



COUNTY OF LAKE
COMMUNITY DEVELOPMENT DEPARTMENT
Planning Division
Courthouse - 255 N. Forbes Street
Lakeport, California 95453
Telephone 707/263-2221 FAX 707/263-2225



2:10 p.m.

~~\$509 + \$188 deposit for court reporter~~

APPEAL TO BOARD OF SUPERVISORS

Date: February 1, 2017

Project Name (if applicable): Middletown Dollar General

Appellant's Name: Cross Development

Appellant's Mailing Address: 5317 Inverray Drive, Plano, TX 75093

Phone #:

Appellant's Representative Joe Dell and Sabrina Teller

555 Capitol Mall, Suite 800, Sacramento, 95814

Phone #: (916) 443-2745

Location of Project: 20900 S. State Hwy 29, Middletown

Assessor's Parcel Number: APN 024-501-18

Previous Action Taken: Planning Commission Hearing and Denial of Design Review and

Environmental Review

Date: January 26, 2017

Reason for Appeal: (Attach extra sheets if necessary)

The Commission's refusal to adopt the mitigated negative declaration prepared for the
project is not supported by substantial evidence, and its findings of inconsistency
within Zoning Ordinance sections 51.4 (a) and 54.5 (a) are not based on reasonable
interpretations of the County's Zoning Ordinance Ordinance
(see attached letter for additional explanation)

Signature of Appellant/s

FOR OFFICE USE ONLY

Appeal Number: AB 17-01

Related File#: UP15-08, 1515-10

Fee: \$509-

Receipt #: PL17000014

Date Received: 02-02-2017

Received By: MGT

EXHIBIT A

C1-DR-FF-FW-SC-ww (C1,RC)



REMY | MOOSE | MANLEY
LLP

Sabrina V. Teller
steller@rmmenvirolaw.com

February 1, 2017

Via Federal Express overnight

Board of Supervisors
County of Lake
255 N. Forbes Street
Lakeport, CA 95453

Re: Appeal of Planning Commission's denial of Middletown Dollar General Design Review and Initial Study/Mitigated Negative Declaration for Use Permit; UP15-08, IS 15-10, APN 024-501-18, 20900 S. State Highway 29, Middletown, Supervisor District 1

Dear Honorable Supervisors:

On behalf of Cross Development, the applicant for a use permit and design review for a proposed Dollar General store in the Middletown community, I am submitting this appeal of the decision by the Lake County Planning Commission on January 26, 2017, to deny the project's design review and refusal to adopt the initial study/mitigated negative declaration (IS/MND) prepared by County planning staff for the project. The Commission's actions to deny the requested entitlements were arbitrary, capricious and not based on substantial evidence or any reasonable interpretation of the County's applicable plans and ordinances.

On July 19, 2016, the Board considered Cross's appeal of the Planning Commission's previous denial of its major use permit, and the Board found that the project was consistent with the requirements of Section 51.4 of the Lake County Zoning Ordinance and met all of the required findings for a Major Use Permit. The Board approved the Major Use Permit, contingent on further design and environmental review by the Planning Commission. It is evident from the Planning Commissioners' comments, however, that they did not limit the scope of their consideration to just the project design elements and the environmental review prepared by staff. Rather, their comments indicate that they simply reject the concept of a "chain" retail store like Dollar General at this site, regardless of its commercial zoning. Cross appeals with the hope that the Board can provide the fair, objective consideration that the project deserves.

For the reasons explained further below, Cross respectfully requests that the Board consider and adopt the IS/MND and approve the design review permit for the project, based on the County's objective standards and requirements, and substantial evidence supporting the conclusions of the IS/MND.

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GROUNDNS FOR APPEAL

Environmental review

In its motion refusing to adopt the IS/MND, the Commission stated, “despite the mitigation measures and conditions of approval which were added to the project, that the use permit and design review as applied for by Cross Development do not meet the requirements of Sections 51.4(a) Findings 1, 3 and 5, and 54.5(a) Findings 4, 5, 6 and 7 of the Lake County Zoning Ordinance, respectively and will have a significant effect on the environment and therefore a mitigated negative declaration shall not be issued.”

Lake County Zoning Ordinance Section 51.4(a) sets forth the findings required for approval of a major use permit. As noted above, the Board has already found in its previous hearing on Cross’s appeal that the proposed project meets all of the requirements for the findings under Section 51.4. (See pages 6-9, ¶¶ 6(a)-(f), Board’s Findings of Fact and Decision in the Matter of the Appeal of Cross Development (AB 16-02).)

Lake County Zoning Ordinance Section 54.5(a) sets forth the eight findings for approval of a design review permit. Findings 4, 5, 6 and 7 cited by the Commission in its motion relate to conformity with applicable plans and zoning, building design and visual compatibility with existing setting, conformity with community design manual criteria, and the adequacy of streets, highways and pedestrian facilities to safely accommodate the proposed use, respectively.

The Commissioners declined to state with any specificity exactly which environmental impacts arising from the requirements of Sections 51.4 and 54.5 they believed were not addressed or fully mitigated, nor did they cite to any substantial evidence supporting their views. The only two environmental issues discussed during the meeting were traffic and aesthetics. Both impacts were fully analyzed, however, and the staff’s conclusions that the impacts would be rendered less than significant by the final project design and mitigation measures are supported by substantial evidence in the County’s administrative record.

Regarding aesthetics, Cross’s response to the Commission’s critiques of the project design are addressed in detail below. With respect to traffic, some Commissioners and members of the public speculated that the store would attract students from nearby schools to jaywalk across Highway 29. As staff noted in verbal response to these comments and as the Board found at its previous meeting on Cross’s appeal, however, similar “attractions” already exist across the highway from the schools and adjacent to the proposed Dollar General store – a Jolly Cone restaurant and Store 24 (a gas station/convenience store) – which do not appear to pose a current threat to student safety. (See p. 6, ¶ 6.a., Board’s Findings of Fact and Decision in the Matter of the Appeal of Cross Development (AB 16-02).) There is nothing uniquely attractive about the products offered in a Dollar General that would increase the potential beyond that which already exists for students to shortcut the legal crosswalk at the intersection of

Highway 29 and Wardlaw. Moreover, the concern raised is a law enforcement responsibility, not a project design issue or environmental impact.

The IS/MND is well-supported by an expert traffic study (Attachment 1) prepared for the project, which concluded that the volume of traffic drawn to the store would not be significant under the County's and Caltrain's adopted levels-of-service standards. Moreover, the project includes the construction of a sidewalk along the portion of Highway 29 fronting the project site, thereby improving pedestrian safety along the highway as compared to existing conditions. No member of the public nor any of the Commissioners offered any substantial evidence contradicting the traffic study's conclusions or to support the Commission's motion stating that the project does not meet Sections 51.4(a), Findings 1 and 3, or 54.5(a), Finding 7.

The Board has ample support in its administrative record to determine that the IS/MND is adequate under the California Environmental Quality Act and that all impacts identified in the environmental review can be mitigated by the conditions that Cross has agreed to. Cross therefore urges the Board to adopt the MND.

Project Design

In its motion denying the design review permit, the Commission stated that the project "does not meet the requirements of Section 54.5(a) Findings 4, 5, 6 and 7." As discussed above, the Commission's conclusion regarding Finding 7, that the project poses traffic safety concerns, is mere speculation, unfounded on any substantial evidence. Finding 4 pertains to project conformity with applicable General Plan policies and zoning ordinances, which is the same determination the Board previously made when it conditionally granted the major use permit.

Findings 5 and 6 relate to visual compatibility with existing development and consistency with any applicable community design criteria (here, the Middletown Area Plan.) This project has been through an exhaustive design review process at the staff and community levels already. Cross has changed the building elevations repeatedly and significantly throughout that process as it heard and responded to input from planning staff and representatives of the Middletown community. (See Attachment 2, the original and several revised renderings of the building through today.) Over the course of the County's consideration of the project, Cross representatives have met or corresponded in good faith in countless hearings, emails and meetings with: the Middletown Area Town Hall (MATH); Middletown Area Merchants Association (MAMA); Lake County Chamber of Commerce; Fletcher Thornton, Chairman of the MATH; Rick Coel, former Director of Community Development; Michalyn DelValle, Principal Planner; Robert Massarelli, current Director of Community Development; and Joe Sullivan, former District 1 Planning Commissioner, all of whom provided valuable input that Cross implemented in adapting the current proposed design of the project.

Unfortunately, even at this late stage, the Commission's direction to Cross on design seems to be a hazy moving target. Before voting to deny the design review permit, Commissioner Malley criticized the most recent project design changes as nothing more than "gingerbread" and faulted the proposed building for including "earth tones," which he asserted are prohibited by the Middletown Area Plan (MAP). We found no such prohibition in the MAP, nor have planning staff ever raised this issue in the lengthy administrative process for this project. Speaking to building colors, the MAP says the following:

- Building design should include architectural themes and colors that promote a rural atmosphere. Large metal buildings should be avoided. Paved areas should be broken up with heavy landscaping that blends with the natural back drop of the valley. New development projects should include visual renderings so that the public can see how visual impacts to this scenic area will be mitigated. (Page 6.)
- Colors and building types should aim to blend and complement natural surroundings. (Policy 6.2.2.b)
- **Utilize colors that are appropriate to the use and the surrounding area.**
 - Muted tones are generally preferred with stronger accent colors limited to smaller areas of trim. Thoughtful consideration should be given to the selection of color hues. Consider muted tones of blues, yellows, tans, grays and other hues rather than selecting non-distinctive beiges and browns.
 - In most cases, a range of analogous or complementary colors is preferred over painting all wall surfaces with the same paint color and shade.
 - Strong building colors that are used for branding or advertising purposes may not be approved.
 - Uses which might make a case for stronger colors will be evaluated on a case-by-case based on the design and the context of surrounding buildings and uses.
 - Creativity and individual identity are encouraged as long as the colors and style does not detract from the surrounding area as a whole. (Guideline #11, Section 7.2, Middletown Design Guidelines, MAP.)

Notably, the only statement in the MAP design guidelines that mention earth tones only vaguely and somewhat confusingly says to "consider" tans, rather than beiges and browns, but does not say that "earth tones" (however one would define them) are prohibited. Cross proposed a color scheme for the building that it felt would be unintrusive and compatible with the surrounding landscape. If the County prefers a different palette, Cross is willing to work with staff on its proposed building colors. Cross

Cross Development Appeal to Board
Re: Middletown Dollar General
February 1, 2017

requested that the Commission provide specific feedback on preferred design changes if it found the current proposal lacking, but the Commission did not do so.

At this point, through building design, conditions of approval, and mitigation measures, the proposed project fully complies with all mandatory, fundamental and specific General Plan policies and zoning ordinance requirements. Planning staff have explained exhaustive detail in their staff reports and initial study how they have reasonable interpreted and applied the requirements of the MAP, many of which are merely advisory or vague and even contradictory. Clearly, some in the community and on the Commission would interpret those policies differently, but the Board is the ultimate arbiter of its own plans and policies. Cross urges the Board to follow the expert advice of its planning staff and grant the design review permit because the staff's interpretation is both reasonable and appropriate.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Sabrina Teller', with a stylized, flowing script.

Sabrina V. Teller

cc: Joe Dell, Cross Development

Attachment 1: Traffic Study

Attachment 2: Building elevations