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April 11, 2017

Via Email and Regular Mail

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

Re: Plan consistency issues in 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 February 1st, we submitted a letter on behalf of applicant Cross Development (Cross) appealing the Planning Commission's denial of design review and refusal to adopt the initial study/mitigated negative declaration (IS/MND) for the above referenced project. This letter supplements our appeal and provides the Board with additional information and arguments to consider regarding the Commission's conclusion that the project is not consistent with applicable plans.

On July 19, 2016, the Board approved the Major Use Permit (UP 16-02) for the project and made all the required findings in Section 51.4 of the Zoning Ordinance. (See Findings of Fact and Decision, pp. 6-9.) The Board remanded the matter to the Planning Commission for the limited purpose of "further design and environmental review." But the Commission did not limit the scope of their consideration to just the project design elements and the environmental review prepared by staff. In the motion refusing to adopt the IS/MND, the Commission stated that the project does not meet the requirements of Section 51.4(a) Findings 1, 3, and 5, and Section 54.5(a) Findings 4, 5, 6, and 7. Similarly, in the 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. Our February 1st letter addressed Section 51.4(a) Findings 1 and 3, and Section 54.5(a) Findings 5, 6, and 7. In this letter, we address Section 51.4(a) Finding 5 and Section 54.5(a) Finding 4, both of which require a finding that the "project is in conformance with the applicable provisions and policies" of the County's Code, the General Plan, and any approved zoning or land use plan.

First, Cross notes that it is difficult to respond to the Planning Commission's concerns when the Commission did not provide a specific list of project design elements that purportedly violate provisions and policies in the County's Code, General Plan, or Middletown Area Plan

(MAP). In contrast, the thorough staff report for the Commission’s January 26, 2017 meeting (“January 2017 staff report”) explains in detail how the project is in conformance with Zoning Ordinance Article 55 (staff report, pp. 2-5), Zoning Ordinance- Community Commercial- Parking requirements (*id.* at pp. 5- 8), Zoning Ordinance- Glare and Heat requirements (*id.* at p. 8), Zoning Ordinance- Landscaping Standards (*id.* at pp. 8-10), Zoning Ordinance- Development Standard Exceptions (*id.* at p. 10), Zoning Ordinance- Signs (*id.* at pp. 10-11), Middletown Area Plan Design Guidelines and Signage Guidelines (*id.* at pp. 11-15), applicable General Plan policies (*id.* at pp. 15-17), and County requirements on various other issues such as tree removal and drainage (*id.* at pp. 17-19). The January 2017 staff report also includes numerous Conditions of Approval and Mitigation Measures for both the Use Permit (*id.* at pp. 19-22) and Design Review Permit (*id.* at pp. 22-25). Taken together, the analysis, conditions of approval, and mitigation measures in the January 2017 staff report support County staff’s recommendation that the Planning Commission approve the project and make all required findings, including Section 51.4(a) Finding 5 and Section 54.5(a) Finding 4 (*id.* at pp. 26-27). The Commission’s decision to reject County staff’s recommendation and to deny the requested entitlements is simply not based on substantial evidence or any reasonable, fair interpretation of the County’s applicable plans and ordinances.

Second, the Commission’s denial of the project’s design review permit appears to be even more arbitrary and capricious when the project’s proposed design is compared to the design of other recently approved projects in the area. For example, Commissioner Bob Malley noted with disfavor that the project’s whole design is brown, citing to a MAP guideline that discourages the use of brown colors. (See MAP, p. 7-7 [Building/ Site Design guideline 11: “Consider muted tones of blues, yellows, tans, grays and other hues rather than selecting non-distinctive beiges and browns”]; Exhibit A [Jan. 2017 staff report, Attachment 2’s Dollar General Middletown Exterior Elevations].) Yet, the recently approved Fast Track Oil (or Velloo Quick Lube) commercial project—which is located just two parcels away from Cross Development’s project site— incorporates the same brown colors into its design and does not appear to be in conformance with other MAP Design Guidelines. (See Exhibit B [Dec. 15, 2016 Elevations for Velloo Quick Lube, showing that design is largely a box with applied design elements and does not provide varied building and parapet heights], and compare to Exhibit A [Cross Development project providing for exterior finish colors in sagebrush, burnished slate, and timber bark tones that appear very similar to the colors in Exhibit B].) Similarly, the design for the 6,000-square-foot Hope City Dormitory in Middletown consists of non-distinctive beige walls and a green roof. (See Exhibit C [Hope City Dormitory design illustrations].) Moreover, the Initial Study/ Mitigated Negative Declaration acknowledges that the existing development in the vicinity of the project site includes commercial buildings that do not comply with design criteria, e.g. “do not have pitched roofs and are facing front property lines.” (Initial Study, p. 18.) Therefore, it would be an unreasonable and unfair application of the MAP Design Guidelines to deny Cross Development’s design review permit here.

Finally, although the Commission did not specifically cite the comment letters sent by The Law Office of Rose M. Zoia (“Zoia Letter”) and M. R. Wolfe & Associates, P.C. (“Wolfe

Letter”) on August 22, 2016, we will address a few of the plan consistency arguments in these letters to provide the Board with information to assist in its deliberations.

1. *MAP Design Guidelines (Chapter 7.2: Commercial Design Guidelines-Middletown Area)*

The Zoia Letter (pp. 3-4) and Wolfe Letter (pp. 5-6) argue that the project violates various guidelines in MAP Chapter 7 (pp. 7-5 to 7-8, 7-11):

- (a) Design to maintain and reinforce the unique scale and character of Middletown;
- (b) Orient building fronts towards primary corridors;
- (c) Avoid visually bulky buildings;
- (d) Provide a unified design around all sides of buildings;
- (e) Avoid blank walls and service areas which are visible from adjacent streets and projects;
- (f) Utilize high quality building materials and details;
- (g) Respect the privacy of neighboring residents; and
- (h) Relate sign colors to building colors.

The project’s conformance with all of these guidelines is addressed in the January 2017 staff report at pages 12-14:

- (a) “There are no historic buildings nearby, no canvas or vinyl awnings are proposed, and the façade is broken into segments.”
- (b) “The building front is oriented towards Highway 29.”
- (c) “The façade design for all four sides avoids a visually bulky building.”
- (d) “A unified design is proposed for all four sides of the building.”
- (e) “There are no blank walls.”
- (f) “High quality building materials and detail has been utilized.”
- (g) “Hopseed is proposed along the building and parking area which, if allow[ed] to grow tall, will provide an effective visual barrier to the neighboring residents.”
- (h) “The proposed color of the signs relate to the building colors.”

Upon closer inspection, the arguments related to MAP Design Guidelines in the Zoia and Wolfe Letters are merely unsupported speculation and personal opinions.

2. *MAP Policy 3.7.2f*

- MAP Policy 3.7.2f states: “Strip commercial development shall be discouraged because of its negative impact to scenic resources and negative economic impacts.” (MAP, p. 3-55.)

Despite the assertions in the Zoia and Wolfe Letters, the evidence in the record does not support a conclusion that the proposed project is “strip commercial development.” The project is

a stand-alone business and will not share any walls or parking lots with other nearby businesses. The project site is not located in a long string of commercial development. Indeed, apart from the Jolly Kone, there are no other commercial structures on either side of the project site. If anything, the project will be contributing to a retail cluster or node that is considered to be the smart planning alternative to strip commercial development. Furthermore, the evidence in the record does not support a conclusion that the project would have a negative impact to scenic resources or result in negative economic impacts. As noted above, the January 2017 staff report details how the project design, conditions of approval, and mitigation measures will ensure that the project is consistent with MAP design guidelines and the aesthetic of other existing buildings in the area.

3. *MAP Policy 5.1.2a*

- MAP Policy 5.1.2a states: “Community Commercial land use designation and zoning shall be established in areas central to the existing communities. The localized themes and design guidelines of this plan shall support the revitalization or creation of town centers.” (MAP, p. 5-7.)

It is unclear from the Wolfe Letter how the project supposedly conflicts with Policy 5.1.2a. The proposed project is zoned C1-DR-FF-FW-SC-WW (Local Commercial- Design Review- Floodway Fringe- Floodway- Scenic- Waterway). The project will not prevent the County from establishing Community Commercial land uses and zoning in areas central to the existing communities. And, as discussed above, the County staff has meticulously applied MAP design guidelines to the project.

4. *MAP Policy 5.1.2b*

- MAP Policy 5.1.2b states: “Commercial development shall be consistent with the guidelines of this plan to provide attractive and compatible development, complimentary in theme to existing development.” (MAP, p. 5-8.)

Again, the January 2017 staff report explains in detail how the project design, conditions of approval, and mitigation measures will ensure that the project is consistent with MAP design guidelines and the aesthetic of other existing buildings in the area. According to the Initial Study, the existing development in the vicinity of the project site includes commercial buildings that do not comply with design criteria. (Initial Study, p. 18.) The proposed project will actually increase the percentage of buildings in the area that comply with and follow MAP design guidelines.

5. *MAP Policy 5.1.2c*

- MAP Policy 5.1.2c states: “‘Formula’ or ‘franchise’ business structures, signs and box stores within the Planning Area that detract from the small-town rural character shall be generally discouraged unless architecture and signage are made compatible with local themes.” (MAP, p. 5-8.)

First of all, Policy 5.1.2c does not act as a mandate to exclude *all* formula or franchise businesses. This policy does not have the same effect as a legally-valid resolution or ordinance establishing a moratorium on formula businesses¹ in the County. Second, the plain language of Policy 5.1.2c provides that a formula business should be allowed if it does *not* detract from the small-town rural character or if it includes architecture and signage that is compatible with local themes. The January 2017 staff report explains how the project includes architecture and a signage plan that is compatible with local themes.

6. *MAP Objective 6.1.1 and MAP Policy 6.1.1d*

- MAP Objective 6.1.1 states: “Expand economic activity in Middletown that builds on the community’s strengths and reinforces its small town character.” (MAP, p. 6-3.)
- MAP Policy 6.1.d states: “Small-scale neighborhood businesses serving commercial developments should be encouraged.” (MAP, p. 6-4.)

The proposed project will expand economic activity in Middletown. And evidence in the record does not support a conclusion that the project will detract from Middletown’s small town character. This is not a big-box store (generally 40,000 sf or more), but a modest 9,100 sf retail store. Dollar General stores are typically located in underserved communities with fewer than 20,000 people where the majority of store customers live within 3.0- to 5.0-miles, or a 10-minute drive, of the stores. Dollar General stores offer a broad selection of merchandise, such as basic packaged and refrigerated food and dairy products, cleaning supplies, paper products, health and beauty care items, basic apparel, housewares, hardware and automotive supplies. Although most items are reasonably priced at \$10 or less, a Dollar General store is not the same as a Dollar Tree, Dollar Store, or other discount retailers that specialize in selling trinkets priced \$1 or less.

7. *MAP Policy 6.1.4b*

- MAP Policy 6.1.4b states: “Develop a sign program exclusively for the downtown Middletown area with specifics on sign types, maximum size allowed, sign materials and location of signs. Signage should be of a uniform design in the downtown core of Middletown to improve the overall image of the area.” (MAP, p. 6-7.)

The proposed project will not hinder the County’s ability to design or implement a sign program for the downtown Middletown area. The project site is not in the downtown “core” of

¹ / There are various legal difficulties in crafting a valid building moratorium aimed at formula or franchise businesses because of constitutional protections and the Dormant Commerce Clause.

Middletown. Nonetheless, the January 2017 staff report provides clear explanations of how the proposed signs comply with MAP signage guidelines. (Jan. 2017 staff report, pp. 14-15.) And the staff report includes a condition of approval that requires a lighting plan to “be submitted and approved by staff prior to occupancy,” with all lighting “directed downwards onto the project site and not onto adjacent roads or properties” and designed to “be consistent” with www.darksky.org recommendations and section 21.41.8 of the County’s Zoning Ordinance. (*Id.* at pp. 15, 23.)

8. *General Plan Policy LU-6.5*

- Lake County General Plan Policy LU-6.5 states: “Pursue Upscale Development. The County shall pursue businesses such as upscale resorts and lodging, wineries and tasting rooms, visitor-oriented retail businesses, and other businesses that would attract high income and multi-day visitors to the County.” (General Plan, p. 3-46.)

The proposed project will not prevent or conflict with the County’s efforts to pursue upscale resorts, wineries, or other businesses for high income visitors. Policy LU-6.5 does not act as a prohibition against developments that are not characterized as “upscale” because there is no reason to believe that the County cannot contain a mix of upscale developments and other types of development. Each and every project that is proposed and considered in the County cannot be expected to fulfill Policy LU-6.5.

9. *General Plan Goal LU-7 and Policy LU-7.5*

- Lake County General Plan Goal LU-7 states: “To preserve Lake County communities’ character and scale, including their design heritage and historic character.” (General Plan, p. 3-48.)
- Lake County General Plan Policy LU-7.5 states: “Distinctive Neighborhoods. The County shall encourage development of diverse and distinctive neighborhoods that build on the patterns of the natural landscape and are responsive in their location and context.” (General Plan, p. 3-48.)

The proposed project, as discussed above and in the January 2017 staff report, is designed and conditioned to be consistent with MAP design guidelines, to be compatible with other existing buildings in the area, and to respect the Middletown community character.

Conclusion

As explained above and in our February 1st appeal letter, the proposed project fully complies with all mandatory, fundamental, and specific General Plan policies and zoning ordinance requirements. The January 2017 staff report and Initial Study explains how the County staff reasonably interpreted and applied the requirements and guidelines of the MAP, General

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Plan, and applicable County Codes. Again, Cross urges the Board to follow the expert advice of its planning staff, adopt the mitigated negative declaration, and grant the design review permit.

Very truly yours,



Sabrina V. Teller

cc: Joe Dell, Cross Development

Exhibit A: Jan. 2017 staff report, Attachment 2's Dollar General Middletown Exterior Elevations
Exhibit B: Dec. 15, 2016 Elevations for Velloo Quick Lube/ Fast Track Oil
Exhibit C: Hope City Dormitory design illustrations

Jan. 2017 staff report, Attachment 2's Dollar
General Middletown Exterior Elevations

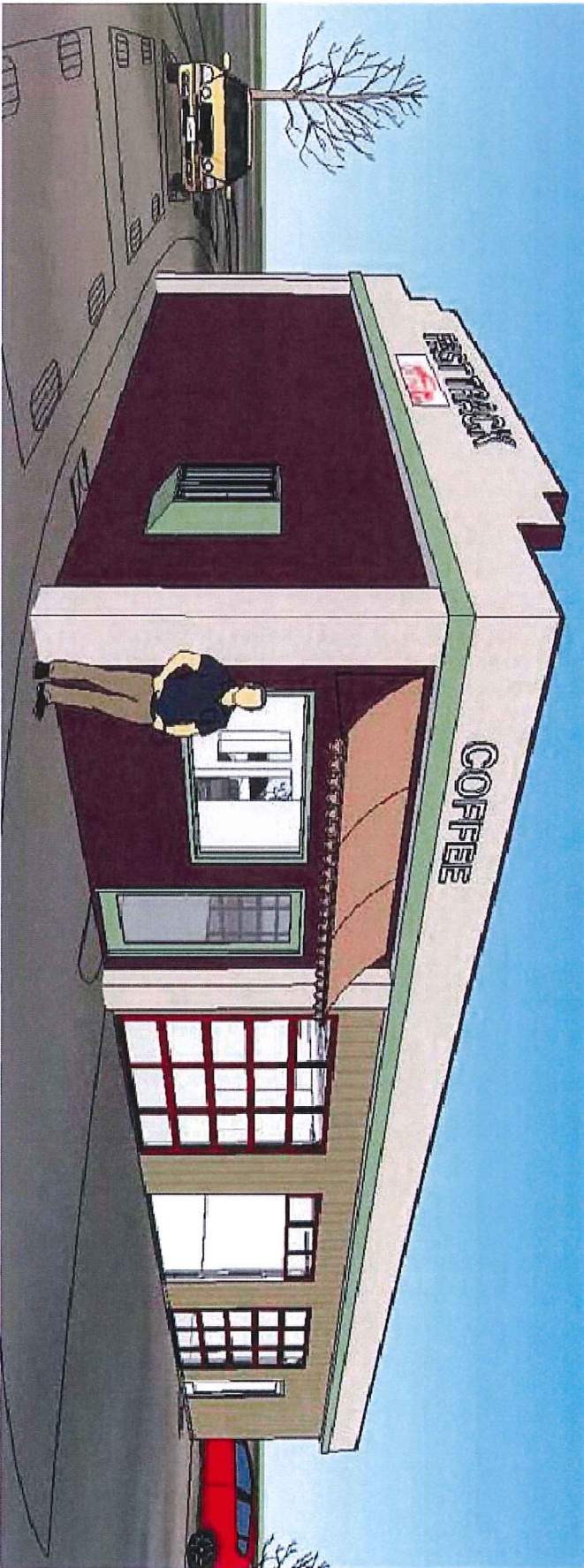
EXHIBIT A

Dec. 15, 2016 Elevations for
Velloo Quick Lube/ Fast Track Oil

EXHIBIT B



North Elevation



South Elevation

Sheet No.

A1
Of



ph 707 274 5022

Sheet Title

Elevations

Project Title

Velloo Quick Lube

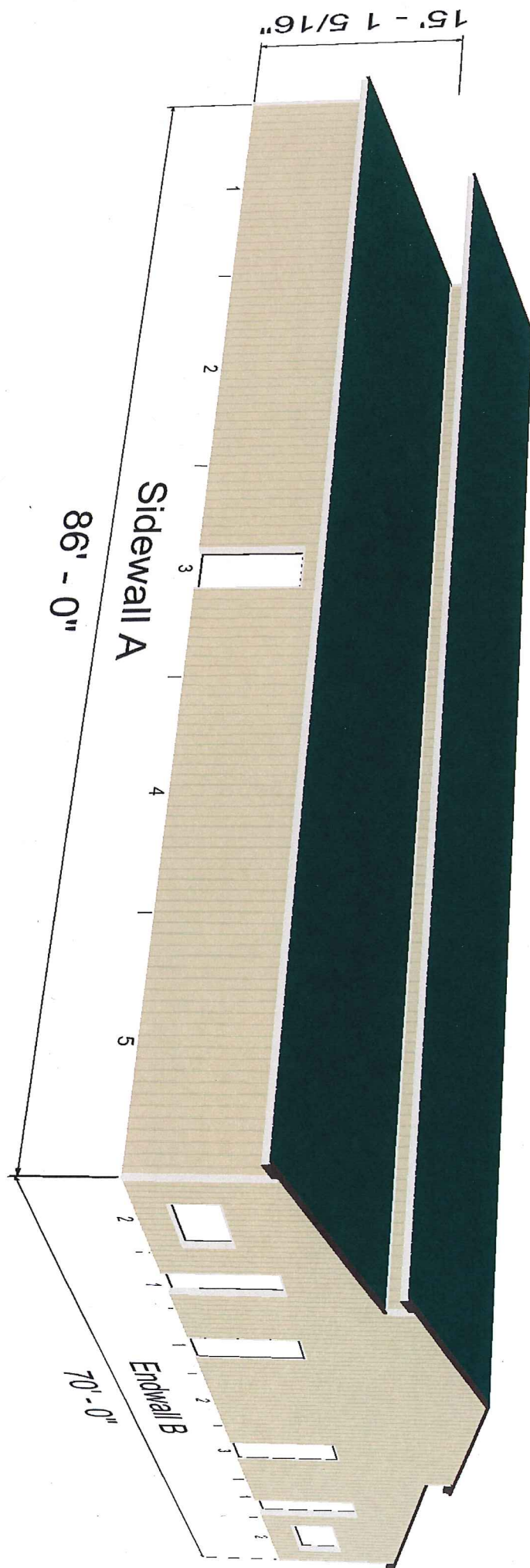
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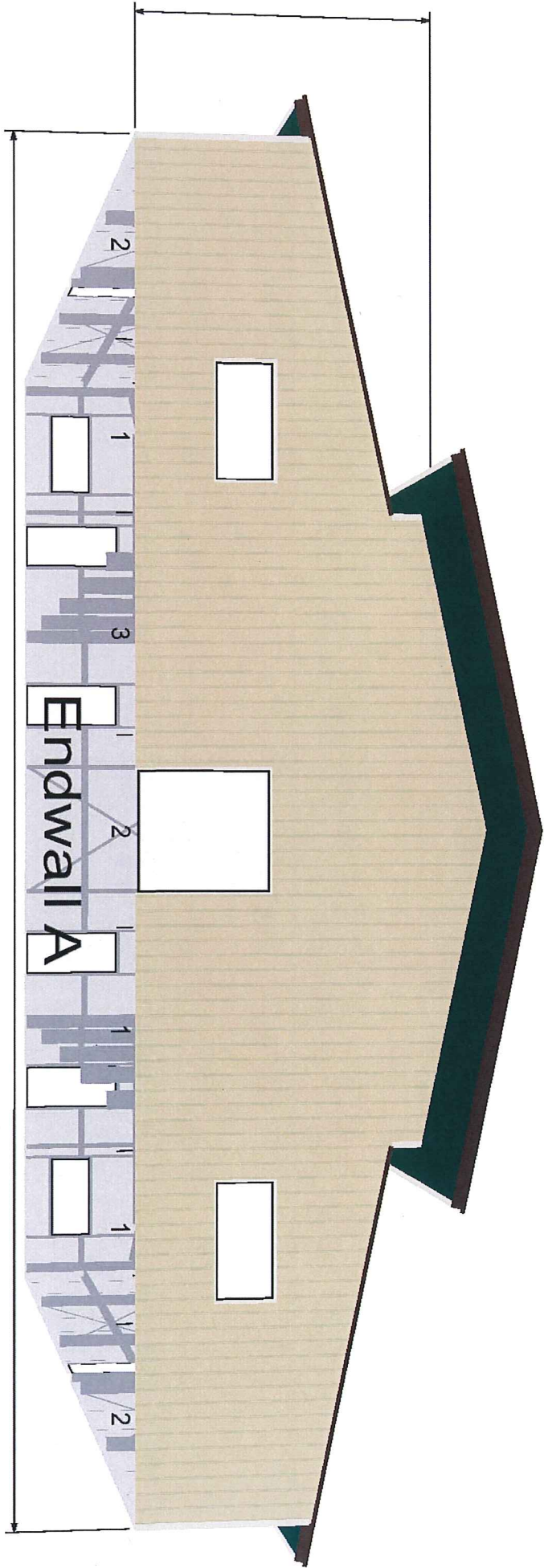
Revisions:

Hope City Dormitory design illustrations

EXHIBIT C



15' - 1 5/16"



70' - 0"

Endwall A