

1 BOARD OF SUPERVISORS, COUNTY OF LAKE, STATE OF CALIFORNIA

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3 In the Matter of the Appeal  
4 of Cross Development  
5 AB 17-01)  
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FINDINGS OF FACT AND DECISION

7 This proceeding was commenced by virtue of an appeal by Cross Development of  
8 the Planning Commission decision of January 26, 2017 to deny the Design Review and  
9 Mitigated Negative Declaration for Use Permit 15-08 of Cross Development, LLC for the  
10 construction of a Dollar General store, a general retail store approximately 9,100 square  
11 feet in size, on property located at 20900 S. State Highway 29, Middletown, California (the  
12 "Project").

13 A duly noticed public hearing on the appeal was held before this Board on April 18,  
14 2017. On that date, evidence, both oral and documentary, was presented. Based upon the  
15 evidence and applicable law, we find the following:

16 1. That the Lake County Planning Commission held a public hearing on April 28,  
17 2016 to consider the application for Major Use Permit (UP 15-08) of Cross Development,  
18 LLC to allow construction of an approximately 9100 square foot Dollar General retail store  
19 at 20900 S. State Highway 29 in Middletown, California. The Planning Commission  
20 found that the Project did not meet the requirements of Section 51.4 of the Lake County  
21 Zoning Ordinance and denied the major use permit on April 28, 2016. The Planning  
22 Commission decision was appealed by Cross Development, LLC. to the Board of  
23 Supervisors. A hearing before the Board of Supervisors occurred on July 19, 2016, at  
24 which hearing the Board of Supervisors approved Major Use Permit 15-08 for the Project,  
25 subject to design review and environmental review by the Planning Commission. A  
26 hearing before the Planning Commission was initially scheduled for August 25, 2016,  
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1 continued to December 8, 2017, and continued again to January 26, 2017. On January  
2 26, 2017, the Planning Commission denied the Design Review and Mitigated Negative  
3 for Use Permit 15-08 on the grounds that the Appellant failed to meet the design review  
4 requirements of Section 54.5 of the Lake County Zoning ordinance.

5 2. That the Appellant is Cross Development, LLC. which has appealed the Planning  
6 Commission's decision of January 26, 2017.

7 3. That staff of the Community Development Department presented evidence both  
8 documentary and testimonial. Staff submitted a staff report dated April 18, 2017, with  
9 attachments which included Exhibits A through M thereto. Michalyn DelValle, Principal  
10 Planner for the Community Development Department, presented the Staff Report, dated  
11 April 18, 2017, made a power point presentation, and in her testimony reviewed the  
12 design review findings required for approval of this Project.

13 4. Appellant presented documentary and testimonial evidence. Appellant, by and  
14 through its representative Joe Dell, testified that they had attempted to incorporate  
15 community ideas into Project changes relating to building elevation and design options.  
16 Written comments were provided by Appellant's legal counsel.

17 5. Testimony was received from numerous members of the public, including many of  
18 whom are residents in the community of Middletown and/or the areas neighboring the  
19 Project location, who spoke against the Project for a variety of reasons, including but not  
20 limited to: Concerns regarding traffic, noise, aesthetic and architectural design issues,  
21 that the Project design was not in keeping with the character and community of  
22 Middletown, nonconformity with the Middletown Area Plan, inconsistencies with the  
23 County General Plan, concerns regarding the safety of children, and quality of life in the  
24 Middletown community.

25 6. That the staff of the Community Development Department recommends this  
26 appeal be granted for those reasons offered in the Staff Report dated April 18, 2017, and  
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as supported in the Initial Study No. 15-10 and other staff reports to the Planning Commission concerning this Project.

7. That this Board has considered and incorporates by reference the Community Development staff memorandum and exhibits thereto submitted to this Board for the hearing on this matter as well as the written submissions by the Appellant and members of the public for the public hearing of this matter.

8. That this Board finds, based on substantial evidence in the record of these proceedings that based upon Initial Study No. 15-10 and the mitigation measures and conditions of approval added to this Project, this Use Permit will not have a significant effect on the environment. This Board finds, therefore, that sufficient information exists in the record of this matter to support the adoption of the Mitigated Negative Declaration and the Board does hereby adopt the Mitigated Negative Declaration with the CEQA findings listed in the staff report to this Board dated April 18, 2017.

9. That consequent to a duly noticed public hearing, this Board previously issued Findings of Fact and Decision on or about August 23, 2016, wherein the Board determined that Major Use Permit 15-08 met the findings required for approval delineated in Section 51.4 of the Lake County Zoning Ordinance and granted said Use Permit subject to further review by the Planning Commission as herein previously described.

10. That this Board finds, based upon substantial evidence in the record of these proceedings, that this Project as mitigated and as modified by conditions of approval, is consistent with the mandatory findings to approve a Design Review pursuant to Section 21-54.5 of the Lake County Zoning Ordinance as specified below:

- a. That the proposed use is a permitted use in the district where located.  
(Zoning Ordinance Sec. 54.5 (a)1.).

A retail store of this size is permitted with a use permit in the C-1 Zoning District.

1 b. That the site for the project is adequate in size, shape, location, and  
2 physical characteristics to accommodate the type of use and level of  
3 development proposed. (Zoning Ordinance Sec. 54.5 (a)2.).

4 The subject parcel, located at the northern edge of downtown Middletown, is over  
5 3.7 acres in size and, upon approval of the parcel map, the area where  
6 construction is proposed would be .96 of an acre. This parcel, therefore, exceeds  
7 the 8000 square foot minimum lot size allowed in C-1 Zoning.

8 c. That there are adequate public or private services, including but not limited  
9 to fire protection, water supply, and sewage disposal. (Zoning Ordinance  
10 Sec. 54.5 (a)3.).

11 The subject parcel is served by the South Lake Fire Protection District, as to fire  
12 protection, the Callayomi County Water District as to water supply, and the Lake  
13 County Sanitation district as to sewage disposal.

14 d. That the project is in conformance with the applicable provisions and  
15 policies of this Chapter, the Lake County General Plan and any approved  
16 zoning or land use study or plan. (Zoning Ordinance Sec. 54.5 (a)4.).

17 With the mitigation measures proposed by County staff, this Project is in  
18 conformance with this requirement.

19 e. That the placement and design of buildings and structures are compatible  
20 with existing development and will not detract from the visual setting.  
21 (Zoning Ordinance Sec. 54.5 (a)5.).

22 The existing development in the area includes various commercial buildings and a  
23 school. Nearby commercial uses include auto-oriented businesses.

24 f. That the project is in conformance with any applicable community design  
25 manual criteria. (Zoning Ordinance Sec. 54.5 (a)6.).

26 Community Development staff determined that with the staff's recommended  
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mitigation measures incorporated, the Project meets all design criteria specified in the Middletown Area Plan as most practicable.

g. That the streets, highways and pedestrian facilities are reasonably adequate to safely accommodate the specific proposed use. (Zoning Ordinance Sec. 54.5 (a)7.).

Incorporated improvements to the Project now include curb, gutter, sidewalk, transit stop, and highway improvements as conditions of approval. The streets, highways, and pedestrian facilities are reasonably adequate to safely accommodate this retail use. The traffic study prepared for the Project concluded that the volume of traffic drawn to the Dollar General store would not be significant under the County's and CalTrans' level of service standards.

h. That no violation of Chapters 5, 17, 21, 23 or 26 of the Lake County Code currently exists on the property, unless the purpose of the permit is to correct the violation, or the permit relates to a portion of the property which is sufficiently separate and apart from the portion of the property in violation so as not to be affected by the violation from a public health, safety or general welfare basis. (Zoning Ordinance Sec. 54.5 (a)(8).).

The subject property has no active County Code violations.

11. Based upon all the foregoing and for the reasons set forth hereinabove, this Board grants the appeal of Cross Development, LLC.

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1 NOTICE TO APPELLANT: You are hereby given notice that the time within which any  
2 judicial review of the decision herein may be sought is governed by the provisions of the  
3 Code of Civil Procedure Sections 1094.5, et seq.  
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6 Dated: \_\_\_\_\_  
7 CHAIR, Board of Supervisors  
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11 ATTEST: CAROL J. HUCHINGSON  
12 Clerk to the Board  
13 of Supervisors

APPROVED AS TO FORM:

14 By: \_\_\_\_\_  
15 Deputy

ANITA L. GRANT  
County Counsel