

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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10 } FINDINGS OF FACT AND DECISION

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

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

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

December 8, 2017, and continued again to January 26, 2017. On January 26, 2017, the Planning Commission denied the Design Review and Mitigated Negative for Use Permit 15-08 on the grounds that the Appellant failed to meet the design review requirements of Section 54.5 of the Lake County Zoning ordinance. Specifically, the Planning Commission determined that the design review findings required by Section 54.5, subdivision (a) 4, 5, 6, and 7 could not be made.

2. That the Appellant is Cross Development, LLC. which has appealed the Planning Commission's decision of January 26, 2017.
3. That staff of the Community Development Department presented evidence both documentary and testimonial. Staff submitted a staff report dated April 18, 2017, with attachments which included Exhibits A through M thereto. Michalyn DelValle, Principal Planner for the Community Development Department, presented the Staff Report, dated April 18, 2017, made a power point presentation, and in her testimony reviewed the design review findings required for approval of this Project.
4. Appellant presented documentary and testimonial evidence. Appellant, by and through its representative Joe Dell, testified that they had attempted to incorporate community ideas into Project changes relating to building elevation and design options. Written comments were provided by Appellant's legal counsel.
5. Testimony was received from numerous members of the public, including many of whom are residents in the community of Middletown and/or the areas neighboring the Project location, who spoke against the Project for a variety of reasons, including but not limited to: Concerns regarding traffic, noise, aesthetic and architectural design issues; that the Project design was not in keeping with the character and community of Middletown; nonconformity with the Middletown Area Plan; inconsistencies with the County General Plan; and concerns regarding the safety of children and quality of life in the Middletown community.
6. That the staff of the Community Development Department recommended this

1 appeal be granted for those reasons offered in the Staff Report dated April 18,  
2 2017, and as supported in the Initial Study No. 15-10 and other staff reports to the  
3 Planning Commission concerning this Project.

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

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

14 9. That this Board finds, based upon substantial evidence in the record of these  
15 proceedings, that this Project is not consistent with all of the mandatory findings  
16 for the approval of a Design Review pursuant to Section 21-54.5, subdivision (a) of  
17 the Lake County Zoning Ordinance. Specifically, that the finding required by  
18 Zoning Ordinance section 54.5, subdivision (a)6 cannot be made:

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

21 Here, it is the Middletown Area Plan which provides the applicable community  
22 design criteria to which this Project must conform. Community Development staff  
23 determined that with the staff's recommended mitigation measures incorporated,  
24 the Project meets all design criteria specified in the Middletown Area Plan, as  
25 most practicable. However, testimony from numerous members of th public gave  
26 voice to concerns that the Project was not in conformance with said community  
27 design criteria. There was substantial evidence presented to this Board that the  
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1 Project does not meet the spirit and intent of the Middletown Area Plan. Neither  
2 the large steel sections nor the colors of the proposed structure are compatible  
3 with the Middletown Area Plan. The Project does not possess a village scale and  
4 character sensitive to the scale and livability of the adjacent residential areas as  
5 provided in the Middletown Area Plan. The Project does not reinforce  
6 Middletown's small town character, but rather, detracts from it. The proposed  
7 structure consists primarily of box elements, only somewhat softened by applied  
8 design elements such as faux shutters. This design is contrary to the guidelines in  
9 the Middletown Area Plan that buildings should be designed to maintain and  
10 reinforce the unique scale and character of Middletown, avoiding designs  
11 consisting largely of boxes with applied design elements. As designed, the  
12 building fails to promote a rural atmosphere as required by the Middletown Area  
13 Plan and detracts from the Middletown area as a whole.

14 10. That this Board finds that the Planning Commission determined in its January 26,  
15 2017 hearing of this matter that a mitigated negative declaration would not be  
16 issued due, in part, to the Planning Commission's decision that not all the design  
17 review findings required by Zoning Ordinance section 54.5, subdivision (a) could  
18 be met. Given this Board's determination hereinabove that all the mandatory  
19 design review findings of Zoning Ordinance section 54.5, subdivision (a) cannot  
20 be met, this Board shall not disturb the Planning Commission's environmental  
21 ruling here.

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

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1 **NOTICE TO APPELLANT:** You are hereby given notice that the time within which  
2 any judicial review of the decision herein may be sought is governed by the provisions of  
3 the Code of Civil Procedure Sections 1094.5, et seq.  
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6 Dated: \_\_\_\_\_

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CHAIR, Board of Supervisors

10 ATTEST: CAROL J. HUCHINGSON  
11 Clerk to the Board  
12 of Supervisors

APPROVED AS TO FORM:

13 By: \_\_\_\_\_  
14 Deputy

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ANITA L. GRANT  
County Counsel