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**Title:** 10:00 A.M. - PUBLIC HEARING - Consideration of Appeal (AB 17-02) of Planning Commission's Denial of the Mitigated Negative Declaration, Major Use Permit (UP 16-04) and Design Review (17-02) for construction of an approximately 9,100 square foot commercial building; Mitigated Negative Declaration is based on Initial Study 16-07; applicant is Cross Development, on behalf of Dollar General; project location is 9781 Point Lakeview Road, Kelseyville (APNs 043-551-06, 07 & 47)

**Sponsors:** Community Development

**Indexes:**

**Code sections:**

**Attachments:** 1. AB 17-02 Staff Memo, 2. BOS Exhibit A, 3. BOS Exhibit B, 4. Exh C UP 16-04 Staff Report, 5. Exh C Agency Comments, 6. Exh C Conditions, 7. Exh C Initial Study, 8. Exh C Public Input 1, 9. Exh C Public Input 2, 10. Exh C Public Input 3, 11. Exh C Public Input 4, 12. Exh C Public Input 5, 13. Exh C Public Input 6, 14. Exh C Public Input 7, 15. Exh C Public Input 8, 16. Exh C Public Input 9, 17. Exh C Site Plan Bldg Elev Grading and Landscape Plan, 18. Exh C Subdivision Map, 19. Exh C Vicinity Map, 20. BOS Exhibit D, 21. BOS Exhibit E, 22. BOS Exhibit F, 23. BOS Exhibit G, 24. Public Input\_ Dollar General

Date	Ver.	Action By	Action	Result
4/25/2017	1	BOARD OF SUPERVISORS	denied	Pass

**MEMORANDUM**

**TO:** Board of Supervisors

**FROM:** Robert Massarelli, Community Development Director

Prepared by: Mireya G. Turner, Associate Planner

**DATE:** April 10, 2017

**SUBJECT:** Appeal of Planning Commission Denial of the Mitigated Negative Declaration, Major Use Permit and Design Review for Cross Development - Dollar General Store, Clear Lake Riviera; AB 17-02 APN 043-551-06, 07 & 47, Supervisor District 5

- EXHIBITS:**
- A. Appeal Form
  - B. Appeal Form Attachment
  - C. Planning Commission Staff Report Dated February 23, 2017
  - D. Planning Commission Minutes dated February 23, 2017
  - E. Public Comment since February 23, 2017
  - F. Geotechnical Engineering Report, dated December 23, 2013

G. Zoning Ordinance Article 41 General Standards, excerpt

I. **BACKGROUND**

Cross Development, LLC appeals the Planning Commission's February 23, 2017 denial of the Mitigated Negative Declaration, Major Use Permit and Design Review for the proposal to demolish an existing, vacant commercial building and construct an approximately 9,100 square foot general retail store (Dollar General) in the Clear Lake Riviera commercial district.

Cross Development proposes the demolition of the existing  $\pm 3,120$  square foot multi-unit commercial structure and the construction of a  $\pm 9,100$  square foot building to house a Dollar General retail store. The project site is near the intersection of State Highway 281 and Point Lakeview Road, spanning three parcels, totaling  $\pm 1.064$  acres. The driveway is located on Point Lakeview Road. Cross Development proposes relocation of the driveway to a point further from State Highway 281, still on Point Lakeview Road. The project site is within the Clear Lake Riviera commercial area including Highway 281, Fairway Drive, Broadmoor Way and Point Lakeview Road. Twenty-five paved parking spaces, a trash enclosure, lighting, and a detention basin are proposed as part of the project. Landscaping is required throughout the unpaved areas. No pedestrian improvements along Point Lakeview Road are proposed.

A Major Use Permit, Design Review and Initial Study (Environmental Review) are required for this project. Cross Development applied for the permit to construct an approximately 9,100 square foot retail store for Dollar General, which was denied by the Planning Commission on February 23, 2017. A timely appealed was received.

Staff recommended that the Planning Commission find on the basis of the Initial Study IS 16-07 prepared by the Planning Division and the mitigation measures and conditions of approval which had been added to the project, that the use permit and design review as applied for by the Cross Development would not have a significant effect on the environment and therefore a mitigated negative declaration be issued with the findings in the staff report. Additionally, staff recommended that the Planning Commission find that the Design Review applied for by Cross Development on property located at 9781 Point Lakeview Road met the requirements of Section 54.5 of the Lake County Zoning Ordinance, and grant the Design Review.

**ENVIRONMENTAL ANALYSIS**

A CEQA Initial Study for this project was completed. Implementation of and compliance with project conditions of approval identified in the CEQA Initial Study as mitigation measures, as outlined below, would avoid or reduce potential impacts to less than significant levels.

1. **AESTHETICS**

The Riviera Architectural Control and Planning Committee met with the applicant and their suggestions have been incorporated into the building elevations. If the project is approved, they will also review the final building plans and submit their comments to this department.

Conditions are in place to ensure the landscaping signage and lighting will be mitigated to less than significant impacts.

2. **AGRICULTURE AND FORESTRY RESOURCES**

No potentially significant impacts were identified.

3. **AIR QUALITY**

Conditions are in place to mitigate any possible asbestos prior to demolition of the existing structure. Additionally, a permit will be required should backup generators be used.

4. **BIOLOGICAL RESOURCES**

No sensitive species were noted within the project area. A California Department of Fish and Wildlife filing fee shall be required.

5. **CULTURAL RESOURCES**

A cultural resource study was completed on April 13, 2016 with no cultural resources identified. Conditions are in

place to immediately halt construction if any archeological materials are discovered during demolition or installation of irrigation.

6. **GEOLOGY AND SOILS**  
The project area is within an Alquist-Priolo Earthquake Fault Zone and the trace of an active fault is located approximately 60 feet east of the project building pad. A geotechnical engineering report was submitted. All recommendations in this report are incorporated into the project conditions.
7. **GREENHOUSE GAS EMISSIONS**  
No potentially significant impacts were identified.
8. **HAZARDS & HAZARDOUS MATERIALS**  
Conditions are in place to reduce potential impacts to less than significant.
9. **HYDROLOGY & WATER QUALITY**  
Conditions are in place to reduce potential impacts to less than significant.
10. **LAND USE & PLANNING**  
The project area consists of three legal lots of record. Each of these lots contains public utility easements and building setbacks established by the subdivision. Prior to the issuance of a building permit, the lots must be merged, the utility easements vacated and if needed, the building setback line must be corrected.
11. **MINERAL RESOURCES**  
No potentially significant impacts were identified.
12. **NOISE**  
Conditions are in place to mitigate any short-term noise impacts during construction.
13. **POPULATION & HOUSING**  
No potentially significant impacts were identified.
14. **PUBLIC SERVICES**  
A condition is in place to ensure the construction and project area comply with local and state fire protection regulations.
15. **RECREATION**  
No potentially significant impacts were identified.
16. **TRANSPORTATION/TRAFFIC**  
The proposed location of the new driveway increases traffic safety. Conditions are in place to ensure appropriate handicap access, as well as pedestrian and driver safety.
17. **UTILITIES & SERVICE SYSTEMS**  
Conditions are in place to address local agency requirements for both municipal water service and on-site wastewater system.

### **DESIGN REVIEW FINDINGS**

The eight required findings for approval of a Design Review Permit are as follows. Alternatively modification of the application can be made and if modifications are not feasible then the application may be denied.

1. *That the proposed use is a permitted use in the district where located.*  
  
This site is zoned "Community Commercial" which allows for retail sales.
2. *That the site for the project is adequate in size, shape, location, and physical characteristics to accommodate the type of use and level of development proposed.*  
  
The proposed project area consists of three parcels. Once the parcels are merged and the public utility easements are vacated, the size of the site will be adequate. The structure meets all setback requirements and the site plan includes the appropriate amount of parking.
3. *That there are adequate public and private services, including but not limited to fire protection, water supply, and sewage disposal.*

The project proposes using municipal water, an on-site septic system and the fire district is able to provide fire protection services to this site.

4. *That the project is in conformance with the applicable provisions and policies of this Chapter, the Lake County General Plan and any approved zoning or land use study or plan.*

With incorporated mitigations (listed below) the project is in conformance.

**CONDITIONS/MITIGATIONS:**

**Build & Design**

1. All landscaping and irrigation plans shall be submitted, installed and maintained for the life of the project as shown on the submitted plans. All Landscaping shall be consistent with the regulations and standards of Section 41.9 of the Lake County Zoning Ordinance and the Model Water Efficient Landscaping Ordinance (Government Code Section 65591 Et. Seq). All undeveloped areas as shown on the Landscape Plan shall be maintained in aggregate base and be kept free of weeds and litter for the life of the project.
2. All lighting shall be directed downwards onto the project site and not onto adjacent roads or properties. Lighting equipment shall be consistent with that which is recommended on the website: [www.darkskyorg](http://www.darkskyorg), and provisions of Section 21.41.8 of the Zoning Ordinance.
3. Prior to installation of all signage, detailed sign plans shall be submitted to the Community Development Department for review and approval. Signage shall be designed in accordance with Section 21-45.12 of the Zoning Ordinance. Total signage shall be limited to 130 square feet, and shall consist of a combination of a wall sign, roof, free standing or a projecting sign.
4. Prior to building permit submittal the Clear Lake Riviera Architectural Control and Planning Committee shall review the building permit application packet and their recommendations and/or approval shall be forwarded to the Community Development Department.
5. *That the placement and design of buildings and structures are compatible with existing development and will not detract from the visual setting.*

The footprint of the building will exceed that of the current building. Its design is consistent with the neighboring businesses. Landscaping has been proposed to limit its visual impact to the area.

6. *That the project is in conformance with any applicable community design manual criteria.*

Staff has determined that the project with incorporated mitigations meets all of the design criteria as specified in the Riviera Area Plan as most practicable. Please see above conditions/mitigations.

7. *That the streets, highways and pedestrian facilities are reasonably adequate to safely accommodate the specific proposed use.*

As proposed, the existing streets, highways and pedestrian facilities are reasonably adequate to safely accommodate the specific proposed use.

8. *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.*

The department has no record of current violations of Chapters 5, 17, 21, 23 or 26 of the Lake County Code.

Significant public input was submitted against this project. The Planning Commission unanimously denied the project stating that despite the mitigation measures and conditions of approval which were added to the project, that the use permit, initial study and design review as applied for by Cross Development do not meet the requirements of Sections 51.4(a), findings 1,3 & 5 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. Additionally they found that the Design Review applied for by Cross Development did not meet the requirements of Section 54.5(a), findings 4, 5, 6 & 7 of the Lake County Zoning Ordinance and that the Design Review be denied.

Lake County Zoning Ordinance Section 51.4(a), findings 1, 3 and 5 are regarding the Major Use Permit. The Planning Commission found that the proposed project did not meet findings 1, 3 and 5 for the following reasons:

1. *That the establishment, maintenance, or operation of the use applied for will not under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, or be detrimental to property and improvements in the neighborhood or the general welfare of the County.*

The project does not fit the community due to the size of the proposed building and its single storefront use. It will also cause a negative economic impact on neighboring, similar-type businesses. The noise impacts of delivery and garbage trucks will be a noise nuisance in the immediate area. The proposed structure is an unsafe distance from a known fault line. Additional traffic to and from this parcel will negatively impact other users of Highway 281 and Point Lakeview Road. The lack of windows along the side of the building makes it inconsistent with other nearby commercial buildings.

3. *That the streets, highways and pedestrian facilities are reasonably adequate to safely accommodate the specific proposed use.*

Highway 281 and Point Lakeview Road are not adequate to safely accommodate this type of general retail store at the proposed location.

5. *That the project is in conformance with the applicable provisions and policies of this Code, the General Plan and any approved zoning or land use plan.*

The size of the proposed building and its lack of side windows make it inconsistent with the design guidelines as listed in the Rivas Area Plan. Additionally, the proposed tenant does not meet the spirit and intent of the Rivas Area Plan promoting small, local business.

Lake County Zoning Ordinance Section 54.5(a), findings 4, 5, 6 and 7 are concerning the Design Review. This Planning Commission found that the Design Review did not meet findings 4, 5, 6 and 7 for following reasons:

4. *That the project is not in conformance with the applicable provisions and policies of this chapter, the Lake County General Plan and any approved zoning or land use study or plan.*

The size of the proposed building and its lack of side windows make it inconsistent with the design guidelines as listed in the Rivas Area Plan. Additionally, it does not meet the spirit and intent of the Rivas Area Plan promoting small, local business, given that Dollar General is a national corporation.

5. *That the placement and design of the buildings and structures are not compatible with existing development and will not detract from the visual setting for the following reasons:*

The size of the building and the lighting of the front signage will detract from the natural beauty of the scenic corridor. Additionally, the long side wall of the building lacks any windows, making it unattractive and inconsistent with the Riviera Area Plan Commercial Design Guidelines.

6. *That the project is not in conformance with any applicable community design manual criteria.*

Please see above.

7. *That the streets, highways and pedestrian facilities are reasonably adequate to safely accommodate the specific proposed use.*

The proposal will create additional traffic to State Highway 281 and Point Lakeview Road. This additional traffic will negatively impact other traffic on those roads.

## **II. APPEAL DISCUSSION**

The appeal form (BOS Exhibit A) provides a response to the Planning Commission denial of the Mitigated Negative Declaration, Use Permit and Design Review. The appellant asserts that the environmental concerns brought up during the Planning Commission hearing were fully analyzed in the Initial Study document and supported by the Geotechnical, Traffic and Economic Analyses. The appellant also asserts that findings can be made that the project is consistent with the Rivieras Area Plan in terms of color, landscaping, and the building construction, and explains that the building design presented to the Planning Commission reflected meetings with the public and the approval of the Clear Lake Riviera Architectural Control and Planning Committee.

The appellant asserts the Planning Commission failed to take into account the development rights of the property owner. The purpose of the Community Commercial base zoning designation of the project site, as listed in the Zoning Ordinance is to provide a full range of commercial retail and service establishments to communities. Permitted uses include retail sales of food, appliances, auto parts, drugs, clothing, books, liquor, and on and off-sale beer and wine. A major use permit is required for this project due to the requested square footage exceeding 8,000 square feet.

The appellant addressed other concerns of the Planning Commission with attachments to the appeal, including a traffic study and economic analysis of the project area. For more information regarding the proximity to the fault line, please see the attached geotechnical report (BOS Exhibit F). For more information on standards for noise due to product deliveries and garbage truck visits in commercially zoned areas, please see the attached excerpt from Article 41 of the Zoning Ordinance regarding General Standards (BOS Exhibit G).

## **RECOMMENDED ACTION:**

### **III. RECOMMENDATION**

Staff recommends that the Board of Supervisors make a motion for an intended decision to approve the appeal of the Mitigated Negative Declaration, Use Permit and Design Review for UP 16-04, IS 16-07 and DR 17-02, denied by the Planning Commission on February 23, 2017, with the following findings:

#### **A. Adopt a mitigated negative declaration for UP 16-04 and DR 17-02 with the following findings:**

1. Potential environmental impacts related to land use and aesthetics have been mitigated to insignificant levels by conditions section B.
2. Potential environmental impacts related to cultural and biological resources have been mitigated to insignificant levels by use permit conditions C.

3. Potential environmental impacts related to traffic have been mitigated to insignificant levels by use permit condition section D.
4. Potential environmental impacts related to utilities, services systems and public safety have been mitigated to insignificant levels by use permit conditions E.
5. Potential environmental impacts related to air quality and noise have been mitigated to insignificant levels by use permit conditions section F.
6. Potential environmental impacts related to geology, soils, hydrology, and water quality have been mitigated to insignificant levels by use permit conditions section G.
7. Potential environmental impacts related to timing and monitoring have been mitigated to insignificant levels by use permit conditions H.
- 7a. This project is consistent with land uses in the vicinity.
8. This project is consistent with the Lake County General Plan, Rivas Area Plan and Zoning Ordinance with the incorporated mitigations and conditions of approval.
9. As mitigated, this project will not result in any significant adverse environmental impacts.

**B. Approve Use Permit UP 16-04 with the following findings:**

1. That the establishment, maintenance, or operation of the use applied for will not under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, or be detrimental to property and improvements in the neighborhood or the general welfare of the County.
2. That the site for the project is adequate in size, shape, location, and physical characteristics to accommodate the type of use and level of development proposed.
3. That the streets, highways and pedestrian facilities are reasonably adequate to safely accommodate the specific proposed use.
4. That there are adequate public or private services, including but not limited to fire protection, water supply, sewage disposal, and police protection to serve the project.
5. That the project is in conformance with the applicable provisions and policies of this Code, the General Plan and any approved zoning or land use plan.
6. 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.

**C. With regards to Design Review Permit make the following findings:**

1. That the proposed use is a permitted use in the district where located.
2. That the site for the project is adequate in size, shape, location, and physical characteristics to accommodate the type of use and level of development proposed.

3. That there are adequate public or private services, including but not limited to fire protection, water supply and sewage disposal.
4. That the project is in conformance with the applicable provisions and policies of this chapter, the Lake County General Plan and any approved zoning or land use study or plan.
5. That the placement and design of the buildings and structures are compatible with existing development and will not detract from the visual setting.
6. That the project is in conformance with any applicable community design manual criteria.
7. That the streets, highways and pedestrian facilities are reasonably adequate to safely accommodate the specific proposed use.
8. 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.

**Sample Motion:**

**Appeal Approval:**

I move that the Board of Supervisors make an intended decision to uphold Appeal AB 17-02 of the Planning Commission's denial and adopt a mitigated negative declaration, approve the Design Review DR 17-02 and Use Permit 16-04, as applied for by Cross Development on behalf of Dollar General.