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**Title:** 10:00 A.M. - PUBLIC HEARING - Appeal of Planning Commission's Denial of the Mitigated Negative Declaration and Design Review for Major Use Permit for Dollar General Store, Middletown; AB 17-01 (APN 024-501-18)

**Sponsors:** Community Development

**Indexes:**

**Code sections:**

**Attachments:** 1. Exhibit A, 2. Exhibit B, 3. Exhibit C, 4. Exhibit D, 5. Exhibit E, 6. Exhibit F, 7. Exhibit G, 8. Exhibit H, 9. Exhibit I, 10. Exhibit J, 11. Exhibit K, 12. Exhibit L, 13. Exhibit M, 14. Letter to Board re Appeal and Plan Consistency Issues, 15. Appeal (AB 17-01) 20900 S. State Highway 29, Middletown, CA, 16. Public Input\_MTownDollarGeneral

Date	Ver.	Action By	Action	Result
4/18/2017	1	BOARD OF SUPERVISORS	approved	

### MEMORANDUM

**TO:** Board of Supervisors

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

Prepared by: Michalyn DelValle, Principal Planner

**DATE:** April 18, 2017

**SUBJECT:** **Appeal of Planning Commission's Denial of the Mitigated Negative Declaration and Design Review for Major Use Permit for Dollar General Store, Middletown; AB 17-01 ( APN 024-501-18) Supervisor District 1**

**EXHIBITS:**

- A. Appeal Form
- B. Appeal Form Attachment 1, Traffic Study
- C. Appeal Form Attachment 2, Building Elevations
- D. Site Plan, Building Elevation and Landscape Plan
- E. Planning Commission Minutes dated January 26, 2017

- F. Planning Commission Staff Report Dated January 9, 2017
- G. Design Review Conditions
- H. Use Permit Conditions
- I. Public Comment Letters, January 26, 2017
- J. Public Comment Letters, December 8, 2016
- K. Public Comment Letters, August 25, 2016
- L. Initial Study, IS 15-10
- M. Findings of Fact

## I. **BACKGROUND**

The appellant is appealing the Planning Commission's January 26, 2017 denial of the Design Review and Mitigated Negative Declaration for Major Use Permit, UP 15-08 to construct a retail store (Dollar General) at 20900 S. State Highway 20, Middletown. The appeal was filed by the applicant's attorney on behalf of Cross Development.

The developer, Cross Development is proposing to construct an approximately 9,100 square foot retail store for Dollar General, on a parcel that currently totals 3.7 acres in land area. The project site is located within downtown Middletown, on State Highway 29 across from Middletown High school and Bible Church. As proposed the project consists of twenty-three paved parking spaces and would provide circulation for delivery trucks to occur facing Highway 29. A trash enclosure, lighting, and two detention basins are proposed as part of the project. Landscaping is required throughout the unpaved areas and pedestrian and State Highway improvements are required by Caltrans and the Transit Authority, including but not limited to sidewalks, a transit stop and a two way left turn lane on State Highway 29.

A Major Use Permit, Design Review and Initial Study (Environmental Review) is required for this project. The developer, Cross Development applied for a Major Use Permit which was denied by the Planning Commission on April 28, 2016. The application was appealed by the developer to the Board of Supervisors and the hearing was held on July 19, 2016 which ultimately approved the Use Permit contingent upon the approval of the Design Review and Environmental by the Planning Commission. A hearing before the Planning Commission was scheduled for the Design Review and Environmental on August 25, 2016. The Planning Commission directed the applicant to work with MATH AND MAMA on the design of the building. A hearing was held on December 8, 2017 and some public comment was taken and was continued to January 26, 2017. On January 26, 2017 the Planning Commission denied the project. A timely appealed was received.

Several different elevations have been submitted by the applicant during this process which has been included in the appeal packet (BOS Exhibit C).

Staff recommended that the Planning Commission find on the basis of the Initial Study No. 15-10 prepared by the Planning Division and the mitigation measures and conditions of approval which have 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 listed below. Additionally, staff recommended that the Planning Commission find that the Design Review applied for by Cross Development on property located at 20900 S. State Highway 29, Middletown 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

Conditions are in place to ensure the landscaping, signage, lighting and fencing 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 air quality concerns including submittal of a dust mitigation plan.

4. BIOLOGICAL RESOURCES

Conditions are included that require that the Valley Oaks be maintained or alternatively must be replaced that they are replaced at a five to one ratio.

5. CULTURAL RESOURCES

A cultural resource study was completed on May 28, 2015 with no cultural resources identified. Conditions are in place to immediately halt construction if any archeological materials are discovered during demolition or irrigation.

6. GEOLOGY AND SOILS

Conditions are included that require engineered drainage plans and calculations and an operation and maintenance plan and method of financing for the Best Management Practices.

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

No potentially significant impacts were identified.

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 will require highway improvements. 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 and sewer service.

## **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.**

Yes, a retail store of this size is permitted with a Use Permit in the C1 zoning district.

**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.**

This parcel is currently over 3.7 acres. Upon approval of the Parcel Map the parcel where construction is proposed would be .96 of an acre. The minimum lot size in the C1 Zoning district is 8,000 square feet. This parcel well exceeds that size. This parcel is located at the northern edge of downtown Middletown.

**3. That there are adequate public or private services, including but not limited to fire protection, water supply and sewage disposal.**

This parcel is served by the South Lake Fire Protection District, public water through Callayomi County Water District and Sewer through Lake County Sanitation District.

**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 the project is in conformance.

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

The existing development in the vicinity consists of various commercial buildings and a school. Most of the commercial buildings do not have pitched roofs and are facing front property lines. Nearby commercial uses to the south, are older, auto oriented businesses, however, across from the proposed development, the two institutional uses comply with the design criteria.

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

Staff has determined that the project with incorporated mitigations by staff meets all of the design criteria as specified in the Middletown Area Plan as most practicable.

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

Yes, with incorporated improvements including, but not limited to curb, gutter sidewalk, transit stop and Highway Improvements which are included as conditions of approval, see BOS Exhibit D the streets, highways and pedestrian facilities are reasonably adequate to safely accommodate the retail 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 property does not have any active violations of County Code.

Several members of the public spoke 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 and design review as applied for by Cross Development do not meet the requirements of Sections 51.4(a), findings 1,3 & 5 and Section 54.5(a), findings 4,5,6 & 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. 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 concerning the Use Permit which was not part of this hearing. The Use Permit was contingently approved by your Board on July 19, 2016. Please see attached Findings of Fact (BOS Exhibit M)

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 proposal does not meet spirit and intent of Middletown Area Plan including having large steel sections and by using brown and tan colors on the building which are discouraged in the Middletown Area Plan.

**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 residences located behind the proposed development will view the rear elevation of the building. The building is not a good fit and or layout and it would have been better to have located parking in the rear on the building.

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

The proposal does not meet spirit and intent of Middletown Area Plan including having large steel sections and by using brown and tan colors on the building which are discouraged in the Middletown Area Plan.

Additionally that the applicant did not work with Middletown Area Town Hall and Middletown Merchants Association as requested by the Planning Commission previously.

*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 an already congested area. The site is located across from several schools and that there are pedestrian concerns with this project being located across the State Highway and children that may be crossing the highway.

## **II. APPEAL DISCUSSION**

The appeal form (BOS Exhibit A) provides a detailed response to the Planning Commission denial of the Design Review and Mitigated Negative Declaration. The attorney for the appellant asserts that the environmental concerns brought up during the Planning Commission hearing were fully analyzed in the Initial Study document, specifically the traffic and aesthetics and a mitigated negative declaration should be supported. The appellant also asserts that findings can be made that the project is consistent with the Middletown Area Plan in terms of color, landscaping, and the building construction. The appellant indicates that they are willing to modify their design if required.

Here are excerpts from BOS Exhibit A:

### **Design Review Findings**

*Findings 4 pertain to project conformity with applicable General Plan policies and zoning ordinances, which is the same determination that 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, MAP.) 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 DeValle, 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.

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 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 reasonably 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 staffs interpretation is both reasonable and appropriate.*

### **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 and Design Review for UP 15-08 denied by the Planning Commission on January 26, 2017, with the following findings.

#### **A. Adopt a mitigated negative declaration for UP 15-08 with the following findings:**

1. Potential environmental impacts related to land use and aesthetics have been mitigated to insignificant levels by use permit conditions section B.
2. Potential environmental impacts related to cultural resources have been mitigated to insignificant levels by use permit conditions section 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, service systems and public safety have been mitigated to insignificant levels by use permit condition section 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. This project is consistent with land uses in the vicinity.

8. This project is consistent with the Lake County General Plan, Middletown Area Plan and Zoning Ordinance.
9. As mitigated, this project will not result in any significant adverse environmental impacts.

**B. 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 approve appeal AB 17-01 and reverse the Planning Commission's denial and adopt a mitigated negative declaration and approve the Design Review for Use Permit 15-08, as applied for by Cross Development on behalf of Dollar General with the findings listed in the Board of Supervisors memorandum dated March 31, 2017.