



AGENDA REPORT

Community Development

DATE:	March 1, 2022
TO:	Mayor Butt and Members of the City Council
FROM:	Lina Velasco, Director of Community Development Hector Lopez, Senior Planner
Subject:	Appeal of the Planning Commission’s Conditional Approval of a Conditional Use Permit and Design Review for a Dollar Tree Store at 12300 San Pablo Avenue (PLN21-129)
FINANCIAL IMPACT:	The proposed Dollar Tree Store is a retail outlet that would generate retail sales tax revenues. The estimated General Fund amount for the City is approximately \$35,000 to \$40,000. Additionally, the project would generate a business license tax based on gross receipts.
PREVIOUS COUNCIL ACTION:	None
STATEMENT OF THE ISSUE:	On January 18, 2022, Jim Hanson filed an appeal, on behalf of Richmond Heights Neighborhood Council (RHNC), objecting to the Planning Commission’s conditional approval of a Conditional Use Permit and Design Review (PLN21-129) to operate and establish a Dollar Tree retail store greater than 3,000 square feet in size (10,000 sf proposed) within the CM-4, Commercial Mixed-Use, Gateway/Node zoning district at 12300 San Pablo Avenue.
RECOMMENDED ACTION:	ADOPT a resolution Denying the Appeal and Affirming the Planning Commission’s conditional approval of a Conditional Use Permit and Design Review to operate and establish a Dollar Tree retail store greater than 3,000 square feet in size (10,000 sf proposed) within the CM-4, Commercial Mixed-Use, Gateway/Node zoning district at 12300 San Pablo Avenue – Community Development Department (Lina Velasco 510-620-6706).

DISCUSSION:

The applicants and owners, Kim Kevin and Jennifer Yu, request approval of a Conditional Use Permit and Design Review to operate and establish a retail store greater than 3,000 square feet (SF) in size (10,000 SF proposed) at 12300 San Pablo Avenue; applicants' request for approval includes making building renovations and site improvements as illustrated in Exhibit A of Attachment 2 (collectively, the "Project"). On January 6, 2022, the Planning Commission conditionally approved the Project. On January 18, 2022, Jim Hanson filed an appeal on behalf of Richmond Heights Neighborhood Council (RHNC), which objected to the Planning Commission's conditional approval of the Project.

The Project site involves two existing parcels that total 37,500 square feet, which are located at the northeast corner of Barrett and San Pablo Avenue(s). The subject property has an existing $\pm 15,000$ square-foot commercial building, which is located at the site's southern portion with surface parking to the north. The site is zoned CM-4, Commercial Mixed-Use, Gateway/Node. Situated immediately to the east of the site is a low-density, single-family district; and situated to the west and south are a variety of commercial uses, including restaurants, retail stores, used auto dealerships, and personal services.



Zoning Compliance:

Pursuant to Zoning Ordinance Table 15.04.202.020, a retail facility greater than 3,000 SF (10,000 SF proposed) requires a Conditional Use Permit (CUP). The proposed Project complies with the applicable development standards of the CM-4, Commercial Mixed-Use, Gateway/Node (Section 15.04.202.020), including setbacks, parking, building height, and floor area ratio (FAR) as follows:

DEVELOPMENT STANDARDS			
Site Features	Existing	Proposed	Required
Lot size:	37,500 SF (0.86-acre)	No change	N/A
Building Height:	16-18 feet	No change	Up to 35 feet
Floor Area Ratio (FAR):	0.4	0.4	Up to 2.0
Setbacks: Street Frontages:	0 feet (Barrett Ave. and San Pablo Ave.)	No change	0 feet (Barrett Ave. and San Pablo Ave.)
Side Yard:	20 feet (rear of building abutting a residential zone)	No change	Min. 5 feet when abutting residential zone.
Rear Yard:	150 feet	No change	0 feet, but 10 feet when abutting a residential zone.
Number of Parking Spaces	Unknown	33 spaces	3 spaces per 1,000 sf 10,000 sf of retail = 33 parking spaces
Landscaping	N/A	<ul style="list-style-type: none"> • ±6,400 SF (17%) • Parking Area Trees: 8 	<ul style="list-style-type: none"> • 10% of Lot Area=3,750 SF • Parking Area Trees: 6 trees (1 per every 5 stalls)

Design Review Board Recommendation:

The Design Review Board (“Board” or “DRB”) first reviewed the Project on August 25, 2021, but continued the matter to allow applicants time to address the Board’s and the public’s design comments. After applicants revised the plans, they returned to the DRB on September 22, 2021, where the Board voted to recommend Design Review approval to the Planning Commission.

Conditional Use Permit:

On November 4, 2021, the Planning Commission held a public hearing to consider the Conditional Use Permit and Design Review for the proposed Project. During the hearing, some neighbors expressed opposition to the Project. Issues raised related primarily to the Project's proximity to other Dollar Tree stores in the area but also included the retailer's alleged unfair labor practices; discount store-associated crime; competition with small businesses; parking shortages in the area; vehicle delivery noise; and traffic congestion in the area.

After closing the public hearing, the Planning Commission continued the item and requested that City staff work with the applicants to draft additional conditions of approval to address comments raised during the public hearing with regard to: delivery truck noise; fencing between the residential neighbors and the proposed use; and other operations' limitations (e.g., modified hours of operation and delivery vehicle times). The Planning Commission also encouraged the applicants to contact the abutting property neighbors regarding the loading zone and perimeter fencing.

On January 6, 2022, the Planning Commission heard the item again, whereby applicants made additional Project modifications resulting in a conditional approval. Some of the applicants' additional modifications included:

- To further reduce potential noise impacting adjacent residential properties, applicants relocated the Project's trash enclosure to the north-west portion of the site within the parking lot.
- To avoid any conflicts with the turning radius during departure and arrival of distribution trucks, applicants adjusted the placement of the two ADA parking stalls.
- To further improve security, the Police Department (via review by Sergeant L. Joseph) suggested applicants place either bollards or large planters at the Project store's entrance; and mark the store's front-entrance parking stall as loading zone only. Additionally, the applicants will install "No Loitering/No Soliciting" signs at the store's entrance and will continue the discussion with the Police Department regarding additional security improvements prior to occupancy, including an on-site visit prior to the store's opening.
- Applicants reduced the sign-letter size from 30" to 28" letters for the San Pablo Avenue frontage.
- In response to public comments and those Chair Tucker made regarding potential traffic impacts, City consultant Fehr & Peers peer-reviewed the traffic analysis originally prepared by the applicants' consultant W-Trans. Fehr & Peers agreed with the findings and conclusions of W-Trans' analysis.

After closing the public hearing, the Project was unanimously approved by the Planning Commission (see Resolution in Attachment 2).

APPEAL ACTION:

Pursuant to Section 15.04.803.140.E of the Zoning Ordinance, the City Council determines whether an underlying decision is supported by substantial evidence and/or constitutes an abuse of discretion. The same standards and evaluation criteria, including the findings required, apply as they were for the original application. The appellate body's review is limited to the issue(s) raised in the petition for the appeal. The City Council may affirm, modify, or reverse the original decision. When a decision is modified or reversed, the City Council must state the specific reasons for modification or reversal. The City Council may also choose to refer a matter back to the Planning Commission or Design Review Board for further consideration and a decision if significant new evidence is presented in conjunction with the appeal, which may include substantial changes to the original proposal.

BASIS OF APPEAL:

The appeal letter (Attachment 3) Jim Hanson submitted on behalf of the Richmond Heights Neighborhood Council ("Appellant" or "RHNC") asserts that the Planning Commission's conditions of approval inadequately mitigate potential adverse impacts of an intensive commercial use within a residential neighborhood and surrounding area, including:

1. Traffic safety measures inadequate at this location (including 800 or more vehicles exiting daily into a fast, I-80 on-ramp lane).

Staff's Response:

The RHNC cited the incorrect traffic volume number for the Project. Applicants submitted a traffic memo prepared by W-Trans, a traffic engineering firm. As indicated in the memo, the proposed Project would generate an average of 604 net-new daily trips, including 14 new trips during the peak morning hours and 55 new trips during the peak evening hours. The Project would not generate more than 100 net-new peak-hour trips; Therefore, the Project does not meet the threshold criteria for a traffic impact analysis requirement under Contra Costa Transportation Authority.

During the Planning Commission hearing on November 4th, RHNC requested that an additional traffic consultant review the Project's traffic impacts. Applicants agreed to pay for a City consultant to peer-review their analysis. The City contracted with its traffic consultant, Fehr & Peers, as described above. In its peer review, Fehr & Peers concluded that W-Trans' methodologies were consistent with the City's and with Contra Costa Transportation Authority's. The peer review determined that the Project constitutes a local-serving retail and would therefore have a less-than-significant impact on traffic volumes.

Given the site's proximity to San Pablo and Barrett Avenues, and the existing driveway's relatively short distance from this intersection, City staff requested applicants submit a traffic analysis addressing potential safety hazards. According to W-Trans, the existing driveway provides the best location from a traffic-engineering perspective. The

Project's driveway has more than adequate sight distances and proper spacing from Barrett Avenue. Exiting vehicles would be able to merge into a northbound through-lane without getting trapped in an I-80 right-turn-only lane. Trucks would be able to complete all maneuvers on-site to access the loading area and would not have to back out vehicles onto San Pablo Avenue. Lastly, traffic operation on the eastbound I-80 on-ramp at San Pablo Avenue is expected to remain relatively unchanged upon the addition of Project-added vehicle trips.

2. Left turn only upon exit also increases traffic on the adjacent neighborhood streets.

Staff's Response:

The Project will have a "Right-Only" (Right Turn Only) sign at the exit (not a "Left Turn Only"). While the traffic consultants acknowledged there may be some cut through traffic on adjacent neighborhood streets due to the no-left turns on San Pablo Avenue; however, they noted the number would be insignificant.

3. Store closing hours incompatible with the residential setting (note: earlier closing hours are in place elsewhere along San Pablo Avenue).

Staff's Response:

The Project's 9:00 AM to 9:00 PM operating hours are consistent with other area businesses and are actually less than many other businesses along San Pablo Avenue, including those immediately adjacent to residential properties. Applicants submitted the following information regarding the hours of operations of surrounding businesses along San Pablo Avenue:

- Tsing Tao Restaurant, 12372 San Pablo (9:30 PM closing on weekdays, 10:00 PM on weekends)
- KFC, 12319 San Pablo Avenue (10:00 AM to 10:00 PM , 7 days per week)
- Wendy's, 12201 San Pablo Avenue (6:30 AM to 1:00 AM , 7 days per week)
- Pizza House, 12343 San Pablo Avenue (10:00 AM to 10:00 PM, weekdays, 10:00 AM to 11:00 PM on weekends)
- Grocery Outlet, 12010 San Pablo (8:00 AM to 9:00 PM , 7 days per week)
- Planet Fitness, 4925 Macdonald Avenue (24 hours Mon. through Thurs., Fri. 12:00 PM – 9:00 PM , Weekends 7:00 AM to 7:00 PM)
- Zen Day Spa, 12230 San Pablo Avenue (9:30 AM to 9:30 PM, 7 days per week)
- Target, 4500 Macdonald Avenue (8 AM to 10:00 PM, 7 days per week)

The RHNC asserts that the proposed retail use is situated within a residential neighborhood; however, it should be noted that the proposed Project is located on a key corridor, San Pablo Avenue, as defined in the General Plan 2030. "Key corridors are commercial streets that provide local serving retail, multi-family housing, and other community uses within walking distance of residential neighborhoods. The type and character of development along these corridors promote activity along the street at all

times of the day.” The proposed Project helps realize the General Plan vision for the San Pablo Avenue corridor.

4. No time limit on delivery trucks, which means they can unload during the evening.

Staff’s Response:

The Project provides adequate protections to the adjacent residential property associated with delivery-truck noise. According to applicants, Dollar Tree does not use any mechanized or motorized equipment to unload the trucks; instead, the merchandise is placed on a gravity-fed rollers and then employees carry it by hand into the stockroom. Dollar Tree deliveries would occur one to two times per week depending on sales, with one time per week being the average.

Conditions of Approval have been crafted to minimize delivery impact on residential properties north of the loading zoning. These interventions include installing a new 8-foot-tall fence; adding a row of hedge species in front of the fence; adding acoustically absorbing material to the fence; and limiting the delivery hours as provided in Approved Conditions Nos. 13, 19, and 26 (see Conditions of Approval under Attachment 2).

5. Timely/specific/effective measures to control delivery dock and other noise (including sound-absorbing wall).

Staff’s Response:

Conditions of Approval have been crafted to minimize the impact of delivery on the residential properties north of the loading zoning. All Dollar Tree distribution truck deliveries shall arrive no earlier than 7:00 AM and no later than 9:00 PM.

6. Oversized, overwhelming signage despite 24-inch signs at adjacent commercial uses and area Dollar Tree stores.

Staff’s Response:

The proposed signage on San Pablo frontage is 28 inches high, with internally lit lettering. Proposed signage on Barrett Avenue has 30-inch-high letters. The proposed lettering’s dimensions are not significantly higher than those of surrounding signs, particularly for an arterial commercial property. In response to comments from the RHNC regarding the Barrett Street sign, Applicants and Dollar Tree agreed to move the Dollar Tree sign closer to San Pablo (left of transom windows) and to not light the sign internally.

7. Total parking lot lighting and sign brightness levels (i.e. lumens) for parking lot, etc. not available.

Staff’s Response:

Capital City Design Inc. prepared a photometric study, which was included in Design Review Board and Planning Commission meetings’ Staff Reports. The primary concern

raised was lighting spillover on residential properties, which reports have demonstrated would not occur.

The Planning Commission's approval, as conditioned, will ensure that the Project will comply with the City's zoning code requirements pertaining to lighting. Applicants will provide lumen calculations prior to construction to ensure compliance with City's zoning code requirements.

In response to the appeal filed, Applicants submitted responses to the issues raised in the RHNC's appeal (see letter in Attachment 4). On Thursday, February 17, 2021, an additional letter was submitted by the RHNC (Attachment 5) that outlines some potential modifications to conditions of approval that they believe would mitigate the issues raised in their appeal.

CONCLUSION:

The proposed Project complies with the CM-4, Commercial Mixed-Use, Gateway/Node and is consistent with the commercial land use designation under the General Plan. The Conditions of Approval, which the Planning Commission approved, address many of the concerns raised in the appeal. Applicants have been responsive incorporating several changes into the design and proposed retail operations to address a variety of issues raised by neighbors, including the RHNC. The CM-4 zoning district encourages and promotes local-serving retail businesses at key community nodes and gateways, such as the one at San Pablo and Barrett Avenues. Therefore, City staff recommends the City Council adopt Resolution (in Attachment 1) Denying the Appeal and Affirming the Planning Commission's conditional approval of a Conditional Use Permit and Design Review to operate and establish a Dollar Tree retail store greater than 3,000 square feet in size (10,000 sf proposed) within the CM-4, Commercial Mixed-Use, Gateway/Node zoning district at 12300 San Pablo Avenue.

DOCUMENTS ATTACHED:

- Attachment 1 – Resolution Denying the Appeal and Upholding the Planning Commission's Conditional Approval
- Attachment 2 – Planning Commission's Resolution approving the Conditional Use Permit and Design Review
- Attachment 3 – Appeal Letter from Jim Hanson on behalf of RHNC
- Attachment 4 – Applicants' Response to the Appeal
- Attachment 5 – Additional Letter submitted by Jim Hanson, dated February 16, 2022