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VIA E-MAIL TO HECTOR_LOPEZ@CI.RICHMOND.CA.US

City of Richmond City Council
City of Richmond
450 Civic Center Plaza, 2nd Floor
Richmond, CA 94804

Hector Lopez, Senior Planner
City of Richmond
450 Civic Center Plaza, 2nd Floor
Richmond, CA 94804

Re: **Applicant Response to Appeal by RHNC**
Proposed Dollar Tree Store (PLN21-129) 12300 San Pablo, Richmond

Dear Honorable Councilmembers and Mr. Lopez:

On behalf of the Applicants and property owners Kevin Kim and Jennifer Yu (“Applicants”), this letter provides a formal response to the administrative appeal filed by Jim Hanson on behalf of the Richmond Heights Neighborhood Council (“RHNC”) challenging the City of Richmond (“City”) Planning Commission’s approval of the proposed Dollar Tree Store Project (“Project”) located at 12300 San Pablo Avenue in Richmond (“Project Site”).

If built, the Project would remodel the existing commercial building, which has been vacant for more than five years, completely revitalize the Project Site through significant building and site improvements, new landscaping and lighting, and local art, bringing new activation along an important City corridor. As provided below, the Project consists of improvements to an existing commercial building for a new retail use that is consistent with the surrounding commercially-zoned properties along San Pablo Avenue and complies with the development standards of the City’s Zoning Code. In the past nine months the Project has undergone review at a total of six public meetings including a RHNC community meeting, two Design Review Board (“DRB”) meetings, and three Planning Commission meetings. The Applicants also met with Mr. Hanson and two other members of the RHNC at the Project Site in October 2021, and met several times with the immediate residential neighbor north of the Project Site during the past few months. The Applicants and Dollar Tree have incorporated dozens of Project design and operational changes as well as voluntary additions to the Project’s 31 Conditions of

Approval, in direct response to feedback received during these meetings. Further, as confirmed by two traffic consultants, the Project would not result in significant traffic impacts. As described in further detail below, the RHNC's appeal does not identify any abuse of discretion by the Planning Commission in its approval of the Project, nor does it identify any finding of the Planning Commission that was not supported by substantial evidence. We ask that the City Council deny the appeal and allow the Project to proceed.

* * * * *

Response to Issues Raised in Appeal:

Decisions of the City's Planning Commission may only be appealed after the appellant has exhausted all other administrative remedies. (Richmond Mun. Code ("RMC") § 15.04.803.140(A)(5).) The appeal must "clearly and concisely state the reasons for the appeal, and also state specifically how and where the underlying decision constitutes an abuse of discretion and/or is not supported by substantial evidence in the record." (15.04.803.140(D)(1).) "The appellate body's review is limited to the issue(s) raised in the petition for appeal." (15.04.803.140(E).)

The RHNC has raised seven issues in its appeal, falling into five topics concerning traffic, hours of operation, deliveries, signage, and parking lot lighting, which are addressed in that order in the sections below. None of the appeal claims state any conflict with the City's zoning regulations or other applicable state or federal law, nor any other abuse of discretion by the Planning Commission.

I. Traffic

Appeal Claims: "Traffic safety measures at location (including 800+ vehicles exiting daily into fast I-80 onramp lane)." (Appeal, Issue 1.) "Left turn only upon exit also increases traffic on the adjacent neighborhood streets." (Appeal, Issue, 2.)

Response: The appeal does not identify how the Planning Commission's approval of the Project was an abuse of discretion and/or is not supported by substantial evidence in the record, and on that basis alone should be denied. (RMC § 15.04.803.140(D)(1).) As both designed and conditioned, the Project will have a "Right-Only" sign at the exit (not a "Left turn only" sign as the appeal suggests), which was a recommendation made by Staff and two traffic consultants. Further, the RHNC's cited number for additional traffic volume is incorrect.

As described above, the Project involves the renovation and use of an existing commercial building and parking lot. The Project will continue to utilize the driveway as it exists in its current location and as it was used for the prior used auto sales store. What is critical to emphasize is that the Project's traffic *does not meet the threshold*

criteria for requiring a traffic impact analysis under Contra Costa County's Transportation Authority guidelines (used by the City for traffic analysis), because the Project will not generate more than 100 net new peak hour trips (the threshold for requiring a traffic report). Indeed, the Project's peak hour trips are one-third to one-half of that amount as shown in the table below. Moreover, these numbers are conservative as they *do not discount* the baseline traffic associated with the prior auto-sales use. Despite this low traffic volume, the Applicant chose to hire W-Trans to prepare a traffic report for the purpose of responding to comments and questions concerning the Project's traffic impacts.¹ The Applicant selected W-Trans to prepare the traffic analysis. W-Trans is one of the City's pre-qualified traffic engineering consultants, has performed countless traffic reports for the City, and is familiar with local traffic patterns in Richmond.

Despite this effort, during the Planning Commission proceedings the RHNC demanded an additional traffic consultant review the Project's traffic impacts.² In response, the Applicant agreed to have the City hire its own traffic consultant—Fehr & Peers—to prepare a peer review of the W-Trans Report, with the Applicant paying the costs of such review.³ The peer review concluded that “the assumptions and methodologies used in the traffic analysis are generally consistent with the City of Richmond and Contra Costa Transportation Authority (CCTA) guidelines, as well as accepted best-practices in traffic engineering.” The peer review also agreed that “the site is considered local serving retail and therefore has a less-than-significant impact on VMT.” The total traffic volumes calculated by Fehr & Peers were very similar to the calculations by W-Trans, as shown in the table below.

Consultant	Land Use / ITE Code	Daily Trips	Pass-By Trips	Net New Auto Trips	AM Peak	PM Peak
<i>City and Contra Costa Threshold for requiring Traffic Report</i>					100	100
W-Trans	Free-Standing Discount Store, ITE LU 815	711	15% reduction (-107)	604	14	55
Fehr & Peers	Variety Store, ITE LU 814	852	35% reduction (-290)	562	27	60

The RHNC's claim that the Project will result in 800+ new trips is incorrect as it ignores the calculation of pass-by trips. As documented by both W-Trans and Fehr & Peers,

¹ *Traffic Analysis for Dollar Tree Project, 12300 San Pablo, Richmond* dated September 8, 2021, prepared by M.Spencer, P.E., of W-Trans (hereafter “W-Trans Report”).

² See RHNC comment letter dated December 1, 2021, included as attachment 6 to the January 6, 2022 Staff Report.

³ *Peer Review of the Traffic Analysis for Dollar Tree Project* dated December 29, 2021, prepared by S.Tabibnia, P.E. of Fehr & Peers (hereafter “F&P Report”). This peer review was provided as Attachment 4 to the January 6, 2022 Staff Report.

traffic associated with a retail use like the Dollar Tree Store includes a significant number of “pass-by trips,” trips corresponding to consumers who are already passing by the store and stop in on their way to their final destination. Fehr & Peers calculated the pass-by trip reduction as 34% and W-Trans calculated the pass-by trip reduction as 17% (but calculated trips based on a more conservative 15% reduction). Regardless of which figure is used, the conclusions remain the same and the proposed Project is *well below* the threshold for preparation of a traffic report to begin with, which is based on peak AM and PM trips.

Like W-Trans, Fehr & Peers agreed that “left-turns out of the project driveway on San Pablo Avenue should be prohibited” and stated that it should be “acknowledged that the left-turn prohibition can increase traffic on the adjacent neighborhood streets, such a Roosevelt and McLaughlin.” As noted by W-Trans in its response to such peer review, “the number of outbound vehicles in the peak hours is relatively small (13 in the a.m. and 29 in the p.m.), and the number that would want to return southbound or potentially use neighborhood streets would be a subset of those numbers.”⁴ Neither W-Trans, nor Fehr & Peers, found that the Project would cause or create any traffic safety issues nor has any evidence been presented during the proceedings of any safety issue.

Further, W-Trans found that the proposed Project’s existing driveway, which served the prior car dealership, is located in the most desirable location from a traffic engineering perspective.⁵ The driveway provides adequate spacing and site distance from Barrett Avenue, allows room for exiting vehicles to get into a northbound San Pablo Avenue through lane without being trapped in a right turn only lane, and would facilitate trucks entering the parking lot that need to maneuver on-site to back into the loading area. The number of new trips added to San Pablo Avenue or the I-80 eastbound on-ramp during the peak hours would represent a *very small portion* of traffic compared to baseline traffic on San Pablo, which is estimated at 1,700 in the peak hours based on pre-pandemic levels. In sum, there would be little to no anticipated change in traffic operations on San Pablo Avenue, the I-80 eastbound on-ramp, or in the vehicle queue extending back from the on-ramp.

As summarized above, the Project’s minimal traffic was exhaustively evaluated by two traffic consultants and the Planning Commission’s decision was supported by substantial evidence and did not constitute an abuse of discretion.

⁴ *Responses to Traffic Analysis Peer Review Letter for Dollar Tree Project* dated December 30, 2021, prepared by M.Spencer, P.E. of W-Trans. This response letter was provided as Attachment 5 to the January 6, 2022 Staff Report.

⁵ W-Trans Report, pp. 2-3.

II. Hours of Operation

Appeal Claim: “Store closing hour incompatible with residential setting (note: earlier closing hours in place elsewhere.” (Appeal, Issue 3.)

Response: The Project Site is located in a *commercially-zoned area* directly fronting on San Pablo Avenue, two blocks from Interstate 80. It is located at the intersection of Barrett Avenue and San Pablo, which has commercial uses on all four sides of the intersection: Kentucky Fried Chicken (“KFC”) on the north-west, Car Care Center and Smog Shop on the south-west, and Barocci Motor Group, on the south-east. North of the Project Site are the Tsing Tao Restaurant and Tire Wheel and Pro Shop, and directly across from the Project Site on San Pablo, next to the KFC, is the Goodwill Store, Pizza House, and La Bamba Taqueria. Much of San Pablo Avenue, both inside and outside of Richmond, is characterized by commercial properties fronting San Pablo, with residential uses immediately behind. In other words, there is nothing unique about the Project Site’s setting.

In response to feedback during the public meetings, the Applicant and Dollar Tree agreed to reduce the store hours to 9:00 a.m. to 9:00 p.m. (the hours originally proposed were 8:00 am to 10:00 pm), as identified in Condition of Approval No. 20. These hours are *less than* the operation hours at most other Dollar Tree Stores throughout the Bay Area and *less than* many of the surrounding businesses listed below. The businesses marked below with two asterisks (**) are businesses that are located immediately adjacent to residential properties. The proposed Project’s operating hours are less than all of the businesses listed below.

- Tsing Tao Restaurant, 12372 San Pablo (closing at 9:30 pm weekdays, 10 pm weekends)**
- KFC, 12319 San Pablo Avenue (10 am -10 pm, 7 days)
- Wendy’s, 12201 San Pablo Avenue (6:30 am - 1 am, 7 day)**
- Pizza House, 12343 San Pablo Avenue (10 am-10 pm weekdays, 10 am-11 pm weekends)
- Grocery Outlet, 12010 San Pablo (8 am to 9 pm, 7 days a week)**
- Planet Fitness, 4925 Macdonald Avenue (24-hours 4 days a week)**
- Zen Day Spa, 12230 San Pablo Avenue (9:30 am – 9:30 pm, 7 days)**
- Walgreens, 1150 Macdonald Avenue (8 am -10 pm, 7 days)**
- FoodsCo, 1250 Macdonald Avenue (7 am – 12 midnight, 7 days)**
- Target, 4500 Macdonald Avenue (8 am – 10 pm, 7 days a week)

The Project’s operating hours of 9 am to 9 pm are compatible with the surrounding commercially zoned setting on San Pablo and are less than many other businesses along San Pablo Avenue including those immediately adjacent to residential properties.

III. Deliveries

Appeal Claims: “No limit on time delivery trucks can unload into the evening.” (Appeal, Issue, 4.) “Timely/specific/effective measures to control delivery dock & other noise (incl. sound absorbing wall).” (Appeal, Issue, 5.)

Response: This appeal claim does not state any Project inconsistency with any City zoning regulation and on that basis alone should be denied. Moreover, the Project as designed and conditioned provides adequate protections for the adjacent residential property associated with delivery truck noise.

The Project will utilize the existing truck loading zone and loading dock entrance at the rear (eastern) portion of the Project Site. Dollar Tree distribution trucks will use this loading area to unload merchandise when the store is closed. As stated during the DRB and Planning Commission hearings, 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 carried by hand into the stock room by employees. Dollar Tree deliveries would occur one to two times a week depending on sales, with one time per week being the average.

The Applicant has conducted significant outreach with the immediate neighbor in the residential home abutting the loading area, including two in-person meetings, emails, and a phone call. As part of these efforts, the Applicant and the City worked to craft Conditions of Approval geared toward minimizing the impact of delivery on the residential property to the north of the loading zoning.⁶ These include installing a new 8-foot-tall fence, adding a row of hedge species in front of the fence, adding acoustic absorbing material to the fence, and limiting the delivery hours as provided in the approved Conditions below:

13. Hedge species shall be either Pittosporum or Potocarpus planting spaced to form hedge or screen buffer to the neighboring properties located to the north.

19. All deliveries by Dollar Tree distribution trucks to the store shall arrive no earlier than 7:00 a.m. and no later than 9:00 p.m. Dollar Tree distribution trucks shall turn off engines during unloading.⁷

⁶ In addition, the Applicant also modified the Project Design to move the trash enclosure (previously located in the loading zone), to the north-western portion of the parking lot to further reduce noise to the adjacent residential properties associated with City trash pick-up. (Condition of Approval 27.)

⁷ This delivery time constraint would be impossible for Dollar Tree to accommodate at a majority of its other stores locations, as the small delivery window greatly increases delivery costs. In an effort to resolve concerns regarding the adjacency of the existing loading zone to the residence immediately north, the Applicant and Dollar Tree agreed to this restriction.

26. The applicant shall construct a new 8-foot-tall wooden construction fence along the loading zone, with landscaping hedge along the fence as provided in Condition 13, as shown in the Project Plans dated December 28, 2021. An acoustic absorbent material shall be installed along the portion of this loading zone fence opposite to the loading dock to further reduce potential noise.

This delivery timing allows Dollar Tree to unload the truck when the store is closed, which is necessary to avoid closing down multiple aisles during store hours. The timing also ensures that the loudest portion of the delivery—the truck beeping when backing into the loading zone at arrival time—is scheduled to avoid disturbance to the residence adjacent to the loading zone and other nearby residences on McLaughlin Street.

IV. Signage

Appeal Claim: “Oversized, overwhelming signage despite 24” signs at adjacent commercial use and area Dollar Tree.” (Appeal, Issue, 6.)

Response: This appeal claim does not state any Project inconsistency with any City zoning regulation and on that basis alone should be denied. The appeal also does not identify the specific signs to which it is objecting. During the proceedings before the DRB and the Planning Commission the RHNC only objected to the signage on the Barrett Avenue and San Pablo Avenue building elevations, therefore the Applicants respond herein to those previously raised complaints as the RHNC did not exhaust its administrative remedies as to other claims.

The proposed signage on the Project’s San Pablo frontage consists of the words “Dollar Tree” in capitalized green lettering measuring 28 inches high, with the lettering internally lit. The proposed signage on the Project’s Barrett Avenue frontage also consists of the words “Dollar Tree” in capitalized green letters, here stacked vertically, with the letters measuring 30 inches high. During the DRB and Planning Commission hearing process, in direct response to comments from the RHNC regarding the Barrett Street sign, the Applicant and Dollar agreed to move the Dollar Tree sign closer to San Pablo (left of transom windows), and to not internally light the sign.⁸ but this sign would not be internally lit. None of the Project’s proposed signage faces any residential properties. The San Pablo building elevation faces K.F.C. on the other side of San Pablo, and the Barrett Avenue building elevation faces a used car dealership parking lot.

The Project’s signage is consistent with similar signage in the vicinity of the Project. For example, the K.F.C. across the street uses both 24-inch and 30-inch lettering on its building, and also includes a face cabinet sign that measures 7 feet high and 5 feet wide.

⁸ Dollar Tree uses only illuminated signs at a great majority of its store locations, but in an effort to resolve concerns from the RHNC the Applicant and Dollar Tree agreed not to light the Barrett Avenue sign.

Similarly, the Grocery Outlet store a few blocks down San Pablo Avenue includes two storefront signs measuring 8 feet 6 inches tall by 14 feet wide, with a lettering size of 27.5 inches for the vertically stacked words “Grocery Outlet,” and 13.5 inch lettering for the words “bargain market” underneath.

Finally, the size of the Project’s signage on Barrett Avenue is particularly important to provide visibility to customers driving from the south, northbound along San Pablo Avenue. This was described in a Supplemental Traffic Analysis (“Supplemental Report”) from W-Trans dated October 20, 2021, for the purpose of responding to prior comments from the RHNC regarding the size of the sign letters. As provided in the Supplemental Report, “[s]ignage that is insufficiently sized or not visible may result in a situation where a driver may have difficulty identifying the site entrance in time to safely change lanes and access the driveway, thus increasing the potential for sudden and unexpected maneuvers along San Pablo.” The Supplemental Report explained that the need for adequately sized signage on Barrett Avenue frontage was particularly important because of obstructions from trees along San Pablo to the south of the Project Site as drivers head northbound and the single access driveway to the parking lot.

V. Parking Lot Lighting

Appeal Claim: “Total parking lot and sign brightness level (i.e. lumens) for parking lot, etc. not available for review.” (Appeal, Issue, 7.)

Response: This appeal claim does not state any Project inconsistency with any City zoning regulation and on that basis alone should be denied.

Sheet E1.0 of the Project Plans is the Photometric Study prepared by Capital City Design Inc., and was included in the Staff Reports for the Design Review Board and Planning Commission meetings. The primary concern raised by the RHNC during the DRB and Planning Commission meetings with regard to lighting was the issue of spillover on residential properties, which the Applicant demonstrated multiple times will not occur. The Photometric Study provides the footcandles of the lighting and demonstrates that there will not be any spillover into the residential properties, which is shown numerically as 0.0 footcandles on the other side of the fence line to the east of the parking lot.

The Planning Commission’s approval of the Project, as conditioned, ensures that the Project will comply with the City’s zoning code requirements pertaining to lighting. Condition of Approval 3 directly addresses lighting and City Staff have significantly expanded the language in the Condition as a result of the questions and comments from the RHNC during both the DRB and the Planning Commission hearings. The underlined portion of Condition of Approval 3, shown below, corresponds to language added to respond directly to the RHNC’s comments and requests, including the requirement the Applicant provide lumen calculations prior to construction to ensure compliance with the City’s zoning code requirements.

3. Lighting installed throughout the site shall consist of pedestrian-friendly lighting at a height that is human scale. Lighting shall also be consistent with International Dark-Sky Association guidelines and include any shielding necessary to limit the amount of light spill over to residential areas. Prior to issuance of any building permit, the applicant shall demonstrate that all exterior lighting has been designed and located so that all direct light is confined to the property and is satisfactory to the Zoning Administrator or his/her designee. Fixtures shall be appropriate to the style and scale of the architecture. The top of the fixture shall not exceed the height of the parapet or roof or eave of roof. No lights shall be greater than 3,000K LED⁹ and the top of the fixture shall not exceed the height of the parapet or roof or eave of roof. All parking lot fixtures and, on the building, shall be shielded and directed downward so that no light trespasses onto adjacent residential properties, including, if needed, by also using bollard lights and other lower or directed lighting fixture. Total lumens shall be provided on plan sheet E.10.

Nevertheless, for purposes of resolving any concerns of the RHNC, the Applicant has requested that its lighting consultant, Capital City Design, Inc. provide the lumen calculations for the Project's light fixtures. The Project Site is located in Lighting Zone "LZ3," which is characterized in the City's Municipal Code as an area of "high ambient lighting levels." All of the Project's proposed light fixtures will be fully shielded. Below is a table summarizing the permitted maximum lumens and the Project's lumens, showing the Project is *well below* the maximum amount permitted.

Use Class and Lamp Type	Lighting Initial Output	LZ3 Maximum Permitted	Project
Class 2 Lighting (General Illumination)			
Type S	More than 2,000 lumens	Allowed if fully shielded.	7 fixtures at 5576 lumens, <u>all fully shielded.</u>
Type A	Under 2,000 lumens	Allowed, shielding not required but recommended.	5 fixtures at 1513 lumens, <u>all fully shielded</u>
Maximum Total Outdoor Light Output – Commercial Zoning			
Commercial Zoning – LZ 3	Total fully shielded and unshielded combined	200,000	7 x 5576 = 39,032 5 x 1513 = 7,565 Total: 46,597
	Unshielded only	10,000	0

⁹ A "warm white" bulb is usually considered to 3000k or below.

* * * * *

For the reasons stated above, we ask that the City Council deny the appeal by the RHNC and uphold the Planning Commission's approval of the Project, which approval was supported by substantial evidence. Should the City require any additional information please do not hesitate to reach out to our team.

Sincerely,

MILLER STARR REGALIA

Arielle Harris

Arielle Harris

cc: Kevin Kim and Jennifer Yu, Applicants
Scott Kipnis, Fox Rothschild LLP, Counsel for Dollar Tree
Jeff Forman, Regional Director of Leasing, Dollar Tree