



Legislation Text

File #: 18-1498, **Version:** 1

HEARING - To consider a request submitted by Rebecca Eno appealing the Planning Commission's August 23, 2018 approval of Design Review Revision DR-R18-0001/Saratoga Retail Phase 2 to allow reducing the square footage by 6,883 square feet, and revising building 3 to include a drive-thru aisle to DR08-0003/The Shops at El Dorado Hills, which was approved by the Planning Commission on January 22, 2009 on property identified by Assessor's Parcel Numbers 120-690-07 and 120-690-08, consisting of 1.71 acres, in the El Dorado Hills area; and staff recommending the Board take the following actions:

- 1) Approve the project thereby denying the appeal by Rebecca Eno based on the Findings (Attachment C) and subject to the Conditions of Approval (Attachment D); and
 - 2) Adopt the Mitigated Negative Declaration based on the Initial Study prepared by staff (Attachment E) (Est. Time: 2 Hr. called with 18-1497)
- (Supervisory District 1)

DISCUSSION / BACKGROUND

This is a request by Rebecca Eno appealing the Planning Commission's August 23, 2018 approval of Design Review Revision DR-R18-0001/Saratoga Retail Phase 2 (Project) to allow reducing the square footage by 6,883 square feet, and revising building 3 to include a drive-thru aisle to DR08-0003/The Shops at El Dorado Hills, which was approved by the Planning Commission on January 22, 2009. The property, identified by Assessor's Parcel Numbers 120-690-07 and 120-690-08, consisting of 1.71 acres, is located on the west side of El Dorado Hills Boulevard, south of the intersection with Saratoga Way, in the El Dorado Hills area, Supervisory District 1. (County Planner: Efren Sanchez) (Mitigated Negative Declaration prepared)

The Project is a revision to the approved Design Review DR08-0003/The Shops at El Dorado Hills. The site is zoned Community Commercial -Design Review Community Combining Zone District (CC-DC) with a General Plan Land Use Designation of Commercial (C). Drive-thru restaurants and commercial retail buildings are an allowed use by right in Community Commercial Zones. The Design Review Combining zone requires a Design Review permit approval from the County prior to issuance of building permits pursuant to Section 130.52.030 (Design Review Permit) of the Zoning Ordinance. The Design Review Permit process is established in specific areas of the County to ensure compatibility with historical, scenic, or community design criteria (Section 130.52.030.A). The Project is required to comply with the California Environmental Quality Act (CEQA) and all other adopted rules, regulations, and ordinances.

The Planning Commission originally approved the shopping center under a Design Review permit (DR08-0003/The Shops at El Dorado Hills) on January 22, 2009 with specific site layout, building design, hardscape, and sign program. This Design Review permit resulted in the construction of the existing Walgreens as Phase 1. The applicant proposed a revision to Phase 2 in 2016. That proposal included two drive-thru restaurants and one commercial building and was submitted on December 07, 2016.

The Planning Commission denied without prejudice application Design Review Revision DR08-0003-

R/Saratoga Retail on January 11, 2018. The denial was based on Findings outlined in the Staff Memo dated January 8, 2018, which indicated that there was inadequate information provided to justify the requested deviation from applicable zoning standards for parking and loading, and the Negative Declaration for the Project.

A revised application was submitted on May 15, 2018. The Planning Commission held a public hearing on August 23, 2018, and approved the Project, Design Review Revision DR-R18-0001/Saratoga Retail Phase 2, based on a reconfigured site plan, new information, and new Mitigated Negative Declaration (Attachment B).

Pursuant to the County Zoning Ordinance, there is an appeal period of 10 working days after approval. Rebecca Eno filed an appeal on September 6, 2018 (and \$239 appeal fee) within 10 working days. The Zoning Ordinance provides that the appeal of a Planning Commission decision be decided at a public hearing with the Board of Supervisors.

Appeal

The appeal (Attachment A) asserts that the Project fails to comply with County law, namely specific design ordinances and regulations adopted by the Board of Supervisors. The appeal further asserts that a fair argument can be made that the Project, as designed, will have a significant negative impact on the environment thus requiring under CEQA regulations a full Environmental Impact Report (EIR). The appeal items are listed, as presented in the appellant's letter from Rebecca Eno dated September 6, 2018 (Attachment A), below in bold with County staff responses immediately following in italics.

1) "The Subject Project, as Designed Does Not Comply with County Law, and Therefore Must be Denied."

County Response: The Design Review Revision DR-R18-0001/Saratoga Retail Phase 2 was analyzed against all applicable El Dorado County General Plan policies and Zoning Ordinance requirements. The Project does comply with County regulations as discussed in the Findings section of the Staff Report. A copy of the Findings section is available as Attachment C.

The Project complies with the Community Design Standards: Drive-thru facilities, as explained in Staff Memo dated August 22, 2018, as Attachment 1: Community Design Standards Analysis for Saratoga Retail Phase 2/DR-R18-0001 (Attachment H).

2) "The Subject Project is Not Entitled to a Ministerial Exception to CEQA Review and Compliance."

County Response: This Design Review Revision was a discretionary project that was not processed as a ministerial project pursuant to CEQA. The Project included an Initial Study: Mitigated Negative Declaration with review authority from the Planning Commission.

3) "A Fair Argument Exists That the Subject Project Will Significantly and Negatively Impact the Environment, Thereby a Full Environmental Impact Report is Necessary."

County Response: No significant impacts that could not be mitigated to less than significant level

were identified within the Mitigated Negative Declaration Initial Study (Attachments E, F, and G). As a result, no EIR is required for the Design Review Revision.

According to the CEQA Section 15384 (Substantial Evidence), substantial evidence is defined as "... enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts."

The submitted appeal does not bring forward any credible evidence of impacts that was not already analyzed in the Mitigated Negative Declaration or Staff Report, Findings, and Conditions of Approval or that creates a fair argument that the Project may have a significant effect on the environment. The appellant claims that an EIR should be prepared based on cumulative impacts; however, this topic was already addressed in item XIX-Mandatory Findings of Significance within the Initial Study: Mitigated Negative Declaration (Attachment E) prepared for the Project. The Initial Study: Mitigated Negative Declaration's conclusion was that all cumulative impacts were determined to be less than significant.

4) "The Planning Departments Untimely Production of Its Revised Findings Violates State and County Notice Requirements."

County Response: The Project complies with the notification requirements for a Design Review permit, as detailed within Section 130.04.015 of the El Dorado County Zoning Ordinance. The notification requirement for a Design Review is at a minimum a 500-foot radius; however, it was expanded to a 1,000-foot radius per the Project applicant's request (Attachment I). Notifications were sent on July 23, 2018 to neighboring parcels within a 1,000-foot radius and a notice was published within the Mountain Democrat.

The Initial Study: Mitigated Negative Declaration was out for circulation on July 24, 2018, which is 30 days in advance from the August 23, 2018 Planning Commission Hearing. The Staff Report and Findings were made available on August 7, 2018, two weeks prior to the August 23, 2018 Planning Commission Hearing. The revised Findings were made available a day before the Planning Commission Hearing, and provided additional explanation of how the Project complied with zoning and design standards.

Staff responded to public comments, although not a requirement, in a Staff Memo issued at the Planning Commission hearing. The Staff Memo briefly summarized the large volumes of public comments submitted for the Project. The Staff Memo also provided a more detailed analysis and expansion of how the Project is consistent with the Community Design Standards for Parking and Loading, Drive-through Facilities (Attachment H).

Conclusion: It is the Planning Director's recommendation that the appeal should be denied and the decision of the Planning Commission on August 23, 2018 be upheld because the Project is consistent with the Zoning Ordinance, General Plan, and CEQA as determined by the Planning

Commission. Should the Board choose to approve the appeal, thus denying Design Review Revision DR-R18-0001/Saratoga Retail Phase 2, the Board would be required to make Findings of Denial.

ALTERNATIVES

The Board may elect to approve the appeal and reverse the action taken by the Planning Commission on August 23, 2018, resulting in the denial of Design Review Revision DR-R18-0001/Saratoga Retail Phase 2. A Denial of the application should be continued to a date certain so that staff can prepare Findings of Denial.

CONTACT

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