



RESOLUTION No. 18-092

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

RESOLUTION DENYING THE APPEAL FILED BY PETER LEMMON, ATTORNEY ON BEHALF OF SIMON CRE, HARLEY V, LLC REGARDING THE PLANNING COMMISSION'S OCTOBER 26, 2017 DENIAL OF DEVELOPMENT PERMIT (DP15-001) FOR A PROPOSED 9,100 SQUARE FOOT DOLLAR GENERAL RETAIL STORE AND ASSOCIATED IMPROVEMENTS LOCATED AT 12345 ROUGH AND READY HIGHWAY, GRASS VALLEY, CALIFORNIA, ASSESSOR'S PARCEL NUMBER 52-122-03, AND SUSTAINING THE PLANNING COMMISSION'S DENIAL OF THE DEVELOPMENT PERMIT (DP15-001)

WHEREAS, on February 11, 2015 Simon CRE, Harley V, LLC applied for a Development Permit proposing to construct a 9,100 square foot Dollar General Retail Store, including associated improvements (parking, lighting, landscaping and signage) on a 1.02-acre privately-owned and developed parcel located at 12345 Rough and Ready Highway, Grass Valley (APN 52-122-03); and

WHEREAS, at 9,100 square feet, this project fell just short of the threshold for being considered a Planning Commission project (typically 10,000 square feet), however, the Planning Director in his role as Zoning Administrator determined that this project along with the other two Dollar General proposals should be reviewed and considered by the Planning Commission instead of the Zoning Administrator consistent with the provisions of Nevada County Land Use and Development Code (LUDC) Section L-II 5.5.E.4; and

WHEREAS, the County and the applicant agreed to pursue an Environmental Impact Report (EIR15-001/ SCH2016012009) for all three of the Dollar General Stores as a way to ensure all potential cumulative impacts could be considered under one environmental document. While only one EIR was prepared, the EIR was structured to allow the Planning Commission to take individual actions on each separate project and each project is considered an independent entitlement; and

WHEREAS, on October 26, 2017, the Nevada County Planning Commission held a public hearing to consider the certification of an Environmental Impact Report for all three projects, including the Rough and Ready Highway Project (DP15-001) and the Planning Commission on a 5-0 vote certified an Environmental Impact Report (EIR15-001/ SCH2016012009) as adequate environmental review for the project, making project specific CEQA Findings of Fact, but not making a Statement of Overriding Considerations for the project's identified significant and unavoidable aesthetic and land use compatibility impacts; and

WHEREAS, on October 26, 2017, the Nevada County Planning Commission conducted a public hearing, considered the entire public record before them and after deliberating on the project denied the proposed Development Permit (DP15-001); and

WHEREAS, on October 26, 2017, the Nevada County Planning Commission in taking action to deny the project found that the projects size, scale and massing was incompatible with the surrounding rural residential neighborhood and that the project was inconsistent with policies of the Nevada County General Plan that are intended to protect the rural character of existing neighborhoods making specific denial findings pursuant to Section L-II 5.2.2.D of the Nevada County Land Use and Development Code as documented in the October 26, 2017 Planning Commission Staff Report; and

WHEREAS, pursuant to Section L-II 5.12.D of the Nevada County Land Use and Development Code, the Planning Commission's approval of the Application is appealable to the Board of Supervisors within 10 days after the date of the decision; and

WHEREAS, on November 3, 2017, Mr. Peter Dunn Lemmon, Esq., Attorney (Representative) on behalf of the Appellant Simon CRE, Harley V, LLC (Applicant) filed a timely appeal of the Planning Commission's decision; and

WHEREAS, on December 12, 2017, the Board of Supervisors adopted Resolution 17-619 to accept the appeal as to the Planning Commission's actions on the Project and scheduled the appeal for hearing on February 27, 2018 at 1:30 p.m.; and

WHEREAS, on February 27, 2018, the Board of Supervisors held a duly noticed public hearing at which the Board considered all evidence both oral and written regarding the appeal and denied the appeal, upholding the Planning Commission's October 26, 2017 denial of Development Permit DP15-001.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Nevada that it hereby finds and determines that:

1. The facts set forth above are true and correct.
2. That the potential environmental impacts of the project have been adequately reviewed, disclosed and mitigated for pursuant to the project specific certified Environmental Impact Report (EIR15-001/ SCH2016012009) as required by the California Environmental Quality Act Guidelines, California Code of Regulations Title 14, Chapter 3, Section 15090.
3. That the proposed Development Permit (DP15-001) requesting entitlements to construct a 9,100 square foot retail store with a maximum height on 28-feet 11-inches and 29 parking spaces, six 15-foot tall parking lot light standards and wall mounted lighting, landscaping, and drainage improvements is inconsistent with Nevada County General Plan in the following respects:
 - A. General Plan Goal 1.4: "Within *Community Regions*, provide for an adequate supply and broad range of residential, employment-generating, and cultural, public, and quasi-public uses located for convenience, efficiency, and affordability while protecting, maintaining, and enhancing communities and neighborhoods." The project is located in an approximately 7.00-acre pod of Neighborhood Commercial (NC) designated land consisting of 9 parcels and contains an existing approximately 2,800 commercial building on it. However, the remaining 8 NC designated parcels are all developed with residential uses and surrounded by rural residential uses and undeveloped land. Given the scale and mass of the proposed structure, its proximity to adjacent residential uses and the buildings prominence in a predominantly residential neighborhood, even with mitigation to reduce effects of noise and lighting, the proposed development would be considered incompatible with the surrounding uses and subsequently cannot be found to protect, maintain or enhance this existing established neighborhood even with the design elements incorporated into the project.

- B. General Plan Policy 1.4.2: "Development within the *Community Regions* shall be consistent with the overall rural quality of life in the County, as demonstrated through sensitivity to resources constraints, provisions of interwoven open spaces as a part of development, and community design which respects the small town or village character of the *Community Regions*. These criteria shall be accomplished through application of the Comprehensive Site Design Standards in review of discretionary and ministerial projects." Due to the proposed size and massing, the project reflects more of an urban type development that is more appropriate in an area with other similar commercial uses. Because this project is located in an established older neighborhood with smaller lots and the existing NC designated parcels surrounding the site are developed with residential uses, the project is inconsistent with the overall rural quality of life in this region of Nevada County and does not respect the small town feel for the neighborhood.

Several examples of smaller more neighborhood centric stores within the NC designation exist throughout the County that are surrounded by residential neighborhoods. These include but are not limited to the Alta Street Market and the Chicago Park Store. This size and scale of development is more consistent with the intention and purpose of the NC designation in this area of unincorporated Nevada County, while the proposed project's size and scale overwhelm the site and the neighboring development.

- C. General Plan Goal 1.5: "Within *Community Regions*, ensure development reflects our small-town character, the characteristics of the land and the natural environment." The project being a 9,100 square foot retail commercial building with a maximum height of 28-feet 11-inches dwarfs any existing buildings surrounding the project site. Further as there are no other commercial development in the area, this project does not reflect the small-town character of the Sunset neighborhood, which is primarily a rural residential area with larger undeveloped lands surrounding the project site.
- D. General Plan Goal 1.6/Policy 1.6.1: "Allow for growth while protecting, maintaining and enhancing communities and neighborhoods; and [e]stablish land uses which protect, enhance, and complement existing communities and neighborhoods." Given the scale of the building, its proximity to adjacent residential uses, and the building's prominence in a predominantly residential neighborhood, even with mitigation to reduce effects of noise and lighting, the proposed development would be considered incompatible with the surrounding uses and subsequently cannot be found to protect, maintain, enhance or complement this existing rural residential neighborhood, as there are no other existing commercial uses or any other types of structures in this area which are of similar size, scale and mass as the proposed development.
- E. General Plan Goal 2.1: "Provide for a strong economic base while protecting and maintaining neighborhoods." The proposed commercial retail development, within an established residential neighborhood is substantially larger than any existing structures surrounding the project site, and subsequently the proposed project would be incompatible with existing development and cannot be found to protect or maintain this established neighborhood.

- F. General Plan Goal MV-4.1: "Provide for the safe and efficient movement of people and goods in a manner that respects the rural character of Nevada County." The project proposes to provide a permanent access on to West Drive that otherwise serves residential uses. The potential use of California Legal Trucks (65-feet) for deliveries by this commercial retail development have the potential to result in impacts that would be incompatible to the rural character of this rural residential neighborhood and potentially result in safety hazards to residents of this community.
- G. General Plan Policy MV-4.2.5: "In review of discretionary permits, the County shall consider the effect of the proposed development on the area-wide transportation network and the effect of the proposed development on the road network and other transportation facilities in the immediate vicinity of the project site." The impact of this development has been reviewed within the Transportation chapter of the project specific Environmental Impact Report (EIR) which found that all traffic impacts could be mitigated. The introduction of commercial traffic and specifically delivery trucks onto West Drive, a residential roadway, would be incompatible with the existing and anticipated use of this road, which currently serves a residential population.
- H. General Plan Policy 9.1.7: "Encourage heavy truck traffic to those routes outside residential areas." Approval of this project would result in the potential of use of West Drive for deliveries by heavy trucks, as the applicant has gone on record that the largest potential truck used for deliveries would be a California Legal Truck (65-feet), and the project has a permanent access onto both Rough and Ready Highway and West Drive. Nothing would preclude truck drivers from using West Drive for both ingress and egress to provide for more efficient movements throughout this 1.02-acre property. As this proposed development is in close proximity to many surrounding residential uses, the noise created by delivery trucks of this size would be incompatible with surrounding residential uses and could be detrimental to the expected enjoyment of surrounding sensitive noise receptors.
- I. General Plan Goal 18.1: "Promote and provide for aesthetic design in new development that reflects existing character." The project proposes to insert a large commercial building with a modern design into an older established residential neighborhood where there are no similar examples of commercial development of this size and scale or architectural style. If approved, this project will clearly stand out and would not reflect the existing character of this community.
4. That the site is not physically suitable for the size, mass and scale of the proposed retail commercial development because the site has potential land use compatibility issues which cannot be avoided through appropriate site planning or without a significant reduction in the height and square footage of the proposed development for which the applicant is not amenable. Existing residential units are within close proximity to the project site that could experience interruption to enjoyment of their residential property by the induction of a commercial use of this size;
5. That West Drive, which serve the project is not adequate in size, width, and pavement type to carry the quantity and kinds of traffic generated by this project;

6. The proposed use and facilities are not compatible with, and could be detrimental to, existing and anticipated future uses on-site, on abutting property and in the nearby surrounding neighborhood or area;
7. That this development permit, proposing a commercial building for commercial use, will be incompatible with the design of existing and anticipated future uses on the nearby surrounding areas as supported by the findings of the project specific EIR (EIR15-001), specifically Impact 12.3.2(RR) which states “[a]lthough the Rough and Ready Highway site is designated for commercial use and is developed with a commercial building, the site is surrounded by rural residential uses. Existing residences are located immediately adjacent the site’s western and southern boundaries. In addition, there are residential properties located north and east of the site across the adjacent roadways. Construction and operation of the proposed project, which would include a building of a greater scale than the existing commercial building on the site, could be incompatible with these residential properties...”. Since the proposed project will not blend into the existing neighborhood character as it relates to design and size/scale and because it will introduce other incompatible factors such as light and glare, in such close proximity to existing residential uses and structures, the proposed project is found to be incompatible with the rural residential character of this long established neighborhood.
8. These findings are supported by substantial evidence in the record, as detailed in this Resolution, in the staff report for the February 27, 2018 appeal hearing before the Board, and as discussed at the hearing. That evidence includes but is not limited to the professional expert advice of staff of the County’s Planning Department, County Counsel, as well as the judgment of the Board of Supervisors.
9. The location and custodian of the documents which constitute the record of these proceedings is the Nevada County Planning Department, 950 Maidu Avenue, Nevada City, California.

BE IT FURTHER RESOLVED that the Board of Supervisors hereby denies the appeal of the Appellants and upholds the decision of the Planning Commission to deny Development Permit (DP15-001) located at 12345 Rough and Ready Highway in unincorporated Nevada County, based on the findings as set forth herein.

The Clerk of the Board shall mail the Appellant a copy of this Resolution, and any appeal of this decision shall be governed by California Code of Civil Procedure Section 1094.6.

PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 27th day of February, 2018, by the following vote of said Board:

Ayes: Supervisors Heidi Hall, Edward Scofield, Dan Miller, Hank Weston and Richard Anderson

Noes: None.

Absent: None.

Abstain: None.

ATTEST:

JULIE PATTERSON HUNTER
Clerk of the Board of Supervisors

By: _____


Edward Scofield, Chair

2/27/2018 cc: Planning*
Simon CRE