



## **SUBJECT**

Proposed Development of Two New Drive-Through Restaurants and a Significant Exterior and Interior Remodel of an Existing 94,500-Square-Foot Commercial Building Located at 26231 Mission Boulevard, Assessor Parcel Nos. 452-0020-009-01 and 452-0020-006-10, Requiring Approval of a Conditional Use Permit, Site Plan Review, and Various Warrants and Exceptions from the South Hayward BART Form-Based Code. Application No. 202002474. Merlone Geier Partners (Applicant), MGP XII Hayward Center LLC (Property Owner).

## **RECOMMENDATION**

That the Planning Commission approve the Conditional Use Permit, Site Plan Review, and Warrant and Exception applications based on the analysis set forth in this report and the required Findings (Attachment II), and subject to the Conditions of Approval (Attachment III).

## **SUMMARY**

Merlone Geier Partners is requesting approval of a Conditional Use Permit (CUP), Site Plan Review (SPR) and various Warrants and Exceptions to develop two (2) new drive-through restaurant pad buildings for Raising Cane's Chicken Fingers and In-N-Out Burger along the northern boundary of the project site, as well as a significant remodel of the exterior and interior of the existing 94,500-square-foot commercial building (formerly K-mart) to be demised into three (3) major commercial tenants and six (6) smaller commercial tenants. One of the three major commercial tenants has been identified as Sprouts Farmers Market grocery store. In addition, the project will include related site improvements, including, but not limited to, upgrades to the site vehicular and pedestrian circulation, improved parking configuration, tree planting and site landscaping, stormwater management infrastructure, and new outdoor dining areas.

The project site is located within the Urban General (S-T4) and Urban Center Zones (S-T5) of the South Hayward BART Form Based Code area with a Sustainable Mixed Use (SMU) land use designation in the *Hayward 2040 General Plan*. This project application was deemed complete prior to the adoption of the recent Mission Boulevard Code (form-based code update), effective August 14, 2020, and thus is subject to the development standards under the South Hayward BART Form Based Code.

## **BACKGROUND**

Public Outreach. On December 13, 2019, the Economic Development staff met with a group from Cal State East Bay that included nine students, one alumnus and the Senior Coordinator of Operations and Partnerships with the Center for Community Engagement. The purpose

of the session was to seek feedback from the University population regarding their views of Hayward businesses, what did they like, what was missing, and what else could the city do to better connect with the students. As part of the discussion staff asked, “What businesses do you go to on a regular basis?” and “What is missing in Hayward that you wish was here?”. The number one item for both questions was In-N-Out Burger. Students regularly travel to Union City and San Leandro to visit the burger establishment. The second restaurant that received mention on the “What’s missing” question was Raising Cane’s Chicken. While half of the students were originally from Hayward, most had experienced this chain while traveling to Southern California or out of state.

Another issue the CSU students brought up was the lack of available food options in and around the university campus. While there is the free shuttle to the downtown that is available, there are not many options located in the vicinity of Mission Boulevard when they come down the hill at either Carlos Bee Boulevard or Harder Road. The proposed location of the revitalized shopping center with the two proposed drive-through businesses along with the major tenants and other in-line retail will provide some additional shopping opportunities for the community located around Cal State East Bay.

On July 8, 2020, a Notice of Application Receipt was sent to 343 property owners, businesses, and residents, including 313 notices for parcels within a 300-foot radius of the project site, including interested parties in the Mission-Garin Neighborhood Task Force, Mission Foothills Neighborhood Task Force, Jackson Triangle, Whitman/Mocine Neighborhood Task Force, and South Hayward Neighborhood Group. Planning Division staff received approximately 35 emails from the community on the initial notice that included a mixed range of comments from general interest on the project details, support, and opposition. Most commenters who stated support or opposition to the project were either enthusiastic or displeased with the identified drive-through restaurant operators. Commenters in opposition of the project stated concerns with the existing abundance of fast-food establishments in Hayward. Instead, many commenters stated their preference to seek healthier options in the form of sit-down restaurants or an organic grocery store (e.g. Trader Joes, Whole Foods, or Sprouts Farmers Market). In addition, opponents of the project had concerns with the potential increase in traffic congestion that they believed would arise from such land uses onto the existing roadway network.

On April 30, 2021, a Notice of Public Hearing for the Planning Commission public hearing was circulated to all property owners, businesses, residents and interested stakeholders (including task forces and community groups listed above) within a 300-foot radius of the project site as well as published within *The Daily Review* newspaper as a Legal Ad.

Between April 26<sup>th</sup> and May 6<sup>th</sup>, Planning Division staff received approximately 28 emails from the community declaring their support for the proposed project and the incoming operators of Sprout’s Farmers Market, In-N-Out Burger and Raising Cane’s Chicken Fingers. Community members included residents of the area and CSUEB students/staff who shared their excitement for the following reasons: having a local grocery store with organic produce and foods, the addition of variety in the types of grocery stores in Hayward, not having to leave Hayward to go to Fremont, Dublin, or Oakland for healthier grocery store options,

convenient access to popular drive-through restaurants within the vicinity the CSUEB campus between classes. A resident informed staff that community members on Nextdoor, an online neighborhood-based networking platform, have expressed their support for the project. In addition, the Hayward Chamber of Commerce sent in a letter stating their support for the project and that the chamber's 16-member Government Relations Council voted unanimously to endorse plans for the site citing that the project is a major win for South Hayward. All public correspondence received at the time this staff report was written has been included to this report as Attachment V.

Council Economic Development Committee (CEDC). On March 25, 2021, the CEDC held a meeting<sup>1</sup> and reviewed a report presented by staff regarding a grocery store and food desert analysis. The report was prepared in response to Council member and community stakeholder comments and questions regarding food deserts, and potential opportunities for additional grocers to open in the Hayward community. The report cited that Hayward was not home to any grocery stores that falls within the "upscale/specialty" subcategory of the industry. These types of upscale grocery stores (e.g. Whole Foods, Sprouts) typically provide an emphasis on natural, organic and/or gourmet foods with moderate to high price. Rather, the city's inventory predominantly consists of deep discount, supercenter, conventional, and ethnic specialty type grocery stores. The analysis found that the nearest grocery stores that fall within the upscale/specialty subcategory are in Oakland, Fremont, and Dublin. With this development, the proposed Sprouts would fill a gap in the Hayward market and offer more variety to Hayward residents, visitors, and businesses for fresh produce and quality organic products.

## **PROJECT DESCRIPTION**

Existing Site Conditions. The total project site consists of two distinct parcels with a cumulative site area of approximately 10.72-acres and 1,150 linear-feet of street frontage situated toward the southwestern corner of Mission Boulevard and Harder Road excluding the parcel which includes the Stereo Base and Frannie Express building. The primary parcel at 26231 Mission Boulevard, Assessor Parcel No. 452-0020-009-01, accounts for more than 97% of the project site's total acreage whereas the subordinate secondary parcel, Assessor Parcel No. 452-0020-006-10, accounts for the remaining 2-3% of the site acreage and currently only serves as site parking and vehicular circulation access.

The larger of the two parcels includes an existing 94,500 square-foot commercial building built in 1973 that was formerly occupied by Kmart, a discount retail store, who vacated the site in early 2020. Most of the existing site comprises of the surface parking lot with approximately 529 existing parking spaces along with ornamental planters and landscaping which consists of 111 existing trees. Further, the project site does not exhibit a fully flat topography as the existing commercial building floor elevation was developed +/- 11-feet lower than Mission Boulevard and +/- 4-feet higher than Harder Road with surface parking transitioning to/from street level, respectively. The project site is accessed by an existing

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<sup>1</sup> March 25, 2021 – Council Economic Development Committee Meeting:  
<https://hayward.legistar.com/LegislationDetail.aspx?ID=4888991&GUID=F6CE7DB2-8CAA-46F3-BB5E-183C71523E47&Options=&Search=>

two-way driveway along Harder Road, and two existing two-way driveways along Mission Boulevard along the eastern edge of the project site.

Surrounding land uses include a mix of multi-family residential (townhome development) and commercial uses across Harder Road to the north, Mission Boulevard to the east, commercial and single-family residential uses to the south, and the Bay Area Rapid Transit (BART) tracks and overpass directly to the west.

Proposed Project. The development proposal includes three main components: 1) a Conditional Use Permit for the development of the two new drive-through restaurants for Raising Cane's Chicken Fingers and In-N-Out Burger and their related site improvements; 2) Site Plan Review for the significant exterior and interior tenant improvement to the existing 94,500 square-foot commercial building and their related site improvements, and 3) various Warrants and Exceptions from the previous Form-Based Code development standards which are required to accommodate the development, as proposed.

The two drive-through restaurants are proposed with two distinct pad buildings located along the northern boundary of the property along Harder Road. Pad #1, located toward the northwestern quadrant of the site, is designated for Raising Cane's Chicken Fingers. Raising Cane's is a Louisiana-based fast-casual chain that specializes in fried chicken fingers, crinkle-cut fries and Texas toast. The building will be approximately 3,270 square-feet in floor area and will include 50 seats for indoor dining and 27 tables with seats for outdoor dining. The outdoor dining area will be situated toward Harder Road and interior to the project site to emphasize the site activity. The proposed hours of operation for Raising Canes are anticipated to 9 a.m. to 2 a.m., Sunday through Wednesday, and 9 a.m. to 3:30 a.m., Thursday to Saturday. Pad #2, located on the northeastern quadrant of the site, is designated for In-N-Out Burger. Pad 2 will be approximately 3,880 square-foot in floor area and include capacity for 84 seats indoors and 7 tables with seats for outdoor dining. The hours of operation for In-N-Out Burger are anticipated to be from 10:30 a.m. to 1 a.m. from Sunday to Thursday, and 10:30 a.m. to 1:30 a.m. on Fridays and Saturdays.

The existing 94,500 square-foot commercial building, formerly occupied by Kmart, will undergo a significant exterior and interior tenant improvement to be demised into nine commercial tenant spaces. Three of the tenant spaces are intended for major commercial anchor tenants and will range between 21,000 and 32,100 square-feet in floor area. The plan set in Attachment IV includes primary and alternative floor and truck access plans to provide site design flexibility on how to best accommodate different unit size needs and loading operations for future occupants. Sprouts Farmers Market has been identified to occupy "Major One" closer to Mission Boulevard. General hours of operation for Sprouts are anticipated to be 7 a.m. to 10 p.m., daily. The remaining six tenant spaces will range in floor area between 1,570 and 1,980 square-feet in floor area at the eastern end of the building for visibility along Mission Boulevard. With the exception of Sprout's, no other commercial tenants have been identified for the primary building. Along the northern and eastern facades of the main building, there will be a 14- to 18-foot-wide paseo proposed for patrons and will include bicycle lockers, uncovered and covered outdoor seating and dining areas,

pedestrian lighting, outdoor merchandise displays, refuse bins, landscape planters, and benches on a mix of typical and enhanced concrete paving.

Architecture. The project site will include an eclectic mix of architectural design themes for the two drive-through restaurants and the primary commercial building. The two drive-through restaurants will exhibit the corporate branding architecture for Raising Cane's and In-N-Out, respectively. Raising Cane's building will be 19'-10" and incorporate a mix of brick, reclaimed metal red panels, and stucco with primarily earth tone colors of beige, taupe, black and dark gray. The building will present a modern architecture with metal awnings and canopies, entry glazing, and flat roofs coupled with varying wall planes along each elevation. At its tallest point, the In-N-Out building will be 23'-6" and consist of the Sherman Williams Bone China stucco for the body of the structure contrasted against a dark black and gray stone veneer base. To add articulation beyond the wall plane offsets, the building will include gray metal canopies with halo-illuminated palm tree silhouettes and a red double band LED lighting feature parallel with the building's roof cap. Payment and order pick-up windows for vehicles in the drive-through queue will be covered via a covered patio.

As previously noted, the existing commercial building will undergo a significant exterior remodel which includes adding new truck docks and services areas for the major tenants while activating the northern and eastern elevations of the building that are orientated towards the street frontages. The building's current façades are made up of outdated and dilapidated tile and stucco finishes that display minimal articulation and storefront glazing along the primary building entrance facing Harder Road. By demising the existing building into nine separate commercial spaces, the building renovation will orientate the three major tenants and two of the small commercial shops toward Harder Road while five commercial shops will face Mission Boulevard for high visibility – one of the commercial shops will wrap the building corner and have dual frontages. The exterior of the building will be finished in earth toned plaster, composite siding and vertical batten boards coupled with an increased amount of glazing include storefront doors and windows, metal canopies, decorative cornices and metal louvers. The façade of the Sprouts Farmers Market (Major 1) will be incorporate new corporate branding elements that include a stepped gable entry with vertical wood siding painted teal green.

Landscaping, Open Space and Tree Removals. The project plans (Attachment IV) include preliminary landscape and irrigation plans for the proposed development which consist of new trees, shrubs, and groundcovers to be planted at the site in compliance with City's Bay Friendly Water Efficient Landscape Ordinance (WELO)<sup>2</sup>. WELO requires new developments with landscape areas greater than 500 square-feet to prepare water budget calculations and design for drought-tolerant, native trees and plantings appropriate for the project climate to ensure sustainable and water efficient landscaping and irrigation practices.

An Arborist Report was prepared by a certified arborist which evaluated existing on-site and off-site perimeter trees at the project site in accordance with the City's Tree Preservation

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<sup>2</sup> Chapter 10, Article 12 of the Hayward Municipal Code – Bay Friendly Water Efficient Landscape Ordinance: [https://library.municode.com/ca/hayward/codes/municipal\\_code?nodeId=HAYWARD\\_MUNICIPAL\\_CODE\\_CH10PLZOSU\\_ART12BIJEWAEFLAOR](https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART12BIJEWAEFLAOR)

Ordinance<sup>3</sup>. Based on the landscaping plans, 74 existing trees that have been deemed protected located on-site will need to be removed to accommodate the site improvements and construction of the new development. The species of the protected trees to be removed include canary island pines, Raywood ash, southern magnolia, coast live oak, Brazilian pepper, coast redwood, blue gum, and Peruvian pepper trees. The arborist report has appraised the value of the 74 trees at \$81,300, which will require mitigation through the on-site planting of trees with like size, or like kind to meet or exceed the appraised value of the removed trees. As proposed, the project will mitigate the removal of these trees with the planting of 211 new trees, including 29 new street trees, 151 parking lot trees, and 31 shade trees for screening along BART tracks and Alameda County Flood Control channel. All new trees are 24- or 36-inch box size for a total value of \$81,675. As conditioned, the landscaping and irrigation plans will be reviewed in greater detail during the building permit phase to ensure that all required mitigation is satisfied. Additionally, the City Landscape Architect will inspect the construction site to verify the trees are planted correctly with proper irrigation that will maximize the health of the trees. Staff believes the updated site landscaping and tree plantings will result in a significant enhancement to the site as a whole.

Parking, Site Circulation, and Traffic. Pursuant to the South Hayward BART Form Based Code (FBC), there are no minimum or maximum parking requirement for non-residential uses; however, the FBC established a minimum bicycle parking for short- and long-term use that reflect CalGreen building standards. As proposed, the project will include a total of 467 parking spaces for automobiles throughout the entire site which is a net reduction of 62 parking spaces from existing conditions. Of that amount the drive-through restaurants will include a parking area consisting of 27 parking spaces for Raising Cane's and 31 spaces for In-N-Out Burger. In addition, the entire project will also include capacity for 44 short-term bicycle parking spaces via bicycle racks, and 26 long-term bicycle parking spaces through the installation of bicycle lockers distributed throughout the project site for convenient access by patrons and employees. In addition, the applicant is proposing a covered bike shelter east of the main commercial building that will include site lighting, bench seating, bike racks, and bicycle lockers; thus, the project complies with the parking requirements of the underlying zoning district.

For vehicular circulation, the project proposes to retain and utilize the three existing driveway entrances/exits along Harder Road and Mission Boulevard. The entrance for the Raising Cane's (Pad 1) drive-through queue will be able to accommodate up to 25 vehicles without spillover into the rest of the project site. Given that vehicles will enter the drive-through queue along the most western edge of the project site, any spillover would not block key circulation arteries within the project site. The entrance for the In-N-Out Burger (Pad 2) drive-through queue will be located on the opposite (northeastern) part of the project site and have a queuing capacity for 22 vehicles without spilling over into the rest of the project site. Both drive-throughs have been designed to reduce the possibility of the queue lines spillover onto the public right-of-way (e.g. streets, sidewalks). In addition, both Raising Cane's and In-N-Out Burger have trained staff that will be positioned outdoors on an as-

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<sup>3</sup> Chapter 10, Article 15 of the Hayward Municipal Code – Tree Preservation Ordinance:  
[https://library.municode.com/ca/hayward/codes/municipal\\_code?nodeId=HAYWARD\\_MUNICIPAL\\_CODE\\_CH10PLZOSU\\_ART15TRPR](https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART15TRPR)



needed basis to help manage order taking and customer queueing. For pedestrian circulation, the project will be accessible from the Harder Road and Mission Boulevard sidewalks through a series of internal sidewalks, pedestrian paths, and crosswalks that range between 5 to 15-feet wide to accommodate patrons. The numerous internal pedestrian paths will support employees and patrons that choose to shop and eat within the project site (e.g. In-N-Out employees who shops at Sprouts during their lunch) by providing safe and dedicated walking routes that are highlighted by illuminated raised sidewalks with enhanced paving. One of the main pedestrian paths will provide direct access to an AC Transit bus stop (Lines 99 and 801) on Mission Boulevard and includes pathway bench seating and illumination at the transit stop trailhead.

A Local Transportation Analysis was prepared for the project by Kittelson & Associates, Inc. (Attachment VII) and determined that the project will be required to install a new traffic signal at the intersection of Harder Road and Dollar Street, replacing the existing two-way stop sign. The new traffic signal will ensure seamless on- and off-site traffic circulation entering and exiting the site and reduce average delay times during peak hours. The proposed signal will also benefit patrons coming from north of the site who elect to walk or bike to the project site by providing ample crossing time through a controlled intersection. Conditions of Approval have been included as part of this project to ensure that the on- and off-site circulation and traffic improvements are completed prior to the occupancies within the project.

Sustainability Features. The project will be required to be designed to meet all applicable California Building Code and CalGreen Standards, which require a minimal level of energy efficiency, conservation, material recycling, and air quality, for new construction. In addition, the landscaping areas and irrigation system will be compliant with Bay Area-Friendly Water Efficient Landscape Ordinance, which requires the use of drought tolerant planting with water-efficient irrigation systems. Furthermore, the applicant will comply with ordinances related to construction debris and recycling to divert waste from landfills. Project specific sustainability features include the installation of additional bicycle parking beyond the code requirements (83% more than required for short term and 8% more than required for long-term bike parking), and installation of 22 electric vehicle chargers. The project also includes the adaptive reuse of an existing building to accommodate new commercial users versus a complete demolition and rebuild.

## **POLICY CONTEXT AND CODE COMPLIANCE**

Hayward 2040 General Plan. The project site is designated Sustainable Mixed Use (SMU)<sup>4</sup> in the *Hayward 2040 General Plan* which allows for a residential density range of 4.3 to 100 dwelling units per net acre, and up to a maximum floor area ratio (FAR) of 2.0. Based on the General Plan density and cumulative lot area of the project site, the proposed development falls within the permissible FAR as the project will not exceed the maximum cap of 933,926 square-feet of floor area (approximately 101,500 square-feet proposed).

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<sup>4</sup> Hayward 2040 General Plan: <https://www.hayward2040generalplan.com/land-use/mixed>

The SMU land use designation generally applies to properties that are regional transit adjacent and are planned as walkable urban neighborhoods. Typical building types will vary based on the zoning of the property, but will generally include single-family homes, duplexes, triplexes, live-work units, multi-story apartment and condominium buildings, commercial buildings, and mixed-use buildings that contain commercial uses on the ground floor and residential units or office space on upper floors. SMU areas are expected to change substantially in the future, as properties are planned to be developed or redeveloped at relatively high densities and intensities to create walkable and mixed-use neighborhoods and multi-modal corridors. Understanding that the site is proposed to remain 100% commercial, the goals and policies within the Plan aim to diversify the economic base of Hayward to support a robust and stable economy with a range of employment, shopping, and cultural opportunities for local residents. The Plan also encourages the establishment and expansion of commercial businesses that increase local spending within Hayward and provide needed goods and services to local residents and businesses. The project consistency with the *Hayward 2040 General Plan* goals and policies are further discussed in greater detail in the Required Findings (Attachment II).

**Zoning Ordinance.** The project site was recently rezoned with the adoption of the updated Mission Boulevard Code. However, the project application was deemed complete prior to the adoption of this Code and for the purposes of this application, the development standards for this site is following the Urban General and Urban Center Zones (S-T4 and S-T5) zoning standards from the South Hayward BART Form Based Code. Although the site is dual-zoned between the S-T4 and S-T5 zoning districts, the site is more than 80% zoned S-T4 with a small portion of the site zoned S-T5 within the middle of the property. Of the subdistricts within the South Hayward BART-FBC, the S-T4 zone is of moderate intensity with respect to development given that it is envisioned to consist of higher density mixed-use buildings that accommodate retail, office, and residential uses, along with townhouses and apartment buildings. Setbacks and landscaping are variable. The S-T4 zoning district requires a Conditional Use Permit (CUP) application for all new drive-in establishments. Also, the smaller subordinate 0.3-acre parcel is zoned Civic Space (CS); however, will not change in its current land use to serve as parking and site circulation. As proposed, the development complies with most of the development standards except for those standards requested to be reduced and/or waived through requested Warrants and Exceptions which include those listed below.

- WARRANTS to deviate from the following standards from the Urban General (S-T4) and Urban Center (S-T5) zoning districts of the South Hayward BART Form-Based Code: 1) deviation from the 24-foot maximum setback along Harder Road, 2) deviation from minimum 60% frontage buildout requirement along Harder Road and Mission Boulevard, 3) deviation from minimum 30% glazing requirement for first floor facades, 4) deviation from the first layer may not be paved with the exception of driveways, and 5) deviation from open parking lot street screen.
- EXCEPTIONS to deviate from the following standards from the Urban General (S-T4) and Urban Center (S-T5) zoning districts of the South Hayward BART Form-Based Code: 1) deviation from Shopfront Frontage with Building Entrance at sidewalk grade, 2)



deviation from minimum two-story building height for the pad buildings, and 3) deviation from minimum 15% of lot area open space requirement.

Requested Entitlements. Per the Hayward Municipal Code, the Planning Commission may approve or conditionally approve applications for CUPs, SPRs, Warrants and Exceptions when all the following findings are met. A more in-depth review and analysis of each Findings can be found as part of Attachment II of this report.

*Conditional Use Permit:*

- The proposed use is desirable for the public convenience or welfare.
- The proposed use will not impair the character and integrity of the zoning district and surrounding area.
- The proposed use will not be detrimental to the public health, safety, or general welfare.
- The proposed use is in harmony with applicable City policies and the intent and purpose of the zoning district involved.

*Site Plan Review:*

- The development is compatible with on-site and surrounding structures and uses and is an attractive addition to the City;
- The development takes into consideration physical and environmental constraints;
- The development complies with the intent of City development policies and regulations;
- The development will be operated in a manner determined to be acceptable and compatible with surrounding development.

*Warrants:*

- Policy Consistency. The Warrant is consistent with the General Plan and overall objectives of this Code.
- Compatibility. The Warrant is justified by environmental features or site conditions; historic development patterns of the property or neighborhood; or the interest in promoting creativity and personal expression in site planning and development.
- No Adverse Impact. The Warrant would result in development that is not detrimental to the public health, safety, or welfare, or injurious to the property or improvements in the vicinity and in the same zoning district.
- Special Privilege. The Warrant would not affect substantial compliance with the Code or grant a special privilege inconsistent with the limitations upon other properties in the vicinity and in the same zoning district.

*Exceptions:*

- Uniqueness. That there are unique physical conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to and inherent in the particular lot; and that, as a result of such unique physical conditions, practical difficulties or unusual hardship arise in complying strictly with the standards of the Code.
- Self-Created Hardship. That the practical difficulties or unnecessary hardship claimed as a ground for an Exception have not been created by the owner or by a predecessor in title.

However, where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

- **Minimal Deviation.** That within the intent and purposes of the Code the Exception, if granted, is the minimum deviation necessary to afford relief; and to this end, the Planning Commission may permit a lesser variance than that applied for.
- **Neighborhood Character.** That the Exception, if granted, will not alter the essential character of the neighborhood or zone in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

**Strategic Roadmap.** This agenda item supports the Strategic Priority to Grow the Economy. This item is not specifically related to a project identified within the Strategic Roadmap; however, the proposed development aligns with the critical focus and vision of growing the economy by attracting and retaining businesses to stimulate a vibrant economy, provide high paying jobs, and ensure a strong business community.

## **STAFF ANALYSIS**

Staff believes that the Planning Commission can make the required Findings to support approval of the Conditional Use Permit, Site Plan Review, and various requests for Warrants and Exceptions to the standards of the South Hayward BART form-based code. Staff believes the proposed project will result in a significant investment and beautification efforts into the project site that will result in an overall positive impact for the community. Staff believes that the specific operators identified for the two drive-through restaurants are unique to Hayward, and in the case of Raising Cane's Chicken Fingers will be one of the first in the Bay Area. In response to the feedback from the original Notice of Application Receipt, the applicant listened to the community and market demand for an upscale grocery store that would provide healthier food options including fresh organic produce, vegetables, meats, etc. and was able to deliver a Sprouts Farmers Market as one of the major tenants. With the proposed project, the City will be able to maintain a resilient commercial shopping center in the heart of Hayward.

**Land Use Compatibility.** The proposed development will consist of a 100% commercial project that will be compatible and consistent with other commercial and mixed-use properties along the Mission Boulevard corridor. With the increased amount of residential and mixed-use development along Mission Boulevard, the proposed grocery store and restaurants will serve the existing and future residents along this Corridor and will be accessible via walking or biking. This redeveloped commercial center will be centrally located along Mission Boulevard and provide relatively quick access from most parts of Hayward via multi-modal forms of transportation. In addition, Conditions of Approval have been included where the drive-through restaurant operators will be required to ensure that adjacent streets and parking lot areas remain clear of debris, trash, and waste.

**Warrants and Exceptions.** Staff believes that the requests for the various Warrants and Exceptions can be supported as the proposed project involves the adaptive reuse of an existing commercial building with additional new development on the property. Much of the

requests for the warrants and exceptions derive from the basis that the site is already developed with an existing commercial building with existing hardscaped and paved areas, topography challenges, access points, and long property frontages. In addition, the corporate business and operations model of the two new drive-throughs does not normally include two-story components, street facing shopfront entrances, etc. Despite the requests for the Warrants and Exceptions, staff believes that the project as proposed does align with the intent of the form-based code and adopted goals and policies of the General Plan for building strong commercial retail centers that serve the needs of Hayward residents and businesses.

Economic Development Specific Plan. The City's Economic Development Strategic Plan<sup>5</sup> lays the groundwork for targeted business attraction, branding and marketing activities, and the development of key catalyst and opportunity sites throughout the city. One of the focus areas within the specific plan specifically relates to the service and retail industry with a goal to recruit and secure new businesses in priority locations/industries that are a good fit for Hayward. The project site is listed as an economic development catalyst site and is located within one of the city's key retail areas which will spur more investment into South Hayward that will cascade to the broader local economy while bolstering City revenues. The proposed project aligns with the goals and strategies of the specific plan by maintaining this site as commercial. In addition, by repurposing the existing building into nine separate tenants, it makes the leasable areas more manageable and less cost prohibitive for retail, service, and food businesses to enter the space and be successful.

It is important to place the economics of the project as a whole into context and explain the role the proposed drive-throughs play in attracting the grocery store user and in the overall feasibility of the project. As described above, the retail center will consist of the proposed two drive-through operators, a Sprouts Farmer's Market grocery store, six new in-line tenant spaces facing Mission Boulevard, and two major tenant spaces representing the remaining square footage of the former K-Mart building. As with all retail centers, the long-term viability of the center is tied to "anchor tenants".

Anchor tenants are commercial users that draw customers into a shopping center. Anchor tenants help boost consumer traffic and improve occupancy rates of the center. Anchor tenants often rent more space and generate more revenue for the property owner, which in turn helps unlock financing for construction of tenant spaces and site improvements. In this application, the anchor tenants are In-N-Out Burger and Raising Cane's.

According to the project applicant, securing Sprouts Farmers Market, a high-end specialty grocery store long sought by the Hayward community, as a tenant is contingent on securing leases with the proposed drive-through restaurant operators. This is consistent with Economic Development Division's analysis of the Hayward grocery marketplace, which was presented to the Council Economic Development Committee in March 2021 (see discussion above). Factors such as operating costs and projected consumer demand are key factors in site selection decisions of grocery stores. In this project, the rental revenue generated by the

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<sup>5</sup> Hayward Economic Development Strategic Plan: [www.hayward-ca.gov/sites/default/files/documents/Economic\\_Development\\_Strategic\\_Plan.pdf](http://www.hayward-ca.gov/sites/default/files/documents/Economic_Development_Strategic_Plan.pdf)

two drive-through restaurants is able to help offset the lease rates and building improvements costs for the grocery space and the associated consumer traffic induced by the two restaurants helped solidify the business case for a new grocery store. In the absence of that revenue and consumer activity, the applicant indicates that the costs of acquiring the site and renovating the building for a grocery store and other planned commercial spaces, as well as improving the site's access and landscaping, will be economically infeasible.

In addition to being the key factor in attracting the grocery store, it important to note the two drive-through users will also play a vital role in attracting future users of the other commercial spaces and enhancing long-term viability of the site. These users provide a strong tenant mix to prospective businesses who are seeking a location that maximizes potential sales traffic. The two proposed restaurants have a renowned following and the presence of high volumes of repeat customers makes the site attractive to retail users of all types.

Finally, the applicant's inclusion of drive-through uses is consistent with pre-pandemic and current retail market trends nationally. Before the pandemic, the retail sector was already being disrupted by new innovative technologies including third-party delivery services (DoorDash, Uber Eats, etc.) and the proliferation of online and mobile ordering applications that allowed retailers and food users to provide curbside or drive-through window pickup. The pandemic accelerated this market shift as consumers moved quickly toward more mobile ordering and contactless pickup.<sup>6</sup> According to the Los Angeles Business Journal, retail food chains indicate that sales via drive-throughs increased over 25 to 35 percent during the pandemic; with industry experts expecting that trend to continue post-pandemic restrictions.<sup>7</sup> In fact, major brands across the country including Shake Shack, Taco Bell and Pizza Hut have unveiled plans for drive-through only establishments.<sup>8</sup> Other traditional and quick service restaurant chains, such as Applebee's, Blaze Pizza and Chipotle are also adding drive-through operations in response to consumer trends and the need to shore up revenue streams in an increasingly challenging retail market environment.

## ENVIRONMENTAL REVIEW

The proposed project is deemed categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15301 for existing facilities including the remodel and occupation of existing commercial building, 15302 also for the remodel and occupation of existing commercial building, and 15303 for the construction of small structures no greater than 10,000 square-feet in cumulative floor area for the drive-through restaurants. A technical memorandum detailing the project's eligibility for the above-referenced categorical exemptions was prepared by LSA Associates and is included as Attachment VI.

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<sup>6</sup> Luna, Nancy (5 October 2020). COVID is forcing restaurants to rethink, modernize drive-thru lanes. *Nation's Restaurant News*. <https://www.nrn.com/quick-service/covid-forcing-restaurants-rethink-modernize-drive-thru-lanes>

<sup>7</sup> Amaradio, Alexis. (26 April 2021). *Restaurants, Developers Line Up for Drive-Thrus*. Los Angeles Business Journal. <https://labusinessjournal.com/news/2021/apr/26/restaurants-developers-respond-demand-drive-thrus/>

<sup>8</sup> Oches, Sam (October 2020). Inside the New Era for Drive Thru. *Quick Service Restaurant (QSR) Magazine*. <https://www.qsrmagazine.com/drive-thru/drive-thrus-big-day>

To accompany the technical memorandum, a Vehicles Miles Traveled (VMT) transportation analysis was also conducted by Kittelson & Associates, Inc. to ensure the project would not trigger any environmental impacts with respect to CEQA. The City's threshold of significance for retail projects is a net increase in total regional VMT. With respect to the existing commercial building that recently occupied by Kmart, the site was already incorporated as retail in the City's most recent General Plan and associated model for both existing and cumulative planning years. The commercial building recently consisted of a locally-serving retail use that will now be replaced with a similar use and is not anticipated to increase regional VMT; therefore, per guidance from the State of California Office of Planning and Research (OPR), transportation impacts can be presumed to be less than significant. As such, a more detailed analysis was not conducted, and the existing commercial part of the project is presumed to have a less-than-significant impact with the "repurposing" of the interior building space.

For the two new drive-through restaurants, the VMT analysis concluded that total daily VMT for the region would decrease by approximately 374, or less than 1 percent. While this represents a negligible change, it does indicate these land uses are likely shortening trips for many residents and customers compared to existing no-project conditions. A technical advisory from the OPR documents this effect by explaining that, "By adding retail opportunities into the urban fabric and thereby improving retail destination proximity, local-serving retail development tends to shorten trips and reduce VMT." Therefore, the drive through restaurants would not be expected to increase regional VMT.

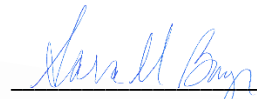
## **NEXT STEPS**

If the Planning Commission approves the Conditional Use Permit, Site Plan Review, Warrant and Exception applications, then a 10-day appeal period will commence from the date of decision. If no appeal is filed, then the decision will be deemed final. If an appeal is filed within the 10-day time frame, then the application will be heard by the City Council for final disposition.

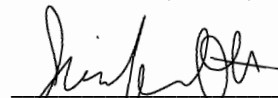
Prepared by: Marcus Martinez, Associate Planner

Recommended by: Jeremy Lochirco, Acting Planning Manger

Approved by:



Sara Buizer, AICP, Acting Deputy Development Services Director



Jennifer Ott, Assistant City Manager/Acting Development Services Director