

**CITY OF HAYWARD PLANNING COMMISSION
CONDITIONAL USE PERMIT AND SITE PLAN REVIEW
WITH WARRANTS AND EXCEPTIONS APPLICATION NO. 202002474
PROPOSED DRIVE-THROUGH RESTAURANT ESTABLISHMENTS AND
SIGNIFICANT RENOVATION OF SITE AND EXISTING COMMERCIAL BUILDING
LOCATED AT 26231 MISSION BOULEVARD**

DRAFT FINDINGS FOR APPROVAL

SITE PLAN REVIEW

Pursuant to Hayward Municipal Code Section 10-1.3025, the Planning Commission or other approving authority may approve or conditionally approve an application when all the following findings are made:

1. The development is compatible with on-site and surrounding structures and uses and is an attractive addition to the City;

The development will be compatible with on-site and surrounding structures and uses in that the proposed project includes two new-drive through restaurants and an extensive renovation of the existing commercial building on a parcel that allows for commercial and mixed-use developments as primary uses on a site located adjacent to a mix of land uses, including other commercial and retail uses such as restaurants. The entire project site is approximately 10.72-acres, which can accommodate the development of the two new drive-through restaurants with adequate site circulation, vehicle queueing, off-street parking and outdoor dining areas without adversely impacting adjacent properties. The property is also located along two arterial streets, Harder Road and Mission Boulevard, that contain enough vehicular capacity to adequately serve the proposed project. The renovation of the existing commercial building will replace a former retail operator (Kmart) with up to nine commercial businesses that support nearby residents, businesses, visitors, etc. The project will introduce a significant amount of investment into an underutilized property, including site landscaping and tree planting, upgraded building architecture and façade activation, wayfinding signage, and proper stormwater management infrastructure that will convert an underutilized site into an attractive catalyst site for the City.

2. The development takes into consideration physical and environmental constraints;

The development takes into consideration the physical and environmental constraints as the proposed project utilizes an already developed property with an existing 94,500 square-foot building in deteriorating conditions to accommodate an adaptive reuse of the former Kmart establishment. The proposed site renovation will improve circulation throughout the site, provide landscaping, and the creation of two new pad buildings for drive-through uses. The project site currently exhibits an outdated site design with one-way angled drive aisles which will be replaced with standard 90-degree spaces and spacious drive aisles for patrons to traverse the site in a fluid and safe manner. The project scope also requires the removal of 74 protected trees that will be mitigated in accordance with the City's tree preservation ordinance

which will result in 211 new 24- and 36-inch trees being planted that will create an attractive presence of vegetation and shade trees for the parking lot areas.

Further, the existing main commercial building and surface parking lot areas were built at a +/- 4 foot higher grade elevation than the Harder Road street level and +/- 11 foot lower grade elevation than the Mission Boulevard street-level, resulting in grade differentials that present challenges to accommodate to ADA accessible paths of travel within the project site. ; The development proposes to incorporate dedicated sidewalks and pedestrian routes between 5- and 8-feet-wide to navigate from within the site and to and from the public right-of-way to support multi-modal access to this project site.

3. The development complies with the intent of City development policies and regulations; and

The project site is within the Urban General (S-T4) and Urban Center (S-T5) zones of the South Hayward BART Form Based Code (FBC) area with a corresponding land use designation of Sustainable Mixed-Use (SMU). Of the subdistricts within the 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. The S-T5 zone consists of higher density mixed-use buildings that accommodate retail, office, and residential uses. The project is consistent with the development standards of the FBC, with the exception of those requested through the Warrants and Exceptions. Consistent with the general character of the S-T4 and S-T5 zones, the project will provide commercial activity in mixed-used neighborhood, and the redevelopment of the project site will accommodate retail and restaurant uses in a manner that will generate pedestrian activity.

The SMU land use designation allows for a residential density range of 4.3 to 100 units per net acre, and up to a maximum floor area ratio (FAR) of 2.0 or 2.75 if located within transit overlay zones established by zoning. Retail, dining, and service uses are allowed uses within the SMU land use designation. The SMU land use designation generally applies to properties that are transit adjacent and are planned as walkable urban neighborhoods. Typical building types vary based on the zoning of the property but will generally include 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. The project proposes retail and dining uses consistent with the SMU land use designation. With the proposed application, the intensity of the site will increase via repurposing the existing commercial building from a single tenant/operator to up to nine businesses plus the proposed two drive-through businesses. This would create a node of local serving retail and commercial uses on an underutilized parcel with an existing unattractive commercial building.

Overall, and for the reasons stated in these findings, the proposed development will support the following *Hayward 2040 General Plan* goals and policies:

- Land Use Policy LU-1.3 – Growth and Infill Development. The City shall direct local population and employment growth toward infill development sites within the city, especially the catalyst and opportunity sites identified in the Economic Development Strategic Plan.
- Land Use Policy LU-1.4 – Revitalization and Redevelopment. The City shall encourage property owners to revitalize or redevelop abandoned, obsolete, or underutilized properties to accommodate growth.
- Land Use Policy LU-2.12 – Mission Boulevard Mixed-Use Corridor. The City shall encourage the redevelopment of the Mission Boulevard corridor to create an attractive mixed-use boulevard with a variety of commercial functions and residential densities that support walking and transit.
- Land Use Policy LU-2.13 – Mission Boulevard Specific Plan. The City shall maintain and implement the Mission Boulevard to guide and regulate development within the Mission Boulevard Mixed-Use Corridor.
- Land Use Policy LU-5.1– Mix of Uses and Activities. The City shall encourage a mix of retail, service, dining, recreation, entertainment, and cultural uses and activities in regional and community centers to meet a range of neighborhood and citywide needs.
- Land Use Policy LU-5.2 – Flexible Land Use Regulations. The City shall maintain flexible land use regulations that allow the establishment of economically productive uses in regional and community centers.
- Land Use Policy LU-5.4 – Parking Lot Enhancements. The City shall require new and renovated community and regional centers to incorporate landscaping and shade trees into parking lots to capture and filter stormwater runoff, minimize the heat island affect, and improve the visual appearance of properties. Parking lot shade structures with solar panels may also be used as an alternative to shade trees.
- Land Use Policy LU-5.6– Adaptive Reuse, Renovation and Redevelopment. The City shall support the adaptive reuse, renovation, or redevelopment of community and regional shopping centers that are no longer viable due to changing market conditions, demographics, or retail trends. The City shall consider alternative land uses if market conditions limit the feasibility of commercial uses.
- Economic Development Policy ED-1.11– Local Serving Retail. The City shall encourage the establishment and expansion of commercial businesses that increase local spending within Hayward and provide needed goods and services to local residents and businesses.
- Economic Development Policy ED-1.12 – Neighborhood Commercial. The City shall consider the integration of quality neighborhood commercial businesses and developments within residential areas to support the concept of “complete neighborhoods.”
- Economic Development Policy ED-5.5– Quality Development. The City shall require new development to include quality site, architectural and landscape design features to improve and protect the appearance and reputation of Hayward.
- Economic Development Policy ED-6.2– Land Use Certainty. The City shall strive to enhance land use certainty for businesses by identifying and removing unnecessary regulatory barriers that discourage private-sector investment.

- Health and Quality of Life Policy HQL-3.1– Access to Healthy Foods. The City shall strive to ensure that all residents are within walking distance of sources of fresh and healthy foods (e.g., grocery stores, healthy corner stores, farmers’ markets, and community gardens).
 - Health and Quality of Life Policy HQL-3.2– New Healthy Food Venues. The City shall support and consider incentives to encourage the development of new retail venues that sell local, fresh produce, including farmers’ markets, community-supported agriculture programs, and grocery stores, especially in underserved areas and near schools.
 - Health and Quality of Life Policy HQL-3.3– Healthy Corner Stores. The City shall use incentives or other programs to encourage existing small grocery or convenience stores to offer and promote healthy food options, with a focus on underserved areas and areas near schools.
- 4. The development will be operated in a manner determined to be acceptable and compatible with surrounding development.**

The development will be operated in a manner determined to be acceptable and compatible with surrounding development in that the proposed project will result in the construction of two new drive-through restaurants and the renovation of an existing commercial building similar to those along the Mission Boulevard and Harder Road corridors. As noted above, the project site abuts commercial land uses along the north, east, and southern boundaries toward Mission Boulevard, and the BART tracks to the west. The loading docks and truck area for the main building will remain along the southern elevation and edge of the project that abuts residential properties; however, the business operators will be required to comply with the city’s noise ordinance for activities.

Additionally, during construction, the proposed project will be subject to all applicable provisions of the Hayward Municipal Code for construction, maintenance, landscaping etc. The proposed development will be required to adhere to the Conditions of Approval (within Attachment III) which will require the project to adhere to standard procedures of site preparation and development, including permitted hours of construction activity, as well as the incorporation of Best Management Practices (BMPs) for construction noise, grading, use of equipment to prevent adverse negative impacts onto adjacent properties.

CONDITIONAL USE PERMIT (For Drive-Through Restaurants)

Per Section 10-1.3225 of the Hayward Municipal Code, the Planning Commission or other approving authority may approve or conditionally approve an application when all the following findings are made:

1. The proposed use is desirable for the public convenience or welfare;

The proposed drive-through restaurants are desirable for the public convenience in that the project will result in a new In-N-Out Burger, a California based fast food establishment with high quality ingredients, and new Raising Cane’s Chicken Fingers, a Louisiana based fast casual restaurant specializing in chicken fingers – neither of which are currently located within the City of Hayward boundaries. There are currently no open Raising Cane’s

establishments located within the Bay Area region and it will be the first of its kind to enter the Bay Area market. At this point in time, the closest Raising Cane's Chicken Fingers establishment to Hayward are in Reno, Nevada and Bakersfield, California. As indicated previously, the project site is centrally located in Hayward and will be quickly accessible to residents, passing traffic along the arterial streets, and nearby employees of the area and students of Cal State East Bay. The proposed project will be desirable for the public convenience or welfare as it will provide new and diverse food options in the City that will be easily accessible to the local community, residents, employees and visitors.

2. The proposed use will not impair the character and integrity of the zoning district and surrounding area;

The proposed drive-through restaurants will not impair the character and integrity of the zoning district and surrounding area. The project site is zoned for commercial and mixed-use developments at high intensities and usage. The project site is approximately 10.72-acres in size, which is sufficient to handle the vehicular site circulation, customer queueing, and parking demand required to accommodate these specific drive-through operators. Both specific operators draw a large and loyal customer base, which require consistent standard operating procedures to ensure an efficient flow of customers in and out of the project site. Conditions of Approval have been attached to this project to ensure that the operators of the drive-through restaurants do not generate an excessive amount of waste and debris within the parking lot areas or within the public right-of-way (e.g. sidewalk, streets, gutters). Business employees will be required to collect and properly dispose of trash that are found within 50-feet of the business boundaries.

3. The proposed use will not be detrimental to the public health, safety, or general welfare; and

The proposed drive-through restaurants will not be detrimental to the public health, safety, or general welfare in that the site layouts for the businesses have been designed to adequately manage all vehicle queueing and excess spillover without creating an adverse impact to the rest of the project site's internal vehicular or pedestrian circulation. In addition, the proposed drive-through restaurant uses are convenient and quick service as eating establishments and will not be detrimental to the public health, safety, or general welfare. As mentioned previously, a Condition of Approval imposed on the project requires the operator be responsible for clean up any debris and trash associated with their business in order to maintain a clean and welcoming environment for patrons, as well as minimize any impacts to nearby residents and businesses.

4. The proposed use is in harmony with applicable City policies and the intent and purpose of the zoning district involved.

The drive-through restaurants will be in harmony with the applicable City policies and the intent of the purpose of the S-T4 and S-T5 zones of the FBC zoning district. The proposed development of In-N-Out Burger and Raising Cane's will provide local serving retail options to the community including its residents, businesses, students, and visitors and serve an

unmet demand in Hayward. The In-N-Out Burger and Raising Cane's is compatible with other adjacent drive-through facilities located along the Mission Boulevard corridor, but the specific operators identified will be unique to the area. The Hayward 2040 General Plan encourages a mix of uses and activities to meet a range of community and regional needs.

Please refer to the goals and policies of the Hayward 2040 General Plan cited in Finding #3 for Site Plan Review that also apply to this Finding.

WARRANTS

Per Section 10-24.410(c) of the previously adopted South Hayward BART Form Based Code ("FBC"), the Planning Commission or other approving authority may approve or conditionally approve an application when all the following findings are made:

1. Policy Consistency. The Warrant is consistent with the General Plan and overall objectives of this Code.

Please refer to the goals and policies of the Hayward 2040 General Plan cited in Finding #3 for Site Plan Review that also apply to this Finding.

Maximum Setbacks. The FBC stipulates a maximum setback requirement of 24-feet from property lines for new construction. The setbacks for the main commercial building are considered existing conditions and deemed legally nonconforming. As proposed, the site plan is proposing a 14.83-foot setback for Pad 1 (Raising Cane's) and a 44.04-foot setback along Harder Road for Pad 2 (In-N-Out); the latter of which requires a Warrant. The SMU designation for the property allows for retail, dining, and service businesses as allowed uses and the General Plan includes land use policies to support flexible land use regulations that allow the establishment of economically productive uses in regional and community centers. The Warrant is required to support the drive-through functionality for Pad 2 to allow vehicles to order and pick-up their meals on the driver side of the vehicles. As designed, the proposed site plan allows for maximum vehicle queueing capacity and optimal safe site circulation to avoid spillover into the rest of the parking lot area.

Frontage Buildout. The FBC requires a minimum frontage buildout of 60% for new developments to create a semi-urban environment and "street wall" along the public right-of-way. The project site is a corner lot with dual frontages along Mission Boulevard (492 linear-feet) and Harder Road (669-feet). As the proposed development includes two new drive-through restaurants along the Harder Road frontage, the project is required to build out a minimum of 401 linear-feet along the street frontage. The project seeks a Warrant from this requirement, and the project is proposing roughly 30% along Harder Road. The frontage buildout Warrant will assist in bringing the project into fruition and meet the goals and policies of the General Plan to build and maintain an activated commercial site.

Facade Glazing. The FBC requires a minimum of 30% of glazing on the first-floor facades of new developments orientated toward the street. As proposed, Pad 1 for In-N-Out does not meet this standard for the northern elevation that faces Harder Road, as the current design reflects approximately 20 - 25% of the glazing on that frontage. Although the floor plan and proposed glazing for this building does not provide the required minimum along Harder Road, the primary customer entrance for pedestrians will be located along the eastern

elevation for the building, which does include more glazing and will maintain the highest amount of visibility from the Pad 2 parking lot. The requested Warrant will still be consistent with the General Plan and overall objectives to activate businesses along major street frontages including Harder Road. The glazing oriented toward Harder Road includes one storefront entrance and window that will be directly accessible from the public right-of-way.

First Layer Paving. The FBC requires that hardscape paving within the first layer be prohibited with the exception of driveways. The “first layer” is defined as the segment between the property or frontage line and the closest building line (first point of contact with the proposed building). Given that the proposed project involves the renovation of the existing building and development of two new drive-through restaurants, the application of the first layer paving standard is only applied to Pad 1 and 2. The requested Warrant from this standard is consistent with the General Plan and overall objectives of the FBC in that the project includes buffer landscaping within the first layer of the development between the proposed buildings and the Harder Road sidewalk. The proposed project also includes a series of sidewalks to enhance the pedestrian experience and enhance accessibility to the businesses.

Open Parking Lot Street Screens. The FBC requires a 3- to 6-foot street screen (or wall) that screens the visibility of surface parking lots from the public right-of-way along Mission Boulevard and Harder Road. The project requests a Warrant from this requirement. The project is designed without a 3- to 6-foot street screen or wall. The requested Warrant is still consistent with the goals of the General Plan and the objective of the FBC in that the project will result in a resilient and catalyst commercial center that will spur additional commercial developments along the corridor and throughout the City. The warrant from the street screen does not inhibit the use of the site and will allow for clear visibility and safe traffic circulation for vehicles entering and exiting the project site. The applicant has proposed attractive landscaping along the perimeter of the project site that will significantly enhance the site beyond its existing conditions.

2. 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.

Maximum Setbacks. The Warrant for the increased setback of 44-feet beyond the 24-foot maximum for Pad 2 is justified since it would allow facilitate creativity in designing the site plan and development of the site to exhibit the most optimal vehicle queueing and site circulation features for the patrons of this shopping center. In order to allow customers to order, pay, and pick-up their meals along their driver side door, the drive-through lane is situated along Harder Road.

Frontage Buildout. For the proposed project, the new buildings associated with the drive-through restaurants that trigger the minimum frontage buildout requirements are considered ancillary to the primary commercial building on the site that will include up to nine new commercial tenants – one of which would be the Sprouts Farmers Market grocery store. Existing grade differentials from the project site boundaries and the Harder Road

right-of-way west of the northern driveway present unique environmental and physical conditions that limit the ability of having a more extensive frontage build out.

Facade Glazing. The requested Warrant is justified as it is in the interest of promoting a creative and effective site design for Pad 2. The proposed site layout for Pad 2 is intended to allow for maximum vehicle queueing to minimize spillover into the rest of the project site's parking lot and circulation arteries which requires the orientation of the building's side to Harder Road while having the main entrance on the eastern elevation facing the parking lot. For this reason, there are minimal opportunities to incorporate the minimum 30% glazing along the northern elevation, with the exception of the proposed storefront entrance and window, which will be enhanced with an entry metal canopy and include a path for pedestrians.

First Layer Paving. The requested Warrant is justified by the interest of promoting the creativity in the site planning and development to allow the proposed drive-through restaurants to have queueing lanes, pedestrian paths, storefront entrances, and an outdoor dining area along Harder Road. Most of the hardscape paving present within the first layer along Harder Road is existing and historical condition. To minimize the existing hardscape paving, the proposed project includes a landscaping buffer from the new drive-through buildings to the Harder Road right-of-way to create an attractive presence from the street.

Open Parking Lot Street Screens. The requested Warrant is justified by the existing environmental features and physical site conditions. The existing project site conditions exhibit a grade differential from the street level than the existing building and surface parking lot. The property's perimeter is approximately 1,224 feet long and the installation of a wall where buildings do not screen the surface lots would lower the curb appeal by reducing the integration with the site with excessive built divisions. In conjunction with the long perimeter, a substantial portion of the site is covered with surface parking lots without building screens (particularly along Mission Boulevard). The use of landscaped street screens where the views to surface parking lots are visible from public vehicular lanes is expressly permitted by the Code as a proper alternative to constructed walls.

3. 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.

Maximum Setbacks. The requested Warrant for a deviation from the maximum setback along Harder Road, would not be detrimental to the public health, safety, or welfare or injurious to the property or improvements in the vicinity and in the same zoning district. Rather, the requested Warrant would enhance public health, safety, or welfare by providing additional space for landscaping and minimize crowding along the street by providing additional buffer space between the drive-through business and Harder Road. The requested Warrant would not adversely impact the adjacent sites.

Frontage Buildout. Approval of the requested Warrant will not result in a development that is detrimental to the public health, safety, or welfare, or injurious to the property or improvements in the vicinity and in the same zoning district in that the project involves reducing the amount of building floor area on the site and allowing less frontage build out to

maintain visibility of the major and shop tenants that will result from the renovation of the existing building.

Façade Glazing. The requested Warrant to deviate from the minimum 30% glazing requirement along the street facing façade would not be detrimental to the overall public health, safety or general welfare or be injurious to the property or improvements in the vicinity and in the same zoning district as the glazing requirement is primarily an architectural feature standard with the goal to “activate” commercial street-facing facades with business activity.

First Layer Paving. The requested Warrant does not result in a development feature that will be detrimental to the public health, safety, general welfare, or will result in being injurious to the property or improvements in that the project provides an attractive landscaping buffer from the buildings to the right-of-way. The Code provision is primarily an architectural and site improvement features to minimize the amount of net new impervious surface area; however, the proposed project will include a significant amount of new vegetation and landscaping on-site that will comply with stormwater requirements.

Open Parking Lot Street Screens. Approval of this Warrant would not be detrimental to the public health, safety, or welfare or injurious to the property or improvements in the vicinity and the in the same zoning district. In fact, it would enhance public health, safety, or welfare by improving curb appeal and adding greenery. The natural look of landscaped street screens along Mission Blvd. would also be compatible with the upwards sloping green grass of the Holy Sepulcher Cemetery to the east.

4. 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.

Maximum Setbacks. The requested Warrant is not granting a special privilege or impacting substantial compliance with the Code because the increase of the maximum allowable setback is being requested, in significant part, due the existing driveways from Harder Road and existing buildings on the Site which limit the feasible locations for safe drive-through facilities with adequate circulation.

Frontage Buildout. The requested Warrant will not adversely affect substantial compliance with the FBC nor grant a special privilege inconsistent with the limitations upon other properties in the vicinity and in the same zoning district in that many existing development patterns of shopping centers positioned along the Mission Boulevard corridor have less than 60% of their frontage built out to clearly display the tenants of those centers, show the available parking, and maintain proper visibility triangles entering and exiting the project site. It is also important to note that this project site maintains two frontages off Harder Road and Mission Boulevard which places a significantly high standard for the site to meet with respect to the minimum buildout requirement. The proposed project upon completion will operate very similarly to other comparable local and regional commercial shopping centers and will not grant a special privilege by authorizing the requested Warrant.

Façade Glazing. The requested Warrant will not affect the substantial compliance with the Code nor grant a special privilege inconsistent with the limitations upon other properties in the vicinity and in the same zoning district in that the proposed drive-through restaurant for Pad 2 will still include glazing along their building elevations.

First Layer Paving. The requested Warrant does not affect the substantial compliance with the Code, nor will it grant a special privilege inconsistent with the limitations on other properties in the area or same zoning district. As mentioned previously, there are numerous similar commercial shopping centers along the Mission Boulevard corridor that do not have, or have minimal permeable landscaping area, within the first layer of their properties. The subject property is a dual-frontage, corner property and the first layer paving prohibition presents an unduly burden on the redevelopment and revitalization of the site.

Open Parking Lot Street Screens. This Warrant is not granting a special privilege or impacting substantial compliance with the Code because the request to replace constructed walls with landscaped street screens is functionally equivalent for the purpose of screening surface parking lots.

EXCEPTIONS

Per Section 10-24.410(d) of the Hayward Municipal Code, the Planning Commission or other approving authority may approve or conditionally approve an application when all of the following findings are made:

- 1. 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.**

Private Frontage Requirements. The FBC requires that new developments incorporate a private frontage element with a building entrance at sidewalk grade that is accessible from the street. The project site exhibits a grade separation from the street-level to the project site along parts of Harder Road which present challenges to maintain a direct frontage and entrance at the sidewalk level. In addition, in order to promote safe vehicular circulation and functionality, the drive-through queueing lanes are present between the Pad 2 building at the public right-of-way. The existing physical conditions of the site present practical difficulties and unusual hardships in the strict compliance of the Code requiring an at grade sidewalk and entrance at the proposed dining establishment frontages justifying the need for an Exception.

Building Height. The FBC requires that primary buildings be no less than 2-stories tall. The proposed project is primarily a remodel of this existing anchor building, which is located towards the center and rear of the Site. The two new dining establishments are ancillary to the existing anchor building and located at the front edge of the Site along Harder Road. Given the existing anchor building will host the commercial center's anchor tenants, the heights of the ancillary dining establishments should not exceed the height of the existing anchor building to maintain the commercial center's main building viability and prominence.

Requiring strict compliance with minimal height requirements of the dining establishments would reduce the visibility and primacy of the existing anchor building and create disjointed design development patterns. The practical difficulties of such a large site, coupled with an existing building that is designed to anchor the Site creates unusual hardships if strict compliance of the Code's minimum heights were required to ancillary buildings, justifying the need for an Exception.

Common Open Space. There are unique physical conditions and other conditions peculiar and inherent to the project site. Specifically, this lot exceeds 467,000 square-feet and includes an existing approximately 94,500 square-foot commercial building. The remaining approximately 372,000 square feet of the Site is almost entirely paved surface parking lots and driveways that are required to serve the anticipated uses on the property. Under the current Code, the Project would require approximately 70,000 square-feet of common open space where the proposed buildings onsite are less than 100,000 square feet. Given a full raze and redevelopment of the site is not proposed, the 15% minimum is incongruent with the project's site planning and proposed uses. There are practical difficulties in complying with such requirements on a large previously developed shopping center that is to be remodeled, particularly where the center will not be reconfigured (except for the addition of two new drive-through pads). Given the extent of previously developed areas that will not be reconfigured, there is not sufficient land area available to establish sufficient new common open space to satisfy this requirement.

2. 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.

Private Frontage Requirements. The practical difficulties of complying with the private shopfront frontage requirements of the Code are not self-created but are the result of an existing grade separation, a City of Hayward landscaped right-of-way, and no other viable option for safe circulation on Site while having two dining establishments with drive-through facilities.

Building Height. The practical difficulties claimed as grounds for the requested Exceptions have not been created by the owner. The corporate architectural designs and business model for the proposed drive-through restaurants do not include a second-story component in suburban areas such as this site. If the drive-through facilities were two-stories, it would hinder the functionality of the site and business for efficient dining services.

Common Open Space. The practical difficulties of complying with the minimum common open space requirements of the Code are not self-created. The difficulties are the result of a smaller 94,500 square-foot existing commercial building relative to the unusually large 10.72-acre parcel and the fact the proposed project involves a remodel of the existing commercial building and site improvements (e.g. parking and site landscaping areas) and not a full raze and redevelopment of the site.

3. 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.

Private Frontage Requirements. This Exception request is the minimum deviation necessary to afford relief. The new drive-throughs cannot achieve the private storefront frontage required because of topography and other existing and proposed conditions. Excepting the Project from this requirement is the minimum deviation necessary to proceed. To compensate for the inability to provide a direct private frontage, the project proposes to include a pedestrian path from the internal sidewalk network to Pad 1, and a pedestrian path from the city sidewalk to the north facing entrance for Pad 2 that will cross over a drive-through lane. The purpose of these connections is to align with the intent of the code provision.

Building Height. The requested Exception to the building height will allow the two drive-through establishments to be one-story tall rather than the minimum two-story requirement. This will result in a minimum deviation from the Code requirements. The existing building will primarily consist of a remodel and would not be subject to this standard.

Common Open Space. The requested Exception to the minimum 15% common open space provision will provide the minimum deviation necessary to afford relief in order to accommodate the proposed development. The project site consists of 10.72-acres and based on the existing site conditions of predominantly surface parking and the existing and proposed commercial buildings, there are minimal opportunities to achieve the minimum 70,000 square-foot open space requirement. However, the project proposes to include numerous outdoor dining areas for the pad building and there will be an 18-foot-wide pedestrian zone along the northern and eastern elevations of the primary building to include seating, bike storage, covered and uncovered outdoor dining areas, etc. to provide a welcoming and person-oriented experience for patrons, employees, and nearby residents to meet the intent of this Code.

4. 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.

Private Frontage Requirements. The requested Exception will not alter the essential character of the neighborhood or zone in which the lot is located nor substantially impair nearby uses and development, or be detrimental to the public welfare in that the project site will still exhibit articulated entrances oriented toward the street and will include accompanying glazing and entrances for pedestrians traveling from the internal and external pedestrian network (e.g. sidewalks, pedestrian paths). The project as a whole does include numerous private frontages of businesses that are orientated toward the street for activation and prominent visibility; however, are not placed at the sidewalk grade level due to existing grade conditions that preclude its feasibility.

Building Height. The requested Exception would not alter the neighborhood or Zone in which the lot is located, nor will it substantially impair the appropriate use or development of adjacent property, and it will not be detrimental to the public welfare. There is no development immediately to the west because the lot is bound by the BART and Union Pacific rails. To the north and south there are residential developments and other similarly positioned drive-through facilities and commercial retailers, all of which are single story. The character of the neighborhood, in fact, would be enhanced by having more services, dining options, and places to congregate without jeopardizing the visibility, viability, and prominence of the existing anchor building.

Common Open Space. The approval of the requested Exception would not alter the neighborhood or Zone in which the lot is located, nor will it substantially impair the appropriate use or development of adjacent property, and it will not be detrimental to the public welfare. The character of the neighborhood, in fact, would be enhanced by having more services, dining options, and places to congregate through some common open space. Also, the character of the neighborhood given the limited remodel at this Site aligns with and further supports 19,000 square feet of common open space serving the dining establishments. The project site would be consistent with the current conditions of the existing anchor building, along with the adjacent stereo store, CVS, and McDonald's.

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, Section 15302 for the remodel and occupation of existing commercial building, and Section 15303 for the construction of small structures no greater than 10,000 square-feet in cumulative floor area for the drive-through restaurants.

The CEQA exemption under Section 15301 "consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use." The type of facilities that are expressly contemplated under this exemption include "additions to existing structures provided that the addition will not result in an increase of more than: (1) 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less." The exemption under Section 15302 "consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced." This exemption expressly states that the "[r]eplacement of a commercial structure with a new structure of substantially the same size, purpose, and capacity" falls within the Class 2 exemption.

For this proposed project, the remodel of the existing commercial building formerly occupied by Kmart involves no net expansion because there is no increase in the existing building's floor area. There will also be no change in use as the uses contemplated in the new building will be retail and commercial uses. The remodeled retail building will be located

within the same footprint as the existing commercial building and will be approximately the same size as the commercial structure.

The CEQA exemption under Section 15303 “consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel. This exemption expressly exempts “[a] store, motel, office, restaurant or similar structure not involving the use of significant amounts of hazardous substances, and not exceeding 2,500 square feet in floor area. In urbanized areas, the exemption also applies to up to four such commercial buildings not exceeding 10,000 square feet in floor area on sites zoned for such use if not involving the use of significant amounts of hazardous substances where all public services and facilities are available, and the surrounding area is not environmentally sensitive.”

The proposed project includes two drive-in establishments that are less than 10,000 square feet, cumulatively and individually. The drive-in restaurants do not involve the use of significant amounts of hazardous substances. In addition, all necessary public services and facilities are available. The Project is also located in an urban area and is not adjacent to an environmentally sensitive area.

A Vehicles Miles Traveled (VMT) transportation analysis was 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.