



AGENCY: City Council
MEETING DATE: January 13, 2020
DEPARTMENT: CDD
PREPARED BY: S McCormick
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AGENDA ITEM SUMMARY

TITLE:

Receive Report, Conduct Public Hearing and Consider Appeal of Planning Commission Decision by Mitch Bramlitt on Denial of Coastal Development Permit 9-18 (CDP 9-18), Design Review 3-18 (DR 3-18), Minor Subdivision 1-18 (DIV 1-18) for the Proposed AutoZone at 1151 S Main Street (APN 018-440-58)

APPLICATION NO: Coastal Development Permit 9-18 (CDP 9-18)
Design Review 3-18 (DR 3-18)
Minor Subdivision 1-18 (DIV 1-18)

APPLICANT: AutoZone Parts, Inc. – Mitch Bramlitt

OWNER: Wayne Mayhew

REQUEST: Coastal Development Permit, Design Review, and Minor Subdivision to construct a 7,500 SF retail store with a 26-space parking lot and associated improvements and infrastructure. The existing 2.5-acre parcel is vacant. The proposed subdivision would create two lots. Lot 1 on the northern portion of the site would be the site of the proposed retail store. No development is proposed for the southernmost lot at this time.

LOCATION: 1151 S Main Street, Fort Bragg, CA

APN: 018-440-58

ENVIRONMENTAL DETERMINATION: A Mitigated Negative Declaration has been prepared for the project. (Attachment 5)

SURROUNDING LAND USES:
NORTH: General Retail / Auto Repair Service
EAST: CA Hwy 1 / Vacant Lot / Drive-thru Restaurant
SOUTH: Lodging-Motel
WEST: Vacant Lot / Mendocino County Residential

ISSUE:

Planning Commission Public Hearing

On September 25, 2019, the Planning Commission held a public hearing to consider Coastal Development Permit 9-18 (CDP 9-18), Design Review Permit 3-18 (DR 3-18), and Minor Subdivision 1-18 (DIV 1-18) to split one lot into two lots, and to construct a 7,500 SF retail store with associated improvements and infrastructure at 1151 S Main Street. Lot 1 on the northern portion of the parcel would be the site of the proposed retail store. No development is proposed for the southernmost lot at this time.

At the meeting, the Planning Commission received a report from staff, considered testimony from interested parties, deliberated and directed staff to develop findings for denial based on the Planning Commission's determination that the proposed project is inconsistent with Coastal General Plan policies and insufficient findings regarding the Design Review Permit.

Staff developed a Resolution with findings for denial based on the Planning Commission's direction (Attachment 3 – Resolution PC08-2019). On October 23, 2019, the Planning Commission reopened the public comment portion of the hearing and heard testimony from the applicant's agent and the public. All interested parties were invited to speak or submit written comments (Attachment 4 – Written and Oral Comments Received). At the conclusion of the public hearing, the Planning Commission adopted Resolution PC 08-2019, denying the proposed project.

Appeal to City Council.

Decisions made by the Planning Commission may be appealed to City Council (See Municipal Code section 19.72). On November 4, 2019 the City Clerk timely received an appeal of the Planning Commission's determination from the applicant, Mitch Bramlitt (Attachment 1 – Appeal).

Pursuant to Municipal Code section 17.92.030.E, as this involves the appeal of a decision on planning permits (e.g., Coastal Development Permit, Design Review Permit), staff recommends that the City Council only consider the grounds for the appeal stated in the applicant's appeal. Therefore, when considering whether the appeal has merit, the City Council should understand the underlying project and actions taken by the Planning Commission. For a full description of the project, please refer to the attached Planning Commission Staff Report and Mitigated Negative Declaration prepared for the project (Attachment 2 – Staff Report to Planning Commission, Attachment 5 – MND).

The City Council may choose to grant the appeal and to thereby approve the project, it may opt to approve the project with additional conditions, or it may choose to deny the appeal, and to uphold the Planning Commission's denial of the proposed project.

APPEAL:

On Monday, November 4, 2019, Mitch Bramlitt, the applicant representing AutoZone Parts, Inc., timely filed an appeal of the Planning Commission's determination with the City Clerk. Per the provisions of Municipal Code Section 17.96.050, a public hearing was noticed for

the next regularly scheduled City Council meeting (Attachment 6). At the meeting of November 25, 2019, Mayor Lee opened the public hearing on appeal and immediately continued the hearing to January 13, 2020, pursuant to agreement of the parties.

The primary issues raised in the appeal are listed below and discussed in detail following:

1. The applicant was not given an opportunity to be heard.
2. Planning Commissioners made a policy decision based on selective and conclusory considerations and that “the Planning Commission rejected AutoZone based upon its identity, rather than the merits of its project.”
3. Policy LU-4.1 is not applicable to the proposed project; and
4. The project is consistent with the City’s Local Coastal Program, specifically supporting Policy LU-3.1.

1. The applicant was not given an opportunity to be heard.

Summary. Contrary to the appellant’s position, the appellant was given an opportunity to be heard. Besides, even if this claim were true, pursuant to this appeal, the City Council is giving the applicant the right to be heard.

Analysis. The Planning Commission held a regularly scheduled meeting on Wednesday, September 25, 2019 at 6:00 PM in Town Hall. At said meeting, the Planning Commission held a public hearing and considered Coastal Development Permit 9-18 (CDP 9-18), Design Review 3-18 (DR 3-18) and Subdivision 1-18 (DIV 1-18) to create two parcels and construct a 7,500 SF retail store with associated improvements and infrastructure.

This public hearing was properly noticed in all respects as required by law. The Planning Commission received a staff report before Chair Rogers asked if the applicant would like to address the Commission. Wayne Mayhew, the property owner and not the project applicant, approached the podium to speak. The fact that the property owner, rather than the applicant stood to address the Planning Commission created confusion, which is evident because at the close of Mayhew’s testimony, Chair Rogers asked fellow commissioners, “Any other questions for the applicant?”

Following testimony by Mayhew, the Planning Commission called on speakers that submitted speaker cards, before taking testimony from other individuals in attendance. Following public comment, Chair Rogers closed the public hearing.

The Chair intended to invite the applicant or the applicant’s representatives back up to the podium to answer clarifying questions that arose during the course of the public comment period. However, because the public hearing portion was closed, this second opportunity was not provided. In order to provide this second opportunity, the subsequent meeting was rescheduled a month out, for October 23, 2019, so it could be properly noticed in all respects as required by law and the applicant and all interested parties wishing to address the Commission would have another opportunity to speak.

On the afternoon of the October 23, 2019 meeting, the applicant submitted a letter to the City, which is included with the appellant letter as “Attachment 1.” The late date and timing of this letter was not favorable because staff, commissioners and the community had little time to read and consider the content. In order to be sure all commissioners had an opportunity to read the applicant’s letter prior to making a decision, the Chair called a ten-minute recess to review the contents of letter. Following the recess, the Chair closed the public hearing before making a motion to adopt Resolution PC08-2019.

The Planning Commission determined that the proposed project does not comply with the City’s Coastal General Plan and Design Review Guidelines. The Planning Commission chose to adopt the prepared resolution with findings for denial, rather than continue the hearing for a third meeting. The applicant was given an opportunity to be heard at the September 25, 2019 and October 23, 2019 meetings, which were legally noticed in advance.

2. Planning Commissioners made a policy decision based on selective and conclusory considerations and that “the Planning Commission rejected AutoZone based upon its identity, rather than the merits of its project.”

Summary. Contrary to the appellant’s position, the record included substantial evidence supporting the Commission’s decision. It also included sufficient information to have allowed the Planning Commission to have reached the opposite conclusion.

Analysis. Based upon the statements made by the Commissioners during the hearing the appellant argues that the Planning Commission based its decision on selective and conclusory considerations and that the adopted Resolution does not reflect deliberations or direction that took place at the meeting.

The Planning Commission is to consider all evidence in the record, but is not required to discuss every piece of evidence presented. The fact that some items were not discussed, does not mean it was not considered. For example, the evidence included the project’s Mitigated Negative Declaration (MND) – a document which has been available for public review since June 27, 2019 and was part of the public record considered by the Planning Commission. The agenda for the September 25, 2019 meeting was published a week in advance, on September 18, 2019 (this included the staff report with attachments and public comment received to date). In consideration of the above referenced documents and timeframes, it is fair to surmise that there was ample time for Commissioners and the public to review written materials and understand the scope of the project prior to meeting date.

Additionally, the staff report clearly identified specific project review criteria, though analyzed and conditioned by staff to comply with the City’s Local Coastal Program, also explicitly acknowledged specific policies and regulations that decision makers could interpret differently. This staff report was presented during the public hearing and therefore the findings and evidence that drew from these aspects of the staff report were in fact, a part of

the record. For example, the Planning Commission did not consider the siting of the proposed structure acceptable because the location would have the most significant impact on existing trees on the site. Also, the commissioners determined the appearance/design of the subject structure did not comply with the Citywide Design Guidelines because the building lacked adequate architectural detail resembling the historic character of the Central Business District, which is reflective of Fort Bragg's community character.

The Planning Commission considered these issues, and other evidence presented (staff report, written and oral public testimony) before using its independent judgment and making a motion to act on Planning Commission Action 5b contained in the staff report:

5b) Direct staff to prepare a resolution with findings for denial based on Planning Commission's determination that the project is inconsistent with either: a) Policy LU-4.1, (appearance/small town character); b) CLUDC 17.50.070 (sited and designed to protect views to and along the ocean and scenic coastal areas); and/or c) insufficient findings regarding Design Review Permit.

The appellant claims that the resolution denying the project does not reflect the true underlying motives of the Commissioners. Rather, that "the Planning Commission rejected AutoZone based upon its identity, rather than the merits of its project." Staff is unaware of the internal mental processes of any of the Commissioners, but can only state that the Planning Commission acted on Action 5b of the staff report, which provides the framework and evidence necessary to make findings based on the proposed project's inconsistency with the City's Local Coastal Program. The staff report identified specific potential issues in which Planning Commission judgment may deviate from staff's analysis, and clearly, the majority of commissioners found the proposed project inconsistent with the City's Local Coastal Program.

After the close of the public hearing on the second meeting date, the Planning Commission adopted the prepared resolution. Commissioners unanimously found Resolution PC08-2019 and its reasoning to reflect the will and reasoning of the Planning Commission.

If the City Council believes that the Planning Commission should have made a different decision, the Council may opt to approve the project. Alternatively, the City Council could agree with the ultimate conclusion of the Planning Commission to deny the project, but to make the record clear that the Council is doing this solely based upon the findings that the Council is required to make.

3. Policy LU-4.1 is not applicable to the proposed project.

Summary. Contrary to the appellant's position, Policy LU-4.1 is applicable to the proposed project.

Analysis. The proposed AutoZone retail store meets Fort Bragg’s Coastal Land Use and Development Code definition of formula business:

“A business which is required by contractual or other arrangement to maintain standardized services, décor, uniforms, architecture, signs or other similar features. This shall include, but not be limited to retail sales and service, and visitor accommodations.”

Goal LU-4 in the Land Use Element of the City’s Coastal General Plan applies to all commercial zoning districts in order to “promote the economic vitality of the City’s existing commercial areas.” The land use “General Retail” is permitted by right in the Highway Visitor Commercial (CH) zoning district designation of the subject site. However, contrary to the appellant’s claim, Formula Businesses subject to discretionary permits (Coastal Development Permits, Design Review, etc.) must be consistent with Policy LU-4.1. A Formula Business subject to discretionary permitting can only be established in Fort Bragg, so long as the review authority finds that the location, scale and appearance does not detract from the economic vitality of established commercial businesses, as stated in the following supporting policy:

Policy LU-4.1 Formula Businesses and Big Box Retail: Regulate the establishment of formula businesses and big box retail to ensure that their location, scale, and appearance do not detract from the economic vitality of established commercial businesses and are consistent with the small town, rural character of Fort Bragg.

The Planning Commission made the determination that the proposed AutoZone retail store would indeed detract from the economic vitality of established commercial businesses due to the location, scale and appearance of the proposed project, based on the following points:

- The proposed design does not reflect the small town character of Fort Bragg because it is missing important architectural form and detail; there is a lack of consistent design features on all elevations, and windows do not relate to the scale and proportions of structure.
- The proposed building is relatively square and 26 feet in height, which is tall for the proposed single-story retail use and creates inappropriate massing and scale to the structure.

4. The AutoZone project is consistent with the City’s Local Coastal Program, and specifically supports Policy LU-3.4.

Summary. The appellant states that the proposed project, as analyzed by staff, complies with Fort Bragg’s policies and regulations.

Analysis. Indeed, staff analyzed potentially significant environmental impacts that might be associated with the proposed project in compliance with the California Environmental Quality Act (CEQA) and drafted mitigation measures in preparation of the environmental document for the project (MND). Staff also prepared and presented a report which included special conditions to ensure the project complied with the City’s Local Coastal Program. However, in said report, specific policies, regulations and design guidelines were identified which required interpretation by the review authority. In such instances, consistent with its authority

to do so, the Planning Commission determined the project did not comply. The Planning Commission, not staff, is the decision-maker regarding certain necessary findings to approve a Coastal Development Permit and Design Review Permit.

Resolution PC08-2019 contains findings, supported by evidence, that explain why the proposed project does not make some of the required findings necessary in order to approve a Coastal Development Permit and Design Review Permit (see Attachment 3). Staff developed the findings for denial with the rationale of written materials and direction of the Planning Commission.

To support the claim that the proposed project complies with the City's Local Coastal Program, the appellant inaccurately points to Policy LU-3.4 for reinforcement. However, Policy LU-3.4 is not applicable to the proposed project because this policy supports Goal LU-3 which "ensures that the Central Business District remains the historic, civic, cultural, and commercial character of the community", stating:

Policy LU-3.4 Encourage Infill Development: Encourage infill development of vacant and underdeveloped land in the Central Business District and adjacent commercial areas before amending the Coastal General Plan and rezoning to obtain additional commercial land elsewhere.

As such, the appellant's reliance on Policy LU-3.4 as supporting evidence is false. Policy LU-3.4 relates to infill development in the Central Business District and adjacent commercial areas. The subject parcel is not located in the Central Business District nor adjacent to it. Certainly, the City values infill development and there are several parcels designated for commercial uses throughout the City (including the Central Business District and adjacent commercial areas) which might be appropriate for infill. The City is not considering rezoning to obtain additional commercial land for the direct purpose of serving new commercial development.¹

POSSIBLE CITY COUNCIL ACTION(S):

1. Deny appeal and uphold Planning Commission's adoption of Resolution PC08-2019 to deny Coastal Development Permit 9-18 (9-18), Design Review Permit 3-18 (DR 3-18), and Minor Subdivision 1-18 (DIV 1-18) for the proposed project;
2. Approve the appeal, overturning the Planning Commission's decision by: 1) approval of Coastal Development Permit 9-18 (9-18), Design Review Permit 3-18 (DR 3-18), and Minor Subdivision 1-18 (DIV 1-18) for the proposed project; and 2) adoption of Mitigated Negative Declaration associated with the project;
3. Continue the public hearing to receive additional information about the application or project for decision at a later date; or
4. If new or different evidence is presented on appeal, the Council may refer the matter to the Planning Commission for further consideration (Fort Bragg Municipal Code Section 17.92.030(E)(2)).

¹ Currently, the City is preparing a Local Coastal Program Amendment to rezone Timber Resources Industrial land on the former Georgia Pacific Mill Site. This effort is to integrate a large underutilized portion of the City into the fabric of the community and includes a balanced variety of zoning districts and land uses.

FISCAL IMPACT:

The City of Fort Bragg collects sales tax for all retail businesses. Of the City's top twenty-five sales tax generating businesses, one is a formula auto parts retail business.

GREENHOUSE GAS EMISSIONS IMPACT:

Construction activities and post-construction customer and vehicles traveling to and from the retail store would likely increase greenhouse gas emissions.

CONSISTENCY:

Review and identify the proposed project's consistency with the following General Plan policies:

- Policy LU-4.1 Formula Businesses and Big Box Retail: Regulate the establishment of formula businesses and big box retail to ensure that their location, scale, and appearance do not detract from the economic vitality of established commercial businesses and are consistent with the small town, rural character of Fort Bragg.
- Policy CD-1.1: Visual Resources: Permitted development shall be designed and sited to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance scenic views in visually degraded areas.
- Policy CD-1.4: New development shall be sited and designed to minimize adverse impacts on scenic areas visible from scenic roads or public viewing areas to the maximum feasible extent.
- Policy CD-2.5 Scenic Views and Resource Areas: Ensure that development does not adversely impact scenic views and resources as seen from a road and other public rights-of-way.
- Policy CD-1.11: New development shall minimize removal of natural vegetation. Existing native trees and plants shall be preserved on the site to the maximum extent feasible.
- Policy CD-1.4: New development shall be sited and designed to minimize adverse impacts on scenic areas visible from scenic roads or public viewing areas to the maximum feasible extent.
- Policy CD-2.5 Scenic Views and Resource Areas: Ensure that development does not adversely impact scenic views and resources as seen from a road and other public rights-of-way.
- Policy CD-1.11: New development shall minimize removal of natural vegetation. Existing native trees and plants shall be preserved on the site to the maximum extent feasible.
- Policy OS-5.1 Native Species: Preserve native plant and animal species and their habitat.
- Policy OS-5.2: To the maximum extent feasible and balanced with permitted use, require that site planning, construction, and maintenance of development preserve existing healthy trees and native vegetation on the site.
- Policy LU-5.2: Ensure that there are adequate sites for visitor-serving land uses by:
 - a) Maintaining existing areas designated for Highway-Visitor Commercial uses;

- b) Maintaining the Highway Visitor Commercial land use designation as one allowing primarily recreational and visitor-serving uses; and
- c) Reserving adequate infrastructure capacity to accommodate existing, authorized, and probable visitor serving uses.
- Policy LU-5.6: The use of private lands suitable for visitor-serving and commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.
- Policy CD-2.1 Design Review: All development that has the potential to affect visual resources shall be subject to Design Review, unless otherwise exempt from Design Review pursuant to Coastal Land Use & Development Code Section 18.71.050. Design Review approval requirements shall not replace, supersede or otherwise modify the independent requirement for a coastal development permit approved pursuant to the applicable policies and standards of the certified LCP. Ensure that development is constructed in a manner consistent with the Citywide Design Guidelines.
- Design Review Project Criteria:
 - Provides architectural design, building massing and scale is not appropriate and compatible with the site surrounding and the community.
 - Provides architectural design, building massing and scale is not appropriate and compatible with the site surrounding and the community.
 - Is consistent with the General Plan, any applicable specific plan, and the certified Local Coastal Program.
 - Complies and is consistent with the Citywide Design Guidelines.

IMPLEMENTATION/TIMEFRAMES:

Timeframe will depend on the decision of Council. If the applicant’s appeal is sustained, the Council’s decision will become effective after the ten working day Coastal Commission appeal period, after which time the project will go forward. If the applicant’s appeal is denied and the Planning Commission’s resolution of denial is upheld, the decision of Council is final and shall be effective on the date the decision is rendered.

ATTACHMENTS:

1. Appeal Letter
2. Planning Commission Staff Report
3. Resolution PC08-2019
4. Written and Oral Comments Received
5. MND for AutoZone Project
6. Notice of Public Hearing
7. AutoZone Market Study / Economic Impact Report

NOTIFICATION:

1. Applicant, Mitch Bramlitt – AutoZone Parts, Inc.
2. City of Fort Bragg Planning Commission
3. City of Fort Bragg City Council
4. Property Owners within 300 feet and Residents within 100 feet

5. Notify Me subscriber lists: Current Planning Permits, Fort Bragg Downtown Businesses, Public Hearing Notices