



SUBJECT: Call for review of a Design Review and a Conditional Use Permit for a new Popeye’s drive-through restaurant.

DEPARTMENT: Community Development

STAFF: Alexis Morris, Director of Community Development
Miguel Contreras, Associate Planner

TITLE/RECOMMENDATION

Adopt a resolution affirming the Planning Commission approval of Conditional Use Permit No. 23-006 and Design Review No. 23-003 to construct (and operate beyond 10:00 p.m.) a 2,735 square foot Popeye’s drive-through restaurant and associated site improvements on a 3.4-acre parcel located at 7820 Brentwood Boulevard (APN 016-150-106).

The project qualifies as a Class 32 categorical exemption under the California Environmental Quality Act (CEQA) Guidelines Section 15332 (In-Fill Development Projects), inasmuch as the proposed restaurant and drive-through are consistent with the applicable General Plan designation, as well as with the applicable zoning designation and regulations, are proposed on a project site less than 5-acres in size, have no value as habitat for endangered species, would not result in significant effects relating to traffic, noise, air quality, or water quality, and can be adequately served by all utilities and public services.

FISCAL IMPACT

The project proponent, Charlie Brown, has paid a total of \$23,577 to cover staff time and materials associated with the project. There are no specific fees associated with a call for review.

BACKGROUND

On May 10, 2023, Charlie Brown submitted an application for a Conditional Use Permit (CUP 23-003) and a Design Review (DR 23-003) to construct (and operate beyond 10:00 p.m.) a new, 2,735 square foot, Popeye’s fast-food restaurant with a 21-vehicle capacity drive-through lane and associated site improvements on a 3.4-acre parcel located at 7820 Brentwood Boulevard (APN 016-150-106) [see attached Planning Commission Staff Report for greater detail].



CITY COUNCIL AGENDA ITEM NO. G.4
09/10/2024

On April 16, 2024, the project was brought before the Planning Commission for a public hearing. During the public hearing, the Planning Commission expressed concerns regarding the inclusion of the proposed 21-vehicle drive-through component, finding this to be in conflict with the Brentwood Boulevard Specific Plan's (BBSP) stated vision and in particular goal #4, which seeks to transform the historical auto-oriented corridor into a more traditional boulevard that gives prominence to all modes of transportation (i.e., not solely to vehicles). The Commission also expressed a desire to improve the proposed open space area with additional seating and vegetation. After deliberation, the Commission indicated that it was unable to make findings for approval of the Conditional Use Permit (and by default the Design Review since the drive-through component is integral to the design) and therefore directed the applicant to redesign the project without a drive-through component and to beautify the proposed open space area.

On April 17, 2024, staff spoke with the applicant, who indicated that their plans would be reviewed and the open space component would be modified, but that while the drive-through component also would be reviewed for possible improvements, it would be retained, as removing it would make the project financially infeasible.

On June 11, 2024, the applicant submitted an updated set of plans (attached) with the following changes:

- Addition of three benches and four tables in the open space area.
- Addition of approximately 147 square feet of landscaping within the open space area.

On August 6, 2024, the project was brought before the Planning Commission for a second public hearing with a recommendation to deny, based on the direction provided at the April 16, 2024 meeting and the continued inclusion of a drive-through. During this second public hearing, there was a significant amount of deliberation amongst the Commission regarding the drive-through component and design, specifically:

- **Queuing capacity:** Members of the Commission expressed concern that a longer drive-through would create a higher demand for Popeye's and thus create impacts.
- **Specific Plan:** Members of the Commission deliberated over the intent of the Brentwood Boulevard Specific Plan's goal to "transform the historical auto-



CITY COUNCIL AGENDA ITEM NO. G.4
09/10/2024

oriented 'strip commercial' land use patterns by prohibiting that type of development in the future and by requiring a vibrant mix of workplace and residential land uses easily accessible by pedestrians, bicyclists, transit riders, and motor vehicles." However, the BBSP also allows, through approval of a CUP, drive-through uses in the COIR zoning district, where the project site is located.

- **Open Space:** Members of the Commission determined that the proposed open space area was not sufficient and appeared to be more of an afterthought.
- **Architecture:** Members of the Commission deliberated on the proposed architecture for the restaurant. The Commission was divided as to whether or not the proposed architecture was in compliance with the BBSP.

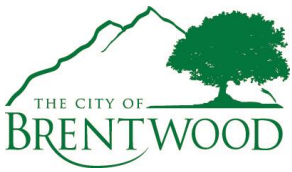
After deliberation, the Planning Commission ultimately approved the project on a 3-2 vote (Commissioner Brand and Commissioner Flohr voted no). The approval included additional conditions of approval as follows:

- Final design of the drive-through, including queuing capacity, shall be approved by the Design Review Subcommittee.
- Final design of the required community courtyard shall include additional green space, additional tables, additional shade, and shall be approved by the Design Review Subcommittee.

However, on August 8, 2024, before the Design Review Subcommittee could convene, Council Member Mendoza filed a call for review per Brentwood Municipal Code (BMC) Section 17.880.030. Under BMC Section 17.880.030, a call for review is required to be heard before the appellate body within 45 days of being filed, unless both the applicant and appellant consent in writing to a later date. In this case, the call for review is being considered 33 days from when it was received, within the required timeframe.

ANALYSIS

The April 16th and August 6th Planning Commission staff reports and public comments received via email before and after the publication of the Planning Commission packets are attached for the City Council's review and reference. The attached staff reports explain in detail how the project is consistent and complies with the City's General Plan, Specific Plan, and zoning requirements.



CITY COUNCIL AGENDA ITEM NO. G.4
09/10/2024

According to the BMC, a call for review results in a 'de novo' or new hearing. Based on the Planning Commission's approval, the Design Review Subcommittee (consisting of two appointed Planning Commissioners) would have considered revisions to the two identified areas of concern, but the items may now be considered by the City Council. The City Council, sitting as the appellate body, is thus required to make specific findings supporting its decision, be it upholding the lower body's decision, modifying it, or reversing it.

If the call for review results in a project approval:

- Entitlements would be affirmed, including the staff modification to draft resolution condition 3.a-b regarding the size of the drive-through component and open space area improvements, unless those conditions were modified by the Council.
- The City Council *could* add or amend conditions relative to specific concerns or issues.
- If direction is clearly provided, the application would no longer require subsequent review by the Design Review Subcommittee. To reflect this, staff has removed conditions of approval, from the attached draft City Council resolutions, that would have required the project to be reviewed by the Subcommittee after Council approval.

If the call for review results in project denial staff would recommend the following steps:

- Either resolutions or both can be denied, depending on the reasons for making findings for denial.
- The Council should provide staff with findings for denial.
- The denial resolution would be brought back to Council for adoption.

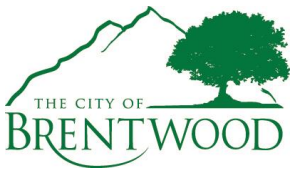
CITY COUNCIL STRATEGIC INITIATIVE

Not applicable.

PREVIOUS ACTION

Previous Action by the City Council is included on Attachment 1.

DATE OF NOTICE



The City of Brentwood published a public hearing notice in the Brentwood Press and mailed it to all property owners within 300 feet of this site on August 30, 2024. The applicant also posted the project site with the required signage.

ENVIRONMENTAL DETERMINATION

The proposed project qualifies as a Class 32 categorical exemption under the California Environmental Quality Act (CEQA Guidelines Section 15332 Infill Development) in that the proposed restaurant building and drive-through are consistent with the applicable General Plan designation, as well as with applicable zoning designation and regulations, are proposed on a project site less than 5-acres in size, have no value as habitat for endangered species, would not result in significant effects relating to traffic, noise, air quality, or water quality, and can be adequately served by all utilities and public services.

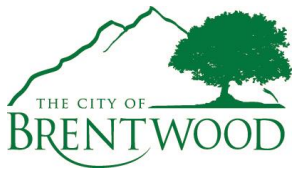
ALTERNATIVE OPTION(S)

Alternative Options to the Staff Recommendation:

1. If the call for review results in a project denial, the Council would provide findings for the denial and the item would return to the Council at a subsequent meeting to review the resulting resolution and formally deny the project. The Council would need to provide findings of denial for either the CUP application or the Design Review application, or for both applications, depending on the findings for the denial.
2. Modify the Planning Commission's approval to include additional conditions or remove conditions.
3. Continue the item with direction for staff to return with additional information or redesign.

ATTACHMENT(S)

1. Previous Action
2. Draft Resolution for CUP 23-006
3. Draft Resolution for DR 23-003
4. Planning Commission Staff Report 4-16-24
5. Planning Commission Staff Report 8-6-24
6. Project Description



CITY COUNCIL AGENDA ITEM NO. G.4
09/10/2024

7. Project Plans
8. Parking Calculations
9. Architectural Review comments
10. Traffic Analysis