

## CITY COUNCIL RESOLUTION NO. 24-XXX

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRENTWOOD APPROVING A DESIGN REVIEW (DR 23-003) FOR A NEW RESTAURANT BUILDING WITH A DRIVE-THROUGH FEATURE, AND RELATED SITE IMPROVEMENTS ON A ±3.4-ACRE PARCEL LOCATED AT 7820 BRENTWOOD BOULEVARD (APN 016-150-106).**

**WHEREAS**, Charlie Brown of C.C. Planning & Permitting Services, (the "Applicant") submitted an application to the City of Brentwood requesting approval of a Design Review application (DR 23-003) to allow for a new 2,735 square foot Popeye's restaurant featuring a drive-through; and

**WHEREAS**, the Applicant concurrently submitted a request for a Conditional Use Permit (CUP 23-006) to allow a drive-through feature as part of the proposed restaurant building and to operate between the hours of 10:00 a.m. and 12:00 a.m.; and

**WHEREAS**, collectively, DR 23-002 and CUP 23-002 constitute the "Project"; and

**WHEREAS**, the City referred the Project to various departments and agencies for review and recommendations; and

**WHEREAS**, the City distributed a Notice of Public Hearing to all property owners within 300 feet of the Project Site and published it in the Brentwood Press on April 5, 2024, in accordance with City policies and Government Code Section 65090, and a public hearing notice sign was posted on the site during this same timeframe; and

**WHEREAS**, the proposed project is exempt from the California Environmental Quality Act ("CEQA") as it qualifies as a Class 32 categorical exemption under the CEQA Guidelines section 15332, as it is characterized as in-fill development, meeting the following conditions: i) the project is consistent with the existing General Plan designation and all applicable General Plan policies, as well as with the applicable zoning designation and regulations, ii) the proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses, iii) the project site has no value for endangered, rare, or threatened species, iv) approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality, and v) the site can be adequately served by all required utilities and public services; and

**WHEREAS**, the Planning Commission of the City of Brentwood considered this design review application at its regular meeting of April 16, 2024, and considered the staff report, all accompanying information, and testimony received from the applicant and other interested parties.

**WHEREAS**, the Planning Commission was unable to make findings for approval of CUP 23-006 during the April 16, 2024 meeting and continued the item with direction to the applicant to resubmit the application without the drive-through component; and

**WHEREAS**, on June 11, 2024, the applicant submitted a revised proposal that still featured the drive-through component; and

**WHEREAS**, the City distributed a Notice of Public Hearing to all property owners within 300 feet of the Project Site and published it in the Brentwood Press on July 26, 2024, in accordance with City policies and Government Code Section 65090, and a public hearing notice sign was posted on the site during this same timeframe; and

**WHEREAS**; the Planning Commission of the City of Brentwood considered this CUP 23-006 application in a public hearing at its regular meeting of August 6, 2024, and considered the staff report, all accompanying information, and testimony received from the applicant and other interested parties; and

**WHEREAS**; the Planning Commission approved the project, subject to certain findings and conditions; and

**WHEREAS**, on August 8, 2024, Council Member Mendoza filed a Call for Review, pursuant to BMC Section 17.882.030; and

**WHEREAS**, the City distributed a Notice of Public Hearing to all property owners within 300 feet of the Project Site and published it in the Brentwood Press on August 30, 2024, in accordance with City policies and Government Code Section 65090, and a public hearing notice sign was posted on the site during this same timeframe; and

**WHEREAS**, the City Council held a public hearing on this project at its regular meeting of September 10, 2024, and considered, among other things, the staff report, supporting documents, public testimony, and all appropriate information submitted with the proposed Project.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Brentwood:

A. Hereby finds that:

- A. The proposed project is exempt from CEQA as it qualifies as a Class 32 categorical exemption under the CEQA Guidelines section 15332, as it is characterized as in-fill development, meeting the following conditions: i) the project is consistent with the existing General Plan designation and all applicable General Plan policies, as well as with the applicable zoning designation and regulations, ii) the proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by

urban uses, iii) the project site has no value for endangered, rare, or threatened species, iv) approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality, and v) the site can be adequately served by all required utilities and public services.

B. With respect to the Design Review findings under Section 17.820.007 of the Brentwood Municipal Code:

- i. *The proposed development shall create a well-composed urban design, harmoniously related to other facilities in the immediate area and to the total setting as seen from key vantage points in the community.*

The proposed development would create a well-composed urban design and would be harmoniously related to the other facilities in the immediate area given that the proposed development would be complimentary to the existing strip-mall in that the new development would feature compatible architectural features, such as a flat roof with varying heights and will feature comparable materials such as stucco, wood and ornamental veneer. The proposed development would be seen as an integrated part of the commercial development from the Brentwood Boulevard key vantage point.

- ii. *Elements of design which have significant relationship to the exterior appearance of structures and facilities shall be given special consideration; these elements include but are not limited to height, arrangement on the site, texture, lighting, material, color, signs, landscaping, size, bulk and scale, and appurtenances.*

Special consideration was given to the proposed building in that it would complement the existing buildings in the established Brentwood Plaza by having a comparable height and the incorporations of pilasters on the proposed trellises that would resemble structures typically found in the greater Brentwood Plaza. The materials and architecture are varied in a similar fashion as the surrounding buildings as detailed in the finding above. The building will be situated in a logical location that compliments the surrounding development. Any proposed signage will need to be reviewed as a separate application, but will be required to adhere to the BMC sign requirements.

- iii. *The proposed development shall be of a quality and character appropriate to, and serving to protect the value of, private and public investments in the immediate area.*

As mentioned above, the proposed project is complimentary to the surrounding Brentwood Plaza. Additionally, the new development would serve to revitalize an area of the BBSP that has not seen redevelopment or new projects since the approval of AutoZone in May of 2012 which was deemed complete prior to the March, 2012, adoption of the BBSP.

- iv. *Where the proposed development is located in an area for which a specific plan, planned development, neighborhood plan or precise plan has been adopted by the City Council, the design of the development shall conform in all significant respects with such plans.*

The project site is within the COIR zoning district of the BBSP. The proposed restaurant adheres to the purpose and intent of the zone as the purpose of the COIR is to provide a transition between employment areas and residential areas located primarily near the Downtown, and to serve as an attractive gateway to the downtown, and the project is of a high quality design, provides open space to pedestrians, and will redevelop a portion of a 1960's strip mall.

- v. *The proposed development shall conform with all requirements for landscaping, screening, parking, usable open space and off-street loading as set forth in this title.*

The project proposes ample vegetation within the project area and at the boundary with the adjacent right-of-ways. The project further proposes an ornate CMU wall that will screen the drive-through use from the right-of-way and neighboring parcels. The project also proposes 10% of the project site as usable open space for the enjoyment of visitors, employees and passersby. Off-street loading and deliveries will happen when the restaurant is closed between the hours of 12:00 a.m. and 10:00 a.m.

- vi. *The site development criteria set forth in Section 17.820.008.*

1. *The siting and internal arrangement of all structures and other facilities on the site, including the land uses, internal circulation, off-street parking and loading facilities, lighting, signing and access to and from public rights-of-way, shall be conducive to an orderly, attractive, efficient and harmonious development.*

The project has been routed to all applicable departments to ensure an orderly, attractive, efficient and harmonious development. The project internal arrangement would be conducive to an orderly development as no changes are proposed to the ingress/egress of the Brentwood Plaza, there is sufficient parking (with the shared access and parking agreement), all lighting is that typical of commercial areas, any signage will be vetted through a separate sign permit, and the proposed building is of a design complementary to the Brentwood Plaza commercial development. The proposed circulation would be harmonious with the existing Brentwood Plaza. Part of the project proposal is to construct a new

centralized trash enclosure area in the eastern portion of the Brentwood Plaza, thus improving the overall plaza.

2. *The proposed development shall not have adverse environmental effects on adjacent developments, existing or potential, by reason of conflicts in land use, topography or traffic.*

The project has been analyzed by multiple departments, who have found no existing or potential adverse effects on the environment by reason of land use, topography or traffic impacts. The project is within the Brentwood Plaza and the uses, architecture and landscaping are designed to be compatible with the Brentwood Plaza.

- vii. *The City of Brentwood Design Guidelines and any other applicable specific design criteria or standards set out in this title or other city ordinances.*

The project adheres to the City's Commercial/Industrial Design Guidelines, in that the project is an infill project, there is substantial landscaping (shrubs, trees and ground cover) proposed, and the building uses quality materials and craftsmanship.

- viii. *All applicable regulations of the zoning ordinance and other city ordinances, policies or resolutions.*

The proposed development is consistent with all applicable regulations of the zoning ordinance and other City ordinances, policies or resolutions. The project meets parking, landscaping, and development requirements for the COIR zoning district, given that it proposes a re-striping to accommodate all parking needs, 16% of the overall site will be landscaped, and is meeting all setback and height restrictions. The project is conditioned to meet all applicable Building, Engineering, and Public Works codes and regulations.

- C. Hereby approves Design Review No. 23-003, subject to the conditions of approval listed in Exhibit "A," attached hereto and made a part of this resolution, and all City standards applicable to this project.
- D. This permit shall terminate on September 10, 2025, unless actual construction or alteration under valid permits has begun and is diligently pursued within said period. However, such period of time may be extended by the Planning Commission upon application filed at any time before said period has expired.

**ADOPTED** by the City Council of the City of Brentwood at its regular meeting of September 10, 2024, by the following vote:

**AYES:**  
**NOES:**  
**ABSENT:**  
**ABSTAIN:**

APPROVED

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Joel R. Bryant  
Mayor

ATTEST:

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Amanda McVey  
Interim City Clerk

**EXHIBIT 'A'****CONDITIONS OF APPROVAL FOR  
DESIGN REVIEW (DR 23-003)**

1. The Permittee, including all successors in interest (collectively "Permittee") shall comply with each and every condition set forth in this Permit. Design Review No. 23-003 ("Permit") shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed.
2. The Permittee shall comply with all applicable Standard Conditions of Approval for Commercial and Industrial Projects, dated May 2005, hereby incorporated by reference, unless modified by any of the conditions below.
3. The project shall be built substantially in conformance with the project plans drawn by AGJM Design Studio, date stamped by the City as received February, 12, 2024, unless otherwise amended by the conditions of approval contained herein.
4. The project shall be built substantially in conformance with the site, grading drainage plans drawn by Moua Enterprise Professional Engineering, date stamped by the City as received February, 12, 2024, unless otherwise amended by the conditions of approval contained herein.
5. The project shall be built substantially in conformance with the landscape plans drawn by Green Design Landscape Architects, Inc., date stamped by the City as received February, 12, 2024, unless otherwise amended by the conditions of approval contained herein.
6. The Permittee shall submit an application for any future signage proposed for the project, which shall require approval of an administrative sign permit by the Community Development Department.
7. At the time of building plan submittal, the Permittee shall submit plans depicting the CMU wall, that serves to screen the drive-through area, to be at least 48 inches tall.
8. The Permittee shall ensure that the open space area, as identified in the project plans drawn by AGJM Design Studio, date stamped by the City as received February, 12, 2024, to be accessible to all and not exclusively to patrons or employees of the proposed restaurant.
9. In the event that the project site is subdivided into its own parcel, at the time of subdivision the Permittee shall secure a shared access and parking agreement with the existing Brentwood Plaza.

10. The building construction drawings shall be submitted for the review and approval by the Community Development Director prior to building permit issuance and shall be designed so that illuminated signs can be installed on the building fascia without the use of external raceways.
11. The landscape plans shall incorporate climbing vegetation on the proposed trellis to the satisfaction of the Director of Parks and Recreation Department.
12. Any significant alteration from the design review drawings "Received February 12, 2024," as determined by the Community Development Director, except as conditioned herein, shall be approved by the Design Review Subcommittee prior to building permit issuance.
13. Any significant alteration of the building colors or materials from the approved color and materials board, as determined by the Community Development Director, shall be approved by the Design Review Subcommittee prior to building permit issuance.
14. The building construction drawings shall indicate that the top of all rooftop equipment is below the height of the parapet to the satisfaction of the Community Development Director prior to building permit issuance. No rooftop equipment shall extend above the roofline on the building.
15. The building construction drawings shall reflect that all roof drainage downspouts and scuppers be interior to the building. All roof drainage shall be designed to be contained within the building walls so as to not be visible from any vantage point to the satisfaction of the Community Development Director prior to building permit issuance.
16. Permittee will indemnify, defend with counsel of the City's reasonable choosing, and hold harmless City and its City Council, its boards and commissions, officials, officers, employees, and agents (the "Indemnified Parties") from and against any third party claim, action, or proceeding against City and/or the Indemnified Parties to attack, review, set aside, void, or annul the City's approval of the project approved herein, including adoption of this Permit, and any environmental determination made with regard thereto. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, reasonable attorneys' fees, and other reasonable expenses incurred in connection with such claim, action, causes of action, suit or proceeding. The Permittee shall pay to the City upon demand or, as applicable, on a monthly basis to counsel of City's reasonable choosing, amounts owed pursuant to the indemnification requirements prescribed in this condition. City shall promptly notify the Permittee of any claim, action, or proceeding and shall engage in reasonable efforts to cooperate in the defense.
17. The Permittee shall maintain the area surrounding the development, including but not limited to, the building and the walkways surrounding the building in a



clean and orderly manner at all times to the satisfaction of the Community Development Director.

18. Plans for any external building-mounted light fixtures shall be submitted in conjunction with the photometric plan for the review and approval of the Community Development Director. All fixtures must be of a cut-off or full cut-off classification and cut-sheets allowing verification of the classification must be submitted for all portions of the driveways and parking areas shall be illuminated between 1-7 foot-candles.
19. The Project shall be consistent with all applicable City's General Plan Policies.
20. All improvements shall be designed and constructed; all permits issued; all fees paid; and all securities submitted pursuant to applicable Federal and state laws, the Brentwood Municipal Code, the City Engineering Department's Standard Plans and Specifications, and the City Engineering Department's Engineering Procedures Manual.
21. Permittee and all construction plans and maps shall comply with Brentwood Municipal Code Title 8 "Health and Safety," Title 9 "Public Peace and Welfare," Title 12 "Streets, Sidewalks and Public Places," Title 13 "Sewers," Title 14 "Water," Title 15 "Building and Construction," and Title 16 "Subdivision and Land Development." In particular:
  - a. Solid waste service shall comply with Brentwood Municipal Code Chapter 8.16 "Solid Waste."
  - b. Construction and demolition work shall comply with Brentwood Municipal Code Chapter 8.40 "Construction and Demolition Debris Recycling."
  - c. Permittee shall comply with Brentwood Municipal Code Chapter 9.32 "Noise Regulations."
  - d. Permittee shall comply with the encroachment permit requirements pursuant to Brentwood Municipal Code Chapter 12.08 "Street Encroachments."
  - e. Sewer backflow prevention, interceptors, and other health and safety requirements shall be incorporated into the project pursuant to Brentwood Municipal Code Chapter 13.04 "Sewer System – Rules and Regulations."
  - f. Brine-discharging self-regenerating water softener systems are prohibited pursuant to Brentwood Municipal Code Section 13.04.022.B.
  - g. Water service shall comply with Brentwood Municipal Code Chapters 14.01 "Municipal Water System" and Chapter 14.10 "Cross-Connection Control."

- h. Contractors requiring construction water shall obtain a temporary water permit and shall only take water metered at a location specified by the City Engineer pursuant to Brentwood Municipal Code Section 14.01.340 "Contractors."
  - i. Permittee shall comply with the Federal Clean Water Act, the Municipal Regional NPDES Permit, and Brentwood Municipal Code Chapter 14.20 "Stormwater Management and Discharge Control."
  - j. Fire access and aerial apparatus access shall comply with the requirements of the Fire District and Brentwood Municipal Code Chapter 15.06 "Fire Code."
  - k. Grading shall comply with Brentwood Municipal Code Chapter 15.52 "Grading, Erosion and Sediment Control."
  - l. All grading and noise generating activities shall be limited to the days and hours defined in Brentwood Municipal Code Section 15.52.060 "Grading Regulations."
  - m. In addition to the indemnification obligation set forth below, Permittee shall indemnify the City pursuant to Brentwood Municipal Code Section 15.52.160 "City Held Harmless."
  - n. Permittee shall obtain all required permits including, but are not limited to: buildings; sewer connections; encroachment; grading; use; business license; water connection; Contra Costa County Flood Control; pursuant to Brentwood Municipal Code Section 16.120.050 "Procedures."
  - o. All public facilities shall be constructed and any existing deficiencies shall be corrected. This includes both required on- and off-site public facilities and any deficiencies on-site, abutting the parcel or parcels involved or required off-site to provide service to the proposed development or for the continued safety, health and well-being of the public upon completion of the development pursuant to Brentwood Municipal Code Section 16.120.090 "Public Facilities Installation."
  - p. Utilities shall be installed underground pursuant to Brentwood Municipal Code Section 16.120.120 "Undergrounding - Electric, Communication, Street Lighting and Advanced Technology Systems."
  - q. All landscaping installed by the project shall consist of trees and plants selected from the City Approved Drought Tolerant and Native Plant List with the exception of bioretention facilities, which shall conform to Appendix B of the Contra Costa Clean Water Program C.3 Guidelines, to the satisfaction of the Director of Parks and Recreation and City Engineer.
22. Prior to issuance of a grading permit or approval of on-site improvement plans:

- a. Construction Plans shall demonstrate with plans, analysis, or other documentation signed and stamped by a licensed Civil Engineer that there is adequate overland drainage release to an adequate public drainage facility to the satisfaction of the City Engineer. Permittee shall acquire drainage easements, if necessary.
- b. Permittee shall provide approved hydrology and hydraulic calculations signed by a licensed engineer demonstrating that the Project will adequately collect and convey all runoff within the Project as well as the entire developed watershed upstream of the Project pursuant to Brentwood Municipal Code 16.120.080C. The analysis shall include conveyance capacity of the existing onsite creek, if any.
- c. Construction Plans shall include all utilities, including, but not limited to, meters, hydrants, poles, signs, clean-outs and boxes to be located clear of all trails, sidewalks and driveways or as determined by the City Engineer.
- d. Construction Plans shall note that construction of all gravity utilities (i.e. storm drain, sewer) to always commence at the downstream connection and proceed to the upstream terminus.
- e. Construction Plans shall demonstrate that all gravity utilities (i.e. storm drain, sewer) are designed to positively and completely drain by gravity without relying on any electro-mechanical means (i.e. pumps, lift stations and siphons) to the satisfaction of the City Engineer.
- f. Construction Plans shall include all proposed storm drain inlets to include and update existing storm drain inlets along the project frontage with "No Dumping - Drains to Creek" thermoplastic stencils to the satisfaction of the City Engineer.
- g. Permittee shall obtain approval from the City Engineer on the Project Operation and Maintenance Manual for all stormwater control systems. Said Manual shall comply with all applicable Municipal Regional NPDES Permit requirements including, but not limited to, maintenance, sediment removal, weed and trash abatement, and the use of chemicals.
- h. The Project shall annex into the most current City Community Facilities District, and annex into, or form a street lighting and landscape maintenance assessment district, or provide and execute an alternative funding mechanism acceptable to the City for the maintenance of City improvements.
- i. The Project shall annex into the most current Fire Community Facilities District as required by the Contra Costa County Fire Protection District.

- j. Permittee shall provide for an adequate private funding mechanism for the perpetual maintenance of all stormwater NPDES treatment areas and other similar clean water facilities to the satisfaction of the City Engineer.
23. Prior to issuance of any Building Permits:
    - a. All on-site improvements shall be constructed prior to the issuance of any building permit in each phase. The improvements shall include, but is not limited to pavement, curb, gutter, sidewalk, street lights, utilities and walls to the satisfaction of the City Engineer.
    - b. Permittee shall provide an approval signed and sealed by a geotechnical or structural engineer of the location, nature and proximity of stormwater features near or adjacent to buildings as determined by the City Engineer. Locations and design of any mitigating structural design feature (i.e. foundations) shall be shown on the appropriate construction plans.
    - c. Permittee shall pay all Development Impact Fees pursuant to, or otherwise comply with the latest City of Brentwood Development Impact Fee Program.
    - d. Permittee shall provide documents signed by a licensed engineer on building pad elevation, compaction, and appropriate remediation from unsuitable soils.
  24. Final landscape plans and a landscape project application must be submitted for review and approved by the Community Development Director, City Engineer, and the Director of Parks and Recreation prior to installation of any landscape or irrigation materials and prior to approval of improvement plans. Further, the landscape plans must include all water use calculations necessary to determine compliance with the City's Water Efficient Landscape Ordinance and any further regulations enacted by the State of California prior to landscape plan approval. A passing water audit is required even though the City does not accept maintenance responsibility.
  25. Utilize City of Brentwood 'Urban Forest Guidelines' for choosing trees species; medium and/or large for shade trees.
  26. No Crepe Myrtles shall be installed.
  27. Prior to issuance of a Building Permit, the applicant shall pay all Contra Costa County Fire Protection District impact fees at the time of the issuance of the first building permit, at the then-current rate.
  28. Access roadways of less than 28-foot unobstructed width shall have signs posted or curbs painted red with the words: "No Parking – Fire Lane" clearly marked. Access roadways of 28-foot or greater, but less than 36 feet, unobstructed width shall have "No Parking – Fire Lanes" signs posted, allowing

for parking on one side only or curbs painted red with the words "No Parking – Fire Lane" clearly marked.

29. The Permittee shall provide an adequate and reliable water supply for fire protection as set forth in the California Fire Code.
30. The Permittee shall provide an adequate and reliable water supply for fire protection with a minimum fire flow of 1125 GPM. Required flow must be delivered from not more than 1 hydrant flowing for a duration of 120 minutes while maintaining 20-pounds residual pressure in the main.
31. New building shall have approved radio coverage for emergency responders. An emergency responder radio coverage system shall be installed when the conditions of CFC 510.4.a are not met. Testing shall be conducted and the results submitted to the Fire District prior to the building final.
32. The Permittee shall obtain from the Contra Costa Fire Protection District a land development permit prior to submitting building construction plans to the City. The Permittee shall submit a minimum of two copies of full size, scaled site improvement plans indicating:
  - a. All existing or proposed hydrant locations
  - b. Fire apparatus access to include slope and road surface
  - c. Aerial fire apparatus access
  - d. Elevations of building
  - e. Size of building and type of construction
  - f. Gates, fences, retaining walls, bio-retention basins, any obstructions to access
  - g. Detail showing the lowest level of fire department vehicle access and the floor level of the highest occupied floor
  - h. Striping and signage plan to include "No parking – Fire Lane" markings
34. The building Emergency apparatus access roadways and hydrants shall be installed, in service, and inspected by the Fire District prior to construction or combustible storage on site.
35. As proposed shall be protected with an approved automatic fire sprinkler system complying with the 2016 edition of NFPA. Submit a minimum of two sets of plans to the Contra Costa Fire Protection District for review and approval prior to installation.
36. Flammable or combustible liquid storage tanks shall not be located on the site without obtaining approval and necessary permits for the Fire District.
37. The Permittee shall cut down and remove all weeds, grass, vines, or other growth that is capable of being ignited and endangering property.

38. The Permittee shall submit a minimum of two complete sets of building construction plans and specifications for the subject project to the Fire District. After the new construction / tenant improvement plans are approved, plans and specifications for all necessary deferred submittals shall be submitted, including, but not limited to the following:
- a. Private underground fire service water mains
  - b. Fire sprinklers
  - c. Fire alarm
  - d. Fire pump if required
  - e. Emergency generator if required
  - f. Photovoltaic
  - g. Carbon dioxide systems
  - h. Commercial kitchen hood extinguishing systems
  - i. Emergency responder radio coverage systems (ERRCS)

Plans shall be submitted to the Fire District for review and approval prior to construction of the building or installation of the systems to ensure compliance with minimum requirements related to fire and life safety. Plan review and inspection fees shall be submitted at the time of plan review submittal.

39. In the event modifications to this Permit are sought, the Planning Commission shall have jurisdiction to consider any such changes or hear any enforcement hearings.