

ATTACHMENT D

Project Approval Findings

**SAFEMART REDEVELOPMENT PROJECT
(BROADWAY AND PLEASANT VALLEY AVENUE)
CASE FILE NO. CMDV09-135; CP09-090; ER09-007**

PROJECT APPROVAL FINDINGS

The following findings are made to approve the project. Required findings are shown in normal type and the reasons the project satisfies the required findings are shown in **bold** type. The basis to approve the project is not limited to the findings contained herein, but also includes the information contained in the application materials, staff reports prepared for the project, the adopted CEQA findings for the project, the adopted conditions of approval, the adopted standard conditions of approval & mitigation monitoring and reporting program (SCAMMRP), and the project EIR.

I. REGULAR DESIGN REVIEW – NEW NONRESIDENTIAL FACILITIES

Permit approval: Regular Design Review for new construction of principal facilities.

Section 17.136.050 (Design Review Criteria)

1. The proposal will help achieve or maintain a group of facilities which are well related to one another and which, when taken together, will result in a well-composed design, with consideration given to site, landscape, bulk, height, arrangement, texture, materials, colors, and appurtenances; the relation of these factors to other facilities in the vicinity; and the relation of the proposal to the total setting as seen from key points in the surrounding area. Only elements of design which have some significant relationship to outside appearance shall be considered.

The proposal will result in facilities that are well-related to one another, are well-composed, and will relate well to the surrounding area. The project design uses texture, materials, surface planes, colors, and height to provide visual interest and articulate the proposed buildings into individual sub-volumes that reduce the visual mass and bulk of the project while maintaining a cohesive overall design. The site design strengthens the character of the site and the relationship of the site to the surrounding area by using architectural design elements from the surrounding area, locating buildings with storefronts and glazing towards the adjacent streets to reinforce street definition and interaction, providing surface parking towards the rear of the site to reduce visibility, and reducing the amount of surface parking by utilizing structured parking. In the interior of the site the project uses walkways and buildings near the adjacent pond to utilize the pond as a visual amenity, and the height of the project does not exceed the surface elevation of the properties to the rear/north of the site thereby limited potential impacts.

2. The proposed design will be of a quality and character which harmonizes with, and serves to protect the value of, private and public investments in the area.

The proposed design will be high in quality and relate well the surrounding area as described above in Criterion 1. The project will replace an existing underutilized shopping center with a new shopping center higher in quality. The design will employ high-quality materials and will create a distinctive commercial shopping environment that will elevate the character and experience of the site and the surrounding area.

3. The proposed design conforms in all significant respects with the Oakland General Plan and with any applicable design review guidelines or criteria, district plan, or development control map which have been adopted by the Planning Commission or City Council.

The proposed design conforms with the General Plan for the reasons stated in the staff reports prepared for the project, the adopted CEQA findings for the project, and the project EIR. The project will provide for large-scale commercial development at the intersection of major arterials and will be compatible with surrounding land uses as described above in Criterion 1. The project will strengthen the commercial use of the site by providing a new high-quality shopping center with a design that will create a sense-of-place and encourage community interaction.

II. INTERIM CONDITIONAL USE PERMIT

Permit approval: Interim Conditional Use Permit to apply the policies of the General Plan to the portions of the site in the R-50 Zone.

Section 17.134.050 (General Use Permit Criteria)

- A. The location, size, design, and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.

The proposed commercial development in the eastern portion of the site zoned R-50 will be compatible with the surrounding area. The development in the R-50 zone will not abut any existing residential land uses thereby minimizing potential impacts of the commercial development in the R-50 zone with adjacent residential facilities. The overall shopping center will relate well to the surrounding area as described above in the Design Review Criteria.

- B. The location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant.

The proposed commercial development in the R-50 zone will provide a convenient and functional working and shopping environment. The site is easily accessible due to its location at the intersection of two major arterials served by bus lines and bicycle facilities. The shopping center will be attractive for the reasons described above in the Design Review Criteria.

- C. The proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region.

The proposed commercial development in the R-50 zone will enhance the surrounding area in that it will provide access to an expanded selection of goods at the new Safeway store and other retailers and will encourage community interaction.

- D. The proposal conforms to all applicable regular design review criteria set forth in the regular design review procedure at Section 17.136.050.

See Design Review Criteria above.

- E. The proposal conforms in all significant respects with the Oakland General Plan and with any other applicable guidelines or criteria, district plan or development control map which has been adopted by the Planning Commission or City Council.

See Design Review Criteria above.

Section 17.01.100 (Special Use Permit Criteria – Interim Conditional Use Permit)

1. The proposal is clearly appropriate in consideration of the characteristics of the proposal and the surrounding area.

The proposed commercial development in the R-50 zone is clearly appropriate. The area zoned R-50 is part of a much larger property zoned for commercial uses. The development in the R-50 zone will not abut any existing residential land uses thereby minimizing potential impacts of the commercial development in the R-50 zone with adjacent residential facilities.

2. The proposal is clearly consistent with the intent and desired character of the relevant land use classification or classifications of the General Plan and any associated policies.

The proposal is clearly consistent with the General Plan as described in above Criterion 3 of the Design Review Criteria.

3. The proposal will clearly promote implementation of the General Plan.

The proposal will clearly promote implementation of the General Plan as described above in Criterion 3 of the Design Review Criteria.

III. CONDITIONAL USE PERMIT – DRIVE-THROUGH FACILITY

Permit approval: Major Conditional Use Permit to allow a Drive-Through Nonresidential Facility.

Section 17.134.050 (General Use Permit Criteria)

- A. The location, size, design, and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.

The proposed drive-through facility located near the southeastern corner of the site will be compatible with the surrounding area. The facility will be located well way from nearby residential facilities and is designed to reduce its visibility from the street—due to the

topography of the site—and reduce potential queuing impacts by providing adequate queuing space.

- B. The location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant.

The proposed drive-through facility will provide convenience to customers in vehicles while not impacting pedestrians or bicyclists. The visibility of the facility is lessened due to the topography of the site and will be visually subordinate to the building it serves which will have a strong presence due to its location at the entry to the shopping center and due to its high quality design.

- C. The proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region.

The proposed drive-through facility will enhance the operation of the shopping center and, therefore, the surrounding area by providing a convenient shopping/service option to customers.

- D. The proposal conforms to all applicable regular design review criteria set forth in the regular design review procedure at Section 17.136.050.

The proposed drive-through facility conforms to the design review criteria in that its visibility is lessened due to the topography of the site and it will be visually subordinate to the building it serves which will have a strong presence due to its location at the entry to the shopping center and due to its high quality design.

- E. The proposal conforms in all significant respects with the Oakland General Plan and with any other applicable guidelines or criteria, district plan or development control map which has been adopted by the Planning Commission or City Council.

The proposed drive-through facility conforms to the General Plan in that will enhance the operation of the shopping center and, therefore, the surrounding area by providing a convenient shopping/service option to customers.

IV. CONDITIONAL USE PERMIT – ALCOHOLIC BEVERAGE SALES

Permit approval: Major Conditional Use Permit to allow alcoholic beverage sales in conjunction with a new General Food Sales Commercial Activity (new Safeway store).

Section 17.134.050 (General Use Permit Criteria)

- A. The location, size, design, and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if

any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.

The proposed alcoholic beverage sales at the new Safeway store will be compatible with the surrounding area. The existing Safeway and CVS Pharmacy stores currently sell alcohol and there have been no major impacts on the surrounding area due to these sales.

- B. The location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant.

The proposed alcoholic beverage sales at the new Safeway store will be convenient for shoppers because shoppers will have the option of purchasing alcoholic beverages while shopping for groceries and other products at the store.

- C. The proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region.

The proposed alcoholic beverage sales at the new Safeway store will support operation of the Safeway store which will provide access to groceries and other products necessary to the successful functioning of the community.

- D. The proposal conforms to all applicable regular design review criteria set forth in the regular design review procedure at Section 17.136.050.

See Design Review Criteria above.

- E. The proposal conforms in all significant respects with the Oakland General Plan and with any other applicable guidelines or criteria, district plan or development control map which has been adopted by the Planning Commission or City Council.

The proposed alcoholic beverage sales at the new Safeway store conforms to the General Plan in that will enhance the operation of the Safeway and the shopping center and, therefore, the surrounding area by providing a convenient shopping/service opportunity for customers.

Section 17.103.030(A) (Special Use Permit Criteria – Alcoholic Beverage Sales)

- 1. The proposal will not contribute to undue proliferation of such uses in an area where additional ones would be undesirable, with consideration to be given to the area's function and character, problems of crime and loitering, and traffic problems and capacity.

The proposed alcoholic beverage sales at the new Safeway store will not contribute to undue proliferation of alcoholic beverage sales because the existing Safeway and CVS Pharmacy stores currently sell alcohol and the new Safeway store will replace these two outlets. There have been no major impacts on the surrounding area due to the existing sales.

2. The proposal will not adversely affect adjacent or nearby churches, temples, or synagogues; public, parochial, or private elementary, junior high, or high schools; public parks or recreation centers; or public or parochial playgrounds.

The proposed alcoholic beverage sales at the new Safeway store will not adversely affect these public institutions because none of these institutions exist in the immediate vicinity of the site. The closest such institution is Oakland Technical High School which is approximately 600 feet from the project site. There have been no major impacts on the high school due to the existing alcoholic beverage sales at the Safeway store and it is not anticipated that the proposed sales would have any adverse impact on any other potential public institution in the greater area.

3. The proposal will not interfere with the movement of people along an important pedestrian street.

The proposed alcoholic beverage sales at the new Safeway store will not interfere with the movement of people along an important pedestrian street because the new Safeway store will be located in the rear of the site well away from adjacent streets.

4. The proposed development will be of an architectural and visual quality and character which harmonizes with, or where appropriate enhances, the surrounding area.

The proposed development will be of high quality and character as described above in the Design Review Criteria.

5. The design will avoid unduly large or obtrusive Signs, bleak unlandscaped parking areas, and an overall garish impression.

The Safeway store will be located in the rear of the site well away from adjacent streets thereby minimizing its potential to be obtrusive. A Master Sign Program will be required which will ensure new signage that is not unduly large or obtrusive. The visual impact of the surface parking lot serving the Safeway store will be reduced due to abundant landscaping in the parking lot and the presence of retail buildings near the street that will partially interrupt views of the Safeway store.

6. Adequate litter receptacles will be provided where appropriate.

The Conditions of Approval require adequate litter receptacles.

7. Where the proposed use is in close proximity to residential uses, and especially to bedroom windows, it will be limited in hours of operation, or designed or operated, so as to avoid disruption of residents' sleep between the hours of ten (10) p.m. and seven (7) a.m. The same criteria shall apply to all conditional use permits required by subsection B of this section for sale of alcoholic beverages at full-service restaurants.

The nearest residential uses are located approximately 200 feet to the west of the proposed Safeway store. The proposal will not result in significant nighttime noise impacts per the analysis in the EIR and the Conditions of Approval require measures to further reduce potential nighttime noise.

Section 17.103.030(B)(3) (Special Use Permit Criteria – Overconcentrated Area)

- a. A community need for the project is clearly demonstrated. To demonstrate community need, the applicant shall document in writing, specifically how the project would serve an unmet or underserved need or population within the overall Oakland community or the community in which the project is located, and how the proposed project would enhance physical accessibility to needed goods or services that the project would provide, including, but not limited to alcohol.

The applicant's statement demonstrates that the proposed alcoholic beverage sales will meet a community need. The new Safeway store will continue to provide needed groceries and related products and services to the community and will continue to provide alcoholic beverage sales in conjunction with the groceries and related products and goods thereby providing convenience to customers.

- b. The overall project will have a positive influence on the quality of life for the community in which it is located, providing economic benefits that outweigh anticipated negative impacts, and that will not result in a significant increase in calls for police service.

The new Safeway store and shopping center will have a positive influence on the quality of life in the community in that it will provide expanded options for groceries and other products, result in an attractive development, provide needed jobs, and result in increased sales and property taxes. The Conditions of Approval also require a site security plan that will reduce the potential for crime and impacts to police service.

- c. Alcohol sales are customarily associated with, and are appropriate, incidental, and subordinate to, a principal activity on the lot.

Alcohol sales are a typical part of a grocery store business. The existing Safeway has sold alcohol for decades.

V. VARIANCE – BUILDING HEIGHT

Permit approval: Minor Variance allow a building height up to 80 feet in the C-30 Zone where the maximum allowed height is 45 feet.

Section 17.134.050 (Variances Findings)

1. Strict compliance with the specified regulation would result in practical difficulty or unnecessary hardship inconsistent with the purposes of the zoning regulations, due to unique physical or topographic circumstances or conditions of design; or, as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution improving livability, operational efficiency, or appearance.

Strict compliance with the height regulation would lower the height of the proposed parking garage located in the central portion of the site thereby reducing the amount of structured parking in the project. Reducing the amount of structured parking in the project would require (a) reducing the amount of floor area in the project or (b) increasing the amount of

surface parking in the project, both of which would be undesirable. Reducing the amount of floor area in the project would reduce the economic vitality of the project and, therefore, its beneficial economic effects. Increasing the amount of surface parking would degrade the physical appearance of the project.

2. Strict compliance with the regulations would deprive the applicant of privileges enjoyed by owners of similarly zoned property; or, as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution fulfilling the basic intent of the applicable regulation.

Strict compliance with the height regulation would result in undesirable design solutions as described above in Finding 1. The proposed design fulfills the intent of the height regulation due to limited impacts on the surrounding area as described below in Finding 3.

3. The variance, if granted, will not adversely affect the character, livability, or appropriate development of abutting properties or the surrounding area, and will not be detrimental to the public welfare or contrary to adopted plans or development policy.

The variance will not adversely affect abutting properties or the surrounding area or be detrimental to public welfare. The intent of the height regulation is to limit the potential impacts on neighbors related to building height, such as shadows, privacy impacts, and view impacts, and to control the scale of development along streets. The proposed design fulfills this intent due to the topography of the site and the location of the proposed parking garage. Due to the topography, the height of the parking garage will be approximately equal to the ground level of the adjacent properties to the north thereby limiting potential impacts. Due to the location of the parking garage in the interior of the site away from the street, the presence of the garage and the impact of the height will be minimal as experienced from the street.

4. The variance will not constitute a grant of special privilege inconsistent with limitations imposed on similarly zoned properties or inconsistent with the purposes of the zoning regulations.

The variance will not constitute of grant of special privilege. Similarly zoned properties under similar circumstances would be given similar consideration.

5. The elements of the proposal requiring the variance (e.g., elements such as buildings, walls, fences, driveways, garages and carports, etc.) conform with the regular design review criteria set forth in the design review procedure at Section 17.136.050.

The height of the parking garage conforms with the regular design review criteria in that is it designed with a variety of textures, materials, surface planes, colors, and heights to provide visual interest, will relate well to the design of the surrounding project and area, and will minimize potential impacts to the surrounding area as described above in Finding 3.

6. That the proposal conforms in all significant respects with the Oakland General Plan and with any other applicable guidelines or criteria, district plan, or development control map which have been adopted by the Planning Commission or City Council.

The proposed design conforms with the General Plan because it will facilitate the proposed shopping center which conforms with the General Plan as described above in Criterion 1 of the Design Review Criteria.

VI. CREEK PROTECTION PERMIT

Permit approval: Creek Protection Permit (Category IV) to allow development on a creekside property.

Section 13.16.200 (Permit Criteria)

- A. The proposed activity (during construction and after project is complete) will not (directly or indirectly) adversely affect the creek. In determining whether the creek would be adversely impacted, the Chief of Building Services shall, at a minimum, consider the following factors:
1. Whether the proposed activity may discharge pollutants into the creek;
 2. Whether the proposed activity may result in modifications to the natural flow of water in the creek;
 3. Whether the proposed activity may deposit new material into the creek or cause bank erosion or instability;
 4. Whether the proposed activity may result in alteration of the capacity of the creek; and
 5. Such other factors as the Chief of Building Services deems appropriate.

The proposal will not adversely impact the pond. The Conditions of Approval require appropriate measures during construction and operation of the project to prevent pollutant discharge into the pond. No modifications are proposed to the pond.

- B. The proposed activity will not adversely affect the riparian corridor, including riparian vegetation, animal wildlife or result in loss of wildlife habitat.

The proposal will not adversely affect the riparian corridor or result in loss of wildlife habitat. No construction activities are proposed in the riparian corridor. Through implementation of the Conditions of Approval, measures will be taken to protect wildlife that be affected by the project.

- C. The proposed activity will not degrade the visual quality and natural appearance of the riparian corridor.

The proposal will not degrade the visual quality of the riparian corridor. No construction activities are proposed in the riparian corridor. The project will improve the visual character of the site and provide walkways along the edge of the site to enhance the visual connection between the pond and the site.

- D. The proposed activity is consistent with the intent and purposes of this chapter.

The proposal is consistent with the intent and purposes of the chapter. The Conditions of Approval require appropriate measures during construction and operation of the project to prevent pollutant discharge into the pond. No modifications are proposed to the pond or riparian corridor. The project site is an existing developed site; implementation of the project will enhance the visual character of the site.

- E. The proposed activity will not endanger public or private property.

No modifications are proposed to the pond or site that would endanger public or private property.

- F. The proposed activity will not (directly or indirectly) threaten the public's health or safety.

No modifications are proposed to the pond or site that would threaten the public's health or safety. Also, adequate fencing will be provided between the site and the pond to restrict access between the site and pond.