

Conservation & Development

Agenda Item #
Contra Costa County

CONTRA COSTA COUNTY PLANNING COMMISSION
TUESDAY, AUGUST 12, 2008

I. INTRODUCTION

Andrew Woolman (Applicant) The Circle Partnership (Owners), The 401 Colusa Avenue Mixed-Use Development Project consists of three applications:

- A. County File GP05-0006 – A request for approval of a General Plan Amendment to change the General Plan land use designation from Commercial (CO) to Mixed-Use (M-);
- B. County File MS06-0011 – A request for a vesting tentative map approval to subdivide 4,792 square feet into three residential condominium units and one retail unit;
- C. County File DP0-63026 – A request for approval to modify the final development plan, County File DP82-3056, to establish a mixed-use building consisting of three residential dwelling units and two separate street front retail/office spaces.

The subject site is located at 401 Colusa Avenue in the Kensington area. (Zoning: Planned Unit District, P-1, TOV, K-) (Assessor Parcel Number: 571-311-001).

II. RECOMMENDATION

Adopt a motion to:

- A. That on the basis of the whole record before it, including the Initial Study and the comments received, the County Planning Commission finds that there is no substantial evidence that the project will have a significant effect on the environment and that the mitigated negative declaration reflects the County's independent judgment and analysis.

The documents or other materials that constitute the record of proceedings upon which the County Planning Commission's decision is based may be found at the Community Development Department, 651 Pine Street, Martinez, CA under the custodian of the project planner, Ryan Hernandez (925) 335-1206.

- B. Find that the Mitigated Negative Declaration is adequate for the project and adopt the Mitigation Monitoring Program.
- C. Recommend that the Board of Supervisors:
 - 1. Adopt the Mitigated Negative Declaration determination for this project for the purposes of compliance with the California Environmental Quality Act and adopt the Mitigation Monitoring Program.
 - 2. Adopt the General Plan Amendment, County File GP05-0006, to re-designate subject site from Commercial, (CO) to Mixed Use (M-).

3. Adopt the findings and approve the proposed Final Development Plan with conditions.

D. Approve the tentative map including a condition that makes approval contingent on Board of Supervisors adoption of the General Plan Amendment and Modification to the Final Development Plan.

III. SUMMARY OF REVIEW

The site was a part of the Colusa Circle Final Development Plan approved in 1983, when the subject site and two other nearby properties on Colusa Circle were rezoned from R-B to P-1. That approval was exercised when Phase I was developed in 1985 so the project approval remains valid, provided that the development is consistent with the earlier project approval.

The current application is to modify one component (original Phase II) of the previously approved project. Phase II was approved for a 38-foot tall, three-story building that housed 120 seat restaurant and a 34 stall parking garage on two properties. The current development application is for approval of a 37-foot 4-inch tall, three-story mixed-use (residential/retail) building with associated parking and landscaping on one of the two original properties located at 401 Colusa Avenue in the Kensington area. The new mixed-use building would house three separate residential units and two separate street-front retail/office spaces, which would provide additional housing and retail/office opportunities within Kensington.

1983 Phase II Final Development Plan Comparison with Current Proposal

	1983 Phase II Approval	Current Project	Staff Recommendation
Building (Square Feet)	8,054 Commercial and 120 Seat Restaurant	8,111 3-residential units 2 retail/office spaces	7,197 2-residential units 2 retail/office spaces
Property Size (Square Feet)	8,872	4,792	4,792
Number of Stories	3	3	2 & 3
Maximum Height (ft.)	38	37-feet 4-inches	29-feet 10-inches and 37-feet 4-inches
Off-street Parking Provided	34 Stall Parking Garage*	8 garage spaces (stacked)	8 garage spaces (stacked)
Additional On-street Spaces Provided	0	2	2
Total New Spaces	34*	10	10
Maximum Site Coverage	100%	67.7%	67.7%
Floor Area Ratio	1.6	1.69	1.5

*Parking Garage was not specific to Phase II but included all Phases of the 1983 Final Development Plan.

The property's size of 4,792 square feet (half of the original Phase II property) and the Kensington Polices 3-191 through 3-195 in the Contra Costa County General Plan provides the basis to recommend the elimination of the third story condominium unit (914 square feet).

IV. GENERAL INFORMATION

Surrounding Land Use and Settings. The parcel lies in a developed urban area of the unincorporated community of Kensington. Kensington is a predominantly residential community that is tucked in the hills between the City of Berkeley and El Cerrito. This triangle shaped site is located near the southwest corner of Kensington and fronts on Colusa Circle, Oakview Avenue and Colusa Avenue.

Most of the immediate area around subject site consists of an older neighborhood commercial center with several underutilized properties. Across Oakview Avenue lies an apartment building and single family residences. Across Colusa Avenue are a veterinarian office and the local market. Beyond Colusa Circle's neighborhood business center there are single family residences on lots that are zoned R-6.

General Plan. The previous project was approved with a General Plan designation of Commercial, CO, which is the current General Plan designation. However, the applicant is proposing to change the existing General Plan designation to Mixed Use (M-). The mixed-use designation allows for retail/office uses to be combined with residential uses.

Zoning: The subject property is zoned Planned Unit District, P-1; and is subject to the conditions of approval of County Files 2539-RZ and DP3056-82, see attached. This property is part of Phase II of the 1983 project that was approved for a 38-foot tall, 3-story building that had commercial on the ground floor and 120-seat restaurant on the second and third floors. The building totaled 8054 square feet (net leaseable). It also included a 34-stall parking garage that was located at 401-411 Colusa Avenue. The current project does not include the property at 411 Colusa Avenue.

Adjacent Projects.

- County File DP03-3047 is a project that was associated with original 1983 Colusa Circle Final Development Plan approval. This project was approved by the Board of Supervisors on January 22, 2008 to construct a new 8360 square foot; three-story building at 370 Colusa Avenue plus improvements to existing buildings addressed 372-380 Colusa Avenue, 13 off-street parking spaces and associated street/landscaping improvements.
- County File DP07-3041 and LP07-2067 is located at 385-389 Colusa Avenue consists of the renovation of an existing 11,839 square foot building and the addition of one 662 square-foot apartment. This project is not a part of the approved 1983 Colusa Circle Final Development Plan. This project was approved by the County Planning Commission on July 22, 2008.

V. PROPOSED PROJECT

In a P-1 zoned area, all development is subject to approval of a Final Development Plan. Under a development plan, the plan that is approved becomes the approved project, subject to all conditions of approval. The actual layout and design do not have to conform to the regulations of a particular

Zoning Ordinance district (unless by reference it is so specified in the plan). The current proposal is to substitute the 1983 approved Phase II with the following:

- **Property Size and Building.** The size of the property is 4,792 square feet. The project includes a development of a new 8,111 square foot mixed-use building that is 37-feet 4-inches tall and is three stories. Three condominiums, two retail/office spaces, and an 8-car garage (4-bilevel “stacked” stalls) with common stairways and parking entry courtyard encompass the site.
- **Residential Development.** The residential portion of the project proposes the construction of three individual condominiums.
 1. Condominium One is 1600 square feet in size and is contained on one level (second story) with a living room, dining/kitchen area, three bedrooms and two bathrooms and also includes small balconies.
 2. Condominium Two is the largest of the three residential units including 1,812 square feet of living area contained in two levels (second and third story) with a living room, dining/kitchen area, three bedrooms and three baths and a roof top deck (shared with condo three).
 3. Condominium Three is a one-bedroom condo of 914 square feet living area comprised of a great room that includes a kitchen and one-bathroom; it does share the roof top deck with Condominium Two.

Each condo would have access to two off-street parking spaces. There is a bi-level automobile lift (stacked parking) that will provide two parking spaces per unit on the ground floor of the building.

- **Retail Business/Office Space.** There are two separate street-front retail/office spaces of 784 square feet and 848 square feet. There are no known tenants at this time. Hours of operation are estimated to be from 9:00 am to 6:00 pm with a maximum of two employees for each space at any given time. The two retail/office spaces will have access to two of the eight stacked off-street parking spaces. It is proposed that the private parking/entry courtyard will be the primary loading zone for the retail/office spaces.
- **Landscaping.** The applicant proposes to plant eight street trees, four along Oakview Avenue and four along Colusa Avenue. The trees will be consistent with the water conservation Ordinance of Contra Costa County.
- **Parking.** The applicant proposes eight off-street parking spaces and two on street parking spaces for a total of 10 parking spaces. The proposed project requires a total of 15 off-street parking spaces. The off-street parking spaces (8) are stacked or bi-level and contained within the proposed garage. Access to the garage will be off of Oakview Avenue. The two on street spaces are created by eliminating the curb cut on Colusa Avenue.
- **Site Preparation.** It is not anticipated that the site will require extensive preparation. The building, landscaping, parking spaces and access would replace the existing pavement.

- **Construction and Phasing.** Details of the construction and phasing are not known at this time. For purposes of this analysis it is assumed that construction would take 15 to 18 months.

VI. AGENCY COMMENTS

- A. Building Inspection: The design of the building is required to comply with 2007 California Building Code. The applicant will be required to submit a soils report, Title 24 compliance and a survey.
- B. Stege Sanitary District: In memorandum dated April 28, 2006 they indicated that sewer service is available subject to this District's regulations and requirements. The applicant is responsible for complying with all District standards.
- C. Kensington Municipal Advisory Council (KMAC): On April 24, 2007 the KMAC denied the project by a 4-0 vote on the basis that the applicant did not meet the Kensington Combining District ordinance and did not adequately address parking or traffic.
- D. East Bay Municipal Utility District: In a memorandum dated April 20, 2006 they indicated that water service is available subject to the District's requirements. The applicant is responsible for complying with all District standards.
- E. El Cerrito Fire Protection District: In a memorandum dated May 2, 2006 the Fire Protection District outlines their standards. The applicant is responsible for complying with all requirements of the District.
- F. Other Public Agencies: Comments were not received from West Contra Costa School District.

VII. CONCERNS ON PROPOSED PROJECT FROM THE COLUSA CIRCLE IMPROVEMENT ASSOCIATION (CCIA) AND SURROUNDING NEIGHBORHOOD

All neighborhood letters and emails are attached in their entirety. Staff has summarized their concerns into six points and provided a response below.

1. The building is too tall and violates the Kensington Combining District Ordinance.
2. The project does not comply with the parking requirements and the project creates dangerous traffic conditions and causes congestion.
3. The building design is inconsistent with the current neighborhood character.
4. There is a lack of landscaping in the plan.
5. There are balconies within the public right-of-way.
6. This building would set a precedent for the future buildings.

Neighborhood Concerns

- A. **Concern:** *The proposed building is too tall for the Colusa Circle and the surrounding neighborhood. It will block views and the Kensington View and Light Ordinance should still apply since the building is mixed use. The height should be lowered in consideration for the neighbor's rights.*

Staff Response: The application to modify Phase II of the 1983 approved commercial building is not subject to the Kensington Combining District Ordinance

due to the valid permit of the previous approval and the exemption of “commercial buildings” in the Ordinance, Section 84-74.604 (a). However, commercial buildings do have to be found consistent with the specific Kensington policies outlined in the General Plan Land Use Element polices 3-191 through 3-195, see the General Plan Amendment in the Staff Analysis/Discussion section for specific language. These policies provide direction when analyzing a project’s impact on view and light in the Kensington area.

To find this project consistent with the General Plan policies for the Kensington area, staff is recommending the elimination of the third story condominium unit, thereby decreasing the eastern portion of the building height from 37-feet 4-inches to 29-feet 10-inches, a decrease in seven and a half feet. The location of the third story condo is substantially in the line-of-sight from the single family residential neighbors located on Oakview Avenue. Removing this unit would reduce the building’s bulk, size, and height and substantially retain the partial Bay view for the neighbors on Oakview Avenue.

- B. **Concern:** *The plan requires a variance of 5 parking spots. The parking lot would not support the use of the building and the parking overflow would spread to the street. There currently is not enough parking for Colusa Ave. due to 67 less spots for the current buildings and the addition of another building will cause an increase in the parking problem. The parking problem will cause traffic problems in the neighborhood as well. The request for a variance should be denied.*

Staff Response: With the elimination of the third condo unit, the off-street parking requirement is 13 spaces. The applicant will be required to provide the eight off-street parking spaces and is creating two new on street parking spaces with current design, effectively creating 10 new parking spaces. This proposed parking plan provides 76% of the required off-street parking and provides a better parking ratio than what was approved in Phase II. This is a significantly larger percentage of parking than either the Hammonds (32%) or David (36%) projects provided.

- C. **Concern:** *The buildings location would block the view of drivers who approach from Oakview Avenue and may put pedestrians at a greater risk. Placing the entrance on a narrow street (Oakview) will create a bottleneck for cars entering the Circle. The neighborhood supports a smaller building to reduce this problem.*

Staff Response: The project is required to comply with the Sight Obstructions at Intersections Ordinance, Chapter 82-18 of the County Code as required by condition of approval #38. The applicant will be required to setback all new gates, fencing, walls, signage, landscaping or other obstructions proposed at these intersections to ensure that the sight line is clear.

- D. **Concern:** *The modern design of the building is not consistent with the neighborhood feeling to the area. The building would not fit with the current neighborhood character. Staff should request a building that is consistent with the current neighborhood character.*

Staff Response: The applicant has indicated, in a meeting at Supervisor Gioia’s office, that they are open to suggestions with regards to design. To date no suggestions to the design have been submitted by the Colusa Circle Improvement

Association. However, staff has added three conditions of approval that are intended bring the design of the building more in to conformance with the surrounding neighborhood. See condition of approval #15, 16 and 17.

- E. **Concern:** *There is lack of landscaping and since the building has no setback and it will be difficult to add any features that will help the pedestrian friendly neighborhood that is now being created through the other projects.*

Staff Response: The streetscape and landscape approvals from the Hammonds and David projects are incorporated into this project and are conditions of approval #4 and #19. This ensures comparable landscaping improvements, in both quantity and quality, for the property's frontage along Colusa and Oakview Avenues.

- F. **Concern:** *The balconies on the building will be above the sidewalk. The neighborhood questions the legality of this structure since there will be no setback.*

Staff Response: The balconies were approved in Phase II of the 1983 Final Development plan and remain valid. Condition of approval #36 requires the applicant to obtain an encroachment permit.

- G. **Concern:** *The neighborhood was told that the first multi-story building would not set a precedent. Now there is another multi-story building and if this is built then more multi-story buildings will be built in the area.*

Staff Response: This application is a modification to the 1983 Phase II approved Development Plan. The application was submitted in March of 2006 prior to the decisions on the previous projects and therefore the County is obligated to process the application.

VIII. STAFF ANALYSIS & DISCUSSION

- A. General Plan Amendment: If approved, the General Plan Amendment would allow residential development to occur on a property designated for commercial use. The residential uses would be mixed with retail/office uses and would allow for the property to remain commercial but to a lesser degree. This General Plan Amendment would reduce the potential for commercial development and is consistent with the overall nature and character of the Colusa Circle neighborhood. The direction established from the recently approved projects (Hammonds' and David) encourage a pedestrian friendly, neighborhood business atmosphere and this project is consistent with this approach.

- Growth Management Considerations: The proposed project has been reviewed in the context of General Plan's Growth Management Element standards, including traffic, water, sewer, fire protection, police protection, parks and recreation, flood control and drainage. The project can meet all of these Growth Management standards.
- 65/35 Land Preservation Standard: The proposed project has been reviewed in the context of the 65/35 Land Preservation Standard as contained in the Land Use Element to the General Plan. The proposed change in the General Plan land use designation from Commercial (CO) to Mixed Use (M-) would have no impact in terms of maintaining the 65/35 land preservation standard in the General Plan as it exchanges one urban use designation with another urban use designation.

- Relevant General Plan Policies - Listed below are a selection of General Plan policies that have relevance to the proposed project.

The Land Use Element contains several relevant policies for the Kensington area:

Policy 3-191: Allow for review of new residential development that provides reasonable protection for existing residences in the Kensington community with regards to: view, design compatibility, (including building bulk, size, and height), adequate parking, privacy and access to sunlight.

Policy 3-192: Preservation of views of scenic natural features (e.g. bay, mountains) and the developed environment (e.g. bridges, city skyline) should be incorporated into the review of development applications.

Policy 3-193: Review proposed residential development for design compatibility with nearby development (e.g. building mass, height, mechanical devices) and provision for adequate parking.

Policy 3-194: New residential development will be reviewed against realistic impacts of privacy and sunlight on surrounding neighbors.

Policy 3-195: Consideration will be given to review of *non-residential development* in the Kensington community with policies 3-191 through 3-194 herein.

Aspects of the current proposal are not consistent with these policies, specifically Policy 3-192. Staff is recommending elimination of a portion of the third story which reduces the bulk and size of the building and in turn provides some view protection for existing residences in the Colusa Circle area.

- B. Zoning (P-1): The project's footprint is substantially similar to the 1983 approval and the uses proposed are inherently less intense. The final development plan modification is substantially less intense than original Phase II approval because it proposes residential use. This is appropriate since the size of the property is roughly half of the original property. The mixed-use combination of retail/office and residential is appropriate for the site.
- C. Building Height: Most of the emails and letters indicated that the building is too tall, but there are other buildings located on the circle that have been built or are approved that are comparable in height. The difference is the impact to surrounding residential neighborhood. Thus, staff has recommended a modification to the proposed plan that eliminates the third story condominium unit. The height of the building at the corner of Colusa Circle would remain as 37-feet 4-inches, which is within the 1983 approved development plan, but with the elimination of the third story condominium decreases the rest of the building height to 29-feet 10-inches.
- D. Contra Costa County Parking Standards: The off-street parking requirements contained in the Contra Costa County Zoning Ordinance are based on well-established average parking generation needs. However, most of the areas subject to Contra Costa County regulations are lower-density, suburban areas more typical of the areas undergoing development when the County Zoning Ordinance was developed. These were areas where public transit and

pedestrian facilities were rare and densities were generally lower, resulting in higher rates of auto use and greater parking demands. The urban development pattern of Kensington is much more like that of nearby Berkeley, Albany, and El Cerrito, than the typical Contra Costa County suburban development. Densities are higher, land uses more varied and pedestrian “friendliness” is much greater. Consequently, these nearby communities have lower parking requirements than the County, and in the case of Berkeley, actively restrict parking availability by setting a *maximum* of one space per 250 square feet.

El Cerrito requires one parking space per 300 square feet for retail and one space per 500 square feet for offices, as compared to the one space per 200 square feet required by the County.

This project, with the staff recommended modification, provides 76% of the required parking spaces. 8 off-street parking spaces are provided and two on street parking spaces are created for a total of 10 spaces, where 13 spaces are required. This is significantly more than the other projects recently approved around the Colusa Circle. The staff proposed two condo limit and retail/office, together with the streetscape and landscaping conditions of approval justify the reduction of the three parking spaces.

- E. Aesthetics: The majority of emails and letters opposing the project do not feel that the look and design of the project is consistent with the character of the neighborhood. Staff, has visited Colusa Circle many times and agrees there is distinct character to the Colusa Circle, and it is reasonable to incorporate architectural features that enhance the building to emulate the existing character of the surrounding neighborhood. Condition of approval #15 requires the applicant to submit a final design of the building that incorporates architectural details that will accomplish an aesthetically cohesive Colusa Circle.
- F. Kensington Municipal Advisory Council: KMAC denied the project 4-0 based on the height of the building, view and light impacts, and parking. Staff is recommending approval of the project with the removal of the third condominium unit located on the third story of the eastern portion of the building. This effectively eliminates impacts to view, light, and parking demand that were the primary concerns KMAC voiced. The proposal would be consistent with the 1983 Final Development Plan.
- G. Compliance with the California Environmental Quality Act (CEQA): An Initial Study and Mitigated Negative Declaration were prepared for this project in accordance with the requirements of the California Environmental Quality Act. The Mitigated Negative Declaration was posted June 10, 2008 with the comment period ending June 30, 2008. The Initial Study and the Mitigation Monitoring Program are attached for review.

Public Comments on the Proposed Mitigated Negative Declaration Determination

Staff received comments from Colusa Circle Improvement Association (CCIA), Contra Costa County Flood Control and Water Conservation District, East Bay Municipal Utility District, and El Cerrito Fire District, all comments are attached. All of the comments except the ones below are previously answered in the staff responses to the neighborhood comments see above.

Colusa Circle Improvement Association (CCIA)

Comment 1: *A Phase I Environmental Assessment should be completed to see whether there is any hazardous material in the area that can impact the area. The Initial study does not look at contamination and that should be investigated.*

Staff Response: The site is not listed as being a hazardous material site, refer to <http://www.envirostor.dtsc.ca.gov/public/>.

Comment 2: *There should be a study on how emissions from the construction will follow the emission standards from the state.*

Staff Response: The project will have to be consistent with the Bay Area Air Quality Management District controls for construction emissions and that will control construction emissions and particulate matter for the temporary period during construction, as required by condition of approval #20. If approved the proposed building and uses do not inherently impact air quality. This site is not adjacent to a major freeway, refinery, or other facility that produces an impact to air quality.

Contra Costa County Flood Control & Water Conservation District (CCFCWD)

Comment 3: *A project condition should be added for the construction of a storm drain to collect water. The hydrology and hydraulic calculations should be completed. The project should have the appropriate permits. It should comply with the National Pollutant Discharge Elimination System.*

Staff Response: The Engineering Services Division of the Public Works Department has provided conditions of approval that address all issues raised in the CCFCWD memo.

El Cerrito Fire Protection District

Comment 4: *The property is currently used as off-street parking and the District will be impacted by the lack of off-street parking if the building is established. It will restrict their abilities, maneuverability and access to fire hydrants.*

Staff Response: This is private property that is currently undeveloped and being used for parking without consent by the property owner. The District has not provided any substantial evidence on how eliminating the current parking impedes the access and emergency response to the site as Colusa Avenue is a major thoroughfare through this area.

Therefore, based on the recommended modification to the proposed project staff recommends finding that the project complies with the California Environmental Quality Act.

- H. Staff Recommendation: The proposed elimination of the third condominium unit will reduce the square footage of building by 914 square feet for a new total of 7,197 square feet. This also reduces the parking demand by two spaces and significantly reduces a portion of the building's height by 7 ½ feet creating a two and three two story building. The three story portion of the building would be located on the Colusa Circle farthest away from the single family residences on Oakview Avenue. With this modification to the proposed plan, staff

recommends approval of the project, subject to the attached findings and conditions of approval.

IX. SUBDIVISION, ROAD AND DRAINAGE CONSIDERATIONS

Traffic and Circulation. The subject parcel fronts Colusa Avenue to the south and Oakview Avenue on the northern boundary. Both roadways are publicly maintained and feature adequate roadway widths. Dedication of additional right of way on Colusa Avenue and Oakview Avenue will not be required for this project. The subject parcel currently gains access via driveways located on Colusa Avenue and Oakview Avenue. The proposed project will be required to limit access to only Oakview Avenue, and will be required to remove the existing driveway on Colusa Avenue and replace it with sidewalk. The applicant shall be prohibited from installing sidewalk “bulb-outs” on Colusa Avenue. It appears that standard curb ramps are currently installed at the intersections of both Colusa Avenue and Oakview Avenue with Colusa Circle. The applicant shall also be required to repair and/or replace any cracked or displaced sidewalk along the entire project frontage.

Drainage. Division 914 of the County Ordinance Code requires all storm water entering and/or originating on this property to be collected and conveyed without diversion and within an adequate storm drainage system, to an adequate natural watercourse having a definable bed and banks, or to an existing adequate public storm drainage system which conveys the storm waters to an adequate natural watercourse.

Stormwater Management. In compliance with Provision C.3 of the NPDES Permit and the County’s Stormwater Management and Discharge Control Ordinance, it has been determined that this project does not require submittal of a Stormwater Control Plan (SWCP). New or redeveloped impervious surface area proposed in this application totals less than 10,000 square feet, which is the threshold for submittal of a SWCP. However, this project is required to incorporate stormwater quality elements to the Maximum Extent Practicable (MEP), in accordance with all other provisions of the County Stormwater Management and Discharge Control Ordinance.

Annexation to Lighting District. The subject site is currently annexed into a lighting district. The applicant will not be required to apply for annexation to County Service Area L-100 Lighting District.

X. CONCLUSION

The property’s size of 4,792 square feet (half of the original Phase II property) and the Kensington Polices 3-191 through 3-195 in the Contra Costa County General Plan, more specifically policy 3-192, provide the basis to recommend the elimination of the third story condominium unit (914 square feet). Therefore, staff recommends the County Planning Commission approve County File MS06-0011 and recommend to the Board of Supervisors approval of County Files GP05-0006, and DP06-3026, subject to the attached findings and conditions of approval.

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