

**THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, CALIFORNIA**  
**and for Special Districts, Agencies and Authorities Governed by the Board**

Adopted this Resolution on 11/03/2009 by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

**RECUSE:**



**Resolution No. 2009/484**

RESOLUTION OF THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, STATE OF CALIFORNIA, REGARDING THE APPLICATION BY ANDREW WOOLMAN (APPLICANT), AND THE CIRCLE PARTNERSHIP (OWNERS); FOR THE FOURTH AMENDMENT FOR CALENDAR YEAR 2009 TO THE CONTRA COSTA COUNTY GENERAL PLAN (2005-2020) CHANGING FROM COMMERCIAL (CO) TO MIXED USE (M-) (COUNTY FILE #GP05-0006); AND TWO APPEALS ON 1) MODIFICATIONS TO THE APPROVED 1983 COLUSA CIRCLE FINAL DEVELOPMENT PLAN (COUNTY FILE #DP06-3026); AND ON THE VESTING TENTATIVE MAP TO SUBDIVIDE A 4,792 SQUARE FOOT PARCEL INTO THREE PARCELS, (COUNTY FILE #MS06-0011), AT 401 COLUSA AVENUE IN THE KENSINGTON AREA.

WHEREAS, on June 28, 1983, after conducting a noticed public hearing, the Board of Supervisors of Contra Costa County rezoned three corner properties at Colusa Circle in the Kensington area of the County to the Planned Unit (P-1) District, and approved the Colusa Circle Final Development Plan, County File #3056-82 filed by Edward Y. Hammonds, allowing for retail, restaurant and office development within four defined project phased areas; and  
WHEREAS, in 1985, the Colusa Circle Final Development Plan was exercised by development of the Phase I portion of the site, and thus allowing the remaining phases of this approval to be implemented at any time; and  
WHEREAS, the existing General Plan designation for the property is Commercial, CO; and

**Contact: Ryan Hernandez, (925) 335-1206**

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

**ATTESTED: November 3, 2009**

David J. Twa, County Administrator and Clerk of the Board of Supervisors

By: , Deputy

**cc:** Chris Howard, DCD, GIS, Patrick Roche, Advance Planning

WHEREAS, On March 3, 2008, Andrew Woolman filed applications with the Department of Conservation and Development for a General Plan Amendment changing the General Plan land use designation from Commercial (CO) to Mixed Use (M-) (County File #GP05-0006); and to modify the approved 1983 Colusa Circle Final Development Plan; and to subdivide the 4,792 square foot property into four parcels (County File #MS06-0011) on 401 Colusa Avenue in Kensington.

WHEREAS, for the purposes of compliance with the provisions of the California Environmental Quality Act (CEQA) and the State and County CEQA Guidelines, a Mitigated Negative Declaration was prepared and circulated for review and comment between June 10, 2008 and June 30, 2008; and

WHEREAS, after notice having been lawfully given, the County Planning Commission held a public on two dates, August 12, 2008 and October 28, 2008, at which time all persons interested were provided the opportunity to testify on the application to modify the application; and

WHEREAS, On October 28 2008 the County Planning Commission having fully considered all testimony and evidence presented in this matter, by a 5-1 vote, with one member absent, recommended approval the vesting tentative map allowing for three parcels, (County File #MS060011), subject to conditions of approval; and

WHEREAS, there is filed with this Board and its Clerk a copy of Resolution No. 18-2009 adopted by the Contra Costa County Planning Commission which discusses and recommends adoption of the General Plan Amendment (County File #GP05-0006) and approval of the modification to the approved 1983 Colusa Circle Final Development Plan (County File #DP06-3026).

WHEREAS, there was an appeal on the County Planning Commission's decision filed by the applicant on November 6, 2008; and

WHEREAS, there was an appeal on the County Planning Commission's decision filed by the Colusa Circle Improvement Association on November 7, 2008; and

WHEREAS, on Tuesday October 13, 2009, the Board held a public hearing on the two appeals of this project. Notice of said hearing was duly given in the manner prescribed by law. The Board at hearing called for testimony of all persons interested in this matter.

BE IT FURTHER RESOLVED, that the County Planning Commission makes the following findings with respect to General Plan and ordinance provisions:

**A. Growth Management Element Performance Standards** 1. Traffic: Any cracked and displaced curb, gutter, and sidewalk shall be removed and replaced along the project frontage of Colusa Avenue/Circle and Oakview Avenue. The creation of two condo units and one retail unit will not create more than 100 peak-period trips and the applicant is not required to prepare a traffic report pursuant to the 1988 Measure C requirements.

2. Water: The County shall require new development to demonstrate that adequate water quantity and quality can be provided. The East Bay Municipal Utility District has indicated that they can adequately serve the project subject to the district's standards and conditions. The applicant shall bear all expenses associated with constructing a water system capable of meeting the fire flow and water demand and water quality requirements of the water district and of the fire district.

3. Sanitary Sewer: The County shall require new development to demonstrate that adequate sanitary sewer quantity and quality can be provided. The Stege Sanitary District has responded that they can service the project subject to standard fees, specifications and conditions.

4. Fire Protection: Fire stations shall be located within one and one-half miles of developments in urban, suburban and central business district areas. The nearest fire station is located approximately 0.6 miles from the site at 218 Arlington. The applicant's engineer shall design the project to the standards and regulations of the El Cerrito Fire Protection District.

5. Public Protection: The Growth Management Element Standard is 155 square feet of Sheriff's facility station per 1,000 persons. A police service mitigation fee of \$1000.00 is required for each residential unit.

6. Parks and Recreation: No neighborhood parks or playfields are proposed in the proposed mixed use. However, the residential aspect of the project, two condominium units, warrants the payment of the in-lieu fee per residential unit.

7. Flood Control and Drainage: The project must comply with the County collect and convey run-off code requirements.

(Ref: the Growth Management Element of the General Plan) **B. Findings to Establish a Planned Unit (P-1) District**

In approving a request for modification to an existing approved Final Development Plan, this Board finds that the changes are consistent with the intent and purpose of the P-1 district and compatible with other uses in the vicinity, both inside and outside the district. Pursuant to that obligation, the proposed project must remain consistent with the findings required for the approval of a Planned Unit District, as follows:

1. Required Finding: The applicant intends to start construction within two and one-half years from the effective date of the zoning change and plan approval.

*Project Finding: The applicant has expressed a desire to begin construction immediately after required permits and approvals have been obtained.*

2. Required Finding: The proposed planned unit development is consistent with the County general plan.

*Project Finding: The general plan designation for the project site is recommended to be changed to Mixed Use. The Final Development Plan modification describes a development of two condominium units and two street front retail/office spaces that meets the general plan requirements.*

3. Required Finding: In the case of residential development, it will constitute a residential environment of sustained desirability and stability, and will be in harmony with the character of the surrounding neighborhood and community.

*Project Finding: Colusa Circle is characterized primarily by neighborhood retail/office surrounded by residential development. The proposed development will be of substantially higher architectural quality and is consistent with the 1983 Final Development Plan. The proposed project reduces land use intensity and creates a stable and desirable development. Conditions of approval to improve the aesthetic quality are provided and will be in harmony with the surrounding Colusa Circle. The project provides for a density level consistent with the current size of the property and is consistent with the Kensington Policies in the General Plan. The addition of the streetscape/landscaping plan will increase the visual and aesthetic characteristic of the project. This use of an underutilized property helps fulfill the County Housing Element within General Plan.*

*Required Finding: In the case of commercial development, the proposed development is needed at the proposed location to provide adequate commercial facilities of the type proposed, and that traffic congestion will not likely be created by the proposed center, or will be obviated by presently projected improvements and by demonstrable provision in the plan for proper entrance and exits, and by internal provision for traffic and parking, and that the development will be an attractive and efficient center which will fit harmoniously into and will have no adverse effects upon the adjacent or surrounding development.*

*Project Finding: The proposed modification to the previously approved planned commercial development is designed to serve the needs of the surrounding residents with two modest sized retail/office spaces. This new proposal includes residential units lessening the intensity of use on the property and is more in character with the surrounding neighborhood.*5. The development of a harmonious integrated plan justifies exceptions from the normal application of this code.

*Project Finding: While there are exceptions from the normal regulations of the RB district and R-6 district, the design of subject project is unique in that it creates a place of both residential and retail/office use. These uses are not substantially different from a project that could be allowed in the RB or R-6 zoning district. The exceptions from the zoning districts include reduced setbacks, limiting the range of retail and office uses, and a reduced number of off-street parking spaces. These exceptions are compatible with the goal of achieving a harmonious integrated plan in that a larger project with a more substantial decrease in off-street parking could be built under the un-expired prior approval.***C. Finding to Modify a Final Development Plan.**

In approving the modification application, the County shall find that it is consistent with the intent and purpose of the P-1 district and compatible with other uses in the vicinity, both inside and outside the district.

*Project Finding: The planned unit district is intended to allow diversification in the relationship of various uses, buildings, structures, lot sizes and open spaces while insuring substantial compliance with the general plan and the intent of the county code in requiring adequate standards necessary to satisfy the requirements of the public health, safety and general welfare. The subject project allows for the combination of residential and retail/office use. The diversity of the proposed uses creates a relationship between the fronting streets and the proposed building that will exhibit attractive elevations toward all street frontages.*

*Additionally, a streetscape/landscaping plan that mirrors the previously approved projects will create pedestrian and customer amenities.***D. Approval of Tentative Map**

• Required Finding: The County Planning Agency shall not approve a tentative map unless it shall find that the proposed subdivision, together with the provisions for its design and improvement, is consistent with the applicable general and specific plans required by law.

*Project Finding. The project is consistent with the various elements of the General Plan. The land use designation is mixed use, (M-) which allows flexibility for the development's density. The tentative map provides for two residential condo units and one retail unit, consisting of two spaces, on a 4,792 square foot parcel. The project, as conditioned, is consistent with the policies for the Kensington area.*

• Required Finding: The County Planning Agency shall not approve a tentative map unless it shall find that the proposed subdivision fulfills construction requirements.

*Project Finding: An existing public street provides access to the site and offsite drainage infrastructure is already in place. The project is conditioned to require construction of onsite driveway and drainage facilities in accordance with County standards.*

Now, Therefore, Be It Resolved:

That the Board of Supervisors of Contra Costa County ("this Board") takes the following actions:

1. SUSTAINS the decision of the County Planning Commission eliminating the proposed third story dwelling unit subject to conditions.
2. FINDS on the basis of the whole record before the Board 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; and that the proposed Mitigated Negative Declaration is adequate for the purpose of compliance with CEQA and ADOPTS the Mitigated Negative Declaration for the project. In support of these actions and conclusions, this Board ADOPTS the CEQA Findings. This Board adopts these findings specifically for each of the approvals and entitlements it approves or recommends for approval for the project.
3. ADOPT the proposed General Plan Amendment (County File #GP05-0006), changing the General Plan designation from Commercial (CO) to Mixed Use (M-) as the fourth consolidated General Plan Amendment for calendar year 2009 as allowed under State Planning Law.
4. APPROVE the proposed modification to the 1983 Final Development Pan (County File DP06-3026) and minor subdivision, (County File #MS06-0011), subject to conditions.
5. DENY the appeal of the applicant dated November 6, 2008.
6. DENY the appeal of the Colusa Circle Improvement Association dated November 7, 2008.
7. DIRECT the Department of Conservation and Development to post the Notice of Determination with the County Clerk.