

CITY OF NEWARK PLANNING COMMISSION

37101 Newark Boulevard, Newark, California 94560-3796 □ 510/578-4330 □ FAX 510/578-4265

City Administration Building
7:30 p.m.
City Council Chambers

AGENDA Tuesday, April 25, 2017

A. ROLL CALL

B. MINUTES

B.1 Approval of Minutes of the regular Planning Commission meeting of Tuesday, April 11, 2017. (MOTION)

C. WRITTEN COMMUNICATIONS

D. ORAL COMMUNICATIONS (Anyone wishing to address the Commission on any planning item not on the Agenda may take the podium and state his/her name and address clearly for the recorder.)

E. PUBLIC HEARINGS

E.1 Hearing to consider an amendment to P-74-1, a planned unit development, and U-74-1, a conditional use permit to rebuild an existing McDonald's restaurant at 35192 Newark Boulevard (APN: 92A-720-10) – from Associate Planner Mangalam. (CONTINUED FROM APRIL 11, 2017) (RESOLUTION)

F. STAFF REPORTS

G. COMMISSION MATTERS

G.1 Report on City Council actions.

H. ADJOURNMENT

Pursuant to Government Code 54957.5: Supplemental materials distributed less than 72 hours before this meeting, to a majority of the Planning Commission, will be made available for public inspection at this meeting and at the Planning Division Counter located at 37101 Newark Boulevard, 1st Floor, during normal business hours. Materials prepared by City staff and distributed during the meeting are available for public inspection at the meeting or after the meeting if prepared by some other person. Documents related to closed session items or are exempt from disclosure will not be made available for public inspection.

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City Administration Building
7:30 p.m.
City Council Chambers

MINUTES

Tuesday, April 11, 2017

A. ROLL CALL

At 7:30 p.m., Chairperson Nillo called the meeting to order. All Planning Commissioners were present.

B. MINUTES

B.1 Approval of Minutes of the regular Planning Commission meeting of Tuesday, February 14, 2017.

Vice-Chairperson Bridges moved, Commissioner Fitts seconded, to approve the Minutes of February 14, 2017. The motion passed 4 AYES, 1 ABSTENTION (Aguilar).

C. WRITTEN COMMUNICATIONS

None.

D. ORAL COMMUNICATIONS

None.

E. PUBLIC HEARINGS

E.1 Hearing to consider an amendment to P-74-1, a planned unit development, and U-74-1, a conditional use permit to rebuild an existing McDonald's restaurant at 35192 Newark Boulevard (APN: 92A-720-10).

Deputy Community Development Director Interiano informed the Planning Commission that staff received a letter objecting to this project, just prior to tonight's meeting, therefore staff is recommending continuance of this item to the April 25, 2017 Planning Commission meeting to allow staff time to review and respond to the concerns addressed in the letter.

Chairperson Nillo opened the Public Hearing.

Mr. Robert Picard, Stantec Architecture, Inc., 1137 N. McDowel Boulevard, Petaluma, CA 94954, on behalf of McDonald's Corporation, described the scope of their proposal and stated he has read and is in agreement with the Conditions listed in the Resolution.

Answering Commissioner Fitts, Mr. Tom Clark, Construction Manager for McDonald's Corporation, 2999 Oak Road, Walnut Creek, CA 94597, stated similar rebuilt McDonald's restaurants can be seen in Millbrae on El Camino, and in Oakland on San Pablo Avenue.

Commissioner Aguilar commented he liked the conceptual drawings and feels it will be an improvement over the existing building.

Answering Commissioner Aguilar, Mr. Clark stated the rebranding campaign has been going well and has brought in new customers to their restaurants. He also stated construction would take approximately 90 days to complete.

Ms. Ahva Aflatooni, Miller Starr Regalia, 1331 North California Boulevard, 5th Floor, Walnut Creek, CA 94596, representing the Ladrechs, owners of several properties in the Rosemont Shopping Center, stated their concerns with the Findings of the project, the CEQA exemptions, perceived blocked views of their property, and concerns with traffic flow within the shopping center. She stated she was pleased to hear this item will be continued but request that the Planning Commission deny the project.

Mr. Eric Ladrech, 35156 Newark Boulevard, Newark, CA 94560, owner of the former Mi Pueblo building, stated he could have worked out some of his concerns with McDonald's if he had been contacted in advance of receiving the Public Hearing Notice.

Answering Commissioner Aguilar, DCDD Interiano stated staff will work with the Applicants and Mr. Ladrech to resolve some of the issues prior to the April 25, 2017 Planning Commission Meeting.

Vice-Chairperson Bridges asked the opposing party to present more details substantiating their concerns at the next Planning Commission Meeting and stated she was not sure if a traffic study was necessary.

Motion by Commissioner Fitts, seconded by Commissioner Otterstetter, to continue this item to the April 25, 2017 Planning Commission Meeting. Motion passed 5 AYES.

F. STAFF REPORTS

None.

G. COMMISSION MATTERS

G.1 Report on City Council actions.

None.

DCDD Interiano informed the Planning Commission and the public that a Community Meeting will be held on April 15, 2017 at the City Council Chambers, 37101 Newark Boulevard, 6th Floor, at noon to discuss revitalizing Old Town.

Answering Commissioner Fitts, DCDD Interiano stated based on the input received from the Community Meeting, it should take approximately 3 weeks to produce the Study.

Commissioners' Comments

Commissioner Otterstetter announced Stage One's production of Bonnie and Clyde will run for the next three weekends at the Newark Memorial High School.

Commissioner Fitts stated how much he and his granddaughter enjoyed attending Family Day at the Park and encourage the public to attend future Community Events.

Commissioner Aguilar congratulated the Newark Memorial High School girl's wrestling team on being the NCS Champions and for placing third at the Reno World Championships.


Vice-Chairperson Bridges also attended Family Day at the Park and was amazed with the number in attendance. Commissioner Bridges listed some of the activities and encourage the public to attend this free event next year.

Chairperson Nillo thanked staff for their work and wished everyone a great Easter Sunday.

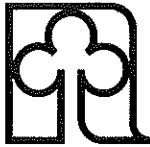
H. ADJOURNMENT

At 7:55 p.m., Chairperson Nillo adjourned the regular Planning Commission meeting of Tuesday, April 11, 2017.

Respectfully submitted,



ART INTERIANO
Acting Secretary



**E.1 Hearing to consider an amendment to P-74-1, a planned unit development, and U-74-1, a conditional use permit to rebuild an existing McDonald's Restaurant at 35192 Newark Boulevard (APN: 92A-720-10) – from Associate Planner Mangalam.
(CONTINUED FROM APRIL 11, 2017) (RESOLUTION)**

Sm

Request – Remove and replace an existing McDonald's Restaurant in the Rosemont Square Shopping Center.

Background/Discussion – On April 11, 2017, the Planning Commission held a Public Hearing to consider an amendment to a Planned Unit Development and Conditional Use Permit to rebuild an existing McDonald's Restaurant in Rosemont Shopping Center. This item was continued in order to allow staff and the applicant the time to review the letter dated April 11, 2017, received from Miller Starr Regalia legal firm representing the owners of former Mi Pubelo grocery store in Rosemont Shopping Center. The letter stated the following issues, in summary: (a) that the findings in the draft resolution are conclusive and not supported by substantial evidence; (b) that the use of the California Environmental Quality Act (CEQA) Guidelines Section 15302 exemption ("Replacement or Reconstruction") is improper; and (c) that a private agreement among landowners would be violated by the project. Staff does not believe that any of these claims have merit for the reasons identified in this staff report and in light of the traffic study authored by Stantec Architecture, Inc., a copy of which is being provided for review.

The existing 5,191 square foot building (including basement) with capacity of 86 seats is located on the east side of Newark Boulevard midway between Jarvis Avenue and Cedar Boulevard. The existing McDonald's Restaurant has one drive-thru lane that supports stacking/queuing of seven vehicles. The existing building is to be removed and rebuilt with a completely updated structure of approximately 4,532 square foot with 80 seats, thus a decrease of 659 square feet of floor area and with 6 less seats. The proposed building includes a two-lane drive-thru layout and improvements includes an additional customer order display and ordering kiosk; an additional menu board speaker; and a separate payment window and order pick-up window.

The existing retaining wall to the southwest corner of the site would be extended and improved with stucco finish and decorative cap to help screen cars using the drive-thru as viewed from Newark Boulevard. The Landscape Planting Plan shows upgraded landscaping including additional trees, shrubs, vines and perennials.

Proposed signage consists of two building wall signs on front and drive-thru facades; four channel wall logos; directional signs for drive-thru; and address identification and refacing of the existing monument sign. In addition, there would be two menu boards, two canopy signs and window banners for 'pick-up here and pay here' needed for the drive-thru.

The traffic study by Stantec Consulting Services Inc., concluded that the reduced size of the building would reduce the number of daily trips by approximately 327. The addition of a second lane would increase the car stacking for customer vehicles to 13 vehicles, as well as assist to prevent any parked vehicles from being blocked during the peak periods. The new location of the drive-thru separate from parking lot will make the transition of arriving and departing customers more efficient.

In response to the issues raised by the law firm representing the adjacent property owners, staff offers the following analysis:

Findings under Planned Unit Development and Use Permits

The Findings given in the draft resolution of approval contains language that comes from the Newark Municipal Code, Sections 17.40.050 (“Planned Unit Development Permit – Permit procedure”) and 17.72.070 (“Use Permits – Action by Planning Commission”) and are supported by application materials on file.

Further elaboration for each finding is as follows:

- a. *That the proposed location of the planned unit development is in accord with the objectives of the zoning title and the purposes of the district in which the site is located.*
The zoning for the site is CC – Community Commercial. Section 17.20.020 of Newark Municipal Code states the purpose of the district is: “The community commercial zone reserves appropriately located areas for commercial uses which serve the comparison shopping needs of the community. These prime commercial areas are intended for uses which support the economic diversity and future financial well-being of the city through generation of substantial amounts of revenue.” Restaurants and drive-through restaurants are a permitted use in this district per Section 17.20.030.
- b. *That the proposed location of the planned unit development and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.*
This is a replacement of an existing restaurant with a new one of similar size and capacity on the same property, which is a commercial site on a major street. There is no reason to anticipate any detrimental or injurious effects of the project.
- c. *That the standards of population density, site areas and dimensions, site coverage, yard spaces, heights of structures, distances between structures, usable open space, off-street parking and off-street loading facilities and landscaped areas will produce an environment of stable and desirable character consistent with the objectives of the zoning title.*
Numerous conditions of approval are incorporated into the permit in order to ensure the desired environment of stable and desirable character for the site and the project.
- d. *That the standards of population density, site area and dimensions, site coverage, yard spaces, heights of structures, distances between structures, usable open space, and off-street parking and off-street loading facilities will be such that the development will not generate more traffic than the streets in the vicinity can carry without congestion and will not overload utilities.*
The new restaurant is not expected to generate more traffic than the existing restaurant. Existing utilities are adequate for the project, which will not require utility usage above that of the

existing restaurant.

- e. *That the combination of different dwelling types and/or the variety of land uses in the development will complement each other and will harmonize with existing and proposed land uses in the vicinity.*

The restaurant is part of an existing shopping center, which is expected to continue to be devoted to compatible commercial uses after the project is in operation.

- f. *That the proposed location of the conditional use is in accord with the purposes of the zoning title and the purposes of the district in which the site is located.*

The zoning for the site is CC – Community Commercial. Restaurants and drive-through restaurants are a permitted use in this district.

- g. *That the proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.*

This is a replacement of an existing restaurant with a new one of similar size and capacity on the same property, which is a commercial site on a major street. There is no reason to anticipate any detrimental or injurious effects of the project. Numerous conditions of approval are incorporated into the permit in order to ensure the desired environment of stable and desirable character for the site and the project.

- h. *That the proposed conditional use will comply with each of the applicable provisions of Chapter 17.72 (Use Permits).*

Numerous conditions of approval are incorporated into the permit in order to ensure that the construction and operation of the restaurant will be in compliance with city code requirements.

California Environmental Quality Act (CEQA) exemption

Substantial evidence supports staff's determination that the project falls within a categorical exemption and therefore is exempt from CEQA analysis. (See *Dehne v. County of Santa Clara* (1981) 115 Cal.App.3d 827, 844.) CEQA Guidelines Section 15384 defines substantial evidence as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached."

The project is exempt from CEQA analysis under Guidelines Section 15302, which covers the replacement or reconstruction of existing facilities. This categorical exemption does not require that new structures be constructed on the exact same footprint as the structures and facilities being replaced; instead, the new structure must be sites on the same lot on which the existing structure is built. (See *Dehne v. County of Santa Clara* (1981) 115 Cal.App.3d 827, 837.) Further, the requirement that the new building have the same purpose and capacity "speaks only to the productive purpose and capacity" of the structure and "does not demand minute scrutiny of each of the individual components" of the new structure. (Id. at p. 839.)

The project is located on the same parcel of land as the existing restaurant. The project does not alter ingress and egress into the surrounding shopping center. The building is approximately the same size as the existing one. In fact, the new building is actually smaller when taking into account the size of the existing basement. Further, there are a total of 86 seats in the existing

restaurant and the proposed restaurant will have 80 seats.

Although the letter states that the new second drive-through lane is an “unusual circumstances”, it should be noted that there is still only one drive-through window. The second lane will reduce queuing or stacking problems, thus improving traffic flow around the site. It does not constitute “unusual circumstances” that would justify invoking Guidelines Section 15300.2 to decide that the normal exemption in Section 15302 does not apply to this project. For a project that meets the requirements of a categorical exemption, as this project does, a claim that unusual circumstances apply must present substantial evidence that the project will actually have a significant effect on the environment. (See *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1106.) The letter fails to demonstrate any actual significant effect on the environment as a result of the second drive-through lane, so the exception to the Class 2 exemption does not apply. No change is proposed for ingress or egress to or from the shopping center.

Finally, the letter asserts that the project would violate a provision of an agreement among property owners regarding use of the shopping center site. This is a private matter between land owners and should not enter into the City’s decision on the requested permits.

Action – It is recommended that the Planning Commission, by resolution, with Exhibit A, pages 1 through 26, approve an amendment to P-74-1, a planned unit development, and U-74-1, a conditional use permit to rebuild an existing McDonald’s Restaurant at 35192 Newark Boulevard (APN: 92A-720-10).

Attachments

1. Drawings by Stantec Architecture Inc., dated March 6, 2017
2. Signage drawings by Superior Electrical Advertising Inc., dated July 1, 2017
3. Traffic Study by Stantec Consulting Services Inc., dated April 19, 2017
4. Letter of Opposition by Miller Starr Regalia dated April 11, 2017

RESOLUTION NO.

RESOLUTION APPROVING AN AMENDMENT TO P-74-1, A PLANNED UNIT DEVELOPMENT, AND U-74-1, A CONDITIONAL USE PERMIT, TO REBUILD AN EXISTING MCDONALD'S RESTAURANT AT 35192 NEWARK BOULEVARD (APN: 92A-720-10)

WHEREAS, Stantec Architecture, Inc., on behalf of McDonald's Corporation, has filed with the Planning Commission of the City of Newark an application to amend P-74-1, a planned unit development, and U-74-1, a conditional use permit, to rebuild a McDonald's restaurant at 35192 Newark Boulevard;

PURSUANT to Municipal Code Section 17.72.060, a public hearing notice was published in The Tri-City Voice on March 28, 2017, and mailed as required, and the Planning Commission held a public hearing on said application at 7:30 p.m. on April 11, 2017 at the City Administration Building, 37101 Newark Boulevard, Newark, California;

Whereas, at its meeting of April 11, 2017, the Planning Commission, at the request of the staff, continued the public hearing to consider the application to the April 25, 2017, Planning Commission Meeting; and

WHEREAS, pursuant to Chapter 1740 (Planned Unit Developments), Section 17.40.050 (Permit Procedure) and Chapter 17.72 (Use Permits), Section 17.72.070 (Action by Planning Commission), the Planning Commission hereby makes the following findings:

1. That the proposed location of the planned unit development is in accord with the objectives of the zoning title and the purposes of the district in which the site is located;
2. That the proposed location of the planned unit development and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity;
3. That the standards of population density, site areas and dimensions, site coverage, yard spaces, heights of structures, distances between the structures, usable open space, off-street parking and off-street loading facilities and landscaped areas will produce an environment of stable and desirable character consistent with the objectives of the zoning title;
4. That the standards of population density, site areas and dimensions, site coverage, yard spaces, heights of structures, distances between the structures, usable open space, off-street parking and off-street loading facilities will be such that the development will not

generate more traffic than the streets in the vicinity can carry without congestion and will not overload utilities;

5. That the combination of different dwelling types and/or the variety of land uses in the development will complement each other and will harmonize with existing and proposed land uses in the vicinity;
6. That the proposed location of the conditional use is in accord with the purposes of the zoning title and the purposes of the district in which the site is located;
7. That the proposed location of the conditional use and the conditions under which it is would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity;
8. That the proposed conditional use will comply with each of the applicable provisions of Chapter 17.72 (Use Permits).

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission hereby approves this application as shown on Exhibit B, pages 1 through 16, subject to compliance with the following conditions:

Planning Division

- a. This project is subject to the conditions of Planning Commission Resolution No. 610, unless otherwise amended herein.
- b. There shall be no outdoor vending machines other than for the sale of newspapers. There shall be no outdoor storage of any materials for sale, display, inventory, or advertisement without the review and approval of the Community Development Director.
- c. The delivery of goods and materials restriction per Planning Commission Resolution No. 610 shall not apply to this project. Parking lot cleaning and sweeping or vacuum equipment shall not be permitted between 8:00 p.m. and 8:00 a.m. No delivery truck or van not associated with this business shall be left overnight on any portion of the site.
- d. All lighting shall be directed on-site so as not to create off-street glare.
- e. Prior to issuance of a building permit, the location and screening design for centralized garbage, refuse, organics, and recycling collection areas (including compactors) for the project shall be submitted for the review and approval of Republic Services, Inc. and the Community Development Director, in that order. Enclosures shall provide signage that states that the enclosure doors shall be closed immediately after use. Enclosures must be located so that the doors, when open, do not encroach into required drive-aisles or parking spaces. No refuse, garbage, organics, or recycling shall be stored outdoors except within the approved trash and recycling enclosures.

- f. The site and its improvements shall be maintained in a neat and presentable condition, to the satisfaction of the Community Development Director. This shall include, but not be limited to, repainting surfaces damaged by graffiti and site clean-up, and maintenance of awnings. Graffiti removal/repainting and site clean-up shall occur on a continuing, as needed basis. Awnings that become torn, faded, or fall into any disrepair shall be immediately replaced by the tenant. Any vehicle or portable building brought on the site during construction shall remain graffiti free.
- g. All exterior utility pipes and meters shall be painted to match and/or complement the color of the adjoining building surface, as approved by the Community Development Director.
- h. The color elevations submitted with this application have been reviewed and approved by the Planning Commission and the City Council. Prior to the issuance of a building permit, the Community Development Director shall review and approve final elevations for consistency with approved plans.
- i. The roof material as submitted with this application have been reviewed and approved by the Planning Commission and the City Council. Prior to the issuance of a building permit, the Community Development Director shall review and approve roof material for consistency with approved plans.
- j. All trash enclosures shall provide signage that states that the dumpsters shall remain in the enclosure(s) and that the enclosure's doors shall be closed immediately after use. The enclosure(s) shall be sited such that the enclosure's doors, when open, do not extend into drive aisles/back-up areas.

The enclosure(s) shall utilize integral color, split-face block or a suitable durable material, and be provided with a roof for storm water quality purposes. A stucco band shall be placed around the top of the enclosure(s) with a mortar cap on top to prevent the infiltration of water and leaching of materials from the block. The enclosure(s) shall be treated with a waterproof finish approved by the Building Official. The doors of the enclosure(s) shall be made of metal and painted to match the color of the enclosure's walls. The enclosure's materials, colors, and roof design shall be subject to the review and approval of the Community Development Director.

The required enclosure(s) shall be provided prior to final inspection.

- k. Prior to the issuance of a building permit, a screening design shall be submitted to and approved by the Community Development Director. Roof equipment shall not be visible from the adjacent public street. All equipment shall be fully screened within the context of the buildings' architecture. Said screening design shall be maintained to the satisfaction of the Community Development Director. The building owner shall paint the roof equipment and the inside of its screening wall within the context of the building's color scheme and maintain the painted areas to the Community Development Director's satisfaction. Screening panels shall not exceed six feet in height unless the screens are

part of the integral design elements of the building.

- l. The signage as submitted with this application have been reviewed and approved by the Planning Commission and the City Council. Prior to the issuance of a building permit, the Community Development Director shall review and approve signage for consistency with approved plans.
- m. Prior to the issuance of a Certificate of Occupancy, all on-site parking facilities shown on the approved plans shall be installed and striped. This shall include, but not be limited to, identifying compact parking spaces and providing directional arrows as required by the Community Development Director.
- n. Prior to the issuance of a building permit, the property owner shall pay impact fees in affect at the time.

Engineering Division

- o. Frontage improvements along Newark Boulevard are required. The project shall remove and replace the shared driveway to the south with a new Type C – Commercial Driveway per City Standard Detail SD-106-2. Additional frontage improvements include, but are not limited to, removal and replacement of damaged curb, gutter and sidewalk.
- p. The project must be designed to minimize the pollution or contamination of stormwater runoff from the site. Examples of control measures include, but are not limited to: no uncovered trash enclosures or storage of products and materials; minimization of impervious surfaces; routing of pavement and roof runoff through vegetated swales or landscaped areas in-lieu of direct connections to the storm drain system; treatment controls for runoff from paved areas used for vehicle parking, repair and/or storage such as storm drain inlet filters, interceptors, separators or other acceptable treatment devices; installation of vegetated or turfed areas around storm water inlets, and other Best Management Practices to address the requirements of the NPDES permit issued to the City of Newark by the Regional Water Quality Control Board. The use of structural treatment controls for runoff quality requires the submittal of a maintenance agreement prior to the issuance of a Certificate of Occupancy.
- q. Prior to the issuance of a building permit for this project, the developer shall submit a Storm Water Quality Plan for the review and approval of the City Engineer. The plan shall include sufficient details to show how storm water quality will be protected during both: (1) the construction phase of the project and (2) the post-construction, operational phase of the project. The construction phase plan shall include Best Management Practices from the California Stormwater Quality Best Management Practices Handbook for Construction Activities. The specific storm water pollution prevention measures to be maintained by the contractor shall be printed on the plans. The operational phase plan shall include Best Management Practices appropriate to the uses conducted on the site to effectively prohibit the entry of pollutants into storm water runoff from this site including, but not limited to, trash and litter control, pavement sweeping, periodic storm

water inlet cleaning, landscape controls for fertilizer and pesticide applications, labeling of storm water inlets with the wording "No Dumping - Drains to Bay," and other applicable practices.

- r. The project must be designed to include appropriate source control, site design, and stormwater treatment measures to prevent stormwater runoff pollutant discharges and increases in runoff flows from the site in accordance with Provision C.3 of the Municipal Regional Stormwater NPDES Permit (MRP), Order R2-2015-0049, revised November 19, 2015, issued to the City of Newark by the Regional Water Quality Control Board, San Francisco Bay Region. Examples of source control and site design requirements include but are not limited to: properly designed trash storage areas, sanitary sewer connections for all non-stormwater discharges, minimization of impervious surfaces, and treatment of all runoff with Low Impact Development (LID) treatment measures. The stormwater treatment design shall be completed by a licensed civil engineer with sufficient experience in stormwater quality analysis and design. The design is subject to review by the Regional Water Quality Control Board. The developer shall modify the site design to satisfy all elements of Provision C.3 of the MRP. The use of treatment controls for runoff requires the submittal of a Stormwater Treatment Measures Maintenance Agreement prior to the issuance of any Certificates of Occupancy
- s. All stormwater treatment measures are subject to review and approval by the Alameda County Mosquito Abatement District. The developer shall modify the grading and drainage and stormwater treatment design as necessary to satisfy any imposed requirements from the District.
- t. The entire site shall be equipped with full trash capture devices approved by the Regional Water Quality Control Board – San Francisco Bay Region, for 100% trash capture at all on-site and adjoining off-site storm drain inlets. All on-site trash capture devices shall be permanently maintained by the property owner.
- u. The location, size and orientation of all trash enclosures shall be approved by Republic Services, the City's franchise waste hauler, based on the anticipated type and intensity of the proposed development. All waste bins shall be stored within the trash enclosure at all times. The location and orientation of the enclosure shall enable adequate servicing of the bins by Republic Services. Design requirements for trash enclosures shall include, but are not limited to, a roof fully covering the enclosure, floor drain connected to the sanitary sewer system subject to approval by Union Sanitary District (USD), hose bib for periodic wash down, and a pedestrian door. In addition, the main doors of the enclosure shall be designed such that they may be locked closed and held open with pin locks during loading.
- v. The applicant shall submit a detailed soils report prepared by a qualified engineer, registered with the State of California. The report shall address in-situ and import soils in accordance with the City of Newark Grading and Excavation Ordinance, Chapter 15.50. The report shall include recommendations regarding pavement sections. Grading operations shall be in accordance with recommendations contained in the soils report and

shall be completed under the supervision of an engineer registered in the State of California to do such work.

- w. The project site is located in a Seismic Hazard Zone for Earthquake Induced Liquefaction according to maps released by the State of California. The applicant shall provide a geotechnical report(s) defining and delineating any seismic hazard(s). The report shall be prepared in accordance with guidelines published by the State. The report is subject to review and approval by a City selected peer review consultant. Construction documents shall conform to the recommendations of seismic hazard report.
- x. The developer shall submit a grading and drainage plan for review and approval by the City Engineer. This plan must be based upon a City benchmark and needs to include pad and finish floor elevations of each proposed structure, proposed on-site property grades, proposed elevations at property line, and sufficient elevations on all adjacent properties to show existing drainage patterns. All on-site pavements shall drain at a minimum of one percent. The developer shall ensure that all upstream drainage is not blocked and that no ponding is created by this development. Any construction necessary to ensure this shall be the developer's responsibility.

Hydrology and hydraulic calculations shall be submitted for review and approval by the City Engineer prior to approval of the final map. The calculations shall show that the City freeboard requirements will be satisfied (0.75 feet to grate or 1.25 feet to the top of curb under a 10-year storm duration).

- y. Where a grade differential of more than a 1-foot is created along the boundary parcel lines between the proposed development and adjacent property, the developer shall install a masonry retaining wall unless a slope easement is approved by the City Engineer. Said retaining wall shall be subject to review and approval of the City Engineer. A grading permit is required by the Building Inspection Division prior to starting site grading work.
- z. Prior to issuance of a Certificate of Occupancy or release of utilities for any building, common vehicle access ways and parking facilities serving said building shall be paved in accordance with the recommendation of a licensed engineer based on a Traffic Index of 5.0 and striped as shown on the approved site plan. All on-site uncovered parking facilities and drive aisles shall be drained at a minimum slope of 1.0% for asphalt surfaces and 0.3% for Portland cement concrete surfaces.
- aa. The property owner shall be responsible for a 2-inch grind and overlay within the shared parking lot/drive aisle with the property to the east and the shared drive aisle with the property to the south. Prior to the issuance of any permits, the property owner shall obtain approval and coordinate any work with the adjoining property owner(s). A letter from each owner shall be submitted to the City Engineer as evidence of approval to perform the 2-inch grind and overlay outside the project boundaries.
- bb. Prior to issuance of a building permit, the developer shall submit a pavement maintenance program for the drive aisles and parking areas on the project site. The

maintenance program shall be signed by the property owner and the property owner shall follow the maintenance program at the City Engineer's direction.

- cc. At no time shall traffic queuing for the drive-thru operation of the facility extend to Newark Boulevard. In the event that regular queuing into the adjoining main shopping center drive aisle from Newark Boulevard is observed, the property owner and/or site operator shall coordinate with the City Engineer to resolve the issue at the property owner and/or site operator's expense.
- dd. Any new utilities including, but not limited to, electric, telephone and cable television services shall be provided underground.
- ee. Any proposed utility connections and/or underground work within structurally sound street pavement must be bored or jacked. Open street cuts will not be permitted across Newark Boulevard.
- ff. The developer shall repair and/or replace any public and private improvements damaged as a result of construction activity to the satisfaction of the City Engineer and adjoining property owners.
- gg. The developer shall ensure that a water vehicle for dust control operations is kept readily available at all times during construction at the City Engineer's direction.

Landscape-Parks Division

- hh. Prior to the issuance of a building permit, the property owner shall dedicate a 20-foot wide landscape easement along the Newark Boulevard frontage of the property, directly adjacent to the right-of-way limit. The easement shall be extended to cover all contiguous landscaped areas along the project frontage.
- ii. The developer shall retain a licensed landscape architect to prepare working drawings for on-site landscape plans in accordance with City of Newark requirements, the approved Conceptual Landscape Plan, and the State of California Model Water Efficient Landscape Ordinance. The landscape plans shall be included with construction plan set and shall include detailed irrigation plans for all modifications to the existing irrigation system within Landscaping and Lighting District No. 7 that are necessary to satisfy the model ordinance requirements. The associated Landscape Documentation Package must be approved by the City Engineer prior to the issuance of a building permit.
- jj. The developer shall implement Bay Friendly Landscaping Practices in accordance with Newark Municipal Code, Chapter 15.44.080. Prior to the issuance of a building permit, the developer shall provide sufficient information to detail the environmentally-conscious landscape practices to be used on the project.
- kk. The plant species identified for any proposed biotreatment measures are subject to final

approval of the City Engineer.

- ll. All maintenance associated with the landscape-based stormwater treatment measures shall be the responsibility of the property owner. The developer shall enter into a Landscape Maintenance Agreement prior to the issuance of a building permit. This agreement shall run with the land and be binding to the homeowners association as successors. Landscape maintenance of these areas by the City under the terms of the Agreement would occur only in the event that City Council deems the homeowners association's maintenance to be inadequate. Any project perimeter walls and adjoining landscape areas shall be included in a dedicated landscape easement to guarantee adequate maintenance of the walls. Any work other than routine maintenance, including but not necessarily limited to, tree removal, tree pruning, or changes to the approved planting palette shall be approved in advance by the City Engineer. All tree pruning shall be performed by or under the direction of a certified arborist.
- mm. Prior to installation by the developer, plant species, location, container size, quality, and quantity of all landscaping plants and materials shall be reviewed and approved by the City Engineer. All plant replacements shall be to an equal or better standard than originally approved subject to approval by the City Engineer.
- nn. Prior to the release of utilities or issuance of any Certificate of Occupancy, all landscaping and irrigation systems shall be completed or guaranteed by a cash deposit deposited with the City in an amount to cover the remainder of the work.
- oo. Prior to issuance of Certificate of Occupancy or release of utilities, the developer shall guarantee all trees for a period of 6 months and all other plantings and landscape for 60 days after completion thereof. The developer shall insure that the landscape shall be installed properly and maintained to follow standard horticultural practices. All plant replacements shall be to an equal or better standard than originally approved subject to approval of the City Engineer.

Building Division

- pp. Construction for this project, including site work and all structures, can occur only between the hours of 8:00 AM and 6:00 PM, Monday through Friday. The applicant may make a written request to the Building Official for extended working hours and/or days. In granting or denying any request the Building Official will take into consideration the nature of the construction activity which would occur during extended hours/days, the time duration of the request, the proximity to residential neighborhoods and input by affected neighbors. All approvals will be done so in writing.
- qq. Prior to the commencement of any demolition activities at the site the developer shall obtain a demolition permit from Bay Area Air Quality Management District (BAAQMD).
- rr. As per the Newark Municipal Code, the new building shall be equipped with an

automatic fire sprinkler system.

Fire Division

- ss. Plans shall meet the requirements of the codes and standards adopted at the time of building plan submittal.

General

- tt. All proposed changes from approved exhibits shall be submitted to the Community Development Director who shall decide if they warrant Planning Commission and City Council review and, if so decided, said changes shall be submitted for the Commission's and Council's review and decision. The developer shall pay the prevailing fee for each additional separate submittal of development exhibits requiring Planning Commission and/or City Council review and approval.
- uu. If any condition of this amendment to a planned unit development and conditional use permit be declared invalid or unenforceable by a court of competent jurisdiction, this amendment to a planned unit development and conditional use permit shall terminate and be of no force and effect, at the election of the City Council on motion.
- vv. This planned unit development and conditional use permit shall be given a public hearing before the City Council for the Council's review and approval.
- ww. The developer hereby agrees to defend with separate counsel reasonably selected by the City, indemnify, and save harmless the City of Newark, its Council, boards, commissions, officers, employees and agents, from and against any and all claims, suits, actions, liability, loss, damage, expense, cost (including, without limitation, attorneys' fees, costs and fees of litigation) of every nature, kind or description, which may be brought by a third party against, or suffered or sustained by, the City of Newark, its Council, boards, commissions, officers, employees or agents to challenge or void the permit granted herein or any California Environmental Quality Act determinations related thereto.
- xx. The Conditions of Project Approval set forth herein may include certain fees, dedication requirements, reservation requirements and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations and other exactions. The developer is hereby further notified that the 90-day approval period in which the developer may protest these fees, dedications, reservations and other exactions, pursuant to Government Code Section 66020(a), has begun. If the developer fails to file a protest within this 90-day period complying with all of the requirements of Section 66020, the developer will be legally barred from later challenging such exactions.

The Commission makes the findings prescribed in Newark Municipal Code Sections

17.40.050 and 17.72.070, and directs a Notice of Decision be mailed to the applicant and filed with the City Clerk who shall present said Notice to the City Council pursuant to Newark Municipal Code Section 17.72.080.

This Resolution was introduced at the Planning Commission’s April 25, 2017 meeting by Commissioner _____, seconded by Commissioner _____, and passed as follows:

AYES:

NOES:

ABSENT:

TERRENCE GRINDALL, Secretary

BERNIE NILLO, Chairperson

Reference: Preliminary Traffic Study for the new Proposed New Two-lane Drive-Thru layout and parking for a McDonald's Restaurant Branch in the City of Newark

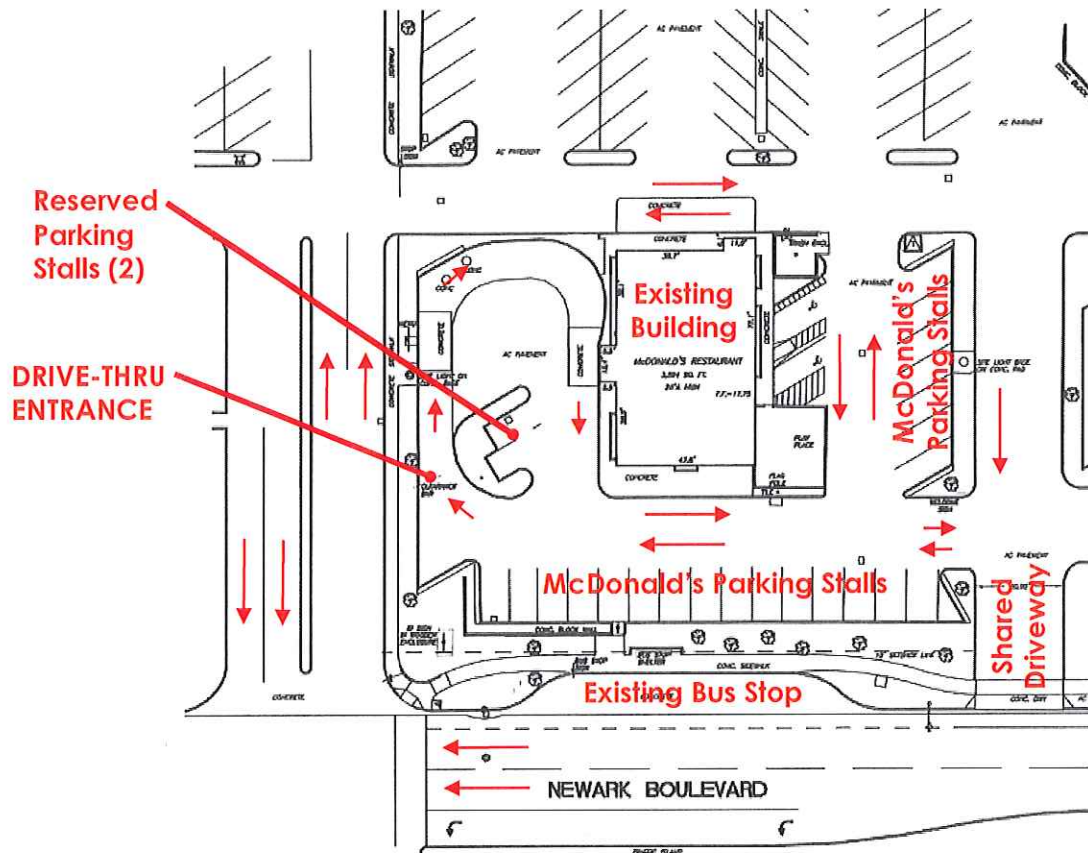


Figure 1. Existing McDonald's Restaurant and Existing Parking Lot in City of Newark.

The proposed improvements to the Drive-Thru are expected to increase storage capacity for the customer vehicles on waiting in queue as well as prevent any parked vehicles from being blocked during the peak periods. The improvements include adding a second lane from the Drive-Thru entrance to the ordering kiosk, an additional Customer Order Display (COD) and ordering kiosk, an additional second Menu Board Speaker at the ordering kiosk, extending the lanes from the Drive-Thru entrance to the Menu Board speaker, as well as having a separate payment window and pick-up window from the existing single window for both payments and order pick-up. These improvements are expected to prevent the queue from spilling outside the McDonald's parking lot and a more efficient flow through the Drive-Thru. It is also expected to increase the efficiency of the Drive-Thru experience of every McDonald's customer. See **Figure 2** for the proposed Drive-Thru and proposed new McDonald's Restaurant building.

Reference: Preliminary Traffic Study for the new Proposed New Two-lane Drive-Thru layout and parking for a McDonald's Restaurant Branch in the City of Newark

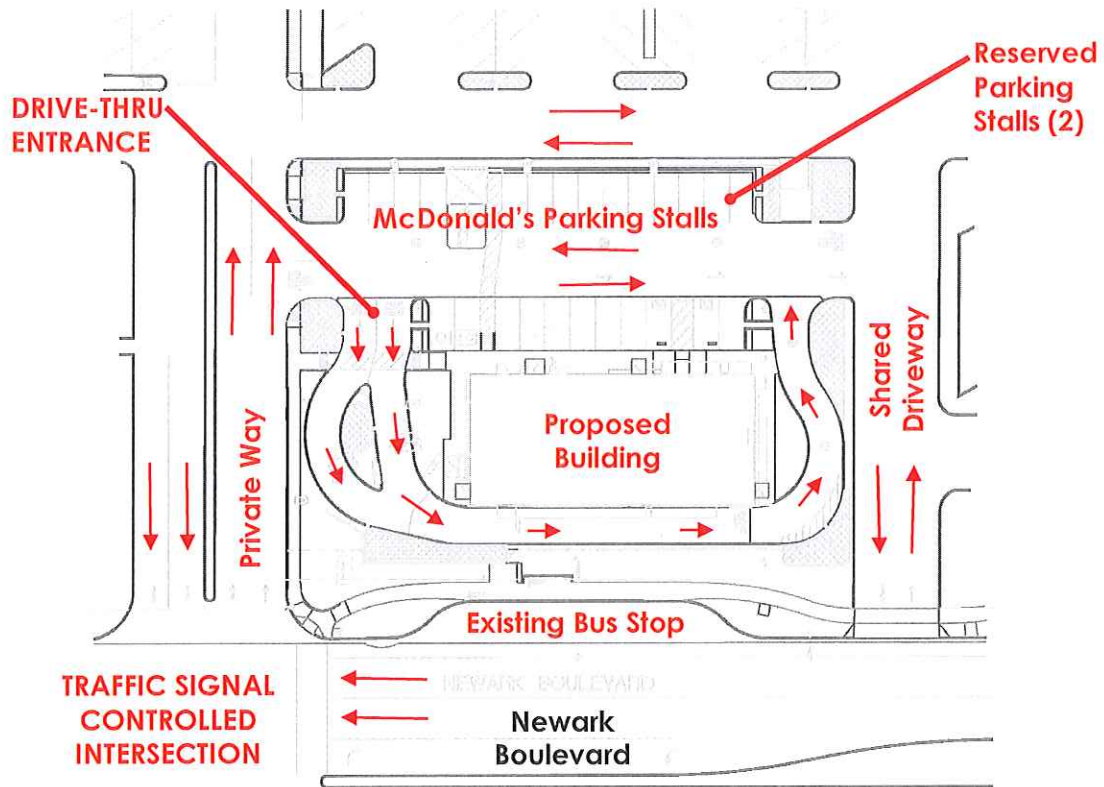


Figure 2. Proposed Drive-Thru and Proposed McDonald's Restaurant Layout

The recommended queue storage for a fast food Drive-Thru from the Drive-Thru entrance to the pick-up window is 240 feet with approximately 12 vehicles^{2 3}. The existing Drive-Thru storage length is approximately 145 feet while the total storage length for the proposed improvements will be 272 feet approximately for the two-lane layout. This results in 13-vehicle queue storage approximately. The proposed improvements will relocate the existing two reserved parking stalls across from the proposed handicap parking stalls.

Stantec staff has identified the feasibility of vehicles making the 180 degree turn from the Private Way into the Drive-Thru entrance and leaving the Drive-Thru to make another 180 degree turn onto the Shared Driveway. As shown from the Autoturn analysis in **Figure 3**, a box representing a vehicle is shown on a path going through the Drive-Thru. The analysis shows Drive-Thru customers can enter

² "How many vehicles do you need to store in a drive through lane? Drive-Through Queue Generation, 1st Edition", Mike Spack, PE, PTOE, <http://www.mikeontraffic.com/how-many-vehicles-do-you-need-to-store-in-a-drive-through-lane-drive-through-queue-generation-1st-ed/>

³ Drive-Through Queue Generation, ITE Technical Council Committee 5d-10, Appendix C, February 2012

Reference: Preliminary Traffic Study for the new Proposed New Two-lane Drive-Thru layout and parking for a McDonald's Restaurant Branch in the City of Newark

from the Private Way and make the turn into the Drive-Thru entrance. They can also exit the Drive-Thru either by turning left onto the McDonald's parking lot or turn onto the Shared Driveway.

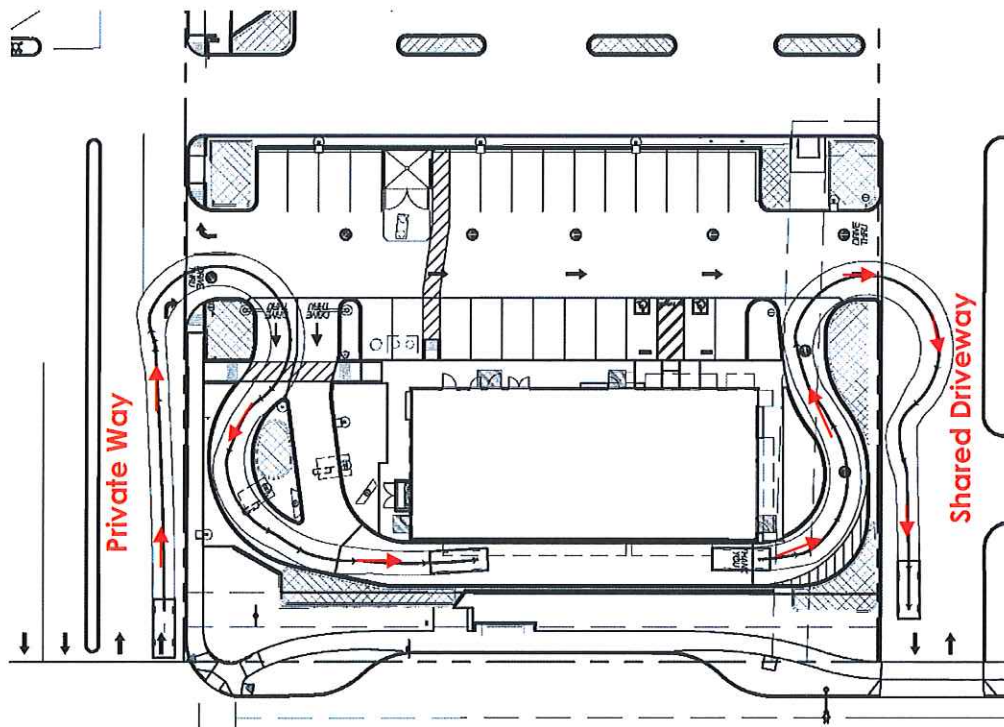


Figure 3. Autoturn Analysis on Drive-Thru vehicles entering and leaving the Drive Thru.

FIELD OBSERVATION

Stantec staff conducted a field observation of the Drive-Thru operations at the McDonald's location on Friday, December 16, 2016, between 7:50 a.m. and 9:50 a.m., which is the busiest weekday period for the restaurant. It was observed that each Drive-Thru customer must stop at two locations: 1) ordering kiosk 2) one window which functions as both payment and pick-up window.

During the start of field observation, the parking lot was half full and Stantec staff observed that not all empty parking stalls were occupied during the peak period because vehicles in queue were blocking the empty parking stalls closer to the existing Drive-Thru entrance. Stantec staff also observed that employees park their vehicles at the adjacent shared parking lot located at the north side of the existing restaurant therefore eliminating the outlier that customers are not able to utilize the empty parking stalls other than the negative effect of the existing Drive-Thru layout.

Reference: Preliminary Traffic Study for the new Proposed New Two-lane Drive-Thru layout and parking for a McDonald's Restaurant Branch in the City of Newark

A customer at the ordering kiosk would spend approximately between 31 seconds to approximately 1 minute 30 seconds depending how familiar they were with the menu and how many items they have to order. The queue starts at the ordering kiosk to the pick-up window. The longest overall time a customer spent throughout the whole Drive-Thru experience was approximately 6 minutes and 54 seconds from the time the vehicle arrived at the McDonald's Drive-Thru ordering kiosk up to the moment they reached the pick-up window and leave. It is safe to add an additional minute to the total queue time for some customer vehicles are already on queue before they reach the Drive-Thru entrance. The shortest overall time observed was approximately 55 seconds and it happened when there were no vehicles waiting in queue. The average time spent by a customer when a queue was present at the Drive-Thru was between four and five minutes.

The parking lot would go from half full to completely full at different periods of time during the two hour observation period. The parking stalls closer to the shared driveway were often utilized first before the parking stalls closer to the Drive-Thru entrance is filled. Approximately four to five parking stalls were blocked by the queue when the queue spills over to the parking lot.

QUEUE ANALYSIS

The maximum nine (9) vehicles on queue were observed for three occurrences and eight vehicles for 4 occurrences between the peak 30-minute period between 8 a.m. and 8:30 a.m. The McDonald's parking lot can only accommodate queues of five vehicles at the ordering kiosk prior extending into the payment/pick-up window. An additional vehicle can queue prior to the Drive-Thru entrance without blocking an existing perpendicular parking stall. Any additional vehicle would spill over to the parking lot travel lane which would block traffic customer vehicles from leaving the premises.

The proposed improvements on the site include a smaller sized restaurant which is expected to reduce the trip generation for the proposed site. The existing restaurant building is approximately 5,191 square feet while the proposed building will be approximately 4,532 square feet. Therefore, the new anticipated vehicles on queue would be 8 vehicles approximately. As mentioned earlier in this report, the existing Drive-Thru storage length is approximately 145 feet which yields 7 vehicles while the total storage length for the proposed improvements will be 272 feet approximately which yields 13 vehicles approximately. There will be no spillover is expected to block the parking stalls with the new proposed layout.

TRIP GENERATION ANALYSIS

Trip generation for the existing building and the proposed building was estimated based on rates provided in the Trip Generation, 9th Edition, published by the Institute of Transportation Engineers (ITE). The existing trips is compared to the proposed trips to estimate expected reductions in trips to the project site.

Table 1 shows the proposed project trip generation during the weekday daily, a.m. and p.m. peak hours. The existing McDonald's Restaurant is generating approximately 2,575 daily trips, including 236 trips (120 inbound trips and 116 outbound trips) during the a.m. peak hour and 169 trips (88 inbound trips and 81 outbound trips) during the p.m. peak hour. The proposed McDonald's

Reference: Preliminary Traffic Study for the new Proposed New Two-lane Drive-Thru layout and parking for a McDonald's Restaurant Branch in the City of Newark

Restaurant is expected to generate approximately 2,248 daily trips, including 206 trips (105 inbound trips and 101 outbound trips) during the a.m. peak hour and 148 trips (77 inbound and 71 outbound) during the p.m. peak hour. Therefore, after deducting the existing trips, the proposed project would generate approximately negative 327 net new daily trips, negative 30 net new trips during the a.m. peak hour and negative 21 net new trips during the p.m. peak hour. The detailed trip generation calculation sheets are attached to this memo.

Table 1 Trip Generation for the Proposed Project

Land Use (ITE Code)	Size		Daily		A.M. Peak Hour			P.M. Peak Hour				
			Rate	Total	Rate	In	Out	Total	Rate	In	Out	Total
Proposed Land Use												
Fast Food w/Drive-Thru (934) - Proposed	5,191	S.F.	496.12	2,248	45.42	105	101	206	32.65	77	71	148
Fast Food w/Drive-Thru (934) - Existing	4,532	S.F.		2,575		120	116	236		88	81	167
Net New Auto Trips			-	-327	-	-15	-15	-30	-	-11	-10	-21

Source: Stantec, April 2017; ITE Trip Generation, 9th Edition, 2012;

CONCLUSIONS

Stantec has reached the following conclusions regarding the proposed Drive-Thru improvements at the restaurant in the City of Newark:

- The proposed addition of a second lane at the entrance of the Drive-Thru would increase queue capacity and decrease the possibility of the queue extending past the Drive-Thru entrance then onto the parking lot blocking access to available parking stalls.
- A second ordering kiosk would decrease the chances of a customer not being able to place an order because a prior vehicle is still blocking the kiosk.
- The relocation of the whole stretch of the Drive-Thru around the new location of the proposed building separates the use of the Drive-Thru and the parking lot, thereby making the transition of arriving and departing customers more efficient.
- By the extension of the length of the Drive-Thru to at least twice the existing total storage capacity will serve more customers efficiently during the peak periods without any queue spillover to the proposed parking lot.
- The Autoturn analysis showed the feasibility of vehicles entering and leaving the Drive-Thru doing 180 degree turns.
- None of the existing amount of parking stalls was lost compared to the proposed layout.
- Reduced size of the proposed building is expected to reduce the number of trips accessing the project site. After deducting the existing trips, the proposed project is expected to reduce the number of vehicle trips by approximately 327 daily trips, 30 trips during the a.m. peak hour and 21 trips during the p.m. peak hour.



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McDonald's USA LLC
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Reference: Preliminary Traffic Study for the new Proposed New Two-lane Drive-Thru layout and parking for a McDonald's Restaurant Branch in the City of Newark

Based on the field observation and the queuing and trip generation analysis, Stantec recommends adding the second Drive-Thru lane and kiosk at this location. Stantec finds the new extended Drive-Thru layout to be efficient and would provide improved daily operation and traffic circulation.

Stantec Consulting Services, Inc.

A handwritten signature in blue ink that reads "Joy Bhattacharya".

Joy Bhattacharya, PE, PTOE
Principal
Phone: 925-296-2107
joy.bhattacharya@stantec.com

TRIP GENERATION
Land Use 934: Fast Food w/ Drive-Thru - GFA

Weekday Traffic

50% entering; 50% exiting
 Average Rate = 496.12 trips per Gross Floor Area (1000 sf)

A.M. Peak Hour

51% entering; 49% exiting
 Average Rate = 45.42 trips per Gross Floor Area (1000 sf)

P.M. Peak Hour

52% entering; 48% exiting
 Average Rate = 32.65 trips per Gross Floor Area (1000 sf)

Variables

T = Average Vehicle Trip Ends
 X = Gross Floor Area (1000 sf)

Input

Gross Floor Area (1000 sf) 5.191

Trip Generation using:

Average Rate
 Adjacent Street Peak Hour Traffic

	Total	Entering	Exiting
Weekday Traffic (average rate) =	2575	1288	1288
A.M. Peak Hour (average rate) =	236	120	116
P.M. Peak Hour (average rate) =	169	88	81

TRIP GENERATION
Land Use 934: Fast Food w/ Drive-Thru - GFA

Weekday Traffic

50% entering; 50% exiting
 Average Rate = 496.12 trips per Gross Floor Area (1000 sf)

A.M. Peak Hour

51% entering; 49% exiting
 Average Rate = 45.42 trips per Gross Floor Area (1000 sf)

P.M. Peak Hour

52% entering; 48% exiting
 Average Rate = 32.65 trips per Gross Floor Area (1000 sf)

Variables

T = Average Vehicle Trip Ends
 X = Gross Floor Area (1000 sf)

Input

Gross Floor Area (1000 sf) 4.532

Trip Generation using:

Average Rate
 Adjacent Street Peak Hour Traffic

	Total	Entering	Exiting
Weekday Traffic (average rate) =	2248	1124	1124
A.M. Peak Hour (average rate) =	206	105	101
P.M. Peak Hour (average rate) =	148	77	71



**MILLER STARR
REGALIA**

1331 N. California Blvd.
Fifth Floor
Walnut Creek, CA 94596

T 925 935 9400
F 925 933 4126
www.mslegal.com

Bryan W. Wenter, AICP
Direct Dial: 925 941 3268
bryan.wenter@mslegal.com

April 11, 2017

VIA HAND DELIVERY

Bernie Nillo, Chairperson
c/o Sofia Mangalam, Association Planner
City of Newark Planning Commission
37101 Newark Boulevard
Newark, CA 94560
Email: sofia.mangalam@newark.org

Re: April 11, 2017 Planning Commission Agenda Item E1.
Replacement and Expansion of McDonald's at 35192 Newark Boulevard

Dear Chairperson Nillo and Commissioners:

This law firm represents Maurice A. Ladrech, Nicole A. Ladrech, Andre A. Ladrech, and Eric. E. Ladrech, the owners of the former Mi Pueblo grocery store at 35156 Newark Boulevard and several parcels in the Rosemont Square Shopping Center that surround the existing McDonald's at 35192 Newark Boulevard. For the reasons explained below, our clients object to the proposed McDonald's expansion project and respectfully request that the Planning Commission deny it.

As you know, the project would involve an expansion of the existing approximately 3,544 square foot McDonald's restaurant with a single drive-thru lane with a queuing capacity of seven vehicles. The expansion project would result in an approximately 4,352 square foot McDonald's restaurant and double drive-thru lanes with a queuing capacity of thirteen vehicles. The project would also involve numerous other improvements, including customer ordering facilities and extensive signage.

State law requires that adjudicative land use decisions such as this must be supported by findings and that the findings be supported by evidence. To be legally adequate, findings must "bridge the analytic gap between the raw evidence and ultimate decision or order." See, e.g., *Topanga Association for a Scenic Community v. County of Los Angeles*, 11 Cal.3d 506, 515 (1974). Each finding must be supported by substantial evidence in the record. See California Code of Civil Procedure § 1094.5.

The proposed findings in the proposed resolution for this project are legally deficient. Instead of connecting the dots between the required findings and the decision, the proposed findings merely regurgitate the requirements of the Newark

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Bernie Nillo, Chairperson
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Zoning Ordinance. The law is well settled that an agency's factual findings cannot merely restate legal requirements. *Topanga*, 11 Cal.3d at 517 n.16 (findings must contain more than just "the language of the applicable legislation").

The proposed findings thus do not meet the minimum standards set forth in *Topanga* and are insufficient to approve this project. See, e.g., *Honey Springs Homeowners Ass'n. v. Board of Supervisors*, 157 Cal.App.3d 1122, 1151 (1984) (a finding that is made "perfunctorily" and "without discussion or deliberation and thus does not show the ... analytical route from evidence to finding will be struck down"); *California Aviation Council v. City of Ceres*, 9 Cal.App.4th 1384, 1395 (1992) (conclusory findings that were not "fact specific" were held to fall "far short of the mark").

There also appears to be no substantial evidence in the record upon which legally adequate findings could be made. For example, there is nothing in the record of which we are aware that would enable the conclusion that the project would "not generate more traffic than the streets in the vicinity can carry without congestion and will not overload utilities." If there is a traffic report that addresses such issues, we have not seen it. The inadequacy of the proposed findings and the lack of substantial evidence in the record precludes the Planning Commission's approval of the project.

In addition, City staff propose to exempt the project from the requirements of the California Environmental Quality Act ("CEQA") and CEQA Guidelines (Cal. Pub. Res. Code § 21000 *et seq.* and 14 Cal Code Regs. § 15000 *et seq.*) pursuant to CEQA Guidelines section 15302. Section 15302 provides an exemption for the "replacement or reconstruction of existing structures or facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced." 14 Cal. Code Regs. § 15302. Projects that qualify for the "replacement exemption" include the replacement of a commercial structure with a new structure of substantially the same size, purpose, and capacity." The McDonald's expansion project cannot rely on this exemption, however, because it would increase the size of the restaurant by approximately 23% and double the drive through capacity.

The proposed CEQA exemption is also not justified because "exceptions" to the exemption apply. In particular, the CEQA Guidelines preclude use of an exemption "where there is a reasonable possibility the project will have a significant impact on the environment due to unusual circumstances." CEQA Guidelines §15300.2(a)(c)(d). Unusual circumstances exist here given the doubling of the project's drive thru capacity. Thus, even if the City could properly exempt the project under the Class 2 "replacement or reconstruction" exemption—which it cannot do for the reasons stated above—the project cannot be determined exempt from CEQA because unusual circumstances exist.

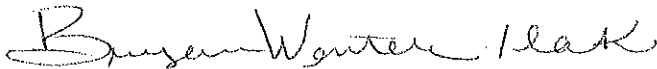
Bernie Nillo, Chairperson
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Our clients also object to the project itself, which would impair the ability of the public on Newark Boulevard to view their existing building and any potential redevelopment of the vacant parcel adjacent to the former Mi Pueblo store. In addition, it appears that the project would drastically alter ingress and egress to the shopping center as well as the traffic flow within the shopping center. We are aware of nothing in the record to show that these issues have been properly analyzed, and any such impacts would violate the First Amendment to Declaration of Establishment of Restrictions, Conditions, Easements and Agreements, which precludes any change that "would adversely affect the ingress and egress routes to and from the Shopping Center or the traffic flow pattern within the Shopping Center"

For the foregoing reasons, we respectfully request the Planning Commission to deny the project.

Sincerely,

MILLER STARR REGALIA

A handwritten signature in cursive script that reads "Bryan W. Wenter".

Bryan W. Wenter, AICP

BWW

cc: Clients
Michael E. DiGeronimo, Esq.