

# Agenda Report

May 5, 2014

**TO:** Honorable Mayor and City Council

**FROM:** Planning & Community Development Department

**SUBJECT: CALL FOR REVIEW OF BOARD OF ZONING APPEALS' DECISION:  
MINOR CONDITIONAL USE PERMIT #6084, AND ASSOCIATED  
PRIVATE TREE REMOVALS, AT 1700 EAST COLORADO  
BOULEVARD ('CHICK-FIL-A')**

## **RECOMMENDATION:**

It is recommended that the City Council:

1. Find that the project is exempt from the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines Section 15301 (Existing Facilities); and
2. Uphold the Board of Zoning Appeals' decision to approve:
  - a. The Zoning Administrator Recommended Specific Findings (Attachment A), with the Conditions of Approval (Attachment C);
  - b. Minor Conditional Use Permit #6084: To allow the expansion of an existing non-conforming use (Drive-Through Business, Restaurant); and
  - c. Private Tree Removal: To allow the removal of one Chinese Elm (*Ulmus parviflora*) and one Southern Magnolia (*Magnolia grandiflora*).

## **EXECUTIVE SUMMARY:**

The City Council has Called for Review the Board of Zoning Appeals' decision to approve Minor Conditional Use Permit #6084, and associated Private Tree Removals. The applications were submitted on behalf of 'Chick-Fil-A' to allow the expansion of the former Burger King building. The proposed project includes: 1) expansion of the existing 3,094-square foot restaurant building to 4,598 square feet (net new 1,504 square feet); 2) reconfiguration of the existing drive-through lane into two lanes; 3) retention one non-conforming freestanding pole sign; 4) installation four new business

identification wall signs; and 5) removal of two protected trees along with a new landscaping plan for the site.

The Board of Zoning Appeals voted 3-2 to approve both the Minor Conditional Use Permit and Private Tree Removals at a public hearing on March 19, 2014. These approvals were consistent with the staff recommendation and the prior decision of the Hearing Officer on December 18, 2013 to also approve the applications.

The effect of a Call for Review is that the prior decision of the Board of Zoning Appeals is vacated. The hearing before the City Council is a *de novo* hearing where the Board has no obligation to honor the prior decision and has the authority to make an entirely different decision.

Staff recommends that the City Council uphold the Board of Zoning Appeals' decision to approve the Minor Conditional Use Permit and Private Tree Removal applications.

### **PROJECT SUMMARY:**

The City Council has Called for Review the Board of Zoning Appeals' decision to approve Minor Conditional Use Permit #6084, and associated Private Tree Removal requests, for 1700 East Colorado Boulevard. The Minor Conditional Use Permit and Private Tree Removal applications were approved by the Board of Zoning Appeals at the March 19, 2014 public hearing.

The applicant, Ed Hale, on behalf of 'Chick-Fil-A Restaurant', and as authorized by the property owner, is requesting to allow the expansion of the existing restaurant building, previously operated as 'Burger King', and proposed to be occupied by 'Chick-Fil-A'. The drive-through service component of the restaurant is no longer permitted in the ECSP-CG-2 (East Colorado Specific Plan, College district) zoning district, and is therefore, a legally established, but non-conforming use. Per Section 17.71.080.E of the Zoning Code, the expansion of a legal non-conforming use is only permitted through the approval of a Minor Conditional Use Permit.

The project consists of: 1) expansion of the existing 3,094-square foot restaurant building to a total size of 4,598 square feet (net new 1,504 square feet); 2) reconfiguration of the existing single drive-through lane into two lanes; 3) retention of one non-conforming freestanding pole sign; 4) installation of four new business identification wall signs; and 5) removal of two protected trees along with a new landscaping plan for the site.

In addition to the Minor Conditional Use Permit, two Private Tree Removal applications have been submitted in order to remove the two protected trees, one Chinese Elm (*Ulmus parviflora*) and one Southern Magnolia (*Magnolia grandiflora*).

**Project Statistics:**

<b>Zoning Designation:</b>	
ECSP-CG-2 (East Colorado Specific Plan, General Commercial, Sub-district 2, The College District sub-area)	
<b>General Plan Designation:</b>	
East Colorado Specific Plan	
<b>Lot Size:</b>	
39,500 square feet (0.91 acres)	
<b>Proposed Building Size:</b>	
4,598 square feet (net new 1,504 square feet)	
<b>Maximum Floor Area Ratio (FAR)::</b>	
None	
<b>Parking Requirement:</b>	
Required	Proposed
10 / 1,000 square feet (46 spaces)	46 spaces
<b>Building Height:</b>	
Maximum Permitted	Proposed
45 feet	23 feet
<b>Setbacks:</b>	
Required	Proposed
Along E. Colorado Blvd.: 5 feet maximum, with additional area for plazas, etc.	16 feet (12'-16' existing)
Along S. Bonnie St.: 5 feet maximum, with additional area for plazas, etc.	15 feet (existing)
Interior Side (east): 15 feet when next to RS or RM zone, none otherwise.	24 feet (at closest point)
Rear (south): 15 feet when next to RS or RM zone, none otherwise.	~200 feet

**BACKGROUND:**

Existing Site Characteristics:

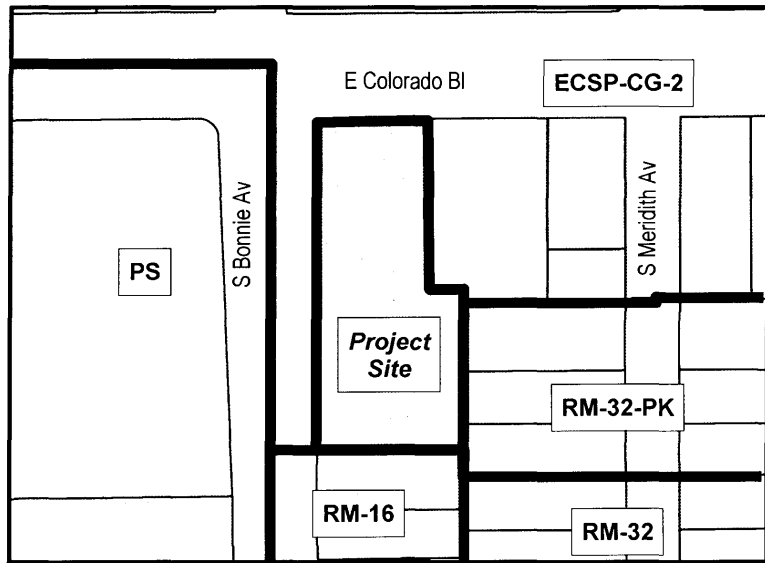
The subject site is a 39,500-square-foot property located on the southeast corner of East Colorado Boulevard and South Bonnie Avenue. It is currently developed with a one-story fast food restaurant measuring approximately 3,100 square feet with a single-lane drive-through service. The drive-through lane is accessed by two driveways on Bonnie Avenue, where drive-through customers exit to Colorado Boulevard. The property is located within the ECSP-CG-2 (East Colorado Specific Plan, General Commercial, Sub-district 2, The College District sub-area) zoning district.

Adjacent Uses:

North: Commercial  
South: Single-Family Residence  
East: Commercial  
West: Institutional (Pasadena City College)

Adjacent Zoning:

North: ECSP-CG-2 (East Colorado Specific Plan, General Commercial, Sub-district 2, The College District sub-area)  
South: RM-16 (Multi-Family Residential, 16 units per acre)  
East: ECSP-CG-2 (East Colorado Specific Plan, General Commercial, Sub-district 2, The College District sub-area, RM-32-PK (Multi-Family Residential, 32 units per acre, Parking Overlay District), and RM-32 (Multi-Family Residential, 32 units per acre)  
West: PS (Public, Semi-Public)



Site and Surrounding Zoning

East Colorado Specific Plan: Purpose and Vision:

The East Colorado Specific Plan was adopted in 2003 and was created in order to guide the revitalization of the three-mile East Colorado Boulevard corridor between Catalina Avenue (two blocks east of Lake Avenue) to the eastern city limits at Sycamore Avenue. The plan goals and objectives are:

- Beautify the streetscape
- Retain the eclectic mix of uses and protect the vitality of small independent businesses.
- Expand the list of allowable land uses to include multi-family and affordable housing.
- Improve on- and off-street parking conditions throughout the Plan area.

- Preserve historic resources.
- Improve public transit, bicycle and pedestrian circulation.
- Create special subdistricts and focus areas or “nodes” to help establish a sense of place along the Boulevard.

As stated in Section II of the Specific Plan, under ‘Plan Goals and Objectives’, the Specific Plan is to also:

- Encourage the development of two- and three-story buildings along Colorado Boulevard with the purpose of improving the, “...street scale”;
- Create redevelopment opportunities and incentives; and
- Provide incentives to intensify development at significant nodes.

Specific to the “College District” sub area (between Holliston Avenue and Allen Avenue), in which the site is located, the Specific Plan intends uses in this area to be focused on college and neighborhood services that serve pedestrians. Examples of these uses include restaurants, cafés, bookstores, office supplies, banks, and motels. Although restaurants are encouraged, new restaurants with drive-through service are not permitted in order to remain focused on pedestrian-oriented uses.

The Specific Plan recognizes in Chapter 5 (“Land Use and Development Potential”) that the limited amount of vacant properties will mean that opportunities for redevelopment will be limited to under-utilized properties. The subject site is slightly less than 40,000 square feet in size, and as proposed the enlarged restaurant would be 4,600 square feet. Because the majority of the remainder of the site will be dedicated to vehicular parking and the drive-through aisles, the site will have a significant amount of remaining development potential.

Recognizing that the majority of the remainder of the site will be dedicated vehicular parking and the drive-through aisles, it could be concluded that a lot coverage of slightly more than ten percent will keep this property in the ‘under-utilized’ category.

The Specific Plan also emphasizes pedestrian and transit-oriented design principles through mixed-use development, street level retail commercial uses, and pedestrian-oriented development where shared parking allows patrons to visit several destinations on one vehicle trip. These can be accomplished through a high intensity compact development pattern where sufficient building height and mass would spatially define public streets and place.

As with any discretionary application such as this, staff has attempted to weigh the vision and purpose of the applicable Specific Plan, in this case East Colorado, with how this same Specific Plan addresses non-conforming uses and structures that result from the adoption of the Specific Plan. How the Specific Plan addresses non-conforming uses is described below.

### East Colorado Specific Plan: Non-Conforming Uses

The Burger King that formerly occupied the building on the subject site was established in 1976. In 2003 the East Colorado Specific Plan was approved, and as codified in the Zoning Code (Ordinance #6958, November 2003), new drive-through businesses were no longer allowed in the 'College District', in which the site is located. From the Plan Area Context section of the Specific Plan (page II-31) it is stated for the College District, "*Since the primary focus is on pedestrians, new drive-through restaurants will no longer be allowed in this area.*" Due to the adoption of the Specific Plan, the Burger King restaurant became a legal, non-conforming use.

However, rather than requiring all existing drive-through operations be removed, or even prohibiting the expansion of existing drive-through businesses, the Specific Plan was consistent with the Zoning Code in dealing with newly created non-conforming uses, such as drive-through businesses, by subjecting them to the same restrictions that apply to other legally established, but currently non-conforming uses elsewhere in Pasadena. From the Land Use and Development Standards section of the Specific Plan, it is stated in the Land Use Regulations table, as a footnote, "*\*All non conforming uses, structures, and signage are subject to the requirements of the Zoning Code, Chapter 17.76*". [In 2003 Section 17.76 was "Nonconforming Uses and Structures", which after the 2005 Zoning Code revision was renamed "Nonconforming Uses, Structures, and Lots" and renumbered Section 17.71.]

How to handle non-conforming uses and structures is important given Pasadena's long history and the evolution of various codes and regulations over the years. It is not uncommon that a use that was established in compliance with rules in effect at that time would no longer be allowed under the current regulations. For example, numerous duplexes and multiple-family developments were constructed in the past in areas now reserved for single-family dwellings. Rather than require a legally constructed duplex to be demolished when the single-family restrictions were imposed, the City's Zoning Code, through Section 17.71, allows the duplex to remain. This is often referred to as "grandfathering" the use.

This is addressed in Section 17.71.040 (Continuation of Nonconforming Uses and Structures) of the Zoning Code, which states, "*Each and every nonconforming use or structure may be continued and maintained, provided that there is no addition, alteration, or enlargement to any use or structure, except as allowed by this Chapter, or unless ordered discontinued, modified, or removed as a public nuisance in compliance with Municipal Code Chapter 14.50 (Property Maintenance and Nuisance Abatement).*"

### Expansion of a Non-Conforming Use

Rather than outright prohibit the alteration or expansion of a non-conforming use, Section 17.71.080.A.1 (Alteration or enlargement of a nonconforming use shall require a permit.) states, "*A nonconforming use may not be altered or enlarged unless a Minor Conditional Use Permit is first obtained, in compliance with Section 17.61.050.*" [Section

17.61.050 regulates the processing of Use Permits.] Using the duplex as an example, if it proposed to enlarge one or both units, but not add units, a Minor Conditional Use Permit may be applied for.

In the current situation before the City Council, it is proposed to enlarge a restaurant with drive-through service. Therefore, as allowed by Section 17.71.080.A.1, the applicant has applied for a Minor Conditional Use Permit, because although new drive-through restaurants are prohibited in the College District, the expansion of existing uses is not.

An example of where specific uses have been made non-conforming, but also prohibited from expanding is in the North Lake Specific Plan. When this Specific Plan was adopted in 1996, it specifically stated that several different land uses, including drive-through businesses, could not be established, nor could existing ones be expanded or altered. Further, the number of queuing positions or service windows at a drive-through could not be increased.

When the North Lake Specific Plan was amended in 2006 however, the prohibition on alteration was revised. As amended, section 17.34.030.C (Drive-through businesses) permits existing drive-through business to increase the number of queuing positions or service windows, subject to the approval of a Conditional Use Permit. In addition, an existing drive-through business may be completely demolished and rebuilt, subject to the approval of a Conditional Use Permit. In both scenarios, the size of the new building may not exceed the size of the existing building.

In summary, the East Colorado Specific Plan no longer permits new drive-through businesses, but allows for the expansion of such existing uses through the approval of a Minor Conditional Use Permit, on a case-by-case basis. The North Lake Specific Plan initially took this a step further by expressly prohibiting their expansion, while later providing some flexibility in order to upgrade and modernize existing drive-through restaurants.

### **ENTITLEMENTS:**

In order to approve a Minor Conditional Use Permit, six findings must be made in the affirmative:

- 1) The proposed use is allowed with a Conditional Use Permit (Major and Minor) or Hillside Development Permit within the applicable zoning district and complies with all applicable provisions of this Zoning Code;
- 2) The location of the proposed use complies with the special purposes of this Zoning Code and the purposes of the applicable zoning district;
- 3) The proposed use is in conformance with the goals, policies, and objectives of the General Plan and the purpose and intent of any applicable specific plan;

- 4) The establishment, maintenance, or operation of the use would not, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the neighborhood of the proposed use;
- 5) The use, as described and conditionally approved, would not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City; and
- 6) The design, location, operating characteristics, and size of the proposed use would be compatible with the existing and future land uses in the vicinity in terms of aesthetic values, character, scale, and view protection.

In addition, Section 17.50.090 (Drive-Through Business) requires that two additional findings be made:

- 7) The proposed parking and circulation plan will provide adequate area for safe queuing and maneuvering of vehicles, and the site design will provide adequate buffering of the use from adjoining land uses; and
- 8) The proposed location of the drive-through business will not result in adverse impacts upon the vicinity after giving consideration to a litter clean-up plan, the hours of operation, and the site plan.

Based on further analysis of the Specific Plan, staff has modified findings #3 and #6 as indicated in Attachment A to this report and as further described below. Attachment B lists the findings as adopted by the Board of Zoning Appeals.

Finding #3:

Finding #3 focuses on goals, policies, and objectives of the General Plan, and the purpose and intent of any applicable specific plan. The General Plan has numerous goals and objectives, several of which may be at odds. For example, commercial growth and economic health are important considerations for any development, but so are pedestrian and non-auto needs. In this case, it is staff's position that these goals and needs can be balanced adequately. Further, the vision of the East Colorado Specific Plan is, "...one of a vibrant mix of land uses, a unified streetscape and a series of distinctive "places" along the Boulevard", is seemingly mutually exclusive with a drive-through business that is auto-oriented and not pedestrian-oriented.

Staff agrees that the vision of the East Colorado Specific Plan is one that is pedestrian-oriented. However, as noted previously, the adopted Specific Plan, and as codified in the Zoning Code, specifically allows non-conforming uses to continue and to be expanded in compliance with regulations set forth in Section 17.71 of the Zoning Code. As stated earlier, if it were the desire of the decision-makers to outlaw such uses and prohibit their expansion, the East Colorado Specific Plan would have included specific language to that effect, similar to the expansion prohibition in the North Lake Specific



Plan. Further, the re-investment in this site through a cosmetic upgrade, including new exterior materials and landscaping, will be reviewed through the Design Review (staff level) process, thereby improving the appearance of the building and how it addresses the street and sidewalk.

### Finding #6

Finding #6 is focused on the how the use, or in this case, the continuance of the use, is compatible with future uses through aesthetic values, character, scale, and view protection. Because drive-through businesses are inherently centered around the automobile and require curb-cuts along sidewalks (in this case, along Colorado Boulevard) this use may not be compatible with future development along Colorado Boulevard as those new buildings will not include a drive-through component. Further, the existing building is set back approximately 16 feet from Colorado Boulevard, which differs from the current regulations that require a fixed setback of five feet.

However, as noted above, the proposed design of the building will be reviewed through the City's Design Review (staff level) process to ensure that the final product is of high quality and meets the high expectations of Pasadena's citizens. This will provide an opportunity to improve a building that would otherwise have remained as it was for the last 40 years, as a 1970's-era corporate design.

Further, the placement of outdoor dining adjacent to the sidewalk provides a method to connect the use with the sidewalk and generate visual interest, as opposed to an unused area of blank paving between the building and the sidewalk. This meets one the Specific Plan goals for The College District, by incorporated plazas and outdoor spaces into new designs.

#### **1. Minor Conditional Use Permit:** To allow expansion of an existing non-conforming use (Drive-Through Business, Restaurant).

A Formula Fast Food Restaurant use is defined in the Zoning Code as a fast-food restaurant which is required by contractual or other arrangements to offer standardized employee uniforms, exterior design, food preparation, ingredients, interior decor, menus, or signs; or adopts an appearance, food presentation format, or name which causes it to be substantially identical to another restaurant regardless of ownership or location. A Drive-Through Business is defined in the Zoning Code as an establishment that sells products or provides services to occupants in vehicles, including drive-in or drive-up windows and drive-through services.

A Formula Fast Food Restaurant use is a permitted use in the ECSP-CG-2 (East Colorado Specific Plan, Commercial, General, The College District sub-area) zoning district; however, Drive-Through Business, Restaurant use is no longer permitted, since the East Colorado Specific Plan zoning district and its land use regulations were established (Ordinance #6958, November 2003). The existing Drive-Through Business, Restaurant ('Burger King') was established at this location in 1976, prior to

the current restriction on Drive-Through Businesses and is therefore, now a non-conforming use. Section 17.71.080.E.1 of the Zoning Code states, "A nonconforming use may not be altered or enlarged unless a Minor Conditional Use Permit is first obtained, in compliance with Section 17.61.050 (this section regulates the processing of Use Permits).

Specific to Drive-Through Businesses, section 17.50.090 (Drive-Through Businesses) of the Zoning Code has specific development standards applicable to drive-through businesses, in addition to specific findings. Some of the development standards are a separation requirement of 500 feet (as described below), a litter clean-up plan, and a requirement that the name of the business be printed on all disposable containers and napkins.

The special findings, in addition to those required for a Minor Conditional Use Permit, focus on the parking and circulation plan, the litter clean-up plan, the hours of operation, and the site plan.

#### Separation Requirements for Restaurants with Drive-Through Service

Section 17.50.090.A of the Zoning Code requires that fast food or formula fast food restaurants with drive-through service be located at least 500 feet from a park and recreation facility, a public or private school, or another fast food or formula fast food restaurant with drive-through service. This separation requirement is measured from site-to-site, not building-to-building.

Within a 500-foot radius of the site there is not a park, recreation facility, or other fast food restaurant with drive-through service, nor is there is a "Public or Private School" within 500 feet. Although Pasadena City College is located directly west of the site across South Bonnie Avenue, ranging 85 feet to 100 feet away, it is a not a "Public or Private School", as defined by the Zoning Code: "*Schools - Public and private. Includes elementary, middle, junior high, and high schools serving kindergarten through 12th-grade students, including denominational and sectarian, boarding schools, and military academies.*" As defined by the Zoning Code, Pasadena City College is a "College – Traditional campus setting": "*Includes community colleges, public or private colleges, universities, and professional schools granting associate arts degrees, certificates, undergraduate and graduate degrees, and requiring for admission at least a high school diploma or equivalent general academic training.*" As a result, the current drive-through business meets, and will continue to meet, the separation requirement.

#### Off-Street Parking and Loading

The off-street parking requirement for a Restaurant Formula Fast Food Use is ten spaces per 1,000 square feet of gross floor area. Based on the new 4,598 square-foot building, a total of 46 parking spaces are required. The existing 49 parking spaces onsite will remain, therefore, will meet the parking required by code.

In addition to parking, the project is required to provide one 12-foot by 30-foot loading space on site. An existing loading space will be relocated to another location behind the enlarged restaurant building, with dimensions of 16 feet by 30 feet. On-site loading, unloading, and trash pick-up will be allowed only between the hours of 7:00 a.m. and 9:00 p.m., Monday through Friday, and between 9:00 a.m. to 5:00 p.m. on Saturdays, and not allowed on Sundays. This shall include maintenance/service vehicles, delivery trucks, and trash trucks. As proposed, the project is in compliance with off-street parking and loading requirements.

### Queuing Study

A Formula Fast Food Restaurant, Drive-Through Business is required to provide a queuing study to determine if the queue lanes required for drive-up service would potentially interfere with the traffic circulation within the parking lot, or to the surrounding streets. A 'Drive-Through Queue Analysis' was conducted by TJW Engineering, Inc. in September 2013. In the absence of any other Chick-Fil-A location in Pasadena, the Queuing Study relies on observations of a similarly-sized 'Chick-Fil-A' restaurant in Costa Mesa, California. This site was chosen because it is similarly situated on a major street (Harbor Boulevard) and has a comparable sales volume to the projected sales volume in the proposed Pasadena site.

Data was collected at three different peak hours: Weekday lunch (11:00 AM to 2:00 PM), Weekday dinner (4:00 PM to 7:00 PM), and weekend lunch (10:30 AM to 2:30 PM). The longest total queue (in number of cars) ranged from a low of eight queued vehicles observed during the weekend dinner period to a high of 13 queued vehicles observed during the weekend lunch period. This facility has one queue lane.

Using this data, it was determined that the proposed side-by-side drive-through lanes, approximately 225 feet in length will provide 135 feet of queuing space between the pick-up window and the order boxes, and the two entry lanes will each provide 88 and 85 feet of queuing space, respectively. Based on the Costa Mesa observations, each vehicle requires approximately 20 to 21 feet of queuing space. The proposed configuration allows the drive-through queuing lanes to split into two lanes with each lane having its own menu board and ordering system. This will result in a more streamlined ordering process, which is an improvement to the current conditions. The study concludes that as designed, the drive-through lanes will provide queuing for 14 vehicles, which is sufficient queuing space to accommodate the anticipated drive-through vehicles during the peak period without over flowing into the parking lot drive aisles.

### Litter Clean-up Plan

A Litter Clean-up Plan was prepared for the proposed project by the applicant. The plan identifies four strategically located trash bins close by to the outdoor seating area. The plan's objective is to maintain an attractive site, free of litter and discarded material. The Plan covers the entire site: parking lot area, drive-through lanes, landscaping area,

walkways, outdoor tables and seating area, exterior windows, doors, lights, canopies, signage, and that monitoring the premises occurs three times daily (early morning, mid-day and evening).

The plan consists of scheduled maintenance procedures to control litter and preventive practices for pest control, food contamination, and discouraging littering by guests and customers. The Clean-up Plan further provides guidelines for personnel to perform the clean-up tasks in a safe manner as to prevent injury and accidents.

### Hours of Operation

Burger King's hours of operation were 6:00 a.m. to 11:00 p.m., Monday to Friday, and 6:00 a.m. to 1:00 a.m., Saturday and Sunday. The new restaurant will retain these hours of operation; however will be closed on Sunday. If Sunday operations were to resume after one year of discontinuance, the hours would be limited to 7:00 a.m. to 10:00 p.m.

In this district, the Zoning Code currently allows all businesses to operate by right from 7:00 a.m. to 10:00 p.m. daily when the use is within 150 feet from a residentially zoned district. A Conditional Use Permit is required when hours of operation occur outside of these hours. In this case, the site is adjacent to a residential zoning district to the south and southeast. Even though this is less than the current 150-foot requirement, the established hours of operation for this site are legal, non-conforming and may be continued and not be subject to review and approval of a Conditional Use Permit.

### Past Complaints

Drive-through service was established on this site in 1976. A search of recent complaints, or potential code violations, found three cases related to this site. The most recent was a complaint for "Violation of delivery hours", wherein the City's Code Enforcement Officer issued a warning to the delivery company (dated April 9, 2012). The violation was abated and the case was closed on April 10, 2012. The other two complaint cases were regarding: 1) a dead tree that needed to be removed (case closed 12/8/2011), and 2) excessive window signs (case closed 5/18/2007). None of these complaints, however, involved the operation of the drive-through service of the restaurant that would be detrimental to the health, safety, or general welfare of persons residing or working in the surrounding area. Furthermore, the project will not result in a change or intensification in use. As such, it is staff's determination that the proposed location of the expanded Restaurant Formula Fast Food Use with Drive-Through Services will not result in a situation that will adversely impact the surrounding uses.

### Traffic Study

A Traffic Study was conducted by Overland Traffic Consultants, Inc. in November 2013. Based on the intersection level of service analysis, it was determined there would not be any significant impacts at any of the six studied intersections or three studied street

segments resulting from the project. While the threshold for a significant impact for a street segment is an increase in the number of traffic trips of five percent or more, the traffic study concluded that the project-related trips have a daily traffic growth along the study segments between 0.95% and 2.28%. The study determined that the following three street segments would experience traffic volume growth up to 2.4% which is subject to staff review and conditions:

1. Colorado Boulevard between Sierra Bonita Avenue and Bonnie Avenue
2. Colorado Boulevard between Bonnie Avenue and Meridith Avenue, and
3. Bonnie Avenue between Colorado Boulevard and Del Mar Boulevard

An analysis of the Pedestrian Environment Quality Index (PEQI) found an average quality along Colorado Boulevard between Bonnie Avenue and Meridith Avenue, and Bicycle Quality Index (BEQI) score of 39, considered low quality. These findings lead to a recommendation that the project contribute funds to the Neighborhood Traffic Management Capital Improvement fund for traffic management measures to protect the local neighborhood, improve pedestrian, bicycle and transit amenities. All Transportation-related conditions of approval are included in Attachment C to this report, as conditions #35-#41.

**2. Private Tree Removal:** To allow the removal of one Chinese Elm (*Ulmus parviflora*) and one Southern Magnolia (*Magnolia grandiflora*).

The site contains a total of 16 trees; three of which are protected specimen trees and 13 that do not qualify for protection. A landscape plan for the entire site proposes removal of 14 trees, two of which are protected trees: one 23-inch DBH (diameter at breast height) Chinese Elm (*Ulmus parviflora*) and one 21-inch DBH Southern Magnolia (*Magnolia grandiflora*).

The Chinese Elm is located along the southern property line and has damaged the block wall between parking lot and adjacent residence to the south. The Southern Magnolia is located in a landscaped strip between the parking lot and existing drive-through lane, on the eastern portion of the site, is in the path of the proposed dual-lane drive-through.

Per Section 8.52.075 of the Pasadena Municipal Code, one of the following six possible findings must be made in order to approve the removal of a tree that qualifies for protection under the Tree Protection Ordinance:

- 1) There is a public benefit as defined in Section 8.52.024(R), or a public health, safety or welfare benefit, to the injury or removal that outweighs the protection of the specific tree;
- 2) The present condition of the tree is such that it is not reasonably likely to survive;
- 3) There is an objective feature of the tree that makes the tree not suitable for the protections of this chapter;

- 4) There would be a substantial hardship to a private property owner in the enjoyment and use of real property if the injury or removal is not permitted;
- 5) To not permit injury to or removal of a tree would constitute a taking of the underlying real property; or
- 6) The project, as defined in Section 17.12.020, includes a landscape design plan that emphasizes a tree canopy that is sustainable over the long term by adhering to the replacement matrix adopted by resolution of the City Council and included in the associated administrative guidelines.

In analyzing these removal requests, it is staff's position that both Finding #4 ("...substantial hardship...") and Finding #6 ("...landscape design plan...") can be made for both trees. For Finding #4, the Chinese Elm has damaged the block wall and the surrounding pavement and curb and the Southern Magnolia is located in the landscape strip between the parking lot and the existing drive-through lane. A new curb will be located approximately where this tree is currently located as part of the proposed re-configuration of the drive-through lanes.

As for Finding #6, the proposed landscape plans meets the replacement requirements of the replacement matrix as shown below.

Trunk of Removed Tree Diameter at Breast Height	Replacement Trees	
	Number	Size
8-12 inches	6	15-gallon, or
	3	24-inch box
13-18 inches	8	15-gallon, or
	4	24-inch box, or
	2	36-inch box
19-36 inches	8	24-inch box, or
	4	36-inch box
37+ inches	12	24-inch box, or
	8	36-inch box

The removal of one 19-inch to 36-inch specimen tree, such as the Chinese Elm, requires the planting of eight (24-inch box) or four (36-inch box) trees. The landscape plan that was submitted shows the planting of 21 new trees: two 15-gallon size Marina Arbutus trees, 13 24-inch box size Marina Arbutus trees, and six 36-inch box size Purple Trumpet trees. Staff finds that the proposed combination of these sizes of new trees meets the required minimum replacement matrix.

Therefore, staff is recommending approval of both tree removal applications, with the condition that the new landscaping will provide replacement trees as indicated on the landscaping plan submitted with this Tree Removal request. Further, the location and species of the new trees must be reviewed and approved in the Final Design Review of the project.

## **PUBLIC HEARINGS AND CALLS FOR REVIEW:**

### Hearing Officer

On December 18, 2013, the Hearing Officer considered the Minor Conditional Use Permit and Private Tree Removal applications at a public hearing. One property owner submitted a letter of opposition to the Hearing Officer and spoke at the public hearing. The main concern expressed was the uncertainty of the City's ability to enforce the conditions of approval of the Minor Conditional Use Permit, should it be approved. The speaker cited the impacts that are currently experienced by residents on South Meridith Avenue, such as deliveries to the retail use located at 1720 East Colorado Boulevard (99 Cents Store), which is adjacent to the subject project site (1700 East Colorado Boulevard).

At the conclusion of public testimony the Hearing Officer concurred with the staff recommendation and approved both the Minor Conditional Use Permit and Private Tree Removal applications.

On January 13, 2014, the City Council, at the request of District 7 Councilmember Tornek, voted to Call for Review the decision of the Hearing Officer to the Board of Zoning Appeals.

### Board of Zoning Appeals

On March 19, 2014, the Board of Zoning Appeals considered the Minor Conditional Use Permit and Private Tree Removal applications at a public hearing. In addition to the applicant team, seven members of the public spoke: five in opposition and two in favor.

The comments from the opponents focused on: 1) noise concerns from speakers used to place order in the drive-through; 2) concerns from traffic and trucks used for loading and unloading; and 3) concerns that the drive-through was incompatible with the surrounding residential uses. The proponents spoke about: 1) the ease of using a drive-through instead of looking for parking; and 2) how the project would improve the site compared to the existing condition.

At the conclusion of the public hearing the Board voted 3-2 to approve both applications, subject to the addition of a condition of approval requiring the installation of sound dampening measures (e.g. landscaping, modifying and upgrading the existing perimeter wall, etc.) along the eastern property line in order to reduce the sound levels due to the drive-through order stations. This condition is #19 in Attachment B to this report.

On March 31, 2014, the City Council, at the request of District 7 Councilmember Tornek, voted to Call for Review the decision of the Board of Zoning Appeals to the City Council.

**ENVIRONMENTAL REVIEW:**

This project has been determined to be exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act (Title 14, Chapter 3, Class 1, Section 15301, Existing Facilities). Class 1 exempts projects that involve negligible or no expansion of an existing use. The project consists of enlarging 3,094 square-foot fast food restaurant with drive-through service ('Burger King') to 4,598 square-foot fast food restaurant ('Chick-Fil-A') with drive-through service. The existing use is a Formula Fast Food Restaurant, Drive-Through Business, Restaurant Service and will remain as such. The project will not result in a change in use or significant expansion of the existing use.

**CONCLUSION:**

It is not uncommon for some goals and objectives of a Specific Plan to be in conflict with other goals and objectives of the same Specific Plan or with other city polices, in this case non-conforming uses. It is the responsibility of the decision-maker to sort through these issues when making a decision on any discretionary land use application.

In this case, it is the staff position that the findings (Attachment A, as modified by staff) can be made to approve the Minor Conditional Use Permit for the expansion of a non-conforming use (Drive-Through Business, Restaurant) and the associated Private Tree Removals to remove one Chinese Elm (*Ulmus parviflora*) and one Southern Magnolia (*Magnolia grandiflora*).

Therefore, it is staff's recommendation to uphold the Board of Zoning Appeals' decision to approve Minor Conditional Use Permit #6084 and the associated Private Tree Removals based on the findings in Attachment A and the conditions of approval in Attachment C.



**FISCAL IMPACT:**

The project will generate revenue from plan check fees and building permit fees.

Respectfully submitted,



VINCENT P. BERTONI, AICP  
Director of Planning & Community  
Development Department

Prepared by:



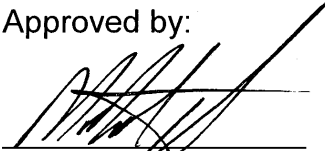
David Sinclair, LEED AP  
Planner

Concurred by:



David Reyes  
Deputy Director of Planning & Community  
Development Department

Approved by:



MICHAEL J. BECK  
City Manager

Attachments: (5)

- Attachment A – Zoning Administrator Recommended Specific Findings
- Attachment B – Board of Zoning Appeals Recommended Specific Findings
- Attachment C – Zoning Administrator and Board of Zoning Appeals Recommended Conditions of Approval
- Attachment D – Board of Zoning Appeals Decision Letter (March 25, 2014)
- Attachment E – Project Plans