

ORDER NO. 2019-04

**ORDER OVERTURNING THE PLANNING COMMISSION'S APPROVAL OF THE
SITE PLAN AND BUILDING DESIGN OF A NEW DOLLAR GENERAL STORE
AT 1121 GALES CREEK ROAD; WASHINGTON COUNTY TAX LOT 1N436B003100;
FILE NUMBER 311-19-000006-PLNG**

WHEREAS, an application (the "Application") for site plan and building design approval was submitted on April 19, 2019 for a new Dollar General store at 1121 Gales Creek Road;

WHEREAS, City planning staff ("Staff") deemed the application complete on May 15, 2019;

WHEREAS, the Planning Commission held a duly-noticed public hearing on June 24, 2019, and voted 5-2 to approve the application;

WHEREAS, Christopher Wilmeth filed a timely appeal of the Planning Commission decision on July 2, 2019;

WHEREAS, the City Council held a duly-noticed Public Hearing on August 12, 2019, to consider an appeal of the Planning Commission's decision;

WHEREAS, the City Council heard testimony from project supporters, project opponents, and staff, and carefully considered the different interpretations of the Forest Grove Development Code offered; and

WHEREAS, the City Council closed the Public Hearing and voted 5-1 to overturn the Planning Commission's decision to approve the application.

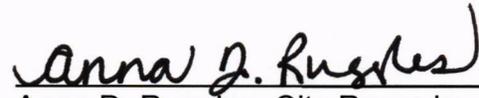
NOW, THEREFORE, THE CITY OF FOREST GROVE ORDERS AS FOLLOWS:

Section 1. The City of Forest Grove City Council hereby adopts the Findings of Fact and Conclusions of Law, attached hereto as Exhibit A.

Section 2. Based on the evidence in the record, and the Findings of Fact and Conclusions of Law included in Exhibit A, the City Council hereby sustains the appeal of the Planning Commission's approval of the Site Plan and Building Design Development Review to allow a new Dollar General store at 1121 Gales Creek Road. Accordingly, the Application is **DENIED**.

Section 3. This Order is effective immediately upon its enactment by the City Council.

PRESENTED AND PASSED the 9th day of September, 2019.



Anna D. Ruggles, City Recorder

APPROVED BY THE MAYOR the 9th day of September, 2019.



Peter B. Truax, Mayor

EXHIBIT A
Order No. 2019-04
Findings of Fact and Conclusions of Law

These Findings of Fact and Conclusions of Law are based on the evidence in the record, including, without limitation, the application materials, public comments, staff reports and deliberations of the City Council.

Finding: The site of the proposed project is 1121 Gales Creek Road. The site is located in the “Gales Creek” Neighborhood Mixed Use (NMU) zoning district as identified in Development Code §17.4.315.

Finding: Development Code §17.3.310(C) Neighborhood Mixed Use (NMU) describes the zone as follows: *The Neighborhood Mixed Use zone is established to support the development of pedestrian-friendly mixed use neighborhoods with a diversity in the mix of housing types and neighborhood-scale retail sales and service, office, civic or recreational uses. Most non-residential uses must be located within a “Village Center”. The Village Center is intended to serve as the center of the neighborhood, providing convenient access to goods and services as well as “third places” where residents can gather. The NMU Zone implements the Comprehensive Plan’s Mixed Use designation. Mixed Use Planned Development approval is required in the NMU Zone in order to ensure that the objectives of the Comprehensive Plan are addressed.*

Finding: Section 17.12.130.D.1 of the Development Code defines General Retail - Sales Oriented as *“Establishments which engage in consumer-oriented sales, leasing and rental of consumer, home and business goods. Examples include sales, leasing and rental of art supplies, bicycles, clothing, dry goods, electronic equipment, fabric, gifts, groceries, hardware, household products, jewelry, pets and pet products, pharmaceuticals, plants, printed materials, stationary and videos. The sales-oriented category excludes large-scale consumer products (see §17.12.130(D)(4) Bulk Sales) and those sold primarily outdoors (see §17.12.130 (D)(5), Outdoor Sales).”* Dollar General is a variety store with multiple product lines. Because it engages in consumer-oriented sales, the proposed use would fall within the General Retail – Sales Oriented definition.

Finding: The application is for a site and design review permit to allow for a new retail store. Development Code §17.3.320 Table 3-10 *Commercial and Mixed Use Zones – Use Table* lists General Retail – Sales Oriented as a Limited use in the Neighborhood Mixed Use zoning district. Development Code §17.3.320, Table 3-10, Footnote No.16 imposes a single limitation on General Retail – Sales Oriented uses proposed in the NMU zone, that the **“Use is only permitted within a Village Center of a Mixed Use Planned Development approved pursuant to §17.4.300”** (emphasis added).

Finding: Additionally, while the Development Code does not provide a definition of a “Village Center”, § 17.3.310.C provides the following description: “Most non-residential uses [in the NMU zone] must be located within a “Village Center.” The Village Center is intended to serve as the center of the neighborhood, providing convenient access to goods and services as well as ‘third places’ where residents can gather. The NMU Zone implements in Comprehensive Plan’s Mixed Use designation. **Mixed Use Planned Development approval is required in the NMU Zone in order to ensure that the objectives of the Comprehensive Plan are addressed”** (emphasis added).

Finding: Development Code §17.3.320, Table 3-10, Footnote No. 16, and 17.3.310.C, together require designation of a Village Center through the approval of a Mixed Use Planned Development to site a General Retail - Sales Oriented use in the NMU zone.

Finding: A Village Center has not yet been established in the Gales Creek NMU zoning district. Until such time as a Village Center is duly established pursuant to §17.4.300 et seq., as required by Development Code §17.3.320, Table 3-10, Footnote No. 16, and §17.3.310.C, a new General Retail - Sales Oriented use may not be approved in the Gales Creek NMU zoning district.

Conclusion: Because the proposal is for a new General Retail - Sales Oriented use, and because it is proposed to be sited in the Gales Creek NMU zoning district, the use must be sited in a Village Center. Because Development Code §17.3.320 Table 3-10 Footnote No. 16 and §17.3.310.C require that Sales-Oriented Retail uses be located only within a Village Center approved as part of a Mixed Use Planned Development, and because no Village Center location has been established by that process in the Gales Creek NMU zoning district, the application for a Dollar General store at 1121 Gales Creek Road must be denied.



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<i>CITY RECORDER USE ONLY:</i>	
AGENDA ITEM #:	<u>6.</u>
MEETING DATE:	<u>09/09/2019</u>
FINAL ACTION:	<u>Order No. 2019-04</u>

CITY COUNCIL STAFF REPORT

TO: *City Council*

FROM: *Jesse VanderZanden, City Manager*

PROJECT TEAM: *Bryan Pohl, Community Development Director
Spencer Parsons, City Attorney
James Reitz (AICP), Senior Planner*

MEETING DATE: *September 9, 2019*

SUBJECT TITLE: Motion for Adoption of Order No. 2019-04
File No. 311-19-000006-PLNG

ACTION REQUESTED:	Ordinance	<input checked="" type="checkbox"/>	Order	<input type="checkbox"/>	Resolution	<input checked="" type="checkbox"/>	Motion	<input type="checkbox"/>	Informational
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X all that apply

BACKGROUND: At the August 12, 2019, City Council meeting, the Council voted to deny site plan approval for the proposed Dollar General store at 1121 Gales Creek Road. The Council directed staff to prepare an Order memorializing this decision. The City Attorney and staff have prepared the attached Order and Findings for adoption.

STAFF RECOMMENDATION: Staff recommends that the City Council adopt Order Number 2019-04.

ATTACHMENTS: Order Number 2019-04 and Exhibit A "Findings."

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