



# MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: August 13, 2008

**APPLICATION:** Conditional Use Permit No. UP08-0022; That's Yogurt

**APPLICATION SUMMARY:** A request to locate a new yogurt shop in 1,730 square feet of a vacant building at 242 Serra Way.

**LOCATION:** 242 Serra Way (APN: 086-07-043)  
**APPLICANT:** Hanh Nguyen, P.O. Box 361733 Milpitas, CA 95136  
**OWNER:** Serra Way LLC (Lap Tang), 380 N First Street San Jose, CA 95112

**RECOMMENDATION:** Staff recommends that the Planning Commission:  
**1. Close the public hearing; and**  
**2. Adopt Resolution No. 08-037 approving the project subject to the conditions of approval.**

**PROJECT DATA:**  
General Plan/  
**Zoning Designation:** General Commercial (GNC/C2)  
**Overlay District:** Site and Architectural Overlay (S) and Gateway Office Overlay Combining District (OO)

**CEQA Determination:** Categorically exempt pursuant to Section 15301 (Existing Facilities)

**PLANNER:** Julie Moloney, Associate Planner

**PJ:** 2538

**ATTACHMENTS:** A. Resolution No. 08-037  
Exhibit 1: Conditions of Approval  
B. Site/Floor Plans

# LOCATION MAP



**BACKGROUND**

In 1992, Blockbuster Video was approved to locate in the building at 242 Serra Way, Blockbuster Video left that location in 2007 and the building has since been vacant. The building is part of the larger Serra Center, which also includes Big Lots, multiple hair and nail salons, a Walgreens and a Denny’s Restaurant. On June 30, 2008, Hanh Nguyen applied to locate a new yogurt shop in a portion of the vacant building (1,730 square feet) previously occupied by Blockbuster Video.

**PROJECT DESCRIPTION**

The project site is located in a free standing building in the parking lot at the Serra Center, at the intersection of Serra Way and West Calaveras Boulevard. Commercial uses surround the site to the north, south, east and west. See previous page for a vicinity map.

The project proposal consists of a 1,730 square foot yogurt store with ten seats inside and four seats outside. The proposal is a “self-serve” yogurt store where the customers will serve themselves yogurt and toppings, and then pay for their yogurt at the counter. No table service is proposed. The floor plan also includes a prep area, restrooms, a private office and storage space. The business is proposing to be open between the hours of 8:00 AM and 12:00 AM (Midnight).

***Parking***

The applicant is proposing to have eight seats inside the store and is asking for seven seats outside as well. Per Section 53.23(7) of the Milpitas Zoning Ordinance, a take-out restaurant of this size that is proposing 15 seats will require a total of eight parking spaces. One parking space is required per every 2.5 seats, and one parking space is required per every 50 square feet of ordering/takeout area.

Since the previous tenant was a retail commercial user, staff determined that the yogurt shop use is less intense in the parking requirement. Retail uses require one parking space per 200 square feet of Gross Floor Area (GFA). A 1,730 square foot retail store would require nine parking spaces. Since the yogurt shop only requires eight parking spaces, it is apparent that the shopping center has enough parking for the proposed use. Therefore, the proposed project meets the parking requirements.

**ADOPTED PLANS AND ORDINANCES CONSISTENCY**

***General Plan***

The table below outlines the project’s consistency with applicable General Plan Guiding Principles and Implementing Policies:

**Table 1**  
**General Plan Consistency**

Principles/Policies	Consistency Finding
<p><i>2.a-I-3: Encourage economic pursuits which will strengthen and promote development through stability and balance</i></p>	<p>Consistent. This application is a business opportunity in a building that has been vacant for approximately one year.</p>
<p><i>2.a-I-5: Maintain policies that promote a strong economy</i></p>	<p>Consistent. This application is a business opportunity in a building that has been</p>

<i>which provides economic opportunities for all Milpitas Residents within existing environmental, social fiscal and land use constraints.</i>	vacant for approximately one year.
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**Table 2**  
**Midtown Specific Plan Consistency**

Principles/Policies	Consistency Finding
<i>Goal 1: Encourage a compatible mixture of residential, retail, office, service-oriented commercial and industrial uses within the Midtown.</i>	Consistent. This application is for a new restaurant establishment which is compatible with the existing uses at the Serra Center.
<i>Policy 3.16: Provide for the continuation of retail development along the Calaveras Boulevard corridor.</i>	Consistent. This site is at the intersection of Serra Way and West Calaveras Boulevard. The establishment of a new restaurant use promotes retail development in the area.

The project is consistent with the Milpitas General Plan and the Midtown Specific Plan in that the new yogurt shop serves the civic, cultural, business and professional life as well as provides economic opportunities for all Milpitas residents.

***Zoning Ordinance***

The project site is located within the General Commercial Zoning District and within the Site and Architectural Overlay and the Gateway Office Overlay Combining District. The proposed restaurant is a Conditionally Permitted Use in the General Commercial Zoning District (*Section 19.03-36 of the Zoning Ordinance*) with the approval by the Planning Commission. The purpose of the Gateway Office Overlay Combining District is to provide for higher intensity, Class A office development at gateways to the City of Milpitas. This overlay would be applicable should the site redevelop in the future. The application for the yogurt shop is compatible with the overlay because the use is proposed in an existing building.

The proposed use will not be detrimental or injurious to the property or improvements in the vicinity in that the use is proposed in an existing building which has stood vacant for approximately one year. The site is surrounded by commercial uses; therefore no residential uses will be impacted by the proposed hours of operation or outdoor seating. Furthermore, the use will not be detrimental or injurious to the public health safety or general welfare because the project will be consistent with the health department and Milpitas Building and Safety codes.

**ENVIRONMENTAL REVIEW**

The Planning Division conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). Staff determined that the project is categorically exempt from further environmental review pursuant to Section 15301 for “Existing Facilities.”

**PUBLIC COMMENT/OUTREACH**

Staff publicly noticed the application in accordance with City and State law. As of the time of writing this report, there have been no inquiries from the public.

**CONCLUSION**

The project is consistent with the General Plan, Midtown Specific Plan and the Zoning Ordinance and meets the parking requirements. The proposal will serve the neighboring uses and will provide alternate types of food in the area for residents and visitors.

**RECOMMENDATION**

**STAFF RECOMMENDS THAT** the Planning Commission adopt Resolution No. 08-037 approving Conditional Use Permit No. UP08-0022, subject to the attached Conditions of Approval.

*Attachments:*

- A. Resolution No. 08-037  
Exhibit 1: Conditions of Approval
- B. Site/Floor Plans

## RESOLUTION NO. 08-037

### A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT NO. UP08-0022; THAT'S YOGURT, TO ALLOW FOR A NEW RESTAURANT TO LOCATE WITHIN THE SERRA CENTER AT 242 SERRA WAY

**WHEREAS**, on June 30, 2008, an application was submitted by Hahn Nguyen, P.O Box 361733, Milpitas, CA 93506, to allow for a new 1,730 square foot yogurt shop within an existing building at 242 Serra Way (APN 086-07-043). The property is located within the General Commercial Zoning with a Site and Architectural Overlay and a Gateway Office Overlay Combining District (C2-S-OO) and is within the Midtown Specific Plan Area; and

**WHEREAS**, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission determine this project is categorically except pursuant to Section 15301 for "Existing Facilities" of the California Environmental Quality Act Guidelines; and

**WHEREAS**, on August 13, 2008, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

**NOW THEREFORE**, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

**Section 1:** The recitals set forth above are true and correct and incorporated herein by reference.

**Section 2:** The project is categorically except pursuant to Section 15301 of the California Environmental Quality Act Guidelines for "Existing Facilities."

**Section 3:** The project is consistent with the Milpitas General Plan Implementation Policies and Guidelines, the Midtown Specific Plan and the Zoning Ordinance in that the new restaurant serves the civic, cultural, business and professional life as well as provides economic opportunities for all Milpitas residents and conforms to the development and operational standards for the zone.

**Section 4:** The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare in that the use, including the hours of operation and outdoor seating, is conducted within a commercial center and is not near any residential properties, and will be consistent with the County Health department and Milpitas Building and Safety codes.

**Section 5:** The Planning Commission of the City of Milpitas hereby approves Conditional Use Permit No. UP08-0022, That's Yogurt, subject to the above Findings, and Conditions of Approval attached hereto as Exhibit 1.

**PASSED AND ADOPTED** at a regular meeting of the Planning Commission of the City of Milpitas on August 13, 2008.

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Chair

**TO WIT:**

**I HEREBY CERTIFY** that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on August 13, 2008, and carried by the following roll call vote:

<b>COMMISSIONER</b>	<b>AYES</b>	<b>NOES</b>	<b>OTHER</b>
Cliff Williams			
Gunawan Ali-Santosa			
Lawrence Ciardella			
Alexander Galang			
Sudhir Mandal			
Gurdev Sandhu			
Noella Tabladillo			
Aslam Ali			

**EXHIBIT 1**

**CONDITIONS OF APPROVAL  
CONDITIONAL USE PERMIT NO. UP08-0022**

**General Conditions**

1. The owner or designee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on August 13, 2008, in accordance with these Conditions of Approval. (P)
2. Any deviation from the approved site plan, floor plans, elevations, or other approved submittal shall require that, prior to the issuance of building permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. (P)
3. Conditional Use Permit No. UP08-0022 shall become null and void if the project is not commenced within 18 months from the date of approval. Pursuant to Section 64.04-2 of the Zoning Ordinance of the City of Milpitas, since the project requires the issuance of a building permit, the project shall not be deemed to have commenced until the date of the building permit is issued. (P)
4. Pursuant to Section 64.04-1, the owner or designee shall have the right to request an extension of UP08-0022 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein. (P)
5. This Conditional Use Permit is for a 1,730 square foot yogurt shop with a maximum of eight indoor seats and seven outdoor seats. (P)
6. This use shall be conducted in compliance with all appropriate local, state and federal laws and regulations and in conformance with the approved plans. (P)
7. The restaurant shall adhere to the following guidelines in perpetuity:
  - a. Keep garbage dumpsters clean inside and out; replace very dirty dumpsters with new, clean ones.
  - b. Double or triple bag waste to prevent leaking.
  - c. Place, do not drop or throw, waste-filled bags, to prevent leaking.
  - d. Keep the ground under and around the garbage dumpsters swept.
  - e. Sprinkle the ground lightly after sweeping with a mixture of water and a little bleach.(P)

8. The business owner shall hold training sessions to instruct their employees on the proper procedures in the handling and disposal of food items; the general maintenance and use of the compactor and any other procedures that would assist the business in complying with all State and local health and sanitation standards (refer to the County of Santa Clara Department of Environmental Health at (408) 729-5155 for their guidelines). (P)
9. Washing of containers and equipment shall be conducted in the kitchen area such that wash water may drain into the sanitary sewer. (P)
10. Prior to building permit issuance, the applicant shall submit tenant improvement plans that incorporate the following requirement: All floor drains, trash compactors, and indoor or covered mat and equipment washing areas shall drain to the sanitary sewer. (P)
11. If at the time of application for building permit there is a project job account balance due to the City for recovery of fees, review of permits will not be initiated until the balance is paid in full. (P)
12. If at the time of application for a certificate of occupancy there is a project job account balance due to the City for recovery of review fees, a certificate of occupancy shall not be issued until the balance is paid in full. (P)
13. No sign(s) are approved with this use permit. All signs shall comply with the Approved Sign Program for the Serra Center. (P)

# CONDITIONAL USE PERMIT FOR: THAT'S YOGURT

APN # 086-07-043

242 SERRA WAY  
MILPITAS, CA

RECEIVED

JUN 30 2008

CITY OF MILPITAS  
PLANNING DIVISION

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fax 408.298.4245  
www.habitec.com

DRAWING SYMBOLS	
	COLUMN GRID LINE
	SECTION
	DETAIL
	ELEVATION
	INTERIOR ELEVATION
	ELEVATION
	ROOM IDENTIFICATION
	WINDOW IDENTIFICATION
	DOOR IDENTIFICATION
	DOOR TYPE
	MATCH LINE
	REVISION CLOUD
	DELTA

MATERIAL SYMBOLS	
	EARTH (SECTION)
	CONCRETE (SECTION)
	CONCRETE MASONRY UNIT (PLAN & SECTION)
	WOOD MEMBER (BLOCKING)
	WOOD MEMBER (CONTINUOUS, NOMINAL SIZE INDICATED)
	PLYWOOD
	ARCHITECTURAL FINISH MILLWORK
	GYPSUM WALL BOARD OR SAND (SECTION)
	METAL (STEEL OR IRON)
	BATT INSULATION
	RIGID INSULATION BOARD OR TILE

SYMBOLS	
#	AND
∠	ANGLE
@	AT
⊕	CENTERLINE
°	DEGREES
Δ	DELTA
⊙	DIAMETER
⌒	FLOKLINE
≥	GREATER THAN OR EQUAL TO
≤	LESS THAN OR EQUAL TO
±	PENNY
±	PLUS OR MINUS
PL	PROPERTY LINE OR PLATE
■	SQUARE
#	POUND

NOT USED

OPERATIONAL DESCRIPTION

\* HOURS OF OPERATION: 7:50 AM TO 12:00 AM  
\* NUMBER OF EMPLOYEES: 2

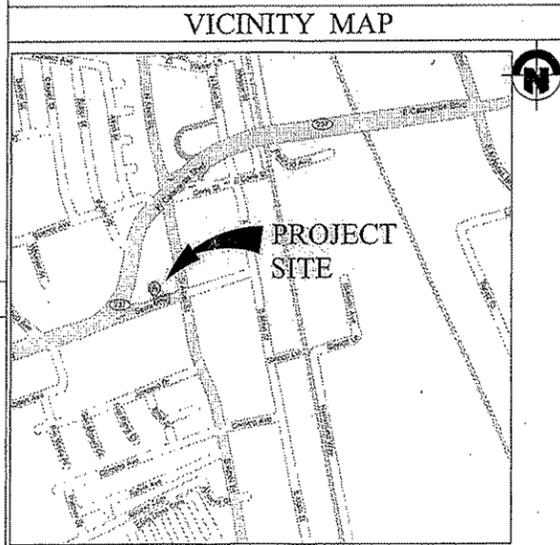
THAT'S YOGURT IS A YOGURT RETAIL STORE PROVIDING SELF-SERVE YOGURT TO CUSTOMERS WITH NON-FAT REFRESHING YOGURT

PROJECT DATA	
APN #	086-07-043
NO. OF BUILDINGS	1
NO. OF STORIES	1
LOT SIZE	1.18 ACRES
ZONE	C
BUILDING AREA	4,420 S.F.
BUILDING HEIGHT	23'
PARKING (EXISTING)	EXISTING STRIP MALL PARKING LOT
SPRINKLERED	YES, THROUGHOUT
TYPE OF CONSTRUCTION	V-N
TYPE OF OCCUPANCY (E)	B-2
BUILDING CODE	2007 U.B.C., C.B.C., U.M.C., U.P.C., U.F.C., C.F.C., C.M.C., C.E.C., 2005 N.E.C. AND ADOPTED CODES & ORDINANCES
PROJECT AREA	4,130 S.F.
OCCUPANCY (PROPOSED)	M (RETAIL)
USE (PROPOSED)	YOGURT STORE

SCOPE OF WORK

CONDITIONAL USE PERMIT APPLICATION FOR A YOGURT RETAIL STORE

DRAWING INDEX	
ARCHITECTURAL	
1	COVER SHEET & PROJECT INFORMATION
2	PARCEL MAP, (B) SITE PLAN & NOTES
3	(B) PROPOSED FLOOR PLAN



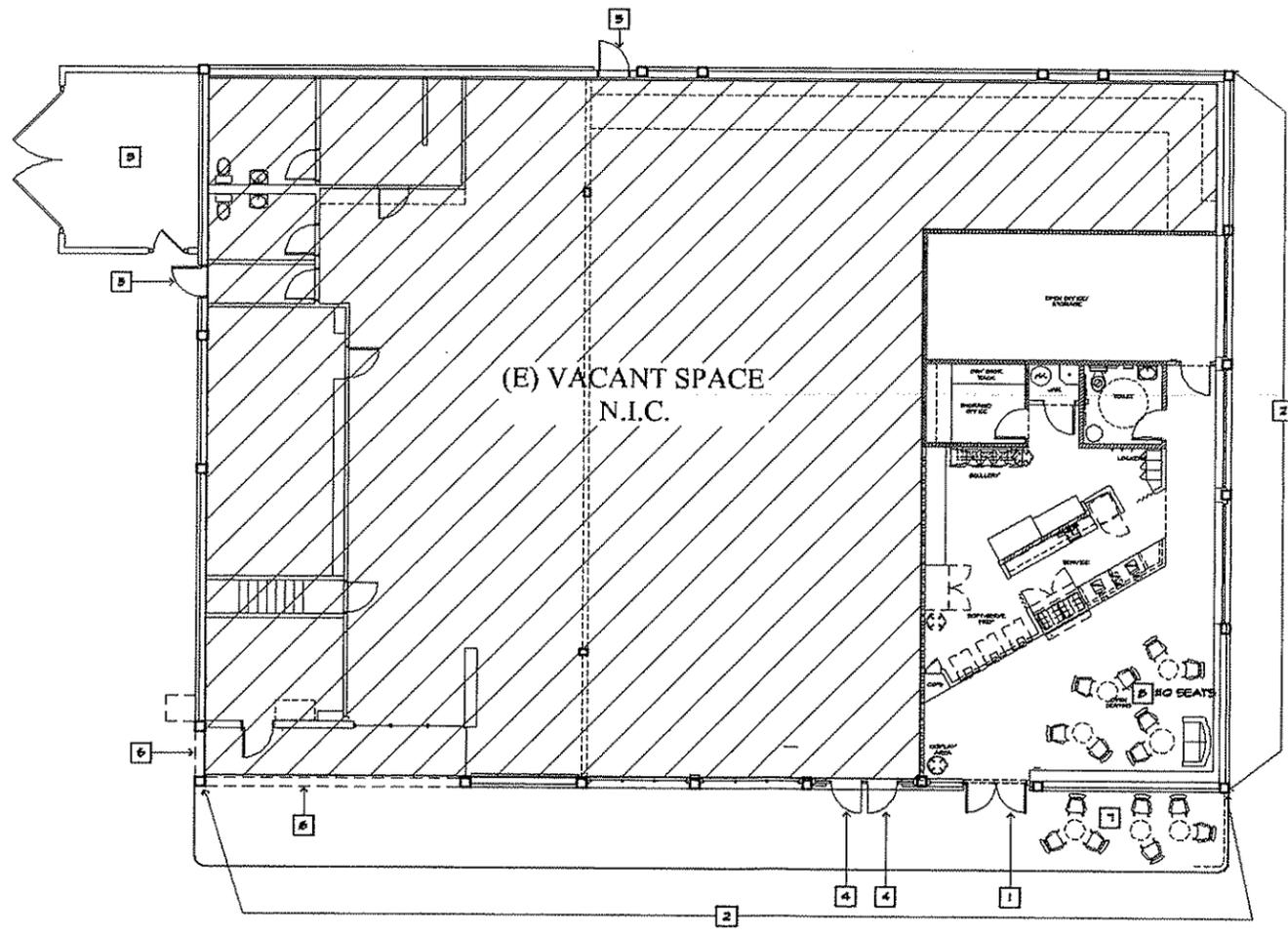
CONSULTANTS	
<b>OWNER</b> SERRA WAY, LLC CONTACT: LAP TANG 350 N. FIRST ST. SAN JOSE, CALIFORNIA 95112	<b>ARCHITECT</b> HABITEC ARCHITECTURE CONTACT: HANH NGUYEN 111 W. ST. JOHN ST., STE. 450 SAN JOSE, CA. 95113 PH # (408) 471-0606 FAX (408) 298-4245
<b>TENANT</b> THAT'S YOGURT 242 SERRA WAY MILPITAS, CALIFORNIA	<b>CONTRACTOR</b> T.B.D.

THAT'S YOGURT  
CONDITIONAL USE PERMIT  
242 SERRA WAY  
MILPITAS, CALIFORNIA

REVISIONS	
06.30.08	C.U.P. SUBMITTAL
COVER SHEET & PROJECT INFORMATION	
Date	June 23, 2008
Scale	N/A
Drawn	NTTH
No.	HN-0801
Sheet	1



Yogurt\Milpas\Ariol\Cup\1  
that's yogurt\_3.dwg



PROPOSED FLOOR PLAN  
1/8" = 1'-0" 0 2' 4' 8' 16' 24'



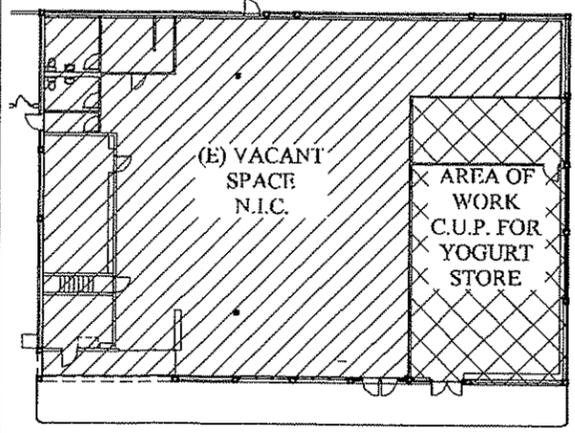
SHEET NOTES

- 1 REMOVE (E) STOREFRONT WINDOW AS REQD. FOR NEW DOUBLE STOREFRONT DOOR INSTALLATION, NEW DOOR TO MATCH (E) OR APPROVED EQUAL.
- 2 PAINT (E) EXTERIOR WALL WITH NEW PAINT AS REQD. FOR NEW & FINISHED LOOK WHERE INDICATED, COLOR.
- 3 (E) TRASH ENCLOSURE
- 4 (E) SINGLE STOREFRONT DOOR TO REMAIN
- 5 (E) STEEL DOOR TO REMAIN
- 6 (E) EXTERIOR SORFIT
- 7 PROPOSED NEW OUTDOOR SEATING AREA
- 8 PROPOSED NEW INDOOR SEATING AREA

NOTE: FOR MORE INFORMATION, SEE SHEET #2

PROPOSED HOURS OF OPERATION

DAYS:	HOURS:
MONDAY-THURSDAY	8 AM - 11 PM
FRIDAY & SATURDAY	8 AM - MIDNIGHT
SUNDAY	9 AM - 11 PM



KEY PLAN

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**THAT'S YOGURT**  
CONDITIONAL USE PERMIT  
242 SERRA WAY  
MILPITAS, CALIFORNIA

REVISIONS

08-30-08	C.U.P. SUBMITTAL
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PROPOSED FLOOR PLAN  
KEY PLAN & NOTES

Date:	June 23, 2008
Scale:	AS SHOWN
Drawn:	NTHH
App:	HN-CB01
Sheet:	

CONDITIONAL USE PERMIT

PLOTTER: 05/27/08