



## MILPITAS PLANNING COMMISSION AGENDA REPORT

**PUBLIC HEARING**

Meeting Date: September 9, 2009

---

**APPLICATION:** **CONDITIONAL USE PERMIT AMENDMENT NO. UA09-0005,  
CRAWDAD HOUSE RESTAURANT**

APPLICATION  
SUMMARY:

A request to add sales of beer and wine to an existing restaurant.

LOCATION:

217 W. Calaveras Blvd. (APN: 22-25-048)

APPLICANT:

Norris Mitchell. 310 S. Central Pkwy., Mountain House, CA 95391

PROPERTY OWNER:

Lo Fong Trustee, 15 Oakwood Blvd., Atherton, CA 94207

**RECOMMENDATION:**

**Staff recommends that the Planning Commission:**

- 1. Close the public hearing; and**
- 2. Adopt Resolution No. 09-041 approving the project subject to conditions of approval.**

PROJECT DATA:

General Plan/

Zoning Designation:

General Commercial (GNC)/General Commercial (C2)

Overlay District:

Office Overlay and Site and Architectural Overlay (OO-S)

Specific Plan:

Midtown Specific Plan Area

Site Area:

7.63-acre

Tenant Square footage:

2,000 square feet

Dining Area

42 seats

CEQA Determination:

Categorically Exempt from further environmental review pursuant to Class 1, Section 15301 (Existing Facilities) of the California Environmental Quality Act (CEQA).

PLANNER:

Cindy Hom, Assistant Planner

PJ:

ATTACHMENTS:

- Resolution No. 09-041
- Plans
- Project Letter



## BACKGROUND

In 1976, Planning Commission granted site and architectural approval for the development of Calaveras Plaza Shopping Center. On April 28, 1999, the Planning Commission approved Conditional Use Permit No. 1506 that allowed for a 2,000 square foot fast food/take out establishment with no sales of beer and wine. The former restaurant tenant was Mr. Chau's, a Chinese fast food/take out establishment. The new business that is taking over the tenant space is Crawdad House, which serves Shanghai spicy crawfish, crab and other foods items.

On July 8, 2009, Norris Mitchell with Nor-Cal Restaurant Designs submitted an application to add sales of beer and wine for on-site consumption in conjunction with an existing restaurant with no changes to the floor plan or hours of operation. The application is submitted pursuant to Milpitas Municipal Code XI-10-5.02-1 (8) (Restaurant with on-site service of alcohol).

## PROJECT DESCRIPTION

The project site is a 7.63 acre parcel that is bounded by West Calaveras Boulevard to east and south, commercial buildings to the west, and residential homes to the north. The parcel is developed with a 43,000 square foot multi-tenant commercial center, 431 parking spaces, and associated site improvements.

The project site is located within the Milpitas Midtown Specific Plan area and is zoned General Commercial with an Office Overlay and Site and Architectural Overlay (C2-OO-S). The project site is surrounded by commercial retail and service uses to the west, south, and east and residential uses to the north. A vicinity map of the subject site location is included on the previous page.

The project proposes to add sales of beer and wine in conjunction with an existing restaurant with no changes to the floor plan or hours of operation.

### *Development Standards*

With no proposed changes to the site or building, the site maintains compliance with the C2 development standards and parking standards.

## 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**

<b>Policy</b>	<b>Consistency Finding</b>
<i>2.a-I-3: Encourage economic pursuits which will strengthen and promote development through stability and balance.</i>	<b>Consistent.</b> The project provides the city with a dining destination within one of Milpitas Commercial gateway locations.

**Zoning Ordinance**

The project is consistent with the Milpitas Zoning Ordinance in terms of land use and development standards. Restaurants with alcohol service are conditionally permitted in the General Commercial Zoning District. The project proposed no site or building modifications and maintains compliance with development standards in terms of setbacks, height, floor area coverage, and parking.

The proposed service of all beer and wine will not be detrimental or injurious to property, improvements, public health, safety, and general welfare. The existing restaurant is located within the Calaveras Plaza shopping center that includes a variety of retail shopping and services. The proposed sale of beer and wine would be ancillary to the meal service. Given that this use is adjacent to residential homes (approximately 95-feet) and is within proximity of Spangler School (approximately 661-feet) *staff recommends* as a condition, that the restaurant operator and its employees receive responsible alcohol beverage service training. The Department of Alcoholic Beverage does not charge a fee for such training.

**Department of Alcohol and Beverage Control “Undue concentration of Liquor License” Regulations**

According to the Department of Alcoholic Beverage control, the project site is located in Census Tract No. 5045.07, which allows eight on-site licenses and has currently, the census tract has ten active licenses. Therefore, the project is located in an undue concentration area and requires the Planning Commission to make a finding that sale of beer and/or wine will not have a negative impact on the surrounding community and serves the public convenience or necessity.

The project is located in the General Commercial service district and is within a retail shopping center that provides for public convenience considering the shopping center serves local residents and the regional customers from north San Jose and Fremont. Restaurants with alcohol service are conditionally permitted in the General Commercial Zoning District. Staff also recommends with a condition of approval that the restaurant operator and its employees receive responsible alcohol beverage service training.

**Midtown Specific Plan**

The table below outlines the project’s consistency with applicable Midtown Specific Plan Implementing Policies:

**Table 2**  
**Midtown Specific Plan Consistency**

<b>Policy</b>	<b>Consistency Finding</b>
3.16 <i>Provide for the continuation of retail development along the Calaveras Boulevard Corridor.</i>	<b>Consistent.</b> The project is located within the Calaveras Boulevard corridor and would further support the continuation of existing and future commercial development

**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 Class 1, Section 15301 (Existing Facilities) of the California Environmental Quality Act. The addition of on-site consumption of a beer and wine in conjunction with food service is considered a negligible expansion beyond the existing restaurant use.

**PUBLIC COMMENT/OUTREACH**

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

**CONCLUSION**

The addition of on-site consumption of beer and wine to the existing restaurant is consistent with the Milpitas General Plan and Midtown Specific Plan policies in that it encourages economic pursuits, business retention, and continuation of commercial development in the Calaveras Boulevard Corridor. The project conforms to the General Commercial Zoning in terms of land use and development standard. As conditioned, the project will not be detrimental to property, improvements, or public health, safety, and general welfare.

**RECOMMENDATION**

**STAFF RECOMMENDS THAT** the Planning Commission adopt Resolution No. 09-0 approving Conditional Use Permit Amendment No. UA09-0005, subject to the attached Conditions of Approval.

*Attachments:*

- A. Resolution No. 09-041
- B. Project Letter
- C. Plans

## RESOLUTION NO. 09-041

### A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT AMENDMENT NO. UA09-0005, CRAWDAD RESTAURANT, A REQUEST TO ADD THE SALE OF BEER AND WINE TO AN EXISTING RESTAURANT LOCATED AT 174 W. CALAVERAS BLVD.

**WHEREAS**, on July 8, 2009 an application was submitted by Norris Mitchell, of Nor-Cal Restaurant Design, 310 S. Central Pkwy., Mountain House, CA 95391, to allow for the sale of beer and wine in conjunction with food service at an existing restaurant. The property is located within the General Commercial Zoning District at 174 West Calaveras Boulevard in Milpitas, California (APN. No. 22-25-048); 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 exempt from further environmental review pursuant to Class 1, Section 15301 (Existing Facilities) of the California Environmental Quality Act.

**WHEREAS**, on September 9, 2009 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 exempt from further environmental review pursuant to Class 1, Section 15301 (Existing Facilities) of the California Environmental Quality Act. The addition of on-site sale and consumption of beer and wine in conjunction with food service is considered a negligible expansion beyond the existing restaurant use.

**Section 3:** The service of beer and wine in conjunction with the existing restaurant is consistent with the Milpitas General Plan and Midtown Specific Plan policies in that it encourages economic pursuits, business retention, and continuation of commercial development in the Calaveras Boulevard Corridor.

**Section 4:** The project conforms to the General Commercial Zoning district in that the restaurant with liquor service is a conditionally permitted use.

**Section 5:** The project will not be detrimental or injurious to property, improvements, public health, safety and general welfare in that the operator and employees shall receive responsible alcohol beverage service training to ensure responsible serving of alcohol. The

proposed use would also serve public convenience or necessity by enhancing the patron experience and enjoyment of a retail shopping center that serves local residents and regional customers from north San Jose and Fremont.

**Section 6:** The Planning Commission of the City of Milpitas hereby approves Conditional Use Permit No. UA09-0005, Crawdad House Restaurant, 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 September 9, 2009.

\_\_\_\_\_  
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 September 9, 2009, and carried by the following roll call vote:

<b>COMMISSIONER</b>	<b>AYES</b>	<b>NOES</b>	<b>ABSENT</b>	<b>ABSTAIN</b>
Cliff Williams				
Aslam Ali				
Lawrence Ciardella				
Alexander Galang				
Sudhir Mandal				
Gurdev Sandhu				
Noella Tabladillo				
Mark Tiernan				

**EXHIBIT 1**

**CONDITIONS OF APPROVAL  
CONDITIONAL USE PERMIT AMENDMENT NO. UA09-0005,  
CRAWDAD HOUSE RESTAURANT**

**General Conditions**

1. The owner or designee shall develop the approved project in conformance with the approved plans and color and materials sample boards approved by the Planning Commission on August 12, 2009, in accordance with these Conditions of Approval.

Any deviation from the approved site plan, floor plans, elevations, materials, colors, landscape plan, 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)

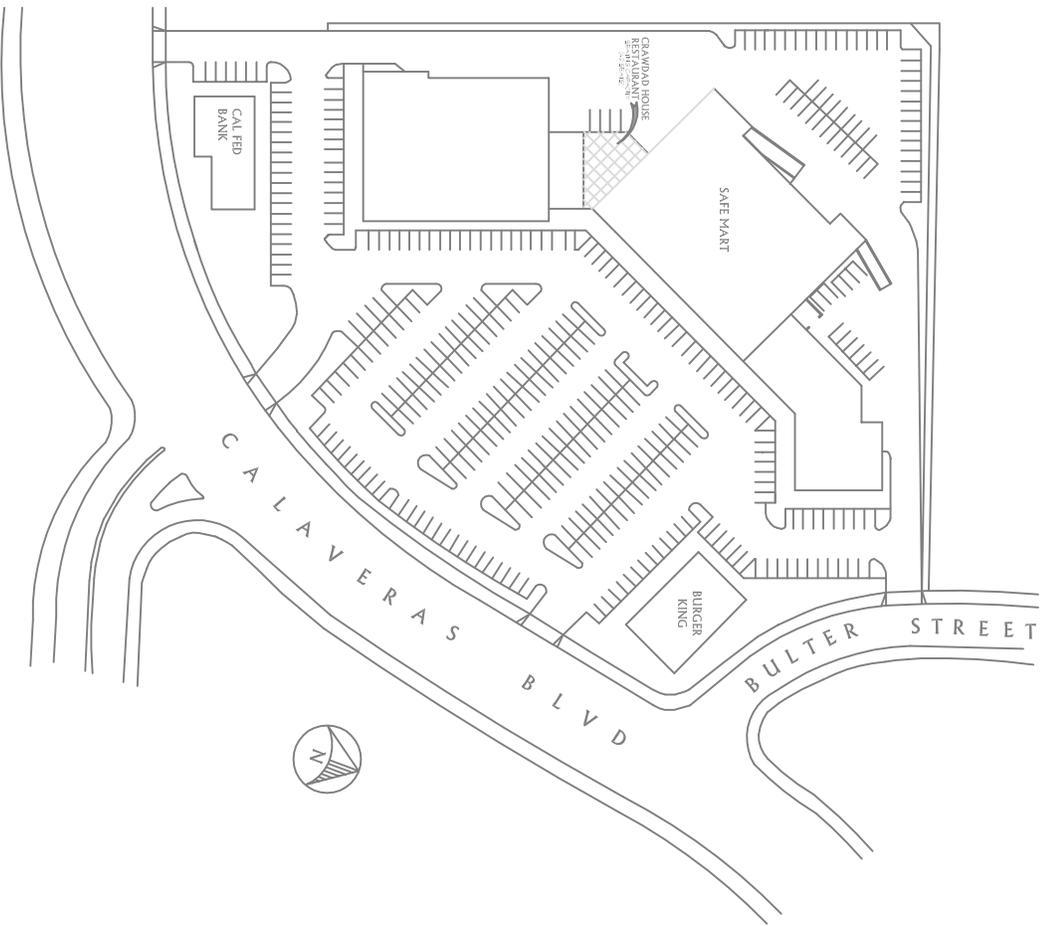
- a. All previous conditions of approval for the project site remain in full force and effect except as amended here. (P)
2. Conditional Use Permit Amendment No. UA09-0005 shall become null and void if the project is not commenced within 18 months from the date of approval. Pursuant to Section 64.04-2 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 and a foundation is completed.

Pursuant to Section 64.04-1, the owner or designee shall have the right to request an extension of UA09-0006 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein. (P)

**Conditional Use Permit**

3. If at the time of Department of Alcoholic Beverage Control license authorization there is a project job account balance due to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. (P)
4. The operator shall be responsible for ensuring that all employees receive 'Responsible Alcoholic Beverage Service' training as offered through programs established by the Alcoholic Beverage Control of the State of California. Evidence of such training and the training records of all employees shall be maintained on-site during business hours, and made available for inspection upon request. (P)
5. The service of beer and wine shall be in conjunction with substantial food service and ancillary to the restaurant. (P)

(P) = Planning



**NOR-CAL**  
RESTAURANT  
DESIGN

THE EXPERTS IN RESTAURANT  
DESIGN & PLANNING, OVER 25  
YEARS OF EXPERIENCE  
NORBERT J. TOROCELLI  
ARCHITECT  
110 SOUTH CENTRAL ROAD  
MILPITAS, CALIFORNIA 95035  
TEL: (408) 261-1100  
FAX: (408) 261-1099

REVISIONS:


PROPOSED NEW TENANT IMPROVEMENTS FOR:  
MR. PATRICK CHAU  
**CRAWDAD HOUSE RESTAURANT**  
217 WEST CALAVERAS BLVD.  
MILPITAS, CALIFORNIA 95035

NOVEMBER 14, 2008  
NJC  
JLV  
AS SHOWN  
2008-25

**A-1**  
SHEET 1 OF 1



City of Milpitas  
455 East Calaveras Blvd.  
Planning Department  
Milpitas, California 95035

RE: Modify Conditional Use Permit  
Mr. Chau's Chinese Fast Food # 1506

To whom it may concern:

The reason for changing our use permit is, Mr. Chau is changing it concept. The new name will be Crawdad House, which will have fine dining and upper customer base. We will be serving beer and wine; also we are adding a LLC to our title. If there are any questions please call me Norris J. Mitchell (209) 221-7090

Thank You

Norris J. Mitchell

A handwritten signature in black ink, appearing to read "Norris J. Mitchell", written in a cursive style.