



MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: January 27, 2010

APPLICATION: Conditional Use Permit Amendment No. UA09-0008, Seafood City

APPLICATION SUMMARY: A request to add sales of all types of alcohol to a previously approved food store that currently offers beer and wine.

LOCATION: 1535 Landess Avenue (APN 88-35-017)
APPLICANT: Dinna Bayangos, Ayafafil Management LLC, 255 Shoreline Drive, Suite 428, Mountain View, CA 954065
OWNER: Same as above.

RECOMMENDATION: Staff recommends that the Planning Commission adopt Resolution No. 10-006 approving the project subject to conditions of approval.

PROJECT DATA:
General Plan/
Zoning Designation: General Commercial (GNC)/General Commercial (C2)

Overlay District: Site and Architectural Overlay (-S)

Specific Plan: N/A

Site Area: 7.89 Acres

CEQA Determination: Categorically exempt pursuant to Section 15301 (Existing Facilities) of the California Environmental Quality Act.

PLANNER: Cindy Hom, Assistant Planner

PJ: 2545

ATTACHMENTS:
A. Resolution No. 10-006
B. Project Plans
C. Project Letter

LOCATION MAP



No scale

BACKGROUND

On March 11, 2009, the Planning Commission approved Site Development Permit No. SD08-0006 and Conditional Use Permit No. UP08-0028 allowing for the redevelopment of the existing 80,704 square foot single use home improvement store into a 107,373 square foot multi-tenant commercial center. Identified uses within the space include a food market approved with beer and wine sales, approximately 17,327 square feet for general retail, 10,715 square feet for office, and approximately 24,260 square feet of restaurants space that were approved under a separate permit.

On December 2, 2009, Dinna Bayangos of Ayafafil Management LLC submitted an application to amend the existing conditional use permit (UP09-0028) for Seafood City to upgrade its liquor license from beer and wine to all types of alcohol. The application is submitted pursuant to the Milpitas Municipal Codes XI-10-5.02-1 (1.) (Alcohol Beverage Sales) and requires Planning Commission review and approval.

PROJECT DESCRIPTION

Seafood City is a 34,321 square grocery store that is currently permitted for beer and wine sales. The applicant is requesting to upgrade its license to allow sales of all types of alcohol.

The project site is situated on a 7.89-acre parcel located at the northeast corner of the Dempsey Road and Landess Avenue intersection. Currently, the site is under construction for the site and building improvements that consist of façade improvements, interior modifications that allow for individual tenant units, and various site improvements.

The site is zoned General Commercial with a Site and Architectural Overlay (C2-S). Neighboring land uses include the Stonegate Development PUD (89 single-family homes) and the French Court PUD (20 single-family homes) which are both located north of the project site. The building is located approximately 70 feet from the rear property lines of the Stonegate residences and approximately 100 feet from the rear of the French Court residences. A six-foot high masonry wall separates the adjacent residences from the subject site. Commercial retail buildings are located to the west, south and east. A vicinity map of the project site is shown on the previous page.

Development Standards

No exterior modifications are proposed with this application. The project maintains the existing development standards.

Operations of Grocer

Seafood City is a 34,321 square foot ethnic grocer and is the major anchor for the Season's Marketplace shopping center. The grocery store will be staffed between the hours of 6:00AM to midnight; however, store hours for the public would be from 8:00AM to 9:00PM. The food store includes a deli take-out section and would retail common groceries, convenience items, and all types of alcohol.

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

Policy	Consistency Finding
<p><i>Implementing Policy 2.a-1-3 Encourages economic pursuits which will strengthen and promote development through stability and balance.</i></p>	<p>Consistent. The proposed alcohol sales would be ancillary to the grocery sales. The sales of food items and alcohol beverages would provide a shopping convenience for patrons.</p>

Zoning Ordinance

As demonstrated in the above analysis, the project is consistent with the General Plan in the terms of land use and conforms to the Milpitas Zoning Ordinance. The project is an existing grocery store that currently is permitted for beer and wine sales. The applicant is requesting upgrade its liquor license to be able to sell all types of alcohol. Alcohol beverage sales are conditionally permitted in the General Commercial zoning district with a conditional use permit.

The proposed upgraded alcohol sales will not adversely impact existing properties, improvements, or the public health, safety and general welfare of neighboring residents within the area, in that the sales are intended to service public need and convenience.

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

According to the Department of Alcohol and Beverage Control, the project site is located within Census Tract 5044.16 that authorizes five (5) On-sale and three (3) Off-Sale establishments. Currently there are six (6) On-site and four (4) Off-Sale licenses active with one (1) on-sale is pending. Therefore, the project is within an undue concentration area that requires the Planning Commission to make a finding that sale of all types of alcohol will not have a negative impact on the surrounding community and serves the public convenience or necessity. In reviewing the proposal, the sale of alcoholic beverages at a food store is considered an accessory use to the sale of food, and is a service typically expected by the public. In addition, the proposal is not anticipated to have adverse impacts on neighboring land uses within the area since a grocery store use is compatible with the mixed commercial uses within the area.

ENVIRONMENTAL REVIEW

The Planning Division conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). The project is categorical exempt from further environmental review pursuant to Section 15301 (Existing Facilities) of the California Environmental Quality Act in that it is a negligible expansion beyond the existing permitted use in that the food store is already entitled to sell beer and wine and is merely requesting to upgrade its liquor license to sell all types of alcohol.

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 proposed project is consistent with the Milpitas General Plan and Zoning Ordinance and provides a bundle of products for the convenience of the consumer.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission adopt Resolution No. 10-006 approving Conditional Use Permit Amendment No. UA09-0008, Seafood City, subject to the attached Conditions of Approval.

Attachments:

- A. Resolution No. 10-006
- B. Project Plans
- C. Project Letter

RESOLUTION NO. 10-006**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT AMENDMENT NO. UA09-0008, SEAFOOD CITY, A REQUEST TO ADD SALES OF ALL TYPES OF ALOCOHOL AT A GROCERY STORY LOCATED AT 1535 LANDESS AVENUE.**

WHEREAS, on December 2, 2009, Dinna Bayangos of Ayafafil Management LLC submitted to upgrade its liquor license from beer and wine to all types of alcohol that is located at 1535 Landess Avenue (APN 88-35-017). The project site is located in the General Commercial Zoning District; and

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with CEQA, and recommends that the Planning Commission determine that this project is categorically exempt from further environmental review pursuant to Sections 15301 of the CEQA Guidelines; and

WHEREAS, on January 27, 2010, 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 Planning Division conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). Staff determined that the proposed sales of all types of alcohol in conjunction with an existing grocery store is exempt from further environmental review pursuant to Section 15301 (“Existing Facilities”) of the California Environmental Quality Act Guidelines (“CEQA Guidelines”) in that the project is a request to upgrade an existing beer and wine liquor license to all types of all types of alcohol.

Section 3: The project is consistent with the General Plan Implementing Policies that encourages economic development and strengthens the commercial development in that the proposed alcohol sales would be ancillary to the grocery sales and provides shopping convenience for local and regional patrons.

Section 4: The proposed sales of all types of alcohol for general sales would not be detrimental to adjacent uses and serves the public convenience or necessity. The proposed sale of alcoholic beverages at a food store is considered an accessory use to the sale of food, and is a service typically expected by the public. In addition, the proposal is not anticipated to have adverse impacts on neighboring land uses within the area since a grocery store use is compatible with the mixed commercial uses within the area.

Section 5: The Planning Commission of the City of Milpitas hereby approves Conditional Use Permit Nos. UP09-0015 through UP09-0028 and Site Development Permit Amendment No. SA09-0008, 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 January 27, 2010

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 January 27, 2010, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Cliff Williams				
Erik Larsen				
Lawrence Ciardella				
Steve Tao				
Sudhir Mandal				
Gurdev Sandhu				
Noella Tabladillo				
Mark Tiernan				

EXHIBIT 1

**CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT AMENDMENT NO. UA09-0008, SEAFOOD CITY**

General Conditions

1. The owner or designee shall develop the approved project in conformance with the approved floor plan approved by the Planning Commission on January 27, 2010, in accordance with these Conditions of Approval.

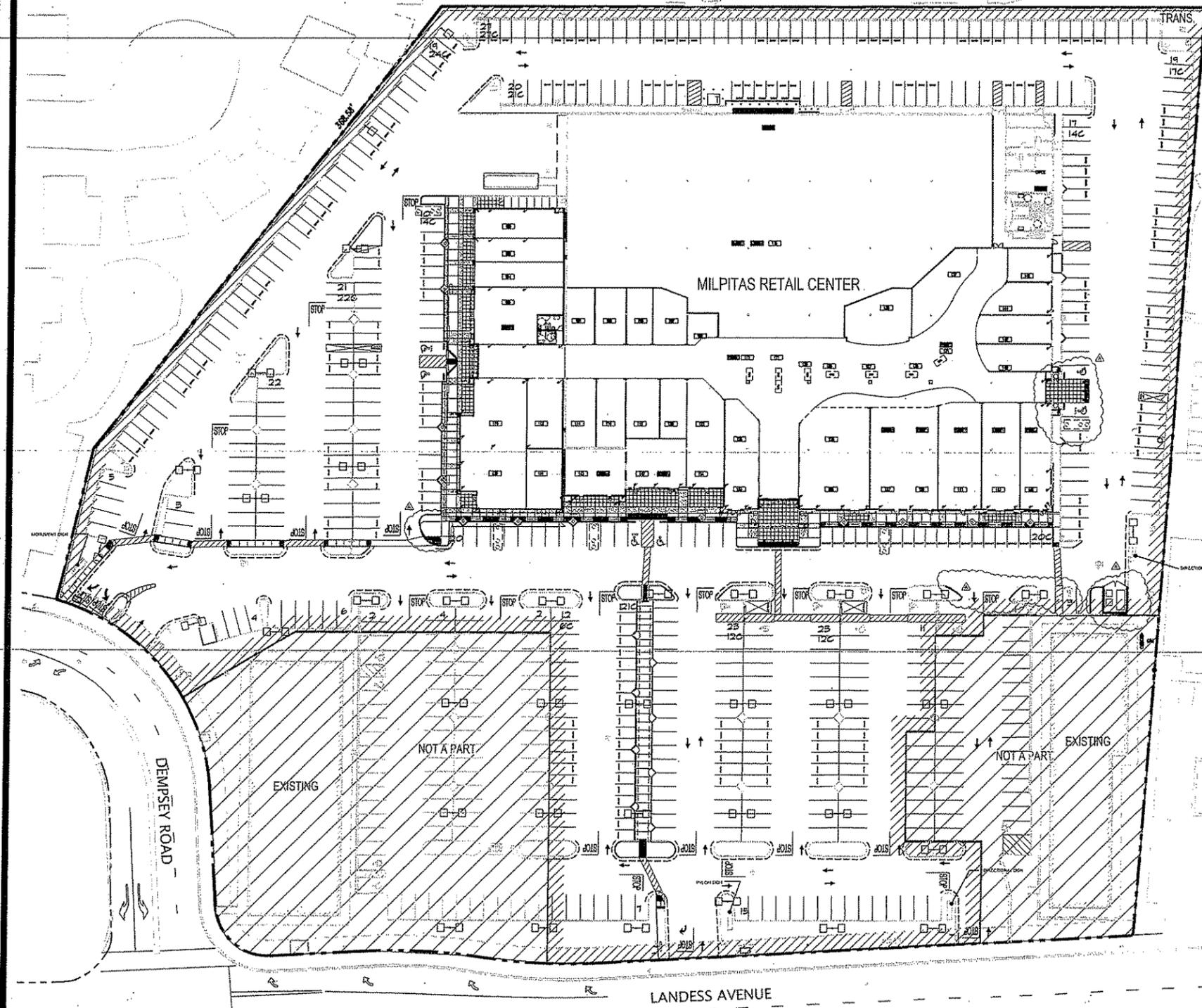
Any deviation from the approved site plan, floor plans, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City 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)

2. Conditional Use Permit Amendment No. UA09-0008 shall become null and void if the project is not commenced within 18 months from the date of approval. Pursuant to Section 64.06(2) of the Zoning Ordinance of the City of Milpitas. If the project requires the issuance of a building permit, the project shall be deemed to have commenced when the date of the building permit is issued and/or a foundation is completed, if a foundation is a part of the project. If the project does not require the issuance of a building permit, the project shall be deemed to have commenced when dedication of any land or easement is required or complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.

Pursuant to Section 64.06(1), the owner or designee shall have the right to request an extension UA09-0008 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein. (P)

3. Private Job Account - If at the time of application for building permit 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 proposed project shall be conducted in compliance with all applicable federal, state, and local regulations. (P)

ALL DIMENSIONS AND NOTED MATERIAL APPEARING HEREIN CONSTITUTE THE ORIGINAL AND UNREPLICATED WORK OF THE ARCHITECT AND THE SCAE MAY NOT BE REPRODUCED, USED OR DISCLOSED WITHOUT THE WRITTEN CONSENT OF THE ARCHITECT.



NOTE:
WORK ON ADJACENT PROPERTIES SHOW
AS "NOT A PART" SHALL BE BID AS
ALTERNATE ADDS TO THE PROJECT.

LEGEND
 [Symbol] EXISTING BUILDING
 [Symbol] EXISTING PARKING
 [Symbol] EXISTING DRIVE

SITE PLAN

SCALE
1" = 30'-0" 1

PROJECT SUMMARY ATTACHMENT B

AREAS	
SITE AREA	343,991 SF (+7.89 ACRES)
BUILDING AREA	
AREA OF EXISTING BUILDING	80,704 SQ. FT.
AREA OF NEW ADDITION	15,041 SQ. FT.
TOTAL BUILDING AREA	95,745 SQ. FT.

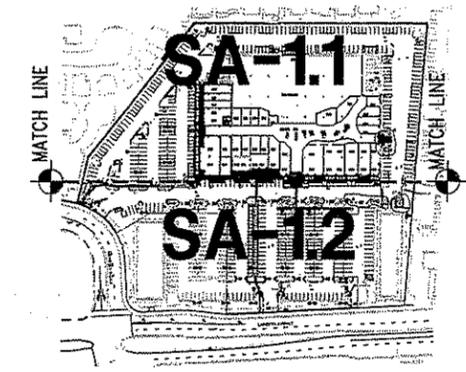
PARKING ANALYSIS				
AREA OF BUILDING	USE	CALC./ OCC.	AREA	STALLS
RETAIL	RETAIL	1/200	16,600 SQ. FT.	83
FOOD MARKET	RETAIL	1/200	34,321 SQ. FT.	172
RESTAURANT & FOOD USE (BASED ON TENTATIVE LAYOUTS)			GROSS FLOOR AREA	24,711 SQ. FT.
	DINING AREA	1/39	8,998 SQ. FT.	230
	TAKE OUT AREA	1/60	1,921 SQ. FT.	32
COMMON AREA			20,113 SQ. FT.	

TOTAL NUMBER OF PARKING REQUIRED	517
TOTAL PARKING PROVIDED	523
PARKING STALLS	REQUIRED PROVIDED
STANDARD STALLS: 90° STALLS (9'x10'-0") 25' DRIVE AISLE	300
COMPACT STALLS: 90° STALLS (7.5'x15'-0") 20' DRIVE AISLE	40% MAX. 210
(4001 - 500) 9 SCC. STALLS ACCESSIBLE 2% OF TOTAL BETWEEN (500 - 1000)	10 10
ACCESSIBLE PARKING (VAN)	2 3
TOTAL	523

LEGEND

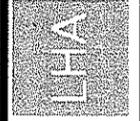
SYMBOLS	DESCRIPTION
[Symbol]	PROPERTY LINE
[Symbol]	CENTER LINE OF STREET
[Symbol]	(N) LIGHT POLE, SEE ELECTRICAL DWGS.
[Symbol]	(B) LIGHT STANDARD ON A BASE MID. POLE TO BE REMOVE
[Symbol]	(H) HANDICAPPED PARKING SIGN
[Symbol]	NOT A PART OF CONTRACT
[Symbol]	SITE/ BUILDING WORK LIMIT LINE

KEY PLAN



DATE: 7/28/09
 DRAWN BY: J. J.
 CHECKED BY: J. J.
 DATE: 06/05/09
 SCALE: AS SHOWN

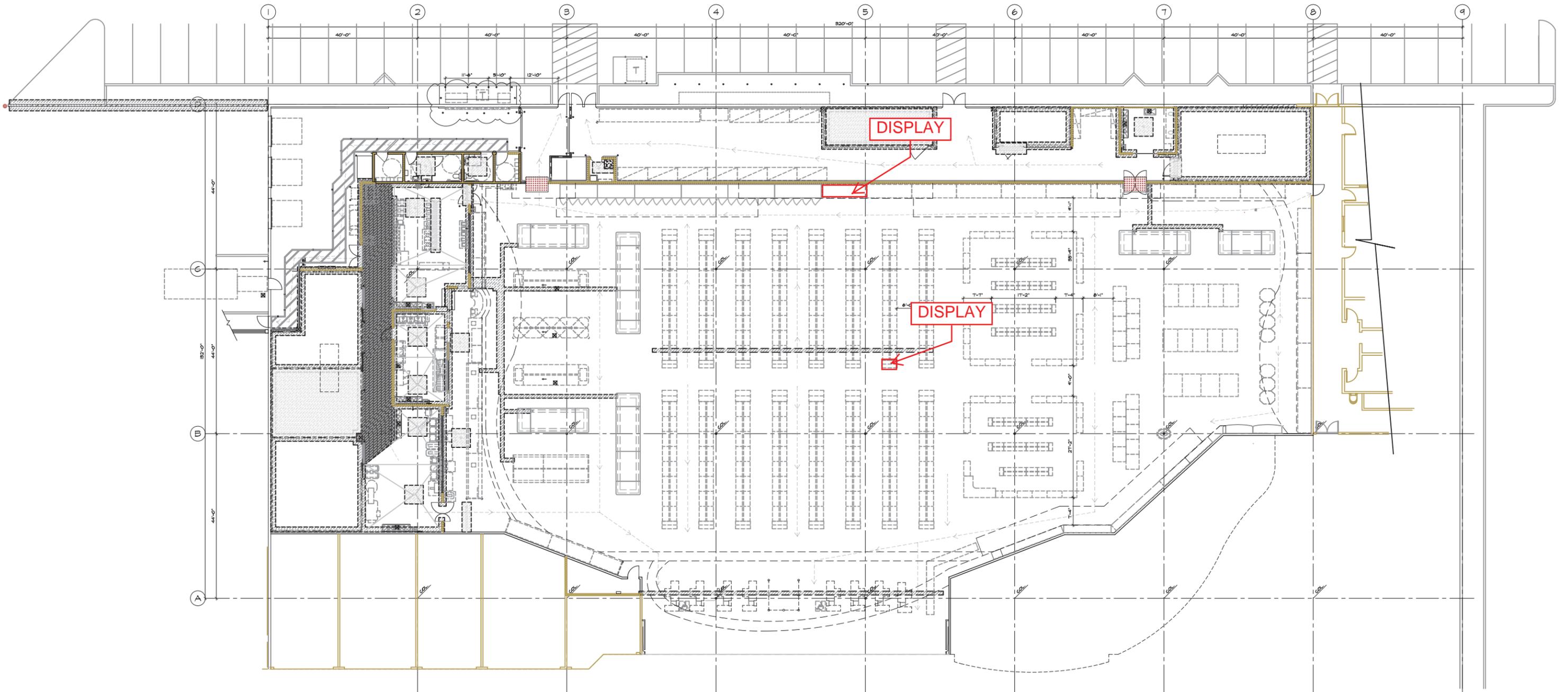
a division of gkkworks
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AVALAFIL (US) CO., INC.
 255 SHORELINE DRIVE, SUITE # 428
 REDWOOD CITY, CALIFORNIA 94063

MILPITAS RETAIL-CENTER
 SITE DEVELOPMENT
 REDWOOD CITY, CA 94063

SA-10



Request for Amendment of CUP:

PROJECT DESCRIPTION:

Project is the renovation and addition of floor area in the existing building at 1535 Landess Avenue. Project name is Seasons Marketplace at Landess.

Season's anchor is Seafood City supermarket which currently operates in San Jose, Union City, Vallejo, Concord, Sacramento, Southern California and Nevada.

In addition to beer and wine, Seafood City supermarket intends to sell alcoholic drinks for off site consumption by shoppers, similar to their operations in other areas. As this hasn't been provided for in the CUP approval for the supermarket, we are requesting for an amendment in the CUP to allow Seafood City supermarket to sell alcoholic drinks.

RECEIVED
DEC 14 2009
CITY OF MILPITAS
PLANNING DIVISION