



MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: January 27, 2010

APPLICATION: **CONDITIONAL USE PERMIT AMENDMET NO. UA09-0004**

**APPLICATION
SUMMARY:**

A request to expand the existing restaurant at 78 Dempsey Road by assuming the adjacent tenant suite of approximately 2,100 square feet.

LOCATION: 78 Dempsey Road (APN: 088-04-001)

APPLICANT: Maria Zavala, 78 Dempsey Road, Milpitas, CA 95035

OWNER: Joseph Levng, P.O. Box 36033, Milpitas, CA 95035

RECOMMENDATION: **Staff recommends that the Planning Commission: Adopt Resolution No. 10-005, subject to the conditions of approval.**

PROJECT DATA:

General Plan/

Zoning Designation: Retail Sub-Center / Neighborhood Commercial (C1)

Overlay: Site and Architectural Overlay District (-S).

Related Permits: Use Permit No. UP1132, Use Permit Amendment No. UA08-0010, and Use Permit Amendment No. UA09-0004

CEQA Determination: Categorically exempt from further environmental review pursuant to Section 15301, "Existing Facilities" of the California Environmental Quality Act (CEQA) guidelines.

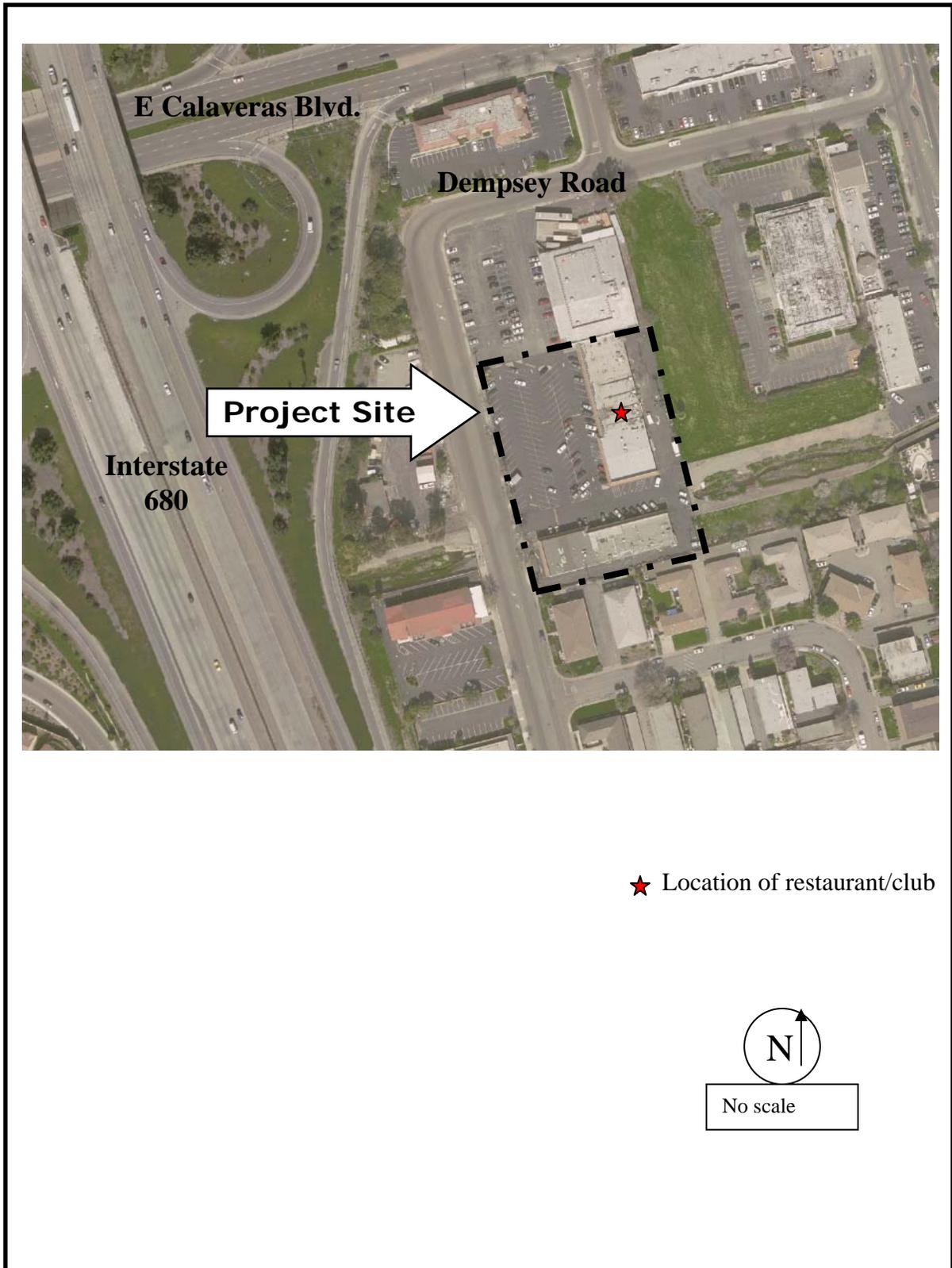
PLANNER: Tiffany Brown

PJ: 2534

ATTACHMENTS:

- A. Resolution No. 10-005
- B. Site Plans
- C. Letter from the applicant
- D. Past staff reports and meeting minutes
- E. Signed Agreement Between Mosque and Restaurant

LOCATION MAP



★ Location of restaurant/club



No scale

BACKGROUND

On April 22, 1992 the Planning Commission approved a Conditional Use Permit (No. 1132) to allow for a restaurant with live entertainment, dancing, a video gaming area with tables, and bar counter with stools serving beer and wine to locate within the Fiesta Shopping Center at 78 Dempsey Road.

In July 2008, the Planning Commission approved a Conditional Use Permit Amendment (UP08-0010) to allow seating on the dance floor and to allow for the service of a full range of alcoholic beverages with 6 and 12 month reviews.

The six month review for UP08-0010 was presented to the Commission on January 28, 2009. At that time, concerns over noise and compliance issues with the conditions of approval were raised by neighboring tenants and residents. The Planning Commission approved a 60 day extension to allow the owner time to address the issues raised.

On April 8, 2009, staff returned to the Planning Commission for the full compliance review and found the restaurant to be in compliance with the conditions of approval and that no further complaints from the public were introduced.

On June 24, 2009, staff presented the 12 month review to the Commission and a number of emails received from patrons of the center and of the adjacent Masjid Mosque regarding excessive noise from Club Bahia. The Planning Commission required another 12 month after receiving the report.

Continued Monitoring

City staff has checked with the Department of Alcoholic Beverage Control (ABC) for any violations of Club Bahia’s liquor license. The ABC responded that the restaurant has no history of disciplinary actions concerning the liquor license and there are no active disciplinary actions or violations. No additional complaints from the public have been registered since the last review and the applicant and representatives from Masjid Mosque signed a mutual agreement addressing the operational issues at the restaurant (Attachment E). Staff has continued to monitor the establishment and has observed that the business is primarily as a bar and dance club at night.

PROJECT DESCRIPTION

On June 29, 2009, Humberto Brito submitted an application requesting a conditional use permit amendment to expand the existing restaurant into the neighboring tenant space at 78 Dempsey Road. According to the Milpitas Zoning Ordinance Section 57, Conditional Uses Permitted, the proposal requires a Conditional Use Permit Amendment with the approval of Planning Commission.

The project site is within the Fiesta Plaza shopping center. The west side of the Plaza runs adjacent to Interstate 680 with neighborhood commercial (C1) zoning to the north and east and residential (R3) zoning to the south. See the vicinity map on the previous page. The plaza is zoned neighborhood commercial with existing businesses such as Indian Cuisine & Sweets,

Deep Emporium, Los Reyes Mexican Food, Cheer-Liter Liquor Store, Hala Marks, a take out pizza place, and Hung Vong Billiard, Fiesta Market, and Club Bahia.

The existing restaurant is located within a 2,400 square foot tenant space. The existing layout includes a kitchen with work area, a storeroom, two restrooms, a dining room, a dance floor, and a bar with counter area. The restaurant hours are Sunday through Thursday 10:00 A.M. – 10:00 P.M. and on Friday and Saturday 10:00 A.M. – 2:00A.M. The restaurant menu consists of gorditas, quesadillas, tacos, and seafood.

The applicant proposes to expand the business into the neighboring tenant space adding 2,150 square feet, leaving the restaurant with a total of 4,550 square feet. The table below shows the comparison in square feet of the floor plan since the restaurant was approved. Staff is recommending that the applicant reduce the proposed amount of square feet for the Arcade / Amusement Area, and add that square footage to the Dining Area. Figures 1 -3 below show the comparison between the existing restaurant floor plan and the proposed floor plan.

Table 1
Comparing Existing Floor Plan to Proposed Floor Plan

	Use Permit No. 1132	Existing Floor Plan	Proposed Floor Plan	Staff Recommendation
Dining Area (sq.ft.)	1,019	683	1,044	1,351
Length of Bar area (ft)	16'	18'	18'	Same
Dance Floor Area (sq.ft.)	322	322	352	Same
Arcade / Amusement Area (sq.ft.)	124 (video gaming area)	N/A	757 (two pool table areas and band area)	450 (one pool table and band area)
Kitchen Area (sq.ft.)	384	384	499	Same

Figure -1
Use Permit No. 1132

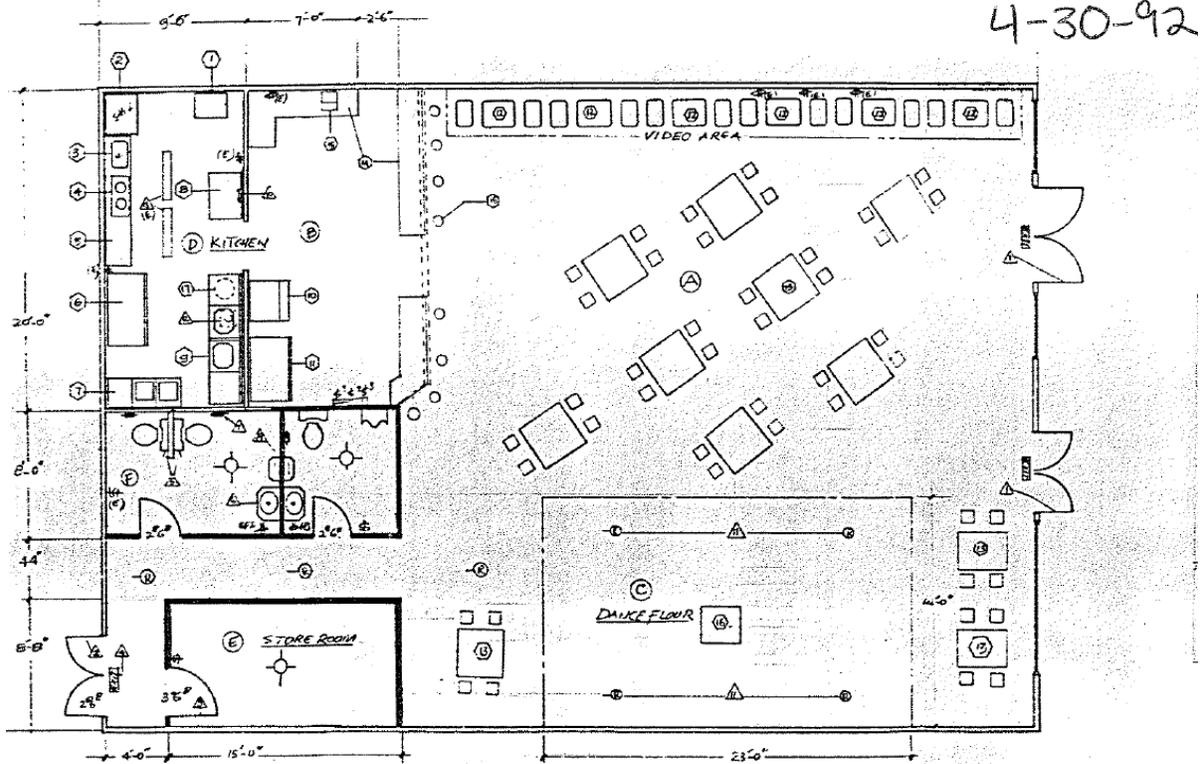
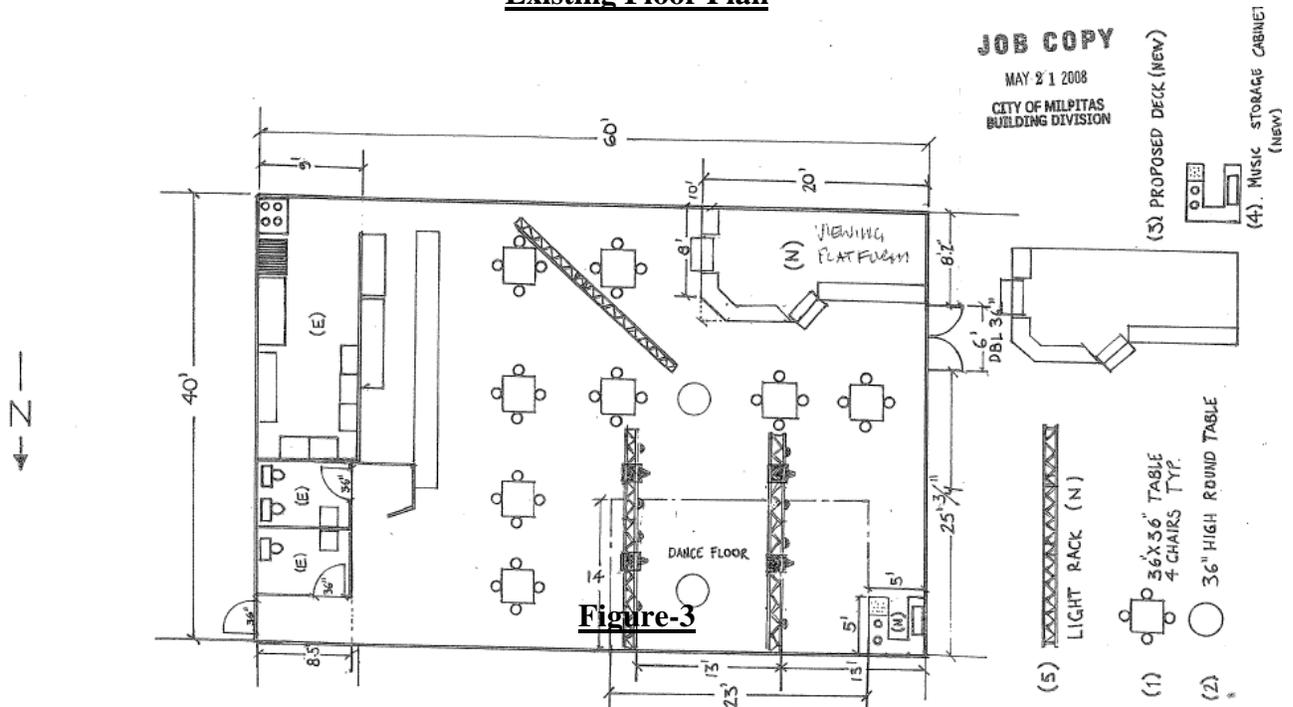
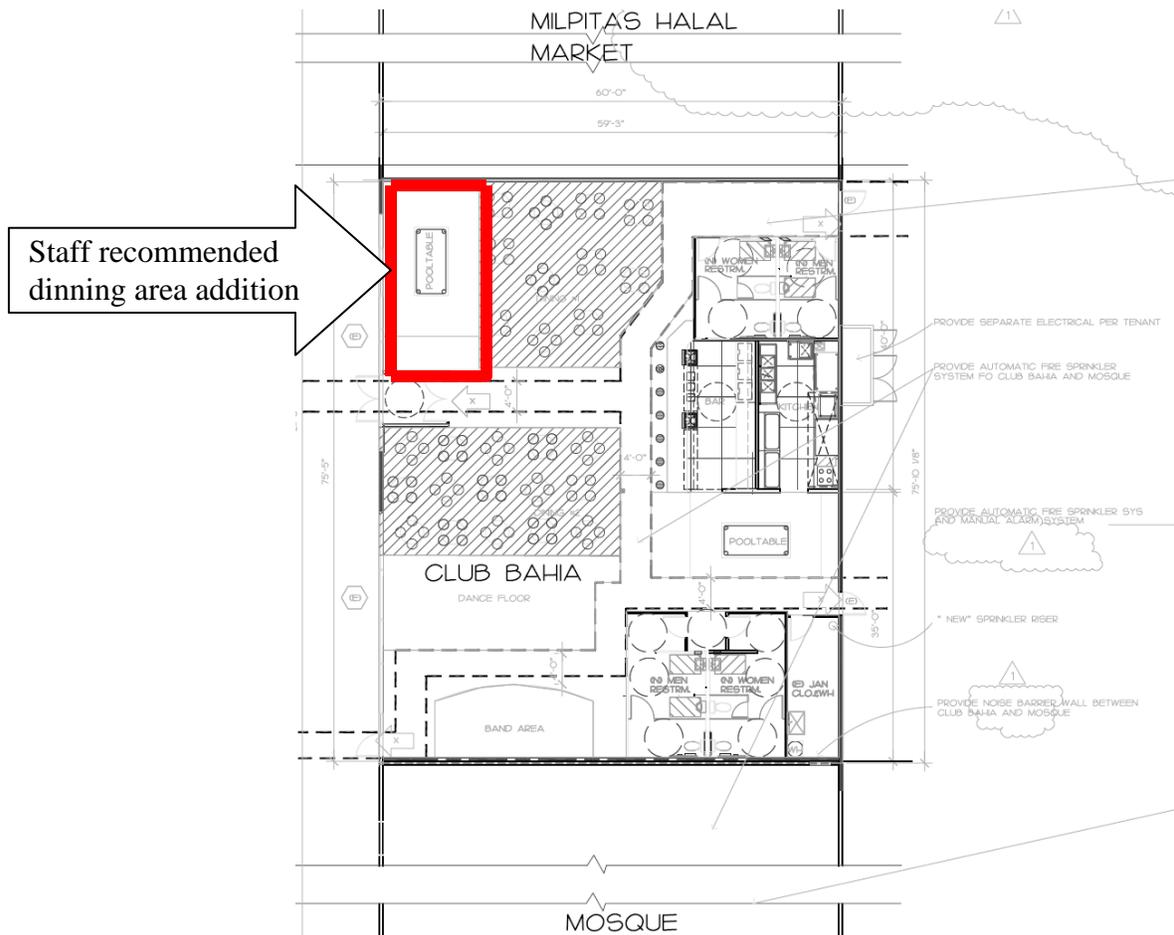


Figure-2
Existing Floor Plan



Proposed Floor Plan



Sound

The proposed expansion will result in Club Bahia and the mosque sharing an interior wall. One of the more significant complaints from the representatives of the mosque was the impact of loud music emanating from the restaurant. The applicant has agreed to enhance / construct the walls and windows with sound reducing materials pursuant to the agreement between the two parties (Attachment E). Staff is recommending the following conditions of approval given the proximity of the proposed expansion space and the existing mosque:

- Live entertainment and amplified sound for the purpose of dancing and entertainment shall only occur between the hours of 9:00 P.M. and 2:00 A.M. The restaurant shall keep doors and windows closed during those hours amplified music is played. Any amplified sound playing throughout the day shall be at a level not to disturb neighboring tenants.
- Prior to the issuance of any building permit for the expansion space, the applicant shall submit an assessment performed by a professional acoustical engineer of the noise

reduction measures agreed to pursuant to Attachment E for the walls and windows of the restaurant.

Architecture

The building façade and style will remain the same, except that the applicant proposes to remove the second tenant space main entry and replace it with a secondary egress door. This way the restaurant will remain having one main entrance and an additional exit. The applicant also proposes modifications to the existing parking lot by updating the parking spaces to meet current Americans with Disabilities Act (ADA) requirements.

Parking

The project site includes two buildings with 11 tenant spaces and a total of 21,168 square feet, and the parking lot contains 151 parking spaces. The required amount of parking for the existing commercial property is 141 parking spaces, leaving the shopping center with a surplus of 10 parking spaces. See Table 2 below.

Table 2
Required Parking

Address / Use	Use Permit No.	Required Parking
74 Dempsey; Billiards	UP595	15
90 Dempsey; Mosque	UP1525	13
94 Dempsey; Restaurant	UP721	19
100 Dempsey; Restaurant	UP883	11
106 Dempsey; Takeout Restaurant	UP645	1
110 Dempsey; Fiesta Market	UP09-0041	13
Other Commercial Stores	N/A	34
78 Dempsey; Club Bahia	UA09-0004	35

Table 3
Required Parking for UA09-0004

Restaurant Use	Parking Ratio	Parking Required
Dining Area	1 parking space per every 39 square feet	1,351sq.ft. / 39 = 35 spaces
		35

Signage

Currently, the tenant has one sign for the restaurant, “Club Bahia”, and one sign over the neighboring tenant space (expansion area) also for the restaurant. In addition, two logo signs are located on the roof top above the existing tenant space and an A-Frame sign is placed along the street frontage of Dempsey Road. Prior to building permit issuance, all signage must comply with the Milpitas Municipal Code Sign Ordinance and obtain the proper building permits.

PROJECT CONCERNS

Club Bahia does operate as a restaurant during the day and early evenings; however based on staff observations, the business is operating primarily as a bar and dance club at night. Staff has witnessed a portable ticket booth located outside the tenant space where an employee checks for identification and on some nights collects a cover charge. There has also been a bouncer located at the front door. These activities are typical of a night club and the underlying Neighborhood Commercial zoning district does not allow nightclubs or bars.

The original 1992 approval allowed a restaurant with ancillary live entertainment, dancing, video gaming area, and a bar area. This amendment, if approved will continue to maintain that the establishment as a restaurant with ancillary entertainment uses as long as they are secondary to the primary restaurant use. To ensure that business operates as a restaurant staff recommends the following additional conditions of approval:

- A full food-service menu shall be available during all hours the business is open.
- Alcohol sales and service shall end at or before 1:00 AM.
- Patrons of all ages shall be allowed in the business and not be required to show identification
- There shall be no entry fee or cover charge to enter the business at anytime and no booths shall be placed outside the business.
- A stereo system may be maintained upon the premises; however, the music shall not be audible outside the premises.
- Provide and maintain a security camera surveillance system to capture criminal activity inside the establishment and in the parking lot, *which shall be made available upon request*
- The owner shall post and maintain a professional quality sign facing the premises parking lot that read as follows:

NO LOITERING
VIOLATORS SUBJECT TO ARREST
MMC V-16-4.01
MMC V-16-4.03

The signs shall be at least two feet square with two inch block lettering. The sign shall be in English.

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 4
General Plan Consistency

Policy	Consistency Finding
<i>2.a-I-3: Encourage economic pursuits which will strengthen and promote development through stability and balance.</i>	Consistent.
<i>2.a-I-5: Maintain policies that promote a strong economy which provides economic opportunities for all Milpitas residents within existing environmental, social fiscal and land use constraints.</i>	Consistent.

As a restaurant, the project is consistent with the General Plan in that a restaurant encourages economic pursuits and maintains policies that promote opportunities for all Milpitas residents within the existing environmental, social, fiscal and land use constraints.

Zoning Ordinance

The project proposal to expand an existing restaurant with ancillary activities is consistent with the Milpitas Municipal Code Table 5.02-1, Commercial Zone Uses: Restaurants, which includes the on-premise consumption of alcoholic beverages when found clearly incidental to the primary food service. However a Bar and/or cocktail lounge including dancing and entertainment is not permitted within the Neighborhood Commercial Zoning District per Milpitas Municipal Code Table 5.02-1, Commercial Zone Uses as a primary use.

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, “Existing Facilities” of the California Environmental Quality Act (CEQA) guidelines. The project is a negligible expansion of an existing 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 have been no inquiries from the public.

CONCLUSION

This proposal to add additional floor area and seating at Club Bahia would not expand the originally approved entertainment uses that should be secondary to the restaurant use. The additional conditions recommended by staff, including the additional 6 and 12 month reviews,

will help ensure that the business operates as a restaurant and not a night club. The project request to expand the restaurant is consistent with the Milpitas General Plan and Zoning Ordinance.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission close the public hearing and approve **CONDITIONAL USE PERMIT AMENDMENT NO. UA09-0004**, subject to the attached Resolution and Conditions of Approval.

Attachments:

- A. Resolution No. 10-005
- B. Site Plans
- C. Letter from the applicant
- D. Past staff reports and meeting minutes
- E. Signed Agreement Between Mosque and Restaurant

RESOLUTION NO. 10-005

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, APPROVING USE PERMIT AMENDMENT NO. UP09-0004, RESTAURANT EXPANSION, TO EXPAND THE EXISTING RESTAURANT BY ASSUMING THE ADJACENT TENANT SUITE OF APPROXIMATELY 2,100 SQUARE FEET, LOCATED AT 78 DEMPSEY ROAD

WHEREAS, on June 29, 2009, an application was submitted by Humberto Brito, 78 Dempsey Road, Milpitas, CA 95035, to expand the existing restaurant into the neighboring tenant space. The property is located within the Neighborhood Commercial Zoning District (APN 088-04-001); 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 categorically exempt; 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 project is categorically exempt from further environmental review pursuant to Section 15301, "Existing Facilities" of the California Environmental Quality Act (CEQA) guidelines because the project is a negligible expansion beyond the existing use.

Section 3: the project is consistent with the General Plan Policies 2.a-I-3 and 2.a-I-5 in that a restaurant encourages economic pursuits and maintains policies that promote opportunities for all Milpitas residents within the existing environmental, social, fiscal and land use constraints.

Section 4: The project proposal is consistent with the Zoning Ordinance in that the expansion of an existing restaurant with ancillary activities such as the sale of alcoholic beverages, live entertainment and dancing along with amusement devices is consistent with the Milpitas Municipal Code Table 5.02-1, Commercial Zone Uses. The proposed project 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.

Section 5: The Planning Commission of the City of Milpitas hereby approves Conditional Use Permit Amendment No. UA09-0004, 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				
Lawrence Ciardella				
Sudhir Mandal				
Gurdev Sandhu				
Steve Tao				
Noella Tabladillo				
Mark Tiernan				
Erik Larsen				

EXHIBIT 1

**CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT NO. UA09-0004**

A request to expand the existing restaurant with ancillary activities, such as live entertainment, dancing and billiards by assuming the adjacent tenant suite of approximately 2,100 square feet.
78 Dempsey Road (APN: 088-04-001)

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 January 27, 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)**

UA09-0004 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.

- a) These conditions of approval shall supersede the previous conditions of approval.
2. Pursuant to Section 64.06(1), the owner or designee shall have the right to request an extension of UA09-0004 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein. **(P)**
3. This Conditional Use Permit Amendment is for the expansion of a restaurant as a primary use that includes on-site dining, takeout foods, on-site consumption of a full range of alcoholic beverages, sale of cigarettes, dancing, live entertainment, amplified music, an amusement / arcade area, and band area. The tenant space is 4,550 square feet with a maximum dining area of 1,351 square feet, amusement / arcade area (including band area) of 450 square feet, and dancing area of 352 square feet. **(P)**

4. Prior to the issuance of building permits, the owner or designee shall include within the four first pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the project. **(P)**
5. Prior to building permit issuance, all signage must comply with the Milpitas Municipal Code Sign Ordinance and obtain the proper building permits. **(P)**
6. The Site Plan A-1 showing the parking modifications will need to be updated to not lose more than the required amount of parking spaces (see staff report) prior to building permit issuance. **(P)**
7. Live entertainment and amplified sound for the purpose of dancing shall not go past 2:00A.M. The operator shall be responsible for ensuring that all doors and windows remain closed during live entertainment or amplified sound performances. **(P)**
8. Prior to the issuance of any building permit for the expansion space, the applicant shall submit an assessment performed by a professional acoustical engineer of the noise reduction measures agreed to pursuant to Attachment E for the walls and windows of the restaurant. **(P)**
9. A full food-service menu shall be available during all hours the business is open. **(PD/ P)**
10. Alcohol sales and service shall end at or before 1:00 AM. **(PD/ P)**
11. Patrons of all ages shall be allowed in the business and not be required to show identification. **(P / PD)**
12. There shall be no entry fee or cover charge to enter the business at anytime and no booths shall be placed outside the business. **(P)**
13. A stereo system may be maintained upon the premises; however, the music shall not be audible outside the premises. **(PD/P)**
14. Provide and maintain a security camera surveillance system to capture criminal activity inside the establishment and in the parking lot, *which shall be made available upon request.* **(PD)**
15. The operator shall post and maintain a professional quality sign facing the premises parking lot that read as follows:

NO LOITERING
VIOLATORS SUBJECT TO ARREST
MMC V-16-4.01
MMC V-16-4.03

The sign shall be at least two feet square with two inch block lettering. The sign shall be in English. **(PD)**

17. After receiving a Certificate of Occupancy, the project is subject to a six, and 12-month review by the Planning Commission. The reviews shall include a public hearing.
18. 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)**
19. The operator shall be responsible to maintain the area in front and behind the tenant space free and clear of debris and litter on a daily basis. **(P)**

(P) = Planning

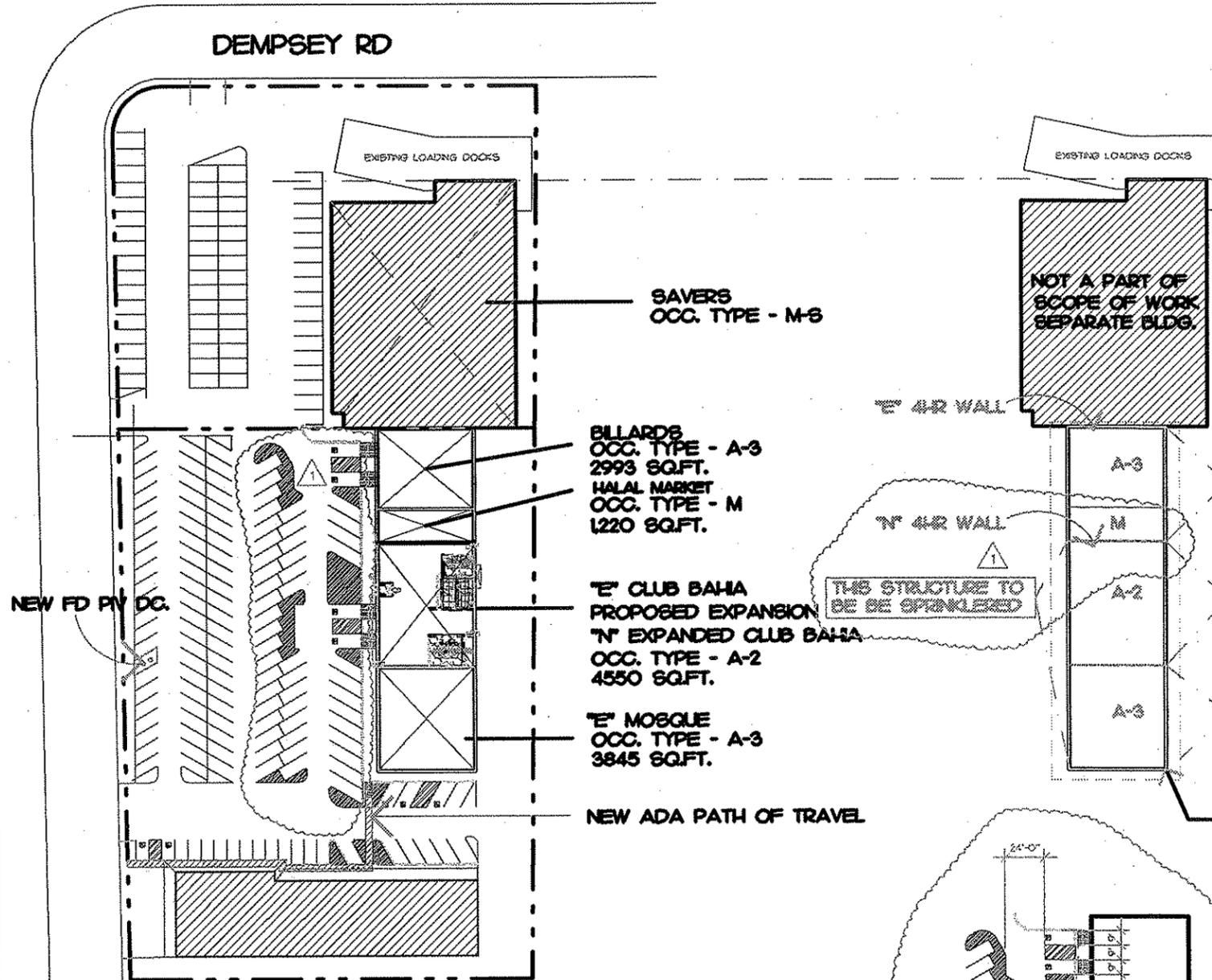
(PD) = Police Department

(B) = Building

(E) = Engineering

(F) = Fire Prevention

DEMPSEY RD



NEW FD PIV DC.

SAVERS
OCC. TYPE - M-S

BILLARDS
OCC. TYPE - A-3
2993 SQ.FT.
HALAL MARKET
OCC. TYPE - M
1220 SQ.FT.

E CLUB BAHIA
PROPOSED EXPANSION
N EXPANDED CLUB BAHIA
OCC. TYPE - A-2
4550 SQ.FT.

E MOSQUE
OCC. TYPE - A-3
3845 SQ.FT.

NEW ADA PATH OF TRAVEL

NOT A PART OF
SCOPE OF WORK
SEPARATE BLDG.

E 4/2 WALL

N 4/2 WALL

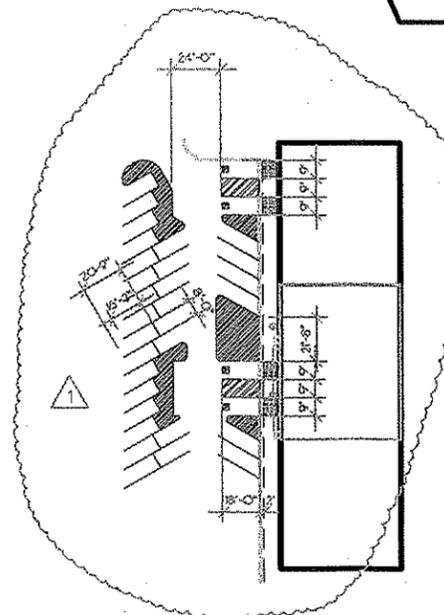
THIS STRUCTURE TO
BE BE SPINKLED

TYPE OF OCCUPANCY: MIXED A-3 AND M
AREA: 428 SQ.FT.
TYPE OF CONSTRUCTION: TYPE VS

TYPE OF OCCUPANCY: A-2
AREA: 4550 SQ.FT.
TYPE OF CONSTRUCTION: TYPE VA

TYPE OF OCCUPANCY: A-3
AREA: 3845 SQ.FT.
TYPE OF CONSTRUCTION: TYPE VA

AREA OF WORK



LEGEND

- EXISTING M-S OCCUPANCY
- PROPOSED A-2 OCCUPANCY FOR EXPANSION AND CUP
- NOT PART OF SCOPE OF WORK
- ADA PATH OF TRAVEL
- CONSTRUCTION WALL TO REMAIN

SITE ANALYSIS

ASSESSOR'S PARCEL #	088-04-001
ZONING	CI-8
TYPE OF CONSTRUCTION	V-N B
TYPE OF CONSTRUCTION	V-A
E OCCUPANCY GROUP	"A-3, B, M, S"
N OCCUPANCY GROUP	"A-2, A-3, M, S"
TENANT AREA	2,400 SQ.FT.
PROPOSED ADD. AREA	2,150 SQ.FT.
GROSS AREA	4,550 SQ.FT.

BUILDING CODE REFERENCED	SECTION
CALIFORNIA BUILDING CODE	2007
CALIFORNIA ELECTRICAL CODE	2007
CALIFORNIA MECHANICAL CODE	2007
CALIFORNIA PLUMBING CODE	2007
CALIFORNIA ENERGY CODE	2007
CALIFORNIA FIRE CODE	2007
INTERNATIONAL EXISTING BUILDING CODE	2006
UNIFORM ADMINISTRATIVE CODE	1997

CODE ANALYSIS

BASE TABLE 503	V A 1500 SQ. FT.
SPINKLED REQUIRED	YES
MANUAL ALARM SYS.	YES
OCCUPANCY MIXED	"A-2, A-3, M, S"
BASE AREA	1,500 SQ.FT.
SEP. THREE SIDES INCREASE 2% OVER 20'	5,825 SQ.FT.
BUILDING AREA GROSS	12,599 SQ.FT. (CK)
CLUB BAHIA A-2	4,550 SQ. FT.
CLUB BAHIA	CUP & TL
H. V. BILLARDS A-3	2,993 SQ. FT.
HALAL MARKET M	1,220 SQ. FT.
MOSQUE A-3	3,845 SQ. FT.

RECEIVED

NOV 23 2009

CITY OF MILPITAS
PLANNING DIVISION

REVISIONS BY

1	COMPLETED	HE
2-20-09		

408/501-8331
527/430-1600
630 SOUTH MILPITAS CIRCLE
SOUTH SALES, SUITE 500A
P.O. BOX 4330-5000
Email: info@milpitas.gov

ARIZONA
CALIFORNIA

All drawings, specifications, and other documents prepared by the architect are the property of the architect. The architect shall not be held responsible for any errors or omissions in the drawings, specifications, or other documents, or for any consequences arising therefrom, whether or not such errors or omissions are caused in whole or in part by the negligence of the architect. The architect shall not be held responsible for any consequences arising therefrom, whether or not such errors or omissions are caused in whole or in part by the negligence of the architect.

"E" SITE PLAN

CLUB BAHIA
78 DEMPSEY DR.
MILPITAS, CALIFORNIA

DATE	8-25-09
SCALE	1/4"=1'-0"
DRAWN	LS
JOB	09-210

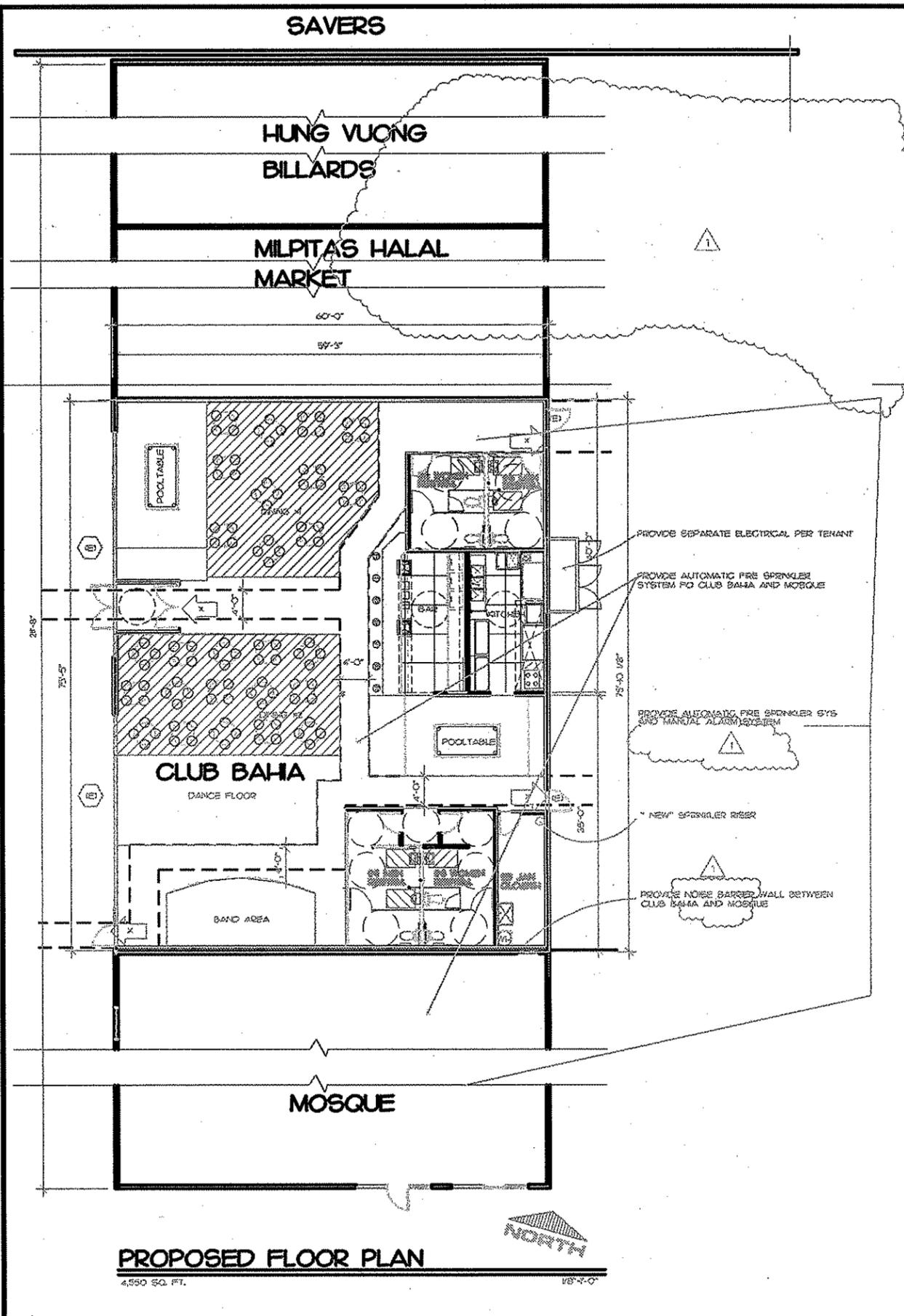
A-1

FOR REVIEW
REVISED PER COM. COMMENTS 8-20-09
REVISED PER COM. COMMENTS 8-20-09
REVISED PER COM. COMMENTS 9-21-09

"E" SITE PLAN

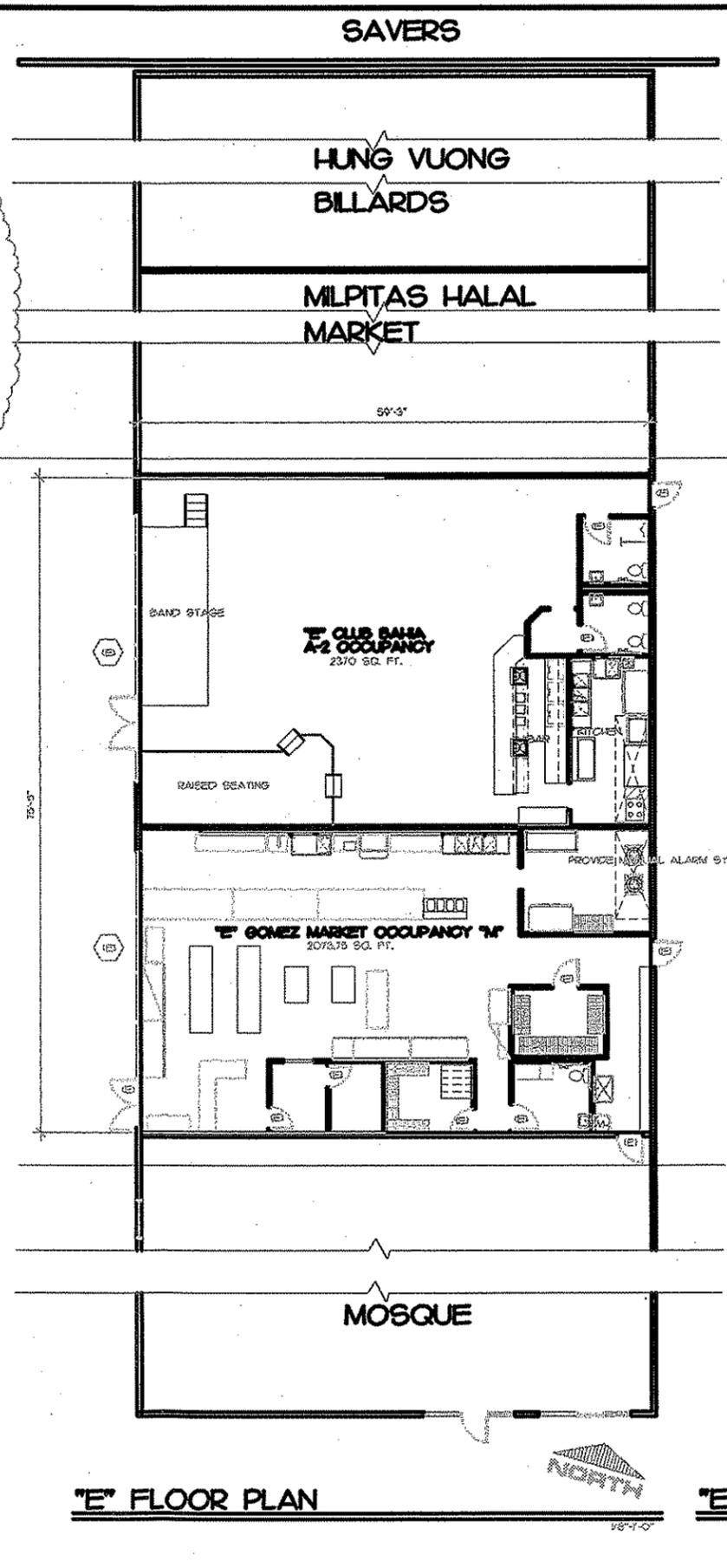


1/4"=1'-0"



PROPOSED FLOOR PLAN

4,550 SQ. FT.



"E" FLOOR PLAN

1,687 SQ. FT.



LEGEND

- (---) CONSTRUCTION WALL TO REMAIN.
- (---) 1/2" RATED DEMOLISH WALL W/ SOUND ATTENUATION INSULATION
- (E) EXISTING WINDOW
- (E) EXISTING DOOR
- (---) EXISTING GLASS / GLAZING
- (X) DIRECTION OF EGRESS W/ OCCUPANT LOAD

FLOOR AREAS

		OCCUPANT LOAD
DINING # 1	533 SQ. FT.	338/7-76
DINING # 2	55 SQ. FT.	5/7-75
DANCING	352 SQ. FT.	352/5-70
BAND	150 SQ. FT.	150/5-72
POOL # 1	207 SQ. FT.	207/50-54
POOL # 2	270 SQ. FT.	270/50-54
TOTAL OCCUPANT LOAD		2424 OAL
CIRCULATION	1035 SQ. FT.	1035 SQ. FT.
KIT & BAR	449 SQ. FT.	449 SQ. FT.
RESTROOMS	684 SQ. FT.	684 SQ. FT.
JAN. CLG.	124 SQ. FT.	124 SQ. FT.
CONST. ACCESS	149 SQ. FT.	149 SQ. FT.
WALLS	559 SQ. FT.	559 SQ. FT.
GROUP AREA	4570 SQ. FT.	4570 SQ. FT.

REVISIONS

NO.	DATE	BY
1	6-26-09	MS

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CITY OF MILPITAS
PLANNING DIVISION

"E" MEZZ. PLAN

1,687 SQ. FT.

CLUB BAHIA A2 OCCUPANCY
2,370 SQ. FT.

"E" GOMEZ MARKET OCCUPANCY "M"
2,073.75 SQ. FT.

REVISIONS

NO.	DATE	BY
1	6-26-09	MS

LEGEND

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REVISIONS

NO.	DATE	BY
1	6-26-09	MS

RECEIVED
NOV 23 2009
CITY OF MILPITAS
PLANNING DIVISION

"E" FLOOR PLAN AND PROPOSED FLOOR PLAN

CLUB BAHIA A2 OCCUPANCY
2,370 SQ. FT.

"E" GOMEZ MARKET OCCUPANCY "M"
2,073.75 SQ. FT.

CLUB BAHIA A2
78 DEMPSEY DR.
MILPITAS, CALIFORNIA

DATE 6-26-09
SCALE 1/8"=1'-0"
DRAWN MS
JOB 09-210

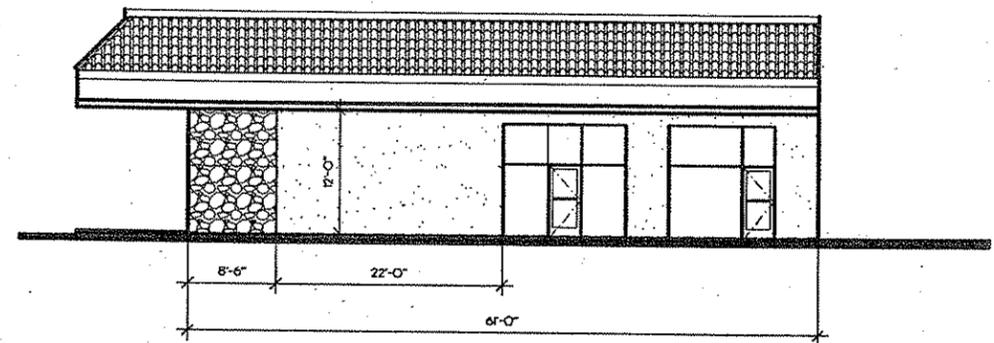
A.2

ARIZONA
COLORADO
CALIFORNIA

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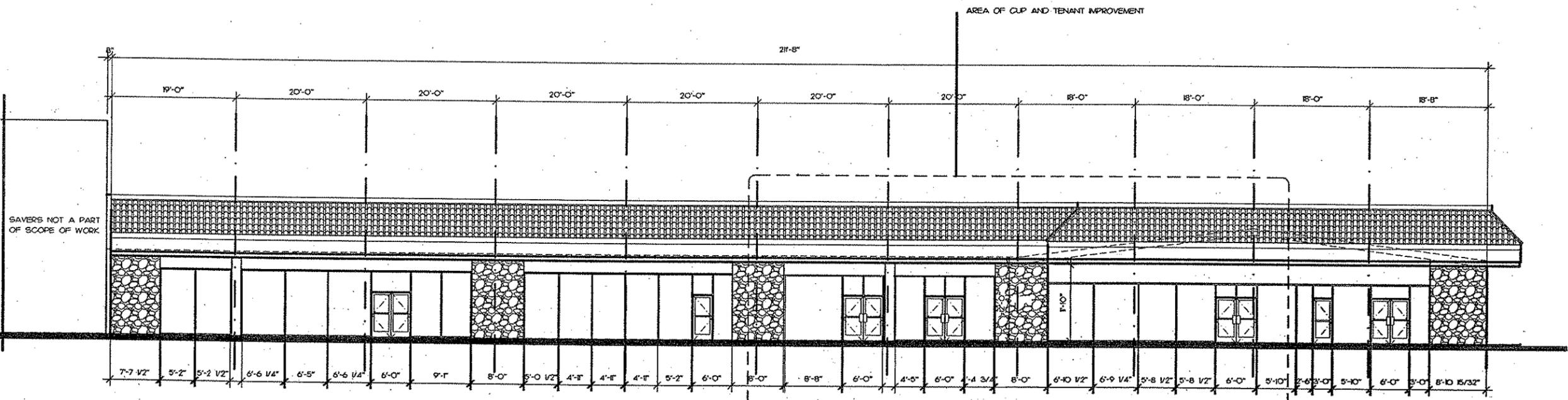
H. E. BOWEN ASSOCIATES, INC.
1400 S. GARDEN AVENUE, SUITE 100
MILPITAS, CALIFORNIA 95035
TEL: 408/951-0330
FAX: 408/951-0330
WWW.HEBOWEN.COM

FOR REVIEW
REVISIONS PER COMMENTS 6-26-09
FOR REVIEW
REVISIONS PER COMMENTS 9-1-09
FOR REVIEW
REVISIONS PER COMMENTS 9-1-09



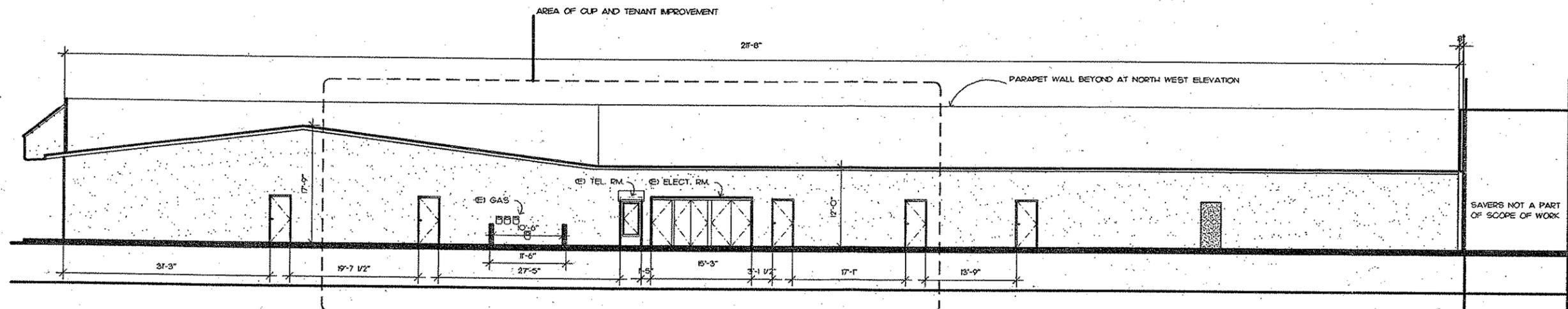
WEST ELEVATION

1/8"=1'-0"



NORTH WEST ELEVATION

1/8"=1'-0"



SOUTH WEST ELEVATION

1/8"=1'-0"

REVISIONS	BY

H.E. BOWEN AIA
ASSOCIATES, INC.
 ARCHITECTURE
 LANDSCAPE ARCHITECTURE
 LAND & FACILITY PLANNING
 INTERIOR & GRAPHIC DESIGN
 408/501-0330
 831/430-1900
 430 SCOTTS VALLEY DRIVE, SUITE E
 SCOTTS VALLEY, CALIFORNIA 95068
 FAX 831/430-9069
 Email: office@hbowenai.com

ARIZONA
 COLORADO
 CALIFORNIA

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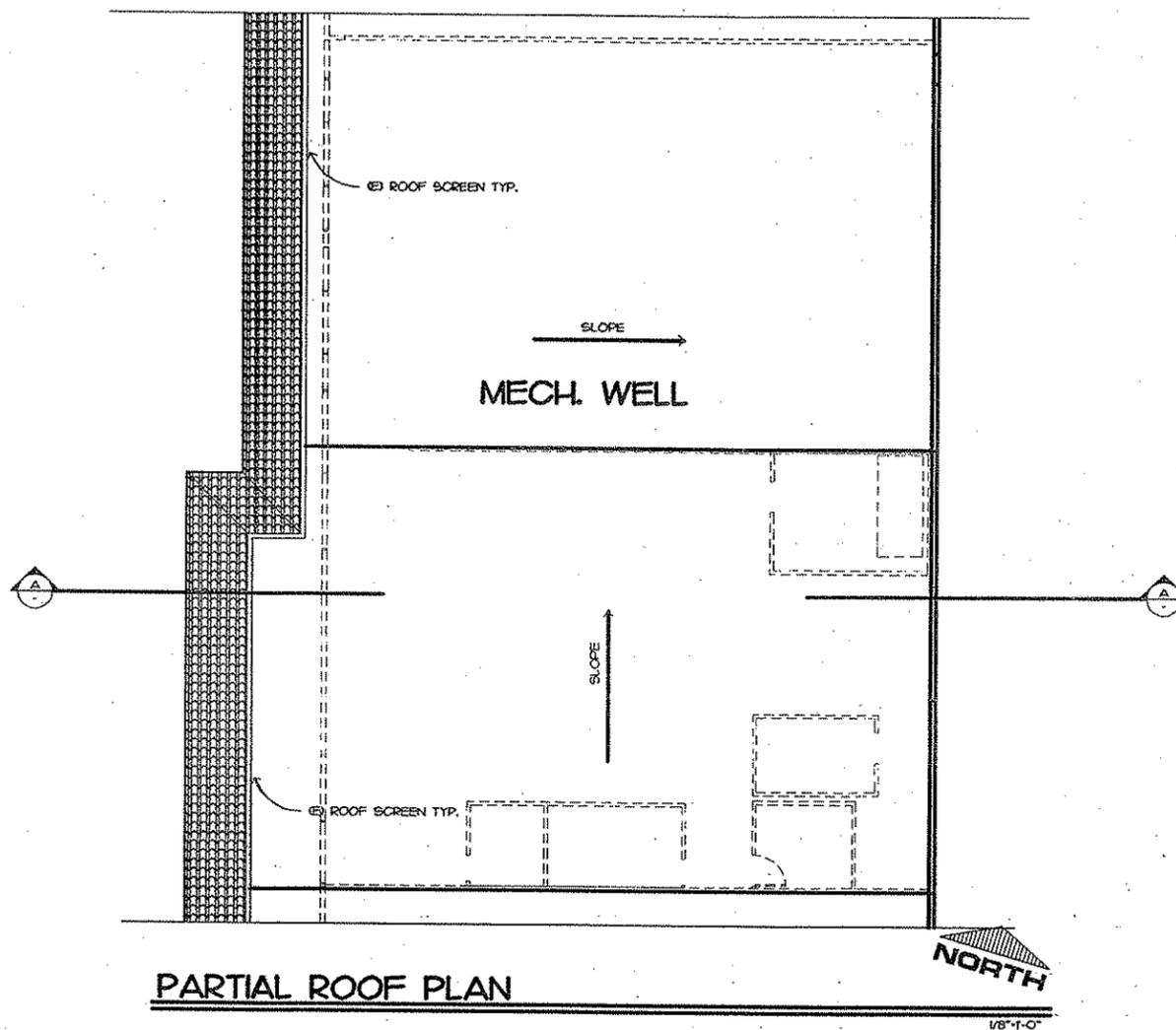
"E" EXT. ELEVS

CLUB BAHIA
87 DEMPSEY DR.
MILPITAS, CALIFORNIA

DATE: 6-25-09
 SCALE: 1/8"=1'-0"
 DRAWN: MB
 JOB: 09-230

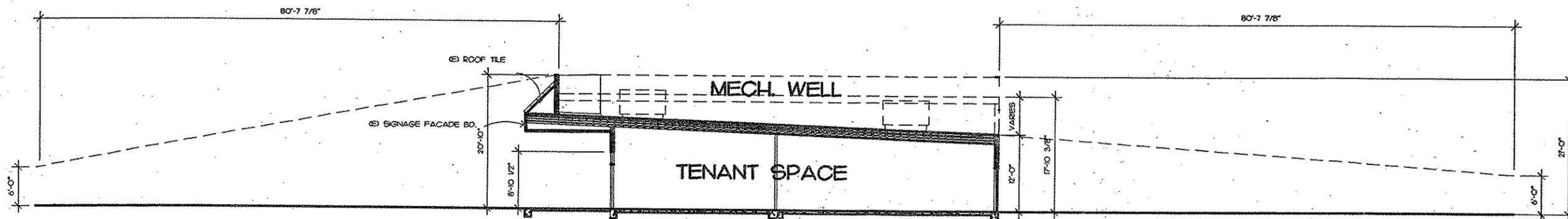
A.3.0

FOR REVIEW
 REVISIONS PER CON COMMENTS 8-1-09
 REVISIONS PER CON COMMENTS 9-1-09



PARTIAL ROOF PLAN

1/8"=1'-0"



A) SECT. & LINE OF SIGHT

1/8"=1'-0"

REVISIONS	BY

H.E. BOWEN AIA
ARCHITECTURE
LANDSCAPE ARCHITECTURE
LAND & FACILITY PLANNING
INTERIOR & GRAPHIC DESIGN

408/501-0330
 831/430-1900
 4340 SCOTT VALLEY DRIVE SUITE E
 SCOTT VALLEY, CALIFORNIA 95066
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 Email: office@hebowenola.com

ARIZONA
 COLORADO
 CALIFORNIA

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Written dimensions on these documents shall have precedence over verbal directions. Contractors shall verify and be responsible for all dimensions and conditions on the job and shall identify and obtain clarification from Architect prior to proceeding work. This drawing shall be submitted to the office for review before proceeding with fabrication.

**PARTIAL ROOF
 & LINE OF SIGHT
 PLAN & SECT.**

**CLUB BALIA
 78 DEMPSEY DR.
 MILPITAS, CALIFORNIA**

DATE 6-25-09
 SCALE 1/8"=1'-0"
 DRAWN MS
 JOB 09-280

A.3.1

FOR REVIEW
 REVISION PER COM COMMENTS 8-1-09
 REVISION PER COM COMMENTS 9-21-09

MARIA ZAVALA DBA: CLUB BAHIA

78 Dempsey Rd.
Milpitas Ca. 95035
Phone (408) 942-3363

July 2, 2009

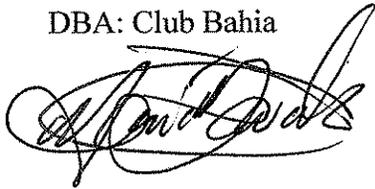
City of Milpitas.

To whom it may concern.

The purpose of this letter is to explain the reason of the amendment;
We found out that our current neighbor known as Gomez market inc. .
Will vacate the location at 84 Dempsey Rd. knowing that ,we would like to
Take over the space and expand our current business into the available space
Due to our need of space for storage and new games.
We would like to continue the same type of business (restaurant with live entertainment
and dancing)
And operate on basis daily from 10:00 am till 2:00 am With the addition of more space.
If you should have any questions please feel free to call me.

Sincerely,

Maria Zavala
DBA: Club Bahia

A handwritten signature in black ink, appearing to read 'Maria Zavala', written over a horizontal line.

Date: April 22, 1992

Item No. **6****MILPITAS PLANNING COMMISSION AGENDA REPORT**

Category: Public Hearing

Report Prepared By: Judd *Judd*Public Hearing: Yes: XX No: _____

Notices Mailed On: 4-10-92 Published On: 4-8-92 Posted On: 4-7-92

TITLE: USE PERMIT NO. 1132

Proposal Restaurant with Live Entertainment, Dancing, Beer & Wine

Location: 78 S. Dempsey Road

RECOMMENDATION: Approval with Conditions

Applicant: Vinh Ngo & Alan Tran, 404 Gemma Dr., Milpitas, CA 95035

Property Owner: Joseph Leung, P. O. Box 36033, Milpitas, CA 95036

Previous Action(s): "S" Zone, Use Permits

Environmental Info: Exempt

General Plan Designation: Retail Sub-Center

Present Zoning: Neighborhood Commercial (C1-S)

Existing Land Use: Shopping Center

Agenda Sent To: Applicant & Owner
Angelo Leber, 1073 Harlan Dr., San Jose, CA 95129Attachments: Plans
Letter from Applicant, dated 4-10-92
Letter from Area Residents, dated 4-16-92**REPORT:**

The applicant is requesting approval to operate a restaurant at 78 S. Dempsey Road. The proposed restaurant would include the following amenities: on-site dining, take-out foods, sale of beer, wine and cigarettes, dancing, live entertainment (consisting of sing-along), and video game tables. According to the applicant, the menu would consist of sandwiches and microwave foods.

The 2,400-square-foot tenant space is proposed to contain kitchen and work areas, storeroom, restrooms, dining room, dance floor, video area, and counter with bar stools. The restaurant would have 59 seats total.

USE PERMIT NO. 1132
Restaurant with Live Ent., Dancing, Beer & Wine
78 S. Dempsey Road

April 22, 1982
Page 2

REPORT (CONT'D):

Due to parking requirements and the proposed seating, this restaurant will require an allocation of 11 additional excess on-site parking stalls. Because the shopping center maintains parking facilities in excess of requirements, this allocation can be made if the landlord so chooses. After such an allocation, parking at this site would still remain in excess of that required (41 excess stalls).

With respect to the video game tables, the zoning ordinance defines an arcade as an establishment containing 7 or more mechanical or electronic game type machines. The submitted floor plan indicates 11 such game tables within this restaurant. The applicant would need to reduce the number of these game tables to 6. An amendment to this Use Permit would be required to designate this establishment as an arcade, if the applicant desires to maintain 7 or more game tables.

Staff has received one letter from area residents in response to the proposed project. The residents express concerns regarding the dancing and live entertainment aspects of this proposed restaurant, and ask that the Commission restrict the Use Permit to restaurant operation, with beer/wine and take-out only. The Commission should also be aware of a potential conflict between this proposal and a recent Use Permit approval for a daycare center in the vicinity of this restaurant site (approximately 700 feet away on Dempsey Road). The Police Department's Crime Prevention Unit has reviewed the applicant's plans and letter, however, and has no objections to the application as proposed.

RECOMMENDATION:

Close the public hearing. Approve Use Permit No. 1132 with the following Findings and Special Conditions:

FINDINGS:

A restaurant with live entertainment, dancing, beer and wine is an appropriate use within this retail center, providing a service to area residents and not causing detriment to adjacent land uses.

Special Conditions:

1. The maximum dining room seating for this restaurant shall not exceed 59 seats, including the 9 bar stools. A sign measuring a minimum of 1' by 1' shall be posted in a conspicuous location near the restaurant front entrance stating this maximum seating. (P)

USE PERMIT NO. 1132
Restaurant with Live Ent., Dancing, Beer & Wine
78 S. Dempsey Road

April 22, 1992
Page 3

6

Special Conditions (Cont'd):

2. The dining room portion of the restaurant shall not exceed 885 square feet (exclusive of dance floor area and take-out area) without further review and approval by the Planning Commission in the form of a use Permit-Amendment. (The submitted floor plan indicates approximately 922 square feet proposed.) (P)
3. The applicant shall not expand the dining room area into the approved dance floor area. Therefore, no seating shall be located within the designated dance floor area. (P)
4. The applicant shall not maintain more than 6 game tables within this establishment, without Planning Commission review and approval of a Use Permit-Amendment. (P)
5. Sales of alcoholic beverages shall be limited to on-site consumption. (P)
6. The maximum dining room seating approval of 59 seats is subject to the landlord allocating in writing 11 additional excess on-site parking stalls to this tenant. This allocation statement shall be in the form of a letter to the Planning Division. (P)

NOTES TO APPLICANT:

- a) Portable fire extinguishers shall be provided prior to building final as per 1991 UFC Standard 10-1. 1991 UFC Section 10.505(a). (F)
- b) Applicant must submit a Sewer Needs Questionnaire and pay the related fee with the building permit application. Contact the Engineering Utilities Section (408 942-2362) to obtain the form. (E)
- c) The Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) under the National Flood Insurance Program shows this site to be in Flood Zone A (flood insurance is required). (E)
- d) If the existing services (water, sewer) are not adequately sized to serve this additional development, plans showing new services must be submitted and approved prior to building permit issuance. (E)
- e) Two water closets required in female restroom, water closet and a urinal required in male restroom. At least one water closet and a urinal shall be handicapped-people accessible. (B)
- f) Back exit hallway shall be 1-hour rated with 20-minute door, leading to dining area. (B)
- g) Occupant load sign shall be posted. (B)
- h) Obtain permit from Health Department prior to application for building permit. (B)

~~Motion to close the Public Hearing on Use Permit No. 1131.~~

~~M/S: Augustine/Unger Ayes: 5 Absent: 2 (Merl, Spencer)~~

~~Motion to approve Use Permit No. 1131 for a security trailer (motor home) for the City's water tanks construction site located at the northerly terminus of Gibraltar Court, as submitted by staff, with their Findings and one Special Condition.~~

~~M/S: Augustine/Unger Ayes: 5 Absent: 2 (Merl, Spencer)~~

6. Use Permit 1132
Restaurant w/Live
Entertainment, Dancing
Beer & Wine
78 S. Dempsey Road
Vinh Ngo & Alan Tran

Chairman Rush opened the Public Hearing and called for a staff report. Principal Planner Reliford overviewed, noting that the applicant was requesting approval to operate a restaurant with on-site dining, take-out foods, sale of beer, wine and cigarettes, dancing, live entertainment and video game tables. He noted that staff was recommending approval with Findings and six (6) Special Conditions, one of them being that no more than six (6) game tables be allowed without Planning Commission approval of an amendment to the Use Permit.

Commissioner Dixon asked about the family billards parlor two doors down, if there have been any registered complaints about it. Principal Planner Reliford answered that there have not. Community Development Manager Smith added that complaints would most likely be registered with the Police Department, and the Police Department received a copy of this request and had made no comment. Chairman Rush asked if there was still dancing and live entertainment at Calamity Janes' down the street. Commissioner Dixon answered that they still have live entertainment. Vice-Chair Unger asked what type of games would go in there. Principal Planner Reliford replied that he envisioned video games like "Pac Man" and "Star Wars", things like that. He asked if the applicant was in the audience. There was no response. Mr. Unger noted that we need to be very specific, pointing out that there are some very noisy type games with simulated guns, etc., at San Jose State University, and that the term "game tables" is very broad. He said he would like to take out "game tables" and make it specifically "video games", because otherwise it is far too broad. The other Commissioners agreed.

Principal Planner Reliford noted that the Commission should be reminded about the the day care center which was recently approved, which is about 700 feet away. Commissioner Dixon asked the hours of operation for the restaurant. Mr. Reliford responded that he didn't know. Chairman Rush suggested that they continue this matter, and the Public Hearing, so the applicant could be present to answer questions.

Motion to continue the Public Hearing on Use Permit No. 1132, until the Planning Commission meeting of May 13, 1992, so the applicant could be present to answer questions.

M/S: Rush/Unger

Chairman Rush asked if there was anyone in the audience who would like to address the Commission concerning Use Permit No. 1132 before they continue the public hearing. There was no response. Chairman Rush called for the question.

Ayes: 5 Absent: 2 (Merl, Spencer)

Date: MAY 13, 1992

Item No. **2**

MILPITAS PLANNING COMMISSION AGENDA REPORT

Category: Public Hearing

Report Prepared By: Oteri *Oteri*

Public Hearing: Yes: XX No: _____

Notices Mailed On: 4-10-92 Published On: 4-8-92 Posted On: 4-7-92

TITLE: USE PERMIT NO. 1132 (Cont'd.)

Proposal: Restaurant with Live Entertainment, Dancing, Beer & Wine

Location: 78 S. Dempsey Road

RECOMMENDATION: Approval with Conditions

Applicant: Vinh Ngo & Alan Tran, 404 Gemma Dr., Milpitas, CA 95035

Property Owner: Cheung-Kan & Pul-Sheung Mok, P.O. Box 694, Milpitas, CA 95035

Previous Action(s): "S" Zone, Use Permits, Zone Change

Environmental Info: Exempt

General Plan Designation: Retail Sub-Center

Present Zoning: "Neighborhood Commercial" (C1-S)

Existing Land Use: Shopping Center

Agenda Sent To: Applicant & Owner
Angelo Leber, 1073 Harlan Dr., San Jose, CA 95129
Joseph Leung, P.O. Box 36033, Milpitas, CA 95036

Attachments: Plans
Letter from Applicant, dated April 10, '92
Letter from Area Residents, dated April 16, '92

REPORT:

This application was continued from the April 22nd Commission meeting due to the applicant's absence. The public hearing was left open.

The applicant is requesting approval to operate a restaurant at 78 S. Dempsey Road. The proposed restaurant would include the following amenities: on-site dining, take-out foods, sale of beer and wine, dancing and live entertainment (consisting of sing-along). The facility will also contain 6 video game tables.

PAGE 2
P.C. ARS
MAY 13, 1992

USE PERMIT NO. 1132

CONT'D.:

The applicant has revised the floor plan since the last meeting. The new floor plan shows seating for 44 in addition to 8 bar stools, but due to the size of the establishment it can accommodate up to 68 seats. The only exterior change would be the tinting of the front windows. The applicant has indicated that they would be open 7 days a week from 11:00 am to 12 midnight.

Due to parking requirements and seating this restaurant, at the size shown (926 Sq. Ft. dining area will accommodate 68 seats), would only require an allocation of 13 additional parking stalls. Because the shopping center has excess parking this allocation can be made, if the landlord desires to do so. They would then need to provide written documentation for the parking allocation. After such an allocation there would still be 39 extra spaces. Without the extra parking allocation the restaurant must be reduced in size (per Commission policy) to contain only 19 seats and the dining area be no larger than 285 Sq. ft. The dining area would then be smaller than the dance floor.

The Police Department's Crime Prevention Unit has reviewed the applicant's plans and letter and has no objections to the proposed use.

RECOMMENDATION:

Close the public hearing. Approve Use Permit No. 1132 with the following Findings and Special Conditions:

FINDINGS:

A restaurant with live entertainment and dancing, beer and wine sales and an arcade, at this location in the shopping center, is found to be an appropriate use which would provide a service to residents and not to be detrimental to the adjacent businesses in the area since there already exist similar uses in this center and the immediate area.

Special Conditions:

1. The maximum dining room seating for this restaurant shall not exceed 68 seats; this figure includes the 8 bar stools and the 6 video game machines. A sign shall be posted in close proximity to the front entrance indicating the maximum seating capacity established by this Use Permit. The establishment of any seating over the maximum shall be grounds for revocation of this Use Permit. (P)
2. Prior to the issuance of a building permit for any tenant improvements at this site, the property owner must submit a letter to the Planning Division assigning 13 extra spaces to this use. (P)

PAGE 3
P.C. ARS
MAY 13 1992

USE PERMIT NO. 1132

CONT'D.:

NOTES TO APPLICANT:

- a) Portable fire extinguishers shall be provided prior to building final as per 1991 UFC Standard 10-1. 1991 UFC Section 10.505(a). (F)
- b) The Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) under the National Flood Insurance Program shows this site to be in Flood Zone A (flood insurance is required). (E)
- c) If the existing services (water, sewer) are not adequately sized to serve this additional development, plans showing new services must be submitted and approved prior to building permit issuance. (E)
- d) At least one water closet required in each restroom, and a urinal shall be handicap people accessible, including privacy compartments. (B)
- e) Back exit hallway shall be 1-hour rated with 20-minute door, leading to dining area. (B)
- f) Obtain permit from Health Department prior to application for building permit. (B)
- g) Provide occupant load sign when occupancy load exceed 50. (B) See special condition no. 1.

2. U. P. 1132 (Cont'd)
Restaurant w/Live
Entertainment, Dancing,
Beer & Wine;
78 S. Dempsey Road
Vinh Ngo & Alan Tran

Chairman Rush noted that Use Permit No. 1132 was continued from the April 22nd Planning Commission meeting and that the Public Hearing was kept open, and called for a staff report. Principal Planner Reliford overviewed, noting that the Commission had expressed several concerns with this application, such as the type and number of games, and the type of entertainment which would be there, and that the applicant was in the audience to any questions. Mr. Reliford stated that staff was recommending approval, with the Findings and Special Conditions which were listed in the agenda report, and pointed out that the Commission was given a memo tonight listing three (3) additional notes from the Fire Department, which should also be included.

Principal Planner Reliford also stated, for the record, that staff received a letter dated April 16, 1992, from a nearby resident, Bella C. Lin, expressing her concerns about noise and traffic on Dempsey Road, and the possible impact on the school children, if dancing and live entertainment were allowed. Mr. Reliford pointed out, however, that there is a commercial building, which serves as a buffer, between the residences and this establishment.

Commissioner Crespo asked if the restaurant would be striping the parking spaces, which were allocated to them by the property owner, with their name. Associate Planner Oteri responded that they would not, as that is illegal.

Commissioner Dixon asked who would take care of linting the restaurant's front windows. Principal Planner Reliford answered that that would be between the lessee and the property owner.

Commissioner Augustine asked how many video tables they planned to have, noting that the applicant's letter states eight (8) but the plans indicate six (6). Principal Planner Reliford responded that the zoning ordinance would allow no more than six (6), if that is what the Commission recommends. Vice-Chairman Unger suggested that, if the Commission does limit this, he thinks the word "arcade" should be taken out because an arcade is more than six (6). Staff agreed.

Commissioner Dixon observed that the application states that this is a restaurant, but it sounds like a nightclub. She asked if there is anything in the ordinance that defines a nightclub. Associate Planner Oteri responded that there is not. Mrs. Dixon asked about the hours of operation, and what kind of control the City has if they go past midnight. It was answered, "None". Commissioner Dixon commented, then, that they would have to restrict their hours of operation. Vice-Chair Unger stated, following up on the same thought, that this appears to be more of an entertainment center than a restaurant, seeing as how they only plan to serve sandwiches.

Commissioner Spencer asked if the Special Conditions the Commission received tonight were in addition to the conditions in the agenda report. Principal Planner Reliford answered that they were.

Vice-Chair Unger asked staff if the Commission could approve this use, but tag on it a review after six months. Associate Planner Oteri responded that they could, and that they have done this in the past for palm readers, etc.

Chairman Rush announced that this is a Public Hearing item and asked if there was anyone in the audience who would like to address the Commission concerning it. There was no response. The Chairman invited the applicant forward.

Joseph Leung, stated that he was the property owner, and representative of Fiesta Shopping Plaza. Vinh Ngo and Alan Tran, partners in the proposed establishment, stated their names. Mr. Leung said that a condition for a 6-month review would be an extreme hardship, because of their investment, and that the type of entertainment they would have would not be exotic dancing, it would be more like a coffee shop atmosphere for people to have a drink, and sing songs.

Commissioner Meri asked Mr. Leung if he was calling it a "coffee-shop" type atmosphere, then why would they have beer and wine? Mr. Leung answered that some people like coffee and some people like beer and wine. Commissioner Meri asked him to explain the financial hardship. Mr. Leung answered that the former tenant was a bookstore, and the new tenant would have to make changes to the building to add a brand-new kitchen. Commissioner Meri explained that the intent of the six-month review is not for a revocation of their use permit, it is for a review, in case there are any problems or complaints, so they can be addressed at that time.

Commissioner Augustine stated that he has a great deal of trouble seeing this as a restaurant. He asked the applicant if they would be preparing food. Mr. Leung responded that they would have microwave foods. Mr. Augustine asked staff if the food is not prepared on site, if it still qualifies as a restaurant. Associate Planner Oteri responded that the Building Code classifies it as a restaurant. Commissioner Augustine asked if an establishment has to have food in order to get a beer and wine license. Associate Planner Oteri answered that there are minimum regulations that have to be met, according to the Alcoholic Beverage Control, and that packaged food is acceptable. Commissioner Augustine asked how many mechanical games they plan to have. Mr. Leung answered that they would stick to the six (6).

Commissioner Dixon asked the reason for tinting the windows. Mr. Leung answered that the number one reason is energy conservation, and there is also a tremendous problem with the light from about 4:00 p.m.-9:00 p.m.. Mrs. Dixon asked if any of the other restaurants in that center, also facing the west, have tinted windows. Mr. Leung answered that they do not, they use drapes or canvas-type curtains to block the light, and some put up newspaper. Commissioner Dixon asked how dark the tinting would be and if anyone would be able to look inside. Mr. Ngo answered, "Most likely not". Mrs. Dixon asked if the dance floor area would be permanent. Mr. Ngo answered that it would be used for special occasions, like birthday celebrations. Mrs. Dixon asked if it would be used for a banquet hall, for large groups of people. Mr. Ngo answered that it would not, they have a limit for 60-70 people.

Commissioner Meri observed that their slide projector seemed to be in the middle of the dance floor, and asked what it would be used for. Mr. Ngo answered that it would be used for sing-alongs. Commissioner Meri asked if there would be a policy to always have the doors closed during their hours of operation, or did they plan to leave them open in order to draw in customers. Mr. Ngo answered that they would keep the doors closed and would use their sign for advertising.

Chairman Rush noted that this is a Public Hearing and asked if there was anyone in the audience who would like to address the Commission concerning it. There was no response.

Motion to close the Public Hearing on Use Permit No. 1132.

M/S: Unger/Meri

Ayes: All

Motion to approve Use Permit No. 1132 for a restaurant with live entertainment, dancing, beer & wine, at 78 S. Dempsey Road, with staff's Findings and two recommended Special Conditions, plus an additional Special Condition (No. 3), that the applicant come back to the Planning Commission, 6 months after they open, for a review of their operation, to make sure there are no other problems with adjacent businesses or neighbors.

M/S: Meri/Unger

Ayes: All

Associate Planner Oteri asked, on the 6-month review, if the Commission wants it to be a "Public Hearing" or a "New Business" item. It was answered, "New Business".

3. Variance No. 485
Increase Rear Yard
Coverage Beyond 30%
Requirement, Reduction
in Setback Between
Main & Accessory Bldgs.,
& Encroachment Into
Side Yard w/Bldg. Add'n
1199 Park Willow Ct.
Richard C. Harmon

Chairman Rush noted that the Public Hearing was kept open on Variance No. 485, and called for a staff report. Associate Planner Oteri overviewed, noting that this item was continued from the April 8th Planning Commission meeting. He stated that the City Attorney has reviewed this request, and has no objections, and that staff is recommending approval, using the City Attorney's memo as Findings.

Chairman Rush announced that this was a Public Hearing item and asked if there was anyone in the audience who would like to address the Commission concerning it. There was no response.

Motion to close the Public Hearing on Variance No. 485.

M/S: Unger/Crespo

Ayes: All

Commissioner Dixon asked if staff knows what triggered this Variance request, if there was a complaint. Associate Planner Oteri answered that a building inspector discovered it.

Motion to approve Variance No. 485, with the City Attorney's memo as Findings.

M/S: Crespo/Meri

Ayes: All

4. U. P. 876-Amend.
Expansion of Restaurant
w/Storage Room
Swagat Indian Cuisine
68 S. Abel Street
(Abel Plaza)
Robert Yen

Chairman Rush opened the Public Hearing on Use Permit No. 876-Amendment, and noted that the applicant has requested that this matter be continued to the next meeting (May 27, 1992). Commissioner Dixon asked staff if that use permit number was specifically for this restaurant. Associate Planner Oteri answered that it was not. Mrs. Dixon asked, if they were looking at taking half the building next to them, if that would require an amendment. Mr. Oteri answered that it would not, because the use runs with the land.

RECEIVED

MAY 13 1992

CITY OF MILPITAS
PLANNING DIVISION

Fiesta Shopping Plaza, P.O. Box 360333, Milpitas, CA 96036

Planning Division
City of Milpitas Planning Commission
455 E. Calaveras Blvd
Milpitas, CA 95035

May 13, 1992

Attention: Mr. Bob Oteri

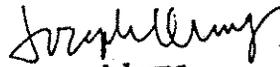
Subject: Use Permit No. 1132
78 So. Dempsey Road, Milpitas
May 13, 1992 Planning Commission Agenda

Gentlemen,

In accordance with your recommendation, we, the owner of Fiesta Shopping Plaza and the subject property, assign 13 extra spaces to this permit use.

We appreciate your effort to assist our new tenant to fulfill the City's requirement for its business in Milpitas. Thank you!

Yours sincerely,



Joseph Leung
Owner Representative
Fiesta Shopping Plaza, Milpitas

2

DATE: May 13, 1992
TO: Planning Commission
FROM: Felix J. Reliford
SUBJECT: Use Permit No. 1132 - Restaurant with Live Entertainment, Dancing, Beer & Wine, at 78 S. Dempsey Road (Item No. 2)

The following Notes to the Applicant should be added to this application.

Notes to Applicant:

- h) The applicant shall provide one 2A10BC portable fire extinguisher. Sec. 10.505(a) UFC. (F)
- i) The requirements for a Hazardous Materials permit shall be met prior to the Fire Department final of Building Permit. Sec. 80.103(b), UFC. (F)
- j) A hood and duct fire extinguishing system shall be provided in accordance with the Mechanical Code for commercial-type food heat-processing equipment that produces grease-laden vapors. Sec. 10.513 UFC. (F)

Staff has spoken with the applicant's representative to inform him of these added Notes, but as of this writing has been unable to reach the applicant and/or property owner.

FJR:tmj

cc: Fire Department



MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: July 9, 2008

APPLICATION: Conditional Use Permit Amendment No. UA08-0010: Club Bahia

APPLICATION SUMMARY:

A request to amend a condition of approval to allow seating on the dance floor during restaurant/dining hours and allow the service of a full range of alcoholic beverages for the restaurant that currently serves beer and wine. No additional changes to the operation or restaurant are requested.

LOCATION:

78 Dempsey Road (APN: 088-04-001)

APPLICANT:

Maria De Jesus Zauala, 78 Dempsey Road, Milpitas CA 95035

OWNER:

Joseph Levng, P.O. Box 36033, Milpitas, CA 95035

RECOMMENDATION:

Staff recommends that the Planning Commission:

1. Close the public hearing; and
2. Adopt Resolution No. 08-032 approving the project and conditions of approval.

PROJECT DATA:

General Plan/

Zoning Designation:

Retail Sub-Center / Neighborhood Commercial (C1)

Overlay District:

"S" Zone District, for Architectural Review

Related Permits:

Use Permit No. 1132

CEQA Determination:

Categorically exempt from further environmental review pursuant to Section 15301, "Existing Facilities" of the California Environmental Quality Act (CEQA) guidelines.

PLANNER:

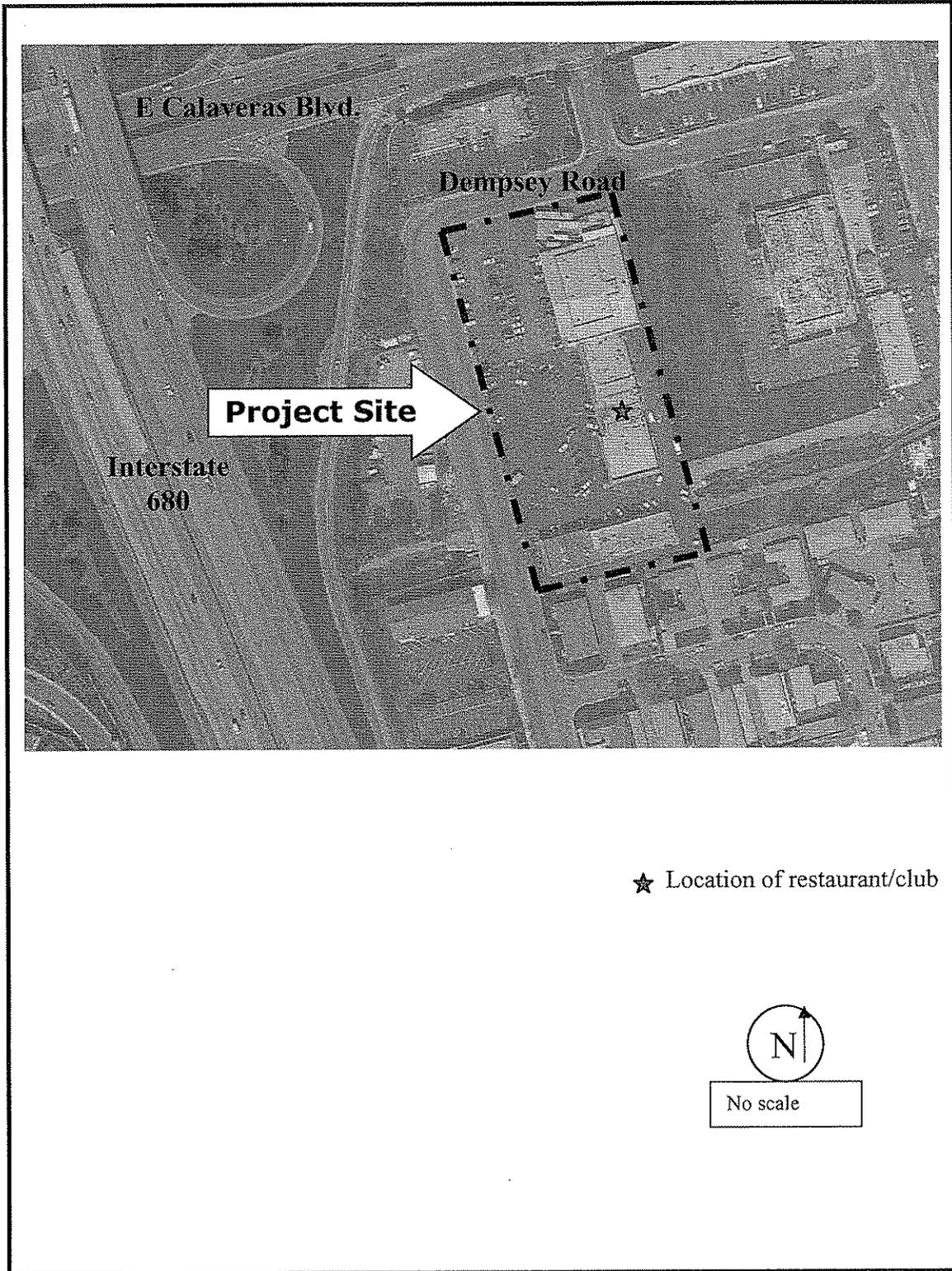
Tiffany Kunsman

PJ: 2534

ATTACHMENTS:

- A. Resolution No. 08-032/Findings/Conditions of Approval
- B. Site Plans
- C. Comments from Milpitas Police Department
- D. Restaurant Menu
- E. Conditional Use Permit No. 1132

LOCATION MAP



BACKGROUND

On April 22, 1992 the Planning Commission approved a Use Permit for a restaurant with live entertainment, dancing, and the service of beer and wine within the Fiesta Plaza Shopping Center. On May 5, 2008, Maria De Jesus Zauala submitted an application to amend a previous condition of approval and allow the service of a full range of alcoholic beverages. According to the Milpitas Zoning Ordinance Section 57, Conditional Uses Permitted, the proposal requires a Conditional Use Permit Amendment with the approval of Planning Commission.

PROJECT DESCRIPTION

The restaurant is located within a 2,400 square foot tenant space located next to Savors, Halal Market and Gomez Market. The existing layout includes a kitchen with work area, a storeroom, two restrooms, a dining room, a dance floor, and a bar with counter area. The office hours include Sunday through Thursday 10:00 A.M. – 10:00 P.M. and on Friday and Saturday 10:00 A.M. – 2:00A.M. The restaurant menu consisting of gorditas, quesadillas, tacos, seafood, etc and the service of beer and wine. The restaurant is in compliance with the existing Conditional Use Permit approved in 1992.

The applicant would like to amend previously approved condition of approval number three to allow dining seats on the dance floor area during the day and transition the tables off the dance floor during live entertainment hours. Live entertainment and music for dancing will start at 9:00P.M. The proposal does not include the request to allow for more dining seats.

Condition of Approval #3

The applicant shall not expand the dining room area into the approved dance floor area. Therefore, no seating shall be allocated within the designated dance floor area.

The zoning for this site is Neighborhood Commercial (C1) and the surrounding zones are also Neighborhood Commercial. A vicinity map of the subject site location is included on the previous page.

Issues

Since 2001, several officer-initiated incidents at the 78 Dempsey Road address and parking lot have been noted and include general patrol checks and pedestrian / vehicle stops. Before 2003, police had three significant calls for service which included a vice activity, two for public disturbances, and one narcotic's violation. These activities occurred under different owners and while the restaurant was named LyLy Café.

The current owner has occupied the space since January of 2007. The only calls of service to the police department since then include five alarm calls and two disturbances where the owner reported juveniles hanging out in the parking lot. The restaurant has also been a victim of an attempted burglary.

The police department concludes given that there has only been a slight volume of calls for service for this establishment under its current ownership, they anticipate the addition of hard liquor sales in conjunction with the restaurant not to be a problem. (See attachment B)

The police also recommended that the applicant install video/security cameras at the entrance, cash register, and the safe area. And suggested that the business should be equipped with a monitored burglar, robbery, and panic alarm. The applicant turned in a certificate providing proof of installation for the alarm system and video surveillance installation.

The California Department of Alcoholic Beverages Control (ABC) was contacted to confirm that the project site will not add to or create an over-concentrated area utilizing liquor licenses for the sale/consumption of alcoholic beverages. ABC confirmed that this project site is not located within an over-concentrated area and included that the Census tract (tract#5044.18) containing the project site is allowed up to seven full range of alcoholic beverage licenses and currently has a total of five alcohol licenses. The draft conditions of approval contained in the resolution include the relevant conditions from the original conditional use permit.

Since the restaurant plays amplified sound after 9:00P.M., Staff proposes a condition of approval to limit hours of amplified sound and require that doors and windows are closed during periods when amplified sounds is used.

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 2
General Plan Consistency

Policy	Consistency Finding
<i>2.a-I-3: Encourage economic pursuits which will strengthen and promote development through stability and balance.</i>	Consistent.
<i>2.a-I-5: Maintain policies that promote a strong economy which provides economic opportunities for all Milpitas residents within existing environmental , social fiscal and land use constraints.</i>	Consistent.

Zoning Ordinance

The proposal is consistent pursuant to Section 18.03-17: *Restraints which include the on-premise consumption of alcoholic beverages when found clearly incidental to the primary food service.* The sale of alcohol is in conjunction with the restaurant and no bar is considered with this application.

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, “Existing Facilities” of the California Environmental Quality Act (CEQA) guidelines.

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 two inquiries from the public. The first inquiry is from a tenant within the center in regards to loud music playing throughout the day and not just during entertainment hours. The second was a message from a nearby residence and is opposed to the existing restaurant with entertainment.

CONCLUSION

The restaurant with live entertainment as is, is consistent with the previously approved Conditional Use Permit. The proposal as conditioned would operate as a restaurant and entertainment service. Since the application does not include the addition of a bar or adding more seats than what was previously approved, placing seats on the dance floor and the addition of a full range of alcoholic beverages is incidental to the primary restaurant use. Allowing Club Bahia to serve a full range of alcoholic beverages will not present a significant impact in public health or safety because the restaurant already serves beer and wine; the restaurant will not play live entertainment/amplified music for the purpose of dancing until 9:00P.M. to be courteous to the neighboring tenants, and because the close proximity to residence, Club Bahia will keep their doors closed during entertainment hours to help keep the noise level down to a non offensive level.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission approve **CONDITIONAL USE PERMIT AMENDMENT NO. UA08-0010, Club Bahia**, subject to the attached Resolution and Conditions of Approval.

Attachments:

- A. Resolution No. 08-032/Findings/Conditions of Approval
- B. Site Plans
- C. Comments from Police Department
- D. Restaurant Menu
- E. Conditional Use Permit No. 1132

RESOLUTION NO. 08-032

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT AMENDMENT NO. UA08-0010, BLUB BAHIA, TO AMEND A CONDITION OF APPROVAL, MINOR TENANT IMPROVEMENTS, AND ALLOW THE SERVICE OF A FULL RANGE OF ALCOHOLIC BEVERAGES FOR THE RESTURANT THAT CURRENTLY SERVES BEER AND WINE LOCATED AT 78 DEMPSEY ROAD.

WHEREAS, on May 5, 2008, an application was submitted by Maria De Jesus Zauala, 78 Dempsey Road, Milpitas, CA 95035, to amend a condition of approval to allow seating on the dance floor during restaurant/dinning hours, minor tenant improvements for an interior patio area, and allow the service of a full range of alcoholic beverages for the restaurant that currently serves beer and wine. The property is located within the Neighborhood Commercial zoning district (APN088-04-001); 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 categorically exempt from further environmental review pursuant to Section 15301, "Existing Facilities."

WHEREAS, on July 9, 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 exempt from further environmental review pursuant to Section 15301, "Existing Facilities

Section 3: The proposed use, at the proposed location will not be detrimental or injurious to the property or improvements in the vicinity nor to the public health, safety, and general welfare.

Section 4: The proposed use is consistent with the Milpitas General Plan because it is ancillary to a restaurant, which promotes and encourages economic pursuits. (General Plan, Implementation Policy, 2.a-I-3 and 2.1-I-5).

Section 5: The proposed use is consistent with the Milpitas Zoning Ordinance pursuant to Title XI, Chapter 10, Section 18.03-17 (Neighborhood Commercial, Conditional Uses-Restaurants, on-premise consumption of alcoholic beverages), and Section 57

(Conditional Use Permitted by Commission) in that the proposed use is a conditionally permitted use with the approval of the Planning Commission.

Section 6: The Planning Commission of the City of Milpitas hereby approves Conditional Use Permit Amendment No. UA080010, Club Bahia, 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 July 9, 2008

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 July 9, 2008, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	OTHER
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 AMENDMENT NO. UA08-0010**

General Conditions

1. The owner or designee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on July 9, 2008, in accordance with these Conditions of Approval.

Any deviation from the approved site plan, floor plans, 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.

- a) These conditions of approval shall supersede the previous conditions of approval.
2. Conditional Use Permit Amendment No. UA08-0010 is for a restaurant as a primary use that includes on-site dining, takeout foods, onsite consumption of a full range of alcoholic beverages, sale of cigarettes, dancing, live entertainment, amplified music, and no more than six video game tables. The tenant space is 2,400 square feet with a maximum of 59 seats total. Hours of operation are Sundays through Thursdays, 10:00A.M. – 10:00P.M., Fridays and Saturdays from 10:00A.M. – 2:00A.M.
3. Conditional Use Permit Amendment No. UA08-0010 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 business license, the project shall not be deemed to have commenced until the date of the business license is issued.

Pursuant to Section 64.04-1, the owner or designee shall have the right to request an extension of UA08-0010 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein.

4. Live entertainment and amplified sound for the purpose of dancing and entertainment shall not play until 9:00 P.M. and not go passed 2:00A.M. The restaurant shall keep doors and windows closed during those hours amplified music is played. Any amplified sound playing throughout the day shall be at a level not to disturb neighboring tenants.

APPROVED

PLANNING COMMISSION SUBCOMMITTEE MINUTES

July 9, 2008

I. ROLL CALL

Present: Ali-Santosa and Williams
Absent: None
Staff: Ah Sing, Bejines and Hom

1. ADMINISTRATIVE PERMIT NO. AD08-0008

Cindy Hom, Assistant Planner, presented a request to hold a one day outdoor event for the Popular Science's Virtual Sports Tour to be held on July 18, 2008 between the hours of 10:00 a.m. to 8:00 p.m. at the Great Mall parking lot area near Falcon Drive and Great Mall Drive. Ms. Hom recommended the Commission approve the project subject to special conditions of approval.

Chair Williams asked where the portable bathrooms will be located and Ms. Hom said there will not be any.

Chair Williams requested that the applicant work with staff regarding restrooms.

Motion to approve Administrative Permit No. AD08-0008.

M/S: Williams/Ali-Santosa

AYES: 2

NOES: 0

2. SITE DEVELOPMENT PERMIT AMENDMENT NO. SA08-0015

Cindy Hom, Assistant Planner, presented a request for landscape modifications to the approved landscaping plan to accommodate installation of ground mounted photovoltaic panels to be installed on the Humane Society of Silicon Valley animal facility site located at 901 Ames Ave. Ms. Hom recommended approval subject to special conditions of approval.

Motion to approve Site Development Permit Amendment No. SA08-0015.

M/S: Williams/Ali-Santosa

AYES: 2

NOES: 0

3. MINOR SITE DEVELOPMENT PERMIT AMENDMENT NO. MA08-0002

Cindy Hom, Assistant Planner, presented a request to renovate existing landscaping and hardscape to achieve LEED standards on the Cisco campus located at 707 Tasman Ave. Ms. Hom recommended approval subject to special conditions of approval.

Motion to approve Minor Site Development Permit Amendment No. MA08-0002.

M/S: Williams/Ali-Santosa

AYES: 2

NOES: 0

II. ADJOURNMENT

This meeting was adjourned at 6:50 p.m.



MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: January 28, 2009

APPLICATION: Six Month Review for Conditional Use Permit Amendment No. UA08-0010: Club Bahia

APPLICATION SUMMARY: Review the approval to allow seating on the dance floor during restaurant/dining hours and to allow the service of a full range of alcoholic beverages for the existing restaurant.

LOCATION: 78 Dempsey Road (APN: 088-04-001)
APPLICANT: Maria De Jesus Zauala, 78 Dempsey Road, Milpitas CA 95035
OWNER: Joseph Levng, P.O. Box 36033, Milpitas, CA 95035

RECOMMENDATION: Staff recommends that the Planning Commission:
1. Close the public hearing;
2. Note Receipt and File; and
3. Maintain six month reviews.

PROJECT DATA:
General Plan/
Zoning Designation: Retail Sub-Center / Neighborhood Commercial (C1)
Overlay District: Site and Architectural
Related Permits: Use Permit No. 1132

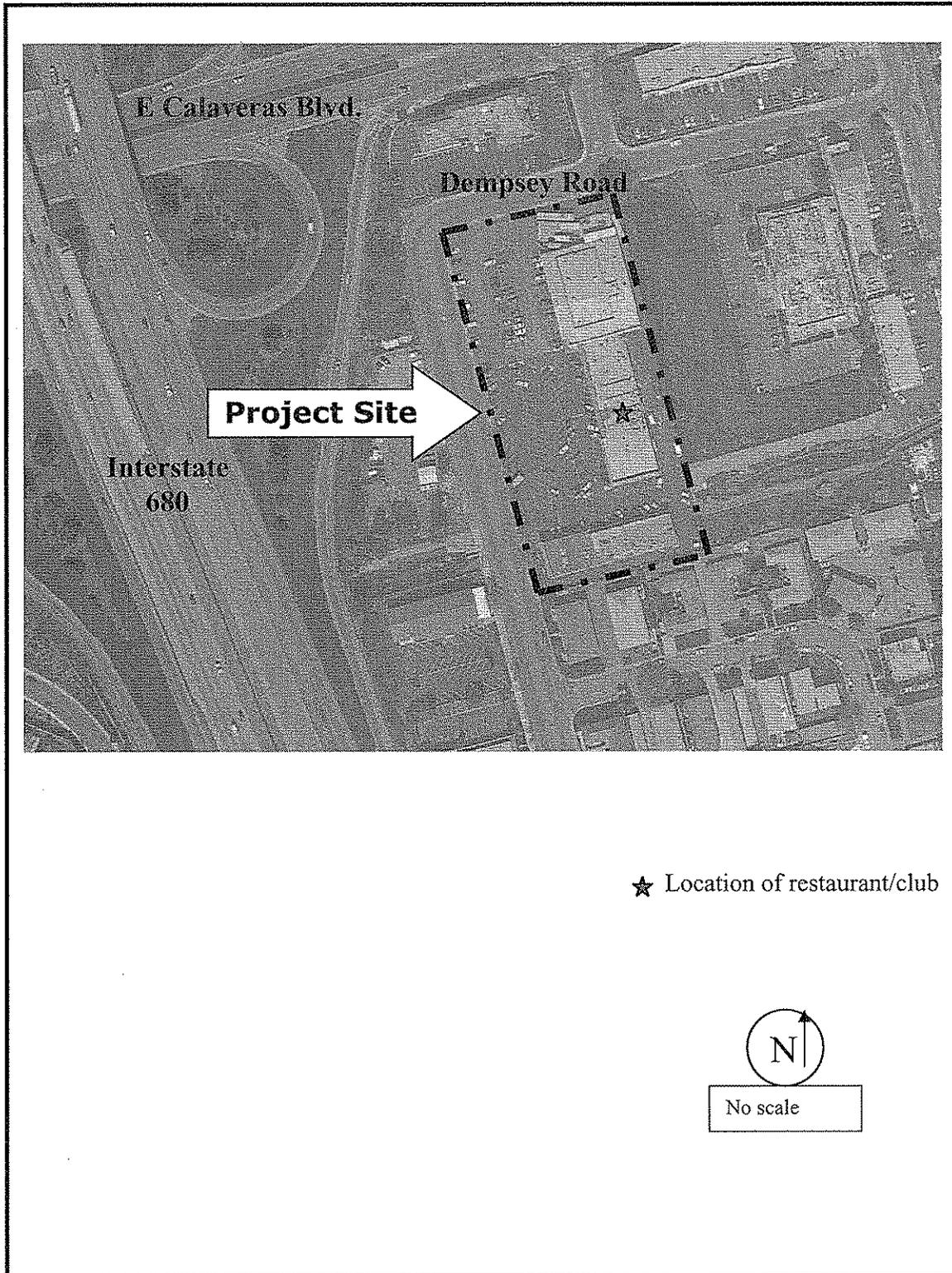
CEQA Determination: Categorically exempt from further environmental review pursuant to Section 15301, "Existing Facilities" of the California Environmental Quality Act (CEQA) guidelines.

PLANNER: Tiffany Brown

PJ: 2534

ATTACHMENTS:
A. Staff Report for UA08-0010 from July 9, 2008
B. Resolution No. 08-32 adopted July 9, 2008
C. Minutes from July 9, 2008 Planning Commission meeting

LOCATION MAP



BACKGROUND

On July 9, 2008 the Planning Commission approved a Conditional Use Permit Amendment No. UA08-0010, for Club Bahia to allow for seating on the dance floor area during restaurant/dining hours and to allow the service of a full range of alcoholic beverages for the existing restaurant located within the Fiesta Plaza Shopping Center.

Prior to approval of the project, the Commissioners required a six and 12 month review of the permit to insure that there will be no issues with the new amendments. The condition reads as follows:

5. *Six months and 12 months after issuance of the certificate of occupancy, the applicant must return to the Planning Commission for a review on Conditional Use Permit Amendment No. UA08-0010 to address any concerns that may have occurred. (PC)*

ISSUES

For this review, staff has checked with the City of Police and Code Enforcement. To date, there has not been an abnormal amount of service calls to the Police Department for the restaurant. Code Enforcement had an issue with a Taco Truck parking in front of the store around the hours of 8:00p.m. and 2:00a.m. The applicant did not know that they were not permitted to have the taco truck. Code enforcement went out and talked to the owner about the taco truck. The owner immediately corrected the problem and the issue was resolved on October 9, 2008.

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

During the last six months there have been some reported incidents. Staff is continuing to react and resolve issues as they are reported. As stated in the conditions of approval for the Conditional Use Permit, the next six month review would occur in July. Based on the reported issues, staff's position is to maintain the six month reviews.

STAFF RECOMMENDS THAT the Planning Commission note, receipt, and file the SIX MONTH REVIEW FOR CONDITIONAL USE PERMIT AMENDMENT NO. UA08-0010, Club Bahia and maintain the six month reviews.

ATTACHMENTS:

- A. Staff Report for UA08-0010 for July 9, 2008
- B. Resolution No. 08-32 adopted July 9, 2008
- C. Minutes from July 9, 2008

APPROVED

PLANNING COMMISSION MINUTES

January 28, 2009

**I.
PLEDGE OF
ALLEGIANCE**

Chair Williams called the meeting to order at 7:09 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL/SEATING
OF ALTERNATE**

Present: Aslam Ali, Larry Ciardella, Sudhir Mandal, Gurdev Sandhu,
Noella Tabladillo, and Cliff Williams
Absent: Alex Galang
Staff: Ah Sing, Andrade, Barnhart, Brown, Gilli, Lindsay, Oliva, and Otake

**III.
PUBLIC FORUM**

Chair Williams invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

Syed Mohsin, CAC Commission, announced the Fourth Annual Town Hall meeting hosted by the Community Advisory Commission, Emergency Preparedness Commission, and the City of Milpitas on Thursday, February 5, 2009, at 7:00 p.m. in the Milpitas Community Center Auditorium.

Carmen Montano and Ha Phan, Library Commission, spoke about a fundraiser to provide preschool literacy, summer reading programs, story times and puppet shows, author visits and book discussion groups, music and craft programs, poetry stories and movies. They are asking for donors who would like to have their names on plaques in the library for those who donate.

**IV.
APPROVAL OF
MINUTES
January 14, 2009**

Chair Williams called for approval of the minutes of the Planning Commission meeting of January 14, 2009.

There were no changes to the minutes.

Motion to approve the minutes of January 14, 2009 as submitted.

M/S: Sandhu, Mandal

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

**V.
ANNOUNCEMENTS**

Sheldon Ah Sing, Senior Planner, wanted to bring to the Commission's attention that staff has placed 3 memos on the dais for Items 1, 6, and 7.

APPROVED

Planning Commission Minutes

January 28, 2009

**VI.
CONFLICT
OF INTEREST**

Assistant City Attorney Bryan Otake asked if any member of the Commission has any personal or financial conflict of interest related to any of the items on tonight's agenda. There were no Commissioners who identified a conflict of interest.

**VII.
APPROVAL OF AGENDA**

Chair Williams asked whether staff or the Commission have any changes to the agenda. There were no changes to the agenda.

Motion to approve the agenda as submitted.

M/S: Sandhu, Mandal

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

**VIII.
CONSENT CALENDAR**

Chair Williams asked whether staff, the Commission, or anyone in the audience wish to remove or add any items to the consent calendar.

Sheldon Ah Sing, Senior Planner, requested to change Item No. 5 recommendation to close the public hearing, table the item, and staff will re-notice; change Item No. 6 to be removed from the consent calendar and staff will give a presentation; and Item No. 7 to continue the public hearing to February 11, 2009.

Chair Williams opened the public hearing on Item No. 5.

There were no speakers from the audience.

Motion to close the public hearing on Item No. 5

M/S: Mandal, Ciardella

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

Motion to table Item 5 and staff will re-notice.

M/S: Mandal, Ciardella

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

APPROVED
Planning Commission Minutes
January 28, 2009

***5 MAJOR TENTATIVE MAP NO. MT08-0002, CONDITIONAL USE PERMIT NO. UP08-0046, DEVELOPMENT AGREEMENT, OWNER PARTICIPATION AGREEMENT, AND ENVIRONMENTAL IMPACT ASSESSMENT NO. EA08-0005:** A request to subdivide a 24 acre site into nine (9) parcels for condominium purposes, establish building setbacks, improve existing roads, construction of a new local street, and create an urban plaza and public trail along Penitencia Creek. The project contemplates the future development of 1,573 dwelling units through a 10% density bonus for affordable housing over the entire project and an additional 25% transit density bonus on the properties zoned MXD2. Commercial space totaling 92,757 square feet is also contemplated on three (3) parcels within mixed use buildings. The project also includes a Development Agreement and an Owner Participation Agreement requesting financial assistance from the Redevelopment Agency. The project is located at the intersection of Great Mall Parkway and McCandless Drive (1315 McCandless Drive) (APNs: 086-33-092, 086-33-093, 086-33-094, 086-33-095, 086-33-098, 086-33-099, and 086-33-101), zoned a combination of Residential – Retail High Density Mixed Use and High Density Transit Oriented Residential with Site and Architectural Overlay (MXD2-S and R3-S). Applicant: Integral. Staff Contact: Sheldon S. Ah Sing (408) 586-3278. PJ # 3222. *(Recommendation: Open the public hearing and continue the public hearing to the February 11, 2009 meeting.)*

Motion to continue the public hearing on Item No. 7 to February 11, 2009.

M/S: Mandal, Ciardella

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

***7 MAJOR TENTATIVE MAP NO. MT08-0001, SITE DEVELOPMENT PERMIT NO. SZ07-0002, CONDITIONAL USE PERMIT NO. UP08-0045, AND ENVIRONMENTAL IMPACT ASSESSMENT NO. EA08-0004:** A request to further develop an existing office campus by adding 424,814 square feet of new office space in six, five story buildings and constructing an elevated parking deck. When built out, the total square footage of the campus would be 1,415,814 square feet. Because of potential environmental impacts stemming from the project, the project is subject to an Environmental Impact Report. The project also proposes a modification to the existing Development Agreement for the site. The project is located at 205 N. McCarthy Ranch Boulevard (APNs: 022-56-005 through 009), zoned Industrial Park with Site and Architectural Overlay (MP-S). Applicant: Equity Office. Staff Contact: Sheldon S. Ah Sing (408) 586-3278. PJ # 3223. *(Recommendation: Adopt Resolution No. 08-066 recommending approval of the project, the first amendment of the Development Agreement and certification of the project EIR, subject to conditions of approval.)*

APPROVED

Planning Commission Minutes

January 28, 2009

Motion to remove Item 6 from the consent calendar.

M/S: Williams, Mandal

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

***6 SIX MONTH REVIEW FOR CONDITIONAL USE PERMIT AMENDMENT**

NO. UA08-0010: Review of the approval which allows seating on the dance floor during restaurant/dining hours and allows the service of a full range of alcoholic beverages for the existing restaurant located at 78 Dempsey Road. The review summarizes any complaints or issues raised by the public during the last six months of operation for the restaurant. (APN: 088-04-001), zoned Neighborhood Commercial with Site and Architectural Overlay (C1-S). Applicant: Maria De Jesus Zauala. Staff Contact: Tiffany Brown (408) 586-3283. PJ # 2534.

(Recommendation: Note receipt and file; and continue until the next 6 month review.)

**IX.
PUBLIC HEARING**

**1. CONDITIONAL USE
PERMIT NO. UP08-0048**

Judi Gilli, Associate Planner, presented a request to operate a Tobacco Shop. The project is located at 1307 Jacklin Rd. Ms. Gilli recommended to Adopt Resolution No. 09-008 recommending approval of the project to the City Council subject to conditions of approval.

Commissioner Ali asked if there were any neighborhood meetings. Ms. Gilli stated there were no meetings; notices were sent out to the surrounding neighborhoods.

Commissioner Tabladillo wanted to know the distance between the tutoring center and the tobacco shop. Ms. Gilli said the tutoring center is at the other end of the complex. Commissioner Tabladillo asked if the customers can smoke in the facility. Ms. Gilli said no the facility is just for selling of retail tobacco.

Commissioner Ciardella asked if there will be video surveillance cameras. Ms. Gilli said staff could add it as a condition.

Chair Williams asked about the traffic situation. Ms. Gilli stated that the complex has about 93 parking spaces and it is at about 20% capacity; it has never been full from what she has seen.

Vice-Chair Mandal asked if there are other facilities in Milpitas of the same type. Ms. Gilli understands there are similar uses in Milpitas.

Charanjit Singh, 1462 Parkington Lane, Tracy, CA, owns a similar store in Stockton. He has visited the other stores and noticed less amount of tobacco. His store would have a greater volume of tobacco and many different varieties.

Commissioner Ciardella asked the applicant if he would be selling glass pipes and rolling paper. Mr. Singh said yes he would be selling pipes and other accessories.

Commissioner Ciardella also asked Mr. Singh if he would be willing to put in video surveillance cameras. Mr. Singh said yes he would.

Commissioner Tabladillo asked if he would be selling specialty cigars. Mr. Singh said he would be selling specialty cigars.

APPROVED

Planning Commission Minutes

January 28, 2009



MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: April 8, 2009

OLD BUSINESS

APPLICATION: 60 Day Compliance Review for Conditional Use Permit Amendment
No. UA08-0010: Club Bahia

APPLICATION SUMMARY: Review Planning Commission's approval to allow seating on the dance floor during restaurant/dining hours and to allow the service of a full range of alcoholic beverages for the existing restaurant.

LOCATION: 78 Dempsey Road (APN: 088-04-001)
APPLICANT: Maria De Jesus Zauala, 78 Dempsey Road, Milpitas CA 95035
OWNER: Joseph Levng, P.O. Box 36033, Milpitas, CA 95035

RECOMMENDATION: Staff recommends that the Planning Commission:
1. Close the public hearing, following public testimony; and
2. Note Receipt and File

PROJECT DATA:
General Plan/
Zoning Designation: Retail Sub-Center / Neighborhood Commercial (C1)
Overlay District: Site and Architectural Overlay (-S)
Related Permits: Use Permit No. 1132

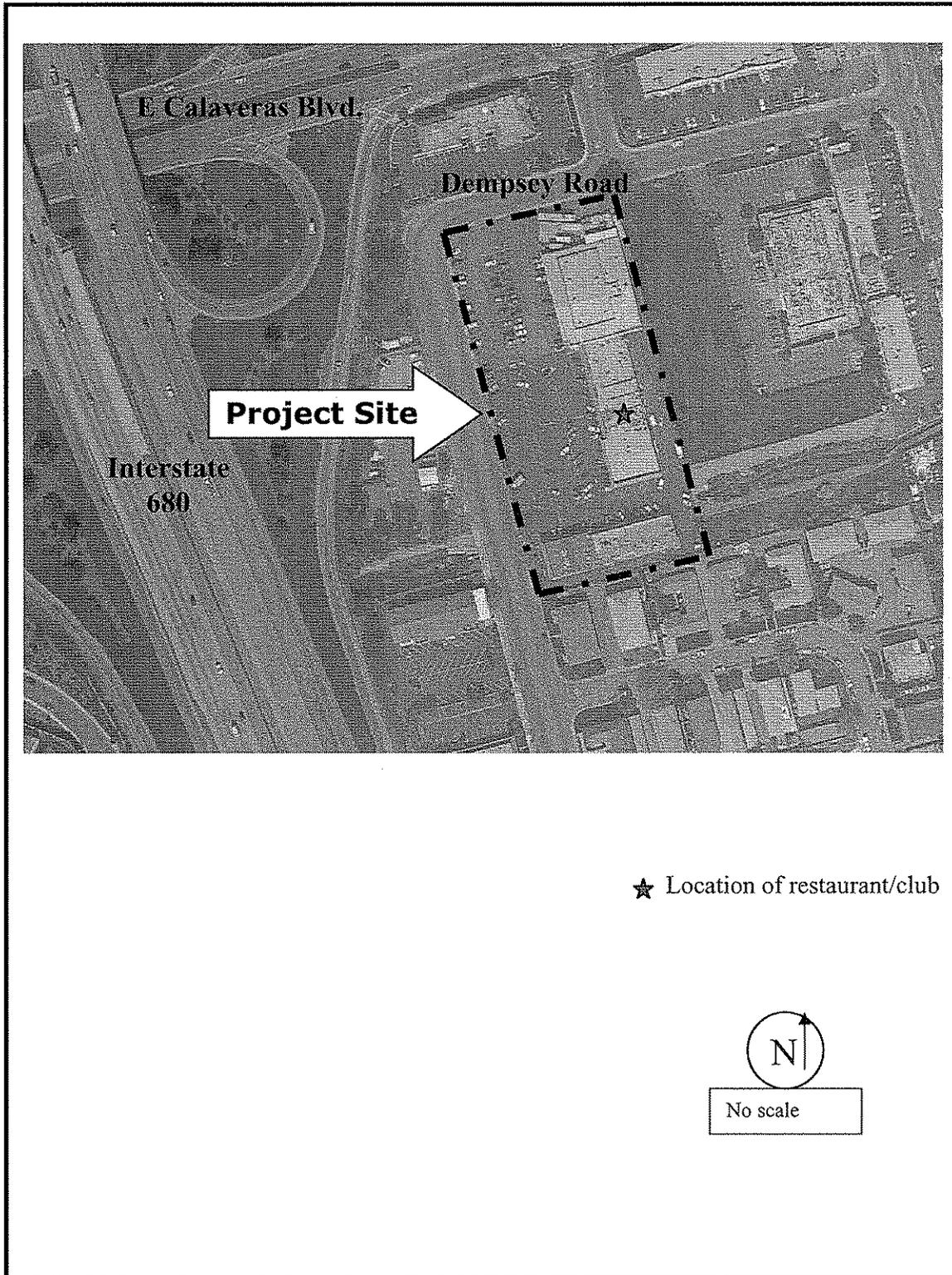
CEQA Determination: Categorically exempt from further environmental review pursuant to Section 15301, "Existing Facilities" of the California Environmental Quality Act (CEQA) guidelines.

PLANNER: Tiffany Brown

PJ: 2534

ATTACHMENTS:
A. Planning Commission minutes from January 28, 2009
B. January 28, 2009 Staff Report
C. Memorandum on parking at Fiesta Plaza

LOCATION MAP



BACKGROUND

On July 9, 2008 the Planning Commission adopted Resolution No. 08-XXX approving Conditional Use Permit Amendment No. UA08-0010, for Club Bahia to allow for seating on the dance floor area during restaurant/dining hours and to allow the service of a full range of alcoholic beverages for the existing restaurant located within the Fiesta Plaza Shopping Center.

With the approval of the project, the Commission included two "reviews". These reviews, as part of a condition of approval are intended to ensure that the operational changes approved by the Commission would not be detrimental to surrounding uses. The condition of approval reads:

5. *Six months and 12 months after issuance of the certificate of occupancy, the applicant must return to the Planning Commission for a review on Conditional Use Permit Amendment No. UA08-0010 to address any concerns that may have occurred. (PC)*

On January 28, 2009 a public hearing was held for the initial six month review pursuant to the above condition. During that meeting, staff summarized any complaints or issues raised by the public during the last six months of operation for the restaurant. Because there were some complaints associated with the restaurant, staff recommended having the Commission direct staff to return with a compliance report within the next 60 days and that the item require a public hearing. The Commission concurred with the recommendation and staff began the review for the 60-day compliance.

Under the Milpitas Municipal Code, the modification, suspension or revocation of any conditional use permit or its conditions of approval requires notice, a public hearing, and a recommendation from the Planning Commission to the City Council.

WITHIN THE PAST 60 DAYS

Issues

Planning staff coordinated with the Police Department on the issues received from the public regarding Club Bahia. The Police Department aided Planning staff with the 60-day compliance review by understanding the restaurant's conditions of approval and conducting patrol checks to ensure the restaurant was in compliance with the conditions.

The Police Department performed 25 patrol checks for Club Bahia. The patrol checks were conducted during Friday, Saturday, and Sundays; hours ranging from 4:00 p.m. to 2:00a.m. There were no calls for services during the 60-day period of review. However, there was one report taken on February 14, 2009 at 11:55p.m. by an officer that was on foot patrol at Club Bahia. The officer arrested a person for public intoxication and took the person into custody. Planning Staff also went out to the site on March 27, 2009 at 10:00p.m. to check compliance with the conditions of approval for the restaurant. Staff concurred with the police department in that the restaurant was in compliance with all conditions of approval.

From January 28, 2009 to date, the city's Code Enforcement Division has not received any calls or filed complaints regarding the restaurant.

PUBLIC COMMENT/OUTREACH

Staff publicly noticed the application. As of the time of writing this report, there have been no inquiries from the public.

CONCLUSION

The restaurant is in compliance with all the conditions of approval and has not received complaints from the public. The next review for the restaurant will be six months from now pursuant to the adopted Resolution and conditions of approval for the project.

STAFF RECOMMENDS THAT the Planning Commission note, receipt, and file the 60-day compliance review for Conditional Use Permit Amendment No. UA08-0010, Club Bahia.

ATTACHMENTS:

- A. Planning Commission minutes from January 28, 2009
- B. January 28, 2009 Staff Report
- C. Memorandum on parking at Fiesta Plaza

APPROVED

PLANNING COMMISSION MINUTES

April 8, 2009

- I.
PLEDGE OF
ALLEGIANCE**
- Chair Williams called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.
- II.
ROLL CALL/SEATING
OF ALTERNATE**
- Present: Aslam Ali, Alex Galang (7:01 pm), Sudhir Mandal, Gurdev Sandhu, Mark Tiernan, and Cliff Williams
Absent: Larry Ciardella and Noella Tabladillo
Staff: Ah Sing, Andrade, Armendariz, Brown, Gilli, Lindsay, Otake and Reliford
- Alternate Commissioner Mark Tiernan was seated as a member of the voting body.
- III.
PUBLIC FORUM**
- There were no speakers in the audience.
- IV.
APPROVAL OF
MINUTES
March 25, 2009**
- Chair Williams called for approval of the minutes of the Planning Commission meeting of March 25, 2009.
- There were no changes to the minutes.
- Motion** to approve the minutes of March 25, 2009 as submitted.
- M/S: Mandal, Sandhu
AYES: 6
NOES: 0
ABSENT: 2 (Larry Ciardella and Noella Tabladillo)
ABSTAIN: 0
- V.
ANNOUNCEMENTS**
- Commissioner Sandhu announced the Sikh celebration on April 13, 2009. Chair Williams stated he went to the new State of the Art Humane Society in Milpitas. He stated it is a fantastic facility. The City is proud that the Humane Society selected Milpitas to have their facility here.
- VI.
CONFLICT
OF INTEREST**
- Assistant City Attorney Bryan Otake asked if any member of the Commission has any personal or financial conflict of interest related to any of the items on tonight's agenda.
- There were no Commissioners who identified a conflict of interest.

VII.

APPROVAL OF AGENDA

Chair Williams asked whether staff or the Commission have any changes to the agenda.
There were no changes to the agenda.

Motion to approve the agenda as submitted.

M/S: Mandal, Galang

AYES: 6

NOES: 0

ABSENT: 2 (Larry Ciardella and Noella Tabladillo)

ABSTAIN: 0

VIII.

CONSENT CALENDAR

Chair Williams asked whether staff, the Commission, or anyone in the audience wish to remove or add any items to the consent calendar.

There were no changes to the consent calendar.

Chair Williams opened the public hearing on Item No. 4.

There were no speakers from the audience.

Motion to close the public hearing.

M/S: Mandal, Sandhu

AYES: 6

NOES: 0

ABSENT: 2 (Larry Ciardella and Noella Tabladillo)

ABSTAIN: 0

Motion to Adopt Resolution No. 09-018 approving the project, subject to the conditions of approval.

M/S: Mandal, Sandhu

AYES: 6

NOES: 0

ABSENT: 2 (Larry Ciardella and Noella Tabladillo)

ABSTAIN: 0

***4 CONDITIONAL USE PERMIT NO. UP09-0001:** A request to operate a martial arts studio. The project is located at 106 South Park Victoria. (APN: 088-04-078), zoned Neighborhood Commercial with Site and Architectural Overlay (C1-S). No exterior changes to the site or building are proposed. Applicant: Tony Tran. Staff Contact: Judie Gilli (408) 586-3280. PJ # 2572. *(Recommendation: Adopt Resolution No. 09-018 approving the project, subject to the conditions of approval.)*

APPROVED

Planning Commission Minutes

April 8, 2009

Chair Williams stated Item No. 5 was a 60-Day Review and not a public hearing.

Motion to Note, receipt and file the report.

M/S: Mandal, Sandhu

AYES: 6

NOES: 0

ABSENT: 2 (Larry Ciardella and Noella Tabladillo)

ABSTAIN: 0

**X.
OLD BUSINESS**

***5 SIXTY-DAY COMPLIANCE REVIEW FOR CONDITIONAL USE PERMIT AMENDMENT NO. UA08-0010:** Review of the approval, which allows seating on the dance floor during restaurant/dining hours and allows the service of a full range of alcoholic beverages for the existing restaurant located at 78 Dempsey Road. (APN: 088-04-001), zoned Neighborhood Commercial with Site and Architectural Overlay (C1-S). Applicant: Maria De Jesus Zauala. Staff Contact: Tiffany Brown (408) 586-3283. (*Recommendation: Note, receipt and file the report*)

**IX.
PUBLIC HEARING**

**1. ZONING ORDINANCE
AMENDMENT NO. ZA09-
0001, CONVERSION OF
MOBILE HOME PARKS
TO OTHER USES**

Felix Reliford, Principal Housing Planner, presented a request to amend the City of Milpitas Zoning Ordinance Title XI, Chapter 20 regarding the conversion of mobilehome parks to other uses and Title XI, Chapter 10-64 establishing mobilehome park conversion permit process. The section would affect existing mobilehome parks within the City. The proposed changes would affect the requirements to convert, close or cease to use land as a mobilehome park. Mr. Reliford recommended adopting Resolution No. 09-017 recommending approval of the amendments to the City Council.

Mr. Reliford stated that State law no longer permits payment of a set monetary amount for relocation costs. The City can only require the mobilehome park owner to pay reasonable costs as it relates to relocation for residents. Since 1992 Mobilehome Parks have been govern by rent control adopted by the City Council. The City feels the property owner should pay for all reasonable costs such as dismantling, packing, moving, reassembling, rebuilding, unpacking, moving all personal property, skirting, tie downs, meals, lodging, gas, while mobilehome is dismantled, moving and reassembling to compensate the residents and making the transition as easy as possible for the residents.

Commissioner Ali asked if there is a cap, minimum or maximum, for relocating. Mr. Reliford stated there is nothing in the law in regards to minimum or maximum it only speaks in terms of reasonable costs.

Vice-Chair Mandal asked how many residents are there that need to be moved at this time. Mr. Reliford stated no one will be moving, all the City is doing is updating the ordinance from 1988 to present.

Chair Williams opened the public hearing.

There were no speakers from the audience.

Motion to close the public hearing.

APPROVED
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April 8, 2009



MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: June 24, 2009

APPLICATION: Twelve Month Review for Conditional Use Permit Amendment No. UA08-0010: Club Bahia

APPLICATION SUMMARY: Review of the approval to allow seating on the dance floor during restaurant/dining hours and to allow the service of a full range of alcoholic beverages for the existing restaurant.

LOCATION: 78 Dempsey Road (APN: 088-04-001)
APPLICANT: Maria De Jesus Zauala, 78 Dempsey Road, Milpitas CA 95035
OWNER: Joseph Levng, P.O. Box 36033, Milpitas, CA 95035

RECOMMENDATION: Staff recommends that the Planning Commission:
1. Close the public hearing;
2. Note Receipt and File

PROJECT DATA:
General Plan/
Zoning Designation: Retail Sub-Center / Neighborhood Commercial (C1)
Overlay District: Site and Architectural
Related Permits: Use Permit No. 1132

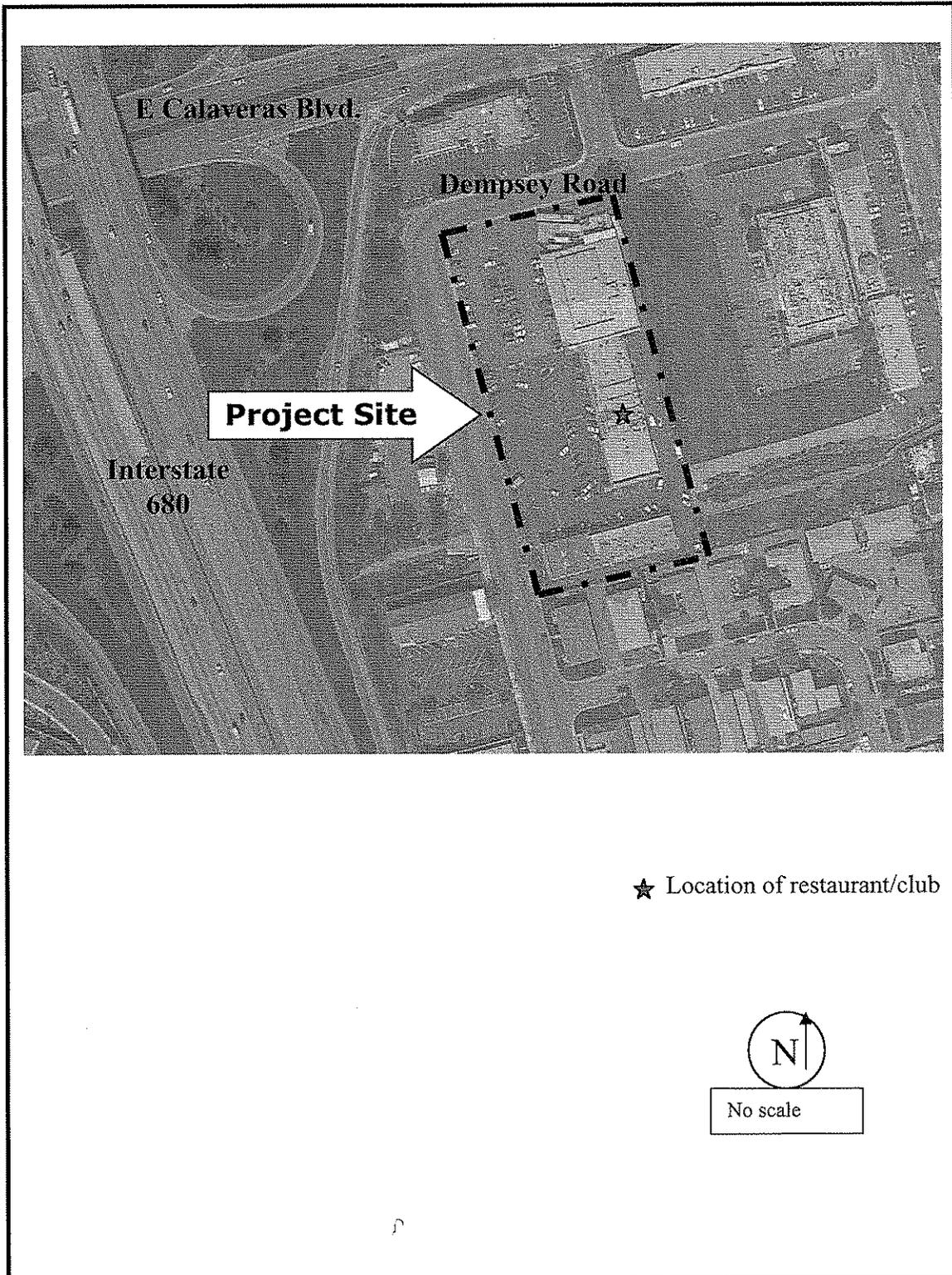
CEQA Determination: Categorically exempt from further environmental review pursuant to Section 15301, "Existing Facilities" of the California Environmental Quality Act (CEQA) guidelines.

PLANNER: Tiffany Brown

PJ: 2534

ATTACHMENTS: A. Planning Commission Meeting Minutes from April 8, 2009
B. Calls of Service Police Report

LOCATION MAP



BACKGROUND

On July 9, 2008 the Planning Commission approved Conditional Use Permit Amendment No. UA08-0010, for Club Bahia to allow for seating on the dance floor area during restaurant/dining hours, where previously no seating was permitted and to allow the service of a full range of alcoholic beverages for the existing restaurant located within the Fiesta Plaza Shopping Center.

Prior to the approval of the project, the Commission required a six and 12 month review of the permit to ensure that there will be no issues with the new amendments. Staff presented the six month review at the January 28, 2009 Planning Commission meeting and recommended the Commission required an additional 60-day compliance review in order to ensure the operation of the restaurant is consistent with the conditions of approval. Staff returned to the Planning Commission on April 8, 2009 and reported that after the compliance review was complete, it was found that the restaurant is in compliance with all the conditions of approval. Staff is now returning to the Planning Commission for the 12 month review of this permit as originally required.

ISSUES

For this review, staff checked with the Police Department and Code Enforcement Division. Attached to this report you will find the *Calls for Service Police Report* for Club Bahia. The Calls of Service show that most services listed are protocol officer patrol checks normally performed during a shift. There are three incidents listed showing that an officer witnessed a verbal argument on May 23rd; the Police responded to a false alarm on June 5th; and an officer cited a patron for urinating in the parking lot on June 6th. To date, such calls do not constitute an abnormal amount of service calls to the Police Department for a restaurant with entertainment services venue of this type. Milpitas Code Enforcement has not received any calls or complaints regarding this venue.

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

During the last six months the amount of service calls for this type of service is considered normal and the three incidents that occurred are considered minor. No complaints or issues have been reported from the public and the restaurant is in compliance with all the conditions of approval.

STAFF RECOMMENDS THAT the Planning Commission close the public hearing and note, receipt, and file the Twelve Month Review for Conditional Use Permit Amendment No. UA08-0010, Club Bahia.

ATTACHMENTS:

- A. Planning Commission Meeting Minutes from April 8, 2009
- B. B. Calls of Service Police Report

APPROVED

PLANNING COMMISSION MINUTES

June 24, 2009

- I. PLEDGE OF ALLEGIANCE** Vice-Chair Mandal called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.
- II. ROLL CALL/SEATING OF ALTERNATE** Present: Larry Ciardella, Alex Galang, Sudhir Mandal, Gurdev Sandhu, Noella Tabladillo, and Mark Tiernan
Absent: Aslam Ali and Cliff Williams
Staff: AhSing, Andrade, Brown, Gilli, Otake
Alternate Commissioner Mark Tiernan was seated as a member of the voting body.
- III. PUBLIC FORUM** Vice-Chair Mandal invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.
There were no speakers from the audience.
- IV. APPROVAL OF MINUTES**
June 10, 2009 Vice-Chair Mandal called for approval of the minutes of the Planning Commission meeting of June 10, 2009.
There were no changes to the minutes.
Motion to approve the minutes of June 10, 2009 as submitted.
M/S: Tabladillo, Galang
AYES: 6
NOES: 0
ABSENT: 2 (Aslam Ali and Cliff Williams)
ABSTAIN: 0
- V. ANNOUNCEMENTS** Sheldon AhSing, Senior Planner announced that this was Judi Gilli's last report to the Planning Commission. Vice-Chair Mandal thanked Judi Gilli for all her help and support.
Commissioner Tiernan stated he would not be at the July 22nd PC meeting.
- VI. CONFLICT OF INTEREST** Assistant City Attorney Bryan Otake asked if any member of the Commission has any personal or financial conflict of interest related to any of the items on tonight's agenda. There were no Commissioners who identified a conflict of interest.
- VII. APPROVAL OF AGENDA** Vice-Chair Mandal asked whether staff or the Commission have any changes to the agenda.
There were no changes to the agenda.
Motion to approve the agenda as submitted.
M/S: Tabladillo, Galang
AYES: 6
NOES: 0

**VIII. CONSENT
CALENDAR**

ABSENT: 2 (Aslam Ali and Cliff Williams)

ABSTAIN: 0

Vice-Chair Mandal asked whether staff, the Commission, or anyone in the audience wish to remove or add any items to the consent calendar.

Commissioner Tabladillo requested that Item No. 1 be placed on the Consent Calendar.

Motion to place Item No. 1 on the Consent Calendar.

M/S: Tabladillo, Sandhu

AYES: 6

NOES: 0

ABSENT: 2 (Aslam Ali and Cliff Williams)

ABSTAIN: 0

Motion to approve Item No. 1 and Item No. 4 on the consent calendar.

M/S: Tiernan, Tabladillo

AYES: 6

NOES: 0

ABSENT: 2 (Aslam Ali and Cliff Williams)

ABSTAIN: 0

Vice-Chair Mandal opened the public hearing on Item No. 1.

There were no speakers from the audience.

Motion to close the public hearing.

M/S: Tabladillo, Galang

AYES: 6

NOES: 0

ABSENT: 2 (Aslam Ali and Cliff Williams)

ABSTAIN: 0

Motion to adopt Resolution 09-027 approving the project subject to conditions of approval.

M/S: Ciardella, Sandhu

AYES: 6

NOES: 0

ABSENT: 2 (Aslam Ali and Cliff Williams)

ABSTAIN: 0

***1. CONDITIONAL USE PERMIT NO. UP09-0013:** A request to allow four temporary tract signs for the Town Center Villas project. The signs are located in the vicinity of the Town Center Villas between N. Milpitas Blvd., E. Calaveras Blvd. and N. Hillview Drive. Applicant: Marketshare Inc. Staff Contact: Judie

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Gilli (408) 586-3280. PJ # 2587. *(Recommendation: Adopt Resolution No. 09-027 approving the project subject to conditions of approval.)*

Vice-Chair Mandal opened the public hearing on Item No. 4.

There were no speakers from the audience.

Motion to close the public hearing.

M/S: Tabladillo, Sandhu

AYES: 6

NOES: 0

ABSENT: 2 (Aslam Ali and Cliff Williams)

ABSTAIN: 0

Motion to table Item No. 4.

M/S: Tabladillo, Galang

AYES: 6

NOES: 0

ABSENT: 2 (Aslam Ali and Cliff Williams)

ABSTAIN: 0

***4 CONDITIONAL USE PERMIT NO. UP08-0046, ENVIRONMENTAL IMPACT ASSESSMENT NO. EA08-0005, SITE DEVELOPMENT PERMIT NO. SZ07-0004, AND MAJOR TENTATIVE MAP NO. MT08-0002:**

Integral/McCandless Mixed Use Project: New mixed use project containing 1,800 dwelling units (73.6/gross acre), 70,000 sq. ft. commercial located at 1315 McCandless Dr. (APN: 086-33-092) Applicant: Glen Brown. Staff Contact: Sheldon AhSing (408) 586-3278. PJ # 3222. *(Recommendation: Close the public hearing and table the item.)*

IX. PUBLIC HEARING

2. TWELVE MONTH REVIEW FOR CONDITIONAL USE PERMIT AMENDMENT NO. UA08-0010

Tiffany Brown, Junior Planner, presented a review of the approval which allows seating on the dance floor during restaurant/dining hours and allows the service of a full range of alcoholic beverages for the existing restaurant located at 78 Dempsey Road. Ms. Brown stated that staff returned to the Commission on April 8, 2009 and reported that after the compliance review was complete, it was found that the restaurant is in compliance with all the conditions of approval. Ms. Brown recommended closing the public hearing; note receipt and file.

Vice-Chair Mandal asked if the applicant was present. Ms. Brown stated the applicant could not make it due to other commitments.

Commissioner Tabladillo asked what the Commission's options were. Bryan Otake, Assistant City Attorney, stated the Commission could either revoke, suspend, modify, or sustain (take no action) of the Conditional Use Permit.

Commissioner Tiernan asked if there is any issue with the restaurant how would the City know. Ms. Brown stated Code Enforcement would be called if there were any issues or complaints.

APPROVED

Planning Commission Minutes

June 24, 2009

Vice-Chair Mandal asked about the report of calls that were given to staff. Ms. Brown stated that these were normal service calls. Commissioner Tabladillo asked where the calls came from. Ms. Brown stated the Police Department does normal patrolling of the restaurant and area.

Commissioner Tabladillo asked staff if the Commission opted to do another 12 month review is that possible. Mr. AhSing stated yes that is a possibility.

Vice-Chair Mandal opened the public hearing.

There were no speakers in the audience.

Motion to close the public hearing.

M/S: Sandhu, Galang

AYES: 6

NOES: 0

ABSENT: 2 (Aslam Ali and Cliff Williams)

ABSTAIN: 0

Commissioner Tiernan stated he feels that the restaurant has been in compliance, a good citizen, and a good business partner. He feels if the Commission should burden the restaurant with another 6 to 12 month review he feels the City is not treating them the same as they do other businesses. He supports the recommendation of staff.

Commissioner Ciardella asked how long the restaurant has had the alcoholic and dance permits. Ms. Brown stated the restaurant has had the entertainment permit and the sell of beer and wine permit since 1992. The recent amendment in 2008 is to allow all types of alcohol.

Motion to place another 12 month review for the conditional use permit.

M/S: Tabladillo, Ciardella

AYES: 5

NOES: 1 (Mark Tiernan)

ABSENT: 2 (Aslam Ali and Cliff Williams)

ABSTAIN: 0

**3. TIME EXTENSION NO.
TE09-0002**

Sheldon AhSing, Senior Planner, presented a request for a one-time eighteen month time extension for a previously approved 387 unit multi-family project that include studio, one and two bedroom units in four story buildings. The purpose of the extension is to allow for additional time to secure financing. The project is located at 1504 -1620 S. Main Street. Mr. AhSing recommended adopting Resolution No. 09-028 approving the project subject to conditions of approval.

Commissioner Ciardella asked if this was the old Ooh La La Lodge property. Mr. AhSing said yes it was. Commissioner Ciardella also asked when the demolition will begin on the property. Bryan Otake, Assistant City Attorney, stated the demolition would begin in Mid July.

Vice-Chair Mandal opened the public hearing.

There were no speakers in the audience.

APPROVED

Planning Commission Minutes

June 24, 2009

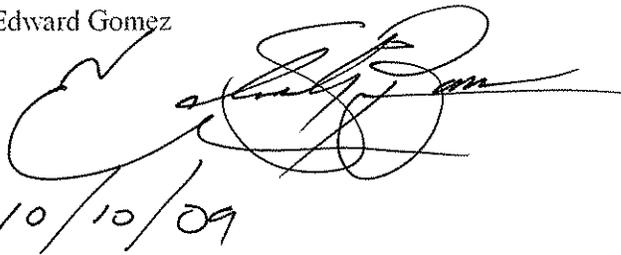
**NEIGHBORHOOD AGREEMENT BETWEEN THE MOSQUE DAR US SALAM,
AL HILAAL ISLAMIC CHARITABLE FOUNDATION, AND CLUB BAHIA**

A meeting between Al Hilaal Islamic Charitable Foundation, Masjid Dar Us Salaam, and the Club Bahia management was held at 6:00 p.m. local time on October 3, 2009, at the Nan N Masala restaurant in Milpitas, California pursuant to notice duly given. Present were Munawwar Ali Daimee, Ali Atesoglu, Salim Akhtar and Edward Gomez

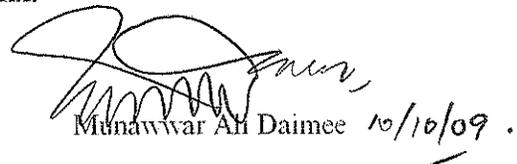
The discussions points ended with the agreement of both sides are :

- The sound proof walls installation all around the Club Bahia, including windows and doors.
- The most important prayer time in the whole year is the month of Ramadan. It should be respected by the Club management to turn down the noisy activities to minimum at the time of long prayers. The prayers may take up to two hours or more in the summer season of the year.
- Turn down the noisy activities to the minimum for 30 minutes or a little more at the Mosque prayer times at nights, to not to disturb the prayers. Whole year prayers time table given to the Club Bahia management.
- Club Bahia will have no customer door entrance close to the Mosque side. Stay at your current door location.
- Club Bahia will make sure none of their customer is urinating, vomiting, or having loud gathering around the Mosque during the prayer times at night. The steam wash cleaning will be done by the Club Bahia if needed.
- Club Bahia will be responsible of cleaning the parking lot if there are bottles, cans and other kind of dirt left by the club customers.
- Club Bahia security will be keeping eye on the people at the back side of the parking lot to keep the noise level down at the time of the night prayers.
- Club Bahia security will be keeping eye and securing the front parking lot from all kind of illegal activities such as prostitution, drug dealing and fighting and etc... If necessary the Club Bahia management must call the Milpitas police right away...
- Club Bahia is responsible of not turning our parking lot as a fair ground. All the activities should be done inside the Club. No open entertainment on the parking lot.
- If there is any damage happens at Mosque premises by the Club Bahia customers, the Club Bahia management should pay the expenses of the fix.

Edward Gomez



10/10/09



Munawwar Ali Daimee 10/10/09.

Ali Atesoglu



Oct. 10, 2009

Salim Akhtar



RECEIVED

OCT 20 2009

CITY OF MILPITAS
PLANNING DIVISION