



## MILPITAS PLANNING COMMISSION AGENDA REPORT

### **PUBLIC HEARING**

Meeting Date: February 10, 2010

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**APPLICATION:**                      **CONDITIONAL USE PERMIT NO. UP09-0037**

**APPLICATION  
SUMMARY:**

A request to operate two takeout restaurants, one with drive through, within an existing commercial building.

**LOCATION:**

Address 1785 Landess Ave. (APN: 088-43-028)

**APPLICANT:**

Sunny Tam, 147 Castro Street Suite 2, Mountain View, CA 94041

**OWNER:**

S02 LLC, 572 Middlebury Dr., Sunnyvale, CA 94087

**RECOMMENDATION:**      **Staff recommends that the Planning Commission: Adopt Resolution No. 10-009 approving the project subject to the conditions of approval.**

**PROJECT DATA:**

General Plan/

Zoning Designation:

General Commercial / General Commercial (C2)

Overlay District:

Site and Architectural Review (-S)

CEQA Determination:

Categorically exempt from further environmental review pursuant to Section 15301 for Existing Facilities.

PJ:

2605

**PLANNER:**

Tiffany Brown

**ATTACHMENTS:**

- A. Resolution No. 10-009
- B. Site Plans

# LOCATION MAP



No scale

**BACKGROUND**

On September 9, 2009, Sunny Tam with Studio 02 submitted an application requesting to operate two new takeout restaurants, one with drive through, within the existing commercial building. according to the Milpitas Municipal Code, restaurants with and without a drive through require a Conditional Use Permit per Title XI, Chapter 10, Table 5.02-1.

**PROJECT DESCRIPTION**

The project site includes a two story 4,261 (1<sup>st</sup> floor = 3,500 sq.ft., 2<sup>nd</sup> floor = 761 sq.ft.) square foot building with two drive through lanes and parking lot with 23 parking spaces. The property and neighboring properties are zoned General Commercial; and the south portion of the property abutting the Milpitas / San Jose border. A vicinity map of the subject site location is included on the previous page.

The applicant proposes to divide the first floor of the building into two tenant spaces; Suite A equaling 1,542 sq. ft. and Suite B equaling 1,619 sq. ft. The second story of the building will remain as is and be used for storage only. One of the drive through lanes will remain in use in conjunction with the restaurant (Suite A). The other drive through lane will be closed and replaced with six parallel parking stalls for delivery and employees only. This will give the parking lot a total of 29 parking spaces.

Suite A includes two restrooms, a dining area with a maximum of 33 seats, a kitchen area, a 17 foot takeout counter with service area and a drive through window. Suite B also includes two restrooms, a dining area with a maximum of 34 seats, a kitchen area, and 16 foot takeout counter with service area.

***Parking***

The required amount of parking for both restaurants is described in the table below.

**Table 1**  
**Required Parking**

	<i>Parking Ratio</i>	<i>Parking Required</i>
Suite A	1 parking space per every 2.5 seats Plus 1 parking space per every 60 square feet GFA for ordering/takeout area Plus queuing of 5 vehicles in drive through	14 parking spaces  Queuing of 5 vehicles in drive through (addressed in paragraph below)
Suite B	1 parking space per every 2.5 seats Plus 1 parking space per every 60 square feet GFA for ordering/takeout area	14 parking spaces
		Total required 28
		Total supplied 29

The total amount of parking required for both restaurants to locate within the existing building is 28 parking spaces with a queuing of five vehicles in the drive through lane. As mentioned previously, the total amount of parking spaces provided in the parking lot is 29 parking spaces and the drive through has a queuing capacity of seven vehicles, therefore the project meets the required amount of parking per the Milpitas Municipal code.

Signage

Per the Milpitas Municipal Code Title XI Chapter 30, Section 3.02, the total aggregate area of all signs permitted for 1785 Landess Avenue shall not exceed 284 square feet. An example of the signage for the restaurants and drive through are shown on sheet A4.0 of the Site Plans (Attachment B.). The exact signage design is to be submitted for review and approval prior to building permit issuance and installation.

**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**

<b>Policy</b>	<b>Consistency Finding</b>
<i>2.a-I-3: Encourage economic pursuits which will strengthen and promote development though stability and balance.</i>	<b>Consistent.</b>
<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>	<b>Consistent.</b>

The two restaurants will encourage economic pursuits and will strengthen and promote a strong economy; providing economic opportunities for all Milpitas residents within the existing environmental, social, fiscal, and land use constraints.

***Zoning Ordinance***

Restaurants are a conditionally permitted use within the General Commercial Zoning District. The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.

**ENVIRONMENTAL REVIEW**

The Planning Division conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). Staff determined that the project is categorically exempt from further environmental review pursuant to Section 15301 for Existing Facilities within the CEQA guidelines because the project includes a negligible expansion beyond the 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**

The two restaurants locating within the existing building are consistent with both the General Plan and Zoning Ordinance and will provide alternate types of food in the area for residents and visitors to choose from.

**RECOMMENDATION**

**STAFF RECOMMENDS THAT** the Planning Commission close the public hearing and adopt Resolution No. 10-009 approving Conditional Use Permit No. UP09-0037, subject to the Conditions of Approval.

*Attachments:*

- A. Resolution No. 10-009
- B. Site Plans

**RESOLUTION NO. 10-009**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT NO. UP09-0037, TO ALLOW THE OPERATION OF TWO TAKEOUT RESTURANTS, ONE WITH DRIVE THROUGH, WITHIN AN EXISTING COMMERCIAL BUILDING, LOCATED AT 1785 LANDESS AVE.**

**WHEREAS**, on September 9, 2009, an application was submitted by Sunny Tam, 147 Castro Street Suite 2, Mountain View, CA 94041, to operate two takeout restaurants, one with drive through, within the existing commercial building. The property is located within the General Commercial Zoning District (APN 088-43-028); 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 exempt.

**WHEREAS**, on February 10, 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 for Existing Facilities within the CEQA guidelines in that the project is a negligible expansion beyond the existing use.

**Section 3:** The project proposal is consistent with the General Plan Implementation Policies 2.a-I-3 and 2.a-I-5 in that the two restaurants will encourage economic pursuits with will strengthen and promote a strong economy; providing economic opportunities for all Milpitas residents within the existing environmental, social, fiscal, and land use constraints

**Section 4:** The project proposal to operate two restaurants within the General Commercial Zoning District is conditionally permitted per Title XI, Chapter 10, Table 5.02-1 of the Milpitas Municipal Code. The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.

**Section 5:** The Planning Commission of the City of Milpitas hereby approves Conditional Use Permit No. UP09-0037, 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 February 10, 2010.

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Chair

**TO WIT:**

**I HEREBY CERTIFY** that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on February 10, 2010, and carried by the following roll call vote:

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

**EXHIBIT 1**

**CONDITIONS OF APPROVAL  
CONDITIONAL USE PERMIT NO. UP09-0037**

Request to operate two takeout restaurants, one with drive through, within an existing commercial building.

1785 Landess Ave. (APN: 088-43-028)

**General Conditions**

1. The owner or designee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on February 10, 2010, in accordance with these Conditions of Approval.

Any deviation from the approved site plan, floor plans, elevations, or other approved submittal shall require that, prior to the issuance of building permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. **(P)**

CONDITIONAL USE PERMIT NO. UP09-0037 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.

2. Pursuant to Section 64.06(1), the owner or designee shall have the right to request an extension of UP09-0037 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein. **(P)**
3. 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)**
4. 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)**
5. The maximum approved seating for Suite A restaurant is 33 indoor seats and 0 outdoor seats. The approved take-out area is 51 (17' counter x 3' ordering area) square feet. Prior to

issuance of a certificate of occupancy for this use, a sign measuring at least 8 1/2 inches by 11 inches, with a lettering height of at least three (3) inches, shall be placed in a conspicuous location near the restaurant front entrance stating "Maximum dining room seating: 33; Maximum outdoor seating: 0, as per Conditional Use Permit No. UP09-0037 granted by the Planning Commission on February 10, 2010. **(P)**

6. The maximum approved seating for Suite B restaurant is 34 indoor seats and 0 outdoor seats. The approved take-out area is 48 (16' counter x 3' ordering area) square feet. Prior to issuance of a certificate of occupancy for this use, a sign measuring at least 8 1/2 inches by 11 inches, with a lettering height of at least three (3) inches, shall be placed in a conspicuous location near the restaurant front entrance stating "Maximum dining room seating: 34; Maximum outdoor seating: 0, as per Conditional Use Permit No. UP09-0037 granted by the Planning Commission on February 10, 2010. **(P)**

(P) = Planning

(B) = Building

(E) = Engineering

(F) = Fire Prevention

**PROJECT DESCRIPTION**

THE BUILDING IS A VACANT 2-STORY STRUCTURE THAT WAS OCCUPIED BY BANK OF SANTA CLARA. THIS CONDITIONAL USE APPLICATION IS FOR A SPECULATIVE CHINESE FASTFOOD RESTAURANT AND A SUBWAY SANDWICHES STORE WITH DRIVE THRU. THE SPECULATIVE FASTFOOD RESTAURANT IS A TAKE OUT STYLE RESTAURANT WITH ORDERING/TAKE COUNTER AND MOVABLE SEATING. THE PROPOSED SUBWAY WILL OCCUPIED THE DRIVE THUR SIDE THAT OFFERS TAKE-OUT, SIT-IN AS WELL AS DRIVE-THRU ORDER. THE EXISTING THE 2ND FLOOR WILL BE FOR STORAGE AND WILL NOT BE ACCESSED BY THE PUBLIC. IT MIGHT ALSO BE USED FOR FUTURE MECHANICAL PIT TO ACCOMMODATE ADDITIONAL ROOFTOP EQUIPMENT. ALL ROOFTOP EQUIPMENT WILL BE ADDED WITHIN THE EXISTING (OR NEW) MECHANICAL PIT AND WILL BE SCREENED FROM THE STREET. THE SPECULATIVE CHINESE FASTFOOD RESTAURANT HOURS ARE 10AM TO 10PM DAILY WHILE SUBWAY HOURS VARIES DAILY FROM 8AM-12AM. EXACT HOURS ARE TO BE DETERMINED BY SUBWAY FRANCHISE. A NEW TRASH ENCLOSURE WILL BE CONSTRUCTED FOR WET WASTE GENERATED BY THE PROPOSED PROJECTS.

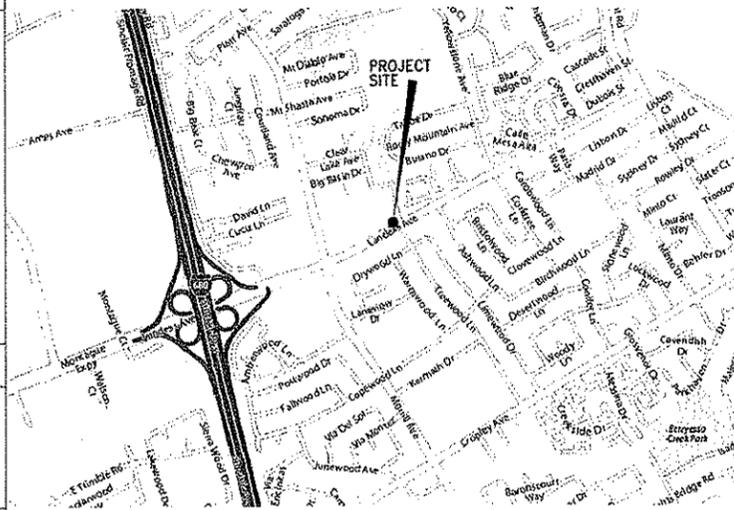
**DRAWING INDEX**

A0.0	PROJECT INFORMATION	A3.0	PROPOSED FLOOR PLAN
A1.0	SITE SURVEY PLAN	A3.5	EXISTING 2ND FLOOR PLAN
A2.0	PROPOSED SITE PLAN	A4.0	EXTERIOR SIGNAGE

**PROJECT TEAM**

<b>PROPERTY OWNER</b>	S02 LLC 572 MIDDLEBURY DRIVE SUNNYVALE . CA 94087 (T) 408.733.3668
<b>ARCHITECT</b>	STUDIO 02 INC. 147 CASTRO STREET . SUITE 2 . MOUNTAIN VIEW . CA 94041 (T) 650.988.8877 (F) 650.963.3310 CONTACT: SUNNY TAM AIA

**LOCATION MAP**



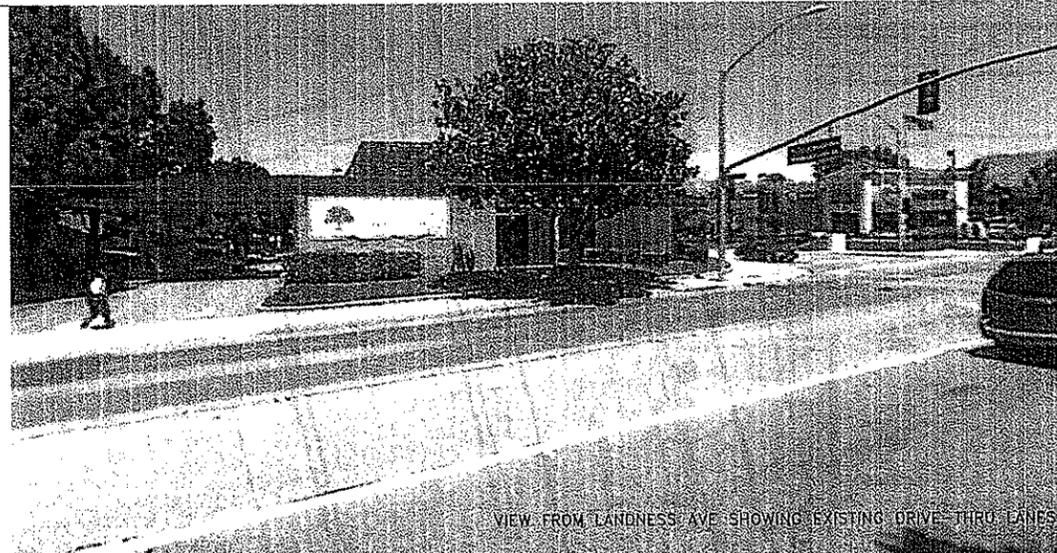
**PROJECT DATA**

APN:	088-43-028
ZONING:	C-2
CONSTRUCTION TYPE:	V-B
SPRINKLERED:	NO
EXISTING LOT AREA:	0.59 AC (25,700 SF)
EXISTING BUILDING AREA:	FIRST LEVEL = 3,500 SF SECOND LEVEL = 761 SF TOTAL = 4,261 SF
PROPOSED FASTFOOD RESTAURANT AREA:	1,619 SF
PROPOSED ORDERING/TAKEOUT AREA:	3'X16' = 48 SF
PROPOSED # OF SEATING:	34 SEATS
TOTAL PARKING REQUIRED:	48 SF / 60 SF + 34 SEAT / 2.5 = 14 STALLS
PROPOSED SUBWAY RESTAURANT AREA:	1,542 SF
PROPOSED ORDERING/TAKEOUT AREA:	3'X17' = 51 SF
PROPOSED # OF SEATING:	33 SEATS
TOTAL PARKING REQUIRED:	51 SF / 60 SF + 33 SEAT / 2.5 = 14 STALLS
TOTAL EXISTING PARKING:	23 (INCLUDING 2 HC STALLS)
NO. OF PARKING STALL ADDED:	6 (PARALLEL STALLS)
TOTAL PARKING PROVIDED:	28
EXISTING DRIVE-THRU LANE:	3
NO. OF DRIVE-THRU REMOVED:	2
NO. OF DRIVE-THRU LANE TO BE USED:	1
MAX. NO. OF CARS IN QUEUE:	8 - 9 ( 5 REQUIRED)
CODE REFERENCE:	2006 IBC (2007 CBC)    2006 IFC (2007 CFC)    2006 UMC (2007 CMC) 2006 UPC (2007 CPC)    2005 NEC (2007 CEC)    CITY OF MILPITAS ZONING ORDINANCES

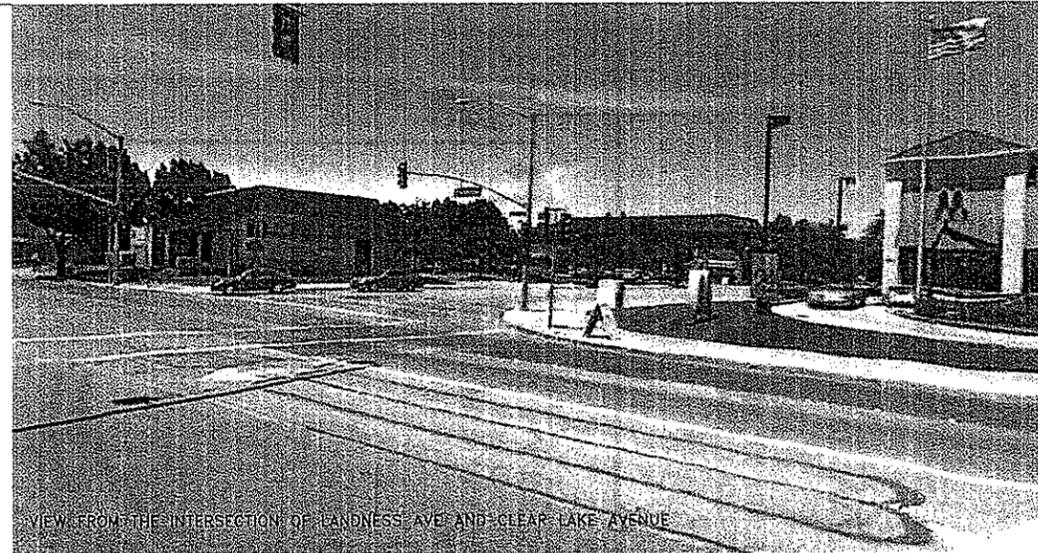


**CONDITIONAL PERMIT APPLICATION  
 PROPOSED RESTAURANTS AT  
 1785 LANDESS AVENUE  
 MILPITAS . CA 95035**

**SITE PHOTOS**



VIEW FROM LANDESS AVE SHOWING EXISTING DRIVE THRU LANES



VIEW FROM THE INTERSECTION OF LANDESS AVE AND CLEAR LAKE AVENUE



09.04.09 ISSUED FOR C.U.P.  
 11.09.09 C.U.P. COMMENTS  
 12.04.09 C.U.P. COMMENTS

**RECEIVED**

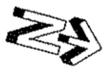
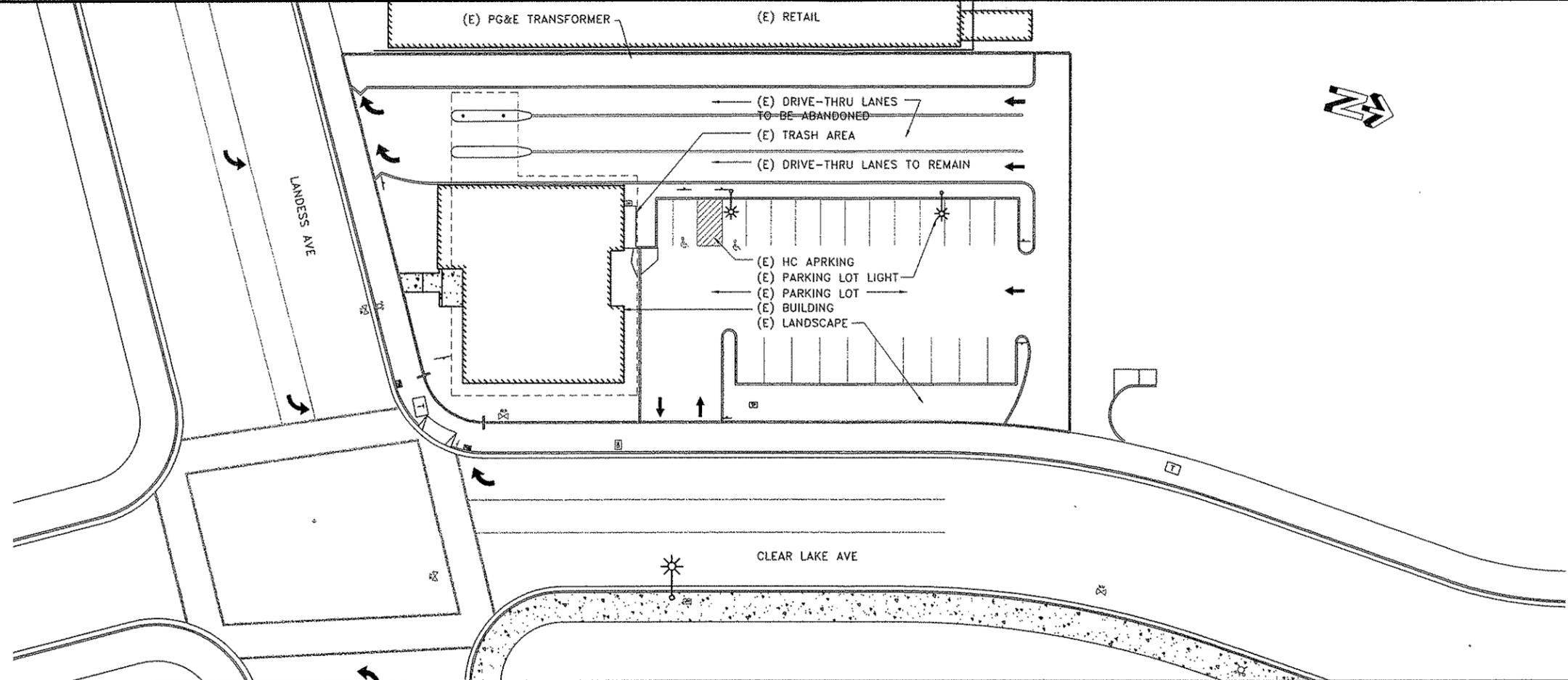
DEC 08 2009

CITY OF MILPITAS  
 PLANNING DIVISION

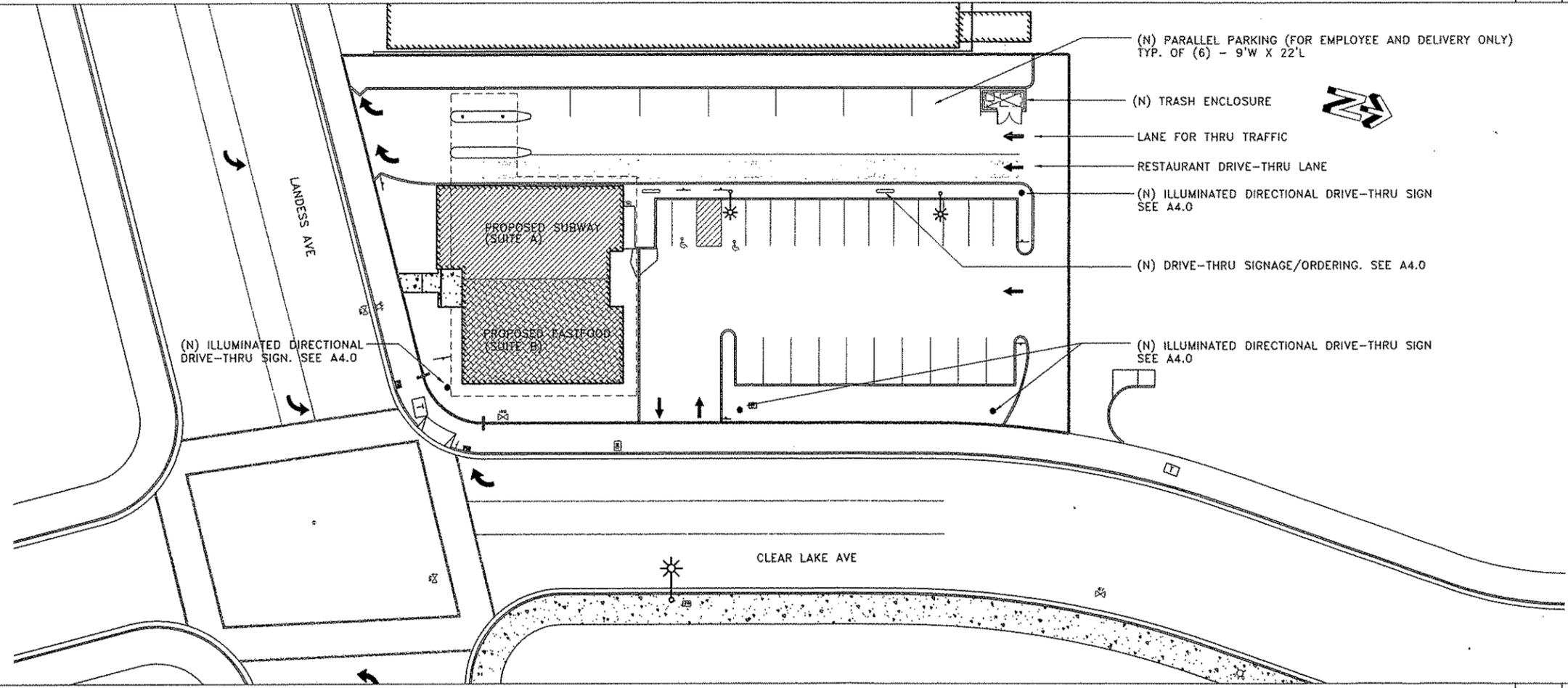
PROJECT NO.: 08-2370

PROJECT INFORMATION

A0.0



EXISTING SITE PLAN 20' 1



PROPOSED SITE PLAN 20' 2

**studio 02**  
 147 castro street suite 2  
 mountain view, ca 94041  
 (t) 650.988.8877 (f) 650.963.3310  
 (e) info@studio02.net

CONDITIONAL PERMIT APPLICATION  
 PROPOSED RESTAURANTS AT  
**1785 LANDESS AVENUE**  
 MILPITAS, CA 95035

09.04.09 ISSUED FOR C.U.P.  
 11.09.09 C.U.P. COMMENTS  
 12.04.09 C.U.P. COMMENTS

PROJECT NO.: 08-2370

PROPOSED SITE PLAN

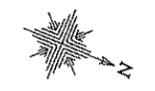
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CONDITIONAL PERMIT APPLICATION  
 PROPOSED RESTAURANTS AT  
**1785 LANDESS AVENUE**  
 MILPITAS . CA 95035

09.04.09 ISSUED FOR C.U.P.  
 11.09.09 C.U.P. COMMENTS  
 12.04.09 C.U.P. COMMENTS

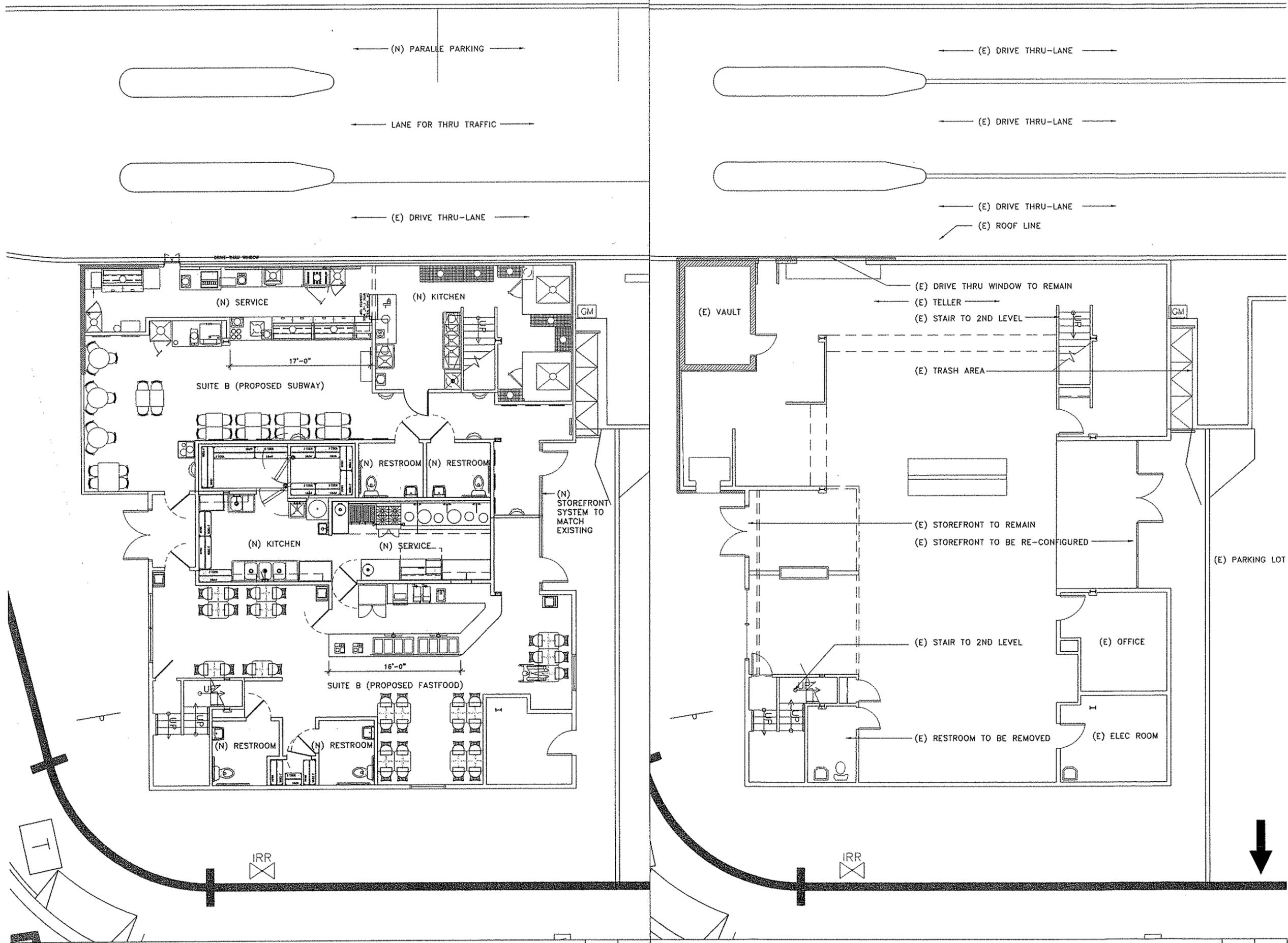
PROJECT NO.: 08-2370

PROPOSED FLOOR PLAN



A3.0

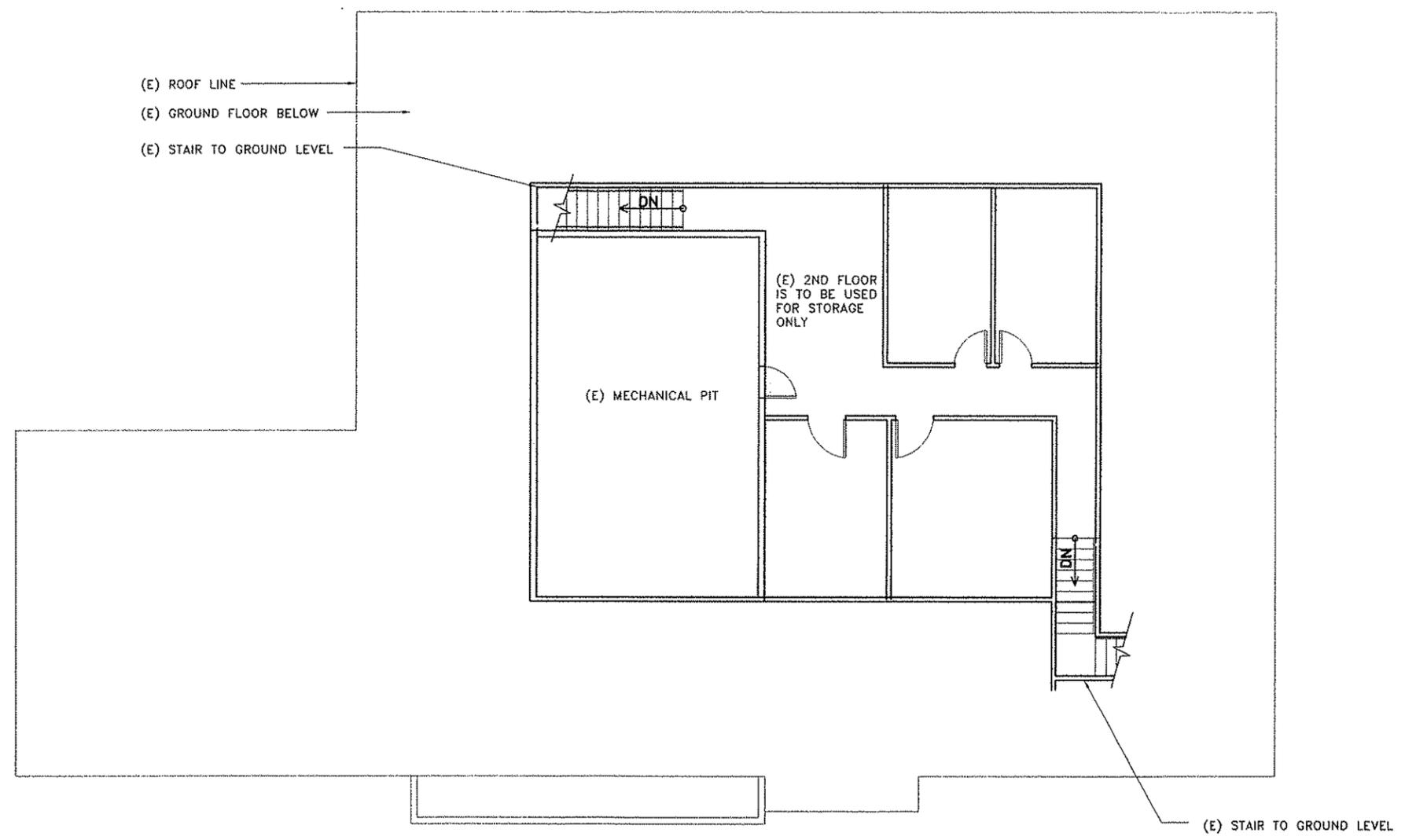
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PROPOSED GOUND FLOOR PLAN 3/16" 2

EXISTING GOUND FLOOR PLAN 3/16" 1

CONDITIONAL PERMIT APPLICATION  
 PROPOSED RESTAURANTS AT  
**1785 LANDESS AVENUE**  
 MILPITAS . CA 95035



09.04.09 ISSUED FOR C.U.P.  
 11.09.09 C.U.P. COMMENTS  
 12.04.09 C.U.P. COMMENTS

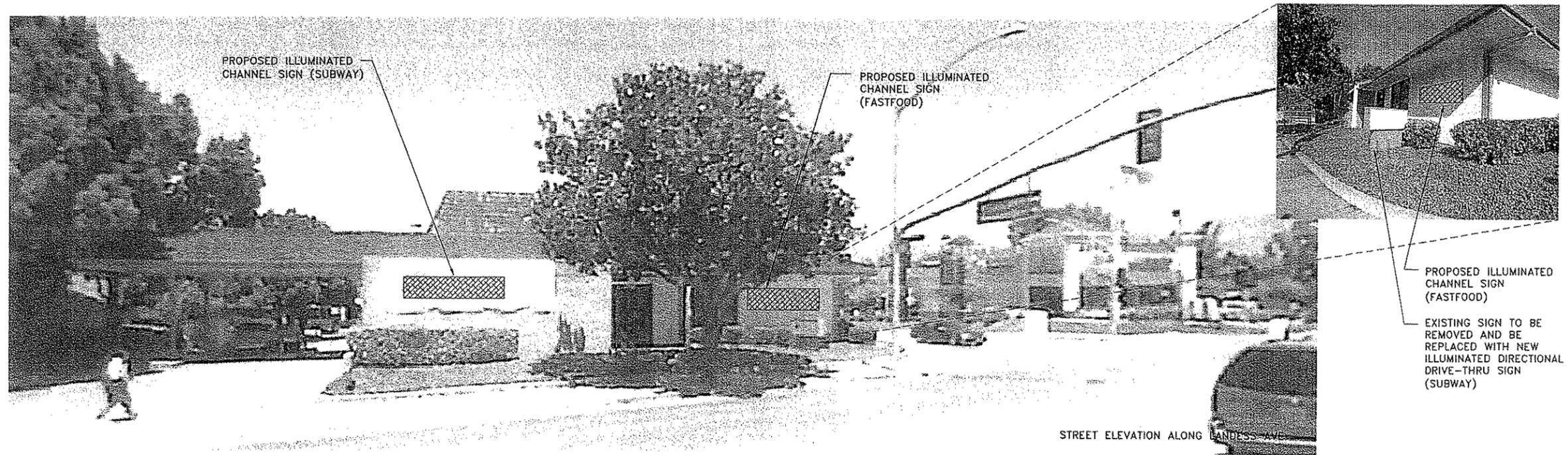
PROJECT NO.: 08-2370

EXISTING 2ND FLOOR PLAN



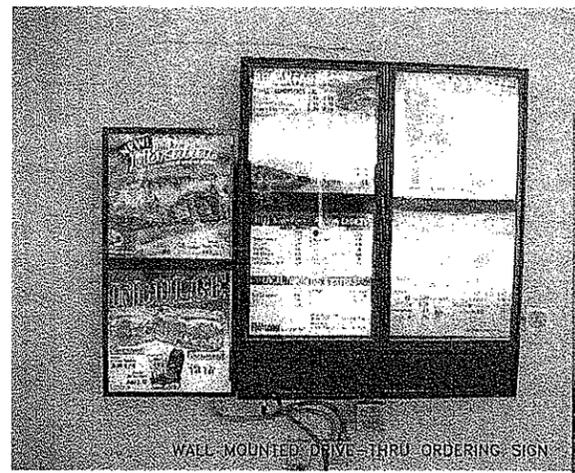
A3.5

CONDITIONAL PERMIT APPLICATION  
 PROPOSED RESTAURANTS AT  
**1785 LANDESS AVENUE**  
 MILPITAS, CA 95035

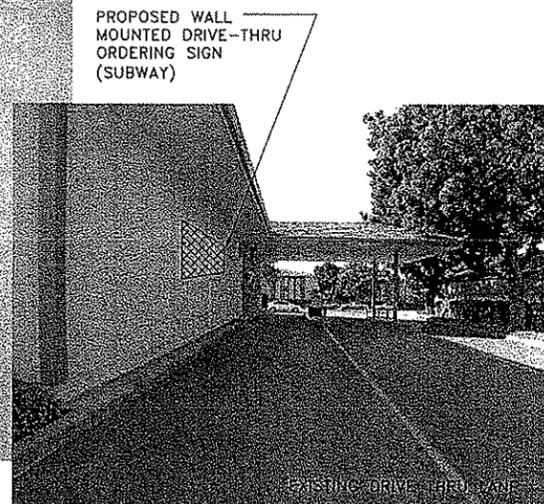


STREET ELEVATION ALONG LANDESS AVE

PROPOSED ILLUMINATED CHANNEL SIGN (FASTFOOD)  
 EXISTING SIGN TO BE REMOVED AND BE REPLACED WITH NEW ILLUMINATED DIRECTIONAL DRIVE-THRU SIGN (SUBWAY)



WALL MOUNTED DRIVE-THRU ORDERING SIGN



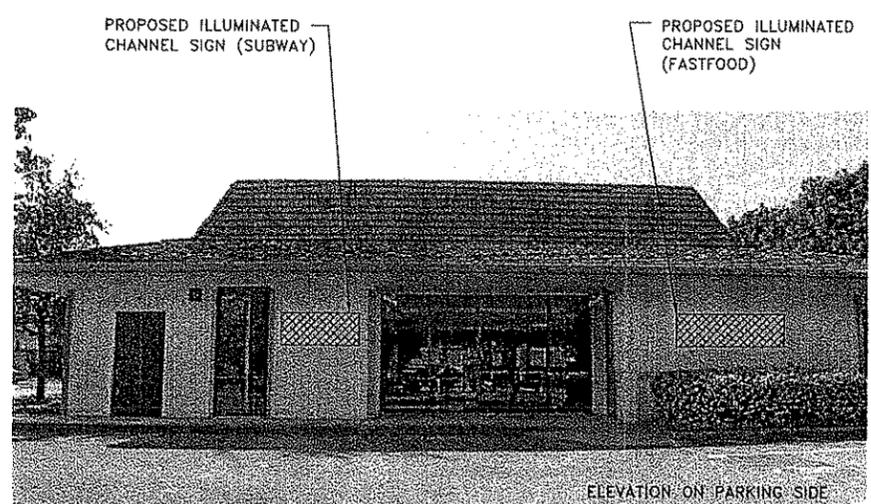
PROPOSED WALL MOUNTED DRIVE-THRU ORDERING SIGN (SUBWAY)

EXISTING DRIVE-THRU LANE

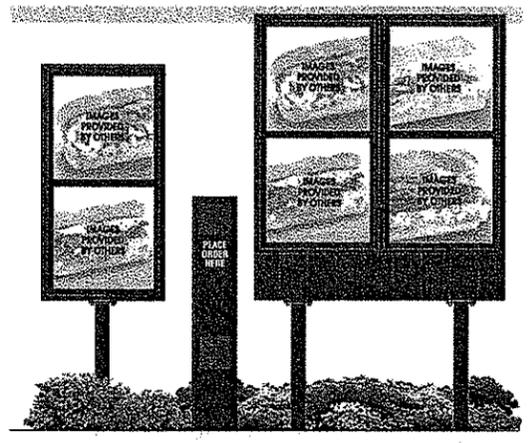
**SIGNAGE NOTE:**  
 PER MILPITAS MUNICIPAL CODE SEC. 30-3.02, THE TOTAL AGGREGATE AREA OF ALL SIGNS PERMITTED ON ANY BUILDING SITE OR PROPERTY SHALL NOT EXCEED (1) SQUARE FOOT OF SIGN FOR EACH (2) LINEAL FOOT OF BUILDING PERIMETER ON THE SUBJECT PARCEL OR NOT EXCEED (2) SQUARE FEET FOR EACH (1) LINEAL FOOT OF PUBLIC STREET FRONTAGE. EXACT SIGNAGE DESIGN IS TO BE SUBMITTED FOR CITY'S REVIEW AND APPROVAL PRIOR TO INSTALLATION.

**BY PUBLIC STREET FRONTAGE**  
 LANDESS AVE FRONTAGE: 72 LF  
 CLEAR LAKE AVE FRONTAGE: 52 LF  
 TOTAL PUBLIC STREET FRONTAGE: 124 LF  
 TOTAL AGGREGATE AREA OF ALL SIGNS: 248 SF

**BY BUILDING PERIMETER**  
 BUILDING PERIMETER: 256 LF  
 TOTAL AGGREGATE AREA OF ALL SIGNS: 128 SF



ELEVATION ON PARKING SIDE

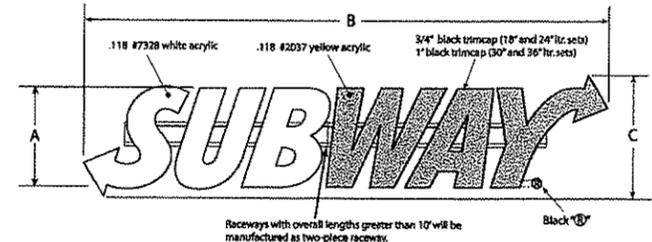


CHANGEABLE TRANSLITE SIGN    SPEAKER TOWER    DRIVE-THRU MENUBOARD

PROPOSED DRIVE THRU ORDERING SIGNAGE  
 SEE A2.0 FOR LOCATIONS



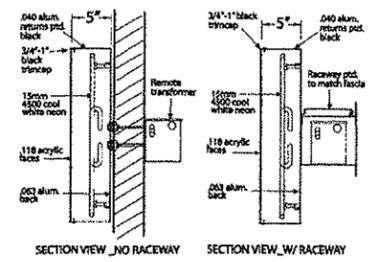
PROPOSED DIRECTIONAL DRIVE THRU SIGN  
 SEE A2.0 FOR LOCATIONS



Neon Illuminated Channel Letters

Nominal Size	PART NO.	A	B	C	*Area (sq ft)	NEON
18"	E002954B w/ rcwy E002990B	18"	86-3/4"	22-1/8"	14.88	15mm 60MA 4500 cool white
24"	E002955B w/ rcwy E002991B	24"	129-3/8"	29-7/16"	26.44	15mm 60MA 4500 cool white
30"	E002956B w/ rcwy E002992B	30"	162"	36-3/4"	41.34	15mm 60MA 4500 cool white
36"	E002957B w/ rcwy E002993B	36"	194"	44-1/8"	59.44	15mm 60MA 4500 cool white

\*Area (sq ft) = Square Footage is calculated by boxing off the entire letter set at its greatest height and length (B x C) including dead space.



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EXTERIOR SIGNAGE

A4.0