



## MILPITAS PLANNING COMMISSION AGENDA REPORT

### PUBLIC HEARING

Meeting Date: January 12, 2010

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**APPLICATION: REVIEW OF CONDITIONAL USE PERMIT AMENDMENT  
NO. UA08-0010:**

**APPLICATION  
SUMMARY:**

A review to determine under Section XI-10-63.06 of the Milpitas Zoning Code whether to modify or to recommend suspension or revocation of a Conditional Use Permit for a restaurant with full onsite alcoholic beverages consumption

**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. 11-001 with modified and restated  
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, Junior Planner

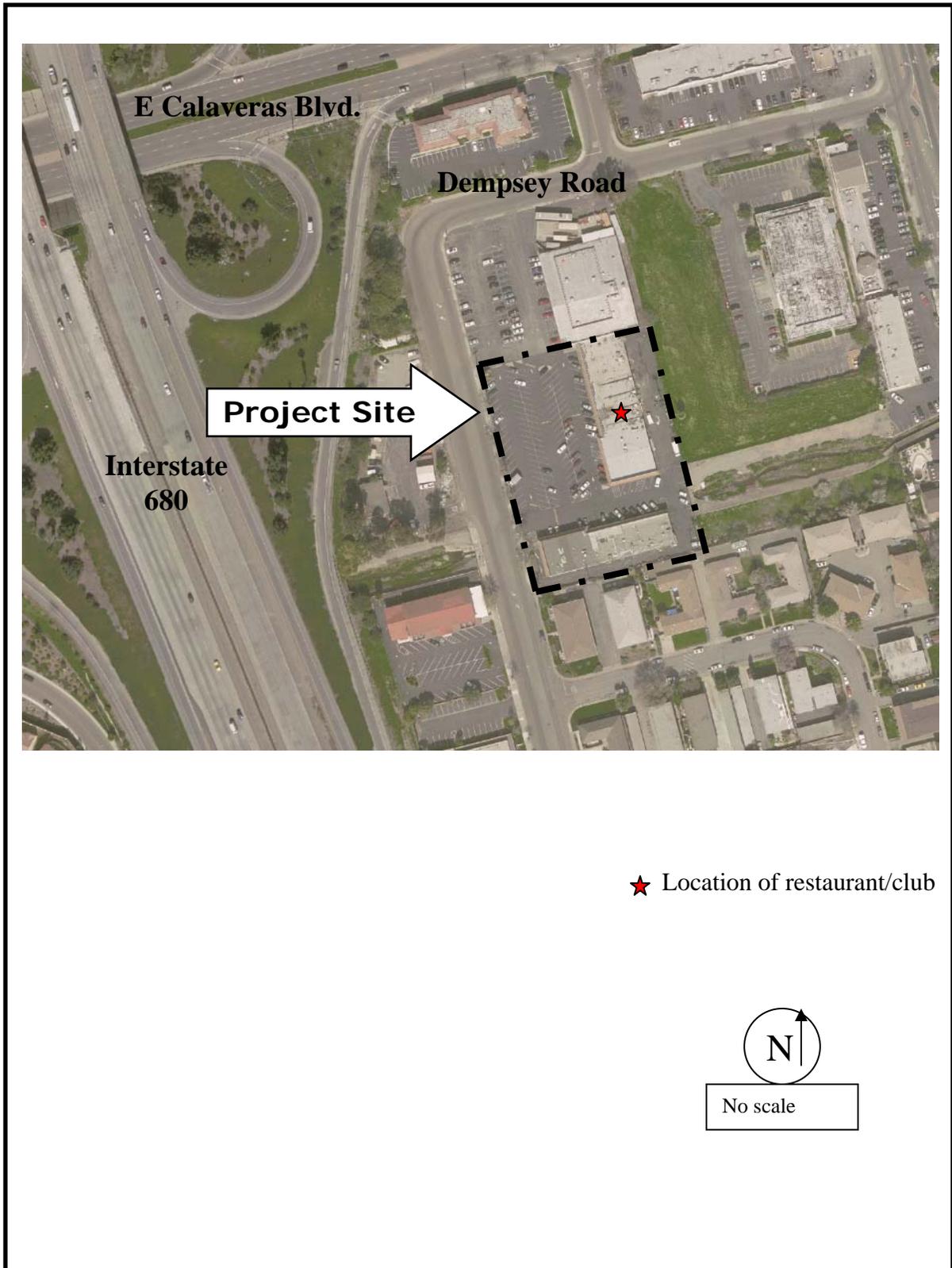
**PJ:** 2534

**ATTACHMENTS:**

- A. Resolution No. 11-001
- B. December 2010 Planning Commission Review
- C. December 2010 Planning Commission Meeting Minutes
- D. January 2010 Planning Commission Staff Report
- E. January 2010 Adopted Resolution No. 10-005

F. January 2010 Planning Commission Meeting Minutes

# LOCATION MAP



★ Location of restaurant/club



No scale

## **BACKGROUND**

On July 9, 2008 the Planning Commission approved Conditional Use Permit Amendment No. UA08-0010, 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 known as Club Bahia.

In January of 2010 the Planning Commission reviewed a request for a 2,150 square foot expansion for the restaurant at this location. Staff raised concerns that the late night hour operations at the restaurant have been typical of a nightclub and that the underlying Neighborhood Commercial zoning district does not allow nightclubs. The Planning Commission adopted and approved the permit for the restaurant expansion at that hearing with modified conditions of approval. (See attached D-F, Staff Report, Resolution with Conditions, Meeting Minutes).

The last required review of the permit amendment which allowed for all types of alcoholic beverage sales was held at the December 12, 2010 Planning Commission meeting. Staff presented additional concerns and information about the restaurant operating more like a nightclub. The Planning Commission directed Staff to schedule a public hearing for the review and possible modification of the Conditional Use Permit for the Club Bahia establishment.

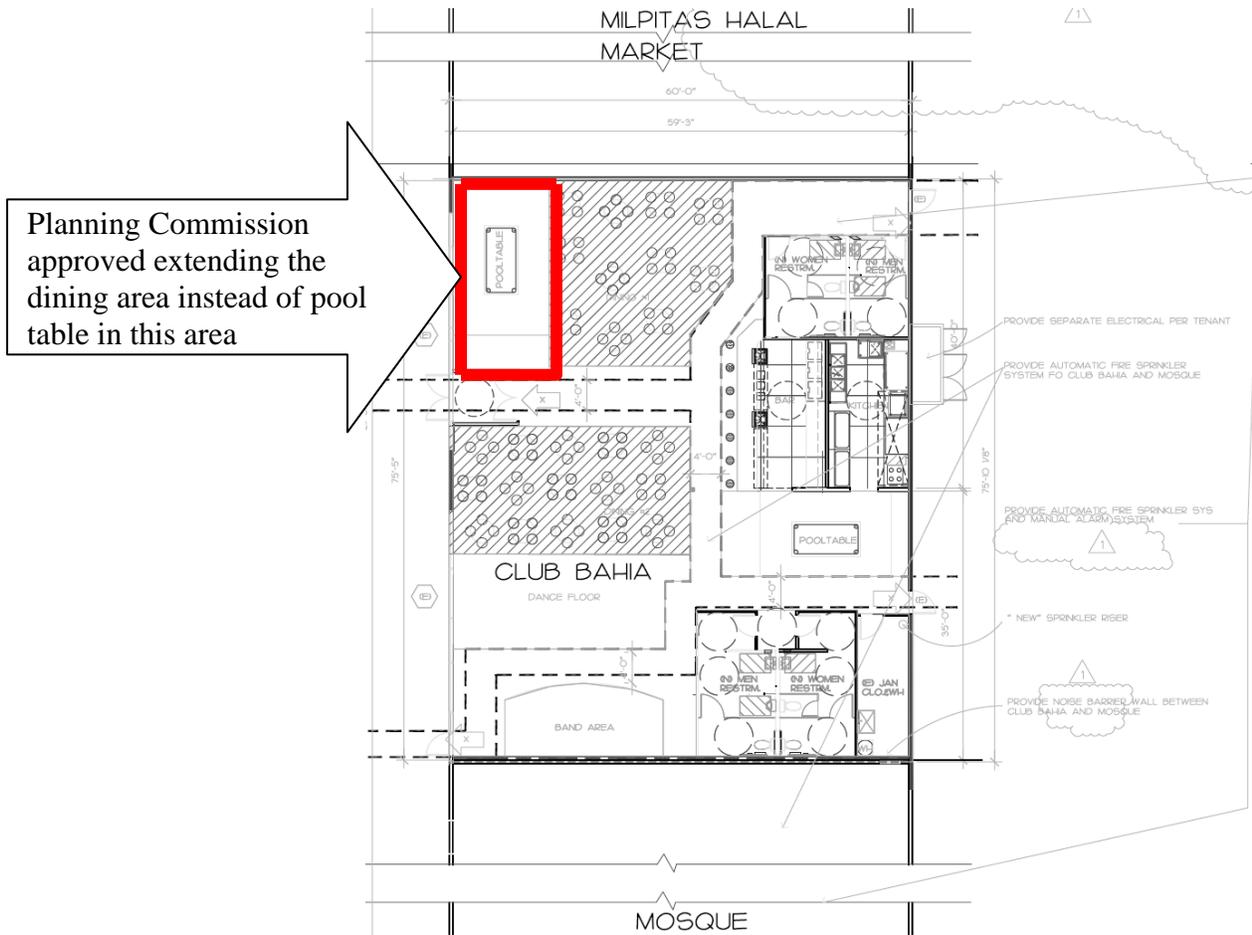
Under Section XI-10-63.06 of the Milpitas Municipal Code, the Planning Commission may modify a permit by either amending or adding new conditions of approval to a project. Alternatively, the Planning Commission may recommend to the City Council that a permit be suspended or revoked in its entirety. At this time, Staff recommends that the operator be allowed to retain its Conditional Use Permit, but with modifications to the conditions of approval to ensure the establishment's operation is in conformity with its restaurant use approval.

## **PROJECT DESCRIPTION**

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 Conditional Use Permit that this restaurant operates under is as follows: 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, amusement/arcade area, and band area. The restaurant hours are Sunday through Thursday 10:00A.M. – 10:00P.M. and on Friday and Saturday 10:00A.M. – 2:00A.M. The approved tenant space is 4,550 square feet with a maximum dining area of 351 square feet, a maximum amusement area of 450 square feet, and a maximum dancing area of 352 square feet. Please see Attachment E. for the approved conditions of approval.

**Figure-1**  
**January 2010, Approved Floor Plan**



The applicant is in the process of obtaining a building permit for the restaurant expansion and therefore is operating under its existing condition which is approximately half the size of the approved space. (See Attachment D for existing floor plan).

**ALLEGED PERMIT VIOLATIONS/PUBLIC NUISANCE ACTIVITY AND PERMIT MODIFICATION, REVOCATION AND SUSPENSION PROCESS**

As noted in the December 2010 review for Club Bahia, the Police department has had approximately 30 arrests and incident reports for various offences including drunk in public, drinking in public, fighting in public (indoors and in the parking lot), driving under the influence, underage drinking, and urinating in public since January 2010. Many of these incidents occurred in the parking lot in front of Club Bahia.

Based on Staff observations, in addition to the number of arrests and incidents that are considered above normal for a restaurant use, Club Bahia appears to be operating primarily as a bar and dance club at night versus a restaurant with accompanying live entertainment.

The underlying Neighborhood Commercial zoning district does not allow for bars or nightclubs. Pursuant to its powers under Section XI-10-63.06 of the Milpitas Municipal Code, the Planning Commission directed Staff to initiate a review and notice a public hearing for possible modification of the Conditional Use Permit. After reviewing the evidence and taking any testimony at the public hearing, the Planning Commission may do any of the following based upon sufficient evidence:

1. Modify the conditions of approval of the Conditional Use Permit (*Staff Recommendation*)
2. Alternatively, recommend that the City Council suspend or revoke the Conditional Use Permit
3. Alternatively, take no action (i.e., permit the operator to retain its Conditional Use Permit with no modifications)

*Staff Recommendation of Permit Modification:* Staff recommends that the Planning Commission modify the existing conditions of approval to help ensure that the restaurant operates as intended, not as a bar or nightclub. The proposed modifications are shown in strikethrough and underlined new text form:

7. Live entertainment and amplified sound for the purpose of dancing shall not go past ~~2:00A.M.~~ 12:00 midnight. The operator shall be responsible for ensuring that all doors and windows remain closed during live entertainment or amplified sound performances.

10. Alcohol sales and service shall end at or before ~~1:00 AM~~ 10:00P.M.

For the Planning Commission’s convenience, the existing conditions of approval for the restaurant are provided in their entirety in Attachment B.

**ADOPTED PLANS AND ORDINANCES CONSISTENCY**

***General Plan***

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

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

<b>Policy</b>	<b>Consistency Finding</b>
<i>2.a-I-3: Encourage economic pursuits which will strengthen and promote development through stability and balance.</i>	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 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 and is therefore considered inconsistent with the zoning district. As conditioned, the restaurant should be operating like a restaurant and the modifications proposed by staff will cause the subject establishment to operate consistently with intent of the zoning district.

### **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 modification of conditions of approval for 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**

It appears during the course of the establishment being open; the business operates as a nightclub after 10:00PM, which is inconsistent with the zoning district. The operation has also resulted in unusually high calls of service by the police department. The amended conditions recommended by staff will help ensure that the business operates as a restaurant and not a nightclub. The existing condition by the Planning Commission for a 12, 18 and 24 month review of the restaurant after obtaining the Certificate of Occupancy for the expansion, will also help ensure that the new conditions are effective.

### **RECOMMENDATION**

**STAFF RECOMMENDS THAT** the Planning Commission close the public hearing and take one of the following actions:

1. Adopt Resolution No. 11-001, restating and modifying the conditions of approval for Club Bahia restaurant. (*Staff Recommendation*).
2. Alternatively, recommend that the City Council suspend or revoke the Conditional Use Permit.

3. Alternatively, take no action (i.e., permit the operator to retain its Conditional Use Permit with no modifications).

*Attachments:*

- A. Resolution No. 11-001
- B. December 2010 Planning Commission Review
- C. December 2010 Planning Commission Meeting Minutes
- D. January 2010 Planning Commission Staff Report
- E. January 2010 Adopted Resolution No. 10-005
- F. January 2010 Planning Commission Meeting Minutes



**RESOLUTION NO. 11-001**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS,  
CALIFORNIA, MODIFYING AND RESTATING CONDITIONAL USE PERMIT  
AMENDMENT NO. UP09-0004, FOR A RESTAURANT LOCATED AT 78 DEMPSEY  
ROAD**

**WHEREAS**, the property at 78 Dempsey Road in Milpitas, California, is conditionally permitted under Conditional Use Permit Amendment No. UP09-0004 to operate as a restaurant use restaurant with full range alcoholic beverage service for onsite consumption and live entertainment. The property is located within the Neighborhood Commercial Zoning District (APN 088-04-001); and

**WHEREAS**, the Planning Commission initiated review of Conditional Use Permit Amendment No. UP09-0004 pursuant to the provisions Milpitas Municipal Code § XI-10-63.06 because of alleged violations of permit conditions of approval and/or public nuisance activity at or near the property; and

**WHEREAS**, on January 12, 2011, the Planning Commission held a duly noticed public hearing on the alleged permit violations and/or public nuisance activity, and considered evidence presented by City staff, the permit holder, and other interested parties, in order to determine whether to modify the Conditional Use Permit for 78 Dempsey Road use and/or to recommend revocation or suspension of said Conditional Use Permit by the City Council; and

**WHEREAS**, based upon the evidence and testimony presented, the Planning Commission finds that there are sufficient grounds to modify the Conditional Use Permit for operation of the use.

**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 Commission hereby modifies the Conditions of Approval for Conditional Use Permit Amendment No. UA09-0004, subject to the above Findings, set forth in strikethrough and underlined new text format and restated for convenience in their entirety, as Exhibit 1 attached hereto.

**Section 3:** The Planning Division conducted an initial environmental assessment of the permit modifications (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 due to the minor operational and other changes set forth in the modified conditions of approval.

**Section 4:** The permit modifications would keep the project 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 5:** The permit modifications would keep the project consistent with the Zoning Ordinance in that a restaurant use may only engage in activities such as the sale of alcoholic beverages, live entertainment and dancing along with amusement devices only as ancillary uses under 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.

**PASSED AND ADOPTED** at a regular meeting of the Planning Commission of the City of Milpitas on January 12, 2011.

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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 January 12, 2011, 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. UA09-0004**

A restaurant with ancillary activities such as live entertainment, dancing and billiards at  
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 any 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, a maximum amusement/arcade area (including band area) of 450 square feet, and a maximum 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 12:00 midnight. 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 (Agreement between adjacent Mosque and Restaurant) 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 10:00P.M. **(PD/ P)**
11. Patrons of all ages shall be allowed in the business at all times. **(PC)**
12. There shall be no booths (i.e. ticket booths, or stands used to collect or distribute tickets or fees) placed outside the business at anytime. **(PC)**
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, 12, 18 and 24-month review by the Planning Commission. The reviews shall include a public hearing. **(PC)**
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)**
20. The operator shall prevent criminal activity from taking place on their property. **(PC)**

**(PC)** = Planning Commission

**(P)** = Planning

**(PD)** = Police Department

**(B)** = Building

**(E)** = Engineering

**(F)** = Fire Prevention



## MILPITAS PLANNING COMMISSION AGENDA REPORT

**UNFINISHED BUSINESS**

Meeting Date: December 8, 2010

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

**APPLICATION SUMMARY:** Review of a restaurant serving a full range of alcoholic beverages pursuant to the conditions of approval.

**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: Direct staff to schedule a public hearing for the review and possible modifications to the conditions of approval**

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

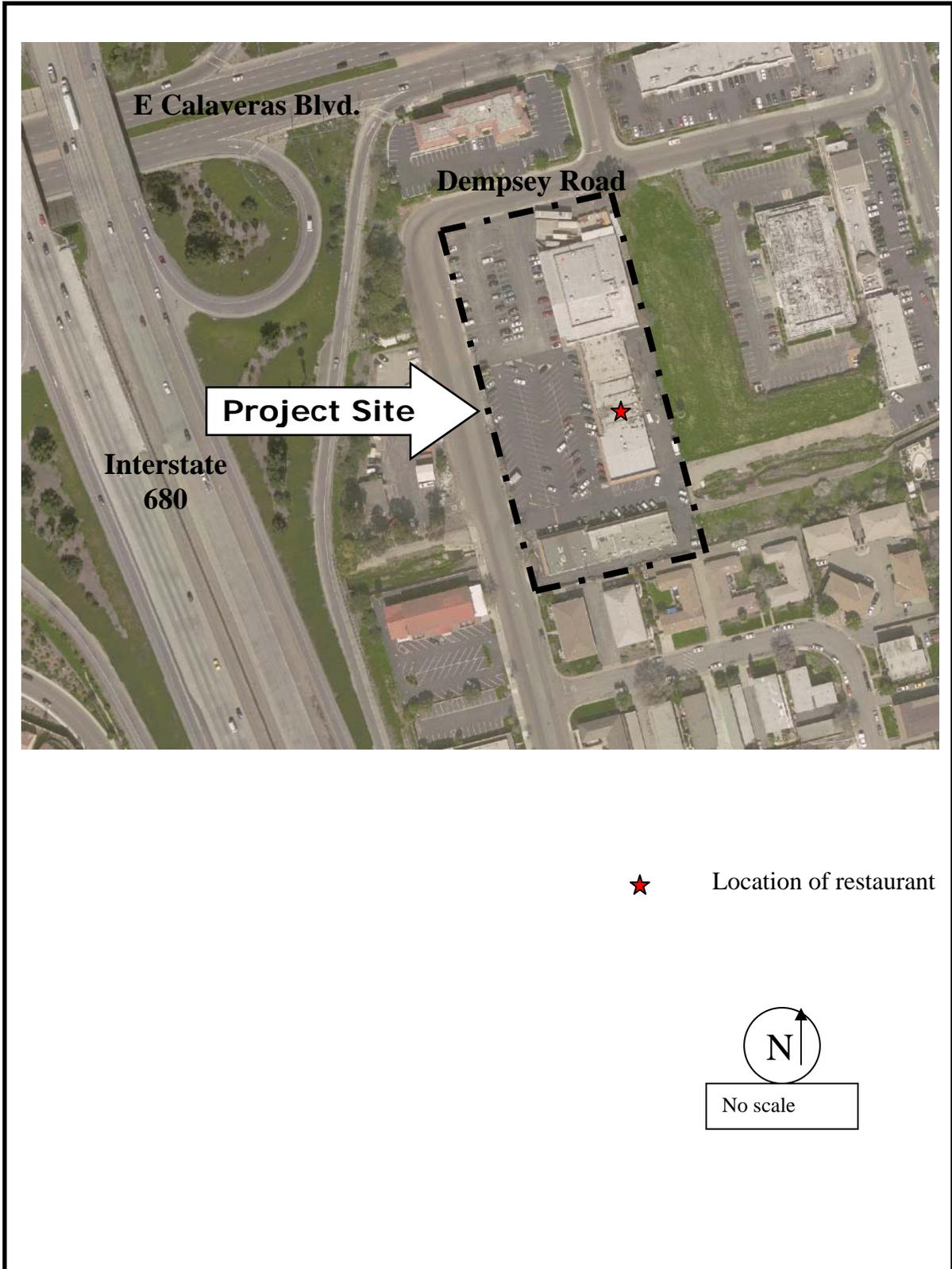
**CEQA Determination:** Categorically exempt from further environmental review pursuant to Section 15301, "Existing Facilities" of the California Environmental Quality Act (CEQA) guidelines.

**PLANNER:** Tiffany Brown  
 PJ: 2534

**ATTACHMENTS:**

- A. Planning Commission Staff Report from January 27, 2010
- B. Resolution and Conditions of approval for Club Bahia
- C. Meeting Minutes for January 27, 2010

# LOCATION MAP



**BACKGROUND**

On July 9, 2008 the Planning Commission approved Conditional Use Permit Amendment No. UA08-0010, 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 known as Club Bahia.

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 require 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 was in compliance with all of the conditions of approval. The Planning Commission conducted a 12 month review on June 24, 2009, and required an additional 12 month review due to issues brought up during the public hearing by the neighboring tenant. The review covered by this report fulfills the requirement; the time period was extended by six months due to the subsequent approval of the restaurant expansion described below.

On January 27, 2010, the Planning Commission reviewed the request for a 2,150 square foot expansion for the restaurant. The applicant and the neighboring tenant reached agreement on the outstanding issues. Staff raised concerns that the late night hour operations at the restaurant have been typical of a nightclub and that the underlying Neighborhood Commercial zoning district does not allow nightclubs. The Planning Commission adopted and approved the permit for the restaurant expansion at that hearing with modified conditions of approval. (See attached A – C, Staff Report, Resolution with Conditions, Meeting Minutes).

In summary, the Conditional Use Permit that this restaurant operates under is as follows: 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, amusement/arcade area, and band area. The approved tenant space is 4, 550 square feet with a maximum dining area of 351 square feet, a maximum amusement area of 450 square feet, and a maximum dancing area of 352 square feet. Please see Attachment B. for the approved conditions of approval. The applicant is in the building permit phase for the restaurant expansion and therefore is operating under its existing condition. This review is of the restaurant operating under its existing conditions. The existing tenant space is 2,400 square feet with a 683 square foot dining area and a 322 square foot dance floor.

**PROJECT CONCERNS**

Since January, the Police department has had approximately 30 arrests and incident reports for drunk in public, drinking in public, fighting in public (indoors and in the parking lot), driving under the influence, underage drinking, and urinating in public. Many of these incidents occurred in the parking lot in front of Club Bahia.

The number of arrests and incidents related to Club Bahia are considered above normal and raises concerns that Club Bahia operates primarily as a bar and dance club at night versus primarily as a restaurant. As mentioned previously, the underlying Neighborhood Commercial zoning district does not allow for nightclubs and bars. Staff recommends that the Planning Commission direct staff to

schedule a public hearing to review the and possibly modify the conditions of approval to help ensure the business is operating in a manner consistent with a restaurant.

**STAFF RECOMMENDS THAT** the Planning Commission direct staff to schedule a public hearing to review and possibly modify the conditions of approval for Conditional Use Permit Amendment No. UA08-0010, Club Bahia.

**ATTACHMENTS:**

- A. Planning Commission Staff Report from January 27, 2010
- B. Resolution and Conditions of approval for Club Bahia
- C. Meeting Minutes for January 27, 2010

~~NOES: 0  
ABSENT: 1 (Sudhir Mandal)  
ABSTAIN: 0~~

**X. UNFINISHED BUSINESS**

**1. TWENTY FOUR 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 the restaurant is operating primarily as a night club not a restaurant as permitted. Ms. Brown recommended scheduling a public hearing for the review and possible modifications to conditions of approval.

Ms. Brown stated since January the Police Department has received approximately 30 arrests and incident reports for drunk in public, drinking in public, fighting in public indoors and out, driving under the influence, under age drinking, and urinating in public. These incident reports are above normal.

Chair Williams asked MPD the number of incidents at Club Bahia. Commander Armando Corpuz, Milpitas Police Department, stated in the last six (6) months there has been 5 fights, minors found at the business, drunken driving accident at the business.

Commissioner Ciardella asked if the problems prior to six months. Commander Corpuz stated within the last year there have been at least 7 assaults that PD knows of. Some of the assaults were not reported by staff of Club Bahia but have been reported by witnesses at the business. Commissioner Ciardella asked if the incidents happened during the day or late evening. Commander Corpuz stated yes, there was one incident that happened late evening when a 15 year old run-away was found at the business. The business has called MPD to let them know there have been juveniles loitering around the business late at night and requested assistance. Commander Corpuz stated some fights have started inside the business and continued outside.

Commissioner Tao asked if Club Bahia have security. Commander Corpuz stated yes there is security at the business.

Commissioner Tabladillo asked what type of assaults has there been. Commander Corpuz stated most of the assaults have been misdemeanor assaults or fighting.

Commissioner Sandhu stated that six (6) months ago a resident had complained about this establishment and asked if any investigation was done. Mr. Lindsay stated yes and those issues at that time have been resolved.

Chair Williams asked staff if they have been to Club Bahia. Ms. Brown stated she has driven by Club Bahia at night and noticed a ticket booth outside and they were checking IDs.

Commissioner Tao asked if there have been excessive problems since 1992. Commander Corpuz stated this year PD has had 25 to 30 incidents. Commander Corpuz also stated that in 2009 PD has experienced fights at the club and have been attacked as well. Commissioner Tao asked if the incidents have happened after midnight. Commander Corpuz stated most have happened after 11:00 p.m. Commissioner Tao asked how late the establishment serves food. Ms. Brown stated food service ends when the restaurant closes.

Commissioner Luk asked if the residents in the surrounding area complained about the fighting. Commander Corpuz stated he is not aware of any resident complaints but they have had cooperation from the business owner.

**Edward Gomez, 1052 Matterhorn Court**, stated his establishment is a place where they sell alcohol. He stated the video was from New Year's and that is the most they have ever had at his business. He said they have worked with PD. There has not been any major incidents just minor fighting. Mr. Gomez has called PD himself for assistance. Mr. Gomez stated they are very strict on minor drinking. They have escorted minors out for drinking. Bracelets are worn on people over 21 years of age. Mr. Gomez stated they follow all the conditions of approval.

Chair Williams suggested working with staff to see what can be improved.

Commissioner Luk asked how the establishment promotes events. Mr. Gomez stated they give free passes to patrons who the promoter wants to invite. It is all by word of mouth.

Commissioner Ciardella asked the percentage of restaurant patrons' verses club patrons. Mr. Gomez stated 50-75% use the business as a restaurant. Commissioner Ciardella asked when the business stops serving dinner. Mr. Gomez stated they stop serving food when the business closes. Mr. Gomez also noted that they are reducing the dance floor for more seating area for dinner.

Commissioner Tiernan feels that Mr. Gomez does not understand the situation. He feels the applicant does not have a plan in resolving these issues. Mr. Gomez stated he does understand the situation and he is focusing on events that bring in a good environment.

Commissioner Tabladillo stated there is a lot investigation that needs to be done.

**Motion** to schedule a public hearing for the review and possible modifications to conditions of approval.

M/S: Tabladillo, Sandhu

AYES: 7

NOES: 0

ABSENT: 1 (Sudhir Mandal)

ABSTAIN: 0

## ~~XI. NEW BUSINESS~~

### ~~1. REPORT ON PERMIT VIOLATIONS – KTV MUSICLAND~~

~~Cindy Hom, Assistant Planner, presented a report on violations of conditions of approval at a karaoke establishment located at 788 Barber Lane. Ms. Hom recommended scheduling a 3 month permit review with a public hearing.~~

~~Chair Williams stated this item is to direct staff to come back at a later date with more details and information.~~

~~Commissioner Tao asked if any food was sold at the business. Ms. Hom stated they do not sell any food items; just water and tea are available.~~

~~**Motion** to direct staff to schedule a three-month permit review with a public hearing.~~

~~M/S: Sandhu, Ciardella~~

~~AYES: 7~~

~~NOES: 0~~

~~ABSENT: 1 (Sudhir Mandal)~~

~~ABSTAIN: 0~~

**UNAPPROVED**  
**Planning Commission Minutes**

December 8, 2010



## MILPITAS PLANNING COMMISSION AGENDA REPORT

**PUBLIC HEARING**

Meeting Date: January 27, 2010

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**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.

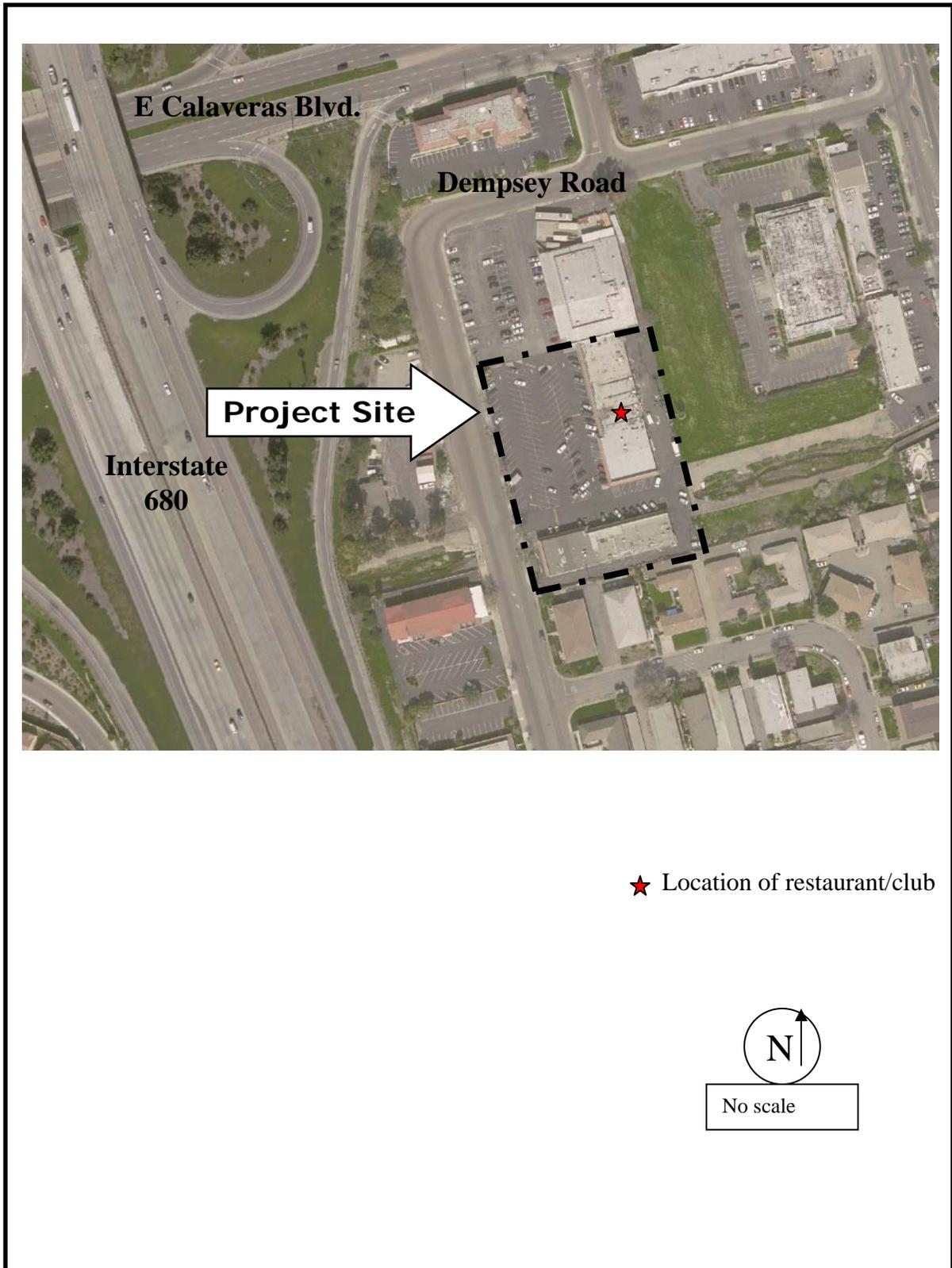
PLANNER: Tiffany Brown

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



**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.

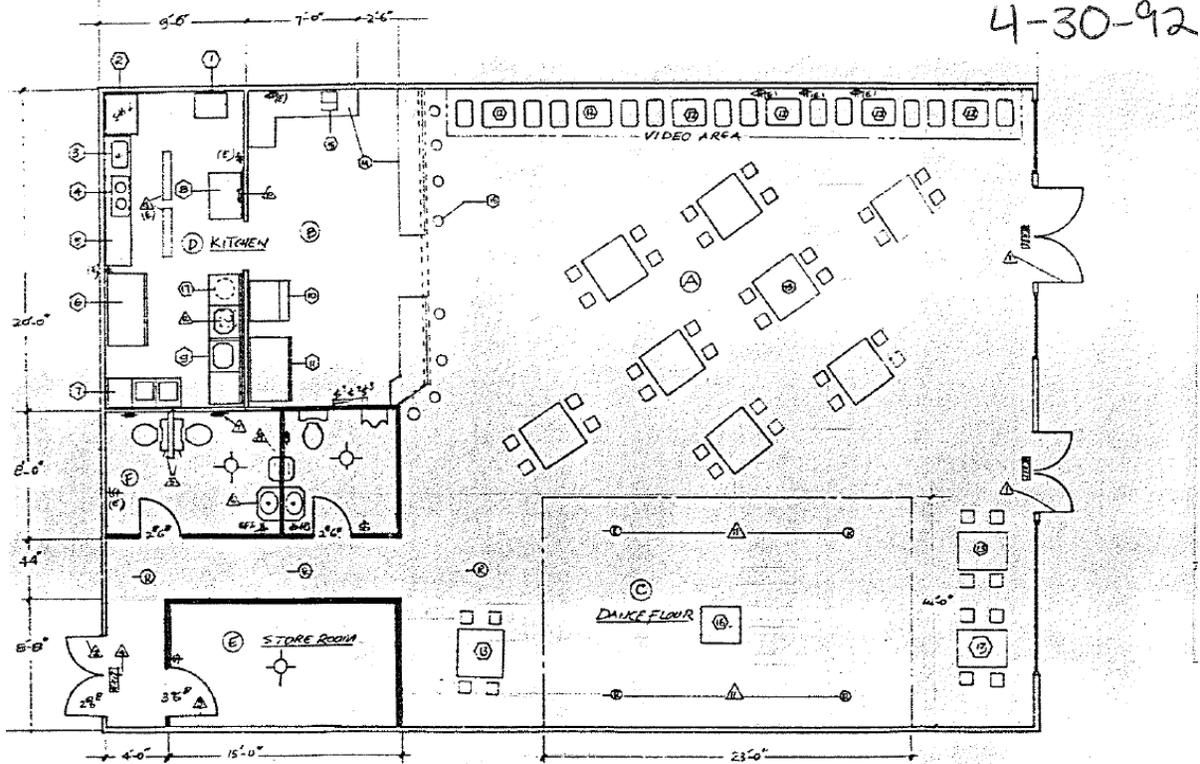
The existing restaurant is located within a 2,400 square foot tenant space. The existing layout includes a kitchen with work area, a storeroom, two restrooms, a dining room, a dance floor, and a bar with counter area. The restaurant hours are Sunday through Thursday 10:00 A.M. – 10:00 P.M. and on Friday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

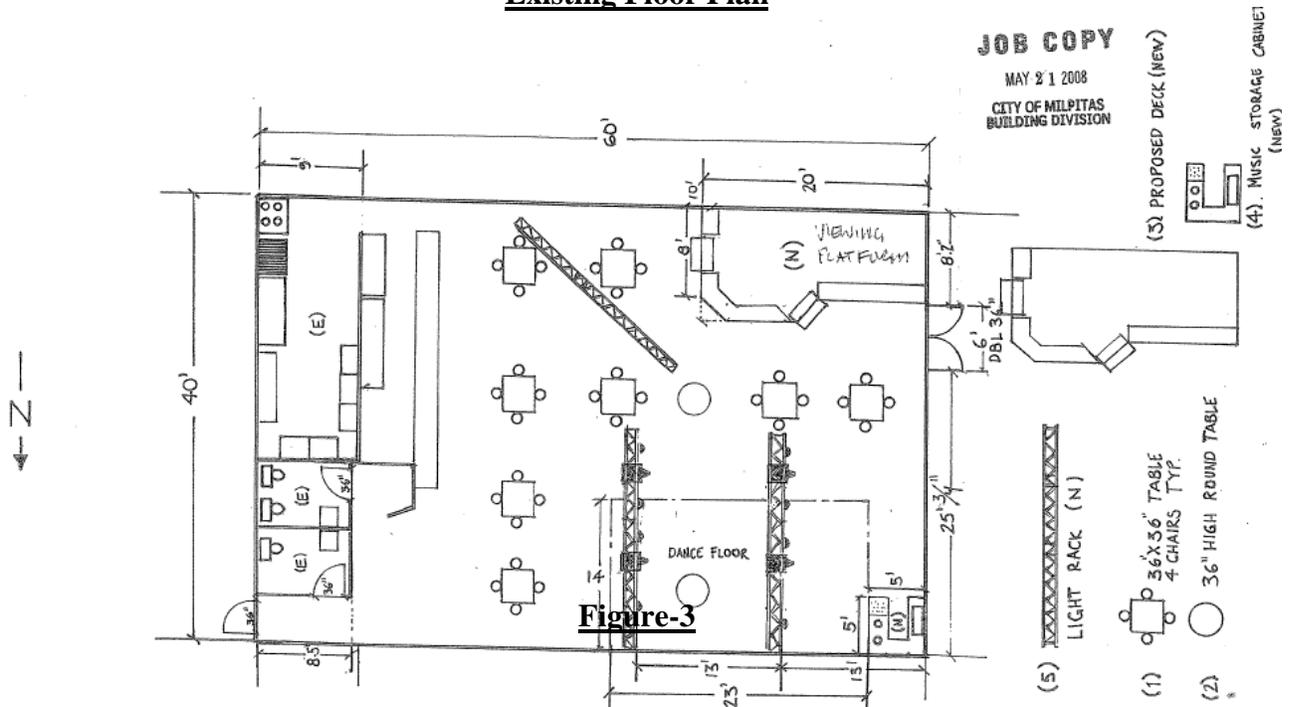
**Table 1**  
**Comparing Existing Floor Plan to Proposed Floor Plan**

	<b>Use Permit No. 1132</b>	<b>Existing Floor Plan</b>	<b>Proposed Floor Plan</b>	<b>Staff Recommendation</b>
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

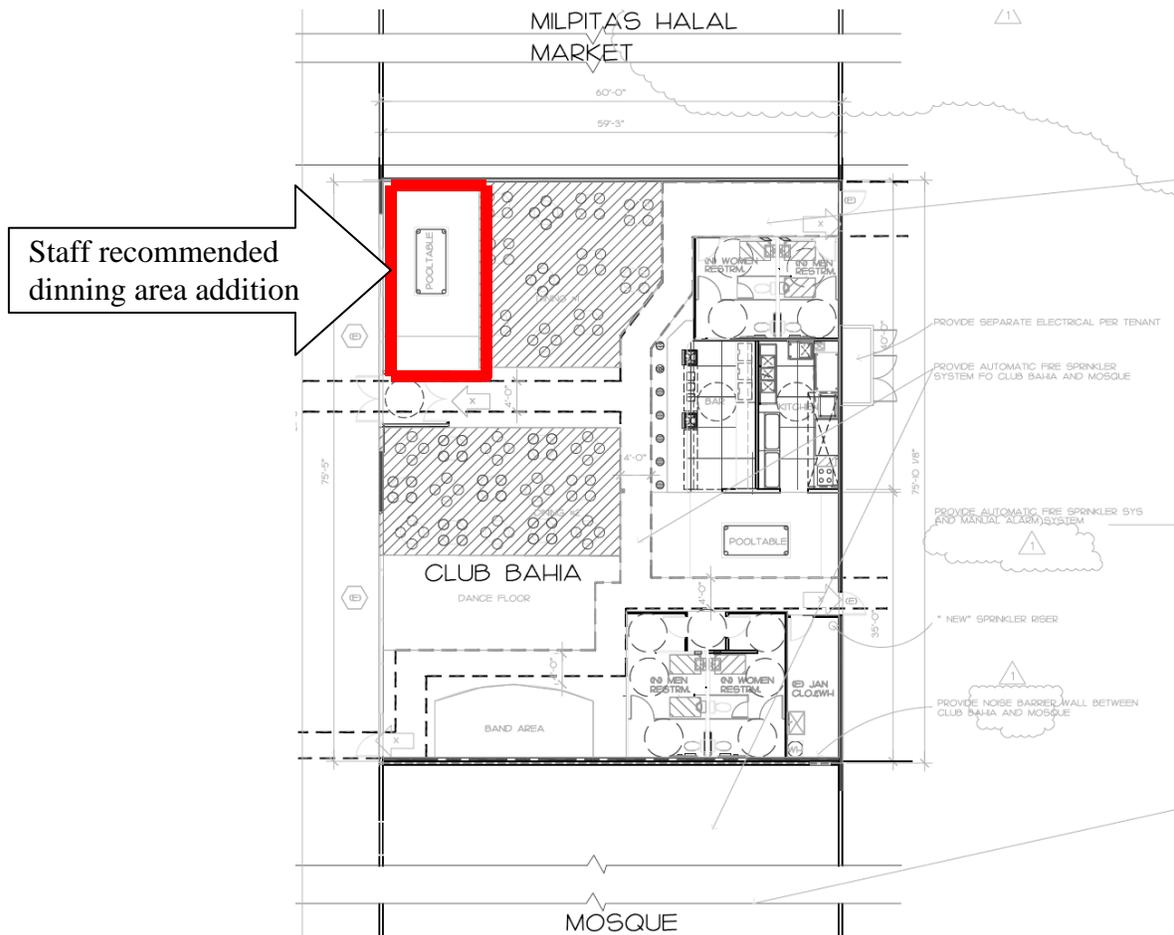
**Figure -1**  
**Use Permit No. 1132**



**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
<b>78 Dempsey; Club Bahia</b>	<b>UA09-0004</b>	<b>35</b>

**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
		<b>35</b>

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**

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

<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. 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 any 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, a maximum amusement/arcade area (including band area) of 450 square feet, and a maximum 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 (Agreement between adjacent Mosque and Restaurant) 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 at all times. **(PC)**
12. There shall be no booths (i.e. ticket booths, or stands used to collect or distribute tickets or fees) placed outside the business at anytime. **(PC)**
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, 12, 18 and 24-month review by the Planning Commission. The reviews shall include a public hearing. **(PC)**
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)**
20. The operator shall prevent criminal activity from taking place on their property. **(PC)**

**(PC)** = Planning Commission

**(P)** = Planning

**(PD)** = Police Department

**(B)** = Building

**(E)** = Engineering

**(F)** = Fire Prevention

*10-007 approving the project subject to conditions of approval.)*

- 3. CONDITIONAL USE PERMIT AMENDMENT NO. UA09-0008:** A request to add sales of all types of alcohol to previously approved grocery store that currently offers beer and wine located at 1535 Landess Avenue (APN: 088-35-017) zoned General Commercial with Site and Architectural Overlay (C2-S). Applicant Dinna Bayangos. Staff Contact: Cindy Hom (408) 586-3284. PJ # 2545. *(Recommendation: Close the public hearing and adopt Resolution No. 10-006 approving the project subject to conditions of approval.)*
- 4. PERMIT REVIEW NO. PR09-0004, SIKH TEMPLE REVIEW:** A six month permit review of the operations of a religious facility located at 1180 Cadillac Court (APN: 022-57-034) zoned Industrial Park. Applicant: Sikh Foundation of Milpitas. Staff Contact: Cindy Hom (408) 586-3284. *(Recommendation: Receive report )*
- 5. CONDITIONAL USE PERMIT NO. UP09-0040 AND MINOR SITE DEVELOPMENT NO. MS09-0011:** A request to construct two new 24' tall antennae with enclosures on the property located at 461 S. Milpitas Blvd. (APN: 086-42-016) zoned Heavy Industrial with Site and Architectural Overlay (M2-S). Applicant: Globalstar Inc. Staff Contact: Tiffany Brown (480) 586-3283. PJ # 2609. *(Recommendation: Table this item to a date uncertain.)*

## IX. PUBLIC HEARING

### 1. CONDITIONAL USE PERMIT AMENDMENT NO. UA09-0004

Tiffany Brown, Junior Planner, presented a request to expand the existing restaurant at 78 Dempsey Road by assuming the adjacent tenant suite of approximately 2,100 square feet. No exterior modifications are proposed. Ms. Brown recommended adopting Resolution No. 10-005 approving the project subject to conditions of approval.

Commissioner Tiernan asked the hours of operation for the Mosque. Ms. Brown did not know the hours, however, she stated the Mosque has come to an agreement that if the restaurant incorporate these sound measures it would not impose a problem for the Mosque.

Vice-Chair Mandal asked how the Mosque relayed their input or concerns. Ms. Brown stated the Mosque provided an e-mail with their concerns to the City in the past. The City has not received any complaints regarding this permit request.

Alternate Commissioner Larsen asked how many calls for service has there been to the site. Ms. Brown did not have that information at this time. Alternate Commissioner Larsen asked what would be the normal number of calls for service for this type of business. Ms. Brown stated staff was working with the Police Department (PD) on the calls of service and in PD's opinion, the site had the number of calls that is typical for that type of use.

Alternate Commissioner Larsen also stated that in 2008 there were some incidents with youths in the parking lot causing problems and if Ms. Brown could respond to that. Ms. Brown stated she did not know any more than what was said in the staff report. Mr. Larsen also inquired about gang activity in that neighborhood and the gang graffiti that is present on the buildings surrounding the restaurant. Ms. Brown stated gang activity or gang graffiti has not been brought to her attention from PD or Code Enforcement.

Alternate Commissioner Larsen stated this was a restaurant expansion and why wasn't this characterized as an expansion of a club. Ms. Brown stated the use permit is for a restaurant because a club is not permitted in this zoning district and the conditions of approval recommended by staff is to ensure the entertainment component is ancillary to the primary use which is a restaurant.

**APPROVED**

**Planning Commission Minutes**

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Commissioner Tao asked if the applicant plan on hosting any special events. Ms. Brown stated no. Commissioner Tao wanted to know the average attendance for the club portion. Ms. Brown referred that question to the applicant.

Commissioner Tiernan asked if the incidents noted on the staff report were accurate. Ms. Brown stated yes it is accurate. Commissioner Tiernan asked if there were more than three service calls since 1992. Ms. Brown stated the new owner has been at this business since 2008. PD stated no on-going problems.

Commissioner Tiernan asked if staff noticed any gang graffiti near or around the building. Ms. Brown stated she did not notice any graffiti.

Vice-Chair Mandal asked if there were any complaints from PD. Ms. Brown stated no. He feels that the applicant has done a great job trying to maintain this business and he supports this project.

**Edward Gomez, 78 Dempsey Road, Milpitas,** stated he was available for any questions from the Commission.

Chair Williams asked what kind of venue Mr. Gomez has. Mr. Gomez said they have a DJ and live bands that include music of all types and for all ages. Other people have proposed to hold their events at the restaurant. Chair Williams inquired on the volume of the music. Mr. Gomez stated the music is a little loud but have had no complaints so far. Chair Williams asked if both doors were sound resistant. Mr. Gomez said one door is and one door is not sound proof. The doors are never left opened. They don't want to have people staying outside; they want to keep everyone inside the establishment. Chair Williams asked how they control litter and debris. Mr. Gomez stated that the bouncer would pick up the bigger debris such as cans and the sweeper is there every night to clean up. The restaurant usually sweeps the front and back of the restaurant.

Chair Williams asked if there is a dress code. Mr. Gomez stated they cannot control the dress code. They do try to monitor people as they come in.

Commissioner Tiernan is concerned about the security situation and ID checks. Mr. Gomez stated the bartender checks the IDs and they have been using a wrist band to tell if someone is over 21 years of age. Ms. Brown stated that in the Conditions of Approval it does not say there will be no security guard all it addresses is the cover charge and the booth outside. Commissioner Tiernan asked if the restaurant is anticipating having events for under 21 years of age. Mr. Gomez stated they have talked about having a separation area or eliminating alcohol for that evening.

Vice-Chair Mandal wanted to make sure the restaurant has a program enforced to keep the area clean in front and back of the building. Mr. Gomez stated they try their best to keep the area clean because it reflects on them.

Alternate Commissioner Larsen asked about the cover charge. Mr. Gomez stated that they are still discussing that item. Mr. Larsen also asked about security. Mr. Gomez stated they start with an ID check, give out wrist bands, they do body checks and bag checks. Alternate Commissioner Larsen wants to support the restaurant in continuing security and do the ID checks. Mr. Larsen also inquired about the dress code issue. Mr. Gomez stated they do not allow people to wear football jerseys. Mr. Gomez also stated if they feel a patron is wearing colors or gang related apparel they turn that person away and make them leave, change, and come back.

Commissioner Tao asked Mr. Gomez if he was an active participate on site. Mr. Gomez stated yes he is always on site. Commissioner Tao asked if there is a storage room. Mr. Gomez said the storage room is next to the kitchen. Commissioner Tao asked what the storage size is. Mr. Gomez stated the janitor and liquor closet is 5 X 20 feet.

**APPROVED**

**Planning Commission Minutes**

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Commissioner Tao asked how many meals will be served per day. Mr. Gomez said about 60% of food order per day. Commissioner Tao asked if there will be a walk in refrigerator. Mr. Gomez stated no. Commissioner Tao asked the maximum occupancy in the restaurant. Mr. Gomez stated the maximum occupancy is 200.

Commissioner Tiernan is concerned with condition of approval No. 11 – Patrons of all ages shall be allowed in the business and not be required to show identification. He feels it puts the applicant at risk. He is also concerned with condition No. 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. He feels it is not fair to the applicant. He supports the no booth outside.

Chair Williams opened the public hearing.

There were no speakers from the audience.

**Motion** to close the public hearing.

M/S: Sandhu, Tiernan

AYES: 6

NOES: 0

ABSENT: 2 (Larry Ciardella and Noella Tabladillo)

ABSTAIN: 0

Vice-Chair Mandal asked if the Commission makes changes to the conditions does this application go to a different category. Mr. Lindsay said night clubs and bars are not allowed in this district. Mr. Lindsay stated that this is a restaurant and not a night club.

Commissioner Tiernan stated that this is a restaurant and not a standalone night club. He will support a modification to conditions No. 11 and No. 12. Alternate Commissioner Larsen also agrees with modifying conditions No. 11 and No. 12. Alternate Commissioner Larsen also stated he would like to see a condition not allowing gang attire on the premises.

Chair Williams read the proposed modified conditions: Condition No. 11 – Patrons of all ages shall be allowed in the business and operator shall post a sign that speaks to a dress code; Condition No. 12 – No booths shall be placed outside the business; and Condition No. 17 – After receiving a Certificate of Occupancy, the project is subject to a six, 12, 18, and 24-month review of the Planning Commission. The reviews shall include a public hearing.

Commissioner Sandhu asked who will enforce the dress code. Chair Williams stated the operator/owner will enforce the dress code.

Assistant City Attorney, Bryan Otake, stated that Condition No. 11 could read: The operator shall prevent all criminal activity from taking place on their property.

**Motion** to adopt Resolution No. 10-005 approving the project subject to the conditions of approval and the modified conditions.

M/S: Tiernan, Larsen

AYES: 6

NOES: 0

ABSENT: 2 (Larry Ciardella and Noella Tabladillo)

ABSTAIN: 0

**APPROVED**  
**Planning Commission Minutes**  
January 27, 2010

**X.  
ADJOURNMENT**

The meeting was adjourned at 9:26 p.m. to the next meeting of February 10, 2010.

Respectfully Submitted,

James Lindsay  
Planning & Neighborhood  
Services Director

Yvonne Andrade  
Recording Secretary

APPROVED  
Planning Commission Minutes  
January 27, 2010