



MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: February 9, 2011

APPLICATION: Permit Review No. PR11-0001, Seafood City

APPLICATION SUMMARY: A six month review of Conditional Use Permit (UP08-0028) which allows for the operations of a 32,975 square foot grocery store and installation of associate site improvements.

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

RECOMMENDATION: Staff recommends that the Planning Commission:
1. Note receipt and File.

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

Overlay District: Site and Architectural Overlay (C2-S)

Site Area: 7.89 Acres

CEQA Determination: Categorically exempt pursuant to Class 9, Section 15309 (Inspections) of the California Environmental Quality Act.

PLANNER: Cindy Hom, Assistant Planner

PJ: 2545

ATTACHMENTS:
A. March 9, 2009 Planning Commission Staff Report
B. March 9, 2009 Planning Commission Resolution
C. March 9, 2009 Planning Commission Meeting Minutes
D. Assessment of Project with Conditions of Approval

LOCATION MAP



No scale

BACKGROUND

In March 11, 2009, the Planning Commission approved a Site Development Permit and Conditional Use Permit to redevelop the former Home Depot building to allow for an approximately 107,373 square foot mixed commercial development that included a 32,975 square feet for a grocery store, various restaurants, and retail stores. The project approval also included renovation of the exterior façade and installation of various site improvements that include landscaping enhancements, creation of pedestrian walkways, and modifications to the Dempsey driveway and Dempsey Road median.

The project site is situated on a 7.89-acre parcel located at the northeast corner of the Dempsey Road and Landess Avenue intersection. The site is zoned General Commercial with a Site and Architectural Overlay (C2-S). Neighboring land uses include the Stonegate Development PUD (89 single-family homes) and the French Court PUD (20 single-family homes) both located north of the project site. The building is located approximately 70 feet from the rear property lines of the Stonegate residences, and the existing garden center is located approximately 100 feet from the rear of the French Court residences. A six-foot high masonry wall separates the adjacent residences from the subject site. Commercial retail buildings are located to the west, south and east. A vicinity map of the project site is shown on the previous page.

PERMIT REVIEW

Pursuant to Condition of Approval No. 39, a six month permit review is required by the Planning Commission for the purpose of ensuring compliance with conditions of approval and to review any issues arising from the operation of the establishment.

Staff conducted several site visits to during the construction stage to ensure consistency with approved site plan, architectural elevations, and landscaping plans. In addition, since the occupancy of the building, staff has also made additional observations. Although, there have been some minor issues associated with the operation of the facility, based on an overall assessment, the project is found to be in substantial conformance with the conditions of approval. Demonstration with compliance with the adopted conditions of approval is included as Attachment D to this report.

Code Compliance Service Request

Since the commencement of occupancy, there were two code violation cases associated with the shopping center cited in 2010. One of the code violations relate to the display of illegal temporary signs (Code Violation No. CZ1007-0002) and the second violation consist of noise complaints related to truck and maintenance operations for Seafood City (Code Violation No. CZ1007-0007). Both code compliance cases has been resolved and closed as of August 2010. However, based on recent site visit, the site continues to have illegal temporary sign displays. Code Compliance staff continues to work with Seasons Marketplace management and individual business owner to abate illegal signs through our Enforcement and Penalty Ordinance (Section 63) and with public information outreach.

ENVIRONMENTAL REVIEW

The Planning Division conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA) and determined the project is categorically exempt pursuant to Class 9, Section 15309 (Inspections) of the California Environmental Quality Act. The project is a six month permit review of the operations of an existing retail center.

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

Based on staff's review the project is in substantial compliance with conditions and there are no operational deficiencies that warrant any changes to the conditions of approval.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission note and receipt and file this report.

Attachments:

- A. March 9, 2009 Planning Commission Staff Report
- B. March 9, 2009 Planning Commission Resolution
- C. March 9, 2009 Planning Commission Meeting Minutes
- D. Assessment of Project with Conditions of Approval



MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: March 11, 2009

APPLICATION: **SITE DEVELOPMENT PERMIT NO. SD08-0006, CONDITIONAL USE PERMIT NO. UP08-0028, and ENVIRONMENTAL ASSESSMENT NO. EA09-0003, LANDESS RETAIL CENTER PROJECT**

APPLICATION SUMMARY:

A request to redevelop an existing 93,704 square foot commercial building. The project proposal entails site and building modifications that includes a 26,669 square two-story addition, exterior upgrade of the building façade, a conceptual design for a future 30-foot pylon sign, and installation of associated site improvements that will allow for retail, office and future restaurant uses. The project also requires a Conditional Use Permit for the proposed 32,975 square foot food market.

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

RECOMMENDATION: **Staff recommends that the Planning Commission:**

- 1. Close the public hearing; and**
- 2. Adopt Resolution No. 09-014 approving the project subject to conditions of approval.**
- 3. Provide preliminary comments on the conceptual design of the 30-foot tall pylon sign.**

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

Overlay District: Site and Architectural Overlay (C2-S)

Specific Plan: N/A

Site Area: 7.89 Acres

CEQA Determination: A Negative Declaration and Initial Study was prepared and circulated for this project.

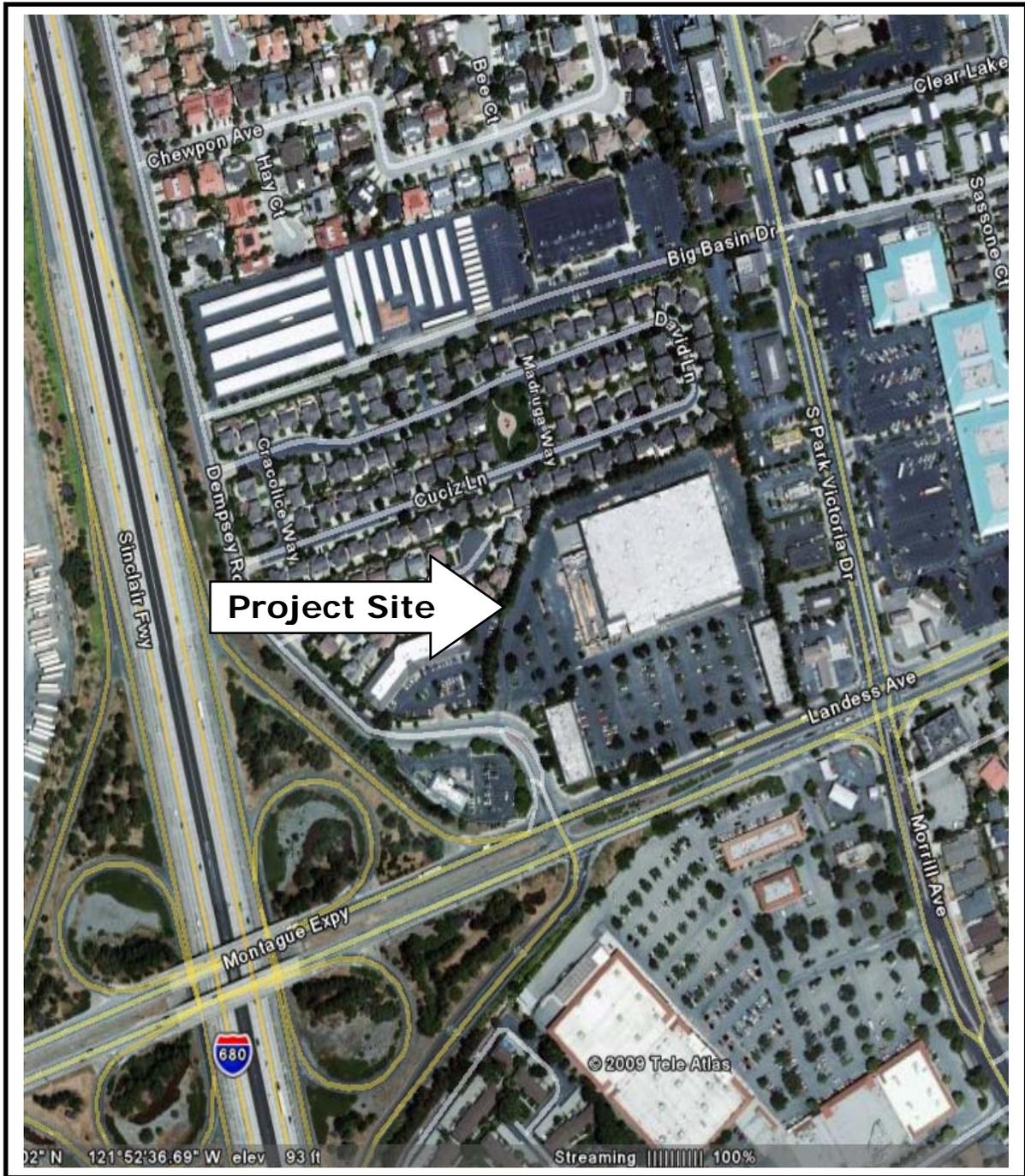
PLANNER: Cindy Hom, Assistant Planner

PJ: 2545

ATTACHMENTS:

- A. Resolution No. 09-010/Conditions of Approval
- B. Project Plans
- C. Alternative West Elevation
- D. Traffic Impact Analysis Report
- E. Solid Waste and Recycling Handling Plan
- F. Stormwater Control Plan
- G. Environmental Assessment No. EA09-0003 (Initial Study and Negative Declaration)
- H. Comment letters from the public

LOCATION MAP



No scale

BACKGROUND

In June 1986, the Planning Commission approved a Site Development Permit and Conditional Use Permit Nos. 798 and 799 that allowed for the construction and operations of 80,704 square foot Home Depot store with attached open air garden center as well as installation of two driveway monument signs. In January 2002, the site was converted to a Home Depot Pro store and was approved for equipment enclosure, minor building modifications, and replacements of signage. Since 2007, the site has been vacant.

On July 23, 2008, Dinna Bayangos of Ayalafil Management LLC submitted an application for entitlements to redevelop the building to allow for approximately 107,373 square foot of mixed commercial. Identified uses within the space include 32,975 square feet for a food market, 17,327 square feet for general retail, 10,715 square feet for office, and approximately 24,260 square feet for future restaurants that would all required separate use permits. The application is submitted pursuant to the Milpitas Municipal Codes listed below:

- XI-10-19.03-17 (Food Stores, such as supermarkets, convenience stores that are located within 1,000 feet of residential development or uses)
- XI-10-57.06 (C) (e) (Additions of 10,000 square or greater)

PROJECT DESCRIPTION

The project site is situated on a 7.89-acre parcel that is developed with a vacant 80,704 square foot single story commercial building and 13,000 outdoor garden center that was previous occupied by Home Depot and later Home Depot Pro. The project site is located at the northeast corner of the Dempsey Road and Landess Avenue intersection. The site is zoned General Commercial with a Site and Architectural Overlay (C2-S). Neighboring land uses include the Stonegate Development PUD (89 single-family homes) and the French Court PUD (20 single-family homes) both located north of the project site. The building is located approximately 70 feet from the rear property lines of the Stonegate residences, and the existing garden center is located approximately 100 feet from the rear of the French Court residences. A six-foot high masonry wall separates the adjacent residences from the subject site. Commercial retail buildings are located to the west, south and east. A vicinity map of the project site is shown on the previous page.

The project proposes to utilize the existing site layout and convert the existing building into a retail center. The project would entail renovation of the exterior façade, interior improvements that will facilitate commercial development and installation of various site improvements that include landscaping enhancements along the perimeter of the building, rehabilitation of existing landscaping, modifications to the Dempsey driveway, and off-site public improvements.

Development Standards

Table 1
C2 Development Standards

	Zoning Ordinance	Proposed
<u>Setbacks</u> (Minimum)		
Front to Primary Structure	None	290'
Interior/Street Side	15' min	75' and 140'
Rear	15' min.	75'
<u>Lot Area</u> (Maximum)	10,000 s.f.	343,991 s.f.
<u>Floor Area Ratio</u> (Maximum)	50%	31%
<u>Building Height</u> (Maximum)	None	45'
<u>Parking</u> (Minimum) discussed further Parking Section below.	513	513

Access, Circulation, and Parking

Access to the project site is provided by two 36-foot wide two-way driveways on Landless Avenue that provide right turn-in and right turn-out access and a third driveway on Dempsey road that currently provides a two-way driveway that consists of one right turn-in and one left/right turn-out. To improve queuing and vehicle storage capacity at the Dempsey driveway, staff is recommending as a condition driveway modifications that would allow a right turn in and one left turn out and one right turn out lanes. The off-site improvement will include reconfiguration of the median island on Dempsey.

Circulation of the project site consists of internal 20-foot and 25-foot drive aisles that are integrated with parking rows and pedestrian pathways including a new pedestrian crosswalk that extends from the public sidewalk on Landless Avenue to the front entrance of the mall. Staff is also recommending a condition of approval that an additional pedestrian pathway provide a connection from the sidewalk on Dempsey to the building. The site circulation complies with Milpitas Zoning development standards and provides adequate site circulation and connectivity.

The parking lot area consists of 90-degree parking spaces. As proposed, the site currently provides 513 on-site parking spaces. Of the 513 parking spaces, 337 are standard parking spaces and the remaining 160 parking spaces are compact stalls. The original site development was approved with 111 compact spaces. The use of additional 49 compact spaces would be contingent upon the effective date of an effort by the City to adopt an amendment to the Parking Ordinance. The draft Ordinance allows up to 40% compact parking in the General Commercial Zoning District. Staff supports the compact parking proposal because it will allow for installation of new pedestrian walkways from Landless Avenue and Dempsey Road. The proposed site plan shows the compact parking in centralized areas at the front and rear of the building. Staff recommends as a condition of approval, that prior to building permit issuance the applicant shall submit a revised parking plan to the approval of the Planning Division that evenly distribute compact spaces throughout the parking area to provide opportunity of all types of cars

to park without larger vehicles occupying more than one space. If the Ordinance amendments are not adopted by the City Council, the applicant would be obligated to ensure that the number of parking provided for the project matches the amount of parking required by the Parking Ordinance in effect. This may affect the overall size of the project. The project complies with the Milpitas Parking Ordinance requirement and is summarized in the Table 2:

Table 2
Parking Summary

Proposed Uses	Parking Ratio	Proposed	Parking Provided
Retail	1/200 GFA	17,327	87
Offices (2 nd Floor)	1/400 GFA	10,715	27
Food Store	1/200 GFA	32,975	165
Future Restaurants	TBD*	24,260	TBD*
Total Number of Spaces required for Commercial Retail			279
Total Number of Space available for Future Restaurant Uses			234
Total Number of Spaces Required			513
Total Number of Spaces Provided			513
* Restaurant shall be required to obtain their individual conditional use permits and parking requirements for each restaurant will be determined based on the Milpitas Parking Ordinance in affect at that time.			

Traffic Impact Analysis Report

A Traffic Impact Analysis report was prepared by Hexagon Traffic Consultants to evaluate potential impacts resulting from the proposed project, taking into account the trips associated with the previous use. The impacts of the project were evaluated in accordance with the standards and methodologies set forth by the City of Milpitas, City of San Jose, and Congestion Management Plan (CMP) of the Santa Clara County. For reference, the report in its entirety is included as Attachment D of this report.

In summary, the proposed project would generate 5,325 net daily trips, 234 new primary AM peak hour trips, 410 new primary midday peak hour trips, and 411 new primary PM peak hour trips. The project would also generate 127 midday peak hour pass-by trips and 117 PM peak hour pass-by trips.

Level of service

Based on the Traffic Impact Analysis, the added vehicle trips would not result in a substantial adverse impact on the Level of Service (LOS) at the studied intersections. Based on the report, all of the study intersections would continue to operate at an acceptable LOS. Results of the LOS analysis are summarized in Table 10 of the report.

The project would not cause a significant increase in traffic volumes on any of the study freeway segments. Results of the CMP freeway LOS are summarized in Table 12 of the report. Furthermore, a Freeway Ramp Capacity Analysis concluded that each of the study ramps had sufficient capacity to serve the existing traffic volumes and would continue to have sufficient capacity under the near and far term conditions with or without the project. Result of the Freeway Ramp Capacity Analysis is summarized in Table 11 of the report.

Although the project would add an incremental demand for transit facilities, the project demand would not exceed the current capacity provided by existing transit facilities.

Operational analysis

The Traffic Impact Analysis also did a supplemental analysis for unsignalized intersections and left turn operations for selected intersections. An assessment of the Park Victoria Drive and Mount Shasta was conducted to determine whether the peak hour traffic volumes warranted a signalized intersection. The assessment concluded that no further improvements are recommended because the intersection would operate at LOS C and the existing, background, project and future growth conditions did not exceed the peak hour signal warrant check threshold.

In terms of the left turn operations, the supplemental assessment found deficiencies at the Great Mall Parkway/Capitol Avenue and Montague Expressway Intersection and the Dempsey Road and Landess Avenue Intersection. The project would add one additional vehicle per lane to the queue for the Great Mall/Capitol and Montague Intersection. However, the impact for the Great Mall/Capitol Avenue and Montague Intersection is less than significant. As a condition of approval, the applicant shall be required to pay a fair share contribution to the Montague Traffic Impact Fee.

At the Dempsey and Landess Intersection, the project would add three additional vehicles to the queue per cycle during the PM peak hour. Currently, vehicles making a southbound left turn on Dempsey Road at Landess Avenue exceed the existing storage capacity by spilling out of the left-turn pocket and blocking the southbound right turn movements. In addition, during project conditions, vehicles attempting to exit from the project driveway towards Montague Expressway may find the driveway blocked due to the southbound left turn queue from the Dempsey Road and Landess Avenue intersection. To improve the operations at the project driveway and Dempsey and Landess Intersection, the project is conditioned to construct driveway modifications and improvements to the existing median island on Dempsey Road between Landess Avenue and the project driveway. The improvements would entail a right turn in and a right and left turn out at the project driveway. As conditioned, the project would remove the taper in the island on Dempsey to extend the existing southbound left turn lane by 55-feet and provide additional vehicle storage capacity. In addition, to prevent blockage of the project driveway, "KEEP CLEAR and DO NO BLOCK INTERSECTION" signage should be installed in front of the project driveway to prevent blockage of queues from the Dempsey Road & Landess Avenue intersection. The impact at the Dempsey and Landess Intersection would also less than significant impact.

Floor Plan

The project proposes an interior mall concept with a 32,975 square foot food market as the major anchor of the retail center. The proposed retail center will also include a 3,100 square foot food court, approximately 21,162 square feet of restaurant space, and 17,327 square feet of retail space. The project also proposes a second story addition that will provide approximately 10,715 square feet of office space. The second story addition could be potential constructed at a later date depending on the market conditions. In the event that the second story is not built out, an alternative west elevation would be constructed and shown in Attachment C. Other ancillary space includes common areas, mechanical rooms, elevator lobbies, and service rooms.

Building Architecture

The existing building façade will be enhanced with a contemporary modern architecture that focuses on simple lines, varied roof lines, color blocking, and texturing. The building proposes stucco walls, decorative score lines, smoked glass, and slate tiling. The applicant has worked with staff to ensure the building's architecture is detailed through the use of cornices, reveals, merchandise display windows, metal awnings, plant trellises and wainscoting. The overall character and scale of the building will be compatible with the surrounding structures. Four new tower elements are proposed to be integrated into the building's design to accent the main entrances to the building. The new architectural elements will provide building articulation in what would otherwise be flat exterior walls. The building will be painted in four complimentary earth-tone colors including beige, tan, green and rust.

Landscaping

The project site is currently landscaped with existing trees that include London Plane trees, Flowering Crabapple trees, Italian Poplar trees, Raywood Ash trees, and Coast Live Oak trees. These trees range in age, health, and size. All existing on-site trees are to remain for the exception of the removal and replacement of six London Plan trees with 24-inch box Pink Dawn Chitalpa trees to accommodate a new pedestrian connection. The project proposes additional landscape enhancements that include seventeen 24-inch box Pink Dawn Chitalpa trees and four 24-inch Flowering Crabapple trees around the perimeter of the building, rehabilitation of existing landscape islands with new groundcover and shrubbery, and reshaping of the existing landscaping berms to provide a gentle transition to a replanted flat area on the left and right side of the Landless driveway entrance. Staff recommends as a condition of approval that prior to building permit issuance a detailed landscape and irrigation plan shall be submitted to ensure compliance with the City's Water Efficiency, use of structure soil for revised and new planting area, and screening of mechanical equipment. All landscaping shall be installed prior to the building permit final. Lastly, all landscaping and irrigation shall be maintained in perpetuity.

Stormwater Control Plan

The existing site is approximately 92% impervious and does not have any on-site stormwater treatment. Although, the project proposes to utilize the existing building footprint and parking lot area, the project is required to treat the expanded roof area and hardscape areas that are re-graded to accommodate the proposed ADA parking spaces and pathways. The project proposes a Filterra treatment filter unit to treat approximately 20,900 square feet of the expanded roof area. This would ensure that stormwater runoff from the project site would not exceed the capacity of the existing storm drainage system, or contribute significantly to downstream flooding.

Solid Waste

The project proposal will consist of two solid waste service areas. The proposed retail center plans to utilize the existing compactor area located at the northwest corner of the building and construct a new CMU trash enclosure on the eastern boundary of the project site. The applicant has submitted a Solid Waste and Recycling Handling Plan that outlines trash and recycling collection procedures. A copy of the report is included as Attachment E to this staff report. Staff recommends the following conditions to ensure adequate servicing and maintenance:

- Trash and recycling service area shall be development in accordance with the Milpitas Trash Enclosure Design Standards.
- Trash and Recycling service areas shall include a roof cover element such as but not limited to roof canopy, decorative trellis, or other design for Planning Division review and approval.

- If at any time there is a problem with bins outside of their enclosures and obstruct vehicle parking or on-site circulation, roll-out service through the local refuse collection company shall be required.
- To ensure that the level of solid waste collection service is adequate, an evaluation of refuse service be done after the businesses have opened by the refuse company and the city Solid Waste Division.

Loading Area

The project proposes to utilize the existing loading docks for the proposed food market tenant and abuts a residential property line. The existing dock area would be partially screened by the proposed building addition. However, there is no screening on the north side of the loading dock area. To ensure that noise levels are minimal, staff recommends replacing the dock railing on the north side with wall screen to dampen noise from loading and trash service activities.

Signage

Pylon Sign

The project proposes a conceptual plan for a 30-foot tall double faced, internally illuminated pylon sign at the Landless Avenue Driveway. The conceptual pylon sign consists of a modern design to continue the style of the retail center and is designed with a tapered base, tile veneer accents, reveals, and plaster texture to match the building. The pylon sign will provide shopping center identification sign and tenant signage. Given the location, the sign height and scale is appropriate given the location is near a gateway to the city and provides a regional landmark with its proximity to Interstate-680. This conceptual plan has been submitted for preliminary comments and will be submitted with a use permit application as part of the center's sign program..

Sign Program

The Milpitas Sign Ordinance requires multi-tenant buildings to have a sign program to ensure design consistency and compliance with the total allowable sign area. Based on the conceptual architectural elevations, proposed signage would appear to consist of individual letter wall signs, blade signs, and metal awning signs. As a condition of approval, the applicant shall obtain Planning Commission approval for a sign program that provides detail sign plans, a use permit for the 30-foot high pylon sign and elevations and shall include design standards, construction requirements, and allocation of sign area prior to the installation of any sign.

Conditional Use Permit

Food Market

The project proposes a 32,975 square food market that will be staffed between the hours of 6:00AM to midnight; however, store hours would be open to the public would be from 8:00AM to 9:00PM. The delivery hours of the supermarket is proposed between 8:00AM to 5:00PM. The proposed food market operator is Seafood City, which a food market that specializes in Asian food items. The proposed market intends to retail common groceries, convenience items, on-site sales of beer and wine, and will also include a deli take-out section.

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 3
General Plan Consistency

Policy	Consistency Finding
<i>Implementing Policy 2.a-I-3 Encourages economic pursuits which will strengthen and promote development through stability and balance.</i>	Consistent. The proposed retail center will help revitalize a vacant commercial site by providing retail opportunities and new jobs. The project site has convenient freeway access and will be compatible with the purpose and intent of the General Commercial Zoning District.
<i>Implementing Policy 2.a-I-5 Maintains policies that promote a strong economy within existing environmental, social, fiscal and land use restraints and policy.</i>	Consistent. The project is a re-use of an existing commercial building. The project site is already served by city services and existing infrastructure. The project would not have a substantial adverse economic effect on nearby uses because it would not reduce business activities or commercial uses in the area. Furthermore, the project would enable Milpitas to maintain a distinctive character to its retail base in order to effectively compete with neighboring retail developments in Fremont and San Jose.
<i>Implement Policy 2.a-I-6 Endeavors to maintain a balanced economic base that can resist downturns in any one economic sector.</i>	Consistent. The project proposes a mix of commercial uses that includes a supermarket, retail services, offices, and food service establishments that provides one stop shopping experience that will cater to nearby residents and the region.
<i>Implementing Policy 2.a-I-7 Provides opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention.</i>	Consistent. The project will expand employment opportunities and allows for the promotion of local business.

Zoning Ordinance

As demonstrated in the above analysis, the project is consistent with the General Plan in the terms of land use and conforms to the Milpitas Zoning Ordinance. The project provides a mix of commercial uses that include a food market, future restaurants, commercial services and retail uses that are permitted and/conditionally permitted in the General Commercial zoning district.

The proposed project provides architecturally compatible with the scale of surrounding structures. The design of the commercial portion of the project incorporates attractive architectural features including tile treatments, metal canopies, fabric awnings, new plaza treatments and new tower elements. The project also uses colors that are warm earth tone colors that would be complement surrounding buildings. The applicant is also proposing landscaping enhancements for the site that will improve the appearance of the center. Overall, the site is transformed from a “big box” to a well articulated commercial building with appropriate elements.

The proposed retail center will not adversely impact existing properties, improvements, or the public health, safety and general welfare of neighboring residents within the area, in that the intended uses will service public need and convenience. As conditioned, the operations related to construction activities and truck traffic associated shipping and receiving operations shall adhere to the Milpitas Noise Ordinance Regulations that prohibits any disturbing noises between the hours of 10:00PM to 7:00AM. Parking regulations shall be enforced through the permit review process for restaurant to ensure adequate parking is being maintained. Given the proximity to residential uses, staff recommends as a condition of approval that odors control equipment shall be required as part of any restaurant tenant improvement. In addition, solid waste enclosures as well as trash and recycling compactor equipment shall be equipped with an odor control system that shall be routinely maintained and serviced.

ENVIRONMENTAL REVIEW

The Planning Division conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). An Initial Study and Negative Declaration were prepared and circulated for the project. The Environmental Assessment (Attachment G) determined there would be no significant impacts related to this project. The twenty-day public review period was held between February 5, 2009 to February 20, 2009. No comments were received during the public review period.

PUBLIC COMMENT/OUTREACH

A community meeting was held on September 29, 2008 at Rancho Middle School Multi-purpose Room. There were approximately 28 people in attendance. The concerns that were identified by the attendees included the following:

- Potential noise from truck deliveries,
- Increasing traffic on Park Victoria and Landess,
- Operating hours of retail center that may conflict with the quiet enjoyment of the adjacent residential neighborhood,
- Potential odor issues with trash generated form the food market and restaurants,
- Sanitation and upkeep of the center, and
- Enforcement of the back area to prevent outdoor storage of materials (i.e. pallets, boxes, garbage, etc)

Staff publicly noticed the application in accordance with City and State law. At of the time of writing this report, there have been several inquiries from the public. Comments have ranged from requesting more information regarding the project proposal to concerns with overconcentration of restaurants. Copies of the comment are included with the staff report as Attachment H.

CONCLUSION

The proposed project is consistent with the Milpitas General Plan and Zoning Ordinance. The proposed mixed commercial development would revitalize an underutilized site that has been vacant for the past two years. The project expands job opportunities and furthers economic development in the city. The project includes architectural modifications that provide for an aesthetic and harmonious development that complements the scale of development in the surrounding area and is appropriate at this location.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission adopt Resolution No. 09-014 approving Site Development Permit No. SD08-0006, Conditional Use Permit No. UP08-0028, and Environmental Assessment No. EA09-0003, Landess Retail Center Project, subject to the attached Conditions Of Approval.

Attachments:

- A. Resolution/Conditions of Approval
- B. Plans
- C. Alternative West Elevation
- D. Traffic Impact Analysis Report
- E. Solid Waste and Recycling Handling Plan
- F. Stormwater Control Plan
- G. Environmental Assessment No. EA09-0003 (Initial Study and Negative Declaration)
- H. Comment letters from the public

RESOLUTION NO. 09-014

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, APPROVING SITE DEVELOPMENT PERMIT NO. SD08-0006, CONDITIONAL USE PERMIT NO. UP08-0028, AND ENVIRONMENTAL ASSESSMENT NO. EA09-0003, LANDESS RETAIL CENTER PROJECT, TO ALLOW FOR A MIXED COMMERCIAL RETAIL CENTER AND INSTALLATION OF ASSOCIATED SITE AND EXTERIOR IMPROVEMENTS LOCATED AT 1535 LANDESS AVENUE.

WHEREAS, on July 23, 2008, an application was submitted by Dinna Bayangos, Ayafafil Management LLC, 255 Shoreline Drive, Suite 428, Mountain View, CA 954065, to allow for the redevelopment of an existing 93,704 square foot commercial building into a mixed commercial retail center. The project proposal entails site and building modifications that includes a 26,669 square two-story addition, exterior upgrade of the building façade, and installation of associated site improvements. The project also requires a Conditional Use Permit for the proposed 32,975 square foot food market. The property is located at 1535 Landess Avenue (APN 88-35-017), zoned General Commercial with Site and Architectural Overlay (C2-S); and

WHEREAS, the applicant held a community meeting on September 29, 2008 with surrounding neighborhood in which 28 people attended the meeting to provide comments on the project; and

WHEREAS, the Planning Division prepared and circulated an Initial Study and Negative Declaration in accordance with the California Environmental Quality Act. The environmental assessment determined there would be no significant impacts related to this project. The document was circulated between February 5, 2009 and February 20, 2009; and

WHEREAS, on March 11, 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 Planning Division prepared and circulated an Initial Study and Negative Declaration in accordance with the California Environmental Quality Act. The environmental assessment determined there would be no significant impacts related to this project in that the site is an existing development that is served by existing infrastructures, the proposed uses does not exceed an CEQA threshold for traffic impacts, and does not create any substantial noise impacts.

Section 3: The project is consistent with the General Plan’s policies in that the proposed mixed commercial development encourages further economic development, expands job opportunities, and would revitalize a commercial site that is currently underutilized.

Section 4: The site is suitable and adequate for the proposed use because it will be located within an area that is accessible from Interstate 680, Montague Expressway, Landess Avenue, and Dempsey Road that provides convenient access. The project will not require a substantial amount of preparation for site work (e.g., grading), because the property is already developed. Furthermore, the future commercial uses will be compatible with the purpose of the General Commercial Zoning District.

Section 5: The proposed use would not have a substantial adverse economic effect on nearby uses because it would not reduce business activities or commercial uses in the area and would help encourage positive retail growth and expand its retail base to capture neighboring cities.

Section 6: The project conforms to the Milpitas Zoning Ordinance in terms of land use, development standards, and parking provisions subject to the effective date of parking ordinance amendment. The proposed food market is permitted with the approval of a conditional use permit.

Section 7: The proposed project provides an architectural compatibility with the scale of surrounding structures and provides for aesthetic and harmonious development. The project proposes to visually enhance the building façade and rehabilitation of the overall site landscaping.

Section 8: The proposed project will not adversely impact the general welfare of residents within the area, and that the intended uses will service public need and convenience. As conditioned, the proposed project would not be detrimental to the general welfare of persons residing in the immediate vicinity, the neighborhood, or the community at large, surrounding uses and environment, and would not create nuisances within the community in the immediate vicinity.

Section 10: The Planning Commission of the City of Milpitas hereby approves Site Development Permit No. SD08-0006, Conditional Use Permit No. UP08-0028, and Environmental Assessment No. EA09-0003, Landess Retail Center Project, 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 March 11, 2009

Chair

TO WIT:

EXHIBIT 1

**CONDITIONS OF APPROVAL
SITE DEVELOPMENT PERMIT NO. SD08-0006, CONDITIONAL USE PERMIT NO.
UP08-0028, AND ENVIRONMENTAL ASSESSMENT NO. EA09-0003, LANDESS
RETAIL CENTER PROJECT**

Site Development Permit

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 March 11, 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.

2. Site Development Permit No. SD08-0006 and Conditional Use Permit No. UP08-0028 shall become null and void if the project is not commenced within 18 months from the date of approval. Pursuant to Section 64.04-2 of the Zoning Ordinance of the City of Milpitas, since the project requires the issuance of a building permit, the project shall not be deemed to have commenced until the date of the building permit is issued and a foundation is completed.
3. Pursuant to Section 64.04-1, the owner or designee shall have the right to request an extension of Site Development Permit No. SD08-0006 and Conditional Use Permit No. UP08-0028 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein.
4. The proposed project shall be conducted in compliance with all applicable federal, state, and local regulations.
5. Private Job Account - If at the time of application for building permit there is a project job account balance due to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full.
6. Private Job Account - If at the time of application for a certificate of occupancy there is a project job account balance due to the City for recovery of review fees, a certificate of occupancy shall not be issued until the balance is paid in full.
7. Prior to the first building permit issuance for the site, the applicant shall submit a revised parking lot plan to the approval of the Planning Division that evenly distribute

- compact spaces throughout the parking area to provide opportunity of all types of cars to park without larger vehicles occupying more than one space.
8. At the time of adoption of these conditions of approval, the City was in the process of updating the City's Parking Ordinance. If the Ordinance amendments were not adopted by the City Council, the applicant would be obligated to ensure that the number of parking provided for the project matches the amount of parking required by the Parking Ordinance in effect. This may mean that the scope of the project would need to be reduced.
 9. A detailed landscaping plan and irrigation shall be submitted and approved by the Planning Division prior to building permit submittal. The plan shall include details of the following:
 - a. The plan shall indicate location and type of trees, shrubs and ground cover, including plant type, plant name, container size quantities, and spacing.
 - b. The landscape plan shall comply with City Council Ordinance No. 238 (An ordinance of the City of Milpitas regulating efficient water use for new or rehabilitated landscapes and existing landscapes)
 - c. All new planter areas along the building, modified parking aisles, and revised landscaped street frontages shall incorporate the use of structural soil to ensure proper growth and prevent damage to surrounding paved areas.
 - d. All mechanical equipment and boxes shall be screened from all views (public and private).
 - e. All planter areas shall be serviced by an automatic system with low volume drip, spray or bubbler emitters.
 - f. Planter pots installed on paving shall be provided with irrigation and be designed to drain to the storm drain.
 - g. Missing or dead trees and shrubs located in the existing landscaped areas shall be replaced with an appropriate tree or plant material subject to the approval of the Planning Division.
 10. Prior to building permit final, all required landscaping shall be planted and in place.
 11. All required landscaping shall be maintained in perpetuity to provide a permanent, attractive and effective appearance.
 12. Prior to building permit issuance the applicant shall demonstrate conformance with the follow conditions for solid waste and recycling enclosures:
 - a. Trash and recycling service area shall be development in accordance with the Milpitas Trash Enclosure Design Standards.
 - b. Trash and Recycling service areas shall include a roof cover element such as but not limited to roof canopy, decorative trellis, or other design for Planning Division review and approval.

- c. If at any time there is a problem with bins outside of their enclosures and obstruct vehicle parking or on-site circulation, roll-out service through the local refuse collection company shall be required.
 - d. To ensure that the level of solid waste collection service is adequate, an evaluation of refuse service be done after the businesses have opened by the refuse company and the city Solid Waste Division.
 - e. All garbage or recycling bins shall be stored in enclosures.
13. Prior to building permit issuance, the applicant shall revise plans to replace the existing dock railing on the north side of the dock area with screen wall to dampen noise from loading and trash service activities.
14. Prior to building permit issuance, an exterior lighting plan shall be submitted for Planning Division review and approval. All lighting on the property shall be oriented or screened to prevent glare and light spillage onto adjacent residential areas. Plans submitted to the Planning Division shall contain sufficient detail on the illumination devices proposed so that the effect of such lighting on the adjacent areas can be evaluated. The type of lighting fixture, mounting height, intensity and direction shall be detailed on the plans. Wall mounted fixtures on the sides of the buildings shall be spaced so as to be architecturally integrated into the building design. Fixture design shall not consist of the standard wall-pack model.
15. Exterior mounted electrical equipment and conduit shall be kept to a visible minimum, and where visible, shall be screened and installed in a neat and orderly fashion. It shall be painted to blend with its mounting background.
16. Prior to building permit issuance, all color permutations for all buildings shall be submitted to the Planning Division for review and approval.
17. Any future restaurant use shall obtain a conditional use permit prior to any tenant improvement and/or occupancy for the operations and compliance with Zoning regulations.
18. The final design of the pylon sign and associated sign program shall be submitted as a separate review prior to the erection of any signs for site and architectural review and approval to ensure high quality design and conformance with the Milpitas Sign Ordinance.
19. Construction activities shall adhere to the following performance standards:
 - a. Pursuant to the City of Milpitas Municipal Code, no person shall engage or permit others to engage in construction of any building or related road or walkway, pool or landscape improvement or in the construction operations related thereto, including delivery of construction materials, supplies, or improvements on or to a construction site except within the hours of 7:00 AM to 7:00 PM on weekdays.

- b. The contractor shall be required to use available noise suppression devices and properly maintain and muffle internal combustion engine-driven construction equipment.
 - c. The contractor shall be required to use noise barriers or noise control blankets to shield stationary equipment from nearby noise-sensitive receptors.
 - d. The contractor shall designate a disturbance coordinator and post the name and phone number of this person at easy reference points for the surrounding land uses. The disturbance coordinator would respond to all complaints about noise and take the necessary steps to reduce the problem.
20. Above ground utilities, such as those for fire service for sprinkler systems, shall be designed as architectural components or provided internal to the buildings or adequately screened.
21. The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval.
22. Prior to issuance of any building permits, the developer shall obtain approval from the City Engineer of the water, sewer, and storm drain studies for this development. These studies shall identify the development's effect on the City's present Master Plans and the impact of this development on the trunk lines. If the results of the study indicate that this development contributes to the over-capacity of the trunk line, it is anticipated that the developer will be required to mitigate the overflow or shortage by construction of a parallel line or pay a mitigation charge, if acceptable to the City Engineer.
23. At the time of building permit submittal, developer shall submit a grading plan and a drainage study prepared by a registered Civil Engineer. The drainage study shall analyze the existing and ultimate conditions and facilities. The study shall be reviewed and approved by the City Engineer and the developer shall satisfy the conclusions and recommendations of the approved drainage study prior to building permit issuance.
24. Prior to building permit issuance, the developer shall obtain design approval and bond for all necessary public improvements along Dempsey Road and Landess Avenue frontage, including but not limited to, removal and replacement of the damaged curb, gutter and sidewalk along project frontage, Dempsey Road median modification, roadway structural section and slurry seal of the street frontage and restriping of the Dempsey Road frontage. Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and developer shall submit a digital format of the Record Drawings (AutoCAD format is preferred) upon

- completion of improvements. The developer shall also execute a secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials. The public facilities such as water meters, RP backflow preventers, sewer clean outs, etc., shall be placed so access is maintained and kept clear of traffic. All improvements must be in accordance with the City of Milpitas standard and specification, and all public improvements shall be constructed to the city Engineer's satisfaction and accepted by the City prior to building occupancy permit issuance/final inspection.
25. The developer shall submit the following items with the building permit application and pay the related fees, following fees are estimates and the actual fees will be calculated at the time of building permit submittal:
- a. The water connection fee of **\$78,613**, to be collected as part of the Tennant Improvement permit submittal.
 - b. The sewer connection fee of **\$112,191**, to be collected as part of the Tennant Improvement permit submittal.
 - c. Storm water connection fee of **\$156,325** based on 7.25 acres @ \$21,562 per acre, to be paid for prior to building permit issuance.
 - d. Sewer Treatment Plant Fee of **\$136,746.62**, to be collected as part of the Tennant Improvement permit submittal.
 - e. Sewer Needs Questionnaire and/or Industrial Waste Questionnaire.
- Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain the form(s).
26. The Developer shall be responsible to pay a traffic impact fee in the amount of **\$115,584.00** (based on a Montague Expressway impact fee of \$903 per peak hour trip). Prior to any building permit issuance, the developer shall pay 50% of the Traffic Impact fee. The Developer shall pay the remainder of the 50% of the traffic impact fee prior to final inspection or issuance of building certificate of occupancy.
27. In addition to the Montague Express way Impact fee, prior to any building permit issuance the developer shall pay for the cost of the plan line study in the amount of **\$20,000** for the Landess/Park Victoria improvements.
28. Prior to building permit issuance, the developer must pay all applicable development fees, including but not limited to, connection fees (water, sewer and storm), treatment plant fee, plan check and inspection deposit, and 2.5% permit automation fee. These fees are collected as part of the secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials.
29. Prior to occupancy permit issuance, applicant/property owner shall construct a new trash enclosure or expand the existing enclosure to accommodate the required number

of bins needed to serve this development. The proposed enclosure shall be designed per the Development Guidelines for Solid Waste Services and enclosure drains must discharge to sanitary sewer line. City review/approval is required prior to construction of the enclosure.

30. All utilities shall be properly disconnected before the building can be demolished. Show (state) how the water service(s), sewer service(s) and storm service(s) will be disconnected. The water service shall be locked off in the meter box and disconnected or capped immediately behind the water meter if it is not to be used. The sanitary sewer shall be capped off at the clean out near the property line or approved location if it is not to be used. The storm drain shall be capped off at a manhole or inlet structure or approved location if it is not to be used.
31. Prior to demolition permit issuance, the Applicant, or Contracted Designee, shall submit Part I of a Recycling Report on business letterhead to the Building Division, for forwarding to the Engineering Section. This initial report shall be approved by the City's Utility Engineering/Solid Waste Section prior to demolition permit issuance. The report shall describe these resource recovery activities:
 - a. What materials will be salvaged.
 - b. How materials will be processed during demolition.
 - c. Intended locations or businesses for reuse or recycling.
 - d. Quantity estimates in tons (both recyclable and for landfill disposal). Estimates for recycling and disposal tonnage amounts by material type shall be included as separate items in all reports to the Building Division before demolition begins.

Applicant/Contractor shall make every effort to salvage materials for reuse and recycling.

32. Prior to building permit issuance, applicant shall submit Part II of the Recycling Report to the Building Division, for forwarding to the City's Utility Engineering/Solid Waste Section, that confirms items 1 – 4 of the Recycling Report, especially materials generated and actual quantities of recycled materials. Part II of the Recycling Report shall be supported by copies of weight tags and/or receipts of "end dumps." Actual reuse, recycling and disposal tonnage amounts (and estimates for "end dumps") shall be submitted to the Building Division for approval by the Utility Engineering/Solid Waste Section prior to inspection by the Building Division.
33. All demolished materials including, but not limited to broken concrete and paving materials, pipe, vegetation, and other unsuitable materials, excess earth, building debris, etc., shall be removed from the job site for recycling and/or disposal by the Applicant/Contractor, all to the satisfaction of the City Engineer or designee. The Applicant/Contractor shall, to the maximum extent possible, reuse any useful construction materials generated during the demolition and construction project. The Applicant/Contractor shall recycle all building and paving materials including, but

not limited to roofing materials, wood, drywall, metals, and miscellaneous and composite materials, aggregate base material, asphalt, and concrete. The Applicant/Contractor shall perform all recycling and/or disposal by removal from the job site.

34. At the time of building plan check submittal, the developer shall incorporate the changes and address the comments shown on Engineering Services Exhibit "S"(dated 3/2/2009).

Conditional Use Permit

35. Planning approval is for the operations of a 32,975 square foot food market that includes the on-site sales of beer and wine and hot deli service. Any modification to the operations and use shall require a conditional use permit amendment.
36. The applicant shall submit a mall security plans that addressing staffing and security measures to deter people from congregating in the parking lot areas and creating nuisances. Furthermore, the applicant shall display "No Loitering" signs that state patrons or persons must vacate the premises no later than 30 minutes after closing.
37. Deliveries for the food market shall only occur between the hours of 8:00AM and 5:00PM.
38. Staffing hours for the food market shall be between the hours of 6:00AM to Midnight but opened to the public between the hours of 8:00AM to 9:00PM.
39. The project shall be subject to a six-month and twelve month review. (PC)
40. The applicant shall provide adequate cart retrieval areas near entrances subject to the approval of the Planning Staff. (PC)
41. The applicant shall ensure adequate lighting, closed circuit TV surveillance, other security or safety equipment in the rear parking areas. (PC)
42. The applicant shall work with authorized haulers of solid waste, recyclables, and other materials to ensure collection times that are compatible with neighboring uses to the extent possible. (PC)
43. The applicant shall work with city staff to ensure that deliveries to external restaurants and retail merchants are made in a manner that protects public safety. (PC)

CITY OF MILPITAS PLANNING COMMISSION
AGENDA FOR MARCH 11, 2009
CITY HALL COUNCIL CHAMBERS 7:00 P.M.
455 E. CALAVERAS BLVD., MILPITAS, CA 95035
(408) 586-3279

- I. PLEDGE OF ALLEGIANCE**
- II. ROLL CALL**
- III. PUBLIC FORUM**

Members of the audience are invited to address the Planning Commission on any subject not on tonight's agenda. Speakers must come to the podium, state their name and address for the Secretary's record, and limit their remarks to under three minutes. As an unagendized item, no response is required of the City staff or the Commission; however, the Commission may agendize the item for a future meeting.

- IV. APPROVAL OF MINUTES:** February 25, 2009
- V. ANNOUNCEMENTS**
- VI. ANNOUNCEMENT OF CONFLICT OF INTEREST**
- VII. APPROVAL OF THE AGENDA**
- VIII. CONSENT CALENDAR (Items with an asterisk *)**

The consent calendar items are considered to be routine and will be considered with one public hearing and adopted by one motion. There will be no separate discussion of these items unless a member of the Planning Commission, member of the audience, or staff requests the Planning Commission to have an item removed from or added to the consent calendar. Any person desiring to speak on any item on the consent calendar should ask to have that item removed from the consent calendar. If removed, this item will be discussed in the order in which it appears on the agenda.

IX. PUBLIC HEARING

- 1. SITE DEVELOPMENT PERMIT NO. SD08-0006, CONDITIONAL USE PERMIT NO. UP08-0028, AND ENVIRONMENTAL ASSESSMENT NO. EA09-0003:** A request to redevelop an existing 80,704 square foot commercial building into a retail center. The project proposal entails site and building modifications that includes a 26,669 square foot two-story addition, exterior upgrade of the building façade, a conditional Use Permit for the proposed 32,975 square foot food market, and installation of associated site improvements. The applicant is also requesting preliminary comments on a proposed 30-foot pylon sign. The project site is located at 1535 Landess Avenue (APN: 088-35-017), zoned General Commercial with Site and Architectural Overlay (C2-S). Applicant: Dinna Bayangos, Ayafafil Management LLC. Staff Contact: Cindy Hom (408) 586-3284. *(Recommendation: Adopt Resolution No. 09-010 approving the project subject to conditions of approval.)*

2. **ZONING AMENDMENT NO. ZA08-0001:** A consideration of amendments to the zoning ordinance text. The City proposes to amend the zoning ordinance by 1) combining separate Commercial District sections (CO, C1, C2, HS, and TC) into one section; combining the separate Industrial District sections (M1, M2 and MP) into one section; 2) reformatting the Institutional District section, Agricultural District section and Exceptions Section; and 3) prohibiting places of assembly uses that are not associated with industrial or business uses within Industrial Districts. Ancillary text changes to the zoning ordinance are also proposed to ensure internal consistency. Staff Contact: Sheldon S. Ah Sing (408) 586-3278 (*Recommendation: Adopt Resolution No. 09-015 recommending approval of the amendments to the City Council.*)

Any person aggrieved by any final decision of any, board, commission, or department head to the City of Milpitas may appeal the decision to the City Council by filing written notice of the appeal with the City Clerk within twelve (12) calendar days of the date of said decision and paying the required fee. This time limit shall be strictly enforced.

XI. ADJOURNMENT

THE NEXT PLANNING COMMISSION MEETING IS March 25, 2009

The Planning Division will provide a recorded agenda or minutes on standard cassette or printed in large type upon request for the visually impaired. In compliance with the Americans with Disabilities act, individuals requiring accommodation for this meeting should notify the Planning Division prior to the meeting at (408) 586-3279, TDD (408) 586-3013.

MILPITAS PLANNING COMMISSION SUBCOMMITTEE

The Planning Commission Subcommittee consists of two members (currently Gurdev Sandhu-regular member, Larry Ciardella-regular member, Alex Galang - alternate member) of the Planning Commission, who have approval authority for Minor Site Development Permits and other minor project reviews not involving public hearings. **This project review will be held at 6:30 P.M. in the City of Milpitas Committee Conference Room, First Floor, 455 E. Calaveras Boulevard.**

- a. **MINOR SITE DEVELOPMENT PERMIT NO. MS08-0016:** A request to construct a wind break near the outdoor seating area for the existing Banana Leaf restaurant located at 182 Ranch Drive. (APN: 022-54-011) Zoned General Commercial with 'S' Zone Overlay District. Applicant: Banana Leaf Restaurant. Staff Contact: Tiffany Brown, 408-586-3283. (*Recommendation: Approve MS08-0016 subject to the conditions of approval*)
- b. **MINOR SITE DEVELOPMENT PERMIT NO. MS09-0006:** A request for a 1,522 square foot addition and new deck for an existing hillside home located at 1658 Pebble Beach Court. (APN: 029-55-022), zoned Single Family Residential with Hillside and Site and Architectural Overlays (R1-H-S). Applicant: C.C. Chin. Staff Contact: Tiffany Brown, 408-586-3283. (*Recommendation: Approve MS09-0006 subject to the conditions of approval*)
- c. **MINOR SITE DEVELOPMENT PERMIT AMENDMENT NO. MA09-0001:** A request to add a new entryway and creating new walkways to the parking lot from the entryway at 800 Tasman Drive (APN: 086-02-053), zoned Industrial Park with Site and Architectural Overlay (MP-S). Applicant: Elizabeth Yeung. Staff Contact: Cindy Hom (408) 586-3284. (*Recommendation: Approve MA09-0001 subject to the conditions of approval*)
- d. **MINOR SITE DEVELOPMENT PERMIT NO. MS09-0001:** A request to remove 21 parking spaces to accommodate two garage buildings and re-stripe parking lot area to include compact spaces at an existing apartment complex located at 555 S Park Victoria Drive (APN: 088-02-027), Multi-family

Residential with Site and Architectural Overlay (R3-S). Applicant: Mindy Anderson. Staff Contact: Cindy Hom (408) 586-3284. (*Recommendation: Approve MS09-0001 subject to the conditions of approval*)

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review.

Materials related to an item on this agenda submitted to the Planning Commission after initial distribution of the agenda packet are available for public inspection at the Planning Department office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas during normal business hours.

For more information on your rights under the Open Government Ordinance or to report a violation of the ordinance, contact the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035

E-mail: mogaz@ci.milpitas.ca.gov

Phone (408) 586-3040

Fax (408) 586-3030

The Open Government Ordinance is codified in the Milpitas Municipal Code as Title I Chapter 310 and is available online at the City's website www.ci.milpitas.ca.gov by selecting the Milpitas Municipal Code link.

**CONDITIONS OF APPROVAL
SITE DEVELOPMENT PERMIT NO. SD08-0006, CONDITIONAL USE PERMIT
NO. UP08-0028, AND ENVIRONMENTAL ASSESSMENT NO. EA09-0003,
LANDESS RETAIL CENTER PROJECT**

Site Development Permit

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 March 11, 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.

Comment: Perpetual

2. Site Development Permit No. SD08-0006 and Conditional Use Permit No. UP08-0028 shall become null and void if the project is not commenced within 18 months from the date of approval. Pursuant to Section 64.04-2 of the Zoning Ordinance of the City of Milpitas, since the project requires the issuance of a building permit, the project shall not be deemed to have commenced until the date of the building permit is issued and a foundation is completed.

Comment: The project is already vested and constructed.

3. Pursuant to Section 64.04-1, the owner or designee shall have the right to request an extension of Site Development Permit No. SD08-0006 and Conditional Use Permit No. UP08-0028 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein.

Comment: The project is already vested and constructed.

4. The proposed project shall be conducted in compliance with all applicable federal, state, and local regulations.

Comment: Perpetual

5. Private Job Account - If at the time of application for building permit there is a project job account balance due to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full.

Comment: Complies. There are no outstanding Private Job Account fees for this project.

6. Private Job Account - If at the time of application for a certificate of occupancy there is a project job account balance due to the City for recovery of review fees, a certificate of occupancy shall not be issued until the balance is paid in full.

Comment: Complies. There are no outstanding Private Job Account fees for this project.

7. Prior to the first building permit issuance for the site, the applicant shall submit a revised parking lot plan to the approval of the Planning Division that evenly distribute compact spaces throughout the parking area to provide opportunity of all types of cars to park without larger vehicles occupying more than one space.

Comment: Complies. Demonstrated on Site Improvement Plans (SI09-0004) approved on 9/14/09

8. At the time of adoption of these conditions of approval, the City was in the process of updating the City's Parking Ordinance. If the Ordinance amendments were not adopted by the City Council, the applicant would be obligated to ensure that the number of parking provided for the project matches the amount of parking required by the Parking Ordinance in effect. This may mean that the scope of the project would need to be reduced.

Comment: Complies. Project satisfies Milpitas Parking Ordinance requirements and development standards based on approve plans for the project and tenant improvements plans.

9. A detailed landscaping plan and irrigation shall be submitted and approved by the Planning Division prior to building permit submittal. The plan shall include details of the following:
 - a. The plan shall indicate location and type of trees, shrubs and ground cover, including plant type, plant name, container size quantities, and spacing.

- b. The landscape plan shall comply with City Council Ordinance No. 238 (An ordinance of the City of Milpitas regulating efficient water use for new or rehabilitated landscapes and existing landscapes)
- c. All new planter areas along the building, modified parking aisles, and revised landscaped street frontages shall incorporate the use of structural soil to ensure proper growth and prevent damage to surrounding paved areas.
- d. All mechanical equipment and boxes shall be screened from all views (public and private).
- e. All planter areas shall be serviced by an automatic system with low volume drip, spray or bubbler emitters.
- f. Planter pots installed on paving shall be provided with irrigation and be designed to drain to the storm drain.
- g. Missing or dead trees and shrubs located in the existing landscaped areas shall be replaced with an appropriate tree or plant material subject to the approval of the Planning Division.

Comment: Complies. Demonstrated on Site Improvement Plans (SI09-0004) approved on 9/14/09

- 10. Prior to building permit final, all required landscaping shall be planted and in place.

Comment: Complies. Field verified with approved landscaping plans prior to building permit final on 9/24/10.

- 11. All required landscaping shall be maintained in perpetuity to provide a permanent, attractive and effective appearance.

Comment: Perpetual

- 12. Prior to building permit issuance the applicant shall demonstrate conformance with the follow conditions for solid waste and recycling enclosures:

- a. Trash and recycling service area shall be development in accordance with the Milpitas Trash Enclosure Design Standards.

Comment: Complies. Demonstrated on Building Permit plans (BP09-0169) approved on 9/14/09.

- b. Trash and Recycling service areas shall include a roof cover element such as but not limited to roof canopy, decorative trellis, or other design for Planning Division review and approval.

Comment: Complies. Demonstrated on Building Permit plans (BP09-0169) approved on 9/14/09.

- c. If at any time there is a problem with bins outside of their enclosures and obstruct vehicle parking or on-site circulation, roll-out service through the local refuse collection company shall be required.

Comment: Perpetual.

- d. To ensure that the level of solid waste collection service is adequate, an evaluation of refuse service be done after the businesses have opened by the refuse company and the city Solid Waste Division.

Comment. Complies. See email from Nancy Clement dated 1/28/11 (Exhibit 1).

- e. All garbage or recycling bins shall be stored in enclosures.

Comment: Perpetual.

- 13. Prior to building permit issuance, the applicant shall revise plans to replace the existing dock railing on the north side of the dock area with screen wall to dampen noise from loading and trash service activities.

Comment: Complies. Demonstrated on Building Permit plans (BP09-0169) approved on 9/14/09.

- 14. Prior to building permit issuance, an exterior lighting plan shall be submitted for Planning Division review and approval. All lighting on the property shall be oriented or screened to prevent glare and light spillage onto adjacent residential areas. Plans submitted to the Planning Division shall contain sufficient detail on the illumination devices proposed so that the effect of such lighting on the adjacent areas can be evaluated. The type of lighting fixture, mounting height, intensity and direction shall be detailed on the plans. Wall mounted fixtures on the sides of the buildings shall be spaced so as to be architecturally integrated into the building design. Fixture design shall not consist of the standard wall-pack model.

Comment: Complies. Demonstrated on Building Permit plans (BP09-0169) approved on 9/14/09.

- 15. Exterior mounted electrical equipment and conduit shall be kept to a visible minimum, and where visible, shall be screened and installed in a neat and orderly fashion. It shall be painted to blend with its mounting background.

Comment: Perpetual

16. Prior to building permit issuance, all color permutations for all buildings shall be submitted to the Planning Division for review and approval.

Comment: Complies. Demonstrated on Building Permit plans (BP09-0169) approved on 9/14/09.

17. Any future restaurant use shall obtain a conditional use permit prior to any tenant improvement and/or occupancy for the operations and compliance with Zoning regulations.

Comment: Complies. Received Planning Commission review and approval for multiple Conditional Use Permit for various food establishments on 3/11/09.

18. The final design of the pylon sign and associated sign program shall be submitted as a separate review prior to the erection of any signs for site and architectural review and approval to ensure high quality design and conformance with the Milpitas Sign Ordinance.

Comment: Complies. Received Planning Commission review and approval for pylon sign and associated sign program on 3/11/09.

19. Construction activities shall adhere to the following performance standards:

- a. Pursuant to the City of Milpitas Municipal Code, no person shall engage or permit others to engage in construction of any building or related road or walkway, pool or landscape improvement or in the construction operations related thereto, including delivery of construction materials, supplies, or improvements on or to a construction site except within the hours of 7:00 AM to 7:00 PM on weekdays.
- b. The contractor shall be required to use available noise suppression devices and properly maintain and muffle internal combustion engine-driven construction equipment.
- c. The contractor shall be required to use noise barriers or noise control blankets to shield stationary equipment from nearby noise-sensitive receptors.
- d. The contractor shall designate a disturbance coordinator and post the name and phone number of this person at easy reference points for the surrounding land uses. The disturbance coordinator would respond to all complaints about noise and take the necessary steps to reduce the problem.

Comment: Complies. Demonstrated on Building Permit plans (BP-09-0169) approved on 09/14/09.

20. Above ground utilities, such as those for fire service for sprinkler systems, shall be designed as architectural components or provided internal to the buildings or adequately screened.

Comment: Perpetual

21. The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval.

Comment: The project is constructed and served.

22. Prior to issuance of any building permits, the developer shall obtain approval from the City Engineer of the water, sewer, and storm drain studies for this development. These studies shall identify the development's effect on the City's present Master Plans and the impact of this development on the trunk lines. If the results of the study indicate that this development contributes to the over-capacity of the trunk line, it is anticipated that the developer will be required to mitigate the overflow or shortage by construction of a parallel line or pay a mitigation charge, if acceptable to the City Engineer.

Comment: Complies. Studies submitted and accepted by city.

23. At the time of building permit submittal, developer shall submit a grading plan and a drainage study prepared by a registered Civil Engineer. The drainage study shall analyze the existing and ultimate conditions and facilities. The study shall be reviewed and approved by the City Engineer and the developer shall satisfy the conclusions and recommendations of the approved drainage study prior to building permit issuance.

Comment: Complies. Demonstrated on Site Improvement plans (SI09-0004) approved on 9/14/09.

24. Prior to building permit issuance, the developer shall obtain design approval and bond for all necessary public improvements along Dempsey Road and Landess Avenue frontage, including but not limited to, removal and replacement of the damaged curb, gutter and sidewalk along project frontage, Dempsey Road median modification, roadway structural section and slurry seal of the street frontage and restriping of the Dempsey Road frontage. Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and developer shall submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of

improvements. The developer shall also execute a secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials. The public facilities such as water meters, RP backflow preventers, sewer clean outs, etc., shall be placed so access is maintained and kept clear of traffic. All improvements must be in accordance with the City of Milpitas standard and specification, and all public improvements shall be constructed to the city Engineer's satisfaction and accepted by the City prior to building occupancy permit issuance/final inspection.

Comment: Complies. Demonstrated on Site Improvement plans (SI09-0004) approved on 9/14/09.

25. The developer shall submit the following items with the building permit application and pay the related fees, following fees are estimates and the actual fees will be calculated at the time of building permit submittal:
- a. The water connection fee of **\$78,613**, to be collected as part of the Tennant Improvement permit submittal.
 - b. The sewer connection fee of **\$112,191**, to be collected as part of the Tennant Improvement permit submittal.
 - c. Storm water connection fee of **\$156,325** based on 7.25 acres @ \$21,562 per acre, to be paid for prior to building permit issuance.
 - d. Sewer Treatment Plant Fee of **\$136,746.62**, to be collected as part of the Tennant Improvement permit submittal.
 - e. Sewer Needs Questionnaire and/or Industrial Waste Questionnaire.
- Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain the form(s).

Comment: Complies. Submitted payment in the amount of for utility connection fees on 10/21/09

26. The Developer shall be responsible to pay a traffic impact fee in the amount of **\$115,584.00** (based on a Montague Expressway impact fee of \$903 per peak hour trip). Prior to any building permit issuance, the developer shall pay 50% of the Traffic Impact fee. The Developer shall pay the remainder of the 50% of the traffic impact fee prior to final inspection or issuance of building certificate of occupancy.

Comment: Complies. Submitted payment for traffic impact fees on 10/21/09

27. In addition to the Montague Express way Impact fee, prior to any building permit issuance the developer shall pay for the cost of the plan line study in the amount of **\$20,000** for the Landess/Park Victoria improvements.

Comment: Noncompliance. Fee has not been collected.

28. Prior to building permit issuance, the developer must pay all applicable development fees, including but not limited to, connection fees (water, sewer and storm), treatment plant fee, plan check and inspection deposit, and 2.5% permit automation fee. These fees are collected as part of the secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials.

Comment: Complies. Submitted payment for development fees on 10/21/09.

29. Prior to occupancy permit issuance, applicant/property owner shall construct a new trash enclosure or expand the existing enclosure to accommodate the required number of bins needed to serve this development. The proposed enclosure shall be designed per the Development Guidelines for Solid Waste Services and enclosure drains must discharge to sanitary sewer line. City review/approval is required prior to construction of the enclosure.

Comment: Complies. Demonstrated on Site Improvement plans (SI09-0004) approved on 9/14/09.

30. All utilities shall be properly disconnected before the building can be demolished. Show (state) how the water service(s), sewer service(s) and storm service(s) will be disconnected. The water service shall be locked off in the meter box and disconnected or capped immediately behind the water meter if it is not to be used. The sanitary sewer shall be capped off at the clean out near the property line or approved location if it is not to be used. The storm drain shall be capped off at a manhole or inlet structure or approved location if it is not to be used.

Comment: Complies. Demonstrated on Site Improvement plans (SI09-0004) approved on 9/14/09.

31. Prior to demolition permit issuance, the Applicant, or Contracted Designee, shall submit Part I of a Recycling Report on business letterhead to the Building Division, for forwarding to the Engineering Section. This initial report shall be approved by the City's Utility Engineering/Solid Waste Section prior to demolition permit issuance. The report shall describe these resource recovery activities:

- a. What materials will be salvaged.
- b. How materials will be processed during demolition.
- c. Intended locations or businesses for reuse or recycling.

- d. Quantity estimates in tons (both recyclable and for landfill disposal). Estimates for recycling and disposal tonnage amounts by material type shall be included as separate items in all reports to the Building Division before demolition begins.

Applicant/Contractor shall make every effort to salvage materials for reuse and recycling.

Comment: Complies. Demonstrated on Site Improvement plans (SI09-0004) approved on 9/14/09.

32. Prior to building permit issuance, applicant shall submit Part II of the Recycling Report to the Building Division, for forwarding to the City's Utility Engineering/Solid Waste Section, that confirms items 1 – 4 of the Recycling Report, especially materials generated and actual quantities of recycled materials. Part II of the Recycling Report shall be supported by copies of weight tags and/or receipts of "end dumps." Actual reuse, recycling and disposal tonnage amounts (and estimates for "end dumps") shall be submitted to the Building Division for approval by the Utility Engineering/Solid Waste Section prior to inspection by the Building Division.

Comment: Complies. Demonstrated on Site Improvement plans (SI09-0004) approved on 9/14/09.

33. All demolished materials including, but not limited to broken concrete and paving materials, pipe, vegetation, and other unsuitable materials, excess earth, building debris, etc., shall be removed from the job site for recycling and/or disposal by the Applicant/Contractor, all to the satisfaction of the City Engineer or designee. The Applicant/Contractor shall, to the maximum extent possible, reuse any useful construction materials generated during the demolition and construction project. The Applicant/Contractor shall recycle all building and paving materials including, but not limited to roofing materials, wood, drywall, metals, and miscellaneous and composite materials, aggregate base material, asphalt, and concrete. The Applicant/Contractor shall perform all recycling and/or disposal by removal from the job site.

Comment: Complies. Demonstrated on Site Improvement plans (SI09-0004) approved on 9/14/09.

34. At the time of building plan check submittal, the developer shall incorporate the changes and address the comments shown on Engineering Services Exhibit "S"(dated 3/2/2009).

Comment: Complies. Demonstrated on Building Permit plans (BP09-0169) approved on 9/14/09.

Conditional Use Permit

35. Planning approval is for the operations of a 32,975 square foot food market that includes the on-site sales of beer and wine and hot deli service. Any modification to the operations and use shall require a conditional use permit amendment.

Comment: Perpetual

36. The applicant shall submit a mall security plans that addressing staffing and security measures to deter people from congregating in the parking lot areas and creating nuisances. Furthermore, the applicant shall display “No Loitering” signs that state patrons or persons must vacate the premises no later than 30 minutes after closing.

Comment: Partial Compliance. Security Plan submitted for staff review on 2/2/11. On a recent site visit, there were no “No Loitering” signs posted in the parking lot.

37. Deliveries for the food market shall only occur between the hours of 8:00AM and 5:00PM.

Comment: Complies. There has been one code enforcement service request for truck noise. The issue was resolved and case closed in August 2010.

38. Staffing hours for the food market shall be between the hours of 6:00AM to Midnight but opened to the public between the hours of 8:00AM to 9:00PM.

Comment: Perpetual

39. The project shall be subject to a six-month and twelve month review. (PC)

Comment: Complies. A six month review is scheduled on 2/9/11 and a twelve month review is scheduled on 7/13/11.

40. The applicant shall provide adequate cart retrieval areas near entrances subject to the approval of the Planning Staff. (PC)

Comment: Complies. Demonstrated compliance on Building Permit plans (BP09-0169) approved on 9/14/09.

41. The applicant shall ensure adequate lighting, closed circuit TV surveillance, other security or safety equipment in the rear parking areas. (PC)

Comment: Complies. Surveillance cameras are located on the north and west elevations.

42. The applicant shall work with authorized haulers of solid waste, recyclables, and other materials to ensure collection times that are compatible with neighboring uses to the extent possible. (PC)

Comment: Perpetual

43. The applicant shall work with city staff to ensure that deliveries to external restaurants and retail merchants are made in a manner that protects public safety. (PC)

Comment: Perpetual