



MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: July 13, 2011

- APPLICATION:** Conditional Use Permit No. UP11-0014, USA Liquors
- APPLICATION SUMMARY:** A request to operate a 1,015square feet alcohol beverage outlet for off site consumption of beer and wine.
- LOCATION:** 148 W. Calaveras Blvd. (APN 22-24-037)
- APPLICANT:** Laxmi Bhardwaj, 1734 Plaza Sol, San Jose, Ca 95131
- OWNER:** Lacorte Marie R. trustee Et Al, Care of Calaveras Square, 3645 Warner Dr., San Jose, CA 95127
- RECOMMENDATION:** **Staff recommends that the Planning Commission: Adopt Resolution Number 11-028 approving the project subject to the conditions of approval.**
- PROJECT DATA:**
- General Plan/
Zoning Designation: General Commercial (GNC) / General Commercial with Site and Architectural Review Overlay District (C2-S)
- CEQA Determination: Categorically exempt from further environmental review pursuant to Section 15301, "Existing Facilities" of the California Environmental Quality Act (CEQA) guidelines.
- PLANNER:** Cindy Hom, Assistant Planner
- PJ:** 2723
- ATTACHMENTS:**
- A. Resolution No. 11-028
 - B. Project Plans
 - C. Project Description Letter

LOCATION MAP



No scale



BACKGROUND

The Calaveras Square shopping center is developed with four commercial retail buildings and associated site improvements. In August 2004, the Planning Commission approved a conditional use permit for an Avis auto rental agency. That business vacated in 2007.

On May 26, 2011 Laxmi Bhardwaj submitted a conditional use permit application to operate a 1,015 square foot alcohol beverage sales outlet for off-site consumption of beer and wine within the space vacated by Avis. This application is submitted pursuant to Milpitas Municipal Code XI-10-5.02-1 (Alcohol Beverage Sales) which requires Planning Commission review and approval of a conditional use permit.

PROJECT DESCRIPTION

The project proposes to operate a 1,015 square foot convenience store that includes the sale of beer and wine for off site consumption as well as sale of tobacco cigarettes and prepackaged food items. The applicant proposes to operate seven days a week between the hours of 7:00AM to 12:00PM. However, the focus of the report is on the alcohol sales, which are subject to a conditional use permit.

The project is located in an existing one-story commercial building within the Calaveras Square shopping center. The center is bounded by Calaveras Boulevard on the west, Abel Street on the east and Serra Way on the south. The shopping center consists of four (4) buildings with 21,000 square feet of commercial retail space and is surrounded by other commercial land uses that includes a sit down restaurant, Carl's Jr. restaurant, dental office, beauty supply store, dry cleaning establishment and courier service to name a few. A vicinity map of the subject site location is included on the previous page.

Department of Alcoholic Beverage Control's "Undue concentration of Liquor License" Regulations

According the Department of Alcohol and Beverage Control, the project site at 148 W. Calaveras Blvd. is located within Census Tract 5045.04 which authorizes three (3) off-sale establishments and seven (7) on-sale licenses. Currently there are thirty-nine (39) on-site and eight (8) off-site licenses that are active. Therefore, the project is within an undue concentration area that requires the Planning Commission to make a finding that sale of alcohol will not have a negative impact on the surrounding community and serves the public convenience or necessity. Based on the project proposal and its context with surrounding land use, staff has identified the following findings:

1. The proposed alcoholic beverages outlet is located in the general commercial zone and is surrounding by other commercial uses. The project is a compatible land use and adds to the variety of the Calaveras Square Shopping Center that does not have any general retail stores.
2. The project is not located within 100-feet of residential homes and is more than 600-feet away from any school, public park, or religious facility and therefore will not be detrimental or injurious to property, improvements or disturb the quiet and peaceful enjoyment of residential homes.

3. This would be the only alcohol beverage sale outlet for off-site consumption within the shopping center. Although, there are three other outlets (SaveMart, Walgreens, and PNS Store) along the Calaveras Boulevard Corridor, both SaveMart and Walgreens mainly cater to the sale the general goods while the PNS Store and proposed alcohol outlet cater mainly to the alcohol sales as the primary point of sales.

Development Standards

The applicant proposes no exterior changes or modifications to the building and therefore maintains compliance with the General Commercial development standards for setbacks, height, floor area ratio, and parking.

Site Lighting

The Calaveras Square Shopping Center completed its last building in 1977. The site continues to use the original lighting fixtures which consist of 12-foot tall wooden poles with decorative lamp fixture that has textured shatter proof lenses. Based on staff site inspection during the evening hours, several light standards in the parking lot were not working. In addition to the planning review of the proposed alcohol sales, staff also verifies compliance with site and architectural approval. As such, *staff recommends as a condition of approval, the applicant shall repair and/or replace any broken light fixtures prior to any occupancy. Furthermore, staff also recommends the applicant install an additional wall light on the east side of the building to safely illuminate the adjacent service alley to deter potential loiters and transients from utilizing this service alley.*

ADOPTED PLANS AND ORDINANCES CONSISTENCY

General Plan

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

Table 1
General Plan Consistency

Policy	Consistency Finding
<i>Implementing Policy 2.a-1-3: Encourage economic pursuits which will strengthen and promote development though stability and balance.</i>	Consistent. The project would replace a vacancy with a new retail use and add variety to the services and goods provided by the Calaveras Square Shopping Center.

Zoning Ordinance

The projects are consistent with Milpitas Zoning Ordinance in terms of land use and development standards. Alcohol beverage sales are conditionally permitted uses in the General Commercial. The project proposes no exterior changes to the building and will maintain the existing architecture and style.

Parking

The proposed tenant space was formerly occupied by Avis Rental Agency which required seven (7) parking spaces. Since the alcohol beverage sales outlet is a retail use, it requires only five (5) parking spaces. The project complies with the city's parking requirements in that the proposed retail use requires five (5) spaces and does not require additional parking beyond the five (5) parking spaces that were allotted to the tenant space. Furthermore, the shopping center has a recorded reciprocal parking agreement, which allows parking to be used by all tenants of the four parcels. Currently, the project site provides a total of 163 parking spaces.

Public Health and Safety

The proposed alcohol sales will not adversely impact existing properties, improvements, or the public health, safety and general welfare of neighboring residents within the area, in that the sales are intended to service public need and convenience. The proposed beer and wine sales are not located within 600-feet of sensitive areas such as schools, churches, and parks. To ensure the site is kept in a state of cleanliness, *staff recommends the following conditions:*

- *The operator shall maintain a litter-free premise each day.*
- *Applicant shall provide signs reminding customers not to loiter and prohibit consumption of alcohol on the premises.*

Midtown Specific Plan

The applicant proposes to operate a 1,015 square foot alcohol beverage outlet. Since the project will not require additional parking or propose modifications that increase the floor area, or propose new building construction, the application is not subject to site and architectural upgrades as required by the Midtown Specific Plan.

ENVIRONMENTAL REVIEW

The Planning Division conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). Staff determined that the project is categorically exempt from further environmental review pursuant to Section 15301 for Existing Facilities within the CEQA guidelines. The project entails the operations of an approximate 1,000 square foot alcohol beverage outlet within an existing shopping 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.

In addition, the Department of Alcoholic Beverage Control also notifies residents within 100 feet of the license premise and any sensitive areas within 600 feet from the license premise as part of the ABC licensing application process. Furthermore, the applicant also sends out notices to residents within 500 feet.

CONCLUSION

The proposed projects are consistent with the Milpitas General Plan and Zoning Ordinance and provide a variety of retail goods and products for the convenience of the customer.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission close the public hearing after hearing testimony and adopt Resolution No. 11-028 approving Conditional Use Permit No. UP11-0014, subject to the attached Resolution and Conditions of Approval.

Attachments:

- A. Resolution No. 11-028
- B. Project Plans
- C. Project Description Letter

RESOLUTION NO. 11-028

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT NO. UP11-0014, USA LIQOURS, A REQUEST TO OPERATE A 1,015 SQUARE FOOT ALCOHOL BEVERAGE SALES OUTLET FOR BEER AND WINE OFF-SITE CONSUMPTION LOCATED AT 148 W. CALAVERAS BLVD.

WHEREAS, on May 26, 2011, an application was submitted by Laxmi Bhardwaj, 1734 Plaza Sol, San Jose, Ca 95131, to locate an alcoholic beverage sales outlet for beer and wine off-site consumption within a 1,015 square commercial retail space located at 148 W. Calaveras Blvd. The property is located within the General Commercial Zoning district (APN: 22-24-037); and

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission determine this project exempt; and

WHEREAS, on July 13, 2011, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

NOW THEREFORE, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

Section 1: The recitals set forth above are true and correct and incorporated herein by reference.

Section 2: The project is categorically exempt from further environmental review pursuant to Section 15301 of the CEQA Guidelines for Existing Facilities. The project entails the operation of a 1,015 alcohol beverage sales outlet within an existing commercial space. The project proposes interior tenant improvements only.

Section 3: The project is consistent with the General Plan Policies 2.a-I-3 and encourage economic pursuits in that the project would replace a vacancy with a new retail use and add variety to the services and goods provided by the Calaveras Square Shopping Center.

Section 4: The project is consistent with the Midtown Specific Plan in that the proposal encourages the compatible mixture of retail uses in an existing shopping center.

Section 5: The proposed use is consistent with the Milpitas Zoning Ordinance in that the use is conditionally permitted in the General Commercial zoning district and complies with the development standards and parking requirements.

Section 6: The project at this location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare in that the are

no other alcohol beverage outlet stores within the Calaveras Square shopping. The proposed beer and wine sales are not located within 600-feet of sensitive areas such as residential homes, schools, churches, and parks. As conditioned, the use will ensure for adequate and safe lighting and that the site remains in a state of cleanliness.

Section 7: In terms of the findings for public necessity and convenience, the project provides the following:

1. The proposed alcoholic beverages outlet is located in the general commercial zone and is surrounding by other commercial uses. The project is a compatible land use and adds to the variety of the Calaveras Square Shopping Center that does not have any general retail stores.
2. The project is not located within 100-feet of residential homes and is more than 600-feet away from any school, public park, or religious facility and therefore will not be detrimental or injurious to property, improvements or disturb the quiet and peaceful enjoyment of residential homes.
3. This would be the only alcohol beverage sale outlet for off-site consumption within the shopping center. Although, there are three other outlets (SaveMart, Walgreens, and PNS Store) along the Calaveras Boulevard Corridor, both SaveMart and Walgreens mainly cater to the sale the general goods while the PNS Store and proposed alcohol outlet cater mainly to the alcohol sales as the primary point of sales.

Section 8: The Planning Commission of the City of Milpitas hereby approves Conditional Use Permit No. UP11-0014, USA Liquors, subject to the above Findings, and Conditions of Approval attached hereto as Exhibit 1.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on July 13, 2011

Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on July 13, 2011, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Lawrence Ciardella				
Sudhir Mandal				

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Zeya Mohsin				
Gurdev Sandhu				
Steve Tao				
Noella Tabladillo				
Mark Tiernan				
John Luk				

EXHIBIT 1**CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT NO. UP11-0014**

A request operate a 1,015 square foot alcohol beverage outlet for beer and wine off-site consumption at 148 W. Calaveras Blvd. (APN: 022-24-037)

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 July 13, 2011, in accordance with these Conditions of Approval.

Any deviation from the approved site plan and floor 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)

Conditional Use Permit UP11-0014 shall become null and void if the project is not commenced within two (2) years from the date of approval unless in conjunction with a tentative map, then the project life coincides with the life of the map. Pursuant to Section 64.06(B) of the Zoning Ordinance of the City of Milpitas, commencement shall be:

- a. Completes a foundation associated with the project; or
 - b. Dedicates any land or easement as required from the zoning action; or
 - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
2. Pursuant to Section 64.06(1), the owner or designee shall have the right to request an extension of Conditional Use Permit UP11-0014 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein. (P)
 3. Prior to the issuance of building permits, the owner or designee shall include within the four first pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the project. (P)
 4. The applicant shall demonstrate repair and/or replacement of any broken outdoor light fixtures prior to issuance of a certificate of occupancy and maintain all light fixtures in good operating condition throughout the term of use.
 5. Prior to issuance of certificate of occupancy, the applicant shall install an additional wall light on the east side of the building to safely illuminate the adjacent service alley and deter potential loitering and transient activity. Such wall light shall be maintained in good operating condition throughout the term of use. (P)

6. The operator of the subject retail space shall maintain the premise around the retail space litter-free each day. (P)
7. Prior to issuance of a certificate of occupancy, the applicant shall provide “No Loitering” and “No consumption of alcohol on the premises” signs on the property/or building to the approval of Planning Staff. Signage meeting these requirements shall be maintained through the term of use. (P)
8. The operator shall abide by all state and local laws. Any violation of ABC license provisions and other alcohol sale requirements may constitute grounds for revocation, suspension or modification of this permit.

(P) = Planning



SITE PLAN # 148 W. CALAVERAS BLVD.
MILPITAS, CA 95035

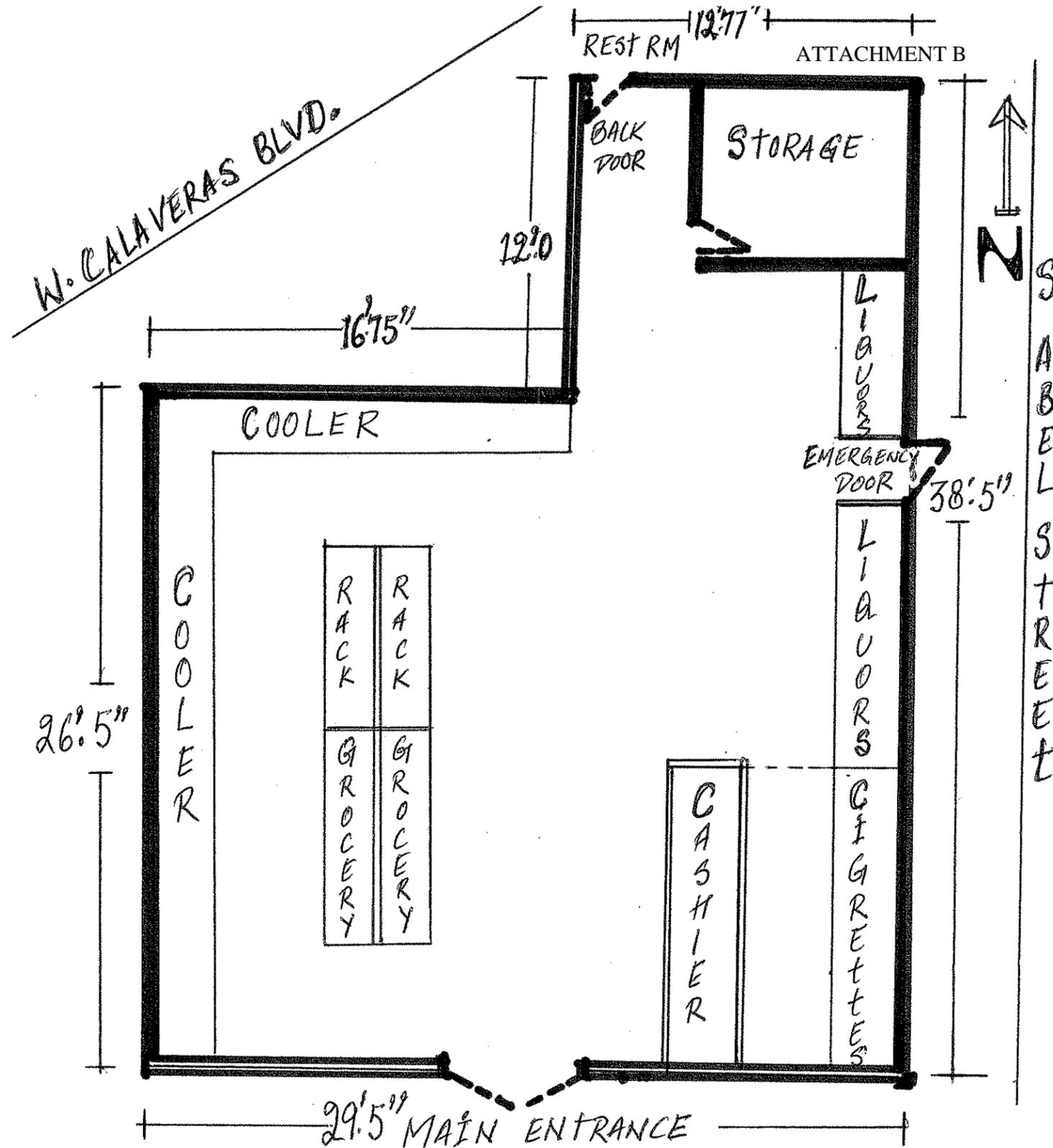
APN # 22-24-034

END UNIT # 148

RECEIVED

MAY 26 2011

CITY OF MILPITAS
PLANNING DIVISION



BUSINESS ADDRESS # 148 W. CALAVERAS BLVD.
MILPITAS, CA 95035

FLOOR PLAN TOTAL AREAS # 1015 SQ. FT
SERRA WAY

City of Milpitas
 Planning Division

455 E. Calaveras Blvd., Milpitas, CA 95035

Sub : I Am Very much Intersted to open new liquors,beer,wine & cigarette shop at
 148 w. calaveras blvd. , Milpitas Ca 95035

Respected Planning Commission ,

Most Respectfully ,

My name is laxmi bhardwaj , I am U.S.
 Citizen,before I worked for city of menlo park,california

I rented a space Area (1015) sq.ft for 3 yrs lease at
 148 w.calaveras blvd. Milpitas Ca 95035.the bussiness location is inside the
 commercial shopping mall .its very safe bussiness location for everybody

My proposal is to open new liquors store in milpitas the hours of operation is
 from Monday to Sunday open 7a.m upto 12 pm. If you issue me all permits &
 licenses etc

I will obey all rules & regulation of City of Milpitas , I will not do
 anything which is against the City of Milpitas rules & regulation etc

I shall be always highly thankful to you forever if you gave me chance to open
 new liquor store and Thank you again

I look forward to hearing from you.

Thank you,

Sincerely,

Laxmi Bhardwaj
 Laxmi K. Bhardwaj

1734 Plaza Sol San Jose, CA 95131

(408) 455-4022 cell laxmib@sbcglobal.

RECEIVED

MAY 26 2011

CITY OF MILPITAS
 PLANNING DIVISION