



MILPITAS PLANNING COMMISSION

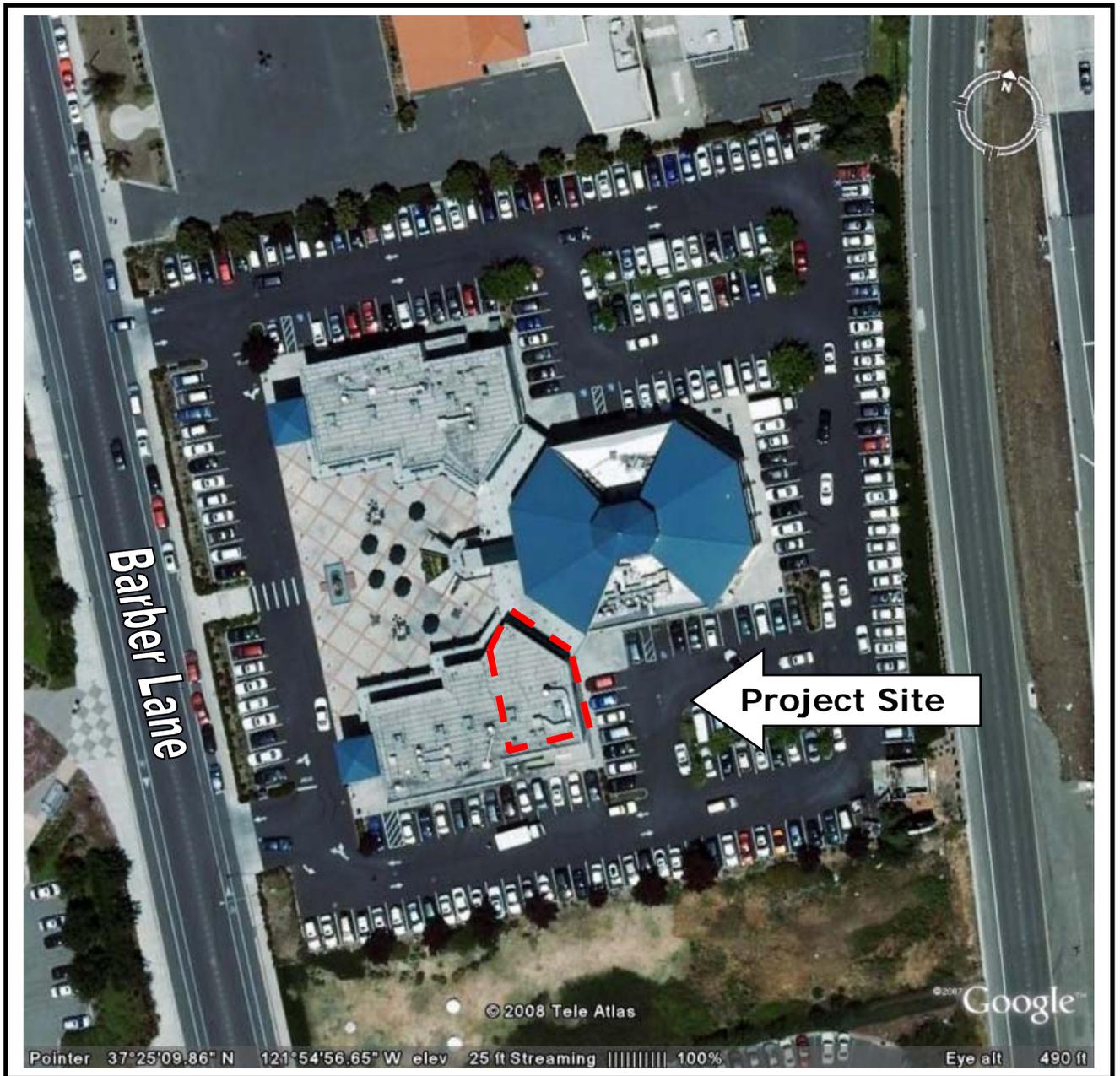
AGENDA REPORT

Meeting Date: January 25, 2012

NEW BUSINESS

APPLICATION:	Conditional Use Permit Amendment No. UA12-0001, KTV
Musicland	
APPLICATION SUMMARY:	A request to extend the hours of operation from 2:00AM to 3:00AM for an existing 2,400 square foot karaoke establishment.
LOCATION:	788 Barber Lane (APN: 86-01-035)
APPLICANT:	Joe Zheng, 2656 Sommersville Road, Antioch, CA 94509
OWNER:	Ulferts Center (USA) Inc., 668 Barber Lane, Milpitas, CA 95035, Attn: Karen Kam
RECOMMENDATION:	Staff recommends that the Planning Commission: Adopt Resolution No. 12-005 Approving the Conditional Use Permit Amendment Subject to the Conditions of Approval.
PROJECT DATA:	
General Plan/Zoning:	General Commercial (GNC)/General Commercial (C2)
Overlay District:	Site and Architectural Overlay
Project Site Area:	3.04 acres
Tenant Space:	2,400 square feet
CEQA Determination:	Categorically exempt from CEQA pursuant to Section 15301 (Existing Facilities)
PLANNER:	Cindy Hom, Assistant Planner
PJ:	2795
ATTACHMENTS:	A. Resolution No. 12-005/Conditions of Approval B. Project Plans C. Project Description

LOCATION MAP



No scale

BACKGROUND

On December 14, 2011, the Planning Commission received a report on permit review on the operations of an existing 2,400 square foot karaoke establishment located within the Ulfert's Center located at 788 Barber Lane. Staff recommended another three month review to work with the applicant on violations to the hours of operation and on-site consumption of alcohol.

Staff met with the applicant and property owner to discuss ways for the project to be in compliance with the conditions approval. The ideas that were suggested included the following:

1. Amend the conditional use permit to extend the hours and/or permit sale of on-site consumption of alcohol.
2. Provide a security guard on-site to assist during the closing hours and enforcement of house rules.

After further consideration, the applicant decided to amend the conditional use permit to extend the hours of operation from 2:00AM to 3:00AM. The applicant did not want to pursue a liquor license due to overhead cost and additional liability. The property owner has also offered their assistance by allowing the applicant to utilize the same security patrol service provided for the shopping center to assist with security and enforcement detail.

On January 8, 2012, Joe Zheng with KTV Musicland, submitted a conditional use permit amendment to modify the hours operations that would allow the establishment to close at 3:00AM. The application is submitted pursuant to Milpitas Municipal Code (MMC) XI-10-57.04-2 (I) (Modifications Requested by the Applicant) and requires Planning Commission review and approval.

PROJECT DESCRIPTION

The karaoke establishment is located on the second level of the Ulfert's Shopping Center located at 788 Barber Lane. The site is zoned General Commercial with a Site and Architectural overlay (C2-S) and is surrounded by Cisco Systems corporate campus to the west, commercial and potential residential uses to the north, and a Cisco Child Care Center to the south. A vicinity map of the subject site location is included on the previous page.

Currently, the conditional use permit allows for a 2,400 square foot karaoke establishment that operates seven days a week between the hours of 4:00PM and 2:00AM without food and alcohol service. The approved floor plan includes a front reception area and nine karaoke rooms. The applicant requests an amendment to extend the hours of operation from 2:00AM to 3:00AM. The extended hours would be consistent with the shopping center hours in that there are several restaurants that are open until 3:00AM as well.

Development Standards

The project does not propose any exterior or site modifications. The project would maintain existing floor plan and therefore there are no changes to the setbacks, height, lot coverage, floor area ratio, landscaping and architecture.

ADOPTED PLANS AND ORDINANCES CONSISTENCY

General Plan

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

Table 2
General Plan Consistency

Policy	Consistency Finding
<i>Implementing Policy 2.a-I-4 Publicize the position of Milpitas as a place to carry on regional commercial activities with an emphasis toward the advantages of the City’s location to both commercial and regional roadways</i>	Consistent. The proposed karaoke entertainment will add to the mix of businesses in Ulfert’s Center and will help to increase the attraction and vitality of the area by providing a night use that is compatible with the existing restaurants and office uses.
<i>Implementing Policy 2.a-I-7 Provide opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention.</i>	Consistent. The project promotes business retention in that the amendment would allow the business to meet the demands of its customers.

Zoning Ordinance

The proposed project is located in the General Commercial Zoning District (C2) and is a conditionally permitted use. The use is consistent with the purpose and intent of the General Commercial zone which is intended for a wide range of retail, personal and business services primarily oriented to the automobile customer. The project is a recreational/entertainment use that complements the existing restaurants and other commercial uses in the Ulfert’s Center. The project would maintain existing conditions to ensure public health, safety and general welfare standards are met.

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 Class 1, Section 15301 (Existing Facilities) of the California Environmental Quality Act. The extension of the hours of operation would be a negligible expansion of use considering it is only a one hour extension of operation and is consistent with other restaurant operating hours within the same 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

The proposed extended hours of operation are consistent with the General Plan and Milpitas Zoning in terms of land use and comply with the General Commercial development standards. As conditioned, the project will maintain existing conditions to ensure public health, safety, and general welfare standards are met.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission approve Conditional Use Permit Amendment No. UA12-0001 and adopt Resolution No. 12-005 subject to the conditions of approval.

ATTACHMENTS:

- A. Resolution No. 12-005
- B. Project Plans
- C. Project Description

RESOLUTION NO. 12-005

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT AMENDMENT NO. UA12-0001. KTV MUSICLAND, A REQUEST TO EXTEND THE HOURS OF OPERATION FROM 2:00AM TO 3:00AM LOCATED AT 788 BARBER LANE.

WHEREAS, on January 8, 2012, an application was submitted by Joe Zhang, 788 Barber Lane, Milpitas, CA 95035 to amend an existing Conditional Use Permit No (UA08-0006) to allow for the extension of operating hours located at 788 Barber Lane (APN 86-01-035), zoned General Commercial with a Site and Architectural Overlay District; 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 that this project is categorically except pursuant to Section 15301 for “Existing Facilities” of the California Environmental Quality Act Guidelines; and

WHEREAS, on January 25, 2012, 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 except pursuant to Section 15301 of the California Environmental Quality Act Guidelines for “Existing Facilities” consisting of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing structures, facilities, mechanical equipment, involving negligible or no expansion of use. The applicant proposes to extend the operation hours from 2:00AM to 3:00AM.

Section 3: The project is an amendment to a previously approved Conditional Use Permit for a 2,400 square feet karaoke establishment. The project entails extending the closing hour from 2:00AM to 3:00AM. The project remains consistent with the Milpitas General Plan Implementing Policies and Milpitas Zoning Ordinance in that it provides a recreational use that is compatible with the surrounding businesses.

Section 4: The proposed modification to the hours of operation will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare since (a) the existing conditions of approval and approved operating procedures will remain in full force and effect and ensure public safety and (b) the project is required a twelve month review to address any potential issues.

Section 5: The Planning Commission of the City of Milpitas hereby approves Conditional Use Permit Amendment No. UA12-0001, KTV Musicland, subject to the above Findings, and Conditions of Approval attached hereto as Exhibit 1.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on January 25, 2012.

Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on January 25, 2012, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Lawrence Ciardella				
John Luk				
Rajeev Madnawat				
Sudhir Mandal				
Zeya Mohsin				
Gurdev Sandhu				
Steve Tao				
Garry Barbadillo				

EXHIBIT 1

**CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT AMENDMENT NO. UA08-0004
(Restated and revised original conditions)**

Planning Division

1. The owner or designee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on January 25, 2012, in accordance with these Conditions of Approval.
2. 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.
3. Conditional Use Permit Amendment No. UA12-0001 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.
4. Pursuant to Section 64.04-1, the owner or designee shall have the right to request an extension of Conditional Use Permit Amendment No. UA12-0001 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein.
5. Planning approval is for 2,400 square foot tenant space denoted on the site and floor plan. The uses approved include 9 karaoke stations with no food or alcohol beverage service. The floor plan proposed for building permits shall substantially conform to the approved plans dated January 25, 2012 except as modified herein. (P)
6. Any changes to the use, business operations or modifications to the approved plans shall require a use permit amendment and Planning Commission review and approval. (P)
7. The use at the facility shall not engage and/or render any services as defined in Section 13.04, Adult Businesses, of the Milpitas Zoning Ordinance. (P)
8. Proposed use shall comply with all Federal, State and local code requirements. (P)
9. Prior to business license issuance, the business owner must submit their background check to the Planning Division and Milpitas Police Department. (PC Sub)
10. No alcoholic beverages may be consumed within or outside of the karaoke facility. (P)

11. The applicant shall maintain signs stating “No loitering or consumption of alcoholic beverages” on the exterior of the building and within the establishment. (P)
12. The hours of operations for the facility shall be limited to 4 P.M. to 3 A.M., Monday through Sunday. All patrons must be off the premises within 30 minutes after the facility’s closure. (P)
13. All patrons within and employees of the facility must be the age of 18 years or older. (P)
14. Lighting within the facility, especially within the hallways and all stations, shall be established and kept at a level not less than forty (40) watts per hundred (100) square feet of floor area to provide visibility and to ensure the safety of patrons, employees, security and emergency personnel. The established lighting within the facility will be subject to the review, modification and approval of the City’s Police Department. (P)
15. Prior to building permit final, the applicant shall install tempered glass doors for all (9) karaoke rooms. Doors shall not include any locking devices. (PC)
16. Prior to building permit final, the applicant shall install closed circuit video surveillance cameras in all (9) karaoke rooms and shall be maintained for no less than one-month or 30 days. Surveillance tapes shall be made available at any time to the Police Department upon request. (PC)
17. Surveillance equipment shall be operable and maintained at all times. Surveillance equipment shall not be down for more than two days. The Planning Director may require the applicant to cease operation until compliance with this condition of approval is met. (PC)
18. Posters and signs shall be displayed in a manner that does not obstruct the view of the interior area from outside of the facility or directly into the individual karaoke rooms. (P)
19. The lobby is reserved for patrons waiting for service only. No exterior loitering shall be allowed. All patrons waiting for service must wait in the designated lobby. No waiting list may be maintained beyond the seating capacity provided in the lobby. (P)
20. The walls separating the establishment from adjacent commercial tenants shall employ effective noise attenuating devices to achieve a minimum standard transmission coefficient (STC) sound rating of 45-50. Such wall shall be soundproofed where no amplified music shall be audible on the exterior of the premises or adjoining tenant spaces. Should the improvements installed not provide acceptable noise levels, or should the noise emanating from the establishment cause noticeable discomfort to adjacent tenants, the establishment may be required to install additional noise attenuating devices. In doing so, the applicant may be required to request the services of a professional consultant specializing in noise attenuating devices to mitigate such impacts. (P)
21. Should additional security measures be needed in order to address any public safety concerns arising from the business, the applicant shall provide those additional security measures as requested by the City’s Police Department. (P)
22. The applicant shall work, as necessary, with the Police Department to review and upgrade (if necessary) surveillance equipment installed on site. Surveillance shall be provided for the front lobby and all hallway areas. Surveillance monitors will be located at the front lobby and will be monitored by the business operator at the site. The Police

Department shall approve the proposed surveillance equipment prior to the issuance of a business license. The recorded surveillance tapes shall be kept for a period of no less than one month or 30 working days and made available to the Police Department upon request. (P)

23. All karaoke stations shall be limited to the approved appurtenances; no Internet service or online electronic gaming shall be allowed within these stations. (P)
24. All patrons entering the facility must provide picture identification before engaging in the karaoke service rendered at the facility to ensure that those patrons are adhering to the facility's regulations and conditions. A log must be kept at the facility. Such log shall be maintained for at least 120 days and surrendered to any city official upon request. The log shall include the patron's name, a state license/identification number, date and time service rendered, and specific station within the facility retained for the service. (P)
25. All conditions applicable to patrons, particularly the stated prohibitions included in these "Conditions of Approval", of the facility incorporated herein shall be conspicuously posted in the front lobby area in a sign at the entrance with lettering of at least two (2) inches in size. (P)
26. This report and its conditions shall be kept on the premises and made available to any officer/employee of the City upon request. (P)
27. Should the City receive any complaints arising from the facility's use and/or an indication that the facility's use has resulted in an increased need for service calls from emergency personnel (i.e., the Police Department), the Planning Director shall be authorized to refer this use permit to the Planning Commission. The Planning Commission may require modifications to the facility's "Conditions of Approval", or revoke the permit entirely, if it has been found that the use has caused a substantial adverse impact on the community. (P)
28. Applicant shall provide Police Department with an Emergency Contact database that consist of after hours contact information for responsible parties of the business in the event of an emergency or when the employee cannot reach a manager or business owner. The applicant shall submit any changes within two weeks utilizing the Police Department procedures. (PD)
29. The Operator shall lock the front doors at closing to prevent people from enter the business after hours. People can be let out under the control of employees. (PD)
30. The project shall be subject to twelve month review until the Planning Commission deems them unnecessary. The applicant shall submit all the necessary public hearing materials and fees to the Planning Division. (P)
31. The operator or designee shall develop a training manual that ensures that staff is properly trained on how to effectively handle emergency situations. A copy of this procedure manual shall be submitted to the Planning Division. Adequacy of the manual shall be determined by Planning staff. Any revisions to the manual shall be submitted to the Planning Division. (P, PC)

32. The applicant shall install an adequately sized window to allow for visual inspection of the VIP room. The window shall be installed within 30-days from the Planning Commission approval of the amendment to allow for storefront window blinds.

DR. TYPE/SIZE	DESCRIPTION	FRAME	REMARKS
A) 36"x6'-8"	ALUM/TEMP. GLASS TWO-WAY SWING	WOOD	32" CLR., SELF-CLOS'G W/ PANIC HWDR. (PUSH TYPE)
B) 36"x6'-8"	CLEAR GLASS	HM/KD	32" CLR., SELF-CLOS'G ALL GLASS
C) 36"x6'-8"	WOOD, PAINT	HM/KD	32" CLR., SELF-CLOS'G

KTV

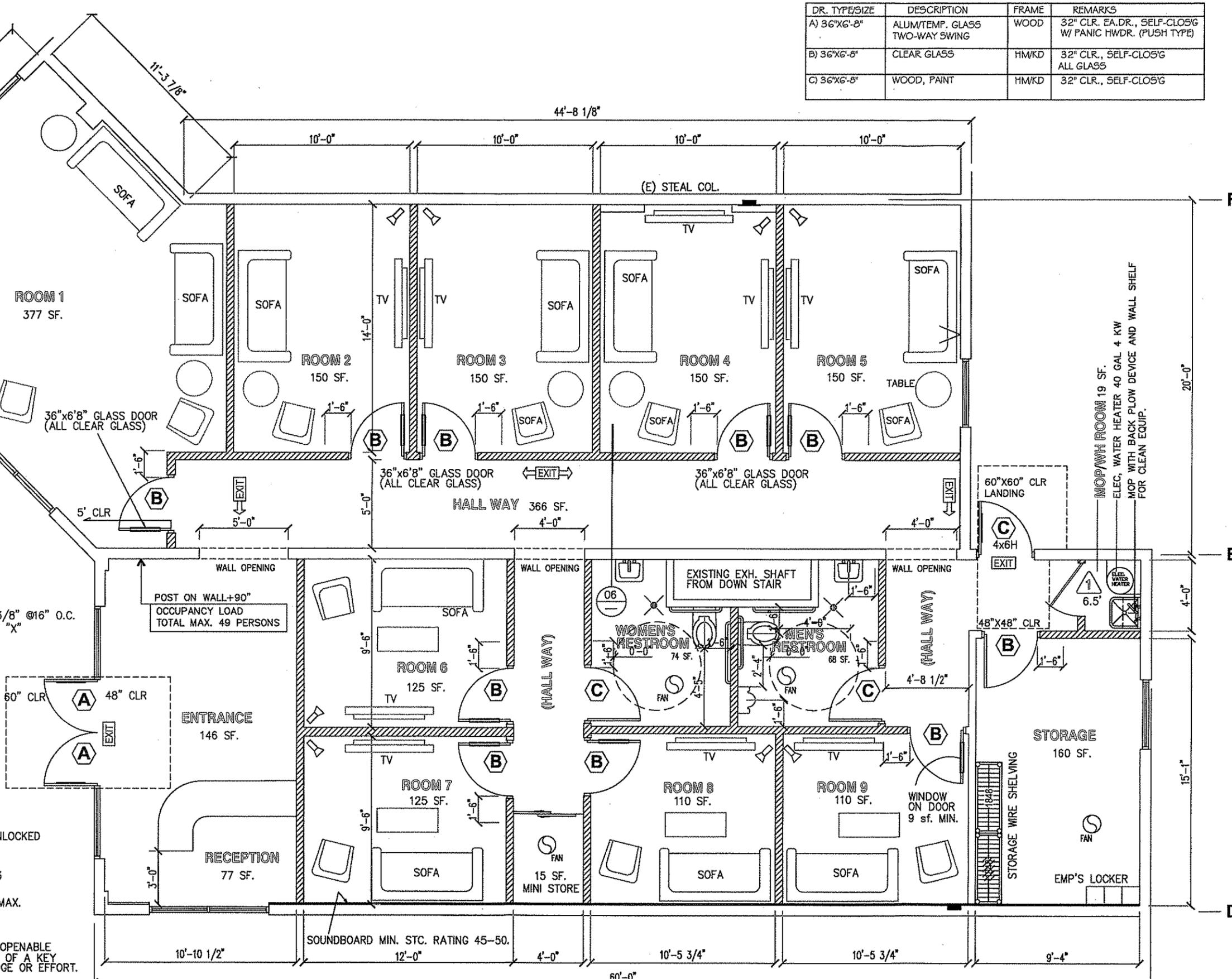
668 BARBER LANE
MILPITAS, CA 95035

APPROVED SPECIAL CONDITIONS
USE PERMIT NO. UP 2006-18
PJ #2465

- LEGEND:
- ALL ARE EXISTING WALL, NO CHANGE.
 - NEW INTERIOR NON BEARING WALL,
METAL STUD 20 GA. 3 5/8" X 1 3/8" @16" O.C.
WITH 5/8" GYP. BD. BOTH SIDE, TYPE "X"
 - SERVLET CAMERA

NOTE FOR ROOM LIGHTING:
THE ROOM 2 TO ROOM 5 SHALL UTILIZE
A MIN. OF 35 WATTS LIGHTING AS SHOWN
ON APPROVED PLAN DATE 11/16/06

- EXISTING 3'x6'-8" DOOR
SELF-CLOSING. 32" CLR.
- SIGN ABOVE THE DOOR:
"THIS DOOR TO REMAIN UNLOCKED
DURING BUSINESS HOURS".
- PROVIDE ILLUMINATED
"EXIT" SIGN PER UBC 1003
BACK-UP POWER 90 MIN.
- LIMIT THRESHOLD = 1/2" MAX.
LOWER 10" OF THE DOOR
SHALL BE SMOOTH
PLANE SURFACE
- EXISTING DOOR SHALL BE OPENABLE
FROM INSIDE WITHOUT USE OF A KEY
OR ANY SPECIAL KNOWLEDGE OR EFFORT.



FLOOR PLAN (Scale: 1/4" = 1'-0")

City of Milpitas
Planning Division

Most of the stories in the center are closing at 3am we would
please to ask to extend our hours to 3am. Thank you!

Music Land KTV
788 barber land
Milpitas CA 95035

Joe Zheng

X

1/5/2012

December 29, 2011

Diana L. Barnhart
Planning & Neighborhood Services Director
City of Milpitas
455 East Calaveras Blvd.
Milpitas, Ca 95035

Dear Director Barnhart,

Thank you very much for giving us the opportunity to meet with you, our Mayor Esteves & City Manager Thomas Williams and our Tenant, Joe Zhang regarding the issue of a Permanent Use Permit for Music Land KTV located at Ulferts Center on 788 Barber Lane, Milpitas on Dec 28, 2011. I hereby would like to verify that our Center has been hiring C.C. Security to protect our shopping center for the past 13 years till present.

Our security guard patrols from 7:00pm till 4:00am on a daily basis. Since our Center opens in 1998, we have always been a good place for people to dine / take-out especially during late evening or after midnight. Most of our café / restaurants really rely on the opening of Music Land KTV to draw customers in for late evening business. Therefore, we highly recommend if the City could allow Music Land KTV to extend its business hour until 3:00am.

With the support of Sacramento City's Tax Credit & new Landlord's 7-month free rent after grand opening, Music Land KTV will expand its business to 1000 K Street in Sacramento very soon. We look forward that Joe Zhang will retain his business at our Center in Milpitas since our Lease will be expiring in Spring 2012.

Your kind support to our Center will be highly appreciated.

Yours Sincerely,



Karen Kam
Property Manager
Ulferts Center

Cc : Mayor Jose Esteves

City Manager Thomas C Williams