



## MILPITAS PLANNING COMMISSION AGENDA REPORT

**PUBLIC HEARING**

Meeting Date: March 28, 2012

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**APPLICATION:** **CONDITIONAL USE PERMIT NO. UP12-0005**, Big Forrest Restaurant, Alcohol Sales

**APPLICATION SUMMARY:** A request to add sales of beer and wine at a new restaurant.

**LOCATION:** 127 Dixon Road (APN: 26-05-019)  
**APPLICANT:** Rui Wang, 37519 Wilburn Place # 1, Fremont, CA 94536  
**OWNER:** Mathew Family Trust, 1131 Calle Almaden, San Jose, CA 95120

**RECOMMENDATION:** **Staff recommends that the Planning Commission: Adopt Resolution No. 12-014 approving the project subject to conditions of approval.**

**PROJECT DATA:**  
General Plan/  
Zoning Designation: Retail Subcenter (RSC)/Neighborhood Commercial (C1)

**CEQA Determination:** The proposed project is categorically exempt per Section 15301 (Existing Facilities) of the California Environmental Quality Act (CEQA) Guidelines.

**PLANNER:** Janice Spuller, Assistant Transportation Planner

**PJ:** 2801

**ATTACHMENTS:**  
A. Resolution No. 12-014  
B. Plans  
C. Census Tract map

# LOCATION MAP



No scale

**BACKGROUND**

On February 8, 2012, Rui Wang submitted an application to add beer and wine sales for on-site consumption within an existing sit-down restaurant located at Big Forrest Restaurant, 127 Dixon Road. The application is submitted pursuant to Milpitas Municipal Code XI-10-5.02-1 (Restaurant with on-site service of alcohol).

**PROJECT DESCRIPTION**

The restaurant site is located on the northeast side of Dixon Road, between Milpitas Boulevard and Arizona Avenue. Surrounding land uses include residential and general commercial.

The subject tenant space is located in a smaller multi-tenant building with retail and restaurant uses as identified in the aerial photo on the previous page.

The project site is located within the Neighborhood Commercial zoning district. The applicant requests a conditional use permit to allow for on-site consumption of beer and wine in conjunction with the existing restaurant with table service. The applicant does not propose any other changes in conjunction with this application.

***Development Standards***

There are no proposed changes to the site or building. The addition of alcohol service does not affect parking standards.

**ADOPTED PLANS AND ORDINANCES CONSISTENCY**

***General Plan***

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

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

<b>Policy</b>	<b>Consistency Finding</b>
<i>2.a-I-3: Encourage economic pursuits which will strengthen and promote development through stability and balance.</i>	<b>Consistent.</b> The project provides the city with a dining destination within the General Commercial Zoning District
<i>2.a-I-7 Provide opportunities to expand employment, participate in partnerships with local businesses to facilitate communication, and promote business retention.</i>	<b>Consistent.</b> The project would promote business retention in that it would allow the restaurant to capture a larger customer base and increase the vitality of the retail center

***Zoning Ordinance***

The project is consistent with the Milpitas Zoning Ordinance in terms of land use and development standards. Restaurants with alcohol service are conditionally permitted in the Neighborhood Commercial Zoning District. The project proposes no site or building modifications and the addition of alcohol service does not require additional parking.

The sale of beer and wine would be ancillary to the food service and would not be detrimental or injurious to property, improvements, public health, safety, and general welfare in that the project site is located within an existing shopping center. To ensure responsible serving of alcohol, staff recommends as a condition of approval that the restaurant operator and its employees receive responsible alcohol beverage training.

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

According to the Department of Alcohol and Beverage Control (ABC), the project site is located within Census Tract 5044.22 which has eight active on-sale permits. The allowable number of on-sale licenses for this area is six (6). A map of the ABC License Concentration is included for your reference. The restaurant is located in a small shopping center with multiple tenants, as well as being within the same census tract with other shopping centers with many restaurants. Therefore, it is not uncharacteristic to have multiple on-sale permits and should not be detrimental to the surrounding area. Findings by the Planning Commission will need to be made regarding the undue concentration. Based on the project proposal and its context with surrounding land use, staff has identified the following findings that the project would serve as a public convenience and necessity:

1. The proposed alcoholic beverage sales are located in the neighborhood commercial zone and are surrounded by other commercial uses.
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.

**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 addition of on-site consumption of beer and wine in conjunction with food service is considered a negligible change in operation of a restaurant use.

**PUBLIC COMMENT/OUTREACH**

Staff publicly noticed the application in accordance with City and State law. As of the time of writing this report, there were no inquiries from the public.

**CONCLUSION**

The service of beer and wine in conjunction with a restaurant would be an ancillary use that would be consistent with the Milpitas General Plan in that it encourages economic pursuits, business retention, and continuation of commercial development. The project conforms to the Neighborhood Commercial zoning district in terms of land use and development standards. As conditioned, the project will not be detrimental to property, improvements, or public health, safety, and general welfare.

**RECOMMENDATION**

**STAFF RECOMMENDS THAT** the Planning Commission close the public hearing and adopt Resolution No. 12-014 approving Conditional Use Permit Amendment No. UP12-0005, subject to the attached Conditions of Approval.

*Attachments:*

- A. Resolution No. 12-014
- B. Plans
- C. Census Tract map

**RESOLUTION NO. 12-014**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT NO. UP12-0005, BIG FORREST RESTAURANT, A REQUEST TO ADD BEER AND WINE SALES TO AN EXISTING RESTAURANT LOCATED AT 127 DIXON ROAD.**

**WHEREAS**, on February 8, 2012, an application was submitted by Rui Wang, 37519 Wilburn Place #1, Fremont, CA 94536 for a request to allow for ancillary sale of beer and wine to an existing restaurant. The property is located at 127 Dixon Road, Milpitas, CA 95035 (APN 26-05-019) within the Neighborhood Commercial Zoning 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 this project is Categorically Exempt from further environmental review; and

**WHEREAS**, on March 28, 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 exempt from further environmental review pursuant to Class 1, Section 15301 (Existing Facilities) of the California Environmental Quality Act. The addition of on-site consumption of beer and wine in conjunction with food service is considered a negligible change in the operation of a restaurant use.

**Section 3:** The service of beer and wine in conjunction with the new restaurant is consistent with the Milpitas General Plan policies in that it encourages economic pursuits, business retention, and continuation of commercial development in the General Commercial Zoning district.

**Section 4:** The project conforms to the Zoning Ordinance in that the restaurant with alcohol beverage service is a conditionally permitted use within the Neighborhood Commercial district.

**Section 5:** The project is located where there is an undue concentration of alcohol sales and the Planning Commission finds that the project serves a public convenience and necessity in that:

1. The proposed alcoholic beverage sales are located in the neighborhood commercial zone and is surrounding by other commercial uses.

- 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.

**Section 6:** As conditioned, the project will not be detrimental or injurious to property, improvements, public health, safety and general welfare in that restaurant operator and its employees shall receive responsible alcohol beverage training.

**Section 7:** The Planning Commission of the City of Milpitas hereby approves Conditional Use Permit No. UP12-0005, Restaurant, 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 28, 2012.

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Chair

**TO WIT:**

**I HEREBY CERTIFY** that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on March 28, 2012, and carried by the following roll call vote:

<b>COMMISSIONER</b>	<b>AYES</b>	<b>NOES</b>	<b>ABSENT</b>	<b>ABSTAIN</b>
Lawrence Ciardella				
John Luk				
Rajeev Madnawat				
Sudhir Mandal				
Zeya Moshin				
Gurdev Sandhu				
Steve Tao				
Gary Barbadillo				

**EXHIBIT 1**

**CONDITIONS OF APPROVAL  
CONDITIONAL USE PERMIT NO. UP12-0005  
A request to allow beer and wine sales to an existing restaurant  
127 Dixon Road**

**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 March 28, 2012, in accordance with these Conditions of Approval.

Any deviation from the approved site plan, floor plans, 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)

2. Conditional Use Permit No. UP12-0005 shall become null and void if the project is not commenced within two (2) years from the date of approval. Pursuant to Section 64.06(B) of the Zoning Ordinance of the City of Milpitas:
  - 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.
3. Pursuant to Section 64.06(1), the owner or designee shall have the right to request an extension of Conditional Use Permit No. UP12-0005 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein. (P)
4. The project shall be operated in accordance with all local, state and federal regulations. (P)
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. (P)
6. The operator shall be responsible for ensuring that all employees receive 'Responsible Alcoholic Beverage Service' training as offered through programs established by the Alcoholic Beverage Control of the State of California. Evidence of such training and the training records of all employees shall be maintained on-site during business hours, and made available for inspection upon request. (P)

(P) = Planning

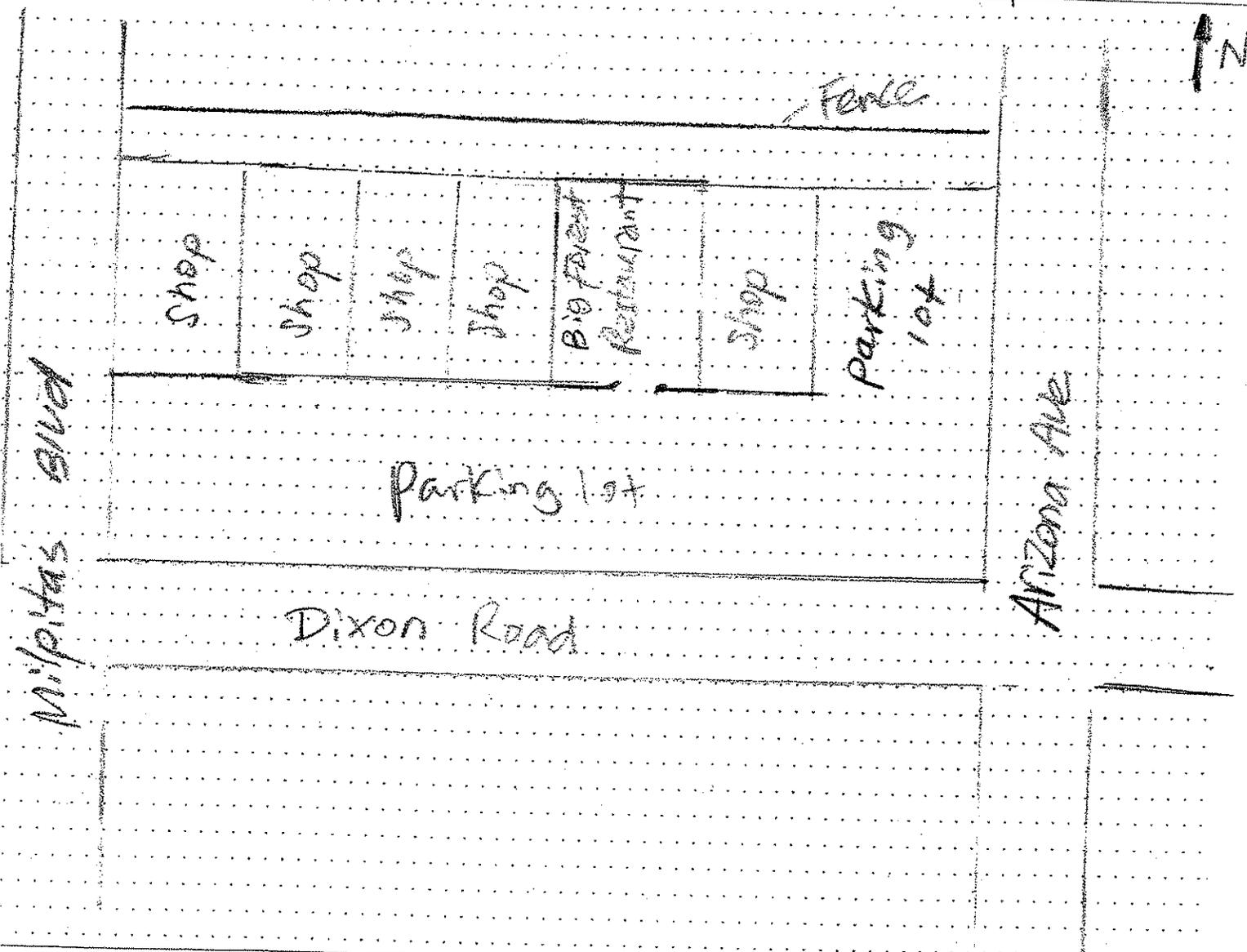
**SUPPLEMENTAL DIAGRAM**

Instructions to Applicant:

Draw a sketch of the area on which the licensed premises is or will be located. Show adjacent structures and nearest cross streets. If this is an event for a daily license, catering authorization or miscellaneous use, show the area where sales and consumption of alcoholic beverages will occur. Post a copy of this diagram with Daily License, Catering Authorization or Event Authorization where the event is held. Sales and consumption of alcoholic beverages must be confined to the area designated in the diagram and supervised to prevent violations of the Alcoholic Beverage Control Act.

1. APPLICANT NAME (Last, first, middle) <b>Wang, Rui</b>	2. LICENSE TYPE <b>on-sale Beer &amp; Wine Eatn Place</b>
3. PREMISES ADDRESS (Street number and name, city, zip code) <b>127 Dixon Road Milpitas CA 95135</b>	4. NEAREST CROSS STREET <b>Milpitas Blvd</b>

DIAGRAM



I have read the above instructions and I declare under penalty of perjury that the above diagram is true and correct.

APPLICANT SIGNATURE	DATE SIGNED
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FOR ABC USE ONLY

NOTIFIED CORRECT (Signature)	PRINTED NAME	INSPECTION DATE
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