



MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: March 28, 2012

APPLICATION: **CONDITIONAL USE PERMIT AMENDMENT NO. UA12-0002,**
Banh Thai, Alcohol Sales

APPLICATION SUMMARY: A request to add sales of beer and wine at an existing restaurant.

LOCATION: 1818 Milmont Drive (APN: 22-37-031)
APPLICANT: YLJ Investment Group, 1818 Milmont Drive, Milpitas, CA 95035
OWNER: Delprop Associates, LLC, 4125 Blackford Avenue, Ste 200, San Jose, CA 95117

RECOMMENDATION: **Staff recommends that the Planning Commission:
Adopt Resolution No. 12-015 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: 2802

ATTACHMENTS: A. Resolution No. 12-015
B. Plans
C. Census Tract map

LOCATION MAP



No scale

BACKGROUND

On February 10, 2012, YLJ Investment Group submitted an application to add beer and wine sales for on-site consumption within an existing sit-down restaurant located at 1818 Milmont Drive. 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 southeast side of Milmont Drive and Dixon Landing Road. Surrounding land uses include residential and industrial.

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

| Policy | Consistency Finding |
|---|--|
| <i>2.a-I-3: Encourage economic pursuits which will strengthen and promote development through stability and balance.</i> | Consistent. 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> | Consistent. 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 change in alcohol license 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 5045.06 which has four active on-sale permits. The allowable number of on-sale licenses for this area is seven (7), therefore the restaurant is not located within a census tract with undue concentration of liquor license. A map of the ABC License Concentration is included for your reference.

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 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. 12-015 approving Conditional Use Permit Amendment. UA12-0002, subject to the attached Conditions of Approval.

Attachments:

- A. Resolution No. 12-015
- B. Plans
- C. Census Tract map

RESOLUTION NO. 12-015

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT NO. UA12-0002, YLJ INVESTMENT GROUP INC., A REQUEST TO ADD BEER AND WINE SALES TO AN EXISTING RESTAURANT LOCATED AT 1818 MILMONT DRIVE.

WHEREAS, on February 10, 2012, an application was submitted by YLJ Investment Group, 1818 Milmont Drive, Milpitas, CA 95035, for a request to allow for ancillary sale of beer and wine to an existing restaurant. The property is located at 1818 Milmont Drive, Milpitas, CA 95035 (APN 22-37-031) 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, the project is not located where there is an undue concentration of alcohol licenses issued by the State Department of Alcohol Beverage Control.

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: 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 6: The Planning Commission of the City of Milpitas hereby approves Conditional Use Permit Amendment No. UA12-0002, Banh Thai 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.

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:

| COMMISSIONER | AYES | NOES | ABSENT | ABSTAIN |
|---------------------|-------------|-------------|---------------|----------------|
| Lawrence Ciardella | | | | |
| John Luk | | | | |
| Rajeev Madnawat | | | | |
| Sudhir Mandal | | | | |
| Zeya Moshin | | | | |
| Gurdev Sandhu | | | | |
| Steve Tao | | | | |
| Gary Barbadillo | | | | |

EXHIBIT 1

**CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT AMENDMENT NO. UA12-0002,
A request to allow beer and wine sales to an existing restaurant
1818 Milmont Drive**

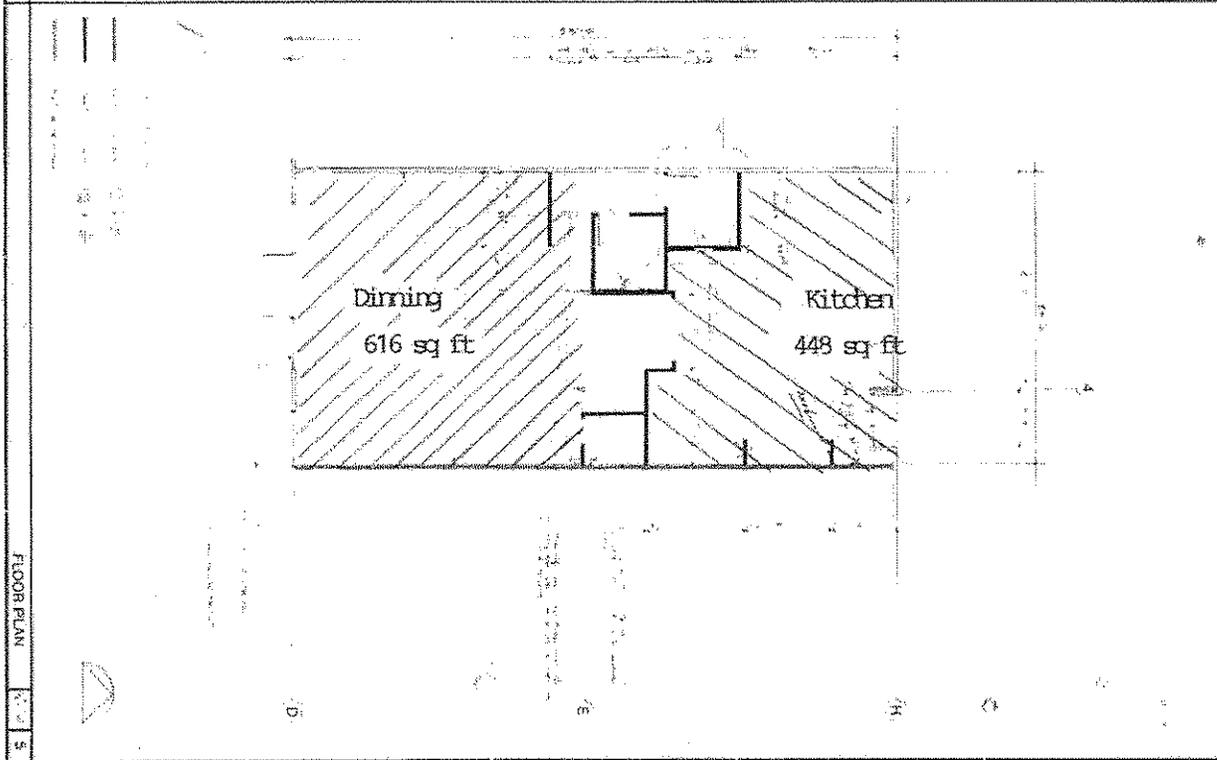
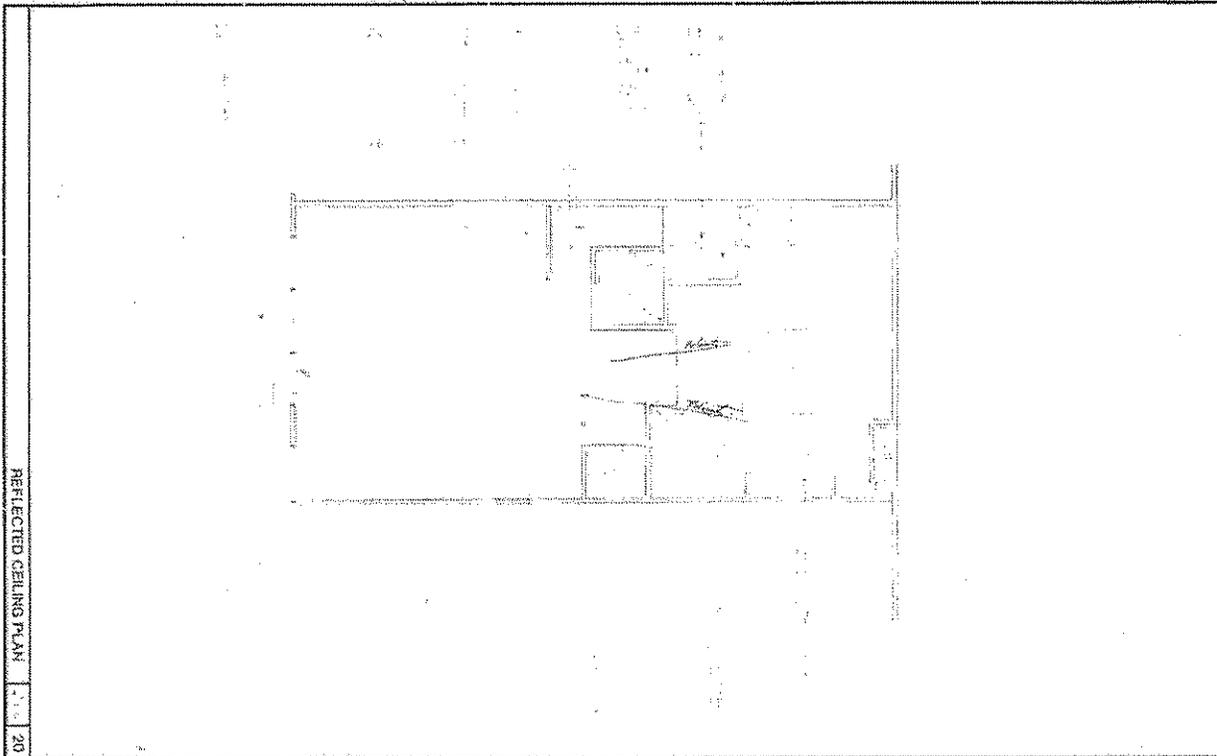
General Conditions

1. The owner or designee shall develop the approved project in conformance with the approved plans 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 Amendment No. UA12-0002, 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 Amendment No. UA12-0002 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



| | | | | |
|----|-----------------------|------------------|--|---|
| A1 | FLOOR & CEILING PLANS | The Hagman Group | | DIXON LANDING CENTER DIXON LANDING RD. & MILMONT DR. MILPITAS, CALIFORNIA WILSON DEVELOPMENT, INC. |
| | | [Logo/Text] | | |

