



MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: January 22, 2014

APPLICATION: **Conditional Use Permit No. UP13-0022, Vedas Indian Restaurant**

APPLICATION SUMMARY:

A request for a Conditional Use Permit, UP13-0022, for the sale of distilled spirits (liquor), beer, and wine at an existing restaurant.

LOCATION:
APPLICANT:
OWNER:

560 North Abel Street (APN 22-07-004)
Pradeep Kumar, 560 North Abel Street, Milpitas, CA 95035
Matthew Meduri Trustee Et Al

RECOMMENDATION: **Staff recommends that the Planning Commission: Adopt Resolution No. 14-003 approving Conditional Use Permit UP13-0022 for the sale of distilled spirits (liquor), beer, and wine at an existing restaurant, subject to the conditions of approval**

PROJECT DATA:

General Plan/

Zoning Designation:

General Commercial (GNC)/General Commercial (C2)

CEQA Determination:

Categorically exempt from further environmental review pursuant to Section 15301 (Existing Facilities) of the California Environmental Quality Act (CEQA).

PLANNER:

Jocelyn Puga, Planning Intern

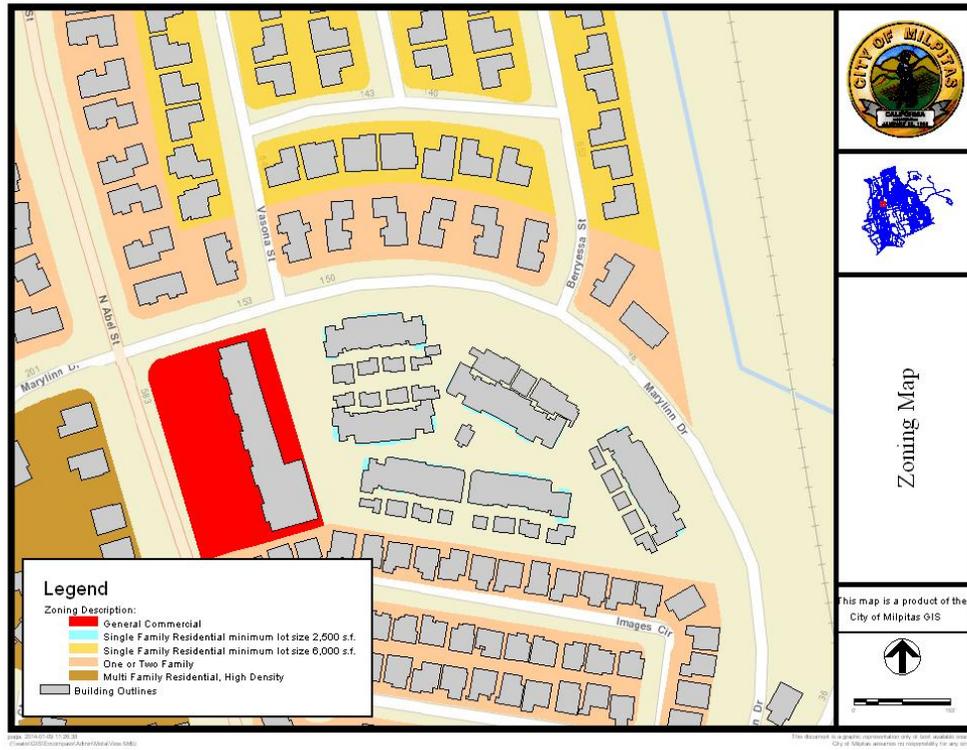
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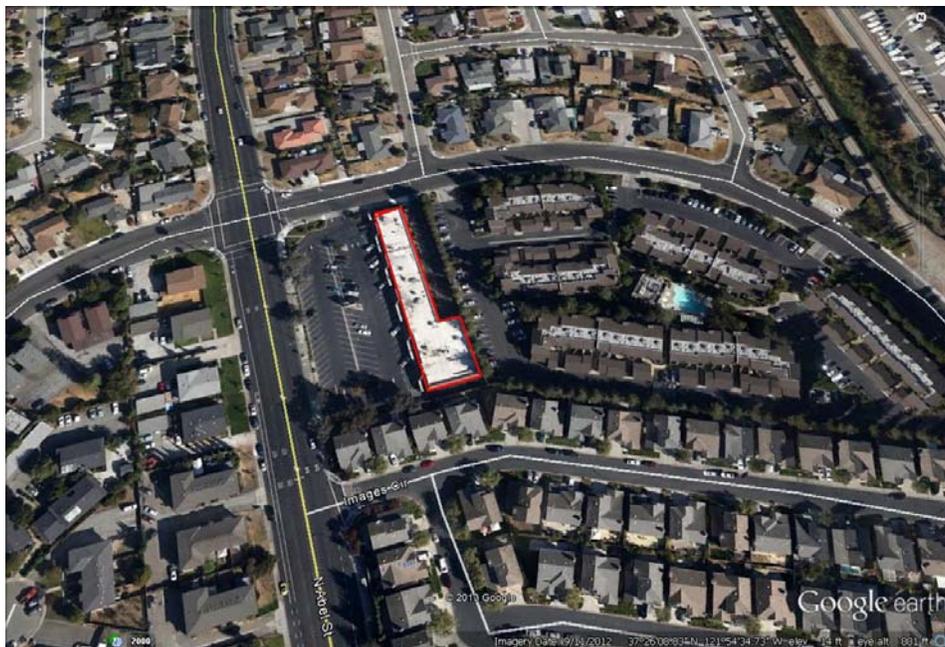
ATTACHMENTS:

A. Resolution No. 14-003
B. Project Description
C. Site Plan

Map 1 Project Location



Map 2 Project Site



Maps Not to Scale

BACKGROUND

History

The project site is located at 560 N. Abel Street and has a history of restaurant and commercial retail use. In 2010, a Building Permit for tenant improvements was approved for Vedas Indian restaurant.

The Application

On December 12, 2013, Pradeep Kumar dba Vedas Indian restaurant submitted an application pursuant to Section 57 of the Milpitas Zoning Ordinance for a Conditional Use Permit, UP13-0022, to allow the sale of distilled spirits, beer, and wine at an existing restaurant.

PROJECT DESCRIPTION

Overview

Vedas Indian Restaurant is located in a multi-tenant commercial building. Other tenants include a Coin-Op Laundry, Happy Hearts Academy, and the 7-Eleven. The property is surrounded by Multi-Family Residential to the west, One or Two Family Residential to the south, Single Family Residential to the east, and Multi-Family and One or Two Family Residential to the north. The tenant space for the restaurant is located at the southern portion of the building, facing North Abel Street. The project proposes no changes to the existing floor plan or hours of operation.

Conditional Use Permit

The project site is zoned General Commercial and is located within a commercial center surrounded by commercial retail and restaurant uses. Restaurant is a permitted use in the General Commercial zone. However, the sale of alcoholic beverages ancillary to and in conjunction with a restaurant requires a Conditional Use Permit. This application for a Conditional Use Permit is also subject to State law regarding the sale of alcoholic beverages.

The sale of alcohol in the State of California is regulated by the Alcoholic Beverage Control Act (California Business and Profession Code Sections 23000-25762). The California Department of Alcoholic Beverage Control is required to deny an application for a license if issuance of the license would result in or add to an undue concentration of licenses in a particular area, unless the local governing body finds that it would serve the public convenience or necessity. An undue concentration is defined under Business and Profession Code Section 23958.4 as an area where: (a) there is a crime reporting district that has a 20% greater number of reported crimes than the average of all crime reporting districts in the jurisdiction, or (b) the ratio of retail licenses of the type applied for, to the population in the census tract or census division exceeds the ratio for the county in which the applicant premises are located.

According to the Department of Alcohol Beverage Control, the project falls within an undue concentration area for the type of liquor license sought, which authorizes seven (7) on-sale licenses in this census tract. The census tract currently has ten (10) active on-site licenses and three (3) off-sale licenses. In order for the Department of Alcoholic Beverage Control to grant the pending license application, the Planning Commission is required to make a finding pursuant to Business and Profession Code Section 23958.4 that the sale of alcohol will not have a negative impact on the surrounding community and serves the public convenience or necessity. As further described below, staff believes there are sufficient facts in the public record to support a finding that the sale of alcohol will not have a negative impact on the surrounding community and serves the public convenience or necessity.

REQUIRED FINDINGS

A finding is a statement of fact relating to the information that the Planning Commission has considered in making a decision. Findings shall identify the rationale behind the decision to take a certain action.

Conditional Use Permit Findings (Section XI-10-57.04 (F)):

1. The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.

The proposed sale of alcoholic beverages at the existing restaurant will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare because the project site is zoned General Commercial and is located within a commercial center surrounded by commercial retail and restaurant uses. The sale of alcoholic beverages is ancillary and in conjunction with the existing restaurant. The existing restaurant with ancillary sales of all types of alcoholic beverages will provide a service not currently offered increasing economic opportunity. The Milpitas Police Department has not responded to a call for service at Vedas Indian Restaurant since its establishment in 2010 and does not oppose the request for Conditional Use Permit No. UP13-0022.

2. The proposed use is consistent with the Milpitas General Plan.

The proposed use is consistent with the Milpitas General Plan, specifically:

- *Policy 2.a-I-3 - Encourage economic pursuits which will strengthen and promote development through stability and balance.*
- *Policy 2.a-I-5 - Maintain policies that promote a strong economy which provides economic opportunities for all Milpitas residents within existing environmental, social fiscal and land use constraints.*

The existing restaurant is a compatible and permitted use within the shopping center, and the service of alcoholic beverages is an ancillary use to the existing restaurant. This use

promotes and encourages social and economic interests while providing Milpitas residents with enhanced restaurant services, and promotes business within the City.

3. The proposed use is consistent with the Milpitas Zoning Ordinance.

The use is consistent with the Milpitas Zoning Ordinance because a restaurant with full service bar is permitted with a Conditional Use Permit and meets the development standards for lot area minimum, floor area ratio, and parking within the Zoning Ordinance. Further, the restaurant is not proposing additional seats or extended hours and therefore will not generate additional traffic or parking demand.

Department of Alcoholic Beverage Control Findings pursuant to Business and Profession Code Section 23958.4:

4. *Based on staff's analysis, the following findings can be made that the project will not be detrimental to the surrounding area and serves the public convenience or necessity because:*
 - *The existing restaurant is not located within a crime reporting district.*
 - *The Milpitas Police Department has not responded to a call for service at Vedas Indian Restaurant since its establishment in 2010.*
 - *The proposed alcohol sales is an ancillary service to the existing food service.*
 - *The project is located in a General Commercial Zoning District and is surrounded by other commercial and restaurant uses. The addition of alcohol sales at this location would provide a public convenience for dining customers in that the sale of alcoholic beverages is ancillary and in conjunction with the existing restaurant.*
 - *As conditioned, the applicant shall be required to obtain training for responsible alcohol serving.*

ENVIRONMENTAL REVIEW

The Planning Division conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). The proposed project is categorically exempt from further environmental review pursuant to Section 15301 (Existing Facilities) of the California Environmental Quality Act (CEQA) because there is no expansion or alteration of the existing 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 have been no inquiries from the public. The table below provides a summary of the City's public noticing efforts for this project.

Table 1
Public Noticing Summary

Notice of Public Hearing	Agenda
<ul style="list-style-type: none"> ▪ Posted on the City’s website (<i>14 days prior to the hearing</i>) ▪ Six hundred and eighty-eight (688) notices mailed to property owners and residents within 1,000 feet to the project site (<i>10 days prior to the hearing</i>) ▪ Posted in the Milpitas Post. (<i>10 days prior to the hearing</i>) 	<ul style="list-style-type: none"> ▪ Posted on the City's official notice bulletin board (<i>5 days prior to the hearing</i>) ▪ Posted on the City of Milpitas’s Web site (<i>one week prior to the hearing</i>)

The map below illustrates the extent of the mailed notices.

Map 3
Public Notice Radius



CONCLUSION

The proposed restaurant with a full service bar will support the surrounding retail and restaurant uses. The sale of alcoholic beverages is ancillary and in conjunction with the existing restaurant.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission adopt Resolution No.14-003 approving Conditional Use Permit UP13-0022 for the sale of distilled spirits (liquor), beer, and wine at an existing restaurant subject to the conditions of approval.

Attachments:

- A. Resolution No. 14-003
- B. Project Description
- C. Site Plan