



MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: January 22, 2014

APPLICATION: **Conditional Use Permit Amendment No. UA13-0007, Dish Dash Restaurant**

APPLICATION SUMMARY: A request for an amendment to existing Conditional Use Permit UA05-0013 for the sale of distilled spirits in addition to existing beer and wine sales at an existing restaurant.

LOCATION: 181 Ranch Drive (APN 22-53-002)
APPLICANT: Dish Dash Inc., 181 Ranch Drive, Milpitas, CA 95035
OWNER: TMS McCarthy LP

RECOMMENDATION: **Staff recommends that the Planning Commission: Adopt Resolution No. 14-004 amending Conditional Use Permit No. 1602 authorizing the sale of distilled spirits (liquor) in addition to existing beer and wine sales at an existing restaurant, subject to the conditions of approval.**

PROJECT DATA:
General Plan/
Zoning Designation: General Commercial (GNC) /General Commercial (C2) with
Overlay District: Recreation and Entertainment Overlay (RE)

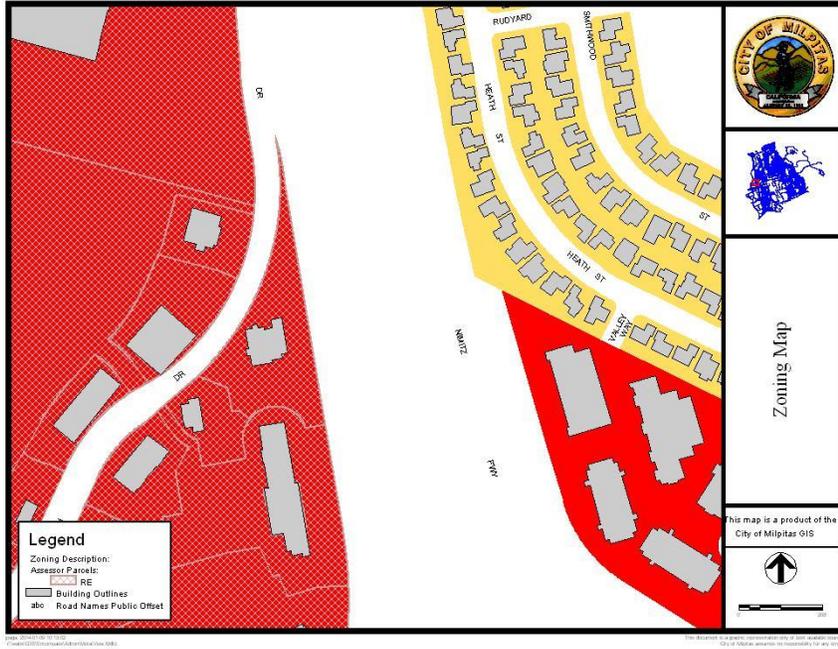
CEQA Determination: Categorically Exempt from further environmental review pursuant to Section 15301 (Existing Facilities) of the California Environmental Quality Act (CEQA).

PLANNER: Jocelyn Puga, Planning Intern

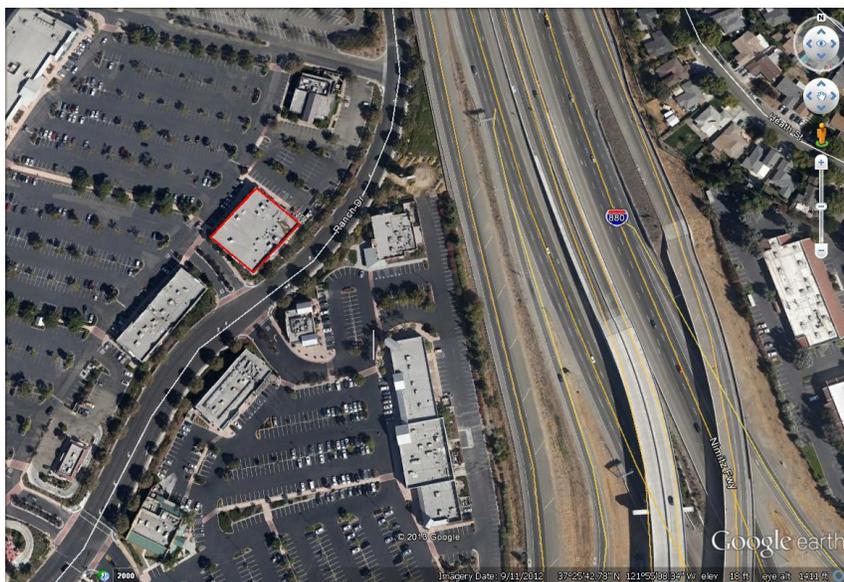
PJ: 1015

ATTACHMENTS:
A. Resolution No. 14-004
B. Project Description
C. Site Plan
D. Original Use Permit No. 1602 Staff Report, Conditions and Minutes

Map 1
Project Location



Map 2
Project Site



Maps Not to Scale

BACKGROUND

History

On March 16, 1994, the Planning Commission approved Site and Architectural plans for a 15,000 square retail building in the McCarthy Ranch Marketplace. In August 2001, Planning Commission approved Use Permit No. 1602 for a full service restaurant with outdoor and indoor seats, site modifications, and a parking reduction for Pasta Pomodoro. In 2005, a Conditional Use Permit Amendment, UA05-0013, was approved for the restaurant Pasta Pomodoro. In 2012 Dish Dash Restaurant moved into the existing restaurant space. The previous Conditional Use Permit was transferred to Dish Dash Restaurant.

The Application

On December 2, 2013, Dish Dash Restaurant submitted an application pursuant to Section 57 of the Milpitas Zoning Ordinance for an amendment to existing Conditional Use Permit UA05-0013 for the sale of distilled spirits in addition to existing beer and wine sales at an existing restaurant.

PROJECT DESCRIPTION

Overview

Dish Dash restaurant is located in a McCarthy Ranch Marketplace in a multi-tenant commercial building on a 1.23 acre site. Other tenants include AT&T and the Red Kwali restaurant. The property is surrounded by industrial/office use to the north and west, highway services to the South, and Interstate 880 to the east. The tenant space for the restaurant is located at the northeast portion of the building, facing Ranch Drive. 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 the McCarthy Ranch Marketplace surrounded by commercial retail and restaurant uses. The sale of alcoholic beverages is ancillary and in conjunction with the existing restaurant. This application is subject to State laws 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 two (2) on-sale licenses in this census tract. The census tract currently has twenty-eight (28) active licenses and one (1)

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 sale of alcohol will not have a negative impact on the surrounding community and serves the public convenience or necessity.

Recreation & Entertainment Overlay

The purpose of the Recreation and Entertainment Overlay (Section XI-10-12.07) is to create a district that will be an attractive destination that draws visitors to Milpitas, encourage the interaction of a commercial and entertainment uses to enhance retail spending opportunities, and diversify the City's economic base to protect the local economy from downturns in any one economic sector. The Recreation and Entertainment Overlay is intended to be combined with commercial and industrial districts located west of Interstate 880.

REQUIRED FINDINGS

A finding is a statement of fact relating to the information that the Planning Commission or City Council 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 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.*
2. *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 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 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 Dish Dash Restaurant*
 - *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 surrounding 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).

PUBLIC COMMENT/OUTREACH

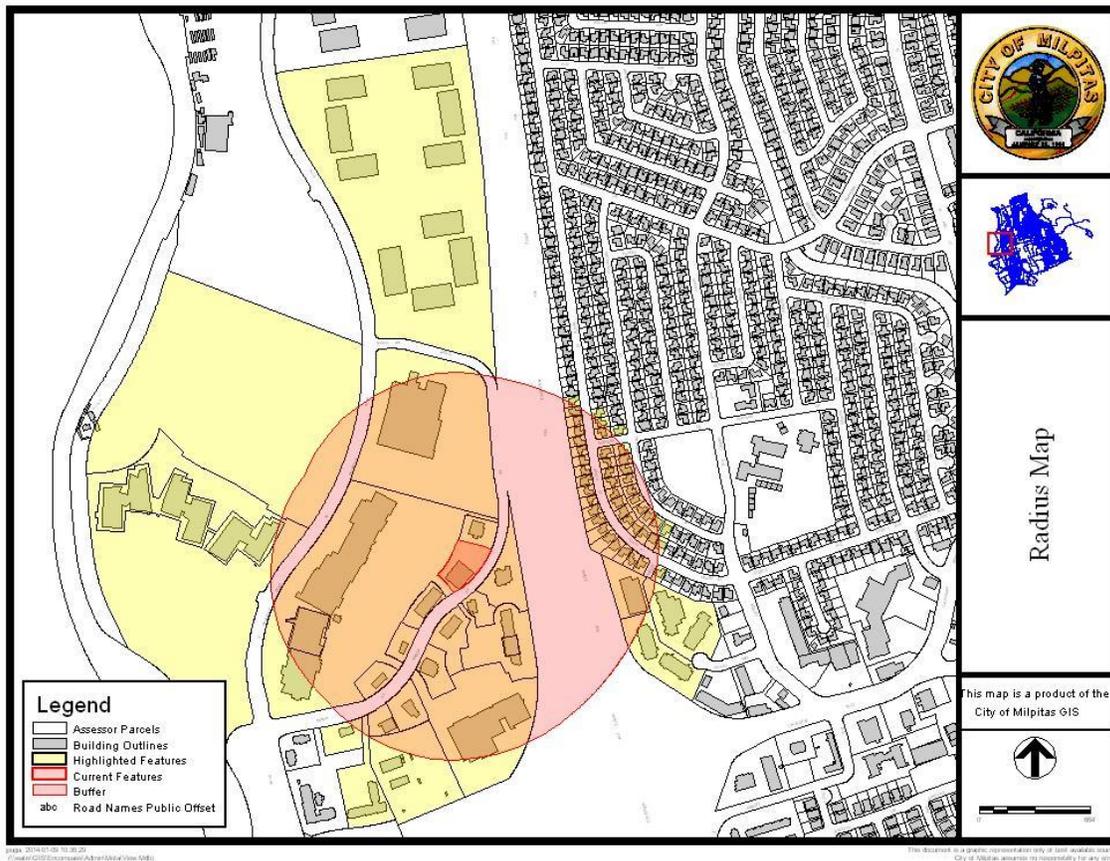
Staff publicly noticed the application in accordance with City and State law. As of the time of writing this report, there have been no inquiries from the public. The table below provides a summary of the City's public noticing efforts for this project.

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>) ▪ One hundred and forty-six (146) 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. As conditioned, the project will not be detrimental to public health.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission adopt Resolution No. 14-004 amending Conditional Use Permit No. 1602 authorizing the sale of distilled spirits (liquor) in addition to existing beer and wine sales at an existing restaurant, subject to the conditions of approval.

Attachments:

- A. Resolution No.14-004
- B. Project Description
- C. Site Plan
- D. Original Use Permit No. 1602 Staff Report, Conditions and Minutes