

RESOLUTION NO. 14-014

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS APPROVING CONDITIONAL USE PERMIT NO. UP14-0001 AND MINOR SITE DEVELOPMENT PERMIT NO. MS14-0002 TO ALLOW CONVERSION OF A FORMER RESTAURANT INTO A STARBUCKS WITH DRIVE-THRU, OUTDOOR PATIO, AND NEW LANDSCAPING AT 1333 SOUTH PARK VICTORIA DRIVE

WHEREAS, on August 21, 1975, the Planning Commission approved site and architectural design for a Wienerschnitzel restaurant and subsequent amendments throughout the years for changes to architecture, landscaping, and lighting.

WHEREAS, on May 12, 1999, the Planning Commission approved the “S” Zone Approval Amendment to allow installation of four new light fixtures to replace the existing parking lot lights. There was no record of a use permit to allow drive-through at that time and therefore, the Conditions of Approval indicated that any change in the restaurant’s floor plan, such as an increase in seats (indoor or outdoor) or take-out area, will require a use permit, and changes in the building’s architecture, including but not limited to new roofing, exterior color changes, building additions, or new exterior materials, will require an “S” Zone Approval Amendment.

WHEREAS, the Wienerschnitzel restaurant has been operating the business since 1975 and has recently closed.

WHEREAS, on December 20, 2013, Lisa Sunderland representing Starbucks Corporation submitted a Planning application to convert the existing Wienerschnitzel restaurant space to a Starbucks and requested a Conditional Use Permit to legalize the existing non-conforming drive-through and a Minor Site Development Permit to allow the exterior improvements and new landscaping to the site, which will supersede all previous approvals for the site.

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 exempt under CEQA.

WHEREAS, on March 26, 2014, 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 Planning Commission has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the Planning Commission.

Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

Section 2: The Planning Commission conducted an environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). The project is categorically exempt from further CEQA review under Section 15301 of the CEQA Guidelines, Existing Facilities since the use has already been established and the proposed Starbucks will not create any significant physical impacts to the environment.

Section 3: **Conditional Use Permit (Section XI-10-57.04(F)) - The Planning Commission makes the following findings based on the evidence in the public record in support of Conditional Use Permit No. UP14-0001:**

- 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 use will not be detrimental or injurious to property in the vicinity nor to the public health, safety, and general welfare because the project site is zoned General Commercial and the proposed Starbucks with a drive-thru is permitted with a Conditional Use Permit. Additionally, the proposed Starbucks is located at a commercial property surrounded by commercial uses. As discussed in detail above and in staff's report, the proposed use is utilizing the existing restaurant and upgrading to meet all current development standards. The proposal will provide a new service to the neighborhood and promote economic opportunity on a site designated for commercial uses.

- 2. The project is consistent with the Milpitas Zoning Ordinance.*

The use is consistent with the Milpitas Zoning Ordinance because a restaurant/sit-down coffee shop is a permitted use under commercial zoning district. The existing non-conforming drive-through can be operated with a Conditional Use Permit. As discussed in detail above and in staff's report, the proposed use meets all of the current development standards within the Zoning Ordinance including the parking requirement.

- 3. The proposed use is consistent with the Milpitas General Plan.*

The proposed restaurant/sit-down coffee shop is a permitted use on the commercial property under the General Plan. This use promotes and encourages social and economic interests while providing Milpitas residents with enhanced restaurant services, and promotes business within the City. Specifically, the proposed use supports the following General Plan policies:

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.

Section 4: Site Development Permit (Section XI-10-57-03(F) - *The Planning Commission makes the following findings based on the evidence in the public record in support of Minor Site Development Permit MS14-0002:*

1. *The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.*

The project is consistent with this finding because the existing condition is deteriorating and the improvement will upgrade the appearance of the existing building and site, and improve the streetscape of the neighborhood. The proposed exterior improvement includes new exterior painting, new roof, new façade, new accessible patio area, new landscape, a new gate for the existing trash enclosure, and replacement of the menu board for drive-through.

2. *The project is consistent with the Milpitas Zoning Ordinance.*

The use is consistent with the Milpitas Zoning Ordinance because a restaurant/sit-down coffee shop is a permitted use under commercial zoning district. The existing non-conforming drive-through can be operated with a Conditional Use Permit. As discussed in detail above and in staff's report, the proposed use meets all of the current development standards within the Zoning Ordinance including the parking requirement.

3. *The project is consistent with the Milpitas General Plan.*

The proposed restaurant/sit-down coffee shop is a permitted use on the commercial property under the General Plan. This use promotes and encourages social and economic interests while providing Milpitas residents with enhanced restaurant services, and promotes business within the City. Specifically, the proposed use supports the following General Plan policies:

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 General Plan designation of the project site is General Commercial (GNC). The use of the project site is in conformance with the City's General Plan in that the proposed use is a permitted use under the Milpitas General Plan and polices as previously enumerated. The proposed project utilizes the existing structure and proposes upgrade to modern design and development

standards. The project promotes economic opportunity for Milpitas residents and visitors within the existing land use and provides opportunities to expand employment.

Section 5: The Planning Commission of the City of Milpitas hereby adopts **Resolution No. 14-014 approving Conditional Use Permit No. UP14-0001 and approving Minor Site Development Permit No. MS14-0002, superseding all previous approvals for the site, based on the above Findings and subject to the Conditions of Approval attached hereto as Exhibit 1 and incorporated herein.**

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on March 26, 2014.

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 26, 2014, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Lawrence Ciardella				
John Luk				
Rajeev Madnawat				
Sudhir Mandal				
Demetress Morris				
Gurdev Sandhu				
Garry Barbadillo				
Hon Lien (alternate)				

EXHIBIT 1

**CONDITIONS OF APPROVAL
STARBUCKS CONDITIONAL USE PERMIT UP14-0001 AND MINOR SITE
DEVELOPMENT PERMIT MS14-0002**

General Conditions

1. The applicant shall develop the approved project in conformance with the approved plans and color and materials sample boards approved by the Planning Commission on March 26, 2014, in accordance with these Conditions of Approval.

Any deviation from the approved site plan, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the applicant 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 applicant shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. **(P)**

Conditional Use Permit No. UP14-0001 and Minor Site Development Permit No. MS14-0002 shall become null and void if the project is not commenced within two (2) years from the date of approval unless in conjunction with a tentative map, then the project life coincides with the life of the map. Pursuant to Section 64.06(B) of the Zoning Ordinance of the City of Milpitas, commencement shall be:

- 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.
2. Pursuant to Section 64.06(1) of the Zoning Ordinance, the applicant shall have the right to request an extension of Conditional Use Permit No. UP14-0001 and Minor Site Development Permit No. MS14-0002 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein. **(P)**
 3. Prior to the issuance of any building permit, the applicant shall pay in full the project account balance and establish a remaining balance of 25% of the initial deposit.
 4. Prior to the issuance of any building permit, the applicant shall include within the four first pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the project. **(P)**

5. Indemnification. To the fullest extent permitted by law, applicant shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the project, including but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition. **(CA)**
6. The construction and use shall comply with all local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. **(CA/P)**
7. Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development Project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the Project applicant that the ninety (90) day period in which the applicant may file a protest has begun under California Government Code Section 66020(d)(1).

Specific Use Conditions

8. The business hours and the drive-through hours are limited to Monday through Saturday from 4:30 a.m. to 10:30 p.m. and Sunday from 4:30 a.m. to 10:00 p.m. **(P)**
9. The approval does not include approval of any signs to be installed on the project site. All proposed signs, including the monument sign replacement, wall signs, and roof signs, shall be submitted to the Planning Division for review and shall comply with applicable City rules and regulations. There shall be no "Drive-Thru" signs on the roof.
10. The outdoor seating is designated at the outdoor patio area. The number of seats is limited to 18 seats. Any addition to the outdoor seating will require a Minor Site Development Permit or other applicable City approval. **(P)**
11. The applicant shall provide all necessary improvements to the trash enclosure to meet current City standards for waste and recycling areas subject to review and approval of the City Public Works Department.

12. Prior to any building permit issuance, the applicant shall obtain design approval and bond for all necessary public improvements along South Park Victoria Drive frontage, including but not limited to removal and replacement of damaged curb, gutter, tree well, sidewalk and driveways, installing a catch basin and a manhole along Park Victoria frontage and connecting to the main Storm Drain line. Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and applicant shall submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements. The applicant will be required to bond for 100% of the engineer's estimate of the construction cost for both faithful performance and labor & materials and may be required to execute a secured public improvement agreement. All proposed improvements must be in accordance with the City of Milpitas standard drawing and specs, and constructed to the city Engineer's satisfaction. **(E)**
13. It is the responsibility of the applicant to obtain any necessary encroachment permits from all affected agencies and private parties. Provide copies of any approvals, permits, and comments to the City of Milpitas Engineering Division. **(E)**
14. Per Chapter 200, Solid Waste Management, V-200-3.10, *General Requirement*, applicant shall not keep or accumulate, or permit to be kept or accumulated, any solid waste of any kind and is responsible for proper keeping, accumulating and delivery of solid waste. In addition, according to V-200-3.20 *Owner Responsible for Solid Waste, Recyclables, and Yard Waste*, applicant shall subscribe to and pay for solid waste services rendered. Prior to occupancy permit issuance (start of operation), the shall submit evidence to the City that a minimum level of refuse service has been secured using a Service Agreement with Allied Waste Services (formally BFI) for commercial services to maintain an adequate level of service for trash and recycling collection. After the applicant has started its business, the applicant shall contact Allied Waste Services commercial representative to review the adequacy of the solid waste level of services. If services are determined to be inadequate, the applicant shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234. **(E)**
15. Prior to any building permit issuance, applicant must pay all applicable development fees, including but not limited to, plan check and inspection deposit, and 2.5% building permit automation fee. **(E)**
16. The U.S. Environmental Protection Agency (EPA) has empowered the San Francisco Bay Regional Water Quality Control Board (RWQCB) to administer the National Pollution Elimination Discharge System (NPDES) permit. The NPDES permit requires all dischargers, including but not limited to construction activities, to eliminate as much as possible pollutants entering our receiving waters. Contact the RWQCB for questions regarding your specific requirements at (800) 794-2482. For general information, contact the City of Milpitas at (408) 586-3329. **(E)**
17. Prior to any work within public right of way or City easement, the applicant shall obtain an encroachment permit from City of Milpitas Engineering Division. **(E)**

18. The applicant shall submit a Sewer Needs Questionnaire and/or Industrial Waste Questionnaire with the building permit application and pay the related fees prior to Building Permit issuance. Contact the Land Development Section at (408) 586-3329 to obtain the form(s). **(E)**
19. The submitted drawings are not reviewed nor approved for fire permits and construction. Project plans shall be based on the current 2013 edition of the California Fire and Building Codes subject to review and approval of the Fire Department. **(F)**
20. New and existing buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters and shall be consistent with Milpitas standardized addressing guidelines. California Fire Code Section 505.1. **(F)**
21. Fire apparatus access roads shall be maintained to have an unobstructed width of not less than 20 feet (6096 mm), except for approved security gates in accordance with California Fire Code Section 503.6, and an unobstructed vertical clearance of 13 feet 6 inches (4115 mm). **(F)**
22. Portable fire extinguishers for general area shall be installed in occupancies and locations as set forth in the California Fire Code Section 906 and as required by the Fire Code Official per California Fire Code Section 901.4.3. **(F)**
23. Egress doors shall be readily openable from the egress side without the use of a key or special knowledge or effort. 2007 California Fire Code Section 1008.1.8. **(F)**
24. Interior finish, decorative materials and furnishings shall comply with the California Fire Code Chapter 8 and the California Building Code Chapter 8. **(F)**

(P) = Planning

(B) = Building

(E) = Engineering

(F) = Fire Prevention

(CA) = City Attorney