

**RESOLUTION NO. 14-032**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS  
APPROVING CONDITIONAL USE PERMIT NO. UP14-0015 TO ALLOW FOR THE  
OPERATION OF A 2,000 SQUARE FOOT FAST-FOOD RESTAURANT AT 1547  
CALIFORNIA CIRCLE**

**WHEREAS**, on February 9, 1994, the Planning Commission approved Conditional Use Permit No. UP 1209 and site and architectural approval for a Burger King fast-food restaurant with drive thru and associated improvements located at 1547 California Circle.

**WHEREAS**, on September 11, 2002, the Planning Commission approved Conditional Use Permits Nos. UP2002-22 and UP2002-25 and Site Development Permits Nos. SA2002-46 & SA2002-47 to convert an existing 3,699 square foot take-out restaurant in a single tenant building into a two-tenant building with drive-thru.

**WHEREAS**, the food service use at 1547 California Circle has been discontinued for a period between May 2011 to May 2014 and therefore Conditional Use permits Nos. UP2002-22 and UP2002-25 have expired.

**WHEREAS**, on July 7, 2014, Abdul Usman with Jake's Wayback Burgers, submitted an application to allow for the operations of a 2,000 square foot fast-food restaurant that would operate seven days a week from 9:00AM to 9:00PM.

**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 September 24, 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 Jake's Wayback Burgers Restaurant 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 food service and hours of operation will not be detrimental or injurious to property, improvements or to public health, safety and general welfare in that the use does not propose service of alcoholic beverages, live entertainment, or late night operations that would disrupt residents’ quiet and peaceful enjoyment of the neighborhood or detract from the character of the Dixon Landing Business Park. As discussed in detail in staff’s report and below, the project complies with the Industrial Park development standards and parking requirements and will provide additional restaurant services to serve the community.

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

The project is consistent with the Milpitas Zoning Ordinance based on the following:

- a) With respect to land use, restaurant and food service uses are conditionally permitted uses in the Industrial Park District.
- b) With respect with development standards, the project complies with setback, height, floor area ratio, landscaping and parking requirements.

**Summary of Development Standards**

	<b>Standard</b>	<b>Existing</b>	<b>Complies?</b>
<u>Setbacks</u> (Minimum)			
Front	35 feet	40 feet	Yes
Interior	10 feet	56 feet and 150 feet	
Rear	20 feet	55 feet	
<u>Floor Area Ratio</u> (Maximum)	.50	.07	Yes
<u>Building Height</u> (Maximum)	3 stories or 35-feet	21 feet	Yes

***Access, Circulation, and Parking***

Primary vehicle access to the project site is provided by shared driveway off of California Circle which provides local and regional access to major arterials such as Dixon Landing Road and Interstate 880.

Pedestrian circulation is provided by internal and public sidewalks and crosswalks. Public sidewalks are provided and the east and west side of California Circle with a crosswalk at the

intersection of California Circle and the I-880 off ramp. The site includes private sidewalks located on the north and south side of the shared driveway and internal crosswalk from sidewalk to the front of the building.

Parking is located on the south, east, and north side of the building. The project complies with the parking ordinance requirements in that it provides the forty (40) required parking spaces as demonstrated in Table 2.

**Table 2:**  
**Parking Requirements with Shared Parking**

<b>Land Use</b>	<b>Site</b>	<b># of Seats/Sq. Ft.</b>	<b>Parking Ratio</b>	<b>Required Parking</b>
Starbuck’s	1545 California Cir.	Seats = 38	1 / 2.5 seats	1
		Take Out/Ordering = 82 s. f.	1 / 60 s. f.	15
		Retail = 290 s. f.	1 / 200 s. f.	1
Jake’s Wayback Burgers	1547 California Cir.	Seats = 51	1 / 2.5 seats	21
		Take Out/Ordering = 120	1 / 60 s. f.	2
<b>Total number of parking spaces required</b>				40
<b>Total number of parking spaces provided</b>				40

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

The proposed food service use provides for a complementary land use that can cater to nearby residents and workers in the surrounding area. The immediate area has a need for these types of food-related businesses, as currently there are none. Specifically, the proposed use supports the following General Plan policies:

- a) Policy 2.a-I-3 - Encourage economic pursuits which will strengthen and promote development through stability and balance.
- b) 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:** The Planning Commission of the City of Milpitas hereby adopts Resolution No. 14-032 approving Conditional Use Permit No. UP14-0015, 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 September 24, 2014.

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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 September 24, 2014, 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				
Demetress Morris				
Gurdev Sandhu				
Garry Barbadillo				
Hon Lien (alternate)				

## EXHIBIT 1

**CONDITIONS OF APPROVAL  
CONDITIONAL USE PERMIT NO. UP14-0015****General Conditions**

1. General Compliance. The applicant and owner, including all successors in interest (collectively “Permittee”) shall comply with each and every condition set forth in this Permit. This Conditional Use Permit No. UP14-0015 (“Permit”) shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed.
2. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which the decision-making body approved this Permit.
3. Acceptance of Permit. Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following:
  - a. Acceptance of this Permit by Permittee; and
  - b. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit.
4. Permit Expiration. Pursuant to Section XI-10-64-06 of the Milpitas Zoning Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. Pursuant to Section XI-10-64.06(B) of the Milpitas Zoning Code, an activity permitted by this Permit shall be deemed to have commenced when the project:
  - 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.
5. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Zoning Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. **(P)**
6. Project Job Account. If Permittee’s project job account is at any time delinquent or below the required deposit amount, City will not continue to review or process the application until Permittee’s private job account is paid in full and the required deposit has been made.

Additionally, prior to the issuance of any building permit or occupancy permit, as applicable, Permittee shall pay in full the project account balance and establish a remaining balance of at least twenty-five percent (25%) of the required initial deposit.

7. Notice. 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 Permittee that the ninety (90) day period in which the Permittee may file a protest has begun under California Government Code Section 66020(d)(1).
8. Cost and Approval. Permittee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the project to the sole satisfaction of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition.
9. Conditions. Each and every condition set forth in this Exhibit shall apply to the project and continue to apply to the project so long as the Permittee is operating the project under the permits and approvals in this Resolution.
10. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. **(CA/P)**
11. Previous Approvals. Permittee shall abide and continue to comply with all previous City approvals, permits, or requirements relating to the subject property, unless explicitly superseded or revised by this Permit.
12. Indemnification. To the fullest extent permitted by law, Permittee 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 (i) 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, and (ii) Permittee's construction, operation, use, or related activity under this Permit. 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. Permittee 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. Permittee 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.

13. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Zoning Code.
14. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision, or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding, and fully enforceable.
15. Permittee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on September 24, 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 Permittee 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 or City Council, as applicable, in accordance with the Milpitas Zoning Code. **(P)**

16. Permittee shall fully pay all applicable fees and charges to the City, including development impact fees, building inspection fees, and building permit automation fees. There shall be no vesting of any fees or charges with the approval of this Permit. The amount of fees or charges to be paid shall be the amount in effect as approved by the City Council, at the time that full payment is made to the City at time of building permit issuance. **(P)**

### **Special Conditions**

17. Prior to the issuance of any building permit, Permittee 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)**
18. The business hours and the drive-through hours are limited to seven (7) days a week from 9:00 a.m. to 9:00 p.m. **(P)**
19. No sale, use, consumption or otherwise of any alcohol beverage service is approved with this Permit.
20. This Permit does not include approval of any signs to be installed on the project site. All proposed signs shall be submitted to the Planning Division for review and shall comply with applicable City rules and regulations.
21. Permittee 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.

22. Per Chapter 200, Solid Waste Management, V-200-3.10, *General Requirement*, Permittee 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*, Permittee shall subscribe to and pay for solid waste services rendered. Prior to occupancy permit issuance (start of operation), Permittee 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 Permittee has started its business, Permittee 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, Permittee shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234. **(E)**
23. 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)**
24. Prior to any work within public right of way or City easement, Permittee shall obtain an encroachment permit from City of Milpitas Engineering Division. **(E)**
25. Permittee 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)**

(P) = Planning

(B) = Building

(E) = Engineering

(F) = Fire Prevention

(CA) = City Attorney