

RESOLUTION NO. 15-028**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS APPROVING CONDITIONAL USE PERMIT NO. UP15-0005 FOR SHARED PARKING AND MINOR CONDITIONAL USE PERMIT NO. MC 15-0003 FOR A NEW 2,968 SQ. FT. RETAIL GROCERY MARKET AND BAKERY IN AN EXISTING TENANT SPACE LOCATED AT 81/83 SOUTH MAIN STREET**

WHEREAS, on April 2, 2015, an application was submitted by Heidi Miller on behalf of Global Bazaar, 115 Toyon Lane, Union City, CA, to allow shared parking in an existing commercial center, and a new 2,968 sq. ft. retail grocery market in an existing tenant space at 81/83 South Main Street. The property is located within the Mixed-Use (MXD) Zoning District (APN: 022-24-020).

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 Categorically Exempt under CEQA.

WHEREAS, on August 12, 2015, 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 project is Categorically Exempt from further environmental review pursuant to Section 15301 (a) "Existing Facilities" of the California Environmental Quality Act in that it consists of minor interior and exterior alterations of an existing private commercial structure for the operation of small grocery store in an existing tenant space.

Section 3: In accordance with Municipal Code 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. UP15-0005 and Minor Conditional Use Permit No. MC15-0003:

- a. *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 is a small (2,968 sq. ft.) retail grocery store in an existing tenant space, and shared parking in an existing commercial center located in an area that is

predominantly commercial land uses. Physical changes are limited to minor exterior and interior modifications for the new use. The amount of on-site parking provided is adequate for the existing mix of commercial uses. As conditioned, the project will comply with applicable public health and safety requirements.

- b) *The proposed use is consistent with the Milpitas General Plan, specifically Economic Development Policy 2.a-L-3 “Encourage economic pursuits which will strengthen and promote development through stability and balance”.*

The General Plan Land Use designation for the site is Mixed-Use, which allows traditional retail and commercial uses. The proposed grocery store in an existing commercial center is a retail use consistent with this land use designation. As a small business, the proposed use is consistent with the economic development goals and policies of the City.

- c) *The proposed use is consistent with the Milpitas Zoning Ordinance.*

The project site is located in the Mixed-Use Zoning District (MXD). The proposed grocery store/market is a conditional use in the MXD. The use is utilizing a tenant space in an existing commercial center without the need for substantial physical changes or improvements to the site. The mix of existing and proposed commercial uses requires a Conditional Use permit to allow shared parking. Adequate on-site parking is provided. As conditioned, the project is consistent with the Zoning Code.

- d) *The proposed use is consistent with the Midtown Specific Plan, specifically Policy 3.10 “Designate parcels along the Main Street and Abel Street corridor (as shown in figure 3.1) Mixed-Use and allow a mixture of retail, office, housing, service, and public/quasi-public uses in this area”.*

The Midtown Specific Plan Land Use designation for the site is Mixed-Use. The Midtown Specific Plan allows legally established businesses and commercial development in the South Main Street area to remain as legal conforming uses. The proposed use is within a tenant space of an existing commercial center. The proposed grocery store/market is consistent with this Policy.

Section 6: The Planning Commission of the City of Milpitas hereby adopts Resolution No. 15-028 approving the Global Bazaar Market and shared parking CONDITIONAL USE PERMIT NO. UP15-0005 and Minor Conditional Use Permit NO. MC15-0003 based on the above Findings and subject to the Conditions of Approval attached hereto as Exhibit 1 incorporated herein.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on August 12, 2015.

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 August 12, 2015, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Sudhir Mandal				
Lawrence Ciardella				
Hon Lien				
Rajeev Madnawat				
Ray Maglalang				
Zeya Mohsin (Alternate)				
Demetress Morris				
Gurdev Sandhu				

EXHIBIT 1

**CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT NO. UP15-0005 &
MINOR CONDITIONAL USE PERMIT MC15-0003
(GLOBAL BAZAAR)**

General Conditions

1. General Compliance. The applicant, including all successors in interest (collectively “Permittee”) shall comply with each and every condition set forth in this Permit. This CONDITIONAL USE PERMIT NO. UP15-0005 AND MINOR CONDITIONAL USE PERMIT MC15-0003 (“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 and this Resolution has been recorded by the Permittee with the Santa Clara County’s Recorder Office and a copy shall be provided to the Planning Division.
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 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 applicant 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 August 12, 2015, 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)**

1. Written Response to Conditions. The Permittee shall provide a written response to the Conditions of Approval indicating how each condition has been addressed with the building permit application submittal. **(ALL)**

Project Specific Conditions

16. Shared parking. The project shall comply with the approved shared parking plan and parking analysis submitted that concludes 23 parking spaces is adequate for the current and proposed mix of commercial uses on the developed site. Any proposed change in the mix of uses should be evaluated for parking standard compliance.
17. Food Preparation.
 - a. No restaurant seating is allowed as part of this permit.
 - b. All food preparation shall comply with the City Council's Guidelines for Recycling Enclosures (Resolution No. 6296).

- c. The bakery shall incorporate measures to reduce odors to acceptable levels, including, but not limited to, installation of a scrubber, carbon filter or similar equipment, on the roof vent to control odors.
 - d. All the facility's floor drains, trash compactors and indoor mat and equipment washing areas shall be drained to the sanitary sewer.
 - e. Where applicable, the market shall maintain an active account with a tallow hauling company.
 - f. The market/bakery shall prepare and implement a program assigning food preparation staff responsibility for complying with the following guidelines which shall be adhered to while any food preparation is in operation:
 - i. Wash all containers and equipment in the kitchen areas so that wash water may drain into the sanitary sewer.
 - ii. Keep garbage dumpsters clean inside and out; replace very dirty dumpsters with new, clean ones.
 - iii. Double bag waste to prevent leaking.
 - iv. Place, do not drop or throw, waste-filled bags, to prevent leaking.
 - v. Keep the ground under and around the garbage dumpsters swept.
 - vi. Sprinkle the ground lightly after sweeping with a mixture of water and a little bleach.
 - vii. Hold training sessions to instruct employees on the proper procedures in the handling and disposal of food items, the general maintenance and use of the compactor and any other procedures that would assist the business in complying with all State and local health and sanitation standards. A record of such training must be kept to prove compliance with this requirement.
 - viii. Post signs (in English and multi-lingual) inside the premises for all employees identifying procedures for food delivery and garbage disposal.
 - ix. All garbage bins shall be stored in the garbage enclosure except for the twelve (12) hours immediately before and after garbage collection. **(P)**
18. Solid Waste Service and Trash Enclosure. Prior to the issuance of a Building Permit, the project shall comply with the City's "Development Guidelines for Solid Waste Services" to the satisfaction of the Public Works Director. **(E)**
19. Lighting. Maintain lighting of sufficient wattage to provide adequate illumination and to make clearly visible the presence of any person during hours of darkness in the parking lot. **(PD)**

Building Conditions

20. Applicable codes shall be 2013 CBC, CMC, CEC, CPC, Green Building Standards Code, California Energy Code and 2014 Milpitas Municipal Code.

21. It is mandated to obtain Business license and Certificate of Occupancy prior to start of business operation.
22. Obtain permits from the Santa Clara County Health Department and the Water Pollution Control Plant prior to applying for a Building permit.
23. Required separation in buildings with mixed occupancies shall be per 2013 CBC sec.508.
24. Separate toilet facilities shall be provided for each sex when total number of customers served and employees exceed 50 in business and mercantile occupancies as per 2013 CPC sec. 422.2.
25. The minimum number of plumbing fixtures shall be determined as per 2013 CPC sec.422.1 and Table 422.1.
26. People with disabilities accessible parking shall be provided as per 2013 CBC, sec. 11B-208.1
27. One in every six accessible parking spaces, but not less than one parking space shall be van accessible as per 2013 CBC sec.11B-208.2.4.
28. Accessibility signs shall be provided at every primary public entrance, at every major junction along or leading to an accessible route of travel and at building entrance that are accessible as per 2013CBC, section 11B-216.6.
29. All primary entrances and required exit doors shall be accessible to people with disabilities as per 2013 CBC, sec. 11B-206.4.1.
30. Provide accessible path of travel from sidewalk to the accessible entrance as per 2013 CBC sec.11B-206.2.1.
31. Sanitary facilities shall be fully accessible to people with disabilities as per 2013 CBC, sec. 11B-213.1.
32. Provide maneuvering clearances at doors as per 2013 CBC, Sec. 11B-404.2.4.
33. At least one accessible counter for each counter type shall be provided for the public and in general employee area. Counter must be 36 in. long minimum and not more 34 inches high per 2013 CBC sec. 11B-904.4.
34. Provide min. aisle width per 2013 CBC section 11B-403.5.1 exception 4. Every aisle shall be 36” wide if serving one side and 44” min. wide if serving both sides.
35. Food preparation areas shall be accessible to people with physical disabilities as per 2013 CBC sec.11B-203.9.

36. At least one hand washing sink in the kitchen shall be accessible as per 2013 CBC sec. 11B-212.3.
37. Electrical. Each tenant shall be provided with separate disconnect as per City Policy BDP-EL02.
38. Structural. Provide complete set of structural design calculations and five sets of construction plans and details for shelving over 5'-9" high and any kitchen equipment 400# or more when applying for a building permit. Plans and calculations shall be wet signed and stamped by Civil/Structural Engineer.

Fire Conditions

39. Please do not consider this an approval from the Fire Department. Additional requirements may be made during the construction permit process. These notes are a general list of the applicable code requirements and it is provided to assist with the construction permit process.
40. No change shall be made in the use or occupancy of any structure that would place the structure in a different division of the same group or occupancy or in a different group of occupancies, unless such structure is made to comply with the requirements of the current code(s). California Fire Code (CFC) Section 102.3
41. 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.(CFC Section 505.1)
42. Fire extinguishing systems. Where a building fire alarm system exists or will be installed, automatic fire-extinguishing systems shall be monitored by the building fire alarm system in accordance with NFPA 72. (CFC Section 904.3.5)
43. Automatic fire sprinkler system monitoring (when existing or to be installed). Alarm, supervisory and trouble signals shall be distinctly different and shall be automatically transmitted to an approved supervising station (approved by the Fire Dept.). (CFC Section 903.4.1)
44. Fire Protection: Fire Sprinkler systems, fire hydrant systems, standpipe system, fire alarm systems, portable fire extinguishers and other fire protective or extinguishing systems or appliances shall be maintained in an operative condition at all times, and shall be replaced or repaired where defective. (CFC Section 901.6)

45. Commercial cooking equipment that produces grease-laden vapors shall be provided with a Type I hood, in accordance with the California Mechanical Code, and an automatic fire-extinguishing system that is listed and labeled for its intended use as follows:
 - Wet-chemical extinguishing system, complying with UL 300,
 - Carbon dioxide extinguishing systems. (CFC 904.11)
46. Portable fire extinguishers for general area shall be installed in occupancies and locations as set forth in the CFC Section 906 and as required by the Fire Code Official.
47. Exit doors shall swing in the direction of exit travel when serving an occupant load of 50 or more. (CFC Section 1008.1.2)
48. Egress doors shall be readily openable from the egress side without the use of a key or special knowledge or effort. (CFC Section 1008.1.9)
49. Manually operated flush bolts or surface bolts are not permitted. (CFC Section 1008.1.9.4)
50. Exits and exit access doors shall be marked by an approved exit sign readily visible from any direction of egress travel. Exit sign placement shall be such that no point in a corridor is more than 100 feet or the listed viewing distance for the sign, whichever is less, from the nearest visible sign. Additional signs may be required if clear path of exit access is not readily defined. (CFC Section 1011.1)
51. Air-moving systems supplying air in excess of 2,000 cfm to enclosed spaces within buildings shall be equipped with State Fire Marshal approved and listed smoke detectors for automatic shutoff. Where fire detection or alarm systems are provided for the building, smoke detectors required by this section shall be supervised by such systems and installed per the NFPA 72. Activation of a duct smoke detector shall initiate a visible and audible supervisory signal at a constantly attended location or supervising station. CFC Section 907.12 and NFPA 72 Section 21.7.4, (see the Mechanical Code for exceptions). (California Mechanical Code Section 608)
52. No approval is granted for the use or handling of hazardous materials.
53. Complete plans and specifications for all aspects of fire-protection systems shall be submitted to the Fire Department for review and approval prior to system installation or alteration. (CFC Section 105.4)

(P) = Planning
(B) = Building
(E) = Engineering
(F) = Fire Prevention
(CA) = City Attorney