

RESOLUTION NO. 16-001

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS RECOMMENDING THE CITY COUNCIL GRANT AN EXCEPTION PER VIII-6.5.08 AND GRANT THE SITE DEVELOPMENT PERMIT NO. 15-0003 TO ALLOW THE CONSTRUCTION FOR A HILLSIDE IN-GROUND SWIMMING POOL AND SPA SUBJECT TO THE CONDITIONS OF APPROVAL LOCATED AT 1506 AUGUSTA COURT

WHEREAS, on December 8, 2015, Mark Barber submitted a complete application on behalf of Sally Sobek, the property owner, to construct an in-ground swimming pool and spa on a single-family residential hillside lot at 1506 August Court (APN: 29-54-013); and

WHEREAS, the Zoning Designation for this site is Single Family Residential with Hillside Combining District (R1-H), within PUD 21. Milpitas Municipal Code Section XI-10-45.09-2 requires site and architectural review any modification on a hillside lot that require a building permit; and

WHEREAS, additionally, Milpitas Municipal Code section VIII-6-5.00, in the absence of an exception, prohibits the construction of new swimming pools in observance of water conservation efforts and requirements. However, Milpitas Municipal Code section VIII-6-5.08 provides that the City Council may grant exceptions to this prohibition; and

WHEREAS, the applicant has committed to **not** construct the swimming pool and spa until the Governor declares an end to the State of Emergency declared on January 17, 2014, and an imposition of the requirement that, once constructed, the swimming pool and spa shall not use potable water supplied by any supplier serving the City of Milpitas or its residents; and

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 under both Section 15301 (Existing Facilities) of the CEQA Guidelines, inasmuch as the project consists of the construction of an in-ground swimming pool and spa at an existing single-family residence, and is thus a minor alteration of an existing private feature or structure, involving no expansion of use beyond that existing at the time of the City's determination; and Section 15303 (New Construction or Conversion of Small Structures), for the same reasons; and

WHEREAS, on February 10, 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 both Section 15301 (Existing Facilities) of the CEQA Guidelines, inasmuch as the project consists of the construction of an in-ground swimming pool and spa at an existing single-family residence, and is thus a minor alteration of an existing private feature or structure, involving no expansion of use beyond that existing at the time of the City's determination; and Section 15303 (New Construction or Conversion of Small Structures), for the same reasons.

Section 3: 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 Site Development Permit No. SD15-0003:*

a) 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 in-ground swimming pool and spa will be located in the rear yard of an existing single-family residence on a 7.2-acre hillside lot and complies with the hillside development site and architectural design review guidelines.

b) The project is consistent with the Milpitas General Plan:

The project is consistent with this finding because the proposed in-ground swimming pool and spa is for an existing single-family residence with a General Plan Land Use designation of Hillside Medium Density that was developed consistent with the allowed density and applicable policies of that land use designation.

c) The project is consistent with the Milpitas Zoning Ordinance:

Assuming the City Council granted an exception under VIII-6.508, the project would be consistent with this finding because the in-ground swimming pool and spa is an allowed use in the Single Family Residential with Hillside Combining District (R1-H) Zoning District and complies with the development standards of that zoning district. However, without an exception to the Supplemental Water Use Restrictions found in VIII-6.5.00, the project could not be found in compliance with the Zoning Ordinance.

d) The project is consistent with the Milpitas Water Conservation Ordinance.

According to Milpitas Municipal Code section VIII-6-5.00, in the absence of an exception, the construction of new swimming pools is prohibited in observance of water conservation efforts and requirements. However, VIII-6-5.08 provides that the City Council may grant exceptions to this prohibition. Thus, in accordance with VIII-6.508, the Planning Commission could

recommend that the City Council grant an exception in this instance. Such an exception could be conditioned on, for example, the deferral of construction of any such swimming pool and spa until such time as the Governor declares an end to the State of Emergency declared on January 17, 2014, with respect to severe drought conditions throughout the state, and an imposition of the requirement that, once constructed, the swimming pool and spa shall not use potable water supplied by any supplier serving the City of Milpitas or its residents.

Section 4: The Planning Commission of the City of Milpitas hereby adopts **Resolution No. 16-001 recommending the City Council grant an exception per VIII-6.5.08 and grant the Site Development Permit No. 15-0003 subject to conditions of approval substantially similar to those included as Attachment A.**

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on February 10, 2016.

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 February 10, 2016, 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				

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Gurdev Sandhu				

EXHIBIT 1

**CONDITIONS OF APPROVAL
SOBEK POOL, SITE DEVELOPMENT PERMIT NO. 15-0003**

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 Site Development Permit No. 15-0003 (“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 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 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 that 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 June 24, 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 at the time of first submittal. **(ALL)**

Project Specific Conditions

16. **Outdoor Lighting.** The project shall comply the Swimming Pool and Spa outdoor artificial lighting standards as enumerated in Municipal Code Section XI-10-45.15-2. **(P)**
17. **Building Permits.** No building permits shall be issued for the construction of swimming pool and or spa-until the Governor declares an end to the State of Emergency declared on January 17, 2014, with respect to severe drought conditions throughout the state. **(P)**
19. **Potable Water Use Restriction.** Once constructed, the swimming pool and spa shall not use potable water supplied by any supplier serving the City of Milpitas or its residents. **(E)**
18. **Approved Site Plan.** The project shall conform to the Pool Site Plan prepared by Lifetime Pools, dated 1/23/2015 and received by the City on December 8, 2015. As shown on the plans, no accessory structures, such as a cabana or shower/changing room is approved with the swimming pool and spa. **(P)**

19. **Pool and Spa Cover.** Upon construction and operation of the swimming pool, the swimming pool and spa shall remain covered when not in use in order to reduce evaporation. (E)

(P) = Planning

(B) = Building

(E) = Engineering

(F) = Fire Prevention

(CA) = City Attorney