

RESOLUTION NO. 16-038

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS
APPROVING CONDITIONAL USE PERMIT NO. UP16-0017 TO ALLOW
OPERATION OF A BANQUET HALL IN C2 ZONE, FULL ALCOHOL SALES FOR
THE RESTAURANT AND BANQUET HALL, AND A REQUEST FOR SHARED
PARKING BASED ON THE PARKING DEMAND STUDY AT 212 RANCH DRIVE,
MILPITAS, CA 95035**

WHEREAS, on July 08, 2016, Upinderjit Ahluwalia submitted an application to the City of Milpitas to allow a banquet hall and on-site consumption of all types of alcohol at a restaurant and the banquet hall located at 212 Ranch Drive (APN 022-54-012). The application also includes shared parking of the spaces existing on site. The property is located in the General Commercial (C2) zoning district; 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 is categorically exempt from further environmental review pursuant to Section 15301 (Existing Facilities) of the Guidelines for the Implementation of CEQA; and

WHEREAS, on October 12, 2016, 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: Recitals. The recitals set forth above are true and correct and incorporated herein by reference.

SECTION 2: Record. 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.

SECTION 3: CEQA. The project is Categorical Exempt from further environmental review under the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Existing Facilities) of the Guidelines for the Implementation of CEQA as the project consists of the minor alteration of existing private structures and features involving negligible or no expansion of an existing use.

SECTION 4: *Conditional Use Permit (Section XI-10-57.04(F)(1)) - The Planning Commission makes the following findings based on the evidence in the public record in support of Conditional Use Permit No. UP16-0017:*

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.*

- Banquet hall

The proposed banquet hall would occupy an existing tenant space in an area that is predominantly commercial land uses. Anticipated physical changes are limited to minor exterior and interior modifications for the new use. A banquet hall would not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare, given that it is generally an expansion of the permitted restaurant use and is not anticipated to have any greater impacts than the associated restaurant use.

- Alcohol sales

Finally, the sale of all types of alcohol on-site for consumption does not affect public safety and convenience since the surrounding uses are all commercial and the nearest school or residence is across the freeway. As conditioned, the project will comply with applicable public health and safety requirements.

- Shared parking

As demonstrated by the parking study conducted by Hexagon Transportation Consultants on August 19, 20 and 24, 2016, the amount of on-site parking provided is adequate for the existing mix of commercial uses based on the results of the parking demand study. Shared parking thus would not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.

b. *The proposed use must be consistent with the Milpitas General Plan*

The table below outlines the project’s consistency with applicable General Plan Guiding Principles and Implementing Policies:

Table 1: General Plan Policies

Use	General Plan Policies	
	<i>2.a-I-3: Encourage economic pursuits which will strengthen and promote development through stability and balance.</i>	<i>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.</i>
Banquet hall	Authorizing a banquet hall use to compliment the permitted restaurant use will strengthen and promote development by replacing the departing restaurant use at this location with another sit down restaurant and banquet facility, thus staving off an unwanted vacancy and balancing the uses offered at the center.	This proposed use is anticipated to provide 40 new jobs to the local economy and due to the additional patrons coming to a new sit down restaurant and banquet center it is anticipated that the shopping center may experience additional patrons.

Use	General Plan Policies	
		<i>2.a-I-3: Encourage economic pursuits which will strengthen and promote development through stability and balance.</i>
Alcohol sales	Full alcohol sales are requested in order to support applicant’s proposed restaurant and banquet hall use. Insomuch as this is a necessary component to a successful restaurant and banquet hall, it is likewise consistent with this General Plan policy.	Full alcohol sales are requested in order to support applicant’s proposed restaurant and banquet hall use. Insomuch as this is a necessary component to a successful restaurant and banquet hall, it is likewise consistent with this General Plan policy.
Shared parking	Use of this site as a restaurant and banquet hall, which would avoid a vacancy in the center and balance the other uses within the center, will not be possible without shared parking. Permitting shared parking thus advances this policy.	Use of this site as a restaurant and banquet hall, which would provide new jobs to the local economy and draw more patrons to this center, will not be possible without shared parking. Permitting shared parking thus advances this policy.

c. *The proposed use must be consistent with the Milpitas Zoning Ordinance.*

- Banquet hall

The proposed banquet hall is a conditionally permitted use in the General Commercial (C2) district. The project does not propose any addition of square footage to the building; the applicant will only be making minor exterior and interior modifications to an existing tenant space. The setback requirements, floor area ratio (FAR), and landscaping requirements remain the same. Table 2 shown below demonstrates the existing building’s conformance with the development standards of the zoning ordinance.

Table 2: Development Standards

	Standards	Existing	Complies
<u>Setbacks</u> (Minimum)			
Front	10 feet	215 feet	Yes
Side Yard Setback (Interior)	10 feet	55 feet on north side and 70 feet on south side	Yes
Rear	10 feet	90 feet	Yes

<u>Floor Area Ratio</u> (Maximum)	0.50	No increase in bldg. sq. ft.	Yes
<u>Landscaping</u>	None	Incorporated with parking spaces	Yes

- Alcohol sales
Full alcohol sales and service is authorized in the C2 zoning district with a conditional use permit, per Milpitas Municipal Code Table XI-10-5.02-1.
- Parking
Table 3 demonstrates the project's compliance with the Zoning Code parking standard per Milpitas Municipal Code Section XI-10-53 (*Off-Street Parking*).

Table 3: Parking Summary

Uses	Square footage	Parking ratio	Required
Romano's Macaroni Grill	7,102	1 per 39 sq. ft. of dining space (3,897 sq. ft.)	100
Ashley Sleep	42,000	1/200 sq. ft.	210
Michaels	21,000	1/200 sq. ft.	105
Vacant	3,000	1/200 sq. ft.	15
Vacant	20,250	1/200 sq. ft.	101
Gentle Dental	4,157	1/225 sq. ft.	18
Verizon Wireless	1,100	1/200 sq. ft.	6
GNC	900	1/200 sq. ft.	5
Subway	1,155	1 per 39 sq. ft. of dining space (758 sq. ft.)	19
Banana Leaf	1,771	1 per 39 sq. ft. of dining space (989 sq. ft.)	25
Vege House Restaurant	2,008	1 per 39 sq. ft. of dining space (1,106 sq. ft.)	28
Taqueria Los Restaurant	1,200	1 per 39 sq. ft. of dining space (898 sq. ft.)	23
Summer Hills Homes	3,235	1/200 sq. ft.	16
Summer Hills Homes	1,200	1/200 sq. ft.	6
Aroma Indian Fusion Dining and Banquet Hall*	10,260	1 per 39 sq. ft. of dining space (6,359 sq. ft.)	163
Pink & Nail Spa	1,200	1/200 sq. ft.	6
McCarthy Medical	2,457	1/225 sq. ft.	11

Joshi Jayashree	2,350	1/225 sq. ft.	10
Sleep Train	4,450	1/200 sq. ft.	22
On the Border	3,700	1 per 39 sq. ft. of dining space (1,858 sq. ft.)	48
Total Parking Required			937
Total Parking Provided			896
Number of Parking Spaces to be Accommodated			41
* Banquet facilities require the same parking ratio as restaurants, per Table 53.09-1 in Milpitas Municipal Code § XI-10-53.			

Parking Demand Study

The table above indicates that the existing number of parking spaces provided on-site does not meet the minimum standards based on the uses. Per Section XI-10-53.11(C) of the Milpitas Municipal Code, parking regulations allow for the shared use of available parking spaces in a mix of commercial uses located on a single site with a Conditional Use Permit approval. According to the Municipal Code, “[t]he minimum number of parking spaces ... where shared parking strategies are proposed shall be determined by a study prepared following the procedures of the Urban Land Institute Shared Parking Report, ITE Shared Parking Guidelines, or other approved procedures.” (XI-10-53.11(D).) To satisfy this requirement, a parking demand survey was conducted by Hexagon Transportation Consultants on August 19, 20 and 24, 2016 for the existing uses on the project site. The number of occupied parking spaces were counted every 15 minutes from 11:30 am to 1:15 pm and 6:30 pm to 9:15 pm on a Wednesday, Friday, and Saturday; the survey results showed that the maximum occupancy was 331, 483, and 304 respectively. After factoring in 116 parking spaces for the vacant tenant space on site, there are 286, 134, and 313 spaces available for use on Wednesday, Friday and Saturday respectively. Based on the results of the parking survey staff determined that there are more than adequate parking spaces for the proposed project and the existing uses.

Although the Demand Study indicates there will be an adequate supply of parking spaces throughout the shopping center parking lot, because parking spaces are not dedicated specifically to the restaurant due to the common parking arrangement, staff believes valet service is necessary to manage the parking more efficiently during banquet events. Specifically, staff believes the valet service will help minimize restaurant patrons from looping throughout the parking lot seeking a space closer to the restaurant. A valet parking requirement is thus included in the conditions of approval set forth in Exhibit 1 hereto.

SECTION 5: The Planning Commission of the City of Milpitas hereby adopts Resolution No. 16-038 approving Conditional Use Permit No. UP16-0017 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 October 12, 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 October 12, 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				
Gurdev Sandhu				

**CONDITIONS OF APPROVAL FOR
AROMA INDIAN FUSION DINING AND BANQUET HALL
CONDITIONAL USE PERMIT NO. UP16-0017**

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. UP16-0017 (“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, including, but not limited to, any requirements of the State of California Department of Alcoholic Beverage Control (ABC). **(CA/P)**
11. Previous Approvals. Permittee shall abide by 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. Permittee shall enter into an indemnification agreement with the City that incorporates the provisions of this condition prior to commencing the use authorized in this Permit.

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 October 12, 2016, 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. 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

17. Mezzanine level. The Permittee shall use the mezzanine level for storage only, and shall not use the space as extended seating for dining area of either the restaurant or the banquet hall.
18. Shared parking. The Permittee shall comply with the approved shared parking plan and parking analysis submitted that concludes the existing 896 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. **(P)**
19. Valet Parking. The Permittee is required to provide valet parking for the Banquet Hall during events in order to avoid any further traffic congestion during peak operation hours of the project site. **(P)**
20. Responsible Alcohol Training. The Permittee shall be responsible for ensuring that all employees receive “Responsible Alcoholic Beverage Service” training as offered through programs established by ABC, as well as any other training required by the State of California in conjunction with alcohol sales and service. Evidence of such training and the training records of all employees shall be maintained on-site during business hours, and made available for inspection upon request. **(P)**

21. Liter and Graffiti Prevention. Permittee shall ensure that litter is removed and graffiti abated on a daily basis. **(P)**

(P) = Planning

(B) = Building

(E) = Engineering

(F) = Fire Prevention

(CA) = City Attorney