

RESOLUTION No. 12-03

**CITY OF MILLBRAE, COUNTY OF SAN MATEO
STATE OF CALIFORNIA**

* * *

**RESOLUTION UPHOLDING THE APPEAL OF A
PLANNING COMMISSION DENIAL OF A
MODIFICATION TO AN APPROVED CONDITIONAL USE PERMIT FOR A
2,230 SQUARE FOOT RESTAURANT WITHIN A 4,350 SQUARE FOOT
COMMERCIAL BUILDING IN THE DOWNTOWN AT 435 BROADWAY**

WHEREAS, a Conditional Use Permit was previously approved by the Millbrae Planning Commission on November 17, 2008 for a new restaurant, “Don Chavas Mexican Grille” at 435 Broadway, but was not utilized within the one-year duration of the approval; and

WHEREAS, a one-year Time Extension of the November 17, 2008 Conditional Use Permit was granted by the Millbrae Planning Commission on November 2, 2009 at the request of the property owner and a second one-year Time Extension was granted by the Millbrae Planning Commission on January 3, 2011; and

WHEREAS, on March 22, 2011, the City of Millbrae received and accepted a formal application from Ms. Belle Tao, the subject property owner, for the conversion of 2,230 square feet of vacant commercial space into a new restaurant, “Shabu Shabu” at 435 Broadway; and

WHEREAS, under the Millbrae Zoning Ordinance, such applications require the approval of a Conditional Use Permit with due consideration of the provisions contained in Millbrae Municipal Code Sections 10.05.2520.D. regarding protection of the health, safety, comfort, and general welfare of surrounding residents, workers, and property; and

WHEREAS, a Conditional Use Permit was previously approved, never utilized, and still active at the subject location, a Modification of such a Conditional Use Permit is required; and

WHEREAS, the proposed project was determined to be exempt from the California Environmental Quality Act pursuant to Section 15301 of the Guidelines in that the request is for a new restaurant use to occupy a portion of an existing commercial building; and

WHEREAS, on November 7, 2011, at a duly noticed public hearing following three prior study sessions (July 5, 2011, August 1, 2011, and September 16, 2011) on the matter, the Millbrae Planning Commission, by a vote of 3-1 (one Commissioner absent), denied the application for a Modification to the Conditional Use Permit based upon the property owner's verbal request for denial during the November 7, 2011 public hearing rather than acceptance of a continuance for further study of the proposed project; and

WHEREAS, under Millbrae Municipal Code Section 10.05.2700 et seq., the City of Millbrae provides a process for the appeal of actions of the Millbrae Planning Commission; and

WHEREAS, on November 14, 2011, a written request for an appeal of the aforementioned denial was received from Belle Tao within the ten-day appeal period established in the Millbrae Municipal Code; and

WHEREAS, on January 10, 2012, the City Council conducted a duly noticed public hearing and considered all written correspondence, verbal testimony, City staff reports to the Planning Commission of November 11, 2011 and to the City Council of January 10, 2012, and background information supplied regarding the appeal of the Planning Commission's decision to deny the Modification of the Conditional Use Permit for the new restaurant.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF MILLBRAE:

- A. Adopts and incorporates herein, as true and accurate statements, all of the recitals set forth in this Resolution.
- B. **Overt**urns the decision of the Planning Commission, upholds the appeal, approving the Modification of the Conditional Use Permit application for a new restaurant at the subject location, based upon the findings and conditions below:

Findings:

- **The establishment, maintenance, or operation of the use applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use;**

The proposed restaurant will be limited to 52 seats and will have a second emergency exit. Adequate parking is available within walking distance in front of and behind the site during most of the proposed business hours. All kitchen and rooftop equipment will be newly installed. Deliveries and trash pick-up will occur along Broadway before 9 a.m. prior to the opening of most other businesses in the vicinity. All signage will comply with the Millbrae Sign Ordinance. Therefore, the use will not interfere with adjacent uses, cause traffic congestion or parking problems in the vicinity, or otherwise be detrimental to the health, safety, morals, comfort, and general welfare of the persons residing or working in the neighborhood.

- **The establishment, maintenance, or operation of the use applied for will not, under the circumstances of the particular case, be detrimental to property and improvements in the neighborhood of such proposed use.**

The proposed restaurant improvements will comply with all applicable building and fire code requirements. Therefore, the use will not be detrimental to property or improvements in the neighborhood.

Conditions:

General Requirements:

1. This approval and all rights hereunder shall be effective for a period of one (1) year from the date of approval. The Planning Commission may extend this approval period if a written request is made and submitted by the property owner prior to the expiration of the approval period and a notice of a public hearing has been made pursuant to Section 10.05.1150 (D) of the Millbrae Municipal Code.
2. Violation of any of the conditions of this permit shall be cause for the issuance of an infraction or citation, prosecution, and/or revocation and termination of all rights under the permit, by the City of Millbrae.
3. In the event of transfer of ownership of the property involved in this application, the new owner shall be fully informed of the use and development of said property as set forth by this permit together with all conditions, which are a part thereof. These specific requirements must be recorded with all title conveyance documents at time of closing escrow.
4. Site development, including landscaping, shall conform to the approved plans, date stamped January 10, 2012, on file in the City of Millbrae Community Development Department. No significant changes shall be made to the approved plans without prior review and approval by the Planning Commission.
5. All landscaped areas must be maintained in a neat, healthy, and growing condition, including public parkways and street trees.
6. The property shall be developed and maintained in a neat, quiet, and orderly condition

and in a manner so as not to be detrimental to adjacent properties and occupants. This shall encompass the maintenance of the exterior facades of the building and all landscaping surrounding the building.

7. City staff shall enforce all zoning, building, and fire code requirements applicable to this project and shall interpret and apply all landscaping, signage, infrastructure, and other land development related policies and guidelines in keeping with the spirit and intent of this Planning Commission approval.
8. All structures shall conform to California Building Code requirements and all required permits from the City of Millbrae Building Division must be secured prior to initiating development under the terms of this permit.
9. Any off-site improvements found to be damaged shall be repaired and/or replaced as required by the City of Millbrae Director of Public Works.
10. All required utility easements shall be provided as indicated by the department or agency having jurisdiction.
11. The project shall comply with all applicable "City of Millbrae Public Works General Conditions of Approval" (copy provided to applicant). This condition includes project compliance with the Public Works Construction and Demolition Reuse and Recycling Requirements, including submittal of planning forms to the City's Recycling Coordinator prior to issuance of a Building Permit.
12. As a condition of this approval, and to the fullest extent permitted by law, applicant shall indemnify, defend 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 the City's related California Environmental Quality Act determinations. 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 any amount owed to the City pursuant to the indemnification requirements prescribed in this condition. If the applicant is required to defend the City as set forth above, the City shall retain the right to select the counsel who shall defend the City.

Special Conditions:

- A. All exterior colors and materials shall match those submitted by the applicant, approved by the Planning Commission, and on file with the Community Development Department.

- B. Prior to issuance of any building permits, all new construction shall comply with all applicable building and fire safety codes. This condition shall also apply to the alteration of existing construction in the event that such existing construction is not already fully code compliant.
- C. In the event the rear easement becomes accessible for garbage removal, the restaurant owner shall immediately cease garbage pick-up from Broadway and only use the rear easement to transport garbage bins to the pick-up point.
- D. The property owner is responsible for maintaining the unfenced portion of the easement behind her property in a manner that provides a passageway free from obstructions. In the event that the pavement becomes broken or uneven, the property owner is responsible for repairing it and restoring it to the City standard.
- E. To the extent possible, construction debris may be temporarily stored at 439 Broadway until its pick up, but the windows must be covered in an appropriate manner and not covered with newspaper.
- F. Separate liquid waste from solid waste prior to disposal. Liquid waste shall be disposed down the drain and only solid waste shall be disposed in the trash. Restaurant grease cannot be disposed down the drain and must be disposed of according to the law.
- G. Pressure wash the sidewalk once a year, preferably in the spring (City pressure washes prior to the Art and Wine Festival on Labor Day weekend), and additional washing as needed.
- H. A heavy-duty, commercial-grade garbage disposal unit with a power rating of at least 2 horsepower shall be installed in the kitchen and utilized on a daily basis as a way of reducing the amount of food waste placed in the trash. This equipment shall be included in the construction documents submitted for building permit approval.

REGULARLY PASSED AND ADOPTED this 10th day of January, 2012,



Mayor

ATTEST:



CITY CLERK

I do hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of Millbrae this 10th day of January 2012, by the following vote:

AYES:	COUNCILMEMBERS:	Colapietro, Papan, Holober, and Lee
NOES:	COUNCILMEMBERS:	None
ABSENT:	COUNCILMEMBERS:	None
ABSTAIN:	COUNCILMEMBERS:	None
EXCUSED:	COUNCILMEMBERS:	Gottschalk


CITY CLERK