CITY OF MERCED
Planning & Permitting Division

STAFF REPORT:	**#13-03-Addendum**	**AGENDA ITEM:**	**4.4**
FROM:	Kim Espinosa, Planning Manager	**PLANNING COMMISSION MEETING DATE: Jan. 23, 2013** (Continued from Jan. 9, 2013)	
PREPARED BY:	Julie Nelson, Associate Planner		

SUBJECT: **Conditional Use Permit #1177**, initiated by David Wu for Changsing Enterprise, Inc., applicant for BDC Merced, LP, property owner. This application involves a request to allow a restaurant (Sushi Cuisine) to sell beer and wine for on-site consumption within an existing building, generally located within the Raley's Shopping Center at the southeast corner of G Street and Yosemite Avenue (3544 G Street), within Planned Development (P-D) #26 with a Neighborhood Commercial (CN) designation. *PUBLIC HEARING*

ACTION: Approve/Disapprove/Modify

1) Environmental Review #12-33 (Categorical Exemption)
2) Conditional Use Permit #1177

SUMMARY

The project site is located within the Raley's Shopping Center at the southeast corner of Yosemite Avenue and G Street (Attachment A). The applicant is requesting approval to serve beer and wine in a restaurant (Sushi Cuisine) located at 3544 G Street. This tenant space is located next door to Raley's and was previously Mel's Café (Attachment B).

The restaurant is approximately 1,200 square feet and has 58 seats. The business is open for lunch from 11:00 a.m. to 2:30 p.m. seven days a week and for dinner from 5:00 p.m. to 9:00 p.m. on Sunday through Thursday, and 5:00 p.m. to 9:30 p.m. on Friday and Saturday.

RECOMMENDATION

Planning staff recommends that the Planning Commission approve Environmental Review #12-33 (Categorical Exemption) and Conditional Use Permit #1177 (including the adoption of the Resolution at Attachment F) subject to the following conditions:

*1) The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan) -- Attachment B, except as modified by the conditions.

*2) All conditions contained in Resolution #1249-Amended ("Standard Conditional Use Permit Conditions"—except for Condition #16 which has been superseded by Code) shall

apply.

*3) The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.

*4) All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.

*5) The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend (with counsel selected by the City) such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

*6) The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.

7) The City reserves the right to periodically review the area for potential problems. Should excessive calls for service or violation of these conditions of approval occur, the City may consider revocation of the Conditional Use Permit (CUP) after a public hearing.

8) This approval is subject to the business owner being in good standing with all laws of the State of California, including the Alcohol Beverage Control (ABC), the City of Merced, and other regulatory agencies.

9) The business shall operate as a "bona-fide" restaurant at all times. Per the Municipal Code, a bona-fide restaurant is required to serve a full-menu during all hours of operation.

(*) Denotes non-discretionary conditions.

PROJECT DESCRIPTION

The applicant is requesting approval to sell beer and wine within a restaurant located at 3544 G

Street within the Raley's Shopping Center (Attachment A). The applicant opened a Sushi restaurant (Sushi Cuisine) at this location in November 2012. There have been other restaurants at this location, but none of them served alcohol. Therefore, the applicant is seeking approval to serve beer and wine within his Sushi restaurant.

The restaurant is approximately 1200 square feet and is located adjacent to Raley's (Attachment B). The restaurant will be open for lunch from 11:00 a.m. to 2:30 p.m. seven days a week and dinner from 5:00 p.m. to 9:00 p.m. on Thursday through Saturday, and 5:00 p.m. to 9:30 p.m. on Friday and Saturday. They provide 58 seats to serve their customers.

Surrounding Uses
(Attachment A)

Surrounding Land	Existing Use of Land	City Zoning Designation	City General Plan Land Use Designation
North	Commercial Uses/Gas Station	P-D #26	Neighborhood Commercial (CN)
South	Commercial Office/ Parking Lot/Residential	P-D #26 & R-1-6	Commercial Office (CO) & Low Density Residential (LD)
East	Raley's	P-D #26	Neighborhood Commercial (CN)
West	Commercial Uses	P-D #26	Neighborhood Commercial (CN)

BACKGROUND

The Raley's Shopping Center was constructed in 1990. In 1991, the Postal Center opened at this location and remained until 1995. Subsequently, the tenant space was occupied by L'Epicurien, a cooking and wine store, until 2002. After the store closed, Braun's Ice Cream opened and remained in business until 2006. The most recent tenant was Mel's Café and Gourmet Ice Cream.

Building permits were issued in 2002 for Braun's Ice Cream to open and additional permits were issued in 2010 to install kitchen equipment (i.e., a grill, a fryer, hood system, fire alarm, system, etc.) prior to Mel's Café and Gourmet Ice Cream opened.

FINDINGS/CONSIDERATIONS:

General Plan Compliance and Policies Related to This Application

A) No change to the Land Use Diagram of the *Merced Vision 2030 General Plan* or Official Zoning Map is proposed. A restaurant with alcohol sales is allowable with Conditional Use Permit approval within the Neighborhood Commercial (C-N) land use designation and the Planned Development (PD) #26 zoning district.

Proximity to Residential Uses and Church

B) The zoning ordinance does not establish a required distance for a restaurant with alcohol sales from Residential and Church uses. State law allows the Alcohol/Beverage Commission (ABC) to deny a license located within 600 feet of schools, public playgrounds, and non-profit youth facilities. Generally, ABC will deny a license in the above situations when there is evidence that normal operation of the licensed premises will be contrary to public welfare and morals. Mere proximity by itself is not sufficient to deny a license. However, ABC will not license a new retail location within 100 feet of a residence unless the applicant can establish that the operation of the proposed premises will not interfere with the quiet enjoyment of the property by residents. (Business and Professions Code Section 23789 and ABC Rule 61.4.)

There are no residential uses within 100 feet of the subject site. However, a portion of the Gateway Community Church located on Donna Drive is within 600 feet of the site (Attachment C). The church is 528 feet away from the restaurant and the two uses are separated by the Raley's building, the impact from this use on the church would be minimal, if any. In addition, the nature of the business is for a sit down restaurant, not a bar or night club, which reduces the chances of negative impacts on the church. Conditions are included to help prevent problems. In addition, the impact from alcohol sales from the restaurant is expected to be minimal as it is the applicant's intent is to offer beer and wine with meals, not to sell beer and wine without the purchase of a meal.

Public Hearing Notices were sent to all property owners within 300 feet of the site (Attachment D). As of the date this staff report was written, no opposition from the surrounding property owners was received. An update of any opposition will be provided at the Planning Commission meeting.

Environmental Clearance

C) The Planning staff has conducted an environmental review (Notice of Exemption # 12-33) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Categorical Exemption is being recommended (Attachment E).

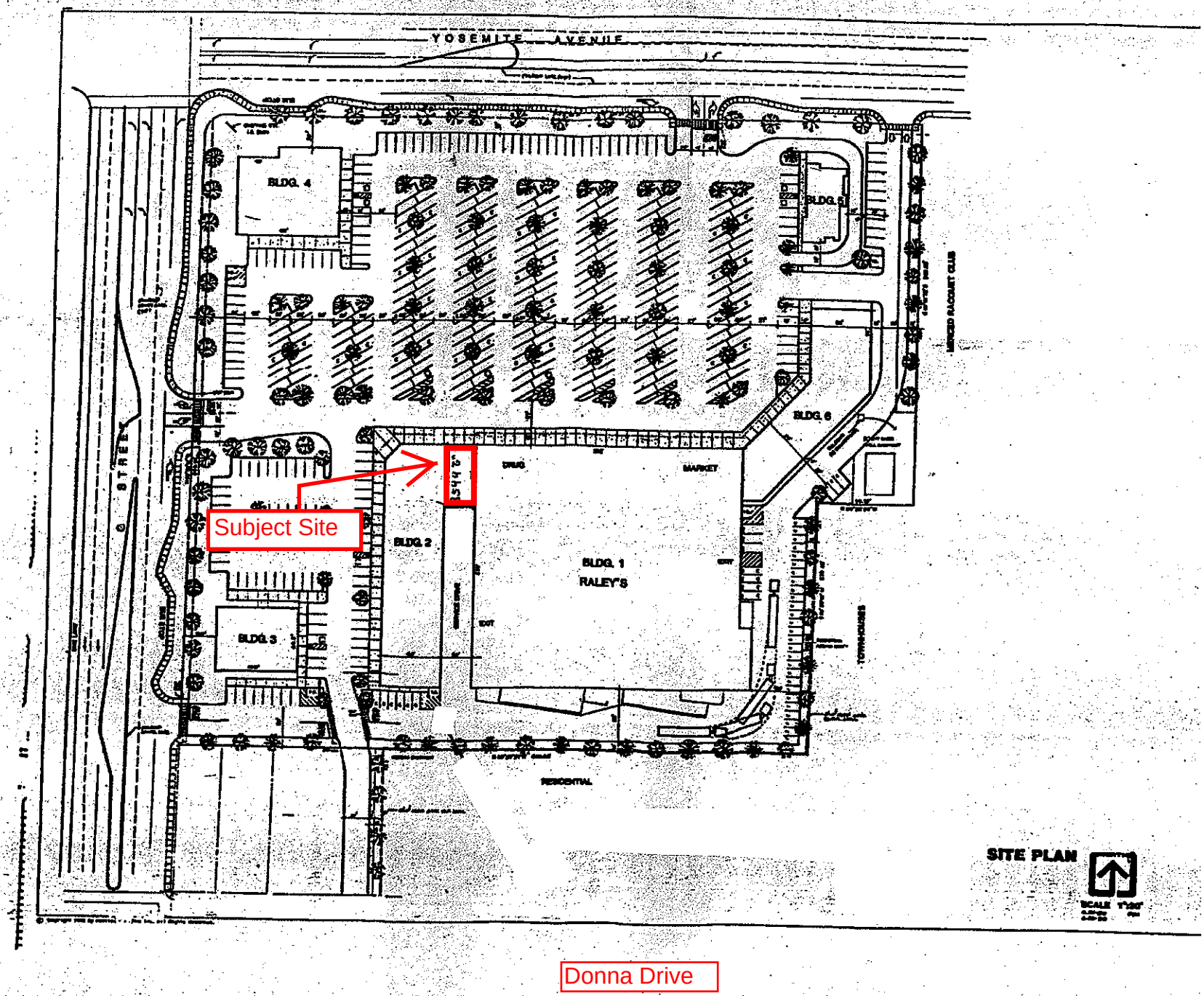
Attachments:

A) Location Map
B) Site Plan
C) Distance to Church
D) Public Notice Area
E) Categorical Exemption
F) Draft Planning Commission Resolution

Ref: *N:shared/planning/staff rep/2013/SR#13-03 (3544 G St)*

Conditional Use Permit #1177
3544 G St.
Sushi Cuisine
SAN
YOSEMITE
Chevron
Millennium Sports Club
Subject Site
Residential
Raley's
G
Gateway Church
Salvadori Realty
DONNA
Residential
ARCH ROCK
CLOUDS REST
MELODY
ATTACHMENT A

ATTACHMENT B



Donna Drive

ATTACHMENT C

Disclaimer: This document was prepared for general inquiries only. The City of Merced makes no warranty, representation, or guarantee regarding the accuracy of this map. The City of Merced is not responsible for errors or omissions that might occur. Official information regarding specific parcels should be obtained from official recorded or adopted City documents.

Conditonal Use Permit #1177
3544 G Street

ATTACHMENT D

NOTICE OF EXEMPTION

To: ____ Office of Planning and Research
P.O. Box 3044
Sacramento, CA 95812-3044

_X_ County Clerk
County of Merced
2222 M Street
Merced, CA 95340

From: (Public Agency)
City of Merced
678 West 18th St.
Merced, CA 95340

Project Title: Conditional Use Permit #1177 (Environmental Review #12-33)

Project Applicant: David Wu for Changsing Enterprise, Inc. applicant for BDC Merced, LP

Project Location (Specific): 3544 G Street **APN: 006-490-001**

Project Location - City: Merced **Project Location - County:** Merced

Description of Nature, Purpose, and Beneficiaries of Project:

A request to allow the sale of beer and wine for on-site consumption to be sold within a restaurant located within an existing building.

Name of Public Agency Approving Project: City of Merced

Name of Person or Agency Carrying Out Project: David Wu for Changsing Enterprise, Inc.

Exempt Status: (check one)

___ Ministerial (Sec. 21080(b)(1); 15268);
___ Declared Emergency (Sec. 21080(b)(3); 15269(a));
___ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
_X_ Categorical Exemption. State Type and Section Number: Section 15301 (a)
___ Statutory Exemptions. State Code Number: _____.
___ General Rule (Sec. 15061 (b)(3))

Reasons why Project is Exempt: The project consists of interior and exterior alterations only, such as partitions, electrical, and plumbing which are considered to be exempt under the CEQA Guidelines.

Lead Agency: City of Merced
Contact Person: Julie Nelson, Planner **Area Code/Telephone:**(209) 385-6858

Signature: _____ **Date:** 11-19-12 **Title:** **Associate Planner**

_X_ Signed by Lead Agency Date Received for Filing at OPR:_____
(If applicable)

Authority Cited: Sections 21083 and 21110. Public Resources Code
Reference: Sections 21108, 21152, and 21152.1. Public Resources Code

ATTACHMENT E

CITY OF MERCED
Planning Commission

Resolution #_____

WHEREAS, the Merced City Planning Commission at its regular meeting of January 23, 2013, held a public hearing and considered **Conditional Use Permit #1177**, initiated by David Wu for Changsing Enterprise, Inc., applicant for BDC Merced, LP, property owner. This application involves a request to allow a restaurant (Sushi Cuisine) to sell beer and wine for on-site consumption within an existing building, generally located within the Raley's Shopping Center at the southeast corner of G Street and Yosemite Avenue (3544 G Street), within Planned Development (P-D) #26 with a Neighborhood Commercial (CN) designation; also known as Assessor's Parcel No. 006-490-001; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through C of Staff Report #13-03; and,

NOW THEREFORE, after reviewing the City's Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby adopt a Categorical Exemption regarding Environmental Review #12-33, and approve Conditional Use Permit #1177, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

Upon motion by Commissioner _____, seconded by Commissioner _____, and carried by the following vote:

AYES: Commissioner(s)

NOES: Commissioner(s)

ABSENT: Commissioner(s)
ABSTAIN: Commissioner(s)

ATTACHMENT F

Adopted this 23rd day of January 2013

_____
Chairperson, Planning Commission of
the City of Merced, California

ATTEST:

_____
Secretary

Attachment:
Exhibit A – Conditions of Approval

n:shared:planning:PC Resolutions:CUP#1177 Sushi Cuisine

Conditions of Approval
Planning Commission Resolution #_____
Conditional Use Permit #1177

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan) -- Attachment B of Staff Report #13-03, except as modified by the conditions.
2. All conditions contained in Resolution #1249-Amended ("Standard Conditional Use Permit Conditions"—except for Condition #16 which has been superseded by Code) shall apply.
3. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
4. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
5. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend (with counsel selected by the City) such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

6. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.

7. The City reserves the right to periodically review the area for potential problems. Should excessive calls for service or violation of these conditions of approval occur, the City may consider revocation of the Conditional Use Permit (CUP) after a public hearing.

8. This approval is subject to the business owner being in good standing with all laws of the State of California, including the Alcohol Beverage Control (ABC), the City of Merced, and other regulatory agencies.

9. The business shall operate as a "bona-fide" restaurant at all times. Per the Municipal Code, a bona-fide restaurant is required to serve a full-menu during all hours of operation.

n:shared:planning:PC Resolutions:CUP#1177 Exhibit A