



**ZONING ADMINISTRATOR PERMIT  
STAFF REPORT  
AUGUST 17, 2015**

**Proposal:** **BENNIGAN'S RESTAURANT ALCOHOL SALES - PLN2015-00281 -**  
To consider a Zoning Administrator Permit to allow a Eating Place serving All Alcoholic Beverages in a building located within Planning Area 5 of Pacific Commons at 43956 Pacific Commons Boulevard, in the Pacific Commons Shopping Center, and to consider a categorical exemption from the California Environmental Quality Act (CEQA) per guideline 15301, Existing Facilities.

**Recommendation:** Approve, based on findings and subject to conditions.

**Location:** 43956 Pacific Commons Boulevard, in the Bayside Industrial Community Plan Area.  
APN 525-1670-008-00  
(See aerial photo next page)

**Area:** 5,600 square-foot tenant space within an 15,703 square-foot building in the Pacific Commons Shopping Center

**People:** JJM Ben Foods, Inc., Narender Taneja, Applicant  
Catellus PC Area 5, LLC, Property Owner  
David Wage, Staff Planner (510) 494-4447; [dwage@fremont.gov](mailto:dwage@fremont.gov)

**General Plan:** Regional Commercial

**Zoning:** Planned District P-2010-221

**EXECUTIVE SUMMARY:**

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The applicant is requesting approval of a Zoning Administrator Permit to allow the sale of beer, wine and distilled spirits at an eating place located in a 5,600 square-foot tenant space within a 15,703-square-foot building. Hours of operation would be Sunday through Thursday from 10:00 AM to 12:00 AM (midnight) seven days per week and Friday and Saturday from 10:00 AM to 1:00 AM; however, the sale of alcohol would be required to cease at midnight. Beer, wine and distilled spirits would be sold for on-site consumption only by patrons within the eating place. Staff recommends approval of the Zoning Administrator Permit as depicted in Exhibit "A," based on findings and subject to the conditions of approval in Exhibit "B."



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Figure 1: Aerial Photo (2009) of Project Site and Surrounding Area.

**SURROUNDING LAND USES:** North: Regional Commercial  
 South: Tech Industrial  
 East: Tech Industrial  
 West: Regional Commercial

## **BACKGROUND AND PREVIOUS ACTIONS:**

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Several land use entitlements were previously approved to allow development of the major retail district that exists at Pacific Commons. The major entitlements included Planned District P-2000-214 and the 2000 Amended and Restated Development Agreement. The subject building is located adjacent to the existing Target store and was approved as part of Planned District Amendment, PLN2010-00221, which established a revised development plan for Planning Area 5 of the Pacific Commons Shopping Center, also known as The Block. Planning Area 5 allows eating places that sell beer and wine as a permitted use; however, this does not include distilled spirits. Eating Places with All Alcoholic Beverages are allowed with the approval of a ZAP.

## **PROJECT DESCRIPTION:**

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The applicant requests approval of a ZAP to allow the service of beer, wine and distilled spirits at the proposed Bennigan's eating place within Planning Area 5 of Pacific Commons. The eating place is located in a 5,600 square foot tenant space. Hours of operation are Sunday through Thursday from 10:00 AM to 12:00 AM (midnight) seven days per week and Friday and Saturday from 10:00 AM to 1:00 AM; however, the sale of alcohol would be required to cease at midnight in accordance with the Conditions of Approval for the Planned District. Additional information is provided in the applicant's statement of proposed operations (Informational Item No. 1).

The applicant has applied for a Type 47 ABC liquor license, which authorizes the sale of beer, wine and distilled spirits for consumption on premises. It requires the continued operation of a bona fide eating place. This includes the maintenance of suitable kitchen facilities and making actual and substantial sales of meals for consumption on the premises. Minors would be allowed on the premises.

## **PROJECT ANALYSIS:**

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### ***General Plan Conformance:***

The General Plan land use designation for the project site is Regional Commercial, which applies to large scale commercial uses serving a city-wide or regional market, typically along freeways or major arterials. The Regional Commercial designation allows for smaller commercial uses such as an eating place that is complementary to regional uses. The proposed eating place is complementary to the surrounding regional commercial uses, and is consistent with the Regional Commercial designation and Bayside Industrial Community Plan Area. The project would be consistent with the following General Plan Land Use goals and policies:

**Land Use Policy 2-4.2: Retail Hierarchy** - *Reinforce a hierarchy of retail centers in the City, characterized by:*

- *Regional Centers, which include general merchandise retailers and services in full depth and variety. Its main attractions are its anchors which include traditional, mass merchant department or fashion specialty stores.*

Analysis: The Eating Place with All Alcoholic Beverages would provide a service use that is compatible and would complement the existing traditional regional commercial uses at the shopping center.

**Land Use Policy 2-4.5: Meeting a Range of Needs** - *Maintain a mix of uses and activities in commercial centers that meet a range of neighborhood and citywide needs. Some centers may be characterized by predominantly retail uses, while others may contain a more varied mix of activities including civic, education, local-serving offices, and group assembly uses.*

Analysis: The Eating Place with All Alcoholic Beverages would provide an additional dining option to persons who live and work and shop in the area.

***Zoning Regulations:***

As detailed in the Background section of this report, the site is located within Planning Area 5 of Planned District P-2010-221, which allows Eating Places with All Alcoholic Beverages with the approval of a ZAP.

Planning Area 5 of the Planned District was established as the entertainment district where a majority of the eating places serving alcohol would be located within the shopping center. The conditions of approval for Planning Area 5 included regulations applicable to establishments serving alcohol to encourage their compatibility with other uses and promote the public health safety and welfare of persons and property in the Pacific Commons Shopping Center. City staff recommends the ZAP include the following conditions regarding alcohol service from Planning Area 5:

1. Places of Entertainment as defined under Title 5 Chapter 14 of the Fremont Municipal Code, shall not be permitted.
2. The onsite consumption and sale of alcohol shall be ancillary to a principle eating establishment use. The sale or service of alcohol shall cease at 12:00 a.m. (midnight).
3. The operator of an eating establishment shall not lease or rent the tenant space or a portion of the establishment to an outside promoter and shall not advertise or use a different name for the venue or any portion of it.
4. Employees who are responsible for alcohol sales and/or service must complete necessary Department of Alcoholic Beverage Control (ABC) training within 90 days of their hiring date.
5. Alcoholic beverages may only be served in accordance with State of California Department of Alcoholic Beverage Control licensing requirements. No alcoholic beverages may be served or consumed outside of an eating establishment, except within outdoor dining areas approved by the City's Community Development Department or Zoning Administrator.
6. Unless further restricted by a zoning conditional use permit approval, the number of persons located within the facility may not exceed the maximum occupant load allowed by the California Building Code (CBC). The maximum occupant load shall be issued by the Building Official for each type of venue and shall be clearly posted at all times in accordance with the requirements of the CBC.
7. In addition to posting maximum occupant load signs, the applicant and facility operator shall provide the current occupant load count to City of Fremont Police or Fire Departments upon request. One employee shall be assigned to monitor occupancy load at all times. If at any time the Fire Department or Police Department determines that the building has exceeded the maximum occupant load, immediate action will be taken to correct the violation and the Fire Marshal reserves the right to require the applicant/operator to install an automatic occupancy counting system to the satisfaction of the Building and Fire Departments.
8. The Fremont Police Department must be notified of any promotional events (expected increase of patrons beyond the normal business operation) and has the right to require private security officers for the particular event.

9. The applicant shall comply with all applicable state and local laws and regulations pertaining to smoking.
10. All activities shall take place in the interior of the tenant space except for outdoor dining areas approved by the City's Community Development Department or Zoning Administrator.
11. No loud amplification of music or voice is allowed outside. Interior restaurant-related noise that is audible 50 feet from the business will be considered excessive and a violation of this condition.
12. Special effects or events which diminish the effectiveness of fire protection systems, occupant notification systems, or infringe upon the means of egress are prohibited.
13. Pyrotechnic displays are prohibited at all times.

## **Parking**

In 2010, a parking analysis for Planning Area 5 was completed based on FMC requirements. The analysis indicated a parking shortfall of 152 spaces. A parking study was prepared by a professional traffic/parking consultant, TJKM, utilizing the Urban Land Institute's (ULI), Shared Parking (2nd Edition, 2005) methodology. Based on the diverse nature of the proposed land uses and their different peak parking characteristics during a typical day as analyzed by the parking analysis, the peak parking demand would be at 89 percent capacity of the available parking. The City Council approved a parking reduction based on the ULI analysis that demonstrated sufficient parking would be available.

A condition was added to the Planning Area 5 approval that allowed up to 21,000 square-feet of floor area for all eating places:

*Permitted Maximum Aggregate Eating Establishment Floor Area: The maximum aggregate floor area for all eating establishments, exclusive of the drive-through eating establishment, shall not exceed 21,000 square feet. The maximum aggregate is established based on the availability of parking for and within Planning Area 5. Increases in the maximum aggregate floor area for eating establishments can be considered by the Planning Director if, based on the application of the Urban Land Institute (ULI) Shared Parking methodology, the applicant (or property owner's association) demonstrates that the current tenant mix and balance of floor area and parking occupied could accommodate additional eating establishment uses and there does not exist an over concentration of high parking demand users within Planning Area 5.*

There have been significant changes to the Planning Area 5 since the parking reduction was approved in 2010, including a revised development plan for Planning Area 5, which replaced smaller inline tenant buildings with Dick's Sporting Goods and Buffalo Wild Wings buildings. In addition, the various tenant spaces throughout Planning Area 5 have been filled. The tenant spaces occupied eating places have approached the 21,000 square-foot limit. Based on the changes to the development plan, updated tenant information, and the increasing number of eating places, the City requested an updated ULI parking analysis from the property owner.

An updated shared parking analysis was prepared by TJKM dated July 21, 2015, that reflects the current development plan and proposed tenants in Planning Area 5. The analysis assumes a total of 28,764 square feet of gross leasable area (not including storage areas) for eating places and demonstrates an expected peak parking demand of 1,501 vehicles in Planning Area 5, which can be accommodated by the existing parking supply of 1,684 spaces. As permitted by the condition

above and supported by the updated shared parking analysis, The Planning Manager determined a maximum aggregate of 28,764 square feet of gross leasable area (not including storage areas) for eating places can be allowed. The proposed restaurant is consistent with the assumptions included the updated parking analysis, which demonstrates sufficient parking in available in Planning Area 5.

## **FINDINGS FOR APPROVAL**

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Pursuant to FMC Section 18.275.060, in order to approve a Zoning Administrator Permit, the Zoning Administrator must make the following findings:

### **1. The proposed use is consistent with the general plan.**

Analysis: The proposed eating place serving alcohol is consistent with the with the Regional Commercial designation and Bayside Industrial Community Plan Area, which allows commercial uses that serve a city-wide or regional market. The proposed eating place serving alcohol would be compatible with and complementary of existing commercial uses at the site. In addition, the project would also be consistent with General Plan land use policies related to "Retail Hierarchy" and "Meeting a Range of Needs" as enumerated in the staff report.

### **2. The site is physically suitable for the type, density, and intensity of the proposed use.**

Analysis: The project will be required to meet applicable building, fire and health codes and conditions of approvals for Pacific Commons. Site improvements such as streets, driveways, parking, landscaping, walkways and lighting for the shopping center are completed. There are other similar eating places located in the shopping center.

### **3. The design, location, size, and operating characteristics of the proposed use are compatible with development in the vicinity.**

Analysis: The eating place is located in the Pacific Commons Shopping Center, which is developed with complementary commercial and entertainment uses. The proposal to allow alcohol sales would include conditions of approval that address operating characteristics including but not limited to: serving food in conjunction to alcohol, hours alcohol may be served, special events, training for employees. The proposed conditions would ensure consistency with other uses in shopping center and promote compatibility.

### **4. The proposed use will not be detrimental to the public health, safety, or welfare of persons or property in the vicinity.**

Analysis: The project would include conditions of approval which regulate the operational characteristics of allowing the sale alcohol and are intended to preserve the public health, safety, or welfare of persons and property in the vicinity.

## ***Environmental Review:***

The project would allow the sale of alcohol at a proposed eating place. This project is exempt from the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301, Existing Facilities. The eating place would be locating in a commercial building that was previously approved as part of Planning Area 5 within the Pacific Commons Shopping Center. The subject ZAP would allow the eating place to sell alcohol, including distilled spirits. Consistent with provision (e) of Section 15301, the project site is in an area where all public services are available and that is not environmentally sensitive. The uses proposed within the building are consistent with the Regional

Commercial General Plan land use designation and the Planned District Zoning. No other changes to the building or site improvements are proposed that would result in a significant expansion of use.

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**PUBLIC NOTICE AND COMMENT:**

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Public hearing notification is applicable. A total of 9 notices were mailed to owners and occupants of property within 300 feet of the site. The notices to owners and occupants were mailed on August 6, 2015. A Public Hearing Notice was published by *The Argus* on August 6, 2015.

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**ENCLOSURES:**

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***Exhibits:***

- Exhibit A     [Site Plan and Floor Plan](#)
- Exhibit B     [Findings and Conditions](#)

***Informational Items:***

- Informational 1     [Statement of Operations](#)

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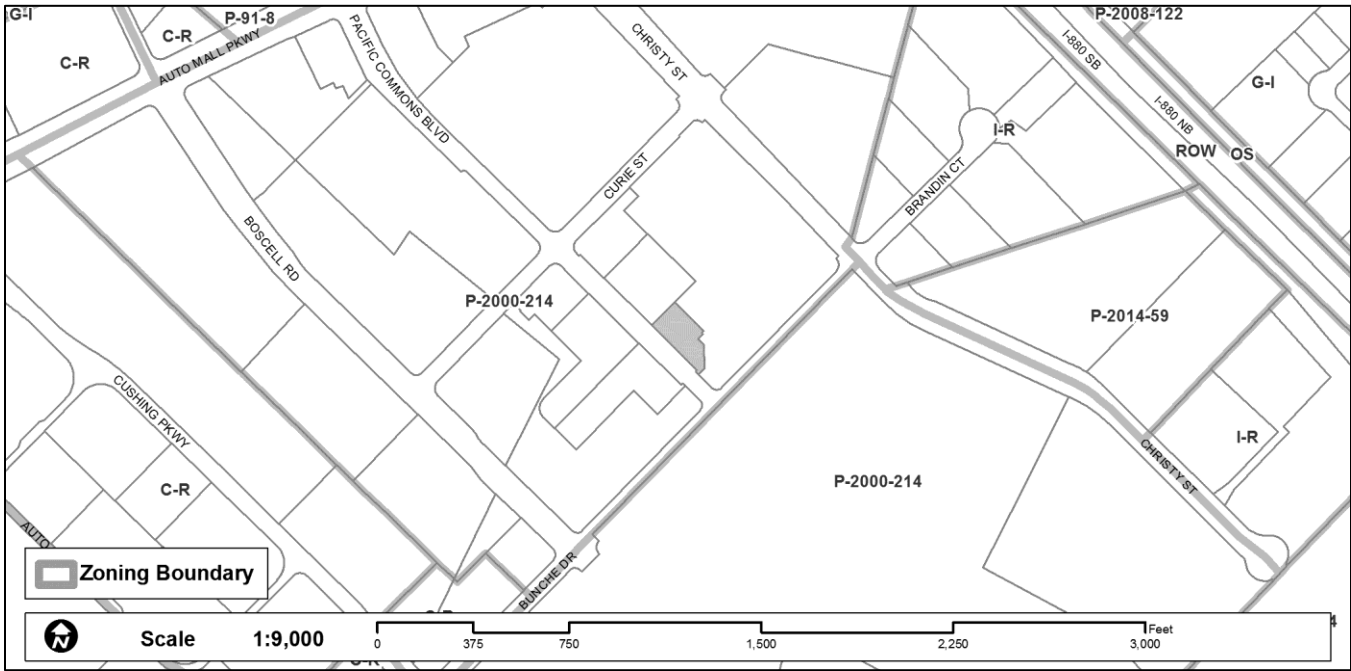
**RECOMMENDATION:**

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1.     Hold public hearing.
2.     Find that the project is categorically exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15301, Existing Facilities, because the project would not significantly expand the existing commercial use.
3.     Find PLN2015-00281, a Zoning Administrator Permit for an Eating Place serving All Alcoholic Beverages, is in conformance with the relevant provisions contained in the City's existing General Plan, as outlined in this Staff Report.
4.     Approve PLN2015-00281, as shown on Exhibit "A," subject to findings and conditions in Exhibit "B."



# **Existing Zoning** Shaded Area represents the Project Site



# **Existing General Plan** Shaded Area represents the Project Site

