



MILPITAS PLANNING COMMISSION STAFF REPORT

March 13, 2024

APPLICATION: **NEW HEAD/SMOKE/TOBACCO SHOP (RETAIL USE) – Conditional Use Permit No. UP23-0013** - A Conditional Use Permit to allow for the retail sales of tobacco products within an existing 870-square foot tenant space of a 9,960-square foot multi-tenant commercial building, located at 1225 Jacklin Road on a 0.9-acre lot within the C1 Neighborhood Commercial zoning district.

RECOMMENDATION: **Staff recommends that the Planning Commission consider the exemption in accordance with CEQA and adopt Resolution No. 24-013, approving Conditional Use Permit No. UP23-0013, subject to the findings and attached Conditions of Approval.**

LOCATION:

Address/APN: 1225 Jacklin Rd. (APN: 029-09-057)
Area of City: Northwest corner of Jacklin Road. and North Park Victoria Drive

PEOPLE:

Project Applicant: Kareem Al Salahi (Representative and Business Owner)

Property/Business Owner: Hartman Property Management Inc.
Project Planner: Randy Baez, Associate Planner

LAND USE:

General Plan Designation: Neighborhood Commercial (NC)
Zoning District: Neighborhood Commercial (C1)

ENVIRONMENTAL: This Project is categorically exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301 (Existing Facilities) and; as a separate and independent basis, CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning).

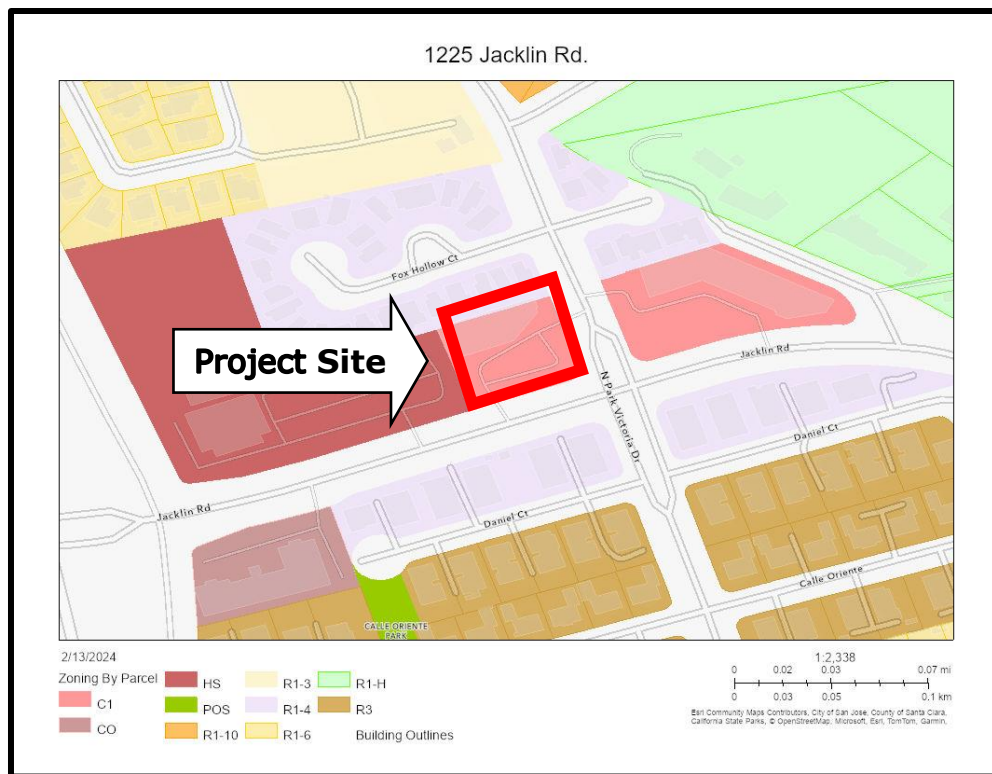
EXECUTIVE SUMMARY

Puff City Smoke Shop is requesting a Conditional Use Permit (CUP) to allow for the retail sales of tobacco products for off-site use only within an existing commercial tenant space. The Project tenant space is 870 square feet in size and located within a multi-tenant commercial building totaling 9,960 square feet. No consumption or sampling of the products will be allowed on-site. The proposed business hours are Monday through Sunday, 10am to 12am.

Map 1:
Project Location



Map 2
Project Zoning Map



BACKGROUND

History

The subject site has an existing one-story, 9,960-square foot multi-tenant commercial building first approved by the Planning Commission in 1983. The existing building consists of eight tenant spaces occupied by various uses ranging from restaurants to personal services. Puff City Smoke Shop (Applicant) proposes to occupy an 870-square foot tenant space addressed as 1225 Jacklin Road. The tenant space was formerly occupied by an insurance office for approximately 30 years.

Background

On August 9th, 2023, the Building Safety & Housing Department conducted an inspection of the property in response to a notice of violation of the Milpitas Municipal Code (MMC). That inspection found that the property was in violation of MMC Sec. XI-10-5.02(A)(1) for operating a Head/Smoke/Tobacco shop without the benefit of an approved Conditional Use Permit. On September 5th, 2023, the Building Safety & Housing Department conducted another inspection of the property and found the property to be in violation of conducting an interior remodel of tenant space without the benefit of a permit. This Project (UP23-0013) seeks to address these violations and bring the property into compliance.

Application

On November 7, 2023, Kareem Al Salahi, the applicant and business owner, submitted a Conditional Use Permit application (Permit No. UP23-0013) to allow for the retail sale of tobacco products within the subject tenant space. The business will be known as Puff City Smoke Shop, which plans to operate daily from 10am to 12am (midnight). Pursuant to Milpitas Municipal Code (MMC) Table XI-10-5.02-1 and Ordinance No. 227.6, the proposed head/smoke/tobacco shop use requires a Conditional Use Permit to be approved by the Planning Commission.

PROJECT DESCRIPTION

Overview

The applicant (Puff City) is requesting a Conditional Use Permit (CUP) to allow for the retail sale of tobacco and tobacco-related products for off-site consumption or use only. A list of items for sale include cigars, tobacco pipes, tobacco containers, tobacco grinders, tobacco wraps, hemp wraps, rolling papers, rolling machines, rolling tips, butane, lighters, backpacks, clothing, kratom, hemp products and CBD. The subject tenant space is 870 square feet, which includes the main retail area as well as ancillary storage, an office and a bathroom at the rear of the suite. Only cosmetic improvements such as display areas are proposed.

Location and Context

The Project site is located within a single-story multi-tenant commercial building at the northwest corner of North Park Victoria Drive and Jacklin Road, just east of the I-680 Interstate Freeway. The 0.9-acre site includes one multi-tenant commercial building with eight tenant spaces ranging from 674 square feet to 2,052 square feet in size. North Park Victoria Drive bounds the site to the east, and Jacklin Road to the south. Table 1 below summarizes the Project site's land use designation and surrounding uses.

Table 1:
Surrounding Zoning and Land Uses

	General Plan	Zoning	Existing Uses
Subject Site	Neighborhood Commercial (NC)	Neighborhood Commercial (C1)	Multi-Tenant Commercial
North	Medium Residential (MDR)	Single-Family Residential (R1-4)	Single-family homes
South	Medium Residential (MDR)	Single-Family Residential (R1-4)	Multi-Family homes
East	Neighborhood Commercial (NC)	Neighborhood Commercial (C1)	Multi-Tenant Commercial
West	Neighborhood Commercial (NC)	Highway Services (HS)	Entertainment (GolfLand)

Site Improvements

Puff City is not proposing any site improvements at this time.

No exterior building wall signage is proposed at this time. Still, there is a condition of approval requiring approval of a sign permit under a separate application for any future sign.

Safety and Security

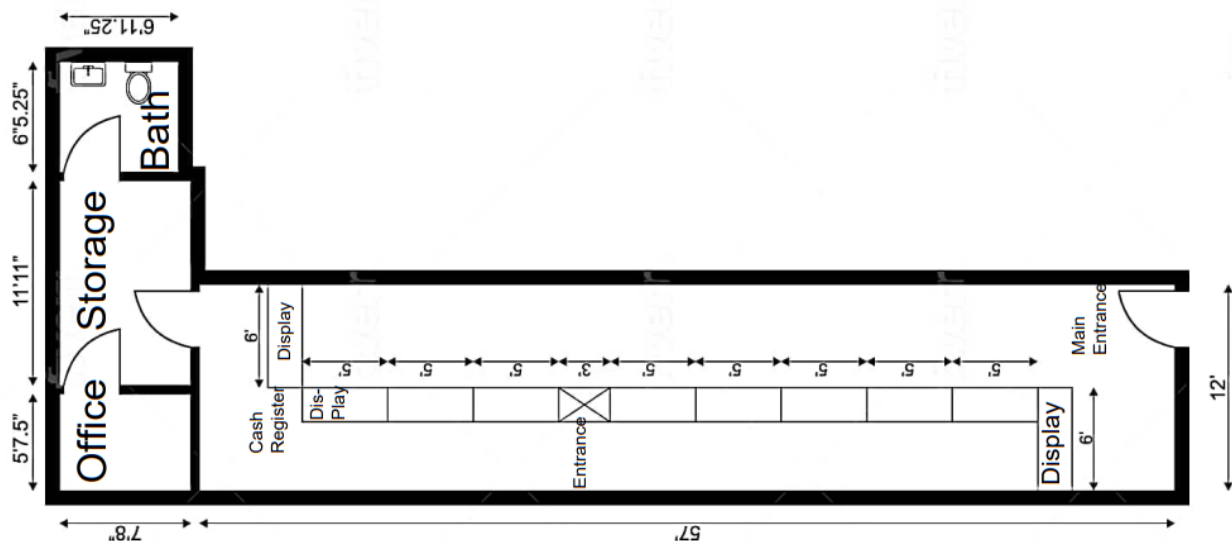
The Milpitas Police Department reviewed the Project and prescribed measures to ensure the safety and security of the overall site and its occupants, including video surveillance and filing emergency contact information with the Police Department. These measures have been included as conditions of approval (20 through 27) within the attached Resolution. Examples include:

1. Line of sight obstructions, including business signs, advertisements, or other markings, should be avoided on the exterior windows to maximize natural surveillance during the business's closed hours.
2. Video/security cameras shall be required for the site, with coverage at all access points into the business. The interior video/security cameras shall record in high definition and cover any cash register, safe, or other device that stores currency, entrances/exits, and hallways or paths leading to a restroom. The video/security system shall have the capability to be downloaded. A copy of video/security footage shall be made available to law enforcement upon request for investigative purposes. It is recommended the employees of the business be appropriately trained on how to use the security surveillance camera system so that footage can be reviewed and collected in a timely fashion by the Police department if needed.

Floor Plan and Operations

The applicant is not proposing any modifications to the existing floor plan at this time other than cosmetic changes to include display cases and a cash register (Figure 1). The tenant space was most recently occupied by an insurance office that had been in operation for approximately 30 years. No structural modifications are proposed as part of this project and no modifications are proposed to the building's exterior. Any new exterior modifications including signage would

Figure 1: Floor Plan



General Plan, Midtown Specific Plan & Zoning Conformance

The General Plan land use designation for the subject property is Neighborhood Commercial (NC). The subject property is currently zoned Neighborhood Commercial (C1).

Table 2:
General Plan Consistency

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General Plan Policy	Consistency Finding
<i>of commercial uses including retail, service, office, entertainment, and assembly uses.</i>	will be located in an existing shopping center that includes a diverse mix of uses including retail and restaurants.
<i>LU 6-5: Promote reinvestment in strip commercial and shopping centers and maintain, revitalize, and redevelop aging and underperforming centers.</i>	Consistent. The proposed smoke shop will reinvest in an existing shopping center by occupying a previously vacant tenant space.

Zoning Ordinance

The proposed use will occupy an existing tenant space within an existing multi-tenant commercial building. No changes to the exterior of the building are proposed and therefore maintains compliance with the Neighborhood Commercial development standards for setbacks, height, floor area ratio, and parking. Table 3 demonstrates project consistency with the Neighborhood Commercial (C1) development standards:

Table 3:
Zoning Conformance

	C1 Standard	Existing	Complies?
Front (South)	20'	~110'	Yes, no change
Side Yard (East/West)	0' 15' when abutting Residential	2' (west) 33' (east)	Yes, no change
Rear (North)	0' 15' when abutting Residential	2'	Yes, no change
<u>Floor Area Ratio</u> (Max)	0.35	~0.25	Yes, no change
<u>Bldg Height</u> (Max)	35' or 3 stories	~15' 1 story	Yes, no change
<u>Landscaping</u>	None	~25	Yes, no change

Traffic, Parking, Access, and Circulation

Traffic

A traffic operations analysis report was not conducted for the Project because there are no anticipated significant increases in trip generation or parking demand. The proposed Project is

consistent with the land uses permitted per the City of Milpitas General Plan. The number of daily trips (including a.m. and p.m. peak hour trips) is not expected to significantly impact the level of service (LOS) in the immediate vicinity.

Parking

A total of 45 parking spaces are available for all uses within the eight-tenant site. Five parking spaces are allocated to the proposed smoke shop. Table 4 shows the proposed smoke shop and adjacent uses within the existing shopping center and demonstrates the Project's compliance with the Zoning Ordinance parking standard per *Section XI-10-53 Off-Street Parking Regulations*.

Table 4:
Parking Summary

Uses	Area (sq. ft.)	Parking Standard	Total Parking Required
Smoke shop Market Gift shop (Retail)	4,108	1 space per 200 sq. ft.	4,180 sq. ft. /200 sq. ft. = ~21 spaces
Massage	619	2 spaces per treatment room	1 treatment room = 2 spaces
Dry Cleaners	1,320	1 space per 200 sq. ft.	1,320 sq. ft. / 200 sq. ft. = 6.6 Total for office = ~7 spaces
Restaurants	2,726 (gross)	1 per 39 sq. ft. of dining area	425 sq. ft./ 39 sq. ft. = ~11 spaces
Salon (personal services)	964	1 per 200 sq. ft.	964/200 = ~5 spaces
Total Parking Spaces required per Section XI-10-53			45
Existing parking spaces for the shopping center			45

Access and Circulation

The project site is at the corner of North Park Victoria Drive and Jacklin Road, near Interstate 680. The Project utilizes two existing two-way driveways: one on North Park Victoria Drive and one on Jacklin Road. A public sidewalk along both streets provide pedestrian access to the site. Regular VTA bus service runs along Jacklin Rd. with two transit stops at the nearby Golfland, approximately 400 feet away.

FINDINGS

A finding is a statement of fact relating to the information the Planning Commission has considered in making a decision. Findings shall identify the rationale behind the decision to take a certain action.

Conditional Use Permit (Section XI-10-57.04(F)(1))

1. *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.*

The proposed head/smoke/tobacco use is consistent with this finding because the Project is in the existing commercial building and is permitted under the Zoning Ordinance with a Conditional Use Permit. The proposed retail business selling tobacco and tobacco related products provides retail options for the patrons. The proposal increases economic opportunity, and as conditioned, will not be detrimental to property or improvements in the vicinity nor to the public health, safety, and general welfare because the building exists and the retail sales will be conducted within the building. No consumption of the products will be made in the premises. As discussed above, the site meets all development standards and off-street parking requirements.

2. *The proposed use is consistent with the Milpitas General Plan.*

As described in Table 2, the Project is consistent with the Milpitas General Plan, which encourages activity within existing commercial centers. The proposed head/smoke/tobacco retailer will serve surrounding neighborhoods by providing goods not typically found nearby, which will help minimize vehicle miles traveled. In addition, the proposed retail sales will encourage economic pursuits by operating a retail business in an existing unoccupied commercial tenant space with Conditional Use Permit approval. The proposal will provide economic opportunities to the Milpitas residents and around the region by providing different retail options.

3. *The proposed use is consistent with the Milpitas Zoning Ordinance.*

The proposed head/smoke/tobacco use are a conditionally permitted use in the Neighborhood Commercial (C1) Zoning District and complies with the applicable development standards. As demonstrated in Table 3, the Project conforms to the development standards as set forth in Milpitas Municipal Code Sections XI-10-5.02 and XI-10-5.03. Table 4 demonstrates the Project's compliance with the Zoning Ordinance parking standard per Section XI-10-53 Off-Street Parking Regulations.

ENVIRONMENTAL REVIEW

This Project is categorically exempt from further environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301 (Existing Facilities) and; as a separate and independent basis, CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning). As proposed, the Project includes

a conditionally permitted use within an existing commercial center in an urbanized area. The Project is also consistent with the Milpitas General Plan and Zoning Ordinance, and there are no circumstances present that would require a subsequent Environmental Impact Report (EIR) or Negative Declaration.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission:

1. Open and close the public hearing;
2. Consider the exemptions in accordance with CEQA; and
3. Adopt Resolution No. 24-013 approving Conditional Use Permit No. UP23-0013 subject to the findings and attached Conditions of Approval.

ATTACHMENTS

A: Resolution No. 24-013

B: Project Plans

RESOLUTION NO. 24-013

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS APPROVING CONDITIONAL USE PERMIT NO. UP23-0013 TO OPERATE A HEAD/ SMOKE/ TOBACCO SHOP, WITHIN 870 SQUARE FEET OF AN EXISTING 9,960 SQUARE-FOOT, ONE-STORY, MULTI-TENANT COMMERCIAL BUILDING LOCATED ON AN 0.9-ACRE SITE WITHIN THE NEIGHBORHOOD COMMERCIAL (C1) ZONING DISTRICT AT 1225 JACKLIN ROAD (APN 029-09-057) AND MAKING FINDINGS OF CEQA EXEMPTION.

WHEREAS, on November 13, 2023, Kareem Al Salahi, the Applicant and business owner, submitted a Conditional Use Permit application (Permit No. UP23-0013) to allow a Head/ Smoke/ Tobacco shop (Puff City) to allow for the retail sales of tobacco products; and

WHEREAS, the Planning Department 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 environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301 (Existing Facilities) and as a separate and independent basis, Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning); and

WHEREAS, on March 13, 2024, the Planning Commission held a duly noticed public hearing on the subject application, and considered the 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 Planning Commission has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2: California Environmental Quality Act

This project is categorically exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301 (Existing Facilities) and; as a separate and independent basis, Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning). As proposed, the Conditional Use Permit will allow for the retail sales of tobacco products within an existing commercial shopping center in an urbanized area and will not have a negative impact on the surrounding area. The project is also consistent with the Milpitas General Plan, Zoning Ordinance, and there are no circumstances present that would require a subsequent Environmental Impact Report (EIR) or Negative Declaration.

SECTION 3: 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. UP22-0007:

- 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.*

The proposed head/smoke/tobacco use is consistent with this finding because the Project is in the existing commercial building and is permitted under the Zoning Ordinance with a Conditional Use Permit. The proposed retail business selling tobacco and tobacco related products provides retail options for the patrons. The proposal increases economic opportunity, and as conditioned, will not be detrimental to property or improvements in the vicinity nor to the public health, safety, and general welfare because the building exists and the retail sales will be conducted within the building. No consumption of the products will be made in the premises. As discussed above, the site meets all development standards and off-street parking requirements.

- b. *The proposed use is consistent with the Milpitas General Plan.*

As described in Table 1, the Project is consistent with the Milpitas General Plan, which encourages activity within existing commercial centers. The proposed head/smoke/tobacco retailer will serve surrounding neighborhoods by providing goods not typically found nearby, which will help minimize vehicle miles traveled. In addition, the proposed retail sales will encourage economic pursuits by operating a retail business in an existing unoccupied commercial tenant space with Conditional Use Permit approval. The proposal will provide economic opportunities to the Milpitas residents and around the region by providing different retail options.

Table 1: General Plan Consistency

General Plan Policy	Consistency Finding
<i>LU 6-4: Maintain viable neighborhood-serving commercial uses throughout the City in order to serve surrounding neighborhoods and minimize vehicle miles traveled. Encourage a diverse mix of commercial uses including retail, service, office, entertainment, and assembly uses.</i>	Consistent. The proposed smoke shop will serve surrounding neighborhoods by providing goods not typically found nearby, which will help minimize vehicle miles traveled. The proposed smoke shop will be located in an existing shopping center that includes a diverse mix of uses including retail and restaurants.
<i>LU 6-5: Promote reinvestment in strip commercial and shopping centers and maintain, revitalize, and redevelop aging and underperforming centers.</i>	Consistent. The proposed smoke shop will reinvest in an existing shopping center by occupying a previously vacant tenant space.

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

The proposed head/smoke/tobacco use are a conditionally permitted use in the Neighborhood Commercial (C1) Zoning District and complies with the applicable development standards. As demonstrated in Table 2, the Project conforms to the development standards as set forth in Milpitas Municipal Code Sections XI-10-5.02 and XI-10-5.03. Table 3 demonstrates the Project's compliance with the Zoning Ordinance parking standard per Section XI-10-53 Off-Street Parking Regulations.

Table 2: Zoning Conformance

	C1 Standard	Existing	Complies?
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<u>Floor Area Ratio</u> (Max)	0.35	~0.25	Yes, no change
<u>Bldg Height</u> (Max)	35' or 3 stories	~15' 1 story	Yes, no change
<u>Landscaping</u>	None	~25	Yes, no change

Table 3: Parking Summary

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Total Parking Spaces required per Section XI-10-53			45
Existing parking spaces for the shopping center			45

SECTION 5: The Planning Commission of the City of Milpitas hereby adopts Resolution No. 24-013 approving Conditional Use Permit Amendment No. UP23-0013 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 March 13, 2024

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 March 13, 2024, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Mercedes Albana				
Dipak Awasthi				
Michael Caulkins				
Chia Ling Kong				
Alexander Galang				
Sonia Medina-Ashby				
Parveen Gupta				

EXHIBIT 1**CONDITIONAL USE PERMIT NO. UP23-0013
1225 JACKLIN ROAD (APN 029-09-057)**

The City of Milpitas Planning Commission approves this Conditional Use Permit No. UP23-0013 in accordance with Section XI-10-57.04 of the Milpitas Municipal Code, subject to and conditioned upon all applicable State and local laws and regulations and the Conditions of Approval outlined below. This permit is to allow the conditional use of a new off-sale only head/smoke/tobacco shop within 870 square feet of an existing 9,960 square-foot, one-story, multi-tenant commercial building located on a 0.9-acre site within the Neighborhood Commercial (C1) Zoning District at 1225 Jacklin Road (APN 029-09-057), subject to all other necessary reviews, approvals, permits, licenses, studies, and inspections necessary for such use. This permit does not permit the operation or use of these premises for a smokers' lounge or other on-site commercial tobacco or smoking use.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS OF APPROVAL:**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. Conditional Use Permit Amendment No. UP23-0013 ("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 Department. **(P)**
2. The Permittee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on March 13, 2024, in accordance with these Conditions of Approval. **(P)**
3. Modifications to Project. Any deviation from the approved site plan, floor plans, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee 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 Permittee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. **(P)**
4. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Ordinance, the date of approval of this Permit is the date on which the decision-making body approved this Permit.

5. Conditions of Approval. As part of the issuance of building permits, the Permittee shall include within the first four pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the project. **(P)**
6. 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)**
7. Permit Expiration. Pursuant to Section XI-10-64.06 of the Milpitas Municipal 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 Municipal 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.
8. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Municipal 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 Department prior to the expiration date of the approval. **(P)**
9. Project Job Account. If at the time of application for building permit there is a project job account balance due to the City for recovery of review fees, the review of permits will not be initiated until the balance is paid in full. **(E)**
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. 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.
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. (CA)

13. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Municipal 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. 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.
16. Fire Department. The project/development shall comply with the requirements of the Fire Department and the California Fire Code, as demonstrated in the Fire Department's Memorandum, dated November 27, 2023, as may be amended by the City of Milpitas. Changes to the site plan and/or internal circulation shall be reviewed and approved by the Fire Department. (F)
17. Building Department. The project/development shall comply with the requirements of the Building Department and the Building Code, as demonstrated in the Building Department's Memorandum, dated November 14, 2023, as may be amended by the City of Milpitas. (B)
18. Smoking and On-site Use of Products Generally Prohibited. The Permittee shall comply with and ensure compliance with all state, local, federal, and other laws and regulations prohibiting or regulating smoking on the premises, including California Labor Code section 6404.5, California Health and Safety Code sections 104495 and 114371, California Government Code sections 7596-7598, and Title V, Chapter 215 of the Milpitas Municipal Code. In addition, the Permittee shall not cause, permit, aid, abet, suffer, conceal, or allow the consumption, smoking, or use of any goods or other products, including samples, obtained from the business on the premises or anywhere in the surrounding shopping plaza, including the parking lot, walkways, and common areas. Nor shall the Permittee cause, permit, aid, abet, suffer, conceal, or allow customers to consume, smoke, or use any tobacco or tobacco products on the premises or anywhere in the surrounding shopping plaza, including the

parking lot, walkways, and common areas. Any violation of this condition shall be an independent and sufficient basis for revocation, suspension, or modification of this Permit.

19. Laws and Licenses for Tobacco Retail. Obey all laws and regulations, including the Cigarette and Tobacco Products Licensing Act, and obtain all necessary permits, licenses, certifications, and approvals necessary for retail sale of tobacco and tobacco products, including maintaining in good standing a Cigarette and Tobacco Products Retailer's License with the California Department of Tax and Fee Administration. Any violation of this condition shall be an independent and sufficient basis for revocation, suspension, or modification of this Permit.

Police Department Conditions

20. Parking. Parking is not affected by the proposed permit, and the current parking lot is of sufficient capacity to accommodate additionally parked vehicles. No changes are recommended for the parking lot. **(PD)**
21. The parking lot should continue allowing accessible circulation for police patrols (vehicles, foot, and bicycles) to prevent and reduce the likelihood of criminal activity occurring in the area. **(PD)**
22. Visibility. Lighting shall be of sufficient wattage to adequately illuminate and make visible the presence of any person in or about the outside premises during hours of darkness. **(PD)**
23. Line of sight obstructions, including business signs, advertisements, or other markings, should be avoided on the exterior windows to maximize natural surveillance during the business's closed hours. **(PD)**
24. Security. Video/security cameras shall be required for the site, with coverage at all access points into the business. The interior video/security cameras shall record in high definition and cover any cash register, safe, or other device that stores currency, entrances/exits, and hallways or paths leading to a restroom. The video/security system shall have the capability to be downloaded. A copy of video/security footage shall be made available to law enforcement upon request for investigative purposes. It is recommended the employees of the business be appropriately trained on how to use the security surveillance camera system so that footage can be reviewed and collected in a timely fashion by the Police department if needed. **(PD)**
25. The cashier area, safe, or other devices that stores currency should be away from the front doors, windows of the business, and not in plain view to help prevent burglaries when the company is closed. If these areas cannot be moved, window treatments such as shades or blinds preventing the site from being visible from the outside should be considered. **(PD)**
26. Accessibility. An up-to-date map of the interior of the building should be provided to the Police Department. The map should minimally identify the locations of each entry/exit point, storage area, maintenance area, etc.

27. Miscellaneous. Applicant shall file an emergency notification form with the Police Department so law enforcement can contact the applicant in case of any significant accident, emergency, or unforeseen circumstance. **(PD)**

Building Department Conditions

28. The Project shall comply with the requirements of the Building Safety and Housing Department and the California Code of Regulations Title 24 and the Milpitas Municipal Code as adopted by the City. Building permits shall be submitted to and approved by the Building Safety and Housing Department prior to start of construction. All California Code of Regulations Title 24 and Milpitas Municipal Code requirements applicable at the time of building permit application must be met in advance of any building permit approvals or related construction. Changes to the site plan and/or building plan require review and approval by the Building Safety and Housing Department.

Fire Department Conditions

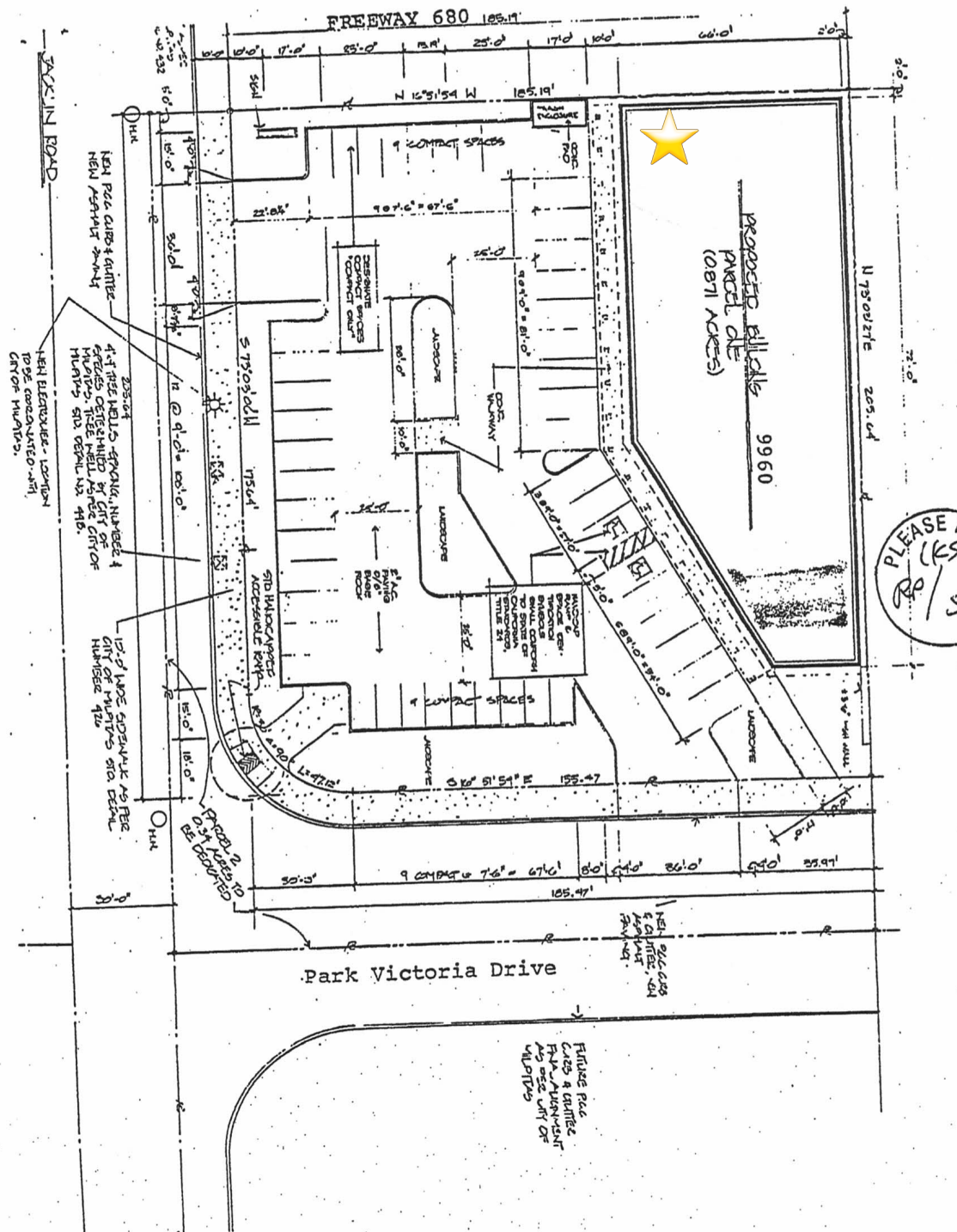
29. Please do not consider this an approval from Fire Department. Additional requirements may be made during the construction permit process. These notes are a general list of the applicable code requirements, and it is provided to assist with the construction permit process.
30. No changes shall be made in the use or occupancy of any structure that would place the structure in a different division of the same group or occupancy or in a different group of occupancies, unless such structure is made to comply with the requirements of the current code(s). California Fire Code (CFC) Section 102.3
31. New and existing buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters and shall be consistent with Milpitas standardized addressing guidelines. CFC Section 505.1
32. Assembly Use. This facility/business/site is not approved for assembly use as defined by the CA Building Code (50 or more occupants).
33. Maximum Occupancy. The maximum number of occupants within this business/facility shall be limited to the permitted number by the Planning Department, but not to exceed the permitted occupancy load under the CA Building and Fire Codes.
34. Portable fire extinguishers for general area shall be installed in occupancies and locations as set forth in the CFC Section 906 and as required by the Fire Code Official.
35. Egress based on occupant load and common path of egress travel distance. Two exits or exit access doorways from any space shall be provided where the design occupant load or the common path of egress exceeds the values listed in 2022 California Fire Code Table 1006.2.1. The cumulative occupant load from adjacent rooms, areas or spaces shall be determined in accordance with section 1004.2.

36. Exit doors shall swing in the direction of exit travel when serving an occupant load of 50 or more. CFC Section 1010.1.2.1
37. Egress doors shall be readily openable from the egress side without the use of a key or special knowledge or effort. CFC Section 1010.1.9
38. Manually operated flush bolts or surface bolts are not permitted. CFC Section 1010.1.9.5
39. Exits and exit access doors shall be marked by an approved exit sign readily visible from any direction of egress travel. Exit sign placement shall be such that no point in a corridor is more than 100 feet or the listed viewing distance for the sign, whichever is less, from the nearest visible sign. Additional signs may be required if clear path of exit access is not readily defined. CFC Section 1013.1
40. Complete plans and specifications for all aspects of fire-protection systems shall be submitted to the Fire Department for review and approval prior to system installation or alteration. CFC Section 105.4
41. Means of egress shall be provided in conformance with the CA Building Code Chapter 10.
42. The Milpitas Fire Department shall approve new installation and/or modifications to existing fire protection, alarm or monitoring system(s). A separate submitted is required to the Milpitas Fire Department, for review and approval, prior to the commencement of any work. CFC Section 901.2

(P) = Planning (PD) = Police Department (B) = Building (E) = Engineering
(F) = Fire Prevention (CA) = City Attorney

Initial: _____

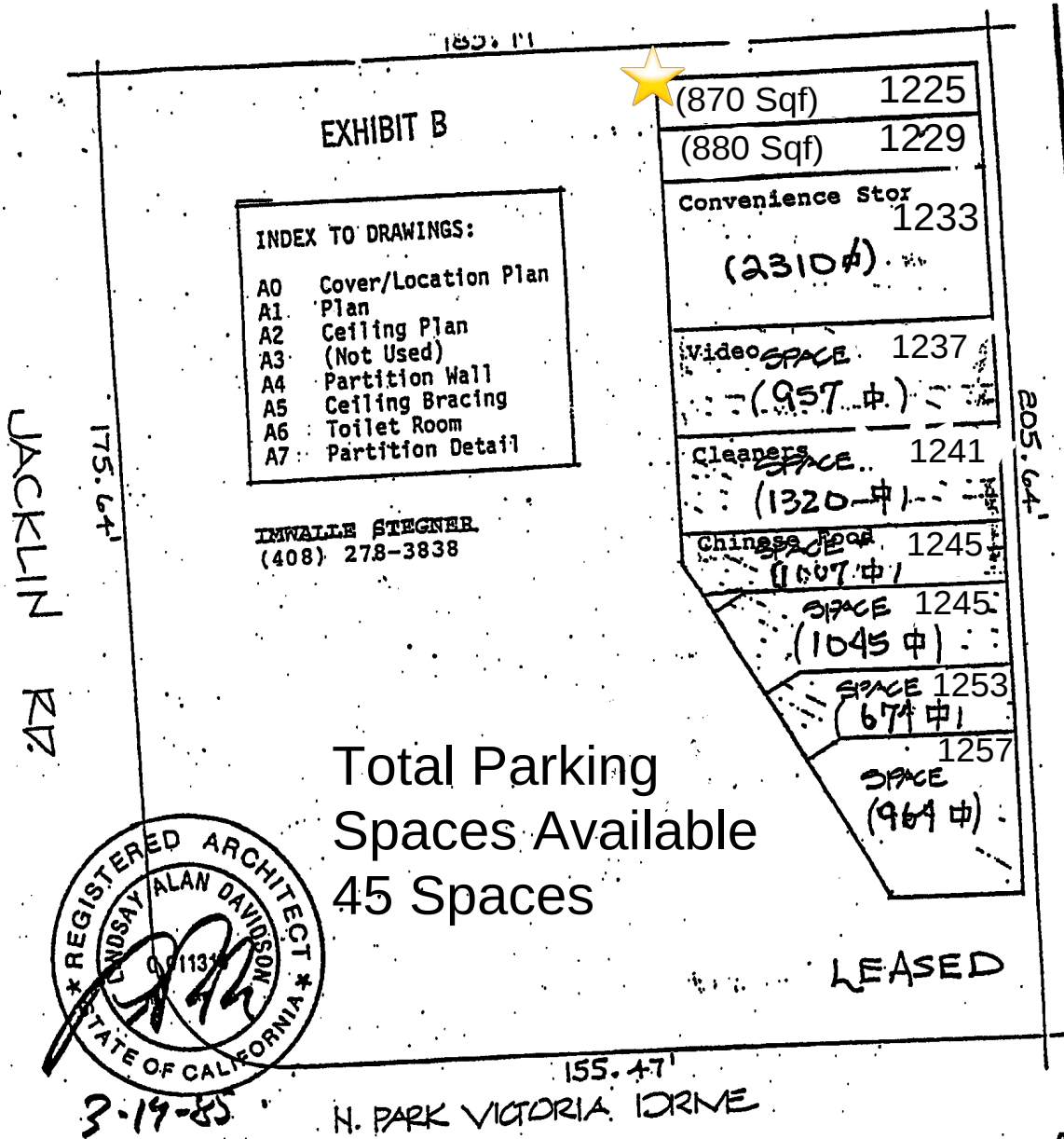
FREEWAY 680 105.19



IMWALLE STEGNER
(408) 287-3838

Initial: _____

Initial: _____



SPACE 3

RETAIL COMMERCIAL

TENANT
BUILDING - IMPROVEMENTS

AT JACKLIN RD. & N PARK VICTORIA

BLVD. MILPITAS, CA

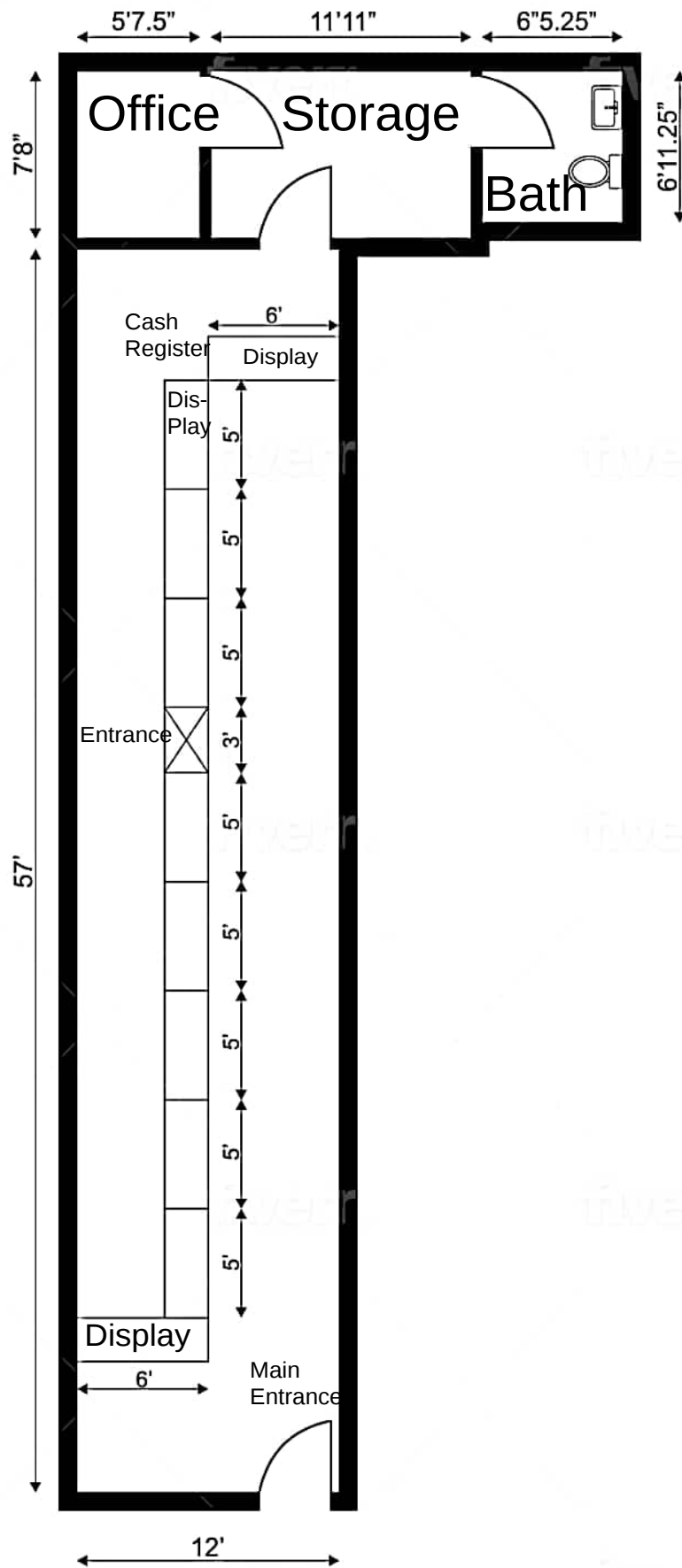
LOCATION PLAN

SCALE - 1" = 30'-0"

architecture - environmental design
community planning - urban design
landscape architecture

255 N. Market St., Suite 200
San Jose, Ca 95110 (408) 293-8300







CITY OF MILPITAS

Planning Commission

MEETING MINUTES

7:00pm

Wednesday, February 28, 2024
CITY COUNCIL CHAMBERS
455 E CALAVERAS BLVD, MILPITAS, CA
and
via TELECONFERENCE (Zoom Webinar)

CALL TO ORDER

Commissioner Galang called the meeting to order at 7:00pm.

PLEDGE OF ALLEGIANCE

Commissioner Albana led the pledge of allegiance.

ROLL CALL

Recording Secretary Elizabeth Medina called the roll.

PRESENT: Commissioners Galang, Albana, Medina-Ashby, Gupta, Caulkins, and Kong

ABSENT: Commissioner Awasthi

STAFF: Jay Lee, Christopher Creech, Randy Baez, Lillian VanHua and Elizabeth Medina

CONFLICT OF INTEREST/CAMPAIGN CONTRIBUTION DECLARATION

Assistant City Attorney Christopher Creech asked if any member of the commission had any personal or financial conflict of interest related to any of the items on the agenda, and there were none.

ELECTION OF CHAIR AND VICE CHAIR FOR 2024

Assistant City Attorney Christopher Creech facilitated elections for Chair and Vice Chair.

Assistant City Attorney Creech invited members of the public to speak on this item and there were none.

Commissioner Medina-Ashby nominated Commissioner Albana for Chair. Commissioner Albana accepted nomination.

Motion/Second Gupta/Galang

Motion carried by a vote of AYES: 6 NOES: 0

Commissioner Albana nominated Commissioner Medina-Ashby for Vice Chair. Commissioner Medina-Ashby accepted nomination.

Motion/Second Caulkins/Galang

Motion carried by a vote of AYES: 6 NOES: 0

*BRIEF RECESS

Rearranged chamber to seat newly appointed Chair and Vice Chair appropriately.

APPROVAL OF THE MEETING AGENDA

By motion, approve the meeting agenda for February 28, 2024.

Motion/Second Kong/Caulkins

Motion carried by a vote of AYES: 6 NOES: 0

APPROVAL OF THE MEETING MINUTES

By motion, approve the meeting minutes for January 10, 2024.

Motion/Second Caulkins/Gupta

Motion carried by a vote of AYES: 4 NOES: 0 ABSTAIN: 2 (Kong, Medina-Ashby)

By motion, approve the meeting minutes for January 24, 2024.

Motion/Second Caulkins/Medina-Ashby

Motion carried by a vote of AYES: 4 NOES: 0 ABSTAIN: 2 (Kong, Galang)

ANNOUNCEMENTS

Chair Albana expressed her gratitude on her appointment and opportunity to continue to serve the City. She thanked former commission members (Chuan, Ciardella, and Mohsin) for their services to our community and appreciate how they worked well together in previous years. Chair Albana also welcomed newest commissioners Kong, Caulkins, and Gupta.

PUBLIC FORUM

Chair Albana invited members of the public to address the commission and there were none.

PUBLIC HEARING

X-1 NEW HILLSIDE RESIDENCE – 500 VISTA SPRING CT. – SD23-0005: A Site Development Permit to develop a 5,963-square foot, two-story single-family residence with two-car garage and a 183-square foot detached pool house on a 2.3-acre lot in the R1-H Single-family Residential Hillside Combining District located at 500 Vista Springs Ct. The maximum height of the new residence will be 27 feet and 5.5 inches above grade level. The project is categorically exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15303 (New Construction or Conversion of Small Structures), Section 15332 (In-fill Development Projects), and as a separate and independent basis, Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning).

(1:26) Project Planner Randy Baez, Planning Director Jay Lee, and the applicant's team members addressed commissioners' clarifying questions related to the location of the second two-car garage, any challenges in meeting City code in regards to design, the maximum weight for the outdoor patio area, structural material to be used for the patio area, durability/maintenance/concerns of fence material proposed, excavation/grading plan and retaining walls, allowable percentage to build/develop (pervious vs. impervious), stability of soil with grading, security measures for the open pool area, and fault lines near project site.

Chair Albana invited members of the public to address the commission and there were none.

Motion to close the Public Forum.

Motion/Second Galang/Kong

Motion carried by a vote of AYES: 6 NOES: 0

Recommendation: Staff recommends that the Planning Commission open and close the public hearing, consider the exemptions in accordance with CEQA, and adopt Resolution 24-008, recommending that the City Council approve Site Development Permit No. SD23-0005, subject to the findings and attached Conditions of Approval.

Motion/Second Caulkins/Medina-Ashby

Motion carried by a vote of AYES: 6 NOES: 0

X-2 76 GAS STATION REMODEL AND BEER AND WINE SALES REQUEST

– 27 S. PARK VICTORIA DR. – UP23-0014 and SD22-0010: A Site Development Permit and Conditional Use Permit to allow the redevelopment of an existing 1,138-square foot gas station with a new 2,460-square foot convenience store, sale of alcoholic beverages Type-20 (Beer and Wine) for off-site consumption, and associated site improvements on a 0.4-acre parcel located at 27 S. Park Victoria Dr. The project is categorically exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines Section 15302 (Replacement or Reconstruction), and as a separate and independent basis, Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning).

(1:55) Project Planner Randy Baez, Planning Director Jay Lee, property owner, and the applicant's team members addressed commissioners' clarifying questions related to location of propane tanks for sale, possible expansion of additional gas pumps, consideration of schools in the area when applying for beer and wines sales license, standard code's minimum distance to schools for sale of alcoholic beverages Type-20 (Beer and Wine), DUI trends in the City, whereabouts of taco truck business currently on-site, the removal of auto shop, driveway entrance locations, numbers of parking spaces, restroom requirements, area of entire lot, shared parking requirements, if MUSD was contacted directly about the project, availability of crime data for the last five years in the area, how applicant will be a partner in the community to make sure that alcohol sales do not occur toward minors (training to appropriately check ID), concern of precedence for other gas stations to sell alcohol, and how is selling liquor an important aspect of the owner's business.

Chair Albana invited members of the public to address the commission and there were none.

Motion to close the Public Forum.

Motion/Second Kong/Gupta

Motion carried by a vote of AYES: 6 NOES: 0

Motion to re-open the Public Forum.

Motion/Second Caulkins/Gupta

Motion carried by a vote of AYES: 6 NOES: 0

Motion to close the Public Forum.

Motion/Second Medina-Ashby/Caulkins

Motion carried by a vote of AYES: 6 NOES: 0

Recommendation: Staff recommends that the Planning Commission open and close the public hearing and adopt Resolution 24-009, approving Site

Development Permit No. SD22-0010 and Conditional Use Permit No. UP23-0014, subject to the findings and attached Conditions of Approval.

Motion/Second Caulkins/Galang

Motion carried by a vote of AYES: 6 NOES: 0

X-3 THE ESCAPE GAME – 123 GREAT MALL DR. - UP23-0012: A

Conditional Use Permit to operate a 4,513-square foot entertainment facility (The Escape Room) within an existing commercial space in the General Commercial (C2) zone, located at 123 Great Mall Drive. The project is also located within the Milpitas Metro Specific Plan Area. The project is categorically exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines Section 15301 (Existing Facilities), and as a separate and independent basis, Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning).

(2:41) Project Planner Lillian VanHua and the applicant's team members addressed commissioners' clarifying questions related to the entrance/exit locations, how games rooms are chosen and paid for, number of employees and their job duties, customer age group, mandatory that at least (1) adult accompany a group of minors, emergency procedure, how situations are handled when customers have panic attacks, game room puzzles considered as a brain development tool as well as a fun activity, any risks of addiction, other business locations in the area, why applicant chose Milpitas, and number of restrooms.

Chair Albana invited members of the public to address the commission and there were none.

Motion to close the Public Forum.

Motion/Second Gupta/Caulkins

Motion carried by a vote of AYES: 6 NOES: 0

Recommendation: Staff recommends that the Planning Commission open and close the public hearing, consider the exemptions in accordance with CEQA, and adopt Resolution No. 24-010, approving Conditional Use Permit No. UP23-0012 subject to the findings and attached Conditions of Approval.

Motion/Second Galang/Medina-Ashby

Motion carried by a vote of AYES: 6 NOES: 0

NEW BUSINESS

- Planning Commission Metrics discussion by Planning Director Jay Lee.

Various topics were discussed that included Planning Commission accomplishments, work plan, and average applicant response times for permit submittals presented to Planning commission.

- Planning Commission and City Attorney discussed the concerns of alcohol sales licenses being issued in the proximity of schools and other sensitive areas (i.e. daycare centers), and alcohol sales at gas stations in the City.

The Planning Commission requested a presentation from Staff at a future meeting about the number of alcohol permits at gas stations, criminal statistics about use and alcohol related crimes around gas stations, and proposals Staff can bring upon similar alcohol related permitted entitlements to help address Planning Commission's concerns about alcohol related crimes at sensitive places (i.e., schools, daycares).

Motion/Second Gupta/Albana

Motion carried by a vote of AYES: 6 NOES: 0

ADJOURNMENT

Chair Albana adjourned the meeting at 9:45 pm

Motion/Second Caulkins/Medina-Ashby

Motion carried by a vote of AYES: 6 NOES: 0

Meeting Minutes submitted by
Planning Commission Secretary Elizabeth Medina