

MEMORANDUM

Planning Department



Date: April 18, 2024
To: Zoning Administrator
From: Randy Baez, Associate Planner

Subject: **Chevron Accessory Structure – 1249 Great Mall Drive - P-MS23-0260** – A Minor Site Development Permit to develop a 100 square-foot shed within the parking lot of a service station on a 1.5-acre site located at 1249 Great Mall Drive in the C2 General Commercial zoning district. The project is also located in the Milpitas Metro Specific Plan area. The project is categorically exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301 (Existing Facilities), Section 15303 (Construction or Conversion of Small Structures), and as a separate and independent basis, Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning).

Location: 1249 Great Mall Drive. (APN: 086-24-044)

Zoning/GP: General Commercial (C2) / Milpitas Metro Specific Plan (MMSP)

Application:

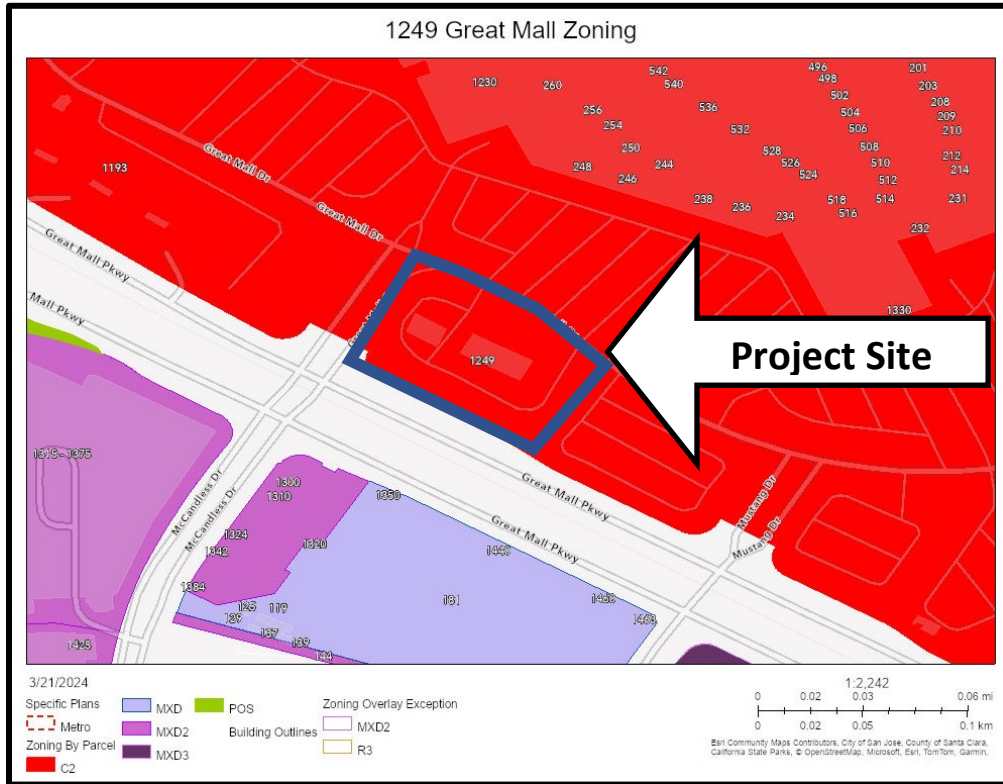
On November 13, 2023, Jeff Stevens (on behalf of the property owner) submitted a Minor Site Development (MSD) Permit application to develop a 100-square-foot detached accessory building (shed) within the parking lot of the 1.5-acre site. The proposed shed was to be used to store documents and pantry-safe goods. No additional improvements are currently proposed for the existing gas station and drive-thru restaurant.

The shed will occupy two existing parking spaces along the southern boundary within the parking lot that services the gas station and restaurant. Per Milpitas Municipal Code (MMC) Table XI-10-57.03-1, accessory buildings within non-residential and Mixed-Use Districts are subject to approval by the Zoning Administrator through an MSD Permit.

The Project site is surrounded by commercial uses to the north, east, and west, and mixed-use, high-density, multi-family residential uses to the south, as demonstrated in Map 1: Project Zoning and Map 2: Aerial View.



Map 1: Project Zoning



Map 2: Aerial View

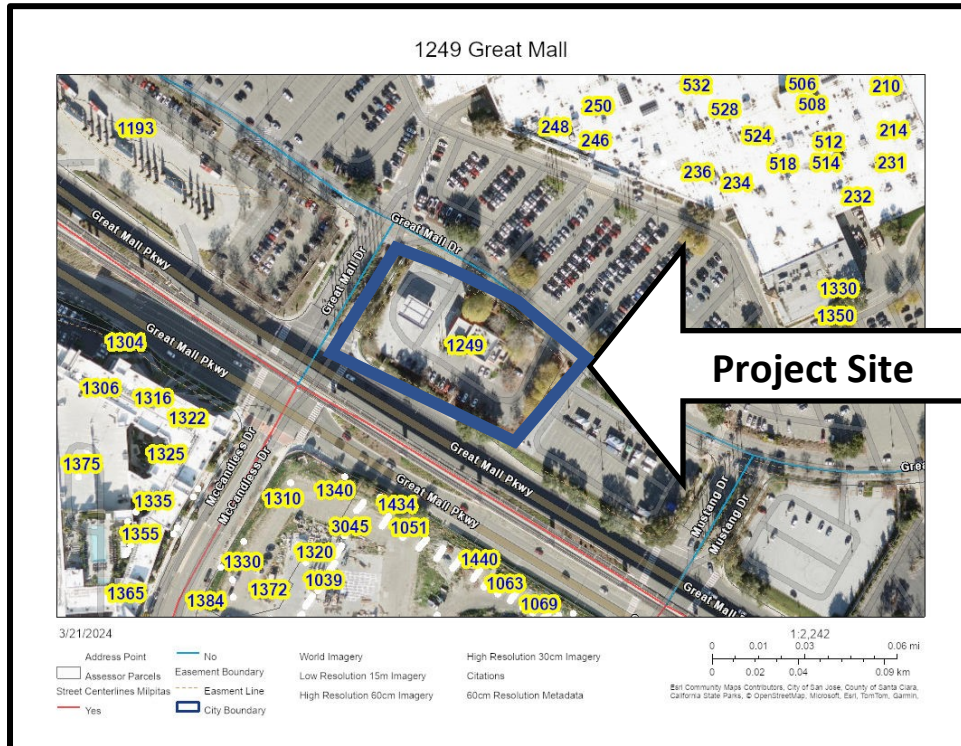


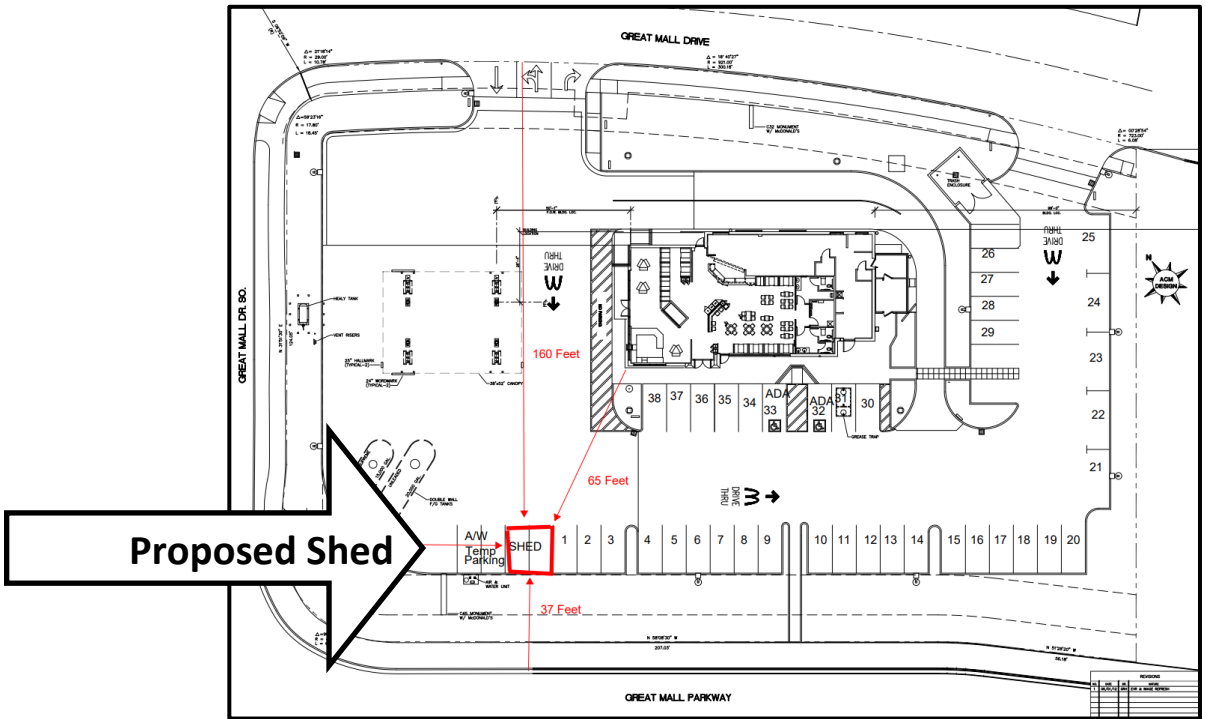
Table 1: Surrounding Zoning and Land Uses

	General Plan	Zone	Uses
Subject Site	Milpitas Metro Specific Plan (MMSP)	General Commercial (C-2)	Gas Station and Drive-Thru Restaurant
North	Milpitas Metro Specific Plan (MMSP)	General Commercial (C-2)	Multi-Tenant Commercial (Great Mall)
South	Milpitas Metro Specific Plan (MMSP)	Mixed Use (MXD)	Multiple-Family Residential
East	Milpitas Metro Specific Plan (MMSP)	General Commercial (C-2)	Great Mall Parking
West	Milpitas Metro Specific Plan (MMSP)	General Commercial (C-2)	Great Mall Parking

Project Details

The shed is proposed in the southwest corner of the property. The shed will feature a gable roof with a maximum height of seven feet. No parking spaces would be required for the shed as it will not increase the parking demand, and no changes are proposed for the main structure. The shed is necessary for storing documents and dry goods as the existing gas station office has a very small storage area and shares building area with the drive-thru restaurant. Figure 1: Site Plan shows the location of the proposed enclosure.

Figure 1: Site Plan



Analysis

The project site is located within the Milpitas Metro Specific Plan (MMSP) area. The specific plan designation is Business Park Research and Development, Limited Residential (BPRD-R) and the planned implementing zoning district of that designation is Business Park Research and Development, Limited Residential (BPRD-R). However, the Project site has not been rezoned yet. As such, the current zoning designation (General Commercial (C2)), as shown in Table 1 above, remains in place. The project complies with all of the development standards of MMC Sec. XI-10-5.03-1 (Commercial Zone Development Standards) as shown in Table 2.

Table 2: C2 - Commercial Zone Development Standards

Standards	Required/Maximum	Proposed	Complies
Front Setback	10 feet	160 feet	Yes
Side Yard Setback	10 feet	95 feet	Yes
Rear Yard Setback	10 feet	37 feet	Yes
Setback to Other Structures	6 feet	65 feet	Yes
Building Height	25 feet	7 feet	Yes
FAR	0.5 / 1.0 (for office or R&D)	0.09	Yes

The proposed shed has an area of 100 square feet and maximum height of seven feet. Typically, similar sheds can be reviewed administratively, but since the project site is located within a non-residential zone, it requires Zoning Administrator review per MMC Table XI-10-57.03-1.

Colors and Materials

The proposed pre-manufactured shed will feature beige siding and asphalt shingle roof. The shed will have a maximum height of seven feet which is significantly shorter than the gas station, associated canopies, and fast-food restaurant. Figure 2 demonstrates a rendering of the proposed shed.

Figure 2: Rendering



Parking

Two parking spaces will be deleted due to the new accessory building (shed), but the site will remain compliant with the MMC and MMSP parking standards, as demonstrated in Table 3. The number of proposed overall parking spaces exceeds the number of required parking spaces.

Table 3: Parking Standards

Use	Area	Minimum Parking Spaces Required	Total
Gas & Service Stations, with Retail	930 sq. ft.	1 per 200 sq. ft.	5
Restaurant, Take Out	32 seats	1 per 2.5 seats plus 1 per 60 sq. ft. gross floor area for the ordering or take out area	13 spaces for seating + 4 spaces for ordering area = 17 spaces
Total Spaces required per MMC			22 spaces
Total Spaces required per MMSP		Non-residential (non-industrial), minimum: 1 space per 1,500 square feet	3 spaces
Total Spaces provided			40 spaces

Views

The proposed shed has been strategically placed in the southwestern corner of the property to be hidden from view from the public right-of-way by existing landscaped hedges. Vehicles traversing along Great Mall Parkway or driving into Great Mall will not be able to see the proposed shed due to its location.

Zoning Conformance

As proposed, the shed will allow the primary uses of the site to operate within the purpose and intent of the General Commercial (C-2) zoning district, which is intended to *“provide for the wide range of retail sales and personal and business services primarily oriented to the automobile customer to provide for general commercial needs of the City and to promote stable, attractive commercial development which will afford a pleasant shopping environment,”* per MMC Sec. XI-10-5.01.

Findings for Approval:

In accordance with Section XI-10-57.03(G) of the Milpitas Municipal Code, the Zoning Administrator may consider and approve a Minor Site Development if the required findings can be made. Findings shall identify the rationale behind the decision to take a certain action and are analyzed below:

1. *The development recognizes and respects the nature of the neighborhood and site, development patterns, materials used, and the expectations of those who will see and use the building;*

The project is minimally obtrusive to the overall site and will remain out of vehicular and pedestrian paths as well as public views. The shed has a proposed building height of seven feet, which is below the maximum allowed within the C-2 Zoning District. The colors and materials of the proposed shed are also consistent with the main building and the nearby shopping center.

2. *The development assures that modifications satisfy functional requirements, and are screened with appropriate compatible materials; and*

The proposed shed will satisfy functional requirements by providing additional storage to the existing gas station. The shed has been strategically placed in the southwestern corner of the property to be hidden from view from the public right-of-way by existing landscaped hedges. The color of the proposed shed will be compatible with the main building. Furthermore, the project would not require additional parking spaces, so the subject site would still meet and exceed minimum parking requirements.

3. *The development assures that the modifications will not interfere with the privacy, quiet enjoyment or view of the surrounding properties.*

The proposed shed will be unoccupied and will be substantially setback from public spaces. The stored items within the shed will not create noise and the structure is strategically placed so as not to be seen by vehicles or pedestrians along Great Mall Parkway. Therefore, the development of this shed will not interfere with the privacy and quiet enjoyment or views of the surrounding properties.

California Environmental Quality Act (CEQA):

The project is categorically exempt from further environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15303 (Construction or Conversion of Small Structures). As proposed, the project is less than 10,000 square feet, located within an area where all public services and facilities are available to allow for maximum development permissible in the General Plan and in an area that is not environmentally sensitive.

Recommendation:

STAFF RECOMMENDS THAT the Zoning Administrator approve P-MS23-0260 to allow the development of a 100 square-foot accessory building (shed) within the parking lot of an existing gas station and drive-thru restaurant on a 1.5-acre site in the C-2 General Commercial Zoning District located at 1249 Great Mall Drive, subject to the findings outlined in this report and the attached Conditions of Approval.

Attachments:

- A. Conditions of Approval
- B. Project Plans

CONDITIONS OF APPROVAL:

1. General Compliance. The applicant, including all successors in interest (collectively "Permittee") shall comply with each and every condition set forth in this Permit. This **Minor Site Development Permit No. MS23-0260** ("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. **(P)**
2. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which the decision-making body approved this Permit. **(P)**
3. Acceptance of Permit. Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following: **(P)**
 - i. Acceptance of this Permit by Permittee; and
 - ii. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit.
4. Permit Expiration. Pursuant to Section XI-10-64-06 of the Milpitas Zoning Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. Pursuant to Section XI-10-64.06(B) of the Milpitas Zoning Code, an activity permitted by this Permit shall be deemed to have commenced when the project: **(P)**
 - i. Completes a foundation associated with the project; or
 - ii. Dedicates any land or easement as required from the zoning action; or
 - iii. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
5. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Zoning Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Department prior to the expiration date of the approval. **(P)**
6. Notice. Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development project shall be filed within ninety (90) days after the date of the approval of this Permit. This provision serves as notice from the local agency to the Permittee that the ninety (90) day period in which the applicant may file a protest has begun under California Government Code Section 66020(d)(1). **(CA)**

7. Cost and Approval. Permittee shall fully complete and satisfy each and every condition set forth in this Permit and any other condition applicable to the project to the sole satisfaction of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition. Permittee shall pay all required fees and charges to the City at the rate in effect at time of building permit issuance, or, the rate in effect when the fees and charges are due and paid in full to the City. There is no vesting of any fees or charges with the approval of this Permit. **(P)**
8. Conditions. Each and every condition set forth in this Exhibit shall apply to the project and continue to apply to the project so long as the Permittee is operating the project under the permits and approvals in this Permit. **(P)**
9. 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)**
10. Previous Approvals. Permittee shall abide 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. **(P)**
11. 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. **(CA)**
12. 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)**
13. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Zoning Code. **(P)**

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. **(CA)**

15. Permittee shall develop the approved project in conformance with the approved plans (date stamped April 18, 2024), approved by the Zoning Administrator in accordance with these Conditions of Approval. **(P)**

Any deviation from the approved site plan, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Zoning Administrator or City Council, as applicable, in accordance with the Milpitas Zoning Code. **(P)**

Fire Department

16. Access shall be maintained for all fire apparatus in accordance with CFC 3103.8.1. **(F)**

17. Shed is not approved for use, storage and/or handling of hazardous materials. [CFC Ch. 50] **(F)**

18. Fire extinguishers are required and shall be placed in accordance with CFC 906.2 **(F)**

- (P) = Planning
- (PO) = Police
- (F) = Fire Prevention
- (B) = Building
- (LD) = Land Development
- (CA) = City Attorney

Jay Lee, AICP
Planning Director

Date: _____

