Date: February 14, 2007 Planning Commission Meeting

Item No. 1.

MILPITAS PLANNING COMMISSION AGENDA REPORT

Category: Public Hearing

Report Prepared by: Kristine Lowe

Public Hearing: Yes: __X___ No: _____

Notices Mailed On: 2/2/07 Published On: 2/1/07 Posted On: 2/2/07

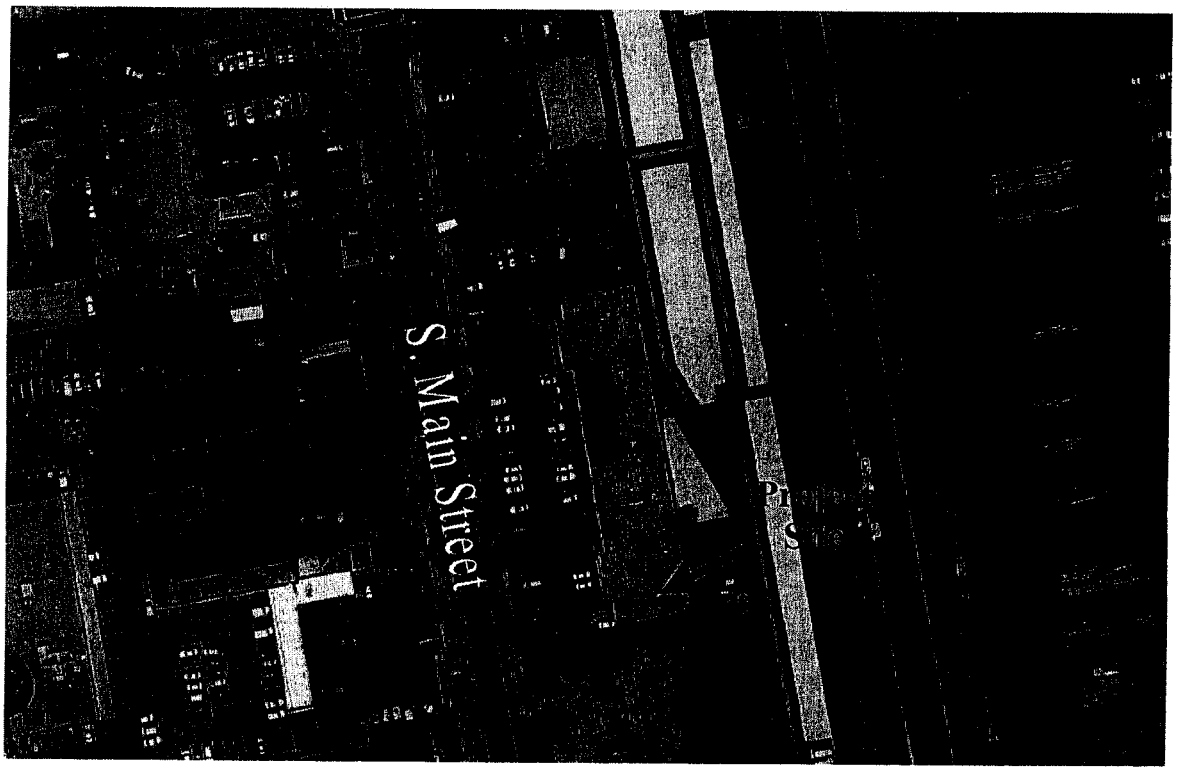
TITLE:	**USE PERMIT AMENDMENT NO. UA2006-11**
Proposal:	A request to amend an existing use permit to allow a table service restaurant (New India Chaat Cafe) to occupy a 1,400 (approximate) square foot tenant space that was previously permitted as a small grocery store and take-out restaurant. The project includes a change of seating from 4 approved seats to 20. No changes to the 7 parking spaces required for the site, exterior modifications to the building or alcohol sales are proposed.
Location:	454 South Main Street
APN:	086-40-014
RECOMMENDATION:	**Approve with Conditions**
Applicant:	Elvira Sladky, 340 S. Temple Drive, Milpitas, CA 95035
Property Owner:	Joseph Nguyen, 454 S. Main Street, Milpitas, CA 95035
Previous Action(s):	"S" Zone Approval for construction of 18,000 square foot multiple-tenant building and Conditional Use Permit Amendment No. 1364 to allow a grocery convenience / take-out restaurant and a second amendment to allow a reduction of 1 parking space to 6 spaces to allow for an outdoor BBQ area and 1 table with four seats.
General Plan Designation:	Mixed Use
Present Zoning:	Mixed Use with an "S" Zone Overlay (MXD-S) / Located within Midtown Specific Plan Area
Existing Land Use:	Restaurant
Agenda Sent To:	Applicant & Owner (as noted above) Mr. Sukhwinder Singh, 4214 Queen Anne Drive, Union City, CA 94587
Attachments:	Site and Floor Plans

BACKGROUND

On March 1980, the Planning Commission approved an 18,888 square foot multi-tenant commercial building. Subsequent Planning Commission approvals have included a Conditional Use Permit Amendment No. 1364 issued in May 12, 1999 to allow a Caribbean grocery convenience / take-out food area and a second Use Permit Amendment (No. 1364) was issued on May 26, 1999 for a take out restaurant and parking reduction from 7 spaces to 6 spaces to allow an outdoor barbecue to occupy one parking space. The permit also allowed only one table with 4 (four) chairs.

Site Description

The project site is located among various commercial and light industrial uses including a commercial building to the north, railroad tracks and industrial uses to the east, a vacant commercial building to the south and a hotel and residential uses to the west. The site has a zoning designation of Mixed Use with an "S" Zone overlay (MXD-S) and is located within the Midtown Specific Plan area.



THE APPLICATION

This Use Permit application is submitted pursuant to Section 57 (Conditional Uses Permitted by Commission) of the Milpitas Zoning Ordinance. Although restaurants with no live entertainment or bar area are permitted in the Mixed Use District, under Special Condition #1 of the Use Permit Amendments No. 1364 stipulates that any changes to the operation of a grocery store / take-out establishment, which allowed for an outdoor BBQ area and a table with four seats, shall require review and approval by the Planning Commission. In 2003, a table-service restaurant (The Kabalen Filipino

Cuisine) operated at this tenant space. The previous owner (applicant of Use Permit Amendments No. 1364) did not communicate to the current applicant, Ms. Sladky, that a Use Permit amendment would be required to operate a table service restaurant, as specified under Special Condition #1.

Project Description

The applicant is requesting to amend the Use Permit to allow a 20-seat table service restaurant to operate Monday – Sunday 11:30 a.m. through 9:30 p.m. No live entertainment or any alcohol sales are proposed. Based on the City's Off-street parking regulations, 7 spaces are required for this use which equals the total spaces allowed for the site prior to the issuance of Use Permit No. 1364. Therefore no changes to the parking plan or exterior modifications to the building are proposed.

Conformance with the General Plan

The project conforms to the General Plan in terms of land use. The proposed use does not conflict with any General Plan Principles and Policies, and is consistent with the following General Plan Implementing Policies.

Implementing Policy 2.a-I-3 *Encourage economic pursuits which will strengthen and promote development through stability and balance.*

Implementing Policy 2.a-I-7 *Provide opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention.*

Implementing Policy 2.a-I-22 *Develop the Midtown area, as shown on the Midtown Specific Plan, as an attractive and economically vital district that accommodates a mixture of housing, shopping, employment, entertainment, cultural and recreational activities organized within a system of landscaped boulevards, streets and pedestrian/bicycle linkages.*

The proposed modified operations of the restaurant add to the City's economic vitality to that portion of the Midtown area by maintaining a restaurant business in its location and increase patronage.

Conformance with the Zoning Ordinance

The proposed project is located in the Mixed Use (MXD) zoning district and is a permitted use. No live entertainment or alcohol sales are proposed. Staff does not anticipate the project will be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare. Moreover, the intent of the Mixed Use district is to "encourage a compatible mix of residential, retail, entertainment, office and commercial service uses within the framework of a pedestrian-oriented streetscape. The zoning district is also intended for residential and commercial uses combine to provide for an "around-the-clock-environment" with urban open areas that serve multiple purposes and can be used for special events. The proposed restaurant operations are compatible with the restaurant use that the MXD zoning district encourages.

ISSUES

Parking

No changes to the 94-space parking area are proposed. The 20-seat table service restaurant requires 7 spaces which equals the maximum off-street parking requirement for the establishment and therefore the requirements of the zoning ordinance are met.

Neighborhood/Community Impact

The proposed restaurant is expected to have a positive community impact by maintaining an existing restaurant use in the Midtown Area. The proposed project as conditioned will not negatively impact the surrounding neighborhood.

RECOMMENDATION

Close the Public Hearing. Approve Use Permit Amendment No. P-UA2006-11 based on the Findings and Special Conditions of Approval listed below:

FINDINGS

1. The proposed restaurant operations are consistent with the City of Milpitas Zoning Ordinance because restaurants without a bar area or live entertainment are principally permitted in the Mixed Use zoning district.
2. The proposed use is consistent with the City of Milpitas General Plan in terms of land use because the business is compatible with neighboring service businesses, encourages economic pursuits and promotes business within the City.
3. The proposed project, as conditioned, conforms to the intent and the specific requirements of the Midtown Specific Plan, including the Development Standards and Design Guidelines.
4. As conditioned, the proposed restaurant will not be detrimental or injurious to the public health, safety, and general welfare to adjacent future tenants or the surrounding community because the proposed use will not produce negative effects on the community.
5. The proposed project is categorically exempt from further environmental review pursuant to Class 1, Section 15301 (Existing Facilities) of the California Environmental Quality Act (CEQA) Guidelines. ("Existing Facilities", Interior or exterior alterations involving such things as interior partitions, plumbing and electrical conveyances.)

SPECIAL CONDITIONS

1. This Use Permit Amendment No. P-UA2006-11 approval is to allow an existing restaurant (New India Chaat Cafe) at 454 S. Main Street. A change in the nature of operations requiring a Use Permit, any request for the sale of alcoholic beverages or live entertainment, or any addition of seating that requires a parking reduction shall review and approval by the Planning Commission of an amendment to this Use Permit. Minor changes, as per Section 42 of the Milpitas Zoning Ordinance, to approved plans or operations that do not require a parking reduction, may be approved by the Planning Division staff. (P)
2. The proposed restaurant use shall comply with Conditions #9-13 of the City of Milpitas Stormwater C.3 Guidebook (Recommended Standard Conditions of Approval – For Restaurants). (P)
3. Applicable codes shall be 2001 California Building Code, CPC, CMC, 2004 CEC, 2005 Energy Efficiency Standards, and 2002 Milpitas Municipal Code. (B)
4. It is mandated to obtain Business license and Certificate of occupancy prior to operating a business. (B)
5. Obtain permits from Health Department and Water Pollution Control prior to applying for a Building permit. (B)

6. Dining room shall be classified as Group A Division 3 occupancy group as per 2001 CBC sec 303.1.1, if occupant load including buffet will exceed 49. Two exits will be required from the dining area. Two required exit doors shall be placed a distance apart a half of the diagonal of area served as per 2001 CBC, section 1004.2.4. (B)
7. In the assembly occupancy doors shall swing in the direction of exit as per 2001 CBC, Sec. 1003.3.1.5. Exit doors from assembly occupancy shall be provided with panic hardware as per Sec. 1007.2.5 and exit signs as per Sec. 1003.2.8.2. (B)
8. Separate toilet facilities shall be provided for each sex when number of customers served exceeds 10 based on occupant load of CBC Table 10-A as per CPC sec.413.3. (B)
9. 2001 CPC Table 4-1 shall determine the minimum number of plumbing fixtures. All sanitary facilities shall be fully accessible to people with disabilities as per 2001CBC, section 1115B. (B)
10. Food preparation areas shall be accessible to people with physical disabilities as per 2001 CBC Sec. 1104B.5.8 and food services aisles and tableware areas as per sec. 1104B.5.5 and sec. 1104B.5.6 accordingly. (B)
11. Plans shall be prepared and designed by Architect/Engineer licensed in the state of California. (B)
12. Required separation in buildings with mixed occupancy shall be as per 2001 CBC, Table 3-B. (B)

ACCESSIBILITY – COMMENTS FROM BUILDING DIVISION:

13. All food establishments selling food for consumption on the premises shall have bathrooms accessible to the public as per 2001 Milpitas Municipal Code. (B)
14. People with disabilities accessible parking shall be provided as per 2001 CBC, sec. 1129B.1. Accessible parking spaces shall be dispersed and located closest to the accessible entrances. One in every eight accessible parking spaces, but not less than one parking space shall be accessible as per sec. 1129B.4.2 (B)
15. All primary entrances and required exit doors shall be accessible to people with disabilities as per 2001 CBC, sec. 1114.B.1.3. (B)
16. Provide maneuvering clearances at doors as per 2001 CBC, Sec. 1133B.2.4.2. (B)
17. Provide seats spaces for persons using wheelchairs when fixed seats are provided as per 2001 CBC, Sec. 1115B. (B)
18. Counters provided for the public and in general employee area must be accessible at least 5%, but not less than one counter (36 in. long) and no more than 28 to 34 inches high per 2001 CBC, Sec. 1122B. (B)
19. Provide min. **aisle width** per 2001 CBC section 1133 B.6.2. Every aisle shall be 36" wide if serving one side and 44" min. wide if serving both sides. (B)
20. *Per Chapter 200, Solid Waste Management, V-200-3.10, General Requirement, applicant/property owner or manager shall not keep or accumulate, or permit to be kept or accumulated, any solid waste of any kind, and is responsible for proper keeping, accumulating and delivery of solid waste. In addition, according to V-200-3.20 applicant/property owner or manager responsible for Solid Waste, Recyclables, and Yard Waste, shall subscribe to and pay for solid waste services rendered.* Prior to occupancy permit issuance, the applicant shall submit evidence to the City that the

following minimum refuse and recycling services have been subscribed with Allied Waste Services/BFI for commercial services:
a) Increase the level of service for trash collection to *1-8CYD bin 4X / week.*
b) Maintain the existing level of service of *1-8CYD bin 3X / week* for recycling collection.
After the applicant has started its business, the applicant shall contact Allied Waste Services/BFI commercial representative to review the adequacy of the solid waste level of services. If services are determined to be inadequate, the applicant shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234, x-264. (E)

21. The U.S. Environmental Protection Agency (EPA) has empowered the San Francisco Bay Regional Water Quality Control Board (RWQCB) to administer the National Pollution Elimination Discharge System (NPDES) permit. The NPDES permit requires all dischargers to eliminate as much as possible pollutants entering our receiving waters. Contact the RWQCB for questions regarding your specific requirements at (800) 794-2482. For general information, contact the City of Milpitas at (408) 586-3329. (E)
22. It is the responsibility of the developer to obtain any necessary encroachment permits from affected agencies and private parties. Copies of any approvals or permits must be submitted to the City of Milpitas Engineering Division. (E)
23. The developer shall submit a Sewer Needs Questionnaire and/or Industrial Waste Questionnaire with the building permit application and pay the related fees prior to Building Permit issuance. Contact the Land Development Section at (408) 586-3329 to obtain the form(s). (E)
24. Prior to building permit issuance, developer must pay all applicable development fees, including but not limited to plan check and inspection deposit and 2.5% building permit automation fee. (E)
25. The Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) under the National Flood Insurance Program shows this site to be in Flood Zone "X". (E)
26. No change shall be made in the character of occupancies or use of any building that would place the building in a different division of the same group of occupancy or in a different group of occupancies, unless such building is made to comply with the requirements of the California Building Code for such division or group of occupancy. California Building Code Section 3405. (F)
27. Approved numbers or addresses shall be provided for all buildings (and tenants) in such a position as to be plainly visible and legible from the street or road fronting the property. CFC Section 901.4.4. (F)
28. Portable fire extinguishers shall be installed in occupancies and locations as set forth in the code, California Code of Regulations Title 19, Division 1, and Chapters 1 and 3 and as required by the Milpitas Fire Chief. California Fire Code (CFC) Section 1002.1. (F)
29. No approval for any hazardous materials under this review. (F)
30. The Milpitas Fire Department shall approve new installation and/or modifications to existing fire protection, alarm or monitoring system(s). A separate submittal is required to the Milpitas Fire Department, for review and approval, prior to the commencement of any work. CFC Section 1001.3. (F)

31. Obstructions, including storage, shall not be placed in the required width of a means of egress, except projections as allowed by the Building Code. Means of egress shall not be obstructed in any manner and shall remain free of any material or matter where its presence would obstruct or render the means of egress hazardous. CFC Section 1203. (F)

32. Exit doors shall be openable from the inside without the use of a key or any special knowledge or effort. Manual operated edge- or surface-mounted flush bolts and surface bolts are prohibited. CFC Section 1207.3 (F)

33. Means of egress illumination shall be provided and maintained in accordance with the Building Code. Means of egress shall be illuminated when the building or structure is occupied. CFC Section 1211.1. (F)

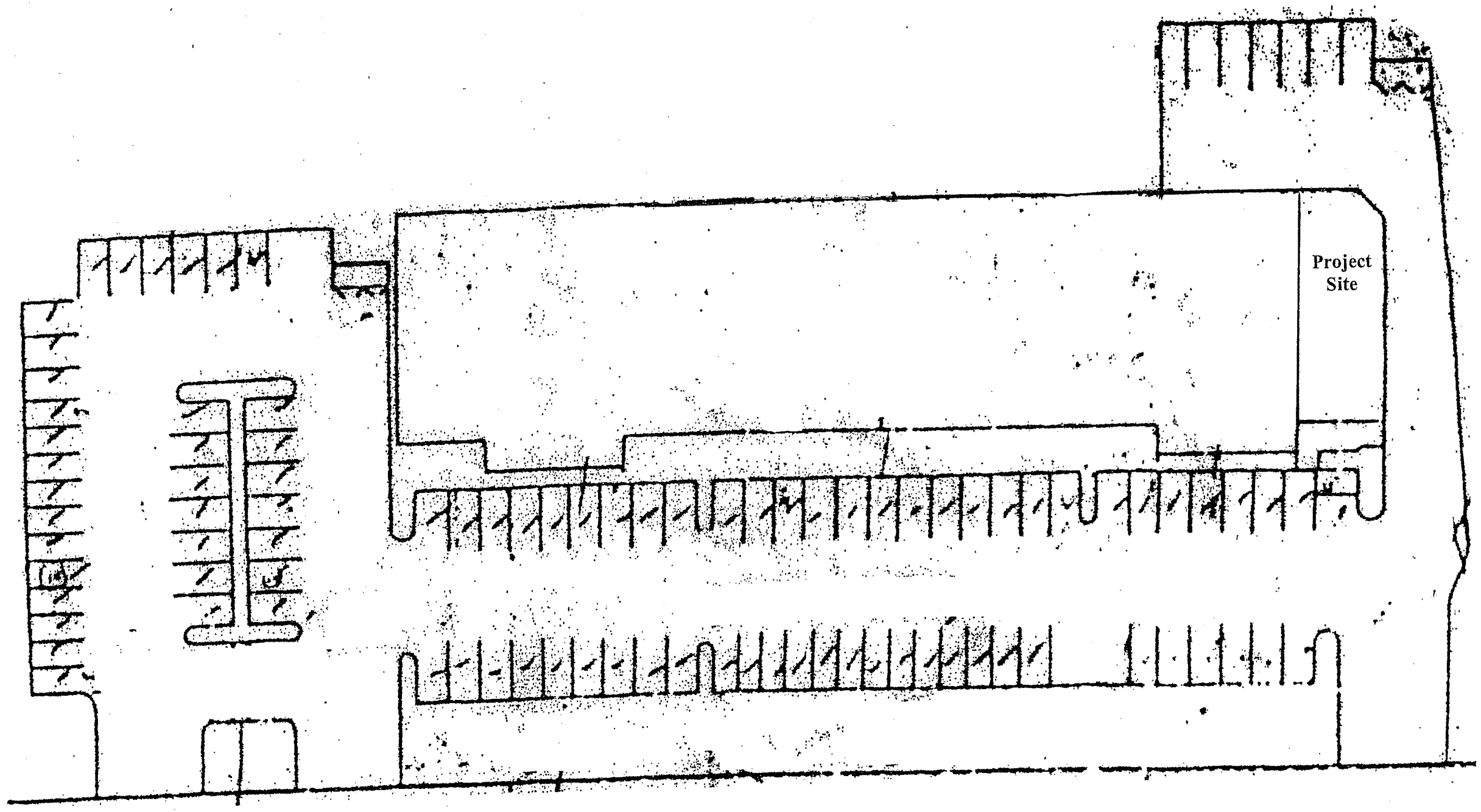
34. A ventilating hood and duct system shall be provided in accordance with the Mechanical Code for commercial-type food heat-processing equipment that produces grease-laden vapors if there are to be any such appliances. CFC Section 1005.1 (F)

35. An approved automatic fire-extinguishing system shall be provided for the protection of commercial-type cooking equipment. CFC Section 1051.2. Exception: The requirement for protection does not include steam kettles and steam tables or equipment, which as used does not create grease-laden vapors. (F)

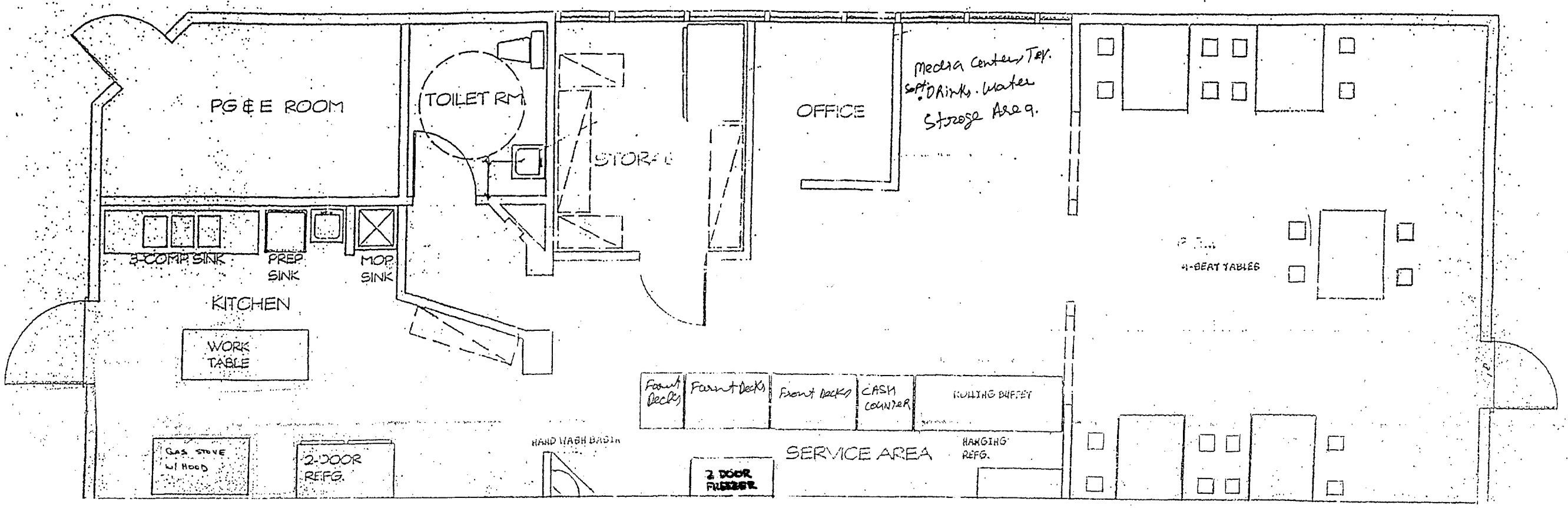
36. A fire extinguisher listed and labeled for Class K fires shall be installed within 30 feet of commercial food heat-processing equipment, as measured along an unobstructed path of travel, in accordance with California Cod of Regulations, Title 19, Division 1, Chapter 3. CFC Section 1005.2.7. (F)

(P) = Planning Division
(B) = Building Division
(E) = Engineering Division
(F) = Fire Department – Special Conditions from the Fire Department are not considered grounds for approval from the Milpitas Fire Department. Submitted drawings are not reviewed nor approved for fire permits and construction. Complete review special conditions for compliance with the building and fire codes will be done during building permit process. These special conditions are provided to assist with the Fire Department permit process.

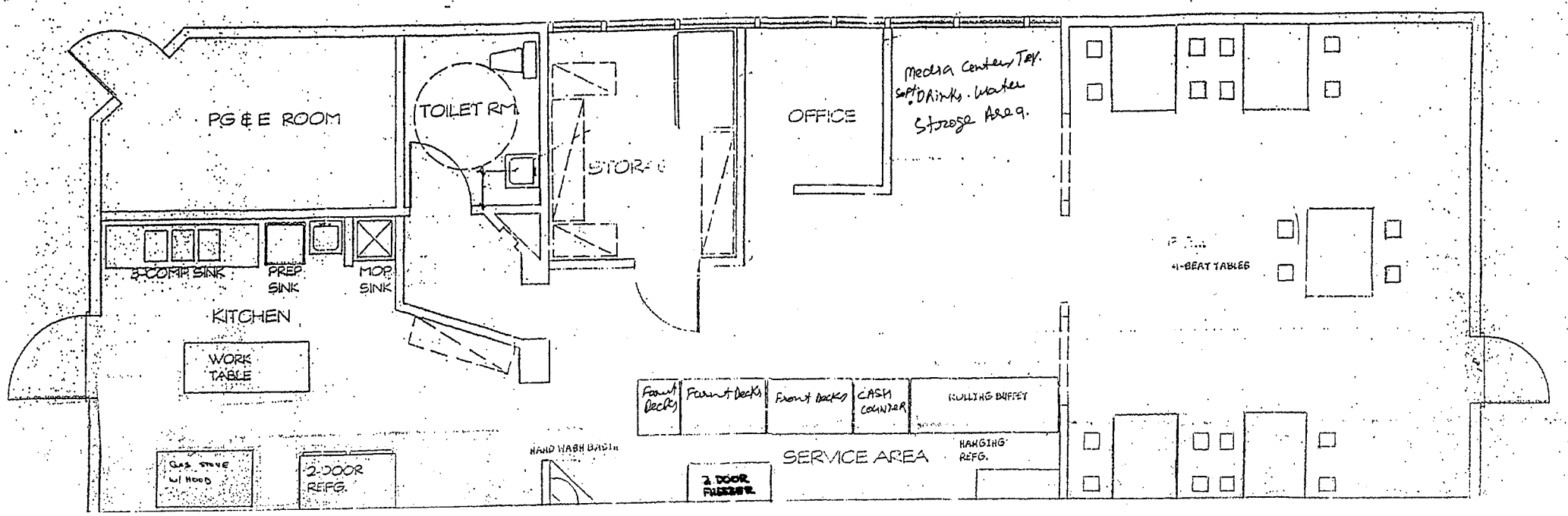
1.



SITE PLAN
454 South Main Street



FLOOR PLAN
454 South Main Street



FLOOR PLAN

454 South Main Street