

MILPITAS PLANNING COMMISSION AGENDA REPORT

Category: New Business

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TITLE: ZONING ORDINANCE INTERPRETATION NO. UD2007-3, TANNING SPAS WITHIN THE TOWN CENTER ZONING DISTRICT

Proposal: A request that the Planning Commission make an interpretation of the Zoning Ordinance that a Tanning Spa/Salon use is similar to a Beauty Salon use within the Town Center zoning district.

Location: 527 E. Calaveras Blvd. (APN 28-12-019)

RECOMMENDATION: Determine that Tanning Spas/Salons are similar to beauty salons and are permitted uses within the Town Center Zoning District.

Applicant: City of Milpitas

Environmental Info: Not applicable

Agenda Sent To: Christian Munic, 1516 McGinnees Ave., San Jose, CA 95127

Attachments: TC Zoning Ordinance text

PJ No. None

BACKGROUND

Staff received a request to locate a 1,419 square foot tanning spa/salon within the Town Center Shopping Center. Tanning spas/salon are not specifically called out in the Town Center Zoning Ordinance. Pursuant to MMC XI-10-22.04-11 (Any other retail business or service establishment), the applicant is requesting an interpretation by the Planning Commission to determine tanning spas/salons are similar to beauty salons and are consistent with the purpose and intent of the Town Center Zoning District. Per the Milpitas Zoning Ordinance, interpretations do not require a public hearing.

DISCUSSION:

The purpose and intent of the Town Center District as a “lifestyle” zoning district that serve as a focal place for variety of daily uses that include retail, entertainment, business, and cultural uses. The tanning spa/salons is a commercial service that is compatible with other permitted uses within the Town Center District that currently includes hair and nail salons, beauty stores, and other retail stores.

Staff’s position is that tanning spas/salons should be considered similar to beauty salons as a permitted use within the Town Center district because:

- Beauty salons and tanning spas/salons offer personal services for the purpose of beauty;
- Both uses operate similarly in that patrons have scheduled appointments, have services performed, and are able to purchase associated products; and
- The internal floor area layout for both uses is similar in that there is a lobby reception area and service stations (i.e. haircutting chairs and tanning beds).

As such, the use will not impair present or potential uses of adjacent properties because it is located within the Town Center Shopping center and is complementary to the other surrounding retail uses. Although Tanning spas/salons are conditionally permitted in the General Commercial District, when considering the purpose and intent of the Town Center district and the reasons above, staff’s position is that the use is compatible with the Town Center district and the use is more akin to beauty salons, which is a permitted use within the Town Center district.

RECOMMENDATION:

Determine that tanning spas/salons are similar to beauty salons; the use is consistent with the purpose of the Town Center Zoning District in that it provides commercial services that are compatible and harmonious with existing uses found in the Town Center Shopping Center; and be allowed as a permitted use in the Town Center District under MMC XI-10-22.04-11 (Any other retail business or service establishment) as permitted by the Planning Commission".

Section 22 "TC" Town Center District

***Note to Section 22**

The following regulations shall apply to the "TC" Town Center District. (Ord. 38.674 (part), 11/3/92; Ord. 38 (part), 3/15/55)

XI-10-22.01 Purpose and Intent

To provide for the orderly development of the Town Center District for the City in the general area designated for such District by the adopted Milpitas General Plan.

22.01-1 The Town Center shall be considered as the chief administrative, business, entertainment, and cultural center of the town as a whole. It is a meeting place for the population, a marketplace, home of commercial and professional firms, the entertainment area with theater, cinema, concert hall, museum, art gallery, library; the place for restaurants, hotels, cafes, and all the miscellaneous halls known as places of public assembly. It includes churches, municipal offices, the City Hall, Council Chambers and department stores. It is the focal place; and the focus of a traffic circulation system.

22.01-2 These various functions can be grouped and take on innumerable shapes, but must retain cohesiveness and a shape convenient for access and communication between groups. The Town Center District consists of two (2) distinct subareas: the eastern portion, located between I-680 and North Hillview Drive; and the western portion, located between North Hillview Drive westerly to the railroad tracks. The development concept for the Town Center is to have predominantly office and highway serving uses (hotels, restaurants, etc.) in the East Area, and predominantly retail and entertainment uses in the West Area. This separation of the Town Center into distinct subareas allows for a great variety of uses within the Town Center District and yet, through their separateness, ensures that they will reinforce rather than negatively affect each other.

22.01-3 Inasmuch as the close proximity of high to very high density residential to areas of relatively intensive commercial and cultural activities can provide mutual benefits to both land use types, it is intended that consideration be given to including residential developments of up to forty (40) units per acre on portions of the Town Center found to be appropriate for such use. (Ord. 38.674 (part), 11/3/92; Ord. 38.577, 5/7/85; Ord. 38.117, 10/24/67; Ord. 38 (part), 3/15/55)

XI-10-22.02 Principal Permitted Uses

The following is a list of permitted uses within the Town Center District. At the end of each permitted use is a symbol (e.g., WA) which defines the subarea that particular permitted use would be allowed. Wherever a symbol is not indicated, that permitted use has been purposely omitted and not allowed in that subarea. Any use not listed as a permitted use shall be a conditional use.

Each district subarea within the Town Center shall allow the following principal permitted uses (Note: Location of each subarea of permitted uses: EA = East Area, WA = West Area):

22.02-1 Art or antique store, not including thrift store. (WA)

22.02-2 Artist's supply store. (WA)

22.02-3 Bakery goods store. (WA)

22.02-4 Banks or similar financial institutions. (EA, WA)

22.02-5 Barbershop or beauty salon. (WA)

22.02-6 Bookstore (except adult bookstore). (WA)

22.02-7 Candy or confectionery store. (WA)

22.02-8 Clothing store. (WA)

22.02-9 Department store. (WA)

22.02-10 Drugstore. (WA)
22.02-11 Dry cleaners store. (WA)
22.02-12 Florist store. (WA)
22.02-13 Furniture store. (WA)
22.02-14 Hardware store. (WA)
22.02-15 Hobby shop. (WA)
22.02-16 Household repair shop. (WA)
22.02-17 Jewelry store. (WA)
22.02-18 Leather goods or luggage store. (WA)
22.02-19 Locksmith shop. (WA)
22.02-19.1 Medical and dental office. (EA, WA)
22.02-20 Millinery shop. (WA)
22.02-21 Music store. (WA)
22.02-22 Offices, business or professional. (EA, WA)
22.02-23 Optician or optometrist store or office. (EA, WA)
22.02-24 Photography supply store. (WA)
22.02-25 Picture framing shop. (WA)
22.02-26 Real estate office. (EA, WA)
22.02-26.1 Residential developments of between twenty-one (21) and forty (40) units per gross acre. (WA)
22.02-27 Tailor or dressmaking store. (WA)
22.02-28 Shoe store. (WA)
22.02-29 Shoe repair shop. (WA)
22.02-30 Sporting goods store. (WA)
22.02-31 Stamp or coin store. (WA)
22.02-32 Stationery store. (WA)
22.02-33 Toy store. (WA)
22.02-34 Travel agency or office. (EA, WA)
22.02-35 Tutoring centers. (Ord. 38.761 (part), 5/20/03; Ord. 38.693 (2) (part), 9/20/94; Ord. 38.674 (part), 11/3/92; Ord. 38.117, 10/24/67; Ord. 38 (part), 3/15/55)

XI-10-22.03 Accessory Uses

The following are the accessory uses permitted in all subareas of the "TC" District:

22.03-1 Signs appurtenant to any use in this District are regulated by Ordinance No. 124, Sign Ordinance, enacted as Chapter XI-30 of this Code.
22.03-2 Deleted by Ord. 38.693. (Ord. 38.693 (3), 9/20/94; Ord. 38.674 (part), 11/3/92; Ord. 38.185, 8/5/69; Ord. 38 (part), 3/15/55)

XI-10-22.04 Conditional Uses

The following are conditional uses in the Town Center District and may be applied for in any of the subareas, provided that it meets the purpose and intent of the Town Center District.

22.04-1 Alcoholic beverage sales, both on-site consumption or off-site sales.
22.04-2 Automatic teller machines (ATM's) or other type walk-up window facility.
22.04-2.1 Billiard center.
22.04-3 Bus terminal, cab stand or other transit facilities.
22.04-3.1 Small and large family child care home, and child care center. Refer to Subsections 53.23-6 through 53.23-8 and 54.16 for standards.
22.04-3.2 Farmer's market, excluding flea market.
22.04-4 Hotels/Motels, excluding Adult Motels/Hotels, as defined in Subsection 54.18.
22.04-5 Mailbox rentals.
22.04-6 Public and quasi-public uses, as defined in section 2.67 (b) and 2.67 (c), appropriate to or customarily located in the "TC" District and intended to serve the whole

City and/or region.

22.04-7 Residential developments of between one (1) and twenty (20) dwelling units per gross acre, provided that the Commission makes a finding that the location of such a use is appropriate and in conformance with the purpose and intent of the Town Center District specified in Section 22.01 above.

22.04-8 Storage garages and off-street parking facilities.

22.04-9 Theater, restaurant, restaurant which includes internet usage for customers, bar, night club or other major entertainment facility, intended and designed to serve the City as a whole, excluding Adult Businesses, as defined in Subsection 54.18.

22.04-9.1 Vehicle-oriented window service.

22.04-10 Video rental store.

22.04-11 Any other retail business or service establishment, excluding Adult Businesses, as defined in Subsection 54.18, that the Commission finds not to be inconsistent with the purpose of this Chapter and will not impair the present or potential uses of adjacent properties. (Ord. 38.761 (part), 5/20/03; Ord. 38.760 (3), 9/17/02; Ord. 38.711 (part), 8/20/96; Ord. 38.702 (1) (part), 8/18/95; Ord. 38.693(1), 9/20/94; Ord. 38.688 (part), 3/15/94; Ord. 38.674 (part), 11/3/92; Ord. 38.577, 5/7/85; Ord. 38.117, 10/24/67; Ord. 38 (part), 3/15/55)

XI-10-22.05 Development Standards

22.05-1 Height Regulations. There shall be no specific height limitation in the Town Center District; provided, however, that before the construction of any structure which exceeds thirty-five (35) feet in height shall be authorized, the Commission must make a finding that any such excess height will not be detrimental to the light, air, or privacy of any other structure or use currently existing or anticipated. This Section does not include freestanding sign heights which are regulated by Ordinance No. 124 (Sign Ordinance), enacted as Chapter XI-30 of this Code.

22.05-2 Front Yard. Twenty (20) feet, except those areas which have frontage on E. Calaveras Blvd. which shall be thirty-five (35) feet.

22.05-3 Side and Rear Yards. None, except where the side or rear yard abuts a residential district there shall be a side or rear yard not less than fifteen (15) feet in depth or width, or; for the street side of a corner lot in which case shall be the same as the front yard.

22.05-3.1 Floor Area Ratio. Subject to XI-10-2.38.2, the Floor Area Ratio is .85 (85%).

22.05-4 Off-Street Parking Requirements. There shall be provided off-street parking for automobiles in terms of design layout and sufficient quantity in accordance with the requirements of Section 53 of this Chapter. All such parking shall be improved as provided for in Subsection 54.03 of this Chapter.

22.05-5 Areas of Lot to be Landscaped.

(a) Required front yard areas. This may be adjusted by the Planning Commission if it is found that there has been provided adequate landscaping adjacent to the building(s) to compensate for a reduction.

(b) Required side and rear yard areas.

(c) The ends of each parking aisle shall include landscaped areas. The size of these planters shall be determined by the Planning Commission at the time of site and architectural review.

22.05-6 Outdoor Storage. Outdoor storage for such things as trash and materials shall be permitted only when said storage areas are suitably screened with a solid wall or tight board fence, and shall not be located within any front or street side setback or yard.

22.05-7 Outdoor Activities. All uses, operations and sales, except off-street parking and loading, reverse vending machines or mobile recycling units, restaurant seating, and other uses and activities customarily conducted out-of-doors as determined by the Planning Commission, shall be conducted within a completely enclosed building. (Ord. 38.760 (3), 9/17/02; Ord. 38.713 (1) (part), 12/3/96; Ord. 38.693 (2) (part), 9/20/94; Ord. 38.674 (part), 11/3/92; Ord. 38.185, 8/5/69; Ord. 38 (part), 3/15/55)

XI-10-22.06 Areas for Collecting and Loading Recyclable Materials

There shall be provided areas for collecting and loading recyclable materials in accordance with the requirements of Subsection 54.15 of this Chapter. (Ord. 38.687 (1) (part), 4/19/94)