



# MILPITAS PLANNING COMMISSION AGENDA REPORT

Meeting Date: January 28, 2009

## **PUBLIC HEARING**

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**APPLICATION:** **CONDITIONAL USE PERMIT NO. UP08-0048**

**APPLICATION SUMMARY:** A request to operate a tobacco shop in an existing shopping center.

**LOCATION:** 1307 Jacklin Rd. (APN: 029-50-040)  
**APPLICANT:** Charanjit Singh, 1462 Parkington Lane, Tracy, CA 95377  
**OWNER:** Charanjit Singh, 1462 Parkington Lane, Tracy, CA 95377

**RECOMMENDATION:** **Staff recommends that the Planning Commission:**  
**1. Close the public hearing; and**  
**2. Adopt Resolution No. 09-008 recommending the City Council approve the proposed project, subject to the conditions of approval.**

**PROJECT DATA:**  
**General Plan/Zoning:** Neighborhood Commercial/Neighborhood Commercial (C1)  
**Overlay District:** Site and Architectural Overlay (-S)  
**Project Site Area:** 65,775 square feet  
**Building Area:** 18,614 square feet  
**CEQA Determination:** Categorically exempt from CEQA pursuant to Section 15301 (Existing Facilities)

**PLANNER:** Judie Gilli, Associate Planner

**PJ:** 2565

**ATTACHMENTS:**  
A. Project Plans  
B. Planning Commission Resolution No. 09-008  
C. Letter from the Applicant  
D. Comments from the Police Department  
E. Letter from Joi-Kho Chewi

# LOCATION MAP



Not to Scale

## **BACKGROUND**

In 1985, the existing 18,614 square foot multi-tenant building was approved and subsequently constructed. Since then, there have been multiple site and tenant improvements to the structure. The structure currently has thirteen tenant suites.

## **SITE DESCRIPTION**

The project site has a commercial building, which includes uses such as an office, retail store, restaurant, dry cleaners and dental office. Four of the tenant suites are currently vacant. The project site is located at the intersection of Jacklin Road and North Park Victoria Drive and is surrounded by residential to the north, south and east. A commercial building is located to the west of the site. See vicinity map on the previous page.

## **PROJECT DESCRIPTION**

The applicant is proposing to operate a tobacco shop. The project area is 1,080 square feet and is currently vacant. The previous use for the tenant space was a restaurant. The plans include a main retail area with jewelry showcases, candy racks and shelves. The office, restrooms and storage areas are located in the rear of the space. The applicant plans to sell tobacco products along with candy, snacks and smoking devices in the store. The hours of operation are 9:00 AM to 8:00 PM, seven days of week. Other than a future sign that will be reviewed separately, no other exterior changes are proposed. The applicant submitted an application pursuant to Section 18.03-4 of the Milpitas Zoning Ordinance, which requires a Conditional Use Permit (CUP) for tobacco shops. Please see the attached letter and plans from the applicant.

## **ANALYSIS**

### **Land Use**

The proposed tobacco store is located in a building with other uses such as a dental office, dry cleaners, beauty salon, realtor office, retail, restaurant and tutoring center. Given the various mix of uses within the building the proposed use, retail tobacco, seems to be compatible with existing uses.

The Police Department has issued comment dated January 5, 2009 regarding the proposed use. The applicant owns a similar store in Stockton, CA. The Milpitas Police contacted the Stockton Police department to inquire about calls for service at that store and found nothing unusual about the number or nature of the calls. Please see the attached memo from the Police Department. Given the nature of the proposed business, the Police department recommends that the use be monitored to insure that the business is operating within the confines of the law. A condition of approval has been added to Resolution 09-0008 to require a six month review of the business by the Planning Commission.

**Parking**

The following table summarizes the parking requirement for the project site.

**Table 1**  
**Parking for Site**

| <b>Tenant Use</b>                    | <b>Square Feet</b> | <b>Req. Parking Ratio</b> | <b>Required Parking</b> |
|--------------------------------------|--------------------|---------------------------|-------------------------|
| Dental Office                        | 1447               | 1/225                     | 6                       |
| Proposed Tobacco Shop                | 1080               | 1/200                     | 5                       |
| Cleaners                             | 1707               | 1/200                     | 8                       |
| Beauty Salon                         | 840                | 1/200                     | 4                       |
| Chiropractor                         | 1432               | 1/225                     | 6                       |
| Realtor                              | 4247               | 1/200                     | 21                      |
| Retail                               | 1077               | 1/200                     | 5                       |
| Vacant                               | 620                | 1/200                     | 3                       |
| Office                               | 752                | 1/200                     | 4                       |
| Vacant                               | 678                | 1/200                     | 3                       |
| Tutoring                             | 570                | 1/500                     | 1                       |
| Vacant                               | 680                | 1/200                     | 3                       |
| Restaurant                           | 107 seats*         | 1 space/3 seats           | 35                      |
| <b>Total Required Parking Spaces</b> |                    |                           | <b>104</b>              |
| <b>Total Parking Provided</b>        |                    |                           | <b>93</b>               |

\*Information from applicant

The proposed use requires one space for every 200 square feet of floor area or five spaces. The building was built with a mix of uses in mind. At a minimum, the site provides one space for each 200 square feet of retail space. The proposed use, a 1,080 square foot tobacco shop, is allocated five parking spaces by the shopping center owner and therefore, has the minimum number of parking spaces that the Zoning Ordinance requires. As a whole, the site does not provide adequate parking based on the information that we provided by the applicant. Staff has researched the 107 seat restaurant (Chez Christina) and found no documentation of a conditional use permit or other approval for it. In order for the site to comply, the restaurant would have to reduce the seats to 72. The restaurant is not part of the proposal from the applicant, therefore, this information is being offered in this staff report for future reference.

**ADOPTED PLANS AND ORDINANCES CONSISTENCY**

***General Plan***

The table below outlines the project's consistency with applicable General Plan Implementing Policies:

**Table 2**  
**General Plan Consistency**

| Policy   | Consistency Finding   |
|--|---|
| <i>Implementing Policy 2.a-1-5 Maintain policies that promote a strong economy which provides economic opportunities for all Milpitas residents within existing environmental, social fiscal and land use constraints.</i> | Consistent in that the proposed use adds to the mix of uses within the neighborhood.    |
| <i>Implementing Policy 2.a-1-6 Endeavor to maintain a balance economic base that can resist downturns in any one economic sector.</i>  | Consistent in that the proposed use adds to the economic base for the City of Milpitas. |

**Zoning Ordinance**

The project is consistent with Section 18, “C-1” Neighborhood Commercial District the Milpitas Zoning Ordinance. The proposed use is appropriate because it is compatible in use to the surrounding uses and with the approval of this conditional use permit will meet all the requirements of the Zoning Ordinance. The land use, with added conditions of approval, will add to the mix of uses within the building and within the area.

**ENVIRONMENTAL REVIEW**

The Planning Division conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). Staff determined that the project is categorically exempt per Section 15301, (Existing Facilities) of the California Environmental Quality Act (CEQA) Guidelines because the proposed use is located within an existing building and no new construction is proposed.

**PUBLIC COMMENT/OUTREACH**

Staff publicly noticed the application in accordance with City and State law. As of the time of writing this report, one inquiry from Joi-Kho Chewi, the business owner of 1343 Jacklin Rd. He is concerned about the proximity of tobacco selling store in the area. The Zoning Ordinance does not have any restrictions on the proximity of businesses selling similar items, however, the Conditional Use Permit process ensures on a case-by-case basis the compatibility of surrounding uses and any individual or cumulative impacts from the project. Please see the attached letter for additional information from the concerned shop owner.

**CONCLUSION**

The primary consideration of a CUP relates to compatibility of the proposed use with surrounding land uses. The applicant proposes to operate a tobacco shop in a building that has many types of commercial uses. The proposed use is compatible with the uses within the building because it is a

commercial business, much like the existing uses within the building. Staff's position is that the proposed use is compatible with the existing surrounding uses.

**RECOMMENDATION**

**STAFF RECOMMENDS THAT** the Planning Commission recommend approval to the City Council of UP08-0048 subject to the attached Resolution.

**ATTACHMENTS:**           A. Resolution No. 09-008  
                                  B. Plans

**RESOLUTION NO. 09-008**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT UP08-0048, HAWAIIAN TOBACCO SHOP, TO ALLOW THE OPERATION OF A TOBACCO SHOP LOCATED AT 1307 JACKLIN ROAD**

**WHEREAS**, on December 4, 2008, an application was submitted by Charanjit Singh, 1462 Parkington Lane, Tracy, CA 95377, to allow the operation of a tobacco shop. The property is located within Neighborhood Commercial (C-1) Zoning district with APN (029-50-040); and

**WHEREAS**, the Planning Division 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 per Section 15301, (Existing Facilities) of the California Environmental Quality Act (CEQA) Guidelines.

**WHEREAS**, on January 28, 2000, the Planning Commission held a duly noticed public hearing on the subject application, and considered 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:** The recitals set forth above are true and correct and incorporated herein by reference.

**Section 2:** The project is categorically exempt per Section 15301, (Existing Facilities) of the California Environmental Quality Act (CEQA) Guidelines because the proposed use is located within an existing building and no new construction is proposed.

**Section 3:** 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 in that it meets all requirements of the City's Zoning Ordinance and General Plan.

**Section 4:** The proposed use is consistent with the Milpitas General Plan in that it meets General Plan Policy 2.a-I-5: Maintain policies that promote a strong economy which provides economic opportunities for all Milpitas residents within existing environmental, social fiscal and land use constraints in that the proposed use adds to the mix of uses within the neighborhood.

**Section 5:** The proposed use is consistent with the Milpitas General Plan in that it meets General Plan Policy 2.a-1-6: Endeavor to maintain a balance economic base that can resist downturns in any one economic sector in that the proposed use adds to the economic base for the City of Milpitas.

**Section 6:** The proposed use is consistent with the Milpitas Zoning Ordinance in that the proposed use meets all the requirements set forth by the Zoning Ordinance.

**Section 7:** The Planning Commission of the City of Milpitas hereby approves conditional use permit UP08-0048, Hawaiian Tobacco Shop, subject to the above Findings, and Conditions of Approval attached hereto as Exhibit 1.

**PASSED AND ADOPTED** at a regular meeting of the Planning Commission of the City of Milpitas on January 28, 2009.

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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 January 28, 2009, and carried by the following roll call vote:

| <b>COMMISSIONER</b> | <b>AYES</b> | <b>NOES</b> | <b>OTHER</b> |
|---------------------|-------------|-------------|--------------|
| Cliff Williams      |             |             |              |
| Lawrence Ciardella  |             |             |              |
| Alexander Galang    |             |             |              |
| Sudhir Mandal       |             |             |              |
| Gurdev Sandhu       |             |             |              |
| Noella Tabladillo   |             |             |              |
| Aslam Ali           |             |             |              |

**EXHIBIT 1**

**CONDITIONS OF APPROVAL  
Hawaiian Tobacco Shop UP08-0048**

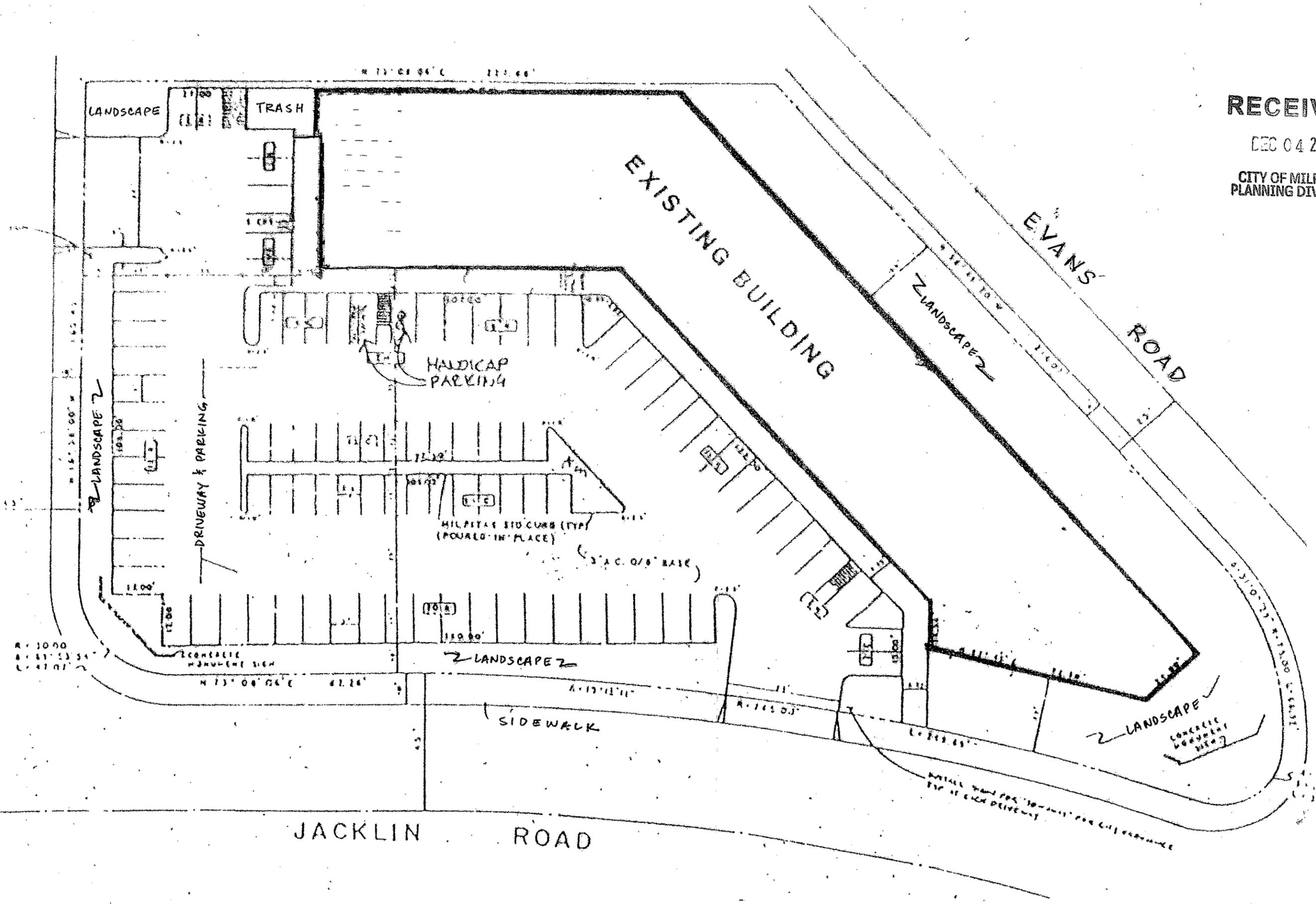
**Planning Division**

1. The owner or designee shall develop the approved project in conformance with the approved plans and color and materials sample boards approved by the Planning Commission on January 28, 2009, in accordance with these Conditions of Approval.
2. Any deviation from the approved site plan, floor plans, or other approved submittal shall require that, prior to the issuance of building permits, the owner or designee 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 Planning Commission, in accordance with the Zoning Ordinance.
3. Conditional Use Permit UP08-0048 shall become null and void if the project is not commenced within 18 months from the date of approval.
4. Pursuant to Section 64.04-1, the owner or designee shall have the right to request an extension of 18 months if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein.
5. The business operation shall be reviewed by the Planning Commission under their Old Business agenda in six months from the date of occupancy for compliance to all conditions of approval and to State Law.
6. PJ ACCOUNT: If at the time of application for business license issuance, there is a project job account balance due to the City for recover of review fees, review of permits will not be initiated until the balance is paid in full.

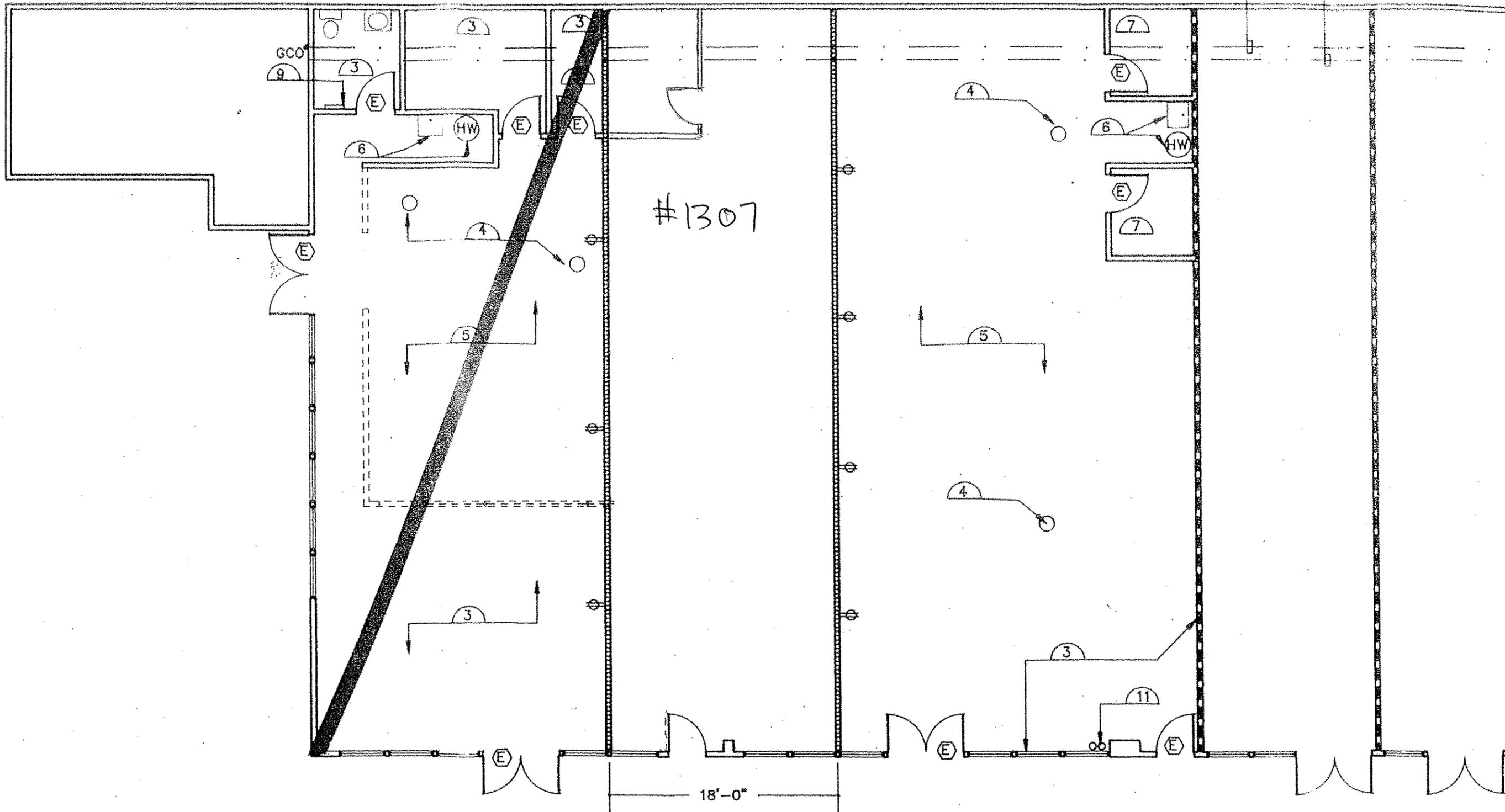
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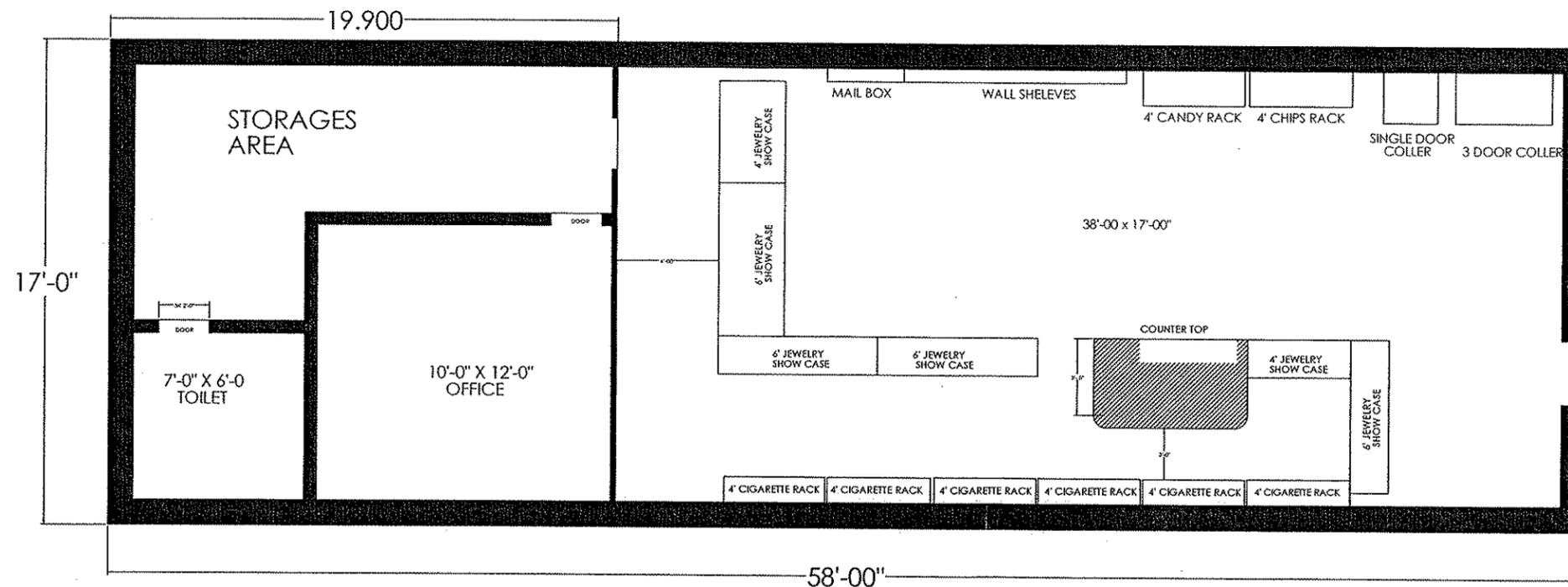
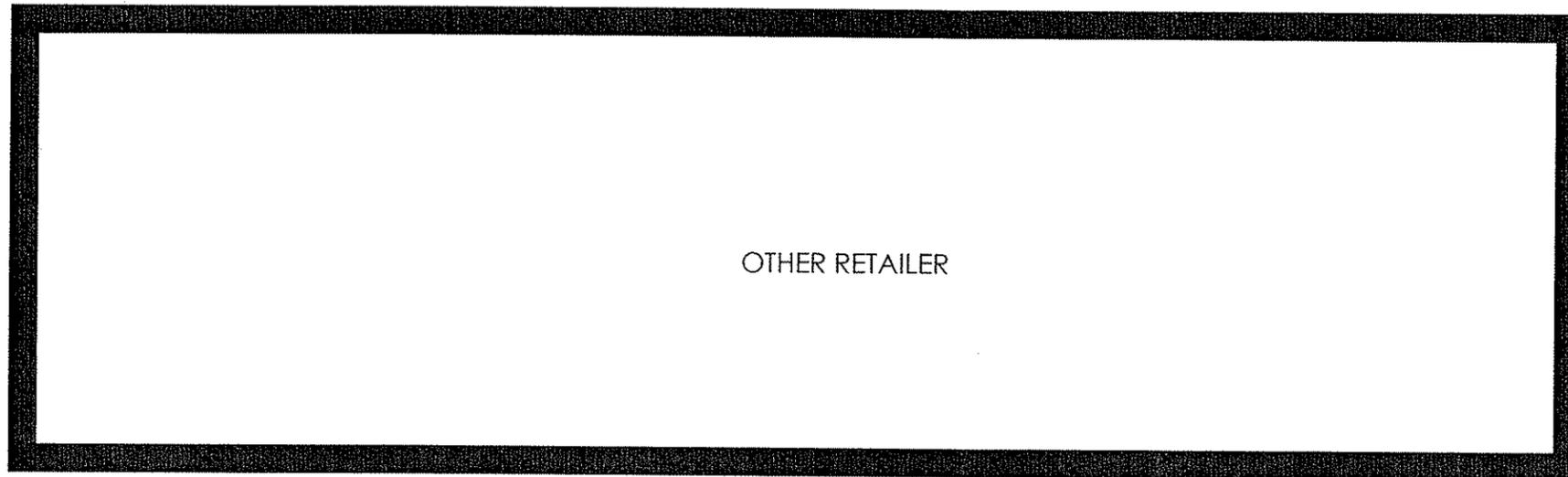
DEC 04 2008

CITY OF MILPITAS  
PLANNING DIVISION



KEY PLAN





FLOOR PLANE FOR CIGARETTE STORE  
 AT  
 1307 JACKLIN ROAD  
 MILPITAS CA

PARKING LOT

JACKLIN ROAD