



MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: February 10, 2010

APPLICATION: Conditional Use Permit No. UP09-0053, Happy Hearts Academy

APPLICATION SUMMARY: A request for to locate a 2,750 square foot childcare facility and site modifications to accommodate an outdoor play area.

LOCATION: 550 N. Abel Street (APN 22-07-004)
APPLICANT: Rupa and Vijay Sethna, 45958 Omega Drive, Fremont, CA 94539
OWNER: Meduri Matthew Trustee Et Al, 1557 Carmel Drive, San Jose, CA 95125-1863

RECOMMENDATION: Staff recommends that the Planning Commission adopt Resolution No. 10-011 approving the project subject to conditions of approval.

PROJECT DATA:
**General Plan/
Zoning Designation:** General Commercial (GNC)/General Commercial (C2)

Overlay District: Site and Architectural Overlay (-S)

Specific Plan: N/A

Site Area: 1.47 Acres
Building Square Footage: 14,870 Sq. Ft.
Tenant Square Footage: 2,750 Sq. Ft.
Parking Required:
Parking Provided:

CEQA Determination: Categorically exempt pursuant to Section 15301 (Existing Facilities) of the California Environmental Quality Act.

PLANNER: Cindy Hom, Assistant Planner

PJ: 2625

ATTACHMENTS: A. Resolution No. 10-011
B. Project Plans
C. Project Letter

LOCATION MAP



No scale

BACKGROUND

On December 4, 2004, the Planning Commission approved Conditional Use Permit No. UP2004-22 to convert a 2,750 square foot tenant space (formally occupied by Radio Shack) and operate a 48-seat restaurant (Red Rooster BBQ) with beer and wine sales. The project was abandoned and never vested.

On December 19, 2009, Rupa and Vijay Sethna submitted an application for a conditional use permit to locate a 2,750 square foot child care center that provides group care for 30 children on the weekdays between 7:00AM to 6:00PM and for exterior modifications to accommodate a 15-foot by 70-foot rubberized outdoor play area within an existing commercial center. The application is submitted pursuant to the Milpitas Municipal Codes XI-10-5.02-1 (Child Care Center) which requires Planning Commission review and approval of a conditional use permit.

PROJECT DESCRIPTION

The project proposal entails the operations of a 2,750 square foot child care center that provides group care for 30 children in an existing vacant tenant space located at the southernmost end of the building. The project also proposes minor exterior modifications to accommodate an outdoor play area that will be enclosed with a new six foot tall fence.

The subject site is located in the Abel Center Plaza on the southeastern corner of North Abel Street and Marylenn Drive. The 1.47 acre subject site includes a multi-tenant retail building with nine tenant spaces that includes a 7-Eleven convenience store, a self service 24 hours Laundromat, various retail stores, a Mexican grocery store and taqueria, and other restaurants. Surrounding land uses include single and two family residential developments and retail commercial centers farther south. A vicinity map of the project site is shown on the previous page.

Development Standards

The applicant does not propose any exterior changes that modify the existing building setback, height, or floor area ratio. Exterior modifications consist of converting an asphalt alley into an outdoor play area that will be covered with a rubberized surface, installation of a 6-foot tall fence and gate to enclose the area and rehabilitated landscaping.

Access, Circulation, and Parking

Access to the project site is provided by two driveways on North Abel Street and a third driveway on Marilynn Drive. Internal site circulation is provided by a looped one-way drive aisle. Pedestrian access is provided by a public sidewalk that is located along the street frontage and a covered walkway in front of the building. Currently the site provides 91 angled parking spaces. To comply with Fire Department's 20-foot exit discharge clearance requirements, it is necessary that two parking spaces located at the front entrance be removed. The applicant proposes to add two compact spaces to ensure there is no net loss of parking. Staff recommends as a condition of approval that prior to building permit issuance; the applicant shall provide a parking restriping plan demonstrating compliance with parking requirements. Based on the review of the project, the parking requirements for the proposed child care facility is satisfied with the on-site parking. A parking summary is provided below:

Table 2
Parking Summary for tenant space

Existing and Proposed Uses	Parking Ratio	Square footage/Persons	Parking Provided
Retail (vacant)	1/200	2,750	13
<i>Child Care Center</i>		2,750	11
<i>Classroom</i>	1/500 GFA	1,901	4
<i>Office</i>	1/200 GFA	323	2
<i>Loading and Unloading</i>	1 per 6 children; up to 5 spaces and thereafter 1 per 10 children	30 people	5
Total Number of Spaces Allotted			13
Total Number of Spaces Required			11
Total Number of Spaces Provided			11
Total Number of Excess spaces			2

Floor Plan

The proposed layout (Attachment B) for the child care center consist of an open floor that allows for group care, restroom facilities, staff lounge area, and office area that are located at the back of the tenant space. Access to the outdoor play area is provided by a side glass door. The exterior building walls are constructed of concrete blocks, so therefore, constructing additional windows is not feasible. To address any concerns regarding access to natural lighting for children, the applicant proposes to increase the duration of outdoor playtime during the course of the day. However, staff recommends the installation of skylights as a condition of approval to incorporate more natural lighting into the facility. Prior to building permit issuance, the applicant shall provide a roof plan showing locations of skylights.

Outdoor Play Area

The applicant proposes to utilize the adjacent uncovered paved area between the building and the property wall for outdoor play area by enclosing the 1,050 square foot area with a six foot tall wooden fence and gate constructed with horizontal wood, decorative trim and wood capping that will be painted to match the building. The asphalt paving will be covered by a child protective rubber surface that will extend 48-inches up the side the adjacent building. Currently this is an existing landscaping strip consisting of ivy ground cover. Staff recommends the following conditions of approval to provide for an urban park environment for the play area.

- Provide details of an attached shade structure that is appropriate in scale and complements the building color and materials.
- Incorporate landscaping planters for non-toxic ornamental trees and seasonal plant material to display seasonal changes and natural elements with the play area.
- Construct seating areas that are integrated with the design of the outdoor spaces that provides a gathering place for children and teachers.

ADOPTED PLANS AND ORDINANCES CONSISTENCY***General Plan***

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

Table 2 or 3
General Plan Consistency

Policy	Consistency Finding
<p><i>2.a-I-6</i> <i>Publicize the position of Milpitas as a place to carry on compatible Industrial and Commercial activities with special emphasis directed the advantages of the City's location to both industrial and commercial use.</i></p>	<p>Consistent. The project would serve local residents living in the surrounding residential development with quality child care.</p>
<p><i>2.aI-7</i> <i>Provide opportunities to expand employment opportunities in partnerships with local businesses to facilitate communication, and promote business retention</i></p>	<p>Consistent. The project would provide employment opportunities and revitalization of the commercial center by replacing a vacancy with a use that would be complementary to existing commercial uses and nearby residents.</p>

Milpitas Child Care Master Plan

The table below outlines the project's consistency with the goals and implementation policies of the Milpitas Child Care Master Plan adopted April 2, 2002.

Table 4
Milpitas Child Care Master Plan Consistency

Policy	Consistency Finding
<p><i>Long Range Goal:</i> <i>Every child and family has access to affordable, safe, quality child care</i></p>	<p>Consistent. The project proposal is a 2,750 square foot child care facility that accommodates 30 children that serves the nearby residential development along the N. Abel and Marilyn corridor.</p>
<p><i>Accessibility Policy 2.2-G-I:</i> <i>The City of Milpitas promotes the retention of existing facilities and the development of new child care facilities within the city limits.</i></p>	<p>Consistent. The project proposes a new child care facility within the city limits.</p>

Zoning Ordinance

The proposed child care center conforms to the Milpitas Zoning Ordinance in that the use is conditionally permitted in the General Commercial Zoning district and complies with the development standards and parking requirements.

The proposed use will not be detrimental or injurious to property, improvements, public health, safety and general welfare in that the use will not create a negative impact in terms of parking and site circulation. The use is appropriate and suitable at this location given its proximity to residential and general retail uses.

ENVIRONMENTAL REVIEW

The Planning Division conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). The project is categorically exempt from further environmental review pursuant to Section 15301 (Existing Facilities) of the California Environmental Quality Act in that involves minor modifications to convert existing retail space into a child care facility with outdoor play area. The project is considered a negligible expansion of use beyond what currently exists.

PUBLIC COMMENT/OUTREACH

Staff publicly noticed the application in accordance with City and State law. As of the time of writing this report, there have been no inquiries from the public.

CONCLUSION

The proposed project is consistent with the Milpitas General Plan, the Milpitas Zoning Ordinance, and Milpitas Childcare Master Plan in that the use is suitable and appropriate at this location and is neighborhood serving.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission close the public hearing and adopt Resolution No. 10-011 approving Conditional Use Permit No. UP09-0053, Happy Hearts Academy, subject to the attached Conditions of Approval.

Attachments:

- A. Resolution No. 10-011
- B. Project Plans
- C. Project Letter

RESOLUTION NO. 10-011

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT NO.UP09-0053, HAPPY HEARTS ACADEMY, A REQUEST TO OPERATE A 2,750 SQUARE FOOT CHILD CARE FACILITY LOCATED AT 550 N. ABEL STREET.

WHEREAS, on, December 17, 2009, an application was submitted by Rupa and Vijay Sethna to operate a 2,750 child care facility and for the installation of minor interior improvements and exterior modifications at 550 N. Abel Street (APN 22-07-004). The property is located within the General Commercial Zoning District; 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 from further environmental review; and

WHEREAS, on February 10, 2010, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, and other interested parties and continued the item.

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 from further environmental review pursuant to Class 1, Section 15301 (Existing Facilities) in that the project entails the operations a 2,750 square foot child care facility that provide care for 30 children. The use is a negligible expansion beyond the existing use, which consists of general retail shops and restaurants.

Section 3: The project is consistent with the Milpitas General Plan in that the project would new promote small businesses and expand employment opportunities.

Section 4: The project conforms to the Milpitas Zoning in that the project is a conditionally permitted use in the General Commercial Zoning district and complies with the development standards and parking requirements.

Section 5: The project will not be injurious or detrimental to property, improvements or to public health and safety in that the use will not create a negative impact in terms of parking and site circulation. The use is appropriate and suitable at this location given its proximity to residential and general retail uses.

Section 6: The Planning Commission of the City of Milpitas hereby approves Conditional Use Permit No. UP09-0053, Happy Hearts Academy, 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 February 10, 2010

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 February 10, 2010, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Cliff Williams				
Lawrence Ciardella				
Sudhir Mandal				
Gurdev Sandhu				
Steve Tao				
Noella Tabladillo				
Mark Tiernan				
Erik Larsen				

EXHIBIT 1

**CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT NO. UP09-0053, HAPPY HEARTS ACADEMY**

Planning Division

1. The owner or designee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on February 10, 2010, in accordance with these Conditions of Approval.

Any deviation from the approved site plan, floor plans, elevations, materials, colors, landscape plan, 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.

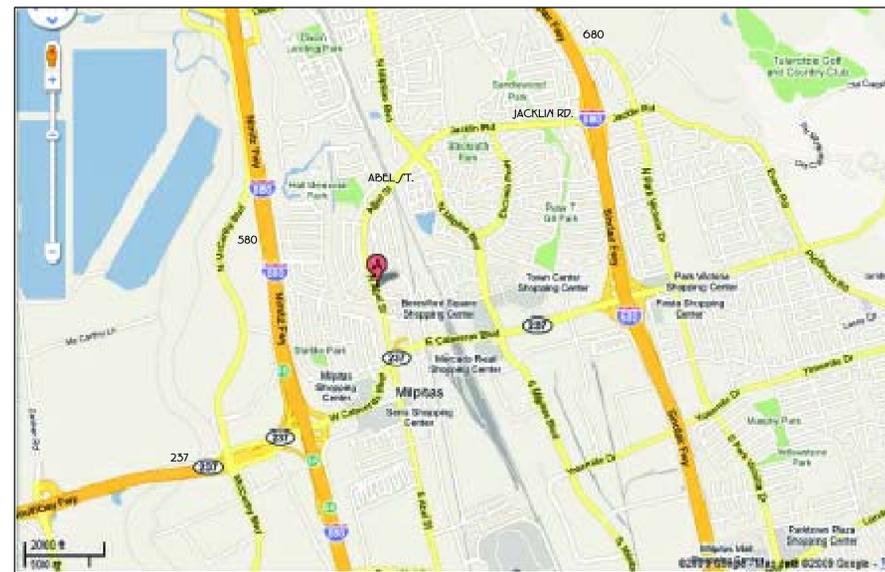
2. Conditional Use Permit No. UP09-0053 shall become null and void if the project is not commenced within 18 months from the date of approval. Pursuant to Section 64.06(2) of the Zoning Ordinance of the City of Milpitas. If the project requires the issuance of a building permit, the project shall be deemed to have commenced when the date of the building permit is issued and/or a foundation is completed, if a foundation is a part of the project. If the project does not require the issuance of a building permit, the project shall be deemed to have commenced when dedication of any land or easement is required or complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.

Pursuant to Section 64.06(1), the owner or designee shall have the right to request an extension of Conditional Use Permit No. UP09-0053 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein.

3. The project shall be operated in accordance with all local, state and federal regulations. (P)
4. If at the time of application for permit there is a project job account balance due to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. (P)
5. If at the time of application for a certificate of occupancy there is a project job account balance due to the City for recovery of review fees, a certificate of occupancy shall not be issued until the balance is paid in full. (P)
6. Prior to business license issuance, the applicant shall submit a parking striping plan that shall demonstrate conformance with parking requirements and development. (P)

7. Prior to building permit issuance, the applicant shall provide a roof plan showing locations of new skylights. (P)
8. The applicant shall provide details on an attached shade structure that is appropriate in scale and complements the building color and materials. Building permit plans shall include elevations and details for Planning Division review and approval. (P)
9. The applicant shall incorporate landscaping planters for non-toxic ornamental trees and seasonal plant material to display seasonal changes and natural elements with the play area to the approval of the Planning Division. (P)
10. The applicant shall construct seating areas that are integrated with the design of the outdoor spaces that provides a gathering place for children and teachers.(P)

HAPPY HEARTS ACADEMY



1 VICINITY MAP
SCALE: 1" = 2000'

SITE DATA

APN: 022 07 004
 OWNER: MEDURI TRU/T
 TENANT: RUPA & VIJAY/ETHNA
 CUP: P-UP09-0053

PARCEL SIZE: 1.47 ACRES
 BUILDING SIZE: COMMERCIAL 14,870/SQ. FT.
 TENANT/SPACE: 2,750/SQ. FT.

APPLICABLE CODES IN EFFECT:
 2007 CBC, CMC, CEC, CPC, CEHC AND
 2008 MILPITAS MUNICIPAL CODE.

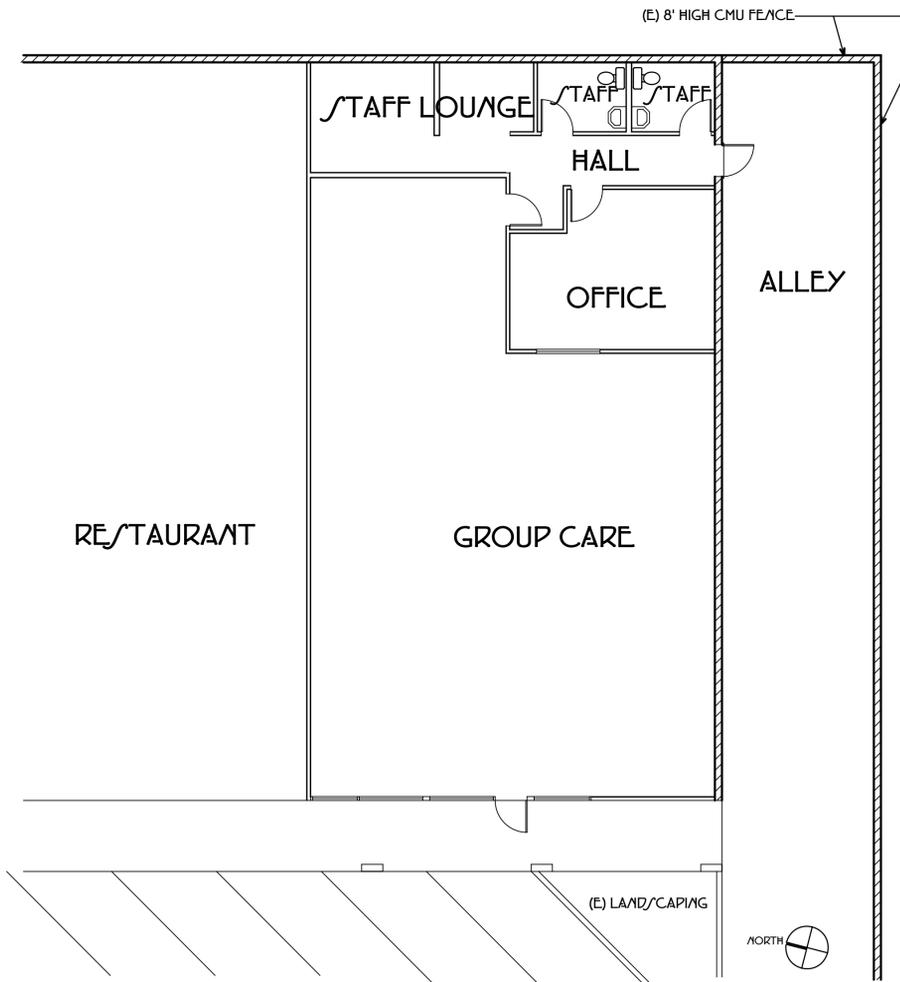
OCCUPANCY: GROUP E
 CONSTRUCTION: TYPE VB
 NO. OF PRINKLERED
 MAX. ALLOW. BLDG. AREA = N/A EX/T. BLDG.
 NEW OCCUPANCY IS LE/RE/RESTRICTIVE IN AREA.

NOTES

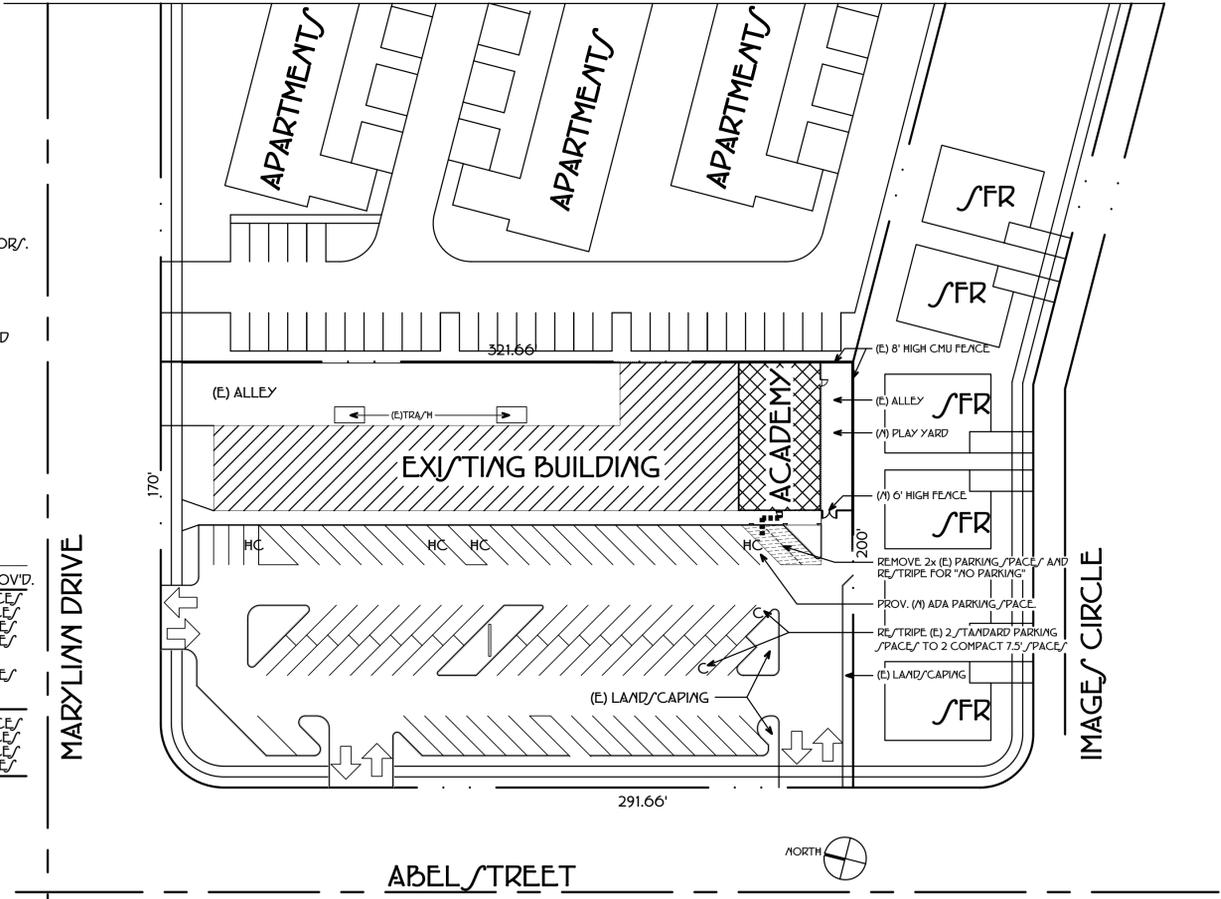
- PROV. TACTILE EXIT SIGNS NEXT TO ALL EXIT DOORS.
- (E) CEILING TILE/ AND GRID TO REMAIN.
- (E) FLUOR. LIGHT FIXTURES TO REMAIN.
- (E) HVAC SYSTEM TO REMAIN.
- (E) SMOKE DETECTOR TO REMAIN.
- (E) CONVENIENCE OUTLETS ARE TO BE REPLACED w/ CHILD PROOF OUTLET - TYP. +15" AFF.
- LANDING ON EITHER SIDE OF DOORS/HALL NOT EXCEED 1/2"
- PROV. ADA UNIFORM SYMBOL ON EA. RESTROOM DOOR +60"
- OWNER/HALL PROV. SECURITY PLAN COMPLETE w/ SECURITY CAMERA/ & BURGLAR ALARM.
10. 10.

PARKING ANALYSIS

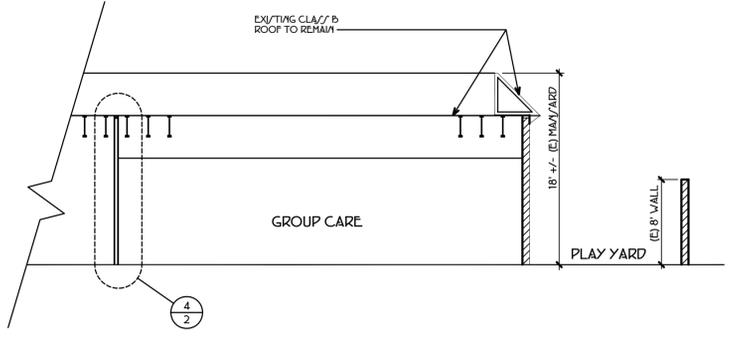
(E) & PROPOSED USE	PARKING RATIO SF/PERSON	PARKING PROVIDED
RETAIL (vacant)	2,750sf	13 /PACE/
CHILDCARE CTR.	2,750sf	11 /PACE/
CLASSROOM	1/500 GFA	4 /PACE/
OFFICE	1/200 GFA	2 /PACE/
LOADING/UNLOADING	1/6 KID/	5 /PACE/
UP TO 5 /PACE/ & THEREAFTER	30 KID/	5 /PACE/
1/10 KID/		
TOTAL NUMBER OF /PACE/ ALLOTTED		13 /PACE/
TOTAL NUMBER OF /PACE/ REQUIRED		11 /PACE/
TOTAL NUMBER OF /PACE/ PROVIDED		11 /PACE/
TOTAL NUMBER OF EXCESS /PACE/		2 /PACE/



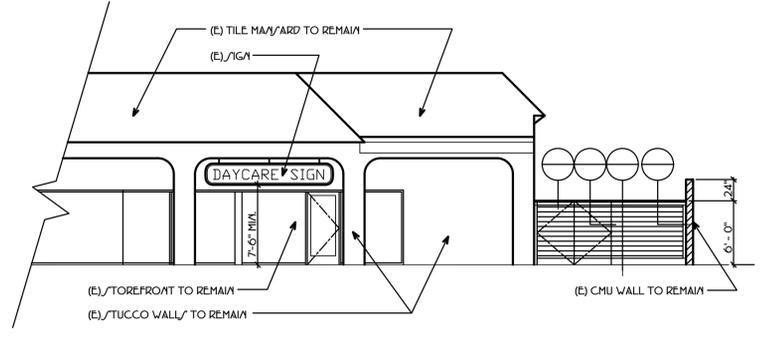
EXISTING PLAN
SCALE: 1/8" = 1'-0"



2 SITE PLAN
SCALE: 1" = 40'-0"



3 SECTION
SCALE: 1/8" = 1'-0"



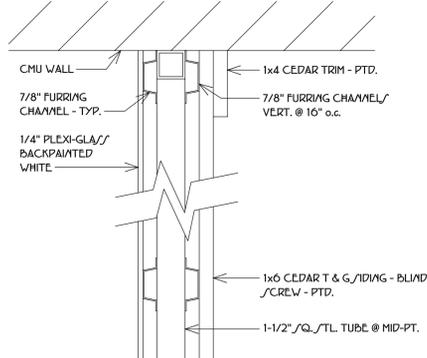
4 ELEVATION
SCALE: 1/8" = 1'-0"

Ritch J. Vorr
 LEED Architect

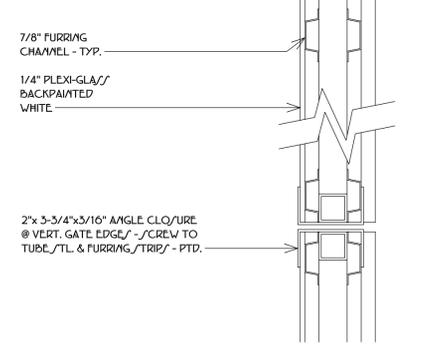
HAPPY HEARTS ACADEMY
 550 ABEL STREET, MILPITAS, CA

VICINITY MAP, SITE PLAN,
 EXISTING PLAN, EXTERIOR
 ELEVATION, SECTION

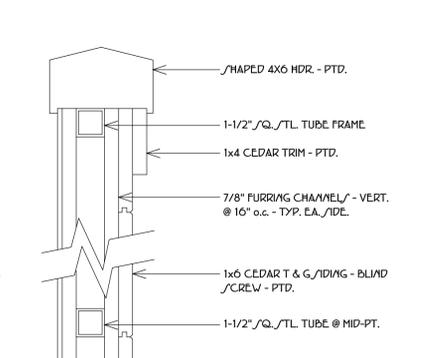
CUP: 2/1/10
 DATE: 12/23/09
 SCALE: AS NOTED
 DRAWN/RJV
 JOB: 09-004



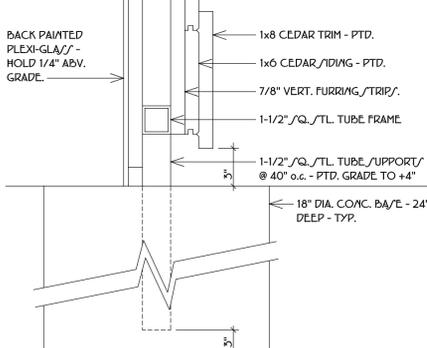
8 FENCE/WALL
SCALE: 3/8" = 1'-0"



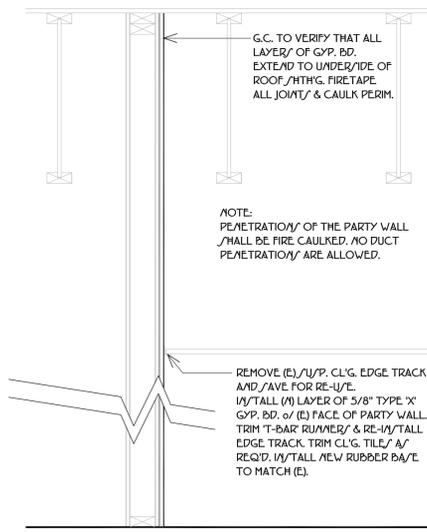
7 FENCE GATE
SCALE: 3/8" = 1'-0"



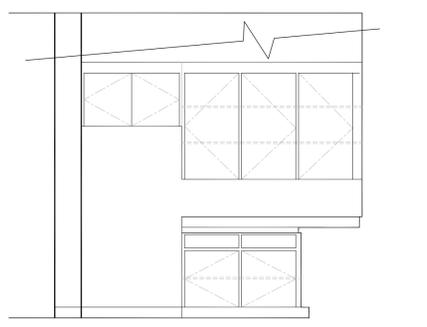
6 FENCE CAP
SCALE: 3/8" = 1'-0"



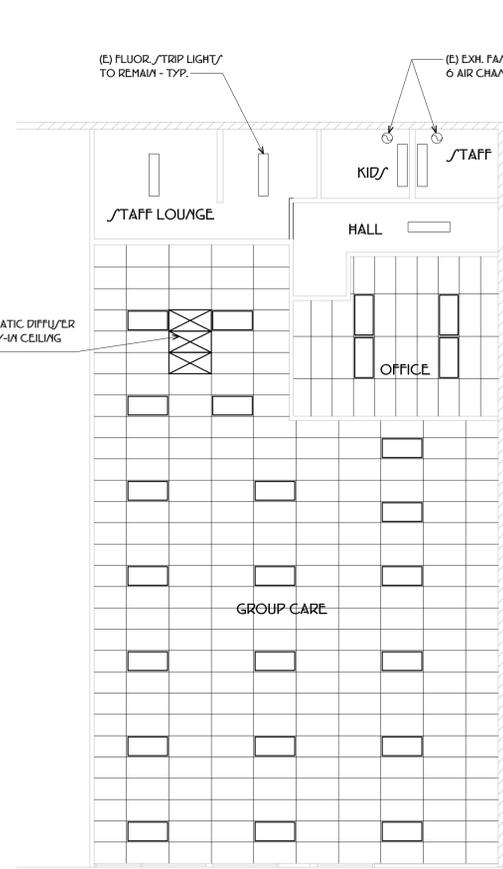
5 FENCE BASE
SCALE: 3/8" = 1'-0"



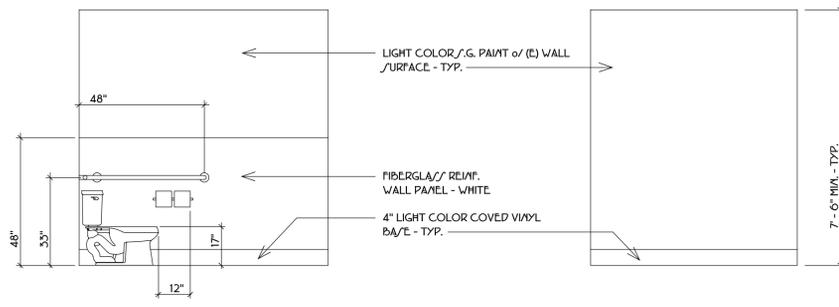
4 PARTY WALL
SCALE: 3/8" = 1'-0"



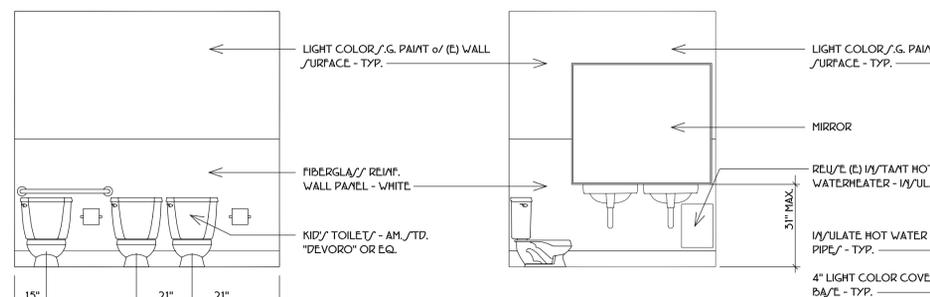
2 STAFF LOUNGE
SCALE: 3/8" = 1'-0"



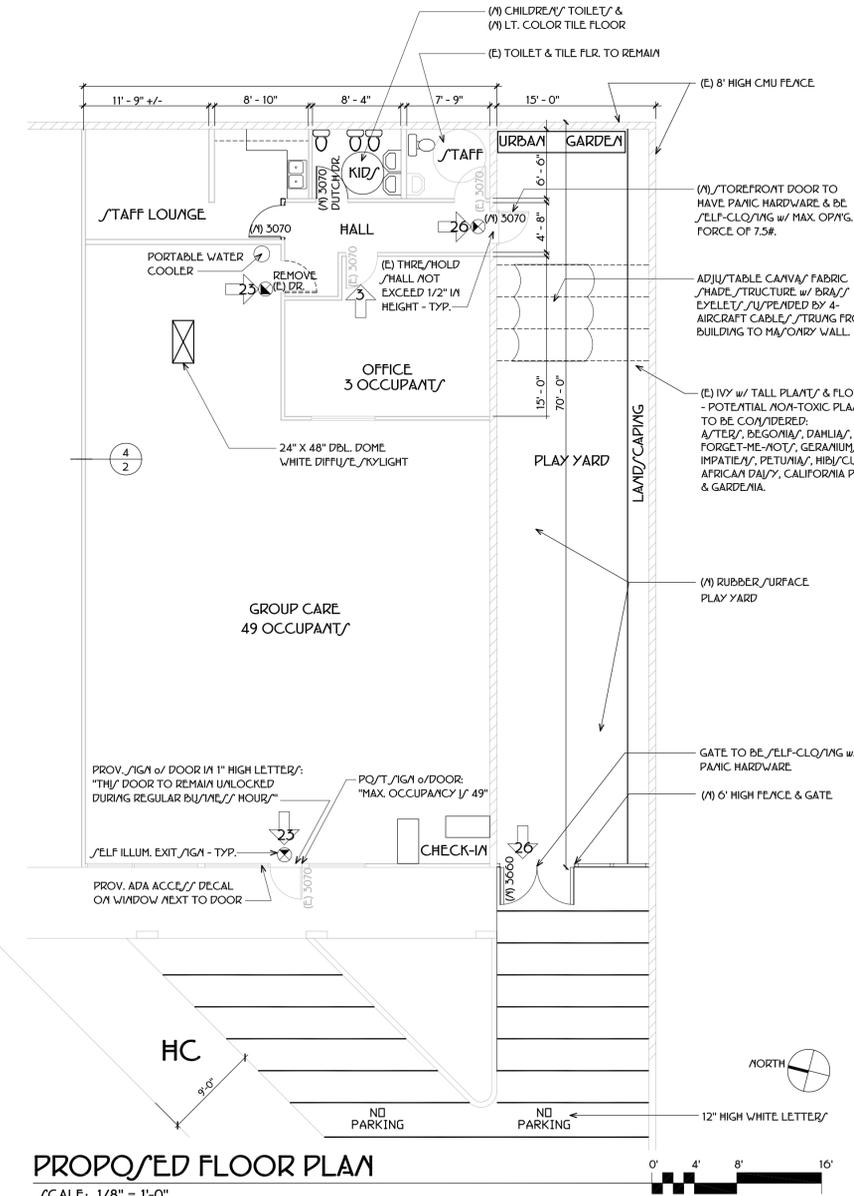
REFLECTED CEILING PLAN
SCALE: 1/8" = 1'-0"



3 STAFF TOILET
SCALE: 3/8" = 1'-0"



1 KID'S TOILET
SCALE: 3/8" = 1'-0"



PROPOSED FLOOR PLAN
SCALE: 1/8" = 1'-0"

HAPPY HEARTS ACADEMY
 EXITING FLOOR PLAN, PROPOSED FLOOR PLAN, SECTION, DETAILS
 550 ABEL STREET, FREMONT, CA
 1023 Dyer Drive Lafayette California 94549
 925/785-7483 email: info@hha.com

CUP 2/1/10
 DATE: 12/23/09
 SCALE: AS NOTED
 DRAWN: RJV
 JOB: 09-004

Ritch J. Voss
Architect

December 16, 2009

City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035

Re: Conditional Use Permit - Happy Hearts Daycare
Rupa & Vijay Sethna, dba: Jaina, Inc.
550 Abel Street, Milpitas
APN: 022 07 004

To Whom It May Concern:

This proposal is to operate a daycare facility in an existing "Commercial – Non-Mall" vacant tenant space. The facility consists of a large Group Care area for approximately 57 children, restrooms, office, staff lounge and outdoor play yard. The existing HVAC on the roof is to remain and the interior restrooms will be upgraded to accommodate the needs of the children and be more water efficient.

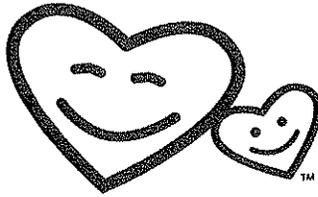
The existing exterior of the building will remain as is with only a security fence and emergency exit gate being added to close off an existing 15'x 70' paved side alley, to create a play yard for the children. The asphalt paving will be covered by a child protective rubber mat which will extend +48" up the side CMU walls. The fence will be of wood construction with 1x8 horizontal wood siding, 1x10 base trim, 1x4 trim and 2x6 wood cap. The wood will be painted to match the color of the existing building stucco.

Sincerely,



Ritch J. Voss, AIA, LEED-AP
Architect, #C12990

Cc: Rupa & Vijay Sethna



Happy Hearts Academy

550 North Abel Street, Milpitas CA
 Tel: 510-386-7041

Days of Operation: Monday – Friday
 (See Calendar for holiday schedule)

Hours of Operation:
 Full Day: 7.00 AM – 6.00 PM
 Part Day: 9.00 AM – 3.00 PM
 Half Day: 8.30 AM – 12.30 PM

Tuition Fees: FY 2010

	Full Week		3 Day (Mon/Wed/Fri)		2 Day (Tues/Thurs)	
	Monthly Rate	Weekly Rate	Monthly Rate	Weekly Rate	Monthly Rate	Weekly Rate
Full Day	\$900.00	\$240.00	\$750.00	\$190.00	\$500.00	\$130.00
Part Day	\$700.00	\$170.00	\$570.00	\$170.00	\$375.00	\$115.00
Half Day	\$650.00	\$150.00	\$550.00	\$150.00	\$360.00	\$100.00

Monthly tuition fees are due on the first of the month and considered late after the 3rd of the month. Late charges shall be \$5.00/day.

Weekly tuition fees are due the Friday of the prior week. Late charges shall be \$5.00/day. Weekly rates will be charged also during school holidays.

Registration: \$100.00 (annual non-refundable fee due in September, prorated at \$10/mo from November - August)

Materials Fee: \$50 (annual non-refundable due in September, prorated at \$5.00/mo from November – August)

Activity Charges: Activity charges are not included in tuition

Late Pick-up Fee: \$10 per quarter hour. Pick-up time is 6.00 PM (Full Day), 12.30 PM (Morning Half Day), 3.00 PM (Afternoon Half Day)

Snacks: Morning and Afternoon snacks are included in the tuition fee

Lunch: Lunch is not included in the tuition. Children are encouraged to bring their own. Happy Hearts will provide lunch for an additional fee. Please inquire about our current rates.

Early Drop-off and Late Pick-up can be pre arranged for a nominal fee

2010 Holiday Schedule: School closed on these days.

January 1: New Years Day

January 18: Martin Luther King Day

February 15: President's Day

April 2: Teacher's Work Day

May 31: Memorial Day

July 5: Independence Day

Sept 6: Labor Day

November 11: Veteran's Day

November 25, 26: Thanksgiving Break

December 23 – 31: Winter Break

School re-opens on January 3, 2011.

Welcome to Happy Hearts

Academy

We are proud to be a part of your child's early education experience. We hope to introduce your preschooler to the magic of learning and helping them develop a life long joy in the quest for knowledge. The philosophy at Happy Heart's is to provide quality child care. We want to meet the needs of the "total" child, physical, intellectual, social, and emotional development. Each child is a unique individual growing at his/ her own pace. Children have the capacity to make choices and should be nurtured to do so. Acceptable attitudes and behaviors should be elicited through reasoning and positive redirection. Each child should feel proud of their heritage while learning to respect other ethnicities. To reach the full potential young children should be nurtured in warm, loving, and caring environments.

Orientation:

At happy Hearts Academy our loving staff believes in fostering independence and self esteem in every child. We understand that initial separation can be difficult for both parent and child. Prior to the first day of attendance, parents are requested to visit the center with the child to meet with the staff and complete the enrollment forms. We would like to ease the natural anxiety and help alleviate all concerns. Child care is provided on a nondiscriminatory basis giving equal treatment of service without regards to sex, race, color, religion, or handicap.

Happy Hearts is a fully licensed facility and enrolls children ages two through first grade entry.

Hours of operation:

Happy Hearts Academy is year around program with hours of operation Monday through Friday with exception of stated Holidays.

Program Content:

Daily activity is posted in the center. The plan incorporates age appropriate teacher and student directed activities. Our carefully tailored lesson plan which includes indoor and outdoor activities helps to develop your child physically, emotionally, and intellectually. At Happy Hearts Academy we incorporate the use of music and movement to stimulate the motor activities of your child. Children are exposed to a

wide array of learning including arts, crafts, alphabets, numbers, shapes, story time and the wonderful world of science. Each child has an opportunity to enhance his/her skills and abilities in large and small group settings.