



MILPITAS PLANNING COMMISSION AGENDA REPORT

Meeting Date: December 8, 2010

PUBLIC HEARING

APPLICATION: **CONDITIONAL USE PERMIT NO. UP10-0019, Cigarette City**

**APPLICATION
SUMMARY:**

A request to operate a 500 square foot tobacco shop.

**LOCATION:
APPLICANT:
OWNER:**

1201 E. Calaveras Blvd. (APN: 29-13-041)
Ratib and Shomisa Norzei, 1982 Vinehill Circle, Fremont, CA 94539
Victorian Square Associates LLC, Care of Richard B. Collins, 660
Tiburon Blvd., Belvedere Tiburon, CA 94920.

RECOMMENDATION: **Staff recommends that the Planning Commission:
Adopt Resolution No. 10-045 approving the project subject to the
conditions of approval.**

PROJECT DATA:

General Plan/Zoning: General Commercial (GNC)/General Commercial (C2)
Overlay District: Site and Architectural Overlay
Project Site Area: 4.30 acres
Tenant Space: 500 square feet

CEQA Determination: Categorically exempt from CEQA pursuant to Section 15301 (Existing Facilities)

PLANNER: Cindy Hom, Assistant Planner

PJ: 2677

ATTACHMENTS:
A. Planning Commission Resolution No. 10-045
B. Project Description
C. Project Plans

LOCATION MAP



Not to Scale

BACKGROUND

On September 17, 2010, Ratib and Shomisa Norzei submitted an application for a conditional use permit to operate a 500 square foot tobacco store within a multi-tenant commercial center. The application is submitted pursuant to Milpitas Municipal Code XI-10-5.01 (1.) (Tobacco Shops) which requires Planning Commission review and approval.

PROJECT DESCRIPTION

The project is located on a 4.3-acre site on the northwest corner of the intersection at E. Calaveras Boulevard and N. Park Victoria Drive. The site bounded by Highway I-680 to the west, E. Calaveras Boulevard to the south, N. Park Victoria to the east, and residential homes to the north. The surrounding land uses include retail and commercial services to the west and south; single family residential to the north; a gas service station, commercial office building, located to the east. Calaveras Hills High School is located approximately 1,000-feet easterly from the shopping center. The Victorian Square shopping center is comprised of three buildings that provide approximately 49,375 square feet of retail floor area. Other stores within the immediate vicinity that also retail tobacco products includes Shell Gas Station located to the east, Ocean Supermarket and Victoria Liquor located in the shopping center to the southeast, 7-Eleven and Union 76 Gas Station to the south. A vicinity map of the project site is shown on the previous page.

The applicant proposes to operate a 500 square foot tobacco shop within the shopping center. The tenant space is currently vacant and was previously occupied as a mobile phone retail store. The proposed floor plan consists of counter displays for lighters and tobacco accessories, shelving for cigarettes, cigars, and prepackaged snacks items and a soft drink display case. The applicant intends to retail the following tobacco merchandise: cigarettes, cigars, roll your own cigarette tobacco and pipe tobacco, hookah, lighters, lighter accessories, ashtrays, soft drinks and small pre-packaged snacks. The proposed hours of operation are Monday through Friday between 9:00am and 8:00pm, Saturdays from 10:00am to 7:00pm and on Sundays from 10:00am to 5:00pm.

Development Standards

The applicant proposes no exterior changes or modifications to the building and therefore maintains compliance with the General Commercial development standards for setbacks, height, floor area ratio, and parking.

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

Policy	Consistency Finding
<i>Implementing Policy 2.a-I-5</i>	Consistent. The project would add to the mix of

Policy	Consistency Finding
<p><i>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></p>	<p>various retail uses in the Victorian Square Shopping Center as well as provide a unique type of retail service that is not served at this commercial center.</p>

Zoning Ordinance

The project is consistent with General Commercial Zoning District in that tobacco stores are conditionally permitted uses and complies with the development standards and parking requirements.

Although state law currently prohibits the sale or furnishing of cigarettes, tobacco products, and smoking paraphernalia to minors and requires tobacco retailers to check the identification of tobacco purchasers who reasonably appear to be under 18 years of age, the number of youths having access to tobacco products is a concern and potential issue with these type of retail establishments. As such, staff recommends the following conditions of approval:

- Prohibit the sale or transfer of tobacco products and tobacco paraphernalia to anyone under the age of 18. The operator shall obtain age detection devices that will confirm the purchaser is the minimum age under state law to purchase and possess tobacco product or paraphernalia.
- Prohibit a person who is younger than the minimum age established by state law for purchase or procession of tobacco products to be engaged in tobacco retailing.
- Prohibit all self-service displays of tobacco products.
- All tobacco products and related paraphernalia shall be stored or kept out public view and shall maintain a minimum distance of 5-feet from any storefront window.

Additionally, any window advertisement shall be regulated by Milpitas Sign Ordinance. Per Milpitas Municipal Code XI-10-24.04-1 (Window Signs), window displays shall not cover more than 25% of the contiguous window area. As conditioned above, the project will not be detrimental or injurious to property, improvements, or the public health, safety, and general welfare and ensure the propose use will add to the vitality of the shopping center.

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. The project entails a conditional use permit to allow for the operations of a 500 square foot smoke shop within an existing commercial retail building.

PUBLIC COMMENT/OUTREACH

Staff publicly noticed the application in accordance with City and State law. As of the time of writing this report, staff did not receive any public inquiries or comments regarding the project proposal.

CONCLUSION

As conditioned, the proposed smoke shop at this location would add to the retail mix and will be compatible with surrounding land uses consisting of the other general retail stores, restaurants, and office uses.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission adopt Resolution No. 10-045 approving the project subject to conditions of approval.

ATTACHMENTS:

- A. Resolution No. 10-045
- B. Project Description
- C. Plans

RESOLUTION NO. 10-045

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT UP10-0019, CIGARETTE CITY, TO ALLOW THE OPERATION OF A 500 SQUARE FOOT TOBACCO SHOP LOCATED AT 1201 E. CALAVERAS BLVD.

WHEREAS, on September 17, 2010 an application was submitted by Ratib and Shomisa Norzei, 1982 Vinehill Circle, Fremont, CA 94539 to allow the operation of a tobacco shop. The property is located within General Commercial (C-1) Zoning district with APN (29-13-041); 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; and

WHEREAS, on December 8, 2010, 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. The project entails the operations of a 500 square foot tobacco shop within an existing tenant space within the Victoria Square shopping center, which is a negligible expansion beyond the existing use.

Section 3: As conditioned, 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. The project would promote economic opportunities by adding to the mix of various retail uses in the Victorian Square Shopping Center as well as provide a unique type of retail service that is not served at this commercial center.

Section 5: 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. The proposed use a conditionally permitted use in the General Commercial Zoning District and comply with the development standards.

Section 5: The Planning Commission of the City of Milpitas hereby approves conditional use permit UP10-0019, Cigarette City, 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 December 8, 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 December 8, 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				
John Luk				

EXHIBIT 1

**CONDITIONS OF APPROVAL
Cigarette City Shop UP10-0019**

Planning Division

1. The owner or designee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on January 28, 2009, in accordance with these Conditions of Approval. **(P)**
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. **(P)**
3. Conditional Use Permit UP10-0019 shall become null and void if the project is not commenced within 18 months from the date of approval. **(P)**
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. **(P)**
5. The business operation shall be reviewed by the Director of Planning and Neighborhood Services in six months from the date of occupancy for compliance to all conditions of approval and to State Law. **(P)**
6. Prohibit the sale or transfer of tobacco products and tobacco paraphernalia to anyone under the age of 18. The operator shall obtain age detection devices that will confirm the purchaser is the minimum age under state law to purchase and possess tobacco product or paraphernalia. **(P)**
7. Prohibit a person who younger than the minimum age established by state law for purchase or possession of tobacco products to be engaged in tobacco retailing. **(P)**
8. Prohibit all self-service displays of tobacco products of all types, including cigars, pipe tobacco, snuff, chewing tobacco, or dipping tobacco. **(P)**
9. All tobacco products and related paraphernalia, including smokeless cigarettes, shall be stored or kept out of public view and shall maintain a minimum distance of 5-feet from any storefront window.
10. The use shall be conducted in accordance with all federal, state, and local regulations. **(P)**

(P) – Planning Division

Nov 01, 2010

To Whom It May Concern:

This letter is written in response to a few questions asked regarding the application for opening a smoke shop named Cigarette City in the city of Milpitas.

We have been providing low and competitive prices to our customers around the bay area for the past fourteen years. Our goal is to open a store in Milpitas in order attract more customers to our business. Our ability to provide better prices will help the hard hit consumers while the city benefits from the customers driven by our business from surrounding areas and cities. Once in operation, the business will also create two job opportunities.

Merchandise that will be carried in the store will be different types of tobacco products including:

- 1- Various types of cigarettes.
- 2- Various types of cigars
- 3- Roll your own cigarette tobacco, and pipe tobacco.
- 4- Hookah.
- 5- Drinks excluding any alcoholic beverage.
- 6- Lighter (Gas & Fluid) and lighter accessories.
- 7- Ashtrays of various kind.

Our customer base will be peoples of eighteen years of age and older. We ID our customers and our record in the sell of tobacco products to the specified age limit is very good.

Store hours of operation:

Mon-Fri 09:00am – 08:00pm

Sat 10:00am – 07:00pm

Sun 10:00am – 05:00pm

Please feel free to contact us if any further information is required,

Regards,

Ratib and Shomisa Norzei

510-376-4410

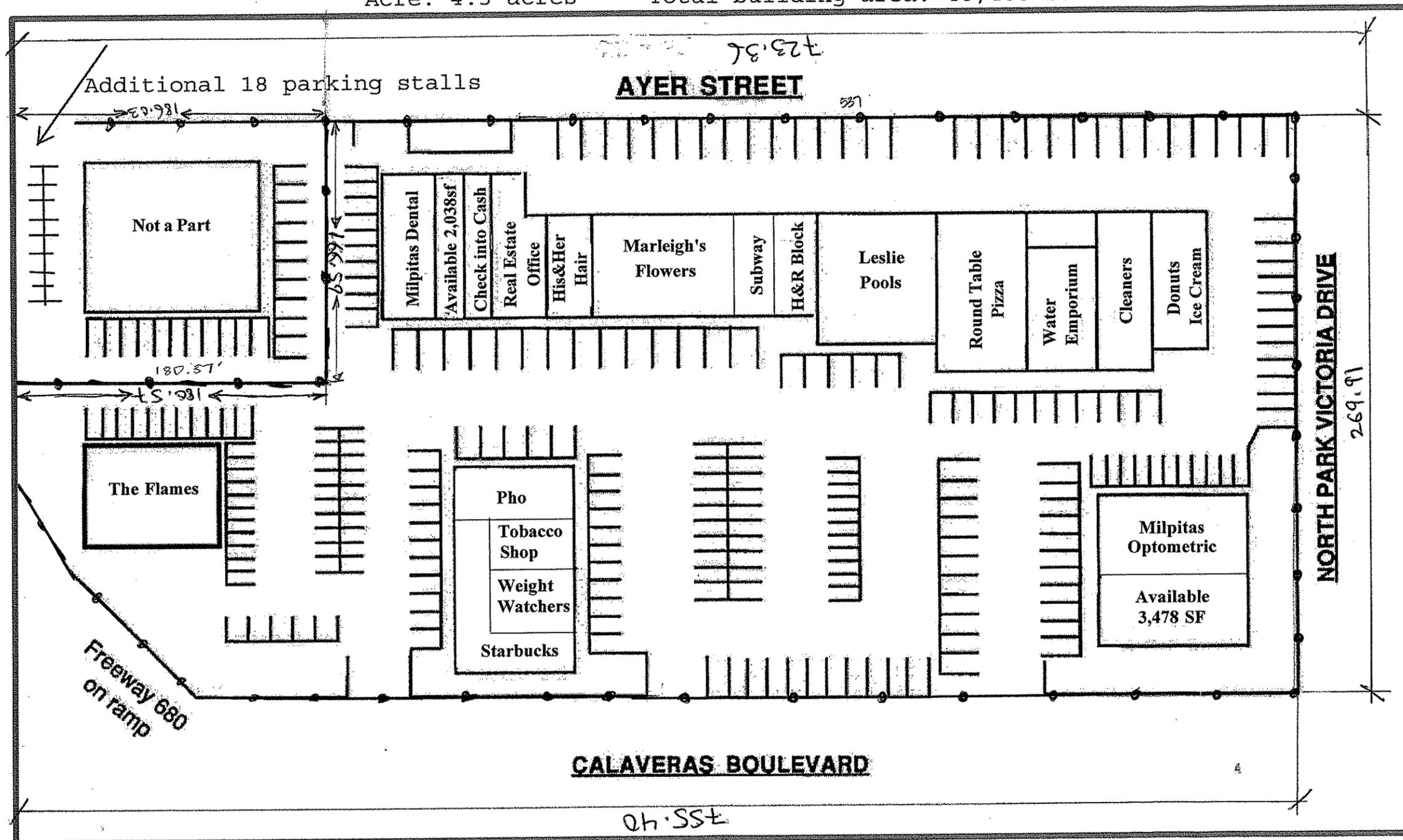
VICTORIAN SQUARE SHOPPING CENTER Milpitas, California

APN: 029-13-041-00

#Parking: 276 #handicap: 9

SITE PLAN

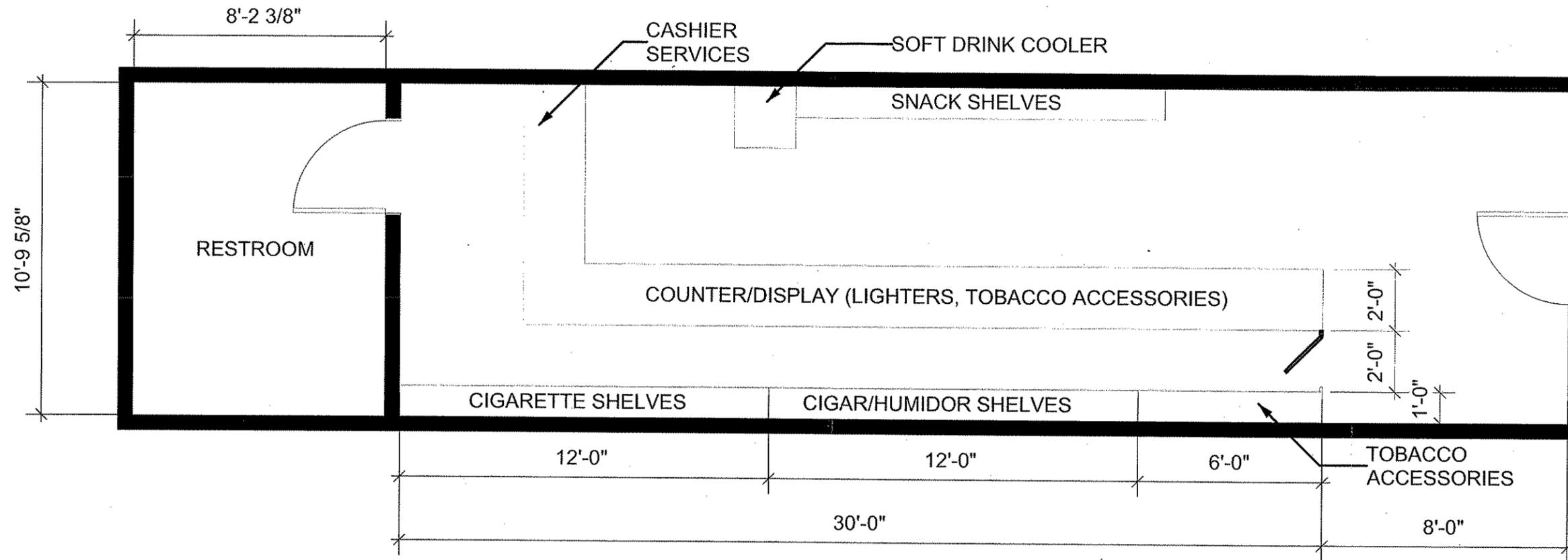
Acre: 4.3 acres Total building area: 48,468 SF



RECEIVED

NOV 01 2010

CITY OF MILPITAS
PLANNING DIVISION



OVERALL SPACE	=	500 SQ F
SOFT DRINK COOLER	=	4 SQ F
SNACK SHELVES	=	12 SQ F
CIGARETTE SHELVES	=	12 SQ F
CIGAR/HUMIDOR	=	12 SQ F
TOBACCO ACCESS.	=	6 SQ F
COUNTER/DISPLAY	=	64 SQ F
RESTROOM	=	89
SQ FT		

○ TOBACCO SHOP - 1201 E. CALAVERAS BLVD MILPITAS, CA
 Scale: 1/4" = 1'-0"

RECEIVED

NOV 01 2010

CITY OF MILPITAS
 PLANNING DIVISION