



MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: July 27, 2011

APPLICATION: **CONDITIONAL USE PERMIT NO. UP11-0016 AND MINOR SITE DEVELOPMENT PERMIT NO. MS11-0019, SIEMIC**

APPLICATION SUMMARY:

A request to re-establish a discontinued research & development facility and the construction of a new roof penthouse on a legal, non-conforming industrial building.

LOCATION: 775 Montague Expressway (APN 86-32-030)

APPLICANT: David Perng, 10268 Bandley Dr. #102, Cupertino, CA 95014

OWNER: Jin and Yu LLC, 2868 Bruce Drive, Fremont, CA 94539

RECOMMENDATION: **Staff recommends that the Planning Commission: Adopt Resolution No. 11-030, subject to the conditions of approval.**

PROJECT DATA:

General Plan/

Zoning Designation: Boulevard Very High Density Mixed Use (BVMU)/Mixed Use, Very High Density with Transit Oriented Development Overlay and Site and Architectural Overlay (MXD3-TOD-S)

Overlays: Transit Oriented Development (-TOD) and Site and Architectural (-S)

Specific Plan: Transit Area Specific Plan

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

PLANNER: Cindy Hom, Assistant Planner

PJ: 2725.

ATTACHMENTS:

- A. Resolution No. 11-030
- B. Project Plans
- C. Applicant's letter

LOCATION MAP



- R3 = Multifamily Residential, High Density
- R4 = Multifamily Residential, Very High Density
- R5 = Urban Residential
- MXD3 = Mixed Use, Very High Density

Not to scale



BACKGROUND

In 1984, the Planning Commission granted site and architectural approval for the construction of a one-story 24,656 square foot industrial building. In 2008, the City adopted the Transit Area Specific Plan and accompanying Zoning and General Plan amendments, which changed the underlying land use designation for the subject property from Heavy Industrial (Manufacturing and Warehousing) to Mixed Use, Very High Density (MXD3) with Transit Oriented Development overlay in anticipation of the Bay Area Rapid Transit station and the development of a transit village consisting of housing and supporting retail development. As such, the site and building are considered non-conforming. The industrial use has been discontinued since 2005 based on business license research.

On May 31, 2001, David Perng of Professional Design submitted a conditional use application to re-establish a discontinued plant and facility use (research & development, manufacturing, assembly and associated offices) and to increase the height of the legal, nonconforming building by 11 ½ feet with the construction of a rooftop penthouse. The application is submitted pursuant to Milpitas Municipal Code XI-10-56.02 (C) (2) and XI-10-56.03 (B) to allow for the enlargement of a legal nonconforming building and for the re-establishment of a nonconforming use for properties within 1000-feet of residential uses in the Transit Specific Plan area. The project proposes to increase the building height and is located approximately 736 feet of the Montague Crossing Apartments and approximately 420 feet from the proposed and approved Milpitas Station residential development.

PROJECT DESCRIPTION

The project is situated on a 1.68 acre site developed with a 24,656 square foot one-story industrial building at 775 Montague Expressway. The project proposes to utilize 14,400 square feet of the building for a research and development use. The project is surrounded by other legal, nonconforming industrial buildings. The surrounding zoning includes Multi-family High Density and Very High Density to the north, Mixed Use, Very High Density to the east, west and southwest, and Urban Residential to the south and southeast. A vicinity map of the subject site location is included on the previous page.

The applicant proposes to re-establish the previous research & development use within the existing industrial building. The project would include interior tenant improvements that consist of additional new interior walls and installation of a new equipment chamber. The proposed equipment chamber requires a high ceiling. As a result, a new roof penthouse would be constructed over a portion of the building, increasing the height of the building by 11 ½ -feet.

Floor Plan

The floor plan proposes a 14,400 square foot research and development facility that consists of 4,500 square foot of office space and approximately, 8,900 square feet of research and development space. The applicant is proposing a new chamber equipment that is use to provide a clean and static environment for the electronic components.

Exterior Modifications

The project proposes to raise a portion of the roof and ceiling to accommodate a new equipment chamber. The applicant proposes an 11 ½-foot by 18-foot rooftop penthouse that will be stucco and painted to match the building. The penthouse will include an 18-inch wide accent band to match the existing accent band on the building. Staff recommends as a condition of approval that the applicant add a cornice projection to provide an articulated roof line

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 1
General Plan Consistency

Policy	Consistency Finding
<i>2.a-I-3 Encourage economic pursuits which will strengthen and promote development through stability and balance.</i>	Consistent. The project allows for the flexibility to use the underutilized existing building before its eventual permanent conversion to residential.
<i>2.a-I-6 Endeavor to maintain a balanced economic base that can resist downturns in any one economic sector.</i>	Consistent. The project would replace a vacancy with an industrial use and add job opportunities.

Zoning Ordinance

Once discontinued for a year or more, nonconforming uses only within the Midtown Specific Plan Area and the Transit Area Specific Plan Area may be re-established if all of the following findings can be made:

- a. The proposed re-establishment of a nonconforming use would not cause a nuisance to the surrounding properties and district (e.g., excessive parking demand, traffic, noise, etc.).

Finding: The project complies with the parking requirements and will not create additional traffic considering the building was development and received environmental clearance as an industrial use.

- b. The proposed re-establishment of a nonconforming use would be compatible with the existing general character of the surrounding neighborhood or district.

Finding: The project is surrounded by other industrial buildings and uses. Additionally, staff recommends as a condition of approval the following conditions to ensure neighborhood compatibility with residential uses:

- 1. Truck operation shall be limited between the hours of 7AM to 10PM.

2. Any exterior equipment and/or noise generating equipment shall be fully screened by a suitable and architecturally compatible enclosure and/or barrier wall that shall mitigate and reduce noise levels to meet a normally acceptable criteria of 60 Ldn per the City of Milpitas Noise Element for residential zones.
 3. Any noise generating mechanical equipment shall be implemented with engineering controls such as but not limited to redirection of discharge ducts, containment via sound dampening blankets, insulation using sound absorbent materials, orifice change, and silencer/mufflers to ensure noise levels are maintained at an acceptable level.
- c. The proposed re-establishment of a nonconforming use is necessary to allow gainful economic use of structures or improvements until such structures or improvements can be permanently converted to conforming uses.

Finding: The building was developed and intended for industrial uses. The project proposes a 14,400 R&D office.

Transit Area Specific Plan

While the project site is located within the Transit Area Specific Plan, the project does not meet the threshold to evoke the policies and guidelines of the specific plan.

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 under section 15301 for existing facilities, since the project only contemplates utilizing the existing building and may require only adjusting partition walls.

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 building was constructed for industrial purposes and the project proposes the re-establishment of a discontinued use. While the vision of the Transit Area Specific Plan is to have residential on the subject site, the current market conditions do not allow for such conversion at this time. The continued use of the building for industrial will not cause any nuisances for the surrounding properties.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission close the public hearing after hearing testimony and adopt Resolution No. 11-030 approving Conditional Use Permit No. UP11-0016 and Minor Site Development Permit No. MS11-0019, Siemic subject to the attached Resolution and Conditions of Approval.

Attachments:

- A. Resolution No. 11-030
- B. Project Plans
- C. Applicant's Letter



RESOLUTION NO. 11-030**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT NO. UP11-0016 AND MINOR SITE DEVELOPMENT PERMIT NO. MS11-0019, SIEMIC, TO RE-ESTABLISH A DISCONTINUED RESEARCH & DEVELOPMENT FACILITY AND CONSTRUCTION OF A NEW ROOF TOP PENTHOUSE IN ACCORDANCE WITH THE CITY'S NONCONFORMING STANDARDS, LOCATED AT 775 MONTAGUE EXPRESSWAY**

WHEREAS, on May 31, 2011, an application was submitted by David Perng, 10268 Bandle Dr. #102, Cupertino, CA 95014, to re-establish a discontinued research & development facility and construction of a new roof top penthouse in accordance with the City's Zoning nonconforming standards. The property is located within the Mixed Use, Very High Density with Transit Development Overlay and Site and Architectural Overlay (MXD3-TOD-S) zoning district (APN: 86-32-030); 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 categorically exempt; and

WHEREAS, on July 27, 2011, 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 under section 15301 for existing facilities, since the project entails the re-establishment of a discontinued research and development facility within an existing industrial building and construction of a rooftop penthouse to allow for installation of an equipment chamber.

Section 3: The proposed re-establishment of a nonconforming use would not cause a nuisance to the surrounding properties and district (e.g., excessive parking demand, traffic, noise, etc.) in that the subject site and building was originally developed to accommodate industrial uses, such as the one proposed. The nearest residential use is located 420 feet away.

Section 4: A conditioned, the proposed re-establishment of a nonconforming use would be compatible with the existing general character of the surrounding neighborhood or district in that the surrounding properties are also developed as industrial.

Section 5: The proposed re-establishment of a nonconforming use is necessary to allow gainful economic use of structures or improvements until such structures or improvements can be permanently converted to conforming uses in that subject site and building was developed and intended for industrial uses such as the proposed research and development facility.

Section 6: The Planning Commission of the City of Milpitas hereby approves Conditional Use Permit No. UP11-0016 and MS11-0019, Siemic, 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 July 27, 2011.

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 July 27, 2011, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Lawrence Ciardella				
Sudhir Mandal				
Zeya Mohsin				
Gurdev Sandhu				
Steve Tao				
Noella Tabladillo				
Mark Tiernan				
John Luk				

EXHIBIT 1

**CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT NO. UP11-0016 AND MINOR SITE DEVELOPMENT
PERMIT NO. MS11-0019, SIEMIC,**

A request to re-establish a discontinued research & development, manufacturing facility and construction of a new roof top penthouse.
775 Montague Expressway (APN 86-32-030)

General Conditions

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 July 27, 2011, 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. **(P)**

Conditional Use Permit No. UP11-00116 and Minor Site Development Permit No. MS11-0019 shall become null and void if the project is not commenced within two (2) years from the date of approval unless in conjunction with a tentative map, then the project life coincides with the life of the map. Pursuant to Section 64.06(B) of the Zoning Ordinance of the City of Milpitas, commencement shall be:

- a. Completes a foundation associated with the project; or
 - b. Dedicates any land or easement as required from the zoning action; or
 - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
2. Pursuant to Section 64.06(1), the owner or designee shall have the right to request an extension of UP11-0017 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein. **(P)**
 3. Truck operations shall be limited between the hours of 7AM to 10PM. **(P)**
 4. Any exterior equipment and/or noise generating equipment shall be fully screened by a suitable and architecturally compatible enclosure and/or barrier wall that shall mitigate and reduce noise levels to meet a normally acceptable criteria of 60 Ldn per the City of Milpitas Noise Element for residential zones. **(P)**

5. Any noise generating mechanical equipment shall be implemented with engineering controls such as but not limited to redirection of discharge ducts, containment via sound dampening blankets, insulation using sound absorbent materials, orifice change, and silencer/mufflers to ensure noise levels are maintained at an acceptable level. (P)

(P) = Planning

(B) = Building

(E) = Engineering

(F) = Fire Prevention

SIEMIC T.I.

775 Montague Expressway

MILPITAS, CA. 95132

ATTACHMENT B

REVISIONS	BY



PROFESSIONAL DESIGN
 10288 BANDLEY DR. #102 CUPERTINO, CA. 95014
 TEL: (408) 996-7988, FAX: (408) 996-7809

TITLE SHEET AND
 SITE PLAN

SIEMIC T.I.
 775 Montague Expressway
 MILPITAS, CA. 95132

Date	05/27/11
Scale	AS SHOWN
Drawn	DP
Job	PD113
Sheet	A-1
Of	N Sheets

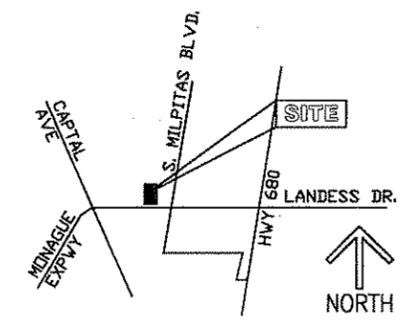
SHEET INDEX

- A-1 TITLE SHEET AND SITE PLAN
- A-2 FLOOR PLAN
- A-3 ELEVATIONS
- A-4 ELEVATIONS

SCOPE OF WORK

* RAISE PARTIAL ROOF CERLING (40'X66'X11.5') TO FIT. EQUIPMENT CHAMBER

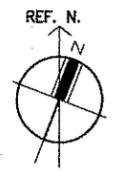
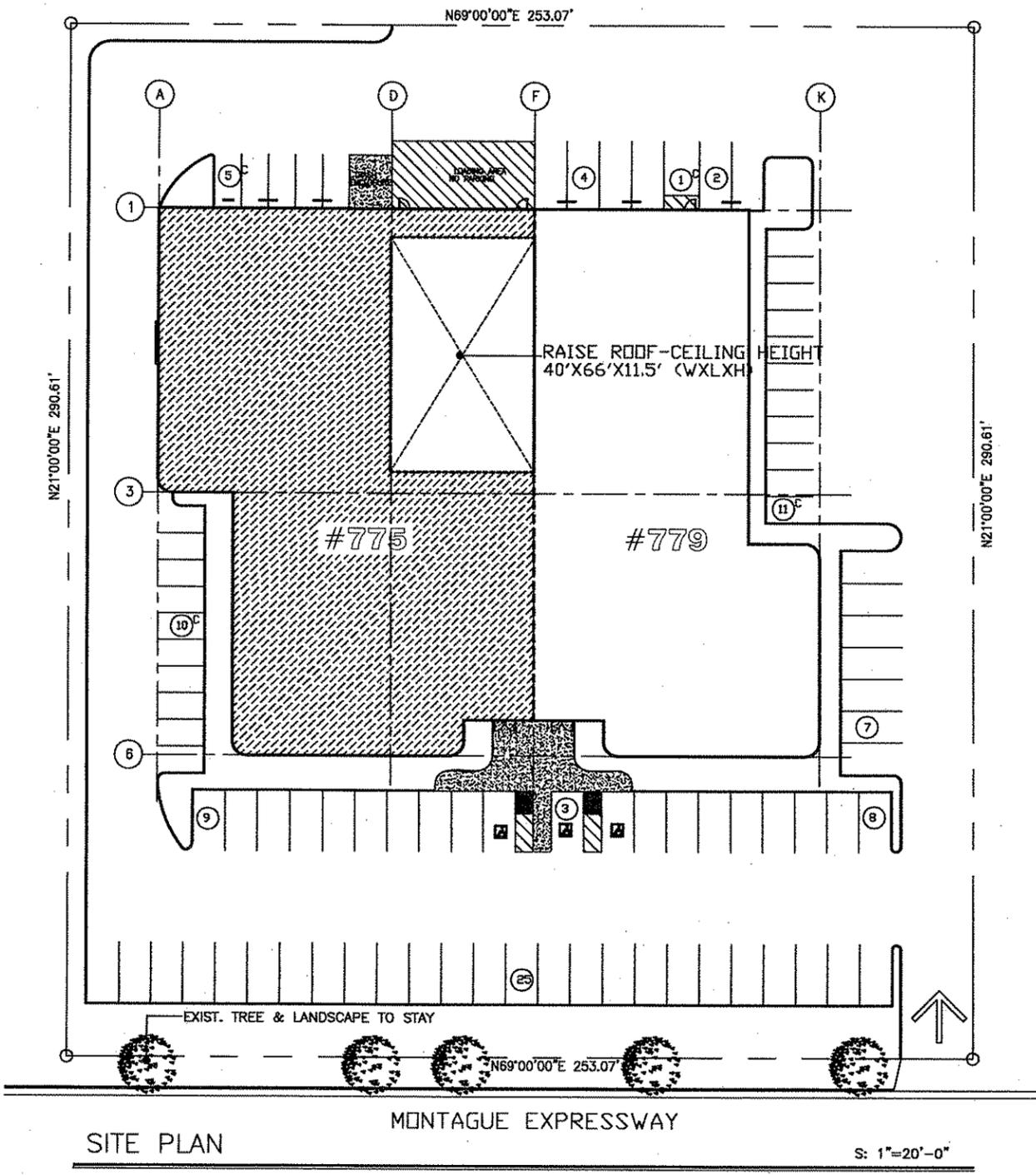
VICINITY MAP

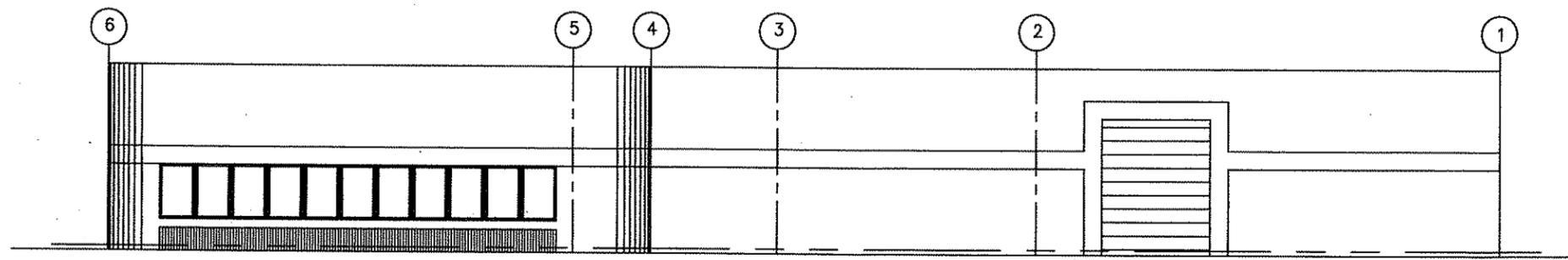


PROJECT DATA

APN: 86-32-23
 ADDRESS : 775 MONTAGUE EXPY.
 ZONE : MXD3
 LOT SIZE : 73,545 S.F. => 1.688 AC.
 BUILDING AREA : 24,656 S.F.
 FIRE ZONE: III
 CONST. TYPE: TYPE I N W/ FIRE SPRINKLER
 BUILDING HT.: 20'-6" (EXIST.)
 32' (PROPOSED)
 PARKING PROVIDED : 85 (EXIST.)
 STANDARD 55
 COMPACT 27
 HANDICAP 3
 PROPOSED USED : OFFICE, R&D & WAREHOUSE
 NO. OF STORIES : ONE STORY (EXIST.)
 OCCUPANCY : F

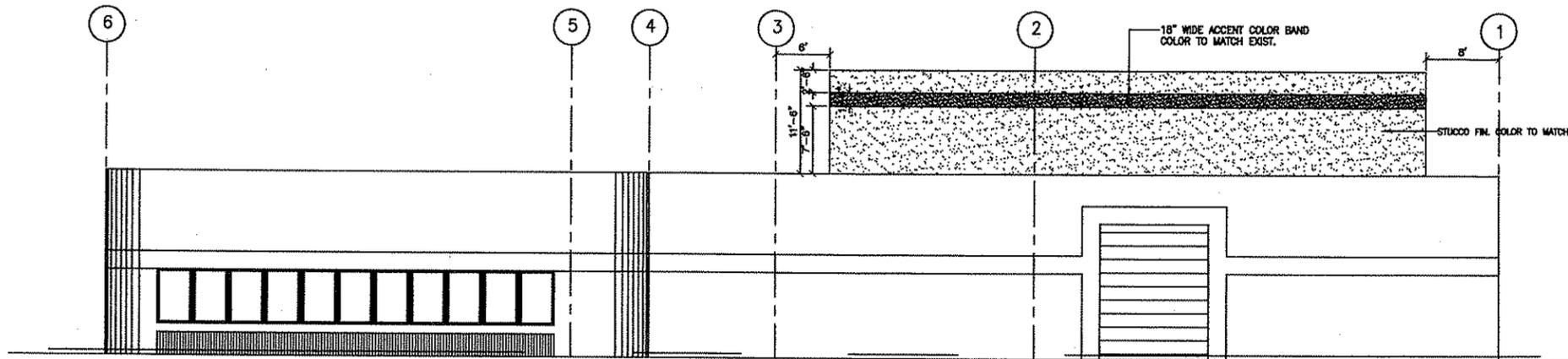
RECEIVED
 MAY 31 2011
 CITY OF MILPITAS
 PLANNING DIVISION





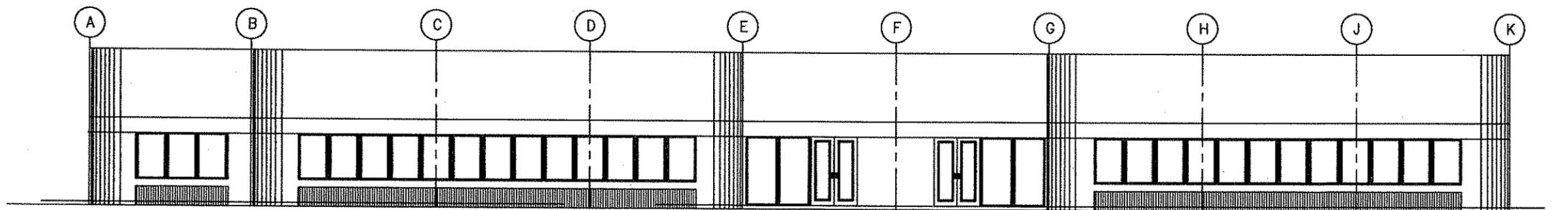
EXISTING EAST ELEVATION

S: 1/8"=1'-0"



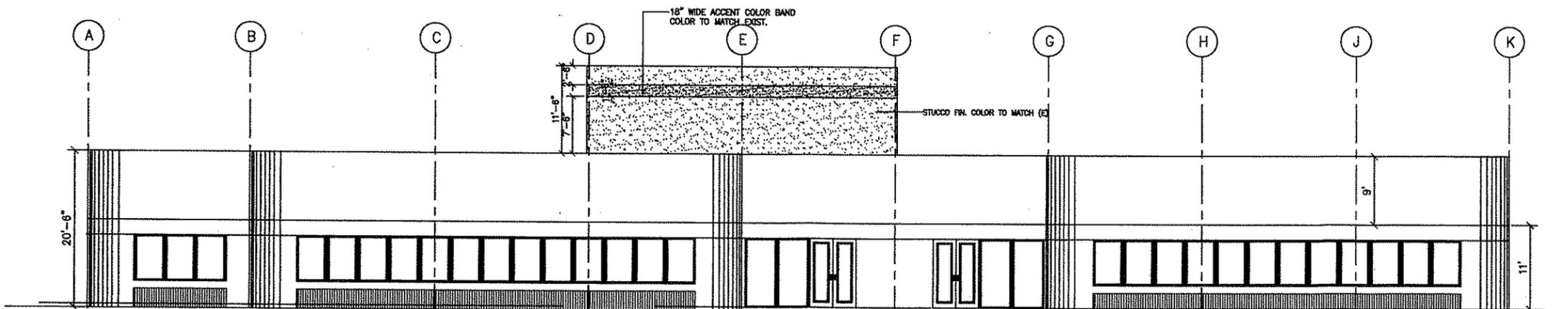
PROPOSED EAST ELEVATION

S: 1/8"=1'-0"



EXISTING SOUTH ELEVATION

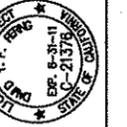
S: 1/8"=1'-0"



PROPOSED SOUTH ELEVATION

S: 1/8"=1'-0"

REVISIONS BY



PROFESSIONAL DESIGN
 10288 BANDLEY DR. #102 CUPERTINO, CA. 95014
 TEL: (408) 996-7988, FAX: (408) 996-7809

ELEVATIONS

SIEMIC T.I.
 775 Montague Expressway
 MILPITAS, CA. 95132

Date 05/27/11

Scale AS SHOWN

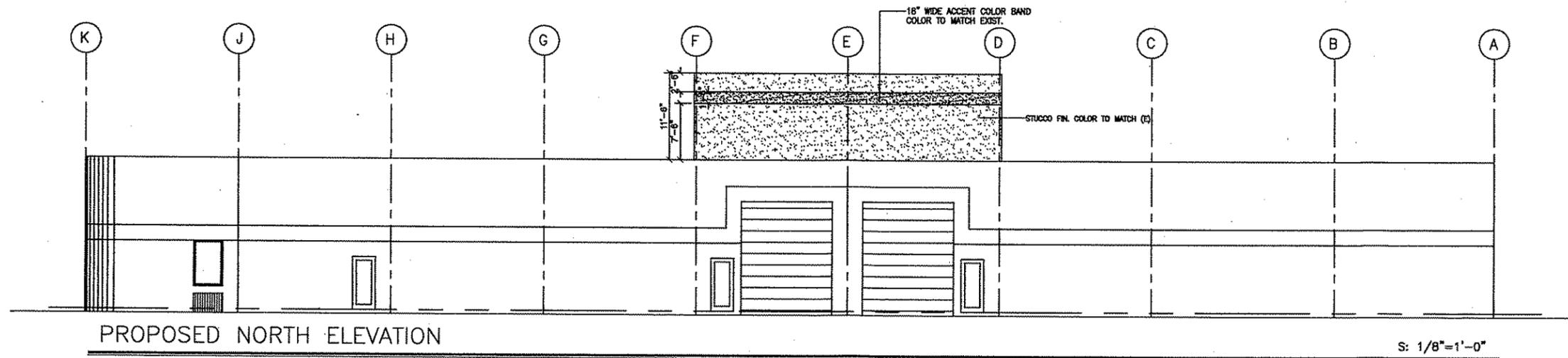
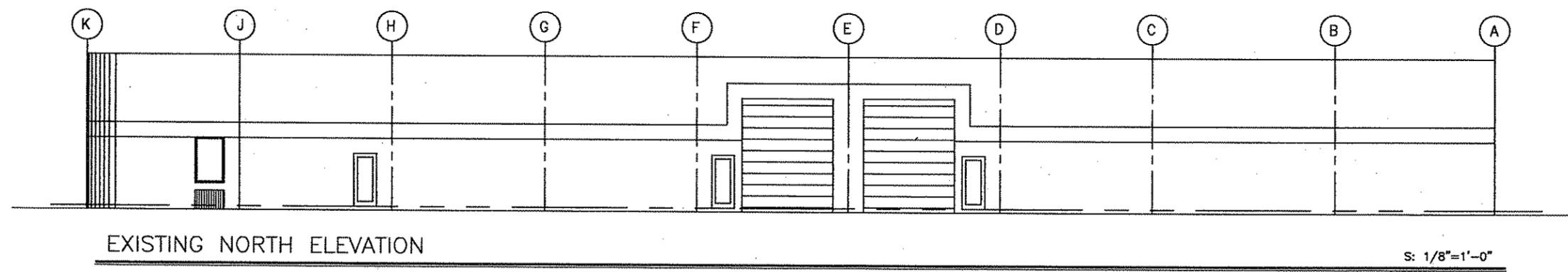
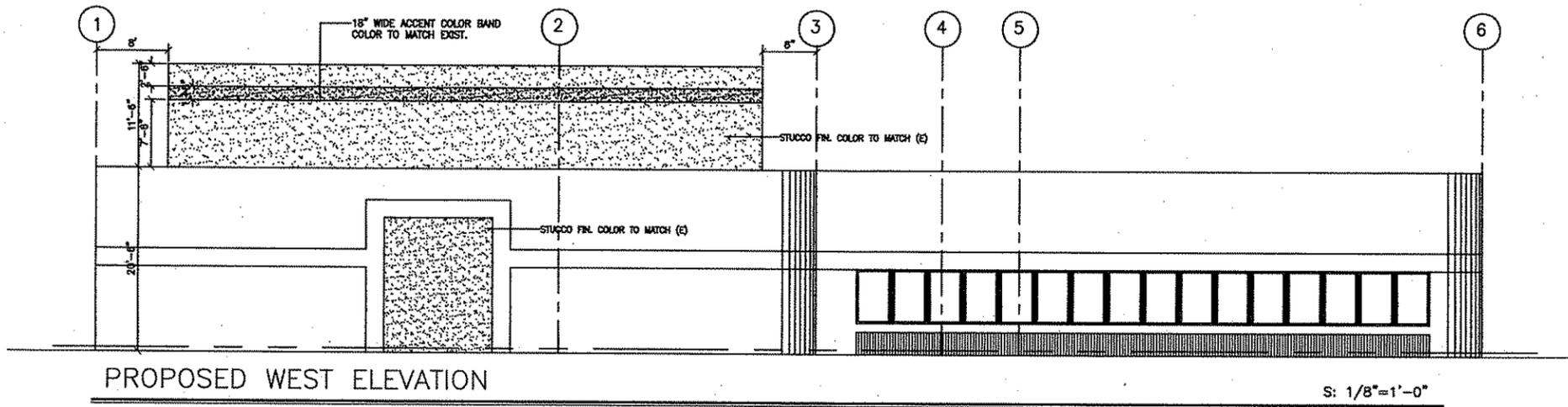
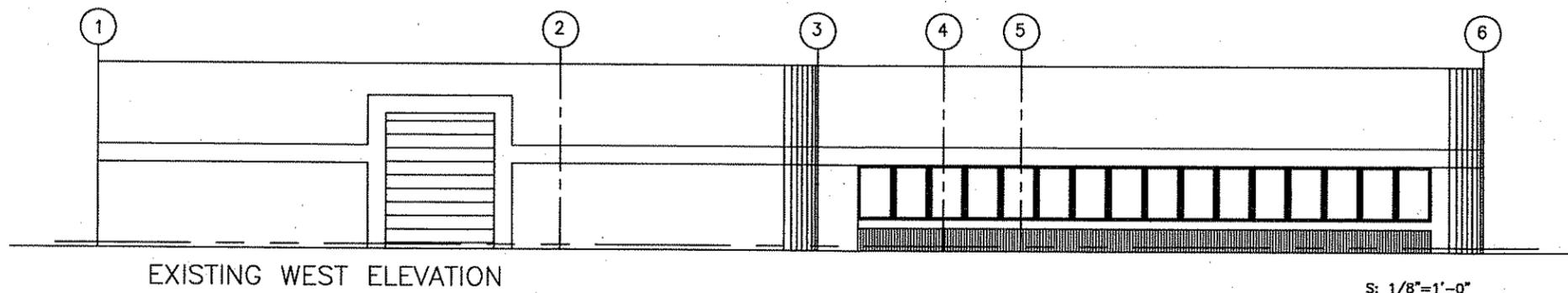
Drawn DP

Job PD113

Sheet

A-3

Of N Sheets



REVISIONS	BY



PROFESSIONAL DESIGN
 10268 BANDLEY DR. #102 CUPERTINO, CA 95014
 TEL: (408) 986-7988, FAX: (408) 986-7809

ELEVATIONS

SIEMIC T.I.
 775 Montague Expressway
 MILPITAS, CA. 95132

Date	05/27/11
Scale	AS SHOWN
Drawn	DP
Job	PD113
Sheet	A-4
Of	N Sheets

DAVID PERNG, ARCHITECT
10268 Bandley Dr. #102
Cupertino, CA. 95014
Phone: (408) 996-7988; Fax: (408) 996-7809

To: Cindy Hom
City of Milpitas
Project Manager

Date: July 21, 2011

Job Site: 775 Montague Expressway

Reg.: Conditional Use Permit: #UP11-0016

1) Work request:

Siemic T.I. is requesting to elevate a portion of the existing buildings' roof to accommodate the installation of a new testing chamber. The new equipment will improve the efficiency of Siemic T.I. testing operations. The dimension of the testing chamber is about 61'x32.5'x27' (LengthxWidthxHeight).

2) General Operation:

Office hour: 8:00 am to 6:00 pm; Mon. to Fri.

No night shift.

Standard mail and Fed-ex for small IC parts delivery only; no trucking involved.

David Perng, Architect