



MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: September 12, 2012

APPLICATION:

Conditional Use Permit No. UP12- 0018, Tire Repair

APPLICATION
SUMMARY:

A request to reestablish an automotive use for tire sales and repair at an existing gas station.

LOCATION:

10 N. Main Street (APN 28-24-030),

APPLICANT:

Tran Hue, 4655 Rotherhaven Way, San Jose, CA 95111

OWNER:

Mahatdejkul Prasert and Hattaya Trustee, 718 Los Pinos Ave. Milpitas, CA 95035

RECOMMENDATION:

**Staff recommends that the Planning Commission:
Adopt Resolution No. 12-037 approving the project subject to
conditions of approval.**

PROJECT DATA:

General Plan/Zoning

Mixed Use (MXD) / Mixed Use with Site and Architectural Overlay District (MXD-S)

Specific Plan:

Midtown Specific Plan

CEQA Determination:

Categorically exempt from further environmental review pursuant to Section 15301 for Existing Facilities

PLANNER:

Tiffany Brown, Assistant Planner

PJ:

2838

ATTACHMENTS:

A. Resolution No. 12-037
B. Site Plans

LOCATION MAP



No scale

BACKGROUND

In June 1965, the Planning Commission granted site and architectural approval for a gasoline/auto service station. With the adoption of the Midtown Specific Plan in 2002, the auto service station became a legal non-conforming use due to the zoning code provision (XI-10-6.02-1 (A) (1)) that states all auto services stations locate a minimum of 1,000-feet away form one another. This property is approximately 110-feet away from another auto service use located on Winsor Street just east of the site. The gas service (pump station and mini mart) is still in operation. The Planning Commission granted a CUP in January of this year to re-establish one of the service bays for a Smog Check use. Since the other service bay has been vacant for more then one year, an applicant must submit for a conditional use permit to allow for the re-establishment of the service bay for a non-conforming use.

Tran Hue submitted an application on July 5, 2012 for a conditional use permit application to re-establish an auto service use for tire repair within the existing service bay of a gas station. The application is submitted pursuant to Milpitas Municipal Code (MMC) XI-10-56.03 (B) which requires Planning Commission review and approval for the re-establishment of a discontinued use within the Midtown and Transit Area Specific Plan.

PROJECT DESCRIPTION

The project site is a 0.21 acre parcel located at the northeast corner of North Main Street and Carlo Street. The site is developed gasoline service station that includes a canopy over four fuel dispensers and a 1,564 square foot commercial building that provides space for a mini-mart and two service bays (existing Smog Check service Bay 387 square feet, vacant service bay is 302 square feet). Surrounding land uses includes a religious temple and preschool to the south; a vacant convenience store (formerly Mr. P's Market) and A-Plus Auto repair shop to the east; a vacant lot, residential home, and a bar to the north, and a one story commercial office building located to the west. A vicinity map of the project site is shown on the previous page.

The project proposal is a request to re-establish an auto service use in one of the existing auto service bays. The service bay is 302 square feet. The applicant proposes to operate a tire repair center that will operate Monday through Saturday from 9am to 6pm and Sundays from 10am to 4pm. All tires will be stored inside the service bay. There will be no exterior storage for this business. Tires old tires will be picked up and transferred to other establishment in San Jose when necessary, but at a minimum once a week.

Development Standards

The project does not propose any exterior or site modifications.

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 an underutilized building before its eventual conversion to conforming use in the Mixed Use Zoning District.
<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 re-establish a use that supports and revitalizes the gasoline service station. The use would also encourage small business opportunities and promote business retention.

Zoning Ordinance

The proposed location for the tire repair shop is a legal non-conforming use due to the zoning code provision (XI-10-6.02-1 (A) (1)), and since the service bay has been vacant for more than one year, applicant must receive approval for a conditional use permit to allow for the re-establishment of the service bay for a non-conforming use.

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 proposed use for a tire repair shop is an ancillary use to a gasoline service station and should not cause a nuisance to the surrounding properties.

- 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 residential, quasi-public, commercial uses as well as other auto service uses. The use would be neighborhood serving and compatible with the general character in that facility is an existing gas station.

- 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 auto service use. The project proposes to operate a tire repair shop in the existing auto service bay.

Midtown Specific Plan

While the project site is located within the Midtown Specific Plan, the project does not meet the threshold to require specific plan upgrades.

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 from further environmental review pursuant to Section 15301 (Existing Facilities) of the California Environmental Quality Act. The project would be a negligible expansion of use considering the project proposes to operate a tire repair shop in the vacant service bay of the existing gasoline service station.

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 project proposes the re-establishment of a discontinued auto service use within an existing gas service station. The continued use of the building for auto service will not cause a nuisance for the surrounding properties in that the use is an ancillary use to a gas station and will not change the character of the existing neighborhood.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission adopt Resolution No. 12-037 approving Conditional Use Permit Amendment UP12-0018, Tire Repair Shop, subject to the attached Conditions of Approval.

Attachments:

- A. Resolution 12-037
- B. Project Plans

RESOLUTION NO. 12-037

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS,
CALIFORNIA, APPROVING CONDITIONAL USE PERMIT NO UP12-0018, TIRE
REPAIR, TO RE-ESTABLISH A AUTOMOTIVE USE FOR TIRE SALES AND REPAIR
WITHIN AN EXISTING SERVICE BAY,
LOCATED AT 10 N MAIN STREET**

WHEREAS, on July 5, 2012, an application was submitted by Tran Hue, 4655 Rothen Heaven Way, San Jose, CA 95037, to reestablish an automotive use for tire sales and repair at an existing gas station.. The property is located within the Mixed Use Development Zoning District with Site and Architectural Overlay District (MXD-S). (APN: 28-24-030); 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 exempt.

WHEREAS, on September 12, 2012, 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 from further environmental review pursuant to Section 15301 (Existing Facilities) of the California Environmental Quality Act. The project would be a negligible expansion of use considering the project proposes to operate a tire repair shop in the vacant service bay of the existing gasoline service station.

Section 3: The proposed use is consistent with the General Plan Policies 2.a-I-3 and 2.a-I-6 in that the tire repair shop allows for the flexibility to use an underutilized building before its eventual conversion to conforming use with the Mixed Use Zoning District and that the use supports and revitalizes the existing gasoline service station.

Section 4: The proposed project at the proposed location is consistent with the zoning ordinance section XI-10-56.03 (B) in that the project the use is an ancillary use to the gasoline service station and is compatible with surrounding uses/businesses in that it is a neighborhood serving use.

Section 5: While the project site is located within the Midtown Specific Plan, the project does not meet the threshold to require specific plan upgrades.

Section 6: The Planning Commission of the City of Milpitas hereby approves UP12-0018, Tire Repair 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 September 12, 2012.

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 September 12, 2012, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Lawrence Ciardella				
John Luk				
Rajeev Madnawat				
Sudhir Mandal				
Zeya Mohsin				
Gurdev Sandhu				
Steve Tao				
Garry Barbadillo				

EXHIBIT 1

**CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT NO. UP12-0018**

A request to reestablish an automotive use for tire sales and repair at the existing gas station.
10 N. Main Street (APN 28-24-030)

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 **September 12, 2012**, 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)**

UP12-0018 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 **UP12-0018** if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein. **(P)**
 3. All operations shall be conducted completely within the enclosed building. No storage outside of the service bay. **(P)**
 4. The use shall be operated in accordance with all local, state, and federal regulations. **(P)**
 5. 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)**
 6. To the fullest extent permitted by law, applicant shall indemnify, defend with counsel of the City's reasonable choosing that is mutually acceptable to both parties, and hold harmless

City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the project, including but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition. City shall promptly notify the project applicant of any claim, action, or proceeding and engage in reasonable efforts to cooperate with applicant in the defense against the claim, demand, obligation, damage, action, or suit. If City fails to so promptly notify the project applicant, then the applicant's indemnification obligations as set forth in this condition of approval shall thereafter terminate. The applicant shall not be required to pay or perform any settlement unless the settlement is approved by the applicant.

- (P) = Planning
- (B) = Building
- (E) = Engineering
- (F) = Fire Prevention

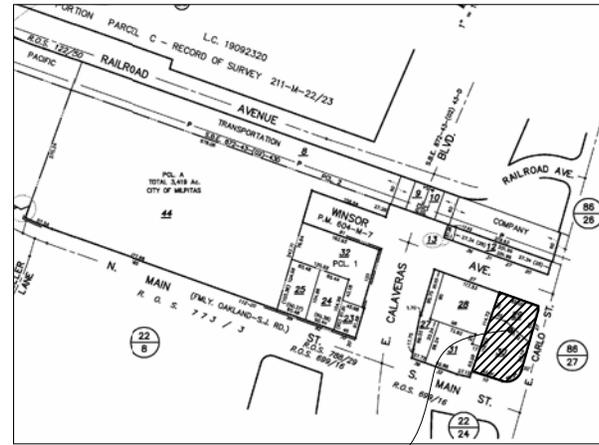
10 N MAIN ST PROPOSED USED TIRE STORE

SCOPE OF WORK:

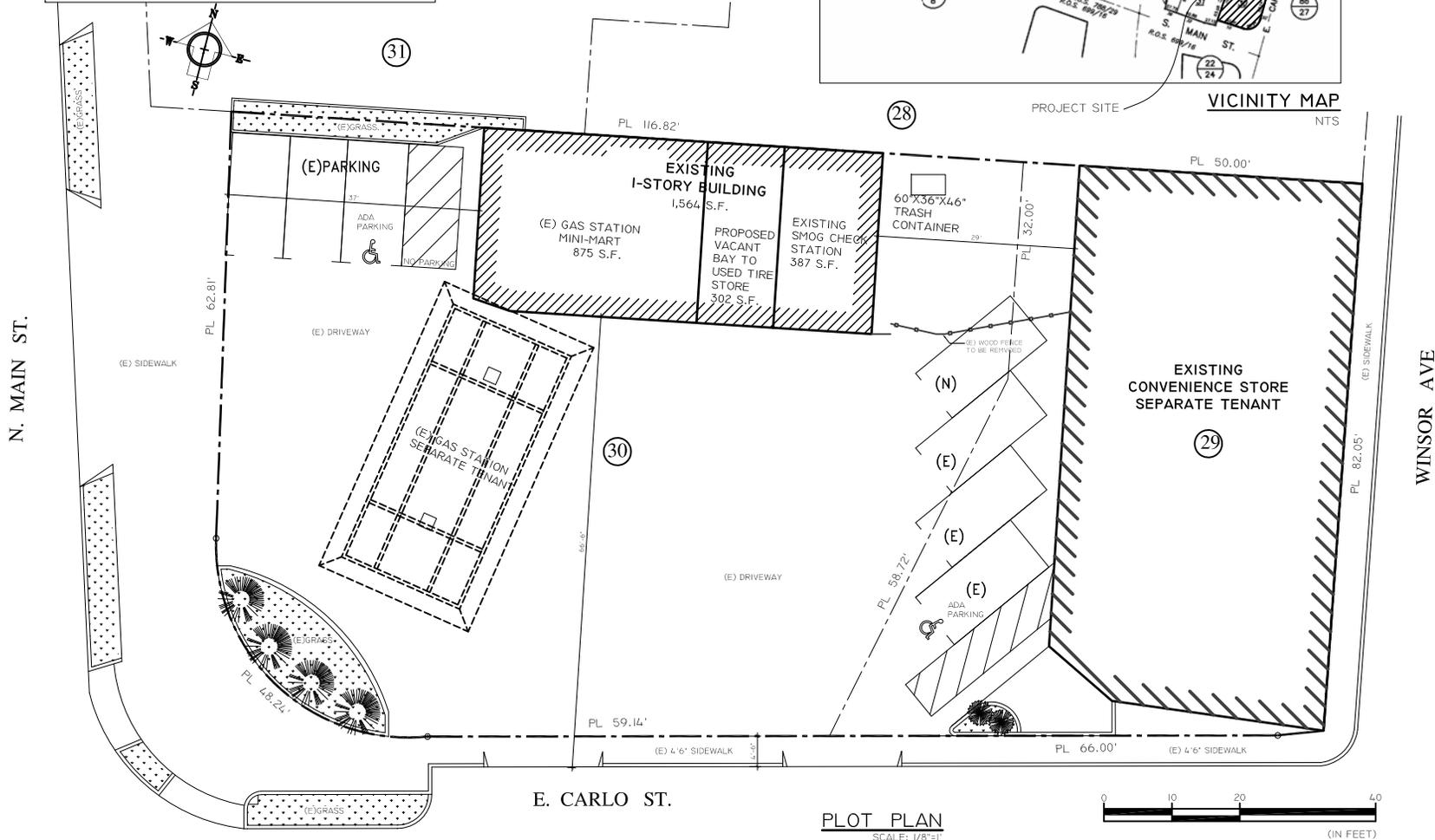
- PROPOSE A USED TIRE STORE

PROJECT DATA

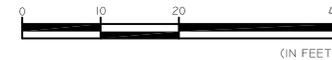
OCCUPANCY: B
 TYPE OF CONSTRUCTION: III-B
 LOT AREA (NET): 9,395 S.F.
 EXISTING USE: COMMERCIAL
 SPRINKLER: NO



VICINITY MAP
NTS



PLOT PLAN
SCALE: 1/8"=1'



526 Calero Ave, San Jose, CA 95123
 Tel: (408) 425-4523
 Fax: (408) 300-1027
 Email: info@tranvu.com



DATE: 02/15			
DRAWN BY: S.K.		CHECKED BY: T.T.	
REVISION	DATE	REVISION	DATE

10 N MAIN ST,
 USED TIRE STORE
 APN # 028-0024-029
 028-0024-030

10 N MAIN ST,
 MILPITAS, CA 95035

10 N MAIN ST,
 MILPITAS, CA 95035

SCALE: 1/8" = 1'
PLOT PLAN

PROJECT NO: SHEET:
 A.1



SURVEYORS - ENGINEERS - ARCHITECTS

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 Email: info@tranvu.com



DATE: 02/10/11			
DRAWN BY: S.K.		CHECKED BY: T.T.	
REVISION	DATE	REVISION	DATE

10 N MAIN ST,
 USED TIRE STORE
 APN # 028-0024-029
 028-0024-030

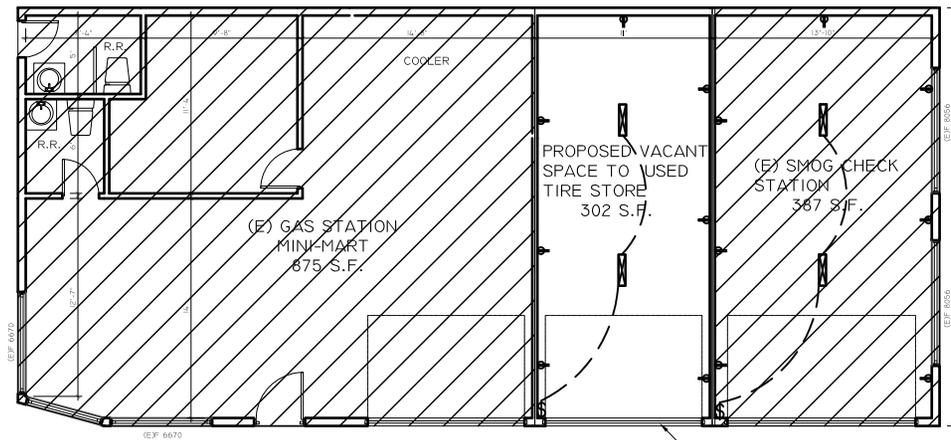
10 N MAIN ST,
 MILPITAS, CA 95035

10 N MAIN ST,
 MILPITAS, CA 95035

SCALE: 1/4" = 1'

EXISTING
 FLOOR PLAN

PROJECT NO:	SHEET:
	A.2



PROPOSED FLOOR PLAN

SCALE : 1/4" = 1'

- GARAGE DOOR SHALL BE OPENABLE FROM INSIDE WITHOUT SPECIAL KNOWLEDGE AND KEY
- THE MAXIMUM FORCE TO RELEASE THE DOOR LATCH SHALL NOT EXCEED 15 POUNDS AND TO SET DOOR IN MOTION SHALL NOT EXCEED 30 POUNDS.