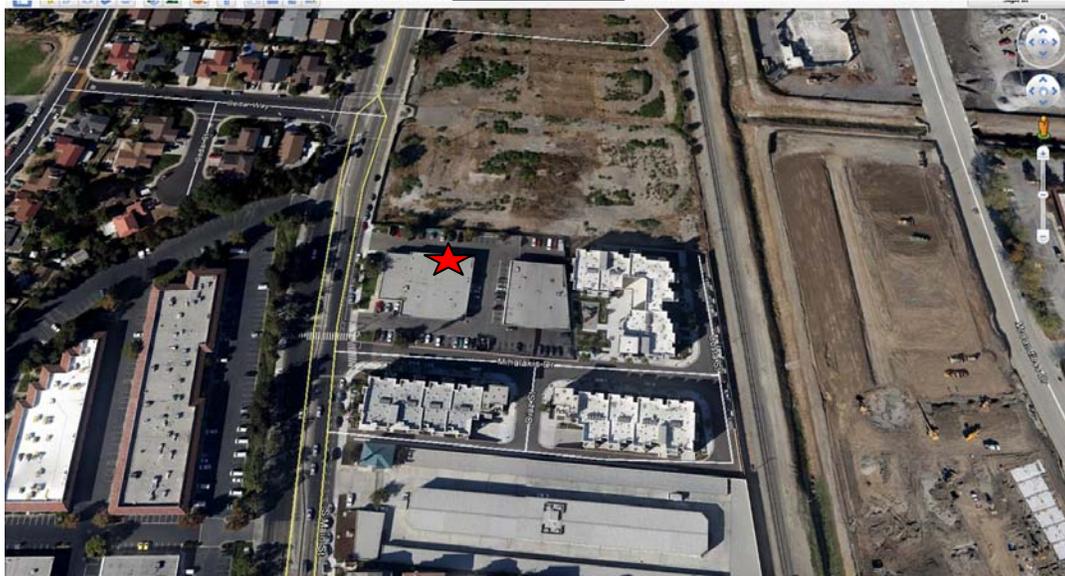


Map 1 Project Location



Map 2 Project Site



BACKGROUND

History

In 1987, two one-story industrial buildings, totaling 23,670 square feet, were built on a 1.41 acre parcel with associated parking on the subject property. Past uses within that building included professional offices, auto repair services, and retail. With the adoption of the Midtown Specific Plan in 2002, the property was rezoned from Industrial to Multi-Family Very High Density, therefore, making the existing structure a legal non-conforming building with non-conforming uses. In May of 2011, an amendment to the Zoning Code was adopted that allows property's within the Midtown Specific Plan and Transit Area Specific Plan meeting certain conditions to apply to re-establish a discontinued nonconforming use through the review and approval of a Conditional Use Permit by the Planning Commission.

The Application

On September 9, 2013, Vu Doan submitted an application pursuant to Section 57 of the Milpitas Zoning Ordinance for a Conditional Use Permit. The following is a summary of the requests:

- *Conditional Use Permit:* For the re-establishment of a non-conforming use within the Midtown Specific Plan Area per Section 10-56.03(B.), to allow for an auto repair use within an existing non-conforming building at 1636 South Main Street.

PROJECT DESCRIPTION

Overview

The project site is a 1.41 acre parcel located at the northeast corner of Mihalakis Street and South Main Street. The site is developed with two one-story industrial buildings previously used for auto services, professional offices, and retail. Surrounding land uses include multi-family residential to the east and south, the South Bay Tech Center to the west along with residential to the northwest, and undeveloped property to the North.

The applicant proposes an auto repair service within the existing 3,072 square foot tenant space previously utilized for auto repair services. The current tenant space includes four service bays, two offices and two restrooms. The applicant proposed no changes to the interior or exterior of the building.

Parking

When the buildings were constructed in 1987, the amount of parking supplied was compliant with the research and development parking ratio at one space per every 300 square feet. The proposed tenant space is allotted 10 parking stalls per that ratio. The Zoning Ordinance Table 53.09-1 for Auto Repair, requires three parking stalls per service bay for auto repair use. The applicant proposes to utilize only three of the service bays and keep the fourth bay closed at all times. As conditioned, the business will require nine parking spaces for the three service bays and therefore meets the parking requirements.

REQUIRED FINDINGS

A finding is a statement of fact relating to the information that the Planning Commission or City Council has considered in making a decision. Findings shall identify the rationale behind the decision to take a certain action.

Re-establishment of Discontinued Nonconforming Uses Within Midtown Specific Plan Area (Section XI-10-56-03(B))

As explained above, with the adoption of the Midtown Specific Plan Area in 2002, the subject property was rezoned from Industrial to Multi-Family Very High Density making the previous auto repair use at the subject property a legal non-conforming use.

As set forth in Section XI-10-56-03(B) of the Milpitas Zoning Code, once a legal non-conforming use is discontinued for a year or more, the nonconforming uses within the Midtown Specific Plan Area may be re-established if all of the following findings outlined 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.) in that:*

The proposed auto repair service, as conditioned, meets the parking requirements, and auto services will be conducted within the building which will act as a barrier to traveling noise from machinery. The auto-repair shop is located within a building where the neighboring tenant is an auto-repair/services business and bike shop.

- b. 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 project area is in transition since it was rezoned and currently has residential to the east and south, a business tech center to the west, and a vacant lot to the north. The proposal is to re-establish an auto repair use within the existing tenant space and does not propose changes to the interior or exterior of the building, therefore maintaining the existing character of the area.

- 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.*

The building was developed and intended for auto service use and has been vacant for more than a year. Since the subject property will not be redeveloped consistent with the Midtown Specific Plan at this time, the proposed auto repair use will allow the property owner to lease out the vacant tenant space for gainful economic use..

Conditional Use Permit (Section XI-10-57.04(F))

- 1. 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:*

The project would re-establish a use that supports and revitalizes the existing businesses within the building and proposes no changes to the existing tenant space and therefore will not be detrimental or injurious to the property or improvements within the vicinity.

The auto repair station will operate in compliance with all state and federal codes and therefore will not be detrimental or injurious to the public health, safety and general welfare.

2. *The project is consistent with the Milpitas Zoning Ordinance in that:*

As explained above, the City's Zoning Code allows for the re-establishment of non-conforming uses. The proposal will not modify the interior or exterior of the existing tenant space and meets the parking requirements for an auto service use.

3. *The project is consistent with the Milpitas General Plan, specifically Policy 2.a-I-6 in that :*

Policy 2.a-I-6: Endeavor to maintain a balanced economic base that can resist downturns in any one economic sector.

The project allows for the flexibility to use an underutilized building before its eventual conversion to conforming use in the Multi-Family Residential Zoning District.

4. *The project is consistent with the Midtown Specific Plan:*

While the project site is located within the Midtown Specific Plan, the project does not proposed any modifications to the structure to accommodate the proposed use and therefore 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) and determined that the project is categorically exempt from further environmental review pursuant to Class 1, Section 15301 (Existing Facilities) in that the auto repair services will be located in an existing tenant space that was utilized for auto repair services previously.

PUBLIC COMMENT/OUTREACH

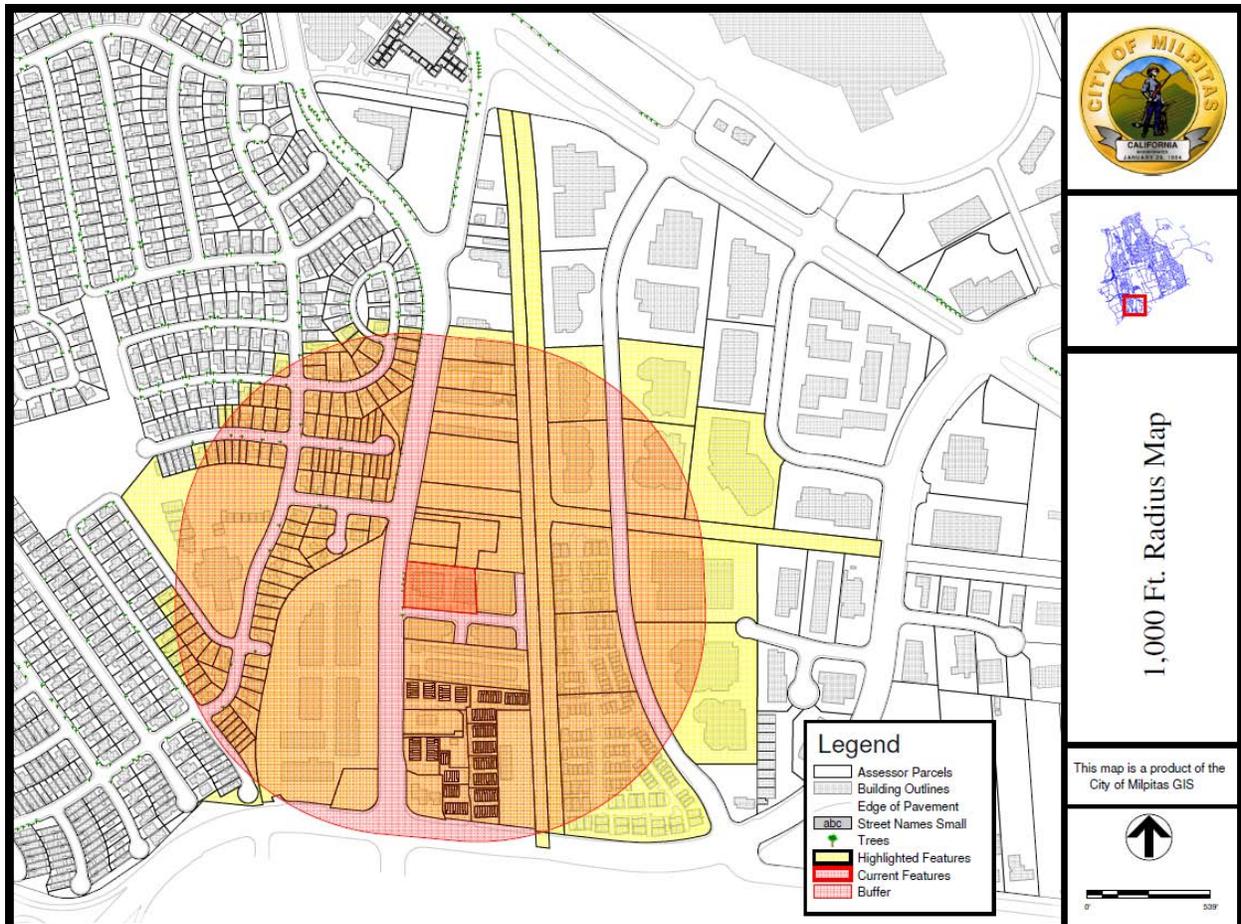
Staff publicly noticed the application in accordance with City and State law. As of the time of writing this report, there have been no inquiries from the public. Table 1 provides a summary of the City's public noticing efforts for this project.

Table 1
Public Noticing Summary

Notice of Public Hearing	Agenda
<ul style="list-style-type: none"> ▪ Posted on the site (14 days prior to the hearing) ▪ Five hundred and ninety (590) notices mailed to property owners and residents within 1,000 feet to the project site (10 days prior to the hearing) ▪ Posted on the City's official notice bulletin board (10 days prior to the hearing) 	<ul style="list-style-type: none"> ▪ Posted on the City's official notice bulletin board (5 days prior to the hearing) ▪ Posted on the City of Milpitas's Web site (one week prior to the hearing)

The map below illustrates the extent of the mailed notices.

Map 3
Public Notice Radius



CONCLUSION

The project proposes the re-establishment of a discontinued auto service use within an existing tenant space once utilized for auto services. The continued use of the building for auto service will not cause a nuisance for the surrounding properties in that the use is conducted within the existing building and will not change the character of the existing neighborhood.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission adopt Resolution No. 13-033 Conditional Use Permit No. UP13-0019 **to re-establish a discontinued non-conforming auto repair use located at 1636 South Main Street, subject to** and conditions of approval.

PROJECT DATA:*Attachments:*

- A. Resolution No. 13-003
- B. Site Plans
- C. Letter from Applicant

RESOLUTION NO. 13-033

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS
APPROVING CONDITIONAL USE PERMIT NO. UP13-0019 TO RE-ESTABLISH A
DISCONTINUED NON-CONFORMING AUTO REPAIR USE AT 1636 SOUTH MAIN
STREET**

WHEREAS, on September 19, 2013, an application was submitted by Vu Doan, 621 Tully Road #223, San Jose CA 95111, to re-establish a discontinued auto repair use within the existing non-conforming building at 1636 South Main Street. The property is located within the Multi-Family Very High Density Zoning District (APN: 86-22-024).

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 under CEQA.

WHEREAS, on October 17, 2013, the application was deemed complete and staff prepared the staff report with supporting documents for the November 13, 2013 Planning Commission meeting.

WHEREAS, on November 13, 2013, 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 Planning Commission has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the Commission. Furthermore, the recitals set forth above are found to be true and correct and are 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 auto repair services will be located in an existing tenant space that was utilized for auto repair services

Section 3: *Re-establishment of Discontinued Nonconforming Uses Within Midtown Specific Plan Area (Section XI-10-56-03(B))*

As explained above, with the adoption of the Midtown Specific Plan Area in 2002, the subject property was rezoned from Industrial to Multi-Family Very High Density making the previous auto repair use at the subject property a legal non-conforming use.

As set forth in Section XI-10-56-03(B) of the Milpitas Zoning Code, once a legal non-conforming use is discontinued for a year or more, the nonconforming uses within the Midtown Specific Plan Area may be re-established if all of the following findings outlined 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.) in that:*

The proposed auto repair service, as conditioned, meets the parking requirements, and auto services will be conducted within the building which will act as a barrier to traveling noise from machinery. The auto-repair shop is located within a building where the neighboring tenant is an auto-repair/services business and bike shop.

- b. *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 project area is in transition since it was rezoned and currently has residential to the east and south, a business tech center to the west, and a vacant lot to the north. The proposal is to re-establish an auto repair use within the existing tenant space and does not propose changes to the interior or exterior of the building, therefore maintaining the existing character of the area.

- 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.*

The building was developed and intended for auto service use and has been vacant for more than a year. Since the subject property will not be redeveloped consistent with the Midtown Specific Plan at this time, the proposed auto repair use will allow the property owner to lease out the vacant tenant space for gainful economic use.

Section 4: Conditional Use Permit (Section XI-10-57.04(F))

1. *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:*

The project would re-establish a use that supports and revitalizes the existing businesses within the building and proposes no changes to the existing tenant space and therefore will not be detrimental or injurious to the property or improvements within the vicinity. The auto repair station will operate in compliance with all state and federal codes and therefore will not be detrimental or injurious to the public health, safety, and general welfare.

2. *The project is consistent with the Milpitas Zoning Ordinance in that:*

As explained above, the City’s Zoning Code allows for the re-establishment of non-conforming uses. The proposal will not modify the interior or exterior of the existing tenant space and meets the parking requirements for an auto service use.

- 3. *The project is consistent with the Milpitas General Plan, specifically Policy 2.a-I-6 in that :*

Policy 2.a-I-6: Endeavor to maintain a balanced economic base that can resist downturns in any one economic sector.

The project allows for the flexibility to use an underutilized building before its eventual conversion to conforming use in the Multi-Family Residential Zoning District.

- 4. *The project is consistent with the Midtown Specific Plan:*

While the project site is located within the Midtown Specific Plan, the project does not propose any modifications to the structure to accommodate the proposed use and therefore does not meet the threshold to require specific plan upgrades.

Section 5: The Planning Commission of the City of Milpitas hereby adopts **Resolution No. 13-033 approving Conditional Use Permit No. UP13-0019 based on the above Findings and subject to the Conditions of Approval attached hereto as Exhibit 1 and incorporated herein.**

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on November 13, 2013.

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 November 13, 2013, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Lawrence Ciardella				
John Luk				
Rajeev Madnawat				
Sudhir Mandal				

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Zeya Mohsin				
Gurdev Sandhu				
Garry Barbadillo				
Demetress Morris				

EXHIBIT 1**CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT NO. UP13-0019****General Conditions**

1. The owner or designee shall develop the approved project in conformance with the plans approved by the Planning Commission on November 13, 2013, in accordance with these Conditions of Approval. Any deviation from the approved site plan, 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)**
2. Conditional Use Permit No. UP13-0019 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.

Pursuant to Section 64.7 of the Zoning Code, the owner or designee shall have the right to request an extension of Conditional Use Permit Amendment No. UP13-0019 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein. **(P)**

3. Prior to the issuance of a building permit, the owner or designee shall pay in full the project account balance and establish a remaining balance of 25% of the initial deposit.
4. Prior to the issuance of a building permit, the owner or designee shall include within the four first pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the project. **(P)**
5. To meet the parking requirements, business owner and/or operator shall utilize only 3 of the service bays. The fourth service bay door shall remain closed at all times. **(P)**
6. All auto-repair work shall be conducted within the existing building. No work permitted within the parking lot or drive way areas or any other areas outside of the building envelope. **(P)**

7. Hours of operation shall be between 7:00 am and 7:00 pm daily only. **(P)**

8. Indemnification. To the fullest extent permitted by law, applicant shall indemnify, defend with counsel of the City's choosing, 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, and 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 related (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. **(CA)**

9. The use shall comply with all local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. **(CA/P)**

(P) = Planning

(CA) = City Attorney

LANDESS AUTO SERVICE INC
1636 S. MAIN ST
MILPITAS, CA 95035

SCOPE OF WORK

OCCUPANT LOAD CAL.

ATTACHMENT B

1. RE-ESTABLISH NONCONFORMING USE

TABULATION

NUMBER OF STORE: 1
PARKING: EXISTING
H/C STALLS: EXISTING

WHOLE BUILDING: EXISTING
AREA OF IMPROVEMENT: 6784 SF
TYPE OF CONSTRUCTION: I-I-N
(FULLY FRANKLERED)
OCCUPANCY: B-1-P
BUILDING HEIGHT: 17.25'
PREVIOUS USE: AUTO REPAIR
PROPOSED USE: AUTO REPAIR

APN#: 86-22-024
ZONE: R-4

RECEIVED

SEP 19 2013

CITY OF MILPITAS
PLANNING DIVISION



DIRECTORY

GENERAL NOTES

CITY OF MILPITAS:
Building Department
Milpitas City Hall
455 East Calaveras Boulevard
Milpitas, California 95035

STRUCTURAL ENGINEERING:
John Papa
3637 Snell ave # 227
San Jose, Ca
Tel: 408-668-4046

DESIGNER:
Vu Doan
3637 Snell ave # 227
San Jose, Ca
Tel: 408-668-4046

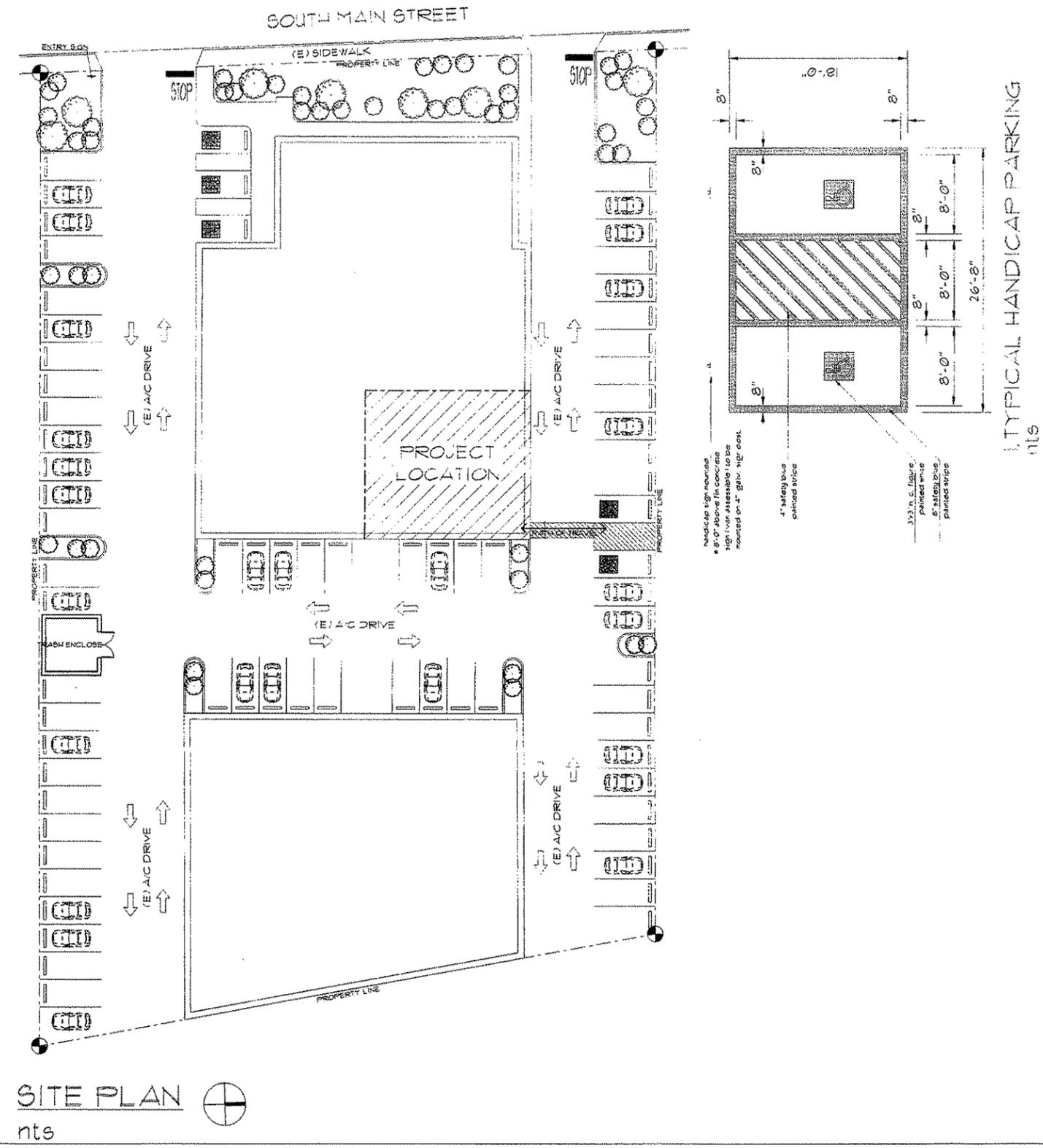
TITLE 24:
Miles Hancock
3637 Snell ave, ste 227
San Jose, Ca
Tel: 650-424-1189

- ALL WORK SHALL COMPLY WITH LATEST APPLICABLE CODES AND TRADE STANDARDS WHICH GOVERN EACH PHASE OF WORK, INCLUDING BUT NOT LIMITED TO:
2010 CALIFORNIA BUILDING CODE
2010 CALIFORNIA MECHANICAL CODE
2010 CALIFORNIA PLUMBING CODE
2010 CALIFORNIA ELECTRICAL CODE
2010 CALIFORNIA TITLE 24 - NBP - CURRENT EDITION + (1) AS AMENDED BY STATE AND LOCAL ORDINANCES CA TITLE 24 AND STATE LAWS.
- ALL WORK SHALL COMPLY WITH LOCAL ORDINANCES AND STATE LAWS.
- ALL CONSTRUCTION SHALL CONFORM TO CURRENT TITLE 24, CALIFORNIA ADMINISTRATIVE CODE ACCESSIBILITY REQUIREMENTS.
- ALL PUBLIC IMPROVEMENTS SHALL BE MADE IN ACCORDANCE WITH THE LATEST ADOPTED CITY STANDARDS.
- ALL MECHANICAL, PLUMBING, AND ELECTRICAL EQUIPMENT SHALL BE ANCHORED AND SEISMICALLY BRACED PER CODE.
- DIMENSIONS ON WORKING DRAWINGS GOVERN. DO NOT SCALE DRAWINGS.
- ALL TYPICAL DETAILS SHALL APPLY UNLESS NOTED OTHERWISE. THE DETAILS REFLECT THE DESIGN INTENT FOR TYPICAL CONDITIONS. THE CONTRACTOR SHALL VERIFY ALL FIELD CONDITIONS AND SHALL INCLUDE, IN HIS SCOPE, THE COST FOR COMPLETE FINISHED INSTALLATION, INCLUDING ANOMALIES, OF ALL TRADES.
- ALL CONTRACTORS SHALL THOROUGHLY REVIEW CONTRACT DOCUMENTS AND SITE CONDITIONS PRIOR TO PROCEEDING WITH WORK. PRIOR TO BIDDING, CONTRACTOR SHALL NOTIFY THE OWNER AND ARCHITECT OF ANY CONDITIONS WHICH ARE NOT COVERED IN THE CONTRACT DOCUMENTS. DURING CONSTRUCTION, CONTRACTORS SHALL NOTIFY THE OWNER AND SEEK CLARIFICATION IF ANY DISCREPANCIES ARE FOUND. CONTRACTORS SHALL BE RESPONSIBLE FOR REMEDIAL WORK IF RELATED WORK IS AFTER A DISCREPANCY IS IDENTIFIED.
- CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING THAT MATERIALS, LABOR, INSTALLATION, ETC., CONFORMS TO THE CODES AND REQUIREMENTS OF LOCAL GOVERNING AGENCIES.
- NO WORK SHALL COMMENCE WITH UNAPPROVED MATERIALS. ANY WORK DONE WITH UNAPPROVED MATERIALS AND EQUIPMENT IS AT THE CONTRACTORS RISK.
- CONSTRUCTION MATERIALS STORED ON THE SITE SHALL BE PROPERLY STACKED AND PROTECTED SO AS TO PREVENT DAMAGE OR DETERIORATION UNTIL USED. FAILURE IN THIS REGARD MAY BE CAUSE FOR REJECTION OF MATERIAL AND/OR WORK.
- FINISHES AND CONSTRUCTION SHALL BE PROTECTED BY THE CONTRACTOR FROM POTENTIAL DAMAGE CAUSED BY CONSTRUCTION ACTIVITY. DAMAGE TO FINISHES OR CONSTRUCTION CAUSED IN THIS MANNER SHALL BE REPAIRED OR REPLACED (OWNER'S / ARCHITECT'S DECISION) BY CONTRACTOR WITH IDENTICAL MATERIAL AND/OR FINISHES.
- ALL CONTRACTORS SHALL REMOVE TRASH AND DEBRIS RESULTING FROM THEIR WORK ON A DAILY BASIS. PROJECT SITE SHALL BE MAINTAINED IN A CLEAN AND ORDERLY CONDITION.
- IN ADDITION TO THOSE SHOWN ON DRAWINGS, PROVIDE AND LOCATE ACCESS DOORS OR PANELS IN CEILING AND WALL CONSTRUCTION AS REQUIRED FOR MECHANICAL, PLUMBING, AND ELECTRICAL WORK.
- PROVIDE BACKING FOR ALL EQUIPMENT AND ACCESSORIES.
- CONTRACTOR TO FIELD VERIFY "AS-BUILT" CONDITIONS AND NOTIFY THE ARCHITECT IF THEY VARY SUBSTANTIALLY FROM THOSE SHOWN.

DRAWING INDEX

- A-1 Cover Sheet / Site Plan
- A-2 Existing Floor Plan

VINCINITY MAP



SITE PLAN
nts
SITE PLAN (FOR REFERENCE ONLY)

LANDESS AUTO SERVICE INC
1636 S. MAIN ST, MILPITAS, CA 95035

COVER SHEET

Revisions:

Project Title: LANDESS AUTO SERVICE INC 1636 S. MAIN ST, MILPITAS, CA 95035

Project No: 012603-19-01

Sheet Title: COVER SHEET

Scale: A-1

Sheet No: 1 of 1

The Cao Nguyen
Landess Auto Service
1636 S. Main Street
Milpitas, CA 95035

October 3, 2013

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

RECEIVED

OCT 07 2013

CITY OF MILPITAS
BUILDING & SAFETY

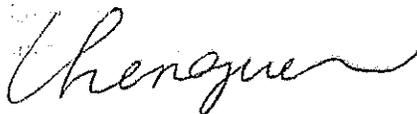
Reference Location: 1636 S. Main Street, Milpitas CA 95035

Dear City of Milpitas-Planning Division Department:

I am writing to request your consideration to approve our auto repair service-Landess Auto Service to operate at location: 1636 S. Main Street, as our understanding that we are operating the same business just like everyone else within this Building Site.

In additional, our Landess Auto Service's business license has been registered with the City of Milpitas to do business within the City for a while and since we had to move our business as well as our business license is coming up for renewal, we would like to get your approved of our business at this new location.

Sincerely,



The Cao Nguyen
Landess Auto Service
Business Owner