

RESOLUTION NO. 14-016**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS APPROVING A TIME EXTENSION TO CONDITIONAL USE PERMIT AMENDMENT NO. P-UA11-0012 MODIFYING THE EXISTING FLOOR PLAN TO ACCOMMODATE NEW PROGRAMMING AT AN EXISTING CHURCH USE IN THE HEAVY INDUSTRIAL ZONING DISTRICT**

WHEREAS, on June 14, 1995, the Planning Commission approved Conditional Use Permit No. UP1264-A, that allowed for the operations of church and shared parking facilities within the Sinclair Industrial Park, which is an industrial condominium complex consisting of 27 condominium units and one common area lot. The church operation has been continuously occupied at 467 Sinclair Frontage Road (APN 86-44-001, 003 and 004).

WHEREAS, on April 21, 2009, the City Council adopted an amendment to the Zoning Code eliminating assembly uses from the industrial districts that are not associated with business or industrial uses. With the amendment of the Zoning Code, most assembly uses are now prohibited in the industrial zones. As such, the church facility became a legal, nonconforming use.

WHEREAS, on December 14, 2011, Pastor Virgil Fernando on behalf of Good Shepherd Community Church submitted an application to allow for interior modifications to the existing floor that would allow for the reprogramming of the sanctuary space and to permit shared parking located at 467 Sinclair Frontage Road (APN 86-44-001, 003, and 004). The property is located in the Heavy Industrial Zoning District (M2-S).

WHEREAS, on April 11, 2012, the Planning Commission approved Conditional Use Permit Amendment, P-UA11-0012 to allow for interior modifications to the existing floor that allows for the reprogramming of the sanctuary space and to permit shared parking located at 467 Sinclair Frontage Road. A copy of Resolution No. 12-019 and Conditional Use Permit Amendment No. P-UA11-0012 approved by the Planning Commission on April 11, 2012 is attached to this Resolution as **Exhibit 2** and incorporated fully herein.

WHEREAS, in accordance with the Milpitas Municipal Code Section XI-10-64.06, Conditional Use Permit Amendment No. P-UA11-0012, may expire within two (2) years of the approval date, provided there was a typographical error in Conditional Use Permit Amendment No. P-UA11-0012 stating the approval will expire within eighteen (18) months.

WHEREAS, on March 31, 2014, Herminio Cantos representing Good Shepherd Community Church submitted an application requesting a time extension, TE14-0001, for the previously approved Conditional Use Permit Amendment No. P-UA11-0012 to modify the existing floor plan to accommodate new programming of church operations for an existing church use, in the Heavy Industrial Zoning District.

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 CEQA review under Section 15301 of the CEQA Guidelines, Existing Facilities because the use is located in an existing facility and no new floor area is being added.

WHEREAS, on April 23, 2014, 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 CEQA review under Section 15301 of the CEQA Guidelines, Existing Facilities because the use is located in an existing facility and no new floor area is being added.

Section 3: *Time Extension (Section XI-10-64-07(D)) for Conditional Use Permit (Section XI-10-57-04(F)) - The Planning Commission makes the following findings based on the evidence in the public record in support of Time Extension No. TE14-0001:*

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.*

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 because the project includes interior modifications of the existing building floor plan to remove and build new walls for the sanctuary, offices, classroom and bathrooms and no changes are made to the capacity of the building or the demand for parking. The project will include one-hour fire rated construction and be built to current building code regulations to further protect and prevent detriment or injuries. The project is required to obtain a shared parking agreement from adjacent owners securing a minimum of eighteen (18) shared parking spaces to maintain an adequate parking supply for the use. The proposal will not add additional square footage or change of the existing use. The project does not propose any exterior modifications and maintains compliance with the Heavy Industrial development standards as well as its non-conforming use status.

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

The project complies with the Milpitas Zoning Ordinance in that the legal non-conforming use of the church facility requires a conditional use permit to allow the modification of the non-conforming use of the buildings and structures due to Council adopted the zoning amendment

that eliminated places of assembly use categories from the industrial districts; and, the applicant received this approval in December 2011, as part of UA11-0012. Further, conditions of approval are in place to ensure that the project will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare. The project is also consistent with the City's parking regulations in that the 18 shared parking spaces will be secured in perpetuity due to the modification of the new floor plan.

As conditioned, the project is also consistent with the City's parking regulations in that eighteen (18) shared parking spaces will be secured in perpetuity by a recorded agreement prior to issuance of any building permit.

The request of the Time Extension is consistent with the Milpitas Zoning Ordinance in that a written statement with reasons of the extension was submitted prior to the approval expiration date. Pursuant to Section 64 of the Milpitas Zoning Ordinance, the length of the extension shall be granted a single time extension within the time period specified in the approval or for eighteen (18) months if no time is specified. The Conditional Use Permit Amendment P-UA11-0012 was approved on April 11, 2012. The Time Extension application TE14-0001 was submitted on March 31, 2014 prior to the CUP Amendment expired. The time extension will expire on October, 23, 2015 if the activity permitted by the approved application is not commenced by that as further set forth in Milpitas Municipal Code Section XI-10-65.06.B.

3. The project is consistent with the Milpitas General Plan.

The project is consistent with this finding because the project will not have negative impact on public health, safety, and general welfare. The project meets the General Plan, specifically the following policy:

- Policy 2.d-G-2 Develop adequate civic, recreational, and cultural centers in locations for the best service to the community and in ways which will protect and promote community beauty and growth.

The Good Shepherd Community Church offers a place of worship and community services for both the local community and the region given its location and proximity to residential land uses and Interstate 680 and has been operating in this location since 1995 per the original Conditional Use Permit UP1264-A and as amended under Conditional Use Permit Amendment UA11-0012.

Section 5: The Planning Commission of the City of Milpitas hereby adopts **Resolution No. 14-016 and approving Time Extension, TE14-0001 based on the above Findings and subject to the Conditions of Approval attached hereto as Exhibit 1 and Exhibit 2 and incorporated herein.**

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on April 23, 2014.

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 April 23, 2014, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Lawrence Ciardella				
John Luk				
Rajeev Madnawat				
Sudhir Mandal				
Demetress Morris				
Gurdev Sandhu				
Garry Barbadillo				
Hon Lien (alternate)				

EXHIBIT 1

**CONDITIONS OF APPROVAL
GOOD SHEPHERD COMMUNITY CHURCH
TIME EXTENSION NO. TE14-0001**

The Conditions of Approval in this Exhibit 1 shall replace in its entirety the Conditions of Approval in Conditional Use Permit Amendment No. UA11-0012, attached hereto as Exhibit 2.

General Conditions

1. General Compliance. The applicant and every owner, including all successors in interest (collectively "Permittee") shall comply with each and every condition set forth in this permit. This Time Extension No. TE14-0001 and Conditional Use Permit Amendment No. UA11-0012 (collectively "Permit") shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed.
2. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which the decision-making body approved this Permit.
3. Acceptance of Permit. Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following:
 - a. Acceptance of this Permit by Permittee; and
 - b. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit.
4. Permit Expiration. Pursuant to Section XI-10-64-07(E) of the Milpitas Zoning Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within eighteen (18) months from the date of approval, or on or before October 23, 2015. Pursuant to Section XI-10-64.06(B) of the Milpitas Zoning Code, an activity permitted by this Permit shall be deemed to have commenced when the project:
 - 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.
5. Time Extension. Pursuant to Section XI-10-64.07(E) of the Milpitas Zoning Code, no additional time extension may be requested or granted.

6. Project Job Account. If Permittee's project job account is at any time delinquent or below the required deposit amount, City will not continue to review or process the application until Permittee's private job account is paid in full and the required deposit has been made. Additionally, prior to the issuance of any building permit or occupancy permit, as applicable, Permittee shall pay in full the project account balance and establish a remaining balance of twenty-five percent (25%) of the initial deposit.
7. Notice. Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the Permittee that the ninety (90) day period in which the applicant may file a protest has begun as of the date of approval under California Government Code Section 66020(d)(1).
8. Review and Cost. Permittee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the project to the sole satisfaction of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition and each and every condition set forth in this Resolution shall apply to the project and continue to apply to the project so long as the subject property is used as permitted herein.
9. Compliance with Laws. The use shall comply with all local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. **(CA/P)**
10. Previous Approvals. Permittee shall abide and continue to comply with all previous City approvals, permits, or requirements relating to the subject property, unless explicitly superseded or revised by this Permit.
11. Indemnification. To the fullest extent permitted by law, Permittee 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, 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 (i) 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, and (ii) Permittee's operation, business or use under this Permit. 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. Permittee 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.

12. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Zoning Code.
13. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision, or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding, and fully enforceable.

Specific Conditions

14. Permittee shall develop the approved project in conformance with the approved plans and color and materials sample boards approved by the Planning Commission on April 23, 2014, 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, Permittee 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 Code. **(P)**

15. Prior to any building permit issuance, Permittee shall record a shared parking agreement(s) in compliance with the City's Parking Ordinance and in a form approved by the City, securing a minimum of eighteen (18) parking spaces in perpetuity. No building permit shall be issued for the subject property relating in any way to this Permit unless Permittee has satisfied the requirements in the prior sentence.

In the event the agreement(s) is terminated in the future, or if Permittee does not have use of the eighteen (18) shared parking spaces at any time, Permittee shall immediately contact the City's Planning Division and cease all use of the subject property under this Permit. Permittee shall not re-commence the use authorized under this Permit until Permittee can demonstrate to the sole satisfaction of the City that Permittee met the parking requirements of the Milpitas Zoning Code and City provides written notice to re-commence the use. **(P)**

16. Prior to the issuance of any building permit, Permittee 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)**
17. Permit Authorization. Subject to all other terms, conditions, and approval, this Permit authorizes the continued legal non-conforming church use in strict accordance to this Permit, all City approvals, and the City of Milpitas Municipal Code including the non-conforming provisions of the Milpitas Municipal Code. Other than general office hours for staff only, Permittee is authorized to use the subject the property during the following hours only:

Sunday: 7:00 AM to 10:00 PM
Monday: 6:30 PM to 8:30 PM
Tuesday: 7:00 PM to 8:30 PM
Wednesday: 6:00 PM to 10:00 PM
Friday: 6:30 PM to 10:00 PM
Saturday: 7:00 AM to 12 PM
5:00 PM to 8:00 PM

In the event Permittee desire to revise the hours or request additional hours, Permittee shall submit a written request to City’s Planning Division. The City’s Planning Division may revise the hours or authorized additional hours if it determines the revise hours or additional ours will not be *detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.*

- a. The Fire Code conditions applying to P-TE14-0001 is the same conditions as the P-UA11-0012. **(F)**
- b. The building submittal applicable code should be the most current California Building Standards Code, California Energy Code and Milpitas Municipal Code. **(B)**

- 18. Permittee shall cease all non-permitted activity immediately. In the event non-permitted activity continues at the subject property, City may seek all legal remedies against Permittee and subject property, including enforcement of the requirements of Municipal Code Section 63, Enforcement and Penalty which may result in Revocation, Suspension or Modification of the Permit. **(P)**
- 19. Permittee shall install additional “No Parking” signs in areas of the site where parking is not permitted. Permittee shall also provide written notice to all members of the congregation regarding on-site parking limitations; shall encourage car-pooling; and, shall strictly monitor and enforce all parking regulations required of this Permit and Owners Association. **(P)**
- 20. This Permit shall be subject to a 6-month compliance review by the Planning Commission from the date the building permit is finaled and certificate of occupancy issued. **(P)**

(P) = Planning
(B) = Building
(E) = Engineering
(F) = Fire Prevention
(CA) = City Attorney