

RESOLUTION NO. 14-031

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS APPROVING CONDITIONAL USE PERMIT NO. UP14-0011 AND MINOR SITE DEVELOPMENT PERMIT NO. MS14-0028 TO OPERATE A PRESCHOOL IN AN EXISTING COMMERCIAL BUILDING AND TO PERMIT VARIOUS BUILDING AND SITE MODIFICATIONS LOCATED AT 430 SOUTH ABEL STREET

WHEREAS, on May 14, 2014, an application was submitted by Sanjay Prasanna, an individual, to operate a preschool in an existing commercial building and to permit various building and site modifications located at 430 South Abel Street. The property is located within the Mixed-Use (MXD) Zoning District (APN: 86-10-006).

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 August 13, 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 Planning Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

Section 2: This project is categorically exempt from further CEQA review pursuant to Section 15303 (New Construction or Conversion of Small Structures) of the CEQA Guidelines. This project is covered under Section 15303 because it is considered a conversion of an existing small structure from one use to another where only minor modifications are made in the exterior of the structure. Additionally, this exemption also applies to commercial buildings not exceeding 10,000 square feet in floor area and does not involve the use of significant amounts of hazardous substances.

Section 3: ***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 Conditional Use Permit No. UP14-0011:***

- a. *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 for a child care facility will upgrade the existing property and will serve the community, and therefore will not be detrimental or injurious to the property or improvements in the vicinity of the property because it will be providing a service. The operation of the child care center will be in compliance with all local, state and federal regulations and therefore will not be detrimental or injurious to the public health, safety, and general welfare.

The existing building is considered a legal non-conforming structure because it does not meet the current development standards. When the building was originally constructed, it was built in compliance with land use and zoning laws at that time. The interior setback requirement for the MXD zoning district is ten (10) feet. However, the existing interior setback is zero (0) feet, as the existing building is on the east property line. The building was constructed prior to adoption of the Midtown Specific Plan and is considered legal non-conforming in regards to this setback.

The project is also not consistent with Section XI-10-6.04(D)(1)(c) of the Milpitas Zoning Code, in that the primary building entrance is not oriented towards the street. Due to the existing floor plan and operation of the proposed use, the project proposes the primary building entrance within the interior of the site facing the parking lot.

Staff supports the proposed deviations given the legal, non-conforming nature of the building, and based on the proposed operations of a child care center. The interior side setback deviation is an existing condition and has had no previous negative effects. The location of the parking lot provides a logical location for the primary entrance to the building. It will not affect adjacent properties because the project site will be enclosed with a six foot (6'-0") masonry wall. Any deviations from the development standards can be accommodated through a Conditional Use Permit, subject to Planning Commission approval per Section XI-10-6.07 (Exceptions to Standards) of the Milpitas Municipal Code.

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

The project is consistent with the General Plan, specifically:

- Policy 2.a I-2: Promote development within the incorporated limits which acts to fill-in the urban fabric rather than providing costly expansion of urban services into outlying areas.

The project is consistent with this finding because the proposed child care use is occupying an existing commercial building on the valley floor and not proposing to expand urban services into unincorporated areas. Deviations from the development standards are also consistent with this finding because the existing building is a legal non-conforming structure on an infill site. Allowing these deviations helps to promote infill development.

- Principle 2.d-G-1: Provide all possible community facilities and utilities of the highest standards commensurate with the present and anticipated needs of Milpitas, as well as any special needs of the region.

The project is consistent with this finding because with the full implementation of the Midtown Specific Plan, higher densities and an increase of employment centers are expected in this area. With the increase in density and employment centers within this area, child care services will be needed to adequately serve the needs of the residents and employees. This project is anticipating the child care needs of this area.

- Policy 2.a-1-33: Encourage the establishment of day care facilities consistent with State standards, including the issuance of use permits for a large day care facilities where compatible with surrounding neighborhoods and commercial uses, particularly in public facilities such as community centers, churches, schools and in employment centers and large housing developments.

The project is consistent with this finding because the proposed child care use will be consistent with State standards because the child care operator must provide City staff with a copy of the license under the California Department of Social Services, Community Care Licensing Division.

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

The project site is zoned Mixed Use and is surrounded by parcels on the north, south, and east that have the same zoning designation. The parcel directly west of the parcel site is zoned General Commercial. The project is consistent with this finding because it is the intent of the Mixed Use zoning district to encourage a compatible mix of residential, retail, entertainment, office and commercial service uses. The project proposes a commercial service to serve the employees and residents of the area. Additionally, the project is a conditionally permitted use in this zoning district. As explained in detail in the staff report, the project is consistent with the development standards in the MXD zoning district in that it meets the front and rear setback requirements, F.A.R. requirement, maximum building height requirement and landscaping requirement. This project is also consistent with the request for Conditional Use Permit for the deviation from standards.

As mentioned before, the existing building is a legal non-conforming building in that it does not conform to the current development standards set forth in the Zoning Ordinance. However, the Zoning Ordinance does allow for deviation from development standards with approval of a Conditional Use Permit.

3. *The project is consistent with the Midtown Specific Plan.*

The project is consistent with the Midtown Specific Plan, specifically:

- Policy 3.22: Encourage the provision of childcare services to support demand generated by employees and residents in the Midtown Area.

The project is consistent with this finding because the proposed child care facility will serve the childcare needs of the employees and residents in the Midtown Area. As mentioned in the staff report, the Midtown Area is in a state of transition where greater densities and an increase in

employment is anticipated. This will place a greater demand for childcare services within the City. By providing a child care facility within this transitional area, the childcare needs of employees and residents will be better served.

Exception to Standards (Section XI-10-6.07)

Exceptions to the Development Standards within the MXD zoning district may be made if the Planning Commission can make two additional findings.

1. *In addition to the required findings under Chapter 57, the Planning Commission must be able to make the following two additional findings for such exceptions:*
 - a. *The exceptions meet the design intent identified within the Zoning District and/or Specific Plan and do not detract from the overall architectural, landscaping and site planning integrity of the proposed development.*

The exception to the Development Standard that the applicant is requesting is to allow for a zero foot (0) foot interior side setback requirement, where the standard is ten feet (10), and to allow the primary building entrance oriented towards the parking lot area instead of the street. The project is consistent with this finding because the project meets the design intent of the Midtown Specific Plan and does not detract from the overall architectural, landscape and design integrity of the proposed development. As previously mentioned, the Midtown Area is envisioned to be the “traditional downtown” area of the City and typically, traditional downtowns do not have an interior side setback requirement. Considering successful traditional downtowns such as Downtown Los Gatos, Downtown Mountain View and Downtown Palo Alto, interior side setback requirements are not observed. Generally speaking, most of the buildings in these areas are side by side without any interior side setbacks. Therefore, the project meets the design intent of the Midtown Specific Plan.

- b. *The exceptions allow for a public benefit not otherwise obtainable through the strict application of the specified standard.*

The project is consistent with this finding because a public benefit is obtained in that a child care use is provided to the employees that work within City limits and the residents of Milpitas. Given the growing residential and business population in Milpitas, there is a demand for additional child care facilities and this project will help meet the increase demands.

Minor Site Development Permit (Section XI-10-57.03(F))

1. *The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development;*

The project is consistent with this finding because the building façade improvements and landscape upgrades proposed do not change the overall design of the building or project site. These changes are intended to improve and renew the aesthetics of site while retaining the same character.

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

As discussed in detail above, the Project is consistent with the Milpitas Zoning Ordinance.

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

As discussed in detail above, the Project is consistent with the Milpitas General Plan.

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

As discussed in detail above, the project is consistent with the Midtown Specific Plan.

Milpitas Child Care Master Plan

The project is consistent with the Milpitas Child Care Master Plan, specifically:

- Accessibility Guiding Principle 2.2-G-1: The City of Milpitas promotes the retention of existing and the development of new child care facilities within the City limits.

The project is consistent with this finding because it is promoting the development of a new child care facility within the City limits.

Section 6: The Planning Commission of the City of Milpitas hereby adopts **Resolution No. 14-031 approving Conditional Use Permit No. UP14-0011 and Minor Site Development Permit No. MS14-0028 based on the above Findings and subject to the Conditions of Approval attached hereto as Exhibit 1 incorporated herein.**

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on August 13, 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 August 13, 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
CONDITIONAL USE PERMIT NO. UP14-001 AND MINOR SITE DEVELOPMENT
PERMIT NO. MS14-0028****General Conditions**

1. General Compliance. The applicant and owner, including all successors in interest (collectively "Permittee") shall comply with each and every condition set forth in this Permit. This Conditional Use Permit No. UP14-0011 and Minor Site Development Permit No. MS14-0028 ("Permit") shall have no force or effect and no building permit shall be issued 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-10-64-06 of the Milpitas Zoning Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. 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 of the Milpitas Zoning Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. **(P)**

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 at least twenty-five percent (25%) of the required 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 under California Government Code Section 66020(d)(1).
8. Cost and Approval. 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.
9. Conditions. Each and every condition set forth in this Exhibit shall apply to the project and continue to apply to the project so long as the Permittee is operating the project under the permits and approvals in this Resolution.
10. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. **(CA/P)**
11. 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.
12. 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 construction, operation, use, or related activity 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. Permittee 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.

13. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Zoning Code.
14. Fees and Charges. Permittee shall pay all applicable fees and charges as required by the City at the rate in effect when the fees and charges are due and paid in full to the City.
15. 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.
16. Permittee shall develop the approved project in conformance with the approved plans and color and material sample board approved by the Planning Commission on August 13, 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, the 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 or City Council, as applicable, in accordance with the Milpitas Zoning Code. **(P)**

Special Conditions

17. Approval is granted by the Planning Commission to allow for the operation of a preschool/child care center and minor site improvements, as shown on the Project plans. **(P)**
18. The Child Care facility capacity shall not exceed eighty-nine (89) children at any time. The approved hours of operation are from 7:30 AM to 6:30PM from Monday through Friday. Any change to extend the operating hours before 7:30AM or after 6:30PM shall require an amendment to the Permit approved by the Planning Commission. **(P)**
19. The Permit is subject to an initial six (6) and twelve (12) month review by the Planning Commission from the date of Certificate of Occupancy. The Planning Commission may impose additional special conditions, if necessary, to address any issues related to the subject property including site circulation, parking, or traffic. Permittee shall bear the costs of all fees and costs associated with the hearing and shall provide all required data, information, and documents required by the Planning Director for the public hearings. **(P/T)**
20. Prior to issuance of any building permit, Permittee shall submit to the Planning Division for review and approval a procedure sheet (or parents handbook) designed for the parents

describing the drop-off and pick-up procedures/rules for this child care center. The procedure sheet shall prohibit the use of car honking or other loud noises at this site in order to keep the drop-off/pick-up process as quiet as possible. There shall be no exterior bells or alarms signaling the beginning or end of a school class or playtime. To ensure safe and orderly pick-up and drop-off of children, the child care operator shall incorporate the following measures:

- a. Parents shall be directed to park only in designated parking areas when dropping off and picking up children.
- b. The child care center operator shall prepare and distribute to each parent instructions on drop-off and pick-up procedures. **(P)**

21. The Permittee shall have a staggered pick-up and drop-off schedule to alleviate traffic and parking issues. The staggered pick-up and drop-off schedule shall be as follows:

| Drop off schedule | | | Pick up schedule | |
|-------------------|---------------|--|------------------|---------------|
| AM | # of students | | PM | # of students |
| 7:30 - 8:00 | 21 | | 11:45 - 12:15 | 15 |
| 8:00 - 8:30 | 24 | | 4:30 - 5:00 | 20 |
| 8:30 - 9:00 | 23 | | 5:30 - 5:30 | 24 |
| 9:00 - 9:30 | 21 | | 5:30 - 6:00 | 24 |
| | | | 6:00 - 6:30 | 21 |

Any changes to the staggered pick-up and drop-off schedule shall require the approval of the Planning Director or Designee in writing. **(P)**

22. Prior to Certificate of Occupancy, the child care operator shall obtain licensure from State of California Community Care Licensing and provide a copy to the City. **(P)**

23. Prior to Certificate of Occupancy, the required landscaping and irrigation system shown on the approved landscape plan shall be installed and inspected and approved by the City. **(P)**

- a. All approved landscaping shall be permanently maintained and replaced in kind as necessary to provide a permanent, attractive and effective appearance. All landscaping shall be of non-toxic plant material. **(P)**
- b. One (1) twenty-four inch (24”) box street tree will be required within the existing street frontage parkway landscape strip subject to review and approval of the Planning Division. **(P)**
- c. A curbed planter between the parking area and the 2,460 square foot preschool play area shall be required. The preschool play area fence shall be located on the east edge of the curbed planter as shown on Sheet A0.1 of the Project plans. **(P)**

24. The proposed playground shall conform to the playground-related standards set forth by the American Society for Testing and Materials and the playground-related guidelines set forth by the United States Consumer Product Safety Commission. **(P)**
25. The existing monument sign shall be demolished and any proposed signage shall be applied for under a separate permit in accordance with City requirements. **(P)**
26. The Permittee shall subscribe to the “push and return” solid waste service. It is the responsibility of the child care operator to ensure that all refuse and recycling contains be returned to the enclosure after it has been serviced. **(P/U)**
 - a. Refuse and recycling containers shall not be visible from a public or private street. Such contains shall be adequately screened by an enclosure. The enclosure shall drain to the sanitary sewer, per City Solid Waste Guidelines. **(U)**
 - b. The Permittee shall work with Republic Services to determine sufficient level of solid waste and recycling service. **(U)**

The Engineering Division has the following comments. Please submit and address the following documents or comments with your building permit submittal:

27. Prior to or concurrent with building permit submittal, Permittee shall provide details of the trash enclosure showing the plans and elevations, size, slopes, bin count, and drainage to sewer system (see solid waste section of City’s Engineering Guidelines). **(E)**
28. Prior to or concurrent with building permit submittal, the Permittee shall include the following items on plans submitted for building permits:
 - a. Provide a site drainage plan that shows site drainage flow pattern.
 - b. Provide a stormwater control plan.
 - c. Show cross-section of the new concrete driveway from Abel Street.
 - d. All downspouts shall be connected to the landscape areas for treatment. Show design and sections of the treatment areas.
 - e. Tree removals shall need City approval prior to removal. For more information, contact David Gordillo at (408) 690-6875.
 - f. Sheet L2.0 “Low Water Requirement” legend hatching conflicts with that of “No Parking” hatching, please correct this.
 - g. Clarify connections of POC, RP device and tie-in to water meter on Sheet L2.1.
 - h. The applicant shall obtain an encroachment permit from the Public Works Department for any work within the City right-of-way (ROW) or easement. **(E)**

(P) = Planning

(B) = Building

(E) = Engineering

(U) = Utility Engineering

(CA) = City Attorney

(T) = Transportation