

RESOLUTION NO. 14-039

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS APPROVING CONDITIONAL USE PERMIT NO. UP14-0018 FOR THE OPERATIONS OF A 3,000 SQUARE FOOT COSMETOLOGY SCHOOL LOCATED AT 102 S. ABEL STREET

WHEREAS, the Planning Commission approved Conditional Use Permit No. UP1517 in August 1999 to authorize the operation of a 1,440 square grocery store with video rentals located at 102 S. Abel Street.

WHEREAS, the Planning Commission approved Conditional Use Permit Amendment No. UA2005-12 in September to allow for the sale of all types of alcohol to the existing grocery and video rental store located at 102 S. Abel Street.

WHEREAS, the City of Milpitas Building Department approved Building Permit No. BP14-0009 to authorize the conversion of the grocery store located at 102 S. Abel Street and the adjacent tenant space located at 98 S. Abel Street into a 3,000 square foot beauty salon.

WHEREAS, on September 25, 2014, an application was submitted by Ninh Thi Nguyen, 106 S. Abel Street, Milpitas, CA 95035 (“Applicant”) to operate a 3,000 square foot cosmetology school within an existing commercial center located at 102 S. Abel Street (“Project”). The property is located within Mixed Use Development Zoning District (APN: 22-24-045).

WHEREAS, the all previous planning entitlements for the operations of a grocery and video rental store and alcohol sales shall be rescinded and superseded by the adoption of this Resolution.

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 December 10, 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: The proposed Project is categorically exempt from further CEQA review under Section 15301 of the CEQA Guidelines, Existing Facilities. The Project entails the operations of a 3,000 square foot cosmetology school within an existing commercial building and the Project site is currently equipped and operating as a beauty salon and the Applicant is not proposing any interior or exterior improvements to the Project site. Therefore, the proposed Project is exempt under Section 15301 (Existing Facilities) of the CEQA Guidelines.

Section 3: Any and all provision of Conditional Use Permit No. 1517 and Conditional Use Permit Amendment No. UA2005-12 approved by the City of Milpitas Planning Commission in August 1991 and September 2005 (“Prior Conditional Use Permits”) are hereby expressly rescinded and superseded by the adoption of this Resolution and the Prior Conditional Use Permits and all other prior approvals inconsistent with this Resolution shall be considered null and void and have no legal effect whatsoever.

Section 4: 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. UP14-0018:

- i. 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.*

As discussed in detail in the staff report and herein, the proposed Project will not be detrimental or injurious to property or improvements in the vicinity nor to public health, safety and general welfare in that the proposed cosmetology school is a compatible use with the existing retail, restaurants and Massage College currently operating at the commercial center. The project does not propose any exterior or site modifications that would affect existing access and site circulation.

- ii. The project is consistent with the Milpitas Zoning Ordinance.*

As discussed in detail in the staff report and herein, the proposed Project is consistent with the Milpitas Zoning Ordinance based on the following:

- a) With respect to land use, the MXD Zoning District allow various commercial services such as beauty salons and professional offices as permitted uses provided the said uses meets the Commercial Services performance standards. The MXD Zoning District also conditionally permits vocational and trade schools with Planning Commission approval of a conditional use permit.*
- b) With respect with development standards, the proposed Project complies with setback, height, floor area ratio as described in the Table 1 below:*

Table 1:
Summary of Development Standards

	Standard	Existing	Complies?
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	Standard	Existing	Complies?
<u>Setbacks (Minimum)</u>			
Front	8-15 feet from the back of walk	52'	Yes
Interior	10 feet	32' and 37'	Yes
Rear	10 feet	46'	Yes
<u>Floor Area Ratio (Maximum)</u>	.75	.23	Yes
<u>Building Height (Maximum)</u>	3 stories and 45-feet	One story	Yes

c) With respect to compliance with parking requirements, the proposed Project complies with the parking requirements in that the beauty salon and proposed trade school requires the same amount of parking as the existing retail use. The site was originally parked at a ratio of one space per 200 square feet of use. The same ratio is required for beauty salons as well as trade and vocational schools.

iii. *The proposed use is consistent with the Milpitas Midtown Specific Plan.*

As discussed in detail in the staff report and herein, the proposed Project is located within the Midtown Specific Plan area and is consistent with its land use goals which encourage a compatible mix of residential, office, service-oriented commercial and industrial uses within the Midtown area. The project entails the operations of a cosmetology school within an existing commercial center. The proposed cosmetology school provides a complementary use with the various restaurants, commercial services and retail shops along the Abel and Main Street corridor.

iv. *The proposed use is consistent with the Milpitas General Plan.*

As discussed in detail in the staff report and herein, the proposed cosmetology school provides for a complementary land use with the offices, retail, and restaurant establishments in the surrounding area as well provide opportunity for educational enrichment. Specifically, the proposed use supports the General Plan Policy 2.a-I-3 in that it encourages economic pursuits which will strengthen and promote development through stability and balance.

Section 6: The Planning Commission of the City of Milpitas hereby adopts **Resolution No. 14-039 approving Conditional Use Permit No. UP14-0018 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 December 10, 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 December 10, 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				
Vacant				
Hon Lien (alternate)				

EXHIBIT 1

**CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT NO. UP14-0018****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. UP14-0018 (“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 and this Resolution has been recorded by the Permittee with the Santa Clara County’s Recorder Office and a copy shall be provided to the Planning Department. **(P)**
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. **(P)**
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. **(P)**
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. **(P)**
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. **(P)**
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 Permittee may file a protest has begun under California Government Code Section 66020(d)(1). **(P)**
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. Permittee shall pay all required fees and charges to City at the rate in effect at time of building permit issuance, or, the rate in effect when the fees and charges are due and paid in full to City. There is no vesting of any fees or charges with the adoption of this Resolution. **(P)**
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. **(P)**
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. **(P)**
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. **(P/CA)**

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. **(P)**
14. 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. **(P)**
15. Permittee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on (December 10, 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)**
16. Compliance with Fire Department and CA Fire Code. The Project shall comply with the requirements of the Milpitas Fire Department and the CA Fire Code. Changes to the site plan and/or building(s) requires review and approval by the Fire Department. **(F)**
17. Written Response to Conditions. The Permittee shall provide a written response to the Conditions of Approval indicating how each condition has been addressed with the building permit application submittal. **(ALL)**

(P) = Planning

(B) = Building

(E) = Engineering

(F) = Fire Prevention

(CA) = City Attorney