

RESOLUTION NO. 15-011

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS
APPROVING CONDITIONAL USE PERMIT NO. UP14-0014 TO OPERATE A
DAYCARE AND AFTERSCHOOL TUTORING FACILITY WITH A TOTAL OF 75
CHILDREN WITHIN AN EXISTING COMMERCIAL BUILDING LOCATED AT 487 &
495 JACKLIN ROAD, MILPITAS, CA 95035**

WHEREAS, on July 31, 2014, an application was submitted by Ashok Gupta and Pardeep Kumar at 487 Jacklin Road to operate a daycare and afterschool tutoring facility with a total of 75 children within an existing commercial building at 487 & 495 Jacklin Road, Milpitas, CA 95035 (“Project”). The property is located within the Neighborhood Commercial (C1) Zoning District (APN: 26-28-027).

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 exempt under CEQA.

WHEREAS, on February 25, 2015, 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 Planning Division conducted an environmental assessment of the Project in accordance with the California Environmental Quality Act (CEQA). The project is categorically exempt from further CEQA review under Section 15301 of the CEQA Guidelines, Existing Facilities. This Project is categorically exempt under Section 15301 because it is an existing commercial building only interior alterations to upgrade the restroom facilities and to separate the two tenant spaces and minor outside improvements to accommodate an outdoor play area.

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. UP14-0014:**

- 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 daycare and group tutoring use will serve the community, and therefore will not be detrimental or injurious to the property or improvements in the vicinity of the property. The operation of the daycare will be in compliance with all local, state, and federal regulations. Additionally, the proposed use will be within an existing commercial building with adequate parking, lighting, and meet all other development standards.

b) The proposed use is consistent with the Milpitas Zoning Ordinance:

The proposed use is consistent with the Milpitas Zoning Ordinance because it is consistent with the Neighborhood Commercial (C1) Zoning Designation by providing a daycare and afterschool tutoring facility which provides a service for the neighborhood and residential uses. The Project does not proposed any architectural modifications and the scope of construction is only limited to the interior of the building, and the outdoor play area. The construction for the outdoor play area encompasses enclosing the landscaped area with a six-foot (6'-0") tall stucco fence with panic hardware.

The table below demonstrates how the project is consistent with the development standards of the Neighborhood Commercial Zoning District.

Table 1:
Summary of Development Standards

	Standard	Proposed	Complies?
<u>Setbacks</u> (Minimum)			
Front	20 feet	34 feet	Yes
Interior	15 feet when abutting residential	20 feet	Yes
Rear	15 feet when abutting residential	15 feet	Yes
<u>Building Height</u> (Maximum)	None	20 feet	Yes
<u>Landscaping</u>	None	All sides of the building	Yes

The project is not proposing any exterior alterations to the building and the construction work is limited to the inside of the existing building. The applicant is proposing to enclose a portion of the landscaped area to create an outdoor play area, as required by the State Department of Social Services. The tenant improvements include, two new classrooms for the daycare use, a new children toilet room, a new kitchenette, and a new sign-in area.

Parking

Per Table 53.09-1 of the Milpitas Municipal Code, a daycare school requires 1 parking space per classroom or 1 parking space per 500 square feet, whichever is greater. In this case, the 1 parking

space per 500 square feet is greater. According to the Project Description (Attachment B), the daycare suite will be 3,063 square feet while the tutoring use will be 1,778 square feet. Based on an area of 3,063 square feet, the parking requirement for the daycare will be 6 parking stalls. There is also a provision in Table 53.09-1 which refers to the loading and unloading parking stall requirement for the daycare use. The loading and unloading requirement is one parking space per six children up to five spaces and thereafter one space per ten children. Based on a total of 75 children, the loading and unloading parking requirement is 9 parking stalls. The total number of required parking is 18 parking stalls.

Use	Parking Ratio	Provided Parking	Required Parking
<u>Daycare</u>	1 per classroom or 1 per 500 sq. ft., whichever is greater	6 parking stalls	6 parking stalls
<u>Private Instruction, Personal enrichment (Tutoring)</u>	1 per instructional area or classroom, whichever is greater. No fewer than 3 spaces.	3 parking stalls	3 parking stalls
<u>Loading and Unloading For Day Care Use</u>	1 parking space per 6 children, up to 5 spaces and thereafter 1 space per 10 children	9 parking stalls	9 parking stalls
<u>Total</u>			18 parking stalls

The Foothill Square shopping center contains approximately 470 parking stalls. Due to the existing uses and the 24 hour nature of the gym, a parking study was required to evaluate the capacity of the parking lot during the peak hours. The parking study was prepared by Hexagon Transportation Consultants to determine the capacity of the parking lot during the peak-hours (typically in the morning and in the evening) and if the proposed daycare and tutoring facility would create a parking impact to the shopping center. The study concluded that the shopping center parking lot will be able to accommodate the parking demand for proposed daycare and tutoring and future uses during the peak hours. A copy of the parking study is a part of the administrative record.

Outdoor Play Area

The proposed outdoor play area is located between the project building and the adjacent residential uses. It is approximately 1,600 square feet and is enclosed with a six foot tall stucco fence. As a Condition of Approval, (Condition # 17) the proposed fence will match the existing building in terms of color, material, and texture. The proposed play area currently contains various tall trees and shrubs and the grading is sloped and uneven. The applicant is proposing to remove various shrubs and level the outdoor play area prior to placing the proposed wood chips. No tree are proposed to be removed. The applicant is not proposing to place any type of playground equipment, but is planning on placing sand and water tables, art easels and

sandboxes. The applicant is also planning on hosting educational programs in the proposed play area that teach the children about plant life.

The outdoor play times will be staggered from 10:30AM to 11:00AM and from 4:00PM to 5:00PM. As a Condition of Approval (Condition # 18), the outdoor play times shall be limited to the hours of operation and conducted in a manner which minimizes the noise impacts to the residential neighborhood. Condition #18 also states that there shall be no outdoor play structure taller than the bordering fence.

Drop-off and Pick-up Schedule

The project anticipates that children will be dropped off during the peak times, from 8:30am to 10:00am and picked up from 5:00pm to 6:30pm. The project also offers parents with a part-time and full-time care option. The drop-off and pick-up will be staggered to prevent congestion along the public streets.

c) *The proposed use is consistent with the Milpitas General Plan, specifically Policies 2.a-I-2 and 2.a-1-33 and Principle 2.d-G-1:*

- 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 daycare and tutoring use will be occupying an existing commercial building and will not be locating in an outlying area.

- 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 and Transit Area Specific Plan, higher densities and an increase of employment centers are expected. With these increases, child care services will be needed to adequately serve the needs of the residents and employees.

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

The Project is consistent with this finding because as a Condition of Approval, the child care operator will provide staff a copy of the licensure from the State of California Community Care Licensing and meet all State requirements. The Foothill Square Shopping Center contains a variety of neighborhood services, such as, bank branches, a supermarket, and a fitness center. The daycare and afterschool tutoring use are compatible with the existing uses because like the existing uses, the daycare and tutoring uses are providing a service.

Section 4: Milpitas Child Care Master Plan

a) *The project is consistent with the Milpitas Child Care Master Plan, specifically Guiding Principle: 2.2-G-1.*

- Accessibility Guiding Principle 2.2-G-1: The City of Milpitas promotes the retention of existing and new development of new child care facilities within 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 5: This Resolution shall supersede and replace entirely the Planning Commission approval on September 11, 2002 for the Project site (Conditional Use Permit No. UP2002-30). Conditional Use Permit No. UP2002-30 shall have no legal force and effect upon the effective date of this Resolution.

Section 6: The Planning Commission of the City of Milpitas hereby adopts **Resolution No. 15-011 approving Conditional Use Permit No. UP14-0014 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 February 25, 2015.

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 February 25, 2015 and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Sudhir Mandal				
Lawrence Ciardella				

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Hon Lien				
Rajeev Madnawat				
Ray Maglalang				
Zeya Mohsin (Alternate)				
Demetress Morris				
Gurdev Sandhu				

EXHIBIT 1

**CONDITIONS OF APPROVAL FOR
GENIUS KIDS CUP
CONDITIONAL USE PERMIT NO. UP14-0014 TO OPERATE A DAYCARE AND
AFTERSCHOOL TUTORING FACILITY WITH A TOTAL OF 75 CHILDREN
WITHIN AN EXISTING COMMERCIAL BUILDING.**

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. UP14-0014 (“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 Division.
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. Permittee shall pay all required fees and charges to the 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 the City. There is no vesting of any fees or charges with the adoption of this Resolution.
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. 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.
15. Permittee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on February 25, 2015, 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)

Project Specific Conditions

16. Daycare & Tutoring Operations.
 - a. Approval is granted by the Planning Commission to allow for the daycare (Suite 495) and tutoring use (Suite 487). The hours of operation are from 8:00AM to 6:30PM and the maximum number of children for the daycare at all times shall be 75 children. Permittee shall also meet all State and local (Building and Fire) occupancy limitations or requirements.
 - b. There shall be no loitering outside the building before or after any classes or sessions are completed.
 - c. Any change in the hours of operation shall be subject to Planning Director or designee approval. (P)
17. Pick-up and Drop-off. There shall be no exterior bells or alarms signaling the beginning or end of a school class or playtime. The use of the vehicular horn shall be prohibited by

the Permittee. Permittee shall provide a written Parents' Handbook to each parent upon registration with clear provisions in the handbook prohibiting horn use of any type. The Parents' Handbook shall also include monetary penalties for this violation. The Permittee shall provide the Planning Division with a revised Parents' Handbook prior to the issuance of any building permit. **(P)**

18. Outdoor Play Times. The outdoor play times shall be limited to the times within the hours of operation and conducted in a manner which minimizes the noise impacts to the residential neighborhood. **(P)**
19. Fencing. The proposed play area fence shall match the existing building in terms of color, material, and texture. **(P)**
20. Parking. Prior to building permit submittal, the Permittee shall clearly designate the location of the loading and unloading parking spaces for the daycare use on the plans for review and approval. **(P)**
21. PG&E Utilities. During Building Permit submittal, the Permittee shall coordinate with the Pacific Gas and Electric Company (PG&E) regarding the proposed utility screen located near the outdoor play area. The Permittee shall obtain written approval from PG&E for the proposed utility screen and provide a copy to the City prior to issuance of any building permit. **(P)**
22. Lighting Plan. During building permit submittal, Permittee shall submit a lighting and iso-illumination plan that shall demonstrate 1) safe and adequate lighting of the project site and outdoor play area and; 2) lighting is contained and does not spill over onto adjacent properties or create unwanted glare. Permittee shall provide detail, elevations and manufacturer's specifications on all proposed light fixtures subject to Planning Director approval. Proposed light fixtures shall be high quality and complement the architectural style of the building. **(P)**
23. Signage. Signage shall not be part of this approval and shall be applied for under a separate City permit or approval. **(P)**
24. Licensing. 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 and meet any and all State licensing or other minimum requirements. **(P)**
25. Noise Mitigation. Permittee shall use its best effort at all times to minimize noise to adjacent properties and uses and maintain the normally acceptable noise standard of 60 decibels (dB). The noise exposure levels shall be measured from the property line. **(P)**
26. Encroachment Permit. The Permittee shall apply and obtain an encroachment permit from the City for any work within the City right-of-way or easement. **(E)**

(P) = Planning

(B) = Building

(E) = Engineering

(F) = Fire Prevention

(CA) = City Attorney