



MILPITAS PLANNING COMMISSION STAFF REPORT

June 10, 2015

APPLICATION: **Uyen Nhi Day Spa, Conditional Use Permit No. UP15-0002**
A request for a Conditional Use Permit to bring into conformance a massage establishment at 122 West Calaveras Boulevard.

RECOMMENDATION: **That the Planning Commission:
Conduct Public Hearing and Adopt Resolution No. 15-019
approving Conditional Use Permit No. UP15-0002 to bring in
to conformance a massage establishment at 122 West
Calaveras Boulevard.**

LOCATION:
Address/APN: 122 West Calaveras Blvd (APN: 22-24-037)
Area of City: West Calaveras Blvd, between South Abel and Serra Way.

PEOPLE:
Project Applicant: Trang Nguyen
Consultant(s): NA
Property/Business Owner: Jack Lacorte
Project Planner: Azhar Khan, Planning Assistant

LAND USE:
General Plan Designation: General Commercial (GNC)
Zoning District: General Commercial (C2)
Overlay District: Gateway Office Overlay (OO)
Specific Plan: Midtown Specific Plan

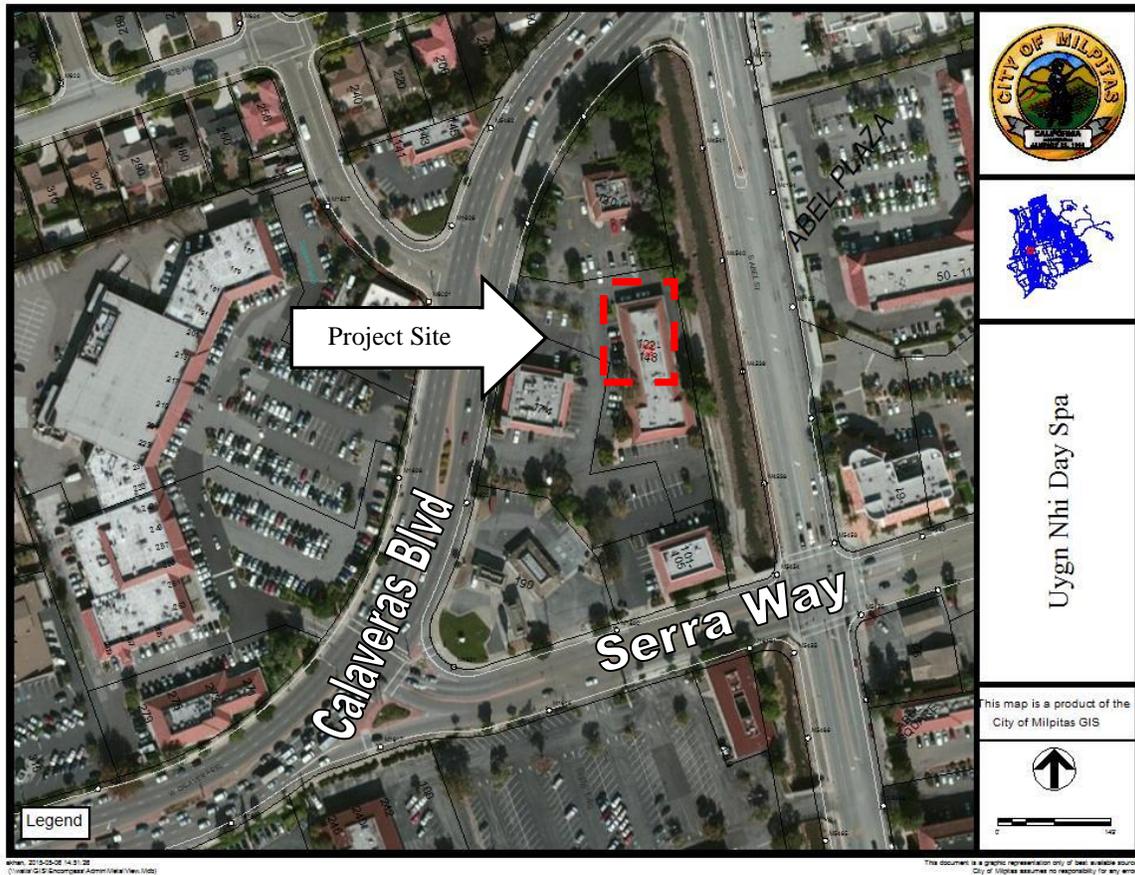
ENVIRONMENTAL: Categorically Exempt from further environmental review pursuant to Section 15301 (Existing Facilities) of the California Environmental Quality Act (CEQA).

EXECUTIVE SUMMARY

The applicant is requesting a Conditional Use Permit to bring an existing massage establishment at 122 West Calaveras Boulevard into conformance with the Zoning Code. The previous business, Shanghai Day Spa, has operated since November 2013 without approval of a Conditional Use Permit. State Law previously classified massage establishments as a “business professional” uses, and the Milpitas Zoning Code did not require a Use Permit for “business professional” uses in the General Commercial (C2) Zone. State Law has reclassified massage

establishments and allows cities to review massage establishes within the context of a City's land use classifications. Table XI-10-5.02-1 of the Zoning Code requires a Use Permit for massage establishments in the General Commercial (C2) zone. The new businesses owner, Trang Nguyen dba Uyen Nhi Day Spa, is requesting approval of a Use Permit to bring the massage establishment into conformance with City standards.

Map 1
Project Location



Map 2 Project Site

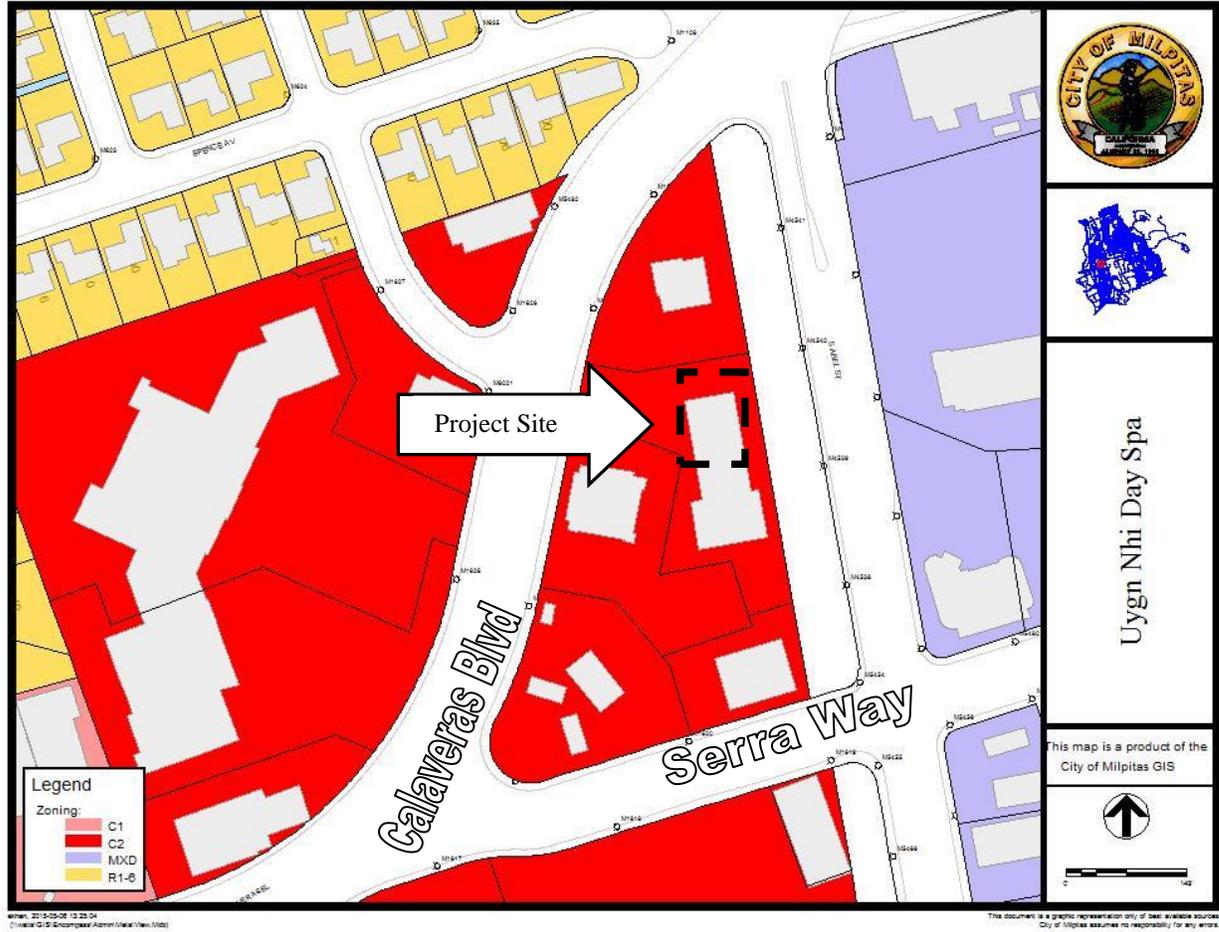


Photo 1



BACKGROUND

The previous tenant, Shanghai Day Spa, operated a massage establishment since 2013 without a Conditional Use Permit. However, previous State Law, reclassified massage establishments as “business professional” uses, and the City of Milpitas allowed these uses to operate without a Use Permit in the C2 Zone. The City issued a business license on October 19, 2013 for the massage establishment.

Changes in State Law altered how jurisdictions can regulate massage establishments, thereby allowing cities to discretionally review such uses as massage establishments. State Assembly Bill No. 1147 authorized cities to adopt zoning ordinances to govern these businesses. Pursuant to Milpitas Zoning Code Table XI-10-5.02-1, massage establishments require a Conditional Use Permit in the C2 Zone. On January 2, 2015, the applicant obtained ownership of the massage establishment. It is this change in ownership that triggered the need for a Conditional Use Permit. Accordingly, the applicant has applied for a Use Permit to bring the use into conformance with the City’s Zoning Code.

The application is submitted pursuant to Milpitas Municipal Code (MMC) XI-10-05.02-1 (3) (Massage Establishments) which requires Planning Commission review and approval for a conditional use permit.

PROJECT DESCRIPTION

Overview

The 1,993 square foot tenant space includes a reception area, lobby area, salon area which occupies 236 square feet, and three body massage rooms which occupies 468 square feet. Other areas include ancillary support areas such as restrooms, utility room, office and employee break room. The services include hair, nails, wax, foot massage and body massage. The applicant proposes to operate daily between the hours of 10 A.M. and 10 P.M.

Location and Context

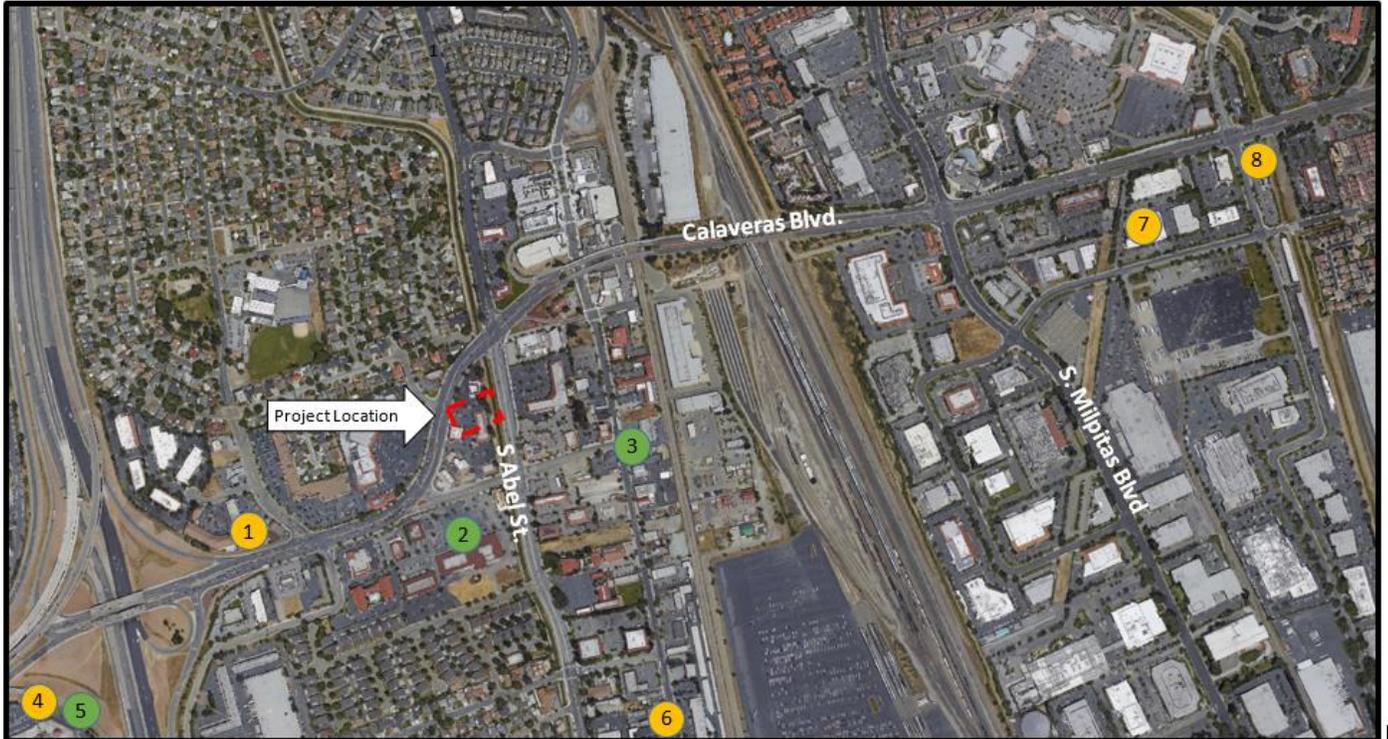
The project site is located within the Calaveras Shopping Center at 122 West Calaveras Boulevard. The Calaveras Shopping Center is bounded by S. Abel Street to the East, Serra Way to the South and Calaveras Blvd to the North and West. Surrounding land uses include commercial uses to the North, South and West and mixed use to the East. Table 1 below provides a summary of the surrounding zones and land uses:

Table 1
Zoning and Land Use Summary

	General Plan	Zone	Uses
Subject Site	General Commercial (GNC)	General Commercial (C2)	Massage Establishment
North	General Commercial (GNC)	General Commercial (C2)	Starbucks
South	General Commercial (GNC)	General Commercial (C2)	Acupuncture center
East	Mixed Use (MXD)	Mixed Use (MXD)	Penitencia Creek /Commercial Businesses
West	General Commercial (GNC)	General Commercial (C2)	Black Bear Diner

A location map is provided below showing the location of other massage establishments.

Map 3
Existing Massage Establishments



	Project Location		6 Skin by Gina – 627 S. Main St.
	1 A-Care Massage & Acupuncture - 55 S. Abbott Ave.		7 Sacred Lotus Healing – 525 Los Coches St.
	2 The Paradise Spa 200 Serra Way. P-UP11-0027		8 Elegance Spa – 22 S. Hillview Dr.
	3 Angel Massage – 154 S. Main St. P-MC15-0006		Conditional Use Permit on file
	4 Beautiful Foot Trace – 492 Barber Ln.		No Conditional Use Permit
	5 Datang Foot Spa – 448 Barber Ln. P-UP10-0026		

PROJECT ANALYSIS

General Plan, Specific Plan, Municipal Code, and Zoning Conformance

General Plan

This project conforms to the intent of the General Commercial designation in that it provides a commercial service for personal and business services accessed primarily by the automobile in a shopping center. The project is also consistent with the implementing policies of the General Plan Land Use Element to promote infill development and provide a wide range of retail sales.

The table below outlines the project’s consistency with applicable General Plan Guiding Principles and Implementing Policies:

Table 2
General Plan Consistency

Policy	Consistency Finding
<p><i>2.a-I-6: Endeavor to maintain a balanced economic base that can resist downturns in any one economic sector.</i></p>	<p>Consistent. The project adds to the retail mix of the Calaveras Shopping Center by adding health and wellness services in conjunction with retail and various restaurant establishments.</p>
<p><i>2.a-I-7: Provide opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention.</i></p>	<p>Consistent. The project expands employment opportunities and would help promote business retention by adding to the economic vitality of the shopping center.</p>

Specific Plan

The project is consistent with the Midtown Specific Plan Land Use Plan. According to the Land Use Plan, General Commercial uses includes a wide range of retail sales, personal and business services accessed primarily by automobile. Individuals and patrons would primarily use automobiles to access the business because it is located along Calaveras Boulevard that carries a high volume of traffic, and it is in an existing shopping center with businesses served by automobiles. The project implements the Midtown Specific Plan by adding health and wellness services in conjunction with retail and various restaurant establishments found in the Calaveras Shopping Center.

Milpitas Municipal Code III-6-7, Massage Establishment

The purpose and intent of the Massage Ordinance is to protect the public health, safety and welfare by providing performance standards for the operation of massage establishments, off-premises massage services, and persons offering massage. Provisions of the Massage Ordinance ensure that persons offering massage services conduct their work in a lawful, professional manner and are duly licensed and possess the minimum necessary qualifications to perform massage services. As conditioned, the proposed establishment shall demonstrate compliance with Milpitas Municipal Code III-6-1 (Massage Establishment) prior to business license issuance for an on-premise establishment.

Zoning Ordinance

The project is consistent with the purpose of the General Commercial (C2) Zone and development standards. The project is consistent with the purpose and intent of the General Commercial zone in that it provides a type of beauty and wellness service that caters to regional and local customers. Further, the massage establishment provides for a compatible land use with the other retail, entertainment, and restaurant uses within the center. The massage establishment is a commercial use that enhances the shopping center because it provides patrons with the

opportunity to walk to several stores. Additionally, the massage establishment consists of a single-purpose use that is served from an immediately parked automobile.

Parking

The project complies with the City of Milpitas's parking requirement. Per Table 53.09-1 of the Milpitas Zoning Code, a massage establishment requires one parking space per 200 square feet. The project meets this requirement by providing the ten (10) parking spaces on site.

Health, Safety and General Welfare

According to MMC XI-10-5.02-1 (3), massage establishments are conditionally permitted uses in the General Commercial (C2) zone. As part of the Conditional Use Permit, the City must determine that conditionally permitted uses are not detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare. 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 located in an existing retail center, and is substantially surrounded by other commercial uses that are similar in nature. The same auto oriented patrons that service the commercial uses in the center would be provided the opportunity to provide commerce to the massage establishment. Further, the hours of operation (10AM to 10PM) will not be disruptive to adjacent commercial businesses because they maintain similar hours as well, and the hours of operation are consistent with the Massage Ordinance per section III-6-7 (c).

The Milpitas Police Department reviewed the project, and staff requested any history of calls for service to the previous massage establishment. The Police Department did not provide comments or conditions for the project nor did they note any calls for service to the previous massage business. However, staff recommends as a condition of approval that the storefront window remain clear and unobstructed to ensure safety of employees and customers. Staff also recommends that the doors to the private rooms do not employ locks. Based on the historical operations of the massage establishment, and the proposed conditions of approval, the business will not have a detrimental effect on the health, safety, and general welfare of the citizens.

FINDINGS FOR APPROVAL

Staff recommends the Planning Commission find the proposed project consistent with the General Plan, Midtown Specific Plan, Zoning Ordinance, and all required findings. The findings for approval are discussed in detail in Attachment A (Resolution 15-019).

ENVIRONMENTAL REVIEW

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 and only interior alternations are proposed to upgrade the business.

PUBLIC COMMENT/OUTREACH

Staff provided public notice the application in accordance with City and State public noticing requirements. At the time of writing this report, there have been no inquiries from the public. A notice was published in the Milpitas Post on May 29, 2015. (Two Fridays before the meeting) In addition, mailed notices were sent to owners and occupants within 1,000 feet of the project site. A public notice was also provided on the project site, on the City's Website, www.ci.milpitas.ca.gov, and posted at City Hall.

CONCLUSION

The project is requesting a Conditional Use Permit to allow for the continued operation of a massage establishment in the General Commercial (C2) Zoning District. The project is consistent with the General Plan in that it adds to the retail mix of the Calaveras Shopping Center by adding health and wellness services in conjunction with retail and various restaurant establishments. The project is consistent with the Midtown Specific Plan in that it adds a health and wellness establishment in conjunction with retail and other commercial uses in the surrounding shopping centers. The project is consistent with the Zoning Ordinance in that it meets all the development standards and the purpose and intent of the C2 Zone. Lastly, there have been no issues with the existing massage business, as verified by the Milpitas Police Department. Therefore the project is consistent with the adopted policies, plans and ordinances of the City of Milpitas, and will not adversely affect the health, safety, and general welfare of Milpitas.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission:

1. Open and Close Public Hearing to receive comments; and
2. Adopt Resolution No. 15-019 approving Conditional Use Permit No. UP15-0002 to bring into conformance a massage establishment at 122 W Calaveras Boulevard, subject to the findings and the attached conditions of approval.

ATTACHMENTS

A: Resolution No. 15-019

B: Project Plans