



CITY OF MILPITAS

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12/19/2017
Agenda Item No. 3



ATTACHMENT RELATED TO AGENDA ITEM AFTER AGENDA PACKET DISTRIBUTION





MEMORANDUM

Planning Division

Date: December 18, 2017

To: Honorable Mayor and City Council

From: Brad Misner, Planning & Neighborhood Services Director

Subject: Appeal of Planning Commission Decision to Approve Conditional Use Permit No. UP17-0002 to Allow a Cultural Center Use in an Industrial Zone and Shared Parking

Location: 691 S. Milpitas Boulevard (APN: 086-42-037)

Zoning/GP: Heavy Industrial (M2) / Manufacturing and Warehousing (MFG)

INTRODUCTION

Having received the Notice of Appeal provided by Eric Clapp of CTC Property, LLC, the Planning Division has prepared the following response for the consideration of the City Council in its hearing of the appeal on December 19, 2017.

Appeal Contention 1: *In order to approve a conditional use permit the proposed use won't be detrimental to adjacent properties. We do not believe this to be true.*

Staff Response 1: Applicant seeks to locate a cultural center or jamatkhana (a religiously-affiliated assembly use) in the M2 ('Heavy Industrial') zoning district. According to the Municipal Code, the Heavy Industrial district "is reserved for the construction, use, and occupancy of buildings and facilities for office, research, general manufacturing, warehousing and distribution *and other uses compatible with the district.*" (Milpitas Municipal Code Section XI-10-7.01(A), emphasis added.)

To site an assembly use in an industrial zoning district, a Conditional Use Permit is required by Milpitas Municipal Code Section XI-10-7.02. To approve a Conditional Use Permit, Milpitas Municipal Code Section XI-10-57.04(F) requires that three findings be made (four if the project is within the boundaries of a Specific Plan). Per section XI-10-57.04(F), the Planning Commission determined that the applicant met all of the required findings in order to support the issuance of the Conditional Use Permit sought.

Appellant's first contention seems to challenge the initial finding made for the issuance of the Conditional Use Permit in question. That finding provides as follows: "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 detailed in the Planning Commission Staff Report (Attachment C, page 8-9), staff determined that 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 applicant has demonstrated compliance with the development standards applicable to all properties in the M2 zone, as well as with the additional development and performance standards required for assembly uses in industrial zones. In addition, staff and the Planning Commission considered the following evidence in the record:

- Michael Fletcher, Vice President of Arcadia Management Services and Arcadia Development Company, the owner and property manager of the Center Pointe Business Park where the Ismaili Center has been

located for the last 30 years, spoke at the Planning Commission's October 25, 2017, hearing on this application. He stated for the record that "neither we nor any of our previous tenants have had any issues with the Ismaili Cultural Center either in terms of their use or parking." He explained that, under his company's management, the applicant had occupied some 8,000 sq. ft. of the 133,000 sq. ft. business park, which was collectively shared by some 40-50 tenants in multiple buildings. These other tenants included a range of uses, including small R&D shops, machine shops, café, retail uses, instructional uses. "Everybody had varied hours, never a parking issue whatsoever," said Mr. Fletcher.

- At the proposed location, applicant seeks to occupy a 9,667 sq. ft. space within a 104,000 sq. ft. building that houses some nine other tenants, including Quantros, Inc. (a provider of enterprise SaaS-based solutions and information services), Sagent Management Corporation (offering financial, tax, and operational services), and Esgyn Corporation (IT work). The other tenants maintain regular office hours of approximately 8:00 am to 5:00 pm, Monday through Friday. The cultural center would conduct its activities outside of those hours, holding morning meditation from 4:00 am to 6:00 am, and evening prayers from 6:00 pm to 9:30 pm, Monday through Friday, as well as during certain periods on the weekends, when its fellow tenants were not open for business. Thus, the cultural center's operations would not interfere with any other tenant operations in or parking around the building, nor should they impact adjacent properties (including those which are currently vacant).
- The applicant has requested no structural or cosmetic changes to the building or grounds that would detract from the appearance of the building or the area as an industrial park.
- The Planning Commission heard from Eric Clapp of CTC Property, LLC, owner of the currently untenanted industrial property directly opposite Applicant's proposed site at 1000 Gibraltar Drive. Mr. Clapp had written a letter in opposition to Applicant's proposed use at this location, advising the Planning Commission that he believed that this use at this site would make it difficult to find tenants for his 395,000 square foot industrial building adjacent to Applicant's site. Matt Taylor, of CBRE commercial real estate services, also spoke at the hearing and echoed Mr. Clapp's concerns.

Mr. Clapp indicated that CTC Property, LLC, purchased its property at 1000 Gibraltar in 2015. The buildings on that site are located 0.3 miles from an existing assembly use, the Crosspoint Church of Silicon Valley (located at 658 Gibraltar since 2008). In addition, Pathway Bible Church is likewise located 0.7 miles away from the CTC Property site at 1201 Montague Expressway. There were thus pre-existing assembly uses in close proximity to CTC Property's site when it was purchased in 2015.

Appeal Contention 2: *The City of Milpitas has already lost a very significant amount of its Industrial Uses to residential conversions surrounding the new BART Station and the Great Mall. Per the General Plan Section on Fiscally Beneficial Land Use 2.a-I-15 the General Plan states that it should "Maintain and expand the total amount of land with industrial designations that would allow non-industrial, employment uses within industrially designated areas." The allowance of the approved assembly use contradicts with the General Plan.*

Staff Response 2: The City made the affirmative decision to convert underutilized industrial land to residential and mixed-use in crafting and adopting the Transit Area Specific Plan, which encompasses the area around the new BART station and across from the Great Mall. In doing so, the current home of the Ismaili cultural center was rezoned and the site has now been sold for residential development, leading Applicant to undertake a three year search for a new location in Milpitas.

The issuance of this Conditional Use Permit would not cause any further loss in existing industrially-zoned land, and thus would not contradict General Plan policy 2.a-I-15. On the contrary, the granting of this Use Permit would allow the City to "maintain ... the total amount of land with industrial designations

that would allow non-industrial, employment uses within industrially designated areas.” That is because issuance of this Use Permit would not rezone the site to some other, non-industrial designation. The zoning of the site is not changing; rather, it is only with the proposed use of the site, which is an assembly use, that will change. Assembly uses are conditionally permitted in industrial zones, and policy 2.a-I-15 remains unaffected. If this Use Permit is approved, this site will remain part of the M2 (‘Heavy Industrial’) zoning district.

Appeal Contention 3: *Section 2.a-I-9 states "Prohibit encroachment of incompatible uses into industrial lands, and prohibit non-industrial uses which would result in the imposition of additional, operational restrictions and/or mitigation requirements on industrial users due to land use incompatibility uses." The potential location of the assembly use adjacent to our heavy power, H-occupancy, lab building is an unnecessary burden on CTC Property, LLC. While there is no record of current hazardous materials being utilized at our property that is because it is currently vacant. The Fire Department and the City of Milpitas should consider all potential users of that building in its consideration of the approval of the assembly use is appropriate.*

Staff Response 3: On February 7, 2017, the City Council approved both a General Plan and Zoning Code text amendments to allow assembly uses via a Conditional Use Permit in areas of the city zoned for industrial use. Subsection 2.a-I-14 of section 2.6 Land Use Principles and Policies of the General Plan was amended to eliminate a prohibition of social organizations from locating in industrial zones. The amended language now reads: “When new uses are proposed in proximity to existing industrial uses, incorporate conditions upon the new use to minimize its negative impacts on existing nearby land uses and to promote the health and safety of individuals at the new development site.”

To implement this General Plan text amendment, City Council also approved a change to the Zoning Code which now lists Places of Assembly as a permitted use via Conditional Use Permit. Further, it was understood that an assembly use would likely have more sensitive receptors (children) than a typical industrial use. In order to ensure these sensitive receptors are sufficiently protected, the Zoning Code was further amended to include that such uses meet specific Industrial Special Development and Performance Standards. According to these standards, any assembly use proposing to locate in an industrial zone must meet the following standards:

- a. Applicant shall provide a Phase I Environmental Site Assessment (ESA) and an Accidental Release Assessment (ARA)
- b. Applicant shall submit a noise study demonstrating noise conditions within the vicinity do not exceed 70 dBA
- c. No assembly use shall install or use exterior public address systems or other noise generating equipment that exceeds 70 dBA.
- d. No new structure shall be construed within an industrial zone for use as a place of assembly and no more than 50% of the square footage of any existing structure in an industrial zone shall be converted to a place of assembly
- e. No exterior modifications to any existing structure within an industrial zone shall be permitted if such modifications would materially alter the structure’s appearance or future use as an industrial building
- f. The applicant met all of these standards to the satisfaction of staff.

Applicant has met each of these standards for this particular use at this specific location, as set forth in the Planning Commission Staff Report (Attachment C, pages 5-6). Contrary to appellant’s letter, that does not mean that every assembly use will be able to meet these criteria at every location in an industrial district.

In addition, when assessing a Conditional Use Permit application, staff must interpret all applicable principles and policies found in the General Plan. It is important to note that all applicable principles and policies must be considered in concert, meaning that any one principle or policy must not be considered to

the exclusion of all others. Regarding CTC Property's citation of General Plan subsection 2.a-I-9, staff have considered it alongside subsection 2.a-I-14 (please see the previous staff response for detail on how this subsection was amended to no longer prohibit assembly uses from locating on properties zoned for industrial use); as well as subsection 2.a.I-17, which states "Foster community pride and growth through beautification of existing and future development", and subsection 2.d-G-2, which states "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."

CTC Property also states that the Fire Department and the City of Milpitas should consider all potential users of the in determining whether an assembly use is appropriate. As listed in Staff Response 2, the Applicant is required to meet Industrial Special Development and Performance Standards. Per standard (a), the Applicant was required to provide a Phase I Environmental Site Assessment (ESA) and an Accidental Release Assessment (ARA) which were reviewed by both Planning Division staff and Fire Department staff who each determined the submission satisfied the standard.

Appeal Contention 4: *Section 2.a-I-13 states "Consider conversion from one employment land use to another, where the conversion would retain or expand employment capacity and revenue generation, particular for intensification on-site if the proposed conversion would result in a net increase in revenue generation." The potential approval of the assembly use adjacent to our property detrimentally affects our ability to lease up our project and is a net negative decrease in revenue generation for the City.*

Staff Response 4: Staff does not believe that this policy is applicable in this context. As noted in Staff Response 3, when assessing a Conditional Use Permit application, staff must weigh all applicable principles and policies of the General Plan at once. Staff have determined that the application is consistent with the majority of applicable General Plan policies and principles and that approving it will further the objectives and policies of the general plan. This assessment is further bolstered by the applicant's compliance with the Industrial Special Development and Performance Standards required by the Zoning Code and listed in Staff Response 2.

Appeal Contention 5: *In the City's zoning code on Conditional Use Permits on Page 386 it states that the "Conditional Use Permit process is intended to encourage uses to be located in a manner that is sensitive to community and neighborhood identity." By allowing such incompatible uses to be next to each other this conditional use permit is not sensitive to the neighborhood identity as an industrial zone. Furthermore there could be impacts on traffic flow, and imposition of noises which are both to be considered in approving conditional use permits.*

Staff Response 5: As stated in Staff Response 1, the review procedure for a Conditional Use Permit application requires that staff make a number of findings to determine whether approving the application would encourage uses to be located in a manner that is sensitive to community and neighborhood identity. See the Planning Commission Staff Report (Attachment C, pages 8-9) for a complete list of findings and how the applicant met each finding.

Finally, potential traffic impacts associated with the assembly were duly considered by Planning Division staff and Traffic Engineering staff. Staff assessed both a parking study and a traffic analysis as submitted by the Applicant. Staff determined that the operation of the assembly use at the proposed location would not result in any negative impacts on neighborhood traffic flow, nor parking. The criteria set forth above address the noise issue raised by appellant.