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Planning Commission Date: August 13, 2003 Item No.

MILPITAS PLANNING COMMISSION AGENDA REPORT

Category: Public Hearings Project Planner: Kim Duncan

Public Hearing: Yes: __X___ No: _____

Notices Mailed On: 8-1-03 Published On: 7-31-03 Posted On: 8-1-03

TITLE: **USE PERMIT NO. P-UP2003-27**

Proposal: Request to operate a video rental store in the Neighborhood Commercial ("C-1) district (Viet Video)

Location: 84 South Park Victoria Drive (APN 088-04-078)

RECOMMENDATION: **Approval with conditions**

Applicant: Oanh Bui, 84 South Park Victoria Drive, Milpitas, CA 95035

Property Owner: Bertram M. Berns, 1245 South Winchester Boulevard, Ste. 304, San Jose, CA 95128

Previous Action(s): GPA, Rezoning, EIA, Tentative Map, Use Permits, "S" Zone Approvals

General Plan Designation: Commercial Retail Sub-Center

Present Zoning: Neighborhood Commercial ("C1-S")

Existing Land Use: Shopping Center

Agenda Sent To: Applicant/Owner

Attachments: Site Plans, letter from applicant dated August 4, 2003

PJ # 2339

BACKGROUND

In 1964, the Planning Commission approved the development of a 36,000 square foot building (Building A) for a grocery store and retail uses. Subsequent approvals include a 4,400 square

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foot restaurant (Building B) in 1969, a 10,000 square foot multi-tenant retail building (Building C) in 1978, and a 5,500 square foot multi-tenant retail building (Building D) in 1991. Originally developed as three (3) separate parcels, the lots were combined into one 5.95 acre parcel in 2000.

Upon application for a business license, it was discovered the existing video store is currently operating without benefit of a use permit. The new owner/applicant is seeking Planning Commission approval for a use permit to operate a video rental store at this location.

Site Description

The subject site is located on the southeast corner of East Calaveras Boulevard and South Park Victoria Drive in the Park Victoria Shopping Center (Ocean Supermarket). The shopping center consists of three (3) multi-tenant retail commercial buildings and one single tenant building (Omega Restaurant). The proposed video rental store is located in a multi-tenant building (Building C) on the southeast quadrant of the shopping center, in a Neighborhood Commercial (C1) zoning district.

Surrounding uses include neighborhood commercial to the west, the Ayer Education Center to the north, professional offices to the east and single family residential (R1-6) to the south.

In the past, there have been garbage problems associated with the grocery store and restaurant located in Building A (Ocean Market). At the time of the violations, steps were taken to rectify the problem, including approval for a new trash enclosure and maintenance of tallow enclosures.

THE APPLICATION

The application is submitted pursuant to Title XI, Chapter 10, Section 18.03-23 (Neighborhood Commercial, Conditional Uses-video sales and rental store) of the Zoning Ordinance.

The applicant/new is requesting approval to operate a 900 square foot video rental and music sales store. The store will specialize in Chinese movies that have been translated into Vietnamese, along with Vietnamese music sales. The proposed hours of operation are from 3:00 pm to 9:00 pm on Monday, 11:00 am to 9:00 pm Tuesday through Saturday, and 11:00 am to 8:00 pm on Sundays. Per the applicant's letter of description, no adult movies are part of this application. As depicted on the floor plan, the tenant space consists of a service/cashier counter, bathroom, and display shelving along the interior perimeter wall.

Conformance with the General Plan & Zoning Ordinance

The proposed project complies with the City's General Plan in terms of land use. The proposed use does not conflict with any General Plan Principles and Policies, and is consistent with Implementing Policy 2.1-I-3, which encourages economic pursuits which will strengthen and promote development through stability and balance. It is also consistent with Policy 2.a-I-6, which endeavors to maintain a balanced economic base that can resist downturns in any one economic sector.

The proposed project is located in the Neighborhood Commercial "C1" Zoning District. Part of this district's purpose is to contain those activities which primarily provide for the day-to-day shopping needs of the residential neighborhood it is located in and not ones which generate loud noise or unpleasant odors. The proposed video store is consistent with this intent of the district

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and will serve the large residential Asian community that surrounds the shopping center where the video store is proposed.

Neighborhood/Community Impact

The proposed video rental store would serve the large residential Asian community that surrounds the shopping center where the video store is proposed. The hours of operation proposed (Monday 3:00 pm to 9:00 pm, Tuesday through Saturday 11:00 am to 9:00 pm, and Sunday 11:00 am to 8:00 pm) do not conflict with the other tenants and uses within the building nor is this type of use expected to cause an increase in existing noise levels or generate odors. The proposed project is not anticipated to create any significant parking, traffic, odor, noise, or other adverse impacts on the community.

Parking

When the retail building was originally built, parking was provided at a ratio of 1 space per 200 square feet of gross floor area. Because the applicant is proposing a retail use, which will have the same parking demand of 1 space per 200 square feet, and will not be expanding the retail space, it is not anticipated to impact parking at the center. However, staff noted on a recent site visit the parking space striping at the shopping center is faded and difficult to identify. As a condition of approval, ***staff recommends*** the property owner submit a parking re-striping plan to meet parking requirements. Staff notes that this re-striping must be accomplished prior to issuance of the Certificate of Occupancy.

Conformance with CEQA

The project is categorically exempt from further environmental review pursuant to Class 1, Section 15301 ("Existing Facilities"-"...permitting, ...licensing...of existing...private structures...involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination") of the California Environmental Quality Act (CEQA) Guidelines.

RECOMMENDATION

Close the Public Hearing. Approve the use permit request P-UP2003-27 based on the Findings and Special Conditions of Approval listed below.

FINDINGS

1. The proposed project is consistent with the General Plan in terms of land use and Policies 2.a-I-6 and 2.1-I-3, which encourage economic pursuit that strengthen and promote development and that can resist downturns in any one economic sector.
2. The proposed project, as conditioned, is consistent with the Zoning Ordinance in that a video rental store is a conditional use in the Neighborhood Commercial "C1" District and it is consistent with its purpose.
3. The proposed use is not expected to generate an increase in noise levels or odors and is not anticipated to affect parking and traffic and, therefore, will not be detrimental or injurious to the public health, safety and general welfare of adjacent tenants or surrounding community.

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4. The proposed project is categorically exempt from further environmental review pursuant to Class 1, Section 15301 (Existing Facilities) of the State CEQA Guidelines.

RECOMMENDED SPECIAL CONDITIONS

1. This Use Permit No. P-UP2002-27 approval is for a 900 square foot video rental store as shown on approved plans dated August 13, 2003. (P)
2. Prior to issuance of Certificate of Occupancy, the property owner shall submit a parking re-striping plan detailing the 340 required parking stalls for Planning Division approval and complete re-striping of said parking lot. (P)
3. If, at the time of application for permit, there is a project job account balance due to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. (P)
4. This use shall be conducted in compliance with all appropriate local, state, and federal laws and regulations. (P)
5. Prior to occupancy permit issuance, the applicant shall submit evidence to the City that the following minimum refuse and recycling services have been subscribed with BFI for both commercial and residential use:
   a) Maintain an adequate level of service for trash collection and recycling. Subscribe to one, 3cyd bin for trash with minimum collection of one time per week; and one, 2cyd bin for recycle collected one time per week. Applicant may choose to share this account, provided minimum frequency of five times per week is agreed upon with account holder. (E)
   b) Maintain trash and recycling bins out of public view at all time. (E)
6. After the applicant has started its business, the solid waste service shall be evaluated by BFI commercial representative to determine the adequacy of the service level. If it is found to be inadequate, the applicant shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234. (E)
7. The developer shall submit a Sewer Needs Questionnaire and/or Industrial Waste Questionnaire with the building permit application and pay the related fees prior to Building Permit issuance by the Building Division. Contact the Land Development Section at (408) 586-3329 to obtain the form(s). (E)

Planning Division = (P)

Engineering Division=(E)

NOTES TO THE APPLICANT

The following notes pertain to administration of the City codes and ordinances that are not part of the Zoning Ordinance regulations. The applicant shall not consider these notes as approval from any department. Additional requirements may be made prior to permit issuance. These notes are provided to assist in the permit process if approval is granted.

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PLANNING DIVISION [For further information regarding the following notes, please contact Kim Duncan at (408) 586-3283]

1. Any future display of adult content visual materials are regulated by Chapter 17 of the Milpitas Municipal Code (Regulations of Display of Visual Materials). Should the applicant desire to add videos with such content to his video rental business, the applicant shall contact the Planning Division and shall submit the necessary materials (floor and elevation plans) required by the Planning And Building Division to ensure conformance with Chapter 17 of the Milpitas Municipal Code.

BULDING DIVISION [For further information regarding the following notes, please contact Veronica Valenti at (408) 586-3241]

1. Applicable codes shall be 2001 CBC, CPC, CMC, CEC, California Energy Code, CFC and 2002 Milpitas Municipal Code.
2. Accessible parking for people with disabilities shall be provided as per 2001 CBC, Section 1129.B.1 and Table 11B-6. Accessible parking spaces shall be dispersed and located closest to the accessible entrances. One in every eight accessible parking spaces, but not less than one parking space, shall be van accessible as per Section 1129 B.4.2.
3. Accessibility signs shall be provided at every primary public entrance, every major junction along or leading to an accessible route of travel, and at building entrances that are accessible as per 2001 CBC, Section 1127B.3.
4. All primary entrances and required exit doors shall be accessible to people with disabilities as per 2001 CBC, Section 1114B.1.3.
5. If at any time the number of employees exceed four, then two separate bathrooms shall be provided as per 2001 CBC, Section 2902.3 and they shall be accessible as per 2001 CBC, Section 1115B.2.
6. Counters provided for the public and in general employee areas must be accessible at a minimum of 5%, but not less than one counter (36 in. long) and no more than 28 to 34 inches high per 2001 CBC, Section 1122B.

ENGINEERING DIVISION [For further information regarding the following notes, please contact Robert Wang at (408) 586-3327]

1. It is the responsibility of the developer to obtain any necessary encroachment permits from affected agencies and private parties. Copies of these approvals or permits must be submitted to the City of Milpitas Engineering Division.
2. Prior to building permit issuance, developer must pay all applicable development fees, including but not limited to, plan check and inspection deposit.
3. The developer shall call Underground Service Alert (U.S.A.) at (800) 642-2444, 48 hrs prior to construction for location of utilities.
4. The U.S. Environmental Protection Agency (EPA) has empowered the San Francisco Bay Regional Water Quality Control Board (RWQCB) to administer the National Pollution

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Elimination Discharge System (NPDES) permit. The NPDES permit requires all dischargers to eliminate as much as possible pollutants entering our receiving waters. Contact the RWQCB for questions regarding your specific requirements at (800) 794-2482. For general information, contact the City of Milpitas at (408) 586-3329.

5. The Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) under the National Flood Insurance Program shows this site to be in Flood Zone "D".

FIRE DIVISION [For further information regarding the following notes, please contact Jaime Garcia at (408) 586-3369]

1. The 2001 triennial edition of the California Code of Regulations, Title 24 (California Building Standards Code) applies to all occupancies that applied for a building permit on or after November 1, 2002.
2. Submitted drawings are not reviewed nor approved for fire permits and construction. These notes are provided to assist with the Fire Department permit process.
3. Portable fire extinguishers shall be installed in occupancies and locations as set forth in the code, California Code of Regulations Title 19, Division 1, and Chapters 1 and 3 and as required by the Milpitas Fire Chief. Section 1002.1 CFC (California Fire Code).
4. The drawings submitted do not provided information as to the existence or nonexistence of a fire sprinkler system. If this building has a sprinkler system, alterations to the automatic fire sprinkler system and/or the fire detection system requires drawings to be submitted to the Fire Department for review and approval prior to alteration. Section 1001.3 CFC.
5. Continuous or non-continuous obstructions that interrupt the performance of the sprinkler system are not permitted. Additional sprinklers shall be provided to ensure adequate coverage of the hazard when obstructions occur. This requirement is applicable to existing conditions.
6. Complete plans and specifications for all aspects of Fire-Protection systems shall be submitted to the Fire Department for review and approval prior to system installation. Section 1001.3, CFC.
7. No approval for hazardous materials is granted with this review. If hazardous materials are intended to be stored, transported on site, used or handled, in an amount requiring a permit, a Hazardous Materials Business Plan (HMBP) shall be submitted to the Fire Department by the business responsible. If hazardous materials are not intended to be stored, transported on site, used or handled in an amount requiring a permit, a Hazardous Materials/Waste Registration Form and/or a Hazardous Materials Exemption Declaration shall be submitted to the Fire Department by the business responsible. Required submittals shall be done at the time of building permit application.
8. Exit doors shall be openable from the inside without the use of a key or any special knowledge or effort. Manual operated edge- or surface-mounted flush bolts and surface bolts are prohibited. Section 1207.3 CFC.

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9. Exit doors shall swing in the direction of exit travel when serving any hazardous area or when serving an occupant load of 50 or more. Section 1207.2, CFC.
10. Obstructions, including storage, shall not be placed in the required width of a means of egress, except projections as allowed by the Building Code. Means of egress shall not be obstructed in any manner and shall remain free of any material or matter where its presence would obstruct or render the means of egress hazardous. Section 1203, CFC.

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City of Milpitas, August 4, 2003

To whom it might be concerned:

My name is Oanh Bui, I am an owner of this business VIET VIDEO.

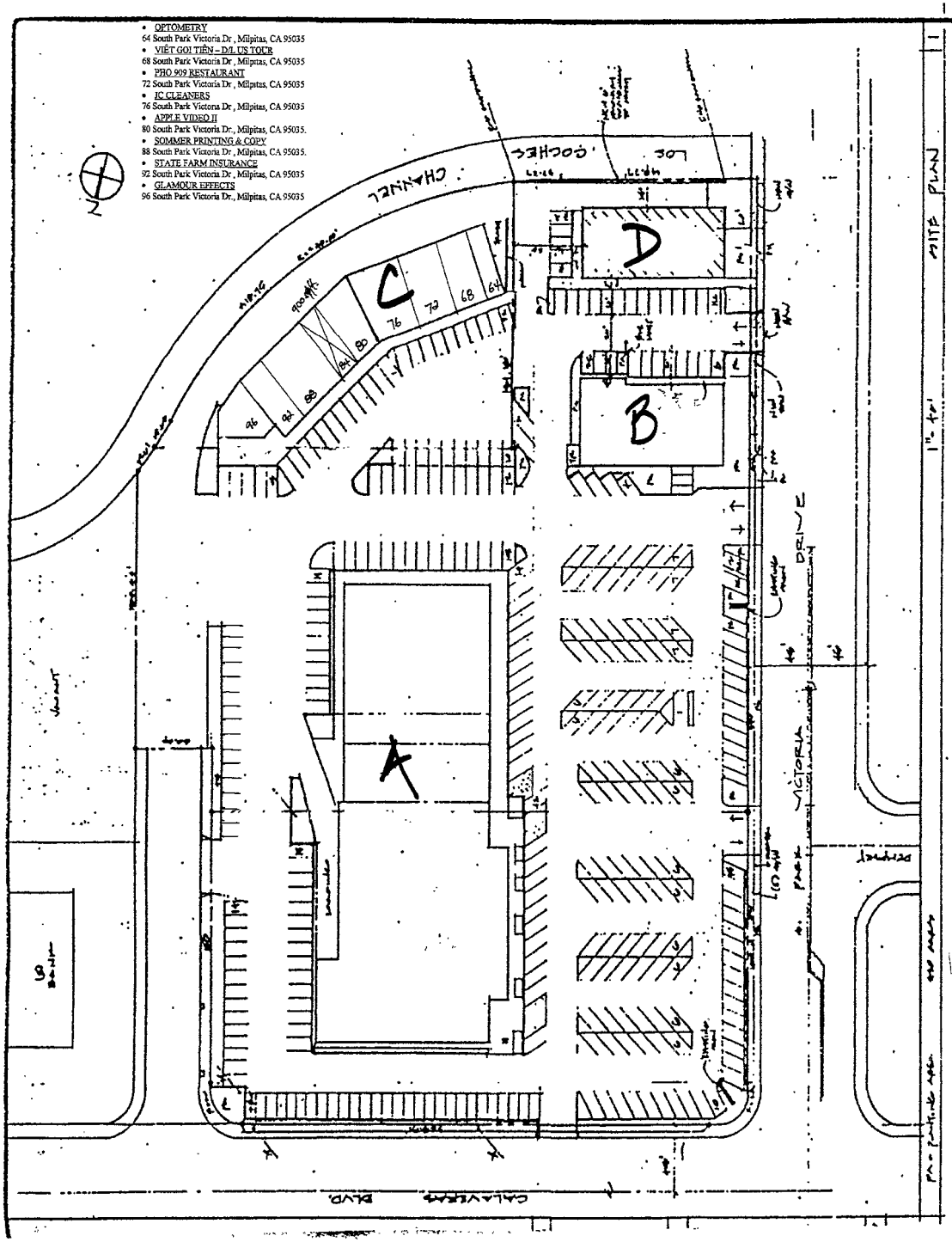
My business hour is: Monday: 3:00 pm to 9:00 pm
Tuesday: 11:00 am to 9:00 pm
Wednesday: 11:00 am to 9:00 pm
Thursday: 11:00 am to 9:00 pm
Friday: 11:00 am to 9:00 pm
Saturday: 11:00 am to 9:00 pm
Sunday: 11:00 am to 8:00 pm

My main business for this store is renting Chinese movies in Vietnamese Language. I am also selling music media.

Those movies for rent is consisted of many types such as: Comedy, Drama, Action, Martial Art... I am not doing any Adult type of movie in this store.

Thank you,

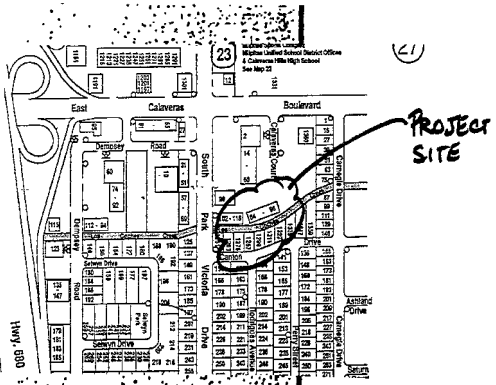
- OPTOMETRY
64 South Park Victoria Dr , Milpitas, CA 95035
- VIÊT GOI TIÊN – D/L US TOUR
68 South Park Victoria Dr , Milpitas, CA 95035
- PHO 909 RESTAURANT
72 South Park Victoria Dr , Milpitas, CA 95035
- JC CLEANERS
76 South Park Victoria Dr , Milpitas, CA 95035
- APPLE VIDEO II
80 South Park Victoria Dr., Milpitas, CA 95035.
- SOMMER PRINTING & COPY
88 South Park Victoria Dr , Milpitas, CA 95035.
- STATE FARM INSURANCE
92 South Park Victoria Dr , Milpitas, CA 95035
- GLAMOUR EFFECTS
96 South Park Victoria Dr., Milpitas, CA 95035

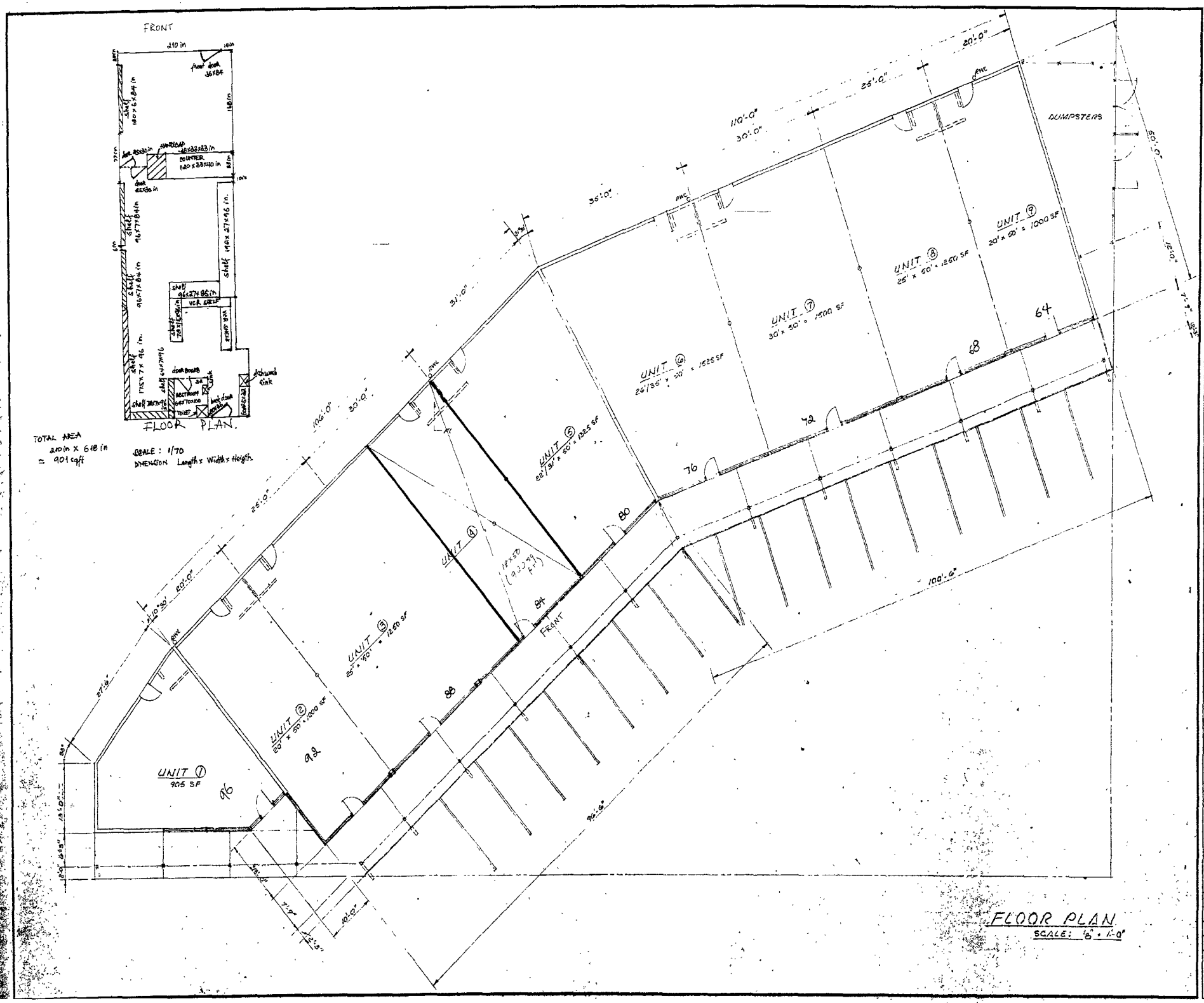


VIET VIDEO

84 South Park Victoria DR.

Milpitas, CA95035.





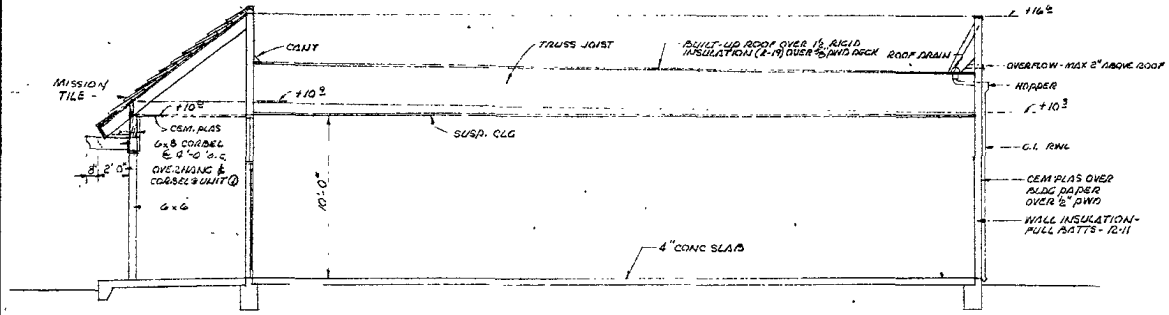
FLOOR PLAN
SCALE: 1/8" = 1'-0"

REVISIONS	BY

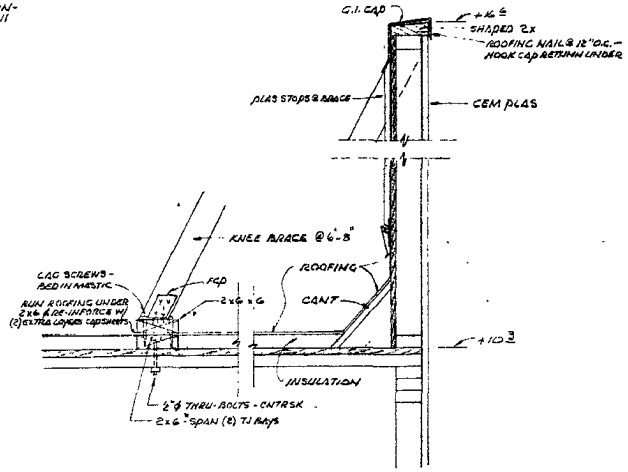
HARRISON, LEE AND KONG, INC.
CONSULTING ENGINEERS
[illegible] SAN JOSE, CALIF. 95126 • (408) 286-6106

FLOOR PLAN
PARK VICTORIA CENTER

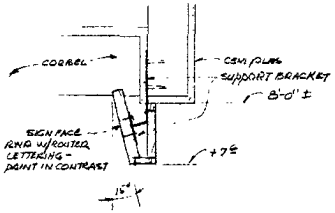
DATE JAN 84
SCALE 1/8" = 1'-0"
DRAWN
JOB BERNS
SHEET A2
OF 3 SHEETS



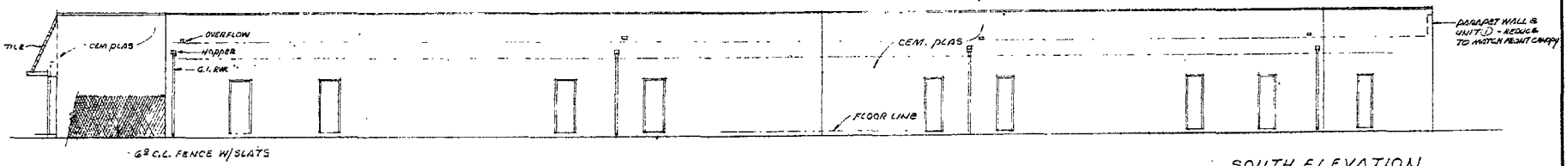
TYPICAL SECTION
SCALE: ¼" = 1'-0"



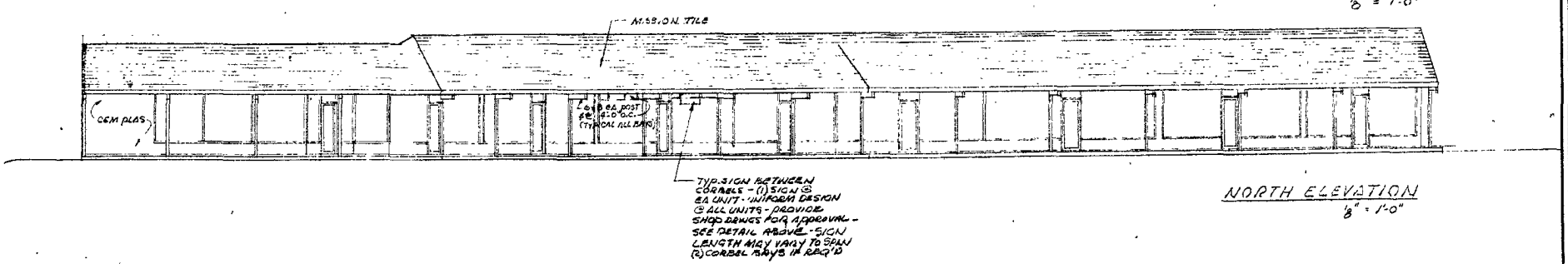
PARAPET BRACE
SCALE: 1½" = 1'-0"



SIGN DETAIL



SOUTH ELEVATION
⅛" = 1'-0"



NORTH ELEVATION
⅛" = 1'-0"

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EXTERIOR ELEVATIONS SECTION
PARK VICTORIA CENTER
SOUTH VICTORIA DRIVE & CALAVERAS DRIVE
MILPETAS SANTA CLARA CO.

DATE JAN 24 '77
SCALE AS NOTED
DRAWN
JOB BERNS
SHEET A3
OF 4 SHEETS 8

77406