

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS DENYING THE APPEAL AND UPHOLDING THE PLANNING COMMISSION'S DENIAL OF SITE DEVELOPMENT PERMIT NO. SD18-0010 AND CONDITIONAL USE PERMIT AMENDMENT NO. UA18-0020 TO DEMOLISH AN EXISTING MANUAL CAR WASH AND CONSTRUCT A NEW, 3,189 SQUARE FOOT FULLY AUTOMATIC CAR WASH WITH AN ADDITIONAL 2,301 SQUARE FEET OF CANOPY AREA IN THE MIXED-USE ZONING DISTRICT (MXD) AT 554 SOUTH MAIN STREET (APN 086-25-012) PURSUANT TO THE MIDTOWN SPECIFIC PLAN ON A .46 ACRE SITE AT 554 SOUTH MAIN STREET (APN: 086-25-012)

WHEREAS, on November 25, 1964, the Planning Commission approved Use Permit No. 78 and Site Plan Approval to construct a 2,131-square foot manual carwash at 554 South Main Street, a then-vacant parcel; and

WHEREAS, on March 6, 1980, the Planning Commission approved an "S" Zone application to allow architectural remodeling of the west façade of the existing coin-operated car wash; and

WHEREAS, on September 17, 2018, an application was submitted by Joel Chapin of Norr Associates, Inc., on behalf of Ramesh and Promilia Sood ("Applicant"), to construct and operate a 3,189 square foot car wash with a 2,301 square foot canopy at 554 South Main Street ("Project"). The property is located within the Mixed-Use (MXD) Zoning District and the Midtown Specific Plan Area (APN: 086-25-012). The Project thus consists of and requires:

1. Site Development Permit SD18-0010: To allow demolition of the existing manually-operated car wash and the development of a fully automatic 3,189 square-foot car wash with canopy; and
2. Conditional Use Permit Amendment UA18-0020: To allow replacement and significant intensification of a use with an existing CUP (Use Permit No.78) and to allow an exception to the maximum front setback of 15 feet from back of sidewalk, which requires an amendment of the existing use permit; and

WHEREAS, Milpitas City staff conducted a full analysis of the Project to ensure compliance with the City's General Plan, Midtown Specific Plan ("MSP") Zoning Code, Engineering Design Requirements and all other applicable laws, regulations and standards, as all further explained in detail in City staff's report to the Planning Commission; and

WHEREAS, the City of Milpitas is the lead agency and the Milpitas Planning Commission is the decision-making body for the proposed Project; and

WHEREAS, the Planning Department has determined that the Project is exempt from the California Environmental Quality Act ("CEQA"), pursuant to CEQA Guidelines Section 15303(c) (New Construction or Conversion of Small Structures) and, alternatively, pursuant to Section 21080(b)(5) of the Public Resources Code, CEQA is inapplicable if the Project is denied; and

WHEREAS, on March 10, 2021, the Planning Commission held a duly-noticed public hearing on the subject application, at which all those in attendance were given the opportunity to speak on the Project; and

WHEREAS, the Planning Commission considered all the written and oral testimony presented at the public hearing in making its decision; and

WHEREAS, the Planning Commission denied the issuance of Site Development Permit No. SD18-0010 and Conditional Use Permit Amendment No. UA18-0020; and

WHEREAS, on March 19, 2021, within the time allowed by the Milpitas Municipal Code, Ramesh Sood, the appellant, appealed the Planning Commission's denial of issuance of Site Development Permit No. SD18-0010 and Conditional Use Permit Amendment No. UP18-0020; and

WHEREAS, the City provided all interested parties and individuals with the opportunity to submit comments on the Project via electronic mail, voicemail, or audio file prior to the meeting; and

WHEREAS, on April 20, 2021, the City Council held a duly-noticed public hearing on the subject appeal, at which time all those who wanted to speak on the Project were given the opportunity to submit written comments via electronic mail, and all comments received during the meeting read aloud by the City Clerk and her deputy; and

WHEREAS, on April 20, 2021, the City Council considered all written and oral testimony presented at the public hearing on the appeal, including evidence presented by City staff, the appellant, and the public in making its decision; and

NOW THEREFORE, the City Council of the City of Milpitas hereby finds, determines and resolves as follows:

SECTION 1. Recitals

The City Council has duly considered the full record before it, which may include but is not limited to such things as the 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. CEQA Findings

The Project is exempt from further environmental review under CEQA pursuant to State CEQA Guidelines section 15303(c) (New Construction or Conversion of Small Structures). Section 15303(c) of the CEQA Guidelines consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. This exemption applies to up to four stores, motels, offices, restaurants, or similar structures located in an urbanized area as defined by CEQA Guidelines Section 15387 and not exceeding 10,000 square feet in floor area on sites zoned for such use if not involving the use of hazardous substances where all public services and facilities are available and the surrounding area is not environmentally sensitive. With a population of 80,430 and a population density of 5,922 persons per square mile, the City of Milpitas is an "urbanized area" under CEQA Guidelines Section 15387, which is a "central city or a group of contiguous cities with a population of 50,000 or more, together with adjacent densely populated areas having a population density of at least 1,000 persons per square mile. Moreover, the proposed car wash is 3,189 square feet and is located in the Mixed-Use Zoning District, which allows car washes subject to a Conditional Use Permit. According to the Project application, only soaps, detergents, and water-based cleansers will be used at the site; no hazardous substances will be used for car wash operations. All public services are available and the area surrounding the site is not environmentally sensitive. None of the exceptions under CEQA Guidelines Section 15300.2 apply to the Project. Therefore, the exemption under CEQA Guidelines Section 15303(c) applies.

Alternatively, pursuant to Section 21080(b)(5) of the Public Resources Code, CEQA is inapplicable if the Project is denied.

SECTION 3: Conditional Use Permit (Section XI-10-57.04(F)(1))

1. 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 aim of the Midtown Specific Plan (“MSP”) is to transition the area from the existing land use pattern to a pedestrian-oriented, mixed-use district with housing, shopping, employment, entertainment, and cultural and recreational activities organized within a system of landscaped boulevards, streets, and pedestrian and bicycle linkages. The proposed expanded auto-oriented automatic car wash may deter future mixed-use residential and retail development in the area and is not compatible with an active pedestrian-oriented neighborhood along Main Street as envisioned by the MSP. Also, the Project retains two driveways, which coupled with the 127-foot queuing aisle on the site, would accommodate more vehicles on the site and increase the risk of pedestrian-vehicular conflicts. Therefore, the proposed car wash would be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the area.

2. The proposed use is consistent with the Milpitas General Plan.

The General Plan designation for the Project site is Mixed Use. This designation provides for commercial offices, retail and services, high density residential, and public and quasi-public uses. Although the Project fosters beautification of the area and continues to provide a commercial service to the community, it does not conform to all the adopted design guidelines and requirements contained in the General Plan as outlined in the table below:

Table 1: General Plan Consistency

Policy	Consistency Finding
2.a-I-2 <i>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.</i>	Consistent: The Project’s scope consists of replacing an existing, outmoded manual coin-operated car wash with a new, 3,189-square foot automated car wash, which is considered in-fill development. The development is within the urban fabric and will not increase the expansion of any urban services into outlying areas.
2.a-I-3: <i>Encourage economic pursuits which will strengthen and promote development through stability and balance.</i>	Inconsistent. Although the Project replaces an existing, outmoded manual coin-operated car wash with a new, economically viable, automated facility, it does not strengthen or promote a mixed-use character for the neighborhood as more specifically expressed in the Midtown Specific Plan. The proposed car wash would be a single, automobile-oriented use on this site. The proposed car wash may not be compatible with future mixed-use

Policy	Consistency Finding
	residential and retail uses on neighboring properties, as envisioned in the Midtown Specific Plan, due to noise and traffic conflicts.
2.a-I-30: <i>Require development in the Midtown area to conform to the adopted design guidelines/requirements contained in the Midtown Specific Plan.</i>	Partially Consistent. While the building design and site improvements for the proposed car wash conform to the design guidelines and requirements as stipulated by the MSP, the Project does not meet the required 8 to 15-foot maximum front building setback from back of sidewalk. The proposed site plan shows a 37-foot setback from back of sidewalk to the front of the building to accommodate the circulation of vehicles exiting the carwash tunnel at the front of the site. The intent of placing buildings closer to the sidewalk is to promote pedestrian comfort and activity and encourage a walkable retail-oriented streetscape. Thus, this type of proposed setback would violate the existing MSP.

3. The proposed use is consistent with the Milpitas Zoning Ordinance.

The proposed car wash meets most of the development standards in the Mixed-Use Zoning District and the MSP for height requirements and landscaping. However, it does not meet the requirements for front setback as shown in the table below:

Table 3:
Summary of MXD Development Standards in the Midtown Specific Plan and the Zoning Code

Standards	MXD Requirements	Proposed	Complies
Front Setback (min)	8 to 15 ft. max.	37 ft., 7 inches	No
Side Yard Setback (min)	10 ft.	10 ft.	Yes
Rear (min)	10 ft.	68 ft.	Yes
Building Height (Maximum)	Principal building: 3 stories/45 ft.	1 story / 22 ft.	Yes
Parking	1 per 200 sq. ft of building area and reservoir space outside building area equal to two (2) times the maximum capacity of the facility	1,342 sq. ft building area/200 sq. ft = 7 spaces/Number of spaces provided = 10 Maximum capacity of building = 2 cars/Reservoir spaces provided = 13 spaces	Yes

Approval of the front setback exception would be inconsistent with the goals, policies and design objectives in the MSP. Specifically, the proposed car wash is not entirely consistent with the concept of a mixed-use neighborhood and may deter future residential and retail uses from locating in the area.

4. The proposed use is consistent with the Midtown Specific Plan.

Given that the intent of the requirements of the MSP is to transition the area from the existing land use pattern to a pedestrian-oriented, mixed-use district with housing, shopping, employment, entertainment, and cultural and recreational activities organized within a system of landscaped boulevards, streets, and pedestrian and bicycle linkages, an automobile-oriented use, such as a car wash, is inherently contrary to the intent of the Plan. The Project retains two driveways, which coupled with the 127-foot queuing aisle on the site, would accommodate more vehicles on the site and increase the risk of pedestrian-vehicular conflicts. Moreover, the Project proposes a setback of 37 feet, 7 inches, which does not promote comfort or active retail along the street. Therefore, the proposed Project does not conform with the intent of the requirements of the MSP, including the Development Standards and Design Guidelines as outlined in the table below:

Table 3: Midtown Specific Plan Policy Consistency

Specific Plan Goals and Policies	Consistency Finding
<p><i>Land Use Goal 1:</i> <i>Encourage a compatible mixture of residential, retail, office, service-oriented commercial and industrial uses within the Midtown Area.</i></p>	<p>Inconsistent. The proposed automatic car wash use attempts to address compatibility required by this policy by locating vehicular queuing onsite rather than on Main Street, screening vacuums and other equipment from the right-of-way, and introducing landscaping to provide additional screening from the right-of-way, but the more significant issue is that an auto-oriented use at this site is inconsistent with the larger vision for the area as a cohesive pedestrian-oriented, mixed-use neighborhood under the MSP and further, would violate an existing setback requirement in order to establish this compatibility in violation of the MSP.</p>
<p><i>Community Design Goal 1:</i> <i>Create an attractive district that is uniquely “Milpitas.”</i></p>	<p>Inconsistent. In accordance with the specific language of Community Design Goal 1 in the MSP, Main Street is intended to be developed in a unique manner that distinguishes it from other commercial areas in the City. The MSP envisions Main Street as a traditional pedestrian-oriented downtown (See Community Design Goal 2 below), and an auto-oriented use, such as a car wash, does not support that vision. Moreover, auto-oriented uses are found in commercial areas throughout the City and, therefore, will not further the goal to create a unique Main Street character that would distinguish it from other areas in the City.</p>

Specific Plan Goals and Policies	Consistency Finding
<p><i>Community Design Goal 2:</i> Establish a pedestrian-oriented, mixed-use district that is focused along Main Street.</p>	<p>Inconsistent. The Project maintains the existing, automobile-oriented use, a car wash, which is contrary to the vision of the area as a pedestrian-oriented, mixed-use area under the MSP.</p>
<p><i>Community Design Goal 4:</i> <i>Improve the character of streets within the Midtown Area.</i></p>	<p>Partially Consistent. While the proposed new car wash would significantly upgrade the existing facilities and improve the character of the site in the short-term, the building setback exception and driveways will not further the long-term vision and character for Main Street as a mixed-use, pedestrian-oriented corridor under the MSP.</p>
<p><i>Land Use Policy 3.10:</i> <i>Designate parcels along the Main Street and Abel Street mixed-use and allow a mixture of retail, office, housing, service, and public/quasi-public uses in this area</i></p>	<p>Inconsistent. The proposed car wash would not be consistent with the mixture of uses envisioned along Main Street in the MSP. Although the site is designated “Mixed Use” in the MSP and the Zoning Code and is an allowed use subject to a Conditional Use Permit, the Project cannot meet the findings for a Conditional Use Permit in Subsection XI-10-57.04(F)(1) of the Zoning Code, as explained in the “Findings” section of this staff report. Further, the applicant requests an exception to the maximum front yard setback requirement in the MSP, and those findings cannot be met as explained in the “Findings” section of this staff report. \</p>
<p><i>Land Use Policy 3.15:</i> <i>Allow existing legally established service businesses to remain within the area as conforming uses.</i></p>	<p>Inconsistent. The proposal for a new automatic car wash would greatly expand an existing legally established use and therefore would be inconsistent with this policy. While allowing the development of a new automatic new car wash might provide immediate economic benefits to the area, the longer-term community vision for redevelopment of Main Street as a pedestrian-oriented, mixed-use area would be greatly compromised. In addition, an auto-oriented use, such as a car wash, could deter future mixed-use developments from being developed in the area. The proposed Project is an expansion and intensification of an existing use that requires an approval of an amendment of an existing CUP, which is a discretionary action. Denial of the</p>

Specific Plan Goals and Policies	Consistency Finding
	CUP would not affect the ability of the existing car wash to continue as a legal conforming use consistent with this policy.
<p>Policy 5.3: <i>Promote high-quality private development that contributes to the visual identity and environmental quality of the Midtown Area through the application of the Development Standards and Design Guidelines.</i></p>	<p>Partially consistent. While the proposed new building and site design are consistent with most development standards and guidelines for the Midtown area, it would require an exception for the front yard building setback. In addition, the nature of the use as an automobile-oriented business would not further the desired visual identity of Midtown as a pedestrian-oriented area.</p>

Exceptions to the standards may be approved by the City Council upon review of a use permit, in accordance with the requirements of the Zoning Code.

- a. The deviation from the Midtown Specific Plan Standard meets the design intent identified within the Specific Plan and does not detract from the overall architectural, landscaping, and site planning integrity of the proposed development.

As stated above, car washes generally are automobile-oriented uses that typically feature large queuing and parking areas. With a setback of 37 feet, 7 inches and two driveways, the Project does not recognize the pedestrian-oriented vision for the area and the importance of designing the car wash in a manner that accommodates both pedestrians and automobile traffic. Further, the Project proposes to locate a 127-foot queuing aisle on the Project site rather than on Main Street and retains two driveways, which would increase vehicular traffic on site and increase the risk of pedestrian-vehicular conflict. Additionally, the Project proposes a setback of 37 feet, 7 inches and is visible from the right-of-way, which does not contribute to a pedestrian-oriented environment. Therefore, the Project does not meet the design intent identified within the MSP.

- b. The deviation from the Midtown Specific Plan Standard allows for a public benefit not otherwise obtainable through the strict application of the Design Standard.

Although granting a deviation from the maximum front setback would allow better on-site circulation and reduce queuing along Main Street, it would accommodate increased vehicular traffic on the site. Coupled with two driveways and the increased volume of vehicular traffic crossing the sidewalk to access the site, the Project could increase the likelihood of pedestrian-vehicular conflicts. In addition, the intent of the maximum setback of 15 feet required by the MSP is to enhance pedestrian safety and encourage retail activity. Allowing the setback of 37 feet, 7 inches does not achieve that goal because it makes the frontage less desirable to pedestrians. Further, staff is not aware of any public benefit that will be provided by the Project.

SECTION 4. Site Development Permit (Section XI-10-57.03(F)(1))

1. The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.

While the proposed architecture, site design, and landscaping is consistent with existing developments, it is not consistent with the community design goals for Main Street. Although the proposed Project would immediately upgrade the visual appearance of the property, it would add permanency to a use that is inconsistent with the long-term vision and goals and policies of the MSP. Moreover, it may inhibit development on adjacent parcels as the car wash operations could impact the feasibility or desirability of establishing uses on neighboring parcels that would be more in conformance with the vision, goals, and policies in the MSP.

As discussed in the staff report the Project is incompatible and inconsistent with the surrounding uses and does not conform with the intent of the MXD Zoning District.

2. The project is consistent with the Milpitas Zoning Ordinance.

Staff cannot recommend this finding. As discussed above, the Project is incompatible and inconsistent with the surrounding uses and does not meet the setback requirement of the MXD Zoning District.

3. The project is consistent with the Milpitas General Plan.

As discussed above, the Project is not compatible or consistent with the surrounding uses and does not conform with the intent of the General Plan Designation.

4. The proposed use is consistent with the Midtown Specific Plan.

As discussed above, the Project does not conform to the specific requirements of the MSP, including the Development Standards and Design Guidelines. Additionally, the findings for an exception to the setback standard cannot be made. The proposed car wash is an auto-oriented use that does not support the pedestrian-oriented vision for the area or community design policies in the MSP and does not enhance pedestrian safety or promote a retail setting.

SECTION 5: City Council Decision and Denial

The City Council of the City of Milpitas hereby denies the appeal and upholds the Planning Commission's denial of Site Development Permit No. SD18-0010 and Conditional Use Permit Amendment No. UA18-0020. This decision of the City Council is based upon the findings contained in this Resolution, the full record before this Council, and the Council's interpretation of the Milpitas Municipal Code.

PASSED AND ADOPTED this _____ day of _____, 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney