



DATE: January 9, 2008

TO: Honorable Mayor and Members of the City Council

FROM: Development Services Department/Planning Division

SUBJECT: **ADOPTION OF A RESOLUTION OVERTURNING PLANNING COMMISSION RESOLUTION NO. 2007-P59 AND DENYING CONDITIONAL USE PERMIT (C-23-07) FOR A REGULATED USE (MESSAGE ESTABLISHMENT) AND A WAIVER OF LOCATIONAL REQUIREMENTS FOR THE PROPOSED REGULATED USE LOCATED AT 560 GREENBRIER DRIVE, UNIT 104 – HOLISTIC TOUCH SPA -- APPLICANT: SUNCHA GRAHAM**

SYNOPSIS

The item under consideration is the adoption of a resolution overturning Planning Commission Resolution 2007-P59 and denying a Conditional Use Permit (C-23-07) for a massage establishment. Included is a waiver of the locational requirements (separation distances) required for the massage establishment, which is a "Regulated Use". As part of its review and recommendation to the Council, the Planning Commission has considered the land use issues associated with the waiver request. The Commission recommends that the Council approve the Conditional Use Permit and grant the waiver of locational requirements. Staff recommends that the Council overturn the Planning Commission Resolution and deny the Conditional Use Permit and deny the waiver request. Staff is recommending that the City Council adopt the attached Resolution.

BACKGROUND

The public hearing and deliberations by the Planning Commission on the proposed use were held on November 19, 2007. The Commission recommended approval of the Conditional Use Permit and waiver of locational requirements by a 5-to-1 vote, with one Commissioner absent.

Pursuant to Oceanside Zoning Ordinance Section 3605, the Planning Commission shall make recommendations to the City Council for the approval or disapproval of a waiver of locational requirements.

Project Description: The layout of the Holistic Touch Spa includes an entryway, an office, three rooms for conducting massage services, a restroom, a shower facility, and space for a washer and dryer. The building shares parking with other building tenants, including five residential apartments. The other commercial tenants include a bar, a job placement office, and a karate studio. Public parking is off-street, behind the building.

The Holistic Touch Spa is proposed to be open seven days a week, between the hours of 10:00 a.m. and 8:00 p.m. No other services aside from the massage services are being proposed.

The Conditional Use Permit is required in order to permit massage services (regulated use) in conjunction with a day spa, pursuant to Article 36 of the Oceanside Zoning Ordinance.

Waiver of Locational Requirements: Pursuant to Article 36, regulated uses are subject to specific separation distances (locational requirements). Massage establishments are subject to a minimum separation distance of 1,000 feet from any other regulated use, public or private schools, childcare facilities, public recreation facilities, religious worship facilities, and residential zoning districts.

In accordance with the Zoning Ordinance provisions, the applicant is requesting a waiver of the locational requirements. Under the zoning regulations, the City Council has the authority to grant a waiver of the locational requirements. In granting a waiver, the Council must affirm all of the following findings:

1. The proposed use will not be contrary to the public interest.
2. The proposed use will not be contrary to the spirit or intent of Article 36 of the Zoning Ordinance.
3. The proposed use will not impair nearby property or the integrity of the underlying district.
4. The proposed use will not encourage the development of an adult entertainment area or otherwise promote community blight.
5. The proposed use will not negatively impact any governmental programs of redevelopment, revitalization, or neighborhood preservation.

ANALYSIS

Although the application materials do not assert, or otherwise suggest, an intention to conduct any illicit or vice activities of a sexual nature, staff finds that the proposed massage services would not promote positive commercial development in the immediate area and would not be compatible with the surrounding neighborhood.

There are nine regulated uses within 1,000 feet of the proposed project. A bar is located next door to the proposed project, at 560 Greenbrier Drive Units 105 and 106. Another massage establishment is located to the west at 1906 Oceanside Boulevard. There are

also two more bars within 1,000 feet of the proposed project, one located at 1919 Oceanside Boulevard and one at 1985 Oceanside Boulevard. There are also two check-cashing businesses, two liquor stores, and a tattoo parlor. The approval of this project would place 10 regulated uses within 1,000 feet of each other. In regards to sensitive land uses, there are three religious assembly land uses, a day care/preschool, residential units, and community resource centers within 1,000 feet of the project site.

The following table lists the land uses within 1,000 feet of the proposed project site. The single starred items (*) represent other regulated uses and the double starred items (**) represent sensitive land uses:

LOCATION	GENERAL PLAN	ZONING	SPECIFIC LAND USE
Subject Property:	GC	CL	Holistic Touch Spa
Other tenants w/in the building	GC	CL	*Hooligan's (bar) **Upstairs apartment units Job Option, Inc. The Dojo (karate studio)
North:	MDC-R	RM-C	**Apartment buildings
East:	GC, LI	CL, CG, IL	*Giant K Liquor and Wine **Women's Resource Center **Apartment buildings Future medical offices Meat market Misc. auto repair shops Gas station w/ convenience store
South:	GC, CC	CG, CC	*Fire Mountain Market *Red Rooster Bar and Grill *Check Cashing *Frontline – tattoo & body piercing Vehicle Repair Services Food and Beverage Sales Eating & Drinking Establishments Personal Services Car Wash Office, Business and Professional
West:	GC, SC	CL, CG, CS-HO	*Liquor Store (1910 Oceanside Blvd) *Check N' Go *Body Wise Massage **Christian Fellowship Center **Inglesia de Jesucristo **Hope Christian Fellowship ** Little Bears daycare **Red Cross WIC program

LOCATION	GENERAL PLAN	ZONING	SPECIFIC LAND USE
			Retail shops Bread of Life California Highway Patrol Personal Services Office, Business and Professional Office, Medical Office, Medical – Pediatrics Thrift Store Coin Laundry Personal Improvement Service Food and Beverage Sales

Staff finds that the business operations would pose negative impacts to public welfare, private properties, or sensitive land uses. Nine other regulated uses are located within 1,000 feet of the proposed use. By allowing this tenth regulated use into the area, the potential for adult activity and associated blight, depreciated property values, and law enforcement problems increases. According to the City of Oceanside Police Department, there have been numerous accounts of criminal activity within the subject mixed-use center over the last two years, including one incident at the proposed business. That case was settled in Fall 2007 and has since been closed; the conviction was discharged pursuant to Penal Code section 1203b.

The project is also located within 1,000 feet of sensitive land uses, including apartments within the same building and in the surrounding neighborhood, community resource centers, and three churches and a day care/preschool. In addition, the project site will negatively impact governmental programs of redevelopment, revitalization, or neighborhood preservation, particularly in regards to the revitalization efforts along Oceanside Boulevard. Based on the preexisting conditions of the surrounding land uses and the known future revitalization plans for the area, staff does not support the issuance of a waiver of locational requirements.

Conclusion: The proposed Conditional Use Permit is not consistent with the requirements of the Oceanside Zoning Ordinance and the land use policies of the General Plan because it does not meet the requirements for the separation of regulated uses and it does not promote or preserve a balance of successful markets and services. The applicant has requested a waiver from the applicable locational requirements. Staff determined that the project does not meet the findings for the waiver pursuant to Oceanside Zoning Ordinance Section 3605. As a result, staff cannot recommend approval for the Conditional Use Permit.

FISCAL IMPACT

None. The applicant has paid all fees required for the consideration of this application.

COMMISSION OR COMMITTEE REPORT

The Planning Commission reviewed the Conditional Use Permit and waiver request on November 19, 2007. Public hearing notices were mailed to business and residential property owners and occupants within a 1,000-foot radius of the proposed operation as required by the regulated use section of the Zoning Ordinance. Staff received two e-mails and a letter in opposition to the proposed project. All public testimony during the public hearing opposed the proposed project.

The Commission recommended approval of the Conditional Use Permit and waiver of locational requirements on a vote of 5-to-1, with one Commissioner absent. Planning Commission Resolution 2007-P59 was adopted on November 19, 2007, on a vote of 5-to-1, with one Commissioner absent.

The motion to recommend approval of the Conditional Use Permit and waiver of locational requirements included a time limit of one year in order for the applicant to continue operating until her lease has expired. Planning Commission found that the Conditional Use Permit is subject to specific operational conditions that will cause the use to operate compatibly with the surrounding land uses and it will not be detrimental to the general welfare of the City.

CITY ATTORNEY'S ANALYSIS

The City Attorney's office has reviewed the proposed resolution and approved it as to form.

Under the provisions of Article 36 of the City Zoning Ordinance, the City Council has final authority in the approval, modification or denial of a Conditional Use Permit for the establishment of a regulated use. In addition, the Council may grant a waiver of the applicable locational requirements for the regulated use, upon finding that:

1. The use will not be contrary to the public interest.
2. The use will not be contrary to the spirit or intent of Article 36 of the Zoning Ordinance.
3. The use will not impair nearby property or the integrity of the underlying district.
4. The use will not encourage the development of an adult entertainment area or otherwise promote community blight.
5. The use will not negatively impact any governmental programs of redevelopment, revitalization, or neighborhood preservation.

The City Council shall review the recommendation of the Planning Commission, the record of the Planning Commission hearing, and hear testimony of the applicant and any other interested party.

After the hearing, the City Council shall accept, modify or deny the Planning Commission recommendation. If the Planning Commission's recommendation is modified or reversed, the City Council shall state the specific reasons for the modification or reversal.

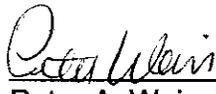
RECOMMENDATION

Staff recommends that the City Council overturn the Planning Commission's findings and recommendations. Staff recommends that the Council deny the waiver of locational requirements, deny Conditional Use Permit (C-23-07) and adopt the attached Resolution denying the project.

PREPARED BY:

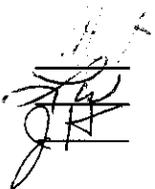

Sally Schiffman
Planner II

SUBMITTED BY:


Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager
Lauren Wasserman, Development Services Director
Jerry Hittleman, City Planner



ATTACHMENTS:

1. Site Plans/Floor Plans
2. City Council Resolution
3. Planning Commission Resolution No. 2007-P59
4. Planning Commission Staff Report dated November 19, 2007

Holistic
 Touch
 Spa

ELECTRICAL SCHEDULE

SYM	DESCRIPTION
01	100 AMP PANEL
02	NO. 100 AMP PANEL
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100	NO. 100 AMP PANEL

DOOR SCHEDULE

SYM	TYPE	NO.	MAT'L	SC/HR	THK.	HOR.	REMARKS
3000	INTERIOR	1	STL	30	1 3/4		EXISTING
3000	INTERIOR	2	MASONRY	30	1 3/4		EXISTING
3000	EXTERIOR	1	MASONRY	30	1 3/4		EXISTING
3000	EXTERIOR	2	MASONRY	30	1 3/4		EXISTING

WINDOW SCHEDULE

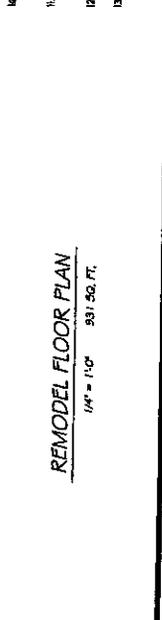
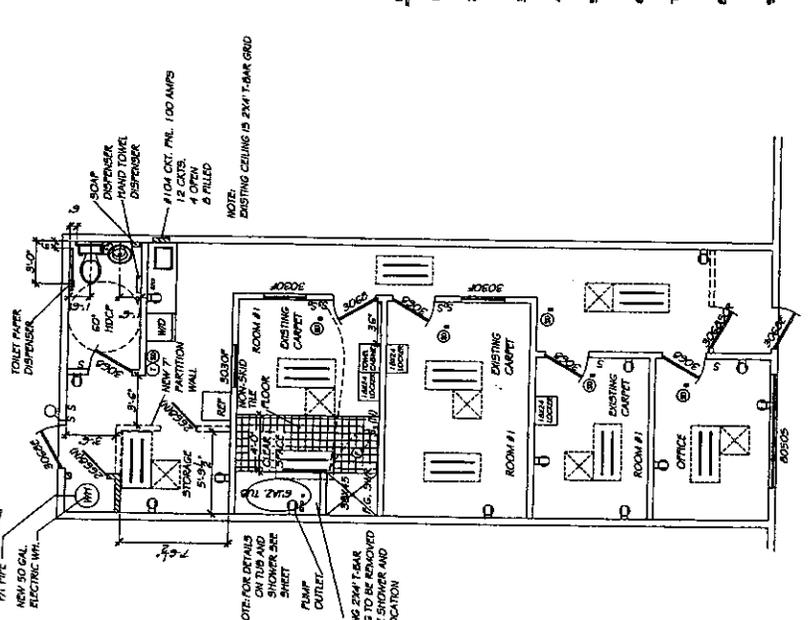
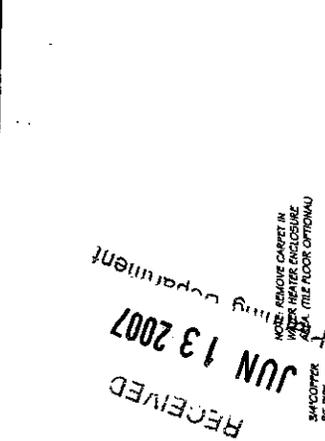
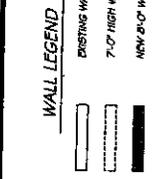
SYM	TYPE	NO.	MAT'L	VERY	BLZ	HOR.	REMARKS
3000	FIXED	1	ALUM.				EXISTING
3000	FIXED	2	ALUM.				EXISTING

NOTE: GLASS IN DOORS TO BE TEMPLERED TO MATCH EXISTING.
 NEW DOORS TO MATCH EXISTING.

WALL SCHEDULE

SYM	DESCRIPTION
01	EXISTING WALLS
02	7'-0" HIGH WALLS
03	NEW 2'-0" WALLS

- SHEET NOTES:**
- ALL BEDROOM BRANCH CIRCUITS SHALL BE ARC FAULT PROTECTED AS PER NEC ARTICLE 210-116.5.
 - BATH GFI RECEPTACLES SHALL BE SUPPLIED BY (1) 20A GFI RECEPTACLE AS PER NEC ARTICLE 210-116.5. THE GFI TRIP UNIT SHALL BE LOCATED IN MASTER BATH.
 - RECEPTACLE OUTLET LOCATIONS SHALL COMPLY WITH NEC ARTICLE 210-53(a).
 - INTERCONNECT SMOKE DETECTORS TO ALLOW ALL DETECTORS ENTER INTO ALERT WHEN TRIPPED.
 - ELECTRICAL CONTRACTOR TO PROVIDE OWNER WITH CUT SHEETS FOR ALL MATERIAL USED AND TO PROVIDE CUT SHEETS TO ELECTRICAL CONTRACTOR TO INSTALL.
 - OWNER SHALL FURNISH SUBBASE MOUNTED FIXTURES AND LAMPS TO ELECTRICAL CONTRACTOR TO INSTALL AT FINISH.
 - ELECTRICAL CONTRACTOR TO PROVIDE (1) 1" PVC SCH 40 CONDUIT FOR TELEVISION AT SERVICE LOCATION.
 - ELECTRICAL CONTRACTOR TO PROVIDE 6/6X8" COPPER-CLAD GROUND ROD AND 1/2" AMG SOLID F ORIGINAL GROUND OR IF NOT EXISTING.
 - ELECTRICAL CONTRACTOR TO PROVIDE 1/2" AMG SOLID TO BOND EXISTING CONDUIT TO NEW 1/2" AMG SOLID GROUND ROD PER NEC TABLE 250-54 IF NOT EXISTING.
 - IN BATHROOMS, GARAGES, LAUNDRY ROOMS AND UTILITY ROOMS ALL FIXTURES MUST BE HIGH EFFICIENCY STYLE OR BE CONTROLLED BY A MANUALLY-OPERATED SENSITIVE SWITCH.
 - ALL OTHER ROOMS, ANY INSTALLED FIXTURES TO BE HIGH EFFICIENCY OR CONTROLLED BY A MANUALLY-OPERATED SENSITIVE SWITCH EXCEPT CLOSETS.
 - OUTDOOR LIGHTING FIXTURES ARE REQUIRED TO BE HIGH EFFICIENCY OR CONTROLLED BY A COMBINATION PHOTO-CONTROL / MOTION SENSOR.
 - GENERALLY, A HIGH EFFICIENCY STYLE OF FIXTURE IS FLUORESCENT COMPLETE WITH ELECTRONIC BALLAST. IF A HIGH EFFICIENCY FLUORESCENT COMPLETE WITH ELECTRONIC BALLAST IS USED, THE LAMP DO NOT COMPLY.



RECEIVED
 JUN 13 2007
 Engineering Department

REMODEL FLOOR PLAN
 1/4" = 1'-0" 331.50 FT.

EXISTING FLOOR PLAN
 1/4" = 1'-0" 331.50 FT.

1 NOW, THEREFORE, the City Council of the City of Oceanside DOES RESOLVE as
2 follows:

3 1. The Conditional Use Permit (C-23-07) and Planning Commission Resolution No.
4 2007-P59 are hereby denied.

5 2. The locational requirements for a "Massage Establishment" as set forth in
6 Oceanside Zoning Ordinance Section 3604 are hereby required.

7 3. The proposed location of the regulated use is not in accord with the objectives of the
8 Ordinance and the purposes of the district in which the site is located. The proposed massage
9 services are contrary to the Zoning Ordinance objective for the CL (Limited Commercial) zoning
10 district and to the intent of Article 36 of the Zoning Ordinance because the proposed use does
11 meet the requirements for a separation of regulated uses. The proposed operation is not consistent
12 with the General Plan Land Use Element objective for the underlying General Commercial land
13 use designation affecting the property because it does not promote or preserve a balance of
14 successful markets and services. The proposed massage services use will adversely affect existing
15 and future development in the immediate area.

16 4. The proposed location of the conditional use will not be consistent with the General
17 Plan Policy 2.2; it will be detrimental to the public health, safety or welfare of persons residing or
18 working in or adjacent to the neighborhood of such use; and it will be detrimental to properties or
19 improvements in the vicinity and to the general welfare of the city, because the location of the
20 proposed massage establishment is within the vicinity of the revitalization efforts along Oceanside
21 Boulevard. In addition, there are multiple homes surrounding the location, including apartment
22 units located on the second floor of the same commercial building.

23 5. The proposed conditional use will not comply with the regulated use locational
24 requirements of the Ordinance. A massage establishment must be located a minimum of 1,000
25 feet from any other regulated use; residential districts; any public or private school; park,
26 playground, or public beach; church or other similar religious facility; and/or childcare or pre-
27 school facility. The proposed project does not comply with this regulation.

28 ////

1 6. The proposed project will impair nearby property or the integrity of the underlying
2 district. There are numerous residential districts, including apartments above the commercial units
3 in the subject building, three religious assembly uses, multiple community resource centers, and a
4 daycare facility within 1,000 feet of the proposed project site. There are nine other regulated uses
5 within 1,000 feet of the proposed massage establishment. By allowing this tenth regulated use
6 into the area, there is the potential for increased adult activity and associated blight, depreciated
7 property values, and law enforcement problems.

8 7. The proposed project may promote community blight. There are nine (9) known
9 regulated uses within 1,000 feet of the proposed project site, including three bars, two liquor stores,
10 two check cashing businesses, a tattoo parlor, and another massage establishment. The addition of
11 massage services at this location would add to the potential for community blight.

12 8. The proposed project will negatively impact governmental programs of
13 redevelopment, revitalization, or neighborhood preservation, particularly in regards to the
14 revitalization efforts along Oceanside Boulevard. Allowing an additional regulated use would not
15 be conducive to the efforts of the City to enhance the neighborhood.

16 9. NOTICE IS HEREBY GIVEN that the time within which judicial review must be
17 sought on this decision is governed by CCP Section 1094.6.

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19 ////

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1 PASSED AND ADOPTED by the City Council of the City of Oceanside, California this
2 _____ day of _____, 2008 by the following vote:

3 AYES:

4 NAYS:

5 ABSENT:

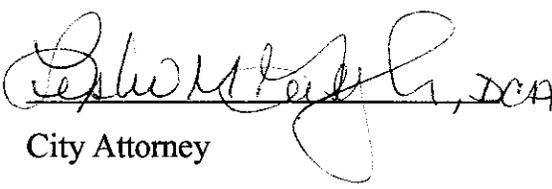
6 ABSTAIN:

7
8 _____
9 Mayor of the City of Oceanside

10
11 ATTEST:

12 APPROVED AS TO FORM:
13 OFFICE OF THE CITY ATTORNEY

14
15 _____
16 City Clerk

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22 City Attorney

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28
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE OVERTURNING PLANNING COMMISSION RESOLUTION NO. 2007-P59 AND DENYING CONDITIONAL USE PERMIT (C-23-07) FOR A REGULATED USE (MASSAGE ESTABLISHMENT) AND DENYING A WAIVER OF LOCATIONAL REQUIREMENTS FOR THE PROPOSED REGULATED USE LOCATED AT 560 GREENBRIER DRIVE, UNIT 104

LEGAL DESCRIPTION

HOLISTIC TOUCH SPA

Parcel No. 2, in the City of Oceanside, County of San Diego, State of California, as shown at page 891 of Parcel Maps filed in the Office of the County Recorder of San Diego County, July 11, 1972.

RECEIVED
JUN 13 2007
Planning Department

PLANNING COMMISSION
RESOLUTION NO. 2007-P59

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF OCEANSIDE, CALIFORNIA RECOMMENDING APPROVAL OF A CONDITIONAL USE PERMIT AND A WAIVER OF LOCATIONAL REQUIREMENTS FOR A REGULATED USE ON CERTAIN REAL PROPERTY IN THE CITY OF OCEANSIDE

APPLICATION NO: C-23-07
APPLICANT: Suncha Graham
LOCATION: 560 Greenbrier Drive Unit 104

THE PLANNING COMMISSION OF THE CITY OF OCEANSIDE, CALIFORNIA DOES RESOLVE AS FOLLOWS:

WHEREAS, there was filed with this Commission a verified petition on the forms prescribed by the Commission requesting a Conditional Use Permit for a regulated use and a waiver of locational requirements for said regulated use under the provisions of Articles 36 and 41 of the Zoning Ordinance of the City of Oceanside to permit the following:

a day spa/massage establishment and a waiver of locational requirements for the subject regulated land use;

on certain real property described in the project description;

WHEREAS, the Planning Commission, after giving the required notice, did on the 19th day of November 2007 conduct a duly advertised public hearing as prescribed by law to consider said application;

WHEREAS, pursuant to the California Environmental Quality Act of 1970, and State Guidelines thereto; this project has been found to be categorically exempt from environmental review per Article 19 Categorical Exemptions, Section 15301 Existing Facilities;

WHEREAS, pursuant to Oceanside Zoning Ordinance §4603, this resolution becomes effective 10 days from its adoption in the absence of the filing of an appeal or call for review;

WHEREAS, studies and investigations made by this Commission and in its behalf reveal the following facts:

1 FINDINGS:

2 For the Conditional Use Permit:

- 3 1. The proposed location of the regulated use is in accord with the objectives of the
4 Ordinance and the purposes of the district in which the site is located. The proposed
5 massage services are not contrary to the Zoning Ordinance objective for the CL (Limited
6 Commercial) zoning district and to the intent of Article 36 of the Zoning Ordinance. The
7 proposed operation is consistent with the General Plan Land Use Element objective for the
8 underlying General Commercial land use designation affecting the property. The proposed
9 massage services use will not adversely affect existing and future development in the
10 immediate area.
- 11 2. The proposed location of the conditional use will be consistent with the General Plan;
12 will not be detrimental to the public health, safety or welfare of persons residing or
13 working in or adjacent to the neighborhood of such use; and will not be detrimental to
14 properties or improvements in the vicinity and to the general welfare of the city.
- 15 3. The proposed conditional use will not comply with the regulated use locational
16 requirements of the Ordinance. A massage establishment must be located a minimum of
17 1,000 feet from any other regulated use; residential districts; any public or private
18 school; park, playground, or public beach; church or other similar religious facility;
19 and/or childcare or pre-school facility. With the approval of the Waiver of Locational
Requirements, the proposed project will comply with this regulation.

20 For the Locational Waiver:

- 21 1. The proposed regulated use will not be contrary to the public interest.
- 22 2. The proposed regulated use will not be contrary to the spirit or intent of Article 36.
- 23 3. The proposed project will not impair nearby property or the integrity of the underlying
24 district.
- 25 4. The proposed project will not encourage the development of an adult entertainment area
26 or otherwise promote community blight.
- 27 5. The proposed project will not negatively impact any governmental programs of
28 redevelopment, revitalization, or neighborhood preservation.
- 29

1 NOW, THEREFORE, BE IT RESOLVED that the Planning Commission does hereby
2 recommend approval of Conditional Use Permit (C-23-06) and waiver of applicable locational
3 requirements subject to the following conditions:

4 **Building:**

- 5 1. Applicable Building Codes and Ordinances shall be based on the date of submittal for
6 Building Division plan check.
- 7 2. The granting of approval under this action shall in no way relieve the applicant/project
8 from compliance with all State and Local building codes.
- 9 3. Site development, parking, access into buildings and building interiors shall comply with
10 the State's Disabled Accessibility Regulations.
- 11 4. Compliance with the Federal Clean Water Act (BMP's) must be demonstrated on the
12 plans.
- 13 5. The developer shall monitor, supervise and control all building construction and supporting
14 activities so as to prevent these activities from causing a public nuisance, including, but not
15 limited to, strict adherence to the following:
 - 16 a) Building construction work hours shall be limited to between 7:00 a.m. and 6:00
17 p.m. Monday through Friday, and on Saturday from 7:00 a.m. to 6:00 p.m. for work
18 that is not inherently noise-producing. Examples of work not permitted on
19 Saturday are concrete and grout pours, roof nailing and activities of similar noise-
20 producing nature. No work shall be permitted on Sundays and Federal Holidays
21 (New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day,
22 Christmas Day) except as allowed for emergency work under the provisions of the
23 Oceanside City Code Chapter 38 (Noise Ordinance).
 - 24 b) The construction site shall be kept reasonably free of construction debris as
25 specified in Section 13.17 of the Oceanside City Code. Storage of debris in
26 approved solid waste containers shall be considered compliance with this
27 requirement. Small Amounts of construction debris may be stored on site in a neat,
28 safe manner for short periods of time pending disposal.
- 29 6. Plans submitted after January 1st 2008 must comply with the State adopted ICC codes.

1 7. Tenant Improvements, or other construction to the existing building, requires permits
2 (including all required Inspections and approvals, and Issuance of Certificate of
3 Occupancy) from the Building Division.

4 **Fire:**

5 8. Smoke detectors are required and detector locations must be indicated on the plans.

6 9. Fire extinguishers are required and shall be included on the plans submitted for plan
7 check.

8 10. Buildings shall meet Oceanside sprinkler ordinance in effect at the time of building
9 permit application.

10 11. In accordance with the California Fire Code Sec. 901.4.4, approved address for
11 commercial, industrial, and residential occupancies shall be placed on the structure in
12 such a position as to be plainly visible and legible from the street or roadway fronting
13 the property. Numbers shall be contrasting with their background.

14 12. Multi-tenant buildings require identification on the rear exit doors with individual suite
15 numbers or letters.

16 13. Plans shall be submitted to the Fire Prevention Bureau for plan check review and
17 approval prior to the issuance of building permits.

18 14. Buildings shall meet Oceanside Fire Department's current codes at the time of building
19 permit application.

20 **Planning:**

21 15. The Conditional Use Permit (C-23-07) shall be valid for 1 year, beginning from the date
22 of City Council approval.

23 16. The Conditional Use Permit (C-23-07), with the waiver of Regulated Use Locational
24 Requirements, is limited to massage services comprising approximately 937 square feet
25 of floor area.

26 17. The Conditional Use Permit does not apply to any services or activities of an illicit
27 sexual nature. Any evidentiary material pertaining to on-site or off-site acts of
28 prostitution, or other acts of sexual conduct associated with the existence of this
29 business, its proprietorship, its employees or clientele, shall be grounds for revocation of
the Conditional Use Permit.

- 1 18. The Conditional Use Permit shall be called for review by the Planning Commission if
2 complaints are filed and verified as valid by the Code Enforcement Office concerning the
3 violation of any of the approved conditions or does not conform with the information
4 contained in or representation made in the application, any supporting material submitted to
5 the City or during any hearing on the application.
- 6 19. Prior to the transfer of ownership and/or operation of the site the owner shall provide a
7 written copy of the applications, staff report and resolutions for the project to the new
8 owner and or operator. This notification's provision shall run with the life of the project
9 and shall be recorded as a covenant or other recordable document approved by the City
10 Attorney on the property.
- 11 20. Unless expressly waived, all current zoning standards and City ordinances and policies in
12 effect at the time improvement permits are issued are required to be met by this project.
13 The approval of this project constitutes the applicant's agreement with all statements in the
14 Description and Justification and other materials and information submitted with this
15 application, unless specifically waived by an adopted condition of approval.
- 16 21. The applicant, permittee or any successor-in-interest shall defend, indemnify and hold
17 harmless the City of Oceanside, its agents, officers or employees from any claim, action or
18 proceeding against the City, its agents, officers, or employees to attack, set aside, void or
19 annul an approval of the City, concerning Conditional Use Permit (C-23-07). The City
20 will promptly notify the applicant of any such claim, action or proceeding against the
21 City and will cooperate fully in the defense. If the City fails to promptly notify the
22 applicant of any such claim action or proceeding or fails to cooperate fully in the
23 defense, the applicant shall not, thereafter, be responsible to defend, indemnify or hold
24 harmless the City.
- 25 22. A covenant or other recordable document approved by the City Attorney shall be
26 prepared by the applicant and recorded prior to the issuance of a Business License. The
27 covenant shall provide that the property is subject to this Resolution, and shall generally
28 list the conditions of approval.
- 29 23. The hours-of-operation shall be limited from 10:00 a.m. to 8:00 p.m., Monday through
Sunday. These hours can be limited further by the Planning Commission upon review of
any valid issues or complaints pertaining to the hours-of-operation.

- 1 24. No neon signage shall be permitted, except for one "Open" sign. No window signage that
2 exclusively advertises massage shall be permitted.
- 3 25. No signage visible from the public right-of-way, including a side-walk sign, shall include
4 the word "massage" at any time.

5 **Police:**

- 6 26. A list of services available and the cost of such services shall be posted in a conspicuous
7 place on the premises at all times.
- 8 27. All persons providing massage shall be fully clothed in hygienically clean apparel while
9 engaged in the practice of massage. As used herein, "Fully clothed" shall mean the
10 wearing of clothing which is comparable to the clothing commonly worn by nurses and
11 physical therapists while performing their respective professional duties.
- 12 28. Permits and Licensing:
- 13 a) All persons engaged in the practice of massage shall have a valid business
14 license issued by the City of Oceanside as well as a permit to practice massage
15 issued by the Oceanside Police Department.
- 16 b) Permits issued by the Oceanside Police Department shall be valid for one year
17 from date of issue and shall be renewed annually.
- 18 c) The business shall display the massage business license and a copy of the license
19 and/or permit for each person providing massages.
- 20 d) All persons engaged in the practice of massage shall have successfully completed
21 a minimum of one thousand (100) hours of instruction in the art of massage
22 provided by a recognized school or institute of learning which offers a course of
23 instruction approved by the State of California Office of Private Postsecondary
24 Education or comparable out-of-state agency which shall include anatomy,
25 physiology and hygiene, massage theory and history, ethics of massage and
26 business practices.
- 27 29. All persons engaged in the practice of massage shall not have been convicted of any of
28 the following offenses:
- 29 a) Any offense involving lewd conduct or an offense involving the use of force or
violence upon the person of another; or,

- b) Any offense described in California Penal Code sections 266h, 266i, 311, through 311.7, 314, 315, 316, 318, 653.22, or 647 (a), (b), or (d); or,
- c) Any offense described in California Penal Code, Part One, Title 9, Chapters 7.5 and 7.6; or,
- d) Any offense which requires registration as a sex offender under California Penal Code section 290; or
- e) Any charge of violating any lesser included or lesser related offense, including Penal Code section 415, in satisfaction of, or as a substitute for, an original charge of any of the offenses listed above.

30. A record shall be maintained which includes the date and time of each massage, the name and address of the patron, the name of the person administering such massage and the type of massage given. Such records shall be made available, upon request for inspection by the Oceanside Police Department. The information contained in such records shall be confidential.

31. Clean and sanitary towels, sheets and linens shall be provided for each patron. No common usage of towels, sheets and linens shall be permitted. Towels, sheets and linens shall be provided in sufficient quantity and shall not be used by more than one person unless such towels, sheets and linens have been re-laundered. Separate closed cabinets of containers shall be provided for the storage of clean and soiled towels, sheets and linens and such cabinets or containers shall be plainly marked: "clean linen" and "soiled linen".

32. Separate lockers shall be provided for patrons.

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1 33. All exterior doors shall remain unlocked from interior side during business hours.

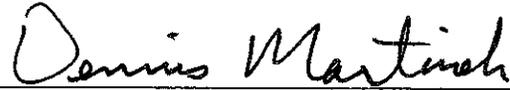
2 PASSED AND ADOPTED Resolution No. 2007-P59 on November 19, 2007 by the
3 following vote, to wit:

4 AYES: Martinek, Parker, Horton, Troisi and Balma

5 NAYS: Neal

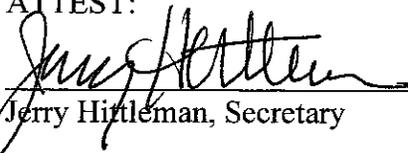
6 ABSENT: Bertheaud

7 ABSTAIN: None



8
9 Dennis Martinek, Chairman
Oceanside Planning Commission

10 ATTEST:



11
12 Jerry Hittleman, Secretary

13
14 I, JERRY HITTLEMAN, Secretary of the Oceanside Planning Commission, hereby certify that
15 this is a true and correct copy of Resolution No. 2007-P59.

16 Dated: November 19, 2007

LEGAL DESCRIPTION

HOLISTIC TOUCH SPA

Parcel No. 2, in the City of Oceanside, County of San Diego, State of California, as shown at page 891 of Parcel Maps filed in the Office of the County Recorder of San Diego County, July 11, 1972.

RECEIVED
JUN 13 2007
Planning Department



NOTICE OF EXEMPTION

City of Oceanside, California

Post Date: 11/20/2007
Removal: 05/20/2008
(180 days)

1. **APPLICANT:** Suncha Graham.
2. **ADDRESS:** 2343 Douglaston Glen, Escondido, CA 92026
3. **PHONE NUMBER:** (760) 231-8134
4. **LEAD AGENCY:** City of Oceanside
5. **PROJECT MGR.:** Sally Schifman
6. **PROJECT TITLE:** Holistic Touch Spa (C-23-07)
7. **DESCRIPTION:** To obtain a Conditional Use Permit to operate a massage establishment located at 560 Greenbrier Drive, Unit 104, Oceanside CA 92054.

ADMINISTRATIVE DETERMINATION: Planning Division staff has completed a preliminary review of this project in accordance with the City of Oceanside's Environmental Review Guidelines and the California Environmental Quality Act (CEQA), 1970. Therefore, the Environmental Coordinator has determined that further environmental evaluation is not required because:

- The project is categorically exempt, Class 1, Existing Facilities (Section 15301); or,
- "The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA" (Section 15061(b)(3)); or,
- The project is statutorily exempt, Section , <name> (Sections 15260-15277); or,
- The project does not constitute a "project" as defined by CEQA (Section 15378).

Sally Schifman, Planner II

Date: November 20, 2007

cc: Project file Counter file Library
Posting: County Clerk \$50.00 Admin. Fee



DATE: November 19, 2007

TO: Chairman and Members of the Planning Commission

FROM: Development Services Department/Planning Division

SUBJECT: **CONSIDERATION OF A CONDITIONAL USE PERMIT (C-23-07) TO PERMIT A REGULATED USE (MASSAGE ESTABLISHMENT) AND A WAIVER OF LOCATIONAL REQUIREMENTS FOR THE SUBJECT REGULATED USE AT 560 GREENBRIER DRIVE WITHIN THE LOMA ALTA NEIGHBORHOOD. – HOLISTIC TOUCH SPA – APPLICANT: SUNCHA GRAHAM**

RECOMMENDATION

Staff recommends that the Planning Commission, by motion:

- (1) Recommend that City Council deny Conditional Use Permit (C-23-07); and,
- (2) Recommend that City Council deny the waiver of locational requirements; and,
- (3) Recommend that City Council confirm the issuance of a Class 1, Categorical Exemption "Existing Facilities"; and,
- (4) Adopt Planning Commission Resolution No. 2007-P59 with findings attached herein.

PROJECT DESCRIPTION AND BACKGROUND

Site Review: The zoning designation for the site is CL (Limited Commercial) and the General Plan Land Use Category is General Commercial. Surrounding land uses include medium and high-density residential properties to the north and a wide array of commercial uses to the east, south and west.

The site is located at 560 Greenbrier Drive and is within the Loma Alta Neighborhood. The Holistic Touch Spa is within a 937-square foot unit located in an existing 17,500-square foot mixed-use building. The building has gone through numerous tenant improvements

including the conversion of second story office space into apartment units in 1984 (Planning Commission Resolution 84-P121).

Project Description: The massage facility consists of an entryway, an office, three (3) rooms for conducting massage services, a restroom, a shower facility, and space for a washer and dryer. The building shares parking with other tenants, including five residential apartments. Public parking is off-street, behind the building.

The Holistic Touch Spa is proposed to be open seven days a week, between the hours of 10:00 a.m. and 8:00 p.m. No other services aside from massage services are proposed with this project.

The project application is comprised of two components; a Conditional Use Permit and a waiver of the locational requirements for a regulated use as follows:

Conditional Use Permit No. C-23-07 represents a request for the following:

- (a) To permit a massage establishment (regulated use) pursuant to Article 36 of the Oceanside Zoning Ordinance (OZO).

Waiver of locational requirements represents a request for the following:

- (a) To permit a waiver of the locational requirements provided in Section 3604 for a regulated use.

The project is subject to the following Ordinances and City policies:

- 1. General Plan Land Use Element
- 2. Zoning Ordinance

ANALYSIS

1. General Plan Compliance

The General Plan Land Use Map designation on the subject property is General Commercial. The proposed project is not consistent with this designation or the goals and objectives of the City's General Plan as follows:

A. Land Use Element

Goal 2.2: Commercial Development

Objective: To promote and preserve a balance of successful markets and services in aesthetic, people-oriented associations that are compatible and organized to surrounding land uses.

Policy: The City shall preserve and enhance viable, positive commercial developments through the proper allocation of the following commercial land use designations: ...3) General Commercial...

2. Zoning Compliance

Article 11, Commercial Districts

PROPOSED USE	ADDITIONAL REGULATIONS
Personal Improvement Service (Massage Establishment)	(K) All "regulated uses", as defined in Article 36, shall be subject to a use permit as well as other requirements as may be imposed by that Article.

Section 3602 classifies a massage establishment as a regulated use. Chapter 15 of the City Code defines massage establishments as: "Any establishment wherein a massage is given, engaged in, carried on, or permitted to be given, engaged in, or carried on, whether for fee or gratuitously" (Article 2, Section 1519). The City Code also requires the screening and licensing of persons who practice the art of massage. Approval of a conditional use permit by the City Council must be obtained prior to operating a massage establishment.

Article 31, Off-street Parking and Loading Regulations

USE	BUILDING AREA	PARKING CODE PROVISION	REQUIRED PARKING	EXISTING PARKING
Holistic Touch Spa (Massage Establishment)	937 sq. ft.	1/200 sq. ft.	5	44 (shared)

Based upon Section 3102(B), no existing use of land or structure shall be deemed to be nonconforming solely because of the lack of off-street parking or loading facilities, provided that facilities being used for off-street parking and loading as of the date of adoption of the article shall not be reduced in number to less than that required by the provisions of the article. The proposed day spa/ massage service use would occupy an existing building suite. The use would not result in the reduction of existing parking spaces and the addition of massage services would not increase the existing requirements for parking.

Article 36, Separation of Regulated Uses

Article 36, Separation of Regulated Uses, states that adult-oriented uses create conditions harmful to the public health, welfare and safety when such uses are allowed to become numerous or concentrated within a limited geographical area, or when such uses exist near residential neighborhoods, family-oriented uses or sites commonly used by

neighborhoods, family-oriented uses or sites commonly used by minors. Therefore special regulations separating such uses from each other and from nearby residential areas, family-oriented uses, or sites commonly used by minors, are necessary to protect the community from consequent blight, depreciated property values, law enforcement problems, as well as interference with activities oriented toward families or minors.

Section 3604 requires that a massage establishment be located a minimum of 1,000 feet from any other regulated use; residential districts; any public or private school; park, playground, or public beach; church or other similar religious facility; and/or childcare or pre-school facility. Any person proposing a permitted regulated use may apply for a waiver of the locational requirements.

DISCUSSION

Issue: Project compatibility with existing surrounding development.

Recommendation:

Although the application materials do not assert, or otherwise suggest, an intention to conduct any illicit or vice activities of a sexual nature, staff finds that the proposed massage services would not promote positive commercial development in the immediate area and would not be compatible with the surrounding neighborhood.

There are nine (9) regulated uses within 1,000 feet of the proposed project. A bar is located next door to the proposed project, at 560 Greenbrier Drive Units 105 and 106. Another massage establishment is located to the west at 1906 Oceanside Boulevard. There are also two more bars within 1,000 feet of the proposed project, one located at 1919 Oceanside Boulevard and one at 1985 Oceanside Boulevard. There are also two (2) check cashing businesses, two (2) liquor stores, and a tattoo parlor. The approval of this project would place 10 regulated uses within 1,000 feet of each other. In regards to sensitive land uses, there are three (3) religious assembly land uses, a day care/preschool, residential units, and community resource centers within 1,000 feet of the project site.

The following table lists the land uses within 1,000 feet of the proposed project site. The single starred items (*) represent other regulated uses and the double starred items (**) represent sensitive land uses:

LOCATION	GENERAL PLAN	ZONING	SPECIFIC LAND USE
Subject Property:	GC	CL	Holistic Touch Spa
Other tenants w/in the building	GC	CL	*Hooligan's (bar) **Upstairs apartment units Job Option, Inc.

LOCATION	GENERAL PLAN	ZONING	SPECIFIC LAND USE
			The Dojo (karate studio)
North:	MDC-R	RM-C	**Apartment buildings
East:	GC, LI	CL, CG, IL	*Giant K Liquor and Wine **Women's Resource Center **Apartment buildings Future medical offices Meat market Misc. auto repair shops Gas station w/ convenience store
South:	GC, CC	CG, CC	*Fire Mountain Market *Red Rooster Bar and Grill *Check Cashing *Frontline – tattoo & body piercing Vehicle Repair Services Food and Beverage Sales Eating & Drinking Establishments Personal Services Car Wash Office, Business and Professional
West:	GC, SC	CL, CG, CS-HO	*Liquor Store (1910 Oceanside Blvd) *Check N' Go *Body Wise Massage **Christian Fellowship Center **Inglesia de Jesucristo **Hope Christian Fellowship ** Little Bears daycare **Red Cross WIC program Retail shops Bread of Life California Highway Patrol Personal Services Office, Business and Professional Office, Medical Office, Medical – Pediatrics Thrift Store Coin Laundry Personal Improvement Service Food and Beverage Sales

Issue: Land Use Consistency with Findings for Granting Locational Requirement Waiver.

Recommendation: In reviewing the application for a waiver of locational requirements, the Planning Commission must make all of the following findings for this regulated use:

- (1) It will not be contrary to the public interest.
- (2) It will not be contrary to the spirit or intent of Article 36 of the Zoning Ordinance.
- (3) It will not impair nearby property or the integrity of the underlying district.
- (4) It will not encourage the development of an adult entertainment area or otherwise promote community blight.
- (5) It will not negatively impact any governmental programs of redevelopment, revitalization, or neighborhood preservation.

Staff finds that the business operations would pose negative impacts to public welfare, private properties, or sensitive land uses. Nine (9) other regulated uses (a massage establishment, three bars, two liquor stores, two check cashing businesses, and a tattoo parlor) are located within 1,000 feet of the proposed use. By allowing this tenth regulated use into the area, the potential for adult activity and associated blight, depreciated property values, and law enforcement problems increases. According to the City of Oceanside Police Department, there have been numerous accounts of criminal activity within the subject mixed-use center over the last two years, including one incident at the proposed business.

The project is also located within 1,000 feet of sensitive land uses, including apartments within the same building and in the surrounding neighborhood, community resource centers, and three churches and a day care/preschool. In addition, the project site will negatively impact governmental programs of redevelopment, revitalization, or neighborhood preservation, particularly in regards to the revitalization efforts along Oceanside Boulevard. Based on the pre-existing conditions of the surrounding land uses and the known future revitalization plans for the area, staff does not support the issuance of a waiver of locational requirements.

ENVIRONMENTAL DETERMINATION

The proposed project is categorically exempt pursuant to Article 19 Categorical Exemptions, Section 15301 Existing Facilities, of the California Environmental Quality Act.

PUBLIC NOTIFICATION

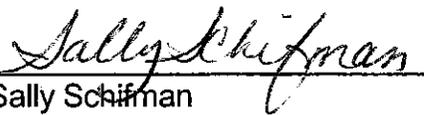
Legal notice was published in the North County Times and notices were sent to property owners of record within a 1000-foot radius of the subject property, individuals and or organizations requesting notification, applicant and other interested parties. As of November 13, 2007, no communication supporting or opposing the request has been received.

SUMMARY

The proposed Conditional Use Permit is not consistent with the requirements of the Oceanside Zoning Ordinance and the land use policies of the General Plan. The applicant has requested a waiver from the applicable locational requirements. Staff does not believe that the project meets the findings for the waiver. Therefore, staff recommends that the Planning Commission:

- Move to recommend that City Council deny Conditional Use Permit (C-23-07) and deny the waiver of the locational requirements and adopt Resolution No. 2007-P59.

PREPARED BY:


Sally Schifman
Planner II

SUBMITTED BY:


Jerry Hittleman
City Planner

JH/SS/fil

Attachments:

1. Tenant Improvement Plans
2. Planning Commission Resolution No. 2007-P59

