

STAFF REPORT



ITEM NO. 15
CITY OF OCEANSIDE

DATE: November 12, 2008

TO: Honorable Mayor and Members of the City Council

FROM: Development Services Department/Planning Division

SUBJECT: **ADOPTION OF A RESOLUTION CONFIRMING PLANNING COMMISSION RESOLUTION NO. 2008-P45 AND APPROVING CONDITIONAL USE PERMIT (C-21-08) FOR A REGULATED USE (MASSAGE ESTABLISHMENT) AND A WAIVER OF LOCATIONAL REQUIREMENTS FOR THE PROPOSED REGULATED USE LOCATED AT 1727-A OCEANSIDE BOULEVARD – OCEANSIDE HEALTH CLINIC -- APPLICANT: YAO YU WANG**

SYNOPSIS

The item under consideration is the adoption of a resolution confirming Planning Commission Resolution 2008-P45 and approving a Conditional Use Permit (C-21-08) 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 and adopt the attached resolution.

BACKGROUND

The public hearing and deliberations by the Planning Commission on the proposed use were held on August 25, 2008. The Commission recommended approval of the Conditional Use Permit and waiver of locational requirements by a 4-to-2 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.

History: The proposed project is located in an existing 1,000-square-foot suite that is part of the circa 1973 Oceanside Town and Country shopping center. The center has over 25 leasable units, including two large spaces for anchor tenants. The proposed business suite is 1727-A Oceanside Boulevard.

On February 8, 2006, Ms. Yao Yu Wang applied for a business license, describing the business as a "Massage Establishment". The application was denied by Planning Division staff on February 20, 2006, on the grounds that a Conditional Use Permit was necessary.

On March 22, 2006, Ms. Wang revised her business activities description to include holistic practitioner, shiatsu massage, acupressure therapy, reflexology, chair therapy, and herbal therapy. The application was approved by Planning Division staff on April 5, 2006, and the owner was informed that she would be required to maintain an active and valid Holistic Health Practitioner's license at all times per City Municipal Code Section 15.21.

On October 24, 2006, City staff (Business License, City Attorney, Code Enforcement, Planning, and Police) met to discuss the interpretation of the City Code regarding massage establishments. It was explained that any business conducting massage services is required to obtain a Conditional Use Permit. Only massage services offered by hospitals, nursing homes, sanitariums, or persons holding an unrevoked certificate to practice the healing arts under the laws of the State of California (or those under the direction of such facilities or persons) are exempt from this requirement.

In January 2008, it was determined that existing massage establishments that had been issued businesses' licenses in error would be required to apply for Conditional Use Permits. In February 2008, Ms. Wang was notified by Code Enforcement that a Conditional Use Permit would be required to continue her business activities.

On May 5, 2008, Ms. Wang submitted her application for a Conditional Use Permit for a massage establishment.

On August 25, 2008, Planning Commission moved to recommend approval of Conditional Use Permit (C-21-08) and the waiver of locational requirements and approved Planning Commission Resolution 2008-P45 by a vote of 4-to-2, with one Commissioner absent.

Project Description: The 1,000-square-foot massage facility would consist of an entryway and receptionist/waiting room, three (3) treatment rooms, a restroom, a shower facility, space for a washer and dryer, an office, and a utility room. The Oceanside Health Clinic is proposed to be open seven days a week, between the hours of 10:00 a.m. and 9:00 p.m. and would provide acupuncture, therapy massage, reflexology therapy, acupressure therapy, shiatsu therapy, and herbal prescription services. Seven hundred (700) public parking spaces are shared among the tenants of Oceanside Town and County shopping center.

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 C-21-08 represents a request for the following:

To permit the establishment of a massage business (regulated use) within a commercial center, pursuant to Article 36 of the Oceanside Zoning Ordinance (OZO); and

Waiver of locational requirements represents a request for the following:

To permit a waiver of locational requirements provided in Section 3604 for a regulated use, on the basis that the proposed massage business falls within 500 feet of a residential district.

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

This project is located in a CS-HO (Special Commercial – Highway Oriented District). Pursuant to the land use regulations of the CS-HO District, a massage establishment is classified as a regulated use and is subject to the approval of a Conditional Use Permit pursuant to Article 36 of the Oceanside Zoning Ordinance.

Article 36, Separation of Regulated Uses

Section 3602 classifies massage establishments 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.

Section 3604 requires that a massage establishment be located a minimum of 500 feet from any 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. A massage establishment must also be located a minimum of 1,000 feet from any other regulated use. Any person proposing a permitted regulated use may apply for a waiver of the locational requirements. No other permitted regulated uses are within 1,000 feet from the proposed massage establishment location.

The following table shows the distances between the proposed project and the closest sensitive uses:

USE	LOCATION	REQUIRED DISTANCE	APPROX. DISTANCE
Single-Family Residential	South of the site; north of Mountain View Avenue	500 feet	350 feet
Multi Family Residential	West of site; west of I-5	500 feet	400 feet

In reviewing the application for a waiver of locational requirements, the City Council 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.

The applicant has presented proof of valid permits, professional licenses, and educational degrees. The proposed business intends to provide a personal care service within an existing shopping center consisting of a variety of commercial businesses including retail shops, restaurants, and personal improvement services. The proposed massage establishment will not result in a concentration of adult-oriented uses as there are no known adult-oriented businesses within 1,000 feet of the proposed project site.

The following table lists specific land uses surrounding the proposed project:

LOCATION	ZONING	LAND USE
Subject Property – Oceanside Town and Country	Special Commercial – Highway Oriented (CS-HO)	Restaurants; Retail shops; Coin-operated Laundry; Personal Improvement Services; Personal Services; Business/Medical Offices; Pet Store; Video Rental store
North:	CS-HO; Open Space	Ralph’s shopping center; On-ramp to I-5 North
East:	Limited Industrial (IL)	Commercial; Light Industrial
South:	Single-Family Residential (RS)	Single-Family Residences
West:	Caltrans; Medium Density Residential (RM-A)	Interstate 5; Cavalier Mobile Estates

The majority of the businesses in the area are open seven days a week and offer services from nine or ten in the morning to eight or nine at night. Some of the businesses are open very early and do not close until late in the evening, including the restaurants and the Longs Drug Store. The proposed business operations would be consistent with the surrounding land uses predominantly engaged in personal improvement services.

The tenant space where the proposed business would be located is approximately 1,000 square feet in size. It has been determined that the proposed massage establishment will not negatively impact any governmental programs of redevelopment, revitalization, or neighborhood preservation. The proposed business would be situated in an established shopping center and any future development of the Oceanside Boulevard corridor will incorporate Oceanside Town and County Shopping Center and all of its tenants into future plans.

Conclusion: In summary, Planning Commission has determined that the proposed Conditional Use Permit is 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 and Planning Commission has determined that the project meets the findings for the waiver. As such, Planning Commission recommends approval of the Conditional Use Permit and waiver of locational requirements.

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 August 25, 2008. Public hearing notices were mailed to business and residential property owners and occupants within a 1,500-foot radius of the proposed operation. Staff received four emails in opposition to the proposed project. Staff received fourteen letters in support of the proposed project. Four members of the public spoke in opposition to the proposed project at the public hearing. Two of the speakers had previously submitted emails.

The Commission recommended approval of the Conditional Use Permit and waiver of locational requirements and adopted Planning Commission Resolution 2008-P45 on a vote of 4-to-2, with one Commissioner absent.

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, after affirming all of the required findings, the Council may grant a waiver of the applicable locational requirements.

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

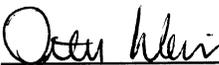
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PREPARED BY:



Sally Schifman
Planner II

SUBMITTED BY:



Peter A. Weiss
City Manager

REVIEWED BY:

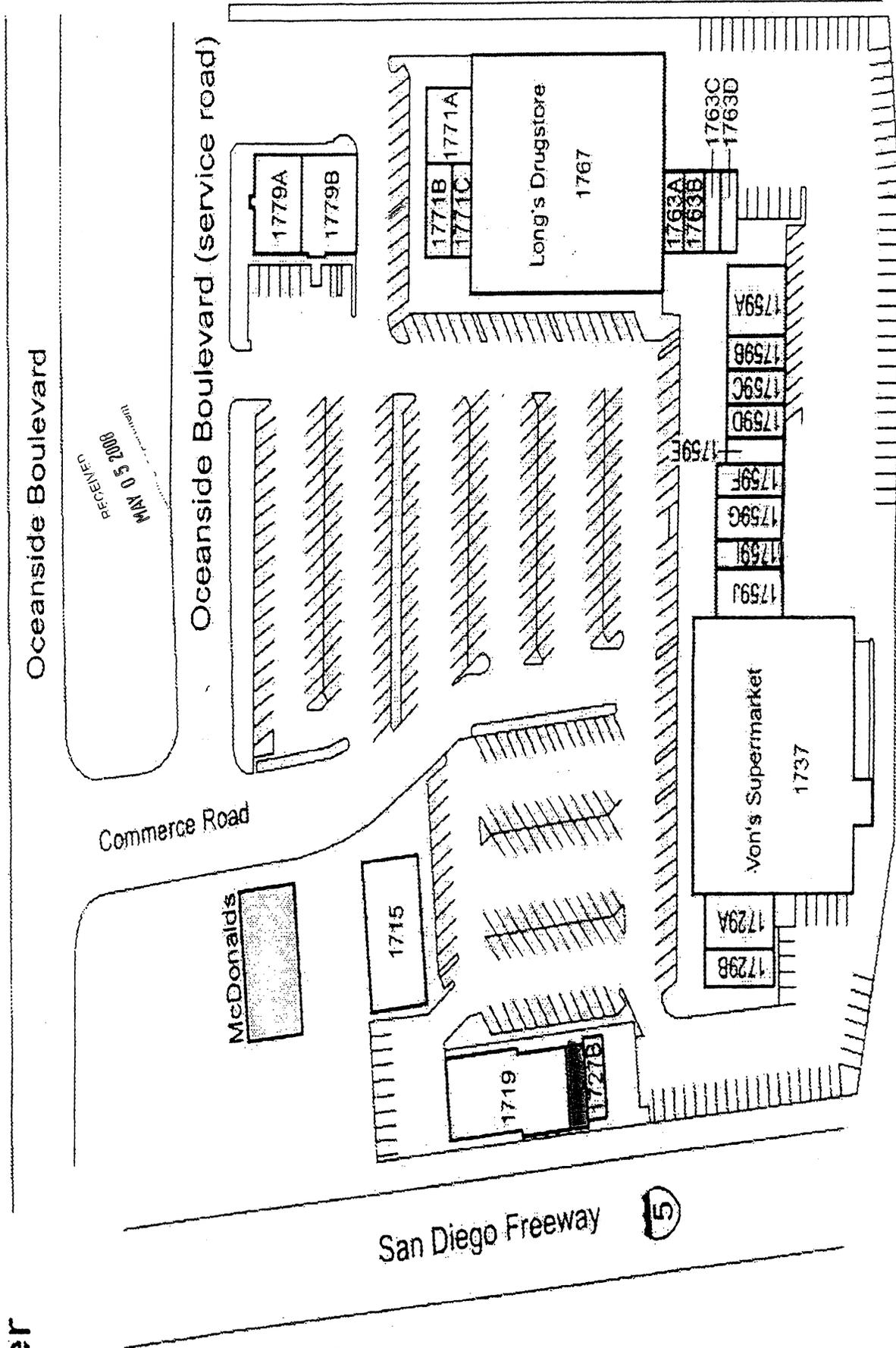
Michelle Skaggs Lawrence, Deputy City Manager
George Buell, Development Services Director
Jerry Hittleman, City Planner

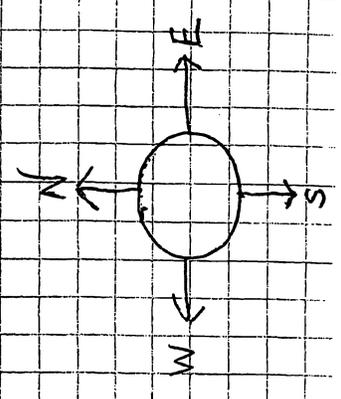
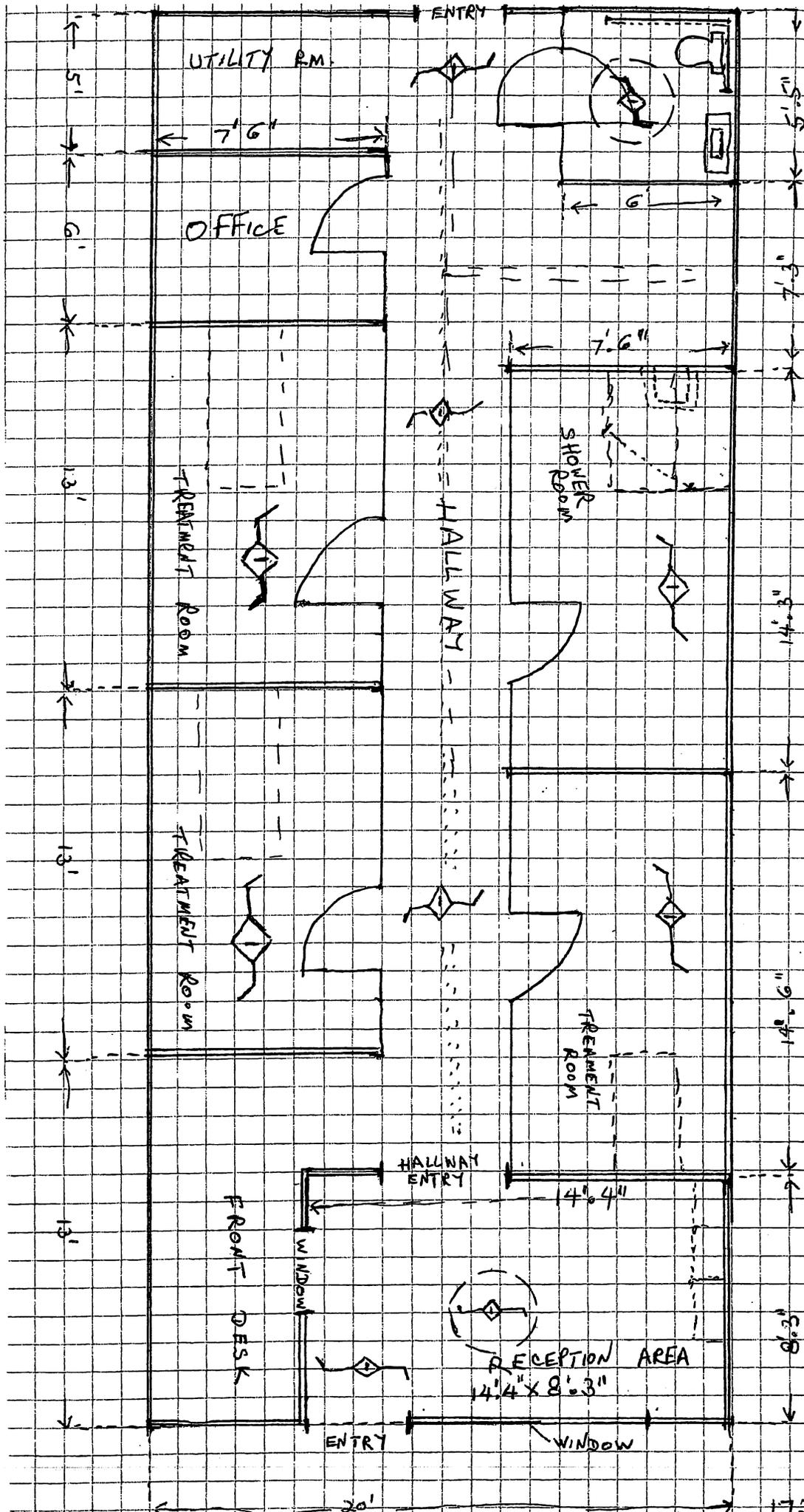


ATTACHMENTS:

1. Site Plans/Floor Plans
2. City Council Resolution
3. Planning Commission Resolution No. 2008-P45
4. Planning Commission Staff Report dated August 25, 2008
5. Correspondence

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RECEIVED
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 Planning Department

OCEAN HEALTH CLINIC
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2. The locational requirements for a "Massage Establishment" as set forth in Oceanside Zoning Ordinance Section 3604 are hereby waived pursuant to the enabling provisions of the Zoning Ordinance and based upon the findings contained within Planning Commission Resolution No. 2008-P45, attached hereto as Exhibit "B".

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

PASSED AND ADOPTED by the City Council of the City of Oceanside, California this 12th day of November, 2008 by the following vote:

- AYES:
- NAYS:
- ABSENT:
- ABSTAIN:

Mayor of the City of Oceanside

ATTEST:

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

City Clerk

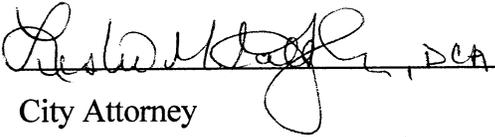

City Attorney

EXHIBIT A

SCHEDULE A

Policy Number: 248360CA26

Date of Policy: December 29, 2006, 2006 at 8:00 AM

1. Name of Insured:
PK II Oceanside Town & Country LP, a Delaware limited partnership
2. The estate or interest in the land which is covered by this policy is:
Fee Simple
3. Title to the estate or interest in the land is vested in:
PK II Oceanside Town & Country LP, a Delaware limited partnership
4. The land referred to in this policy is described as follows:
Real property in the City of Oceanside, County of San Diego, State of California, described as follows:

PARCELS 1, 2, 3, 4, 6 AND 7, INCLUSIVE, OF PARCEL MAP NO. 5579, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, BEING A PORTION OF TRACT 101 OF SOUTH OCEANSIDE, ACCORDING TO MAP THEREOF NO. 622, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.

EXHIBIT B

PLANNING COMMISSION
RESOLUTION NO. 2008-P45

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-21-08
APPLICANT: Yao Yu Wang
LOCATION: 1727A Oceanside Boulevard

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 massage establishment with a waiver of locational requirements for regulated land uses; on certain real property described in the project description.

WHEREAS, the Planning Commission, after giving the required notice, did on the 25th day of August, 2008 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:

FINDINGS:

For the Conditional Use Permit:

1. The proposed location of the use is in accord with the objectives of the Ordinance and the purposes of the district in which the site is located. The proposed massage services

1 are not contrary to the Zoning Ordinance objective for the CS-HO (Special Commercial-
2 Highway Oriented) zoning district and to the intent of Article 36 of the Zoning Ordinance.
3 The proposed operation is consistent with the General Plan Land Use Element objective for
4 the underlying Special Commercial land use designation affecting the property. The
5 proposed massage establishment will contribute to the balance of land uses in the
6 Oceanside Town and Country shopping center and surrounding commercial centers.

7 2. The proposed location of the conditional use and the proposed conditions under which it
8 would be operated or maintained will be consistent with the General Plan; will not be
9 detrimental to the public health, safety or welfare of persons residing or working in or
10 adjacent to the neighborhood of such use; and will not be detrimental to properties or
11 improvements in the vicinity or to the general welfare of the City. The proposed use is
12 subject to specific operational conditions that will cause the use to operate compatibly with
13 the surrounding land uses and it will not be detrimental to the general welfare of the City.
14 The only sensitive land uses in the vicinity are residential properties, which are sufficiently
15 separated from the proposed use by either Interstate 5 or a significant elevation difference.

16 3. The proposed conditional use will comply with the provisions of the Ordinance,
17 including any specific condition required for the proposed conditional use in the district
18 in which it would be located. The applicant will maintain all necessary permits and
19 professional licenses in good standing at all times. The proposed conditional use will not
20 comply with the regulated use locational requirements of the Ordinance. A massage
21 establishment must be located a minimum of 1,000 feet from any residential districts.
22 With the approval of the Waiver of Locational Requirements, the proposed project will
23 comply with this regulation.

24 For the Locational Waiver:

25 1. The massage establishment will not be contrary to the public interest. The applicant has
26 presented proof of valid permits, professional licenses, and educational degrees. The
27 proposed business intends to provide a personal care service to the surrounding
28 community.

29 2. The proposed massage establishment will not result in a concentration of adult-oriented
uses and will not be contrary to the spirit or intent of Article 36. No known adult-
oriented businesses are within 1000 feet of the proposed project site.

- 1 3. The proposed project will not impair nearby property or the integrity of the underlying
2 district. The proposed massage establishment business would be part of an existing
3 shopping center consisting of a variety of commercial businesses including retail shops,
4 restaurants, and personal improvement services.
- 5 4. The proposed project will not encourage the development of an adult entertainment area
6 or otherwise promote community blight. There are no known regulated uses within 1,000
7 feet of the proposed project site. The addition of a massage establishment within the
8 Oceanside Town and County shopping center will not result in an adult entertainment
9 area.
- 10 5. The proposed project site is 1000 square feet. Individually it will not negatively impact
11 any governmental programs of redevelopment, revitalization, or neighborhood
12 preservation. The proposed business would be situated in an established shopping
13 center. Any future development of the Oceanside Boulevard corridor will need to
14 incorporate Oceanside Town and County Shopping Center and all of its tenants into
15 design ideas.

16 NOW, THEREFORE, BE IT RESOLVED that the Planning Commission does hereby
17 recommend approval of Conditional Use Permit (C-21-08) and waiver of applicable locational
18 requirements subject to the following conditions:

19 **Planning:**

- 20 1. This Conditional Use Permit (C-21-08) and waiver of Regulated Use Locational
21 Requirements are limited to a massage establishment comprising approximately 1,000
22 square feet of floor area.
- 23 2. A covenant or other recordable document approved by the City Attorney shall be
24 prepared by the applicant and recorded within 45 days from the date of project approval.
25 The covenant shall provide that the property is subject to this resolution, and shall
26 generally list the conditions of approval.
- 27 3. This Conditional Use Permit does not apply to any services or activities of an illicit
28 sexual nature. Any evidentiary material pertaining to on-site or off-site acts of
29 prostitution, or other acts of sexual conduct associated with the existence of this
business, its proprietorship, its employees or clientele, shall be grounds for the
institution of revocation proceedings of the Conditional Use Permit.

- 1 4. This 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 assumptions made by the application.
- 4 5. Prior to the transfer of ownership and/or operation of the site the owner shall provide a
5 written copy of the applications, staff report and resolutions for the project to the new
6 owner and or operator. This notification's provision shall run with the life of the project
7 and shall be recorded as a covenant or other recordable document approved by the City
8 Attorney on the property.
- 9 6. Unless expressly waived, all current zoning standards and City ordinances and policies in
10 effect at the time improvement permits are issued are required to be met by this project.
11 The approval of this project constitutes the applicant's agreement with all statements in the
12 Description and Justification and other materials and information submitted with this
13 application, unless specifically waived by an adopted condition of approval.
- 14 7. The applicant, permittee or any successor-in-interest shall defend, indemnify and hold
15 harmless the City of Oceanside, its agents, officers or employees from any claim, action or
16 proceeding against the City, its agents, officers, or employees to attack, set aside, void or
17 annul an approval of the City, concerning Conditional Use Permit (C-21-08). The City
18 will promptly notify the applicant of any such claim, action or proceeding against the
19 City and will cooperate fully in the defense. If the City fails to promptly notify the
20 applicant of any such claim action or proceeding or fails to cooperate fully in the
21 defense, the applicant shall not, thereafter, be responsible to defend, indemnify or hold
22 harmless the City.
- 23 8. The hours-of-operation shall be limited from 10:00 a.m. to 9:00 p.m. Monday through
24 Sunday. These hours can be limited further by the Planning Commission upon review of
25 any valid issues or complaints pertaining to the hours-of-operation.
- 26 9. No neon signage shall be permitted, except for one "Open" sign. No window signage that
27 exclusively advertises massage shall be permitted.
- 28 10. No signage visible from the public right-of-way, including a side-walk sign, shall include
29 the word "massage" at any time.

1 11. No more than 50 percent of the frontage windows and door shall be covered with window
2 treatments including, but not limited to curtains, drapes, and blinds, during hours of
3 operation.

4 **Police:**

5 12. A list of services and the cost of such services shall be posted in a conspicuous place on
6 the premises at all times.

7 13. All persons providing massage shall be fully clothed in hygienically clean apparel while
8 engaged in the practice of massage. As used herein, "fully clothed" shall mean the
9 wearing of clothing which is comparable to the clothing commonly worn by nurses and
10 physically therapists while performing their respective professional duties.

11 14. All persons engaged in the practice of massage shall have a valid business license issued
12 by the City of Oceanside, as well as a permit to practice massage issued by the
13 Oceanside Police Department.

14 15. Permits issued by the Oceanside Police Department shall be valid for one (1) year from
15 the date of issuance and shall be renewed annually.

16 16. The business shall display the massage business license and a copy of the license and/or
17 permit for each person providing massage services at all times.

18 17. All persons engaged in the practice of massage shall have successfully completed a
19 minimum of one thousand (1,000) hours of instruction in the art of massage provided by
20 a recognized school or institute of learning which offers a course in instruction approved
21 by the State of California Office of Private Postsecondary Education or comparable out-
22 of-state agency, which shall include anatomy, physiology and hygiene, massage theory
23 and history, ethics of massage and business practices.

24 18. All persons engaged in the practice of massage shall not have been convicted of any of
25 the following offenses:

26 a) Any offense involving lewd conduct or an offense involving the use of force or
27 violence upon the person of another; or,

28 b) Any offense described in California Penal Code sections 266h, 266i, 311 through
29 311.7, 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 offenses, including Penal Code section 415, in satisfaction of, or as a substitute for, an original charge or any of the offenses listed above.

19. The business operator shall provide clean and sanitary towels, sheets and linens for each patron. 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 or 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 linens" and "soiled linens".

20. Separate lockers shall be provided for patrons.

21. All exterior doors shall be unlocked from the interior during business hours.

PASSED and ADOPTED Resolution No. 2008-P45 on August 25, 2008 by the following vote, to wit:

- AYES: Balma, Neal, Martinek and Parker
- NAYS: Troisi, Rosales
- ABSENT: Bertheaud
- ABSTAIN: None



Claudia Troisi, Chairperson
Oceanside Planning Commission

ATTEST:


Jerry Hittleman, Secretary

I, JERRY HITTLEMAN, Secretary of the Oceanside Planning Commission, hereby certify that this is a true and correct copy of Resolution No. 2008-P45.

Dated: August 25, 2008



DATE: August 25, 2008

TO: Chairperson and Members of the Planning Commission

FROM: Development Services Department/Planning Division

SUBJECT: **CONSIDERATION OF A CONDITIONAL USE PERMIT (C-21-08) TO PERMIT A REGULATED USE (MESSAGE ESTABLISHMENT) AND A WAIVER OF LOCATIONAL REQUIREMENTS FOR THE SUBJECT REGULATED USE LOCATED AT 1727A OCEANSIDE BOULEVARD WITHIN THE FIRE MOUNTAIN NEIGHBORHOOD. – OCEANSIDE HEALTH CLINIC – APPLICANT: YAO YU WANG**

RECOMMENDATION

Staff recommends that the Planning Commission by motion:

- (1) Recommend that City Council approve Conditional Use Permit (C-21-08); and,
- (2) Recommend that City Council approve 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. 2008-P45 with findings attached herein.

PROJECT DESCRIPTION AND BACKGROUND

Background: The proposed project is located in an existing 1,000-square foot suite that is part of the circa 1973 Oceanside Town and Country shopping center. The center has over 25 leasable units, including two large spaces for anchor tenants. The proposed business suite is 1727A Oceanside Boulevard.

Site Review: The zoning designation for the site is CS-HO (Special Commercial – Highway Oriented District) and the General Plan Land Use Category is SC (Special Commercial). Surrounding land uses include commercial properties to the north and east, single-family residences to the south, and Interstate 5 to the west.

Project Description: The 1,000-square foot massage facility would consist of an entryway and receptionist/waiting room, three (3) treatment rooms, a restroom, a shower facility, space for a washer and dryer, an office, and a utility room. The Oceanside Health Clinic is proposed to be open seven days a week, between the hours of 10:00 a.m. and 9:00 p.m. and would provide acupuncture, therapy massage, reflexology therapy, acupressure therapy, shiatsu therapy, and herbal prescription services. Seven hundred (700) public parking spaces are shared among the tenants of Oceanside Town and County shopping center.

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 C-21-08 represents a request for the following:

- (a) To permit the establishment of a massage business (regulated use) within a commercial center, pursuant to Article 36 of the Oceanside Zoning Ordinance (OZO); and

Waiver of locational requirements represents a request for the following:

- (a) To permit a waiver of locational requirements provided in Section 3604 for a regulated use, on the basis that the proposed massage business falls within 500 feet of a residential district.

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

1. General Plan Land Use Element
2. Zoning Ordinance
3. California Environmental Quality Act (CEQA)

ANALYSIS

KEY PLANNING ISSUES

1. General Plan conformance

The General Plan Land Use Map designation on the subject property is SC (Special Commercial). The proposed project is consistent with the goals and objectives of the City's General Plan as follows:

I. Community Enhancement

Goal: The consistent, significant, long term preservation and improvement of the environment, values, aesthetics, character and image of Oceanside as a safe, attractive, desirable and well-balanced community.

Section 1.1 Community Values

Objective: To ensure the enhancement of long term community and neighborhood values through effective land use planning.

Policy B: Land uses shall not significantly distract from nor negatively impact surrounding conforming land uses.

The proposed business intends to provide personal care services within an existing shopping center consisting of a variety of commercial services/businesses surround the project site including restaurants, retail shops, personal services, and business and medical offices. The proposed massage establishment will not result in a concentration of adult-oriented uses as there are no known adult-oriented businesses within 1,000 feet of the proposed project site. The addition of massage services to the Town and Country shopping center would not negatively impact existing commercial development because it will provide a personal service to the surrounding neighborhood.

2. Zoning Compliance

This project is located in a CS-HO (Special Commercial – Highway Oriented District). Pursuant to the land use regulations of the CS-HO District, a massage establishment is classified as a regulated use and is subject to the approval of a Conditional Use Permit pursuant to Article 36 of the Oceanside Zoning Ordinance.

Article 36, Separation of Regulated Uses

Section 3602 classifies massage establishments 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.

Section 3604 requires that a massage establishment be located a minimum of 500 feet from any 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. A massage establishment must also be located a minimum of 1,000 feet from any other regulated use. Any person proposing a permitted regulated use may apply for a waiver of the locational requirements. No other permitted regulated uses are within 1,000 feet from the proposed massage establishment location.

The following table shows the distances between the proposed project and the closest sensitive uses:

USE	LOCATION	REQUIRED DISTANCE	APPROX. DISTANCE
Single Family Residential	South of the site; north of Mountain View Avenue	500 feet	350 feet
Multi-Family Residential	West of site; west of I-5	500 feet	400 feet

DISCUSSION

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.

The applicant has presented proof of valid permits, professional licenses, and educational degrees. The proposed business intends to provide a personal care service within an existing shopping center consisting of a variety of commercial businesses including retail shops, restaurants, and personal improvement services. The proposed massage establishment will not result in a concentration of adult-oriented uses as there are no known adult-oriented businesses within 1,000 feet of the proposed project site.

The tenant space where the proposed business would be located is approximately 1,000 square feet in size. It has been determined that the proposed massage establishment will not negatively impact any governmental programs of redevelopment, revitalization, or neighborhood preservation. The proposed business would be situated in an established shopping center and any future development of the Oceanside Boulevard corridor will incorporate Oceanside Town and County Shopping Center and all of its tenants into future plans.

Issue: Project compatibility with existing surrounding development.

Recommendation:

The proposed business intends to provide massage services within an existing shopping center consisting of a variety of commercial businesses including retail shops, restaurants, and personal improvement services. The proposed massage establishment will not result in a concentration of adult-oriented uses as there are no known adult-oriented businesses within 1,000 feet of the proposed project site. The following table lists specific land uses surrounding the proposed project:

LOCATION	ZONING	LAND USE
Subject Property – Oceanside Town and Country	Special Commercial – Highway Oriented (CS-HO)	Restaurants; Retail shops; Coin-operated Laundry; Personal Improvement Services; Personal Services; Business/Medical Offices; Pet Store; Video Rental store
North:	CS-HO; Open Space	Ralph’s shopping center; On-ramp to I-5 North
East:	Limited Industrial (IL)	Commercial; Light Industrial
South:	Single-Family Residential (RS)	Single-Family Residences
West:	Caltrans; Medium Density Residential (RM-A)	Interstate 5; Cavalier Mobile Estates

The majority of the businesses are open seven days a week and offer services from nine or ten in the morning to eight or nine at night. Some of the businesses are open very early and do not close until late in the evening, including the restaurants and the Longs Drug Store. The proposed business operations would be consistent with the surrounding land uses predominantly engaged in personal improvement services.

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 1500-foot radius of the subject property, individuals and or organizations requesting notification, applicant and other interested parties. No communication supporting or opposing the project was received as of August 18, 2008.

SUMMARY

In summary, staff has determined that the proposed Conditional Use Permit is 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 and staff has determined that the project meets the findings for the waiver. As such, staff recommends approval of the Conditional Use Permit and waiver of locational requirements and recommends that the Planning Commission:

- Move to recommend that City Council approve Conditional Use Permit (C-21-08) and approve the waiver of the locational requirements and adopt Planning Commission Resolution No. 2008-P45 as attached.

PREPARED BY:


Sally Schifman
Planner II

SUBMITTED BY:


Jerry Hittleman
City Planner

REVIEWED BY: 
Richard Greenbauer, Senior Planner

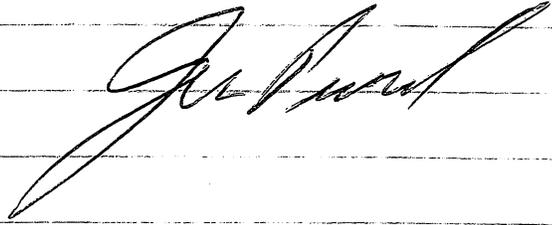
JH/SS/fil

Attachments:

1. Existing Site Plan and Interior Floor Plan
2. Planning Commission Resolution No. 2008-P45
3. Applicant's credentials, licenses, and permits
4. Oceanside Health Clinic list of services

9-19-08

I HAVE BEEN COMING TO OCEAN CURRIC
FOR SEVERAL MONTHS. I FIND THEM
TO BE VERY PROFESSIONAL AND HAVE
HELPED ME RELEASE PAIN AND
DISTRESS IN MY LEGS AND BACK



JIM PICKARD
4761 WESTRIDGE DRIVE
OCEANSIDE, CA 92056
760-945-9027

7-25-08

- I come to Occaui
for Pcia in my legs
& it is helpful. - I feel
better after.

Royce

I have received
excellent care at
The Ocean Clinic. All of
The Therapists are very
Professional and are helpful
with any injury stretching
Having had a mountain
bike accident, it is very
convenient for this service!

7/22/08

James Wetzel

8-23-2008

I HAVE COME TO THE OCEAN CLIN FOR THE THERAPEUTIC MASSAGES ON SEVERAL OCCASIONS, PARTICULARLY AFTER LENGTHY AND STRESSFUL COMMUTES FROM L.A. THE MASSAGES PROVIDED ARE RELAXING AND STRESS RELIEVING AND PROVIDE LONG TERM RELIEF FROM MUSCLE AND BACK PAIN. THEREBY IMPROVING MY SLEEP PATTERNS.


T. G. SMITH

Aug 21 2008

I've have a bad Back for
25 years now. To be able to
come and a masage is one of
the few thing Tha Help

Jeff Killerman
1513 California Street
Oceanside CA 92054

8-20-08

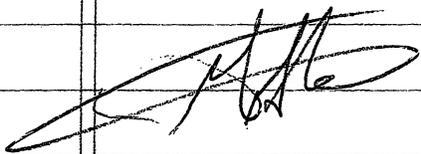
TO WHOM IT MAY CONCERN

I HAVE BEEN A CUSTOMER OF THIS BUSINESS OCEAN CLINE FOR 2 YEARS.

ALL OF MY VISITS HAVE BEEN VERY PLEASANT + PROFESSIONAL. ESHA MASSAGE HAS BEEN REFRESHING + THERAPEUTIC.

IF ANY ESTABLISHMENT IS WORTHY OF A LICENSE - THIS ONE IS!!!

REGARDS



GARY TATE

818 MISSION AVE.

OCEANSIDE, CA.

8-20-08

I have the best luck with
Ocean Clinic.

Suffered injury on my back
many years ago.

Chiropratic did not work. until
I found Ocean Clinic

In three visits that I had with
Ocean Clinic my pain was gone.
I have much Relief on my body.

No Stress!

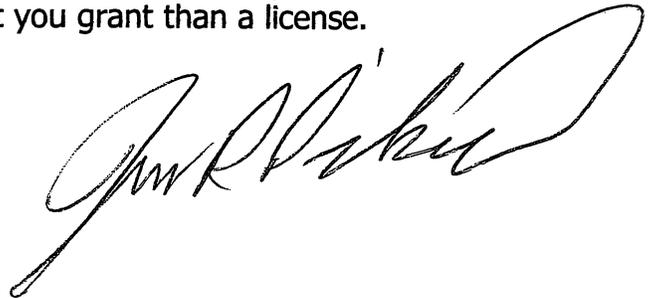
I would Recommend Ocean Clinic
stay in business a long time

Mike Mojica
4104 Jonathan ST
Oceanside Ca.
92056

Jim Pickard
4761 Westridge Drive
Oceanside, CA 92056-3003
760-945-9027
jimpickard@cox.net

August 19, 2008

I have been going to the Ocean Clinic 1727 A Oceanside Blvd for several months. Their staff of massage therapists are professional, pleasant and knowledgeable. I have physical disabilities and the staff truly cares about my needs and adjust their therapies to accommodate my special needs. The treatments I have received there have greatly reduced the amount of pain I was suffering and has increased the flexibility in my joints immensely. The facilities are clean and their rates are reasonable. Your never rushed and they are open late. I highly recommend that you grant than a license.

A handwritten signature in black ink, appearing to read "Jim Pickard", written in a cursive style.

To City Council of Oceanside
and Mayor

Please approve a
massage and acupuncture
permit for Oceanside
Clinic, 01727A Oceanside
Blvd.

I use their services
about once a month
and I am very satisfied
with their therapists and
massage services.

Sincerely
D. J. Dwyer 8-18-2008
Vista, CA

8-21-08

I HAVE COME TO OCEAN CHIRIC
FOR RELIEF OF LOWER BACK
PAIN, MASSAGE IS VERY HELPFUL
TO MY DAILY ACTIVITIES &
HELPS ME WORK COMFORTLY

LEONARD MANTWER

20 Aug 08

I Gray Collins Have been coming to
get massage for the last 6 wks, Because
of Pain in my Shoulder from sleep wrong
And since come & getting a massage at
least one a week my Neck has gotten
Better, Since coming to the Ocean Clinic
is safe & Clean I plan coming here
Please Consider Renewing there License

Thank you
Gray Collins

August 18 2008.

I came to the ocean clinic for a massage, after one hour my headaches was gone, and my body was so much relax.

It's was my first time and this massage was so relaxing and all my stress was gone.

Jean Luc Bournil

2814 Via Topaze
Carlsbad CA 92010

(1760) 845-4626

8/24/08

I have been a customer Ocean Clinic For
quite some time. I have had back pain
for a while and have recieved relief
from my visits temporarily and also
shoulder pain. The therapists are very
nice and also professional

Ray Throug

Please grant a permit to Ocean
therapy. ~~They~~ They provide a necessary
service and never anything in my
two years have been inappropriate or
illegal.

Thank you
D. J. [Signature]

Sally Schifman

From: d-mcginty [d-mcginty@cox.net]
Sent: Thursday, August 21, 2008 9:55 AM
To: Sally Schifman
Cc: Barbara Riegel Wayne; ctroisi@msn.com; City Council
Subject: Item # 4, Planning Commission Agenda, Aug. 25, 08

Dear Chairwoman Troisi and Fellow Commissioners:

Item #4 on your Agenda for August 25, 2008 for CUP to permit a regulated use (massage establishment) and waiver of location requirements for the location at 1727A Oceanside Boulevard, being applied for by Oceanside Health Clinic applicant Yao Yu Want.

This location has been open for business for many months already. I have complained about the business to Code Enforcement and now this man is going through the steps to gain a license for this location. Planner Schifman is recommending the adoption of the resolution for CUP and for the Planning Commission to approve the project.

I personally visited this location. They did not have a proper business license. One can not see through the front windows. The lady at the counter barely spoke English and said no one was there who did. This establishment is in the practice of hanging laundry out to dry on the chain link fence behind the location, including towels and personal clothing. Even though they were told that could not be the case, as recent as August 17th the laundry is still out to dry.

This is a very dark, ominous entrance inside the reception area with a very small space for customers. There is no licensing or certification displayed for Public view.

As the City Council has adopted the Plan to revitalize this neighborhood corridor to create a family friendly, walkable, livable, economically sustainable area (unanimously adopted by the City Council in November 2007, http://www.ci.oceanside.ca.us/pdf/OBTF_finalreport.pdf)

I do not agree with Staff that this business will "enhance our community." The Vision Plan adopted by the City Council does not include this type of business in this neighborhood. Principle 7 of the Corridor Plan makes a priority principle to be selective about recruiting new business to fit the social vision established by the Task Force study and input from the many neighborhoods who participated in the "Plan" for the corridor. The very fact that this business is drying towels used by customers on the chain link fence behind the location violates City and State Health Codes.

If you are not friendly to this standard of business practice in your own neighborhood, I urge you to vote against this CUP applicant and demand the doors of this illegitimately operating establishment be closed. Approving this businesses application with a CUP will set a precedent for other unsavory types of business to locate in this corridor. There is another massage parlor operating without proper permits in the shopping center East of Boney's on Oceanside Boulevard probably waiting to see if this one gets a CUP to operate and then will come through Planning for the same thing. Code Enforcement was notified about this one as well.

Thank you,
Donna McGinty
2405 Mesa Drive
Oceanside, CA 92054

Sally Schifman

From: nadia550@sbcglobal.net
Sent: Wednesday, August 20, 2008 5:27 PM
To: Sally Schifman
Cc: Barbara Riegel Wayne; Claudia Troisi
Subject: Massage Parlor Item #4

Dear Chairwoman Troisi, (CC to City Clerk for the record, Public Notice Request & to Planner Schifman)

I must register my opposition to the proposed Conditional Use Permit and Locational Waiver for the Wang Massage Parlor to be located in the Von's center on Oceanside Boulevard and I-5. I urge a NO vote.

I do not agree with staff's finding that such an establishment 'enhances our community', our 'community values' and does not interfere with any government plans that have been adopted. This project approval must fail on all three bases.

As you know many citizens, including myself and over 200 of the neighbors in the immediate area, met over the course of several months and developed the Oceanside Boulevard Corridor Task Force Plan. This Plan speaks volumes about *revitalization of this neighborhood* corridor. In fact that was the whole point- to create a family friendly, walkable, livable economically sustainable and attractive area . This Plan was unanimously adopted by the City Council November, 2007.
http://www.ci.oceanside.ca.us/pdf/OBTF_finalreport.pdf

I'd like to remind you that one of the most important principles adopted was to 'transform the Oceanside Boulevard Corridor into a beautiful, vibrant, neighborhood friendly" place. (Principle 2) I know of no neighborhood that finds a massage parlor to be an enhancement to their neighborhood nor is such a business 'neighborhood friendly.' This will be within 500 feet of Cavalier Mobile Estates and will be in the first shopping center one sees when entering at the Oceanside Boulevard Gateway. The gateway is really trashy enough considering the chain link fence that NCTD put up for the Sprinter. I know that I wouldn't get out of my car after seeing that and a massage parlor.

If you want to leave people with the image of low class neighborhoods, then these are the types of businesses that should go in. I do not agree with that and strongly suggest that you think of the future of this Corridor and what it could become: a lovely place with shopping and services that benefits residents and contributes good paying jobs to the economy. Massage parlors aren't what any of us had in mind!

The PLAN also makes a priority principle to recruit new businesses that better fit with the neighborhood's social vision for the corridor. (Principle 7) Our neighborhood spoke loud and clear about not wanting any more liquor stores, social services, massage parlors, check cashing places, etc.

Please respect the wishes and desires of the PLAN and the surrounding hundreds upon hundreds of citizens.

I'd also like to add I have personally gone by this business dozens of times and seen laundry and other junk behind the business, adjacent to the Loma Alta Creek drainage area and clearly visible from the freeway. I have photographs documenting this. I witnessed this behavior as recently as Sunday, August

17th. It disgusts me to see someone hanging out laundry at this location.

Frankly this does not appear to be a very legitimate business. Why is one of the rooms complete with a shower? That is very irregular. This is NOT the kind of business we need to revitalize the area. It does not include other spa-like services like facials, hair styling, etc.

I strongly urge you to vote NO. You have the easy option to simply say NO to the CUP and a waiver. You should not grant either.

I request that I be put on the public notice list for all subsequent documents related to this application.

Nadine L Scott

550 Hoover St.

Oceanside, CA 92054

760-757-6685

Think with Kindness

The test of courage comes when we are in the minority.
The test of tolerance comes when we are in the majority.

Ralph W. Sockman

Sally Schifman

From: Kratcoski, Rick [rkratcoski@palomar.edu]
Sent: Thursday, August 21, 2008 11:07 AM
To: George Buell
Subject: RE: Massage Parlor Item #4

As a member and organizer of Loma Alta Mission Park, I have to concur with Nadine Scott's e-mail and would like to add that this is the first time our group has heard about this project. I feel the applicant should do a presentation to all groups OCNA,LANA,LAMP and Fire Mountain groups before this is presented to the planning commission. It seems that the planning department has missed a few loops on this process like the neighborhoods buy in to a massage parlor.

I too would suggest pulling this from the planning commission Aug 25 calendar until all local groups have had a presentation from the applicant. We do not know what type of massage parlor this person plans and it subsequent problems to our neighborhoods.

From: nadia550@sbcglobal.net [mailto:nadia550@sbcglobal.net]
Sent: Wednesday, August 20, 2008 5:27 PM
To: Sally Schifman
Cc: bwayne@ci.oceanside.ca.us; Claudia Troisi
Subject: Massage Parlor Item #4

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Nadine L Scott
550 Hoover St.
Oceanside, CA 92054
760-757-6685
Think with Kindness

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The test of tolerance comes when we are in the majority.

Ralph W. Sockman

Sally Schifman

From: Kratcoski, Rick [rkratcoski@palomar.edu]
Sent: Thursday, August 21, 2008 11:29 AM
To: George Buell
Subject: FW: Planning Commission Item number 4

George , I received this e-mail from Jimmy Knott 111 and agree the Planning Dept is pushing this through with a lot of unanswered questions. There was an Oceanside Blvd Vision and we did not foresee massage parlors in the Vons Shopping area. If this project belongs anywhere on the boulevard area it should be at the new medical building they are building on Crouch. Here we go again with our mish mash throw anything anywhere philosophy that Oceanside is so well known . Again let the neighborhood groups have a presentation from Mr. Wang.

From: Jimmy Knott III [mailto:jhk3@cox.net]
Sent: Thursday, August 21, 2008 10:37 AM
To: ctroisi@msn.com
Cc: Oside City Clerk Barbara Wayne; jhittleman@ci.oceanside.ca.us; jhittleman@ci.oceanside.ca.us
Subject: Planning Commission Item number 4

Good morning Chairman Troisi,

I was informed about an item, # 4 the Wang Health Clinic, on your agenda for August 25th Planning Commission meeting that may be of concern as I sat on the Oceanside Blvd Redevelopment-Visioning Committee. So I accessed the Item and found it quite interesting, confusing and misleading as well as leaving a lot of questionable doors open that need to be shut, sealed and or removed.

1) the Name of the facility is misleading, it is not a "Health Clinic" and if people read this title they would be mistaken as to what services would be offered there. This facility is as far as I can ascertain a message parlor, acupuncture clinic, and alternate oriental medicines provider – traditional, herbal and natural. This title Health Clinic would confuse people to believe it would be a place for them to go for medical assistance or other forms of medical advise. Which obviously would or could not provide, thus is misleading and confusing. So a name change is necessary.

2) I did not see anywhere in the documentation or charge list where they would be receiving medical referrals and there would be no charge for this or there is an Workman's Comp system pay-back or insurance component and this is a red flag issue for these type of establishments. In the operators background has there been any prior prohibition by any authority from receiving any qualified medical referrals? If so this needs to be investigated and disclosed. (I have independently investigated the University this operator has received the degree from and the South Baylo University is an Accredited university in fact has been investigated by both the state and federal authorities and the accreditation institution mandated changes in their institution and they complied. So if the name on the degree is valid I have no problem with the person's background educationally). But has there been an business and medical profile background been done on this person and their staff?

3) I did not see where Therapeutic Massage would be rendered at this establishment and this is required under our city code and it has specific meanings and an educational background requirement for this operators license. The business lists a number of different types of messages in their panoply of offerings and charges but it does not define what is to be expected with each type of message. This is quite interesting.....we don't want unexpected activities to take place or say people show up with unrealistic anticipations as this could cause trouble.

4) Many HMO's/PPO's have sub-contracted Therapeutic message and Acupuncture Clinics. Where are their association lists or is there an application of file? This is another red flag.

5) I did not see in the documentation of any long term goal or any business plan and is another red flag, exactly where does this business see it self in say 10 years? This question is very important for the long term development of the Oceanside Blvd. Corridor and any development, redevelopment or in-coming business along this segment of Oceanside Blvd. Should be asked this question so the planning Commission as part of the inheritors of our exhaustively public process that came up with the guidelines for redeveloping Oceanside Blvd could ascertain if the proposal fits into the Vision or not. Staff may have their opinion but they aren't the public whose city this corridor belongs to, staff merely responds to the public, advise from the those provided the authority to give advise like your Commission and their own managers.

This proposal needs to go back and be reworked at minimum. There are a lot of unanswered questions and the

locale, is this part of a medical center grouping for the convenience of the public or is it separate, distinct and out of place?

I support alternative health options as they have a place in health care but I also believe in being transparent as possible and providing the best service to the public as possible. The public spoke during the Oceanside Blvd. Visioning process, any business or development that comes along on this blvd must fit into this plan. I did not see this matrix in staff presentation for you to consider only simple allusions. Maybe the Planning commission should ask that a sub-committee from this Visioning committee be consulted by staff for any development that comes along on Oceanside Blvd to assist you and they should sign off before it reaches you, it could help speed up this process as we sacrificed over a year of our lives to come up with this plan and know the background issues and what the public wants and demands and what the city council gave their final approval to.

Thank You,

Jimmy Knott III

Oceanside Blvd. Visioning Committee Member