

STAFF REPORT



ITEM NO. 12
CITY OF OCEANSIDE

DATE: May 2, 2007

TO: Honorable Mayor and Members of the City Council

FROM: Community Development Department/Planning Division

SUBJECT: **ADOPTION OF A RESOLUTION OVERTURNING PLANNING COMMISSION RESOLUTION NO. 2007-P14 AND DENYING CONDITIONAL USE PERMIT (C-55-06) AND REGULAR COASTAL PERMIT (RC-3-07) FOR A REGULATED USE (MASSAGE ESTABLISHMENT) COMPONENT TO A DAY SPA, AND A WAIVER OF LOCATIONAL REQUIREMENTS FOR THE PROPOSED REGULATED USE LOCATED AT 417 SOUTH COAST HIGHWAY – GOLDEN DAY SPA -- APPLICANT: TIANNA J. MARTIN**

SYNOPSIS

The item under consideration is the adoption of a resolution overturning Planning Commission Resolution 2007-P14 and denying a Conditional Use Permit (C-55-06) and Regular Coastal Permit (RC-3-07) for massage services as a component of a day spa business. 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 Regular Coastal Permit and grant the waiver of locational requirements. Staff recommends that the Council overturn the Planning Commission Resolution and deny the Conditional Use Permit, Regular Coastal 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 March 12, 2007. The Commission recommended approval of the Conditional Use Permit, Regular Coastal Permit and waiver of locational requirements by a 6-to-1 vote.

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: In February 2006, a building permit request for tenant improvements was submitted to the City by the applicant. Planning Division staff gave Planning approval for the issuance of building permits over the counter.

On February 26, 2006, Ms. Tianna Martin applied for her business license. The business was classified as a Personal Improvement Service, and the application was given approval by Planning Division staff on March 6, 2006. The business activities description included therapeutic massage, reflexology, skin care, and acupuncture. The owner, Ms. Martin, 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.

In July 2006, final building inspections were conducted at the Golden Day Spa located at 417 South Coast Highway.

On October 5, 2006, the Golden Day Spa business license was issued.

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.

As a result of the October 24, 2006 meeting, Ms. Martin was not able to hire any massage therapists to provide the Golden Day Spa services without applying for a Conditional Use Permit. On November 15, 2006, Ms. Martin submitted her application for a Conditional Use Permit for massage services at her day spa. The subject property is located within the non-appealable coastal zone and a Regular Coastal Permit was included as part of the discretionary review process.

On March 12, 2007, Planning Commission moved to recommend approval of Conditional Use Permit (C-55-06), Regular Coastal Permit (RC-3-07), and the waiver of locational requirements by a vote of 6-to-1. Planning Commission Resolution 2007-P14 was adopted with changes on March 26, 2007 by a vote of 7-to-0.

Project Description: The layout of the Golden Day Spa includes an entryway and receptionist/waiting room, six (6) rooms for conducting spa services, a restroom, a shower facility, and space for a washer and dryer. The building shares parking with eight other building tenants. The other tenants include a sports card shop, an insurance office, a check cashing business, a tattoo parlor, a temporary employment office, a casino dealer school, a hair salon, and a retail surfboard shop. Public parking is off-street, either behind or adjacent to the building, or along Coast Highway and Washington Street.

The Golden Day Spa is proposed to be open seven days a week, between the hours of 9:00 a.m. and 8:00 p.m. and to provide skin care, reflexology, acupressure and massage services. The proposed massage services will constitute the predominant activity/business service at the day spa and will occupy the majority of the floor area.

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.

The Regular Coastal Permit is required in order to permit the establishment of massage services within the coastal zone, pursuant to the Local Coastal Program

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. 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.

Pursuant to the provisions of Chapter 15, Article II of the City Code, the Police Chief has the authority to issue a permit for any massage practitioner or massage establishment within the City. The Police Chief may impose operational conditions designed to protect the general health, safety and welfare of the community. In addition, the police review includes a compliance check for the acquisition of the applicable health permits, and zoning and building clearances.

ANALYSIS

Staff believes that the proposed massage services would not necessarily enhance positive commercial development in the immediate area. There are two (2) regulated uses close to the proposed project. A tattoo parlor is located within the same building, less than 50 feet

from the Golden Day Spa. Another massage establishment is located approximately 540 feet to the north. The approval of this project would place three (3) regulated uses within 1,000 feet of each other.

The proposed hours of operation are inconsistent with those of the surrounding businesses. The applicant has indicated that the day spa's hours of operation are tailored to meet the needs of working individuals. However, the business is less than 100 feet from residential properties and the 9:00 am to 8:00 pm hours of operation may be disruptive to these homes.

In addition, Staff finds that the business operations could pose negative impacts to public welfare, private properties, or sensitive land uses. The proposed massage establishment does not meet the minimum separation distances. Two (2) other regulated uses are within 1,000 feet from the proposed project. By allowing this third regulated use into the area, the potential for adult activity and associated blight, depreciated property values, and law enforcement problems increases. There are also single-family and multifamily residential districts within 200 feet and two (2) religious facilities within approximately 830 feet of the proposed use. The addition of massage services at this location may interfere with activities oriented toward families or minors.

Conclusion: The proposed Conditional Use Permit and Regular Coastal Permit are not consistent with the requirements of the Oceanside Zoning Ordinance and the land use policies of the General Plan, or the Local Coastal Program. 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 or Regular Coastal 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 Regular Coastal Permit application and waiver request on March 12, 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. No opposition was delivered in the form of written correspondence to the Commission. All public testimony during the public hearing supported the proposed project.

The Commission recommended approval of the Conditional Use Permit, Regular Coastal Permit, and waiver of locational requirements on a vote of 6-to-1. Planning Commission

Resolution 2007-P14 was adopted with changes on March 26, 2007 on a vote of 7-to-0.

The motion to recommend approval of the Conditional Use Permit, Regular Coastal Permit, and waiver of locational requirements was based on numerous findings. Planning Commission found that the Conditional Use Permit is in accord with the objectives of the Ordinance and the purposes of the district in which the site is located. The proposed use is also 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. In addition, Planning Commission found that the proposed project is consistent with the policies of the Local Coastal Program and its effective zoning code.

In regards to the request for the locational waiver, Planning Commission found that the day spa with associated massage services will not be contrary to the public interest or the spirit or intent of Article 36; the proposed project will not result in a concentration of adult-oriented uses or impair nearby properties; nor will the proposed project negatively impact any governmental programs of redevelopment, revitalization, or neighborhood preservation.

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.

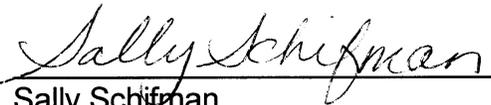
The City Council shall review the record of the decision and hear testimony of the appellant, the applicant, and any other interested party.

After the hearing, the City Council shall affirm, modify or reverse the Planning Commission decision. If a decision is modified or reversed, the City Council shall state the specific reasons for the modification or reversal.

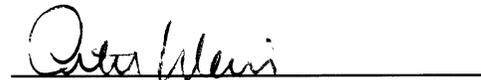
RECOMMENDATION

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-55-06) and Regular Coastal Permit (RC-3-07) and adopt the attached Resolution denying the project.

PREPARED BY:


Sally Schiffman
Planner II

SUBMITTED BY:


Peter A. Weiss
Interim City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager
Mike Blessing, Deputy City Manager
Jerry Hittleman, Acting City Planner



ATTACHMENTS:

1. City Council Resolution
2. Site Plans/Floor Plans
3. Planning Commission Staff Report dated March 12, 2007
4. Planning Commission Resolution No. 2007-P14

1 1. The Conditional Use Permit (C55-06), Regular Coastal Permit (RC-3-07) and Planning
2 Commission Resolution No. 2007-P14 are hereby denied.

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

5 3. The Conditional Use Permit and Regular Coastal Permit as proposed are not consistent
6 with the Land Use Element of the General Plan, the City's Zoning Ordinance implementing the General
7 Plan, or the Local Coastal Program. Coast Highway is the business loop for Interstate 5 and functions as
8 the major through street in the Coastal Zone. As such, it represents a major "window" to the coast and a
9 significant visitor use area. The existing businesses surrounding the project site provide a wide range of
10 commercial services for the community. These include personal services, retail shops, vehicle repair
11 services, and a convenience market. The addition of massage services may not contribute towards creating
12 an attractive and balanced environment. The use will not comply with regulated use locational
13 requirements and may negatively impact the viability of existing and/or future commercial uses that
advance revitalization of the coastal zone.

14 4. The proposed use would be detrimental to the public health, safety and welfare. A massage
15 establishment must be located a minimum of 1,000 feet from any other regulated use; residential districts;
16 any public or private school; park, playground, or public beach; church or other similar religious facility;
17 and/or childcare or pre-school facility. The proposed project cannot meet this regulation.

18 5. The day spa with associated massage services will be contrary to the public interest. "The
19 addition of this use to the area will result in a concentration of regulated uses and will be contrary to the
20 spirit and intent of Article 36. The business operations could pose negative impacts to public welfare,
21 private properties, or sensitive land uses. The project is also located within 200 feet of single-family and
22 multifamily residences and is within 900 feet of two religious assembly land uses. The addition of
23 massage services to the day spa at this location may interfere with activities oriented toward families or
24 minors.

25 6. The proposed project will impair nearby property or the integrity of the underlying district.
26 There are numerous residential districts and two religious assembly uses within 1,000 feet of the proposed
27 project site. By allowing this third regulated use into the area, there is the potential for increased adult
28 activity and associated blight, depreciated property values, and law enforcement problems.

1 7. The proposed project may promote community blight. There are two (2) known regulated
2 uses with 1,000 feet of the proposed project site. Other businesses within 1,000 feet of the proposed
3 project include a pawn shop and a check cashing business. Though these are not regulated uses, the
4 addition of the day spa with massage services would add to the potential for community blight.

5 8. The proposed project will negatively impact governmental programs of redevelopment,
6 revitalization, or neighborhood preservation. Allowing three regulated use within 1,000 feet of each
7 other would not be conducive to the efforts of the City to enhance the coastal area.

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

10 PASSED AND ADOPTED by the City Council of the City of Oceanside, California this _____ day
11 of _____, 2007 by the following vote:

12 AYES:

13 NAYS:

14 ABSENT:

15 ABSTAIN:

16 _____
17 Mayor of the City of Oceanside

18
19
20 ATTEST:

21 APPROVED AS TO FORM:
22 OFFICE OF THE CITY ATTORNEY

23
24 _____
25 City Clerk

26
27 _____
28 City Attorney

Legal Description

LOT 4 AND ALL OF LOTS 5 TO8, INCLUSIVE IN BLOCK 27 OF BRYAN'S ADDITION, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 219, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MARCH 10, 1887.

GENERAL NOTES:

- DESCRIPTIONS SHOWN ARE INTENDED AS A GUIDE TO THE TYPE OF FIXTURE TO BE USED. SUBSTITUTION OF DIFFERENT MANUFACTURERS MAY BE MADE SUBJECT TO THE APPROVAL OF THE ARCHITECT. ALL FIXTURES SHALL BE WHITE UNLESS NOTED OTHERWISE. ALL FINISHES SHALL BE AS NOTED.
- ELECTRICAL SUB-CONTRACTOR SHALL PROVIDE SUBSTITUTALS AS REQUIRED BY THE ELECTRICAL SPECIFICATIONS FOR APPROVALS INDICATED.
- CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND LOCATIONS OF ALL DEVICES, SWITCHES AND CIRCUITRY SHALL BE CAPABLE TO MEET THE ABOVE STANDARDS. SYSTEMS SHALL MEET ALL CODES AND ALL LOCAL, STATE AND FEDERAL REQUIREMENTS.
- PROVIDE INSULATION PROTECTION FOR ALL INCREASED UNITS AS REQUIRED BY LOCAL CODE.
- SWITCH AND DEVICE PLATES TO BE PER TENANT REQUEST (BEFORE) NOT USED.
- ELECTRICAL OUTLETS SHALL NOT BE BACK TO BACK. PROVIDE 12" CLEARANCE BETWEEN SAID OUTLETS AND FIRE CALICING IS REQUIRED.
- ELECTRICAL OUTLETS IN BATHS SHALL BE 48" FROM THE WALL AND 18" FROM THE BATH TUB. PROVIDE 12" CLEARANCE BETWEEN SAID OUTLETS AND FIRE CALICING IS REQUIRED.
- UBC 704.10 OUTLETS SHALL BE INSTALLED BACK TO BACK IN THE SAME ANCHORAGE MAINTAIN ONE END CLEARANCE

GENERAL NOTES:

- GENERAL: All electrical work shall conform to the requirements of the National Electrical Code (NEC) and all applicable local codes. All work shall be done in accordance with the 2017 NEC and all applicable local codes.
- INSTALLATION: All electrical work shall be installed in accordance with the 2017 NEC and all applicable local codes. All work shall be done in accordance with the 2017 NEC and all applicable local codes.
- TESTING: All electrical work shall be tested in accordance with the 2017 NEC and all applicable local codes. All work shall be done in accordance with the 2017 NEC and all applicable local codes.
- SAFETY: All electrical work shall be done in accordance with the 2017 NEC and all applicable local codes. All work shall be done in accordance with the 2017 NEC and all applicable local codes.
- MAINTENANCE: All electrical work shall be done in accordance with the 2017 NEC and all applicable local codes. All work shall be done in accordance with the 2017 NEC and all applicable local codes.
- WARRANTY: All electrical work shall be done in accordance with the 2017 NEC and all applicable local codes. All work shall be done in accordance with the 2017 NEC and all applicable local codes.

DESIGN ASSOCIATES
 1710 17th St, Suite 100
 San Francisco, CA 94103
 TEL: 415.774.1111
 WWW.DESIGNASSOCIATES.COM

TRANT MOVEMENT FOR GOLDEN DAY SPA
 417 SOUTH COAST HWY
 OCEANVIEW, CA

ELECTRICAL SPECIFICATIONS

PANEL 1 - GENERAL

- General: All electrical work shall conform to the requirements of the National Electrical Code (NEC) and all applicable local codes. All work shall be done in accordance with the 2017 NEC and all applicable local codes.
- Installation: All electrical work shall be installed in accordance with the 2017 NEC and all applicable local codes. All work shall be done in accordance with the 2017 NEC and all applicable local codes.
- Testing: All electrical work shall be tested in accordance with the 2017 NEC and all applicable local codes. All work shall be done in accordance with the 2017 NEC and all applicable local codes.
- Safety: All electrical work shall be done in accordance with the 2017 NEC and all applicable local codes. All work shall be done in accordance with the 2017 NEC and all applicable local codes.
- Maintenance: All electrical work shall be done in accordance with the 2017 NEC and all applicable local codes. All work shall be done in accordance with the 2017 NEC and all applicable local codes.
- Warranty: All electrical work shall be done in accordance with the 2017 NEC and all applicable local codes. All work shall be done in accordance with the 2017 NEC and all applicable local codes.

FIXTURE SCHEDULE

SYMBOL	DESCRIPTION	QUANTITY	REMARKS
A	LITOMIA	2478-283-100-28300	RECEPTACLES
B	LITOMIA	2478-283-100-28300	2478-283-100
C	BEKALL	1008-8E	2478-283-100

LOAD CALCULATIONS

MODIFIED LOAD CALCULATIONS

LOADING @ 125%
 LIGHTING @ 125%
 WATER HEATER @ 100%
 CLOTHES WASHER @ 100%

WATTS PER PHASE: 14880 / 3 PHASE = 4960 WATTS PER PHASE

LOAD CALCULATIONS

MODIFIED LOAD CALCULATION NOTE:

THE EXISTING SILENT SWITCHES, LIGHTING AND ELECTRICAL EQUIPMENT LOADS ARE PART OF THE EXISTING HOME PANEL. TO REMAIN, AND NOT A PART OF THIS PROJECT APPLICATION.

POWER LEGEND:

- SINGLE OUTLET
- DOUBLE DUPLEX RECEPTACLE
- DEDICATED OUTLET
- GROUND FAULT PROTECTION
- 220V THREE PHASE OUTLET, SIZE AS SHOWN
- COMPUTER OUTLET IN TWO GANG BOX
- TELEPHONE OUTLET IN TWO GANG BOX
- DOUBLE CONNECTION TYPE REQUIRED. () () ()
- JUNCTION BOX
- 220V OUTLET SINGLE PHASE SIZE AS SHOWN
- MOTOR DISCONNECT SWITCH SIZE AS PER NFPA RECOMMENDATION, TYPE NO. CONVENTION STARTER
- STOP/START CONTROL
- MAGNETIC STARTER
- DIMMER CONTROL
- SPRT (800 250 PHS)
- 220V RELAY INTERLOCK FOR FAN ADJUNCT
- DRY (800 250 PHS)
- NOTION
- SOLENOID
- RAINTIGHT HEAVY DUTY SPST DISCONNECT 220V FUSED AS SHOWN
- TV OUTLET FUSED OR BY GO STUBBED TO ATTIC
- RECYCLE OUTLET
- FLOOR OUTLET - RECEPT MPV/G SCH. 40 TO WALL OUTLET
- FLOOR OUTLET - COMPUTER PROVIDE 1" CO. TO ATTIC
- FLOOR OUTLET - TELEPHONE PROVIDE 3/4" CO. TO ATTIC
- SURFACE METAL RACEWAY (SIZE AS NEEDED)
- SMOKE DETECTOR (IE ALL TOGETHER IN 1/2" CO. EXTEND TO FA INTERLOCK)
- DUCT DETECTOR () IN DUCT UNIT.
- INTERLOCKING RELAY - SEE A/C DRAWING
- FIRE ALARM STATION (VERIFY WFA CONTR)
- FA BELL
- FA SONG (VERIFY WFA CONTR)

POWER LEGEND:

- SINGLE POLE SWITCH 100A-1
- DOUBLE POLE SWITCH 100A-1
- THREE WAY SWITCH 100A-1
- FOUR WAY SWITCH 100A-1
- MOTOR RATED MANUAL STARTER SWITCH
- LEVITON DIMMER 2500W (ROOM) OR EQUAL
- SWITCH NOTING PARTICULAR FEATURE FOR SWITCHING
- KEY OPERATED SWITCH
- LEVITON 0-10V-DIMMABLE LIGHT CONTROL
- LEVITON 0-10V-DIMMABLE LIGHT CONTROL
- CEILING SURFACE MOUNT FIXTURE
- BRACKET MOUNT MOUNT FIXTURE
- RECESSED FIXTURE
- SURFACE MOUNTED FLUORESCENT FIXTURE
- RECESSED FIXTURE
- FLUORESCENT STRIP LIGHT
- EXT LIGHT FIXTURE
- LOW LEVEL SELF ILLUMINATED EXIT LIGHT @ 6" - 1" ASBY FIN FLEX
- EMERGENCY LIGHT
- EXHAUST FAN
- FLOOD LIGHT
- DOVE LIGHT - EDWARDS 1600 ABOVE DOOR
- CALL STATION - EDWARDS 6000 @ 6" - 1" A.F.F. (IF DESIRED)
- ANNUNCIATOR - EDWARDS 1600 @ 6" - 1" A.F.F. (IF DESIRED)
- WIRE UNITS IN PARALLEL

GENERAL NOTES:

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DATE: March 12, 2007

TO: Chairman and Members of the Planning Commission

FROM: Community Development Department/Planning Division

SUBJECT: **CONSIDERATION OF A CONDITIONAL USE PERMIT (C-55-06) AND A REGULAR COASTAL PERMIT (RC-3-07) TO PERMIT A REGULATED USE (DAY SPA/ MASSAGE ESTABLISHMENT) AND A WAIVER OF LOCATIONAL REQUIREMENTS FOR THE SUBJECT REGULATED USE AT 417 SOUTH COAST HIGHWAY WITHIN THE TOWNSITE NEIGHBORHOOD AND THE COASTAL ZONE. – GOLDEN DAY SPA – APPLICANT: TIANNA J. MARTIN**

RECOMMENDATION

Staff recommends that the Planning Commission, by motion:

- (1) Recommend that City Council deny Conditional Use Permit (C-55-06) and Regular Coastal Permit (RC-3-07); 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-P14 with findings attached herein.

PROJECT DESCRIPTION AND BACKGROUND

Site Review: The zoning designation for the site is CG (General Commercial) and the General Plan Land Use Category is General Commercial. Surrounding land uses include commercial and high-density residential properties to the north, south and west and commercial and single-family residences to the east.

The proposed project is located in an existing 1,200-square foot suite that is part of a larger 12,000-square foot building. The building was built circa 1960 and has gone through numerous tenant improvements including a storefront remodel in 1981. Extensive tenant improvements were permitted and completed in 2006 in order to create the Golden Day Spa. The site is located at 417 South Coast Highway and is within the Townsite Neighborhood and the Coastal Zone.

Project Description: The day spa/massage facility consists of an entryway and receptionist/waiting room, six (6) rooms for conducting spa services, a restroom, a shower facility, and space for a washer and dryer. The building shares parking with eight other tenants. Public parking is off-street, either behind or adjacent to the building, or along Coast Highway and Washington Street.

The Golden Day Spa is proposed to be open seven days a week, between the hours of 9:30 a.m. and 9:00 p.m. and to provide skin care, reflexology, acupressure and massage services. The proposed massage services will constitute the predominant activity/business service at the day spa and will occupy the majority of the floor area.

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

Conditional Use Permit No. C-55-06 represents a request for the following:

- (a) To permit massage services (regulated use) in conjunction with a day spa, pursuant to Article 36 of the Oceanside Zoning Ordinance (OZO).

Regular Coastal Permit No. RC-3-07 represents a request for the following:

- (a) To permit the establishment of massage services within the coastal zone, pursuant to the Local Coastal Program.

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. Zoning Ordinance
2. General Plan Land Use Element
3. Coastal Act/ Local Coastal program

ANALYSIS

KEY PLANNING ISSUES

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...

A wide range of commercial services/businesses surround the project site including personal services, retail shops, vehicle repair services, and a convenience market. The addition of massage services has the potential of negatively impacting existing commercial development because the use will not comply with applicable locational requirements and will contribute to the concentration of regulated uses in the immediate area.

2. Zoning Compliance

Article 11, Commercial Districts

PROPOSED USE	CG LAND USE REGULATIONS	ADDITIONAL REGULATIONS
Adult Business	L-3	(E) (K)

Section 3602 classifies massage establishments as an adult business and 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 (SQ. FT.)	PARKING CODE PROVISION	REQUIRED PARKING	EXISTING PARKING	EXISTING PARKING FOR AREA
Golden Day Spa	1,200	1/200 sq. ft.	6	2	34

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 except where such waiver would allow for the creation of a Sex Supermarket/Sex Mini-Mall. Two (2) other regulated uses (another massage establishment and a tattoo parlor) are within 1,000 feet from the proposed project day spa/massage location.

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

OTHER USE	NAME & ADDRESS	REQUIRED DISTANCE	APPROXIMATE DISTANCE
Regulated Use	About Face (tattoo) 423 S. Coast Highway	1,000 feet	< 50 feet
Residential District	<ul style="list-style-type: none"> • Beginning west of Tremont St • Beginning east of alley btwn Coast Highway & Freeman St 	1,000 feet	200 feet

OTHER USE	NAME & ADDRESS	REQUIRED DISTANCE	APPROXIMATE DISTANCE
Regulated Use	Massage World (massage est.) 310 S. Coast Highway	1,000 feet	540 feet
Church/similar facility	I AM Sanctuary of O'side 501 S. Nevada Street	1,000 feet	830 feet
Church/similar facility	Hope Chapel 506 S. Nevada Street	1,000 feet	830 feet
Child care/pre-school	515 Wisconsin Street	1,000 feet	1,200 feet
Church/similar facility	First Christian Church 204 S. Freeman Street	1,000 feet	1,200 feet
Playground	515 Wisconsin Street	1,000 feet	1,200 feet
Public/Private School	St. Mary Star of the Sea 515 Wisconsin Street	1,000 feet	1,200 feet
Public Beach	Pacific Ocean	1,000 feet	1,300 feet
Park	Tyson Street Park @ Tyson and Pacific	1,000 feet	1,500 feet
Public/Private School	Oceanside High School One Pirates Cove Way	1,000 feet	2,000 feet
Church/similar facility	Saint Anne's Parish 701 West Street	1,000 feet	2,000 feet

3. Land Use Compatibility with Surrounding Developments

The hours of operation are somewhat inconsistent with those of the surrounding businesses; most of the businesses close between 5:00 and 7:00 pm. The Golden Day Spa would close at 9:00 pm, with the final service of the day offered around 8:00 pm to meet the needs of working individuals. The following table lists specific land uses surrounding the proposed project:

LOCATION	GENERAL PLAN	ZONING	SPECIFIC LAND USE
Subject Property:	GC (General Commercial)	CG	Day spa with massage
Other tenants w/in the building	GC	CG	Sports card shop Insurance office Check cashing Tattoo parlor Temporary labor Casino dealer school Hair salon Retail surfboard shop

LOCATION	GENERAL PLAN	ZONING	SPECIFIC LAND USE
North of Subject Property:	GC, UHD-R (Urban High-Density Residential), HD-R (High-Density Residential)	CG, RH-U, RH	Gas station Vehicle repair Parking lot
East:	GC, SFD-R (Single Family Detached-Residential)	CG, RS	Furniture store Tactical supplies Retail store Convenience market
South:	GC, UHD-R, SFD-R	CG, RH-U, RS	Transmission shop
West:	GC, UHD-R, Redevelopment	CG, RH-U, D	Parking lot Apartment building Vehicle repair Single-family residences

4. Local Coastal Program compliance

The proposed project is within a non-appealable portion of the Coastal Zone. The following objectives and policies of the LCP apply to the project:

Section VII: New Development and Public Works

Objective: The City endorses infilling and revitalization of the Coastal Zone for the purpose of creating an attractive, balanced, and economically sound urban environment.

Policy 2c: Encourage preservation of existing and development of new neighborhood commercial uses such as markets, banks, and small retail stores.

Policy 2d: Support development of wide variety of private and public recreational and tourist facilities, which can attract and serve both visitors and residents.

Coast Highway is the business loop for Interstate 5 and functions as the major through street in the Coastal Zone. As such, it represents a major “window” to the coast and a significant visitor use area. Although the addition of massage services would add to the variety of commercial services available to residents and visitors, staff is concerned that the use may not contribute towards creating an attractive and balanced environment. The use will not comply with regulated use locational requirements and may negatively impact the viability of existing and/or future commercial uses that advance revitalization efforts of the coastal zone.

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, which may be associated with a stereotypical perception of a "massage parlor", staff finds that the proposed massage services would not necessarily enhance positive commercial development in the immediate area.

There are two (2) regulated uses close to the proposed project. A tattoo parlor is located within the same building, less than 50 feet from the Golden Day Spa/Massage establishment. Another massage establishment is located approximately 540 feet to the north and across the street. The approval of this project would place three (3) regulated uses within 1,000 feet of each other.

The proposed hours of operation are not consistent with those of the surrounding businesses. The applicant has indicated that the day spa's hours of operation are tailored to meet the needs of working individuals. However, the business is only 200 feet from residential districts, less than 100 feet from legal, non-conforming residential properties and may be disruptive to these homes. Therefore, staff recommends against the applicant's request for the establishment of massage services at the subject location.

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 could pose negative impacts to public welfare, private properties, or sensitive land uses. Two other regulated uses (a massage establishment and a tattoo parlor) are located within 1,000 feet of the proposed use. By allowing this third regulated use into the area, the potential for adult activity and associated blight, depreciated property values, and law enforcement problems increases. The project is also located within 200 feet of single-family and multi-family residences and within 900 feet of two religious assembly land uses. The addition of massage services at this location may interfere with activities oriented toward families or minors.

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 and tenants within a 1,000 ft. radius of the subject property.

SUMMARY

The proposed Conditional Use Permit and Regular Coastal Permit are not consistent with the requirements of the Oceanside Zoning Ordinance and the land use policies of the General Plan, or the Local Coastal Program. The applicant has requested a waiver from the applicable locational requirements. Staff does not believe that the project meets the findings for the waiver. As a result, staff cannot recommend approval for the Conditional Use Permit or Regular Coastal Permit. Therefore, staff recommends that the Planning Commission:

- Move to recommend that City Council deny Conditional Use Permit (C-55-06), deny Regular Coastal Permit (RC-3-07), and deny the waiver of the locational requirements and adopt Resolution No. 2007-P14.

PREPARED BY:


 Sally Schifman
 Planner II

SUBMITTED BY:


 Jerry Hittlerman
 City Planner

REVIEWED BY:


 Amy Volzke, Principal Planner
 JH/SS/fil

Attachments:

1. Tenant Improvement Development Plans 06-423
2. Resolution No. 2007-P14

1 PLANNING COMMISSION
2 RESOLUTION NO. 2007-P14

3 A RESOLUTION OF THE PLANNING COMMISSION OF THE
4 CITY OF OCEANSIDE, CALIFORNIA RECOMMENDING
5 APPROVAL OF A CONDITIONAL USE PERMIT, REGULAR
6 COASTAL PERMIT, AND A WAIVER OF LOCATIONAL
7 REQUIREMENTS FOR A REGULATED USE ON CERTAIN
8 REAL PROPERTY IN THE CITY OF OCEANSIDE

9 APPLICATION NO: C-55-06, RC-3-07
10 APPLICANT: Tianna Martin
11 LOCATION: 417 South Coast Highway

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

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

19 a massage establishment operating as part of a day spa business and a waiver of locational
20 requirements for regulated land uses;
21 on certain real property described in the project description.

22 WHEREAS, the Planning Commission, after giving the required notice, did on the 12th
23 day of March 2007 conduct a duly advertised public hearing as prescribed by law to consider said
24 application.

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

28 WHEREAS, pursuant to Oceanside Zoning Ordinance §4603, this resolution becomes
29 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 use is in accord with the objectives of the Ordinance and
4 the purposes of the district in which the site is located. The proposed massage services as
5 part of a day spa business are not contrary to the Zoning Ordinance objective for the CG
6 (General Commercial) zoning district and to the intent of Article 36 of the Zoning
7 Ordinance. The proposed operation is consistent with the General Plan Land Use Element
8 objective for the underlying General Commercial land use designation affecting the
9 property.
- 10 2. The proposed location of the conditional use and the proposed conditions under which it
11 would be operated or maintained will be consistent with the General Plan; will not be
12 detrimental to the public health, safety or welfare of persons residing or working in or
13 adjacent to the neighborhood of such use; and will not be detrimental to properties or
14 improvements in the vicinity or to the general welfare of the city. The proposed use is
15 subject to specific operational conditions that will cause the use to operate compatibly with
16 the surrounding land uses and it will not be detrimental to the general welfare of the City.
- 17 3. The proposed conditional use will comply with the provisions of the Ordinance,
18 including any specific condition required for the proposed conditional use in the district
19 in which it would be located.

19 For the Regular Coastal Permit:

- 20 1. The proposed project is consistent with the policies of the Local Coastal Program and its
21 effective zoning code.

22 For the Locational Waiver:

- 23 1. The day spa with associated massage services will not be contrary to the public interest.
24 2. The proposed day spa with associated massage services will not result in a concentration
25 of adult-oriented uses and will not be contrary to the spirit or intent of Article 36.
26 3. The proposed project will not impair nearby property or the integrity of the underlying
27 district.
28 4. The proposed project will not encourage the development of an adult entertainment area
29 or otherwise promote community blight. There are two (2) known regulated uses with
1,000 feet (in all directions) of the proposed project site.

1 5. The proposed project will not negatively impact any governmental programs of
2 redevelopment, revitalization, or neighborhood preservation.

3 NOW, THEREFORE, BE IT RESOLVED that the Planning Commission does hereby
4 recommend approval of Conditional Use Permit (C-55-06), Regular Coastal Permit (RC-3-07)
5 and waiver of applicable locational requirements subject to the following conditions:

6 **Planning:**

7 1. This Conditional Use Permit (C-55-06), Regular Coastal Permit (RC-3-07) and waiver
8 of Regulated Use Locational Requirements are limited to massage services as a
9 component to a day spa operation comprising approximately 1,200 square feet of floor
10 area.

11 2. The massage services may not at any time be operated independent of the day spa
12 business. The revenue derived from the massage component of the business shall be
13 limited to 75 percent of the business total. The applicant shall provide evidence of
14 annual revenue from the massage component in relation to the total business gross
15 income at the time of business license renewal.

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

21 4. This Conditional Use Permit shall be called for review by the Planning Commission if
22 complaints are filed and verified as valid by the Code Enforcement Office concerning the
23 violation of any of the approved conditions or assumptions made by the application.

24 5. Prior to the transfer of ownership and/or operation of the site the owner shall provide a
25 written copy of the applications, staff report and resolutions for the project to the new
26 owner and or operator. This notification's provision shall run with the life of the project
27 and shall be recorded as a covenant or other recordable document approved by the City
28 Attorney on the property.

29 6. Unless expressly waived, all current zoning standards and City ordinances and policies in
effect at the time improvement permits are issued are required to be met by this project.
The approval of this project constitutes the applicant's agreement with all statements in the

1 Description and Justification and other materials and information submitted with this
2 application, unless specifically waived by an adopted condition of approval.

3 7. The applicant, permittee or any successor-in-interest shall defend, indemnify and hold
4 harmless the City of Oceanside, its agents, officers or employees from any claim, action or
5 proceeding against the City, its agents, officers, or employees to attack, set aside, void or
6 annul an approval of the City, concerning Conditional Use Permit (C-55-06) and Regular
7 Coastal Permit (RC-3-07). The City will promptly notify the applicant of any such claim,
8 action or proceeding against the City and will cooperate fully in the defense. If the City
9 fails to promptly notify the applicant of any such claim action or proceeding or fails to
10 cooperate fully in the defense, the applicant shall not, thereafter, be responsible to
11 defend, indemnify or hold harmless the City.

12 8. The hours-of-operation shall be limited from 9:00 a.m. to 8:00 p.m. These hours can be
13 limited further by the Planning Commission upon review of any valid issues or complaints
14 pertaining to the hours-of-operation.

15 9. No neon signage shall be permitted, except for one "Open" sign. No window signage that
16 exclusively advertises massage shall be permitted.

17 10. The north facing canopy sign shall either be removed completely or shall display only the
18 name of the business advertised. No signage visible from the public right-of-way,
19 including a side-walk sign, shall include just the word "massage" at any time.

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

22 **Police:**

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

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

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

- 1 15. Permits issued by the Oceanside Police Department shall be valid for one (1) year from
2 the date of issuance and shall be renewed annually.
- 3 16. The business shall display the massage business license and a copy of the license and/or
4 permit for each person providing massage services at all times.
- 5 17. All persons engaged in the practice of massage shall have successfully completed a
6 minimum of one hundred (100) hours of instruction in the art of massage provided by a
7 recognized school or institute of learning which offers a course in instruction approved
8 by the State of California Office of Private Postsecondary Education or comparable out-
9 of-state agency, which shall include anatomy, physiology and hygiene, massage theory
10 and history, ethics of massage and business practices.
- 11 18. All persons engaged in the practice of massage shall not have been convicted of any of
12 the following offenses:
- 13 a) Any offense involving lewd conduct or an offense involving the use of force or
14 violence upon the person of another; or,
 - 15 b) Any offense described in California Penal Code sections 266h, 266i, 311 through
16 311.7, 314, 315, 316, 318, 653.22, or 647 (a), (b), or (d); or,
 - 17 c) Any offense described in California Penal Code, Part One, Title 9, Chapters 7.5 and
18 7.6; or,
 - 19 d) Any offense which requires registration as a sex offender under California Penal
20 Code section 290; or,
 - 21 e) Any charge of violating any lesser included or lesser related offenses, including
22 Penal Code section 415, in satisfaction of, or as a substitute for, an original charge
23 or any of the offenses listed above.
- 24 19. The business operator shall maintain a record, which includes the date and time of each
25 massage, the name and address of the patron, the name of the person administering such
26 massage and the type of massage given. Such records shall be made available upon request
27 for inspection by the Oceanside Police Department. The information contained in such
28 records shall be confidential.
- 29 20. 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-

1 laundered. Separate closed cabinets of containers shall be provided for the storage of clean
2 and soiled towels, sheets and linens and such cabinets or containers shall be plainly marked
3 "clean linens" and "soiled linens".

4 21. Separate lockers shall be provided for patrons.

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

6 PASSED on March 12, 2007 by the following vote, to wit:

7 AYES: Martinek, Blom, Troisi, Balma, Horton and McLeod

8 NAYS: Parker

9 ABSENT: None

10 ABSTAIN: None

11 ADOPTED Resolution No. 2007-P14 on March 26, 2007.

12 
13 _____
14 Dennis Martinek, Chairman
Oceanside Planning Commission

15 ATTEST:

16 
17 _____
18 Jerry Hittleman, Secretary

19 I, JERRY HITTLEMAN, Secretary of the Oceanside Planning Commission, hereby certify that
20 this is a true and correct copy of Resolution No. 2007-P14.

21 Dated: March 26, 2007

*Golden Day Spa
417 South Coast Highway
Oceanside, CA 92054*

Waiver of Locational Requirements

Findings for this waiver are based on whether or not the use will be contrary to the public interest; whether it impairs the nearby property or the integrity of the underlying district; whether or not it will encourage the development of an adult entertainment area or promote community blight and whether or not governmental programs of redevelopment, revitalization, or neighborhood preservation will be affected. These requirements were written based on "massage parlors", not a modern day spa as proposed. This business will only serve to benefit the City of Oceanside. The purpose of this business is to provide high end spa services to the general public in accordance to all rules and regulations set forth by the City.

Examples of how these findings might be supported are listed below.

1. It will not be contrary to the public interest.

The location and high-end spa services to be offered to the general public will add to the variety of services available in this area which has been Commercially-Zoned and designated for Commercial Use on the General Plan. It will improve the value of the property in its neighborhood area.

2. It will not be contrary to the spirit or intent of this Article.

This General Commercial Zone was designed to provide opportunities for a full range of retail and service businesses to the general public. This business is a small-scale personal improvement service business that will contribute to the range of opportunities available in this area.

3. It will not impair nearby property or the integrity of the underlying district.

The massage services will be a part of and integrated within a broader offering of personal improvement services that are allowed within the General Commercial Zone. It will enhance the service and retail offerings in the area.

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Planning Department

4. It will not encourage the development of an adult entertainment area or otherwise promote community blight.

This area is continuing to grow and improve its standards of appearance and maintenance. This business is in no way affiliated with any type of adult entertainment. Its sole purpose is to be established as an upscale wellness center. It will only recruit licensed professionals that meet or exceed the City's requirements for the health and safety of all patrons.

5. It will not negatively impact any governmental programs of redevelopment, revitalization, or neighborhood preservation.

Renovations to this business have already been completed to enhance the building and general area of business. We support any improvements or revitalization to aide in the prosperity of the City of Oceanside. As a business owner, my intent is to encourage City improvements and to make the City a desirable location for nearby businesses, the general public and all others who visit the City of Oceanside.