



CITY OF HAYWARD AGENDA REPORT

Meeting Date 07/26/07
Agenda Item 2

TO: PLANNING COMMISSION

FROM: Arlyne J. Camire, AICP, Associate Planner

SUBJECT: Use Permit Application No. PL-2007-0329 (Modification of PL- 2007-0019) – John W. Houser (Applicant) / General Growth Properties (Owner) – Request to Modify the Conditions of Approval for a Massage Establishment to Allow Five Massage Chairs in a Satellite Station in the Concourse Adjacent to Macy’s in Southland Mall

The Property is Located at Southland Mall in the Central Business District (CB-B20)

RECOMMENDATION:

Staff recommends that the Planning Commission:

1. Find that the project is Categorically Exempt from CEQA pursuant to Section 15301, Class (b), Class 1, Existing Facilities; and
2. Approve the modification of the Use Permit application subject to the attached findings and conditions of approval.

DISCUSSION:

On June 14, 2007, the Planning Commission conditionally and unanimously approved (4-0, 3 absent) a conditional use permit that allows the operation of the Far East Rehabilitation Center, a 685-square-foot massage establishment to be located on the lower level of Southland Mall adjacent to the Food Fair. The applicant, John W. Houser, was present at the public hearing and, following discussion regarding the satellite massage station, agreed to the conditions of approval. As approved, Condition No. 9 reads:

In the event that the business operator wishes to operate a massage chair in the concourse adjacent to massage establishment tenant space, approval by the Hayward Police Department is required and the Massage Establishment Permit shall be maintained. In addition, the satellite massage chair location shall be approved by the Planning Director. In the event that the Massage Establishment Permit is not renewed or revoked for the lower level retail space, the satellite massage chair operation is to cease.

Following the public hearing, the applicant realized that any approved satellite massage station would be restricted to one chair and its location would be limited to an area adjacent to the massage establishment on the lower level of the mall. At this time, the applicant requests a modification to Condition No. 9 to allow a satellite massage station of five massage chairs, located in the concourse adjacent to Macy's, mirroring his lease agreement with the property owner, General Growth Properties. If approved, the one chair permitted adjacent to the massage establishment associated with the Commission's June 14 action would not be allowed.

During the public hearing, Ed Bogue, the President of the Southgate Area Homeowners Association and member of the Southgate Neighborhood Task Force, expressed concerns for approval of the satellite station. The homeowners association felt that the satellite massage is not an appropriate use for Southland Mall. Following discussion with Mr. Bogue, the Planning Commission concluded that the use is appropriate and will provide a service to shoppers to relax and possibly continue to shop (Attachment B).

Staff supports the modification allowing one satellite massage station containing five massage chairs. The satellite chair massage services will diversify the services offered to shoppers at Southland Mall, and provide a service staff would suggest is compatible with Southland mall activities. In addition, the satellite station will be operated in a professional manner which meets the conditions of approval of the use permit approved on June 14, 2007.

Massages would not be permitted at the satellite station prior to the completion of all tenant improvements, the issuance of a certificate of occupancy, and final inspection by the Police Department to confirm that the massage establishment retail space has met all of the conditions of the Massage Permit Ordinance. Following the Police Department inspection, the massage establishment, the satellite massage station and the massage therapy technicians will receive final clearance and will be issued Massage Establishment and Massage Therapy Technician permits.

The satellite station would be subject to all conditions of approval of Use Permit No: PL-2007-0019, accept for modified Condition No. 9 (Attachment D).

ENVIRONMENTAL REVIEW:

The proposed project is categorically exempt from environmental review pursuant to Section 15301, Class 1, Existing Facilities, of the California Environmental Quality Act (CEQA) Guidelines.

PUBLIC NOTICE:

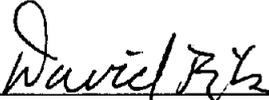
On July 10, 2007, a public notice of this hearing was mailed to every property owner and occupant as noted on the latest assessor's records within 300 feet of the Southland Mall property, the Longwood-Winton Grove and Southgate Task Forces, the Southgate Area Homeowners Association and the Longwood Area Neighborhood Group Improvement Association. The Southgate Area Homeowners Association continues to oppose the approval of the satellite massage station.

Prepared by:



Arlynn J. Camire, AICP
Associate Planner

Recommended by:



David Rizk, AICP
Planning Manager

Attachments:

- A Zoning Map
- B Planning Commission minutes dated June 14, 2007
- C Findings for Approval
- D Conditions of Approval

**DUE TO THE LENGTH OR COLOR
OF THE REFERENCED EXHIBIT,
IT HAS BEEN ATTACHED AS A
SEPARATE LINK.**



CITY OF HAYWARD PLANNING COMMISSION
MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, June 14, 2007, 7:30 p.m.
777 B Street, Hayward, CA 94541

MEETING

The regular meeting of the Hayward Planning Commission was called to order at 7:30 p.m., by Vice Chair Peixoto followed by the Pledge of Allegiance led by Commissioner Zermefio.

ROLL CALL

Present: COMMISSIONERS: Lavelle, Sacks, Zermefio
 VICE CHAIRPERSON: Peixoto
Absent: COMMISSIONER: Mendall, Thnay
 CHAIRPERSON: McKillop

Staff Members Present: Camire, Conneely, Patenaude, Rizk, Lens

General Public Present: Approximately 10

Vice Chair Peixoto announced that item #3 was postponed to a future meeting not yet determined.

PUBLIC COMMENTS

There were no public comments.

PUBLIC HEARINGS

1. **Use Permit Application No. PL-2007-0019 – Xiao Yuan Lu (Applicant) / General Growth Properties (Owner) – Request to Operate Massage Establishment in a Retail Space in Southland Mall – The Property is Located at Southland Mall, Space LL43, Near the Food Court**

Staff report submitted by Associate Planner Camire, dated June 14, 2007, was filed.

Associate Planner Camire presented the staff report.

In response to Commissioner Zermefio's inquiry regarding the satellite location, Associate Planner Camire indicated that the proposed satellite location could be in the concourse adjacent to the proposed establishment and that it would have to be approved by the Planning Director.

Commissioner Sacks clarified that the approval of the application would include a condition of approval pertaining to a satellite location.

At the request of Commissioner Lavelle, Associate Planner Camire clarified Condition of Approval No. 10 pertaining to problems and actions as a result of the massage services, stating that the condition is a standard operating condition.

Vice Chair Peixoto opened the public hearing at 7:41 p.m.

Mr. Edward Bogue, spoke on behalf of the South Gate Area Homeowners Association and the South Gate Neighborhood Task Force expressing opposition for the satellite location because of its inappropriate use and its disadvantage to the tenant mix. In response to Commissioner Sack's inquiry regarding the objection, Mr. Bogue indicated that the satellite would not be appropriate because of the location. Staff clarified that the satellite location would be one massage chair subject to approval by the Hayward Police Department and the Planning Director.

Mr. John W. Houser, applicant, gave background of the type of business including that it would be beneficial for the economy of the City and would provide a service for the residents. He showed pictures of the equipment to be used at a satellite location in the proposed establishment. He indicated that his extensive experience as a consultant and in a massage related business would give him the advantage to properly oversee the operation of the establishment. He reinforced that the proposed business would follow regulations. In response to Commissioner Lavelle, Mr. Houser indicated that he was aware and in agreement with Condition of Approval No. 9.

Vice Chair Peixoto closed the public hearing at 7:56 p.m.

Commissioner Sacks made a motion to approve the application indicating optimism for the type of establishment including that the proper safeguards are in place with the conditions of approval.

Commissioner Lavelle seconded the motion commending staff for the conditions of approval. She suggested that the establishment be advertised to get more customers and recommended that members of the homeowners association take advantage of this type of service.

In response to Commissioner Zermefio's concern, there was clarification that the applicant is applying for one satellite massage chair location.

Vice Chair Peixoto spoke in favor of the motion indicating that it is a legitimate service and that it is needed to enhance the mall. He also indicated that the conditions of approval are detailed and not controversial.

Commissioner Sacks moved, seconded by Commissioner Lavelle, and approved with Chair McKillop and Commissioners Mendall and Thnay absent, to find the project Categorically Exempt from CEQA pursuant to Section 15301, Class (b), Class 1, Existing Facilities; and approve the Use Permit application subject to the findings and conditions of approval.

USE PERMIT APPLICATION NO. PL-2007-0329
Modification of Use Permit Application No. PL-2007-0019
John W. Houser (Applicant)
General Growth Properties (Owner)
One Southland Mall Drive, Space LL43

Based on the staff report and the public record:

FINDINGS FOR APPROVAL

- A. Approval of Use Permit Application No. PL-2007-0329 modifying Use Permit Application No. PL-2007-0019 to allow five massage chairs in a satellite station within the concourse adjacent to Macy's in the Southland Mall within the City Business Zoning District is exempt from the provisions of California Environmental Quality Act guidelines pursuant to Section 15301, *Existing Facilities*.
- B. The proposed modification to the use permit to allow five massage chairs in the concourse adjacent to Macy's is desirable for the public convenience or welfare in that the chair massage services that will be offered will diversify the services offered to shoppers at Southland Mall.
- C. The proposed modification to the use permit to allow five massage chairs in the concourse adjacent to Macy's will not impair the character and integrity of the surrounding neighborhoods and stores in Southland Mall in that the satellite station will be operated in a professional manner which meets the conditions of approval of Use Permit Application No. PL-2007-0019.
- D. The proposed modification to the use permit to allow five massage chairs in the concourse adjacent to Macy's will not be detrimental to the public health, safety, or general welfare in that each massage therapist and the massage establishment owner are required to meet all the requirements of the Municipal Code which regulate massage establishments. In addition, all massage therapists are required to obtain Massage Therapy Technician Permits issued by the Police Department, and the owner is required to obtain a Massage Establishment Permit issued by the Police Department. The business operator has passed the Police Department background check and has obtained the required Massage Establishment Permit.
- E. The proposed modification to the use permit to allow five massage chairs in the concourse adjacent to Macy's is in harmony with applicable City policies as well as the intent and purpose of the Central Business District in that the use will be compatible with other commercial activity and services at Southland Mall without being detrimental to the public health, safety or general welfare of surrounding properties.

USE PERMIT APPLICATION NO. PL-2007-0329
Modification of Use Permit Application No. PL-2007-0019
John W. Houser (Applicant)
General Growth Properties (Owner)
One Southland Mall Drive, Space LL43

Use Permit Application No. PL-2007-0019 to allow the operation of a massage establishment in the Central Business District, is approved subject to the conditions of approval as modified below.

CONDITIONS OF APPROVAL

1. This permit becomes void one year after the effective dated of approval, unless prior to that time and a Massage Establishment Permit has been approved and operation of the establishment has commenced. A request for a one-year extension, approval of which is not guaranteed, must be submitted to the Planning Division at least 15 days prior to June 14, 2008.
2. Any modification to the approved plans or conditions shall require review and approval by the Planning Director.
3. In the event that the business owner intends to change the floor plan to provide separate massage therapy rooms, the business owner shall apply for a new conditional use permit.
4. Prior to the commencement of massage services, the following must be completed by the business owner and the applicant:
 - a. A Massage Establishment Permit shall be obtained and shall be maintained as long as massage services are offered. Operations are not permitted to begin prior to obtaining approval of a Massage Establishment Permit from the Hayward Police Department. The business owner or operator shall display the Massage Establishment Permit issued.
 - b. Obtain required building permits to install the required unisex restroom facilities and an employee wash basin. The unisex restroom and the employee wash basin shall be installed prior to commencement of operation of the business.
 - c. The Massage Establishment Permit shall be renewed with the Hayward Police Department every two years.
5. All massage technicians shall have a Massage Therapy Technician Permit. The permit shall be renewed with the Hayward Police Department every two years.
6. The massage establishment permit and a copy of the permit of each and every massage therapy technician employed in the establishment shall be displayed in an open and conspicuous place on the premises. The business owner or operator shall maintain a register of all persons employed as massage technicians and their permit numbers. Such register shall be available for inspection at all times during regular business hours.

7. The business owner/operator shall permit the City officials the right to enter the premises used by the massage technicians from time to time during regular business hours for the purpose of making reasonable inspections to enforce compliance with building, fire, electrical, plumbing, or health codes, the California Penal Code and the Hayward Municipal Code.
8. The massage establishment and every massage therapy technician shall comply with standards established by the Alameda County health services for such businesses and practitioners and the following facilities and operation requirements:
 - a. The massage establishments premises and facilities shall meet and be maintained in a condition to comply with all applicable code requirements of the city, county, and state, including, but not limited to, those related to the safety of structures, adequacy of the plumbing, lighting, heating, ventilation, waterproofing of rooms in which showers, water or steam baths are used, and the health and leanness of the facility.
 - b. The massage establishments and massage therapy technicians shall at all times have an adequate supply of clean sanitary towels, covering, and linens. Towels, non-disposable coverings, and linens shall not be used on more than one client, unless they have first been laundered and disinfected. Disposable towels and disposable coverings shall not be used on more than one client. Soiled linens and paper towels shall be disposed in separate receptacles.
 - c. In the massage establishment the restroom and basin shall be thoroughly cleaned and disinfected as needed, and at least once a day when the premises are opened, with a disinfected. All walls, ceilings, floors, and other fiscal facilities for the establishment shall be in good repair, and maintained in a clean and sanitary condition.
 - d. All equipment used in the massage therapy operation shall be maintained in a clean and sanitary condition. Instruments utilized in performing massage therapy shall not be used on more than one client unless they have been sterilized, using standard sterilization methods.
 - e. Toilet facilities shall be provided in a convenient location within the massage establishment and shall consist of at least one unisex toilet with laboratories or wash basins provided with soap and both hot and cold running water either in the toilet room or vestibule.
 - f. A minimum of one wash basin for employees shall be provided at all times. The basin shall be located within or as close as possible to the area devoted to performing of massage therapy services. Soap and sanitary towels shall also be provided at each basin
 - g. Massage therapy shall be provided or given only between the hours of 10:00 am to 9:00 pm. The massage establishment shall not be opened and no client shall be in the establishment between 9:00 pm and 10:00 am.
 - h. No alcoholic beverages shall be sold, served, furnished, kept, consumed, or

possessed on the premises.

- i. Controlled substances must not be consumed in the massage establishment and unless the person has a prescription for the substance.
- j. Only massage services shall be provided on the premises.
- k. No permittee or employee of the massage establishment shall place, publish or distribute or cause to be placed, published or distributed by any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective customers that a service is available that is prohibited under the provisions of the Massage Ordinance, nor shall any massage establishment employ language in any advertising text or business name that would reasonably suggest to a prospective client that any service is available that is prohibited by the provisions of the Massage Ordinance.
- l. The use or possession of adult oriented merchandise in any part of the massage establishment is prohibited.
- m. Condoms must not be kept on the premises or used for any purpose in the massage establishment.
- n. No electrical, mechanical or artificial device shall be used by the operator and or manager, massage therapy technician and any employee of the massage establishment for audio and/or recording for monitoring the performance of the massage therapy, or the conversation or other sounds in the massage room without the knowledge and written consent of the patron.
- o. Surveillance cameras may not be installed on the interior of the massage establishment. Other surveillance cameras must be maintained or operated so as to provide surveillance of the exterior of the massage establishment or the surrounding area.
- p. No massage therapy shall be conducted within any space on the premises of the massage therapy business which is fitted with a lock.
- q. All entrance and exit doors on the premises of the massage therapy business shall remain unlocked during business hours.
- r. All massage services shall be paid for in the reception area. The massage establishment may utilize a system where tip envelopes are provided in the in the massage area and at each massage station, to be utilized and deposited by the client in the reception area.
- s. The massage establishment must not be used for residential or sleeping purposes.
- t. Massage establishment personnel or any massage technician may not inquire as to whether any client is a police officer.

9. *The business operator is permitted to operate a satellite massage station consisting of not more than five massage chairs to be located in the concourse proximate to Macy's. A Massage Establishment Permit for a fixed retail space shall be maintained. All the operating requirements and hour of operation that are required of the fixed retail space shall be observed at the satellite station. In the event that the Massage Establishment Permit is not renewed or revoked for the lower level retail space, the satellite massage operation is to cease.*
10. If it comes to the attention of the Planning Director that there are problems occurring as a result of the massage services, the Director may call the use permit application up to the Planning Commission for consideration of imposing additional conditions or revocation.