



COMMUNITY DEVELOPMENT DEPARTMENT

PLANNING DIVISION

3300 Newport Boulevard, Building C, Newport Beach, CA 92663

(949) 644-3200 Fax: (949) 644-3229

www.newportbeachca.gov

CITY OF NEWPORT BEACH ZONING ADMINISTRATOR STAFF REPORT

December 12, 2012

Agenda Item #3

SUBJECT: Thai Body Works - (PA2012-136)
3617 E. Coast Highway, Suite B
▪ Minor Use Permit No. UP2012-023

APPLICANT: Three Naree Co. Inc dba Thai Body Works

PLANNER: Kay Sims, Assistant Planner
(949) 644-3237 or ksims@newportbeachca.gov

ZONING DISTRICT/GENERAL PLAN

- **Zone:** CC (Commercial Corridor)
- **General Plan:** CC (Commercial Corridor)

PROJECT SUMMARY A minor use permit to establish the number of parking spaces required for a proposed 1,191 square-foot massage facility in a suite previously occupied by a dry cleaning and shoe repair business within a commercial building located in Corona del Mar. Zoning Code Section 20.40 (Off-Street Parking) permits the establishment of the parking requirement for a massage facility with approval of a use permit. The proposed operation will consist of four therapy rooms. Four massage technicians, as independent contractors, certified by the California Massage Therapy Council (CAMTC), will provide the massage services. Each individual technician will schedule their client appointments and greet walk-in clients. A maximum of four technicians will be present at any one time. The proposed hours of operation will be 10:00 a.m. to 9:00 p.m., 7 days per week.

RECOMMENDATION

- 1) Conduct a public hearing; and
- 2) Adopt Draft Zoning Administrator Resolution No. _ approving Minor Use Permit No. UP2012-023 No. (Attachment No. ZA 1).

DISCUSSION

- Zoning Code Chapter 20.40 (Off-Street Parking), Table 3-10 (Off-Street Parking Requirements) allows establishment of the parking requirement for a massage facility to be one space per 200 square feet or as required by a conditional use permit. Pursuant to Zoning Code Section 20.50.020 (Authority for Land Use and Zoning Decisions), the Community Development Director has interpreted the code and has determined that approval of a minor use permit is appropriate, since the Zoning Code (Chapter 20.20.020: Commercial Zoning Districts Land Uses and Permit Requirements) states that approval of a minor use permit is required for a massage facility.
- The Zoning Code states that approval of a minor use permit is required to allow a massage facility in the CC (Commercial Corridor) Zoning District. As a result of the passage of California Bill SB731, the City does not require discretionary approval, if all massage services are provided by technicians certified by the California Massage Therapy Council (CAMTC). Approval of the proposed minor use permit application, however, will include conditions of approval pertaining to the operational characteristics of the massage use, as well as establishing the parking requirement.
- The subject property consists of a 4,207-square-foot commercial building and a 109-square-foot detached flower stand located at the front of the property facing East Coast Highway (4,316 total square feet). The retail/commercial building is divided into six suites, which are currently occupied with three retail uses, a hair and nail salon, and a takeout restaurant (UP3855 approved 1991). The flower stand was originally approved as a 70-square-foot structure (Use Permit No. UP3125) in 1985. A building permit also issued in 1985 allowed an increase in the square footage.
- The property is considered legal nonconforming (parking) because there are 17 existing parking spaces, where, based on a retail parking ratio of one space per 250 gross square feet, a total of 18 spaces ($4,316/250 = 18$ spaces) is required.
- Pursuant to Chapter 20.38.060 (Nonconforming Parking), a nonconforming use in a nonresidential zoning district may be changed to a new use allowed in that zoning district without providing additional parking, provided no intensification or enlargement (e.g., increase in floor area, or lot area) occurs and the new use requires a parking rate of no more than one space per 250 square feet of gross building area.
- The subject suite, currently vacant, was previously a shoe repair and dry cleaning business, which required one parking space per 250 square feet ($1/250$) of gross floor area ($1,191$ sq. ft/ $250 = 5$ spaces).

- Staff believes that, based on the high level of pedestrian activity in the Corona del Mar village, the operational characteristics of the project, and the facts stated in the attached Resolution, the same parking ratio (1/250) can be supported rather than the more stringent 1/200 ratio.
- The proposed massage use is a service use that will be complementary to the other uses in the commercial building which include a hair salon, retail sales, and a take-out restaurant. Its operating characteristics are similar to other service uses such as barber and beauty shops, and tanning salons.

ENVIRONMENTAL REVIEW

The project qualifies for Class 1 (Existing Facilities) categorical exemption, Section 15301 of the California Environmental Quality Act. The Class 1 exemption includes the ongoing use of existing buildings where there is negligible or no expansion of use. The proposed project involves interior alterations to convert a currently vacant suite, previously occupied by a dry cleaner and shoe repair business, to a massage facility. The existing space will be remodeled with approval of a tenant improvement building permit. There is no expansion of the physical building and no additional parking will be required.

PUBLIC NOTICE

Notice of this application was published in the Daily Pilot, mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicant and posted on the subject property at least 10 days prior to the decision date, consistent with the provisions of the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

APPEAL PERIOD: An appeal may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered. For additional information on filing an appeal, contact the Planning Division at 949 644-3200.

Prepared by:



Kay Sims, Assistant Planner

GR/ks

Attachments: ZA 1 Draft Resolution

ZA 2 Vicinity Map
ZA 3 Photos
ZA 4 Project Plans

Attachment No. ZA 1

Draft Resolution

RESOLUTION NO. ZA2012-0##

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, APPROVING APPLICATION NO. UP2012-023 FOR A MINOR USE PERMIT TO ESTABLISH THE NUMBER OF PARKING SPACES REQUIRED FOR A PROPOSED 1,191-SQUARE-FOOT-MASSAGE FACILITY WITHIN AN EXISTING COMMERCIAL SUITE LOCATED AT 3617 EAST COAST HIGHWAY (PA2012-136).

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Three Naree Co. Inc dba Thai Body Works with respect to property located at 3617 East Coast Highway, Suite B and legally described as Lot 1 and Lot 2, Block AA, Tract requesting approval of a Minor Use Permit.
2. A minor use permit to establish the number of parking spaces required for a proposed 1,191 square-foot massage facility in a suite previously occupied by a dry cleaning and shoe repair business within a commercial building located in Corona del Mar. Zoning Code Section 20.40 (Off-Street Parking) permits the establishment of the parking requirement for a massage facility with approval of a use permit. The proposed operation will consist of four therapy rooms. Four massage technicians, as independent contractors, certified by the California Massage Therapy Council (CAMTC), will provide the massage services. Each individual technician will schedule their client appointments and greet walk-in clients. A maximum of four massage technicians will be present at any one time. The proposed hours of operation will be 10:00 a.m. to 9:00 p.m., 7 days per week.
3. The subject property is located within the Commercial Corridor (CC) Zoning District and the General Plan Land Use Element category is Commercial Corridor (CC).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Corridor Commercial (CC-B).
5. A public hearing was held on December 12, 2012 in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities).
2. The Class 1 exemption includes the ongoing use of existing buildings where there is negligible or no expansion of use. The proposed project involves interior alterations to convert a currently vacant suite, previously occupied by a dry cleaner and shoe repair business, to a massage facility. The existing space will be remodeled with approval of a tenant improvement building permit. There is no expansion of the physical building and no additional parking will be required.

SECTION 3. REQUIRED FINDINGS.

Minor Use Permit

In accordance with Section 20.52.020.F of the Newport Beach Municipal Code, the following findings and facts in support of such findings for a use permit are set forth:

Finding:

A. The use is consistent with the General Plan and any applicable specific plan.

Facts in Support of Finding:

1. The General Plan land use designation for this site is CC (Corridor Commercial), which is intended to provide a range of neighborhood-serving retail and service uses along street frontages that are located and designed to foster pedestrian activity. The proposed massage use is a service use and is consistent with the land uses permitted within this land use designation. The location within a commercial building located at the corner of East Coast Highway and Orchid Avenue in Corona del Mar will provide residents and visitors within the neighborhood and vicinity an additional neighborhood service and will contribute to pedestrian activity in the area.
2. The subject property is not part of a specific plan area.

Finding:

B. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.

Facts in Support of Finding:

1. The proposed use is located in the CC (Commercial Corridor) Zoning District of the Newport Zoning Code. The intent of this district is to provide for a range of neighborhood-serving retail and service uses along street frontages that are located and designed to foster pedestrian activity. The proposed massage use is consistent with the land uses permitted within this zoning district. The location within a commercial building at the corner of East Coast Highway and Orchid Avenue in Corona del Mar will provide residents and visitors within the neighborhood and vicinity an additional neighborhood service and will foster pedestrian activity in the area.
2. Zoning Code Chapter 20.40 (Off-Street Parking), Table 3-10 (Off-Street Parking Requirements) allows establishment of the parking requirement for a massage facility with approval of a conditional use permit. Pursuant to Zoning Code Section 20.50.020 (Authority for Land Use and Zoning Decisions), the Community Development Director has interpreted the code and has determined that approval of a minor use permit is appropriate, since the Zoning Code (Chapter 20.20.020: Commercial Zoning Districts Land Uses and Permit Requirements) states that approval of a minor use permit is required for a massage facility.
3. The Zoning Code states that approval of a minor use permit is required to allow a massage facility in the CC (Commercial Corridor) Zoning District. As a result of the passage of California Bill SB731, the City does not require discretionary approval for the new massage use, because all massage services are provided by technicians certified by the California Massage Therapy Council (CAMTC). Although the purpose is to establish the parking requirement for the massage use, conditions of approval that establish the operational characteristics of the massage use are included in Attachment A.
4. The proposed use will be located within an existing commercial building. The commercial site is considered legal nonconforming (parking). Parking for the current uses on the site is calculated using a required ratio of one space per 250 gross square feet. Eighteen spaces are required ($4,316/250 = 18$ spaces) and 17 spaces are existing.
5. Pursuant to Chapter 20.38.060 (Nonconforming Parking), a nonconforming use in a nonresidential zoning district may be changed to a new use allowed in that zoning district without providing additional parking, provided no intensification or enlargement (e.g., increase in floor area, or lot area) occurs, and the new use requires a parking rate of no more than one space per 250 square feet of gross building area.
6. Although classified as a separate land use, a massage use is a service use with similar operating characteristics to other service uses, such as barber and beauty shops and tanning salons. The subject suite was formerly occupied by a

dry cleaning and shoe repair business, which is also classified as a service use. Service uses have a required parking ratio of one space per 250 square feet of gross floor area. Establishing the parking rate for the proposed massage use at one space per 250 gross square feet is reasonable given that there is space for four clients, it is a service use with similar operating characteristics as those of other service uses, and there is a high level of pedestrian activity in the Corona del Mar village.

7. The proposed project complies with the requirements of Chapter 20.38.060 (Nonconforming Parking) because the square footage of the existing suite will not be increased; the operational characteristics of the massage use as a service use will require the same number of parking spaces required for the previous occupant of the subject suite and for other uses with similar operating characteristics that are classified as service uses ($1,191/250 = 5$ spaces); and the new use will require a parking rate of no more than one space per 250 square feet of gross building area.

Finding:

- C. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.*

Facts in Support of Finding:

1. The proposed project involves interior alterations to convert an existing suite previously occupied by a dry cleaning and shoe repair business. The 17 existing parking spaces on site will be maintained.
2. The proposed operation will consist of four therapy rooms. Four massage technicians, as independent contractors, certified by the California Massage Therapy Council (CAMTC), will provide the massage services. Each individual technician will schedule their client appointments and greet walk-in clients. No designated receptionist will be provided. A maximum of four technicians will be present at any one time. The proposed hours of operation will be 10:00 a.m. to 9:00 p.m., 7 days per week.
3. The proposed massage use is a service use that will be complementary to the other uses in the commercial building, which include a hair salon, retail sales, and a take-out restaurant. Its operating characteristics are similar to other service uses such as barber and beauty shops, and tanning salons.
4. The proposed addition of a massage facility at this location does not present any conflicts with uses within the surrounding neighborhood and vicinity. It will provide a beneficial service for residents of the neighborhood and visitors to the area and will not require the provision of additional parking spaces on the site.

5. The proposed massage use will be located within a commercial building on a site located at the corner of East Coast Highway and Orchid Avenue in Corona del Mar. It will serve clients by appointment and walk-in customers. Due to its corner location, opportunities for on-street parking will be available along Orchid Avenue and East Coast Highway in addition to the parking spaces provided on the site.

Finding:

D. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.

Facts in Support of Finding:

1. The proposed project will be located in a suite within an existing commercial building and will involve minor interior alterations of the suite. The design, size, location, and operating characteristics of the use are compatible with the existing uses on the site and within the surrounding area.
2. Adequate public and emergency vehicle access, public services, and utilities are provided on-site and are accessed from either Orchid Avenue, East Coast Highway, or the alley at the rear of the site.
3. The tenant improvements to the project site will comply with all Building, Public Works, and Fire Codes. All ordinances of the City and all conditions of approval will be complied with.

Finding:

E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.

Facts in Support of Finding:

1. The project has been reviewed and this approval includes conditions to establish the permitted hours of operation, the maximum number of rooms allowed for massage services in the suite, and the maximum number of massage technicians allowed on site at any one time. These conditions will ensure that the proposed massage use will be compatible with the uses on site and within the surrounding neighborhood. These restrictions will also ensure that the proposed operation will not create an intensification of the previous use that would require additional parking spaces on the site.

2. Establishing the parking rate for the proposed massage use at one space per 250 gross square feet is reasonable given that there is space for four clients, it is a service use with similar operating characteristics as those of other service uses, and there is a high level of pedestrian activity in the Corona del Mar village.
3. The proposed massage facility will help revitalize the project site and provide an economic opportunity for the property owner to update the tenant space and provide additional services to the residents and visitors in the surrounding area without increasing the number of parking spaces required on the site.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves UP2012-023, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the Director of Community Development in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 12th DAY OF DECEMBER, 2012.

Brenda Wisneski, AICP, Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

1. The development shall be in substantial conformance with the approved site plan and floor plans stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
2. The hours of operation for the massage facility shall be 10:00 a.m. to 9:00 p.m., 7 days per week.
3. The number of massage technicians operating at one time shall be limited to four, and each technician shall be certified by the California Massage Therapy Council (CAMTC). A maximum of four rooms shall be permitted to provide the massage services.
4. Use Permit No. 2012-023 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.91.050 of the Newport Beach Municipal Code, unless an extension is otherwise granted.
5. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
6. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
7. This Use Permit may be modified or revoked by the Zoning Administrator should they determine that the proposed use or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
8. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Use Permit or the processing of a new Use Permit.
9. All proposed signs shall be in conformance with the approved Comprehensive Sign Program for the project site and provisions of Chapter 20.67 of the Newport Beach Municipal Code.
10. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. Approval from the Orange County Health Department is required prior to the issuance of a building permit.

11. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
12. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the **Thai Body Works** including, but not limited to **Minor Use Permit No. UP2012-023**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

DRAFT

Attachment No. ZA 2

Vicinity Map

VICINITY MAP



Minor Use Permit No. UP2012-023
PA2012-136

3617 E. Coast Highway, Suite B

Attachment No. ZA 3

Photos



Farah's
HOME FURNISHING

Farah's
HOME FURNISHING

OG Gold & Silver
Exchange

OG Gold & Silver
Exchange

CASH

DANIEL'S
SHOE REPAIR
DRY CLEANERS

Kid'G

BOHEMIA

BREAKFAST

DANIEL'S
SHOE REPAIR
&
DRY CLEANERS
LUGGAGE • LEATHER • SUEDE • RUG

3617



BOHEMIA

BOHEMIA

BREAKFAST

TACO



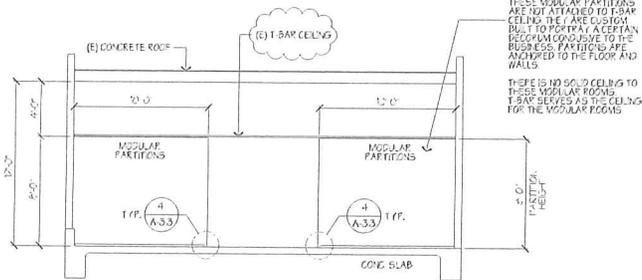
Attachment No. ZA 4

Project Plans

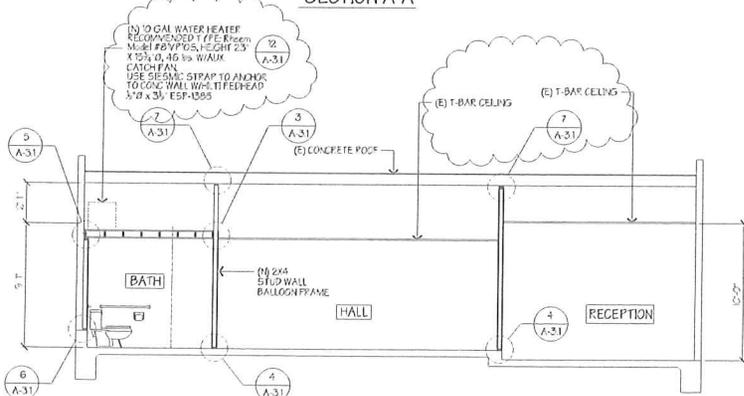
DOOR SCHEDULE					
SYMBOL	SIZE	THICK	T TYPE	MANUF.	NOTES
(1)	3' 6"	1 1/2"	HOLLOW CORE	TO BE DETERMINED	SGL DOOR, PAINT GRADE
(2)	3' 6"	1 1/2"	SOLID CORE	TO BE DETERMINED	SGL DOOR, PAINT GRADE
(3)	3' 6"	1 1/2"	HOLLOW CORE	TO BE DETERMINED	SGL DOOR, PAINT GRADE

NOTES
 1 SEE DETAIL (A-31) FOR DOOR RECOMMENDED HANDLE

SCHEDULES

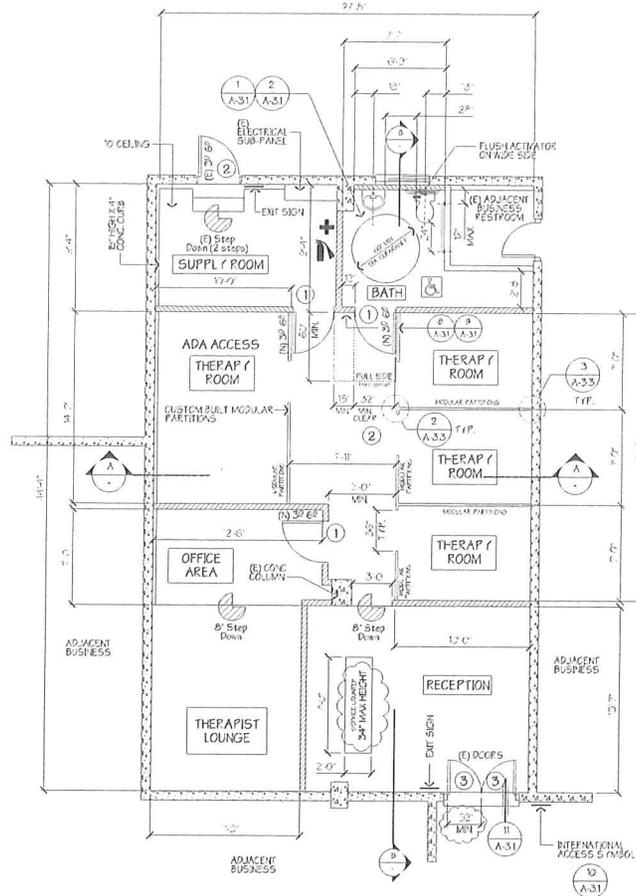


SECTION A-A



SECTION B-B

SECTION PLAN



PROPOSED CHANGES

FLOOR PLAN

REV. LEVEL	DESCRIPTION	INITIAL
-	INITIAL RELEASE	

LEGEND	
(E) Concrete Walls:	
(E) Interior Walls:	
New Construction:	
Partitions:	
Fire Extinguisher:	
First Aid Kit:	

PROJECT NAME:

Thai Body Works
 3617 E. Coast Highway
 Corona Del Mar, CA 92625
 1.714.928-0344

DRAFTING SERVICES

SCALE: 1/4" = 1'-0" DO NOT SCALE DRAWING

All drawings and written material appearing herein constitute original and unpublished work of MSR Design and may not be duplicated, used or disclosed without written consent from MSR Design

DRAWN BY: *MSR*
 JOB NO.:
 DATE:

FLOOR and SECTION PLAN

6661 Melbourne Drive
 Huntington Beach, CA 92647
 TEL: (949) 873-8021



SHEET NUMBER
 A-2

PA2012-136 for UP2012-023
 3617 E. Coast Highway Suite B
 Three Naree Co. Inc dba Thai Body Works

ADDITIONAL
MATERIALS
RECEIVED

Item No. 3. Thai Body Works- Minor Permit

The agenda, in two places, says "Minor Permit." It evidently means "Minor **Use** Permit."

In the Staff Report:

- Under "APPEAL PERIOD" on page 3 (handwritten page 4), the reference to filing an appeal with the City Clerk is confusing. As indicated on page 6 of the draft resolution (handwritten page 14) an appeal of the Zoning Administrator's decision would always be filed with the Director of Community Development.

In the draft Resolution starting on page 9 of the staff report:

- The line in capitals under the main title says "PLANNING COMMISSION" where "ZONING ADMINISTRATOR" is intended.
- In the legal description of Item 1 under "*Section 1. Statement of Facts,*" the Tract number seems to have been omitted.
- In the first sentence of Item 2 a verb is missing. Possibly "...*the number of parking spaces is required for...*" (?)
- In Item 4, the abbreviation "CC-B" appears where elsewhere in the resolution it is just "CC".
- Under Item 5, on the last line of the page, "Planning Commission" is used where "Zoning Administrator" is intended.
- In Item 3 on handwritten page 11, it would seem helpful to clarify the reference to "California Bill SB731" by specifying either the year of the legislative session, or the California law in which it was codified. SB731 is presumably a reference to the Massage Therapy Act passed in 2008, which added "*Chapter 10.5 (commencing with Section 4600) is added to Division 2 of the Business and Professions Code*":

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=bpc&group=04001-05000&file=4600-4620>

specifically Sections 4612 and 4614, which limit the ability of cities to regulate massage businesses employing certified therapists differently from "*other professional or personal service businesses.*" It might be noted that this Act appears set to self-repeal in just two years (per Section 4620).

- The *Fact in Support of Finding C.2* on handwritten page 12 that "*No designated receptionist will be provided*" seems slightly odd in view of the plans on handwritten page 28 showing that patrons enter through a reception room. Does one will ring a bell like arriving at a motel late at night?

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- With regard to the *Conditions of Approval* starting on handwritten page 15, the reference in Condition 9 to the “*approved Comprehensive Sign Program for the project site*” is slightly surprising, since the existence of such a program was not mentioned in the Findings. Does it have a number?
- Should the *Conditions of Approval* include the *Building Division and Fire Department Conditions* (for example, for ingress and egress and use of the rear door?) and *Revenue Department Conditions* (and perhaps others?) as in the previous agenda item?
- Does this approval rescind or otherwise modify any prior permits for the location?