CITY OF NEWPORT BEACH STAFF ACTION REPORT

TO: CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION

FROM: Planning Department Javier Garcia, Zoning Administrator jgarcia@city.newport-beach.ca.us

SUBJECT: Report of actions taken by Planning Department Staff for the week ending August 1, 2008.

Item 1: Vereeya Phakeesuk and Suwanna Poladian on behalf of property owner Emanual Shaoulian – Planning Director's Use Permit UP2008-042 (PA2008-121) 328 Old Newport Boulevard, Unit A

The Planning Director approved the applicants request to allow the establishment of an independent massage facility in conjunction with a therapeutic physical therapy establishment specializing in Thai Yoga. Also included in the application is a request for a waiver of the location requirements since the facility is located within 500 feet of another independent massage establishment. This approval for massage is only in conjunction with the primary use as a yoga studio and shall not be authorized to operate solely as a massage establishment.

Approved – July 31, 2008

Council District 2

Item 2: Bernards Brothers Construction on behalf of property owner Sage Hill School - Staff Approval No. SA2008-004 (PA2008-136)

20402 Newport Coast Drive

The Zoning Administrator approved the Staff Approval application to allow the installation of two relocatable trailer/structures for temporary facilities during the construction of permanent school facilities. The structures include a 12 foot by 40 foot and 24 foot by 40 foot trailers; that will house construction project related activities and classroom activities displaced by the construction.

Approved – July 31, 2008

Council District 6

Prepared and submitted by:

Javier S. Garcia, Zoning Administrator

APPEAL:

The decision of the Planning Director and Zoning Administrator may be appealed to the Planning Commission within 14 days of the action date. A \$600.00 filing fee shall accompany any appeal filed. No building permits may be issued until the appeal period has expired.

 c: David Lepo, Planning Director (e-mail) Sharon Wood, Assistant City Manager (e-mail) David Keely, Public Works Senior Civil Engineer (e-mail) Kay Sims, Assistant Planner (e-mail) Sgt. Ron Vallercamp, Vice/Narcotics (e-mail) Code Enforcement Division (e-mail) Erin Steffen, Office Assistant (e-mail) Kim Dominguez, NBPD (e-mail)



USE PERMIT NO. UP2008-042

(PA2008-121)

PLANNING DEPARTMENT 3300 NEWPORT BOULEVARD NEWPORT BEACH, CA 92663 (949) 644-3200 FAX (949) 644-3229

Staff Person: Javier S. Garcia, 644-3206 Appeal Period: 14 days after approval date

Application:	Planning Director's Use Permit No. UP2008-042 (PA2008-121)					
Applicant:	Vereeya Phakeesuk and Suwanna Poladian					
Site Address:	328 Old Newport Boulevard, Unit A					
Legal Description:	Lot 8, Tract 1136					

Request as Modified and Approved:

To allow the establishment of an independent massage facility in conjunction with a therapeutic physical therapy establishment specializing in Thai Yoga. The facility is located within an existing commercial office building. The applicant also requests a waiver of the location requirements since the facility is located within 500 feet of another independent massage establishment that is currently located across the street, authorized at 325 Old Newport Boulevard. The basis for the waiver of location requirement is due to the operational characteristics that rely on the touching or in this case the aided stretching of the patron in the yoga positions. This differs from the traditional yoga methods and is characterized as massage by the City ordinances. Therefore, this approval for massage is only in conjunction with the primary use as a yoga studio and shall not be authorized to operate solely as a massage establishment. A change to a massage establishment shall require review and approval of a new use permit application and shall be subject to review on the merit of the change in use and justification of the required findings for the waiver of the location requirements. The proposed tenant space is approximately 750 square feet and provides four therapy/massage rooms. The property is located in the SP-9 (Old Newport Boulevard Specific Plan Area) District.

DIRECTOR'S ACTION APPROVED – JULY 31, 2008

Application Request:

The Planning Director, in approving this application, reviewed issues with regard to compliance with Chapters 5.50 and 20.86 of the Newport Beach Municipal Code (Massage Establishments) and the parking requirements of Chapter 20.66 of the Newport Beach Municipal Code. The detailed discussion can be found in the attached appendix. In consideration of those aspects, the Planning Director determined in this case that the proposal would not be detrimental to persons, property or improvements in the neighborhood and that the use permit as approved would be consistent with the legislative intent of Title 20 of the Newport Beach Municipal Code, and made the following findings:

FINDINGS

- 1. The proposed development is designated for Commercial General Office by the Land Use Element of the General Plan and Retail Service Commercial by the Old Newport Boulevard Specific Plan Area Regulations. The proposed use is consistent with those designations. The use as proposed is compatible with the surrounding land uses.
- 2. The approval of **Use Permit No. UP2008-042 (PA2008-121)**, will not, under the circumstances of this case, be detrimental to persons residing or working in the neighborhood or be detrimental or injurious to property or improvements in the neighborhood or the general welfare of the city for the following reason:
 - The proposed operation of the massage establishment is an ancillary service use to a yoga studio and is a minor portion of the primary use. The massage portion of the operational characteristics is minor in comparison to the overall procedures and movement/positioning techniques proposed and is consistent with the legislative intent of Chapter 20.87 of the Municipal Code.
- 3. This project has been reviewed, and it has been determined that it is categorically exempt from the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities).
- 4. The approval of **Use Permit No. UP2008-042 (PA2008-121)** will not, under the circumstances of this case, be detrimental to the health, safety, peace, morals, comfort, and general welfare of the city for the following reasons:
 - Adequate on-site parking is available for the existing and proposed uses since the adequate off-street parking spaces exist in the common lot for the proposed establishment.
 - The proposed use is located in a managed commercial center with coordinated tenant management, which is not in a blighted area.
 - There are no urban renewal or neighborhood conservation programs in effect in the area.
 - The proposed use is not within 500 feet of a school or playground, or place of worship.
 - The proposed use will not create a concentration of massage uses in the neighborhood that would be detrimental to the neighborhood or create neighborhood blight.
 - Compliance with all other applicable regulations of the Municipal Code will be required and enforced.
- 5. Although the proposed facility is located within 500 feet of another independent massage establishment, the characteristics of the proposed use is as a yoga studio with limited massage procedures or services. The facility is not operating as an independent massage facility and the approval of **Use Permit No. UP2008-042** (**PA2008-121**) will not, under the circumstances of this case and as conditioned by

this approval, be detrimental to the health, safety, peace, morals, comfort, and general welfare of the city for the following reasons:

- The proposed use is within 500 feet of another independent massage establishment located at 325 Old Newport Boulevard; however, the limitation on the proposed use will be to utilize massage as a minor means of furthering the yoga operational activities. Sole massage activities or services are prohibited by this approval. Any deviations from the limits of this approval shall be deemed a material breach of the conditions of approval and shall make this approval subject to revocation. The use as proposed and conditioned by this approval is not anticipated to create or cause any detrimental affect on the surrounding commercial, church patrons or nearby residential uses.
- 6. The proposed massage establishment will not be contrary to the public interest or injurious to nearby properties and is consistent with the legislative intent and the location requirements for massage establishments established in Chapter 20.87 of the Municipal Code for the following reasons:
 - The massage establishment is not within 500 feet of a public or private school, playground, place of worship, civic center or cultural site.
 - The massage establishment is a minor part of the primary yoga studio operation and will use massage as a minor means of extension or facilitation of the yoga training and positioning exercises.

CONDITIONS

- 1. The development shall be in substantial conformance with the approved floor plan.
- 2. The project shall comply with State Disabled Access requirements.
- 3. Only three licensed massage technicians shall be permitted to operate within the facility at any one time, and the addition of any additional massage technicians to the business shall be subject to an amendment to this Use Permit. No more than three treatment rooms shall be permitted to provide massage services at any one time, with the exception of peak periods and holidays, when a maximum of four massage technicians shall be authorized to operate at any one time within the facility.
- 4. Any changes to the existing parking lot configuration shall be subject to further review by the City Traffic Engineer for the on-site parking, vehicular circulation and pedestrian circulation systems.
- 5. The hours of operation shall be limited between the hours of 8:00 a.m. and 9:00 p.m., daily, and shall also be subject to the operational requirements provided in Chapter 5.50 of the Municipal Code.
- 6. All applicable requirements of Chapter 5.50 of the Municipal Code shall be fulfilled.

- 7. At least one parking space for each 250 square feet of gross floor area shall be provided on site for the proposed facility.
- 8. Employees shall park on-site at all times.
- 9. No temporary "sandwich" signs, balloons or similar temporary signs shall be permitted, either on-site or off-site, to advertise the proposed use, unless specifically permitted in accordance with the Sign Ordinance of the Municipal Code. Temporary signs shall be prohibited in the public right-of-way, unless otherwise approved by the Public Works Department in conjunction with the issuance of an encroachment permit or encroachment agreement.

STANDARD CITY REQUIREMENTS

- 1. All signs shall conform to the provisions of Chapter 20.67 of the Municipal Code.
- 2. The facility shall be designed to meet exiting and fire protection requirements as specified by the Uniform Building Code and shall be subject to review and approval by the Building Department
- 3. The project shall comply with State Disabled Access requirements.
- 4. The Planning Director or the Planning Commission may add to or modify conditions of approval to this use permit, or revoke this permit upon a determination that the operation which is the subject of this approval causes injury, or is detrimental to the health, safety, peace, morals, comfort, or general welfare of the community.
- 5. This approval shall expire unless exercised within 24 months from the end of the appeal period, in accordance with Section 20.91.050 of the Newport Beach Municipal Code.

APPEAL PERIOD

The decision of the Planning Director may be appealed by the applicant or any interested party to the Planning Commission within 14 days of the decision date. Any appeal filed shall be accompanied by a filing fee of \$600.00.

On behalf of Planning Director David Lepo,

Zoning Administrator Javier S. Garcia, AICP

JSG/rm

Attachments: Appendix Vicinity Map Applicant's Project Description Site Plan and Floor Plan

<u>APPENDIX</u>

Discussion

The proposed yoga studio will offer individual yoga sessions with hands-on assistance by trained yoga specialists as a physical therapy regimen. In accordance with Section 20.87 of the Municipal Code, independent massage establishments in the RSC Districts are permitted, but subject to the approval of a use permit by the Planning Director in each case. The facility is generally limited to provide three massage technicians at any one time, but may increase to a maximum of four technicians during peak operations and authorized to operate at any one time within the facility.

As shown on the attached floor plan, the overall square footage of the personal service facility is approximately 750 square feet, with the square footage devoted to massage activity limited to four therapy rooms containing approximately 60 square feet of floor area each (designated as the massage therapy rooms on the floor plan). The daily hours of operation of the facility vary but are between 8:00 am and 9:00 pm. The massage service will be available by appointment during regular business hours only.

Section 20.87 Compliance

Section 20.87 of the Municipal Code sets forth the provisions that govern the establishment and location of massage services within the City. It is intended to allow and promote the operation of legitimate massage service and to prevent problems of blight and deterioration that might accompany or be brought about by large numbers of massage establishments. The spirit and intent of Chapter 20.87 seeks to prevent the establishment of uses that may act as fronts for illegal activity by dispersing the location of massage establishments, preventing their concentration within certain noncommercial areas of the city, and by establishing specific Zoning Districts in which the use is permitted.

In this case, the proposed massage establishment is an ancillary use or service incidental to a physical therapy regimen/personal service establishment.

Request for Waiver of Location Restrictions

Chapter 20.87 of the Municipal Code also establishes specific location requirements for independent massage establishments. Chapter 20.87.025 (A) states that, notwithstanding any other provision of the Municipal Code, no use permit shall be approved for any massage establishment if the proposed site is located:

- 1. Within 500 feet of any public or private school, park or playground, civic center, cultural site or church site; or
- 2. Within 500 feet of any other massage establishment site.

The proposed massage use is not located within 500 feet of any identified sensitive uses mentioned above, except that it is within 500 feet of another independent massage facility located at 325 Old Newport Boulevard. Therefore, a waiver of location restrictions is proposed.

Title 5 Compliance

In addition to the Title 20 requirements mentioned above, Title 5 of the Municipal Code (Business Licenses and Regulations) also includes provisions for the review and approval of operator permits, massage technician permits, and requirements of operation for massage establishments. The applicable permits and necessary business license as required by the Municipal Code must be secured before the operation of the massage establishment.

Parking Requirement

Since the subject use is a personal service use, the parking demand for the use is not any greater than for a general office or a retail use that are permitted by right without approval of a use permit.



Planning Director's Use Permit UP2008-042 Project No. PA2008-121

Site Address:

328 Old Newport Boulevard, Unit A

THAI BODY WORKS 328 OLD NEWPORT BLVD. #A NEWPORT BEACH, (A. 92663

To: Planning Director Newport Beach Mr. Javier Garcia:

From:

Owner/Operator Thai Body Works Vereeya Phakeesuk Suwanna Poladian

Project: Thai Body Works Newport Beach

Project Description and Justification

I, Vereeya Phakeesuk, owner of Thai Body Works, have found a suitable new location to relocate and expand. Along with that, I will form a partnership with Suwanna Poladian. The intention of this partnership is to increase sales and in the future to hire additional massage technicians. There are several benefits to help justify the move to this new location, which will provide:

- 1. The parking will be more convenient for customers, by providing free on-site parking and off- street additional parking at 332 Old Newport Blvd., which property, our new landlord also owns. Total of 14 spaces.
- 2. This new location also allows us to have the benefit of 4 large therapy rooms, a separate office, a larger storage room for supplies, and an over-size handicapped restroom. The reception area is also larger. Central air conditioning and heating is provided, which the present location lacks.

June 5, 2008

3. The building, located on a major street, with more vehicle and foot traffic, should provide much needed exposure we lack at the present location. With the unit at street level, we are than easier to access for all individuals, including handicapped customers.

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4. At this new location we will have the security of a lease. The present location is month to month rent, and cannot be leased, because the property owners, WREC, plan a new structure in the future.

To describe the type of therapy we provide, is the same we are performing at the location at Via Oporto, and may be reviewed in the current Planning Director's Use Permit No. UP2006-006. To better understand Thai Yoga, commonly and mistakenly called Thai Massage, is truly a yoga, which is performed in Thailand as a therapeutic physical therapy designed to help a person regain movement or improve movement and performance by the technician assisting them with the various stretches and positions. In this country the common description for what we practice is called massage because some technicians have changed the methods adding massage techniques. Municipal Codes will define massage to include various descriptions or methods, stating, any " other manner of touching external parts of the body with the hands." So, with having to obtain permits to perform massage expands our variety of therapies to include Thai Yoga/Massage, Reflexology, and the many different forms of massage therapy.

Massage has grown in popularity over recent years. Much of it in the form of entertainment. This is not the nature of our service. It is our desire to continue to provide the community with a variety of professional therapeutic services. We have always strived to earn our customers respect and friendship, making them feel important to us, and our service invaluable to them. This new location will help provide a more convenient upgraded atmosphere for the customer, and make our work environment more efficient and productive.

As far as the physical changes we need to make to the unit we will occupy, the floor plan should explain all of our basic changes. Also the Municipal Code 5.50.050, Requirements of Operation, and all requirements and regulations of the new Director's Use Permit will be followed and applied. Hopefully any questions you have will be explained by what we have provided. Please contact George Sanfilippo, 714-928-0344, for any other details. Thank You.

> Sincerely, Vereeya Phakeesuk and Suwanna Pøladian

Q. Vm/E GP=





Thai Body Works Newport Beach Floor Plan Scale. 1'= 34 " George San Filippo 74-928 0.244 328 Old Newport Blvd # A 2 Systere Fortage. 30'x 25'= 250' Ceiling 8'6" Hyb

Note: All Walls, Doors, and Windows are existing: Partitions are the only proposed interior Changes.

CITY OF NEWPORT BEACH

STAFF APPROVAL NO. SA2008-004

(PA2008-136)



PLANNING DEPARTMENT 3300 NEWPORT BOULEVARD NEWPORT BEACH, CA 92658 (949) 644-3200; FAX (949) 644-3229

Staff Person: Appeal Period: Javier S. Garcia, 644-3206 14 days after approval date

Application:Staff Approval No. SA2008-004 (PA2008-136)Applicant:Bernards Brothers Construction on behalf of property owner
Sage Hill SchoolSite Address:20402 Newport Coast Drive - Sage Hill School

Request as Approved:

To allow the installation of two relocatable trailer/structures for temporary facilities during the construction of permanent school facilities. The structures include a 12 foot by 40 foot and 24 foot by 40 foot trailers; that will house construction project related activities and classroom activities displaced by the construction project (theater arts building), respectively. The property is located in the GEIF (Governmental, Educational and Institutional Facilities) District.

Section 20.91.055 A of the Newport Beach Municipal Code provides that the Planning Director may waive the requirement for a new <u>use permit</u> application if the changes are minor, do not involve substantial alterations or addition to the plan or the conditions of approval, and are consistent with the intent of the original approval.

DIRECTOR'S ACTION: <u>APPROVED JULY 31, 2008</u> - The Planning Director determined that the proposed changes to the phasing and development plan for Sage Hill School are consistent with the plans approved by the Orange County Planning Commission in conjunction with the review and approval of Use Permit PA97-0173.

FINDINGS

- 1. The proposed temporary structures and use are in support of the construction project approved by Staff Approval No. SA2007-017(PA2007-224) which allowed the relocation of the Arts Center and the removal of the Mini-Gym/Fitness/Facilities structure from the project plan reducing the intensity of the originally approved on-site use.
- 2. The installation of temporary classroom and storage trailers shall be in accordance with the approved site plan and floor plans submitted with this application.

CONDITIONS

- 1. The project shall be in substantial conformance with the approved Use Permit PA97-0173 which permitted the establishment of a private high school and Staff Approval SA2007-017(PA2007-224) which allowed changes to the phasing and development plan for Sage Hill School.
- 2. The applicant shall submit all required construction plans for the current school renovations and the installation of the temporary trailers, classroom and storage buildings.
- 3. The Planning Director or the Planning Commission may add to or modify conditions of approval to this use permit. In addition, this permit may be revoked upon a determination that the operation which is the subject of this approval causes injury or is detrimental to the health, safety, peace, morals, comfort, or general welfare of the community.
- 4. The Planning Department reserves the right to require a new use permit upon review of future phasing and development applications.

The decision of the Planning Director may be appealed by the applicant or any interested party to the Planning Commission within 14 days of the decision date. Any appeal filed shall be accompanied by a filing fee of <u>\$600.00</u>.

On behalf of Planning Director David Lepo,

By

Zoning Administrator Javier S. Garcia, AICP

Attachments: Appendix Vicinity Map Trailer Floor Plans Site Plan

<u>APPENDIX</u>

Determination

The Planning Director has determined that the proposed installation and use of the temporary trailers are consistent with the original approval and waives the requirement for a new application (use permit) for the following reasons:

- The use of temporary trailers and structures to house displaced storage and classrooms is consistent with the current use permit and will be removed upon completion of the construction project.
- The proposed temporary use is in support of the Arts Center construction project and mini-gym demolition project.

VICINITY MAP



Staff Approval No. SA2008-004 (PA2008-136)

Sage Hill School 20402 Newport Coast Drive

July 31, 2008 F:\Users\PLN\Shared\PA's\PAs - 2008\PA2008-136\SA2008-004 appr.doc Page 4

Client Bernards Brothers Construction Size 12x60 Modular Building Concepts 12580 Statler Cl. Powery Ca. 92064 Ph (858) 679-1185 Fx (858)67	Standard Features Fiors	A CONST. TRAIER
on Size <u>12x60</u> Unit # <u>205a</u> Date <u>6/3/08</u> Ph (858) 679-1185 Fx (858) 679-6804 Dimensions Are Approximate. Features subject to change.	Windows	

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