

**Honorable Chairman and Members of the
Hermosa Beach Planning Commission**

**Regular Meeting of
January 16, 2007**

SUBJECT: CONDITIONAL USE PERMIT 07-1

LOCATION: 1093 ½ AVIATION BOULEVARD

APPLICANT: ERIK GRAY – AKIYAMA MASSAGE THERAPY INC.
P.O. BOX 7000-155
REDONDO BEACH, CA 90277

REQUEST: TO ALLOW A MASSAGE THERAPY BUSINESS

Recommendation

To approve the request subject to the conditions contained in the attached resolution.

Background

PROJECT INFORMATION:

ZONING:	C-3 General Commercial
GENERAL PLAN:	Commercial Corridor
FLOOR AREA:	520 square feet
PARKING:	None (Existing nonconforming structure)
ENVIRONMENTAL DETERMINATION:	Categorically Exempt

The applicant proposes to operate a massage therapy business, “AKIYAMA MASSAGE THERAPY INC.” within a three tenant commercial building that contains 1,892 square feet. The commercial building is located on the northwest corner of Aviation Boulevard and Prospect Avenue, and includes a pottery studio/gallery and a dining establishment. Currently, there is no on-site parking for the businesses. The pottery studio/gallery offers private showings by appointments only and the restaurant contains very few tables thus there currently does not appear to be a high demand for on-site parking.

The subject business is considered a “massage therapy business” pursuant to the definitions of the Zoning Ordinance. The City adopted an ordinance to allow massage therapy businesses, subject to a Conditional Use Permit in 1997, and adopted fairly restrictive regulations for obtaining a business license to conduct massage therapy¹ (as set forth in Chapter 5.74) and standard CUP conditions. This is the third application for a C.U.P. under these new provisions, as other massage businesses in this City are secondary uses to a health club, spa, beauty salon, or medical related uses. The only massage therapy business, approved by the Commission in October of 2005 is currently in operation on the corner of Pacific Coast Highway and 4th Street.

Analysis

The applicant is proposing to offer massage therapy treatment as the primary function of the business. Skin care services such as facial and waxing will comprise of approximately 15% of the proposed operation. The plan shows three proposed workrooms, a small reception area, one bathroom, a small storage/linen closet and an office area in the rear of the building. The location would appear to be suitable for this type of business, as it is within an existing commercial building and in a visible location along Aviation Boulevard. The proposed use of the building is not considered any more intense than prior commercial uses, as the parking requirement for a massage studio is the same as a retail use and doesn't change the current nonconforming parking situation.

Chapter 5.74 of the Municipal Code regulates massage therapy under business licensing regulations with respect to hygiene and the potential for criminal activity. Section 17.40.160 of the Zoning Ordinance provides standard conditions for operation of a massage therapy business, requiring that a licensed massage therapist be on the premises at all times the business is open, that management inform patrons and employees of all rules of Chapter 5.74, and that hours are limited to between 7:00 A.M. and 10:00 P.M.² Staff is including these conditions in the attached resolution, as well as a condition requiring a more detailed floor plan prior to permit issuance, identifying a separate closet or storage area for soiled and sanitary towels and linens, and specifying the types of massage tables and seats used in the workrooms.

According to the applicant, "AKIYAMA MASSAGE THERAPY INC." will provide customized deep tissue massage in an authentically Japanese inspired environment, and other services including facial and waxing.

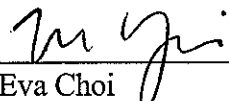
If the CUP is approved, the following additional steps are necessary prior to opening the proposed massage therapy business:

- Submit detailed floor plans to the Community Development Department for plan check, and when approved, obtain a building permit for the proposed alterations to the interior.
- Submit an application pursuant to Chapter 5.74 to the Finance Department for a business license.
- The City Police Chief will review the application and conduct appropriate investigations of the applicant's submittal and record to determine if the business license can be issued in accordance with Chapter 5.74. If the applicant does not comply with these conditions the Police Chief may deny the application.
- The City will have to inspect the premises to ensure compliance with Chapter 5.74 with respect lighting, sanitary conditions, proper storage for towels and linens etc. prior to issuing a business license.

CONCUR:



Sol Blumenfeld, Director
Community Development Department



Eva Choi
Planning Assistant

Attachments

1. Proposed Resolution
2. Location Map
3. Photographs
4. Correspondence
5. Chapter 5.74 of the HBMC

¹The requirements in Chapter 5.74, among other things, requires 500 hours of massage therapy training; CPR certification; Police Chief approval based on the applicant's record; dressing room and wash room facilities; sanitary towel service, etc. A copy of Chapter 5.74 is attached for reference.

² **Section 17.40.160 Massage Therapy Business**

The following conditions and standards of operation, in addition to any other deemed necessary or appropriate to ensure compatibility with existing or permitted uses in the vicinity, shall be required: A. A licensed Massage Therapist, pursuant to **Chapter 5.74** of the Hermosa Beach Municipal Code, shall be on the premises at all times when the business is open. The business may employ technicians or aides only if supervised by a licensed Massage Therapist.

B. Management shall adopt, inform patrons and employees of, and strictly enforce all requirements of the Conditional Use Permit and all regulations as set forth in **Chapter 5.74**.

C. Hours of operation shall be limited to between 7:00 A.M. and 10:00 P.M. or other hours as established by the Planning Commission if deemed necessary because of proximity to residential uses.

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P.C. RESOLUTION 07-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HERMOSA BEACH, CALIFORNIA, APPROVING A CONDITIONAL USE PERMIT TO ALLOW A MASSAGE THERAPY BUSINESS AT 1093 1/2 AVIATION BOULEVARD, LEGALLY DESCRIBED AS LOTS 53 & 54, HERMOSA HEIGHTS TRACT BEING LOT 14 BLOCK 84 AND PART OF LOT 7 BLOCK 88 OF SECOND ADDITION TO HERMOSA BEACH.

Section 1. An application was filed by Erik J. Gray to allow a massage therapy business pursuant to Sections 17.26.030, and 17.40.160, and Chapter 5.74 of the Municipal Code.

Section 2. The Planning Commission conducted a duly noticed public hearing to consider the application for the Conditional Use Permit on January 16, 2007, at which testimony and evidence, both written and oral, was presented to and considered by the Planning Commission

Section 3. Based on evidence received at the public hearing, the Planning Commission makes the following factual findings:

1. The site is zoned C-3 allowing the proposed massage therapy business with a Conditional Use Permit.
2. Standard conditions of a Conditional Use Permit for conducting a massage therapy business are contained in Section 17.40.160 of the Zoning Ordinance,
3. Licensing, application, training and education, facilities requirements, conduct of business and conditions for issuance of a business license are all contained in Chapter 5.74 to regulate the operations of the massage therapy business.

Section 4. Based on the foregoing factual findings, the Planning Commission makes the following findings pertaining to the application to amend the Conditional Use Permit:

1. The site is zoned C-3, and the location within a commercial building along the Aviation Boulevard Commercial Corridor is suitable for the proposed business.
2. The imposition of conditions as contained in this resolution as required by the Municipal Code to address and prevent inappropriate behavior and to require proper hygiene will mitigate any concerns associated with this type of business.
3. This project is Categorically Exempt pursuant to 15301, Class 1 of the California Environmental Quality Act Guidelines alterations to existing facilities.

Section 5. Based on the foregoing, the Planning Commission hereby approves the Conditional Use Permit subject to the following **Conditions of Approval:**

1. **Interior alterations to the building shall be consistent with the plans reviewed by the Planning Commission at their meeting of January 16, 2007, and revised to clearly indicate, separate cabinets for storage of soiled and sanitary towel and linens, and specifying the types of tables and chairs used in the massage rooms.**

- 1 **2. A licensed Massage Therapist, pursuant to Chapter 5.74 of the Hermosa Beach**
2 **Municipal Code, shall be on the premises at all times when the business is open. The**
3 **business may employ technicians or aides only if supervised by a licensed Massage**
4 **Therapist.**
- 4 **3. Management shall adopt, inform patrons and employees of, and strictly enforce all**
5 **requirements of the Conditional Use Permit and all regulations as set forth in**
6 **Chapter 5.74.**
- 6 **4. Hours of operation shall be limited to between 7:00 A.M. and 10:00 P.M.**
- 7 **5. The establishment shall not adversely affect the welfare of the residents, and/or**
8 **commercial establishments nearby.**
- 9 **6. Any changes to the interior layout that would alter the primary function of the business**
10 **shall be subject to review and approval by the Planning Commission.**
- 11 **7. The project and operation of the business shall comply with all applicable requirements**
12 **of the Municipal Code.**

12 Section 6. This grant shall not be effective for any purposes until the permittee and the
13 owners of the property involved have filed an Acceptance of Conditions with the office of Planning
14 Division of the Community Development Department their affidavits stating that they are aware of,
15 and agree to accept, all of the conditions of this grant.

16 The Conditional Use Permit shall be recorded, and proof of recordation shall be submitted to
17 the Community Development Department.

18 Each of the above conditions is separately enforced, and if one of the conditions of approval
19 is found to be invalid by a court of law, all the other conditions shall remain valid and enforceable.

20 Permittee shall defend, indemnify and hold harmless the City, it agents, officers, and
21 employees from any claim, action, or proceeding against the City or its agents, officers, or employee
22 to attack, set aside, void or annul this permit approval, which action is brought within the applicable
23 time period of the State Government Code. The City shall promptly notify the permittee of any
24 claim, action, or proceeding and the City shall cooperate fully in the defense. If the City fails to
25 promptly notify the permittee of any claim, action or proceeding, or if the City fails to cooperate fully
26 in the defense, the permittee shall no thereafter be responsible to defend, indemnify, or hold harmless
27 the City.

28 The permittee shall reimburse the City for any court and attorney's fees which the City may
29 be required to pay as a result of any claim or action brought against the City because of this grant.
Although the permittee is the real party in interest in an action, the City may, at its sole discretion,
participate at its own expense in the defense of the action, but such participation shall not relieve the
permittee of any obligation under this condition.

The subject property shall be developed, maintained and operated in full compliance with the
conditions of this grant and any law, statute, ordinance or other regulation applicable to any
development or activity on the subject property. Failure of the permittee to cease any development
or activity not in full compliance shall be a violation of these conditions.

1 The Planning Commission may review this Conditional Use Permit and may amend the
2 subject conditions or impose any new conditions if deemed necessary to mitigate detrimental effects
3 on the neighborhood resulting from the subject use.

4 Section 7. Pursuant to the Code of Civil Procedure Section 1094.6, any legal challenge to the
5 decision of the Planning Commission, after a formal appeal to the City Council, must be made within
6 90 days after the final decision by the City Council.

7 VOTE: AYES:
8 NOES:
9 ABSENT:
10 ABSTAIN:

11 CERTIFICATION

12 I hereby certify the foregoing Resolution P.C. 07- is a true and complete record of the action taken by
13 the Planning Commission of the City of Hermosa Beach, California, at their regular meeting of
14 January 16, 2007.

15 _____
16 Peter Hoffman, Vice-Chairman

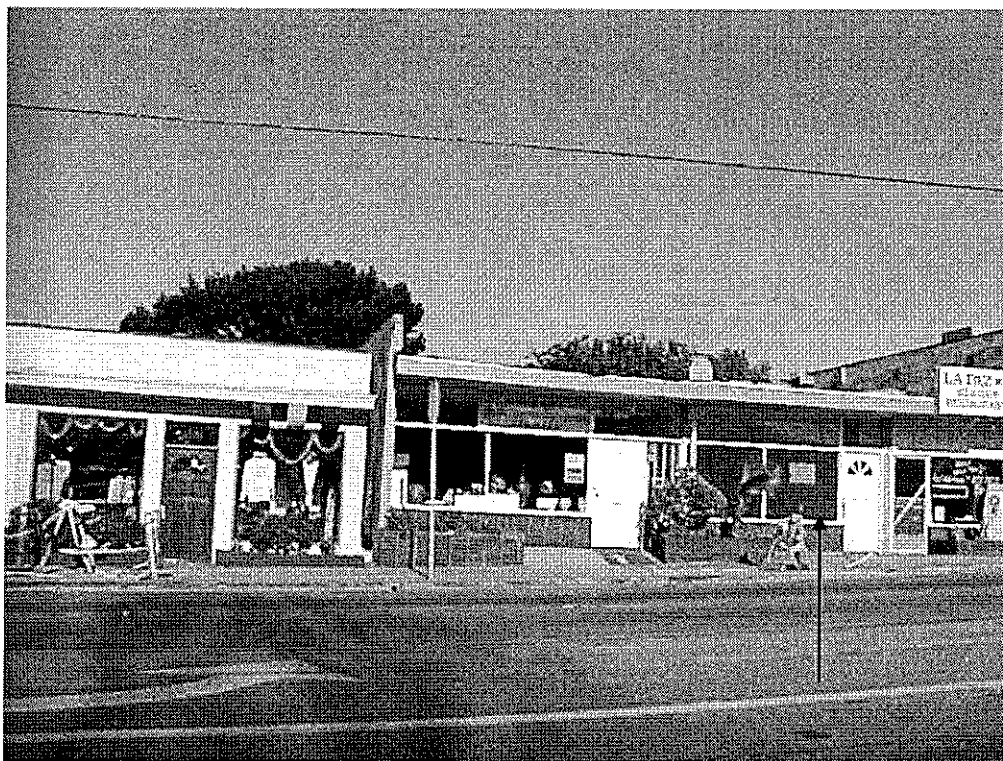
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18 Sol Blumenfeld, Secretary

19 Date January 16, 2007

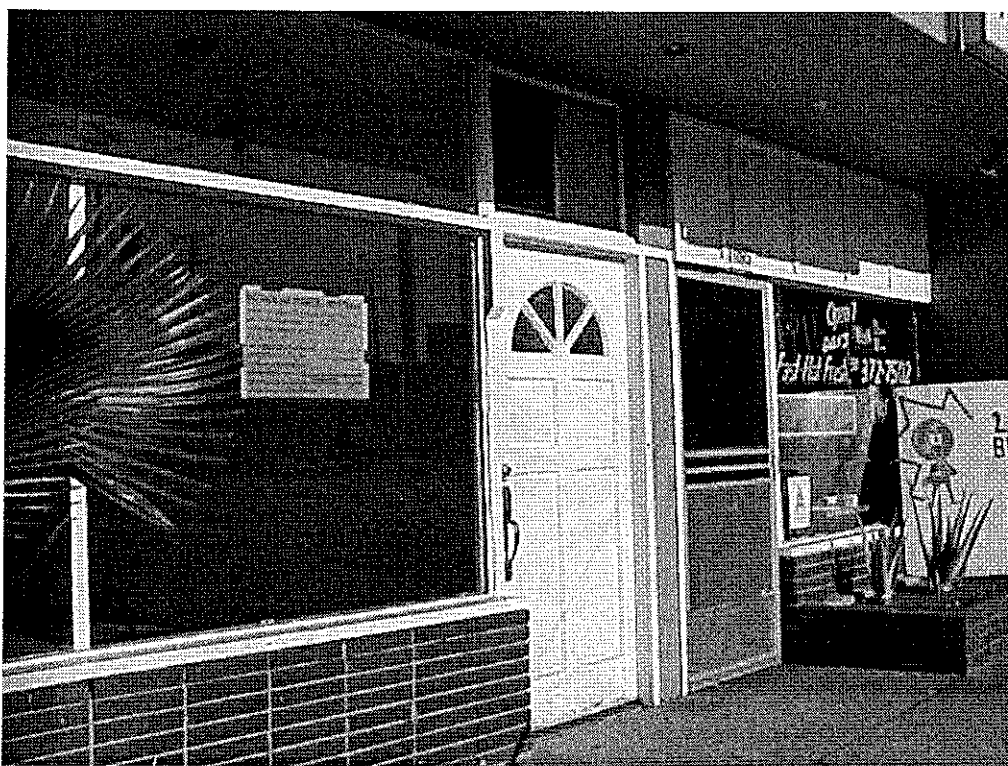
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City of Hermosa Beach
1093 1/2 Aviation Blvd.



1093 ½ Aviation Boulevard – Subject location with orange poster on the window.



1093 ½ Aviation Boulevard – Currently vacant

WAYLAND & VUKADINOVICH LLP

CERTIFIED PUBLIC ACCOUNTANTS

GARY C. WAYLAND, CPA
MICHAEL VUKADINOVICH, CPA

RECEIVED

JAN 10 2007

COMMUNITY DEV. DEPT.

January 8, 2007

Community Development Department
Planning Division
City of Hermosa Beach
1315 Valley Drive
Hermosa Beach, CA 90254

Sent via fax 310 937-6234

Re: January 16, 2007 Public Hearing re 1093 ½ Aviation Blvd

Ladies and Gentlemen:

My partner, Mike Vukadinovich, and I own the property located at 1097 Aviation Blvd, several doors east from the property subject to the public hearing on January 16th. Due to prior commitments, neither Mike nor I will be able to attend the hearing, but we both wanted to write regarding past experiences we have had and our hopes that these experiences could be averted this time.

Several years ago, the Planning Commission allowed local restaurant owners to open a small Mexican restaurant adjacent to our property. The restaurant has about twenty seats and also does a good take-out business. The restaurant (which is adjacent to the 1093 ½ Aviation property) has NO PARKING. As a result, customers from the restaurant routinely park in our office parking lot, inconveniencing our staff and clients.

Please review parking plans and requirements for this business. There is no onsite parking available; there is little street parking available. Please take steps to make sure parking is provided properly for this business. Thank you for your efforts.

Sincerely,



Gary Wayland
Partner

CITY OF HERMOSA BEACH

MUNICIPAL CODE

BUSINESS LICENSES AND REGULATIONS

Chapter 5.74 MASSAGE THERAPY BUSINESS

5.74. 010 Definitions

Massage Therapy Business. An establishment offering massage, alcohol rub, fomentation, electric or magnetic treatment, or similar treatment or manipulation of the human body, unless such treatment or manipulation is administered by a medical practitioner, chiropractor, acupuncturist, physical therapist or similar professional person licensed by the state as part of a medical clinic. This definition excludes a gymnasium/health and fitness center, school, barber/beauty shop, or similar establishment where massage or similar manipulation of the human body is offered by an individual as an incidental or accessory service and does not occupy more than 25% of the area of the establishment. This definition also specifically excludes Adult Massage as defined in Section 17.04.060. (Ord. 97-1173, Added, 08/12/97)

5.74. 020 Massage therapy business location -- conditional use permit required.

Before any location and building may be used for the purposes of massage therapy a Conditional Use Permit shall be obtained pursuant to Chapter 17.40 of the Zoning (Ord. 97-1173, Added, 08/12/97)

5.74. 030 Massage therapy business -- massage therapist license required .

The business shall be owned and/or operated by an on-premises City licensed Massage Therapist who meets the minimum qualification as set forth in this Chapter. Every person conducting, managing, owning, or operating a massage therapy business in the City, as defined in this section, shall procure a license in the manner prescribed in this section. (Ord. 97-1173, Added, 08/12/97)

5.74. 040 Massage therapist -- training and education required.

A massage therapy business shall at all times be conducted, managed, and/or supervised by an on-premises Massage Therapist. The following are the minimum education and training requirements for a Massage Therapist:

A. Completion of a minimum of five hundred (500) hours of training in the theory, method, profession, and work of massage therapy from a recognized school, evidenced by a diploma or certificate of graduation from a recognized school;

B. Training and maintenance of certification to practice CPR and First Aid from the American Heart Associate, Red Cross, or the State of California; (Ord. 97-1173, Added, 08/12/97)

5.74. 050 License application.

Every person desiring to obtain a license shall make an application to the City Finance Department. The applicant shall provide the following:

- A. The full name, residence address, business address, and telephone numbers of the applicant, and the name under which the proposed business is to be conducted;
- B. The full name, business address, residence address, and telephone numbers of any copartners, excluding limited partners, of the applicant;
- C. The full name, residence address, business address, and telephone numbers of the property owner, in which the business is to be located, and the written consent of said owner to the operation of the business or a copy of the lease for the premises executed by the owner evidencing such consent;
- D. Applicants height, weight, color of eyes and hair, age, and date and place of birth;
- E. The nature, name and place of applicants business or employment during the five years immediately preceding the date of the filing of the application;
- F. A two-inch square photograph of the applicant taken within sixty days immediately prior to the date the application is filed;
- G. Such other identification and information as the Police Chief may require in order to discover the truth of the matters set forth in the application, including the right to take fingerprints, any additional photographs or to confirm the height and weight of the applicant;
- H. Record of any conviction of violation of law, excluding minor traffic violations;
- I. An annual certificate from a medical doctor stating that the applicant and any other massage therapist or massage technician employed or permitted to work by the applicant has, within sixty days prior thereto, been examined and found to be free of any contagious or communicable disease;
- J. A statement in writing by the applicant that he or she certifies, under penalty of perjury, that all information contained in the application is true and correct. (Ord. 97-1173, Added, 08/12/97)

5.74. 060 Facilities necessary.

A license shall not be issued pursuant to this Chapter unless an inspection by the City shows the business establishment complies with each of the following requirements;

- A. Minimum lighting shall be provided in accordance with the Uniform Building Code;
- B. All instruments used in massage shall be cleaned and disinfected;
- C. Hot and cold running water, soap or detergent, and sanitary towels or air dryer shall be available on the premises;
- D. Dressing and toilet facilities shall be provided for patrons;
- E. Separate enclosed cabinets or containers shall be provided for storage of clean and soiled towels and linen; (Ord. 97-1173, Added, 08/12/97)

5.74. 070 Conduct of business.

A. The massage therapy business shall have at least one person who has a valid Massage Therapist license pursuant to this chapter on the premises during all operating hours.

B. Clean and sanitary towels and linens (washed in hot water a minimum of 140 degrees Fahrenheit) shall be provided for each patron of the business.

C. Standard or portable massage tables or a mat suitable for shiatsu or acupressure shall be used. Foam pads more than four inches thick or with a width of more than four feet may not be used. Beds, mattresses, and water beds may not be used nor be present anywhere on the premises. (Ord. 97-1173, Added, 08/12/97)

5.74. 080 Investigation.

Upon receipt of a complete application, it shall be forwarded to the Police Chief who shall conduct an appropriate investigation to determine whether said permit shall be issued in accordance with this chapter. (Ord. 97-1173, Added, 08/12/97)

5.74. 090 Conditions for issuance of license.

After investigation, and report by the Chief of Police, the City shall issue or renew the license only when all of following conditions are met:

A. A completed written application form has been filed;

B. The required application fee has been paid;

C. The applicant has complied with all provisions of this Chapter and of the Municipal Code;

D. The building and facilities comply with all of the health, zoning, fire, building and safety requirements and standards of the State of California and of the City;

E. A determination that the applicant and any employee, agent, partner, director, officer, shareholder, associate, manager or any other person connected with the business for which the applicant is requesting a permit hereunder:

1. Has not been convicted in a court of competent jurisdiction of:
 - o a) A violation of Health and Safety Code Section 1155; or,
 - o b) A violation of Penal Code Sections 266I, 315, 316, 318, or 647(b); and,
2. Has not been convicted in any other State of any offense which, if committed or attempted in this State, would have been punished as one or more of the above mentioned offenses; and,
3. Is not required to register under the provisions of Penal Code Section 290; and,
4. Has not made any false, misleading or fraudulent statement in the application or in any report or record filed with the Chief of Police; and,
5. Has not had a permit or license for a similar type business revoked by the City or any other jurisdiction within the past three years. (Ord. 97-1173, Added, 08/12/97)