



AGENDA REPORT

To: Honorable Chair and Planning Commissioners

From: Milan J. Sikela, Jr.
Assistant Planner

Date: December 14, 2021

Subject: Agenda Item 8.A.
Evergreen Healing Center – Request for Approval of a Use Permit for a Massage Therapy Business (UP-03-2021).

SUMMARY

This is a public hearing on a request by Son Hang Wong for approval of a Use Permit (UP-03-2021) to allow the Evergreen Healing Center massage therapy business to operate within an existing tenant space (Suite B) located in an existing commercial building at 1520 Kirker Pass Road, Assessor's Parcel Number (APN) 118-031-037.

RECOMMENDATION

Staff recommends that the Planning Commission receive and consider the staff report and attachments thereto, open the public hearing, accept and consider written and spoken testimony, close the public hearing, and adopt the attached proposed Resolution No. 09-2021 (see **Attachment A**) conditionally approving Use Permit Application UP-03-2021.

PROJECT INFORMATION

Applicant: Son Hang Wong

Property Owner: Elaine Hom

Location: 1520 Kirker Pass Road, Suite B
APN 118-031-037
(See **Attachment B** for Vicinity Map)

General Plan Designation: Kirker Corridor Commercial (KC)

Zoning Classification: Limited Commercial (L-C)

Environmental Review: The subject Use Permit request is categorically exempt from the California Environmental Quality Act (CEQA; Public Resources Code Section 21000 *et seq.*) pursuant to Categorical Exemption Class 1, Section 15301 (Existing Facilities) of the State CEQA

Guidelines (California Code of Regulations, Section 15000 *et seq.*) Categorical Exemption Class 1 exempts from CEQA the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

Public Notice:

On December 3, 2021, a public hearing notice for tonight's meeting was posted on the community notice boards at Clayton City Hall, at the Clayton Community Library, and in the Town Center, and copies of the notice were mailed to the owners of real property located within 300 feet of 1520 Kirker Pass Road.

The proposed massage therapy business would occupy an existing 1,823 square foot tenant space comprised of a lobby area, four massage rooms, break room, restroom, and storage room (see **Attachment C** for the proposed floor plan). The business would be open daily from 10:00 a.m. to 8:30 p.m. The applicant has submitted a Business Statement listing acupressure and massage as the services provided; he has also submitted applicable codes of ethics under which the business would operate (see **Attachment D** for the Business Statement). There would be an average of two to four massage therapists on site at any given time with a maximum of four therapists total. The maximum number of clients at any one time is proposed to be four. Staff has proposed a condition of approval requiring all massage therapists to provide certification from the California Massage Therapy Council or comparable certification entity. The California Massage Therapy Council was created to implement a Statewide certification process with clear standards of preparation and education, including, but not limited to, a certified massage therapist receiving a minimum of 500 hours of education from approved schools and having passed the California Massage Therapy Council exam. Please see **Attachment E** for the massage therapy certifications submitted by the applicant.

ANALYSIS

Use Permit Required

In accordance with Clayton Municipal Code (CMC) Section 17.60.030.C.8, a Use Permit is required in any commercial zoning district for an establishment (other than a medical office or clinic) that provides massages. Standards of review for Use Permit requests are listed in Section 17.60.040 of the CMC.

Use Permit Standards of Review

Staff analyzed the parking requirements as related to the proposed business. Section 17.37.020.A.2 of the CMC requires that required off-street parking facilities for non-residential uses shall be provided only when the activity would increase the required number of off-street parking spaces by 10 percent or more. The previous occupant of the tenant space was an office use which is required by the CMC to have one parking space per 250 square feet of building area, or seven required off-street parking spaces for the subject tenant space. Given that the proposed use is categorized as a personal service, the off-street parking requirement is identical to office uses at one space per 250 square feet and has an identical number of seven off-street parking spaces. Since the previous use and currently-proposed use both have a zoning code requirement of seven off-street parking spaces, there is no increase in the required number of off-street parking spaces. Pursuant to CMC Section 17.37.020.A.2, the off-street parking requirements of CMC Section 17.37.030 are therefore not applied to the proposed use.

In addition, staff conducted a count of off-street parking spaces on the parcel where the subject building complex is located containing the subject tenant space and observed that there are 85 off-street parking spaces serving various tenants in the three commercial buildings located on the property. Staff discussed the available off-street parking with a former tenant of the subject building complex who reported that she found the existing parking facilities to be more than adequate.

Staff analyzed the proposed use as it pertains to the other Use Permit Standards of Review listed in CMC Section 17.60.040 and believes that the proposed use is consistent with the Standards. The use preserves the general safety of the community regarding seismic, landslide, flooding, fire, and traffic hazards since the use would be conducted entirely indoors in an existing building that was previously permitted and constructed under applicable building codes, and there is no new construction proposed for the project. The use would not have significant negative impacts on the health or general welfare of residents, businesses, property owners, or employees in the City since the use would be conducted entirely inside of an existing building, and massage therapy is an activity that is beneficial to the health and well-being of individuals which is a positive influence on the community. As a commercial service use, the use is consistent with the allowable uses specified for the Kirker Corridor General Plan Land Use Designation. Although compliance with any applicable Specific Plan is listed as part of the Standards of Review, there is currently no Specific Plan applicable to the location where the subject use is proposed to operate.

Required Use Permit Findings

Prior to approving a Use Permit request, the Planning Commission must make the Required Findings listed in CMC Section 17.60.060. Staff believes that the Commission can make these required findings for the proposed project.

As described above, staff believes the proposed use is consistent with the Use Permit Standards of Review in CMC Section 17.60.040. With respect to the other Required Findings, the proposed use:

- would not generate significant traffic congestion since the massage therapy business entails a maximum of only four massage therapists and four clients at one time for a total maximum potential increase of eight additional people at one time;
- would not generate intermittent or constant noise levels violating the General Plan Noise Element since the use would be conducted entirely indoors, and there is no new construction proposed that would require use of heavy machinery or equipment;
- would not generate significant levels of toxic or non-toxic dust, airborne particulates, fumes, smells or other impacts to air quality since the use would be conducted entirely indoors, and there is no new construction or grading proposed that would generate air emissions;
- would not generate exterior lighting or significant litter since the use would incorporate lighting and trash/recycling disposal containers that would be located entirely indoors;
- would not result in crime or negative influences on minors since the use would be conducted entirely indoors, and massage therapy is an activity that is beneficial to the health and well-being of individuals which is a positive influence on the community; and
- would not represent a concentration of an activity that would be detrimental to the health, safety, and welfare of nearby residents, businesses, property owners, or employees since massage therapy is an activity that is beneficial to the health and well-being of individuals, and there are no similar businesses immediately adjacent to the property.

As part of the massage therapy services, the applicant has indicated that new signage is proposed. Staff has provided a condition of approval that any project-related signage shall require review and approval by the City in accordance with the Clayton Municipal Code Sign Provisions.

Staff referred the application to staffs of the Clayton Police Department and outside agencies including the City of Concord and the Contra Costa County Environmental Health Services Department. The Chief of Police had no comments on the proposal, and no comments were received from other outside agencies.

CONCLUSION

Staff has reviewed the proposal relative to the Use Permit standards of review in the Clayton Municipal Code and has determined that the proposal, as conditioned, is in conformance with the Clayton Municipal Code.

ATTACHMENTS

- A. Proposed Planning Commission Resolution No. 09-2021
- B. Vicinity Map
- C. Proposed Floor Plan
- D. Business Statement
- E. Massage Therapy Certifications