



AGENDA MEMO

CITY COUNCIL MEETING DATE: MARCH 18, 2009

DEPARTMENT: PLANNING AND DEVELOPMENT

**ITEM DESCRIPTION: SUP-32148 - APPLICANT: SUMMERLIN MESSAGE NV, LLC -
OWNER: JMK/BOCA PAD, LLC**

**** CONDITIONS ****

Staff recommends DENIAL. The Planning Commission (6-1/se vote) recommends APPROVAL, subject to:

Planning and Development

1. There shall be a review in one year at a public hearing of the Planning Commission.
2. Conformance to all minimum requirements under LVMC Title 19.04.010 for Massage Establishment use, including parking requirements.
3. This approval shall be void one year from the date of final approval, unless a business license has been issued for the principal use of Massage Establishment on the site. An Extension of Time may be filed for consideration by the City of Las Vegas.
4. A Waiver from Title 19.04.010 is hereby approved, to allow a distance separation of less than 1,000 feet from another Massage Establishment.
5. All City Code requirements and design standards of all City departments must be satisfied, except as modified herein.

**** STAFF REPORT ****

PROJECT DESCRIPTION

This is a request for a Special Use Permit for a 3,193 square-foot Massage Establishment at 8950 West Charleston Boulevard, Suite #7 within the Boca Park Shopping Center. The applicant is also requesting Waivers to allow for a zero-foot distance separation from another Massage Establishment where 1,000 feet the minimum distance required and to allow for the proposed Massage Establishment to remain open until 10:00 p.m. Monday through Friday where 9:00 p.m. is the latest hour a Massage Establishment is allowed to remain open.

Due to the Waiver request to allow for the proposed Massage Establishment to be located within 1,000 feet of four (4) existing Massage Establishments, causing an over saturation of this type of use in the immediate area, as well as the request for a Waiver to allow the proposed Massage Establishment to remain open later in the evening than Title 19 allows, staff is recommending denial of this application.

BACKGROUND INFORMATION

<i>Related Relevant City Actions by P&D, Fire, Bldg., etc.</i>	
05/20/81	The City Council approved a request for a Rezoning (Z-0034-81) of approximately 2,249 acres from N-U (Non-Urban) to R-1 (Single Family Residential), R-2 (Medium-Low Density Residential), R-3 (Medium Density Residential), R-MHP (Residential Mobile / Manufactured Home Park), R-PD7 (Residential Planned Development 7 Units per Acre), R-PD8 (Residential Planned Development 8 Units per Acre), P-R (Professional Office and Parking), C-1 (Limited Commercial), C-2 (General Commercial), and C-V (Civic) on property generally located north of Sahara Avenue, south of Westcliff Drive, west of Durango Drive, and east of Hualapai Way. The Planning Commission recommended approval.
09/02/92	The City Council approved a request for a Reclassification of property (Z-0030 -92) located on the east side of Rampart Boulevard between Charleston Boulevard and Alta Drive from N-U (Non-Urban) under Resolution of Intent to R-1 (Single Family Residential), C-1 (Limited Commercial), and C-2 (General Commercial), to R-1 (Single Family Residential) and C-1 (Limited Commercial) for a proposed regional shopping mall and single-family dwellings. The Planning Commission recommended approval.

04/27/98	The City Council approved a request for a Site Development Plan Review [Z-0030-92(5)] on property located on the northeast corner of Rampart Boulevard and Charleston Boulevard for a proposed 433,240 square-foot retail shopping center including 21 retail pad sites (Phase I of the Peccole Town Center). The Planning Commission recommended approval.
06/14/99	The City Council approved an appeal from the denial by the Planning Commission of a request for a Site Development Plan Review [Z-0030-92(7)] on property located on the northeast corner of Charleston Boulevard and Rampart Boulevard for a proposed commercial development consisting of 434,967 square feet of retail and 58,418 square feet of office uses within Phase I of the previously approved Boca Park Phase I Shopping Center.
02/06/02	The Department of Planning and Development administratively approved a request for an Administrative Site Development Plan Review [Z-0030-92(23)] for a 14,390 square-foot retail building on 67.37 acres adjacent to the northeast corner of Charleston Boulevard and Rampart Boulevard.
02/23/04	Code Enforcement processed a complaint (Case #10335) for illegal signage, a huge tent, and balloons at 8950 West Charleston Boulevard. The case was resolved on 03/02/04.
02/26/08	Code Enforcement processed a complaint (Case #62684) for illegal signage at 8950 West Charleston Boulevard. The case was resolved on 03/24/08.
04/15/08	Code Enforcement processed a complaint (Case #64533) for illegal signage at 8950 West Charleston Boulevard. The case was resolved on 04/21/08.
05/16/08	Code Enforcement processed a complaint (Case #65665) for illegal signage at 8950 West Charleston Boulevard. The case was resolved on 06/16/08.
05/19/08	Code Enforcement processed a complaint (Case #65698) for illegal signage at 8950 West Charleston Boulevard. The case was resolved on 06/05/08.
06/23/08	Code Enforcement processed a complaint (Case #66937) for illegal signage at 8950 West Charleston Boulevard. The case was resolved on 07/01/08.
08/18/08	Code Enforcement processed a complaint (Case #68834) for illegal signage at 8950 West Charleston Boulevard. The case was resolved on 09/18/08.
09/15/08	Code Enforcement processed a complaint (Case #69703) for illegal signage at 8950 West Charleston Boulevard. The case was resolved on 09/30/08.
11/03/08	Code Enforcement processed a complaint (Case #71397) for illegal signage at 8950 West Charleston Boulevard. The case was resolved on 11/24/08.
11/03/08	Code Enforcement processed a complaint (Case #71400) for illegal signage at 8950 West Charleston Boulevard. The case was resolved on 11/24/08.
02/12/09	The Planning Commission voted 6-1/se to recommend APPROVAL (PC Agenda Item #14/ne).
<i>Related Building Permits/Business Licenses</i>	
02/26/02	A building permit (#02003336) was issued for on-site hardscapes at 8950 West Charleston Boulevard. The permit expired on 03/01/03.

02/26/02	A building permit (#02003337) was issued for shell building pad G certificate of completion at 8950 West Charleston Boulevard. The permit was finaled on 10/18/02.
04/09/02	A building permit (#02003760) was issued for a trash enclosure and retaining wall at 8950 West Charleston Boulevard. The permit expired on 10/19/02.
09/23/02	A building permit (#02018292) was issued for a sign (tag #006333) at 8950 West Charleston Boulevard, Suite #8. The permit expired on 05/04/03.
10/04/02	A building permit (#02018026) was issued for a tenant improvement certificate of occupancy at 8950 West Charleston Boulevard, Suite #8. The permit was finaled on 10/31/02.
10/30/02	A building permit (#02019464) was issued for a sign (tag #006428) at 8950 West Charleston Boulevard, Suite #8. The permit was finaled on 12/23/02.
11/07/02	A business license (T18-00534) was issued for telephone equipment sales at 8950 West Charleston Boulevard, Suite #8. The license is currently active.
04/01/03	A building permit (#03006392) was issued for three wall signs (tag #06757) at 8950 West Charleston Boulevard, Suite #10. The permit was finaled on 05/23/03.
05/06/03	A building permit (#03009118) was issued for a tenant improvement certificate of occupancy at 8950 West Charleston Boulevard, Suite #9. The permit was finaled on 05/23/03.
07/22/03	A business license (F07-01783) was issued for mattress furniture at 8950 West Charleston Boulevard, Suite #9. The license is currently active.
11/04/04	A building permit (#04021056) was issued for a tenant improvement at 8950 West Charleston Boulevard, Suite #3. The permit was finaled on 08/16/05.
11/10/04	A building permit (#04021198) was issued for sign (tag #07950) at 8950 West Charleston Boulevard, Suite #3. The permit expired on 06/16/05.
01/13/05	A business license (#T11-00958) was issued for sales, consumer electronics at 8950 West Charleston Boulevard, Suite #A. The license was marked out of business on 02/21/08.
07/29/05	A building permit (#05005240) was issued for a sign (tag #08471) at 8950 West Charleston Boulevard. The permit expired on 02/04/06.
10/01/07	A building permit (#07002802) was issued for a sign (tag #10076) at 8950 West Charleston Boulevard, Suite #9. The permit expired on 03/29/08.
03/04/08	A building permit (#108929) was issued for a tenant improvement at 8950 West Charleston Boulevard, Suite #7. The permit expired on 09/11/08.
Pre-Application Meeting	
10/13/08	A pre-application meeting was held where the submittal requirements for a Special Use Permit were discussed.
Neighborhood Meeting	
A neighborhood meeting was not required, nor was one held.	

Field Check	
12/04/08	

	Staff performed a routing field check where a non-permitted temporary sign was observed on the backside of the subject building, and the trash receptacle was not being contained within the trash enclosure.
--	---

<i>Details of Application Request</i>	
<i>Site Area</i>	
Net Acres	1.14

Surrounding Property	Existing Land Use	Planned Land Use	Existing Zoning
Subject Property	Shopping Center	SC (Service Commercial)	C-1 (Limited Commercial)
North	Shopping Center	SC (Service Commercial)	PD (Planned Development)
South	Shopping Center	SC (Service Commercial)	C-2 (General Commercial)
East	Single-Family & Multi-Family Residences	L (Low Density Residential) & M (Medium Density Residential)	R-1 (Single Family Residential) & R-3 (Medium Density Residential)
West	Shopping Center	SC (Service Commercial)	C-1 (Limited Commercial)

<i>Special Districts/Zones</i>	<i>Yes</i>	<i>No</i>	<i>Compliance</i>
Special Area Plan		X	N/A
<i>Special Districts/Zones</i>	<i>Yes</i>	<i>No</i>	<i>Compliance</i>
Special Purpose and Overlay Districts		X	N/A
Trails Pedestrian Path	X		Y
Rural Preservation Overlay District		X	N/A
Development Impact Notification Assessment		X	N/A
Project of Regional Significance		X	N/A

DEVELOPMENT STANDARDS

Pursuant to Title 19.10, the following parking standards apply:

Parking Requirement							
Use	Gross Floor Area or Number of Units	Parking Ratio	Required		Provided		Compliance
			Parking		Parking		
			Regular	Handi-capped	Regular	Handi-capped	
Shopping Center	466,510 Square Feet	1:250	1,838	29	2,341	34	Y*
SubTotal			1,838	29	2,341	34	
TOTAL (including handicap)			1,867		2,375		

**The proposed site is located within the Boca Park Shopping Center, which is a large commercial subdivision that allows cross-access and shared parking throughout the entire shopping center.*

Waivers		
Request	Requirement	Staff Recommendation
To have a zero-foot distance separation from another Massage Establishment.	1,000 Feet	Denial
To extend the hours of operation to 10:00 p.m. Monday Through Friday.	Limited to 8:00 a.m. to 9:00 p.m.	Denial

Waiver Information for Distance Separation				
Type Of Use	Name (License #)	Address	Required Distance	Distance Provided
Massage Establishment	Euphoria Salons & Day Spas (#M03-00086)	8850 West Charleston Boulevard	1,000 Feet	Zero Feet (Located within the same commercial subdivision as applicant approximately 250 feet).
Massage Establishment	The Loft (#M03-00145)	8689 West Charleston Boulevard	1,000 Feet	Approximately 150 Feet (Parcel-to-Parcel)
Massage Establishment	Fabulous Freddys Car Wash (#M03-00056)	1101 South Fort Apache Road	1,000 Feet	Approximately 250 Feet (Parcel-to-Parcel)
Massage Establishment	A Body in Balance (#M03-00153)	1215 South Fort Apache Road	1,000 Feet	Approximately 670 Feet (Parcel-to-Parcel)

Information for Distance Separation				
Type Of Use	Name (License #)	Address	Required Distance	Distance Provided
Massage School	European Massage Therapy School (#S02-01105)*	8751 West Charleston Boulevard, Suite #295	No Distance Separation Required	Approximately 925 Feet (Parcel-to-Parcel)

**A massage therapy school does not require a Special Use Permit. Per City Code, a massage school is not a massage establishment and is exempt from the Title 19 requirements for a massage establishment. As a licensed school, students are exempt from the licensing requirements for individual massage therapists and are therefore allowed to perform and charge for massage.*

ANALYSIS

This is a request for a Special Use Permit for a 3,193 square-foot Massage Establishment at 8950 West Charleston Boulevard, Suite #7 within the Boca Park Shopping Center. The proposed floor plan consists of an office, a waiting area with seating for nine people and reception desk, a storage room, supply room, a break and laundry room, two restrooms, twelve therapy rooms at approximately 100 square feet each, and a couples therapy room at approximately 120 square feet.

In addition to the Special Use Permit, the applicant is also requesting Waivers to allow a zero-foot distance separation from another Massage Establishment where 1,000 feet the minimum distance required and to allow the proposed Massage Establishment to remain open until 10:00 p.m. Monday through Friday where 9:00 p.m. is latest hour a Massage Establishment is allowed to remain open.

Within the 1,000-foot radius of the proposed site are four additional establishments licensed to perform massages: one approximately 250 feet away within the same shopping center (Boca Park) requiring the zero-foot distance separation Waiver request; the second is located approximately 150 feet east of the subject site on Charleston Boulevard; the third is on the southwest corner of Charleston and Fort Apache; with the fourth establishment also located on Fort Apache Road, approximately 670 feet away. The approval of this request would allow five (5) Massage Establishments to co-exist within a 1,000-foot radius of each other, creating an oversaturation of the use in the immediate area.

- **Zoning**

The subject site is designated SC (Service Commercial) in the Las Vegas 2020 Master Plan. This land use category allows low to medium intensity retail, office, or other commercial uses that serve primarily local area patrons and do not include more intense general commercial characteristics. Examples include neighborhood shopping centers, theaters, and other places of public assembly and public and semi-public uses. The existing C-1 (Limited Commercial) zoning district is consistent with the SC (Service Commercial) General Plan designation.

The subject site is located within a C-1 (Limited Commercial) zoning district. The C-1 district is intended to provide most retail shopping and personal services. This district should be located on the periphery of residential neighborhoods and should be confined to the intersection of primary and secondary thoroughfares along major retail corridors. A Massage Establishment is a permitted use within the C-1 (Limited Commercial) district with the approval of a Special Use Permit. The C-1 (Limited Commercial) district is consistent with the SC (Service Commercial) category of the General Plan.

- **Boca Park Marketplace Master Development Plan and Development Standards**

1.3 Submittal Requirements

“Once contracts are signed and in place for development within Boca Park, parcel owners and tenants will be issued a set of Boca Park Marketplace Master Development Plan and Development Standards which outlines the approved architecture, landscape and signage requirements for the property. Developers will then be required to submit preliminary and final designs for review and approval by the Boca Park Architectural Review Committee (ARC) prior to submitting designs to the City of Las Vegas Department of Planning and Development. All submittals must be in compliance with the Covenants, Conditions and Restrictions (CC & Rs) for the property as well as the Development Standards and Zoning ordinances for the City of Las Vegas.

The scope of this application pertains to the allowing of a Massage Establishment use within a C-1 (Limited Commercial) zoning district and has no bearing on the improving of the site by means of construction. Therefore, Section 1.3 of the Boca Park Marketplace Master Development Plan and Design Guidelines does not pertain to the subject application. Future development of the site by means of a tenant improvement or signage permit will need to comply with the before mentioned section.

2.2 Land Use

Properties within Boca Park Marketplace shall be developed in accordance with the City of Las Vegas Planning and Development Zoning Ordinance for C-1 uses.

The applicant has proposed a Massage Establishment at 8950 West Charleston Boulevard, Suite #7, within the Boca Park Marketplace. The subject site was approved with Site Development Plan Review [Z-0030-92(5)] on April 27, 1998. To operate a Massage Establishment within a C-1 (Limited Commercial) district, one must obtain a Special Use Permit for that use. In accordance with Title 19, the applicant has now requested a Special Use Permit with a Distance Separation Waiver for a Massage Establishment use. With the approval of this request, the applicant would be in compliance with the requirements of Title 19 for a Massage Establishment use; therefore, in compliance with Section 2.2 of the Boca Park Marketplace Master Development Plan and Development Standards.

- **Use**

Title 19 defines a Massage Establishment as a facility which is occupied and used for the purpose of practicing massage therapy as defined in LVMC Chapter 6.52.

LVMC Chapter 6.52 defines the use as:

“Unless the context otherwise requires, the following words, as they appear in this Chapter, shall have the meanings ascribed to them in this Section:

Certification means certification by the National Certification Board for Therapeutic Massage and Bodywork or by a board of equivalent stature which is accredited by the National Commission for Certifying Agencies for massage and bodywork. *Chair Massage* means a massage administered by a massage therapist to the neck, shoulders, back, arms, hands and feet of a fully clothed client utilizing a massage chair. *Employee* means any massage therapist who is a bona fide employee of a massage establishment. *Independent Massage Therapist* means a massage therapist who is not an employee of a massage establishment, is a sole practitioner, and hires no employees. *Massage* means any method of treating any of the external parts of a person including, but not limited to, rubbing, stroking, kneading, tapping, pounding, vibrating or stimulating with the hands, feet, elbows or any other part of the body. All massage modalities recognized by the National Certification Board for Therapeutic Massage and Bodywork, and the American Organization for Bodywork Therapies of Asia are included in this definition. *Massage Establishment* means any premises occupied and used for the purpose of performing massage therapy. *Massage Therapist* means any person who, for consideration, performs any massage as defined in this Section and has met all of the requirements of this Chapter. *Outcall Massage* means any massage given or provided off the premises of a licensed massage establishment by a licensed massage therapist.

A massage therapist license authorizes the licensee to: (A) Administer a massage to a client at a licensed massage establishment. (B) Be dispatched from a licensed massage establishment to administer a massage to a client at the clients temporary or permanent residence or at the clients place of business. (C) Advertise as a massage therapist.

- **Minimum Special Use Permit Requirements**

1. The use shall comply with all applicable requirements of LVMC Title 6.
2. The use must be located on a secondary thoroughfare or larger.
3. The use may not be located within 400 feet of any church, synagogue, school, City park, child care facility, or any parcel zoned for residential use.
4. The use may not be located within 1000 feet of any other massage establishment.
5. The hours of operation shall be limited to the period between 8:00 a.m. and 9:00 p.m., unless further limited by the City Council on a case-by-case basis.

The proposed site is located on West Charleston Boulevard, a 100-foot Primary Arterial as defined by the Master Plan of Streets and Highways. The proposed Massage Establishment is not located within 400 feet of a church, synagogue, school, City park, child care facility, or parcel zoned for residential use but is within 1,000 feet of four (4) other Massage Establishments. The applicant is also requesting a Waiver to allow for the establishment to be able to remain open until 10:00 p.m. Monday through Friday.

The proposed use is not in compliance with the Minimum Special Use Permit Requirements for a Massage Establishment and would create an oversaturation of Massage Establishments within the immediate vicinity: therefore, staff recommends denial of this application.

FINDINGS

The following findings must be made for a Special Use Permit:

- 1. The proposed land use can be conducted in a manner that is harmonious and compatible with existing surrounding land uses, and with future surrounding land uses as projected by the General Plan.**

The proposed Massage Establishment fails to meet the minimum distance separation requirements, set forth between similar uses. While the use is permitted within a C-1 (Limited Commercial) zoning district, the distance separation requirement was established to prevent an oversaturation of a particular use within an established commercial area. Therefore the use is not compatible with the surrounding development as its existence, if approved would lead to an oversaturation of Massage Establishments.

- 2. The subject site is physically suitable for the type and intensity of land use proposed.**

The subject site can physically handle the variety of use proposed, but due to oversaturation of these uses, staff cannot support this request.

- 3. Street or highway facilities providing access to the property are or will be adequate in size to meet the requirements of the proposed use.**

The proposed Massage Establishment would be located within Boca Park, which is adequately served by Rampart Boulevard and Charleston Boulevard, 100-foot Primary Arterials as defined by the Master Plan of Streets and Highways.

- 4. Approval of the Special Use Permit at the site in question will not be inconsistent with or compromise the public health, safety, and welfare or the overall objectives of the General Plan.**

The proposed Massage Establishment would be subject to regular inspections by regulatory agencies for business licensing and would not compromise the public health, safety and welfare:

In addition to the information required by LVMC Chapter 6.06 in connection with a license application, an applicant for a massage therapist license or an independent massage therapist license shall provide to the Department, on forms provided or approved by the Department proof that the applicant has a currently valid health card issued by the Clark County Health District; and proof of current certification or a valid unexpired massage permit or license issued by the Clark County Department of Business Licensing with proof of having held that permit or license a minimum of twenty-four consecutive months immediately prior to making application with the Department.

The use is consistent with the General Plan; it does not comply with the Minimum Special Use Requirements of Title 19.

5. The use meets all of the applicable conditions per Title 19.04.

The proposed Massage Establishment does not meet all of the applicable conditions per Title 19.04. A Waiver has been requested to allow for the Massage Establishment to remain open until 10:00 p.m. Monday through Friday where 9:00 p.m. is the latest allowed, and to allow this establishment to have a zero-foot distance separation from another Massage Establishment where 1,000 feet is required.

PLANNING COMMISSION ACTION

The Planning Commission added condition #1 as shown to which the applicant agreed. A condition indicating hours of operation shall be 8:00 a.m. to 9:00 p.m. only shall be added if approved.

NEIGHBORHOOD ASSOCIATIONS NOTIFIED

8

ASSEMBLY DISTRICT 3

SENATE DISTRICT 8

NOTICES MAILED 951 by City Clerk

APPROVALS 3

PROTESTS 15