



AGENDA MEMO

CITY COUNCIL MEETING DATE: AUGUST 18, 2010

DEPARTMENT: PLANNING AND DEVELOPMENT

ITEM DESCRIPTION: APPLICANT: STEVEN KOZMARY, M.D. - OWNER: LA JOLLA PLAZA II, LLC

THIS ITEM WAS HELD IN ABEYANCE FROM THE JULY 21, 2010 CITY COUNCIL MEETING AT THE REQUEST OF THE COUNCIL

** STAFF RECOMMENDATION(S) **

<i>CASE NUMBER</i>	<i>RECOMMENDATION</i>	<i>REQUIRED FOR APPROVAL</i>
VAR-38195	Staff recommends DENIAL, if approved subject to conditions:	
SUP-38194	Staff recommends DENIAL, if approved subject to conditions:	VAR-38195

** CONDITIONS **

VAR-38195 CONDITIONS

Planning and Development

- 1.Striping shall be painted within six months and maintained thereafter.
- 2.Approval of and conformance to the conditions for Special Use Permit (SUP-38194) if approved.
- 3.This approval shall be void two years from the date of final approval, unless a business license has been issued to conduct the activity. An Extension of Time may be filed for consideration by the City of Las Vegas.
- 4.These Conditions of Approval shall be affixed to the cover sheet of the plan set submitted for building permit.
- 5.All City Code requirements and design standards of all City departments must be satisfied, except as modified herein.

SUP-38194 CONDITIONS

Planning and Development

1. Conformance to all Minimum Requirements under LVMC Title 19.04.010 for a Massage Establishment use.
2. Approval of and conformance to the Conditions of Approval for Variance (VAR-38195) shall be required.
3. This approval shall be void two years from the date of final approval, unless a business license has been issued to conduct the activity. An Extension of Time may be filed for consideration by the City of Las Vegas.
4. These Conditions of Approval shall be affixed to the cover sheet of the plan set submitted for building permit.
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 Massage Establishment within an existing 8,001 square-foot building at 2851 El Camino Avenue. The existing building has current business licenses for a Clinic, Medical Office, and Accessory Massage. The applicant is proposing to utilize three massage rooms with a total area of 473 square feet, which exceeds the maximum floor area of 150 square feet that is allowed for the Accessory Massage use; therefore, a Special Use Permit is required for a Massage Establishment use. The applicant is requesting Waivers of the minimum distance separation requirements, as well as a Variance for parking. The subject location is not suitable for the intensity of the proposed use, due to the proximity of the subject site to residential property to the north combined with the parking Variance request; therefore, staff recommends denial. If denied, the use would not be permitted at the subject location.

ISSUES

- Approval of a companion Variance (VAR-38195) to allow 26 parking spaces where 45 parking spaces are required is necessary for this request to be approved.
- A Waiver is required to allow a 60-foot distance separation from a residentially zoned property where 400 feet is the minimum distance required.
- A Waiver is required to allow a 362-foot distance separation from another Massage Establishment where 1,000 feet is the minimum distance required.
- A Waiver is required to allow access to the site from a 60-foot right-of-way where an 80-foot right-of-way or larger is required.

BACKGROUND INFORMATION

<i>Related Relevant City Actions by P&D, Fire, Bldg., etc</i>	
06/26/63	The Board of City Commissioners approved a request to Rezone (Z-0108-63) property fronting Sahara Avenue, running from Rancho Drive to Richfield Boulevard. Planning Commission and staff recommended approval.
06/24/10	The Planning Commission (7-0 vote) recommended APPROVAL of companion items VAR-38195 and SUP-38194 concurrently (PC agenda Items 23-24/gk).

<i>Most Recent Change of Ownership</i>	
05/06/98	A deed was recorded for a change in ownership.

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<i>Related Building Permits/Business Licenses</i>	
11/19/96	A building permit (96022950) was issued for a new shell building at 2851 El Camino Avenue. The permit was finalized on 04/30/98.
04/08/97	A building permit (97006973) was issued for plumbing work in a new shell building at 2851 El Camino Avenue. The permit was finalized on 03/11/98.
06/16/97	A building permit (97012184) was issued for block walls at 2851 El Camino Avenue. The permit was finalized on 04/30/98.
12/16/97	A building permit (97024951) was issued for a tenant improvement at 2851 El Camino Avenue, suite #200. The permit was finalized on 05/14/98.
04/01/98	A building permit (98006737) was issued to extend the length of a masonry wall at 2851 El Camino Avenue. The permit was finalized on 04/16/98.
06/12/98	A building permit (98012432) was issued for a tenant improvement at 2851 El Camino Avenue, suite #101. The permit expired on 06/19/99.
06/12/98	A building permit (98012433) was issued for a tenant improvement at 2851 El Camino Avenue, suite #102. The permit expired on 05/15/99.
06/12/98	A building permit (98012434) was issued for a tenant improvement at 2851 El Camino Avenue, suite #103. The permit expired on 05/15/99.
12/22/98	A building permit (98024934) was issued for a Non-Work Certificate of Occupancy at 2851 El Camino Avenue, Suite #101. The permit was finalized on 01/04/99.
04/06/99	A business license (Q07-00391) was issued for a medical firm at 2851 El Camino Avenue, Suite #101. The license is still active.
11/21/00	A building permit (21248) was issued for a tenant improvement and certificate of occupancy at 2851 El Camino Avenue, suite #101. The permit was finalized on 03/07/01.
08/13/07	A business license (C14-00527) was issued for a Clinic use at 2851 El Camino Avenue, Suite #200. The license is still active.
10/25/07	A building permit (7002980) was issued for a wall sign at 2851 El Camino Avenue. The permit expired on 06/07/08.
05/14/09	A business license (M12-01761) was issued for a Massage Therapist at 2851 El Camino Avenue, Suite #200. The license is still active.
11/04/09	A business license (M11-00023) was issued for a Massage, Accessory use at 2851 El Camino Avenue, Suite #200. The license is still active.
11/13/09	A business license (M12-01825) was issued for a Massage Therapist at 2851 El Camino Avenue, Suite #200. The license is still active.

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<i>Pre-Application Meeting</i>	
04/29/10	The following items were discussed at the pre-application meeting: • A Massage Establishment requires a Special Use Permit in the C-1 (Limited Commercial) zoning district. The submittal requirements for a Special Use Permit were discussed. • The subject site is only 60 feet away from existing residential uses where 400 feet is the minimum distance required. Also, the use is only 362 feet away from another Massage Establishment where 1,000 feet is the minimum distance required. Waivers must be requested. • The site is accessed from El Camino Avenue, designated as a 60-Foot Right-of-way. A Massage Establishment must be accessed by an 80-Foot right-of-way or larger. A Waiver must be requested. • The subject parcel has a cross access agreement with the adjacent property to the west, but does not have a parking agreement. Please provide a parking agreement or submit a parking analysis. • A parking Variance will be required if no parking agreement can be obtained. The submittal requirements for a Variance were discussed.

<i>Neighborhood Meeting</i>
A neighborhood meeting is not required, nor was one held.

Field Check	
05/20/10	A field check was completed on the indicated date. Staff observed a well maintained commercial development.

<i>Details of Application Request</i>	
<i>Site Area</i>	
Net Acres	0.48

<i>Surrounding Property</i>	<i>Existing Land Use Per Title 19.04</i>	<i>Planned or Special Land Use Designation</i>	<i>Existing Zoning District</i>
Subject Property	Clinic	SC (Service Commercial)	C-1 (Limited Commercial)
North	Condominiums	M (Medium Density Residential)	R-3 (Medium Density Residential)
South	Office, Other than Listed	SC (Service Commercial)	C-1 (Limited Commercial)

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East	Office, Other than Listed	SC (Service Commercial)	C-1 (Limited Commercial)
West	Office, Other than Listed	SC (Service Commercial)	C-1 (Limited Commercial)

Master Plan Areas	Yes	No	Compliance
Master Plan Area		X	N/A
Special Purpose and Overlay Districts	Yes	No	Compliance
Special Purpose and Overlay Districts			
A-O (Airport Overlay) District – 200 Feet	X		Y
Trails		X	N/A
Rural Preservation Overlay District		X	N/A
Las Vegas Redevelopment Plan Area		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	Required		Provided		Compliance	
		Parking Ratio	Parking		Parking		
			Regular	Handi-capped	Regular	Handi-capped	
Massage Establishment	3 rooms	2 spaces for each massage room	6				
Clinic	3,524 SF	1:200 up to 2,000 SF, then 1:250	17				
Office, Medical	4,004 SF	1:200 up to 2,000 SF, then 1:175	22				
TOTAL SPACES REQUIRED			45		26		N
TOTAL (With Handicapped)			43	2	24	2	N
Percent Deviation			42%				

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<i>Waivers</i>		
<i>Requirement</i>	<i>Request</i>	<i>Staff Recommendation</i>
A 1000-foot distance separation from another Massage Establishment.	362 Feet	Denial
A 400-foot distance separation from a residentially zoned property.	60 Feet	Denial
The use must be located on a secondary thoroughfare or larger	60-foot right-of-way	Denial

ANALYSIS

The subject site contains an existing 8,001 square-foot clinic and medical office with an active business license for Accessory Massage, which allows up to 150 square feet of floor area to be dedicated to the use. The applicant is proposing to utilize three rooms with a total floor area of 473 square feet for the massage use, which requires the approval of this Special Use Permit. The proposed use will be conducted in conjunction with the medical office and clinic, with hours of operation from 8:00 a.m. to 6:00 p.m.

As part of this request, Waivers are required to allow a 362-foot distance separation from another Massage Establishment where 1,000 feet is required and a 60-foot distance separation from a residentially zoned property where 400 feet is required. An additional Waiver is required to allow access to the site by a 60-foot right-of-way where an 80-foot secondary collector or larger is required.

An additional request has been made by the applicant for a parking variance (VAR-38195). The Variance request is to allow 26 parking spaces where 45 spaces are required. Staff recommends denial of the waiver and variance requests, as the proposed use cannot be conducted in a manner that is compatible with the surrounding uses, most notably the residentially zoned properties to the north of the subject site. The applicant has provided no evidence of a unique or extraordinary circumstance that would substantiate the Variance request; staff is therefore recommending denial of this request.

FINDINGS (VAR-38195)

In accordance with the provisions of Title 19.18.070(B), Planning Commission and City Council, in considering the merits of a Variance request, shall not grant a Variance in order to:

1. Permit a use in a zoning district in which the use is not allowed;
2. Vary any minimum spacing requirement between uses;
3. Relieve a hardship which is solely personal, self-created or financial in nature.”

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Additionally, Title 19.18.070(L) states:

“Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of enactment of the regulation, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the piece of property, the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of the property, a variance from that strict application may be granted so as to relieve the difficulties or hardship, if the relief may be granted without substantial detriment to the public good, without substantial impairment of affected natural resources and without substantially impairing the intent and purpose of any ordinance or resolution.”

No evidence of a unique or extraordinary circumstance has been presented, in that the applicant has created a self-imposed hardship by introducing a use on the site that requires additional parking spaces without providing additional spaces for that use. In view of the absence of any hardships imposed by the site’s physical characteristics, it is concluded that the applicant’s hardship is preferential in nature, and it is thereby outside the realm of NRS Chapter 278 for granting of Variances.

FINDINGS (SUP-38194)

In order to approve a Special Use Permit application, per Title 19.18.060 the Planning Commission and City Council must affirm the following:

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 applicant has requested Waivers of the minimum distance separation requirements to allow a 60-foot distance separation from any residentially zoned parcel where 400 feet is required, a 362-foot distance separation from another massage establishment where 1,000 feet is required and a waiver to allow access to the site from a 60-foot right-of-way where an 80-foot right-of-way or larger is required. The use is not appropriate within the subject site due to the close proximity to residential uses. The use is not compatible and harmonious with existing surrounding land uses, and with future surrounding land uses as projected by the General Plan.

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

The subject site is not physically suitable for the type and intensity of the use, as it will be located in close proximity to residential uses. Additionally, the applicant is seeking approval of a parking variance. The site cannot accommodate the additional required parking as a result of the added Massage Establishment use to the site.

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.

Site ingress and egress will be from El Camino Avenue, a 60-foot Local Street, which does not meet the minimum Special Use Permit requirement for access from a Secondary Thoroughfare or larger.

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.

Approval of this Special Use Permit will not compromise public health, safety, or welfare or the overall objectives of the General Plan, as the proposed Massage Establishment use will be subject to regular inspections.

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

The proposed use fails to meet Minimum Special Use Requirements as listed in Title 19.04 for a Massage Establishment use, as evidenced by the requested Waivers.

NEIGHBORHOOD ASSOCIATIONS NOTIFIED 23

NOTICES MAILED 269 (By City Clerk)

APPROVALS 1

PROTESTS 30