

**CITY OF ALBANY
PLANNING AND ZONING AGENDA
STAFF REPORT**

Agenda date: 10/13/09
Prepared by: AC
Reviewed by: JB

ITEM/ *6a 4c*
SUBJECT: **Planning Application 09-043. Conditional Use Permit. Request for a Conditional Use Permit to allow a business that includes massage services, located at 850 Talbot.**

SITE: **850 Talbot**

**APPLICANT/
OWNER:** **Ahram Kang**

ZONING: **R-1 (Single-Family Residential)**

STAFF RECOMMENDATION

Staff recommends that the Planning and Zoning Commission approve the request for conditional use permit approval and parking exception approval.

BACKGROUND/PROJECT DESCRIPTION

The applicant is requesting approval of a Conditional Use Permit to allow an existing business to allow massage services where there is currently yoga classes, spa services, ayurvedic medicine and massage offered. The applicant is the new owner that recently purchased the business. The previous business owner received approval of a parking exception to allow the services, as listed above, to be provided at 850 Talbot. The approval, however, did not include the required Conditional Use Permit to allow massage to be offered at the site (see attachment 5 for 2004 staff report and notice of action). The new business owner/applicant would like to "legalize" all aspects of the business, and is therefore requesting approval of a Conditional Use Permit to allow massage services. As part of the Conditional Use Permit review the Albany Police Department completes a background check, which has been completed and approved (see attachment 4).

The business currently operates Monday through Saturday, from 9am – 9pm, closed on Sunday. The applicant would like to maintain the same hours of operation but stay open 7 days a week. Aside from an extra day of business the services, hours of operation, maximum number of employees, etc will remain as the same, as the business currently operates.

ENVIRONMENTAL ANALYSIS

Staff has determined that the proposed project is categorically exempt from the requirements of California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301, "Existing Facilities," which exempts single-family residences in a residential zone.

DISCUSSION OF KEY ISSUES

Conditional Use Permit

The request for a Conditional Use Permit is appropriate in that massage is an appropriate use coupled with yoga and the site has been operating with massage services. The previous owner received a letter from the city in 2008 stating that the massage component of the business was not in compliance and that the live music and special events that were occurring at the site were also not permitted. The applicant has chosen to legalize and all aspects of the business and bring it into code conformance.

The Municipal Code requires that each individual masseuse receive a "massage technician clearance," which is essentially a background check for each individual. Staff recommends a condition of approval requiring that each individual masseuse practicing at the site receive a massage technician license through the police department and that no live music or "special events" are permitted without city review and approval.

Attachments:

1. Findings
2. Conditions
3. Projects application
4. Albany Police Department Background Check
5. July 27, 2004 Staff Report and Notice of Action

Findings for Conditional Use Permit approval (Per section 20.100.030.D of the AMC)

Required Finding	Explanation
<p>1. Necessity, Desirability, Compatibility. <i>The project's size, intensity and location of the proposed use will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community.</i></p>	<p>The General Plan designates this area for commercial development. Additionally, the project meets City zoning standards for location, intensity and type of development. Massage is an appropriate use coupled with yoga. The business previously was granted a parking exception and the applicant has received clearance from the Police Department.</p>
<p>2. Adverse Impacts. <i>The project's use as proposed will not be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity, or physically injurious to property, improvements or potential development in the vicinity, with respect to aspects including but not limited to the following:</i></p> <ul style="list-style-type: none"> a. <i>The nature of the proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;</i> b. <i>The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;</i> c. <i>The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;</i> d. <i>Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;</i> 	<p>The proposal is in scale and harmony with existing development in the vicinity of the site. The architectural style, design and building materials will not be altered. The proposed project will provide safe and convenient access to the property for both vehicles and pedestrians. The project will not remove any significant vegetation and will not require significant grading. The project will not create a visual detriment at the site or the neighborhood.</p> <ul style="list-style-type: none"> a. The proposed site is an existing building that has operated with similar uses in the past. b. A parking exception was previously granted for the business. c. No noxious or offensive emissions should result from approval from of the business. d. Design review is required of any new signage for the commercial space.

CONDITIONS OF APPROVAL

1. This Conditional Use Permit approval is to allow massage to be offered as part of the services offered a business located at 850 Talbot, except as may be modified by conditions herein. Plans include a floor plans, business description and documentation of Police Department approval submitted by Ahram Kang, dated received by the Community Development Department on August 11, 2009, and presented to the Planning and Zoning Commission at its meeting of October 13, 2009.
2. The applicants shall pay any and all City and other related fees applicable to the property. Fees shall be based on the current fee structure in effect at the time the relevant permits are secured, and shall be paid prior to issuance of said permit or prior to any City Council final action approval. Notice shall be taken specifically of Plan Check and Inspection Fees.
3. Pursuant to Government Code Section 66474.9, the applicants (including any agent thereof) shall defend, indemnify, and hold harmless, the City of Albany and its agents, officers and employees, from any claim, action, or proceeding against the City or its agents, officers or employees to attack, set aside, void, or annul the City's approval concerning this application, which action is brought within the time period provide for in Section 66499.37. The City will promptly notify the applicants of any such claim action or proceeding and cooperate fully in the defense.
4. The hours of operation are from 9am to 9pm, daily.
5. Existing and proposed signage shall be reviewed and all signage shall be brought into conformance with the zoning code.
6. The applicant shall obtain all applicable/required state licenses.
7. The applicant shall comply with all requirements in Municipal Code Section 5-13 (attached).
8. The Planning and Zoning Commission may reconsider the conditional use permit approval should any complaints or illegal occur at the site.
9. Each individual masseuse practicing at the site receive a massage technician license through the police department.
10. No live music or "special events" are permitted without city review and approval.

Appeals: The Albany Municipal Code provides that any action of the Planning and Zoning Commission may be appealed to the City Council, if such appeal is filed within 14 days of the date of the action. Appeals may be filed in the Community Development Department by completing the required form and paying the required fee. The City Clerk will then schedule the matter for the next available City Council meeting.

Date Received: 8/11/09
 Planning Application No.: 09-043
 Fee Paid: 1784.00
 Receipt # 58987



City of Albany



PLANNING APPLICATION FORM (GENERAL PROJECTS)

<p>For PLANNING & ZONING COMMISSION action:</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Conditional Use Permit* <input type="checkbox"/> Design Review (residential, residential additions, commercial, office and multi-family*,) <input type="checkbox"/> General Plan Amendment from _____ to _____ <input type="checkbox"/> Parcel Map/ Tentative Map/ Vesting Tentative Map, Lot Line Relocation <input type="checkbox"/> Parking Exceptions/Reductions <input type="checkbox"/> Precise Development Plan <input type="checkbox"/> Second Unit Use Permit * <input type="checkbox"/> Variance * <input type="checkbox"/> Zone Change from _____ to _____ <input type="checkbox"/> Other: 	<p>For ADMINISTRATIVE action:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Admin. Lot Line Relocation <input type="checkbox"/> Home Occupations <input type="checkbox"/> Sign Review <input type="checkbox"/> Other:
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* Please complete the appropriate Supplemental Questionnaire.

The City of Albany Municipal Code has certain requirements for Planning Applications. Your answering the following questions will help staff assess how to process your application. Thus, we may have additional questions based on your responses below. Additionally, after your application is accepted for processing, staff and Planning and Zoning Commissioners will likely make at least one field visit to your house and neighborhood.

Job Site Address: <u>850 TALBOT AVE.</u>		Zone: _____
Property Owner(s) Name: <u>HAL HOFFMAN</u>	Phone: <u>510-527-2326</u> Fax:	Email:
Mailing Address: <u>1207 SOLICHO AVE.</u>	City: <u>Albany.</u>	State/Zip: <u>CA / 94706</u>
Applicant(s) Name (contact person): <u>AHRAM KANG</u>	Phone: <u>925-586-5129</u> Fax:	Email: <u>autumn.cleo@gmail.com</u>
Mailing Address: <u>850 Talbot Ave.</u>	City: <u>Albany</u>	State/Zip: <u>CA 94706</u>

PROJECT DESCRIPTION (Please use back of sheet or attach extra sheets, if necessary):

massage therapy, yoga
instruction, sauna,
(please see attachment)

GENERAL INFORMATION (Please fill out this section if you are asking for approval of a project that will require construction):

Item	Existing	Proposed
Lot size (square feet)	5000	
Size of structure(s) or commercial space (square feet)		
Height and No. of stories		
Lot coverage ¹		
Floor Area Ratio (FAR) ²		
Impervious Area ³		
Slope Density ⁴		
No. of dwelling units		
Parking ⁵ Number of off-street spaces		
Number of spaces in garage		
Size of spaces		

¹ Lot Coverage applies to all zoning districts. It is defined as the land area covered by all the structures on a site, including all projections, except portions of uncovered decks, porches or landings, balconies, or stairways that are less than six feet above grade and are not enclosed by walls on more than two sides; eaves, trellises and similar structures that do not have solid roofs.

² Floor Area Ratio (FAR) is defined as the proportion of building floor area per area of the parcel of land upon which the building rests. See the informational handout "How to Calculate Floor Area Ratio" for details on what is included and excluded.

³ Impervious Area includes the total square footage of building footprint(s), driveway(s), patio(s), parking lots, walkway(s), and any other impervious surfaces.

⁴ Slope Density requirements apply in the HD Zoning District pursuant to Measure K. See handout on how to measure slope density in this area.

⁵ Minimum parking requirements were enacted under Measure D. This Measure requires that all residential development must have a minimum of two off-street parking spaces. Some exceptions may apply to your project, see residential development handout.

Restrictions: Are there any deed restrictions, easements, etc. that affect the property, and, if so, what are they? In some instances, you may be required to provide a title report.

Rowan L. Hoffman Trust
 Signature of Property Owner

[Signature]
 Signature of Applicant

Date 8.11.2009

Date 8.11.09

Community Development Department staff is available between 8:30 a.m. and 7:00 p.m. on Mondays, 8:30 a.m. through 5:00 p.m. on Tuesdays through Thursdays, and 8:30 a.m. to 12:30 p.m. on Fridays at 979 San Pablo Avenue, 2nd Floor, Albany, CA 94706; TEL: (510) 528-5760.



City of Albany



SUPPLEMENTAL QUESTIONNAIRE

CONDITIONAL USE PERMIT
(e.g., commercial, institutional, assembly uses
& non-administrative home occupations)

The City of Albany Municipal Code has certain requirements for approving Conditional Use Permits. Your answers to these questions will help staff assess how to process your application. Please understand that this supplemental questionnaire will help staff to further work with you. Thus, we may have additional questions based on your responses below. Additionally, after your application is accepted for processing, staff and Planning and Zoning Commissions (if applicable) will likely make at least one field visit to the Site and neighborhood.

1. What is (was) the use in this building/tenant space prior to your proposal?
massage therapy, yoga instruction
2. What are you proposing? massage therapy, yoga instruction
3. Proposed hours/days of operation? 9-9
4. Maximum number of employees expected on site at any one time? 3
(include owners/partners)
5. For instructional uses/assemblies of people/classes, etc. what is the maximum number of participants expected on site at any one time? 9
6. For restaurants and cafes, will beer/wine/liquor be served? N/A

Community Development Department staff is available between 8:30 a.m. and 7:00 p.m., Mondays, 8:30 a.m. through 5:00 p.m. Tuesday through Thursday, and 8:30 a.m. to 12:30 p.m. on Fridays at 979 San Pablo Avenue, Albany, CA 94706 (510) 528-5760.

Description of Vara Healing Arts

We offer massage therapy through certified and insured therapists, yoga classes with certified and insured instructors, and 30 minute sauna sessions.

Hours of operation: 9 am – 9 pm (Monday through Sunday)

Number of massages: 2 – 4 one-on-one sessions per day

Number of yoga classes: 2 – 4 classes per day with 5 – 10 students per class

Number of saunas: 2 – 4 single person 30 minute sessions per day

CITY OF ALBANY

AUG 11 2009

**COMMUNITY DEVELOPMENT
DEPARTMENT**

COPY

APPLICATION FOR PERMIT - MASSAGE ESTABLISHMENT

Massage Establishment Vara Healing Arts
(Business Name)

LOCATION 850 Talbot Ave Albany 94706

TELEPHONE 510.526.9642

Corporation* _____ Partnership** _____ Individual X

*If Corporation: List names, residence address of all officers and directors, and each stockholder owning more than 10% of stock

**If Partnership: List names, residence address of all partners, including limited partners •

Partner(s)/Stockholder(s):

Name	Address	Phone Number
AHRAM KANG	694 67RD ST. OAKLAND #1	925.586.5129

Employees:

Status:

Name	Address	Date of Birth	Phone Number	Employee- "E" Independent Contractor- "IC"

If employee works as independent contractor, furnish a copy of all written agreements wherein the terms of the contractor's status are set forth, and the amounts of any fee or money paid, or to be paid, and the method of payment and computation of fees under any such agreements.

List two (2) previous addresses, if any, during the three (3) years prior to your present address:

Address: From: (date) to: (date)

15 PONCETTA DR. #118. DALLY CITY, CA	7/31/07	7/31/08
FILBERT ST OAKLAND, CA 94607	7/4/04	7/31/07

Age 29 (Attach written proof of age) Height: 5'4" Weight: 105

Color of eyes brown Color of hair brown Sex F.

ATTACHMENT #4

Your occupation, or employment, for three (3) years immediately preceding the date of this application:

Employer/Occupation:

Name	Address	Phone Number	Dates of Employment	Position/Title
Hotel Utah (AK)	500 4th St, SF			
Hotel Utah	500 4th St, SF	415-5466200	10/1/07 ~	Bartender
South Pacific Market	San Pedro, CA	310-832-5956	11/1/05 ~ 11/1/07	Manager

Give location of any prior massage establishment or similar business or occupation:

Name	Address	Phone Number

Have you ever had a license, or permit, revoked or suspended?

Yes ___ No

If yes, give reason, and list business or occupation subsequent to such action of suspension or revocation

List all criminal convictions, other than misdemeanor traffic violations, and reasons therefor:

Date	Charge(s)	Location of Arrest	Disposition


I understand that the investigating officer has the right to obtain fingerprints and/or additional photographs of the applicant.

SIGNATURE OF APPLICANT *Quam Long*


FEE OF \$ PAID 116.60 8-4-09
 Date & signature of person receiving fee *[Signature]*

The following shall be furnished at time of application:
(To be checked off by the Officer or PST processing the application)

- 1. A color portrait photograph, at least 2 inches by 2 inches.
- 2. Fingerprints, taken by Albany Police Department personnel.
- 3. Written proof of applicant's age. (Must be over 18). *D.L. or passport*
- 4. Diploma or certificate of graduation from a "recognized school".
- 5. All additional documents required by AMC (copies of contract for any independent contractor employees, each area of application completed (including "no" or "not applicable" initialed where required))

DATED: 8-4-09 Applicant's signature 

Date permit fee paid: 8-4-09 Receipt No. #58894

DATE: 9/21/09 PERMIT APPROVED 
CHIEF OF POLICE

DATE: _____ PERMIT DENIED _____
CHIEF OF POLICE

City of Albany
Planning and Zoning Commission
Staff Report

Agenda Item: #5a

Meeting Date: July 27, 2004

Subject: **Planning Application #04-073: Parking Reduction.** A request for a Parking Reduction to allow a waiver of the one additional parking space that would be required due to the change in use.

Location: 850 Talbot Avenue

Applicant: Jennifer Long for H Hoffman, owner

Zoning: C-1 General Commercial

Surrounding Property Use

North - SFD	East - SFD
South - Commercial	West - Public Library

Attachments:

- A. Project application
- B. Project Site Plan
- C. Data from Solano Avenue Parking Study
- D. Parking observations from applicant

Recommendation

Staff recommends that the Commission make the required findings and approve the request, subject to the attached conditions of approval.

Site History

According to City records, the building was originally built in 1946 as a chapel (front building) and residence (rear building). The building was used as a commercial use as early as 1979. Various improvements have been approved since the building was constructed.

Project Description

The applicant is proposing a massage therapy and ayurvedic medicine use, including yoga classes. The proposed hours of operation would be 9:00am - 9:00pm, Monday-Saturday. The applicant is proposing one yoga class in the morning, with therapy and other ayurvedic medicine activities throughout the rest of the morning and afternoon, and 2 or 3 yoga classes in the evening. A book publication office was the prior use in this building.

Regulatory Requirements

Staff has concluded that the proposed use is a mixture of medical office and personal service uses and, as such, is permitted in the C-1 Zoning District. The proposed project would comply with all dimensional development requirements of the Albany Zoning Ordinance, except for the Parking Requirement, for which the applicant is requesting a Parking Waiver.

Parking

The existing building was originally built as a chapel with a residence behind. The site only has 2 off-street parking spaces, which are located in tandem in the south side yard. Due to the inset in the property line midway back on the lot, it would not be possible to expand the existing parking area.

Per City ordinance, office uses are required to provide 1 off-street parking space per every 500 square feet of floor area, so the previous use had a parking requirement of 3 off-street spaces (1700 divided by 500 equals 3.4). Staff has been considering alternative medicine uses as personal service uses for parking purposes. Personal service uses require 1 off-street parking space per every 400 square feet of floor area, so the proposed use would have a parking requirement of 4 off-street spaces (1700 divided by 400 equals 4.25). The applicant is requesting a parking waiver for the additional required space.

The Commission is allowed to waive or reduce the parking requirements for any nonresidential use in an existing building, including an addition to an existing building, upon making one of the findings provided in Section 20.3-5.d.2.b. Staff believes that the Commission can make the finding that, "Space is not available to provide the required parking facilities without undue hardship" because there is not sufficient available open space located on the site to provide additional off-street parking without the removal of a portion of the existing building.

Staff also reviewed the "Solano Avenue Parking Study" that was completed by a planning intern in July of 2000. This study reviewed parking along Solano Avenue during a subset of days and times over a 3-week period. The study (Attachment C) shows that the area of Solano Avenue between Cornell and Masonic, which is the area immediately adjacent to the project site, has a significant number of open parking spaces throughout the day, especially during the evening hours when the applicant is proposing more classes. During the day, it is seldom that more than 40 percent of the parking spaces are occupied, and during evening hours the study shows that it is uncommon for more than 30 percent to be occupied. The applicant also conducted parking counts along the entirety of lower Solano Avenue (Attachment D) that show a significant number of spaces unoccupied at various times of the day. Staff performed visual surveys at random times and found the data to be typical.

Staff would recommend that the applicant create a written policy that would be posted and given to all clients asking them to park on Solano Avenue or in the commercial spaces on the side streets just off Solano Avenue, to help reduce the parking impact on residential uses in the immediate vicinity. With this condition of approval, staff would recommend approval of a one-space parking waiver.

Environmental Analysis

Staff has determined that the proposed project is categorically exempt from the requirements of CEQA per Section 15301 (Class 1, existing facilities) of the CEQA Guidelines.

Summary

Staff recommends that the Planning and Zoning Commission make the required findings and approve the Parking Reduction request, subject to the attached conditions of approval.

Findings for Non-Residential Parking Waiver.

1. *Space is not available to provide the required parking facilities without undue hardship.* The existing building and site plan is configured to include 2 off-street parking spaces, with no additional open space. No further parking spaces could be created without tearing down a portion of the building.

Conditions of Approval

A. **GENERAL**

- A-1. This approval is for a parking reduction at 850 Talbot Avenue, as substantially shown on the project drawings, except as may be modified by conditions herein. Plans include a site plan prepared by Jennifer Long, dated July 22, 2004 and presented to the Planning and Zoning Commission at its meeting of July 27, 2004.
- A-2. The applicant shall pay any and all City and other related fees applicable to the property. Fees shall be based on the current fee structure in effect at the time the relevant permits are secured, and shall be paid prior to issuance of said permit or prior to any City Council final action approval. Notice shall be taken specifically of Plan Check and Inspection Fees
- A-3. Prior to the issuance of grading or building permits, the applicant shall submit written documentation that all requirements of the Albany Fire Department have, or will be, met to the satisfaction of the AFD.

B. SITE PLANNING

- B-1. All exterior lighting shall be installed in such a manner that glare is directed away from surrounding properties and rights-of-way.

C. PARKING

- C-1. This approval includes a Parking Waiver for 1 parking space.
- C-2. The applicant shall have a written policy to be given to all clients requesting they park either on Solano Avenue or in the commercial spaces on the side streets just off Solano Avenue.

D. MISCELLANEOUS

- D-1. The project shall be constructed as approved. Planning staff may approve minor modifications in the project design, but not the use. Any other change shall require further Planning and Zoning Commission approval through the Design Review process.
- D-2. Pursuant to Government Code Section 66474.9, the applicant (including any agent thereof) shall defend, indemnify, and hold harmless, the City of Albany and its agents, officers and employees, from any claim, action, or proceeding against the City or its agents, officers or employees to attack, set aside, void, or annul the City's approval concerning this application, which action is brought within the time period provide for in Section 66499.37. The City will promptly notify the applicant of any such claim action or proceeding and cooperate fully in the defense.

Appeals: The Albany Municipal Code provides that any action of the Planning and Zoning Commission may be appealed to the City Council if such appeal is filed within 14 days of the date of action. Appeals may be filed in the Community Development Department by completing the required form and paying the required fee. The City Clerk will then schedule the matter for the next available City Council meeting.

City of Albany
Planning and Zoning Commission
Notice of Action

Applicant: Jennifer Long for H Hoffman, owner

Project Address: 850 Talbot Avenue

Application: **Planning Application 04-073: Parking Reduction.**
A request for a Parking Reduction to allow a waiver of the one additional parking space that would be required due to the change in use.

Date of Action: July 27, 2004

Appeal Deadline: August 10, 2004

Commission Action: The Commissioners voted 4-0 to approve the application as based on the findings and subject to the conditions of approval below.

Findings for Non-Residential Parking Waiver.

1. *Space is not available to provide the required parking facilities without undue hardship.* The existing building and site plan is configured to include 2 off-street parking spaces, with no additional open space. No further parking spaces could be created without tearing down a portion of the building.

Conditions of Approval

A. GENERAL

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- A-2. The applicant shall pay any and all City and other related fees applicable to the property. Fees shall be based on the current fee structure in effect at the time the relevant permits are secured, and shall be paid prior to issuance of said permit or prior to any City Council final action approval. Notice shall be taken specifically of Plan Check and Inspection Fees

Notice of Planning and Zoning Commission Action

850 Talbot Avenue

July 27, 2004

Page 2

A-3. Prior to the issuance of grading or building permits, the applicant shall submit written documentation that all requirements of the Albany Fire Department have, or will be, met to the satisfaction of the AFD.

B. SITE PLANNING

B-1. All exterior lighting shall be installed in such a manner that glare is directed away from surrounding properties and rights-of-way.

C. PARKING

C-1. This approval includes a Parking Waiver for 1 parking space.

C-2. The applicant shall have a written policy to be given to all clients requesting they park either on Solano Avenue or in the commercial spaces on the side streets just off Solano Avenue.

C-3. Prior to final sign-offs, the applicant shall install a bicycle rack for a minimum of 3 bicycles at the site.

D. MISCELLANEOUS

D-1. The project shall be constructed as approved. Planning staff may approve minor modifications in the project design, but not the use. Any other change shall require further Planning and Zoning Commission approval through the Design Review process.

D-2. Pursuant to Government Code Section 66474.9, the applicant (including any agent thereof) shall defend, indemnify, and hold harmless, the City of Albany and its agents, officers and employees, from any claim, action, or proceeding against the City or its agents, officers or employees to attack, set aside, void, or annul the City's approval concerning this application, which action is brought within the time period provide for in Section 66499.37. The City will promptly notify the applicant of any such claim action or proceeding and cooperate fully in the defense.

Appeals: The Albany Municipal Code provides that any action of the Planning and Zoning Commission may be appealed to the City Council if such appeal is filed within 14 days of the date of action. Appeals may be filed in the Community Development Department by completing the required form and paying the required fee. The City Clerk will then schedule the matter for the next available City Council meeting.