



CITY OF
HAYWARD
HEART OF THE BAY

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DATE: November 15, 2007
TO: PLANNING COMMISSION
FROM: Carl T. Emura, Associate Planner
SUBJECT: Use Permit Application No. PL-2007-0067 – Wah Yiu Lee, Art of Reflexology/Quick Fix (Applicant) / General Growth Properties, Inc. (Owner) – Request to Allow a Massage Establishment at Southland Mall

Southland Mall is located in the Central Business Zoning (CBB20) District

RECOMMENDATION:

Staff recommends that the Planning Commission:

1. Find that the project is Categorical Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303, Class 1 (c), Conversions of Small Structures; and
2. Approve the Use Permit application subject to the attached findings and conditions of approval.

SUMMARY

The applicant requests to operate a massage establishment from both a standard tenant space and a kiosk space within Southland Mall. The operators would provide traditional Chinese-style foot massages as well as neck, shoulder and back massages. Staff is supportive of the application because massage is a complementary ancillary service for those shopping at the mall and the Police Department has voiced no concerns with the proposal.

BACKGROUND

Project Description

The applicant previously offered neck, shoulder and back massages, under the name of Quickfix, in Southland Mall in the open court in front of Macy's. The applicant requests to primarily provide traditional Chinese-style foot massage (reflexology) services in a 2,241-square-foot tenant space (no. 376), the former Community Police Resource Center, across from Hometown Buffet restaurant.

The tenant space is divided into three sections: a main massage room, a smaller partially- enclosed massage room, and a bathroom/storage area. The main room would contain 12 armchairs and the smaller massage room would have six armchairs and three massage chairs. There would be no massage tables. The kiosk space, located in the open mall area near Footlocker, would have four arm chairs.

The foot massages would be given while customers sit in armchairs. The neck, shoulder and back massages would be given on the massage chairs. The massage would last approximately 15 minutes and the customers would be fully clothed. The massages would be given from 10:00 am to 9:00 pm Monday through Saturday, and 11:00 am to 7:00 pm on Sundays.

The applicant also operates massage establishments in Newpark Mall in Newark and the Great Mall in Milpitas.

Traditional Chinese-Style Foot Massage (Reflexology)

Chinese-style foot massage is based on the theory that certain points on the feet correspond to certain organs and body parts and that applying pressure to the areas can promote health in the corresponding parts. For example:

- The head pressure points are located in the tips of the toes
- The heart and chest pressure points are around the ball of the foot
- The liver, pancreas and kidney pressure points are in the arch of the foot
- Lower back and intestines pressure points are towards the heel

Practitioners believe that applying pressure to these reflex areas can reduce stress, get rid of headaches, sooth arthritic pain and other ailments. It is extremely popular in Asian countries and is spreading to the West Coast where large Asian populations are located.

Permits

The Zoning Ordinance requires a Conditional Use Permit for a facility of this type, regardless of size, to ensure the establishment would meet a community need and would be in harmony with the adjacent uses. Adjacent uses include a department store, a marketing company and restaurant. In addition, the Massage Permit Ordinance requires that the applicant apply for a Massage Establishment Permit from the Chief of Police. The applicant has applied for the massage establishment permit and submitted to a background check. The Police Department has reviewed the application and do not have any concerns at this time. All massage therapists are required by ordinance to obtain a separate Massage Therapy Technician Permit. To obtain a permit, a therapist must provide valid identification, proof of adequate training and employment with a massage establishment, and undergo a Police Department background check. As a condition of approval, the applicant and all massage therapists are required to obtain Massage Therapy Technician Permits from the Police Department. All permits are required to be renewed every two years.

DISCUSSION:

Receiving a foot massage is similar to someone going to a nail salon for a pedicure. Both are done in an open setting and the customers are fully clothed. Staff believes that the foot massages would provide mall patrons a break from shopping that would enhance their shopping experience. In addition, the Police Department foresees no issues with the proposed application, therefore, staff is supportive of their application.

ENVIRONMENTAL REVIEW:

The proposed project is categorically exempt from environmental review pursuant to Section 15303, Class 1 (c), Conversions of Small Structures, of the California Environmental Quality Act (CEQA) Guidelines.

PUBLIC NOTICE:

On February 14, 2007, a referral notice was mailed to every property owner and occupant as noted on the latest assessor's records within 300 feet of the property, the Longwood-Winton Grove and Southgate Task Forces, the Southgate Area Homeowners Association and the Longwood Area Neighborhood Group Improvement Association. Staff received one letter from the Southgate Neighborhood Task Force, stating the project would not be a positive addition to the tenant mix. One email was received from a Longwood-Winton Grove Task Force member containing general comments about the proposal.

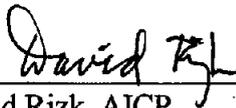
On November 5, 2007, a notice of the November 15, 2007 public hearing was mailed. No additional comments have been received.

Prepared by:



Carl T. Emura, ASLA
Associate Planner

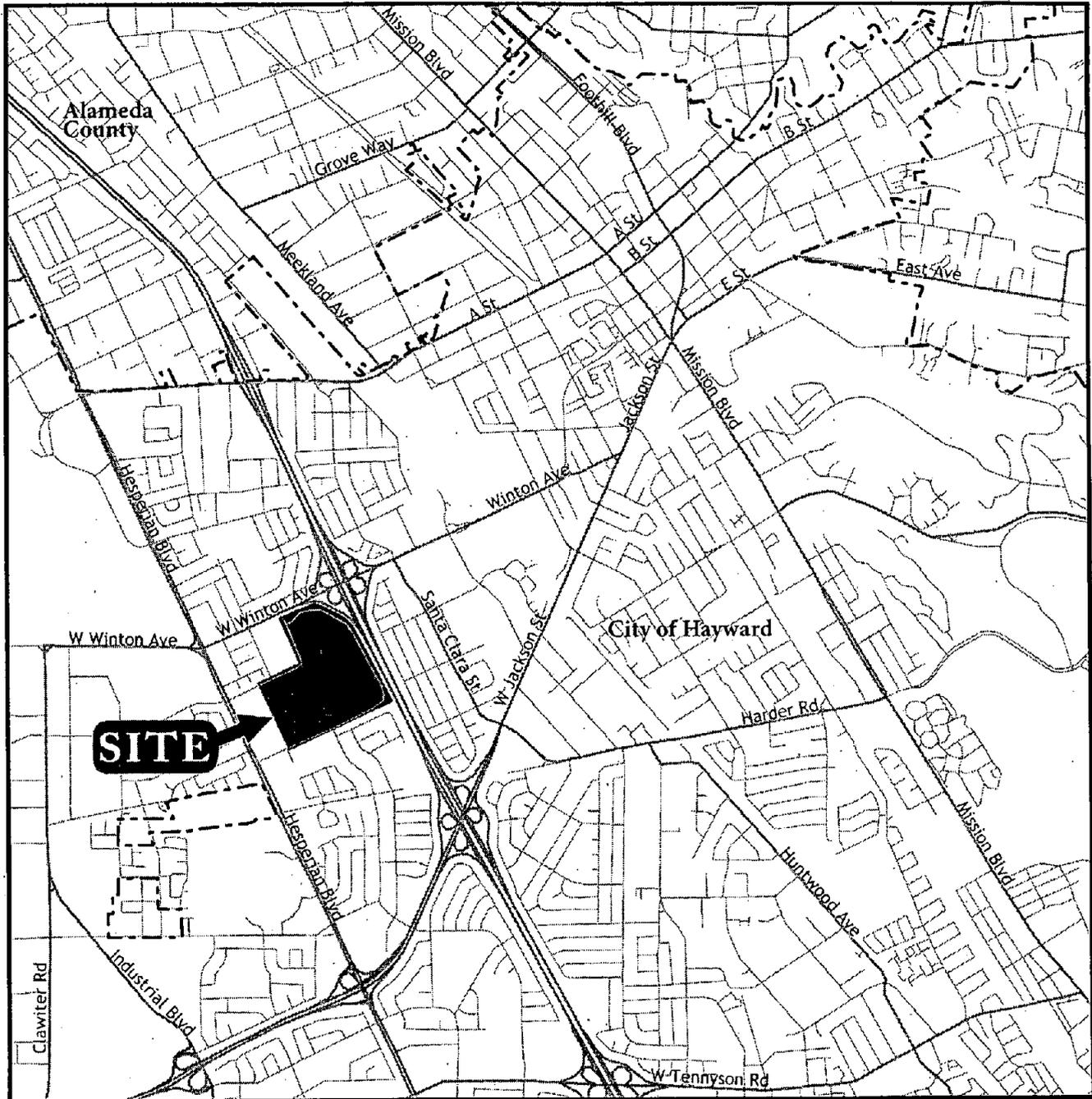
Recommended by:



David Rizk, AICP
Planning Manager

Attachments:

- A Location Map**
- B Zoning Map**
- C Findings of Approval**
- D Conditions of Approval**
- E. Public Comments:**
 - Letter from Deanna Bogue dated February 19, 2006**
 - Email from J.W. Kyle dated February 17, 2007**
 - Plans**

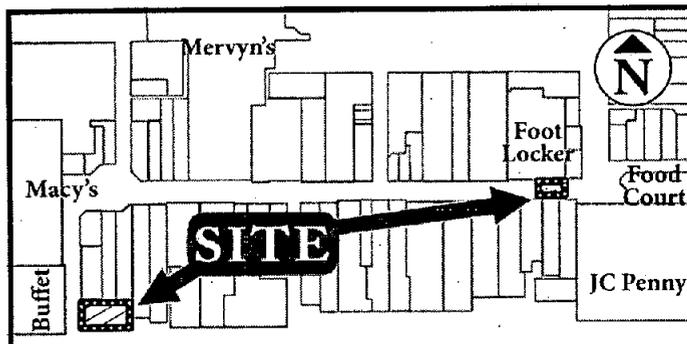


Vicinity Map

PL-2007-0067 UP

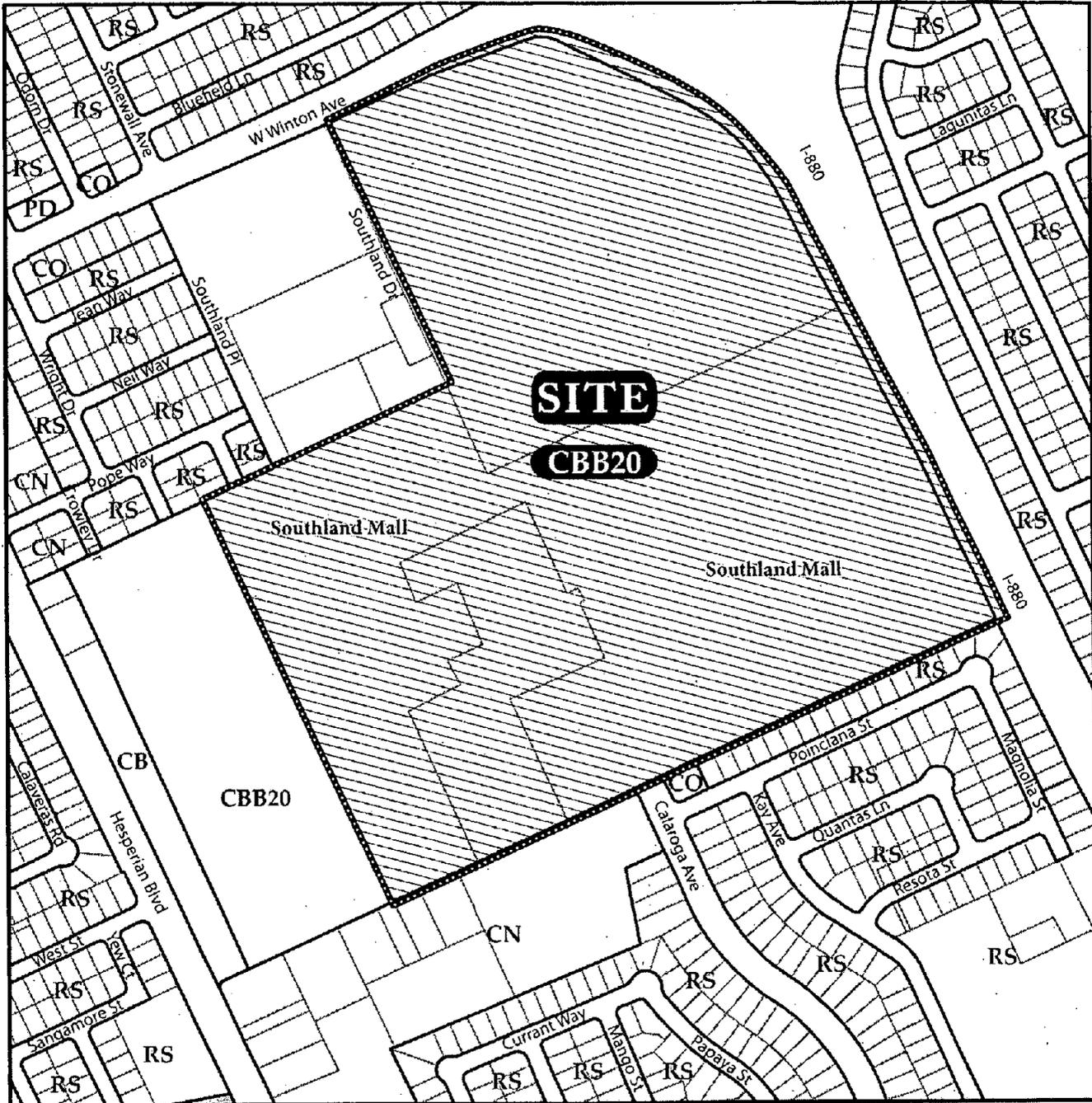
1 Southland Mall Drive, Unit 32

FEET 2000 4000



Partial Mall Floor Plan

ATTACHMENT A



Area & Zoning Map

PL-2007-0067 UP

Address: 1 Southland Mall Drive
Unit 32

Applicant: Wah Yiu Lee

Owner: Southland Mall

Zoning Classifications

RESIDENTIAL

RS Single Family Residential, min lot size 5000 sqft

COMMERCIAL

CB Central Business

CBB20 Central Business, min. lot size 20,000 sqft

CN Neighborhood Commercial

CO Commercial Office

OTHER

PD Planned Development



FEET 400 800

ATTACHMENT B

**CITY OF HAYWARD
PLANNING DIVISION
CONDITIONAL USE PERMIT APPROVAL
November 15, 2007**

CONDITIONAL USE PERMIT APPLICATION NO. PL-2007-0067: Wah Yiu Lee/Art of Reflexology (Applicant) /General Growth Properties (Owner) – Request to allow a massage establishment within tenant space No. 376 and a satellite location on the thoroughfare in front of Footlocker in Southland Mall

The property is located at One Southland Mall in the City Business Special Lot Size B20 (CB-B20) Zoning District. (APN: 442 0010 004 20)

FINDINGS FOR APPROVAL

- A. Approval of Use Permit Application No.PL-2007-0067 to allow the operation of a massage establishment in the City Business Zoning District is exempt from the provisions of California Environmental Quality Act (CEQA) pursuant to Section 15303, Class 1 (c) *Conversions of Small Structures*, of the CEQA Guidelines
- B. A massage establishment is a use that is desirable for the public convenience or welfare in that a traditional Chinese foot massage (reflexology) provides the mall patrons a break that promotes relaxation, improves circulation, reduces pain, soothes tired feet, and encourages overall healing during the mall shopping experience.
- C. A massage establishment will not impair the character and integrity of the surrounding neighborhoods in that it is located entirely within Southland Mall and conditions will be imposed to mitigate any unforeseen adverse impacts, including regular oversight by the Police Department.
- D. The proposed massage establishment will not be detrimental to the public health, safety, or general welfare in that each massage therapist and the massage establish owner are required to meet all the requirements of the Municipal Code that regulate massage establishments, including those that require all message therapists to obtain Massage Therapy Technician Permits and the owner to obtain a Massage Establishment Permit issued by the Police Department.
- E. The massage establishment is in harmony with applicable City policies as well as the intent and purpose of the Central Business District in that the use will be compatible with other commercial activity and services at Southland Mall without being detrimental to the public health, safety or general welfare of surrounding properties.

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PLANNING DIVISION
CONDITIONAL USE PERMIT APPROVAL
November 15, 2007**

CONDITIONAL USE PERMIT APPLICATION NO. PL-2007-0067: Wah Yiu Lee/Art of Reflexology (Applicant) /General Growth Properties (Owner) – Request to allow a massage establishment within Tenant space No. 376 and a satellite location on the concourse in front of Footlocker in Southland Mall

The property is located at One Southland Mall in the City Business Special Lot Size B20 (CB-B20) Zoning District. (APN: 442 0010 004 20)

CONDITIONS OF APPROVAL

1. This permit becomes void one year after the effective dated of approval, unless prior to that time, a Massage Establishment Permit has been approved and operation of the establishment has commenced. A request made to the Planning Director for a one-year extension, approval of which is not guaranteed, must be submitted to the Planning Division at least 15 days prior to November 15, 2008.
2. Any modification to the approved plans or conditions shall require review and approval by the Planning Director.
3. In the event that the business owner intends to change the floor plan to provide separate massage therapy rooms, the business owner shall apply for a modification to the conditional use permit.
4. Prior to the commencement of massage services, a Massage Establishment Permit shall be obtained and shall be maintained as long as massage services are offered. Operations are not permitted to begin prior to obtaining approval of a Massage Establishment Permit from the Hayward Police Department. The business owner or operator shall display the Massage Establishment Permit issued.
5. All massage technicians shall have a Massage Therapy Technician Permit. The permit shall be renewed with the Hayward Police Department every two years.
6. The Massage Establishment Permit and a copy of the Massage Therapy Technician Permit for each and every massage therapy technician employed in the establishment shall be displayed in an open and conspicuous place on the premises. The business owner or operator shall maintain a register of all persons employed as massage technicians and their permit numbers. Such register shall be available for inspection at all times during regular business hours.

ATTACHMENT D

7. The business owner/operator shall permit City officials the right to enter the premises used by the massage technicians from time to time during regular business hours for the purpose of making reasonable inspections to enforce compliance with building, fire, electrical, plumbing, or health codes, the California Penal Code and the Hayward Municipal Code.
8. The massage establishment and every massage therapy technician shall comply with standards established by the Alameda County Health Services for such businesses and practitioners and the following facilities and operation requirements:
 - a. The massage establishment, which includes the tenant space and kiosk space, shall meet and be maintained in a condition to comply with all applicable code requirements of the city, county, and state, including, but not limited to, those related to the safety of structures, adequacy of the plumbing, lighting, heating, ventilation, and the health and cleanliness of the facility.
 - b. The massage establishment and massage therapy technicians shall at all times have an adequate supply of clean sanitary towels, covering, and linens. Towels, non-disposable coverings, and linens shall not be used on more than one client, unless they have first been laundered and disinfected. Disposable towels and disposable coverings shall not be used on more than one client. Soiled linens and paper towels shall be disposed in separate receptacles.
 - c. In the tenant space of the massage establishment, the restroom and basin shall be thoroughly cleaned and disinfected as needed, and at least once a day when the premises are opened, with a disinfectant. All walls, ceilings, floors, and other fiscal facilities for the establishment shall be in good repair, and maintained in a clean and sanitary condition.
 - d. All equipment used in the massage therapy operation shall be maintained in a clean and sanitary condition. Instruments utilized in performing massage therapy shall not be used on more than one client unless they have been sterilized, using standard sterilization methods.
 - e. Toilet facilities shall be provided in a convenient location within the massage establishment tenant space and shall consist of at least one unisex toilet with laboratories or wash basins provided with soap and both hot and cold running water either in the toilet room or vestibule.
 - f. A minimum of one wash basin for employees shall be provided at all times in the tenant space. The basin shall be located within or as close as possible to the area devoted to performing of massage therapy services. Soap and sanitary towels shall also be provided at each basin. In the kiosk space other means of sanitizing hands shall be provided.
 - g. Massage therapy shall be provided or given only between the hours of 10:00 am to 9:00 pm Monday through Saturday and 11 am to 7 pm on Sunday. The massage establishment shall not be opened and no client shall be in the establishment outside of these hours.
 - h. No alcoholic beverages shall be sold, served, furnished, kept, consumed, or

possessed on the premises.

- i. Controlled substances shall not be consumed in the massage establishment unless the person consuming such substances has a prescription for it.
 - j. Only foot, neck, shoulder and back massage services shall be provided on the premises. Clients shall be fully clothed.
 - k. No permittee or employee of the massage establishment shall place, publish or distribute or cause to be placed, published or distributed any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective customers that a service is available that is prohibited under the provisions of the Massage Ordinance, nor shall any massage establishment employ language in any advertising text or business name that would reasonably suggest to a prospective client that any service is available that is prohibited by the provisions of the Massage Ordinance.
 - l. The use or possession of adult oriented merchandise in any part of the massage establishment is prohibited.
 - m. Condoms must not be kept on the premises or used for any purpose in the massage establishment.
 - n. No electrical, mechanical or artificial device shall be used by the operator and or manager, massage therapy technician and any employee of the massage establishment for audio and/or recording for monitoring the performance of the massage therapy, or the conversation or other sounds in the massage room without the knowledge and written consent of the patron.
 - o. Surveillance cameras may not be installed on the interior of the tenant space of the massage establishment. Other surveillance cameras must be maintained or operated so as to provide surveillance of the exterior of the massage establishment or the surrounding area.
 - p. No massage therapy shall be conducted within any space on the premises of the massage therapy business which is fitted with a lock.
 - q. All entrance and exit doors on the premises of the massage therapy business shall remain unlocked during business hours.
 - r. All massage services shall be paid for in the reception areas. The massage establishment may utilize a system where tip envelopes are provided in the massage area and at each massage station, to be utilized and deposited by the client in the reception area.
 - s. The massage establishment must not be used for residential or sleeping purposes.
 - t. Massage establishment personnel or any massage technician may not inquire as to whether any client is a police officer.
9. If it comes to the attention of the Planning Director that there are problems occurring as a result of the massage services, the Director may call the use permit application up to the Planning Commission for consideration of imposing additional conditions or revocation.

February 19, 2006

Carl Emura
City of Hayward, Planning Division
777 B Street
Hayward, CA 94541

Re: PL-2007-0067 UP
Foot Massage Establishment, Southland Mall

Mr. Emura,

I do not support the proposal for a foot massage establishment at Southland Mall. I believe this type of business is inappropriate for the concourse. Although I can understand why a business would desire a location on the mall. After the many positive additions to the tenant mix at the mall a business such as this would be undesirable. This would be the second application for a foot massage. The other is the Far East Rehabilitation Center PL-2007-0019 UP. There are many other shops that people would be excited about. Cina-Bunion would not be one of them.

Please keep me informed as this application proceeds.
Thank you for the opportunity to comment on this application.

Sincerely,

Deanna Bogue, Member
Southgate Neighborhood Task Force

ATTACHMENT E

Carl Emura

From: jwkyle6@comcast.net
Sent: Saturday, February 17, 2007 12:57 AM
To: Carl Emura
Subject: PL -2007-0067 UP Wah Yiu Lee

February 17, 2007

Foot massage Parlor ? Boy, will that draw in a huge crowd at Southland !

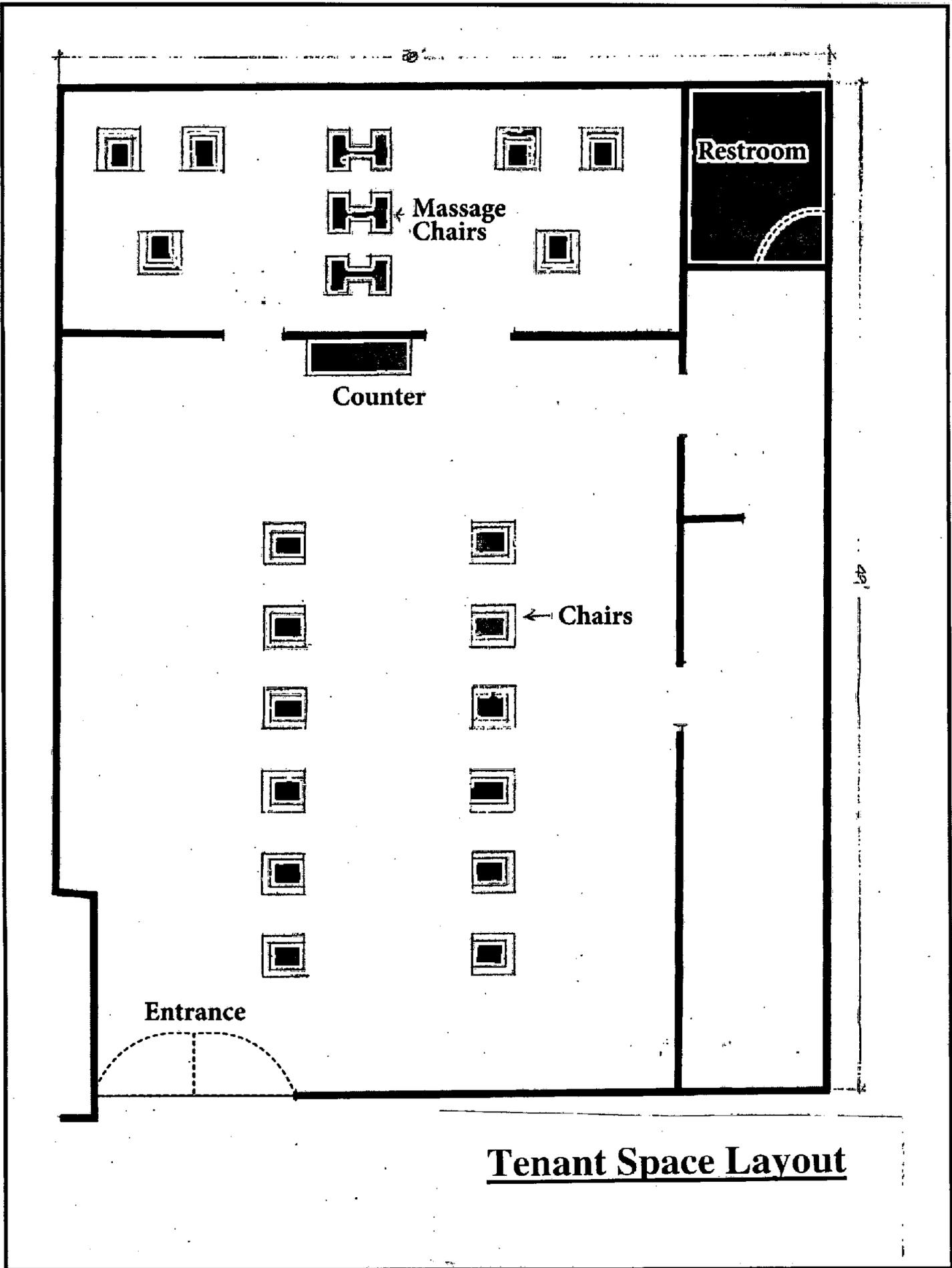
The synergism due to presence of foot fetish customers will create a huge demand for opportunity to spend big bucks at adjacent sales generation in other stores while awaiting a turn for foot massage. Just think of the benefit to Dr. Scholl's 'gellin' TV ads..... the bay area will really rock with this craze ! Sales tax revenue will solve all of Hayward's budget problems.

If the experts at Southland Mgt are for it.... good ! Is there enough parking available to handle the crowds?

I have no problem with that idea.... it beats standing up at the local nearby pubs waiting for draft beer to be poured properly ! Perhaps a keg or two can be sold while feet massages are demonstrated in shop windows?

J.W. Kyle

3/5/2007



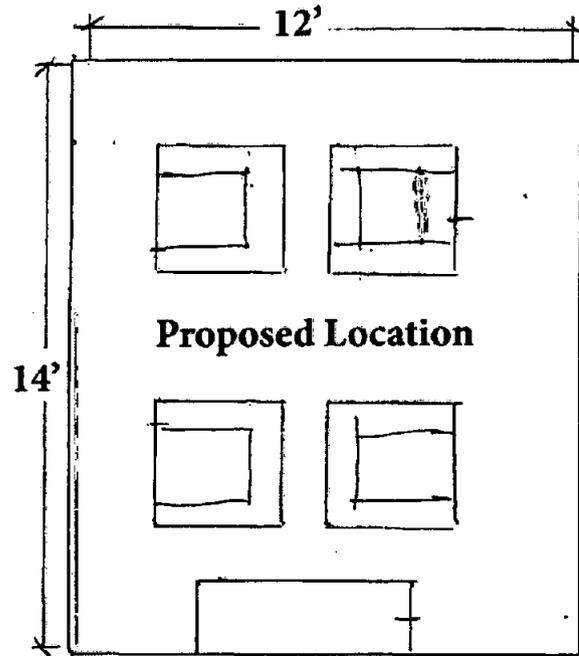
Tenant Space Layout

Foot Locker

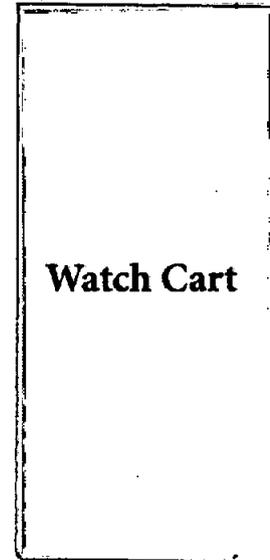
Kids Footlocker



Belt Cart



Proposed Location



Watch Cart

Ecko Enterprises

Rave