



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Motion No. 17692

HEARING DATE: SEPTEMBER 11, 2008

*Date:* September 3, 2008  
*Case No.:* **2008.0616C**  
*Project Address:* **4565 MISSION STREET**  
*Zoning:* NC-3 (Moderate-Scale, Neighborhood Commercial District)  
 40-X Height and Bulk District  
*Block/Lot:* 6014/032  
*Project Sponsor:* LiXiong Zeng, (Carol)  
 2152 Greenwood Avenue  
 San Carlos, CA 94070  
*Staff Contact:* Sharon Lai – (415) 575-9087  
[sharon.lai@sfgov.org](mailto:sharon.lai@sfgov.org)

**ADOPTING FINDINGS RELATING TO CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 712.54 AND 790.60 OF THE PLANNING CODE TO ALLOW A NEW MESSAGE ESTABLISHMENT (D.B.A. ZENG'S MESSAGE) WITHIN AN EXISTING MEDICAL USE (CHIROPRACTIC AND MEDICAL CLINIC) WITHIN THE GROUND FLOOR COMMERCIAL SPACE LOCATED AT 4565 MISSION STREET ON ASSESSOR'S BLOCK 6014, LOT 032, LOCATED IN AN NC-3 (MODERATE-SCALE, NEIGHBORHOOD COMMERCIAL DISTRICT).**

### PREAMBLE

On May 22, 2008, LiXiong Zeng, authorized agent and lessee (hereinafter "Project Sponsor,") filed an application (hereinafter "Application") with the Department for a Conditional Use Authorization under Planning Code Section 711.54 of the Planning Code for the property at 4565 Mission Street, Block 6014, Lot 032 (hereinafter "Subject Property") to allow a massage establishment to be located within an existing medical use in a ground floor commercial space, operated by Dr. Luis Vidalon, Chiropractic and Medical Clinic, in general conformity with plans filed with the Application, located within a NC-3 (Moderate-Scale Neighborhood Commercial) District and 40-X Height and Bulk District.

On September 11, 2008, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2008.0616C.

The proposed Conditional Use application was determined by the San Francisco Planning Department (hereinafter "Department") to be Categorically Exempt pursuant to Section 15303(e). The Commission has reviewed and concurs with said determination.

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties.

**MOVED**, that the Commission hereby authorizes the Conditional Use requested in Application No. 2008.0616C, subject to the conditions contained in "EXHIBIT A" of this motion, based on the following findings:

## **FINDINGS**

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.
2. **Site Description and Present Use.** The Project is located at 4565 Mission Street, east side between Excelsior and Brazil Avenues, Block 6014, Lot 032. The property is developed with one, ground level commercial use within a two-story mixed-use building. The existing ground level has been and is currently occupied by the owner, Dr. Luis Vidalon, as a Chiropractic and Medical Clinic since 1990. The subject property is a mid-block lot, with approximately 25-feet of frontage on Mission Street. The lot is approximately 90% covered by the subject building.
3. **Surrounding Properties and Neighborhood.** The property is located within the Mission Street commercial corridor, NC-3 (Moderate-Scale, Neighborhood Commercial) District, with 40-X height and bulk district. The Mission Street commercial corridor is characterized by moderate-scale retail uses from Silver Avenue to Pope Street, such as clinics, markets, restaurants, and fringe financial institutions. The retail frontage is interrupted at several locations by residential and larger businesses such as Kragen Auto Parts. The Subject Property is more than 1,000 feet from any other legally established, licensed massage establishment.
4. **Project Description.** The Applicant is requesting Conditional Use Authorization to allow a new massage establishment in the NC-3 (Neighborhood Commercial, Three Stories) District, which is conditionally permitted under Section 712.54 of the Planning Code and as defined in 790.60. New ADA compliant bathrooms and showers were installed within the existing footprint of the building under building permit No.

2008.04.02.8638. No additional construction has been proposed as part of the current project.

The massage establishment proposes to occupy 4 of the 7 existing medical treatment rooms, approximately 636 square feet of the existing 1,925 square foot chiropractic and medical clinic. The reception area, hallways, and other common areas are proposed to be shared by both businesses. The Project Sponsor has been a certified general massage practitioner by the City and County of San Francisco since 2006. In addition to the Project Sponsor, up to three licensed massage personnel would be employed to offer "Swedish and deep-tissue, full body" massage therapy services.

The Project is an independent use and locally owned. The proposal requires a change of use and Section 312-neighborhood notification was conducted in conjunction with the Conditional Use Authorization process. The proposed establishment is a neighborhood-serving use.

5. **Public Comment.** The Department has received 1 letter of support from the Excelsior Action Group (EAG) and various phone calls and emails from the Outer Mission Merchants and Residents Association (OMMRA) with concerns regarding the legitimacy of the establishment, hours of operation, etc... A meeting and site visit was conducted with the Project Sponsor, EAG, OMMRA, and staff on September 3, 2008 to discuss the Project. Subsequently OMMRA submitted a letter of support for the Project based on discussions with the Project Sponsor including restricted hours of operation from 10a.m. to 9p.m. daily. See Exhibit A for more details.

6. **Planning Code Compliance:** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:

A. **Massage Establishment.** Planning Code Section 712.54 allows a massage establishment in an NC-3 District with Conditional Use Authorization, so long as the use is located no less than 1,000 feet from any other massage establishment, as defined by Planning Code Section 790.60.

*The Project is more than 1,000 feet from any other legally established licensed massage establishment.*

B. **Hours of Operation.** Planning Code Section 712.27 states that there are no limits on hours of operation as defined by Planning Code Section 790.48.

*Although there are no hours of operation limitations for the Subject Property per the Planning Code Section 712.27, the Project Sponsor has reached a general agreement with the neighborhood organizations (Outer Mission Merchant and Resident Association and Excelsior Action Group) to operate from 10:00a.m. to 9:00p.m. daily, as included in Condition 11 of Exhibit A.*

- C. **Parking.** Planning Section 712.22 and 151 of the Planning Code requires off-street parking for every 300 square-feet of occupied floor area, where the occupied floor area exceeds 5,000 square-feet.

*The existing Chiropractic Clinic contains approximately 1,925 square-feet of occupied floor area. The Massage Establishment proposes to occupy approximately 640 square feet of the existing clinic and thus does not require any off-street parking.*

- D. **Signage.** Currently, there is not a proposed sign program on file with the Planning Department. The proposed business does not have a name as of this writing. Any proposed signage will be subject to the review and approval of the Planning Department.

7. **Planning Code Section 303(c)** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the project does comply with said criteria in that:

- A. The proposed new uses and building, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

*The Project is compatible and desirable to the neighborhood, in that it will provide a complimenting personal-service, therapeutic massage, to the patrons of the chiropractic and medical clinic and to the residents of the Excelsior/Outer Mission area, where no such use currently exists within a 1,000-foot radius of the Subject Property.*

- B. The proposed project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. There are no features of the project that could be detrimental to the health, safety or convenience of those residing or working the area, in that:

- i. Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

*The height and bulk of the existing building will remain the same and will not alter the existing appearance or character of the project vicinity. The Project is not proposing to affect the building envelope.*

- ii. 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;

*The Planning Code does not require parking or loading for a 640 square-foot Massage establishment within an existing clinic. The Project is located in an area well served by MUNI bus lines 14L, 14X, 14, 29, 49, and 52. The proposed use is designed to meet the*

*needs of the immediate neighborhood and should not generate significant amounts of vehicular trips from the immediate neighborhood or citywide.*

- iii. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

*The Project is for a change of use within an existing medical clinic and is not expected to negatively impact the existing conditions. The proposed massage establishment's operational format is similar to other medical establishments and therefore is not expected to generate significant levels of noxious or offensive emissions such as noise, glare, dust and odor.*

- iv. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;

*The proposed massage establishment does not require any additional tenant improvements the Department shall review all lighting and signs proposed for the new business in accordance with Condition 9 of Exhibit A.*

- C. That the use as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

*The Project complies with all relevant requirements and standards of the Planning Code and is consistent with objectives and policies of the General Plan as detailed below.*

- D. That the use as proposed would provide development that is in conformity with the purpose of the applicable Neighborhood Commercial District.

*The proposed project is consistent with the stated purposes of NC-3 Districts in that the intended use is located at the ground floor, will provide a compatible convenience service for the immediately surrounding neighborhoods during daytime hours.*

- 8. **General Plan Compliance.** The Project is, on balance, consistent with the following Objectives and Policies of the General Plan:

## NEIGHBORHOOD COMMERCE

### Objectives and Policies

#### OBJECTIVE 1:

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

**Policy 1.1:**

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development that has substantial undesirable consequences that cannot be mitigated.

*The Project will provide net benefits because the proposed use will take advantage of the currently underutilized commercial space at 4565 Mission Street, by adding a compatible service. The proposed commercial tenant will most likely attract nearby residents that already patron the chiropractic clinic and the Mission Street commercial corridor. As such, the Project is unlikely to create additional parking or traffic congestion.*

**OBJECTIVE 2:**

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

**Policy 2.1:**

Seek to retain existing commercial and industrial activity and to attract new such activity to the City.

*The Property proposes to accommodate an additional, complementing commercial use within the existing commercial space. The massage establishment will increase the diversity of personal services in the Mission Street NC-3 District; given that there is currently no legal massage establishments within 1,000 feet of the subject tenant space.*

**OBJECTIVE 3:** PROVIDE EXPANDED EMPLOYMENT OPPORTUNITIES FOR CITY RESIDENTS, PARTICULARLY UNEMPLOYED AND ECONOMICALLY DISADVANTAGED.

**Policy 3.1:**

Promote the attraction, retention and expansion of commercial and industrial firms which provide employment opportunities for unskilled and semi-skilled workers.

*The Project represents a reuse of ground floor tenant space to better serve patrons of the Chiropractic and Medical Clinic, and residents of the Excelsior/Outer Mission neighborhood. Zeng's Massage Therapy is a small, independently owned business use, which is complementary with its shared tenant, and will not displace any commercial or industrial firms.*

**Policy 3.1:**

Promote measures designed to increase the number of San Francisco jobs held by San Francisco residents.

*The Project will provide three additional job opportunities.*

**OBJECTIVE 6:** MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

**Policy 6.1:**

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.

*No commercial tenant would be displaced and the project would not prevent the district from achieving optimal diversity in the types of goods and services available in the neighborhood.*

**Policy 6.2:**

Promote economically vital neighborhood commercial districts which foster small business enterprises and entrepreneurship and which are responsive to the economic and technological innovation in the marketplace and society.

*An independent entrepreneur is sponsoring the proposal. The proposed use is a neighborhood serving use, which will complement the existing tenant use thereby encouraging the viability of the existing Chiropractic and Medical Clinic.*

9. **Planning Code Section 101.1(b)** establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project does comply with said policies in that:

- A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

*The Project would enhance the district by providing a personal-service that is not currently available within 1,000 foot radius. The business would be locally owned and it creates 3 more employment opportunities for the community.*

- B. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

*The Project is within an existing medical clinic and proposes no changes to the number of housing units.*

- C. That the City's supply of affordable housing be preserved and enhanced,

*The City's affordable housing stock will not be affected. No housing is removed for this Project.*

- D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

*The site is on Mission Street and is well served by transit. It is presumable that the employees and residents would commute by transit thereby mitigating possible impacts on street parking. Mission Street has six MUNI bus lines (14L, 14X, 14, 29, 49, and 52).*

- E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

*The Project will not displace any service or industry establishment. The Project will enhance the Mission Street NC-3 District's personal-services diversity and promote job opportunities. Ownership of industrial or service sector businesses will not be negatively affected by this project.*

- F. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

*There is no construction proposed as part of this Project. Any future construction shall conform to the structural and seismic safety requirements of the City Building Code. This proposal will not impact the property's ability to withstand an earthquake.*

- G. That landmarks and historic buildings be preserved.

*A landmark or historic building does not occupy the Project site.*

- H. That our parks and open space and their access to sunlight and vistas be protected from development.

*The project will have no negative impact on existing parks and open spaces. The Project does not have an impact on open spaces.*

- 10. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.
- 11. The Commission hereby finds that approval of the Conditional Use authorization would promote the health, safety and welfare of the City.



**DECISION**

That based upon the Record, the submissions by the Project Sponsor, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Application No. 2008.0616C** subject to the following conditions attached hereto as "EXHIBIT A" which is incorporated herein by reference as though fully set forth.

**APPEAL AND EFFECTIVE DATE OF MOTION:** Any aggrieved person may appeal this Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. 17692. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on September 11, 2008.

Linda Avery  
Commission Secretary

AYES: Commissioners Olague, Antonini, Bill Lee, Moore, Borden, and Sugaya

NAYES: None

ABSENT: Commissioner Miguel

ADOPTED: September 11, 2008

## Exhibit A

# Conditions of Approval

1. This approval is for a Conditional Use Authorization under Planning Code Section 712.54 of the Planning Code to allow a massage establishment (d.b.a. Zeng's Massage Therapy) at 4565 Mission Street within the NC-3 (3 Stories, Neighborhood Commercial) District and a 40-X Height and Bulk District, in general conformance with plans filed with the Application as received on May 22, 2008 and stamped "EXHIBIT B" included in the docket for **Case No. 2008.0616C**, reviewed and approved by the Commission on September 11, 2008.
2. The entry to the massage establishment shall be directly visible from the street and not through a subordinate corridor shared with adjacent tenants or any vestibule area with two sets of doors. The entrance shall be a single set of door(s) that open directly into the reception area, shared the chiropractic and medical clinic and the massage establishment. IF any additional doors are required by the Building Code for emergency egress purposes, such door shall be labeled "for emergency use only" and shall have an audible alarm that will sound when the door is opened.
3. No locks shall be allowed on any interior door of the Massage Treatment rooms, except that a lock for privacy may be permitted on the bathroom door.
4. All persons engaged in performing massage shall be licensed for that purpose by the State of California and the licenses shall be prominently displayed either on walls of the business or on the practitioner.
5. Prior to the issuance of the Building Permit for the Project the Zoning Administrator shall approve and order the recordation of a notice in the Official Records of the Recorder of the City and County of San Francisco for the premises (Assessor's 6014, Lot 032), which notice shall state that construction has been authorized by and is subject to the conditions of this Motion. From time to time after the recordation of such notice, at the request of the Project Sponsor, the Zoning Administrator shall affirm in writing the extent to which the conditions of this Motion have been satisfied.
6. Violation of the conditions contained in this Motion or of any other provisions of the Planning Code may be subject to abatement procedures and fines up to \$250 a day in accordance with Planning Code Section 176.
7. Should monitoring of the Conditions of Approval contained in Exhibit A of this Motion be required, the Project Sponsor or successors shall pay fees as established in Planning Code Section 351(e)(1).

8. The property owner shall maintain the main entrance to the building and all sidewalks abutting the Subject Property in a clean condition. Such maintenance shall include, at a minimum, daily litter pickup and disposal, and washing or steam cleaning of the main entrance and abutting sidewalks at least once each week.
9. Signs and exterior lighting for the business shall be reviewed and approved by the Planning Department before they are installed.
10. The Project shall appoint a Community Liaison Officer to address issues of concern to neighbors related to the operation of this Project. The Project Sponsor shall report the name and telephone number of this Officer to the Zoning Administrator and the neighborhood for reference. The Project Sponsor will keep the above parties apprised should a different staff liaison be designated.
11. The hours of operation shall be limited to 10 a.m. to 9 p.m.
12. The Project Sponsor shall assure the execution and recordation of the specified conditions as a Notice of Special Restrictions at the Office of the County Recorder / County Clerk.
13. The authorization and right vested by virtue of this action shall be deemed void and canceled, if within 3 years of this Motion a site permit or building permit for the Project has not been secured by Project Sponsor. This authorization may be extended at the discretion of the Zoning Administrator only if the failure to issue a permit by the Department of Building Inspection is delayed by a city, state, or federal agency or by appeal of the issuance of such permit.