



# MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: February 23, 2011

**APPLICATION:** Conditional Use Permit No. UP11-0001, Massage Establishment

**APPLICATION SUMMARY:** A request to operate a 1,172 square massage establishment within the Seasons Marketplace Shopping Center.

**LOCATION:** 1535 Landess Avenue (APN 88-35-017)  
**APPLICANT:** Rene Ganzon and Marilou Dore, , CA 954065  
**OWNER:** Dinna Bayangos, Ayafafil Management LLC, 255 Shoreline Drive, Suite 428, Mountain View, CA 954065

**RECOMMENDATION:** Staff recommends that the Planning Commission:  
**Adopt Resolution No. 11-008 subject to the conditions of approval.**

**PROJECT DATA:**  
**General Plan/  
Zoning Designation:** General Commercial (GNC)/General Commercial

**Overlay District:** Site and Architectural Overlay (C2-S)

**Specific Plan:** N/A

**Site Area:** 7.89 Acres

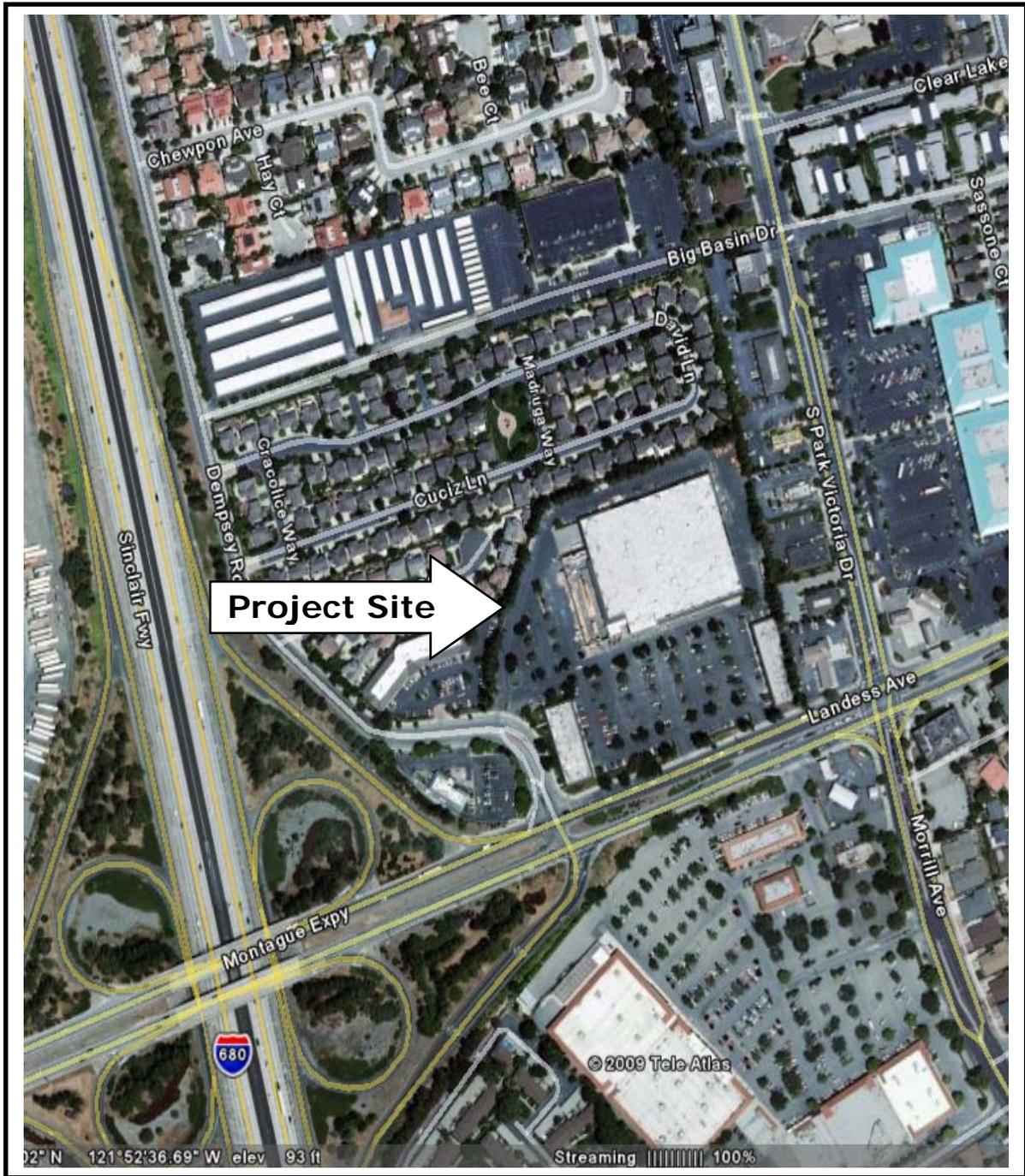
**CEQA Determination:** Categorically exempt pursuant to Class 1, Section 15301 (Existing Facilities) of the California Environmental Quality Act.

**PLANNER:** Cindy Hom, Assistant Planner

**PJ:** 2695

**ATTACHMENTS:**  
A. Resolution No. 11-008  
B. Project Plans  
C. Project Description

# LOCATION MAP



No scale

**BACKGROUND**

In March 2009, the Planning Commission approved Site Development Permit and Conditional Use Permits to convert the former Home Depot building to mixed retail center that included a 32,975 square foot food store, restaurant and retail establishments as well as installation of various site and architectural modifications.

On January 11, 2011, Rene Ganzon and Marilou Dore submitted a conditional use permit application to allow for the operation of a 1,172 square foot massage establishment within the Seasons Marketplace Shopping Center. The application is submitted pursuant to Milpitas Municipal Code (MMC) XI-10-05.02-1 (3) (Massage Establishments) which requires Planning Commission review and approval of conditional use permits.

**PROJECT DESCRIPTION**

The project site is situated on a 7.89-acre parcel located at the northeast corner of the Dempsey Road and Landess Avenue intersection. The site is zoned General Commercial with a Site and Architectural Overlay (C2-S). Neighboring land uses include the Stonegate Development PUD (89 single-family homes) and the French Court PUD (20 single-family homes) located north of the project site. The building is located approximately 70 feet from the rear property lines of the Stonegate residences and approximately 100 feet from the rear of the French Court residences. A six-foot high masonry wall separates the adjacent residences from the subject site. Commercial retail buildings are located to the west, south and east. A vicinity map of the project site is shown on the previous page.

The applicant proposes a massage establishment within a 1,172 square foot tenant space located at the northwest corner of the Season Marketplace Shopping Center. The proposed floor plan includes two massage rooms that are constructed with 6-foot tall cubicle walls which will allow approximate 6-foot clearstory opening; an employee break area; a foot massage area consisting of nine massage chairs; and a reception/waiting area. The proposed massage facility will offer foot and full body massages and employ approximately three to ten certified masseuses. The applicant proposes to operate seven days a week from the hours of 9:00AM to 10:00PM.

**ADOPTED PLANS AND ORDINANCES CONSISTENCY**

*General Plan*

The table below outlines the project’s consistency with applicable General Plan Guiding Principles and Implementing Policies:

**Table 2**  
**General Plan Consistency**

<b>Policy</b>	<b>Consistency Finding</b>
<i>2.a-I-6: Endeavor to maintain a balanced economic base that can resist downturns in any one economic sector.</i>	<b>Consistent.</b> The project would add to the retail mix of the Season’s Marketplace Shopping Center by adding beauty and wellness services in conjunction with a food market and

Policy	Consistency Finding
	various restaurant eateries.
<p><i>2.a-I-7:                  Provide opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention.</i></p>	<p><b>Consistent.</b> The project would expand employment opportunities and would help promote business retention by adding to the economic vitality of the shopping center.</p>

**Zoning Ordinance**

The project is consistent with the Zoning Ordinance in terms of development standards and land use. According to MMC XI-10-5.02-1 (3), massage establishments are conditionally permitted uses in the General Commercial zone. The proposed massage establishment provides for a compatible land use with the other retail and restaurant uses within the center that include other beauty salons, medical offices, and other general retail stores.

The project is consistent with the purpose and intent of the General Commercial zone in that it provides a type beauty and wellness service that caters to regional and local customers. The project will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare. The project located in an existing retail center. The proposed hours of operation of 9:00AM to 10:00PM will not be disruptive to adjacent neighbors. Staff recommends as a condition of approval that the storefront window remain clear and unobstructed to ensure safety of employees and customers.

**Milpitas Municipal Code III-6-7, Massage Establishment,**

The purpose and intent of the Massage Ordinance is to protect the public health, safety and welfare by regulating the operation of massage establishments, off-premises massage services, and persons offering massage. Provisions of the Massage Ordinance ensure that persons offering massage services conduct their work in a lawful, professional manner and are duly licensed and possess the minimum necessary qualifications to perform massage services. As conditioned, the proposed establishment shall demonstrate compliance set forth in Milpitas Municipal Code III-6-1 (Massage Establishment) prior to business license issuance.

**ENVIRONMENTAL REVIEW**

The Planning Division conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA) and determined that the project is categorically exempt from further environmental review pursuant to Class 1, Section 15301 (Existing Facilities) of the California Environmental Quality Act. The project proposed a massage establishment within an existing retail tenant space.

**PUBLIC COMMENT/OUTREACH**

Staff publicly noticed the application in accordance with City and State law. As of the time of writing this report, there have been no inquiries from the public.

**CONCLUSION**

The project will promote a mix of retail and commercial service uses that will be compatible with existing business and neighboring residents. The project is consistent with the General Plan and Zoning in terms of land use, encourages a stable development, and provides new employment opportunities. As conditioned, the project location and hours of operation will not be disruptive to adjacent residential neighbors and businesses.

**RECOMMENDATION**

**STAFF RECOMMENDS THAT** the Planning Commission close the public hearing after hearing testimony and adopt Resolution No. 11-008 approving UP11-0001, subject to the attached Resolution and Conditions of Approval.

*Attachments:*

- A. Resolution No. 11-008
- B. Project Plans
- C. Project Letter

## RESOLUTION NO. 11-008

### **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT NO. UP11-0001, DA TANG FOOT SPA, TO ALLOW A MASSAGE ESTABLISHMENT LOCATED AT 1535 Landess Ave. #100.**

**WHEREAS**, on January 11, 2011, an application was submitted by Rene Ganzon and Marilou Dore, 1535 Landess Ave. #100, Milpitas, CA 95035, to allow for a 1,172 square foot massage establishment within the Milpitas Square shopping center located at 1535 Landess Ave. #100 (APN 86-01-043). The project is located in the General Commercial Zoning District; and

**WHEREAS**, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission determine this project categorically exempt pursuant to Class 1, Section 15301 (Existing Facilities) of the CEQA; and

**WHEREAS**, on February 23, 2010 the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

**NOW THEREFORE**, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

**Section 1:** The recitals set forth above are true and correct and incorporated herein by reference.

**Section 2:** The project is categorically exempt from further environmental review pursuant to Class 1, Section 15301 (Existing Facilities) of the CEQA guidelines. The project proposes to operation 1,172 square feet massage establishment within an existing commercial tenant space.

**Section 3:** The proposed massage establishment is consistent with the General Plan policies 2.a-I-6 and 2.a-I-7 in that the project would add to the retail mix of the Milpitas Square Shopping Center by providing massage/spa services with other various retail and restaurant uses. The project would encourage business retention by allowing an existing business upgrade to include full body massages.

**Section 4:** The proposed project at the proposed location is consistent with the Zoning Ordinance in that a massage establishment is a conditionally permitted use within the General Commercial zone. As conditioned, the project will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare. The proposed location is within a regional shopping center and the proposed hours of operation are compatible with the other uses in the shopping center.

**Section 5:** The Planning Commission of the City of Milpitas hereby approves Conditional Use Permit No. UP11-0001, Ganzon Foot Spa, subject to the above Findings, and Conditions of Approval attached hereto as Exhibit 1.

**PASSED AND ADOPTED** at a regular meeting of the Planning Commission of the City of Milpitas on February 23, 2011.

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Chair

**TO WIT:**

**I HEREBY CERTIFY** that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on February 23, 2011, and carried by the following roll call vote:

<b>COMMISSIONER</b>	<b>AYES</b>	<b>NOES</b>	<b>ABSENT</b>	<b>ABSTAIN</b>
Zeya Mohsin				
Lawrence Ciardella				
Sudhir Mandal				
Gurdev Sandhu				
Steve Tao				
Noella Tabladillo				
Mark Tiernan				
John Luk				

**EXHIBIT 1**

**CONDITIONS OF APPROVAL  
CONDITIONAL USE PERMIT NO. UP11-0001**

A request to operate a 1,172 square foot massage facility within the  
Seasons Marketplace Shopping Center.  
1535 Landess Ave. #100. (APN: 86-01-043)

**General Conditions**

1. The owner or designee shall develop the approved project in conformance with the approved plans and color and materials sample boards approved by the Planning Commission on February 23, 2011, in accordance with these Conditions of Approval.

Any deviation from the approved site plan, floor plans, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance.  
**(P)**

UP11-0001 shall become null and void if the project is not commenced within two (2) years from the date of approval unless in conjunction with a tentative map, then the project life coincides with the life of the map. Pursuant to Section 64.06(B) of the Zoning Ordinance of the City of Milpitas, commencement shall be:

- a. Completes a foundation associated with the project; or
  - b. Dedicates any land or easement as required from the zoning action; or
  - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
2. Pursuant to Section 64.06(1), the owner or designee shall have the right to request an extension of UP11-0001 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein. **(P)**
  3. Prior to the issuance of building permits, the owner or designee shall include within the four first pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the project. **(P)**
  4. Use Permit No. UP11-0001 is for a Massage Establishment known as the Da Foot Spa. The business provides foot, full body, and head with shoulder massages in a variety of styles (i.e. traditional Swedish massage, deep tissue work, hot stone massage etc.). The business hours of operation will be 7 days a week from 10:00a.m. to 10:00p.m. **(P)**

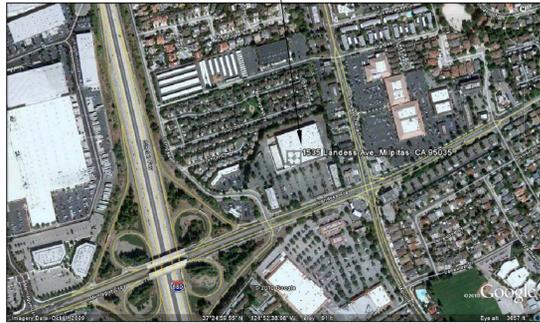
5. **Prior to Building Permit issuance**, the applicant shall submit a revised floor plan with construction details for the construction of the massage rooms and shall demonstrate a clearstory opening on the wall facing the common walk area. This opening allows sound in all massage rooms to be heard throughout the establishment. The opening will remain open at all times and may be covered by some type of shade or curtain. **(P)**
6. Massage practitioners that have a valid certificate issued by the Massage Therapy Organization (also known as the California Massage Therapy Council), pursuant to California Business and Professions Code Chapter 10.5 of Division 2, shall be excused from compliance with those conditions of approval contained herein that are governed by state law.
7. The massage establishment shall comply with Title III, Chapter 6 "Massage Establishments and Practitioners", of the City of Milpitas Municipal Code. **(P)**
8. The massage establishment permit, and a copy of the permit of each and every massage practitioner employed by a massage establishment shall be displayed in an open and conspicuous place on the premises. **(P)**
9. Prior to issuance of a certificate of occupancy and business license, the applicant shall submit an application to the Chief of Police or his or her authorized representative. Please refer to III-6-6 Massage Establishment, and Off-Premises Massage Service Permit Application. **(P)**
10. Each person employed or acting as a message practitioner shall have a valid massage practitioner permit issued by the Chief of Police which shall be clearly visible on the massage practitioner's person during working hours. It shall be unlawful for any owner, manager, operator, managing officer/employee, or permittee to employ or permit a person to act as a massage practitioner who is not listed on the massage establishment permit application or off-premises massage services permit application and who is not in possession of a valid massage practitioner permit issued pursuant to Chapter 6 of the Milpitas Municipal Code. **(P)**
11. The possession of a valid massage establishment permit or off-premises massage service permit does not authorize the possessor of the permit or any other person to perform work for which a massage practitioner permit is required. **(P)**
12. Massage shall be provided or given only between the hours of 7:00 a.m. and 10:00 p.m. No massage establishment shall be open and no customer shall be in such massage establishment between the hours of 10:30 p.m. and 7:00 a.m. No off-premises massage shall be provided or given between the hours of 10:00 p.m. and 7:00 a.m. **(P)**
13. A list of services available, and the cost of such services, shall be posted in an open public place within the premises and shall be described in readily understandable language. No owner, manager, operator, managing officer/employee, or permittee shall

permit, and no massage practitioner shall offer or perform, any service other than those posted. **(P)**

14. Every massage establishment and off-premises massage service shall keep a written record of the date and hour of each service provided, the name and address of each patron and the service received, and the name of the massage practitioner administering the service. Such records shall be open to inspection only by City officials, including the Police Department and the City Attorney, charged with enforcement of this chapter. These records may not be used for any other purpose than as records of services provided and may not be provided to other parties by the massage establishment or off-premises massage service unless otherwise required by law. Such records shall be retained on the premises of the massage establishment or at the off-premises massage service business office for a period of two (2) years. **(P)**
15. Massage establishments shall at all times be equipped with an adequate supply of clean sanitary towels, table coverings and linens. Clean towels, coverings and linens shall be stored in enclosed cabinets. Towels and linens shall not be used on more than one (1) patron, unless they have first been laundered and disinfected. Disposable towels and coverings shall not be used on more than one (1) patron. Soiled linens and paper towels shall be deposited in separate, approved receptacles. **(P)**
16. All employees, and massage practitioners, shall perform their work fully clothed, be clean and wear clean outer garments which are used and worn only at the establishment (i.e., a smock). **(P)**
17. No massage establishment or off-premises massage service shall operate as a school of massage, or use the same facilities as that of a school of massage. **(P)**
18. No massage establishment or off-premises massage service which has been granted a permit under the provisions of this Chapter 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 any service is available other than those services described in Section 6-2(c) of this Chapter. No massage establishment or off-premises massage service shall employ language in the text of such advertising that would reasonably suggest to a prospective patron that any service is available other than those services as described in Section 6-2(c) of this Chapter. **(P)**
19. At least one entrance door, allowing access to the massage establishment and any building it may be located in, shall remain unlocked during business hours. **(P)**
20. No massage establishment shall be open for business without at least one massage practitioner on the premises at all times who is in possession of a valid permit. **(P)**
21. Any change with respect to the information contained in the permittee's application shall be reported to the Chief of Police within ten (10) days of such change. (Ord. 172.3 (part), 4/18/95) **(P)**

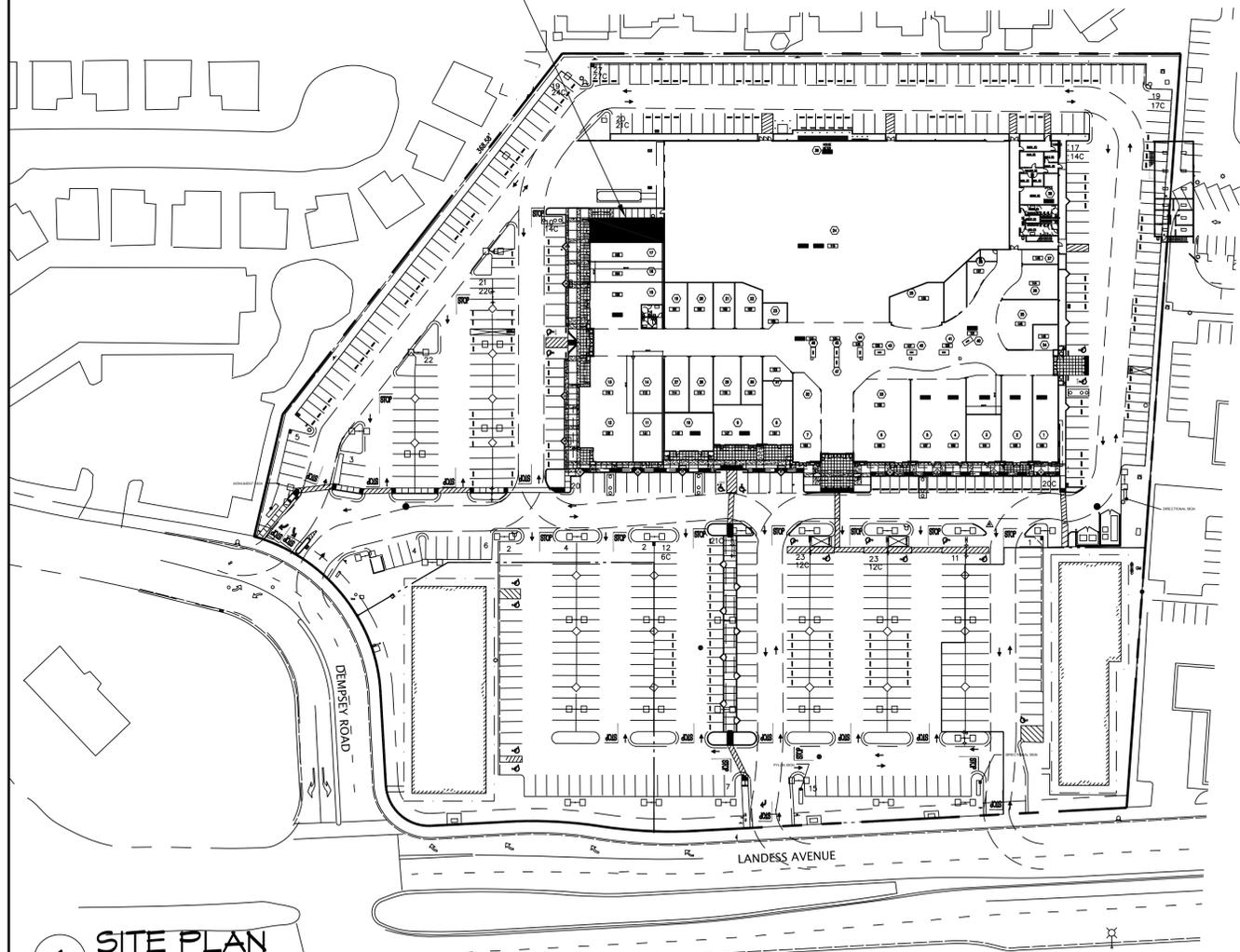
(P) = Planning Division  
(PC) = Planning Commission

LOCATION OF PROJECT

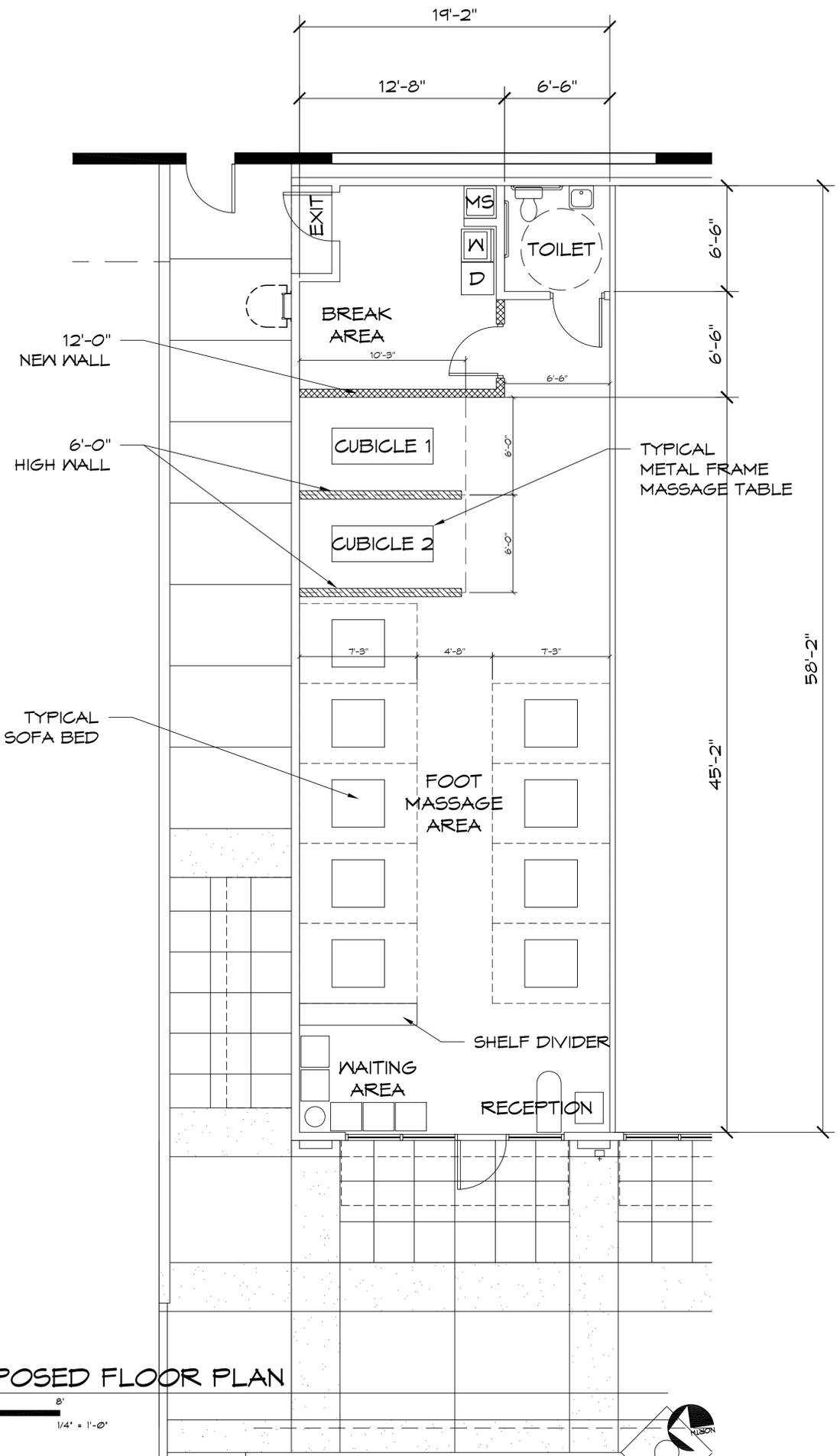
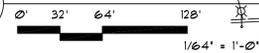


VICINITY MAP  
n.t.s.

SUITE 100



1 SITE PLAN



1 PROPOSED FLOOR PLAN



These drawings are not valid for construction unless wet stamped and signed by CHL Associates, Inc.

PROJECT NAME AND ADDRESS:  
**GANZON FOOT MASSAGE**  
1595 Landess Avenue, Suite 100  
Milpitas, CA 95035

SHEET TITLE:  
**Proposed Floor Plan**

REVISIONS	BY

JOB #  
ENGINEER:  
DRAWN BY: SCDG  
CHECKED BY:  
FILE:  
DATE:  
SCALE:

SHEET  
**A-01**

**PROJECT DESCRIPTION**

Seasons Marketplace at Landess is known mainly for its anchor tenant, Seafood City, and its restaurants and food service outlets. To further improve customer traffic and loyalty to the shopping center, it has brought in tenants who specialize in beauty and wellness. Currently, it has the following tenants in that category – hair salon, optical shop, dental clinic, and facial clinic. Based on customer feedback and observation of other similar developments within and outside of Milpitas, we identified the need for a massage facility to complete the beauty and wellness offering at Seasons.

The following is a description of the proposed operations of the tenant, represented by Mr George Dore.

1. Location: Suite no. 100. Note that this suite has its own entrance and can be accessed directly from the parking lot.
2. Services: Foot and body massage
3. The tenant/operators are Marilou G. Dore and Rene Ganzon. George Dore is going to manage the operations.
4. They propose to put in 10 massage chairs, 2 massage tables in a space that is semi-enclosed with planter boxes that are 4' to 6' in height and translucent curtains. They also intend to put 1 break room for their employees. Details are provided for in the floor plan.
5. Operating hours are from 9am to 11pm daily.
6. They will have 3 to 10 certified masseuses. Number will depend on the volume of the business.

For any questions you may contact the following:

1. Dinna Bayangos, Tel no. 650-740-1160, [dbayangos@ayala-namerica.com](mailto:dbayangos@ayala-namerica.com)
2. George Dore, Tel no. 408-270-4209, [gdore@ymail.com](mailto:gdore@ymail.com)
3. Jun Perucho, Tel no 408-835-5516, [jun.seasons@gmail.com](mailto:jun.seasons@gmail.com)

**RECEIVED**

JAN 11 2011

CITY OF MILPITAS  
PLANNING DIVISION