



MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: February 23, 2011

APPLICATION: Conditional Permit Review No. UP10-0026, Massage Establishment

APPLICATION SUMMARY: A request to operate a 1,102 square massage establishment within the Milpitas Square Shopping Center.

LOCATION: 448 Barber Lane (APN 86-01-043)
APPLICANT: Wen Jing Bai, 448 Barber Lane, Milpitas, CA 95035
OWNER:

RECOMMENDATION: Staff recommends that the Planning Commission:
1. Adopt Resolution No. 11-010 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: 16.85 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: 2692

ATTACHMENTS:
A. Resolution No. 11-010
B. Project Plans
C. Project Description

LOCATION MAP



No scale

BACKGROUND

On October 22, 2008, the Planning Commission approved a zoning text amendment to allow Massage Establishments in MXD, C2 and TC Zones and to include massage of hands and feet, as ancillary uses to commercial services. This zoning text amendment was initiated by the project applicant and manager of Milpitas Square located at 448 Barber Lane. Since the 2008 approval, the applicant has been in operation and is requesting to upgrade their services to include full body massages.

On December 21, 2010, Wen Jing Bai submitted a conditional use permit application to allow for the operations of a 1,102 square foot massage establishment within the Milpitas Square 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 located within the Milpitas Square Shopping Center, which is a 17 acre property bounded by SR-237 to the north, Barber Lane to the west, I-880 to the east, and commercial building to the south. The Milpitas Square Shopping Center includes a variety of uses, including the Ranch 99 Marketplace, retail shops, restaurants and financial offices. Surrounding land uses include two hotels located to the northwest, SR-237 to the north, a vacated auto dealership to the south, and the Cisco campus to the east. The subject tenant space is located in the central pad building of the shopping center. A vicinity map of the subject site location is included on the previous page.

The applicant proposes a massage establishment within a 1,102 square foot tenant space located at the Milpitas Square Shopping Center. The proposed floor plan includes two massage rooms that are constructed with 4-foot pony wall with a 4-foot curtain screen walls which will allow approximate 4-foot clearstory opening; an employee break area; a foot massage area consisting of eleven massage chairs; and a reception/waiting area. The proposed massage facility will offer foot and full body massages and would operate seven days a week from the hours of 10:00AM 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

Policy	Consistency Finding
2.a-I-6: <i>Endeavor to maintain a balanced economic base that can resist downturns in any one economic sector.</i>	Consistent. The proposed massage services would add to the retail mix to Milpitas Square Shopping Center.
2.a-I-7: <i>Provide opportunities to expand employment, participate in partnerships</i>	Consistent. The project would expand employment opportunities and would help promote business

Policy	Consistency Finding
<i>with local business to facilitate communication, and promote business retention.</i>	retention by allowing an existing business to expand their operations to include full body massage services.

Zoning Ordinance

The objective of the conditional use permit is to provide a discretionary review of the project to ensure ongoing compliance with performance standards and to ensure that the physical layout of the floor space is maintained throughout the life of the use at the subject location. In addition, the conditional use permit provides an evaluation of the proposed use’s compatibility with surrounding uses to ensure that the proposed use does not introduce unwanted or unabated negative issues that may impact surrounding uses.

As proposed and conditioned, 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 such as the Ranch 99 Marketplace, various restaurants, 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 commercial 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 in that the project located in an existing retail center. The proposed hours of operation of 10:00AM to 10:00PM will not be disrupted with adjacent businesses. 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 promotes a compatible mix of retail and commercial service uses within the Milpitas Square Shopping Center. The project is consistent with the General Plan and Zoning in terms of land use, encourages a stable development, and encourages business retention. As conditioned, the project location and hours of operation will not be disruptive with adjacent businesses.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission close the public hearing after hearing testimony and adopt Resolution No. 11-010 approving UP10-0026, subject to the attached Resolution and Conditions of Approval.

Attachments:

- A. Resolution No. 11-010
- B. Project Plans
- C. Project Letter

RESOLUTION NO. 11-010

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT NO. UP10-0026, DA TANG FOOT SPA, TO ALLOW A MASSAGE ESTABLISHMENT LOCATED AT 448 BARBER LANE.

WHEREAS, on December 21, 2010, an application was submitted by Wen Jing Bai, 448 Barber Lane, Milpitas, CA 95035, to allow for a 1,102 square foot massage establishment within the Milpitas Square shopping center located at 448 Barber Lane (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 1,102 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. UP10-0026, Da 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.

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:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
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. UP10-0026**

A request to operate a 1,102 square foot massage facility within the
Milpitas Square Shopping Center.
448 Barber Lane. (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)**

2. UP10-0026 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.
3. Pursuant to Section 64.06(1), the owner or designee shall have the right to request an extension of UP10-0026 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein. **(P)**
4. 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)**
5. Use Permit No. UP10-0026 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)**

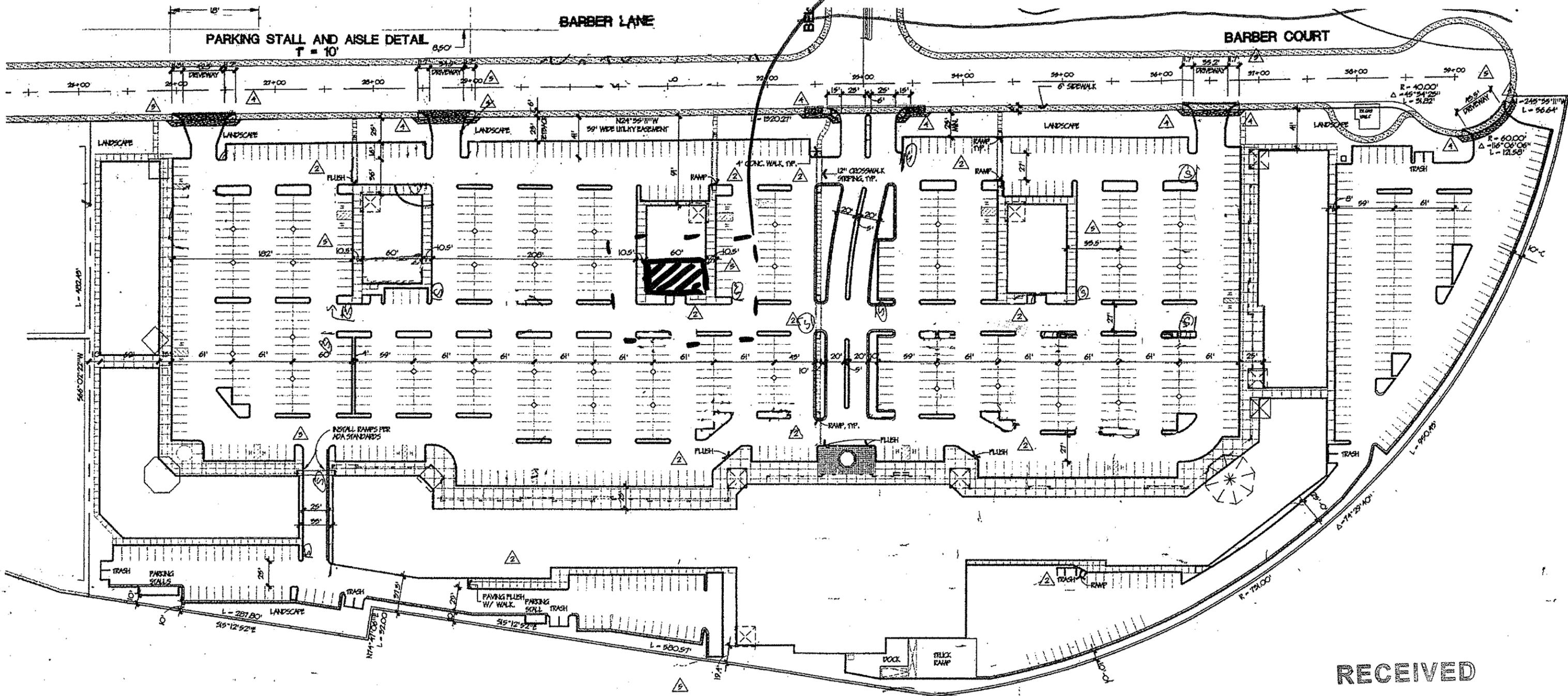
- 6. Prior to Building Permit issuance**, the applicant shall submit a revised floor plan with construction details for the construction of the massage rooms and shall demonstrate a clearstory opening on the wall facing the common walk area. This opening allows sound in all massage rooms to be heard throughout the establishment. The opening will remain open at all times and may be covered by some type of shade or curtain. **(P)**
7. 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.
8. The massage establishment shall comply with Title III, Chapter 6 "Massage Establishments and Practitioners", of the City of Milpitas Municipal Code. **(P)**
9. 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)**
10. 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)**
11. 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)**
- 12.** 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)**
- 13.** 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)**
14. 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)**

15. 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)**
16. 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)**
17. 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)**
18. 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)**
19. 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)**
20. 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)**
21. 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)**
22. 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

PROJECT SITE



RECEIVED

JAN 03 2011

CITY OF MILPITAS
PLANNING DIVISION

4' TALL PONY WALL

Massage
Chairs

MASSAGE
ROOM # 1
6'X12'



MASSAGE
ROOM # 2
6'X12'



RESTROOM
7'X8'

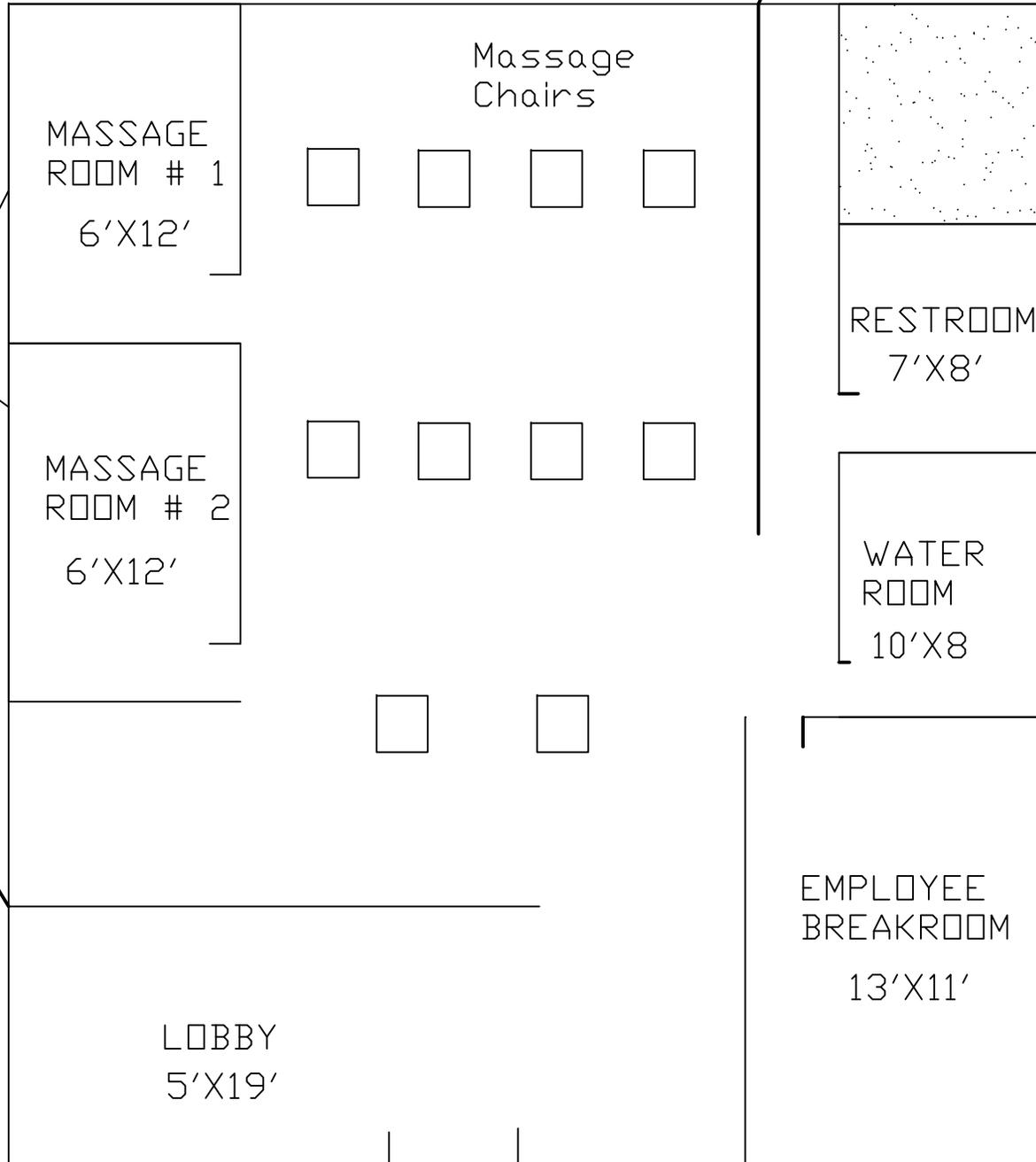
WATER
ROOM
10'X8

EMPLOYEE
BREAKROOM
13'X11'

LOBBY
5'X19'

4' tall pony wall with 2' curtain wall with 3' door opening.

4' TALL PONY WALL



City of Milpitas

Planning Dept

I'm Wen Jing Bai DA TANG Foot SPA owner
located in 448 Barber Lane Milpitas CA 95035
I applied for foot spa about two years now
I want to add two beds for body massage. I
sent diagram two weeks ago. 2 beds. 6 FT
wide. 11.8 FT long. 8 FT high. The wall 4 FT high
4 FT curtain high NO doors.

Thanks

DA TANG FOOT SPA
Wenjing Bai

JAN 30th 2011

CITY OF MILPITAS
INFORMATION DESK

FEB 01 2011

RECEIVED