

**City of San Leandro Board of Zoning Adjustments**

**RESOLUTION NO. 2023-0XX**

**A RESOLUTION OF THE BOARD OF ZONING ADJUSTMENTS  
OF THE CITY OF SAN LEANDRO**

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**A RESOLUTION APPROVING A CONDITIONAL USE PERMIT (CUP) TO PERMIT  
THE OPERATION OF A MASSAGE THERAPY USE WITHIN AN EXISTING 354  
SQUARE-FOOT SUITE OF AN 11,684 SQUARE-FOOT OFFICE BUILDING AT 400  
ESTUDILLO AVENUE, SUITE 207, AND DETERMINING THAT THE PROJECT IS  
CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY  
ACT (CEQA) PURSUANT TO CEQA GUIDELINES SECTION 15301  
PLN23-0035**

**WHEREAS**, the applicant, Yihua Ma of Nina Therapy Massage Studio (“Applicant”), on behalf of the property owner, Robbin Beebe of Free Bird Properties, LLC (“Property Owner”), is proposing to operate a massage therapy use at 400 Estudillo Avenue, Suite 207; Zoning District: DA-2, Downtown Area 2; Alameda County Assessor’s Parcel Number 77-460-12 (the “Property”); and

**WHEREAS**, the Property has a Downtown Mixed Use General Plan Land Use designation and is zoned DA-2, Downtown Area 2; and

**WHEREAS**, the proposed massage therapy use is consistent with the definition for massage therapy in Section 1.12.108 of the Zoning Code; and

**WHEREAS**, Zoning Code Section 2.08.228.B.21 requires a Conditional Use Permit (CUP) to establish a massage therapy use in the DA-2 Zoning District; and

**WHEREAS**, the Applicant submitted an application for a Conditional Use Permit (PLN23-0035) on August 30, 2023 to allow the establishment of massage therapy use at the Property (the “Project”); and

**WHEREAS**, staff determined the Project is categorically exempt from the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301, Existing Facilities; and

**WHEREAS**, a staff report dated November 2, 2023, and incorporated herein by reference, describes and analyzes the proposed Project; and

**WHEREAS**, on November 2, 2023, the Board of Zoning Adjustments reviewed the staff report at a duly noticed public hearing on the proposed Project, at which time all interested parties had the opportunity to be heard; and

**WHEREAS**, the Board of Zoning Adjustments has considered all public comments received, the presentation by City staff, the staff report and attachments in adopting this resolution; and

**WHEREAS**, the Board of Zoning Adjustments has determined that the proposed Project does satisfy the requisite findings of fact necessary for approval as described in the staff report and herein; and

**WHEREAS**, the Board of Zoning Adjustments desires to approve a Conditional Use Permit for the Project; and

**WHEREAS**, the City's General Plan, Zoning Code, and Municipal Code, are incorporated herein by reference, and are available for review at City Hall during normal business hours.

**NOW, THEREFORE THE BOARD OF ZONING ADJUSTMENTS FOR THE CITY OF SAN LEANDRO RESOLVES THAT:** The above recitals are true and correct and made a part of this resolution.

**BE IT FURTHER RESOLVED THAT**, the Board of Zoning Adjustments does hereby determine that the Project is categorically exempt from CEQA per CEQA Guidelines Section 15301, Existing Facilities.

**BE IT FURTHER RESOLVED THAT**, the Board of Zoning Adjustments of the City of San Leandro does hereby approve a Conditional Use Permit (CUP) to permit the operation of a massage therapy use at an existing 354 square-foot suite within an 11,684 square-foot office building at 400 Estudillo Avenue, Suite 207, as shown on the submitted project plans attached as Exhibit A and Project Description attached as Exhibit B and incorporated herein, based on the following findings and considering the staff report, and the whole of the record related to the Project:

1. The proposed location of the Project use is in accord with the objectives of the Zoning Code and the purposes of the DA-2, (Downtown Area 2) Zoning District in which the Property is located;
2. The proposed location of the Project and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan; will not be detrimental to the public health, safety or welfare of persons residing, or working in, or adjacent to, the neighborhood of such use; and will not be detrimental to properties or improvements in the vicinity, or to the general welfare of the City;
3. The proposed Project will comply with the provisions of the Zoning Code, including all requirements for the proposed use in the Downtown Area 2 Zoning District in which it would be located; and
4. The proposed Project will not create adverse impacts on traffic or create demands exceeding the capacity of public services and facilities, which cannot be mitigated.

**BE IT FURTHER RESOLVED THAT,** the Board of Zoning Adjustments' approval of a Conditional Use Permit for the Project is subject to the following conditions of approval:

## **PLANNING DIVISION**

### *Compliance with Approved Plans and Conditions of Approval*

1. **Compliance.** The Project shall comply with Exhibit A (Project Plans) and Exhibit B (Project Description) except as hereinafter modified. Exhibits are on file at the City of San Leandro, Community Development Department located at 835 E. 14th Street, San Leandro, California, 94577.
2. **Scope of Work.** The approval of this Conditional Use Permit (CUP) is to permit the operation of a massage therapy use at an existing 354 square-foot suite within an 11,684 square-foot office building at 400 Estudillo Avenue, Suite 207.
3. **Compliance with Zoning Code.** Prior to permit issuance, the Applicant/Property Owner shall demonstrate that the Project complies with all minimum requirements of the San Leandro Zoning Code.
4. **Succession.** These conditions of approval shall run with the land and the applicant and/or property owner shall be responsible for assuring that any heirs, executors, administrators, and successors in interest who assumes responsibility for this approval are informed of its terms and conditions.
5. **Substantial Compliance and Amendments.** The project shall remain in substantial compliance with the approved Plans, Exhibits, and Conditions of Approval. Proposed changes to the project shall be made in writing to the Zoning Enforcement Official. The Zoning Enforcement Official may approve changes to approved exhibits or Conditions of Approval without a public hearing upon determining that the changes are minor and are consistent with the intent of the original approval. Revisions involving substantial changes to approved exhibits or Conditions of Approval shall be treated as new applications, to be reviewed as a new project.
6. **Effective Date.** The project approval shall become effective on the 15th day after the date the Board of Zoning Adjustments approves the project, unless appealed, as provided in Zoning Code Chapter 5.20 Appeals.
7. **Expiration.** The Project approval shall lapse two (2) years following approval of the application unless diligent progress has been made evidencing a good faith intent to commence the intended use; or an occupancy permit has been issued; or the approval is renewed, as provided in Zoning Code Section 5.08.136.A. Pursuant to Zoning Code Section 5.08.136.E, upon written request the approval may be renewed by the Zoning Enforcement Official for one (1) year, with one additional (1) one-year renewal allowed for a total period not to exceed two (2) years without notice or public hearing if the findings required by Zoning Code Section 5.08.124.A remain valid. An application for

renewal shall be made in writing to the Zoning Enforcement Official prior to the expiration of the permit. Denial of a request for renewal of the Project approval may be appealed.

8. **Revocation.** In accordance with Section 5.24.108 of the Zoning Code, upon determination by the Zoning Enforcement Official that there are reasonable grounds for revocation of this use permit, a revocation hearing shall be set by the Zoning Enforcement Official before the Board of Zoning Adjustments.
9. **Access to Conditions of Approval.** These Conditions of Approval shall be made available and accessible to all tenants, employees and vendors on the property.
10. **Notations to Conditions of Approval.** Prior to permit issuance, the Applicant/Property Owner shall provide notations to the conditions of approval and clearly indicate how all conditions of approval will be or have been complied with. A reference shall be provided to specific plan sheets that demonstrate compliance. Construction plans shall not be accepted without the annotated final conditions of approval document.
11. **Fees.** Any outstanding Planning, Engineering or Building deposit fees or balances shall be paid prior to permit issuance.

#### Operational Conditions

12. **Hours of Operation.** Hours of operation shall be limited to Wednesday through Monday from 10a.m. and 6:00 p.m. Any modification to the hours of operation shall be subject to the review and approval of the Zoning Enforcement Official.
13. **Municipal Code.** Prior to commencement of operation, the Applicant shall obtain an Operator Permit in accordance with Municipal Code Section 4-23-305. The Applicant shall comply with all requirements of San Leandro Municipal Code Chapter 4-23 (Regulations for Massage Establishments and Massage Technicians).

#### General Conditions

14. **Site Maintenance.** The Applicant/Property Owner or building manager shall maintain the Project site and ensure that it is free of litter, weeds, and other debris in accordance with San Leandro Municipal Code §3-15-215.
15. **Graffiti.** Any graffiti shall be promptly removed from the property. Any graffiti shall be promptly removed from building walls. The Applicant/Property Owner and shall comply with the rules and regulations of the City's graffiti removal program and shall grant a license and right of entry as requested to enforce the terms of such program.
16. **Landscape Maintenance.** All landscaping improvements shall be maintained by the Applicant/ Property Owner or building manager in a healthy, growing, and weed-free condition at all times. Any missing, dead, or damaged plant and groundcover material

shall be promptly replaced with a material similar in type and comparable in size to the plant(s) or groundcover being removed. Street trees and tree wells shall be maintained to provide shade cover and a healthy canopy. All trees shall be planted so that at maturity they are located far enough away from the sidewalk so that their branches are at least eight (8) feet above the sidewalk area and 14 feet above the roadway/vehicle traveled way. Pruning and tree trimming shall be avoided during nesting season.

**17. Noise Regulations.** All uses and activities shall comply with the provisions of the San Leandro Noise Regulations (Title IV, Chapter 1 of the Municipal Code). Tenants and vendors shall take proactive measures to avoid and reduce noise during the City's established quiet hours and do not pose a public nuisance during other times.

**18. Parking Lot Maintenance.** The Applicant/Property Owner or building manager shall regularly maintain the parking areas and shall be responsible for the prompt clean up and removal of litter, oil stains and spilled vehicle fluids. Parking areas shall be well maintained and kept free of litter and debris at all times. Any parking lifts shall be regularly maintained and in operable condition to ensure optimal vehicle capacity.

### Indemnification

19. The Applicant/Property Owner hereby agrees to defend, indemnify, and hold harmless the City of San Leandro, its Council, boards, commissions, officers, employees and agents, from and against any and all claims, suits, actions, liability, loss, damage, expense, cost (including, without limitation, attorneys' fees, costs and fees of litigation) of every nature, kind or description, which may be brought by a third party against, or suffered or sustained by, the City of San Leandro, its Council, boards, commissions, officers, employees or agents to challenge or void the permit granted herein or any California Environmental Quality Act determinations related thereto.

20. In the event that any person should bring an action to attack, set aside, void or annul the City's approval of this Project, the Applicant/Property Owner shall defend, indemnify and hold harmless the City and/or its agents, officers and employees from any claim, action, or proceeding against the City and/or its agents, officers and employees with counsel selected by the Applicant/Property Owner (which shall be the same counsel used by Applicant/Property Owner) and reasonably approved by the City. Applicant/Property Owner's obligation to defend, indemnify and hold harmless the City and/or its agents, officers and employees shall be subject to the City's compliance with Government Code Section 66474.9.

## **BUILDING AND SAFETY SERVICES**

### Compliance

21. The plans reviewed under this Conditional Use Permit does not constitute a complete building plan review. A formal plan check review will be completed at the time of project submittal to the Building Division. All construction shall fully comply with the

current adopted California Building Standards Code in effect at the time of building permit issuance.

**Building Permit Plans**

22. The Applicant/Property Owner shall demonstrate the following on plans submitted for permit issuance. All building permit plan submittals shall include required mechanical, electrical, and plumbing plans. Deferred plans shall not be accepted.

- a. Sheet notes for Item 15 on Sheet A1 of the plans shall be added on the site plan.
- b. The project shall comply with Title 24 for any mechanical, electrical and plumbing engineering (MEP) modification.
- c. Construction and Demolition recycling is required to comply with Cal Green.
- d. 2019 CalGreen Non-Residential Mandatory Checklist is required.
- e. All revision clouds and deltas added during planning approval shall be removed prior to submitting for building permits.
- f. Existing and proposed electrical plans shall be provided.
- g. Existing mechanical and ventilation systems shall be verified.

**Accessibility/ ADA Compliance**

23. The Applicant/Property Owner shall demonstrate the following on plans submitted for permit issuance.

- a. The Applicant/Property Owner shall provide van and standard accessible parking space with signage, clearances, and striping per 2022 CBC Chapter 11A.
- b. An accessible path of travel from public right of way and accessible parking to building entrance, Suite 207, reception area, therapy area, and therapist office shall be provided per 2022 CBC Chapter 11A shall be provided.
- c. Van and standard accessible parking, path of travel, and signage compliance with 2022 CBC is required to be provided.
- d. Accessible clearances for all accessible spaces are required per 2022 CBC Chapter 11A.
- e. All exterior walking surfaces shall be ADA compliant.
- f. All restrooms shall be ADA compliant.

**ALAMEDA COUNTY FIRE DEPARTMENT**

24. The Project shall comply with the California Building and Fire Codes and current and local ordinances in effect at the time of building permit submittal.

**PASSED, CONDITIONALLY APPROVED, AND ADOPTED**, on this 2nd day of November 2023 by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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Litha Zuber

Chair of the Board of Zoning Adjustments

**ATTEST:**

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Avalon Schultz, AICP

Secretary to the Board of Zoning Adjustments