



Agenda Item No. 10e.

Staff Report

Date: December 18, 2013

To: Mayor Beach Kuhl and Council Members

From: Elise Semonian, Senior Planner

Subject: Faye Coddington, Use Permit Request for Message Therapy Business, 30 Ross Common, File No. 1940

Recommendation

Town Council approve the project subject to the findings and conditions attached.

Project Summary

Owner: Marcella Arana, Joseph and Deborah Montero

Applicant: Faye Coddington

Location: 30 Ross Common

A.P. Number: 73-272-11

Zoning: Local Service Commercial District (C-L)

General Plan: Local Service Commercial and Downtown Special Planning Area

Flood Zone: Zone A (High Risk Area with a 1% annual chance of flooding and a 26% chance of flooding over the life of a 30 year mortgage)

Draft FIRM Flood Zone: Zone AE (High Risk Area with a 1% annual chance of flooding and a 26% chance of flooding over the life of a 30 year mortgage) and within Floodway.

A Local Service Commercial District Use Permit application for a massage therapy business in a 200 square foot, street level, space behind the hair salon. The office would have one employee (the applicant) and one to four clients per day.

Background and project description

The applicant, Faye Coddington, is proposing to operate a massage therapy business in a 200 square foot ground floor space on the north side of an existing commercial/residential building at 30 Ross Common. The site has no on site parking. The existing uses consist of a beauty salon, store/office for an online kids clothing business, and second floor residential unit. The proposed

massage space was occupied over the years by a home theater/stereo office, a writer, and dog grooming businesses.

The applicant has been practicing massage therapy for 21 years but is not certified as a massage therapist under California State Law. The proposed business hours and days of operation would be Tuesday through Friday and every other Saturday. Hours would vary between 11:00 a.m. and 6:30 p.m. with two to three 90-minute appointments per day. No changes to the floor plan or exterior of the building are proposed. The tenant improvements consist of painting and carpeting the 200 square foot space. The building and fire departments will require no additional improvement of the space.

Pursuant to the Ross Municipal Code Section 18.20.030(a) Town Council approval of a Conditional Use Permit is required for any “beauty and barber shops,” “medical offices,” and any use that the Town Council finds to be similar to those uses. A massage therapy business is similar in character to a beauty salon or medical office since only one client is seen at a time.

The Ross General Plan policies for the commercial area encourage uses that serve local residents, maintain the downtown as a shopping area, and create a pedestrian feel, especially in ground-floor storefront locations. While the general plan discourages offices in storefront locations, staff would not classify this space as “storefront.” The space, which is located on the right side of the building at the ground floor, does not meet the characteristics of a storefront space as it is setback far from the street edge and has no windows facing Ross Common. The limited size of the space and lack of street frontage would not make it attractive for retail tenants.

With one employee and client at a time, the business may not generate customers for other downtown businesses. However, this could be true of any occupant of this small space. The site has no parking available for any of the existing uses. The proposed use will not result in an increase in parking demand over the prior occupant.

Pursuant to Ross Municipal Code Section 18.20.030(b), in order to grant a use permit the Town Council must make a number of findings (see findings, below). Staff believes that the Council may make the required findings in support of the use permit. The Town Council has approved at least three other use permits for massage businesses downtown since 1975. Terri Henderson has operated a massage business at 27 Ross Common since 1994 and planning department staff is not aware of any complaints regarding that use.

In 2008, the State Legislature enacted the “Massage Therapy Law,” Business and Professions Code section 4600 et seq. This State law severely limits the Town’s ability to regulate massage businesses that are certified by the California Massage Therapy Council (CAMTC). Under the Massage Therapy Law, the Town may only regulate those certified by the CAMTC if those same regulations are also placed upon all other professional services, including barbers, doctors, lawyers and accountants. The Town may regulate and impose special conditions on the applicant’s massage businesses since she is not certified pursuant to the State law.

Staff recommends that the Town Council approve the Conditional Use Permit based on findings below and subject to the conditions in Attachment 1. Use permits run with the land. The draft conditions include a provision that allow more regulation of the business in the event any issues arise in the future. These regulations may conflict with current or future State law if a future massage business is certified by the State.

Fiscal, resource and timeline impacts

If approved, the project would be subject to annual business license fees. California Government Code Section 65863.5 requires the Town to notify the Marin County Assessor when any conditional use permit is approved. Staff is not aware if this will result in any reassessment of the property, leading to an increase in the Town’s property tax revenues. The Town currently serves the site and there would be no operating or funding impacts associated with the project.

Alternative actions

1. Continue the project for modifications; or
2. Make findings to deny the application.

Environmental review (if applicable)

See findings, Attachment 1.

Attachments

1. Findings and Conditions of Approval
2. Material submitted by applicant
3. Site history

Attachment 1

Recommended Town Council Action, Findings and Conditions

Staff recommends that the Town Council, after carefully reviewing the application, site visits, staff reports, correspondence, and other information contained in the project file, approve the Conditional Use Permit as proposed with the following Findings and subject to the following Conditions of Approval:

A. Findings

1. *The establishment, maintenance, or conducting of the use for which the use permit is sought will not, under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort, convenience, or general welfare of persons residing or working in the neighborhood of the use and will not, under the circumstances of the particular case, be detrimental to the public welfare or injurious to property or improvements in the neighborhood. (RMC §18.44.030) The use permit is consistent with the public welfare;*

The proposed use would not be detrimental to the health, safety and morals since the size and nature of the proposed business would not generate noticeable parking, traffic, noise, or other undesirable or harmful effects that would adversely impact nearby businesses or neighborhoods. Design review is required for any outdoor advertising and no signs are currently proposed.

2. *The proposed use will not be detrimental to or change the character of adjacent or neighboring properties in the area the use is proposed to be located;*

The proposed use will be in an existing structure that has no onsite parking. No exterior modifications are proposed except a new sign that will be reviewed by staff. The character of the neighborhood is a downtown commercial district, which is appropriate for the proposed use.

3. *The property on which the proposed use is to be located is suitable for the proposed use;*

The property is suitable for the proposed use in that it is located in a commercial building containing another service use that is compatible with a massage therapy business. The tenant space does not need modifications to accommodate the business.

4. *The traffic-generating potential and/or the operation of the proposed use will not place an unreasonable demand or burden on existing municipal improvements, utilities or services;*

The massage therapy use would not generate noticeable traffic or place other burdens on the Town since the business has only one employee and client at a time in a small space. The site is served by existing utilities and services and requires no additional municipal improvements. The use will not generate more traffic than prior uses at the site.

5. *Adequate consideration has been given to assure protection of the environment;*
The project is considered categorically exempt from the California Environmental Quality Act because it is the type of project that typically does not have a significant effect on the environment.

6. *The proposed use is consistent with applicable zoning provisions;*

The project site is located within the Local Service Commercial District (C-L) zoning district. This district “is intended to be applied to properties which constitute a compact centrally located land area of only such size as is necessary to contain local service commercial uses necessary for the convenience of the residents of the town.” (RMC §18.20.020) The zoning regulations require approval of a Conditional Use Permit (CUP) by the Town Council. The proposed use is consistent with the zoning, as it includes activity similar to a medical office. There is no parking available on site and no parking requirements for the use. The proposed use will generate at most 2 parking spaces for each 90 minute session, which is low parking demand.

7. *The proposed use is consistent with the objectives of the general plan;*

The General Plan land use designation for the site is Local Service Commercial. This commercial land use designation “applies to the downtown area and is intended to constitute a compact, centrally located area of such size as is necessary to contain local service commercial uses necessary for the convenience of the Town residents.” The following General Plan policies are applicable to the proposed use:

8.4 Downtown and Ross Common. Maintain the Town-owned Ross Common areas linked to uses and activities at Ross School, and linked to the Town’s downtown area as the central recreation, gathering and local shopping area of Ross. Maintain the downtown area as an attractive, pedestrian-friendly, small retail/business area. Encourage smaller-scale housing units mixed with commercial uses.

8.5 Downtown Commercial Uses. Create a warm, friendly, attractive and economically viable shopping environment in the downtown by encouraging local-serving commercial uses that create a pedestrian feel in the Downtown, especially in ground-floor storefront locations. Create an attractiveness to the Downtown commercial area through regulation of signage, awnings, and other façade treatments, and through public improvements.

The Action List of New Ideas 8.B Modify Downtown Commercial Zoning. Revise commercial zoning in the Downtown to prohibit offices in storefront locations, to encourage mixed use housing, and to encourage uses that are local-serving and would contribute to the vitality of downtown.

The proposed office is on a ground floor but not in a storefront location. Therefore it will not detract from the pedestrian feel in the downtown. The addition of the massage therapy business would add to the variety of services downtown and expand the services available for Ross residents. The use may attract additional patrons to the downtown area for the benefit of the other businesses.

8. *Adequate consideration has been given to assure conservation of property values, the suitability of the particular area for the proposed use and the harmony of the proposed use with the planned development and future land use of the general area.*

The professional massage business will not negatively impair property values or planned development or future land use in the area. The business owner has many hours of massage therapy training, experience and certifications. Appropriate conditions are included to ensure the business will provide legitimate massage services at all times.

B. Conditions of Approval, Faye Coddington Commercial District Use Permit Application for Massage Therapy Business at 30 Ross Common

1. This approval shall allow the establishment and operation of a 200-square-foot massage therapy business within an existing commercial building subject to compliance with all of the following conditions of approval. The use permit limits the business to a single massage practitioner at one time and requires professional training and experience equivalent to the applicant's 20 years of experience in massage therapy.

2. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with the Town Council and Town boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding ("action") against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or alleging any other liability or damages based upon, caused by, or related to the approval of the project. The Town shall promptly notify the applicants and/or owners of any action. The Town, in its sole discretion, may tender the defense of the action to the applicants and/or owners or the Town may defend the action with its attorneys with all attorneys' fees and litigation costs incurred by the Town in either case paid for by the applicant and/or owners.

3. These conditions shall be binding on the applicant and all successors in interest. In case of transfer of ownership, the new owner of the establishment shall provide the Town with written acknowledgement of these conditions of approval. The signed agreement shall be filed with the Town Planning Department. Failure to comply with this requirement may result in revocation of this Conditional Use Permit.

4. The applicant is notified that the site and ground floor office space is in a FEMA flood hazard area and the area periodically floods.

5. Minor modifications to the Conditional Use Permit consistent with the Town of Ross Municipal Code may be made subject to review and approval of the Planning Department if the modifications are in keeping with the intent of the original approval.

6. The applicant is responsible for ensuring that all improvements comply with disabled access regulations, regardless of whether a building permit is required for the work.

7. Any encroachment into the public right of way, such as for installation or replacement of awnings, signage, or seating, requires prior approval of a revocable encroachment permit from the Director of Public Works.

8. Any person engaging in business within the Town of Ross must first obtain a business license from the Town and pay the business license fee.

9. If the Planning Department finds evidence that any of the conditions of approval have not been fulfilled, or that the use has resulted in a substantial adverse effect on public health, safety, and/or general welfare or on public facilities or services, the Planning Department may elect to refer the Conditional Use Permit to the Town Council for review. If upon such review the Town Council finds that project has resulted in a substantial adverse

impact on public health, safety, and/or general welfare or on public facilities or services, the Town Council shall reserve the right to modify or revoke the approval of the use.

10. Signage is not a part of this review. The applicant shall apply to the Planning Department for a separate sign permit prior to the installation of any permanent signage at the site.

11. The business owner shall remain in compliance, at all times, with the Town's regulations and with other applicable laws.

12. The hours of operation for the massage therapy business shall be limited as described on the Commercial District Use Permit application and in no case shall the business be open before 8:00 A.M. or after 8:00 P.M., Monday through Sunday. The business must be closed for business at all other times.

13. The business owner shall notify the Town of any intention to rename, change management, or convey the business to another person.

14. Duly authorized officials of the Town of Ross have the right to conduct reasonable inspections, during regular business hours, to ensure compliance with state and local laws or other applicable fire and health and safety requirements.

15. The Town reserves the right to require the business owner and massage therapist to be screened by the police department and to require every person or entity operating the massage therapy business to maintain a record of the date and hour of each treatment, the name and address of the patron, and the name of the massage therapist. Such records shall be open to inspection by any officials charged with the enforcement of these provisions for the purpose of law enforcement and no other purposes. Such records shall be maintained for a period of two years.

16. The business shall have an address number that complies with the building code (contact Building Department for more information).

17. To the extent that state law conflicts with the conditions set forth above, the applicant shall comply with state law.