

MEMORANDUM

TO: Planning & Zoning Commission

FROM: Michele Berry, AICP, Planning manager

DATE: January 21, 2025

SUBJECT: **Continued Public Hearing: Consideration of a Special Use Permit for Licensed Massage Therapy; on Approximately 1.1601 Acres, Legally Described as Lot 2, Block A, Lewisville Plaza Phase 2, Located at 1010 Edmonds Lane; Zoned Local Commercial District (LC); as Requested by Yangjuan Zhao, Top Massage, on Behalf of Jay Maharaj LLC, the Property Owner. (Case No. 24-12-21-SUP).**

BACKGROUND:

The public hearing for this case was opened at the January 7, 2025 meeting and continued to January 21, 2025 to obtain information regarding the applicant's current establishment in Flower Mound. A very similar request (Case No. 24-09-16-SUP) was heard at the December 3, 2024 meeting. However, due to miscommunication, the applicant did not attend that meeting. The applicant withdrew that request and submitted a new request with additional information, including her current licensed massage business in Flower Mound, Jia Jia Foot Spa.

The applicant is requesting a Special Use Permit (SUP) to operate a Licensed Massage Therapy Business at 1010 Edmonds Lane, Suite 107. This space was occupied by another Licensed Massage Therapy business, Top Massage. In March of 2024 the business owner of Top Massage and another person were arrested with four combined charges related to prostitution. The arrest of the business owner on prostitution related offenses triggers the requirement for the Special Use Permit for any other medical or massage related use at this location.

The City Council adopted an amendment to the Unified Development Code (UDC) to require a Special Use Permit (SUP) for Medical Office and Clinic, Hospital, and Licensed Massage Therapy uses if certain violations had occurred. That UDC amendment was recommended for approval by the Planning and Zoning Commission on October 2, 2023, and approved by the City Council on November 6, 2023. That section of the UDC was then further amended on June 17, 2024 after a recommendation from the Planning and Zoning Commission on June 4, 2024. Per the memo to City Council on November 6, 2023 the amendments "*address the issue the Police Department has of illicit businesses reoccupying a space under a different owner name and utilizing the same equipment and setup.*"

ANALYSIS:

Section VII.2.23 contains supplemental standards for Medical Office and Clinic, Hospital and Licensed Massage Therapy uses. Per this section, a Special Use Permit is required for a medical office and clinic, hospital or licensed massage therapy as the previous business owner was arrested based on charges from Section 43.02, 43.021, 43.03, 43.04, 43.05, or

71.02 of the Texas Penal Code. The Section goes on to state, “*To obtain a special use permit required by this section, in addition to the items required in Article III, Chapter 9, the owner or operator will be required to provide documentation showing what actions the owner or operator has taken to ensure that no further violations of the Texas Penal Code as listed in Subsections A.1. or A.2, above, occur at the medical office and clinic, hospital, or licensed massage therapy.*”

Any Special Use Permit granted will also be subject to the following conditions:

B. A special use permit required by this section shall:

- 1. require as a condition that the medical office and clinic, hospital, or licensed massage therapy limit its hours of operation to between the hours of 7:00 a.m. and 10:00 p.m.; and*
- 2. expire after two years unless otherwise provided by the City Council, except that the ordinance granting a special use permit required by this section may be revoked by the City Council as provided for in subsection D or repealed by the City Council as provided for in subsection H, below*

Section III.9.2. - Compatibility Criteria for Approval

The Planning and Zoning Commission and the City Council, in considering a special use permit shall consider:

A. Compatibility with surrounding uses and community facilities,

The subject property is a retail center with a mix of retail, restaurant, vehicle and related uses and service uses. Across Edmonds Lane is Office District (OD) zoning that includes Serve Lewisville and the Greater Lewisville Area Association of Realtors. Adjacent to the north is Vistas on the Park, a multifamily development with Multifamily 1 District (MF-1) Zoning. A Licensed Massage Therapy operated in compliance with all state and local statutes may be compatible with these uses.

B. Compatibility with the comprehensive plan and any adopted long-range plans addressing the area;

The Lewisville 2025 Plan calls for Diverse and Thriving Neighborhoods in this area. Part of Diverse and Thriving Neighborhoods is having access to resources and services. The Local Commercial District supports this goal with its purpose of “providing areas for services and retail shopping primarily serving nearby neighborhoods and local needs.” A Licensed Massage Therapy use can support a local neighborhood.

C. Enhancement or promotion of the welfare of the area;

A Licensed Massage Therapy business can promote the local welfare of the area provided it is operated in compliance with all state and local statutes. However, one that allows illicit activities such as prostitution and human trafficking would have a negative effect on the area.

*D. Whether the use will be detrimental to the public health, safety or general welfare;
and*

A Licensed Massage Therapy can promote public health, safety or general welfare of the area provided it is operated in compliance with all state and local statutes. However, one that allows illicit activities such as prostitution and human trafficking would have the opposite effect on the area. The previous business at this location was detrimental to public health, safety and general welfare.

Ms. Tao provided the license for her existing massage establishment in Flower Mound, Jia Jia Foot Spa. TDLR has not identified any issues with establishment. However, a member of the police department received a police report from Flower Mound from July of 2024 that contains allegations of an employee of the establishment engaging in sexual misconduct. Planning staff submitted an open record request to the City of Flower Mound to obtain a copy of the report. After reviewing the request, Fower Mound is not releasing the report based on common law privacy concerns, as outlined in the attached letter to the Attorney General's Office.

E. Conformity with all zoning regulations and standards.

Per Section VII.3.23 the owner is required to limit hours of operation to between the hours of 7:00am to 10:00pm. The proposed business owner has provided a letter explaining her hours of operation will be further limited to between the hours of 8am to 8pm.

Per Section VII.3.23 the owner is required to "provide documentation showing what actions the owner or operator has taken to ensure that no further violations of the Texas Penal Code as listed in Subsections A.1. or A.2, above, occur at the medical office and clinic, hospital, or licensed massage therapy." Ms. Tao has also letters stating that:

- all massage therapist hired must be licensed including those that do foot reflexology,
- therapists are required to wear medical scrubs, that no provocative clothing will be allowed at any time,
- that work rooms doors cannot be completely shut during massage sessions, and
- that signage will cover a maximum of 10% storefront windows to allow better visibility into the reception area.

She has also provided a copy of her state license as a massage therapist and copy of her state license for the Jia Jia Foot Spa in Flower Mound.

State regulations require that all massage therapists be licensed and prohibits provocative clothing. Requiring medical scrubs, hiring only massage therapist for foot reflexology, limited storefront window signage and prohibiting workroom doors from being completely shut are four steps to help prevent further violations of the Texas penal code. However, staff does not find these actions are enough to ensure that no further violations of the Texas Penal Code will occur. Staff is concerned that violations of Texas Penal Code may continue based on the past issues related to prostitution at this location and concerns about the massage business the applicant owns in Flower Mound. There has been a pattern of

facilities in Lewisville that have been closed due to prostitution and human trafficking issues and reopened by new owners to have the same issue occur again, which is why the special use permit requirement was adopted. The applicant could open a licensed massage therapy business at a different location in Lewisville that has not had issues with prostitution or human trafficking without having to obtain a Special Use Permit.

CITY STAFF'S RECOMMENDATION:

That the Planning and Zoning Commission recommend **denial** of the Special Use Permit.