Staff Report
City of Doraville, Georgia
Planning and Zoning

Public Hearing:	MCC public hearing scheduled for February 28, 2011@ 6:30 p.m.
Applicant:	William Wai Linn Ho
Request:	Conditional Use per Ordinance 2008-33 on property zoned C-2 for "massage therapy as defined by state law with all parties holding a valid massage therapy license issued by the Georgia Board of Massage Therapy." No variances were requested or advertised. The Applicant did not apply for CSTTOM. The Application is for a purchase/sale contract of an existing establishment (Treat Your Feet #1) which does not have a Conditional Use or an Occupational Tax Placard.
Location:	Parcel ID 18-311-06-006; 5382 - C Buford Highway - a multi-tenant facility with four (4) tenant spaces.
Tract Size:	Approximately 0.50 +/- acres

NOTE: Petition received by the City on February 4, 2011.

CU Standards of Review

(1) ***The proposed use at the specified location is consistent with the policies embodied in the adopted Comprehensive Plan.*** Determination is unknown from available resources. Although the site is located on a C-2 highway commercial corridor, the site (as much of Buford Highway) does not personify the vision of the Plan. Perhaps this is one of the "Quality Community Objectives" addressed in terms of "appropriate business" illuminated on Page 13 of the Plan. The Plan does not illustrate in any further details what this appropriate mix would be other than to describe recommended uses of commercial; limited office/professional; and public/institutional.

To quote the Doraville Comp Plan 2005-2025 (Page 12): "There are two primary commercial corridors in Doraville: Buford Highway and Peachtree Industrial Boulevard. Some of these areas are declining and need redevelopment to be vital in the future. Comprised mainly of unattractive, vacant, or under-utilized strip shopping centers, these areas are characterized by auto-oriented design that creates a high degree of access for vehicular traffic. Superfluous on-site parking and lack of preserved open space typify these areas."

(2) ***The proposed use is consistent with the general purpose and intent of the applicable zoning district regulations.*** Item cannot be determined from available information. Although there are numerous similar uses within the City, the majority of these types of establishments are unlicensed by the City and have remained so for more than twelve (12) sequential months. As previously counseled by the City Attorney, those using the word

"massage" without being a licensed GA Board of Massage Therapy Massage Therapist are clearly in violation of State law.

At this time there are only three (3) establishments which have a Conditional Use and an Occupational Tax Placard: Spa 18 (5164-B Buford Highway) – Approved by City Council 12/14/09; Treat Your Feet #2 at Plaza One (5938 Buford Highway) – Approved by City Council 11/30/09; and New Gun Barber and Therapeutic Massage/Hye (Lisa) W. Shin (5141 - B Buford Highway – CLOSED) – Approved by City Council 6/30/2010.

Thus, based on the regulatory population cap imposed by City code, four (4) establishments per 10,000 residents, a single remaining slot is available to be considered by the Council for GA Massage Therapists.

(3) ***The proposed use is compatible with and preserves the character and integrity of adjacent developments and neighborhoods, and includes improvements either on-site or within the public rights-of-way to mitigate development related adverse impacts such as traffic, noise, odors, visual nuisances, drainage or other similar adverse effects to adjacent developments and neighborhoods.*** Item cannot be determined from available information.

(4) ***The proposed use does not generate pedestrian and vehicular traffic which will be hazardous or conflict with the existing and anticipated traffic in the neighborhood.*** True. The site does not affect any residential neighborhood due to its obvious placement within a commercial matrix; however, it is located next to a City park complex.

(5) ***The proposed use incorporates roadway adjustments, traffic control devices or mechanisms, and access restrictions to control traffic flow or divert traffic as may be needed to reduce or eliminate development generated traffic on neighborhood streets.*** False. There are no neighborhood streets which are directly affected by the site due to a location on a GDOT right-of-way (Buford Highway) and its curb-cuts being only onto Buford Highway.

(6) ***The proposed use incorporates features to minimize adverse affects, including visual impacts, of the proposed conditional use on adjacent properties; and the proposed use meets the standards for the zoning district, or to the extent variations from such standards have been requested, that such variations are necessary to render the use compatible with adjoining developments and neighborhoods.*** Item cannot be determined from available information. No variances were requested or advertised.

(7) ***The proposed use is based on a site plan in conformity with all space limits, buffers, parking and loading provisions, and other provisions of this article.*** Space limits, generally true for the principal structure, but only to the extent the property could be determined to be legally non-conforming by virtue of Code changes to the dimensional requirements of C-2 as per Ordinance 2008-33. Please note an accessory dumpster enclosure located in front of the principal structure is an apparent Code violation; however, this could easily be remedied by attachment to the principal structure. Transitional zoning

buffers are not applicable given the subject property does not abut upon any residentially zoned land.

Two (2) loading/unloading spaces are required if classified as "shopping center." Loading/unloading spaces must be 10 feet by 30 feet with 14 feet of overhead clearance. The principal structure on the site is 6,100 square feet. Based on the criterion of one (1) parking space for every 250 square feet of gross floor area for multi-tenant shopping center, 6,100/250 = 25 parking spaces are required. The provided number of parking spaces is 27 spaces (including two (2) handicapped spaces).

Up to 25 parking spaces requires one (1) handicapped space. From 26 spaces to 50 spaces requires two (2) handicapped spaces. Two (2) are present per the site plan exhibit.

Relying upon the site plan exhibit presented with the application, the parcel meets its required parking numbers, absent loading/unloading spaces. The dimensional size of these parking spaces is unknown.

(8) ***The proposed use applicant has agreed to any specific limitations or conditions necessary to protect the public interest and assure the continued beneficial use and enjoyment of nearby properties or that no special limitations are necessary to protect the public***. Item cannot be determined from available information due to no mediation as yet with the City Council that Staff is aware of having occurred – these may (or may not) have occurred within the confines of attorney/client privilege.

The subject business under contract for purchase by the Applicant has active litigation against the City (Chinese Massage Association v. City of Doraville). The majority of the litigants are no longer in business within the City so the continued viability of this lawsuit is suspect.

Staff is only listed in the litigation in his respective City capacity and not individually.

Recommendation:

Conditional Use:

Based upon the standards of review contained herein with such actions warranted by past staffing errors and interpretations by Others of the zoning ordinance which has resulted in a proliferation of these business types within C-2, the conflicting approach of the City regulatory codes relative to the zoning code(s) – at least to the extent that massage parlor regulation was in place without attendant zoning since 1988, and with respect to ongoing litigation, the Department has **No Recommendation.**

The previous zoning ordinance did not allow massage parlors as a permitted or a conditional use within any zoning district and the previous Staff had no authority to interpret otherwise. There is no archival evidence which suggests the existing business was allowed pursuant to a Zoning Procedures Act hearing conducted by the City Council according to a general finding of "other uses as may be determined by the City Council to be similar and compatible with the above permitted uses." The City moratorium proceedings were not conducted as public hearings, not advertised per ZPA, and nor where these hearings related to a zoning moratorium. Thus, what (if any) vesting the existing business may have is suspect in light of its failure to file a timely CUP application per the August 30, 2010, directive of the City Council. The CUP application was filed subsequent to pending litigation and not by the intended/original owner of the business.

The original occupational placard for the parent "massage" establishment was issued on December 3, 2008, per the City Council action of September 19, 2008, moratorium proceedings. The City Planner or his staff does not, nor is not responsible, for the issuance of occupational placards. The City Planner assists the City Clerk's office as a review agent with the Occupational Tax Clerk (employee of the City Clerk) to enforce the City zoning ordinance. Staff is unaware if any regulatory action has been engaged by DPD/QOL given the parent, existing business has been operating at least since December 31, 2009, without an occupational tax placard.

The site as a CUP would be governed by Ordinance 2009-28 with no variations expressed or implied.

The approval of the CUP does not warrant compliance with the City regulatory Codes and is just the first of many requirements (including fees) to obtain occupational and massage parlor licensure which is in the review capacity of the City Clerk's Office and the Doraville Police Department.