CITY OF NEWPORT BEACH
STAFF ACTION REPORT

TO: CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION

FROM: David Lepo, Planning Director

SUBJECT: Report of actions taken by Planning Director, Zoning Administrator and/or Planning Department staff for the week ending March 6, 2009

Item 1: Michael J. Bernas on behalf of Sawadee Thai Yoga, applicant – Planning Director's Use Permit No. UP2008-005 (PA2008-046)
2744 East Coast Highway, #6

The Planning Director approved the applicants request to allow the introduction of a massage establishment in an existing commercial building. The tenant space is approximately 640 square feet on the second floor. The proposed hours of operation are 10 a.m. to 8 p.m. with up to two employees. The facility will provide three treatment rooms. Also included in the application is a request to waive the location requirements since the facility is located within 500 feet of two other independent massage establishments located across the street at 2711 East Coast Highway, Suite 205; and at 2721 East Coast Highway, Suite 108 and within 500 feet of a place of worship located at 611 Heliotrope Avenue..

Approved – March 6, 2009 Council District 6

On behalf of David Lepo, Planning Director: -

Senior Planner Javier S. Garcia, AICP

APPEAL:
The decision of the Planning Director may be appealed to the Planning Commission within 14 days of the action date. A $1,810.00 filing fee shall accompany any appeal filed. No building permits may be issued until the appeal period has expired.

c: David Lepo, Planning Director *(e-mail)*
Sharon Wood, Assistant City Manager *(e-mail)*
David Keely, Public Works Senior Civil Engineer *(e-mail)*
Code Enforcement Division *(e-mail)*
Kim Dominguez, NBPD *(e-mail)*

USE PERMIT NO. UP2008-005
(PA2008-046)

PLANNING DEPARTMENT
3300 NEWPORT BOULEVARD
NEWPORT BEACH, CA 92663
(949) 644-3200 FAX (949) 644-3229

Staff Person: Javier S. Garcia, 644-3206
Appeal Period: 14 days after approval date

Application: **Planning Director's Use Permit No. UP2008-005 (PA2008-046)**

Applicant: **Michael J. Bernas**

Site Address: **2744 East Coast Highway, #6**

Legal Description: **Parcel 1 of PM- 137/39**

Request as Approved:

To allow the introduction of a massage establishment in an existing commercial building. The tenant space is approximately 640 square feet on the second floor. The proposed hours of operation are 10 a.m. to 8 p.m. with up to two employees. The facility will provide three treatment rooms. Also included in the application is a request to waive the location requirements since the facility is located within 500 feet of two other independent massage establishments located across the street at 2711 East Coast Highway, Suite 205; and at 2721 East Coast Highway, Suite 108 and within 500 feet of a place of worship located at 611 Heliotrope Avenue. The property is located in the RSC (Retail and Service Commercial) District.

Director's Action **Approved – March 6, 2009**

Application Request

The Planning Director, in approving this application, reviewed issues with regard to compliance with Chapters 5.50 and 20.86 of the Newport Beach Municipal Code (Massage Establishments) and the parking requirements of Chapter 20.66 of the Newport Beach Municipal Code. The detailed discussion can be found in the attached Appendix. In consideration of those aspects, the Planning Director determined in this case that the proposal would not be detrimental to persons, property or improvements in the neighborhood and that the use permit as approved would be consistent with the legislative intent of Title 20 of the Newport Beach Municipal Code, and made the following findings:

FINDINGS

1. The property is designated for "Corridor Commercial" use by the Land Use Element of the General Plan and "Retail and Service Commercial" land use by the Zoning Map. The proposed use is consistent with these designations.

2. The approval of **Use Permit No. UP2008-005 (PA2008-046)**, will not, under the circumstances of this case, be detrimental to persons residing or working in the neighborhood or be detrimental or injurious to property or improvements in the neighborhood or the general welfare of the city for the following reason:

   - The proposed operation of the massage establishment is a service use that will serve residents and patients in the neighborhood, and is consistent with the legislative intent of Chapter 20.87 of the Municipal Code.

3. This project has been reviewed, and it has been determined that it is categorically exempt from the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities).

4. The approval of **Use Permit No. UP2008-005 (PA2008-046)**, will not, under the circumstances of this case, be detrimental to the health, safety, peace, morals, comfort, and general welfare of the city for the following reasons:

   - Adequate on-site parking is available for the existing and proposed uses since off-street parking spaces are provided in the common lot for the property.
   - The proposed use appears to be legitimate.
   - The proposed use is located in a managed shopping center with coordinated tenant management, which is not in a blighted area.
   - There are no urban renewal or neighborhood conservation programs in effect in the area.
   - The proposed use is within 500 feet of two massage establishments at 2711 East Coast Highway, and 2721 East Coast Highway, but is located across a multi-lane roadway (East Coast Highway) and the public walkways that serve the other massage facilities do not pass near or around the subject massage facility.
   - The proposed use is located within 500 feet of a place of religious worship, however, given the location of the establishment which is on the block to the west of the church, it is not located on a direct path of travel to and from the church and therefore is not anticipated to create or cause any detrimental effect on the church patrons or nearby residential uses.
   - The proposed use is not within 500 feet of a school or playground.
   - The proposed use will not create a concentration of massage uses in the neighborhood that would be detrimental to the neighborhood or create neighborhood blight.
   - Compliance with all other applicable regulations of the Municipal Code will be required and enforced.

5. The proposed massage establishment will not be contrary to the public interest or injurious to nearby properties and is consistent with the legislative intent and the location requirements for massage establishments established in Chapter 20.87 of the Municipal Code for the following reasons:

- The massage establishment is not within 500 feet of a public or private school, playground, civic center or cultural site.
- Although the massage establishment (provides massage as its primary service) is within 500 feet of a place of religious worship, it will not create any detrimental affect to persons on or near church site, since it is not located on a direct path of travel to the church. Additionally, the place of religious worship is located a block easterly of the subject facility and is therefore less likely to be viewed by patrons the church.
- The proposed use is within 500 feet of two massage establishments at 2711 East Coast Highway, and 2721 East Coast Highway, but is located across a multi-lane roadway (East Coast Highway) and the public walkways that serve the other massage facilities do not pass near or around the subject massage facility.

CONDITIONS

1. The development shall be in substantial conformance with the approved floor plan.

2. Only two licensed massage technicians shall be permitted to operate within the facility at any one time, and the addition of any additional massage technicians to the business shall be subject to an amendment to this Use Permit. No more than three treatment rooms shall be permitted to provide massage services at any one time, with the exception of peak periods and holidays, when a maximum of three massage technicians shall be authorized to operate at any one time within the facility.

3. Any changes to the existing parking lot configuration shall be subject to further review by the City Traffic Engineer for the on-site parking, vehicular circulation and pedestrian circulation systems.

4. The hours of operation shall be limited between the hours of 10:00 a.m. and 8:00 p.m., daily, and shall also be subject to the operational requirements provided in Chapter 5.50 of the Municipal Code.

5. All applicable requirements of Chapter 5.50 of the Municipal Code shall be fulfilled.

6. Employees shall park on-site at all times.

7. No temporary "sandwich" signs, balloons, banners or similar temporary signs shall be permitted, either on-site or off-site, to advertise the proposed use, unless specifically permitted in accordance with the Sign Ordinance of the Municipal Code. Temporary signs shall be prohibited in the public right-of-way, unless otherwise approved by the Public Works Department in conjunction with the issuance of an encroachment permit or encroachment agreement.

STANDARD CITY REQUIREMENTS

1. All signs shall conform to the provisions of Chapter 20.67 of the Municipal Code.

2. The facility shall be designed to meet exiting and fire protection requirements as specified by the Uniform Building Code and shall be subject to review and approval by the Building Department in accordance with the review and issuance of building permits, as necessary.

3. The project shall comply with State Disabled Access requirements.

4. The Planning Director or the Planning Commission may add to or modify conditions of approval to this use permit, or revoke this permit upon a determination that the operation which is the subject of this approval causes injury, or is detrimental to the health, safety, peace, morals, comfort, or general welfare of the community.

5. This approval shall expire unless exercised within 24 months from the end of the appeal period, in accordance with Section 20.91.050 of the Newport Beach Municipal Code.

APPEAL PERIOD

The decision of the Planning Director may be appealed by the applicant or any interested party to the Planning Commission within 14 days of the decision date. Any appeal filed shall be accompanied by a filing fee of $1,810.00.

On behalf of Planning Director David Lepo,

Senior Planner Javier S. Garcia, AICP

Attachments: Appendix
Vicinity Map
Project Description
Site Plan and Floor Plan
Existing Parking Plan

APPENDIX

Discussion

The existing tenant space will be occupied by the proposed massage establishment. These primary services provided will be assisted yoga/massage regimen as describe in the attached project description from the applicant. In accordance with Section 20.87 of the Municipal Code, independent massage establishments in the RSC Districts are permitted subject to the approval of a use permit by the Planning Director in each case. The facility is generally limited to provide two massage technicians at any one time within the facility (except for peak periods when three are authorized).

The subject business is not located within 500 feet of any public or private school, public park or playground, civic or cultural site; however, it is within 500 feet of a religious place of worship and two other massage establishments. The applicant is requesting that said location requirement be waived.

As shown on the attached floor plan, the overall square footage of the personal service facility is approximately 640 square feet, with three treatment rooms. The hours of operation vary but are generally limited to between 10:00 a.m. and 8:00 p.m., daily. The massage service will be available by appointment during regular business hours only.

Section 20.87 Compliance

Section 20.87 of the Municipal Code sets forth the provisions that govern the establishment and location of massage services within the City. It is intended to allow and promote the operation of legitimate massage services and to prevent problems of blight and deterioration that might accompany or be brought about by large numbers of massage establishments. The spirit and intent of Chapter 20.87 seeks to prevent the establishment of uses that may act as fronts for illegal activity by dispersing the location of massage establishments, preventing their concentration within certain noncommercial areas of the city, and by establishing specific Zoning Districts in which the use is permitted.

In this case, the proposed massage establishment is primarily a massage service use and not incidental to a personal service establishment.

Request for Waiver of Location Restrictions

Chapter 20.87 of the Municipal Code also establishes specific location requirements for independent massage establishments. Chapter 20.87.025 (A) states that, notwithstanding any other provision of the Municipal Code, no use permit shall be approved for any massage establishment if the proposed site is located:

1. Within 500 feet of any public or private school, park or playground, civic center, cultural site or church site; or
2. Within 500 feet of any other massage establishment site.

The proposed massage use is located within 500 feet of a place of religious worship located at 611 Heliotrope Avenue; and two massage establishments across the street at 2711 East Coast Highway, Suite 205; and at 2721 East Coast Highway, Suite 108. Therefore, a waiver of location restrictions [as specified in Chapter 20.87.025 (A) of the Municipal Code] must be granted for the use permit to be approved. In order to waive any location restriction the Planning Director must make all of the following findings:

1. The proposed use will not be contrary to the public interest or injurious to nearby properties, and that the spirit and intent of this section will be observed; and
2. The proposed use will not enlarge or encourage the development of an urban blight area; and
3. The establishment of an additional regulated use in the area will not be contrary to any program of neighborhood conservation nor will it interfere with any program of urban renewal; and
4. The use at the proposed location will not adversely affect the use of a place used exclusively for religious worship, school, park or playground; and
5. All applicable regulations of this Municipal Code will be observed.

Staff is of the opinion that the use will not add to any detrimental affect related to the close proximity of the massage establishment to the place of religious worship and that the waiver of location restrictions is appropriate in this case for the following reasons:

- The proposed use appears to be legitimate and the massage operation is the primary service provided.
- The proposed use is located in a managed commercial center with coordinated tenant management, which is not a blighted area.
- There are no urban renewal or neighborhood conservation programs in effect in the area.
- The proposed use is not within 500 feet of a school or playground.
- Although the proposed use is within 500 feet of two other massage establishments, the other massage establishments have massage service provided only as a small part of the overall personal service amenities provided. One is a physical therapy facility and the other is a personal service facility that specializes in hair, health and beauty. Additionally, the subject facility is located across a multi-lane roadway (East Coast Highway) and the public walkways that serve the other massage facilities do not pass near or around the subject massage facility.
- The use at the proposed location will not adversely affect the use of a place used exclusively for religious worship, since the church is located on Heliotrope Avenue, a block away from the subject property, and the public walkways that serve the church do not pass near the facility.
- The proposed use will not create a concentration of massage uses in the neighborhood that would be detrimental to the neighborhood.
- Compliance with all other applicable regulations of the Municipal Code will be required.

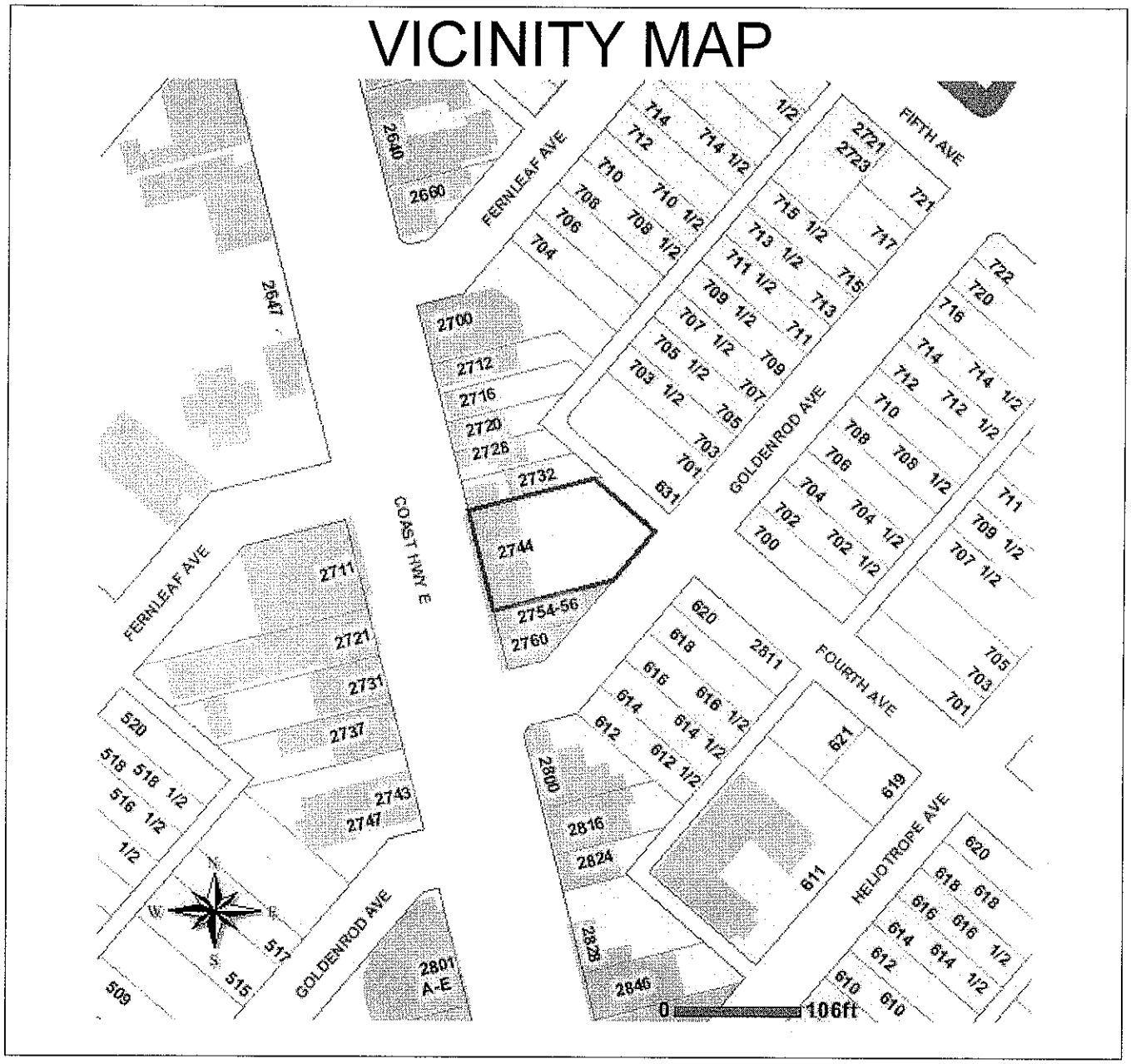
Title 5 Compliance

In addition to the Title 20 requirements mentioned above, Title 5 of the Municipal Code (Business Licenses and Regulations) also includes provisions for the review and approval of operator permits, massage technician permits, and requirements of operation for massage establishments. The applicable permits and necessary business license as required by the Municipal Code must be secured before the operation of the massage establishment can begin.

Parking Requirement

Since the subject use is a personal service use, the parking demand for the use is no greater than that of a general office or a retail use that are permitted by right on the subject property without approval of a use permit.

VICINITY MAP



Planning Director's Use Permit UP2008-005
Project No. PA2008-046

Site Address: 2744 East Coast Highway, #6

PROJECT DESCRIPTION
2744 E. COAST HWY. #6

HOURS OF OPERATION

OPEN DAILY

10:00 AM TO 8:00 PM

TWO EMPLOYEE

Traditional Thai Massage has its origins in the spiritual history of Thai Buddhism. Thailand has a rich cultural inheritance from its indigenous medical practices along with influences from India, China and other countries.

What we know of in the west as "Thai massage" is really more like a form of **assisted yoga** with pressure along energy lines of the body. An ingenious and efficient blend of stretching and acupressure, Thai massage can be relaxing, invigorating and therapeutic, all at the same time. Our goal is to provide our community with a high class, clean and therapeutic service.

Sawadee Thai Yoga

2744 E. Coast Hyw.

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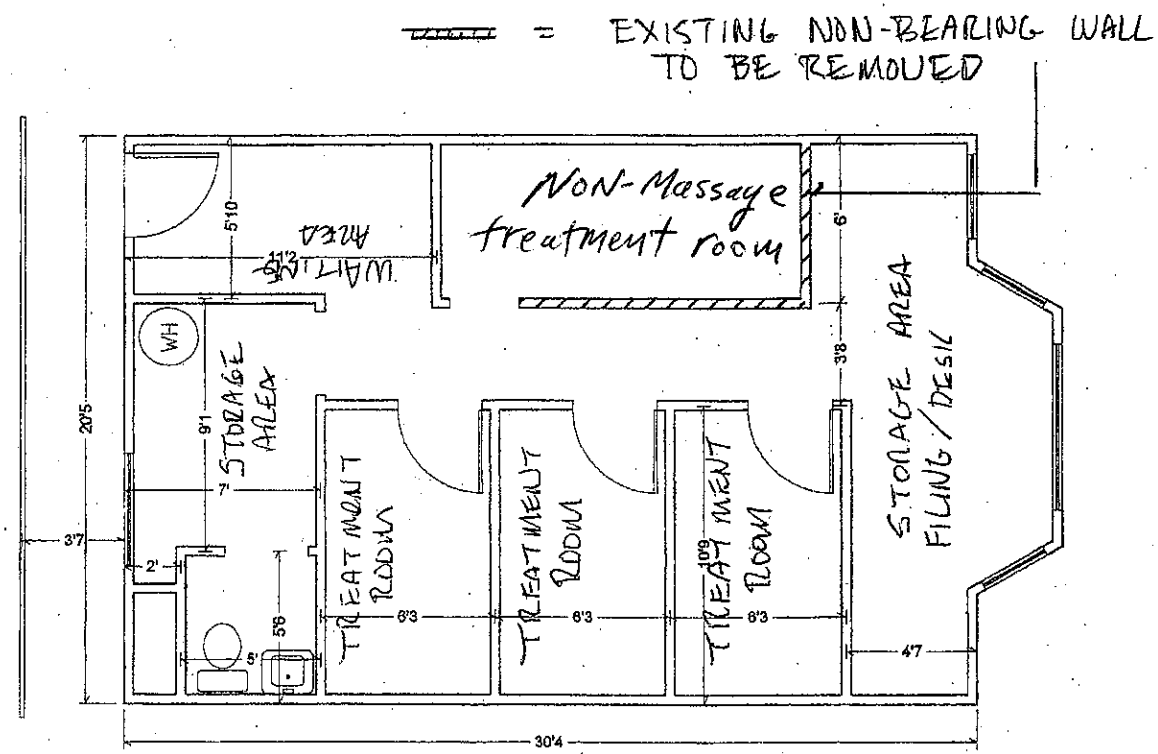
2744 East Coast Highway, #6
Michael J. Bernas



FLOOR PLAN 1/4" = 1 FOOT
APPROX 640 □ SQ FT.

2744 E. Coast Hyw.

PA2008-046 for UP2008-005
2744 East Coast Highway, #6
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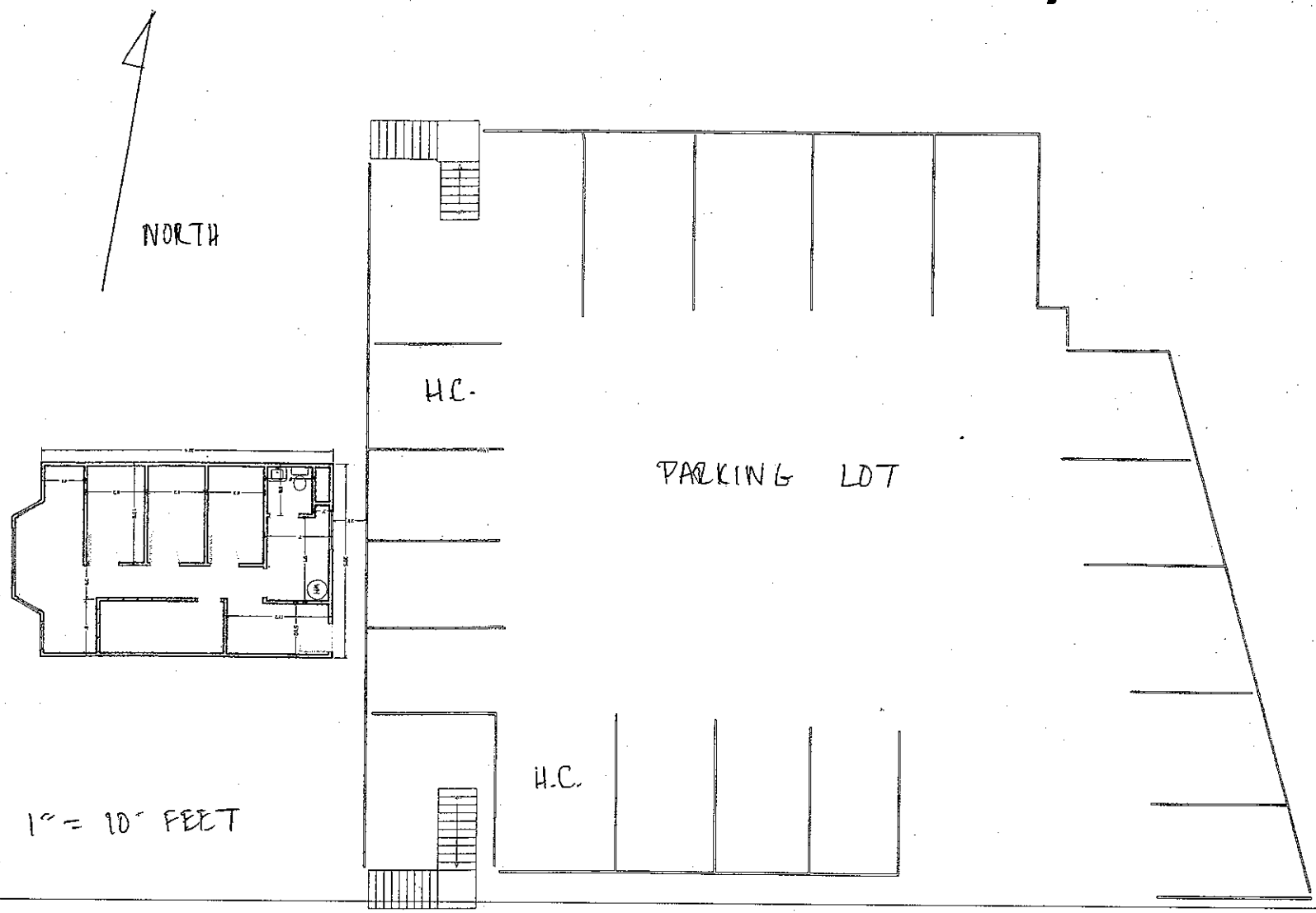
2744 E. Coast Hyw.



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