CITY OF NEWPORT BEACH
ZONING ADMINISTRATOR HEARING
ACTION REPORT

TO: CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION

FROM: Planning Department
James W. Campbell, Zoning Administrator
jcampbell@city.newport-beach.ca.us

SUBJECT: Report of the actions taken for the Zoning Administrator Hearing on Thursday, February 12, 2009

Item 1: Modification No. MD2008-053 (PA2008-213)
3912 Channel Place

Request for a modification permit to allow a new bulkhead with guard railing and pool protection fence to exceed the 3-foot height limit in the front yard setback in association with a new single-family dwelling. The proposed bulkhead will be constructed at 8.67 NAVD with a forty-two inch guard railing. The proposed pool protection fence will be constructed five feet above the existing grade of the adjacent properties. The Zoning Administrator's approval is based on the following findings and subject to the following conditions.

This item was approved as conditioned. Council District 1

Prepared and submitted by:

JW Campbell

James W. Campbell, Zoning Administrator

APPEAL: The Zoning Administrator's decision 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)*
Jay Garcia, Senior Planner *(e-mail)*
Sgt. Ron Vallercamp, Vice/Narcotics *(e-mail)*
Code Enforcement Division*(e-mail)*
Iris Lee, Public Works *(e-mail)*
Evelyn Tseng, Revenue (*e-mail)*

MODIFICATION PERMIT ACTION LETTER

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

Application No.	**Modification No. MD2008-053 (PA2008-213)**
Applicant	**William Guidero**
Site Address	**3912 Channel Place**
Legal Description	**Lot 1, Block 593**

On **February 12, 2009**, the Zoning Administrator approved the application for a modification permit to allow a new bulkhead with guard railing and pool protection fence to exceed the 3-foot height limit in the front yard setback in association with a new single-family dwelling. The proposed bulkhead will be constructed at 8.67 NAVD with a forty-two inch guard railing. The proposed pool protection fence will be constructed five feet above the existing grade of the adjacent properties. The Zoning Administrator's approval is based on the following findings and subject to the following conditions.

FINDINGS

The Zoning Code designation for the subject property is located in the R-2 (Two-Unit Residential) District. The proposed single-family dwelling is consistent with this designation.

The Land Use Element of the General Plan designates the subject property for "Two-Family Residential" use. The proposed single-family dwelling is consistent with this designation.

This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 3 (New Construction or Conversion of Small Structures) as the proposed project is one, single-family residence with accessory structures in a residential zone that contains no environmentally significant resources on site.

Section 20.93.030 (Required Findings) of the Zoning Code requires that the following three findings must be made in order to approve a modification permit:

Practical Difficulties Finding

A) *The granting of the application is necessary due to practical difficulties associated with the property and that the strict application of the Zoning Code results in physical hardships that are inconsistent with the purpose and intent of the Zoning Code.*

The grade of the lot in the front yard setback is too low pursuant to the Building Code to construct a bulkhead and guard railing (5.14 NAVD29 which is equivalent to approximately 7.25 NAVD88). The minimum elevation for a bulkhead is 8.67 NAVD per the Building Code and the guard railing must be forty-two inches above the finished grade. The minimum elevation for a pool protection fence is five feet from the existing grade on the adjacent properties.

The proposed bulkhead is designed at 8.67 NAVD with a forty-two inch guard railing. The proposed pool protection fence is proposed five feet above the existing grade of the adjacent properties.

Strict application of the Zoning Code would not allow walls over three feet in height in yards adjacent to the channels in West Newport, which eliminates the opportunity for pools as the protection fencing of five feet in height required by the Building Code can not be provided. Prohibiting pools in yards adjacent to channels in West Newport is not the intent of the Zoning Code.

Neighborhood Compatibility Finding

B) *The requested modification will be compatible with existing development in the neighborhood.*

All properties located adjacent to channels in West Newport are required to construct bulkheads at 8.67 NAVD88 with a forty-two inch guard railing upon constructing new structures pursuant to the Building Code. The proposed bulkhead and guard railing that are proposed at the Building Code required height which is compatible with existing development in the neighborhood.

The minimum elevation for a pool protection fence pursuant to the Building Code is five feet above the existing grade of the adjacent properties. The proposed pool protection fence is proposed at five feet above the existing grade of adjacent properties, and where exceeding the three-foot height limit, constructed of transparent material to minimize visual impacts and to be compatible with existing development in the neighborhood.

Health and Safety Finding

C) *The granting of such an application will not adversely affect the health or safety of persons residing or working in the neighborhood of the property and will not be detrimental to the general welfare or injurious to property or improvements in the neighborhood.*

Although the bulkhead with guard railing (collectively) and the pool protection fence are proposed at approximately five feet above existing grade, which is required by the building code, it is not expected to interfere with the provisions of this finding. The proposed project was routed to applicable City departments for their review and they did not foresee any safety issues with the proposed project.

CONDITIONS

1. The development shall be in substantial conformance with the approved plot plan, floor plans and elevations, except as noted in the following conditions.

2. The bulkhead shall be set at an elevation of 8.67 NAVD88.

3. The guard railing associated with the bulkhead shall not exceed 42 inches above the bulkhead.

4. The pool protection fence shall not exceed five feet from the existing grade on adjacent properties and, where exceeding the height limit, constructed of transparent material.

5. Anything not specifically approved by this Modification Permit is prohibited and must be addressed in a separate and subsequent Modification Permit review and approval.

6. If any of the existing public improvements surrounding the site is damaged by private work, new concrete sidewalk, curb and gutter, street pavement, and other public improvements will be required by the City at the time of private construction completion. Said determination and the extent of the repair work shall be made at the discretion of the Public Works inspector.

7. This approval was based on the particulars of the individual case and does not, in and of itself or in combination with other approvals in the vicinity or Citywide, constitute a precedent for future approvals or decisions.

8. Prior to issuance of building permits, the applicant shall submit to the Planning Department a copy of the revised architectural plans showing the location of the encroachment of the proposed addition and eave approved by all departments for inclusion in the Modification Permit file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11-inches by 17-inches. The plans shall accurately depict the elements approved by this Modification Permit and shall highlight the approved elements such that they are readily discernible from other elements of the plans.

9. A building permit shall be obtained prior to commencement of the construction.

10. A copy of this approval letter shall be incorporated into the Building Department and field sets of plans prior to issuance of the building permits or issuance of revised plans.

11. All work performed within the public right-of-way shall be reviewed and approved by the Public Works Department under an encroachment permit/agreement, if required.

12. The proposed addition and related work shall comply with the California Building Code and all adopted local amendments.

13. This approval shall expire unless exercised within 24 months from the approval date, as specified in Section 20.93.050 (A) of the Newport Beach Municipal Code. Prior to the expiration date of this approval, an extension may be approved in accordance with Section 20.93.050 (B) of the Newport Beach Municipal Code. Requests for an extension must be in writing.

APPEAL PERIOD

The Zoning Administrator's decision 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. **A copy of the approval letter shall be incorporated into the Building Department set of plans prior to issuance of the building permits or issuance of revised plans.**

By: J W Campbell
James W. Campbell, Zoning Administrator

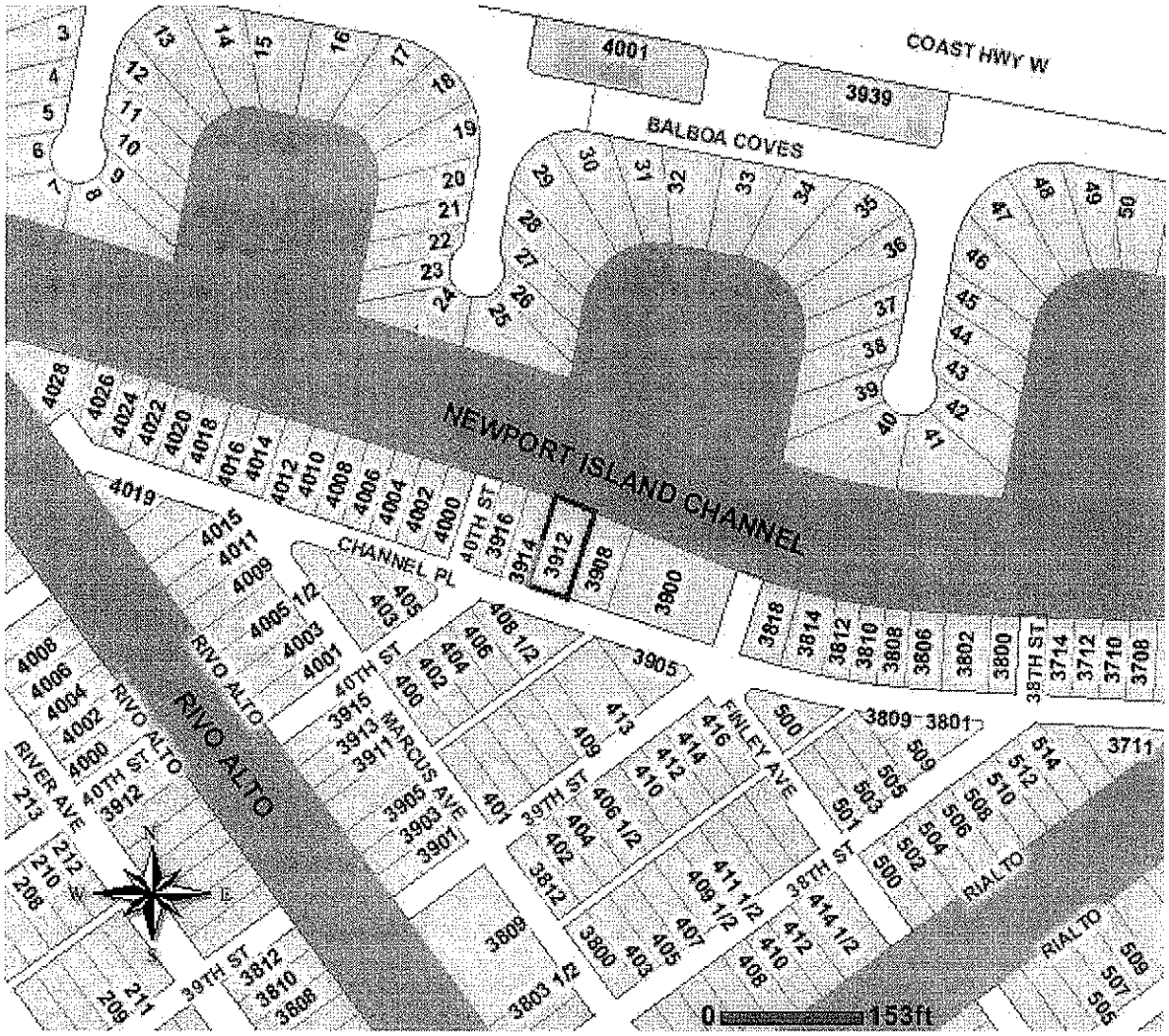
JC:rwb

Attachments: Vicinity Map

Appeared in Opposition: P. Linder, 3914 Channel Place

Appeared in Support: None

VICINITY MAP



Modification Permit No. MD2008-053
PA2008-213

3912 Channel Place