

**CITY OF NEWPORT BEACH
PLANNING DEPARTMENT ACTION REPORT**

TO: CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION
FROM: James W. Campbell, Acting Planning Director
SUBJECT: Report of actions taken by the Zoning Administrator, Planning Director and/or Planning Department staff for the week ending November 12, 2010.

ACTIONS TAKEN AT NOVEMBER 10, 2010 ZONING ADMINISTRATOR HEARING

Item 1: Fashion Island Entry Drive Banner Signs – Modification Permit No. MD2010-018
(PA2010-146)
Fashion Island Entry Drives

This item was approved. Council District 5

ACTIONS TAKEN BY THE PLANNING DIRECTOR OR PLANNING DEPARTMENT STAFF

Item 2: Picante Martin Use Permit– Use Permit No. UP2010-014 (PA2010-079)
320-B Marine Avenue

This item was approved on November 10, 2010 Council District 5

Item 3: Mallers' Massage Therapy – Use Permit No. UP2010-029 (PA2010-138)
1601 Dove Street #278

This item was approved on November 10, 2010 Council District 4

Item 4: Fit Foods 4 Life, Inc. Use Permit No. UP2010-030 (PA2010-140)
1000 Bristol Street North, Suite 12

This item was approved on November 10, 2010 Council District 5

On behalf of James W. Campbell, Acting Planning Director:



James W. Campbell, Acting Planning Director

APPEAL PERIOD: Modification Permit applications do not become effective until 14 days after the date of action, during which time an appeal may be filed with the Planning Commission Secretary in accordance with the provisions of the Newport Beach Municipal Code. Tentative Parcel Map, Condominium Conversion, Lot Merger, and Lot Line Adjustment applications do not become effective until 10 days following the date of action, during which time an appeal may be filed with the Planning Commission Secretary in accordance with the provisions of the Newport Beach Municipal Code.

Email Dana Smith, Assistant City Manager
Leonie Mulvihill, Assistant City Attorney
David Keely, Public Works Senior Civil Engineer
Code Enforcement Division
Kim Dominguez, NBPD
Bryan Moore, NBPD
Sgt. John Freeman, NBPD



ZONING ADMINISTRATOR ACTION LETTER

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

Application No. **Modification Permit No. MD2010-018 (PA2010-146)**
Applicant **Irvine Company**
Site Address **Fashion Island Entry Drives (5 major)**
 Fashion Island Entry Drive Banner Signs

On **November 10, 2010**, the Zoning Administrator approved the following: a modification permit to allow installation of two banner signs (a new sign type) on 48 existing street light standards located along five Fashion Island entry drives. The property is located in the PC-56 (North Newport Center Planned Community, Fashion Island Sub Area). The Zoning Administrator's approval is based on the following findings (per Section 20.93.030 of the Newport Beach Municipal Code) and subject to the following condition(s):

The Land Use Element of the General Plan designates the site as CR (Regional Commercial) use. The purpose of the proposed signs is consistent with this designation because the signs would be used for decorative purposes to enhance the entire Fashion Island development, which is a regional commercial use.

This project has been reviewed, and it has been determined that it is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) Guidelines under Section 15311 Class 11 (Accessory Structures) that exempts small accessory structures such as on-premise signs in commercial areas.

FINDINGS

1. **Finding:** The granting of the application is necessary due to the practical difficulties associated with the property and the strict application of the Zoning Code would result in physical hardships that are inconsistent with the purpose and intent of the Zoning Code.

Facts in Support of Finding:

- Fashion Island is one of seven sub-areas of the North Newport Center Planned Community. It is developed as a major regional retail, dining, and entertainment center, and serves as a day/evening destination for residents and visitors to Newport Beach, as well as, employees of the entire North Newport Center area.
- Fashion Island covers a large geographic area bounded by Newport Center Drive, which serves as a "ring road" around the development area. The retail

core is developed within the center of the site and parking is provided in parking structures and parking lots located around the interior perimeter of the site. Many pedestrian walkways provide connectivity between the retail core, parking areas, and the various sub-areas of the North Newport Center Planned Community. Five major entry drives provide vehicular access at various locations around the "ring road".

- The sign standards for the sub-area were based on the sign types existing within the development when the North Newport Center Planned Community Development Plan was adopted. New sign types not included in the sign standards may be permitted with approval of a modification permit pursuant to Section 20.67.110 of the Municipal Code.
- Because most of the sign types currently permitted on the Fashion Island site are for the benefit of individual tenants, most of the permitted signs are located on or near a building or tenant space in the center of the site in the retail core; only one shopping center identification sign is permitted per entry drive.
- Due to the size of the overall Fashion Island sub-area and the location of the retail core in the center of the site, the sign types currently permitted on site do not fully address and implement the Design Regulations in the North Newport Center Planned Community Development Plan related to "Orientation and Identity".

2. Finding: The requested modification will be compatible with existing development(s) in the area.

Facts in Support of Finding:

- The proposed banner signs will be mounted on existing light standards along five entry drives to Fashion Island and will be designed to complement the overall design of the Fashion Island sub-area, retail core, streetscape, and pedestrian walkways on the site.
- Pursuant to Section II.D (Orientation and Identity) of the Design Regulations of the North Newport Center Planned Community, the applicant submits that the proposed decorative banner signs will contribute to Fashion Island's "sense of place" and promote way-finding for residents and visitors to the Fashion Island site.

3. Finding: 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.

Facts in Support of Finding:

- The proposed banner signs will be designed to a limited size and number, and mounted on existing light standards at a sufficient height that will not impede pedestrian or vehicular traffic.
- The proposed banner signs will not be permitted to promote or advertise products, tenants, activities, or events, will be decorative in nature, and will provide a cohesive feel to the overall Fashion Island sub-area.

Conditions

1. The development shall be in substantial conformance with the approved site plan, details, and elevations, except as noted in the following conditions.
2. The proposed banner signs shall be mounted to the existing light standards designated per the site plan approved as a part of the Modification Permit approval adjacent to the following entry drives: Newport Center Drive, Santa Barbara Drive, Santa Cruz Drive, Santa Rosa Drive, and San Miguel Drive.
3. Two proposed banner signs are permitted to be mounted on each existing light standard designated per the approved site plan. Each proposed banner sign shall not exceed seven (7) feet in height and two (2) feet in length.
4. The proposed banner signs shall not project into the vehicular travel way. If the proposed banner signs are adjacent to pedestrian areas, the banner signs shall not hinder pedestrian walkway and shall provide sufficient vertical clearance in accordance with building code provisions.
5. The proposed banner signs shall be decorative in nature and identify the Fashion Island retail center, and shall not be permitted to promote or advertise any activities, events, products, or tenants.
6. Anything not specifically approved by this Modification Permit is prohibited and must be addressed in a separate and subsequent Modification Permit review.
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 an additional copy of the approved architectural plans 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 banner installation.
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.
11. 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.
12. 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.
13. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the **Fashion Island Entry Drive Banner Signs** including, but not limited to, the **MD2010-018, PA2010-146**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.
14. 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: Modification Permit applications do not become effective until 14 days after the date of action, during which time an appeal may be filed with the Planning Commission Secretary in accordance with the provisions of the Newport Beach Municipal

Code. For additional information on filing an appeal, contact the Planning Department at 949 644-3200.

By: 

Gregg Ramirez, Zoning Administrator

GR/

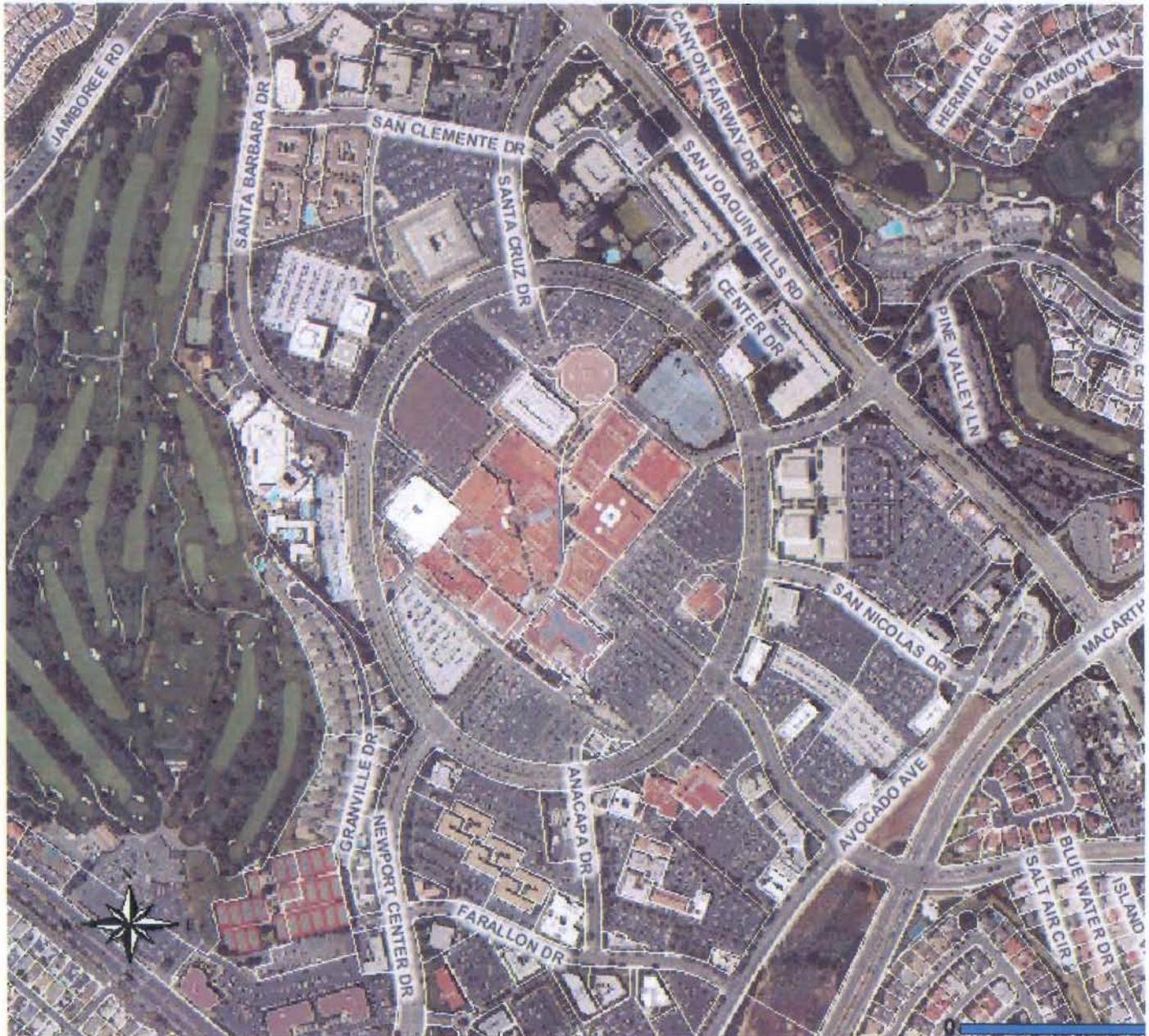
Attachments:

ZA1 - Vicinity Map
ZA2 - Plans

Attachment No. ZA 1

Vicinity Map

VICINITY MAP



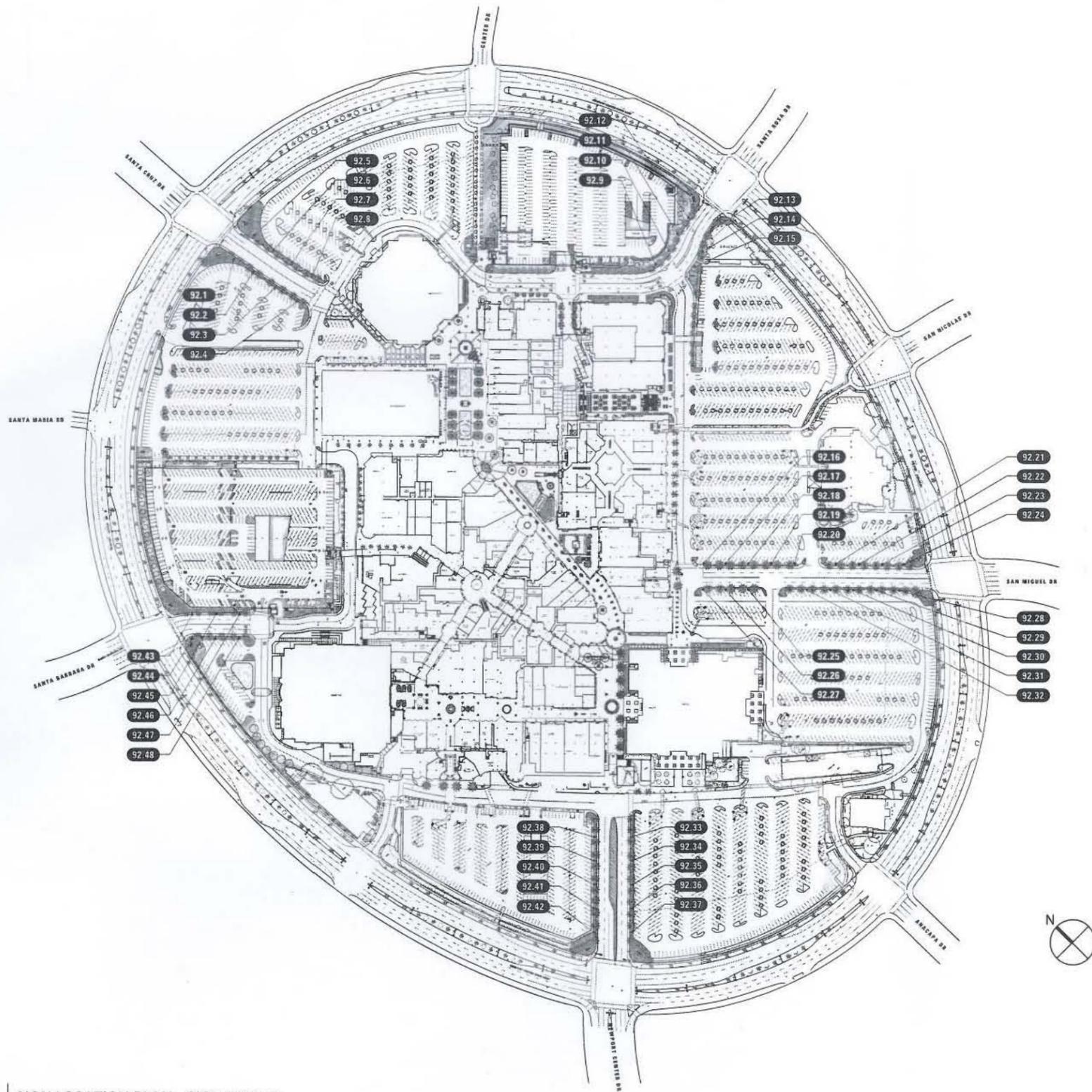
PA2010-146 for MD2010-018
901 Newport Center Dr, Fashion Island Entry Drives
(5 major)
Irvine Company

Modification Permit No. MD2010-018
PA2010-146

Fashion Island Entry Drives

Attachment No. ZA 2

Plans



1 SIGN LOCATION PLAN - SIGN TYPE 92

NTS

PA2010-146 for MD2010-018
 901 Newport Center Dr, Fashion Island Entry Drives
 Irvine Company (5 major)



Davies Associates

Environmental Graphics
 Davies Associates, Inc.
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This drawing and the designs included therein as instruments of service are and shall remain the property of Davies Associates, Inc. whether or not the project for which they are made is executed. They are not to be used by the Owner/Client on other projects or extensions of this project except by agreement in writing with Davies Associates, Inc.

Fashion Island
 Centerwide Decorative
 Banner Program

Signage and Graphics Program
 Irvine, California
 Project No. 28028DD

Irvine Company
 Retail Properties

Bid Documents 09.10.10 AC

**Sign Type 92 -
 Street Light
 Banner**

Sign Location Plan

G1



NOTES

- QUANTITY: 48 LOCATIONS
- TWO (2) BANNERS PER STREET LIGHT
- 2'-0" X 7'-0" SUNBRELLA FABRIC BANNERS HEMMED ALL AROUND WITH SEWN POCKET SLEEVES AT TOP AND BOTTOM
- BANNER FABRIC COLORS ALTERNATE BETWEEN SUNBRELLA TERRACOTA #4622 AND TUSCAN #4677 WITH DIGITALLY PRINTED OR SILKSCREENED "FASHION ISLAND" COPY
- PROVIDE NERI POLE #1300.221 COMPATIBLE CLAMP-ON COLLAR, ARMS AND FINIALS PAINTED TO MATCH NERI GREY

D
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The drawings and the design included herein are the property of Davies Associates, Inc. and shall remain the property of Davies Associates, Inc. unless otherwise stated. Davies Associates, Inc. is not responsible for any errors or omissions in this project except by agreement in writing with Davies Associates, Inc.

Fashion Island
NNC Comprehensive
Signage Program

Signage and Graphics Program
 Newport Beach, California
 Project No. 28028-DD

Irvine Company
 Retail Properties

Conceptual Design

07.27.10 AC

Sign Type A

Street Light Banners

G2

PA2010-146 for MD2010-018
 901 Newport Center Dr, Fashion Island Entry Drives
 Irvine Company
 (5 major)



PLANNING DIRECTOR ACTION LETTER

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

Application No. **Use Permit No. UP2010-014
(PA2010-079)**

Applicant **Andrew Molle**

Site Address **320-B Marine Avenue
Picante Martin Use Permit**

Legal Description **Lot 11, Block 14, Section 4, Tract Balboa Island**

On **November 10, 2010**, the Planning Director approved the following: a use permit to allow an existing restaurant operating with a "Specialty Food Service Permit" to change to a full-service, small-scale restaurant and to expand into an adjacent suite. No additional parking spaces would be required. The property is located in the RSC-R (Retail Commercial with Residential Overlay) District. The approval is based on the following findings and subject to the following conditions:

FINDINGS

Finding:

1. That the proposed location of the use is in accord with the objectives of the Zoning Code and the purpose of the district in which the site is located.

Facts in Support of Finding:

- The proposed project is located on Balboa Island facing Marine Avenue in the RSC-R District (Retail and Service Commercial with a Residential Overlay). This designation allows all of the permitted uses of the base retail and service commercial district and residential uses above the first floor. The subject property is developed with an existing two story building, which currently has three suites. Suite "A", currently vacant, is a residential unit (1,158 square feet/gross floor area) consisting of a living area on the second floor, and a storage area and a one car garage in a separate structure located at the rear of the property adjacent to the alley; Suite "B" consists of the subject restaurant, Picante Martin's Mexican Restaurant (700 square feet/gross floor area); and Suite "C", currently vacant, consists of a retail space (328 square feet/gross floor area). The proposed restaurant would combine Suites "B" and "C" (1,028 total square feet/gross floor area). No parking spaces are currently provided on the property for the commercial uses.

- The purpose of the RSC District is to provide areas which are predominantly retail in character, but which allow restaurant uses with approval of a use permit. The proposed full-service, small-scale use is allowed within the district with approval of a use permit by the Planning Director. The existing and proposed commercial uses on the subject site serve residents and visitors and are consistent with the purpose of the RSC District.
- Use permits enable the City to control certain uses that could have detrimental effects if not compatible with uses on adjoining properties and in the surrounding area. The property's Specialty Food Service Permit was approved in 1995, and the existing restaurant (Picante Martin's Mexican Restaurant) has been in existence since 1998. It has proven to be compatible with and complements the uses currently existing along Marine Avenue which include: other restaurants, ice cream and frozen yogurt shops, clothing boutiques, retail stores, hair salons, and coffee shops.

Finding:

2. That the proposed location of the Use Permit and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan and the purpose of the district in which the site is located; will not be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use; and will not be detrimental to the properties or improvements in the vicinity or to the general welfare of the city.

Facts in Support of Finding:

- The project site is designated as Mixed Use Water related (MU-W2) by the Land Use Element of the General Plan. The proposed project is consistent with the MU-W2 land use category, which is intended to provide for marine-related uses including retail, restaurants, and visitor-serving uses with residential on the upper floors. The proposed use is a visitor-serving use that will serve part-time and full-time residents as well as visitors.
- The hours and days of operation for the existing restaurant will remain the same (9:30 a.m. to 8:30 p.m., seven days a week), which limits any noise impacts on the neighboring residential uses.
- The conditions imposed on the use will reduce any possible detriment to the community by ensuring continued consistency with the intent and purpose of Chapter 20.82 (Eating and Drinking Establishments) of the Municipal Code.

- The existing restaurant has operated in this location since 1998, and has not proven detrimental to the area.
- The Specialty Food Service Permit approved for the subject Suite "B" was considered to be retail in nature and would have required three (3) parking spaces. Suite "C" is a retail suite and requires two (2) parking spaces. Based on a retail parking rate of one (1) space for each 250 square feet of gross floor area, a total of five (5) parking spaces is required for the existing commercial uses on site.
- Pursuant to Chapter 20.66.030 (Off-street Parking and Loading Spaces Required) of the Municipal Code, a full-service small-scale restaurant requires one (1) space per each 75 square feet of net public area or 1 space per each three (3) seats. The proposed restaurant would consist of 351 square feet of net public area and have 15 seat (nine fixed stools at a counter area), and would require a total of 5 spaces ($351/75$ sq. ft. net public area = 5 spaces and $15 \text{ seats}/3 \text{ seats} = 5$ spaces).
- Pursuant to Municipal Code Section 20.62.050 (Nonconforming Structures and Uses – Nonconforming Parking), nonconforming uses in nonresidential districts may be continued or changed to a use requiring the same or less on-site parking. Although the subject property is nonconforming due to deficient off-street parking, the nonconforming status is not intensified by the proposed use because no additional off-street parking is required.

Finding:

3. That the proposed use will comply with the provisions of this Zoning Code, including any specific condition required for the proposed use in the district in which it would be located.

Facts in Support of Finding:

- Full-service, small-scale restaurants are a permitted use in the RSC-R Zoning District, subject to approval of a use permit. Because the total square footage of the building on site is not changing, and the parking requirements for the site would not increase, waiver of development standards pertaining to site requirements and parking will not be detrimental to the adjoining properties.
- The proposed conditions of approval ensure that all potential conflicts with surrounding land uses are eliminated or minimized to the greatest extent possible.

- The proposed hours of operation will not change. The hours of operation for the establishment are 6:00 a.m. to 7:00 p.m., daily.

Finding:

4. The proposed project is in compliance with the California Environmental Quality Act (CEQA).

Facts in Support of Finding:

- This project qualifies for an exemption from environmental review pursuant to Section 15303 (Class 3, New Construction or Conversion of Small Structures) of the Implementing Guidelines of the California Environmental Quality Act (CEQA), which exempts the conversion of existing small structures from one use to another where only minor modifications are made to the exterior of the structure. The project proposal involves minimal construction including minor interior alterations.

CONDITIONS OF APPROVAL (*Project specific conditions are in italics*)

1. The development shall be in substantial conformance with the approved site plan and floor plan, dated May 6, 2010, except as noted in the following conditions.
2. This approval was based on the particulars of the individual case and does not in of itself or in combination with other approvals in the vicinity or Citywide constitute a precedent for future approvals or decisions.
3. 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.
4. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Department.
5. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
6. The applicant is required to obtain all applicable permits from the City Building and Fire Departments. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. Approval from the Orange County Health Department is required prior to the issuance of a building permit.

7. The applicant shall comply with federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
8. This Use Permit may be modified or revoked by the City Council or Planning Commission should they determine that the proposed use or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
9. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this use permit or the processing of a new use permit.
10. *The existing parking space located on site shall be used for the parking of vehicles at all times.*
11. *Any addition of seats and/or stand-up counter space for customers shall be subject to the approval of an amendment to this use permit. Any patron seating or stand-up counter located outside of the facility on the subject property or on public property (including sidewalks, streets) is prohibited.*
12. *The net public area shall be limited to a maximum of 351 square feet.*
13. *The number of seats shall be limited to a total of 15: six (6) seats located at three (3) tables, six (6) fixed-in-place counter stools, and three (3) stools at the lower counter area which can be moved to provide a handicapped accessible eating location.*
14. A covered wash-out area (36 inches wide by 36 inches deep by 6 feet high) for refuse containers and kitchen equipment shall be provided and shall drain directly into the sewer system, unless otherwise approved by the Building Director, Planning Department, and Public Works Director in conjunction with the approval of an alternative drainage plan. The washout area shall be specifically shown on the construction drawings submitted for building permits.
15. The facility shall be designed to meet exiting and fire protection requirements as specified by the California Building Code and shall be subject to review and approval by the Building Department.
16. The project shall comply with State Disabled Access requirements.
17. Public sanitation facilities shall be available to the general public (patrons) during regular business hours of the operation, unless otherwise approved by the Building Department.

18. *The hours of operation shall remain the same as the existing restaurant operation and are limited to between the hours of 9:30 a.m. to 8:30 p.m., seven days a week; and any increase in the hours of operation shall be subject to the approval of an amendment to this use permit.*
19. Live entertainment and dancing shall be prohibited as a part of the regular operation, unless an amendment to this use permit or other required application is first approved in accordance with the provisions of the Municipal Code.
20. No outside paging or sound system shall be utilized in conjunction with this food service establishment.
21. No background music shall be allowed in the dining areas, or waiting areas.
22. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.
23. On-sale alcoholic beverage service is not permitted. The establishment of on-sale alcoholic beverage service shall require the approval of an amendment to this Use Permit, approval by the Police Department, and the approval from the State Department of Alcoholic Beverage Control.
24. All mechanical equipment shall be screened from view of adjacent properties and adjacent public streets, and shall be sound attenuated in accordance with Chapter 10.26 of the Municipal Code, Community Noise Control.
25. The operator of the facility shall be responsible for the control of noise generated by the subject facility including, but not limited to, noise generated by patrons, food service operations, and mechanical equipment. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal code.
26. The exterior of the establishment shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter, and debris from the premises and on all abutting sidewalks within 20 feet of the premises. Graffiti shall be removed within 48 hours of written notice from the City.
27. Trash receptacles for patrons shall be conveniently located both inside and outside of the proposed facility; however, they shall not be located on or within any public property or right-of-way.

28. The operator of the food service use shall be responsible for the clean-up of all on-site and off-site trash, garbage and litter generated by the use.
29. All trash shall be stored within the building or within public dumpsters provided for the convenience of businesses in the area, or otherwise screened from view of neighboring properties except when placed for pick-up by refuse collection agencies. The trash dumpsters shall have a top which shall remain closed at all times, except when being loaded or while being collected by the refuse collection agency. Pick-up of trash from the dumpsters shall occur at least once daily, or more as deemed necessary by the Planning Department.
30. The applicant shall maintain the trash dumpsters or receptacles so as to control odors which may include the provision of fully self-contained dumpsters or may include periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Department. Trash generated by the establishment shall be adequately contained in sealed plastic bags to control odors prior to placement in the trash dumpster. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).
31. Deliveries and refuse collection for the facility shall prohibited between the hours of 10:00 p.m. and 8:00 a.m., daily, unless otherwise approved by the Planning Director, and may require an amendment to this Use Permit.
32. Storage outside of the building shall be prohibited.
33. All signs and displays must conform to the City Municipal Code requirements.
34. No temporary "sandwich" signs, balloons or similar temporary signs shall be permitted, either on-site or off-site, to advertise the proposed eating and drinking establishment, unless specifically permitted in accordance with the Sign Ordinance of the Municipal Code.
35. 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.
36. A Special Event Permit is required for any event or promotional activity outside the normal operational characteristics of this restaurant business that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
37. The facility shall comply with the provisions of Chapter 14.30 of the Newport Beach Municipal Code for commercial kitchen grease disposal, as determined by the Building department and the Utilities Department.

38. Should the business, subject to the Use Permit conditioned herein, be sold or otherwise come under different ownership or a change in operators, any future owners, operators, or tenants shall be notified of the conditions of this approval by either the current business owner, property owner, or the leasing agent.
39. The applicant shall comply with all federal, State, and local laws. Material violation of any of those laws in connection with the use will be cause for revocation of this permit.
40. This Use Permit may be modified or revoked by the City Council or Planning Commission should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
41. *Use Permit No. UP2010-014 shall expire unless exercised within 24 months from the end of the appeal period as specified in Section 20.91.050 of the Newport Beach Municipal Code.*
42. *To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Picante Martin Mexican Restaurant including, but not limited to, the Use Permit No. UP2010-014 (PA2010-079). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.*

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.

APPEAL PERIOD

The applicant or any interested party may appeal the decision of the Planning Director, Zoning Administrator and department staff to the Planning Commission by a written request to the Planning Director within 14 days of the action date. A \$4,280.00 filing fee shall accompany any appeal filed. For additional information on filing an appeal, contact the Planning Department at 949 644-3200.

On behalf of James W. Campbell, Acting Planning Director

By: _____
Patrick J. Alford, Planning Manager

JWC/ks

Attachments: PD 1 Vicinity Map
PD 2 Plans
PD 3 Photos
PD 4 Applicant's Project Description and Sample Menu

Attachment No. PD 1

Vicinity Map

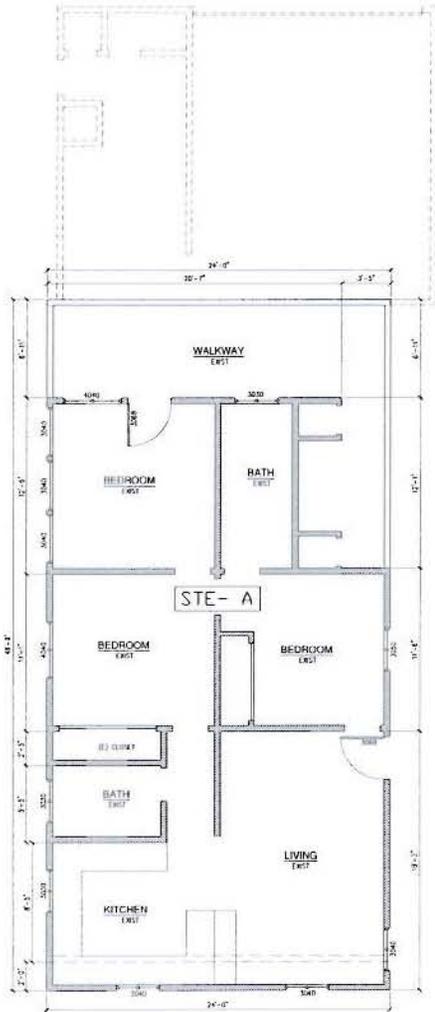
VICINITY MAP



Use Permit No. UP2010-014
PA2010-079

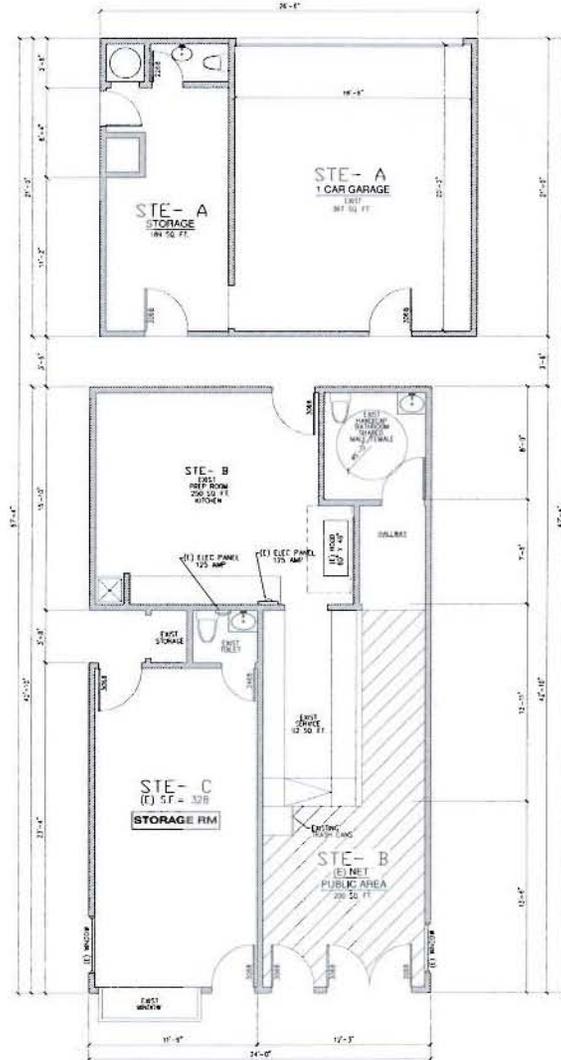
320-B Marine Avenue

Attachment No. PD 2
Plans



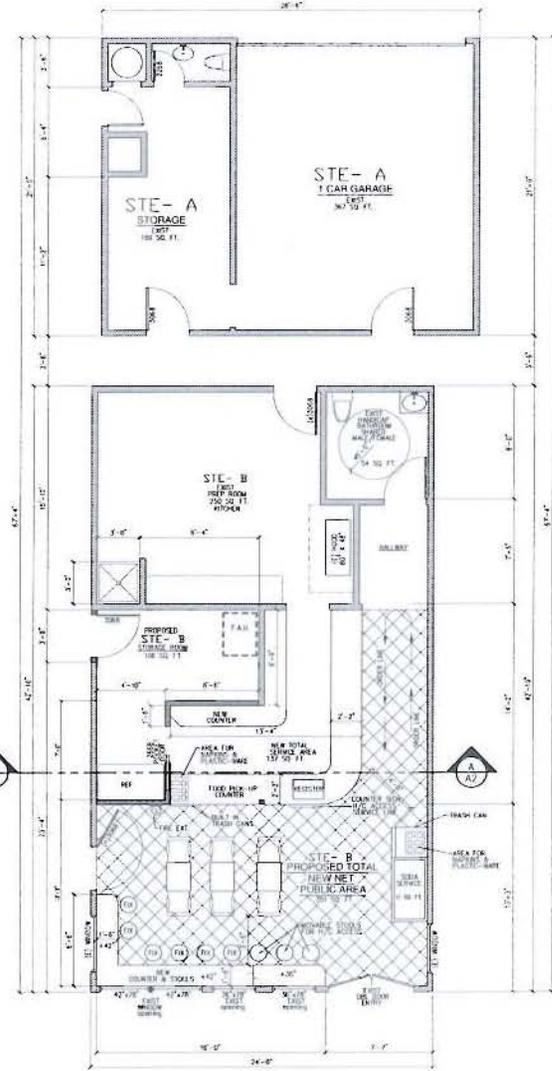
RECEIVED BY
(E) 2nd FLOOR PLAN
PLANNING DEPARTMENT

NOV 8 2010



(E) 1st FLOOR PLAN
1/4" = 1'-0"

| NET PUBLIC AREA | |
|------------------------------------|----------|
| (E) SITE "B" NET PUBLIC AREA | 200 S.F. |
| PROPOSED NEW NET PUBLIC AREA | 151 S.F. |
| TOTAL NEW SITE "B" NET PUBLIC AREA | 351 S.F. |



NEW 1st FLOOR PLAN
1/4" = 1'-0"

FORCED AIR UNIT
UNIT, YORK APPOINT SERIES W/ASE & CONDENSER
A: FAN, VOLT 120V, 1/2 HP, 1/2" CONDENSER
FOLLOW THE MECHANICAL

WALL LEGEND

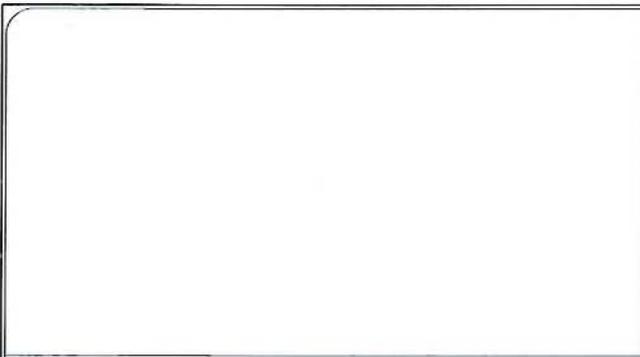
- EXIST. WALLS TO REMAIN
- NEW CONSTRUCT. WALL TO MATCH EXIST.
- EXISTING
- NEW

PUBLIC AREA LEGEND

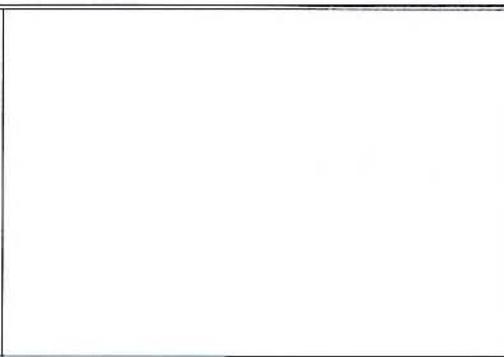
- EXISTING NET PUBLIC AREA
- PROPOSED NEW NET PUBLIC AREA

| REVISIONS | |
|-------------------------|-----------|
| PROJECT TITLE | REVISIONS |
| OWNER'S DESIGNER | DATE |
| 322 HARVEY AVE. # 2 | 10/07/10 |
| NEWPORT BEACH, CA 92662 | DRAWN |
| PROJECT LOCATION | J.M.F. |
| 227 HARVEY AVE. # 2 | SCALE |
| NEWPORT BEACH, CA 92662 | AS SHOWN |
| SHEET TITLE | PROJECT |
| EXISTING PLAN | 10-001 |
| NEW FLOOR PLAN | |
| DRAFTER | |
| 10/07/10 | |

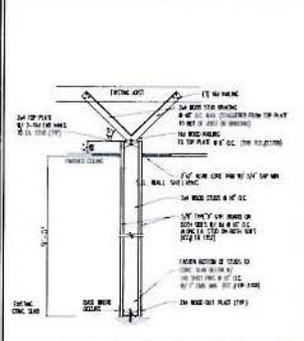
SHEET
A1



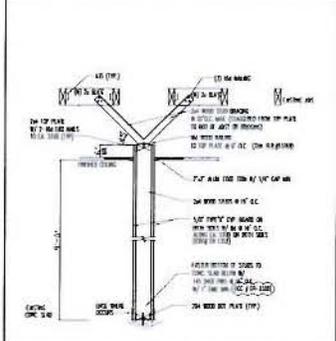
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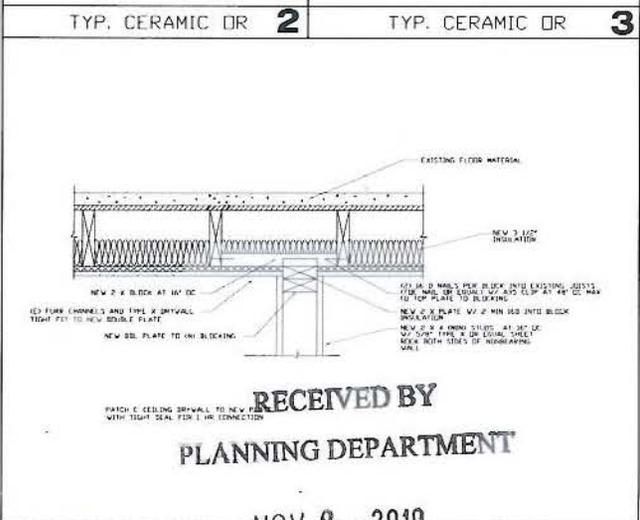
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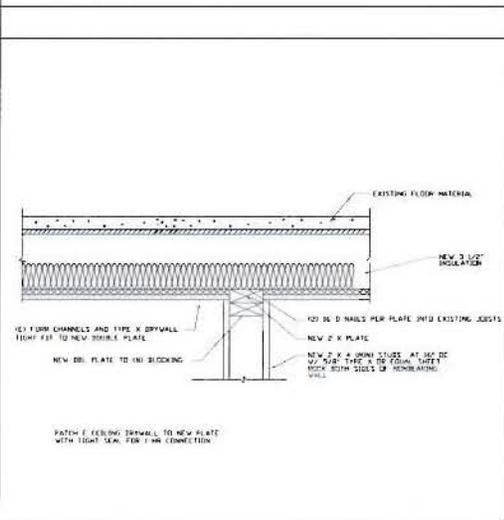
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3

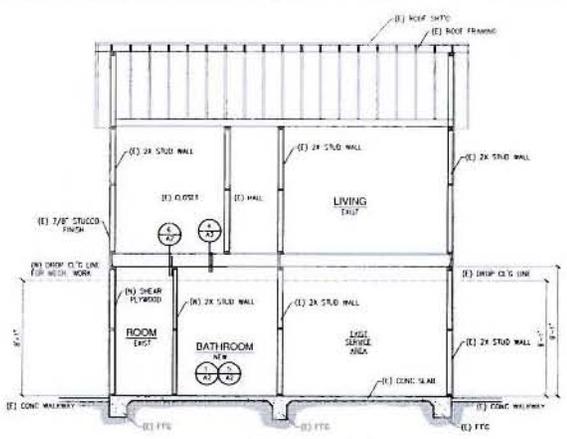


4



6

| WALLS AND INTERIOR PARTITIONS, WOOD-FRAMED | | |
|---|---------|-------------|
| GA FILE NO. WP 3640 | GENERIC | 1 HOUR FIRE |
| GYPSUM WALLBOARD, WOOD STUDS | | |
| One layer 5/8" type X gypsum wallboard or gypsum veneer base applied parallel or at right angles to each side of either 2 x 3 or 2 x 4 wood studs, burned stainless, 24" o.c. with 1/2" cement-coated nails, 1 7/8" long, 0.0915" gauge, 144 heads, F-100 (MLB) | | |
| Thickness: 2 7/8" | | |
| Approx. Weight: 7 psf | | |
| Fire Test: UL 94-12-96 UL Design U338 | | |



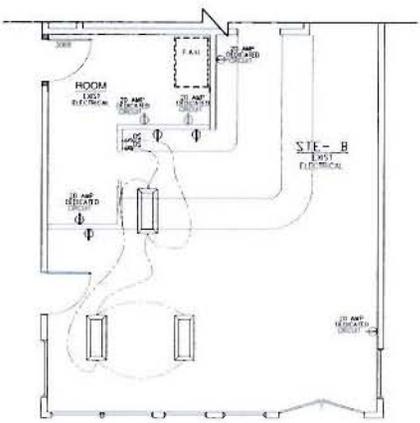
SECTION A-A
1/4" = 1'-0"

RESTAURANT NOTES:

- TYPE OF RESTAURANT SHALL BE: A DINNER RESTAURANT
- ALL WALKWAYS TO BE MIN 36" WIDE FOR HANDICAP ACCESS
- ALL TABLES WILL BE MOVABLE AND WILL NOT BE ANCHORED.
- 1 COUNTER SPACE, & 1 TABLE INSIDE & 1 SPACE OUTSIDE SHALL BE HANDICAP
- ALL DOOR THRESHOLD WILL BE HANDICAP APPROVED. 1/2" max
- ALL PATHWAYS TO TABLES TO BE HANDICAP APPROVED.
- PLUMBING TO CONNECT TO EXISTING PLUMBING FIXTURES FROM REMOVED RESTROOM

ELECTRICAL LEGEND

- RECEIVED CAN LIGHT
- SMOKE DETECTOR TO 110 V AC BATTERY BACK-UP
- WALL MOUNTED REFRIGERATOR 1/2" SHAR
- TOILET FLOOR TANK
- LEVELER FOR 1/2" REFRIG. WALL WITH OCCUPANCY SENSOR
- GROUND FAULT INTERRUPTER
- 40 LUM. LIGHT FIXTURE 4" DIA. (SEAL AIR CHANGES PER HOUR)
- FLUORESCENT TUBE FIXTURE (LUM. SURFACE MOUNTED BY ARCHITECT UNDER OTHER SITE SPECIFICATIONS)



ELECTRICAL PLAN
1/4" = 1'-0"

RECEIVED BY
PLANNING DEPARTMENT

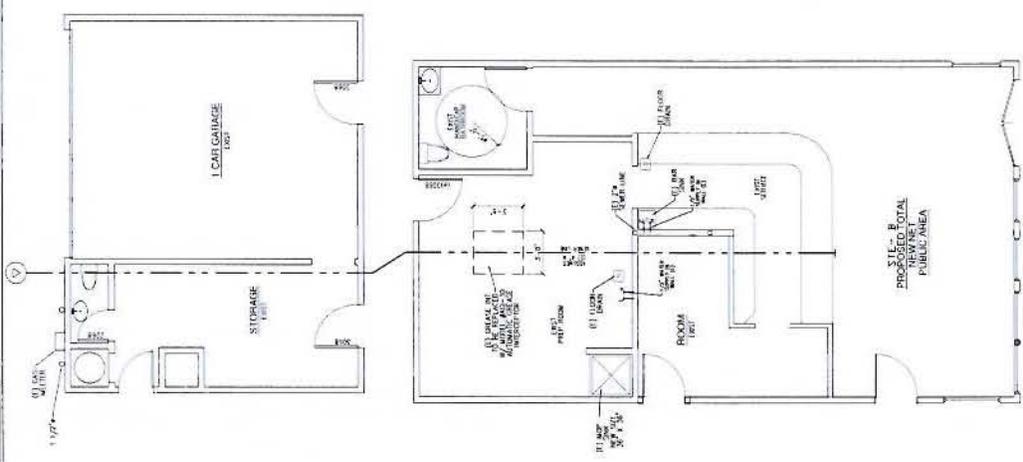
NOV 8 2010

NONBEARING WALL SUPPORT DETAIL
PLATE PARALLEL TO JOISTS N.T.S.

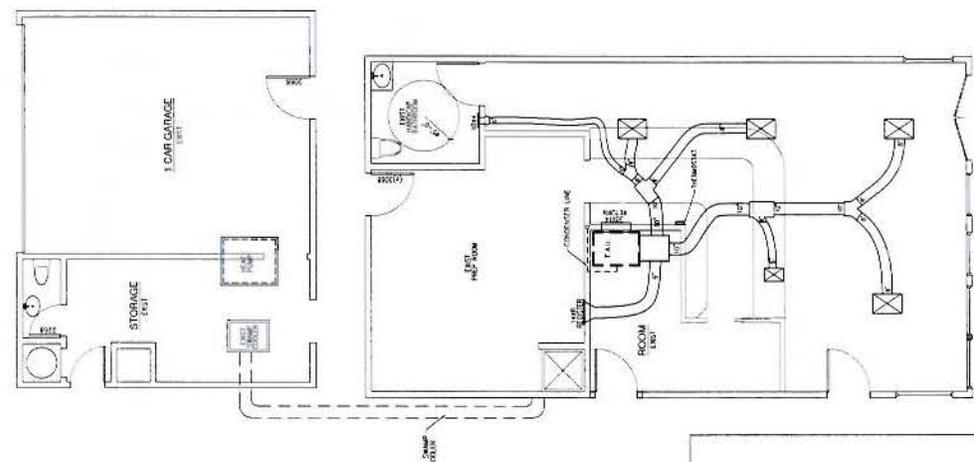
NONBEARING WALL SUPPORT DETAIL
PLATE PERPENDICULAR TO JOISTS N.T.S.

| | | |
|--|--|--|
| <p>OWNER/DESIGNER MARTIN 310 MARINE AVE # B NEWPORT BEACH, CA 92662</p> | | <p>REVISIONS</p> |
| <p>PROJECT TITLE PICANTE MARTINS TENANT IMPROVEMENT</p> | | <p>PROJECT LOCATION 310 MARINE AVE # B NEWPORT BEACH, CA 92662</p> |
| <p>PROJECT NO. 10-001</p> | | <p>SHEET TITLE HANDICAP DETAILS FIRE RATED DETAILS</p> |
| <p>DATE 11/07/10</p> | | <p>DRAWN LWS</p> |
| <p>SCALE AS SHOWN</p> | | <p>PROJECT 10-001</p> |
| <p>CHARTER LWS & ASSOCIATES 310 MARINE AVE # B NEWPORT BEACH, CA 92662</p> | | <p>SHEET A2</p> |

| | | | |
|---|---|-------------------------|---------------------------|
| REVISIONS PROJECT / TITLE TENANT IMPROVEMENT 320 MARINE AVE # B ELEVATION PLAN MECHANICAL PLAN 160011 BACH, CA 92662 | OWNER/DESIGNER PROJECT LOCATION 320 MARINE AVE # B ELEVATION PLAN MECHANICAL PLAN 160011 BACH, CA 92662 | DATE 10/27/20 | SHEET A3 |
|---|---|-------------------------|---------------------------|

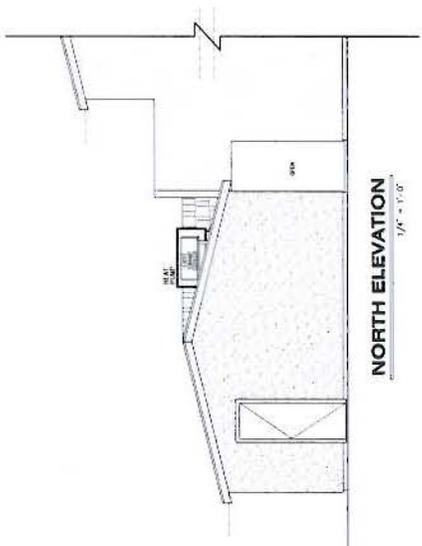


PLUMBING PLAN
1/4" = 1'-0"

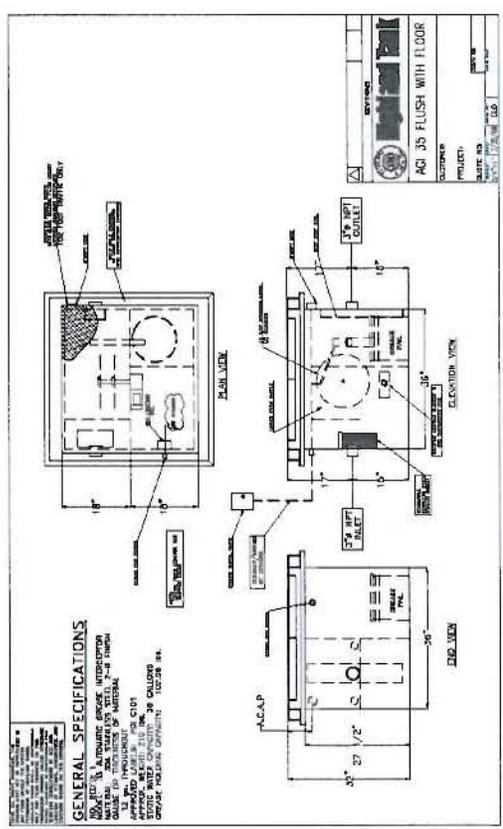


MECHANICAL PLAN
1/4" = 1'-0"

FORCED AIR UNIT
 UNIT: YORK AFFINITY SERIES MODEL # C040B11
 4.02A, 301T HEAT PUMP (48,000 Btu COOLING)
 (50,000 Btu HEATING)
 NO GAS LINE REQUIRED FOR THIS UNIT



NORTH ELEVATION
1/4" = 1'-0"



GENERAL SPECIFICATIONS
 ALL WORK SHALL BE ACCORDING TO THE LATEST EDITIONS OF THE UNIFORM CONSTRUCTION CODE AND THE INTERNATIONAL MECHANICAL CODE (IMC) AS APPLICABLE TO THE PROJECT.
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Attachment No. PD 3

Photos





Attachment No. PD 4

Applicant's Project Description
Sample Menu



320 Marine Ave. Ste. C

May 26, 2010

Project Description

Picante Martins LLC proposes to expand the existing restaurant located at 320 Marine Ave. Ste. B named "Picante Martins Mexican Restaurant" into the adjacent unit at 320 Marine Ave. Ste. C. The existing restaurant has been serving mexican style food for over 12 years to local residents and visitors from all over who enjoy the Balboa Island dining experience. However, over the years the business has increased and has made it necessary to expand the restaurant for safety, comfort, and seating to avoid crowding and patrons eating on the walkways. We believe this would be best both for the restaurant and all surrounding persons and businesses during the operational hours of 9:30am to 8:30pm, seven days a week.

The project will consist of the removal of a section of the dividing wall to join both suites B & C and create an additional dining space, expanded service counter, and a new exit for customers. The addition of a new counter and stools will allow the total of 15 seats and bar stools to fit in the new dining area. A new food pick up counter will allow customers in the new order line to place orders, pay, and pick up their orders. Our new plan will provide great flow for both our customers and our 5 employees behind the counter. We hope to continue serving our neighbors and visitors to the best of our abilities for the many years to come in our newly improved establishment. Thank you.



Picante, Martin's

Mexican Food



COMBINATIONS

(Combinations served with rice and beans)

*Choose from the following: Beef or chicken, Crispy taco, taquitos, tamale, flautas, enchiladas.

- #1 One Item \$ 5.95
- #2 Two Items \$ 6.95
- #3 Three Items \$ 8.45

More combinations:

Chile relleno combo (One) \$ 6.95

Burrito combo (Your choice of chicken or beef.) \$ 6.95

Enchiladas Suizas

Prepared with our special homemade tomatillo sauce choice of chicken, beef, or cheese. One \$ 6.95 Two \$ 7.95

Enchiladas Rancheras

Filled with chicken, beef, or cheese and topped with our special ranchera salsa. One \$ 6.95 Two \$ 7.95

Soft tacos Combo

Choose from carne asada, carnitas, fish or pastor, beef or chicken. One \$ 6.95 Two \$ 7.95

Chimiflautas

Delicious pastry like tortilla shell stuffed with chicken, served with guacamole and sour cream. \$ 7.95

Two sopes

Thick homemade tortilla topped with your choice of: chorizo, beef, carnitas, pastor, asada). \$ 8.45

Tostitas

Chicken, carnitas, veggie, or beef (Fish or Asada +\$1) \$ 6.95

Taco salad

Chicken, carnitas, veggie, or beef served in a flour shell bowl \$ 7.95

NOTE: Some substitutions/additions are extra.



TRADITIONAL SPECIAL ENTREES

(Served with rice, beans and tortillas)

\$9.45

Carnitas
Marinated pork in citrus and spices slowly cooked till tender inside and crispy outside. Served with guacamole.

\$9.45

Chicken Mole
One of the most popular dishes in old Mexico with a very rich flavor (up to 27 spices & a touch of chocolate).

\$9.45

Camarones Rancheros

\$9.45

Carne Asada (Mexican thin cut steak)

\$8.95

Fajitas Beef, Chicken or (Shrimp +\$1)

\$8.95

Chile Verde (Juicy pork in tomatillo sauce)

Burritos

(Burritos come with Rice, Beans, and Cheese inside)

\$5.75

Burrito Rice Beans & Cheese \$3.75 **Burrito Chorizo**

\$5.75

Burrito Chicken or Beef \$4.95 **Burrito Chileverde**

\$5.95

Burrito Asada \$5.75 **Burrito Veggie**

\$5.95

Burrito Carnitas \$5.75 **Burrito Fish**

\$5.75

Burrito Pastor \$5.75 **For wet burrito add***

\$2.45

Burrito de Chile relleno

\$2.95

Crispy taco (Beef or chicken)

\$3.95

Soft taco (Carnitas, veggie, fish, asada or pastor)

\$2.45

Chile relleno a la carte

\$3.95

Enchilada

\$3.95

Taquitos (3 beef or chicken)

\$2.95

Tamale (Chile verde, chicken or beef)

\$4.95

Flautas (2 piece chicken)

\$4.95

Cheese quesadilla

\$5.95

Chicken or beef quesadilla

\$4.95

Nachos beans & cheese

\$4.95

Nachos asada, carnitas, beef, or chicken

\$5.95

Chips and salsa (One) \$1.50

A la carte

Breakfast



Breakfast from 9:30 a.m. - 12 p.m.

Eggs

(Served with potatoes and toast)

| | | | |
|--------------------|------|---------------------------|------|
| Two eggs any style | 4.25 | Breakfast Burrito | 4.25 |
| Bacon and eggs | 5.25 | Veggie Breakfast Burrito | 5.25 |
| Ham and eggs | 5.25 | Machaca (Beef or chicken) | 5.25 |
| Sausage and eggs | 5.25 | Asada Breakfast Burrito | 5.25 |
| | | Chorizo Breakfast Burrito | 4.95 |
| | | Bacon Breakfast Burrito | 4.95 |
| | | Ham or Sausage Burrito | 4.95 |

Omeletes

(Served with breakfast potatoes and toast)

| | | | |
|-----------------------|------|---|------|
| Denver Omelet | 5.95 | Traditionals | |
| Veggie Omelette | 5.95 | (With rice & beans - with tortillas) | |
| Bacon & Cheese Omelet | 5.95 | Breakfast Soft Tacos | 6.95 |
| Chorizo hot cream | 5.95 | (Two soft tacos with egg, potato and cheese) | |
| Ham and cheese Omelet | 5.45 | Asada con huevos | 6.95 |
| Mushrooms and cheese | 5.45 | (Mexican steak and scrambled eggs) | |
| Chili Cheese Omelet | 5.45 | Machaca | 6.95 |
| | | (beef or chicken) | |
| | | Crispy Potato Tacos | 6.45 |
| | | (Two crunchy tacos stuffed with breakfast potatoes) | |

Otros

| | |
|------------------|------|
| Pancakes (plain) | 4.25 |
| French toast | 4.25 |

On The Side

| | |
|-------------------------|------|
| Side of Bacon | 2.25 |
| Side Breakfast potatoes | 2.25 |
| Chips and Salsa | 1.50 |
| Toast | 1.25 |
| Side of Avocado | 1.25 |
| Tortillas | .95 |
| Sour cream | .50 |

NOTE:

Sandwiches, burritos, and tamales

are available

Lunch

Served all day



Soups

| | Cup | Bowl |
|---|------|------|
| Picante's chicken soup (Our Famous Soup) | 3.75 | 5.95 |
| Albondigas (Meatballs) | 3.75 | 5.95 |
| Chicken tortilla soup | 3.50 | 4.95 |
| Homemade chicken noodles | 3.50 | 4.95 |

CRISP SALADS



| | SM | LG |
|--------------------|------|------|
| Dinner salad | 3.45 | 5.25 |
| Vegetarian salad | 3.95 | 5.95 |
| Chicken salad | 4.50 | 6.95 |
| Tuna avocado salad | 4.50 | 6.95 |

BURGERS



| | |
|--|------|
| Hamburguesa Mexicana (Bacon, avocado, jalapenos & grilled onions) | 5.25 |
| House Special (1/2 pounder w/cheese, grilled onion and pastrami) | 5.95 |
| Quarter pounder Cheese Burger | 4.25 |
| Bacon or Avocado Cheese Burger | 4.95 |
| Half pounder | 5.25 |

Extras:

| | |
|-----------------------------|------|
| Sim rice and beans | 2.95 |
| Side fries | 1.75 |
| Avocado | 1.25 |
| Cheese | .95 |
| Side of guacamole (1.5 oz) | .75 |
| Side of sour-cream (1.5 oz) | .50 |

SANDWICHES

(Contains: lettuce, tomato, onions, dill pickles, mustard and mayonnaise)

| | Small | Large |
|-----------------------|-------|-------|
| Roast beef and cheese | 4.25 | 5.75 |
| Turkey and cheese | 4.25 | 5.75 |
| Ham and cheese | 4.25 | 5.75 |
| Egg salad | 4.25 | 5.75 |
| B.L.T | 4.25 | 5.75 |
| Chicken | 4.75 | 6.45 |
| Hot Pastrami | 4.75 | 6.45 |
| Tuna salad OR VEGGIE | 4.75 | 6.45 |
| Teriyaki chicken | 4.75 | 6.45 |

TORTAS

(MEXICAN SANDWICHES)

| | |
|---|------|
| Torta de Milanesa (breaded steak) | 5.95 |
| Torta de carnicas (pork) | 5.95 |
| Torta al pastor (seasoned grilled pork) | 5.95 |
| Torta de chorizo con huevo | 5.95 |
| Torta de carne asada | 5.95 |
| Torta de jamon con queso | 5.95 |
| Torta de Aguacate | 5.95 |
| Torta Cubana | 6.95 |

BEVERAGES



| | Small | Large |
|--|-------|-------------|
| Coffee, hot tea | 1.45 | 1.50 |
| Iced tea | 1.45 | 1.95 |
| Fountain Soda (Coke, Ice Cold, Sprite, Root Beer, Lemonade, Orange Fanta) | 1.45 | 1.95 |
| Bottled/Canned | | 1.00 - 2.50 |



PLANNING DIRECTOR ACTION LETTER

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

Application No. **Use Permit No. UP2010-029 (PA2010-138)**
Applicant **Danny Mallers**
Site Address **1601 Dove Street #278**
 (Mallers' Massage Therapy)
Legal Description **Parcel Book 39, Page 18, Parcel 1**

On **November 10, 2010** the Planning Director approved the following: a use permit to allow an independent massage establishment in a suite (710 gross square feet) within an existing commercial office building. The proposal also includes a request to waive the location requirement of the Zoning Code that requires independent massage establishments to be at least 500 feet from other massage establishments. The establishment will provide a lobby/reception area, two massage treatment rooms, and a quiet room. The property is located in the PC-11 (Newport Place Planned Community District, Commercial/Professional and Business Office Sites 1 & 2). The approval is based on the following findings and subject to the following conditions.

FINDINGS

In approving this application and pursuant to Section 20.91.035.A of the Municipal Code (Required Findings, Use Permit), the Planning Director determined the following:

1. Finding: That the proposed location of the use is in accord with the objectives of the Zoning Code and the purposes of the district in which the use is located.

Facts in support of finding:

- The proposed use is consistent with the legislative intent of Chapter 20.87 of the Municipal Code. The purpose and intent of the chapter is to disperse the location of massage establishments throughout the City and to prevent problems of blight. The proposed massage establishment is not located in a freestanding building as a separate use, but in a suite in an existing office building within a multi-building office complex not located within a blighted area.

- Pursuant to Section 20.05.V of the Zoning Code (Use Classifications, Personal Services), a massage establishment is classified as a personal service and is listed as a commercial land use per Chapter 20.15 (Commercial Districts). The Newport Place Planned Community regulations (Part II Commercial, Section II Permitted Uses, Group I. Professional and Business Offices, C. Support Commercial) allow service uses ancillary to the operation and use of office facilities. The proposed massage establishment is a personal service ancillary to the office uses located within the multi-building office complex.
2. Finding: that the proposed location of the use permit and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan and the purpose of the district in which the site is located; will not be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use; and will not be detrimental to the properties or improvements in the vicinity or to the general welfare of the city.

Facts in support of finding:

- The Land Use Element of the General Plan designates the site for "MU-H2" (Mixed Use Horizontal) use. This land use designation provides for a horizontal intermixing of uses that may include regional commercial office, multi-family residential, vertical mixed-use buildings, industrial, hotel rooms, and ancillary neighborhood commercial uses. The proposed independent massage establishment is a personal service use and is typically found as an ancillary use in a neighborhood commercial area.
- The proposed use is located in a suite within a managed office complex with coordinated tenant management and is not a blighted area.
- The proposed use is located in a suite within a managed office complex with coordinated tenant management and will not create neighborhood blight.
- The proposed use is not within 500 feet of a place of religious worship, school or playground.
- Compliance with all other applicable regulations of the Municipal Code will be required and enforced.
- Adequate on-site parking is available for the existing and proposed uses located within the multi-building office complex. Per Section 20.66.030 (Off Street Parking and Loading Spaces Required, Personal Service) of the Municipal Code, massage establishments require one (1) space for each 250 gross square feet of floor area. The proposed massage use parking

requirement is less than the previous office use of the suite, which required one (1) space for each 225 square feet of net floor area.

3. Finding: That the proposed use will comply with the provisions of this code, including any specific condition required for the proposed use in the district in which it would be located.

Facts in support of finding:

- The proposed massage establishment is consistent with the legislative intent of Chapter 20.87 of the Municipal Code. The purpose and intent of the chapter is to disperse the location of massage establishments throughout the City and to prevent problems of blight. The subject site is not located within a blighted neighborhood and will not contribute to the creation of a blighted area.
- The proposed use is a personal service use ancillary to the primary office uses on the site and is located in a suite within an existing multi-building office complex.

4. Finding: That the proposed project will comply with the California Environmental Quality Act.

Facts in support of finding:

- The proposed project has been reviewed, and it has been determined that it is categorically exempt under Section 15301 of the California Environmental Quality Act Guidelines under Class 1 (Existing Facilities).
- The proposed project includes a change of the tenant and does not require any interior alterations.

Pursuant to Section 20.87.025.B. of the Municipal Code (Massage Establishments as an Independent Use, Waiver of Location Restrictions), the Planning Director determined the following:

5. Finding: 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.

Facts in support of finding:

- Although the proposed massage establishment is located within 500 feet of other independent massage establishments, all of establishments are located in suites within existing office buildings in an area which is not blighted. The approval of the proposed massage establishment will not contribute to the creation of a blighted area.

- The existing and proposed massage establishments are required to comply with all applicable regulations of the Municipal Code and the Conditions of Approval delineated at the time of approval of each use permit.
- Adequate parking for the proposed massage establishment is provided onsite, and the parking requirement is less than the previously existing office use of the proposed subject suite.

6. Finding: The proposed use will not enlarge or encourage the development of an urban blight area.

Facts in support of finding:

- The proposed massage establishment is not a freestanding single-use facility. It is located in a suite within an existing, managed tenant multi-building office complex. The subject site is not located within a blighted area and the proposed use will not contribute to the creation of a blighted area.

7. Finding: 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.

Facts in support of finding:

- There are no urban renewal or neighborhood conservation programs in effect in the subject area.

8. Finding: The use at the proposed location will not adversely affect the use of a place used exclusively for religious worship, school, park or playground.

Facts in support of finding:

- The proposed massage establishment is not located within 500 feet of a public or private school, playground, civic center, cultural site or church site.

9. Finding: All applicable regulations of the Municipal Code will be observed.

Facts in support of finding:

- Compliance with all other applicable regulations of the Municipal Code will be required and enforced, including Chapter 5.50 (Massage Establishments), which regulates massage services with a massage permit issued by the Police Department in order to protect the health, safety and welfare of citizens of the City.

CONDITIONS

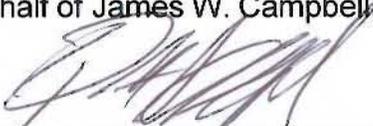
1. A revised site plan shall which accurately labels the location of the project on the subject site shall be submitted to the Planning Department. The development of proposed massage establishment shall be in substantial conformance with the approved site plan and floor plan.
2. A copy of the approval letter shall be incorporated into the Building Department and field sets of plans prior to issuance of the building permits.
3. All applicable requirements of Chapter 5.50 under Title 5, Business Licenses and Regulations, of the Municipal Code shall be fulfilled.
4. The hours of operation shall be limited to between 7:00 a.m. to 6 p.m. Monday through Friday and 9 a.m. to 2 p.m. Saturday and Sunday.
5. Two licensed massage technicians shall be permitted to operate within the establishment at any one time. No more than two treatment rooms shall be permitted to provide massage services at any one time within the establishment.
6. The applicant is required to obtain all applicable permits from the City Building Department. Construction plans must comply with the most recent, City-adopted version of the California Building Code, and must comply with all applicable State Disabilities Access requirements.
7. No temporary "sandwich" signs, balloons 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.
8. All signs shall conform to the provisions of the Newport Place Planned Community District standards and regulations and Chapter 20.67 of the Municipal Code.
9. The Planning director may add to or modify conditions of approval to this Use Permit, or revoke this permit upon a determination that the operation that is the subject of this approval causes injury, or is detrimental to the health, safety, peace, morals, comfort, or general welfare of the community.
10. 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.
11. *To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers,*

employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of Mallers' Massage Therapy, but not limited to, UP2010-029, PA2010-138. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

APPEAL PERIOD

The applicant or any interested party may appeal the decision of the Planning Director, Zoning Administrator and department staff to the Planning Commission by a written request to the Planning Director within 14 days of the action date. A \$4,280.00 filing fee shall accompany any appeal filed. For additional information on filing an appeal, contact the Planning Department at 949 644-3200.

On behalf of James W. Campbell, Acting Planning Director

By: 

 Patrick J. Alford, Planning Manager

- PJA/ks
 Attachments: PD 1 Vicinity Map
 PD 2 Site Plan and Floor Plan
 PD 3 Photos
 PD 4 Applicant's Project Description

Attachment No. PD 1

Vicinity Map

VICINITY MAP



Use Permit No. UP2010-029
PA2010-138

1601 Dove Street, Suite #278

Attachment No. PD 2

Site Plan and Floor Plan

• Suite ~~278~~ 278 -
located in
building #4
• TOTAL #
parking places
282

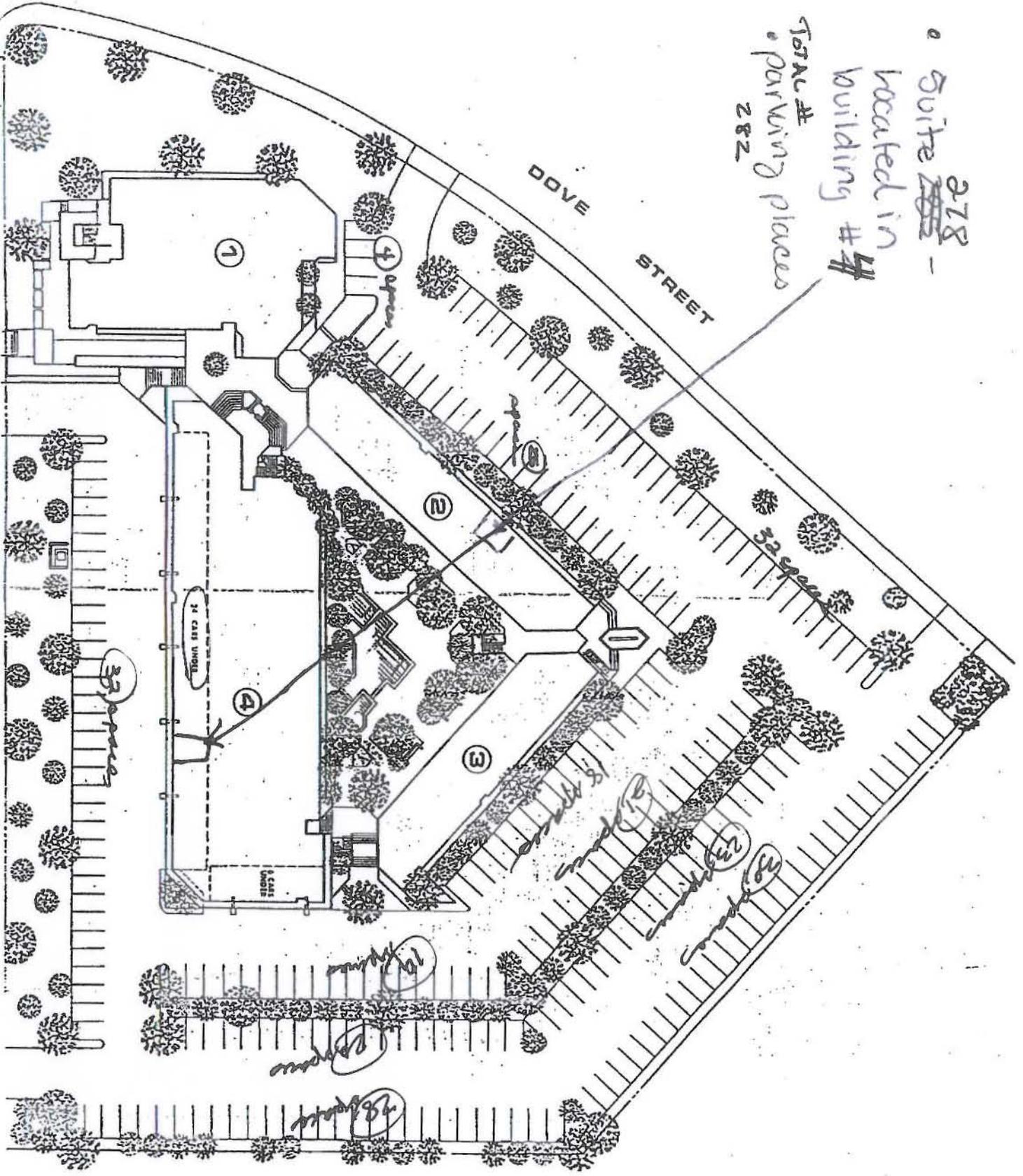
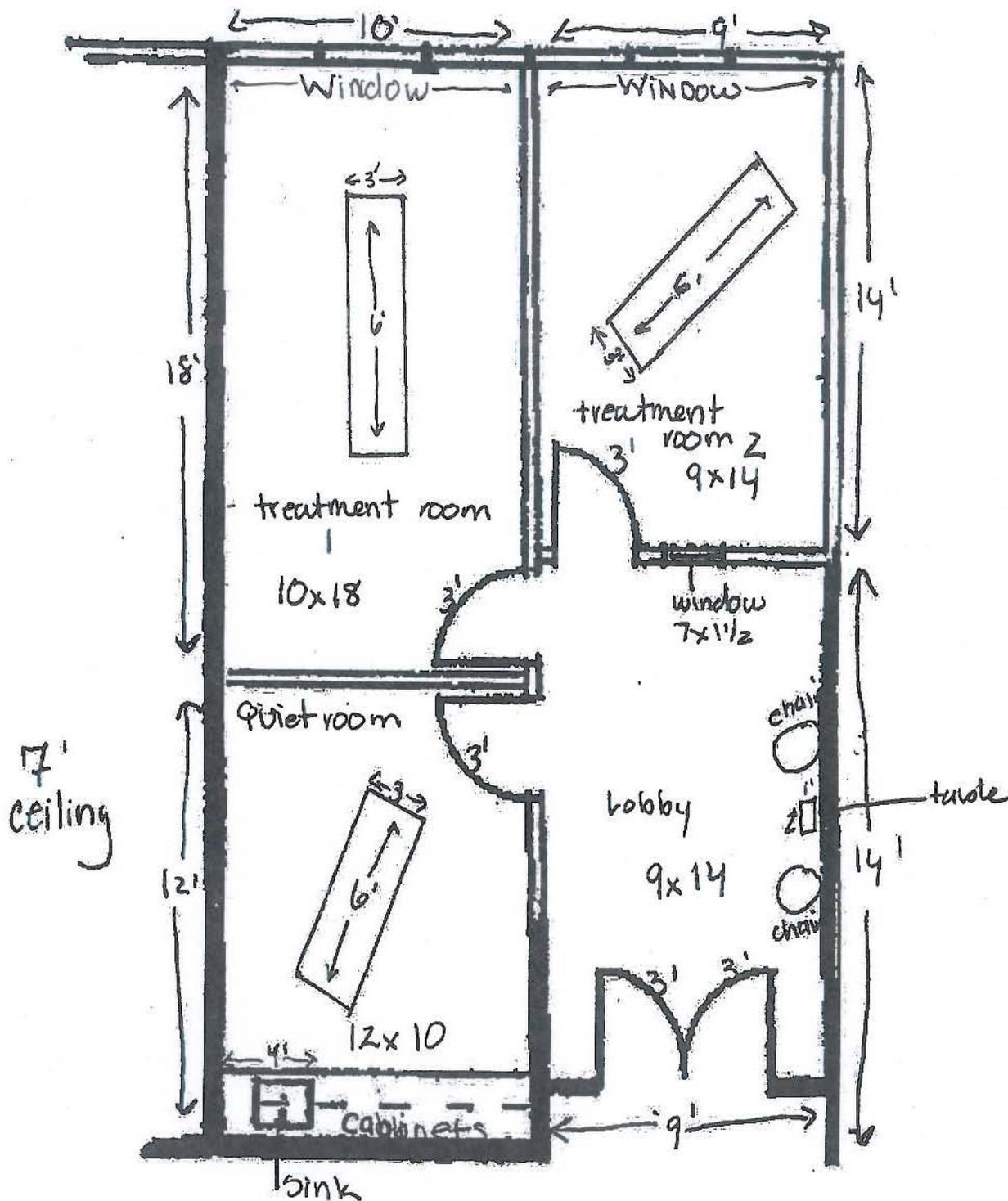


EXHIBIT A
FLOOR PLAN

PA2010-138 for UP2010-029
1601 Dove Street #278
Danny Mallers



NEWPORT PLAZA

278
285 (A) 710 sq. ft.

Attachment No. PD 3

Photos





Attachment No. PD 4
Applicant's Project Description

October 20, 2010

To: Kay Sims, Assistant Planner

From: Daniel Mallers

Re: Use Permit No. UP2010-029 (PA2010-138)/ 1601 Dove Street #278

This letter is in response to your request to submit additional documentation necessary to complete our application. This included: (a) details related to the type of service(s) provided; and (b) information related to the required findings to be met for approval of a use permit (attached) pursuant to Section 20.91 of the Newport Beach Zoning Code. Please note the information below.

(a): Services provided are massage therapy. This includes several modalities (e.g., neuromuscular, deep tissue, Swedish, and pregnancy) designed to assist clients with chronic and acute muscle problems as well as to decrease stress. These modalities are based on manual stretching and placing varying levels of pressure and movement on muscles and soft tissue. Massage therapists are not trained, nor licensed, to develop treatment plans, nor do they diagnose. As such, services offered are solely limited to massage practice as described.

(b) The proposed location, 1601 Dove Street #278, is in accord with the objectives code 20.91.035 and the purposes of the district in which the site is located. Specifically, the office space is in a professional building with ample and unlimited parking. Rooms are designed to meet requirements of the city. There will be no potential conflicts with the surrounding land uses; the goal of our service is to maintain a healthy environment for clients and surrounding businesses. The hours of operation will be limited to the hours of 7am-6pm, M-F, and 9am-2pm Sat/Sun. The service is intended to be convenient for clients. Additionally, the Newport Police Department has approved Daniel Mallers' practice of massage therapy. As indicated in our proposal submitted previously, all code provisions will be abided.

Thank you.

Daniel Mallers, LMT

RECEIVED BY
PLANNING DEPARTMENT

OCT 20 2010

CITY OF NEWPORT BEACH



PLANNING DIRECTOR ACTION LETTER

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

Application No. **Use Permit No. UP2010-030 (PA2010-140)**

Applicant **Fit Foods 4 Life, Inc.**

Site Address **1000 Bristol Street North, Suite 12**

Legal Description **P Bk 81 Pg 43 Par 2**

On **November 10, 2010**, the Planning Director approved the following: the conversion of an existing 1,160-square-foot retail space to a take-out service, limited restaurant. The restaurant will offer meals prepared and packaged off-site for both take-out and limited on-site consumption. The property is located in the PC-11 (Newport Place Planned Community) District. The approval is based on the following findings and subject to the following conditions.

FINDINGS

1. The proposed location of the use is in accord with the objectives of the Zoning Code and the purposes of the district in which the site is located.

Facts in support of finding:

- The project is located within the General Commercial Site 3 of the PC-11 (Newport Place Planned Community) District. The purpose of this district is to provide areas which are predominantly professional offices in character but also allows some support commercial. The proposed take-out service, limited restaurant is commercial in nature supporting the general offices and serving residents and visitors in the area, therefore, is consistent with the purposes of the PC-11 District.
2. The proposed location of the use permit and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan and the purpose of the district in which the site is located; will not be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use; and will not be detrimental to the properties or improvements in the vicinity or to the general welfare of the city.

Facts in support of finding:

- The project site is designated as General Commercial (GC) by the Land Use Element of the General Plan. The proposed project is consistent with the GC land use category, which is intended to provide for a wide variety of commercial activities orientated primarily to serve citywide or regional needs.
 - The conditions imposed on the use will reduce the possibility of detriments to the community, such as littering, excessive noise, and negative parking impacts, by ensuring continued consistency with the intent and purpose of Chapters 20.82.
 - The proposed use will not impact parking within the center as no additional off-street parking spaces are required. The existing retail sales use requires five (5) parking spaces based upon the retail use parking ratio of one (1) parking space per 250 feet of gross floor area required per Chapter 20.66 (Off-street Parking and Loading Regulations) of the Municipal Code. Chapter 20.66 also requires 5 spaces for the proposed use based upon the parking ratio of one (1) parking space per 250 feet of gross floor area for take-out service, limited eating and drinking establishments
 - The 100 square feet of interior net public area is necessary to accommodate the proposed customer waiting needs and the limited number of seats (6 seats maximum) and is consistent with the intent of the net public area limitations that apply to the take-out, limited food service use.
 - The limitation on the hours of operation (between 8:00 a.m. and 10:00 p.m., daily) and the hours to prohibit deliveries (between 11:00 p.m. and 8:00 a.m.) is necessary to prevent adverse or negative impacts on the surrounding uses in the vicinity.
 - 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).
3. The proposed use will comply with the provisions of this code, including any specific condition required for the proposed use in the district in which it would be located.

Facts in support of finding:

- Subject to the approval of a use permit by the Planning Director, a take-out service, limited eating and drinking establishment is permitted within this district. Use permits enable the City to control certain uses which could have detrimental effects if not compatible with uses on adjoining properties and in the surrounding area. The proposed use is compatible to and complements the other uses in this district, including restaurants, retail stores, and an urgent care facility. The

proposed application does not present any conflicts with the purpose and intent of this district.

- The project has been conditioned to comply with the development and operational regulations pursuant to Section 20.82.040 of the Municipal Code as they relate to the operation of the proposed eating and drinking establishment.

CONDITIONS

1. Development shall be in substantial conformance with the approved site plan and floor plan, except as noted in the following conditions.
2. The proposed project shall be designed as to not to exceed the parking requirement for the previously existing use, unless all the required off-street parking can be provided or a parking waiver is approved to waive any additional required parking in excess of the existing use.
3. The hours of operation shall be limited to between the hours of 8:00 a.m. and 10:00 p.m., daily; and any increase in the hours of operation shall be subject to the approval of an amendment to this use permit.
4. The hours of operation of the on site location and off site delivery shall be limited to between the hours of 8:00 a.m. and 11:00 p.m., daily; and any increase in the hours of operation shall be subject to the approval of an amendment to this use permit.
5. No on-sale alcoholic beverage service shall be permitted on the premises.
6. No live entertainment or dancing shall be permitted in conjunction with the permitted use.
7. The project shall comply with State Disabled Access requirements.
8. A business license must be obtained prior to the operation of the business.
9. Any public sanitation facilities as required by the Building Department shall be provided.
10. Storage outside the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
11. Trash receptacles for patrons shall be conveniently located both inside and outside of the proposed facility; however shall not be located on or within any public property or right-of-way or interfere with pedestrian or vehicular movement or vehicle parking. Trash dumpsters shall have a top which shall remain closed at all times, except when being loaded or while being collected by the refuse collection agency. Additionally, the operator must monitor all trash receptacles having them

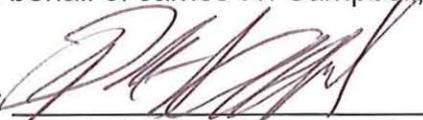
- emptied, maintained and cleaned when necessary as to control odors and any nuisances.
12. Public sidewalks or common walkways adjacent to the establishment shall be maintained in a clean and orderly manner. The operator of the establishment shall be responsible for maintaining these areas as well as the on-site parking lot adjacent to the site collecting any trash or litter generated by the business.
 13. No outside paging or sound system shall be utilized in conjunction with this food service establishment. No on-sale alcoholic beverage service shall be permitted on the premises. No live entertainment or dancing shall be permitted in conjunction with the permitted use.
 14. No temporary "sandwich" signs, balloons or similar temporary signs shall be permitted, either on-site or off-site, to advertise the proposed food establishment, 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.
 15. Should this business be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner or the leasing company.
 16. All signs shall conform to the provisions of Chapter 20.67 of the Municipal Code or any applicable comprehensive sign program that is in force for the subject property.
 17. The facility shall comply with the provisions of Chapter 14.30 of the Newport Beach Municipal Code for commercial kitchen grease disposal, as determined by the Building Department and the Utilities Department.
 18. The facility shall be designed to meet exiting and fire protection requirements as specified by the California Building Code and shall be subject to review and approval by the Building Department.
 19. All mechanical equipment shall be screened from view of adjacent properties and adjacent public streets, and shall be sound attenuated in accordance with Chapter 10.26 of the Newport Beach Municipal Code, Community Noise Control.
 20. The Planning Director or the Planning Commission may add to or modify conditions to this approval, or revoke this approval upon a finding of failure to comply with the conditions set forth in Chapter 20.82 of the Municipal Code or other applicable conditions and regulations governing the eating and drinking establishment.
 21. 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.

22. To the fullest extent permitted by law, the applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the take-out service, limited eating and drinking establishment including, but not limited to, the Use Permit No. UP2010-030 (PA2010-140). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

APPEAL PERIOD

The applicant or any interested party may appeal the decision of the Planning Director, Zoning Administrator and department staff to the Planning Commission by a written request to the Planning Director within 14 days of the action date. A \$4,280.00 filing fee shall accompany any appeal filed. For additional information on filing an appeal, contact the Planning Department at 949 644-3200.

On behalf of James W. Campbell, Acting Planning Director

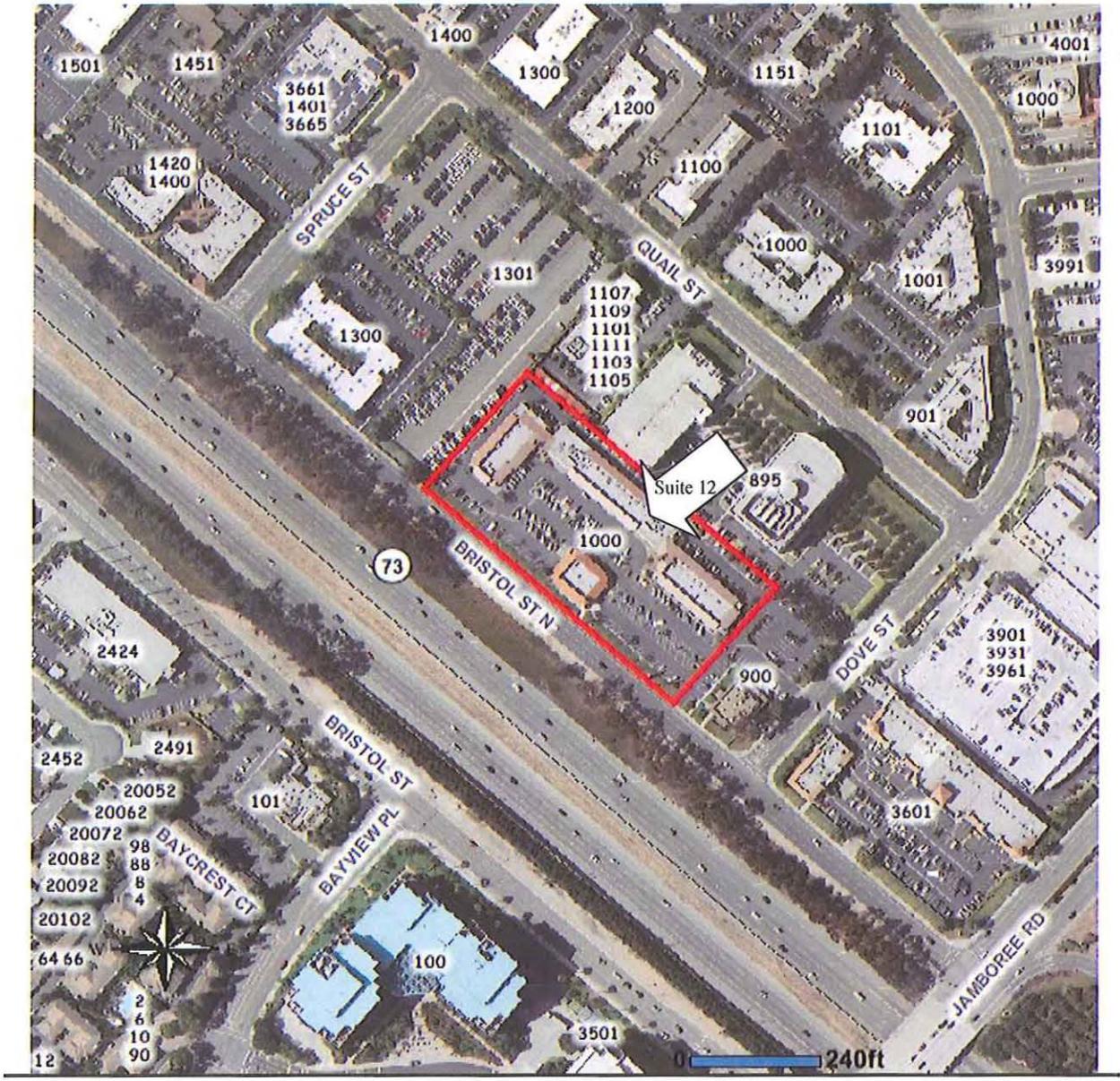
By: 

Patrick J. Alford, Planning Manager

PJA/ems

Attachments: PD 1 Vicinity Map
PD 2 Project Description
PD 3 Site Plan and Floor Plans

VICINITY MAP



Use Permit No. UP2010-030
PA2010-140

1000 Bristol Street North, Suite 12

PROJECT DESCRIPTION AND JUSTIFICATION

Applicant, Fit Foods 4 Life, Inc., is a Nevada corporation and seeks Directors Use Permit for a Take-Out Limited project. The Applicant is lessee of commercial space in the Plaza Newport Shopping Center, 1000 Bristol Street North, Suite 12, Newport Beach, CA 92660. Applicant will operate under the business name of "Fit Foods 4 Life".

Applicant's business is a niche food service provider to those seeking freshly prepared, healthy meal options. Meals will be prepared and packaged exclusively *offsite*. The business model is for healthy, diet-conscious, take-out food sales. There will be two to three tables provided with no more than six (6) chairs for patrons awaiting service and for very limited (less than ten percent) onsite consumption of food.

There will be no soda dispensing equipment, as emphasis will be on healthy, natural, diet and fitness oriented nutrition. However, bottled water and health drinks will be provided in coolers for customer purchase. There will be two to four employees depending on variances in business activity, primarily affected by daily mealtimes periods and different days of week. It is anticipated that there will be lighter traffic for weekday lunch with heavier patronage at dinner time both during the work week and on weekends. Fit Foods 4 Life's anticipated hours of operation will be between 9:00 a.m. and 9:00 p.m. daily. Applicant will require little in terms of parking and traffic flow in the center because of the pre-packaged food products offered for sale and resultant quick turnover of customers anticipated.

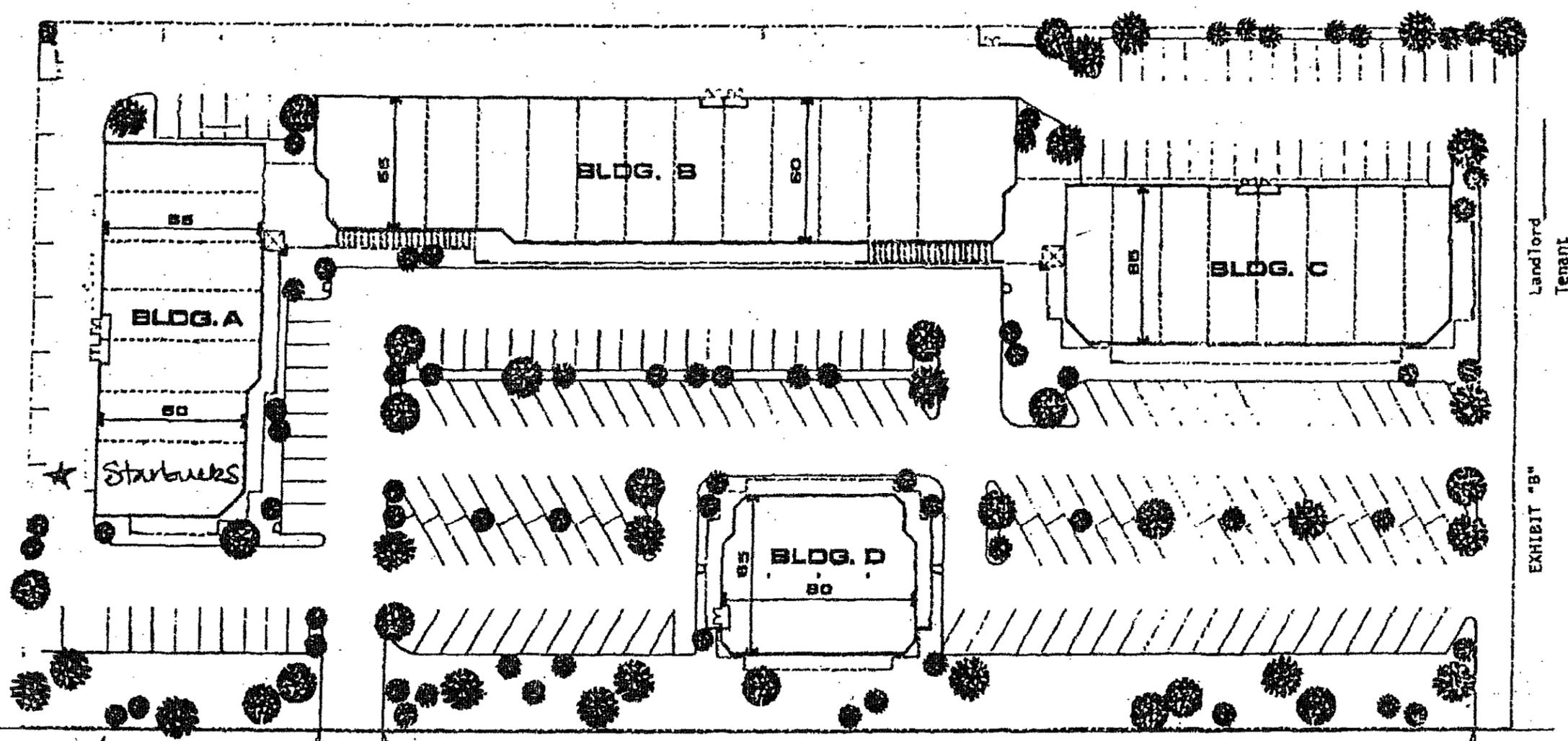
This application for director's use permit should be approved because the business services and products of Fit Foods 4 Life enhance the healthy alternative lifestyle by offering good nutrition and healthful meals, thereby fostering a positive, long-term effect upon the community. Applicant's business will provide residents of and visitors to the City of Newport Beach with a nourishing and affordable alternative food choices to those of traditional fast food outlets. In the busy and stressful environment of contemporary life, good nutrition is increasingly important to maintaining energy, productivity, and

vitality. However, eating right is a goal that cannot always be readily or economically attained. Fit Foods 4 Life fills that niche with a delicious selection of foods and satisfies a burgeoning popular interest in making better mealtime choices that maintain a healthy diet and good nutrition. The food products will be presented in recyclable, and in most instances, microwaveable, packaging. This will minimize trash and preserve natural resources. The public area, net of offices, counter areas, and furniture, is approximately 100 square feet.

The customers are not likely to remain in the business premises except to make their selection, purchase food at the counter space provided, and depart. There will be two to three tables and five (5) chairs provided in the customer service area for customers selecting and paying for their purchases. These chairs and tables can also be used on a limited basis to consume the food on-site. However, more than 90% of the prepared foods are intended to be and will be re-heated and then consumed offsite.

Finally, the anticipated traffic and turnover will not be inordinately large nor markedly different from that of customers already frequenting the shops and food outlets in the center. However, those interested in affordable, healthy eating with little or no inconvenience will be attracted to Fit Foods 4 Life on a regular basis as part of their health-conscious lifestyle. This will benefit nearby businesses by providing residents and visitors with more free time, as well as abiding good health to enjoy the culture and commerce of the City of Newport Beach.

The foregoing facts justify a finding that the proposed location of the use is in accord with the objectives and provisions of the Code and the purposes of the District in which the site is located. Such facts also establish that the conditions under which Applicant's business will be operated are consistent with the General Plan and the purposes of the district in which the site is located. Operations of "Fit Foods 4 Life" will not be detrimental with public health, safety, morals, peace, comfort, or welfare of persons working or residing in or adjacent to the neighborhood, and use is not detrimental to the properties or improvements in the vicinity or to the general welfare of the City.



PROJECT INFORMATION

Project Name: "Fit Foods 4 Life"
 Address: 1000 Bristol Street North, Ste. 12
 Zoning: PC-11 (Newport Place)
 Existing and Proposed SF: Same 1,160 SF
 Existing Use: Retail
 Proposed Use: Take-Out Service Limited Restaurant
 No Intensification in Use/ No change in Parking
 Hours of Operation: 9:00 a.m. to 9:00 p.m.
 No. of Employees: 4 (four)
 Maximum No. of Seats: 6 (six)
 Maximum Net SF of Public Area: 100 SF

NORTH BRISTOL STREET

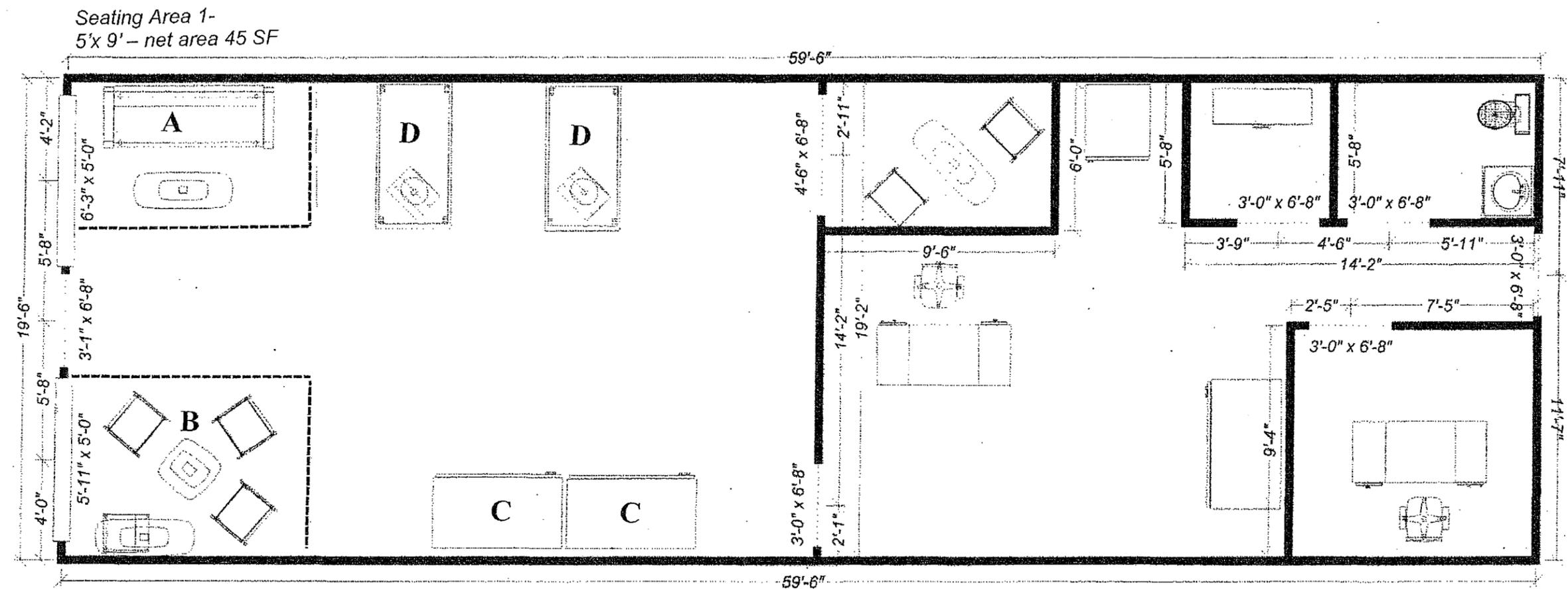
PLAZA NEWPORT

**A WOLOSON-LANGSTON DEVELOPMENT
 NEWPORT BEACH, CALIFORNIA**



Landlord
 Tenant
 EXHIBIT "B"

PA2010-140 for UP2010-030
 1007 Bristol Street North
 Fit Foods 4 Life, Inc.



Seating Area 1-
5'x 9' - net area 45 SF

Seating Area 2 -
6'x 9' - net area 54 SF

NET PUBLIC AREA SF = 99 SF

KEY/LEGEND

- A - Couch (Seating area)
- B - Table and Chairs (Seating Area)
- C - Coolers/Refrigerators
- D - Point of Sale/Check Out

