

**CITY OF NEWPORT BEACH
STAFF ACTION REPORT**

TO: CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION

FROM: Planning Department
Javier Garcia, Zoning Administrator
jgarcia@city.newport-beach.ca.us

SUBJECT: Report of actions taken by Planning Department Staff for the week ending March 21, 2008

Item 1: Stephen Sheldon, property owner - Staff Approval No. SA2007-018 (PA2007-244)
14 Old Course Drive

The Planning Director approved the applicants request to modify the floor plans and site plan with 5 foot distance to rear property line as originally authorized by the Planning Commission at its meeting of January 19, 2006. Also, the request to waive the requirement to file a new modification permit application was approved.. The property is located in the PC-24 (Aeronutronic Ford Planned Community) District.

Approved – March 19, 2008

Council District 4

Prepared and submitted by: -



Javier S. Garcia, Zoning Administrator

APPEAL:

The decision of the Planning Director may be appealed to the Planning Commission within 14 days of the action date. A \$600.00 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)
Kay Sims, Assistant Planner (e-mail)
Sgt. Ron Vallercamp, Vice/Narcotics (e-mail)
Code Enforcement Division (e-mail)
Erin Steffen, Office Assistant (e-mail)
Iris Lee, Public Works (e-mail)
Evelyn Tseng, Revenue (e-mail)



CITY OF NEWPORT BEACH

STAFF APPROVAL NO. SA2007-018

(PA2007-244)

PLANNING DEPARTMENT
3300 NEWPORT BOULEVARD
NEWPORT BEACH, CA 92658
(949) 644-3200; FAX (949) 644-3229

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

Application: Staff Approval No. SA2007-018 (PA2007-244)

Applicant: Stephen Sheldon

Site Address: 14 Old Course Drive

Legal Description: Lot 44, Tract 15387

Request as Modified and Approved:

Request for changes to the approved floor plans and site plan authorized with Modification Permit No. 2005-103 by the Planning Commission on January 19, 2006. The proposed changes include an increased overall footprint and the addition of a 754 square foot basement below the previously authorized pool house. The revised plans also include permanently installed shoring walls that encroach 5 feet into the 10-foot rear yard setback and the addition of a light well and egress/exit well (do not encroach into any required setbacks), not included in the original approval. The overall length of the structure has increased from 35 feet 7 inches long to 40 feet 2 inches and the width has increased at its widest point from 20 feet 3¼ inches to 32 feet 3 inches. The building has changed from a laundry room, bathroom and den to a two level game room with laundry room and bathroom. The height as proposed will also increase from 14 feet 6 inches to 15 feet 10 inches, however, that portion of the building located within the 10-foot rear yard setback is consistent with the height of the originally approved structure. The property is located in the PC-24 (Aeronutronic Ford Planned Community) District. Also included in the application is a request to waive the requirement to file a new modification permit application.

Staff has modified and conditionally approved the request as described above, except that the project is limited to an overall footprint of 643 square feet and overall height of the structure to 14 feet 6 inches (within the rear yard setback area), comparable to the project originally reviewed and approved by the Planning Commission at the January 19, 2006 Planning Commission meeting.

Section 20.93.060 A of the Newport Beach Municipal Code provides that the Planning Director may waive the requirement for a new Modification Permit application if the changes are minor, do not involve substantial alterations or addition to the plan or the conditions of approval, and are consistent with the intent of the original approval.

ACTION: **APPROVED – MARCH 19, 2008** To modify the floor plans and site plan with 5 foot distance to rear property line as originally authorized by the Planning Commission at its meeting of January 19, 2006. Also, the request to waive the requirement to file a new modification permit application was approved.

FINDINGS

1. The majority of the revised building footprint maintains the minimum rear yard setback with the exception of the new basement below the authorized ground floor, the new light well and the new egress/exit well.
2. The increase in floor area from 620 square feet to 1,438 square feet increases the amount of encroachment into the 10-foot rear yard setback which is not consistent or in substantial conformance with the structure previously authorized to encroach by Modification Permit No. 2005-103 (PA2005-225), however, the applicant has modified the plans to limit the amount of building encroachment into the rear yard setback consistent with the previous modification permit approval. The remainder of the new building, although larger, is located within the buildable area of the site, not within the side or rear yard setbacks, and would not be subject to the modification permit requirement. The proposed shoring wall (which will remain permanently in place below ground) has been relocated to maintain the minimum 5-foot side yard setbacks.
3. The approved height of that portion of the building located within the rear yard setback is consistent and in substantial conformance with the overall height of the project originally approved by the Planning Commission.
4. The new light well and new egress/exit well, which maintains the required side and rear yard setbacks, are consistent and in substantial conformance with the original approval of the Planning Commission and are necessary due to the increase in the size of the project and the introduction of a basement level.
5. The request to waive the requirement of the filing of new modification permit application is appropriate with the relocation of the shoring wall to maintain a minimum 5-foot rear yard setback and maintain the height of the project located within the 10-foot rear yard setback consistent with the previous modification permit approval and as conditioned by this approval.

CONDITIONS


1. The development shall be in substantial conformance with the approved revised plot plan, floor plans, sections and elevations, except as noted in the following conditions. The conditions of approval of Modification Permit No. 2005-103, with the exception of those related to the revised site plan, floor plan and elevations shall remain in full force and as limited by the conditions of approval below.
2. The structure shall maintain a minimum 5-foot rear yard setback for all exterior building and basement walls, and shoring walls and caissons. No new encroachments at or below grade shall be allowed unless an amended modification permit is first approved by the Planning Commission.

3. The overall projected footprint of the structure shall be reduced to 643 square feet which is comparable to the project originally reviewed and approved by the Planning Commission on January 19, 2006.
4. The overall height of the structure located within the 10-foot rear yard setback shall be limited to 14 feet 6 inches consistent with the approval of Modification Permit No. 2005-103, by the Planning Commission on January 19, 2006.
5. The Planning Director or the Planning Commission may add to or modify conditions of approval to this use permit, or revoke this permit upon a determination that the operation which is the subject of this approval causes injury, or is detrimental to the health, safety, peace, morals, comfort, or general welfare of the community.
6. This approval shall expire unless exercised within 24 months from the approval date, as specified in Section 20.93.055 of the Newport Beach Municipal Code. Prior to the expiration date of this approval, an extension may be approved in accordance with Section 20.93.055 (B) of the Newport Beach Municipal Code. Requests for an extension must be in writing.

APPEAL PERIOD

The decision of the Planning Director may be appealed by the applicant or any interested party to the Planning Commission within 14 days of the decision date. Any appeal filed shall be accompanied by a filing fee of \$600.00.

On behalf of David Lepo, Planning Director

By 

Zoning Administrator Javier S. Garcia, AICP

JSG:rm

- Attachments:
- Appendix
 - Vicinity Map
 - Revised Site Plan, Floor Plans and Elevations
 - Portion of Original Site Plan and Floor Plan as approved by the Planning Commission on January 19, 2006
 - Excerpt of Planning Commission Minutes of January 19, 2006
 - Staff Report of the Planning Commission for Modification Permit No. 2005-103, dated January 19, 2006

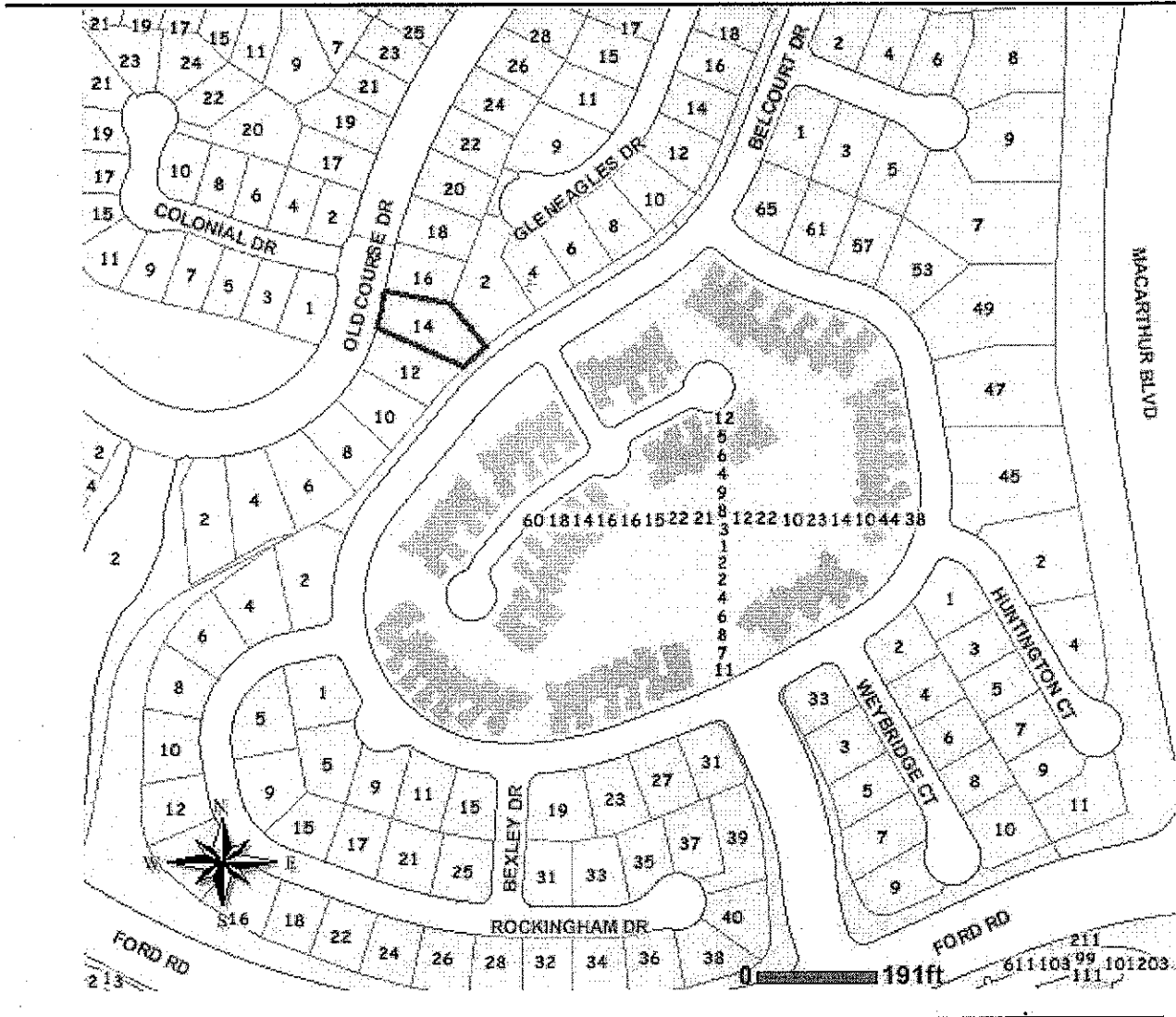
APPENDIX

Discussion

A determination of substantial conformance with Modification Permit No. 2005-103 (PA2005-225) is subject to review by the Planning Director. The Planning Director has determined that the proposed alterations to add a basement level, increase the floor area and height and the introduction of new light and egress/exit wells to encroach into the 10-foot rear yard setback are not consistent with Modification Permit No. 2005-103 as authorized and approved by the Planning Commission on January 19, 2006 (overturning and modifying the decision of the Zoning Administrator), unless implemented as revised by revised site plan and project sections presented with this approval. Modifying and reducing the footprint within the rear yard setback area and height, and relocation of the shoring wall is consistent with the previous approval or as a minor change to the encroachment within the rear yard setback that would justify waiving the requirement for the filing of a new modification permit application for the following reasons:

- The increase in floor area from 620 square feet to 1,438 square feet increases the overall footprint; however, the amount of encroachment into the 10-foot rear yard setback has been limited and is consistent or in substantial conformance with the structure previously authorized to encroach by Modification Permit No. 2005-103 (PA2005-225). The footprint as originally approved at 620 square feet was not limited by the previous approval and the increase in the footprint is vertical below grade, with the exception of the shoring wall that will remain permanently in place upon completion of the project.
- The applicant has provided revised plans to show that the portion of the structure located within the 10-foot rear yard setback is consistent and in substantial conformance with the overall height of the project originally approved by the Planning Commission.
- The new light well and egress/exit wells have been relocated to maintain the minimum side and rear yard setbacks and are therefore consistent and in substantial conformance with the original approval of the Planning Commission, since the below grade basement level addition is considered a minor change to the floor plan.

VICINITY MAP

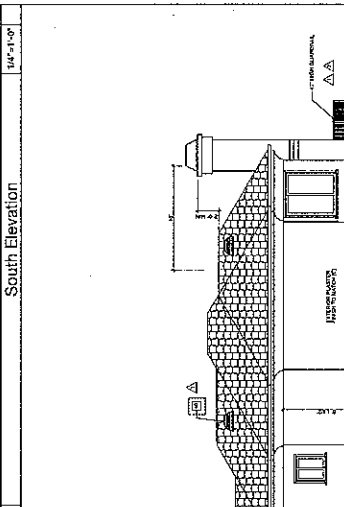
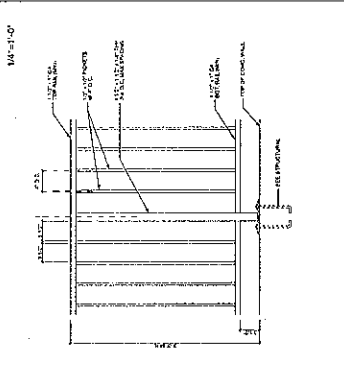
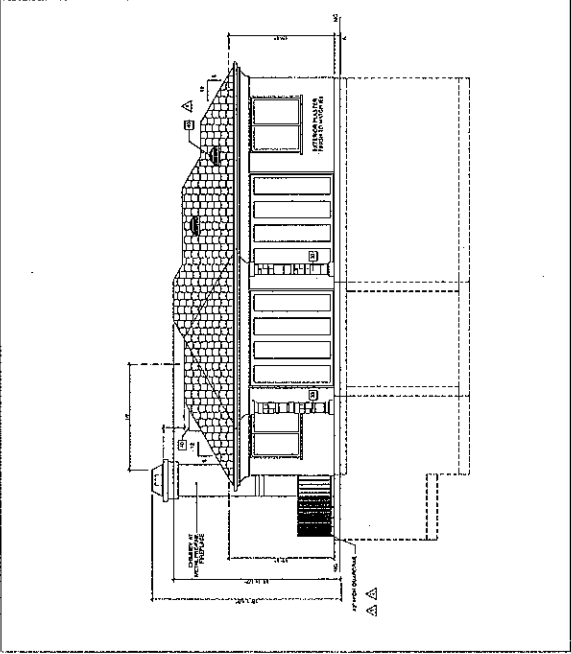
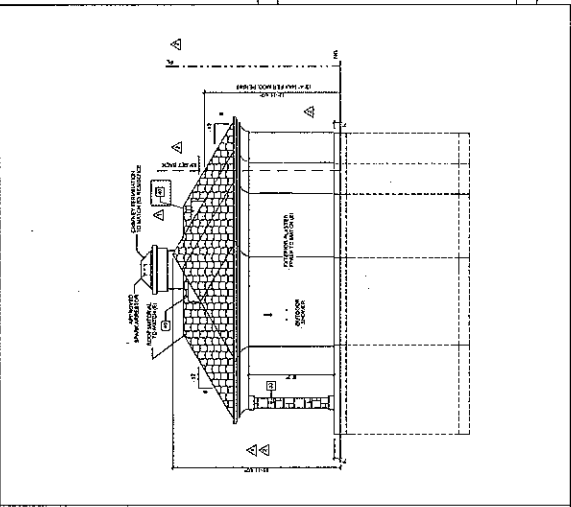
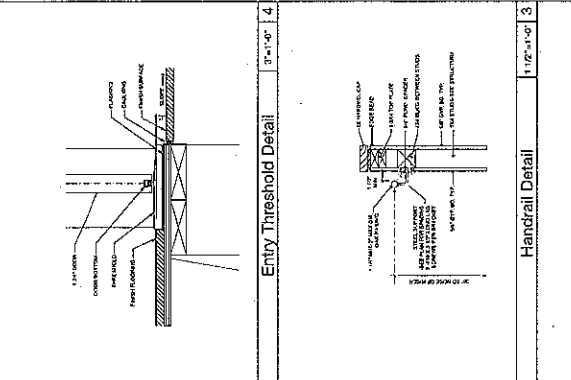


Staff Approval No. SA2007-018
(PA2007-244)

14 OLD COURSE DRIVE

Donald R. Lee
Architect
 2801 N. Harbman
 San Jose, CA 95131
 714-995-5771 FAX

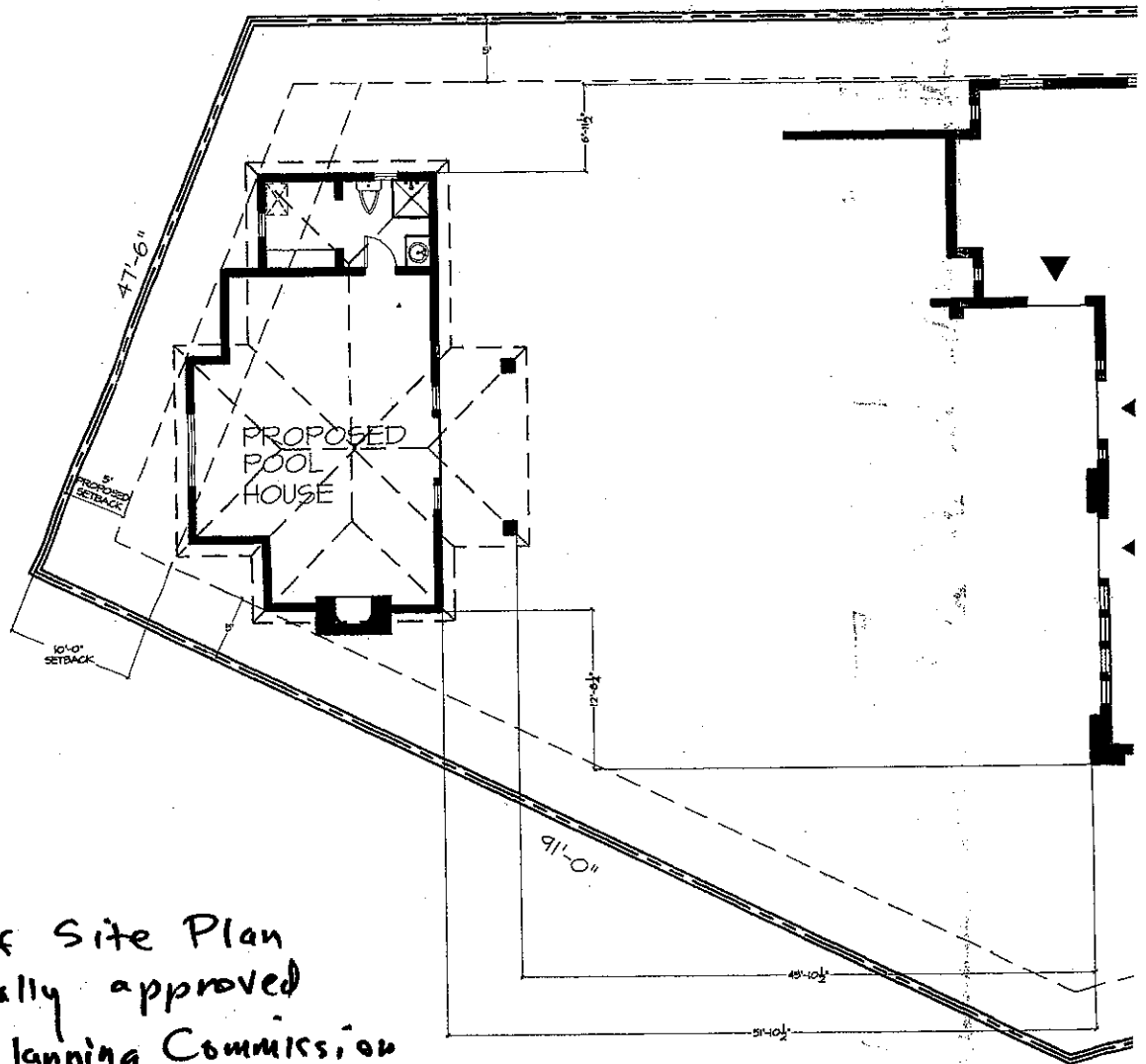
Remodel No.:
Sheldon
Pool House
 11 Cliff Clenden, City
 Menlo Park, CA
 94025-4271



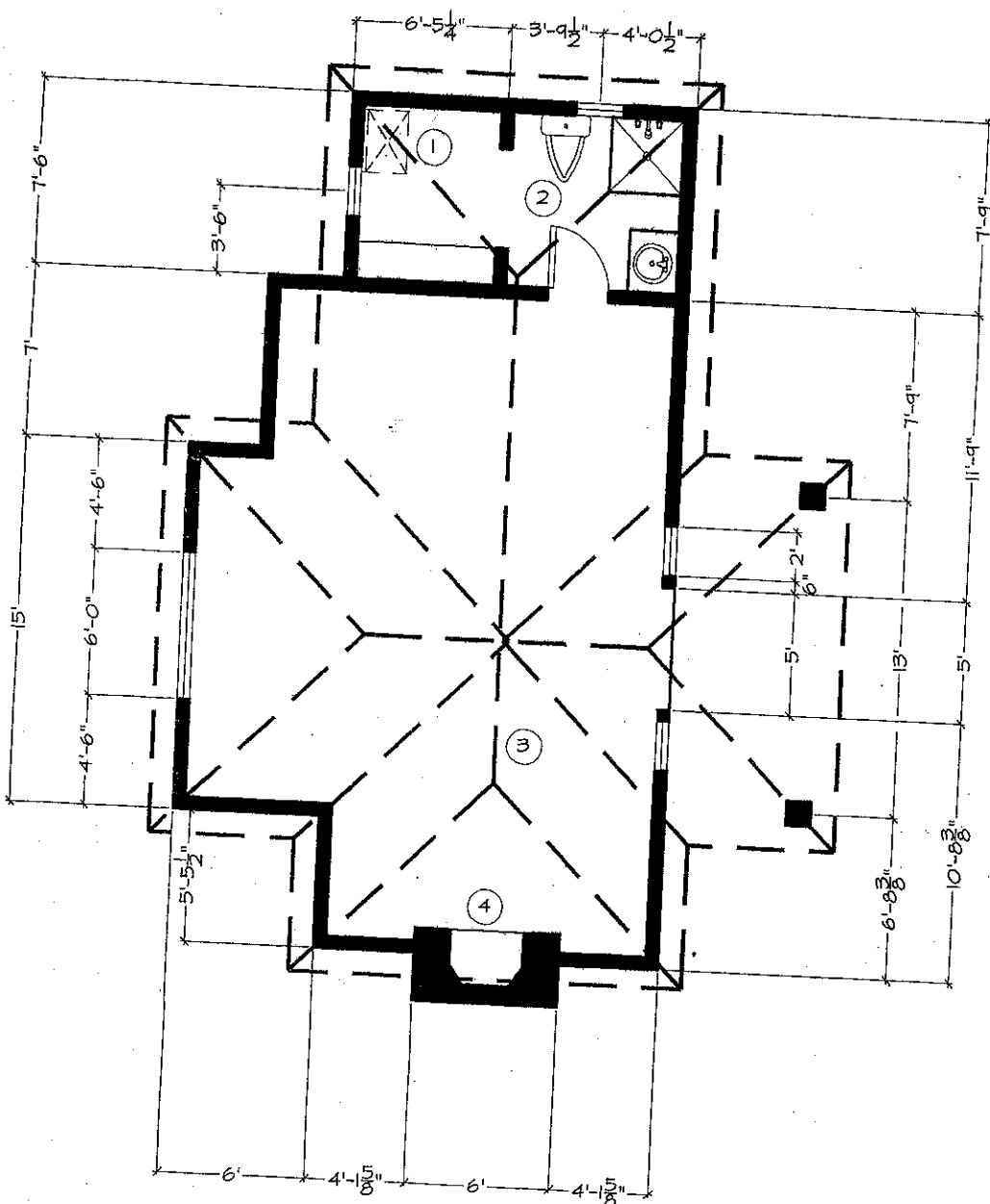
Elevations

8-11-07
 2-08-08 P.F.2
 2-10-08 P.F.1
 2-10-08 P.F.3

A-3



Portion of Site Plan
as originally approved
by the Planning Commission
on January 19, 2006 with
Modification Permit 2005-103
(PA 2005-225).



203 3/4

Floor Plan
 as originally approved
 by the Planning Commission
 on January 19, 2006 with
 Modification Permit 2005-103
 (PA 2005-225)

CITY OF NEWPORT BEACH

Planning Commission Minutes
 January 19, 2006
 Regular Meeting - 6:30 p.m.

	INDEX
ROLL CALL	
Commissioners Eaton, Hawkins, Cole, Toerge, Tucker, McDaniel and Henn - all present.	
STAFF PRESENT:	
Patricia L. Temple, Planning Director Aaron C. Harp, Assistant City Attorney Rich Edmonston, Transportation and Development Services Manager James Campbell, Senior Planner Brandon Nichols, Assistant Planner Ginger Varin, Planning Commission Executive Secretary David Lepo, Hogle Ireland, consultant planner	
PUBLIC COMMENTS:	
None	
	PUBLIC COMMENTS
	None
POSTING OF THE AGENDA:	
The Planning Commission Agenda was posted on January 13, 2006	
CONSENT CALENDAR	
SUBJECT: MINUTES of the regular meeting of January 5, 2006	
Motion was made by Chairperson Toerge to approve the minutes as corrected.	
ITEM NO. 1	
Minutes	
Approved	
Ayes:	Eaton, Hawkins, Cole, Toerge, Tucker, McDaniel and Henn
Noes:	None
Absent:	None
Abstain:	None
* * *	
SUBJECT: Sheldon Residence 14 Old Course Drive	
Appeal of the approval of Modification Permit No. 2005-103 (PA2005-225) for a 1-foot encroachment of a detached accessory structure within a required rear yard setback. The applicant requests a 5-foot encroachment within a required 10-foot rear yard setback as originally proposed within the application.	
Mr. Brandon Nichols gave an overview of the staff report concluding that in staff's opinion there is no practical difficulty associated with the property and therefore no hardship results from requiring the standard 10-foot rear setback.	
	ITEM NO. 2
	PA2005-225
	Approved

At Commission inquiry, Mr. Nichols stated that the determination made by the Zoning Administrator was based upon the information that was provided at the Modification hearing. As part of the appeal staff did an in-depth analysis of the lot characteristics compared to others in the community. Based on that information staff determined that the first finding could not be made.

Brian Carmel, architect who worked on the design of the subject proposal noted:

- Shape of the lot is five sided,
- Fitting in this extra structure along with a swimming pool and others, it needs to be in the 5-foot setback.
- Property backs up to a greenbelt and a street with another greenbelt, and the nearest house is 150 feet away.
- No impact on any neighbors by this encroachment.

Mr. Steve Sheldon, applicant, presented three letters of support from neighbors, his proposed findings and then noted:

- Rear property line is not straight.
- Proposed structure varies as far as the amount of encroachment.
- Backyard is designed for family use with a cook center and pool as well as the proposed structure.
- Neighbors prefer to have the pool house back against the wall because of the way they look into the property.
- Will plant trees and screen the pool house from neighbors and will maintain that landscape at the roof line.
- Other pool houses in One Ford Road have been granted this same encroachment.
- He then made a presentation depicting where modifications have been granted in his neighborhood for accessory uses.
- His lot is a custom lot on a little over 1/4 acre.
- He then presented possible findings for the Commission to use in order to grant this encroachment.

Commissioner Cole asked if the applicant had looked at a re-design to shift the angle of the pool house; amount of space lost and height of the house.

Mr. Sheldon answered that he would lose space in the rear (about 20 - 25 feet). The pool house height is about 14 feet and 6 inches with a wood burning fireplace chimney of 18 feet. He noted he would modify the chimney to make it smaller.

Public comment was opened.

Scott Hart, citizen, spoke as Chairman of the Architecture Committee of the Homeowners

Association. He noted they have reviewed the plans and believe they are fine. There has been a review process and a sign-off with the neighbors around this home and impacted by the project. The association is fine with the encroachment.

Public comment closed.

Commissioner Tucker asked what the purpose is to have a rear yard setback.

Ms. Temple answered that setback yards assure adequate separation between structures and/or public/common areas in order to preserve light and air.

Commissioner Tucker noted that in this case there aren't any structures that would benefit from this setback, would it make any difference with a separation if the building was set all the way back to the property line? It doesn't seem like there is anybody there.

Ms. Temple answered to another home, you are correct.

Continuing, Commissioner Tucker noted that behind the property line is a common area lot with landscaping that is seen by people in the next development over. The houses in Belcourt are across the street from where this particular house is. I understand the purposes of the setbacks, but in this particular case I'm having a hard time how the benefits of the setback are adversely affected by the location of the structure.

Ms. Temple answered that staff's rationale on this really has to do with the fact that all these proposed improvements could be designed in a conforming fashion if changes were made.

Commissioner Tucker stated that if this case had come before, this application would have gone through.

Ms. Temple answered when you reference the barbecue and fireplaces, things that were given, those are small structures. This proposal is a very substantial sized building and is very different in our opinion.

Commissioner Tucker noted he agrees and if there was anybody around them it would have a bigger challenge. However, in this particular case there is nobody around it. We probably should have had a new finding in the requirements that gave us the latitude in situations where this particular setback serves no purpose in this type of situation where there is nobody around.

Ms. Temple noted that for this Planned Community, where the lots are generally large, years ago the regular Zoning Code allowed lesser setbacks for accessory structures; however, that went by the way side. Many of the arguments in this particular application made by the applicant perhaps the Homeowners Association might consider suggesting to the City that they amend the Planned Community, or areas of the Planned Community, that would address the circumstance for any type of accessory structure, would be to us the better solution because they are actually changing their regulations to address the unique characteristics of their community.

Chairperson Toerge noted the original request was for a 5 foot encroachment into the 10 foot setback for the perimeter wall of the structure, and an additional 2 feet encroachment reducing the setback 3 feet for the eaves. Staff answered yes. Continuing, he noted the Zoning Administrator made that finding. Given the lack of impact on adjacencies he is conflicted about the ideology of this policy and the practicality that there doesn't seem to be an impact.

Commissioner Henn noted there is large mature landscaping along the back property line and across the Belcourt areas. This residence is not visible to homes across the street. This modification would not defeat the intent of the Code here.

* Commissioner Hawkins asked if Belcourt had objected to this project.

Mr. Hart answered they have not spoken to Belcourt at all as it is not their responsibility to go outside of their association.

Commissioner McDaniel asked about the agreement of trees to be planted. Is there something in writing to document this?

Ms. Temple answered you would have to add a condition to maintain the landscaping as depicted on the approved site plan.

Commissioner Hawkins noted that there will be a lot of wasted space with the required setback in the back. **Motion** was made to grant the appeal for the approval of Modification Permit No. 2005-103 for a 5 foot encroachment of a detached accessory structure within the required rear yard setback together with the eave encroachment of 2 feet. The landscaping as depicted on the site plan together with a reduced fireplace chimney structure to the minimum extent required by the Building Code for a gas fireplace is to be conditioned.

Mr. Sheldon noted he has agreed to the landscaping on the site plan and to maintain it to the height of the roof which is 14 feet.

Commissioner McDaniel noted he is not in support of the motion because there is plenty of room on this lot to accommodate the proposed structure as is. There is an opportunity available to the applicant without this modification.

Ayes:	Eaton, Hawkins, Cole and Henn
Noes:	Toerge, Tucker, McDaniel
Absent:	None
Abstain:	None

SUBJECT: Sober Living by the Sea
2811 Villa Way

ITEM NO. 3
PA2005-136

Request for approval of Use Permit No. 2005-031 to allow a substance abuse counseling center. The application also requests the approval of an Off-Site Parking Agreement and a Modification Permit to allow the construction and use of an off-site parking lot located at 2807 Lafayette Avenue, accommodating 12 employee parking spaces, two pair of which will be in tandem configuration. Additionally, a parking waiver of 43 spaces is requested in association with the use.

Continue to
02/09/2006

Commission Henn recused himself from this deliberating on this item.

An overview of the staff report was given by Jaimie Murillo. He noted the reason for this hearing was for a use permit, an off-site parking agreement and a waiver of the remaining 42 parking spaces based on the finding that the parking demand is less than what the Code requires because of the operational characteristics.

Commissioner Tucker noted that the matter before the Commission has to do with the type of use that it is, which affects the amount of parking that is required. Staff answered yes and an approval of a club facility and parking that is associated with that.

Commissioner Tucker noted it is an issue of a club or not a club and not based on the use that is needed within the community. Therefore, people should not give us testimony of the great works of the club, that is really not relevant.

Aaron Harp, Deputy City Attorney answered that the primary focus is on the parking and the

**CITY OF NEWPORT BEACH
PLANNING COMMISSION STAFF REPORT**Agenda Item No.2
January 19, 2006

TO: PLANNING COMMISSION

FROM: Brandon Nichols, Assistant Planner
(949) 644-3234, bnichols@city.newport-beach.ca.us

SUBJECT: Appeal of Modification Permit No. 2005-103 (PA2005-225)
14 Old Course Drive

**APPELLANT &
APPLICANT:** Stephen Sheldon, property owner

BACKGROUND

On November 14, 2005, the Zoning Administrator considered the applicant's request for a Modification Permit to allow the construction of a detached accessory building that would encroach 5 feet into a required 10-foot rear yard setback. The encroachment was requested to accommodate the construction of a 624 square foot pool house measuring 14-feet 6-inches in height with an 18-foot high chimney. The applicant also requested an additional 2-foot encroachment to accommodate the eave overhang for the structure. The site plan for the proposed development is attached as Exhibit 1.

After reviewing the applicant's request, the Zoning Administrator determined that the applicant did not provide adequate justification to support the full 5-foot rear yard encroachment, and approved a minor 1-foot encroachment for the structure and an additional 1-foot encroachment for the eave overhang. The Zoning Administrator cited the following reasons for reducing the amount of encroachment:

- The subject property is larger and deeper than adjacent lots to the north which comply with the required setbacks.
- The rear yard area of the subject property is larger than the rear yards of lots to the south.
- Adequate area exists in the rear yard to accommodate the pool house and minimize the amount of encroachment into the required rear yard setback.

Due to the large lot size and rear yard area, the Zoning Administrator determined that the pool house and rear yard amenities could be accommodated on the property without the need for the full 5-foot encroachment into the rear setback. The approval letter for the Modification Permit is attached as Exhibit 2.

Vicinity Map



Modification Permit No. MD2005-103 Appeal

Current Development:	Single Family Residence
To the north:	Single Family Residential
To the east:	Association Property and Attached Residential
To the south:	Single Family Residential
To the west:	Single Family Residential

On November 23, 2005 the appellant filed an appeal of the Zoning Administrator's decision.

DISCUSSION

Appeal

The appellant is requesting that the Planning Commission reconsider the application and approve the original encroachment request. The appellant contends that the findings required to approve the modification can be made and cites the following factors in support of the appeal:

- That the shape of the lot fits the owner's utilization and enjoyment of the lot due to practical difficulties associated with the property.
- That the proposed pool house will be compatible with the existing home and the neighboring residences.
- That the granting of the application will not be detrimental to the general welfare or injurious to the property or improvements in the neighborhood.

The full appeal letter outlines the appellant's arguments in support of the above conclusions. This letter is attached as Exhibit 3.

Section 20.95 of the Municipal Code establishes the procedures for the appeal process. Pursuant to Section 20.95.060 C, a public hearing on an appeal is conducted "de novo", meaning that it is a new hearing and the decision being appealed has no force or effect as of the date the appeal was filed. The appellate body is not bound by the decision being appealed or limited to the issues raised on appeal.

Lot Characteristics

The property is located at 14 Old Course Drive. The lot is flat and is 11,653 square feet in area. The property is somewhat irregular in shape (i.e. not rectangular) and is approximately 178 feet deep measured from the front property line to the far corner at the rear of the property. The lot is approximately 80 feet in width at the widest point and narrows to 47 feet and 6 inches at the rear property line. There is approximately 4300 square feet of rear yard area behind the existing single family dwelling (see Exhibit 4). Single family properties are located directly adjacent to the north and south of the property and an association owned lot is adjacent to the east. An aerial photo of the lot and surrounding properties is attached as Exhibit 5. The vicinity map also shows the lot and its relation to surrounding properties.

The subject property is zoned PC-24 (Aeronutronic Ford Planned Community). The Planned Community text contains the development standards for planning areas within PC-24 zone district. The required rear yard setback for detached buildings and structures is 10 feet. Accessory structures such as the pool house are subject to the same setback requirements as the main dwelling.

Analysis

Chapter 20.93 (Modification Permits) of the Newport Beach Municipal Code establishes findings required for approval of a Modification Permit. To approve a modification the following three findings must be made:

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

To make this finding, it must be shown that the property has some practical difficulty or constraint that when combined with the strict application of the 10-foot rear yard setback creates a physical hardship that is inconsistent with the purpose of the code. Setback modifications can be appropriate for exceptionally small or irregularly shaped lots that do not meet current lot standards or for lots where topography severely limits proposed development. It is staff's opinion that the lot in question does not possess these physical characteristics. As stated, the lot is flat and measures 11,653 square feet in area. Based upon data from the City's Geographic Information System the lot is larger than 90% of the lots in the planned community. The lot depth also exceeds that of the adjacent lots and is deeper than most lots in the community. Although the lot narrows at the rear of the property, it still retains approximately 4,300 square feet of rear yard area behind the existing single family residence. Due to the lot's size, depth and large rear yard area, it is staff's opinion that there is no practical difficulty associated with the property and that no physical hardship results from the application of the rear setback requirement. It is therefore staff's belief that this finding cannot be made.

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

The purpose of this finding is to ensure that the granting of the modification will not result in development that is out of character with existing development in the neighborhood. Accessory structures are common features of residential properties and are permitted under the planned community development regulations. The proposed structure will be architecturally compatible with the main dwelling and will not exceed the lot coverage requirements for the district. For these reasons it is staff's determination that this finding can be made.

3. *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 improvements in the neighborhood.*

In this case, the rear property line of the lot abuts association property. The proposed development will be screened by association landscaping planted adjacent to the rear property line and the pool house will not be visible from the adjacent street. (See Exhibit 6). Due to the structure's location at the rear of the property and its proximity to neighboring structures, it is staff's opinion that the modification will not adversely impact the surrounding neighborhood. It is therefore staff's determination that this finding can be made.

The appellant contends that the irregular shape of the lot creates a practical difficulty that limits the owner's utilization and enjoyment of the property. It is the opinion of staff, that the "practical difficulty" cited by the applicant is created by the choice of design rather than an innate characteristic of the lot. Adequate space exists to the rear of the main dwelling to accommodate the pool house, pool and related landscaping without the need for a setback encroachment. Since the proposed development is new construction within a large rear yard area, there are a number of design alternatives that could provide full utilization of the lot while maintaining the required setbacks.

After reviewing the information submitted for the appeal, staff is recommending that the appeal and modification be denied because of the inability to make the first required finding. Staff is also recommending that development on the site be subject to the code required development standards. A draft resolution for this action is attached as Exhibit 7.

Environmental Review

The project qualifies for a Categorical Exemption pursuant to Section 15303 (New Construction or Conversion of Small Structures) of the implementing guidelines of the California Environmental Quality Act.

Public Notice

Notice of this hearing was mailed to property owners within 300 feet of the property and posted at the site a minimum of 10 days in advance of this hearing consistent with the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the city website.

RECOMMENDATION

Staff recommends that the Planning Commission deny the appeal and the Modification Permit, thereby and requiring all new construction to observe the code required setbacks.

ALTERNATIVES

The Planning Commission has three readily identifiable alternatives:

1. Uphold the Zoning Administrator's previous approval, granting a one foot encroachment for the wall of the pool house and an additional 1 foot eave overhang.
2. Approve the applicant's original request allowing the pool house to encroach 5 feet into the required 10-foot rear yard setback, along with an additional 2-foot allowance to accommodate the eave overhang.
3. Modify any aspect of the approved Modification Permit.

Prepared by:

Submitted by:

Brandon Nichols, Assistant Planner

Patricia L. Temple, Planning Director

EXHIBITS

1. Proposed Plans
2. Modification Approval Letter
3. Appeal Letter
4. Backyard Area Calculation
5. Aerial Photograph
6. Property Photographs
7. Draft Resolution



MODIFICATION NO. MD2005-103
(PA2005-225)

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

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

Pursuant to Planning Commission Decision of January 19, 2006

January 19, 2006

Stephen Sheldon
14 Old Course Drive
Newport Beach, CA 92660



Application No.	Modification Permit No. MD2005-103 (PA2005-225)
Applicant	Stephen Sheldon
Site Address	14 Old Course Drive
Legal Description	Lot 44, Tract 15387

Planning Commission Action of January 19, 2006:

The Planning Commission modified the decision of the Zoning Administrator and approved a 5-foot encroachment into a 10-foot rear yard setback for a detached accessory structure. An additional 2-foot encroachment for the structure's eave overhang was also granted. This decision supersedes the approval outlined below.

Request as Modified and Approved by the Zoning Administrator on November 14, 2005:

To allow the construction of a detached accessory building that will encroach 1 foot 5-feet into the required 10-foot rear yard setback. The structure will be approximately 14-feet 6-inches tall with an 18-foot-tall chimney. Also requested in the application is a roof overhang that will extend 1 foot 2-feet beyond the face of the proposed accessory structure into the 10-foot rear yard setback. The chimney does not encroach into any side or rear yard setback. The property is located in the PC (Ford Aeronutronic Planned Community) District.

DISCUSSION

On November 23, 2005, the applicant filed an appeal to the Planning Commission of the Zoning Administrator's decision on Modification Permit No. MD2005-103. The applicant requested that the Planning Commission reconsider their original request to allow a detached accessory pool house to encroach 5 feet into the required 10-foot setback with an additional 2-foot allowance for the structure's eave overhang. The Zoning Administrator's approval granted a 1-foot encroachment for the structure and an additional 1-foot encroachment for the eave overhang.

On January 19th, 2006, the Planning Commission approved the applicant's request by a vote of 4 ayes and 3 noes. The approval granted the full 5-foot encroachment for the structure with an additional 2-foot encroachment for the eave overhang. The Planning Commission's decision was based upon the following revised findings and subject to the following conditions:

FINDINGS

1. The Land Use Element of the General Plan designates the site for "Single Family Detached" residential use, and the existing residential structure is consistent with this designation. The structure is accessory to the primary use.
2. 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 11 (Accessory Structures).
3. The modification to the Zoning Code and the Aeronutronic Ford Planned Community District Regulations would be consistent with the legislative intent of Title 20 of the Newport Beach Municipal Code. It is a logical use of the property that would be precluded by strict application of the zoning requirements for this District for the following reasons:
 - Strict application of the Zoning Code would require the structure to be setback 10 feet from the rear property line. Since the rear property line abuts open space, the proposed setback encroachment will have relatively no impact on the flow of light or air to the surrounding residential properties.
 - Mature landscaping is located on the adjacent association lot to the rear of the subject property. This landscaping will substantially screen the proposed development from view. As a condition of approval, additional landscape screening is required to be planted on the subject property. This additional landscaping will further screen the development from the adjacent residential properties to the north and south.
4. In accordance with the provisions of Chapter 20.93, the granting of this application is necessary due to practical difficulties associated with the property. The strict

application of the Zoning Code and the Aeronutronic Ford Planned Community District Regulations results in physical hardships that are inconsistent with the purpose and intent of the Zoning Code for the following reason:

- The lot is irregularly shaped and narrows at the rear. The atypical lot shape limits the usable rear yard area.
 - Since structures cannot be located within setback areas, application of the required rear yard setback further reduces the buildable area available to accommodate the proposed pool house and other back yard amenities.
5. In accordance with the provisions of Chapter 20.93, the requested modification will be compatible with existing development in the neighborhood for the following reasons:
- The homeowners' association has approved the proposed development.
 - Accessory structures are allowed by the planned community regulations.
6. In accordance with the provisions of Chapter 20.93, the granting of this Modification Permit request, as modified, will not adversely affect the health or safety of persons residing or working in the neighborhood of the property and not be detrimental to the general welfare or injurious to property or improvements in the neighborhood based on the following:
- The 14-foot 6-inch tall detached accessory structure meets the lot coverage and height requirements of the district.
 - The detached accessory structure will not encroach into the required side yard setbacks.
 - The rear yard setback encroachment will not be readily discernible from the rear of the property since the rear property line abuts association open space. Mature landscaping exists on the association property that substantially screens the development from view.
 - The project has been conditioned to provide additional landscape screening around the proposed structure to soften any visual impact that the development might have on surrounding residential properties.
7. The proposed accessory building will not affect the flow of air or light to adjoining residential properties because:
- The encroachment is located at the rear of the lot.
 - The other setbacks will be maintained.
 - There is a large open area between the subject building and the main residential structure.
8. The proposed detached accessory structure will not obstruct public views from adjacent public roadways or parks because:

- There are no public views through or across the subject property that are affected by 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 detached accessory pool house shall maintain a minimum rear yard setback of 5 feet from the rear property line, and the related roof overhang may extend an additional 2 feet into the rear setback. A minimum 3 foot clearance shall be maintained between the rear property line and any portion of the proposed structure.
- 3.
4. The proposed indoor fireplace shall be gas burning only. The chimney height shall be no greater than the minimum height required by the Uniform Building Code.
5. Landscape screening shall be required to shield the proposed development from view from the surrounding residential properties. Said landscaping shall be maintained at a height equal to the maximum roof height of the proposed pool house. A copy of the proposed landscape plan shall be included with the pool house plans submitted to the Building Department for plancheck.
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 and landscape 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 site plan and 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 copy of this approval letter shall be incorporated into the plancheck sets of plans prior to issuance of the building permits.
10. A building permit shall be obtained prior to commencement of the construction.