## 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 April 11, 2008

Item 1: Custom Design Construction on behalf of property owner Hollie Keeton – Planning Director's Use Permit No. UP2007-024 (PA2007-202) 300 Rialto Street

The Planning Director approved the applicants request to allow structural alterations throughout the building greater than 50% but less than 75% of the existing structural elements. The extent of structural remodel is approximately 54% and the demolished and reconstructed walls will comply with the setback requirements. The property is located in the R-2 District.

Approved – April 4, 2008

Council District 1

Prepared and submitted by:

Javier S. Garcia, Zoning Administrator

<u>APPEAL</u>:

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 Stoffon, Office Assistant (a mail)

Erin Steffen, Office Assistant (e-mail)

# USE PERMIT NO. UP2007-024



(PA2007-202)

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

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

Application:

Planning Director's Use Permit No. UP2007-024 (PA2007-202)

**Applicant:** 

Hollie Keeton

Address of Property Involved: 300 Rialto

Legal Description:

Lot 1 and the Southwesterly one-half of Lot 2, Block 236 of Canal Section

## Request as Modified and Approved:

To allow structural alterations throughout the building greater than 50% but less than 75% of the existing structural elements. The extent of structural remodel is approximately 54% and the demolished and reconstructed walls will comply with the setback requirements.

#### Application Request:

A use permit is required when the proposed addition to a nonconforming structure is between 50%-75% of the existing gross square footage and/or an alteration of up to 75% of the structural elements occurs within any 12 month period. The use permit may be granted by the Planning Director in accordance with the provisions of Section 20.62.040 (F) and 20.91.025 of the Newport Beach Municipal Code. The extent of structural remodel is approximately 54% and the demolished and reconstructed walls will comply with the setback requirements. The property is located in the R-2 District.

## DIRECTOR'S ACTION: APPROVED – APRIL 4, 2008

The Planning Director, in approving this application, reviewed issues such as the extent of the structural elements to be demolished in relation to the total amount of structural elements of all structures on the site and the proposed amount of addition. In consideration of those aspects, the Planning Director determined in this case that the proposal would not be detrimental to persons, property or improvements in the neighborhood and that the use permit as approved would be consistent with the legislative intent of Title 20 of the Newport Beach Municipal Code, and made the following findings:

## FINDINGS

- 1. The Land Use Element of the General Plan and Local Coastal Program Land Use Plan designate the site for "Two-Family Residential" use and the existing single family dwelling is a permitted use within this designation.
- 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 1 (Existing Facilities).
- 3. The approval of Use Permit No. **UP2007-024** will not, under the circumstances of this case, be detrimental to the health, safety, peace, morals, comfort, and general welfare of the City for the following reasons:
  - The addition and remodel will comply with all the provisions of the R-2 District regulations, with the exception of the approved modifications required because of the nonconforming status of the building with setback requirements.
  - The addition and remodel will allow for a dwelling that is similar to other structures in the neighborhood and enhance the aesthetics of the neighborhood, in furtherance of the General Plan Policies.
  - The remodel and addition provides a minimum of two enclosed parking spaces for the single-family dwelling, although substandard in width.
- 4. In accordance with the provisions of Section 20.91.035 (A) of the Newport Beach Municipal Code, the Planning Director has determined that the project as proposed complies with the required findings of that section for the following reasons:
  - The single family use is compatible with the objectives of this code and the purposes of the R-2 District regulations that allow single family and two family uses on the site.
  - The location of the single family use is consistent with the General Plan and the purpose of the district and 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.
  - The existing single family use complies with the provisions of the Zoning Code and there are no specific conditions required for the single family use in the R-2 District.
  - The single family use is a permitted use in the R-2 District and the nonconforming status of the structure does not make it subject to the provisions of Chapter 20.91 (A) of the Newport Beach Municipal Code.
- 5. In accordance with the provisions of Section 20.62.040 (F) of the Newport Beach Municipal Code, the Planning Director has determined that the project as proposed complies with the required findings of that section for the following reasons:

- The cost of the remodel and addition is minor in comparison to the value of the existing nonconforming condition because the area of nonconformity is part of the structural integrity of the existing dwelling.
- The cost of correcting the nonconforming condition would exceed the cost of making the addition, since it would require demolition and reconstruction of a substantial portion of the building adjacent to the alley.
- Retention of the nonconforming condition is necessary to maintain reasonable use of the structure because large portions of the building would have to be demolished to comply with the setbacks on the side and front of the lot.
  - The addition and remodel does not increase the structure's inconsistency with the regulations of the Zoning Code because the structure meets all other development standards of the R-2 District.

## CONDITIONS

- 1. Development shall be in substantial conformance with the approved site plan, floor plan, demolition plans and elevations.
- 2. Two (2) enclosed on-site garage spaces be provided and remain accessible for the parking of vehicles at all times.
- 3. The two-car garage shall be used for the parking of vehicles only and not for storage purposes.
- 4. 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.

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  $\frac{600.00}{0}$ .

On behalf of Planning Director David Lepo,

Zoning Administrator Javier S. Garcia, AICP

JSG/rm

- Attachments:
- Appendix
- Vicinity Map
- Zoning Administrator Approval of Modification Permit No. MD2007-073
- Site Plan and Floor Plans and Elevations (includes demolition plans)

#### <u>APPENDIX</u>

#### **Background**

The building is currently nonconforming with regard to side and front yard setbacks since portions of the building encroach; and nonconforming size/number of existing parking spaces. The existing garage is wider than a single car garage; however, the extent of the addition proposed requires that at least two-car parking be provided. The proposed changes to the building will result in a two car garage with interior width of 16 feet 9 inches at its widest point. Staff has determined that this dimension will provide a useable width to accommodate two cars. The required number of on site parking spaces will be provided for the single-family dwelling.

#### Modification Permit No. MD2007-073

The nonstructural alterations throughout the portion of the building to remain are minor room changes including change of one of the ground floor bathrooms to garage space.

Section 20.62.040 (C)(2,3) states, that "structural elements of a legal nonconforming structure may be modified or repaired subject to the following provisions:

- 2. Alteration of up to 50 percent of the structural elements within any 12 month period may be permitted upon the approval of a modification permit.
- 3. Alteration of up to 75 percent of the structural elements within any 12 month period may be permitted upon the approval of a use permit by the Planning Director, subject to the findings and provisions contained in Section 20.62.040 *(F).*"

The findings for the approval of Modification Permit No. MD2007-073 (see attached approval letter) were based on the fact that the alterations to the existing property were located on the front, side and rear of the lot and alterations to the remainder of the building throughout. The applicant has since revised the project to retain the side yard encroaching wall of the building and move the garage wall at the alley side to increase the useable width of the garage to provide for the parking of two vehicles. The remodel allowed for an upgrade to the property without demolishing the entire structure on the site.

#### Use Permit Findings

In reviewing the project, it was determined by staff, that the amount of work proposed would exceed the 50% alteration of the structural elements and requires the approval of a Use Permit by the Planning Director.

In accordance with the provisions of Section 20.91.035 (A) of the Newport Beach Municipal Code, the Planning Director shall approve or conditionally approve an application for a use permit if, on the basis of the application, plans, materials, and testimony submitted, the Planning Director finds: 1. That the proposed location of the use is in accord with the objectives of this code and the purposes of the district in which the site is located.

Comment: The single family use is compatible with the objectives of this code and the purposes of the R-2 District regulations that allow single family and two family uses on the site.

- 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.
  - Comment: The location of the single family use is consistent with the General Plan and the purpose of the district and 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.
- 3. 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.
  - Comment: The existing single family use complies with the provisions of the Zoning Code and there are no specific conditions required for the single family use in the R-2 District.
- 4. If the use is proposed within a Residential District (Chapter 20.10) or in an area where residential uses are provided for in Planned Community Districts or Specific Plan Districts, the use is consistent with the purposes specified in Chapter 20.91A and conforms to all requirements of that Chapter.
  - Comment: The single family use is a permitted use in the R-2 District and the nonconforming status of the structure does not make it subject to the provisions of Chapter 20.91A of the Newport Beach Municipal Code.

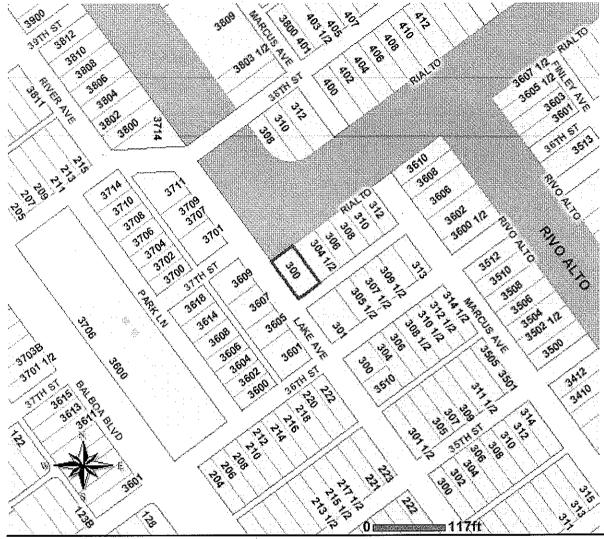
In accordance with the provisions of Section 20.62.040 (F) of the Newport Beach Municipal Code, the Planning Director shall approve or conditionally approve an application for a use permit required for the alteration of a nonconforming structure only if the following findings are made in addition to those findings specified in Chapter 20.91:

- 1. The cost of the improvements to be made is minor in comparison to the value of the existing nonconforming condition.
  - Comment: The cost of the remodel and addition is minor in comparison to the value of the existing nonconforming condition because the area of nonconformity is part of the structural integrity of the existing dwelling.

- 2. The cost of correcting the nonconforming condition would exceed the cost of the other alterations proposed.
  - Comment: The cost of correcting the nonconforming condition would exceed the cost of making the addition, since it would require demolition and reconstruction of a substantial portion of the building adjacent to the alley.
- 3. Retention of the nonconforming condition is necessary to maintain reasonable use of the structure.
  - Comment: Retention of the nonconforming condition is necessary to maintain reasonable use of the structure because large portions of the building would have to be demolished to comply with the setbacks on the side and front of the lot.
- 4. The alteration does not increase the structure's inconsistency with the regulations of the Zoning Code.

Comment: The addition and remodel does not increase the structure's inconsistency with the regulations of the Zoning Code because the structure meets all other development standards of the R-2 Zone.

# VICINITY MAP



# Planning Director's Use Permit No. UP2007-024 (PA2007-202)

# **300 Rialto Street**





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

Hollie Keeton

300 Rialto Street



(PA2007-202)

**Application No.** 

Modification Permit No. MD2007-073 (PA2007-202)

Applicant

Site Address

Legal Description

# Lot 1 and the Southwesterly one-half of Lot 2, Block 236 of Canal Section

On <u>January 14, 2008</u>, the Zoning Administrator approved the application request to permit the remodel and addition of between 25% and 50% of the existing gross square footage of an existing non-conforming single-family dwelling unit. The proposed additional gross square footage conforms to all required setbacks. The existing single-family structure is non-conforming due to a single non-standard size parking space, and the building encroaches into the required front and northeasterly side setbacks. The remodel and addition will result in the expansion of the existing garage creating a two-car garage with clear interior parking space dimensions of 16 feet 9 inches wide by 20-feet ½-inch deep. The property is located in the R-2 District. The Zoning Administrator's approval is based on the following findings and subject to the following conditions.

#### **FINDINGS**

- 1. The Land Use Element of the General Plan and the Local Coastal Program Land Use Plan designate the site for "Two-Unit Residential" use. The existing single family residential structure is consistent with this designation. The proposed addition does not change the use of the structure.
- 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 1(Existing Facilities).
- 3. The modification to the Zoning Code, as proposed, is 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:
  - The existing single family structure is nonconforming due to providing a single substandard size parking space and the structure encroaches into the required front yard and northeasterly side yard setbacks. The proposed remodel will create the minimum required two-car garage parking spaces deficient in width by 9 inches.

Chapter 20.62 of the Zoning Code permits existing legal nonconforming structures to additions that increase up to 25 percent of the existing gross floor area by right.

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 results in physical hardships that are inconsistent with the purpose and intent of the Zoning Code for the following reason:

The Zoning Code permits the addition to an existing legal nonconforming structure of up to 50 percent of the gross floor area with the approval of a Modification Permit.

- In accordance with the provisions of Chapter 20.93, the requested modification will be compatible with existing development(s) in the neighborhood for the following reasons:
  - The proposed gross square footage of the structure is less than the maximum square footage allowed by the Zoning Code for the subject property and is consistent with the surrounding neighborhood as well as similar land uses throughout the City.
  - Granting the request of a square footage addition of up to 50 percent of the gross floor area is a suggested option by the Zoning Code and is consistent with modified and conditioned approvals granted by the Zoning Administrator and the Modifications Committee within the neighborhood and throughout the City.
  - In accordance with the provisions of Chapter 20.93, the granting of this Modification Permit 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 minimum open space requirement of 5,040 cubic feet will be provided within the buildable area of the property.
    - The addition of 1,139 square feet creates a single family residence with a total gross floor area within the maximum limits allowed by the Zoning Code for the subject property.

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

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- 3. 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.
- 4. 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.
- 5. The proposed addition and related work shall comply with the California Building Code and all adopted local amendments.
- 6. The additional square footage shall not exceed a 50 percent increase of the existing gross square footage and shall maintain all required setbacks excluding the proposed second floor deck and terrace which will encroach a maximum 8 inches into the front year setback.
- 7. The proposed addition causes exterior structural member alterations that are greater than 50 percent but less 75 percent. Therefore, a Planning Directors Use Permit shall be obtained to allow the exterior structural member alterations to be greater than 50 percent but less than 75 percent, prior to issuance of building permits.
- 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 <u>11-inches by 17-inches</u>. 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. Coastal Commission approval shall be obtained prior to issuance of the building permits and a copy of the approval letter from Coastal Commission shall be incorporated into the Building Department and field sets of plans.
- 10. The building permits obtained shall provide for the removal of an interior wall on the first floor between bedroom three extension and living room extension that was done prior to this application without a permit. The wall is shown and labeled on the existing first floor plan.

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

12. 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.

> January 14, 2008 F:\Users\PLN\Shared\PA's\PAs - 2007\PA2007-202\MD2007-073 appr.doc Page 3

- 13. 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.
- 14. There are private encroachments in a triangular piece of land surrounded by Lake Avenue, the Rialto Canal and the property that is owned by the City in front of the property. An encroachment agreement/permit will need to be obtained for these private encroachments in this triangular piece of land.
- 15. This approval shall expire unless exercised within 24 months from the approval date, as specified in Section 20.93.050 (A) of the Newport Beach Municipal Code. Prior to the expiration date of this approval, an extension may be approved in accordance with Section 20.93.050 (B) of the Newport Beach Municipal Code. Requests for an extension must be in writing.

#### APPEAL PERIOD

The Zoning Administrator's decision may be appealed to the Planning Commission within 14 days of the action date. A \$600.00 filing fee shall accompany any appeal filed. No building permits may be issued until the appeal period has expired. <u>A copy of the approval letter shall be incorporated into the Building Department set of plans prior to issuance of the building permits or issuance of revised plans.</u>

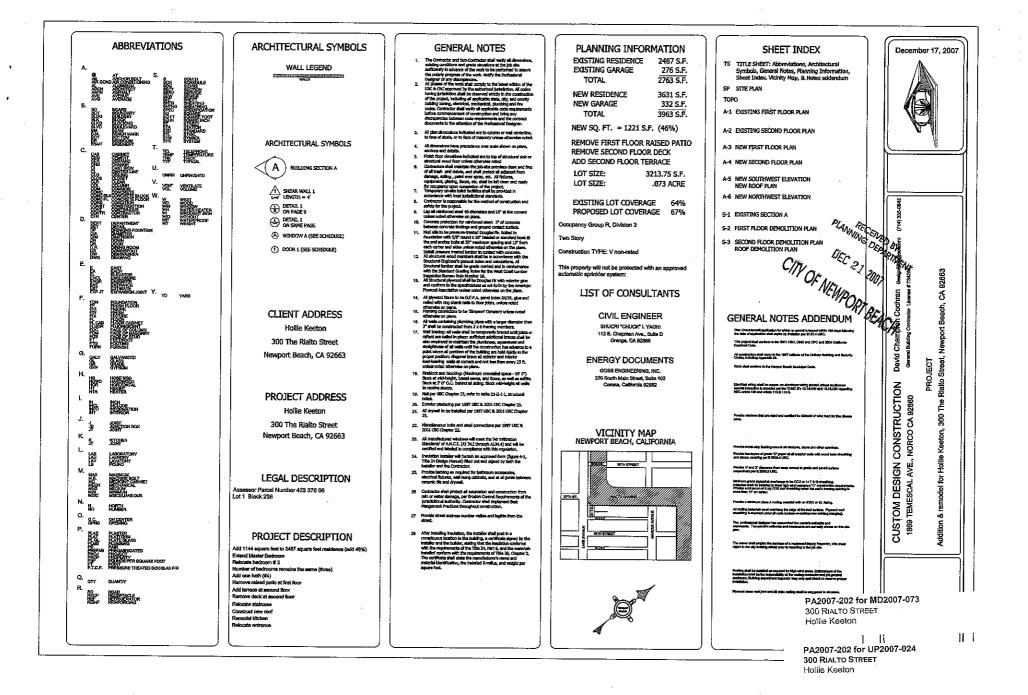
By: Zoning Administrator Javier S. Garcia, AICP

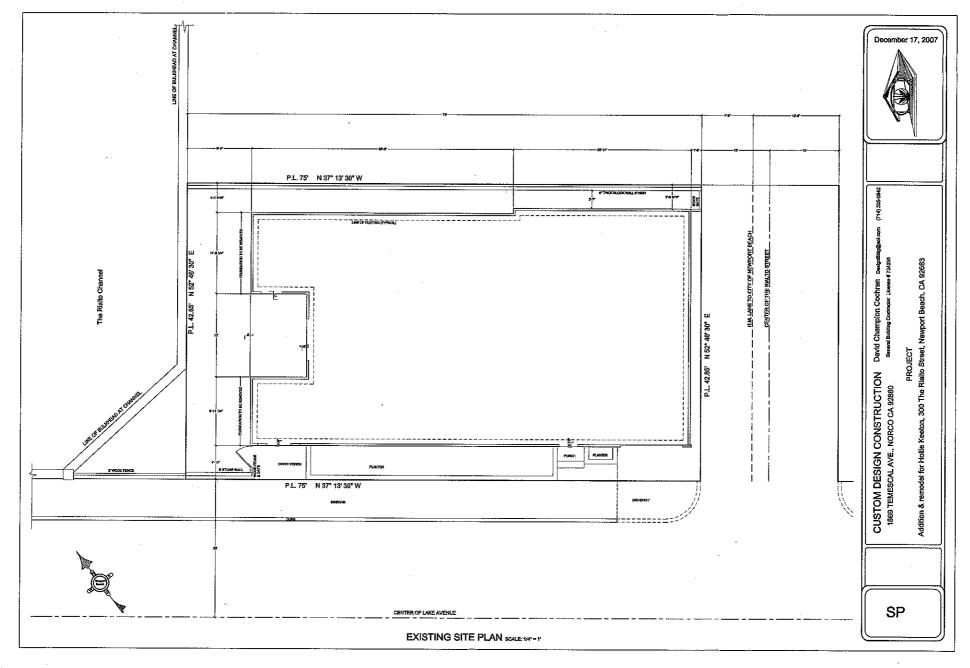
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Attachments: Vicinity Map

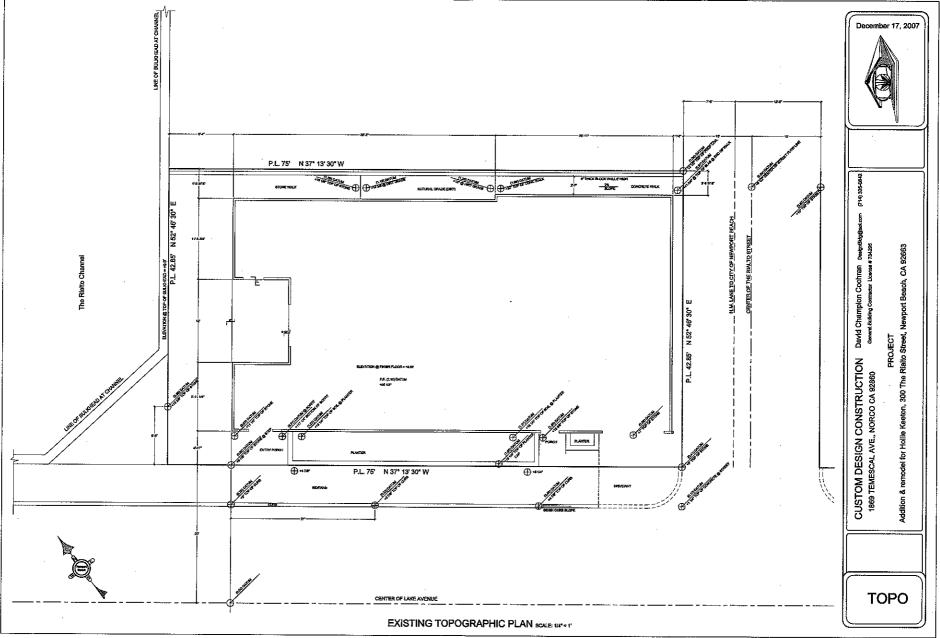
Appeared in Opposition: None

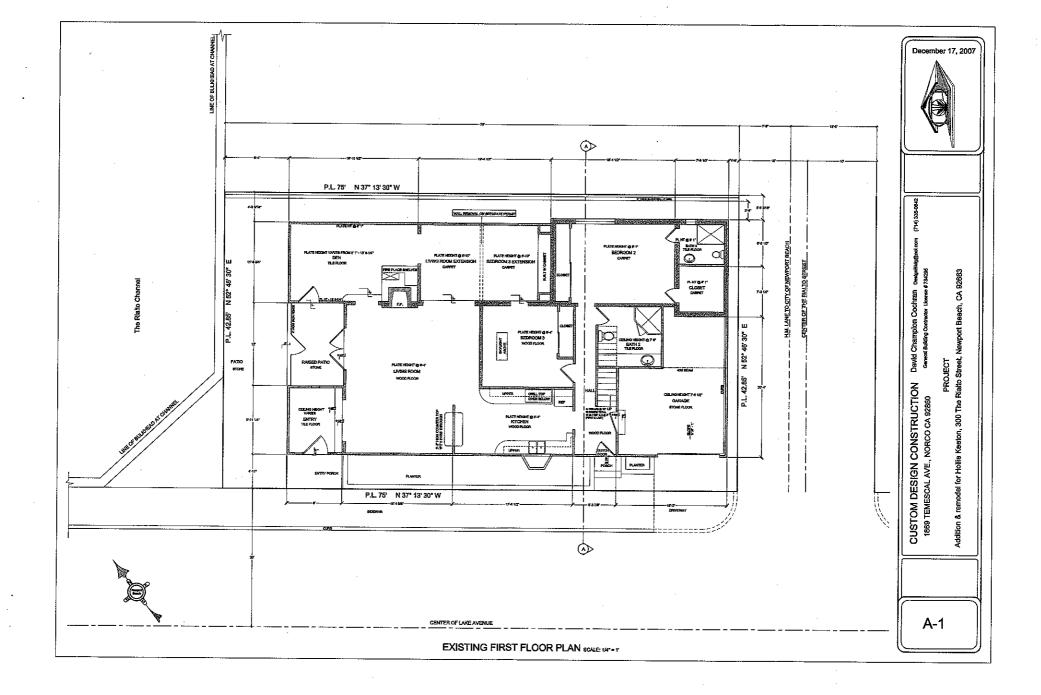
Appeared in Support: None

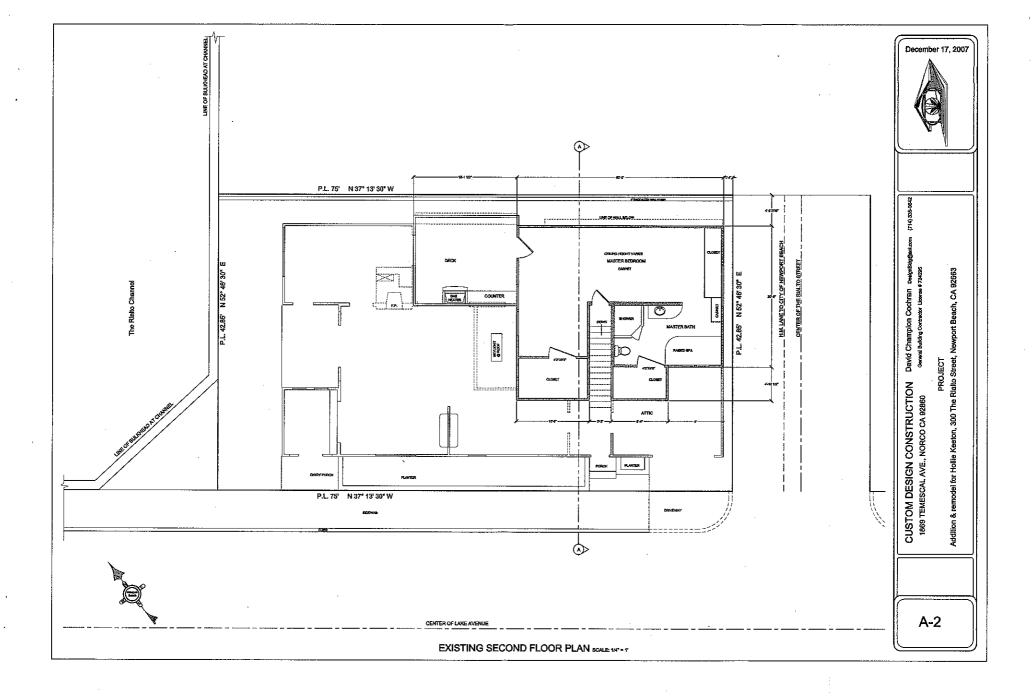


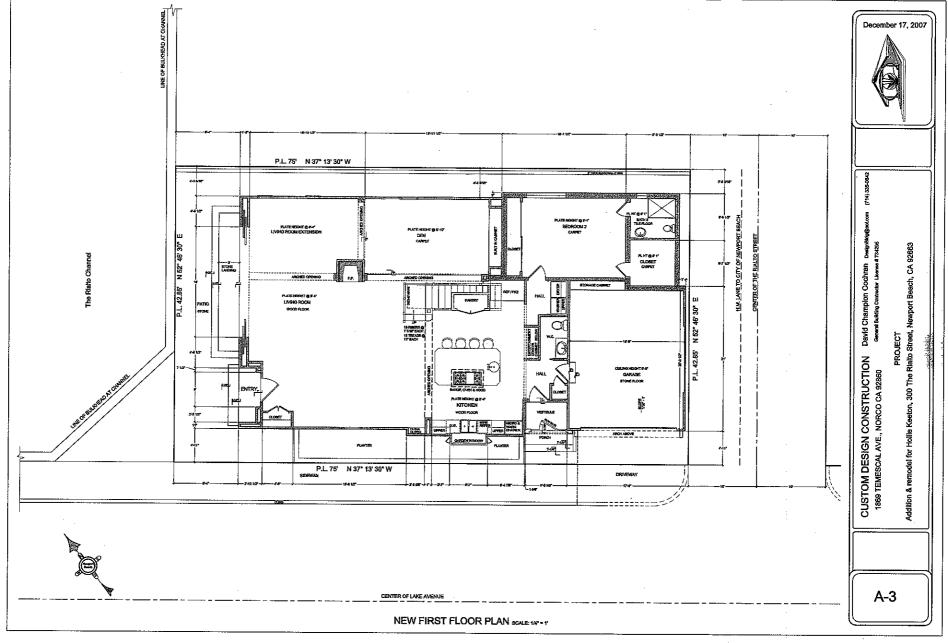


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