

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

TO: CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION  
FROM: David Lepo, Planning Director  
SUBJECT: Report of actions taken by the Zoning Administrator, Planning Director and/or Planning Department staff for the week ending April 17, 2009

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**ACTIONS TAKEN AT ZONING ADMINISTRATOR HEARING ON APRIL 16, 2009**

Item 1: Modification Permit No. MD2009-006 (PA2009-027)  
6607 Seashore Drive

The Zoning Administrator approved the applicant's request for a modification permit to allow 38 percent structural alterations to an existing, nonconforming single-family residence that encroaches a maximum of 2 feet 6 inches into the required 5-foot rear alley setback. The structure provides only one required parking space where the Zoning Code requires two spaces.

Approved – April 16, 2009

Council District 2

**ACTIONS TAKEN BY THE PLANNING DIRECTOR OR PLANNING DEPARTMENT STAFF**

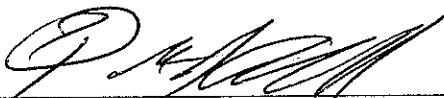
Item 2: Tutti Frutti Frozen Yougurt - Planning Director's Use Permit No. UP2009-006 (PA2009-021)  
2233 West Balboa Boulevard, Suite 101

The Planning Director approved the applicant's request to allow a self-serve yogurt shop (eating and drinking establishment Take-Out Service, Limited) within a retail commercial space. The proposed hours of operation are 10 a.m. to 10 p.m., daily, with up to two employees and no patron seating or stand-up counter space. The tenant space is approximately 630 square feet.

Approved – April 14, 2009

Council District 1

On behalf of David Lepo, Planning Director:



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Patrick Alford, Planning Manager

**APPEAL:**

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 \$1,810.00 filing fee shall accompany any appeal filed. No building permits may be issued until the appeal period has expired.

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



## MODIFICATION ACTION LETTER

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

<b>Application No.</b>	<b>Modification No. MD2009-006 (PA2009-027)</b>
<b>Applicant</b>	<b>Rod Jeheber</b>
<b>Site Address</b>	<b>6607 Seashore Drive</b>
<b>Legal Description</b>	<b>Lot 7, Block F, Tract 709</b>

On April 16, 2009, the Zoning Administrator approved a modification permit to allow 38 percent structural alterations to an existing, nonconforming single-family residence that encroaches a maximum of 2 feet 6 inches into the required 5-foot rear alley setback. The structure provides only one required parking space where the Zoning Code requires two spaces. 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.

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### FINDINGS

1. The Land Use Element of the General Plan designates the site for "Two-Unit Residential" use. The proposed residential structure is consistent with 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 5 (Minor Alterations in Land Use Limitations). The project consists of minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density, including but not limited to minor lot line adjustments, side yard, and setback variances not resulting in the creation of any new parcel.
3. 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 reasons:
  - The placement of the existing single-family residence on the subject property presents a practical difficulty as the cost of redesigning and relocating the existing single-family residence would be disproportionate to the costs of the proposed interior improvements.

- The proposed alterations do not add additional square footage or bedrooms to the existing structure and therefore does not increase the nonconformity of the building.
4. 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 reason:
    - The deviation from the Zoning Code requested by this application is reasonable due to the characteristics of the surrounding properties which have similar nonconforming structures. Many of the dwelling units in this area were constructed at a time when a 10-foot rear setback was permitted from the centerline of the alley.
    - The adjacent nonconforming property to the northwest encroaches 1 foot into the required 5-foot rear alley setback at the first and second floor.
  5. 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 orientation of the existing structure provides adequate access through the alley. The modification permit request has been reviewed by Public Works and the approval has been conditioned so that the remainder of the alley setback shall be free of all above ground improvements.
    - The alterations proposed by the applicant do not increase the encroachment into the rear alley setback. The property owner has worked to improve the aesthetic quality of the alley consistent with General Plan Land Use Policy 5.2.3 by removing a block wall that previously encroached 5 feet into the rear alley setback.

### **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.
3. 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.
4. 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.

5. A building permit shall be obtained prior to commencement of the construction. The project shall comply with the 2007 California Building Code.
6. The remaining portion of the alley setback shall be free of all above ground improvements.
7. 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.
8. 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.
9. 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.
10. This approval shall expire unless exercised within 24 months from the approval date, as specified in Section 20.93.050 (A) of the Newport Beach Municipal Code. Prior to the expiration date of this approval, an extension may be approved in accordance with Section 20.93.050 (B) of the Newport Beach Municipal Code. Requests for an extension must be in writing.

### **APPEAL PERIOD**

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

By:   
James W. Campbell, Zoning Administrator

JWC/mn

Attachments: Vicinity Map

Appeared in Opposition: None

Appeared in Support: None

# VICINITY MAP



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Modification Permit No. MD2009-006  
PA2009-027

**6607 Seashore Drive**



## USE PERMIT ACTION LETTER

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

Staff Person: Melinda Whelan  
Appeal Period: 14 days after approval date

**Application:** Use Permit No. UP2009-006 (PA2009-021)

**Applicant:** Tom Le

**Site Address:** 2333 W. Balboa Boulevard, Suite 101

**Legal Description:** Newport Beach City Lot 9 BLK 22 AND Lots 10-15  
Incall In BLK 22

**ACTION:** APPROVED AS REQUESTED – APRIL 14, 2009

Allow a self-serve yogurt shop (eating and drinking establishment Take-Out Service, Limited) within a retail commercial space. The proposed hours of operation are 10 a.m. to 10 p.m., daily, with up to two employees and no patron seating or stand-up counter space. The tenant space is approximately 630 square feet. The property is located in the SP-6 (Cannery Village/McFadden Square Specific Plan) RSC (Retail Service Commercial) District. The approval of this eating and drinking establishment is based upon the following findings and subject to the following conditions:

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### FINDINGS

1. The use will not contribute to a disproportionate number of take-out establishments in the area nor contribute to a land use mix that is inconsistent with the specific purposes of the zoning district in which it is proposed.

Facts in support of finding:

- The subject tenant space is within an existing retail/commercial building with two residential units on the second floor in the SP-6 (Cannery Village/McFadden Square Specific Plan) RSC (Retail Service Commercial) District.
- The building was recently remodeled to maintain the uses of two residential units on the second floor and commercial/retail uses below. The residential units have the required parking while the commercial/retail spaces were approved uses with fewer than the required parking spaces due to updating the parking lot configuration for ADA Building Department requirements and locating a required transformer within the parking lot. The California Coastal Commission and the City approved the aforementioned existing parking subject to the following: future use of the retail/commercial tenant space

shall not increase the parking demand to greater than the demand for a general retail commercial use (1 parking space per 250 square feet).

- The Take-Out Service, Limited, food classification is a permitted use upon the approval of a use permit within the SP-6 RSC Zoning District and is the only food service use that is recognized by the Zoning Code as generating the same parking demand as a general retail commercial use.
  - There are ten remaining vacant commercial/retail spaces on-site. Future uses of the remaining vacant spaces are subject to separate review and permits and any future Take-Out Service, Limited, food services would be subject to discretionary review including verification that there are not disproportionate numbers in the area.
  - There are no existing Take-Out Service, Limited, food service establishments within the subject property's block. Within the area bordered by West Ocean Front, McFadden Place and 22<sup>nd</sup> Street, there are approximately five Take-Out Service and several Full-Service food establishments intermixed with retail/commercial and residential uses. Staff does not anticipate the implementation of the subject Take-Out Service, Limited, establishment to trigger an excessive concentration of these uses. The area sustains a high tourist impact which actually embodies these pedestrian-oriented, quick-serve establishments as a component in maintaining the visitor-serving tourist atmosphere, which is also included in the intentions of SP-6.
  - The intent of the SP-6 RSC Zoning District, specifically the McFadden Square area, is to allow for uses that serve visitors and promote pedestrian activity. The walk-thru, self-serve yogurt store will offer a service to beach visitors and pedestrians who frequent the McFadden Square beach area.
2. That the site and structure are of sufficient size and design to accommodate the use and will not cause customer service queues, storage areas, or waste to encroach onto adjacent properties or public rights-of-way.

Facts in support of finding:

- The proposed operational characteristics of the walk-thru, self-service use with no seating or stand-up counter space allow the tenant to accommodate the proposed use and its customer services.
- The customer service area does not exceed the maximum 100 square feet permitted to qualify as a Take-Out Service, Limited, classification provided by the Zoning Code and maintains additional areas for a Building Department-required interior ramp with landing and a public restroom.

- Trash receptacles will be conveniently located within the space for patron use.
3. That a condition of approval of the use permit includes a practical program for controlling litter, spills, and stains resulting from the use on the site and adjacent areas.

Facts in support of finding:

- The operator of the food service use, as a condition of this approval, is required to maintain a practical program for monitoring and implementing the clean-up of the site and adjacent areas that shall be practiced on a regular basis.
  - There are additional conditions that ensure trash receptacle and dumpster maintenance.
4. 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.

Facts in support of finding:

- The current zoning classification of SP-6 RSC permits Take-Out Service, Limited, eating and drinking establishments upon the approval of a Planning Director's Use Permit.
- The intent of the SP-6 RSC zoning district, specifically the McFadden Square area, is to allow for uses that serve visitors and promote pedestrian activity. The walk-thru, self-serve yogurt store would promote pedestrian activity serving the commercial and residential uses in the area and is not a destination point since there is no seating on-site.
- Due to the location and method of operation (take-out only) of the facility, it is anticipated that the proposed use will have the parking demand characteristics similar to or less than a general retail commercial use. In accordance with the provisions of Chapter 20.66 of the Municipal Code, parking for a Take-Out, Service, Limited, food use is the same as a general retail commercial use. The limited menu and restriction on seating makes the proposed use unlikely to cause adverse impacts to traffic or the parking demand of the surrounding commercial uses.
- Staff believes that the proposed use will not increase the morning peak parking demand of the building since the peak demand is more of a regular food use with peaks at lunch and dinner time. Based on the recommended

April 14, 2009

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Page 3 of 9



restrictions (no seating or stand-up counter space) and the parking characteristics of the use, adequate parking is provided on-site to serve all uses in the building. There is also on-street municipal parking immediately adjacent to the property and in the vicinity.

5. 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, 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 property is designated for "Mixed-Use Water Related" (MU-W2) by the Land Use Element of the General Plan. The proposed use is consistent with that designation as it is a visitor-serving commercial use, which is described as a permitted use under the MU-W2 designation.
  - The parking demand should be similar to a general retail commercial use and can be accommodated by the existing six spaces on-site, by the proximity of the on-street municipal parking spaces, by the proximity of off-site beach municipal parking lot spaces, all of which can provide adequate parking opportunities so the parking demand is not anticipated to adversely impact the parking needs of the other uses in the area.
  - There is no seating for on-site dining so the 100-square-foot of interior net public area will accommodate the proposed customer-waiting needs and is consistent with the intent of the net public area limitations that apply to the Take-Out Service, Limited, food use.
  - The facility will provide a restroom for patrons.
6. 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.

Fact in support of finding:

- The proposed use will comply with the development standards for the SP-6 RSC District. The proposed conditions of approval ensure that all conflicts with surrounding land uses are minimized to the greatest extent possible or eliminated.

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

Fact in support of finding:

- This project has been reviewed, and it has been determined that it is categorically exempt from the requirements of CEQA under Class 3 (New Construction or Conversion of Small Structures) because it is the conversion of an existing space from one use to another with only minor interior alterations.

### **CONDITIONS**

1. Development shall be in substantial conformance with the approved site plan and floor plan, dated March 9, 2009, except as noted in the following conditions.
2. Seating and/or stand-up counter space shall not be permitted inside or outside the subject eating and drinking establishment. 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 exclusive patron seating or stand-up counter space located outside of the facility on the subject property or on public property (including sidewalks, streets and/or park property) is prohibited.
3. The "net public area" shall be limited to a maximum of 100 square feet as depicted on the approved set of plans dated March 9, 2009, and shall be exclusive of the Building Department required interior ramp with landing.
4. The hours of operation shall be limited to the hours between 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 and may be subject to approval of the Planning Commission.
5. The area outside of the food establishment, including the public sidewalks or walkways or common walkways, shall be maintained in a clean and orderly manner.
6. 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.
7. Employees shall park on-site or in the nearby municipal parking areas at all times and not on the residential streets in the vicinity.
8. Storage outside the building in the front or at the rear of the property shall be prohibited.

April 14, 2009

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Page 5 of 9

9. 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.
10. The area outside of the food establishment, including the public sidewalks or walkways or common walkways, shall be maintained in a clean and orderly manner. The operator of the food service establishment shall be responsible for the clean-up of all on-site and off-site trash, garbage, and litter generated by the use as outlined in the practical program for the monitoring and implementation of clean-up included in this application as conditioned as follows:
  - The proprietor shall direct his employees to actively monitor and police the public sidewalk and street immediately adjacent to the subject food use facility in addition to the nearby parking lot for any trash or litter.
  - All trash or litter generated by the subject establishment shall be picked up on a regular basis and during the summer months may require hourly policing of the area outside of the building.
11. 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 (double bagged, if necessary) to control odors prior to placement in the trash dumpster.
12. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m., unless otherwise approved by the Planning Director in conjunction with an established delivery schedule.
13. All trash shall be stored within the building or within the dumpster 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 dumpster shall have a top, which shall remain closed at all times, except when being loaded or while being collected by the refuse collection agency.
14. No outside paging or sound system shall be utilized in conjunction with this food service establishment.
15. No on-sale alcoholic beverage service shall be permitted on the premises.
16. No live entertainment or dancing shall be permitted in conjunction with the permitted use.

17. 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.
18. The kitchen exhaust fan and hood system, if later installed, shall include a charcoal filtering system for the control of odors and for the capture/removal of grease. The system shall be installed in accordance with the Uniform Mechanical Code approved by the Building Department and the Planning Director (manufacturer's specifications shall be submitted for Planning Director's approval prior to issuance of the building permit) and shall be maintained in good working order. The applicant shall maintain a record of the maintenance of the exhaust fan and hood vent systems, which may be requested by the Planning Department at any time to verify compliance with this condition. Should complaints arise with regard to odors emanating from the kitchen exhaust fan and hood vent system, then at the Planning Director's discretion, the applicant shall be required to provide for monthly cleaning and maintenance of the hood vents, ducts, and filters to remedy the problem.
19. 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.
20. 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.
21. A grease collection device is required and shall be approved by the Building Department.
22. The project shall obtain Health Department approval prior to obtaining building permits.
23. The project shall comply with the 2007 California Building Code and tenant improvement plans shall be submitted to the Building Department as a part of the plan check review process to obtain all appropriate permits.
24. A copy of this approval letter including the findings and conditions shall be blue lined onto the approved sets of plans.

April 14, 2009

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Page 7 of 9

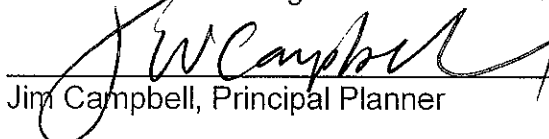
## **STANDARD CITY REQUIREMENTS**

1. 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 or subsequently approved for the subject property and require separate review and permits.
2. The facility shall be designed to meet exiting and fire protection requirements as specified by the Uniform Building Code and shall be subject to review and approval by the Building Department.
3. 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.
4. The project shall comply with State Disabled Access requirements.
5. 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 food establishment.
6. This approval shall expire unless exercised within 24 months from the end of the appeal period, in accordance with Section 20.91.050 of the Newport Beach Municipal Code.

## **APPEAL PERIOD**

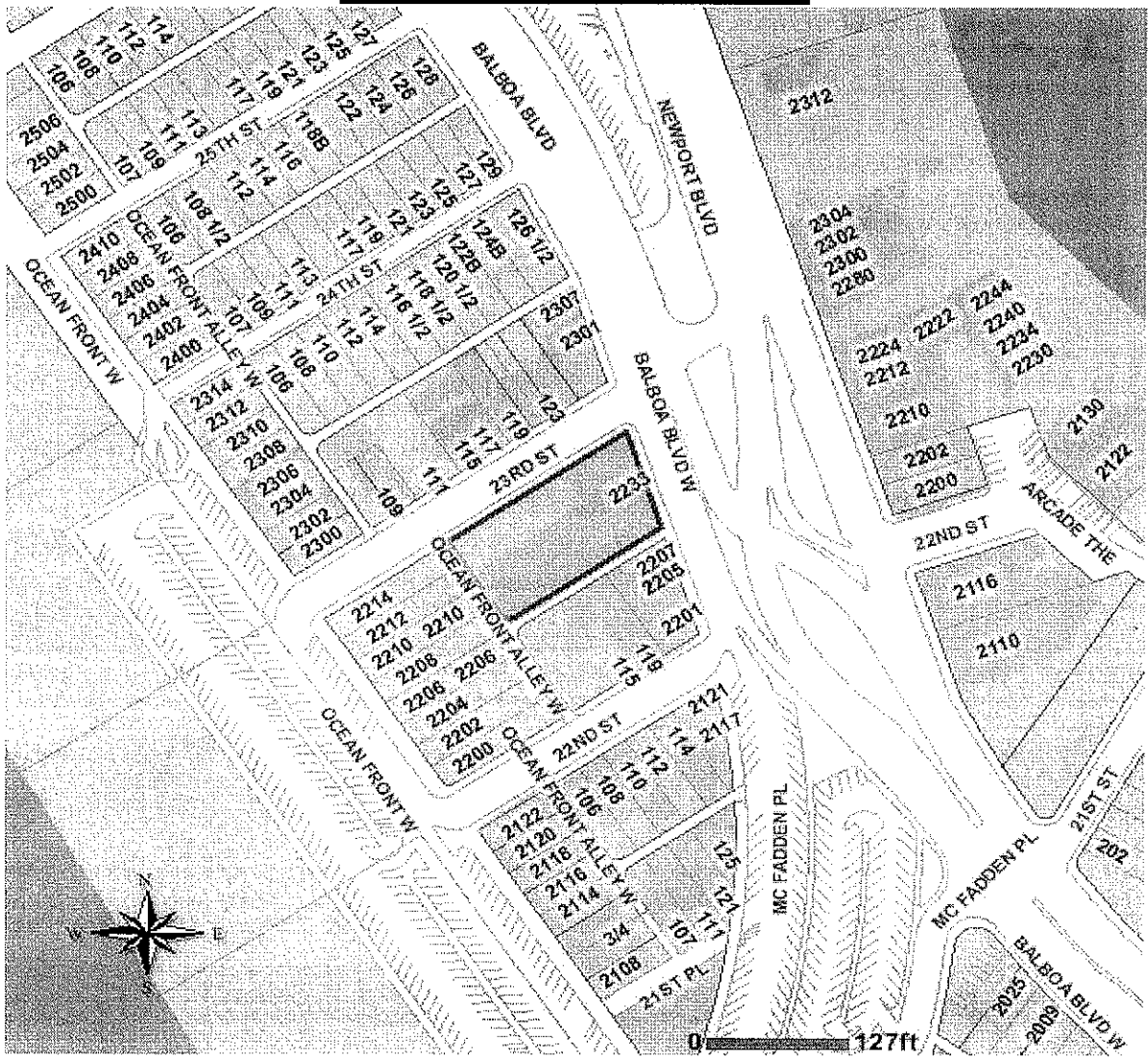
The decision of the Planning Director may be appealed by the applicant or any interested party to the Planning Commission within 14 days of the decision date. Any appeal filed shall be accompanied by a filing fee of \$1,810.00.

*On behalf of Planning Director David Lepo,*

  
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Jim Campbell, Principal Planner

Attachments: Vicinity Map  
Site Plan/Parking Plan and Floor Plan

# VICINITY MAP



Planning Director's Use Permit UP2009-006  
Project No. PA2009-021

*2233 West Balboa Boulevard*



