

**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 May 15, 2009.

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**ACTIONS TAKEN AT MAY 14, 2009 ZONING ADMINISTRATOR HEARING**

- Item 1: Lot Line Adjustment No. LA2009-002 (PA2009-041)  
201 and 203 North Bay Front
- A lot line adjustment for a lot merger to combine two existing parcels by removing the shared interior lot line. Also included in the application was a request to waive the requirement to file a parcel map.
- This item was approved. Council District 5
- Item 2: Parcel Map No. NP2009-001 (PA2009-049)  
613 & 613½ Larkspur Avenue
- A Parcel Map for condominium purposes for a new, two-unit residential development. No waivers of Title 19 (Subdivision Code) development standards are proposed with this application.
- This item was approved. Council District 6
- Item 3: Modification Permit No. MD2009-010 (PA2009-045)  
2723 Ocean Boulevard
- A modification permit to allow the retention of a garage addition, constructed without an approved building permit, which encroaches 4 feet into the required 4-foot side yard setback and 10 feet into the required 10-foot front yard setback. A modification permit is also required to allow the proposed garage space to maintain a parking space depth of approximately 17 feet 4 inches where the Code requires a clear depth of 19 feet.
- This item was continued to the 05/28/09 Zoning Administrator Hearing. Council District 6
- Item 4: Modification Permit No. MD2009-008 (PA2009-038)  
1100 East Balboa Boulevard
- A modification permit application to allow a 1,358-square-foot addition to an existing single-unit dwelling that encroaches into the required side and rear yard setbacks. The existing encroachments were approved by Modification Permit No. 4823 in 1998. The proposed addition will comply with all current Zoning Code requirements.
- This item was approved. Council District 1

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

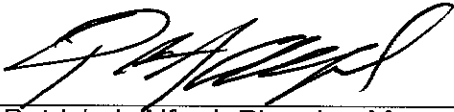
Item 4: Radim Konecny on behalf of Too Sweet – Use Permit No. UP2009-017 (PA2009-060)  
302 B Marine Avenue

The Planning Director approved the following: A use permit application for a take-out service, limited confectionery offering an assortment of desserts and candy. The suite will be internally connected to the adjacent suite, which is an existing food use with an approved use permit. The suites will share kitchen and storage facilities.

Approved – May 14, 2009

Council District 5

On behalf of David Lepo, Planning Director: -



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Patrick J. 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*)



## LOT LINE ADJUSTMENT ACTION LETTER

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

**Application No.** Lot Line Adjustment LA2009-002 (PA2009-041)

**Applicant** Barry and Karen Meguiar

**Site Address** 201 and 203 North Bay Front

**Legal Description** Lots 1 and 2, Block 4, Balboa Island Resubdivision  
Section 1

On May 14, 2009, the Zoning Administrator approved the following: A lot line adjustment for a lot merger to combine two existing parcels by removing the shared interior lot line. Also included in the application was a request to waive the requirement to file a parcel map. The property is located in the R-1.5 (Restricted Two-Family Residential) District. In accordance with Section 19.68.060 D., voluntary mergers of contiguous lots, under the same ownership, may be initiated by the lot owner. In cases where no more than one parcel is eliminated, the Zoning Administrator may approve a waiver of the parcel map requirement and use a lot line adjustment to combine the lots. The Zoning Administrator's approval is based on the following findings and subject to the following procedural requirements and condition:

### FINDINGS

1. The Land Use Element of the General Plan designates the site as Two-Unit Residential (RT). The Coastal Land Use Plan designates this site as High Density Residential (RH-A), which is intended to provide primarily for multi-unit residential development with density ranges from 20.1 to 30 units per gross acre. The existing development on each lot is consistent with the General Plan and the Coastal Land Use Plan designations.
2. This project qualifies for an exemption from environmental review pursuant to Section 15305 (Class 5 Minor Alterations in Land Use Limitations) of the Implementing Guidelines of the California Environmental Quality Act (CEQA), which consists of minor alterations in land use limitations in areas with an average slope of less than 20 percent, which do not result in any changes in land use or density, including minor lot line adjustments not resulting in the creation of any new parcel.
3. In accordance with Chapter 19.68 (Merger of Contiguous Lots) of the Municipal Code, the Planning Director has deemed the lot line adjustment application as appropriate to combine the two lots into a single parcel based on the following:
  - The lots to be merged have the same owner.

- Neither the merged lot now adjoining parcel will be deprived of legal access as a result of the merger as vehicular access to and from the adjacent street and alley will remain unchanged.
  - In order for the proposed parcel to conform to the General Plan and Zoning Code regulations, one or two of the existing dwelling units will be demolished so that the new parcel will contain two or fewer dwelling units, and the structures will conform to the required distance between detached structures.
4. The merger of continuous lots, under the circumstances of the particular case, will not be detrimental to the health, safety, peace, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the City, and further that the proposed lot line adjustment is consistent with the legislative intent of Title 19 (Subdivision Code) of the Newport Beach Municipal Code for the following reasons:
- The future development on the proposed parcel will comply with the Zoning Code development standards.
  - The lot merger will bring the proposed parcel into compliance with the Zoning Code minimum lot width and lot area standards.
  - The proposed merger will not cause future development to impact public views of the channel as no view presently exists behind the existing structure.
  - The project site described in the proposal consists of legal building sites.
  - The lot merger to combine two existing legal lots by removing the interior lot line between them, and will not result in the creation of additional parcels.
  - The project is in an area with an average slope less than 20 percent and no changes in use or density will occur as a result of the merger.
5. Based on the information of this particular case, the Zoning Administrator waives the requirement of a parcel map pursuant to Section 19.08.030 of the Municipal Code.
- The proposed lot line adjustment combines the properties into a single parcel of land and does not result in the elimination of more than one lot.
  - The proposed division of land complies with requirements as to area, improvement and design, flood water drainage control, appropriate improved public roads, sanitary disposal facilities, water supply availability, environmental protection and other applicable requirements of this Subdivision Code, the Zoning Code and the General Plan.

## PROCEDURAL REQUIREMENTS

1. All applicable Public Works Department plan check fees shall be paid prior to review of the lot line adjustment and grant deeds.
2. Prior to recordation of the lot line adjustment, grant deeds indicating the changes in titles of ownership should be submitted to the Public Works Department for review and approval.
3. The lot line adjustment and grant deeds reviewed and approved by the Public Works Department should be filed concurrently with the County Recorder and County Assessor's Offices.
4. In conformance with the California Coastal Act, Coastal Commission approval shall be obtained prior to the recordation of the lot line adjustment.
5. Prior to final of the building permit for any new construction proposing development over the existing lot line separating the two lots, the Planning Department shall verify Coastal Commission approval of the lot line adjustment and recordation of the lot line adjustment documents with the County Recorder.
6. This approval shall expire unless exercised within 24 months from the date of approval as specified in Section 20.93.050 of the Newport Beach Municipal Code, unless otherwise approved by the Planning Department.

## CONDITION

1. Prior to recordation of the lot line adjustment, the development of the parcels combined shall conform to current zoning regulations pertaining to the number of dwelling units and the distance between detached structures. The proposed parcel shall have two or fewer dwelling units. One structure shall be modified or demolished to achieve the required separation between structures and density.

## 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:   
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Zoning Administrator James Campbell

JC:fn/rm

Attachments: Vicinity Map

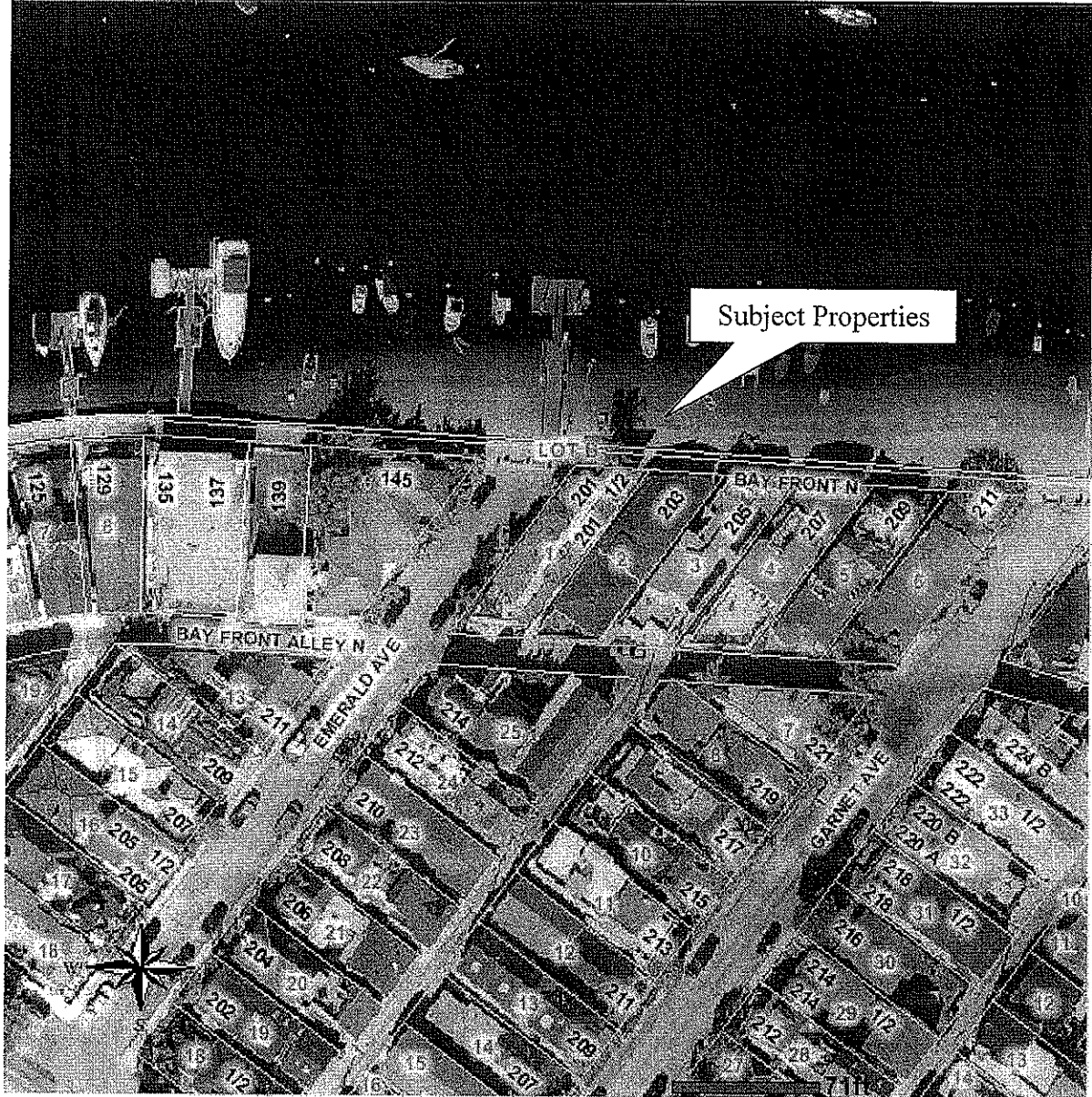
Appeared in Opposition: None

Appeared in Support: None

# VICINITY MAP

Lot Line Adjustment No. LA2009-002

PA2009-041



## 201 and 203 North Bay Front

May 14, 2009

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## PARCEL MAP ACTION LETTER

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

**Application No.** Parcel Map No. NP2009-001 (PA2009-049)  
Tentative Parcel Map No. 2008-164

**Applicant** Lance Boggs

**Site Address** 613 & 613½ Larkspur Avenue

On May 14, 2009, the Zoning Administrator approved the following: A Parcel Map for condominium purposes for a new, two-unit residential development. No waivers of Title 19 (Subdivision Code) development standards are proposed with this application. The property is located in the R-2 (Two-Family Residential) District. The Zoning Administrator's approval is based on the following findings and subject to the following conditions.

### Findings and Facts in Support of Findings

The Zoning Administrator determined in this case that the proposed Parcel Map is consistent with the legislative intent of Title 20 of the Newport Beach Municipal Code and is approved based on the following findings per Section 19.12.070 of Title 19:

1. **Finding:** That the proposed map and the design or improvements of the subdivision are consistent with the General Plan and any applicable specific plan, and with applicable provisions of the Subdivision Map Act and this Subdivision Code.

#### **Facts in Support of Finding:**

- The proposed Parcel Map is for two-unit condominium purposes. An existing duplex was demolished and is being replaced with a new duplex. The residential density on the site will remain the same. The proposed subdivision and improvements are consistent with the density of the R-2 Zoning District and the current General Plan Land Use Designation "Two Unit Residential"
2. **Finding:** That the site is physically suitable for the type and density of development.

#### **Facts in Support of Finding:**

- The lot is regular in shape, has a slope of less than 20 percent, and is suitable for development.

3. **Finding:** That the design of the subdivision or the proposed improvements will not cause substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat. However, notwithstanding the foregoing, the decision-making body may nevertheless approve such a subdivision if an environmental impact report was prepared for the project and a finding was made pursuant to Section 21081 of the California Environmental Quality Act that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.

**Facts in Support of Finding:**

- 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 alteration in land use limitations in areas with an average slope of less than 20 percent which do not result in any changes in land use or density and do not result in the creation of a new parcel.

4. **Finding:** That the design of the subdivision or the type of improvements is not likely to cause serious public health problems.

**Facts in Support of Finding:**

- The proposed Parcel Map is for residential condominium purposes. All construction for the project will comply with all Building, Public Works, and Fire Codes, which are place to prevent serious public health problems.

5. **Finding:** That the design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the decision-making body may approve a map if it finds that alternate easements, for access or for use, will be provided and that these easements will be substantially equivalent to easements previously acquired by the public. This finding shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to the City Council to determine that the public at large has acquired easements for access through or use of property within a subdivision.

**Facts in Support of Finding:**

- The design of the development will not conflict with any easements acquired by the public at large for access through or use of property within the proposed development as there are no public easements that are located on the property.



6. **Finding:** That, subject to the detailed provisions of Section 66474.4 of the Subdivision Map Act, if the land is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 (Williamson Act), the resulting parcels following a subdivision of the land would not be too small to sustain their agricultural use or the subdivision will result in residential development incidental to the commercial agricultural use of the land.

**Facts in Support of Finding:**

- This site developed for residential use in a residentially zoned area.
- The property is not subject to the Williamson Act since the subject property is not considered an agricultural preserve and is less than 100 acres.

7. **Finding:** That, in the case of a "land project" as defined in Section 11000.5 of the California Business and Professions Code: (a) there is an adopted specific plan for the area to be included within the land project; and (b) the decision-making body finds that the proposed land project is consistent with the specific plan for the area.

**Facts in Support of Finding:**

- The property is not a "land project" as defined in Section 11000.5 of the California Business and Professions Code.
- The project is not located within a specific plan area.

8. **Finding:** That solar access and passive heating and cooling design requirements have been satisfied in accordance with Sections 66473.1 and 66475.3 of the Subdivision Map Act.

**Facts in Support of Finding:**

- The proposed Parcel Map and improvements are subject to Title 24 of the California Building Code that requires new construction to meet minimum heating and cooling efficiency standards depending on location and climate. The Newport Beach Building Department enforces Title 24 compliance through the plan check and inspection process.

9. **Finding:** That the subdivision is consistent with Section 66412.3 of the Subdivision Map Act and Section 65584 of the California Government Code regarding the City's share of the regional housing need and that it balances the housing needs of the region against the public service needs of the City's residents and available fiscal and environmental resources.

**Facts in Support of Finding:**

- The proposed Parcel Map is consistent with Section 66412.3 of the Subdivision Map Act and Section 65584 of the California Government Code regarding the City's share of the regional housing need. The residential density on the site will remain the same, which allows two units in the R-2 Zoning District. No affordable housing units are being eliminated based upon the fact that the previously existing units were not occupied by low or moderate income households and the proposed number of units remains the same.

10. **Finding:** That the discharge of waste from the proposed subdivision into the existing sewer system will not result in a violation of existing requirements prescribed by the Regional Water Quality Control Board.

**Facts in Support of Finding:**

- Wastewater discharge into the existing sewer system will remain the same and does not violate Regional Water Quality Control Board (RWQCB) requirements.

11. **Finding:** For subdivisions lying partly or wholly within the Coastal Zone, that the subdivision conforms with the certified Local Coastal Program and, where applicable, with public access and recreation policies of Chapter Three of the Coastal Act.

**Facts in Support of Finding:**

- The subject property is not located in the Coastal Zone.
- The subject property does not have access to any beaches, shoreline, coastal waters, tidelands, coastal parks or trails.

**CONDITIONS**

1. A parcel map shall be recorded. The map shall be prepared on the California coordinate system (NAD83). Prior to recordation of the map, the surveyor/engineer preparing the map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of said map in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. **The map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.**

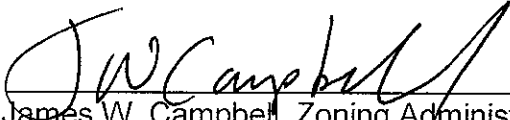
2. Prior to recordation of the Parcel Map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. Monuments (one inch iron pipe with tag) shall be set on each lot corner, unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
3. All improvements shall be constructed as required by City Ordinance and the Public Works Department.
4. All applicable Public Works Department plan check fees, improvement bonds and inspection fees shall be paid prior to processing of the map by the Public Works Department.
5. Arrangements shall be made with the Public Works Department in order to guarantee satisfactory completion of the public improvements if it is desired to record a parcel map or obtain a building permit prior to completion of the public improvements.
6. Each unit shall be connected to its individual water meter and sewer lateral and cleanout located within the public right-of-way. If installed at a location that will be subjected to vehicle traffic, each water meter and sewer cleanout shall be installed with a traffic-grade box/frame and cover.
7. Each dwelling unit shall be served with individual gas and electrical service connection and shall maintain separate meters for the utilities.
8. Overhead utilities serving the site shall be undergrounded to the nearest appropriate pole in accordance with Section 19.28.090 of the Municipal Code unless it is determined by the City Engineer that such undergrounding is unreasonable or impractical.
9. A new street tree shall be planted in the Larkspur Avenue right-of-way per street tree requirements of Chapter 13.09 of the Municipal Code. The designated street tree for this block of Larkspur Avenue is the Firewheel Tree (*Stenocarpus sinuatus*).
10. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L.
11. All on-site drainage shall comply with the latest City Water Quality requirements.
12. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.

13. All work conducted within the public right-of-way shall be approved under an encroachment permit issued by the Public Works Department.
14. Install new sod or low groundcover of the type approved by the City throughout the Larkspur Avenue parkway fronting the development site.
15. All existing private, non-standard improvements (i.e. low wall) within the public right-of-way and/or extensions of private, non-standard improvements into the public right-of-way fronting the development site shall be removed unless an Encroachment Agreement is applied for and approved by the Public Works Department.
16. Two-car parking, including one enclosed garage space, shall be provided on site for each dwelling unit per requirements of the Zoning Code.
17. Disruption caused by construction work along roadways and by movement of construction vehicles shall be minimized by proper use of traffic control equipment and flagmen. Traffic control and transportation of equipment and materials shall be conducted in accordance with state and local requirements.
18. In compliance with the requirements of Chapter 9.04, Section 901.4.4, of the Newport Beach Municipal Code, approved street numbers or addresses shall be placed on all new and existing buildings in such a location that is plainly visible and legible from the street or road fronting the subject property. Said numbers shall be of non-combustible materials, shall contrast with the background, and shall be either internally or externally illuminated to be visible at night. Numbers shall be no less than four inches in height with a one-inch wide stroke. The Planning Department Plan Check designee shall verify the installation of the approved street number or addresses during the plan check process for the new or remodeled structure.
19. County Sanitation District fees shall be paid prior to issuance of any building permits, if required by the Public Works Department or the Building Department. Reconstruct existing broken and/or otherwise damaged concrete sidewalk panels, curb and gutter along the Larkspur Avenue frontage. Limits of work shall be at the discretion of the Public Works Inspector.
20. The rear 5-foot setback adjacent to the alley shall be clear of any above ground improvements.
21. Subsequent to recordation of the Parcel Map, the applicant shall apply for a building permit for description change of the subject project development from "duplex" to "condominium." **The development will not be condominiums until this permit is finalized.** The building permit for the new construction shall not be finalized until after recordation of the Parcel Map.

22. This Parcel Map shall expire if the map has not been recorded within 3 years of the date of approval, unless an extension is granted by the Planning Director in accordance with the provisions of Section 19.16 of the Newport Beach Municipal Code.

**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:rwb/rgm

Attachments: Vicinity Map

Appeared in Opposition: None

Appeared in Support: None

# VICINITY MAP

Parcel Map Permit No. NP2009-001  
PA2009-049



**613 & 613<sup>1</sup>/<sub>2</sub> Larkspur Avenue**



## **MODIFICATION PERMIT ACTION LETTER**

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

<b>Application No.</b>	<b>Modification Permit No. MD2009-008 (PA2009-038 )</b>
<b>Applicant</b>	<b>Ian J.N. Harrison Architect</b>
<b>Site Address</b>	<b>1100 East Balboa Boulevard Bacich Addition</b>
<b>Legal Description</b>	<b>Balboa Bay Front Tract, Lot 1, Block K All - Including a Portion of Street Adjacent, and Balboa Tract East Side Addition All Including Portion of Streets Adjacent –Lot 1, Block 17</b>

On **May 14, 2009**, the Zoning Administrator approved the following: A modification permit application to allow a 1,358-square-foot addition to an existing single-unit dwelling that encroaches into the required side and rear yard setbacks. The existing encroachments were approved by Modification Permit No. 4823 in 1998. The proposed addition will comply with all current Zoning Code requirements. The property is located in the R-1 (Single-Family Residential) 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 "Single-Unit Residential Detached" use. The existing residential structure and proposed addition 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 (CEQA) Guidelines under Section 15301 (Class 1 - Existing Facilities). The proposed project consists of an addition to an existing single-family residence.
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 subject property's irregular shape, which narrows along the westerly side property line toward Newport Bay, constrained development of the original lot. Modification Permit No. 4823 was approved in 1998 to allow reasonable development and use of the property by permitting encroachments into the required 3-foot side yard setbacks, and 6-foot rear yard building setback.
  - Recordation of Parcel Map No. 2008-023 approved in 2008 would not change the irregular shape of the lot; this results in a physical hardship which would continue to constrain further development of the property.
  - Although the Zoning Code allows encroachment into required setbacks with approval of a modification permit, the strict application of the Zoning Code would require that the existing structure be brought into conformance with the increased required westerly side yard setback and the required rear yard building setback adjacent to East Balboa Boulevard prior to construction of the proposed addition. Redesigning or relocating the existing single-unit dwelling would result in a practical difficulty since the costs involved would be disproportionate to the costs of constructing the proposed addition.
  - Per approval of Modification Permit No. 4823, the existing single-unit dwelling was permitted to encroach into the required side and rear yard setbacks of the original lot; and it was legally constructed in its present location.
4. 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 applicant is proposing to construct a single-car garage and two-story residential addition, totaling 1358 square feet. The resulting structure would be similar in character and size to developments located in the neighboring area.
  - The location of the proposed single-car garage and second floor step-back would provide articulation of the exterior walls facing East Balboa Boulevard. Windows, an upper level balcony, and a variety of materials on all of the exterior walls of the proposed addition would be incorporated into the design. All of these design elements are encouraged by and would comply with the Residential Design Criteria of the General Plan.
  - The property would remain a single-family residence consistent with the Zoning District and neighboring properties.



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 0 to 3-foot encroachment of portions of the existing single-family residence into the required westerly side yard setback and the 2-foot second floor encroachment into the required 6-foot rear yard building setback were minor in nature and were approved with Modification Permit No. 4823. The existing structure has existed in its present location since 2000 and has not proven detrimental to date.
  - No additions or alterations to the existing structure along the westerly side property line are proposed. Because the required westerly side yard setback would increase from 3 feet to 4 feet, additional areas of the first floor would encroach into the required side yard setback. These additional encroachments would be minor, and would be located toward the front (Newport Bay) portion of the existing structure within the narrowest portion of the lot.
  - The additional encroachments into the increased, required westerly side yard setback would have no effect on the appearance of the structure when viewed from East Balboa Boulevard or "C" Street.
  - Recordation of Parcel Map No. 2008-023 would eliminate the encroachment into the easterly side yard setback previously approved by Modification Permit No.4823 since the easterly side property line would be moved further to the east.
  - Since the major portion of the proposed addition would be constructed on the rear half of the easterly side of the new lot, the front half of the easterly side of the lot would remain open space, and would provide light and air for the subject property and neighboring property to the east.
  - The proposed addition would comply with all regulations of the Zoning Code.

### 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 existing structure may encroach from 0 to 4 feet into the required 4-foot westerly side yard setback with portions of the first floor as indicated on the plans submitted with this modification permit application. No additions to the existing structure which encroach into the required westerly side yard are permitted without approval of a new modification permit.

3. The existing encroachment of the second floor into the required 6-foot rear building setback may be retained. . No additions to the existing structure which encroach into the required 6-foot rear yard building setback are permitted without approval of a new modification permit.
4. The property owner shall record a Covenant Agreement with Orange County to hold the property as a single-family dwelling unit prior to final of the building permit issued for construction of the proposed addition.
5. Anything not specifically approved by this Modification Permit is prohibited and must be addressed in a separate and subsequent Modification Permit review.
6. 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.
7. 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.
8. The property will incur all costs related to relocating the existing Queen Palms to a pre-determined site directed by City staff. The estimated costs are \$402.00 (3 hours crew rental) for labor and equipment. A check in the correct amount must be submitted to the City of Newport Beach.
9. A building permit shall be obtained prior to commencement of the construction, and the proposed addition shall comply with the 2007 California Building Code.
10. A copy of this approval letter shall be incorporated into the Building Department and field sets of plans prior to issuance of the building permits.
11. The top of the driveway "X" shall be located a minimum of 3.5 feet from the existing fire hydrant as shown on the approved plans.
12. The driveway approach bottom shall be 8 feet wide maximum.
13. The tree shall be located a minimum of 5 feet from the drive approach.
14. 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.

15. 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.
16. 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/ks

Attachments: Vicinity Map

Appeared in Opposition: None

Appeared in Support: None

# VICINITY MAP

Modification Permit Permit No. MD2009-008  
PA2009-038



**1100 East Balboa Boulevard**



## USE PERMIT ACTION LETTER

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

<b>Application No.</b>	<b>Use Permit No. UP2009-017 (PA2009-060)</b>
<b>Applicant</b>	<b>Radim Konecny</b>
<b>Site Address</b>	<b>302 B Marine Avenue Too Sweet</b>
<b>Legal Description</b>	<b>Lot 2, Block 4 , Balboa Island Section 4</b>

On **May 14, 2009**, the Planning Director approved the following: A use permit application for a take-out service, limited confectionery offering an assortment of desserts and candy. The suite will be internally connected to the adjacent suite, which is an existing food use with an approved use permit. The suites will share kitchen and storage facilities. The property is located in the RSC-R (Retail Service Commercial Residential Overlay) District. The Planning Director's approval is based on the following findings and subject to the following conditions:

### FINDINGS

1. The project is categorically exempt from the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities), which exempts the ongoing use of existing commercial buildings where there is negligible or no expansion of use. The use involves minimal construction including minor interior alterations or signs and the change in use will not increase parking demand above the prior retail use of the existing building.
2. The design of the proposed improvements will not conflict with any easements acquired by the public at large for access through or use of property within the proposed development.
3. The proposed location of the use is in accord with the objectives of the Zoning Code and the purposes of the district in which the site is located.

Facts in support of finding:

- The project is located in the Retail and Service Commercial (RSC) District with a Residential Overlay. The residential overlay allows all of the permitted uses of

the base district with residential allowed above the first floor. The purpose of the RSC District is to provide areas which are predominantly retail in character but which allow some service office uses. The proposed confectionery is a retail sales use which serves residents and visitors and, therefore, is consistent with the purposes of the RSC District.

- Subject to the approval of a use permit by the Planning Director, a take-out service, limited use is permitted within this district. Use permits enable the City to control certain uses which could have detrimental effects if not compatible with uses on adjoining properties and in the surrounding area. The Too Sweet confectionery is compatible and complements the uses in this district, including the other restaurants, ice cream and frozen yogurt shops, clothing boutiques, hair salons, and coffee shops along Marine Avenue. The proposed application does not present any conflicts with the purpose and intent of this district.
4. The proposed location of the use permit and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan and the purpose of the district in which the site is located; will not be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use; and will not be detrimental to the properties or improvements in the vicinity or to the general welfare of the city.

Facts in support of finding:

- The project site is designated as Mixed Use Water Related (MU-W2) by the Land Use Element of the General Plan. The proposed project is consistent with the MU-W2 land use category, which is intended to provide for marine-related uses including retail, restaurants, and visitor-serving uses with residential on the upper floors. The proposed use is a visitor-serving use that will serve part-time and full-time residents as well as visitors.
- The proposed hours of operation of the facility of 10:00 a.m. to 10:00 p.m. daily will limit the noise impacts on the neighboring residential uses.
- If the Use Permit is approved, the conditions imposed on the use will reduce any possible detriment to the community by ensuring continued consistency with the intent and purpose of Chapters 20.82.
- The limited menu and restriction on seating avoids adverse impacts to traffic or the parking demand of the surrounding commercial uses as patrons who are residents or visitors to the district will likely walk up.
- The subject property is nonconforming due to deficient off-street parking; however the nonconforming status is not intensified by the proposed use. No additional off-street parking is provided. Pursuant to Section 20.62.050 (Nonconforming Structures and Uses – Nonconforming Parking) of the Municipal

Code, nonconforming uses in nonresidential districts may be continued or changed to a use requiring the same or less on-site parking. The previous retail sales use would require four (4) parking spaces based upon the retail use parking ratio of one (1) parking space per 250 feet of gross floor area required per Chapter 20.66 (Off-street Parking and Loading Regulations) of the Municipal Code. The gross floor area of the subject suite is approximately 773 square feet. The proposed use with less than 100 square feet of net public area will not require more parking than the previous retail sales use required.

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

Facts in support of finding:

- Eating and drinking establishments are subject to the requirements of Chapter 20.82 of the Municipal Code.
  - The project has been conditioned to comply with the development and operational regulations pursuant to Section 20.82.040 of the Municipal Code as they relate to the operation of the proposed project.
  - The Use Permit approval has a condition that requires submittal and approval of a practical program for the control of litter, spills and stains for the subject property, the adjacent private property as well as the adjacent public rights-of-way to be maintained in a clean and orderly manner.
6. 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.
  7. 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.

**CONDITIONS**

1. Development shall be in substantial conformance with the approved site plan, floor plan and elevation(s), except as noted in the following conditions.
2. Any addition of seats and/or stand-up counter space for customers shall be subject to the approval of an amendment to this use permit. Any patron seating or stand-up counter located inside or 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.

4. The hours of operation shall be limited to between the hours of 8:00 a.m. and 10:00 p.m., daily; and any increase in the hours of operation shall be subject to the approval of an amendment to this use permit.
5. If seating is added later, 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.
6. Storage outside the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
7. Trash receptacles for patrons shall be conveniently located both inside and outside of the proposed facility; however shall not be located on or within any public property or right-of-way.
8. The area outside of the food establishment, including the public sidewalks, 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 submitted with this application as conditioned by this approval:
  - The proprietor shall direct his/her employees to actively monitor the public sidewalk and street immediately adjacent to the subject food use facility in addition to the on-site 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.
9. All trash shall be stored within the building or within public dumpsters provided for the convenience of businesses in the area, or otherwise screened from view of neighboring properties except when placed for pick-up by refuse collection agencies. The trash dumpsters shall have a top which shall remain closed at all times, except when being loaded or while being collected by the refuse collection agency.
10. 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) to control odors prior to placement in the trash dumpster.
11. Use of the facility's back door, including deliveries and refuse collection for the facility, shall be prohibited between the daily 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. Except for during the end of the business day the back door may be utilized to access the trash enclosure for disposing the remaining refuse accumulated by the facility.

12. No outside paging or sound system shall be utilized in conjunction with this food service establishment.
13. No on-sale alcoholic beverage service shall be permitted on the premises.
14. No live entertainment or dancing shall be permitted in conjunction with the permitted use.
15. 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.
16. 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.
17. All signs shall conform to the provisions of Chapter 20.67 of the Municipal Code or any applicable comprehensive sign program that is in force for the subject property.
18. The facility shall comply with the provisions of Chapter 14.30 of the Newport Beach Municipal Code for commercial kitchen grease disposal, as determined by the Building Department and the Utilities Department.
19. The facility shall be designed to meet exiting and fire protection requirements as specified by the California Building Code and shall be subject to review and approval by the Building Department.
20. 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.
21. The project shall comply with State Disabled Access requirements.
22. An encroachment permit is required for all work activities within the public right-of-way.
23. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way


could be required at the discretion of the Public Works Inspector.

24. The project shall redesign both doors fronting Marine Avenue so they do not swing out over the public right-of-way.
25. The Planning Director or the Planning Commission may add to or modify conditions to this approval, or revoke this approval upon a finding of failure to comply with the conditions set forth in Chapter 20.82 of the Municipal Code or other applicable conditions and regulations governing the eating and drinking establishment.
26. 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 Planning Director'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.

On behalf of David Lepo, Planning Director:

By:   
James W. Campbell, Zoning Administrator

JWC/fn

Attachments: Vicinity Map

# VICINITY MAP



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