

**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 July 31, 2009

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**ACTIONS TAKEN AT JULY 30, 2009 ZONING ADMINISTRATOR HEARING**

- Item 1: Modification Permit No. MD2009-012 (PA2009-065)  
1101 Dove Street
- This item was withdrawn by Applicant Council District 4
- SA2009-003 (PA2009-065)  
1101 Dove Street
- A staff approval to change the parking requirement from one space per 225 square feet to one space per 250 square feet.
- This item was approved. Council District 4
- Item 2: Modification Permit No. MD2009-015 (PA2009-089)  
3401 Seabreeze Lane
- A modification permit to allow a 6-foot-high block wall to encroach up to 8 feet 6 inches into the required 20-foot front yard setback.
- This item was denied. Council District 7

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

- Item 3: Tacos Cancun – Accessory Outdoor Dining Permit No. OD2009-001 (PA2009-093)  
707 East Ocean Front, Suite B
- The addition of accessory outdoor dining to an existing eating and drinking establishment. The proposed 42-square-foot outdoor dining area complies with the Zoning Code limitation of 25 percent of the approved interior net public area.
- Approved – July 30, 2009 Council District 1

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)*



## NOTICE OF ZONING ADMINISTRATOR ACTION

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

July 30, 2009

Dove Street Condos, Inc.  
Attn: Michael Tong  
4300 Von Karman Avenue  
Newport Beach, CA 92660

**Application No.**      **Modification No. MD2009-012 (PA2009-065)**  
                                 **Staff Approval No. SA2009-003**

**Site Address**        **1101 Dove Street**  
                                 **Dove Street Condos Parking**

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On July 30, 2009, the following actions were taken at the Zoning Administrator hearing:

- The June 25, 2009, approval of Modification Permit No. MD2009-012 was rescinded due to improper noticing.
- A revised public notice for the July 30, 2009, hearing for Modification Permit No. MD2009-012 was given in accordance with the Municipal Code.
- The applicant withdrew the modification permit portion application (MD2009-012).
- Staff Approval No. SA2009-003 to change the parking requirement from one space per 225 square feet to one space per 250 square feet was approved based on the following findings.

### FINDINGS

1. The project is categorically exempt from the requirements of the California Environmental Quality Act under Class 3 (New Construction or Conversion of Small Structures). The application does not include changes to the physical building; however, the additional parking would allow for a portion

- of the building to be used as medical office along with the existing professional office use.
2. The change in parking requirement from one space per 225 square to one space per 250 square feet for professional office use would not be detrimental to 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, because the site would provide adequate parking. One space per 250 square feet is consistent with the Municipal Code standard.

By:   
James W. Campbell, Zoning Administrator

JWC/rwb

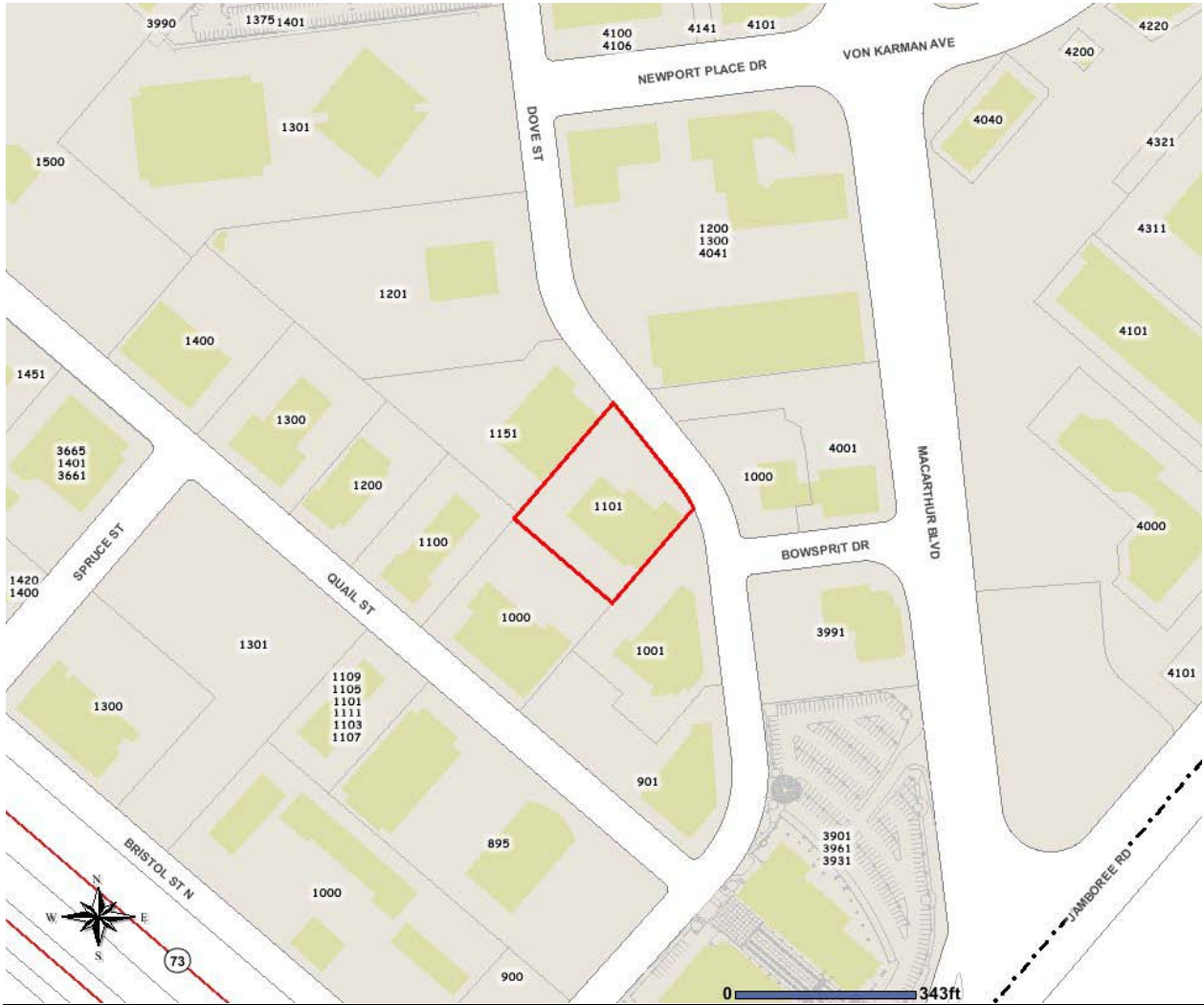
**APPEAL PERIOD:** The Zoning Administrator's decision may be appealed to the Planning Commission within 14 days of the action date. A \$1,810.00 filing fee shall accompany any appeal filed. For additional information on filing an appeal, contact the Planning Department at 949 644-3200.

Attachments: Vicinity Map

Appeared in Opposition: Tom Garrett, 1101 Dove Street, Suite 100  
Ed Moss, 1101 Dove Street, Suite 100  
Michael Stoll, 1101 Dove Street

Appeared in Support: Michael Tong, 9300 Von Karman  
Karen Blankenzee, Pacific Planning Group  
John Fitzgibbon, 4300 VonKarman

# VICINITY MAP



Staff Approval No. SA2009-065  
PA2009-065

**1101 Dove Street**



## **MODIFICATION PERMIT ACTION LETTER**

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

**Application No.**                    **Modification Permit No. MD2009-015  
(PA2009-089)**

**Applicant**                         **Dr. Kathy Quintana and Dr. Hisham El-Bayar**

**Site Address**                    **3401 Seabreeze Lane**

**Legal Description**            **N Tract 6228, Lot 38**

On **July 30, 2009**, the Zoning Administrator denied the following: A modification permit to allow a 6-foot-high block wall to encroach up to 8 feet 6 inches into the required 20-foot front yard setback. The property is located in the R-1-B (Residential B – Overlay District) District. The Zoning Administrator's denial is based on the following findings.

### **FINDINGS**

1. The subject property is a corner lot oriented with the front facing Seabreeze Lane and the north side property line facing Tiller Way. It has a required 20-foot front yard setback along Seabreeze Lane and required 6-foot side and rear yards. The Zoning Code allows fences and walls to a height of 6 feet within required side and rear yard setbacks, but restricts the height within required front yard setbacks to 3 feet. The proposed modification is to allow a 6-foot block wall to encroach up to 8 feet 6 inches in the required 20-foot front yard setback.
2. The topography and site development constraints of the subject property and the strict application of the Zoning Code do not result in physical hardships that are inconsistent with the purpose and intent of the Zoning Code. The downward slope to the north of the property takes up only a small portion of usable space. Furthermore, the remodel of the home and addition of the pool were recently approved with the knowledge of zoning regulations; thus this represents a self-imposed constraint.
3. The existing nonconforming fence located in the same position and at the same height of the proposed block wall does not set a precedent for approval of the proposed modification. However, it does provide objective reason that a 6-foot wall in the front setback does not adversely affect the health or safety of persons residing or working in the neighborhood of the property and is not detrimental to the general welfare or injurious to property or improvements in the neighborhood.
4. A block wall can be constructed to provide privacy and the required pool protection screening without encroaching into the required setbacks.

5. The requested modification would not be compatible with existing development in the neighborhood. Other fences and walls in the neighborhood were constructed in accordance with the Zoning Code.

**APPEAL PERIOD**

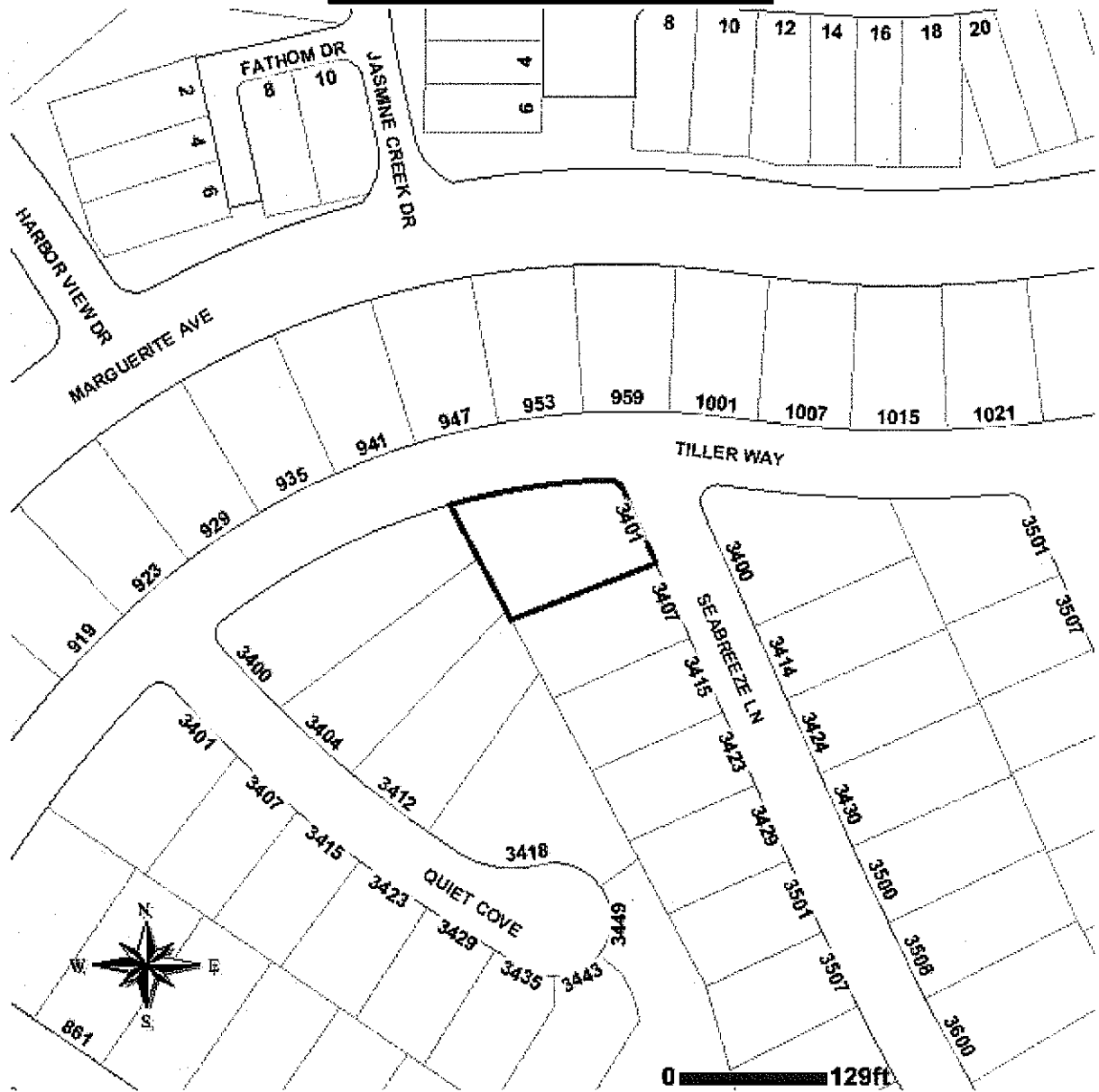
The Zoning Administrator's decision may be appealed to the Planning Commission within 14 days of the action date. A \$1,810.00 filing fee shall accompany any appeal filed. For additional information on filing an appeal, contact the Planning Department at 949 644-3200.

By:   
James W. Campbell, Zoning Administrator

JWC/ems

Attachments: Vicinity Map  
Letter from Property Owner at 3429 Quiet Cove

# VICINITY MAP



Modification Permit No. MD2009-015  
PA2009-089

**3401 Seabreeze Lane**



## Steffen, Erin

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**From:** Joe Stefano [vjsqcove@aol.com]  
**Sent:** Sunday, July 19, 2009 4:30 PM  
**To:** Steffen, Erin  
**Subject:** Project File # PA2009-089

Erin,

I received the notice of public hearing on the above project, and appreciate the heads up. I live in Harbor View Hills South, the same neighborhood as the proposed modification permit.

I have lived in this neighborhood for 11 years, and have also been through both a full construction project, as well as a modification of our own. I live just one street down from the proposed modification and am aware of a traffic issue worthy of your consideration.

The proposed modification is to occur on a corner property (Tiller & Seabreeze). There are frequently close calls with regards to cars leaving Seabreeze onto Tiller that are due to poor line of sight views from the car leaving Seabreeze then viewing both up and down Tiller. I believe you should consider anything that would further obstruct the view from car to car at that intersection as a detriment to public safety.

I have children and live on Quiet Cove the street just below and parallel to Seabreeze. Quiet Cove has the same challenge at the Tiller intersection so I am very familiar with the risks of further limiting line of sight views.

Thank you for considering my observations.

Sincerely,

Joe Stefano  
3429 Quiet Cove  
Corona Del Mar, CA 92625  
(714) 337-4484 cell



## ACCESSORY OUTDOOR DINING PERMIT ACTION LETTER

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

**Application No.:** Accessory Outdoor Dining Permit No. OD2009-001  
(PA2009-093)

**Applicant** Tacos Cancun

**Site Address** 707 East Ocean Front, Suite B

**Legal Description** Balboa Tr Lot D Ely 135 Ft Nly 55 Ft

On July 30, 2009, the Planning Director approved the following: The addition of accessory outdoor dining to an existing eating and drinking establishment. The proposed 42-square-foot outdoor dining area complies with the Zoning Code limitation of 25 percent of the approved interior net public area. The property is located in the SP-9 (Central Balboa Specific Plan Area) District. The 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 Coastal Land Use Plan designate the property for "Mixed Use Vertical" land use; and the proposed outdoor dining is accessory to an existing restaurant, 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 this application 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 use is accessory to and an extension of the existing restaurant use, subject to all the findings and conditions of approval of **Use Permit No. UP2006-011 (PA2006-121)** and its amendments, and not an independent use.
  - The proposed outdoor dining area is compatible with the surrounding land uses and its limited hours shall prevent noise from adversely impacting the nearby residential uses since the proposal does not include any noise generating activities (i.e., entertainment).
  - The proposed accessory outdoor dining will not be located so as to result in a reduction of existing parking spaces.

- The restrictions on the use of solid roof structures as applied to this approval are consistent with the intent and purpose of the accessory outdoor dining.
- The proposal does not include any noise generating activities inside or outside of the facility (i.e., live entertainment is not authorized for the facility) and are specifically prohibited in the outdoor dining area by this approval.
- Public bathrooms accessible to customers are provided within 500 feet of the restaurant.

### **CONDITIONS**

1. Development shall be in substantial conformance with the approved site plan and floor plan, except as noted in the following conditions.
2. The accessory outdoor dining shall be used in conjunction with the related adjacent food establishment and shall be limited to 42 sq. ft. maximum (gross area, 25 percent of the indoor net public area of 169 sq. ft.), unless an amendment to this application is approved to increase the area allowed.
3. The seating adjacent to the food use facility shall be limited to the area as delineated on the approved site plan only. The approved outdoor dining area shall be located on a solid surface in accordance with the approved floor plan or seating plan.
4. Any rail/fence or screen planting shall be a minimum of 42 inches tall unless otherwise required by the Public Works Department. The use of pavement markings to delineate the area is prohibited. Prior to implementation, the applicant shall call the Code Enforcement Division at (949) 644-3215 to schedule an inspection of the area enclosed by the specified rail/fence/screen planting.
5. Trash receptacles for patrons shall be conveniently located outside of the related food service facility to serve the accessory outdoor dining area. The operator of the food service use shall be responsible for the clean-up of all on-site and off-site trash, garbage and litter generated by the use.
6. 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
7. The project shall comply with State Disabled Access requirements. Tables and chairs for the outdoor dining shall not encroach into the required handicap access area specified on the approved detail seating plan.
8. No outside paging system or sound system shall be utilized in conjunction with this outdoor dining establishment.

9. The operator of the restaurant facility shall be responsible for the control of noise generated by the subject facility. The use of outside loudspeakers, paging system or sound system shall be prohibited in the outdoor dining area or outside of the building. The noise generated by the proposed use shall comply with the provisions of Chapter 10.26 of the Newport Beach Municipal Code. Chapter 10.26 provides, in part, that the sound shall be limited to no more than depicted below for the specified time periods:

	Between the hours of 7:00 a.m. and 10:00 p.m.		Between the hours of 10:00 p.m. and 7:00 a.m.	
	<u>interior</u>	<u>exterior</u>	<u>interior</u>	<u>exterior</u>
Measured at the property line of commercially zoned property:	N/A	65 dBA	N/A	60 dBA
Measured at the property line of residentially zoned property:	N/A	60 dBA	N/A	50 dBA
Residential property:	45 dBA	55 dBA	40 dBA	50 dBA

10. The applicant shall retain a qualified engineer specializing in noise/acoustics to monitor the sound generated by the outdoor dining activity to insure compliance with these conditions, if required by the Planning Director.
11. The use of area heaters shall be approved by the Public Works Department, Building Department and the Fire Department prior to installation or use. The use of propane heaters and the storage of propane containers on the premises are prohibited, unless otherwise approved by the Fire Department.
12. 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 owner or the leasing company.
13. The hours of operation of the outdoor dining area is limited to between the hours of 8:00 am and 10:00 pm, daily; and any increase in the hours of operation shall be subject to the approval of an amendment to this application and may require approval of a Use Permit.
14. Alcoholic beverage service shall be prohibited in the outdoor dining areas, unless an amendment to the existing use permit is first amended by the Planning Commission, Police Department and the California Department of Alcoholic Beverage Control to increase the licensed premises.
15. Increase in the interior seating may require an increase in the number of fixtures or provisions or separate sex restrooms, as required by the Newport Beach Municipal Code and in compliance with the provisions of the Health Code (Orange County).

16. All applicable conditions of approved **Use Permit No. UP2006-011 (PA2006-121)** shall remain in force (copy available in the Planning Department).
17. Should problems arise with regard to noise associated with the outdoor dining areas, the Planning Department shall require the removal of all or a portion of the outdoor dining area seating in the areas that contribute or cumulatively contribute to the noise problems or complaints.
18. Should problems arise with regard to umbrellas, tables, chairs or stools encroaching into the public right-of-way, public walkway or other common area pedestrian pathways, the Planning Department reserves the right to require the relocation of the railing/fence and removal of all or a portion of the outdoor dining area seating and/or the use of unitized table and chair construction.
19. Deliveries shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m., daily.
20. The Planning Department may add to or modify conditions of approval to this outdoor dining permit, 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. The Planning Director or the Planning Commission may also revoke this permit upon a determination that the operation which is the subject of this approval causes injury, or is detrimental to the health, safety, peace, morals, comfort, or general welfare of the community.

#### **City Approval for Outdoor Dining in Public Right-of-Way**

1. An encroachment permit for outside dining in the public right-of-way, issued by the Public Works Department, shall be approved and all conditions of approval and requirements shall be satisfied prior to implementation of this Outdoor Dining Permit No. OD2009-001.
2. The area outside of the food establishment, including the public sidewalks, shall be maintained in a clean and orderly manner and may be subject to providing periodic steam cleaning of the public sidewalks as required by the Public Works Department.
3. The location and set-up of the tables and chairs shall be within the approved outdoor dining area only.
4. The use of solid, permanent roof coverings, patio covers or retractable awnings shall be prohibited. If umbrellas are utilized, they shall be located to not extend beyond the edge of the approved paved outdoor dining area or into the path of the adjacent public.

5. The outdoor dining in the public right-of-way shall be provided and maintained in accordance with City Council Policy No. L-21.
6. All the outdoor umbrellas, dining tables and chairs shall be removed from the public right-of-way when the facility stops serving for the day or upon the closing of the facility, unless otherwise approved by the Public Works Department and as specified in the Encroachment Agreement.
7. All City-approved plans and permits for the outdoor dining area shall be kept on the premises for inspection, by authorized City staff (Police Department, Fire Department, Planning Department, etc.), at all times when the establishment is open for business.
8. This approval shall expire unless exercised within 24 months from the end of the appeal period as specified in Section 20.91.050 of the Newport Beach Municipal Code.

### **APPEAL PERIOD**

The applicant or any interested party may appeal the decision of the Planning Director, Zoning Administrator and department staff to the Planning Commission by a written request to the Planning Director within 14 days of the action date. A \$1,810.00 filing fee shall accompany any appeal filed. For additional information on filing an appeal, contact the Planning Department at 949 644-3200.

On behalf of David Lepo, Planning Director

By: 

Patrick J. Alford, Planning Manager

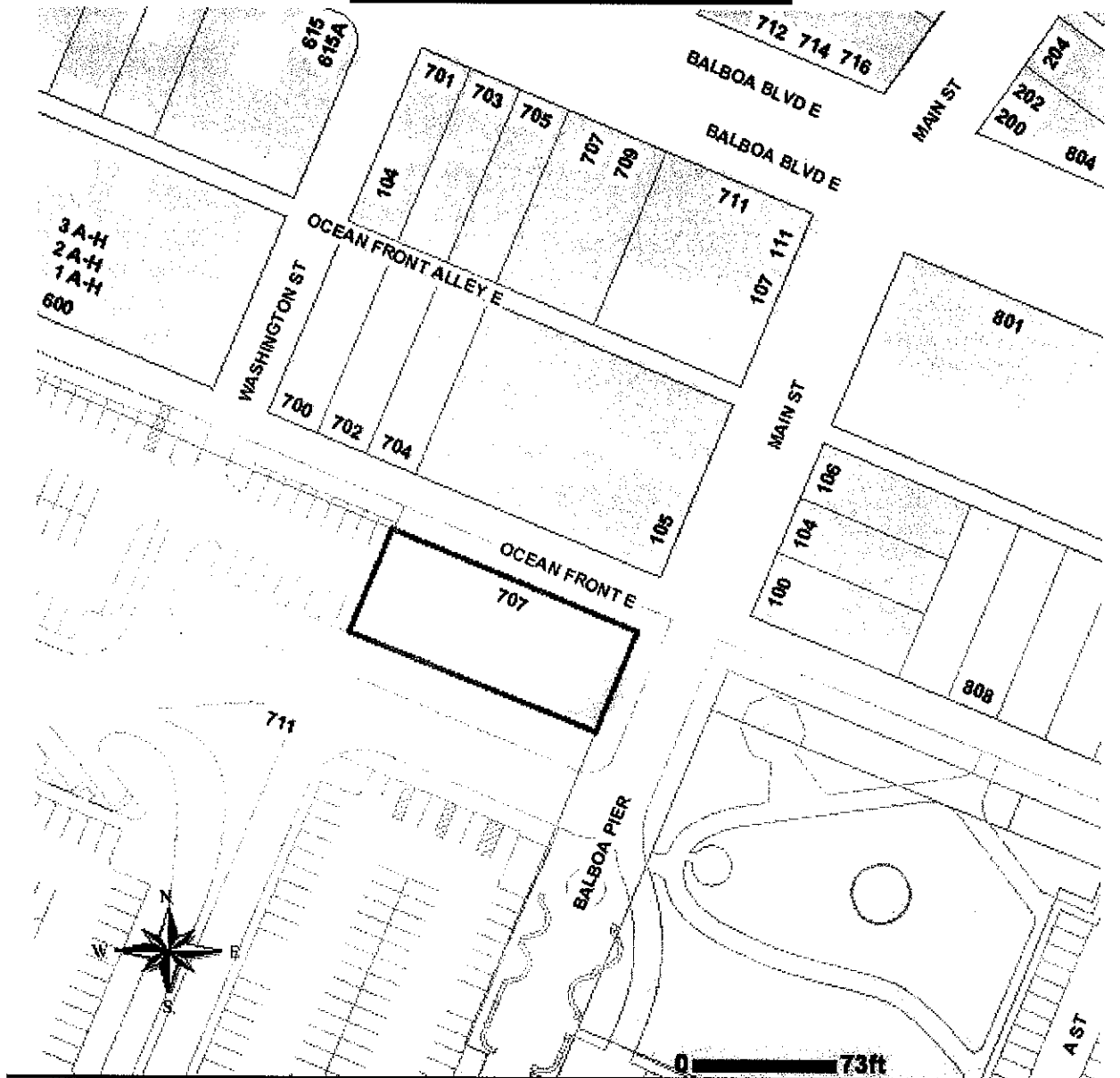
JWC/ems

Attachments: Vicinity Map  
"Project Plans" on file in the Planning Department

cc: property owner  
Mitchell Peeleski  
707 East Ocean Front  
Newport Beach, CA 92661

Code Enforcement Division

# VICINITY MAP



Accessory Outdoor Dining Permit No. OD2009-001  
PA2009-093

**707 East Ocean Front, Suite B**