

**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 August 28, 2009

ACTIONS TAKEN AT AUGUST 27, 2009 ZONING ADMINISTRATOR HEARING

- Item 1: Parcel Map Permit No. NP2009-007 (PA2009-104)
700 Narcissus Avenue and 3530 Fourth Street
A Parcel Map application for two-unit condominium purposes. No waivers of title 19 development standards are proposed with this application.

This item was approved. Council District 6
- Item 2: Modification Permit No. MD2009-013 (PA2009-077)
116 Ruby Avenue

This item was continued to the September 24, 2009 Zoning Administrator Hearing. Council District 5

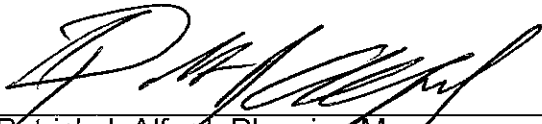
ACTIONS TAKEN BY THE PLANNING DIRECTOR OR PLANNING DEPARTMENT STAFF

- Item 3: Lutfi Abdelfattah on behalf of Jack's Surfboards – Use Permit No. UP2009-004 (PA2009-016)
2727 Newport Boulevard, Ste 101
A use permit to allow temporary outdoor sales (tent sales) of merchandise within the on-site parking lot of Jack's Surfboards. The outdoor sales may take place on various weekend dates up to eight times a year for up to three years. Each sale may be held up to four consecutive days.

Approved – August 27, 2009 Council District 1
- Item 4: Panini Garden Bistro – Staff Approval No. SA2009-004 (PA2009-115)
4647 MacArthur Boulevard
A temporary extension of food service hours to 4:00 a.m. for a period not to exceed 90 days. The temporary use approval is for food service only; alcoholic beverage service will continue to end at 1:00 a.m.

Approved – August 28, 2009 Council District 4

On behalf of David Lepo, Planning Director:



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*)
Bryan Moore, NBPD (*e-mail*)
Sgt. John Freeman, NBPD (*e-mail*)



USE PERMIT ACTION LETTER

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

Application No.	Use Permit No. UP2009-004 (PA2009-016)
Applicant	Lutfi Abdelfattah
Site Address	2727 Newport Boulevard, Ste 101 Temporary Outdoor Sales for Jack's Surfboards
Legal Description	LAKE TRACT, LOT 20, BLK 217 ALL -EXCEPT STREET- AND PORTION NE1/4 NW1/4 AS DESCRIBED IN DD -7169/824 OR- SECTION 33 T 6 R

On **August 27, 2009**, the Planning Director approved the following: A use permit to allow temporary outdoor sales (tent sales) of merchandise within the on-site parking lot of Jack's Surfboards. The outdoor sales may take place on various weekend dates up to eight times a year for up to three years. Each sale may be held up to four consecutive days. The property is located in the Retail Service Commercial (RSC) within the Cannery Village/McFadden Square (SP-6) Special Plan area District. The approval is based on the following findings and subject to the following conditions.

Findings:

1. That 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 subject site is located within the Retail and Service Commercial (RSC) land use designation within the Cannery Village/McFadden Square Specific Plan District (SP-6). This land use designation provides for retail sales, personal service, commercial, and professional uses that offer direct services to the public, and light marine industrial uses. In addition to Jack's Surfboards, there is a restaurant, take-out food, nail salon and spa, and office uses on the site, which are consistent with this designation. The proposed temporary outdoor sales is a retail use that would be consistent within this land use designation.
2. That the proposed location of the use permit and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan and the purpose of the district in which the site is located; will not be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use; and will not be detrimental to the properties or improvements in the vicinity or to the general welfare of the city.

Facts in support of finding:

- The temporary outdoor sales are in conjunction with the operation of a retail store, and will be located directly in front of the store within the on-site parking lot of the subject property. The Visitor Serving Commercial (CV) designation of the General Plan allows this temporary retail use with approval of a Use Permit issued by the Planning Director.
- The purpose of requiring a use permit for a temporary use that exceeds 90 days is to allow the City to impose whatever conditions deemed necessary to assure that the temporary use is consistent with the purpose of the Zoning Code and General Plan.
- The proposed temporary outdoor sales would be located within a 200 square foot canopy erected within three parking spaces located directly in front of the retail store (Jack's Surfboards) within the on-site parking lot. Approval of the proposed use permit would limit the number of sales allowed to no more than eight times per year on weekends, for no more than four consecutive days per sale. The outdoor sales would take place in conjunction with the hours of operation of Jack's Surfboards, typically from 8:00 am to 9:00 pm on weekends. Set-up for the sale would occur before the store opens by unloading pre-stocked clothing racks from a truck. The truck would be parked in a parking stall on-site, and would pick-up unsold merchandise at the end of the day.
- The proposed use permit would be subject to a condition that would allow sales within an additional two year period if, after review by the Planning Department, it was determined that previous sales were in compliance with all required conditions of approval.
- No more than three of the 86 parking spaces on-site would be required for the sale. In addition to customers whose destination would be Jack's Surfboards, the outdoor sales would attract customers of other uses on-site and pedestrian traffic from various businesses within the vicinity. Previous temporary sales held with a special event permit have not caused parking problems. The number of parking spaces on-site provides adequate parking for the existing uses, and the proposed temporary outdoor sales would not negatively impact parking on-site.
- The outdoor sales would be limited to the area within the canopy and would be surrounded by significant barricades to delineate the sales area from the parking lot and enhance patron safety from adjacent vehicular traffic. The location and type of barricades would be reviewed and approved by the Public Works Department prior to each sale.

- All signage for the proposed temporary outdoor sales would comply with the requirements of the Chapter 20.67 (Signs) of the Zoning Code.
3. That the proposed use will comply with the provisions of this code, including that any specific condition required for the proposed use in the district in which it would be located.

Facts in support of finding:

- Per Section 20.60.015 of the Zoning Code (Temporary Structures and Uses), temporary use of structures and land for periods of time in excess of 90 days are permitted in any commercial, industrial, or planned community district subject to the approval of a use permit.

Conditions:

1. The use permit shall be limited to outdoor sales associated with the adjacent retail clothing store, Jack's Surfboards, only and does not permit the outdoor sales as an independent use. Sale of snacks, food and beverages is prohibited.
2. The number of sales allowed shall be limited to no more than eight times per year on weekends, for no more than four consecutive days per sale. The outdoor sales shall take place in conjunction with the hours of operation of Jack's Surfboards, typically from 8:00 am to 9:00 pm on weekends.
3. Temporary outdoor sales may be allowed within an additional two year period subject to review of the Planning Department that previous sales were conducted in compliance with all required conditions of approval. A letter shall be submitted no later than January 30th of each of the two subsequent years stating the sale dates requested for that year.
4. That temporary outdoor sales shall be restricted to within no more than three parking spaces located directly in front of Jack's Surfboards and shall not extend into the public rights-of way. The outdoor sales shall be limited to the sale of clothing and fashion accessories only and shall occupy the area as shown on the approved plot plan (20 feet by 10 feet = 200 square feet).
5. The 200-square-foot-canopy shall be separated from the adjacent building by a minimum of 20 feet.
6. No activities related to the outdoor sales are permitted on public property including any portion of a public street or sidewalk
7. Sales activities shall not create a pedestrian or traffic hazard. The sales area shall be surrounded by significant barricades (i.e. water-filled barricades or others approved by the Planning and Public Works Departments to delineate the

sales area and provide patron safety from adjacent vehicular traffic. A plot plan/site plan delineating the parking layout, including sales area, barricade locations and barricade type shall be reviewed and approved by the Planning and Public Works Departments prior to the first sale date and shall be submitted to the Planning Department to include in the project file. Subsequent sales shall comply with the approved plot plan/site plan on file.

8. The sales area shall be signed to clearly identify that the area is closed for vehicular parking.
9. No posting of promotional signs is permitted on any portion of public property, including trees, utility poles, street signs, etc. All signage located on-site shall comply with Chapter 20.67 (Signs) of the Zoning Code.
10. No amplified sound is permitted.
11. All areas related to the sale shall be cleaned, and displays and merchandise shall be removed at the end of each day of the sale.
12. No smoking or open flames are permitted inside the canopy.
13. The sales area and vicinity will be kept clean at all times.

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

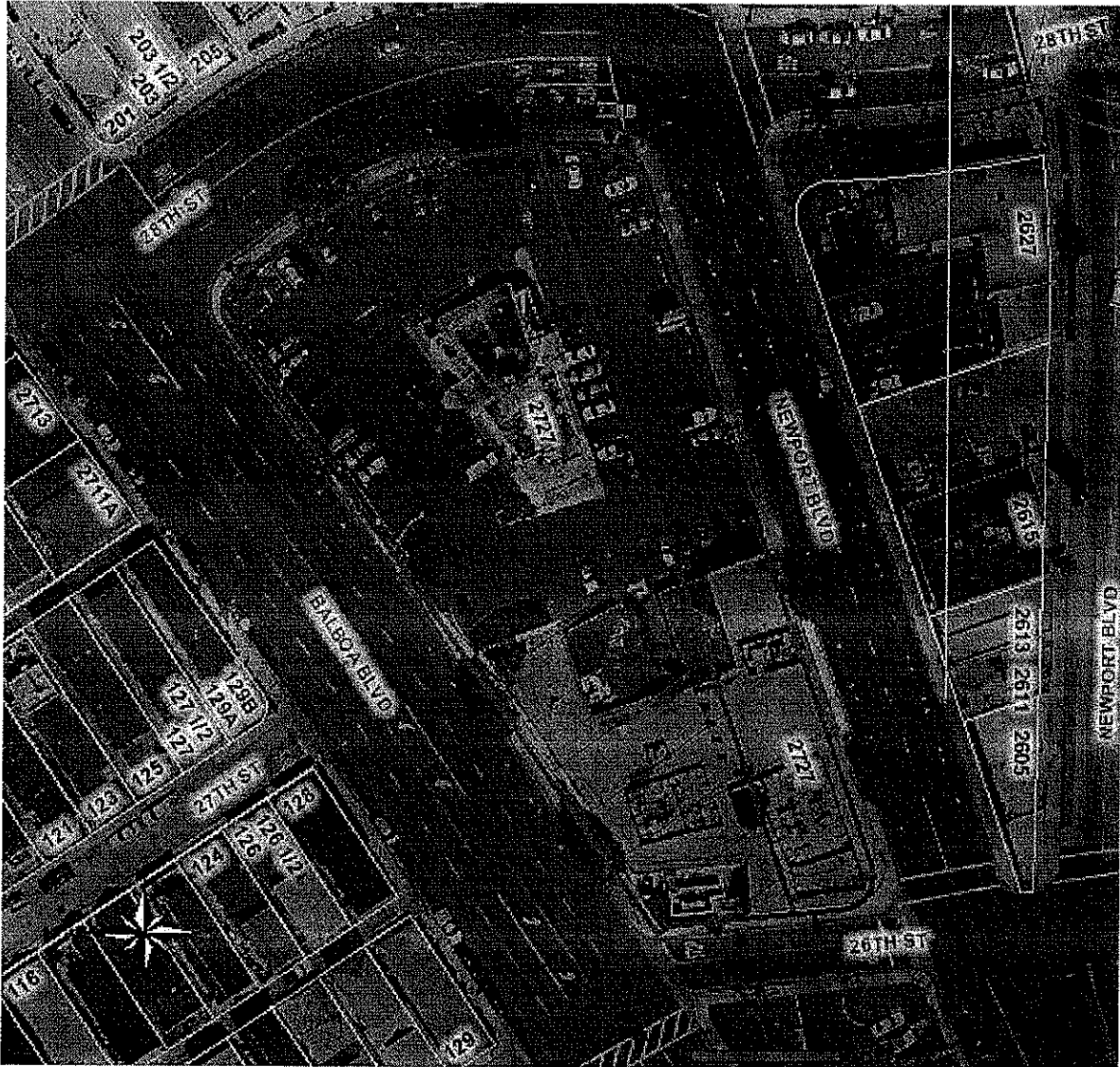
By: 
Kay Sims, Assistant Planner

PJA/ks

Attachments: PD 1 Vicinity Map
PD 2 Site Plan
PD 3 Photos

Attachment No. PD 1

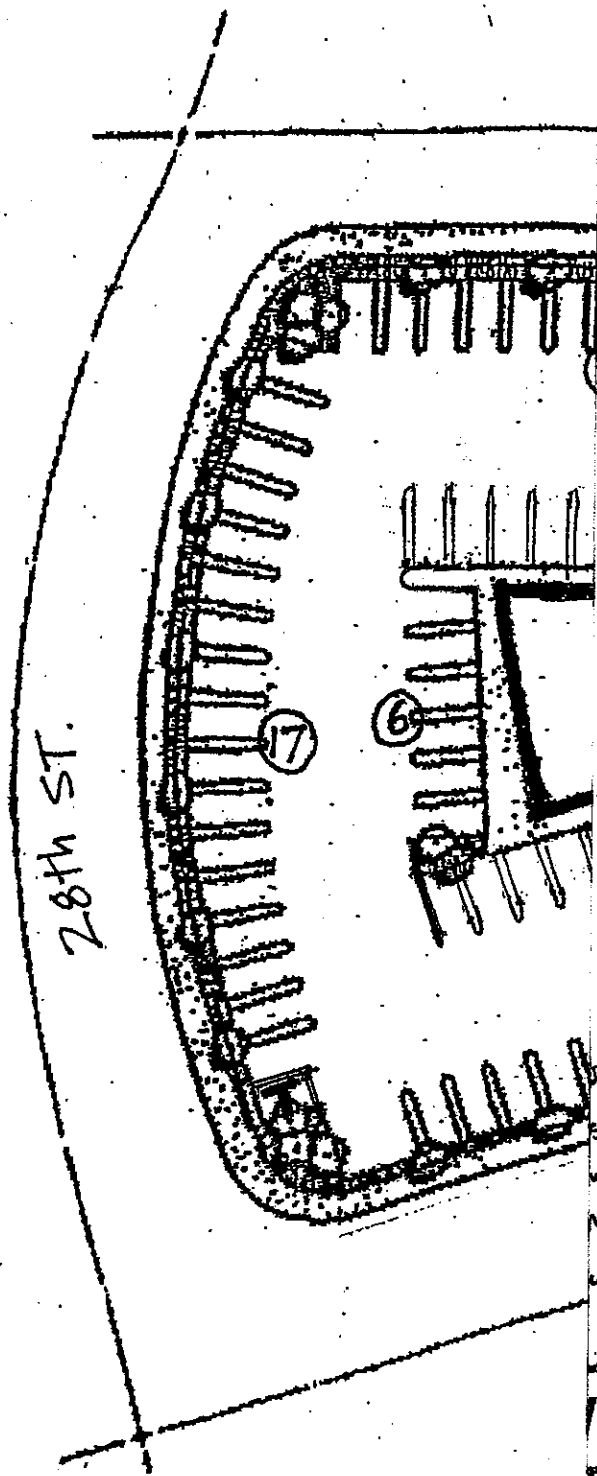
VICINITY MAP



Use Permit No. UP2009-004
PA2009-016

2727 Newport Boulevard, Ste 101

Attachment No. PD 2



RECEIVED BY
 PLANNING DEPARTMENT

AUG 6 2009

CITY OF NEWPORT BEACH

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 nd in the sales
 shall be approved by
 ing & Public works.*

**JRFBOARDS
 PORT BLVD. STE. 101
 T BEACH CA 92663**

8/5/09





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. NP2009-007**

Tentative Parcel Map No. 2009-105
 (PA2009-104)

Applicant **Walter Howald**

Site Address **700 Narcissus Avenue and 3530 Fourth Street**
 Howald Residence

Legal Description **Lot 2, Block 741**

On **August 27, 2009**, the Zoning Administrator approved the following: A Parcel Map application for two-unit condominium purposes. No waivers of title 19 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. A previously existing two-unit dwelling was demolished and a new duplex, which can become a two-unit condominium project, is currently under construction. The proposed subdivision and improvements are consistent with the land use and property development regulations of the R-2 Zoning District and the 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 are not likely to 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:

- The project qualifies for an exemption from environmental review pursuant to Section 15315 (Class 15 Minor Land Divisions) of the Implementing Guidelines of the California Environmental Quality Act (CEQA), which exempts the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous 2 years, and the parcel does not have an average slope greater than 20 percent.
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. The new duplex is being constructed to become a condominium project and will comply with all Building, Public Works, and Fire Codes. Public improvements will be required of the developer per Section 19.28.010 of the Municipal Code and Section 66411 of the Subdivision Map Act. All ordinances of the City and all conditions of approval will be complied with.
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. Public improvements will be required of the Applicant per the Municipal Code and the Subdivision Map Act.

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:

- The property is not subject to the Williamson Act because 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.

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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 for the R-2 Zoning District.
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 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 proposed parcel map is not located within the Coastal Zone.

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 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.
4. 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.
5. All improvements shall be constructed as required by City Ordinance and the Public Works Department.
6. Additional Public Works improvements, including street and alley reconstruction, work may be required at the discretion of the Public Works Inspector.
7. A 10-foot radius corner cut-off easement for street and public utility purposes at the Narcissus Avenue/Fourth Avenue curb return shall be recorded as a part of the parcel map.
8. A new ADA compliant curb access ramp shall be constructed at the Narcissus Avenue/Fourth Avenue curb return.
9. The alley approach shall be reconstructed to meet ADA requirements per City Standards.
10. Reconstruct any broken and/or otherwise damaged concrete sidewalk panels, alley section, concrete curb and gutter along the Narcissus Avenue and Fourth Avenue frontages and alley way. Limits of work shall be at the discretion of the Public Works Inspector.
11. The rear 5-foot setback adjacent to the alley shall be clear of any above ground improvements.
12. Install new sod or low groundcover of the type approved by the City throughout the Narcissus Avenue and Fourth Avenue parkway fronting the development site.
13. An encroachment agreement is required for all private encroachments in the public right-of-way. All private encroachments shall comply with City Council Policy L-6, Private Encroachments in Public Rights-of Ways.
14. One new street tree shall be planted in each of the Narcissus Avenue and Fourth Avenue rights-of-way per street tree requirements of Chapter 13.09 of the Municipal Code.

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15. Protect in place the existing Eucalyptus globules – Blue Gum street tree in the Fourth Avenue public right-of-way.
16. 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.
17. All work conducted within the public right-of-way shall be approved under an encroachment permit issued by the Public Works Department.
18. All existing private, non-standard improvements 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.
19. 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.
20. 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.
21. 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.
22. Each dwelling unit shall be served with an individual water service and sewer lateral connection to the public water and sewer systems, unless otherwise approved by the Public Works Department and the Building Department.
23. Each dwelling unit shall be served with individual gas and electrical service connection and shall maintain separate meters for the utilities.
24. Two-car parking, including one enclosed garage space, shall be provided on site for each dwelling unit per requirements of the Zoning Code.
25. All vehicular access to the property shall be from the adjacent alley, unless otherwise approved by the City Council.
26. In accordance with the provisions of Chapter 13 (or any other applicable chapters) of the Newport Beach Municipal Code, additional street trees may be required and existing street trees shall be protected in place during construction of the subject project, unless otherwise approved by the General Services

August 27, 2009

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Department and the Public Works Department through an encroachment permit or agreement.

27. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L.
28. All on-site drainage shall comply with the latest City Water Quality requirements.
29. All existing drainage facilities in the public right-of-way shall be retrofitted to comply with the City's on-site non-storm runoff retention requirements. The Public Works Inspector shall field verify compliance with this requirement prior to recordation of the parcel map.
30. 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.
31. 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.
32. 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.
33. This Parcel Map shall expire if the map has not been recorded within three 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. 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

Appeared in Opposition: None

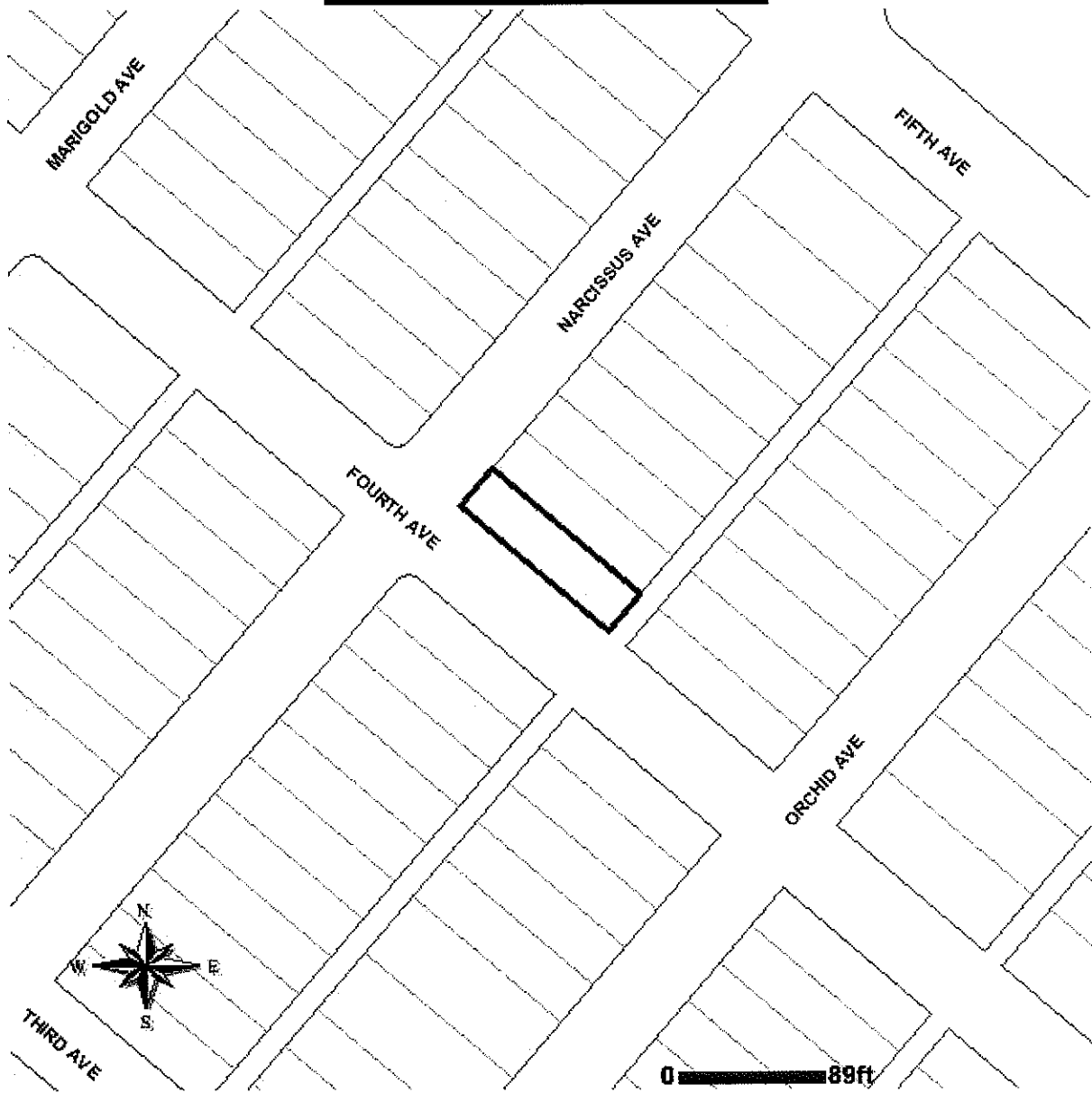
Appeared in Support: None

August 27, 2009

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VICINITY MAP



Parcel Map No. NP2009-007
PA2009-104

700 Narcissus Avenue and 3530 Fourth Street



PLANNING DEPARTMENT
CITY HALL
3300 NEWPORT BOULEVARD
P. O. BOX 1768
NEWPORT BEACH, CALIFORNIA
92658-8915

Memorandum

To: Planning Commission
From: David Lepo, Planning Director
Date: August 28, 2009
Re: Panini Garden Bistro 4647 MacArthur Boulevard
PA2009-115 SA2009-004 – Temporary Expansion of Hours

In accordance with Section 20.60.015 (Temporary Structures and Uses) of the Newport Beach Municipal Code, I have authorized the Panini Garden Bistro at 4647 MacArthur Boulevard to extend their food services hours to 4 a.m. for a period not to exceed 90 days. Currently, the conditions of approval for Use Permit No. 2002-040 require that the restaurant cease operations at 1:00 a.m. This temporary use approval is for food service only; alcoholic beverage service will continue to end at 1:00 a.m. The temporary extension of hours is exclusively for Panini Garden Bistro therefore, the only entrance and areas open for food service during these hours is the Panini Garden Bistro entrance and the Panini Garden Bistro food service area, not including the bar, within the northwesterly corner of the building and the Panini Garden Bistro outdoor patio areas (See attached plan with highlighted areas).

Panini Garden Bistro is one of three establishments that are interconnected with a shared kitchen and storage facilities. These establishments are operated under the same ownership; however, they have very different operational characteristics. Panini Garden Bistro is an Italian-inspired restaurant and bakery specializing in gourmet salads, panini sandwiches, pizza and seafood. Ten Asian Bistro is an Asian-inspired restaurant specializing in a variety of Asian cuisines. Red Night Club is a nightclub and multi-purpose assembly facility. The nightclub usually operates every Thursday, Friday, and Saturday from the hours of 8:00 p.m. to 2:00 a.m., with occasional special events on other nights of the week.

Background

In June of 2005, the Code Enforcement and Water Quality Division was made aware that the Café Panini (Panini Garden Bistro) was continuing to operate after the 1:00 a.m. closing time. A letter was sent to the applicant informing them of the violation,

which prompted an application for an amendment to the Use Permit to extend the hours of operation, Use Permit No. 2002-040 A.

Use Permit No. 2002-040 was approved by the Planning Commission in 2003 for the operation of two full service restaurants and a nightclub/multiple use assembly venue with dancing and live entertainment. Additionally, the Use Permit authorized the on-site sale of alcoholic beverages pursuant to the Alcoholic Beverage Ordinance (ABO) and a waiver of the portion of the off-street parking requirements.

The hours of operation for Café Panini (Panini Garden Bistro) were conditioned as follows, per Condition No. 12 of Use Permit No. 2002-040:

"Hours of operation for the restaurant and outdoor patio area occupied by Panini, as depicted on the approved set of plans, shall be 7:00 a.m. to 1:00 a.m. daily."

On August 18, 2005, the Planning Commission amended Condition No. 12 to temporarily expand the hours of operation for Panini from the hours of 7:00 a.m. to 4:00 a.m. daily, until August 2006. The condition specifically states that after August 18, 2006, the hours of operation shall revert back to 7:00 a.m. to 1:00 a.m. daily, unless the extended hours prove not to be detrimental, in which case the Planning Director may permanently change the hours of operation.

On August 9, 2006, the Planning Director extended the trial period for an additional one year since the restaurant only operated with expanded hours for a few months due to personnel scheduling problems. The Newport Beach Police Department expressed concern that using 3 months of a 12 month trial period was not a valid example of the operation and on July 24, 2007, they submitted a memorandum to the Planning Department objecting to permanently changing the hours of operation, or for another one year extension, since the restaurant had elected not to remain open until 4:00 a.m. The applicant explained that the restaurant had not operated under the extended hours due to a change in management and that the new management was not aware of the condition. Staff forwarded the resolution and conditions of approval for the expanded hours to the new management and gave until August 18, 2007, for a request for an extension; however, they were unable to establish the proper staffing to meet the timeline and the expanded hours of operation expired on October 5, 2007.

Rationale for Approval

Currently the applicant has requested the Planning Commission approval of a Use Permit Amendment, Use Permit No. 2002-040 A (PA2009-115), to permanently restore the expanded hours of operation for Panini Garden Bistro from 7:00 a.m. to 4:00 a.m. in addition to a request for the addition of as-built restrooms to the club area (Red Night Club), and live entertainment for traditional and ethnic music, including a belly dancer for Panini Garden Bistro.

Since the Planning Commission previously amended Condition No. 12 to temporarily extend the hours of operation for Café Panini (Panini Garden Bistro) from 7:00 a.m. to 4:00 a.m. and the circumstances of management have been resolved, it is reasonable to conclude that the previously amended Condition No. 12 could be reinstated until the Use Permit Amendment for all of the proposed changes are presented to the Planning Commission.

Staff anticipates a hearing date to review the proposed amendment will be scheduled within the next 90 days.