

**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 September 25, 2009

ACTIONS TAKEN AT SEPTEMBER 24, 2009 ZONING ADMINISTRATOR HEARING

- Item 1: Modification Permit No. MD2009-013 (PA2009-077)
116 Ruby Avenue
A modification permit requesting to maintain a non-conforming, external staircase 12 feet 3 inches in height to encroach 3 feet into the southerly side yard setback and 2 feet 6 inches into the rear-yard setback.
This item was denied. Council District 5
- Item 2: Modification Permit No. MD2008-037 (PA2008-180)
1800 South Bay Front
A modification permit to allow alterations of up to 50 percent of the structural elements of a nonconforming single-unit dwelling which exceeds the maximum permitted floor area limit.
This item was approved. Council District 5

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*)



NOTICE OF ZONING ADMINISTRATOR ACTION

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


September 24, 2009

Thomas J. and Katherine M. O'Keefe
2725 West Coast Highway
Newport Beach, CA 92663

Application No. Modification Permit No. MD2009-013
(PA2009-077)

Site Address 116 Ruby Avenue
O'Keefe Residence

On September 24, 2009, the Zoning Administrator denied the above referenced application based on the findings and conditions in the attached action letter.

By: 
James W. Campbell, Zoning Administrator

JWC: ems

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.

cc: *property owner*
Thomas J. and Katherine M. O'Keefe
2725 West Coast Highway
Newport Beach, CA 92663



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. MD2009-013
(PA2009-077)**

Applicant **Thomas J. and Katherine M. O'Keefe**

Site Address **116 Ruby Avenue**

Legal Description **Balboa Island Section 2 Block 2 Lot 22**

On September 24, 2009, the Zoning Administrator denied the application for a Modification Permit requesting to maintain a non-conforming, external staircase 12 feet 3 inches in height to encroach 3 feet into the southerly side yard setback and 2 feet 6 inches into the rear-yard setback that was constructed without the benefit of permits. The property is located in the R-1.5 (Two-Family Residential) District. The Zoning Administrator's denial is based on the following findings.

FINDINGS

1. The subject property is located on Balboa Island and has a required 5-foot rear yard setback along the alley and 3-foot side setbacks. The Zoning Code allows certain structures to a height of 6 feet within required side and rear yard setbacks other than those abutting and alley. The proposed modification is to allow a 12 feet 6 inch in height staircase to encroach 3 feet into the southerly side yard setback and 2 feet 6 inches into the rear-yard alley setback.
2. Staff finds no practical difficulties or physical hardships associated with the property that warrant approval to allow for the encroachment of the staircase in the southerly side yard and rear yard setback. Access to the second floor is provided by an interior staircase at the front of the property and the proposed secondary staircase at the rear of the property extending from the upper unit to the alley is not required by the California Building Code. Eliminating or closing the existing door on the second floor will not require significant structural alteration or expense.
3. The proposed open exterior staircase is not permitted under the 2007 California Building Code given its proximity to the property line without it being fully enclosed to the ground, thus retention of the structure would have an adverse affect on the health or safety of persons residing or working in the neighborhood of the property and be detrimental to the general welfare or injurious to property or improvements in the neighborhood. Fully enclosing the structure would increase the mass of the encroachment and would be an increase in the degree of the nonconformity, which the Zoning Code does not permit, thereby creating

further negative effects and incompatibilities to the potential detriment to surrounding properties.

4. Development on Balboa Island, including Ruby Avenue, maintains many building nonconformities, including encroachments within side and alley setbacks. The requested encroachments would not be compatible as they are new construction, rather than routine maintenance, that should only be performed in compliance with the Zoning Code and the California Building Code. Allowing new construction to deviate from the Zoning Code when viable and safe alternatives exist is not compatible with the surrounding neighborhood.
5. Although there was a landing and staircase, similar to the proposed project that existed for many years on the subject site; its prior existence does not set a precedent for approval of the proposed Modification Permit.
6. The applicant's suggestion that the staircase is necessary to provide reasonable accommodation for a medical condition or disability is only considerable upon the filing of an application for Reasonable Accommodation pursuant to Section 20.98.

APPEAL PERIOD

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By: 
James W. Campbell, Zoning Administrator

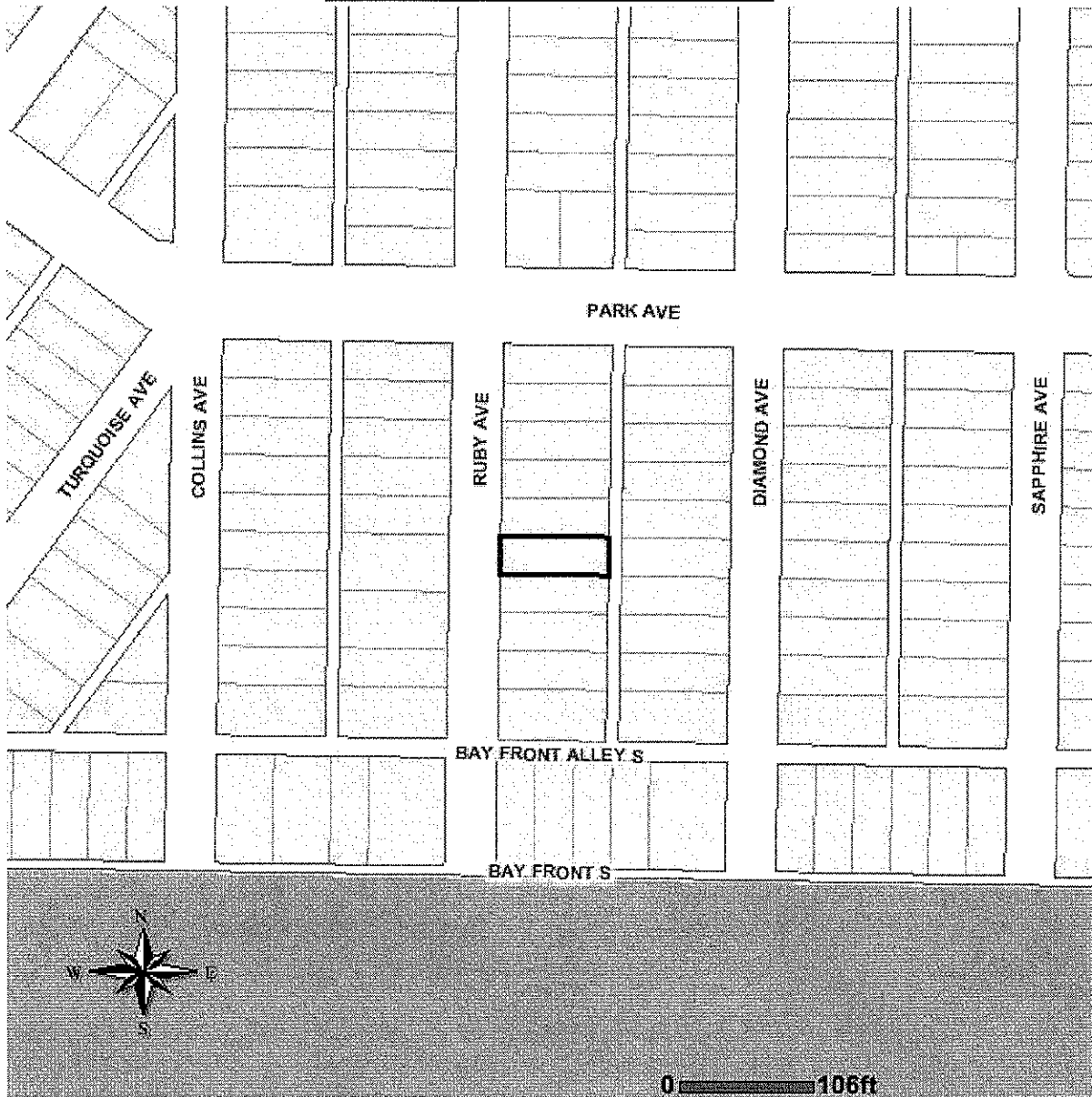
JWC/ems

Attachments: Vicinity Map

Appeared in Opposition: None

Appeared in Support: None

VICINITY MAP



Modification Permit No. MD2009-013
PA2009-077

116 Ruby Avenue



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. MD2008-037**
 (PA2008-180)

Applicant **The Jarvis Group Architects**

Site Address **1800 South Bay Front**
 Silk Residence Remodel

Legal Description **Lot 1, Block 4, Balboa Island Section 5**

On **September 24, 2009**, the Zoning Administrator approved the following: A modification permit to allow alteration of up to 50 percent of the structural elements of a nonconforming single-unit dwelling. The structure is nonconforming because it currently measures 3,277 square feet which exceeds the maximum permitted floor area limit by 377 square feet, and encroaches into the front, side and rear/alley setbacks. The property is located in the R-1.5 (Restricted Two-family Residential) District. The Zoning Administrator's approval is based on the following findings and subject to the following conditions.

FINDINGS AND CONDITIONS: PA2008-180 (MD2008-037)

The Zoning Administrator of the City of Newport Beach hereby finds as follows:

- 1) The Land Use Element of the General Plan and the Local Coastal Program Land Use Plan designate the site for "Two-Unit Residential" use. The existing single-unit dwelling is consistent with this designation.
- 2) General Plan Policy CE 7.1.11 states: "Require new development to minimize curb cuts to protect on-street parking spaces. Close curb cuts to create on street parking spaces wherever feasible." The vehicular access to the existing garage is presently provided from Jade Avenue rather than the 15-foot wide alley. Reorienting the existing garage to take access from the alley to facilitate the elimination of the existing curb cut to provide one additional on-street parking space is feasible for the following reasons:
 - a) Existing nonconforming structural encroachments within the 5-foot alley setback (portion of the building, exterior staircase and block walls) are planned to be removed by the applicant.
 - b) Creating an opening in the garage that faces the alley given the planned demolition in that wall will not significantly increase the amount of structural changes or costs in comparison to the overall scope and cost of the entire project.

- c) The garage is presently setback 7 feet from the 15-foot wide alley creating a 22-foot wide area to permit vehicles to access the existing garage.
 - d) The interior dimensions of the existing garage exceed the minimum standards of the Zoning Code to accommodate vehicular access from either the alley or Jade Street.
- 3) The granting of the application is necessary due to the practical difficulties associated with the property and that 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:
- a) The existing, nonconforming structure on the subject property exceeds the floor area limit because when the building was constructed the R-2 District regulations at that time allowed aggregate building coverage at full coverage less required yard setbacks and a 35 foot height limit. The floor area limitation of Balboa Island was not codified until January 22, 1973, which is 1.5 times the buildable area of the lot.
 - b) The Zoning Code permits the alteration of up to 50 percent of the existing structural elements of a nonconforming structure with the review and approval of a modification permit. The project as presented will provide for alteration of approximately 50 percent of the existing structural members of the structure.
 - c) The proposed remodel will reduce the floor area (bringing it closer to conformance) and eliminate the nonconforming front, side, and rear/alley setback encroachments.
 - d) The proposed remodel is a reasonable design solution given the development constraints of the existing, nonconforming structure on the subject property which does not provide the opportunity to bring the structure into conformance with the floor area limitation without substantial building alteration and substantial demolition and elimination of existing floor area. The proposed remodel eliminates all structural encroachments into the required front, side, and rear/alley setbacks to eliminate some of the nonconforming aspects and bring the building closer to conformance with the floor area limitations.
- 4) The requested modification will be compatible with existing development in the neighborhood for the following reasons.
- a) The proposed structure is consistent with the surrounding residential neighborhood as well as similar land uses throughout the City. The remodel will allow for a single-unit dwelling that is comparable in size to other structures in the neighborhood. Dwellings that exceed the floor area limit are common on Balboa Island because many structures were constructed prior to the institution of the current floor area limit, which is 1.5 times the buildable area of the lot.
 - b) The project will reduce the nonconformity of the existing structure by reducing the floor area of the structure.

- c) The project will remove existing structural encroachments in the front, side, and rear/alley setbacks so that the remodeled structure conforms to all required setbacks.
 - d) The project continues to provide a minimum of two enclosed parking spaces for the existing single-unit dwelling.
- 5) The granting of such an application will not adversely affect the health or safety of persons residing or working in the neighborhood of the property and will not be detrimental to the general welfare or injurious to property or improvements in the neighborhood for the following reasons:
- a) The project as conditioned and the application of general building code regulations to the construction of the project will ensure the welfare of the surrounding community.
 - b) The project as proposed will comply with all the provisions of the R-1.5 District regulations, with the exception of the floor area limit.
- 6) The project is exempt from the requirements of the California Environmental Quality Act pursuant to Section 15301 - Class 1 (Existing Facilities) of Title 14, Chapter 3 of the California Code of Regulations. The project involves the alteration and remodeling of an existing single-family residence involving no expansion of use on an existing developed site without significant environmental resources present.

Conditions

- 1. The development shall be in substantial conformance with the approved plot plan, floor plans and elevations.
- 2. Anything not specifically approved by this Modification Permit is prohibited and must be addressed in a separate and subsequent Modification Permit review.
- 3. Due to the age of the existing structure, this approval allows for some flexibility should the applicant encounter dry rot or termite damage to additional structural members during the construction phase. A maximum alteration of up to 50 percent of the existing structural members is permitted under this Modification Permit.
- 4. The project shall be revised to reorient the existing two-car garage to provide vehicular access from the alley. The existing curb cut and driveway along Jade Avenue shall be closed and replaced with standard curb, gutter, and sidewalk to the satisfaction of the Public Works Department. Said work within the public right-of-way shall be accomplished pursuant to permits issued by the Public Works Department. The Planning Director may waive these requirements if it is determined that reorientation of the garage is otherwise infeasible for unforeseen reasons.

5. No above ground improvements are allowed in the rear yard alley setback. Prior to final of the building permit, the block wall located at the rear of the property shall be removed to maintain the minimum 5-foot alley setback.
6. The submitted plans and topographic survey show an existing 6-foot-high wooden fence in the Jade Avenue public right-of-way. This wall is prohibited in the public right-of-way per Council Policy L-6.
7. Remove lighting and electrical appurtenances from the South Bay Front public right-of-way.
8. All landscaping in the public right-of-way shall be maintained at a maximum of 36 inches in height and shall not overhang in the public right-of-way to provide clearance for pedestrians. The shrub/hedge along Jade Avenue is higher than 36 inches and the shrub/hedge and bird of paradise branches overhang into the Jade Avenue public right-of-way. Also, the landscaping shall be clear around the air vent, located behind the low brick planter wall, for accessibility.
9. All existing and proposed non-standard encroachments in the Jade Avenue and South Bay Front public rights-of-way require an encroachment permit/agreement with the Public Works Department. All improvements shall conform to City Council Policy L-6.
10. A Public Works Department encroachment permit inspection is required before the Building Department Permit Final can be issued. At the time of Public Works Department inspection, if any of the existing public improvements surrounding the site are damaged by the private work, new concrete sidewalk, curb and gutter, and alley/street pavement will be required by the City and 100% paid by the owner 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.
11. A building permit shall be obtained prior to commencement of the construction.
12. The proposed work shall comply with the California Building Code (C.B.C) and all adopted local amendments.
13. The side yard setback shall be the as required by Title 20 of the Municipal Code plus the walls exterior finish materials thickness.
14. The proposed work shall comply with the 2007 C.B.C. for protection of exterior walls and percentage of unprotected openings.
15. Openings along the east elevation shall be limited to 25 percent of the floor level's exterior wall area per Section 704.8 of the C.B.C.

16. If more than 75 percent of the envelope of the first floor (perimeter walls and floor or roof over the first floor) of the existing structure is demolished or remodeled, the project will be required to comply with the same liquefaction standards for a new structure. Replacement or filling of existing doors and windows and new openings in existing walls will be counted with the area of demolition. Building a new roof over an existing roof or a new exterior wall beyond an existing exterior wall will be considered demolition of existing roof or wall respectively.
17. If the scope of the project cost of construction exceeds 50 percent of the replacement cost of the existing structure (substantial improvement), the entire structure shall be raised to finish floor elevation at 8.77 (NAVD 88) and documented with an elevation certification. This does not include the garage.
18. 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.
19. 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
20. 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.
21. 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

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By: 
James W. Campbell, Zoning Administrator

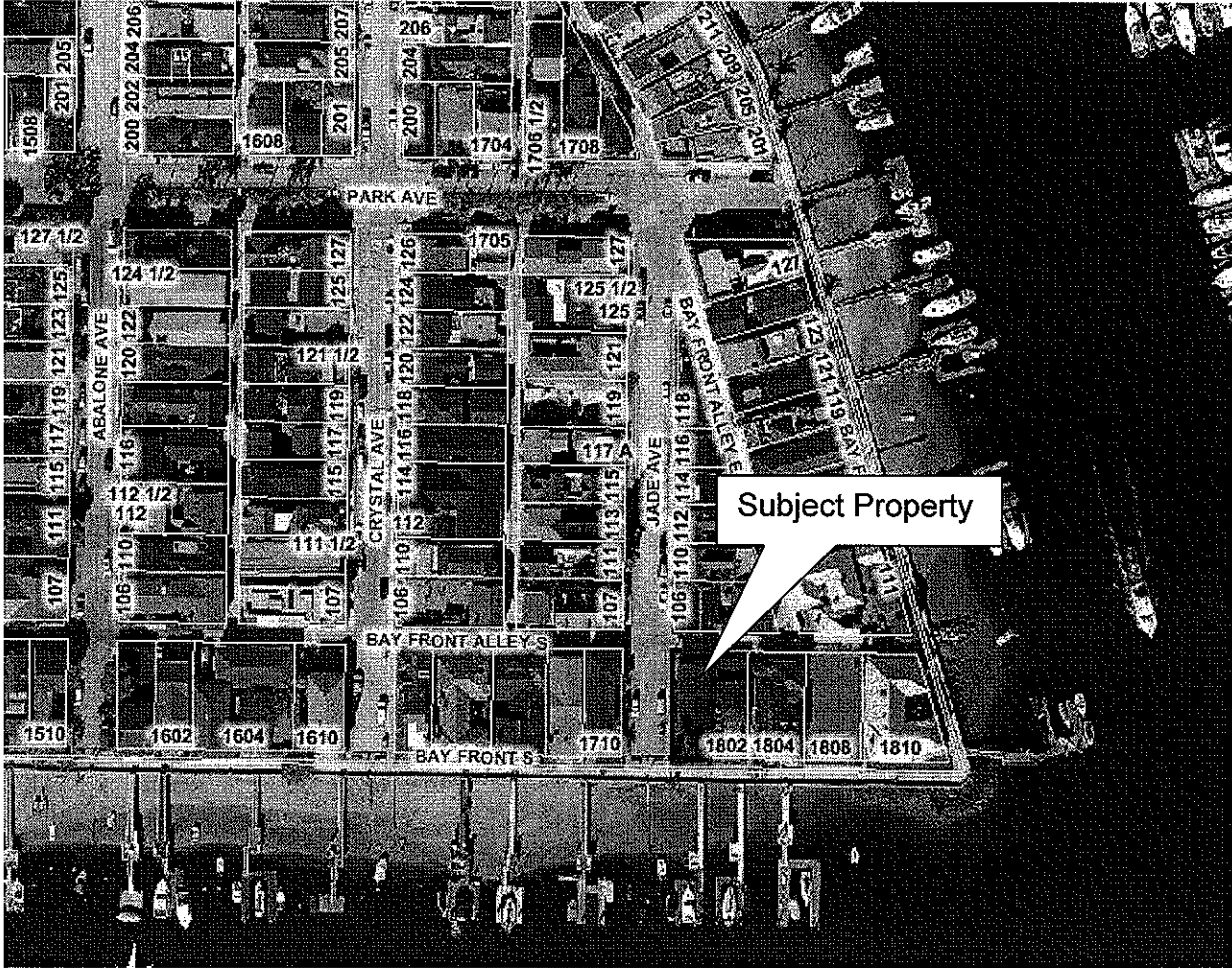
JWC/mkn

Attachments: Vicinity Map

Appeared in Opposition: None

Appeared in Support: Tim Lindenfelser

VICINITY MAP



Modification Permit No. MD2008-037
PA2008-180

1800 South Bay Front