

**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 December 4, 2009

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**ACTIONS TAKEN AT DECEMBER 3, 2009 ZONING ADMINISTRATOR HEARING**

- Item 1:** Lot Line Adjustment No.LA2009-009 (PA2009-146)  
227 and 233 Evening Canyon Road
- A lot line adjustment application for a lot merger to combine two existing parcels by removing the shared interior lot line. This application also approves to waive the requirement to file a parcel map.
- Council District 6
- This item was approved.
- Item 2:** Modification Permit No. MD2009-020 (PA2009-106)  
1421 Newporter Way
- A modification permit to allow an as-built exterior barbeque to encroach 5 feet into the required 5-foot side yard setback and an as-built exterior fireplace to encroach 5 feet into the required 10-foot rear yard setback. The barbeque is a maximum of 36 inches in height and the fireplace is a maximum of 8 feet in height from finished grade.
- Council District 5
- This item was approved.

  
\_\_\_\_\_  
David Lepo, Planning Director

**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 No. LA2009-009  
(PA2009-146)**

**Applicant**                **Jeffrey and Deborah Margolis**

**Site Address**            **227 and 233 Evening Canyon Road  
Margolis Residence**

**Legal Description**      **N Tract 1116 Lot 128**

On **December 3, 2009**, the Zoning Administrator approved the following: A lot line adjustment application for a lot merger to combine two existing parcels by removing the shared interior lot line. This application also approves to waive the requirement to file a parcel map. The property is located in the R-1-B (Residential B-Overlay) District. The Zoning Administrator's approval is based on the following findings and subject to the following condition(s).

### **FINDINGS**

1. The Land Use Element of the General Plan designates the site as Single-Unit Residential Detached (RS-D). The Coastal Land Use Plan designates this site as Single Unit Residential Detached (RSD-A), which is intended to provide primarily for single-unit residential development with density ranges from 0.0 to 5.9 units per gross acre.
  - One of the two dwelling units shall be removed from the proposed parcel prior to recordation of the lot line adjustment with the County.
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.
  - The average slope of the proposed parcel is less than 20 percent.
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.

- In order for the proposed parcel to conform to the General Plan and Zoning Code regulations, one of the existing dwelling units will be demolished so that the new parcel will contain no more than one dwelling unit.
  - Neither the merged lot nor adjoining parcels will be deprived of legal access as a result of the merger since vehicular access to and from the adjacent street will remain unchanged.
4. The merger of contiguous 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 proposed merger will not cause future development to impact public views.
  - The proposed parcel consists of legal building sites.
  - The lot merger will 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 of 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 parcel.
  - 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 shall be submitted to the Public Works Department for review and approval.
3. The lot line adjustment and grant deeds approved by the Public Works Department shall be filed 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. No building permits may be issued until the appeal period has expired, unless otherwise approved by the Planning Department.
6. Prior to final of the building permit for any new construction on the properties, the Planning Department shall verify Coastal Commission approval of the lot line adjustment and recordation of the document with the County Recorder.
7. 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 proposed parcel shall conform to current zoning regulations pertaining to the number of dwelling units and the distance between detached structures. The proposed parcel shall have no more than one dwelling unit. At least one structure shall be demolished or modified to achieve the required separation between structures.

**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

Architectural Application Approval from Shore Cliffs Property Owners  
Association dated October 28, 2009

Appeared in Support: Greg George – 237 Evening Canyon Road

Appeared in Opposition: None

# VICINITY MAP



Lot Line Adjustment No. LA2009-009  
PA2009-146

**227 and 233 Evening Canyon Road**



## Shore Cliffs Property Owners Assoc Inc

October 28, 2009

Margolis Family Trust 12/23/1998  
c/o Jeffrey & Deborah Margolis  
227 Evening Canyon Rd  
Corona Del Mar, CA 92625-2637

**Re: Architectural Application Approval – 227 & 233 Evening Canyon  
Shore Cliffs Property Owners Association**

Dear Margolis Family Trust 12/23/1998:

The Architectural Review Committee (ARC) and consulting Architect, David George have reviewed and **Approved** your preliminary architectural submittal dated October 15, 2009 for landscape & hardscape merger (rear yard) at 227 & 233 Evening Canyon, per your submittal.

***Please review the enclosed comments from David George, the Association consulting Architect.***

Please review with your contractor the CC&R's and Architectural Guidelines that pertain to the construction site and its maintenance.

If you find that you need to modify your original plans or if you need an extension, please contact us in writing, so that the modifications may also be reviewed by the Architectural Committee. Please call me at (949) 752-2225 if you have any questions or email me at [vvanhorn@waltersmanagement.com](mailto:vvanhorn@waltersmanagement.com). 714-3998

Sincerely,

A handwritten signature in black ink that reads 'Valerie Vanhorn'.

Valerie Vanhorn  
Community Association Administrator  
Shore Cliffs Property Owners Assoc Inc

cc: Board of Directors  
Enclosure



# SHORE CLIFFS PROPERTY OWNERS ASSOCIATION ARCHITECTURAL DESIGN REVIEW

**Homesite:** Margolis – 227 & 233 Evening Canyon  
**Subject:** Landscape & Hardscape (Rear Yard) – Preliminary Submittal #1  
**Reviewed:** Dave George / 10-26-2009

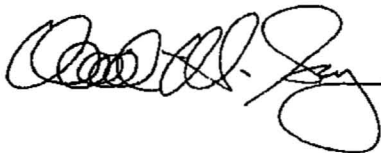
- I. Recommendation – Approved to proceed with a complete Preliminary Submittal, including all items as designated herein.
- II. Submittal Requirements:  
Provide additional Neighbor Signature from 241 Evening Canyon.
- III. **Story Pole Staking Plan:**
  - a. Provide a story pole staking plan and install storey poles as indicated on the accompanying red line site plan.
- IV. **Civil / Grading Plans:**
  - a. Site Survey – Submitted.
- V. **Landscape Plans:**  
Provide the following information on the landscape site plan:
  - a. Provide elevations and details of all new/proposed vertical landscape features as they relate to existing.
  - b. Provide site sections of all horizontal and vertical landscape features as they relate to existing.
  - c. Provide a screened background of the existing site/survey on landscape site plan, include heights or all new and existing landscape features on the plan.
- X. **Color / Material Palette:**
  - a. Not provided, required for final approval.

**APPROVAL SUMMARY:**

**Preliminary Design Review – Landscape**

- Approved with Corrections - Resubmission required including the items as specified herein and the submittal plans
- Preliminary Review approved w/ conditions as described herein – Proceed with Final Submittal

Sincerely,  
**David George + Associates, Inc.**



David H George  
Principal

**Walters Management**

OCT 27 2009

**Irvine Office**



## **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. MD2009-020 (PA2009-106)**  
**Applicant**                         **Michael and Patricia Tenerelli**  
**Site Address**                    **1421 Newporter Way**

**Legal Description**            **Lot 50, Tract 15243**

On **December 3, 2009**, the Zoning Administrator approved the following: To allow an as-built exterior barbeque to encroach 5 feet into the required 5-foot side yard setback and an as-built exterior fireplace to encroach 5 feet into the required 10-foot rear yard setback. The barbeque is a maximum of 36 inches in height and the fireplace is a maximum of 8 feet in height from finished grade. The property is located in the PC-41 (Newporter North) District. The Zoning Administrator's approval is based on the following findings and subject to the following conditions.

### **FINDINGS AND CONDITIONS: PA2009-106 (MD2009-020)**

#### **Required Findings for Action and Facts in Support of Findings**

In approving a modification permit, the decision-making body shall make all of the following findings:

1. The City's Land Use Element of the General Plan designates the property as Single-Unit Residential Detached (RS-D), which is intended to provide for range of detached single-family residential dwelling units on a single legal lot and does not include condominiums or cooperative housing. The detached single-unit dwelling is consistent with the General Plan designation.
2. Districting Map No. 60 of the Zoning Code designates the site as PC-41 (Newporter North Planned Community) Zoning District, which designates the site for residential dwellings and associated uses as well as parks and environmental open space. The existing detached single-unit dwelling is consistent with the Newporter North Planned Community designation.
3. The project has been reviewed, and it qualifies for a categorical exemption pursuant to Section 15305 of the California Environmental Quality Act under Class 5 (Minor Alterations in Land Use Limitations) of the Implementing Guidelines of the California Environmental Quality Act. Examples of this exemption include, but



are not limited to: (a) Minor lot line adjustments, side yard, and setback variances not resulting in the creation of any new parcel. This project consists of a minor side yard setback modification to allow for a fireplace and barbeque with related counter.

4. Notice of this application was mailed to all owners of property within 300 feet of the boundaries of the site, including the applicant, and posted on the subject property at least 10 days prior to the decision date, consistent with the provisions of the Municipal Code.

The Zoning Administrator determined in this case that the proposed Modification Permit 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 20.93.030:

1. **Finding:** The granting of the application is necessary due to the practical difficulties associate 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.

**Facts in Support of Finding:**

- The practical difficulties of locating the exterior fireplace and barbecue structures within the required setbacks would place the structures in the middle of the yard, in this particular case. The backyard of the subject property is about 26 feet deep so it is difficult to site the proposed structures within the required setbacks and still provide useable yard. The placement of the exterior fireplace structure to comply with the required rear setback requirement would result in a physical hardship that limits the use of the rear yard space.
  - The design and location of the two patio covers in the backyard further limits the useable area of the rear yard, and creates a practical difficulty in redeveloping the rear yard area so that the applicant is able to fully enjoy the property. This results in a physical hardship inconsistent with the purpose and intent of the Zoning Code.
  - It is staff's determination that such placement is not the intent of the Newport North Planned Community District Regulations for setback requirements for fireplaces and chimneys.
2. **Finding:** The requested modification will be compatible with existing development in the neighborhood.

**Facts in Support of Finding:**

- The freestanding fireplace and barbeque are accessory structures commonly located on residential properties. The Newporter North Planned Community District Regulations allow fences and walls to be located within a side or rear yard setback limited to a maximum height of 8 feet. However, for fireplace regulations, the Planned Community Text refers to the Municipal which makes

no such provision for accessory structures such as fireplaces. When uncertainty exists regarding the interpretation of any provision of this code or its application to a specific site, the Planning Director determines the intent of the provision. In this case, the Planning Director determined that exterior freestanding fireplaces and barbeques are not permitted in the setback unless a modification permit has been granted.

- The granting of a 5-foot encroachment into the required 10-foot rear yard setback for a freestanding fireplace is consistent with the modified and conditioned approvals granted by the Modifications Committee and the Planning Commission for encroachments of similar structures and in this neighborhood and Citywide.
  - The granting of a 5-foot encroachment in the required 5-foot side yard setback with the freestanding barbeque is consistent with the modified and conditioned approvals granted by the Modifications Committee and the Planning Commission for encroachments of similar structures and in this neighborhood and Citywide.
  - The granting of the proposed encroachments is consistent with the draft Zoning Code regulations for exterior fireplaces, barbeques, and fire pits.
3. **Finding:** 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.

**Facts in Support of Finding:**

- As conditioned, the freestanding fireplace and barbeque will be gas-burning only. The prohibition to burn smoke-generating combustible material will mitigate any detrimental or negative effects to persons, property or improvements in the neighborhood.
- The fireplace maintains the required side yard setbacks and a maximum of 8 feet in height measured from finished surface which is the maximum permitted fence height in the PC-41 (Newporter North Planned Community).
- The barbeque maintains the required 10-foot rear yard setback, a maximum of 36 inches in height and is located in the side yard setback well below the elevation of the existing 8-foot-high wall.
- The rear of the subject property abuts the rear and side yards of the adjacent properties and is separated from them by an existing 8-foot-high wall. The proposed location of the fireplace and barbeque will ensure adequate light, air, and open space for the adjoining residential properties.


**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 freestanding fireplace and barbeque will be gas-burning only.**

3. **The freestanding fireplace and barbeque shall not exceed eight feet in height measured from finished surface.**
4. Anything not specifically approved by this Modification Permit is prohibited and must be addressed in a separate and subsequent modification permit review.
5. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use will be cause for revocation of this Modification Permit.
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. A building permit shall be obtained prior to commencement of the construction.
9. 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.
10. 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.
11. 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.
12. 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. For additional information on filing an appeal, contact the Planning Department at 949 644-3200.

By:   
James W. Campbell, Zoning Administrator

JWC/mkn

Attachments: Vicinity Map

Appeared in Opposition: None

Appeared in Support: None

# VICINITY MAP



Modification Permit No. MD2009-020  
PA2009-106

**1421 Newporter Way**