

**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 17, 2009.

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**ACTIONS TAKEN AT DECEMBER 17, 2009 ZONING ADMINISTRATOR HEARING**

- Item 1: Parcel Map Permit No. NP2009-012 (PA2009-151)  
505 Orchid Avenue  
A Parcel Map for condominium purposes for a new, two-unit residential development.  
This item was approved. Council District 6
- Item 2: Condominium Conversion Permit No. CC2009-004 (PA2009-141)  
401 38th Street & 3800 Marcus Avenue  
A condominium conversion to convert an existing duplex into a condominium project. Building Permit No. X2006-0153 for a new duplex was finalized prior to recordation of County Tentative Parcel Map No. 2005-302, Parcel Map No. NP2007-003 (PA2007-237). A condominium conversion application is required to allow for the dwelling units to be sold as condominiums. The code required two-car parking per unit will be provided. No exceptions to the Title 19 development standards are proposed with this application.  
This item was approved. Council District 1
- Item 3: Modification Permit No. MD2009-026 (PA2009-145)  
1729 Port Abbey Place  
A modification permit to allow a 12-foot 10-inch high exterior fireplace and 4-foot 3-inch barbeque to encroach 6 inches into the required 5-foot side yard setback. Also, the modification permit would allow a 12-foot 10 inch high accessory building to encroach 5 feet into the 10-foot rear yard setback. The accessory building has a floor area of 93 square feet and contains a toilet, two sinks, two refrigerators, and storage cabinets.  
This item was continued to the 01/07/2010 Zoning Administrator Hearing. Council District 7
- Item 4: Modification Permit No. MD2009-031 (PA2009-150)  
157 Shorecliff Road  
A modification permit to allow a fence and gate 5 feet 6 inches in height to encroach 15 feet into the required 25 foot front yard setback along Shorecliff Road.  
This item was denied. Council District 6





## 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. NP2009-012**  
   **County Tentative Parcel Map No. 2009-137**  
   **(PA2009-151)**

**Applicant**                            **Robert Fabricant**

**Site Address**                        **505 Orchid Avenue**

### **Legal Description**

On December 17, 2009, the Zoning Administrator approved the following: A Parcel Map for condominium purposes for a new, two-unit residential development. 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 condition(s).

### **FINDINGS AND CONDITIONS: PA2009- 151 (NP2009-012)**

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

In approving a tentative tract map or tentative parcel map, the decision-making body shall make all of the following findings:

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

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

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

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

2. **Finding:** That the site is physically suitable for the type and density of development.

**Facts in Support of Finding:**

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

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

**Facts in Support of Finding:**

- This project has been reviewed, and it has been determined that it is categorically exempt from the requirements of the California Environmental Quality Act under Class 3 (New Construction or Conversion of Small Structures).

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

**Facts in Support of Finding:**

- The proposed Parcel Map is for residential condominium purposes. All construction for the project will comply with all Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems. 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 as there are no public easements that are located on the property.
6. **Finding:** That, subject to the detailed provisions of Section 66474.4 of the Subdivision Map Act, if the land is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 (Williamson Act), the resulting parcels following a subdivision of the land would not be too small to sustain their agricultural use or the subdivision will result in residential development incidental to the commercial agricultural use of the land.

**Facts in Support of Finding:**

- The property is not subject to the Williamson Act since the subject property is not considered an agricultural preserve and is less than 100 acres.
  - This site developed for residential use in a residentially-zoned area.
7. **Finding:** That, in the case of a "land project" as defined in Section 11000.5 of the California Business and Professions Code: (a) there is an adopted specific plan for the area to be included within the land project; and (b) the decision-making body finds that the proposed land project is consistent with the specific plan for the area.

**Facts in Support of Finding:**

- The property is not a "land project" as defined in Section 11000.5 of the California Business and Professions Code.
  - The project is not located within a specific plan area.
8. **Finding:** That solar access and passive heating and cooling design requirements have been satisfied in accordance with Sections 66473.1 and 66475.3 of the Subdivision Map Act.

**Facts in Support of Finding:**

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

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

**Facts in Support of Finding:**

- The proposed Parcel Map is consistent with Section 66412.3 of the Subdivision Map Act and Section 65584 of the California Government Code regarding the City's share of the regional housing need. The residential density on the site will remain the same, which allows two units in the R-2 Zoning District. No affordable housing units are being eliminated based upon the fact that the previously existing units were not occupied by low or moderate income households and the proposed number of units remains the same.
10. **Finding:** That the discharge of waste from the proposed subdivision into the existing sewer system will not result in a violation of existing requirements prescribed by the Regional Water Quality Control Board.

**Facts in Support of Finding:**

- Wastewater discharge into the existing sewer system will remain the same and does not violate Regional Water Quality Control Board (RWQCB) requirements.
11. **Finding:** For subdivisions lying partly or wholly within the Coastal Zone, that the subdivision conforms with the certified Local Coastal Program and, where applicable, with public access and recreation policies of Chapter Three of the Coastal Act.

**Facts in Support of Finding:**

- The subject property is not located in the Coastal Zone.

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. 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.
7. All work conducted within the public right-of-way shall be approved under an encroachment permit issued by the Public Works Department.
8. 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.
9. 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.
10. 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.
11. 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.

12. 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.
13. Each dwelling unit shall be served with individual gas and electrical service connection and shall maintain separate meters for the utilities.
14. Two-car parking, including one enclosed garage space, shall be provided on site for each dwelling unit per requirements of the Zoning Code.
15. All vehicular access to the property shall be from the adjacent alley, unless otherwise approved by the City Council.
16. 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 Department and the Public Works Department through an encroachment permit or agreement.
17. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L.
18. All on-site drainage shall comply with the latest City Water Quality requirements.
19. 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.
20. 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.
21. 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.



22. 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.
23. 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 \$3,070.00 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/rwb

Attachments: Vicinity Map

Appeared in Opposition:

Appeared in Support:

# VICINITY MAP





## CONDOMINIUM CONVERSION ACTION LETTER

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

**Application No.**            **Condominium Conversion No. CC2009-004 (PA2009-141)**  
**Applicant**                **Ryan Vitt**  
**Site Address**            **401 38th Street & 3800 Marcus Avenue**  
                                  **Vitt Residence – Condominium Conversion**  
**Legal Description**      **Lot 18, Block 438, Tract 164 Canal Section**

On **December 17, 2009**, the Zoning Administrator approved the following: a condominium conversion to convert an existing duplex into a condominium project. Building Permit No. X2006-0153 for a new duplex was finalized prior to recordation of County Tentative Parcel Map No. 2005-302, Parcel Map No. NP2007-003 (PA2007-237). A condominium conversion application is required to allow for the dwelling units to be sold as condominiums. The code required two-car parking per unit will be provided. No exceptions to the 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.

### **PA2009-141 (CC2009-004)**

#### **FINDINGS**

1. **Finding:** The minimum number, and the design and location, of off-street parking spaces shall be provided in conformance with the provisions of Chapter 20.66 of the Municipal Code (Off-Street Parking and Loading Regulations) in effect at the time of approval of the conversion.

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

- The property has the required four parking spaces for the existing two dwelling units.

2. **Finding:** Each dwelling unit within a building shall have a separate sewer connection to the City sewer.

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

- Separate sewer connections have been provided in accordance with the Standards for Condominium Conversions.

3. **Finding:** Each sewer lateral shall be retrofitted/fitted with a cleanout at the property line.

**Facts in Support of Finding:**

- The plumbing system, as approved, will be in substantial compliance with the City of Newport Beach Plumbing Code.
- The clean-out, as required, has been installed in such a way that it will meet the intent of the requirements of the City.

4. **Finding:** Each unit shall maintain a separate water meter and water meter connection.

**Facts in Support of Finding:**

- Separate sewer water meters and water meter connections have been provided in accordance with the Standards for Condominium Conversions.

5. **Finding:** The electrical service connection shall comply with the requirements of Chapter 15.32 of the Municipal Code.

**Facts in Support of Finding:**

- Separate electrical boxes have been provided in accordance with the Standards for Condominium Conversions.

6. **Finding:** The applicant for a condominium conversion shall request a special inspection from the Building Department for the purpose of identifying any building safety violations. The applicant shall correct all identified safety violations prior to approval of a final map for the condominium conversion.

**Facts in Support of Finding:**

- A special inspection for the Building Department was performed on November 6, 2009.
- As conditioned, the project will substantially comply with all applicable standard plans and specifications, adopted City and State Building Codes, and zoning requirements for new buildings related to the district in which the proposed project is located at the time of original construction.

7. **Finding:** Permanent lot stakes and tags shall be installed at all corners by a licensed surveyor or civil engineer unless otherwise required by the City Engineer.

**Facts in Support of Finding:**

- The project has been conditioned to comply with this requirement prior to recordation of the final parcel map per Condition No. 25

8. **Finding:** The project is consistent with the adopted goals and policies of the Land Use Element and other Elements of the General Plan and the Local Coastal Program Land Use Plan.

**Facts in Support of Finding:**

- The Land Use Element of the General Plan designates the site as Two-Unit Residential (RT). The RT land use designation provides for a range of two-family residential dwelling units such as duplexes and townhomes and the existing residential units are consistent with this designation.

9. **Finding:** The establishment, maintenance or operation of the use or building applied for will not, under the circumstances of this particular case, be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood of such use or be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the City.

**Facts in Support of Finding:**

- An existing two-unit dwelling rental will be converted into a two-unit condominium project. The residential density on the site will remain the same.
- The application of the project conditions provided below will ensure the health, safety, peace, comfort, and general welfare of persons residing or working in the neighborhood and the City.

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

**Facts in Support of Finding:**

- This project has been reviewed, and it has been determined that it is categorically exempt from the requirements of the California Environmental Quality Act under Section 15301 Class 1 (Existing Facilities). This exemption includes, but is not limited to the division of multiple family or single family residences into common-interest ownership involving where no physical changes occur which are not otherwise exempt. This project consists of a condominium conversion to allow for an existing duplex to be sold as separate dwelling units and there is no physical change proposed to the existing structure.

**CONDITIONS**

(Project specific conditions indicated in bold)

1. The project shall be in substantial conformance with the submitted plot plan, floor plans and elevations, except as noted below.

2. No more than two dwelling units shall be permitted on the site.
3. In accordance with the provisions of Chapter 13 of the Newport Beach Municipal Code or other applicable section or chapter, 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 Department and the Public Works Department through an encroachment permit or agreement.
4. All work conducted within the public right-of-way shall be approved under an encroachment permit issued by the Public Works Department.
5. Each of the tenants of the proposed condominium shall be given 180 days' written notice of intention to convert, prior to the termination of tenancy due to the proposed conversion.
6. Each of the tenants of the proposed condominium shall be given written notification within 10 days of the approval of the condominium conversion permit establishing the proposed condominium conversion. Proof of said notification shall be provided to the Planning Department.
7. Each of the tenants of the proposed condominium shall be given notice of an exclusive right to contract for the purchase of their respective units upon the same terms and conditions that such units will be initially offered to the general public or terms more favorable to the tenant. Such right shall run for a period of not less than 90 days from the date of issuance of the subdivision public report (Section 11018.2 of the Business and Professions Code), unless the tenant gives prior written notice of his or her intention not to exercise the right. Prior to final of the condominium conversion permit, the applicant shall provide a copy of the written verification forwarded to the tenants and said verification shall be presented to the Planning Department.
8. **Two-car parking, including one covered space, shall be provided on site for each dwelling unit per requirements of the Zoning code. All parking spaces shall be maintained clear of obstructions for the parking of vehicles at all times.**
9. The existing electrical service connection shall comply with the requirements of Chapter 15 of the Newport Beach Municipal Code; specifically, that each unit will have a minimum 100-amp service.
10. Each dwelling unit shall be served with an individual sewer lateral/cleanout and water service to the public water system, and shall maintain a separate water meter and water meter connection. Each water meter and sewer cleanout shall be installed with a traffic-grade box and cover. This work shall be completed prior to final of the condominium conversion permit.

11. The sewer service shall be separated so that each unit is served with a sewer lateral connection to the public sewer system with a clean-out to grade at the property line. If there is evidence that sewage is leaking from the facility or if it is substandard, the existing sewer lateral shall be replaced. Said work shall be completed under an encroachment permit issued by the Public Works Department, unless otherwise approved by the Utilities Department and the Building Department. This work shall be completed prior to final of the condominium conversion permit.
12. All improvements shall be constructed as required by Ordinance and the Public Works Department.
13. **A 10-foot radius corner cut-off easement for street and public utility purposes at the northeasterly corner of 38<sup>th</sup> Street and Marcus Avenue shall be recorded as part of the parcel map.**
14. **The white picket fence shall be located outside the corner cut-off easement and on private property.**
15. **A 5-foot setback from the rear property line shall be kept clear of all obstructions.**
16. **All improvements shall comply with the City's site distance requirement. See City Standard 110-L.**
17. **If any of the existing public improvements surrounding the site is damaged, public works improvements including, but not limited to, curb and gutter, sidewalk, and alley/street reconstruction may be required at the discretion of the Public Works Inspector.**
18. **An encroachment permit is required for all activities within the public right-of-way.**
19. Smoke detectors shall be provided in each bedroom.
20. The corrections listed by the Building Department in the special inspection report shall be made prior to final of the condominium conversion permit.
21. The exterior wall surfacing shall be made weather-tight as required by the Uniform Housing Code.
22. The property owner shall provide information to the Building Department that the roof is a Class C fire retardant roof as certified by a roofing contractor.
23. **A final 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 Sections 7-9-330 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.

24. All applicable Public Works Department plan check fees, park dedication fees, improvement bonds, and inspection fees shall be paid prior to processing of the map by the Public Works Department.
25. Prior to recordation of the final 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 the construction project.
26. 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.
27. The building permit obtained from the Building Department in order to convert the subject residential units into condominiums shall be finalized after the Parcel Map for Condominium Purposes has been recorded with the County of Orange and all conditions of approval have been completed and verified by the Planning Department.
28. Coastal Commission approval shall be obtained prior to recordation of the parcel map.
29. 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.

**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



Condominium Conversion No. CC2009-004  
PA2009-141

**401 38th Street & 3800 Marcus 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. MD2009-031**  
    **(PA2009-150)**

**Applicant**                            **William Guidero**

**Site Address**                        **157 Shorecliff Road**  
    **Whelan Property**

**Legal Description**                **N Tract 1116 Lot 109**

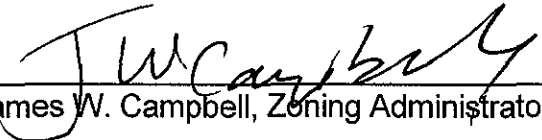
On **December 17, 2009**, the Zoning Administrator denied the following: A modification permit to allow a fence and gate 5 feet 6 inches in height to encroach 15 feet into the required 25-foot front yard setback along Shorecliff Road. The property is located in the R-1-B (Residential B-Overlay District) District. The Zoning Administrator's denial is based on the following findings.

### **FINDINGS**

1. The subject property is located in the Shorecliffs Property Owner's Community Association and has a required 25-foot rear yard setback along Shorecliff Road. The Zoning Code allows certain structures to a height of 3 feet within required front yard setbacks. The proposed modification is to allow a 5 foot 6 inch in height gate and fence to encroach 15 feet into the front yard.
2. The property slopes downward towards the rear and the proposed encroachments are located in a front yard setback adjacent to a cul-de-sac, which sets the property further back from Shorecliff Road than other dwellings on this street. However, staff does not consider these as practical difficulties resulting in physical hardships that warrant approval of the encroachment of the fence and gate in the front yard. The proposed gate and fence are neither required by code nor necessary for the enjoyment of the property. If desired, they can be designed to meet the requirements of the code for this particular property.
3. Although there is an existing fence and gate, similar to the proposed project that exists on the subject site, its prior existence does not set a precedent for approval of the proposed Modification Permit.

**APPEAL PERIOD**

The Zoning Administrator's decision may be appealed to the Planning Commission within 14 days of the action date. A \$3,070 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

# VICINITY MAP



Modification Permit No. MD2009-031  
PA2009-150

**157 Shorecliff Road**



## NOTICE OF PLANNING DIRECTOR ACTION

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

<b>Application No.</b>	<b>Staff Approval No. SA2009-009 (PA2009-148)</b>
<b>Applicant</b>	<b>Chi H. Lim</b>
<b>Site Address</b>	<b>3536 E Coast Highway</b>
<b>Project Name</b>	<b>Rose's Bakery Café, Inc.</b>
<b>Legal Description</b>	<b>Lot 4 &amp; 5, Block U, Tract 323</b>

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### Action

On **December 17, 2009**, the Planning Director approved the above referenced temporary use subject with the following conditions:

1. Allow a maximum of 12 seats inside the eating and drinking establishment, which exceeds the maximum number of six seats approved by Planning Director's Use Permit No. 29.
2. Allow a maximum of 340 square feet of accessory outdoor dining area in conjunction with the eating and drinking establishment, which exceeds the 75 square feet of outdoor dining area approved by Outdoor Dining Permit No. 60.
3. The temporary use shall not exceed a period of 90 days from this approval date.
4. The private off-street parking lot at 409 Orchid Avenue (across the alley from the subject site) shall be made available to the subject use at all times it is open for business. If access to the off-site parking is discontinued, this approval shall become null and void.

### Background

Use Permit No. 29 was approved by the Planning Director in 1998 for the operation of a full-service small-scale eating and drinking establishment (donut shop). Outdoor Dining Permit No. 60 was approved by the Planning Director to establish an accessory outdoor dining use in conjunction with the donut shop.

The establishment was given a notice of violation from the City's Code Enforcement Division on June 25, 2009, for the violation of Outdoor Dining Permit No. 60 whereby the area being used for outdoor dining exceeded 75 square feet.

Rationale for Approval

The approval of the temporary use is an interim expansion for interior and exterior seating while an application for an amendment to the Use Permit and Outdoor Dining Permit is processed. The applicant has requested Planning Commission approval of Use Permit No. UP2009-035 and Outdoor Dining Permit No. OD2009-004 (PA2009-148) to permanently allow the increased number of seats indoors and expand the outdoor dining area. Moreover, the applicant has provided documentation of a private off-site parking agreement at 409 Orchid Avenue to accommodate the increased interior seating and expanded outdoor dining area.

On behalf of David Lepo, Planning Director

By:   
\_\_\_\_\_  
Russell Bunim, Assistant Planner

JG/rwb

Attachments

1. Project Plans

# VICINITY MAP

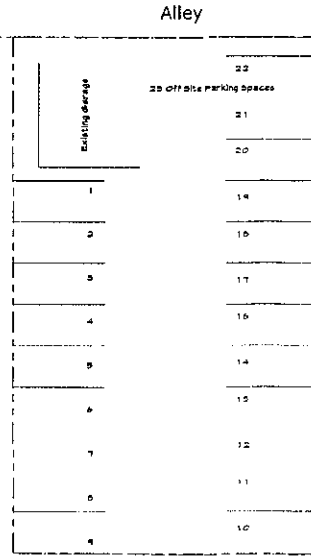
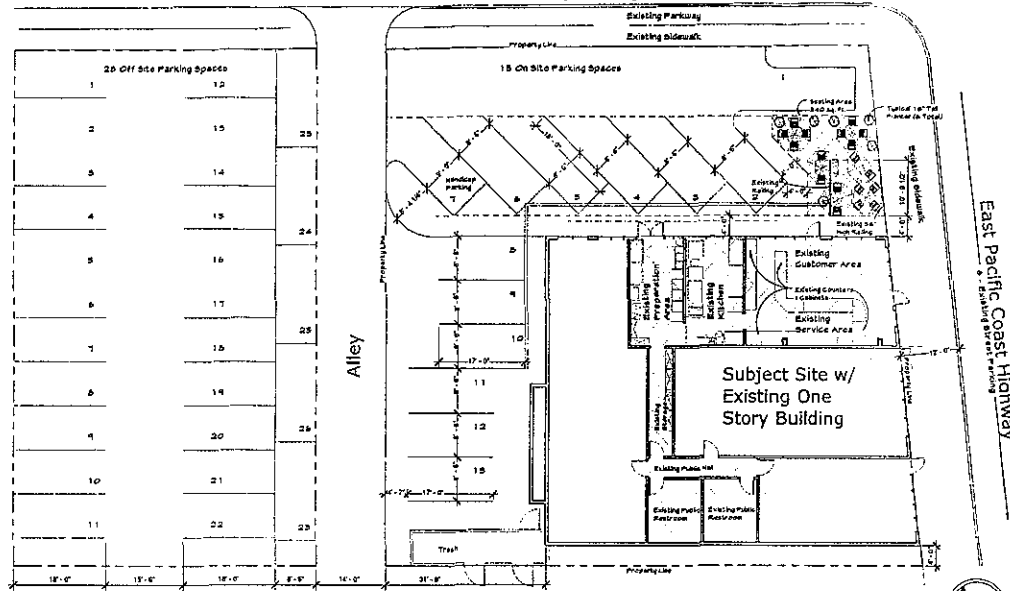


Use Permit No. UP2009-035  
PA2009-148

**3536 E Coast Hwy**



Orchid Avenue



Areas

Unit A	500 sf
Unit B	961 sf
Unit C	1263 sf
Unit D	1063 sf
Common & Utility	586 sf
<b>Total</b>	<b>4375 sf</b>

Exterior Seating Layout

Application Temporary Permit

Revisions

Rose Bakery Cafe

3536 Coast Highway #C Newport Beach, Ca

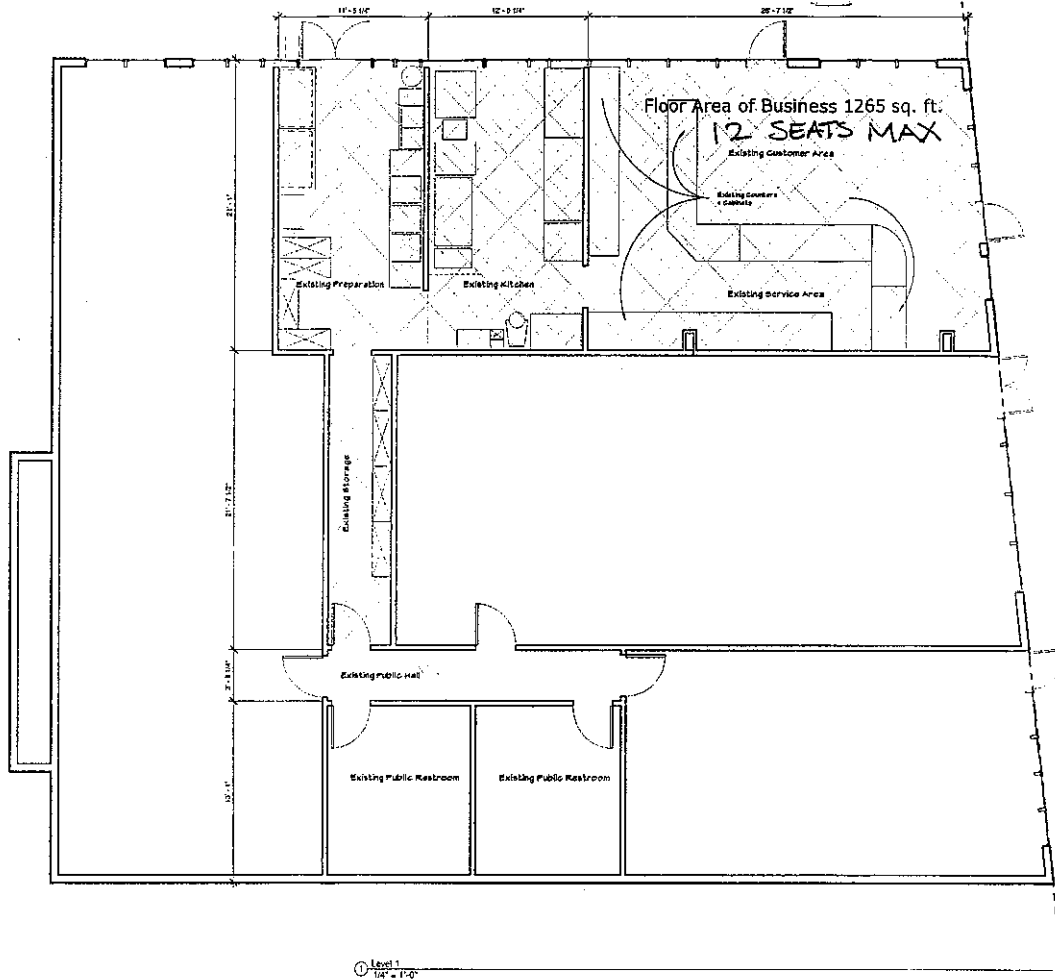
Site Plan

job no. 0  
date 10-08-09

Sheet

1

of



Exterior Seating Layout

Application Temporary Permit

Revisions

Rose Bakery Cafe

3536 Coast Highway #C Newport Beach, Ca

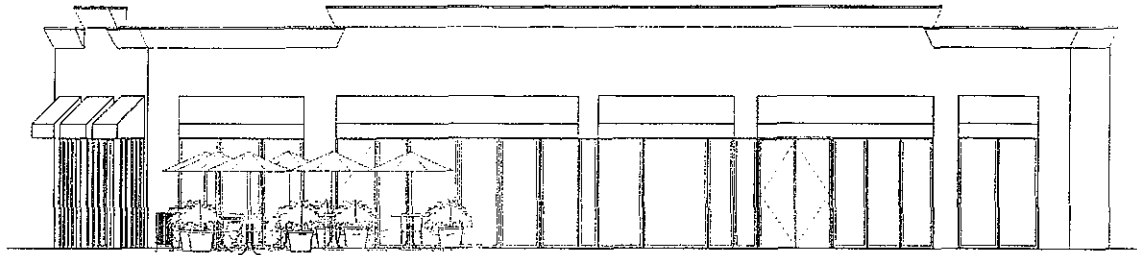
Floor Plan

job no. 0  
date 10-08-09

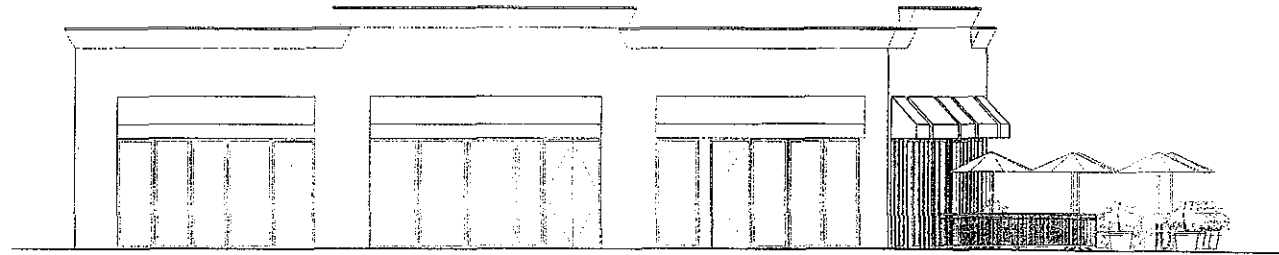
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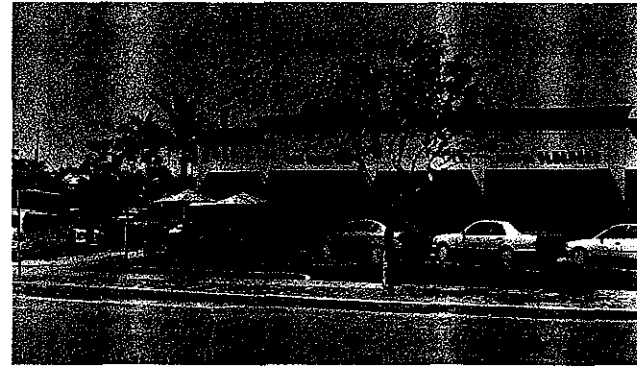
of



① Street Elevation - Ditch Avenue  
1/4" = 1'-0"



② Street Elevation - Pacific Coast Highway  
1/4" = 1'-0"



Exterior Seating Layout

Application Temporary Permit

Revisions \_\_\_\_\_  
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Rose Bakery Cafe

3536 Coast Highway #C  
Newport Beach, Ca

Exterior Elevations

job no. 0  
date 10-08-09

Sheet  
3

of



## 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. UP2009-036 (PA2009-154)**

**Applicant**                **Pelican Equity Partners, LLC**

**Site Address**            **2545 Eastbluff Drive**  
                                  **Icicles Yogurt**

**Legal Description**      **PCL 1 of Lot Line Adjustment 98-14**

On December 17, 2009, the Planning Director approved the following: A use permit application for a full service, small-scale eating and drinking establishment, which will offer self-serve frozen yogurt. The subject property is part of the Eastbluff Village Center. The suite is approximately 900 square feet in area with approximately 350 square feet as net public area. There will be a maximum of 12 seats, which are only permitted in the 140 square-foot dining area. The property is located in the RSC (Retail and Service Commercial) District. The approval is based on the following findings and subject to the following conditions.

### FINDINGS

1. This project qualifies for an exemption from environmental review pursuant to Section 15301 (Class 1 Existing Facilities) of the Implementing Guidelines of the California Environmental Quality Act (CEQA), which exempts minor alterations to existing facilities. The proposed changes involve minimal construction including interior alterations, and the change in use will not increase parking demand above the prior retail use of the existing building.
2. The proposed location of the use is in accord with the objectives of the Zoning Code and the purposes of the district in which the site is located.

Facts in support of finding:

- The project is located in the Retail and Service Commercial (RSC) District. The purpose of the RSC District is to provide areas which are predominantly retail in character but which allow some service office uses. The proposed frozen yogurt shop is a retail sales use, which serves residents and visitors and, therefore, is consistent with the purposes of the RSC District.

- Subject to the approval of a use permit by the Planning Director, a full service, small-scale use is permitted within this district. Use permits enable the City to control certain uses which could have detrimental effects if not compatible with uses in the surrounding area. The frozen yogurt shop is compatible with and complements the uses in this district, including restaurants, a drug store, a grocery store, a hair salon, and a bank located in the Eastbluff Village Center. The proposed application does not present any conflicts with the purpose and intent of this district.
3. The proposed location of the use permit and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan and the purpose of the district in which the site is located; will not be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use; and will not be detrimental to the properties or improvements in the vicinity or to the general welfare of the city.

Facts in support of finding:

- The project site is designated as Neighborhood Commercial (CN) by the Land Use Element of the General Plan. The proposed project is consistent with the CN land use category, which is intended to provide for a limited range of retail and service uses developed in one or more distinct centers oriented to primarily serve the needs of and maintain compatibility with residential uses in the immediate area. The proposed use will serve residents and students in the vicinity.
- The proposed hours of operation of the facility are 11:00 a.m. to 11:00 p.m., Friday and Saturday, and 11:00 a.m. to 10:00 p.m. Sunday through Thursday. In order to grant flexibility, staff has extended the permitted hours of operation to allow the facility to open at 9:00 a.m. The limited hours of operation and deliveries will limit the noise impacts on the nearby residential uses. The closest residential properties are over 200 feet away from the subject suite.
- The proposed project is located within a shopping center with shared parking. The site contains 303 parking spaces, excluding the 2507-2515 Eastbluff Drive building, which is on a separate parcel with 31 parking spaces.
- Because of the location and method of operation (mostly take-out) of the facility, it is anticipated that the proposed use will have the parking demand characteristics similar to or less than a general retail use. The subject suite is approximately 900 square feet in gross floor area. The previous use of the suite required four (4) parking spaces based on a rate of one (1) space for 250 square feet of gross floor area. The parking requirement for full service, small-scale establishments is one (1) space per twelve (12) seats or per 75 square feet of net public area. With a twelve (12) seat limit, the required number of parking spaces is four (4); therefore the parking requirement is not increasing with the change in use.

- The limited menu and restriction of seating makes the proposed use unlikely to cause negative impacts to traffic and the parking demand of the surrounding commercial uses.
  - The conditions of approval imposed on the use will reduce any possible detriment to the community by ensuring continued consistency with the intent and purpose of Chapters 20.82 (Eating and Drinking Establishments) and 20.91 (Use Permits and Variances) of the Municipal Code.
4. The proposed use will comply with the provisions of this code, including any specific condition required for the proposed use in the district in which it would be located.

Facts in support of finding:

- Eating and drinking establishments are subject to the requirements of Chapter 20.82 of the Municipal Code.
- The conditions of approval for this Use Permit will ensure consistency with Chapter 20.82 of the Municipal Code by limiting any traffic, noise, trash, or other negative impacts that sometimes occur with food uses. The number of seats, hours of operation, delivery times, and trash disposal methods are limited.

**CONDITIONS**

1. Development shall be in substantial conformance with the approved site plan and floor plans, except as noted in the following conditions.
2. The net public area shall be a maximum of 380 square feet.
3. The seating area shall be no more than 150 square feet in area with a maximum of 12 seats.
4. Any addition of seats and/or stand-up counter space for customers shall be subject to the approval of an amendment to this use permit. Any patron seating or stand-up counter located inside or outside of the facility on the subject property or on public property (including sidewalks, streets and/or park property) is prohibited.
5. The hours of operation shall be limited to between the hours of 9:00 a.m. and 10:00 p.m., Sunday through Thursday, and 9:00 a.m. and 11:00 p.m., Friday and Saturday. Any increase in the hours of operation shall be subject to the approval of an amendment to this use permit.
6. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m., daily, unless otherwise approved by the Planning Director in conjunction with an established delivery schedule.

7. Storage outside the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
8. Trash receptacles for patrons shall be conveniently located both inside and outside of the proposed facility; however shall not be located on or within any public property or right-of-way.
9. All trash shall be stored within the building or within public dumpsters provided for the convenience of businesses in the area, or otherwise screened from view of neighboring properties except when placed for pick-up by refuse collection agencies. The trash dumpsters shall have a top which shall remain closed at all times, except when being loaded or while being collected by the refuse collection agency.
10. The applicant shall maintain the trash dumpsters or receptacles so as to control odors which may include the provision of fully self-contained dumpsters or may include periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Department. Trash generated by the establishment shall be adequately contained in sealed plastic bags (double bagged) to control odors prior to placement in the trash dumpster.
11. 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.
12. No outside paging or sound system shall be utilized in conjunction with this food service establishment.
13. The noise generated by the proposed use shall comply with the provisions of Chapter 10.26 of the Newport Beach Municipal Code.
14. No alcoholic beverage service shall be permitted on the premises, unless a use permit to operate as an alcoholic beverage outlet is approved by the Planning Commission.
15. No live entertainment or dancing shall be permitted in conjunction with the permitted use.
16. A Special Event Permit is required for any event or promotional activity outside the normal operational characteristics of this business that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
17. No temporary "sandwich" signs, balloons or similar temporary signs shall be permitted, either on-site or off-site, to advertise the proposed food establishment, unless specifically permitted in accordance with the Sign Ordinance of the Municipal Code. Temporary signs shall be prohibited in the public right-of-way,

unless otherwise approved by the Public Works Department in conjunction with the issuance of an encroachment permit or encroachment agreement.


18. All signs shall conform to the provisions of Chapter 20.67 of the Municipal Code or any applicable comprehensive sign program that is in force for the subject property.
19. A building permit is required prior to construction. All work must comply with the California Building Code.
20. The facility shall comply with the provisions of Chapter 14.30 of the Municipal Code for commercial kitchen grease disposal, as determined by the Building Department and the Utilities Department.
21. The facility shall be designed to meet exiting and fire protection requirements as specified by the California Building Code and shall be subject to review and approval by the Building Department.
22. The project shall comply with State Disabled Access requirements.
23. Approval is required by the Health Department.
24. All mechanical equipment shall be screened from view of adjacent properties and adjacent public streets, and shall be sound attenuated in accordance with Chapter 10.26 of the Municipal Code, Community Noise Control.
25. Should this business be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner or the leasing company.
26. The Planning Director or the Planning Commission may add to or modify conditions to this approval, or revoke this approval upon a finding of failure to comply with the conditions set forth in Chapter 20.82 of the Municipal Code or other applicable conditions and regulations governing the eating and drinking establishment.
27. This approval shall expire unless exercised within 24 months from the end of the appeal period, in accordance with Section 20.91.050 of the Newport Beach Municipal Code.

### **APPEAL PERIOD**

The 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 \$3,070.00 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:   
James W. Campbell, Principal Planner

PJA/fn

Attachments: PD 1 Vicinity Map  
PD 2 Project Plans

# VICINITY MAP

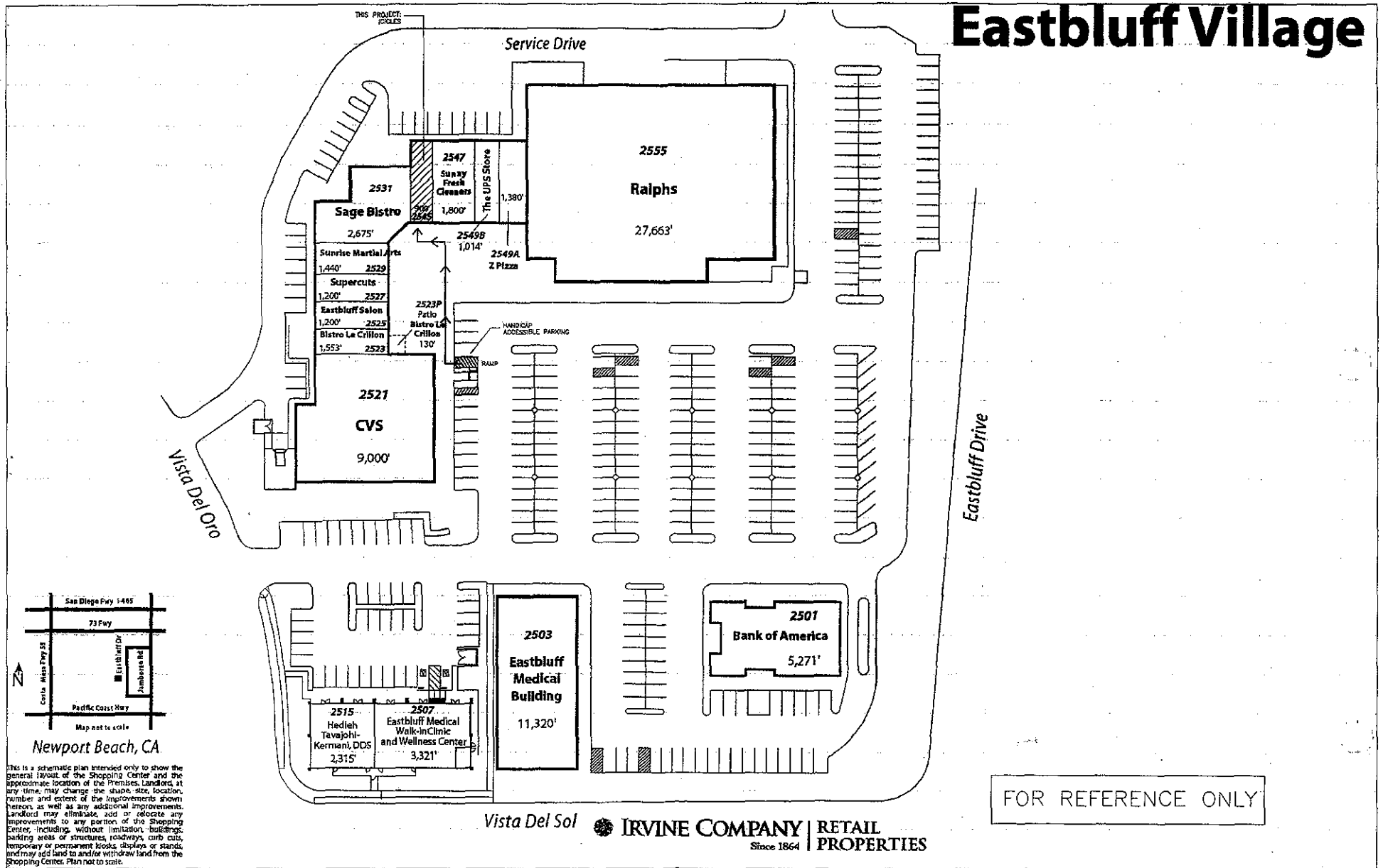


Use Permit No. UP2009-036  
PA2009-154

**2545 Eastbluff Drive**



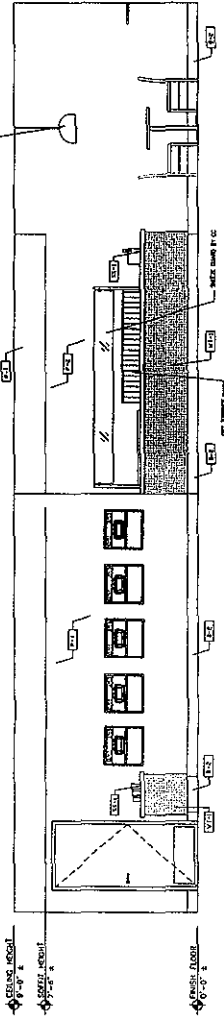
# Eastbluff Village



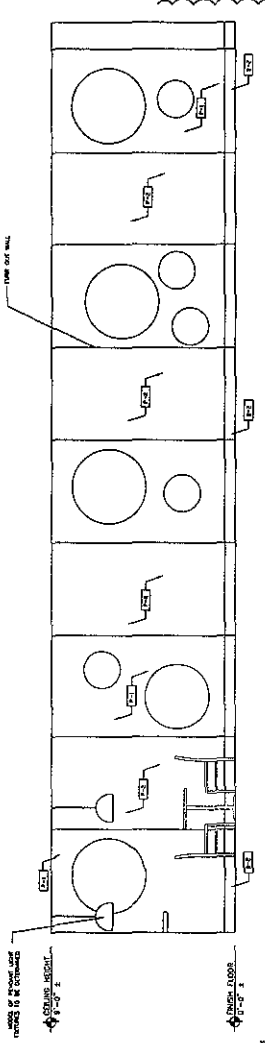
This is a schematic plan intended only to show the general layout of the Shopping Center and the approximate location of the Premises. Landlord, at any time, may change the shape, size, location, number and extent of the improvements shown hereon, as well as any additional improvements. Landlord may eliminate, add or relocate any improvements to any portion of the Shopping Center, including, without limitation, buildings, parking areas or structures, roadways, curb cuts, temporary or permanent kiosks, displays or stands, and may add land to and/or withdraw land from the Shopping Center. Plan not to scale.

**OVERALL SITE PLAN**  
SCALE: NOT TO SCALE - FOR REFERENCE ONLY

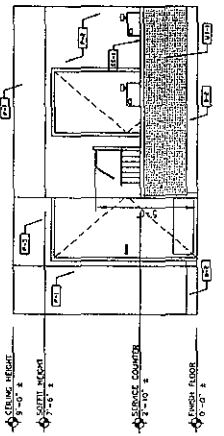




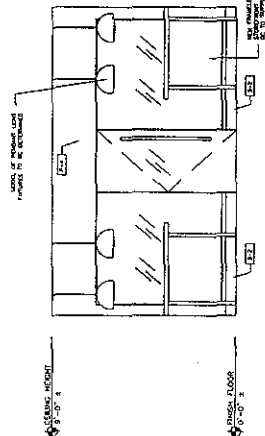
1 FRONT COUNTER ELEVATION  
 SCALE: 3/8" = 1'-0"



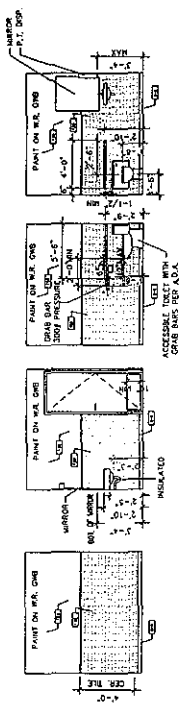
2 YOGURT WALL ELEVATION  
 SCALE: 3/8" = 1'-0"



3 INTERIOR ELEVATION  
 SCALE: 3/8" = 1'-0"



4 DINING ROOM ELEVATION  
 SCALE: 3/8" = 1'-0"



A RESTROOM ELEVATIONS  
 SCALE: 1/4" = 1'-0"

RECEIVED BY  
 PLANNING DEPARTMENT  
 DEC 4 2009  
 CITY OF NEWPORT BEACH



## **STAFF APPROVAL ACTION LETTER**

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

**Application No.**                    **Staff Approval No. SA2009-006 (PA2009-167)**  
**Applicant**                         **Goodwill of Orange County**  
**Site Address**                    **2100 Mar Vista Drive**  
   **Goodwill Donation Center**  
**Legal Description**            **Portion of Block 56 of Irvine's Subdivision**  
   **(APN 440-092-13)**

On **December 16, 2009**, the Planning Director approved the following: Request to allow the temporary installation of an 8-ft-wide by 28-ft-long commercial storage trailer, for period not to exceed 90 days, to be located in the southwest corner of the parking lot. The location proposed will displace 5 parking spaces. This will be an interim installation while a use permit for an extended duration is processed by the Planning Department. The container will be used for drop off and storage of charitable wares from congregation patrons and the public, with an attendant on duty during the hours of operation. No signs advertising the container will be posted on the property, with the exception of signage on the trailer itself. The property is located in the GEIF (Governmental, Educational and Institutional Facilities) District. The approval is based on the following findings and subject to the following conditions.

### **Authority:**

Section 20.60.015 B. of the Newport Beach Municipal Code provides that the Planning Director may authorize the temporary use of structures and land for a period of time not to exceed 90 days and that said land or building will be restored at such time as the use is terminated, unless a subsequent application for an extension of time or other time period is approved prior to expiration of this approval.

**ACTION:**            **APPROVED – DECEMBER 16, 2009** - The Planning Director approved the request to allow the temporary installation of an 8-ft-wide by 28-ft-long commercial storage trailer, for period not to exceed 90 days, to be located in the southwest corner of the parking lot. The location proposed will displace 5 parking spaces.

**FINDINGS**

1. Although the proposed trailer will displace 5 parking spaces, there is adequate parking on site and on the off-site church property to accommodate any required overflow parking necessary for the ongoing church uses or activities.
2. The placement and use of the trailer will not conflict with the activities and use of the other church buildings on site. The limited duration of this approval will also limit any adverse impact on the use of the parking lot.
3. The proposed trailer location in relation to the roadway is less visible to passing traffic on Mar Vista Drive, and will have a minimal effect on vehicular circulation and use of the parking lot.

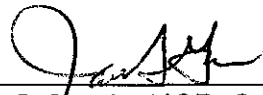
**CONDITIONS**

1. The trailer shall conform to the approved plans (Attachment PD-2). The sign, located at the southwesterly portion of the subject property, shall have a maximum width of 8 feet wide and 28 feet in length.
2. No on-site or off-site signs shall be permitted in conjunction with or advertising the presence of the trailer, with the exception of signs on the trailer as depicted in the attached photos and to show the hours of operation.
3. The trailer shall be removed from the site no later than March 16, 2010 (90 days after the date of this approval), unless it is otherwise extended or superseded by the approval of the Planning Director or the Planning Commission.

**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 \$3,070.00 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:   
\_\_\_\_\_  
Javier S Garcia AICP, Senior Planner

PJA/jsg  
Attachments: Vicinity Map  
Applicant's Project Description  
Site Plan and Photos



# VICINITY MAP



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Staff Approval No. SA2009-006  
PA2009-167

**2100 Mar Vista Drive**

# GOODWILL OF ORANGE COUNTY

## The Face of Independence

December 3, 2009

City of Newport Beach  
Planning Department  
3300 Newport Blvd  
Newport Beach, Ca 92663

RE: Request for Early Placement of Donation Trailer

Our busiest time for our donation centers is during the month of December as our donors take advantage of year-end tax deductions. Goodwill of Orange County understands and respects the timeline and protocol of submitting a Use Permit.

However, we would like to request an early placement of our Donation Trailer before final approval of the Use Permit, with the understanding the if we are not approved will remove our trailer. This will allow us to provide a beneficial service to the local community by offering a convenient location to drop off their donated goods.

We look forward to working with the city to ensure compliance with any requests that planning may have. We appreciate your consideration in this matter and thank you for your support.

Sincerely,



Casey Caston

410 North Fairview  
Santa Ana, CA 92703

voice: 714.547.6301  
tty/td: 714.543.1873  
fax: 714.541.6331

ocgoodwill.org  
shopgoodwill.com

### BOARD OF DIRECTORS

#### CHAIRMAN

K. Brian Horton  
1st Enterprise Bank

#### PRESIDENT & CEO

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Sam Anderson  
Community Volunteer

Dan Armstrong  
Orange Community Bank

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Ferruzzo & Ferruzzo, LLP

Robert O. Briggs  
Investment Properties Group

Kathy Bronstein  
KB Bronstein Consulting

Robert D. Chickering  
Launch

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The SM Coyne Company, Inc.

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International  
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Union Bank of California

Shauna Farley  
Walmart Foundation

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Greg Gluchowski  
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World Travel Bureau, Inc.

Michael Perry  
DLD Insurance Brokers

Kenneth E. Petersen, Jr., JD  
First American Trust

Thomas S. Salinger, Esq.  
Rutan & Tucker, LLP

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Manatt, Phelps & Phillips, LLP

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Carl R. Steen, Esq.  
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James P. Trainor  
Hyundai Motor America

Todd Tripp, MPA  
Northwestern Mutual

Michael Valentine  
RiverRock Real Estate Group

Joann Waldron  
Community Volunteer

Laurence J. Weese  
Hopkins Real Estate Group

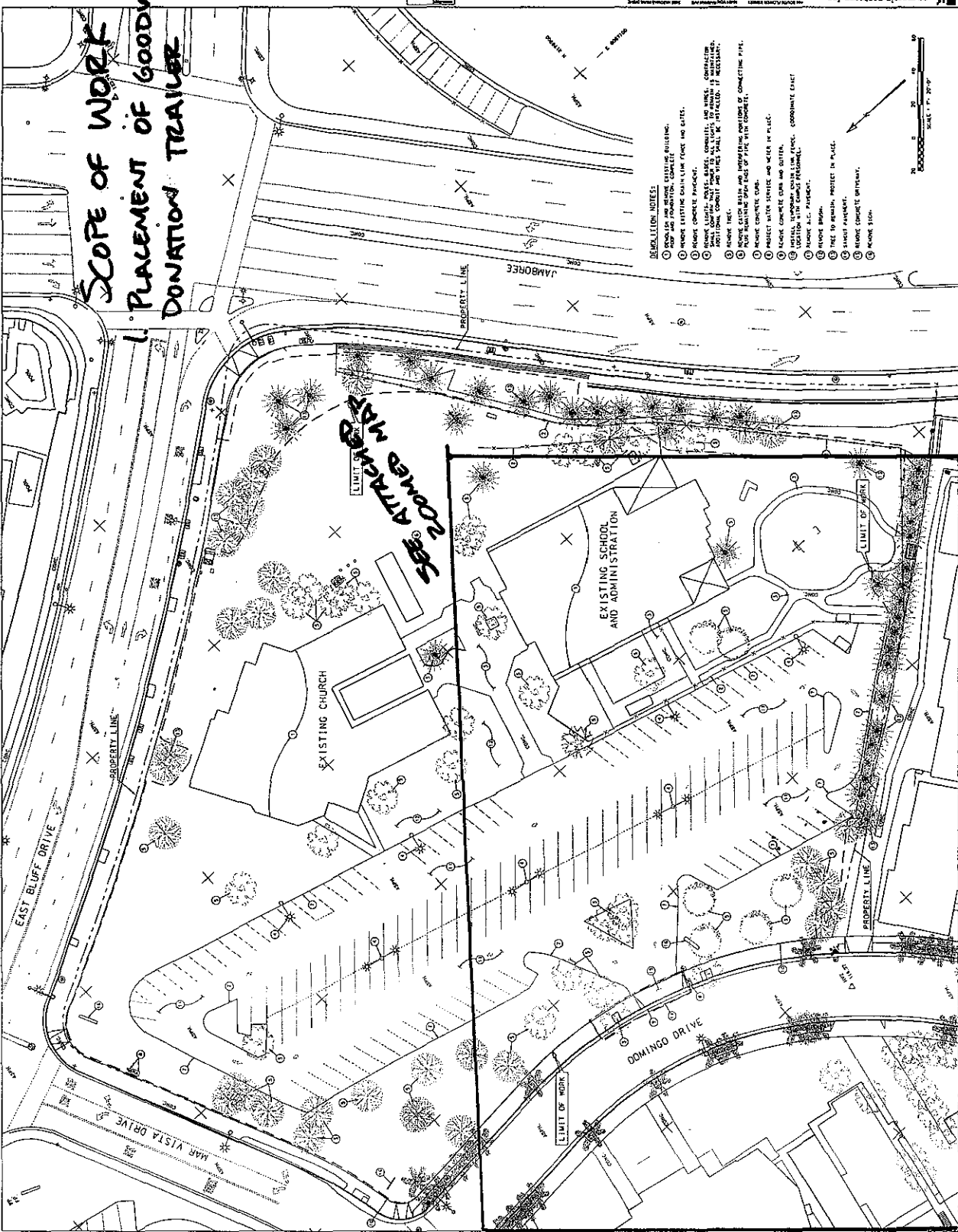
**CUP - SITE DEMOLITION PLAN**

**Our Lady Queen of Angels**  
 Newport Beach, California  
 CUP Submittal / April 18, 2005

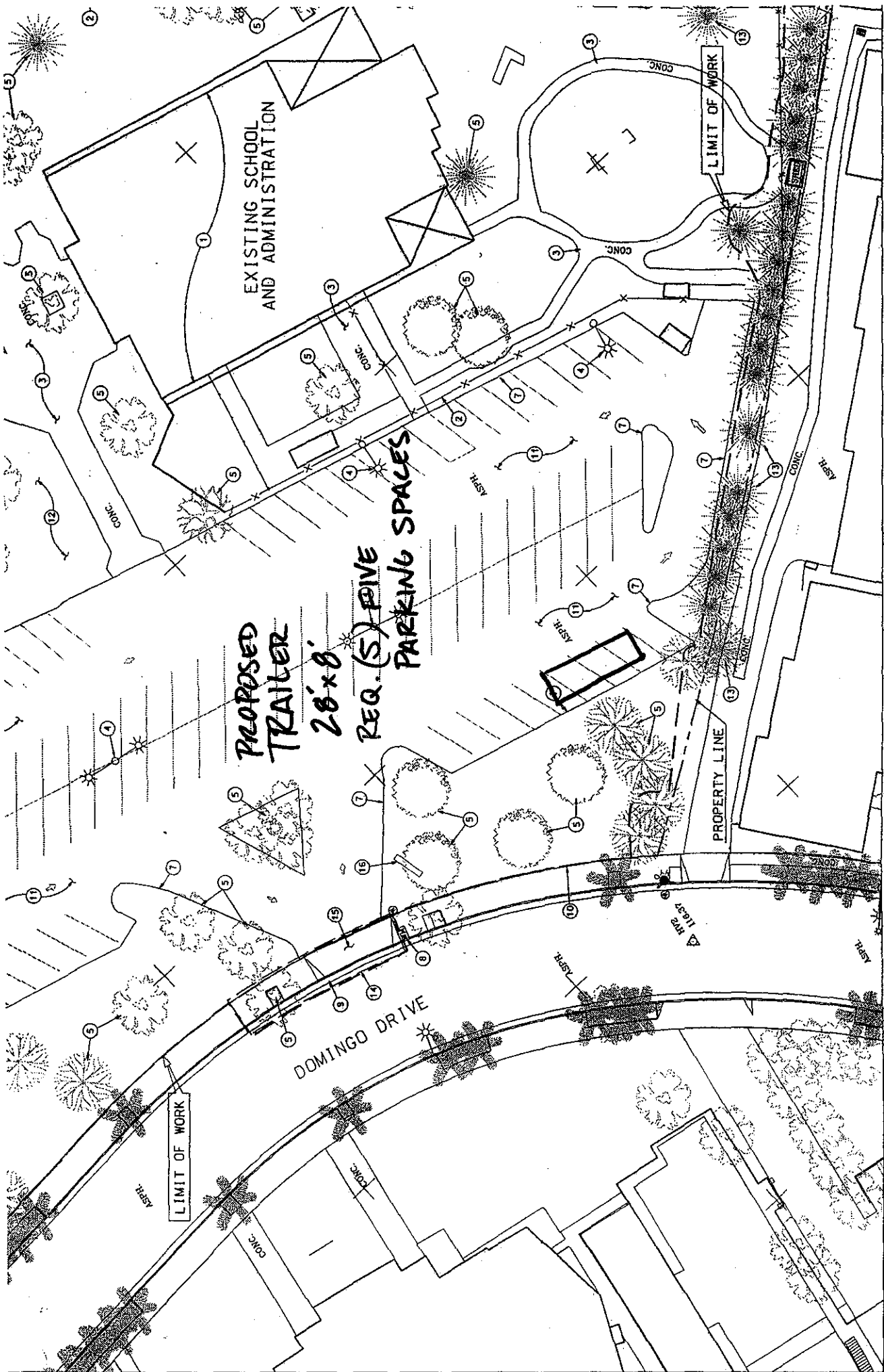
**C-02**

30 NORTH PARKWAY, INC.  
 10000 WEST 10TH AVENUE, SUITE 100  
 DENVER, COLORADO 80202  
 PHONE: (303) 751-1000  
 FAX: (303) 751-1001  
 WWW: 30NORTH.COM

DATE: 04/18/05  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]  
 APPROVED BY: [Name]



PA2009-167 for SA2009-006  
 2100 Mar Vista Drive  
 Goodwill of Orange County



EXISTING SCHOOL AND ADMINISTRATION

PROPOSED TRAILER

28'x8'

REQ. (5) PINE PARKING SPACES

PROPERTY LINE

LIMIT OF WORK

LIMIT OF WORK

DOMINGO DRIVE

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PROPOSED TRAILER

28'x8'

REQ. (5) PINE PARKING SPACES

PROPERTY LINE

LIMIT OF WORK

LIMIT OF WORK

DOMINGO DRIVE

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