

**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 January 8, 2010.

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**ACTIONS TAKEN AT JANUARY 7, 2010 ZONING ADMINISTRATOR HEARING**

- Item 1: Modification Permit No. MD2009-026 (PA2009-145)  
1729 Port Abbey Place
- A modification permit to allow an exterior fireplace and barbeque to encroach into the side yard setback, and to allow an accessory building to encroach into the rear yard setback.
- This item was continued to the 01/28/10 Zoning Administrator Hearing. Council District 7
- Item 2: Modification Permit No. MD2009-033 (PA2009-162)  
20382 SW Cypress Street
- A modification permit to allow existing property line walls within the required side yard and rear yard setback areas to exceed the 6-foot height limit for walls established pursuant to Section 20.60.030 of the Zoning Code. The existing walls are no higher than 7 feet, 6 inches in height measured from existing finished grade of the subject property.
- This item was approved as modified by the Zoning Council District 3 Administrator.
- Item 3: Modification Permit No. MD2009-029 (PA2009-113)  
2800 West Coast Highway
- A modification permit request to allow the construction of a combination block wall and glass fence located within the front yard setback that will encroach to within 4 feet 8 inches of the street side property line. The fence has an overall height of 8 feet as measured from the top of the adjacent sidewalk along West Coast Highway. The fence is proposed in conjunction with the addition of accessory outdoor dining to the existing restaurant facility.
- This item was approved. Council District 3

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

Item 4: China Palace – Accessory Outdoor Dining Permit No. OD2009-003 ((PA2009-113))

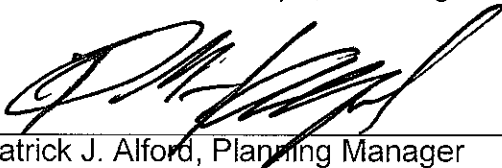
2800 West Coast Highway

Establishment of an accessory outdoor dining area in conjunction with an existing eating and drinking establishment. The out door dining area will be located on the West Coast Highway side of the property. The dining area will provide seating for approximately 31 people and will be enclosed by a perimeter screen-wall to minimize wind and noise impacts from West Coast Highway.

Approved – January 7, 2010

Council District 3

On behalf of David Lepo, Planning Director:



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Patrick J. Alford, Planning Manager

### APPEAL:

The applicant or any interested party may appeal the decision of the Planning Director, Zoning Administrator and department staff to the Planning Commission by a written request to the Planning Director within 14 days of the action date. A \$3,070.00 filing fee shall accompany any appeal filed.

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*)



## **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. MD2009-033  
(PA2009-162)**

**Applicant**                         **Mike Moinfar**

**Site Address**                    **20382 SW Cypress Street  
Moinfar Property**

**Legal Description**            **Lot 166 , Tract 706 Nely1/2**

On **January 7, 2010**, the Zoning Administrator approved the following: A modification permit to allow existing property line walls within the required side yard and rear yard setback areas to exceed the 6-foot height limit for walls established pursuant to Section 20.60.030 of the Zoning Code. The existing walls are no higher than 7 feet, 6 inches in height measured from existing finished grade of the subject property. The property is located in the SP-7 (East Santa Ana Heights Specific Plan) District. The Zoning Administrator's approval is based on the following findings and subject to the following conditions.

### **FINDINGS**

1. The Land Use Element of the General Plan designates the site for Single-Unit Residential Detached (RS-D) use, which is intended to provide a range of detached single-family units on a single legal lot. The Zoning Code designates the site as Residential Equestrian (REQ) within the Santa Ana Heights Specific Plan District (SP-7). The current development is consistent with these designations and the proposed construction does not change the use of the property.
2. The project is categorically exempt under Section 15303, of the California Environmental Quality Act (CEQA) Guidelines - Class 3 (New Construction or Conversion of Small Structures). Section 15303, subsection (e) of the CEQA Guidelines exempts "accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences" such as those structures proposed in this modification permit application.
3. In accordance with the provisions of Chapter 20.93, the granting of this application is necessary due to practical difficulties associated with the property. 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 project site is located in an area that supports the keeping of livestock including horses.
  - The abutting properties located to the north and south of the project site are developed and are currently used for the keeping of horses and other animals.
  - Development of the project does not currently support horses and is negatively impacted by dust, noise, and odors generated by horses kept on adjacent properties.
  - Increasing the height of the walls to a maximum height of 7 feet, 6 inches from existing grade will assist in mitigating these negative effects affording a better level of enjoyment and use of the property by the applicant or future property owners, which is consistent with the intent of the Zoning Code to promote the orderly growth and development of the City, to promote and protect the public health, safety, peace, comfort and general welfare, to protect the character and social and economic vitality of all districts within the City, and to assure the orderly and beneficial development of such areas.
4. In accordance with the provisions of Chapter 20.93, the requested modification will be compatible with existing development(s) in the neighborhood.

Facts in support of finding:

- The increased height of the property line walls is not visible from the public right-of-way.
  - The properties within the neighborhood have varying heights of property line walls some that are higher than 6 feet from existing grade.
  - The existing walls are constructed in conformance with the design regulations for walls in the Santa Ana Heights Specific Plan.
  - The existing wall along the rear property line is not higher than 6 feet from the existing finished grade of the residential lot abutting the rear property line.
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.

Facts in Support of Finding:

- The existing walls will allow the residents increased enjoyment and use of the subject property by providing a barrier that buffers and reduces the effects of the noncommercial keeping of horses on the abutting lots.

- The existing walls will not interfere with sight distance from any street or driveway and are not visible from the public right-of-way.
  - The existing wall along the rear property line is not higher than approximately 6 feet from existing grade from the perspective of the abutting property to the rear.
  - Although the existing walls along the side property lines range in height from 8 to 9 feet from the existing grade from the perspective of the abutting properties, occupied buildings on the abutting lots are not located in close proximity. The walls are at a pedestrian scale and do not significantly block light and air to these abutting lots.
6. Increasing the height of the existing perimeter walls by up to 2 feet as requested by the applicant will not significantly diminish dust or odors originating from the uses being conducted on the abutting properties. Increasing the height of these walls would exacerbate the impact of the existing wall on the neighbors to their detriment by further reducing light and air reaching their property and creating a wall that exceeds a comfortable pedestrian scale.

### **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. Anything not specifically approved by this Modification Permit or depicted on the revised and approved plans is prohibited and must be addressed in a separate and subsequent Modification Permit review.
3. 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.
4. Perimeter walls constructed on the subject property in the side yard or rear yard setbacks shall not exceed a maximum of 7 feet, 6 inches in height measured from existing finished grade of the subject property. This height is reflective of the existing perimeter walls on or abutting the property lines. The architectural plans shall be revised to eliminate the metal privacy panel and details that are not indicative of actual condition or requirements. The addition of any material to increase the height of the existing walls shall be expressly prohibited without the prior approval of an amendment of this modification permit.
5. Existing perimeter walls not covered by existing valid building permits shall be inspected by the Building Department within 30 days of the date of this approval to ensure compliance with the Building Code. The applicant shall correct any deficiencies identified or required by the Building Department as directed. A building permit shall be obtained prior to commencement of any new construction or corrective work necessitating a building permit. All construction shall be done in accordance with required permits and the California Building Code.

6. Any walls and fences constructed on the subject property shall conform to the Santa Ana Heights Specific Plan design regulations.
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 copy of this approval letter shall be incorporated into the Building Department and field sets of plans prior to issuance of the building permits.
9. 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.
10. 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 \$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

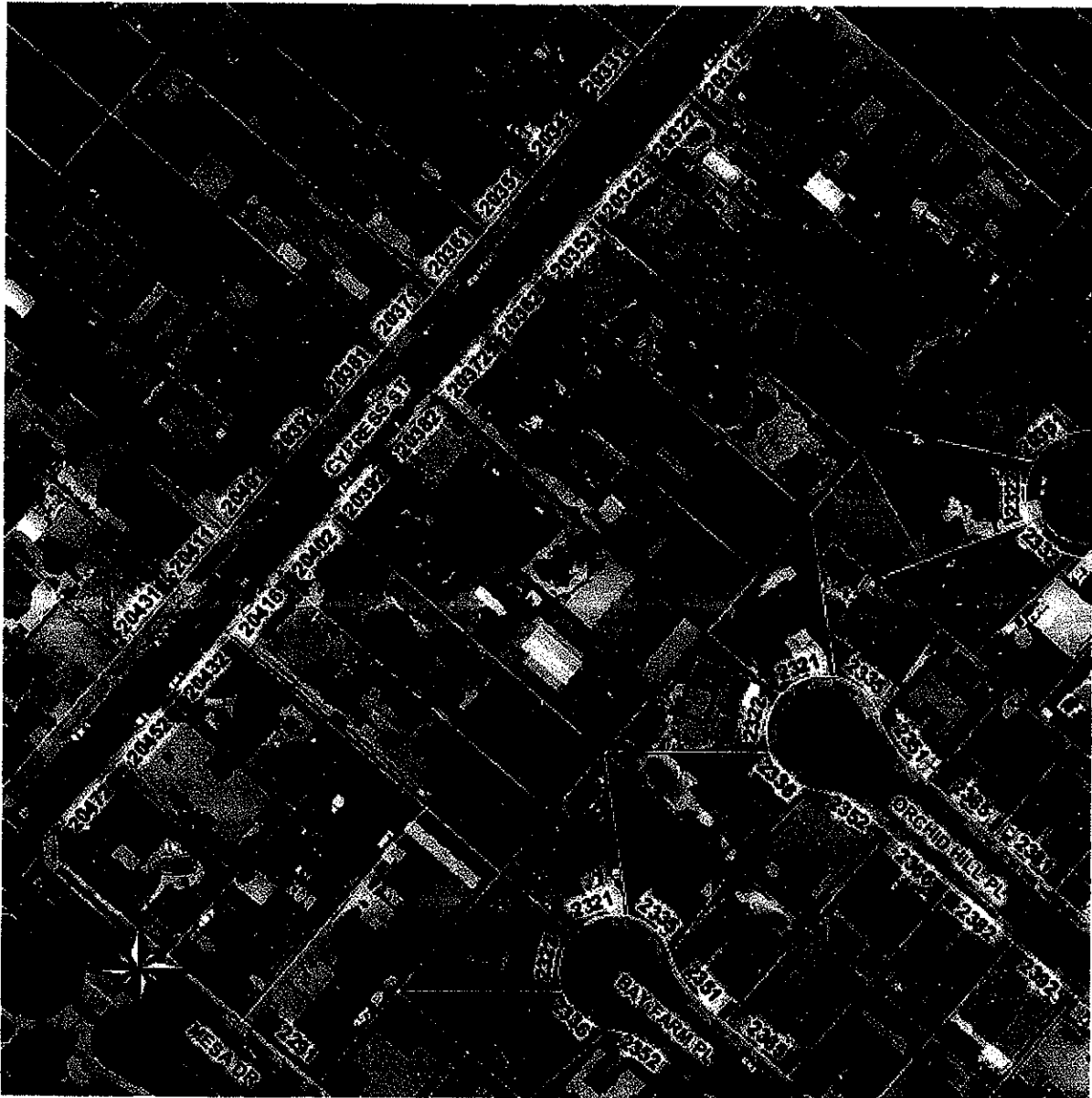
JWC/ems

#### **Attachments:**

- Vicinity Map
- Excerpt from Santa Ana Height Specific Plan  
Design Regulations for Walls and Fences
- Letters of Opposition: E. C. Vogler, Cypress Street  
S. Sanders, Cypress Street  
R Summers, Birch Street

- Petition of Support: M. Lin, Cypress Street  
R. Lehn, Cypress Street  
S. Dittoe, Bay Farm Place  
D. Culbertson, Orchid Hill Place  
S. Grant, Cypress Street  
C Schneider, Cypress Street  
R. Rosenberg, Cypress Street
- Project Plans
- Appeared in Opposition: Resident, Cypress Street  
A. Croul, Cypress Street  
G. Madrigal, Cypress Street  
J. Candelmo, Cypress Street
- Appeared in Support: None

# VICINITY MAP



Modification Permit No. MD2009-033  
PA2009-162

**20382 SW Cypress Street**



Groundcover:

Gazania spp.

Gazania

Hedera Helix 'Hahns'

English Ivy

5. Hardscape and Street Furniture Design.

Hardscape and street furniture design elements incorporated into the overall design theme for development in the specific plan area shall include, but not be limited to: walls and fences, paving, light fixtures, bollards, benches, trash receptacles and planters. Hardscape and street furniture elements will function to allow a coordinated and consistent visual and physical connection between buildings and landscape materials within the specific plan area.

Building materials to be used as key hardscape elements are specified below. All materials utilized for walls, fences, paving, lighting and street furniture shall be coordinated with and be complementary to architectural design details and materials.

a. Walls and Fences.

- Concrete masonry: integral color, 4" coursing maximum
- Brick: either red or in earth tones
- Concrete: Textured, bush-hammered, rock salt, sandblasted, integral color in earth tones
- Wrought iron (as accents)
- Stucco: integral or painted color (same as building stucco color or approved alternative)

b. Project and Individual Site Entry Paving (outside public R.O.W.).

- Concrete: integral color, rock salt, exposed aggregate finish with brick or wood edges, or stamped concrete
- Paving brick: in earth tones
- Paving brick tile: in earth tones
- Textured concrete: in earth tones
- Precast rough-textured pavers: integral color
- Quarry tile: in earth tones
- Rough textured granite
- River washed stones/cobblestones
- Asphalt; use of asphalt with the above noted materials as accent features is encouraged.

Emily Crean Vogler  
20372 Cypress Street, Newport Beach, California 92660  
(949) 476-5008 Fax (949) 476-5009



RECEIVED BY  
PLANNING DEPARTMENT

January 3, 2010

City of Newport Beach Planning Department  
Building C, 2<sup>nd</sup> Floor  
3300 Newport Boulevard  
Newport Beach, CA 92663

JAN 05 2010

CITY OF NEWPORT BEACH

Re: Project File No.: PA2009-162  
Activity No.: MD2009-033

I own and live at 20372 SW Cypress Street, next door to the subject property. Please note that I object to any more increase in the fence height at 20382 SW Cypress Street. My fence is 6 feet tall in relation to the original grade, and the Moinfar fence presently exceeds 8 feet in relation to the original grade. It appears that Mr. Moinfar wants to increase the fence height in excess of 8 feet in relation to the 3+ feet of fill dirt he placed on his property by the addition of metal privacy panels, which would result in a fence effectively 12 feet tall on our side, which is not reasonable, needed or acceptable.

Attached are two photos:

1. My fence during construction at 20382 SW Cypress Street indicating the effective reduction in height due to the large amount of fill deposited before construction began. The worker shown demonstrates that the original 6 foot fence may not offer adequate protection for and from my horses housed in this paddock.
2. The current two fences- my original 6 foot fence and the approximately 8 foot fence erected by Mr. Moinfar. The worker's head in the first photo is well below the light fixture seen again in this photo.

In summary, I accept a fence modification to 8 feet from the original grade, which is the existing situation and provides adequate privacy and protection, but object to any more increase in height and also to any metal privacy panels. The bare cement block is bad enough.

This letter does not intend to limit my ability to pursue recourse regarding the issues raised by Mr. Moinfar's fill dirt, fence construction and drainage and the resulting damage to my property (note the seepage stain on the lower 3 feet of my fence); this is only a response to the request for a modification permit noted above.

Emily Crean Vogler

Re: Project File No.: PA2009-162  
Activity No.: MD2009-033

Photo 1

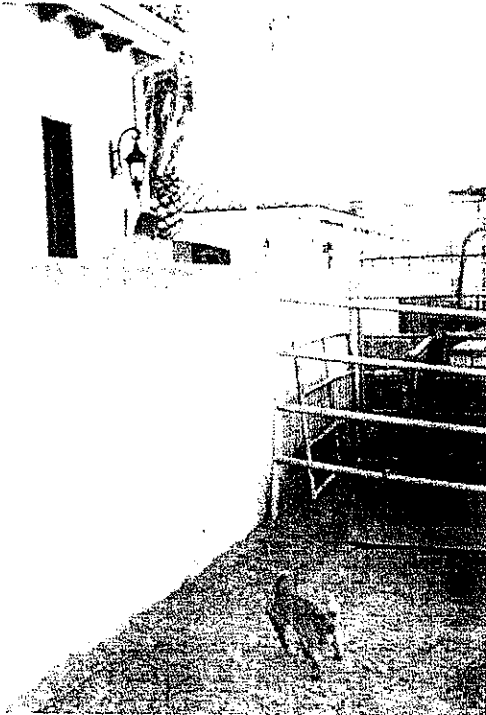
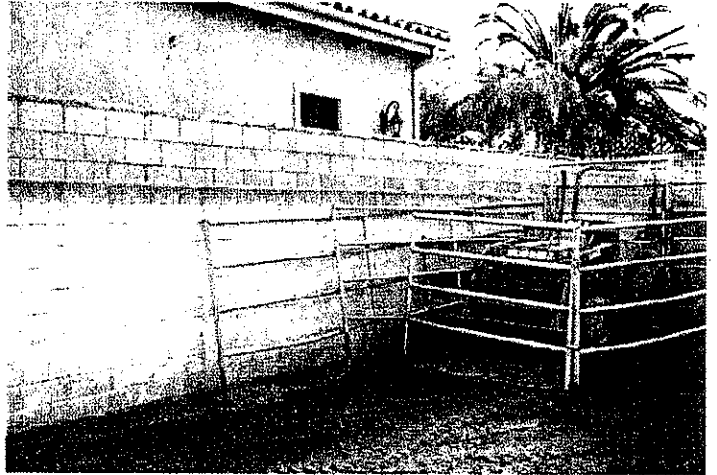


Photo 2



## Steffen, Erin

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**From:** Steve Sanders [steves@ci.garden-grove.ca.us]  
**Sent:** Monday, January 04, 2010 9:01 AM  
**To:** Steffen, Erin  
**Subject:** Public Hearing - MD2009-033

Erin Steffen  
City of Newport Beach  
Project File No. PA2009-162

January 4, 2010

I am a property owner on Cypress St, in the Santa Ana Heights area. My family has lived in this area since 1941. I am OPPOSED to the variance proposed. This area is equestrian/residential. The trend in the neighborhood is to build a six foot wall after they have elevated their elevation. This places the height on the opposite property at different levels, up to eight feet. The walls are supposed to be from natural grade. Many are not. Actually, after they have been installed, additional courses are added.

The problem is, as in my case, the wall on my side is eight (8) feet tall!

If you allow this variance you will be setting a precedence whereas as my new neighbor would then be allowed to add another 2 feet 3 inches to his side, which would make my view of the wall over 10 feet.

I believe if you allow this variance/modification you, The City, would be setting precedence for future approvals, for projects, I believe, DO NOT meet current building code specifications.

Steve Sanders  
714-510-7337

**Steffen, Erin**

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**From:** Roger Summers [roger@tandreenterprises.com]  
**Sent:** Tuesday, January 05, 2010 2:26 PM  
**To:** Steffen, Erin  
**Cc:** rdayton@juno.com; timstoaks@sbcglobal.net  
**Subject:** MD-2009-033

**Hello Erin:**

**I am e-mailing you after my telephone conversation of yesterday regarding the proposed modification permit for an increased wall height at 20382 Cypress Street. I became a member of ABCOM (a homeowners group) in east Santa Ana Heights in approximately 1980 and I was appointed to the SAHPAC in 1982 and from 1992 to 2005 I served as the Chairman. With this back round, I am aware of what it took to develop our present SAH specific plan. It was a long and arduous commitment by all of the various factions involved to come up with what we have today. I would in no way want to set any precedence by allowing this modification to be granted and wish to state my position that fence heights be maintained throughout the area as presently outlined in our specific plan.**

**Thank you for your consideration of this matter.**

**Sincerely,  
Roger Summers  
20292 Birch Street  
Newport Beach, California 9266949-756-8805**

I Mike Lin am in favor of granting Mike Moinfar the modification permit to increase his wall heights to 8' 3".

Signature 

Name Mike Lin

Address 20381 SW Cypress St  
Newport Beach, Ca 92660

I RICHARD M. LEHN am in favor of granting Mike Moinfar the modification permit to increase his wall heights to 8' 3".

Signature Richard M. Lehn

Name RICHARD M. LEHN

Address 20352 SW CYPRESS ST.

I Sondra L. Dittoe am in favor of granting Mike Moinfar the modification permit to increase his wall heights to 8' 3".

Signature Sondra L. Dittoe

Name Sondra L. Dittoe

Address 2321 Bay Farm PL  
NB CA 92660



Dorita Culbertson am in favor of granting Mike Moinfar the modification permit to increase his wall heights to 8' 3".

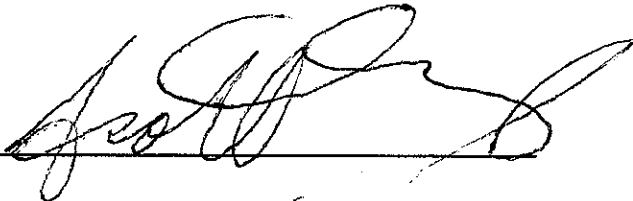
Signature D. Culbertson

Name Dorita Culbertson

Address 2322 orchid Hill Pl.

N.P. Ca. 92660  
(949) 548-3151

I Scott GRANT am in favor of granting Mike Moinfar the modification permit to increase his wall heights to 8' 3".

Signature 

Name Scott GRANT

Address 20371 SW CYPRESS ST

I CAROL SCHEIDT am in favor of granting Mike Moinfar the modification permit to increase his wall heights to 8' 3".

Signature Carol Scheider

Name CAROL SCHEIDER

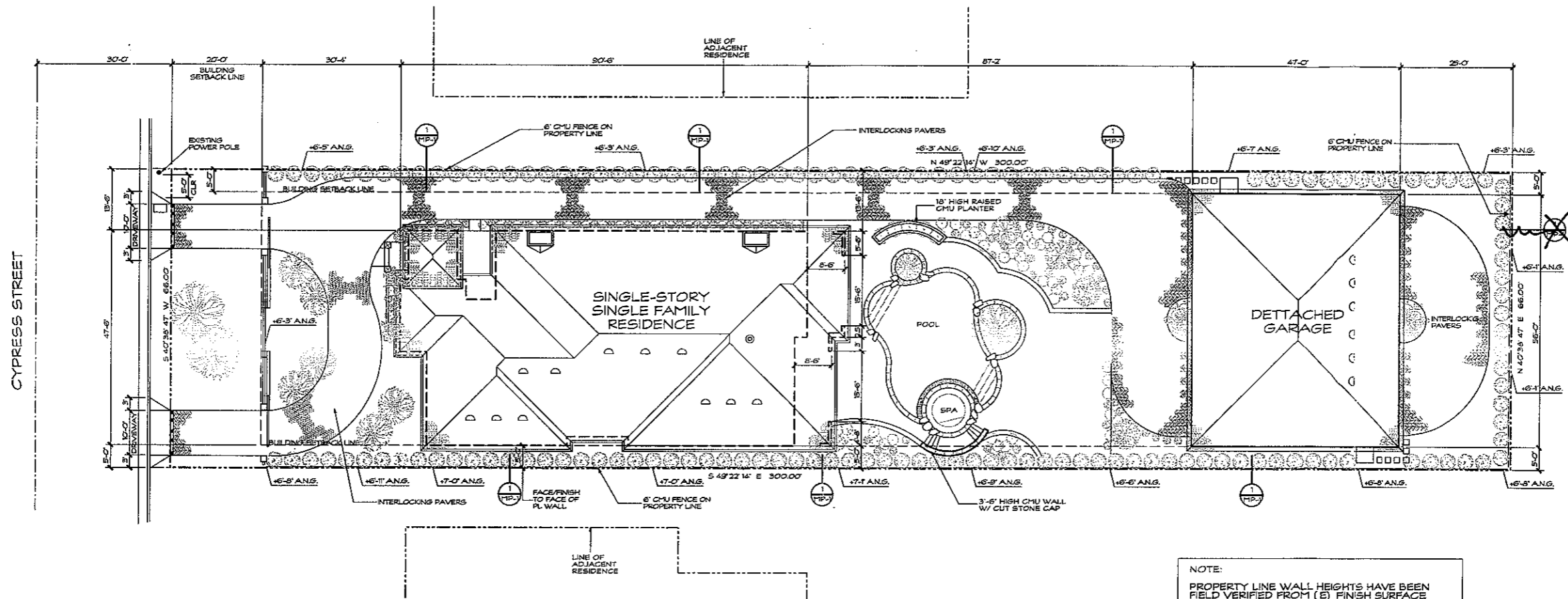
Address 20292 SW Cypress St.

I Robert Rosenberg am in favor of granting Mike Moinfar the modification permit to increase his wall heights to 8' 3".

Signature 

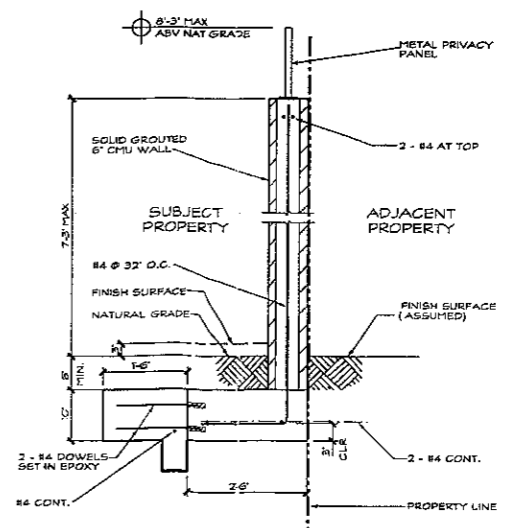
Name Robert Rosenberg

Address 20454 SW Cypress St  
and 20452 SW Cypress St.



**SITE PLAN**  
SCALE: 1" = 10'-0"

NOTE:  
PROPERTY LINE WALL HEIGHTS HAVE BEEN FIELD VERIFIED FROM (E) FINISH SURFACE ON HOMEOWNERS SIDE AND ADJUSTED TO INDICATE HEIGHT FROM (E) NATURAL GRADE.



**CMU WALL SECTION**  
SCALE: 1" = 1'-0"

**SITE INFORMATION**

LEGAL DESCRIPTION:	N TR 1686 LOT 6
PARCEL No.:	425-043-01
ZONING:	REQ
SITE AREA (66 X 300):	19,800 SF.

**BUILDING INFORMATION**

CONSTRUCTION TYPE:	TYPE VB
OCCUPANCY: RESIDENCE	R3
DETACHED GARAGE	U
EXISTING BUILDING AREA	3617 SF.
DETACHED GARAGE	2630 SF.

**PROJECT DESCRIPTION**  
PROVIDE ACCURATE ELEVATIONS FOR HEIGHT OF EXISTING FENCE ON PROP LINE FROM NATURAL GRADE AND FILE MODIFICATION PERMIT TO INCREASE THE HEIGHT TO A MAXIMUM TO THE TOP OF AN ADDITIONAL PRIVACY SCREEN

**OWNER INFORMATION**

OWNER: MIKE MOINFAR  
(619) 572-6561

ADDRESS: 20382 CYPRESS STREET  
NEWPORT BEACH, CA 92660

CONTACT: BILL COPE  
BILL COPE DESIGN  
(949) 514-4066

PHONE:

**ISSUES**

ISSUE NO.	DATE	FOR
A	11/15/09	Modification Permit

**REVISIONS**

REV. NO.	DATE	DESCRIPTION
A		

DESIGNER:  
**Bill Cope Design**  
residential renovations  
new building designs  
space planning  
tel: 949-514-4066  
fax: 949-514-4066

ENGINEER:  
**CHARLES A. JOHNSON, JR.**  
Structural Engineer  
P.O. Box 8284  
Garden Grove, California 92648  
Tel: (714) 958-8158



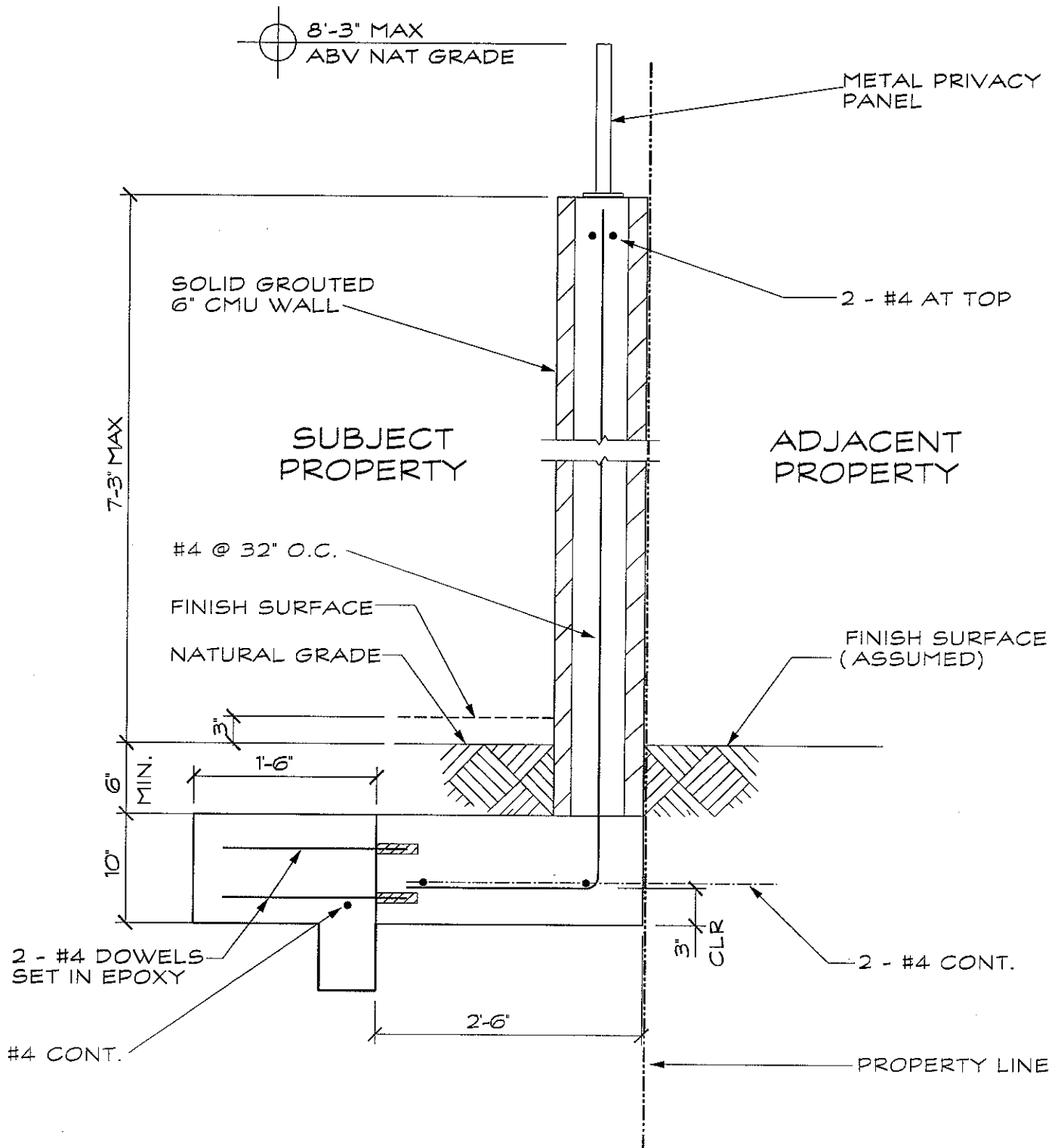
Site Plan for Property Line Wall Height Modification Permit:

Mike Moinfar  
20382 Cypress Street  
Newport Beach, California 92660

DATE:	11/15/09
SCALE:	AS NOTED
DRAWN BY:	BHC
JOB NUMBER:	MMR-103

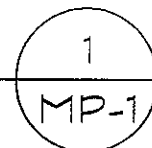
SHEET TITLE  
**SITE WALL PLAN AND DETAIL**

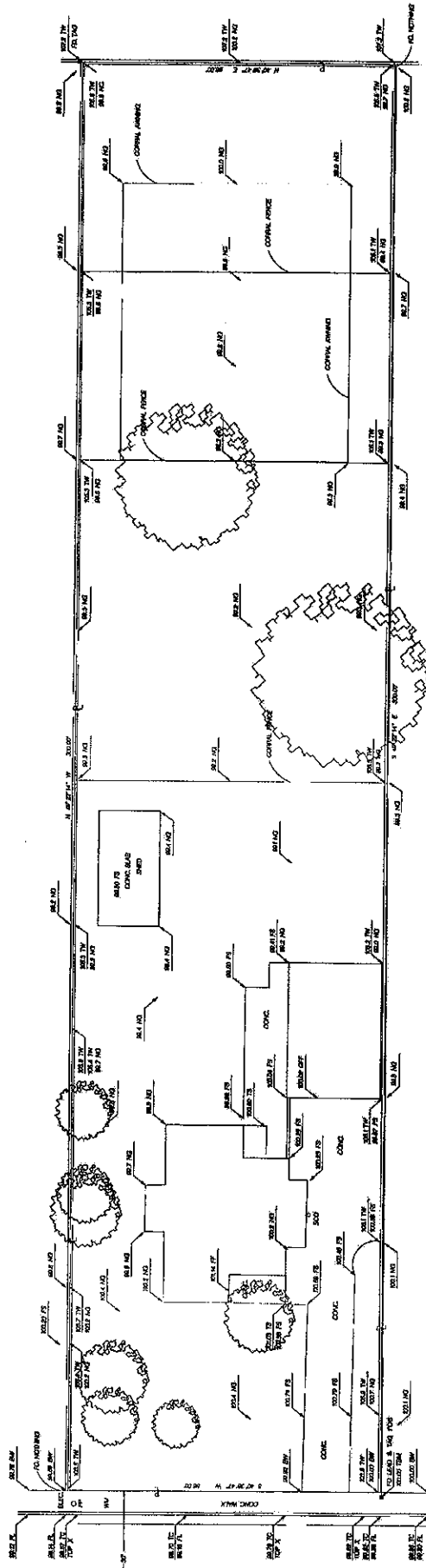
PA2009-162 for MD2009-033  
20382 SW Cypress Street  
Mike Moinfar



CMU WALL SECTION

SCALE: 1" = 1'-0"

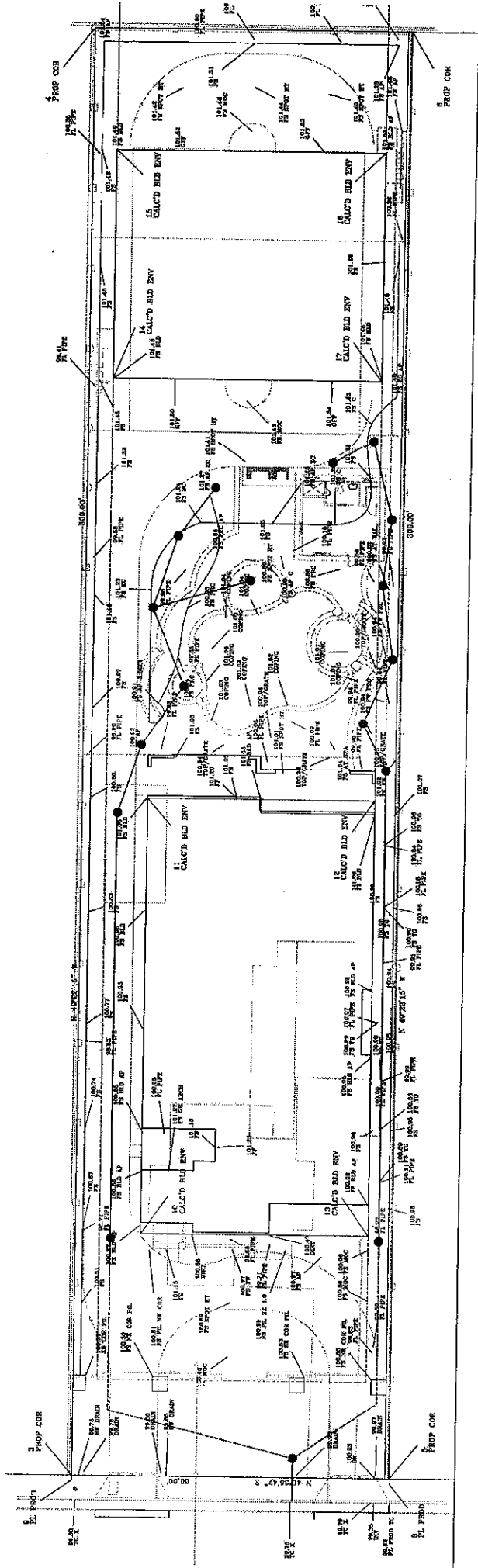




CYPRESS ST.

Original Topo

PA2009-162 for MD2009-033  
 20382 SW Cypress Street  
 Mike Mointar



as built

PA2009-162 for MD2009-033  
 20382 SW Cypress Street  
 Mike Moynar





## **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. MD2009-029 (PA2009-113)**  
**Applicant**                        **Yu-Ter (Jack) Mau**  
**Site Address**                    **2800 West Coast Highway**  
   **China Palace**  
**Legal Description**            **TR 919 LOT F SELY 129.15 FT SWLY 130 FT**

On **January 7, 2010**, the Zoning Administrator approved the following: A modification permit request to allow the construction of a combination block wall and glass fence (screen-wall) located within the front yard setback that will encroach to within 4 feet 8 inches of the street side property line. The screen-wall has an overall height of 8 feet as measured from the top of the adjacent sidewalk along West Coast Highway. The screen-wall is proposed in conjunction with the addition of accessory outdoor dining to the existing restaurant facility. The property is located in the SP-5 Mariner's Mile Specific Plan (Retail Service Commercial) District. The Zoning Administrator's approval is based on the following findings and subject to the following condition.

### **FINDINGS**

1. The Land Use Element of the General Plan and the Coastal Land Use Plan designate the site for "Mixed Use Horizontal" use. The existing restaurant facility is consistent with these designations.
2. The project site is located within the Mariner's Mile Specific Plan District (SP-5) and is designated for Retail Service Commercial uses. The existing restaurant and proposed outdoor dining area are consistent with this designation.
3. The project is categorically exempt under Section 15303, of the California Environmental Quality Act (CEQA) Guidelines - Class 3 (New Construction or Conversion of Small Structures). Section 15303, subsection (e) of the CEQA Guidelines exempts "accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences" such as those structures proposed in this modification permit application.

4. In accordance with the provisions of Chapter 20.93, the granting of this application is necessary due to practical difficulties associated with the property. 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:

- General Plan Policy LU 5.3.5 (Pedestrian-Oriented Architecture and Streetscapes) encourages the inclusion of outdoor seating and other amenities that extend the interior uses to the sidewalk and requires articulation and modulation of street-facing elevations to promote visual interest.
- The perimeter screen-wall is proposed in conjunction with an application for an outdoor dining area for the China Place restaurant and would be necessary and appropriate for the shielding of wind impacts and from the traffic noise of West Coast Highway.
- In order for the outdoor dining area to maintain a consistent finish floor elevation with that of the restaurant, the patio floor elevation must be raised approximately 2 feet in height.

5. In accordance with the provisions of Chapter 20.93, the requested modification will be compatible with existing development(s) in the neighborhood.

Facts in support of finding:

- The lower 4 feet of the screen-wall will consist of solid block with a smooth plaster finish to match the color and finish of the existing restaurant building.
- The solid portion of the screen-wall is limited to a maximum of 4 feet and the upper portion of the proposed wall will consist of glass, providing an open effect along the frontage of the subject property.
- There is adequate distance (4 feet 8 inches) between the proposed wall and the sidewalk to provide landscaping.
- The design of the screen-wall and associated landscaping will comply with the Design Guidelines of the Mariner's Mile Specific Plan Area, with the exception of the wall/fence height and fence materials.

- A landscape hedge is proposed to be planted along the West Coast Highway frontage between the screen-wall and the sidewalk that will effectively screen the lower portion of the screen-wall from view. Five palm trees are also proposed to be planted to further enhance the aesthetics of the restaurant frontage, break up the massing of the screen-wall, and to ensure compatibility with the landscaping of other projects developed under the Design Guidelines.
  - Many of the adjacent existing buildings that front onto West Coast Highway do not provide any setback or landscaping adjacent to West Coast Highway.
6. In accordance with the provisions of Chapter 20.93, the granting of this Modification Permit will not adversely affect the health or safety of persons residing or working in the neighborhood of the property and not be detrimental to the general welfare or injurious to property or improvements in the neighborhood.

Facts in support of finding:

- The proposed perimeter screen-wall has been reviewed by the City's Traffic Engineer and determined that it would not interfere with sight distance. The final construction drawings will be subject to review and approval of the Public Works Department for conformance with City Standard 110-L (Intersection Line of Sight Requirements).
- The City maintains a leasehold interest over an 18-foot strip of land which runs parallel to the property line along West Coast Highway for street widening and sidewalk expansion purposes. A condition of approval has been imposed requiring the approval of an encroachment agreement for the placement of the walls within this area and will require the removal of the walls, at the applicant's sole cost and expense, should the City pursue the future street widening and public improvements in the future.

**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 overall height of the screen-wall shall not exceed 8 feet measured from the top of the adjacent sidewalk along West Coast Highway, with the solid block portion limited to a maximum height of 4 feet. The upper portion of the screen-wall shall be constructed of glass or other similar clear material.

3. The final design shall comply with the Mariner's Mile Design Guidelines, with the exception of the height and screen-wall material as set forth in this approval.
4. Landscape and irrigation plans shall be prepared consistent with the Mariner's Mile Design Guidelines, and shall be submitted with the construction plans to be approved by the Public Works Department and Planning Department prior to the issuance of building permits.
5. Prior to the issuance of building permits, the existing Encroachment Agreement on file with the Public Works Department shall be amended to depict the approved design of the perimeter screen-wall. All work performed within the public right of way shall be reviewed and approved by the Public Works Department under said encroachment agreement. Should the City pursue street widening and sidewalk improvements in the future, the applicant shall agree to remove the improvements at their sole cost and expense.
6. The final location of the perimeter screen-wall shall be reviewed and approved by the City Traffic Engineer and shall conform to the City Standard 110-L to ensure that adequate sight distance is provided.
7. Anything not specifically approved by this Modification Permit is prohibited and must be addressed in a separate and subsequent Modification Permit review.
8. 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.
9. 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.
10. A building permit shall be obtained prior to commencement of the construction.
11. 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.
12. 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

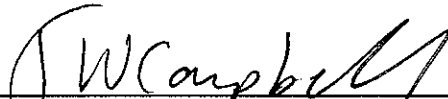
construction completion. Said determination and the extent of the repair work shall be made at the discretion of the Public Works inspector.

13. 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 \$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

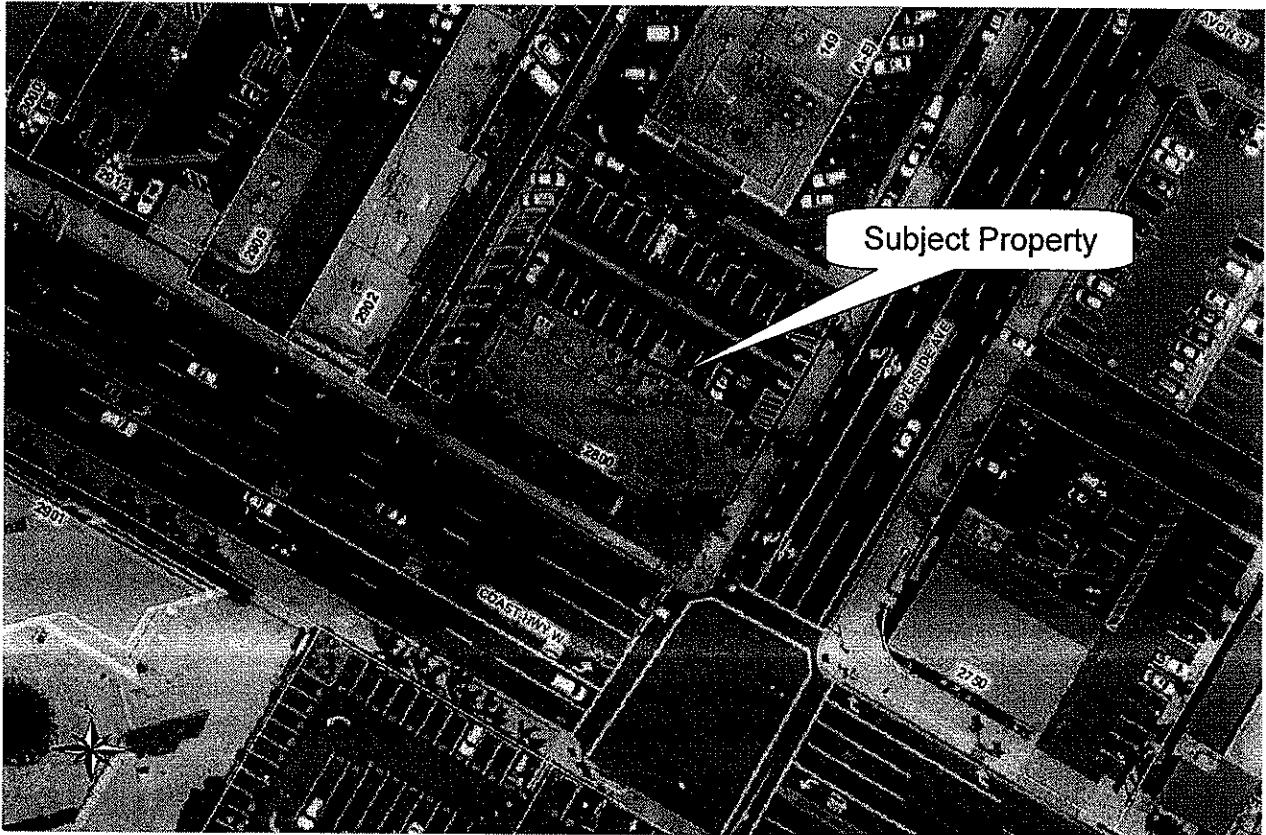
JWC/jm

Attachments: Vicinity Map

Appeared in Opposition: None

Appeared in Support: None

# VICINITY MAP



Modification Permit No. MD2009-029  
PA2009-113

**2800 West Coast Highway**



## ACCESSORY OUTDOOR DINING PERMIT ACTION LETTER

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

**Application No.:** Accessory Outdoor Dining Permit No. OD2009-003  
(PA2009-113)

**Applicant** Yu-Ter (Jack) Mau

**Site Address** 2800 West Coast Highway  
China Palace

**Legal Description** TR 919 LOT F SELY 129.15 FT SWLY 130 FT

On January 7, 2010, the Planning Director approved the following: Establishment of an accessory outdoor dining area in conjunction with an existing eating and drinking establishment. The out door dining area will be located on the West Coast Highway side of the property. The dining area will provide seating for approximately 31 people and will be enclosed by a perimeter screen-wall to minimize wind and noise impacts from West Coast Highway. The property is located in the SP-5 (Mariner's Mile Specific Plan Area) District. The approval is based on the following findings and subject to the following conditions.

### FINDINGS

1. The Land Use Element of the General Plan and the Coastal Land Use Plan designate the property for "Mixed Use Horizontal" land use; and the proposed outdoor dining is accessory to an existing restaurant, a permitted use within these designations.
2. This project has been reviewed, and it has been determined that it is categorically exempt from the requirements of the California Environmental Quality Act under Section 15303 Class 3 (New Construction or Conversion of Small Structures).
3. The approval of this application will not, under the circumstances of this case, be detrimental to the health, safety, peace, morals, comfort, and general welfare of the City for the following reasons:
  - The use is accessory to and an extension of the existing restaurant use, subject to all the findings and conditions of approval of **Use Permit No. UP3095** and its amendments, and not an independent use.
  - The proposed outdoor dining area is compatible with the surrounding land uses and its limited hours shall prevent noise from adversely impacting the nearby residential uses since the proposal does not include any noise generating activities (i.e., entertainment).

- The proposed accessory outdoor dining will not be located so as to result in a reduction of existing parking spaces.
- The restrictions on the use of solid roof structures as applied to this approval are consistent with the intent and purpose of the accessory outdoor dining.
- The proposal does not include any noise generating activities inside or outside of the facility (i.e., live entertainment is not authorized for the facility) and are specifically prohibited in the outdoor dining area by this approval.

### **CONDITIONS**

1. Development shall be in substantial conformance with the approved site plan and floor plan, except as noted in the following conditions.
2. The accessory outdoor dining shall be used in conjunction with the related adjacent food establishment and shall be limited to 532 sq. ft. maximum (25 percent of the total net public area of 2,129 sq. ft.), unless a use permit is obtained from the Planning Commission.
3. The total outdoor dining area shall be limited to 619 sq. ft. maximum (532 sq. ft. of accessory outdoor dining area plus 87 sq. ft. of net public area), unless a use permit is obtained from the Planning Commission.
4. The perimeter screen-wall shown on the plot plan is not approved in conjunction with this application; and that any perimeter screen-wall around the outdoor dining area shall be subject to the approval of a modification permit by the Zoning Administrator for encroachments into the required front yard setback, the approval of the Public Works Department for conformance with the City Standard 110-L for sight distance and shall be subject to the approval of an encroachment agreement and related permit for the placement of such wall within the area for the proposed future widening of West Coast Highway.
5. The improvements specifically relating to this outdoor dining area (i.e., flatwork, tables, fire feature, etc.) shall be subject to the approval of a new or amended encroachment agreement and related permits for the placement of said improvements within the area for the proposed future widening of West Coast Highway. Should the City pursue street widening and sidewalk improvements in the future, the applicant shall agree to remove the improvements at their sole cost and expense
6. For sunshade purposes, coverings shall be limited to the use of umbrellas with a minimum vertical clearance of 7 feet measured from the floor of the dining area to the lowest portion of the shade structure. The use of solid, permanent roof coverings, patio covers or retractable awnings shall be prohibited, unless otherwise approved by an amendment to the Modification Permit No. MD2009-029.



7. Alcoholic beverage service shall be prohibited in the outdoor dining area, until the approval of the Police Department and the Alcoholic Beverage Control Board are first obtained. Any substantial physical changes required (as determined by the Planning Department) to accommodate alcoholic beverage service shall be subject to the approval of an amendment to this Outdoor Dining Permit.
8. The hours of operation of the outdoor dining area is limited to between the hours specified by Use Permit No. 3095; and any increase in the hours of operation shall be subject to the approval of an amendment to this application and may require an amendment to Use Permit No. 3095.
9. The seating adjacent to the food use facility shall be limited to the area as delineated on the approved site plan only. The approved outdoor dining area shall be located on a solid surface in accordance with the approved floor plan or seating plan.
10. The facility shall be designed to meet exiting and fire protection requirements as specified by the Building Code and shall be subject to review and approval by the Building and Fire Departments.
11. The outdoor patio area shall comply with State Disabled Access requirements.
12. All applicable conditions of approved **Use Permit No. UP3095** shall remain in force (copy available in the Planning Department).
13. No outside paging system or sound system shall be utilized in conjunction with this outdoor dining establishment.
14. The operator of the restaurant facility shall be responsible for the control of noise generated by the subject facility. The use of outside loudspeakers, paging system or sound system shall be prohibited in the outdoor dining area or outside of the building. The noise generated by the proposed use shall comply with the provisions of Chapter 10.26 of the Newport Beach Municipal Code. Chapter 10.26 provides, in part, that the sound shall be limited to no more than depicted below for the specified time periods:

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

15. The applicant shall retain a qualified engineer specializing in noise/acoustics to monitor the sound generated by the outdoor dining activity to insure compliance with these conditions, if required by the Planning Director.
16. The use of area heaters shall be approved by the Public Works Department, Building Department and the Fire Department prior to installation or use. The use of propane heaters and the storage of propane containers on the premises are prohibited, unless otherwise approved by the Fire Department.
17. Should this business be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current owner or the leasing company.
18. Should problems arise with regard to noise associated with the outdoor dining areas, the Planning Department shall require the removal of all or a portion of the outdoor dining area seating in the areas that contribute or cumulatively contribute to the noise problems or complaints.
19. The Planning Department may add to or modify conditions of approval to this outdoor dining permit, or revoke this approval upon a finding of failure to comply with the conditions set forth in Chapter 20.82 of the Municipal Code or other applicable conditions and regulations governing the food establishment. The Planning Director or the Planning Commission may also revoke this permit upon a determination that the operation which is the subject of this approval causes injury, or is detrimental to the health, safety, peace, morals, comfort, or general welfare of the community.
20. This approval shall expire unless exercised within 24 months from the end of the appeal period as specified in Section 20.91.050 of the Newport Beach Municipal Code.

### **APPEAL PERIOD**

The applicant or any interested party may appeal the decision of the Planning Director, Zoning Administrator and department staff to the Planning Commission by a written request to the Planning Director within 14 days of the action date. A \$3,070 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:   
Jaime Murillo, Associate Planner

JWC/jm

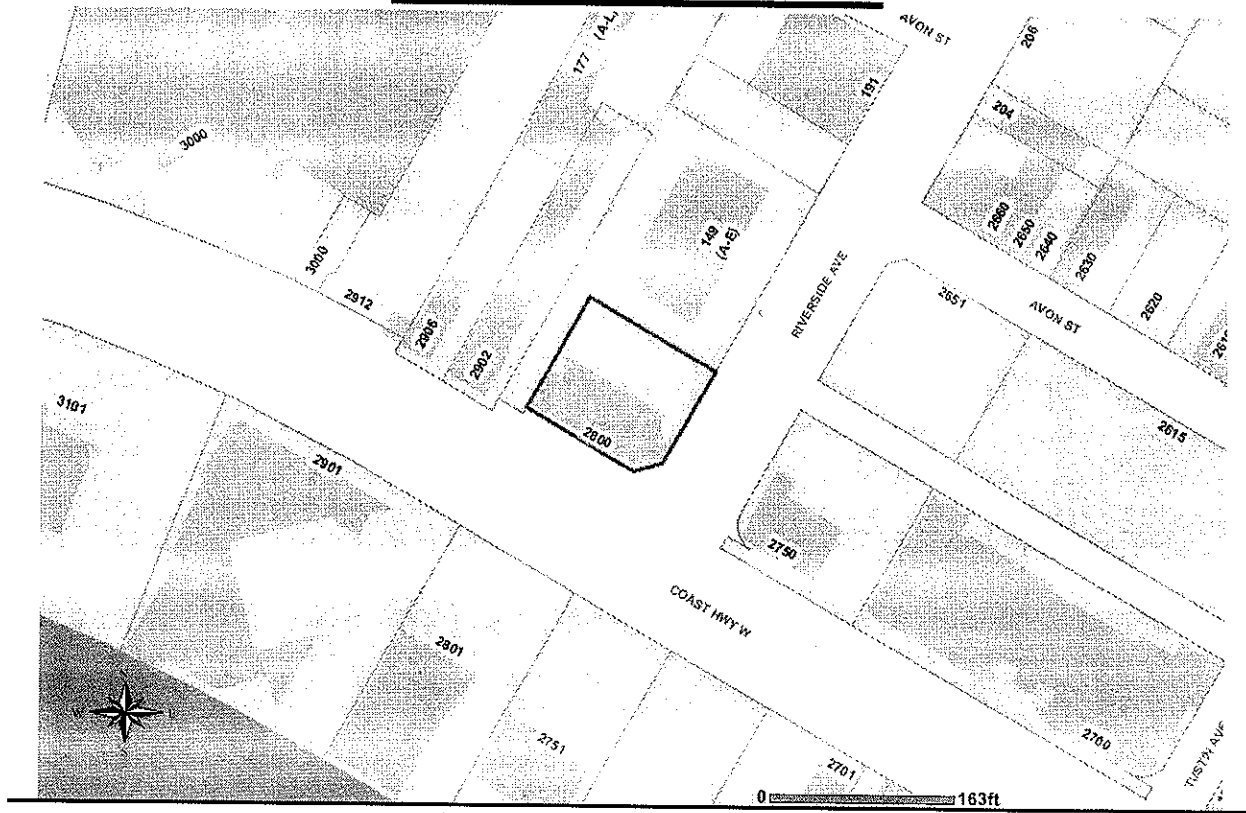
Attachments: Vicinity Map

"Project Plans" on file in the Planning Department

cc: property owner  
Yu-Ter (Jack) Mau  
2800 West Coast Highway  
Newport beach, CA 92663

Code Enforcement Division

# VICINITY MAP



Accessory Outdoor Dining Permit No. OD2009-003  
PA2009-113

**2800 West Coast Highway**