

**CITY OF NEWPORT BEACH
PLANNING DEPARTMENT ACTION REPORT**

TO: CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION
FROM: David Lepo, Planning Director
SUBJECT: Report of actions taken by the Zoning Administrator, Planning Director and/or Planning Department staff for the week ending August 13, 2010

ACTIONS TAKEN BY THE PLANNING DIRECTOR OR PLANNING DEPARTMENT STAFF

- Item 1: Goodwill of Orange County – Use Permit No. UP2010-007 (PA2010-030)
3233 Pacific View Drive - Goodwill Donation Center

Approved – August 12, 2010 Council District 7
- Item 2: Christopher and Irene Veitch – Modification Permit No. MD2010-009 (PA2010-067)
60 Royal Saint George Road,

Approved – June 24, 2010 Council District 5
Revised – August 11, 2010
- Item 3: Pizzeria Mozza – Outdoor Dining Permit No. OD2010-003 (PA2010-087)
800 West Coast Highway

Approved – August 11, 2010 Council District #3

On behalf of David Lepo, Planning Director:



Patrick J. Alford, Planning Manager

APPEAL PERIOD: Modification Permit applications do not become effective until 14 days after the date of action, during which time an appeal may be filed with the Planning Commission Secretary in accordance with the provisions of the Newport Beach Municipal Code. Tentative Parcel Map, Condominium Conversion, Lot Merger, and Lot Line Adjustment applications do not become effective until 10 days following the date of action, during which time an appeal may be filed with the Planning Commission Secretary in accordance with the provisions of the Newport Beach Municipal Code.

Email City Council
Planning Commission
David Lepo, Planning Director
Sharon Wood, Assistant City Manager
David Keely, Public Works Senior Civil Engineer
Code Enforcement Division
Bryan Moore, NBPD
Sgt. John Freeman, NBPD



PLANNING DIRECTOR'S ACTION LETTER

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

Application No. **Use Permit No. UP2010-007 (PA2010-030)**

Applicant **Goodwill of Orange County**

Site Address **3233 Pacific View Drive**
 Goodwill Donation Center

Legal Description **Parcel 1 of PM 7/42**

On **August 12, 2010**, the Planning Director approved the following: Request to allow the retention of an 8-ft-wide by 28-ft-long commercial storage container (trailer) previously installed without benefit of a use permit. The location does not displace any parking spaces, however it affects access to the trash dumpster. The container is located at the southwest corner of the parking lot. The container is located approximately 300 feet away from the public right-of-way (sidewalk). The installation is semi-permanent and is intended to remain during the existence of the church use. 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 container 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 C of the Newport Beach Municipal Code provides that the Planning Director may authorize the use of structures and land for a period of time 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 or request for an extension of time or other time period is approved prior to expiration of this approval.

FINDINGS

1. This project has been reviewed, and it has been determined that it is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) Guidelines under Section 15303, Class 3 (New Construction or Conversion of Small Structures). The proposed storage container is an accessory structure that will complement the church use and activities; and the use and the resulting loss of use of one parking space is a minor impact of the service provided and is therefore exempt under Section 15303.

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 Governmental, Educational, and Institutional Facilities (GEIF) District. The purpose of the GEIF District is to provide areas which are predominantly nonresidential and noncommercial uses in character but which allow some service activities that will serve the neighborhood.
 - Although the proposed storage container will not displace use of any parking spaces, it will impact the use of the dumpster located in front of the dumpster location. Adequate parking is provided on site to accommodate the proposed trailer use and the ongoing church use or activities.
 - Subject to the approval of a use permit by the Planning Director, an institutional use and its support activities are 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 or if not appropriately regulated. The container and its related activities are compatible and complementary to the neighboring uses in the residential districts. The proposed application does not present any conflict with the purpose and intent of the GEIF District.
3. The proposed location of the container requested by the use permit and the conditions of approval 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 Private Institutions (PI) by the Land Use Element of the General Plan. The proposed project is consistent with the PI land use category, which is intended to provide for institutional 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 be available to serve residents of the city.
- The proposed hours of operation of the facility are 8:00 a.m. to 5:00 p.m., daily. Pick-up of full containers and drop-off of empty replacement containers shall be prohibited between the hours of 5 pm and 9 am, daily, to limit adverse noise impacts on the nearby residential uses. The residential properties and uses are located more than 400 feet from the trailer itself.

- The placement and use of the trailer will not conflict with the activities and use of the other church buildings or school facilities in the vicinity.
- The proposed container location in relation to the roadway is less visible to passing traffic on Pacific View Drive, and its placement will have no adverse effect on vehicular circulation or use of the parking lot.

CONDITIONS

1. The container shall conform to the approved plans, attached. The storage container, located at the southwesterly portion of the subject property, shall have a maximum width of 8 feet wide and 28 feet in length. The container shall remain as currently located in the southwest corner of the parking lot and displace no on-site parking spaces. The container will continue to 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. A trailer may also be substituted in place of the storage container, if desired.
2. The hours of operation shall be limited to between the hours of 8:00 a.m. and 5:00 p.m., daily. Removal or replacement of the container, and or other deliveries for the facility shall be prohibited between the hours of 5:00 p.m. and 9:00 a.m., daily. Any increase or change in the hours of operation shall be subject to the approval of an amendment to this use permit.
3. No on-site or off-site signs shall be permitted in conjunction with or advertising the presence of the storage container, with the exception of logo signs and information on the container to show the hours of operation.
4. The container may remain in its present location. Relocation of the trailer elsewhere on site shall be approved by the Planning Director. The container may be removed from the property at any time.
5. Storage outside or around the container; or in the front or at the rear of the property shall be prohibited. Overflow of contributions that cannot be accommodated within the container, shall be removed within 24 hours.
6. Within 30 days after the approval of this application, the trash dumpster shall be screened from view by an enclosure on all four sides and a solid roof cover (to prevent rainwater intrusion), and shall be located so as not to impact the existing parking spaces. A building permit for the trash enclosure shall be obtained prior to installation; and shall be first reviewed and approved by the Building Department and the Public Works Department.
7. 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 20.60.105 of the Municipal Code or other applicable conditions and regulations governing outdoor storage.

8. 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 \$4,280.00 filing fee shall accompany any appeal filed. For additional information on filing an appeal, contact the Planning Department at 949 644-3200.

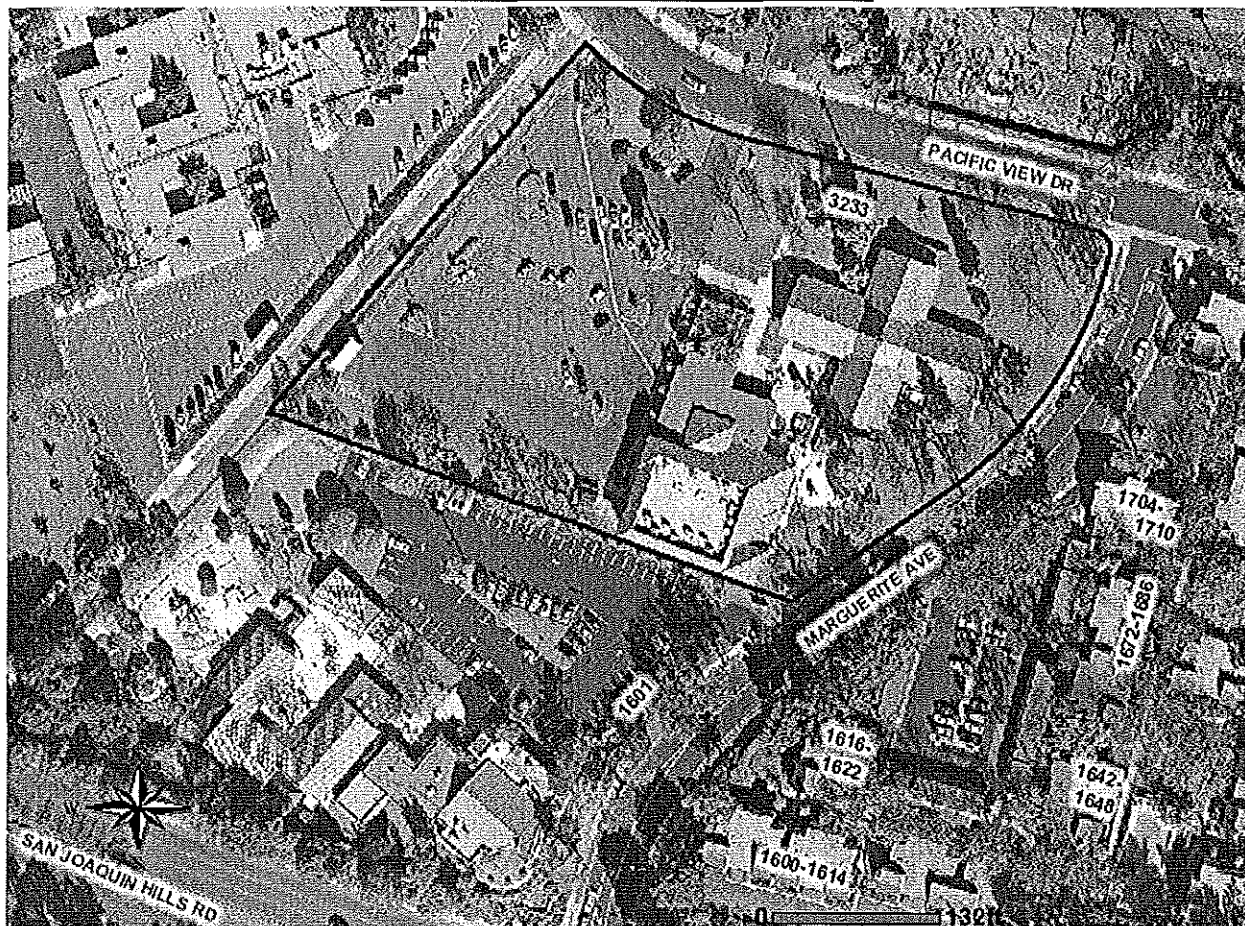
On behalf of David Lepo, Planning Director

By: 
Javier S. Garcia AICP, Senior Planner

JSG

Attachments: Vicinity Map
Applicant's Project Description
Property Owner Letter of Support
Response Letter from Applicant
Letter of Support – Coleman
Site Plan

VICINITY MAP



Use Permit No. UP2010-007
PA2010-030

3233 Pacific View Drive

GOODWILL OF ORANGE COUNTY

The Face of Independence

February 2, 2010

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

Dear Planning Department:

This letter is to express our intent in permitting an Attended Donation Center (ADC) container in the parking lot of St. Michael & All Angels Episcopal Church located at 3233 Pacific View Drive. The parcel number is: 458-341-01. This ADC will be staffed with one (1) attendant to collect donated goods 7 days a week from the hours of 8am-5pm.

These donated goods provide us the opportunity to employ people with disabilities and other barriers to reach their highest levels of personal and economic independence.

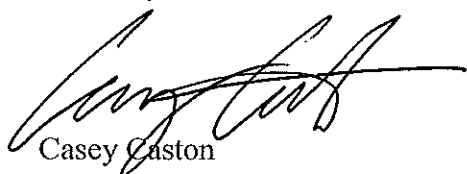
Our ADC sites are kept clean with the strictest standards. In fact, we have never been asked to leave a site due to an untidy appearance or because trash is left behind. Our attendants arrive 30 minutes early to their shift to clean around the trailer area. We also have a nightly cleaning crew (between the hours of 6-7pm) to ensure the area surrounding the donation center is kept clean.

We are good neighbors to have in the city; our donation centers work towards increasing the state mandated landfill diversion (AB 939), lower crime since we have attendants monitoring the lots creating a deterrent to mischievous behavior, our ADC's do not create any additional noise, and because our containers are secure, do not attract scavengers.

Included in this packet are all the necessary documentation to be presented to make an informed decision. I have also included supporting information regarding our ADC program and a letter of endorsement. If there are any additional questions, please feel free to contact me at (714) 415.8192 or by email at caseyc@ocgoodwill.org.

Thank you for your support.

Sincerely,



Casey Caston

410 North Fairview
Santa Ana, CA 92701

voice: 714.547.6301
tty/tdd: 714.543.1873
fax: 714.541.6531

ocgoodwill.org
shopgoodwill.com

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Saint Michael & All Angels Episcopal Church
A Christian Community of the Anglican Communion
3233 Pacific View Drive
Corona del Mar, California 92625

Peter D. Haynes, Rector

Telephone: 949.644.0463
Fax: 949.644.9247
email: church@stmikescdm.org
Web site: www.stmikescdm.org

February 1, 2010

To Whom It May Concern:

As Rector/Senior Pastor of Saint Michael & All Angels Episcopal Parish Church in Corona del Mar I am pleased that we have been blessed to host a Goodwill Donation Center in the southwest corner of our parking lot for more ten years. Contributions for our annual rummage sales were so overwhelming that we easily saw the need in our neighborhood for such a resource to encourage us to clean out our garages and give what we do not need to the benefit of those who do have such needs.

Those who staff Goodwill's Donation Center are generally courteous and help us monitor our parking lot and, when present, keep others from dropping off trash by our dumpster which sits beside the Donation Center. The Donation Center is located in such a way that it does not take up any of our parking spaces, nor does it bother our neighbors; they have never complained about it being here.

PROTECT DESCRIPTION AS PER INDICATES 1 PARKING SPACE
DISPLACED.

The only problems we have had occur when people ignore Goodwill's signs on their Donation Center which clearly ask others to not leave anything here when the Center is unattended; our parishioners have grown to understand this dynamic.

I would be very glad to communicate with others about our good experience hosting a Goodwill Donation Center.

Respectfully,

(The Very Rev'd Canon) Peter D. Haynes

GOODWILL 3233 PACIFIC VIEW DR. / ATTENDED DONATION SITE

Date: March, 10 2010

To: The City of Newport Beach (Corona Del Mar Project)

Project: Goodwill Industries of Orange County (GIOC)
(a California, non profit corporation)
3233 Pacific View Drive, Corona Del Mar

Project Manager: Mike Easton, EPCC Inc. (949) 223-5090 measton@eastonpacific.com

Response to question regarding operations during church service times

The donation site operates in conjunction with the church and has 2 parking spaces available for use by patrons of the Goodwill Attended Donation Center. During church services the congregation is the primary user of the donation site. Church Congregation Members bring goods to donate prior to and after church services. We have not experienced any problems or traffic congestion in the years of existing operation.

Description of existing use

Collection of donated goods and clothing, goods are collected and delivered to the Goodwill processing facility located in Santa Ana.

Significant landfill diversion is achieved through our donation and retail sales program. Many items delivered to our donation site would otherwise end up in landfill. This "Green" program also benefits thousands of challenged individuals throughout Orange County and California.

Goodwill has earned a reputation as a leader in the retail discount store industry. All of our stores and donation sites are kept clean and are professionally operated and maintained. Our sites are attended by full time trained employees who also police and maintain the areas surrounding our stores and donation sites. Goodwill stores and donation sites provide a positive impact and generally improve the overall security and cleanliness not to mention a substantial reduction in graffiti / vandalism of our, and the adjacent sites.

Goodwill will continue to provide community based employment; support and services for challenged individuals through the numerous programs offered and funded by the continued operation of this and other Orange County retail stores and donation centers.

We respectfully request,

City of Newport Beach approval as required to legalize the existing use.

Garcia, Jay

From: Joan Coleman [jcoleman@harborday.org]
Sent: Monday, April 26, 2010 5:04 PM
To: Garcia, Jay
Subject: Comments on Public Notice Goodwill Donation Center

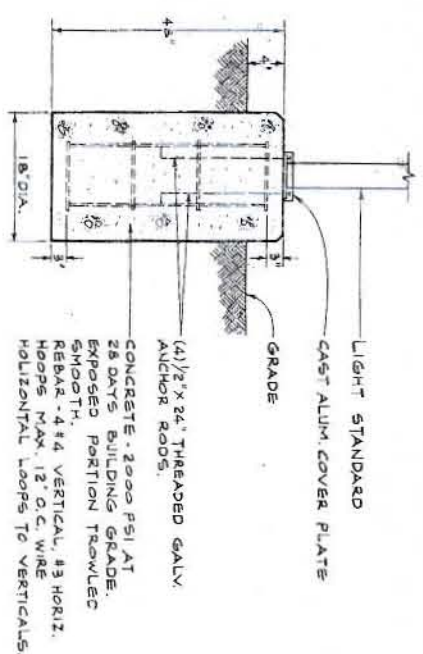
Dear Mr. Garcia,

I am writing on behalf of the employees and parents of Harbor Day School. The Goodwill Donation Center located in the parking lot of St. Michael's and All Angels Church provides a worthwhile service to the members of our Harbor Day School community. It is a convenient drop-off spot for many useful items that might otherwise go into trash/landfills instead. Not only does the school use it, but our parents will drop reusable items off at the donation center on their way too or from school.

Harbor Day School firmly supports the continued retention of the Goodwill Donation storage trailer in the parking lot at St. Michael's. If you need any additional input, please contact me.

Sincerely,

Joan A. Coleman
Business Manager
Harbor Day School
3443 Pacific View Drive
Corona del Mar, CA 92625
949-640-1410



FOOTING FOR PARKING AREA
 LIGHTING STANDARD "F9-300"
 NOT TO SCALE

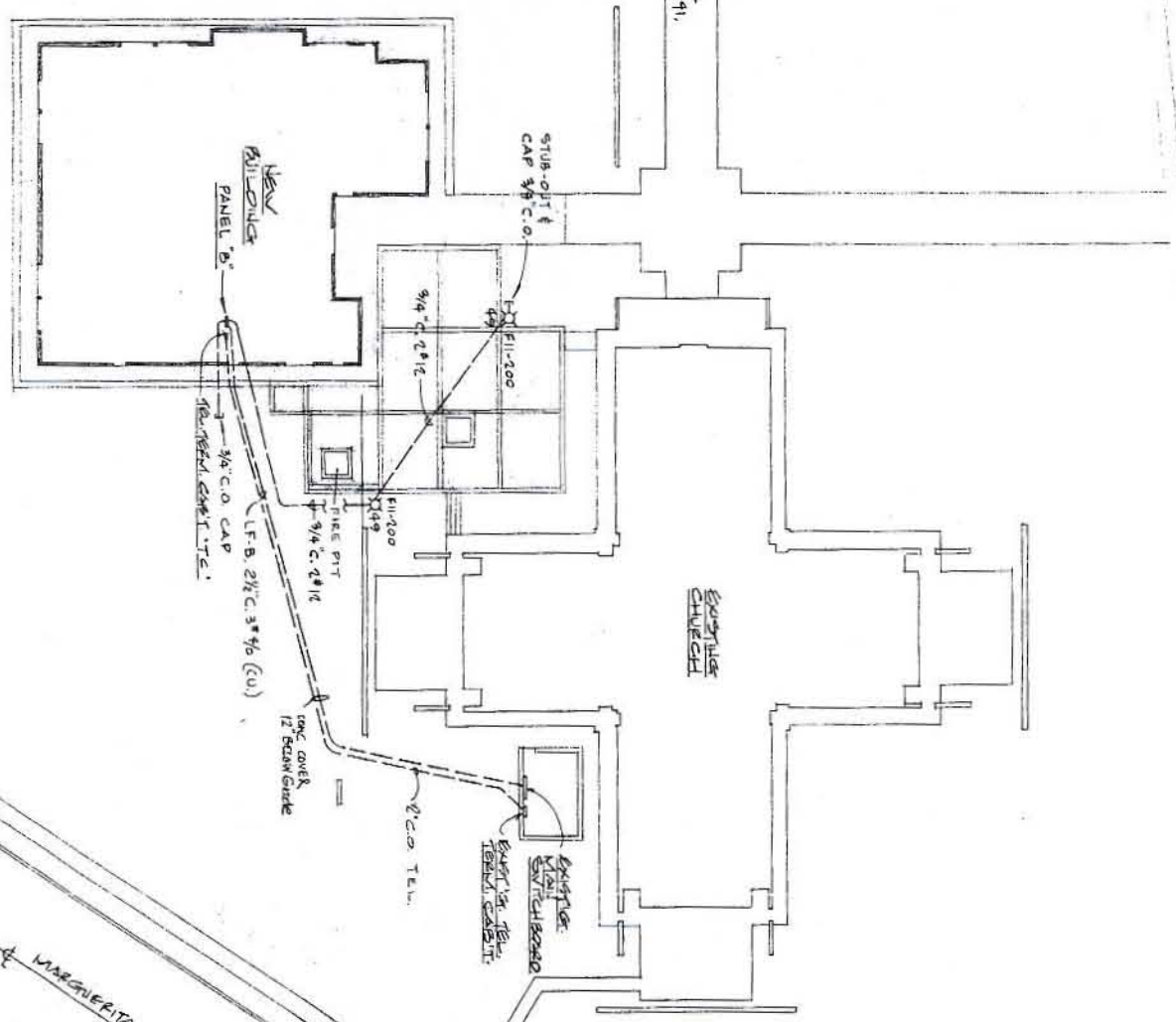
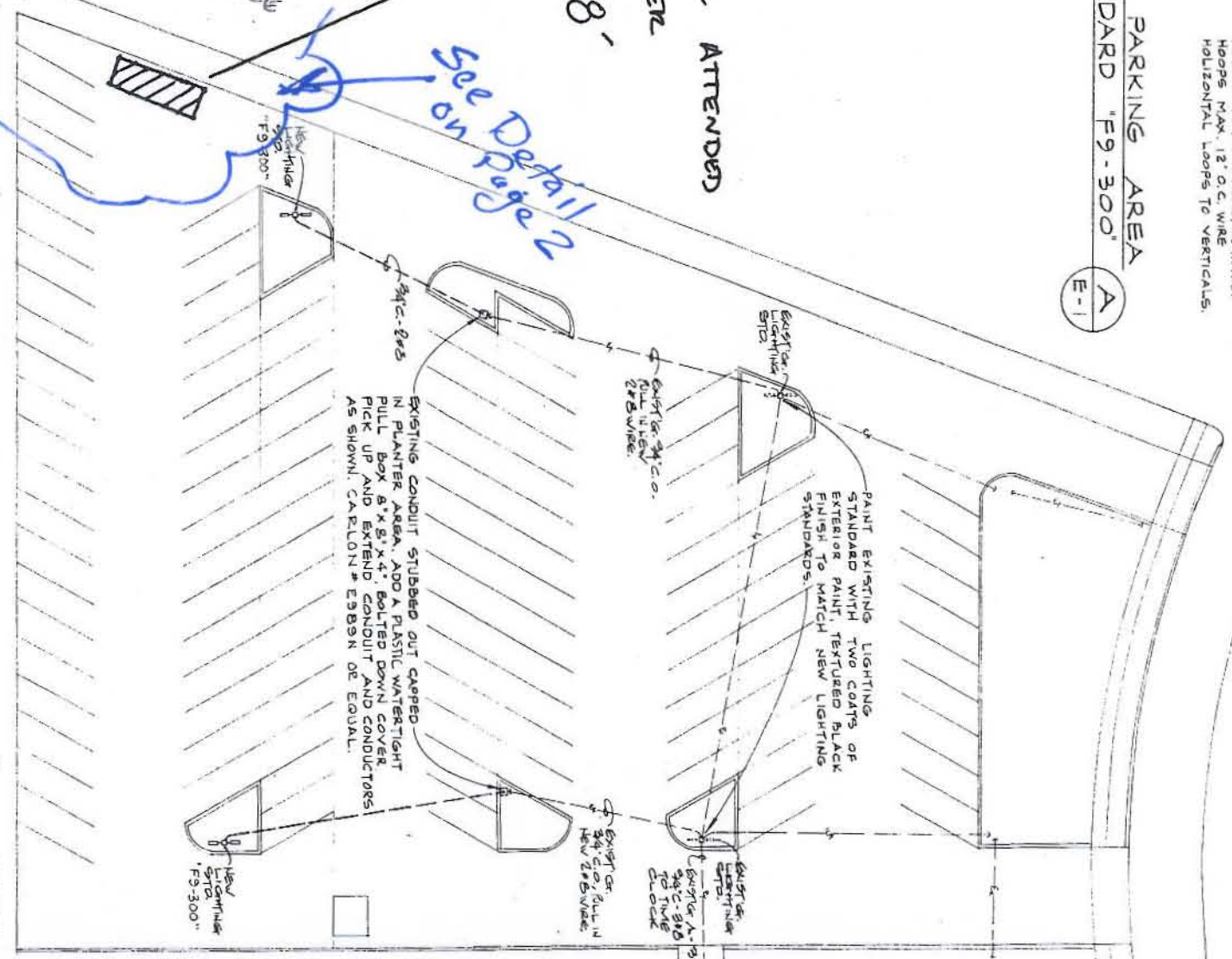
A
 E-1

EXISTING GOODWILL ATTENDED
 DONATION CENTER
 DIMENSIONS: 28' x 8'

See Detail
 on page 2

SCHOOL
 PLAY GROUND

CHAINLINK FENCE
 6'



PACIFIC VIEW DRIVE

MARGUERITA AVE

SCALE: 1/8\"/>

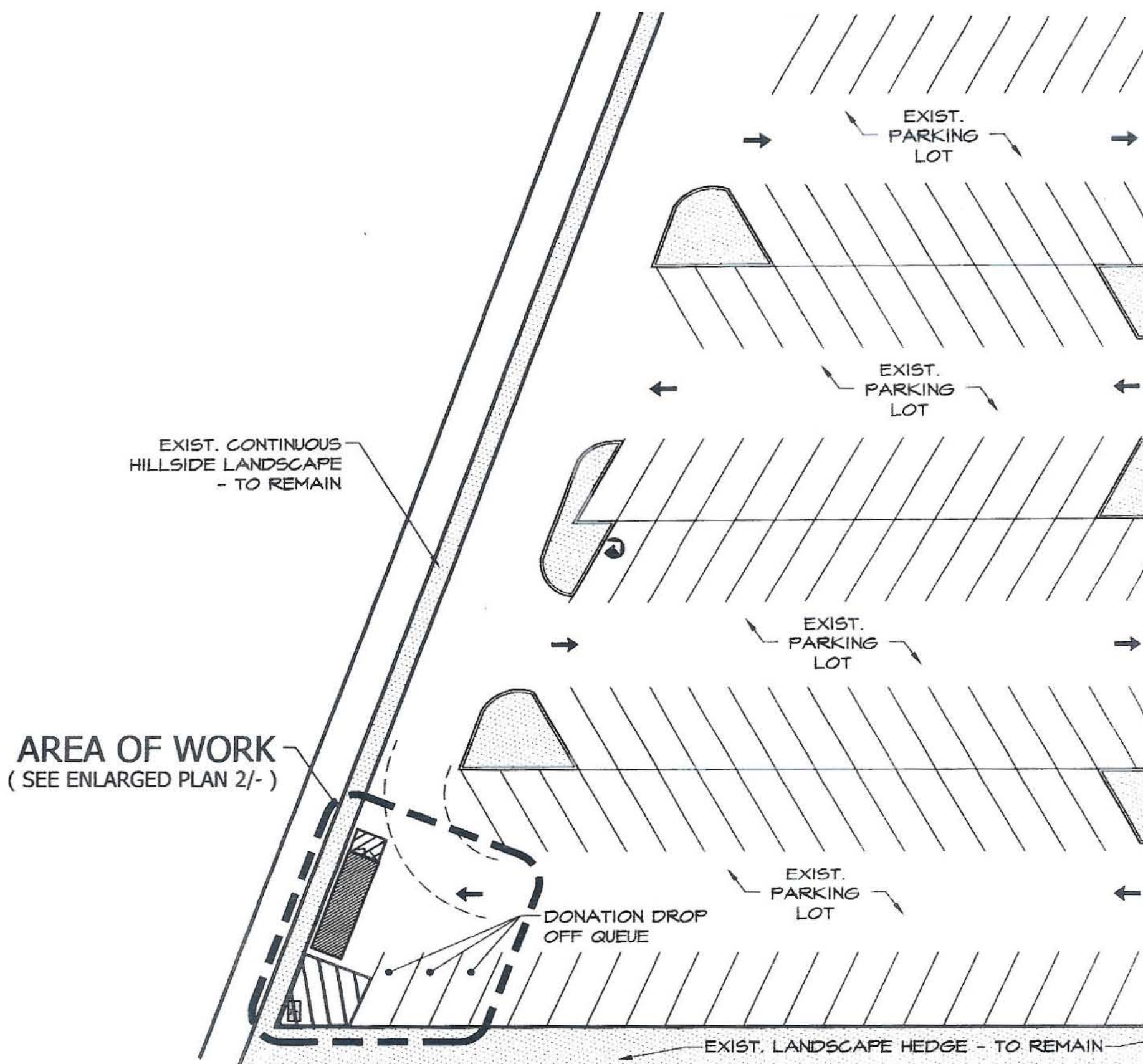
NO BUILD

EDUCATIONAL FELLOWSHIP AKA
 RELATED FACILITIES, JR.
 STIMCKE, WILLIAMS, JR. CO-CHURCH
 3533 MARGUERITA DRIVE, ORANGE, CA 92668

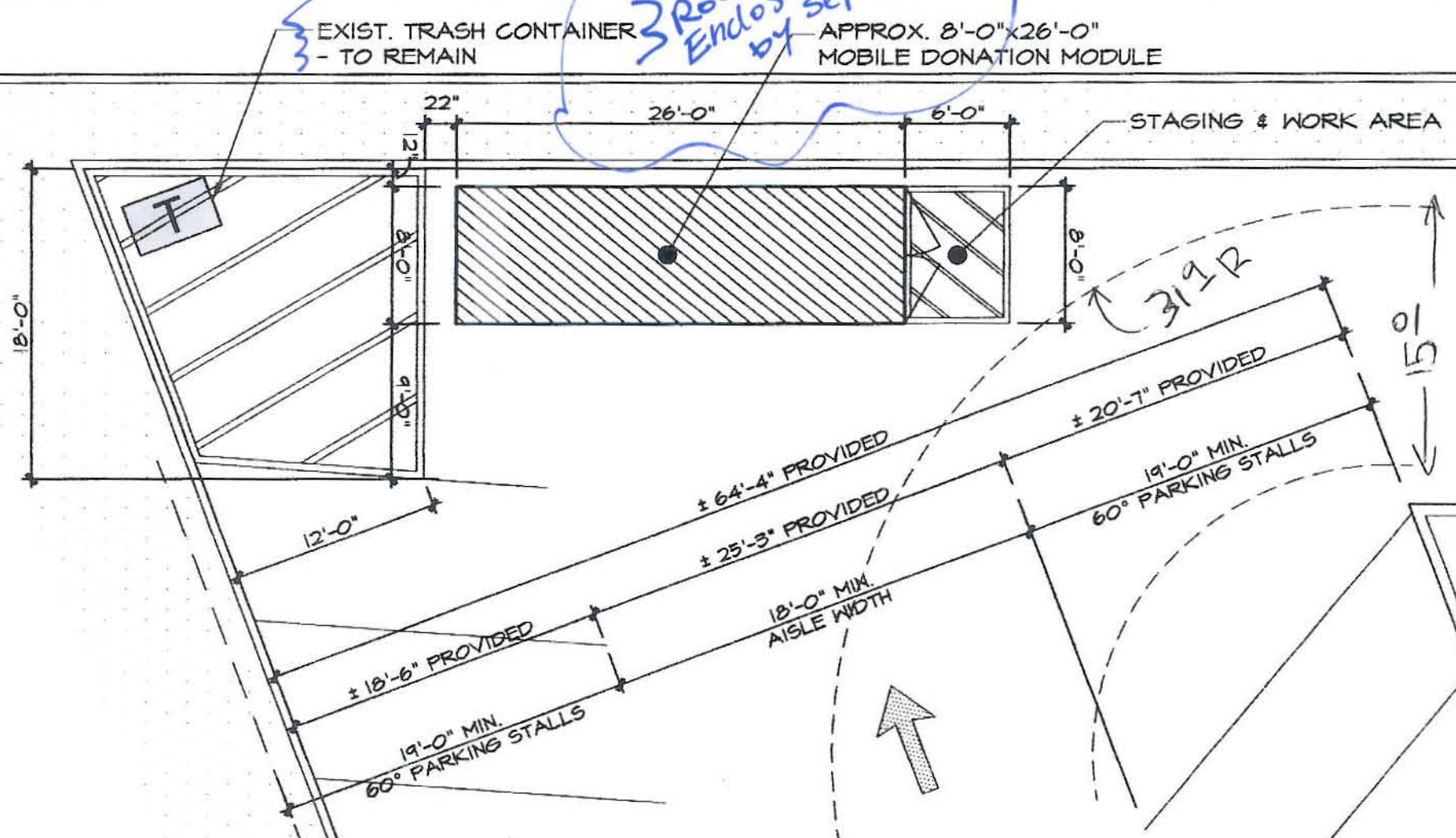
ARCHITECT: JAMES D. COOPER & ASSOCIATES, INC.
 CONSULTING ENGINEER: JAMES D. COOPER & ASSOCIATES, INC.
 DATE: 10-1-75
 SHEET: 6-1-75

PROJECT: SITE PLAN

Page 1



EXISTING REFERENCE SITE PLAN



EXISTING REFERENCE SITE PLAN

Page 2 - Detail



ZONING ADMINISTRATOR ACTION LETTER **(REVISED)**

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

Application No. **Modification Permit No. MD2010-009 (PA2010-067)**
 Veitch Residence Modification

Applicant **Christopher and Irene Veitch**

Site Address **60 Royal Saint George Road,**
 Big Canyon Planned Community

Legal Description **Lot 38, Tract 7223**

Request as Modified and Approved:

Approval of minor changes to the previously approved Modification Permit No. MD2010-009 (PA2010-067) to allow the retention of a 15-foot wide addition to a single unit dwelling, constructed without a building permit, which encroaches 6 inches into the required 5-foot side yard setback. Upon inspection of the property for final building permits, the structure was found to encroach 3 additional inches into the required 5-foot side yard setback. The resulting side yard setback is 4 feet 3 inches. The property is located in Planning Area 12 of the SP-8 (Big Canyon Planned Community) Zoning District.

Authority:

Section 20.93.055 (A) of the Newport Beach Municipal Code provides that the Planning Director may waive the requirement for a new Modification Permit application if the changes are minor, do not involve substantial alterations or addition to the plan or the conditions of approval, and are consistent with the intent of the original approval.

ACTION: **APPROVED – June 24, 2010** - The Planning Director approved the following: A modification permit to allow the retention of a 15-foot addition to a single unit dwelling, constructed without a building permit, which encroaches 6 inches into the required 5-foot side yard setback. The addition was constructed approximately 28 years ago by a prior owner and the current owner had no constructive knowledge of the encroachment or that the addition was done without the benefit of permits. The changes include a minor, 3 inch increase in the setback encroachment to accommodate the as-built condition of the addition to the existing single unit dwelling. The portion of the addition that now encroaches is 15 feet in width and the total area of encroachment is 11.25 square feet. The approval is based on the following findings and subject to the following conditions:

Revised August 11, 2010

FINDINGS

- A. *The findings as previously addressed still apply to the revised location and minor encroachment increase to accommodate the as-built addition to the existing single-family residence. The smaller setback of 4 feet 3 inches is consistent with the previous approval of Modification Permit No. MD2010-009 (PA2010-067).*
- B. *This project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) Guidelines under Section 15305 Class 5 (Minor Alterations in Land Use Limitations).*

This exemption allows minor setback deviations where no new lot is created on lots where the slope is less than 20 percent and when there is no change in land use or density. The 9-inch encroachment totals 11.25 square feet in area and is for an existing single unit dwelling on a flat lot with no change in land use or density.

- C. *The granting of the application is necessary due to the practical difficulties associated with the property and that the strict application of the Zoning Code results in physical hardships that are inconsistent with the purpose and intent of the Zoning Code.*

Although the owner has no right to retain the unpermitted improvements and resulting minor encroachment, the location of existing improvements on the subject property with the strict application of the Zoning Code is a practical difficulty. The subject improvements were constructed approximately 28 years ago without benefits of permits and they were not identified when the property was sold in 1992 and again in 2003. The resulting reconstruction results in a physical hardship where the owner and neighbor would have to live through and endure the corrective construction effort simply to provide 9 additional inches of setback area and strict code compliance. The physical hardship (not economic) outweighs any tangible benefits to the abutting properties or the community given that the existing improvements have been in place for so long and have not proven to be unsafe or a nuisance.

- D. *The requested modification will be compatible with existing development in the neighborhood.*

The 9-inch by 15-foot wide encroachment is single-story and provides a 4-foot, 3-inch setback that allows full use of the side yard. The location of the encroachment is approximately 55 feet from the street, is behind a 6-foot high fence, and is not visible from the street. Although the minimum side yard setback within this planning area of the Big Canyon Planned Community is 5 feet, the abutting property has a varying setback that ranges between 5 and 20 feet. The distance between the abutting residence and the encroaching addition is approximately 12 feet and other portions are at least 20 feet away.

- E. *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.

The resulting 4-foot, 3-inch setback for the single-story addition provides adequate access through the side yard for emergency personnel. The remainder of the existing single-story house has an 8-foot setback. The abutting residence has varying setbacks ranging from 20 to as little as 5 feet. The closest point of the abutting residence is approximately 12 feet away from the encroaching addition. These spatial relationships suggest that the light, air and privacy of the abutting home and property will not be negatively affected. The encroaching addition has been in existence for 28 years and has not proven to be a nuisance. A condition of approval requires that the applicant/owner obtain a building permit. The construction will then be inspected and any deficiencies with the building code will be corrected.

CONDITIONS

(Project specific conditions are noted in italics)

1. *The revision to plans issued for building permits shall be in compliance with the site plan and details included in this approval. Any deviation to further increase the encroachment at the side yard setback shall require the filing of an amendment or new modification permit application.*
2. *The plans approved by this approval supersede the plans previously approved by Modification Permit No. 2010-009 (PA2010-067), which are hereby rendered null and void by this action. The revised plan as changed requires a 4-foot 3 inch setback at the side yard for the as-built addition.*
3. *Prior to issuance of final building permits, this approval letter and attached revised plan shall be made a part of the Building Department set of plans issued for building permit purposes.*
4. The Planning Director or the Planning Commission may add to or modify conditions of approval to this approval or revoke this approval 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.
5. The development shall be in substantial conformance with the approved plot plan, floor plans and elevations, except as noted in the following conditions.
6. Anything not specifically approved by this Modification Permit is prohibited and must be addressed in a separate and subsequent Modification Permit review.
7. Prior to issuance of building permits, the applicant shall submit to the Planning Department an additional copy of the approved architectural plans for inclusion in the Modification Permit file. The plans shall be identical to those approved by all

City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11 inches by 17 inches. The plans shall accurately depict the elements approved by this Modification Permit and shall highlight the approved elements such that they are readily discernible from other elements of the plans.

8. *A building permit shall be obtained within 60 days of the approval of this Modification Permit and prior to the commencement of any construction, reconstruction or corrective work. The construction plans must comply with the most recent, City-adopted version of the California Building Code. Any corrective work directed by the Building Department shall be completed within a timely manner and failure to complete said work and receive a final inspection sign-off by the Building Department shall be grounds for revocation of this permit.*
9. *The project shall comply with the California Building Code for fire rating of the exterior wall and area of openings along the side yard of the subject property.*
10. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Veitch Residence Modification including, but not limited to, the Modification Permit No. MD2010-009 (PA2010-067). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.
11. 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.

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.

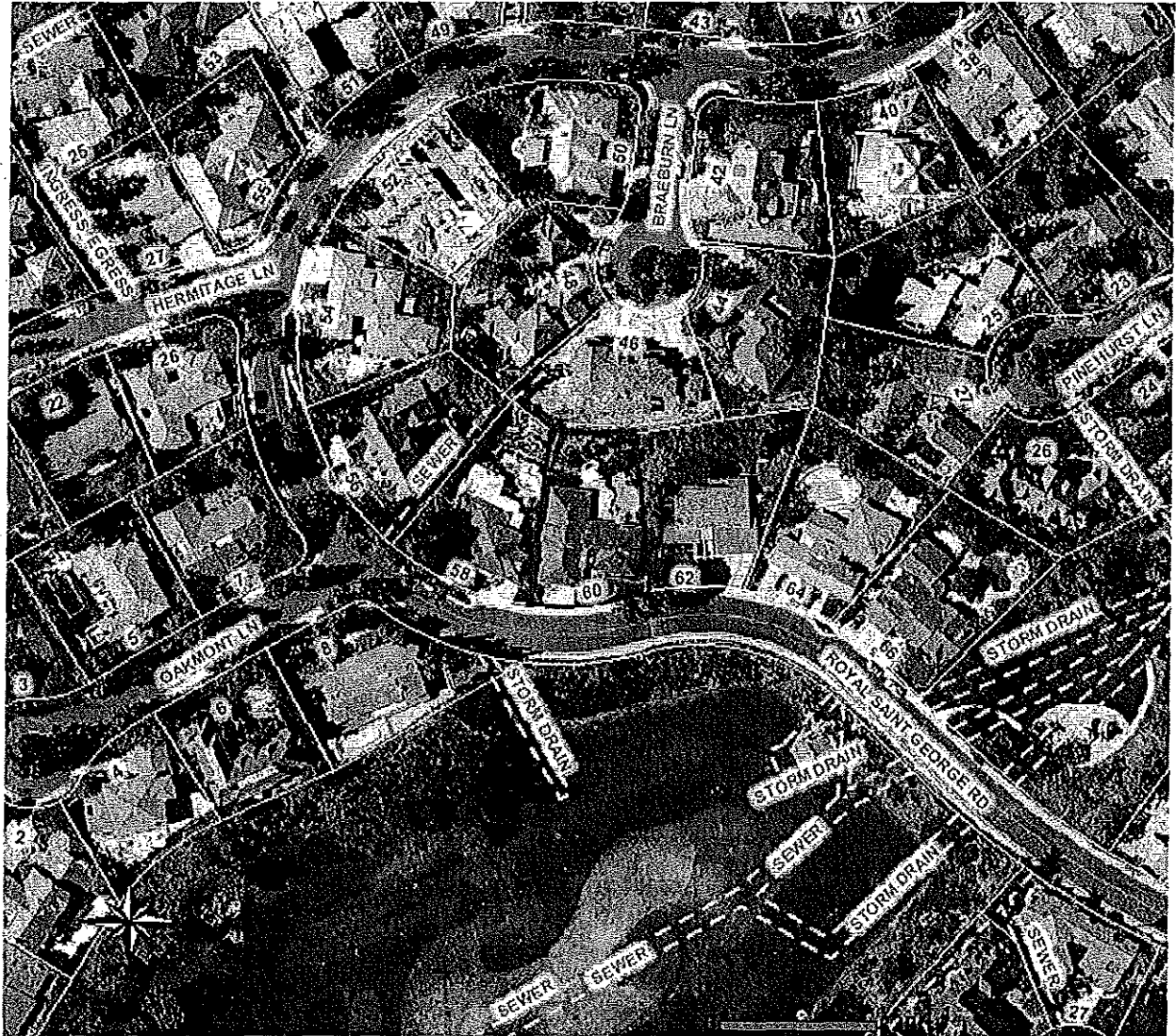
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By: JW Campbell
James W. Campbell, Zoning Administrator

JWC/mkn

Attachments: Vicinity Map
Site Photos
Project Plans

VICINITY MAP



Modification Permit No. MD2010-009
PA2010-067

60 Royal Saint George Road



PLANNING DIRECTOR ACTION LETTER

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

Application No. **Outdoor Dining Permit No. OD2010-003 (PA2010-087)**

Applicant **AEDAS**

Site Address **800 West Coast Highway
Pizzeria Mozza**

Legal Description **Lots 24 and 25, Tract No. 1210**

On August 11, 2010, the Planning Director approved the following: An outdoor dining permit application for the construction of an outdoor dining area accessory to an existing eating and drinking establishment undergoing renovation. The outdoor dining area shall be limited to 202 square feet in area (or 17 percent of the 1,182-square-foot interior net public area), and is located at the northwest corner of the building adjacent to the main entrance to the restaurant. The outdoor dining area will be sheltered by a retractable canvas cover, or other canvas shade cover. The total number of seating permitted within the existing eating and drinking establishment, including the outdoor dining area, is limited to 90 seats. The property is located in the Retail and Service Commercial-Mariners Mile Overlay (RSC-MM) District. The approval is based on the following findings and subject to the following conditions.

FINDINGS

Finding:

- A. *The proposed project is in compliance with the California Environmental Quality Act (CEQA).*

Facts in Support of Finding:

- A-1. This project qualifies for an exemption from environmental review pursuant to Section 15303 (Class 3, New Construction or Conversion of Small Structures) of the Implementing Guidelines of the California Environmental Quality Act (CEQA), which exempts the expansion or conversion of existing small structures from one use to another where only minor modifications are made in the exterior structure. The project proposal involves the addition of a small outdoor dining and patio area to an existing restaurant in a location devoid of significant environmental resources.

Finding:

- B. *That the proposed outdoor dining is accessory to the Eating and Drinking Establishment.*



PLANNING DIRECTOR ACTION LETTER

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

Application No. **Outdoor Dining Permit No. OD2010-003 (PA2010-087)**

Applicant **AEDAS**

Site Address **800 West Coast Highway
Pizzeria Mozza**

Legal Description **Lots 24 and 25, Tract No. 1210**

On August 11, 2010, the Planning Director approved the following: An outdoor dining permit application for the construction of an outdoor dining area accessory to an existing eating and drinking establishment undergoing renovation. The outdoor dining area shall be limited to 202 square feet in area (or 17 percent of the 1,182-square-foot interior net public area), and is located at the northwest corner of the building adjacent to the main entrance to the restaurant. The outdoor dining area will be sheltered by a retractable canvas cover, or other canvas shade cover. The total number of seating permitted within the existing eating and drinking establishment, including the outdoor dining area, is limited to 90 seats. The property is located in the Retail and Service Commercial-Mariners Mile Overlay (RSC-MM) District. The approval is based on the following findings and subject to the following conditions.

FINDINGS

Finding:

- A. *The proposed project is in compliance with the California Environmental Quality Act (CEQA).*

Facts in Support of Finding:

- A-1. This project qualifies for an exemption from environmental review pursuant to Section 15303 (Class 3, New Construction or Conversion of Small Structures) of the Implementing Guidelines of the California Environmental Quality Act (CEQA), which exempts the expansion or conversion of existing small structures from one use to another where only minor modifications are made in the exterior structure. The project proposal involves the addition of a small outdoor dining and patio area to an existing restaurant in a location devoid of significant environmental resources.

Finding:

- B. *That the proposed outdoor dining is accessory to the Eating and Drinking Establishment.*

Facts in Support of Finding:

- B-1. The Land Use Element of the General Plan designates the property for General Commercial (CG) uses. The outdoor dining area is accessory to an existing eating and drinking establishment, and is a permitted use within the CG designation.
- B-2. Pursuant to the provisions of Chapter 20.82 of the Newport Beach Municipal Code, accessory outdoor dining areas may be established, and no additional off-street parking is required when the outdoor dining area is 25 percent or less of the interior net public area. The subject outdoor dining complies with this requirement. The interior net public area of the existing eating and drinking establishment is 1,182 square feet, which allows a maximum outdoor dining area of 295 square feet. The project has been conditioned to limit the outdoor dining area to 202 square feet or 17 percent of the net public area, and to require the boundaries of the outdoor dining area to be clearly marked so that the Code Enforcement division can easily identify the limits of the outdoor dining area.

Finding:

- C. *The establishment, maintenance or operation of the accessory outdoor dining will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood or injurious to property or improvements in the area.*

Facts in Support of Finding:

- C-1. The outdoor dining permit has been conditioned to adhere to hours of operation of 11:00 a.m. to 10:00 p.m. All activities within the outdoor dining area, including cleanup activities, shall cease at the specified closing hour. Increases in the hours of operation for the outdoor dining area shall require approval of an amendment to this application.
- C-2. The outdoor dining area is accessory to and an extension of the existing eating and drinking establishment, subject to the findings and conditions of approval of Use Permit No. 3542 and its amendments, except as limited by this approval. The outdoor dining area is accessory, and is not an independent use.
- C-3. The outdoor dining area, as conditioned, is compatible with the surrounding land uses. The limited hours of operation of the outdoor dining area would alleviate potential noise from adversely impacting the nearby residential uses. In addition, noise generating activities outside of the facility (i.e., entertainment, outdoor loudspeaker, paging system or exterior music) is prohibited, and the approval of this outdoor dining permit is subject to conditions which prohibit these uses in the outdoor dining area.

- C-4. The provision of limited and restricted hours of use is necessary to minimize noise impacts on the residential uses located to the rear of the property that overlook the establishment and across West Coast Highway. If use of the outdoor dining area results in noise complaints, the Planning Department may require the removal of all, or a portion, of the outdoor seating or choose another remedy in accordance with Conditions of Approval Nos. 16 through 22.
- C-7. 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.

Finding:

- D. *That the proposed accessory outdoor dining will not be located so as to result in reduction of existing parking spaces.*

Facts in Support of Finding:

- D-1. The accessory outdoor dining is located at the front of the business and does not result in a reduction of off-street parking spaces.
- D-2. In accordance with the provisions of Chapter 20.82 of the Newport Beach Municipal Code, accessory outdoor dining requires no additional parking if it is less than 25 percent of the interior net public area.

CONDITIONS *(Project-specific conditions are in italics)*

1. *The accessory outdoor dining area shall be in substantial conformance with the approved site plan and floor plan, dated July 2, 2010, except as noted in the following conditions.*
2. *All applicable conditions of approval for Use Permit No. 3542, as reviewed and modified by the Planning Director on May 14, 2010, shall remain in full force (copy available in the Planning Department).*
3. *The accessory outdoor dining area shall be used in conjunction with the related eating and drinking establishment and shall be limited to 202 square feet in area (17 percent of the total net public area of 1,182 square feet). Seating within the existing eating and drinking establishment, including the outdoor dining area, shall be limited to a maximum of 90 seats, unless a use permit is obtained from the Planning Commission.*
4. *At such a time that the City widens West Coast Highway in this area, the applicant shall reconfigure the main entry doorway to the eating and drinking establishment to eliminate the door swing within the future public right-of-way. Alterations shall be made at the sole cost and expense of the applicant.*

5. *The boundary of the accessory outdoor dining area shall be marked to define the maximum 202 square foot area on the pavement or through the use of fences, walls, or similar barriers. Fences, walls or similar barriers shall serve only to define the outdoor dining area and not constitute a permanent all weather enclosure.*
6. *The installation of roof coverings shall not have the effect of creating a permanent enclosure. The use of umbrellas or a retractable canvas cover for shade purposes shall be permitted. The use of any other type of overhead covering, including solid ridged roof coverings, shall be subject to review and approval by the Planning Director and may require an amendment to this permit.*
7. *The outdoor dining area shall be subject to the hours of operation of 11:00 a.m. to 10:00 p.m., daily. All activities within the outdoor dining area, including cleanup activities, shall cease at the specified closing hour of the outdoor dining area. Increases in the hours of operation for the outdoor dining area shall require approval of an amendment to this application.*
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. The accessory outdoor dining area 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 and the Fire Department.
10. The project shall comply with State Disabled Access requirements.
11. The project shall comply with the most recent, City-adopted version of the California Building Code and California Plumbing Code.
12. *Approval is required by the Orange County Health Department prior to the issuance of building permits.*
13. *Alcoholic beverage service shall be prohibited in the outdoor dining area, until approval of the Police Department and the Alcoholic Beverage Control Board is 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 and amendment to this Outdoor Dining Permit.*
14. *All doors and windows of the entire facility, including those doors and/or windows leading to the outdoor dining area, shall remain closed at all times except for the ingress and egress of patrons and employees.*
15. *No outside paging system or sound system shall be utilized in conjunction with this accessory outdoor dining establishment.*

16. *No amplified music or entertainment is permitted in the accessory outdoor dining area.*
17. *No dancing or live entertainment shall be allowed on the premises.*
18. The operator of the eating and drinking establishment shall be responsible for the control of noise generated by the patrons of 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. All 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 should 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

19. 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.
20. *Should problems arise with regarding noise associated with the accessory outdoor dining area, the Planning Department shall require the removal of all or a portion of the outdoor dining area, and/or seating in the areas that contribute or cumulatively contribute to the noise problems or complaints. The Planning Director may also curtail or reduce hours of operation and use of the outdoor dining area in response to noise complaints or loud and unreasonable noise generated by the outdoor dining use.*
21. *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.*
22. 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.
23. 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

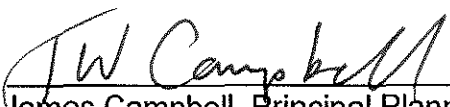
applicable conditions and regulations governing the food establishment. The Planning Director or the Planning Commission may also revoke this permit upon a determination that the operation which is the subject of this approval causes injury, or is detrimental to the health, safety, peace, morals, comfort, or general welfare of the community.

24. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Pizzeria Mozza including, but not limited to, the Accessory Outdoor Dining Permit OD2010-003. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.
25. 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 \$4,280.00 filing fee shall accompany any appeal filed. For additional information on filing an appeal, contact the Planning Department at 949 644-3200.

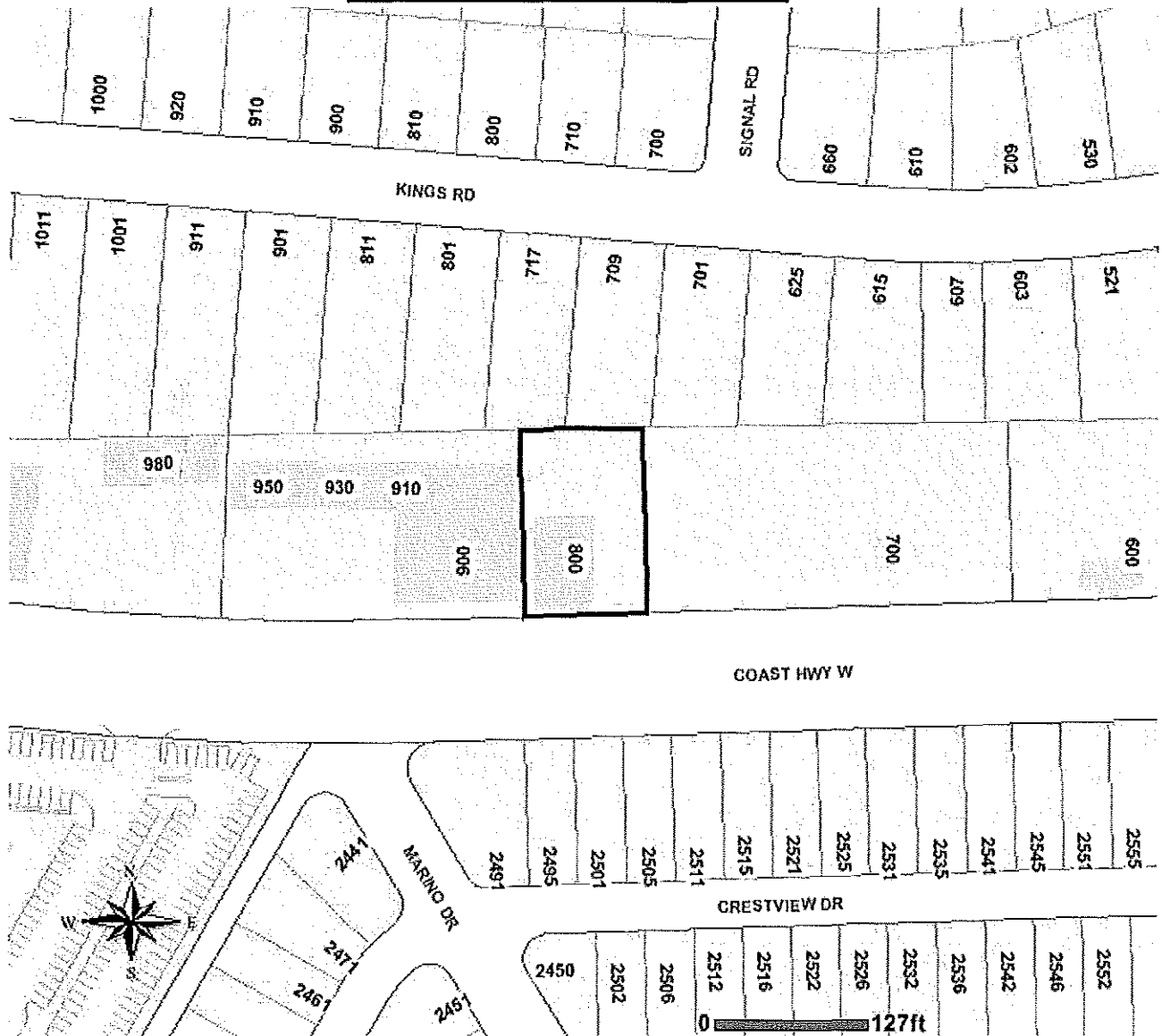
On behalf of David Lepo, Planning Director

By: 
James Campbell, Principal Planner

JWC/jjb

Attachments: PD 1 Vicinity Map
PD 2 Site Plan and Seating Plan
PD 3 Letters Received

VICINITY MAP



Outdoor Dining Permit No. OD2010-003
PA2010-087

800 West Coast Highway

RECEIVED BY
PLANNING DEPARTMENT

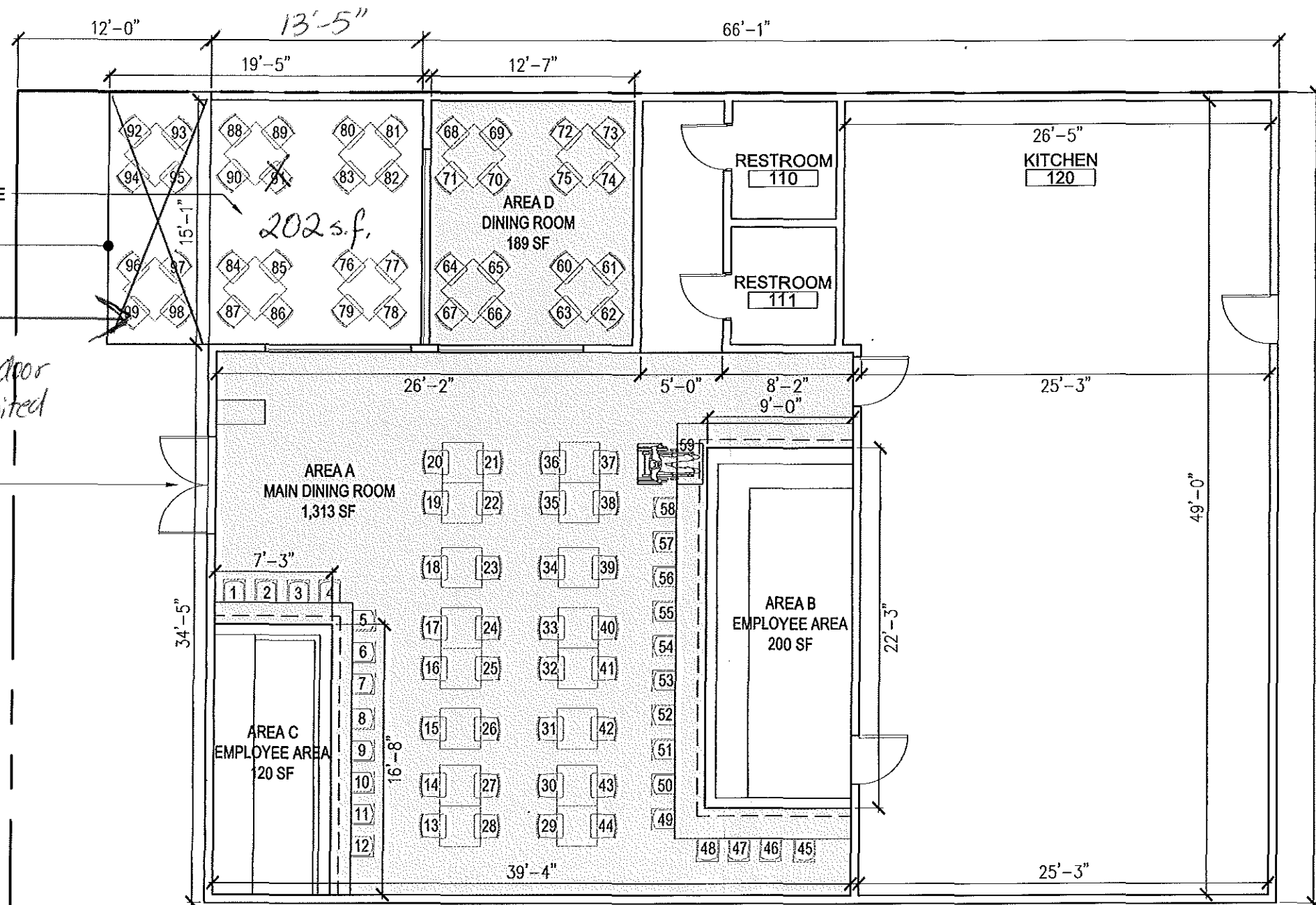
JUL 2 2010

CITY OF NEWPORT BEACH

PATIO WITH RETRACTABLE
CANVAS COVER
PROPOSED ACCESSORY
OUTDOOR DINING AREA =
295 SF

*This area
eliminated-outdoor
dining area limited
to 202 s.f. per
Condition #3*

WEST COAST HIGHWAY



INTERIOR NET PUBLIC AREA CALCULATION:

(AREA A: 1,313 SF) - (AREA'S B AND C: 320 SF) = 993 SF
993 SF + (AREA D: 189 SF) = 1,182 SF

INTERIOR NET PUBLIC AREA: 1,182 SF
ACCESSORY OUTDOOR DINING: (25% X 1,182) = 295 SF

- = NET PUBLIC AREA (A - (B+C)) + D
- = EMPLOYEE AREA (B+C)
- = PROPOSED ACCESSORY OUTDOOR DINING AREA

APPROVED SEATING: 75 SEATS
ACCESSORY OUTDOOR DINING SEATING: 24 SEATS
TOTAL # SEATS = 99-90 maximum interior
and exterior, per
Condition #3.

MM/DD/YY	ISSUE/REV	MM/DD/YY	ISSUE/REV
06/08/10	PLANNING DEPARTMENT: ACCESSORY OUTDOOR DINING PERMIT		
07/02/10	ACCESSORY OUTDOOR DINING PERMIT R1		

Aedas

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USA

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PROJECT:
PIZZERIA MOZZA
Newport Beach, California

PROJECT NO: 01002

ACCESSORY OUTDOOR DINING AREA DIAGRAM

SCALE: 1/8"=1'-0" DATE: 07.02.2010

DRAWING NO:

A2_101AR1

W. GARY SOKOLICH, PH.D.

RECEIVED BY

SCIENTIFIC & TECHNICAL CONSULTANT PLANNING DEPARTMENT

801 Kings Road
Newport Beach, CA 92663
(949) 650-5379

JUL 26 2010

CITY OF NEWPORT BEACH

PIZZARIA MOZZA USE PERMIT APPLICATION

To: Janet Johnson Brown
CNB Planning Department
Re: Pizzeria Mozza
800 West Coast Highway
Project File # PA2010-087
Activity # OD2010-003

July 26, 2010

As someone who lives on the bluff overlooking the site, my main concern is noise in the late evening, which was a continual problem with the Dolce Restaurant at this location. I therefore request that all of the conditions and stipulations regarding noise that were in effect when the Dolce closed its doors remain in effect when the Pizzeria Mozza opens its doors at this location. Specifically, live music within the restaurant as well as outside loudspeakers should be prohibited. Also, doors at the restaurant entrance and into the outside dining area should not leak sound, should close automatically and should not be able to be locked in an open-always position. Lastly, the after-hours cleanup crew should be prohibited from playing music from either their car stereos or other sources at the rear of the restaurant or within an open-door kitchen while performing their cleanup activities. If possible, cars with excessively loud exhaust systems should not be allowed to be parked on the restaurant property.

When the Dolce closed it's doors a year or so ago, peace and quiet in the late evenings returned to the residents on the bluff. Let's keep it that way.

Carole M. Pewthers

2501 Crestview Drive, Newport Beach, California 92663
(949) 650-2929 Cell: (949) 933-1224 e-mail: carole@pewthers.net

July 23, 2010

RECEIVED BY
PLANNING DEPARTMENT

JUL 26 2010

City of Newport Beach
Planning Department
3300 Newport Blvd.
Newport Beach, CA 92663

CITY OF NEWPORT BEACH

Re: Pizzeria Mozza
Request for outdoor dining area.
800 West Coast Highway

To Whom It May Concern:

I am writing to ask that this not be approved.

I live in Bayshores directly across the street from this proposed restaurant. In reviewing the information on the internet regarding the Pizzeria Mozza that is currently run in Los Angeles, I find that they are billed as a late night dining establishment with music. I am concerned that the noise from an outdoor dining facility at the new location will be detrimental to the quiet enjoyment of our property. The music noise, the opening/closing of car doors late at night, as well as the sound of many voices will carry over PCH and have a negative effect on those of us in Bayshores who are across from this property.

In addition, we are concerned about what type of signage the restaurant is planning to use. A sign that is lit up and visible from our property is definitely a concern.

As you know, the former restaurant, Dolce, was a nuisance with noise until very late hours. We are concerned that we will be put in the same situation if this outdoor dining is allowed. Please do not approve an outdoor dining area.

Thank you for your attention to this matter.

Very truly yours,

Carole Pewthers