

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

**TO:** CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION

**FROM:** James W. Campbell, Acting Planning Director

**SUBJECT:** Report of actions taken by the Zoning Administrator, Planning Director and/or Planning Department staff for the week ending October 1, 2010

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

**Item 1:** Curl Fitness – Use Permit No. UP2010-022 (PA2010-111)  
3505 Via Oporto

This item was approved on September 30, 2010

Council District 1

On behalf of James W. Campbell, Acting Planning Director:



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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* Dana Smith, Assistant City Manager  
Leonie Mulvihill, Assistant City Attorney  
David Keely, Public Works Senior Civil Engineer  
Code Enforcement Division

- ## PLANNING DIRECTOR ACTION LETTER



Facts in Support of Finding:

- B-1. Districting Map No. 4 of the Zoning Code designates the site as Retail and Service Commercial (RSC), which designates the site for commercial uses. Health and fitness clubs are a commercial use (personal improvement service) that is permitted in the Retail and Service Commercial Zoning District with the approval of a use permit. The purpose of requiring a use permit for this type of use is to allow the City to review and condition the design and operational characteristics of the proposed use so that it will be compatible with the various uses permitted in the district. Existing uses in the area include: various retail and personal service uses, offices, a grocery store, a private club, dine-in and take-out restaurants located along Via Oporto and Via Lido Streets. The proposed health and fitness facility would complement the existing uses, and would not present any conflicts with the purpose and intent of this district. It would provide a beneficial service for residents of the surrounding area.

Finding:

- C. *The proposed location of the use permit and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan and the purpose of the district in which the site is located, will not be detrimental to the public health, safety, peace, 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, for the following reasons:*

Facts in Support of Finding:

- C-1. The City's Land Use Element of the General Plan designates the site as Mixed Use Water Related (MU-W2). The Mixed Use Water Related designation allows uses that are permitted by the CM, CV, and MU-V designations. Health and fitness clubs are permitted in CM and CV designations. The proposed health and fitness facility will be located in the Lido Marina Village, adjacent to the Lido Marina Village's 4-story parking structure. It would provide a personal improvement service use to residents of the area, and would integrate well with existing neighborhood-serving retail and personal service uses.
- C-2. The proposed facility incorporates 2 private personal training studios, a spin room and aerobic area, as well as a smoothie bar that will be serving healthy, fresh foods and nutritional shakes. The proposed hours of operation are Monday through Friday from 5 a.m. to 10 p.m. and Saturday and Sunday from 6 a.m. to 8 p.m. Based on the proposed occupancy calculation shown on the submitted floor plan, the maximum number of members and employees occupying the facility is 184.



- C-3. According to City records, the existing 13,629 square-foot building was constructed in the 1950's and is legal nonconforming due to an off-street parking deficient. The existing building was originally occupied by a medical facility with an off-site parking agreement on an adjacent parking lot where the Lido Marina Village's parking structure is now situated, per Use Permit #36. Once constructed, the parking structure and other nearby off-street parking lots have been used as off-site parking locations for the subject property and others within the Lido Marina Village. The former business (Magic Island Restaurant) occupied this building and required a total of 211 parking spaces. Of those, 150 parking spaces were located within the parking structure, per Use Permit #1774.

Pursuant to Section 20.62.050 (Nonconforming Structures and Uses–Nonconforming Parking) of the Municipal Code, nonconforming uses in nonresidential districts may be continued or changed to a use requiring the same or less on-site parking. Use permits for health and fitness facilities previously approved by the City permitted a requirement of one (1) parking space for each three (3) members or employees. Using this calculation, the proposed health and fitness facility would require 62 parking spaces ( $184/3$ ), which is less than the number of parking spaces required by the former medical and restaurant uses.

For comparison purposes, the draft Zoning Code has a parking ratio of one (1) parking space for each 200 square feet of gross floor area for large health/fitness facilities (2,000 square feet or more). By using this formula, a total of 68 spaces would be required for the proposed fitness facility. Staff concludes that the parking demand in the range of 62-68 spaces would, therefore, not exceed the parking demand generated by the previous restaurant use. Furthermore, the nature of the use and its location in close proximity to residential neighborhoods would likely encourage the use of alternate modes of transportation (walking and biking). The hours of operation before and after normal office hours would allow members to use the facility during off-peak times. These operational characteristics would also likely further reduce the actual parking demand of the facility.

Parking for the proposed fitness center will be located in the adjacent Lido Marina Village's 372-space parking structure. This parking structure is for the use by the Village tenants and their customers at a cost, including the proposed fitness center and its members. The applicant has secured a total of 30 parking spaces for employee parking, through an 84-month lease arrangement.

Finding:

- D. *That the proposed use will comply with the provisions of this code, including any specific condition required for the proposed use in the district in which it would be located.*



Facts in Support of Finding:

- D-1. The proposed health and fitness facility is consistent with the legislative intent of Chapter 20.15 (Commercial Districts) of the Municipal Code. Section 20.15.020 requires approval of a use permit for personal improvement services in the RSC District. No other specific conditions are required by the Zoning Code for the proposed use.
- D-2. The proposed health and fitness facility use is consistent with the parking requirements pursuant to Chapters 20.62 (Nonconforming Structures and Uses) and 20.66 (Off-street Parking and Loading Regulations) of the Municipal Code. The nonconforming off-street parking is not exacerbated by the proposed use.

Conditions

- 1. Use Permit No. UP2010-012 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.91.050 of the Newport Beach Municipal Code, or an extension is otherwise granted.
- 2. The Planning Director may add to or modify conditions of approval to this Use Permit or revoke this Use Permit upon a determination that the operation, which is the subject of this Use Permit, causes injury, or is detrimental to the health, safety, peace, comfort, or general welfare of the community.
- 3. Hours of operation of the facility shall be limited to Monday through Friday, from 5 a.m. to 10 p.m. and Saturday and Sunday, from 6 a.m. to 8 p.m.
- 4. The project shall be in substantial conformance with the approved plot plan, floor plan and elevations dated July 29, 2010.
- 5. The project and all tenant improvements must comply with the most recent, City-adopted version of the California Building Code.
- 6. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use will be cause for revocation of this Permit.
- 7. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of this health and fitness club that would attract large crowds, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
- 8. The doors and windows shall remain closed at all times during periods when noise is generated by the proposed use.

9. The operator of the facility shall be responsible for the control of noise generated on the subject facility, including any music utilized. The noise generated by the use shall comply with the provisions of Chapter 10.26 of the Newport Beach Municipal Code.
10. All signs on the subject property shall be in conformance with the provisions of Chapter 20.67 of the Newport Beach Municipal Code.
11. No temporary "sandwich" signs, balloons or similar temporary signs shall be permitted, either on-site or off-site, to advertise the health and fitness facility, unless specifically permitted in accordance with the Sign Ordinance of the Municipal Code. Temporary signs shall be prohibited in the public right-of-way unless otherwise approved by the Public Works Department in conjunction with the issuance of an encroachment permit or encroachment agreement.
12. If this business is sold or otherwise comes under different ownership, any future owners or assignees shall be notified of the conditions of this approval by the current business owner, property owner or leasing company.
13. The project shall comply with State Disabled Access requirements.
14. The facility shall be designed to meet exiting and fire protection requirements as specified by the Uniform Building Code and shall be subject to review and approval by the Building Department.
15. The use shall be limited to a maximum occupancy load of 184.
16. 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 Curl Fitness including, but not limited to, UP2010-022 (PA2010-111). 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.



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On behalf of Jim Campbell, Acting Planning Director

By:   
Patrick J. Alford, Planning Manager

PJA/ru

Attachments: Vicinity Map  
Project Plans

## VICINITY MAP



Use Permit No. UP2010-022  
PA2010-111

**3505 Via Oporto**



## NEWPORT BEACH, CA 92663

## 1ST & 2ND FLOORS

EXISTING PARKING RECAP

EXISTING PARKING PROVIDED:

(ALL PARKING IS WITHIN THE PARKING STRUCTURE AND SHARED AMONGST ALL TENANTS OF THE BUILDING.)

STANDARD:	963 SPACES
HANDICAP:	9 SPACES
TOTAL:	972 SPACES

SUITE 9505 ALLOWED PARKING:

(PER PREVIOUS CONDITIONAL USE PERMIT FOR DINING/THEATRE USE.)

STANDARD:	200 SPACES
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SINCE NO RATIO IN CURRENT CODE FOR FITNESS CENTER ASSUME 1/250 PER RETAIL.

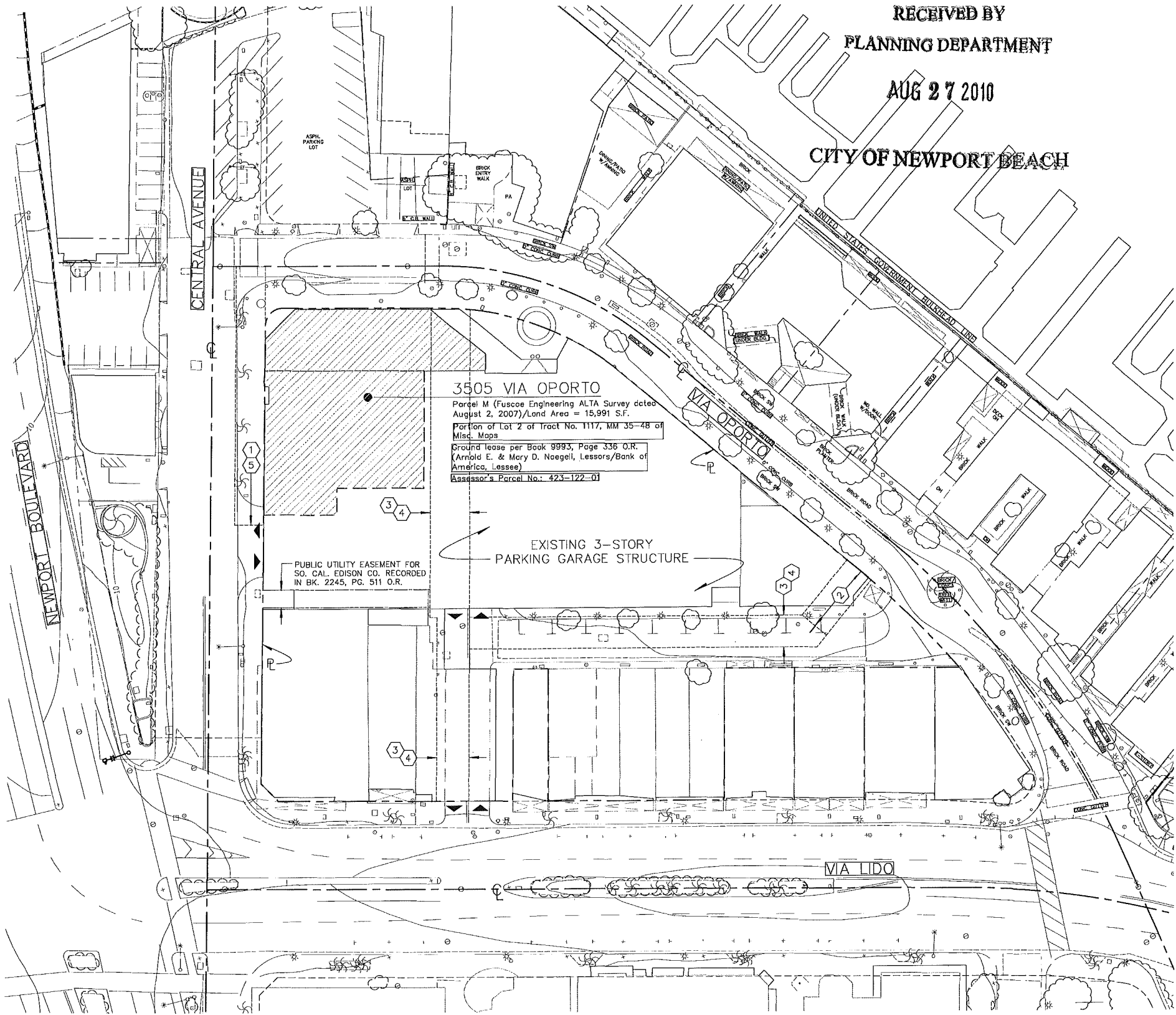
13,624 S.F. / 250 =	55 SPACES
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GENERAL SITE PLAN NOTES:

1. NO PROPOSED CHANGES TO UTILITIES, DRIVEWAYS, WALKS OR OPEN SPACES UNDER THIS CONDITIONAL USE PERMIT. (INTERIOR TENANT IMPROVEMENTS ONLY.)
2. PROPOSED CONDITIONAL USE PERMIT TO INCLUDE INTERIOR TENANT IMPROVEMENTS AND RESTORING OF BUILDING ORIGINAL STOREFRONT SYSTEM ALONG GROUND LEVEL OF VIA OPORTO AND CENTRAL AVENUE.
2. PROPOSED CONDITIONAL USE PERMIT TO INCLUDE ADDITION OF NEW EXTERIOR WALL SIGNAGE PER CITY OF NEWPORT BEACH SIGN ORDINANCE CHAPTER 20.67. SIGN ADDITIONS SHALL BE UNDER SEPARATE PERMIT FROM T.I. CONSTRUCTION DOCUMENTS.
3. NO PROPOSED MODIFICATIONS TO EXISTING PROPERTY LINES, SETBACKS, OR ANY RIGHTS OF WAY OR EASEMENTS UNDER THIS CONDITIONAL USE PERMIT.
4. NO PROPOSED ALTERATIONS TO EXISTING GRADE ELEVATIONS OR SIGNIFICANT NATURAL FEATURES UNDER THIS CONDITIONAL USE PERMIT.
5. NO TRAFFIC STUDY REQUIRED PER CONVERSATION WITH MR. JAMIE MURILLO, JULY 2010.

SITE PLAN KEY NOTES:

- 1 COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS IN THE DOCUMENT RECORDED IN BOOK 10902, PAGE 724 OF OFFICIAL RECORDS. (AFFECTS PARCELS C, D, E, F AND G)
- 2 AN EASEMENT FOR UNDERGROUND CONDUITS AND INCIDENTAL PURPOSES, RECORDED JUNE 10, 1974 AS BOOK 11166, PAGE 1948 OF OFFICIAL RECORDS. IN FAVOR OF: SOUTHERN CALIFORNIA EDISON COMPANY AFFECTS: AS DESCRIBED THEREIN
- 3 AN EASEMENT FOR GAS PIPES, MAINS AND INCIDENTAL PURPOSES, RECORDED AS BOOK 1822, PAGE 120 OF OFFICIAL RECORDS. IN FAVOR OF: SOUTHERN CALIFORNIA GAS COMPANY AFFECTS: AS DESCRIBED THEREIN  
SAID DEED RECITES, AMONG OTHER THINGS, THAT "THE GRANTOR FOR ITSELF, ITS SUCCESSORS OR ASSIGNS, AGREES THAT NO BUILDING OR OTHER STRUCTURE SHALL EVER BE ERECTED OVER THE AREA OF SAID EASEMENT OR OVER ANY OF THE PIPE LINES OR FACILITIES OF THE GRANTEE, PROVIDED, HOWEVER, THAT IF THE GRANTOR SHALL DESIRE TO BUILD OVER SAID AREA OCCUPIED BY THE EASEMENT, GRANTEE MAY DO UPON FIRST PAYING TO GRANTEE THE FULL COST OF MOVING ITS PIPES AND FACILITIES TO A NEW LOCATION AND PROVIDING GRANTEE WITH ANOTHER EASEMENT WITHOUT ANY ADDITIONAL COST SIMILAR TO THE PRESENT ONE FOR SUCH NEW LOCATION".  
NOTE: BY AN INSTRUMENT RECORDED JUNE 28, 1973 IN BOOK 10770, PAGE 370 OF OFFICIAL RECORDS, PORTIONS OF SAID EASEMENTS WERE QUITCLAIMED, AS DESCRIBED THEREIN.
- 4 AN EASEMENT FOR SUPPLYING OR DISTRIBUTING TELEPHONE SERVICE AND ELECTRICITY FOR DOMESTIC OR INDUSTRIAL USE, SANITARY SEWER PIPE LINES, MANHOLES AND OTHER APPURTENANCES FOR THE PURPOSE OF CONVEYING DOMESTIC OR INDUSTRIAL SEWAGE, AND INCIDENTAL PURPOSES, RECORDED MAY 21, 1951 AS BOOK 2191, PAGE 208 OF OFFICIAL RECORDS. IN FAVOR OF: THE CITY OF NEWPORT BEACH AFFECTS: AS DESCRIBED THEREIN  
SAID DEED RECITES, AMONG OTHER THINGS, THAT "THE GRANTOR FOR ITSELF, ITS SUCCESSORS OR ASSIGNS, AGREES THAT NO BUILDING OR OTHER STRUCTURE SHALL EVER BE ERECTED OVER THE AREA OF SAID EASEMENT OR OVER ANY OF THE PIPE LINES OR FACILITIES OF THE GRANTEE, PROVIDED, HOWEVER, THAT IF THE GRANTOR SHALL DESIRE TO BUILD OVER SAID AREA OCCUPIED BY THE EASEMENT, GRANTEE MAY DO UPON FIRST PAYING TO GRANTEE THE FULL COST OF MOVING ITS PIPES AND FACILITIES TO A NEW LOCATION AND PROVIDING GRANTEE WITH ANOTHER EASEMENT WITHOUT ANY ADDITIONAL COST SIMILAR TO THE PRESENT ONE FOR SUCH NEW LOCATION".  
NOTE: BY RESOLUTION #8055, RECORDED JULY 31, 1973 IN BOOK 10828, PAGE 413, OFFICIAL RECORDS, THE CITY OF NEWPORT BEACH VACATED PORTIONS OF SAID EASEMENTS, AS DESCRIBED THEREIN.
- 5 COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS IN THE DOCUMENT RECORDED AS BOOK 10902, PAGE 724 OF OFFICIAL RECORDS. (AFFECTS PARCELS T THROUGH V)



SITE PLAN  
SCALE: 1" = 30'-0"

RECEIVED BY  
PLANNING DEPARTMENT

AUG 27 2010

CITY OF NEWPORT BEACH

3505 VIA OPORTO

Parcel M (Fuscoe Engineering ALTA Survey dated August 2, 2007)/Land Area = 15,991 S.F.  
Portion of Lot 2 of Tract No. 1117, MM 35-48 of Misc. Maps  
Ground lease per Book 9993, Page 336 O.R. (Arnold E. & Mary D. Naegel, Lessors/Bank of America, Lessee)  
Assessor's Parcel No.: 423-122-01

PUBLIC UTILITY EASEMENT FOR SO. CAL. EDISON CO. RECORDED IN BK. 2245, PG. 511 O.R.

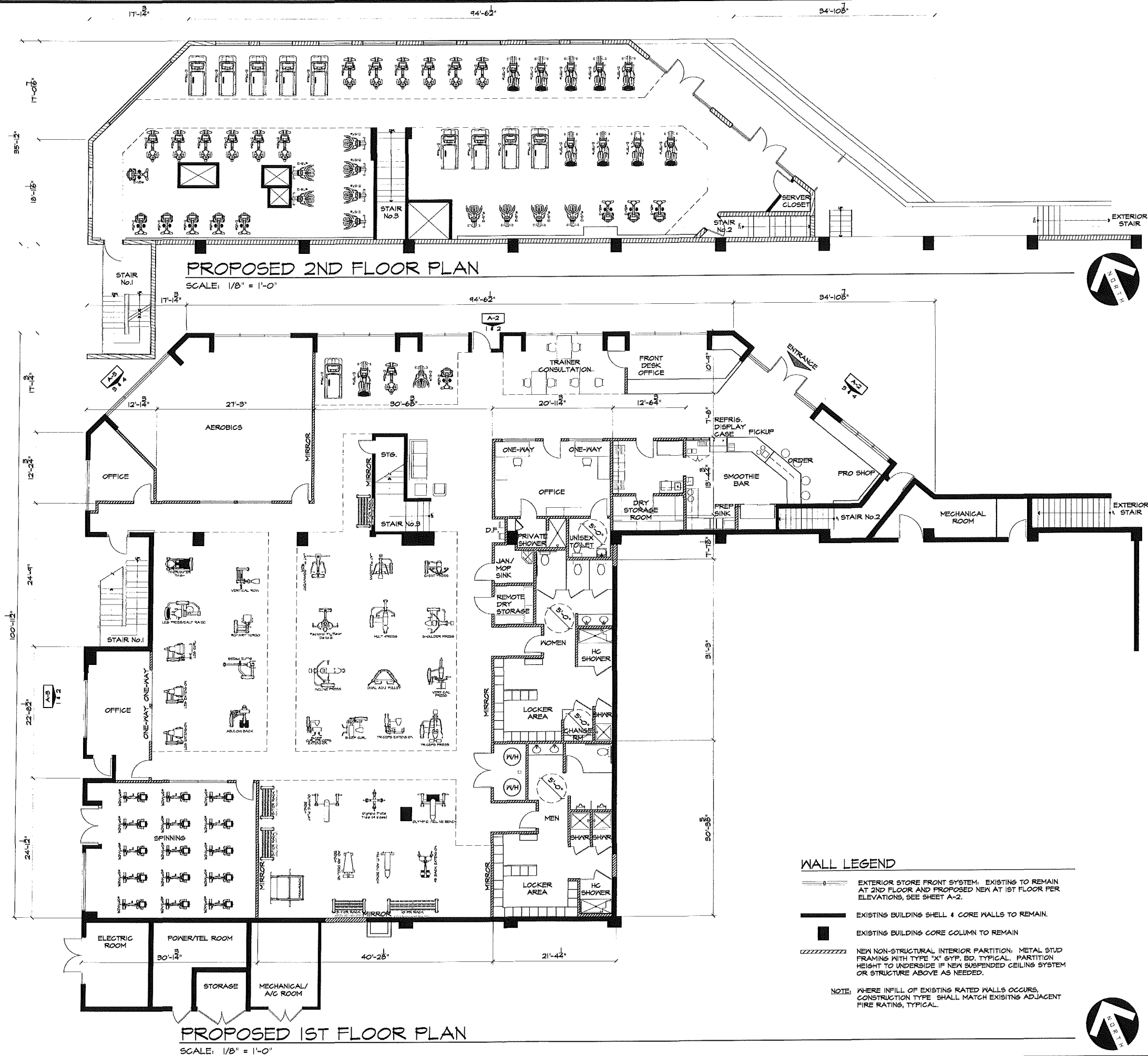
EXISTING 3-STORY PARKING GARAGE STRUCTURE

VIA LIDO

Revisions	By	Date

Drawn	DJP
Date	7/24/10
Project No.	10016
Scale	AS NOTED

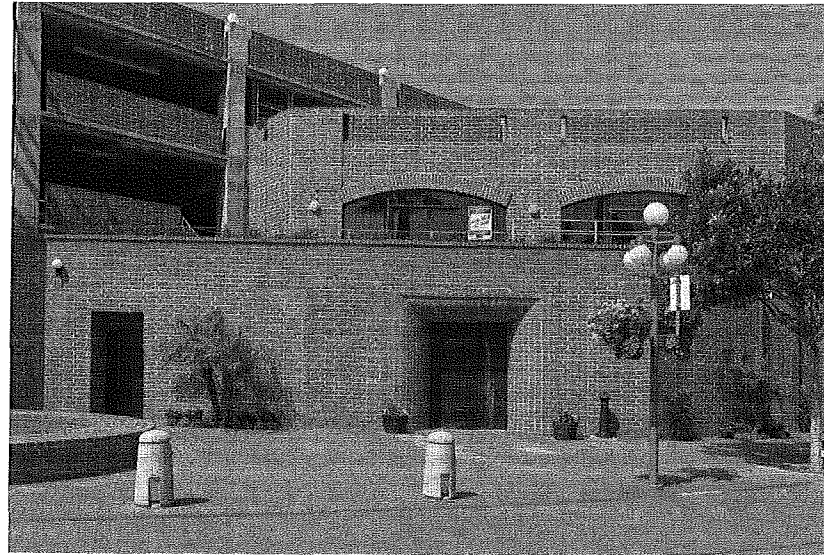




Revisions	By	Date

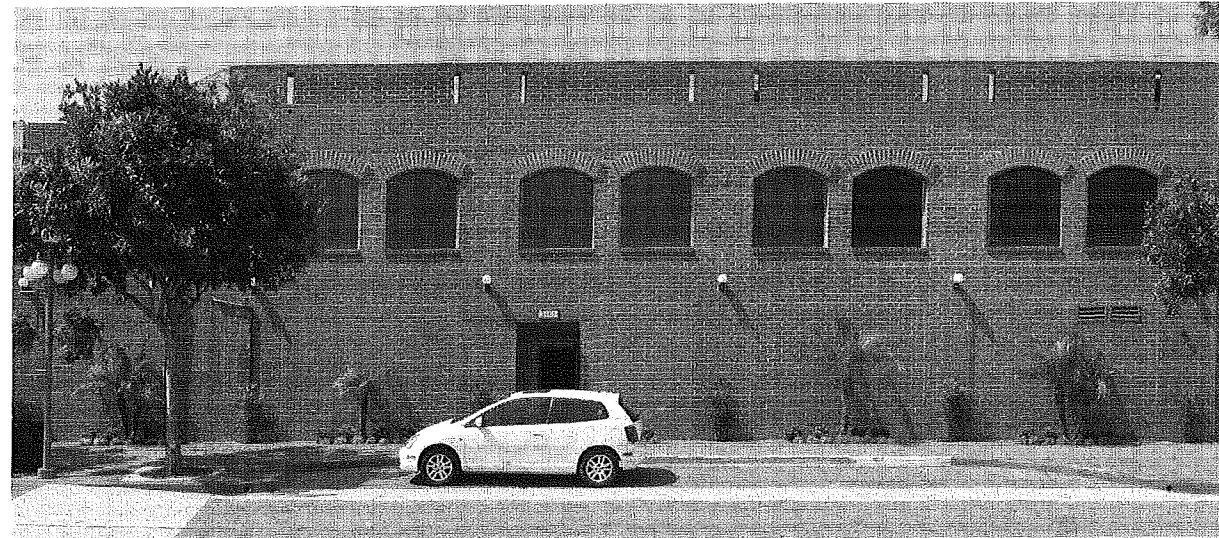
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Project No.	10016
Scale	1/8" = 1'-0"

Sheet	A-1
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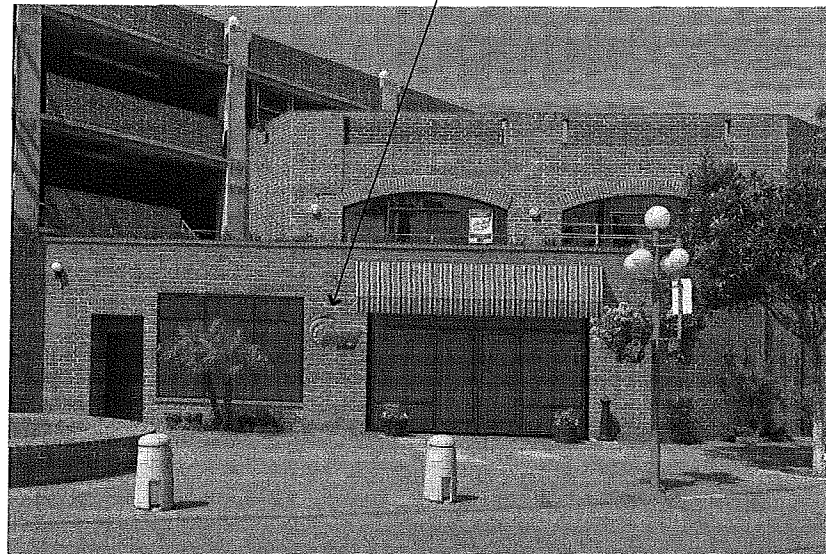
EXISTING EXTERIOR EAST ELEVATION  
SCALE: NONE

3



EXISTING EXTERIOR NORTH/EAST ELEVATION  
SCALE: NONE

1



PROPOSED EXTERIOR EAST ELEVATION  
SCALE: NONE

4



PROPOSED EXTERIOR NORTH/EAST ELEVATION  
SCALE: NONE

2

PROPOSED SECONDARY SIGN LOCATION. NOT A PART OF USE PERMIT APPLICATION. SIGNS WILL BE SUBMITTED AS A SEPARATE PERMIT.

CONDITIONAL USE PERMIT SUBMITTAL FOR:

**CURL FITNESS**

3505 VIA OPORTO

NEWPORT BEACH, CALIFORNIA

EXTERIOR ELEVATIONS

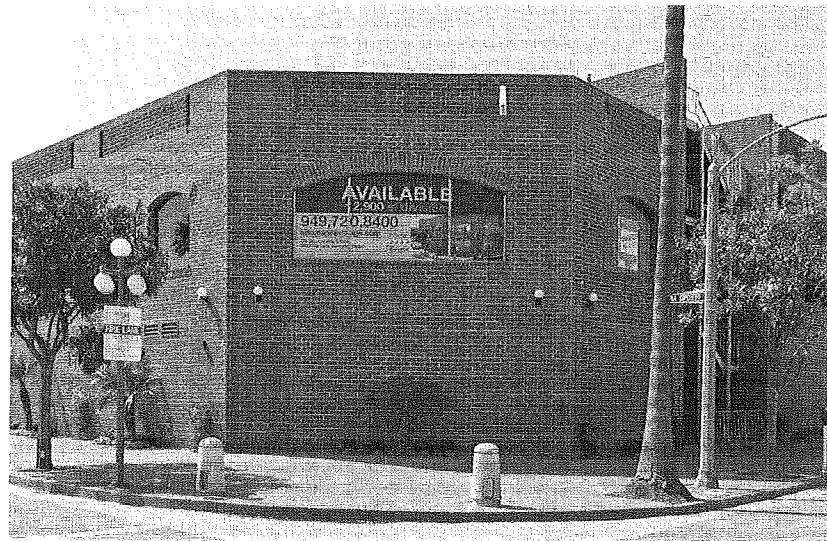
**LIDO MARINA  
VILLAGE**

Revisions	By	Date

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Date	7/24/10
Project No.	10016
Scale	NONE

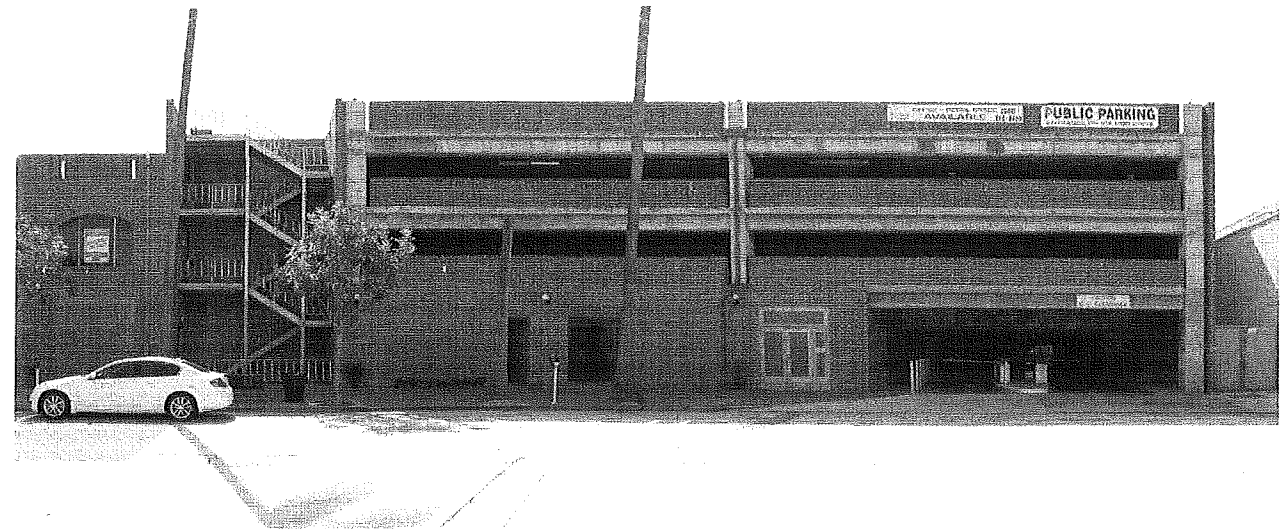
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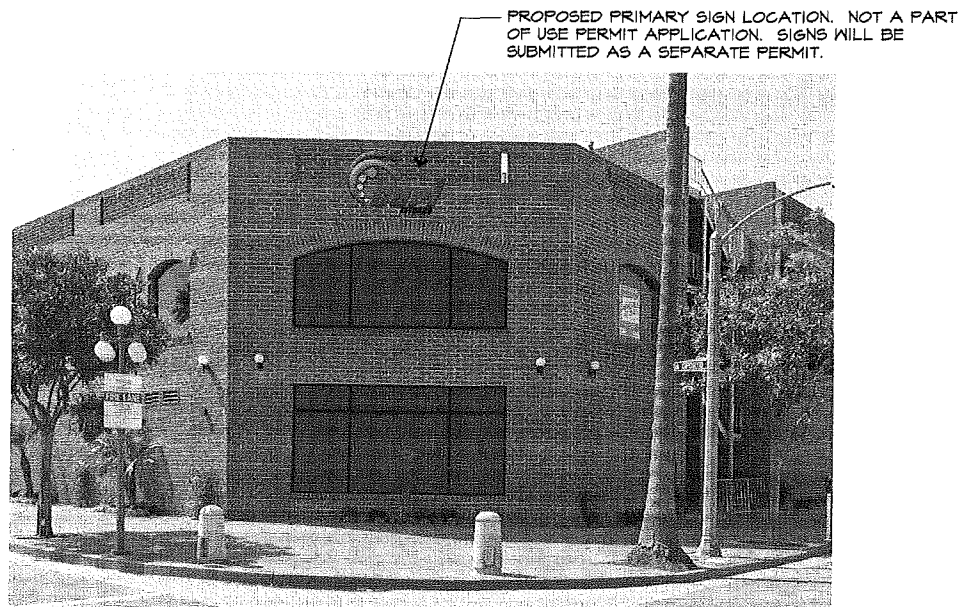
EXISTING EXTERIOR NORTH ELEVATION  
SCALE: NONE

3



EXISTING EXTERIOR NORTH/WEST ELEVATION  
SCALE: NONE

1



PROPOSED EXTERIOR NORTH ELEVATION  
SCALE: NONE

4



PROPOSED EXTERIOR NORTH/WEST ELEVATION  
SCALE: NONE

2

**BORDERS**

5030 CAMPUS DRIVE NEWPORT BEACH, CA 92560 (949) 851-1317

ARCHITECTURE • COMMERCIAL INTERIORS

**ROBERT BORDERS & ASSOCIATES**

CONDITIONAL USE PERMIT SUBMITTAL FOR:

**CURL FITNESS**

3505 VA OPORTO

NEWPORT BEACH, CALIFORNIA

EXTERIOR ELEVATIONS

**LIDO MARINA  
VILLAGE**

Revisions	By	Date

Drawn	DJP
Date	7/24/10
Project No.	10016
Scale	NONE

Sheet  
**A-3**