



**CITY OF NEWPORT BEACH
COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION ACTION REPORT**

TO: CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION
FROM: Kimberly Brandt, Community Development Director
Brenda Wisneski, Deputy Community Development Director
SUBJECT: Report of actions taken by the Zoning Administrator and/or Planning Division staff for the week ending April 26, 2013

**ZONING ADMINISTRATOR ACTIONS
APRIL 25, 2013**

Item 1: West Marine Towers - Modification Permit No. MD2013-005 (PA2013-053)
3425 and 3433 Via Lido
Action: Approved by Resolution No. ZA2013-022 Council District 1

**COMMUNITY DEVELOPMENT DIRECTOR
OR PLANNING DIVISION STAFF ACTIONS**

Item 2: Pavilions Temporary Trailer – Limited Term Permit No. XP2013-002 (PA2013-074)
3100 Balboa Boulevard
Action: Approved Council District 1

APPEAL PERIOD: An appeal may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered unless a different period of time is specified by the Municipal Code (e.g., Title 19 allows ten (10) day appeal period for tentative parcel and tract maps, lot line adjustments, or lot mergers). For additional information on filing an appeal, contact the Planning Division at 949 644-3200.

RESOLUTION NO. ZA2013-022

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MODIFICATION PERMIT NO. MD2013-005 ALLOWING A HEIGHT INCREASE ASSOCIATED WITH TWO ARCHITECTURAL TOWER ELEMENTS LOCATED AT 3425 AND 3433 VIA LIDO (PA2013-053)

THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Sean Unsell, Perkowitz + Ruth Architects, with respect to property located at 3425 and 3433 Via Lido, and legally described as Parcel 1, as shown on a Map filed in Book 85, pages 1 and 2 of Parcel Maps, in the Office of the Orange County Recorder, requesting approval of a modification permit.
2. The applicant proposes to construct two architectural tower elements that exceed the base height limit of 31 feet for sloped roofs by an additional 3 feet.
3. The subject property is located within the General Commercial (CG) Zoning District and the General Plan Land Use Element category is Commercial General (CG).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is General Commercial (CG-B).
5. A public hearing was held on April 25, 2013, in the Corona del Mar Conference Room (Bay E-1st Floor), 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities).
2. Class 1 authorizes the minor alteration of existing structures involving negligible or no expansion of use. The proposed towers are solely architectural design elements that do not increase the structure's overall floor area and only increase the overall height of the structure by 6.6 percent.

SECTION 3. REQUIRED FINDINGS.

Section 20.30.060.D.2 of the Newport Beach Municipal Code permits architectural features with a height greater than that allowed for a sloped roof (31 feet) subject to the approval of a modification permit. In this case, the applicant is proposing two architectural tower features at a height of 34 feet. In accordance with Section 20.52.050 of the Newport Beach Municipal Code, the following findings and facts in support of such findings for a modification permit are set forth:

Finding:

A. The requested modification will be compatible with existing development in the neighborhood.

Facts in Support of Finding:

- A-1. The subject property is designated Commercial General by the Land Use Element of the General Plan, which is intended to provide for a wide variety of commercial activities oriented primarily to serve citywide or regional needs. The structure on which the towers are proposed is the anchor retail building within a 4.8-acre shopping center. The proposed architectural features are a compatible addition to an existing commercial center.
- A-2. The proposed tower elements measure 34 feet in height. This is approximately 2 feet 3 inches higher than the height of the existing building. Within the context of a 4.8-acre site, the tower features are minor projections.
- A-3. The tower facing Newport Boulevard is setback approximately 227 feet from the Newport Boulevard right-of-way. The tower facing Via Oporto is setback approximately 139 feet from the Via Oporto right-of-way and 131 feet from the Via Lido right-of-way. Given these distances, the increase in height is negligible and will not result in heights that are out of scale with surrounding development.
- A-4. The proposed height of the tower elements is compatible with the height of existing development in the neighborhood, including the historic Lido Theater located at 3459 Via Lido that measures approximately 33 feet in height to the top of the main building and approximately 43 feet to the top of the tower element.

Finding:

B. The granting of the modification is necessary due to the unique physical characteristic(s) of the property and/or structure, and/or characteristics of the use.

Facts in Support of Finding:

- B-1. The existing building was constructed as a supermarket in 1948 at the current height of 31 feet 9 inches, prior to the establishment of the 26-foot base height limitation for flat roofs and 31-foot base height limitation for sloped roofs.
- B-2. Any addition of an architectural tower feature that complements the scale of the taller existing building necessitates exceeding the allowed height limit for architectural features.

Finding:

C. The granting of the modification is necessary due to 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.

Facts in Support of Finding:

- C-1. The Zoning Code is the primary tool used by the City to carry out the goals, objectives, and policies of the General Plan. Section 20.16.020 of the Zoning Code also requires compliance with other adopted criteria, guidelines, and policies adopted by the City related to the use and development of land. In this case, the Lido Village Design Guidelines are applicable. Both the General Plan and Lido Village Design Guidelines includes design principles that encourage the modulation of building masses, elevations, and rooflines to promote visual interest.
- C-2. General Plan Land Use Element Policy LU 5.2.1 (Architecture and Site Design) requires that new development within existing commercial districts, centers and corridors complement existing uses and exhibit high quality architectural and site design in consideration of a number of design principles. One principle in particular requires modulation of building masses, elevations, and rooflines to promote visual interest. The intent of the architectural tower elements is to establish an identifying feature for the anchor retail building visible from Newport Boulevard and Via Lido and to identify the two entries.
- C-3. The Lido Village Design Guidelines specifically states that towers and other vertical/prominent building features may be used to accentuate key elements such as building entries and that building massing should consist of a mix of heights to add visual interest. The proposed tower elements implement these design guidelines.
- C-4. Strict application of the base height limits would eliminate the ability to provide this enhanced architectural treatment encouraged by both the General Plan and Lido Village Design Guidelines.

Finding:

- D. There are no alternatives to the modification permit that could provide similar benefits to the applicant with less potential detriment to surrounding owners and occupants, the neighborhood, or to the general public.*

Facts in Support of Finding:

- D-1. Tower heights designed to comply with the 31-foot base height limit for sloped roofs would remain below the height of the existing building and would not result in the enhanced architectural treatment, variation in building heights, or a clear identification of the building entries as encouraged by the General Plan and Lido Village Design Guidelines.
- D-2. The proposed tower elements measure 34 feet in height, exceeding the base height limit by only 3 additional feet. Towers features designed at this height would not have any more impacts to surrounding neighborhood or general public than 31-foot-high tower elements.

Finding:

E. The granting of the modification would not be detrimental to public health, safety, or welfare, to the occupants of the property, nearby properties, the neighborhood, or the City, or result in a change in density or intensity that would be inconsistent with the provisions of this Zoning Code.

Facts in Support of Finding:

- E-1. The tower elements do not add floor area, but rather are of an open nature on the ground level and provide a protected entry canopy for the business.
- E-2. The tower elements are designed with sloping roofs and incorporate backlit frosted glass to visually reduce the massing of the tower and enhance the aesthetics.
- E-3. Given the location of the property, the tower features will not block any private or public views.
- E-4. The tower features are solely architectural features that are minor in nature, similar to the tower of the historic Lido Theater, which has not proven detrimental to the visual quality of the area.
- E-5. A condition of approval has been included to limit the illumination of the tower to soft accent lighting at night so as not to become a visual nuisance and to control potential light and glare impacts.

NOW, THEREFORE, BE IT RESOLVED:

- 1. The Zoning Administrator of the City of Newport Beach hereby approves Modification Permit No. MD2013-005, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
- 2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the Community Development Director in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 25th DAY OF APRIL, 2013.



Brenda Wisneski, AICP, Zoning Administrator

EXHIBIT "A"**CONDITIONS OF APPROVAL**

1. The development shall be in substantial conformance with the approved site plan, roof plan, details, and elevations, except as noted in the following conditions.
2. The two tower elements shall not exceed a maximum height of 34 feet.
3. A building permit shall be obtained prior to commencement of the construction of and in accordance with the applicable Building Codes.
4. A copy of the resolution, including conditions of approval Exhibit "A," shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
5. Lighting shall be in compliance with applicable standards of the Zoning Code. Exterior onsite lighting shall be shielded and confined within site boundaries. No direct rays or glare are permitted to shine onto public streets or adjacent sites or create a public nuisance.
6. The site shall not be excessively illuminated based on the outdoor lighting standards contained within Section 20.30.070 of the Zoning Code, or, if in the opinion of the Community Development Director, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Community Development Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
7. The proposed illumination of the tower elements shall consist of soft accent lighting so as not to become a visual disturbance or result in excess light or glare.
8. Prior to issuance of the certificate of occupancy or final of building permits, the applicant shall schedule an evening inspection by the Code Enforcement Division to confirm control of all lighting sources.
9. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.
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 **West Marine Towers including, but not limited to Modification Permit No. MD2013-005 (PA2013-053)** and the determination that the project is exempt under the requirements of the California Environmental Quality Act. 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.



COMMUNITY DEVELOPMENT DEPARTMENT

PLANNING DIVISION

100 Civic Center Drive, P.O. Box 1768, Newport Beach, CA 92658-8915

(949) 644-3200 Fax: (949) 644-3229

www.newportbeachca.gov

ZONING ADMINISTRATOR ACTION LETTER

Application No. Limited Term Permit No. XP2013-002 (PA2013-074)
Applicant Pavilions Grocery Store
Site Address 3100 Balboa Boulevard
Pavilions Temporary Trailer
Legal Description Parcel 1 on Parcel Map No. 2009-135, as per map filed in book 371, pages 4 through 6 of Parcel Maps, in the office of the County Recorder in the County of Orange, California

On **April 24, 2013**, the Zoning Administrator approved the following: A limited term permit to allow a 40-foot electric refrigeration trailer to store ice for a 10-day duration within the loading dock at the rear of the Vons Pavilions Grocery Store within The Landing Shopping Center. The trailer's refrigeration unit will operate only between the hours of 7:00 a.m. and 9:00 p.m. to store ice for the Independence Day holiday period (July 1, 2013 through July 10, 2013). The property is located in the CN (Commercial Neighborhood) Zoning District. The approval is based on the following findings and subject to the following conditions.

FINDINGS

Finding:

- A. *This project has been reviewed, and it has been determined that it is categorically exempt from the requirements of the California Environmental Quality Act under Class 11 (Accessory Structures).*

Facts in Support of Finding:

- A-1. Class 11 exempts the placement of seasonal or temporary use of items such as lifeguard towers, mobile food units, portable restrooms, or similar items. The proposed temporary facility will be placed within the rear of the shopping center for a temporary time period and will be accessory to an existing commercial development.

Finding:

- B. *The operation of the limited duration use at the location proposed and within the time period specified would not be detrimental to the harmonious and orderly*

growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the requested limited duration use;

Facts in Support of Finding:

- B-1. The limited term permit will allow a temporary electric refrigeration trailer to store ice on-site for the Independence Day holiday as conditioned.
- B-2. The operation of the electric refrigeration unit is limited to the hours of 7:00 a.m. and 9:00 p.m., July 1 through July 10, 2013, to reduce the impact of noise to surrounding residents.
- B-3. Electric refrigeration trailers have been used at the subject property on holiday weekends during similar hours in the past and the use has not proven detrimental.
- B-4. Conditions of approval require the location of the trailer to be within the loading dock area, which is more than 100 feet from the nearest residence and is below grade.

Finding:

- C. *The subject lot is adequate in size and shape to accommodate the limited duration use without material detriment to the use and enjoyment of other properties located adjacent to and in the vicinity of the lot;*

Facts in Support of Finding:

- C-1. The subject lot is approximately 3.75 acres in size. Based upon the site plan, there is adequate area to accommodate the proposed trailer and existing uses without impacting required parking or vehicle circulation.
- C-2. The lot is bound by Balboa Boulevard to the west, Newport Boulevard to the east, 32nd Street to the north, and 30th Street to the south. The adjacent right-of-way (30th Street) serves as a buffer between the majority of nearby residential properties within the R-2 (Two-Unit Residential) Zoning District.
- C-3. A public parking lot is located across 30th street, adjacent to where the trailer will be parked.

Finding:

- D. *The subject lot is adequately served by streets or highways having sufficient width and improvements to accommodate the kind and quantity of traffic that the limited duration use would or could reasonably be expected to generate;*

Facts in Support of Finding:

- D-1. The subject lot has four direct driveway approaches taken from Newport Boulevard, 32nd Street, Balboa Boulevard, and 30th Street. The temporary electric refrigeration trailer's location will not impede access, required parking, or truck access to the loading dock at the rear of the grocery store. There are no traffic issues anticipated.
- D-2. The limited duration use is a temporary electric refrigeration trailer for the grocery store to store ice during the holiday weekends when significant demand is anticipated.

Finding:

- E. *Adequate temporary parking to accommodate vehicular traffic to be generated by the limited duration use would be available either on-site or at alternate locations acceptable to the Zoning Administrator; and*

Facts in Support of Finding:

- E-1. The proposed limited duration use will not impact required parking spaces on-site and will not create additional parking demand since it will be utilized to store ice for the grocery store. The public will not have direct access to the temporary electric refrigeration trailer.

Finding:

- F. *The limited duration use is consistent with all applicable provisions of the General Plan, any applicable specific plan, the Municipal Code, and other City regulations.*

Facts in Support of Finding:

- F-1. The General Plan land use designation for this site is CN (Neighborhood Commercial). The CN designation is intended to provide for a range of retail and service uses developed in one or more distinct centers oriented to serve the needs of and maintain compatibility with residential uses in the immediate area. The proposed use is accessory to the existing retail use, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the CN designation.
- F-2. The site is located in the CN (Commercial Neighborhood) Zoning District. The CN designation is intended to provide for a range of retail and service uses developed in one or more distinct centers oriented to serve the needs of and maintain compatibility with residential uses in the immediate area. The proposed use is accessory to the existing retail use, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the CN designation. The CN zoning

district allows temporary uses as specified within the Zoning Code and the proposed limited duration use is consistent with this designation.

F-3. The site is not located within a specific plan area.

CONDITIONS

1. The development shall be in substantial conformance with the approved site plan except as noted in the following conditions.
2. Anything not specifically approved by this limited term permit is prohibited and must be addressed by a separate and subsequent review.
3. The temporary electric refrigeration trailer shall be located within the loading dock area as shown on the plan.
4. The temporary electric refrigeration trailer shall be limited to the storage of ice for the grocery store. Alcohol and other store merchandise shall not be stored within the temporary trailer.
5. The temporary electric refrigeration trailer is permitted on-site for a ten-day duration from July 1, 2013 through July 10, 2013. Storage of a trailer on-site other than the dates specified is prohibited.
6. Operation of the refrigeration unit within the temporary trailer shall be limited to the hours of 7:00 a.m. and 9:00 p.m.
- G. A minimum number of 235 parking spaces are required on-site and the temporary trailer shall not restrict access to any of these parking spaces, vehicle circulation, or truck access to the loading dock at the rear of the grocery store.
- H. The Limited Term Permit is for the operation of one temporary electric refrigeration trailer on site for the hours and dates specified and does not authorize the use or operation of additional storage trailers on site.
9. 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 Vons Pavilions Temporary Trailer including, but not limited to, the XP2013-002 (PA2013-074). 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.

APPEAL PERIOD: Limited Term Permit applications do not become effective until 14 days following the date of action. Prior to the effective date the applicant or any interested party may appeal the decision of the Zoning Administrator to the Planning Commission by submitting a written appeal application to the Community Development Director. For additional information on filing an appeal, contact the Planning Division at 949 644-3200.



Brenda Wisneski, AICP, Zoning Administrator

GR/mkn

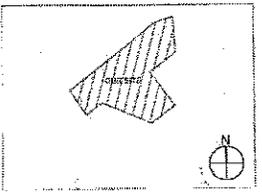
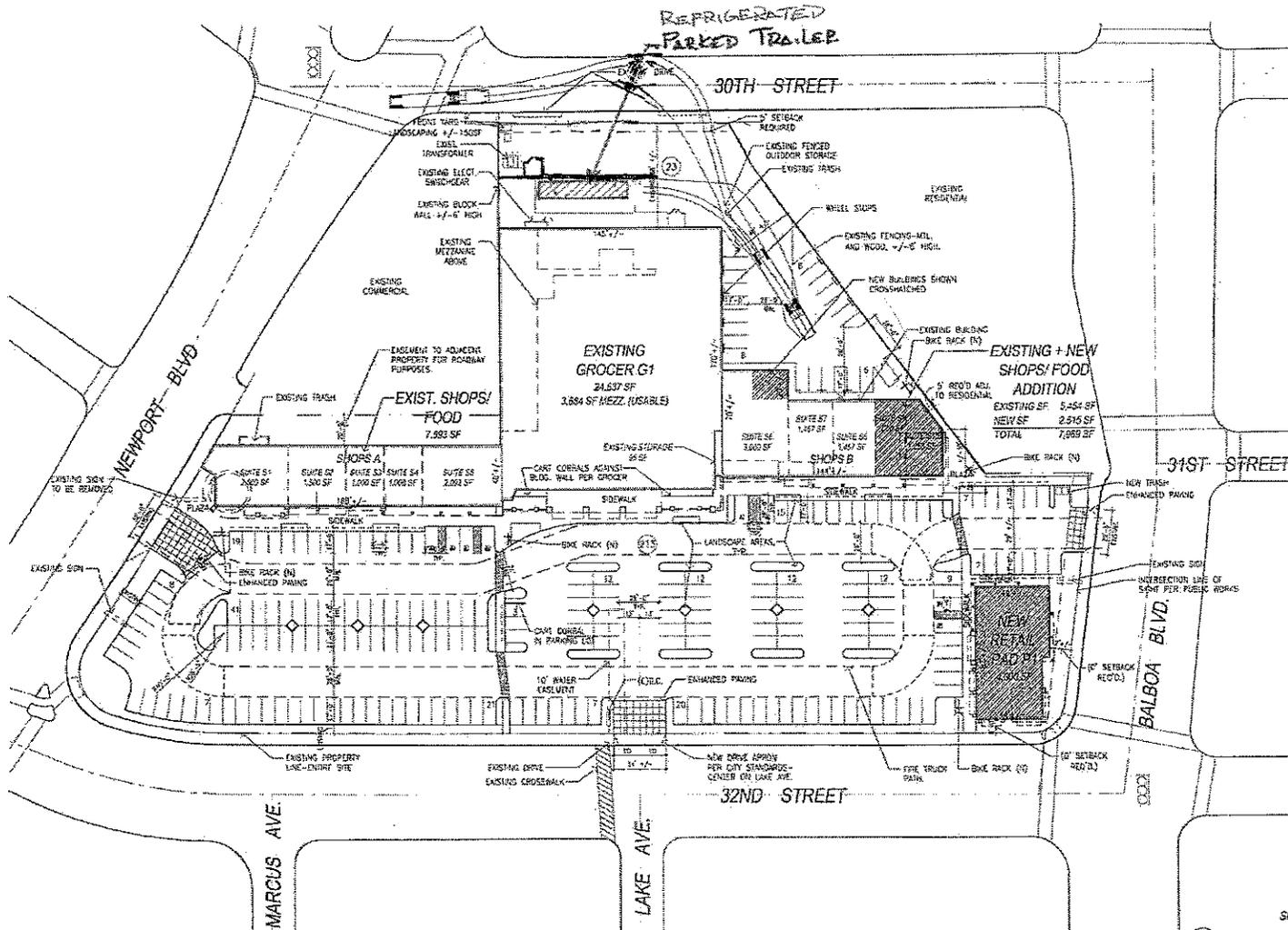
Attachments: ZA 1 Vicinity Map
 ZA 2 Site Plan

VICINITY MAP



Limited Term Permit No. XP2013-002
PA2013-074

3100 Balboa Boulevard



VICINITY MAP
 PROJECT ADDRESS:
 3101-3121 NEWPORT BLVD
 2100, 2102 W BALBOA BLVD
 NEWPORT BEACH, CA

SITE SUMMARY

BUILDING AREA	
GROCER G-1	24,637 SF
SUITE S1	2,500 SF
SUITE S2	2,500 SF
SUITE S3	2,500 SF
SUITE S4	2,500 SF
SUITE S5	2,500 SF
SUITE S6	2,500 SF
SUITE S7	2,500 SF
SUITE S8	2,500 SF
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SUITE S92	2,500 SF
SUITE S93	2,500 SF
SUITE S94	2,500 SF
SUITE S95	2,500 SF
SUITE S96	2,500 SF
SUITE S97	2,500 SF
SUITE S98	2,500 SF
SUITE S99	2,500 SF
SUITE S100	2,500 SF
TOTAL	7,689 SF

SITE PARKING LOT LANDSCAPE AREA SUMMARY

EXIST. PARKING AREA	
GROSS PARKING AREA	79,429 SF
PARKING LANDSCAPE AREA PROVIDED	5,164 SF
LANDSCAPE AREA RATIO	6.4%

NEW CAR TRIPS SUMMARY

TOTAL NEW BLDG SF	6,315 SF
OR 420 CAR TRIPS / 1,000 SF CARPARK	280 NEW CAR TRIPS/DAY

NEW OVERALL SITE LANDSCAPE AREA

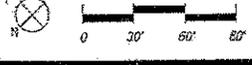
OVERALL LANDSCAPE AREA	4,447,000 SF
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NOTES:
 1. ALL DIMENSIONS SHALL BE SHOWN OR DERIVED FROM THE 1"=30' SCALE.
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 9. ALL DIMENSIONS SHALL BE SHOWN OR DERIVED FROM THE 1"=30' SCALE.
 10. ALL DIMENSIONS SHALL BE SHOWN OR DERIVED FROM THE 1"=30' SCALE.

DESIGNER/OWNER: ARCHITECTS ORANGE
DATE: 08/14/13
PROJECT NO.: 144 NORTH ORANGE ST.
CONTACT: GARY DUNN
PHONE: (714) 243-2112

SITE PLAN A1

SCALE: 1" = 30'



The Landing NEWPORT BEACH, CA

CATELLUS
 A PROLOGUS COMPANY

ARCHITECTS ORANGE
 144 NORTH ORANGE ST., ORANGE, CALIFORNIA 92666 (714) 639-9550

PA2013-074 for XP2013-002
 3100 W. Balboa Boulevard
 Pavilions Grocery Store

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