

COMMUNITY DEVELOPMENT DEPARTMENT

PLANNING DIVISION 3300 Newport Boulevard, Building C, Newport Beach, CA 92663 (949) 644-3200 Fax: (949) 644-3229 www.newportbeachca.gov

CITY OF NEWPORT BEACH ZONING ADMINISTRATOR STAFF REPORT

January 11, 2012 Agenda Item 1

- SUBJECT: B Candy PA2011-200 3100 E. Coast Highway Use Permit No. UP2011-032
- **APPLICANT:** Robert Linnaus
- PLANNER: Melinda Whelan, Assisstant Planner (949) 644-3221

ZONING DISTRICT/GENERAL PLAN

Commercial Corridor (CC)/Corridor Commercial (CC)

PROJECT SUMMARY

A Minor Use Permit application for an ice cream and candy shop (take-out service, limited eating and drinking establishment) with six seats at an ice cream counter within an existing vacant commercial space of approximately 1,513 square feet. The proposed hours of operation are 10:00 a.m. to 10:00 p.m., daily.

RECOMMENDATION

- 1) Conduct a public hearing; and
- 2) Adopt Draft Zoning Administrator Resolution No. _ approving Use Permit No. UP2011-031, subject to findings and conditions (Attachment No. ZA 1).

DISCUSSION

- The project will occupy the 1,531 square-foot ground floor of a two-story 3,481 square-foot commercial building which is currently vacant. The building is located on the northeasterly corner of East Coast Highway and Jasmine Avenue in Corona del Mar.
- The proposed use is consistent with the land uses permitted within the Commercial Corridor (CC) Zoning District and the Corridor Commercial (CC) General Plan Land Use Element category.
- Per the Zoning Code, approval of a minor use permit is required because the location of the proposed restaurant is located within 500 feet of a residential zoning district.
- The proposed project complies with the Zoning Code standards for take-out service, limited eating and drinking establishments, including a maximum of six seats for patrons.
- The ground floor of the commercial building is 1,531 square feet and the second floor is 1,968 square feet. The second floor was previously occupied by a Curves gym however, it is currently vacant. Per the Zoning Code, the proposed use on the ground floor requires 1 parking space per 250 square-feet of gross floor area, or six spaces. There are 14 parking spaces provided on-site for the entire building. Therefore, six spaces are provided for the ground floor and eight (1 per 250-square-feet of gross floor area) remain for the second floor.
- Staff believes the project is compatible with existing and allowed uses within the area which include various retail and visitor commercial uses such as restaurants and take-out services; general office, and residential. The project has been conditioned so that the potential for negative impacts from its operation is minimized.

ENVIRONMENTAL REVIEW

The project qualifies for a Class 1 (Existing Facilities) categorical exemption of the California Environmental Quality Act because it involves interior alterations to convert a currently vacant commercial space to a take-out service limited, eating and drinking establishment.

PUBLIC NOTICE

Notice of this application was mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicant and posted on the subject property at least 10 days prior to the decision date, consistent with the provisions of the Municipal Code.

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APPEAL PERIOD

Minor Use 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.

Submitted by:

Melinda Whelan, Assistant Planner

GBR/msw

Attachments:

- ZA 1 Draft Zoning Administrator Resolution No.
- ZA 2 Vicinity Map
- ZA 3 Plans

Attachment No. ZA 1

Draft Zoning Administrator Resolution No. _

RESOLUTION NO.

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, APPROVING MINOR USE PERMIT NO. UP2011-032 FOR B CANDY, A TAKE-OUT SERVICE LIMITED, EATING AND DRINKING ESTABLISHMENT LOCATED AT 3100 EAST COAST HIGHWAY (PA2011-200)

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

SECTION 1. STATEMENT OF FACTS.

- 1. An application was filed by Robert Linnaus, with respect to property located at 3100 East Coast Highway, and legally described as PCL 1, Resub 0796 requesting approval of a Minor Use Permit.
- 2. The applicant proposes a Minor Use Permit to convert 1,513 square feet of commercial space to a take-out service, limited eating and drinking establishment, which will consist of a retail area and six seats at an ice cream bar. The requested hours of operation are 10:00 a.m. and 10:00 p.m., daily.
- 3. The subject property is located within the Commercial Corridor (CC) Zoning District and the General Plan Land Use Element category is Corridor Commercial (CC).
- 4. The subject property is not located within the coastal zone.
- 5. A public hearing was held on January 11, 2012, in the City Hall Council Chambers, 3300 Newport Boulevard, 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. The project has been reviewed, and it qualifies for a categorical exemption pursuant to Section 15301 of the California Environmental Quality Act under Class 1 (Existing Facilities) of the Implementing Guidelines of the California Environmental Quality Act.
- 2. The Class 1 exemption includes the ongoing use of existing buildings where there is negligible or no expansion of use. The proposed project involves interior alterations to convert currently vacant commercial space to a take-out service, limited eating and drinking establishment. The existing space will be remodeled with approval of a tenant improvement building permit.

SECTION 3. REQUIRED FINDINGS.

Minor Use Permit

In accordance with Section 20.52.020.F of the Newport Beach Municipal Code, the following findings and facts in support of the findings for a use permit are set forth:

Finding

A. The use is consistent with the General Plan and any applicable specific plan:

Facts in Support of Finding

- The General Plan land use designation for this site is CC (Corridor Commercial). The CC provides for a range of neighborhood-serving retail and service uses along street frontages that are located and designed to foster pedestrian activity. The proposed ice cream and candy shop is consistent with this land use category.
- 2. Take-out service limited, eating and drinking establishments are common in the vicinity and along the Corona del Mar commercial corridor. They are frequented by the surrounding businesses, travelers that visit the City, and residents of the City.
- 3. The ice cream and candy shop will contribute to the revitalization of the commercial corridor and is consistent with the goal of pedestrian friendly businesses.
- 4. The subject property is not part of a specific plan area.

Finding

B. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code:

Facts in Support of Finding

- 1. The site is located in the Commercial Corridor (CC) Zoning District. The ice cream and candy shop, which includes seating for six customers and a kitchen, is allowed subject to the approval of a Minor Use Permit in the CC Zoning District.
- 2. The ground floor of the commercial building is 1,531 square feet and the second floor is 1,968 square feet. The second floor was previously occupied by a Curves gym however, it is currently vacant. Per the Zoning Code, the proposed use on the ground floor requires 1 parking space per 250 square-feet of gross floor area, or six spaces. There are 14 parking spaces provided on-site for the

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entire building. Therefore, six spaces are provided for the ground floor and eight (1 per 250-square-feet of gross floor area) remain for the second floor.

3. The proposed use will comply with all applicable development standards including those specific for the take-out service, limited eating and drinking use classification including a maximum of six seats.

Finding

C. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity:

Facts in Support of Finding

- 1. The hours of operation will be from 10:00 a.m. to 10:00 p.m. daily. This will provide a dessert stop for pedestrians and visitors to the area while still closing at an early hour to minimize disturbances to nearby residences.
- 2. In addition to the residential neighborhood located north and south of Coast Highway, the surrounding commercial corridor contains various retail and visitor commercial uses including restaurants and take-out eating establishments, as well as general office uses. The proposed establishment is compatible with the existing and permitted uses within the neighborhood.

Finding

D. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities:

Facts in Support of Finding

- 1. The interior tenant space will be improved with the appropriate plumbing and utilities.
- 2. The existing parking lot provides adequate circulation and parking spaces for patrons.
- 3. Adequate public and emergency vehicle access, public services, and utilities are provided within the existing tenant space.

Finding

E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, a safety, or general welfare of persons residing or working in the neighborhood of the proposed use.

Facts in Support of Finding

- 1. The project has been reviewed and includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The hours of operation are reasonable and consistent with the neighborhood.
- 2. The take-out service limited, eating and drinking establishment will serve the surrounding commercial and residential community.
- 3. The applicant will obtain Health Department approval. The establishment will comply with the California Building Code and to ensure the safety and welfare of customers and employees within the establishment.
- 4. The applicant is required to control trash and litter around the subject property.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

- 1. The Zoning Administrator of the City of Newport Beach hereby approves Use Permit No. UP2011-032, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
- 2. Minor Use 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.

PASSED, APPROVED, AND ADOPTED THIS 11TH DAY OF JANUARY, 2012.

By:

Brenda Wisneski, AICP, Zoning Administrator

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EXHIBIT "A"

CONDITIONS OF APPROVAL

Planning Division Conditions

- 1. The development shall be in substantial conformance with the approved site plan, floor plan(s) and building elevations dated with this date of approval. (Except as modified by applicable conditions of approval.)
- 2. This Minor Use Permit may be modified or revoked by the Zoning Administrator should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
- 3. Any change in operational characteristics, hours of operation, expansion in area, or other modification to the approved plans, shall require an amendment to this Use Permit or the processing of a new Use Permit.
- 4. 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.
- 5. Minor Use Permit No. UP2011-032 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 (Time Limits and Extensions) of the Newport Beach Zoning Code, unless an extension is otherwise granted.
- 6. Should this business be sold or otherwise come under different ownership, any future owners or assignees shall be notified in writing of the conditions of this approval by the current owner or leasing company.
- 7. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
- 8. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
- 9. A copy of these conditions of approval shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
- 10. Prior to the issuance of building permits, any applicable Fair Share Traffic Contribution Fees shall be paid in accordance with Chapter 15.38 of the Newport Beach Municipal Code.

- 11. The take-out service, limited eating and drinking establishment shall be limited to six seats.
- 12. The hours of operation for the eating and drinking establishment are limited from 10:00 a.m. to 10:00 p.m., daily.
- 13. A covered wash-out area for refuse containers and kitchen equipment, with minimum useable area dimensions of 36-inches wide, 36-inches deep and 72-inches high, shall be provided, and the area shall drain directly into the sewer system, unless otherwise approved by the Building Manager and Public Works Director in conjunction with the approval of an alternate drainage plan.
- 14. No outside paging system shall be utilized in conjunction with this establishment.
- 15. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m., daily, unless otherwise approved by the Community Development Director, and may require an amendment to this use permit.
- To the fullest extent permitted by law, applicant shall indemnify, defend and hold 16. 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 **B Candy** including, but not limited to **Use Permit No. UP2011-032** 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 the City's costs, attorneys' fees, and damages which the 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.

Building Division and Fire Department Conditions

- 17. Public sanitation facilities shall be available to the general public (patrons) during regular business hours of the operation, unless otherwise approved by the Building Division.
- 18. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The facility shall be designed to meet exiting and fire protection requirements as specified by the California Building Code and shall be subject to review and approval by the Building Division.

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- 19. The construction plans must meet all applicable State Disabilities Access requirements.
- 20. Approval from the Orange County Health Department is required prior to the issuance of a building permit.
- 21. All exits shall remain free of obstructions and available for ingress and egress at all times.

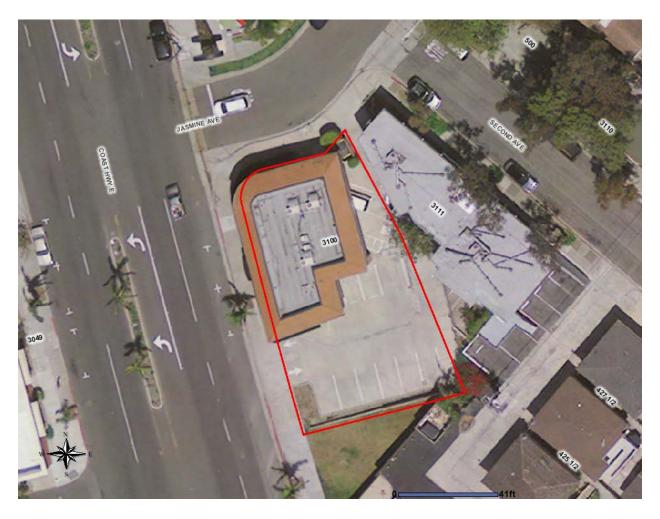
Public Works Department Conditions

- 22. County Sanitation District fees shall be paid prior to the issuance of any building permits.
- 23. New and existing fire services, when required by the Fire Department, shall be protected by a University of Southern California approved double check detector assemble and installed per STD-517-L.
- 24. All new and existing commercial water meter(s) shall be protected by a University of Southern California approved reduced pressure backflow assembly and installed per STD-520-L-A.
- 25. Any changes to the existing parking lot design require review and approval from the Public Works Department.
- 26. Prior to the issuance of building permits permits the applicant is responsible for all upgrades to the City's utilities as required to fulfill the project's demand, if applicable.
- 27. New water services shall be installed per STD-502-L or STD-503-L, depending on the size.
- 28. Landscaping lines shall be protected by a dedicated University of Southern California approved reduced pressure backflow assembly.
- 29. New and existing sewer lateral shall have a cleanout installed per STD-406-L.

Attachment No. ZA 2

Vicinity Map

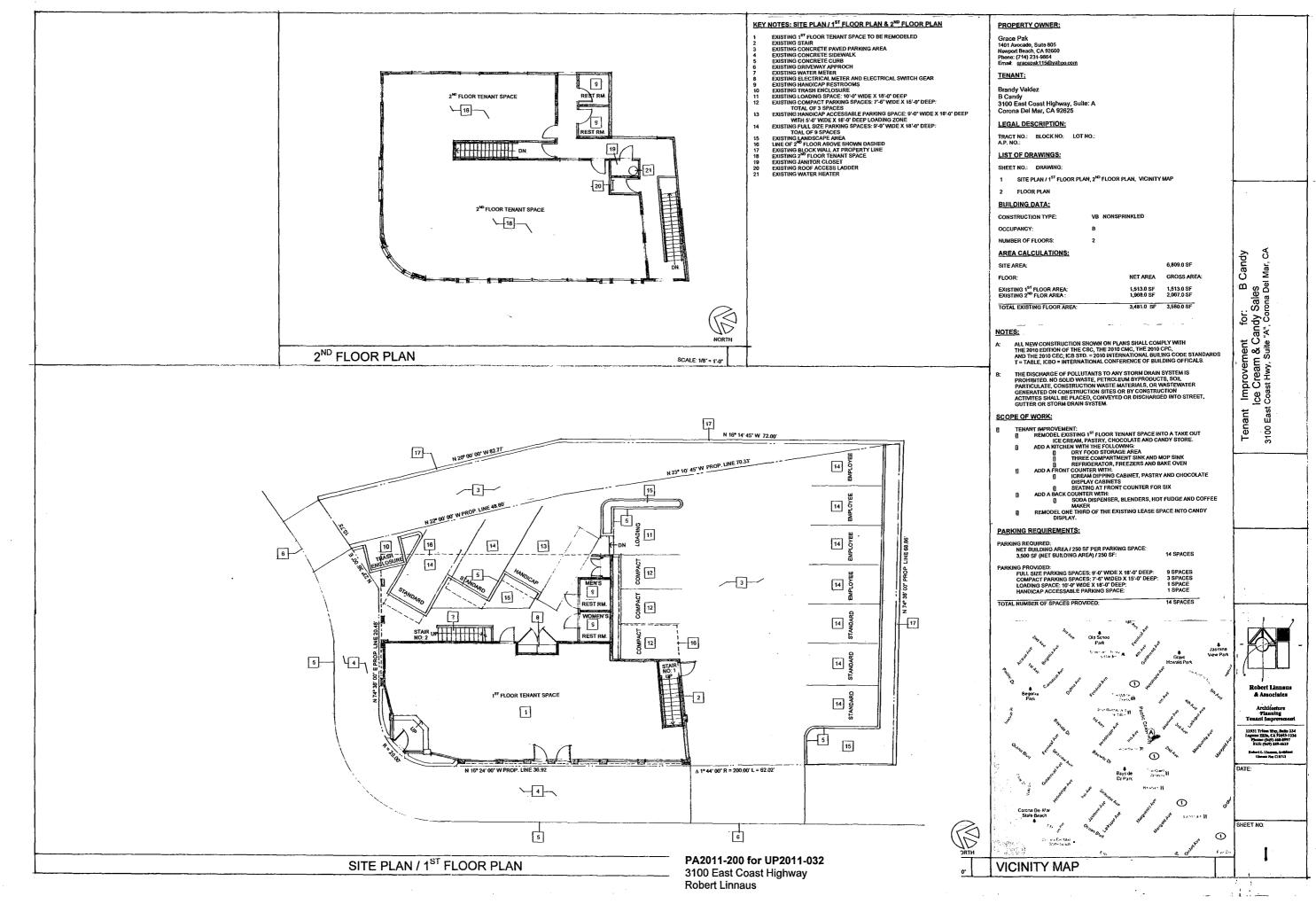
VICINITY MAP

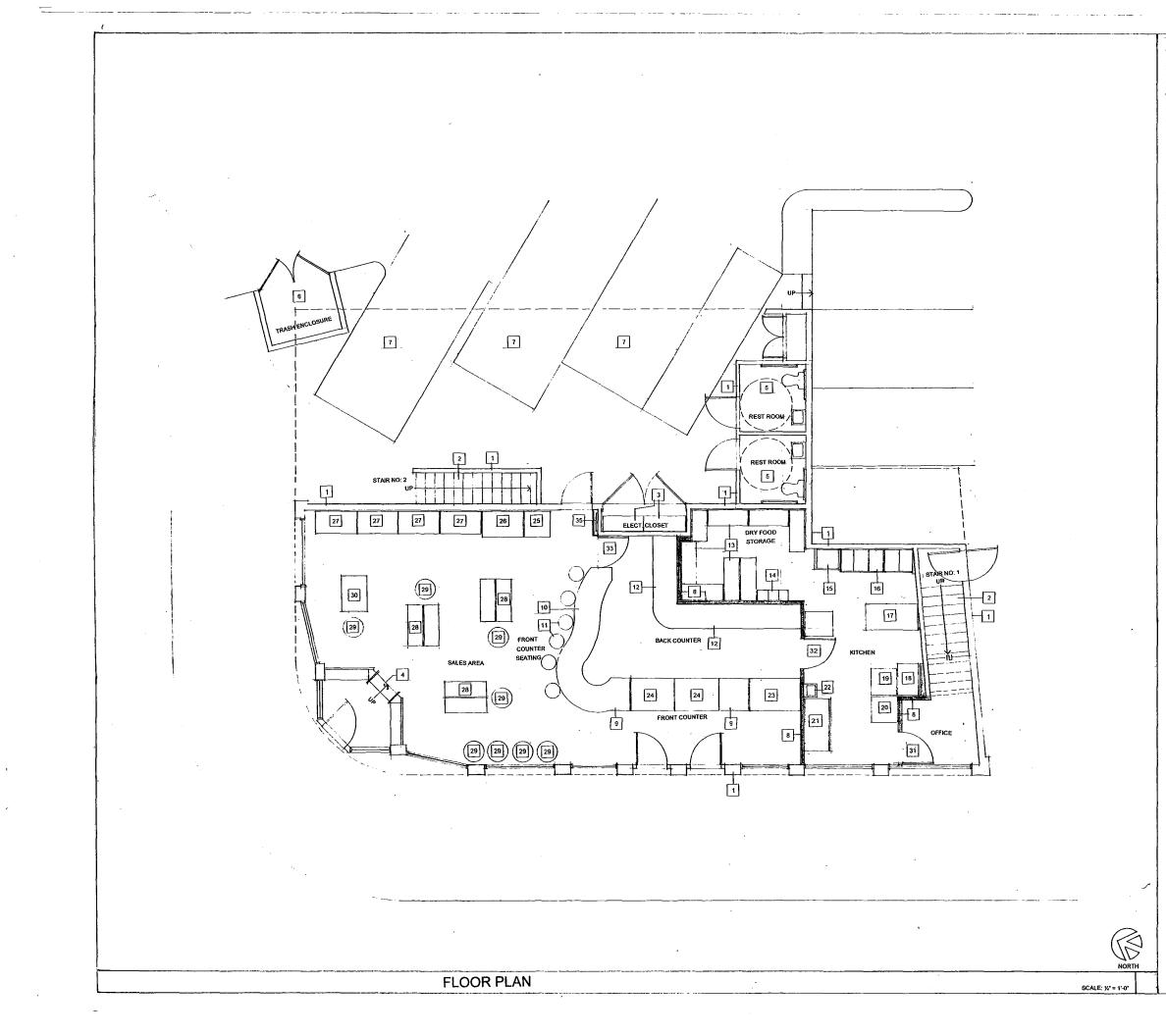


3100 East Coast Highway B Candy PA2011-200 for UP2011-032

Attachment No. ZA 3

Plans





FLOC	DR PLAN KEY NOTES:	
1 2 3 4 5	EXISTING EXTERIOR WALLS WINDOWS AND DOORS EXISTING STAIRS TO EXISTING 2 ¹⁰⁰ FLOOR TENANT SPACES EXISTING ELECTRICAL METER AND ELECTRICAL SWITCH GEAR EXISTING STAIR WITH TWO RISERS EXISTING ANDICAP ACCESSIBLE REST ROOMS	
6 7 8	EXISTING TRASH ENCLOSURE EXISTING PARKING SPACES, SEE SITE PLAN NEW INTERIOR NONBEARING PARTITION: ONE LAYER OF 5/8" TYPE "X" GYPSUM BOARD OVER 3-5/8" METAL STUDS @ 16" ON CENTER	
9 10 11 12	NEW BUIL-IN FRONT COUNTER: 34" HIGH ABOVE FINISH FLOOR NEW BUILT-IN BAR TYPE SEATING COUNTER: 34" HIGH ABOVE FINISH FLOOR NEW FIXED BAR STOOLS: TOTAL OF SIX STOOLS NEW BUILT-IN BACK COUNTER	
13 14 15 16	NEW DRY FOOD STORAGE SHELVES NEW EMPLOYEE LOCKERS NEW MOP SINK IN NEW BUILT-IN CABINET NEW THREE COMPARTMENT SINK	
17 18 19	NEW WORK TABLE NEW ICREAM MAKER NEW BLAST FREEZER NEW BLAST FREEZER NEW REACH IN REFRIGERATOR	
20 21 22 23 24	NEW REACH IN FREEZER NEW WALL MOUNT HAND SINK NEW ICE CREAM DIPPING CABINET WITH NEW DIPPER WELL NEW REFRIGERATORED DISPLAY CASE	
25 26 27 28	NEW BOTTLE COOLER NEW REACH-IN FREEZER WITH GLASS DOORS NEW BULK CANDY DISPLAY / DISPENSER CABINET NEW CANDY DISPLAY SHELVES	
29 30 31 32 33	NEW DISPLAY TABLE NEW COUNTER: 34' HIGH ABOVE FINISH FLOOR NEW INTERIOR DOOR: 36' WIDE X 84' HIGH NEW INTERIOR DOOR: 36' HIGH X 84' WIDE WITH GLASS PANEL NEW FRONT COUNTER GATE: 36' WIDE X 34' HIGH	
34 35	NEW BAKE OVEN NEW LOCATION OF TELEPHONE PANEL, SET IN NEW WALL MOUNT CABINET	cA d
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