

**CITY OF NEWPORT BEACH
MODIFICATIONS STAFF ACTION REPORT**

TO: CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION

FROM: Planning Department
Javier Garcia, Zoning Administrator
igarcia@city.newport-beach.ca.us

SUBJECT: Report of the actions taken for the Modifications Hearing on Monday,
March 10, 2008

Item 1: Modification No. MD2008-010 (PA2008-015)
110 9th Street

Request to permit the following encroachments to portions of a new single-family residence: maximum 15 feet into the required 20-foot reversed-corner setback, and maximum 5 feet 1 inch into the required 10-foot rear yard setback. The request also includes encroachment into the reversed corner setback with a portion of a 6-foot high concrete wall at the rear property line. The property is located in the R-2 District.

This item was approved.

Council District 1

Item 2: Modification No. MD2008-011 (PA2008-018)
4607 Seashore Drive

Request to permit the combining of two existing bedrooms at the second floor and addition of a new room and deck at the third floor to an existing non-conforming duplex. The existing duplex is non-conforming because it does not provide the Zoning Code required two-car parking per unit. The property is located in the R-2 District.

This item was approved.

Council District 1

Item 3: Modification MD2008-013 (PA2008-028)
526 South Bay Front

Request to permit the structural alteration between 25% and 50% of an existing non-conforming single-family dwelling with removal and replacement of the walls and roof of a second floor sunroom and enclosure of an adjacent deck/patio. Additionally, the request includes the retention of existing encroachments into the required 4-foot easterly side yard setback. The encroachments include a trellis with uprights exceeding 6 feet in height, and a lattice exceeding the 6-foot height limit. The existing single-family dwelling is non-conforming because it encroaches into the required front, rear, and side yard setbacks. The property is located in the R-1.5 District.

This item was approved.

Council District 5

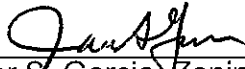
Item 4: Modification MD2008-016 (PA2008-034))
500 West Ocean Front

Request to allow below grade encroachment of temporary shoring and structural elements that will provide additional structural support for a basement in conjunction with the new single family dwelling. The shoring which will remain in place, below ground upon completion of the construction project, will encroach up to 2 feet 6 inches into the required 3-foot side yard setbacks. The property is located in the R-1 District.

This item was approved.

Council District 1

Prepared and submitted by:



Javier S. Garcia, Zoning Administrator

APPEAL: The Zoning Administrator's decision may be appealed to the Planning Commission within 14 days of the action date. A \$600.00 filing fee shall accompany any appeal filed. No building permits may be issued until the appeal period has expired.

c: David Lepo, Planning Director (*e-mail*)
Sharon Wood, Assistant City Manager (*e-mail*)
David Keely, Public Works Senior Civil Engineer (*e-mail*)
Kay Sims, Assistant Planner (*e-mail*)
Sgt. Ron Vallercamp, Vice/Narcotics (*e-mail*)
Code Enforcement Division(*e-mail*)
Erin Steffen, Office Assistant (*e-mail*)
Iris Lee, Public Works (*e-mail*)
Evelyn Tseng, Revenue (*e-mail*)



MODIFICATION PERMIT NO. MD2008-010

(PA2008-015)

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

Application No.	Modification Permit No. MD2008-010 (PA2008-015)
Applicant	Ian Harrison
Site Address	110 9th Street
Legal Description	East Newport, Lot 15, Block 7 and Lot 16, Block 7 all of lots except Southwesterly 57.25 feet, Tract 219

On **March 10, 2008**, the Zoning Administrator approved the application request to permit the following encroachments to portions of a new single-family residence: maximum 15 feet into the required 20-foot reversed-corner setback, and maximum 5 feet 1 inch into the required 10-foot rear yard setback. The request also includes encroachment into the reversed corner setback with a portion of a 6-foot high concrete wall at the rear property line. The property is located in the R-2 District. The Zoning Administrator's approval is based on the following findings and subject to the following conditions.

FINDINGS

1. The Land Use Element of the General Plan and the Local Coastal Program Land Use Plan designate the site for "Single-Unit Residential Detached" use. The proposed residential structure is consistent with this designation.
2. This project has been reviewed, and it has been determined that it is categorically exempt from the requirements of the California Environmental Quality Act under Class 3 (New Construction).
3. The modification to the Zoning Code, as proposed, is consistent with the legislative intent of Title 20 of the Newport Beach Municipal Code. It is a logical use of the property that would be precluded by strict application of the zoning requirements for this District for the following reasons:
 - The subject lot's size, shape, corner location, and orientation facing Balboa Boulevard places constraints on the design and placement on the lot of the proposed new residence.

- The Zoning Code allows fences and walls to a height of 6 feet within required side and rear yard setbacks, but restricts the height within required front yard setbacks to 3 feet.
4. In accordance with the provisions of Chapter 20.93, the granting of this application is necessary due to practical difficulties associated with the property. The strict application of the Zoning Code results in physical hardships that are inconsistent with the purpose and intent of the Zoning Code for the following reasons:
- The subject property is an irregular-shaped corner lot oriented with the front facing Balboa Boulevard and the west side property line facing 9th Street. It has a required 10-foot front yard setback along Balboa Boulevard and a required 10-foot rear yard setback adjacent to the side yard of the neighboring property. Additionally, the property has a required 20-foot reverse corner setback at the rear of the property along 9th Street.
 - The lot is widest at the rear of the subject property adjacent to the side yard of the neighboring property and narrowest at the front property line along Balboa Boulevard.
 - Since the property cannot take access from Balboa Boulevard, and does not have access from an alley, access must be taken along the 9th Street property line.
 - The rear of the property is 49.14 feet in length. The 20-foot required reversed-corner setback severely limits construction within the widest area of the property.
5. In accordance with the provisions of Chapter 20.93, the requested modification will be compatible with existing development(s) in the neighborhood for the following reasons:
- The proposed single-family residence will meet the floor area, height, and open requirements of the Zoning Code, and the "Residential Design Criteria" standards of the General Plan.
 - The project will comply with the required 10-foot front-yard setback adjacent to Balboa Boulevard and the required 4-foot side yard setbacks.
 - The design of the proposed single-family residence is similar to other residences in the area and will add to the character of the beach-front neighborhood.
6. In accordance with the provisions of Chapter 20.93, the granting of this Modification Permit will not adversely affect the health or safety of persons residing or working in the neighborhood of the property and be detrimental to the general welfare or injurious to property or improvements in the neighborhood based on the following:

- At the first floor level, habitable area of the proposed single-family residence encroaches into the required 20-foot reversed corner setback 10 feet 8 inches. A porch area open on two sides encroaches to a maximum 15 feet 6 inches. This open porch area maintains a 4 foot 6 inch setback from the property line along 9th Street and is greater than the Zoning Code required 4 foot side yard setback. At the second and third levels, the greater portion of encroachment into the reversed corner setback consists of a balcony and roof deck area.
- Although one on-street parking space will be lost to widen the existing curb-cut, the proposed project will provide two on-site parking spaces which meet the required size standards of the Zoning Code.
- Portions of the proposed single-family residence will encroach a maximum 5 foot 1 inch into the required 10-foot rear yard setback providing a 4 foot 11 inch setback from the rear property line. This setback is greater than the required 4-foot side yard setback of the property adjacent to the rear and will provide adequate light and air to the neighboring property.
- The proposed 6-foot block wall at the rear of the property will meet the sight distance requirements of the Zoning Code and will be setback 5 feet from the side property line along 9th Street.

CONDITIONS

1. The development shall be in substantial conformance with the approved plot plan, floor plans and elevations, except as noted in the following conditions.
2. The proposed concrete block wall along the rear property line shall be a maximum 6 feet in height measured from natural grade and shall be allowed to encroach a maximum 15 feet along the rear property line into the required 20-foot reversed corner front yard setback.
3. The proposed single-family residence shall comply with the front and side yard setbacks. The proposed single-family structure shall be allowed to encroach a maximum 4 feet 11 inches into the required 10-foot rear yard setback, and a maximum 13 feet 5 ¼ inches from the rear property line into the required 20-foot reversed-corner setback. The open porch area on the first level, and the balconies and deck areas on the second and third levels within the required 20-foot reversed corner setback along 9th Street shall be allowed to be constructed to a maximum 4 feet 6 inches from the side-yard property line along 9th Street.
4. The garage shall be relocated to maintain a minimum setback of 5 feet to 7 feet from the property.
5. Change dining room and living room windows facing southerly to minimize impact on the neighboring property by eliminating the opening, providing frosted

or opaque glass, or elevate the bottom of the window above the finish floor to 5 feet.

6. The intersection of the proposed driveway along 9th Street and 9th/Balboa Boulevard shall comply with the City sight distance standard STD-110-L. All improvements within the limited use area shall comply with said requirements.
7. Prior to issuance of building permits, the applicant shall contact the Planning Department to obtain and record a Certificate of Compliance or file an application for a Lot Line Adjustment to legally recognize or combine the portions of parcels that comprise 110 9th Street as a single parcel for single family development.
8. Prior to issuance of building permits, approval from the California Coastal Commission shall be required.
9. The two-car garage shall remain free of all obstructions and remain available for the parking of vehicles at all times.
10. Anything not specifically approved by this Modification Permit is prohibited and must be addressed in a separate and subsequent Modification Permit review.
11. If any of the existing public improvements surrounding the site is damaged by private work, new concrete sidewalk, curb and gutter, street pavement, and other public improvements will be required by the City at the time of private construction completion. Said determination and the extent of the repair work shall be made at the discretion of the Public Works inspector.
12. 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.
13. 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.
14. A building permit shall be obtained prior to commencement of the construction.
15. 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.

16. All work performed within the public right-of-way shall be reviewed and approved by the Public Works Department under an encroachment permit/agreement, if required.
17. This approval shall expire unless exercised within 24 months from the approval date, as specified in Section 20.93.050(A) of the Newport Beach Municipal Code. Prior to the expiration date of this approval, an extension may be approved in accordance with Section 20.93.050(B) of the Newport Beach Municipal Code. Requests for an extension must be in writing.

APPEAL PERIOD

The Zoning Administrator's decision may be appealed to the Planning Commission within 14 days of the action date. A \$600.00 filing fee shall accompany any appeal filed. No building permits may be issued until the appeal period has expired. **A copy of the approval letter shall be incorporated into the Building Department set of plans prior to issuance of the building permits or issuance of revised plans.**

By: 
Zoning Administrator Javier S. Garcia, AICP

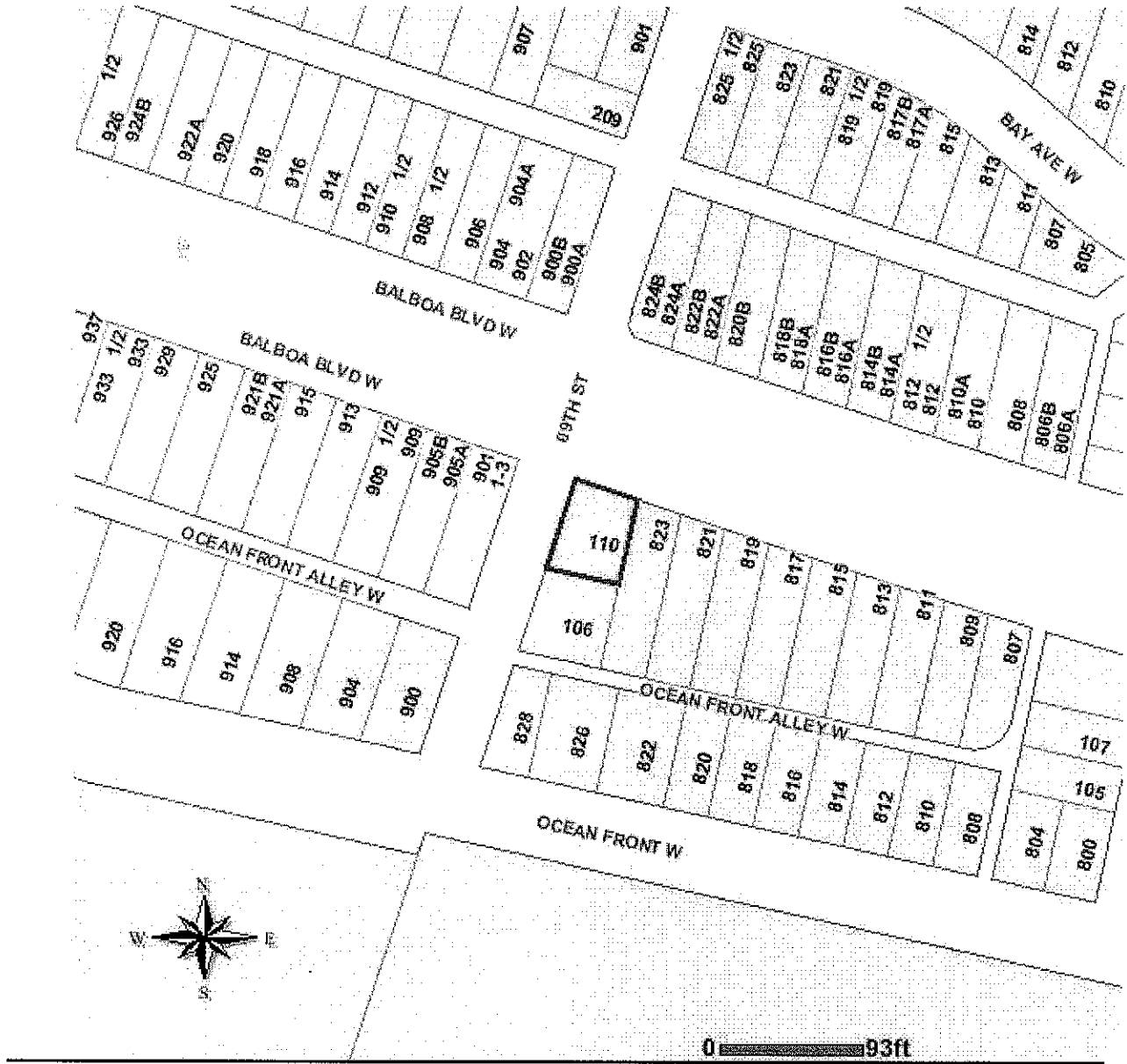
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Attachments: Vicinity Map

Appeared in Opposition: G. Gardner, W. Balboa Boulevard
L. Fundenberg, W. Balboa Boulevard
M. Hendrickson, Piazza Lido
E. Ogden, 9th Street

Appeared in Support: None

VICINITY MAP



0 93ft

Modification Permit No. MD2008-010
PA2008-015

110 9th Street

- Two bedrooms at the second floor will be combined and a new bedroom will be constructed at the third floor.
 - The proposed deck at the third level will not add habitable space to the existing duplex.
 - There is no justification to allow the retention of the non-approved deck and rail within the side yard setback.
4. In accordance with the provisions of Chapter 20.93, the granting of this application is necessary due to practical difficulties associated with the property. The strict application of the Zoning Code results in physical hardships that are inconsistent with the purpose and intent of the Zoning Code for the following reason:
- The subject property is an existing duplex which is non-conforming because it does not provide the two-car parking spaces per unit required by the Zoning Code. The design and location of the existing structure precludes the construction of additional parking spaces without extensive demolition and reconstruction which would be cost prohibitive.
5. In accordance with the provisions of Chapter 20.93, the requested modification will be compatible with existing development(s) in the neighborhood for the following reasons:
- The subject property will remain a duplex consistent with the Zoning Code and surrounding land use.
 - The gross square footage of the existing duplex and the proposed third floor room addition will be less than the maximum square footage allowed by the Zoning Code for the subject property and is consistent with existing structures in the surrounding neighborhood.
 - The proposed deck at the third floor will not add habitable space to the existing duplex and is a common element found in this neighborhood and throughout the City.
6. In accordance with the provisions of Chapter 20.93, the granting of this Modification Permit will not adversely affect the health or safety of persons residing or working in the neighborhood of the property and not be detrimental to the general welfare or injurious to property or improvements in the neighborhood based on the following:
- The proposed room addition and deck at the third floor will be constructed to comply with the standard height limit and setbacks required by the Zoning Code for properties in this area.
 - With construction of the third floor room addition, the subject property will nevertheless provide 1,368 cubic feet of open space in excess of Zoning Code requirements.

CONDITIONS

1. The development shall be in substantial conformance with the approved plot plan, floor plans and elevations, except as noted in the following conditions.
2. The existing wall separating the two bedrooms to be combined shall be entirely removed, with exception of a one foot wall perpendicular to the exterior building wall.
3. Remove entirely or move the existing non-conforming railing at the second floor deck area so that it does not encroach into the required 3-foot side yard setback. Remove decking material in setback area and replace with roofing material.
4. The wrought iron rail located at the second floor shall be attached to the face of the building and may encroach up to 6 inches into the 3-foot side yard setback.
5. Anything not specifically approved by this Modification Permit is prohibited and must be addressed in a separate and subsequent Modification Permit review.
6. If any of the existing public improvements surrounding the site is damaged by private work, new concrete sidewalk, curb and gutter, street pavement, and other public improvements will be required by the City at the time of private construction completion. Said determination and the extent of the repair work shall be made at the discretion of the Public Works inspector.
7. 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.
8. 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.
9. A building permit shall be obtained prior to commencement of the construction.
10. 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.

11. All work performed within the public right-of-way shall be reviewed and approved by the Public Works Department under an encroachment permit/agreement, if required.
12. This approval shall expire unless exercised within 24 months from the approval date, as specified in Section 20.93.050 (A) of the Newport Beach Municipal Code. Prior to the expiration date of this approval, an extension may be approved in accordance with Section 20.93.050 (B) of the Newport Beach Municipal Code. Requests for an extension must be in writing.

APPEAL PERIOD

The Zoning Administrator's decision may be appealed to the Planning Commission within 14 days of the action date. A \$600.00 filing fee shall accompany any appeal filed. No building permits may be issued until the appeal period has expired. **A copy of the approval letter shall be incorporated into the Building Department set of plans prior to issuance of the building permits or issuance of revised plans.**

By: 
Zoning Administrator Javier S. Garcia, AICP

JSG:ks/rm

Attachments: Vicinity Map

Appeared in Opposition: None

Appeared in Support: None

VICINITY MAP



Modification Permit No. MD2008-011
PA2008-018

4607 Seashore Drive



MODIFICATION PERMIT NO. MD2008-013

(PA2008-028)

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

Application No.	Modification Permit No. MD2008-013 (PA2008-028)
Applicant	Barry Walker
Site Address	526 South Bay Front
Legal Description	Balboa Island Resubdivision, Section 1, Lot 1, Block 13 and northwesterly ½ Lot 2, Block 13, Tract 99

On **March 10, 2008**, the Zoning Administrator approved the application request to permit the structural alteration between 25% and 50% of an existing non-conforming single-family dwelling with removal and replacement of the walls and roof of a second floor sunroom and enclosure of an adjacent deck/patio. Additionally, the request includes the retention of existing encroachments into the required 4-foot easterly side yard setback. The encroachments include a trellis with uprights exceeding 6 feet in height, and a lattice exceeding the 6-foot height limit. The existing single-family dwelling is non-conforming because it encroaches into the required front, rear, and side yard setbacks. The property is located in the R-1.5 District. The Zoning Administrator's approval is based on the following findings and subject to the following conditions.

FINDINGS

1. The Land Use Element of the General Plan designates the site for "Two-Unit Residential" use. The Local Coastal Program Land Use Plan designates the site for "High Density Residential" use. The existing residential structure is consistent with these designations.
2. This project has been reviewed, and it has been determined that it is categorically exempt from the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities).
3. The modification to the Zoning Code, as proposed, is consistent with the legislative intent of Title 20 of the Newport Beach Municipal Code. It is a logical use of the property that would be precluded by strict application of the zoning requirements for this District for the following reasons:
 - The existing single-family dwelling is nonconforming because it encroaches into the required front, rear, and side yard setbacks.

- Chapter 20.62 of the Zoning Code permits additions to existing legal nonconforming structures of up to 25 percent of the gross floor area within any twelve month period. However, the enclosure of the deck will encroach into the required 4-foot side yard setback.
 - The existing deck and solarium/atrium room presently encroach into the side and rear yard setbacks, and the proposed construction of the office/hobby room will replace these features.
 - The proposed side and rear yard encroachments are minor elements that are congruent with the existing structure.
 - The property lines are not parallel; therefore the encroachments into the easterly side yard setback will range between five inches and twelve inches.
 - The existing trellis and lattice that were built without the benefit of a permit were constructed several years ago.
4. In accordance with the provisions of Chapter 20.93, the granting of this application is necessary due to practical difficulties associated with the property. The strict application of the Zoning Code results in physical hardships that are inconsistent with the purpose and intent of the Zoning Code for the following reasons:
- Chapter 20.62 of the Zoning Code allows additions and alterations to existing nonconforming structures between 25 percent and 50 percent of the gross floor area, within a twelve month period, subject to the approval of a Modification Permit.
 - The cost of removing and reconstructing the existing nonconforming structure to meet the required setbacks would be cost prohibitive.
 - The existing first and second floors encroach into the side and rear setbacks, and the proposed construction may extend the existing walls vertically. Preventing the proposed walls from encroaching into the side and rear setbacks would complicate the construction of the project.
5. In accordance with the provisions of Chapter 20.93, the requested modification will be compatible with existing development(s) in the neighborhood for the following reason:
- The proposed gross square footage of the structure is less than the maximum square footage allowed by the Zoning Code for the subject property and is consistent with the surrounding neighborhood as well as similar land uses throughout the City.
 - The existing structure will remain a single family dwelling. The proposed conversion of the deck to additional square footage is less than 25 percent of the existing structure which is allowed per the Zoning Code; however, a portion of the new floor area will encroach into the four foot side yard setback.
 - The proposed alteration and addition will replace an aging solarium/atrium room with a structure that matches the existing residence.
 - The existing trellis is open beam, which allows for light and air to pass through. The existing lattice only spans across a portion of the property line. Both provide architectural enhancements in the open area along the easterly side of the property.

6. In accordance with the provisions of Chapter 20.93, the granting of this Modification Permit will not adversely affect the health or safety of persons residing or working in the neighborhood of the property and not be detrimental to the general welfare or injurious to property or improvements in the neighborhood based on the following:
 - The proposed addition will comply with all other requirements of the Zoning Code, and will comply with all Building Code requirements.
 - The proposed alteration and addition will not increase any existing nonconformities on the building footprints.
 - The existing trellis and lattice have not proven to be a detriment to the neighborhood thus far.

CONDITIONS


1. The development shall be in substantial conformance with the approved plot plan, floor plans and elevations, except as noted in the following conditions.
2. Anything not specifically approved by this Modification Permit is prohibited and must be addressed in a separate and subsequent Modification Permit review.
3. All work performed within the public right-of-way shall be reviewed and approved by the Public Works Department under an encroachment permit/agreement, if required.
4. All private encroachment improvements fronting South Bay Front shall conform to City Council Policy L-6. A copy of said Policy can be viewed from the City's website at <http://www.city.newport-beach.ca.us/Councilpolicies/toc.htm>.
5. A Public Works Department encroachment permit inspection is required before the Building Department permit final can be issued. At the time of Public Works Department inspection, if any of the existing public improvements surrounding the site is damaged by private work, new concrete sidewalk, curb and gutter, street pavement, and other public improvements will be required by the City at the time of private construction completion. Said determination and the extent of the repair work shall be made at the discretion of the Public Works inspector.
6. 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.
7. The proposed room that is replacing the existing sunroom shall not encroach into the side yard setback unless the new roof is redesigned with a gable and shed roof, or hip roof that slopes toward the side property line in order to lessen the impact of the roof within the setback area.
8. 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.

9. A building permit shall be obtained prior to commencement of the construction.
10. A building permit shall be obtained for the existing trellis that encroaches into the easterly side yard setback, unless otherwise approved by the Building Department. If replaced, modified, or altered, the trellis structure shall comply with the Building Code and may encroach up to 1 foot 6 inches into the 4 foot side yard setback.
11. A building permit shall be obtained for the existing lattice structure located within the easterly 4-foot side yard setback. The lattice/fence shall be reduced in height to 8 feet.
12. 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.
13. This approval shall expire unless exercised within 24 months from the approval date, as specified in Section 20.93.050 (A) of the Newport Beach Municipal Code. Prior to the expiration date of this approval, an extension may be approved in accordance with Section 20.93.050 (B) of the Newport Beach Municipal Code. Requests for an extension must be in writing.

APPEAL PERIOD

The Zoning Administrator's decision may be appealed to the Planning Commission within 14 days of the action date. A \$600.00 filing fee shall accompany any appeal filed. No building permits may be issued until the appeal period has expired. **A copy of the approval letter shall be incorporated into the Building Department set of plans prior to issuance of the building permits or issuance of revised plans.**

By: 
Zoning Administrator Javier S. Garcia, AICP

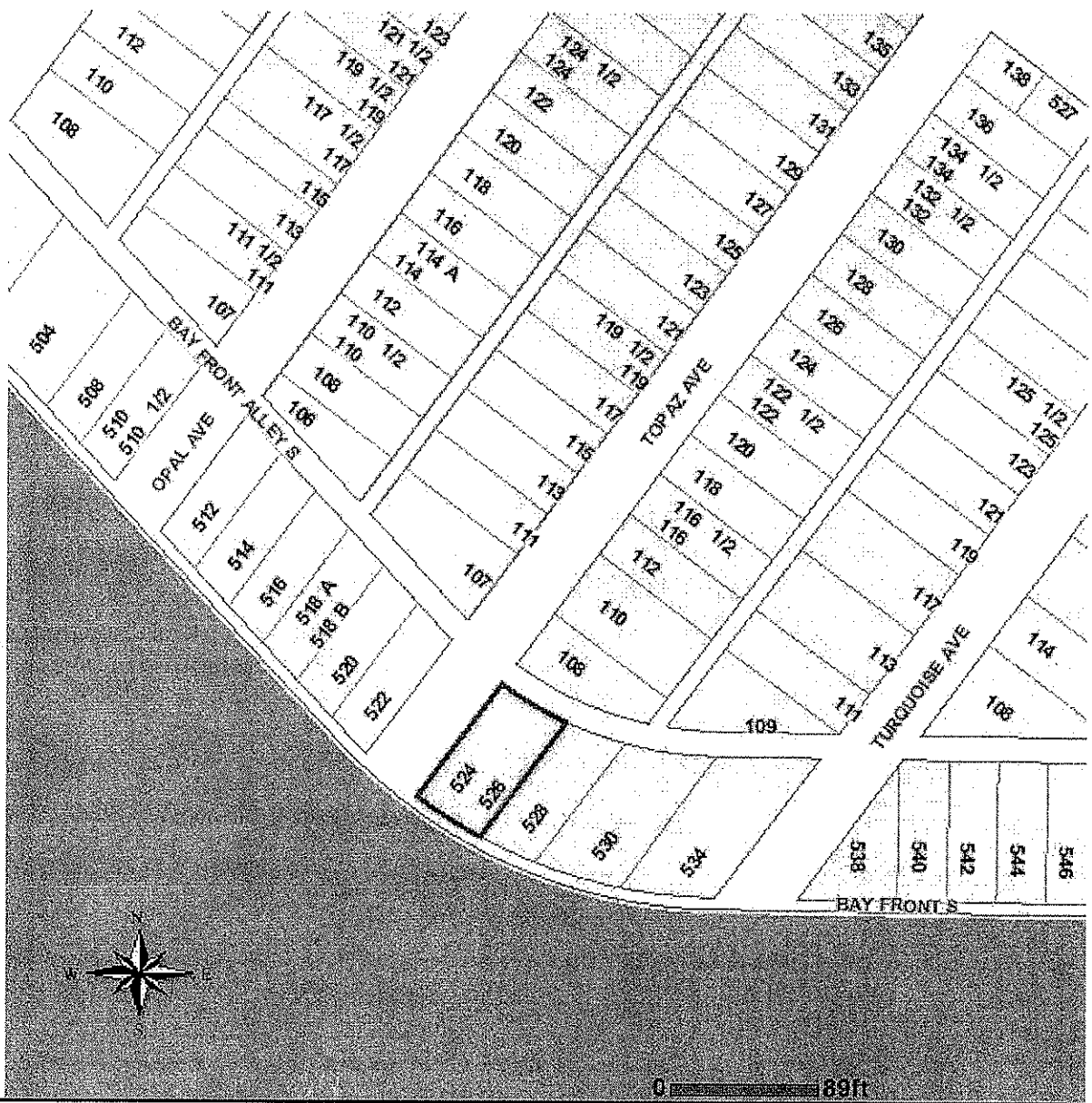
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Attachments: Vicinity Map

Appeared in Opposition: None

Appeared in Support: None

VICINITY MAP



Modification Permit No. MD2008-013
PA2008-028

526 South Bay Front



MODIFICATION PERMIT NO. MD2008-016

(PA2008-034)

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

Application No.	Modification Permit No. MD2008-016 (PA2008-034)
Applicant	John T. Morgan Architect
Site Address	500 West Ocean Front
Legal Description	Portion of Lots 4 and 5 and southerly 10 feet of Lot 3, Block 10, East Newport Tract 219

On **March 10, 2008**, the Zoning Administrator approved the application request to allow below grade encroachment of temporary shoring and structural elements that will provide additional structural support for a basement in conjunction with the new single family dwelling. The shoring which will remain in place, below ground upon completion of the construction project, will encroach up to 2 feet 6 inches into the required 3-foot side yard setbacks. The property is located in the R-1 District. The Zoning Administrator's approval is based on the following findings and subject to the following conditions.

FINDINGS

1. The Land Use Element of the General Plan and the Local Coastal Program Land Use Plan designate the site for "Single-Unit Residential Detached" use. The existing residential structure is consistent with this designation.
2. This project has been reviewed, and it has been determined that it is categorically exempt from the requirements of the California Environmental Quality Act under Class 3 (New Construction or Conversion of Small Structures).
3. The modification to the Zoning Code, as proposed, is consistent with the legislative intent of Title 20 of the Newport Beach Municipal Code. It is a logical use of the property that would be precluded by strict application of the zoning requirements for this District for the following reasons:
 - The Zoning Code allows the encroachment of architectural features such as roof overhangs, brackets, cornices, and eaves to project up to 2 feet 6 inches into any required front or rear yard setback provided that such features shall not project any closer than 2 feet from side property lines, but does not have any such provisions for below grade structural encroachments such as shoring structures or foundations.

- The proposed encroachments of caissons and steel shoring of 2 feet 6 inches into the required 3-foot side yard setbacks are proposed to support the structural foundations for the proposed new dwelling and basement due to the existing waterfront conditions at the site which is located along West Ocean Front on the Balboa Peninsula.
4. In accordance with the provisions of Chapter 20.93, the granting of this application is necessary due to practical difficulties associated with the property. The strict application of the Zoning Code results in physical hardships that are inconsistent with the purpose and intent of the Zoning Code for the following reasons:
- The subject property is located along the Pacific Ocean and requires a foundation system sensitive to the waterfront conditions to include secure waterproofing systems and caissons with steel shoring which provide support for the proposed new dwelling with a basement.
 - The proposed encroachments into the side yard setbacks are reasonable design solutions given the development constraints due to waterfront geological conditions of the subject property.
5. In accordance with the provisions of Chapter 20.93, the requested modification will be compatible with existing development(s) in the neighborhood for the following reasons:
- Granting the request to encroach into the required side yard setbacks of the subject property with caissons and steel shoring is similar and consistent with modified and conditioned approvals granted by the Zoning Administrator and the Modifications Committee throughout the City.
 - The new development will maintain all required setbacks above grade.
6. In accordance with the provisions of Chapter 20.93, the granting of this Modification Permit will not adversely affect the health or safety of persons residing or working in the neighborhood of the property and not be detrimental to the general welfare or injurious to property or improvements in the neighborhood based on the following:
- The proposed encroachments of caissons with steel shoring encroachments are below grade encroachments that will not be visible upon completion of the development project.
 - The proposed encroachments of caissons with steel shoring support a functional foundation system including secure waterproofing and will meet Building Department requirements necessary to support developments that 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.
 - All above grade required setbacks for the development site will remain clear of structural encroachments.

CONDITIONS

1. The development shall be in substantial conformance with the approved plot plan, floor plans and elevations, except as noted in the following conditions.
2. Anything not specifically approved by this Modification Permit is prohibited and must be addressed in a separate and subsequent Modification Permit review.
3. If any of the existing public improvements surrounding the site is damaged by private work, new concrete sidewalk, curb and gutter, street pavement, and other public improvements will be required by the City at the time of private construction completion. Said determination and the extent of the repair work shall be made at the discretion of the Public Works inspector.
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. The caissons and steel shoring for the development shall maintain a minimum setback of 6 inches to the side property lines measured from the face of the laggings (vertical face).
6. The plans shall be revised to reflect the additional 1 foot setback of the adjacent structure on the neighboring property.
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 prior to commencement of the construction.
9. The proposed shoring and caisson system shall not impact public utilities in the vicinity.
10. Dewater system shall meet current water quality standards.
11. A copy of this approval letter shall be incorporated into the Building Department and field sets of plans prior to issuance of the building permits.
12. Coastal Commission approval shall be obtained prior to issuance of the building permits and a copy of the approval letter from Coastal Commission shall be incorporated into the Building Department and field sets of plans.

13. A Parcel Map or Certificate of Compliance shall be completed prior to issuance of building permits.
14. No structural elements (caissons, shoring, etc.) are permitted within the public right of way.
15. All work performed within the public right-of-way shall be reviewed and approved by the Public Works Department under an encroachment permit/agreement, if required.
16. This approval shall expire unless exercised within 24 months from the approval date, as specified in Section 20.93.050 (A) of the Newport Beach Municipal Code. Prior to the expiration date of this approval, an extension may be approved in accordance with Section 20.93.050 (B) of the Newport Beach Municipal Code. Requests for an extension must be in writing.

APPEAL PERIOD

The Zoning Administrator's decision may be appealed to the Planning Commission within 14 days of the action date. A \$600.00 filing fee shall accompany any appeal filed. No building permits may be issued until the appeal period has expired. **A copy of the approval letter shall be incorporated into the Building Department set of plans prior to issuance of the building permits or issuance of revised plans.**

By: 
Zoning Administrator Javier S. Garcia, AICP

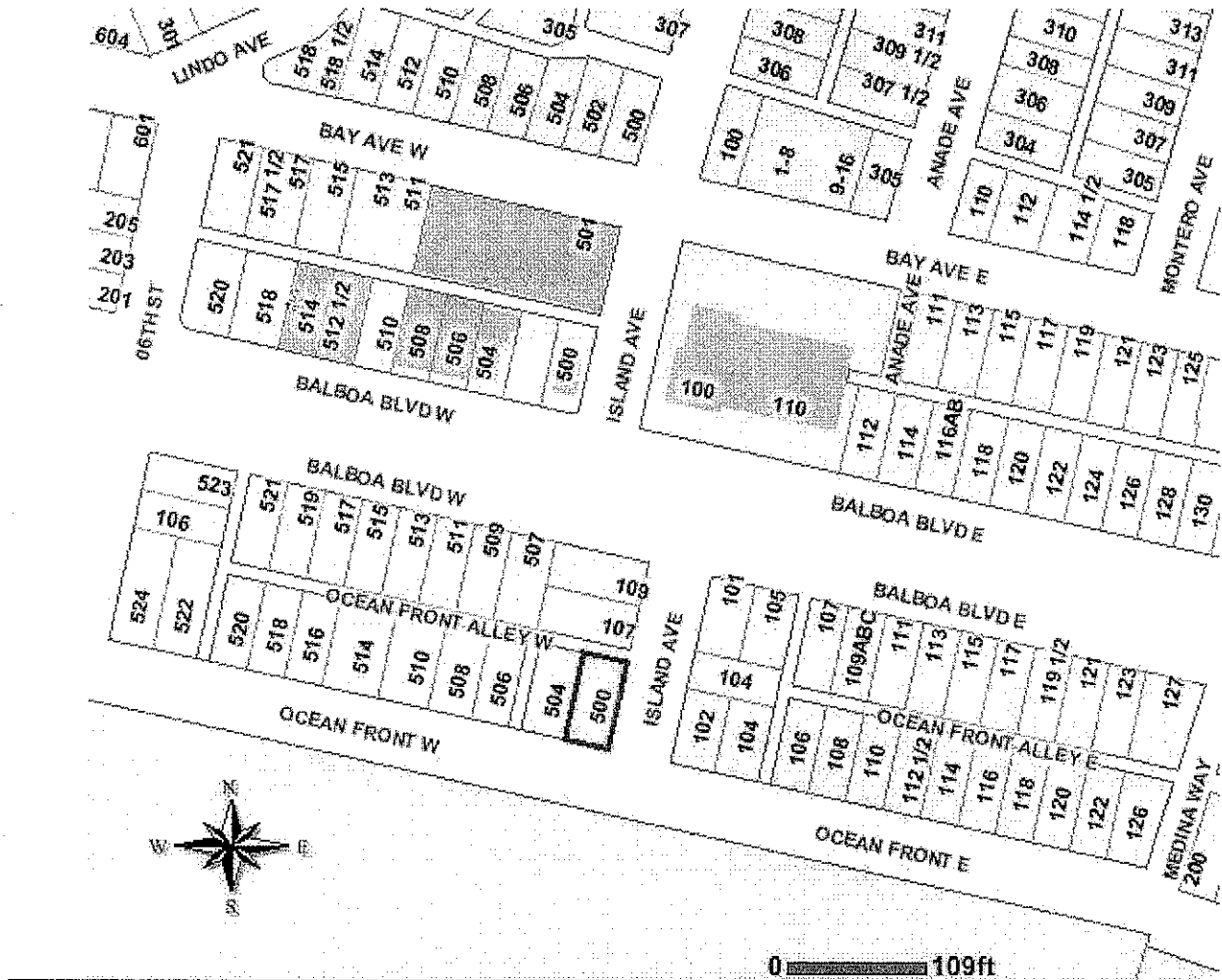
JSG:mn/rm

Attachments: Vicinity Map

Appeared in Opposition: None

Appeared in Support: None

VICINITY MAP



Modification Permit No. MD2008-016
PA2008-034

500 West Ocean Front