

## CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA  
245 W. BROADWAY, STE. 380  
P.O. BOX 1450  
LONG BEACH, CA 90802-4416  
(310) 590-5071

Filed: 1/27/97  
49th Day: 3/17/97  
180th Day: 7/26/97  
Staff: MV-LB\\  
Staff Report: 2/20/97  
Hearing Date: 3/11-14/97  
Commission Action:

STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: 5-84-514 A2

APPLICANT: Newport Landing Restaurant

AGENT: David Salisbury & Doug Salisbury

PROJECT LOCATION: 503 E. Edgewater, Balboa (Newport Beach), Orange County

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED:

Conversion of partial two-story commercial building to a two-story restaurant, cocktail lounge, and oyster bar.

DESCRIPTION OF FIRST AMENDMENT:

Demolition and reconstruction of fish market and deletion of last sentence of special condition no. 5.

DESCRIPTION OF PROPOSED AMENDMENT:

Request to allow outdoor dining service within the existing 693 square foot patio area. And, in addition, to allow dining in second floor area previously restricted by special condition 2 of 5-84-514 due to lack of parking.

LOCAL APPROVALS RECEIVED:

City of Newport Beach Outdoor Dining Permit No. 14; City of Newport Beach Encroachment Permit; City of Newport Beach Conditional Use Permit No. 3076.

SUBSTANTIVE FILE DOCUMENTS:

5-83-222 (Balboa Bayview);  
5-84-514 (Howard Properties);  
5-85-445 (Howard & Glaser);  
Coastal Development Permit 5-82-593, 5-82-593 A, and  
5-82-593 A2 (Balboa Fun Zone);  
Coastal Development Permit 5-96-200 (Belmont Brewing  
Company);  
City of Newport Beach certified Land Use Plan.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission determine that the proposed development with the proposed amendment, subject to the conditions below, is consistent with the requirements of the Coastal Act.

PROCEDURAL NOTE: The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change,
- 2) Objection is made to the Executive Director's determination of immateriality, or
- 3) the proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Admin. Code 13166.

In this case the Executive Director has determined that the proposed amendment is a material change to the project previously approved.

#### STAFF RECOMMENDATION

##### I. APPROVAL WITH CONDITIONS

The Commission hereby grants, subject to the conditions below, an amendment to the permit for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, is located between the sea and first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

##### II. SPECIAL CONDITIONS:

**NOTE:** All previous conditions of the underlying permit and first permit amendment, except as modified herein, remain effective.

Special conditions 7 and 8 are modified by this amendment as follows:

7. Prior to transmittal of permit, the applicant shall submit revised plans for the review and approval of the Executive Director. Said plans shall eliminate from the project the off-shore development of ramps and docks along the bulkhead and revise the notation on the plans from waiting to bench seating.
8. Parking required for the project shall be based on one (1) space for each 62 square feet of net public area pursuant to the special parking study dated November 7, 1984.

### III. FINDINGS AND DECLARATIONS

The Commission finds and declares:

#### A. Amendment Description

The applicant proposes to establish outdoor patio dining in conjunction with an existing restaurant and to expand dining on the second floor into an approximately 500 square foot area previously restricted by special condition 2 of coastal development permit 5-84-514 due to insufficient parking. The existing restaurant is a two story structure with 3,595 square feet of public service area (the square footage includes the approximately 500 square foot proposed dining area). The patio is a 693 square foot area surrounded by a low railing. The net public service area of the patio is 648 square feet.

The subject site fronts on Newport Harbor in the Balboa Peninsula area of the City of Newport Beach. The site is located in the vicinity of the Balboa Fun Zone, ferry landing, and Balboa Pavilion. The outdoor dining is proposed within a patio area located adjacent to the Newport Harbor bulkhead and directly in front of the existing restaurant (an 11 foot walkway between the existing restaurant and the patio will be maintained).

The area between the bulkhead and the restaurant structure is a dedicated public access easement held by the City of Newport Beach. The patio is located within the easement.

#### B. Project Background

Coastal development permit 5-84-514 was approved on January 8, 1985 and allowed the 3,576, two-story restaurant use, subject to nine special conditions. Attached is a copy of the original permit and the nine special conditions (see exhibit G). Special conditions 1, 4, 6, and 9 were met and no changes have been made or requested to them.

At the Commission's July 1985 hearing, the Commission approved coastal development permit 5-85-445 (Howard and Glaser). The commercial portion of the 5-85-445 development was located on the site of the parking used to serve the development approved under 5-84-514. However, the project also included construction of a 4 level, 237 space parking structure. At the time the development proposed under coastal development permit 5-84-514 was approved, the project at the site of coastal development permit 5-85-445 was anticipated. The parking for 5-84-514 was expected to be temporary until the parking structure was constructed. The existing parking that serves Newport Landing restaurant (5-84-514) is provided in the parking structure built pursuant to coastal development permit 5-85-445.

Special conditions of both 5-84-514 and 5-85-445 required that the applicant record an offer to dedicate a public access easement between the proposed structures and the bulkhead. The easement area depicted on the exhibit to the staff reports and on the recorded easement document shows the area between the 5-84-514 structure and the 5-85-445 structure and the bulkhead as the easement required pursuant to the special condition of 5-84-514 and 5-85-445 (see exhibit C). A free standing structure, used then as a fish market, already existed at the time of Commission action on 5-84-514 and 5-85-445. Although

located between the proposed structure and the bulkhead, the area of the fish market structure was excluded from the easement area. The easement has been accepted by the City of Newport Beach. The City is the current holder of the easement.

On July 31, 1985 an immaterial amendment to coastal development permit 5-84-514 was issued. The amendment allowed the demolition and reconstruction of the existing fish market structure. The fish market structure was located adjacent to the bulkhead in the area of the public access easement. The amendment further allowed the fish market to be relocated to the north end of the easement adjacent to Adams Street. The fish market structure was relocated pursuant to the amendment. In addition, the amendment deleted the last sentence of special condition 5 of the underlying permit. Special condition 5 required the recordation of an offer to dedicate a public access easement. The last sentence of special condition 5, which was deleted by the amendment, stated: "Such easement shall not preclude the serving of food or drink to the public in the outdoor patio area so long as additional parking is provided, to the satisfaction of the Executive Director, based on a parking standard of one (1) space for each 62 square feet of net public area."

Following is a clarification of the status of each of the original special conditions of coastal development permit 5-84-514 that have been modified in the past or are requested to be modified pursuant to the subject amendment request.

#### Special Condition 2

Special condition 2 prohibited changing any uses within the restaurant without Coastal Commission approval. This special condition applied specifically to an approximately 500 (actually 439) square foot private dining area and adjoining deck on the second floor. The 500 square foot area was to remain closed due to insufficient parking available at the time the permit was originally approved. The subject amendment request would allow dining within the second floor area.

#### Special Condition 3

Special condition 3 required the applicant to purchase from the City twenty-five (25) in-lieu parking certificates as long as tandem parking spaces were necessary to meet the parking required pursuant to coastal development permit 5-84-514. In 1989 the applicant demonstrated that tandem spaces were no longer necessary to meet the project's parking demand. Consequently, the applicant was released from the requirement to purchase in-lieu parking certificates and they are not required now. (See Exhibit D).

#### Special Condition 5

Special Condition 5 required the applicant to record an offer to dedicate an easement for public access and passive recreational use along the promenade. The easement included all the area, except the area of the fish market structure, between the bulkhead and the proposed project. The offer to dedicate the easement was accepted by the City of Newport Beach and the City is the current holder of the easement.

Special condition 5 also originally stated that the "easement shall not preclude the serving of food or drink to the public in the outdoor patio area so long as additional parking is provided, to the satisfaction of the Executive Director, based on a parking standard of one (1) space for each 62 square feet of net public area." The patio itself existed at the time the Commission acted on the original permit.

The first amendment to 5-84-514 affected special condition 5 in two ways. First, it deleted the above language regarding serving of food and drink within the patio area. Second, it allowed the relocation of the fish market structure.

The deleted language was originally inserted into the special condition at the request of the applicant. It's subsequent deletion was effected via the first amendment request. Based on review of the hearing tape from the Commission's January 8, 1985 hearing, the Commission discussed at length the appropriate amount of parking for the project, but did not specifically discuss the possibility of future restaurant dining within the patio area. Because the first amendment was an immaterial amendment, there is no record of Commission discussion on the amendment regarding patio dining. Therefore, the Commission has not previously indicated whether dining on the patio is consistent with the Chapter 3 policies of the Coastal Act. That is to be determined at this time, under this second amendment request.

#### Special Condition 7

Special condition 7 required revised plans indicating, among other things, that the patio area be labeled patio "seating" rather than patio "dining". The proposed amendment would change the use of the patio from general public use to restaurant dining. The language of special condition 7 has been modified to reflect the change in use within the patio area.

#### Special Condition 8

Special condition 8 describes the maximum parking that can be required for the project. This amendment request modifies the previously approved project by expanding the restaurant use. The parking demand is based on the square footage of the public service area of the restaurant. Since the proposed amendment would increase the public service area of the restaurant, the maximum parking determined for the previous project no longer applies. In addition, special condition 8 refers to the sportfishing and marina uses. These uses are no longer a part of the restaurant project. The language of special condition 8 has been modified to reflect this.

#### C. Public Access & Recreation

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

1. Use

The Coastal Act requires that access be maximized. An offer to dedicate a public access easement was required as a condition of approval of coastal development permit 5-84-514. The offer to dedicate the public access easement was accepted by the City of Newport Beach. The City is the current holder of the easement. The outdoor dining is proposed on an existing underutilized patio located within the public access easement. The City has determined that the proposed dining is consistent with the public access easement. The patio is located adjacent to the bulkhead. The bulkhead abuts Newport Harbor. The Commission must consider whether the proposed patio dining within the easement will result in adverse impacts to public access.

The proposed patio dining will not preclude all public use of the dedicated access area. It appears the proposed dining may not reduce current public use of the easement. The patio that exists in the easement is raised 3 feet from the ground, and is surrounded by a railing. A visit by Commission staff suggests that the public does not cross the patio. An existing eleven foot clear walkway between the existing restaurant building and the patio area will remain open. In addition, within the same easement area, immediately to the north, an approximately five foot wide walkway exists between the fish market structure and the bulkhead.

Public access will remain within the adjacent and overlapping easement area immediately east of the patio dining area (see exhibit C). Within the area immediately east of the patio, the public will still be able to stroll along the bulkhead and tables and chairs are available for general public use. Furthermore, an unobstructed City sidewalk extends from the Balboa Pavilion, through the subject site, to the Newport Harbor Yacht Club at 7th Street, a distance of approximately three quarters of a mile. West of Adams Street (immediately west of the subject site), continuing to 7th Street, the sidewalk adjoins the bulkhead, allowing pedestrians unobstructed views of the harbor.

The subject site is located on the opposite side of the ferry landing from the Fun Zone. Both the Fun Zone and the subject site and nearby development offer numerous visitor serving amenities including restaurants, fast food, arcade games, carnival type rides (including the landmark Ferris wheel), harbor tours, boat rentals, fishing charters, and souvenir shops. The nature of the development in this area is more intense than along the rest of the walkway along the bulkhead.

In this more intense area some existing obstructions prevent the general public from strolling immediately adjacent to the bulkhead along the entire public access easement. These obstructions include a harbor cruise ticket booth and the Ferris wheel. Even so, ample access exists in the easement area.

It is appropriate to concentrate the more intense development in the Fun Zone vicinity. The obstructions that exist in this area all offer visitor serving uses and enhance a specific type of visitor use. In the case of the proposed project, a unique visitor serving amenity, outdoor harborside dining, will be provided. Further, the City of Newport Beach, the holder of the public access easement, endorses the proposed patio dining.

The proposed development will enhance visitor use of the area. Ample pedestrian use and unobstructed views will remain available to the general public after the project is developed. Therefore, the Commission finds that the proposed project is consistent with Section 30210 of the Coastal Act regarding public access.

## 2. Parking

Section 30252(4) of the Coastal Act states:

The location and amount of new development should maintain and enhance public access to the coast by (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation.

The Commission's adopted Regional Interpretive Guidelines for Orange County recommend a parking ratio for restaurant use of one space for every 50 square feet of public service area. However, at the time the Commission considered the original permit, the applicant had prepared a site specific parking study for the proposed restaurant.

The parking study indicated that for many of the restaurant patrons, the restaurant would not be the only stop of the trip. Many patrons were expected to combine the restaurant visit with one or more of the following uses: a boat tour, strolling, shopping, bicycling, skating, fishing, or other uses available in the area. In addition, the study found that groups of people would be expected to arrive in the same car. Also, because of the restaurant's location on the Balboa Peninsula, many patrons were expected to walk or bicycle from their nearby homes. Based on these considerations, the site specific parking study found that the appropriate parking demand for the restaurant was one parking space for every 62 square feet of public service area.

In addition, the previous use of the building was also a restaurant. The former restaurant did not provide any parking. The proposed restaurant's parking would provide more parking than the former restaurant, thereby decreasing parking deficiency. Further, the Commission considered the fact that coastal development permit 5-83-222, which was located adjacent to and in some areas overlapping the subject site, was a much more intense project with less parking. (Coastal development permit 5-83-222 was never activated and pursuant to special condition 1 of 5-84-514 all rights were extinguished). For all these reasons the Commission found that the parking study's recommended ratio of one space for every 62 square feet of public service area was appropriate. Special condition 8 of coastal development permit 5-84-514 states that parking for the project shall be provided at one space per 62 square feet.

The original permit was approved with 65 parking spaces. The 65 spaces served the 3,156 square feet of the restaurant public service area, and the adjacent marina and sportfishing use. In addition to the 65 parking spaces, the applicant was required to purchase 25 in-lieu parking certificates from the City. Pursuant to special condition 3, the in-lieu certificates were required as long as tandem spaces were necessary to provide the required parking. In 1989, the applicant demonstrated that tandem spaces were no longer used. Consequently, the applicant was released from the requirement of purchasing in-lieu certificates (see exhibit D).

Under the Commission's original approval of 5-84-514 parking credit was given for four boat slips adjacent to the site. The boat slips were required to be available during business hours for use by restaurant customers. The boat slips were not to be available on a long term basis. The four boat slips remain available for transient use by the restaurant patrons.

The restaurant use is no longer connected with the marina/sport fishing use. Parking for the marina is now provided by the current marina operator, Fun Zone Boat Company, Inc. (see exhibit F). The applicant is party to a long term parking lease that provides 75 parking spaces exclusively for the restaurant use in the parking structure immediately behind the restaurant. The signed and recorded long term parking lease is valid through October 31, 2051.

The parking demand generated by the existing restaurant, the addition of the 439 square foot second floor area, and the proposed patio dining, based on the Commission approved parking ratio of one space for every 62 square feet of public service area, is 69 spaces. (3595 square feet of existing restaurant public service area:  $3595/62 = 58$  spaces; 648 square feet of public service area within the proposed patio dining:  $648/62 = 11$  spaces; total = 69 spaces).

The net public service area of the existing restaurant includes the 439 square foot second floor dining area that was to be closed until adequate parking could be provided. With the long term parking lease assuring provision of 75 spaces, adequate parking will be provided for all restaurant uses including the proposed expansion.

Therefore, for the reasons stated above, the Commission finds that the proposed project is consistent with Section 30252(4) of the Coastal Act which requires that adequate parking be provided to serve new development.

#### D. Local Coastal Program

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Development Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with the Chapter 3 policies of the Coastal Act.

The Newport Beach Land Use Plan was certified on May 19, 1982. The project as amended and conditioned is consistent with the Chapter 3 policies of the Coastal Act. The proposed amended development as conditioned will not prejudice the City's ability to prepare a Local Coastal Program for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

#### E. California Environmental Quality Act

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.



Coastal Development Permit Amendment  
5-84-514 A2/Newport Landing Restaurant  
Page 9

The project is located between the sea and the first public road. The project is proposed in an existing urbanized area. All utilities exist to serve the subject site. The proposed development as amended and conditioned will not have a significant impact on the environment. The proposed development as amended and conditioned will not result in adverse impacts to coastal access or resources and is consistent with the Chapter 3 policies of the Coastal Act. The proposed project as amended and conditioned is the least environmentally damaging alternative. Therefore, the Commission finds that the proposed project is consistent with CEQA and the policies of the Coastal Act.

8435F



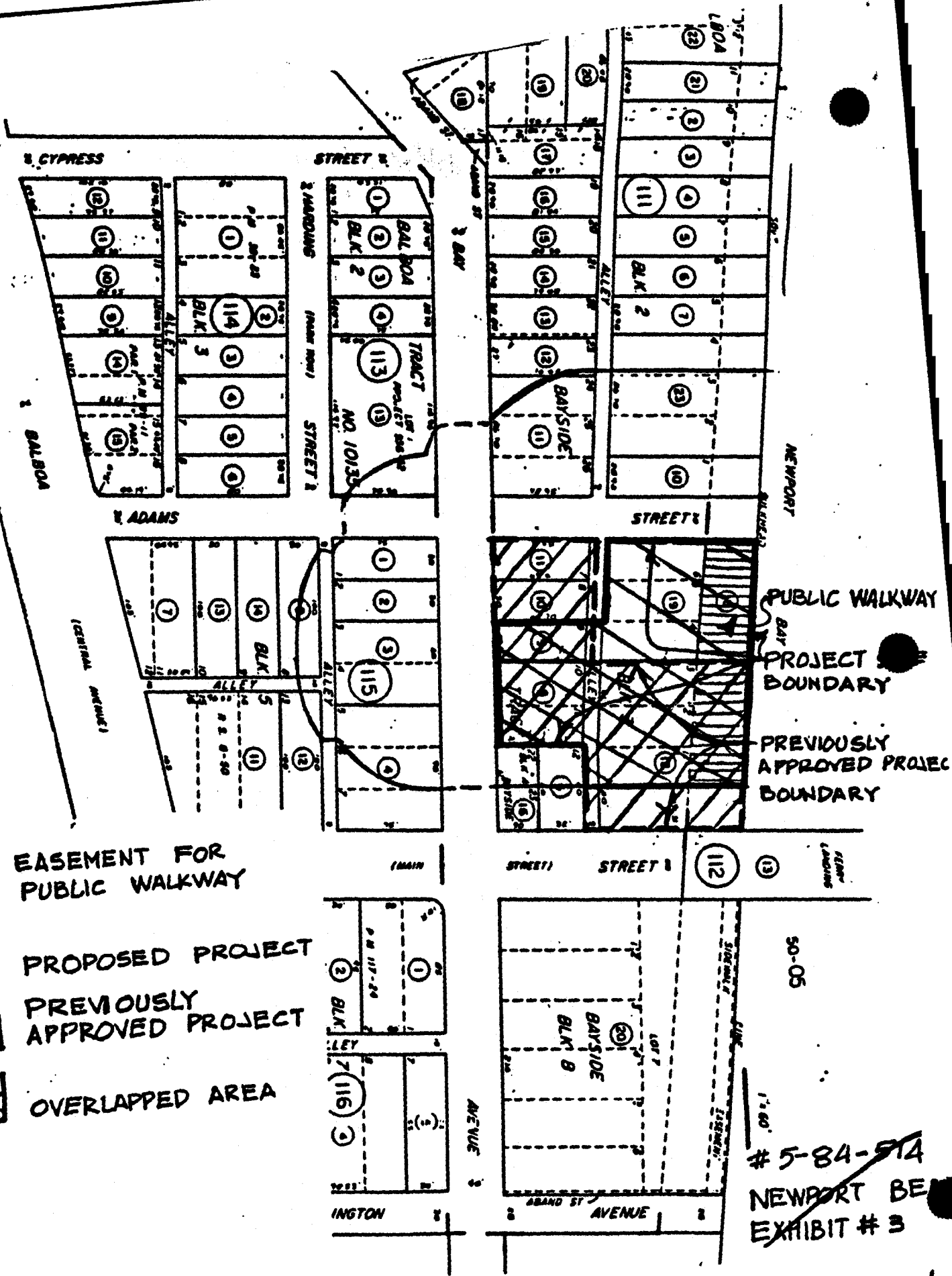
Project Site





EXHIBIT NO. A
APPLICATION NO. 5-84-514 A2
VICINITY MAP
California Coastal Commission

# VICINITY MAP



5-84-514



-  EASEMENT FOR PUBLIC WALKWAY
-  PROPOSED PROJECT
-  PREVIOUSLY APPROVED PROJECT
-  OVERLAPPED AREA

# 5-84-514  
NEWPORT BE  
EXHIBIT # 3

## CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA

245 WEST BROADWAY, SUITE 380

LONG BEACH, CA 90802

590-5071



October 13, 1989

Finance Director  
City of Newport Beach  
3300 Newport Blvd.  
Newport Beach, CA. 92663

Re: In-lieu parking spaces for Invoice No. 88-0277

Dear Sir,

Mr. Jerry King has contacted this office regarding the in-lieu parking fees for a project that the Coastal Commission has issued a permit for and required in-lieu parking fees as a condition of approval. The special condition of permit number 5-84-514 states that "...said parking certificates will be purchased annually as long as tandem spaces are required to meet the parking required pursuant to this permit." From the evidence submitted to staff, the continuing requirement for in-lieu parking fees does not appear to be necessary as the tandem spaces are no longer being used. If you have any further questions regarding this matter please call me at (213) 590-5071.

Sincerely,

A handwritten signature in cursive script that reads "Vicky Komie".

Vicky Komie  
Staff Analyst

22670

5-84-514 A2

Letter Regarding  
In-Lieu  
Certificates

Exhibit D



# CITY OF NEWPORT BEACH

PUBLIC WORKS DEPARTMENT  
P.O. BOX 1768, NEWPORT BEACH, CA 92658-8915  
(714) 644-3311

November 19, 1996

Meg Vaughn  
Staff Analyst  
California Coastal Commission  
South Coast Area  
245 W. Broadway, Suite 380  
P.O. Box 1450  
Long Beach, CA 90802-4416

RECEIVED

NOV 22 1996

CALIFORNIA  
COASTAL COMMISSION  
SOUTH COAST DISTRICT

SUBJECT: Coastal Development Permit Application No. 5-84-514 A

Dear Ms. Vaughn,

This letter is in response to your letter to Dave Salisbury dated October 29, 1996, regarding the subject application for outside dining (see attachment).

The City of Newport Beach supports this project but does not feel that it needs to be a co-applicant.

If you have any questions or need additional information, please feel free to call me or Dick Hoffstadt at (714) 644-3311.

Sincerely,

Richard M. Edmonston  
Transportation and Development Services Manager

cc: Jay Garcia, Planning Department

letters.1a\UP3076.din

5-84-514 A2

3300 Newport Boulevard, Newport Beach

Exhibit E



**FUN ZONE BOAT COMPANY, INC.**

600 Edgewater Place  
Balboa, California 92661  
tel: (714) 673-0240  
fax: (714) 673-8413

January 24, 1997

Attention: Joe Thompson  
Newport Landing Restaurant

Dear Mr. Thompson:

The Fun Zone Boat Company, Inc. holds 15 spots in the Edgewater Parking Structure.

Sincerely,

J.R. Handy  
President

*Marina Parking*

*Exhibit F*

5-84-514 A2

March 8, 1985

California Coastal Commission  
SOUTH COAST DISTRICT  
245 West Broadway, Suite 380  
P.O. Box 1450  
Long Beach, California 90801-1450  
(213) 590-5071

**COASTAL DEVELOPMENT PERMIT**

No. 5-84-514 do

Page 1 of 4

On January 8, 1985, the California Coastal Commission granted to

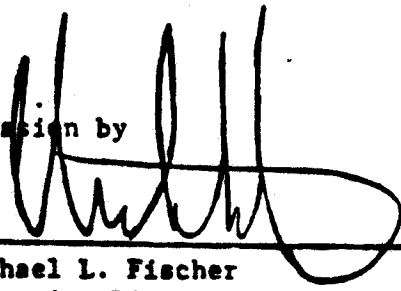
Howard Properties

this permit for the development described below, subject to the attached Standard and Special conditions.

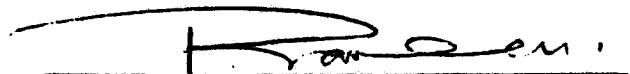
Conversion of a partial two-story, commercial building to a two-story restaurant, cocktail lounge and oyster bar with 65 parking spaces.

Site: 503 E. Edgewater, Balboa, Newport Beach

Issued on behalf of the California Coastal Commission by



Michael L. Fischer  
Executive Director  
and



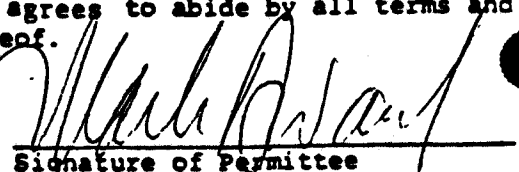
Staff Analyst

**IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE.**

**ACKNOWLEDGEMENT**

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

3-8-85  
Date

  
Signature of Permittee

5-84-514 A2

Coast 11: 7/81

Exhibit 6 1/4



STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. The permit is not valid and construction shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If construction has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Construction shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All construction must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS:

Conditions:

This permit is subject to the following Special

1. Prior to transmittal of a Coastal Development permit, the applicant shall provide evidence to the Executive Director that no development will occur pursuant to Permit No. 5-83-222 (Balboa Bayview), and that all rights obtained pursuant to Permit No. 5-83-222 have been extinguished. The form and content of such required evidence shall be subject to the approval of the Executive Director.
2. Prior to transmittal of a Coastal permit, the applicant shall submit to the Executive Director an executed and acknowledged deed restriction for recordation free of prior liens and encumbrances, except tax liens, that binds the applicant and all successors in interest to the development property. The form and content of the deed restriction shall be subject to the review and approval of the Executive Director. The deed restriction shall provide that the applicant or any successors in interest will not modify any allocation of uses in the approved structure without the approval of the Coastal Commission. Specifically, the applicant shall not open without Coastal Commission approval approximately 500-square-foot private dining area and adjoining deck on the second floor for serving food and drink.
3. Prior to the transmittal of a permit, the applicant shall submit evidence for Executive Director's approval of purchase of twenty-five (25) in-lieu parking certificates from the City of Newport Beach on an annual basis. The form and content of

such evidence shall be subject to the approval of the Executive Director and shall indicate that said parking certificates will be purchased annually as long as tandem spaces are required to meet the parking required pursuant to this permit.

4. By acceptance of this permit, the applicant agrees that the approved restaurant will not commence operation until all 65 parking spaces are constructed and available for use by patrons, employees of the restaurant, and other existing uses.
5. Lateral Access. Prior to transmittal of permit, the Executive Director shall certify in writing that the following condition has been satisfied. The applicant shall execute and record a document, in a form and content approved in writing by the Executive Director of the Commission, irrevocably offering to dedicate an easement for public access and passive recreational use along the promenade, to a public agency or a private association approved by the Executive Director. The document shall also restrict the applicant from interfering with present use by the public of the area subject to the easement prior to acceptance of the offer. Such easement shall include all area, except the existing fish market structure, between the bulkhead and the proposed project, as shown in Exhibit 3. The document shall include that the applicant shall repair and maintain the area in a safe condition. Such easement shall be recorded free of prior liens except for tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed.

The offer shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner. The offer of dedication shall be irrevocable for a period of 21 years, such period running from the date of recording. Such easement shall not preclude the serving of food or drink to the public in the outdoor patio area so long as additional parking is provided, to the satisfaction of the Executive Director, based on a parking standard of one (1) space for each 62 square feet of net public area.

6. Within 12 months of occupancy of the project, the applicant shall submit landscaping plans for the review and approval of the Executive Director. Said plans shall incorporate landscape elements, e.g., public amenities, such as benches and drinking fountains, etc., along the bulkhead and within the easement for public lateral access and plant materials which are sensitive to the established character of the adjacent areas, namely with the character of Main Street. The applicant shall complete installation of landscaping within the same period and also provide evidence that the said landscaping has been bonded for through the City of Newport Beach.

7. Prior to transmittal of permit, the applicant shall submit revised plans for the review and approval of the Executive Director. Said plans shall eliminate from the project the off-shore development of ramps and docks along the bulkhead and revise the notation on the plans from waiting to bench seating; and patio dining to patio seating.
8. Parking required for the project shall be based on one (1) space for each 62 square feet of net public area pursuant to the special parking study dated November 7, 1984. In no event shall more than 73 spaces be required for the project use, including parking for the sportfishing operations and the Fun Zone Marina. The applicant will be permitted to reduce square footage occupancy of the building in order to meet 65 required on-site parking spaces.
9. In calculation of parking requirements for the project, 4 boat slips shall be given credit for 4 parking spaces as long as the boat slips are available during all business hours (are not leased for other uses) for transient restaurant customers' use only.

## CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA  
245 WEST BROADWAY, SUITE 380  
LONG BEACH, CA 90802  
(213) 590-5071

5-84-514 A PG:lkj  
July 31, 1985



## IMMATERIAL AMENDMENT TO PERMIT

DATE: July 31, 1985

Dear Howard Properties:

Permit Number 5-84-514 issued to Howard Properties  
has been amended as follows:

Original Permit: (Approved January 8, 1985) Conversion of a partial two-story, commercial building to a two-story restaurant, cocktail lounge and oyster bar with 65 parking spaces.

\*\*\*Amendment: Demolish an existing fish market and reconstruct the same and enclose it per the County Health Department's conditions, on the west end of the public area; thus, combining the smaller public area with the larger one. The request includes deletion of the last sentence of condition no. 5 to prohibit food service in the public area.

Location: 503 E. Edgewater, Balboa, Newport Beach, Orange County  
~~This amendment~~ was determined by the Executive Director to be immaterial, was duly noticed, and no objections were received.


This amendment will become effective upon return of a signed copy of this form to the District Office. The remaining conditions, if any, are still in effect.

Sincerely,

Tom Crandall  
South Coast Director

Attachment: Permit

cc: File  
Applicant  
Representative  
Local Building Department

  
Staff Analyst  
Praveen Gupta

\_\_\_\_\_  
Applicant's Signature

Exhibit H  
5-84-514 A2  
First Amendment