

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 Oceangate, 10th Floor  
Long Beach, CA 90802-4302  
(562) 590-5071

Th 18g

Filed: 3/9/98  
49th Day: 4/27/98  
180th Day: 9/5/98  
Staff: CP-LB  
Staff Report: 4/24/98  
Hearing Date: May 14, 1998  
Commission Action:



STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 5-98-071  
APPLICANTS: C. Grant Mitchell, Wm. B. Watts & Morgan McBain  
AGENT: Alain Bally Associates  
PROJECT LOCATION: 1009 Abbot Kinney Boulevard, Venice, City of Los Angeles, Los Angeles County.  
PROJECT DESCRIPTION: Restaurant with 690 square foot dining area on ground floor of existing two-story structure.  
Lot Area 4,882 sq. ft.  
Building Coverage 1,984 sq. ft.  
Pavement Coverage 1,018 sq. ft.  
Landscape Coverage 1,880 sq. ft.  
Parking Spaces 0  
Zoning C2-1: Commercial  
Ht abv fin grade 25 feet

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends approval of the proposed project with a special condition limiting the permitted use of the site. Approval of this application will legalize a use that has existed on the site for several years without the benefit of a Coastal Development Permit. The applicants are the new owners and they are in agreement with the staff recommendation.

LOCAL APPROVAL RECEIVED: City of Los Angeles Approval in Concept, 3/6/98.

SUBSTANTIVE FILE DOCUMENTS:

1. California Coastal Commission Regional Interpretive Guidelines for Los Angeles County, 10/14/80.
2. Coastal Development Permit application 5-83-299 (Hiller).

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California 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, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions

1. Notice of Receipt and Acknowledgment The permit is not valid and development 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 development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development 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 development 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 project during its development, 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.

### III. Special Condition

#### 1. Permitted Use

Prior to issuance of the permit, the applicants shall record a deed restriction on the property, in a form and content approved by the Executive Director, which states that: a) the permitted use of the ground floor of the structure located at 1009 Abbot Kinney Boulevard is limited to a restaurant with 690 square feet of customer dining area; b) any intensification or change in use of the structure, including any increase in customer service area, will require an amendment to the permit or a new Coastal Development Permit; and c) any application that proposes an increase in customer service area shall be accompanied by a parking plan that provides off-street parking for customers.

This deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission approved amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is required.

### IV. Findings and Declarations

The Commission hereby finds and declares:

#### A. Project Description

The applicants have applied for a Coastal Development Permit for a sit-down restaurant in an existing two-story building in North Venice (Exhibit #1). The proposed restaurant occupies the entire ground floor of the building which was built prior to 1969 (probably prior to 1935). Office uses occupy the top floor of the building. The proposed 690 square foot dining area accommodates a seating capacity of 46 diners (Exhibit #3). The site does not provide any on-site parking, and no off-site parking is proposed. The public beach and Ocean Front Walk are located about one-half mile west of the site (Exhibit #1).

This is an after-the-fact permit application to permit an existing restaurant use. According to the current owners and applicants, the restaurant has existed on the site since 1985. They have submitted City records to support their claim that the restaurant was already an established use when they purchased the property in November of 1996.

The restaurant which exists at the site was brought to the Commission staff's attention by a neighbor in February, 1998. This application is the result of the ensuing investigation into an alleged violation involving the unpermitted change in intensity of use of a commercial building. The following section of the staff report recounts the history of the site using the Commission's records and the City of Los Angeles documents supplied by the applicants.

**B. Project History**

The only Commission record for the site shows that the ground floor of the building was operated as a retail store prior to May of 1983 [see Coastal Development Permit application 5-83-299 (Hiller)]. In lieu of a permit, the Commission's Long Beach office issued an "Exemption From Obtaining Coastal Development Permit" on May 26, 1983 to change the use from a custom rug store to a bakery (Exhibit #5). There is no record of any Commission action on the site before or after 1983.

The applicants, however, have submitted copies of City of Los Angeles Building Department records that shed some light on the history of the site. The City Building Department records show that:

- In 1935: Residential uses occupied three buildings on the site.
- In 1969: A one-story single family dwelling and a two-story five-unit apartment house occupied the site. The five-unit apartment house was converted to four-units by order of the City.
- In 1971: A one-story single family dwelling on the rear of the lot was demolished, leaving only the existing two-story building.
- In 1971: The use of the existing two-story building is changed from dwelling to dwelling and retail uses.
- In 1982: A patio deck added to existing two-story building. Use of building is listed as office use.
- In 1983: June 7th change of use to a food establishment with dining capacity listed as 17. [This building permit coincides with the Commission's May 26, 1983 exemption for a bakery. The exemption states that a customer eating area is not permitted (Exhibit #5)].

All of the above-stated City Building Department records are consistent in stating that the site did not ever provide any on-site parking spaces. The City records also show that there was no restaurant use permitted on the site prior to 1983. The Commission's file indicates that the use of the structure in May of 1983 was retail [see Coastal Development Permit application 5-83-299 (Hiller)].

A restaurant was, however, established at the site at some time after May of 1983. This fact is agreed to by all parties involved in the investigation. The applicants believe that the restaurant use has occupied the site since 1985 when "LA Eats" started doing business in the storefront. City of Los Angeles tax and permit records supplied by the Office of the City Clerk support the applicants' belief by showing that:

From 5/85  
to 12/91:

A business called "LA Eats, Inc." was licensed at the site. [The City Clerk tax and permit records do not distinguish between types of businesses.]

From 6/92  
to 6/97:

A business called "Pinocchio Cafe" was licensed at the site.

City records also show that in 1993 the City of Los Angeles Planning Department approved a Conditional Use Permit for the dispensing of beer and wine for on-site consumption in conjunction with an existing 45 seat restaurant at the site (Case No. ZA 93-0780). The City, however, has no record of ever issuing a Local Coastal Development Permit for any project on the site.

The applicants state that when they purchased the property in November of 1996 it was an operating restaurant. Because the City's records documented a restaurant use at the site over several years, the applicants had no idea that there was not a valid Coastal Development Permit for the use, or that a potential violation existed at the site. They did not know that a Coastal Development Permit would be required in order for them to continue the operation of the restaurant that they had just purchased.

The applicants now propose to resolve the question of whether the restaurant use is a legal use by obtaining a Coastal Development Permit. They are not proposing to expand the restaurant seating area at this time.

### C. Public Access/Parking

One of the main goals of the Coastal Act is to protect coastal access. The Coastal Act contains following policies which protect the public's right to access the coast.

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.

One of the methods commonly used to maximize public access to the coast is to ensure that there is enough parking available for visitors of the coast. The Commission has consistently found that a direct relationship exists between the provision of adequate parking and availability of public access to the coast. Section 30252 requires that new development should maintain and enhance public access to the coast by providing adequate parking facilities.

Section 30252 of the Coastal Act states, in part:

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 proposed project involves a restaurant with a 690 square foot customer seating area (Exhibit #3). A restaurant has been operating at the site for several years. No parking has been provided in the past and no parking is proposed as part of this application.

City records show that the building on the project site was originally built as an apartment house, probably before 1935. No parking was ever provided on the site according to City records. The front of the property is occupied by the structure, and there is no way to park on the rear of the property because there is no vehicular access (Exhibit #4). There is no rear alley or side access to the rear of the property. According to the applicants, permission to cross the adjacent lots has been denied by the landowners (Exhibit #4). Therefore, there is no space for parking on the front portion of the site, and there is no way to access the rear of the property for parking. The uses on the site have historically depended entirely on public street parking.

The proposed project is located in North Venice on Abbot Kinney Boulevard (Exhibit #1). This part of Venice was developed in the early 1900's primarily as a residential area. Abbot Kinney Boulevard, then known as Washington Boulevard, was developed with a mix of residential uses and neighborhood serving retail and commercial uses. Very little on-site parking was provided for the storefronts built in the first half of the twentieth century.

Abbot Kinney Boulevard suffered from urban decay and blight in the 1960's and 70's. Vacant storefronts were the norm. In recent years, however, the street has become revitalized as many of the vacant storefronts have been filled with small businesses, cafes, boutiques and art galleries. Many of the old residential uses have been replaced by new commercial uses. Because the past pattern of development did not provide for any space for on-site parking areas, most of the changes in use have occurred without providing any additional parking. Some of the recycled uses have obtained Coastal Development Permits, many may not have.

Parking is the primary Coastal Act issue involved in the recycling of old residential uses to commercial uses and the accompanying increases in parking demand. Most of the time there is adequate parking near Abbot Kinney Boulevard for all the uses. At times, however, conflicts can arise. For instance, residents near some businesses have complained that customers and employees are using too much of the on-street parking. In addition, the influx of beach visitors on summer weekends also results in competition for on-street parking spaces. People living in automobiles on the City streets have also generated complaints.

The competition for on-street parking in the North Venice area resulted in the City recently approving a preferential parking district for residents (see Appeal A-5-VEN-97-183). The Commission denied the City's proposed North Venice preferential parking district on appeal on November 5, 1997.

Section 30252 of The Coastal Act requires that adequate parking be provided for new development. A change of use that increases the intensity of use is also required to provide adequate parking. Changes in use which increase the parking demand are generally required to provide enough parking to meet the increase in parking demand generated by the change in use. In North Venice,

where off-street parking supplies are scarce, creative parking solutions are often a necessary part of converting an old residential or retail use to a new restaurant. Off-site leased parking is the most commonly employed solution in Venice. Usually, only brand new construction projects can provide adequate on-site parking, especially if the use is a restaurant.

Walk-up and take-out food establishments are treated as different uses than restaurants with sit-down dining areas. The Coastal Commission has allowed small counter service and walk-up food service establishments to provide parking at the same rate as retail uses because of the similarity in parking demands for both uses.

An "Exemption From Obtaining Coastal Development Permit" was issued on May 26, 1983 to change a use on the project site from a custom rug store to a bakery (Exhibit #5). The exemption determined that a bakery and a retail use are equally intense uses and share similar parking demands. The bakery did not include a sit-down dining area.

The Commission's current parking standards are contained in the Regional Interpretive Guidelines for Los Angeles County, adopted by the Commission on October 14, 1980. Based on the Commission's current parking standards for retail development in the North Venice area, the ground floor of the site, with a total of 1,984 square feet of commercial area, would require 8.8 parking spaces (general retail: 1 space/225 sq. ft.) if it was a new development.

Because the well-documented retail use occupied the site prior to the Coastal Act, it is not required to provide the 8.8 parking spaces for the continuance of a retail use. In fact, the site is actually credited with a non-conforming parking credit that allows similar commercial uses to occupy the site without having to provide additional parking. If additional parking was required in order to change from a retail use to another retail use, the building would always be vacant or it would have to be demolished and rebuilt so that on-site parking could be provided.

Parking for sit-down restaurants is required at a higher rate of one space per fifty square feet of customer service area (1 space/50 sq. ft. customer service area). The proposed restaurant has 690 square feet of dining area and no waiting area or bar. The kitchen, restrooms and storage areas are not counted as customer service areas. Based on the Commission's current parking standards for restaurants in the North Venice area, 690 square feet of customer service area would require 13.8 parking spaces.

If the previously documented ground floor use is credited with a non-conforming parking credit of 8.8 parking spaces, the proposed project is short of the Commission's guideline by five parking spaces. The applicants do not propose to provide any parking.

The Commission may grant an exception to the parking guidelines in specific cases if the facts warrant it. In this case, a restaurant has been in operation at the site since 1985 (if LA Eats was a restaurant as the applicants claim). The Pinoccio Cafe occupied the site from 1992 to 1997. Although the use of on-street parking by customers of the restaurant

has reduced the availability of on-street parking for other uses, the impact on coastal access has been minor. Some parking spaces used by the customers would be used by people visiting the beach, but the impact is not great enough, in this case, to deny a permit for a restaurant that has operated for several years without incident.

The Commission, instead, will recommend that the merchants in North Venice develop a comprehensive parking plan to address the patterns of development in the area that are generating additional parking demands on the on-street parking. The on-street parking must be shared by all of the public, including the public from outside the area who visit Venice to enjoy the beach and the unique community character.

Therefore, the Commission finds that a permit for the proposed restaurant may be granted, subject to a condition that limits the use of the ground floor of the structure located at 1009 Abbot Kinney Boulevard to a restaurant with 690 square feet of customer dining area. Any intensification or change in use of the structure, including any increase in customer service area, will require an amendment to the permit or a new Coastal Development Permit, and any application that proposes an increase in customer service area shall be accompanied by a parking plan developed by the applicant that provides off-street parking for customers. Any additional impacts on public access will be analyzed at that time. The applicants shall record a deed restriction on the property with this condition prior to issuance of the permit. Only as conditioned is the proposed project consistent with the coastal access policies of the Coastal Act.

#### 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 Chapter 3 policies of the Coastal Act:

Prior to certification of the Local Coastal Program, a Coastal Development Permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200). A denial of a Coastal Development Permit on grounds it would prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200) shall be accompanied by a specific finding which sets forth the basis for such conclusion.

The City of Los Angeles has not yet developed a Local Coastal Program for the North Venice area that has been certified by the Commission. The proposed project, as conditioned, is consistent with the coastal access and other policies of the Coastal Act. Therefore, the Commission finds that approval of



the proposed development, as conditioned, will not prejudice the City's ability to prepare a Local Coastal Program consistent with the policies of Chapter 3 of the Coastal Act, as required by Section 30604(a).

E. California Environmental Quality Act

Section 13096 of the California Code of Regulations requires Commission approval of Coastal Development Permit application 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)(A) 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 effect which the activity may have on the environment.

The proposed project, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that the proposed project is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

F. Violation

Although unpermitted development and/or use of the site may have taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of this permit does not constitute a waiver of any legal action with regard to any violation of the Coastal Act that may have occurred. The Commission will act on this application without prejudice and will act on it as if none of the existing development or uses have previously occurred.



COASTAL COMMISSION

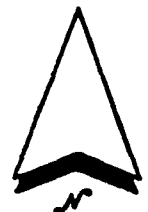
5-98-071

EXHIBIT # 1

PAGE 1 OF 1

**VICINITY MAP**

SUBJECT SITE: 1009 Abbot Kinney Boulevard  
Venice, Ca. 90291



4286 | 12  
SCALE 1" = 60'

PARCEL MAP

1994

P.M. 193-28720

RECEIVED

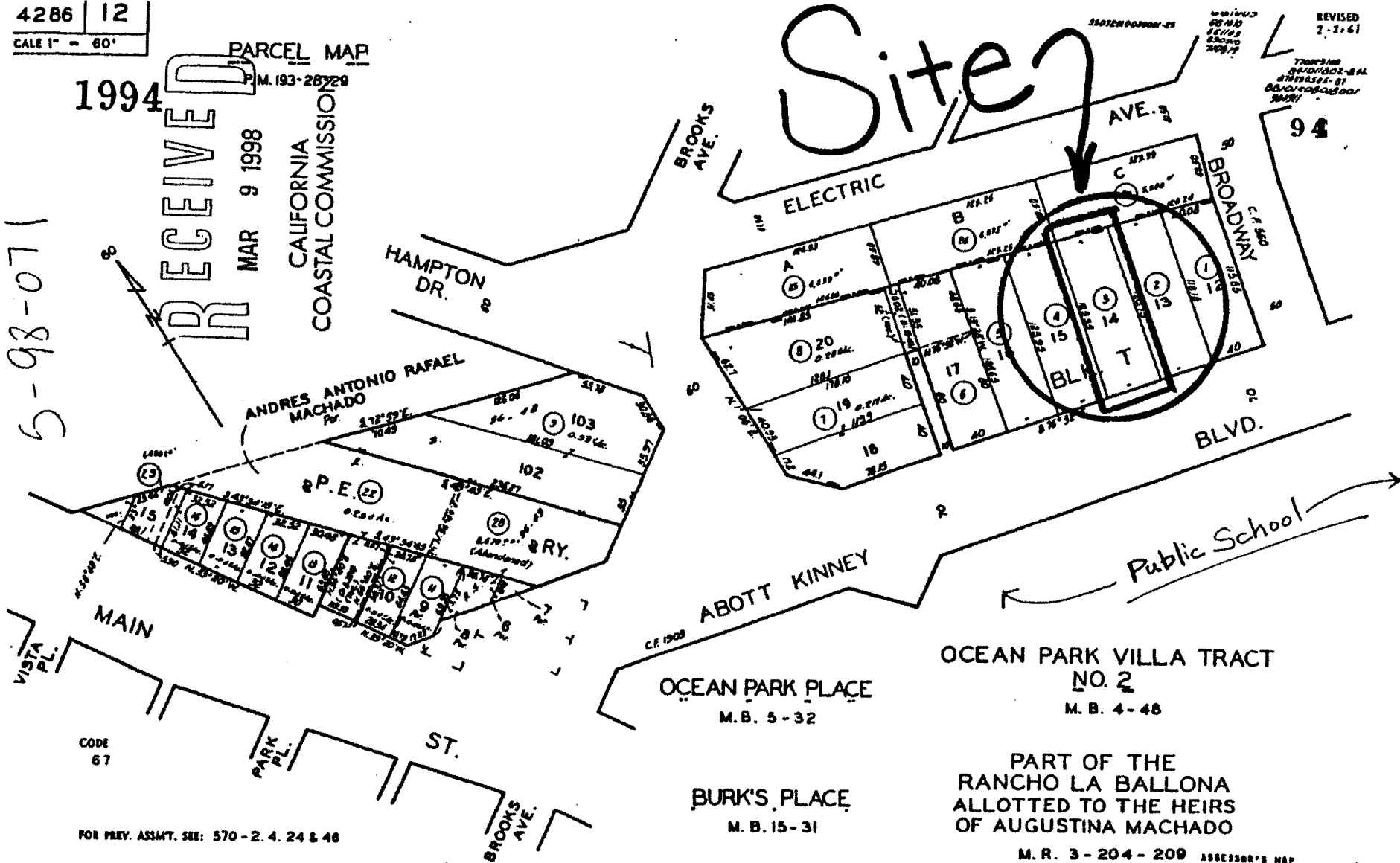
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CALIFORNIA  
COASTAL COMMISSION

REVISED 2-2-61  
TRANSFERS  
RECORDED-BAL  
47874559-81  
650100400000  
30001

94

Site



OCEAN PARK VILLA TRACT  
NO. 2  
M.B. 4-48

PART OF THE  
RANCHO LA BALLONA  
ALLOTED TO THE HEIRS  
OF AUGUSTINA MACHADO

M. R. 3-204-209 ASSessor's MAP  
COUNTY OF LOS ANGELES, CALIF.

COASTAL COMMISSION

5-98-071

EXHIBIT # 2

PAGE 1 OF 1

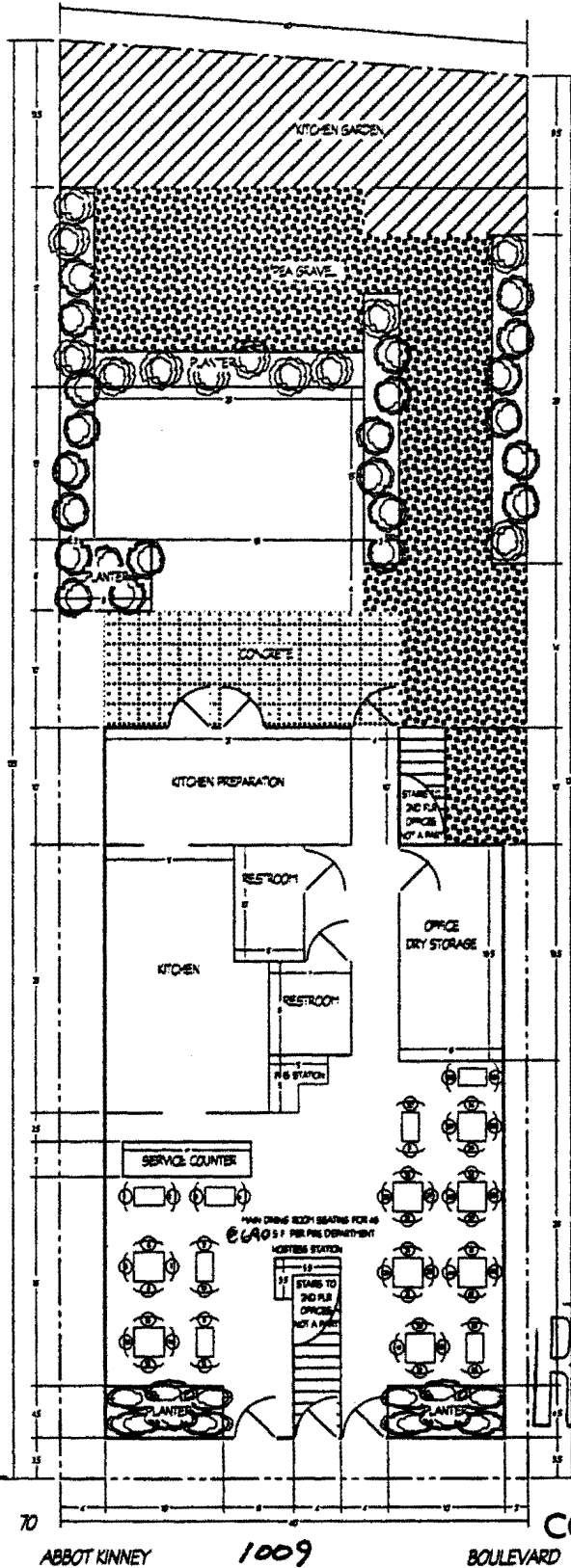
CODE  
67

FOR PREV. ASSMT. SEE: 570-2. 4. 24 & 46

T.W. REDD Property Data: Los Angeles, CA 1993-94 - Map: 4286-012

Residential Building

1007



Vacant Lot

5-98-071  
RECEIVED  
MAR 9 1998

CALIFORNIA COASTAL COMMISSION

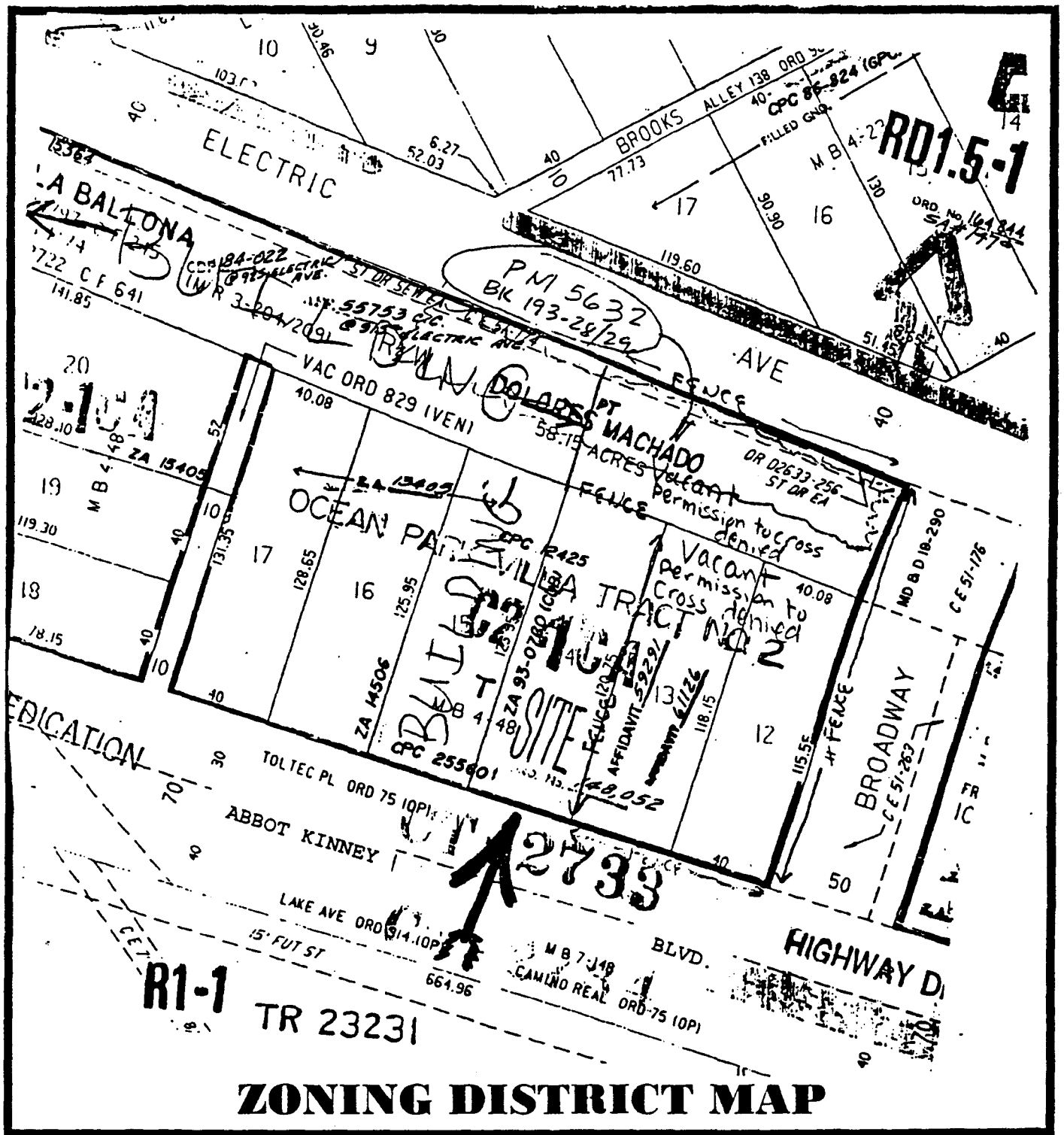
Legal Description - Lot 14 Block 7 Ocean Park Villa Tract No. 2 No 76-6-68

**SCHEMATIC PLOT PLAN / FLOOR PLAN**  
 1009 ABBOT KINNEY BOULEVARD  
 VENICE, CA 90291

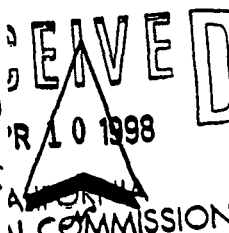
DATE: 03/05/98  
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 CHECKED BY: [illegible]  
 SCALE: 1/8" = 1'-0"  
 PROJECT NO.: [illegible]  
 PLAN NO.: [illegible]  
 SHEET NO.: [illegible]

COASTAL COMMISSION  
5-98-071

EXHIBIT # 3  
PAGE 1 OF 1



Chuck,  
 Enclosed is the site plan for 1009 Abbot Kinney showing adjacent properties. The plan identifies structures and fences and also includes denials of access across vacant properties. If you have any questions call me at 310 392-0576. Bill Watts



**SITE ADDRESS**  
 1009 ABBOT KINNEY BL  
 VENICE, CA. 90291

**PROPERTY OWNER**  
 C G MITCHELL  
 650 SAN JUAN AVE.  
 VENICE, CA. 90291

**COASTAL COMMISSION**  
 5-98-071

EXHIBIT # 4

PAGE 1 OF 1

California Coastal Commission  
South Coast District  
245 West Broadway, Suite 300  
P.O. Box 1450  
Long Beach, California 90801-1450  
(213) 990-5071

EXEMPTION FROM OBTAINING  
COASTAL DEVELOPMENT PERMIT

FILE COPY

DATE: May 26, 1983

TO: Gunter Hiller

FROM: SOUTH COAST DISTRICT OFFICE, CALIFORNIA COASTAL COMMISSION

SUBJECT: PROPOSED DEVELOPMENT AT: 1009 W. Washington Blvd  
Venice, CA

IN ACCORDANCE WITH PUBLIC RESOURCES CODE SECTION 30610 (b) OF THE CALIFORNIA COASTAL ACT OF 1976 AS AMENDED AND EFFECTIVE 1 JANUARY 1980, NO COASTAL DEVELOPMENT PERMIT IS REQUIRED FOR:

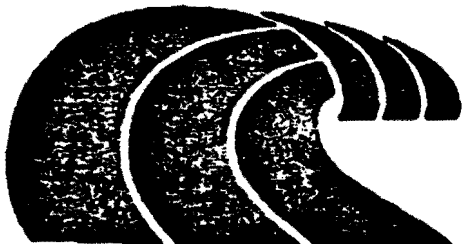
The change in use of the property from a custom rug and mural store to a bakery. Both uses are a retail use and the change does not constitute a change in intensity of use of the property. A customer eating area is not permitted under this exemption.

YOUR PERMIT APPLICATION NUMBER 5-83-299 IS HEREWITH BEING RETURNED.

SINCERELY YOURS,  
SOUTH COAST DISTRICT OFFICE

NANCY A. LUCAST, DISTRICT DIRECTOR

BY Gary L. Pierce  
Gary L. Pierce



COASTAL COMMISSION  
5-98-071

EXHIBIT # 5  
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