

CALIFORNIA COASTAL COMMISSION

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Item W17a

Filed: 4/18/08
49th Day: 06/06/08
180th Day: 10/15/08
Staff: Liliana Roman-LB
Staff Report: 8/21/08
Hearing Date: 9/10-12/08
Commission Action:

STAFF REPORT: PERMIT AMENDMENT

AMENDMENT

APPLICATION No.: 5-94-036-A3

APPLICANT: The Arches Restaurant

PROJECT LOCATION: 508 29th Street, Newport Beach, Orange County

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Conversion and expansion by 336 sq. ft. of an existing 1185 sq. ft. vacant commercial structure to a restaurant with 442 sq. ft. of public service area.

DESCRIPTION OF PREVIOUSLY APPROVED PROJECT AMENDMENT (A1):

Expansion of the existing restaurant by 368 sq. ft. of public service area (new total of 810 sq. ft. of public service area), paving and striping the vacant portion of the off-site parking location to provide an additional 11 off-site parking spaces, merger of the two lots comprising the off-site parking location, and limiting the hours of operation of the restaurant to 5:00 p.m. to 11:00 p.m., Monday through Friday (no change to Saturday and Sunday hours of operation).

DESCRIPTION OF PREVIOUSLY APPROVED PROJECT AMENDMENT (A2):

Relocation of the previously approved off-site parking location for an existing restaurant operation. The new location for the required 13 off-site parking spaces will be the Cannery Village Municipal Parking Lot through the use of in-lieu parking fees under the City's commercial in-lieu parking fee program. Delete special conditions 3, 4 and 6 of CDP 5-94-036-A1 pertaining to the previously approved off-site parking location; and revise the project description of the approved development as described in 5-94-036-A1 to reflect the correct hours and days of operation of the restaurant. The restaurant operates Tuesday through Saturday from 5:00 p.m. until 11:00 p.m. and is closed on Sundays and Mondays.

DESCRIPTION OF PROPOSED AMENDMENT: Expand hours of operation of an existing restaurant to include lunch service; proposed new operating hours are Monday through Friday 11:00 a.m. to 11:00 p.m. and Saturday through Sunday, 6:00 a.m. to 11:00 p.m. service.

LOCAL APPROVALS RECEIVED: City of Newport Beach Approval in Concept No. 0340-2008 dated 3/6/08; City of Newport Beach Use Permit No. 3611; City of Newport Beach Use Permit No. 3611 Amendment; City of Newport Beach Resolution No. 1750 adopted 1/31/08.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permit 5-94-036, 5-94-036-A1 and 5-94-036-A2; A-76-7286; Report to the Mayor and City Council, Request to Use In-Lieu Parking Fees for Aubergine Restaurant, 508 29th St. dated 4/27/98; City of Newport

Beach Coastal Land Use Plan; CDP Application 5-02-096 (Cannery Lofts) and amendments; Cannery Lofts Detailed Parking Study Demand Analysis, prepared by IBI Group, dated February 2007.

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending approval of the proposed coastal development permit amendment with two special conditions. Special Condition No. 1 clarifies which conditions of the previously approved permit and permit amendments remain in effect and Special Condition No. 2 requires signage directing patrons to the off-street Municipal Parking Lot.

LIST OF EXHIBITS:

1. Location Map
 2. Assessors Parcel Map
 3. City of Newport Beach Parking Survey for Arches Grill, 508 29th St.
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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. The Executive Director has determined that the proposed amendment is a material change to the development previously approved, therefore, pursuant to Section 13166 of the Commission's regulations, the Executive Director is referring this application to the Commission.

I. STAFF RECOMMENDATION:

Staff recommends that the Commission adopt the following resolution:

MOTION: *I move that the Commission approve the proposed amendment to Coastal Development Permit No. 5-94-036 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendment as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE A PERMIT AMENDMENT:

The Commission hereby approves the coastal development permit amendment on the ground that the development as amended and subject to conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act and 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. Approval of the permit amendment complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

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. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. 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.
5. 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 CONDITIONS

1. CONDITIONS IMPOSED UNDER ORIGINAL PERMIT

Special conditions to Coastal Development Permit Nos. 5-94-036-A3 shall supersede previous conditions to 5-94-036, 5-94-036-A1 and 5-94-036-A2.

2. PARKING MANAGEMENT AND SIGNAGE PLAN

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit, for the review and approval of the Executive Director, a Parking Management and Signage Plan. The plan shall be prepared by a qualified professional and shall include the following:

(1) Provisions, such as but not limited to, instructions/training and signage to ensure that employees and patrons of the commercial use are directed to utilize disabled person parking behind the restaurant or park in Cannery Village Municipal Parking Lot located at 420 30th Street.

The project plans shall include, at a minimum, the following components: a sample of each sign and a site plan depicting the location of each sign. Signage shall be posted that specifies the location and directions to the parking and applicable restrictions and/or fees. The signs shall be clearly visible to motorists from the frontage street and alley.

B. The permittees shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. Description of Proposed Amendment and Previously Approved Project

The subject site is located at 508 29th Street, Newport Beach, Orange County, in the neighborhood known as Cannery Village. The project originally approved by the Commission in 1994 allowed the conversion and expansion by 336 sq. ft. of an existing 1185 sq. ft. vacant commercial structure to a restaurant with 442 sq. ft. of public service area. The original coastal development permit was approved subject to special conditions that required the following: 1) revised plan identifying location of the required on-site and off-site parking spaces; 2) deed restriction providing that the required parking be situated within 500 feet of the restaurant located at 508 29th St, Newport Beach; 3) off-site parking lease or deed restriction; 4) off-site parking signage plans; 5) revised site plans indicating proposed locations, wording and size of signs on the site. The special conditions were met and the permit was been issued on November 7, 1994.

Subsequent amendments expanded the public service area to 810 sq. ft. and changed the previously approved off-site parking location for the required 13 off-site parking spaces to the Cannery Village Municipal Parking Lot located at 420 30TH Street through the use of in-lieu parking fees under the City's commercial in-lieu parking fee program and rescinded special conditions 3, 4 and 6 of the original CDP 5-94-036. The restaurant hours of operation were limited to Tuesday through Saturday from 5:00 p.m. until 11:00 p.m. and

closed Sundays and Mondays due to partly to parking concerns.

With the subject amendment request, the applicant proposes to expand the previously approved limited hours of operation to Monday through Friday 11:00 a.m. to 11:00 p.m. and Saturday through Sunday, 6:00 a.m. to 11:00 p.m.

B. Access/Parking

Section 30252 of the Coastal Act states, in relevant 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 project site is on the Balboa Peninsula, which is a major tourist area in the City of Newport Beach. Furthermore, the project is located in the Cannery Village/McFadden Square Specific Plan area, which has been designated for a mixture of retail and commercial uses to promote marine and visitor serving commercial types of development. The project site lies east of Newport Boulevard, which is a major arterial route for public access to the coastal opportunities located on the Balboa Peninsula, and is approximately one and a half blocks from the West Lido Channel, 500 yards from the public beach, and less than half a mile from the Municipal Pier (Exhibit #1). The area is historically popular with boaters as bay access is available in the vicinity. The Cannery Village area is not typically used for parking by beach visitors due to its separation by busy Newport Boulevard and distance from the sandy beach. However, on peak summer days, parking here does accommodate beach visitor overflow. The relative proximity of these public coastal access facilities to the project site gives good reason for the need for adequate parking for private development. Insufficient parking on the project site may result in users of that development taking up spaces that the public may use to access areas such as the public beach and municipal pier.

In 1994, the Commission issued CDP 5-94-036 for the conversion of an existing commercial structure to a restaurant with special conditions requiring a nearby (within 500 ft) off-site parking location to mitigate for the on-site parking deficiency. The original conditions required the off-site parking spaces to be for the exclusive use of the restaurant, signage directing patrons to off-site parking; and for a deed restriction recording this provision. CDP 5-94-036-A1 expanded the size of the restaurant, thereby increasing the parking requirement. As part of this amendment approval, the restaurant hours of operation were limited to Tuesday through Saturday from 5:00 p.m. until 11:00 p.m. and closed Sundays and Mondays, as the proposed off-site parking location was used by another commercial development during the daytime. However, as a final agreement with the off-site parking location could not be reached, CDP 5-94-036-A2 amended the permit allowing the restaurant to instead pay into the City's in-lieu parking program. Restaurant employees and patrons may use the Cannery Village Municipal Parking Lot at 420 30th Street; however, spaces are not restricted for the exclusive use of any one business, regardless of payment of in-lieu parking fees. In prior permit approvals for restaurants in

Newport Beach, the Commission has found the City's parking standards adequate, including participation in the in-lieu parking fee program.

Approval of CDP 5-94-036-A2 was contingent on the applicant's participation in the City's in-lieu parking program. The applicant is current in its annual in-lieu parking fee payments. Additionally, the City approvals for the applicant's participation in the in-lieu parking fee program did not limit the possibility of extending the restaurant's operating hours at a future date if deemed appropriate.

The City issued a temporary use permit allowing the restaurant to operate lunch service since July 19, 2007. In the City review of the restaurant's proposal to permanently change the hours of operation, the City conducted a parking survey.

City staff conducted a five-day parking availability survey on streets surrounding the restaurant where restaurant employees and patrons would likely park (70 on-street metered spaces) and the Cannery Village Municipal Parking Lot at 420 30th St. (43 metered spaces). The survey was conducted on weekdays in the off-peak season (Oct-Nov 2007). The results of the parking survey indicate that on average 34 of 70 on-street parking spaces in the vicinity of the restaurant were available throughout the days surveyed. Parking in the 30th St. Municipal Parking Lot did not reach full capacity, but did have higher use with an average of 11 out of 43 spaces available. The survey also found significantly higher parking utilization at noon (lunch time) as opposed to the morning or late afternoon hours with an average of 7 spaces available in the Municipal Parking Lot and 22 spaces available on-street. Based on these survey results, the City concluded that ample and convenient street parking is available throughout the day and the proposed change in restaurant hours of operation to include lunch service could be permanently approved without a negative impact on parking demand in the vicinity (pending Coastal Commission approval). The applicant has not provided more recent parking studies or parking counts of the area.

The conclusions reached by the City regarding parking in this matter are supported by the conclusions reached by the Commission on a recent parking-related project at 509 30th Street (5-02-093-A2/Cannery Lofts) approved by the Commission in October 2007. In that matter a parking study prepared by IBI Group, dated February 2007 documents the results of a parking survey conducted over a 101-day period between May 26, 2006 and September 4, 2006, to capture the peak summer season beginning the day before the Memorial Day Holiday weekend and ending the day after the Labor Day Holiday weekend. The survey included all unenclosed off-street parking spaces in the Cannery Lofts development on 30th Street and on-street parking spaces adjacent to the project on Villa Way, 30th Street, and Lafayette Avenue; which is immediately adjacent to the subject site on 29th Street. The data presented in that parking study showed that public on-street parking is consistently available during the peak summer months on the streets surrounding the Cannery Lofts development. In addition, that study, and two prior studies completed for the Cannery Lofts development in the past two years, each concluded that sufficient off-street and on-street parking capacity is available to meet summer peak season parking demand. The results of the studies also show that parking demand has

been consistent on a year-over-year basis and that there is an established parking demand pattern.

Additionally, the Orange County Transit Authority Bus Line #71 provides public transit service to the area with frequent stops along Newport Blvd.

Therefore, given the applicant's on-going participation in the City's parking in-lieu fee program, which support the provision of parking spaces at the Cannery Village Municipal Parking Lot, and the evidence that overflow parking could be accommodated by on-street parking without adversely impacting public access and the availability of nearby public transit, the Commission finds the proposed expansion of operating hours would be consistent with the public access policies of the Coastal Act. Furthermore, the expansion of service hours would enhance the availability of visitor serving commercial in the coastal zone.

As conditioned to provide proper signage directing restaurant patrons to the Municipal Parking Lot, the expansion of the restaurant's operating hours is consistent with the Commission's typically applied parking standards and would not adversely affect the public's ability to gain access to and/or to make use of the coast and nearby recreational facilities. Therefore, the project can be considered consistent with public access policies of the Coastal Act.

C. Local Coastal Program

Section 30604(a) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. The permit may only be used if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program which conforms to the Chapter 3 policies of the Coastal Act.

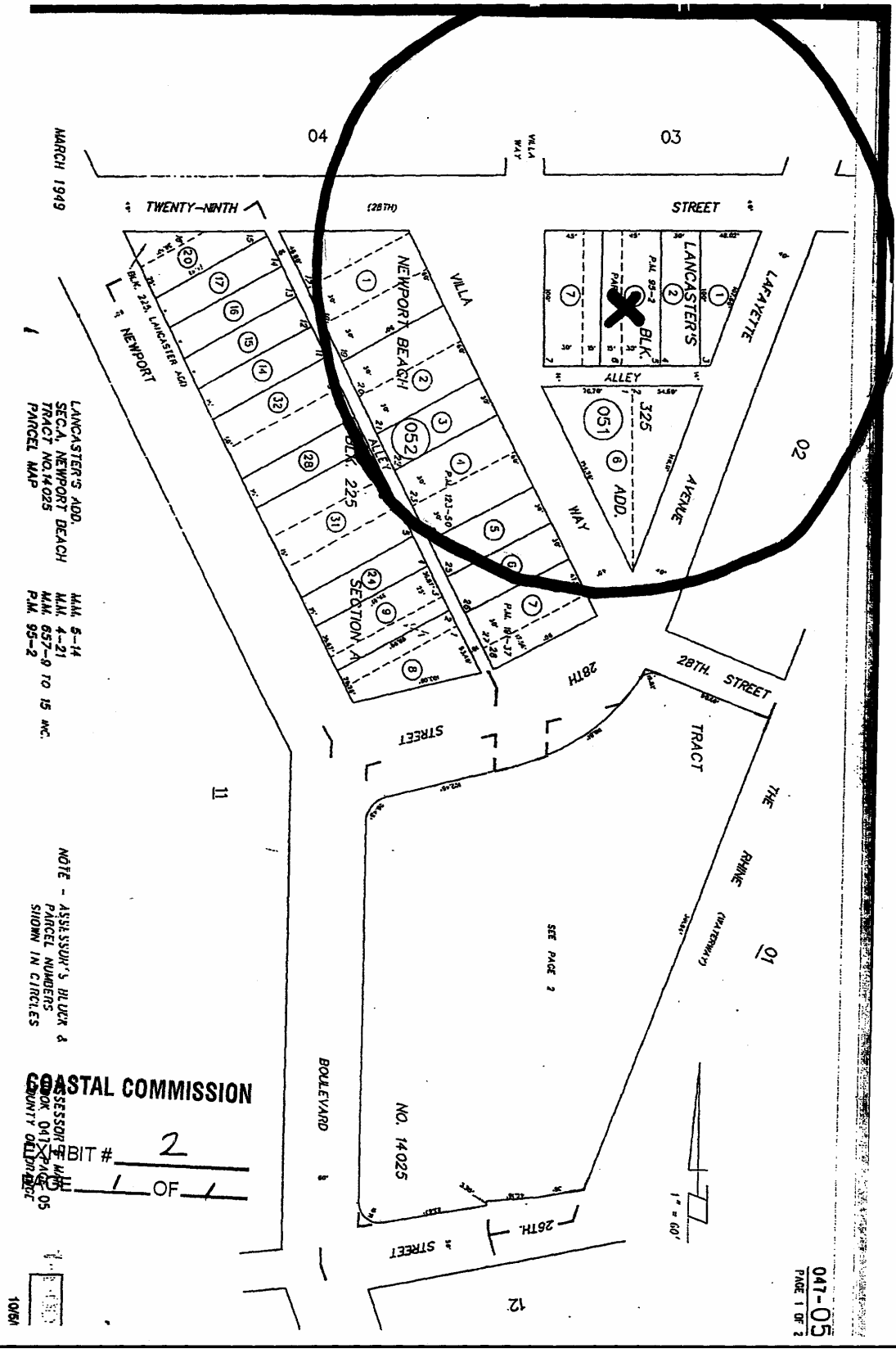
The Newport Beach Land Use Plan was effectively certified on May 19, 1982. At the October 2005 Coastal Commission Hearing, the certified LUP was updated. The City currently has no certified implementation plan. Therefore, the Commission issues coastal development permits within the City based on the development's conformance with the Chapter 3 policies of the Coastal Act. The LUP policies may be used for guidance in evaluating a development's consistency with Chapter 3. As conditioned, the proposed project is not expected to create additional adverse impacts to parking and therefore coastal access.

The proposed development is consistent with Chapter 3 policies of the Coastal Act and with the LUP. Therefore, approval of the proposed development 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).

D. California Environmental Quality Act

Section 13096(a) of Title 14 of the California Code of 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)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or further feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The City of Newport Beach Planning Division is the lead agency for California Environmental Quality Act (CEQA) purposes. On 3/6/08, the City deemed the proposed project Categorically Exempt pursuant to CEQA Guidelines. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect, which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.



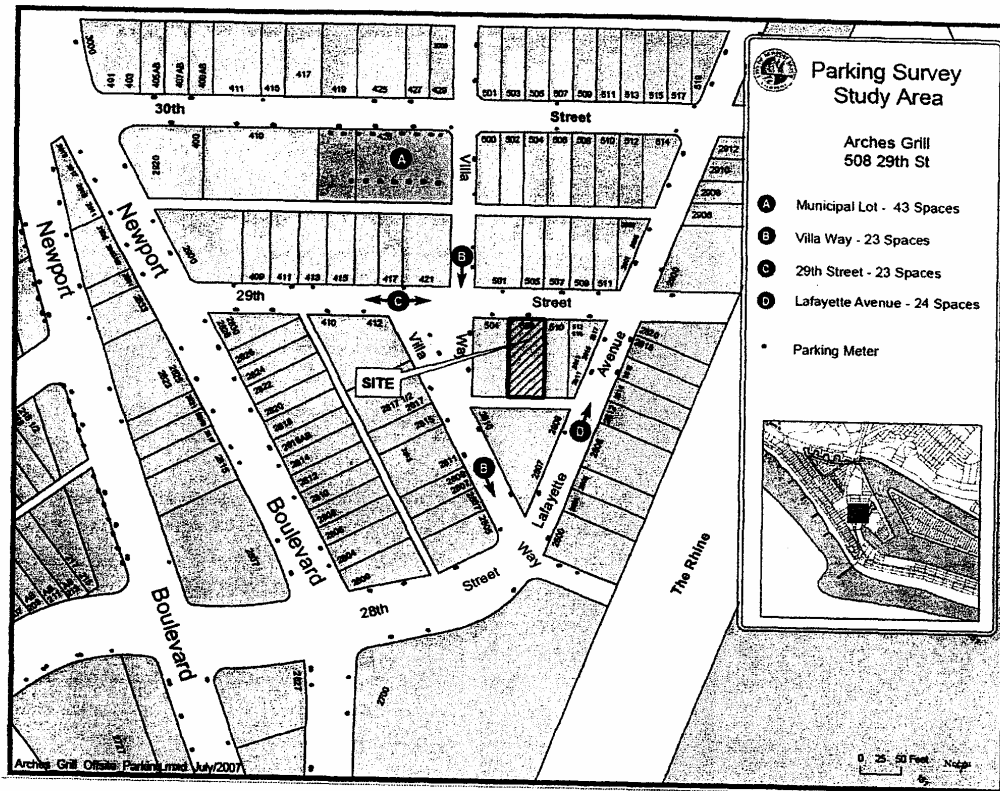
MARCH 1949
 SEC. A, NEWPORT BEACH
 TRACT NO. 14025
 PARCEL MAP
 M.M. 5-14
 M.M. 4-21
 M.M. 657-8 TO 15 A.C.
 P.M. 95-2

NOTE - ASSessor's BLOCK &
 PARCEL NUMBERS
 SHOWN IN CIRCLES

COASTAL COMMISSION
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 PAGE 1 OF 2



Staff surveyed the study area four times a day (9 a.m., 12 p.m., 3:30 p.m., and 5 p.m.), on five separate days (Thursday, October 25th, Friday, October 26th, Friday, November 2nd, Monday, November 19th, and Friday, November 30th). The number of available parking spaces on each of the streets and within the municipal parking lot within the study area was tallied and analyzed. The following table provides the results of the study:

COASTAL COMMISSION

EXHIBIT # 3
PAGE 1 OF 2

5-94-036-A3 (Arches Restaurant)
 Staff Report—Material Amendment
 Page 12 of 12

Arches Grill
 January 31, 2008
 Page 9

Parking Space Counts						
AREA :		A	B	C	D	
Description:		Municipal Lot	Villa Way	29th Street	Lafayette Ave.	Total
Total Spaces:		43	23	23	24	113
DATE	TIME	Number of Available Spaces				
Thursday, Oct. 25	9:00 A.M.	7	12	14	14	47
	12:00 P.M.	9	4	8	1	22
	3:30 P.M.	12	11	15	11	49
	5:00 P.M.	14	16	14	12	56
Friday, Oct. 26	9:00 A.M.	8	13	15	16	52
	12:00 P.M.	5	5	8	12	30
	3:30 P.M.	4	11	13	15	43
	5:00 P.M.	13	16	16	11	56
Friday, Nov. 2	9:00 A.M.	5	13	15	15	48
	12:00 P.M.	7	11	9	7	34
	3:30 P.M.	17	12	11	12	52
	5:00 P.M.	18	10	12	12	52
Monday, Nov. 19	9:00 A.M.	7	13	15	15	50
	12:00 P.M.	6	5	12	3	26
	3:30 P.M.	7	7	16	9	39
	5:00 P.M.	18	9	17	12	56
Friday, Nov. 30	9:00 A.M.	12	16	14	12	54
	12:00 P.M.	7	4	9	11	31
	3:30 P.M.	11	11	10	14	46
	5:00 P.M.	25	9	8	1	43

5-Day Average Availability		
TIME	Municipal Lot Availability	On-Street Availability (Villa Way, 29th St., Lafayette Ave.)
9:00 A.M.	8	42
12:00 P.M.	7	22
3:30 P.M.	10	36
5:00 P.M.	18	35
DAILY AVERAGE:	11	34

COASTAL COMMISSION

EXHIBIT # 3
 PAGE 2 OF 2