



PLANNING COMMISSION

AGENDA REPORT

MEETING DATE: JUNE 8, 2009

ITEM NUMBER:

VI.3

**SUBJECT: REVIEW OF ZONING APPLICATION ZA-09-16
A MINOR CONDITIONAL USE PERMIT FOR OUTDOOR DISPENSERS AT
2281 NEWPORT BOULEVARD**

DATE: MAY 21, 2009

**FOR FURTHER INFORMATION CONTACT: REBECCA ROBBINS, ASSISTANT PLANNER
714-754-5609**

PROJECT DESCRIPTION

Appeal of the Zoning Administrators denial of Zoning Application ZA-09-16, a minor conditional use permit to legalize four beverage dispensers and auto-related retail goods outside the cashier booth at the Costa Mesa Oil Company Gas Station.

APPLICANT

David Cabrinha is representing the property owner, Shahram Rahimian.

RECOMMENDATION

Uphold, reverse, or modify the Zoning Administrator's decision of the project.

REBECCA ROBBINS
Assistant Planner

KHANH NGUYEN
Acting Asst. Development Services Director

BACKGROUND

On May 7, 2009, the Zoning Administrator denied ZA-09-16, for a minor conditional use permit (MCUP) to legalize four beverage dispensers and outdoor display of auto-related retail goods outside the cashier booth at the Costa Mesa Oil Company Gas Station at 2281 Newport Boulevard.

On May 14, 2009 an appeal of the Zoning Administrator denial was submitted by the project applicant. A full description and discussion of the project is contained within the Zoning Administrator's denial letter, which is attached (Attachment 3).

ANALYSIS

Summary of Zoning Administrator's Denial

Unless a MCUP is approved, Code requires all uses for a business to be conducted and contained within a building under the roof. The Zoning Administrator denied the application for the following reasons:

- Most importantly, the dispensers along the west side of the kiosk encroach into the required drive aisle and vehicle back-up area for the handicap parking space.
- The outdoor display creates a negative appearance. Views of the advertising panels or the back of the dispensers can be seen from the public-right-of-way. Since the beverage dispensers and other retail goods could not be completely screened from view from Newport Boulevard and Fairview Road, the Zoning Administrator determined that these items created a negative visual impact.
- Given the fact that other similar businesses are required to contain these items inside a building (typically a mini-market), the Zoning Administrative considered the request as incompatible with surrounding properties and other similar uses.
- Past approvals for outdoor retail displays have been limited to items that are typically found outdoors, such as patio furniture and plants. As common outdoor items, these goods are not considered to detract from the property's appearance if they are visible from the public right-of-way.

Updated Proposal includes New Enclosure Area

The applicant has recently proposed to construct a semi-enclosed area along the front and side of the kiosk to screen the dispensers. The applicant verbally agreed to address the issues stated in the Zoning Administrator's denial letter, by implementing the following measures:

- The dispensers are to be relocated from the west side of the kiosk to remove any obstruction to the drive aisle and handicapped parking space.
- The new front enclosure area to the kiosk is proposed to address aesthetics. New wing walls and roof area will be constructed to be integrated to the existing kiosk for the purpose of screening the dispensers. Specifically, permanent wing wall extensions of the kiosk will be constructed to fully screen the front and back side of the

dispensers. The roof of the kiosk will also be redesigned to cover the top of the dispensers. All new construction will be consistent with the existing kiosk in color, building materials, and integrated design.

- Landscape planter area is to be expanded behind the new east wall and planted with live plant materials.
- Propane tanks and trash receptacle/trash enclosure along east side of kiosk are to be relocated to accommodate new construction.
- Total number of dispensers are to be reduced to three dispensers.
- Open display of auto-related retail goods are to be completely removed.

Given that these modifications to the original proposal appear to address initial concerns, the Zoning Administrator may be able to support this idea **in concept**. Conditions of approval have been added to the Planning Commission's approval resolution to ensure compliance with specified requirements.

Important note: However, at the time of the publication of this report, the conceptual drawings have not been completed. If these plans are not remitted and approved in concept to the satisfaction of the Zoning Administrator prior to the Planning Commission hearing, a request for continuance will be in order. The Zoning Administrator's support is contingent upon an enclosure that is well-designed and fully-integrated into the kiosk.

GENERAL PLAN CONSISTENCY

Without proper screening of the beverage dispensers, the original request is inconsistent with General Plan Goal LU-2 which requires development to "*maintain an aesthetically pleasing and functional environment*" with minimal impacts to existing resources.

However, the modified proposal involves the construction of an integrated enclosure area for the outdoor dispensers which seem to address the Zoning Administrator's concerns. The updated proposal would therefore be consistent with the General Plan.

ALTERNATIVES

The Planning Commission may consider the following alternatives:

1. *Uphold the Zoning Administrator's denial of the minor conditional use permit (with any modifications to the denial findings and/or requirements).* Despite the revised proposal involving the construction of a semi-enclosed area around the kiosk, the Planning Commission may decide to deny the request. This would require coolers outside the kiosk to be completely removed from the site.
2. *Reverse the Zoning Administrator's denial of the minor conditional use permit, based on the modified proposal for a new enclosure* Coolers outside the kiosk would be permitted to remain provided that they are completely screened from off-site views and contained inside a newly constructed and fully integrated enclosure area. All obstructions to the handicapped parking space will be removed.

CONCLUSION

The Zoning Administrator's concerns regarding the original proposal involved the negative appearance of outdoor beverage coolers and obstructions to parking and on-site vehicle circulation. These items are typically required to be contained in a fully enclosed building (i.e. mini-market). However, the applicant has recently offered to build an enclosure area that is to be integrated into the existing kiosk. The modified proposal appears to address the Zoning Administrator's initial concerns, and therefore, this idea may be supported in concept in the spirit of expediting this application. However, actual plans are still required to be reviewed/approved to the satisfaction of the Zoning Administrator prior to the Planning Commission hearing or a continuance will be in order

- Attachments:
1. Draft Planning Commission Resolutions
 2. Appeal Request
 3. Zoning Administrator's letter of May 7, 2009
 4. Location Map & Site Photos
 5. Plans

cc: Acting Development Svs. Director
Senior Deputy City Attorney
City Engineer
Fire Protection Analyst
Staff (4)
File (2)

David Cabrinha
15525 Starview
Lake Elsinore, CA 92503

Shahram Rahimian
20 Stillwater
Newport Coast, CA 92657

| | | |
|--------------------------|--------------|------------------|
| File: 060809ZA0916Appeal | Date: 052809 | Time: 11:00 a.m. |
|--------------------------|--------------|------------------|

RESOLUTION NO. PC-09-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA TO UPHOLD THE ZONING ADMINISTRATOR'S DECISION AND DENY ZONING APPLICATION ZA-09-16

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, an application was filed by David Cabrinha authorized agent for property owner Shahram Rahimian, requesting a minor conditional use permit for four beverage dispensers outside the cashier's booth at the Costa Mesa Oil Company Gas Station at 2281 Newport Boulevard in a C2 zone;

WHEREAS, the Zoning Administrator denied Zoning Application ZA-09-16 on May 7, 2009;

WHEREAS, David Cabrinha submitted an appeal of the Zoning Administrator's denial of ZA-09-16 on May 14, 2009;

WHEREAS, a duly noticed public hearing was held by the Planning Commission on June 8, 2009 with all persons given the opportunity to speak for or against the proposed project.

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A", the Planning Commission hereby **UPHOLDS THE ZONING ADMINISTRATOR'S DECISION AND DENIES** Zoning Application ZA-09-16 with respect to the property described above.

PASSED AND ADOPTED this 8TH day of June, 2009.

James Righeimer, Chair
Costa Mesa Planning Commission

EXHIBIT "A"

FINDINGS FOR DENIAL

1. The information presented does not comply with Section 13-29(g)(2) of the Costa Mesa Municipal Code in that:
 - a. The proposal for outdoor dispensers is not compatible with developments in the same general area. Beverage dispensers in this quantity are typically contained in a building and not visible from off-site.
 - b. Granting the minor conditional use permit will be detrimental to the health, safety and general welfare of the public or other properties or improvements within the immediate vicinity in that the coolers encroach into drive aisles, vehicle back-up, and create interference with the onsite circulation.
 - c. Granting the minor conditional use permit will allow a use, density or intensity which is not in accordance with General Plan Goal LU-2 which requires development to "maintain an aesthetically pleasing and functional environment" with minimal impacts to existing resources.
2. The information presented does not comply with Section 13-29 (e) of the Costa Mesa Municipal Code in that:
 - a. The outdoor placement of coolers is not compatible and harmonious with uses on-site or on surrounding properties.
 - b. Safety and compatibility of the location of the coolers, parking areas, landscaping, and other site features including functional aspects of the site development such as automobile and pedestrian circulation have been considered.
 - c. The zoning application would establish a precedent for future development.
3. The Costa Mesa Zoning Administrator has denied ZA-09-16. Pursuant to Public Resources Code Section 21080(b)(5) and CEQA Guidelines Section 15270(a), CEQA does not apply to this project because it has been rejected and will not be carried out.
4. The project is exempt from Chapter XII, Article 3 Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.

RESOLUTION NO. PC-09-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA TO REVERSE THE ZONING ADMINISTRATOR'S DECISION AND APPROVE ZONING APPLICATION ZA-09-16

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, an application was filed by David Cabrinha authorized agent for property owner Shahram Rahimian, requesting a minor conditional use permit for four beverage dispensers and miscellaneous items outside the cashier's booth at the Costa Mesa Oil Company Gas Station located at 2281 Newport Boulevard in a C2 zone;

WHEREAS, the Zoning Administrator denied Zoning Application ZA-09-16 on May 7, 2009;

WHEREAS, David Cabrinha submitted an appeal of the Zoning Administrator's denial of ZA-09-16 on May 14, 2009;

WHEREAS, the proposal for outdoor beverage dispensers was updated to include the proposed construction of an enclosure area to be integrated into the existing kiosk in color, materials, and design. Specifically, the enclosure area will fully screen any outdoor dispensers from off-site views and eliminate obstructions to handicapped parking;

WHEREAS, a duly noticed public hearing was held by the Planning Commission on June 8, 2009 with all persons given the opportunity to speak for or against the proposed project;

WHEREAS, the Planning Commission considered the modifications to the proposal with respect to addressing the Zoning Administrator's original concerns regarding the lack of screening and handicapped parking obstruction;

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A", the Planning Commission hereby **REVERSES THE ZONING ADMINISTRATOR'S DECISION AND APPROVES** Zoning Application ZA-09-16, as modified by the applicant, with respect to the property described above.

BE IT FURTHER RESOLVED that the Costa Mesa Planning Commission does hereby find and determine that adoption of this Resolution is expressly predicated upon the modified proposal as described in the Staff Report for Zoning Application ZA-09-16 and upon applicant's compliance with each and all of the conditions contained in Exhibit "B", as well as with compliance of all applicable federal, state, and local laws. Any approval granted by this resolution shall be subject to review, modification or revocation if there is a material change that occurs in the operation, or if the applicant fails to comply with any of the conditions of approval.

PASSED AND ADOPTED this 8TH day of June, 2009.

James Righeimer, Chair
Costa Mesa Planning Commission

EXHIBIT "A"

FINDINGS FOR APPROVAL

1. The information presented complies with Section 13-29(g)(2) of the Costa Mesa Municipal Code in that:
 - a. The proposal for beverage dispensers in a newly-constructed enclosure area that is well integrated into the existing kiosk in color, materials, and design is compatible with developments in the same general area.
 - b. Granting the minor conditional use permit will not be detrimental to the health, safety and general welfare of the public or other properties or improvements within the immediate vicinity.
 - c. Granting the minor conditional use permit will allow a use, density or intensity which is in accordance with General Plan Goal LU-2, which requires development to "maintain an aesthetically pleasing and functional environment" with minimal impacts to existing resources.
2. The information presented complies with Section 13-29 (e) of the Costa Mesa Municipal Code in that:
 - a. The outdoor placement of coolers is compatible and harmonious with uses on-site or on surrounding properties.
 - b. Safety and compatibility of the location of the coolers, parking areas, landscaping, and other site features including functional aspects of the site development such as automobile and pedestrian circulation have been considered.
 - c. The zoning application is for a project-specific case and does not establish a precedent for future development.
3. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City environmental procedures, and has been found to be exempt under Section 15311 for Accessory Structures to existing commercial facilities.
4. The project is exempt from Chapter XII, Article 3 Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.

EXHIBIT "B"

CONDITIONS OF APPROVAL (If approved)

- Plng. 1. All dispensers and outdoor display of retail goods shall not obstruct any required drive aisle widths, back-up distance, and handicapped parking space. All obstructions to required on-site parking and vehicle circulation shall be immediately removed. The applicant shall submit proof to the Planning Division, within 5 days from the date of this approval, that obstructions to parking and vehicle circulation are removed in accordance with the requirements of the Building Safety Division and the Transportation Division.
2. With respect to the proposed enclosure area for the outdoor dispensers, all new walls and roof areas will be integrated to the existing kiosk for the purpose of complete screening from off-site views. Specifically, the permanent wing wall extensions of the kiosk will be constructed to fully screen the front and back side of the dispensers. The roof of the kiosk will also be refurbished and extended to cover the top of the dispensers. All new construction will be consistent with the existing kiosk in color, building materials, and integrated design to the satisfaction of the Zoning Administrator.
3. The landscape planter area shall be expanded behind the new east wall and planted with live plant materials. The propane tanks and trash receptacle and enclosure that are currently located in this area shall be relocated elsewhere on the property, to the satisfaction of the Zoning Administrator.
4. The applicant shall remit construction plans for building plan check to the Development Services Department within 30 days from the date of this approval. Timely progress towards obtaining the building permits and ultimately constructing the enclosure area shall be made to the satisfaction of the Zoning Administrator. If progress towards the implementation of the proposed project lapses, the Zoning Administrator shall require the removal of all outdoor beverage dispensers until such time the construction of the enclosure area is completed.
5. A copy of the conditions of approval for the minor conditional use permit must be kept on the premises and presented to any authorized City official upon request. New business/property owners shall be notified of the conditions of approval upon transfer of business or ownership of land.

CODE REQUIREMENTS (if approved)

The following list of federal, state and local laws applicable to the project has been compiled by staff for the applicant's reference. Any reference to "City" pertains to the City of Costa Mesa.

- PIng. 1. Approval of the zoning application is valid for thirty (30) days from the effective date of this approval and will expire at the end of that period unless applicant contacts the Planning Division to arrange for Planning inspection of the site to verify compliance with the requirements of the Building Safety Division and the Transportation Division. If the applicant is unable to obtain final planning approval within the thirty-day time period, the applicant may request an extension of time. The Planning Division must receive a written request for the time extension prior to the expiration of the zoning application.
- 2. Once the use is legally established, the zoning application herein approved shall be valid until revoked. The Development Services Director or his designee may refer the zoning application to the Planning Commission for modification or revocation at any time if, in his opinion, any of the following circumstances exist: 1) the use is being operated in violation of the conditions of approval; 2) the use is being operated in violation of applicable laws or ordinances or 3) one or more of the findings upon which the approval was based are no longer applicable.
- 3. Street address shall be visible from the public street and shall be displayed on the freestanding sign. If there is no freestanding sign, the street address may be displayed on the fascia adjacent to the main entrance or on another prominent location. Numerals shall be a minimum twelve (12) inches in height with not less than three-fourth-inch stroke and shall contrast sharply with the background.
- 4. Parking stalls shall be double-striped in accordance with City standards.
- Bldg. 5. Comply with the requirements of the 2007 California Building Code.

ATTACHMENT 2

CITY OF COSTA MESA
P. O. Box 1200
Costa Mesa, CA 92628-1200

FEE: \$ _____

APPLICATION FOR REVIEW, APPEAL OR REHEARING

Applicant Name Costa Mesa oil Co.
Address 2281 Newport Blvd. Costa Mesa Ca. 92627
Phone _____ Representing* _____

REQUEST FOR: REVIEW** APPEAL REHEARING

Decision of which review, appeal or rehearing is requested: (give number of rezone, zone exception, ordinance, etc., if applicable, and the date of the decision, if known.) Permit ZA-09-16 Outdoor display
minor Conditional use permit

Decision by: _____

Reasons for requesting review, appeal or rehearing: The station was first purchased in 5/20/05 and the owner at the time (Ed Birchler) had the coolers in place and assured us that they were permitted and there was no problem with the city. We had no problem until 3/10/09 and we were under the assumption that we just needed a new permit. We are just confused why the coolers were okay for ten years and not now.

Thank you,

Date: 5/14/09 Signature: [Signature]

For office use only - do not write below this line

SCHEDULED FOR THE CITY COUNCIL/PLANNING COMMISSION MEETING OF:
If review, appeal or rehearing is for person or body other than City Council/Planning Commission, date of hearing of review, appeal or rehearing:

* If you are serving as the agent for another person, please identify the person you represent and provide proof of agency.
** Review may be requested only by City Council or City Council Member
Costa Mesa/Forms1/Application for Review-Appeal-Rehearing

ATTACHMENT 3



CITY OF COSTA MESA

P.O. BOX 1200 • 77 FAIR DRIVE • CALIFORNIA 92628-1200

DEVELOPMENT SERVICES DEPARTMENT

May 7, 2009

David Cabrinha
15525 Starview
Lake Elsinore, CA 92503

**RE: MINOR CONDITIONAL USE PERMIT ZA-09-16
OUTDOOR DISPLAY AND RETAIL COOLERS
2281 NEWPORT BOULEVARD, COSTA MESA**

Dear Mr. Cabrinha:

Review of the minor conditional use permit for the above-referenced project has been completed. The application, as described in the attached project description, has been **denied**, based on the attached findings. The decision will become final at 5 p.m. on **May 14, 2009**, unless appealed by an affected party (including filing of the necessary application and payment of the appropriate fee) or by a member of the Planning Commission or City Council.

If you have any questions regarding this letter, please feel free to contact the project planner, Rebecca Robbins, at 714-754-5609 or rrobbins@ci.costa-mesa.ca.us.

Sincerely,

WILLA BOUWENS-KILLEEN, AICP
Zoning Administrator

Attachments: Project description
Findings

cc: Engineering
Fire Protection Analyst
Building Division

PROJECT DESCRIPTION

- The property is zoned C2 (General Business) and is located on the northeast corner of Newport Boulevard and Fairview Road. In 1983, a conditional use permit was approved for a gas station with a 200 square-foot cashier's kiosk and two canopies with four pump islands.
- The applicant requests approval of a minor conditional use permit to legalize the outdoor placement of coolers on the property. The coolers are used to sell retail products such as beverages. When visiting the site, however, Planning staff also found miscellaneous items displayed outside.
- A minor conditional use permit is required because all uses for a business are required to be within a building, under roof. The retail coolers and other items are not within a building and are visible from both streets.
- Since the coolers and other items cannot be completely screened from view from Newport Boulevard and Fairview Road, it is staff's opinion that they create a negative visual impact and are not compatible with on-site and surrounding properties. In addition, the coolers encroach into required drive aisles and vehicle back-up for the handicap parking space adjacent to the cashier's kiosk.
- Past approvals for outdoor display have been limited to items that are typically found outdoors, such as patio furniture and plants.
- The applicant will be required to have all displays and coolers outside the kiosk removed from the site no later than **May 28, 2009**. Although propane tanks are also located outside the building, they are permitted to remain as they are consistent with typical operations of a gas station and because the Fire Department prefers them outside. However, the propane tanks will be required to be moved parallel to the kiosk under the direction of the Planning Division.
- The proposed use is not consistent with General Plan Land Use Objective LU-1F in that the outdoor display contributes to blighting influences in the area.

FINDINGS

1. The information presented does not comply with Section 13-29(g)(2) of the Costa Mesa Municipal Code in that:
 - a. The minor conditional use permit to allow outdoor retail coolers and display is not compatible with developments in the same general area. The coolers are visible from the public streets and would not be consistent with past approvals for outdoor displays.
 - b. Granting the minor conditional use permit will be detrimental to the health, safety and general welfare of the public or other properties or improvements within the immediate vicinity in that the coolers encroach into drive aisles, vehicle back-up, and create interference with the onsite circulation.

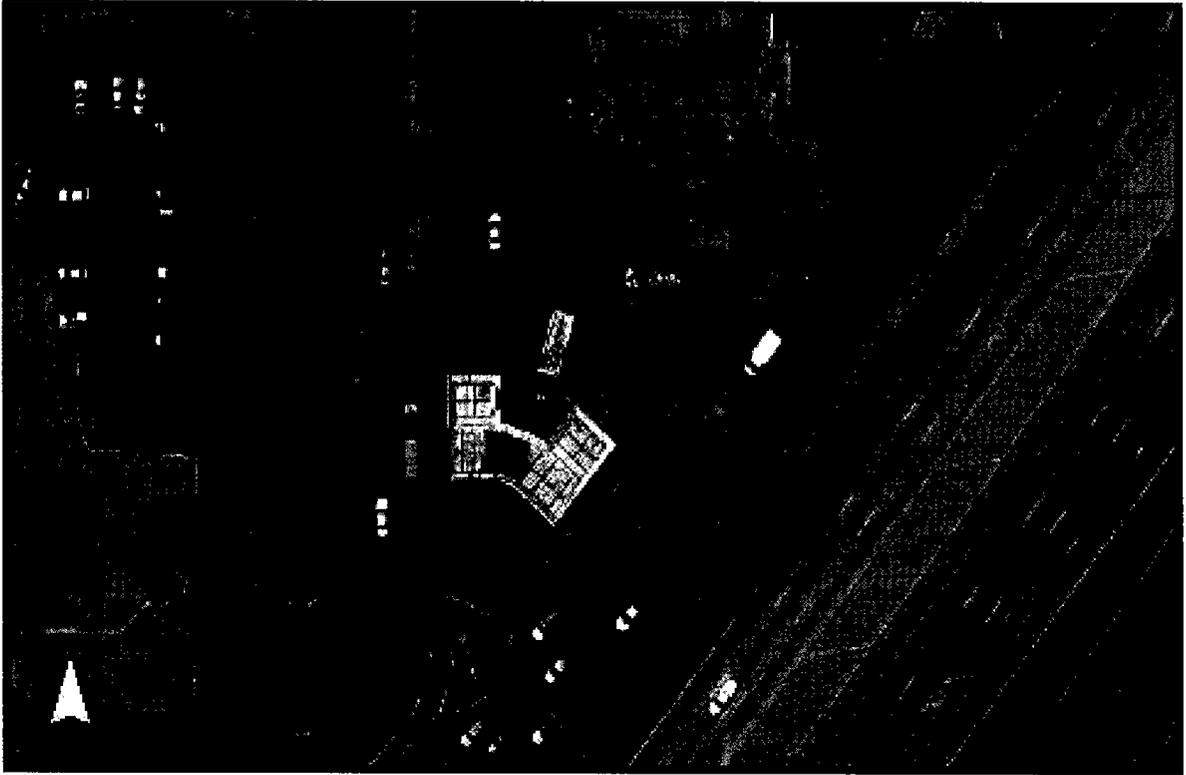
- c. Granting the minor conditional use permit will allow a use, density or intensity which is not in accordance with the general plan objective LU-1F because the outdoor retail coolers and display contributes to blighting influences in the area.
2. The information presented does not comply with Section 13-29 (e) of the Costa Mesa Municipal Code in that:
 - a. The outdoor placement of coolers is not compatible and harmonious with uses on-site or on surrounding properties.
 - b. Safety and compatibility of the location of the coolers, parking areas, landscaping, and other site features including functional aspects of the site development such as automobile and pedestrian circulation have been considered.
 - c. The planning application is for a project-specific case and does not establish a precedent for future development.
3. The Costa Mesa Zoning Administrator has denied ZA-09-16. Pursuant to Public Resources Code Section 21080(b)(5) and CEQA Guidelines Section 15270(a), CEQA does not apply to this project because it has been rejected and will not be carried out.
4. The project is exempt from Chapter XII, Article 3 Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.

REMOVAL OF OUTDOOR COOLERS AND DISPLAY

- The applicant is advised that all displays and coolers outside the kiosk shall be removed from the site no later than **May 28, 2009**. The propane tanks shall be placed parallel to the kiosk under the direction of the Planning Division.

ATTACHMENT 4

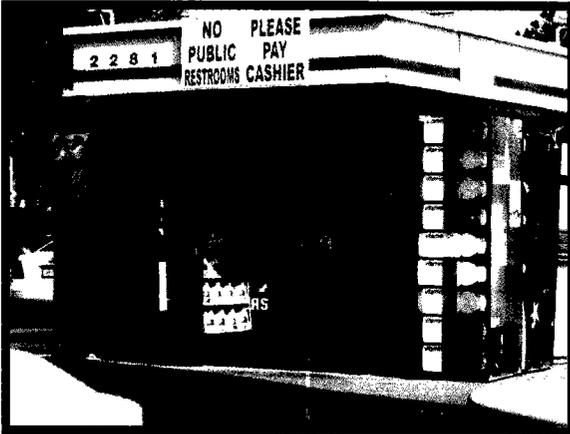
Location Map



Front view

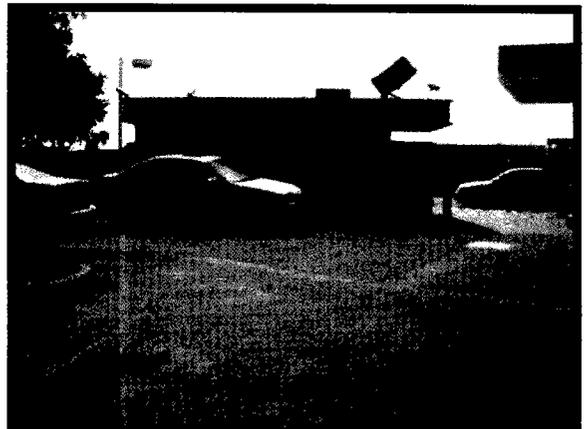
Site Photos

View from Newport Blvd



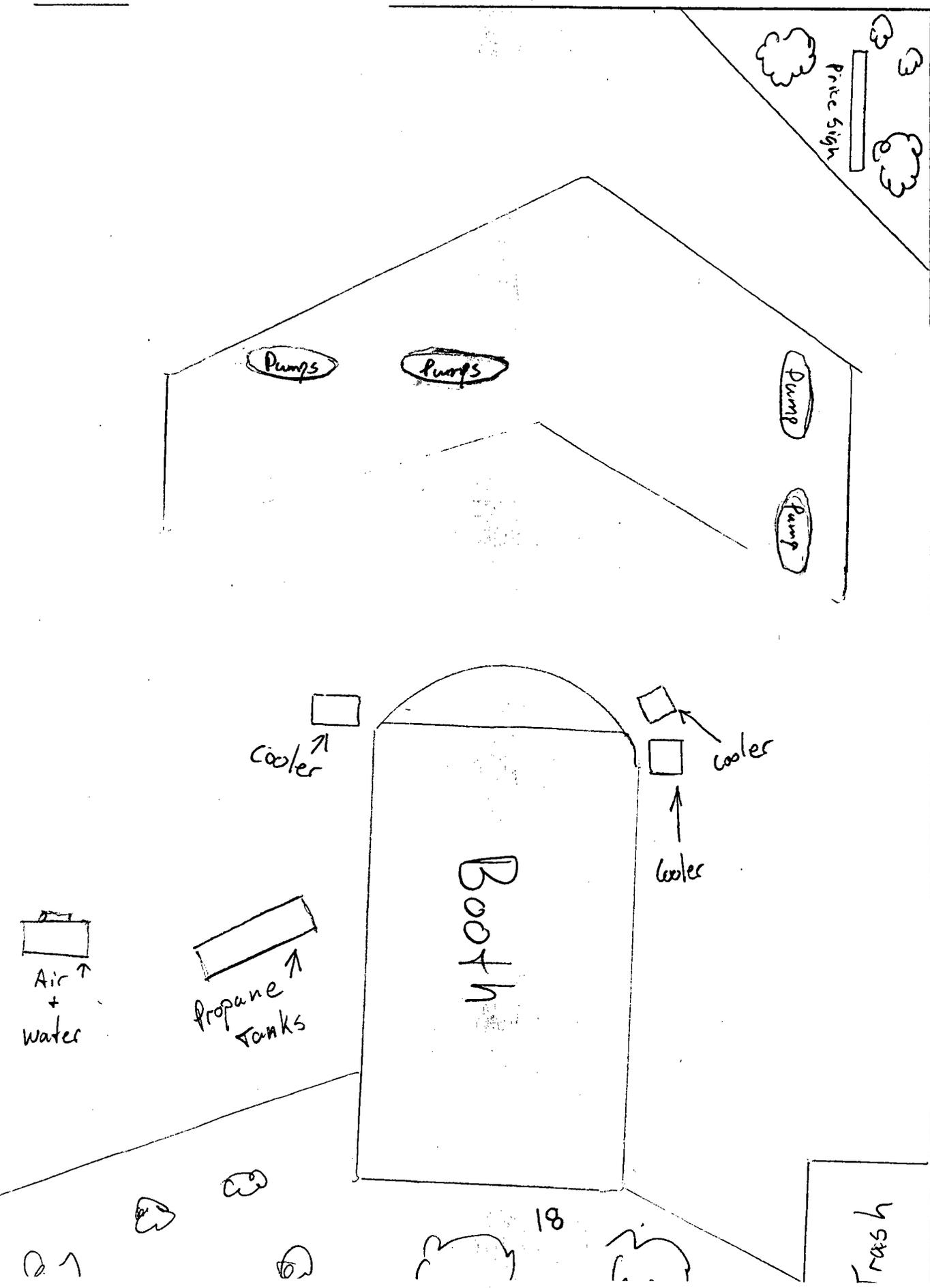
Corner of Newport Bl & Fairview Rd

View from Fairview Road



Newport Blvd ATTACHMENT 5

Fairview St.



2A-09-11

City of Costa Mesa Inter Office Memorandum

VI.3
ZA-09-16

TO: Planning Commission

FROM: Rebecca Robbins, Assistant Planner 

DATE: June 3, 2009

SUBJECT: Zoning Applications ZA-09-16
Outdoor Dispensers – 2281 Newport Boulevard

Attached is a letter from the authorized agent requesting a continuance of his item to the Planning Commission meeting of June 22, 2009.

cc: Deputy City Manager – Dev. Svs. Director
Senior Deputy City Attorney
City Engineer
Fire Protection Analyst
Staff (4)
✓ File (2)

David Cabrinha
15525 Starview
Lake Elsinore, CA 92503

Shahram Rahimian
20 Stillwater
Newport Coast, CA 92657

In reference to ZA-09-16, I can have the new plans by 6-8-09 which is the same day as the planning commission hearing, so I am requesting a continuance to the next planning hearing.

Thank you
Dewid Cabrinha
Authorized agent for
Shahram Rahimian

Received
City of Costa Mesa
Development Services Department
JUN 03 2009