

RESOLUTION NUMBER R-288629

ADOPTED ON MAY 6, 1997

WHEREAS, William A. Newman, et al., appealed the decision of the Planning Commission in approving Coastal Development Permit ("CDP")/La Jolla Shores Planned District ("LJS") Permit No. 96-0112 submitted by John M. Percival, Owner, and K.A. Financial, a joint venture, Permittee, to construct a free-standing restaurant and an automobile service station with mini-mart (the "Project") at the corner of La Jolla Shores Drive and Torrey Pines Road, in the La Jolla Community Plan area, described as a portion of Lot 1286 of the Pueblo Lands of San Diego, in the La Jolla Shores PDO Visitor Zone and the Coastal Zone; and

WHEREAS, the matter was set for public hearing on May 6, 1997, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that this Council adopts the following findings with respect to Coastal Development Permit/La Jolla Shores Planned District Permit No. 96-0112:

COASTAL DEVELOPMENT PERMIT FINDINGS:

- A. THE PROPOSED DEVELOPMENT WILL NOT ENCROACH UPON ANY EXISTING PHYSICAL ACCESSWAY LEGALLY UTILIZED BY THE PUBLIC OR ANY PROPOSED PUBLIC ACCESSWAY IDENTIFIED IN AN ADOPTED LCP LAND USE PLAN; NOR WILL IT OBSTRUCT VIEWS TO AND ALONG THE OCEAN AND OTHER SCENIC COASTAL AREAS FROM PUBLIC VANTAGE POINTS.**

The restaurant/service station location is approximately one-half mile from the coast and will not encroach on any existing or proposed physical access to the coast, nor will it obstruct ocean or other scenic views from public vantage points.

B. THE PROPOSED DEVELOPMENT WILL NOT ADVERSELY AFFECT MARINE RESOURCES, ENVIRONMENTALLY SENSITIVE AREAS, OR ARCHAEOLOGICAL OR PALEONTOLOGICAL RESOURCES.

The project will be constructed on a previously developed urban site and will not adversely affect marine resources, environmentally sensitive areas, archaeological or paleontological resources.

C. THE PROPOSED DEVELOPMENT WILL COMPLY WITH THE REQUIREMENTS RELATED TO BIOLOGICALLY SENSITIVE LANDS AND SIGNIFICANT PREHISTORIC AND HISTORIC RESOURCES AS SET FORTH IN THE RESOURCE PROTECTION ORDINANCE, CHAPTER X, SECTION 101.0462 OF THE SAN DIEGO MUNICIPAL CODE, UNLESS BY THE TERMS OF THE RESOURCE PROTECTION ORDINANCE, IT IS EXEMPTED THEREFROM.

The project will be located on a previously developed site. Biologically sensitive lands, prehistoric or historic resources do not exist on the site.

D. THE PROPOSED DEVELOPMENT WILL NOT ADVERSELY AFFECT RECREATIONAL OR VISITOR-SERVING FACILITIES OR COASTAL SCENIC RESOURCES.

The project will be located on a previously developed site and will not adversely affect recreational or visitor-serving facilities. Improvements to the site will improve the access to this visitor serving facility.

E. THE PROPOSED DEVELOPMENT WILL BE SITED AND DESIGNED TO PREVENT ADVERSE IMPACTS TO ENVIRONMENTALLY SENSITIVE HABITATS AND SCENIC RESOURCES LOCATED IN ADJACENT PARKS AND RECREATION AREAS, AND WILL PROVIDE ADEQUATE BUFFER AREAS TO PROTECT SUCH RESOURCES.

The project is not located adjacent or close to any parks, recreation areas, environmentally sensitive habitats or scenic coastal resources.

F. THE PROPOSED DEVELOPMENT WILL MINIMIZE THE ALTERATIONS OF NATURAL LANDFORMS AND WILL NOT RESULT IN UNDUE RISKS FROM GEOLOGIC AND EROSIONAL FORCES AND/OR FLOOD AND FIRE HAZARDS.

The project will not alter natural landform nor will it result in undue risks from geologic and erosional forces. The site is located in an urbanized area that does not need brush management for fire protection.

G. THE PROPOSED DEVELOPMENT WILL BE VISUALLY COMPATIBLE WITH THE CHARACTER OF SURROUNDING AREAS, AND WHERE FEASIBLE, WILL RESTORE AND ENHANCE VISUAL QUALITY IN VISUALLY DEGRADED AREAS.

The proposed design and landscaping of the new restaurant and service station will enhance the visual quality of this entrance to the La Jolla Community.

H. THE PROPOSED DEVELOPMENT WILL CONFORM WITH THE GENERAL PLAN, THE LOCAL COASTAL PROGRAM, AND ANY OTHER APPLICABLE ADOPTED PLANS AND PROGRAMS.

The proposed redevelopment of the site conforms to the General Plan and the Local Coastal Program which allows the development of a free-standing restaurant and an automobile service station in the Coastal and LJSPDO Visitor Zones at this location.

LA JOLLA SHORES FINDINGS:

THE PROPOSED DEVELOPMENT WILL BE CONSISTENT WITH THE LA JOLLA SHORES PLANNED DISTRICT ORDINANCE.

The La Jolla Shores Planned District Ordinance designates this site for use as a restaurant and automobile service station. The proposed redevelopment conforms to that designation.

The above findings are supported by the minutes, maps and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED, by the Council of The City of San Diego, that it hereby approves the Project as proposed consisting of an automobile service station and a 2,735 square foot restaurant with the following modifications;

1. The automobile service station component of the Project shall consist of a canopy covered area for twelve fuel dispensers and a 2,000 square foot building.
2. The operation of the automobile service station portion of the Project shall be used consistent with the definition of an automobile service station as contained in San Diego Municipal Code section 101.0101.6. The following uses are also permitted within the 2,000

square foot structure incidental to the sale of gasoline: cashiers sales, sales of auto related products and services, office, general storage, restrooms and utility space.

3. The hours of operation for all uses at the site shall be limited from 6:00 a.m. to 12 Midnight. During non-operational hours, lighting shall be reduced to the minimum necessary for reasonable security requirements.

4. Use of any amplified sound systems or outdoor intercom systems at the site is prohibited.

5. Language provided by the City Attorney and made a part of the Clerk's record shall be incorporated into the permit requiring the Applicant to indemnify the City in the event of a court challenge to the approval of this Project, a copy of the indemnification agreement is on file in the office of the City Clerk as Document No. RR- 288629.

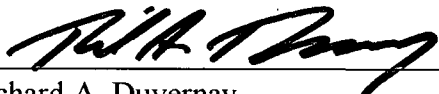
BE IT FURTHER RESOLVED, that the Applicant's request for a classification of use determination to allow a "Mini-Market" within the 2,000 square foot building approved as part of the automobile service station component of the Project is hereby granted. This determination is supported by the fact that the sale of groceries and sundries at gasoline service stations has been recognized and routinely approved throughout the City as a use typically associated with automobile service stations in accordance with the "Guidelines for Automobile Service Stations" adopted by the City Council on July 1, 1986 (Resolution No. R-266156). The Mini-Market is also found to be consistent with the Visitor Zone and the La Jolla Shores Planned District because evidence in form of photographs and testimony has established that the previous automobile service station lessee historically provided a variety of snacks, beverages, and convenience goods in conjunction with the station's cashier function and the La Jolla Shores Precise Plan specifically

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states that: "It is appropriate that this . . . parcel continue to serve the community's auto-visitor oriented commercial needs."

BE IT FURTHER RESOLVED, that the appeal of William A. Newman, et al., is denied; the decision of the Planning Commission is sustained, and Coastal Development Permit/La Jolla Shores Planned District Permit No. 96-0112 is hereby granted to John M. Percival, Owner, and K. A. Financial, Permittee, under the terms and conditions set forth in the permit attached hereto and made a part hereof.

APPROVED: CASEY GWINN, City Attorney

By 
Richard A. Duvernay
Deputy City Attorney

RAD:lc
06/02/97
09/04/98 COR.COPY
Or.Dept:Clerk
R-97-1215
Form=permitr.frm

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RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT-SERVICES

AND WHEN RECORDED MAIL TO
PERMIT INTAKE
MAIL STATION 501

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CITY COUNCIL
COASTAL DEVELOPMENT PERMIT/LA JOLLA SHORES PLANNED DISTRICT
PERMIT CDP/LJS NO. 96-0112
SERVICE STATION AT TORREY PINES ROAD

This permit is granted by the Council of The City of San Diego to John M. Percival, Owner and K.A. Financial, A Joint Venture, Permittee, pursuant to Section 111.1202 and Chapter X, Article 3, Division 3, of the Municipal Code of The City of San Diego.

Permission is hereby granted by the City of San Diego City Council to the referenced Owner/Permittee to construct, use and maintain a free-standing restaurant and an automobile service station on a 0.7 acre lot located at 2204 Torrey Pines Road and 7939 La Jolla Shores Drive in the La Jolla Community Plan area legally described as a portion of Lot 1286 of the Pueblo Lands of San Diego in the LJSPDO Visitor Zone and the Coastal Zone.

1. This permit shall consist of the following facilities and/or site improvements as identified by size, dimension, quantity and location on the approved Exhibits "A," dated May 6, 1997, on file in the office of Development Services:
 - a. A 2,735 Square foot free-standing restaurant;
 - b. An automobile service station consisting of:
 - 1) Canopy covered fuel dispensers;
 - 2) A maximum 2,000 square foot mini-mart structure;
 - 3) The operation of the automobile service station portion shall be consistent with the definition of an automobile service station contained in Municipal Code section 101.0101.6.1 (Automobile Service Station). The following uses are permitted incidental to the sale of gasoline: cashier sales, sales of auto related products and services as defined in the permit conditions, office, general storage, restrooms and utility space.
 - c. Parking, landscaping and signs for both uses; and

- d. Incidental accessory uses approved by the City Manager.
2. This permit shall not become effective unless, no later than thirty days following Council approval of this Permit on May 6, 1997, the Owner/Permittee has signed and filed with the Development Services Department an indemnification Agreement approved by the City Attorney which shall contain language in substantially in the following form:
- The APPLICANT shall defend, indemnify, and hold harmless the CITY and its agents, officers, and employees from any claim, action, or proceeding against the CITY or its agents, officers, or employees to attack, set aside, void, or annul this approval or any prior or subsequent project-related approvals or conditions imposed by the CITY or any of its agencies, departments, commissions, agents, officers, or employees concerning this project, or to impose personal liability against such agents, officers, or employees resulting from their involvement in the project. APPLICANT further agrees to reimburse CITY for any costs or fees incurred by CITY in responding to any claim, action, or proceeding, including but not limited to, court costs, staff time, City Attorney time at their normal rate, any award of private attorney general fees and all other direct or indirect costs associated with the CITY's response to any claim, action, or proceeding under this Agreement.
3. No permit for the construction, occupancy or operation of any facility described in this permit shall be granted nor shall any activity authorized by this permit be conducted on the premises until:
- a. The Permittee signs and returns the permit to the City Clerk; and
 - b. The permit is recorded by the City Clerk in the office of the San Diego County Recorder.
4. This permit must be used within 36 months after the effective date. Failure to utilize the permit within 36 months will automatically void the permit unless an extension of time has been granted as set forth in Section 111.1122 of the Municipal Code.
5. All grading shall conform to requirements of Sections 62.0401-62.043 of the City of San Diego Municipal Code in a manner satisfactory to the City Engineer.
6. Prior to issuance of any building permits, complete building construction documents (including plans and/or detailed specifications) and complete landscape construction documents including plans, details and specifications (including a permanent automatic irrigation system unless otherwise approved) shall be submitted to the City of San Diego for approval. The plans shall be in substantial conformity to the approved Exhibits "A," dated May 6, 1997, and shall show the location of all fire hydrants and shall provide traffic calming devices in the easterly driveway.

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7. No change, modifications or alternations shall be made unless appropriate applications or amendment of this permit shall have been granted.
8. Prior to the issuance of a Certificate of Occupancy, landscaping shall be installed and all required landscape inspections obtained.
9. The Owner/Permittee shall be responsible for maintenance of the landscaping identified on the approved Exhibit "A" Landscape Concept Plan. All approved landscaping shall be maintained in a disease, weed and litter-free condition at all times and shall not be modified or altered unless this permit has been amended. Modifications, such as severely pruning or "topping," is not allowed unless specifically noted in this permit.
10. If any existing or proposed landscaping (including pavement, hardscape, landscape features, etc.) indicated on the approved plans is damaged or removed during demolition, construction or at any time after issuance of any permit or occupancy certificate, it shall be repaired and/or replaced in kind and equivalent size per the approved plans within 30 days by the Permittee. The replacement size of plant material after three years shall be the equivalent size of that plant at the time of removal (the largest size commercially available and/or an increased number) to the satisfaction of the City Manager.
11. Prior to occupancy, the Permittee shall assure by permit and bond the following items satisfactory to the City Engineer:
 - a. Closure of the southerly driveway on La Jolla Shores Drive with full height curb, gutter and sidewalk.
 - b. Consolidation of two southerly driveways on La Jolla Shores Drive to one driveway. Construct one new 30-foot-wide commercial driveway approximately 90 feet south of the northerly property-line.
 - c. Closure of the existing driveways on Torrey Pines Road with full height curb, gutter and sidewalk and construction of a 30 foot-wide commercial driveway and a 26 foot-wide commercial driveway.
 - d. Re-painting of the existing red curb along the property frontage on Torrey Pines Road and La Jolla Shore Drive.
12. Prior to building occupancy, the applicant shall conform to Section 62.0203 of the Municipal Code, "Public Improvement Subject to Desuetude or Damage." If repair or replacement of such public improvement is required, the owner shall obtain the required permits for work in the public right-of-way, satisfactory to the permit-issuing authority.
13. The Permittee shall obtain an encroachment removal Agreement from the City Engineer for new/proposed landscaping, pavement and other private improvements to be located in public right-of-way on La Jolla Shores Drive adjacent to the service station.

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14. Prior to the issuance of any building permits, the Permittee shall ensure that building address numbers are visible and legible from the street (UFC 10.208).
15. All trash and refuse shall be stored within an area enclosed by a wall at least six feet in height. Wall material shall match the exterior of the main building. Doors to the area shall be closable and constructed of solid materials. Refuse shall not be visible from outside the enclosed area.
16. Outdoor lighting shall conform to city regulations. They may be mounted only to buildings, walls, or on free-standing posts not to exceed a height of 14 feet. All fixtures and lenses should be so designed and field-adjusted as to direct light only onto the premises from which it emanates. Energy conservation is encouraged.
17. The requirements of the County Health Department and the City of San Diego Fire Department for storage of all hazardous materials, including underground chemical storage, shall be met at all times.
18. Signage shall be approved by the Zoning Administrator to accurately reflect the permitted uses and be in compliance with the PDO.
19. Pennants, portable signs or banners shall not be permitted on the premises.
20. The restaurant, the fuel pump islands and the convenience store may operate from 6 a.m. to 12 midnight. During off hours, lighting shall be reduced to the minimum necessary for reasonable security requirements. Use of any amplified sound system or outdoor intercom system is prohibited.
21. "No loitering" signs shall be placed in and around the mini-mart facility and "no loitering" shall be enforced by the Permittee, any lessee or subsequent owner.
22. 15 parking spaces, including three handicapped spaces, shall be maintained on site at all time. One space may be used for dispensing air and water and one space may be used for emergency repairs such as plugging flat tires or charging batteries.
23. Automobile repairs shall be limited to fixing flat tires or charging batteries. No merchandise or supplies shall be stored or displayed outdoors.
24. Signaling devices to alert station attendants to entering vehicles shall be located and adjusted so as to cause no noise disturbances to adjoining properties.
25. When operations are discontinued at the automobile service station for a period approaching 24 months, the Permittee of the permit has the following options:
 - a. Apprise Development Services that the Coastal Development Permit/La Jolla Shores Planned District Permit should be rescinded. In this case, all buildings and structures not

conforming with the underlying zone or planned district, including underground tanks, shall be removed.

- b. Redevelop the property as a service station through an amended CDP/LJS Permit, as set forth in Municipal Code Section 103.0300.
- c. Resume use as a service station under the existing CDP/LJS Permit.

If none of the above options is taken by the Permittee, and operations remain discontinued beyond the twenty-fourth month, the City may initiate proceedings to rescind the permit and require removal of the structures.


- 26. In the event that the gasoline sales service facility is abandoned or vacated for a continuous period of two years (24 months), the property owner shall cause to have all structures, buildings, signs, and accessory uses related to the gasoline service station and other potentially hazardous conditions removed from the premises. Underground fuel storage tanks shall also be removed from the premises or capped satisfactorily to the Fire Department.
- 27. The property included within this permit shall be used only for the purposes and under the terms and conditions set forth in this permit unless authorized by the City Manager or the permit has been revoked by the City of San Diego.
- 28. This permit may be canceled or revoked if there is a material breach or default in any of the conditions of this permit. Cancellation or revocation may be instituted by the City of San Diego or Permittee.
- 29. This permit is a covenant running with the subject property and shall be binding upon the Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this permit and all referenced documents.
- 30. All of the conditions contained in this permit have been considered and have been determined to be necessary in order to make the findings required for this discretionary permit. It is the intent of the City that the holder of this permit be required to comply with each and every condition in order to be afforded special rights which the holder of this permit is obtaining as a result of this permit. It is the intent of the City that the owner of the property which is the subject of the permit either utilize the property for any use allowed under the zoning and other restrictions which apply to the property or, in the alternative, that the owner of the property be allowed the special and extraordinary right conveyed by this permit, but only if the owner complies with all the conditions of this permit.

In the event that any condition of this permit, on a legal challenge by the Owner/Permittee of this permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable or unreasonable, this permit shall be void. However, in such event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition back to the discretionary body which approved the permit for a determination by that body as to whether all of the findings necessary for the issuance of the

permit can still be made in the absence of the "invalid" condition(s). Such hearing shall have the absolute right to approve, disapprove or modify the proposed permit and the condition(s) contained therein.

31. Construction and operation of the approved use shall comply at all times with the regulations of this or any other governmental agencies.
32. This development may be subject to impact fees, as established by the City Council, at the time of issuance of building permits.
33. A copy of this permit shall be posted on the premises of the service station at all time and be available for viewing by any person or persons who may desire to see the document.
34. The sale of alcoholic beverages is not permitted at the mini-mart.
35. The Permittee shall install signs, satisfactory to the City Manager, in the Ardath Road and La Jolla Shores Drive street rights-of-way parking lots identifying the lots to be open to the public.

Passed and adopted by the Council of The City of San Diego on May 6, 1997, by Resolution No. R-288629.

 288629

AUTHENTICATED BY THE CITY MANAGER

By _____

The undersigned Permittee, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Permittee hereunder.


JOHN M. PERCIVAL
Owner

By _____

K.A. FINANCIAL, a joint venture
Permittee

By _____

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1180 et seq.
06/02/97**

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