

CITY OF LONG BEACH

H-2

DEPARTMENT OF DEVELOPMENT SERVICES

333 West Ocean Blvd., 4th Floor Long Beach, CA 90802 (562) 570-5237 Fax: (562) 570-6205

August 7, 2012

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Receive the supporting documentation into the record, conclude the public hearing, consider the applicant's appeal, and either:

- 1) Uphold the decision of the Planning Commission to deny a Conditional Use Permit request for the sale of beer and wine for off-site consumption (Type 20 license) at an existing convenience store located at 1821 Martin Luther King Junior Avenue within the Single Family Residential zone; or
- 2) Approve the Conditional Use Permit request for the sale of beer and wine for off-site consumption (Type 20 license) at an existing convenience store located at 1821 Martin Luther King Junior Avenue within the Single Family Residential zone. (District 6)

DISCUSSION

A Conditional Use Permit (CUP) application was received on March 12, 2012 for the sale of beer and wine for off-site consumption (Type 20 license) at an existing convenience store located at 1821 Martin Luther King Junior Avenue. The subject site is located within the Single Family Residential (R-1-N) zone and is developed with a total building area of 2,678 square feet with no on-site parking (Exhibit A – Plans & Photographs). The existing use is grandfathered. Single-family residential uses are the predominant development pattern surrounding the site, although it backs up to commercial uses to the south along Pacific Coast Highway.

On May 17, 2012, planning staff recommended approval of the CUP application to the Planning Commission. After hearing public testimony and discussing the proposed application in detail, the Planning Commission voted unanimously to overturn staff's recommendation, directed staff to prepare findings for denial of the CUP, and continued the request to the June 7, 2012 Planning Commission hearing. At the June 7, 2012 Planning Commission hearing, after additional public testimony and discussion, the Planning Commission voted unanimously to deny the CUP request, in part because the proposed use was within 500 feet of the Long Beach Polytechnic High School administrative building and it is located in a single family residential zone. The Planning Commission decision was appealed on June 11, 2012 (Exhibit B – Appeal). The Appellant contends that the use would be appropriate for the area.

When a decision of the Planning Commission is appealed to the City Council, staff is required to send the appeal to the City Council within 60 business days of obtaining the appeal.

The Planning Commission's reasons for denial of the CUP, along with denial findings are provided herein (Exhibit C – Denial Findings). However, should the City Council wish to overturn the decision of the Planning Commission and sustain the appeal, staff has prepared the appropriate findings for such a decision based on staff's original recommendation (Exhibit D). This will provide the City Council flexibility to either uphold the Planning Commission's decision to deny the request, or overturn the decision and uphold planning staff's recommendation for approval.

This matter was reviewed by Assistant City Attorney Michael Mais on July 16, 2012 and by Budget Management Officer Victoria Bell on July 18, 2012.

TIMING CONSIDERATIONS

The Municipal Code requires City Council action within 60 days of receiving an application for appeal. The subject appeal was received on June 11, 2012.

FISCAL IMPACT

There is no fiscal impact and no job impact as a result of the recommended action.

SUGGESTED ACTION:


Approve recommendation.

Respectfully submitted,



AMY J. BODEK, AICP
DIRECTOR OF DEVELOPMENT SERVICES

APPROVED:

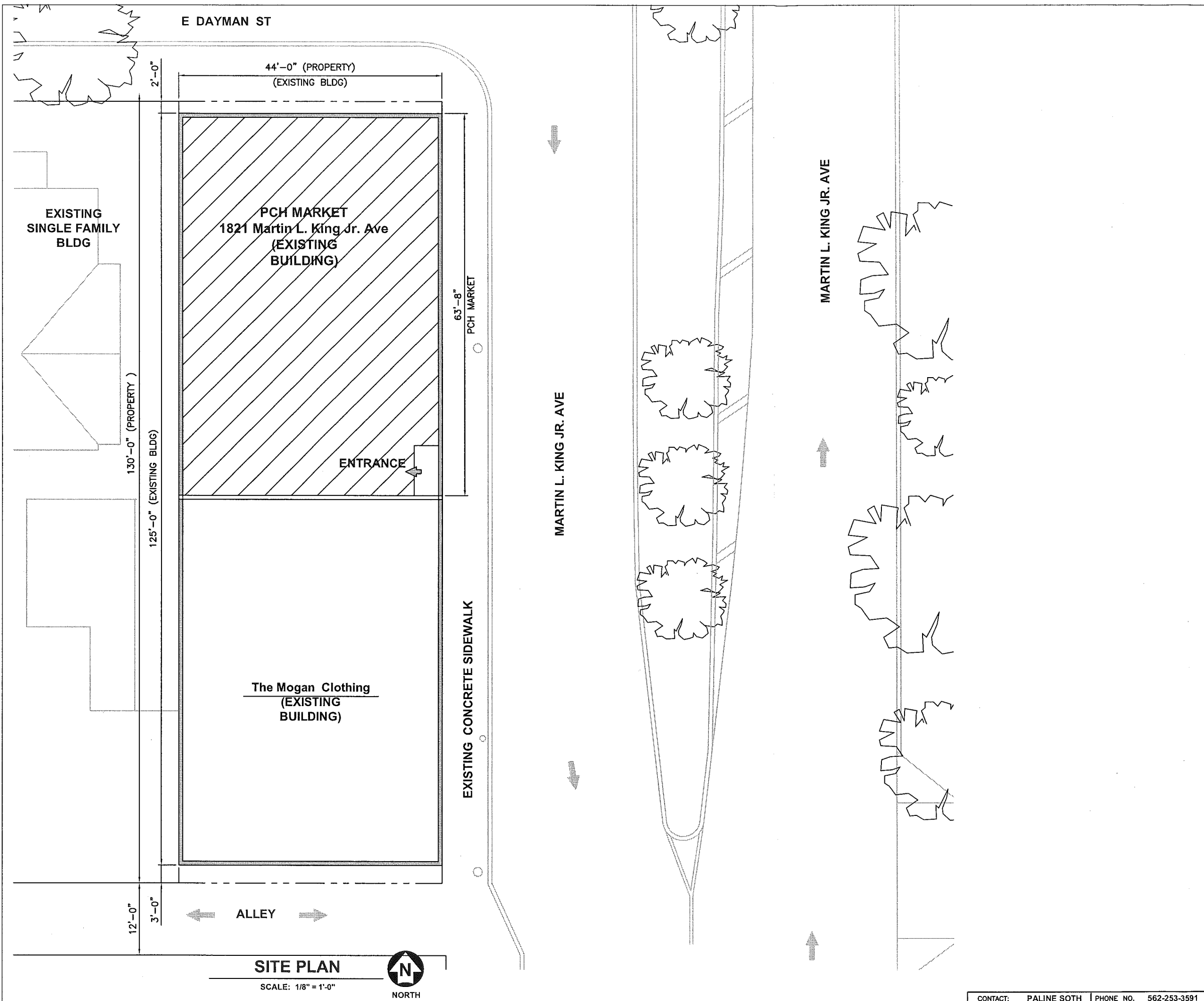


PATRICK H. WEST
CITY MANAGER

AJB:DB:JR
P:\Planning\City Council Items (Pending)\Council Letters\2012\12-08-07.doc

- Attachments: Exhibit A- Plans and Photographs
Exhibit B- Appeal
Exhibit C- Denial Findings adopted by Planning Commission (6/7/2012)
Exhibit D- Original Findings for approval of CUP and Conditions of Approval (5/17/2012)

EXHIBIT A



PROJECT SITE
PCH MARKET

SITE MAP
SCALE: N.T.S.

NORTH

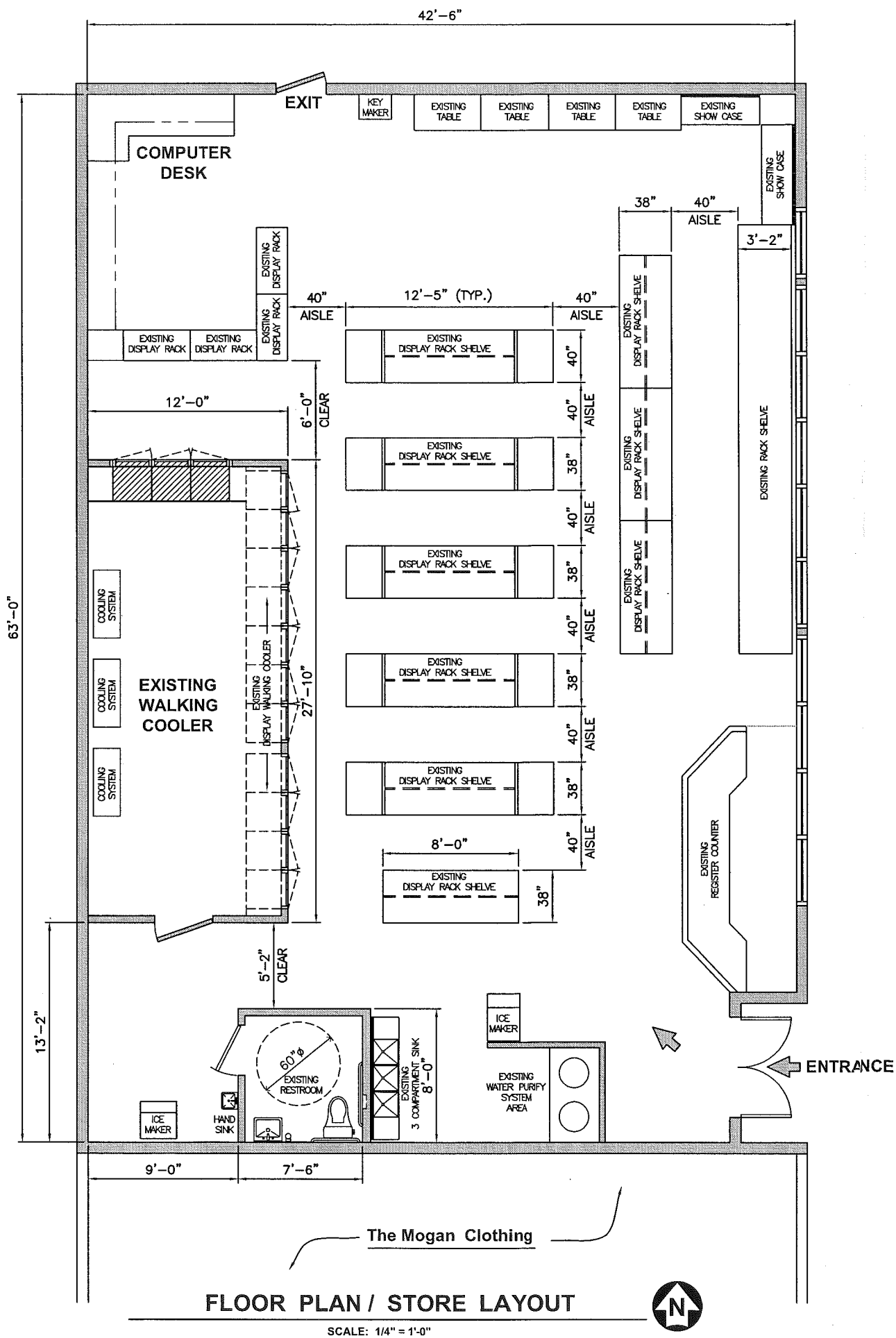
PCH MARKET
FLOOR AREA : 2677.5 SQ. FT.

LOT SIZE : 5702 SQ. FT.
LOT COVERAGE: 5485 SQ. FT.

PROPOSED CONDITIONAL USE PERMIT
FOR BEER & WINE OFF SALE

SITE ADDRESS		PCH MARKET 1821 MARTIN L. KING JR. AVE	
CITY	LONG BEACH, CALIFORNIA	ZIP CODE	90806
SHEET TITLE			SHEET NO.
SITE MAP & SITE PLAN			1

CONTACT: PALINE SOTH | PHONE NO. 562-253-3591 | DRAWING SCALE: 1/8" = 1'-0"



PCH MARKET
 FLOOR AREA : 2677.5 SQ. FT.

FLOOR PLAN / STORE LAYOUT

SCALE: 1/4" = 1'-0"



PROPOSED CONDITIONAL USE PERMIT FOR BEER & WINE OFF SALE			
SITE ADDRESS			
PCH MARKET 1821 MARTIN L. KING JR. AVE			
CITY			ZIP CODE
LONG BEACH, CALIFORNIA			90806
SHEET TITLE			SHEET NO.
FLOOR PLAN / STORE LAYOUT			2
CONTACT: PALINE SOTH		PHONE NO. 562-253-3591	
			DRAWING SCALE: 1/4" = 1'-0"





Martin Luther King Jr Ave

Martin Luther King Jr Ave



CITY OF LONG BEACH

DEPARTMENT OF DEVELOPMENT SERVICES

333 West Ocean Blvd., 5th Floor Long Beach, CA 90802 (562) 570-6194 FAX (562) 570-6068

PLANNING BUREAU

APPLICATION FOR APPEAL

An appeal is hereby made to Your Honorable Body from the decision of the

<input type="checkbox"/> Zoning Administrator	on the <u>7th</u> day of <u>JUNE</u> , 2012
<input checked="" type="checkbox"/> Planning Commission	
<input type="checkbox"/> Cultural Heritage Commission	
<input type="checkbox"/> Site Plan Review Committee	

Project Address: APPLICATION NO. 1203-09 1821 Martin Luther King Jr. Ave.

Reasons for Appeal:

The establishment is qualified and responsible merchant. One block from my residence, Dayman & Myrtle Ave

Your appellant herein respectfully requests that Your Honorable Body **reject** the decision and **Approve** / **Deny** this application.

	Appellant 1	Appellant 2
Name:	<u>Jon Rambo</u>	
Organization:		
Address:	<u>1847 Myrtle Ave</u>	
City/ZIP:	<u>L.B. 90806</u>	
Phone:	<u>(562) 504-4554</u>	
Signature:	<u>Jon Rambo</u>	
Date:	<u>6/11/12</u>	

- A separate appeal form is required for each appellant party, except for appellants from the same address, or those representing an organization.
- Appeals must be filed within 10 days after the decision is made (LBMC 21.21.502).
- You must have established *aggrieved* status by presenting oral or written testimony at the hearing where the decision was rendered; otherwise, you may not appeal the decision.
- See reverse of this form for the statutory provisions on the appeal process.

(Below This Line for Staff Use Only)

Appeal by Applicant, or Appeal by Third Party

Received by: Jose Ramirez App. No.: 1203-09 Filing Date: 6/11/12

Fee: 55.00 Fee Paid Project (receipt) No.: PZON 27645

CONDITIONAL USE PERMIT FINDINGS

**1821 Martin Luther King Junior Avenue
Application No. 1203-09
June 7, 2012**

Pursuant to Section 21.25.206 of the Long Beach Municipal Code, a Conditional Use Permit can be granted only when positive findings are made consistent with the following criteria set forth in the Zoning Ordinance. These findings and staff analysis are presented for consideration, adoption and incorporation into the record of proceedings:

- 1. THE APPROVAL IS CONSISTENT WITH AND CARRIES OUT THE GENERAL PLAN, ANY APPLICABLE SPECIFIC PLANS SUCH AS THE LOCAL COASTAL PROGRAM AND ALL ZONING REGULATIONS OF THE APPLICABLE DISTRICT;**

The project site is located in Land Use District #1—Single Family Residential District. LUD #1 was created in response to the majority of the public's preference for single-family homes. The existing convenience store is a legal nonconforming use located in a single family residential zone (R-1-N). Per Section 21.27.060 of the zoning regulations, a nonconforming use may not be expanded or altered in any way so as to increase that nonconformity. Therefore the addition of off-site sales of beer and wine would be considered an expansion of a nonconforming use and would not be consistent with the General Plan or the zoning regulations.

- 2. THE PROPOSED USE WILL NOT BE DETRIMENTAL TO THE SURROUNDING COMMUNITY INCLUDING PUBLIC HEALTH, SAFETY OR GENERAL WELFARE, ENVIRONMENTAL QUALITY OR QUALITY OF LIFE; AND**

In accordance with the California Environment Quality Act (CEQA) and the CEQA Guidelines, a Categorical Exemption (CE 12-081) was prepared for this project and is attached for your review.

The addition of off-site beer and wine sales at an existing convenience store could be detrimental to the surrounding community. With the proximity of Long Beach Polytechnic High School approximately 400 feet away from the proposed site, the potential exists for sales of beer and wine to students who are under age, potentially creating a health and safety problem to the surrounding community.

- 3. THE APPROVAL IS IN COMPLIANCE WITH THE SPECIAL CONDITIONS FOR SPECIFIC CONDITIONAL USES, AS LISTED IN CHAPTER 21.52.**

Section 21.52.210 states that the following conditions shall apply to all alcoholic beverages sales uses requiring a conditional use permit:

- A. The operator of the use shall provide parking for the use equivalent to the parking required for new construction regardless of the previous use as to legal nonconforming rights.**

Although not applicable due to the negative findings contained in findings number 1 and 2, for informational purposes; The existing PCH neighborhood market is approximately 2,678 square feet in size. Per zoning code section 21.41.216, parking for a retail store is at (4) spaces per 1,000 square feet of floor area. Given the current establishment was built without onsite parking and in a manner that does not allow for the incorporation of additional onsite parking, the parking is considered legal non-conforming and no additional parking is required.

B. The operator of the use shall provide night lighting and other security measures to the satisfaction of the Chief of Police.

Although not applicable due to the negative findings contained in findings number 1 and 2, for informational purposes; Staff consulted with the Long Beach Police Department on this application. The LBPD did not have any objections to the request with the incorporated conditions of approval that required security cameras, a limitation on alcohol sales operating hours (8 a.m. to 9 p.m.), limit on the size of alcohol containers/packages, and prevention of loitering.

C. The operator of the use shall prevent loitering or other activity in the parking lot that would be a nuisance to adjacent uses and/or residential neighborhoods.

Although not applicable due to the negative findings contained in findings number 1 and number 2, if this application had been approved then condition of Approval #11 would require the operator to prevent loitering and other related nuisances.

D. The use shall not be in a reporting district with more than the recommended maximum concentration of the applicable on or off-premise sales use, as recommended by the Long Beach Police Department, except: (1) locations in the greater downtown area; or (2) stores of more than 20,000 square feet of floor area, and also providing fresh fruit, vegetables, and meat, in addition to canned goods.

Although not applicable due to the negative findings contained in findings number 1 and 2, for informational purposes; In consideration of a Conditional Use Permit application for the sale of alcoholic beverages, staff evaluates the number of existing alcohol licenses in the subject Census Tract as well as the total number of reported crimes in the subject Police Reporting District. Section 21.52.210 of the zoning regulations requires that the use not be in a reporting district with an over-concentration of alcohol sales, as recommended by the California Department of Alcoholic Beverage Control (ABC), and that the use shall not be in a reporting district with a high crime rate as reported by the Long Beach Police Department. The project is not located in a high crime area per LBPD; nor in an area that has an over-concentration of licenses for on-site

alcohol sales. In the subject census tract (5732.02), four licenses for on-site alcohol sales are allowed and there are currently two existing licenses; one of these was recently surrendered. The addition of this license will keep the number of licenses in the census tract at two licenses, which is below the maximum number of licenses allowed in the census tract and the same that existed before a license was surrendered.

- E. The use shall not be located within 500 feet of a public school or public park, except: (1) locations in the greater downtown area; or (2) stores of more than 20,000 square feet of floor area, and also providing fresh fruit, vegetables, and meat in addition to canned goods.**

The subject site is located within 500 feet of the Long Beach Polytechnic High School campus boundaries. With the proximity of the school the opportunity exists for sales of beer and wine to students who are under age to drink, thus potentially creating a higher risk of health and safety problems to the surrounding community.

CONDITIONAL USE PERMIT FINDINGS

1821 Martin Luther King Junior Avenue

Application No. 1203-09

May 17, 2012

Pursuant to Section 21.25.206 of the Long Beach Municipal Code, a Conditional Use Permit can be granted only when positive findings are made consistent with the following criteria set forth in the Zoning Ordinance. These findings and staff analysis are presented for consideration, adoption and incorporation into the record of proceedings:

- 1. THE APPROVAL IS CONSISTENT WITH AND CARRIES OUT THE GENERAL PLAN, ANY APPLICABLE SPECIFIC PLANS SUCH AS THE LOCAL COASTAL PROGRAM AND ALL ZONING REGULATIONS OF THE APPLICABLE DISTRICT;**

The project site is located in Land Use District #1—Single Family Residential District. LUD #1 was created in response to the majority of the public's preference for single-family homes, and in recognition of reality that a majority of the city contains single-family homes. The existing market is a use that was allowed prior to the creation of the Single Family Residential District. The request to sell alcohol for off-site consumption is considered an expansion and is a use that was allowed prior to the creation of the Single Family Residential District. Therefore the use is considered a legal non-conforming use in the district. To expand on a non-conforming use, a use which was originally established in a zone district by right and reclassified as a discretionary use in that district shall obtain a conditional use permit prior to expansion of the use, subject to the special conditions enumerated in Section 21.52.212 of the Municipal Code. Approval of this project would be consistent with the General Plan and the zoning regulations.

- 2. THE PROPOSED USE WILL NOT BE DETRIMENTAL TO THE SURROUNDING COMMUNITY INCLUDING PUBLIC HEALTH, SAFETY OR GENERAL WELFARE, ENVIRONMENTAL QUALITY OR QUALITY OF LIFE; AND**

The applicant is currently operating a retail store within an existing commercial building, which has had no adverse impacts, or calls for service. With the incorporation of conditions of approval, which includes the maintenance of landscaping, improvements to the commercial building and operational conditions, the use will not be detrimental to the surrounding community. Thus, no public health, safety, general welfare, environmental quality, or quality of life impacts are foreseen for this project.

- 3. THE APPROVAL IS IN COMPLIANCE WITH THE SPECIAL CONDITIONS FOR SPECIFIC CONDITIONAL USES, AS LISTED IN CHAPTER 21.52.**

Section 21.52.210 states that the following conditions shall apply to all alcoholic beverages sales uses requiring a conditional use permit:

- A. The operator of the use shall provide parking for the use equivalent to the parking required for new construction regardless of the previous use as to legal nonconforming rights.**

The existing PCH neighborhood market is approximately 2,678 square feet in size. Per zoning code section 21.41.216, parking for a retail store is at (4) spaces per 1,000 square feet of floor area. Given the current establishment was built without onsite parking and in a manner that does not allow for the incorporation of additional onsite parking, the parking is considered legal non-conforming and no additional parking is required.

- B. The operator of the use shall provide night lighting and other security measures to the satisfaction of the Chief of Police.**

Staff consulted with the Long Beach Police Department on this application. The LBPD did not have any objections to the request with the incorporated conditions of approval that required security cameras, a limitation on alcohol sales operating hours (8 a.m. to 9 p.m.), limit on the size of alcohol containers/packages, and prevention of loitering.

- C. The operator of the use shall prevent loitering or other activity in the parking lot that would be a nuisance to adjacent uses and/or residential neighborhoods.**

Condition of Approval #11 requires the operator to prevent loitering and other related nuisances.

- D. The use shall not be in a reporting district with more than the recommended maximum concentration of the applicable on or off-premise sales use, as recommended by the Long Beach Police Department, except: (1) locations in the greater downtown area; or (2) stores of more than 20,000 square feet of floor area, and also providing fresh fruit, vegetables, and meat, in addition to canned goods.**

In consideration of a Conditional Use Permit application for the sale of alcoholic beverages, staff evaluates the number of existing alcohol licenses in the subject Census Tract as well as the total number of reported crimes in the subject Police Reporting District. Section 21.52.210 of the zoning regulations requires that the use not be in a reporting district with an over-concentration of alcohol sales, as recommended by the California Department of Alcoholic Beverage Control (ABC), and that the use shall not be in a reporting district with a high crime rate as reported by the Long Beach Police Department. The project is not located in a high crime area per LBPD; nor in an area that has an over-concentration of licenses for on-site alcohol sales. In the subject census tract (5732.02), four licenses for on-site alcohol sales are allowed and there are currently two existing license; one of those was recently surrender. The addition of this license will keep the number of licenses in the census tract at two licenses, which is below

the maximum number of license allowed in the census tract and the same that existed before a license was surrendered.

- E. The use shall not be located within 500 feet of a public school or public park, except: (1) locations in the greater downtown area; or (2) stores of more than 20,000 square feet of floor area, and also providing fresh fruit, vegetables, and meat in addition to canned goods.**

The subject site is located within 500 feet of the Poly High school property boundary. However, the school offices and classrooms are more than 1,000 feet away from the entrance to the store and is situated at the northerly corner of the school, away from the entrance to the school. Thus, staff is recommending that Planning Commission waive this finding.

CONDITIONAL USE PERMIT CONDITIONS OF APPROVAL

1821 Martin Luther King Junior Avenue

Application No. 1203-09

Date: May 17, 2012

1. The use permitted on the subject site, in addition to the other uses permitted in the R-1-N zoning district, shall be to allow the sale of beer and wine for off-site consumption (Type 20 License) at a neighborhood market located at 1821 Martin Luther King Junior Avenue.
2. This permit and all development rights hereunder shall terminate one year from the effective date of this permit unless construction is commenced or a time extension is granted, based on a written and approved request submitted prior to the expiration of the one year period as provided in Section 21.21.406 of the Long Beach Municipal Code.
3. This permit shall be invalid if the owner(s) and/or applicant(s) have failed to return written acknowledgment of their acceptance of the conditions of approval on the *Conditions of Approval Acknowledgement Form* supplied by the Planning Bureau. This acknowledgment must be submitted within 30 days from the effective date of approval (final action date or, if in the appealable area of the Coastal Zone, 21 days after the local final action date).

Special Conditions:

4. No publicly accessible telephones shall be maintained on the exterior of the premises. Any existing publicly accessible telephones shall be removed.
5. The windows of the store shall be maintained free of signage or other obstructions in excess of 10 percent of each window area. Window signs displaying prices shall be prohibited.
6. There shall be no exterior advertising or sign of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages.
7. Installation of any exterior newsstands and vending machines shall be prohibited.
8. Video or coin operated games and the like shall be prohibited on site so as to discourage loitering on the premises.
9. The permittee shall maintain full compliance with all applicable laws, ABC laws, ordinances and stated conditions. In the event of a conflict between the requirements of this permit, Conditional Use Permit, or Alcoholic

Beverage Control license, the more stringent regulation shall apply.

10. The beer and wine sales shall be limited to one cooler and shall not be expanded.
11. The operator of the approved use shall prevent loitering and loud noises around the project site, and in all parking areas serving the use during and after hours of operation.
12. If the owner wishes to upgrade the existing alcohol license such as (beer, wine, and distilled spirits), they will be required to apply for a new Conditional Use Permit.
13. No alcoholic beverages shall be consumed on the property, or on adjacent properties under control of the licensee.
14. No sales to any person appearing to be or actually being intoxicated shall be allowed.
15. Licensee shall take all reasonable measures to prohibit and prevent any loitering on the premises.
16. All sales of alcohol shall be directly supervised by an authorized employee of the licensee, aged at least 21 years, including inspection of identification to verify age of purchaser, and observation of purchaser to ensure no sales to intoxicated persons.
17. No beer or malt beverages shall be sold, regardless of container size, in packages of less than three per sale.
18. No pay phone shall be maintained on the interior and exterior of the premises.
19. The sale of beer or malt beverages in quantities of quarts, 22 oz, 32 oz, 40 oz or similar size is prohibited.
20. Wine shall not be sold in bottles or containers smaller than 750 ml. other than dessert wines in 375 ml. bottles.
21. Exterior security bars and roll-up doors applied to windows and pedestrian building entrances shall be prohibited.
22. The operator shall install exterior video security cameras at the front and rear of the business with full view of the public right-of-way and shall install exterior security video cameras that provide full view of any areas where operator provides parking for its patrons. The cameras shall record video for

a minimum of 30 days and be accessible via the Internet by the LBPd. A Public Internet Protocol (IP) address and user name/password to allow LBPd to view live and recorded video from the cameras over the Internet are also required. All video security cameras shall be installed to the satisfaction of the Police Chief, Director of Technology Services, and Director of Development Services.

23. The operator/owner/tenant shall prevent loitering and loud noises around the project site during hours of operation. If loitering continues, as determined by the Long Beach Police Department, a security guard shall be required during business hours at the discretion of the Director of Development Services. Continual problems with loitering, which increase the calls for service at the business may lead to revocation of the Conditional Use Permit.
24. The hours of operation for alcohol sales shall be limited to 8 a.m. to 9 p.m. Monday through Sunday.
25. The sale of fortified wines with an alcohol content of greater than 15% is prohibited.

Standard Conditions:

26. If, for any reason, there is a violation of any of the conditions of this permit or if the use/operation is found to be detrimental to the surrounding community, including public health, safety or general welfare, environmental quality or quality of life, such shall cause the City to initiate revocation and termination procedures of all rights granted herewith.
27. In the event of transfer of ownership of the property involved in this application, the new owner shall be fully informed of the permitted use and development of said property as set forth by this permit together with all conditions that are a part thereof. These specific requirements must be recorded with all title conveyance documents at time of closing escrow.
28. This approval is required to comply with these conditions of approval as long as the use is on the subject site. As such, the site shall allow periodic re-inspections, at the discretion of city officials, to verify compliance. The property owner shall reimburse the City for the inspection cost as per the special building inspection specifications established by City Council (Sec. 21.25.412, 21.25.212).
29. All conditions of approval must be printed verbatim on all plans submitted for plan review to the Department of Development Services. These conditions must be printed on the site plan or a subsequent reference page.
30. The Director of Development Services is authorized to make minor

modifications to the approval design plans or any of the conditions of approval if such modifications shall not significantly change/alter the approved design/project. Any major modifications shall be reviewed by the Zoning Administrator or Planning Commission, respectively.

31. The property shall be developed and maintained in a neat, quiet, and orderly condition and operated in a manner so as not to be detrimental to adjacent properties and occupants. This shall encompass the maintenance of exterior facades of the building, designated parking areas serving the use, fences and the perimeter of the site (including all public parkways).
32. Any graffiti found on site must be removed within 24 hours of its appearance.
33. The applicant shall defend, indemnify, and hold harmless the City of Long Beach, its agents, officers, and employees from any claim, action, or proceeding against the City of Long Beach or its agents, officers, or employees brought to attack, set aside, void, or annul an approval of the City of Long Beach, its advisory agencies, commissions, or legislative body concerning this project. The City of Long Beach will promptly notify the applicant of any such claim, action, or proceeding against the City of Long Beach and will cooperate fully in the defense. If the City of Long Beach fails to promptly notify the applicant of any such claim, action or proceeding or fails to cooperate fully in the defense, the applicant shall not, thereafter, be responsible to defend, indemnify, or hold harmless the City of Long Beach.