



COMMUNITY DEVELOPMENT DEPARTMENT

PLANNING DIVISION

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CITY OF NEWPORT BEACH ZONING ADMINISTRATOR STAFF REPORT

January 10, 2013

Agenda Item 1

SUBJECT: Hershey's Market - PA2012-125
200 Marine Avenue
Minor Use Permit No. UP2012-020

APPLICANT: BB & C, LLC - DBA: Hershey's Market

PLANNER: Fern Nueno, Associate Planner
(949) 644-3227 or fnueno@newportbeachca.gov

ZONING DISTRICT/GENERAL PLAN

- **Zone:** MU-W2 (Mixed-Use Water Related)
- **General Plan:** MU-W2 (Mixed-Use Water Related)

PROJECT SUMMARY

A minor use permit application to allow an accessory food service use within an existing grocery store and delicatessen. The applicant proposes to add 6 tables with 12 seats adjacent to the retail area. The market is approximately 4,300 square feet in gross floor area and the proposed seating area is approximately 120 square feet.

RECOMMENDATION

- 1) Conduct a public hearing; and
- 2) Adopt Draft Zoning Administrator Resolution No. _____ approving Minor Use Permit No. UP2012-020 (Attachment No. ZA 1).

DISCUSSION

- The subject property is located on the corner of Marine Avenue and Park Avenue on Balboa Island (See vicinity map provided as Attachment No. ZA 2). The lot is 60 feet by 75 feet (4,500 square feet in area).

- A grocery store is designated as a retail sales land use within the Zoning Code. Pursuant to Chapter 20.22 of the Zoning Code (Mixed-Use Zoning Districts), retail sales is an allowed use within the MU-W2 Zoning District and accessory uses are allowed with the approval of a Minor Use Permit.
- Accessory food service uses are typical within grocery stores and do not change or expand the primary use.
- The project is compatible with existing and allowed uses within the vicinity. Nearby uses include restaurants, a post office, a coffee shop, candy and dessert establishments, and retail sales.
- The parking is nonconforming as the site does not provide any off-street parking. The addition of an accessory use does not change or increase the parking requirement.
- As demonstrated in the attached draft resolution, staff believes the proposed project meets the requirements of the Zoning Code and the findings for approval can be made.

ENVIRONMENTAL REVIEW

This project qualifies for an exemption from environmental review pursuant to Section 15301 (Class 1 Existing Facilities) of the Implementing Guidelines of the California Environmental Quality Act ("CEQA"), which exempts minor alterations to existing facilities involving negligible expansion of use. The addition of tables for an accessory food service use is a negligible expansion of the existing retail use.

PUBLIC NOTICE

Notice of this application was published in the Daily Pilot, mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicant and posted on the subject property at least 10 days prior to the decision date, consistent with the provisions of the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

APPEAL PERIOD

An appeal may be filed with the Director of Community Development, within fourteen (14) days following the date the action. For additional information on filing an appeal, contact the Planning Division at 949-644-3200.

Prepared by:



Fern Nueno, Associate Planner

GBR/fn

Attachments:	ZA 1	Draft Resolution
	ZA 2	Vicinity Map
	ZA 3	Applicant's Project Description
	ZA 4	Project Plans

Attachment No. ZA 1

Draft Resolution

RESOLUTION NO. ZA2012-____

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2012-020 FOR ACCESSORY FOOD SERVICE WITHIN AN EXISTING GROCERY STORE LOCATED AT 200 MARINE AVENUE (PA2012-125)

THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by BB&C LLC., DBA Hershey's Market, with respect to property located at 200 Marine Avenue, and legally described as Lots 1 and 2, Block 11, Balboa Island Section 4, requesting approval of a Minor Use Permit.
2. The applicant proposes accessory food service use within the existing grocery store and delicatessen, which will include six (6) tables and 12 chairs.
3. The subject property is located within the Mixed-Use Water Related (MU-W2) Zoning District and the General Plan Land Use Element category is Mixed-Use Water Related (MU-W2).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Mixed-Use Water Related (MU-W).
5. A public hearing was held on January 10, 2013, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act ("CEQA") under Class 1 (Existing Facilities).
2. Class 1 exempts minor alterations to existing facilities involving negligible expansion of use. The addition of tables for an accessory food service use is a negligible expansion of the existing retail grocery store use.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.020 of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

A. The use is consistent with the General Plan and any applicable specific plan.

Facts in Support of Finding:

1. The project site is designated as Mixed-Use Water Related (MU-W2) by the Land Use Element of the General Plan, which is intended to provide for commercial development near the bay while integrating residential development on the upper floors. The existing grocery store and delicatessen use and the proposed accessory food service use are consistent with the MU-W2 designation.
2. Retail sales and eating and drinking establishment uses are prevalent in the vicinity along Marine Avenue and are frequented by both visitors and residents. The establishment is compatible with the land uses allowed within the surrounding neighborhood.
3. The subject property is not part of a specific plan area.

Finding:

B. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.

Facts in Support of Finding:

1. Pursuant to Section 20.70.020 (Definitions of Specialized Terms and Phrases), a grocery store is classified as a retail sales land use. An accessory food service use is a typical use within grocery stores and does not change the principal use.
2. The subject property is located in the MU-W2 Zoning District. A retail sales use is allowed by right within the MU-W2 Zoning District pursuant to Section 20.22.020 (Mixed-Use Zoning Districts Land Uses and Permit Requirements) of the Zoning Code. Subject to the approval of a Minor Use Permit by the Zoning Administrator, the accessory use is allowed within the MU-W2 Zoning District.
3. Pursuant to Zoning Code Section 20.40.040 (Off-Street Parking Spaces Required), retail sales uses require one parking space per 250 square feet of gross floor area. The parking is nonconforming as the site does not provide any off-street parking; however, the addition of an accessory use does not change or increase the parking requirement.

Finding:

C. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.

Facts in Support of Finding:

1. The proposed project is located within a nonresidential zoning district with residential uses nearby. The operational characteristics are that of retail sales establishment, and not of a restaurant, bar, or nightclub.
2. The gross floor area of the building is approximately 4,300 square feet. The proposed seating area is approximately 120 square feet in area.
3. The hours of operation are from 7:30 a.m. to 8:00 p.m. daily.
4. On-sale alcoholic beverage service is not proposed. The approval includes conditions prohibiting dancing or live entertainment on the premise.
5. The surrounding area along Marine Avenue contains various commercial uses including restaurants and retail sales. The proposed establishment is compatible with the existing and allowed uses within the neighborhood.

Finding:

- D.* The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.

Facts in Support of Finding:

1. The subject lot is 60 feet by 75 feet (4,500 square feet in area) and is developed with an approximately 4,300-square-foot building.
2. The subject lot is located at the intersection of two public streets and also has alley access. The existing building has functioned effectively with the current configuration.

Finding:

- E.* Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.

Facts in Support of Finding:

1. The restrictions on seating area and number of chairs will prevent adverse traffic impacts for the surrounding residential and commercial uses. Patrons who are nearby residents or visitors to the area will likely walk or ride a bicycle to the subject site.
2. The hours of operation are from 7:30 a.m. to 8:00 p.m., daily, which will eliminate any late-night noise impacts on the neighboring residential uses.

3. The proposed accessory food service use will provide an economic opportunity for the property owner and provide additional services for the residents and visitors in the surrounding area who patronize the grocery store.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2012-020, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the Director of Community Development in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 10TH DAY OF JANUARY, 2013.

BY:

Brenda Wisneski, AICP, Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

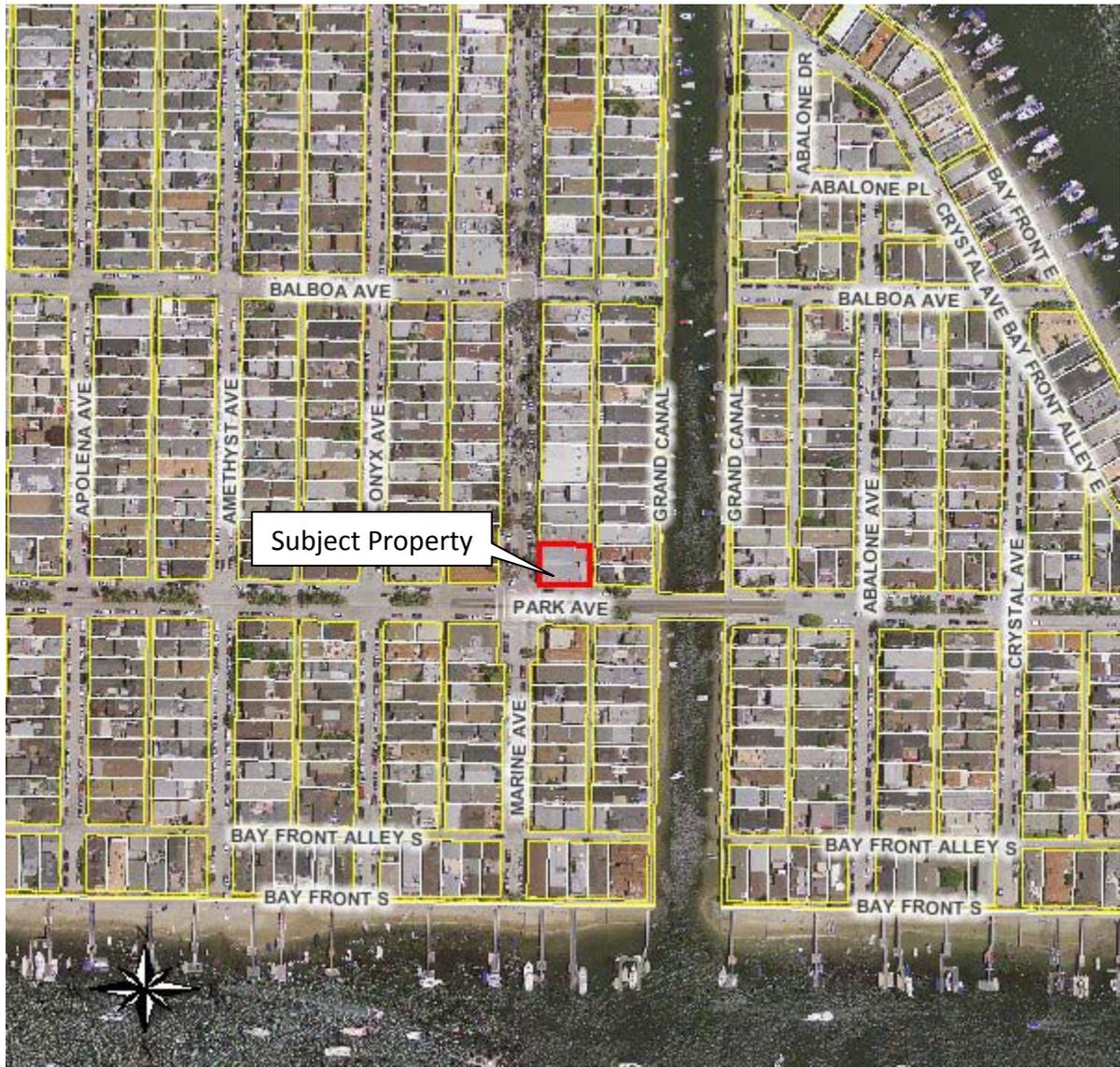
1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval, except as modified by applicable conditions of approval.
2. The hours of operation shall be limited to 7:30 a.m. to 8:00 p.m., daily.
3. The seating area shall be limited to 200 square feet in area.
4. A maximum of 6 tables and 12 seats shall be allowed.
5. Approval is required from the Orange County Health Department.
6. The project shall comply with accessibility requirements as required by the Building Division.
7. The project may necessitate additional plumbing fixtures as required by the Building Division.
8. The addition of the tables and chairs shall be reviewed and approved by the Fire Department and the door and exiting requirements may change based on the occupant load.
9. Dancing and live entertainment are prohibited unless an amendment to this Minor Use Permit is first approved.
10. This Minor Use Permit may be modified or revoked by the Zoning Administrator should he/she determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
11. Any change in operational characteristics, expansion in area, or other modification to the approved plans, may require an amendment to this Minor Use Permit or the processing of a new Minor Use Permit.
12. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
13. No outside paging system shall be utilized in conjunction with this establishment.
14. Trash receptacles for patrons shall be conveniently located inside the establishment.

15. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
16. The applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).
17. Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
18. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 7:00 a.m., daily, unless otherwise approved by the Community Development Director, and may require an amendment to this Minor Use Permit.
19. A Special Event Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
20. Minor Use Permit No. UP2012-020 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 of the Newport Beach Municipal Code, unless an extension is otherwise granted.
21. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Hershey's Market including, but not limited to, the Minor Use Permit No. UP2012-020. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Attachment No. ZA 2

Vicinity Map

VICINITY MAP



Minor Use Permit No. UP2012-020
PA2012-125

200 Marine Avenue

Attachment No. ZA 3

Applicant's Project Description

*H*ERSHEY'S Market

Est. 1929

Store Hours: 7:30 am to 8:00pm Everyday

Store Owners: BB&C, LLC

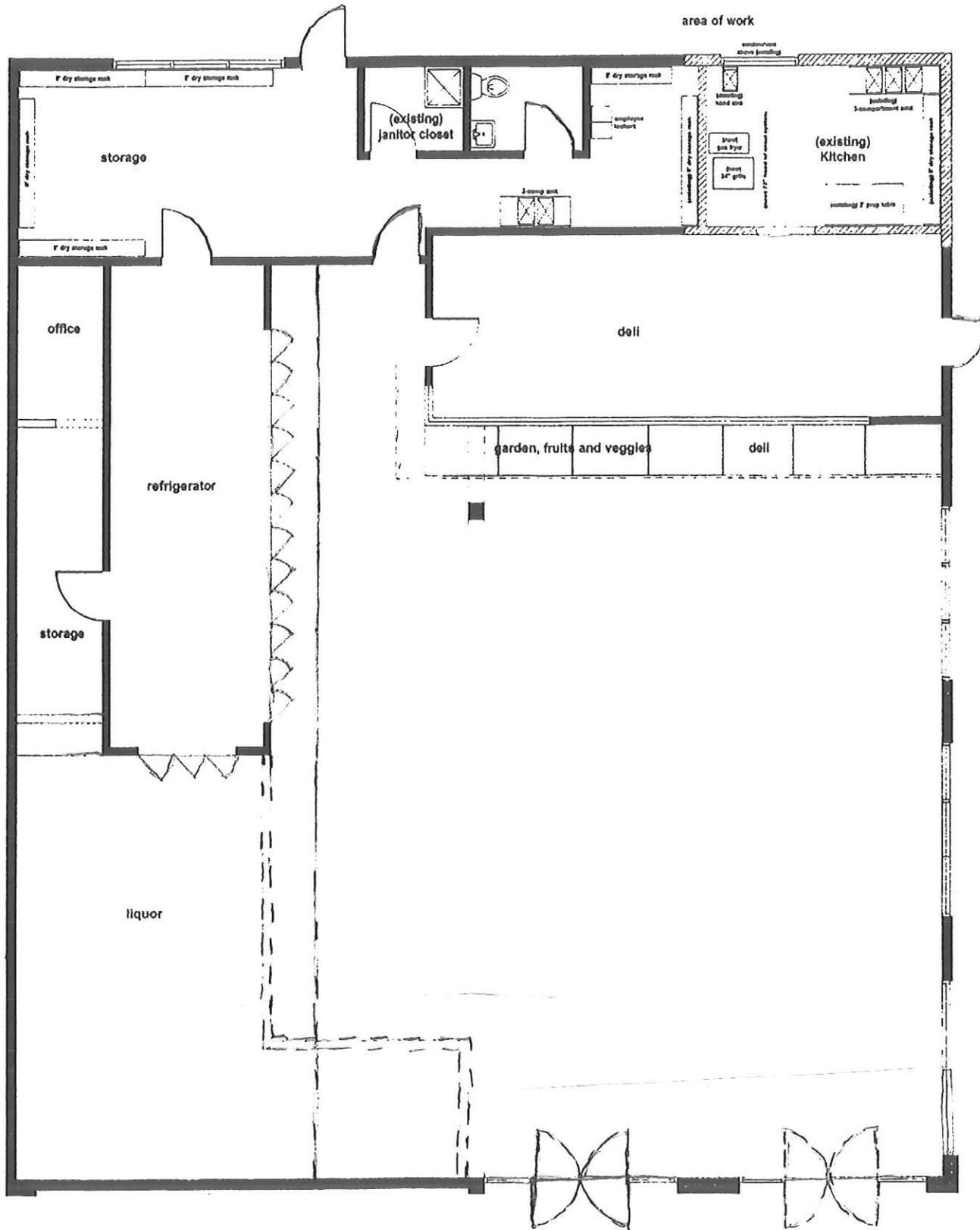
Number of Employees: 13

Description of Business: Established in 1929, Hershey's Market was one of the first businesses to open on Balboa Island. With around \$70,000 in inventory today, 45% of merchandise is grocery, 25% deli, 20% alcohol and 10% general merchandise. Hershey's Market caters to both tourists and the locals, offering island residents a 10% discount.

The market originally had two small tables for customers to enjoy a cup of coffee and a sandwich, Naomi Tesfamichael, our Orange County Health Inspector, gave approval on her last visit to put 6 tables in the deli area. The building is 60' by 75' and the store is approximately 4300 square feet. The seating area is 8' by 15'. Each table is 2.5' by 2.5' with two chairs.

Attachment No. ZA 4

Project Plans

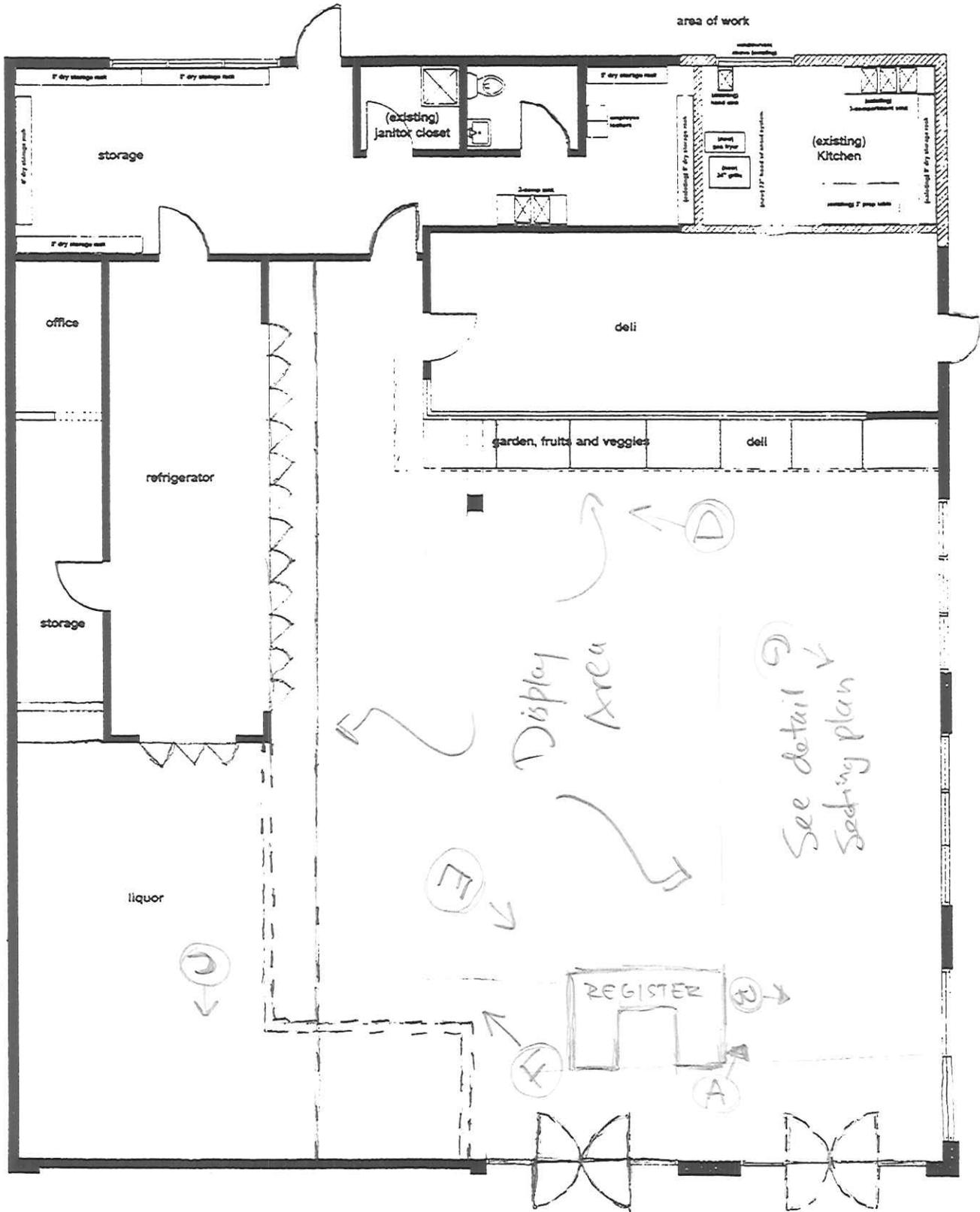


HERSHEY'S MARKET

SITE PLAN

SCALE: 1/2" = 1'-0"

PA2012-125 for UP2012-020
 200 Marine Avenue
 BB & C, LLC - DBA: Hershey's Market

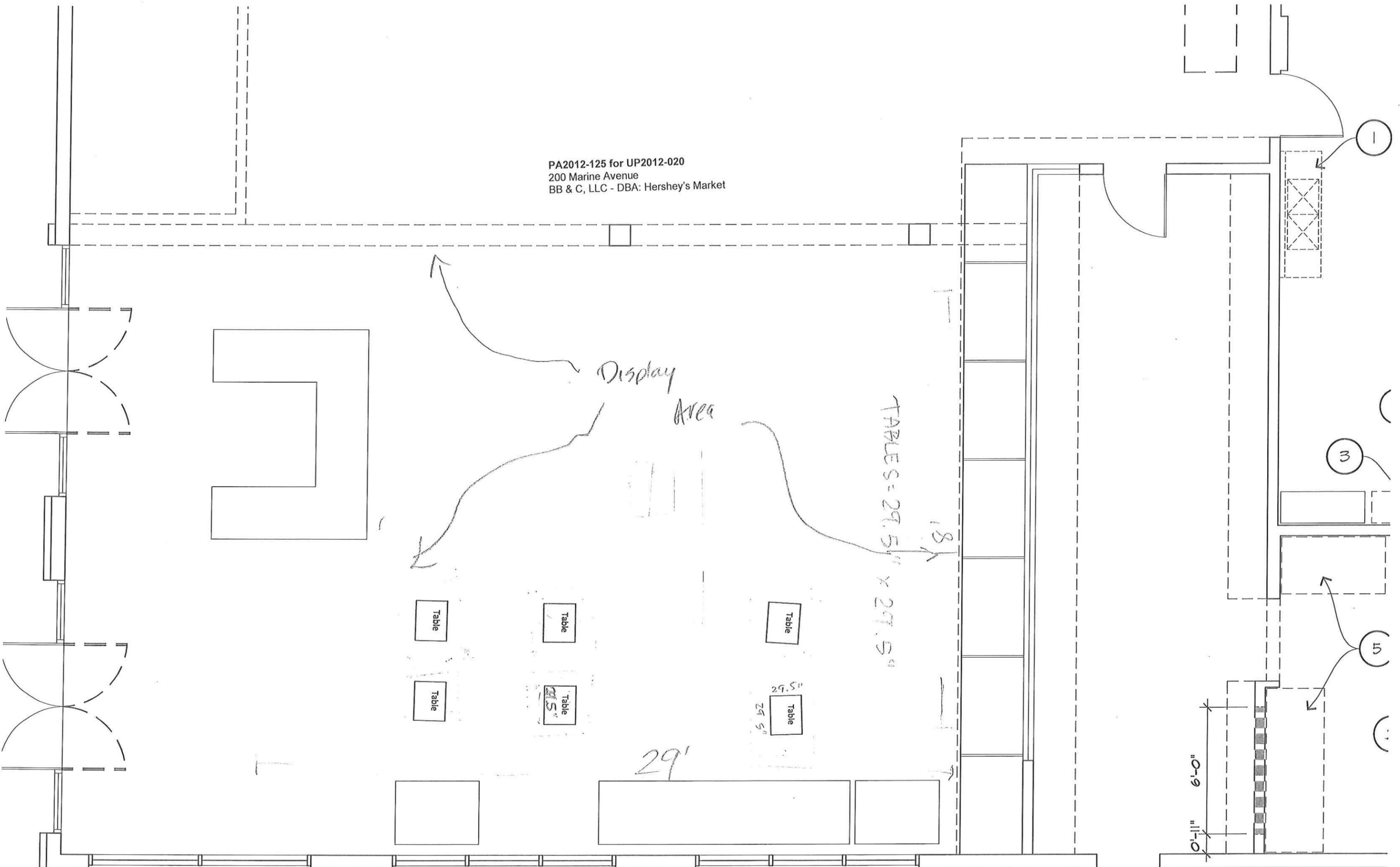


HERSHEY'S MARKET

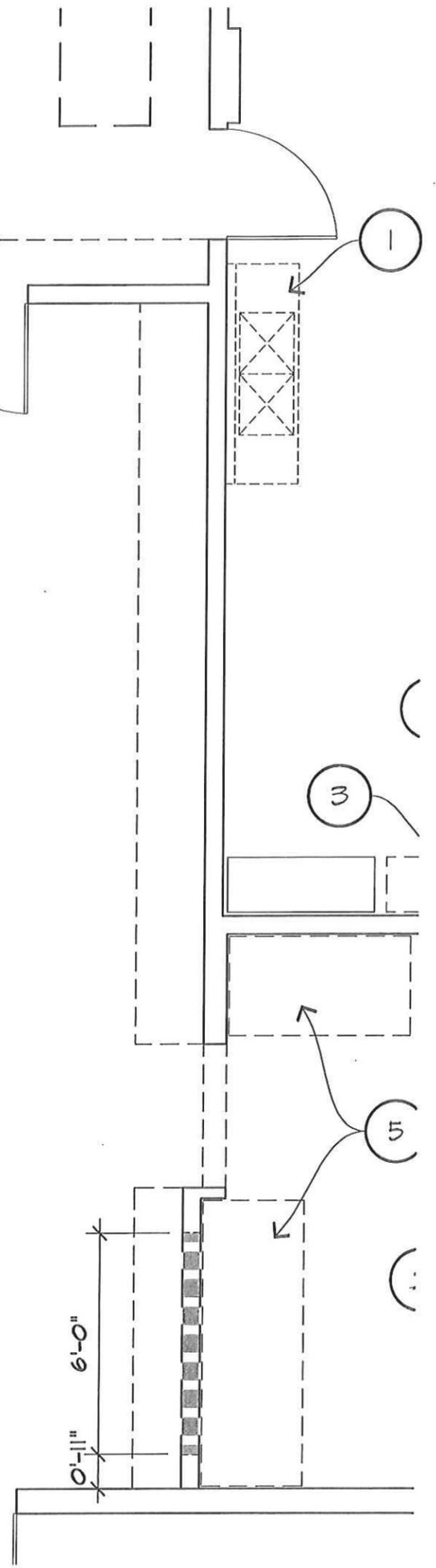
SCALE 1/2" = 1'-0" SITE PLAN

PA2012-125 for UP2012-020
 200 Marine Avenue
 BB & C, LLC - DBA: Hershey's Market

PA2012-125 for UP2012-020
200 Marine Avenue
BB & C, LLC - DBA: Hershey's Market



HERSHEY'S MARKET SEATING AREA DETAIL. scale: 1/4" = 1'-0"



ADDITIONAL
MATERIALS
RECEIVED

Item 1. Hershey's Market Minor Use Permit (PA2012-125)

Comments regarding the draft resolution:

SECTION 1. STATEMENT OF FACTS.

- Statement 2. *"The applicant **proposes** accessory food service use within the existing grocery store and delicatessen, which will include six (6) tables and 12 chairs."*

I believe the tables and chairs may be an existing use, in which case it would seem more accurate to say: *"The applicant **seeks approval for...**"*

The Applicant's Project Description (attachment ZA 3) suggests there are already two tables. It is unclear from that document, and from this, if the proposal is to add four tables for a total of six, or to add six for a total of eight.

SECTION 3. REQUIRED FINDINGS.

- Page 3, Fact 1:

*"The proposed project is located within a **nonresidential** zoning district with residential uses nearby."*

The statement that the district is nonresidential seems contradicted by Fact 1 on page 2, which says the General Plan designation for the area is intended to *"provide for commercial development near the bay while integrating **residential** development on the upper floors."*

*"The operational characteristics are that of retail sales establishment, and **not of a restaurant, bar, or nightclub.**"*

Is a *Subway* or *MacDonald's*, where one buys food and sits at tables to eat it, regarded as a "restaurant"? I would think so, and the proposed operation here seems to me to have very similar characteristics to those.

- Page 3, Fact 4. *"On-sale alcoholic beverage service is not proposed."*

Does the market sell alcohol as part of its retail sales operation? If so, does this mean customers will be prohibited from consuming alcohol at the tables?

The Applicant's Project Description (attachment ZA 3) says that 20% of sales are alcohol; and I see nothing in the conditions of approval prohibiting its consumption at the tables. It is possible the applicant's current liquor license prohibits that, but they could presumably apply for a different kind of license, making that use possible, unless explicitly prohibited in this MUP. It also seems possible the Market is regarded as a "alcohol sales establishment," in which case consumption on premises would seem to be prohibited by NBMC 20.48.030.A.1.

CONDITIONS OF APPROVAL

*“7. The project may necessitate **additional plumbing fixtures** as required by the Building Division.”*

Does this refer to bathroom facilities? Does the market currently provide them? And are they normally required for a dining use?

*“8. The **addition** of the tables and chairs shall be reviewed and approved by the Fire Department and the door and exiting requirements may change based on the occupant load.”*

Are these tables and chairs really being added? Or do some of them already exist? The implication that there may be an increased occupant load seems to contradict earlier assertions that there will be no traffic impact.

“16. The applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors.”

I believe Dan Purcell may have observed problems with refuse storage at this location.

*“17. Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of **the required trash container enclosure**.”*

The nature of the “*required trash container enclosure*” does not seem to be defined in this document.

“19. A Special Event Permit is required for any event ... that would ... involve the sale of alcoholic beverages ...”

Fact 4 on page 3 implied there would be no on-sale alcoholic beverage service.

“21. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City ...”

As has been pointed out to me by a prominent local attorney, the Newport Beach City Attorney has publicly asserted (for example with respect to the proposed Uptown Newport Airport Land Use Commission override) that the City has **no** liability for land use decisions. If so, why are we asking the applicant to indemnify the City?