

MASTER APPEAL FORM

ORIGINAL

City of Los Angeles – Department of City Planning

APPEAL TO THE: City Council
(DIRECTOR, AREA PLANNING COMMISSION, CITY PLANNING COMMISSION, CITY COUNCIL)

REGARDING CASE #: APCS-2013-4102-SPE-DRB-SPP-SPR and CEQA:ENV-2013-4103-MND

PROJECT ADDRESS: 378² W. Martin Luther King Jr. Boulevard, 4055-4081 S. Marlon Avenue

FINAL DATE TO APPEAL: September 17, 2014

- TYPE OF APPEAL:**
1. Appeal by Applicant
 2. Appeal by a person, other than the applicant, claiming to be aggrieved
 3. Appeal by applicant or aggrieved person from a determination made by the Department of Building and Safety

APPELLANT INFORMATION – Please print clearly

Name: MLK Marlon, LLC Frederick H. Leeds

- Are you filing for yourself or on behalf of another party, organization or company?
- Self Other: _____

Address: 1640 S. Sepulveda Blvd., Suite 320
Los Angeles, CA Zip: 90025

Telephone: (310) 405-7600 E-mail: fredleeds@fredleedsproperties.com

- Are you filing to support the original applicant's position?
- Yes No

REPRESENTATIVE INFORMATION

Name: John A. Henning, Jr., Attorney at Law

Address: 125 N. Sweetzer Ave.
Los Angeles, CA Zip: 90048

Telephone: (323) 655-6171 E-mail: jhenning@planninglawgroup.com

This application is to be used for any appeals authorized by the Los Angeles Municipal Code for discretionary actions administered by the Department of City Planning.

FHV

JUSTIFICATION/REASON FOR APPEALING – Please provide on separate sheet.

Are you appealing the entire decision or parts of it?

Entire

Part

Your justification/reason must state:

- The reasons for the appeal
- How you are aggrieved by the decision
- Specifically the points at issue
- Why you believe the decision-maker erred or abused their discretion

ADDITIONAL INFORMATION/REQUIREMENTS

- Eight (8) copies of the following documents are required (1 original and 7 duplicates):
 - Master Appeal Form
 - Justification/Reason for Appealing document
 - Original Determination Letter
- Original applicants must provide the original receipt required to calculate 85% filing fee.
- Original applicants must pay mailing fees to BTC and submit copy of receipt.
- Applicants filing per 12.26 K "Appeals from Building Department Determinations" are considered original applicants and must provide notice per 12.26 K 7.
- Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the City (Area) Planning Commission must be filed within 10 days of the written determination of the Commission.
- A CEQA document can only be appealed if a non-elected decision-making body (i.e. ZA, APC, CPC, etc...) makes a determination for a project that is not further appealable.

"If a nonelected decision-making body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decision-making body, if any."

--CA Public Resources Code § 21151 (c)

attorney for appellant
John Henning, Jr. Attorney at Law

I certify that the statements contained in this application are complete and true:

MLK Marlton, LLC

Appellant Signature: _____

By: Frederick H. Leeds
Its: Managing Member

Date: _____

9-11-14

Planning Staff Use Only

Amount \$106.80	Reviewed and Accepted by MNGUYEN	Date 09/12/14
Receipt No. 19308	Deemed Complete by	Date



Determination Authority Notified



Original Receipt and BTC Receipt (if original applicant)

Justification/Reason for Appealing
Appeal to City Council
Case No. APCS-2013-4102-SPE-DRB-SPP-SPR / ENV-2013-4103-MND

The within appeal is filed on the ground that the South Los Angeles Area Planning Commission (“SLAAPC”) erred and abused its discretion by approving the project and accepting the mitigated negative declaration (“MND”) as the environmental review for the project.

Appellant MLK Marlton LLC is aggrieved by the decision because it is the owner of two parcels that are less than 200 feet from the Project site and is directly affected by the proposed development, and because it is a property owner and taxpayer and in the City of Los Angeles and as such is entitled to the full enforcement by the City of both local zoning laws and the California Environmental Quality Act.

The points at issue are fully described in the attached letters to the SLAAPC dated August 12, 2014, and August 15, 2014, respectively. The SLAAPC ignored these points in its deliberations, with the exception of the objections made to the requested Specific Plan Exception for fence height, which were sustained. Moreover, subsequent to these two letters no additional evidence was submitted by the applicant or anyone else sufficient to support the various approvals and findings made by the SLAAPC. Thus, it is unnecessary to prepare additional correspondence to the City Council in the context of this appeal.

The decision maker erred and/or abused its discretion because (1) the project violates the City’s zoning code; (2) an Environmental Impact Report should have been prepared instead of an MND; (3) the various approvals are not supported by adequate findings; and (4) the findings are not supported by substantial evidence in the record.

Office: Downtown
Applicant Copy
 Application Invoice No: 19308

City of Los Angeles
 Department of City Planning



Scan this QR Code® with a barcode reading app on your Smartphone. Bookmark page for future reference.

City Planning Request

NOTICE: The staff of the Planning Department will analyze your request and accord the same full and impartial consideration to your application, regardless of whether or not you obtain the services of anyone to represent you.

This filing fee is required by Chapter 1, Article 9, L.A.M.C.

Applicant: MLK MARLTON, LLC - LEEDS, FEDERICK H. (B:310-4057600)
Representative: HENNING JR., JOHN A. (B:323-6556171)
Project Address: 4055 S MARLTON AVE, 90008

NOTES: APPEAL OF ENTIRE DETERMINATION BY AN AGGRIEVED PARTY

APCS-2013-4102-SPE-DRB-SPP-SPR-1A			
Item	Fee	%	Charged Fee
Appeal by Aggrieved Parties Other than the Original Applicant *	\$89.00	100%	\$89.00
Case Total			\$89.00

Item	Charged Fee
*Fees Subject to Surcharges	\$89.00
Fees Not Subject to Surcharges	\$0.00
Plan & Land Use Fees Total	\$89.00
Expediting Fee	\$0.00
OSS Surcharge (2%)	\$1.78
Development Surcharge (6%)	\$5.34
Operating Surcharge (7%)	\$6.23
General Plan Maintenance Surcharge (5%)	\$4.45
Grand Total	\$106.80
Total Invoice	\$106.80
Total Overpayment Amount	\$0.00
Total Paid (this amount must equal the sum of all checks)	\$106.80

LA Department of Building and Safety
 LA 0006 102044307 9/12/2014 2:09:18 PM

PLAN & LAND USE \$106.80
 Sub Total: \$106.80

Receipt #: 0102345463

Council District: 8
 Plan Area: West Adams - Baldwin Hills - Leimert
 Processed by RODRIGUEZ, ANDRES on 09/12/2014
 Signature:



LA Department of Building and Safety
 LA 0006 102044307 9/12/2014 2:09:18 PM
 PLAN & LAND USE \$106.80
 Sub Total: \$106.80

Receipt #: 0102345463

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125 N. SWEETZER AVENUE
LOS ANGELES, CALIFORNIA 90048

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August 12, 2014

VIA HAND DELIVERY

South Los Angeles Area Planning Commission
c/o James Williams, Commission Secretary
City of Los Angeles
200 N. Spring St., Room 272
Los Angeles, CA 90012

Re: Case No. APCS-2013-4102-SPE-DRB-SPP-SPR / ENV-2013-4103-MND
(3780 W. Martin Luther King Jr. Boulevard and 4055-4081 S. Marlton Avenue)
(South Los Angeles Area Planning Commission Meeting Date: August 19, 2014)

Honorable Commissioners:

I represent MLK Marlton LLC ("MLK Marlton"), which owns the parcels at 3710 and 3718 Martin Luther King Jr. Boulevard and which opposes the above-referenced project (the "Project") proposed by Kaiser Foundation Health Plan, Inc. ("Kaiser"). The Project is scheduled for a hearing before your commission on August 19, 2014.

My client opposes this project on the ground that it violates the City's zoning ordinance and the Crenshaw Corridor Specific plan, and because it would inject a soulless, inward-facing and completely gated institutional use into the middle of a densely populated residential area. In addition, my client strenuously objects to the use of a Mitigated Negative Declaration as the environmental review for the Project. Instead, because there is a fair argument of numerous significant impacts in a host of impact categories, the City should prepare an Environmental Impact Report ("EIR") pursuant to the California Environmental Quality Act (CEQA).

Honorable Commissioners
August 12, 2014
Page 2

My client initially wrote to the Commission's hearing officer, Michelle Singh, on July 17, 2014, explaining why the Project should be denied and why an EIR should be prepared. In our July 17 letter, we focused especially on uncontroverted evidence that the Project site is subject to a Declaration of Restrictions ("Declaration") requiring that a substantial part of the site be used only for parking and vehicular access to benefit MLK Marlton and others.

On July 18, 2014, Ms. Singh conducted a public hearing regarding the Project. At the hearing, Kaiser's counsel, Paul Rohrer of Loeb & Loeb LLP, appeared on behalf of Kaiser, and asserted various grounds for the City to ignore the Declaration. Subsequently, Mr. Rohrer wrote a letter to Ms. Singh dated July 25, 2014, in which he elaborated on these and other arguments. Also on July 25, Kaiser's environmental consultant, Shane Parker of Parker Environmental Consultants, wrote a 61-page letter to Ms. Singh responding to the various points made in our July 17 letter.

Neither of Kaiser's letters adequately rebuts my client's arguments for denial of the Project, or its contention that there is substantial evidence supporting a fair argument that a significant environmental impact exists, requiring preparation of an EIR. To the contrary, by tying themselves into knots with convoluted rationales, the letter writers each illustrate that there is a spirited dispute on virtually every count, and especially with regard to parking and access. These disputes must be resolved by an EIR, not by an exchange of letters that is invisible to the public.

Mr. Rohrer, the lawyer, uses what is essentially magical thinking to explain away the existence of a restrictive covenant that is recorded against the title of a substantial portion of the subject property, and which specifies that the property must be used only for parking and access, not for buildings and a private "park". Leaving aside the merits of Mr. Rohrer's arguments, at the outset the Department of City Planning must understand its limits here. The Department is simply in no position to accept the unproven and self-serving legal opinions of an applicant's lawyer, in the face of a recorded document to the contrary. The fact is that the covenant exists, Kaiser does not dispute its existence, and neither Mr. Rohrer nor the applicant has ever gone to court to obtain a declaration that the covenant is extinguished. Thus, for purposes of both the "fair argument" standard and the underlying permits, the City must assume that the covenant is not extinguished.

Mr. Parker, the environmental consultant, also does not explain in his letter why a "fair argument" of a significant environmental impact cannot be made here. The letter reads like an advocacy piece from Kaiser's public relations machine. In a desperate attempt to "plug every hole" in the MND and thereby avoid any further environmental review of this project, Mr. Parker repeatedly resorts to circular reasoning and injects new "factual" allegations that were never considered in the MND. He also misinterprets the law. He parrots Mr. Rohrer's convoluted

legal opinion about the restrictive covenant as though it were gospel, rather than being one lawyer's opinion of a disputed matter.

My client's real estate counsel, Geoff Gold of Ervin Cohen & Jessup, has responded to Mr. Rohrer's arguments in more detail in his letter dated August 12, 2014, which is submitted concurrently with the within letter. In sum, Mr. Gold establishes that the Declaration is on its face fully in effect and fully enforceable by MLK Marlton, and that even if it weren't fully enforceable MLK Marlton has acquired an easement by implication, an easement by prescription, or both across the parking and access. As a result, the Project either (a) utterly lacks the minimum on-site parking required by the zoning code; or (b) will effectively deprive the other property owners in the Plaza, and their employees and customers, of the parking and access to which they are legally entitled and that they presently enjoy and have come to rely upon. In either event, the Project requires the preparation of an EIR, because there is at least a fair argument that the parking effects of the Project will constitute significant impacts on the environment.

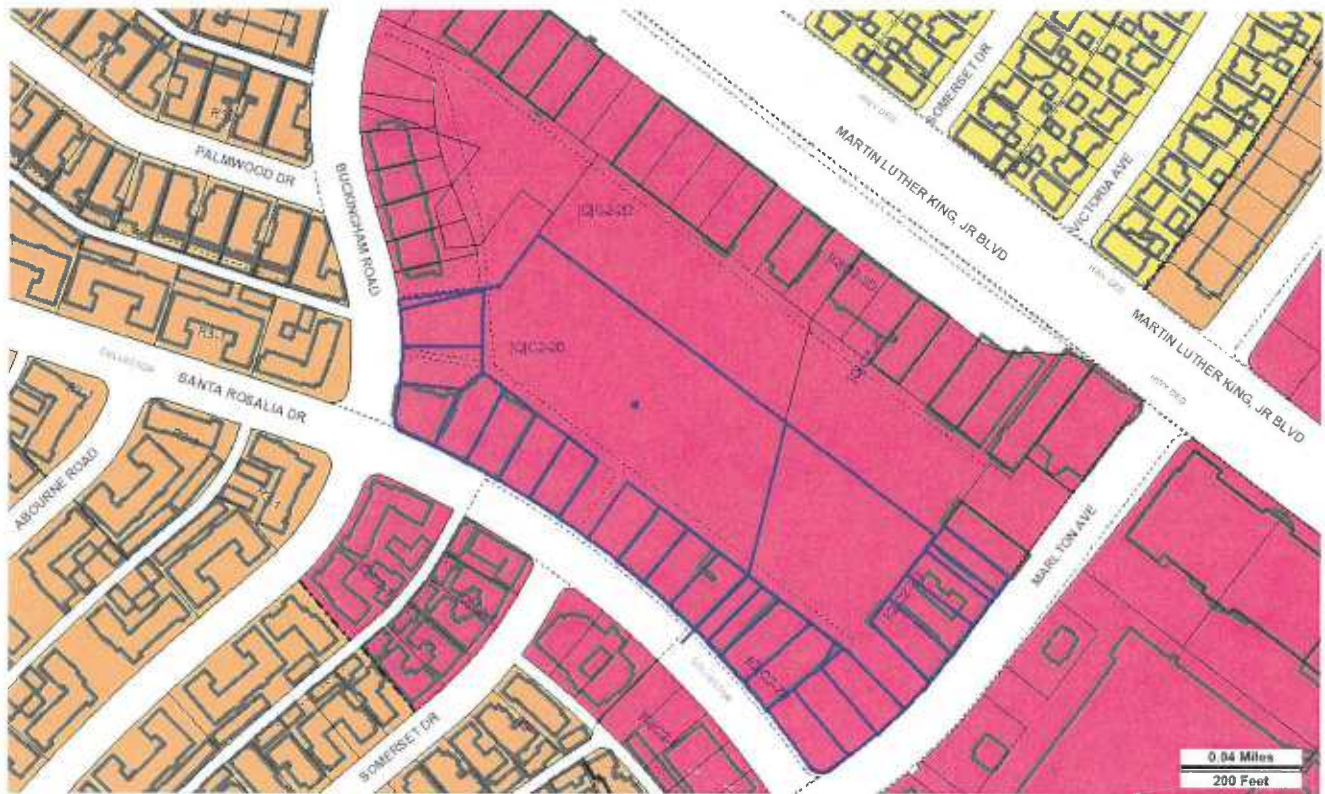
I will address the points made by Mr. Parker below, in the context of a complete description of the project and our various arguments. In addition, we have attached as Exhibits 2 and 3 the affidavits of Johnny Edwards and Fred Leeds, respectively. These affidavits reflect the essence of their testimony at the July 18 public hearing as well as additional evidence sufficient to support a fair argument that the Project would have a significant impact on the environment.¹

For the Commission's convenience, the new material responsive to Mr. Parker's letter will be highlighted in yellow.

A. Project Area.

The Project is an enormous 105,000 square foot outpatient medical facility on a larger commercially-zoned "superblock" bounded by Martin Luther King Jr. Boulevard to the north, Marlton Avenue to the east, Santa Rosalia Drive to the south and Buckingham Road to the west. This block was once known as Santa Barbara Plaza, and from the early 1950s until the commencement of redevelopment in the late 1990s, it housed more than 250 individual local-serving businesses located on approximately 50 separate parcels. In more recent years, the entire block has been referred to as Marlton Square.

¹ The attached affidavits are unsigned; original signed affidavits will be presented to the Commission on or before the Commission's meeting on August 19, 2014.



Neighborhood Context (From ZIMAS)

The site is surrounded on all sides by stable, historically African-American residential neighborhoods, churches and other small-scale commercial uses. The nearby residential uses include (1) a large senior housing facility on Buckingham Road, immediately adjacent to the site; (2) several hundred multi-family residences (zoned R-3) across Buckingham Road and Santa Rosalia Drive to the west and southwest (zoned R-3); and (3) a single family neighborhood across Martin Luther King, Jr. Blvd. to the northeast. As evidenced by the mailing labels supplied by the applicant, more than 1000 individual residences are within a 500 foot radius from the Project. Many of these residential neighbors are less than 100 feet away from the Project boundary. My client's principals and their related entities own more than 30 buildings with over 500 residential apartments in close proximity to the site.



LEGEND		Project Site	Access Easement	Commerical Property/Zone	Residential Property/Zone
① Multi-family Housing 4108 Buckingham Rd. 3920 Santa Rosalia Dr.	⑤ Multi-Family Housing 3790 Santa Rosalia Dr 4106-4112 Marlton Ave..	⑩ The Oran Z Pan African Black Facts and Wax Museum 3738 MLK Jr. Blvd.	⑮ Valero Gas Station 3930-3950 MLK Jr. Blvd.	⑲ Multi-Family Housing 4043 Buckingham Rd.	
② Multi-family Housing 3904-3908 Santa Rosalia Dr. 4101-4104 Somerset Dr.	⑥ Baldwin Hills Crenshaw Plaza 3650 MLK Jr. Blvd.	⑪ Baldwin Plaza Villas Senior Housing 3939 Marlton Ave.	⑯ Multi-Family Housing 4001 Palmyra Rd.	⑳ Multi-Family Housing 4053 Buckingham Rd.	
③ Bethlehem Church of God Holiness 3850 Santa Rosalia Dr.	⑦ Vacant Building 3710 MLK Jr. Blvd.	⑫ Single-Family Residential	⑰ Multi-Family Housing 4000 Palmyra Rd.	㉑ Multi-Family Housing 4069 Buckingham Rd. 4007-4011 Santa Rosalia Dr.	
④ YMCA 3820 Santa Rosalia Dr.	⑧ African Book Club & Tame Salon 3718 MLK Jr. Blvd.	⑬ Demolished/Vacant 3850-3900 MLK Jr. Blvd.	⑱ Buckingham Place Senior Housing 4042 Buckingham Rd.	㉒ Multi-Family Housing 4107 Buckingham Rd.	
	⑨ The Flying Fox Restaurant 3726 MLK Jr. Blvd.	⑭ Vacant Office Building 391.6 MLK Jr. Blvd.			



Figure II-7
 Surrounding Land Use Map

Surrounding Land Use Map (MND, Figure II-7)