



SAN FRANCISCO PLANNING DEPARTMENT

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| <input type="checkbox"/> Affordable Housing (Sec. 415) | <input type="checkbox"/> First Source Hiring (Admin. Code) |
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Planning Commission Motion No. 18456

HEARING DATE: OCTOBER 6, 2011

Date: September 29, 2011
Case No.: **2011.0571 C**
Project Address: **1085 MISSION STREET**
Zoning: MUG (Mixed Use, General)
85-X Height and Bulk District
Block/Lot: 3726/107
Project Sponsor: Matt Semmelhack
Mercer Restaurant Group, LLC
1085 Mission Street
San Francisco, CA 94103
Staff Contact: Brittany Bendix – (415) 575-9114
brittany.bendix@sfgov.org

ADOPTING FINDINGS RELATING TO THE APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303 AND 840.47 OF THE PLANNING CODE TO ADD A BAR TO A PREVIOUSLY APPROVED FULL-SERVICE RESTAURANT (D.B.A. AQ) WITHIN THE MUG (MIXED USE, GENERAL) ZONING DISTRICT AND AN 85-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On June 2, 2011, Matt Semmelhack (hereinafter “Project Sponsor”) filed an application with the Planning Department (hereinafter “Department”) for Conditional Use Authorization under Planning Code Section(s) 303 and 840.47 to add a bar to a previously approved full-service restaurant (d.b.a. AQ) within the MUG (Mixed Use, General) Zoning District and an 85-X Height and Bulk District.

On October 6, 2011, the San Francisco Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2011.0571C.

The Project is exempt from the California Environmental Quality Act (“CEQA”) as a Class 1 categorical exemption.

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties.

MOVED, that the Commission hereby authorizes the Conditional Use requested in Application No. 2011.0571 C, subject to the conditions contained in "EXHIBIT A" of this motion, based on the following findings:

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.
2. **Site Description and Present Use.** The project is located on the southern side of Mission Street, between 6th and 7th Streets, Lot 107 of Assessor's Block 3726. The subject property is located within an MUG (Mixed Use, General) Zoning District and an 85-X Height and Bulk District. The 2,975 square-foot lot is developed with a three-story 8,548 square-foot commercial building. The upper two stories are occupied by an economic development organization (d.b.a. Urban Solutions). The ground floor retail space and basement will be occupied by a full-service restaurant (d.b.a. AQ) of approximately 4,456 square-feet. The change of use from retail to a full-service restaurant within this district does not require neighborhood notification; however, interior tenant improvements to convert the space for restaurant use, and changes to the façade were reviewed and approved by Planning Department staff under Building Permit Application No. 2011.04.14.4053. The ground floor space is presently under construction to make the improvements already approved.
3. **Surrounding Properties and Neighborhood.** The project site is situated on the southern side of the 1000 block of Mission Street, and is closest to the 7th Street intersection. To the north of the subject property is federally owned land – the San Francisco Federal Building, the U.S. Court of Appeals, and associated surface off-street parking. As Mission Street approaches 6th Street, the northern side of the block transitions from an RSD (Residential Service Mixed Use) District into the South of Market Neighborhood Commercial Transit District. Buildings in this area are characterized by ground floor retail with residential units above. The Bayanihan Community Center is situated at the northwest corner of the intersection of Mission and 6th Streets. Buildings located on the south side of Mission Street are also mixed-use with commercial or light-industrial uses on the ground floor and residential uses above. Most of the ground floor retail spaces situated near the Mission Street and 7th Street intersection are vacant.

The broader neighborhood is characterized by varied zoning which includes P (Public), C-3-G (Downtown, General Commercial), RSD (Residential/Service Mixed Use), SOMA

NCT (South of Market Neighborhood Commercial Transit), RED (Residential Enclave), and SLR (Service/Light-Industrial/Residential Mixed Use) districts. The intent of the MUG (Mixed Use, General) zoning district is to facilitate the land use demands that result from the conversion of these varied districts.

The site is well served by local and regional public transit. The 14-Mission Muni Bus line operates on Mission Street and stops on the same block as the subject property. Other Muni bus lines serving the subject property within a ¼-mile radius include the 5-Fulton, 9-San Bruno, 12-Folsom, 14-Mission, 16X-Noriega Express, 19-Polk, and 31-Balboa. The Civic Center BART station is also located within ¼-mile from the subject site, as are connections to Golden Gate Transit and SamTrans.

4. **Project Description.** The Project Sponsor is seeking Conditional Use authorization to add a bar to a previously approved restaurant (d.b.a. AQ). There are no other proposed changes. The bar land use designation enables to the Project Sponsor to seek a Type 47 License from the California Department of Alcoholic Beverage Control. This license would permit the sale of beer, wine, and distilled spirits for on-site consumption in association with the restaurant.

The proposed operation will require approximately 35 employees, of which half of these positions are anticipated to provide employment opportunities for lower skilled workers. The project sponsor intends to hire employees that live within, or relatively close to the neighborhood. The subject site is well served by public transit so that potential employees and customers should not adversely affect the traffic flow

5. **Public Comment.** The Department has received five letters regarding this project. All have indicated complete support for the restaurant and bar.
6. **Planning Code Compliance:** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:
 - A. **Neighborhood Notification.** Pursuant to Planning Code Section 312, any change of use from one land use category to another, within an Eastern Neighborhoods Mixed Use Zoning District, requires neighborhood notification to go out to all owners and occupants within a 150-foot radius from the project site.

The MUG (Mixed-Use, General) Zoning District is considered an Eastern Neighborhoods Mixed Use Zoning District as defined in Section 802.4. Additionally, the Project Sponsor is proposing adding the use of a bar (Section 840.47) to a previously approved restaurant (Section 840.45). As these uses are in separate land use categories, the proposal requires neighborhood notification. Section 312 notification was conducted in conjunction with the Conditional Use authorization notification.

- B. **Bar Use.** Planning Code Section 840.47 allows a bar within the MUG (Mixed Use, General) Zoning District by Conditional Use authorization.

The Project Sponsor intends to add a bar to a previously approved full-service restaurant (d.b.a. AQ) in a ground floor commercial space within the MUG (Mixed Use, General) Zoning District and is seeking Conditional Use authorization.

- C. **Use Size.** Planning Code Sections 840.45 and 840.47 limit all retail uses, (including restaurants and bars), to 25,000 gross square feet per lot, or above if the ratio of other permitted uses to retail is at least 3:1.

The Project Sponsor intends to incorporate the addition of the bar into the previously approved restaurant space of 4,456 square-feet. The entire commercial building has a gross floor area of approximately 8,548. This is well below the 25,000 square-foot threshold for retail uses.

- D. **Formula Retail Use.** Planning Code Section 840.46 requires Conditional Use authorization for Formula Retail uses.

The Project would establish the first AQ Restaurant and Bar, and is not identified as a Formula Retail use.

- E. **Good Neighbor Policies.** Planning Code Section 803.5 establishes good neighbor policies for bars and restaurants in the Eastern Neighborhoods Mixed Use Districts. Such uses are not to be allowed except on conditions which, in the judgment of the City agency, board or commission, are reasonably calculated to insure that:

1. The quiet, safety and cleanliness of the premises and its adjacent area are maintained;
2. Adequate off-street parking is provided, for which purpose the agency, board or commission may require parking in excess of that required under the provisions of Section 150(c) of the Planning Code and may include participation in a South of Market Parking Management Program;
3. Proper and adequate storage and disposal of debris and garbage is provided;
4. Noise and odors are contained within the premises so as not to be a nuisance to neighbors; and,
5. Sufficient toilet facilities are made accessible to patrons, including persons waiting to enter the establishment.

The Conditions of Approval set forth in Exhibit A require that the Project Sponsor practice the Good Neighbor Policies outlined above. Parking is not included in the subject proposal, nor is it required by the Planning Code. The Project Sponsor's plan to use a valet service in partnership with local garages, combined with the area's variety of transit options are expected to meet the needs of employees and patrons.

- F. **Off-Street Parking.** Planning Code Section 151.1 limits the amount of off-street parking allowed for a retail use within an Eastern Neighborhoods Mixed Use District

and less than ¼ mile from Mission Street to one off-street parking space for every 1,500 square feet of gross floor area.

The proposal does not include any off-street parking spaces. The Project Sponsor intends to accommodate patrons by partnering with local parking lots and garages for valet service. Additionally, the area is well-served by public transit. Seven MUNI bus lines (5-Fulton, 9-San Bruno, 12-Folsom, 14-Mission, 16X-Noriega Express, 19-Polk, and 31-Balboa) and the F-Market are all within ¼-mile from the subject site. Regional connections are also available within this area via the Civic Center BART station and bus stops for both Golden Gate Transit and SamTrans.

- G. **Street Frontage in Mixed Use Districts.** Section 145.1 of the Planning Code requires that the floors of street-fronting interior spaces housing non-residential active uses should be as close as possible to the level of the adjacent sidewalk at the principal entrance to these spaces. Additionally, frontages with active non-residential uses must be fenestrated with transparent windows and doorways for no less than 60 percent of the street frontage at ground level and allow visibility to the inside of the building.

The subject commercial space has approximately 35-feet of frontage on Mission Street that is devoted to either the restaurant entrance or window space. The windows are clear glass, providing an unobstructed view into the establishment at pedestrian eye-level.

7. **Planning Code Section 303** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the project does comply with said criteria in that:

- A. The proposed new uses and building, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

The proposed project is both necessary and desirable because it seeks to occupy an existing ground floor commercial space. The bar use will contribute to the viability of the neighborhood serving full-service restaurant and will enrich the diversity of goods offered within the general area.

- B. The proposed project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. There are no features of the project that could be detrimental to the health, safety or convenience of those residing or working the area, in that:

- i. Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

The proposed project will operate within the existing building envelope.

- ii. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;

The Planning Code does not require parking or loading for any uses within an Eastern Neighborhoods Mixed Use District that are within ¼-mile from Mission Street. The subject lot does not have any existing off-street parking spaces. Additionally, the Project does not include any new off-street parking spaces. As previously mentioned, the proposed project is well served by public transit, minimizing the need for private automobile trips.

- iii. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

The proposed use is subject to the standard conditions of approval for bars and full-service restaurants as outlined in Exhibit A. Conditions 5 and 9 specifically obligate the Project Sponsor to mitigate odor and noise generated by the restaurant use.

- iv. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;

Parking and loading areas are not required for the proposed use. Landscaping is not proposed as the building has no front setback. The Planning Department shall review all proposed signs under separate permit applications.

- C. That the use as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

The Project complies with all relevant requirements and standards of the Planning Code and is consistent with objectives and policies of the General Plan as detailed below.

- D. That the use as proposed would provide development that is in conformity with the purpose of the applicable Mixed Use District.

The proposed project is consistent with the stated purpose of the MUG (Mixed Use, General) Zoning District in that the intended use is located at the ground floor, will provide compatible convenience goods to the immediately surrounding neighborhoods and will be active throughout the day.

- 8. **General Plan Compliance.** The Project is, on balance, consistent with the following Objectives and Policies of the General Plan:

EAST SOMA AREA PLAN

Objectives and Policies

OBJECTIVE 1.1:

ENCOURAGE PRODUCTION OF HOUSING AND OTHER MIXED-USE DEVELOPMENT IN EAST SOMA WHILE MAINTAINING ITS EXISTING SPECIAL MIXED-USE CHARACTER.

Policy 1.1.8:

Permit small and moderate size retail establishments in mixed use areas of East SoMa, but permit larger retail only as part of a mixed-use development.

The proposed bar will function as part of a full-service restaurant and make the overall use more viable as a neighborhood service.

OBJECTIVE 4.3:

ESTABLISH PARKING POLICIES THAT IMPROVE THE QUALITY OF NEIGHBORHOODS AND REDUCE CONGESTION AND PRIVATE VEHICLE TRIPS BY ENCOURAGING TRAVEL BY NON-AUTO MODES.

Policy 4.3.4:

Encourage, or require where appropriate, innovative parking arrangements that make efficient use of space, particularly where cars will not be used on a daily basis.

The Project does not include any off-street parking spaces, as it is not required by the Planning Code. As a result, the Project Sponsor intends to offer a valet service in partnership with garages in the area; this service will accommodate patrons who are driving to the restaurant. Otherwise, public transit options will provide access to the site for employees or customers travelling from outside of the immediate area.

COMMERCE AND INDUSTRY ELEMENT

Objectives and Policies

OBJECTIVE 2:

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.3:

Maintain a favorably social and cultural climate in the city in order to enhance its attractiveness as a firm location.

The proposal enhances the desirability of the stretch of Mission Street between 6th and 7th Streets. An active and engaging use at this particular location will improve the overall street life of the

block and provide residents with a safe and busy pedestrian route to the neighborhood commercial district developing on 6th Street. Additionally, this restaurant and bar will provide needed dining options to patrons of the City's multiple cultural activities within this immediate area.

OBJECTIVE 3:

PROVIDE EXPANDED EMPLOYMENT OPPORTUNITIES FOR CITY RESIDENTS, PARTICULARLY THE UNEMPLOYED AND ECONOMICALLY DISADVANTAGED.

Policy 3.1:

Promote the attraction, retention and expansion of commercial and industrial firms which provide employment improvement opportunities for unskilled and semi-skilled workers.

The proposed project will provide approximately 35 employment opportunities, of which approximately half will be entry-level, unskilled and semi-skilled positions

9. **Planning Code Section 101.1(b)** establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project does comply with said policies in that:

- A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

The business would be locally owned and would generate employment opportunities for the community. The proposed alterations will not expand the existing building footprint.

- B. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

The existing units in the surrounding neighborhood would not be adversely affected. The proposal will contribute to a more active and neighborhood engaging environment along Mission Street.

- C. That the City's supply of affordable housing be preserved and enhanced,

No housing is altered for this Project.

- D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

The proposed project is on Mission Street between 6th and 7th Streets, and is well served by public transit. It is highly likely that both employees and customers of the proposed establishment will either walk, bike or use public transit as the preferred mode of transportation.

- E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

The proposed project will not include any commercial office development and will not displace any existing service or industry establishments.

- F. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

The proposed project will comply with the City Codes to achieve the proper preparedness in the event of an earthquake.

- G. That landmarks and historic buildings be preserved.

The project as proposed does not include any alterations to the façade and thereby maintains the historic character.

- H. That our parks and open space and their access to sunlight and vistas be protected from development.

The proposed project will not have a negative effect on existing parks and open space.

10. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.
11. The Commission hereby finds that approval of the Conditional Use authorization would promote the health, safety and welfare of the City.

DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Application No. 2011.0571C** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated April 21, 2011, and stamped "EXHIBIT B", which is incorporated herein by reference as though fully set forth.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. 18456. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on October 6, 2011.

Linda D. Avery
Commission Secretary

AYES: Commissioners Antonini, Borden, Fong, Miguel, Moore, Olague and Sugaya

NAYS: None

ABSENT: None

ADOPTED: October 6, 2011.

EXHIBIT A

AUTHORIZATION

This authorization is for a conditional use to add a bar to a previously approved full-service restaurant (d.b.a. AQ) located at 1085 Mission Street pursuant to Planning Code Section(s) 303 and 840.47 within an MUG (Mixed Use, General) Zoning District and an 85-X Height and Bulk District and subject to conditions of approval reviewed and approved by the Commission on October 6, 2011 under Motion No. 18456. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

RECORDATION OF CONDITIONS OF APPROVAL

Prior to the issuance of the building permit or commencement of use for the Project the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on October 6, 2011, under Motion No. 18456.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. 18456 shall be reproduced on the Index Sheet of construction plans submitted with the Site or Building permit application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use authorization and any subsequent amendments or modifications.

SEVERABILITY

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a building permit. "Project Sponsor" shall include any subsequent responsible party.

CHANGES AND MODIFICATIONS

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Conditional Use authorization.

Conditions of Approval, Compliance, Monitoring, and Reporting

PERFORMANCE

1. **Validity and Expiration.** The authorization and right vested by virtue of this action is valid for three years from the effective date of the Motion. A building permit from the Department of Building Inspection to construct the project and/or commence the approved use must be issued as this Conditional Use authorization is only an approval of the proposed project and conveys no independent right to construct the project or to commence the approved use. The Planning Commission may, in a public hearing, consider the revocation of the approvals granted if a site or building permit has not been obtained within three (3) years of the date of the Motion approving the Project. Once a site or building permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. The Commission may also consider revoking the approvals if a permit for the Project has been issued but is allowed to expire and more than three (3) years have passed since the Motion was approved.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

2. **Extension.** This authorization may be extended at the discretion of the Zoning Administrator only where failure to issue a permit by the Department of Building Inspection to perform said tenant improvements is caused by a delay by a local, State or Federal agency or by any appeal of the issuance of such permit(s).

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

MONITORING

3. **Enforcement.** Violation of any of the Planning Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

4. **Revocation due to Violation of Conditions.** Should implementation of this Project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and found to be in violation of the Planning Code and/or the specific conditions of approval for the Project as set forth in Exhibit A of this Motion, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter to consider revocation of this authorization.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

OPERATION

5. **Garbage, Recycling, and Composting Receptacles.** Garbage, recycling, and compost containers shall be kept within the premises and hidden from public view, and placed outside only when being serviced by the disposal company. Trash shall be contained and disposed of pursuant to garbage and recycling receptacles guidelines set forth by the Department of Public Works.

For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 415-554-.5810, <http://sfdpw.org>

6. **Sidewalk Maintenance.** The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Streets and Sidewalk Maintenance Standards.

For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works, 415-695-2017, <http://sfdpw.org>

7. **Community Liaison.** Prior to issuance of a building permit to construct the project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

8. **Notices Posted at Bars and Entertainment Venues.** Notices urging patrons to leave the establishment and neighborhood in a quiet, peaceful, and orderly fashion and to not litter or block driveways in the neighborhood, shall be well-lit and prominently displayed at all entrances to and exits from the establishment.

For information about compliance, contact the Entertainment Commission, at 415 554-6678, www.sfgov.org/entertainment

9. **Noise Control.** The premises shall be adequately soundproofed or insulated for noise and operated so that incidental noise shall not be audible beyond the premises or in other sections of the building and fixed-source equipment noise shall not exceed the decibel levels specified in the San Francisco Noise Control Ordinance.

For information about compliance with the fixed mechanical objects such as rooftop air conditioning, restaurant ventilation systems, and motors and compressors with acceptable noise

levels, contact the Environmental Health Section, Department of Public Health at (415) 252-3800, www.sfdph.org

For information about compliance with the construction noise, contact the Department of Building Inspection, 415-558-6570, www.sfdbi.org

For information about compliance with the amplified sound including music and television contact the Police Department at 415-553-1012 or 415-5530123, www.sf-police.org