



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- | | |
|--|--|
| <input type="checkbox"/> Affordable Housing (Sec. 415) | <input type="checkbox"/> First Source Hiring (Admin. Code) |
| <input type="checkbox"/> Jobs Housing Linkage Program (Sec. 413) | <input type="checkbox"/> Child Care Requirement (Sec. 414) |
| <input type="checkbox"/> Downtown Park Fee (Sec. 412) | <input type="checkbox"/> Other |

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Planning Commission Draft Motion 18471

HEARING DATE: OCTOBER 20, 2011

Date: October 13, 2011
Case No.: **2011.0653C**
Project Address: **325-329 KEARNY STREET**
Zoning: C-3-O Downtown, Office, District
80-130-F Height and Bulk District
Block/Lot: 0270/003
Project Sponsor: Brian Hofer
456 8th Street
Oakland, CA 94607
Staff Contact: Rick Crawford – (415) 558-6358
rick.crawford@sfgov.org

ADOPTING FINDINGS RELATING TO THE APPROVAL OF A CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303 AND 218.8 OF THE PLANNING CODE TO EXPAND MASSAGE SERVICES WITHIN AN EXISTING MASSAGE ESTABLISHMENT (DBA QUEENS HEALTH CLINIC) WITHIN THE C-3-O, DOWNTOWN, OFFICE DISTRICT AND A 80-130-F HEIGHT AND BULK DISTRICT.

PREAMBLE

On June 22, 2011 Brian Hofer (hereinafter “Project Sponsor”) filed an application with the Planning Department (hereinafter “Department”) for Conditional Use Authorization under Planning Code Section(s) 303 and 218.8 to allow the expansion of a massage establishment (dba Queens Health Clinic) on the second and third floors of the subject property, located in the C-3-O Downtown, Office District and 80-130-F Height and Bulk District.

On October 20, 2011, the San Francisco Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2011.0653C.

The project is exempt from the California Environmental Quality Act (“CEQA”) as a Class 1 (Existing Facilities) categorical exemption. The Commission has reviewed and concurs with said determination.

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. 2011.0653C, 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 west side of Kearny Street, between Bush and Pine Streets; Lot 003 in Assessor's Block 0270, within the C-3-O Downtown Office District and within the 80-130-F Height and Bulk District. The subject property is developed with a three-story commercial building, built circa 1907, with two restaurants on the ground floor and an acupuncture and herbal medicine clinic use with accessory massage (dba Queens Health Clinic) on the second and third floors.
3. **Surrounding Properties and Neighborhood.** The subject block features a mix of three and four-story buildings with ground-floor food service uses and upper-story offices. The greater surrounding area features taller office and bank buildings. Uses in buildings to the west become more retail in character as one moves closer to the Union Square retail district.
4. **Project Description.** The project would expand the existing massage use within the existing establishment located at 325-327 Kearny Street. The project would eliminate the acupuncture services offered by the clinic and establish three new massage treatment rooms, for a total of five treatment rooms, on the third floor. The acupuncturist has relocated his practice and the massage use will be expanded to occupy the space formerly occupied by the acupuncture use. The proposal does not include any exterior alterations to the building. The massage establishment was initially authorized by the Planning Commission on March 25, 2010 under Motion 18050 in case number 2009.1131C.

The proposed use is an independent use, which has been encouraged throughout San Francisco and is not a Formula Retail use.

5. **Public Comment.** The Department has not received any comment from the public regarding this project.

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. **Planning Code Section 218.8** allows massage establishments with Conditional Use Authorization in the C-3-O, Downtown Office District and requires that the Planning Commission shall make findings in addition to those required under Planning Code Section 303 (c), based on the following criteria:

1. Whether the applicant has obtained, and maintains in good standing, a permit for a Massage Establishment from the Department of Public Health pursuant to Section 1908 of the San Francisco Health Code.

Criteria Met

The existing clinic maintains such a permit for the existing establishment and the business owner has filed for a massage permit with the Department of Public Health for the proposed expansion. Conditions of Approvals will ensure that the business maintains the Massage Establishment Permit in good standing with the Department of Public Health. Failure to do so could result in this Conditional Use Authorization being revoked by the Planning Commission. The massage establishment was initially authorized by the Planning Commission on March 25, 2010 under Motion 18050 in case number 2009.1131C and has been operating since then with no complaints to the Planning Department or to the Police.

2. Whether the use's façade is transparent and open to the public. Permanent transparency and openness are preferable. Elements that lend openness and transparency to a façade include:
 - i. An active street frontage of at least 25 feet in length where 75% of that length is devoted to entrances to commercially used space or windows at the pedestrian eye-level.

Criteria Met:

The clinic is located on the second and third floors of the building. The ground floor of the building has 36 feet of frontage on Kearny Street over 75% of which is committed to commercial entrances and windows.

- ii. Windows that use clear, un-tinted glass, except for decorative or architectural accent.

Criteria Met:

The subject tenant space has clear, un-tinted glass along the entire frontage.

- iii. Any decorative railings or decorative grille work other than wire mesh which is placed in front of or behind such windows should be at least 75

percent open to perpendicular view and no more than six feet in height above grade.

Criteria Met.

The commercial frontage is predominantly dedicated to large picture windows. There are no bars or grills in front of or behind such windows.

3. Whether the use includes pedestrian-oriented lighting. Well lit establishments where lighting is installed and maintained along all public rights-of-way adjacent to the building with the massage use during the post-sunset hours of the massage use are encouraged.

Criteria Met

The ground floor uses of the building provide adequate pedestrian oriented lighting and the subject commercial space includes pedestrian oriented lighting at the entrance and on the stairway to the clinic.

4. Whether the use is reasonably oriented to facilitate public access. Barriers that make entrance to the use more difficult than to an average service-provider in the area are to be strongly discouraged. These include (but are not limited to) foyers equipped with double doors that can be opened only from the inside and security cameras.

Criteria Met

The expanded massage use will be located on the third floor of the building. Access to the massage rooms will be open and unobstructed.

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 project is necessary and desirable because it will provide a massage use for office workers and visitors of area. The project expands the existing massage establishment, and will not result in the displacement of any neighborhood serving use. The project will compliment the mix of goods and services currently available in the area and contribute to the economic vitality of the neighborhood.

- 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;

There are no proposed alterations to exterior of the existing building.

- 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 proposed use will expand within its existing tenant. The present use has no affect on parking and traffic. The subject property is well served by public transit.

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

The proposal will not create any offensive emissions due to the nature of the use.

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

The project is not expected to create a constant demand for on-street loading as there are minimal supplies delivered in association with a massage establishment. The property is fully covered by the existing building and no exterior changes are proposed. Any new signage will comply with the Planning Code.

- 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 detailed below.

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

The project is not located within a Neighborhood Commercial District.

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

COMMERCE & INDUSTRY

Objectives and Policies

OBJECTIVE 1:

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

Policy 1.1:

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development that has substantial undesirable consequences that cannot be mitigated.

Policy 1.2:

Assure that all commercial and industrial uses meet minimum, reasonable performance standards.

Policy 1.3:

Locate commercial and industrial activities according to a generalized commercial and industrial land use plan.

The expansion of an existing massage establishment will provide desirable services and employment opportunities to individuals who live in, work in, or visit the neighborhood.

OBJECTIVE 2:

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

Policy 2.1:

Seek to retain existing commercial and industrial activity and to attract new such activity to the City.

Policy 2.3:

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

The project is located within the existing commercial tenant space and will compliment the diverse economic base of the City.

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 opportunities for unskilled and semi-skilled workers.

Policy 3.2:

Promote measures designed to increase the number of San Francisco jobs held by San Francisco residents.

The project represents the expansion of an existing business in an existing building and will provide additional employment opportunities for State licensed massage professionals.

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 project will not displace any neighborhood-serving retail use but will expand an existing business.

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

No housing will be displaced, as no housing exists in the building or in the immediate area. The project expands an existing business.

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

No housing is removed for this project.

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

The site is on Kearny Street, which is well served by public transit. The current clinic in the space does not affect parking or traffic and the expansion of that use can be expected to have a similar effect.

- 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 project will expand a service-sector use. The project does displace any industrial use and does not include any office uses.

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

The project does not include any structural work to the building, and thus will not affect the structure's ability to withstand an earthquake.

- G. That landmarks and historic buildings be preserved.

The subject building is classified as a Category IV building in the Kearny-Market-Mason-Sutter Conservation District. As a Category IV building it is considered contributory to the District. In this instance, the subject building is also appears eligible for listing on the National Register of Historic Places as an individual building through survey rating. The project will not affect the potential historic resource as there are no exterior alterations proposed for the project.

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

The project will have no negative affects on existing parks or open spaces, as it does not involve any expansion of the existing tenant 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 desirable 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. 2011.0653C** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated June 22, 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. 18471. 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 20, 2011.

Linda D. Avery
Commission Secretary

AYES: Commissioners Bordon, Fong, Miguel, Moore, Olague, and Sugaya

NAYS: none

ABSENT: Commissioner Antonini

ADOPTED: October 20, 2011

EXHIBIT A

AUTHORIZATION

This authorization is for a conditional use to allow the expansion of existing massage establishment (dba Queen's Health Center) on the second and third floors of the subject property located at 325-329 Kearny Street, Block 0270, and Lot 003 pursuant to Planning Code Section(s) 303 and 218.8 within the C-3-O Downtown Office District and a 80-130-F Height and Bulk District; in general conformance with plans, dated June 22, 2011, and stamped "EXHIBIT B" included in the docket for Case No. 2011.0653C and subject to conditions of approval reviewed and approved by the Commission on October 20, 2011 under Motion No 18471. 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 20, 2011 under Motion No 18471.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. 18471 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. **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.

6. **Massage Establishments.** All massage establishments shall comply with the following standard massage use operation standards.
 - a. The entry to the massage treatment room shall remain directly visible from the public right-of-way. If any additional doors are required under the Building Code for emergency egress purposes, such door shall be labeled "for emergency use only" and shall have an audible alarm that will go off when the door is opened.
 - b. All interior alterations shall be reviewed by the Planning Department to verify compliance with these conditions.
 - c. No locks shall be allowed on any interior door of the business except that a lock for privacy may be permitted on the bathroom door.
 - d. Any blinds or curtains located behind the storefront windows must be kept open during business hours to allow for visibility into the tenant space from the street. No obstructions shall be located in front of any of the storefront windows that would prevent such visibility.
 - e. The front door to the business must be open during business hours. The use of buzzers or a security camera is not permitted.
 - f. The massage establishment shall comply with the hours of operation outlined in Ordinance 140-09, approved on July 2, 2009. This Ordinance amended the Health Code to limit the hours of permitted operation for massage establishments from 7:00 am to 10:00 pm.
 - g. All persons engaged in performing massage shall be licensed for that purpose by the State of California and the licenses shall be prominently displayed on walls of the business.
 - h. The Planning Commission may revoke this Conditional Use authorization if the Department of Public Health revokes the health permit for massage.

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