



SAN FRANCISCO PLANNING DEPARTMENT

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Planning Commission Motion No. 18521

HEARING DATE: JANUARY 26, 2012

Date: January 31, 2012
Case No.: **2011.0894 C**
Project Address: **3481 18TH STREET**
Zoning: RTO-Mission (Residential, Transit-Oriented-Mission
Neighborhood)
55-X Height and Bulk District
Block/Lot: 3589/145
Project Sponsor: David Cumby
95 Brady Street
San Francisco, CA 94103
Staff Contact: Kimberly Durandet – (415) 575-6816
kimberly.durandet@sfgov.org

ADOPTING FINDINGS RELATING TO THE APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 178, 186, 303, 726.24 OF THE PLANNING CODE TO ALLOW AN OUTDOOR ACTIVITY AREA TO BE ADDED TO AN EXISTING LIMITED COMMERCIAL USE AUTHORIZED AS A FULL-SERVICE RESTAURANT (D.B.A. REGALITO) WITHIN THE RTO-MISSION (RESIDENTIAL, TRANSIT-ORIENTED-MISSION NEIGHBORHOOD) ZONING DISTRICT AND A 55-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On August 18, 2011 David Cumby (hereinafter "Project Sponsor") filed an application with the Planning Department (hereinafter "Department") for Conditional Use Authorization under Planning Code Section(s) 178, 186, 303, and 726.24 to allow an Outdoor Activity Area to be added to an existing Limited Commercial Use authorized as a full-service restaurant (d.b.a. Regalito) within the RTO-Mission (Residential, Transit-Oriented-Mission Neighborhood) Zoning District and a 55-X Height and Bulk District.

On January 26, 2012, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2011.0894 C.

The Project is exempt from the California Environmental Quality Act ("CEQA") as a Class 1A 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. 2007.0894C, 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 south side of 18th Street, between Valencia and Lexington Streets, Block 3589, Lot 145. The property is located within the RTO-Mission (Residential, Transit-Oriented-Mission Neighborhood) Zoning District and a 55-X Height and Bulk District. The property is developed with a ground floor commercial unit and one residential unit on the second floor. The ground floor commercial unit is authorized as a Limited Commercial Use currently operating as a full-service restaurant (d.b.a. "Regalito"). The subject property is a lot with approximately 25 feet of frontage on 18th Street and lot depth of 85 feet.
3. **Surrounding Properties and Neighborhood.** The surrounding properties in the neighborhood are located within the RTO-Mission (Residential, Transit-Oriented-Mission Neighborhood), RH-3 (Residential House, Three-Family), Valencia NCT (Neighborhood Commercial Transit), and Mission NCT Districts and consist of single, two, and three-family residential buildings as well as commercial and some industrial buildings which are predominately used as auto repair facilities. The NCT Districts contain a mixture of food and beverage establishments, personal services, small retail establishments, and other commercial uses. The adjacent property to the east is a five unit residential building, to the west is a parking lot, to the southeast is a single family dwelling, and to the southwest is a commercial building.
4. **Project Description.** The applicant proposes to add an Outdoor Activity Area of approximately 250 square feet on the ground floor in a portion of the rear on the west side of the lot. Approximately 480 square feet of rear open space will remain. The

addition of outdoor seating (14 seats) to the existing Limited Commercial Use as a full-service restaurant (d.b.a. Regalito) will operate in conjunction with the restaurant hours of operation Mon - Fri, 5pm - 10pm; Sat, 11am - 10pm; Sun, 11am - 10pm. Regalito has been in operation since 2006. Fences and/or landscaping may be added to buffer potential noise. No other work is proposed.

5. **Public Comment.** The Department has received no comments in opposition to the proposal. The Department has received one email in support of the proposal from the property owner of the second floor residential condominium. The Department received one phone call inquiring about the 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. **Limited Commercial Use.** Planning Code Section 186 allows Limited Commercial Uses in Residential Districts.

The Limited Commercial use is located within ¼ mile from the Valencia Neighborhood Commercial Zoning District. Therefore, Planning Code Section 726 zoning controls shall apply. As such, Planning Code Section 726.24 requires Conditional Use Authorization for Outdoor Activity Area as defined in Section 790.70. However, the Limited Commercial Use described above shall meet the following conditions:

- (1) *The building shall be maintained in a sound and attractive condition, consistent with the general appearance of the neighborhood;*
- (2) *Any signs on the property shall be made to comply with the requirements of Article 6 of this Code applying to nonconforming uses;*
- (3) *The hours during which the use is open to the public shall be limited to the period between 6:00 a.m. and 10:00 p.m.;*
- (4) *Public sidewalk space may be occupied in connection with the use provided that it is only occupied with tables and chairs as permitted by this Municipal Code;*
- (5) *Truck loading shall be limited in such a way as to avoid undue interference with sidewalks, or with crosswalks, bus stops, hydrants and other public features;*
- (6) *Noise, odors and other nuisance factors shall be adequately controlled; and*
- (7) *All other applicable provisions of this Code shall be complied with.*

- B. **Outdoor Activity.** Planning Code Section 726.24 states that a Conditional Use Authorization is required for an Outdoor Activity Area, as defined by Planning Code Section 790.70.

The Project Sponsor proposes setting up tables to accommodate approximately 14 additional patrons (the restaurant currently has approximately 26 seats inside) in an existing rear undeveloped portion of the lot. The outdoor area would be used for dining both day and night. Evening hours in the outside area would be restricted to 10p.m. daily to reduce

potential noise that may affect residential uses in the area, and in accordance with Limited Commercial Use hours of operation.

- C. **Hours of Operation.** The subject property may be open to the public until 10:00 p.m. per Planning Code Section 186.

The Outdoor Activity Area will operate in conjunction with the restaurant hours of operation which currently are Mon - Fri, 5pm - 10pm; Sat, 11am - 10pm; Sun, 11am - 10pm.

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 addition of an Outdoor Activity Area to a local neighborhood serving restaurant will not impact traffic or parking in the neighborhood because it is not a destination venue. Due to its size, the Outdoor Activity Area is intended to be an amenity addition to a small restaurant. This will compliment the mix of goods and services currently available in the neighborhood and will contribute to the economic vitality of the neighborhood. Outdoor seating areas have been shown to be a desirable amenity in NC and adjoining districts.

- 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 height and bulk of the existing building will remain the same and will not alter the existing appearance or character of the project vicinity. No work is proposed that would alter the 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 this size project. The proposed use is designed to meet the needs of the immediate neighborhood and should not generate significant amounts of vehicular trips from the immediate neighborhood or citywide.

- 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 and outlined in Exhibit A.

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

The proposed use does not require any additional tenant improvements. The Department shall review all lighting and signs when proposed.

- 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 Neighborhood Commercial District.

The proposed project is consistent with the stated purpose of the Valencia Street Neighborhood Commercial Transit District in that the intended use is located at the ground floor, and it will provide a compatible convenience service for the immediately surrounding neighborhoods.

- 8. **Additional Criteria for Outdoor Activity Area 145.2(a)(2).** An Outdoor Activity Area is subject to additional criteria that the Planning Commission shall find that:

- a. The nature of the activity operated in the Outdoor Activity Area is compatible with surrounding uses;

The proposed use is in keeping with other Limited Commercial Use establishments that propose to add an Outdoor Activity Area to a local neighborhood serving restaurant. The Outdoor Activity area will be located close to the Valencia NCT District and the existing commercial uses along the western property line. This will compliment the mix of goods and services currently available in the neighborhood and will contribute to the economic vitality of the neighborhood.

- b. The operation and design of the Outdoor Activity Area does not significantly disturb the privacy or affect the livability of adjoining or surrounding residences;

The Outdoor Activity Area as shown on the plans is proposed to be 255 square feet located on the west side of the lot close to the existing building. A portion of the building extends beyond the proposed Outdoor Activity Area which will buffer sound from the proposed outdoor

dining area to the nearby residences. Landscaping may also be provided to buffer any associated noise for the residential buildings located east and south of the subject property.

- c. The hours of operation of the activity operated in the Outdoor Activity Area are limited so that the activity does not disrupt the viability of surrounding uses.

The subject property may be open to the public between 6:00 a.m. and 10:00 p.m. per the more restricted requirements of Limited Commercial Uses per Section 186(b). However, the Outdoor Activity Area will operate in conjunction with the restaurant hours of operation which are Mon - Fri, 5pm - 10pm; Sat, 11am - 10pm; Sun, 11am - 10pm.

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

NEIGHBORHOOD COMMERCE

Objectives and Policies

OBJECTIVE 6:

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

POLICY 6.1:

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts. Entertainment uses may be appropriate in certain districts or parts of districts if guidelines are followed.

POLICY 6.2:

Promote economically vital neighborhood commercial districts which foster small business enterprises and entrepreneurship and which are responsive to economic and technological innovation in the marketplace and society.

POLICY 6.9

Regulate uses so that traffic impacts and parking problems are minimized.

The proposed addition of Outdoor Activity will help preserve a neighborhood serving use as a restaurant. It will provide the neighborhood with an outdoor dining experience within walking distance. The surrounding properties to the west are mostly commercial and residential to the east. The Outdoor Activity area will be located closest to the Valencia NCT District and the existing commercial uses. Landscaping may be provided to buffer any associated noise. Traffic and parking will not be affected by adding the Outdoor Activity Area to the existing restaurant.

MISSION AREA PLAN

POLICY 1.1.3

Maintain the successful Mission Street, 24th Street, and Valencia Street Neighborhood Commercial districts; recognize the proximity to good transit service by eliminating residential density limits and minimum parking requirements.

POLICY 1.1.6

Permit and encourage small and moderate size retail establishments in neighborhood commercial areas of the Mission, while allowing larger retail in the formerly industrial areas when part of a mixed-use development.

The proposed addition of Outdoor Activity Area will help preserve a neighborhood serving use as a restaurant. It will provide the neighborhood with an outdoor dining experience within walking distance. The Outdoor Activity area will be located closest to the Valencia NCT District and the existing commercial uses. The use will compliment this district. The site of the Outdoor Activity Area will serve to enhance and promote a thriving small business. Traffic and parking will not be affected by adding the Outdoor Activity Area to the existing restaurant.

10. **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 proposal would enhance the district by providing an Outdoor Activity Area for local residents to enjoy while dining at a neighborhood restaurant. The business would be locally owned and creates employment opportunities for the community. There are no alterations proposed to the building.

- 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.

- 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.

Neither housing nor office use is proposed which is normally associated with commuter traffic issues. The site is well served by transit. Therefore, parking and traffic will not be affected.

- 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 not displace any service or industry establishment. The project will enhance a currently existing service sector use and related employment opportunities. Ownership of industrial or service sector businesses in the area will not be adversely affected by this project.

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

The Project proposes no changes to the existing structure. This proposal will not impact the property's ability to withstand an earthquake.

- G. That landmarks and historic buildings be preserved.

A landmark or historic building does not occupy the Project site.

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

The project will have no negative impact on existing parks and open spaces. The Project does not have an impact on open spaces.

11. 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.
12. 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. 2011.0894C** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated December 27, 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. 18521. 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 January 26, 2012.

Linda D. Avery
Commission Secretary

AYES: Antonini, Borden, Fong, Miguel, Moore, Sugaya

NAYS:

ABSENT:

ADOPTED: January 26, 2012

EXHIBIT A

AUTHORIZATION

This authorization is for a conditional use to allow an Outdoor Activity Area (d.b.a. Regalito) located at 3481 18th Street, Block 3589 and Lot 145, pursuant to Planning Code Section(s) 178 and 186 within the RTO-Mission (Residential Transit Oriented, Mission) Zoning District and a 55-X Height and Bulk District; in general conformance with plans, dated December 27, 2011, and stamped "EXHIBIT B" included in the docket for Case No. 2011.0894C and subject to conditions of approval reviewed and approved by the Commission on January 26, 2012 under Motion No. 18521. 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 January 26, 2012 under Motion No. 18521.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. 18521 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

DESIGN – COMPLIANCE AT PLAN STAGE

3. **Noise.** Plans submitted with the building permit application for the approved project shall incorporate acoustical insulation and other sound proofing measures to control noise.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

MONITORING - AFTER ENTITLEMENT

4. **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

5. **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

6. **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 community liaison officer shall be available by telephone at all hours should noise be problematic. 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

7. **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>

8. **Lighting.** All Project lighting shall be directed onto the Project site and immediately surrounding sidewalk area only, and designed and managed so as not to be a nuisance to adjacent residents. Nighttime lighting shall be the minimum necessary to ensure safety, but shall in no case be directed so as to constitute a nuisance to any surrounding property.

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

9. **Hours of Operation.** The Outdoor Activity Area will operate in conjunction with the restaurant hours of operation which are Mon - Fri, 5pm - 10pm; Sat, 11am - 10pm; Sun, 11am - 10pm. No patrons may remain in the Outdoor Activity Area after closing time. Staff may remain as necessary for cleaning and other duties related to the operations of the Outdoor Activity Area one hour past the closing hour stated above. No employees may be in the Outdoor Activity Area after the clean up time.

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

