



SAN FRANCISCO PLANNING DEPARTMENT

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Planning Commission Motion No. 18541

HEARING DATE: FEBRUARY 9, 2012

Date: February 2, 2012
Case No.: **2011.0965 C**
Project Address: **1415 OCEAN AVENUE**
Zoning: Ocean Avenue NCT (Neighborhood Commercial Transit)
45-X Height and Bulk District
Block/Lot: 6941/063 and 064
Project Sponsor: John Kevlin, Reuben & Junius, LLP
One Bush Street, #600
San Francisco, CA 94104
Staff Contact: Sharon Lai – (415) 575-9087
sharon.w.lai@sfgov.org

ADOPTING FINDINGS RELATING TO THE APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303(i), 703.4, and 737.21 OF THE PLANNING CODE TO CONVERT A VACANT COMMERCIAL SPACE INTO A FORMULA RETAIL USE IN EXCESS OF 4,000 SQUARE FEET AT THE GROUND AND MEZZANINE FLOOR, (D.B.A. SHERWIN WILLIAMS) WITHIN THE OCEAN AVENUE NCT (NEIGHBORHOOD COMMERCIAL TRANSIT) DISTRICT AND A 45-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On September 1, 2011, John Kevlin for Reuben & Junius, LLP (hereinafter “Project Sponsor”) filed an application with the Planning Department (hereinafter “Department”) for Conditional Use Authorization under Planning Code Section(s) 703.4 and 737.21 to establish a formula retail use in excess of the permitted use size in a vacant commercial ground and mezzanine space (d.b.a. Sherwin Williams), within the Ocean Avenue NCT (Neighborhood Commercial Transit) District and a 45-X Height and Bulk District.

On January 19, 2012, the San Francisco Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2011.0965C.

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. 2011.0965C, 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 Ocean Avenue, between Miramar and Granada Avenues, Block 6941, Lots 063 and 064. The property is located within the Ocean Avenue NCT (Neighborhood Commercial Transit) District with 45-X height and bulk district. The subject one-story building was constructed circa 1923. It occupies two lots and is developed with three commercial spaces. The commercial spaces are currently vacant and the last known use was a retail store, (d.b.a. Golden Years Medical Home Health Care Products). The subject building is located in the mid-block, with approximately 52 feet of frontage.
3. **Surrounding Properties and Neighborhood.** The Subject Site is located within a commercial building that occupies two lots, along the Ocean Avenue NCT (Neighborhood Commercial Transit) commercial corridor, with a 45-X height and bulk district. The Ocean Avenue Neighborhood Commercial Transit corridor is characterized by multi-purpose transit-oriented small-scale commercial uses, one- or two-story buildings, containing neighborhood serving uses from Phelan Avenue to Manor Drive, such as salons, cleaners, retail stores, and restaurants. The retail frontage is interrupted at several locations by larger buildings such as multi-family residential apartments and churches. The nearest paint store is Kelly Moore Paint Company located 1.8 miles away at 445 Taraval Street, and the nearest hardware store that sells paint product is J&J True Value, located 1.1 miles away at 929 Geneva Avenue.
4. **Project Description.** The project sponsor is seeking Conditional Use authorization to establish a formula retail use (d.b.a. Sherwin Williams) as defined by Section 703.3 and 703.4 of the Planning Code. The proposed retail establishment will occupy two of the three vacant commercial store fronts of the subject building, occupying approximately 36 feet, 6 inches of commercial frontage. The proposed use would offer retail sales of paint supplies and would occupy the ground and mezzanine levels of the commercial tenant

space, measuring approximately 4,243 gross square feet. A Conditional Use authorization is required for exceeding the permitted use size of 3,999 square feet. Interior tenant improvements are proposed to combine two of the vacant storefronts as well as to convert the mezzanine level to a second floor by enclosed the existing half walls. There would be no physical expansion of the building, nor would storefront alterations be necessary. 3,950 Sherwin Williams locations currently exist nationwide with at least another one additional location pending approval in San Francisco. Sherwin Williams utilizes a standardized array of merchandise, façade, décor, uniform, signage and trademark.

5. **Public Comment.** A petition with nine signatures of support has been submitted. The Department is not aware of any other public comment.
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. **Floor Area Ratio.** Section 124 establishes basic floor area ratios (FAR) for all zoning districts. FAR is the ratio of the gross floor area of all the buildings on a lot to the total area of the lot. Under Section 124(a), the FAR for the Ocean Avenue NCT is 2.5 to 1.

With a combined lot area of 6,324 square feet, 15,810 nonresidential gross square feet can be developed on the Project Site. Since the Project will not include the physical expansion of the commercial space, there will be no increase in nonresidential gross floor area.

- B. **Parking Requirement.** Section 151 requires retail establishments to provide one parking space for every 500 square feet of occupied floor area, where the occupied floor area exceeds 5,000 square feet.

With a gross floor area of under 5,000 square feet, the Project is not required to provide parking.

- C. **Loading.** Section 152 requires off-street freight loading for uses above a certain size. Retail stores up to 10,000 square feet in gross floor area are not required to provide off-street freight loading.

With a gross floor area of under 10,000 square feet, the Project is not required to provide off-street loading. Existing metered parking along Ocean Avenue can be used for loading purposes.

- D. **Formula Retail.** Sections 703.3 and 703.4 places notification requirements and other restrictions on formula retail uses.

The Project is considered to be a formula retail use as defined by Section 703.3(b) of the Planning Code. Conditional Use authorization must be authorized for a formula retail use at the subject site as per Section 703.4.

- E. **Hours of Operation.** Section 723.27 allows hours of operation from 6:00AM until 2:00AM as of right and requires conditional use authorization to operate between the hours of 2:00AM and 6:00AM.

The Project Sponsor is not requesting Conditional Use authorization to operate between the hours of 2:00AM and 6:00AM. The proposed hours are 7:00AM to 8:00PM daily.

- F. **Use Size.** Section 121.2 establishes nonresidential use size limits in neighborhood commercial districts in order to protect and maintain a scale of development appropriate to each district. In the Ocean Avenue NCT, Conditional Use Authorization is required for any nonresidential use that exceeds 3,999 square feet, per Section 737.21.

The Project proposes to occupy 4,243 gross square feet and requires a Conditional Use authorization for the use size.

- G. **Signage.** Currently, there is not a proposed sign program on file with the Planning Department. Any proposed signage will be subject to the review and approval of the Planning Department.

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 size of the proposed use is in keeping with other storefronts on the block face. The proposed retail use will not impact traffic or parking in the District because it is not a destination restaurant. This will complement the mix of goods and services currently available in the district and contribute to the economic vitality of the neighborhood by removing a vacant storefront.

- 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. The proposed work will not affect the building envelope, yet the inclusion of outside seating will alter the use of the property.

- 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 a 4,243 square-foot retail use. 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 retail use is not expected to generate noxious or offensive emissions.

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

The proposed retail use does not require any exterior improvements and the Department shall review all lighting and signs proposed for the new business under future building 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 Neighborhood Commercial District.

The proposed project is consistent with the stated purposes of NCT Districts in that the intended use is located at the ground floor, will provide a compatible convenience service for the immediately surrounding neighborhoods during daytime hours.

- 8. **Planning Code Sections 303(i) and 703.4** require Conditional Use authorization for the establishment of a formula retail use in Neighborhood Commercial Districts. The

Planning Commission shall consider the following criteria set forth in **Section 303(i)** in addition to the criteria set forth in Section 303(c):

- A. The existing concentrations of formula retail uses within the Neighborhood Commercial District.

A survey of the Ocean Avenue NCT bounded Manor Drive and Phalen Avenue revealed that six formula retail uses are currently found in the area. These businesses include Quickly's, McDonald's, Walgreens, KFC/Taco Bell, 7-Eleven, and UPS Store.

- B. The availability of other similar retail uses within the Neighborhood Commercial District.

Within the survey area of the Ocean Avenue NCT between Manor Drive and Phalen Avenue, no other retailer specializes in paint supplies.

- C. The compatibility of the proposed formula retail use with the existing architectural and aesthetic character of the Neighborhood Commercial District.

No physical expansions of the subject building would be necessary to accommodate the proposed use. Any exterior facade modifications would be reviewed by the Department under future permits.

- D. The existing retail vacancy rates within the Neighborhood Commercial District.

There are approximately 10 vacant commercial storefronts currently in the Ocean Avenue NCT.

- E. The existing mix of Citywide-serving retail uses and neighborhood-serving retail uses within the Neighborhood Commercial District.

The subject district contains eating and drinking establishments, retail, services and institutions that serve not only the immediate neighborhood, but also the City as a whole. These aforementioned uses are primarily locally-owned, independent uses. Formula retail uses can be found scattered across the district. The proposed use is intended to be primarily neighborhood-serving.

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 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.

The Project would be a neighborhood-serving use and would further enhance the neighborhood by filling a storefront that has been vacant. Additionally, the Project would add commercial diversity to the subject area of the Ocean Avenue NCT which contains a high concentration of eating and drinking establishments.

Policy 6:

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

The subject business would be an individually owned franchise by a San Francisco resident.

Policy 9:

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

The Project will not adversely impact public transit or place a burden on the existing supply of parking in the neighborhood. Many of the patrons will be able to walk from their residences or places of employment, and the Project Site is well-served by public transportation. Those who drive will be able to utilize nearby parking garages located within in the immediate Project area.

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 a neighborhood serving use in an area where a paint store is currently unavailable. The business will create 4 new employment opportunities for the community. The proposed alterations are within 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.

- 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 Ocean Avenue and is well served by transit. It is presumable that the employees would commute by transit thereby mitigating possible effects on street parking. Ocean Avenue NCT is served by the Muni rail and eight Muni bus lines.

- 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 not affect industrial or service sector uses or related employment opportunities. Ownership of industrial or service sector businesses will not be affected by this project.

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

The Project is designed and will be constructed to conform to the structural and seismic safety requirements of the City Building Code. 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. 2011.0965C** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated September 1, 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. 18541. 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 February 9, 2012.

Linda D. Avery
Commission Secretary

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

NAYES: None

ABSENT: None

ADOPTED: February 9, 2012

EXHIBIT A

AUTHORIZATION

This authorization is for a conditional use to allow a formula retail use in excess of 4,000 square feet (d.b.a. Sherwin Williams) located at 1415 Ocean Avenue, Block 6941, and Lots 063 and 064 pursuant to Planning Code Sections 303, 703.3, 703.4 and 737.21 within the Ocean Avenue NCT District and a 45-X Height and Bulk District; in general conformance with plans, dated September 1, 2011, and stamped "EXHIBIT B" included in the docket for Case No. 2011.0965C and subject to conditions of approval reviewed and approved by the Commission on February 9, 2012, under Motion No. **18541**. 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 19, 2012** under Motion No. **18541**.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. **18541** 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.

DESIGN

2. **Garbage, composting and recycling storage.** Space for the collection and storage of garbage, composting, and recycling shall be provided within enclosed areas on the property and clearly labeled and illustrated on the architectural addenda. Space for the collection and storage of recyclable and compostable materials that meets the size, location, accessibility and other standards specified by the San Francisco Recycling Program shall be provided at the ground level of the buildings.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, 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. **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/>*