



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- Affordable Housing (Sec. 415)
- Jobs Housing Linkage Program (Sec. 413)
- Downtown Park Fee (Sec. 412)
- First Source Hiring (Admin. Code)
- Child Care Requirement (Sec. 414)
- Other

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Planning Commission Motion No. 18552

HEARING DATE: FEBRUARY 23, 2012

Date: February 16, 2012
Case No.: **2011.1403C**
Project Address: **3500 19TH STREET**
Zoning: Valencia Street NCT (Neighborhood Commercial Transit) District
 Mission Alcoholic Beverage Special Use District
 55-X Height and Bulk District
Block/Lot: 3588/012
Project Sponsor: David Silverman
 Reuben & Junius LLP
 1 Bush Street, Suite 600
 San Francisco, CA 94104
Staff Contact: Corey Teague – (415) 575-9081
corey.teague@sfgov.org
Recommendation: **Approval with Conditions**

ADOPTING FINDINGS RELATING TO THE MODIFICATION OF CONDITIONS OF A CONDITIONAL USE AUTHORIZATION APPROVED BY PLANNING COMMISSION MOTION NO. 17560, PURSUANT TO PLANNING CODE SECTION 303(E), TO ALLOW THE PROJECT TO PAY THE AFFORDABLE HOUSING IN-LIEU FEE INSTEAD OF PROVIDING THREE ON-SITE AFFORDABLE HOUSING UNITS IN THE VALENCIA STREET NCT (NEIGHBORHOOD COMMERCIAL TRANSIT) ZONING DISTRICT, THE MISSION ALCOHOLIC BEVERAGE SPECIAL USE DISTRICT, AND 55-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On December 15, 2011 David Silverman (hereinafter "Project Sponsor") filed an application with the Planning Department (hereinafter "Department") for Conditional Use Authorization under Planning Code Section 303(e) to modify Condition Nos. 11-14 of Motion No. 17560 to allow the project to pay the affordable housing in-lieu fee instead of providing three on-site affordable housing units in the Valencia Street NCT (Neighborhood Commercial Transit) Zoning District, Mission Alcoholic Beverage Special Use Subdistrict, and 55-X Height and Bulk District.

On June 30, 2007, the Preliminary Mitigated Negative Declaration for the Project was prepared and published for public review. On July 20, 2007, an appeal of the Preliminary Negative Mitigated Negative Declaration was appealed to the Planning Commission ("Commission"). On January 10, 2008, the Commission considered the Appeal and upheld the Preliminary Mitigated Negative Declaration. The Commission found that the contents of said report and the procedures through which the FND was prepared, publicized, and reviewed complied with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) (CEQA), 14 California Code of Regulations Sections 15000 et seq. (the "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code ("Chapter 31"). The Planning Department, Linda Avery, is the custodian of records, located in the File for Case No. 2005.0490E, at 1650 Mission Street, Fourth Floor, San Francisco, California. Department staff prepared a Mitigation Monitoring and Reporting Program, which material was made available to the public and the Commission for the Commission's review, consideration, and action. Since the FND was finalized, there have been no substantial project changes and no substantial changes in project circumstances that would require major revisions to the FND due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the FND.

On February 21, 2008 the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2005.0490C and approved the project per Motion No. 17560.

On February 23, 2012 the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2011.1403C.

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. 2011.1403C, 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 northwest corner of the intersection of Valencia and 19th Street, Block 3588, Lot 012. The property is located

within the Valencia Street NCT (Neighborhood Commercial Transit) District and a 55-X Height and Bulk District. The subject property is currently a surface parking lot with approximately 100-feet of frontage on 19th Street and 100-feet of frontage on Valencia Street.

3. **Surrounding Properties and Neighborhood.** The project site is located at the intersection of Valencia and 19th Streets. The Valencia Street corridor includes a variety of neighborhood-serving uses. A mixture of food establishments, entertainment venues, personal services, and small retail establishments define the District. The surrounding properties to the west are located within the RTO-Mission District. Corner properties within the immediate neighborhood tend to be larger in height, massing, and scale than other buildings. Of note, one block south at the northwest and southeast corners of Valencia and 20th Streets, are two mixed-use structures constructed in the early part of the 20th-century that exceed 5-stories in height.
4. **Original Project Description.** On February 21, 2008, the Planning Commission approved a mixed use project, per Motion No. 17560, that meets the following description. The proposal is to construct a 17-unit mixed-use development. The development will be divided into two separate structures linked by the ground floor podium and separated at the first habitable level by an inner courtyard. The ground floor facing Valencia Street will reserve 2,900 square feet for commercial space. This space is configured in a manner that it can be used by a single tenant or divided for smaller establishments. The residential units above will be a mixture of one and two bedroom units in a townhouse configuration. The proposal shall provide 13 unbundled off-street parking spaces, 2 city care share spaces, secured storage for 6 bicycles adjacent to the residential lobby entrance on 19th Street, and storage for 7 bicycles within the garage.
5. **Proposal.** The project proposes to modify Condition Nos. 11-14 of Motion No. 17560 to allow the project to pay the affordable housing in-lieu fee instead of providing three on-site affordable housing units.
6. **Public Comment.** The Department received several calls requesting general information about the proposal, but no written public comments for the project.
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 original project approved per Motion No. 17560 met this criterion. The proposal to pay the affordable housing in-lieu fee will have no physical impact on the project design.

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 original project approved per Motion No. 17560 met this criterion. The proposal to pay the affordable housing in-lieu fee will have no physical impact on the project design.

- 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 original project approved per Motion No. 17560 met this criterion. The proposal to pay the affordable housing in-lieu fee will have no physical impact on traffic patterns, traffic volumes, or off-street parking and loading.

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

The original project approved per Motion No. 17560 met this criterion. The proposal to pay the affordable housing in-lieu fee will have no physical impact on the project design and therefore will not increase any emissions from the building.

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

The original project approved per Motion No. 17560 met this criterion. The proposal to pay the affordable housing in-lieu fee will have no physical impact on the project design and therefore will have no impact on landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs.

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 proposal will continue to be consistent with the Planning Code and General Plan because Section 415 allows a project to elect to pay the in-lieu fee as an equal option to providing the units on-site.

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

The proposed affordable housing modification will not cause any physical change to the project, and it will continue to be consistent with the Valencia Street Neighborhood Commercial Transit District.

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

HOUSING

Objectives and Policies

OBJECTIVE 7:

SECURE FUNDING AND RESOURCES FOR PERMANENTLY AFFORDABLE HOUSING, INCLUDING INNOVATIVE PROGRAMS THAT ARE NOT SOLELY RELIANT ON TRADITIONAL MECHANISMS OR CAPITAL.

Policy 7.1:

Expand the financial resources available for permanently affordable housing, especially permanent sources.

Local programs such as HOPE-SF, *inclusionary housing* and 50% set asides of Redevelopment Areas' Tax Increment Financing dollars demonstrate a strong dedication to providing local funding to affordable housing.

The affordable housing in-lieu fee is currently the first option for new developments. The in-lieu fee pays an important role in funding the construction of permanently affordable housing in the City.

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 original project approved per Motion No. 17560 met this criterion and the proposal to allow the project to pay the affordable housing in-lieu fee instead of providing three on-site affordable housing units will have no physical impact on the project and therefore will have no impact on neighborhood serving retail uses.

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

The original project approved per Motion No. 17560 met this criterion and the proposal to allow the project to pay the affordable housing in-lieu fee instead of providing three on-site affordable housing units will have no impact on existing housing and neighborhood character.

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

The proposal will not increase or decrease the amount of affordable housing provided by the project. The affordable housing in-lieu fee is currently the first option for new developments, and it plays an important role in funding the construction of permanently affordable housing in the City.

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

The original project approved per Motion No. 17560 met this criterion and the proposal to allow the project to pay the affordable housing in-lieu fee instead of providing three on-site affordable housing units will have no impact on traffic or transit services.

- 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 proposal 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 original project approved per Motion No. 17560 met this criterion and the proposal to allow the project to pay the affordable housing in-lieu fee instead of providing three on-site affordable housing units will have no impact on the project's ability meet this criterion.

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

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. 2011.1403C** subject to the following conditions attached hereto as "EXHIBIT A" 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. 18552. 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 23, 2012.

Linda D. Avery
Commission Secretary

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

NAYES: None

RECUSED: Commissioner Wu

ADOPTED: February 23, 2012

EXHIBIT A

AUTHORIZATION

This authorization is for a conditional use to modify Condition Nos. 11-14 of Motion No. 17560 for the project at 3500 19th Street, Block 3588, Lot 012, to allow the project to pay the affordable housing in-lieu fee instead of providing three on-site affordable housing units in the Valencia Street NCT (Neighborhood Commercial Transit) Zoning District, Mission Alcoholic Beverage Special Use Subdistrict, and 55-X Height and Bulk District., and subject to conditions of approval reviewed and approved by the Commission on **February 23, 2012** under Motion No. **18552**. 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 **February 23, 2012** under Motion No. **18552**.

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

The following conditions shall supersede Condition Nos. 11-14 outlined in Motion No. 17560. The conditions of approval for Motion No. 17560 are attached as Exhibit B for reference.

AFFORDABLE UNITS

11. **Requirement.** Pursuant to Planning Code 415.5, the Project Sponsor must pay an Affordable Housing Fee at a rate equivalent to the applicable percentage of the number of units in an off-site project needed to satisfy the Inclusionary Affordable Housing Program Requirement for the principal project. The applicable percentage for this project is twenty percent (20%).
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, <http://sf-moh.org/index.aspx?page=321>

12. **Other Conditions.** The Project is subject to the requirements of the Inclusionary Affordable Housing Program under Section 415 et seq. of the Planning Code and the terms of the City and County of San Francisco Inclusionary Affordable Housing Program Monitoring and Procedures Manual ("Procedures Manual"). The Procedures Manual, as amended from time to time, is incorporated herein by reference, as published and adopted by the Planning Commission, and as required by Planning Code Section 415. Terms used in these conditions of approval and not otherwise defined shall have the meanings set forth in the Procedures Manual. A copy of the Procedures Manual can be obtained at the Mayor's Office of Housing ("MOH") at 1 South Van Ness Avenue or on the Planning Department or Mayor's Office of Housing's websites, including on the internet at:

<http://sf-planning.org/Modules/ShowDocument.aspx?documentid=4451>.

As provided in the Inclusionary Affordable Housing Program, the applicable Procedures Manual is the manual in effect at the time the subject units are made available for sale.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, <http://sf-moh.org/index.aspx?page=321>

- a. The Project Sponsor must pay the Fee in full sum to the Development Fee Collection Unit at the DBI for use by MOH prior to the issuance of the first construction document, with an option for the Project Sponsor to defer a portion of the payment prior to issuance of the first certificate of occupancy upon agreeing to pay a deferral surcharge that would be

deposited into the Citywide Inclusionary Affordable Housing Fund in accordance with Section 107A.13.3 of the San Francisco Building Code.

- b. Prior to the issuance of the first construction permit by the DBI for the Project, the Project Sponsor shall record a Notice of Special Restriction on the property that records a copy of this approval. The Project Sponsor shall promptly provide a copy of the recorded Notice of Special Restriction to the Department and to MOH or its successor.
- c. If project applicant fails to comply with the Inclusionary Affordable Housing Program requirement, the Director of DBI shall deny any and all site or building permits or certificates of occupancy for the development project until the Planning Department notifies the Director of compliance. A Project Sponsor's failure to comply with the requirements of Planning Code Sections 415 et seq. shall constitute cause for the City to record a lien against the development project and to pursue any and all other remedies at law.

13. Intentionally left blank.

14. Intentionally left blank.