



SAN FRANCISCO PLANNING DEPARTMENT

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Planning Commission Motion No. 18568

HEARING DATE: MARCH 22, 2012

Date: March 15, 2012
Case No.: **2011.1281 C**
Project Address: **1300 DOLORES STREET**
Zoning: RH-3 (Residential, House – Three-Family) District
40-X Height and Bulk District
Block/Lot: 6566/045
Project Sponsor: Ahmad Larizadeh
71 Blake Street
San Francisco, CA 94118
Staff Contact: Doug Vu – (415) 575-9120
doug.vu@sfgov.org

ADOPTING FINDINGS RELATING TO THE APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 186, 303 AND 728.44 OF THE PLANNING CODE FOR A CHANGE OF USE TO ESTABLISH A SMALL SELF-SERVICE RESTAURANT (D.B.A. LUV A JAVA) WITHIN AN RH-3 (RESIDENTIAL, HOUSE – THREE-FAMILY) DISTRICT AND A 40-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On November 10, 2011, Ahmad Larizadeh (hereinafter “Project Sponsor”) filed an application with the Planning Department (hereinafter “Department”) for Conditional Use Authorization under Planning Code Section(s) 186, 303 and 728.44 for a change of use to establish a small self-service restaurant (d.b.a. Luv a Java) within an RH-3 (Residential, House – Three-Family) District and a 40-X Height and Bulk District.

On March 22, 2012, the San Francisco Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2011.1281C.

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

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. 2011.1281C, 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 site is located on the southwest corner of 26th and Dolores Streets and is developed with a two-story building that includes three dwelling units fronting 26th Street and the subject ground floor commercial space fronting Dolores Street. The project site is approximately 2,120 square feet in lot area with 26.5 feet of frontage along Dolores Street and 80 feet of frontage along 26th Street.
3. **Surrounding Properties and Neighborhood.** The project site is located within an RH-3 (Residential, House – Three-Family) District, which is characterized by a mixture of dwelling types including one, two, and three-family homes. The predominant form is large flats rather than apartments, with lots 25 feet wide, a fine or moderate scale and separate entrances for each unit. Limited commercial nonconforming uses are more common in these areas than in less intensive residential districts. Shopping facilities and transit lines are found within a short distance of this neighborhood. These include the Valencia Street Neighborhood Commercial Transit District located two blocks east, and the 24th Street – Noe Valley Neighborhood Commercial District located four blocks north of the project site. Excluding the project site and other lots that front Dolores Street, the subject block is also zoned RH-2 and NC-1 that is primarily developed with one and two-family houses, and a small neighborhood grocery store (d.b.a. Modern Market) located at 26th and Church Streets.
4. **Project Description.** The project sponsor proposes to convert the existing 850 square foot retail coffee store (d.b.a. Luv a Java) to a small self-service restaurant that will retain the same name. The business is an independent neighborhood-serving use that is locally owned, which is encouraged throughout San Francisco. The hours of operation will be 6:00 a.m. to 7:00p.m. daily. Pursuant to Planning Code Section 186, this limited commercial nonconforming use can be converted to a small self-service restaurant through conditional use authorization because it is located within ¼ mile of the 24th Street – Noe Valley Neighborhood Commercial District.
5. **Public Comment.** The Department has received one communication in support of the proposal. This individual stated his appreciation of good neighborhood serving businesses.

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 Nonconforming Uses.** Planning Code Section 186 states that any nonconforming use in an RH District which is located within $\frac{1}{4}$ mile from any Individual Area Neighborhood Commercial District and which complies with the most restrictive use limitations specified for the first story and below shall be exempt from the termination provisions of Section 185.

The project sponsor proposes a change of use for the existing retail coffee store to a small self-service restaurant, which requires Conditional Use Authorization within the 24th Street – Noe Valley Neighborhood Commercial District that is located within $\frac{1}{4}$ mile of the subject property. The Project is also required to comply with the conditions of operation pursuant to Planning Code Section 186(b) for limited commercial nonconforming uses.

B. **Small Self-Service Restaurant.** Planning Code Section 728.44 requires a Conditional Use Authorization for a small self-service restaurant, as defined by Planning Code Section 790.91, on the first story and below.

The Project is a small self-service restaurant as defined by Planning Code Section 790.91, totaling approximately 850 square feet, and the Project sponsor is seeking the required Conditional Use Authorization.

C. **Hours of Operation.** Planning Code Section 186 states that the hours of operation for limited commercial nonconforming uses in an RH District shall be limited to the period between 6:00 a.m. and 10:00 p.m.

The Project's proposed hours of operation will be 6:00 a.m. to 7:00 p.m. daily.

D. **Formula Retail Uses.** Planning Code Section 186 states that all uses meeting the definition of "formula retail" use shall not be permitted except by Conditional Use through the procedures of Planning Code Section 303.

The Project is not a "formula retail" use.

E. **Street Frontage.** Planning Code Section 186 states that the requirements of Section 145.1(c)(6) and (7) shall apply for limited commercial nonconforming uses. Planning Code Section 145.1(c)(6) require frontages with active uses that are not residential or PDR be fenestrated with transparent windows and doorways for no less than 60 percent of the street frontage at the ground level and allow visibility to the inside of the building. The use of dark or mirrored glass shall not count towards the required transparent area. Buildings located inside of, or within an unobstructed line of less than 300 feet of an Urban Bird Refuge, as defined in Section 139(c)(1), shall follow glazing requirements within Section 139(c) of the Code. Planning Code Section 145.1(c)(7) requires that any decorative railings or grillwork,

The portion of the project site with an active use that is not residential has approximately 26.5 feet of lineal street frontage along Dolores Street and 32 feet of frontage along 26th Street for a total of 58.5 feet. Approximately 32.5 feet is currently devoted to either transparent windows or doorways, which amounts to 56 percent of the total street frontage. Since the project involves a change of use in an existing commercial space and the deficit in transparent windows and doorways will not be increased, additional fenestration will not be required.

- F. **Parking.** Section 151 of the Planning Code requires off-street parking for every 200 square-feet of occupied floor area, where the occupied floor area exceeds 5,000 square-feet.

The project site contains approximately 850 square-feet of occupied floor area and thus does not require any off-street parking.

- G. **Signage.** Planning Code Section 186 states that any signs on the property shall be made to comply with the requirements of Article 6 of the Code applying to nonconforming uses. Any proposed signage will be subject to the review and approval of the Planning Department.

The project site currently has two small signs that advertise the retail coffee store, which are permitted pursuant to Planning Code Section 606(c)(3). Any newly proposed signage shall be subject to the review 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 proposed use will not increase the size or intensity of the existing commercial space, which is currently operating as a retail coffee store. The project will convert the retail coffee store to a small self-service restaurant in order to offer a wider selection of easily prepared foods including soup, sandwiches, salads and other specialty food items. This change of use will strengthen the diversity of goods offered within 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;

The limited size and shape of the proposed small self-service restaurant is compatible with the pattern of development in the area, and the Project does not include any alterations that will modify the building's 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 a 850 square-foot, small self-service restaurant. The proposed change of 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. Traffic patterns will remain unaltered by the Project because patrons will have ample walking, bicycling, taxi and public transit options.

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

The Project will not create substantial emissions and Conditions of Approval will require compliance with applicable City codes to control noise, dust and odor associated with food and beverage preparation activities.

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

The Project does not require any additional landscaping or screening, and any newly proposed signage shall be subject to review by the Planning Department and required to meet all applicable provisions set forth in Article 6.

- 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.

8. **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 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.

The Project will convert an existing retail coffee store to small self-service restaurant in order to provide desirable goods and services to the neighborhood that is independently owned and operated and will continue to provide resident employment to those in the community.

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.

The Project will convert the existing retail coffee store to a small self-service restaurant that will offer a broader selection of food items throughout the day in the immediate neighborhood, which could generate additional pedestrian activity to the area. The expanded food selection will improve the viability of the business and contribute to 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 improvement opportunities for unskilled and semi-skilled workers.

The change of use from a retail coffee store to a small self-service restaurant will improve the viability of the business and help retain the employment opportunities currently provided by the business owner.

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 preserves and enhances a neighborhood-serving retail use by converting the existing retail coffee store to a small self-service restaurant that will continue to provide coffee and beverages, while also offering an expanded selection of food items throughout the day.

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

The Project will not result in the alteration or expansion of the existing commercial space that is occupied by a nonconforming limited commercial use, and will therefore preserve the existing housing and neighborhood character.

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

No housing will be removed for this Project.

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

The Project includes a change of use for an existing commercial use that does not include any expansion and therefore will not result in a significant increase in any type of traffic or parking associated with the use. Additionally, the subject site is located at the corner of 26th and Dolores Streets and is well served by Muni transit service.

- 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 includes the change of use from a retail coffee store to a small self-service restaurant and does not require or include alterations to the existing commercial space. 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 does not include any changes to the existing building envelope and will have no negative impact on existing parks and 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. 2011.1281C** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated October 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. 18568. 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 March 22, 2012.

Linda D. Avery
Commission Secretary

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

NAYES: None

ABSENT: Commissioner Moore

ADOPTED: March 22, 2012

EXHIBIT A

AUTHORIZATION

This authorization is for a conditional use to allow a small self-service restaurant (d.b.a. Luv a Java) located at 1300 Dolores Street, Block 6566, and Lot 045 pursuant to Planning Code Sections 186, 303 and 728.44 within an RH-3 (Residential, House – Three-Family) District and a 40-X Height and Bulk District and subject to conditions of approval reviewed and approved by the Commission on March 22, 2012 under Motion No. **18568**. 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 March 22, 2012 under Motion No. **18568**.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. **18568** 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

3. **Signage.** Any signs on the property shall be made to comply with the requirements of Article 6 of the Planning Code applying to nonconforming uses.

MONITORING

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. **Garbage, Recycling, and Composting Receptacles.** Garbage, recycling, and compost containers shall be kept within the premises and hidden from public view, and placed outside only when being serviced by the disposal company. Trash shall be contained and disposed of pursuant to garbage and recycling receptacles guidelines set forth by the Department of Public Works.
For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 415-554-.5810, <http://sfdpw.org>
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. **Noise Control.** The premises shall be adequately soundproofed or insulated for noise and operated so that incidental noise shall not be audible beyond the premises or in other sections of the building and fixed-source equipment noise shall not exceed the decibel levels specified in the San Francisco Noise Control Ordinance.
For information about compliance with the fixed mechanical objects such as rooftop air conditioning, restaurant ventilation systems, and motors and compressors with acceptable noise levels, contact the Environmental Health Section, Department of Public Health at (415) 252-3800, www.sfdph.org
For information about compliance with the construction noise, contact the Department of Building Inspection, 415-558-6570, www.sfdbi.org
For information about compliance with the amplified sound including music and television contact the Police Department at 415-553-0123, www.sf-police.org
9. **Odor Control.** While it is inevitable that some low level of odor may be detectable to nearby residents and passersby, appropriate odor control equipment shall be installed to prevent any significant noxious or offensive odors from escaping the premises.
For information about compliance with odor or other chemical air pollutants standards, contact the Bay Area Air Quality Management District, (BAAQMD), 1-800-334-ODOR (6367), www.baaqmd.gov and Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org
10. **Community Liaison.** Prior to the implementation of 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

11. **Hours of Operation.** The subject establishment is limited to the following hours of operation:
6:00 a.m. to 10:00 p.m. daily.

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