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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Planning Commission Motion No. 18643 HEARING DATE, JUNE 14, 2012

Date: June 7, 2012
Case No.: 2012.0205 C
Project Address: 4149 18th STREET
Zoning: Castro Street Neighborhood Commercial District
40-X Height and Bulk District
Block/Lot: 2695/041
Project Sponsor: Tim Eicher for Edge of Castro, Inc.
4149 18th Street
San Francisco, CA 94114
Staff Contact: Adrian C. Putra – (415) 575-9079
adrian.putra@sfgov.org

ADOPTING FINDINGS RELATING TO THE APPROVAL OF A CONDITIONAL USE AUTHORIZATION PURSUANT TO PLANNING CODE SECTIONS 715.48 AND 303 TO ALLOW AN OTHER ENTERTAINMENT USE WITHIN AN EXISTING BAR (D.B.A. THE EDGE) IN THE CASTRO STREET NEIGHBORHOOD COMMERCIAL DISTRICT, AND A 40-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On March 1, 2012, Tim Eichler (Project Sponsor) filed an application with the Department for Conditional Use Authorization under Planning Code Sections 715.48 and 303 of the Planning Code to allow an “other entertainment” use within an existing bar (d.b.a. The Edge) located in the Castro Street Neighborhood Commercial District, and a 40-X Height and Bulk District.

On June 14, 2012, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2012.0205C.

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. 2012.0205C, 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 at 4149 18th Street is located at the southeast corner of 18th and Collingwood Streets. The project site contains a three-story mixed-use building with ground floor commercial uses and 12 dwelling units above. The ground floor commercial uses face 18th Street and consist of a legal, nonconforming bar (d.b.a. The Edge) and a retail store (d.b.a. Does Your Mother Know). The Department has permit history for the bar dating back to 1981 with the likelihood that the bar has been operating longer. The project site is a corner lot with approximately 80 feet of frontage along 18th Street and approximately 75 feet of frontage along Collingwood Street.
3. **Surrounding Properties and Neighborhood.** The project site at 4149 18th Street is located within the Castro Street Neighborhood Commercial District (NCD), which is situated in Eureka Valley, close to the geographic center of San Francisco between the Mission District, Twin Peaks, and Upper Market Street. The physical form of the district is a crossing at Castro and 18th Streets, the arms of which contain many small, but intensely active commercial businesses. The multi-purpose commercial district provides both convenience goods to its immediate neighborhood as well as comparison shopping goods and services on a specialized basis to a wider trade area. Commercial businesses are active both in the daytime and late into the evening and include a number of gay-oriented bars and restaurants, as well as several specialty clothing and gift stores. The district also supports a number of offices in converted residential buildings.

The Castro Street NCD controls are designed to maintain existing small-scale development and promote a balanced mix of uses. Building standards permit small-scale buildings and uses and protect rear yards above the ground story and at residential levels. In new buildings, most commercial uses are permitted at the ground and second stories. Special controls are necessary to preserve the existing equilibrium of neighborhood-serving convenience and specialty commercial uses. In order to maintain convenience stores and protect adjacent residential livability, controls authorize some additional eating and drinking establishments with a conditional use, permit self-service specialty food establishments, and permit with certain limitations new late-night uses, adult and other entertainment, and financial service uses. The continuous retail frontage is maintained by prohibiting most automobile and drive-up uses.

Businesses found on the subject block facing 18th Street include Thai Chef (restaurant) & Walgreens Pharmacy (retail store), Badlands (bar and “other entertainment” use), Not Just Flowers (retail store), and Harvey’s (restaurant). In total, the Castro Street NCD contains seven existing bars also permitted to have “other entertainment” which are, “Midnight Sun” at 4067 18th Street, “Badlands” at 4117 18th Street, “Moby Dick” at 4047 18th Street, “Toad Hall” at 4146 18th Street, “The Mix” at 4086 18th Street, and “440 Castro” at 440 Castro Street.

4. **Project Description.** The Project Sponsor seeks a Conditional Use Authorization, pursuant to Planning Code Sections 303 and 715.48 to establish an “other entertainment” use in conjunction with an existing a legal, nonconforming bar (d.b.a. The Edge) containing approximately 1,250 square-feet of floor area. “The Edge” has hours of operation from 12:00 PM to 2:00 AM, seven days a week. “The Edge” currently has a limited live performance permit from the Entertainment Commission obtained in January 2012 that allows indoor live performances up to 10:00 PM in accordance with Police Code Section 1060. The project sponsor is requesting an “other entertainment” use at “The Edge” in order to be allowed to have a DJ play amplified music within the establishment approximately 3 to 4 nights a week until 1:45 AM at the latest. The project sponsor also plans to host occasional fundraising events for community groups which may involve live performances such as lip-syncing or live singing. Due to the existing bar containing only approximately 1,250 square-feet of gross floor area the project sponsor does not intend to have dancing or a dance area for patrons. “The Edge” currently employees 19 people and the project sponsor expects to hire up to two additional employees if granted a conditional use for an “other entertainment use”
5. **Public Comment.** To date the Department has received letters of support for the project from the following organizations: Castro/Eureka Valley Neighborhood Association, Golden State Gay Rodeo Association – Bay Area Chapter, The Council of Grand Dukes and Grand Duchesses of San Francisco, The Sister of Perpetual Indulgence, Folsom Street Events, and the AIDS Emergency Fund. Additionally, the Department has received a petition of support with approximately 165 signatures, and is not aware of any opposition to 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. **Other Entertainment.** Planning Code Section 715.48 states that “other entertainment” is permitted as conditional uses on the first floor. Section 790.38 defines an “other entertainment” use as a retail use which provides live entertainment, including dramatic and musical performances, and/or provides amplified taped music for dancing on the premises, including but not limited to Places of Entertainment and Limited Live Performance Locales, as defined in Section 1060 of the Police Code, and which is adequately soundproofed or insulated so as to confine incidental noise to the premises. Other entertainment also includes a bowling alley, billiard parlor, shooting gallery, skating rink and other commercial recreational activity, but it excludes amusement game arcades, as defined in Section 790.4.

The project sponsor seeks Conditional Use Authorization to allow “other entertainment” in an existing bar at the first floor and within the Castro Street Neighborhood Commercial District.

- B. **Hours of Operation.** Planning Code Section 715.27 states that in the NC-S District maintaining hours of operation from 6:00 PM. to 2:00 AM. is permitted by right, and that hours of operation from 2:00 AM. to 6:00 AM. is conditionally permitted.

The hours of operation of "The Edge" are from 12:00 PM to 2:00 AM, seven days a week. The hours of operation would not change with the added "other entertainment" use.

- C. **Use Size.** Planning Code Section 715.21 states that a use size of up to 1,999 square feet is permitted by right.

The project site has a use size of approximately 1,250 gross square-feet of floor area, which is below the 1,999 square foot threshold established for uses sizes in the Castro Street NCD.

- D. **Parking.** Section 151 of the Planning Code requires off-street parking for an "other entertainment" use or bar for every 200 square-feet of occupied floor area, where the occupied floor area exceeds 5,000 square-feet.

The project does not involve any physical enlargement to the existing use which contains approximately 1,250 square-feet of floor area and thus does not require any off-street parking.

- E. **Signage.** Any proposed signage will be subject to the review and approval of the Planning Department.

Any proposed signage shall be subject to the review of the Planning Department and required to meet all provisions set forth in Article 6 of the Planning Code pending the approval of this application.

7. **Planning Code Section 303** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the project does comply with said criteria in that:

- A. The proposed new uses and building, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

The project is necessary and desirable because it will enhance an existing business and not result in the displacement of any other neighborhood serving use. Allowing an "other entertainment" use in addition to the existing bar will compliment the mix of goods and services currently available in the Castro NCD and contribute to the economic vitality of the neighborhood by providing an additional entertainment option for local residents and visitors of the Castro 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 size and shape of the project site is compatible with the pattern of development in the area, and the project does not involve any alterations to the exterior of the subject building. The project will not affect 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 project would not adversely impact public transit or overburden the existing supply of parking in the neighborhood, because the project site is well-served by public transit as it is within a few blocks from the Castro MUNI Station and is served by multiple MUNI lines with bus stops located along 18th, Castro and Market Streets within the neighborhood.

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

The project will not create any noxious or offensive emissions, such as glare, dust, or odor, since the Project is an augmentation of existing bar use on the property that does not currently create such offensive emissions. The amplified entertainment will be regulated by the Entertainment Commission and Police Department so that it will meet the San Francisco Noise Control Ordinance, and not be heard outside of the enclosed structure. Furthermore, the Conditions of Approval 7 and 10 specifically restrict noise and vibration associated with the entertainment use to within the enclosed structure.

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

There are no proposed changes to existing conditions as they relate to landscaping, screening, open spaces, parking and loading areas, service areas, lighting, and signage.

- 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 project is consistent with the stated purpose of the Castro NCD in that the intended use is located at the ground floor, will provide a compatible convenience service for the immediately surrounding neighborhoods, and operates with hours of operation that are permitted by right within the district.

8. **General Plan Compliance.** The Project is consistent with the Objectives and Policies of the General Plan in that:

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.

Policy 1.3:

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

The project will provide desirable services to the neighborhood and provides employment opportunities to residents in the community and not displace an existing business. The conditions of approval will ensure that the use meets minimum, reasonable performance standards. The project is also located within a neighborhood commercial district and is thus consistent with activities in the commercial land use plan.

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 augment an existing independently owned commercial use and enhance the diverse economic base of the City by creating new job opportunities in the neighborhood related to "other entertainment" activities taking place at the project site. No neighborhood-serving businesses will be displaced by the project.

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 project will provide additional employment opportunities for local residents and performers.

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.

No commercial tenant would be displaced and the project would not prevent the district from achieving optimal diversity in the types of goods and services available in the neighborhood.

9. **Planning Code Section 101.1(b)** establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project does comply with said policies in that:

- A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

The project will not displace any existing retail uses within the neighborhood. In fact, the project will create additional job opportunities by allowing an "other entertainment" use within an existing bar.

- 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 adversely affect existing housing and is consistent with the surrounding 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 would not adversely impact public transit or place a burden on the existing supply of parking in the neighborhood due to commuter traffic, because the project site is well-served by public transit as it is within a few blocks from the Castro MUNI Station and is served by multiple MUNI lines with bus stops located along 18th, Castro and Market Streets which reduces the need for patrons to frequent the project site by private automobile.

- 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.

Approval of this project will not adversely affect any industrial or service sector jobs rather it will create new service sector employment opportunities for local residents.

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

The project will be designed and constructed to conform to the structural and seismic safety requirements of the San Francisco Building Code where applicable. Therefore, the project will not impact the existing structure's ability to withstand an earthquake.

- G. That landmarks and historic buildings be preserved.

The project does not involve any exterior alterations. Therefore, no landmarks or historic buildings will be adversely affected by the project.

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

This project will not affect any parks or open space because there is no change to the existing building footprint.

- 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. 2012.0205C** 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. 18643. 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 94012.

I hereby certify that the Planning Commission **ADOPTED** the foregoing Motion on June 14, 2012.

Linda Avery
Commission Secretary

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

NAYES: None

ABSENT: None

ADOPTED: June 14, 2012

EXHIBIT A

AUTHORIZATION

This authorization is for a conditional use to allow an “other entertainment” use in an existing bar (d.b.a. The Edge) located at 4149 18th Street, Block 2695, and Lot 041 pursuant to Planning Code Sections 303 and 715.48 within the Castro Street Neighborhood Commercial District and a 40-X Height and Bulk District; in general conformance with plans, dated March 1, 2012, and stamped “EXHIBIT B” included in the docket for Case No. 2012.0205C and subject to conditions of approval reviewed and approved by the Commission on June 14, 2012 under Motion No. **18643**. 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 June 14, 2012 under Motion No. **18643**.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. **18643** shall be reproduced on the Index Sheet of construction plans submitted with the Site or Building permit application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use authorization and any subsequent amendments or modifications.

SEVERABILITY

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a building permit. “Project Sponsor” shall include any subsequent responsible party.

CHANGES AND MODIFICATIONS

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Conditional Use authorization.

Conditions of Approval, Compliance, Monitoring, and Reporting

PERFORMANCE

1. **Validity and Expiration.** The authorization and right vested by virtue of this action is valid for three years from the effective date of the Motion. A building permit from the Department of Building Inspection to construct the project and/or commence the approved use must be issued as this Conditional Use authorization is only an approval of the proposed project and conveys no independent right to construct the project or to commence the approved use. The Planning Commission may, in a public hearing, consider the revocation of the approvals granted if a site or building permit has not been obtained within three (3) years of the date of the Motion approving the Project. Once a site or building permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. The Commission may also consider revoking the approvals if a permit for the Project has been issued but is allowed to expire and more than three (3) years have passed since the Motion was approved.

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

2. **Extension** This authorization may be extended at the discretion of the Zoning Administrator only where failure to issue a permit by the Department of Building Inspection to perform said tenant improvements is caused by a delay by a local, State or Federal agency or by any appeal of the issuance of such permit(s).

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

MONITORING - AFTER ENTITLEMENT

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. **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>
6. **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/>
7. **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
8. **Community Liaison.** Prior to issuance of a building permit to construct the project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org
9. **Notices Posted at Bars and Entertainment Venues.** Notices urging patrons to leave the establishment and neighborhood in a quiet, peaceful, and orderly fashion and to not litter or block driveways in the neighborhood, shall be well-lit and prominently displayed at all entrances to and exits from the establishment.
For information about compliance, contact the Entertainment Commission, at 415 554-6678, www.sfgov.org/entertainment

10. **Other Entertainment.** The Other Entertainment shall be performed within the enclosed building only. The building 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. Bass and vibrations shall also be contained within the enclosed structure. The Project Sponsor shall obtain all necessary approvals from the Entertainment Commission prior to operation. The authorized entertainment use shall also comply with all of the conditions imposed by the Entertainment Commission.

For information about compliance, contact the Entertainment Commission, at 415 554-6678, www.sfgov.org/entertainment