



# SAN FRANCISCO PLANNING DEPARTMENT

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*Subject to: (Select only if applicable)*

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|--|--|
| <input type="checkbox"/> Inclusionary Housing (Sec. 315)         | <input type="checkbox"/> First Source Hiring (Admin. Code) |
| <input type="checkbox"/> Jobs Housing Linkage Program (Sec. 313) | <input type="checkbox"/> Child Care Requirement (Sec. 314) |
| <input type="checkbox"/> Downtown Park Fee (Sec. 139)            | <input type="checkbox"/> Other                             |

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## Planning Commission Motion No. 18671

HEARING DATE: JULY 26, 2012

*Date:* August 3, 2012  
*Case No.:* **2012.0274C**  
*Project Address:* **542 - 550 DIVISADERO STREET**  
*Zoning:* NC-2 (Small-Scale Neighborhood Commercial) Zoning District  
Divisadero Street Alcohol Restricted Use Subdistrict  
65-A Height and Bulk District  
*Block/Lots:* 1203/024 & 037  
*Project Sponsors:* Sam Mogannam (applicant)  
3639 - 18<sup>th</sup> Street  
San Francisco, CA 94110  
Craig Nikitas (agent)  
2555 - 32<sup>nd</sup> Avenue  
San Francisco, CA 94116  
Suheil Shatara (architect)  
Shatara Architecture Inc.  
524 Second Street  
San Francisco, CA 94107  
*Staff Contact:* Sharon M. Young – (415) 558-6346  
sharon.m.young@sfgov.org  
*Recommendation:* **Approval with Conditions**

**ADOPTING FINDINGS RELATED TO THE APPROVAL OF A CONDITIONAL USE AUTHORIZATION UNDER PLANNING CODE SECTIONS 121.2, 303, AND 711.21 TO ALLOW A USE SIZE OVER 4,000 SQUARE FEET THROUGH THE COMBINATION OF A VACANT RETAIL COMMERCIAL TENANT SPACE (PREVIOUSLY OCCUPIED BY A GROCERY STORE D.B.A. DIVISADERO FARMER'S MARKET LIQUOR & DELI) AT 550 DIVISADERO STREET WITH A VACANT COMMERCIAL TENANT SPACE (PREVIOUSLY OCCUPIED BY A GROOMING AND PET SUPPLY STORE D.B.A. TAE HEE'S) AT 542 DIVISADERO STREET TO ESTABLISH AN APPROXIMATELY 7,350 SQUARE FOOT GROCERY STORE (D.B.A. BI-RITE) WITHIN THE NC-2 (SMALL-SCALE NEIGHBORHOOD COMMERCIAL) ZONING DISTRICT, DIVISADERO STREET ALCOHOL RESTRICTED USE SUBDISTRICT, AND A 40-X HEIGHT AND BULK DISTRICT.**

### PREAMBLE

On March 13, 2012, Craig Nikitas and Suheil Shatara on behalf of Sam Mogannam (hereinafter "Project Sponsor") made an application for Conditional Use authorization for the property at **542 - 550 Divisadero**

**Street, Lots 024 & 037 in Assessor's Block 1203** (hereinafter "Subject Property"), to allow a use size over 4,000 square feet through the combination of a vacant retail commercial tenant space (previously occupied by a grocery store d.b.a. Divisadero Farmer's Market Liquor & Deli) at 550 Divisadero Street with a vacant commercial tenant space (previously occupied by a grooming and pet supply store d.b.a. Tae Hee's) at 542 Divisadero Street to establish an approximately 7,350 square foot grocery store (d.b.a. Bi-Rite) within the NC-2 Zoning District, Divisadero Street Alcohol Restricted Use Subdistrict, and a 65-A Height and Bulk District, in general conformity with plans dated June 11, 2012, and labeled "Exhibit B" (hereinafter "Project"). There will be an interior connection between the two buildings, with the grocery store customer service areas located at 550 Divisadero Street and the storage and refrigeration areas located at 542 Divisadero Street.

On **July 26, 2012**, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on **Conditional Use Application No. 2012.0274C**.

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. 2012.0274C, subject to the conditions contained in "EXHIBIT A" of this motion, based on the following findings:

## **FINDINGS**

Having reviewed the materials identified in the recitals 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 542 - 550 Divisadero Street is on the east side of Divisadero Street between Hayes and Fell Streets, Assessor's Block 1203, Lots 024 and 037. It is located within the NC-2 Zoning District, Divisadero Street Alcohol Restricted Use Subdistrict, and a 65-A Height and Bulk District. Lot 024 (542 Divisadero Street) is 2,812.5 square feet in area (25 feet wide by 112.5 feet deep) and is occupied by a three-story mixed use building built circa 1900, with vacant commercial space on the first floor and three residential units on the second and third floors. Lot 037, located at the corner of Divisadero and Hayes Street, is 6,562.5 square feet in area (75 feet wide by 87.5 feet deep) and is occupied by a one-story tall building built circa 1931 containing two separate tenant spaces – the restaurant Nopa occupies the space at 560 Divisadero Street and the currently vacant subject commercial space is at 550 Divisadero Street. The building at 542 Divisadero Street, but not the building at 550 Divisadero Street, is listed in the Planning Department's 1976 Survey as having architectural significance. Neither building is listed in the National or California Registers as having architectural significance.

3. **Surrounding Properties and Neighborhood.** The subject property is located within the Western Addition Neighborhood. The surrounding development consists of a variety of commercial and mixed-use buildings mostly featuring residential uses above ground-floor commercial establishments. The scale of development in the area consists of a mix of one- to three-story structures mostly built between 1900 and the 1930s. Generally, the commercial establishments characterizing this portion of Divisadero Street include restaurants, a liquor store, specialty stores, a beauty salon, and a dry cleaning establishment. The surrounding zoning is primarily RH-3 (Residential House, Three-Family) District zoning. Some of the existing commercial establishments on the subject and opposite blocks include Nopa, Budget Cleaners, Post-All Center, Citi Beauty Skin Care, SF Hardware, New Star-ell Liquor, Palm Reading, Club Waziema, Jay's Cheesesteak & Burgers, Acme Burgerhaus, and Popeyes.
4. **Project Description.** The proposal is a request for Conditional Use authorization under Planning Code Sections 121.2, 303, and 711.21 to allow a use size over 4,000 square feet through the combination of a vacant retail commercial tenant space (previously occupied by a grocery store d.b.a. Divisadero Farmer's Market Liquor & Deli) at 550 Divisadero Street with a vacant commercial tenant space (previously occupied by a grooming and pet supply store d.b.a. Tae Hee's) to establish an approximately 7,350 square foot grocery store (d.b.a. Bi-Rite). There will be an interior connection between the two buildings, with the grocery store customer service areas located at 550 Divisadero Street and the storage and refrigeration areas located at 542 Divisadero Street.

The proposal will also involve constructing a vertical addition set back approximately 44 feet from the front building wall at 550 Divisadero Street, expanding the existing building from approximately 4,240 square feet to 5,427 square feet. There will be no change in the existing building envelope to the approximately 1,900 square foot ground floor retail commercial tenant space at 542 Divisadero Street. Interior and exterior tenant improvements are proposed and storefront improvements have been filed under separate permits. The project site is located within the NC-2 (Small-Scale Neighborhood Commercial) Zoning District and a 65-A Height and Bulk District.

5. **Issues and Other Considerations.**

- The proposed Bi-Rite grocery store would be the second location for this business. The original Bi-Rite grocery store, located at 3639 - 18<sup>th</sup> Street within the Mission District, was established in 1940.
- There are several existing grocery stores within an approximately three-block radius of the project site: Save-More Market, Transfer Market, Green Earth Natural Food, Divisadero Health Haven, Faletti Foods, Delessio Market & Bakery, K J Produce Market, and Michael's Pit Stop.

6. **Public Comment.** As of July 26, 2012, the Department has received approximately 90 emails/letters in support of the proposed project. The Department has received 2 letters in opposition to the proposed project.

7. **Use District.** The project site is within the NC-2 (Small-Scale Neighborhood Commercial) Zoning District in the Western Addition neighborhood in north-central San Francisco. The NC-2 Zoning District is intended to serve as the City's Small-Scale Neighborhood Commercial District. These districts are linear shopping streets which provide convenience goods and services to the surrounding neighborhoods as well as limited comparison shopping goods for a wider market. The range of comparison goods and services offered is varied and often includes specialty retail stores, restaurants, and neighborhood-serving offices. NC-2 Zoning Districts are commonly located along both collector and arterial streets which have transit routes.

Most new commercial development is permitted at the ground and second stories. Neighborhood-serving businesses are strongly encouraged. Eating and drinking and entertainment uses, however, are confined to the ground story. The second story may be used by some retail stores, personal services, and medical, business and professional offices. Parking and hotels are monitored at all stories. Limits on late-night activity, drive-up facilities, and other automobile uses protect the livability within and around the district, and promote continuous retail frontage. Housing development in new buildings is encouraged above the ground story. Existing residential units are protected by limitations on demolition and upper-story conversions.

8. **Planning Code Compliance:** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:

- A. **Non-Residential Use Size Limits for the Proposed Grocery Store in the NC-2 Zoning District.** Planning Code Sections 121.2 and 711.21 establish size limits on non-residential use sizes in the NC-2 Zoning District. Within the NCD, Conditional Use authorization is required for any non-residential use that meets or exceeds 4,000 square feet, in addition to the criteria of Section 303(c) of the Planning Code requiring the Commission to consider the extent to which the following criteria are met:

1. The intensity of activity in the district is not such that allowing the larger use will be likely to foreclose the location of other needed neighborhood-serving uses in the area.

*Conditional Use authorization is required pursuant to Planning Code Sections 121.2 and 711.21 to allow the proposed expansion of the grocery store use. The proposed grocery store, with approximately 7,350 square feet of floor area, will exceed the principally permitted use size limitations by approximately 3,350 square feet of floor area with the combination of commercial tenant spaces at 542 and 550 Divisadero Street. According to the project sponsor, in order to make the paths of travel, shelves, counters, and restrooms in the proposed grocery store handicap accessible, the project requires a larger footprint than the previous grocery store, which was not complying with current ADA access regulations. In addition, the long and narrow retail space at 542 Divisadero Street is deficient with its floor below street level and with sub-standard ceiling clearance to function as an active, pedestrian-friendly or handicapped-accessible retail space.*

2. The proposed use will serve the neighborhood, in whole or in significant part, and the nature of the use requires a larger size in order to function.

*The expansion into the adjacent building at 542 Divisadero Street will allow for "back-of-house" storage and stocking for the proposed grocery store.*

3. The building in which the use is to be located is designed in discrete elements which respect the scale of development in the district.

*Each building at 542 and 550 Divisadero Street will retain a separate identity and both facades will maintain their current widths and heights. According to the project sponsor, the 550 Divisadero Street building will be a revitalized Art Deco-style structure and the 542 Divisadero Street building will remain a Victorian structure. In addition, an over-sized canvas canopy and wood siding covering the original facade and wood millwork at 542 Divisadero Street will be removed.*

- B. **Hours of Operation.** Section 711.27 allows hours of operation from 6 a.m. until 2 a.m. as of right and requires Conditional Use authorization to operate between the hours of 2 a.m. and 6 a.m.

*The proposed hours of operation of the grocery store are 9 a.m. to 9 p.m., seven days a week. (The project sponsor indicated that Bi-Rite Creamery within the grocery store may consider extending its hours of operation until 10 p.m. on weekdays and 11 p.m. on weekends.)*

- C. **Street Frontage in Neighborhood Commercial Districts.** Section 145.1 of the Planning Code requires that within NC Districts space for active uses shall be provided within the first 25 feet of building depth on the ground floor and 15 feet on floors above from any facade facing a street at least 30 feet in width. In addition, the floors of street-fronting interior spaces housing non-residential active uses and lobbies shall be as close as possible to the level of the adjacent sidewalk at the principal entrance to these spaces. Frontages with active uses that must 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. Any decorative railings or grillwork, other than wire mesh, which is placed in front of or behind ground floor windows, shall be at least 75 percent open to perpendicular view. Rolling or sliding security gates shall consist of open grillwork rather than solid material, so as to provide visual interest to pedestrians when the gates are closed, and to permit light to pass through mostly unobstructed. Gates, when both open and folded or rolled as well as the gate mechanism, shall be recessed within, or laid flush with, the building facade.

*Approximately 75% of the street frontage (45 feet) at the ground level on Divisadero Street is fenestrated with transparent windows and doorways allowing for visibility to the inside of the buildings.*

- D. **Off-Street Parking and Loading.** Section 151 requires off-street parking for every 500 square feet of occupied floor area, where the occupied floor area exceeds 5,000 square feet.

*The combined commercial tenant spaces at 542 and 550 Divisadero Street, with approximately 7,350 square feet of floor area, will require 14 off-street parking spaces. The project sponsor has requested that the Zoning Administrator eliminate the requirement for off-street parking with their application for a Parking Reduction. The previous uses as two separate tenant spaces (grocery store and grooming pet supply store) at 542 and 550 Divisadero Street did not provide for any off-street parking.*

- E. **Loading.** Section 152 requires one off-street loading space for retail stores between 10,001 and 60,000 gross square feet.

*The combined commercial tenant spaces, with approximately 7,350 square feet of floor area, will not require any loading spaces. However, the project sponsor has indicated that they have contacted the San Francisco Municipal Transportation Agency to extend the existing yellow loading zone metered parking spaces in front of 550 Divisadero Street to 542 Divisadero Street to a width of approximately 66 feet in length which will allow for commercial vehicle loading from 7 a.m. to 4 p.m. Monday through Saturday. The project sponsor has estimated that there will be 10 to 15 deliveries per day which will take place in front of the yellow loading zone, most occurring between 7 a.m. and 2 p.m. with loading times ranging between 10 and 30 minutes (mostly taking 15 to 20 minutes).*

- F. **Signage.** Any proposed signage will be subject to the review and approval of the Planning Department and must comply with Article 6 of the Planning Code.

9. **Planning Code Sections 161(j) and 307(i)** allow the Zoning Administrator to reduce off-street parking requirements in NC and RC Districts. The Zoning Administrator shall consider the criteria set forth below and may reduce off-street parking requirements if they find that:

- (a) The reduction in the parking requirement is justified by the reasonable anticipated auto usage by residents of and visitors to the Project.

*Neither of the existing retail spaces, separately, had provided any off-street parking. The combined retail areas of each former space will be relocated to 550 Divisadero Street, and the combined back-of-house areas of each will be concentrated in 542 Divisadero Street, with little or no increase in parking demand as a result. According to the project sponsor, the exemption from the parking requirement is justified because the net number of employees and the level of customer activity will be similar to the previous uses (grocery and retail stores) in both commercial separate commercial spaces.*

- (b) The reduction in the parking requirement will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity.

*The exemption of the parking requirement would not be detrimental to the neighborhood since there is on-street parking on the subject and opposite blocks. In addition, the exemption of the parking requirement will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity since the area is will served by public transit Muni Lines N, 5, 6, 7, 21, 24, 71, and 71L that is in close proximity to the Project Site.*

- (c) The minimization of conflict of vehicular and pedestrian movements.

*Pedestrian safety will be enhanced to the extent that vehicles will not cross the sidewalk with a new curb cut on Divisadero Street if off-street parking is required and traffic flow will not be impeded by a vehicle entering the roadway from the property.*

- (d) The availability of transportation modes other than the automobile.

*There is public transit (Muni Lines N, 5, 6, 7, 21, 24, 71, and 71L) that is in close proximity to the Project Site. The Project Site is also accessible by walking and biking.*

- (e) The pattern of land use and character of development in the vicinity.

*The neighborhood features mixed-use and commercial uses, many of which include no off-street parking. The exemption of the parking requirement will allow the proposed grocery store to operate its customer service and back-of-house functions on the ground floor in accordance with the District's intent and design.*

- (f) Such other criteria as the Zoning Administrator deems appropriate in the circumstances of the particular case.

*The Zoning Administrator determined that no additional criteria are required for consideration in the circumstances of this particular case.*

The Zoning Administrator reviewed the criteria set forth under Planning Code Section 307(i) and has determined that the proposed project meets the criteria for the exemption from the off-street parking requirements.

10. **Section 303(c)** 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:

- (1) 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 project is the establishment and expansion of a grocery store use with the grocery store customer service areas located at 550 Divisadero Street and the storage and refrigeration areas located at 542 Divisadero Street. There will be interior and exterior tenant improvements made to the existing commercial tenant spaces at both buildings. There will be an expansion of the existing building envelope with a vertical addition at 550 Divisadero Street.*

- (2) 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:

- (A) Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

*The size and shape of the site and the arrangement of the structures on the site are adequate for the proposed project. There will be physical expansion of the building at 550 Divisadero Street with the proposed vertical addition.*

- (B) 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;

*Existing traffic patterns will not be significantly affected by the proposed project. There is public transit (Muni Lines N, 6, 7, 16, 21 24, and 71) that is in close proximity to the Project Site. In addition, there is on-street parking within the immediate neighborhood and the Project Site is also accessible by walking and biking.*

- (C) The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

*No noxious or offensive emissions such as noise, glare, dust, or odor are expected to be produced by the proposed project.*

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

*There will be no addition of off-street parking spaces, open space or service areas. The project sponsor has estimated that there will be 10 to 15 deliveries per day which will take place in front of the yellow loading zone, most occurring between 7 a.m. and 2 p.m. with loading times ranging between 10 and 30 minutes (mostly taking 15 to 20 minutes). All project signage and projections will be consistent with the controls of the Planning Code.*

- i. That the use as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

*The proposed 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.*



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

*The proposed project is consistent with the stated purpose of the NC-2 Zoning District in that the intended use is a neighborhood-serving business.*

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

### **COMMERCE AND INDUSTRY ELEMENT**

#### **GENERAL/CITYWIDE**

##### **OBJECTIVE 1:**

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

##### **Policy 1:**

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development, which has substantial undesirable consequences that cannot be mitigated.

*The proposed project would be compatible with and complimentary to the types of uses characterizing this portion of the NC-2 Zoning District, which includes restaurants, a liquor store, specialty stores (i.e. hardware), a beauty salon, and a dry cleaning establishment.*

##### **Policy 3:**

Preserve and promote the mixed commercial-residential character in neighborhood commercial districts. Strike a balance between the preservation of affordable housing and the needed expansion of commercial activity.

*Approval of the proposed project would be consistent with the mixed commercial-residential character of this portion of the NC-2 Zoning District. The proposed project would not adversely affect any affordable housing resources in the neighborhood.*

### **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.

*No existing commercial tenant will be displaced. The proposed project will not prevent the district from achieving optimal diversity in the types of goods and services available in the neighborhood.*

The following guidelines, in addition to others in this objective for neighborhood commercial districts, should be employed in the development of overall district zoning controls as well as in the review of individual permit applications, which require case-by-case review and City Planning Commission approval. Pertinent guidelines may be applied as conditions of approval of individual permit applications. In general, uses should be encouraged which meet the guidelines; conversely, uses should be discouraged which do not.

**Policy 2:**

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.

*An independent entrepreneur is sponsoring the proposal. The proposed use is a neighborhood-serving use. The proposed grocery store is not considered a Formula Retail Use.*

The following guidelines, in addition to others in this objective for neighborhood commercial districts, should be employed in the development of overall district zoning controls as well as in the review of individual permit applications, which require case-by-case review and City Planning Commission approval. Pertinent guidelines may be applied as conditions of approval of individual permit applications. In general, uses should be encouraged which meet the guidelines; conversely, uses should be discouraged which do not.

**Policy 4:**

Encourage the location of neighborhood shopping areas throughout the city so that essential retail goods and personal services are accessible to all residents.

*The proposed project will be accessible to all residents in this portion of the NC-2 Zoning District.*

**Policy 9:**

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

*The proposed project would not adversely affect public transit or place a burden on the existing supply of parking in the neighborhood. Many patrons would be able to walk from their residences or places of employment, and the proposed project is well served by public transportation. There is on-street parking in front of the subject property and in the surrounding neighborhood.*

12. **Section 101.1(b)** establishes eight priority planning policies and requires the review of permits that authorize changes of use for consistency with said policies:

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

*The proposed project will be complimentary to the existing commercial establishments within the immediate neighborhood. The proposed project will provide approximately 50 new job opportunities to the City.*

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

*The proposed project will preserve and enhance the cultural and economic diversity of the neighborhood by allowing the establishment of a new business in the area. Existing housing will not be affected by the proposed project.*

- (3) That the City's supply of affordable housing be preserved and enhanced.

*The proposed project will not displace any affordable housing.*

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

*The proposed project would not significantly increase the automobile traffic congestion and parking problems in the neighborhood. The proposal is a neighborhood-serving use which residents can access by walking or taking public transit.*

- (5) 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.

*There is no commercial office development associated with the proposed project and there would be no displacement of any existing industrial or service businesses in the area.*

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

*The proposed project will comply with all applicable earthquake safety standards and built to the current standards of the California Building Code.*

- (7) That landmark and historic buildings be preserved.

*The proposed project will not significantly affect any landmarks or historic buildings.*

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

*The proposed project will not affect any city-owned park or open space.*

13. 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.

14. 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. 2012.0274C** 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. 18671. 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 July 26, 2012.

Linda Avery  
Commission Secretary

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

NAYS: None

ABSENT: None

ADOPTED: July 26, 2012

## **EXHIBIT A**

### **AUTHORIZATION**

This authorization is for a conditional use to allow a use size over 4,000 square feet through the combination of a vacant retail commercial tenant space (previously occupied by a grocery store d.b.a. Divisadero Farmer's Market Liquor & Deli) at 550 Divisadero Street with a vacant commercial tenant space (previously occupied by a grooming and pet supply store d.b.a. Tae Hee's) at 542 Divisadero Street to establish an approximately 7,350 square foot grocery store (d.b.a. Bi-Rite) located at 542 - 550 Divisadero Street in Assessor's Block 1203, Lots 024 & 037, pursuant to Planning Code Sections 121.2, 303 and 711.21 within the NC-2 (Small-Scale Neighborhood Commercial) Zoning District, Divisadero Street Alcohol Restricted Use Subdistrict, and a 65-A Height and Bulk District; in general conformance with plans and stamped "EXHIBIT B" included in the docket for Case No. 2012.0274C and subject to conditions of approval reviewed and approved by the Commission on July 26, 2012, under Motion No. 18671. There will be an interior connection between the two buildings, with the grocery store customer service areas located at 550 Divisadero Street and the storage and refrigeration areas located at 542 Divisadero Street. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

The proposal will also involve constructing a vertical addition set back approximately 44 feet from the front building wall at 550 Divisadero Street, expanding the existing building from approximately 4,240 square feet to 5,427 square feet. There will be no change in the existing building envelope to the approximately 1,900 square foot ground floor retail commercial tenant space at 542 Divisadero Street. Interior and exterior tenant improvements are proposed and storefront improvements have been filed under separate permits.

### **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 July 26, 2012 under Motion No. 18671.

### **PRINTING OF CONDITIONS OF APPROVAL ON PLANS**

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. 18671 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](http://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](http://www.sf-planning.org)*

### **DESIGN – COMPLIANCE AT PLAN STAGE**

3. **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 building permit plans. 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](http://www.sf-planning.org)*

4. **Odor Control Unit.** In order to ensure any significant noxious or offensive odors are prevented from escaping the premises once the project is operational, the building permit application to implement the project shall include air cleaning or odor control equipment details and manufacturer specifications on the plans. Odor control ducting shall not be applied to the primary facade of the building.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

## **MONITORING - AFTER ENTITLEMENT**

5. **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](http://www.sf-planning.org)*

6. **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](http://www.sf-planning.org)*

## **OPERATION**

7. **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>*

8. **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>*

9. **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](http://www.sfdph.org)*

*For information about compliance with the construction noise, contact the Department of Building Inspection, 415-558-6570, [www.sfdbi.org](http://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](http://www.sf-police.org)*

10. **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 in conformance with the approved plans and maintained 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](http://www.baaqmd.gov) and Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

11. **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](http://www.sf-planning.org)*

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

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*