



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

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

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Planning Commission Motion No. 18673

HEARING DATE: JULY 26, 2012

Date: July 16, 2012
Case No.: **2012.0456X**
Project Address: **1390 MARKET STREET**
Zoning: C-3-G (Downtown, General Commercial) District
 120-X & 200-S Height and Bulk Districts
Block/Lot: 0813/006
Project Sponsor: Andrew Junius of
 Reuben & Junius, LLP for
 API Fox Plaza LLC
 One Bush Street, Suite 600
 San Francisco, CA 94104
Staff Contact: Aaron Hollister – (415) 575-9078
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ADOPTING FINDINGS TO AMEND THE CONDITIONS OF APPROVAL FOR A DETERMINATION OF COMPLIANCE AND THE GRANTING OF EXCEPTIONS (FROM THE REQUIREMENTS SET FORTH IN THE PLANNING CODE FOR "FREIGHT LOADING" AND "GROUND LEVEL WIND CURRENTS") PURSUANT TO SECTION 309 OF THE PLANNING CODE TO EXTEND THE PERFORMANCE PERIOD FOR TWO YEARS FOR A PROPOSED PROJECT TO DEMOLISH AN EXISTING TWO-STORY RETAIL AND OFFICE BUILDING ADJACENT TO THE EXISTING FOX PLAZA OFFICE/RESIDENTIAL TOWER AND CONSTRUCTION OF A NEW 120-FOOT-TALL, 11-STORY BUILDING CONTAINING UP TO 250 RESIDENTIAL UNITS ABOVE APPROXIMATELY 19,880 GROSS SQUARE FEET OF RETAIL USE ON THE GROUND FLOOR WITHIN THE C-3-G ZONING DISTRICT AND THE 120-X/200-S HEIGHT AND BULK DISTRICT, AND ADOPTING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

PREAMBLE

On April 4, 2012, Andrew Junius of Reuben & Junius, LLP for API Fox Plaza LLC ("Project Sponsor"), submitted a request (Case No. 2012.0456X) with the City and County of San Francisco Planning Department ("Department") for an amendment to the conditions of approval for a

previously approved project in order to extend the performance period for two years. The project was originally approved by the Planning Commission ("Commission") on May 28, 2009 (Case No. 2005.0979EX), and would demolish the existing two-story retail and office building adjacent to the existing two-story retail and office building adjacent to the existing Fox Plaza office/residential tower and construct an 11-story building containing approximately 250 dwelling units, approximately 19,880 square feet of ground-floor retail uses, 98 off-street residential parking spaces, and 15 off-street commercial parking spaces, located at 1390 Market Street ("Project Site"), within the C-3-G Zoning District and the 200-S Height and Bulk District (collectively, "Project").

At the hearing on May 28, 2009, the Commission granted exceptions for the Project under Planning Code Section 309, including freight loading and ground-level wind currents.

On April 3, 2009 the Department determined that the proposed Project could not have a significant effect on the environment and published a Preliminary Mitigated Negative Declaration (PMND) in compliance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code.

On April 24, 2009, the Preliminary Negative Declaration (PND) was appealed to the Planning Commission (Commission) by San Franciscans for Reasonable Growth and on May 28, 2009 following a duly noticed public hearing the Commission approved the issuance of the Final Negative Declaration (FND) as prepared by the Planning Department (Department) in compliance with CEQA, the State CEQA Guidelines and Chapter 31.

On September 23, 2009, the FND was appealed to the Board of Supervisors by San Franciscans for Reasonable Growth and on October 6, 2009 in Motion No. M09-166, following a duly noticed public hearing the Board of Supervisors affirmed Planning Commission adoption of the FND. On May 28, 2009, the Commission, by Motion No. 17893, approved the Project and adopted findings (CEQA findings) and a Mitigation Monitoring and Reporting Program required by the California Environmental Quality Act (CEQA); and

The Project files, including the FND and Motion No. 17893 have been made available for review by the Commission and the public, and those files are part of the record before this Commission; and

The Commission has reviewed and considered the information contained in the FMD and the findings contained in Motion No. 17893 and all written and oral information provided by the Planning Department, the public, relevant public agencies, and other experts and the administrative files for the Project;

Since the FND was issued, there have been no substantial project changes and no substantial changes in project circumstances that would require major revisions to the FND due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the FND.

On July 26, 2012, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Case No. 2012.0456X.

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 approves the two-year extension of the performance period requested in Application No. 2012.0456X, subject to the conditions of Motion No. 17893 and 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. **Project Description.** The project sponsor requests an amendment to the conditions of approval for a previously approved project in order to extend the performance period for two years (to July 26, 2014). The project was originally approved by the Planning Commission on May 28, 2009, and would entail demolition of an existing two-story retail and office building adjacent to the existing Fox Plaza office/residential tower and construction of a new 120-foot-tall, 11-story building containing up to 250 residential units above approximately 19,880 gross square feet of retail use on the ground floor. There would be no change to the existing Fox Plaza mixed-use tower, and no new parking would be provided (18 existing spaces would be removed). Parking for the new residential units would be within the existing two-level basement garage at Fox Plaza.
3. **Site Description and Present Use.** The 63,977-square-foot project site is a triangular lot covering the entire block bounded by Hayes Street to the north, Polk Street to the west and Market Street to the southeast. The site is currently occupied by the existing Fox Plaza complex, which consists of two structures: a 29-story residential/office/retail building and a two-story retail/commercial building. The 29-story building is rectangular in footprint, with the longer dimension along Polk Street, and the two-story building is an irregularly shaped structure at the corner of Hayes and Market Streets.
4. **Surrounding Properties and Neighborhood.** The C-3-G District covers the western portions of downtown San Francisco and is composed of a variety of uses, including hotels, offices, entertainment, dwelling units, and retail establishments. The intensity of development is generally lower within the C-3-G District than within the downtown core. Residential uses are principally permitted within the C-3-G District.

The scale of development varies greatly in the vicinity of the project site, with the current height limits in the area ranging from 50 to 320 feet. Permitted heights and the prevailing scale of development generally decrease with distance from Market Street. Two buildings in the area, Fox Plaza (1390 Market Street) and the AAA Building (100 Van Ness Avenue), approach heights of 400 feet. Other taller buildings include the 17-story SCIF Building (1275 Market Street), the 23-story SOMA Grand (1160 Mission Street), the 18-story Federal Building (1100 Mission Street), and the 20-story Argenta (One Polk). Currently, office and retail uses predominate on Market Street, but substantial residential development is proposed or approved including 55 9th Street project and the 10th/Market Development, which will consist of approximately 754 dwelling units. Other uses near the project site include tourist and residential hotels, institutional and cultural uses, and government offices

5. **Public Comment.** To date, the Department has received no correspondence regarding the requested extension.
6. This Commission adopts the findings of the previous Planning Commission Motion No. 17893, as though fully set forth herein.
7. 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.
8. The Commission finds that, given the continuing weakness in the real estate market and the associated difficulties in securing financing, which is beyond the control of the Project Sponsor, and given the merits of the proposed Project, it is appropriate to amend condition of approval No. G(1) of Planning Commission Motion No. 17893 to extend the performance period of the Project to July 26, 2014.
9. On balance, the Commission hereby finds that approval of the proposed amendment to condition of approval No. G(1) of Planning Commission Motion No. 17893 in this case 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 Section 309 Determination of Compliance and Request for Exceptions Application No. 2012.0456X** subject to the following conditions attached hereto as "EXHIBIT A", and subject to the Conditions of Approval of Planning Commission Motion No. 17893, including the Mitigation Monitoring and Reporting Program, as amended by this approval to modify Condition G(1) to extend the performance period of the project to July 26, 2014.

The Commission has reviewed and considered the FMD and the record as a whole, and finds that the FMD is adequate for the action taken herein and incorporates the CEQA findings contained in Motion No. 17893 by this reference thereto as though set forth in this Motion. The Planning Commission further finds that since the FND was issued, there have been no substantial project changes and no substantial changes in project circumstances that would require major revisions to the FND due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the FND.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this Section 309 Determination of Compliance and Request for Exceptions to the Board of Appeals within fifteen (15) days after the date of this Motion. The effective date of this Motion shall be the date of adoption of this Motion if not appealed (after the 15-day period has expired) OR the date of the decision of the Board of Appeals if appealed to the Board of Appeals. For further information, please contact the Board of Appeals in person at 1650 Mission Street, 3rd Floor (Room 304) or call 575-6880.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on July 26, 2012

Linda Avery
Commission Secretary

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

NAYS: None

ABSENT: None

ADOPTED: July 26, 2012

EXHIBIT A

AUTHORIZATION

This authorization is to extend the performance period under Motion No. 17893 until July 26, 2014, for a project located at 1390 Market Street, Block 0813, Lot 006, within the C-3-G District and the 120-X & 200-S Height and Bulk Districts for the demolition of an existing two-story retail and office building adjacent to the existing Fox Plaza office/residential tower and construction of a new 120-foot-tall, 11-story building containing up to 250 residential units above approximately 19,880 gross square feet of retail use on the ground floor with parking for the new residential units within the existing two-level basement garage at Fox Plaza, and subject to conditions of approval reviewed and approved by the Commission on May 28, 2009, under Motion No. 17893, as amended by the Planning Commission on July 26, 2012, under Motion No. 18673. 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 May 28, 2009 under Motion No. 17893, as amended by the Planning Commission on July 26, 2012 under Motion No. 18673.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. 18673 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 Section 309 Determination of Compliance and Request for Exceptions 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 Section 309 Determination of Compliance and Request for Exceptions.

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 two years from the effective date of the Motion, amending the expiration date of the performance specified the approval granted per Motion No. 17893 (until July 26, 2014). A building permit from the Department of Building Inspection to construct the project and/or commence the approved use must be issued as this Section 309 Determination of Compliance and Request for Exceptions 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 two (2) 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 two (2) 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.