



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

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|---|--|
| <input type="checkbox"/> Affordable Housing (Sec. 415) | <input type="checkbox"/> First Source Hiring (Admin. Code) |
| <input checked="" type="checkbox"/> Jobs Housing Linkage Program (Sec. 413) | <input type="checkbox"/> Child Care Requirement (Sec. 414) |
| <input type="checkbox"/> Downtown Park Fee (Sec. 412) | <input type="checkbox"/> Other |
| <input checked="" type="checkbox"/> Transit Impact Development Fee (Admin Code) | |

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Planning Commission Motion No. 18700

HEARING DATE: SEPTEMBER 13, 2012

Date: September 6, 2012
Case No.: **2011.1049B**
Project Address: **1098 HARRISON STREET**
Zoning: MUG (Mixed Use General
65-X Height and Bulk District
Block/Lot: 3754/017
Project Sponsor: David Silverman
1 Bush Street, Suite 600
San Francisco, CA 94104
Staff Contact: Diego R Sánchez – (415) 575-9082
diego.sanchez@sfgov.org

ADOPTING FINDINGS APPROVING ALLOCATION OF OFFICE SQUARE FOOTAGE UNDER THE 2012 – 2013 ANNUAL OFFICE DEVELOPMENT LIMITATION PROGRAM FOR A PROPOSED PROJECT LOCATED AT 1098 HARRISON STREET THAT WOULD AUTHORIZE THE CONVERSION OF 42,039 GROSS SQUARE FEET OF OFFICE USE PURSUANT TO PLANNING CODE SECTIONS 179.1, 321 AND 322 ON LOT 017 OF ASSESSOR'S BLOCK 3754 IN THE MUG (MIXED USE GENERAL) ZONING DISTRICT AND A 65-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On September 8, 2011 David Silverman (hereinafter "Project Sponsor") filed an application with the Planning Department (hereinafter "Department") for an Office Development Authorization to establish 42,039 gross square feet of office use at 1098 Harrison Street, within the MUG (Mixed Use General) Zoning District and a 65-X Height and Bulk District.

On September 13, 2012, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Office Allocation Application No. 2011.1049B.

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 Office Development requested in Application No. 2012.1098B, subject to the conditions contained in "EXHIBIT A" of this motion, based on the following findings:

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.
2. **Site Description and Present Use.** The project is located on the north side of Harrison Street, between Sherman and 7th Streets, and is Lot 17 in Assessor's Block 3754. The lot is approximately 100 feet deep and 275 feet wide and is improved with a two story building constructed in 1924, according to Assessor's records. The entire building is currently used by one office tenant, d.b.a. Atlassian Software Development.
3. **Surrounding Properties and Neighborhood.** The project site is located within the South of Market neighborhood, among numerous other buildings of similar age, scale and type. Immediately to the south of the site is Interstate 80. To the north and east of the site is Victoria Manalo Draves Elementary School and Victoria Manalo Draves Park, respectively. To the west, across 7th Street, are multiple two-story mixed use buildings, occupied by residential, retail or light industrial uses. The uses in the area are a mixture of retail, residential, public, and light industrial / production, distribution and repair uses. The surrounding properties are located within the P (Public Use), MUG (Mixed Use General), NCT (Neighborhood Commercial Transit), SLI (Service Light Industrial), and SLR (Service Light Industrial Residential) Zoning Districts.
4. **Project Description.** The proposal is to establish 42,039 gross square feet of office use within an existing two-story building. The proposal is utilizing Planning Code Section 179.1, Legitimization of Uses Located in the Eastern Neighborhoods, as part of its request for an office allocation under Planning Code Sections 321 and 322, which govern the development and administrative procedures for office uses. No alterations are proposed to the exterior of the building.
5. **Public Comment.** The Planning Department has not received any public input regarding this proposal.

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. **Legitimization of Office.** Planning Code Section 179.1 established a time limited program wherein existing uses in the Eastern Neighborhoods plan area that have operated without the benefit of required permits may seek those permits. Uses that could be "legitimized" under this Section are those uses which, under the current provisions of this Code and without this Section, could not otherwise seek the required permits.

The Zoning Administrator issued a Letter of Legitimization on August 5, 2011 for this project stating that the project had met all the eligibility requirements of Section 179.1, and the requested 42,039 gross square feet of office use are eligible to be approved as office space pursuant to the Legitimization program.

B. **Development Fees.** The Project is subject to the Transit Impact Development Fees per Planning Code Sections 179.1(g) and 411 and the Jobs-Housing Linkage Fee per Planning Code Sections 179.1(g) and 413.

The Project Sponsor shall pay the appropriate Transit Impact Development and Jobs-Housing Linkage Fees pursuant to Planning Code Sections 179.1(g), 411, and 413, at the appropriate stage of the building permit application process.

C. **Office Allocation.** Planning Code Section 321 establishes standards for San Francisco's Office Development Annual Limit. In determining if the proposed Project would promote the public welfare, convenience and necessity, the Commission considered the seven criteria established by Code Section 321(b)(3), and finds as follows:

I. APPORTIONMENT OF OFFICE SPACE OVER THE COURSE OF THE APPROVAL PERIOD IN ORDER TO MAINTAIN A BALANCE BETWEEN ECONOMIC GROWTH ON THE ONE HAND, AND HOUSING, TRANSPORTATION AND PUBLIC SERVICES, ON THE OTHER.

The existing building has been used as office space for more than more than 12 years. There is approximately 1.2 million gross square feet of available "Small Cap" office space in the City at this time. The subject property is located in an area rich in land use diversity, including PDR uses, retail, housing, and public open space. The Project will help maintain the balance between economic growth, housing, transportation and public services.

II. THE CONTRIBUTION OF THE OFFICE DEVELOPMENT TO, AND ITS EFFECTS ON, THE OBJECTIVES AND POLICIES OF THE GENERAL PLAN.

The Project is consistent with the General Plan, as outlined in Section 7 below.

III. THE QUALITY OF THE DESIGN OF THE PROPOSED OFFICE DEVELOPMENT.

The proposed office space is within an existing building. The proposed reclassification of use does not include exterior additions or alterations to the existing building.

IV. THE SUITABILITY OF THE PROPOSED OFFICE DEVELOPMENT FOR ITS LOCATION, AND ANY EFFECTS OF THE PROPOSED OFFICE DEVELOPMENT SPECIFIC TO THAT LOCATION.

The proposal is an allocation and legitimization of an office use in existence since the late 1990s without complaint to the Planning Department Code Enforcement division regarding incompatibilities to the existing and surrounding uses. The legitimization of the office use in and of itself will not create any new, adverse impacts in the area.

V. THE ANTICIPATED USES OF THE PROPOSED OFFICE DEVELOPMENT IN LIGHT OF EMPLOYMENT OPPORTUNITIES TO BE PROVIDED, NEEDS OF EXISTING BUSINESSES, AND THE AVAILABLE SUPPLY OF SPACE SUITABLE FOR SUCH ANTICIPATED USES.

The existing area to be allocated and legitimized as an office use currently employs approximately 400 individuals, meets the needs of existing businesses by legally establishing approximately an additional 42,000 gross square feet of office space in a neighborhood where such office space provides locational opportunities and provides quality office space that is suitable for a variety of office uses and sizes.

VI. THE EXTENT TO WHICH THE PROPOSED DEVELOPMENT WILL BE OWNED OR OCCUPIED BY A SINGLE ENTITY.

The office space proposed for allocation and legitimization is currently occupied by a single entity (d.b.a. Atlassian Software Development).

VII. THE USE, IF ANY, OF TRANSFERABLE DEVELOPMENT RIGHTS ("TDR's") BY THE PROJECT SPONSOR.

The project will not use TDR's.

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

COMMERCE AND INDUSTRY

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 allocation and legitimization of the office use will provide net benefits to the City in that an existing office tenant employing approximately 400 individuals will remain in San Francisco utilizing a building that has been used as an office since the late 1990's. The proposal is required to comply with the Conditions of Approval (Exhibit A), thereby ensuring reasonable performance.

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 allocation and legitimization of the office use will retain an existing commercial office tenant that employs approximately 400 individuals and this signals to the greater business community that an attractive environment exist in San Francisco and the South of Market neighborhood in which to conduct commerce.

EAST SOMA PLAN AREA

Objectives and Policies

OBJECTIVE 1.1:

ENCOURAGE PRODUCTION OF HOUSING AND OTHER MIXED-USE DEVELOPMENT IN EAST SOMA WHILE MAINTAINING ITS EXISTING SPECIAL MIXED-USE CHARACTER.

Policy 1.1.2:

Encourage small flexible, office space throughout East SoMa and encourage larger office in the 2nd Street Corridor.

The proposed office use is not considered a larger office use in that it is less than 50,000 square feet in size, is located outside of the 2nd Street Corridor and is in accordance with the East Soma Plan for office location.

OBJECTIVE 1.3:

INSTITUTE FLEXIBLE "LEGAL NONCONFORMING USE" PROVISIONS TO ENSURE A CONTINUED MIX OF USES IN EAST SOMA.

Policy 1.3.1:

Continue existing legal nonconforming rules, which permit pre-existing establishments to remain legally even if they no longer conform to new zoning provisions, as long as the use was legally established in the first place.

Policy 1.3.2:

Recognize desirable existing uses in the former industrial areas which would no longer be permitted by the new zoning, and afford them appropriate opportunities to establish a continuing legal presence.

The requested allocation and legitimization will continue an existing non-conforming, desirable existing use in an area that principally permitted industrial uses and will legally establish the use through the process afforded by Planning Code Section 179.1.

8. **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 proposal does not affect the retail sector as the project is wholly office in nature.

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

The proposal preserves the existing character of the neighborhood as the request is an allocation and legitimization of a use that has existed at the site since the late 1990's and that has not generated any incompatibilities with the surrounding area.

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

No housing is removed as a result of the proposal.

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

The proposal will not impede MUNI service or overburden streets and neighborhood parking as the proposal is an allocation and legitimization of an existing use.

- E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

The proposal will not displace industrial or service sector activities as the proposed office use has been in existence at the site since the late 1990's and the previous use was an institutional use.

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

The proposal will not affect 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 proposal will have no negative impact on existing parks and open spaces as there is no expansion to the existing two-story structure.

9. 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.
10. The Commission hereby finds that granting the Office Development 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 Office Development Application No. 2011.1049B** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated September 6, 2012 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 Section 321 and 322 Office-Space Allocation 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 at (415) 575-6880, 1660 Mission, Room 3036, San Francisco, CA 94103.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on September 13, 2012.

Linda D. Avery
Commission Secretary

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

NAYES: None

ABSENT: None

ADOPTED: September 13, 2012

EXHIBIT A

AUTHORIZATION

This authorization is for an office allocation to establish 42,039 gross square feet of office use in the existing building, located at Lot 17 in Assessor's Block 3754, pursuant to Planning Code Section(s) 179.1, 321, and 322 within the MUG (Mixed Use General) Zoning District and a 65-X Height and Bulk District; in general conformance with plans, dated September 6, 2012, and stamped "EXHIBIT B" included in the docket for Case No. 2011.1049B and subject to conditions of approval reviewed and approved by the Commission on September 13, 2012 under Motion No. 18700. 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 **September 13, 2012** under Motion No. **18700**.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. **18700** 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 Office Development 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 Office Development 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 Office Development 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 eighteen months 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.

3. **Development Timeline - Office.** Pursuant to Planning Code Section 321(d) (2), construction of the office development project shall commence within 18 months of the effective date of this Motion. Failure to begin work within that period or to carry out the development diligently thereafter to completion, shall be grounds to revoke approval of the office development under this Office Development authorization.

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

PROVISIONS

4. **Transit Impact Development Fee.** Pursuant to Planning Code Section 179.1(g), the Project Sponsor shall pay the Transit Impact Development Fee (TIDF) as required by and based on drawings submitted with the Building Permit Application.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org.

5. **Jobs Housing Linkage.** Pursuant to Planning Code Section 179.1(g), the Project Sponsor shall contribute to the Jobs-Housing Linkage Program (JHLP). The calculation shall be based on the net addition of gross square feet of each type of space to be constructed as set forth in the permit

plans. The Project Sponsor shall provide evidence that this requirement has been satisfied to the Planning Department prior to the issuance of the first site or building permit by the Department of Building Inspection.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

MONITORING

6. **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

7. **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

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. **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/>*