



SAN FRANCISCO PLANNING DEPARTMENT

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Planning Commission Motion No. 18913

HEARING DATE: JUNE 20, 2013

Date: June 13, 2013
Case No.: 2012.1356 C
Project Address: 2100 MARKET STREET
Zoning: Upper Market Street Neighborhood Commercial Transit District
40-X/60/65-X Height and Bulk District
Block/Lot: 3542/041
Project Sponsor: Lisa Burbey
Chipotle Mexican Grill, Inc.
c/o Messner & Reeves, LLC
1430 Wynkoop Street, Ste. 300
Denver, CO 80202
Staff Contact: Adrian C. Putra – (415) 575-9079
adrian.putra@sfgov.org

ADOPTING FINDINGS RELATING TO THE DISAPPROVAL OF A CONDITIONAL USE AUTHORIZATION PURSUANT TO PLANNING CODE SECTIONS 303 AND 703.4 TO ALLOW A FORMULA RETAIL USE OPERATING AS RESTAURANT (D.B.A. CHIPOTLE) WITH AN OUTDOOR ACTIVITY AREA WITHIN THE UPPER MARKET STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT, AND A 40-X/60/65-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On October 26, 2012, Chipotle Mexican Grill, Inc. (Project Sponsor) filed an application with the Department for Conditional Use Authorization under Planning Code Sections 303 and 703.4 of the Planning Code to allow a formula retail use operating as a restaurant (d.b.a. Chipotle) with an outdoor activity area within the Upper Market Street Neighborhood Commercial Transit District, and a 40-X/60/65-X Height and Bulk District.

On June 20, 2013, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2012.1356C.

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 **DISAPPROVES** the Conditional Use Authorization requested in Application No. 2012.1356C, 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 2100 Market Street is a triangular lot located on the northwest corner of Market and Church Streets, and contains a commercial building which is currently vacant, but was last occupied by a restaurant use (d.b.a. Home) in 2011. The project site contains approximately 9,490 square-feet in lot area, with approximately 129-feet of frontage along Market Street, 11-feet of frontage along Church Street, and 141-feet of frontage along 14th Street.
3. **Surrounding Properties and Neighborhood.** The subject property is located in the Upper Market Street NCT District, which is part of the Upper Market Street corridor along Market Street between Castro and Church Streets. Commercial uses located within the neighborhood include restaurants, bars, various retail establishments, financial services, and personal and professional service uses, and dry cleaners. Surrounding this neighborhood commercial corridor in the adjacent blocks are mostly residential dwellings in residentially zoned districts. The immediately adjacent to the west of the project site and facing Market Street is a three-story, mixed-use building containing two residential flats above a formula retail, financial service (d.b.a. Sterling Bank & Trust) at the ground floor.

The Upper Market Street NCT District is located on Market Street from Church to Noe Streets, and on side streets off Market. Upper Market Street is a multi-purpose commercial district that provides limited convenience goods to adjacent neighborhoods, but also serves as a shopping street for a broader trade area. A large number of offices are located on Market Street within easy transit access to downtown. The width of Market Street and its use as a major arterial diminish the perception of the Upper Market Street Transit District as a single commercial district. The street appears as a collection of dispersed centers of commercial activity, concentrated at the intersections of Market Street with secondary streets.

This district is well served by transit and is anchored by the Market Street subway (with stations Church Street and Castro Street) and the F-Market historic streetcar line. All light-rail lines in the City traverse the district, including the F, J, K, L, M, and N, and additional key cross-town transit service crosses Market Street at Fillmore and Castro Streets. Additionally, Market Street is a

primary bicycle corridor. Housing density is limited not by lot area, but by the regulations on the built envelope of buildings, including height, bulk, setbacks, and lot coverage, and standards for residential uses, including open space and exposure, and urban design guidelines. The Upper Market Street district controls are designed to promote moderate-scale development which contributes to the definition of Market Street's design and character. They are also intended to preserve the existing mix of commercial uses and maintain the livability of the district and its surrounding residential areas

4. **Project Description.** The Project Sponsor seeks a Conditional Use Authorization, pursuant to Planning Code Sections 303 and 703.4 to allow a formula retail use operating as a restaurant (d.b.a. Chipotle) at a vacant commercial building previously occupied by a restaurant (d.b.a. Home). The proposed formula retail restaurant would offer Chipotle's standard menu of burritos, tacos, and salad featuring pork, beef, chicken, and vegetarian fillings. Additionally, this proposed Chipotle location would offer alcoholic beverages in the form of bottled beers and margaritas. The project would not increase the exterior dimensions of the existing building, but would involve interior tenant improvements and façade alterations. The project would occupy approximately 3,467 square-feet of floor area and establishing an approximately 611 square-foot outdoor seating area directly adjacent to the west of the building where there is currently a partially enclosed storage area proposed for removal. The outdoor seating area would be screened from view from Market Street behind an 8'-0" high solid wall that the project sponsor intends to turn into a public art mural.

Chipotle is based in Denver, Colorado and has approximately 1,200 locations nationally, nine of which are located in San Francisco. The nearest Chipotle location is located approximately two miles away at 865 Mission Street, inside the Westfield San Francisco Centre.

5. **Public Comment.** In support of the project the Department has received in the following: A letter of support from the Merchants of Upper Market & Castro (MUMC), a letter of support from the Castro/Upper Market Community Benefit District (Castro CBD), 34 letters/emails of support from local merchants, 48 letters/emails of support from the public, a petition of support with 34 individual signatures from local merchants, a petition of support with 1,661 signatures, and 69 public supporter cards.

In opposition to the project the Department has received in the following: A letter of opposition from the Duboce Triangle Neighborhood Association (DTNA), 10 letters/emails of opposition from local merchants, 3 letters/emails of opposition from the public, and a petition of opposition with 255 signatures.

Additionally, the Department is aware of an online petition in support of the project with 433 signatures, and another online petition in opposition to the project with 773 signatures.

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. **Restaurant.** Planning Code Section 733.44 states that a restaurant is permitted as a conditional use on the first story. A restaurant is defined in Section 790.91 as: a retail eating

or eating and drinking use which serves prepared, ready-to-eat cooked foods to customers for consumption on or off the premises and which has seating. It may provide on-site beer, wine, and/or liquor sales for drinking on the premises (with ABC license types 41, 47, 49, 59, or 75); however, if it does so it shall be required to operate as a Bona Fide Eating Place as defined in Section 790.142. It is distinct and separate from a Limited-Restaurant as defined in Section 790.90.

It shall not be required to operate within an enclosed building pursuant to Section 703.2(b)(1) so long as it is also a Mobile Food Facility as defined in Section 102.34. Any associated outdoor seating and/or dining area is subject to regulation as an Outdoor Activity Area as set forth elsewhere in this Code.

The subject property contains a vacant commercial building that was previously occupied by a restaurant (d.b.a. Home) that operated with an ABC type-47 license, which allowed the sale of beer, wine and distilled spirits for consumption on the premises in conjunction with a bona fide eating place. The proposed Chipotle would continue to operate as a restaurant with an ABC type-47 license allowing on-site beer, wine, and/or liquor sales on the premises.

- B. Outdoor Activity Area.** Planning Code Section 790.70 defines an Outdoor Activity Area as an area, not including primary circulation space or any public street, located outside of a building or in a courtyard which is provided for the use or convenience of patrons of a commercial establishment including, but not limited to, sitting, eating, drinking, dancing, and food-service activities. Planning Code Section 733.24 states that in the Upper Market Street NCT District an Outdoor Activity Area is principally permitted at the ground floor, if located at the front.

The project sponsor is proposing to add an Outdoor Activity Area at the front of the subject parcel facing Market Street and directly adjacent to the west of the subject building. The proposed outdoor activity area (17 feet wide by 24 feet, 1 inch deep) would be screened behind an 8'-0" tall solid wall that the project sponsor intends on turning into a public art mural.

- C. Hours of Operation.** Planning Code Section 733.27 states that in the NC-S District maintaining hours of operation from 6:00 AM. 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 project sponsor has indicated that the proposed hours of operation would be from 11:00 AM to 10:00 PM daily, which are Chipotle's standard operating hours.

- D. Use Size.** Planning Code Section 733.21 states that a use size of up to 2,999 square feet is permitted by right.

The proposed formula retail restaurant would be located an existing commercial building and occupy approximately 3,467 gross square-feet of floor area. The project would not increase the use size of the existing building.

- E. **Parking.** Section 151 of the Planning Code requires a restaurant, bar, nightclub, pool hall, dancehall, bowling alley or other similar enterprise to provide one off-street parking space for each 200 square feet of occupied floor area, where the occupied floor area exceeds 5,000 square feet.

The project site contains approximately 3,467 gross square-feet devoted to a restaurant with an outdoor activity area, and as a result the project does not require off-street parking spaces. However, the lot contains an existing parking lot with 10 off-street parking spaces.

- F. **Street Frontage in Neighborhood Commercial Districts.** Section 145.1 of the Planning Code requires that NC Districts containing specific uses, including large fast-food restaurants, have at least ½ the total width of the new or altered structure at the commercial street frontage devoted to entrances to commercially used space, windows or display space at the pedestrian eye-level. Such windows shall use clear, un-tinted glass, except for decorative or architectural accent. Any decorative railings or decorated grille work, other than wire mesh, which is placed in front or behind such windows, shall be at least 75 percent open to perpendicular view and no more than six feet in height above grade.

The subject storefront has a total of approximately 80-feet of frontage devoted to either to the entrance or window space fronting Market, Church, and 14th Streets. The project does not involve reducing the existing amount of street facing entrance or window space.

- G. **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.

- H. **Formula Retail.** Planning Code Section 703.3 defines Formula Retail as a type of retail sales activity or retail sales establishment which, along with eleven or more other retail sales establishments located in the United States, maintains two or more of the following features: a standardized array of merchandise, a standardized façade, a standardized décor and color scheme, a uniform apparel, standardized signage, a trademark or a servicemark.

The proposed Formula Retail Restaurant would share a standardized array of merchandise, a uniform apparel, standardized signage and trademark with approximately 1,200 other existing Chipotle establishments.

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 not 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 not necessary because there are a number of similar establishments in close proximity to the subject property. Nor is the proposed use desirable in that it would introduce a formula retail use at a prominent corner building in a neighborhood characterized by independently-owned businesses.

- 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 will not change the size, shape or arrangement of the existing structure on the subject property.

- 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;

Traffic conditions will not be significantly impacted by this project because the proposed use is a can be easily frequented via foot, cab, or public transportation, and is well served by the K, L, M and T streetcar lines.

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

The project is not anticipated to produce noxious or offensive emissions related to noise glare, dust and odor.

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

The project will provide new landscaping to the project site.

- 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. However, on balance the project is not consistent with the 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 a formula retail use and is not appropriate for the neighborhood. There are several nearby independently owned restaurants, Casa Mexicana at 180 Church, Taqueria El Castillito at 136 Church, and Chilango at 235 Church that already offer products that similar or identical to those offered by Chipotle.

- E. That the existing concentration of eating and drinking uses in the area should not exceed 25% of the total commercial frontage as measured in linear feet within the immediate area of the subject property. For the purposes of Section 303(p) of the Code, the immediate area shall be defined as all properties located within 300' of the subject property and also located within the same zoning district.

The existing total commercial frontage within 300 feet of the project site is approximately 3293.5 linear feet, and the existing concentration of eating and drinking uses (including the project site) within 300 feet of the project site is 623 linear feet, or 19%. Since, the project is a change of use from a restaurant to a formula retail restaurant it would not result in a net increase of commercial frontage within the Upper Market Street Neighborhood Commercial Transit District dedicated to eating and drinking establishments.

8. **Planning Code Sections 303(i) and 703.4** require Conditional Use authorization for the establishment of a Formula Retail Use in Neighborhood Commercial Districts. The Planning Commission shall consider the following criteria set forth in Section 303(i) in addition to the criteria set forth in Section 303(c):

- A. The existing concentrations of formula retail uses within the Neighborhood Commercial District.

The Commission recently adopted a policy that established a standardized method for determining the existing and appropriate concentration of formula retail uses in the Upper Market Neighborhood that extends from Octavia Boulevard to Castro Street. The policy requires the Planning Department to recommend disapproval of any project that brings the concentration of formula retail within 300 feet of the subject property to 20% or greater, although the Commission still retains its discretion to approve or disapprove the project. There are currently 10 Formula Retail Uses that include Sterling Bank & Trust, Ace Hardware, Walgreens, Crossroads Trading, Good Feet, Safeway, Jamba Juice, Starbucks, GNC, and Mike's Camera that occupy approximately 873.7 linear feet of commercial frontage within 300 feet of the project site, resulting in an existing formula retail concentration of approximately 27%. The project would increase the formula retail commercial frontage to 1154.7 linear feet, which would increase the concentration of Formula Retail Uses to approximately 36% within 300 feet of the project site.

Other formula retail uses located within the Upper Market Street NCT beyond 300 feet of the project site include: Peet's Coffee & Tea, Wells Fargo Home Mortgage, Community – A Walgreen's Pharmacy, Chase Bank, Radio Shack, and Verizon Wireless.

- B. The availability of other similar retail uses within the Neighborhood Commercial District.

As earlier stated, there are three other restaurants (Casa Mexicana at 180 Church, Taqueria El Castillito at 136 Church, and Chilango at 235 Church) within the Upper Market Street NCT that offer products similar or identical to Chipotle's menu offerings. Additionally, Casa Mexicana and Chilango are located within 300 feet of the project site.

- C. The compatibility of the proposed formula retail use with the existing architectural and aesthetic character of the Neighborhood Commercial District.

The project includes minor façade alterations to the existing structure, which is in keeping with the architectural and aesthetic character of the Upper Market Street NCT.

- D. The existing retail vacancy rates within the Neighborhood Commercial District.

There are nine retail vacancies within the Upper Market Street NCT, including the project site.

- E. The existing mix of Citywide-serving retail uses and neighborhood-serving retail uses within the Neighborhood Commercial District.

The proposed project could detrimentally alter the existing mix of neighborhood-serving retail uses within the Upper Market Street NCT due to the proposed restaurant offering a specific type of cuisine in an area where it has been demonstrated that such businesses already exist.

- 9. **General Plan Compliance.** The Project is, on balance, not consistent with the Objectives and Policies of the General Plan:

NEIGHBORHOOD COMMERCE

Objectives and Policies

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.

The proposed formula retail restaurant would negatively affect the diversity of this portion of the Upper Market Street neighborhood by adding a formula retail use at a prominent corner location which would erode the existing character of the area predominately made up of local, independently owned and operated businesses.

Policy 6.2:

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.

The project would not promote the Upper Market Street NCT as a neighborhood commercial district which fosters small business enterprises and entrepreneurship by allowing a formula retail restaurant, which offers a particular good and service that is readily available in the neighborhood from existing small businesses.

10. **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 not 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 existing neighborhood-serving retail uses will not be preserved and enhanced, since many existing independently owned businesses in the neighborhood operate and/or provide goods similar in nature to the proposed business.

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. However, the project would introduce a formula retail establishment at a prominent corner building within the Upper Market Street NCT, and as a result will change the neighborhood character and economic diversity of this neighborhood.

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

The project will not impact the City's supply of affordable housing.

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

The project would not impede MUNI transit service, and is within close access to public transit as it is located in front of the Church Street MUNI station. Additionally, the project should not overburden the City's streets or neighborhood parking.

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

The project would create new service sector employment opportunities for local residents. However, the business qualifies as a formula retail use, thus preventing the establishment of a locally-owned business.

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

The project will comply with all applicable building codes to ensure the greatest possible preparedness in the event of an earthquake.

- G. That landmarks and historic buildings be preserved.

The subject building is not a landmark or historic building, but is located within the potential Upper Market Street Commercial Historic District that extends from 14th Street to Noe Street. The proposed alterations will not expand the envelope of the building and will not have negative impact on the character and integrity of this potential historic district.

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

The project will not affect any existing parks or open space.

11. The Project is inconsistent with and would not promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would not contribute to the character and stability of the neighborhood and would not constitute a beneficial development.
12. The Commission hereby finds that approval of the Conditional Use authorization would not 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 **DISAPPROVES Conditional Use Application No. 2012.1356C** as submitted on October 26, 2012.

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. 18913. 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 20, 2013.

Jonas P. Ionin
Acting Commission Secretary

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

NAYES: Commissioner Antonini,

ABSENT: Commissioner Wu

ADOPTED: June 20, 2013