



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Conditional Use

HEARING DATE: JANUARY 20, 2011

Date: January 13, 2011
Case No.: **2010.0912C**
Project Address: **813 – 815 COLE STREET**
Zoning: RH-3 (Residential, House, Three-Family)
40-X Height and Bulk District
Block/Lot: 1267/003
Project Sponsor: Tracy Boxer Zill
3042 Jackson Street, Suite 4
San Francisco, CA 94115
Staff Contact: Sara Vellve – (415) 558 - 6263
sara.vellve@sfgov.org
Recommendation: **Approval with Conditions**

1650 Mission St.
Suite 400
San Francisco,
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Reception:
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Planning
Information:
415.558.6377

PROJECT DESCRIPTION

The proposal is to establish a bona fide full-service restaurant (a soda fountain, dba The Ice Cream Bar) with waiter service of approximately 1,400 square feet in a ground-floor commercial space defined as a Limited Commercial Use (LCU) which was formerly occupied by a grocery store (dba Cole Foods). The Ice Cream Bar would operate a full-service 1930's-style soda fountain and ice creamery, as well as provide a range of made-to-order seasonal soups, salads and sandwiches. To accommodate the restaurant, the interior would be modified to include a traditional soda fountain, ice-cream making facility, and food preparation area. Plans submitted with the application indicate that seating for approximately 35 patrons will be provided. The sponsor has estimated that approximately 15% of all sales are expected to be derived from items purchased for off-site consumption. No expansion of the building envelope is proposed. The restaurant will employ 8 – 10 people.

SITE DESCRIPTION AND PRESENT USE

The approximately 1,750 square foot site is located on the west side of Cole Street, near the corner of Cole and Frederick Streets, and contains a vacant ground-floor commercial space and one dwelling unit above. The grocery store vacated the premises in June of 2009 and the commercial use would not therefore be considered abandoned. The building does not provide off-street parking. The proposal does not include the removal or any alteration to the dwelling unit above.

SURROUNDING PROPERTIES AND NEIGHBORHOOD

As the subject property is zoned RH-3 (Residential, House, Three-Family) the majority of properties around the subject site are multi-unit residential buildings. The mixed-use neighborhood known as Cole Valley is generally located one block south of the subject site on Cole Street.

ENVIRONMENTAL REVIEW

The Department has determined that the proposed project is exempt/excluded from environmental review, pursuant to CEQA Guideline Section 15301 (Class One - Minor Alteration of Existing Facility, (e) Additions to existing structures provided that the addition will not result in an increase of more than 10,000 square feet).

HEARING NOTIFICATION

TYPE	REQUIRED PERIOD	REQUIRED NOTICE DATE	ACTUAL NOTICE DATE	ACTUAL PERIOD
Classified News Ad	20 days	January 1, 2011	January 1, 2011	20 days
Posted Notice	20 days	January 1, 2011	January 1, 2011	20 days
Mailed Notice	20 days	December 31, 2011	December 30, 2010	21 days

PUBLIC COMMENT

- The Department is not aware of any opposition to this project.

ISSUES AND OTHER CONSIDERATIONS

- The ground-floor commercial space is considered a Limited Commercial Use (LCU) subject to Planning Code Section 186 for the exemption of limited commercial and industrial nonconforming uses. As the property is located within a ¼ mile of the Haight Street Neighborhood Commercial District, a full-service restaurant must satisfy the criteria pursuant to Planning Code Section 303 in order to be established on the property. In addition, the Haight Street Neighborhood Commercial District controls limit the number of new full-service restaurants in the District. The subject application represents the second of four new full-service restaurants permitted. Planning Code Section 186(b)(1-7) requires that LCUs follow the conditions listed below.
 - The building shall be maintained in a sound and attractive condition, consistent with the general appearance of the neighborhood;
 - Any signs on the property shall be made to comply with the requirements of Article 6 of the Planning Code applying to nonconforming uses;
 - The hours during which the use is open to the public shall be limited to the period between 6:00 a.m. and 10:00 p.m.;
 - Public sidewalk space may be occupied in connection with the use provided that it is only occupied with tables and chairs as permitted by San Francisco's Municipal Code;
 - Truck loading shall be limited in such a way as to avoid undue interference with sidewalks, or with crosswalks, bus stops, hydrants and other public features;

- Noise, odors and other nuisance factors shall be adequately controlled, and
 - All other applicable provisions of this Code shall be complied with.
-
- Based on the location of the site, well within a residential district, there is not an overconcentration of full-service restaurants in the immediate area. A number of such restaurants are located in the NC-1 (Neighborhood Commercial Cluster District) neighborhood known as Cole Valley, but the subject restaurant could be considered a “stand alone” use within the subject residential district.
 - Currently, there is not a proposed sign program on file with the Planning Department. Any proposed signage will be subject to the review and approval of the Planning Department.
 - The proposed use is an independent use and locally owned, which has been encouraged throughout San Francisco. This is not a Formula Retail use and would serve the immediate neighborhood. The proposal requires a Section 312-neighborhood notification, which was conducted in conjunction with the conditional use authorization notice.

REQUIRED COMMISSION ACTION

In order for the project to proceed, the Commission must grant conditional use authorization to allow for a full-service restaurant to be established as an LCU in an RH-3 District.

BASIS FOR RECOMMENDATION

The Department believes this project is necessary and/or desirable under Section 303 of the Planning Code for the following reasons:

- The project promotes small-business ownership.
- The project is a neighborhood serving use.
- The District is well served by transit, therefore customers should not impact traffic.
- The proposed project meets all applicable requirements of the Planning Code.

RECOMMENDATION: Approval with Conditions
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Attachments:

- Block Book Map
- Sanborn Map
- Aerial Photographs
- Photographs
- Public Notice
- CU Application
- Reduced Plans (in Sponsor’s Brief)



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- | | |
|--|--|
| <input type="checkbox"/> Affordable Housing (Sec. 415) | <input type="checkbox"/> First Source Hiring (Admin. Code) |
| <input 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 |

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Planning Commission Draft Motion

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ADOPTING FINDINGS RELATING TO THE APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 186, 303 AND 719.42 OF THE PLANNING CODE TO ALLOW A FULL-SERVICE RESTAURANT (DBA. THE ICE CREAM BAR) AS A LIMITED COMMERCIAL USE (LCU) WITHIN AN RH-3 (RESIDENTIAL, HOUSE, THREE-FAMILY) AND WITHIN A ¼ MILE RADIUS OF THE HAIGHT STREET NEIGHBORHOOD COMMERCIAL DISTRICT AND A 40-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On October 6, 2010, Tracy Boxer Zill (hereinafter “Project Sponsor”) filed an application with the Planning Department (hereinafter “Department”) for Conditional Use Authorization under Planning Code Sections 186, 303 and 719.42 to allow the establishment of a bona fide full-service restaurant as defined in Planning Code Section 790.92 (dba. The Ice Cream Bar) as a Limited Commercial Use (LDU) within the RH-3 (Residential, House, Three-Family) and within ¼ mile of the Haight Street Neighborhood Commercial District and a 40-X Height and Bulk District.

On January 20, 2011, the San Francisco Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2010.0912C.

The Department has determined that the proposed project is exempt/excluded from environmental review, pursuant to CEQA Guideline Section 15301 (Class One - Minor Alteration of Existing Facility, (e)

Additions to existing structures provided that the addition will not result in an increase of more than 10,000 square feet).

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. 2010.0912C, 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 west side of Cole Street between Frederick and Carl Streets, Block 1267, Lot 003. The property is located within an RH-3 (Residential, House, Three-Family) District, within ¼ mile of the Haight Street Neighborhood Commercial District with 40-X height and bulk district. The approximately 1,750 square foot site is located on the west side of Cole Street, near the corner of Cole and Frederick Streets, and contains a vacant ground-floor commercial space and one dwelling unit above. Cole Foods vacated the premises in June of 2009 and the commercial use would not therefore be considered abandoned. The building does not provide off-street parking. The proposal does not include the removal or any alteration to the dwelling unit above.
3. **Surrounding Properties and Neighborhood.** As the subject property is zoned RH-3 (Residential, House, Three-Family) the majority of properties around the subject site are multi-unit residential buildings. The mixed-use neighborhood known as Cole Valley is generally located one block south of the subject site on Cole Street.
4. **Project Description.** The proposal is to establish a bona fide full-service restaurant (a soda fountain, dba The Ice Cream Bar) with waiter service of approximately 1,400 square feet in a ground-floor commercial space defined as a Limited Commercial Use (LCU) which was formerly occupied by a grocery store (dba Cole Foods). The Ice Cream Bar would operate a full-service 1930's-style soda fountain and ice creamery, as well as provide a range of made-to-order seasonal soups, salads and sandwiches. To accommodate the restaurant, the interior would be modified to include a traditional soda fountain, ice-cream making facility, and food preparation area. Plans submitted with the application indicate that seating for approximately 35 patrons will be provided. The sponsor has estimated that approximately 15% of all sales are expected to be derived from items purchased for off-site consumption. No expansion of the building envelope is proposed. The restaurant will employ 8 – 10 people.

The proposed use is an independent use and locally owned, which has been encouraged throughout San Francisco. The proposed use is not a Formula Retail use. The proposal requires a change of use and Section 312-neighborhood notification was conducted in conjunction with the Conditional Use Authorization process. The proposed use is a neighborhood-serving use.

The subject site is well served by public transit so that potential customers should not adversely affect the traffic flow.

5. **Public Comment.** The Department has received has one letter in support of the proposal an no letters of opposition.
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. **Limited Commercial Use.** Planning Code Section 186 states that Conditional Use Authorization is required for a Limited Commercial Use to change to another use.

The property is considered a Limited Commercial Use and is located within ¼ mile of the Haight Street Neighborhood Commercial District, which requires Conditional Use Authorization to establish a full-service restaurant on the premises. The premises were last occupied by a grocery store (dba Cole Foods) in July of 2009 and as such, is not considered abandoned.

- B. **Full-Service Restaurant within a restricted use district:** Planning Code Section 719.42 controls the number of new full-service restaurants in the Haight Street Neighborhood Commercial District.

The subject project represents the second of four new restaurants permitted in the Haight Street Neighborhood Commercial District pursuant to Ordinance 88-08.

- C. **Full-Service Restaurant:** Planning Code Section 790.92 defines a full service restaurant as:
 - A retail eating or eating and drinking use which serves food to customers primarily for consumption on the premises, and in not specifically designed to attract and accommodate high customer volumes or turnover.
 - It has seating and serves prepared, ready-to-eat cooked foods for consumption on the premises. Guests typically order and receive food and beverages while seated at tables on the premises and pay for service after the meal is consumed.
 - It includes, but is not limited to, lunch counters, coffee shops, soda fountains and full-service dining establishments. It is distinct and separate from a small or large fast-food restaurant, as defined in Sections 790.90 and 790.91 of the Planning Code.
 - It may provide on-site beer and/or wine sales for drinking on the premises (with ABC licenses 40, 41, or 60). If it serves liquor for drinking on the premises (with ABC licenses 47 or 48), or does not admit minors (with ABC licenses 42 or 61), then it shall also be considered a bar, as defined in Planning Code Section 790.22.

The project sponsor intends to establish a full-service restaurant with waiter service as specified in Planning Code Section 790.92 and pursuant to Ordinance 88-08 that permits 4 new full-service restaurants within the Haight Street Neighborhood Commercial District and within ¼ mile radius of the Haight Street NCD. The proposed restaurant is the second to apply under the legislation since it was signed into law on May 21, 2008.

- D. **Hours of Operation:** Planning Code Section 186(a)(3) limits the hours of operation for Limited Commercial Uses to the period between 6:00 am and 10:00 pm.

The project sponsor has indicated that the proposed full-service restaurant will operate within the permitted hours of a Limited Commercial Use.

- E. **Parking.** Planning Section 151 of the Planning Code requires off-street parking for every 200 square-feet of occupied floor area, where the occupied floor area exceeds 5,000 square-feet.

The Subject Property contains approximately 1,400 square-feet of occupied floor area and thus does not require any off-street parking.

- F. **Signage.** Currently, there is not a proposed sign program on file with the Planning Department. 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 applying to nonconforming uses.

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

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

The size of the proposed use is in keeping with the building's historic use size. The proposed full-service restaurant will not impact traffic or parking in the District because it is not intended to be a "destination" restaurant. The restaurant will compliment the mix of goods and services currently available in the broader neighborhood and will contribute to the economic vitality of the neighborhood by activating a vacant storefront.

- 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 height and bulk of the existing building will remain the same and the project will not alter the existing appearance or character of the project vicinity. The proposed interior modifications will not alter the overall building size, shape or dwelling unit on the second floor.

- ii. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;

The Planning Code does not require parking or loading for an approximately 1,400 square-foot full-service restaurant. The proposed use is designed to meet the needs of the neighborhood and should not generate significant amounts of vehicular trips from the immediate neighborhood or citywide.

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

The proposed use is subject to the standard conditions of approval for full-service restaurants as outlined in Exhibit A. Conditions 13, 14, 15, 21 and 22 specifically obligate the project sponsor to mitigate any odor and noise generated by the restaurant use.

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

The proposed full-service restaurant proposes only interior modifications and the Department will review all lighting and signs proposed for the new business in accordance with Conditions 11, 12 and 24 of Exhibit A.

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

The project complies with all relevant requirements and standards of the Planning Code and is consistent with objectives and policies of the General Plan as detailed below.

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

The proposed project is consistent with the stated purposes of Limited Commercial Uses in Residential Districts in that the intended use is located at the ground floor, will provide a compatible convenience service for the immediately surrounding neighborhoods during daytime hours and that the commercial use is original to the building which is located within a residential neighborhood.

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

NEIGHBORHOOD COMMERCE

Objectives and Policies

OBJECTIVE 1:

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

Policy 1.1:

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

Policy 1.2:

Assure that all commercial and industrial uses meet minimum, reasonable performance standards.

The proposed project will provide desirable goods and services to the neighborhood and will provide resident employment opportunities to those in the community. The scope of the proposed business will not result in undesirable consequences. Further, the project site is zoned so as to allow the continuance of a commercial use within the subject residential neighborhood..

OBJECTIVE 2:

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.1:

Seek to retain existing commercial and industrial activity and to attract new such activity to the City.

The project will continue to provide an opportunity for a commercial use in a residential neighborhood and will enhance the diverse economic base of the City.

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.

While the subject site is not specifically located in a Neighborhood Commercial District, Planning Code Section 186 allows for the continuance of certain commercial uses in residential areas in order to provide neighborhood-serving goods and services throughout San Francisco's residential neighborhoods. No

commercial tenant would be displaced and the project would not prevent the district from achieving optimal diversity in the types of housing, goods and services available in the neighborhood.

The following guidelines 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.

Eating and Drinking Establishments

Eating and drinking establishments include bars, sit-down restaurants, fast food restaurants, self-service restaurants, and take-out food. Associated uses, which can serve similar functions and create similar land use impacts, include ice cream stores, bakeries and cookie stores. Guidelines for eating and drinking establishments are needed to achieve the following purposes:

- Regulate the distribution and proliferation of eating and drinking establishments, especially in districts experiencing increased commercial activity;
- Control nuisances associated with their proliferation;
- Preserve storefronts for other types of local-serving businesses; and
- Maintain a balanced mix of commercial goods and services.
- The regulation of eating and drinking establishments should consider the following:
 - Balance of retail sales and services;
 - Current inventory and composition of eating and drinking establishments;
 - Total occupied commercial linear frontage, relative to the total district frontage;
 - Uses on surrounding properties;
 - Available parking facilities, both existing and proposed;
 - Existing traffic and parking congestion; and
 - Potential impacts on the surrounding community.

There is a general concern with the potential over-concentration of food-service establishments in neighborhoods. The Commerce and Industry Element of the General Plan contains Guidelines for Specific Uses. For eating and drinking establishments, the Guidelines state, "the balance of commercial uses may be threatened when eating and drinking establishments occupy more than 20% of the total occupied commercial frontage." To this end, the Haight Street Neighborhood Commercial District controls were modified to limit the number of full-service restaurants in order to prevent an over-concentration of such establishments. The subject proposal represents the second of four new full-service restaurants permitted by the controls. In addition, the project site is located within a Residential District with few other commercial uses in the immediate area. The proposal would be the only full-service restaurant on Cole Street between Frederick and Haight Streets.

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.

An independent entrepreneur is sponsoring the proposal. The proposed use is a neighborhood-serving use. This is not a Formula Retail use.

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

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

The proposal would enhance the district by providing a full-service restaurant in an area that is not over-concentrated with restaurants. The business would be locally-owned and it creates 8 - 10 more employment opportunities for the community. The proposed alterations are within the existing building footprint.

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

The existing residential unit(s) in the surrounding neighborhood would not be adversely affected by the project. The proposal would not extend the hours of operation beyond those principally permitted, and does not propose any entertainment or alcoholic beverage service.

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

No housing would be removed to implement this project.

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

The site is on Cole Street and is well served by MUNI lines 33, 37, 43 and the N Judah metro line.

- 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 will not displace any service or industry establishment. The project will not affect industrial or service sector uses or related employment opportunities. Ownership of industrial or service sector businesses will not be affected by this project. The project represents a new use that will occupy a commercial space that has been vacant for some time.

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

The project is designed and will be constructed to conform to the structural and seismic safety requirements of the City Building Code. This proposal will not impact the property's ability to withstand an earthquake.

G. That landmarks and historic buildings be preserved.

The proposed full-service restaurant use does not involve any exterior modifications to the building.

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

The project will have no negative impact on existing parks and open spaces. The project does not have an impact on open spaces.

10. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.

11. The Commission hereby finds that approval of the Conditional Use authorization would promote the health, safety and welfare of the City.

DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Application No. 2010.0912C** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans filed with the Application as received on December 9, 2010 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 Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. 2010.0912C. 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 January 20, 2011.

Linda D. Avery
Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: January 20, 2011

EXHIBIT A

AUTHORIZATION

1. This authorization is for a conditional use to allow a bona fide full-service restaurant with waiter service (dba **The Ice Cream Bar**) located at 815 Cole Street, Block 1267, Lot 003] pursuant to Planning Code Section(s) **186, 303 and 719.42** within the **RH-3 (Residential, House, Three-Family)** District and **within ¼ mile of the Haight Street Neighborhood Commercial District** and a **40-X** Height and Bulk District; in general conformance with plans, dated **December 9, 2010**, and stamped "EXHIBIT B" included in the docket for Case No. **2010.0912C** and subject to conditions of approval reviewed and approved by the Commission on **January 20, 2011** under Motion No **XXXXXX**. 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

2. 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 **January 20, 2011** under Motion No **XXXXXX**.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

3. The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. **XXXXXX** 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

4. 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

5. 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

6. **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.

7. **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.

DESIGN – compliance at plan stage

8. **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 required building permit application. 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.

9. **Rooftop Mechanical Equipment.** Pursuant to Planning Code 141, the Project Sponsor shall submit a roof plan to the Planning Department prior to Planning approval of the building permit application. Rooftop mechanical equipment, if any is proposed as part of the Project, is required to be screened so as not to be visible from any point at or below the roof level of the subject building.

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

10. **Lighting Plan.** The Project Sponsor shall submit an exterior lighting plan to the Planning Department prior to Planning Department approval of the building / site permit application.

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

11. **Signage.** The Project Sponsor shall develop a signage program for the Project which shall be subject to review and approval by Planning Department staff before submitting any building permits for construction of the Project. All subsequent sign permits shall conform to the approved signage program. Once approved by the Department, the signage program/plan information shall be submitted and approved as part of the site permit for the Project. All exterior signage shall be designed to compliment, not compete with, the existing architectural character and architectural features of the building.

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

- 12. Noise.** Plans submitted with the building permit application for the approved project shall incorporate acoustical insulation and other sound proofing measures to control noise.

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

- 13. Odor Control.** Plans submitted with the building permit application for the approved project shall incorporate odor control ducting which shall not be applied to the primary façade of the building.

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

MONITORING - after entitlement

- 14. 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

- 15. Monitoring.** The Project requires monitoring of the conditions of approval in this Motion. The Project Sponsor or the subsequent responsible parties for the Project shall pay fees as established under Planning Code Section 351(e) (1) and work with the Planning Department For information about compliance.

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

- 16. 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

- 17. 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 off 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/>.

- 18. 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/>

- 19. Noise Control.** The noise shall be adequately soundproofed or insulated for noise and operated so that incidental noise shall not be audible beyond the premises or in other sections of the building and fixed-source equipment noise shall not exceed the decibel levels specified in the San Francisco Noise Control Ordinance.

For information about compliance with the fixed mechanical objects such as rooftop air conditioning, restaurant ventilation systems, and motors and compressors with acceptable noise levels, contact the Environmental Health Section, Department of Public Health at (415) 252-3800, www.sfdph.org.

For information about compliance with the construction noise, contact the Department of Building Inspection, 415-558-6570, www.sfdbi.org.

For information about compliance with the amplified sound including music and television contact the Police Department at 415-553-1012 or 415-5530123, www.sf-police.org

- 20. Odor Control.** While it is inevitable that some low level of odor may be detectible to nearby residents and passersby, appropriate odor control equipment shall be installed and maintained to prevent any significant noxious or offensive odors from escaping the premises. The building permit application to implement the project shall include air cleaning or odor control equipment details and manufacturer specifications on the plans.

For information about compliance with odor or other chemical air pollutants emission standards and air quality regulations contact the Bay Area Air Quality Management District,(BAAQMD), 1-800-334-ODOR (6367), www.baaqmd.gov and Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

- 21. Community Liaison.** Prior to issuance of a building permit application 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 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

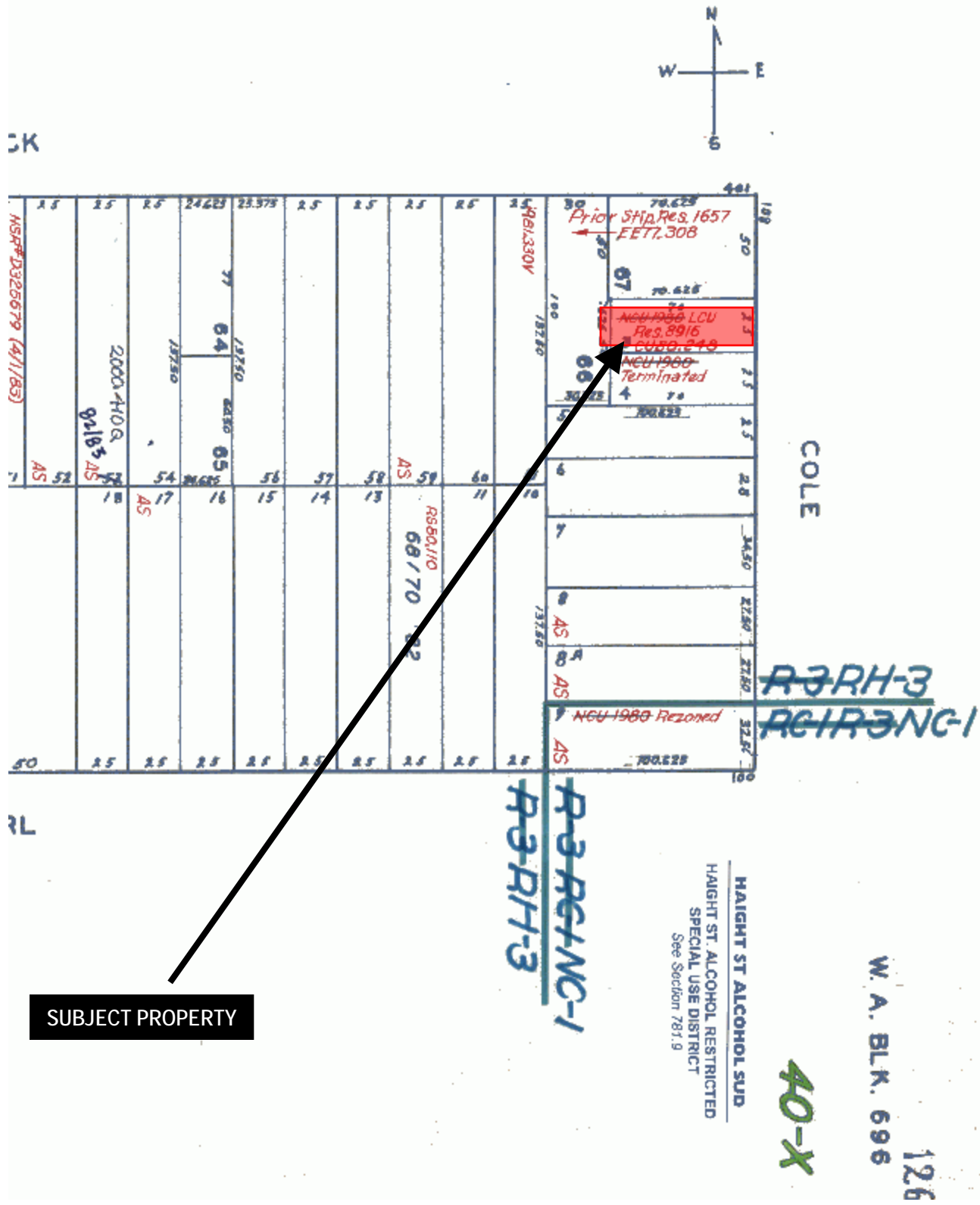
- 22. Lighting.** All Project lighting shall be directed onto the Project site and immediately surrounding sidewalk area only, and designed and managed so as not to be a nuisance to adjacent residents. Nighttime lighting shall be the minimum necessary to ensure safety, but shall in no case be directed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

- 23. Hours of Operation.** The hours of operation for public service shall be between 6:00 a.m. and 10:00 p.m. seven days a week.

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

Parcel Map

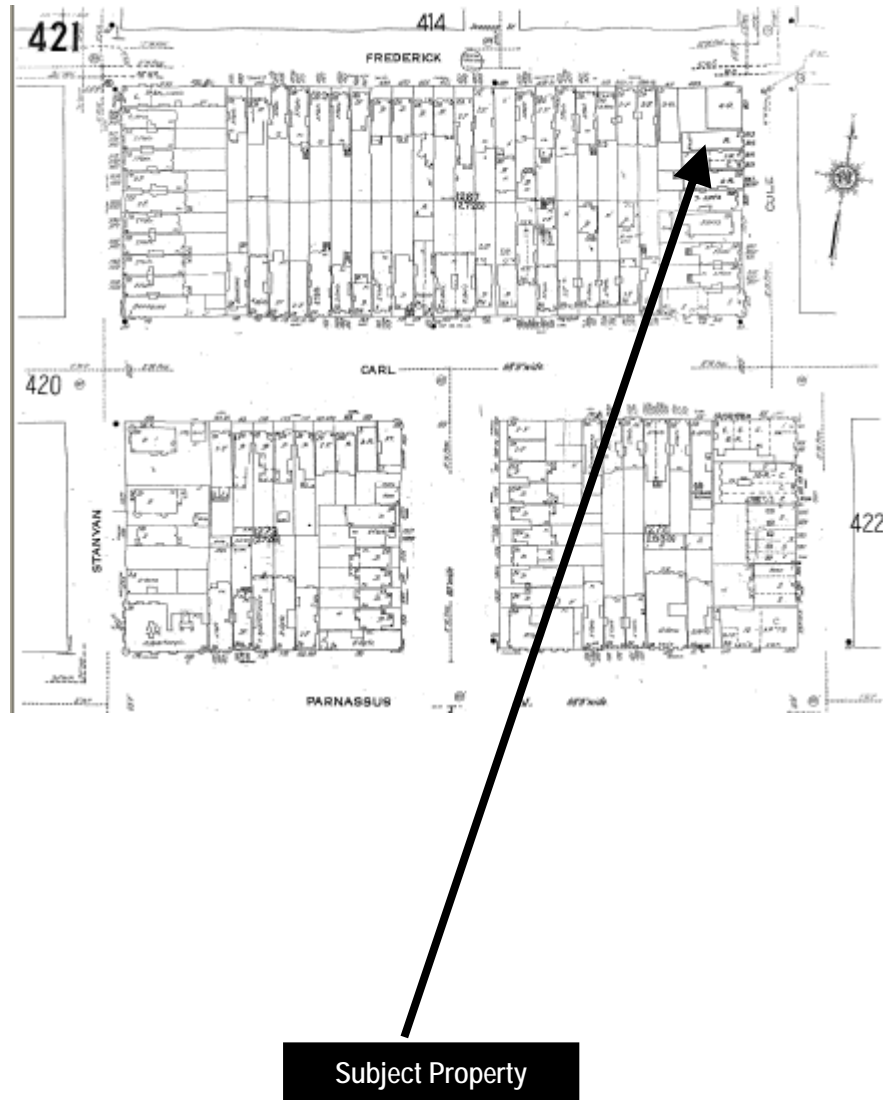


SUBJECT PROPERTY



Conditional Use Hearing
Case Number 2010.0912C
813 - 815 Cole Street

Sanborn Map*



**The Sanborn Maps in San Francisco have not been updated since 1998, and this map may not accurately reflect existing conditions.*



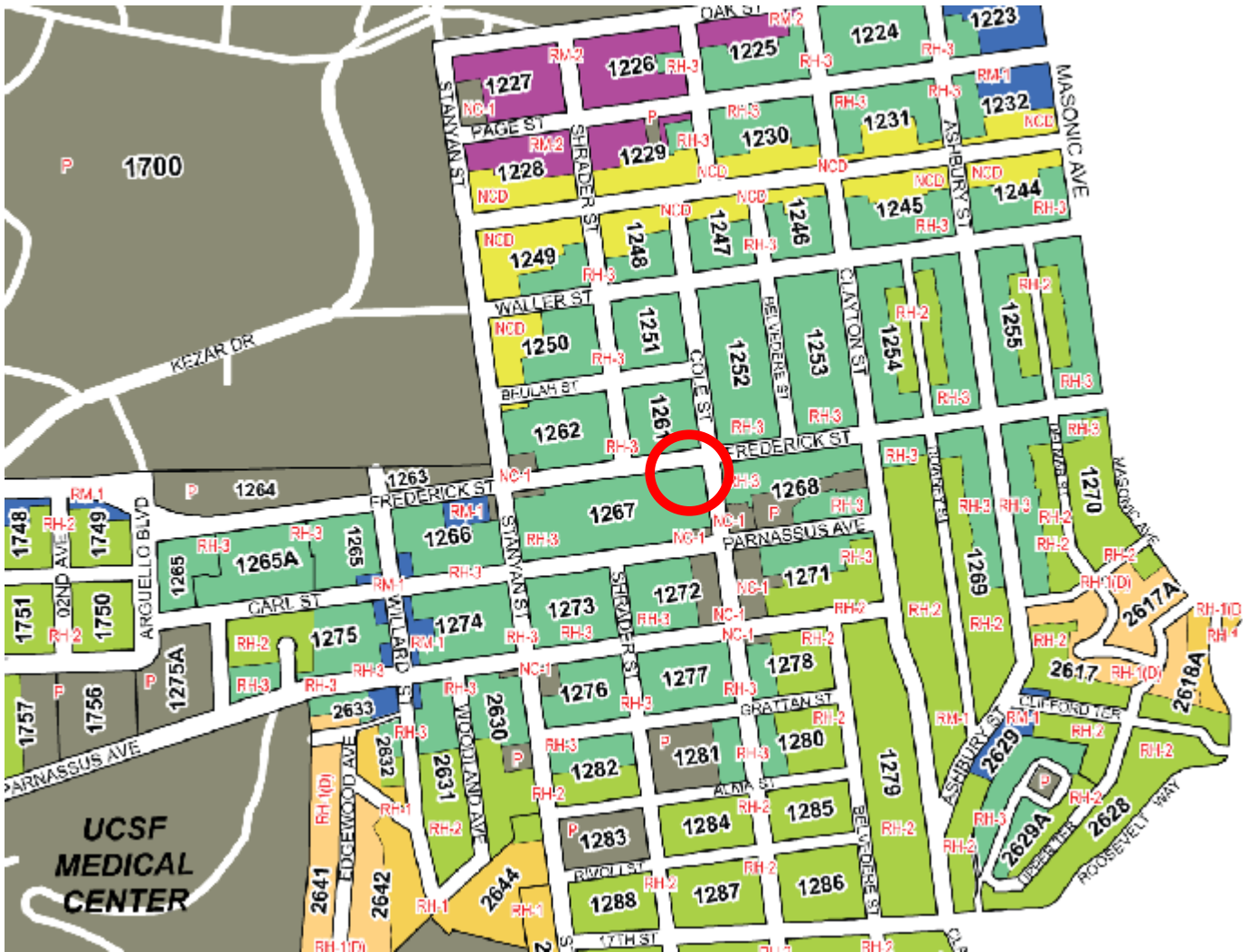
Aerial Photo



Subject Property



Zoning Map



ZONING USE DISTRICTS

RESIDENTIAL, HOUSE DISTRICTS

RH-1(D) RH-1 RH-1(S) RH-2 RH-3

RESIDENTIAL, MIXED (APARTMENTS & HOUSES) DISTRICTS

RM-1 RM-2 RM-3 RM-4

NEIGHBORHOOD COMMERCIAL DISTRICTS

NC-1 NC-2 NC-3 NCD NC-S

SOUTH OF MARKET MIXED USE DISTRICTS

SPD RED RSD SLR SLI SSO

COMMERCIAL DISTRICTS

C-2 C-3-S C-3-G C-3-R C-3-O C-3-O(SD)

INDUSTRIAL DISTRICTS

C-M M-1 M-2

CHINATOWN MIXED USE DISTRICTS

CRNC CVR CCB

RESIDENTIAL-COMMERCIAL DISTRICTS

RC-3 RC-4

REDEVELOPMENT AGENCY DISTRICTS

MB-RA HP-RA

DOWNTOWN RESIDENTIAL DISTRICTS

RH DTR TB DTR

MISSION BAY DISTRICTS

MB-OS MB-O

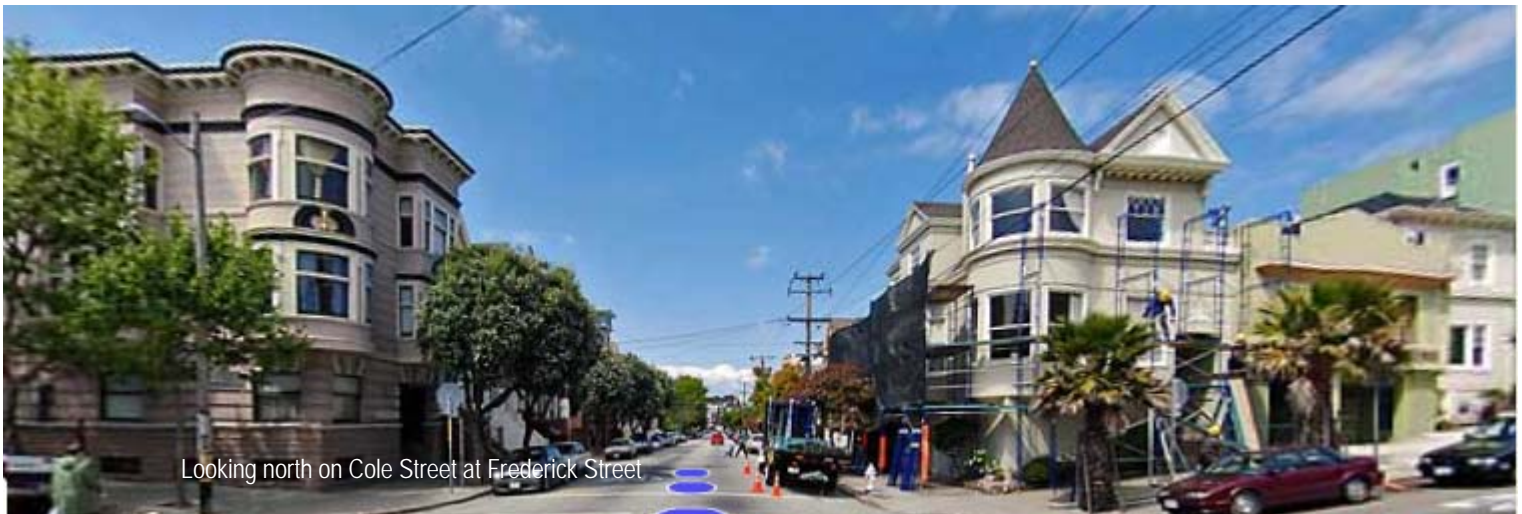
PUBLIC DISTRICT

P



Conditional Use Hearing
Case Number 2010.0912C
813 - 815 Cole Street

Context/Site Photos



Conditional Use Hearing
Case Number 2010.0912C
813 - 815 Cole Street



SAN FRANCISCO PLANNING DEPARTMENT

SAN FRANCISCO PLANNING COMMISSION NOTICE OF HEARING

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Notice is hereby given to the general public that an application involving the property described below has been filed with the Planning Department for review as set forth in the Planning Code. The Planning Commission will hold a **PUBLIC HEARING** on this item and on other matters on **Thursday, JANUARY 20, 2011 at 1:30 P.M. or later, in City Hall, 1 Dr. Carlton B. Goodlett Place, Room 400.**

CASE NO. 2010.0912C: 813 – 815 COLE STREET, west side between Frederick and Carl Streets; Lot 003 in Assessor's Block 1267: Request for Conditional Use authorization per Sections 183 303 and 719 of the Planning Code to establish a new Full-Service Restaurant (soda fountain) within an RH-3 (Residential, House, Three-Family) District and a 40-X Height and Bulk District. The site is within a ¼ mile radius of the Haight Street Neighborhood Commercial District.

The proposal is to change the use of the ground-floor commercial space (formerly occupied by Cole Foods) to a full-service soda fountain serving a variety of ice cream products and light meals. The overall use size would be approximately 1,500 square feet. Modifications to the building include an interior tenant improvement.

For further information, call Sara Velve at (415) 558-6263 and ask about Case Number 2010.0912.

You are receiving this notice because you own property within a 300-foot radius of the subject property. If you are interested in viewing the plans, please call the planner whose name is stated below. Please call one day in advance so that the plans can be ready for you at the Planning Department's "Pick Up" box on the fourth (4th) floor at 1650 Mission Street.

This notice will also serve to comply with Planning Code Section 311/312 for project notification of occupants within a 150-foot radius of the subject property.

Persons who are unable to attend the scheduled Planning Commission hearing may submit written comments regarding this case to **Sara Velve** at the Planning Department, 1650 Mission Street, Suite 400, San Francisco, CA 94103.

Comments received by 11:00 a.m. on the day of the hearing will be made a part of the official record and will be brought to the attention of the Planning Commission.

Comments which cannot be delivered to the Planning Commission by noon on the day of the hearing may be taken directly to the hearing at the location listed above. Comments received at 1650 Mission Street after the noon deadlines will be placed in the project file, but probably cannot be brought to the attention of the Planning Commission at the public hearing.

Pursuant to Government Code §65009, if you challenge, in court, the approval of a conditional use, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Planning Commission at, or prior to, the public hearing.

Scott Sanchez
Zoning Administrator

SECTION 303 APPLICATION – CONDITIONAL USE

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A. INTRODUCTION AND BACKGROUND

Fawzi and Jamileh Bajjalieh (collectively, “Project Sponsor”) are the owners of the property located at 815 Cole Street in San Francisco (“Property”).

The Project Sponsor proposes to convert the existing vacant nonconforming retail space into a full service restaurant (“Project”). By this application the Project Sponsor requests approval of this Conditional Use Authorization to allow a non-permitted Full Service Restaurant use in a residential zoning district.

B. OWNER/PROJECT SPONSOR INFORMATION

1. Property Owner/
Project Sponsor: Fawzi and Jamilah Bajjalieh
C/o Jameel Shihadeh, Esq.
333 Gellert Blvd., Suite 145
Daly City, CA 94105
Tel: (650) 758-2671
Email: jshihadeh@sbcglobal.net

2. Project Contact: Tracy Boxer Zill, Esq.
3042 Jackson Street, Suite Four
San Francisco, CA 94115
Tel: (415) 676-8035
Email: trzill@gmail.com

3. Architect: Roman Rettner
120 Manor Drive
San Francisco, CA 94127
Tel: (415) 867-2181
Email: RN4M@yahoo.com

C. SITE INFORMATION

1. Street address: 815 Cole Street
Cross streets: Frederick and Carl Streets

2. Assessor's block/lot: Block 1267, Lot 003

3. Zoning district: RH-3

- 4. Height/bulk district: 40-X
- 5. Lot Area: 1,746 square feet

D. EXISTING SITE AND SURROUNDING AREA CONDITIONS

The Property, located at 815 Cole Street (Assessor’s Block 1267, Lot 3) is located in the RH-3 (Residential-House, Three Family) and 40-X Height and Bulk Districts. The Property consists of a 1,746 sf rectangular midblock lot on the west side of Cole Street between Frederick and Carl Streets. The Property features a two story structure built in 1912. The upper story (813 Cole Street) is a residential unit of approximately 1,400 sf. The vacant ground story contains a commercial space of approximately 1,550 sf, most recently occupied by Cole Foods, a small neighborhood grocery store which operated from 2006-2009.

The area around the Property, located in the Cole Valley neighborhood and within ¼ mile of the Haight Street Neighborhood Commercial District (“HSNCD”), features a mixture of residential and commercial uses providing goods and services to local residents and visitors to Golden Gate Park and Haight Street. HSNCD controls are designed to promote mixed-use development with commercial uses directed to the ground floor, and housing encouraged above. Virtually all of the neighborhood commercial uses provide little or no parking.

Photographs of the Project Site and adjacent buildings are attached as **Exhibit A**.

E. PROJECT SUMMARY

- 1. Construction Cost: \$25,000
- 2. Present use: Dwelling unit over vacant commercial space
- 3. Proposed use: Dwelling unit over ground floor soda fountain.
- 4. Site size: 1,550 square feet (approximately)
- 5. Building Characteristics:
 - Height: 25 feet
 - Stories: 2

- Number of units: Two
6. Parking: None required per Section 150.

F. EXISTING COMMERCIAL USE

The Property was most recently used as Cole Foods, a neighborhood serving small grocery which closed in June 2009 and has remained vacant since.

G. DESCRIPTION OF THE PROPOSED PROJECT

The Sponsor proposes to reconfigure the existing commercial space and remodel it as a full service soda fountain, tentatively named The Ice Cream Bar, within the definition of the San Francisco Planning Code.¹ The Ice Cream Bar will operate as a full-service 1930s style soda fountain and ice creamery, serving items prepared on-site using local, organic ingredients. Menu items will include organic ice cream, ice cream sandwiches, bars, cakes and novelties as well as a cafe-style menu featuring seasonal specials, soups and sandwiches. Built around an original Art Deco soda fountain circa 1935, The Ice Cream Bar will also feature traditional soda fountain beverages and table service. The Sponsor plans to operate the Ice Cream Bar from 11:00 a.m. to 10:00 p.m. daily.

Reduced plans for the Project are attached as **Exhibit B**.

H. PROPOSED ACTION

As noted above, the Property is located in a RH-3 (Residential, House, Three Family) Use District. Residential districts do not permit commercial establishments as-of-right.² However, the Planning Code does allow an existing nonconforming use that has not been abandoned for more than three years³ in a Residential Use District to be replaced by another nonconforming use provided the following criteria are met:⁴

¹ San Francisco Planning Code Section 790.92. Subsequent references are to the San Francisco Planning Code unless otherwise noted.

² Section 209.8.

³ Section 183.

⁴ Section 182(b).

- The nonconforming use is located within ¼ mile from a Neighborhood Commercial District;
- The proposed new use is conditionally permitted at the first story in the Neighborhood Commercial District, upon approval of a Conditional Use application

The Property is located at 815 Cole Street, near the Frederick Street intersection and within ¼ of the Height Street Neighborhood Commercial District located immediately to the north. The HSNCD conditionally allows full service restaurant uses at the first floor with Conditional Use authorization.⁵ Thus, upon approval of this Conditional Use application, the Project would be a legal replacement of a previous nonconforming use.

I. COMPLIANCE WITH CONDITIONAL USE CRITERIA (SECTION 303 FINDINGS)

Under Planning Code Section 303(c), the City Planning Commission shall approve the application and authorize a conditional use if the facts presented are such to establish the following:

1. Desirability and Compatibility of Project

That the proposed use or feature, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community.

The proposed project is necessary and desirable because it will allow a locally owned neighborhood-serving small business to operate. Due largely to the recent economic downturn, the City in general and the Haight Street area in particular are suffering from a number of vacant commercial spaces. Haight Street Neighborhood Commercial District controls are specifically designed to promote small, locally owned businesses like The Ice Cream Bar, which will cater largely to local residents as well as visitors to nearby Golden Gate Park. There is no similar restaurant in the area, and the type of food offered is particularly attractive to families. Denial of this Conditional Use authorization could result in the Project Sponsor locating her small business outside the City. Due to its location near the Haight Street shopping district, the Property is an ideal space for this family-owned, small business for which the Haight is renowned.

2. Effect of Project on Health, Safety, Convenience or General Welfare

Planning Code section 303(c)(2) requires that facts be established which demonstrate the following:

That such use or feature as proposed will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity, or

⁵ Section 719.42.

injurious to property, improvements or potential development in the vicinity, with respect to aspects including but not limited to the following:

- (a) The nature of the proposed site, including its size and shape, and the proposed size, shape and arrangement of the structure.**
- (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 and of proposed alternatives to off-street parking, including provisions of car-share parking spaces, as defined in Section 166 of this Code.**
- (c) The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor.**
- (d) Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs.**

- (a) The nature of the proposed use is appropriate to the Property.

A soda fountain use is appropriate and desirable for the neighborhood and the Property. The Ice Cream Bar is consistent with neighborhood uses, and the proposed design is compatible with the immediate vicinity. The commercial space at the Property operated as a retail grocery for several years prior to the Project Sponsor entering into a lease in 2010.

- (b) Traffic patterns and parking will not be affected by the Project.

The Property currently provides no off-street parking. Approval of the Project would have minimal, if any, effect on current traffic.

- (c) The Project will not produce noxious emissions.

The Project would not produce any offensive odors. The restaurant space is relatively small and state of the art ventilation will control the modest amount of odor generated from cooking.

- (d) Appropriate treatment has been given to landscaping, open space, parking, loading, service areas and lighting.

The Property is a small storefront, at the ground floor of a mixed use building. Appropriate lighting will be provided.

3. Compliance with the General Plan.

Planning Code Section 303(c)(3) requires that facts be established that demonstrate the following:

That such use or feature as proposed will comply with the applicable provisions of this Code and will not adversely affect the master plan.

The Project will affirmatively promote, is consistent with, and will not adversely affect the General Plan as follows:

Commerce and Industry Element

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 which has substantial undesirable consequences that cannot be mitigated.

Approval of the Project will benefit the neighborhood in particular and the City in general with a viable locally owned small soda fountain. The Haight is well known for such small restaurant uses and The Ice Cream Bar would become part of the Haight's small business culture.

POLICY 1.3 Locate commercial and industrial activities according to a generalized commercial and industrial land use plan.

The Haight Street Neighborhood Commercial District encourages mixed-use buildings exactly like 813-815 Cole featuring residential units over ground floor commercial space.

OBJECTIVE 3 PROVIDE EXPANDED EMPLOYMENT OPPORTUNITIES FOR CITY RESIDENTS, PARTICULARLY THE UNEMPLOYED AND ECONOMICALLY DISADVANTAGED.

POLICY 3.1 Promote the attraction, retention and expansion of commercial and industrial firms which provide employment improvement opportunities for unskilled and semi-skilled workers.

POLICY 3.2 Promote measures designed to increase the number of San Francisco jobs held by San Francisco residents.

Approval of the Project will affirmatively promote these policies as The Ice Cream Bar will employ local workers in unskilled and semi-skilled capacities.

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.

Approval of the Project will result in the creation of a family oriented, neighborhood serving soda fountain that reinforces the Haight Street Neighborhood Commercial District as a center for small business.

POLICY 6.2 Promote economically vital neighborhood commercial districts which foster small business enterprises and entrepreneurship and which are responsive to economic and technological innovation in the marketplace and society.

The Project supports this Policy as The Ice Cream Bar features a small entrepreneur filling a local need.

POLICY 6.3 Preserve and promote the mixed commercial-residential character in neighborhood commercial districts.

As mentioned above, the Project site is a mixed-use building in support of this Policy and the District aims.

POLICY 6.9 Regulate uses so that traffic impacts and parking problems are minimized.

Approval of the Project will result in minimal, if any, impact on traffic and parking.

J. PRIORITY MASTER PLAN POLICIES FINDINGS

The proposed project is consistent with the Priority Policies of Section 101.1, as follows:

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

As noted above, the proposed Project is located near the Haight Street Neighborhood Commercial Zoning District, which is geared toward mixed-use development with commercial uses at the ground floor and housing above. The existing ground floor commercial space on the Property has been a neighborhood serving retail use for many years, and approval of the Project would allow its operators to continue to work in the neighborhood.

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

Approval of the Project would allow The Ice Cream Bar to function as a vibrant and valuable neighborhood serving artisan restaurant completely in keeping with the artistic and small business character of the Haight.

3. **That the City's supply of affordable housing be preserved and enhanced.**

As the Project proposes no addition or reduction in housing, this Policy does not apply.

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

The Project will not create commuter traffic. Employees will likely live in the immediate neighborhood or commute by public transit to the Project Site. The Project will not alter the existing commuter traffic patterns. The Project Site is located within 2 blocks from several Muni lines, and the area is well served by 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 opportunity for resident employment and ownership in these sectors be enhanced.**

The Project does not involve office development, and will have no effect on industrial and service space.

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

The existing building meets the structural and seismic requirements of the Building Code.

7. That landmarks and historic buildings be preserved.

The Project proposes no alterations to the building or its façade. Thus, this Policy does not apply.

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

The proposed Project will not shadow any park or open space within meaning of this policy. No park vistas will be affected by the proposed Project.

K. CONCLUSION

The Project satisfies all of the criteria of the Planning Code and the Master Plan for approval of a Conditional Use. The Project will result in a popular and vital small artisan soda fountain in a centrally located, transit-rich neighborhood. The proposal furthers the objectives and policies of the City's Master Plan, and will be a positive addition to the neighborhood.

The Project is compatible with the scale of the neighborhood and will give character and preserves the essential character of the existing Residential District. The Ice Cream Bar fits very well within the neighborhood and activates the pedestrian experience along Cole Street. We respectfully request you approve this Project as proposed.

L. APPLICANT'S AFFIDAVIT

I declare, under penalty of perjury, that the undersigned is the owner or authorized agent of the owner of the property that is the subject of this Conditional Use (Section 303) Application and that the statements set forth herein, as well as those in the attached exhibits are true and correct to the best of my knowledge.

Respectfully submitted,

Dated: October 5, 2010

by:

Tracy Boxer Zill, Esq.
Attorney for Project Sponsor

LIST OF EXHIBITS

- Exhibit A -- Photographs of Project Site and Adjacent Buildings
- Exhibit B -- Reduced Plans for the Project
- Exhibit C -- Letter of Authorization
- Exhibit D -- List of Notification Labels