



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Conditional Use

HEARING DATE: JULY 12, 2012

Date: July 2, 2012
Case No.: 2012.0525C
Project Address: 1250 OCEAN AVENUE
Zoning: Ocean Avenue NCT (Neighborhood Commercial Transit) District
55-X Height and Bulk District
Block/Lot: 3180/003
Project Sponsor: John Kevlin
Reuben & Junius, LLP
One Bush Street, Suite 600
San Francisco, CA 94104
Staff Contact: Michael Smith – (415) 558-6322
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Recommendation: **Approval with Conditions**

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PROJECT DESCRIPTION

The project sponsor is seeking Conditional Use authorization pursuant to Sections 703.4 and 303 of the Planning Code to establish a 1,615 square-foot, formula retail, limited-restaurant (d.b.a. "Yogurtland") within the ground floor commercial space of a newly constructed mixed-use building. The proposed retail establishment will occupy approximately 71-feet of commercial frontage along Ocean Avenue and offer self-serve frozen yogurt. The use is considered a limited restaurant as defined in Section 790.90 of the Planning Code and also a Formula Retail Use pursuant to Section 703.3 of the Planning Code because according to the project sponsor, there are currently more than 11 restaurant locations nationwide which have a standardized array of merchandise, facade, décor and color scheme, signage, and trademark or service mark, under the incorporated business of "Yogurtland". The proposal will involve interior tenant improvements and no exterior façade modifications or expansions are proposed. The Project would provide employment for 20 people.

SITE DESCRIPTION AND PRESENT USE

The Project Site (Assessor's Block 3180, Lot 003) is located on the north side of Ocean Avenue, between Phelan and Plymouth Avenues. The project site is located on the eastern edge of the Ocean Avenue NCT District near San Francisco City College. The property also borders the Westwood Park neighborhood to the north. The site is developed with a 5-story, mixed-use building that was approved by the Commission in 2009. The ground floor commercial space within the east block of the building contains an approximately 28,000 square-foot "Whole Foods" grocery store.

SURROUNDING PROPERTIES AND NEIGHBORHOOD

The new Ingleside Branch Library is adjacent to the site to the west. To the north, the property abuts an empty PUC water reservoir. To the east the site abuts the existing MTA Phelan Loop site which is proposed for a 5-story, mixed-use building. Across Ocean Avenue, to the south of the site, is a vacant corner lot, a McDonald's restaurant, and a modern, four-story mixed-use building as well as two smaller scale mixed use buildings. The MUNI K-Ingleside line travels down the center of Ocean Avenue with east and west bound MUNI stops in front of the site. The MUNI stops continue the length of the block and consist of raised platforms with barriers, ADA accessible boarding ramps, and covered bus shelters. City College of San Francisco's main campus is located to the east of the site, as is a City Fire Station. The single-family neighborhoods of Westwood Park and Ingleside flank Ocean Avenue to the north and south respectively.

There are ten existing formula retail uses within the Ocean Avenue NCT including Walgreens, Quickly's, Whole Foods, McDonald's, Sherwin Williams, CVS/Pharmacy, The UPS Store, 24 Hour Fitness, 7-Eleven, and Taco Bell/KFC. There are no "Yogurtland" restaurants currently operating in San Francisco and the nearest yogurt retailer is located 1.3 miles away at 44 West Portal Avenue. There are 16 existing restaurant uses within the Ocean Avenue NCT including Ocean Café, Quickly's, Beep's Drive-In, Ha Tien Hut, Java Creperie, McDonald's, Hang Fook Bakery, San Francisco Meats and Delicatessan, Mayflower, Luck Ocean Café, Jojo's Café, Happy Bakery and Deli, Java on Ocean, A-1 Bakery, Emmy's, and Taco Bell/KFC.

ENVIRONMENTAL REVIEW

The Project is exempt from the California Environmental Quality Act ("CEQA") as a Class 1 categorical exemption.

HEARING NOTIFICATION

TYPE	REQUIRED PERIOD	REQUIRED NOTICE DATE	ACTUAL NOTICE DATE	ACTUAL PERIOD
Classified News Ad	20 days	June 22, 2012	June 20, 2012	22 days
Posted Notice	20 days	June 22, 2012	June 20, 2012	22 days
Mailed Notice	20 days	June 22, 2012	June 21, 2012	21 days

The proposal requires a Section 312-neighborhood notification, which was conducted in conjunction with the conditional use authorization process.

PUBLIC COMMENT

At the completion of this report, the Department had not received any communications from the public regarding this proposal.

ISSUES AND OTHER CONSIDERATIONS

- There are ten existing formula retail establishments within the Ocean Avenue NCT. Please see attached map for locations.
- There are 16 existing restaurant uses within the Ocean Avenue NCT with one restaurant pending approval. Please see attached map for locations.
- There are 15 ground floor vacancies within the Ocean Avenue NCT. Please see attached map for locations.
- There is are no other establishments with the Ocean Avenue NCT that offer frozen yogurt.
- The restaurant would occupy a vacant commercial space.
- Less than 20% of the commercial frontage within the Ocean Avenue NCT is devoted to eating and drinking uses.

REQUIRED COMMISSION ACTION

Pursuant to Sections 703.4 and 303 of the Planning Code, Conditional Use Authorization is required for a Formula Retail Use as defined by Section 703.3(b) of the Planning Code in the Ocean Avenue Neighborhood Commercial Transit District.

BASIS FOR RECOMMENDATION

- The project has been found to be desirable as the requested Conditional Use authorization requests would comply with the Priority Policies and Commerce and Industry Element of the General Plan and the stated purpose of the zoning controls for the Ocean Avenue NCT and the provisions regarding formula retail uses in Section 703.3 of the Planning Code
- The proposed business would occupy a new storefront and would provide employment opportunities for local residents. Additionally, because of the existing vacant retail availability in the area, 15 storefronts, the proposed business would not preclude a locally-owned, independent business from locating in the area.
- The proposed business would not be competing against local, independent retailers offering similar products in the area. The nearest competitor to the project is another formula retail restaurant (d.b.a. "Tuttimelon") that is located in a different neighborhood.
- The addition of a restaurant selling frozen yogurt would add commercial diversity to the neighborhood.
- The Project would not lead to an overconcentration of eating and drinking establishments in the District.

RECOMMENDATION: Approval with Conditions

Attachment Checklist

- | | |
|---|---|
| <input checked="" type="checkbox"/> Executive Summary | <input checked="" type="checkbox"/> Project sponsor submittal |
| <input checked="" type="checkbox"/> Draft Motion | Drawings: <u>Existing Conditions</u> |
| <input type="checkbox"/> Environmental Determination | <input checked="" type="checkbox"/> Check for legibility |
| <input checked="" type="checkbox"/> Zoning District Map | Drawings: <u>Proposed Project</u> |
| <input checked="" type="checkbox"/> Height & Bulk Map | <input checked="" type="checkbox"/> Check for legibility |
| <input checked="" type="checkbox"/> Parcel Map | |
| <input checked="" type="checkbox"/> Sanborn Map | |
| <input checked="" type="checkbox"/> Aerial Photo | |
| <input checked="" type="checkbox"/> Formula Retail Map | |
| <input checked="" type="checkbox"/> Context Photos | |
| <input checked="" type="checkbox"/> Site Photos | |

Exhibits above marked with an "X" are included in this packet

_____MES
Planner's Initials

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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

HEARING DATE: JULY 12, 2012

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Case No.: **2012.0525C**
Project Address: **1250 OCEAN AVENUE**
Zoning: Ocean Avenue NCT (Neighborhood Commercial Transit) District
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ADOPTING FINDINGS RELATING TO THE APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303 AND 703.4 OF THE PLANNING CODE TO ESTABLISH A 1,615 SQUARE-FOOT, FORMULA RETAIL, LIMITED-RESTAURANT (D.B.A. "YOGURTLAND") IN A VACANT GROUND FLOOR COMMERCIAL SPACE LOCATED IN A NEWLY CONSTRUCTED MIXED-USE BUILDING WITHIN THE OCEAN AVENUE NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT AND A 55-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On April 19, 2012, John Kevlin of Reuben & Junius, LLP, on behalf of Yogurtland (YLSB LLC) (hereinafter "Project Sponsor") filed an application with the Planning Department (hereinafter "Department") for Conditional Use Authorization under Planning Code Sections 303 and 703.4 to establish a formula retail, limited restaurant use in a vacant commercial ground floor space (d.b.a. Yogurtland), within the Ocean Avenue NCT (Neighborhood Commercial Transit) District and a 55-X Height and Bulk District.

On July 12, 2012, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2012.0525C.

The Project is exempt from the California Environmental Quality Act ("CEQA") as a Class 1 categorical exemption

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties.

MOVED, that the Commission hereby authorizes the Conditional Use requested in Application No. 2012.0525C, 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 Site (Assessor's Block 3180, Lot 003) is located on the north side of Ocean Avenue, between Phelan and Plymouth Avenues. The project site is located on the eastern edge of the Ocean Avenue NCT District near San Francisco City College. The property also borders the Westwood Park neighborhood to the north. The site is developed with a 5-story, mixed-use building that was approved by the Commission in 2009. The ground floor commercial space within the east block of the building contains an approximately 28,000 square-foot "Whole Foods" grocery store.
3. **Surrounding Properties and Neighborhood.** The new Ingleside Branch Library is adjacent to the site to the west. To the north, the property abuts an empty PUC water reservoir. To the east the site abuts the existing MTA Phelan Loop site which is proposed for a 5-story, mixed-use building. Across Ocean Avenue, to the south of the site, is a vacant corner lot, a McDonald's restaurant, and a modern, four-story mixed-use building as well as two smaller scale mixed use buildings. The MUNI K-Ingleside line travels down the center of Ocean Avenue with east and west bound MUNI stops in front of the site. The MUNI stops continue the length of the block and consist of raised platforms with barriers, ADA accessible boarding ramps, and covered bus shelters. City College of San Francisco's main campus is located to the east of the site, as is a City Fire Station. The single-family neighborhoods of Westwood Park and Ingleside flank Ocean Avenue to the north and south respectively.

There are ten existing formula retail uses within the Ocean Avenue NCT including Walgreens, Quickly's, Whole Foods, McDonald's, Sherwin Williams, CVS/Pharmacy, The UPS Store, 24 Hour Fitness, 7-Eleven, and Taco Bell/KFC. There are no "Yogurtland" restaurants currently operating in San Francisco and the nearest yogurt retailer is located 1.3 miles away at 44 West Portal Avenue. There are 16 existing

restaurant uses within the Ocean Avenue NCT including Ocean Café, Quickly's, Beep's Drive-In, Ha Tien Hut, Java Creperie, McDonald's, Hang Fook Bakery, San Francisco Meats and Delicatessan, Mayflower, Luck Ocean Café, Jojo's Café, Happy Bakery and Deli, Java on Ocean, A-1 Bakery, Emmy's, and Taco Bell/KFC.

4. **Project Description.** The project sponsor is seeking Conditional Use authorization pursuant to Sections 703.4 and 303 of the Planning Code to establish a 1,615 square-foot, formula retail, limited-restaurant (d.b.a. "Yogurtland") within the ground floor commercial space of a newly constructed mixed-use building. The proposed retail establishment will occupy approximately 71-feet of commercial frontage along Ocean Avenue and offer self-serve frozen yogurt. The use is considered a limited restaurant as defined in Section 790.90 of the Planning Code and also a Formula Retail Use pursuant to Section 703.3 of the Planning Code because according to the project sponsor, there are currently more than 11 restaurant locations nationwide which have a standardized array of merchandise, facade, décor and color scheme, signage, and trademark or service mark, under the incorporated business of "Yogurtland". The proposal will involve interior tenant improvements and no exterior façade modifications or expansions are proposed. The Project would provide employment for 20 people.
5. **Public Comment.** At the completion of this motion, the Department had not received any communications from the public 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. **Parking Requirement.** Planning Code Section 737.22 permits up to one space per 1,500 square-feet of occupied floor area, not permitted above.

The existing building has 64 off-street parking spaces for the on-site retail uses.

- A. **Loading.** Section 152 requires off-street freight loading for uses above a certain size. Retail stores up to 10,000 square feet in gross floor area are not required to provide off-street freight loading.

With a gross floor area of under 10,000 square feet, the Project is not required to provide off-street loading. Existing metered parking along Ocean Avenue will be used for loading purposes.

- B. **Formula Retail.** Sections 703.3 and 703.4 places notification requirements and other restrictions on formula retail uses.

The Project is considered to be a formula retail use as defined by Section 703.3(b) of the Planning Code. Conditional Use authorization must be authorized for a formula retail use at the subject site as per Section 703.4.

- C. **Hours of Operation.** Section 737.27 allows hours of operation from 6:00AM until 2:00AM as of right and requires conditional use authorization to operate between the hours of 2:00AM and 6:00AM.

The Project Sponsor is not requesting Conditional Use authorization to operate between the hours of 2:00AM and 6:00AM. The proposed hours are 9AM to 7PM on Monday through Saturday and 10AM to 5PM on Sunday.

- D. **Signage.** Any proposed business signage will be subject to the review and approval of the Planning Department.
- E. **Land Use.** Planning Code Section 737.43 permits a limited restaurant, as defined in Planning Code Section 790.90, in the Ocean Avenue Neighborhood Commercial Transit District.

Planning Code Section 790.90 defines a limited restaurant as follows:

- (a) A retail eating and/or drinking use which serves ready-to-eat foods and/or drinks to customers for consumption on or off the premises, that may or may not have seating. It may include wholesaling, manufacturing, or processing of foods, goods, or commodities on the premises as an accessory use as set forth in Section 703.2(b)(1)(C)(v).
- (b) It includes, but is not limited to, specialty foods provided by bakeries, delicatessens, and confectioneries meeting the above characteristics, but it is distinct from a Restaurant, as defined in Section 790.91, and a Bar, as defined in Section 790.22. It may also operate as a Take-Out Food use as defined in Section 790.122.
- (c) It shall not provide on-site beer and/or wine sales for consumption on the premises, but may provide off-site beer and/or wine sales for consumption off the premises with a California Alcoholic Beverage Control Board License type 20 (off-sale beer and wine) within the accessory use limits as set forth in Section 703.2(b)(1)(C)(vi).
7. **Ocean Avenue Neighborhood Commercial Transit District.** The Ocean Avenue Neighborhood Commercial Transit District is located on Ocean Avenue from Phelan Avenue to Manor Drive. Ocean Avenue is a multi-purpose transit-oriented small-scale commercial district that is modeled on the NCT-2 District. Ocean Avenue was developed as a streetcar-oriented commercial district in the 1920s and continues to serve this function, with the K-line streetcar on Ocean Avenue. Numerous other bus lines serve the area, especially the eastern end, where the Phelan Loop serves as a major bus terminus. The eastern end of the district is anchored by the main City College campus at Phelan and direct linkages to the Balboa Park BART/MUNI rail station a couple blocks to the east, which serves as the southernmost San Francisco station for BART and the

terminus of the J, K, and M streetcar lines. Because of the immediate proximity of the BART/MUNI station the district has quick and easy transit access to downtown.

The Ocean Avenue NCT District is mixed use, transitioning from a predominantly one- and two-story retail district to include neighborhood-serving commercial uses on lower floors and housing above. 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. Access (i.e. driveways, garage entries) to off-street parking and loading is generally prohibited on Ocean Avenue to preserve and enhance the pedestrian-oriented character and transit function of the street. Residential and commercial parking are not required.

The Ocean Avenue NCT District is intended to provide convenience goods and services to the surrounding neighborhoods as well as limited comparison shopping goods for a wider market. The range of comparison goods and services offered is varied and often includes specialty retail stores, restaurants, and neighborhood-serving offices. Buildings may range in height, with height limits generally allowing up to four or five stories. Lots are generally small to medium in size and lot consolidation is prohibited to preserve the fine grain character of the district, unless the consolidation creates a corner parcel that enables off-street parking to be accessed from a side street.

8. **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 other storefronts on the block face. The proposed retail use will not impact traffic or parking in the District because it is not a destination retailer. This will complement the mix of goods and services currently available in the district and contribute to the economic vitality of the neighborhood by occupying 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 will not alter the existing appearance or character of the project vicinity. The proposed work will not affect the building envelope.

- 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 a 1,600+ square-foot retail use. Current traffic conditions and off-street parking availability in this district should remain substantially unaltered by this Project because it is designed to meet the needs of the immediate neighborhood and should not generate significant amounts of vehicular trips from the immediate neighborhood or citywide. Furthermore, the Ocean Avenue transit corridor provides many public transportation options and both patrons and staff are expected to rely on the existing available infrastructure.

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

The proposed retail use is not expected to generate noxious or offensive emissions.

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

The proposed retail use does not require any exterior improvements and the Department shall review all lighting and signs proposed for the new business under future building permit applications.

- 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 NCT 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.

- 9. **Planning Code Sections 303 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.

A survey of the Ocean Avenue NCT revealed that ten formula retail uses are currently found in the district. These businesses include Walgreens, Quickly's, Whole Foods, McDonald's, Sherwin Williams, CVS/Pharmacy, The UPS Store, 24 Hour Fitness, 7-Eleven, and Taco Bell/KFC.

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

There are no other frozen yogurt or ice cream stores within the subject Ocean Avenue NCT. Tuttimelon is the nearest frozen yogurt store and it is located approximately 1.3 miles away at 44 West Portal Avenue.

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

No physical expansions of the subject building would be necessary to accommodate the proposed use.

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

There are 15 ground floor vacancies within the Ocean Avenue NCT.

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

The subject district contains eating and drinking establishments, retail, services and institutions that serve the immediate neighborhood.. These aforementioned uses are primarily locally-owned, independent uses. Formula retail uses can be found scattered across the district. The proposed use is intended to be primarily neighborhood-serving.

10. **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 6:

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

Policy 1:

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.

The Project would be a neighborhood-serving use and the subject ground floor commercial space is currently vacant; therefore, no commercial tenant would be displaced. The Project would not prevent the district from achieving optimal diversity in the types of goods and services available in the neighborhood. The Project would increase diversity within the District by providing a eating establishment that provides a good (frozen yogurt) that is not currently offered in the neighborhood.

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

- Existing businesses, especially neighborhood-serving retail stores and services, should be retained wherever feasible and in conformity with the Planning Code.
- New uses should be consistent with the purpose of the district in which they are located as stated in the Planning Code.
- In small-scale districts with limited amounts of commercial space, priority should be given to retail stores and services which primarily serve the needs of nearby residents. Larger-scale districts may include some larger or more specialized uses which serve a broader citywide or regional clientele in addition to convenience oriented businesses. However, no district should include so many specialty stores that space is not available for businesses which serve the needs of nearby residents. The appropriate size of an individual use may vary depending on the type of merchandise or service offered and the volume or intensity of customer activity it generates.
- The use should contribute to the variety of uses in the district and avoid an undesirable concentration of one type of use in a certain location. In low-intensity districts, a balanced mix of various neighborhood-serving uses, with no concentration of a particular use, is desirable. In higher-intensity districts with a special orientation to one type of use (such as antique stores), clustering of such specialty uses may be appropriate. However, one type of use should not occupy an entire block frontage.

- The use should not detract from the livability of the district or adjacent residential areas by causing offensive noise, odors, or light, particularly in the late night or very early morning hours.
- Establishments operating in the late night or early morning hours should provide goods and services which are necessary or desirable to the community at those hours. For example, longer hours of operation may be appropriate for neighborhood-serving convenience stores such as groceries or pharmacies.
- If locating at the ground story, the use should contribute to an active retail frontage. In districts with continuous active retail frontage, individual uses which do not serve the general public during regular business hours, such as churches, are encouraged to share ground story space with more active uses. This guideline may not apply in those districts or parts of a district where retail uses are interspersed with fully residential buildings and institutional facilities. However, in some areas, it may be appropriate to allow conversion of non-commercial ground story space in order to accommodate commercial growth in the district, if such growth would not create unmanageable parking, noise or other unwanted impacts.
- The use should fully utilize available floor area. Uses which require a limited amount of ground story frontage, such as limited financial services and hotel lobbies, should provide access to remaining space for use by other establishments
- The use should not significantly increase traffic congestion or parking problems. The use should be evaluated for its traffic and parking impacts, especially on surrounding residential areas. Significant adverse impacts should be sufficiently mitigated or the use should not be permitted (See Auto-Oriented Facilities guidelines and Policy 8 of this Objective for more specific guidelines on parking).

In some districts, the balanced mix of commercial activities has been upset by the proliferation of certain uses such as financial services, restaurants and bars, take-out food and quick-stop establishments and entertainment uses. Overconcentration of one or more types of uses reduces the opportunity for other needed uses. The concerns are not limited to the number and concentration of these uses but also include the related nuisances they create and their impacts on the neighborhood. Other uses, such as automotive repair and parking, also can create noise and traffic problems. Special controls should be adopted for these uses in districts where they are a particular problem. These uses should adhere to the following guidelines, in addition to the general guidelines noted above.

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.

In districts where the proliferation of eating and drinking establishments could generate problems, the following guidelines should be employed in the consideration of new establishments, relocations, changes from one kind of eating and drinking establishment to another (e.g. from self-service restaurant to full-service restaurant), expansion or intensification of existing establishments:

- The establishment should not add to an overconcentration of eating and drinking establishments in a single district. The balance of commercial uses may be threatened when eating and drinking establishments occupy more than 20% of the total occupied commercial frontage. Proposals for eating and drinking establishments which would increase the proportion of total occupied commercial frontage above 20% should be reviewed to ensure that they would not reduce the variety of neighborhood-serving uses; nor create substantial noise, traffic, parking problems, or other nuisances in the district or surrounding neighborhood. Those establishments that would do the above should not be permitted. Except in districts with an established pattern of service to a broad market, such as North Beach, such establishments should not occupy more than 25% of the total commercially-occupied frontage in a district. To minimize the problems they can create, eating and drinking uses should generally be at least 100 feet apart from each other, unless there are factors making clustering of uses appropriate. For example, a configuration of clustered eating and drinking uses where off-street parking is shared might be more appropriate than an even distribution of such establishments.
- New, expanding or relocating eating and drinking uses should not impose significant adverse impacts on traffic and transit volumes and circulation and parking congestion. If such impacts are anticipated, especially on transit-preferential streets, the proposed use, expansion or relocation should be redesigned to mitigate

such impacts, or it should be prohibited. (See Auto-Oriented Facilities section and Policy 9 of this Objective for more specific guidelines on parking).

- Eating and drinking uses should be adequately soundproofed or insulated for noise and operated so as to reasonably protect adjoining and surrounding upper-story residences from disturbances. Fixed source equipment noise should not exceed the decibel levels specified in the Noise Control Ordinance.

The Ocean Avenue NCT District, which extends from Phelan Avenue to Manor Drive, currently contains 16 restaurant uses including Ocean Café, Quickly's, Beep's Drive-In, Ha Tien Hut, Java Creperie, McDonald's, Hang Fook Bakery, San Francisco Meats and Delicatessan, Mayflower, Luck Ocean Café, Jojo's Café, Happy Bakery and Deli, Java on Ocean, A-1 Bakery, Emmy's, and Taco Bell/KFC. Restaurants occupy less than 20% of the total occupied commercial frontage within the District. Restaurants would continue to occupy less than 20% of the total occupied commercial frontage within the District with the addition of the proposed restaurant and therefore it would not lead to an overconcentration of restaurant uses within the District which makes it consistent with the above Guidelines.

The Project would be located within a newly constructed building that is adequately soundproofed to protect residents in the upper stories from noise.

The proposed restaurant provides adequate space for walk-in patrons and the conditions or approval help ensure that the area around the Project Site will be kept clean. The Project Sponsor proposes to operate daily from 10:00 a.m. to 10:00 p.m., which are within the recommended hours of operation, pursuant to Planning Code Section 737.27.

Off-street parking is not required in this District for uses that occupy less than 5,000 square feet of gross floor area. However, the building contains 64 off-street parking spaces for commercial customers. Traffic impacts are not anticipated because the Project is designed to mainly serve residents from the surrounding neighborhood and patrons of other businesses on Ocean Avenue within walking distance. It is not intended to be a destination restaurant. Further, the Project Site is well served by public transit so that patrons and employees alike can arrive by means other than driving private automobiles.

11. **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 neighborhood serving restaurant use in an area where the product being served is currently unavailable. The business will create 20 new employment opportunities for the community.

- 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 units in the surrounding neighborhood would not be adversely affected. The proposed tenant improvements are interior only.

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

No housing is removed for this Project.

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

The site is located on Ocean Avenue and is well served by transit. It is presumable that the employees would commute by transit thereby mitigating possible effects on street parking. The subject location is well served by transit and is the terminus of the J, K, and M streetcar lines.

- 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.

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

The Project would be located within a newly constructed building that conforms 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.

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

12. 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.

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

DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Application No. 2012.0525C** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, received April 19, 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 Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. XXXXX. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on July 12, 2012.

Linda D. Avery
Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: July 12, 2012

EXHIBIT A

AUTHORIZATION

This authorization is for a conditional use to establish a formula retail, limited restaurant use (d.b.a. Yogurtland) located at 1250 Ocean Avenue, Block 3180, and Lot 003 pursuant to Planning Code Sections 303 and 703.4 within the Ocean Avenue NCT District and a 55-X Height and Bulk District; in general conformance with plans, received April 16, 2012, and stamped "EXHIBIT B" included in the docket for Case No. 2012.0525C and subject to conditions of approval reviewed and approved by the Commission on July 12, 2012 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

Prior to the issuance of the building permit or commencement of use for the Project the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on July 12, 2012 under Motion No XXXXXX.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

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

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a building permit. "Project Sponsor" shall include any subsequent responsible party.

CHANGES AND MODIFICATIONS

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Conditional Use authorization.

Conditions of Approval, Compliance, Monitoring, and Reporting PERFORMANCE

1. **Validity and Expiration.** The authorization and right vested by virtue of this action is valid for three years from the effective date of the Motion. A building permit from the Department of Building Inspection to construct the project and/or commence the approved use must be issued as this Conditional Use authorization is only an approval of the proposed project and conveys no independent right to construct the project or to commence the approved use. The Planning Commission may, in a public hearing, consider the revocation of the approvals granted if a site or building permit has not been obtained within three (3) years of the date of the Motion approving the Project. Once a site or building permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. The Commission may also consider revoking the approvals if a permit for the Project has been issued but is allowed to expire and more than three (3) years have passed since the Motion was approved.

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

MONITORING

2. **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*
3. **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.

OPERATION

4. **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, www.sfdpw.org

5. **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, www.sfdpw.org

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

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

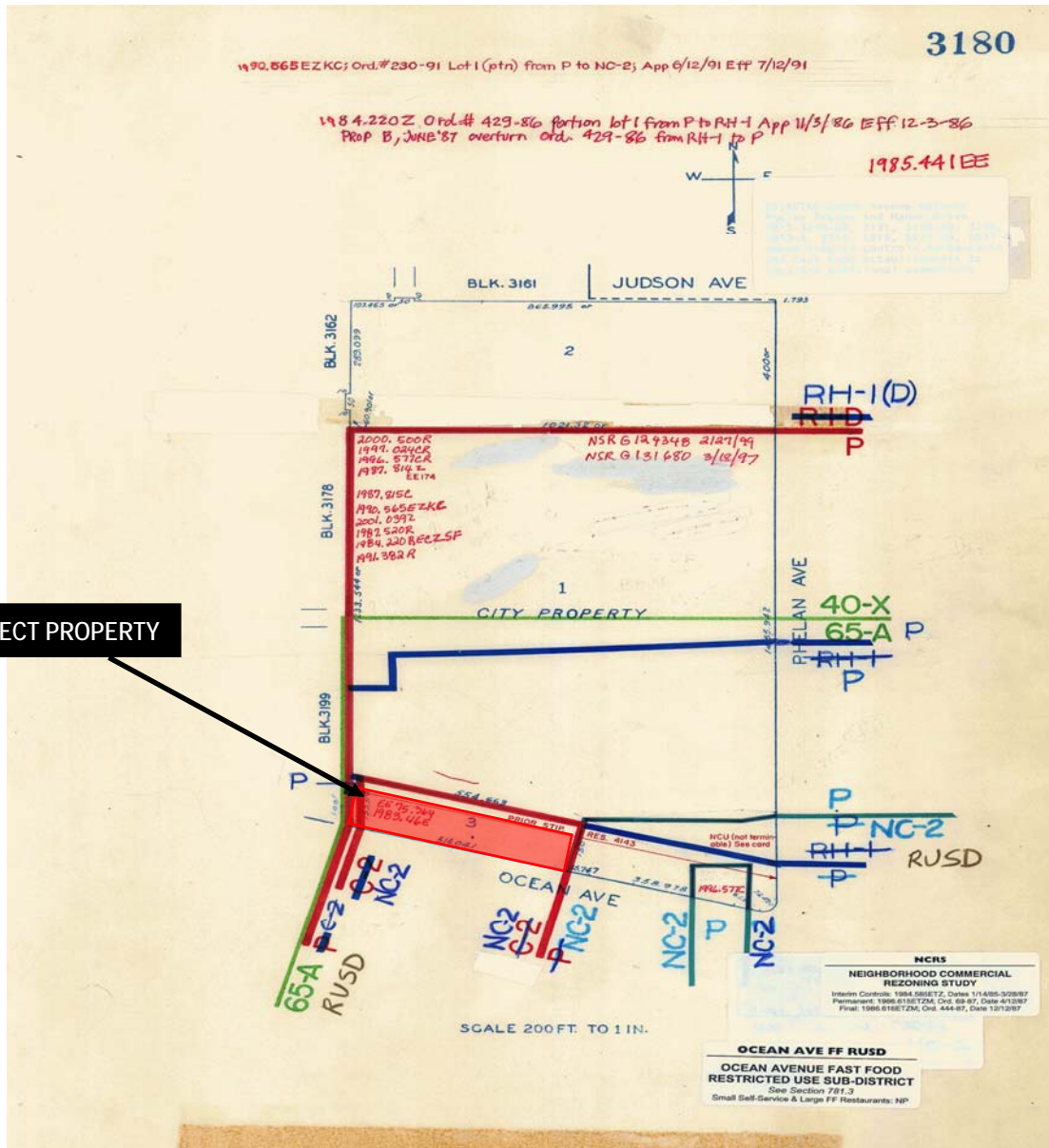
For information about compliance with the construction noise, contact the Department of Building Inspection, 415-558-6570, www.sfdbi.org

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

7. **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

Parcel Map

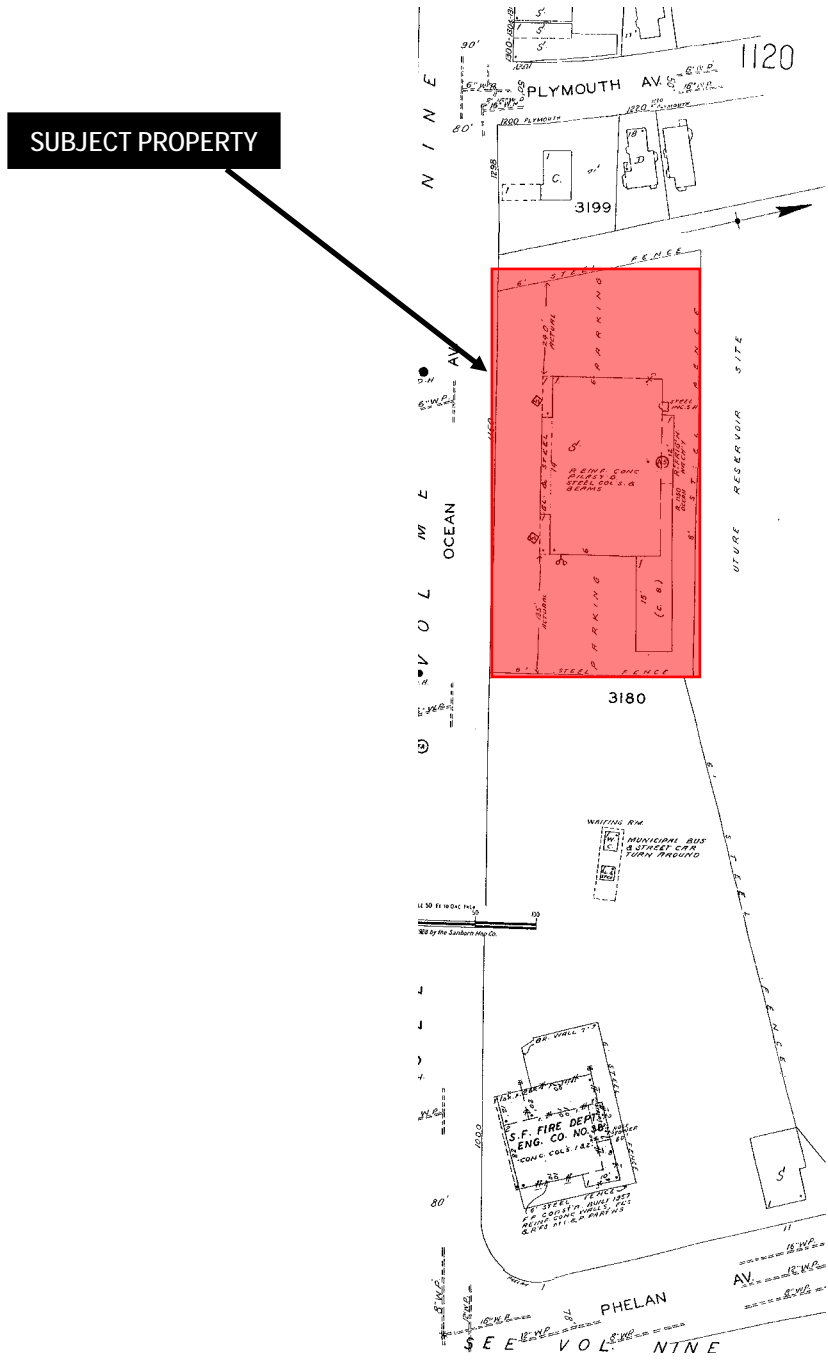


SUBJECT PROPERTY



Conditional Use Hearing
Case Number 2012.0525C
1250 Ocean Avenue

Sanborn Map*



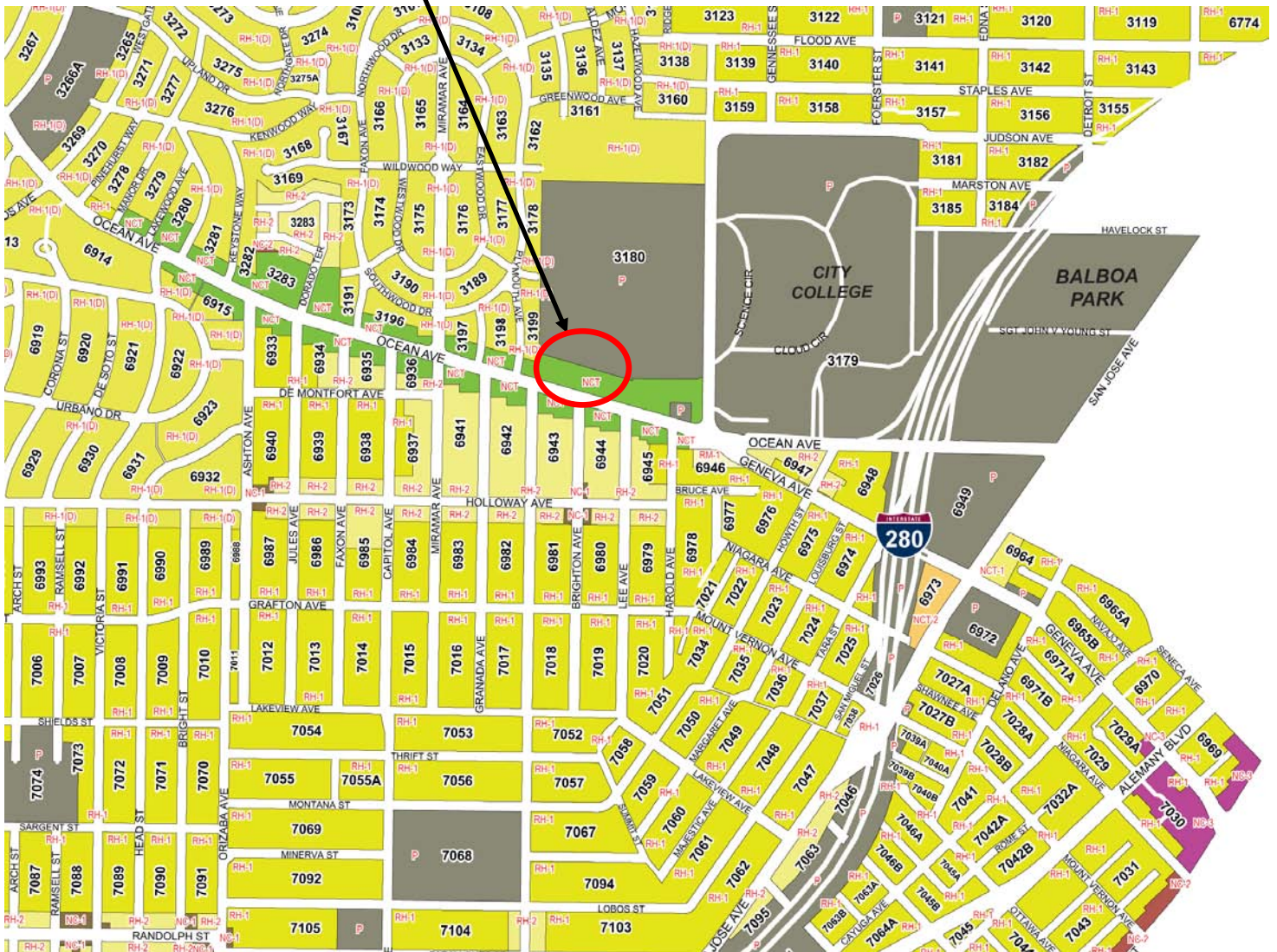
*The Sanborn Maps in San Francisco have not been updated since 1998, and this map may not accurately reflect existing conditions.



Conditional Use Hearing
Case Number 2012.0525C
1250 Ocean Avenue

Zoning Map

SUBJECT PROPERTY



Conditional Use Hearing
Case Number 2012.0525C
1250 Ocean Avenue

Aerial Photo



SUBJECT PROPERTY



Conditional Use Hearing
Case Number 2012.0525C
1250 Ocean Avenue

Aerial Photo



**The above aerial photograph has not been updated to reflect existing conditions.*

SUBJECT PROPERTY



Conditional Use Hearing
Case Number 2012.0525C
1250 Ocean Avenue

REUBEN & JUNIUS^{LLP}

June 29, 2012

VIA MESSENGER

Mr. Rodney Fong, President
San Francisco Planning Commission
1650 Mission Street, 4th Floor
San Francisco, CA 94103

**Re: Yogurtland – 1250 Ocean Avenue
Planning Department Case No. 2012.0525C
Hearing Date: July 12, 2012
Our File No.: 7161.01**

Dear President Fong and Commissioners:

This office represents YLSB LLC, the project sponsor of a proposed Yogurtland frozen yogurt shop (the “Project”) to be located at 1250 Ocean Avenue (the “Property”). The Project will not increase the floor area or otherwise expand the envelope of the existing building at the Property.

The Property consists of a recently-completed mixed use development with two ground floor retail units with dwelling units above (a.k.a. “Avalon Ocean Avenue”). A Whole Foods grocery store is currently improving one of the ground floor retail spaces (to the east) for occupancy. The Project would establish a Yogurtland frozen yogurt shop in the second retail space (to the west), occupying roughly 1,615 square feet of space. A customer entrance is located along Ocean Avenue with direct access to the sidewalk. If approved, Yogurtland would be the first tenant to occupy this space.

The Property is located along the Ocean Avenue commercial corridor, one of the largest commercial areas on the south side of the city. Ocean Avenue has numerous vacant storefronts, and is in need of revitalization, as recognized by the recently-passed Balboa Park Station Area Plan. The Project would occupy the second retail unit at the Property. **There are no nearby exclusive ice cream or frozen yogurt shops and the nearest such retailers are located over a mile away and are located in three different neighborhoods outside of Ocean Avenue.**

No new construction and no alteration or modification to the exterior of the existing building is proposed as part of the Project. Internal tenant improvements will be conducted. The Project will include new exterior signage.

A floor plan and elevation for the proposed Yogurtland frozen yogurt shop are attached as **Exhibit A**. Area photos are attached as **Exhibit B**. A photograph of the interior of another Yogurtland, which resembles what the interior of the Project would look like, are attached as **Exhibit C**. Maps indicating other formula retail uses, Restaurant-Limited uses, and vacancies in the Ocean Avenue NCT are attached as **Exhibit D**.

A. Benefits of the Project

Benefits of the Project will include:

- Activating a retail space along Ocean Avenue in a high-profile, newly-constructed building;
- Providing Ocean Avenue its first exclusive frozen yogurt shop, thereby increasing the diversity of retail offerings in the neighborhood;
- Creating 20 new jobs in the city, with many likely filled by local residents;
- Providing the nearby student population a new retail location to hang out after school;
- Generation of new economic activity and production of business tax revenue to the City.

B. The Project will Benefit the Neighborhood

Yogurtland will be a desirable and beneficial use to the Ocean Avenue neighborhood. Yogurtland is a popular frozen yogurt retailer. The Yogurtland experience consists of customers self-serving soft-serve frozen yogurt into cups, and then topping their frozen yogurt with fresh fruit, chocolate, cookies and other toppings. Customers then pay for their frozen yogurt at a register, and eat at seating provided on-site or take it to go. Yogurtland frozen yogurt is particularly healthy: over 25 flavors are non-fat, the others are low fat, with a maximum calorie count per serving of 130. Yogurtland provides a healthy alternative to other snacks and sweets.

Yogurtland would be especially desirable at the Property. The City College of San Francisco's main campus is located almost adjacent to the Property and Lick Wilmerding High School is located just a few blocks east. Between the two schools, tens of thousands of students commute to the area every school day. However, there are few retail food options for students.

Yogurtland is particularly popular with students and kids, as it provides a hip, trendy hangout location that provides inexpensive and healthy snacks between classes or after school.

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Mr. Rodney Fong
June 29, 2012
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There are currently few such food options available to students in the neighborhood. The Yogurtland will also cater to the new residents living in the new apartments constructed as part of the mixed-use project at the Property. The vast majority of customers are expected to travel to Yogurtland by foot.

Yogurtland's up-and-coming popularity, and its trendy, modern interior also provides significant cachet to the existing retail environment in the neighborhood. For many years, Ocean Avenue has been characterized by vacant storefronts and a retail environment that did not capture the energy and vibrancy felt in other neighborhood commercial districts in the city. Yogurtland, located in a new lot line, 5-story development with a Whole Foods, will help set a new tone for the neighborhood, and can help begin to transform Ocean Avenue into a walkable, vibrant neighborhood similar to so many others in the city.

The Balboa Park Station Area Plan has expressly identified the Ocean Avenue corridor as a district "not as economically successful today as it has been in the past" and acknowledging that many local residents travel elsewhere to shop. Considering there are no other exclusive frozen yogurt or ice cream shops along the Ocean Avenue corridor, the proposed Yogurtland would directly fulfill the Balboa Park Station Area Plan's policy to "attract[] new businesses that address unmet retail and service needs of the diverse local neighborhoods." (Policy 1.2.3)

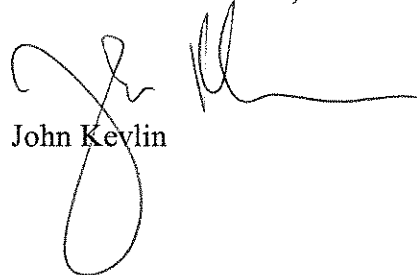
Yogurtland will hire 20 new employees, preferably from the surrounding neighborhood, and will also provide tax revenue to the City.

D. Conclusion

The Project requires conditional use authorization for a formula retail. It provides substantial benefits to the City by establishing a vibrant new use in a new retail space along the Ocean Avenue corridor. There are no exclusive ice cream or frozen yogurt shops in the Ocean Avenue corridor, and the closest such retailer is over a mile away. The proposed store would provide neighborhood residents and students with a new, healthy snack option and an engaging location to spend time. For all of these reasons and those listed in the application, we respectfully request this Commission grant this conditional use authorization for this Project.

Very truly yours,

REUBEN & JUNIUS, LLP



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Mr. Rodney Fong
June 29, 2012
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Encls.

cc: Commission Vice-President Cindy Wu
Commissioner Michael Antonini
Commissioner Gwen Borden
Commissioner Ron Miguel
Commissioner Kathrin Moore
Commissioner Hisashi Sugaya
John Rahaim - Planning Director
Scott Sanchez - Zoning Administrator
Linda Avery - Commission Secretary
Michael Smith - Planner
Dan Almquist – YLSB LLC

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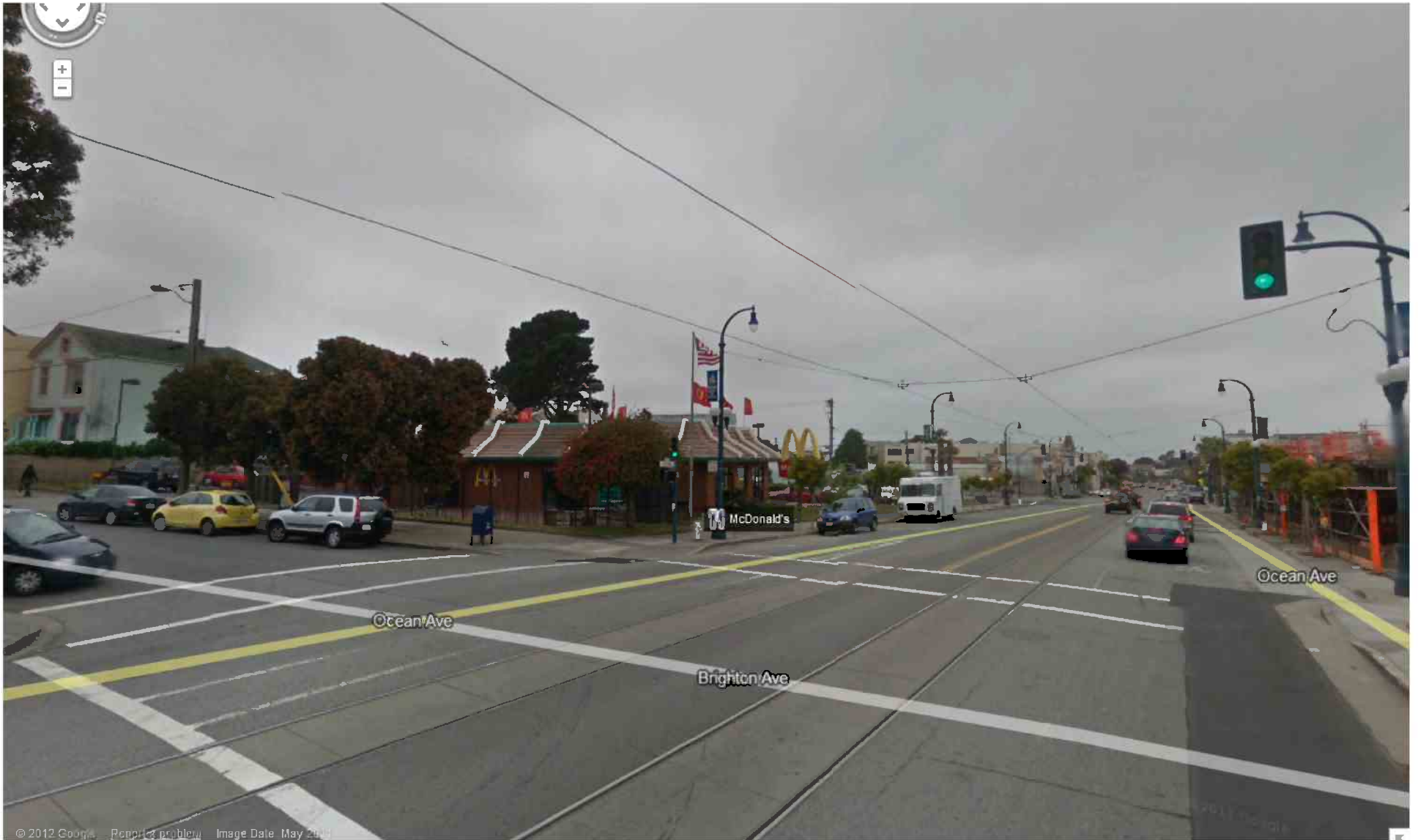








1250







Formula Retail Uses in the Ocean Avenue NCT



Restaurant-Limited in the Ocean Avenue NCT



Vacancies in the Ocean Avenue NCT

