



SAN FRANCISCO PLANNING DEPARTMENT

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Planning Commission Motion No. 18030

HEARING DATE: FEBRUARY 11, 2010

Release Date: February 4, 2010
Case No.: **2009.1139 C**
Project Address: **3111 24TH STREET**
Zoning: 24th Street – Mission NCT (Neighborhood Commercial Transit) District
45-X Height and Bulk District
Block/Lot: 3640 / 071
Project Sponsor: Yaron Milgrom-Elcott
3111 24th Street
San Francisco, CA 94110
Staff Contact: Edgar Oropeza – (415) 558-6381
edgar.oropeza@sfgov.org

ADOPTING FINDINGS RELATING TO CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303, 727.42 AND 790.92 OF THE PLANNING CODE TO ALLOW A FULL-SERVICE RESTAURANT (D.B.A. LOCAL) WITHIN THE 24TH STREET – MISSION NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT AND A 45-X HEIGHT AND BULK DISTRICT. THE PROJECT IS ALSO WITHIN THE MISSION ALCOHOLIC BEVERAGE SPECIAL USE SUBDISTRICT.

PREAMBLE

On December 10, 2009 Yaron Milgrom-Elcott (Project Sponsor) filed an application with the San Francisco Planning Department (hereinafter “Department”) for Conditional Use Authorization under Planning Code Sections 727.42 and 790.92 to allow a retail full-service restaurant (dba Local) within the 24th Street – Mission NCT District and a 45-X Height and Bulk District.

On February 11, 2010, the San Francisco Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2009.1139C.

The Project was determined by the Department to be categorically exempt from environmental review. The Commission has reviewed and concurs with said determination.

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. 2009.1139C, 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 proposed project is located on the south side of 24th Street, between Folsom and Shotwell Streets, within the 24th Street – Mission Neighborhood Commercial Transit District, The Mission Alcoholic Beverage Special Use Subdistrict, and a 45-X Height and Bulk District. The 2,500 square foot lot is improved with a 5,550 square foot three-story mixed use building. Residential uses are located on the second and third floors. The vacant commercial storefront is on the ground floor. The proposed project would occupy approximately 17 linear feet of frontage on 24th Street.
3. **Surrounding Properties and Neighborhood.** The proposed project site is located on the southern side of the 3100 block of 24th Street. This neighborhood commercial district is characterized by a number of neighborhood serving uses including bars, eating and drinking establishments, general grocery stores, liquor stores, professional and personal service uses and financial service uses. In general, residential uses are found above the commercial / retail uses found on the ground floor. The surrounding properties are located within the RH-2 (Residential House, Two-Family) and RH-3 (Residential House, Three-Family) Districts.

The site is well served by local and regional transit. Eight bus lines run within close proximity of the site (9, 12, 14, 27, 33, 48, 49, and 67) and BART stops just blocks away.

4. **Project Description.** The project proposes to establish a full service restaurant (dba Local) of approximately 2,000 square feet within the 24th Street – Mission NCT District. The former use at the site, vacant since early 2009, was a retail grocery store dba "Al Hambra Halal Meat Co."

"Local" is an independently owned restaurant. The project is not a Formula Retail use.

The proposed operation will require between four to six employees. Employment opportunities for lower skilled workers will comprise roughly half of the positions filled. The project sponsor intends to hire employees that live within a short distance from the restaurant.

5. **Public Comment.** The Department received one phone call in support of the proposed eating establishment. The call was received from a representative of the Lower 24th Street Merchants Association (Mr. Rick Arguello).
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. **Neighborhood Commercial Permit Review.** Planning Code Section 312 requires neighborhood notification of changes in use to a full service restaurant, as defined by Planning Code Section 790.91 for lots within the Neighborhood Commercial Districts.

The Project Sponsor is proposing the establishment within the 24th Street - Mission Neighborhood Commercial District of a full service restaurant (dba Local). Section 312 notification was conducted in conjunction with the Conditional Use authorization notification.

- B. **Full Service Restaurant.** Planning Code Section 727.42 allows a full service restaurant within the 24th Street - Mission Street NCT District by Conditional Use authorization on the first story.

The Project Sponsor intends to establish a retail full service restaurant (dba Local) in the 24th Street – Mission Neighborhood Commercial Transit District and is seeking Conditional Use authorization.

- C. **Formula Retail Use.** Planning Code Section 703.4 requires conditional use authorization from the Planning Commission to establishment of a formula retail use, as defined in Section 703.3, in any Neighborhood Commercial District, as identified in Article 7 pursuant to the criteria of Sections 303(c) and 303(i) and be subject to the terms of Sections 703.3(g) and (i).

The proposed retail full service restaurant use (dba Local) is not identified as a formula retail.

- D. **The Mission Alcoholic Beverage Special Use Subdistrict.** Planning Code Section 781.1 prohibits new establishments where alcoholic beverages are sold, served or given away for on-site or off-site consumption such as bars and liquor stores.

The Zoning Administrator does permit beer and wine liquor licenses (type 41) within the Mission Alcoholic Beverage Special Use District as an accessory use to a bona fide eating establishment. Although the Planning Department has not received an application for a type 41 liquor license, it does expect one if the project were to be approved by the Planning Commission.

- E. **Use Size Limits.** Planning Code Section 727.21 principally permits uses sizes of up to 2,499 square feet and conditionally permits uses sizes of 2,500 square feet.

The project proposes a retail full service restaurant of approximately 2,000 square feet.

- F. **Hours of Operation.** Planning Code Section 727.27 permits hours of operation, as defined by Planning Code Section 790.48, from 6 a.m. to 2 a.m. and from 2 a.m. to 6 a.m. by Conditional Use authorization.

The proposed hours of operation, between 11:00 a.m. to 9:30 p.m. are principally permitted by Planning Code Section 727.27.

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

The subject commercial space has approximately 17½-feet of frontage on 24th Street with approximately eleven feet devoted to either the restaurant entrance or window space. The windows are clear glass, providing an unobstructed view into the establishment at pedestrian eye-level.

The proposed storefront was already approved per Building Permit Application No. 2009.1118.1570 and is currently under construction. Building Permit Application No. 2009.1118.1570, to remove and replace the existing storefront, was reviewed by A Historic Preservation Technical Specialist at the Planning Information Center, where the building permit was approved.

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 proposed project is desirable because it seeks to occupy an existing ground floor commercial space that has been vacant since early 2009. The proposal is a neighborhood serving full service restaurant located on the ground floor, will enrich the variety of goods offered within the 24th Street – Mission NCT District, is in line with the prevalent pattern of commercial / retail ground floor uses and is thus compatible with the neighborhood.

- 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 proposed project will operate within the existing 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 any uses within the 24th Street Mission NCT District. The proposed project is well served by public transit, minimizing the need for private automobile trips.

- 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 5 through 9 specifically obligate the project sponsor to mitigate noxious or offensive 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;

Parking and loading areas are not required for the proposed use. Landscaping is not proposed as the building has no front setback. The Planning Department shall review all proposed signs under separate 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 the 24th Street – Mission NCT District in that the intended use is located at the ground floor, will provide convenience goods to the immediately surrounding neighborhoods and will be active throughout the day.

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.

Policy 1.3:

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

The proposed project will provide desirable goods and services to residents of the neighborhood, to patrons of the surrounding commercial establishments as well to persons within the greater area.

Being located within the 24th Street – Mission Neighborhood Commercial Transit District, the proposed project is consistent with activities in the commercial land use plan.

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 proposed project will fill a currently vacant commercial space with a commercial use beneficial for the area's residents as well as to patrons of the surrounding commercial establishments in the 24th Street - Mission NCT District.

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.

The proposed project will provide employment opportunities, including entry-level employment opportunities, for the immediate area's unskilled and semi-skilled workers.

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.

Policy 6.3:

Preserve and promote the mixed commercial-residential character in neighborhood commercial districts. Strike a balance between the preservation of existing affordable housing and needed expansion of commercial activity.

The project proposes to provide neighborhood serving goods while utilizing a vacant storefront. The commercial space is on the ground floor of a building whose upper floors are residential, thereby preserving the mixed commercial-residential character of the 24th Street - Mission NCT District. No affordable housing will be lost as the project proposes to retain commercial activity within an existing storefront.

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.

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.

For eating and drinking establishments, the Commerce and Industry Guidelines for Specific Uses state, "the balance of commercial uses may be threatened when eating and drinking establishments occupy more than 20% of the total occupied commercial frontage." Planning Department Staff conducted a site survey of the 24th Street- Mission NCT District, where the proposed project is located. With the proposed restaurant use, approximately 19-20 percent of the linear frontage of the 24th Street- Mission NCT District is attributed to eating and drinking establishments. Because the proposed use is well served by public transit and to the nature of the project, negative traffic and parking impacts are not expected to arise.

Over the years the 24th Mission NCT has developed from a smaller neighborhood serving NCD to one that serves a larger area, becoming more of a destination point for City residents. The number of restaurants has increased and appears to have approached and exceeded the 20 percent threshold for concentration of restaurants. While a strict reading of the General Plan would not allow additional restaurants, the Planning Departments feels that a restaurant use contribute to the economic vitality of the District and does not detract from the diversity of retail uses provided in the District. Planning Department staff will continue to monitor the number of restaurants should there be exacerbation of this issue. In sum, Staff has observed through site visits, that within the overall area there exists a strong mixture of uses critical to making the 24th –Street Mission NCT a livable neighborhood.

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 project proposes to fill a vacant storefront with a retail use that serves the neighborhood and as a source of potential employment for neighborhood residents.

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

The project proposes to utilize a currently vacant storefront for its operation. The proposed storefront was already approved per Building Permit Application No. 2009.1118.1570 and is currently under construction.

The said Building Permit to remove and replace the existing storefront was reviewed by A Historic Preservation Technical Specialist at the Planning Information Center, where the building permit was approved.

- 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 proposed project is on 24th Street, between Folsom and Shotwell Streets, and is well served by public transit. It is highly likely that both employees and customers of the proposed establishment will either walk, bike or use public transit as the preferred mode of transportation.

The 24th Street Mission corridor is well served by local and regional transit. Eight bus lines run within close proximity of the site (9, 12, 14, 27, 33, 48, 49, and 67), and BART stops just blocks away.

- 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 proposed project will not include any commercial office development and will not displace any existing service or industry establishments. The project site has been vacant for well over one year.

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

The proposed project will comply with the City Codes to achieve the proper preparedness in the event of an earthquake.

- G. That landmarks and historic buildings be preserved.

The existing building is considered a potential historic resource for the purposes of CEQA. Building Permit Application No. 2009.1118.1570, to remove and replace the existing storefront was reviewed by A Historic Preservation Technical Specialist at the Planning Information Center where the building permit was approved.

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

The proposed project will not have a negative impact on existing parks and 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. 2009.1139C** subject to the following conditions attached hereto as "EXHIBIT A" 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. 18030. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94012.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on February 11, 2010.

Linda Avery
Commission Secretary

AYES: Commissioners Lee, Miguel, Moore, Olague, and Sugaya,

NAYS: None

ABSENT: Commissioners Antonini and Borden

ADOPTED: February 11, 2010

Exhibit A

Conditions of Approval

1. This authorization is for a Conditional Use Authorization under Sections 727.42 and 790.92 of the Planning Code to allow a Full Service Restaurant not identified as a formula retail use at 3111 24th Street within the 24th Street - Mission Neighborhood Commercial Transit District and a 45-X Height and Bulk District, and the Mission Alcoholic Beverage Special Use District, in general conformance with plans filed with the Application as received on November 18, 2009 and stamped "EXHIBIT B" included in the docket for **Case No. 2009.1139C**, reviewed and approved by the Commission on February 11, 2010.

2. A Retail Full Service Restaurant, as defined in Planning Code Section 790.92, is described as a retail eating or eating and drinking use which serves food to customers primarily for consumption on the premises, and is 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 beverage 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 this 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 Section 790.22 of this Code.

3. Violation of the conditions contained in this Motion or of any other provisions of the Planning Code may be subject to abatement procedures and fines up to \$500 a day in accordance with Planning Code Section 176.
4. Should monitoring of the Conditions of Approval contained in Exhibit A of this Motion be required, the Project Sponsor or successors shall pay fees as established in Planning Code Section 351(e)(1).
5. The property owner shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean condition. Such maintenance shall include, at a minimum, daily sweeping and litter pickup and disposal as well as washing or steam cleaning of the main entrance and abutting sidewalks at least once each week.

6. Until removal by a waste disposal service, all garbage and/or waste containers shall be either (1) kept within the subject building or (2) kept in a sealed enclosure which prevents the emission of any noxious odors.
7. The Project Sponsor shall maintain appropriate odor control equipment to prevent any significant noxious or offensive kitchen odors from escaping the premises.
8. The Project Sponsor shall operate the proposed restaurant such that noise is kept at reasonable levels so as not to unduly disturb neighboring businesses and residents.
9. The Project Sponsor shall maintain an attractive storefront providing visibility of the restaurant interior through the storefront windows.
10. Signs for the business shall be reviewed and approved by the Planning Department before they are installed.
11. The Project Sponsor shall assure the execution and recordation of the specified conditions as a Notice of Special Restrictions at the Office of the County Recorder / County Clerk.
12. The Planning Commission may, in a public hearing, consider the revocation of this conditional use authorization if a site or building permit has not been issued 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 thenceforth diligently to completion. The Commission may also consider revoking this conditional use authorization 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. This authorization may be extended at the discretion of the Zoning Administrator only if the failure to issue a permit by the Department of Building Inspection is delayed by a City, state or federal agency or by appeal of the issuance of such permit.