



SAN FRANCISCO PLANNING DEPARTMENT

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Planning Commission Motion No. 18040

HEARING DATE: MARCH 4, 2010

Date: February 25, 2010
Case No.: **2009.1010C**
Project Address: **1701 OCTAVIA STREET**
Zoning: RH-2 (Residential, House, Two-Family) District
40-X Height and Bulk District
Block/Lot: 0663/005
Project Sponsor: Jeffrey Banker
c/o Ahmad Mohazab
TECTA Associates
2747 19th Street
San Francisco, CA 94110
Staff Contact: Glenn Cabreros – (415) 558-6169
glenn.cabreros@sfgov.org

ADOPTING FINDINGS RELATING TO CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 186, 303 and 710.69A OF THE PLANNING CODE TO ALLOW A SELF-SERVICE SPECIALTY FOOD USE AS PART OF AN EXISTING NONCONFORMING USE (FULL-SERVICE RESTAURANT DBA “BAKER AND BANKER”) WITHIN AN RH-2 (RESIDENTIAL, HOUSE, TWO-FAMILY) DISTRICT AND A 40-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On October 23, 2009, Jeffrey Banker (Project Sponsor) filed an application with the San Francisco Planning Department (hereinafter “Department”) for Conditional Use Authorization under Sections 186, 303 and 710.69A of the Planning Code to allow a self-service specialty food use as part of an existing full-service restaurant (dba “Baker and Banker”) within an RH-2 (Residential, House, Two-Family) District and a 40-X Height and Bulk District.

On March 4, 2010, the Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2009.1010C.

The Project was determined by the Department to be Categorical Exempt from the California Environmental Quality Act ("CEQA") as a Class 1a exemption under CEQA Guidelines. 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. 2009.1010C, subject to the conditions contained in "EXHIBIT A" of this motion, based on the following findings:

FINDINGS

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

1. The above recitals are accurate and constitute findings of this Commission.
2. **Site Description and Present Use.** The project is located on the north side of Bush Street at the northwest corner of Octavia and Bush Streets, Block 0663, Lot 005. The property is located within the RH-2 (Residential, House, Two-Family) District and the 40-X Height and Bulk District. The property contains two buildings, each with two stories, which are connected by a one-story structure that is part of the existing restaurant at the ground floor. The two-story building on the west side of the property, with frontage on Bush Street, contains two dwelling units. A third residential unit is located on the second story of the corner building on the east side of the property above the existing restaurant. The one-story structure that exists between the two, two-story buildings houses the restaurant's kitchen. The restaurant use (presently dba "Baker and Banker") at the ground floor has existed for over 29 years.
3. **Surrounding Properties and Neighborhood.** The immediate neighborhood contains a varied mix of uses and architectural styles including smaller-scaled residential buildings (ranging from 1-5 units), large apartment buildings (18-54 units), office uses and educational and religious facilities. Adjacent and directly north of the subject lot on Octavia Street exists a two-story, single-family residence. Further north on Octavia Street and on the same block face as the subject building is a four-story, 12-unit apartment building and Stuart Hall High School at the corner of Octavia and Pine Streets. Adjacent and directly west of the subject lot on Bush Street is a tall two-story-over-basement, two-unit building. Further west along Bush Street, the block face is defined by a series of three-story row houses that step down with the slope of the street and contain multiple units (varying from 2 to 14 units). Directly across Bush Street from the subject lot is a professional office building on the southwest corner of Octavia and Bush Streets. On the northeast corner and southeast corner of the intersection are large apartment buildings, respectively containing a 17-story, 35-unit building and a 4-story, 54-unit building.

4. **Project Description.** The project sponsor proposes a Self-Service Specialty Food use in addition to the existing Full-Service Restaurant use. The proposed new use is for the incidental sales of baked goods and beverages, to the general public, from the existing restaurant kitchen along the Bush Street frontage between the hours of 9 a.m. and 5 p.m. daily. Minor alterations to the kitchen space are proposed which include replacement of the entry door and the addition of counter/display racks for baked goods. The existing full-service restaurant use and its hours of operation are to remain as authorized under previous approvals from the Planning Commission (Motion Nos. 8992, 11669, 14011 and 14889). The current authorization for the full-service restaurant, per Motion 14889, limits the seating capacity to 40 persons with hours open to the public as follows: Monday through Thursday from 5:30 p.m. to 10:30 pm, Friday from 5:30 p.m. to 11:00 p.m. and Saturday and Sunday from 9:00 a.m. to 4:00 p.m. and from 5:30 p.m. to 11:00 p.m.
5. **Public Comment.** The Department has received two comments with regard to potential double-parking along Bush Street during business hours, particularly during the morning commute hours from 7 a.m. to 9 a.m. To reduce the potential traffic impacts of double parking both members of the public have suggested that the project's hours of operation begin around 9 a.m. In response to public comment and as reflected in Exhibit A of this Motion, the Commission modified the hours of operation to start at 9 a.m., whereas the project sponsor originally requested to business hours starting at 7 a.m.
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 Nonconforming Uses.** Planning Code Section 186 allows for the continuance in R Districts of nonconforming uses of a limited commercial character that are more than a quarter-mile from the nearest Individual Area Neighborhood Commercial District and that complies with the use limitations specified for the first story and below of an NC-1 District.

The subject lot is located more than a quarter-mile from the nearest Individual Area Neighborhood Commercial District. The subject lot is roughly equidistant from the Polk Street NCD and the Upper Fillmore NCD. The use limitations for the subject lot are therefore regulated by the NC-1 District controls. Per the NC-1 District controls, Planning Code Section 710.69A allows Self-Service Specialty Food use at the ground floor with Conditional Use Authorization.
 - B. **Self-Service Specialty Food Use.** Planning Code Section 790.93 defines Self-Service Specialty Food use as a retail use whose primary function is to prepare and provide a ready-to-eat specialty food to a high volume of customers who carry out the food for off-premises consumption.

The proposed project would comply with the Self-Service Specialty Food use definition. Baked goods and beverages would be served out of the existing restaurant kitchen from a small counter area. No seating is proposed, so customers would have to carry out purchased goods.

- C. **Hours of Operation.** Planning Code Section 710.27 states that commercial hours of operation from 6:00 a.m. to 11:00 p.m. are allowed as-of-right.

The requested hours to operate the Self-Service Specialty Food use from 7 a.m. to 5 p.m. daily are permitted by the Planning Code. In response to public comment, the Commission modified the hours of operation to begin at 9 a.m.

- D. **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 occupied floor area of the existing restaurant is less than 5,000 sf. As the proposed self-service specialty food use is proposed within the existing kitchen space, the project does not require any off-street parking.

- E. **Signage.** Currently, the project does not propose a sign. Any proposed signage will be subject to the review and approval of the Planning Department pursuant to Article 6 of the Planning Code.

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 use would not increase the size of the existing commercial use as the project occurs within the existing restaurant kitchen. There would be an intensification of use at the site, as baked goods and beverages would be made available for purchase by the public at times when the restaurant is typically closed (with the exception of weekends). The intensification of the use is seen to be necessary and desirable, as the project is consistent with the objective to retain certain limited commercial uses that provide convenience goods and services on a retail basis that meet the frequent and recurring needs of neighborhood residents within a short distance of their homes.

- B. The proposed project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. There are no features of the project that could be detrimental to the health, safety or convenience of those residing or working the area, in that:

- i. Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

The size and shape of the existing buildings would remain unchanged by the project.

- 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 project would not adversely affect existing traffic and parking. The proposed Self-Service Specialty Food use operation is small in scale. The proposal would primarily serve walk-in trade that would cause minimal interference with nearby streets and properties.

- 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 Self-Service Specialty Food uses as outlined in Exhibit A. Conditions 9 and 10 specifically obligates the project sponsor to mitigate 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 proposal does not require any additional tenant improvements; however Condition 7 of Exhibit A specifically requires any proposed or future exterior treatments to be compatible with the residential character of the neighborhood and the RH-2 Zoning District.

- 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.

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

RESIDENCE ELEMENT: NEIGHBORHOOD ENVIRONMENT

Objectives and Policies

OBJECTIVE 12:

PROVIDE A QUALITY LIVING ENVIRONMENT

Policy 12.2:

Allow appropriate neighborhood-serving commercial activities in residential areas.

The proposed development will retain a desirable service to the neighborhood while appropriately including daytime operating hours to allow incidental sales of baked goods and beverages.

COMMERCE AND INDUSTRY ELEMENT:

Objectives and Policies

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.

Policy 2.3:

Maintain a favorable social and cultural climate in the city in order to enhance its attractiveness as a firm location.

The project would create storefront activity during daytime business hours (typically when the full-service restaurant is closed). The project's small scale would enliven the street and sidewalk with minimal detrimental impact to the residential character of the area. Sole corner commercial spaces (i.e. restaurants, corner markets, flower shops, etc.) that punctuate residential areas contribute to the unique character of San Francisco's neighborhood environment and are desirable to the cultural climate and reputation 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.

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.

While the subject property is not located within a Neighborhood Commercial District, the project retains a restaurant use and introduces an incidental Self-Service Specialty Food use that are both neighborhood serving. An independent, local entrepreneur is sponsoring the proposal.

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 maintaining a full-service restaurant and providing a Self-Service Specialty Food use in an area that is not over-concentrated with food service businesses. The business would be locally owned. 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.

Existing housing and neighborhood character are conserved as the project occurs within the existing building footprint and is operated out of the kitchen of the existing full-service restaurant.

- 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 size and use type proposed should not significantly increase commuter traffic. The Self-Service Specialty Food use is primarily neighborhood serving.

- 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.

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

The Project occurs within the existing building envelope and does not propose structural or seismic alterations. This proposal will not impact the property's ability to withstand an earthquake.

- G. That landmarks and historic buildings be preserved.

The subject building, constructed circa 1900, is an historic building appearing in "Here Today" (p. 283) and with a "2" rating on the Department's 1976 Architectural Survey. The historic building will be preserved and the proposed replacement exterior door at the kitchen has been selected to not create an adverse impact to the historical resource.

- 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. 2009.1010C** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans filed with the Application as received on February 24, 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. 18040. 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 March 4, 2010.

Linda D. Avery
Commission Secretary

AYES: Commissioners Miguel, Olague, Antonini, Borden, Lee, Moore, Sugaya

NAYS: (none)

ABSENT: (none)

ADOPTED: March 4, 2010

Exhibit A

Conditions of Approval

1. This authorization is for a Conditional Use Authorization under Planning Code Sections 186, 303 and 710.69A to allow a Self-Service Specialty Food use as part of an existing nonconforming use (Full-Service Restaurant dba "Baker and Banker) within an RH-2 (Residential, House, Two-Family) District and a 40-X Height and Bulk District, in general conformance with plans filed with the Application as received on February 24, 2010 and stamped "EXHIBIT B" included in the docket for **Case No. 2009.1010C**, reviewed and approved by the Commission on March 4, 2010.
2. Prior to the issuance of the Building Permit 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 premises (Assessor's Block 0663, Lot 005), which notice shall state that the change of use and proposed alterations has been authorized by and is subject to the conditions of this Motion. From time to time after the recordation of such notice, at the request of the Project Sponsor, the Zoning Administrator shall affirm in writing the extent to which the conditions of this Motion have been satisfied.
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 \$250 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 litter pickup and disposal, and washing or steam cleaning of the main entrance and abutting sidewalks at least once each week.
6. Signs and exterior lighting for the business shall be reviewed and approved by the Planning Department before they are installed.
7. The Project Sponsor shall maintain an attractive storefront that is residential in scale and character.
8. The Project shall appoint a Community Liaison Officer to address issues of concern to neighbors related to the operation of this Project. The Project Sponsor shall report the name and telephone number of this Officer to the Zoning Administrator and the neighborhood for reference. The Applicant will keep the above parties apprised should a different staff liaison be designated.

9. The project sponsor shall maintain appropriate odor control equipment to prevent any significant noxious or offensive kitchen odors from escaping the premises.
10. The project sponsor shall operate the proposed Self-Service Specialty Food use such that noise is kept at reasonable levels so as not to unduly disturb neighboring businesses and residents.
11. Refuse containers shall be provided both inside and outside the establishment for use by patrons of the Self-Service Specialty Food use. The operator of the use shall be responsible for maintaining the sidewalk within a one-block radius of the site free of paper or litter generated by the restaurant.
12. An enclosed garbage area shall be provided within the establishment. All garbage containers shall be kept within the building until pick-up by the disposal company.
13. The hours of operation, open to the general public, for the Self-Service Specialty Food use shall be limited to 9 a.m. to 5 p.m. daily.
14. The authorization and right vested by virtue of this action shall be deemed void and canceled if, within 3 years of the date of this Motion, a site permit or building permit for the Project has not been secured by Project Sponsor. 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.