



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- Inclusionary Housing (Sec. 315)
- Jobs Housing Linkage Program (Sec. 313)
- Downtown Park Fee (Sec. 139)
- First Source Hiring (Admin. Code)
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Planning Commission Motion 18050

HEARING DATE: MARCH 25, 2010

Date: March 18, 2010
Case No.: **2009.1131C**
Project Address: **325 KEARNY STREET**
Zoning: C-3-O Downtown, Office, District
 80-130-F Height and Bulk District
Block/Lot: 0270/003
Project Sponsor: Jie Qin Zhou
 Queens Health Clinic
 686 Post Street #53
 San Francisco, CA 94109
Staff Contact: Rick Crawford – (415) 558-6358
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ADOPTING FINDINGS RELATING TO THE APPROVAL OF A CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303 AND 218.8 OF THE PLANNING CODE TO ALLOW A MASSAGE ESTABLISHMENT (DBA QUEENS HEALTH CLINIC) WITHIN THE C-3-O, DOWNTOWN, OFFICE DISTRICT AND A 80-130-F HEIGHT AND BULK DISTRICT.

PREAMBLE

On December 9, 2009, Jie Qin Zhou (Project Sponsor) filed an application (hereinafter “Application”) with the Department for Conditional Use Authorization under Planning Code Sections 303 and 218.8 to allow a massage establishment to operate within the existing personal service establishment (dba Queens Health Clinic), located in the C-3-O Downtown, Office District and 80-130-F Height and Bulk District.

On March 25, 2010, the Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting on Application No. 2009.1131C.

The Project is exempt from the California Environmental Quality Act (“CEQA”) as a Class 1 (Existing Facilities) categorical exemption. 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 Project Sponsor, Department staff, and other interested parties.

MOVED, that the Commission hereby approves the Conditional Use requested in Application No. 2009.1131C, based on the following findings:

FINDINGS

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

1. The above recitals are accurate and constitute findings of this Commission.
2. **Site Description and Present Use.** The Project is located on the west side of Kearny Street, between Bush and Pine Streets; Lot 003 in Assessor's Block 0270, within the within the C-3-O Downtown Office District and within the 80-130-F Height and Bulk District. The subject property is developed with a three-story commercial building, built circa 1907, with a restaurant and a vacant commercial space on the ground floor and an acupuncture and herbal medicine clinic use with accessory massage (dba Magical Health Center) on the second and third floors. The project business will replace the existing clinic.
3. **Surrounding Properties and Neighborhood.** The subject block features a mix of generally three story buildings with ground floor food service uses and upper story offices. The larger surrounding area feature taller office and bank buildings. Uses in buildings to the west become more retail in character as one moves closer to the Union Square retail district.
4. **Project Description.** The project would establish two 300 square foot massage/acupressure treatment rooms within an acupuncture and herbal medicine clinic (dba Queen's Health Center) on the second and third floor of the building. The massage treatment rooms will be on the third floor. The proposed business will replace an existing clinic offering similar acupuncture and herbal medicine services with accessory massage (dba Magical Health Center). The existing use was developed prior to the adoption of the present conditional use requirements and is considered a legal non-conforming use. The proposal does not include any exterior alterations to the building.

The proposed use is an independent use, which has been encouraged throughout San Francisco and is not a Formula Retail use.

5. **Public Comment.** The Department has not received any comment from the public regarding this project.
6. **Planning Code Compliance:** The Commission finds that the Project is consistent with the following relevant provisions of the Planning Code:

A. **Planning Code Section 218.8** allows massage establishments with Conditional Use Authorization in the C-3-O, Downtown Office District and requires that the Planning Commission shall make findings in addition to those required under Planning Code Section 303 (c), based on the following criteria:

1. Whether the applicant has obtained, and maintains in good standing, a permit for a Massage Establishment from the Department of Public Health pursuant to Section 1908 of the San Francisco Health Code.

Criteria Met

The existing clinic maintains such a permit and the applicant has filed for a massage permit with the Department of Public Health. Condition of Approvals will ensure that the Applicant maintains the Massage Establishment Permit in good standing with the Department of Public Health. Failure to do so may result in this Conditional Use Authorization being revoked by the Planning Commission.

2. Whether the use's façade is transparent and open to the public. Permanent transparency and openness are preferable. Elements that lend openness and transparency to a façade include:
 - i. An active street frontage of at least 25 feet in length where 75% of that length is devoted to entrances to commercially used space or windows at the pedestrian eye-level.

Criteria Met:

The clinic is located on the second and third floors of the building. The ground floor of the building has 36 feet of frontage on Kearny Street over 75% of which is committed to commercial entrances and windows.

- ii. Windows that use clear, un-tinted glass, except for decorative or architectural accent.

Criteria Met:

The subject tenant space has clear, un-tinted glass along the entire frontage.

- iii. Any decorative railings or decorative grille work other than wire mesh which is placed in front of or behind such windows should be at least 75 percent open to perpendicular view and no more than six feet in height above grade.

Criteria Met.

The commercial frontage is predominantly dedicated to large picture windows. There are no bars or grills in front of or behind such windows.

3. Whether the use includes pedestrian-oriented lighting. Well lit establishments where lighting is installed and maintained along all public rights-of-way adjacent to the

building with the massage use during the post-sunset hours of the massage use are encouraged.

Criteria Met

The ground floor uses of the building provide adequate pedestrian oriented lighting, in addition the subject commercial space includes pedestrian oriented lighting at the entrance and on the stairway to the clinic.

4. Whether the use is reasonably oriented to facilitate public access. Barriers that make entrance to the use more difficult than to an average service-provider in the area are to be strongly discouraged. These include (but are not limited to) foyers equipped with double doors that can be opened only from the inside and security cameras.

Criteria Met

The proposed massage use will be located on the third floor of the building. Access to the massage rooms will be open and unobstructed.

7. **Planning Code Section 303** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the Project complies 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 and desirable, and compatible with the neighborhood and the community.

The Project is necessary and desirable because it will provide a massage use for office workers and visitors of area. The massage establishment will be in addition to the existing acupuncture and herbal medicine clinic, and will not result in the displacement of any neighborhood serving use. This will compliment the mix of goods and services currently available in the area and contribute to the economic vitality of 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;

There are no proposed alterations to exterior of the existing building.

- 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 proposed use will occupy an existing commercial space currently occupied by the same type of business. The present use has no impact on parking and traffic. The subject property is well served by public transit.

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

The proposal will not create any offensive emissions due to the nature of the use.

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

The Project is not expected to create a constant demand for on-street loading as there are minimal supplies delivered in association with a massage establishment. The property is fully covered by the existing building and no exterior changes are proposed. Any new signage will comply with the Planning Code.

- 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 detailed below.

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

The Project is not located within a Neighborhood Commercial District.

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

COMMERCE & INDUSTRY

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 addition of a massage establishment within the existing personal service establishment will provide desirable services and employment opportunities to individuals who live in, work in, or visit the neighborhood. The Project will provide net benefits to the community by providing full service acupuncture and eastern medicine clinic in the neighborhood.

OBJECTIVE 2:

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

Policy 2.1:

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

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 will be located within an existing commercial tenant space and will compliment the diverse economic base of the City.

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 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 Project represents a new business in an existing building and, while the use replaces a similar clinic it will provide additional employment opportunities for State licensed massage professionals.

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 complies 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 will not displace any neighborhood-serving retail use but will replace an existing business performing the similar services.

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

No housing will be displaced as no housing exists in the building or in the immediate area. The Project replaces a similar use in the same space in the building.

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

The Project will not affect the supply of affordable housing in the City. No housing will be removed as part of this project.

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

The site is on Kearny Street, which is well-served by public transit. The current clinic in the space does not impact parking or traffic and the replacement of that use with a similar use can be expected to have a similar lack of impacts.

- 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 replace one service-sector use with a similar use. The project does displace any industrial use and does not include any office uses.

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

The Project does not include any structural work to the building, and thus will not impact the structure's ability to withstand an earthquake.

- G. That landmarks and historic buildings be preserved.

The subject building is classified as a Category IV building in the Kearny-Market-Mason-Sutter Historic District. As a Category IV building is considered contributory to the District. In this instance, the subject building is also appears eligible for listing on the National Register of Historic Places as an individual building through survey rating. The project will not affect the potential historic resource as there are no exterior alterations proposed for the project.

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

The Project will have no negative impacts on existing parks or open spaces, as it does not involve any expansion of the existing tenant space.

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. 2009.1131C** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans filed with the Application as received on December 9, 2009, 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. 18050. 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 25, 2010.

Linda D. Avery
Commission Secretary

AYES: Antonini, Bordon, Lee, Miguel, Moore, Olague, Sugaya

NAYS: None

ABSENT: None

ADOPTED: March 25, 2010

Exhibit A

Conditions of Approval

1. This authorization is for a Conditional Use Authorization under Planning Code Sections 303, and 218.8 to allow a massage establishment to operate within an existing personal service (dba Queens Health Clinic Job) at 325 Kearny Street within the C-3-O, Downtown Office District and 80-130-F Height and Bulk District, in general conformance with plans filed with the Application as received on December 9, 2009, and stamped "EXHIBIT B" included in the docket for **Case No. 2009.1131C**, reviewed and approved by the Commission on March 25, 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 0270, Lot 003), which notice shall state that a change of use 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. The Planning Commission may revoke this Conditional Use Authorization if the Department of Public Health revokes the health permit for massage.
5. 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).
6. 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, necessary permits for the Project have 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.
7. All signage and exterior lighting for the business shall be reviewed and approved by the Planning Department before any new installations or modifications are made to the existing signage or lighting. The existing entrance lighting must remain on from dusk until the business is closed.
8. The entry to the massage establishment shall remain directly visible from the public right-of-way. If any additional doors are required under the Building Code for emergency egress purposes, such door shall be labeled "for emergency use only" and shall have an audible alarm that will go off when the door is opened.

9. All interior alterations shall be reviewed by the Planning Department to verify compliance with these conditions.
10. No locks shall be allowed on any interior door of the business except that a lock for privacy may be permitted on the bathroom door.
11. The Project Sponsor shall maintain an attractive storefront no tinting or reflective coating is permitted on any glazing visible from the public right-of-way.
12. Any blinds or curtains located behind the storefront windows must be kept open during business hours to allow for visibility into the tenant space from the street. No obstructions shall be located in front of any of the storefront windows that would prevent such visibility.
13. The front door to the business must be open during business hours. The use of buzzers or a security camera system is not permitted.
14. The massage establishment shall comply with the hours of operation outlined in Ordinance 140-09, approved on July 2, 2009. This Ordinance amended the Health Code to limit the hours of permitted operation for massage establishments from 7:00 a.m. to 10:00 p.m.
15. All persons engaged in performing massage shall be licensed for that purpose by the State of California and the licenses shall be prominently displayed on walls of the business.
16. **Monitoring Conditions of Approval:** The proposed use of the subject property as a massage establishment may be subject to inspections by the Planning Department in order to monitor the conditions of approval (9.-15.) listed above. Failure to comply with the conditions listed above may result in the initiation of enforcement action per Planning Code Section 176 and the assessment of administrative penalty fees of up to \$250 a day for every day the business does not adhere the mandated conditions. In addition, the Planning Department will seek to recover all costs associated with bringing the use into compliance per Planning Code Section 305.
17. **Conditional Use Abatement:** The Planning Commission may consider the possible revocation of a conditional use or the possible modification of or placement of additional conditions on a conditional use when the Planning Commission determines, based upon substantial evidence, that the applicant for the conditional use had submitted false or misleading information in the application process that could have reasonably had a substantial effect upon the decision of the Commission or the conditional use is not in compliance with a condition of approval, is in violation of law if the violation is within the subject matter jurisdiction of the Planning Commission or operates in such a manner as to create hazardous, noxious or offensive conditions enumerated in Section 202(c) if the violation is within the subject matter jurisdiction of the Planning Commission and these circumstances have not been abated through administrative action of the Director, the Zoning Administrator or other City authority. Such consideration shall be the subject of a public hearing before the Planning Commission but no fee shall be required of the applicant or the subject conditional use operator.

Motion No. 18050
Hearing Date: March 25, 2010

CASE NO 2009.1131C
325 Kearny Street

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