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Planning Commission Motion No. 18081

HEARING DATE: MAY 13, 2010

Date: May 6th, 2010
Case No.: **2009.0199C**
Project Address: **503 33rd AVENUE (AKA 6901 GEARY BOULEVARD)**
Zoning: NC-1 (Neighborhood Commercial, Cluster)
40-X Height and Bulk District
Block/Lot: 1511/001
Project Sponsor: Sareth Yip
503 33rd Avenue
San Francisco, CA 94121
Staff Contact: Sharon Lai – (415) 575-9087
sharon.w.lai@sfgov.org

ADOPTING FINDINGS RELATING TO CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303, 710.69A AND 790.93 OF THE PLANNING CODE TO ALLOW A SELF-SERVICE SPECIALTY FOOD ESTABLISHMENT (D.B.A. HAPPY YOGURT) TO REPLACE A RETAIL GROCERY STORE WITHIN THE NC-1 (CLUSTER, NEIGHBORHOOD COMMERCIAL) DISTRICT AND A 40-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On March 17, 2009 Sareth Yip (Project Sponsor) filed an application with the Planning Department (hereinafter “Department”) for Conditional Use Authorization under Planning Code Section 710.69A, 790.93, and 303 of the Planning Code to legalize a self-service specialty food establishment (d.b.a. Happy Yogurt) to replace a retail grocery store, within the NC-1 (Cluster, Neighborhood Commercial) District and a 40-X Height and Bulk District.

On May 13, 2010, the Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2009.0199C.

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 as described in

the determination contained in the Planning Department files for this project. 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. 2009.0199C, 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 is located on the southwest corner of Geary Boulevard and 33rd Avenue, Block 1511, Lot 001. The property is located within the NC-1 (Neighborhood Commercial, Cluster) District with 40-X height and bulk district. The subject property is a corner lot, with approximately 100 feet of frontage on 33rd Avenue and 120 feet of frontage on Geary Boulevard. The subject lot is 12,000 square feet in size and is occupied by a four-story mixed-use building built in 2006. The subject property is one of six commercial tenant spaces located on the ground floor of the mixed-use building. The other tenant spaces are occupied by a small-self service restaurant (dba Quickly's); a full-service restaurant (dba Pizza City); a dry cleaning store (dba Pacific View Cleaners); a retail sales and services establishment (dba Milan Station Computer Service), and a self-service restaurant (dba Tasty Delights). The existing Happy Yogurt, self-service specialty retail establishment has been in operation at the Project Site since October 2008.
3. **Surrounding Properties and Neighborhood.** The Project Site is located at the intersection of Geary Boulevard and 33rd Avenue within the Outer Richmond Neighborhood. The Project Site is located in an NC-1 District with a variety of neighborhood-serving uses. The surrounding development consists of multi-family residential buildings and mixed-use buildings featuring residential uses above ground-floor commercial establishments within this portion of the NC-1 Zoning District. The scale of development in the area consists primarily of two-to-four story structures. Generally, the commercial establishments characterizing this portion of Geary Boulevard include a mix of cafes, full-service restaurants, personal and medical service establishments, and specialty stores. On 33rd and 34th Avenues running north and south of the project site, a few apartment buildings and commercial buildings exist among predominantly two-to-four story residential buildings within the RH-2 (House, Two-Family) Zoning District. There are also a few other commercial establishments located within a one-block radius of the project site along Geary Boulevard between 32nd and 35th Avenues and approximately two blocks south of the project along Balboa Street between 32nd and 39th Avenues within an NC-2

(Small-Scale Neighborhood Commercial) Zoning District. George Washington High School (600 - 32nd Avenue) is located approximately 1-2 blocks from the project site.

4. **Project Description.** The applicant proposes to legalize an approximately 500 square foot self-service specialty food establishment (dba Happy Yogurt), to replace a retail grocery store use with accessory food preparation that was approved in 2006. In 2008, the subject commercial space was operating as a continuation of the retail grocery store as Sandwich Heaven and subsequently without authorization as Tansy's Café as a self-service restaurant under the retail grocery store approval. The space was then vacated for several months until the current tenant, Happy Yogurt, began operation in October 2008. During the process of applying for the Department of Public Health approval, the Planning Department notified the sponsor of the illegal use and advised that the change of use would require a Conditional Use authorization. The project sponsor submitted the Conditional Use application in early 2009 and has been working towards obtaining all proper permits and entitlements.

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

The operation employs of 1 full-time and 3 part-time employees. The business hours are from 12p.m. to 9p.m. daily. The self-service specialty food yogurt shop serves self-service frozen yogurt with a variety of toppings. Customers dispense their own yogurt and pay for the food prior to consumption.

5. **Public Comment.** As of May 6th, 2010, the Department has received 1 letter in opposition to the project.
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. **Self-service Specialty Food.** Planning Code Section 710.69A states that a Conditional Use Authorization is required for a self-service specialty food establishment, as defined by Planning Code Section 790.93:
 - (a) A retail use whose primary function is to prepare and provide ready-to-eat specialty foods to a high volume of customers who carry out the food for off-premises consumption. Such use exhibits each of the following characteristics: (1) Contains a service counter designed specifically for the sale and distribution of food that has been prepared on site; (2) Food is paid for prior to consumption; (3) Typically open for retail sales on weekdays during daytime hours; and (4) May contain no more than 10 seats including sidewalk seating. It often includes

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 each of the above characteristics, but it is distinct from small a self-service restaurant use as defined in Section 790.91, a large fast-food restaurant use as defined in Section 790.90 or a retail coffee store as defined in 790.102(n). It does not include general or specialty grocery stores with accessory take-out food activity as described in Section 703.2(b)(1)(C) or retail uses which sell prepackaged or bulk ready-to-eat-foods with no on-site food preparation area.
- (c) It shall not provide on-site beer and/or wine sales for consumption on the premises, but may provide 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).

Happy Yogurt meets the definition of a self-service specialty food establishment in that, ready-to-eat frozen yogurt is served at high volumes for consumption off the premises and customers pay prior to consumption of the yogurt. The establishment is proposing 4 seats and no tables, which is less than the maximum allowable per Code Section 790.93.

- B. **Formula Retail.** Planning Code Section 703.3 states that a formula retail use is defined as sales activity or retail sales establishment which, along with eleven or more other retail sales establishments located in the United States, maintains two or more of the following features: a standardized array of merchandise, a standardized facade, a standardized decor and color scheme, a uniform apparel, standardized signage, a trademark or a servicemark.

Happy Yogurt is the third retail location in operation in the United States and therefore does not constitute a formula retail use.

- C. **Hours of Operation.** Planning Code Section 710.27 states that a Conditional Use Authorization is required for maintaining hours of operation from 11p.m. to 2 a.m, as defined by Planning Code Section 790.48.

The current hours of operation for Happy Yogurt are from noon to 9p.m. daily. These hours of operation are permitted by Planning Code Section 710.27 and are consistent with the hours of the surrounding businesses. The adjacent small self-service restaurant, Quickly, was approved to operate from 11a.m. to 11p.m. daily.

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

The subject commercial space contains approximately 500 square feet of occupied floor area and thus does not require any off-street parking.

- E. **Street Frontage in Neighborhood Commercial Districts.** Section 145.1 of the Planning Code requires that NC Districts containing specific uses, 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 13 feet of frontage on 33rd Avenue with approximately 10 feet, 6 inches devoted to both the establishment's entrance and window space. The windows are clear and unobstructed. There are no changes proposed to the commercial frontage.

- F. **Signage.** The existing illegally installed signage is subject to Planning Department review under a future separate building permit.

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

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

The size of the use is in keeping with other storefronts on the block face. The self-service specialty food use does not impact traffic or parking in the District because it is not a "destination" establishment. This use compliments the mix of goods and services currently available in the district and contributes to the economic vitality of the neighborhood since it replaces a vacant storefront.

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

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

The height and bulk of the existing building will remain the same and the Project will not alter the existing appearance or character of the project vicinity. No further work is proposed for the commercial property.

- 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 500 square-foot self-service specialty food use. The use is designed to meet the needs of the immediate neighborhood and does not generate significant amounts of vehicular trips from the immediate neighborhood or citywide.

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

The use is subject to the standard conditions of approval for self-service specialty food use and outlined in Exhibit A. Conditions 4 and 5 specifically obligate the project sponsor to mitigate odor and noise generated by the self-service specialty food use.

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

The self-service specialty food use does not require any additional tenant improvements. The Planning Department shall retroactively review all lighting and signage for the business in accordance with Condition 6 of Exhibit A.

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

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

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

The project is consistent with the stated purpose of NC-1 Districts in that the use is located at the ground floor, and provides a compatible convenience service for the immediately surrounding neighborhoods during daytime hours.

- 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 project provides desirable goods and services to the neighborhood and provides resident employment opportunities to those in the community. The legalization of this existing establishment does not result in undesirable consequences. Further, the Project Site is located within a Neighborhood Commercial District and is thus 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 Project will retain an existing commercial activity that enhances the diverse economic base of the City.

OBJECTIVE 6:

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

Policy 3:

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

Approval of the Project would be consistent with the mixed commercial-residential character of this portion of the NC-1 Zoning District. The Project would not adversely impact any affordable housing resources in the neighborhood.

Policy 4:

Encourage the location of neighborhood shopping areas throughout the city so that essential retail goods and personal services are accessible to all residents.

The Project will continue to provide retail goods and services and is accessible to all residents in this portion of the NC-1 Zoning District.

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.

No commercial tenant would be displaced and the project would not prevent the district from achieving optimal diversity in the types of goods and services available 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.

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.

Although Happy Yogurt proposes to sell food items, the use is categorized as a self-service specialty food use and is therefore not considered an eating or drinking establishment under the General Plan Policy. Hence, it is not subject to and does not contribute to the concentration of food-service establishments. The Commerce and Industry Element of the General Plan contains Guidelines for Specific Uses. For eating and drinking establishments, the Guidelines state, "the balance of commercial uses may be threatened when eating and drinking establishments occupy more than 20% of the total occupied commercial frontage." Planning staff has performed a survey of the subject NC-1 (Neighborhood Commercial Cluster) District

and found that approximately 46.5% of the existing 1,145 feet of commercial frontage, excluding the subject commercial space, is occupied by eating and drinking establishments.

Policy 6.2:

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

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

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

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

The proposal enhances the district by providing a self-service specialty food use in the form of a frozen yogurt shop. The business adds 4 more 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 residential units in the surrounding neighborhood are not adversely affected by this use. The closing time of 9 p.m. is consistent with other neighborhood commercial activities in the area.

- 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 at the corner of 33rd Avenue and Geary Boulevard and is well served by transit. The employees commute by transit thereby mitigating impacts on street parking. There are six available MUNI bus routes within a ¼ mile radius from the site, including: 1AX; 38AX; 38L; 1; 18; and 38.

- 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 does not displace any service or industry establishment. The project does not affect industrial or service sector uses or related employment opportunities. Ownership of industrial or service sector businesses are not affected by this project.

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

There are no changes proposed for the existing establishment. The subject building was constructed in 2006, and the project does not affect the structural and seismic safety requirements of the City Building Code. This proposal does 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. This mixed-use building was constructed in 2006.

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

The project has no 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. 2009.01996C** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans filed with the Application as received on March 17, 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. 18081. 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 May 13, 2010.

Linda D. Avery
Commission Secretary

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

NAYS:

ABSENT:

ADOPTED: May 13, 2010

Exhibit A

Conditions of Approval

1. This authorization is for a Conditional Use Authorization under Planning Code Section 710.69A, 790.93, and 303 of the Planning Code to legalize a self-service specialty food use (d.b.a. Happy Yogurt) at 503 33rd Avenue (aka 6901 Geary Boulevard) within the NC-1 (Cluster, Neighborhood Commercial) District and a 40-X Height and Bulk District, in general conformance with plans filed with the Application as received on March 17, 2009, and stamped "EXHIBIT B" included in the docket for **Case No. 2009.0199C**, reviewed and approved by the Commission on May 13, 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 1511, Lot 001), which notice shall state that construction 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. All illegally installed signs and exterior lighting for the business shall seek retroactive reviewed and approved from the Planning Department.
7. The Project Sponsor shall maintain an attractive storefront providing visibility of the self-service specialty food establishment's interior through the storefront windows.
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 establishment 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 establishment. 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 establishment.
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 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.