



SAN FRANCISCO PLANNING DEPARTMENT

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Planning Commission Motion No. 18128

HEARING DATE: MAY 27, 2010

Date: May 20, 2010
Case No.: **2009.1049 C**
Project Address: **3400 MISSION STREET**
Zoning: NC-3 (Moderate Scale Neighborhood Commercial) District
RH-2 (Residential, House Two Family) District
40-X Height and Bulk District
Block/Lot: 6660/060
Project Sponsor: Ahmad Mohazab
2749 19th Street
San Francisco, CA 94110
Staff Contact: Diego R Sánchez – (415) 575-9082
diego.sanchez@sfgov.org

ADOPTING FINDINGS RELATING TO CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303 AND 703.4 OF THE PLANNING CODE TO ALLOW A FORMULA RETAIL USE (DBA 7-ELEVEN) AT AN EXISTING GASOLINE SERVICE STATION WITHIN THE NC-3 (MODERATE SCALE NEIGHBORHOOD COMMERCIAL) DISTRICT AND THE RH-2 (RESIDENTIAL, HOUSE TWO FAMILY) DISTRICT AND A 40-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On November 5, 2009 Ahmad Mohazab (Project Sponsor) filed an application with the Planning Department (hereinafter "Department") for Conditional Use Authorization under Planning Code Section 703.4 of the Planning Code to allow a formula retail establishment (dba 7-Eleven) within the NC-3 (Moderate Scale Neighborhood Commercial) District and a 40-X Height and Bulk District.

On May 27, 2010, the Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2009.1049C.

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. 2009.1049C, 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 at the southwestern corner of Mission and 30th Streets, Lot 060 in Assessor's Block 6660. The property is located within the NC-3 (Moderate Scale Neighborhood Commercial) District and an RH-2 (Residential, House Two Family) District with 40-X height and bulk district. On the property there is an existing 76 gasoline service station and a general grocery store, as defined in Planning Code Section 790.102. The general grocery store is not identified as a formula retail use and is an independent establishment. As a corner lot, the subject property fronts Mission Street along the east for approximately 110 feet and 30th Street along the north for approximately 105 feet.
3. **Surrounding Properties and Neighborhood.** The project site is located at the southern end of the NC-3 District that stretches from Cesar Chavez, to the north, to Randall Street, to the south. Immediately to the north of the site, across 30th Street, is a Walgreens drug store. To the west are residential properties forming part of the Glen Park/San Jose Guerrero neighborhood. To the south of the subject property are two and three story buildings that feature ground floor commercial storefronts with residential uses at the floors above. To the east, on the opposite side of Mission Street, is the same pattern of two to three story buildings with ground floor commercial uses and residences above. Zoning Districts surrounding the property include the RH-2 (Residential, House, Two Family) and the NC-3 (Moderate Scale Neighborhood Commercial) District.
4. **Project Description.** The applicant proposes to establish a formula retail use, dba 7-Eleven, in the location of an existing general grocery store on a site where a 76 gasoline service station is located. The applicant seeks this change to an identified formula retail establishment to realize the economic advantages of the branding name, the buying power and operational techniques that being a franchise of a major chain store provides. Beyond changes to signage and the addition of lighting to an existing exterior area, the project is also seeking to add a space 144 square feet in area to allow for a new office for the management of the property. With the proposed addition the structure would be approximately 1,675 square feet. There will be no other changes to the existing structure as viewed from the public right of way.

5. **Public Comment.** The Department has not received any comments regarding this case as of the date of this document.
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. **Formula Retail Use.** Planning Code Section 703.4 allows the establishment of formula retail uses within any Neighborhood Commercial District by Conditional Use authorization.

The Project Sponsor intends to establish a retail use (dba 7-Eleven) identified as formula retail in the NC-3 (Moderate Scale Neighborhood Commercial) District and is seeking Conditional Use authorization.

- B. **Neighborhood Commercial Permit Review.** Planning Code Section 312 requires neighborhood notification of changes in use to a formula retail, as defined by Planning Code Section 703.3 for lots within the Neighborhood Commercial Districts as well as for expansions of existing commercial structures.

The Project Sponsor is proposing the establishment within the NC-3 (Moderate Scale Neighborhood Commercial) District of a retail use (dba 7-Eleven) that is identified as Formula Retail as well as a 144 square foot building expansion to allow for an office area for the management of the property. Section 312 notification was conducted in conjunction with the Conditional Use authorization notification.

- C. **Parking.** Planning Section 151 of the Planning Code requires off-street parking for every 500 square-feet of occupied floor area, where the occupied floor area exceeds 5,000 square-feet.

The proposed project contains less than 5,000 square feet of occupied floor area and therefore does not require any off-street parking. Furthermore, it is a pre-existing retail use and parking requirements remain constant.

- D. **Signage.** Planning Code Section 607.1 regulates the dimensions of business and other signs within the NC-3 (Moderate Scale Neighborhood Commercial) District.

To date there have been no submittals for change in signage. However, when the change in signage is submitted, it will be reviewed and altered so as to meet the dimensional requires for business signs under Planning Code Section 607.1.

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, its size and intensity will not differ from the existing use. The proposed project will provide goods and services at the same levels of desirability as does the existing retail convenience store. The proposed conversion to a formula retail use is compatible with the neighborhood as well. While the size of the structure will increase by 144 square feet the addition is relatively minimal and will be utilized to help operate and maintain the property.

- 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 virtually unchanged, as the only alteration is the addition of a 144 square foot office and as such will not create any detrimental impact to the health, safety convenience or general welfare to those in the vicinity.

- 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 is designed to meet the needs of the immediate neighborhood and should not generate significant amounts of vehicular trips from the immediate neighborhood or elsewhere as it is anticipated that patrons of the proposed formula retail convenience store will most likely arrive at the property for gasoline or would be local residents.

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

The nature of use, a retail convenience store, and its past history indicate that there will be no noxious or offensive emissions from the conversion to a formula retail establishment.

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

The proposed formula retail establishment will submit any changes to signage and addition of lights to the Planning Department for review to ensure no detrimental changes occur.

- 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 NC-3 Districts in that the intended use is located at the ground floor and will provide convenience goods to the immediate neighborhood.

8. Planning Code Section 303(i) establishes the following criteria for the Planning Commission to consider when reviewing Formula Retail Use applications for Conditional Use authorization.

- A. The existing concentrations of formula retail uses within the neighborhood commercial district.

Within the subject NC-3 District there are approximately seven uses identified as formula retail. These uses include Krageen, Burger King, Metro PCS, Safeway, Big Lots, Pizza Hut and Walgreens.

- B. The availability of other similar retail uses within the neighborhood commercial district.

There are approximately six other retail convenience store uses providing similar goods such as beverages, pre-packaged foods and alcohol. One of these uses is a convenience store at another automotive gasoline station. Many of the other retail convenience store uses also sell alcohol. The proposed project will not sell alcohol.

- C. The compatibility of proposed formula retail use within the existing architectural and aesthetic character of the neighborhood commercial district.

The proposed project will utilize an existing commercial space currently occupied by another retail convenience store use. The modifications of business signage and the addition of a small office space will be the only change visible from the public right of way. The architecture of the existing building would not be altered in a manner that would be incompatible with the character of the greater neighborhood.

- D. The existing retail vacancy rates within the neighborhood commercial district.

Within the approximately 2/3 mile long NC-3 District there are approximately 16 lots with vacant commercial storefronts. The proposed project intends to utilize a currently occupied commercial storefront, whose owner will also own the proposed project, and would not affect available retail space for other commercial operators.

- E. The existing mix of Citywide serving retail uses and neighborhood-serving retail uses within the neighborhood commercial district.

The proposed project will not disturb the existing mix of Citywide serving retail uses and neighborhood serving retail uses within the NC-3 District as the project will utilize a commercial space currently occupied by another retail convenience store.

9. **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 development will provide desirable goods and services to the neighborhood in the form of beverages, pre-packaged food and other convenience goods. The operation of the establishment will be required to abide by minimum performance standards common to all similar commercial operations in San Francisco. Being located along the NC-3 District and at corner, the proposed project is located in an appropriate setting.

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 and will enhance the diverse economic base 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.

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.

10. **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 utilize a commercial storefront with a retail use that serves the neighborhood and that is a source of 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 an existing commercial structure for its operation and does not propose any significant expansion to either the building envelope or building façade.

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.

It is not anticipated that any additional burden to the transit system will result from the conversion to a formula retail establishment at this site.

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 service or industry establishments.

- 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 current city codes to achieve the proper preparedness in the event of an earthquake.

- G. That landmarks and historic buildings be preserved.

There are no landmarks or historic buildings on the site.

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

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

11. 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.
12. 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. 2009.1049C** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans filed with the Application as received on November 5, 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. 18128. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on July 1, 2010.

Linda D. Avery
Commission Secretary

AYES: Commissioners Antonini, Borden, Miguel and Sugaya

NAYS: Commissioners Moore and Olague

ABSENT: Commissioner Lee

ADOPTED: July 1, 2010

Exhibit A

Conditions of Approval

1. This authorization is for a Conditional Use Authorization under Planning Code Section 703.4 of the Planning Code to allow a formula retail establishment (dba 7-Eleven) within the NC-3 (Moderate Scale Neighborhood Commercial) District and a 40-X Height and Bulk District, in general conformance with plans filed with the Application as received on November 5, 2009 and stamped "EXHIBIT B" included in the docket for Case No. 2009.1049C, reviewed and approved by the Commission on May 27, 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 (Lot 060 in Assessor's Block 6660), which notice shall state that construction has been authorized by and is subject to the conditions of this Motion.
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 providing visibility of the establishment 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 odors from escaping the premises.

10. Refuse containers shall be provided both inside and outside the establishment for use by patrons of the retail convenience store.
11. The hours of operation for the convenience store shall be limited to 5 a.m. to 1 a.m. daily.
12. 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.