



SAN FRANCISCO PLANNING DEPARTMENT

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| <input type="checkbox"/> Inclusionary Housing (Sec. 315) | <input type="checkbox"/> First Source Hiring (Admin. Code) |
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| <input type="checkbox"/> Downtown Park Fee (Sec. 139) | <input type="checkbox"/> Other |

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Planning Commission Motion No. 18147

HEARING DATE: JULY 15, 2010

Date: July 8, 2010
Case No.: **2009.1062C**
Project Address: **1097 HOWARD STREET UNIT #209**
Zoning: MUG (Mixed Use, General)
65-X Height and Bulk District
SUD: SOMA Youth and Family
Block/Lot: 3731/140
Project Sponsor: Christy Bergman
1097 Howard Street #209
San Francisco, CA 94103
Staff Contact: Diego R Sánchez – (415) 575-9082
diego.sanchez@sfgov.org
Recommendation: **Approval with Conditions**

ADOPTING FINDINGS RELATING TO CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303, 249.40A AND 840.47 OF THE PLANNING CODE TO ALLOW A BAR (DBA THE SECRET WINE SHOP) WITHIN THE MUG (MIXED USE, GENERAL) DISTRICT, THE SOMA YOUTH AND FAMILY SPECIAL USE DISTRICT AND A 65-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On November 12, 2009 Christy Bergman (Project Sponsor) filed an application with the Planning Department (hereinafter "Department") for Conditional Use Authorization under Planning Code Section 249.40A and 840.47.24 of the Planning Code to allow a bar (dba The Secret Wine Shop) within the MUG (Mixed Use, General) District, the SOMA Youth and Family Special Use District and a 65-X Height and Bulk District.

On July 15, 2010, the Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2009.1062C.

The Project was determined by the Department to be Categorically Exempt from the California Environmental Quality Act ("CEQA") as a Class 1(a) 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. 2009.1062C, 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 second floor of a three story condominium building at the southeast corner of 7th and Howard Streets and is currently the primary residence of the project sponsor. The building permit application for the conversion of this building from industrial and office uses to live/work units was submitted in 1995 and received approval for occupancy from the Department of Building Inspection in 1999. The Department of Building Inspection granted the Certification of Final Completion for the unit in which the project is proposed, unit #209, in 2002.
3. **Surrounding Properties and Neighborhood.** The proposal is located at the intersection of 7th and Howard Streets within the South of Market Area neighborhood and the Mixed Use, General, Zoning District. The area is characterized by mixed used developments, with retail/commercial uses on the ground floor and residential uses above. There are also many single and two story buildings whose main use is for commercial or light industrial purposes. To the south of the project, along Moss alley, there are numerous multi-storied buildings wholly residential in nature. Properties in the immediate vicinity of the proposal are zoned SLR (Service/Light Industrial), MUG (Mixed Use, General) and RED (Residential Enclave District).
4. **Project Description.** The project proposes to establish a retail wine shop, dba The Secret Wine Shop, with public tastings within a Live/Work unit that is currently used exclusively for residential purposes. The project sponsor intends to sell local, small production, hand crafted wines in a retail capacity and conduct wine tastings and wine education/appreciation classes on a scheduled basis approximately four times a month. The loft is approximately 1,030 square feet. 655 square feet will be dedicated to the wine tasting and retail use of the proposal. The project sponsor also intends to continue using the balance of the space, 375 square feet, as a primary residence. The project is considered a bar under Planning Code Section 790.22 because the wine tasting aspect of the proposal requires an ABC license type 42, authorizing the sale of wine for consumption on or off the premises.

5. **Public Comment.** The Department has received multiple letters in support of the proposed project. Those writing in support claim the project will enhance the immediate area, the goods and services provided will be beneficial and that the project sponsor will prudently manage the operations of the project so as to mitigate any possible negative effects of such a use.
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. **Useable Open Space.** Planning Code Section 135.3 states that, for uses other than dwellings units within the Eastern Neighborhoods Mixed Use Districts, all newly constructed structures, all structures to which gross floor area equal to 20 percent or more of existing gross floor area is added and all structures for which floor area is converted to office use, other than office use accessory to a non-office, shall provide and maintain useable open space for that part of the new, additional or converted square footage.

While the project is converting gross square footage to a new use, it is not subject to this provision as there is no new office space proposed and there is no new construction or addition to the existing structure.

- B. **Parking.** Planning Section 151.1 of the Planning Code establishes maximum amounts for off-street parking within the Mixed Use, General (MUG) Zoning District at no more than one space for each 1,500 square feet of gross floor area for retail uses.

The proposal does not provide off-street parking and therefore complies with the off-street parking requirements under Section 151.1.

- C. **SOMA Youth and Family Special Use District.** Section 249.4A of the Planning Code establishes the SOMA Youth and Family Special Use District. With this Special Use District the establishment of a bar use, as defined in Planning Code Section 890.22, requires Conditional Use authorization.

The proposal seeks to establish a bar and is seeking Conditional Use authorization as required by Planning Code Section 249.40A.

- D. **Neighborhood Notification.** Planning Code 312 requires neighborhood notification in the Eastern Neighborhoods Mixed Use Districts for a change in use from any one land use category to another land use category.

The proposal seeks to change the use of space from the Residential Uses land use category to the Retail Sales and Services land use category. Neighborhood notification was done in conjunction with the notification for the request for Conditional Use authorization.

- E. **Eastern Neighborhood Impact Fees.** Planning Code 327 applies impact fees on projects within the Eastern Neighborhoods Plan Area that contribute to a 20 percent increase of non-residential space in an existing structure.

The proposal seeks to change the use of space from the Residential Uses land use category to the Retail Sales and Services land use category and contributes to a 60 percent (835 square feet of 1,380 total square feet) increase in non-residential space in an existing structure. Prior to the issuance by the Department of Building Inspection of first site permit or building permit, the sponsor will pay to the Treasurer of the City and County of San Francisco impact fees at a Tier 2 level for non-residential space.

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.

Because the proposal is situated entirely within an existing Live/Work unit, there will no enlargement of building envelope or any other enlargement visible from the public right of way. The proposal seeks to convert a portion of an existing Live/Work unit into a bar (for wine tastings) and retail wine shop that will also hold small wine appreciation courses. This use, and its proposed size and intensity, are found to be necessary and desirable for the neighborhood and will be compatible with the mixed use character of the South of Market Area neighborhood.

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

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

The proposal will be with an existing Live/Work unit and will not expand the building envelope or the unit envelope. Within the context of the greater neighborhood, the proposal should not create any new detrimental effects as the context is of a mix of residential uses coexisting with commercial and light industrial uses.

- 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 this proposal. Given the intensity of the use and the proximity to major public transit, it is not anticipated that the use will exacerbate problems with the traffic patterns in the area.

- 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 retail establishments serving food and or beverages as outlined in Exhibit A. Conditions 7, 8 and 9 specifically obligates the project sponsor to mitigate odor and noise generated by the proposed use.

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

Because the proposal is within an existing building there are no opportunities to provide additional landscaping or screening of the use and there are no off-street parking or loading spaces to screen as well.

- 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:

COMMERCE AND INDUSTRY

Objectives and Policies

OBJECTIVE 3:

PROVIDE EXPANDED EMPLOYMENT OPPORTUNITIES FOR CITY RESIDENTS, PARTICULARLY THE UNEMPLOYED AND ECONOMICALLY DISADVANTAGED.

Policy 1.1:

Assist newly emerging economic activities.

The proposal is an emerging variety of retail wine shop that focuses on the local, small production wines and that provides educational/appreciation opportunities for the local public. It is an economic activity that is new and that can provide employment opportunities for city residents.

EAST SOMA AREA PLAN

Objectives and Policies

OBJECTIVE 1.1:

ENCOURAGE PRODUCTION OF HOUSING AND OTHER MIXED-USE DEVELOPMENT IN EAST SOMA WHILE MAINTAINING ITS EXISTING SPECIAL MIXED-USE CHARACTER.

Policy 1.1.8:

Permit small and moderate size retail establishments in mixed use areas of East SoMa, but permit larger retail only as part of a mixed-use development.

The proposed development is a retail establishment of small size, approximately 835 square feet, within the Mixed Use General (MUG) Zoning District, a mixed use district.

OBJECTIVE 1.3:

INSTITUTE FLEXIBLE "LEGAL NONCONFORMING USE" PROVISIONS TO ENSURE A CONTINUED MIX OF USES IN EAST SOMA.

Policy 1.3.1:

Continue existing legal nonconforming rules, which permit pre-existing establishments to remain legally even if they no longer conform to new zoning provisions, as long as the use was legally established in the first place.

The proposal will continue its non-conforming Live/Work status as only a fraction of existing space will be used as a retail establishment. The Department of Building Inspection approved the permit to change the legal use of the subject property to Live/Work in 1995. Live/Work uses in the SOMA neighborhood had historically allowed work activities that were principally or conditionally permitted in the district.

OBJECTIVE 4.2:

ESTABLISH PARKING POLICIES THAT IMPROVE THE QUALITY OF NEIGHBORHOODS AND REDUCE CONGESTION AND PRIVATE VEHICLE TRIPS BY ENCOURAGING TRAVEL BY NON-AUTO MODES

Policy 4.3.2:

For new non-residential development, provide flexibility by eliminating minimum off-street parking requirements and establishing caps generally equal to the previous minimum requirements. For office uses in East SoMa, parking requirements should be commensurate with general downtown parking standards.

The proposal does not propose any new off-street parking, as parking is not required in this zoning district, and is implicitly encouraging patrons to utilize non-private automobile means of transport, in line with the Transportation Objectives of the East SOMA plan.

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 will enhance the neighborhood serving retail base by providing a retail wine shop with wine tasting that would complement the existing retail uses in the area. The business would be locally owned.

- 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 units in the in the building and within the surrounding neighborhood will not be adversely affected given the Conditions of Approval regulating the operation of the proposal. The proposal will blend well into the existing mixed use character of the area. The addition of such a retail wine shop that focuses on the provision of locally made wine will preserve and enhance the cultural and economic diversity of the City.

- 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.

Given the site's proximity to Market Street, the multiple public transit lines that run along Market Street and the intended number of patrons to be served by the use at any one time, it is not anticipated that the private automobile use by patrons will impede MUNI transit or overburden off-street parking.

- 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. The project will not affect industrial or service sector uses or related employment opportunities. Ownership of industrial or service sector businesses will not be affected by this project.

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

All alterations as a part of this proposal will meet the seismic code to insure, to the greatest extent possible, that any injury or loss of life in an earthquake is minimized.

- G. That landmarks and historic buildings be preserved.

The project does not include alterations to the exterior.

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. 2009.1062C** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans filed with the Application as received on November 12, 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. 18147. 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 15, 2010.

Linda D. Avery
Commission Secretary

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

NAYS: None

ABSENT: Commissioner Borden

ADOPTED: July 15, 2010

Exhibit A

Conditions of Approval

1. This authorization is for a Conditional Use Authorization under Planning Code Sections 303, 249.40A, and 840.47 of the Planning Code to allow a bar (dba The Secret Wine Shop) within the MUG (Mixed Use, General) District, the SOMA Youth and Family District and a 65-X Height and Bulk District, in general conformance with plans filed with the Application as received on November 11, 2009 and stamped "EXHIBIT B" included in the docket for **Case No. 2009.1062C**, reviewed and approved by the Commission on July 15, 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 3731, Lot 140; Unit #209), 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. Signs for the business shall be reviewed and approved by the Planning Department before they are installed.
6. 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.
7. The project sponsor shall maintain appropriate odor control equipment to prevent any significant noxious or offensive odors from escaping the premises.
8. The project sponsor shall operate the proposed use such that noise is kept at reasonable levels so as not to unduly disturb neighboring businesses and residents.
9. The hours of operation shall not exceed 10 PM. daily.
10. 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.