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Planning Commission Motion No. 17605

HEARING DATE: MAY 29, 2008

Hearing Date: May 15, 2008
Case No.: **2007.1280C**
Project Address: **1680 MARKET STREET**
Zoning: NC-3 (Neighborhood Commercial, Moderate-Scale)
80-A Height and Bulk District
Block/Lot: 0854/005
Project Sponsor: Akki Patel
Letap Group, Inc./Subway North Bay Development, Inc.
4050 Redwood Highway, Suite D
San Rafael, CA 94903
Staff Contact: Aaron Hollister – (415) 575-9078
aaron.hollister@sfgov.org

ADOPTING FINDINGS RELATED TO THE DISAPPROVAL OF A CONDITIONAL USE AUTHORIZING THE ESTABLISHMENT OF A LARGE FAST FOOD RESTAURANT, FORMULA RETAIL USE (D.B.A "SUBWAY") AT 1680 MARKET STREET ON ASSESSOR'S BLOCK 3576, LOT 004, LOCATED WITHIN THE NC-3 (NEIGHBORHOOD COMMERCIAL, MODERATE SCALE) AND AN 80-A HEIGHT AND BULK DISTRICT.

RECITALS

1. On November 7, 2007, Akki Patel (Project Sponsor) applied for a Conditional Use, Application No. 2007.1280C, on the property at 1680 Market Street, Lot 005 in Assessor's Block 0854 (Project Site), to establish a large fast food restaurant and formula retail use (d.b.a. "Subway") as defined in Planning Code Sections 703.3(b) and 790.90 within the vacant ground-floor commercial storefront, in general conformity with plans labeled Exhibit B dated May 8, 2008 (Project). The application proposed no physical expansion of the existing building. The site is within the NC-3 NCD and an 80-A Height and Bulk District.
2. The Project was determined by the Planning Department (Department) to be categorically exempt from the environmental review process pursuant to Title 14 of the California Code of Regulations.

3. On May 29, 2008, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2007.1280C.
4. This Commission has reviewed and considered reports, studies, plans, and other documents pertaining to this Project.
5. 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.
6. **MOVED**, that the Commission hereby disapproves the conditional use requested in Application No. 2007.1280C, based on the following findings:

FINDINGS

Having reviewed the materials identified in the recitals 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.** The project is located on the north side of Market near the corner of Gough Street and Haight Street, Assessor's Block 0854, Lot 005. The property is located within an NC-3 (Moderate-Scale) Neighborhood Commercial District and an 80-A Height and Bulk District.

The Project Site is occupied by a six-story building (built in 1923) which has street frontages on both Market Street and Rose Street (alleyway). There are two retail spaces fronting Market Street on the ground floor and a total of 42 residential units on the upper levels of the building. A furniture store currently operates from one of the retail spaces, while the subject storefront currently is vacant, but has most recently housed a furniture store (L'art Deco Francais).

3. **Surrounding Neighborhood.** The subject commercial district is located along a continuous, linear commercial strip centered on Market Street that stretches from Franklin Street to Church Street. This stretch of Market Street is heavily trafficked, contains major public transit routes and is characterized by several large buildings located on large lots. This commercial strip not only provides goods and services to the immediate neighborhood, but also to several surrounding neighborhoods.

The surrounding development is a variety of multi-story, mixed-use buildings. Nearby ground-floor uses include eating and drinking establishments, furniture stores and other small-scale retail stores. The upper stories are generally occupied by apartments, and residential hotels. The scale of development throughout the area consists of low- and mid-rise buildings (one- to six-story structures). The height limit in the area is 80 feet.

4. **Project Description.** The Project proposes to establish a Large Fast Food Restaurant (d.b.a Subway) of approximately 1200 square feet within the subject vacant commercial site. The proposed restaurant is considered formula retail as defined by Section 703.3(b) of the Planning Code.

There would be no physical expansion of the building. No storefront alterations are proposed with the exception of signage. Interior tenant improvements will be necessary to accommodate the restaurant. New fixtures associated with the restaurant are proposed within the tenant space.

5. **Public Comment.** The Department has received letters of opposition from the Hayes Valley Neighborhood Association and residential neighbors in the project vicinity. These neighbors believe that the proposed restaurant will not be in character with the neighborhood nor the surrounding, established restaurants. Additionally, a petition containing several names from neighboring residents (many of whom reside in the subject building) who do not support the Project has been submitted to the Planning Department.

A letter of support has been received from Marvis J. Phillips, Land Use Chair for the Alliance for a Better District 6. The Alliance for a Better District 6 believes that the proposed use will provide an additional dining option for low-income families living in the project area. Additionally, a petition containing several names from neighboring residents who support the Project has been submitted.

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. **Floor Area Ratio.** Section 124 establishes basic floor area ratios (FAR) for all zoning districts. FAR is the ratio of the gross floor area of all the buildings on a lot to the total area of the lot. Under Section 124(a), the FAR for the NC-3 NCD is 3.6 to 1. Under Section 124(b), in NCDs, the floor area ratio limits listed in Subsection (a) do not apply to dwellings or other residential units.

With a lot area of 5,665 square feet, 20,394 nonresidential gross square feet can be developed on the Project Site. Since the Project will not include the physical expansion of the commercial space, there will be no increase in nonresidential gross floor area.

- B. **Parking Requirement.** Section 151 requires eating and drinking establishments to provide one parking space for every 200 square feet of occupied floor area, where the occupied floor area exceeds 5,000 square feet.

With a gross floor area of under 5,000 square feet, the Project is not required to provide parking.

- C. **Loading.** Section 152 requires off-street freight loading for uses above a certain size. Eating and drinking establishments up to 100,000 square feet in gross floor area are not required to provide off-street freight loading.

With a gross floor area of under 100,000 square feet, the Project is not required to provide off-street loading. The alleyway can be used for deliveries.

- D. **Formula Retail.** Section 703.3 places notification requirements and other restrictions on formula retail uses.

The Project is considered to be a formula retail use as defined by Section 703.3 of the Planning Code. Conditional Use authorization must be granted for a formula retail use at the subject site.

- E. **Large Fast Food Restaurant.** Section 712.43 states that Conditional Use authorization is required for any fast food restaurant with a gross floor area of 1,000 square feet or more, as defined by Planning Code Section 790.90.

The Project, which would contain approximately 1200 square feet, is considered a large fast food restaurant as defined by Section 790.90 of the Planning Code. Conditional Use authorization must be granted for the proposed use to operate in the first floor retail space of the subject building.

- F. **Hours of Operation.** Section 712.27 does not provide a limit for hours of operation in the NC-3 NCD.

- G. **Use Size.** Section 121.2(a) establishes size limits on nonresidential uses in all NCDs. In the NC-3 NCD, conditional use authorization is required for any nonresidential use that exceeds 5,999 square feet.

At 1200 square feet, the Project does not require Conditional Use authorization for use size.

7. **Conditional Use Findings.** Under Section 303(c), the Commission may authorize a conditional use after finding 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 project is not necessary because other nearby, locally-owned, non-formula retail restaurants already offer custom-made sandwiches on their menus. Additionally, five Subway Restaurants already exist within a one-mile radius of the subject site.

Furthermore, a survey of the Market Street storefronts located in the subject NC-3 Zoning District revealed that few of the storefronts are currently vacant. The proposed formula retail use may prevent a locally-owned business from locating to the subject commercial space.

Certain aspects of the Project would be desirable. The business franchise would be locally-owned and staffed. A now-vacant storefront would be filled and the restaurant would provide employment for neighborhood residents.

However, the proposed restaurant may be detrimental to neighborhood character by filling a storefront with a formula retail use that may detract from the character of the neighborhood commercial district which features primarily local, non-formula retail businesses. Formula retail businesses offering similar menus may have a competitive advantage over non-formula retail business because the formula retail businesses are often better capitalized, and therefore, can commit to longer and more expensive leases. This could potentially put pressure on existing businesses for higher rents. Additionally, higher rents may prohibit a new startup independent business from locating in the subject neighborhood where several startup businesses have started and sustained.

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

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

The size and shape of the site and the size, shape and arrangement of the building are adequate for the Project.

- ii. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;

The Project will not adversely impact public transit or overburden the existing supply of parking in the neighborhood. The Project is intended to be a walk-in facility for pedestrian traffic. Furthermore, the Project site is well-served by public transportation (Muni Lines F, J, K, L, M, N, S, T, 6-Parnassus, 7-Haight, 16AX & BX-Noriega 'A' & 'B' Express, 26-Valencia, 47-Van Ness, 49 Van Ness-Mission, 71 Haight-Noriega, 71L-Haight-Noriega Limited). Off-street parking and loading is not required for the Project.

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

The Project is not anticipated to produce noxious or offensive emissions related to noise, glare and dust. However, the Project may have the potential to increase odors in the area because bread will be baked on-site.

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

The project site is completely built-out at the commercial ground level, therefore, no landscaping will need to be provided. All lighting and signage would be required to comply with the requirements of the Planning Code, the approved signage program, the Secretary of the Interior's Standards for the Treatment of Historic Properties (Secretary Standards) and the Urban Design Element of the General Plan.

- 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 most of the applicable requirements of the Planning Code, but is not in conformity with the Priority Policies and Commerce and Industry Element of the General Plan. The Project would detract from the character of the neighborhood by adding a formula retail restaurant use to a neighborhood that is defined by locally-owned, independent restaurants.

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

The subject commercial district is located along a continuous, linear commercial strip centered on Market Street that stretches from Franklin Street to Church Street. This stretch of Market Street is heavily trafficked, contains major public transit routes and is characterized by several large buildings located on large lots. This commercial strip not only provides goods and services to the immediate neighborhood, but also to several surrounding neighborhoods.

The proposed formula retail restaurant is not an appropriate use for the neighborhood. Several locally-owned, neighborhood-serving restaurants and delis in the project area already offer similar items provided by the proposed formula retail restaurant. Additionally, the neighborhood has had a history of locally-owned restaurants starting and locating within the area.

8. **Planning Code Sections 303(i) and 703.4** require Conditional Use authorization for the establishment of a formula retail use in Neighborhood Commercial Districts. The Planning Commission shall consider the following criteria set forth in **Section 303(i)** in addition to the criteria set forth in Section 303(c):

- A. The existing concentrations of formula retail uses within the Neighborhood Commercial District.

The nearest formula retail use within the same neighborhood commercial district is a Fast Frame framing shop located at the intersection of Market and Gough Streets. The next nearest formula retail uses are located nearly three blocks away at the corner of Market and Duboce Streets. FedEx Kinkos, H&R Block and Pet Food Express can be found at this intersection. Kentucky Fried Chicken (KFC) also is located three blocks away from the subject site at the intersection of Duboce and Guerrero Streets.

Other restaurants located in the subject neighborhood commercial district include Jamba Juice and Starbucks which are housed in the Safeway shopping center at the corner of Market and Church Streets. Other formula retail uses housed in the Safeway shopping center, located on the opposite end of the subject, linear neighborhood commercial district, include Wolf Camera, General Nutrition Center and the Safeway grocery store. Additionally, San Francisco Ford Mercury Lincoln is located at the corner of Market and Dolores Streets.

- B. The availability of other similar retail uses within the Neighborhood Commercial District.

Other than KFC, no other similar formula retail restaurant use exists in the subject district. However, several other locally-owned restaurants exist in the same district that offer a similar menu items to potential customers.

C. The compatibility of the proposed formula retail use with the existing architectural and aesthetic character of the Neighborhood Commercial District.

No physical expansions of the subject building would be necessary to accommodate the proposed use. Interior tenant improvements would be necessary for the instillation of restaurant fixtures and seating. Because the subject building is considered an historic resource per the provisions of CEQA, all lighting and signage would be required to comply with the requirements of the Planning Code, the approved signage program, the Secretary of the Interior's Standards for the Treatment of Historic Properties (Secretary Standards) and the Urban Design Element of the General Plan.

D. The existing retail vacancy rates within the Neighborhood Commercial District.

Retail vacancy rates in the subject neighborhood commercial district are limited. The subject district enjoys a healthy mix of restaurants, drinking establishments, retail, services and institutions. Several of the institutions and non-profit organizations in the subject district occupy more than one storefront which can lead to a perception of higher retail vacancy rates.

E. The existing mix of Citywide-serving retail uses and neighborhood-serving retail uses within the Neighborhood Commercial District.

The subject district contains restaurants, retail, services and institutions that serve not only the immediate neighborhood, but also the City as a whole. These aforementioned uses are primarily locally-owned, independent uses. However, formula retail uses that can be found in the district are clustered primarily at the intersection of Market and Duboce Streets and the nearby Safeway shopping center. The proposed use is intended to be primarily neighborhood-serving.

9. **General Plan Compliance.** The Project is not consistent with the Objectives and Policies of the General Plan in that:

COMMERCE AND INDUSTRY ELEMENT

Neighborhood Commerce

OBJECTIVE 6:

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

Policy 1:

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development that has substantial undesirable consequences that cannot be mitigated.

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.

Although the proposed use is intended to be neighborhood-serving, the proposed use may be detrimental to the character of the immediate neighborhood. The immediate neighborhood is defined by locally-owned restaurants which add unique character and diversity. Formula retail businesses offering similar menu items may have a competitive advantage over non-formula retail business because the formula retail businesses are often better capitalized, and therefore, can commit to longer and more expensive leases. This could potentially put pressure on existing businesses for higher rents. Additionally, higher rents may prohibit a new startup independent business from locating in the subject neighborhood where several startup businesses have started and sustained.

This policy includes guidelines for specific uses. In order to maintain the balance of commercial uses, eating and drinking establishments should not occupy more than 20 percent of the commercial frontage in a district. Proposals for eating and drinking establishments which would increase the proportion of total occupied commercial frontage above 20 percent should be reviewed to ensure that they would not reduce the variety of neighborhood-serving uses or create substantial noise, traffic, parking problems, or other nuisances. Except in districts with an established pattern of service to a broad market, such establishments should not occupy more than 25 percent of the total commercially-occupied frontage in a district.

In the subject neighborhood commercial district, eating and drinking establishments do not occupy more than 20 percent of commercially-occupied frontage.

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.

The proposed restaurant may be detrimental to neighborhood character by filling a storefront with a formula retail use that may detract from the character of the neighborhood commercial district which features primarily local, non-formula retail businesses. Formula retail businesses offering similar menus may have a competitive advantage over non-formula retail business because the formula retail businesses are often better capitalized, and therefore, can commit to longer and more expensive leases. This could potentially put pressure on existing businesses for higher rents. Additionally, higher rents may prohibit a new startup independent business from locating in the subject neighborhood where several startup businesses have started and sustained.

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.

The subject NC-3 District contains a healthy balance of uses which includes retail sales and services, institutional uses and restaurants. An additional restaurant will not upset the balance of uses in the area as eating and drinking establishments do not occupy more than 20 percent of commercially-occupied frontage. Additionally, because the proposed project is well served by public transit and due to the nature of the proposed project as a walk-in restaurant, negative traffic and parking impacts are not anticipated to arise.

Fast Food Restaurants and Self-Service Restaurants

Fast food restaurants and self-service restaurants including take out food establishments are retail uses which provide quick-food service for consumption on or off the premises, which are often designed to serve a high volume of customers at a high turnover rate. As a result, this can generate problems in traffic and pedestrian circulation, parking congestion, litter, noise and odors. All guidelines for eating and drinking establishments should apply to fast food restaurants and self-service restaurants in addition to the guidelines stated below:

- The proposed use should not add to an over-concentration of fast food restaurants in a single district. As a general rule, fast food restaurants should be evenly distributed throughout the district. However, in certain locations, clustering may be more appropriate. For example, a

- configuration of clustered fast food restaurants where sufficient off-street parking is shared between them might make more efficient use of land than an even distribution of fast food restaurants throughout the district. The number of large fast food restaurants and small self-service restaurants should not exceed the maximum number that would be allowed if all fast food restaurants in the district were at least 500 feet from each other;
- To avoid potential pedestrian vehicle conflicts where large number of children are present, fast food restaurants should not be within 500 foot walking distance of an elementary or secondary school;
 - The use should provide adequate waiting space for walk-in patrons;
 - The use should be equipped with sufficient outdoor and indoor trash receptacles to avoid litter problems in the surrounding neighborhood;
 - The operator of the use should be responsible for maintaining the sidewalk within a one block radius of the site free of paper or litter;
 - The use should be designed and operated to contain fumes and odors within the cooking areas, so that such fumes and odors will not spread to adjacent or upper-story uses; and
 - The new or expanding use should close at 12:00 Midnight or earlier

If all fast food and small service restaurants were spaced 500 feet in the subject NC-3 District, an additional fast food restaurant could be accommodated as the Commerce and Industry Guidelines for Specific Uses demands for the District. Additionally, the Project proposes to provide in excess of 30 linear feet of waiting space for walk-in patrons as well as 20 seats located in the restaurant for on-site consumption food, all of which would quell any concerns in regards to traffic, parking congestion and circulation. The Project would be subject to standard conditions of approval for a small self-service restaurant including conditions specifically addressing litter, fumes and odors.

10. General Plan Findings. Section 101.1(b) establishes eight priority planning policies and requires the review of permits for consistency with said policies:

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

A formula retail use would occupy a tenant space that could potentially house a locally-owned, independent business. The proposed formula retail business would create more competition for a number of locally-owned restaurants in the area that serve custom-made sandwiches.

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

The Project would adversely impact the character and diversity of the neighborhood. The immediate neighborhood already contains locally-owned restaurants and delis which offer similar food choices as the Project proposes.

- (3) That the City's supply of affordable housing be preserved and enhanced.

The Project would not have any impacts on the City's supply of affordable housing.

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

The Project would not adversely impact public transit or place a burden on the existing supply of parking in the neighborhood. The Project Site is well-served by public transportation.

- (5) 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.

There is no commercial office development associated with the Project. No industrial or service sector uses would be displaced.

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

Although there would be some interior tenant improvements to the subject commercial space, the Project does not involve any construction activities that would compromise the structural integrity of the existing building or trigger any Building Code requirements for a seismic upgrade.

- (7) That landmarks and historic buildings be preserved.

The existing building is considered an historic resource per the provisions of CEQA. If approved, any storefront alterations and signage would be required to comply with "Secretary Standards". No exterior alterations, other than signage, are proposed by the Project.

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

The Project, which does not include any physical expansion of the existing building envelope, would not impact any parks or open spaces or their access to sunlight.

12. On balance, the Commission hereby finds that approval of the conditional use authorization would not 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 **DISAPPROVES Conditional Use Application No. 2007.1280C.**

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this disapproval of a Conditional Use Authorization application to the Board of Supervisors within thirty (30) days after the date of this Motion No. 17604. 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 94012.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on May 29, 2008.

Linda Avery
Commission Secretary

AYES: President Christina Olague, Michael J. Antonini, Ron Miguel, Kathrin Moore, Hisashi Sugaya

NAYS: None

ABSENT: William L. Lee

ADOPTED: May 29, 2008