



SAN FRANCISCO PLANNING DEPARTMENT

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Planning Commission Motion No. 17632

HEARING DATE: JUNE 26, 2008

Release Date: **June 19, 2008**
Case No.: **2008.0360 C**
Project Address: **3242 22nd STREET**
Zoning: NC-3 (Moderate-Scale) Neighborhood Commercial District,
The Mission Street Fast-Food Subdistrict &
The Mission Alcoholic Beverage Special Use Subdistrict.
50-X Height and Bulk District
Block/Lot: 3616/009
Project Sponsor: Suheil Shatara
522 2nd Street
San Francisco, CA 94107
Staff Contact: Edgar Oropeza – (415) 558-6381
edgar.oropeza@sfgov.org

ADOPTING FINDINGS RELATING TO CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303, 712.44, 790.91 AND 781.5 OF THE PLANNING CODE TO ESTABLISH A SMALL SELF-SERVICE RESTAURANT (dba "TORTAS EL PRIMO") WITH OUTDOOR SEATING IN THE PUBLIC-RIGHT-OF-WAY, ALL WITHIN THE NC-3 (MODERATE SCALE) NEIGHBORHOOD COMMERCIAL DISTRICT, THE MISSION FAST-FOOD SUBDISTRICT, THE MISSION ALCOHOLIC BEVERAGE SPECIAL USE DISTRICT AND A 50-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On March 20, 2008 Suheil Shatara (Project Sponsor) filed an application with the Department for Conditional Use Authorization under Planning Code Sections 712.44, 790.91 and 781.8 to allow a small self-service restaurant (dba "Tortas El Primo") with outdoor seating in the public-right-of-way within the NC-3 (Moderate, Scale) Neighborhood Commercial District, the Mission Street Fast-Food Subdistrict, the Mission Alcoholic Beverage Special Use District and a 50-X Height and Bulk District.

On June 26, 2008, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2008.0360C.

The Project was determined by the San Francisco Planning Department (hereinafter "Department") to be categorically exempt from environmental review. 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. 2008.0360C 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 north side of 22nd Street, between Bartlett and Mission Streets, Assessor's Block 3616, Lot 009. The property is located within the NC-3 (Moderate Scale) Neighborhood Commercial District, The Mission Street Fast-Food Subdistrict and the Mission Street Alcoholic Beverage Special Use Subdistrict, within 50-X height and bulk district. The property is improved with three buildings with commercial and residential uses ranging from one to three-stories tall. The site contains five-ground floor commercial spaces that open directly onto the street. Three of the five commercial spaces are currently used as eating and drinking establishments, including "Revolution Café," immediately adjacent to the project site.

The restaurant has been in operation nominally as a deli with some grocery / retail space, food prep and seating. Approval of the Conditional Use would bring the project into compliance with the Planning Code.

3. **Surrounding Properties and Neighborhood.** The project site is located near the heart of the Mission District between two vibrant neighborhood commercial districts, the Valencia Street Neighborhood Commercial District and Mission Street. The surrounding area is zoned for a variety of residential, residential-mixed, neighborhood-commercial and public uses, and is developed mostly with one to three-story multi-family housing / mixed-use, commercial and public buildings.

All buildings on subject block provide commercial ground floors resulting in approximately 270 lineal feet of continuous commercial ground floor uses. A large number of eating and drinking establishments are present; they are a mixture of bars, full and self-service restaurants. Nearby land uses also include a mix of residential, retail, personal service and institutional uses.

4. **Project Description.** The applicant proposes to change the use from a "Retail Sales and Service" to a small self-service restaurant with outdoor seating in the public-right-of-way. The commercial space has been used as an eating establishment ("Tortas El Primo") for approximately one year and is in violation of the Planning Code. The proposed commercial use is approximately 800 gross square feet in size.

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

The proposed operation consists of 4 to 6 employees. The majority of employees live within the immediate surrounding area and walk to work while some commute to the Mission District on public transit. The subject site is well served by public transit so that potential customers should not adversely affect the traffic flow.

5. **Public Comment.** The Department has not received public comment on the proposed 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. **Small Self-Service Restaurant.** The Mission Street Fast-Food Subdistrict intends to preserve the mix and variety of goods and services provided to the Mission neighborhood and prevent further proliferation of fast-food restaurant uses, and prevent further aggravation of parking and traffic congestion in this district.

A small self-service restaurant, as defined in Section 790.91 of this Code, is permitted as a conditional use on the first story and below. Approval of the Conditional Use would ensure compliance with the Planning Code.

- B. **Outdoor Activity.** Planning Code Section 712.24 allows an Outdoor Activity Area, as defined by Planning Code Section 790.70 as a principal use within the NC-3 (Moderate Scale) Neighborhood Commercial District.

The Project Sponsor also intends to include outdoor seating in the public right-of-way. The Project Sponsor proposes setting up picnic tables to accommodate approximately 6 additional patrons (the restaurant currently has 8 to 12 seats inside). The outdoor area would be used for dining both day and night.

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

The Subject Property contains approximately 800 square-feet of gross floor area and thus does not require any off-street parking.

- D. **Street Frontage in Neighborhood Commercial Districts.** Section 145.1 of the Planning Code requires that NC Districts containing specific uses, including large fast-food restaurants, 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.

There are no changes proposed to the commercial frontage. The subject commercial space has windows that are clear and unobstructed. .

- E. **Signage.** Currently, there is not a proposed sign program on file with the Planning Department. The proposed business does have a name as of this writing. Any proposed signage will be subject to the review and approval of the Planning Department.
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 proposed use is in keeping with other storefronts on the block face. The proposed small self-service restaurant will not impact traffic or parking in the District because it is not a destination restaurant. This will compliment the mix of goods and services currently available in the district and contribute to the economic vitality of the neighborhood.

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

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

The height and bulk of the existing building will remain the same and will not alter the existing appearance or character of the project vicinity. The proposed work will not affect the building envelope.

- 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 800 square-foot small self-service restaurant. 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 citywide.

- 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 small self-service restaurants and outlined in Exhibit A. Condition 7 specifically obligates the project sponsor to mitigate odor and noise generated by the restaurant use.

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

The proposed small self-service restaurant does require additional tenant improvements. The Department shall further review all lighting and signs proposed for the existing business in accordance with Condition 7 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 proposed project is consistent with the stated purposes of NC-3 Districts in that the intended use is located at the ground floor, will provide a compatible convenience service for the immediately surrounding neighborhood.

- 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 proposed project will provide desirable goods and services to the neighborhood and will provide resident employment opportunities to those in the community. The approval of the proposed eating establishment will 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 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.

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.

There is a concern with the potential over-concentration of food-service establishments on the subject block, but not the subject NC-3 District (beginning from 15th and Mission Streets and ending at Randall and Mission Streets). With the proposed restaurant use, approximately 9% of the frontage of this NC-3 District is attributed to eating and drinking establishments. Because the proposed project is well served by public transit and due to the nature of the proposed project, it is not believed that negative traffic and parking impacts will arise.

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." At present, more than 20% of the frontages on the subject block face are already attributed to eating and drinking establishments. Though, historically the immediate area has housed a high percentage of eating and drinking establishments that support the more intensive entertainment and shopping areas of the Mission District.

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 proposed 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 would enhance the district by providing a small self-service restaurant in an area historically known for its restaurants. The use complements the nearby City College Campus by providing a clean eating establishment in close proximity to an institutional use which generates hundreds of pedestrian trips to the area. Additionally, the business would be locally owned and creates 4-6 more employment opportunities for the community. The proposed alterations are within the existing building footprint.

- 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 surrounding neighborhood would not be adversely affected. The proposal would establish a modest-sized restaurant that primarily accommodates students from City College's Mission Campus and neighborhood residents.

- 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 on 22nd Street and is well served by public transit. It is presumable that the employees would commute by transit thereby mitigating possible impacts on 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.

The Project is designed and will be constructed to conform to the structural and seismic safety requirements of the City Building Code. This proposal will 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.

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. 2008.0386 C** subject to the following conditions attached hereto as "EXHIBIT A" 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. 17632. 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 June 26, 2008.

Linda Avery
Commission Secretary

AYES: Commissioners Michael Antonini, Ron Miguel, Kathrin Moore, Christina Olague, and Bill Sugaya

NAYS: None

ABSENT: Commissioner William L. Lee

ADOPTED: June 26, 2008

Exhibit A

Conditions of Approval

1. This authorization is for a Conditional Use Authorization under Planning Code Section 712.44, 790.91 and 781.8 of the Planning Code to allow a small self-service restaurant (dba "Tortas El Primo") with outdoor seating in the public-right-of-way, at 3242 22nd Street within the NC-3 (Moderate Scale) Neighborhood Commercial District, the Mission Street Fast Food Subdistrict, the Mission Alcoholic Beverage Special Use District and a 50-X Height and Bulk District, in general conformance with plans filed with the Application as received on June 3, 2008 and stamped "EXHIBIT B" included in the docket for Case No. 2008.0360 C, reviewed and approved by the Commission on June 26, 2008.
2. 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 \$500 a day in accordance with Planning Code Section 176.
3. 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).
4. 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.
5. Signs and exterior lighting for the business shall be reviewed and approved by the Planning Department before they are installed.
6. The Project Sponsor shall maintain an attractive storefront providing visibility of the restaurant interior through the storefront windows.
7. The Project Sponsor shall maintain appropriate odor control equipment to prevent any significant noxious or offensive kitchen odors from escaping the premises.
8. Refuse containers shall be provided both inside and outside the establishment for use by patrons of the restaurant. 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 restaurant.
9. 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.
10. The Project Sponsor shall assure the execution and recordation of the specified conditions as a Notice of Special Restrictions at the Office of the County Recorder / County Clerk.

11. The Planning Commission may, in a public hearing, consider the revocation of this conditional use authorization if a site or building permit has not been issued within three (3) years of the date of the Motion approving the project. Once a site or building permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued thenceforth diligently to completion. The Commission may also consider revoking this conditional use authorization if a permit for the project has been issued but is allowed to expire and more than three (3) years have passed since the Motion was approved. 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.