



SAN FRANCISCO PLANNING DEPARTMENT

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Planning Commission Motion No. 17645

HEARING DATE: JULY 10, 2008

Date: July 3, 2008
Case No.: **2008.0309 C**
Project Address: **2790 Harrison Street**
Zoning: 24th Street – Mission Neighborhood Commercial District
40-X Height and Bulk District
Block/Lot: 3640/011
Project Sponsor: Janet Campbell
2 Parker Avenue #302
San Francisco, CA 94118
Staff Contact: Brittany Bendix – (415) 575-9089
brittany.bendix@sfgov.org

ADOPTING FINDINGS RELATING TO CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303 and 727.44 OF THE PLANNING CODE TO ALLOW A SMALL SELF-SERVICE RESTAURANT (dba HUMPHRY SLOCOMBE) WITHIN THE 24TH STREET - MISSION NEIGHBORHOOD COMMERCIAL DISTRICT AND A 40-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On March 13, 2008, Janet Campbell (Project Sponsor) filed an application with the Department for Conditional Use Authorization under Planning Code Sections 303 and 727.44 to allow a small self-service restaurant (dba Humphry Slocombe) within the 24th Street-Mission Neighborhood Commercial District and a 40-X Height and Bulk District.

On July 10, 2008, the San Francisco Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2008.0309C.

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. 2008.0309C, 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 western side of Harrison Street, between 23rd and 24th Street, Lot 011 of Assessor's Block 3640. The subject property is located within the 24th Street – Mission Neighborhood Commercial District with a 40-X Height and Bulk district. The subject property is a corner lot, with approximately 82.5-feet of frontage on 24th Street and 70-feet of frontage on Harrison Street. The 5,775 square-foot lot is developed with three two-story mixed-use buildings with commercial units occupying the ground floor and residential units occupying the second story. The proposed small self-service restaurant would occupy 29-feet of the vacant ground floor commercial storefront along the building's Harrison Street frontage. The proposal will not alter the existing rear yard located in the northwest corner of the lot.

On May 19, 2008, the Department approved Building Permit Application No. 2008.05.19.2370 to change the use of the vacant commercial space to a retail grocery store. This enabled the Project Sponsor to be operating a retail grocery store while applying for Conditional Use authorization to establish the small self-service restaurant, which is required because the owner intends to sell ice cream that is produced on site and prepared to order.

3. **Surrounding Properties and Neighborhood.** The subject property is at the intersection of Harrison and 24th Street, situated at the center of the 15 block 24th Street – Mission Neighborhood Commercial District. On the northeast corner of this intersection is a full service restaurant (dba Usulután) specializing in Salvadorian cuisine. On the southeast corner is a specialty grocery store (dba La Gallinita Meat Market). On the southwest corner of the 24th and Harrison Streets intersection is Mission Girls Services, an educational facility that offers homework and career assistance to neighborhood girls. The subject commercial unit is adjacent to and directly across from residential units in an RH-2 district.

In general, neighborhood serving uses - including bars, eating and drinking establishments, general or specialized grocery stores, liquor stores, professional and personal services and financial services - characterize this neighborhood commercial district. Residential uses exist and are typically found above ground floor commercial/retail uses. The surrounding properties are located within the RH-2 (Residential House, Two-Family) and RH-3 (Residential House, Three-Family) Districts.

The site is well served by transit. The 48-Qunitara/24th Muni Bus Line operates on 24th Street and stops directly in front of the subject property. Other Muni bus lines serving the subject property within a three-block radius include the 12-Folsom/Pacific, 27-Bryant and the 67-Bernal Heights. Additionally, the 24th Street Bart station is located six-blocks from the subject property.

4. **Project Description.** The project proposes to establish a small self-service restaurant (dba Humphry Slocombe) within the 24th Street – Mission Neighborhood Commercial District. The subject unit is 1,000 square-feet. The current proposal includes minor tenant improvements, facilitating the conversion of the unit from a retail grocery store into a small self-service restaurant, i.e. installation of freezers and large sinks. The proposal also includes outdoor seating, including to 4 tables and 8 chairs, which will be located directly in front of the commercial space. The proposed outdoor seating is principally permitted by Planning Code Section 727.24. Neighborhood notification, required for change of use to a Small Self-Service Restaurant pursuant to Planning Code Section 312, occurred in conjunction with the Conditional Use Authorization process.

Humphry Slocombe is an independently and locally owned ice cream shop. The proposed project would be the first Humphry Slocombe restaurant. It is not a Formula Retail use. The proposed operation will generate approximately 5 to 6 employment opportunities for low- and semi-skilled workers. The project sponsor intends to hire employees that live within, or relatively close to the neighborhood. The subject site is well served by public transit so that potential employees and customers should not adversely affect the traffic flow.

Dairy products will be delivered to Humphry Slocombe twice a week. These deliveries are “dark drops” occurring in the early morning hours, and are not anticipated to disrupt the traffic flow. The Project Sponsor will coordinate trash pick-up with the adjacent specialty coffee shop, Sundance Coffee, which has their trash picked up on Monday and Thursday in the early morning.

5. **Public Comment.** The Department has received one e-mail in support of the project.
6. **Planning Code Compliance:** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:

- A. **Neighborhood Commercial Permit Review.** Planning Code Section 312 requires neighborhood notification of a change in use to a small self-service restaurant, as

defined by Planning Code Section 790.91 for lots within the Neighborhood Commercial Districts.

The Project Sponsor is proposing the establishment of a small self-service restaurant (dba Humphry Slocombe) within the 24th Street – Mission Neighborhood Commercial District. Section 312 notification was conducted in conjunction with the Conditional Use authorization notification.

- B. **Small Self-Service Restaurant.** Planning Code Section 727.91 allows a small self-service restaurant within the 24th Street – Mission Street Neighborhood Commercial District by Conditional Use authorization on the first story.

The Project Sponsor intends to establish a small self-service restaurant (dba Humphry Slocombe) in vacant ground floor commercial unit within the 24th Street – Mission Neighborhood Commercial District and is seeking Conditional Use authorization.

- C. **Outdoor Activity.** Planning Code Section 727.24 states that an outdoor activity, as defined by Section 790.70, is principally permitted if located in front of the use.

The Project Sponsor intends to include outdoor activity per Planning Code Section 727.24. The Outdoor Activity included with this proposal is outdoor seating in front of the commercial space and includes 4 tables and 8 chairs. The outdoor area would be used for dining both during the restaurant's hours of operation.

- D. **Hours of Operation.** Planning Code Section 727.27 permits hours of operation, as defined by Planning Code 790.48, from 6:00 a.m. to 2:00 a.m. and from 2:00 a.m. to 6:00 a.m. by Conditional Use authorization.

The proposed hours of operation, between 11:00 a.m. to 9:00 p.m. on weekdays and 11:00 a.m. to 10:00 p.m. on weekends are principally permitted.

- E. **Rear Yard Requirement in the 24th Street – Mission Neighborhood Commercial District.** Planning Code Section 134 states that rear yards shall be provided at the second story and at each succeeding story of the building, and at the first story if it contains a dwelling unit.

The proposed project complies with the rear yard requirements under Planning Code Section 134 as the existing structure does not contain a dwelling unit on the first story.

- F. **Parking.** Planning Code Section 151 requires off-street parking for every 200 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.

- G. **Street Frontage in Neighborhood Commercial Districts.** Section 145.1 of the Planning Code requires that NC Districts containing specific uses, including small self-service 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.

The subject commercial space has approximately 29-feet of frontage on 24th Street with approximately 16-feet devoted to either the restaurant entrance or window space. The windows are clear glass, providing an unobstructed view into the establishment at pedestrian eye-level.

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 project is desirable because it seeks to occupy an existing vacant ground floor commercial space. The restaurant will offer a type of food service not readily found within the neighborhood commercial district. The use, a neighborhood serving small self-service restaurant, located on the ground floor, will enrich the diversity of goods offered within the 24th Street – Mission Neighborhood Commercial District, and is in line with the prevalent pattern of commercial/retail ground floor uses.

- 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 proposed project will operate primarily within the existing 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 small self-service restaurant with an occupied floor area of less than 5,000 square-feet. The proposed project is well served by public transit, minimizing the need for private automobile trips.

- 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 as outlined in Exhibit A. Conditions 4 through 8 specifically obligate the Project Sponsor to mitigate noxious or offensive emissions 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;

Parking and loading areas are not required for the proposed use because the commercial use contains less than 5,000 square-feet of occupied floor area. Landscaping is not proposed as the building has no front setback. However, there are two existing street trees in front of the proposed restaurant. Signage and awnings are illustrated as proposed and meet all applicable Planning Code requirements.

- 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 purpose of the 24th Street – Mission Neighborhood Commercial District in that the intended use is located at the ground floor, will provide convenience goods to the immediately surrounding neighborhoods and will be active throughout the day.

- 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 development will provide desirable goods and services to the neighborhood and will provide resident employment opportunities to those in the community. Additionally, the Project Site is located within a Neighborhood Commercial District and is 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.

By establishing a new commercial activity in a vacant space, the project will enhance the diverse economic base of the City.

OBJECTIVE 3:

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

Policy 3.1:

Promote the attraction, retention and expansion of commercial and industrial firms which provide employment improvement opportunities for unskilled and semi-skilled workers.

Policy 3.2:

Promote measures designed to increase the number of San Francisco jobs held by San Francisco residents.

The proposed project will provide employment opportunities, including entry-level employment opportunities, for the area's unskilled and semi-skilled workers.

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 assist the Neighborhood Commercial district in achieving optimal diversity in the types of goods and services available in the neighborhood.

Policy 6.3:

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

The project proposes to provide neighborhood serving goods while utilizing a currently vacant storefront. The commercial space is on the ground floor of a building with residential units on the second floor, thereby preserving the mixed commercial-residential character of the 24th Street - Mission Neighborhood Commercial District. No affordable housing will be lost as the project does not propose any changes to the existing dwellings.

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 Commerce and Industry Guidelines direct the Commission to take into consideration the percentage of district frontage occupied by eating and drinking establishments, setting a reasonable standard at less than 20%. Department staff has conducted a survey of the frontages in the 24th Street – Mission Neighborhood Commercial District and have found that eating and drinking establishments occupy approximately 15.5% of the total district frontage. Furthermore, the presence of only one other specialty ice cream shop within the 24th Street – Mission Neighborhood Commercial District, indicates that the proposal contributes to the diversity of eating and drinking establishments in the neighborhood.

The following are ways in which potential impacts on the surrounding community have been addressed. Pursuant to Condition of Approval No. 4, the owner will maintain the sidewalk area in front of the restaurant in a clean condition, keeping the immediate area clear of any debris associated with the use. However, trash and recycling receptacles are available at every corner at the Harrison and 24th Streets intersection. Hours of operation are limited by Planning Code Section 727.27, however the proposed hours of operation are 11:00 a.m. to 9:00 p.m. (10:00 p.m. on weekends) and are within the range principally permitted in the district. Additionally, any negative traffic and parking impacts are not anticipated given the nature of the proposed project and its proximity to public transit options.

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.

The owner of the restaurant is an independent and local entrepreneur who is opening his first ice cream shop. The proposed use is a neighborhood serving use and will provide a service not readily available in the neighborhood. This is the first Humphry Slocombe; it 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 business would be locally owned and it creates 5-6 more employment opportunities for the community. The proposed alterations will not expand 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.

Residents in the surrounding neighborhood would not be adversely affected. The proposal includes providing outdoor seating for patrons and will contribute to a more active and neighborhood engaging environment along Harrison Street.

- C. That the City's supply of affordable housing be preserved and enhanced,

No housing is altered for this Project.

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

The proposed project is on Harrison Street, between 23rd and 24th Streets, and is well served by public transit. It is highly likely that both employees and customers of the proposed project will either walk or use Muni to arrive as the 12-Folsom, 48-Qunitara, 27-Bryant and the 67-Bernal Heights Muni Bus Lines operate within three blocks of the site. Furthermore, the site is 6-blocks away from the 24th Street Bart station.

- 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 achieves 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.

The Historic Preservation Technical Specialist for the Southeast Quadrant has reviewed the proposed plans and has provided minimum standards and specifications to the project sponsor.

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

The proposed project will not have a negative impact on existing parks and open spaces.

10. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.
11. The Commission hereby finds that approval of the Conditional Use authorization would promote the health, safety and welfare of the City.

DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Application No. 2008.0309C** 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. 17645. 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 10, 2008.

Linda Avery
Commission Secretary

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

NAYS: None

ABSENT: None

ADOPTED: July 10, 2008

Exhibit A

Conditions of Approval

1. This authorization is for a Conditional Use Authorization under Planning Code Section 727.44 to allow a small self-service restaurant (dba Humphry Slocombe) at 2790 Harrison Street within the 24th Street – Mission Neighborhood Commercial District and a 40-X Height and Bulk District, in general conformance with plans filed with the Application as received on March 13, 2008, and stamped “EXHIBIT B” included in the docket for **Case No. 2008.0309C**, reviewed and approved by the Commission on July 10, 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. Until removal by a waste disposal service, all garbage and/or waste containers shall be either (1) kept within the subject building or (2) kept in a sealed enclosure which prevents the emission of any noxious odors.
6. The Project Sponsor shall maintain appropriate odor control equipment to prevent any significant noxious or offensive kitchen odors from escaping the premises.
7. The Project Sponsor shall operate the proposed restaurant such that noise is kept at reasonable levels so as not to unduly disturb neighboring businesses and residents.
8. The Project Sponsor shall maintain an attractive storefront providing visibility of the restaurant interior through the storefront windows.
9. Signs and exterior lighting for the business shall be reviewed and approved by the Planning Department before they are installed.

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.