



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- Inclusionary Housing (Sec. 315)
- Jobs Housing Linkage Program (Sec. 313)
- Downtown Park Fee (Sec. 139)
- First Source Hiring (Admin. Code)
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Planning Commission Final Motion No. 17690

HEARING DATE: SEPTEMBER 11, 2008

Date: September 4, 2008
Case No.: **2008.0852 C**
Project Address: **1909 MISSION STREET**
Zoning: Moderate Scale Neighborhood Commercial District
 80-B Height and Bulk District
Block/Lot: 3553/029
Project Sponsor: Nick Heydarian
 1905 Mission Street
 San Francisco, CA 94103
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ADOPTING FINDINGS RELATING TO CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303 AND 781.5 OF THE PLANNING CODE TO ALLOW A SMALL SELF-SERVICE RESTAURANT (DBA PASQUA'L CREAMERY & JUICE BAR) WITHIN THE MODERATE SCALE NEIGHBORHOOD COMMERCIAL DISTRICT, THE MISSION STREET FAST-FOOD SUBDISTRICT AND AN 80-B HEIGHT AND BULK DISTRICT.

PREAMBLE

On July 17, 2008 Nick Heydarian (Project Sponsor) filed an application with the San Francisco Planning Department (hereinafter "Department") for Conditional Use Authorization under Planning Code Section 781.5 of the Planning Code to allow a Small Self-Service Restaurant (dba Pasqua'l Creamery & Juice Bar) within the Moderate Scale Neighborhood Commercial District, the Mission Street Fast-Food Subdistrict and an 80-B Height and Bulk District.

On September 11, 2008, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2008.0852C.

The Project was determined by the 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. 2008.0852C, 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 proposed project is located on the east side of Mission Street, between 15th and 16th Streets, within the Moderate Scale Neighborhood Commercial District, the Mission Street Fast-Food Subdistrict and an 80-B height and bulk district. The 8,700 square foot corner lot is improved with a five story structure completed in March 2007. Residential uses are found on the upper stories while commercial / retail uses are on the ground floor. The proposed project intends to utilize a vacant ground floor commercial space of approximately 515 square feet, occupying 16 linear feet of frontage on Mission Street.
3. **Surrounding Properties and Neighborhood.** The proposed project site is located at the northern end of the 1.8 mile long Moderate Scale Neighborhood Commercial District that runs along the spine of the Mission District through to the outer Mission District. A number of neighborhood serving uses including bars, eating establishments, general grocery stores, liquor stores, professional and personal service uses and retail sales and services uses characterize this neighborhood commercial district. In general, residential uses are found above the commercial / retail uses found on the ground floor. Properties in the vicinity of the proposed project are located within the RC-4 (Residential-Commercial Combined, High Density), C-M (Heavy Commercial) and P (Public Use) Districts.

The site is well served by transit. The 14-Mission, 14L-Mission Limited, 49-South Van Ness Mission Muni Bus Lines operate on Mission Street, immediately in front of the proposed project. The 22-Fillmore, 26-Valencia, 33-Stanyan and the 53-Southern Heights Muni Bus Lines and the 16th Street BART station operate within one block of the site.

4. **Project Description.** The project proposes to establish a Small Self-Service Restaurant (dba Pasqua'l Creamery & Juice Bar) within the Moderate Scale Neighborhood Commercial District and the Mission Street Fast-Food Subdistrict. Conditional Use authorization is required to establish a Small Self-Service Restaurant within the Mission Street Fast-Food Subdistrict. The project intends to occupy a storefront vacant since March 2007.

Pasqua'l Creamery & Juice Bar is an independently owned restaurant and is not identified as a formula retail use. The menu will consist of ice cream, pastries, sandwiches and an assortment of non-alcoholic beverages.

Although the project does not propose to enlarge the existing building envelope, Planning Code Section 312 requires notification and review for a change of use to a Small Self-Service Restaurant.

5. **Public Comment.** The Planning Department has not received any public comment on this case.
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 changes 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 Pasqua'l Creamery & Juice Bar) within the Moderate Scale Neighborhood Commercial District and the Mission Street Fast-Food Subdistrict. Section 312 notification was conducted in conjunction with the Conditional Use authorization notification.

- B. **Small Self Service Restaurant.** Planning Code Section 781.5 allows a Small Self-Service Restaurant within the Mission Street Fast-Food Subdistrict by Conditional Use authorization on the first story.

The Project Sponsor intends to establish a Small Self-Service Restaurant (dba Pasqua'l Creamery & Juice Bar) in the Mission Street Fast-Food Subdistrict and is seeking Conditional Use authorization.

- 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 proposed project contains less than 5,000 square feet of occupied floor area and therefore 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 full 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 provides 16 linear feet of frontage on Mission Street with approximately 14 linear 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 necessary and desirable because it complements the character of the Moderate Scale Neighborhood Commercial District's overall pattern of retail/commercial uses on the ground floor, it utilizes a storefront vacant since March 2007, it provides specialty goods for the residents of the Mission neighborhood, and it will enliven pedestrian traffic along Mission Street north of the 16th Street intersection.

- 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 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 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 5 through 8 specifically obligate the project sponsor to mitigate noxious or offensive noise and odor 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. The Department shall review all proposed signs.

- 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 the Moderate Scale Neighborhood Commercial District in that the intended eating and drinking use is located at the ground floor, will provide specialty goods to the surrounding neighborhoods and will contribute to the street's mixed use character and activity in the evening.

8. **Eastern Neighborhoods Community Planning Program Compliance.** The Commission finds that the Project is consistent with the relevant provisions of the proposed Eastern Neighborhoods Community Planning Program in the following manner:

- A. **Mission Street Neighborhood Commercial Transit District Description and Purpose Statement.** The stated intention of the Mission Street Neighborhood Commercial Transit District is to provide a selection of goods serving the day-to-day needs of the residents of the Mission District and to situate eating and drinking establishments on the ground story, thereby providing a continuous retail frontage and contributing to the street's mixed-use character and activity in the evening hours.

The proposed project will provide goods in the form of ice cream, pastries, sandwiches and an assortment of non-alcoholic beverages to the area's residents. The establishment will occupy a storefront on the ground floor only and provides 16 linear feet of retail frontage along Mission Street.

- B. **Non-Residential Use Size.** Proposed Planning Code Section 736.21 allows up to 5,999 square feet of non-residential use by right and requires Conditional Use authorization for uses 6,000 square feet and greater.

The proposed project will occupy a commercial space less than 6,000 square feet.

- C. **Small Self-Service Restaurant.** Proposed Planning Code Section 736.44 allows Small Self-Service restaurants on the first and second stories of buildings as of right.

The proposed project is a Small Self-Service restaurant on the ground floor and is therefore consistent with the proposed use control.

9. **General Plan Compliance.** The Project is, on balance, consistent with the following Objectives and Policies of the General Plan:

NEIGHBORHOOD COMMERCE

Objectives and Policies

OBJECTIVE 1:

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

Policy 1.1:

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

Policy 1.2:

Assure that all commercial and industrial uses meet minimum, reasonable performance standards.

Policy 1.3:

Locate commercial and industrial activities according to a generalized commercial and industrial land use plan.

The proposed project will provide desirable goods and services –ice cream, pastries, sandwiches and an assortment of non-alcoholic beverages – to residents of the neighborhood and of a greater area as well as to patrons of the surrounding commercial establishments in the Moderate Scale Neighborhood Commercial District. The project is subject to the standard conditions of approval for a Small Self-Service Restaurant including those dealing with litter/cleanliness, fumes and odors. Being located within the Moderate Scale Neighborhood Commercial District, the proposed project 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.

The proposed project will fill a currently vacant commercial space with a beneficial commercial use for the area's residents and patrons of the surrounding commercial establishments in the Moderate Scale Neighborhood Commercial District.

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.

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 whose upper floors are residential, thereby preserving the mixed commercial-residential character of the Moderate Scale Neighborhood Commercial District. No affordable housing will be lost as the project proposes to retain commercial activity within in an existing storefront.

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.

Within the 1.8 mile long Moderate Scale Neighborhood Commercial District there are 95 eating and drinking establishments. For eating and drinking establishments, the Commerce and Industry Guidelines for Specific Uses state, "the balance of commercial uses may be threatened when eating and drinking establishments occupy more than 20% of the total occupied commercial frontage." Planning Department Staff performed a site survey of the NC-3 District in which the proposed project is located. With the proposed restaurant use, approximately 13% of the frontage of this NC-3 District is attributed to eating and drinking establishments. Due to the level of public transit service and of the nature of the goods served, it is not believed that any traffic or parking impacts will 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

The survey conducted by Planning Department Staff identified 38 large fast food and small self-service restaurants within the NC-3 District, a quantity that exceeds the number of fast food restaurants, if all 500 feet from each other, that the Commerce and Industry Guidelines for Specific Uses indicate for the District. There is also one public school, Marshall Elementary School, within 500 feet of the proposed project. However, due to the neighborhood serving nature of the project, the abundance of public transit and the project being located on the same side of the street as the existing elementary school, there is little reason to expect an increase in the number of pedestrian - vehicle conflicts. The project proposes 15 linear feet of queuing space for walk in patrons as well as 5 seats for those who wish to eat on site, in accord with the

Guidelines for Specific Uses found in the Commerce and Industry Element. The project is subject to the standard conditions of approval for a Small Self-Service Restaurant including those dealing with litter/cleanliness, fumes and odors. The project sponsor proposes operating hours to extend no later than 10 p.m.

10. **Planning Code Section 101.1(b)** establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project does comply with said policies in that:

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

The project proposes to fill a currently vacant storefront with a retail use that serves the neighborhood and that can serve as a source of employment for neighborhood residents.

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

The project proposes to utilize a currently vacant storefront for its operation and does not propose any expansion or significant alteration to either the building envelope or building façade.

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

No housing is removed for this Project.

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

The proposed project is on Mission Street, between 15th and 16th 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 14-Mission, 14L-Mission Limited, 22-Fillmore, 26-Valencia, 33-Stanyan, 49-South Van Ness Mission and 53-Southern Heights Muni Bus Lines and the 16th Street BART station operate within two blocks of the site.

- E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

The proposed project will not include any commercial office development and will not displace any service or industry establishments

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

The proposed project will comply with the current city codes to achieve the proper preparedness in the event of an earthquake.

- G. That landmarks and historic buildings be preserved.

There is no landmark or historic building occupying the project site.

- 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.

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

DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Application No. 2008.0852C** 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. 17690. 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 September 11, 2008.

Linda Avery
Commission Secretary

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

NAYS: None

ABSENT: Commissioner Miguel

ADOPTED: September 11, 2008

Exhibit A

Conditions of Approval

1. This authorization is for a Conditional Use Authorization under Section 781.5 of the Planning Code to allow a Small Self-Service Restaurant at 1909 Mission Street within the Moderate Scale Neighborhood Commercial District, the Mission Street Fast-Food Subdistrict and a 80-B Height and Bulk District, in general conformance with plans filed with the Application as received on July 17, 2008 and stamped "EXHIBIT B" included in the docket for **Case No. 2008.0852C**, reviewed and approved by the Commission on September 11, 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 sweeping and litter pickup and disposal as well as 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 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 authorization and right vested by virtue of this action shall be deemed void and canceled, if within 3 years 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.