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Planning Commission Motion No. 18500

HEARING DATE: DECEMBER 1, 2011

Date: November 17, 2011
Case No.: **2011.1067 C**
Project Address: **1529 Polk Street**
Zoning: Polk Street NCD (Neighborhood Commercial District)
65-A Height and Bulk District
Block/Lot: 0643/003
Project Sponsor: Mr. Ray Starbuck, The Sherwin Williams Company
101 West Prospect Avenue
Cleveland, OH 44115
Staff Contact: Elizabeth Watty – (415) 558-6620
Elizabeth.Watty@sfgov.org

ADOPTING FINDINGS RELATING TO THE DISAPPROVAL OF A CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303, 703.3(b). AND 703.4 OF THE PLANNING CODE TO ALLOW A FORMULA RETAIL USE (D.B.A. SHERWIN WILLIAMS) WITHIN THE POLK STREET NCD (NEIGHBORHOOD COMMERCIAL DISTRICT) AND THE 65-A HEIGHT AND BULK DISTRICT.

PREAMBLE

On September 15, 2011, John Kevlin of Reuben & Junius, LLP on behalf of Ray Starbuck of The Sherwin Williams Company (hereinafter "Project Sponsor") filed an application with the Planning Department (hereinafter "Department") for Conditional Use authorization under Planning Code Section(s) 303, 703.3(b), and 703.4, to allow a Formula Retail Use (d.b.a. Sherwin Williams) within the Polk Street Neighborhood Commercial District (NCD), and a 65-A Height and Bulk District.

On December 1, 2011, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2011.1067C.

On November 10, 2011, the Project was determined to be exempt from the California Environmental Quality Act ("CEQA") as a Class 1 Categorical Exemption under CEQA as described in the determination contained in the Planning Department files for this Project.

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 disapproves the Conditional Use requested in Application No. 2011.1067C, 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 west side of Polk Street, between Sacramento and California Streets. The subject property is located within the Polk Street NCD (Neighborhood Commercial District) and 65-A Height and Bulk District.

Although the Project Site is located mid-block, the property has two street frontages in an “L-shaped” configuration: there is a commercial frontage on Polk Street and a residential/commercial frontage along California Street. The majority of the current structure at the Property was constructed within the last few years, obtaining its Certificate of Final Completion in November 2008; this new portion of the structure fronts California Street and is mixed-use, with five stories of residential over ground floor retail. The building also includes a one-story retail space at 1529 Polk Street (subject tenant space), which was previously occupied by the Royal Theater. As part of the construction that concluded in 2008, the theater was removed as part of an interior tenant improvement, while much of the façade was retained. The remodel resulted in the creation of one off-street parking space dedicated to the subject tenant space; this space is accessed by vehicles off of California Street, but can be accessed by employees through the rear door of the tenant space. Since this remodel in 2008, the subject tenant space has been vacant (approximately three years).

3. **Surrounding Properties and Neighborhood.** The surrounding properties on Polk Street include an adjacent four-story mixed-use building to the south occupied by Swan’s Oyster Depot, Metro PCS, California Tobacco Center, T. Piaceri (restaurant), and Nara Sushi on the ground floor; and an adjacent one-story building to the north occupied by Spencer & Daniels Wine Outlet. Directly across the street are a Walgreens Pharmacy and a Chase Bank.

The Polk Street NCD, located in the gulch between Nob Hill, Russian Hill, and Pacific Heights, provides convenience goods and services to the residents of the Polk Gulch neighborhood and the west slopes of Nob and Russian Hill. The district has a very active and continuous commercial frontage along Polk Street, while the side streets have a greater proportion of residences. The zoning controls are designed to encourage residential development above neighborhood-serving commercial uses on the ground floor.

The surrounding development is a variety of multi-story, mixed-use buildings. Nearby ground-floor uses include eating and drinking establishments, small-scale retail stores, and nighttime entertainment. The upper stories are generally occupied by apartments, and residential hotels. The scale of development throughout the area varies widely. The scale of development throughout the area consists of low- and mid-rise buildings (one- to four-story structures) and high-rise buildings exceeding 100 feet in height. The height limits in the area range from 65 to 130 feet.

4. **Project Description.** The Project Sponsor proposes to establish a formula retail paint supply business, known as "Sherwin Williams" within the existing vacant 2,838 sf tenant space at 1529 Polk Street, pursuant to Planning Code Sections 303, 703.4 and 703.3(b). The Sherwin Williams paint supply store would sell paint and paint sundries to local homeowners and small-scale painting contractors; they will provide free deliveries of paint orders, which have proven to be a successful business model at their other San Francisco locations. There would be no expansion to the tenant space as part of this Project.
5. **Public Comment.** The Department has received four letters in opposition to the Project, and one letter of support.
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. **Other Retail Sales and Services.** Planning Code Section 723.40 states that a retail use, as defined by Planning Code Section 790.102, is permitted-by-right at the ground floor.

The Project is a retail use proposed at the ground floor. Although permitted by right as a general use category, the Formula Retail Controls below require that this Project obtain a Conditional Use authorization.

- B. **Street Frontage in Neighborhood Commercial Districts.** Section 145.1 of the Planning Code requires that NC Districts provide the following: 1) "active uses" within the first 25 feet of building depth on the ground floor from any facade facing a street at least 30 feet in width; 2) street-facing ground-level spaces that open directly onto the street; and 3) frontages that are fenestrated with transparent windows and doorways for no less than 60 percent of the street frontage at the ground level and that allow visibility to the inside of the building.

The subject commercial space has approximately 23'-9" of frontage along Polk Street. This entire space will be occupied by the "active use" of Sherwin Williams, a Formula Retail Use. Nearly the entire façade is dedicated to clear, unobstructed clear-glass windows, including a flush entrance that opens directly onto the sidewalk. The windows are all clear and unobstructed and are conditioned to remain as such.

- C. **Use Size.** Planning Code Section 723.21 allows a use size up to 1,999 gsf as-of-right, and any use size 2,000 gsf and above requires a Conditional Use authorization.

The Project will occupy the entire vacant tenant space, which is 2,838 gsf. Since there will be no change to the existing gross square footage as a result of this Project, the change of use is "grandfathered-in" as having a Conditional Use for use size. A nonconforming use size that is discontinued and abandoned for a period three years and has not been reduced in size by a new tenant may be reoccupied by a new use at its original size, without seeking a new Conditional Use authorization for use size.

The Planning Commission approved the existing interior tenant space as part of a larger project in 2002 (Case No. 2000.718CEKV!). That project included the demolition of an existing 800-seat movie theatre (the Royal Theater) with retention of the historic façade, and construction of a new eight-story building with ground floor retail, 56 dwelling units on the seven upper floors, and 75 off-street parking spaces provided in three underground levels. There are no changes to the use size of the subject tenant space that differ from that approval.

- D. **Parking.** Planning Section 151 of the Planning Code requires retail uses to provide one off-street parking for every 500 square-feet of occupied floor area, where the occupied floor area exceeds 5,000 square-feet.

The occupied floor area of the subject tenant space measures approximately 2,838 sf and thus does not require any off-street parking. Nonetheless, the tenant space does include one dedicated off-street parking space that will be used for paint deliveries, and this parking space is located behind the Polk Street tenant space, but accessed off of California Street.

- E. **Loading.** Section 152 requires off-street freight loading for uses above a certain size. Retail establishments and uses primarily engaged in the handling of goods (such as the proposed business) are not required to provide off-street freight loading if they measure less than 10,000 square feet in gross floor area.

With a gross floor area of under 10,000 square feet, the Project is not required to provide any off-street loading.

- F. **Hours of Operation.** Planning Code Section 722.27 allows hours of operation from 6:00 a.m. until 2:00 a.m. as-of-right in the Polk Street NCD, and requires Conditional Use authorization to operate between the hours of 2:00 a.m. and 6:00 a.m.

Sherwin Williams will operate within the permitted-by-right hours of operation, although will typically operate during regular business hours.

- G. **Formula Retail.** Section 703.3(f) allows formula retail uses in the Polk Street NCD with a Conditional Use authorization.

The Project is considered to be a formula retail use as defined by Section 703.3 of the Planning Code, and as such, is seeking a Conditional Use authorization.

H. **Signage.** Currently, there is not a proposed sign program on file with the Planning Department. 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 authorization. On balance, the Project complies 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 Project has not been found to be desirable at the proposed location due to its proximity to other similar uses in the area, many of which are independent businesses.

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 Project would not physically expand the existing building or tenant space, and therefore would not alter the existing appearance or character of the Project vicinity.

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 publically-accessible portion of the business is relatively small, and the area is well-served by ample public transportation. The C cable care line runs along Californian Street, less than one block south of the Property, and nine bus lines (the 19, 76, 47, 49, 1, 27, 31, 38AX, and 38BX) have stops within two blocks of the Property. Off-street parking and loading are not required for the Project. The Project's one off-street parking space that will be used for deliveries will help minimize the number of vehicular trips coming to and from the Project Site. 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 business is not expected to generate excessive noise or odors. No paint, nor any tool that has touched paint, is thrown away at Sherwin Williams's stores. Sherwin Williams has special disposal services so that paint is not dumped into a landfill. There are virtually no fumes that emanate from the store, as the products offered are low in VOC and most paint is water soluble. No paint (in cans or otherwise) will be left open per company policy. The Project will not produce, or include, uses that noxious or offensive emissions such as noise, glare, dust and odor. The proposed use is subject to the standard conditions of approval for controlling noise and odor, as outlined in Exhibit A.

- 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 ground-floor level to all street-facing property lines, thus no landscaping will need to be provided. The one parking space for the tenant space is located mid-blocked, and screened from public view. Any future changes in lighting and signage would be required to comply with the requirements of the Planning Code, CEQA, the Urban Design Element of the General Plan, and other applicable regulations and policies, in accordance with Conditions of Approval contained in 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 Polk NCD functions as a neighborhood-serving shopping corridor, providing convenience goods and services to the residents of the Polk Gulch neighborhood and the west slopes of Nob and Russian Hill. The district has a very active and continuous commercial frontage along Polk Street, and is designed to encourage residential development above neighborhood-serving commercial uses on the ground floor. Ground-floor uses typically include eating and drinking establishments, small-scale retail stores, and nighttime entertainment. The scale of development throughout the area varies widely. The addition of a formula retail paint supply store, when there are many similar uses in the neighborhood, is not consistent with the purpose of the Polk NCD.

- 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.

A survey of the Polk Street NCD bounded by Sacramento Street to the north and Post Street to the south revealed that there are eight existing formula retail uses in the area. These businesses include two Walgreens, two Metro PCS stores, Subway, GNC, Max Muscle, and Out of the Closet Thrift Store.

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

There are three other businesses within the Polk NCD that offer a similar product through a similar business model: G & R Paint Company (1238 Sutter Street), Fregosi & Company (1812 Polk Street), and Glidden Professional Paint Center (1580 Pacific Avenue). In addition, there are four hardware stores within the Polk NCD that stock paint and paint supplies as part of a larger offering of products and services: Brownies Hardware (1563 Polk Street), Polk Home Hardware True Value (1630 Polk Street), Nob Hill Hardware (1414 California Street), and Cole Hardware (2254 Polk Street).

- 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, and thus the Formula Retail Use would remain compatible with the architectural and aesthetic character of the Neighborhood Commercial District. Any future signage would be review by historic preservation staff prior to approval.

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

There are currently twelve (12) vacant commercial storefronts in the Polk Street NCD between Sacramento and Post Streets, in addition to the subject tenant space. Only three of these twelve vacancies are located on Polk Street.

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

The subject district contains eating and drinking establishments, retail, services and institutions that serve not only the immediate neighborhood, but also the City as a whole. There is a mixture of locally-owned and independent uses, although there is a majority of independent uses along this portion of Polk Street. The proposed use would largely serve contractors and would not primarily be a neighborhood-serving use.

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

COMMERCE AND INDUSTRY ELEMENT

Objectives and Policies

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 formula retail use may adversely affect independently-owned businesses in the area that provide a similar product.

Neighborhood Commerce

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.

In order for a Neighborhood Commercial District to remain viable and be compatible with the surrounding neighborhood, it must exhibit a healthy balance of different types of commercial uses. This policy includes guidelines that prioritize uses that will provide goods and services to serve residents of the area. This project will provide goods similar to those that are already found throughout the Polk Street NCD, and will not predominantly be a neighborhood-serving use.

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 complies 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 could affect several existing independently-owned neighborhood-serving retail uses that sell similar goods and provide similar services.

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 would adversely affect the neighborhood character of the Polk Street NCD by adding a formula retail paint supply store to a district that has several similar businesses and 8 formula retail businesses between Sacramento and Post Street. The use has not been found to be either necessary or desirable by members of the community; the only support for the project was for the filling of a vacant storefront, and not for the business itself.

The Project will have no effect on housing and will not significantly change the retail character of the Polk Street corridor.

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

The Project would not affect the City's supply of affordable housing, as the vacant commercial storefront was never previously occupied by housing.

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

The Project would not adversely affect public transit or place a burden on the existing supply of parking in the neighborhood. The area is well-served by public transportation and many of the business' customers walk, bicycle, or take public transit to the point sure.

- 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.

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

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

The Project does not involve any construction activities that would compromise the structural integrity of the existing building.

- G. That landmarks and historic buildings be preserved.

No exterior changes are proposed for the Project. Any future storefront alterations or signage would be required to comply with applicable historic preservation standards.

- H. 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 building envelope, would not affect any parks or open spaces, or their access to sunlight.

11. The Project is not consistent with and would not promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would not contribute to the character and stability of the neighborhood and would not constitute a beneficial development.
12. The Commission hereby disapproves the Conditional Use authorization, as it 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. 2011.1067C.**

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this Denial of the Conditional Use authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. 18500. 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 December 01, 2011.

Linda D. Avery
Commission Secretary

AYES: Commissioners Miguel, Borden, Moore, and Sugaya

NAYS: Commissioners Antonini, Fong, and Olague

ABSENT:

ADOPTED: December 01, 2011