



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- | | |
|--|--|
| <input type="checkbox"/> Affordable Housing (Sec. 415) | <input type="checkbox"/> First Source Hiring (Admin. Code) |
| <input type="checkbox"/> Jobs Housing Linkage Program (Sec. 413) | <input type="checkbox"/> Child Care Requirement (Sec. 414) |
| <input type="checkbox"/> Downtown Park Fee (Sec. 412) | <input type="checkbox"/> Other |

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Planning Commission Motion No. 18694

HEARING DATE: SEPTEMBER 6, 2012

Date: August 30, 2012
Case No.: **2012.0716C**
Project Address: **3121 GEARY BOULEVARD**
Zoning: NC-3 (Neighborhood Commercial, Moderate-Scale)
40-X
Block/Lot: 1088/062
Project Sponsor: Alex Mawhinney
741 Balboa Street, Apt #3
San Francisco, CA 94118
Staff Contact: Christine Lamorena – (415) 575-9085
christine.lamorena@sfgov.org

ADOPTING FINDINGS RELATING TO THE APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303 AND 712.54 OF THE PLANNING CODE TO CONVERT APPROXIMATELY 700 SQUARE FEET OF VACANT COMMERCIAL SPACE INTO A MASSAGE ESTABLISHMENT (D.B.A. TOUCH THAI BODYWORK AND MASSAGE) ON THE GROUND FLOOR OF THE THREE-STORY BUILDING WITHIN THE NC-3 (NEIGHBORHOOD COMMERCIAL, MODERATE-SCALE) ZONING DISTRICT AND 40-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On June 5, 2012, Alex Mawhinney (hereinafter "Project Sponsor") filed an application with the Planning Department (hereinafter "Department") for Conditional Use Authorization under Planning Code Sections 303 and 712.54 to convert approximately 700 square feet of vacant commercial space into a massage establishment (d.b.a. Touch Thai Bodywork and Massage) on the ground floor of the three-story building within the NC-3 (Neighborhood Commercial, Moderate-Scale) Zoning District and 40-X Height and Bulk District.

On September 6, 2012, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2012.0716C.

The Project is exempt from the California Environmental Quality Act ("CEQA") as a Class 1 categorical exemption.

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. 2012.0716C, 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 south side of Geary Boulevard between Spruce and Cook Streets, on Lot 062 in Assessor's Block 1088. The proposed massage establishment is located within an NC-3 Zoning District and a 40-X Height and Bulk District. The subject lot is 5,000 square feet (50 feet wide by 100 feet deep) in size and is occupied by a three-story, commercial building originally built in 1972 and renovated in 2007. The three-story building is occupied by vacant commercial space on the ground floor with eight office spaces on the upper floors.
3. **Surrounding Properties and Neighborhood.** The project site is located within the Inner Richmond neighborhood in the eastern portion of the NC-3 Zoning District along Geary Boulevard, a three mile commercial corridor that stretches from the Western Addition to the Outer Richmond, covering four neighborhoods. The corridor is comprised of a mix of neighborhood-serving and citywide-serving retail uses. The surrounding development along Geary Boulevard consists of a variety of commercial and mixed-use buildings featuring ground floor commercial units with residential units above. The scale of development in the area consists primarily of two- to four- story structures. Commercial uses include beauty shops, print shops, pet stores, coffee shops, restaurants, bars, dry cleaners, liquor stores, office supply stores, medical offices and other professional offices. The commercial corridor is surrounded by residential dwellings and residentially zoned districts in the adjacent blocks. The immediately adjacent properties to the east and west are two-story mixed-use buildings containing commercial space at the ground floor with residential units above.
4. **Project Description.** The proposal is to convert vacant commercial space into a massage establishment (d.b.a. Touch Thai Bodywork and Massage) on the ground floor of the three-story commercial building. The massage establishment would occupy approximately 700 square feet of space and contain a reception area, three massage treatment areas separated by movable

curtain partitions, and a restroom. The proposed operation will consist of three employees with operating hours between 9:00 a.m. and 9:00 pm daily. No changes to exterior of the building are proposed.

5. **Public Comment.** To date, the Department has received one phone call inquiring about the proposal. The Department has not received any letters or phone calls in support of or opposition to 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. **Street Frontage in Neighborhood Commercial Districts.** Section 145.1 of the Planning Code requires that within NC Districts, space for active uses shall be provided within the first 25 feet of building depth on the ground floor and 15 feet on floors above from any facade facing a street at least 30 feet in width. In addition, the floors of street-fronting interior spaces housing non-residential active uses and lobbies shall be as close as possible to the level of the adjacent sidewalk at the principal entrance to these spaces. Frontages with active uses that must be fenestrated with transparent windows and doorways for no less than 60 percent of the street frontage at the ground level and allow visibility to the inside of the building. The use of dark or mirrored glass shall not count towards the required transparent area. Any decorative railings or grillwork, other than wire mesh, which is placed in front of or behind ground floor windows, shall be at least 75 percent open to perpendicular view. Rolling or sliding security gates shall consist of open grillwork rather than solid material, so as to provide visual interest to pedestrians when the gates are closed, and to permit light to pass through mostly unobstructed. Gates, when both open and folded or rolled as well as the gate mechanism, shall be recessed within, or laid flush with, the building facade.

The proposed massage establishment will have a frontage of approximately 8.5 feet, about 76% of which is committed to the commercial entrance and windows. The windows are clear and unobstructed. There are no changes proposed to the commercial frontage.

- B. **Hours of Operation.** Planning Code Section 712.27 places no limit to the hours of operation within the NC-3 Zoning District.

The Project Sponsor intends to operate the proposed massage establishment during the hours of 9:00 am to 9:00 pm daily, which is permitted in the NC-3 Zoning District.

C. **Massage Establishment.** Section 712.54 allows massage establishments with Conditional Use Authorization in the NC-3 Zoning District and requires that the Planning Commission shall make findings as outlined in Planning Code Section 790.60(c) in addition to those required under Planning Code Section 303(c), based on the following criteria:

1. Whether the applicant has obtained, and maintains in good standing, a permit for a Massage Establishment from the Department of Public Health pursuant to Section 1908 of the San Francisco Health Code.

The Project Sponsor provided the Department with copies of the permits from the Department of Public Health.

2. Whether the use's facade is transparent and open to the public. Permanent transparency and openness are preferable. Elements that lend openness and transparency to a facade include: (i) an active street frontage of at least 25 feet in length where 75% of that length is devoted to entrances to commercially used space or windows at the pedestrian eye-level; (ii) windows that use clear, untinted glass, except for decorative or architectural accent; (iii) any decorative railings or decorative grille work, other than wire mesh, which is placed in front of or behind such windows, should be at least 75 percent open to perpendicular view and no more than six feet in height above grade.

The proposed massage establishment will have a frontage of approximately 8.5 feet, about 76% of which is committed to the commercial entrance and windows. The storefront features a door and window that are clear, untinted, and free of any decorative railings or grille work.

3. Whether the use includes pedestrian-oriented lighting. Well-lit establishments where lighting is installed and maintained along all public rights-of-way adjacent to the building with massage use during the post-sunset hours of the massage use are encouraged.

Existing overhead lighting in the building's front entrance will provide adequate pedestrian oriented lighting to the subject building.

4. Whether the use is reasonably oriented to facilitate public access. Barriers that make entrance to the use more difficult than to an average service-provider in the area are to be strongly discouraged. These include (but are not limited to) foyers equipped with double doors that can be opened only from the inside and security cameras.

The use is reasonably oriented to facilitate public access and there are no barriers to entry, no foyers, and no double doors.

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 will provide a use that will be compatible with the mix of goods and services currently available along this section of Geary Boulevard and will contribute to the economic vitality of

the neighborhood by occupying a vacant storefront. There will be no major alterations to the existing tenant space or any physical expansion of the building envelope.

- 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 the proposed project will not alter the existing appearance or character of the project vicinity. There will be no expansion to 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 an approximately 700 square-foot massage establishment. The proposed use is designed to meet the needs of the immediate and surrounding neighborhoods and should not generate significant amounts of vehicular trips from the neighborhood or citywide. There is street parking on Geary Boulevard and in the immediate neighborhood. In addition, the project site is well served by transit. MUNI bus lines 38-Geary, 38BX-Geary B Express, and 38L-Geary Limited run directly in front of the project site.

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

The proposed use, by its nature, will not produce any noxious or offensive emissions such as noise, glare, dust and odor.

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

The proposed project does not propose any exterior tenant improvements. There will be no addition of parking spaces, loading facilities, open space or service areas. All project signage and projections will be consistent with the controls of the Planning Code.

- 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 NC-3 Zoning District in that the intended use is located at the ground floor and is a neighborhood-serving business.

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

COMMERCE AND INDUSTRY ELEMENT

GENERAL/CITYWIDE

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, which 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 massage establishment would be compatible with and complimentary to the type of uses characterizing this portion of the NC-3 Zoning District, which is primarily a mixture of neighborhood-serving retail uses. The proposed use would be consistent with 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 such new activity to the City.

Policy 2.3:

Seek to retain existing commercial and industrial activity and to attract such new activity to the City.

The proposed project would retain and reactivate an existing commercial space and will enhance the diverse economic base of the City.

OBJECTIVE 3:

PROVIDE EXPANDED EMPLOYMENT OPPORTNITIES 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 would provide enhanced opportunities for employment of neighborhood residents.

NEIGHBORHOOD COMMERCE

Objectives and Policies

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.

The proposed project would occupy a vacant commercial space with a commercial use that would be complimentary to the type of neighborhood-serving uses within the immediate area.

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.

Independent entrepreneurs are sponsoring the proposal. The proposed use is neighborhood-serving, to occupy an existing vacant commercial space, thereby encouraging the vitality of the commercial corridor.

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 proposed project would preserve and enhance existing neighborhood-serving retail uses by occupying a vacant space and diversifying the type of commercial establishments within the immediate neighborhood. The proposed project would provide new job opportunities to the City by employing approximately three employees.

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

The proposed project would not displace housing.

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

The proposed project would not have any effect on the City's supply of affordable housing. No housing would be removed as part of this project.

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

The proposed project would not significantly increase the automobile traffic congestion and parking problems in the neighborhood. The proposal is a neighborhood-serving use to which residents can access by walking or taking public transit.

- 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 proposed project. No industrial or service sector uses would be displaced.

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

The existing building was recently renovated in 2007 and was built to the seismic safety requirements at the time.

- G. That landmarks and historic buildings be preserved.

The proposed project would not affect any landmarks or historic buildings.

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

The proposed project will not affect any city-owned park or open space.

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. 2012.0716C** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated July 12, 2012, and stamped "EXHIBIT B", 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. 18694. 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 September 6, 2012.

Linda D. Avery
Commission Secretary

AYES: Fong, Wu, Antonini, Borden, Hillis, Moore & Sugaya

NAYS: None

ABSENT: None

ADOPTED: September 6, 2012

EXHIBIT A

AUTHORIZATION

This authorization is for a conditional use to convert approximately 700 square feet of vacant commercial space into a massage establishment (d.b.a. Touch Thai Bodywork and Massage) on the ground floor of the three-story building located at 3121 Geary Boulevard; Lot 062 in Assessor's Block 1088, pursuant to Planning Code Sections 303 and 712.54, within the NC-3 (Neighborhood Commercial, Moderate-Scale) Zoning District and 40-X Height and Bulk District; in general conformance with plans, dated July 12, 2012, and stamped "EXHIBIT B" included in the docket for Case No. 2012.0716C and subject to conditions of approval reviewed and approved by the Commission on September 6, 2012 under Motion No. 18694. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

RECORDATION OF CONDITIONS OF APPROVAL

Prior to the issuance of the building permit or commencement of use for the Project the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on September 6, 2012 under Motion No. 18694.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. 18694 shall be reproduced on the Index Sheet of construction plans submitted with the Site or Building permit application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use authorization and any subsequent amendments or modifications.

SEVERABILITY

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a building permit. "Project Sponsor" shall include any subsequent responsible party.

CHANGES AND MODIFICATIONS

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Conditional Use authorization.

Conditions of Approval, Compliance, Monitoring, and Reporting PERFORMANCE

1. **Validity and Expiration.** The authorization and right vested by virtue of this action is valid for three years from the effective date of the Motion. A building permit from the Department of Building Inspection to construct the project and/or commence the approved use must be issued as this Conditional Use authorization is only an approval of the proposed project and conveys no independent right to construct the project or to commence the approved use. The Planning Commission may, in a public hearing, consider the revocation of the approvals granted if a site or building permit has not been obtained 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 diligently to completion. The Commission may also consider revoking the approvals 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.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

2. **Extension.** This authorization may be extended at the discretion of the Zoning Administrator only where failure to issue a permit by the Department of Building Inspection to perform said tenant improvements is caused by a delay by a local, State or Federal agency or by any appeal of the issuance of such permit(s).

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

MONITORING

3. **Enforcement.** Violation of any of the Planning Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

4. **Revocation due to Violation of Conditions.** Should implementation of this Project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and found to be in violation of the Planning Code and/or the specific conditions of approval for the Project as set forth in Exhibit A of this Motion, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter to consider revocation of this authorization.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

OPERATION

5. **Sidewalk Maintenance.** The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Streets and Sidewalk Maintenance Standards. *For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works, 415-695-2017, <http://sfdpw.org/>*

6. **Community Liaison.** Prior to issuance of a building permit to construct the project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

7. **Massage Establishments.** All massage establishments shall comply with the following standard massage use operation standards.
 - a. The entry to the massage treatment room shall remain directly visible from the public right-of-way. If any additional doors are required under the Building Code for emergency egress purposes, such door shall be labeled "for emergency use only" and shall have an audible alarm that will go off when the door is opened.
 - b. All interior alterations shall be reviewed by the Planning Department to verify compliance with these conditions.
 - c. No locks shall be allowed on any interior door of the business except that a lock for privacy may be permitted on the bathroom door.
 - d. Any blinds or curtains located behind the storefront windows must be kept open during business hours to allow for visibility into the tenant space from the street. No obstructions shall be located in front of any of the storefront windows that would prevent such visibility.
 - e. The front door to the business must be open during business hours. The use of buzzers or a security camera is not permitted.
 - f. The massage establishment shall comply with the hours of operation outlined in Ordinance 140-09, approved on July 2, 2009. This Ordinance amended the Health Code to limit the hours of permitted operation for massage establishments from 7:00 am to 10:00 pm.
 - g. All persons engaged in performing massage shall be licensed for that purpose by the State of California and the licenses shall be prominently displayed on walls of the business.
 - h. The Planning Commission may revoke this Conditional Use authorization if the Department of Public Health revokes the health permit for massage.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org