



SAN FRANCISCO PLANNING DEPARTMENT

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| <input type="checkbox"/> Affordable Housing (Sec. 415) | <input type="checkbox"/> First Source Hiring (Admin. Code) |
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Planning Commission Motion 18849

HEARING DATE: APRIL 18, 2013

Date: April 11, 2013
Case No.: **2013.0172 C**
Project Address: **3970 17th STREET**
Zoning: Upper Market Street Neighborhood Commercial District
65-B Height and Bulk District
Block/Lot: 3563/036
Project Sponsor: Adriana Vermut
1459 Ashbury Street
San Francisco, CA 94118
Staff Contact: Rick Crawford – (415) 558-6358
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ADOPTING FINDINGS RELATING TO THE APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303, AND 721.44 OF THE PLANNING CODE TO ALLOW A RESTAURANT (D.B.A. PICA PICA MAIZE KITCHEN) WITHIN THE UPPER MARKET STREET NEIGHBORHOOD COMMERCIAL DISTRICT (NCD) AND A 65-b HEIGHT AND BULK DISTRICT.

PREAMBLE

On February 14, 2013 Adriana Vermut (hereinafter “Project Sponsor”) filed an application with the Planning Department (hereinafter “Department”) for Conditional Use Authorization under Planning Code Section(s) 303, and 721.44 to allow a restaurant (d.b.a. Pica Pica Maize Kitchen) within the Upper Market Street Neighborhood Commercial District (NCD) and a 65-B Height and Bulk District.

On, April 18, 2013 the San Francisco Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2013.0172C.

The project is categorically exempt as a Class 1 exemption under CEQA Guidelines.

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. 2013.0172C, 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 northeast side of 17th Street, Block 3563, Lot 036. The subject property is a 4,691 square foot through lot between Market and 17th Streets with 45.75 feet of frontage on Market Street and 25.5 feet of frontage on 17th Street. The property is occupied by a three-story commercial building containing two limited restaurants, on the ground floor of the Market Street (d.b.a. Subway) and 17th Street frontage (d.b.a. Pica Pica Maize Kitchen) respectively. A bar (d.b.a. The Café) with a permit for music and dancing is located on the second floor.

On March 20, 2008, with Motion 17572 (attached) in case #2007.0072C, the Planning Commission granted Conditional Use authorization to expand The Café bar at 2367 Market Street. Motion 17572 allowed construction of a three-story with mezzanine addition to the rear of the property on the 17th Street frontage. The addition provided space for the expansion of The Café bar on the upper floors and created a new ground level retail space fronting on 17th Street. In response to concerns in the neighborhood regarding late night activity from bar patrons leaving the area, the Commission imposed a variety of good neighbor conditions on that project. The conditions of approval for the Café expansion included conditions relating to the new retail space on 17th Street relating to formula retail, alcohol sales, and hours of operation.

The present project would occupy the new retail space created by the earlier project and recommended conditions of approval include those conditions from Motion 17572 relating to the use of the space including limitations on alcohol sales, hours of operation and a prohibition against formula retail uses.

3. **Surrounding Properties and Neighborhood.** Properties along Market Street in the vicinity of the project are occupied by commercial uses or mixed use buildings with commercial uses on the ground floor and, occasionally, second floors and residential uses above. The adjacent property to the west is occupied by a gas station. The character of the land uses along 17th Street divides at Hartford Street. The properties west of Hartford Street along 17th Street are generally occupied by mixed-use commercial/residential buildings except for a 28-unit apartment building at the southwest corner of the intersection of the two streets. East of Hartford Street the

properties all tend to be residential in character. The buildings immediately adjacent to the project site are occupied by commercial uses.

4. **Project Description.** The applicant proposes to change the use of the existing Limited Restaurant (d.b.a Pica Pica Maize Kitchen) to a Restaurant with beer and wine service. The proposed use is not a Formula Retail use rather it is an independent use and locally owned, which has been encouraged throughout San Francisco. The hours of operation are limited to 6:00 a.m. to 11:00 p.m. and the sale of alcohol from the restaurant is limited to on-site sales of beer and wine only by Motion 17572 in case # 2007.0072 C.
5. **Public Comment.** To date, the Department has received no public comment regarding this request.
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. **Eating and Drinking Uses.** Planning Code Section 303(p) requires that with regard to a conditional use authorization application for a Restaurant, Limited-Restaurant and Bar uses in Neighborhood Commercial Districts or Mixed Use Districts, the Planning Commission shall consider, in addition to the criteria set forth in Subsection 303(c) the existing concentration of eating and drinking uses in the area. Such concentration should not exceed 25% of the total commercial frontage as measured in linear feet within the immediate area of the subject site. For the purposes of this Section of the Code, the immediate area shall be defined as all properties located within 300' of the subject property and also located within the same zoning district.

No concentration of eating and drinking uses exists within 300 feet of the subject property within the Upper Market Street NCD. Including the proposed Restaurant use, eating, and drinking uses occupy a total of 15% of the lineal street frontage in the 300-foot radius. The proposed Restaurant would not cause a concentration of such uses.

- B. **Formula Retail.** Planning Code Section 730.4 stated that Conditional Use authorization is required for Formula Retail Uses in the Upper Market Street NCD.

The proposed use is an independent and locally owned use and is not a Formula Retail use.

- C. **Hours of Operation.** Planning Code Section 721.27 states that Conditional Use Authorization is required for maintaining hours of operation from 11p.m. to 2 a.m., as defined by Planning Code Section 790.48.

The hours of operation for the proposed restaurant are limited to 6:00 a.m. to 11:00 p.m. by Motion 17572 in case # 2007.0072 C.

- D. **Restaurant Use.** Planning Code Section 721.44 states that Conditional Use authorization is required for a Restaurant in the Upper Market Street NCD.

The proposed use is a Restaurant with the on-site sale of beer and wine only. The sale of alcohol from the restaurant is limited to on-site sales of beer and wine only by Motion 17572 in case # 2007.0072 C.

- E. **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, 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 subject commercial space has approximately 25-feet of frontage on 17th Street with approximately 20 feet devoted to the restaurant entrance and window space. The windows are clear and unobstructed. The remainder of the space is a secondary egress for the Café bar on the upper floors of the Market Street frontage of the building. There are no changes proposed to the commercial frontage.

7. **Planning Code Section 303** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the project does comply with said criteria in that:

- A. The proposed new uses and building, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

The size of the proposed use is in keeping with other storefronts on the block face. The proposed restaurant would not affect traffic or parking in the District because it is not a destination restaurant and the site is well served by transit. The use would complement the mix of goods and services currently available in the district and contribute to the economic vitality of the neighborhood.

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

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

The height and bulk of the existing building would remain the same and the project 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 Planning Code does not require parking or loading for a 1,500 square foot restaurant. The proposed use is designed to meet the needs of the immediate neighborhood and should not generate significant amounts of vehicular trips from the immediate neighborhood or citywide.

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

The proposed use is subject to the standard conditions of approval for restaurants and outlined in Exhibit A. Two conditions specifically obligate the project sponsor to mitigate odor and noise generated by the restaurant use.

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

The proposed restaurant does not require any additional tenant improvements the Department shall review all lighting and signs proposed for the new business in accordance with 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 purposes of Upper Market Street NCD in that the intended use is located at the ground floor, would provide a compatible convenience service for the immediately surrounding neighborhoods during daytime hours.

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 would provide desirable goods and services to the neighborhood and would provide resident employment opportunities to those in the community. Further, the Project Site is located within a Neighborhood Commercial District and is thus consistent with activities in the commercial land use plan.

OBJECTIVE 2:

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.1:

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

The project would retain an existing commercial activity and enhance the diverse economic base of the City.

OBJECTIVE 6:

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

Policy 6.1:

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.

No commercial tenant would be displaced and the project would not prevent the district from achieving optimal diversity in the types of goods and services available in the neighborhood. No concentration of eating and drinking uses exists within 300 feet of the subject property within the Upper Market Street NCD. Including the proposed Restaurant use, eating, and drinking uses occupy a total of 15% of the lineal street frontage in the 300-foot radius. The proposed Restaurant would not cause a concentration of such uses.

Policy 6.2:

Promote economically vital neighborhood commercial districts which foster small business enterprises and entrepreneurship and which are responsive to the economic and technological innovation in the marketplace and society.

An independent entrepreneur is sponsoring the proposal. The proposed use is a neighborhood serving use. This is not a Formula Retail use.

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

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

The proposal would enhance the district by providing an active food-service use on the ground floor of the building in close proximity to the open space at Castro and 17th Streets. The business would be locally owned and it creates employment opportunities for the community.

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

The existing units in the surrounding neighborhood would not be adversely affected. .

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

No housing is removed for this project.

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

The site is on 17th Street near the intersection of Castro, Market, and 17th Streets and is well served by 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.

The project would not displace any service or industry establishment. The project would not affect industrial or service sector uses or related employment opportunities. Ownership of industrial or service sector businesses would not be affected by this project.

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

The project is designed and would be constructed to conform to the structural and seismic safety requirements of the City Building Code. This proposal would not affect the property's ability to withstand an earthquake.

- G. That landmarks and historic buildings be preserved.

A landmark or historic building does not occupy the Project site.

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

The project would have no negative impact on existing parks and open spaces. The project does not have an impact on open spaces.

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

DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Application No. 2013.0172C** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated September 26, 2011, 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. 18849. 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 April 18, 2013.

Jonas P. Ionin
Acting Commission Secretary

AYES: Commissioners Antonini, Bordon, Fong, Hillis, Moore, Sugaya, and Wu.

NAYS: none

ABSENT: none

ADOPTED: April 18, 2013

EXHIBIT A

AUTHORIZATION

This authorization is for a conditional use to allow a Restaurant (d.b.a. Pica Pica Maize Kitchen) located at 3970 17th Street, Block 3563, Lot 036 pursuant to Planning Code Section(s) 303 and 721.44 within the Upper Market Street Neighborhood Commercial District and a 65-B Height and Bulk District; in general conformance with plans, dated September 26, 2011, and stamped "EXHIBIT B" included in the docket for Case No. 2013.0172C and subject to conditions of approval reviewed and approved by the Commission on April 18, 2013 under Motion No 18849. 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 April 18, 2013 under Motion No. 18849.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. 18849 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

DESIGN – COMPLIANCE AT PLAN STAGE

- 3. Garbage, composting and recycling storage.** Space for the collection and storage of garbage, composting, and recycling shall be provided within enclosed areas on the property and clearly labeled and illustrated on the building permit plans. Space for the collection and storage of recyclable and compostable materials that meets the size, location, accessibility and other standards specified by the San Francisco Recycling Program shall be provided at the ground level of the buildings.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

- 4. Odor Control Unit.** In order to ensure any significant noxious or offensive odors are prevented from escaping the premises once the project is operational, the building permit application to implement the project shall include air cleaning or odor control equipment details and manufacturer specifications on the plans. Odor control ducting shall not be applied to the primary façade of the building.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

MONITORING - AFTER ENTITLEMENT

- 5. 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

6. **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

7. **Garbage, Recycling, and Composting Receptacles.** Garbage, recycling, and compost containers shall be kept within the premises and hidden from public view, and placed outside only when being serviced by the disposal company. Trash shall be contained and disposed of pursuant to garbage and recycling receptacles guidelines set forth by the Department of Public Works.

For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 415-554-.5810, <http://sfdpw.org>

8. **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>

9. **Odor Control.** While it is inevitable that some low level of odor may be detectable to nearby residents and passersby, appropriate odor control equipment shall be installed in conformance with the approved plans and maintained to prevent any significant noxious or offensive odors from escaping the premises.

For information about compliance with odor or other chemical air pollutants standards, contact the Bay Area Air Quality Management District, (BAAQMD), 1-800-334-ODOR (6367), www.baaqmd.gov and Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

10. **Noise Control.** The premises shall be adequately soundproofed or insulated for noise and operated so that incidental noise shall not be audible beyond the premises or in other sections of the building and fixed-source equipment noise shall not exceed the decibel levels specified in the San Francisco Noise Control Ordinance.

For information about compliance with the fixed mechanical objects such as rooftop air conditioning, restaurant ventilation systems, and motors and compressors with acceptable noise levels, contact the Environmental Health Section, Department of Public Health at (415) 252-3800, www.sfdph.org

For information about compliance with the construction noise, contact the Department of Building Inspection, 415-558-6570, www.sfdbi.org

For information about compliance with the amplified sound including music and television, contact the Police Department at 415-553-0123, www.sf-police.org

- 11. Hours of Operation.** The subject establishment is limited to hours of operations from 6:00 a.m. to 11:00p.m. seven day a week.

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

- 12. Alcohol Sales.** The Conditional Use approval is based on the understanding that only beer and wine (Type 41 ABC license) would be sold at this location. The sale of hard liquor (Type 47 ABC license) and the single-can sales of alcohol for consumption off the premises shall not be permitted.

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

- 13. 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