



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

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- Jobs Housing Linkage Program (Sec. 413)
- Downtown Park Fee (Sec. 412)
- First Source Hiring (Admin. Code)
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Planning Commission Motion No. **18910** HEARING DATE: JUNE 20, 2013

Date: June 13, 2013
Case No.: **2012.1473C**
Project Address: **1150 OCEAN AVENUE**
Zoning: Ocean Avenue NCT (Neighborhood Commercial Transit) District
 55-X Height and Bulk District
Block/Lot: 3180/010
Project Sponsor: Brian Laney
 Genji Sushi
 1500 JFK Boulevard, Suite 725
 Philadelphia, PA 19002
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ADOPTING FINDINGS RELATING TO THE APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303(i) AND 703.4 OF THE PLANNING CODE TO ESTABLISH A FORMULA RETAIL LIMITED RESTAURANT, (D.B.A. GENJI SUSHI) INSIDE AN EXISTING WHOLE FOODS GROCERY STORE LOCATED WITHIN THE OCEAN AVENUE NCT (NEIGHBORHOOD COMMERCIAL TRANSIT) DISTRICT AND A 55-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On November 30, 2012, Brian Laney of Genji Sushi (hereinafter “Project Sponsor”) filed an application with the Planning Department (hereinafter “Department”) for Conditional Use Authorization under Planning Code Sections 303(i), and 703.4, to establish a formula retail limited restaurant, (d.b.a. Genji Sushi) inside the existing Whole Foods grocery store at 1150 Ocean Avenue, located within the Ocean Avenue NCT (Neighborhood Commercial Transit) District and a 55-X Height and Bulk District.

On June 20, 2013, the San Francisco Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2012.1473C.

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. 2012.1473C, 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 (Assessor's Block 3180, Lot 003) is located on the north side of Ocean Avenue, between Phelan and Plymouth Avenues. The lot measures approximately 80,150 square feet with approximately 514-feet of frontage on Ocean Avenue and a depth of 150-feet. The project site is located just west of Highway 280 and San Francisco City College. The property abuts the PUC water reservoir at the rear. The property is on the border of the Westwood Park and Ingleside neighborhoods. The Project Site is within the boundaries of the Balboa Park Station Area Plan

The ground floor commercial space is anchored by a Whole Foods grocery store which opened in 2012. The project would occupy a 355 square-foot space within Whole Foods.

3. **Surrounding Properties and Neighborhood.** The Ingleside Branch Library is adjacent to the site to the west. To the north, the property abuts an empty PUC water reservoir that is currently used by City College of San Francisco for parking. To the east the site abuts the proposed mixed-use development at 1100 Ocean Avenue, the MTA Phelan bus stop and a fire station. Across Ocean Avenue, to the south of the site, is a vacant corner lot, a McDonald's restaurant, and a modern, four-story mixed-use building as well as two smaller scale mixed use buildings. The MUNI K-Ingleside line travels down the center of Ocean Avenue with east and west bound MUNI stops in front of the site. The MUNI stops continue the length of the block and consist of raised platforms with barriers, ADA accessible boarding ramps, and covered bus shelters. City College of San Francisco's main campus is located to the east of the site, as is a City Fire Station. The single-family neighborhoods of Westwood Park and Ingleside flank Ocean Avenue to the north and south respectively.
4. **Project Description.** The applicant proposes to establish a formula retail limited restaurant (d.b.a. Genji Sushi) located within the existing Whole Foods grocery store at 1150 Ocean Avenue. The facility is a 355 square feet in area, is located near the northeast corner of the store.

5. **Public Comment.** The Department has not received any comments from the public regarding this project to date.
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. **Formula Retail.** Planning Code Section 703.3 states that a Conditional Use Authorization is required for Formula Retail Uses within this District. The proposed use, Genji Sushi, is a national chain establishment with more than eleven stores. Section 303(i) requires that, with respect to an application for Conditional Use authorization for formula retail use, the Planning Commission shall consider the following criteria:

- i. The existing concentrations of formula retail uses within the Neighborhood Commercial District.

A survey of the Ocean Avenue NCT revealed that ten formula retail uses are currently found in the district. These businesses include Walgreens, Quickly's, Whole Foods, McDonald's, Sherwin Williams, CVS/Pharmacy, The UPS Store, 24 Hour Fitness, 7-Eleven, and Taco Bell/KFC.

The proposed formula retail limited restaurant would be located within a larger formula retail use and would not increase the existing amount of street frontage devoted to formula retail uses within the District. The restaurant would be difficult to distinguish from the other prepared foods offered by Whole Foods. Additionally, there would be no exterior signage advertising the restaurant.

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

According to Yelp, there are five restaurants within the 94112 zip code that specialize in sushi. Of these five restaurants, only "Yama Sushi" on Holloway Avenue is located within the Ingleside/Oceanview neighborhood.

- iii. The compatibility of the proposed formula retail use with the existing architectural and aesthetic character of the Neighborhood Commercial District.

The project is located entirely within the existing Whole Foods grocery store and would not be visible from outside that store. The project would not alter the existing architectural and aesthetic character of the District.

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

There are 15 ground floor vacancies within the Ocean Avenue NCT.

- v. 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 the immediate neighborhood.. These aforementioned uses are primarily locally-owned, independent uses. Formula retail uses can be found scattered across the district. The proposed use is intended to be neighborhood-serving, catering to Whole Foods shoppers who desire prepared sushi, furthermore, the restaurant would not alter the mix of neighborhood-serving retail uses within the District.

- B. **Limited Restaurant.** Planning Code Section 710.27 states that a 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.

Whole Foods includes other take-out food uses in addition to the project. However, the sum of the floor areas of all the take-out food uses is less than 10% of the store's floor area so the proposed limited can be considered an accessory use to the grocery store use.

- C. **Ocean Avenue Neighborhood Commercial Transit District.** The Ocean Avenue Neighborhood Commercial Transit District is located on Ocean Avenue from Phelan Avenue to Manor Drive. Ocean Avenue is a multi-purpose transit-oriented small-scale commercial district that is modeled on the NCT-2 District. Ocean Avenue was developed as a streetcar-oriented commercial district in the 1920s and continues to serve this function, with the K-line streetcar on Ocean Avenue. Numerous other bus lines serve the area, especially the eastern end, where the Phelan Loop serves as a major bus terminus. The eastern end of the district is anchored by the main City College campus at Phelan and direct linkages to the Balboa Park BART/MUNI rail station a couple blocks to the east, which serves as the southernmost San Francisco station for BART and the terminus of the J, K, and M streetcar lines. Because of the immediate proximity of the BART/MUNI station the district has quick and easy transit access to downtown.

The Ocean Avenue NCT District is mixed use, transitioning from a predominantly one- and two-story retail district to include neighborhood-serving commercial uses on lower floors and housing above. Housing density is limited not by lot area, but by the regulations on the built envelope of buildings, including height, bulk, setbacks, and lot coverage, and standards for residential uses, including open space and exposure, and urban design guidelines. Access (i.e. driveways, garage entries) to off-street parking and loading is generally prohibited on Ocean Avenue to preserve and enhance the pedestrian-oriented character and transit function of the street. Residential and commercial parking are not required.

The Ocean Avenue NCT District is intended to provide convenience goods and services to the surrounding neighborhoods as well as limited comparison shopping goods for a wider market. The range of comparison goods and services offered is varied and often includes specialty retail stores, restaurants, and neighborhood-serving offices. Buildings may range in height, with height limits generally allowing up to four or five stories. Lots are generally small to medium in size and lot consolidation is prohibited to preserve the fine grain

character of the district, unless the consolidation creates a corner parcel that enables off-street parking to be accessed from a side street.

- D. **Signage.** There would be no exterior signage for the proposed use.
- E. **Land Use.** Planning Code Section 737.43 permits a limited restaurant, as defined in Planning Code Section 790.90, in the Ocean Avenue Neighborhood Commercial Transit District.

Planning Code Section 790.90 defines a limited restaurant as follows:

- (a) A retail eating and/or drinking use which serves ready-to-eat foods and/or drinks to customers for consumption on or off the premises, that may or may not have seating. It may include wholesaling, manufacturing, or processing of foods, goods, or commodities on the premises as an accessory use as set forth in Section 703.2(b)(1)(C)(v).
 - (b) It includes, but is not limited to, specialty foods provided by bakeries, delicatessens, and confectioneries meeting the above characteristics, but it is distinct from a Restaurant, as defined in Section 790.91, and a Bar, as defined in Section 790.22. It may also operate as a Take-Out Food use as defined in Section 790.122.
 - (c) It shall not provide on-site beer and/or wine sales for consumption on the premises, but may provide off-site beer and/or wine sales for consumption off the premises with a California Alcoholic Beverage Control Board License type 20 (off-sale beer and wine) within the accessory use limits as set forth in Section 703.2(b)(1)(C)(vi).
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 project is necessary and desirable because it does not disrupt the existing balance of commercial frontage within the district.

- 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 size, shape, and arrangement of structures on the property would not be altered as part of this project. The project is located inside an existing store.

- 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 would not adversely affect public transit or overburden the existing supply of parking in the neighborhood. The project is not intended, as a destination restaurant but rather, would serve the existing Whole Foods customers. The existing parking at the subject property is adequate for the project.

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

The project would not produce noxious or offensive emissions related to noise, glare, and dust.

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

The project would not alter the landscaping, open spaces, parking, loading, lighting, or signs in the existing shopping center.

- 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 Ocean Avenue NCT District in that the intended use is located at the ground floor and 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:

COMMERCE AND INDUSTRY ELEMENT

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 project would provide desirable goods and services to the neighborhood and would provide resident employment opportunities to those in the community. Conditions of approval would ensure that the use meets minimum reasonable performance standards. Further, the Project Site is located within a Neighborhood Commercial District and is thus consistent with activities in the commercial land use plan.

OBJECTIVE 3:

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

Policy 3.1:

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

The project would provide resident employment opportunity for those persons in the community who work in the service industry.

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 replace a formula-retail limited restaurant with another formula-retail limited restaurant and thus would not alter the balance of food uses or formula-retail uses in the District.

- 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 is a 355 square foot sushi stand within an existing grocery store and would have no effect on the character or diversity of the neighborhood.

- 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 project would not adversely affect transit service or overburden neighborhood parking as the use is inside the existing grocery store, the site is well served by transit on Ocean Avenue and, the site is well served by existing off-street parking.

- 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 include an office use and would not displace any service or industry establishment.

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

The project is designed and 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. 2012.1473C** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated August 8, 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. 18910. 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 June 20, 2013.

Jonas P. Ionin
Acting Commission Secretary

AYES: Commissioners Hillis, Sugaya, Borden, Antonini, Wu, and Moore

NAYES:

ABSENT: Commissioner Fong

ADOPTED: June 20, 2013

EXHIBIT A

AUTHORIZATION

This authorization is for a conditional use to allow a Formula Retail Limited Restaurant (d.b.a. Genji Sushi) as an accessory use within the Whole Foods grocery store located at 1150 Ocean Avenue, Block 3180, Lot 010 pursuant to Planning Code Sections 303(i) and 703.4 within the Ocean Avenue NCT (Neighborhood Commercial Transit) District and a 55-X Height and Bulk District; in general conformance with plans, dated November 30, 2012, and stamped "EXHIBIT B" included in the docket for Case No. 2012.1473C and subject to conditions of approval reviewed and approved by the Commission on June 20, 2013 under Motion No. 18910. 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 June 20, 2013 under Motion No. 18910.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. 18910 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).

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MONITORING - AFTER ENTITLEMENT

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.

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