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Planning Commission Motion No. 19043

HEARING DATE: DECEMBER 12, 2013

Date: December 12, 2013
Case No.: **2013.0894C**
Project Address: **2016 Market Street**
Zoning: Upper Market Street Neighborhood Commercial Transit District
 40/65-X Height and Bulk District
Block/Lot: 3536/001
Project Sponsor: Ahmad Mohazab
 c/o See's Candies Inc.
 210 El Camino Real
 South San Francisco, CA 94080
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ADOPTING FINDINGS RELATING TO THE APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303 AND 703.4 OF THE PLANNING CODE, TO ALLOW A FORMULA RETAIL SPECIALTY GROCERY (D.B.A. SEE'S CANDIES) WITHIN THE UPPER MARKET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT (NCT) AND A 40/85-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On July 5, 2013, Ahmad Mohazab on behalf of See's Candies Inc. (hereinafter "Project Sponsor") filed an application (hereinafter "Application") with the Planning Department (hereinafter "Department") for Conditional Use authorization pursuant to Planning Code Sections 303 and 703.4, on the property located at 2016 Market Specialty Grocery (d.b.a. See's Candies) within the Upper Market Street Neighborhood Commercial Transit District (hereinafter "Upper Market NCT") and a 40/85-X Height and Bulk District.

On December 12, 2013, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Case No. 2013.0894C.

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

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 Sponsor, Department staff, and other interested parties.

MOVED, that the Commission hereby approves the Conditional Use requested in Application No. 2013.0894C 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 at the northwest corner of Market and Duboce Streets within the Upper Market Street NCT (Neighborhood Commercial Transit District) and a 40/85-X Height and Bulk District. The Property is part of the Safeway Shopping Center at 2020 Market Street, which sits on a 69,452 sq. ft. triangular lot. The retail space is located in one of the external storefronts with an area of 1,931 sq. ft. and fronts the shopping center's parking lot facing Market Street. The subject location is currently occupied by a formula retail store (d.b.a. Mike's Cameras) that sells photography supplies.
3. **Surrounding Properties and Neighborhood.** The Upper Market Street NCT is a multi-purpose commercial district that provides limited convenience goods to adjacent neighborhoods, but also serves as a shopping street for a broader trade area. A large number of offices are located on Market Street within easy transit access to downtown. The width of Market Street and its use as a major arterial diminish the perception of the Upper Market Street NCT as a single commercial district. The street appears as a collection of dispersed centers of commercial activity, concentrated at the intersections of Market Street with secondary streets.

The district is well served by transit and is anchored by the Market Street subway (with stations Church Street and Castro Street) and the F-Market historic streetcar line. All light-rail lines in the City traverse the district, including the F, J, K, L, M, N and T, and additional key cross-town transit service crosses Market Street at Fillmore and Castro Streets. Additionally, Market Street is a primary bicycle corridor. 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. Residential parking is not required and generally limited. Commercial establishments are discouraged or prohibited from building accessory off-street parking in order to preserve the pedestrian-oriented character of the district and prevent attracting auto traffic. There are prohibitions on access (i.e. driveways, garage entries) to off-street parking and loading on Market and Church Streets to preserve and enhance the pedestrian-oriented character and transit function.

The Upper Market Street NCT controls are designed to promote moderate-scale development which contributes to the definition of Market Street's design and character. They are also intended to preserve the existing mix of commercial uses and maintain the livability of the district and its surrounding residential areas. To promote mixed-use buildings, most commercial uses are permitted with some limitations above the second story. In order to maintain continuous retail frontage and preserve a balanced mix of commercial uses, ground-story neighborhood-serving uses are encouraged, and eating and drinking, entertainment, and financial service uses are limited. Ground floor-commercial space is required along Market and Church Streets, and most automobile and drive-up uses are prohibited or conditional.

Land uses located within the immediate vicinity of this subject include predominantly two- and three-story buildings that contain a range of commercial uses on the ground and upper floors including retail stores, eating and drinking establishments, and financial, medical, professional and personal services. The project site is located in the Safeway Shopping Center, which contains Safeway with its ancillary sub tenancies, Starbucks, Jamba Juice, GNC, and Mike's Cameras. Several buildings within the block also contain multi-family dwelling units above the ground floor. This area of the Upper Market Street NCT bounds the Upper Market Street Neighborhood Commercial District (NCD) to the southwest, which begins at Noe and 16th Streets.

4. **Project Description.** The Project Sponsor seeks a Conditional Use Authorization, pursuant to Planning Code Sections 303 and 703.4, for a change of use from a formula retail store (d.b.a. Mike's Cameras) to a formula retail specialty grocery (d.b.a. See's Candies). The proposed formula retail specialty grocery would offer chocolates and candy products. The proposed hours of operation would be from 9:00 a.m. to 7:00 p.m. Monday-Friday, 11:00 a.m. to 5:00 p.m. Saturday, and 12:00 p.m. to 5:00 p.m. Sunday.

The proposed Project would occupy approximately 1,931 sq. ft. of floor area. The Project would not result in any expansion of the existing building, although improvements would be made to the interior and exterior including the installation of new signage.

See's is headquartered in South San Francisco and has had a presence in the Bay Area since 1936. There are over 200 See's Candies locations nationwide.

5. **Public Comment.** The Department has received 2 letters in support of the Project from the public and the Castro/Upper Market Community Benefit District. The Department has not received any communications in opposition to the proposal.
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 defines a formula retail use as a type of retail sales activity or retail sales establishment which, along with eleven or more retail sales establishments located in the United States, maintains two or more of the following features: a standardized array of merchandise, a standardized façade, a standardized décor and color scheme, a uniform apparel, standardized signage, a trademark or a service mark. Planning

Code Section 703.4 requires Conditional Use Authorization from the Planning Commission for all new Formula Retail Uses within all Neighborhood Commercial Districts.

The proposed specialty grocery has more than eleven locations in the United States, would offer a standardized array of goods and has a standardized décor, color scheme, signage and trademark. Therefore, it is considered a formula retail use. As such, the Sponsor has applied for Conditional Use Authorization to establish the proposed See's Candies in the Upper Market NCT.

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 not 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.

Formula retail businesses have a competitive advantage over independent retailers because they are typically better capitalized and can absorb larger startup costs, pay more for lease space, and commit to longer lease contracts. This can make for fewer storefront vacancies and more neighborhood stability. Additionally, some locations can better accommodate a formula retail use with minimum impact on the greater neighborhood commercial 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 height and bulk of the existing building will remain the same, but modifications to the façade and the interior will be made to provide service inside the building.

- 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;

Traffic conditions will remain substantially unaltered by this Project because the proposed use is a neighborhood-serving business that will be frequented by foot, bicycle or public transportation, and is well served by the K, L, M and T streetcar lines. The Planning Code does not require off-street parking for the proposed Project.

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

The Project is not anticipated to produce noxious or offensive emissions related to 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 Project would only include interior and exterior alterations to an existing building, and does not require off-street parking or loading areas. The Project Sponsor would submit any changes to signage and lighting to the Planning Department for review to ensure appropriate treatments are given.

- 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 the applicable provisions of the Planning Code and is consistent with the Priority Policies and Commerce and Industry Element 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 Project is a formula retail use that replaces an existing formula retail use that has vacated the storefront. The Project will reduce commercial blight in a growing neighborhood.

- E. That the existing concentration of eating and drinking uses in the area 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 Section 303(p) 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.

The proposed use is not an eating and drinking use. The chocolate and candy goods are typically consumed off site.

- 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.

Within 300 feet of the Subject Property in the Upper Market Street NCT, there are multiple Formula Retail Uses that include Whole Foods, Safeway, Starbucks, Jamba Juice, GNC, and Mike's Cameras that occupy commercial frontage and have a concentration of 33%. The proposed Project replaces an existing formula retail use and would maintain the concentration of Formula Retail Uses at 33% within 300 feet of the Subject Property.

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

There are no other specialty groceries within the Upper Market NCT that serve primarily chocolates and candy products.

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

The Project replaces an existing formula retail use within the formula retail oriented Safeway Shopping Center.

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

There are currently nine vacant commercial storefronts in the Upper Market NCT, including two that have pending Conditional Use Authorization Applications. The Project will prevent an additional storefront vacancy.

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

The Upper Market NCT contains primarily independently owned eating and drinking establishments, retail sales and services, personal services, laundry services, professional services and financial institutions that serve not only the immediate neighborhood but also the City as whole. Since there are no other specialty groceries within the Upper Market NCT that serve primarily chocolates and candy products, the Project does not detract from the existing mix of Citywide and neighborhood-serving uses within the District.

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

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 formula retail use will replace a pre-existing formula retail store and continue to add to the neighborhood character and diversity. Formula retail businesses offering similar products have a competitive advantage over non-formula retail businesses because they are often better capitalized and therefore can commit to longer and more expensive leases. This can make for fewer storefront vacancies and more neighborhood stability.

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.

The Project is a formula retail use and is not considered a small business enterprise. Formula retail businesses have a competitive advantage over independent retailers because they are typically better capitalized and can absorb larger startup costs, pay more for lease space, and commit to longer lease contracts. This can make for fewer storefront vacancies and more neighborhood stability, which will positively impact the economic vitality of the Upper Market NCT.

10. **Planning Code Section 101.1(b)** establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project does not comply with said policies in that:

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

The Project would not displace an existing retail use but could potentially adversely affect future opportunities for independent and local ownership of a business at this location.

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

There are no changes proposed to the existing building envelope and no existing housing will be removed.

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

No housing would be removed for this Project.

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

The Project would have a low demand on neighborhood parking. The area is well served by public transit, with MUNI underground stations at Church and Castro Streets, with access to the K, L, M and T metro lines and the F streetcar line. The Project will not impede MUNI transit nor will it overburden the City's streets or neighborhood 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 displace any industrial and service sector uses.

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

The Project would be designed and constructed to comply with all required seismic and life safety codes in order to achieve the possible preparedness to protect against injury and loss of life in the event of an earthquake.

- G. That landmarks and historic buildings be preserved.

The existing structure is not a landmark or historic building, but is located within the potential Upper Market Street Commercial Historic District that extends from 14th Street to Noe Street. The proposed alterations will not expand the envelope of the building will not have a negative impact on the character and integrity of this potential historic district.

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

The Project would not include any changes to the existing building envelope and will have no negative impact on existing parks and open spaces.

11. The Project is inconsistent 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 finds that approval of the Conditional Use authorization 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 **APPROVES Conditional Use Application No. 2013.0894C** as submitted on July 5, 2013.

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. 19043. 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 12, 2013.

Jonas P. Ionin
Acting Commission Secretary

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

NAYES: None

ABSENT: Commissioner Fong

ADOPTED: December 12, 2013

EXHIBIT A

AUTHORIZATION

This authorization is for a conditional use to allow a formula retail use (d.b.a. **See's Candies**) providing chocolate and candy goods at 2016 Market Street, Block 3536, and Lot 001 pursuant to Planning Code Sections **303 and 703.4** within an NCT (Neighborhood Commercial Transit) District and a **40/85-X** Height and Bulk District; in general conformance with plans, dated **July 5, 2013**, and stamped "EXHIBIT B" included in the docket for Case No. **2013.0804C** and subject to conditions of approval reviewed and approved by the Commission on **December 12, 2013** under Motion No. **19043**. 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 **December 12, 2013** under Motion No. **19043**.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. **19043** 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

2. **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

3. **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

4. **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 architectural addenda. 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

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/>