



SAN FRANCISCO PLANNING DEPARTMENT

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Planning Commission Motion No. 19109

HEARING DATE: MARCH 27, 2014

Date: February 20, 2014
Case No.: **2013.0638C**
Project Address: **4871-73 Mission Street**
Zoning: Excelsior Outer Mission Street NCD
Fringe Financial Service RUD
40-X Height and Bulk District
Block/Lot: 6272/015
Project Sponsor: Gabriel Ng
Gabriel Ng + Architects Inc.
1360 9th Avenue
San Francisco, CA 94122
Staff Contact: Jessica Look – (415) 575-6812
Jessica.look@sfgov.org

ADOPTING FINDINGS RELATING TO THE APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303, 186.1(e) OF THE PLANNING CODE TO ALLOW THE RELOCATION OF A FRINGE FINANCIAL SERVICE USE SUD WITHIN THE EXCELSIOR OUTER MISSION STREET NCD AND A 40-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On May 17, 2013, Gabriel Ng (hereinafter “Project Sponsor”) filed an application with the Planning Department (hereinafter “Department”) for Conditional Use Authorization under Planning Code Section(s) 186.1 (e) to allow the relocation of a the fringe financial service use at 4871-73 Mission Street d.b.a., Lucky Money Check Cashing in the Excelsior Outer Mission Street NCD and a 40-X Height and Bulk District.

On March 27, 2014, the San Francisco Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2013.0638C.

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. 2013.0638C, 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 east side of Mission Street, between Onondaga Ave, Block 6272, and Lot 015. The subject property is located within the Excelsior Outer Mission Street NCD (effective 12/27/2013) and the 40-X Height and Bulk District. It is also located within the Fringe Financial Services RUD. The property is developed with a two-story mixed use building, with commercial on the ground floor and a residential unit on top. The subject property has approximately 25-feet of frontage on Mission Street. There is also an additional housing unit in the rear of the building.
3. **Surrounding Properties and Neighborhood.** The area surrounding the project site is mixed-use in character. A variety of commercial establishments are located within ground floor storefronts along Mission Street including restaurants, bars, convenience stores, and other types of retailers, including Safeway which is located down the street. Buildings in the vicinity typically range from two to three stories in height. Upper floors of buildings are generally occupied by residential units. The commercial corridor is surrounded generally, by single-family residential uses. There is one other fringe financial use located near the subject property at 4919 Mission Street d.b.a. Money Mart, however, the Department's Enforcement planners determined that it is an existing nonconforming use that has operated at the location since 2004.
4. **Project Description.** The project sponsor proposes to legalize the fringe financial service use at 4871-73 Mission Street d.b.a., Lucky Money Check Cashing, pursuant to the relocation provision found in Planning Code Section 186.1(e) which states that a nonconforming use in a Neighborhood Commercial District may be reestablished at another location within that Neighborhood Commercial District, but only upon approval of a conditional use authorization. A fringe financial service use is defined under Planning Code Section 790.111 as, "A retail use that provides banking services and products to the public and is owned or operated by a 'check cashier' or licensee as defined in California Civil.

Lucky Money Check Cashing has been continuously providing financial services to the Excelsior District for over 20 years as evidenced by state and city licenses. Since July of 2007, Lucky Check Cashing has been located at 4871-73 Mission Street. Previously, since July of 2007, they were located at 4569 Mission Street, which the site now operates as a tattoo parlor. Due to an anonymous complaint, the Zoning Administrator has determined that the use within the Fringe

Financial Service Restricted Use District, created by legislation in 2008, is a non-conforming use and as such, requires a Conditional Use Authorization to relocate. The Zoning Administrator issued a Notice of Violation for this on October 2, 2012. In addition, the Zoning Administrator determined that the wall and projecting signs do not conform to signage requirements of the Planning Code. This violation was also included in the October 2, 2012, Notice of Violation. The project sponsor has submitted a building permit to rectify this situation.

According to the project sponsor, Lucky Check Cashing primarily serves the Filipino immigrant community in the Excelsior District. Their primary services include check cashing of government and payroll checks, with the added service of fund wiring back to customers families in the Philippines. Other services they provide include sales of prepaid Phone Cards and transportation Passes. The hours of operation are 9am to 6pm, 7 days a week. The project does not include interior tenant improvements. The existing tenant space measures approximately 605 square feet and the size would not change as part of the project. The previous location at 4569 Mission Street operates currently as a tattoo parlor d.b.a. "UK Tattoo".

5. **Public Comment.** At the time of publishing of this report, the Department has not received any public comment on this item.
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. **Continuation of Existing Prohibited Fringe Financial Service Use** Planning Code Section 249.35 states that any fringe financial service may continue in accordance with Planning Code Section 180 – 186.2, only if the following provisions are met:
 1. The fringe financial service lawfully exists as licensed by the State of California prior to the effective date of Fringe Financial Service Restricted Use District legislation
 2. The use shall retain the same type of fringe financial service license within a license classification
 3. The fringe financial service shall be operated continuously, without substantial changes in mode or character of operation.

Lucky Money Cash Checking, have had a Check Casher Permit issued by the Department of Justice and State of California prior to the effective date of the legislation. The use retains the same license classification throughout its business history. In addition, the project complies with the relocation provision found in Planning Code Section 186.1(e), as the previous location at 4569 Mission Street operates as a tattoo parlor d.b.a. "UK Tattoo".

- B. **Parking.** Planning Section 151 of the Planning Code requires off-street parking for every 200 square-feet of occupied floor area, where the occupied floor area exceeds 5,000 square-feet.

The Subject Property contains approximately 605 square-feet of occupied floor area and thus does not require any off-street parking.

- C. **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 subject commercial space has approximately 25-feet of frontage on Mission Street with approximately 16 feet devoted to either the use entrance or window space. The windows are clear and unobstructed. There are no changes proposed to the commercial frontage.

D. **Signage.** Planning Code Section 607.1(f)(3)(B) allows a wall sign that complies with the following restrictions:

- The area of all wall signs shall not exceed three square feet per foot of street frontage occupied by the use measured along the wall to which the signs are attached, or 150 square feet for each street frontage, whichever is less. The height of any wall sign shall not exceed 24 feet, or the height of the wall to which it is attached, or the height of the lowest of any residential windowsill on the wall to which the sign is attached, whichever is lower. Such signs may be nonilluminated, indirectly, or directly illuminated.

In addition, Planning Code Section 607.1(f)(3)(C) allows a projecting sign that complies with the following restrictions:

- The number of projecting signs shall not exceed one per business. The area of such sign, as defined in Section [602.1\(a\)](#), shall not exceed 32 square feet. The height of the sign shall not exceed 24 feet, or the height of the wall to which it is attached, or the height of the lowest of any residential windowsill on the wall to which the sign is attached, whichever is lower. No part of the sign shall project more than 75 percent of the horizontal distance from the street property line to the curblin, or six feet six inches, whichever is less. Such signs may be nonilluminated, indirectly, or directly illuminated.

The subject sponsor has submitted a building permit number 2012.11.01.3283 that demonstrates a code complying signage plan.

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 use is in current operation and has been in operation in the neighborhood commercial corridor for several years. Furthermore, the size of the proposed use is in keeping with other storefronts on the block face. The proposed fringe financial service will not impact traffic or parking in the District because it is not a destination use. This use will continue to add to the mix of goods and services currently available in 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 height and bulk of the existing building will remain the same and will not alter the existing appearance or character of the project vicinity. The proposed work will not affect the 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 a 605 square-foot commercial use. 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 will not create substantial emissions. The proposed use typically does not emit noise, dust and/or 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 does not require any additional landscaping or screening, and the proposed signage shall be subject to review by the Planning Department and required to meet all applicable provisions set forth in Article 6.

- 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 Excelsior Outer Mission Street NCD in that the intended use is located at the ground floor, will 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 1.3:

Locate commercial and industrial activities according to a generalized commercial and industrial land use plan.

The proposed development will provide a demonstrated needed goods and services to the neighborhood and will 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 will retain an existing commercial activity and will 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.

The following guidelines, in addition to others in this objective for neighborhood commercial districts, should be employed in the development of overall district zoning controls as well as in the review of individual permit applications, which require case-by-case review and City Planning Commission approval. Pertinent guidelines may be applied as conditions of approval of individual permit applications. In general, uses should be encouraged which meet the guidelines; conversely, uses should be discouraged which do not.

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.

Lucky Check Cashing has been providing neighborhood serving financial services to the immediate area for over twenty years. The use supports the residents of the immediate neighborhood and community. According to the project sponsor, the business is a small local operation.

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

The site contains 2 residential units that are to remain. The project will not impact the City's supply of affordable housing. Also, the current use will be conserved and in essence will preserve the economic diversity within 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 site is on Mission Street and is well served by transit. It is presumable that the employees and customers would commute by transit or by walking thereby mitigating possible effects on 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 will not displace any service or industry establishment. The project will not affect industrial or service sector uses or related employment opportunities. Ownership of industrial or service sector businesses will 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 facility is within an existing building envelope and it does not require or involve structural change.

- 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 will 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. 2013.0638C** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated January 8, 2013, 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. 19109. 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.

Protest of Fee or Exaction: You may protest any fee or exaction subject to Government Code Section 66000 that is imposed as a condition of approval by following the procedures set forth in Government Code Section 66020. The protest must satisfy the requirements of Government Code Section 66020(a) and must be filed within 90 days of the date of the first approval or conditional approval of the development referencing the challenged fee or exaction. For purposes of Government Code Section 66020, the date of imposition of the fee shall be the date of the earliest discretionary approval by the City of the subject development.

If the City has not previously given Notice of an earlier discretionary approval of the project, the Planning Commission's adoption of this Motion, Resolution, Discretionary Review Action or the Zoning Administrator's Variance Decision Letter constitutes the approval or conditional approval of the development and the City hereby gives **NOTICE** that the 90-day protest period under Government Code Section 66020 has begun. If the City has already given Notice that the 90-day approval period has begun for the subject development, then this document does not re-commence the 90-day approval period.

I hereby certify that the Planning Commission **ADOPTED** the foregoing Motion on March 27, 2014.

Jonas P. Ionin
Commission Secretary

AYES: Commissioners Hillis, Sugaya, Antonini, and Borden

NAYES: Commissioners Moore, Wu

ABSENT: Commissioner Fong

ADOPTED: March 27, 2014

EXHIBIT A

AUTHORIZATION

This authorization is for a conditional use to allow a Fringe Financial Service Use (d.b.a. **Lucky Check Cashing**) located at 4871-73 Mission Street, Block/Lot 6272/015 pursuant to Planning Code Section(s) **303 and 186.1(e)** within the **Excelsior Outer Mission Street NCD** and a **40-X** Height and Bulk District; in general conformance with plans, dated **January 8, 2014**, and stamped "EXHIBIT B" included in the docket for Case No. **2013.0638C** and subject to conditions of approval reviewed and approved by the Commission on **February 27, 2014** under Motion No. **19109**. 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 **February 27, 2014** under Motion No. **19109**.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. **19109** 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.

DESIGN

- 2. 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.

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

OPERATION

- 4. 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/>*