



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Conditional Use

HEARING DATE: JULY 11, 2013

Date: July 3, 2013
Case No.: **2013.00477 C**
Project Address: **435-437 Potrero Avenue**
Zoning: UMU (Urban Mixed Use) District
58-X Height and Bulk District
Block/Lot: 3974/022
Project Sponsor: Industry Capital Internet Infrastructure, LLC
1 Sansome Street, 15th Floor
San Francisco, CA 94104
Staff Contact: Corey Teague – (415) 575-9081
corey.teague@sfgov.org
Recommendation: **Approval with Conditions**

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

PROJECT DESCRIPTION

The applicant proposes to establish an Internet Services Exchange (ISE) to occupy the entire building of approximately 10,000 square feet through the Eastern Neighborhoods Legitimization program. No changes to the exterior of the building are proposed except for some additional screening for the existing rooftop mechanical equipment. In contrast to larger ISEs, this project's small scale, local ownership, and central location will allow it to provide services to smaller users and businesses within the City.

SITE DESCRIPTION AND PRESENT USE

The project is located on the east side of Potrero Avenue between 17th and Mariposa Streets. The property is located within the UMU (Urban Mixed Use) District with a 58-X height and bulk district. The irregularly shaped parcel is nearly 5,000 square feet and contains an approximately 10,000 square foot, two-story building that was built in 1950 and the building was occupied as an Internet Services Exchange from 2000 to 2010 (most recently d.b.a. Astound Networks).

SURROUNDING PROPERTIES AND NEIGHBORHOOD

The project site is located in an area where the commercial nature of Showplace Square and lower Potrero begins to transition towards a mix of uses, including residential. As such, it is surrounded by a mix of building types and sizes, and a mix of land uses. The subject property is located in a cluster of UMU zoning that also borders RH-2 (along Utah Street) and PDR-1-G. Land uses on the subject block include a gas station, art studio, auto repair shop, residential buildings, and a vacant lot proposed for residential development (480 Potrero Avenue). Other nearby landmarks include Franklin Square, the Potrero Shopping Center, and the Soka Gakkai International of America Buddhist Center.

ENVIRONMENTAL REVIEW

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

HEARING NOTIFICATION

This project was originally scheduled and noticed for a public hearing on June 13, 2013. It was continued to July 11th because the notification poster on site was torn down and not replaced in a reasonable amount of time. The poster was replaced and advertised the new hearing date of July 11, 2013.

TYPE	REQUIRED PERIOD	REQUIRED NOTICE DATE	ACTUAL NOTICE DATE	ACTUAL PERIOD
Classified News Ad	20 days	May 24, 2013	May 22, 2013	22 days
Posted Notice	20 days	May 24, 2013	May 24, 2013	20 days
Mailed Notice	20 days	May 24, 2013	May 23, 2013	21 days

PUBLIC COMMENT

- The Department did not receive any comments from the project explicitly supporting or opposing the project. However, several neighbors did express concerns about specific aspects of the project that were generally related to the operation of the backup generator.

ISSUES AND OTHER CONSIDERATIONS

- On June 4, 2013, the Zoning Administrator determined that the entire building is eligible to be legitimized as an ISE pursuant to Planning Code Section 179.1 because it had been used as an ISE from 2000 to 2010, and the building has not been used for any other use since 2010.
- A consultant is currently conducting a noise analysis for this building. The building's rooftop mechanical equipment will be altered and/or replaced to ensure compliance with maximum noise levels permitted for commercial and industrial buildings (no more than eight dBA above the local ambient at any point outside of the property plane) in the San Francisco Noise Ordinance (Section 2909 of the San Francisco Police Code).

REQUIRED COMMISSION ACTION

In order for the proposed ISE to be approved, the Commission must grant conditional use authorization to allow the ISE under the site's previous M-1 Zoning District, pursuant to Planning Code Sections 179.1, 227(r), 303, and 303(h).

BASIS FOR RECOMMENDATION

- The existing building was used as an ISE from 2000 to 2010 without any formal complaints from the community.

- The project will provide needed supportive technical services for businesses that are locating or growing in the City.
- The project is consistent with the Planning Code, Mission Area Plan, and the General Plan overall.

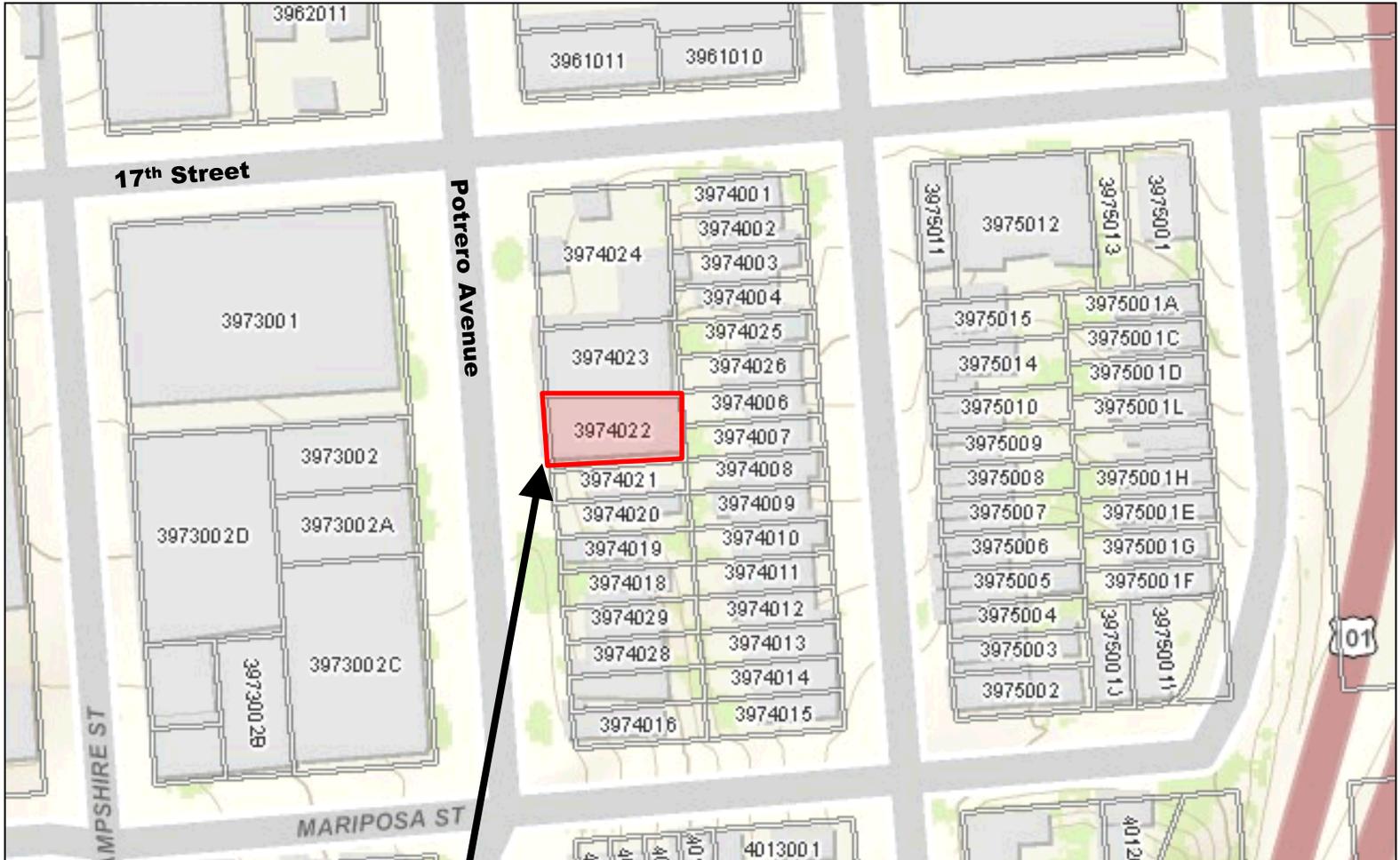
RECOMMENDATION: Approval with Conditions
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Attachments:

- Parcel Map
- Sanborn Map
- Aerial Photographs
- Site Photo
- Zoning Map
- Draft Motion
- Sponsor Submittal
 - Project Narrative
 - Reduced Size Plans

CT: G:\Documents\C\2012\435 Potrero Ave\Executive Summary.doc

Parcel Map

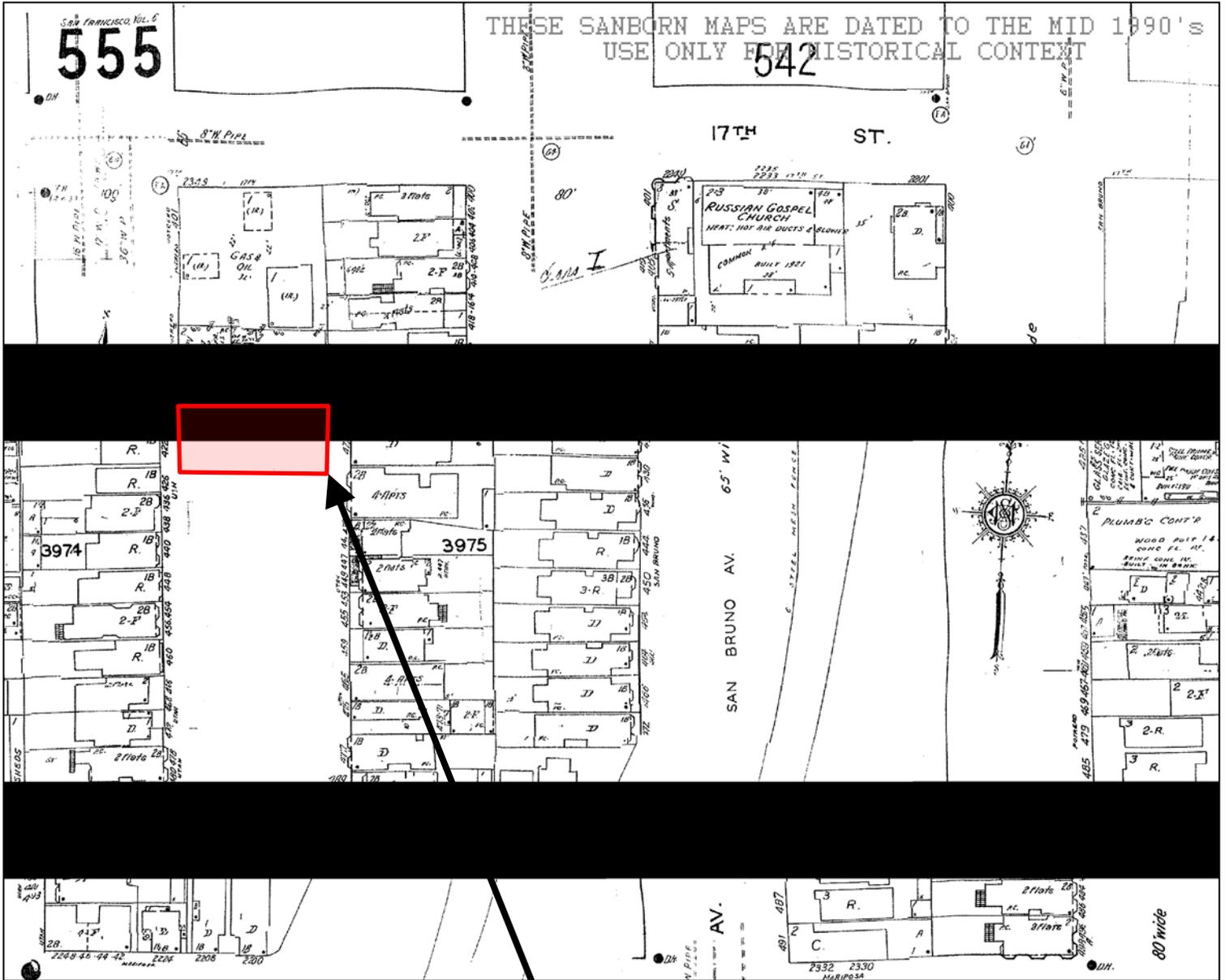


SUBJECT PROPERTY



Conditional Use Hearing
Case Number 2013.0447C
Internet Services Exchange
435-437 Potrero Avenue

Sanborn Map*

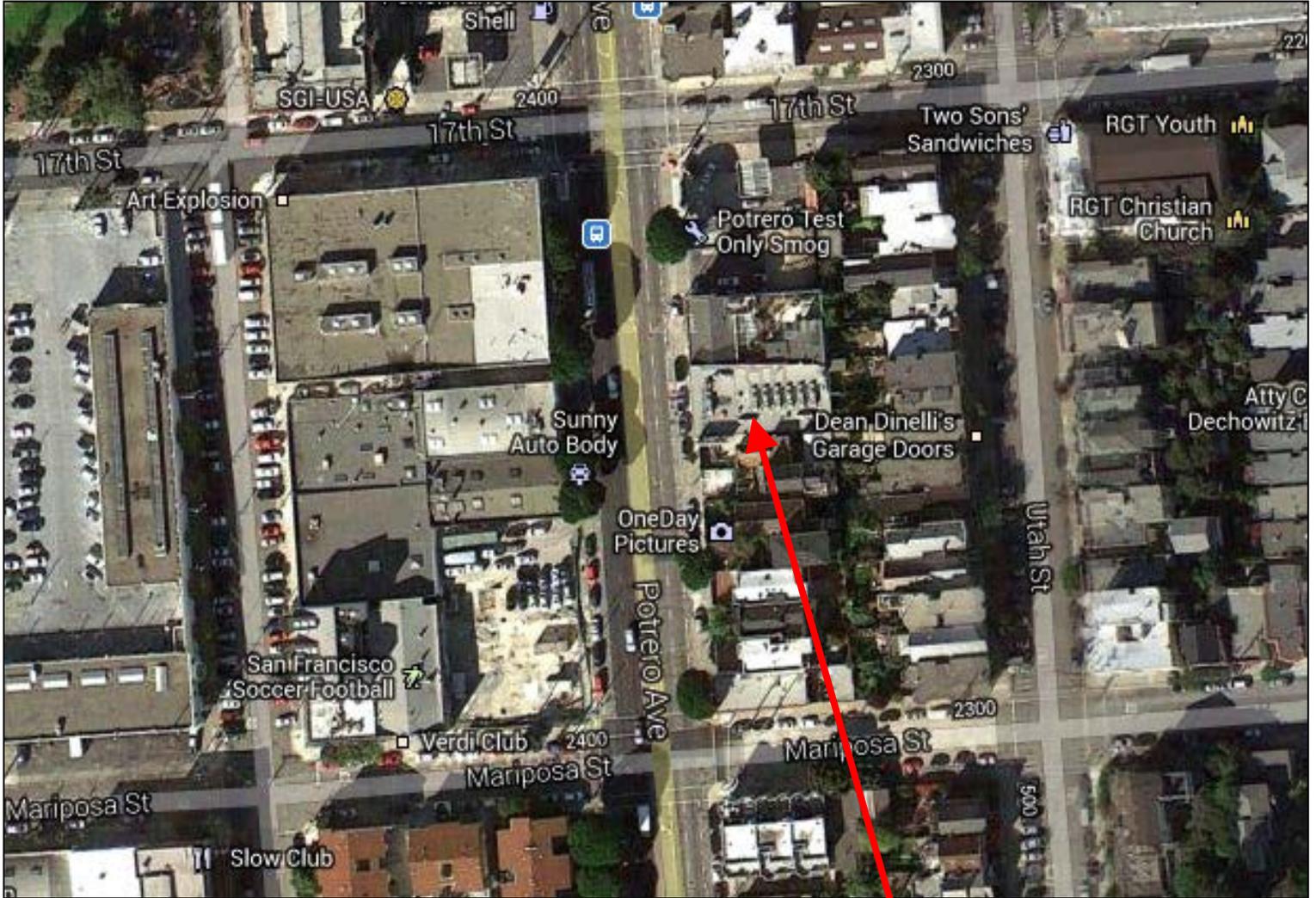


SUBJECT PROPERTY

*The Sanborn Maps in San Francisco have not been updated since 1998, and this map may not accurately reflect existing conditions.



Aerial Photo

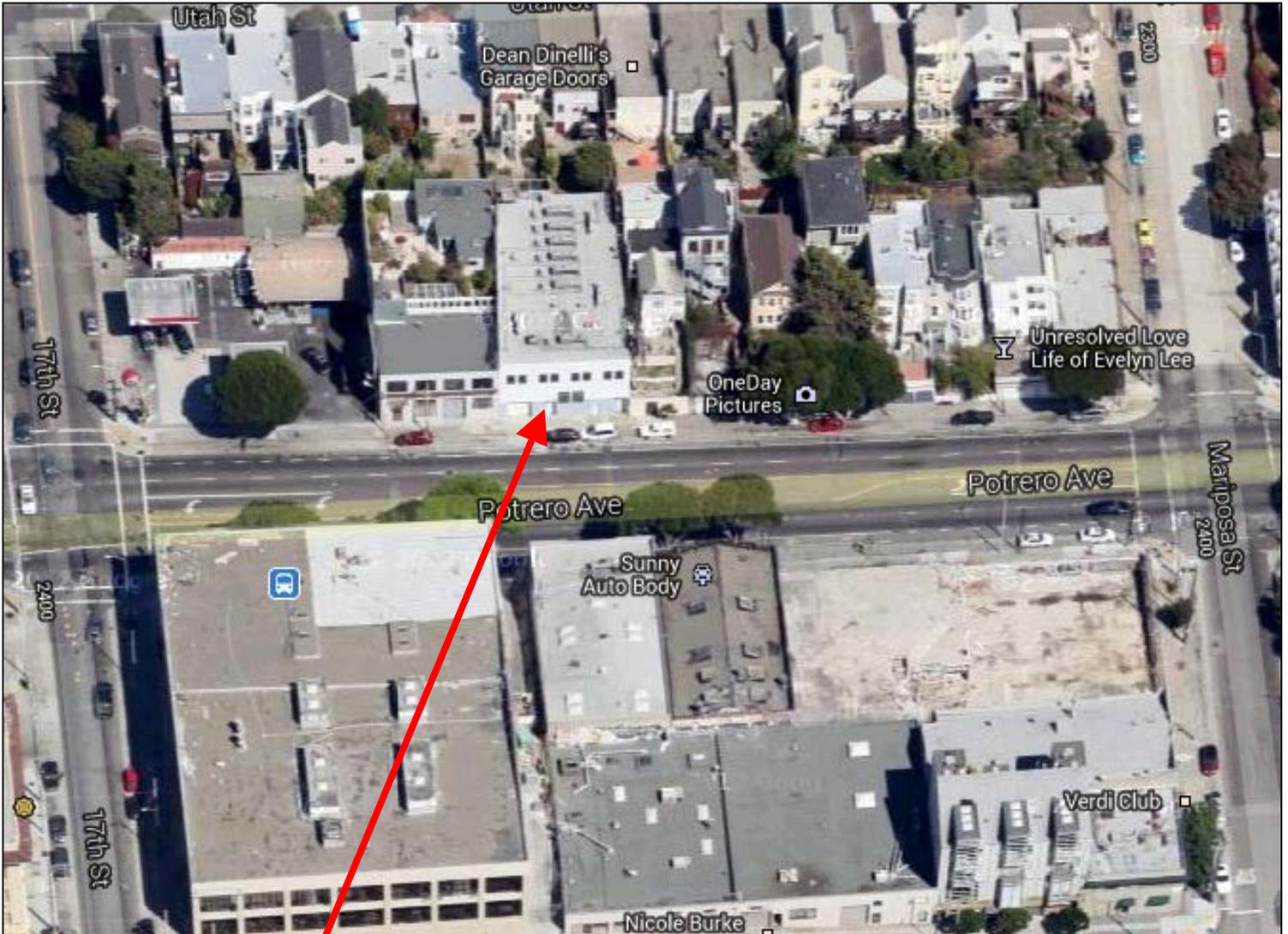


SUBJECT PROPERTY



Conditional Use Hearing
Case Number 2013.0447C
Internet Services Exchange
435-437 Potrero Avenue

Aerial Photo



SUBJECT PROPERTY



Conditional Use Hearing
Case Number 2013.0447C
Internet Services Exchange
435-437 Potrero Avenue

Site Photo



SUBJECT PROPERTY

Zoning Map



SUBJECT PROPERTY



Conditional Use Hearing
Case Number 2013.0447C
Internet Services Exchange
435-437 Potrero Avenue



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- | | |
|--|--|
| <input type="checkbox"/> Affordable Housing (Sec. 415) | <input type="checkbox"/> First Source Hiring (Admin. Code) |
| <input type="checkbox"/> Jobs Housing Linkage Program (Sec. 413) | <input type="checkbox"/> Child Care Requirement (Sec. 414) |
| <input type="checkbox"/> Downtown Park Fee (Sec. 412) | <input type="checkbox"/> Other (TIDF – Sec. 411) |

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Planning Commission Draft Motion

HEARING DATE: JULY 11, 2013

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ADOPTING FINDINGS RELATING TO THE APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO PLANNING CODE SECTIONS 179.1, 227(R), 303, AND 303(H), TO ALLOW APPROXIMATELY 10,000 GROSS SQUARE FEET OF INTERNET SERVICES EXCHANGE ON THE ENTIRETY OF BOTH FLOORS OF THE EXISTING TWO-STORY BUILDING WITHIN A UMU (URBAN MIXED USE) ZONING DISTRICT AND 58-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On April 18, 2013, David Silverman, on behalf of Industry Capital Internet Infrastructure, LLC (hereinafter “Project Sponsor”), filed an application with the Planning Department (hereinafter “Department”) for Conditional Use Authorization under Planning Code Sections 179.1, 227(r), 303, and 303(h), to allow approximately 10,000 gross square feet of Internet Services Exchange on the entirety of both floors of the existing two-story building within a UMU (Urban Mixed Use) Zoning District and 58-X Height and Bulk District.

On July 11, 2013, the San Francisco Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2013.0477C.

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. 2013.0477C, 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 Potrero Avenue between 17th and Mariposa Streets. The property is located within the UMU (Urban Mixed Use) District with a 58-X height and bulk district. The irregularly shaped parcel is nearly 5,000 square feet and contains an approximately 10,000 square foot, two-story building that was built in 1950 and the building was occupied as an Internet Services Exchange from 2000 to 2010 (most recently d.b.a. Astound Networks).
3. **Surrounding Properties and Neighborhood.** The project site is located in an area where the commercial nature of Showplace Square and lower Potrero begins to transition towards a mix of uses, including residential. As such, it is surrounded by a mix of building types and sizes, and a mix of land uses. The subject property is located in a cluster of UMU zoning that also borders RH-2 (along Utah Street) and PDR-1-G. Land uses on the subject block include a gas station, art studio, auto repair shop, residential buildings, and a vacant lot proposed for residential development (480 Potrero Avenue). Other nearby landmarks include Franklin Square, the Potrero Shopping Center, and the Soka Gakkai International of America Buddhist Center.
4. **Project Description.** The applicant proposes to establish an Internet Services Exchange (ISE) to occupy the entire building of approximately 10,000 square feet through the Eastern Neighborhoods Legitimization program. No changes to the exterior of the building are proposed except for some additional screening for the existing rooftop mechanical equipment. In contrast to larger ISEs, this project's small scale, local ownership, and central location will allow it to provide services to smaller users and businesses within the City.
5. **Public Comment.** The Department did not receive any comments from the project explicitly supporting or opposing the project. However, several neighbors did express concerns about specific aspects of the project that were generally related to the operation of the backup generator.

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. **Legitimization.** Planning Code Section 179.1 established a time-limited program wherein existing uses in the Eastern Neighborhoods plan area that have operated without the benefit of required permits may seek those permits. Uses that could be "legitimized" under this Section are those uses which, under the current provisions of this Code and without this Section, could not otherwise seek the required permits.

The proposed Internet Services Exchange (ISE) originally occupied the subject building in 2000. The subject property was zoned M-1 at that time, which permitted ISEs with a Conditional Use Authorization. The Zoning Administrator issued a Letter of Legitimization on June 4, 2013 for this project stating that the approximately 10,000 gross square feet of Internet Services Exchange occupying the entire existing building is eligible to be approved as a legal nonconforming use pursuant to Planning Code section 179.1. As such, the project is now seeking a Conditional Use Authorization under the provisions of the properties former M-1 zoning.

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 Internet Services Exchange has already existed at the site for more than ten years without any reported complaints from surrounding businesses or residents. The low-intensity nature of the use, along with its relatively small size and scale, make it compatible with the existing mixed use surroundings. Additionally, the use provides a locally-owned, small-scale option for small businesses within the City for data and information storage.

- 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 existing building is two stories and approximately 30 feet high. It was originally built in 1950 and is representative of the size and scale of buildings in the area. The project would not enlarge or reduce the size of 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;

The nature of the project is such that very little traffic will be generated because it is not a typical commercial use where customers come to the place of business to receive a service or purchase a good. Additionally, only two to four workers will be present at a time, and there is a two-space tandem parking garage in the building. Therefore, the project will not create issues for traffic or parking.

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

The existing HVAC equipment consists of seven fan units that will comply with the San Francisco Noise Ordinance the equipment and does not emit any dust or odors. The backup generator will only be used for testing and in emergencies like power outages.

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

The existing building covers the entire site and includes no open space or landscaped areas. All lighting and signing will meet Planning Code requirements.

- 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 project is not located within a Neighborhood Commercial District.

- 8. Planning Code Section 303(h) establishes additional criteria for the Planning Commission to consider when reviewing applications for Conditional Use Approval of Internet Services Exchanges. On balance, the project does comply with said criteria in that:

- a. The intensity of the use at this location and in the surrounding neighborhood is not such that allowing the use will likely foreclose the location of other needed neighborhood-serving uses in the area;

The use has a low intensity and has existed in the building for more than ten years with no known negative impacts. Additionally, the existing building is not currently designed to easily

accommodate a more active commercial use, and therefore is suitable for an Internet Services Exchange.

- b. The building in which the use is located is designed in discrete elements, which respect the scale of development in adjacent blocks, particularly any existing residential uses;

The existing building is two stories and approximately 30 feet high. It was originally built in 1950 and is representative of the size and scale of buildings in the area. The project would not enlarge or reduce the size of the building.

- c. Rooftop equipment on the building in which the use is located is screened appropriately;

The project is required to provide adequate screening of rooftop equipment pursuant to Planning Code Section 141 and Condition of Approval No. 6 in this motion.

- d. The back-up power system for the proposed use will comply with all applicable federal state, regional and local air pollution controls;

The existing backup generator complies with all relevant controls and is permitted by the Bay Area Air Quality Management District (Permit No. 21731).

- e. Fixed-source equipment noise does not exceed the decibel levels specified in the San Francisco Noise Control Ordinance;

A consultant is currently conducting a noise analysis for this building. The building's rooftop mechanical equipment will be altered and/or replaced to ensure compliance with maximum noise levels permitted for commercial and industrial buildings (no more than eight dBA above the local ambient at any point outside of the property plane) in the San Francisco Noise Ordinance (Section 2909 of the San Francisco Police Code). This requirement is also listed as Condition of Approval No. 11 of this motion.

- f. The building is designed to minimize energy consumption, such as through the use of energy-efficient technology, including without limitation, heating, ventilating and air conditioning systems, lighting controls, natural ventilation and recapturing waste heat, and as such commercially available technology evolves;

The existing equipment at the site is fully operable. However, the project will also use the following energy saving techniques to reduce the total power consumption of the building:

- 1) *Energy efficient Toshiba G90000 UPS systems to increase the efficiency of the current uninterruptible power system from 80 percent efficiency to 96.5 percent efficiency.*

- 2) *Cold isle containment, which can reduce the power associated with mechanical cooling by 25 to 30 percent.*
 - 3) *Air-side economization, which can reduce the cooling power consumption by an estimated 50 to 60 percent.*
- g. The project sponsor has examined the feasibility of supplying and, to the extent feasible, will supply all or a portion of the building's power needs through on-site power generation, such as through the use of fuel cells or co-generation;

The project sponsor studied the feasibility of using on-site Co-generation and fuel cells. However, due to the limited lot size, such power generation is not possible.

- h. The project sponsor shall have submitted design capacity and projected power use of the building as part of the conditional use application;

The building is served by PG&E with a 1.0 mega volt ampere ("MVA") dedicated underground feed transformer that is located inside the building. This translates into a serviced capacity of approximately 800kW of power per hour. Using a vacancy factor estimate of 7.5 percent, the projected maximum annual energy use is 6,500,000 KWh per year, or 540,000kWh per month.

The following table provides projected monthly energy use per year as the building is leased up over time:

<i>Power Use per Month</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>	<i>2016</i>
<i>Total Capacity (KWh)</i>	<i>36,000</i>	<i>216,000</i>	<i>360,000</i>	<i>540,000</i>

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

COMMERCE AND INDUSTRY

Objectives and Policies

OBJECTIVE 1:

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKINIG 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.

The project will provided a much needed support service for other businesses within the City without producing undesirable consequences.

OBJECTIVE 3:

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

Policy 3.4:

Assist newly emerging economic activities.

OBJECTIVE 4:

IMPROVE THE VIABILITY OF EXISTING INDUSTRY IN THE CITY AND THE ATTRACTIVENESS OF THE CITY AS A LOCATION FOR NEW INDUSTRY.

Policy 4.1:

Maintain and enhance a favorable business climate in the city.

Policy 4.2:

Promote and attract those economic activities with potential benefit to the City.

The project will provided a much needed support service for other businesses to locate and grow within the City, especially businesses with technological support needs.

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 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 will not remove or otherwise impact any existing neighborhood-serving retail uses in the area.

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

The proposed use has existed within the subject building since 2000 (including periods of vacancy). Continuing the use at this location will not impact existing housing or neighborhood character.

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

No housing is created or removed as part of this project.

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

The nature of the project is such that very little traffic will be generated because it is not a typical commercial use where customers come to the place of business to receive a service or purchase a good. Additionally, only two to four workers will be present at a time, and there is a two-space tandem parking garage in the building. Therefore, the project will not create issues for traffic, parking, or MUNI.

- 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, but will instead preserve and industrial service that has existed at this site since 2000.

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

The project includes no significant changes to the existing building.

- G. That landmarks and historic buildings be preserved.

The subject building was determined to not be a historic resource by the Showplace Square/Northeast Mission Historic Survey.

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

The project will have no impact on existing parks and open spaces.

- 11. 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.
- 12. 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. 2013.0477C** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated May 30, 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. XXXXX. 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 July 11, 2013.

Jonas P. Ionin
Acting Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: July 11, 2013

EXHIBIT A

AUTHORIZATION

This authorization is for a conditional use to allow approximately 10,000 gross square feet of Internet Services Exchange on the entirety of both floors of the existing two-story building located at 435-437 Potrero Avenue, Block 3972, and Lot 22, pursuant to Planning Code Section(s) **179.1, 227(r), 303, and 303(h)** within the **UMU** District and a **58-X** Height and Bulk District; in general conformance with plans, dated **May 30, 2013**, and stamped "EXHIBIT B" included in the docket for Case No. **2013.0477C** and subject to conditions of approval reviewed and approved by the Commission on **July 11, 2013** under Motion No. **XXXXXX**. 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 **July 11, 2013** under Motion No **XXXXXX**.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. **XXXXXX** 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.** The authorization and right vested by virtue of this action is valid for three (3) years from the effective date of the Motion. The Department of Building Inspection shall have issued a Building Permit or Site Permit to construct the project and/or commence the approved use within this three-year period.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.
2. **Expiration and Renewal.** Should a Building or Site Permit be sought after the three (3) year period has lapsed, the project sponsor must seek a renewal of this Authorization by filing an application for an amendment to the original Authorization or a new application for Authorization. Should the project sponsor decline to so file, and decline to withdraw the permit application, the Commission shall conduct a public hearing in order to consider the revocation of the Authorization. Should the Commission not revoke the Authorization following the closure of the public hearing, the Commission shall determine the extension of time for the continued validity of the Authorization.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.
3. **Diligent pursuit.** 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. Failure to do so shall be grounds for the Commission to consider revoking the approval if more than three (3) years have passed since this Authorization was approved.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.
4. **Extension.** All time limits in the preceding three paragraphs may be extended at the discretion of the Zoning Administrator where implementation of the project is delayed by a public agency, an appeal or a legal challenge and only by the length of time for which such public agency, appeal or challenge has caused delay.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.
5. **Conformity with Current Law.** No application for Building Permit, Site Permit, or other entitlement shall be approved unless it complies with all applicable provisions of City Codes in effect at the time of such approval. *For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.*

DESIGN – COMPLIANCE AT PLAN STAGE

6. **Rooftop Mechanical Equipment.** Pursuant to Planning Code 141, the Project Sponsor shall submit a roof plan to the Planning Department prior to Planning approval of the building permit

application. Rooftop mechanical equipment, if any is proposed as part of the Project, is required to be screened so as not to be visible from any point at or below the roof level of the subject building.

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

PROVISIONS

7. **Transit Impact Development Fee.** Pursuant to Planning Code Section 411 (formerly Chapter 38 of the Administrative Code), the Project Sponsor shall pay the Transit Impact Development Fee (TIDF) as required by and based on drawings submitted with the Building Permit Application. Prior to the issuance of a temporary certificate of occupancy, the Project Sponsor shall provide the Planning Director with certification that the fee has been paid.

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

MONITORING

8. **Reporting.** As long as the use remains an Internet Services Exchange, the project sponsor shall submit to the Planning Department on an annual basis power use statements for the previous twelve-month period as provided by all suppliers of utilities and shall submit a written annual report to the Department of Environment and the Planning Department which shall state: (a) the annual energy consumption and fuel consumption of all tenants and occupants of the Internet Services Exchange; (b) the number of all diesel generators located at the site and the hours of usage, including usage for testing purposes; (c) evidence that diesel generators at the site are in compliance with all applicable local, regional, state and federal permits, regulations and laws; and (d) such other information as the Planning Commission may require.

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

9. **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.

10. **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

11. **Noise Control.** The premises shall be adequately soundproofed or insulated for noise and operated so that 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.

12. **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>.

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.

**PROJECT SPONSOR'S SUBMITTAL
IN SUPPORT OF CONDITIONAL USE APPLICATION
(Planning Code Section 303(h))**

for

**PRE-EXISTING LEGITIMIZED INTERNET SERVICES USE AT
435-437 POTRERO AVENUE
(BLOCK 3974, LOT 022)**

**APPLICANT:
INDUSTRY CAPITAL INTERNET INFRASTRUCTURE, LLC**

**PLANNING DEPARTMENT CASE NO. 2013.0477C
HEARING DATE: June 13, 2013**

Attorneys for Applicant:

REUBEN, JUNIUS & ROSE, LLP

One Bush Street, Suite 600, San Francisco, CA 94104
Tel No.: (415) 567-9000 Fax No.: (415) 399-9480

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A. INTRODUCTION

Industry Capital Internet Infrastructure, LLC (“Applicant”) received a Letter of Legitimization from the Zoning Administrator (“ZA Legitimization Letter”) for the pre-existing Internet Services Use at 435-437 Potrero Avenue, Block 3974/Lot 022 (“Property”). A copy of the ZA Legitimization Letter is attached to the Staff Report. The ZA Legitimization noted that a Conditional Use Authorization was also required for continuation of the use. The Applicant seeks Conditional Use Authorization (“Authorization”) pursuant to the ZA Legitimization Letter. The Property is located at the east side of Highway 101 between 17th and Mariposa Streets, and is within the UMU Zoning District, and the 58-X Height and Bulk District.

The Conditional Use criteria are set forth in Planning Code Sections 303(c) and 303(h). The existing use supports and addresses the continued need for Internet Services for San Francisco’s small business and start-up community by providing convenient, affordable access to the existing data center. The existing use meets all requirements of San Francisco’s General Plan and Planning Code.

B. SITE INFORMATION

Street Address: 435-437 Potrero Avenue
Cross Streets: 17th Street and Mariposa Street
Assessor’s Block/Lot: 3974/022
Zoning District: UMU
Height/Bulk District: 58-X
Other Planning Areas: None
Parcel Area Size: 4,996 square feet
Existing Improvements: Two-story structure improved with electrical and other upgrades for existing Internet Services use
Existing Use: Internet Services

C. PROJECT SUMMARY

Proposed Use: Continuation of existing Internet Services Use
Building Height: 30 feet
Gross Square Footage: 10,000 square feet
Number of Stories: 2 stories

D. DESCRIPTION OF THE BUILDING AND EXISTING USE

The building is located on a rectangular lot on the east side of Potrero Avenue between 17th Street and Mariposa Streets. The Site is within the UMU Zoning District. Plans of the existing building are attached as **Exhibit A**.

The building was constructed in 1950 and significantly improved in 2000 for use as an Internet Services Center operated by RCN (which later became Astound Networks). The building is fully equipped for this use. No changes to the exterior of the building are proposed, except for additional screening on the roof to cover the existing mechanical equipment.

In contrast to the larger Internet Services centers that are in existence in San Francisco, this site is ideally suited to serve small customers in the City – much like a print shop or a similar light industrial use but with a 21st century application. In the City, there is currently no independent provider of Internet Service data center except for Digital Realty, a multi-billion dollar development company, which owns two large facilities at 365 Main Street and 200 Paul Street. The Property represents a local choice for the San Francisco small business community. The building's central location is ideal for local businesses. Additionally, by continuing the existing use with its infrastructure intact, the business will not require construction of a new facility.

The Applicant will focus on local retail business customers whereas some of the larger facilities that have been built in the City are focused on much larger, wholesale clients. The size of the facility is small compared to the others operating the City. The proximity of this facility to the city center will help attract and retain small businesses and start-up companies.

We expect this data center to promote further job growth in San Francisco as the business users will have a platform to grow their businesses with a local data center provider, which we believe can provide a higher degree of service than the larger national and multi-national platforms.

E. COMPLIANCE WITH SECTION 303 (CONDITIONAL USE) CRITERIA

Under Planning Code section 303(c), the Planning Commission shall approve the application and authorize a conditional use if the facts presented establish the following:

1. Desirability and Compatibility of Project

Planning Code section **303(c) (1)** requires that facts be established which demonstrate the following:

That the proposed use or feature, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community.

The existing use is compatible with the neighborhood and the community. The Applicant plans to use the existing building (built in 1950). No exterior changes are proposed except a roof screen upgrade. The height and scale of this building are in line with the adjacent

properties. Additionally, at 10,000 sq. ft., the data center is in scale with many of the surrounding small businesses.

The Applicant proposes to use the existing facility to serve the small business community of San Francisco with co-location services. Co-location services means that servers and communications equipment which are either housed at the customer's premises or which would be housed in other facilities would be located inside the 435-437 Potrero building. Co-location has the benefit of increasing the energy efficiency of the equipment. Much of the equipment would otherwise be spread out among offices and basements.

Typically, the customers who choose to maintain a presence in the City do so because of a real need to be close to the location of their servers and back-up computers. The customers are typically small-to-medium sized businesses who cannot afford to build dedicated data centers.

At any given time there will be 4-6 people employed at the facility with 2-4 employees of customers rotating on and off-site at any given time.

2. Effect of Project on Health, Safety, Convenience or General Welfare

Planning Code section 303(c)(2) requires that facts be established which demonstrate the following:

That such use or feature as proposed will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity, or injuries to property, improvements or potential development in the vicinity, with respect to aspects including but not limited to the following:

- (a) The nature of the proposed site, including its size and shape, and the proposed size, shape and arrangement of the structure.

The CU Authorization will not be detrimental to the health, safety or general welfare of the persons or business in the vicinity. The use has been in operation at the site for 13 years.

- (b) 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 4-6 employees and the customers are expected to arrive by foot, bicycle, or public transit. Given the central location of the building and proximity to public transit, we do not expect any traffic issues.

- (c) The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor.

The HVAC equipment consists of seven fan units that comply with the San Francisco Noise Ordinance. The HVAC equipment does not emit any dust or odors. The backup generator is located in the basement, and is used only in emergencies such as power outages.

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

An awning will be added to improve the entrance. Rooftop screening will be upgraded.

3. Compliance with the General Plan

Planning Code Section 303(c)(3) requires that facts be established that demonstrate the following:

That such use or feature as proposed will comply with the applicable provisions of this code and will not adversely affect the Master Plan.

The Project will affirmatively promote, is consistent with, and will not adversely affect the General Plan, as follows:

The objectives and policies of the Commerce Element of the General Plan are based on the premise that economic development activities in San Francisco must be designed to achieve economic vitality, among other things.

POLICY 4.11

Maintain an adequate supply of space appropriate to the needs of incubator industries.

Small, emerging industries in the City, many utilizing new technologies, are dependent on relatively inexpensive space accessible to prospective markets. Examples of these “incubator” type industries include electronic data processing firms, business services, apparel manufacturing and design, crafts manufacturing, etc. During the early stages of developments, while markets are being established, fixed costs such as rent and transportation must be kept at minimal levels. The South of Market area is currently serving as a functional area containing a supply of such spaces needed by new businesses. The maintenance of a reservoir of such spaces, which can fulfill these needs, is needed.

Economic Vitality

The first goal is to maintain and expand a healthy, vital and diverse economy which will provide jobs essential to personal well-being and revenues to pay for the services essential to the quality of life in the city.

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.

In situations where proposed developments have no significant adverse environmental effects and will result in positive fiscal and employment benefits for residents, and where the developments otherwise meet planning objectives, they should be encouraged.

POLICY 2.1

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

POLICY 3.4

Assist newly emerging economic activities.

POLICY 4.1

Maintain and enhance a favorable business climate in the city.

The creation and maintenance of a positive relationship between city government and private industry is an important factor for many industries in choosing to stay or relocate.

F. COMPLIANCE WITH ADDITIONAL CONDITIONAL USE CRITERIA (SECTION 303(h))

The Planning Commission shall, in addition to the criteria set forth in Section 303(c) above, find that:

- 1) The intensity of the use at this location and in the surrounding neighborhood is not such that allowing the use will likely foreclose the location of other needed neighborhood-serving uses in the area.**

The building is already constructed and has been in use for more than 13 years for Internet Services Use. We do not anticipate that the current use will preclude other uses in the area.

- 2) The building in which the use is located is designed in discrete elements, which respect the scale of development in adjacent blocks, particularly any existing residential uses.**

The existing building is within the physical dimensions and scale of the surrounding neighborhood, and the design and layout is consistent with the surrounding architecture for commercial buildings on Potrero Avenue.

- 3) **Rooftop equipment on the building in which the use is located is screened appropriately.**

The rooftop equipment is not visible from street level (see **Exhibit B**). The equipment screen will be improved.

- 4) **The back-up power system for the proposed use will comply with all applicable federal state, regional and local air pollution controls.**

The building's backup generator complies with and is permitted by Bay Area Air Quality Management District permit number 21731.

- 5) **Fixed-source equipment noise does not exceed the decibel levels specified in the San Francisco Noise Control Ordinance.**

The building's air cooled fans located on the roof will comply with the ambient noise levels, by utilizing the following technologies and methods to meet and exceed the noise control Ordinance:

- i. Mufflers and Variable Frequency Drive fans and pumps.
 - ii. Sound wall / noise absorption
- 6) **The building is designed to minimize energy consumption, such as through the use of energy-efficient technology, including without limitation, heating, ventilating and air conditioning systems, lighting controls, natural ventilation and recapturing waste heat, and as such commercially available technology evolves.**

The equipment at the site is functioning well and can continue to be used as is. However, the Applicant, as part of its commitment to energy efficiency, will deploy the following energy saving technologies:

- i. Energy efficient Toshiba G9000 UPS systems increases the efficiency of the current uninterruptible power system from 80% efficiency to 96.5% (reduces energy usage).
- ii. Deployment of cold isle containment, reducing the power associated with mechanical cooling by 25-30%.
- iii. Deployment of air-side economization will reduce the cooling power consumption by an estimated 50-60%.

In aggregate, the above will reduce power consumption by approximately 45% relative to the existing use.

- 7) **The Applicant has examined the feasibility of supplying and, to the extent feasible, will supply all or a portion of the building's power needs through on-site power generation, such as through the use of fuel cells or co-generation.**

The Applicant has studied the feasibility of utilizing onsite Co-gen and fuel cells. Due to the limited lot size, such power generation is not possible.

- 8) **The Applicant shall have submitted design capacity and projected power use of the building as part of the conditional use application.**

The building is served by PG&E with a 1,000 mega volt amperes (“MVA”) dedicated underground feed transformer that is located inside the building. The maximum capacity shall not exceed 800 KW. The following is the estimated power use for the building

Power Use	2013	2014	2015	2016
Total capacity in KWh	36,000	216,000	360,000	540,000

As a condition of approval, and so long as the use remains an Internet Services Exchange, the Applicant shall submit to the Planning Department on an annual basis power use statements for the previous twelve-month period as provided by all suppliers of utilities and shall submit a written annual report to the Department of Environment and the Planning Department which shall state: (a) the annual energy consumption and fuel consumption of all tenants and occupants of the Internet Services Exchange; (b) the number of all diesel generators located at the site and the hours of usage, including usage for testing purposes; (c) evidence that diesel generators at the site are in compliance with all applicable local, regional, state and federal permits, regulations and laws; and (d) such other information as the Planning Commission may require.

The building is only 10,000 square feet in size, with 800 KWh of dedicated power and a single 400 KWh diesel standby backup generator.

G. MASTER PLAN PRIORITY POLICIES

Planning Code Section 101.1 establishes the following eight priority planning policies and requires review of permits for consistency with said policies. The Project and this Section 329 Application are consistent with each of these policies as follows:

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

The continuance of the existing use will benefit existing neighborhood-serving retail uses by keeping employees and customers in the neighborhood.

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

The Applicant will not have any effect on housing. The existing use is a part of the neighborhood character.

3. That the City's supply of affordable housing be preserved and enhanced.

The application will have no effect on affordable housing.

4. That commuter traffic not impede Muni transit service or overburden our streets or neighborhood parking.

The application will have no effect on commuter traffic or Muni.

5. 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.

No commercial office development is proposed.

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

The application is consistent with this policy.

7. That landmarks and historic buildings be preserved.

The Property is not a landmark or historically rated building and the Property is not located within a historic district. The Project will have no impact on landmarks or historic buildings.

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

The Property is not adjacent to any parks or public open space, and will therefore have no impact on access to sunlight or vistas.

H. CONCLUSION

The application satisfies the objectives and policies of the General Plan, the Planning Code, and the ZA Legitimization Letter, and should be approved.

Dated: May 29, 2013

REUBEN, JUNIUS & ROSE, LLP
Attorneys for Owner and Applicant

By: 
David Silverman

LIST OF EXHIBITS

Exhibit A – Floor Plans

