



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

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- ☐ Jobs Housing Linkage Program (Sec. 313)
- ☐ Downtown Park Fee (Sec. 139)

- ☐ First Source Hiring (Admin. Code)
- ☐ Child Care Requirement (Sec. 314)
- ☐ Other

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Planning Commission Final Motion No. 17640

HEARING DATE: JUNE 26, 2008
(CONTINUED FROM MAY 29, 2008 HEARING)

Date: June 26, 2008
Case No.: **2007.1064CE**
Project Address: **1860 LOMBARD STREET**
Zoning: NC-3 (Neighborhood Commercial, Moderate-Scale)
40-X Height and Bulk District
Block/Lot: 0494/023 (formerly Lot 011)
Project Sponsor: Akki Patel
Letap Group, Inc./Subway North Bay Development, Inc.
4050 Redwood Highway, Suite #D
San Rafael, CA 94903
Staff Contact: Mary Woods – (415) 558-6315
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ADOPTING FINDINGS RELATING TO THE DISAPPROVAL OF A CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303(C), 303(I), 703.4 AND 712.43 OF THE PLANNING CODE TO ALLOW A “FORMULA RETAIL USE” THAT IS ALSO A “LARGE FAST FOOD RESTAURANT” (DBA SUBWAY) WITHIN THE NC-3 (NEIGHBORHOOD COMMERCIAL, MODERATE-SCALE) DISTRICT AND A 40-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On September 13, 2007, Subway (Project Sponsor) filed an application with the Department for Conditional Use authorization under Planning Code Sections 303(c), 303(i), 703.4 and 712.43 to allow a Formula Retail use that is also a large fast food restaurant (dba Subway) within the NC-3 (Neighborhood Commercial, Moderate-Scale) District and a 40-X Height and Bulk District.

On April 24, 2008, the San Francisco Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2007.1064CE. At that hearing, the Commission continued the matter to a future hearing date. **On May 29, 2008**, the Commission passed a motion of intent to disapprove the Conditional Use application and continued the matter to **June 26, 2008**.

The Project was determined by the San Francisco Planning Department (hereinafter "Department") to be categorically exempt from environmental review. The Commission has reviewed and concurs with said determination.

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 disapproves the Conditional Use requested in Application No. 2007.1064CE, 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 north side of Lombard Street between Buchanan and Laguna Streets, in Assessor's Block 0494, Lot 023 (formerly Lot 011). Lot 011 was originally a through-lot with frontages on Lombard and Magnolia Streets and measured approximately 27 feet wide by 120 feet deep. It was subdivided into two lots in 2002: Lot 022 with frontage on Magnolia Street and Lot 023 with frontage on Lombard Street. Lot 023 is 27 feet wide by 60 feet deep. The property is located within the NC-3 (Neighborhood Commercial, Moderate-Scale) District and an 40-X height and bulk district. The property is developed with a two-story building containing a vacant commercial use (formerly Audio Lab) on the ground floor and a dwelling unit on the second floor. The lot is approximately 75 percent covered by the subject building, with a rear yard measuring approximately 14 feet deep.
3. **Surrounding Properties and Neighborhood.** The Project Site is situated towards the northern end of the NC-3 District along the 12-block Lombard Street commercial corridor. This corridor is bounded by Broderick Street to the west and Franklin Street to the east. Lombard Street is a major vehicular thoroughfare, also known as State Highway 101. It is the City's primary link to the North Bay via the Golden Gate Bridge. Transit lines serving San Francisco and Marin County are nearby and are within walking distance of the Site. Numerous small-scale motels can be found further west and east of the Project Site. While the Site is near other commercial corridors, such as Chestnut Street, Fillmore Street and Union Street, the Project Site is surrounded by predominantly residential dwellings and residentially zoned districts. Buildings on the subject block and the facing block range from two to four stories tall. Commercial uses on the subject and facing blocks include a liquor store, a gasoline station, real estate offices, an insurance company and other professional offices.
4. **Project Description.** The applicant proposes to convert a vacant retail space (formerly "Audio Lab", a car and home stereo repair service shop) to a large fast food restaurant. The proposed Project will occupy the entire ground floor, approximately 1,100 square feet. The proposal

involves interior remodeling work with minimal exterior improvements, while maintaining the existing building envelope and height. The restaurant will have seating for approximately 24 people. The existing building has no off-street parking or loading spaces and none is required or proposed.

The proposed use is a Formula Retail use. The proposal requires a change of use and Section 312-neighborhood notification was conducted in conjunction with the Conditional Use Authorization process.

5. **Public Comment.** As of June 12, 2008, the Department has received one letter in support of the proposed Project and two letters in opposition to the proposed Project. Concerns raised involve the intensity of use related to a fast food restaurant, limited parking, noise, and crime.
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 Use.** Planning Code Section 703.4 states that a Conditional Use authorization is required for a formula retail use, as defined by Planning Code Section 703.3, in any of the City's Neighborhood Commercial Districts.

The Project is considered to be a formula retail use as defined by Section 703.3 of the Planning Code. Conditional use authorization must be granted for a formula retail use at the subject Site.

- B. **Large Fast Food Restaurant.** Planning Code Section 712.43 states that a Conditional Use authorization is required for any fast food restaurant with a gross floor area of 1,000 square feet or more, as defined by Planning Code Section 790.90.

The proposed Project will occupy the existing vacant retail space, which is approximately 1,100 square feet, without any expansion to the existing building footprint.

- C. **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. Section 152 requires one off-street loading space for retail stores between 10,001 and 60,000 gross square feet.

The Subject Property contains approximately 1,100 square feet of occupied floor area and thus does not require any off-street or loading parking spaces.

- D. **Rear Yard Requirement in the NC-3 District.** Planning Code Section 134 states that rear yards shall be provided at the lowest story containing a dwelling unit, and at each succeeding level or story of the building.

The proposed Project occupies approximately 75 percent of the lot area even though 100 percent is allowed per the Planning Code. No outdoor activity is proposed for the Project. The existing second floor dwelling unit will remain as is.

- E. **Street Frontage in Neighborhood Commercial Districts.** Section 145.1 of the Planning Code requires that NC Districts containing specific uses, including large fast-food restaurants, have at least ½ the total width of the new or altered structure at the commercial street frontage devoted to entrances to commercially used space, windows or display space at the pedestrian eye-level. Such windows shall use clear, un-tinted glass, except for decorative or architectural accent. Any decorative railings or decorated grille work, other than wire mesh, which is placed in front or behind such windows, shall be at least 75 percent open to perpendicular view and no more than six feet in height above grade.

The subject commercial space has approximately 17 feet of frontage on Lombard Street with approximately 12 feet devoted to either the restaurant entrance or window space. The windows are clear and unobstructed. There are no changes proposed to the commercial frontage.

- F. **Signage.** Any proposed signage will be subject to the review and approval of the Planning Department and must comply with Article 6 of the Planning Code.
7. **Planning Code Section 303(c)** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. The Commission may authorize a Conditional Use after finding 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 Project is not necessary because other nearby, locally-owned, non-formula retail restaurants or delicatessen stores already offer custom-made sandwiches. Additionally, other formula retail restaurants already exist along the Lombard Street corridor, including the Kentucky Fried Chicken/Taco Bell, Mel's Diner, Amici's Pizza, and the International House of Pancakes. The proposed Project would increase the number of formula retail uses in the area. It may thereby prevent a locally-owned, non-formula retail business from locating to the subject Site. Although the proposed Project would be locally-owned and staffed, the proposed Project may be detrimental to the neighborhood character by filling a storefront with a new formula retail use.

- 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. The Project proposes to replace the garage door that was installed by the former tenant with windows. 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 off-street parking or loading for an 1,100 square-foot restaurant. The proposed Project will not adversely impact traffic or parking in the District.

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

The proposed use is not anticipated to produce noxious or offensive emissions related to noise, glare and dust. The Project may have the potential to increase odor in the area because bread will be baked on-site.

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

The Project Site is built-out at the retail ground level, therefore, no landscaping will be provided. All lighting and signage would be required to comply with the provisions of the Planning Code.

- C. That the use as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

The Project complies with most of the relevant requirements and standards of the Planning Code, but it is not in conformity with the Priority Policies and Commerce and Industry Element of the General Plan. The Project would detract from the character of the neighborhood by adding a new formula retail restaurant use to a neighborhood that already has well-established formula retail restaurants and locally-owned restaurants and delicatessens.

- 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 located along a continuous, linear commercial corridor on Lombard Street that stretches from Franklin to Broderick Streets. This stretch of Lombard Street is a major vehicular thoroughfare, also known as State Highway 101, with transit lines serving San Francisco and Marin County residents.

The proposed formula retail restaurant is not an appropriate use for the neighborhood. Several locally-owned, neighborhood-serving restaurants and delicatessens in the project area already offer similar items provided by the proposed formula retail restaurant. Additionally, the neighborhood has had a history of locally-owned restaurants locating within the area.

- 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.

There are several formula retail uses within a few blocks of the proposed Project Site, including a Fast Frame store at Lombard and Octavia Streets, a Radio Shack at Lombard and Laguna Streets, and a Kentucky Fried Chicken/Taco Bell at Lombard and Fillmore Streets. Along the Chestnut, Fillmore and the Union Street commercial corridors, other formula retail stores are interspersed throughout the neighborhoods.

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

Other non-formula retail uses include the Viking Submarine Sandwiches on Lombard Street near Van Ness Avenue, the Albertino delicatessen on the corner of Lombard and Buchanan Streets, and the Abigail's Pastry & Fine Foods on Greenwich Street near Fillmore Street. Other formula retail restaurants along the Lombard Street corridor include the Kentucky Fried Chicken/Taco Bell, Mel's Diner, Amici's Pizza, and the International House of Pancakes.

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

No physical expansions of the subject building would be necessary to accommodate the proposed use. The height and bulk of the existing building will remain the same. The Project proposes to replace the garage door that was installed by the former tenant with windows.

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

The existing commercial space has been vacant for a year. Retail vacancy rates in the subject neighborhood commercial district are limited. The subject district enjoys a healthy mix of restaurants, drinking establishments, retail, services and institutions.

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

Commercial uses on the subject and facing blocks include a liquor store, a real estate office, an insurance company and other professional offices. Numerous small-scale motels can be found further west and east of the Project Site. The proposed Project is intended primarily to serve the immediate neighborhood, which includes many residential buildings as well.

9. **General Plan Compliance.** The Project is not consistent with the Objectives and Policies of the General Plan in that:

COMMERCE AND INDUSTRY ELEMENT

NEIGHBORHOOD COMMERCE

Objectives and Policies

OBJECTIVE 6:

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

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 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.

Although the proposed use is intended to be neighborhood-serving, it may be detrimental to the character of the immediate neighborhood. The immediate neighborhood is defined by locally-owned restaurants which add unique character and diversity. Formula retail businesses offering similar menu items may have a competitive advantage over non-formula retail business because the formula retail businesses are often better capitalized, and therefore, can commit to longer and more expensive leases. This could potentially put pressure on existing businesses for higher rents. Additionally, higher rents may prohibit a new startup independent business from locating in the subject neighborhood where several startup businesses have started and sustained.

This policy includes guidelines for specific uses. In order to maintain the balance of commercial uses, eating and drinking establishments should not occupy more than 20 percent of the commercial frontage in a district. Proposals for eating and drinking establishments which would increase the proportion of total occupied commercial frontage above 20 percent should be reviewed to ensure that they would not reduce the variety of neighborhood-serving uses or create substantial noise, traffic, parking problems, or other nuisances. Except in districts with an established pattern of service to a broad market, such establishments should not occupy more than 25 percent of the total commercially-occupied frontage in a district.

In the subject neighborhood commercial district, eating and drinking establishments do not occupy more than 20 percent of commercially-occupied frontage.

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.

Eating and Drinking Establishments

Eating and drinking establishments include bars, sit-down restaurants, fast food restaurants, self-service restaurants, and take-out food. Associated uses, which can serve similar functions and create similar land use impacts, include ice cream stores, bakeries and cookie stores. Guidelines for eating and drinking establishments are needed to achieve the following purposes:

- Regulate the distribution and proliferation of eating and drinking establishments, especially in districts experiencing increased commercial activity;
- Control nuisances associated with their proliferation;
- Preserve storefronts for other types of local-serving businesses; and
- Maintain a balanced mix of commercial goods and services.

The regulation of eating and drinking establishments should consider the following:

- Balance of retail sales and services;
- Current inventory and composition of eating and drinking establishments;
- Total occupied commercial linear frontage, relative to the total district frontage;
- Uses on surrounding properties;
- Available parking facilities, both existing and proposed;
- Existing traffic and parking congestion; and
- Potential impacts on the surrounding community.

The subject NC-3 District contains a mix of uses which includes retail sales and services, professional office uses and restaurants. An additional restaurant will not upset the balance of uses in the area as eating and drinking establishments do not occupy more than 20 percent of commercially-occupied frontage. Additionally, because the proposed Project is well-served by public transit and due to the nature of the proposed Project as a walk-in restaurant, negative traffic and parking impacts are not anticipated to arise.

Fast Food Restaurants and Self-Service Restaurants

Fast food restaurants and self-service restaurants including take out food establishments are retail uses which provide quick-food service for consumption on or off the premises, which are often designed to serve a high volume of customers at a high turnover rate. As a result, this can generate problems in traffic and pedestrian circulation, parking congestion, litter, noise and odors. All guidelines for eating and drinking establishments should apply to fast food restaurants and self-service restaurants in addition to the guidelines stated below:

- The proposed use should not add to an over-concentration of fast food restaurants in a single district. As a general rule, fast food restaurants should be evenly distributed throughout the district. However, in certain locations, clustering may be more appropriate. For example, a configuration of clustered fast food restaurants where sufficient off-street parking is shared between them might make more efficient use of land than an even distribution of fast food

- restaurants throughout the district. The number of large fast food restaurants and small self-service restaurants should not exceed the maximum number that would be allowed if all fast food restaurants in the district were at least 500 feet from each other;
- To avoid potential pedestrian vehicle conflicts where large number of children are present, fast food restaurants should not be within 500 foot walking distance of an elementary or secondary school;
 - The use should provide adequate waiting space for walk-in patrons;
 - The use should be equipped with sufficient outdoor and indoor trash receptacles to avoid litter problems in the surrounding neighborhood;
 - The operator of the use should be responsible for maintaining the sidewalk within a one block radius of the site free of paper or litter;
 - The use should be designed and operated to contain fumes and odors within the cooking areas, so that such fumes and odors will not spread to adjacent or upper-story uses; and
 - The new or expanding use should close at 12:00 Midnight or earlier

If all fast food and small service restaurants were spaced 500 feet from each other in the subject NC-3 District, an additional fast food restaurant could be accommodated in this District. The Project would be subject to standard conditions of approval for a small self-service restaurant including conditions specifically addressing litter, fumes and odors.

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.

At the April 24, 2008 and May 29, 2008 Planning Commission hearings, there was public testimony from local residents and business owners which indicated a preference for the Project Site to be occupied by an independently-owned business. One of the concerns raised was that the proposed formula retail restaurant would negatively impact existing independent businesses by creating more competition for a number of locally-owned food establishments in the area that serve custom-made sandwiches.

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

The Project would adversely impact the character and diversity of the neighborhood. The immediate neighborhood already contains locally-owned restaurants and delicatessens which offer similar food choices as the Project proposes.

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

The Project would not have any impacts on the City's supply of affordable housing.

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

The Site is well-served by both local and regional transit lines. The Project would not adversely impact public transit or overburden the 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 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 Project would comply with all applicable earthquake safety standards and built to the current standards of the California Building Code.

- G. That landmarks and historic buildings be preserved.

The Project would not affect any landmarks or historic buildings.

- 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.

11. The General Plan provides guidelines for neighborhood commerce which state that the essential character of neighborhood commercial districts should be maintained by encouraging and protecting uses which provide necessary goods and services to the surrounding neighborhoods and which are compatible in scale or type with the district in which they are to be located. Often, a district's character is defined by certain established businesses which have been serving the neighborhood residents and businesses for an extensive period. Loss of such businesses could undermine that district's distinctive character. The use should contribute to the variety of uses in the district and avoid an undesirable concentration of one type of use in a certain location.
12. On balance, 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 **DISAPPROVES Conditional Use Application No. 2007.1064CE** subject to the following conditions attached hereto as "EXHIBIT A" 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. 17640. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on **June 26, 2008**.

Linda Avery
Commission Secretary

AYES: Commissioners Antonini, Miguel, Moore and Sugaya

NAYS: Commissioner Olague

ABSENT: Commissioner Lee

EXCUSED: Commissioner Borden

ADOPTED: June 26, 2008