



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- | | |
|--|--|
| <input type="checkbox"/> Inclusionary Housing (Sec. 315) | <input type="checkbox"/> First Source Hiring (Admin. Code) |
| <input type="checkbox"/> Jobs Housing Linkage Program (Sec. 313) | <input type="checkbox"/> Child Care Requirement (Sec. 314) |
| <input type="checkbox"/> Downtown Park Fee (Sec. 139) | <input type="checkbox"/> Other |

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Planning Commission Final Motion No. 17695

HEARING DATE: SEPTEMBER 11, 2008

Date: September 11, 2008
Case No.: **2008.00717 C**
Project Address: **804 BRYANT STREET**
Zoning: Service/Light Industrial District
30-X Height and Bulk District
Block/Lot: 3759/011
Project Sponsor: Deen Fatterpaker
1191 Crestmount Drive
Lafayette, CA 94549
Staff Contact: Diego R Sánchez – (415) 575-9082
diego.sanchez@sfgov.org

ADOPTING FINDINGS RELATING TO CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303 AND 803.6 OF THE PLANNING CODE TO ALLOW A LARGE FAST FOOD RESTAURANT (DBA SUBWAY) IDENTIFIED AS FORMULA RETAIL WITHIN THE SERVICE/LIGHT INDUSTRIAL DISTRICT, THE WESTERN SOMA PLANNING AREA SPECIAL USE DISTRICT AND A 30-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On June 19, 2008 Deen Fatterpaker (Project Sponsor) filed an application with the San Francisco Planning Department (hereinafter "Department") for Conditional Use Authorization under Planning Code Section 803.6 of the Planning Code to allow a Large Fast Food Restaurant (dba Subway) identified as formula retail within the Service/Light Industrial District, the Western SoMa Planning Area Special Use District and a 30-X Height and Bulk District.

On September 11, 2008, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2008.0717C.

The Project was determined by the 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 authorizes the Conditional Use requested in Application No. 2008.0717C, 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 proposed project is located at the intersection of Bryant and Sixth Streets within the Service/Light Industrial District, the Western SoMa Planning Area Special Use District and a 30-X height and bulk district. The 6,700 square foot interior lot is improved with a three story structure. Financial services uses are found on the ground floor and office uses on the upper stories. The proposed project intends to utilize an existing 1,600 square foot ground floor commercial space. The proposed project would occupy 19 linear feet of frontage on Bryant Street.
3. **Surrounding Properties and Neighborhood.** The proposed project site is located in the eastern half of the Western SoMa Planning Area Special Use District. There are a wide range of uses in this special use district, including bars, eating establishments, general grocery stores, automobile-related uses, production repair and distribution uses, professional and personal service uses and retail sales and services. Properties in the vicinity are located within the SLI (Service/Light Industrial) and P (Public Use) Districts. Owing to its proximity to the Hall of Justice, there are numerous legal services uses catering to this institution along Bryant Street.

The site is served by public transit, accessible via the 9X-Bayshore Express, 14X-Mission Express, 19-Polk and the 27-Bryant Muni Bus Lines.

4. **Project Description.** The project proposes to establish a Large Fast Food Restaurant (dba Subway) identified as formula retail within the Service/Light Industrial District and the Western SoMa Planning Area special Use District. Conditional Use authorization is required to establish any formula retail use within the Western SoMa Planning Area Special Use District. The current use at this location is also a Large Fast Food Restaurant (dba Tacos Del Mar) identified as formula retail.

Subway is an international fast food restaurant with over 29,000 establishments in 87 countries. The menu offers a variety of delicatessen-style food choices, including a number of healthy sandwich and salad options for adults and children. While the headquarters of Subway is in Connecticut, all restaurants are franchised.

The proposed scope of work is comprised of interior tenant improvements (new kitchen equipment, counters, seating, and wall coverings) and a replacement of business sign. The project does not propose to expand the building envelope and will remain within the existing 1,600 square foot commercial space.

5. **Public Comment.** The Planning Department has received two letters and two petitions of support from the public on this case.
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 803.6 allows the establishment of formula retail uses within the Western SoMa Planning Area Special Use District by Conditional Use authorization.

The Project Sponsor intends to establish a Large Fast Food Restaurant (dba Subway) identified as formula retail in the Western SoMa Planning Area Special Use District and is seeking Conditional Use authorization.

- B. **Western SOMA Planning Area Permit Review.** Planning Code Section 803.7 requires neighborhood notification of changes in use to a Large Fast Food Restaurant, as defined by Planning Code Section 890.91 for lots within the Western SoMa Planning Area Special Use District.

The Project Sponsor is proposing the establishment of a Large Fast Food Restaurant (dba Subway) within the Western SoMa Planning Area Special Use District. Notification in accordance with the procedures of Section 312 was conducted in conjunction with the Conditional Use authorization notification.

- 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.

The proposed project contains less than 5,000 square feet of occupied floor area and therefore does not require any off-street parking. Furthermore, it is a pre-existing restaurant use and parking requirements remain constant.

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 project is necessary and desirable because it provides goods (delicatessen-style fare) to the existing commercial, manufacturing, home and business service, live/work use, arts uses, light industrial activities and small design professional firms in the area, in line with the stated intentions of the district; it utilizes a storefront of an existing Large Fast Food Restaurant; and it maintains the surrounding pattern of ground floor retail/commercial uses found in the vicinity.

- 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 proposed project will operate within the existing 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 Large Fast Food Restaurant with an occupied floor area of less than 5,000 feet. The proposed project is well served by public transit, minimizing the need for private automobile trips.

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

The proposed use is subject to the standard conditions of approval for Large Fast Food Restaurants as outlined in Exhibit A. Conditions 5 through 8 specifically obligate the project sponsor to mitigate noxious or offensive noise and odor generated by the restaurant use.

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

Parking and loading areas are not required for the proposed use because the commercial use contains less than 5,000 square feet of occupied floor area. The Department shall review all proposed signs.

- 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.

8. Planning Code Section 303(i) established the following criteria for the Planning Commission to consider when reviewing Formula Retail Use applications for Conditional Use authorization

- A. The existing concentrations of formula retail uses within the neighborhood commercial district.

Within the Western SoMa Planning Area Special Use District there are approximately ten uses identified as formula retail. These uses include Tacos Del Mar, Quizno's, McDonalds, Burger King, Starbucks, Costco, Out of the Closet, Selix, TJ Maxx and Sports Authority. As stated above, the proposed project will replace an existing formula retail use and therefore the number of formula retail uses within the Western SoMa Planning Area Special Use District will not increase as a result of Conditional Use authorization.

- B. The availability of other similar retail uses within the neighborhood commercial district.

There are approximately four other independently owned retail uses providing delicatessen style fare and / or sandwiches as their primary good. Three of four of these retail establishments are located at least three blocks from the proposed project. It should be noted that the proposed project chiefly aims to serve the employees and users of the Hall of Justice in addition to the residential cluster located in the vicinity of the intersection of Bryant and Sixth Streets.

- C. The compatibility of proposed formula retail use within the existing architectural and aesthetic character of the neighborhood commercial district.

The proposed project will utilize an existing commercial space currently occupied by another Large Fast Food Restaurant identified as formula retail. The modifications of business signage will be the only change visible from the public right of way. The architecture of the existing building is compatible with the changing character of the greater SoMa neighborhood.

- D. The existing retail vacancy rates with the neighborhood commercial district.

Within a 1/3 mile radius of the proposed project there are approximately 5 vacant storefronts potentially capable of accommodating a Large Fast Food Restaurant. The proposed project intends to utilize a currently occupied commercial storefront, whose owner will also own the proposed project, and would not affect available retail space for other Large Fast Food Restaurant operators.

- E. The existing mix of Citywide serving retail uses and neighborhood-serving retail uses within the neighborhood commercial district.

The proposed project will not disturb the existing mix of Citywide serving retail uses and neighborhood serving retail uses within the Western SoMa Planning Area Special Use District as the project will utilize a commercial space currently occupied by another Large Fast Food Restaurant identified as formula retail.

9. **Additional Policies for Consideration of Formula Retail in Western SoMa SUD.** In addition to existing conditional use finding required in the Planning Code for formula retail uses in the Western SoMa Special Use District, the San Francisco Planning Commission shall consider the following additional policies:

Size

- A. New formula retail uses should maintain the use size characteristics of nearby retail uses. By nearby the Planning Commission means to evaluate retail uses on the proposed block face and opposing block face.

The proposed project is smaller than the only other formula retail use (dba McDonalds) on either the proposed or the opposing block face

- B. The Planning Commission will seek to ensure sufficient separation of formula retail uses and thereby avoid clustering of any formula retail uses in the Western SoMa SUD. By sufficient separation the Planning Commission means to avoid to the greatest extent possible more than two formula retail uses on either the proposed block face and/or the opposing block face.

The other formula retail use on the block face is located on an adjacent lot and, with the proposed project, creates a cluster of two formula retail uses. However, this other formula retail use, as well as the current formula retail use at the project site, received approval from the Planning Department prior to the establishment of the additional formula retail policies within the Western SoMa Planning Area SUD.

Use Type

- A. Discourage single, stand alone formula retail uses, and encourage formula retail uses to be integrated with non-formula retail and other uses in the Western SoMa SUD.

The proposed project is within a building shared by the San Francisco Police Credit Union.

- B. Encourage the integration of pedestrian friendly and publicly accessible open space in new formula retail use proposals.

Because the project proposes no exterior alterations, there will not be additional publicly accessible open space

- C. Discourage drive-through formula retail uses.

Because the project proposes no exterior alterations, there will not be any drive-through component at the site.

Location

- A. Auto oriented formula retail uses will be discouraged north of Highway 80 in the Western SoMa SUD.

The proposed project is on Bryant Street, south of Highway 80.

- B. Auto oriented formula retail uses will be discouraged in heavily used pedestrian areas (e.g. schools and parks) or in proximity to existing clusters of residential uses.

The proposed project is not auto oriented as the sole means of entering the site is by foot and the proposed project site does not provide off-street parking.

- C. Pedestrian oriented formula retail uses will be encouraged in proximity to existing clusters of residential uses.

The proposed project is within one block of a cluster of residential uses.

Other

- A. Discourage formula retail uses requiring multiple curb cuts.

The proposed project site does not provide off-street parking and therefore no new curb cuts are part of the project.

- B. Encourage a mix of uses and discourage the sole use of a development site by formula retail uses and their required parking (especially when required parking is provided in a surface parking area).

The proposed project shares a building with the San Francisco Police Credit Union, a financial service, and does not provide off-street parking.

- C. Discourage any formula retail use that could increase demand for double parking (legal or illegal).

The nature and typical market area of the proposed project will not generate an increase in demand for double parking.

- D. Discourage exclusive pedestrian entrances to formula retail uses from parking lots and encourage primary retail entrances from street frontages.

The proposed project site does not provide off-street parking and is accessed only by pedestrians exclusively from the Bryant Street frontage.

- E. Preference should be given to new formula retail uses that willingly participate in formalized local resident job hiring programs.

The project sponsor intends to employ all workers from the current large fast food restaurant for the proposed project.

10. **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 1.2:

Assure that all commercial and industrial uses meet minimum, reasonable performance standards.

The proposed project will provide desirable goods (delicatessen-style fare) to the existing commercial, manufacturing, home and business service, live/work use, arts uses, light industrial activities and small design professional firms in the area. The proposed use is subject to the standard conditions of approval for Large Fast Food Restaurants as outlined in Exhibit A. Conditions 5 through 8 specifically obligate the project sponsor to mitigate noxious or offensive noise and odor generated by the restaurant use.

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 proposed project will utilize an existing commercial space with a beneficial commercial use for the area's residents as well as for the employees, patrons and users of the surrounding commercial establishments and public institutions.

OBJECTIVE 3: PROVIDE EXPANDED EMPLOYMENT OPPORTUNITIES FOR CITY RESIDENTS, PARTICULARLY THE UNEMPLOYED AND ECONOMICALLY DISADVANTAGED.

Policy 3.1:

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

Policy 3.2:

Promote measures designed to increase the number of San Francisco jobs held by San Francisco residents.

The proposed project will provide employment opportunities, including entry-level employment opportunities, for the area's unskilled and semi-skilled workers. The project sponsor will also retain all current employees of the existing Large Fast Food Restaurant establishment.

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.

Policy 6.3:

Preserve and promote the mixed commercial-residential character in neighborhood commercial districts. Strike a balance between the preservation of existing affordable housing and needed expansion of commercial activity.

The project proposes to provide neighborhood serving goods while utilizing an existing commercial storefront. No affordable housing will be lost as the project proposes to retain commercial activity within in an existing storefront.

11. **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 project proposes to utilize a commercial storefront with a retail use that serves the neighborhood and that can serve as a source of employment for neighborhood residents.

- 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 proposes to utilize an existing commercial storefront for its operation and does not propose any expansion or significant alteration to either the building envelope or building façade.

- 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 proposed project is located at the intersection of Bryant and Sixth Streets, and is well served by public transit. It is likely that both employees and customers of the proposed project will either walk or use Muni to arrive, as the 27-Bryant, 19-Polk, 14X-Mission Express and the 9X-Bayshore Express Muni Bus Lines operate within one block of the site.

- 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 proposed project will not include any commercial office development and will not displace any service or industry establishments

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

The proposed project will comply with the current city codes to achieve the proper preparedness in the event of an earthquake.

- G. That landmarks and historic buildings be preserved.

There are no landmarks or historic buildings on the site.

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

The proposed project will not have a negative impact on existing parks and open spaces.

12. 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.
13. 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. 2008.0717C** 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. 17695. 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 94012.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on September 11, 2008.

Linda Avery
Commission Secretary

AYES: Commissioners Antonini, Borden, Lee, Moore, Olague, and Sugaya

NAYS: None

ABSENT: Commissioner Miguel

ADOPTED: September 11, 2008

Exhibit A

Conditions of Approval

1. This authorization is for a Conditional Use Authorization under Section 303 and 803.6 of the Planning Code to allow a Large Fast Food Restaurant at 804 Bryant Street within the Service/Light Industrial District, the Western SoMa Planning Area Special Use District and a 30-X Height and Bulk District, in general conformance with plans filed with the Application as received on June 19, 2008 and stamped "EXHIBIT B" included in the docket for **Case No. 2008.0717C**, reviewed and approved by the Commission on September 11, 2008.
2. Violation of the conditions contained in this Motion or of any other provisions of the Planning Code may be subject to abatement procedures and fines up to \$500 a day in accordance with Planning Code Section 176.
3. Should monitoring of the Conditions of Approval contained in Exhibit A of this Motion be required, the Project Sponsor or successors shall pay fees as established in Planning Code Section 351(e)(1).
4. The property owner shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean condition. Such maintenance shall include, at a minimum, daily sweeping and litter pickup and disposal as well as washing or steam cleaning of the main entrance and abutting sidewalks at least once each week.
5. Until removal by a waste disposal service, all garbage and/or waste containers shall be either (1) kept within the subject building or (2) kept in a sealed enclosure which prevents the emission of any noxious odors.
6. The Project Sponsor shall maintain appropriate odor control equipment to prevent any significant noxious or offensive kitchen odors from escaping the premises.
7. The Project Sponsor shall operate the proposed restaurant such that noise is kept at reasonable levels so as not to unduly disturb neighboring businesses and residents.
8. The Project Sponsor shall maintain an attractive storefront providing visibility of the restaurant interior through the storefront windows.
9. Signs for the business shall be reviewed and approved by the Planning Department before they are installed.
10. The Project Sponsor shall assure the execution and recordation of the specified conditions as a Notice of Special Restrictions at the Office of the County Recorder / County Clerk.

11. The authorization and right vested by virtue of this action shall be deemed void and canceled, if within 3 years of this Motion a site permit or building permit for the Project has not been secured by Project Sponsor. This authorization may be extended at the discretion of the Zoning Administrator only if the failure to issue a permit by the Department of Building Inspection is delayed by a city, state, or federal agency or by appeal of the issuance of such permit.