



# Conditional Use Authorization Appeal

## 301 TOLAND STREET

**DATE:** May 15, 2023  
**TO:** Angela Calvillo, Clerk of the Board of Supervisors  
**FROM:** Rich Hillis, Planning Director – Planning Department (628) 652-7600  
Ella Samonsky, Case Planner – Planning Department (628) 652-7417  
**RE:** Board File No. 230435, Planning Case No. 2022-011241APLCUA  
Appeal of Conditional Use Authorization for 301 Toland Street  
**HEARING DATE:** May 23, 2023  
**PROJECT SPONSOR:** John Kelvin, Ruben, Junius and Rose LLP, One Bush Street, Suite 600, San Francisco, CA 94104  
**APPELLANT:** Mark Gleason, 1414 30th Avenue, #5, San Francisco, CA 94122

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### INTRODUCTION

This memorandum and the attached documents are a response to the letter of appeal to the Board of Supervisors (“Board”) regarding the Planning Commission’s (“Commission”) approval of the application for Conditional Use Authorization under Planning Department Case Number 2022-011241CUA pursuant to Planning Code Sections:

- 210.3: PDR Use Districts (Production, Distribution and Repair); and
- 303: Conditional Use Authorization.

This memorandum addresses the appeal to the Board, filed on April 17, 2023, by Mark Gleason.

The decision before the Board is whether to uphold, overturn, or amend the Commission’s approval of an application for Conditional Use Authorization to allow the proposed project (“Project”) at the subject property.

### PROJECT DESCRIPTION

The Project involves a change of use, from Wholesale Storage (a Non-Retail Sales and Service Use) to a Private Parking Garage (a Non-Retail Automotive Use), for a portion, approximately 21,200 square feet, of the existing 108,000 square-foot one-story building. The Project would provide 44 parking spaces to be used as employee parking for employees working at Waymo’s existing automotive maintenance site at 201 Toland Street. The proposal also includes interior modifications to create an employee break room, security office, meeting room, and restrooms. Exterior alterations are limited to the replacement of one roll-up door with a larger roll-up door that extends to grade.

## **SITE DESCRIPTION & PRESENT USE**

The Project Site ("Site") is located within the PDR-2 (Production, Distribution and Repair) Zoning District on a full-block lot with frontages along Toland Street to the west, Innes Avenue to the south, and Shelby Street to the east below the elevated Interstate 280 Highway, and Hudson Avenue to the north. The Site is developed as a single-story warehouse building. The proposed Project would occupy approximately 21,200 square feet at the northeastern portion of the site with vehicular entrances accessible from Hudson Avenue.

## **SURROUNDING PROPERTIES AND NEIGHBORHOOD**

The area surrounding the Site is industrial in character, with a mix of warehouses, automotive, and light industrial uses. The surrounding development is predominately single-story, with enclosed and unenclosed vehicular use areas and loading directly from the street. A Waymo fleet maintenance facility is located across Hudson Avenue, at 201 Toland Street. Immediately to the south of the site is the San Francisco Produce Market.

## **BACKGROUND**

- On November 17, 2022, the Project Sponsor filed the Application with the Department.
- On March 16, 2023, the Commission considered the Application and voted unanimously to approve the Project.

## **CONDITIONAL USE AUTHORIZATION REQUIREMENTS**

Planning Code Section 303 establishes criteria for the Commission to consider when reviewing all applications for conditional use approval. To approve the Project, the Commission must find that these criteria have been met:

1. 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; and
2. 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 injurious 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 structures;
  - 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;
  - c. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust, and odor;
  - d. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting, and signs; and
3. That such use or feature as proposed will comply with the applicable provisions of this Code and will not adversely affect the General Plan.
4. That such use or feature as proposed will provide development that is in conformity with the stated purpose of the applicable use district.

Furthermore, when considering a Conditional Use application for non-accessory parking for a specific use or uses, the Planning Commission shall find affirmatively that the project satisfies the following additional criteria:

1. Demonstration that trips to the use or uses to be served, and the apparent demand for additional parking, cannot be satisfied by the amount of parking classified by this Code as accessory, by transit service which exists or is likely to be provided in the foreseeable future, by car pool arrangements, by more efficient use of existing on-street and off-street parking available in the area, and by other means;
2. Demonstration that the apparent demand for additional parking cannot be satisfied by the provision by the applicant of one or more car-share parking spaces in addition to those that may already be required by Section 166 of this Code;
3. The absence of potential detrimental effects of the proposed parking upon the surrounding area, especially through unnecessary demolition of sound structures, contribution to traffic congestion, or disruption of or conflict with transit services, walking, and cycling;
4. In the case of uses other than housing, limitation of the proposed parking to short-term occupancy by visitors rather than long-term occupancy by employees; and
5. Availability of the proposed parking to the general public at times when such parking is not needed to serve the use or uses for which it is primarily intended.

## APPELLANT ISSUES AND PLANNING DEPARTMENT RESPONSES

**ISSUE 1:** The approval of a Private Parking Garage Use at the Site, through the provision of additional parking spaces for the private vehicles of the employees working at the Waymo fleet maintenance site at 201 Toland Street, is ultimately the expansion of a Parcel Delivery Service Use. As a result, the Private Parking Garage Use authorized by the Commission failed to include a separate Conditional Use Authorization for Parcel Delivery Service Use.

### **RESPONSE 1:**

Private Parking Garage Use and Parcel Delivery Use are distinct land uses. As defined within Planning Code Section 102, Private Parking Garage Use is an *“A Non-Retail Automotive Use that provides temporary parking accommodations for automobiles, trucks, vans, bicycles, or- motorcycles in a garage not open to the general public, without parking of recreational vehicles, mobile homes, boats, or other vehicles, or storage of vehicles, goods, or equipment. Provisions regulating automobile parking are set forth in Sections 155, 156, 303(t) or (u) and other provisions of Article 1.5 of this Code.”* Whereas Planning Code Section 102 defines Parcel Delivery Service as a *“Non-Retail Automotive Use limited to facilities for the unloading, sorting, and reloading of local retail merchandise for deliveries, including but not limited to cannabis and cannabis products, where the operation is conducted entirely within a completely enclosed building, including garage facilities for local delivery trucks, but excluding repair shop facilities. Where permitted in PDR Districts, this use is not required to be operated within a completely enclosed building.”*

While both Private Parking Garage Use and Parcel Delivery Use are categorized as Automotive Uses within the Planning Code, they serve different functions. The essential distinction between the two use definitions is that Private Parking Garage Use authorizes temporary parking automobiles, trucks, vans, bicycles, or

motorcycles for private use (not for general public use), whereas Parcel Delivery Use involves the unloading, sorting, and reloading of local retail merchandise for deliveries. As distinct uses, any authorization to establish a Private Parking Garage Use does not permit the unloading, sorting, and reloading of local retail merchandise for deliveries at a project site. Conversely, any authorization to establish a Parcel Delivery Use does not permit temporary parking of personal vehicles for private use.

Further, both Private Parking Garage Use and Parcel Delivery Use are conditionally permitted uses requiring separate Conditional Use Authorization for each use. Within the PDR-2 Zoning District, a Private Parking Garage Use is a conditionally permitted use, and Parcel Delivery Use is conditionally permitted Citywide per interim zoning controls established by Resolution 109-22, adopted by the Board of Supervisors on March 22, 2022. The Project Sponsor filed a Conditional Use Authorization application to establish a Private Parking Garage Use at the Site but did not include a separate Conditional Use Authorization application to establish a Parcel Delivery Use. The Commission, through Motion No. 21278, approved Conditional Use Authorization for Private Parking Garage Use, but did not authorize Parcel Delivery Use at the Site. Any activities at the Site that function as activities listed under Parcel Delivery Use, including unloading, sorting, and reloading of local retail merchandise for deliveries, would violate the Conditions of Approval (Exhibit A). Specifically, Condition of Approval No. 9 (“Revocation due to Violation of Conditions”) would authorize the Zoning Administrator to refer complaints to the Commission. After being referred, the Commission has the option to hold a public hearing regarding the matter in order to consider revoking the Conditional Use Authorization.

### **SUMMARY RESPONSE**

The Appellant claims that the Project Sponsor, by obtaining Conditional Use Authorization to establish a Private Parking Garage Use, has also obtained authorization to operate a Parcel Delivery Service Use. They assert that this is because Parcel Delivery Service Use activities are permitted within garage facilities, per the definition of Parcel Delivery Service Uses; however, what the Appellant fails to highlight is that the Commission did not authorize a Parcel Delivery Use at the Site. To this point, at the March 16, 2023 Planning Commission hearing, the Commission specially asked Department Staff to confirm that the use authorization consideration before them was only for a Private Parking Garage Use, and not for any other use. Staff also confirmed that any authorization for Parcel Delivery Use at the Site would require a separate Conditional Use Authorization. After this discussion and considering all the facts in the case as well as public comment, the Commission found the Project necessary, desirable for, and compatible with the surrounding neighborhood. Further, the Commission determined that on balance, the projects is consistent with the General Plan and Use District and ultimately voted unanimously to approve the Project.

### **CONCLUSION**

For the reasons stated in this document, in the attached Motion, and in the Planning Department case file, the Planning Department recommends that the Board uphold the Commission’s decision in approving the Conditional Use Authorization for the Project.