



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Motion No. 20352

HEARING DATE: DECEMBER 6, 2018

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Record No.: 2018-005694CUA
Project Address: 3060 FILLMORE STREET
Zoning: Union Street NCD (Neighborhood Commercial) Zoning District
40-X Height and Bulk District
Block/Lot: 0533/040
Project Sponsor: Alec Paddock, CenterCal LLC
1600 East Franklin Avenue
El Segundo, CA 90245
Property Owner: Richard Rege
3060 Fillmore Street
San Francisco, CA 94123
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ADOPTING FINDINGS RELATING TO A CONDITIONAL USE AUTHORIZATION PURSUANT TO PLANNING CODE SECTIONS 303(c), 303(l), 303(o) AND 725 TO ALLOW A CHANGE IN USE FROM A GENERAL GROCERY USE (CURRENTLY VACANT, FORMERLY D.B.A. REAL FOOD COMPANY) TO A FORMULA RETAIL/RESTAURANT USE (D.B.A. SHAKE SHACK) MEASURING APPROXIMATELY 3,650 SQUARE-FOOT, A GYM USE (D.B.A. RUMBLE FITNESS) MEASURING APPROXIMATELY 6,583 SQUARE FEET, AND A SPECIALTY GROCERY USE (D.B.A. INDIE SUPERETTE) MEASURING APPROXIMATELY 700 SQUARE FEET WITHIN THE UNION STREET NEIGHBORHOOD COMMERCIAL DISTRICT AND A 40-X HEIGHT AND BULK DISTRICT, AND ADOPTING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

PREAMBLE

On April 13, 2018, Alec Paddock of CenterCal LLC (hereinafter "Project Sponsor") filed Application No. 2018-005694CUA (hereinafter "Application") with the Planning Department (hereinafter "Department") for a Conditional Use Authorization to allow a change in use from a General Grocery use (currently vacant, formerly d.b.a. Real Food Company) to a Formula Retail/Restaurant use (d.b.a. Shake Shack) measuring approximately 3,650 square-foot, a Gym use (d.b.a. Rumble Fitness) measuring approximately 6,583 square feet, and a Specialty Grocery use (d.b.a. Indie Superette) measuring approximately 700 square feet (hereinafter "Project") at 3060 Fillmore Street, Block 0533, Lot 040 (hereinafter "Project Site").

The Planning Department Commission Secretary is the custodian of records; the File for Record No. 2018-005694CUA is located at 1650 Mission Street, Suite 400, San Francisco, California.

On December 6, 2018, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Authorization Application No. 2018-005694CUA.

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 Authorization as requested in Application No. 2018-005694CUA, 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. **Project Description.** The Project proposes to subdivide the approximately 11,700 square-foot building (currently vacant, formerly d.b.a. Real Food Company) into three retail spaces including a restaurant use (d.b.a. Shake Shack) measuring approximately 3,650 square feet, a gym use (d.b.a. Rumble Fitness) measuring approximately 6,583 square feet, and a specialty grocery use (d.b.a. Indie Superette) measuring approximately 700 square feet. The proposed restaurant will make use of the existing portico on the southeast corner of Fillmore and Filbert Streets to provide an outdoor seating area, located entirely within the subject property. The proposal involves interior tenant improvements to the building. Aside from a new secondary means of egress on the Filbert Street frontage, which is required by Building Code, and permitted business signage, no alterations to either façade are proposed. There will be no expansion of the existing building envelope.

According to the project sponsor, Shake Shack, which is headquartered in New York City, NY, has been in operation since 2004. Shake Shack is described as a "modern day burger stand" and while it has more than 200 locations worldwide, there are currently no Shake Shack restaurants open in Northern California – although one is pending in Palo Alto. The project sponsor has indicated that, in addition to hamburgers, hot dogs and french fries, Shake Shack plans to secure the appropriate ABC license in order to serve wine and beer, and will operate from 7:00 a.m. (if breakfast is served) or 11:00 a.m. (if breakfast is not served) to 10:00 p.m. The proposed project will allow for the establishment of a new Shake Shack location in San Francisco within the Marina neighborhood.

Rumble Fitness is described as a "hybrid boxing-group fitness" center catering primarily to women. It offers group classes as well as one-on-one sessions with personal trainers, with sessions lasting approximately 60 minutes. The project sponsor expects Rumble Fitness to

operate from 6:00 a.m. to 9:00 p.m. There are three locations currently in operation, two of which are located in New York City, while the third location is in Los Angeles.

Indie Superette is a small-scale specialty grocery store operated by the Michael Mina Restaurant Group, and will sell staples and prepared foods, such as smoothies, salads and sandwiches. The project sponsor has indicated that Indie Superette will operate from 7:00 a.m. to 8:00 p.m.

3. **Site Description and Present Use.** The Project is located on an L-shaped lot (with a lot area of approximately 11,700 square feet) on the southeast corner of Fillmore and Filbert Streets. The subject property has approximately 55 feet of frontage on Fillmore Street and approximately 138 feet of frontage along Filbert Street. The subject property contains a one-story commercial building which, until October, 2016, had been occupied by a General Grocery use (formerly d.b.a. Real Food Company). The subject building, which was constructed circa 1915, occupies the entire lot, with a recessed curved façade and portico framing the corner of Fillmore and Filbert Streets. Currently, the existing building is vacant.
4. **Surrounding Properties and Neighborhood.** The Project Site is located in the Marina neighborhood, and within the Union Street NCD (Neighborhood Commercial District), which encompasses approximately 8 blocks of Union Street between Van Ness Avenue to the east and Steiner Street to the west, as well as portions of Fillmore Street between Union and Lombard Streets. The surrounding context is characterized primarily with commercial and mixed-use buildings of two- to three-stories in height. Immediately adjacent to the subject property, and to the south, is a two-story building with retail uses on the ground floor and residential uses above. Immediately adjacent to the subject property, and to the east, is a two-story, two-unit residential building. Directly across Filbert Street, and to the north, is a three-story building containing retail uses on the ground floor with residential units above. Directly across Fillmore Street, and to the west, is a four-story building containing retail uses on the ground floor with residential units above.
5. **Public Outreach and Comments.** As of November 26, 2018, the Department has received correspondence from 12 neighborhood residents expressing opposition to the project and four letters of support, including one from the Union Street Association, which supports the project on the basis that it will be an asset to the business mix and will draw new foot traffic to Fillmore Street. Those expressing opposition to the project cited concerns over the perceived abundance of burger restaurants and gyms already operating within the vicinity, as well as a lack of neighborhood grocery stores. Additionally, some residents expressed concerns with potential traffic and parking impacts as a result of meal delivery vehicles queuing in front of the proposed Shake Shack.
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. **Change in Use of General Grocery.** Planning Code Section 202.3 requires Conditional Use Authorization for change in use or demolition of a General Grocery use exceeding 5,000 gross square feet.

The project proposes the change of use of an existing General Grocery use measuring approximately 11,700 square feet and therefore requires Conditional Use Authorization. The additional required findings are listed below under Subsection 8.

- B. **Formula Retail Use.** A Formula Retail Use is defined under Planning Code Section 303.1 as a type of retail sales or service activity or retail sales or service establishment that has eleven or more other retail sales establishments in operation, or with local land use or permit entitlements already approved, located anywhere in the world. In addition to the eleven establishments either in operation or with local land use or permit entitlements approved for operation, the business maintains two or more of the following features: a standardized array of merchandise, a standardized facade, a standardized decor and color scheme, uniform apparel, standardized signage, a trademark or a servicemark.

Within the Union Street NCD, Formula Retail Uses require Conditional Use Authorization under Planning Code Section 725. Planning Code Section 303.1 provides additional criteria for the Planning Commission to consider when considering any conditional use pursuant to Formula Retail Uses.

The project proposes the establishment of a Formula Retail Use (d.b.a. Shake Shack, a restaurant use) in approximately 3,650 square feet of the vacant commercial space on the project site. The additional required findings are listed below under Subsection 9. Neither Rumble Fitness nor Indie Superette are considered Formula Retail Uses.

- C. **Eating and Drinking Uses.** Planning Code Section 303(o) establishes criteria with regard to a Conditional Use Authorization application for a Restaurant, Limited-Restaurant and Bar use. The Planning Commission shall consider, in addition to the criteria set forth in Subsection 303(c), the existing concentration of Eating and Drinking uses in the area. Such concentration should not exceed 25 percent of the total commercial frontage as measured in linear feet within the immediate area of the subject site, defined as all properties located within 300' of the subject property and also located within the same zoning district.

Based on a land use survey of the area within 300 feet of the project site and also located in the Union Street Neighborhood Commercial District that was completed by the project sponsor and reviewed by Department staff, the total concentration of commercial frontage currently dedicated to Eating and Drinking uses within this survey area is approximately 25 percent. With the proposed change of use to a restaurant, the concentration of commercial frontage dedicated to eating and drinking establishments in this survey area would increase by approximately 4 percent, to a total of approximately 29 percent.

While the project would result in the concentration of Eating and Drinking uses slightly exceeding 25 percent, half of the 4 percent increase is due to the project's location on a corner lot, which effectively doubles the project's frontage.

- D. **Locating and Operating Conditions for Eating and Drinking Uses.** Planning Code Section 202.2 requires Eating and Drinking Uses to be subject to specific operating conditions including: 1) maintaining 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 Street and Sidewalk Maintenance Standards; 2) being adequately soundproofed or insulated for noise and operated so that incidental noise shall not be audible beyond the premises or in other sections of the building, and fixed-source equipment noise shall not exceed the decibel levels specified in the San Francisco Noise Control Ordinance; 3) ensuring appropriate odor control equipment shall be installed in conformance with the approved plans and maintained to prevent any significant noxious or offensive odors from escaping the premises; and 4) keeping garbage, recycling, and compost containers within the premises and hidden from public view, and placed outside only when being serviced by the disposal company.

The project sponsor has acknowledged and will comply with the operating conditions for the proposed Eating and Drinking Use.

- E. **Union Street Restaurants.** Planning Code Section 725 states that the Planning Commission may approve a Restaurant if, in addition to meeting the criteria set forth in Planning Code Section 303, 1: the use is located on the ground floor, and 2: the Planning Commission finds that an additional Restaurant would not result in a net total of more than 44 Restaurants in the Union Street Neighborhood Commercial District.

There are currently 35 Restaurant uses within the Union Street Neighborhood Commercial District. The proposed Restaurant use would increase this number to 36.

- F. **Outdoor Activity Areas.** In order to provide for limited commercial Outdoor Activity Areas, which promote active street life, but do not detract from the livability of surrounding uses, Planning Code Section 145.2 permits Outdoor Activity Areas in NC Districts as a Principal Use if located outside a building and contiguous to the front property line of the lot on which the Commercial Use is located.

The project proposes an outdoor activity area within the existing unenclosed portico area facing the intersection of Fillmore and Filbert Streets, which is fully within the boundaries of the subject property.

- G. **Hours of Operation.** Planning Code Section 725 permits non-residential uses to maintain hours of operation from 6 a.m. to 2 a.m. as of right and requires Conditional Use Authorization to operate between the hours of 2 a.m. and 6 a.m.

The project sponsor has indicated that the proposed restaurant will operate from 7:00 a.m. (if breakfast is served) or 11:00 a.m. (if breakfast is not served) to 10:00 p.m., the proposed gym use will operate from 6:00 a.m. to 9:00 p.m., and the specialty grocery use will operate between the hours of 7 a.m. and 8 p.m.

- H. **Street Frontage in Neighborhood Commercial Districts.** Section 145.1 of the Planning Code requires that within NC Districts space for active uses shall be provided within the first 25 feet of building depth on the ground floor and 15 feet on floors above from any facade facing a street at least 30 feet in width. In addition, the floors of street-fronting interior spaces housing non-residential active uses and lobbies shall be as close as possible to the level of the adjacent sidewalk at the principal entrance to these spaces. Frontages with active uses that must be fenestrated with transparent windows and doorways for no less than 60 percent of the street frontage at the ground level and allow visibility to the inside of the building. The use of dark or mirrored glass shall not count towards the required transparent area. Any decorative railings or grillwork, other than wire mesh, which is placed in front of or behind ground floor windows, shall be at least 75 percent open to perpendicular view. Rolling or sliding security gates shall consist of open grillwork rather than solid material, so as to provide visual interest to pedestrians when the gates are closed, and to permit light to pass through mostly unobstructed. Gates, when both open and folded or rolled as well as the gate mechanism, shall be recessed within, or laid flush with, the building facade. Ground floor non-residential uses shall have a minimum floor-to-floor height of 10 feet.

The subject commercial space has approximately 55 feet of frontage on Fillmore Street and approximately 138 feet of frontage on Filbert Street with approximately 60 percent of the façade devoted to transparent windows looking into the restaurant, specialty grocery store or gym. Aside from a second means of egress required per the Building Code, there are no changes proposed to the commercial frontage. The existing floor-to-ceiling height is approximately 20 feet.

- I. **Off-Street Parking.** Planning Code Section 151 requires one off-street parking space per 200 square feet of occupied floor area for eating and drinking uses greater than 5,000 square feet, and one off-street parking space for each 500 square feet of occupied floor area for retail sales and service uses exceeding 5,000 square feet.

The proposed restaurant and specialty grocery uses would both occupy less than 5,000 square feet of the building and, therefore, do not require any off-street parking. The proposed gym use would occupy approximately 6,583 square feet and would therefore require 13 off-street parking spaces. The existing building is lawfully non-conforming in that it does not have any off-street parking spaces. Planning Code Section 150(c) permits any lawful existing deficiency in off-street parking or loading spaces to be carried forward for the structure or use, apart from a major addition.

- J. **Off-Street Freight Loading.** Planning Code Section 152 requires one off-street freight loading space for retail sales and services use between 10,001 and 60,000 square feet.

The project includes approximately 11,700 square feet of retail sales and service uses; thus, the project requires one off-street freight loading space. The existing building is lawfully non-conforming in that it does not have an off-street freight loading space. Planning Code Section 150(c) permits any lawful existing deficiency in off-street parking or loading spaces to be carried forward for the structure or use, apart from a major addition.

- K. **Bicycle Parking.** Planning Code Section 155.2 requires the provision of bicycle parking spaces for projects proposing a change of use which would increase the number of total required bicycle parking spaces (inclusive of Class 1 and 2 spaces in aggregate) by 15 percent.

The former general grocery use would have required the provision of two (2) Class 1 bicycle spaces and five (5) Class 2 bicycle spaces. The proposed restaurant, specialty grocery and gym uses would require one (1) Class 1 bicycle space and eight (8) Class 2 bicycle spaces. The project proposes one Class 1 bicycle parking spaces and eight Class 2 bicycle spaces.

- L. **Signage.** Any proposed signage will be subject to the review and approval of the Planning Department pursuant to Article 6 of the Planning Code.

The proposed signage will be required to have a separate sign permit and comply with the requirement of the Planning Code and Formula Retail sign guidelines. Although the Project generally complies with the guidelines and Planning Code, and does not have a significant adverse effect on the architectural and aesthetic character of the Neighborhood Commercial District, staff will continue to work with project sponsor on the proposed signage details.

7. **Conditional Use Findings.** Planning Code Section 303 establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use authorization. On balance, the project complies 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 project site has been vacant for almost two years, which has resulted in a number of adverse impacts on the neighborhood and community, including perpetuating the rate of commercial vacancies in the area and allowing for the local homeless population congregating on the site and its vicinity. The project will repurpose this vacant space without expansion or substantial modification. Accordingly, the project's size and intensity are in keeping with the existing conditions and character of the building, as well as bringing new interest, activity, and vitality to the intersection, and so are compatible with the neighborhood and community. In addition, the proposed new uses will serve the

neighborhood and community and are of the type, size, and intensity of use that already exist in the area.

- 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:

- (1) Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

The project will repurpose and enhance a long-vacant existing space without expansion or substantial modification; accordingly, its size and shape are already in harmony with its vicinity and will remain as such with the proposed project.

- (2) 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 project is not anticipated to generate substantial additional traffic, particularly compared with the previous full-scale general grocery store use. The Project may attract some residents and visitors from outside of the neighborhood; however, this area is well serviced by transit, including Muni lines 22, 41, and 45. Furthermore, the nature of the uses/tenants that are proposed are neighborhood-serving rather than regional draws, and thus most of the patrons are expected to come from the surrounding areas, within walking and biking distance. Consistent with the historic uses on-site and within this urbanized area, there is no off-street parking proposed. Therefore the existing traffic and parking management will be sufficient to accommodate the project without any deleterious effects on local residents or property.

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

Given the neighborhood serving retail uses proposed, which are similar to those in the surrounding area and typical for this type of neighborhood, the project will not produce any substantial noise, glare, dust, odor, or any other noxious or offensive emissions. Approval Condition Nos. 11 and 15 specifically obligates the project sponsor to mitigate any odor and noise generated by the restaurant use.

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

The project will not entail any additional landscaping, screening, open space, parking or loading areas, or service areas. The Department shall review all lighting and signs proposed for the new business in accordance with Approval Condition No. 10.

- 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. The proposed Gym use (d.b.a. Rumble Fitness) and Specialty Grocery use (d.b.a. Indie Superette) are permitted uses as-of-right and the proposed Restaurant use (d.b.a. Shake Shack) is conditionally permitted in the Union Street Neighborhood Commercial District (NCD) within which the project site is located. The project involves tenant improvements to an existing vacant retail space with few exterior modifications, and the project will adhere to all applicable development standards and design guidelines under the Planning Code, with no variances or exceptions being sought.

- D. That the use as proposed would provide development that is in conformity with the purpose of the applicable Neighborhood Commercial District.

The proposed project is consistent with the stated purpose of the Union Street Neighborhood Commercial District in that the intended use is located at the ground floor, will provide a compatible convenience service for the immediately surrounding neighborhoods.

8. **Change in Use or Demolition of General Grocery Use Findings.** Planning Code Section 303(l) establishes the following criteria for the Planning Commission to consider when reviewing applications that propose the change in use or demolition of General Grocery which use exceed 5,000 gross square feet:

- A. Preservation of a General Grocery store use is no longer economically viable and cannot affect reasonable economic return to the property owner. For purposes of defining "reasonable economic return," the Planning Commission shall be guided by the criteria for Fair Return on Investment, as defined in Section 102 of the Planning Code.

Where the property owner does not own the business, the Planning Code defines "Fair Return on Investment" as "the before income tax total annual rent and other compensation received from the business for the lease of the land and buildings, less the expenses of the lessor, on a cash basis".

The project sponsor has retained an independent third party to prepare a report entitled "3060 Fillmore Street Economic Analysis", attached as Exhibit H, prepared by ALH Urban & Regional Economics and dated October, 2018. In the report, five scenarios are modeled with different occupancy and property acquisition assumptions, in order to determine their relative economic viability.

Scenario 1 generally comprises the status quo of the property during the last year of occupancy by Real Food Company, reflecting lease payments by Real Food Company and the property owner's operating expenses. As such, there are no capital costs incorporated into this scenario for acquisition or upgrading.

Of the scenarios with capital costs, only Scenario 2 (which is representative of the proposed project) indicates a feasible outcome, with a positive difference between indicated value and capital costs. The net result is \$2.8 million, and a calculated Developer Incentive metric of 15.6percent, which is the percentage of the Value Less Capital Costs to Total Capital Costs. As a positive figure, this metric indicates this scenario results in a positive return to the developer.

Scenario 3A, which assumes replacement by a grocery store at the same effective gross income as Real Food Company, is infeasible at -\$11.4 million. Scenario 4, assuming a typical market rent for a non-grocery retail use in the space with fewer physical upgrades, is also infeasible at -\$4.4 million.

Scenario 3B indicates an economically feasible outcome for a general grocery use, assuming a significantly lower property acquisition cost of \$4,525,000, which is based on the indicated value less the non-acquisition capital costs (i.e., hard construction, tenant improvement, financing, permit & fees, and soft costs) and allowing for a similar developer incentive to that for Scenario 2. However, this acquisition cost is significantly below market range, and represents a \$9 million reduction (67percent) to the project sponsor's offer price.

In summary, the report concludes that "due to a variety of site-specific and macroeconomic factors, it is not economically feasible for a grocery store to re-tenant and successfully operate at the property, while at the same time providing the landlord with a reasonable economic return based on the amount of capital investment required." Since the departure of the previous tenant (d.b.a. Real Food Company) in 2016, the subject property has remained vacant. During its period of vacancy, according to the project sponsor, the current owner and the project sponsor have made attempts at leasing the subject tenant space to a new general grocery store business without success. Specifically, the project sponsor discussed renewing full-scale general grocery uses at the project site with 18 grocery companies, including Whole Foods, Trader Joes, Lunardi's, Andronico's, and New Leaf. These efforts involved meetings, extended discussions of lease economics, and site visits. However, all of the companies declined to lease the site, citing a variety of factors including the site's orientation and internal wall, the lack of parking, the narrow Filbert Street frontage, and general economic upheaval in the grocery industry. This is consistent with the general experience of knowledgeable brokers as well as others focused on economic development in San Francisco, where there is a broad-based concern about the significant challenge of bringing full-scale general grocery store uses to the San Francisco market environment.

Finally, the project does include a small-scale specialty grocery use (d.b.a. Indie Superette) measuring approximately 700 square feet. The project sponsor has indicated that this use is only feasible at below-market rent and will effectively be subsidized by the Shake Shack and Rumble Fitness uses. As such, there is no economically viable means to re-establish a full-scale general grocery use on the project site, and it cannot effect a reasonable economic return to the property owner.

- B. The change in use or demolition of the General Grocery store use will not undermine the economic diversity and vitality of the surrounding neighborhood.

The project site has been vacant for almost two years, and this vacancy occurred well in advance of, and was not precipitated by the proposed project. The proposal change in use to non-grocery uses will

enhance the economic diversity and vitality of the surrounding neighborhood by revitalizing a vacant site with active, specialized neighborhood-serving retail uses. There are a number of grocery outlets within approximately one mile or less of the subject property, including a Safeway at 15 Marina Boulevard, Gino's Grocery Co. at 2500 Fillmore Street, Trader Joe's at 1095 Hyde Street, Whole Foods Market at 1765 California Street, and Mollie Stone's Markets at 2435 California Street. Moreover, the project will include a small-scale specialty grocery use subsidized by the restaurant and gym uses, helping to maintain and enhance economic diversity and vitality of the surrounding neighborhood.

9. **Formula Retail.** Planning Code Section 303.1 provides additional criteria for the Planning Commission when considering Conditional Use Authorization requests, including:

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

The project site is located within the Union Street Neighborhood Commercial District (NCD). This area is characterized by a wide variety of ground floor retail uses, often with residential units above. The commercial uses in the Union Street NCD are predominately neighborhood-serving restaurants, personal services, and retail uses. As of the date of submittal of the project application materials, there are approximately 95 commercial ground floor storefronts within 300 feet of the project site, 11 of which are Formula Retail, amounting to a concentration of approximately 12 percent. These include one Limited Financial Service use, two Non-Retail Professional Service uses, and eight Retail Sales and Service uses. As measured in linear feet of the total frontage, this concentration of is also approximately 12percent. With the addition of the proposed new Formula Retail use, the concentration of Formula Retail uses within the vicinity would increase by approximately 1percent from 12percent to 13percent (as measured by number of storefronts subject to the Formula Retail controls) or by 4percent from 12percent to 16percent (as measured in linear feet of the total frontage). Accordingly, there is no excessive concentration of Formula Retail uses in the district and vicinity of the project, and the addition of one Restaurant Formula Retail use will not lead to an excessive contribution.

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

While the Union Street NCD and the vicinity of the project site include other restaurants, the formula retail restaurant component of the project is unique insofar as it does not duplicate other casual dining options in the area because it is new to San Francisco.

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

The project entails the repurposing of an existing building with minimal exterior changes. Moreover, the project will reinvigorate a prominent corner building, which is currently vacant, with active, pedestrian-oriented, neighborhood-serving uses, which will enhance the overall aesthetic character of the area.

D. The existing retail vacancy within the district.

According to the project sponsor, the vacancy rate within 300 feet of the project site is approximately 17percent (based on the number of storefronts), and 21percent (based on the total lot frontage). The project will help revitalize the corridor by repurposing a vacant building with active, pedestrian-oriented uses which will ensure a continuous commercial frontage and enhance the physical and economic condition of the project site and surrounding neighborhood.

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

The existing mix of daily needs serving uses (generally considered to include Limited Restaurants; Other Retail, Sales and Services; Personal Services; Limited Financial Services; and Specific Trade Shops) versus Citywide retail uses (generally considered to include all other uses) is one with predominantly daily needs-serving retail uses within the district with 60percent versus 23percent for Citywide-serving uses (the remaining 17percent represents vacant storefronts). The proposed formula retail use is considered to be a Citywide serving use which will complement the mix of goods and services currently available within this portion of the Union Street Neighborhood Commercial District.

F. Additional data and analysis set forth in the Performance-Based Design Guidelines adopted by the Planning Commission.

The proposed use is consistent with the existing character of the district, which is composed of a variety of retail outlets, including Formula Retailers who specialize in a variety of goods and services. The Project signage is consistent with the Performance-Based Design Guidelines, and maintaining the facades of the existing building ensures that the storefronts will be consistent with the surrounding buildings while keeping a continuous street wall and edge. The entrances to the building are readily identifiable and inviting to passersby. Accordingly, the Project is consistent with the Guidelines.

G. For formula retail uses of 20,000 square feet or more, except for General or Specialty Grocery stores as defined in Articles 2, 7, 8 of this Code, the contents of an economic impact study prepared pursuant to Section 303(i) of the Planning Code.

As the subject retail use is less than 20,000 square feet, an economic impact study is not required for the proposed project.

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

COMMERCE AND INDUSTRY ELEMENT

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 which has substantial undesirable consequences that cannot be mitigated.

Policy 1.2

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

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.

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 6.2

Promote economically vital neighborhood commercial districts which foster small business enterprises and entrepreneurship and which are responsive to economic and technological innovation in the marketplace and society.

Policy 6.3

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

Policy 6.4:

Encourage the location of neighborhood shopping areas throughout the city so that essential retail

goods and personal services are accessible to all residents.

Policy 6.8:

Preserve historically and/or architecturally important buildings or groups of buildings in neighborhood commercial districts.

Policy 6.9:

Regulate uses so that traffic impacts and parking problems are minimized.

The project will promote and facilitate the achievement of the Objectives and Policies of the General Plan by repurposing a vacant and inactive building with neighborhood-serving retail uses that will provide employment and economic benefits to local residents and the broader community while enhancing the overall neighborhood with vibrant, engaging uses. The proposed project would not adversely affect public transit or place a burden on the existing supply of parking in the neighborhood. Most patrons would be able to walk from their residences or places of employment, and the proposed project is well served by public transportation. There is on-street parking in the surrounding neighborhood, and the project proposes to provide a total of ten bicycle parking spaces for employees and customers of the proposed retail uses. The proposal will involve interior tenant improvements to the ground floor commercial tenant space which is compatible with the building's existing architectural and aesthetic character. There will be no expansion of the existing building envelope.

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 complies 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 will not adversely affect existing neighborhood-serving retail uses, as it will repurpose and reinvigorate a long-vacant existing building, which will contribute to a continuous retail frontage and reduce the retail vacancy rate in the area. Moreover, the introduction of three separate retail uses will create employment opportunities for area 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 repurposes an existing long-vacant non-residential building. Accordingly, it will have no effect on existing housing, and will maintain neighborhood character by restoring retail uses to an existing retail facility.

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

The project site is occupied by non-residential uses. As such, the project will have no impact on the City's supply of affordable housing.

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

Given the nature and scope of the proposed uses, the project will not materially contribute to commuter traffic and will have minimal, if any, impacts on Muni transit service, street burden, and 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 does not include any commercial office uses and will not displace any industrial or service sector uses or otherwise adversely affect the opportunities for resident employment and ownership in these sectors.

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

The project does not involve any expansion or substantial structural modifications to the existing building. Any work performed will be required to adhere to current Building Code provisions addressing seismic safety and will not impact the property's ability to withstand an earthquake.

- G. That landmarks and historic buildings be preserved.

The project does not involve any expansion or substantial exterior modifications. Changes to the existing building will be minimal and will not adversely affect its character or integrity.

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

The project will not adversely impact any parks or open space areas, or their access to sunlight or vistas.

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

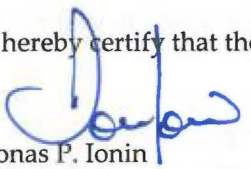
That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Authorization Application No. 2018-005694CUA** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated May 31, 2018, 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. The effective date of this Motion shall be the date of this Motion if not appealed (after the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

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

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

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on December 6, 2018.


Jonas P. Ionin
Commission Secretary

AYES: Fong, Hillis, Johnson, Koppel, Melgar, Moore

NAYS: None

ABSENT: Richards

ADOPTED: December 6, 2018

EXHIBIT A

AUTHORIZATION

This authorization is for a conditional use to allow a change of use of the approximately 11,700 square-foot building (currently vacant, formerly d.b.a. Real Food Company) to three retail spaces including a restaurant use (d.b.a. Shake Shack) measuring approximately 3,650 square feet, a gym use (d.b.a. Rumble Fitness) measuring approximately 6,583 square feet, and a specialty grocery use (d.b.a. Indie Superette) measuring approximately 700 square feet located at 3060 Fillmore Street, Block 0533, and Lot 040, pursuant to Planning Code Sections 303(c), 303(l), 303(o) and 725 within the Union Street Neighborhood Commercial District and a 40-X Height and Bulk District; in general conformance with plans, dated May 31, 2018, and stamped "EXHIBIT B" included in the docket for Record No. 2018-005694CUA and subject to conditions of approval reviewed and approved by the Commission on December 6, 2018 under Motion No. 20352. 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 December 6, 2018 under Motion No. 20352.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. 20352 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. **Final Materials.** The Project Sponsor shall continue to work with Planning Department on the building design. Final materials, glazing, color, texture, landscaping, and detailing shall be subject to Department staff review and approval. The architectural addenda shall be reviewed and approved by the Planning Department prior to issuance.
For information about compliance, contact the Case Planner, Planning Department at 415-575-9087, www.sf-planning.org
7. **Garbage, composting and recycling storage.** Space for the collection and storage of garbage, composting, and recycling shall be provided within enclosed areas on the property and clearly labeled and illustrated on the building permit plans. Space for the collection and storage of recyclable and compostable materials that meets the size, location, accessibility and other standards specified by the San Francisco Recycling Program shall be provided at the ground level of the buildings.
For information about compliance, contact the Case Planner, Planning Department at 415-575-9087, www.sf-planning.org
8. **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 415-575-9087, www.sf-planning.org
9. **Streetscape Plan.** Pursuant to Planning Code Section 138.1, the Project Sponsor shall continue to work with Planning Department staff, in consultation with other City agencies, to refine the design and programming of the Streetscape Plan so that the plan generally meets the standards of the Better Streets Plan and all applicable City standards. The Project Sponsor shall complete final design of all required street improvements, including procurement of relevant City permits, prior to issuance of first architectural addenda, and shall complete construction of all required street improvements prior to issuance of first temporary certificate of occupancy.
For information about compliance, contact the Case Planner, Planning Department at 415-575-9087, www.sf-planning.org
10. **Signage.** The Project Sponsor shall develop a signage program for the Project which shall be subject to review and approval by Planning Department staff before submitting any building permits for construction of the Project. All subsequent sign permits shall conform to the approved signage program. Once approved by the Department, the signage program/plan information shall be submitted and approved as part of the site permit for the Project. All exterior signage shall be designed to compliment, not compete with, the existing architectural character and architectural features of the building.

For information about compliance, contact the Case Planner, Planning Department at 415-575-9087, www.sf-planning.org

11. **Odor Control Unit.** In order to ensure any significant noxious or offensive odors are prevented from escaping the premises once the project is operational, the building permit application to implement the project shall include air cleaning or odor control equipment details and manufacturer specifications on the plans. Odor control ducting shall not be applied to the primary façade of the building.

For information about compliance, contact the Case Planner, Planning Department at 415-575-9087, www.sf-planning.org

PARKING AND TRAFFIC

12. **Bicycle Parking.** Pursuant to Planning Code Sections 155.1 and 155.4, the Project shall provide no fewer than one (1) Class 1 and eight (8) Class 2 bicycle parking spaces. SFMTA has final authority on the type, placement and number of Class 2 bicycle racks within the public ROW. Prior to issuance of first architectural addenda, the project sponsor shall contact the SFMTA Bike Parking Program at bikeparking@sfmta.com to coordinate the installation of on-street bicycle racks and ensure that the proposed bicycle racks meet the SFMTA's bicycle parking guidelines. Depending on local site conditions and anticipated demand, SFMTA may request the project sponsor pay an in-lieu fee for Class II bike racks required by the Planning Code.

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

MONITORING - AFTER ENTITLEMENT

13. **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

14. **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

15. **Eating and Drinking Uses.** As defined in Planning Code Section 202.2, Eating and Drinking Uses, as defined in Section 102, shall be subject to the following conditions:

- A. The business operator 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 Street and Sidewalk Maintenance Standards. In addition, the operator shall be responsible for daily monitoring of the sidewalk within a one-block radius of the subject business to maintain the sidewalk free of paper or other litter associated with the business during business hours, in accordance with Article 1, Section 34 of the San Francisco Police Code.

For information about compliance, contact the Bureau of Street Use and Mapping, Department of Public Works at 415-554-.5810, <http://sfdpw.org>.

- B. When located within an enclosed space, the premises shall be adequately soundproofed or insulated for noise and operated so that incidental noise shall not be audible beyond the premises or in other sections of the building, and fixed-source equipment noise shall not exceed the decibel levels specified in the San Francisco Noise Control Ordinance.

For information about compliance of 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.

For information about compliance with construction noise requirements, contact the Department of Building Inspection at 415-558-6570, www.sfdbi.org.

For information about compliance with the requirements for amplified sound, including music and television, contact the Police Department at 415-553-0123, www.sf-police.org.

- C. While it is inevitable that some low level of odor may be detectable to nearby residents and passersby, appropriate odor control equipment shall be installed in conformance with the approved plans and maintained to prevent any significant noxious or offensive odors from escaping the premises.

For information about compliance with odor or other chemical air pollutants standards, contact the Bay Area Air Quality Management District, (BAAQMD), 1-800-334-ODOR (6367), www.baaqmd.gov and Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

- D. Garbage, recycling, and compost containers shall be kept within the premises and hidden from public view, and placed outside only when being serviced by the disposal company. Trash shall be contained and disposed of pursuant to garbage and recycling receptacles guidelines set forth by the Department of Public Works.

For information about compliance, contact the Bureau of Street Use and Mapping, Department of Public Works at 415-554-5810, <http://sfdpw.org>.

16. **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>

17. **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 and all registered neighborhood groups for the area with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator and registered neighborhood groups 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

18. **Lighting.** All Project lighting shall be directed onto the Project site and immediately surrounding sidewalk area only, and designed and managed so as not to be a nuisance to adjacent residents. Nighttime lighting shall be the minimum necessary to ensure safety, but shall in no case be directed so as to constitute a nuisance to any surrounding property.

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

19. **Hours of Operation.** The subject establishment is limited to the following hours of operation:
Daily from 6:00 a.m. to 2:00 a.m.

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