

From: [Starr, Aaron \(CPC\)](#)
To: [BOS Legislation, \(BOS\)](#)
Subject: Planning Department Appeal Response 5801 Mission Street
Date: Monday, July 19, 2021 10:35:40 AM
Attachments: [CU Appeal Response Portfolio - 5801 MISSION ST - 2020-007152APL \(ID 1245825\).pdf](#)

Please see attached.

Aaron Starr, Manager of Legislative Affairs

Legislative Affairs

San Francisco Planning

PLEASE NOTE MY NEW ADDRESS AND PHONE NUMBER AS OF AUGUST 17, 2020:

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[San Francisco Property Information Map](#)

IN ORDER FOR US TO MOVE, OUR OFFICE WILL BE CLOSED WITH NO ACCESS TO PHONES OR E-MAIL ON THURSDAY, AUGUST 13 and FRIDAY, AUGUST 14, 2020. WE APPRECIATE YOUR PATIENCE.

Due to COVID-19, San Francisco Planning is not providing any in-person services, but we are operating remotely. Our staff are available by e-mail, and the Planning and Historic Preservation Commissions are convening remotely. The public is encouraged to participate. Find more information on our services [here](#).



Conditional Use Authorization Appeal

5801 MISSION ST

DATE: July 19, 2021
TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Rich Hillis, Planning Director – Planning Department (628) 652-7600
Ryan Balba, Case Planner – Planning Department (628) 652-7331
RE: Board File No. 210801, Planning Case No. 2020-007152CUA
Appeal of Conditional Use Authorization for 123 Market Street
HEARING DATE: July 27, 2021
PROJECT SPONSOR: Edward Brown, PO BOX 31248, Walnut Creek, CA 31248
APPELLANTS: Pastor Roderick Gittens, on behalf of the San Francisco Christian Center

INTRODUCTION

This memorandum and the attached documents are a response to the letters 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 2020-007152CUA (“Application”) pursuant to Planning Code Sections:

- 202.2 (Location and Operating Conditions);
- 303 (Conditional Use Authorization); and
- 720 (Excelsior Outer Mission Neighborhood Commercial District)

This memorandum addresses the appeal to the Board, filed on July 12, 2021, by Pastor Roderick Gittens on behalf of the San Francisco Christian Center.

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

PROJECT DESCRIPTION

The Project would establish a Cannabis Retail Use measuring 2,055 square feet in a vacant commercial space within a two-story, mixed-use building located at 5801 Mission Street, APN 001/6472 (“Project Site”). The Project does not include a request for authorization of on-site smoking or vaporizing of cannabis products. No changes to the building exterior or envelope are proposed. New business signage will be applied for under a separate permit.

SITE DESCRIPTION & PRESENT USE

The Project Site is located on a corner lot located on the south side of Mission Street, with approximately 100 feet of frontage along Mission Street and 122 feet of frontage along Oliver Street within the Excelsior Outer Mission Street Neighborhood Commercial Zoning District, the Fringe Financial Services Restricted Use District, and a 40-X Height and Bulk District. The site is an approximately 11,602 square foot lot. The Project Site is developed with a two-story building containing five commercial spaces at the ground floor and six residential units above. The commercial space was last occupied by a boutique retail shop.

SURROUNDING PROPERTIES AND NEIGHBORHOOD

The surrounding neighborhood is predominantly comprised of single-family homes; however, there are many fully commercial buildings and mixed-use residential buildings along the Mission Street corridor. The two directly adjacent properties are a residential property and a religious institution.

BACKGROUND

- On October 10, 2020, the Project Sponsor filed the Application with the Department.
- On June 10, 2021, the San Francisco Planning Commission (“Commission”) conducted a duly noticed public hearing and considered the Application. At this hearing, the Commission voted 4-2 (Tanner and Fung against; Chan absent) 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.

In addition, Planning Code Section 303(w) outlines additional findings for the Commission when reviewing proposals for new Cannabis Retail establishments.

1. The Commission shall consider “the geographic distribution of Cannabis Retail Uses throughout the City, the concentration of Cannabis Retail and Medical Cannabis Dispensary Uses within the general proximity of the proposed Cannabis Retail Use, the balance of other goods and services available within the general proximity of the proposed Cannabis Retail Use, any increase in youth access and exposure to cannabis at nearby facilities that primarily serve youth, and any proposed measures to counterbalance any such increase.”

APPELLANT ISSUES AND PLANNING DEPARTMENT RESPONSES

ISSUE 1: The Appellant expressed concern with the clustering of cannabis storefronts in District 11.

RESPONSE 1: The Planning Commission found that the project is appropriately distanced from other cannabis storefronts and does not contribute to clustering.

In District 11, there are 3 existing Medical Cannabis Dispensaries, each operating with temporary authorization to conduct adult use sales. The closest Medical Cannabis Dispensary to the Project Site is 5260 Mission Street, dba Mission Organic Services, and is approximately 3,143 feet from the Project. Planning Code Section 202.2(a)(5)(B) states that a new Cannabis Retail Use shall not be located within a 600-foot radius of a parcel for which a valid permit from the City’s Office of Cannabis for a Cannabis Retailer or a Medicinal Cannabis Retailer has been issued. The Project meets this requirement. This application is the first Cannabis Retail application that has been approved in District 11 since the legalization of adult use cannabis in late 2017.

ISSUE 2: The proposed project is in an area with a high density of children, including a well-used facility for school-age children located at the San Francisco Christian Center.

RESPONSE 2: The Planning Code establishes a buffer between Cannabis Retail locations and schools. The Planning Code does not preclude Cannabis Retailers to be in an area with a high density of children.

Planning Code Section 202.2(a)(5)(B) states that a new Cannabis Retail Use shall not be located within a 600-foot radius containing an existing public or private School. The Planning Code’s definition of School does not include facilities such as parks, preschools, or after-school programs. By providing a regulated, legal market within the neighborhood, the proposed business would further discourage unregulated sales, making youth access to cannabis products more restricted. Additionally, the Project has been designed to be responsive to this condition by placing a waiting and check in area at the front of the tenant space, ensuring that cannabis products are never visible from the exterior of the store. The Planning Commission found that the Project will not increase youth access and exposure to cannabis.

ISSUE 3: There was a lack of appropriate outreach to monolingual residents.

RESPONSE 3: The Project Sponsor conducted outreach and noticing as required by the Planning Code and the Office of Cannabis Good Neighbor Policy.

On November 13, 2020, the Project Sponsor held a Pre-Application Meeting and invited all Neighborhood Organizations listed in the Crocker-Amazon and Outer Mission as of August 29, 2020. All immediately adjacent neighbors were also notified by postal mail. On February 12, 2021, the Project Sponsor held an Office of Cannabis Virtual Good Neighbor Meeting. All residents within 300 feet of the proposed site, as well as all neighborhood groups within the Crocker-Amazon Neighborhood were notified by postal mail. The notice was provided in English, Spanish, traditional Chinese, and Filipino. An additional Good Neighbor Policy meeting, with the same groups notified, occurred on April 21, 2021. Finally, the June 10 Planning Commission hearing for the Project was properly noticed per the City's language access rules, including mailed, posted, and newspaper advertisements.

SUMMARY RESPONSE

The Appellant brings up the issue of cannabis storefront clustering in District 11. The Planning Commission found that the Project meets the necessary buffering provisions from other cannabis uses. The Commission also found that the Project contributes to a more balanced geographic distribution of Cannabis Retailers in the City. The Appellant additionally brings up the issue of the Project's proximity to youth. The Planning Commission found that the site is not within 600 feet of a School, as defined by the Planning Code. Further, the high regulation of cannabis facilities assuages the concerns of youth access. The final issue from the Appellant deals with the lack of appropriate outreach to monolingual residents. The Project Sponsor conducted all noticing and outreach as required by the Planning Code and the Office of Cannabis Good Neighbor Policy, including mailing of notices for outreach meetings in English, Spanish, traditional Chinese, and Filipino.

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 Planning Commission's decision in approving the Conditional Use Authorization for the Project.