

From: [Starr, Aaron \(CPC\)](#)
To: [BOS Legislation, \(BOS\)](#)
Subject: Planning Department's Appeal Response for 5 Leland Ave
Date: Monday, July 19, 2021 10:58:30 AM
Attachments: [5 Leland Avenue - Planning Department Appeal Response\[1\].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

5 Leland Ave / 2400 Bay Shore Blvd

DATE: July 19, 2021
TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Rich Hillis, Planning Director – Planning Department (415) 558-6411
Michael Christensen, Case Planner – Planning Department (628) 652-7567
RE: Board File No. 210756, Planning Case No. 2021-000603CUA
Appeal of Conditional Use Authorization for 5 Leland Avenue / 2400 Bay Shore Blvd
HEARING DATE: July 27, 2021
PROJECT SPONSOR: Quentin Platt, Equinox Botanicals, 530 Divisadero Street, Suite 226, San Francisco, CA 94117
APPELLANT(S): Gaynorann Siataga, 6955 Skyline Blvd, Hillsborough, CA 94010

INTRODUCTION

This memorandum and the attached documents are a response to the letters of appeal to the Board of Supervisors (“Board”) filed by the Appellant regarding the Planning Commission’s (“Commission”) disapproval of the application for Conditional Use authorization pursuant to Planning Code Sections:

- 190(b) (Establishment of Cannabis Retail Uses at Sites with MCD Applications Pending Before the Planning Commission);
- 202.2(a) (Location and Operating Conditions);
- 303 (Conditional Use Authorization); and
- 712 (Neighborhood Commercial, Moderate-Scale)

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

PROJECT DESCRIPTION

The Project includes the establishment of a 2,198- square- foot Cannabis Retail Use with no on-site smoking or vaporizing of cannabis products (hereinafter “Project”), within the ground floor commercial space of a two-story mixed-use building located at 5 Leland Ave and 2400 Bay Shore Blvd (hereinafter “Project Site”).

SITE DESCRIPTION & PRESENT USE

The Project Site is located within the Neighborhood Commercial, Moderate Scale (NC-3) Zoning District. It is occupied by a two-story mixed-use building of approximately 18,000 square feet. The ground floor tenant spaces are currently vacant and were last occupied by two separate retail uses, dba “Golden 123

Zone” and “Shun Lee Market,” both of which were small neighborhood convenience stores. The second floor contains ten residential units and one guest unit.

SURROUNDING PROPERTIES AND NEIGHBORHOOD

The Project Site is located at the western corner of Leland Avenue and Bayshore Boulevard within the Visitacion Valley Invest in Neighborhoods (IIN) Initiative Area.

BACKGROUND

- On January 12, 2021, the Project Sponsor filed Application No. 2021-000603CUA (hereinafter “Application”) with the Planning Department (hereinafter “Department”) for a Conditional Use Authorization for the proposed Project.
- On May 27, 2021 the Commission heard the proposed Application, including public comment on the Project.
- After reviewing the Project and taking public comment, the Commission voted to disapprove 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.

Additionally, all applications for Conditional Use Authorization to establish a Cannabis Retail use are subject to the criteria established in Planning Code Section 303(w):

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 challenges the disapproval on the basis that the Planning Commission erred in determining that the Project would cause an overconcentration of Cannabis Retail uses in the area.

RESPONSE 1: The Planning Commission determined that the Project would cause an overconcentration because the Project is located 68 feet from another cannabis storefront (2442 Bay Shore Blvd, a Medical Cannabis Dispensary operating with temporary authorization to conduct adult use sales).

The Planning Code regulates the location of Cannabis Retailers and their proximity to each other through two Planning Code provisions. First, Planning Code Section 202.2(a) requires a minimum distance of 600-feet from the parcel containing a proposed Cannabis Retailer and any other parcel which contains an existing Cannabis Retailer or Medical Cannabis Dispensary (hereafter “cannabis storefront”). Second, Planning Code Section 303(w) requires that the Commission “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, [and] the balance of other goods and services available within the general proximity of the proposed Cannabis Retail Use.”

With respect to the minimum 600-foot distance required under Planning Code Section 202.2(a), the Project does not meet the requirement, because the nearest other cannabis storefront is only 68-feet from the Project Site. However, the Project is entitled to an exemption from this requirement as a “Pending MCD Applicant” under Planning Code Section 190(b). This Section, added under Ordinance No. 16-19, Board File 181061, creates an exemption from the required 600-foot distance between cannabis storefronts for “Pending MCD Applicants,” which the section defines as:

An applicant that submitted a complete application to the Department of Public Health to operate a Medical Cannabis Dispensary by July 20, 2017, but that did not receive a permit or authorization from the Planning Department to operate such Use as of January 5, 2018, and that qualifies as either an Equity Applicant or an Equity Incubator pursuant to Section 1604 of the Police Code.

The intent of the legislation was to allow locations that were submitted prior to the adoption of the 600-foot rule to have their cases decided based on the merits of the individual case, even if the location was within 600-feet of another cannabis storefront. The legislation did not exempt these locations from a requirement for Conditional Use Authorization or from the required Finding for Approval of Section 303(w). The proposed Project meets the definition of ‘Pending MCD Applicant’ and is entitled to an exemption from the 600-foot rule.

The required Finding for Approval under Section 303(w) is subjective, in that it does not provide defined parameters for determining whether a specific Project meets the intent of the Section. Instead, the Planning Commission is tasked with reviewing individual Projects for their compliance based on local conditions. For this Project, the Planning Commission noted that the nearest other cannabis storefront is only 68 feet away from the Project Site and on the same block face of Bay Shore Blvd. The Planning Commission also took into consideration the second closest cannabis storefront, which is approximately 0.88 miles from the Project Site (3015 San Bruno Avenue). Based on these conditions, the Planning Commission found that the Project did not meet the Finding for Approval of Planning Code Section 303(w), citing:

The closest approved Cannabis storefront is located at 2442 Bay Shore Blvd, approximately 68 feet from the Project Site. This site is a Medical Cannabis Dispensary with temporary authorization to conduct adult use sales while being converted to a Cannabis Retailer. The second closest Cannabis storefront is located at 3015 San Bruno Avenue, approximately 4,600 feet from the Project Site. Since an existing cannabis storefront is located on the same block face, the proposed Project is not necessary to provide access to cannabis products for the neighborhood.

The disapproval of the requested Conditional Use Authorization was based on the Planning Commission's finding that the Project did not meet this finding, as well as other required Findings for Approval. The full findings of the Commission are contained in the attached Disapproval Motion No. 20925.

ISSUE 2: The appellants contend that "community opposition for this project is matched by overwhelming community support."

RESPONSE 2: The Planning Commission was informed at the May 27 hearing of the total amount of comments received in support and in opposition to the proposed Project.

As of May 27, 2021, the Planning Commission and Department staff had received a total of 478 comments in support of the Project and 598 comments in opposition to the Project. Department staff noted that letters in support of the Project cited support for the project team, support for the decriminalization of cannabis and inclusion of the industry in the neighborhood, and support for the addition of a second storefront in the area. Letters in opposition to the Project stated that one storefront already exists at 2442 Bay Shore Blvd and that no additional outlets are needed, concern for youth access to cannabis products, concern that the storefront would preclude other vacant storefronts in the area from being used for certain business types such as childcare centers or after-school programs, and opposition to the dispensary opening within 600' of 2442 Bay Shore Blvd. Additionally, the majority of comments in opposition cited opposition to an 'MCD' use, reflecting a continuation of the opposition to the Project when it was first proposed in 2016 as a Medical Cannabis Dispensary.

The Planning Commission was informed and understood the balance of support and opposition for the Project when making the decision to deny the requested Conditional Use Authorization.

ISSUE 3: The appellants state that "community ownership in this project has dramatically increased to a majority stake."

RESPONSE 3: The ownership structure of the business is regulated by the Office of Cannabis and was not material to the Planning Commission's disapproval of the requested Conditional Use Authorization. Additionally, these potential changes in ownership structure were made after the Planning Commission had rendered the decision for the Project.

The Office of Cannabis requires cannabis projects to further the City's social equity goals by meeting equity tiers. Applicants may choose which tier they elect to meet when they apply, and higher numbered tiers are given priority over lower tiers. The highest tier is Equity Applicant, and the second highest is Equity Incubator. This application was submitted to the City's Office of Cannabis as an Equity Incubator tier, which was noted at the Planning Commission hearing. The status of the Project at this second tier was not noted as a basis for the disapproval by the Planning Commission.

Department staff contacted the Project Sponsor for clarification of this statement in the appeal. The Project Sponsor responded that the San Francisco Equity Group has been given an option to purchase 98% of the ownership of the Project if the disapproval is overturned by the Board of Supervisors.

SUMMARY RESPONSE

The information provided by the appellants regarding the concentration of Cannabis Retail uses in the area and neighborhood support and opposition to the Project was known when the Planning Commission disapproved the Project. The ownership structure of the business is not material to the Planning Commission's review and was not cited as a basis for the disapproval. Further, the changes to this ownership structure cited in the appeal occurred after the Planning Commission had rendered its disapproval of 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 Planning Commission's decision in disapproving the Conditional Use authorization for the Project.



PLANNING COMMISSION MOTION NO. 20925

HEARING DATE: MAY 27, 2021

Record No.: 2021-000603CUA
Project Address: 5 Leland Avenue / 2400 Bay Shore Boulevard
Zoning: NC-3 (Moderate-Scale Neighborhood Commercial District) Zoning District
55-X Height and Bulk District
Visitacion Valley/Schlage Special Use District
Block/Lot: 6249 / 001
Project Sponsor: Quentin Platt
Equinox Botanicals, Inc.
530 Divisadero Street, Suite 226
San Francisco, CA 94117
Property Owner: Rasmi & Bahjeh Ziedan Revocable Trust
6955 Skyline Blvd
Hillsborough, CA 94010
Staff Contact: Michael Christensen – (628) 652-7567
Michael.Christensen@sfgov.org

ADOPTING FINDINGS RELATING TO THE DENIAL OF A CONDITIONAL USE AUTHORIZATION PURSUANT TO PLANNING CODE SECTIONS 190(B), 202.2, 303, AND 712, REQUESTING THE ESTABLISHMENT OF A 2,198- SQUARE-FOOT CANNABIS RETAIL USE WITH NO ON-SITE SMOKING OR VAPORIZING OF CANNABIS PRODUCTS WITHIN THE GROUND FLOOR COMMERCIAL SPACE OF A TWO-STORY MIXED USE BUILDING LOCATED AT 5 LELAND AVENUE / 2400 BAY SHORE BOULEVARD, LOT 001 IN ASSESSOR'S BLOCK 6249, WITHIN THE NC-3 (NEIGHBORHOOD COMMERCIAL, MODERATE SCALE) ZONING DISTRICT, THE SCHLAGE LOCK SPECIAL USE DISTRICT, AND A 55-X HEIGHT AND BULK DISTRICT, AND ADOPTING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

PREAMBLE

On January 12, 2021, Quentin Platt (hereinafter "Project Sponsor") filed Application No. 2021-000603CUA (hereinafter "Application") with the Planning Department (hereinafter "Department") for a Conditional Use Authorization to establish a 2,198-square-foot Cannabis Retail use (hereinafter "Project") within the ground floor commercial space of a two-story mixed use building located at 5 Leland Avenue / 2400 Bay Shore Blvd, Block 6249 Lot 001 (hereinafter "Project Site").

The Project is categorically exempt from the California Environmental Quality Act (CEQA) under Class 1 and Class 3 exemptions.

On May 13, 2021, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Authorization Application No. 2021-000603CUA and continued the hearing to the May 27, 2021 hearing.

On May 27, 2021, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Authorization Application No. 2021-000603CUA.

The Planning Department Commission Secretary is the Custodian of Records; the File for Record No. 2021-000603CUA is located at 49 South Van Ness Avenue, Suite 1400, San Francisco, California.

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 DENIES the Conditional Use Authorization as requested in Application No. 2021-000603CUA, 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 includes the establishment of a 2,198-square-foot Cannabis Retail Use with no on-site smoking or vaporizing of cannabis products, within the ground floor commercial space of a two-story mixed-use building located at 5 Leland Ave and 2400 Bay Shore Blvd. The Project includes the merger of two existing storefronts to create the new 2,198-square-foot space.
- 3. Site Description and Present Use.** The project site is occupied by a two-story mixed-use building of approximately 18,000 square feet. The ground floor tenant spaces are currently vacant and were last occupied by two separate retail uses, dba “Golden 123 Zone” and “Shun Lee Market,” both of which were small neighborhood convenience stores. The second floor contains ten residential units and one guest unit.
- 4. Surrounding Properties and Neighborhood.** The subject property is located at the western corner of Leland Avenue and Bayshore Boulevard. The property is within the Visitacion Valley Invest in Neighborhoods (IIN) Initiative Area. This corridor was rezoned during the Visitacion Valley planning process. The building is located within the Neighborhood Commercial, Moderate Scale (NC-3) Zoning District.

The NC-3 Zoning District is intended to offer a wide variety of comparison and specialty goods and services to a population greater than the immediate neighborhood, additionally providing convenience goods and services to the surrounding neighborhoods. The NC-3 Zoning District is a linear district located along a heavily trafficked thoroughfare (Bayshore Boulevard) that also serves as a major transit route. NC-3 Zoning Districts include some of the longest linear commercial streets in the City, with this one having continuous commercial (and some industrial development) for many blocks. Large-scale lots and buildings and wide streets distinguish the district from smaller-scaled commercial streets, although the District includes small as well as moderately scaled lots. Buildings typically range in height from two to four stories with occasional taller structures. The building standards in this district permit moderately large commercial uses and buildings. A diversified commercial environment is encouraged for the NC-3 District, and a wide variety of uses are permitted with special emphasis on neighborhood-serving businesses. Eating and drinking, entertainment, financial service and certain auto uses generally are permitted with certain limitations at the first and second stories. Other retail businesses, personal services, and offices are permitted at all stories of new buildings. Limited storage and administrative service activities are permitted with some restrictions.

The vicinity of 2400 Bayshore Boulevard/5 Leland Avenue contains medical uses including North East Medical Services and Visitacion Valley Pharmacy within two blocks. Other uses within the subject block include dwellings, vacant storefronts, banks, grocery markets, food uses, nail salon, cleaners, mobile phone retail store, post office, church, auto service centers, and a large future development site (Schlage Lock) across the street.

The Project Site is well-served by transit, with major buses running along Bayshore Boulevard, and cross-town and local-serving buses nearby. Given the area's accessibility to the City's transit network, parking is not required. The Project Site is located within one-quarter-mile of MUNI lines KT, 9R, 9, 8AX, 8BX, 8, and 56, within 0.6-miles of the regional-serving Caltrain Bayshore Station (which will be 0.2-miles when streets are developed on the Schlage Lock site, e.g. Visitacion Avenue extension to Tunnel Avenue), and within 3-miles of two regional-serving BART stations (Glen Park and Balboa Park). The General Plan includes Transit Preferential Streets: Bayshore Blvd is Transit Important and Visitacion Ave is Transit Oriented. There is metered parking on Leland Ave and Desmond Street with hours of 9am-6pm Mon-Sat and 12-6pm Sun. Two public parking garages are located within approximately one block. There is a bike lane along Bayshore Boulevard and nearby access to U.S. Highway 101.

5. Public Outreach and Comments. The Project Sponsor conducted a community meeting with members of the public on April 21, 2021, and an additional outreach event is planned for May 8, 2021. The Department has received 80 comments expressing support for the Project and a total of 547 emails, form responses, and voicemails expressing opposition to the Project.

- Letters in support of the Project cited support for the project team, support for the decriminalization of cannabis and inclusion of the industry in the neighborhood, and support for the addition of a second storefront in the area.
- Letters in opposition to the Project stated that one storefront already exists at 2442 Bay Shore Blvd and that no additional outlets are needed, concern for youth access to cannabis products, concern that the storefront would preclude other vacant storefronts in the area from being used for certain business types such as childcare centers or after-school programs,

and opposition to the dispensary opening within 600' of 2442 Bay Shore Blvd. Additionally, the majority of comments in opposition cited opposition to an 'MCD' use, reflecting a continuation of the opposition to the Project when it was first proposed in 2016 as a Medical Cannabis Dispensary.

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. **Use.** Planning Code Section 712 requires a Conditional Use Authorization to operate a Cannabis Retail use in the NC-3 Zoning District.

The Project is requesting Conditional Use Authorization for the establishment of a Cannabis Retail use, in compliance with this Section.

- B. **Use Size.** Within the NC-3 Zoning District, the Planning Code principally permits individual Non-Residential Uses at up to 5,999 square feet.

The Project would provide a 2,198-square-foot (sq ft) Cannabis Retail use which is compliant with this requirement.

- C. **600-Foot Buffer Rule:** Planning Code Section 202.2(a)(5)(B) states that the parcel containing the Cannabis Retail Use shall not be located within a 600-foot radius of a parcel containing an existing public or private School or 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. There shall be no minimum radius from a Cannabis Retail Use to an existing day care center or youth center unless a State licensing authority specifies a minimum radius. Additionally, Planning Code Section 190(b) provides that locations where Medical Cannabis Dispensaries were proposed prior to July 20, 2017 and that never received a formal approval of the proposed Medical Cannabis Dispensary use prior to January 5, 2018 (when the City's regulations implementing adult use cannabis and establishing the 600-foot rule were established) are eligible for an exemption from the 600' buffer between Cannabis Retail storefronts and other Cannabis Retail Storefronts or Medical Cannabis Dispensaries, but does not provide any exemption from the 600-foot buffer from Schools. Additionally, the Section provides that such establishments may apply for a Cannabis Retail use, rather than Medical Cannabis Dispensary.

The subject parcel is not located within a 600-foot radius of a parcel containing an existing private or public school. The subject parcel is located within 600-feet of 2442 Bay Shore Blvd, which contains a Medical Cannabis Dispensary use operating with temporary authorization to conduct adult use sales pending conversion to Cannabis Retail under Section 190(a) of the Planning Code. The approval of this application would not preclude the conversion of 2442 Bay Shore Blvd to Cannabis Retail. This application qualifies for the exemption from the 600-foot rule under Section 190(b) and thus is compliant with the 600-foot rule

- D. **Hours of Operation.** The NC-3 Zoning District sets no limits on hours of operation for any uses. State law limits hours of operation for Cannabis Retailers to between 6am and 10pm.

The Project is required under State law to cease operation between 10pm and 6am.

- E. **Street Frontage in Mixed Use Districts.** Section 145.1 of the Planning Code requires that within Mixed Use 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.

The subject commercial space complies with this requirement. No significant modification to the front façade was proposed, and the interior changes do not impact compliance with this Section.

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 would provide a retail outlet that is typically required to be at least 600' from other outlets providing the same product (cannabis). While afforded an exemption from this requirement under the Planning Code Section 190(b), the location of the proposed Project is in such close vicinity to an existing cannabis storefront (2442 Bay Shore Blvd, less than 100-feet from the site) and is not considered to be necessary or desirable for this neighborhood. The immediate neighborhood is also served by an existing cannabis retailer. Additionally, by occupying two existing storefronts, located at a key corner gateway to the Leland Avenue neighborhood, the Project could preclude other uses at this site or near this site, which would be more desirable, such as after-school programs, day cares, or other types of retail services. As such, the use is neither necessary nor desirable at the proposed location.

- 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 height and bulk of the existing building would remain the same and would not alter the

existing appearance or character of the project vicinity. The proposed work would not affect the building envelope.

- (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 Planning Code does not require parking for any uses.

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

The proposed use does not propose on-site smoking or vaporizing of cannabis products. Even so, an odor mitigation plan will be submitted to the Office of Cannabis for review by the Department of Public Health prior to any license approval. Thus, adequate safeguards against odor are provided. The proposed use has no issues with noise or glare.

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

No changes to landscaping, screening, open spaces, parking and loading areas, or lighting are proposed. Signage will be reviewed under a sign permit for compliance with the Sign Ordinance.

- 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, except for the required Findings for Approval of Section 303 as noted herein. The Project is not consistent with the objectives and policies of the General Plan as detailed below.

- D. That use or feature as proposed will provide development that is in conformity with the stated purpose of the applicable Use District.

The proposed project is not consistent with the stated purpose of NC-3 Zoning District in that the intended use would not further the goal to “offer a wide variety of comparison and specialty goods and services” because it would concentrate two cannabis storefronts within the same block, thus decreasing the variety of goods and services offered in the immediate neighborhood.

- 8. Additional Conditional Use Findings for Cannabis Retail.** Planning Code Section 303(w) outlines additional findings for the Commission when reviewing proposals for new Cannabis Retail establishments. 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.”

In the December 2019 report titled "[Cannabis in San Francisco: A Review Following Adult Use Legalization](#)," the City Controller's Office identified the Mission and South of Market Neighborhoods as more concentrated with Cannabis Retail uses in comparison to the balance of San Francisco. The approval of this application would contribute to the balance and even distribution of Cannabis Retail uses in the City by providing an additional outlet in the far southeast of the City. This will reduce the need for customers to travel to other neighborhoods in the City for purchase cannabis products for medical or general use.

The closest approved Cannabis storefront is located at 2442 Bay Shore Blvd, approximately 68 feet from the Project Site. This site is a Medical Cannabis Dispensary with temporary authorization to conduct adult use sales while being converted to a Cannabis Retailer. The second closest Cannabis storefront is located at 3015 San Bruno Avenue, approximately 4,600 feet from the Project Site. Since an existing cannabis storefront is located on the same block face, the proposed Project is not necessary to provide access to cannabis products for the neighborhood.

There were no sensitive uses found within 600', so the impact on youth exposure from this approval is minimal.

9. **General Plan Compliance.** The Project is, on balance, not consistent with the following Objectives and Policies of the General Plan:

COMMERCE AND INDUSTRY ELEMENT

Objectives and Policies

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 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.

OBJECTIVE 4

IMPROVE THE VIABILITY OF EXISTING INDUSTRY IN THE CITY AND THE ATTRACTIVENESS OF THE CITY AS A LOCATION FOR NEW INDUSTRY.

Policy 4.8:

Provide for the adequate security of employees and property.

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.

Objective 6, Policy 6.1 of the Commerce and Industry Element of the General Plan establishes guidelines for all uses in the City. Such guidelines include:

- The use should contribute to the variety of uses in the district and avoid an undesirable concentration of one type of use in a certain location. In low-intensity districts, a balanced mix of various neighborhood-serving uses, with no concentration of a particular use, is desirable. In higher-intensity districts with a special orientation to one type of use (such as antique stores), clustering of such specialty uses may be appropriate. However, one type of use should not occupy an entire block frontage.*
- In small-scale districts with limited amounts of commercial space, priority should be given to retail stores and services which primarily serve the needs of nearby residents. Larger-scale districts may include some larger or more specialized uses which serve a broader citywide or regional clientele in addition to convenience-oriented businesses. However, no district should include so many specialty stores that space is not available for businesses which serve the needs of nearby residents. The appropriate size of an individual use may vary depending on the type of merchandise or service offered and the volume or intensity of customer activity it generates.*

The Commission finds that the proposed use is not consistent with these guidelines, in that it would create an undue concentration of Cannabis Retail uses on the subject block, limiting the availability of commercial space for stores and services which primarily serve the needs of nearby residents.

10. Planning Code Section 101.1(b) establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project complies with said policies in that:

- 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 site will provide a new retail tenant and new use for the neighborhood. The addition of

this business will enhance foot traffic to the benefit neighboring businesses. Cannabis is one of the fastest growing job categories in the country and one of the few retail uses that is burgeoning even in the face of e-commerce.

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

No housing is impacted by the Project. The building exterior is maintained, preserving neighborhood character.

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

The Project has no effect on housing and does not convert housing to a non-residential use.

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

The Project site is extremely well-served by transit. It is presumable that the employees would commute by transit thereby mitigating possible effects on street 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.

There is no commercial office development associated with the proposed project and there would be no displacement of any existing industrial or service businesses in the area. The Project would unduly concentrate Cannabis Retail uses in the Visitacion Valley neighborhood, which is contrary to the intent to maintain a diverse economic base.

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

Any construction associated with Project will be designed and will be constructed to conform to the structural and seismic safety requirements of the Building Code. This proposal will not impact the property's ability to withstand an earthquake.

- G. That landmarks and historic buildings be preserved.

Currently, the Project Site does not contain any City Landmarks or historic buildings.

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

The Project will have no negative impact on existing parks and open spaces. The Project does not have an impact on open spaces.

- 11.** The Project is not consistent with and would not promote the general and specific purposes of the Code

provided under Section 101.1(b) in that, as designed, the Project would not contribute to the character and stability of the neighborhood and would not constitute a beneficial development.

12. The Commission hereby finds that approval of the Conditional Use Authorization would not promote the health, safety and welfare of the City.

DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **DENIES Conditional Use Authorization Application No. 2021-000603CUA**, as proposed per the plans dated May 4, 2021, 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 May 27, 2021.



Jonas P. Ionin
Commission Secretary

AYES: Chan, Fung, Imperial, Moore

NAYS: Tanner, Diamond, Koppel

ABSENT: None

ADOPTED: May 27, 2021



