



Conditional Use Authorization Appeal

2351 Mission Street

DATE: March 25, 2024
TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Rich Hillis, Planning Director – Planning Department (628) 652-7600
Maggie Laush, Case Planner – Planning Department (628) 652-7339
RE: Board File No. 240162, Planning Case No. 2022-008254CUAAPL
Appeal of Conditional Use Authorization for 2351 Mission Street
HEARING DATE: April 2, 2024
PROJECT SPONSOR: Chris Hastings, Down With This Sort of Thing, LLC, 2351 Mission Street, San Francisco, CA 94114
APPELLANTS: Chris Hastings, Down With This Sort of Thing, LLC, 2351 Mission Street, San Francisco, CA 94114

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 2022-008254CUA pursuant to Planning Code Sections 145.2 (Outdoor Activity Areas in NC Districts), 249.60 (Mission Alcoholic Beverage SUD), 754 (Mission Street NCT), and 303 (Conditional Use Authorization).

This memorandum addresses the appeal to the Board, filed on February 21, 2024, by the Project Sponsor (Mr. Hastings).

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 proposes to add a Nighttime Entertainment use to an existing Restaurant use (d.b.a. “Casements”) and establish an Outdoor Activity Area, measuring 1,777 square feet, in part of an existing public parking lot adjacent to the restaurant. The Project also proposes to expand the existing liquor establishment, as the restaurant has a Type 47 liquor license, to include the Outdoor Activity Area. The Sponsor requested that the Outdoor Activity Area be allowed to operate from 10 a.m. to 11 p.m. Sunday through Thursday and from 10 a.m. to midnight on Fridays and Saturdays. Ten of the 81 parking spaces in the public parking lot would be occupied by the Outdoor Activity Area. The remaining 71 parking spaces would continue to operate as a public parking lot.

SITE DESCRIPTION & PRESENT USE

The subject property contains the El Capitan Theater and Hotel, a three-story Residential Hotel building with 165 feet of frontage on Mission Street and an Article 10-designated Landmark. The ground floor features multiple commercial spaces, including Casements, and a 45-foot-wide driveway through the structure. The driveway provides access to an existing legal non-conforming public parking lot (d.b.a. “California Parking Company”) at the rear of the lot, with a total area of approximately 31,396 square feet. The lot is also accessed via two 24-foot curb cuts from Capp Street, where it extends the full width of the parcel. The Project Site encompasses ten of the parking spaces adjacent to the Casements commercial unit, partially beneath the upper stories of the building.

The Project Site was authorized for use as an outdoor patio in December 2020 through the Shared Spaces program (Permit No. 12072020-0002-SSP). The Shared Spaces program allowed for temporary outdoor uses to be rapidly authorized during the COVID-19 emergency. In conjunction, a Just Add Music (JAM) permit was granted by the Entertainment Commission in January 2021, allowing entertainment activities on the patio. The Shared Spaces and JAM programs sunset as of March 31, 2023. Accordingly, the Project Sponsor is seeking authorization for continued use of the same patio footprint.

SURROUNDING PROPERTIES AND NEIGHBORHOOD

The Project Site is located within the Mission Street NCT Zoning District in the Mission Area Plan. The neighborhood is mixed in character with residential and commercial uses. The immediate context includes two-to-four story commercial development with residential uses above to the north and south, and west across Mission Street. To the east, development is primarily two-to-three-story residential properties, as well as a public park (Alioto Mini Park). Other zoning districts in the vicinity of the project site include: RTO-M (Residential Transit Oriented-Mission), NC-1 (Neighborhood Commercial Cluster), NC-2 (Small-Scale Neighborhood Commercial), and the Valencia Street NCT (Neighborhood Commercial Transit) Zoning Districts.

BACKGROUND

- On March 30, 2023, Christopher Hastings of Down With This Sort of Thing, LLC (hereinafter “Project Sponsor”) filed Application No. 2022-008254CUA (hereinafter “Application”) with the Planning Department (hereinafter “Department”).
- On December 19, 2023, the Entertainment Commission granted a One Time Outdoor Event permit to temporarily allow outdoor entertainment and amplified sound at the Site from January 7, 2024 through December 6, 2024, daily from 4 p.m. to 10 p.m.
- On November 9, 2023, the Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2022-008254CUA and continued the hearing to January 4, 2024. The Commission cancelled the

regularly scheduled January 4, 2024 meeting and continued the hearing on the Application to January 25, 2024.

- On January 25, 2024, the Commission conducted a duly noticed public hearing on the Application at a regularly scheduled meeting (hereinafter “Hearing”). In their application, the Sponsor requested that the Outdoor Activity Area be allowed to operate from 10 a.m. to 11 p.m. Sunday through Thursday and from 10 a.m. to midnight on Fridays and Saturdays. The Department recommended restricting evening operation of the Outdoor Activity Area to 10 p.m. daily to reduce potential noise impacts on nearby Residential uses, including Residential Hotel units directly above the proposed Outdoor Activity Area and apartments to the north fronting on Mission and Capp Streets. During the Hearing, the Planning Commission considered the Planning Department’s recommendation, and testimony from the project sponsor, and the public. At the conclusion of the Hearing the Planning Commission approved the Conditional Use authorization with conditions, including a condition to restrict the hours of operation no later than 10 p.m.

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.

Planning Code Section 754 establishes additional criteria for the Commission to consider when reviewing any Conditional Use application within the Mission Street NCT. To approve the project, the Commission must find that the project supports at least three of the four stated purposes of the NCT:

1. To preserve and enhance the existing storefront configuration and size, signage, artwork, and

- other character-defining elements of the built environment;
2. To preserve the contributions of Legacy Businesses to the history and identity of the District;
 3. To retain, enhance, and promote active community involvement and input on development within the District by conducting thorough outreach to stakeholders and neighborhood groups and responding to community input; and
 4. To retain, enhance, and promote neighborhood-serving businesses and institutions that enhance economic and workforce opportunities for local residents by coordinating with the Office of Economic and Workforce Development to engage with the City's workforce system to provide employment opportunities, career trainings, and formal partnerships to identify and address both business and community workforce needs.

Planning Code Section 145.2 establishes additional criteria to consider when reviewing all Conditional Use applications for Outdoor Activity Areas in any Neighborhood Commercial District, including named NCTs. To approve the project, the Commission must find that these criteria have been met:

1. The nature of the activity operated in the Outdoor Activity Area is compatible with surrounding uses;
2. The operation and design of the Outdoor Activity Area does not significantly disturb the privacy or affect the livability of adjoining or surrounding residences;
3. The Hours of Operation of the activity operated in the Outdoor Activity Area are limited so that the activity does not disrupt the viability of surrounding uses.

Planning Code Section 249.60 restricts the establishment, expansion, and relocation of alcohol-related uses within the Mission Alcoholic Beverage SUD, including the requirement of a Conditional Use authorization to expand an existing liquor establishment. In reviewing applications for such expansion:

1. The Commission shall consider the establishment's prior operating conditions.
2. The Project must comply with additional operating conditions, beyond the applicable conditions of Planning Code Section 202.2. These additional conditions consist of providing outside lighting to illuminate adjacent streets, sidewalks, and parking lots, and maintaining visibility to the interior of the establishment by limiting obstructions on windows.

APPELLANT ISSUES AND PLANNING DEPARTMENT RESPONSES

ISSUE 1: Multiple Planning Commissioners were not present at the Hearing.

RESPONSE 1: There was a quorum sufficient for the Commission to act on the Application.

ISSUE 2: Dissenting public comment focused on amplified sound and live music late at night, suggesting the commenters did not understand the Project under review. These activities are regulated by the Entertainment Commission, and the sponsor's current authorization already limits them to 10 p.m., which the sponsor does not contest.

RESPONSE 2: While some of the public comment made at the Hearing mentioned live music and/or amplified sound, other comments made both at the Hearing and provided to the Department prior to it

focused on patron conversation. For example, an adjacent neighbor provided video files to demonstrate the volume of speaking voices as heard from their home. This distinction was also made explicit by the staff report's summary of public comment and the explanation of Entertainment Commission authorizations on the site.

ISSUE 3: The patio has operated without incident past 11 p.m. on weekdays and midnight on weekends since it was authorized by the Shared Spaces program in July 2020.

RESPONSE 3: Comments made at the Hearing and provided to the Department prior to it describe multiple incidents. Commenters attest to phoning and visiting the restaurant in person to voice concern, with insufficient or no response.

ISSUE 4: As San Francisco seeks to support small businesses and encourage places for communities to gather, we believe that Casements should have the ability to use the patio until 11 on weekdays and midnight on weekends.

RESPONSE 4: The General Plan and Mission Area Plan (hereinafter 'Plans') establish policy priorities seeking to promote small businesses, as described in Finding 11 of Motion No. 21497. However, the Commission considers these objectives vis-à-vis all stated policies of the Plans, some of which emphasize competing priorities. The Commission found that on balance, the Project would be consistent with the Plans if conditioned to operate no later than 10 p.m.

ISSUE 5: Casements was not given an opportunity to respond to dissenting voices.

RESPONSE 5: The Hearing followed Commission procedure. The Sponsor was provided with the staff report when it was published one week prior to the Hearing, which included a summary of the public comment received in opposition to the Project. In their presentation to the Commission, the Sponsor noted anticipated themes in dissenting comments and provided a response.

ISSUE 6: The 10 p.m. curfew would force Casements to lay off employees and cut hours for those still employed. Further, an earlier closure time would be financially devastating to Casements. If this curfew was in place in 2023 the business would have lost money, and we would not have renewed our lease and would have closed the business.

RESPONSE 6: The Department is sensitive to the difficulties of running a small business in San Francisco; however, we are unable to weigh in on financial decisions a business may or may not have to make based on the conditions of approval. The Planning Commission's charge is to consider both the needs of the surrounding community and the business when coming to a decision on Conditional Use authorizations. In this instance they determined that a 10 p.m. closure time found a balance between those competing needs.

ISSUE 7: There has been precedence set at multiple other nearby businesses for permitted hours of operation after 10 pm in the immediate vicinity of Casements.

RESPONSE 7: Each request for Conditional Use authorization undergoes a thorough individual assessment tailored to the unique circumstances of the case. In this instance, the Planning Commission meticulously considered the evidence presented to them and determined that a 10 p.m. closure time for the Outdoor Activity Area was justified. The specific physical conditions of the Project Site, such the brick rear façade of the El Capitan building and the expansive open parking lot, may amplify ambient and conversational noise to a level greater than what is produced by Outdoor Activity Areas at other locations. That in addition to the surrounding residential uses led the Planning Commission to their decision.

Outdoor Activity Areas are principally permitted in most mixed-use Zoning Districts if they operate no later than 10 p.m., per Planning Code Section 202.2(a)(7). Operation beyond 10 p.m. is at the discretion of Commission, through a Conditional Use authorization. Nearby restaurants with conditional Outdoor Activity Areas include:

- Restaurant d.b.a. **Prubechu** at 2224 Mission Street – patio at adjacent parking lot authorized in 2023, with hours of operation conditioned to end at 10 p.m. (Motion No. 21401).
- Restaurant d.b.a. **Teeth** at 2323 Mission Street – rear patio legalized in 2017 with hours of operation conditioned to end at 10 p.m. (Motion No. 20061).
- Restaurant d.b.a. **Lolinda (El Techo)** at 2516 Mission Street – roof deck legalized in 2011 with hours of operation conditioned to end at 11:30 p.m. Sunday through Thursday and 1:30 a.m. Friday and Saturday (Motion No. 18434). Noise mitigations, including orienting the roof deck to abut Mission Street and adding a landscape buffer, are detailed in Motion No. 18434.
- Restaurant d.b.a. **Foreign Cinema** at 2534 Mission Street – rear patio authorized in 1998 in conjunction with the restaurant, with hours of operation for the entire use conditioned to end at 2 a.m. (Motion No. 14761). A private agreement was reached between the sponsor and an adjacent neighbor to undertake improvements on their property, such as sound-rated windows, to mitigate noise impacts. This agreement is included as Exhibit C in Motion No. 14761.

SUMMARY RESPONSE

The proposed Outdoor Activity Area is directly adjacent to residential uses, including Residential Hotel Units above and Dwelling Units on the abutting lots to the north. Noise is a typical and expected characteristic of an urban environment, especially in areas zoned for a mix of uses as this area is and has been historically. However, neighbors' comments indicate that the temporarily-authorized patio at Casements has created negative impacts beyond just temporary annoyance or inconvenience. Restricting hours of operation is an established strategy of the Department and Commission to find compromise when adjacent land uses present such incompatibilities. 10 p.m. is identified throughout the Planning Code, and in recent Conditional Use authorizations, as a reasonable hour to expect that the residential use be prioritized.

CONCLUSION

For the reasons stated in this document, in the attached Resolution, 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.