



# SAN FRANCISCO PLANNING DEPARTMENT

*Subject to: (Select only if applicable)*

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|--|--|
| <input type="checkbox"/> Affordable Housing (Sec. 415)           | <input type="checkbox"/> First Source Hiring (Admin. Code) |
| <input type="checkbox"/> Jobs Housing Linkage Program (Sec. 413) | <input type="checkbox"/> Child Care Requirement (Sec. 414) |
| <input type="checkbox"/> Downtown Park Fee (Sec. 412)            | <input type="checkbox"/> Other                             |

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## Planning Commission Motion No. 20071

HEARING DATE: DECEMBER 7, 2017

*Case No.:* 2017-008461CUA  
*Project Address:* 2358 FILLMORE STREET  
*Zoning:* Upper Fillmore Neighborhood Commercial District (NCD)  
40-X Height and Bulk District  
*Block/Lot:* 0612 / 022  
*Project Sponsor:* Richard Warren  
929 Fresno Avenue  
Berkeley, CA 94707  
*Staff Contact:* David Weissglass – (415) 575-9177  
[david.weissglass@sfgov.org](mailto:david.weissglass@sfgov.org)

**ADOPTING FINDINGS RELATING TO THE APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303 AND 718 OF THE PLANNING CODE TO ALLOW THE ESTABLISHMENT OF A LIQUOR STORE WITHIN THE UPPER FILLMORE NEIGHBORHOOD COMMERCIAL DISTRICT AND A 40-X HEIGHT AND BULK DISTRICT.**

### **PREAMBLE**

On July 5, 2017, Richard Warren (hereinafter "Project Sponsor") filed an application with the Planning Department (hereinafter "Department") for Conditional Use Authorization under Planning Code Section(s) 303 and 718 to allow the establishment of a Liquor Store (d.b.a. "Verve") within the Upper Fillmore Neighborhood Commercial District and a 40-X Height and Bulk District.

On December 7, 2017, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2017-008461CUA.

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 requested in Application No. 2017-008461CUA, 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. **Site Description and Present Use.** The project site is located at the southeast corner of Fillmore and Washington Streets, Block 0612, Lot 022 in Pacific Heights. The property is located within the Upper Fillmore Neighborhood Commercial District (NCD) within a 40-X height and bulk district. The property is developed with a late 19<sup>th</sup> century two-story commercial building, with the only other ground-floor tenant being a women's clothing retailer (d.b.a. "Curve") adjacent to the subject tenant space. The tenant space at 2358 Fillmore Street is currently vacant; the most recent tenant of the space was "Gimme Shoes," a shoe retailer which vacated the space in early 2017. The second story is occupied by offices.
3. **Surrounding Properties and Neighborhood.** The project site is located at the intersection of Fillmore and Washington Streets. The area surrounding the project site is mixed-use in character. A variety of commercial establishments are located within ground floor storefronts in the Upper Fillmore NCD, including restaurants, bars, apparel stores, convenience stores, and other types of retailers. Buildings in the vicinity typically range from one to three stories in height. Upper floors of buildings are generally occupied by offices or residential units. Surrounding areas are primarily zoned RH-2, and RM-1, and these areas are predominantly residential in nature.
4. **Project Description.** The applicant proposes to change the use of the tenant space from a shoe store, defined as a Retail Sales and Services Use, to a Liquor Store. The most recent tenant was "Gimme Shoes," a shoe retailer. The proposal includes minor tenant improvements under Building Permit No. 2017.0718.2143, as well as signage alterations which conform to the requirements of Article 6 of the Planning Code. The existing commercial space is 810 square feet in size.

The proposed use is the second worldwide location of a liquor store business. The proposed use is not a Formula Retail use. The proposal requires a change of use and Section 312 neighborhood notification was conducted in conjunction with the Conditional Use Authorization notification. The proposed use is a neighborhood-serving use.



The operators plan to employ approximately 5 employees. The subject site is well served by public transit so that potential customers should not adversely affect the traffic flow.

Verve is a liquor store founded by Master Sommelier Dustin Wilson and wine merchant Derrick Mize. They opened their first store in December 2016 at 24 Hubert Street in the Tribeca neighborhood of New York, New York. Verve's founders personally taste all products offered in stores personally and provide recommendations to all customers shopping in person at the stores or using the online delivery platform based on taste preferences. They plan to offer on-site tastings of some of their products with a Type-86 ABC license.

5. **Public Comment.** The Department received no correspondence regarding the project.
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. **Hours of Operation.** Planning Code Section 718 states that non-residential uses are permitted to operate between the hours of 6:00 a.m. to 2a.m. daily.

*The proposed hours of operation for the establishment are 10:00 a.m. to 10:00 p.m. daily.*

- B. **Parking.** Planning Code Section 151 does not require non-residential uses to provide off-street parking spaces if the occupied floor area is less than 5,000 square feet.

*The tenant space contains less than 5,000 square feet and thus no parking spaces are required.*

- C. **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.

*The subject commercial space has approximately 19 feet 3 inches of frontage along Fillmore Street and the majority of the frontage is glazed. The glazing is not to be obscured and all signage will be required to comply with Article 6 of the Planning Code.*

D. **Signage.** The Planning Department has reviewed preliminary signage plans and has confirmed that the signage is in conformance with the requirements of Article 6 of the Planning Code. A separate sign permit will nonetheless be required.

7. **Planning Code Section 303** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the project does comply 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 size of the proposed use is in keeping with other storefronts on the block face. The proposed liquor store will not impact traffic or parking in the District. The proposed use will complement the mix of goods and services currently available in the district and contribute to the economic vitality of the Upper Fillmore neighborhood by providing an upscale liquor retailer.*

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:

i. 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 will remain the same and the project will not alter the existing appearance or character of the project vicinity. The proposed work will not affect the building envelope.*

ii. 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 or loading for a commercial establishment of this size. The proposed use is designed to meet the needs of the immediate neighborhood and should not generate significant amounts of vehicular trips from the immediate neighborhood or citywide.*

iii. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

*The proposed use is subject to the standard conditions of approval for liquor stores and outlined in Exhibit A. The project is not expected to produce noxious or offensive emissions related to noise, glare, and dust.*

iv. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;

*The project would not alter the site's landscaping, open spaces, parking and loading areas, service areas, or lighting. All new signage will be made to comply with the requirements of Article 6 of the Planning Code.*

- 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.*

- 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 purposes of the Upper Fillmore Neighborhood Commercial District in that the intended use is located at the ground floor and will provide a compatible convenience service for the immediately surrounding neighborhoods during daytime and early evening hours.*

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

## **NEIGHBORHOOD COMMERCE**

### **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 that has substantial undesirable consequences that cannot be mitigated.

#### **Policy 1.2:**

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

#### **Policy 1.3:**

Locate commercial and industrial activities according to a generalized commercial and industrial land use plan.

*The proposed use will provide desirable goods and services to the neighborhood and will provide resident employment opportunities to those in the community. The Project Site is located within a Neighborhood Commercial District and is thus consistent with activities in the commercial land use plan.*

#### **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.

*The Project will provide the City and the Upper Fillmore Street commercial corridor with new commercial activity to satisfy demand.*

**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.

*No long-term commercial tenant would be displaced and the project would not prevent the district from achieving optimal diversity in the types of goods and services available in the neighborhood.*

**Policy 6.2:**

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

*An independent entrepreneur is sponsoring the proposal. The proposed use is a neighborhood serving use. This is not a Formula Retail use.*

9. **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 does comply 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 proposal would enhance the district by providing an upscale liquor store in an area that is not over concentrated by similar uses. The business would be locally owned and the proposed alterations are within the existing building footprint.*

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

*Residential units in the surrounding neighborhood would not be adversely affected by the project. The proposed establishment's operations are not expected to have any negative impacts on the neighborhood or its character.*

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

*No housing is removed for this Project.*

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

*The site is on Fillmore Street and is well served by transit. Employees will be encouraged to commute by foot or transit thereby mitigating possible effects on street parking. The location is within ¼ mile of ten MUNI bus lines (1, 1AX, 1BX, 22, 24, 3, 31AX, 31BX, 38AX, 38BX).*

- 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 will not displace any service or industry establishment. The project will not affect industrial or service sector uses or related employment opportunities. Ownership of industrial or service sector businesses will not be affected by this project.*

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

*The Project is designed and will be constructed to conform to the structural and seismic safety requirements of the City Building Code. This proposal will not impact the property's ability to withstand an earthquake.*

- G. That landmarks and historic buildings be preserved.

*A landmark or historic building does not occupy the Project site.*

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

*The project will have no negative effects on existing parks and open spaces.*

10. 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.
11. The Commission hereby finds that approval of the Conditional Use authorization would promote the health, safety and welfare of the City.

### DECISION

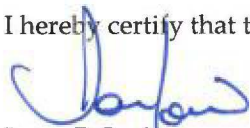
That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Application No. 2017-008461CUA** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated June 28, 2017, 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 No. 20071. 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 7, 2017.



Jonas P. Ionin  
Commission Secretary

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

NAYS: None

ABSENT: Johnson

ADOPTED: December 7, 2017



## EXHIBIT A

### AUTHORIZATION

This authorization is for a conditional use to allow a Liquor Store (d.b.a. "Verve") located at 2358 Fillmore Street, Lot 022 of Block 0612 pursuant to Planning Code Sections 303 and 718 within the **Upper Fillmore Neighborhood Commercial** District and a **40-X** Height and Bulk District; in general conformance with plans, dated June 28, 2017, and stamped "EXHIBIT B" included in the docket for Case No. **2017-008461CUA** and subject to conditions of approval reviewed and approved by the Commission on **December 7, 2017** under Motion No**20071**. 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 7, 2017** under Motion No**20071**.

### PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. **20071** 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](http://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](http://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](http://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](http://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](http://www.sf-planning.org).*

## DESIGN

6. **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 architectural addenda. 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 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org).*

## MONITORING

7. **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](http://www.sf-planning.org).*

8. **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](http://www.sf-planning.org).*

## OPERATION

9. **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>*

10. **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](http://www.sf-planning.org).*

11. **Hours of Operation.** The subject establishment is limited to the following hours of operation: 10:00 a.m. to 10:00 p.m. daily.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org).*