



Conditional Use Authorization Appeal

800 TARAVAL STREET

DATE: April 10, 2023
TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Rich Hillis, Planning Director – Planning Department (628) 652-7600
Christy Alexander, Case Planner – Planning Department (628) 652-7334
RE: Board File No. 230285, Planning Case No. 2022-001838APLCUA
Appeal of Conditional Use Authorization for 800 Taraval Street
HEARING DATE: April 18, 2023
PROJECT SPONSOR: Angel Davis, (Equity Applicant) 415 Native, LLC, 313 Ivy Street, San Francisco, CA 94102
APPELLANT: Lefteris Eleftheriou, 2419 18th Avenue, San Francisco, CA 94116

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 2022-001838APL pursuant to Planning Code Sections:

- 202.2: Location and Operating Conditions;
- 303: Conditional Use Authorization; and
- 745: Inner Taraval Street Neighborhood Commercial District.

This memorandum addresses the appeal to the Board, filed on March 6, 2023, by Lefteris Eleftheriou.

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

PROJECT DESCRIPTION

The Project would establish a Cannabis Retail use (d.b.a. "Green Mirror") measuring approximately 977 square feet in a vacant mezzanine commercial tenant space which will be converted to a new fully enclosed second floor within a two-story commercial building located at 800 Taraval Street, ("Project Site") APN 2347/009A. The Project does not include a request for on-site smoking or vaporizing. The Project proposes minor interior tenant improvements and installation of new accessible building entrance upgrades. New business signage will be applied for under a separate permit.

SITE DESCRIPTION & PRESENT USE

The Project is in the Inner Taraval Street NCD on a corner lot with frontage along Taraval Street to the south and 18th Avenue to the east. The Project Site is situated on a lateral and upsloping lot measuring 2,696 square feet in size with a two-story, commercial building containing a restaurant use on the ground floor and mezzanine level. The mezzanine, which previously served as private party space for the restaurant, has been vacant for almost three years and the existing restaurant owner does not see any viability in the space serving the restaurant as is in the foreseeable future.

SURROUNDING PROPERTIES AND NEIGHBORHOOD

The Project Site is located on a neighborhood commercial corridor. The neighborhood is primarily residential uses, with limited, ground-floor commercial uses located within buildings located on corner lots and fronting Taraval Street. The immediate context includes two-to-four story buildings with a large grocery store across the street. Lincoln High School and Herbert Hoover Middle School are both five to six blocks from the Project Site, or approximately 2,112 feet away.

BACKGROUND

- On February 25, 2022, the Project Sponsor filed the Application with the Department.
- On February 2, 2023, the Commission considered the Application and voted unanimously 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. 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: Misrepresentation and Lack of Notice of On-Site Consumption.

RESPONSE 1:

Planning Code Section 202.2 (a) (5) (C), states that “cannabis may be consumed or smoked on site pursuant to authorization by the Department of Public Health as applicable.” Under current State and Local laws, permits for the on-site consumption of cannabis are allowed in San Francisco if the applicant obtains 1) a permit from the Department of Public Health, 2) a storefront Cannabis Retailer or Cannabis Microbusiness permit issued by the Office of Cannabis; and 3) an equivalent State Cannabis License. The required notice and staff report distributed to the public specified that the Project does not include a request for on-site smoking or vaporizing but did not specify that it would not include on-site edible consumption. The Commission found that the Project met all the notification requirements and approved the Project.

ISSUE 2: Misrepresentation of Restaurant as Vacant Storefront.

RESPONSE 2:

The property’s mezzanine area, which previously served as private party space for the restaurant currently operating at the ground floor, has been vacant for almost three years and the existing restaurant owner does not see any viability in the space serving the restaurant as is, in the foreseeable future. The Project notice and staff report described the property as a vacant, mezzanine commercial tenant space, not a storefront. The Mayor’s Office and Office of Small Business are in active collaboration to provide any opportunities for small businesses and commercial businesses to enter spaces along neighborhood commercial corridors. The Commission found that doing so better activates our streets and helps surrounding businesses thrive.

ISSUE 3: Incompatibility with Neighborhood/Failure to Alter the Neighborhood for the Better.

RESPONSE 3:

This Project Site is situated in a Neighborhood Commercial District that allows various commercial uses. Aside from the installation of new accessible building entrance upgrades, entry doors, and removal of the existing awning, no other changes to the building exterior or envelope are proposed. Since this use is situated in a second-floor space there will be no store front street-level windows for passersby to see into this space. There will be added signage that meets all the standards of the Planning Code and Office of Cannabis policies. As per San Francisco Health Code Article 8A, it is not allowed for cannabis consumption to be visible from any public place or any nonage-restricted area on the premises. There is also an existing liquor store at the southeast corner of Taraval and 18th Street which is compatible and legal within this

neighborhood commercial district as are Cannabis Retail uses. The Commission found the Project to be necessary, desirable, and compatible with the surrounding neighborhood, and not to be detrimental to persons or adjacent properties in the vicinity.

ISSUE 4: Public Policy – Site Buffers Need to Include Youth-Serving Facilities.

RESPONSE 4:

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 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. The Project is not located within a 600-foot radius of a parcel containing any school as defined by the Planning Code. The Commission found that the Project meets all the required findings and unanimously voted to approve the Project. Before the legalization of adult use of cannabis, Medicinal Cannabis Retailers needed to be 1,000 feet from a School or any community facility or recreation center that primarily serves persons under 18 years of age. The previous regulations did not require a distance between dispensaries, resulting in the clustering of Medicinal Cannabis Retailers in areas lacking these youth-serving facilities. In July 2015, the Board created the Cannabis State Legalization Task Force to advise the Board, the Mayor, and other City departments on legalizing cannabis. The Task Force was active for three years, held numerous public meetings, and published recommendations that resulted in adopting the current Planning Code regulations for Cannabis uses. The current regulations expanded locations where new Cannabis Retailers could operate, allowing for a more equitable distribution of retailers across the city, and are in line with the City’s recent efforts towards advancing racial equity City-wide. The Commission found that the Project meets all the required findings and unanimously voted to approve the Project.

SUMMARY RESPONSE

The Appellant claims that there has been a misrepresentation of the Project Description in noticing to the public. The Project was properly noticed, as required by the Administrative Code and the Planning Code and a staff report was prepared which discussed all the issues the Appellant raises. The Appellant also expressed concerns that the Project would not be compatible to the neighborhood. The Commission found that the Project meets the Planning Code’s allowed use provisions within the Inner Taraval Neighborhood Commercial District, and that it contributes to a more balanced geographic distribution of Cannabis Retailers in the City. The Appellant’s final issue is with the Project’s proximity to youth serving facilities; however, staff’s analysis showed, and the Commission agreed that the site is not within the 600-foot buffer of any public or private school, as required by the Planning Code. The Commission found the Project to meet all necessary requirements and did not open the 600-foot buffer policy up for further discussion.

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