



# CONDITIONAL USE AUTHORIZATION APPEAL

## 4100 3RD STREET

*Date:* March 19, 2025  
*To:* Angela Calvillo, Clerk of the Board of Supervisors  
*From:* Rich Hillis, Planning Director – Planning Department (628) 652-7600  
Gabriela Pantoja, Case Planner – Planning Department (628) 652-7380

*Re:* **Board File No. 250174, Planning Case No. 2024-008292APL**  
**Appeal of Conditional Use Authorization for 4100 3<sup>rd</sup> Street**

*Hearing Date:* March 25, 2025  
*Project Sponsor:* Lawrence Badiner, PO Box 1254, Sebastopol, CA 95473  
*Appellants:* Bivett Brackett, 874 Brussels Street, San Francisco, CA 94134

## 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 2024-008292APL. The Conditional Use authorization was issued pursuant to Planning Code Sections:

- 121.2 - Non-Residential Use Size,
- 303 - Conditional Use Authorization,
- 317 - Loss of Residential and Unauthorized Units Through Demolition, Merger, and Conversion, and
- 752 - Moderate Scale Neighborhood Commercial Transit District (NCT-3) Zoning District.

The subject site is located at 4100 3<sup>rd</sup> Street (Lot 032 of Assessor’s Block 5260) and zoned NCT-3, Moderate Scale Neighborhood Commercial Transit District. The proposed project would establish a use greater than 6,000 square feet in size and convert an existing two-story over basement, mixed-use building with eight Group Housing units into an approximately 6,123 square-foot Social Service Facility Use (D.B.A. “Friends Of The Children- Sf Bay Area”). The proposal also includes an Outdoor Activity Area.

This memorandum addresses the appeal to the Board, filed on February 10, 2025, by Bivett Brackett, D.B.A. Big Black Brunch.

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.

## **Site Description & Present Use**

The approximately 8,219 square-foot lot is located on the west side of Third Street, between Hudson and Innes Avenues,. The subject property is developed with a two-story basement, mixed-use building located at the northeast section of the property. The remaining portion of the subject property is made up of surface parking lot and yard space. The approximately 6,123 square-foot mixed-use building legally consists of a commercial space on the basement and first floors and a Group Housing with eight rooms and common kitchen and bathroom on the second floor. The Group Housing space is accessed via independent stairs and entry along Third Street. Developed circa 1900, the existing building is considered Historical Resources (“Class A”) per the California Environmental Quality Act (CEQA). The commercial space is currently legally authorized as a Restaurant Use and is occupied by “Bayview Makers Kitchen”. The second floor was occupied by an unauthorized social service, “We are Church,” for 10 years till approximately 2024.

## **Surrounding Properties and Neighborhood**

The subject property is located within the Moderate Scale Neighborhood Commercial Transit (NCT-3) Zoning District, Third Street Alcohol Special Use District, the 65-J Height and Bulk District, and Bayview neighborhood. It is also adjacent to the Potrero Hill and Bernal Heights neighborhoods. The NCT-3 Zoning District is located to the north, south, and east of the subject property, and the PDR-1-G Zoning District is located to the west of the property. The immediate neighborhood is comprised of mostly single-to-four-story commercial and mixed-use developments, with mixed-use developments consisting of commercial tenant spaces located at the ground floor and residential units located above. The neighborhood includes a mix of land uses including residential, restaurant, automotive uses, and professional services.

## **Project Description**

The proposal is for conversion of an existing two-story basement, mixed-use building with a Restaurant Use at the basement and first floor and eight Group Housing units at the second floor into a Social Service Facility Use. The proposed Social Service Facility Use (D.B.A. “Friends of the Children- SF Bay Area”) will be approximately 6,123 square feet in size and includes an approximately 3,781 square-foot Outdoor Activity Area. Minor interior and exterior alterations are proposed.

## **Background**

On January 9, 2025, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Authorization Application No. 2024-008292CUA and approved the Project by issuing Motion No. 21669.

On January 16, 2025, the Commission discussed a letter addressed to the Commission by Supervisor Shamann Walton regarding the Project under the hearing's Commission Matters. After discussion, the Commission elected to agendaize a discussion on the Project for the following hearing date.

On January 23, 2025, the Commission discussed the Project. After discussion, the Commission requested that Department to evaluate their policy on correspondence shared with the Commission.

## **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 to the criteria of Section 303(c) of this Code, the Commission shall consider the extent to which the following criteria are met:

- a) The intensity of activity in the district is not such that allowing the larger use will be likely to foreclose the location of other needed neighborhood-serving uses in the area.

- b) The proposed use will serve the neighborhood, in whole or in significant part, and the nature of the use requires a larger size to function.
- c) The building in which the use is to be located is designed in discrete elements which respect the scale of development in the district.

Section 317 of the Planning Code establishes criteria for the Planning Commission to consider when reviewing applications to convert residential buildings. In addition to the criteria of Section 303(c) of this Code, the Commission shall consider the extent to which the following criteria are met pursuant to Section 317(g)(3):

- a) Whether conversion of the unit(s) would eliminate only owner-occupied housing, and if so, for how long the unit(s) proposed to be removed were owner occupied;
- b) Whether Residential Conversion would provide desirable new Non- Residential Use(s) appropriate for the neighborhood and adjoining district(s);
- c) In districts where Residential Uses are not permitted, whether Residential Conversion will bring the building closer into conformance with the Uses permitted in the zoning district;
- d) Whether conversion of the unit(s) will be detrimental to the City's housing stock;
- e) Whether conversion of the unit(s) is necessary to eliminate design, functional, or habitability deficiencies that cannot otherwise be corrected;
- f) Whether the Residential Conversion will remove Affordable Housing, or units subject to the Residential Rent Stabilization and Arbitration Ordinance.

## **Appellant Issues and Planning Department Responses**

### **ISSUE 1: Misrepresentation in the Application**

The appellant states there were four misrepresentations within the submitted application. They are:

- The non-profit claims to have 13-16 staff members, yet their most recent 990 tax filings show only five (5) employees, all listed as part of the executive team. This raises questions about the accuracy of their stated need for a larger facility.
- The application falsely implies that the restaurant was not in operation, when in fact, beer and wine were still being served as recently as 2024 under Bayview's Makers Kitchen, where the appellant was a tenant since June 2023.
- The SRO units were occupied-at least two persons lived there, contradicting any claim that the units were vacant or obsolete.
- The claim that the second floor was converted into social services housing is false. The 2013 real estate listings clearly describe the second floor as containing nine (9) intact SRO units, and no

permits were ever issued to alter their use. Physically, the units remain unchanged, meaning the building has continued to serve as housing and has never been legally converted into a social services facility.

**RESPONSE 1:** As listed above, the Conditional Use Authorization was based on the legal land use of the subject property, which includes Restaurant Use at the basement and first floors and Group Housing at the second floor. Note the legal use of the basement and first floors was not for a Catering Use or commercial kitchen. The Application did identify the legal existing tenant at the Restaurant tenant space as “Bayview Makers Kitchen.” As background information, the Application also did recognize that the second floor was previously occupied by the prior property owner, “We are Church”, as an illegal social service use for approximately 10 years. No entitlements or building permits were properly sought or issued for the change of use to a Social Service Use at the second floor. “We are Church” have provided a letter that speaks to their use of the second-floor space. Thus, the request for the Conditional Use Authorization was for the removal of the Group Housing Use at the second floor.

**ISSUE 2: Historical & Cultural Significance of 4100 3rd Street**

The appellant states that the building is an important part of the Bayview’s history and this information was not disclosed for consideration by the Commission.

**RESPONSE 2:** As listed above, the Conditional Use Authorization did reflect the importance of the subject building and did identify it as historic resource, pursuant to California environmental Quality Act (CEQA). According to the Department’s records, 4100 3<sup>rd</sup> Street was included in a historic resource survey from 1976 and is part of a collection of other notable buildings in the surrounding neighborhood. The Project recognizes the subject building as a Historic Resource and the proposed minor exterior and interior alterations will not significantly impact the Historic Resource. The Department did analyze proposed work to the property and did not find any significant adverse impacts to a historic resource.

**ISSUE 3: Preserving Bayview's Commercial Corridor & Economic Development**

The appellant states that the Third Street Corridor is already oversaturated with Social Services and the loss of the subject Restaurant tenant space is an economic setback for the neighborhood and Bayview community, discourage small business development, and limit access to food.

**RESPONSE 3:** From the land use perspective, the subject property is located within the Moderate Scale, Neighborhood Commercial Transit (NCT-3) Zoning District which principally permits Social Service Uses at all floors of a building and principally permits Restaurant Use at the first and second floors. That is a land use entitlement is not required to establish a Social Service at the subject property. In addition, the NCT-3 Zoning District does not contain land use controls that seek to preserve existing Restaurant Uses. Rather, the NCT-3 Zoning District’s goal is to encourage a mix of uses with a special emphasis on neighborhood serving businesses including Social Service Uses. As mentioned above, the neighborhood includes a mix of land uses including residential, restaurant (aside from the subject property), automotive uses, and professional services.

**ISSUE 4: San Francisco's Legal & Moral Obligation to Preserve Housing & Commercial Space**

The appellant states that the San Francisco is required under the Housing Element to preserve and expand affordable housing and maintaining commercial spaces.

**RESPONSE 4:** All Projects are evaluated against the General Plan and all its Elements including the Housing and Community Facilities Elements. It is expected that all Projects will not advance each Element. Therefore, the Department and Commission are tasked with finding a balance. The Commission found that, on balance, the Project was consistent with the Objectives and Policies of the General Plan and Bayview Hunters Point Area Plan. While the Project would not advance the implementation of the Housing Element, the Commission found that the Project would advance the General Plan's Community Facilities Element and Bayview Hunters Point Area Plan's Land Use and Commerce Objective and Policies. Specifically, the Commission found that the Project would provide a community space for underserved children Citywide and in the Bayview neighborhood, that is compatible with the mix of uses in the business district and within proximity to public transportation.

## **Summary Response**

In summary, this listed Application was presented to the Commission with accurate information including identifying the legal use of the subject property, the legal occupancy of the subject property, and its characteristic as a Historic Resource. The Commission thereafter evaluated the request based on the existing land use controls of the NCT-3 Zoning District and the General Plan and Bayview Hunters Point Area Plan, and found that, on balance, the Project was consistent with the Objectives and Policies of the General Plan and Bayview Hunters Point Area Plan.

## **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.