



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Motion XXXXX

HEARING DATE: JANUARY 28, 2016

*Date:* January 21, 2016  
*Case No.:* **2015-006317CUA**  
*Project Address:* **518 Castro Street**  
*Zoning:* Castro Street Neighborhood Commercial District (NCD)  
40-X Height and Bulk District  
*Block/Lot:* 2695/002  
*Project Sponsor:* Dale Gluth  
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San Francisco, CA 94114  
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**ADOPTING FINDINGS RELATING TO THE DISAPPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303.1, 703.3, AND 704.4 OF THE PLANNING CODE TO ALLOW A CHANGE OF USE TO A FORMULA RETAIL PHARMACY WITHIN THE CASTRO STREET NEIGHBORHOOD COMMERCIAL DISTRICT (NCD) AND A 40-X HEIGHT AND BULK DISTRICT.**

### PREAMBLE

On May 20, 2015, Dale Gluth (hereinafter "Project Sponsor") filed an application with the Planning Department (hereinafter "Department") for Conditional Use Authorization under Planning Code Sections 303.1, 703.3, and 703.4 to allow a change of use to allow a Formula Retail pharmacy within the Castro Street Neighborhood Commercial District and a 40-X Height and Bulk District ("Project").

On January 14, 2016, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2015-006317CUA.

The Project is not considered a project requiring review under CEQA Guidelines Sections 15060(c) and 15378 because the proposed use would cause no direct or indirect physical change in the environment.

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 does not authorize the Conditional Use requested in Application No. 2015-006317CUA, 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 is located on the west side of Castro Street, between 18<sup>th</sup> and 19<sup>th</sup> Street, Block 2695, Lot 002. The subject property is located within the Castro Street Neighborhood Commercial District ("NCD") and the 40-X Height and Bulk District. The property is developed with a two-story mixed-use building, with tenants including three retail stores on the ground level and two residential units on the second level. The Project sponsor currently operates a medical clinic at the property and proposes to relocate an existing Aids Healthcare Foundation ("AHF") pharmacy to a portion of 518 Castro Street that is currently vacant.
3. **Surrounding Properties and Neighborhood.** The area surrounding the project site is mixed-use in character. A variety of commercial establishments are located within ground floor storefronts in the Castro Street NCD, including restaurants, bars, apparel stores, convenience stores, and other types of retailers. Buildings in the vicinity typically range from two to three stories in height. Upper floors of buildings are generally occupied by offices or residential units.

Of the approximate 43 commercial establishments within 300 feet of the subject property, there are approximately 7 formula retail establishments, including Walgreens, Bank of America, Wells Fargo, Starbucks, and State Farm, amounting to about 16% formula retail. The subject Project would relocate an existing formula retail establishment.

4. **Project Description.** The project sponsor proposes to relocate an existing pharmacy d.b.a. "Aids Health Foundation (AHF) Pharmacy" from its present location at 4071 18<sup>th</sup> Street to the project site at 518 Castro Street. The business would be relocated from its current location to provide centrally located services for clientele. Between the hours of 9:00AM to 7:00PM Mondays through Fridays and 9:00AM to 12:00PM on Saturdays, the business would fill prescriptions for its clientele. Products sold at the current pharmacy location are exclusively pharmaceutical. The existing clinic located at 518 Castro Street is separate from the proposed pharmacy sales and consultant area, approximately 68 linear feet from the front door. The project also includes interior tenant improvements and minor alterations to the existing awning.

At its current location at 4071 18<sup>th</sup> Street, the AHF Pharmacy serves approximately 1,300 clients. A slight increase in demand is anticipated in the new location given the combination of the pharmacy and clinic into one location.

The proposal requires a change of use, and Section 312-neighborhood notification was conducted in conjunction with the Conditional Use Authorization process. The proposed use is a neighborhood-serving use.

The proposed pharmacy would employ 15 employees, with three vacancies. The majority of the existing employees live in the immediate surrounding area and take transit to get to work. Only one employee commutes using their personal car on the days they are not dropped off to work. The subject site is well served by public transit so that potential customers should not adversely affect the traffic flow.

5. **Public Comment.**

- To date, the Department has received four communications in support from the following:
  - Tyler Deutscher, General Manager of Knobs Retail and Outfit Castro,
  - Curtis Moore, Executive Director of Bay Area Young Positives,
  - Marsha Martin, Director of Get Screened Oakland,
  - Kaushik Roy, Executive Director of Shanti Project.
- Additionally, the Project Sponsor submitted a petition in support of the project relocation from 4071 18<sup>th</sup> Street to 518 Castro Street to consolidate medical and pharmacy services in one location. This petition included 32 signatures.
- To date, the Department has received four communications in opposition to the project from the following:
  - Castro/Upper Market Community Benefit District,
  - Jim Manning, community member,
  - Gary Weiss, board member of the Duboce Triangle Neighborhood Association (DTNA) and a member of the Upper Market Alliance (UMA), and
  - Castro Merchants
- The Project Sponsor also conducted a brief survey inquiring patrons if they had a choice, would they prefer to receive medical and pharmacy services in one location. There were a total of 224 responses, broken down as follows:
  - Yes = 153 or about 68%
  - No = 18 or about 8%
  - No Preference / Don't Care = 37 or about 17%
  - Incomplete = 16 or about 7%

6. **Planning Code Compliance:** The Commission finds that the Project is inconsistent with the relevant provisions of the Planning Code in the following respects:

- A. **Formula Retail.** Planning Code Section 703.3 provides additional criteria for the Planning Commission to consider when considering any discretionary review pursuant Section 703.3, Formula Retail Uses:

- a. The existing concentrations of formula retail uses within the district.

*Of the 43 lots with a 300' vicinity of the subject property, 7 are Formula Retail for a total of about 16%. This comprises about 443 linear feet of street frontage, or 22%, of the street frontage within the 300' vicinity of the subject property. One of these Formula Retail uses is the existing AHF Pharmacy located at 4071 18<sup>th</sup> Street.*

- b. The availability of other similar retail uses within the district.

*The Commission and members of the public commented that there are at least three other pharmacies within a one (1) block walk from the Project site, and up to eleven (11) other pharmacies in the Castro Street Neighborhood Commercial District, including the existing Aids Health Foundation (AHF) pharmacy, and pharmacies located in two other formula retail businesses (Walgreens and Safeway). The existing pharmacies adequately provide the neighborhood's pharmaceutical needs through formula retail outlets.*

- c. The compatibility of the proposed formula retail use with the existing architectural and aesthetic character of the district.

*The proposal includes minor alterations to the existing awning. Members of the public expressed concern that this alteration was incompatible with the existing aesthetic character of the district. In addition, the Commission finds that the use of a ground floor retail space in this high traffic area of the District for an inactive (pharmacy) use is incompatible with the aesthetic of the district.*

- d. The existing retail vacancy rates within the district.

*There are currently two (2) vacant lots within a 300' vicinity of the subject property. This comprises about 5% of the lineal footage within the 300' vicinity of the subject property. There are approximately six (6) vacancies within the immediate Castro/Upper Market Street neighborhood.*

*In consolidating its pharmacy and clinic, AHF will be creating one (1) additional vacancy in the neighborhood. Members of the Commission expressed concerns regarding the impacts this potential new vacancy would have on the Castro Street Neighborhood Commercial District.*

- e. The existing mix of Citywide-serving retail uses and neighborhood-serving retail uses within the district.

*Daily Needs: There are currently 33 daily needs-businesses within a 300' vicinity of the subject property. This comprises about 1,953 linear feet, or 89%, of the street frontage within 300' vicinity of the subject property. This is also about 19% of the number of storefronts in this same area.*

*Citywide Services: There are currently eight (8) citywide-businesses within a 300' vicinity of the subject property. This comprises about 243 linear feet, or 11%, of the street frontage within 300'*

*vicinity of the subject property. This is also about 77% of the number of storefronts in this same area.*

- f. Additional data and analysis set forth in the Performance-Based Design Guidelines adopted by the Planning Commission.

*Of the approximate 43 commercial establishments within 300 feet of the subject property, there are approximately 7 formula retail establishments, including Walgreens, Bank of America, Wells Fargo, Starbucks, and State Farm, amounting to about 16% formula retail.*

**Table 1. Ground Floor Frontage Breakdown per Land Use within 300' Vicinity of Subject Property<sup>1</sup>**

LAND USE TYPE	STREET FRONTAGE TOTAL (FEET)	STREET FRONTAGE PERCENTAGE (%)
Animal Hospital	0	0.00%
Financial Services	236	9.96%
Institutional	0	0.00%
Limited-Restaurant	86	3.63%
Liquor Store	0	0.00%
Medical Service	0	0.00%
Movie Theater	0	0.00%
Personal Service	546	23.04%
Professional Service	213	8.99%
Restaurant	104	4.39%
Retail	1011	42.66%
Vacant	174	7.34%
<b>Total</b>	<b>2370</b>	<b>100.00%</b>

- g. For formula retail uses of 20,000 square feet or more, except for General or Specialty Grocery stores as defined in Articles 2, 7, 8 of this Code, the contents of an economic impact study prepared pursuant to Section 303(i) of the Planning Code.

*As the subject retail use is less than 20,000 square feet, an economic impact study is not required for this project.*

- B. **Use Size.** Planning Code Section 715.21 permits use sizes up to 1,999 square feet, with a Conditional Use Authorization required for use sizes of 2,000 square feet and above, as defined by Planning Code Section 790.130.

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<sup>1</sup> The Ground Floor Frontage Breakdown per Land Use within 300' Vicinity of Subject Property table was developed using data collected by the project sponsor and reviewed by Planning Department Staff in 2015.

*The proposed use size of the pharmacy is 1,232.*

- C. **Outdoor Activity.** Planning Code Section 721.24 permits Outdoor Activity Areas in front of building, with a Conditional Use Authorization required if located anywhere else, as defined by Planning Code Section 790.70.

*The Project Sponsor does not intend to establish an outdoor activity area.*

- D. **Hours of Operation.** Planning Code Section 715.27 permits hours of operation from 6:00AM to 2:00AM, with a Conditional Use Authorization required for maintaining hours of operation from 2:00AM to 6:00AM, as defined by Planning Code Section 790.48.

*The current hours of operation for the business are 9:00AM to 7:00PM Mondays through Fridays and 9:00AM to 12:00PM on Saturdays. Members of the Commission had concerns that the existing businesses had limited hours of operation, and constituted an inactive use which posed concerns for a lack of activity on the street frontage.*

- E. **Rear Yard Requirement in the Castro Street NCD.** Planning Code Section 134 states that the minimum rear yard depth shall be equal to 25 percent of the total depth of a lot in which it is situated, but in no case less than 15 feet.

*The proposal does not include any structural expansion.*

- F. **Parking.** Planning Code Section 715.22 does not require off-street parking for commercial uses if occupied floor area is less than 5,000 square feet.

*The Subject Property does not propose any off-street parking.*

- G. **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 16 feet 5 inches of frontage on Castro Street with almost 100% devoted to either the business entrance or window space. The windows are clear and unobstructed. There are no changes proposed to the commercial frontage. Members of the Commission expressed concern that the proposed pharmacy use would not adequately activate this area of Castro Street.*

- H. **Signage.** Any proposed signage will be subject to the review and approval of the Planning Department per Article 6 of the Planning Code.

*The proposal included minor alterations to the existing awning.*

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.

*Members of the Planning Commission have indicated that the proposed formula retail pharmacy was a largely inactive use, is duplicative of services provided by other retailers in the neighborhood, and is therefore not desirable or compatible with the neighborhood. Furthermore, there was strong neighborhood opposition to the project. Many neighbors indicated that the business did not serve local neighborhood residents. When the Commission inquired about how many local residents the business served or the percentage of clientele living within the Castro Street Neighborhood Commercial District, the project sponsor repeatedly declined to provide an estimate to either inquiry. Members of the Commission took this into consideration. Based on this and other observations, the Commission was unable to make findings that granting Conditional Use Authorization would provide a development which was necessary or desirable for the project to relocate an existing formula retail pharmacy.*

- 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 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 1,232 square feet retail use. Neighbors of the proposed Project site expressed concern that the Project was not intended to serve neighborhood residents, and noted that no neighbors of the Project site appeared to speak in favor of the Project. When the Commission inquired about how many local residents the business served or the percentage of clientele living within the Castro Street Neighborhood Commercial District, the project sponsor was unable to provide an estimate to either inquiry. Without this information, the Commission could not assess the amounts of vehicular trips from throughout or even beyond the city limits. Members of the Commission took this information into consideration and had concerns that the Project would not serve neighborhood residents.*

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

*The Project would operate a formula retail pharmacy in an existing retail storefront. No noxious or offensive emissions would result from the proposed or reduced addition. All construction would be completed in compliance with the San Francisco building code and would adhere to guidelines which control for noise, glare, dust and odor.*

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

*The proposed Project would maintain the existing entrance and make minor modifications to the existing awning. The Project does not require parking or new loading. Members of the Commission expressed concern that the proposed use would not activate this location on Castro Street, but would rather create an inactive storefront space.*

- 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 generally complies with all relevant requirements and standards of the Planning Code; however, the Commission finds that the Project does not meet the requirement that it is necessary and desirable for the Commission to grant Conditional Use Authorization to approve this formula retail pharmacy use. The project is inconsistent with objectives and policies of the General Plan as detailed below.*

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

## COMMERCE AND INDUSTRY

### Objectives and Policies

#### OBJECTIVE 1:

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.



**Policy 1.3:**

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

*The Project Site is located within a Neighborhood Commercial District; however there was strong neighborhood opposition. Members of the Commission felt the proposed development will not provide desirable goods and services to the neighborhood because there are a significant number of existing pharmacies in close proximity to the Project Site. In addition, neighbors and members of the Commission expressed concern that the Project would create an inactive space in a ground floor retail space in an active block of Castro Street.*

**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 retain an existing commercial activity, but will not enhance the diverse economic base of the City because there are a significant number of existing pharmacies in close proximity to the Project Site. In addition, neighbors and members of the Commission expressed concern that the Project would create an inactive space in a ground floor retail space in an active block of Castro Street.*

**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.

*Approval of the Conditional Use Authorization would create a vacancy in the Castro Street Neighborhood Commercial District. Members of the Commission and neighbors expressed concerns related to the number of existing pharmacies in the immediate Project area, and the lack of an active street front use of the Project Site by the proposed pharmacy.*

The following guidelines, in addition to others in this objective for neighborhood commercial districts, should be employed in the development of overall district zoning controls as well as in the review of individual permit applications, which require case-by-case review and City Planning Commission approval. Pertinent guidelines may be applied as conditions of approval of

individual permit applications. In general, uses should be encouraged which meet the guidelines; conversely, uses should be discouraged which do not.

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 proposed project would not enhance the neighborhood-serving retail base by providing one additional household to patronize existing businesses. Although the business may create three more employment opportunities for the community, members of the Commission believed that there were limited hours of operation and this would be an inactive use.*

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

*The existing units in the surrounding neighborhood, including those at the second level of the property, would not be adversely affected. However, members of the Commission found that this use was neither necessary nor desirable for the community*

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

*The city's supply of affordable housing will not be adversely affected by the proposal.*

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

*The site is on Castro Street and is well served by transit. The Muni Castro Street Station is around the corner on Castro and Market Streets, and is served by the L-Taraval, M-Ocean View, and K-Ingleside/T-Third Street lines. When the Commission inquired about how many local residents the business served or the percentage of clientele living within the Castro Street Neighborhood Commercial District, the project sponsor refused to provide an estimate to either inquiry. Members of the Commission took this into consideration and had concerns that the project would not serve neighborhood residents.*

- 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 would not displace any service or industry establishment. The project would 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 achieves the greatest possible preparedness to protect against injury and loss of life in an earthquake.

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

- G. That landmarks and historic buildings be preserved.

*There would be no negative impact on any landmarks or historic buildings.*

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

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

10. The Project is inconsistent 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 or constitute a beneficial development.
11. The Commission hereby finds that approval of the Conditional Use authorization would not promote the health, safety and welfare of the City.
12. In disapproving the Conditional Use Authorization, the Commission understands that existing AHF Pharmacy located at 4071 18<sup>th</sup> Street will remain.

## 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 **DISAPPROVES Conditional Use Application No. 2015-006317CUA**.

**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. XXXXX. 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 January 28, 2016.

Jonas P. Ionin  
Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: January 28, 2016