



SAN FRANCISCO PLANNING DEPARTMENT

Memo to the Planning Commission

HEARING DATE: APRIL 27, 2017
Continued from the April 13, 2017 Hearing

Date: April 20, 2017
Case No.: 2016-005702CUA
Project Address: 524A CLEMENT STREET
Zoning: Inner Clement Street Neighborhood Commercial District
40-X Height and Bulk District
Block/Lot: 1427/017
Project Sponsor: JC American, LLC
c/o Philip Lesser
555 Laurel Avenue, #501
San Mateo, CA 94401
Staff Contact: Laura Ajello – (415) 575-9142 or laura.ajello@sfgov.org
Recommendation: **Disapproval**

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

BACKGROUND

On April 13, 2017, the San Francisco Planning Commission conducted a duly noticed public hearing on Conditional Use Application No. 2016-005702CUA proposing to legalize a Formula Retail use (d.b.a. Cricket Wireless) established without Conditional Use Authorization. After considering the facts of the case and hearing public testimony, the Planning Commission voted 5-0 (Johnson, Moore absent) to adopt a Motion of Intent to disapprove the request for Conditional Use authorization and continued the item to the April 27, 2017 hearing so that a draft motion of disapproval could be prepared for the Commission's consideration.

REQUIRED COMMISSION ACTION

The Commission must adopt the attached Draft Motion to disapprove case No. 2016-005702CUA.

RECOMMENDATION: Disapproval

Attachments:

Disapproval Draft Motion

This page intentionally left blank.



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- | | |
|--|--|
| <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 |

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Planning Commission Draft Motion

HEARING DATE: APRIL 27, 2017

Case No.: 2016-005702CUA
Project Address: 524a Clement Street
Zoning: Inner Clement Street Neighborhood Commercial District
40-X Height and Bulk District
Block/Lot: 1427/017
Project Sponsor: JC American, LLC
c/o Philip Lesser
555 Laurel Avenue, #501
San Mateo, CA 94401
Property Owner: Yee Family Trust
524 Clement Street
San Francisco, CA 94118
Staff Contact: Laura Ajello – (415) 575-9142 or laura.ajello@sfgov.org

ADOPTING FINDINGS RELATING TO THE DISAPPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303, 303.1, 703.4 and 716.40 OF THE PLANNING CODE TO LEGALIZE THE ESTABLISHMENT OF A FORMULA RETAIL STORE (D.B.A. CRICKET WIRELESS, A SUBSIDIARY OF AT&T), WITHIN THE INNER CLEMENT STREET NEIGHBORHOOD COMMERCIAL DISTRICT (NCD) ZONING DISTRICT AND A 40-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On September 6, 2016, JC American, LLC (hereinafter “Project Sponsor”) filed an application with the Planning Department (hereinafter “Department”) for Conditional Use Authorization under Planning Code Sections 303, 303.1, 703.4 and 716.40 to legalize a Formula Retail use (d.b.a. [Cricket Wireless](#), a subsidiary of AT&T, that sells mobility products and services, including mobile telecommunication devices, plans, accessories, and technical services), established without Conditional Use Authorization on the ground floor of the four-story mixed-use building within the Inner Clement Street NCD and a 40-X Height and Bulk District.

On April 13, 2017, the San Francisco Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2016-

005702CUA. After considering the facts of the case and hearing public testimony, the Planning Commission voted 5-0 to adopt a Motion of Intent to disapprove the request for Conditional Use authorization. At that time the hearing was continued to April 27, 2017 so that a draft motion of disapproval could be prepared for the Commission's consideration.

On April 27, 2017, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2016-005702CUA.

The Project is exempt from the California Environmental Quality Act ("CEQA") as a Class 1 categorical exemption. The Commission has reviewed and concurs with said determination.

The Planning Department, Jonas P. Ionin, is the custodian of records, located in the File for Case No. 2016-005702CUA at 1650 Mission Street, Fourth Floor, San Francisco, California.

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 disapproves the Conditional Use Authorization requested in Application No. 2016-005702CUA.

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.** The project is located on the north side of Clement Street, between 6th and 7th Avenues, Block 1427, Lot 017. The subject property is located within the Inner Clement Street Neighborhood Commercial District (NCD) and the 40-X Height and Bulk District. The property is developed with a four-story commercial building. The Cricket store is located on the ground floor; there are four residential units above. The building, constructed circa 1900, occupies approximately three-quarters of the 2,888 square foot lot. The property contains no off-street parking.

The tenant space was occupied by a Retail Sales and Service use (d.b.a. Pacific Books and Arts) until spring of 2014 previously Cricket Wireless began occupancy shortly thereafter without a Conditional Use Authorization for Formula Retail and installed the existing wall sign without a permit.

3. **Surrounding Neighborhood.** The Inner Clement Street NCD extends along Clement Street between Funston Avenue and Arguello Boulevard and along 6th and 7th Avenues mid-block to Geary Boulevard. The district provides a wide selection of convenience goods and services for

the residents of the Inner Richmond neighborhood. Inner Clement Street has one of the greatest concentrations of restaurants of any commercial street in San Francisco, drawing customers from throughout the City and region.

The area surrounding the project site is mixed-use in character. A variety of commercial establishments are located within first story storefronts, including restaurants, personal services, laundromats, grocery stores and other types of retailers. Buildings in the vicinity typically range from two to four stories in height. Upper floors of buildings are generally occupied by offices or residential units. The Inner Clement NCD is bounded by residential and mixed-uses in the surrounding RM-1 (Residential, Mixed) District. This district is in close proximity to major east-west thoroughfare and thriving commercial district on Geary Boulevard.

4. **Project Description.** The project sponsor proposes to legalize an approximately 818 square-foot Formula Retail Sales and Service use (electronics store d.b.a. Cricket Wireless, a subsidiary of AT&T, that sells mobility products and services, including mobile telecommunication devices, plans, accessories and technical services) in an existing commercial space formerly occupied by another Retail use (d.b.a. Pacific Books and Arts). The store offers products, accessories, services and support for Cricket wireless customers. The hours of operation are from 11 a.m. to 7 p.m. daily. The store employs approximately four employees. The project includes one new non-illuminated wall sign to replace the existing sign.

Cricket Wireless is a national telecommunications corporation headquartered in Atlanta with seven (7) other San Francisco locations, two of which were legalized by the Planning Commission in March 2017.

5. **Public Comment.** The Department received 51 letters of support for the proposed project and 79 letters opposed to the project, including two letters from the Clement Street Merchants Association. Signatures were not checked for duplication. All public comment is available in the case docket.
 - Merchant Associations and Inner Clement Street merchants in opposition to the project include: Clement Street Merchants Association, San Francisco Council of District Merchants Associations, Inner Cement Street businesses including: Green Apple Books, Burma Superstar Restaurant, Richmond New May Wah Supermarket, Village Pizzeria, Blue Danube Coffee Shop, Toy Boat Dessert Café, Aroma Tea Shop, and Foggy Notion.
 - Merchant Associations and merchants in support of the project include: None.
 - At the April 13, 2017 Planning Commission hearing on the Conditional Use application speakers opposed to the project included District 1 Supervisor Sandra Lee Fewer, Michael Bush of the Clement Street Merchants Association, Henry Karnilowicz of San Francisco Council of District Merchants Associations, and numerous Clement Street business owners.

The original project sponsor held a pre-application community outreach meeting on March 24, 2016. A second meeting was held by the current sponsor on September 13, 2016.

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. Street Frontage in Neighborhood Commercial Districts.** Planning Code Section 145.1 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 first 25 feet of building depth on the Clement Street frontage is devoted to an active retail use. The primary façade of the subject storefront is glazed. The mixed-use building has approximately 26 feet of frontage on Clement Street with approximately 13 feet devoted to the commercial entrance and window space. No obscured glazing or other elements that would reduce the level of transparency is used.

- B. Off-Street Parking and Loading.** Section 151 requires retail stores to provide one parking space for every 500 square feet of occupied floor area, where the occupied floor area exceeds 5,000 square feet. Section 155(i) requires one handicapped parking space for each 25 off-street parking spaces provided. Section 155(j) requires 1 bicycle space for every 20 off-street parking spaces provided.

The project does not occupy more than 5,000 square feet of floor area, and is therefore not required to provide off-street parking.

- C. Loading.** Section 152 requires off-street freight loading for uses above a certain size. Eating Retail uses up to 10,000 square feet in gross floor area are not required to provide off-street freight loading.

The project is less than 10,000 square feet in gross floor area and is therefore not required to provide off-street freight loading.

D. Hours of Operation. Pursuant to Sections 716.27 of the Planning Code, permitted hours of operation are limited to 6:00 a.m. to 2:00 a.m. and require conditional use from 2:00 a.m. to 6:00 a.m.

The proposed daily hours of operation are 11 a.m. to 7 p.m. are within permitted hours of operation.

7. Conditional Use Authorization. Planning Code Section 303(c) establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the project does not comply with said criteria in that:

- 1) 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.

According to testimony at the public hearing by District 1 Supervisor Sandra Lee Fewer, the Inner Clement Street Merchants Association and its members, the proposed formula retail use will not provide a development that is necessary or desirable at this location. There are a number of similar establishments in the neighborhood, which is characterized by independently-owned businesses. The project displaced the former book store located in this tenant space and displaced a second business when Cricket temporarily opened a second location at 455 Clement Street.

- 2) 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) Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

The size and shape of the site and the size, shape and arrangement of the building will not be altered as part of this project. The proposed work will not affect the building envelope.

- 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;

The Project will not affect public transit or overburden the existing supply of parking in the neighborhood. Clement Street has traditionally served as a pedestrian-oriented shopping street providing retail goods and services to the Inner Richmond community. The project site is well-served by public transit and existing street parking and loading spaces. Several MUNI transit lines run directly in front of near the site. Transit lines serving the site area include the 1-California, 2-Clement, 38-Geary, 38L-Geary, 33-Ashbury and 44-O'Shaughnessy.

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

The Project will not produce noxious or offensive emissions related to noise, glare and dust.

- d) 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. The proposed non-illuminated 18-inch high wall sign complies with the requirements of the Planning Code and Formula Retail signage guidelines.

- 3) That the use as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

The Planning Commission found that the Project does not comply with all relevant requirements and standards of the Planning Code and is not consistent with objectives and policies of the General Plan as detailed below.

- 4) That the use as proposed would provide development that is in conformity with the purpose of the applicable Neighborhood Commercial District.

The Planning Commission found that the proposed Formula Retail use was not in conformity with the purpose of the applicable Neighborhood Commercial District. The Inner Clement Street NCD provides a wide selection of convenience goods and services for the residents of the Inner Richmond neighborhood. The pleasant pedestrian character of the district is derived directly from the intensely active retail frontage on Clement Street. The proposed project is not consistent with the stated purpose of the Inner Clement Street NCD in that the Project displaced two former non-formula retail merchants and does not maintain a harmony of uses that supports the district's vitality.

- 8. **Formula Retail.** Planning Code Section 303.1 provides additional criteria for the Planning Commission to consider when considering any conditional use pursuant Section 303.1, Formula Retail Uses:

- a. The existing concentrations of Formula Retail uses within the district.

There are 13 existing Formula Retail establishments out of 236 retail establishments within the Inner Clement Street NCD Zoning District. Therefore, the existing intensity of Formula Retail uses is approximately 6% of all businesses within the district. The proposed establishment would increase the concentration of Formula Retail establishments by less than 1%, which is a nominal increase in the Formula Retail commercial frontage in this district. While the introduction of a

new formula retail use would not result in an overconcentration of such uses, it would alter the character of this portion of Clement Street by introducing a business that is not independently-owned.

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

The Inner Clement Street NCD is located on Clement Street between Arguello Boulevard and Funston Avenue in the eastern portion of the Richmond District. Within the vicinity of the project site there are two similar wireless stores (d.b.a Cell and Verizon) located at 201a and 440 Clement Street and three authorized wireless dealers (d.b.a. JUD Global, RadioShack and Impact Communication) located at 658 and 701 and 918 Clement Street. Since several businesses already provide wireless services, the neighborhood is already well-served by similar retail uses and like merchandise.

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

The project sponsor does not propose alterations to the building that would change the architectural and aesthetic character of the Neighborhood Commercial District. The project occupies a commercial space previously occupied by another Retail use (d.b.a. Pacific Books and Arts) with no exterior alterations are proposed other than signage.

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

According to the Project Sponsor, the vacancy rate within the project area is approximately 8%. There are 20 vacancies within the Inner Clement Street NCD fronting on Clement Street and seven in the ¼ mile vicinity.

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

Of the occupied Retail uses in the Inner Clement Street NCD, 35% (82) of the occupied retail uses are considered "Daily-Needs," or neighborhood-serving; of these, eight are Formula Retail. The remaining 65% (154 locations) of locations which do not serve daily needs is composed of 87 other retail uses, 74 restaurants, 23 medical offices, among other miscellaneous uses. The proposed Formula Retail use does not qualify as a "Daily-Needs" use. The proposed project could detrimentally alter the existing mix of Citywide-serving retail uses and neighborhood-serving retail uses as the proposed project is a business which sells wireless products and services in an area where it has been demonstrated that such businesses already exist.

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

Of the 236 commercial establishments within the Inner Clement Street NCD, there are 13 Formula Retail establishments amounting to 6% Formula Retail. The subject project would add an additional Formula Retail establishment to the district, increasing the intensity by less than 1%. There is a high concentration of commercial storefronts in the district, with two similar wireless stores and several businesses that act as authorized wireless dealers.

- 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.

Table 1. Inner Clement Street NCD Ground Floor Frontage Breakdown per Land Use ¹

Land Use Type	Clement St. Frontage Total (linear feet)	Clement Street % Concentration	¼ Mile Vicinity Frontage Total (feet)	Vicinity % Concentration
Automotive	0	0	1155	21%
Bar	200	2%	235	4%
Financial	725	8%	400	7%
Limited-Restaurant	240	3%	175	3%
Liquor Store	215	2%	125	2%
Medical	445	5%	165	3%
Mortuary	0	0	550	10%
Personal Service	1260	13%	395	7%
Professional Service	45	0%	110	2%
Other Retail	3385	36%	1055	20%
Restaurant	2155	23%	795	15%
Trade Shop	34	0%	0	0%
Vacant	710	8%	225	4%
Total	9425	100%	5385	100%

¹ The Inner Clement Street NCD Land Use table was developed using data collected by the project sponsor and reviewed by Planning Department Staff in 2017.

9. **General Plan Compliance.** The Project is, on balance, is not consistent with the 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 1.3:

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

The proposed development would not have a substantial net benefit as similar products are offered through existing stores in the neighborhood. The proposed formula retail wireless store would negatively affect the diversity of this portion of Clement Street by adding another formula retail use, which would erode the existing character of the area.

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.

While the proposed use could bring additional commercial activity to the City, given the proposed use's competitive advantage, it could have the undesirable consequence of harming the non-formula retail businesses in the area.

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.

Two Inner Clement commercial tenants were displaced as a result of the opening of two Cricket wireless stores by the applicant. The project at 524A Clement Street would prevent the district from achieving optimal diversity in the types of goods and services available in the neighborhood. The proposed use would not help to preserve existing neighborhood-serving retail uses nor would it promote economically vital neighborhood commercial districts that foster small business enterprises or entrepreneurship. Formula retail businesses could potentially put pressure on existing businesses for higher rents. Higher rents may prohibit a new independent business from locating in the subject neighborhood where many have started and sustained.

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.

The Project is a formula retail use and is not considered a small business enterprise. Formula retail businesses may have a competitive advantage over independent retailers because they are typically better capitalized and can absorb larger startup costs, pay more for lease space, and commit to longer lease contracts. This can put pressure on existing businesses and potentially price out new startup independent businesses, which will negatively impact the economic vitality of the Inner Clement NCD.

10. **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 Project displaced two Clement Street NCD neighborhood-serving retail uses. The proposal would not retain the previous mix of neighborhood-serving retail uses by continuing a Formula Retail in operation at the subject site since spring 2014. The proposal would not enhance the district by providing another retail outlet for wireless customers. The area contains two other wireless stores and numerous authorized wireless dealers.

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

Existing residential units at the subject site and in the surrounding neighborhood would not be adversely affected by the Project. The proposal does not affect housing or change the character of the historic building.

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

The Project would not have any impact on the City's supply of affordable housing.

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

The Project would not adversely affect public transit or place a burden on the existing supply of parking in the neighborhood. The site is well served by transit. Several MUNI transit lines run directly in front or near the site. Transit lines serving the site area include the 1-California, 1BX-California, 2-Clement, 28-19th Avenue, 28R-19th Avenue, 38-Geary, 38L-Geary, 33-Ashbury and 44-O'Shaughnessy.

- 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 due to commercial office development. The Project does not include commercial office development. 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.

This proposal will not affect the property's ability to withstand an earthquake.

- G. That landmarks and historic buildings be preserved.

The existing building is not a City Landmark, and has not been studied as a historic building.

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

The project will have no effect on existing parks and open spaces.

11. The Project is not 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 not contribute to the character and stability of the neighborhood and would not constitute a beneficial development.
12. The Commission hereby finds that approval of the Conditional Use Authorization would not 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 **DISAPPROVES** Conditional Use Application No. 2016-005702CUA.

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.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on April 27, 2017.

Jonas P. Ionin
Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: April 27, 2017