



## MEMO TO THE PLANNING COMMISSION

Hearing Date: October 24, 2019

*Date:* 10/15/2019  
*Case No.:* **2017-000655CUA**  
*Project Address:* **458 GROVE ST**  
*Zoning:* NCT (HAYES NCT)  
40-X  
*Block/Lot:* 0793/014  
*Project Sponsor:* Angela Valgiusti  
458 Grove Street  
San Francisco, CA 94102  
*Staff Contact:* Nancy Tran – 415-575-9138  
nancy.h.tran@sfgov.org  
*Recommendation:* **None-Informational**

### BACKGROUND

On July 2, 2017, the Planning Commission (“Commission”) reviewed a request for Conditional Use Authorization (Case No. 2017-000655CUA) pursuant to Sections 145.2 and 303 of the Planning Code, to authorize an outdoor patio area for the existing Restaurant (D.B.A. “Birba”). At that hearing, the Commission heard testimony about concerns over potential noise impacts as a result of the outdoor patios. In response to those concerns, the Commission added a condition of approval that limited operation of the outdoor patio to 10 P.M. and 26 people (no restrictions were placed on restaurant operating hours, the district principally permits 6A.M. to 2A.M.). The Commission then approved project as set forth in Motion No. 19969, and requested a Written Performance Update to occur one year following the commencement of operations. This memo serves as the one-year update as the Certificate of Final Inspection for the building permit to establish the outdoor patio was completed in October 2018.

On May 9, 2019, a neighbor submitted a complaint to the Planning Department’s Code Enforcement division stating that Birba was in violation of their permit by allowing patrons into the patio past 10 P.M. Planning reviewed both the video and “noise log” included in the complaint and was unable to verify any violation.

- One video recording was timestamped at approximately 11 P.M., however, only the interior of the building was filmed.
- The second clip shows patrons on the outdoor patio timestamped around 4:30 P.M. which is within the timeframe allowed per the approval Motion.
- The noise log listed loud music and talking, however, only one appeared to be beyond 10 P.M. and it does not specify whether the noise was from patrons in the outdoor activity area.

No additional complaints have been filed with the Planning Department. Additionally, staff has verified with SFPD that there have been no noise complaints for the property.

## **REQUIRED COMMISSION ACTION**

This is an informational hearing only; therefore, no Commission action is required. If the Commission wants to amend, add, or rescind the conditions of approval, the Commission must request a separate hearing, which would require additional noticing. Unless the Commission requests additional hearings on this matter, this would be the final informational check-in hearing.

### **Attachments:**

Planning Commission Motion No. 19969

Context Photos

Code Enforcement Complaint Emails

Project Sponsor Email



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Motion No. 19969

HEARING DATE: JULY 20, 2017

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*Case No.:* 2017-000655CUA  
*Project Address:* 458 GROVE STREET  
*Zoning:* Hayes-Gough NCT (Neighborhood Commercial Transit)  
40-X Height and Bulk District  
*Block/Lot:* 0793/014  
*Project Sponsor:* Angela Valgiusti  
458 Grove Street  
San Francisco, CA 94102  
*Staff Contact:* Carly Grob – (415) 575-.9138  
[carly.grob@sfgov.org](mailto:carly.grob@sfgov.org)

**ADOPTING FINDINGS RELATING TO THE APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 145.2 AND 303 OF THE PLANNING CODE TO ESTABLISH AN OUTDOOR ACTIVITY AREA IN THE BACK PATIO OF AN EXISTING RESTAURANT USE (D.B.A. BIRBA) WITHIN THE HAYES-GOUGH NCT (NEIGHBORHOOD COMMERCIAL TRANSIT) DISTRICT AND A 40-X HEIGHT AND BULK DISTRICT.**

### **PREAMBLE**

On January 17, 2017 Angela Valgiusti (hereinafter "Project Sponsor") filed an application with the Planning Department (hereinafter "Department") for Conditional Use Authorization under Planning Code Sections 145.1 and 303 to establish an Outdoor Activity Area in the back patio of an existing restaurant (d.b.a. Birba) within the Hayes-Gough NCT (Neighborhood Commercial Transit) District and a 40-X Height and Bulk District.

On July 20, 2017, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2017-000655CUA.

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. 2017-000655CUA, 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 is located on the north side of Grove Street between Octavia Street and Gough Street, Block 0793, Lot 014. The property is located within the Hayes-Gough NCT (Neighborhood Commercial Transit) District with 40-X height and bulk district. Originally constructed in 1940 as a two-story, single-family dwelling, the building was converted to commercial space in 1994 per Site Permit No. 9400627S. There are 528 square feet of existing restaurant space on the ground floor, doing business as Birba, as well as a 216 square foot garage fronting Grove Street, office space on the second floor, and a landscaped patio at the rear.
3. **Surrounding Properties and Neighborhood.** The Hayes-Gough Neighborhood Commercial Transit District extends along both sides of Octavia Boulevard to Market Street, is bounded by Franklin Street to the east and Laguna Street to the west, and Fulton Street to the North. Generally, the District is surrounded by the RTO (Residential, Transit Oriented) District to the north and west, and the NCT-3 (Neighborhood Commercial Transit District) to the south and north, and the P District to the east (Public). The Hayes-Gough NCT contains a limited range of commercial activity which primarily caters to the neighborhood, but also to visitors and workers from the performance arts venues and Civic Center nearby.

The surrounding properties along Grove Street are 2-3 story mixed-use buildings with residential units over ground floor retail. The Oxenrose Salon is directly adjacent to the property, the block includes a spa d.b.a. Pure Envy Spa Bar, a restaurant d.b.a. Little Gem, a laundromat d.b.a. Pete's Launderette; in addition, there is a 4-story Days Inn Motel located across the street from the Subject Property, as well as an attached restaurant, doing business as Double Decker.

4. **Project Description.** The project proposes to expand the existing restaurant use, doing business as Birba, into the adjacent 216 square foot garage space, which includes the replacement of an existing garage door with a storefront system. The project also includes the construction of a 7' 8" tall pergola on the existing outdoor patio at the rear of the existing building, as well as the addition of outdoor seating for 26 patrons. The project would result in 1,490 square feet of restaurant use.

Birba is an independent use and locally owned restaurant, which has been encouraged throughout San Francisco. The proposed use is a neighborhood-serving use. Birba currently operates Mondays from 5:00 to 9:00 p.m., Tuesdays-Thursdays from noon to 3:00 p.m. and from 5:00 to 10:00 p.m., Fridays from noon to 10:00 p.m. and Saturdays from 3:00 to 10:00 p.m. The sponsor plans to operate the back patio within the existing operating hours.

5. **Public Comment.** To date, the Department has received 52 total letters of support for the project, including nine letters of support from residents on the subject block, 25 letters from Hayes Valley businesses and residents, and a letter from the Hayes Valley Neighborhood Association. These



letters identify the existing restaurant as a community gathering space, and acknowledge the sponsor's continued effort to reduce potential impacts on neighbors. Many letter-writers identify the business operator as considerate, and state that the existing restaurant is an important neighborhood-serving use. The project sponsor has also provided over 1,000 signatures in support of the outdoor activity area. An example signature sheet has been provided as an attachment.

The Department has also received 13 letters in opposition to the project, including four from the adjacent property at 470 Grove, as well as one letter from a neighborhood group known as D5 Action. Most letters state concerns about noise nuisances in resulting from patrons in the back patio.

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. **Outdoor Activity.** Planning Code Section 720.24 states that a Conditional Use Authorization is required for an Outdoor Activity Area, as defined by Planning Code Section 790.70. In addition to the criteria of Section 303(c) of this Code, the City Planning Commission shall find that:

1. The nature of the activity operated in the outdoor activity area is compatible with surrounding uses;
2. The operation and design of the outdoor activity area does not significantly disturb the privacy or affect the livability of adjoining or surrounding residences;
3. The hours of operation of the activity operated in the outdoor activity area are limited so that the activity does not disrupt the viability of surrounding uses.

*The Project Sponsor is seeking authorization to include an Outdoor Activity Area per Planning Code Section 710.24. The proposed Outdoor Activity Area is outdoor seating in existing patio at the rear of the property. The Project Sponsor proposes setting up picnic tables to accommodate a maximum of 26 additional patrons (the restaurant currently has about 20 seats inside). The project sponsor has incorporated soundproofing elements into the design of the back patio, including a pergola at the northwest corner of the lot and substantial planting. The subject property is commercial, and is bounded by commercial properties to the east and to the north. The sponsor has also offered to replace the windows on the adjacent residential building to further mitigate any potential noise impact created by the patio. The outdoor area would be used for dining both day and night. Evening hours in the outside area would be restricted to 10p.m. daily to mitigate neighbors' concerns about potential noise.*

B. **Restaurant Use.** Restaurant uses are principally permitted in the Hayes-Gough NCT, and they require Section 312 Neighborhood Notification.

*The proposal includes the expansion of the existing 528 square foot restaurant use, doing business as Birba, into the adjacent garage and into the back patio. The project would result in approximately 1,490 square feet of restaurant use. Section 312 Neighborhood Notification was completed in conjunction with the notification distributed for the Conditional Use Authorization hearing.*

- C. **Rear Yard Setback in the Hayes Gough NCT.** Planning Code Section 134 states that a rear yard setback is required at the first residential level and above in the Hayes-Gough NCT District.

*The subject property does not include any residential uses; therefore, a rear yard setback is not required at the first or second floor.*

- D. **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. 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 project proposes to expand the existing restaurant use into the adjacent garage with the capacity for one off-street parking space. The existing garage door would be replaced with a storefront system, which would increase transparency and further activate the public realm. Since the proposed restaurant use would be located within the first 25 feet of lot depth, the project would comply with the active use provisions of the Planning Code.*

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 project is necessary and desirable for members of the Hayes Valley community, as the project would allow a local small business owner to expand. The outdoor activity area is compatible with the mixed-use character of the surrounding district and of the subject block. In order to ensure that the project is compatible with the adjacent residential use, the sponsor has incorporated soundproofing measures and has limited occupancy and hours of operation on the back patio. The project would contribute to the economic vitality of the neighborhood by replacing a garage with one off-street parking space with additional commercial uses in a Neighborhood Commercial District.*

- 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 project has been designed to be compatible with its surroundings, and the project sponsor has worked closely with neighbors to ensure compatibility with the existing uses in the vicinity.*

*Converting the existing garage into support area for the restaurant would enhance the pedestrian realm by providing active uses within a Neighborhood Commercial District, and removing the curb cut would also provide one additional off-street parking space and two Class 2 bicycle parking spaces.*

*The sponsor has incorporated both natural and structural elements into the design of the Outdoor Activity Area in order to mitigate noise impacts to neighbors. The project includes a pergola structure at the northwest corner of the property, as well as substantial landscaping.*

- 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 project would eliminate one curb cut along Grove Street, which would add one off-street parking space and would allow the construction of two Class 2 bicycle parking spaces. Traffic conditions would not be substantially altered by this project, as it proposes the expansion of an existing, neighborhood-serving restaurant, which is often frequented by foot, taxi, or public transit.*

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

*The project is not expected to generate any noxious or offensive emissions, glare, dust, or odors. The rear courtyard has been designed to minimize the impacts of its patrons, including the installation of plantings and the pergola structure to limit the emission of noise from the courtyard.*

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

*The project incorporates a number of landscaping and design features to screen the proposed Outdoor Activity Area from adjacent uses and to ensure compatibility with the surrounding context. The project does not include any off-street parking or loading areas, and does not include any new signage.*

- 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 Hayes-Gough NCT is a mixed-use commercial district that contains a limited range of retail commercial activity, which primarily caters to the immediate need of the neighborhood, as well as comparison goods that attract clientele from outside the neighborhood, mostly the Performing Arts and*



*Civic Center workers and visitors. The Hayes-Gough controls are designed to allow for growth and expansion that is compatible with existing uses and scales. The proposed project is consistent with the stated purposed of Hayes-Gough NCT District in that it will enhance a local, neighborhood-serving small business. The proposed Outdoor Activity Area is in a location of the lot that is surrounded by commercial uses on three of four sides. The project protects the existing residential uses as it incorporates soundproofing measures.*

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 WORKINIG 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 development will provide desirable goods and services to the neighborhood and will provide resident employment opportunities to those in the community. The expanded scope of the existing business to include outdoor activity and extended hours of operation will not result in undesirable consequences, as the sponsor has worked closely with neighbors in the vicinity to mitigate any potential noise impacts. Further, 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 retain an existing commercial activity and will enhance the diverse economic base of the City by expanding the linear frontage of active use on the subject property.*

**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.

*The project would allow the project sponsor to enhance an existing neighborhood-serving restaurant with an upstanding reputation in the neighborhood. No 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.*

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.

**Eating and Drinking Establishments**

Eating and drinking establishments include bars, sit-down restaurants, fast food restaurants, self-service restaurants, and take-out food. Associated uses, which can serve similar functions and create similar land use impacts, include ice cream stores, bakeries and cookie stores. Guidelines for eating and drinking establishments are needed to achieve the following purposes:

- Regulate the distribution and proliferation of eating and drinking establishments, especially in districts experiencing increased commercial activity;
  - Control nuisances associated with their proliferation;
  - Preserve storefronts for other types of local-serving businesses; and
  - Maintain a balanced mix of commercial goods and services.
- The regulation of eating and drinking establishments should consider the following:
- Balance of retail sales and services;
  - Current inventory and composition of eating and drinking establishments;
  - Total occupied commercial linear frontage, relative to the total district frontage;
  - Uses on surrounding properties;
  - Available parking facilities, both existing and proposed;
  - Existing traffic and parking congestion; and
  - Potential impacts on the surrounding community.

*The subject restaurant is an eating and drinking establishment, and the project would not result in the proliferation of eating and drinking establishments. The project would create additional commercial frontage where there currently is none, which activates the sidewalk while also providing future*

*opportunities for one or two tenants. The project is not anticipated to have a negative impact on parking or traffic. The project sponsor has worked extensively to mitigate any potential impacts to the surrounding community by incorporating soundproofing measures and implementing limited hours of operation at the proposed outdoor activity area.*

**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 business owner, who is 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 project would enhance an existing neighborhood serving retail use by allowing the restaurant to utilize an existing outdoor space while also enlivening the pedestrian realm. Expansion of the existing business would enhance future employment opportunities, which is consistent with this policy.*

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

*The subject property does not contain residential uses. The project would preserve and enhance the mixed-use character of the area by expanding an existing small business while also taking steps to protect surrounding residential uses. The project would contribute to the cultural and economic diversity of the neighborhood by increasing the diversity of services available in the neighborhood.*

- 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 conversion of a small rear courtyard and existing off-street parking garage into restaurant use is not anticipated to result in any noticeable impact on transit services or neighborhood parking. The elimination of an existing curb cut would add one additional street parking space, and the sponsor proposes to add two Class 2 bicycle parking spaces. The subject property is located along MUNI 21 bus route, and is within close proximity to transit services along Market Street, Van Ness Avenue, and McAllister Street.*

- 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.

*There are no landmarks or historic buildings on the subject property. The existing building is considered a potential historic resource. Minor modifications to the façade, which include the replacement of a garage door with a storefront, have been reviewed by Department preservation staff. The modifications would not have a negative impact the potential resource.*

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

*The project will have no negative impact on existing parks and open spaces. The Project does not have an impact on 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. 2017-000655CUA** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated May 10, 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. 19969. 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 July 20, 2017.



Christine L. Silva  
Acting Commission Secretary

AYES: Fong, Johnson, Koppel, Melgar, Moore

NAYS: None

ABSENT: Hillis, Richards

ADOPTED: July 20, 2017



## EXHIBIT A

### AUTHORIZATION

This authorization is for a conditional use to allow an Outdoor Activity Area at the back patio of an existing restaurant (d.b.a. Birba) located at 458 Grove Street, Block 0793 and Lot 014, pursuant to Planning Code Section(s) 145.1 and 303 within the Hayes-Gough NCT (Neighborhood Commercial Transit) District and a 40-X Height and Bulk District; in general conformance with plans, dated May 10, 2017, and stamped "EXHIBIT B" included in the docket for Case No. 2017-000655CUA and subject to conditions of approval reviewed and approved by the Commission on July 20, 2017 under Motion No 19969. 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 July 20, 2017 under Motion No 19969.

### PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. 19969 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 – COMPLIANCE AT PLAN STAGE

6. **Final Materials.** The Project Sponsor shall continue to work with Planning Department on the building design. Final materials, glazing, color, texture, landscaping, and detailing shall be

subject to Department staff review and approval. The architectural addenda shall be reviewed and approved by the Planning Department prior to issuance.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

7. **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 building permit plans. 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)*

8. **Noise.** Plans submitted with the building permit application for the approved project shall incorporate acoustical insulation and other sound proofing measures to control noise.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

9. **Odor Control Unit.** In order to ensure any significant noxious or offensive odors are prevented from escaping the premises once the project is operational, the building permit application to implement the project shall include air cleaning or odor control equipment details and manufacturer specifications on the plans. Odor control ducting shall not be applied to the primary façade of the building.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

## PROVISIONS

10. **Transportation Sustainability Fee.** The Project is subject to the Transportation Sustainability Fee (TSF), as applicable, pursuant to Planning Code Section 411A.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

## MONITORING - AFTER ENTITLEMENT

11. **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)*

12. **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

13. **Garbage, Recycling, and Composting Receptacles.** Garbage, recycling, and compost containers shall be kept within the premises and hidden from public view, and placed outside only when being serviced by the disposal company. Trash shall be contained and disposed of pursuant to garbage and recycling receptacles guidelines set forth by the Department of Public Works.  
*For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 415-554-5810, <http://sfdpw.org>*
14. **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>*
15. **Noise Control.** The premises shall be adequately soundproofed or insulated for noise and operated so that incidental noise shall not be audible beyond the premises or in other sections of the building and fixed-source equipment noise shall not exceed the decibel levels specified in the San Francisco Noise Control Ordinance.  
*For information about compliance with the fixed mechanical objects such as rooftop air conditioning, restaurant ventilation systems, and motors and compressors with acceptable noise levels, contact the Environmental Health Section, Department of Public Health at (415) 252-3800, [www.sfdph.org](http://www.sfdph.org)*  
*For information about compliance with the construction noise, contact the Department of Building Inspection, 415-558-6570, [www.sfdbi.org](http://www.sfdbi.org)*  
*For information about compliance with the amplified sound including music and television contact the Police Department at 415-553-0123, [www.sf-police.org](http://www.sf-police.org)*
16. **Odor Control.** While it is inevitable that some low level of odor may be detectable to nearby residents and passersby, appropriate odor control equipment shall be installed in conformance with the approved plans and maintained to prevent any significant noxious or offensive odors from escaping the premises.  
*For information about compliance with odor or other chemical air pollutants standards, contact the Bay Area Air Quality Management District, (BAAQMD), 1-800-334-ODOR (6367), [www.baaqmd.gov](http://www.baaqmd.gov) and Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*
17. **Community Liaison.** Prior to issuance of a building permit to construct the project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator shall be made aware of such change. The community liaison

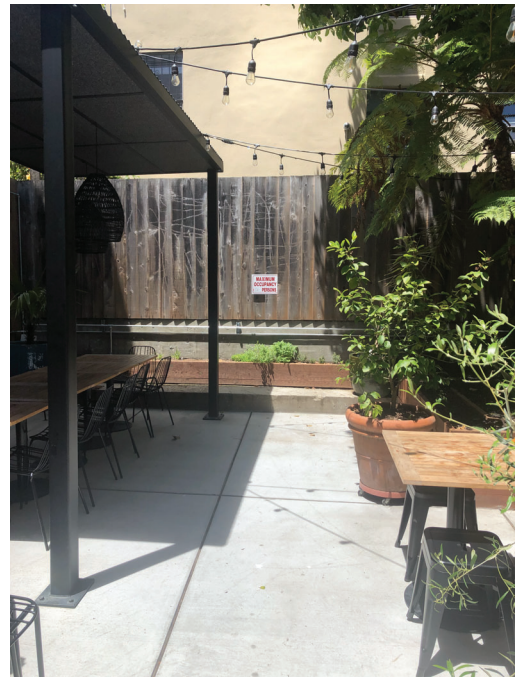


shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.

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

18. **Hours of Operation.** The Outdoor Activity Area of the subject establishment must close at 10:00 p.m.
19. **Patio Occupancy.** The Outdoor Activity Area shall be limited to 26 patrons at all times.
20. **Follow Up Memorandum.** One year from the commencement of operation, the Planning Department shall provide the Planning Commission with a written update on the operation of the outdoor activity area.
21. **Recycling Collection.** The sponsor shall work with their disposal company to coordinate the pickup of garbage and recycling to occur after 7:30 a.m.







**From:** Ellis Berner <[eberner@gmail.com](mailto:eberner@gmail.com)>  
**Sent:** Sunday, April 14, 2019 4:40 PM  
**To:** Asbagh, Claudine (CPC) <[claudine.asbagh@sfgov.org](mailto:claudine.asbagh@sfgov.org)>  
**Cc:** Ionin, Jonas (CPC) <[jonas.ionin@sfgov.org](mailto:jonas.ionin@sfgov.org)>  
**Subject:** Re: Birba conditional use

Hi Claudine,

I haven't heard back from you. Just making sure you have received my comments.

On Fri, Apr 5, 2019, 11:38 PM Ellis Berner <[eberner@gmail.com](mailto:eberner@gmail.com)> wrote:

Hi Claudine,

It's nice to hear from you. I do have some information that I have been compiling.

I have kept a log of every time I can hear Birba's music or its patrons from within my house with all my windows closed. The only reason I stopped keeping it is because I went on vacation but it will be obvious it's any time I'm home, Birba is open and it's not raining.

I also have a video that was recorded more than an hour after Birba's conditional use permit allows their back patio to be open and playing music. The video is of me going back a second time after a few minutes because the music was still playing. Again, at 11pm. Then, the employee says she turned down the music at 11:06 pm but there were also loud deposits of glass bottles into a recycling container near the same time.

Finally, I might preface this all by saying I have a one year old baby who is a light sleeper and none of this noise makes things any easier. I have talked to Angie, the owner, before and she is keenly aware of the noise issue for the neighbors. But, when speaking to her I felt that she could not care about my concern with the noise and that she was being combative by repeatedly saying "I have until 10" when I'm trying to explain that I know that but to also try to do what you can to help me. I suggested to her that signs be put up to remind people to keep the noise down as other bars in the area have. As far as I know, she has not done this.

What we know is that everyone that likes to drink and likes being outside likes to drink outside. But what supporters of the bar failed to sympathize with is that this stops being so great when you live with it 7 days a week. And your kid wakes up because someone is having a great time laughing about something. Mixed zoning is the future but I think it requires a light touch and nuance. Birba has way too many neighbors in too close proximity. Please reevaluate the conditional use.

Let me know how you would like to receive the supporting logs and videos.

Ellis

**From:** Ellis Berner <[eberner@gmail.com](mailto:eberner@gmail.com)>  
**Sent:** Tuesday, April 16, 2019 2:45 PM  
**To:** Asbagh, Claudine (CPC) <[claudine.asbagh@sfgov.org](mailto:claudine.asbagh@sfgov.org)>  
**Subject:** Re: Birba conditional use

Thank you for the reminder: Here's the video: <https://photos.app.goo.gl/SDfutrZwWmZgAYW7>  
You can see in the video she says that she turned the music down in the back, but it was already 11pm and the patio was supposed to be closed at 10pm.

[https://docs.google.com/document/d/16PabYY3O06AFfSPwX5r\\_7zylzYKiq13PtDYZebRB2Ng/edit?usp=sharing](https://docs.google.com/document/d/16PabYY3O06AFfSPwX5r_7zylzYKiq13PtDYZebRB2Ng/edit?usp=sharing)

This is an unedited log. I stopped compiling it because I went on vacation but you can see it's pretty consistent as long as it's not raining and I'm home. I don't have the day I spoke with her about putting up signs to respect the noise levels with regards to the neighbors but it had to be early February.

Finally, another video shot from my kitchen of people standing in the back: <https://photos.app.goo.gl/oM apQ8nN4S4HreBQ7>

I can't remember if it's the ABC license or the CU permit that makes it explicit but I am somewhat confident that the back patio is permitted only for sitting.



## Tran, Nancy (CPC)

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**From:** BIRBA <birbawine@gmail.com>  
**Sent:** Friday, October 11, 2019 11:08 AM  
**To:** Tran, Nancy (CPC)  
**Subject:** Re: October 24 Planning Commission - 458 Grove Street

good morning Nancy

I would like to add

Being courteous to the neighbors is a priority for us. Yes, we have a successful business and a patio that all of San Francisco enjoys.

We have permission to serve the patio until 10pm.

We close and have all guests off the patio by 9:30pm

My staff is trained to stop seating the patio by 8:30pm

We could serve later on the inside but we do not in order to keep late night noise to a minimum. Yes, we allow customers to finish their meal and drinks if they arrived before 10pm. Standard restaurant protocol.

I know Mr. Ellis has made a few formal complaints. One of the complaints was completely false and I had a site visit from another planner. He sent a video and said we were seating after 10pm and the video was shot in broad day light. We have never had customers on the patio after 10pm.

He has been aggressive with my staff and this is not ok. Mr. Ellis purchased his home after my business was in operation. I know our record is public information and I believe there should be some accountability on the part of someone choosing to live in a mixed use neighborhood.

I appreciate the departments support to continue to run my small business.

Thank you

Angie