

RESOLUTION NUMBER R-272972

ADOPTED ON FEBRUARY 28, 1989

WHEREAS, Cheng Development, Inc., Permittee, and representing the owners of the subject property, Midtown Investors, appealed the decision of the Planning Commission in denying Planned Commercial Development Permit No. 87-1135 submitted by Cheng Development, Inc., Permittee, which proposes a 13-story mixed commercial complex on Lots A-L, Block 281 of Horton's Addition located on the block bound by Fourth and Fifth Avenues and Kalmia and Laurel Streets, in the Uptown Community Plan area, in the C Zone; and

WHEREAS, the matter was set for public hearing on February 28, 1989, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; and

WHEREAS, the Council of The City of San Diego voted to require the applicant to reduce the building height to 130 feet with final building plans subject to review and approval by the City Architect and the Planning Director; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that this Council adopts the following findings with respect to Planned Commercial Development Permit No. 87-1135:

1. The proposed use will fulfill an individual and/or community need and will not adversely affect the General Plan or the Uptown Community Plan. The Uptown Community Plan recommends

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this site for high intensity commercial/mixed use development with pedestrian orientation. This project proposes retail commercial on the ground floor and office use above. The C Zone allows a maximum floor area ratio (FAR) of two, however, this project, which will have a higher FAR, is similar to FARs of adjacent buildings and also implements the "high intensity" use designation of the community plan.

2. The proposed use, because of the conditions that have been applied to it, will not be detrimental to the health, safety and general welfare of persons residing or working in the area and will not adversely affect other property in the vicinity. The Federal Aviation Administration (FAA) has reviewed the proposed project in relation to the airspace clearance for Lindbergh Field and has determined that the building would not pose a hazard to the airport's air operations. Additionally, conditions have been placed on the project to ensure the owner of the property will contribute funds toward the feasibility study for the Fifth Avenue Trolley extension and participate in an assessment district for the implementation of the trolley extension.

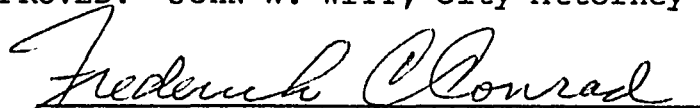
3. The proposed use will comply with the relevant regulations in the Municipal Code. The Laurel and 5th Center project fulfills and/or exceeds development regulations of the Municipal Code with the exception of the increased FAR. In return, the applicant is proposing an exceptionally high quality project.

The above findings are supported by the minutes, maps and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED, that the appeal of Cheng Development, Inc., Permittee, and Midtown Investors, Owner, is granted; the decision of the Planning Commission is overruled; and Planned Commercial Development Permit No. 87-1135 is hereby granted to Cheng Development, Inc., Permittee, and Midtown Investors, Owner, under the terms and conditions set forth in the permit attached hereto and made a part hereof.

APPROVED: JOHN W. WITT, City Attorney

By



Frederick C. Conrad
Chief Deputy City Attorney

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04/10/89
06/27/89 REV. 1
Or.Dept:Clerk
R-89-1864
Form=r.permit

PLANNED COMMERCIAL DEVELOPMENT PERMIT NO. 87-1135

CITY COUNCIL

This Planned Commercial Development Permit is granted by the City Council of the City of San Diego to MIDTOWN INVESTORS, a California general partnership, Owner/Permittee, pursuant to Section 101.0910 of the Municipal Code of the City of San Diego.

1. Permission is granted to Owner/Permittee to construct a Planned Commercial Development located on the block bounded by Fourth and Fifth Avenues and Laurel and Kalmia Streets, described as Lots A-L, Block 281 of Horton's Addition, in the C Zone.

2. The facility shall consist of the following:

a. A mixed commercial complex not to exceed 130 feet in height. The entire ground floor shall be utilized by retail commercial uses. Final design plans shall be reviewed and approved by the City Architect and the Planning Director prior to the issuance of any building permits.

b. A five-level subterranean parking garage.

c. Accessory uses as may be determined incidental and approved by the Planning Director.

No medical offices shall be allowed within this development.

3. No fewer than 1,109 off-street parking spaces shall be maintained on the property in the approximate location shown on Exhibit "A," dated February 28, 1989, on file in the office of the Planning Department. At the point that a redesign is submitted, illustrating a lower overall building square footage, the Planning Director and the Engineering and Development Department will make a determination on the necessary number of parking spaces. Parking spaces shall be consistent with Division 8 of the Municipal Code and shall be permanently maintained and not converted for any other use. Parking spaces and aisles shall conform to Planning Department standards. Parking areas shall be marked.

4. No permit for construction of any facility shall be granted nor shall any activity authorized by this permit be conducted on the premises until:

a. The Permittee signs and returns the permit to the Planning Department;

b. The Planned Commercial Development Permit is recorded in the office of the County Recorder.

5. Before issuance of any building permits, complete grading and building plans shall be submitted to the Planning Director for approval. Plans shall be in substantial conformity to

Exhibit "A," dated February 28, 1989, on file in the office of the Planning Department. No change, modifications or alterations shall be made unless appropriate applications, Findings of Substantial Conformance or amendment of this permit shall have been granted.

6. Before issuance of any grading or building permits, a complete landscape plan, including a permanent irrigation system, shall be submitted to the Planning Director for approval. The plans shall be in substantial conformity to Exhibit "A," dated February 28, 1989, on file in the office of the Planning Department. Approved planting shall be installed before issuance of any occupancy permit on any building. Such planting shall not be modified or altered unless this permit has been amended and is to be maintained in a disease, weed and litter free condition at all times. All streets trees shall be approved by the Planning Department.

7. All outdoor lighting shall be so shaded and adjusted that the light is directed to fall only on the same premises as light sources are located. All proposed lighting standards shall be approved by the Planning Director

8. The effective date of this permit shall be the date of final action following all appeal dates and proceedings or the effective date of a concurrent rezoning case. The permit must be utilized within 36 months after the effective date. Failure to utilize the permit within 36 months will automatically void the permit unless an extension of time has been granted by the Planning Director, as set forth in Section 101.0910, M, of the Municipal Code. Any such extension of time must meet all the Municipal Code requirements and applicable guidelines in effect at the time the extension is considered by the Planning Director.

9. Construction and operation of the approved use shall comply at all times with the regulations of this or any other governmental agencies.

10. After establishment of the project, the property shall not be used for any other purposes unless:

- a. Authorized by the Planning Director; or
- b. The proposed use meets every requirement of the zone existing for the property at the time of conversion;
- c. The permit has been revoked by the City.

The property included within this Planned Commercial Development shall be used only for the purposes and under the terms and conditions set forth in this permit unless authorized by the Planning Director or the permit has been revoked by the City of San Diego.

11. This Planned Commercial Development Permit may be cancelled or revoked if there is any material breach or default

in any of the conditions of this permit. Cancellation or revocation may be instituted by the City of San Diego or Permittee.

12. This Planned Commercial Development Permit is a covenant running with the subject property and shall be binding upon the Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out.

13. The use of textured or enhanced paving shall be permitted only with the approval of the City Engineer and Planning Director, and shall meet standards of these departments as to location, noise and friction values, and any other applicable criteria.

14. If any existing hardscape or landscape indicated on the approved plans is damaged or removed during demolition or construction, it shall be repaired and/or replaced in kind per the approved plans.

15. Prior to the issuance of any building permits, the applicant shall assure, by permit and bond, the construction of curb and sidewalk on 5th Avenue, Laurel Street, 4th Avenue, and Kalmia Street adjacent to this project.

16. Prior to the issuance of any building permits, the applicant shall assure, satisfactory to the Water Utilities Director:

a. The installation of fire hydrants at locations satisfactory to the Fire Department and to the City Engineer.

b. Calculations to show that the size and grade of the existing sewer main will provide adequate capacity and cleaning velocities for this development.

17. The applicant shall install concrete bus pads measuring 60' X 12' adjacent to the existing bus stops opposite the project on Fifth Avenue and Fourth Avenue. Transit shelters shall also be installed at these locations. The design of these shelters shall be approved by MTDB and the Planning Department. Plans for the bus stop facilities shall be submitted to and approved by MTDB prior to the issuance of building permits. Installation shall occur concurrently with the construction of the planned commercial development. The owner of the Laurel and 5th Center project will be responsible for the maintenance of these facilities.

18. Prior to the issuance of building permits, the applicant shall contribute to the MTDB program to improve transit facilities in the downtown Hillcrest corridor.

19. The applicant shall agree to participate in and not oppose an Uptown Transit Assessment District, for the purposes of the improvement of transit facilities. The cost of transit

improvements required at present may be deducted from any future assessment.

20. Prior to the issuance of building permits, the applicant shall provide for approval of the Planning Director, a roof plan that effectively screens all roof equipment.

21. Prior to the issuance of building permits, the applicant shall submit a revised site plan, for approval of the Planning Director, illustrating the use of pedestrian warning devices, such as bollards, at all driveways.

22. Prior to obtaining the certificate of occupancy, the applicant shall submit a car-pool study to the Planning Department for review. The study shall make recommendations for the implementation of a car-pool program, which shall be instituted for employees on the premises.

23. A building permit in conformance with this Planned Commercial Development Permit No. 87-1135 shall not be issued until the applicant has obtained a determination, pursuant to FAR Part 77 from the Federal Aviation Administration, that this structure does not constitute a hazard to air navigation, and such determination has become final as provided in FAR Part 77.

24. In the event that any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable or unreasonable, this Permit shall be void.

APPROVED by the City Council of the City of San Diego on February 28, 1989.

AUTHENTICATED BY:

MAUREEN O'CONNOR, Mayor
The City of San Diego

CHARLES G. ABDELNOUR, City Clerk
The City of San Diego

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On this _____ day of _____, before me, the undersigned, a notary public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared CHARLES G. ABDELNOUR, known to me to be the City Clerk of The City of San Diego, the municipal corporation that executed the within instrument, and known to me to be the person whose name is subscribed to the within instrument, as a witness thereto, who being by me duly sworn, deposes and says that he was present and saw MAUREEN O'CONNOR, known to him to be the Mayor of The City of San Diego, and known to him to be the person who executed the within instrument on behalf of the municipal corporation therein named, and acknowledged to me that such municipal corporation executed the same, and that said affiant subscribed his name to the within instrument as a witness.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal in the County of San Diego, State of California, the day and year in this certificate first above written.

Notary Public in and for the County
of San Diego, State of California

The undersigned Permittee, by execution hereof, agrees to each and every condition of this permit and promises to perform each and every obligation of Permittee hereunder.

Cheng Development, Inc., Permittee

Midtown Investors, Owner

NOTE: Notary acknowledgments must be attached per Civil Code Section 1180, et seq.
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FEB 28 1989

Passed and adopted by the Council of The City of San Diego on.....
by the following vote:

Council Members	Yeas	Nays	Not Present	Ineligible
Abbe Wolfsheimer	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ron Roberts	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gloria McColl	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
H. Wes Pratt	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ed Struikma	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
J. Bruce Henderson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Judy McCarty	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Bob Filner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Maureen O'Connor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

MAUREEN O'CONNOR
Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.

(Seal)

By *Jera Martin*, Deputy.

Office of the City Clerk, San Diego, California

Resolution Number *f* 272972 Adopted FEB 28 1989