

**APPEAL NUMBER 14-077**  
**Supplemental Brief Submitted by Permit Holder AIDS Healthcare Foundation to the**  
**City and County of San Francisco Board of Appeals**  
**Re: Release of Suspension Request dated April 18, 2014 re: Permit**  
**Application No. 2013/11/12/1689**

Per the Board of Appeals' instructions, Permit Holder AIDS Healthcare Foundation ("AHF") respectfully submits this supplemental briefing in support of the Zoning Administrator's (ZA) April 18, 2014 Release of Suspension Request (the "Release").

This Appeal poses the following question: "Did the Zoning Administrator err or commit an abuse of discretion when he issued the Release?" The answer is clearly "no." Following a prior appeal (Appeal No. 14-021), AHF engaged with the Planning Department and made certain changes to its proposed HIV/AIDS pharmacy project (BPA No. 2013/11/12/1689, the "Project"), by changing the Project's name and signage. As a result, the Zoning Administrator determined that the Project is *not* a Formula Retail use<sup>1</sup>, and he issued the Release.

The changes AHF made to the Project – changing the name and signage – comply with both the letter and spirit of the Formula Retail law. As a result, the Project will not be a "cookie-cutter" chain store, but rather a uniquely branded clinic and pharmacy dedicated to serving San Francisco's safety-net HIV/AIDS patients. This appeal must be denied.

## **ARGUMENT**

### **A. Standard of Review**

#### **1. The Board Must Defer to the ZA Unless the Board Finds That the ZA Committed an Error or Abuse of Discretion**

In his Release, the Zoning Administrator determined that the Project is not a Formula Retail use. The Board must defer to the Zoning Administrator's actions and determinations unless it finds he committed an error or abuse of discretion. City Chart., Art. IV, § 4.106(c)(1). In

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<sup>1</sup> It should be noted that the Release incorrectly states that this Board "upheld the Planning Department's determination that the proposed use (dba "AHF Pharmacy") was considered to be a Formula Retail Use." As set out further below, no such determination of Formula Retail has ever been made. See the Notice of Decision for Appeal No. 14-021, upholding a portion of the January 23, 2014 Suspension Request which did *not* contain a determination of Formula Retail use.

addition, under Planning Code Section 308.2 (and Board's "Special Instructions For Parties"), the Board may only resolve the ZA determination that was presented to it on appeal:

In deciding a case, the Board may only uphold, overturn or place conditions on a departmental decision; it cannot remand (send back) a decision to the underlying department for further review or action.

This Board has never determined that the Project was *ever* a Formula Retail use.

The ZA's January 23, 2014 Suspension Request was issued for the following reasons:

To allow [AHF] to (1) seek Conditional Use authorization from the Planning Commission for the proposed change of use [for a 2,000+ sq. ft. use] and (2) *address the question* of any new Formula Retail Use at the site, and *if necessary* seek Conditional Use authorization.

The January 23 Suspension Request was issued to give the department time to consider the Formula Retail question. AHF subsequently worked with the Planning Department to address the Formula Retail question, and it satisfied the ZA that no Formula Retail use was proposed. The ZA then issued the Release on April 18, which must be upheld in this appeal.

**2. This Appeal Is Governed By the Law at the Time the ZA Issued the Release**

The question in this appeal is whether the ZA erred or abused his discretion *when he issued the April 18, 2014 Release*. A change in law that post-dates the ZA's determination cannot retroactively create an error or abuse of discretion in the ZA's preexisting determination. In evaluating the April 18 Release, the Board must only look to the law in existence on April 18.

**B. There Has Been No Determination That AHF's Proposed Use Is Formula Retail.**

Here, the original decision of the ZA is contained in his January 23, 2014 Suspension Request. There, he made the decision to request suspension of the permit

To allow [AHF] to (1) seek Conditional Use authorization from the Planning Commission for the proposed change of use and (2) *address the question* of any new Formula Retail Use at the site, and *if necessary* seek Conditional Use authorization.

It is manifest that this Suspension Request was not issued based upon a decision by the ZA that AHF's proposed use implicated Formula Retail. In fact, the letter expressly states that such

use has only been *suggested*, and the purpose of the Suspension Request was to allow time for the issue of Formula Retail to be considered and determined.

It was this decision that was appealed by AHF, and that was upheld by the Board on March 19th: “The Suspension Request with respect to the issue of formula retail is UPHELD. . .” This Board thus upheld *only* the ZA’s decision to suspend the permit “to address the question of any new Formula Retail use at the site.” It in no way upheld any decision that Formula Retail use was implicated, as that determination had not been made, was not the decision of the ZA that was appealed, and thus was not before the Board.

Further, it is clear that any decision of the ZA must be done in writing and provided to AHF to become effective, and *there is no written decision by the ZA that AHF’s proposed use implicates Formula Retail*. The Planning Code makes clear that all decisions of the ZA, including decisions about Formula Retail, are subject to appeal to the Board. Under Planning Code Section 308.2(a), “The action of the Zoning Administrator . . . in making any order, requirement, decision or other determination, other than a variance, shall be subject to appeal to the Board of Appeals.” It is also clear that any such decision must be in writing, and served on a party like AHF, in order for it to become effective, because *the ability to appeal and the time limits to appeal start when that written notice is provided*. Planning Code Section 308.2(b) plainly states that “Any appeal under this Section shall be taken by filing written notice of appeal with the Board of Appeals . . . within 15 days of any other written determination of the Zoning Administrator.”

Even if the ZA expressed an opinion that AHF’s original proposed use implicated Formula Retail, the ZA did not make an actual (and thus appealable) determination because he never provided AHF with a written determination. Further, the classification of AHF’s original proposed use as Formula Retail or not Formula Retail is moot, because AHF has withdrawn that

proposed use, and submitted a new proposed use, **which the ZA has determined not to be Formula Retail.**

**C. The Board Must Apply the Proper Standard of Review and Burden of Proof**  
**1. The ZA's Determination is Entitled to Deference**

In his April 18, 2014 Release of Suspension Request, the ZA made a formal determination that AHF's proposed pharmacy use does not implicate Formula Retail. As stated above, the Board is legally required to give that determination deference, and to overturn it *only* if the Board finds the ZA erred, or abused his discretion.

At the June 11, 2014 hearing on this appeal, the ZA stated his determination that the proposed use does not implicate the Formula Retail Use law, and the facts and reasons for his determination. In addition, it is undisputed that the Appellants were provided the opportunity to, and did, supplement the ZA's evidence and findings with evidence and arguments of their own.

Despite this, the Board has not yet ruled on the ZA's determination based on the record before it – what facts and evidence the ZA relied on, as supplemented by the Appellants - as it is legally required to do. Instead, it has now required **AHF** to provide additional evidence *to establish what the ZA has already found* – that the proposed use does not implicate the Formula Retail law. This requirement is in excess of its authority, and does not apply the Standard of Review of the ZA's determination as required by law. It is a runaround of the Board's rules, which prohibit the Board from remanding a decision to the ZA for further review or action, by requiring AHF to submit additional information to itself rather than the ZA. In this instance, the Board is not a fact-finding body. Its charge is to “uphold, overturn or place conditions on a departmental decision.” Thus, this Board is required to pass judgment on the ZA's determination, based on the facts and evidence presented by the ZA (and supplemented by Appellants), and nothing more. Moreover, the Board is required to uphold the ZA's

determination unless that determination, based upon the facts and evidence presented by the ZA, was error or an abuse of discretion.

## **2. The Appellant Bears the Burden of Proof**

The request that AHF provide evidence establishing that Formula Retail is not implicated improperly shifts the burden of proof in this matter. There has been no finding of Formula Retail use for AHF to refute. What is at issue in this appeal is the correctness of the ZA's determination, as challenged by Appellants. Therefore, the burden of proof lies not in *AHF* establishing that Retail Formula does not apply, but in **Appellants** establishing that the ZA erred or abused his discretion in determining that Formula Retail does not apply.

The arguments put forth by Appellants in no way address the elements of Formula Retail and whether or not AHF's proposed use meets these elements. Instead, Appellants spend the bulk of their brief making ad hominem attacks and unfounded accusations against AHF, and complaining that AHF's efforts to comply with the law are somehow unfair or manipulative. Likewise, Supervisor Wiener's last-minute attempt to insert himself into what is the province of the Board not only misstates the facts of this case and the law, but also is devoid of analysis of AHF's proposed use as it applies to the Formula Retail Use law.

Despite this, however, some Board members at the June 11th hearing made numerous statements that these arguments were somehow relevant, and/or suggested that AHF's proposed use should be subject to the Conditional Use process even if it is not Formula Retail.<sup>2</sup>

### **D. The Project Is Not a Formula Retail Use.**

Planning Code Section 703.3(b) states:

**Formula Retail Use.** Formula retail use is hereby defined as a type of retail sales activity or retail sales establishment which, along with eleven or more other retail sales

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<sup>2</sup> E.g., one Commissioner commented, "as a matter of what I prefer for there to be a conditional use hearing, it seems like that's what the community needs, and I would encourage the foundation to go in that direction."

establishments located in the United States, maintains two or more of the following features: a standardized array of merchandise, a standardized facade, a standardized decor and color scheme, a uniform apparel, standardized signage, a trademark or a servicemark.<sup>3</sup>

1. AHF does not offer a standardized array of merchandise as defined by section 703.3.

Attached as Exhibit A to this brief are photographs of medications sold in the pharmacies. The pharmacies sell medications from a wide array of manufacturers. Moreover, the medications are sold with manufacturers' labels, not AHF labels.

2. AHF does not produce goods, and the Project does not have a trademark as defined by section 703.3. Furthermore, the proposed Project will not use the AHF name or logo.

3. The Project will not provide services under a servicemark as defined by section 703.3. Furthermore, the proposed Project will not use the AHF name or logo at all.

4. AHF facilities do not have standardized décor as defined by section 703.3. The Project will have unique lighting, flooring, window treatments, internal decorations, and furniture.

5. AHF facilities do not have a standardized color scheme as defined by section 703.3. Attached as Exhibit B to this brief are pictures of other AHF facilities. As seen in the photos, AHF facilities come in all different colors. The Project will use a unique color scheme, unlike any other AHF facility.

6. AHF facilities do not have standardized facades as defined by section 703.3. The Project will likewise include a unique façade, unlike any other AHF facility.

7. Staff at the Project site will not wear standardized apparel as defined by section 703.3.

8. AHF facilities do not have uniform signage as defined by section 703.3. AHF signage varies between facilities. With a name, font, style unlike any other AHF facility (Exh. C), the Project's signage will be unique. The proposed Project will not use the AHF name or logo at all.

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<sup>3</sup> This code language was in existence on April 18, 2014 and remains in effect today.

The ZA has determined that AHF's proposed use *does not meet these criteria, in that the use will not maintain two or more of the above features*. There is no evidence to the contrary, and Appellants have produced no evidence that the proposed use will maintain two or more of the same features as AHF's other pharmacies.

Appellant does not deny that AHF's proposed use does not meet the criteria for Formula Retail as set out in law. Instead, she seeks to eliminate most of the requirements of the law, and pare it down to a single criterion - the user's identity. Her argument (and the argument of Supervisor Wiener) seems to be that since AHF will remain the owner of the pharmacy, and AHF owns eleven or more other pharmacies, the pharmacy must be deemed Formula Retail.

Not only is this criteria not found in the law, it is completely contrary to the Formula Retail law's plain language. As set out above, a use is Formula Retail if, and only if: 1) The user has eleven or more establishments, **and** 2) the proposed use will maintain two or more standards *in common with* (in the statute, "along with") those eleven or more other establishments.

Appellant's argument is that Formula Retail applies if an owner has eleven or more other establishments, period. This is incorrect, as it completely reads out of the law the requirement that the establishments have two or more features in common. This is not what the law states.

In the Release, the ZA found that AHF's proposed use does not maintain two or more enumerated features along with AHF's other stores. The finding is consistent with the express, plain meaning of section 703.3. The ZA did not err in making that finding. The ZA did not abuse his discretion in making that finding. The ZA's decision is legally entitled to deference, and should be upheld.

**E. This Board Has Issued a Final Decision Allowing Construction of the Medical Clinic Portion of the Site to Continue, and Ordered Re-Instatement of That Portion of the Permit. The City Has Failed to Do So.**

It is undisputed that this Board, in its March 19 decision, issued a decision overruling the ZA's determination that Conditional Use Authorization was needed to change the use of the space because the space is in excess of 2,000 sq. feet:

[T]he said Suspension Request with respect to the issue of change of use is OVERRULED on the basis that the Zoning Administrator ERRED in determining that the medical office use exceeded the 2,000 square foot threshold by inaccurately including the bathrooms in the calculations.

This Board also ordered the ZA to re-instate portions of the permit covering the medical office use:

The ZONING ADMINISTRATOR shall issue a revised Order pursuant to this decision in order to clarify which construction elements of the permit scope are re-instated.

It is also undisputed that that no rehearing request was filed, and therefore the decision is final and binding. Despite this, however, there has yet to be compliance with this Board's Order. All elements of the permit remain suspended. AHF requests that the Board reaffirm its Order, and require the ZA to comply with its March 19, 2014 Order.

### CONCLUSION

The ZA did not err or abuse his discretion in issuing the April 18<sup>th</sup> Release. His determination of no Formula Retail use was clearly correct and entitled to deference.

AHF is deeply troubled by the numerous procedural, substantive, and evidentiary errors at every step of this permitting process, and which have worked only to reduce the level of HIV/AIDS services available to San Francisco residents. To date, despite the fact that there has been no written finding that AHF's proposed pharmacy use implicates Formula Retail, and that this Board issued a final decision allowing construction of AHF's medical clinic at this site to proceed, AHF has been blocked from proceeding with construction at the site in any manner, with all permits for the site presently suspended. The Board should affirm the ZA's Release, deny the appeal, and release all Project permits so that the facility can be completed.

Respectfully submitted, AIDS Healthcare Foundation (Tom Myers)

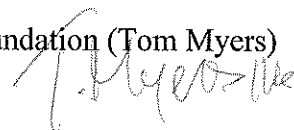




EXHIBIT A











EXHIBIT 5



Miami, Florida





Columbus Ohio Store



Current San Francisco Store-18th St.





West Hollywood



Fort Lauderdale



EXHIBIT C

Castro Pharmacy

AUG 14 2014

APPEAL # 14-077

**APPEAL NUMBER 14-077**

**Supplemental Brief Submitted by the Appellants:  
Laura Thomas, Castro/Upper Market Community Benefit District, Duboce  
Triangle Neighborhood Association to the City and County of San  
Francisco Board of Appeals**

The appellants are asking to have a voice in this project as is required by City law. The citizens of San Francisco voted in 2006 to require formula retail desiring to locate in a neighborhood commercial district to obtain a conditional use permit. This case is unique in that an error was made "at the counter" and this error ultimately led to the project moving forward without the necessary conditional use authorization.

The Project Sponsor was, erroneously, issued a permit for the project over the counter. The Building Department, realizing the mistake, asked for a suspension for the permit to allow the project sponsor to seek Conditional Use Authorization from the Planning Commission.

On review, the Planning Department determined that the proposed use (dba "AHF Pharmacy") was considered to be a Formula Retail Use. The Project Sponsor appealed the suspension request to the Board of Appeals. At the March 19, 2014 SF Board of Appeals public hearing, the Board of Appeals upheld the Planning Department's determination that the proposed use (dba "AHF Pharmacy") was considered to be a Formula Retail Use.

After this decision and understanding that the project at 518 Castro St. would require a Conditional Use Authorization, the Project Sponsor learned that this process could be avoided if the name of the project was changed. Subsequent to the March 19<sup>th</sup> hearing, the AIDS Healthcare Foundation changed the name of their pharmacy at 518 Castro St. to Castro Pharmacy and then reported to the Zoning Administrator that they were no longer formula retail because there was only one (1) Castro Pharmacy. The Zoning Administrator then asked for a release of the suspension of the Building Permit Application No. 201311121689 based on the Project Sponsor's representation that the proposed pharmacy will not operate as a Formula Retail Use.

The history to this project is important to understand.

- When the AIDS Healthcare Foundation submitted their original application, an error was made in issuing a permit over the counter. The permit should not have been issued over the counter because there was a change of use over 2000 square feet and the project appeared to fall under the City's definition of Formula Retail, both of which require a Conditional Use Authorization. However, because of the error, there was no requirement for a pre-application meeting and there was no public notification of the project. This project never went before the Planning Commission as it would have if the original error in giving the building permit over the counter was not made.
- The permit was suspended when the Planning Department realized a Conditional Use Authorization was necessary because of the proposed

change of use and to address the question of any new formula retail use at the site.

- The AIDS Healthcare Foundation appealed this decision to the Board of Appeals and only a limited public notification process was triggered. There was not the broad public notification of the project as is required for Conditional Use Authorizations. Notification of this project was only given to those property owners and occupants within 150 feet of the project instead of the required 300 feet plus interested neighborhood organizations for a Conditional Use Authorization.
- Neighborhood organizations were not notified of the appeal or that the project was moving forward. The public was not aware of the appeal and of the hearing scheduled on March 19, 2014.
- The hearing was held on March 19, 2014 and the Board of Appeals determined the project did not need a conditional use due to the change of use, but the Board of Appeals determined the AIDS Healthcare Foundation was formula retail and therefore, did need to go through the conditional use process.
- After the March 19, 2014 Board of Appeals hearing, AIDS Healthcare Foundation changed the name of their project at 518 Castro St. to Castro Pharmacy.
- Because of this name change, the Planning Department had to re-evaluate if the project was still formula retail. In evaluating if a project is formula retail or not, the Planning Department is limited to relying on information provided by

the project sponsor. In evaluating the Project Sponsor's new information about the project, the Planning Department determined the project was no longer formula retail because of the name change (still no public notification has been triggered).

- Then on April 18, 2014 the Zoning Administrator issued a request to the Department of Building Inspection to release the suspension of the building permit for 518 Castro St. Because of the name change, the Planning Department determined the project is no longer formula retail and a Conditional Use Authorization is no longer required.
- Through word of mouth, members of the public, notably in the AIDS community, learn about the release of suspension request.
- Appellants file an appeal to the release of suspension request.
- Board of Appeals hears the appeal on June 11, 2014 and asks the AIDS Healthcare Foundation to come back in August to prove that the Castro Pharmacy is not formula retail.

The issue for the appellants is being able to have a voice on this project. The only reason this project has come before the Board of Appeals is because an error was made at the counter when the Project Sponsor applied for a building permit. If the Planner had not made the original error when issuing the building permit over the counter, this project would have gone through the Conditional Use Authorization process with the Planning Commission and this project never would have come before the Board of Appeals.

The Appellants contend that these decisions set a very dangerous precedent in San Francisco for protecting the unique character of San Francisco's neighborhood commercial districts and preserving the ability of citizens to have a voice in the look, feel and character of their neighborhood. It is untenable that a simple error can lead to the circumvention of laws and projects being built without the required public hearings. It is also untenable that the simple "dba" name change can also circumvent existing laws and circumvent the public hearing process. It is clear that the ownership of the proposed Castro Pharmacy is the AIDS Healthcare Foundation and that the AIDS Healthcare Foundation is a national chain, falling under San Francisco's definition of formula retail. The AIDS Healthcare Foundation is the Project Sponsor. And, up until very recently, the establishment at 518 Castro St. was branded with the AIDS Healthcare Foundation signage (see enclosed supporting documents). This documents that the dba Castro Pharmacy is in-deed the AIDS Healthcare Foundation, which the Board of Appeals correctly determined on March 19, 2014, is formula retail.

The Appellants strongly urge the Board of Appeals to reverse the Zoning Administrator's determination that the proposed use is not subject to Formula Retail controls, suspend the current building permit, and require AHF to submit its project proposal to the conditional use process.

**Contact information:**

Andrea Aiello, Castro/Upper Market Community Benefit District  
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Laura Thomas - [lgthomas@gmail.com](mailto:lgthomas@gmail.com)  
David Troup, Duboce Triangle Neighborhood Association  
[david@troup.net](mailto:david@troup.net)

AIDS Healthcare Foundation  
is pleased to share with our  
Castro neighbors that we are  
converting this space into a non-  
profit specialty Pharmacy and Clinic.

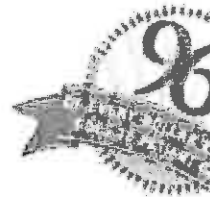
We will relocate our existing  
services from 18th St and Church St  
into this space to provide essential,  
conveniently located services.

Please support us in serving the  
community according to our mission:  
"cutting-edge medicine & advocacy,  
regardless of ability to pay."

AHF

518 Castro St.





# AIDS HEALTHCARE FOUNDATION

## *Who We Serve*

### SUPPORT AHF'S WORK IN SAN FRANCISCO!

For over 13 years, AIDS Healthcare Foundation (AHF) has served the people of San Francisco as part of our mission to provide cutting edge HIV medicine and advocacy regardless of ability to pay. In staying true to our nonprofit mission, we have provided these services at a financial loss and without receiving any funding from the San Francisco government. This is made possible because 96% of every dollar we earn goes directly to services.

#### AHF's HIV Care Services

- AHF services include HIV primary care, specialty pharmacy services, free HIV testing, free STD testing, Out of the Closet thrift stores and a men's wellness center.
- Since 2001, we have treated over 1,000 people with HIV in San Francisco, 65% of whom are people of color.

#### AHF's Partnership With San Francisco

- AHF employs 55 people in their San Francisco clinic, pharmacy, and thrift stores.
- AHF has donated over \$800,000 to local groups and charities.
- AHF's clinic operates at a financial loss. Since its opening in 2001, AHF has subsidized the clinic at a total cost of \$7.8 million.

#### AHF's New Castro Pharmacy and Clinic

[ahfserves.org](http://ahfserves.org)

AHF is seeking to combine two existing SF pharmacies (Church Street and 18<sup>th</sup> Street) into a single location at 518 Castro Street that will be co-located with a clinic. As a mission-driven nonprofit, this arrangement allows us to achieve better health outcomes for our clients by locating all their care services in a single location. In addition, the new site will help AHF increase its net revenue, enabling us to better support and expand all of the services we provide in San Francisco.

**We need your help! SEND AN E-LETTER TO THE BOARD OF APPEALS TODAY**

**SEND E-LETTER (<https://secure2.convio.net/ahf/site/Advocacy?cmd=display&page=UserAction&id=231>)**

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# SAN FRANCISCO PLANNING DEPARTMENT

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## Board of Appeals Brief

*Date:* August 14, 2014  
*Hearing Date:* August 20, 2014  
*Appeal No.:* 14-077  
*Project Address:* 518 Castro Street  
*Block/Lot:* 2695/002  
*Zoning:* Castro Street Neighborhood Commercial District (NCD)  
40-X Height and Bulk District  
*Staff Contact:* Scott Sanchez – (415) 558-6350  
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### INTRODUCTION

The Planning Department respectfully submits this brief to clarify points raised in a supplemental brief submitted by the AIDS Healthcare Foundation (“AHF”) for Appeal No. 14-077 (518 Castro Street).

### FORMULA RETAIL USE DETERMINATION

In their brief, AHF claims that there has been no determination that “AHF Pharmacy” is a Formula Retail Use. It is the position of the Planning Department that AHF Pharmacy has been determined to be a Formula Retail Use.

On January 23, 2014, the Zoning Administrator issued a Suspension Request (Exhibit A) to the Department of Building Inspection (“DBI”) requesting suspension of Building Permit Application No. 201311121689. The subject permit sought to establish a medical office and pharmacy at 518 Castro Street. The Zoning Administrator determined that the permit was issued in error because the project required a Conditional Use Authorization for a use size exceeding 2,000 square feet in the Castro NCD. Additionally, the Suspension Request was issued because a proposed tenant (AHF Pharmacy) may be considered a Formula Retail Use.

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**Hearing Date: August 20, 2014**

On February 7, 2014, AHF appealed the Suspension Request (Appeal No. 14-021) and submitted a brief on February 27, 2014 arguing that they did not meet the criteria for a Formula Retail Use.

On March, 19, 2014, the Board of Appeals (“Board”) held a public hearing on Appeal No. 14-021. At this hearing, both AHF and the Zoning Administrator presented arguments and evidence regarding the question of whether or not AHF Pharmacy was a Formula Retail Use. Per Planning Code Section 303(i)(1): “A formula retail use is hereby defined as a type of retail sales activity or retail sales establishment which has eleven or more other retail sales establishments located in the United States. In addition to the eleven establishments, the business maintains two or more of the following features: a standardized array of merchandise, a standardized facade, a standardized decor and color scheme, uniform apparel, standardized signage, a trademark or a servicemark.” Evidence presented by the Zoning Administrator included the following facts: 1) AHF Pharmacy operates more than 11 pharmacies within the United States, 2) AHF Pharmacy is a registered servicemark and 3) AHF Pharmacy maintains standardized signage. As such, the Zoning Administrator determined that AHF Pharmacy is a Formula Retail Use. The Board of Appeals ultimately upheld the Zoning Administrator’s Suspension Request with respect to the issue of Formula Retail and overruled with respect to the issue of use size requiring a Conditional Use Authorization (Exhibit B).

Subsequent to the Board of Appeals decision, AHF revised their proposal to operate as the “Castro Pharmacy” (Exhibit C). This modification was proposed by AHF to render the project exempt from the Formula Retail Use requirements of the Planning Code. On April 18, 2014, the Zoning Administrator issued a Release of Suspension (Exhibit D) which found that while the Board’s March 19, 2014 decision upheld the Planning Department’s

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determination that the proposed AHF Pharmacy was considered to be a Formula Retail Use, the suspension may be released because AHF informed the Planning Department that the proposed pharmacy would be changed to a non-Formula Retail Use (“Castro Pharmacy”).

On May 5, 2014, Laura Thomas (“Appellant”) appealed the Release of Suspension (Appeal No. 14-077) arguing that the proposed pharmacy is subject to the Formula Retail Use requirements. On June 11, 2014, the Board held a public hearing on Appeal No. 14-077. At this hearing, the Appellant argued that despite changes proposed by AHF the proposed Castro Pharmacy still met the intent of the Formula Retail Use controls. AHF argued that “AHF’s pharmacy, doing business under the unique name ‘Castro Pharmacy’ – a name not shared by any other AHF pharmacy – falls outside the Formula Retail Use criteria.” The Zoning Administrator cited Planning Code Section 303(i)(8) which states: “If the City determines that a building permit application or building permit subject to this Section of the Code is for a “formula retail use,” the building permit application or holder bears the burden of proving to the City that the proposed or existing use is not a “formula retail use” (emphasis added). Furthermore, it should be noted that this section also states “any building permit approved that is determined by the City to have been, at the time of application, for a ‘formula retail use’ that did not identify the use as a ‘formula retail use’ is subject to revocation at any time.” The Board ultimately continued the matter to August 20, 2014, and requested that AHF provide additional evidence supporting its claim that the proposed pharmacy is not a Formula Retail Use.

**INTERIM CONTROLS**

July 8, 2014, the Board of Supervisors voted unanimously to adopt interim zoning controls (“Interim Controls”) for an 18-month period in the Castro Street NCD to require a Conditional Use Authorization by the Planning Commission for any proposed use that has

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been determined to be a Formula Retail Use even if the project sponsor subsequently removes one or more distinguishing Formula Retail Use features (Exhibit E). On July 18, 2014, the Mayor signed the Interim Controls which became effective on the same date. Per the Interim Controls, “any proposed use in the Castro Street NCD within the scope of these interim controls that has not received a final decision on any required approval action by any City department, board, commission, or agency shall be covered by these interim controls.” Based on the Interim Controls, the proposed pharmacy requires a Conditional Use Authorization because the project sponsor removed one or more distinguishing Formula Retail Use features from their previous proposal (AHF Pharmacy – which has been determined to be a Formula Retail Use) and the project has not received a final decision from the Board regarding Appeal No. 14-077.

**RELEASE OF SUSPENSION FOR MEDICAL OFFICE**

In their brief, AHF claims that the City has failed to abide by the Board’s March 19, 2014 decision to reinstate the portion of the permit related to the medical office use. The Board’s decision directed the Zoning Administrator to issue a revised Order to clarify which construction elements of the permit scope are reinstated. As noted previously, the Zoning Administrator issued a Release of Suspension for the subject permit on April 18, 2014. The Release of Suspension was issued (in part) in response to the Board’s March 19, 2014 decision; however, it was subsequently appealed and is pending before the Board.

**Cc:**

Dale Gluth – AHF  
Laura Thomas - Appellant

**Attachments:**

Exhibit A – Suspension Request  
Exhibit B – Notice of Decision and Order for Appeal No. 14-021  
Exhibit C – AHF Email  
Exhibit D – Release of Suspension Request  
Exhibit E – Interim Zoning Controls



# SAN FRANCISCO PLANNING DEPARTMENT

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## Suspension Request

January 23, 2014

Mr. Tom Hui, CBO  
Director  
Department of Building Inspection  
1660 Mission Street  
San Francisco, CA 94103

**Building Application No.:** 201311121689  
**Property Address:** 518 Castro Street  
**Block and Lot** 2695/002  
**Zoning District:** Castro Street Neighborhood Commercial District  
**Staff Contact:** Delvin Washington - (415) 558-6443 or [delvin.washington@sfgov.org](mailto:delvin.washington@sfgov.org)

Dear Director Hui,

This letter is to request that the Department of Building Inspection (DBI) suspend **Building Permit Application No. 201311121689** ("the Permit") for the property at 518 Castro Street.

The Permit was issued on January 13, 2014 in order to change the use of a portion of the ground floor commercial space at the subject property from a retail use to a medical office and pharmacy and to perform associated tenant improvements.

It has come to our attention that the Planning Department's over-the-counter approval of the Permit was erroneous. Specifically, Planning Code Section 178(e)(6) requires Conditional Use Authorization in order to change the use of any non-residential space in the Castro NCD that is larger than 2,000 square feet. The Permit authorizes a change of use for such a space but no Conditional Use authorization has sought or approved.

Furthermore, it has been suggested that the proposed tenant of the space may be considered a Formula Retail Use under the Planning Code. Planning Code Section 703.4 requires Conditional Use authorization for a Formula Retail Use in districts including the Castro NCD. No such Conditional Use authorization has been sought or approved.

Based on the foregoing, **the Planning Department is requesting the suspension of the Permit** to allow the project sponsor to (1) seek Conditional Use authorization from the Planning Commission for the proposed change of use and (2) address the question of any new Formula Retail Use at the site, and if necessary seek Conditional Use authorization.

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

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

Tom Hui, CBO, Director  
Department of Building Inspection  
Suspension Request  
518 Castro Street  
January 23, 2014

**APPEAL:** Any aggrieved person may appeal this letter to the Board of Appeals within fifteen (15) days after the date of the issuance of this letter. For further information, please contact the Board of Appeals in person at 1650 Mission Street, Room 304, or call 575-6880.

Sincerely,



Scott F. Sanchez  
Zoning Administrator

cc: Zachary Nathan, Project Architect *via email* - [info@zacharynathan.com](mailto:info@zacharynathan.com)  
Joe Duffy, Senior Building Inspector, DBI *via email*  
Patrick O'Riordan, Chief Building Inspector, DBI *via email*  
Delvin Washington, Planning Department *via email*  
Kevin Brusatori, Planning Department *via email*  
Daniel Sider, Planning Department *via email*





Edwin M. Lee  
Mayor

Cynthia G. Goldstein  
Executive Director

# AFFIDAVIT OF SERVICE

**Aids Healthcare Foundation, Appellant  
c/o Dale Gluth, Agent for Appellant  
100 Church Street  
San Francisco, CA 94114**

I, Victor F. Pacheco, Legal Assistant for the Board of Appeals, hereby certify that on this 1<sup>st</sup> day of **April, 2014**, I served the attached **Notice of Decision for Appeal No. 14-021, Aids Healthcare Foundation vs. Zoning Administrator**, subject property at **518 Castro Street**, on the appellant by mailing a copy via U.S. mail, first class, to the address above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed in San Francisco, California.

April 01, 2014  
Date

\_\_\_\_\_  
Victor F. Pacheco

cc: Scott Sanchez, Zoning Administrator  
Planning Department  
1650 Mission Street, 5th Floor  
San Francisco, CA 94103

OTHER PARTIES  
OR CONCERNED CITIZENS:

N/A



BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal of
AIDS HEALTHCARE FOUNDATION,
Appellant(s)
vs.
ZONING ADMINISTRATOR,
Respondent

Appeal No. 14-021

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT on February 07, 2014, the above named appellant(s) filed an appeal with the Board of Appeals of the City and County of San Francisco from the decision or order of the above named department(s), commission, or officer.

The substance or effect of the decision or order appealed from is the ISSUANCE on January 23, 2014, of a Request for Suspension (requesting that BPA No. 2013/11/12/1689- tenant improvement of existing vacant retail space for new medical office and pharmacy- be suspended for the reason that the Planning Department's over-the-counter approval was erroneous) at 518 Castro Street.

FOR HEARING ON March 19, 2014

Address of Appellant(s):

Address of Other Parties:

Table with 2 columns: Address of Appellant(s) and Address of Other Parties. Appellant: Aids Healthcare Foundation, Appellant c/o Dale Gluth, Agent for Appellant, 100 Church Street, San Francisco, CA 94114. Other Parties: Zassem Sirhed, Subject Property Owner, PO Box 626, Burlingame, CA 94011.

NOTICE OF DECISION & ORDER

The aforementioned matter came on regularly for hearing before the Board of Appeals of the City & County of San Francisco on MARCH 19, 2014.

PURSUANT TO § 4.106 of the Charter of the City & County of San Francisco and Article 1, §14 of the Business & Tax Regulations Code of the said City & County, and the action above stated, the Board of Appeals hereby GRANTS THE APPEAL AND ORDERS

that the ISSUANCE of the subject Order by the ZONING ADMINISTRATOR is UPHeld IN PART /OVERRULED IN PART, and the Suspension Request with respect to the issue of formula retail is UPHeld, and the said Suspension Request with respect to the issue of change of use is OVERRULED on the basis that the Zoning Administrator ERRED in determining that the medical office use exceeded the 2,000 square foot threshold by inaccurately including the bathrooms in the calculations. Note: The ZONING ADMINISTRATOR shall issue a revised Order pursuant to this decision in order to clarify which construction elements of the permit scope are re-instated.

BOARD OF APPEALS
CITY & COUNTY OF SAN FRANCISCO

Ann B. Lazarus (handwritten signature)

Ann Lazarus, President

Last Day to Request Rehearing: March 31, 2014
Request for Rehearing: None
Rehearing: None
Notice Released: April 01, 2014

Cynthia G. Goldstein (handwritten signature)
Cynthia G. Goldstein, Executive Director

**From:** [Dale Gluth](#)  
**To:** [Chang, Tina \(CPC\)](#); [Zachary Nathan](#)  
**Subject:** RE: 518 Castro Permit  
**Date:** Thursday, March 27, 2014 7:06:39 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[FR Aff NEW.pdf](#)

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Hi Tina,

Thanks again for your assistance with this matter. I've attached a new FR Affidavit that I plan to deliver to you tomorrow. We have decided to unbrand our pharmacy and register it as a new business: Castro Pharmacy. I hope this satisfies the condition you reference below.

If you would like me to make an appointment, I'd be happy to do so. Otherwise, I'll speak with you as you're available.

Best,  
Dale

Dale R. Gluth  
Bay Area Regional Director  
AIDS Healthcare Foundation  
400 30th St., Suite 300  
Oakland, CA 94609  
C: 415.218.9587  
F: 415.447.0988  
E: [dale.gluth@aidshhealth.org](mailto:dale.gluth@aidshhealth.org)

---

**From:** Chang, Tina [[tina.chang@sfgov.org](mailto:tina.chang@sfgov.org)]  
**Sent:** Friday, March 21, 2014 3:48 PM  
**To:** Zachary Nathan  
**Cc:** Dale Gluth  
**Subject:** RE: 518 Castro Permit

Hi Zachary and Dale,

I spoke to the Zoning Administrator regarding your project. If you can demonstrate that the Pharmacy would no longer be a formula retail use, we can lift the suspension of the building permit and move forward.

I hope that answers your question. Have a great weekend.

**Tina Chang, AICP, LEED AP**  
**Planner, Southwest Quadrant, Current Planning**

Planning Department, City and County of San Francisco  
1650 Mission Street, Suite 400, San Francisco, CA 94103

**Direct:** 415-575-9197 **Fax:** 415-558-6409

**Email:** [Tina.Chang@sfgov.org](mailto:Tina.Chang@sfgov.org)

**Web:** [www.sfplanning.org](http://www.sfplanning.org)



---

**From:** Zachary Nathan [<mailto:nathanarch@earthlink.net>]  
**Sent:** Friday, February 07, 2014 2:17 PM  
**To:** Washington, Delvin  
**Cc:** 'Dale Gluth'; Chang, Tina  
**Subject:** 518 Castro Permit

Delvin,

We filed a conditional use application with Angela Huisman this morning and a new building permit at Central Permit Bureau for 518 Castro Street. As you recall, our building permit was suspended due to an error.

The new building permit (application #2014-0207-8005) is for a pharmacy only with no change of use. The existing use is vacant retail and the new use will also be retail with related storage. Our previous approved permit that is suspended is for retail/medical offices. Since the new building permit application does not include the medical offices, there is not a change of use. The new permit application is being routed to you.

Once the conditional use is approved, then we will file a new building permit for the medical office use.

Please contact me if you have any questions.

Thank you.

Zachary

**Zachary Nathan, AIA, CASp**  
**Zachary Nathan Architect**  
1108 Bryant Suite C  
San Francisco, CA 94103

Telephone 415-701-0877  
Fax 415-252-7649  
Email: [nathanarch@earthlink.net](mailto:nathanarch@earthlink.net)

**From:** [Dale Gluth](#)  
**To:** [Chang, Tina \(CPC\)](#)  
**Subject:** RE: Affidavit  
**Date:** Friday, March 28, 2014 2:54:14 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[FR 2\\_new.pdf](#)

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Hi Tina,  
Thanks again for your help with this. I've attached a new affidavit (the correct one this time).

ALSO, what is the process for pulling our second permit application? We no longer need it.  
Thanks,  
Dale

Dale R. Gluth  
Bay Area Regional Director  
AIDS Healthcare Foundation  
400 30th St., Suite 300  
Oakland, CA 94609  
C: 415.218.9587  
F: 415.447.0988  
E: [dale.gluth@aidshhealth.org](mailto:dale.gluth@aidshhealth.org)

---

**From:** Chang, Tina (CPC) [[tina.chang@sfgov.org](mailto:tina.chang@sfgov.org)]  
**Sent:** Friday, March 28, 2014 1:25 PM  
**To:** Dale Gluth  
**Subject:** Affidavit

Hi Dale,

Can you check "no" or "yes" next to each of the standardized features on Page 3 of the affidavit?  
You can just email that page to me. Thanks.

**Tina Chang, AICP, LEED AP**  
**Planner, Southwest Quadrant, Current Planning**

Planning Department, City and County of San Francisco  
1650 Mission Street, Suite 400, San Francisco, CA 94103  
**Direct:** 415-575-9197 **Fax:** 415-558-6409  
**Email:** [Tina.Chang@sfgov.org](mailto:Tina.Chang@sfgov.org)  
**Web:** [www.sfplanning.org](http://www.sfplanning.org)





SAN FRANCISCO  
PLANNING  
DEPARTMENT

## AFFIDAVIT FOR

# Formula Retail Establishments

Planning Department  
1650 Mission Street  
Suite 400  
San Francisco, CA  
94103-9425

T: 415.558.6378  
F: 415.558.6409

Pursuant to Planning Code Section 303(i) and 703.3-4, certain retail uses must have additional review to determine if they qualify as a Formula Retail Establishment. The first pages consist of Instructions and important information which should be read carefully before the affidavit form is completed.

Planning Department staff are available to advise you in the preparation of this affidavit. Call (415) 558-6377 for further information.

### WHAT IS A FORMULA RETAIL USE?

A Formula Retail Use is a type of retail sales activity or retail sales establishment which has eleven or more other retail sales establishments located in the United States. In addition to the eleven establishments, the business maintains two or more of the following features: a standardized array of merchandise, a standardized facade, a standardized decor and color scheme, uniform apparel, standardized signage, a trademark or a servicemark.

### WHAT TYPES OF BUSINESSES ARE REGULATED AS FORMULA RETAIL USES?

Businesses subject to the formula retail establishment controls include the following 'Retail Sales Activity' or 'Retail Sales Establishment' as defined in Article 7 and Article 8 of the Code:

- Amusement Game Arcade (§§790.4, 890.4)
- Bar (§§790.22, 890.22)
- Drive-up Facility (§§790.30, 890.30)
- Eating and Drinking Use (§§790.34, 890.34)
- Limited-Restaurant (§790.90)
- Liquor Store (§790.55)
- Movie Theater (§§790.64, 890.64)
- Restaurant (§790.91)
- Sales and Service, Nonretail (§§790.100, 890.100)
- Sales and Service, Other Retail (§§790.102, 890.102)
- Sales and Service, Retail (§§790.104, 890.104)
- Service, Financial (§§790.110, 890.110)
- Take-out Food (§790.122)

This affidavit for Formular Retail must accompany any Permit Application for any Alterations, New Construction, Commercial Tenant Improvements, Change of Use or Signage which relates to the establishment of that use.

### IS A CONDITIONAL USE AUTHORIZATION OR NEIGHBORHOOD NOTIFICATION NECESSARY?

If a use does qualify as a Formula Retail Establishment, then additional controls may apply depending on the zoning district where the proposed business will be located. Please consult the Public Information Center (PIC) for guidance on whether a Conditional Use Authorization or Neighborhood Notification is required.



#### HOW IS FORMULA RETAIL STATUS DETERMINED?

If the number of national locations is 12 or more and if the number of total standardized features of this business is two (2) or more, then the proposed use is a Formula Retail Use.

If the Planning Department determines that an application or permit is for a Formula Retail Use, the permit applicant bears the burden of proving to the Planning Department that the proposed or existing use is not a Formula Retail Use. Any permit approved for a use that is determined by the Planning Department to be for a Formula Retail Use that did not identify the use as such is subject to revocation at any time.

#### WHAT ARE STANDARDIZED FEATURES?

Formula Retail uses are identified by having certain standardized features in common throughout their locations. They are officially defined in Planning Code Section 303(i)(1). The below list is a summary:

- (A) Standardized array of merchandise: Half or more of the products in stock are branded alike.
- (B) Trademark: A word, phrase, symbol or design that identifies products as being offered by them and no others.
- (C) Servicemark: A word, phrase, symbol or design that identifies a service as being offered by them and no others.
- (D) Décor: The style of interior furnishings, (i.e. furniture, wall coverings or permanent fixtures)
- (E) Color Scheme: A selection of colors used throughout the decor and/or used on the facade.
- (F) Façade: The face or front of a building (including awnings) looking onto a street or an open space.
- (G) Uniform Apparel: Standardized items of clothing (i.e. aprons, pants, shirts, smocks, dresses, hats, pins (other than name tags) including the colors of clothing.
- (H) Signage: A sign which directs attention to a business conducted on the premises. (see P.C. Sec. 602.3)

#### ARE PROPOSED LOCATIONS INCLUDED IN MY TOTAL QUANTITY OF RETAIL LOCATIONS?

Yes. A proposed location is counted in your total number of retail locations calculation even if it is not open for business yet, so long as a lease has been executed, it counts. It may not even have any permits issued yet, but if a lease has been executed: it counts.

# AFFIDAVIT FOR Formula Retail Establishments

## 1. Location and Classification

STREET ADDRESS OF PROJECT:		
518 A Castro St		
ASSESSORS BLOCK/LOT:	ZONING DISTRICT:	HEIGHT/BULK DISTRICT:
2695 / 002	Castro NCD	40-X

## 2. Proposed Use Description

PROPOSED USE (USE CATEGORY PER ARTICLE 7 OR 8):	
medical service (715.51) and other retail sales (715.40)	
PROPOSED BUSINESS NAME:	
Castro Pharmacy and AIDS Healthcare Foundation medical offices	
DESCRIPTION OF BUSINESS, INCLUDING PRODUCTS AND/OR SERVICES:	
Non-profit specialty pharmacy and non-profit medical offices (medical is exempt from Formula Retail)	
BUILDING PERMIT APPLICATION NO.: (if applicable)	CONDITIONAL USE CASE NO.: (if applicable)
2013-1112-1689	NA

## 3. Quantity of Retail Locations

	TOTAL
3.a How many retail locations of this business are within the United States? Please include any property for which a lease has been executed.	0
3.b How many of the above total locations are in San Francisco?	1

If the number entered on Line 3.a above is 11 or more, then the proposed use *may* be a Formula Retail Use. Continue to section 4 below.

If the number entered on Line 3.a above is 10 or fewer, no additional information is required. Proceed to section 5 on the next page and complete the Applicant's Affidavit.

## 4. Standardized Features

Will the proposed business utilize any of the following Standardized Features?

FEATURES	YES	NO
A Array of Merchandise	<input type="checkbox"/>	<input type="checkbox"/>
B Trademark	<input type="checkbox"/>	<input type="checkbox"/>
C Servicemark	<input type="checkbox"/>	<input type="checkbox"/>
D Décor	<input type="checkbox"/>	<input type="checkbox"/>
E Color Scheme	<input type="checkbox"/>	<input type="checkbox"/>
F Façade	<input type="checkbox"/>	<input type="checkbox"/>
G Uniform Apparel	<input type="checkbox"/>	<input type="checkbox"/>
H Signage	<input type="checkbox"/>	<input type="checkbox"/>

TOTAL

Enter the total number of Yes/No answers above.

If the total YES responses is two (2) or more, then the proposed use is a Formula Retail Use.



5. Applicant's Affidavit

NAME: Dale R. Gluth  Property Owner  Authorized Agent

MAILING ADDRESS: (STREET ADDRESS, CITY, STATE, ZIP)  
100 Church Street, San Francisco, CA 94114

PHONE: (4 1 5) 2 1 8 9 5 8 7 EMAIL: dale.gluth@aidshealth.org

Under penalty of perjury the following declarations are made:  
 a: The undersigned is the owner or authorized agent of the owner of this property.  
 b: The information presented is true and correct to the best of my knowledge.  
 c: Other information or applications may be required.

Applicant's Signature: [Signature] Date: 28 MAR 14

**PLANNING DEPARTMENT USE ONLY**

PLANNING CODE SECTION(S) APPLICABLE:

HOW IS THE PROPOSED USE REGULATED AT THIS LOCATION?

- Principally Permitted
- Principally Permitted, Neighborhood Notice Required (Section 311/312)
- Not Permitted
- Conditional Use Authorization Required (Please list Case Number below)

CASE NO.	MOTION NO.	EFFECTIVE DATE	NSR RECORDED?
			<input type="checkbox"/> Yes <input type="checkbox"/> No

COMMENTS:

VERIFIED BY:

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_ Phone: \_\_\_\_\_



**FOR MORE INFORMATION:**  
Call or visit the San Francisco Planning Department

<p><b>Central Reception</b> 1650 Mission Street, Suite 400 San Francisco CA 94103-2479</p> <p>TEL: 415.558.6378 FAX: 415 558-6409 WEB: <a href="http://www.sfplanning.org">http://www.sfplanning.org</a></p>	<p><b>Planning Information Center (PIC)</b> 1660 Mission Street, First Floor San Francisco CA 94103-2479</p> <p>TEL: 415.558.6377</p> <p><i>Planning staff are available by phone and at the PIC counter. No appointment is necessary.</i></p>
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# SAN FRANCISCO PLANNING DEPARTMENT

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## Release of Suspension Request

April 18, 2014

Tom C. Hui, CBO, SE  
Director  
Department of Building Inspection  
1660 Mission Street, Sixth Floor  
San Francisco, CA 94103

**Sign Permit Application Nos.:** 201311121689  
**Property Address:** 518 Castro Street  
**Block and Lot** 2695/002  
**Zoning District:** Castro Street Neighborhood Commercial District  
**Staff Contact:** Tina Chang - (415) 575-9197 or [tina.chang@sfgov.org](mailto:tina.chang@sfgov.org)

Dear Mr. Hui,

This letter is to request that the Department of Building Inspection (DBI) **release the suspension of Building Permit Application No. 201311121689 for 518 Castro Street.**

The subject permit was issued on January 13, 2014, in order to change the use of a portion of the ground floor commercial space at the subject property from a retail use to a medical office and pharmacy and to perform associated tenant improvements.

On January 23, 2014, I requested suspension of the subject permit to allow the project sponsor to 1) seek Conditional Use Authorization from the Planning Commission for the proposed change of use and 2) address the question of any new Formula Retail Use at the site, and if necessary, seek Conditional Use Authorization.

On February 7, 2014, the Project Sponsor appealed the suspension request to the Board of Appeals (Appeal No. 14-021). On March 19, 2014, the Board of Appeals held a duly noticed public hearing on the appeal and upheld the Planning Department's determination that the proposed use (dba "AHF Pharmacy") was considered to be a Formula Retail Use. The Board of Appeals also overruled the Planning Department's determination that the proposed use required a Conditional Use Authorization for use size and determined that the proposed medical office use was less than 2,000 square feet.

Subsequent to the Board of Appeals hearing, the Project Sponsor informed the Planning Department that the proposed pharmacy would be changed to a non-Formula Retail Use (dba "Castro Pharmacy"), which would not require Conditional Use Authorization. As such, I am hereby requesting that DBI **release suspension of Building Permit Application No. 201311121689** based upon the Board of Appeals decision and the Project Sponsor's representation that the

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

Reception:  
**415.558.6378**

Fax:  
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Planning  
Information:  
**415.558.6377**

Tom C. Hui, Director, DBI  
Release of Suspension Request  
518 Castro Street  
April 18, 2014

proposed pharmacy will not operate as a Formula Retail Use. Additionally, if the Project Sponsor proposes signage for the pharmacy or medical service that requires a permit under Planning Code Section 604, they must file a separate Sign Permit Application to authorize such signage.

**APPEAL:** Any aggrieved person may appeal this letter to the Board of Appeals within fifteen (15) days after the date of the issuance of this letter. For further information, please contact the Board of Appeals in person at 1650 Mission Street, Room 304, or call 575-6880.

Sincerely,



Scott F. Sanchez  
Zoning Administrator

CC: Zachary Nathan, Project Architect (via email)  
Dale R. Gluth, AIDS Healthcare Foundation (via email)



Edwin M. Lee  
Mayor

Cynthia G. Goldstein  
Executive Director

# AFFIDAVIT OF SERVICE

**Aids Healthcare Foundation, Appellant  
c/o Dale Gluth, Agent for Appellant  
100 Church Street  
San Francisco, CA 94114**

I, Victor F. Pacheco, Legal Assistant for the Board of Appeals, hereby certify that on this 1<sup>st</sup> day of **April, 2014**, I served the attached **Notice of Decision for Appeal No. 14-021, Aids Healthcare Foundation vs. Zoning Administrator**, subject property at **518 Castro Street**, on the appellant by mailing a copy via U.S. mail, first class, to the address above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed in San Francisco, California.

April 01, 2014  
Date

\_\_\_\_\_  
Victor F. Pacheco

cc: Scott Sanchez, Zoning Administrator  
Planning Department  
1650 Mission Street, 5th Floor  
San Francisco, CA 94103

OTHER PARTIES  
OR CONCERNED CITIZENS:

N/A



**BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO**

Appeal of  
AIDS HEALTHCARE FOUNDATION, )  
Appellant(s) )  
vs. )  
ZONING ADMINISTRATOR, )  
Respondent

Appeal No. 14-021

**NOTICE OF APPEAL**

**NOTICE IS HEREBY GIVEN THAT** on February 07, 2014, the above named appellant(s) filed an appeal with the Board of Appeals of the City and County of San Francisco from the decision or order of the above named department(s), commission, or officer.

The substance or effect of the decision or order appealed from is the **ISSUANCE** on January 23, 2014, of a Request for Suspension (requesting that BPA No. 2013/11/12/1689- tenant improvement of existing vacant retail space for new medical office and pharmacy- be suspended for the reason that the Planning Department's over-the-counter approval was erroneous) at 518 Castro Street.

**FOR HEARING ON March 19, 2014**

**Address of Appellant(s):**

**Address of Other Parties:**

Aids Healthcare Foundation, Appellant c/o Dale Gluth, Agent for Appellant 100 Church Street San Francisco, CA 94114	Zassem Sirhed, Subject Property Owner PO Box 626 Burlingame, CA 94011
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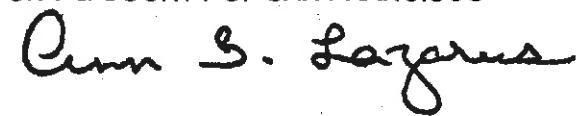
**NOTICE OF DECISION & ORDER**

The aforementioned matter came on regularly for hearing before the Board of Appeals of the City & County of San Francisco on MARCH 19, 2014.

**PURSUANT TO** § 4.106 of the Charter of the City & County of San Francisco and Article 1, §14 of the Business & Tax Regulations Code of the said City & County, and the action above stated, the Board of Appeals hereby **GRANTS THE APPEAL AND ORDERS**


that the **ISSUANCE** of the subject Order by the **ZONING ADMINISTRATOR** is **UPHELD IN PART /OVERRULED IN PART**, and the Suspension Request with respect to the issue of formula retail is **UPHELD**, and the said Suspension Request with respect to the issue of change of use is **OVERRULED** on the basis that the Zoning Administrator **ERRED** in determining that the medical office use exceeded the 2,000 square foot threshold by inaccurately including the bathrooms in the calculations. **Note:** The **ZONING ADMINISTRATOR** shall issue a revised Order pursuant to this decision in order to clarify which construction elements of the permit scope are re-instated.

BOARD OF APPEALS  
CITY & COUNTY OF SAN FRANCISCO



Ann Lazarus, President

Last Day to Request Rehearing: March 31, 2014  
Request for Rehearing: None  
Rehearing: None  
Notice Released: April 01, 2014

  
Cynthia G. Goldstein, Executive Director

1 [Interim Zoning Controls - Formula Retail Uses in the Castro Street Neighborhood  
2 Commercial District]

3 **Resolution imposing interim zoning controls for an 18-month period in the Castro**  
4 **Street Neighborhood Commercial District to require a Conditional Use authorization by**  
5 **the Planning Commission under Planning Code, Section 303(i), for a proposed use that**  
6 **has been determined to be Formula Retail even if a project sponsor subsequently**  
7 **removes one or more distinguishing Formula Retail Use features from the project**  
8 **proposal; and making environmental findings, and findings of consistency with the**  
9 **General Plan, and with the eight priority policies of Planning Code, Section 101.1.**

10  
11 WHEREAS, Planning Code, Section 306.7, permits the imposition of interim zoning  
12 controls that promote the public interest, including but not limited to (a) development and  
13 conservation of the City's commerce and industry to maintain the City's economic vitality and  
14 maintain adequate services for its residents, visitors, businesses and institutions, and (b)  
15 preservation of neighborhoods and areas of mixed residential and commercial uses and their  
16 existing character; and

17 WHEREAS, Planning Code, Section 703.3(b), defines a "Formula Retail Use" as "a  
18 type of retail sales activity or retail sales establishment which, along with eleven or more other  
19 retail sales establishments located in the United States, maintains two or more of the following  
20 features: a standardized array of merchandise, a standardized facade, a standardized decor  
21 and color scheme, a uniform apparel, standardized signage, a trademark or a servicemark,"  
22 which features are also defined in Section 703.3(b); and

23 WHEREAS, Formula Retail Uses in specified zoning districts are either permitted,  
24 prohibited, or require a Conditional Use authorization from the Planning Commission; and  
25

1           WHEREAS, These interim zoning controls furthers the City's interests set forth in  
2 Planning Code, Section 703.3(a); and

3           WHEREAS, Planning Code, Section 303(i), establishes criteria for the Planning  
4 Commission to consider when hearing requests for Conditional Use authorization for a  
5 Formula Retail Use, which include: the existing concentrations of Formula Retail Uses within  
6 the district; the availability of other similar retail uses within the district; the compatibility of the  
7 proposed Formula Retail Use with the existing architectural and aesthetic character of the  
8 district; the existing retail vacancy rates within the district; and the existing mix of Citywide  
9 retail uses and neighborhood-serving retail uses within the district; and

10           WHEREAS, The Castro Street Neighborhood Commercial District (NCD), established  
11 in Planning Code, Section 715.1, has special controls that are designed, among other things,  
12 to promote a balanced mix of uses and to preserve the existing equilibrium of neighborhood-  
13 serving convenience and specialty commercial uses; and

14           WHEREAS, The City is currently investing considerable capital resources in improving  
15 Castro Street included within the NCD area in order to enhance pedestrian activities; and

16           WHEREAS, The Castro Street NCD requires a Conditional Use authorization for  
17 Formula Retail Uses; and

18           WHEREAS, Both Planning Code, Section 703.3(i), and Planning Code, Section  
19 303(i)(8), provide that if the City determines that a building permit application or building  
20 permit subject to the Formula Retail Use controls of the Planning Code is for a Formula Retail  
21 Use, the building permit applicant or holder bears the burden of proving to the City that the  
22 proposed or existing use is not a Formula Retail Use; and

23           WHEREAS, A problem in San Francisco's Citywide Formula Retail Use controls has  
24 been identified in the Castro Street (NCD) in that, despite the fact that once the City has  
25 determined that a proposed use is a Formula Retail Use the Planning Code puts the burden

1 on a project sponsor to prove that it is not, a project sponsor can easily manipulate the  
2 Formula Retail Use features to evade the Conditional Use authorization requirement; and,

3 WHEREAS, The Planning Commission is in the process of considering updates to the  
4 Formula Retail Use controls that would apply Citywide; and

5 WHEREAS, Any Planning Commission recommendation for updates to the Citywide  
6 Formula Retail controls is likely months away; and

7 WHEREAS, Any recommendation on the imposition, on a Citywide basis, of these  
8 interim controls proposed herein for the Castro Street NCD is best handled by the Planning  
9 Commission as part of its larger, comprehensive analysis; yet there is an urgent need to  
10 address this problem for the Castro Street NCD; and

11 WHEREAS, These interim controls proposed herein for the Castro Street NCD will  
12 allow time for the orderly completion of a planning study and for the adoption of appropriate  
13 legislation; and

14 WHEREAS, The Board of Supervisors ("Board") has considered the impact on the  
15 public health, safety, peace and general welfare if the interim controls proposed herein for the  
16 Castro Street NCD are not imposed; and

17 WHEREAS, The Board has determined that the public interest will best be served by  
18 imposition of these interim controls for the Castro Street NCD in order to ensure that the  
19 comprehensive legislative scheme that may be ultimately adopted is not undermined during  
20 the planning and legislative process for permanent controls; and

21 WHEREAS, The Board makes the following findings of consistency with the Priority  
22 Policies set forth in Planning Code, Section 101.1: By adding additional criteria for defining a  
23 Formula Retail Use in the Castro Street NCD, these interim controls advance Priority Policy 1  
24 that existing neighborhood-serving retail uses be preserved and enhanced and Priority Policy  
25 2 that existing housing and neighborhood character be conserved and protected to preserve



1 the cultural and economic diversity of our neighborhoods; further, these interim controls do not  
2 conflict with the other Priority Policies of Section 101.1; and

3 WHEREAS, The Planning Department has determined that the actions contemplated in  
4 this Resolution are in compliance with the California Environmental Quality Act (California  
5 Public Resources Code sections 21000 et seq.) and the Board hereby affirms that  
6 determination. Said determination is on file with the Clerk of the Board of Supervisors in File  
7 No. 140736 and is incorporated herein by reference; now, therefore, be it

8 RESOLVED, That in the Castro Street NCD, a Conditional Use authorization by the  
9 Planning Commission is required under Planning Code, Section 303(i), in circumstances  
10 where there has been a determination by Department staff or a City board, commission, or  
11 agency that a proposed project is a Formula Retail Use and the project sponsor subsequently  
12 removes one or more of the Formula Retail Use features listed in Planning Code, Sections  
13 703.3(b) and 303(i), as defining a Formula Retail Use; and, be it

14 FURTHER RESOLVED, That any proposed use in the Castro Street NCD within the  
15 scope of these interim controls that has not received a final decision on any required approval  
16 action by any City department, board, commission, or agency shall be covered by these  
17 interim controls; and, be it

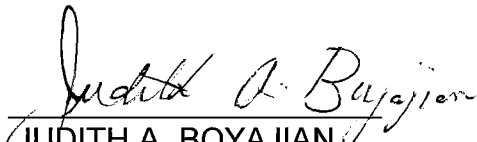
18 FURTHER RESOLVED, That upon imposition of these interim controls for the Castro  
19 Street NCD, the Planning Department shall conduct a study of the contemplated zoning  
20 proposal and propose permanent legislation to address the issues of manipulation of the  
21 Formula Retail Use features and disagreements between the Planning Department and  
22 project sponsors as to whether a proposed use is a Formula Retail Use; and, be it

23 FURTHER RESOLVED, That these interim controls for the Castro Street NCD shall  
24 remain in effect for a period of 18 months unless extended in accordance with Planning Code,  
25 Section 306.7(h), or until permanent controls are adopted; and, be it

1 FURTHER RESOLVED, That the Planning Department shall provide reports to the  
2 Board pursuant to Planning Code, Section 306.7(i).

3  
4 APPROVED AS TO FORM:

5 DENNIS J. HERRERA, City Attorney

6  
7 By:   
8 JUDITH A. BOYAJIAN  
Deputy City Attorney

9  
10 n:\land\as2014\1400604\00934965.doc



City and County of San Francisco

Tails

Resolution

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

File Number: 140736

Date Passed: July 08, 2014

Resolution imposing interim zoning controls for an 18-month period in the Castro Street Neighborhood Commercial District to require a Conditional Use authorization by the Planning Commission under Planning Code, Section 303(i), for a proposed use that has been determined to be Formula Retail even if a project sponsor subsequently removes one or more distinguishing Formula Retail Use features from the project proposal; and making environmental findings, and findings of consistency with the General Plan, and with the eight priority policies of Planning Code, Section 101.1.

July 07, 2014 Land Use and Economic Development Committee - RECOMMENDED AS COMMITTEE REPORT

July 08, 2014 Board of Supervisors - ADOPTED

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

File No. 140736

I hereby certify that the foregoing Resolution was ADOPTED on 7/8/2014 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo  
Clerk of the Board

  
\_\_\_\_\_  
Mayor

7/18/14

\_\_\_\_\_  
Date Approved

HD 8/20/14

FILE

Longaway, Alec (PAB)

**From:** AIDS Healthcare Foundation <community@aidshhealth.org> on behalf of Lorene Leon <community@aidshhealth.org>  
**Sent:** Thursday, June 12, 2014 4:14 PM  
**To:** Board of Appeals (PAB)  
**Subject:** SUPPORT AHF'S WORK IN SAN FRANCISCO!

BOARD OF APPEALS

JUN 13 2014

CSB

APPEAL # 14-077

Jun 12, 2014

President Ann Lazarus

Dear President Lazarus,

I am pleased to write this letter of support for AIDS Healthcare Foundation. I am aware that they are in the process of relocating their Castro location from Church and 18th Streets to a single location at 518 Castro Street. I have found AHF's service to be of great value in San Francisco. Since their introduction to San Francisco in 2001, and more specifically since their move to the Castro in 2009, AHF has been a valued collaborator, and has made significant contributions to toward addressing the HIV epidemic in San Francisco. AHF has proven their commitment to providing prevention and care options without governmental funding.

AHF offers an essential service to a community where nearly 40% of people living with HIV are not engaged in medical care, and AIDS Service Organizations struggle to battle significant reductions in funding. AHF provides these services in the best interest of San Franciscans.

Sincerely,

Ms. Lorene Leon  
 3845 Folsom St  
 San Francisco, CA 94110-6135

H D 8/20/14

FILE

Mejia, Xiomara (PAB)

**From:** AIDS Healthcare Foundation <community@aidshhealth.org> on behalf of STUART WALDMAN <community@aidshhealth.org>  
**Sent:** Sunday, July 06, 2014 3:38 PM  
**To:** Board of Appeals (PAB)  
**Subject:** SUPPORT AHF'S WORK IN SAN FRANCISCO!

BOARD OF APPEALS

JUL 07 2014 *CBF*

APPEAL # 14-077

Jul 6, 2014

President Ann Lazarus

Dear President Lazarus,

I am pleased to write this letter of support for AIDS Healthcare Foundation. I am aware that they are in the process of relocating their Castro location from Church and 18th Streets to a single location at 518 Castro Street. I have found AHF's service to be of great value in San Francisco. Since their introduction to San Francisco in 2001, and more specifically since their move to the Castro in 2009, AHF has been a valued collaborator, and has made significant contributions to toward addressing the HIV epidemic in San Francisco. AHF has proven their commitment to providing prevention and care options without governmental funding.

AHF offers an essential service to a community where nearly 40% of people living with HIV are not engaged in medical care, and AIDS Service Organizations struggle to battle significant reductions in funding. AHF provides these services in the best interest of San Franciscans.

Sincerely,

Mr. STUART WALDMAN  
52 Beaver St  
San Francisco, CA 94114-1515