



SAN FRANCISCO PLANNING DEPARTMENT

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Planning Commission Motion 18528

HEARING DATE: FEBRUARY 2, 2012

Date: January 26, 2012
Case No.: **2011.1233C**
Project Address: **2255 POLK STREET**
Zoning: Polk Street Neighborhood Commercial District
65-A Height and Bulk District
Block/Lot: 0550/001
Project Sponsor: Ceri Smith
1415 Green Street
San Francisco, CA 94109
Staff Contact: Kevin Guy– (415) 558-6163
kevin.guy@sfgov.org

ADOPTING FINDINGS RELATING TO THE APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303 AND 723.42 OF THE PLANNING CODE TO ALLOW A FULL-SERVICE RESTAURANT (D.B.A. TO BE DETERMINED) WITHIN THE POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT AND THE 65-A HEIGHT AND BULK DISTRICT.

PREAMBLE

On November 2, 2011, Thomas Pippin, acting on behalf of Ceri Smith (“Project Sponsor”) filed an application with the Planning Department (“Department”) for Conditional Use Authorization under Planning Code Section(s) 303 and 723.42 to allow a full-service restaurant (d.b.a. to be determined) within the Polk Street Neighborhood Commercial District and the 65-A Height and Bulk District (Case No. 2011.1233C, “Project”).

On February 2, 2012, the San Francisco Planning Commission (“Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2011.1233C.

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. 2011.1233C, 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 at 2255 Polk Street, on the west side of Polk Street between Green and Vallejo Streets, Block 0550, Lot 001 ("Project Site"). The property is located within the Polk Street Neighborhood Commercial District ("NCD") and the 65-A Height and Bulk District. The property is developed with a single-story commercial building that also has frontage on Green Street, containing a wine store, a beauty salon, and a dry cleaning establishment. The subject tenant space is currently vacant, but was previously occupied by a clothing boutique.
3. **Surrounding Properties and Neighborhood.** The area surrounding the Project Site is mixed-use in character. A variety of commercial establishments are located within ground floor storefronts in the Polk Street NCD, including restaurants, bars, apparel stores, convenience stores, and other types of retailers. Buildings in the vicinity typically range from one to five stories in height. Upper floors of multi-story buildings are generally occupied by residential units. Larger scale retail uses, tourist hotels, and residential uses are situated along the Van Ness Corridor, outside of the Polk Street NCD to the west.
4. **Project Description.** The applicant proposes to establish a full-service restaurant, including an outdoor seating area along the Polk Street sidewalk. The proposal includes interior tenant improvements, however, the size of the tenant space and the overall exterior configuration of the storefront would not change. The tenant space measures approximately 350 square feet. The restaurant would offer beer and wine, but the sponsor is not proposing to offer liquor.
5. **Public Comment.** The Department has received numerous communications in support of the project that praise the operation of an existing wine store operated by the project sponsor, as well as the diversification of dining options in the area. The Department has received no communications in opposition to the project.

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. **Use.** Planning Code Section 723.42 states that, within the Polk Street NCD, Conditional Use Authorization is required for a Full-Service Restaurant, as defined by Planning Code Section 790.92.

The Project Sponsor is requesting Conditional Use authorization to establish a Full-Service Restaurant. As part of the project, the sponsor proposed to install two outdoor tables and with four seats. Through interpretations of the Planning Code, the Zoning Administrator has determined that up to eight chairs of sidewalk seating can be considered a "de minimus" addition to a restaurant, and is a convenience and neighborhood amenity. Accordingly, the addition of "de minimus" sidewalk seating does not require separate Conditional Use authorization as a distinct use.

B. **Hours of Operation.** Planning Code Section 723.27 states that Conditional Use Authorization is required for maintaining hours of operation from 2:00AM to 6:00AM, as defined by Planning Code Section 790.48.

The Project Sponsor does not propose operation between the hours of 2:00AM to 6:00AM. Therefore, the business would continue to operate during hours which are principally permitted within the Polk Street NCD.

C. **Other Entertainment.** Planning Code Section 723.48 states that a Conditional Use Authorization is required for Other Entertainment, as defined by Planning Code Section 790.38.

The business does not propose to host any activities defined as Other Entertainment by Section 790.38.

D. **Parking.** Planning Section 151 of the Planning Code requires off-street parking for every 200 square-feet of occupied floor area, where the occupied floor area exceeds 5,000 square-feet.

The occupied floor area of the restaurant measures less than 5,000 square feet, therefore, the business does not require any off-street parking.

E. **Street Frontage in Neighborhood Commercial Districts.** Section 145.1 of the Planning Code requires that NC Districts containing specific uses, including large fast-food restaurants, have at least ½ the total width of the new or altered structure at the commercial street frontage devoted to entrances to commercially used space, windows or display space at the pedestrian eye-level. Such windows shall use clear, un-tinted glass, except for decorative or architectural accent. Any decorative railings or decorated grille work, other than wire mesh, which is placed in front or behind

such windows, shall be at least 75 percent open to perpendicular view and no more than six feet in height above grade.

Nearly the entire storefront at the Project Site consists of clear glazing with views into the interior of the tenant space. As part of the Project, the existing entry door would be upgraded to accommodate access for the disabled. However, the Project would not modify the overall configuration of the storefront.

F. **Signage.** The proposed business does not have a name as of this writing. Any proposed signage will be subject to the review and approval of the Planning Department.

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 desirable because it will allow for the establishment of a new business that will diversify the dining options within the Polk Street corridor. While the overall Polk Street corridor contains a substantial number of restaurants, the size of the proposed use is modest, and is smaller than most tenant spaces on the subject block. The proposed full-service restaurant would not impact traffic or parking in the district because it would have a relatively small patron capacity, and is located within in area served by abundant transit options. The Project will compliment the mix of goods and services currently available in the district and contribute to the economic vitality of the neighborhood by removing a vacant storefront.

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 size and shape of the site and the size, shape, and arrangement of the building are adequate for the Project. The Project would not physically expand the existing building. While the new outdoor seating would be located within the public right-of-way, the seating area is relatively small and would not impede pedestrian movement.

- ii. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;

The Planning Code does not require parking or loading for a 350 square-foot full-service restaurant. The Project is designed to meet the needs of the immediate neighborhood and should not generate significant amounts of vehicular trips from the immediate neighborhood or citywide.

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

The proposed use is subject to the standard conditions of approval for full-service restaurants and outlined in Exhibit A. Condition 7 specifically obligates the project sponsor to mitigate odor generated by the restaurant use. Due to the small size and patron capacity of the restaurant, the Project is not expected to generate substantial amounts of noise.

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

Aside from upgrading the existing entry door to accommodate disabled access, the proposed full-service restaurant does not require any exterior tenant improvements. The Department shall review all lighting and signs proposed for the new business.

- 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 Polk Street NCD functions as a neighborhood-serving marketplace, providing convenience and specialty goods and services to residents in the Polk Gulch, Nob Hill, Russian Hill, and Pacific Heights areas. The NCD is further described in Section 723.1, which states that commercial uses are generally located on the ground floor of buildings. The regulations of Section 723 are intended to, "...limit new eating, drinking, and other entertainment...uses, which can produce parking congestion, noise, and other nuisances or displace other types of local-serving convenience goods and services." While the Polk Street corridor hosts a number of restaurants, the size of the proposed use is relatively small. Establishment of the business would not foreclose substantial opportunities for other retail businesses providing convenience goods and services. The installation of outdoor seating will

contribute to the vitality of the sidewalk along Polk Street. The restaurant would occupy a storefront that is currently vacant, and will activate the streetscape.

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 WORKING ENVIRONMENT.

Policy 1.1:

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development that has substantial undesirable consequences that cannot be mitigated.

Policy 1.2:

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. 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 establish a new, locally-owned business and will enhance the diverse economic base of the City.

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.

No commercial tenant would be displaced and the Project. The proposed use is relatively small, and 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.

There is a concern with the potential over-concentration of food-service establishments. The Commerce and Industry Element of the General Plan contains Guidelines for Specific Uses. For eating and drinking establishments, the Guidelines state, "the balance of commercial uses may be threatened when eating and drinking establishments occupy more than 20% of the total occupied commercial frontage." Approximately 27 percent of the subject block face is currently occupied by

eating and drinking establishments. While this exceeds the threshold recommended by the General Plan, the proposed use is relatively small, and would not displace an existing retail business. The business would not occupy a large amount of commercial square footage, therefore, the Project would not foreclose opportunities for other retail businesses providing substantial convenience goods and services to the neighborhood.

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.

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 proposal would enhance the district by providing a locally-owned, full-service restaurant that creates employment opportunities for the community.

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

There are no dwelling units on the subject property. Given the small patron capacity of the proposed restaurant, the Project is not expected to generate substantial noise or traffic in a manner that would adversely affect the quality of life for residents in the area. The Project would diversify the mix of business and increase the number of dining choices offered in the area. The business will occupy a storefront that is currently vacant, and will enhance the commercial vitality of the Polk Street corridor.

- 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 Project would not adversely impact public transit or place a burden on the existing supply of parking in the neighborhood. The area is well-served by public transportation.

- 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.

Although there would be some interior tenant improvements to the subject commercial space, the Project does not involve any construction activities that would compromise the structural integrity of the existing building.

- G. That landmarks and historic buildings be preserved.

Aside from upgrades to the entry door to accommodate disabled access, the Project would not modify the exterior of the building.

- 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.

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. 2011.1233C** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated February 2, 2012, 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. 18528. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on February 2, 2012.

Linda D. Avery
Commission Secretary

AYES: Miguel, Antonini, Borden, Fong, Moore, Sugaya

NAYS:

ABSENT:

ADOPTED: February 2, 2012

EXHIBIT A

AUTHORIZATION

This authorization is for a conditional use to allow a full self-service restaurant (d.b.a. to be determined) located at 2255 Polk Street, Block 0550, Lot 001, pursuant to Planning Code Sections 303 and 723.42 within the Polk Street Neighborhood Commercial District and the 65-A Height and Bulk District; in general conformance with plans, dated February 2, 2012, and stamped "EXHIBIT B" included in the docket for Case No. 2011.1233C and subject to conditions of approval reviewed and approved by the Commission on February 2, 2012 under Motion No 18528. 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 February 2, 2012 under Motion No 18528.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. 18528 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 and Expiration.** The authorization and right vested by virtue of this action is valid for three years from the effective date of the Motion. A building permit from the Department of Building Inspection to construct the project and/or commence the approved use must be issued as this Conditional Use authorization is only an approval of the proposed project and conveys no independent right to construct the project or to commence the approved use. The Planning Commission may, in a public hearing, consider the revocation of the approvals granted if a site or building permit has not been obtained within three (3) years of the date of the Motion approving the Project. 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. The Commission may also consider revoking the approvals if a permit for the Project has been issued but is allowed to expire and more than three (3) years have passed since the Motion was approved.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

2. **Extension.** This authorization may be extended at the discretion of the Zoning Administrator only where failure to issue a permit by the Department of Building Inspection to perform said tenant improvements is caused by a delay by a local, State or Federal agency or by any appeal of the issuance of such permit(s).

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

MONITORING - AFTER ENTITLEMENT

3. **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.

4. **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

OPERATION

5. **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>

6. **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>

7. **Odor Control Unit.** In the event that a hooded range or other cooking equipment using open flame is installed, 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 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 and Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

8. **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