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Planning Commission Motion No. 18025

HEARING DATE: JANUARY 28, 2010

Date: January 21, 2010
Case No.: **2009.1058C**
Project Address: **1346 POLK STREET**
Zoning: Polk Street Neighborhood Commercial District
 65-A Height and Bulk District
Block/Lot: 0668/007
Project Sponsor: Chanh Pham
 72 Orsi Street
 San Francisco, CA 94103
Staff Contact: Aaron Hollister – (415) 575-9078
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ADOPTING FINDINGS RELATING TO CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303 AND 704.3 OF THE PLANNING CODE TO ESTABLISH A FORMULA RETAIL USE (D.B.A. MAX MUSCLE) AT 1346 POLK STREET ON ASSESSOR’S BLOCK 0668, LOT 007, LOCATED WITHIN THE POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT AND A 65-A HEIGHT AND BULK DISTRICT.

PREAMBLE

On November 10, 2009, Chanh Pham (Project Sponsor) applied for Conditional Use Authorization, Application No. 2009.1058C, on the property at 1346 Polk Street, Lot 007 in Assessor’s Block 0668 (Project Site), to establish a formula retail use (D.B.A. Max Muscle) as defined in Planning Code Section 303.3(b) in general conformity with plans labeled Exhibit B dated January 28, 2010 (Project). The site is within the Polk Street Neighborhood Commercial District and a 65-A Height and Bulk District.

On January 28, 2010, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2009.1058C.

The Project was determined by the San Francisco Planning Department (hereinafter “Department”) to be categorically exempt pursuant to the California Environmental Quality Act (CEQA), Section 15303 (Class 3, Conversion of a Small Structure). The Commission has reviewed and concurs with said determination.

This Commission has reviewed and considered reports, studies, plans and other documents pertaining to this Project.

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. 2009.1058C, subject to the conditions contained in "EXHIBIT A" of this motion, based on the following findings:

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.
2. **Site Description and Present Use.** The project is located on the east side of Polk Street between Pine and Bush Streets, Assessor's Block 0668, Lot 007. This site is within the Polk Street Neighborhood Commercial District and a 65-A Height and Bulk District. The Project Site is occupied by a single-story over basement commercial building with two commercial tenant spaces. A restaurant currently occupies one of the commercial tenant spaces, while the subject commercial tenant space has been vacant for nearly two years, but most recently the subject tenant space contained a bookstore.
3. **Surrounding Properties and Neighborhood.** The Polk Street NCD, located in the gulch between Nob Hill, Russian Hill, and Pacific Heights, provides convenience goods and services to the residents of the Polk Gulch neighborhood and the west slopes of Nob Hill and Russian Hill. The district has a very active and continuous commercial frontage along Polk Street, while the side streets have a greater proportion of residences. The zoning controls are designed to encourage residential development above neighborhood-serving commercial uses on the ground floor.

The surrounding development is a variety of multi-story, mixed-use buildings. Nearby ground-floor uses include eating and drinking establishments, small-scale retail stores, and nighttime entertainment. The upper stories are generally occupied by apartments, and residential hotels. The scale of development throughout the area varies widely. The scale of development throughout the area consists of low- and mid-rise buildings (one- to four-story structures) and high-rise buildings exceeding 100 feet in height. The height limits in the area range from 65 to 130 feet.

4. **Project Description.** The project sponsor is seeking Conditional Use authorization to establish a Formula retail use (D.B.A. Max Muscle) as defined by Section 703.3 of the Planning Code. The proposed retail use would offer retail sales of health and sports nutrition products and would occupy the ground floor, basement and mezzanine levels of the subject commercial tenant space,

or approximately 1870 gross square feet. There would be no physical expansion of the building, nor would storefront alterations be necessary.

180 Max Muscle locations currently exist nationwide with at least another 25 locations pending approvals. One San Francisco Max Muscle location exists at 16th and Market Streets. Max Muscle locations utilize a standardized array of merchandise, décor, signage and trademark. The subject business would be an individually owned franchise by a San Francisco resident.

5. **Public Comment.** The Department has received letters of support from the Mayor's Office Economic Workforce Development, the Polk District Merchants' Association, the Lower Polk Neighbors, the Middle Polk Neighborhood Association, the Alliance for a Better District 6, the Tenant Associations Coalition of San Francisco, the Miss Asian America Pageant, a neighborhood business, a neighborhood resident and several individuals from outside the neighborhood area.

Additionally, a petition supporting the project has been submitted. The petition contains signatures from 25 local businesses, 48 residential neighbors, several businesses and residents outside of the neighborhood and 23 members of an adjacent yoga studio.

The Department has not received any correspondence not in support of the Conditional Use authorization request.

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. **Floor Area Ratio.** Section 124 establishes basic floor area ratios (FAR) for all zoning districts. FAR is the ratio of the gross floor area of all the buildings on a lot to the total area of the lot. Under Section 124(a), the FAR for the Polk Street NCD is 2.5 to 1. Under Section 124(b), in NCDs, the floor area ratio limits listed in Subsection (a) do not apply to dwellings or other residential units.

With a lot area of 1,875 square feet, 4,687.5 nonresidential gross square feet can be developed on the Project Site. Since the Project will not include the physical expansion of the commercial space, there will be no increase in nonresidential gross floor area.

- B. **Parking Requirement.** Section 151 requires eating and drinking establishments to provide one parking space for every 200 square feet of occupied floor area, where the occupied floor area exceeds 5,000 square feet.

With a gross floor area of under 5,000 square feet, the Project is not required to provide parking

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

With a gross floor area of under 10,000 square feet, the Project is not required to provide off-street loading. Existing yellow zones along Polk Street can be used for deliveries.

- D. **Formula Retail.** Section 703.3 places notification requirements and other restrictions on formula retail uses.

The Project is considered to be a formula retail use as defined by Section 703.3(b) of the Planning Code. Conditional Use authorization must be authorized for a formula retail use at the subject site.

- E. **Hours of Operation.** Section 723.27 allows hours of operation from 6:00AM until 2:00AM as of right and requires conditional use authorization to operate between the hours of 2:00AM and 6:00AM.

The Project Sponsor is not requesting Conditional Use authorization to operate between the hours of 2:00AM and 6:00AM.

- F. **Use Size.** Section 121.2 establishes nonresidential use size limits in neighborhood commercial districts in order to protect and maintain a scale of development appropriate to each district. In the Polk Street NCD, Conditional Use Authorization is required for any nonresidential use that exceeds 1,999 square feet.

At 1,870 gross square feet, the Project does require Conditional Use authorization for use size.

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 has been found to be desirable as the requested. Conditional Use authorization would allow a storefront that has been vacant for two years to be filled and would provide employment opportunities for local residents. Additionally, because of the existing vacant retail availability in the area, 30 storefronts, the proposed business would not preclude a locally-owned, independent business from locating in the area. Furthermore, the proposed business would not be competing against local, independent retailers offering similar products in the area. The only competitors in the area are two other formula retail uses.

Also, the project is compatible with and would further promote the mixed-use character of the Polk Street NCD. The addition of a formula retail use would not detract from the character of the neighborhood primarily consisting of local, independent businesses, and the addition of a retail use in the subject area of the Polk Street NCD would add commercial diversity to an area that primarily features eating and drinking establishments.

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. There will be no physical expansion of the existing building or commercial space.

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

The Project will not adversely impact public transit or overburden the existing supply of parking in the neighborhood. Many of the patrons will be able to walk from their residences or places of employment. The Project site is well-served by public transportation (2-Clement, 3-Jackson, 4-Sutter, 19-Polk, 27-Bryant, 38-Geary, 47-Van Ness and the 49-Van Ness-Mission). For the patrons who choose to drive, parking garages are located in the immediate neighborhood.

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

Given the nature of the Project (a retail store), it would not emit any substantial amount of glare, dust or odor.

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

The Project does not propose the physical expansion of the existing tenant space, therefore, no landscaping will need to be provided. All lighting and signage would be required to comply with the requirements of the Planning Code, an approved signage program, the Secretary of the Interior's Standards for the Treatment of Historic Properties (Secretary Standards) and the Urban Design Element of the General Plan.

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 Project will provide development that is in conformity with the purpose of the zoning controls for the Polk Street NCD as set forth in Planning Code Section 721.1. The Polk Street NCD offers a wide variety of goods and services to larger areas than the immediate neighborhoods in which they are located. The proposed use will be compatible with the mixed-use character of the neighborhood and would add commercial diversity to an area that primarily features eating and drinking establishments.

8. **Planning Code Sections 303(i) and 703.4** require Conditional Use authorization for the establishment of a formula retail use in Neighborhood Commercial Districts. The Planning Commission shall consider the following criteria set forth in **Section 303(i)** in addition to the criteria set forth in Section 303(c):

- A. The existing concentrations of formula retail uses within the Neighborhood Commercial District.

A survey of the Polk Street NCD bounded north/south by Sacramento and Post Streets revealed that five formula retail uses are currently found in the area. These businesses include two Walgreens, Subway, General Nutrition Center and Metro PCS.

The Walgreens are respectively located on Polk Street between Sacramento and California Streets and at the corner of Bush and Larkin Streets. Subway is located on the corner of Polk and Sutter Streets, General Nutrition Center is located on Polk Street between Bush and Sutter Streets and Metro PCS is located on Polk Street between Bush and Post Streets.

- B. The availability of other similar retail uses within the Neighborhood Commercial District.

Within the survey area of the Polk Street NCD between Sacramento and Post Streets, one similar retail use exists, General Nutrition Center. General Nutrition Center also is considered a formula retail use per Planning Code Section 703.3(b).

- C. The compatibility of the proposed formula retail use with the existing architectural and aesthetic character of the Neighborhood Commercial District.

No physical expansions of the subject building would be necessary to accommodate the proposed use. Because the subject building is considered an historic resource per the provisions of CEQA, all lighting and signage would be required to comply with the requirements of the Planning Code, the Secretary of the Interior's Standards for the Treatment of Historic Properties (Secretary Standards) and the Urban Design Element of the General Plan.

- D. The existing retail vacancy rates within the Neighborhood Commercial District.

30 vacant commercial storefronts currently exist in the Polk Street NCD between Sacramento and Post Streets.

- E. The existing mix of Citywide-serving retail uses and neighborhood-serving retail uses within the Neighborhood Commercial District.

The subject district contains eating and drinking establishments, retail, services and institutions that serve not only the immediate neighborhood, but also the City as a whole. These aforementioned uses are primarily locally-owned, independent uses. Formula retail uses can be found scattered across the district. The proposed use is intended to be primarily neighborhood-serving.

9. **General Plan Compliance.** The Project is, on balance, consistent with the following Objectives and Policies of the General Plan:

COMMERCE AND INDUSTRY ELEMENT

Neighborhood Commerce

OBJECTIVE 6:

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

Policy 1:

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.

The Project would be a neighborhood-serving use and would further enhance the neighborhood by filling a storefront that has been vacant for two years. Additionally, the Project would add commercial diversity to the subject area of the Polk Street NCD which contains a high concentration of eating and drinking establishments.

Policy 6:

Promote economically vital neighborhood commercial districts which foster small business enterprises and entrepreneurship and which are responsive to the economic and technological innovation in the marketplace and society.

The subject business would be an individually owned franchise by a San Francisco resident.

Policy 9:

Regulate uses so that traffic impacts and parking problems are minimized.

The Project will not adversely impact public transit or place a burden on the existing supply of parking in the neighborhood. Many of the patrons will be able to walk from their residences or places of employment, and the Project Site is well-served by public transportation. Those who drive will be able to utilize nearby parking garages located within in the immediate Project area.

10. **Planning Code Section 101.1(b)** establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project does comply with said policies in that:

- A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

The Project is intended to be a neighborhood-serving retail use. The subject business would be an individually owned franchise by a San Francisco resident.

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

The Project will not have an adverse impact on neighborhood character or the cultural and economic diversity of the neighborhood. With the addition of subject business, the subject area of the Polk Street NCD would enjoy a greater mix of uses. Furthermore, the addition of another formula retail use would not add to an overconcentration of formula retail uses in an area that features locally owned, independent businesses.

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

The Project will not have any impacts on the City's supply of affordable housing.

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

The Project will not adversely impact public transit or place a burden on the existing supply of parking in the neighborhood. Many of the patrons will be able to walk from their residences or places of employment, and the Project Site is well-served by public transportation. Those who drive will be able to utilize nearby parking garages.

- 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.

There is no commercial office development associated with the Project. No industrial or service sector uses would be displaced.

- F. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

The Project does not involve any construction activities that would compromise the structural integrity of the existing building or trigger any Building Code requirements for a seismic upgrade.

- G. That landmarks and historic buildings be preserved.

The Project does not include any alterations to the exterior of the building. The architectural and/or historic features of the building will be preserved.

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

The Project, which does not include any physical expansion of the existing building envelope, and would not impact any parks or open spaces or their access to sunlight.

11. 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.
12. 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. 2009.1058C** subject to the following conditions attached hereto as "EXHIBIT A" 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. 18025. 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 January 28, 2010.

Linda D. Avery
Commission Secretary

AYES: Miguel, Olague, Moore, Sugaya, Antonini

NAYS: None

ABSENT: Borden & Lee

ADOPTED: January 28, 2010

Exhibit A

Conditions of Approval

1. This authorization is for a Conditional Use Authorization under Planning Code Section 703.4 of the Planning Code to establish a formula retail use (D.B.A. Max Muscle) as defined in Planning Code Section 703.3(b) within the Polk Street Neighborhood Commercial District and a 65-A Height and Bulk District, in general conformance with plans filed with the Application as received on November 10, 2010, and stamped "EXHIBIT B" included in the docket for **Case No. 2009.1058C**, reviewed and approved by the Commission on January 28, 2010.
2. Prior to the issuance of the Building Permit 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 premises (Assessor's Block 0668, Lot 007), which notice shall state that construction has been authorized by and is subject to the conditions of this Motion. From time to time after the recordation of such notice, at the request of the Project Sponsor, the Zoning Administrator shall affirm in writing the extent to which the conditions of this Motion have been satisfied.
3. The authorization and right vested by virtue of this action shall be deemed void and canceled if, within three years of the date of this Motion, a site permit or building permit for the Project has not been secured by Project Sponsor. This authorization may be extended at the discretion of the Zoning Administrator only if the failure to issue a permit by the Department of Building Inspection is delayed by a city, state, or federal agency or by appeal of the issuance of such permit.
4. Violation of the conditions contained in this Motion or of any other provisions of the Planning Code may be subject to abatement procedures and fines up to \$250 a day in accordance with Planning Code Section 176.
5. Should monitoring of the Conditions of Approval contained in Exhibit A of this Motion be required, the Project Sponsor or successors shall pay fees as established in Planning Code Section 351(e)(1).
6. Ground level storefronts in general conformity with Exhibit B shall be maintained in an attractive manner, providing transparency into the tenancy behind. Visibility of the commercial interiors and activity through all storefront windows shall be maintained in order to ensure that the ground level of the building remains visually active, provides visual interest to pedestrians, and enhances sidewalk security. Commercial interior layouts should be designed with these requirements in mind. Generally, storefront windows should not be visually obscured with the following: blinds, shades or curtains; shelving; equipment; darkly tinted, translucent or opaque film; painted, stenciled or adhesive signage applied to individual window surfaces that has an overall transparency of less than 50%, or any signage that covers more than 1/3 of the area of any individual window; full or partial height interior partition walls placed directly against or within 10 feet from the window glazing; or

any other items that significantly block the vision of pedestrians through the storefront windows into the occupiable commercial space. Solid roll-down security gates shall not be installed in storefront openings. The property owner shall ensure that this condition of approval is incorporated into all commercial leases.

7. The property owner shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean condition. Such maintenance shall include, at a minimum, daily litter pickup and disposal, and washing or steam cleaning of the main entrance and abutting sidewalks at least once each week.
8. The operator of the use shall be responsible for maintaining the sidewalk within a one-block radius of the site free of paper or litter generated by the retail use.
9. Signs and exterior lighting for the business shall be reviewed and approved by the Planning Department before they are installed.
10. The Project shall appoint a Community Liaison Officer to address issues of concern to neighbors related to the operation of this Project. The Project Sponsor shall report the name and telephone number of this Officer to the Zoning Administrator and the neighborhood for reference. The Applicant will keep the above parties apprised should a different staff liaison be designated.
11. An enclosed garbage area shall be provided within the establishment. All garbage containers shall be kept within the building until pick-up by the disposal company.