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Planning Commission Motion 18160

HEARING DATE: AUGUST 5, 2010

Date: July 29, 2009
Case No.: **2010.0438C**
Project Address: **1268 GRANT AVENUE**
Zoning: North Beach Neighborhood Commercial District (NCD)
40-X Height and Bulk District
North Beach Special Use District (SUD)
Block/Lot: 0145/032
Project Sponsor: Marsha Garland
535 Green Street
San Francisco, CA 94133
Staff Contact: Rick Crawford (415) 558-6358
rick.crawford@sfgov.org
Recommendation: **Approval with Conditions**

ADOPTING FINDINGS RELATED TO THE APPROVAL OF A CONDITIONAL USE AUTHORIZATION FOR AN "OTHER ENTERTAINMENT" USE WITHIN AN EXISTING RESTAURANT AND BAR (D.B.A "KING OF THAI NOODLE HOUSE") AT 1268 GRANT AVENUE WITHIN ASSESSOR'S BLOCK 0145, LOT 032, LOCATED WITHIN THE NORTH BEACH NEIGHBORHOOD COMMERCIAL DISTRICT, THE 40-X HEIGHT AND BULK DISTRICT, AND THE NORTH BEACH SPECIAL USE DISTRICT.

PREAMBLE

On June 9, 2010, Marsha Garland ("Project Sponsor") submitted a request with the City and County of San Francisco Planning Department ("Department") for a Conditional Use authorization, Application No. 2010.0438C to allow an Other Entertainment use, as defined in Planning Code Section ("Section") 790.38, in an existing restaurant and bar (d.b.a. "King of Thai Noodle House") located at 1268 Grant Avenue ("Project Site"), within the North Beach Neighborhood Commercial District ("NCD") and the North Beach Special Use District (collectively, "Project"). This authorization was requested to allow the restaurant and bar to install a Karaoke machine in the bar on the ground floor within the establishment only. Flexible seating areas would be relocated to create space to accommodate the entertainment. No other alterations are proposed for the interior or exterior of the business.

The Project was determined by the San Francisco Planning Department (hereinafter "Department") to be categorically exempt from environmental review under class 1(a). The Commission has reviewed and concurs with said determination.

On August 5, 2010, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2010.0438C.

The Commission has heard and considered the testimony presented at the public hearing and has further considered the written materials and oral testimony presented on behalf of the Project Sponsor, Department staff, and other interested parties.

MOVED, that the Commission hereby approves the Conditional Use Authorization requested in Application No. 2010.0438C, based on the following findings:

FINDINGS

Having reviewed the materials identified in the recitals 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. **Project Description.** The existing restaurant and bar known as "King of Thai Noodle House" is located at 1268 Grant Street, at the southeast corner of Grant Avenue and Vallejo Street. The sponsor wishes to install a Karaoke machine on the ground floor in the bar portion of the facility an activity categorized as "Other Entertainment" by Planning Code Section 790.38. Conditional Use authorization is required to establish an Other Entertainment use within the North Beach Neighborhood Commercial District (NCD). The sponsor proposes to locate a Karaoke machine to the right hand side of the bar near the front of the facility. Flexible seating and tables would be relocated to accommodate the Karaoke area. No other changes are proposed to the interior or exterior of the business.
3. **Site Description and Present Use.** The Project Site is located at 1268 Grant Avenue, at the southeast corner of Grant Avenue and Vallejo Street. The property is located within the North Beach NCD, the 40-X Height and Bulk District, and the North Beach Special Use District. The Project Site is developed with a three-story mixed-use building with an office use on the top floor situated over the subject restaurant and bar which occupies both the first and second floors of the building.
4. **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 vicinity, including restaurants, financial institutions, apparel stores, and other types of retailers. Upper floors of buildings are generally occupied by offices, residential units, or tourist-hotels. Other uses in the vicinity include the Church of Saints Peter and Paul and Washington Square Park (located to the north).

5. **Public Comment.** Department staff has received one email from Telegraph Hill Dwellers in opposition to the project because of concerns that the restaurant and bar will become a nightclub, as well as a 12 letters of support from businesses, a veteran's group, and residents in the area. The Police Department is opposed to this request because of concerns that the restaurant and bar will become a nightclub. The Police Department is also concerned about the amount of window signage displayed by the business.
6. **Planning Code Compliance:** The Commission finds that the Project complies with the relevant provisions of the Planning Code in the following manner:

- A. **Use.** Other Entertainment uses require Conditional Use authorization within the North Beach NCD, pursuant to Section 722.48.

The Project Sponsor is requesting Conditional Use authorization to allow a Karaoke machine on the ground floor bar area within the existing King of Thai Noodle restaurant and bar.

- B. **Off-Street Parking.** Section 151 requires restaurant uses to provide one parking space 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 existing business measures less than 5,000 square feet. The Project proposes no physical expansion of the building. The Project is not required to provide parking.

- C. **Loading.** Section 152 requires off-street freight loading for uses above a certain size. Businesses such as the existing restaurant are not required to provide off-street freight loading if they measure less than 100,000 square feet in gross floor area

With a gross floor area of under 100,000 square feet, the Project is not required to provide off-street loading.

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

The Project is not considered to be a Formula Retail Use as defined by Section 703.3 of the Planning Code.

- E. **North Beach Special Use District.** Section 780.3(a) of the Planning Code allows Full Service Restaurants in the North Beach Neighborhood Commercial district and establishes additional criteria for consideration by the Planning Commission. The Project complies with this Section as follows:

- i. The space occupied by the proposed Full Service Restaurant was not last occupied by a Basic Neighborhood Sales or Service use or by a permitted principal use Under Section 722 (North Beach Controls).

The project complies with this criterion as the space to be occupied by the proposed use is now and will continue to be a Full Service Restaurant.

- ii. The space occupied by the proposed Full Service Restaurant is not a vacant space last occupied by a nonconforming use or a permitted conditional use under Section 722 (North Beach Controls) that has been discontinued or abandoned for more than 3 years.

The project complies with this criterion as the space has been operated continuously as a full service restaurant and bar since the use was authorized at the current size and configuration in 1987.

7. **Conditional Use Findings.** Section 303(c) establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use Authorization. The Project complies with all of the criteria in that:

- A. The proposed use or feature, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community.

The Project is desirable for the neighborhood, because it would enhance the viability of an existing business. In addition, it will contribute to the overall vibrancy of the North Beach NCD by diversifying the options for dining and entertainment experiences in the area.

The Project is situated in an area that already hosts a significant number of live entertainment establishments. However, the majority of these venues are concentrated north along Grant Avenue, with other isolated venues scattered throughout North Beach and along the Broadway corridor to the south. The proposed live entertainment at "King of Thai Noodle House" is not expected to exacerbate negative impacts that can be associated with the clustering of live entertainment venues due to the low scale of the proposed entertainment. The restaurant will be required to comply with the San Francisco Noise Ordinance, and if needed, install interior upgrades and implement management practices to attenuate noise. The project is compatible with the neighborhood.

- B. The proposed use or feature will not be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity, or injurious to property, improvements, or potential development in the vicinity, with respect to aspects including, but not limited to the following:

- 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.

- 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, including provision of car-share parking spaces, as defined in Section 166 of this Code;

The Project will not adversely impact public transit or overburden the existing supply of parking in the neighborhood. The Project Site is well-served by ample public transportation, and off-street parking and loading are not required for the Project.

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

Residents and businesses located in the vicinity of entertainment uses are often concerned about and the noise that could be generated by live entertainment. Exhibit A of this motion contains a condition requiring that all noise and odors be regulated so as not to be a nuisance to nearby businesses or residents. The live entertainment activity must also comply with the San Francisco Noise Ordinance. In addition the hours of the entertainment use could be limited so that the potential for noise is eliminated earlier than the typical business closing time of 2:00 A.M.

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

The Project Site is completely built-out at the commercial ground level, therefore, no landscaping will need to be provided. Any future changes in lighting and signage would be required to comply with the requirements of the Planning Code 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 the applicable requirements of the Planning Code, and will not adversely affect the policies of the General Plan as discussed below.

- D. That the use as proposed would provide development that is in conformity with the purpose of the applicable Neighborhood Commercial District.

The North Beach NCD functions as a neighborhood-serving marketplace, citywide dining district, and tourist attraction. Section 722.1 acknowledges that NCD serves as a nighttime entertainment destination, with "eating, drinking, and entertainment establishments [that] remain open into the evening to serve a much wider trade area and attract many tourists." The NCD regulations are intended to avoid an overconcentration of eating and drinking establishments, and protect residential livability. Section 722.1 further states that, "Special controls limit additional ground-story entertainment uses..."

The Project would not expand the existing business, and would therefore not displace any residential or resident-serving retail uses. The North Beach NCD does not expressly prohibit ground-floor entertainment uses, but instead requires Conditional Use authorization to allow such venues that can

be located and operated properly without detracting from residential livability. The Project would reinforce the established tradition of the North Beach area as an entertainment destination. A condition of approval has been included requiring noise to be attenuated, so that the live entertainment does not create a nuisance to surrounding properties. The Project is in general conformity with the purpose of the North Beach NCD.

E. With respect to applications filed pursuant to Article 7, Section 703.2(a), zoning categories .46, .47, and .48, that such use or feature will:

i. Not be open between two a.m. and six a.m.;

The Project does not propose to operate the restaurant, bar, or the live entertainment functions between the hours of two a.m. and six a.m.

ii. Not use electronic amplification between midnight and six a.m.;

The proposed Entertainment use shall be restricted to prohibit the use of amplification including the operation of a Karaoke machine, between midnight and six a.m.

iii. Be adequately soundproofed or insulated for noise and operated so that incidental noise shall not be audible beyond the premises or in other sections of the building and fixed-source equipment noise shall not exceed the decibel levels specified in the San Francisco Noise Control Ordinance.

Residents and businesses located in the vicinity of Entertainment uses are often concerned about and the noise that could be generated by live entertainment. Exhibit A of this motion contains a condition requiring that all noise and odors be regulated so as not to be a nuisance to nearby businesses or residents. The live entertainment activity must also comply with the San Francisco Noise Ordinance. In addition the hours of the Entertainment use could be limited so that the potential for noise is eliminated earlier than the typical business closing time of 2:00 A.M. A requirement that the Entertainment activity cease at midnight could alleviate noise concerns and decrease the likelihood that the restaurant and bar could evolve into a nightclub. The installation of the requested karaoke machine was approved by the Entertainment Commission in February 2010 without conditions.

8. **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.

In order for a neighborhood commercial district to remain viable and be compatible with the surrounding neighborhood, it must exhibit a healthy balance of different types of commercial uses. This policy includes guidelines that discourage the overconcentration of a particular type of use, such as eating and drinking establishments, and entertainment venues. The Project would add a live entertainment function to an existing restaurant, and would not expand the restaurant or displace a neighborhood-serving retail use. Due to the scale and nature of the proposed entertainment, a Karaoke machine, the Project is not expected to exacerbate negative impacts that can be associated with the clustering of live entertainment venues. The addition of the live entertainment activity will not disrupt the balance of commercial uses in the area, and will not displace neighborhood-serving goods and services.

Policy 2:

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

The Project is desirable because it will contribute to the viability of an existing, locally-owned restaurant. The Project would not physically expand the existing restaurant or create a new, stand-alone bar establishment. The Project is desirable and compatible with the neighborhood, and will contribute to the overall vitality of the North Beach NCD.

9. **General Plan Findings.** Section 101.1(b) establishes eight priority planning policies and requires the review of permits for consistency with said policies:

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

The Project would not expand the existing restaurant, and would therefore not decrease the square footage that could be made available to other types of neighborhood-serving retail uses or service establishments. The Project will contribute to the viability of a locally-owned business, preserving and enhancing opportunities for resident employment.

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

No housing units will be displaced by the Project. The Project will add a Karaoke machine to an existing restaurant, reinforcing the cultural history of North Beach as an entertainment destination.

- (3) That the City's supply of affordable housing be preserved and enhanced.

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

- (4) 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.

- (5) 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.

- (6) 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.

- (7) That landmarks and historic buildings be preserved.

No exterior changes are proposed for the Project. Any future storefront alterations and signage would be required to comply with applicable preservation standards.

- (8) 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.

12. On balance, the Commission hereby finds that approval of the conditional use authorization would not 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. 2010.0438C.**

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this approval of a Conditional Use Authorization application to the Board of Supervisors within thirty (30) days after the date of this Motion No. 18160. 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 94012.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on August 5, 2010.

Linda Avery
Commission Secretary

AYES: Antonini, Bordon, Lee, Miguel

NAYS: Moore, Olague, Sugaya

ABSENT: none

ADOPTED: August 5, 2010

Exhibit A

Conditions of Approval

1. This authorization is to allow "Other Entertainment" limited to one Karaoke machine located in the bar area on the ground floor of the building, at an existing restaurant (d.b.a. King of Thai Noodle House), located at 1268 Grant Avenue, pursuant to Planning Code Section 722.48, in general conformity with plans labeled Exhibit B; received by the Department on June 9, 2010.
2. The Commission may consider revocation of this conditional use authorization if a permit for the project has been issued, but is allowed to expire and more than three years have passed since the Motion was approved. 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 within three years is delayed by a City, state or federal agency, or by appeal of the issuance of such permit.
3. The operator of the establishment shall obtain all necessary approvals from the San Francisco Entertainment Commission prior to hosting live entertainment events on-site, but no later than 18 months from the date of this Conditional Use authorization.
4. The use of electronic amplification, including a Karaoke machine, shall not be permitted between midnight and two a.m. and this approval does not authorize the operation of the restaurant or any live entertainment activities between two a.m. and six a.m.
5. The ground level storefront shall be maintained in an attractive manner, providing transparency into the restaurant behind. Visibility of the 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. The storefront windows shall 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 10% 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.
6. The operator of the establishment shall maintain the entrances and all sidewalks abutting the subject property in a clean condition. Such maintenance shall include, at minimum, daily

- sweeping, litter pickup and disposal, and washing or steam/pressure cleaning of the main entrance and abutting sidewalks at least once every two weeks.
7. Noise and odors shall be regulated so as not to be a nuisance to nearby businesses or residents.
 8. The Project Sponsor shall work with staff to ensure that all future exterior alterations, including signage, are consistent with the Secretary of Interior's Standards for Treatment of Historical Properties. Signage size shall be appropriate for the scale of the historic building, and materials and lighting shall be compatible with the historical character of the building.
 9. An enclosed waste storage area shall be provided within the establishment. All trash and recycling containers shall be kept within the building until pick-up by the disposal company.
 10. Should monitoring of the Conditions of Approval of this Motion be required, the Project Sponsor shall pay fees as established in Planning Code Section 351(e)(1).
 11. 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 are subsequently reported to the Zoning Administrator 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 in accordance with the hearing notification and conduct procedures as set forth in Sections 174, 306.3, and 306.4 of the code to consider revocation of this conditional use authorization.
 12. The Project Sponsor shall assure the execution and recordation of the specified conditions as a Notice of Special Restrictions at the Office of the County Recorder / County Clerk.