



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- | | |
|--|--|
| <input type="checkbox"/> Inclusionary Housing (Sec. 315) | <input type="checkbox"/> First Source Hiring (Admin. Code) |
| <input type="checkbox"/> Jobs Housing Linkage Program (Sec. 313) | <input type="checkbox"/> Child Care Requirement (Sec. 314) |
| <input type="checkbox"/> Downtown Park Fee (Sec. 139) | <input type="checkbox"/> Other |

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Planning Commission Motion No. 18161

HEARING DATE: AUGUST 5, 2010

Date: August 10, 2010
Case No.: **2010.0132C**
Project Address: **1849 UNION STREET**
Zoning: Union Street Neighborhood Commercial District (NCD)
40-X Height and Bulk District
Block/Lot: 0543/029
Project Sponsors: Ahmad Larizadeh (agent)
Bana Inc.
71 Blake Street
San Francisco, CA 94118
KAP Investments LLC – Zack Faidi, manager (applicant)
85 Liberty Ship Way
Sausalito, CA 94965
Staff Contact: Sharon M. Young – (415) 558-6346
sharon.m.young@sfgov.org

ADOPTING FINDINGS RELATED TO THE APPROVAL OF A CONDITIONAL USE AUTHORIZATION UNDER PLANNING CODE SECTIONS 725.42 AND 303 TO CONVERT A GROUND FLOOR RETAIL COMMERCIAL TENANT SPACE INTO A FULL-SERVICE RESTAURANT DBA UNIQUE AT 1849 UNION STREET WITHIN THE UNION STREET NEIGHBORHOOD COMMERCIAL ZONING DISTRICT AND A 40-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On March 2, 2010, Ahmad Larizadeh acting agent on behalf of KAP Investments LLC (hereinafter “Project Sponsor”) made an application for Conditional Use authorization for the property at **1849 Union Street, Lot 029 in Assessor’s Block 0543** (hereinafter “Subject Property”), to convert a retail commercial tenant space with approximately 1,730 square feet in floor area into a full-service restaurant (dba Unique) on the ground floor of a two-story residential and commercial building within the Union Street Neighborhood Commercial Zoning District and a 40-X Height and Bulk District, in general conformity with plans dated February 2010, and labeled “Exhibit B” (hereinafter “Project”).

On **August 5, 2010**, the San Francisco Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting on **Conditional Use Application No. 2010.0132C**. Under Sections 725.42 and 303 of the Planning Code, Conditional Use authorization is

required to convert retail commercial tenant space (previously occupied by a retail clothing store dba Bianca Luna and temporarily occupied by a retail jewelry store dba Sikara & Co.) into a full-service restaurant dba Unique within the Union Street Neighborhood Commercial District and a 40-X Height and Bulk District.

Pursuant to the Guidelines of the State Secretary of Resources for the implementation of the California Environmental Quality Act (hereinafter "CEQA"), the Planning Department of the City and County of San Francisco (hereinafter "Department") determined that the proposed Conditional Use Application was categorically exempt from the environmental review process under Class 1(a) of the State CEQA Guidelines, Section 15301, pursuant to Title 14 of the California Administrative Code. The Commission has reviewed and concurs with said determination.

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. 2010.0132C, subject to the conditions contained in "EXHIBIT A" of this motion, 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. **Site Description and Present Use.** The Project Site at 1849 Union Street is on the south side between Laguna and Octavia Streets; Assessor's Block 0543; Lot 029. It is located within the Union Street Neighborhood Commercial Zoning District (NCD) and a 40-X Height and Bulk District. The subject lot is approximately 3,076 square-feet (22.37 feet wide by 137.50 feet deep) in size and is occupied by a two-story residential and commercial building constructed circa 1900. The existing building is not listed in the Planning Department's 1976 Architectural Survey or the National or California Registers as having architectural significance. The subject ground floor commercial tenant space was vacant for approximately 3 years, and was last occupied by a retail clothing store dba Bianca Luna and is temporarily being occupied by a retail jewelry store dba Sikara & Co. Currently, there is one residential unit on the second floor of the building and an accessory structure within the rear yard.
3. **Surrounding Properties and Neighborhood.** The Project Site is located within the Union Street Neighborhood Commercial District (NCD). The majority of the surrounding development consists of two-story residential over ground floor commercial buildings, with a few one-story commercial buildings, and three-story mixed-use buildings within the Union Street NCD. A mix of food establishments, personal services, and small retail establishments defines the Union Street NCD corridor in the immediate vicinity. Some of the existing commercial establishments

on the subject block include Fenzi, B&A Estate Antique Jewelry, Capannina, BCBG Maxazria, Skn, The Blue Jean Bar, MAC, Pavillion De Paris, Hourian Gallery, Luisa's, Jest Jewels, Pasta Pomodoro, A Valente & Sons, Sunglass Hut, and Dara Dara. Some of the commercial establishments on the opposite block include Stewart Moore, Papyrus, Susan Miller Gallery & School of Fine Art, David Clay Jewelers, Ambiance, L'Occitane, Bryan Lee, Ottimista Enoteca Café, Silver Moon, Caffè U Union, City Joon, Salon de Moda, Cara Mia, Croll Sport, and Wolf Camera. On Laguna and Octavia Streets running north and south of the project site, there are two- to four-story residential buildings within the RH-2 (Residential, House, Two-Family) and RH-3 (Residential, House, Three-Family) Zoning Districts.

4. **Project Description.** The proposal is to convert a retail commercial tenant space (previously occupied by a retail clothing store dba Bianca Luna and temporarily being occupied by a retail jewelry store dba Sikara & Co.) into a full-service restaurant dba Unique with approximately 1,730 square feet in floor area within the Union Street Neighborhood Commercial District and a 40-X Height and Bulk District. The proposal will involve tenant improvements to the ground floor commercial tenant space, with no expansion of the existing building envelope. The proposed hours of operation of the restaurant are 6 a.m. to 2 a.m., seven days a week. According to the project sponsor, the proposed full-service restaurant will be specializing in French cuisine.

5. **Issues and Other Considerations.**

- The proposed full-service restaurant dba Unique will be independently owned and is not considered a formula retail use under Section 703.3 of the Planning Code.
- The project sponsor has conducted a site survey along this portion of the Union Street NCD and estimated that approximately 15% of all the commercial establishments are eating and drinking establishments. In early 2010, Planning Department staff conducted a site survey of the Union Street NCD (for the proposed full-service restaurant at 1784 Union Street dba Giordano Bros. under Case No. 2009.0996C) and estimated that approximately 12% of the frontage of the NCD is occupied by eating and drinking establishments. This is below the 20% threshold indicated in the Commerce and Industry Element of the General Plan which signals a potential over-concentration of eating and drinking establishments in a NCD.
- On June 24, 2010, the Planning Commission continued the Conditional Use case (originally an item on the Consent Calendar), without hearing to August 5, 2010, to allow the Department time to address the issue regarding public noticing of the project. The proposed project had not met the signposting requirements under Planning Code Section 306.8(b); the poster has since been posted on the property as required by the Planning Code. During public comment on the continuance of this item, several members of the public expressed that the item should not be heard at the June 24 Planning Commission hearing since the property owner had unresolved enforcement issues at other properties he owned in the City (Kasa restaurant at 3115 Fillmore Street and The Brickyard restaurant at 1787 Union Street).

6. **Public Comment.** As of August 5, 2010, the Department has not received any letters or phone calls in opposition to the project. The Department had received two phone calls requesting additional information and clarification on the proposal regarding concerns about noise and odors emitting from the proposed full-service restaurant and the use of the rear yard. The project sponsor had indicated that odor control equipment will be provided to prevent any significant noxious or offensive kitchen odors and fumes from escaping the full-service restaurant premises. Outdoor dining in the rear yard is considered to be an “outdoor activity area”, and pursuant to Planning Code Section 725.24, this use requires Conditional Use authorization in the Union Street NCD. The project before the Planning Commission does not include this component.
7. **Use District.** For the purposed of this action, the project site is within the Union Street Neighborhood Commercial District (NCD). The Union Street NCD, located in Northern San Francisco between the Marina and Pacific Height neighborhoods, provides convenience goods and services to the residents of the Cow Hollow, Golden Gate Valley, and Pacific Heights neighborhoods. The district has a very active and continuous commercial frontage along Union Street, while the side streets have a greater proportion of residences. The Union Street NCD controls are designed to encourage a wide variety of uses, with special emphasis on eating and drinking establishments and specialty shops whose clientele comes from a wide trade area. This is in addition to a significant number of professional, realty, and business offices. Most commercial development is permitted at the first two stories of new buildings, while retail service uses are monitored at the third story and above. The zoning controls are designed to provide sufficient growth opportunities for commercial development that is in keeping with the existing scale and character, promote continuous retail frontage, and protect adjacent residential livability.
8. **Planning Code Compliance:** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:
 - A. **Full-Service Restaurant Use in the Union Street NCD.** Planning Code Section 725.42 states that a Conditional Use authorization is required to establish a full-service restaurant use on the ground floor, as defined by Planning Code Section 790.92, and with the additional control that:

the Planning Commission may approve a full-service restaurant providing on-site beer and/or wine sales (with ABC license 40, 41, or 60) if, in addition to meeting the criteria set forth in Section 303, the use (1) is located on the ground floor, and (2) the Planning Commission finds that an additional full-service restaurant would not result in a net total of more than 32 full-service restaurants in the Union Street NCD. The Planning Department shall apply Article 7 zoning controls for Union Street Full-Service Restaurants to conditional use authorizations required by Planning Code Section 178, including but not limited to significant alterations, modifications, and intensifications of use.

A full-service restaurant is defined under Planning Code Section 790.92 as:

a retail eating or eating or eating and drinking use which serves food to customers primarily for consumption on the premises, and is not specifically designed to attract and accommodate high customer volumes or turnover.

It has seating and serves prepared, ready-to-eat cooked foods for consumption on the premises. Guests typically order and receive food and beverage while seated at tables on the premises and pay for service after the meal is consumed.

It includes, but is not limited to, lunch counters, coffee shops, soda fountains and full-service dining establishments. It is distinct and separate from a small or large fast-food restaurant, as defined in Sections 790.90 and 790.91 of this Code.

It may provide on-site beer and/or wine sales for drinking on the premises (with ABC licenses 40, 41 or 60). If it serves liquor for drinking on the premises (with ABC licenses 47 or 48), or does not admit minors (with ABC licenses 42 or 61), then it shall also be considered a bar, as defined in Section 790.22 of this Code.

The Project Sponsor intends to establish a new full-service restaurant as specified in Planning Code Section 790.92 and pursuant to the 2009 Ordinance No. 0008-09 that would permit 5 new full-service restaurants for a net total of no more than 32 restaurants within the Union Street NCD. The proposed project is the third restaurant to apply under the recent legislation since it was adopted in January 2009. Two full-service restaurants have been approved since the adoption of the ordinance: Kasa at 3115 Fillmore Street (approved in August 2009 under Case No. 2009.0398C) and Giordano Bros. at 1784 Union Street (approved in February 2010 under Case No. 2009.0996C).

- B. **Hours of Operation.** Section 725.27 allows hours of operation from 6 a.m. until 2 a.m. as of right and requires Conditional Use authorization to operate between the hours of 2 a.m. and 6 a.m.

The proposed hours of operation of the full-service restaurant are 6 a.m. to 2 a.m., seven days a week.

- C. **Street Frontage in Neighborhood Commercial Districts.** Section 145.1 requires that NC Districts containing specific uses, including retail stores, 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.

The subject commercial space has 22.37 feet of frontage on Union Street with the majority of the glass frontage and window openings devoted to either the entrance or window space. There are no modifications proposed to the existing storefront.

- D. **Off-Street Parking and Loading.** Section 151 requires off-street parking for every 200 square feet of occupied floor area, where the occupied floor area exceeds 5,000 square feet. Section 152 requires one off-street loading space for retail stores between 10,001 and 60,000 gross square feet.

The subject commercial space, with approximately 1,730 square feet in floor area, does not require any off-street or loading parking spaces.

- E. **Signage.** Any proposed signage will be subject to the review and approval of the Planning Department and must comply with Article 6 of the Planning Code.

9. **Section 303(c)** 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:

- (1) 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 proposed Project is to allow for the establishment of a full-service restaurant on the ground floor of the building. There will be tenant improvements made to the existing commercial tenant space with no expansion of the existing building envelope.

- (2) 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:

- (A) 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, and the arrangement of the structures on the site are adequate for the proposed Project. There will be no physical expansion of the existing building.

- (B) 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;

Existing traffic patterns will not be significantly affected by the proposed Project. Public transit is in close proximity to the proposed full-service restaurant; a Muni bus stop is located on the corner of Union and Laguna Streets. There is on-street parking in front of the subject property and in the surrounding neighborhood.

- (C) The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

No noxious or offensive emissions such as glare, dust, or odor are expected to be produced by the proposed Project. The project sponsor has indicated that a mechanical exhaust system for the proposed full-service restaurant will be located at the roof level.

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

The proposed full-service restaurant proposes interior alterations to the existing ground floor commercial tenant space. There will be no addition of parking spaces, loading facilities, open space or service areas. All Project signage and projections will be consistent with the controls of the Planning Code.

- i. That the use as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

The proposed 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.

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

The proposed Project is consistent with the stated purpose of the Union Street NCD in that the intended use is a neighborhood-serving business.

10. **General Plan Compliance.** The Project is consistent with the Objectives and Policies of the General Plan in that:

COMMERCE AND INDUSTRY ELEMENT
GENERAL/CITYWIDE

OBJECTIVE 1:

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

Policy 1:

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

The proposed full-service restaurant would be compatible and complimentary with the types of uses characterizing this portion of the Union Street NCD, which include a mixture of food establishments, personal services, and small retail establishments.

Policy 3:

Preserve and promote the mixed commercial-residential character in neighborhood commercial districts. Strike a balance between the preservation of affordable housing and the needed expansion of commercial activity.

Approval of the proposed Project would be consistent with the mixed commercial-residential character of this portion of the Union Street NCD. The proposed Project would not adversely impact any affordable housing resources in the neighborhood.

OBJECTIVE 3:

PROVIDE EXPANDED EMPLOYMENT OPPORTUNITIES FOR CITY RESIDENTS, PARTICULARLY THE UNEMPLOYED AND ECONOMICALLY DISADVANTAGED.

Policy 1:

Promote measures designed to increase the number of San Francisco jobs held by San Francisco residents.

The proposed Project would provide enhanced opportunities for employment of neighborhood residents.

NEIGHBORHOOD COMMERCE

Objectives and Policies

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.

No existing commercial tenant would be displaced and the proposed Project would not prevent the district from achieving optimal diversity in the types of goods and services available in the neighborhood. The proposed full-service restaurant will occupy the subject commercial tenant space which was vacant for approximately 3 years and previously occupied by a retail clothing store dba Bianca Luna, and temporarily being occupied by a retail jewelry store dba Sikara & Co.

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.

Policy 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.

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.

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 percent of the total occupied commercial frontage." Based on the site surveys of the Union Street NCD conducted by Planning staff and the Project Sponsor, it is estimated that 12% - 15% of the frontage of the NCD is occupied by eating and drinking establishments.

Policy 4:

Encourage the location of neighborhood shopping areas throughout the city so that essential retail goods and personal services are accessible to all residents.

The proposed Project will provide a new full-service restaurant use which is accessible to all residents in this portion of the Union Street NCD.

Policy 9:

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

The proposed Project would not adversely impact public transit or place a burden on the existing supply of parking in the neighborhood. Many patrons would be able to walk from their residences or places of employment, and the project is well served by public transportation. There is on-street parking in front of the subject property and in the surrounding neighborhood.

NEIGHBORHOOD ENVIRONMENT

Objectives and Policies

OBJECTIVE 4:

IMPROVEMENT OF THE NEIGHBORHOOD ENVIRONMENT TO INCREASE PERSONAL SAFETY, COMFORT, PRIDE AND OPPORTUNITY.

Policy 15:

Protect the livability and character of residential properties from the intrusion of incompatible new buildings.

The proposed Project would improve the neighborhood environment by increasing safety during the daytime and evening hours through the occupancy of the retail commercial tenant space.

11. **Section 101.1(b)** establishes eight priority planning policies and requires the review of permits that authorize changes of use 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 proposed Project will preserve and enhance existing commercial uses by providing a new commercial establishment (full-service restaurant), which will be complimentary to the existing commercial establishments within the immediate neighborhood. The

proposed Project will provide new job opportunities to the City by employing approximately 7 people.

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

The proposed Project will preserve and enhance the cultural and economic diversity of the neighborhood by bringing a new business to the area. Existing housing will not be significantly affected by the proposed Project.

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

The proposed Project will not displace any affordable housing.

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

The proposed Project would not significantly increase the automobile traffic congestion and parking problems in the neighborhood. The proposal is a neighborhood-serving use to which residents can access by walking or taking public transit.

- (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.

A full-service restaurant use will replace a retail use on the Project Site. There would be no displacement of any existing industrial or service businesses in the area.

- (6) That the City achieves the greatest possible preparedness to protect against injury and loss of life in an earthquake.

The proposed Project will comply with all applicable earthquake safety standards and built to the current standards of the California Building Code.

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

The proposed Project will not significantly affect any landmarks or historic buildings.

- (8) That our parks and open space and their access to sunlight and vistas be protected from development.

The proposed Project will not affect any city-owned park or open space.

12. 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.

13. 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. 2010.0132C** 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. 18161. 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 August 5, 2010.

Linda Avery
Commission Secretary

AYES: Commissioners Antonini, Borden, Lee, Miguel, Moore, Olague, Sugaya

NAYS: None

ABSENT: None

ADOPTED: August 5, 2010

Exhibit A

Conditions of Approval

1. Pursuant to Planning Code Sections 725.42 and 303, this Conditional Use approval is to allow the conversion of ground floor retail commercial tenant space with approximately 1,730 square feet of floor area into a full-service restaurant with waiter service within the Union Street Neighborhood Commercial Zoning District and a 40-X Height and Bulk District, in general conformity with Plans on file with the Department in the docket for **Case No. 2010.0132C** (labeled EXHIBIT B), reviewed and approved by the Commission on August 5, 2010 under Motion No. 18161.
2. The proposal is to convert a retail commercial tenant space (previously occupied by a retail clothing store dba Bianca Luna and temporarily occupied by a retail jewelry store dba Sikara & Co.) into a full-service restaurant with waiter service dba Unique within the Union Street Neighborhood Commercial District and a 40-X Height and Bulk District. The project sponsor intends to establish a new full-service restaurant with waiter service as specified in Planning Code Section 790.92 and pursuant to the 2009 Ordinance No. 0008-09 that would permit 5 new full-service restaurant uses on the ground floor for a net total of no more than 32 restaurants within the Union Street Neighborhood Commercial District. The proposal will involve tenant improvements to the ground floor commercial tenant space, with no expansion of the existing building envelope. According to the project sponsor, the proposed full-service restaurant with waiter service will be specializing in French cuisine.
3. The proposed hours of operation of the full-service restaurant with waiter service are 6 a.m. to 2 a.m., seven days a week. Planning Code Section 725.27 allows hours of operation from 6 a.m. until 2 a.m. as of right and requires Conditional Use authorization to operate between the hours of 2 a.m. and 6 a.m.
4. The Project Sponsor 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.
5. The Project Sponsor shall operate the proposed full-service restaurant such that noise is kept at reasonable levels so as not to unduly disturb neighboring residents and businesses. Any new ductwork shall not discharge near residential window openings or obscure any windows.
6. The Project Sponsor shall maintain appropriate odor control equipment to prevent any significant noxious or offensive kitchen odors from escaping the full-service restaurant premises, and, while it is inevitable that some low level odor from the restaurant may be detectable to residents and passersby, the exhaust system shall not discharge air in a manner so that exhaust air will enter dwellings.
7. Refuse containers shall be provided both inside and outside the establishment for use by patrons of the full-service restaurant. 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.
8. There shall be no noise audible outside the establishment during the daytime or nighttime hours that violates the San Francisco Noise Ordinance. Further, absolutely no sound from the establishment shall be audible inside any surrounding residences or businesses that violate San Francisco Police Code Section 2900.

9. Signs and exterior lighting for the business shall be reviewed and approved by the Planning Department before they are installed.

10. **VALIDITY, EXPIRATION, AND EXTENSION**

This Conditional Use approval is **valid for three years** from the effective date of the Motion No. 18161 authorizing the proposed full-service restaurant with waiter service use and shall automatically expire on August 5, 2013. This authorization is just an approval of the proposed use and is NOT a permit to implement the approved use. This authorization and right vested by virtue of this action shall be deemed void and cancelled if a Building Permit from the Department of Building Inspection to implement the approved use has not been obtained prior to the expiration of this Conditional Use approval. The validity of this Conditional Use approval may be extended at the discretion of the Zoning Administrator only if the failure to issue a Building Permit by the Department of Building Inspection is delayed by the city, state, or federal agency or by appeal of the issuance of such Building Permit. However, the extension must be requested prior to the expiration of this Conditional Use approval.

11. **MAJOR AND MINOR CHANGES AND MODIFICATIONS OF CONDITIONS**

Minor changes to the approved plans may be approved administratively by the Zoning Administrator. Major changes and modifications of conditions shall be subject to review and approval by the Planning Commission requiring a new Conditional Use approval or amendment to this Conditional Use approval as determined by the Zoning Administrator. Such changes must be requested prior to the expiration of this Conditional Use approval.

12. **RECORDING OF CONDITIONS OF APPROVAL**

Prior to the issuance of a Building Permit Application for the proposed full-service restaurant with waiter service use, the project sponsor or the responsible party shall record a Notice of Special Restrictions as approved by the Zoning Administrator in the Official Records of the Recorder of City and County of San Francisco for the premises (Assessor's 0543, Lot 029), which notice shall state that the proposed use has been authorized by Motion No. 18161 and is subject to the conditions of approval of this Motion.

13. **BUILDING PERMIT TO IMPLEMENT THE APPROVED PROJECT**

A Building Permit from the Department of Building Inspection must be obtained to implement the approved use within three years from the effective date of Motion No. 18161 approving the proposed full-service restaurant with waiter service use. The Building Permit Application shall include plans in conformance with the plans on file with the Department in the docket for **2010.0132C** (labeled EXHIBIT B), reviewed and approved by the Planning Commission on August 5, 2010 under the **Motion No. 18161**. The plans are required to record the approved use of the premises even if there is no new construction or minor interior changes. The conditions of approval shall be reproduced on the Index Sheet of the plans submitted with the Building Permit Application. The Index Sheet of the plans shall reference to this Conditional Use Authorization and any subsequent amendments or modifications.

The project shall also comply with all other applicable city codes as required by other city departments. Additionally, no change in the character of occupancy or change to a different group of occupancy as described under the Building Code shall be made without first obtaining a Certificate of Occupancy from the Department of Building Inspection and approval from Planning and other city departments as necessary.

14. COMPLETION OF BUILDING PERMIT

If the Building Permit is allowed to expire for more than one year, the renewal of such Building Permit thereafter will be subject to review by the Planning Department. Prior to filing of a renewal of the expired permit, the project sponsor or the responsible party shall notify the Planning Department.

15. REPORTING

The Project Sponsor or the subsequent responsible party for the project shall submit to the Zoning Administrator two copies of a written report describing the status of compliance with the conditions of approval contained within the Motion No. 18161 within six months from the date of implementation of the proposed use. Thereafter, the submittal of the report shall be on an annual basis. This requirement shall lapse when the Zoning Administrator determines that all the conditions of approval have been satisfied or that the report is no longer required for other reasons.

16. REVOCATION

During the Building Permit Application process phase of the project, the Zoning Administrator may place an order to stop work, suspend, or revoke a Building Permit if the proposal carried out on the site is not in conformance with the plans approved under this Conditional Use approval and subsequent Building Permit. The Zoning Administrator may also recommend the Planning Commission to consider revocation of this Conditional Use approval in a public hearing for non-compliance with any of the conditions of approval.

17. ENFORCEMENT

After commencement of the approved use, violation of any of the planning conditions of approval contained in the Motion No. 18161 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, whichever applicable for each day a violation continues or is allowed to continue. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.

18. MONITORING

If the project requires monitoring of the conditions of approval contained in Exhibit A of Motion No. 18161, the project sponsor or the subsequent responsible parties for the project shall pay fees as established under Planning Code Section 351(e)(1) and work with the Planning Department to ensure compliance.

19. NEIGHBORHOOD CONCERNS

The Project Sponsor 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 Project Sponsor shall keep the above parties apprised should a different staff liaison be designated.

20. SEVERABILITY

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 of the remaining provisions, clauses, sentences, or sections of these conditions. It is hereby declared to be the intent of the Planning Commission that these conditions of approval would have been adopted had such invalid sentence, clause, or section or part thereof not been included herein.