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Planning Commission Motion No. 18163

HEARING DATE: AUGUST 05, 2010

Date: July 28, 2010
Case No.: **2010.0422 C**
Project Address: **9 WEST PORTAL AVENUE**
Zoning: West Portal Neighborhood Commercial District
 26-X Height and Bulk District
Block/Lot: 2979A/029
Project Sponsor: James Robinson & Gail Ferriss
 9 West Portal Avenue
 San Francisco, CA 94127
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ADOPTING FINDINGS RELATING TO THE APPROVAL OF A CONDITIONAL USE AUTHORIZATION, PURSUANT TO PLANNING CODE SECTION 303, TO MODIFY CONDITIONS OF APPROVAL CONTAINED IN MOTION NO. 17897, CASE NO. 2009.0273C, TO ALLOW AN INCREASE IN THE PERMITTED HOURS OF OPERATION AND AN INCREASE IN THE PERMITTED NUMBER OF CHAIRS LOCATED WITHIN THE EXISTING BAR AND LIQUOR STORE (DBA VIN DEBUT), LOCATED WITHIN THE WEST PORTAL NEIGHBORHOOD COMMERCIAL DISTRICT (NCD) AND 26-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On June 3, 2010, James Robinson, (hereinafter “Applicant”), made an application (hereinafter “Application”) for a Conditional Use authorization on the property at 9 West Portal Avenue, Assessor’s Lot 029 in Block 2979A (hereinafter “Property”), to modify the Conditions of Approval outlined in Motion No. 17897, Case No. 2009.0273C, to increase the hours of operation and number of permitted seats within the existing bar/liquor store (dba Vin Debut), per the application dated June 3, 2010, and labeled “EXHIBIT B” (hereinafter “Project”), within the West Portal Neighborhood Commercial District (hereinafter “West Portal NCD”) and 26-X Height and Bulk District.

On August 5, 2010, the San Francisco Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting on Case No. 2010.0422C. Conditional Use

authorization is required pursuant to Planning Code Section 303, in order to modify the Conditions of Approval contained in Motion No. 17897, Case No. 2009.0273C.

The Application was determined by the San Francisco Planning Department (hereinafter "Department") to be Categorically Exempt from the environmental review process pursuant to Title 14, Class 1(a) of Category 15301 (Existing Facilities) of the California Administrative Code. The Commission has reviewed and concurs with said determination.

This Commission has heard and considered the testimony presented to it at the public hearing and has further considered the written materials and oral testimony presented on behalf of the Applicant, the Department staff, and other interested parties.

MOVED, that the Commission hereby approves the Conditional Use requested in Case No. 2010.0422C, subject to the conditions contained in "EXHIBIT A", attached hereto and incorporated herein by reference thereto, based on the following findings:

FINDINGS

Having reviewed all the materials identified in the recitals above, and having heard oral 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 Subject Property is located at 9 West Portal Avenue, on the east side between Ulloa and Vicente Streets. The lot currently contains a two-story commercial structure built circa 1922 that is divided into two ground-floor commercial tenant spaces, with office space on the second floor. To the south Vin Debut abuts Eezy Freezy Health and Gourmet Foods, and to the north it abuts the Squat and Gobble Restaurant. Vin Debut contains approximately 1,100 square feet of gross floor area and approximately 34'-9" of frontage along West Portal Avenue. The Subject Property is within the West Portal NCD and 26-X Height and Bulk District.

Vin Debut (formerly known as WineStyles) at 9 West Portal Avenue is currently permitted to operate as a liquor store with a limited bar component. Their existing limitations are as follows: (1) they are restricted to obtaining only Type 20 and 42 liquor licenses (Off-Sale Beer and Wine, and On-Sale Beer and Wine for Public Premises, respectively); (2) their hours of operation currently require that they close by 8:00p.m., daily; (3) outside tables and chairs are not permitted; (4) no more than 1/3 of the businesses occupied floor area may be dedicated to the sale and service of alcohol for on-site consumption; (5) at least 2/3 of the area must remain dedicated to retail displays; and (6) no more than eight seats may be provided for on-site wine consumption.

3. **Surrounding Properties and Neighborhood.** Land uses located within the subject block of West Portal Avenue include predominantly one- and two-story buildings containing primarily neighborhood-serving commercial uses on the ground floor with office space located above. The

West Portal NCD is surrounded by low-density residential neighborhoods, consisting of predominantly single-family detached dwellings.

The West Portal NCD controls are designed to preserve the existing family-oriented village character of West Portal Avenue. The building standards limit building heights to 26 feet and two stories, and maintain the existing pattern of rear yards at the ground level and above. The height, bulk and design of new development, especially on large lots, should respect the small-scale character of the District and its surrounding residential neighborhoods. Lot mergers creating large lots are discouraged. Individual nonresidential uses require Conditional Use authorization above 2,500 square feet and are restricted to 4,000 square feet as an absolute limit to conform to the existing small use sizes in the District.

Special controls on commercial uses are designed to protect the existing mix of ground-story retail uses and prevent further intensification and congestion in the District. No new financial services are permitted. Because the district and surrounding neighborhoods are well served by the existing number of eating and drinking establishments, new bars, restaurants and take-out food generally are discouraged: any proposed new establishment should be carefully reviewed to ensure that it is neighborhood-serving and family-oriented, and will not involve high-volume take-out food or generate traffic, parking, or litter problems. Large fast-food restaurants and small self-service restaurants are prohibited. Medical and business or professional services are permitted at the first two stories, but additional ground-story locations are to be closely monitored to ensure that the current balance between retail and office uses is maintained. Existing service stations are encouraged to continue operating, but changes in their size, operation, or location are subject to review. Other automotive uses are prohibited. The neighborhood-oriented, retail character of the district is further protected by prohibiting hotels and nonretail uses. The daytime orientation of the district is maintained by prohibitions of entertainment uses and late-night commercial operating hours.

4. **Project Description.** The Project seeks a Conditional Use authorization, pursuant to Planning Code Section 303, to modify the Conditions of Approval contained in Motion No. 17897, Case No. 2009.0273C, to allow an increase in the permitted hours of operation and number of seats within the existing bar/liquor store (dba Vin Debut). The granting of this Conditional Use would allow Vin Debut to operate until 11:00 p.m. Sunday–Thursday, and until 12:00 a.m. Friday and Saturday; and to have 19 seats within the business for use by patrons.
5. **Public Comment.** As of July 26, 2010, the Planning Department has received a substantial amount of support to the request to modify the existing Conditions of Approval. The Department has received letters in support from the West Portal Avenue Association and The Village Grill, a petition in support with signatures from 20 merchants and 196 individuals, and one phone call in support from a member of the community. The Department has also received opposition from the owners of Que Syrah wine bar at 230 West Portal Avenue, and one other individual.

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. **Hours of Operation.** Planning Code Section 729.27 permits businesses in the West Portal NCD to be open from 6:00 a.m. until 2:00 a.m., daily.

The hours of operation included in Motion No. 17897, Case No. 2009.0273C limited the business to operate from 9:00 a.m. to 8:00 p.m., daily. The proposed hours of operation would be from 9:00 a.m. to 11:00 p.m. Sunday – Thursday, and from 9:00 a.m. to 12:00 a.m. (midnight) Friday-Saturday. The hours of operation being sought by the Project Sponsor remain more restrictive than the permitted hours of operation of the West Portal NCD.

- B. **Bar Use:** Planning Code Section 729.41 permits bars in the West Portal NCD with Conditional Use authorization.

A Conditional Use Authorization was approved with Conditions on June 4, 2009, under Case Number 2009.0273C; Motion No. 17897, to allow a bar at the Subject Property.

This Conditional Use Authorization seeks to modify Condition numbers 11 and 15 (hours of operation and number of chairs, respectively) from Motion No. 17897.

- C. **Liquor Store.** Planning Code Section 729.45 permits Liquor Stores in the West Portal NCD by-right.

Section 312 Notification was conducted in 2006 to allow a change of use from an antique store (retail sales and services) to a liquor store within the West Portal NCD. No Discretionary Reviews were filed. A liquor store remains a permitted use at this Site, and that use is not being changed under this Conditional Use Authorization.

- D. **Signage.** Vin Debut currently has a permitted sign erected on the street façade of the building. This sign was approved under Building Permit No. 2010.02.01.5666, and the Applicant does not propose a change to this existing signage. Any future signage or alterations to the existing signage will be subject to the relevant provisions of the Planning Code and will be reviewed by the Planning Department prior to the issuance of any sign permit.

7. **Planning Code Section 303** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the Project complies with said criteria in that:

- A. The proposed new use 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 will provide a use that is necessary and desirable for the neighborhood in that it will expand the viability of a well-used existing neighborhood-serving business. The commercial use is compatible with the existing uses in the general vicinity of the Subject Property. The envelope of the existing building will not be enlarged, and the façade of the building will not be altered.

- 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;

There are no modifications proposed to the exterior of the structure on the Subject Property, nor to the interior layout of the 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;

Traffic conditions will remain substantially unaltered by this Project, because the proposed use is a neighborhood-serving business, frequented via foot, cab, or public transportation by many residents of the surrounding neighborhoods. Many of the comments received in support of this Application mention that this is a neighborhood-serving establishment that is part of the community. It is expected that this change in operation will not result in substantial increase to the number of patrons. Parking is not required in this District for uses that occupy less than 5,000 square-feet of floor area.

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

The Project will not create any noxious or offensive emissions – such as glare, dust, or odor – seeing as this Conditional Use is to allow an increase to the hours of operation and number of chairs within the existing bar and liquor store. This modification to the business operation should not create offensive emissions.

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

There are no setbacks to allow for landscaping in front of the Subject Property, and there are no alterations proposed to the exterior of the existing structure. There is no parking or dedicated loading space required for the existing or proposed use, and the existing signage was approved under Building Permit No. 2010.02.01.5666.

8. **General Plan Compliance.** The Project meets the criteria in Section 303(c)(3) by complying with applicable provisions of the Planning Code as established in the Findings 6 and 7 above and by affirmatively promoting the Objectives and Policies of the General Plan as outlined below:

COMMERCE AND INDUSTRY ELEMENT

Objectives and Policies

OBJECTIVE 1:

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

Policy 1.1:

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

Policy 1.2:

Assure that all commercial and industrial uses meet minimum, reasonable performance standards.

Policy 1.3:

Locate commercial and industrial activities according to a generalized commercial and industrial land use plan.

Modifying the existing Conditions of Approval would provide desirable services to the neighborhood and employment opportunities to the West Portal community. Vin Debut is locally owned and operated and currently provides a similar service to the community. They have operated with very strict conditions for the past year with no complaints. Based on their history, an increase to their hours of operation and number of seats enables development that provides substantial net benefits to the community with negligible undesirable consequences.

The intensity of uses proposed at the Site are compatible with the other businesses along West Portal Avenue, and the Conditions of Approval shown in Exhibit A are imposed to mitigate potential concerns about a traditional "full bar" within this family-oriented neighborhood.

OBJECTIVE 2:

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.1:

Seek to retain existing commercial and industrial activity and to attract new such activity to the City.

Allowing modifications to the previously approved Conditions of Approval enables the retention and operational expansion of the existing locally-owned wine store and wine bar. Vin Debut has become a successful local wine store and wine bar in the West Portal NCD. Increasing its permitted hours of operation and number of seats will enable the continued success of the local small business.

OBJECTIVE 6: MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

Policy 6.1:

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

Modifying the previously imposed Conditions of Approval would not prevent the West Portal NCD from achieving optimal diversity in the types of goods and services available throughout the neighborhood. Rather, allowing less restrictive hours of operation and an increased capacity for customers would benefit the NCD, making it more viable by bringing more foot traffic to the NCD during later evening hours, which brings additional "eyes to the street". It will also provide an after dinner amenity to people enjoying dinner on West Portal Avenue.

Policy 6.2:

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

The Project is sponsored by an independent San Francisco entrepreneur. The business owners have recognized the demand by local residents to expand the availability of on-site wine consumption at this Site.

AIR QUALITY ELEMENT

Objectives and Policies

OBJECTIVE 3:

DECREASE THE AIR QUALITY IMPACTS OF DEVELOPMENT BY COORDINATION OF LAND USE AND TRANSPORTATION DECISIONS.

Policy 3.2:

Encourage mixed land use development near transit lines and provide retail and other types of service oriented uses within walking distance to minimize automobile dependent development.

The Project furthers this Policy due to its location across the street from the West Portal/Ulloa Street MUNI Station. This station is served by three light-rail lines (K, L, and M) and two bus lines (17 and

48). The Project Site is also surrounded by residential neighborhoods, making it within walking distance to a large number of its customers.

9. **Planning Code Section 101.1(b)** establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the Project complies 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 granting of this Conditional Use Authorization will not adversely affect the existing neighborhood-serving retail uses in the area because there is only one other business within the West Portal NCD that offers a similar use (Que Syrah Wine Bar, located at 230 West Portal Avenue). Many neighborhood commercial districts have businesses that compete with other businesses, as it provides choices and variety for consumers. Furthermore, the subject business recently separated from their Formula Retail contract on February 1, 2010, and is now operating as a fully independent business. The modifications to the existing hours of operation and number of permitted seats within the existing wine tasting area are in response to neighborhood demand, thus enhancing neighborhood-serving retail.

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

The immediate vicinity is characterized by predominantly commercial buildings of one-to-two stories in height with ground-floor retail uses along West Portal Avenue. No changes are proposed to the existing building envelope and no existing housing will be removed. The modification of the existing hours of operation and numbers of seats within the wine tasting area of the existing bar and liquor store (see Conditions of Approval in Exhibit A for specific limitations) preserves the cultural and economic diversity of the neighborhood as it provides variety and additional consumer options for patrons of the West Portal NCD without displacing any existing businesses.

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

This Project does not include any residential dwelling units. Modifications to the existing hours of operation and numbers of seats within the wine tasting area of the existing bar and liquor store will not impact the City's supply of affordable housing, as the Project does not contain or propose removal of any housing.

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

The Project measures approximately 1,100 square feet and will have a low demand on neighborhood parking. The area is well-served by public transit, with a MUNI underground station at the corner of West Portal Avenue and Ulloa Street, with access to light rail lines K, L, and M, as well as bus lines 17 and 48. Numerous neighbors have commented that this is a neighborhood-serving establishment,

frequented by those who live in the adjacent residential communities. The Project will not impede MUNI transit nor will it overburden the City's streets or neighborhood parking.

- E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

The existing building does not contain industrial uses, and no industrial uses will be displaced as part of this Project. Service sector employment opportunities may increase as a result of the additional hours of operation.

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

The building will comply with all required seismic and life-safety codes in order to achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

- G. That landmarks and historic buildings be preserved.

There are no exterior alterations proposed as part of this Project. Furthermore, the existing structure is not considered to be a historic resource for the purposes of CEQA.

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

This Project will not affect any parks or open space because it does not include any expansion to the existing building envelope.

10. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.

11. The Commission hereby finds that approval of the Conditional Use authorization would promote the health, safety and welfare of the City.

DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Application No. 2010.0422C** 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. 18163. 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 94103.

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

Linda D. Avery

Commission Secretary

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

NAYS:

ABSENT:

ADOPTED: August 5, 2010

Exhibit A

Conditions of Approval

1. The Project seeks a Conditional Use Authorization, pursuant to Planning Code Section 303, in order to modify the Conditions of Approval from Motion No. 17897 (Case No. 2009.0273C) to allow an increase in the permissible hours of operation (until 11:00 p.m. Sunday-Thursday, and 12:00 a.m. Friday-Saturday) and the number of chairs (19) within the existing bar/liquor store (dba Vin Debut), located in the West Portal NCD and 26-X Height and Bulk District. Such use applies to the property located at 9 West Portal Avenue, in general conformance with plans filed with the Application as received on June 3, 2010, and stamped "EXHIBIT B" included in the docket for Case No. 2010.0422C, reviewed and approved by the Commission on August 5, 2010.
2. After the Conditional Use Authorization for the Project becomes final, the Zoning Administrator shall approve and order the recordation of a Notice of Special Restrictions in the Official Records of the Recorder of the City and County of San Francisco against the land record of the Subject Lot. Said notice shall state that the operation of the proposal has been authorized by and is subject to the conditions of this Motion applicable to the Project. From time to time, after the recordation of such notice, at the request of the Applicant or the successor-in-interest thereto, the Zoning Administrator shall affirm in writing the extent to which the conditions of this Motion have been satisfied.
3. 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.
4. 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).
5. 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 Planning 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 Section 174, 306.3 and 306.4 of the Planning Code to consider revocation of this Conditional Use Authorization.
6. The Project Sponsor shall implement any other conditions and/or management practices – as determined by the Zoning Administrator, in consultation with the Police Department and other appropriate public agencies – to be necessary to ensure that management and/or patrons of the establishment maintain the quiet, safety, and cleanliness of the premises and the vicinity of the use.

7. This Authorization is valid for a period of three (3) years from the date of approval by the Planning Commission. This Authorization may be extended at the discretion of the Zoning Administrator for up to two years where the failure to implement the Project is caused by delay by any other public agency or by legal challenge.
8. The Project Sponsor shall appoint a Community Liaison Officer to address issues of concern to neighbors related to the operation of this Project. The Community Liaison Officer will be James Robinson, who can be contacted at (415) 420-7268, or via email at james@vindebut.com. The Applicant will keep the Zoning Administrator updated with any changes to the contact information or if a different liaison is designated.
9. The operator shall comply with all conditions required by the Police Department at all times.
10. All garbage and recycling containers shall be stored within the enclosed building or designated storage areas except during collection periods.
11. The hours of operation for the sale and/or service of wine for on-site consumption shall be limited from 9:00a.m. – 11:00p.m., Sunday-Thursday; and from 9:00a.m. – 12:00a.m. (midnight) Friday-Saturday. Private events that are closed to the public may exceed this provision if there is signage posted that the business is closed for a private event.
12. Patrons are not permitted to consume wine outside of the enclosed building. Sidewalk tables and chairs are not permitted.
13. This Authorization limits the Alcoholic Beverage Control licenses to Types 20 and 42.
14. No more than 1/3 of the occupied floor area of the liquor store may be dedicated to the sale and service of alcohol for on-site consumption. Private events that are closed to the public may exceed this provision if there is signage posted that the business is closed for a private event.
15. No more than 19 (nineteen) seats may be provided within the liquor store. Private events that are closed to the public may exceed this provision if there is signage posted that the business is closed for a private event.
16. At least 2/3 of the area dedicated to retail displays must be retained.
17. This Motion shall supersede all Conditions of Approval in Motion No. 17897 (Case No. 2009.0273C).

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