



SAN FRANCISCO PLANNING DEPARTMENT

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Planning Commission Motion 18165

HEARING DATE: AUGUST 12, 2010

Date: August 6, 2010
Case No.: **2010.0360C**
Project Address: **1423 POLK STREET**
Zoning: Polk Street Neighborhood Commercial District (NCD)
80-A Height and Bulk District
Block/Lot: 0646/003
Project Sponsor: David Sternberg
Sternberg, Benjamin Architects
1331 Harrison Street
San Francisco, CA 94103
Staff Contact: Rick Crawford (415) 558-6358
rick.crawford@sfgov.org
Recommendation: **Disapproval**

ADOPTING FINDINGS RELATED TO THE DISAPPROVAL OF A CONDITIONAL USE AUTHORIZATION FOR A "FULL SERVICE RESTAURANT" USE WITHIN AN EXISTING BUILDING AT 1423 POLK STREET WITHIN ASSESSOR'S BLOCK 0646, LOT 003, LOCATED WITHIN THE POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT, THE 80-A HEIGHT AND BULK DISTRICT.

PREAMBLE

On May 12, 2010, David Sternberg ("Project Sponsor") submitted a request with the City and County of San Francisco Planning Department ("Department") for a Conditional Use authorization, Application No. 2010.0360C to allow a Full Service Restaurant use, as defined in Planning Code Section ("Section") 723.42, in an existing building located at 1423 Polk Street ("Project Site"), within the Polk Street Neighborhood Commercial District ("NCD") (collectively, "Project"). This authorization was requested to allow the development of a restaurant in a vacant space previously occupied by an antique furniture store. No alterations are proposed for the exterior of the business other than a change of signage.

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. 2010.0360C. At that hearing, the Commission entertained a motion to approve the project. This motion failed by a vote of 4-3. The Commission subsequently entertained a motion of intent to disapprove the project. This motion passed by a vote of 5-2.

On August 12, 2010 the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2009.0360C, at which time the Commission reviewed and discussed the findings for disapproval prepared for its review by Department staff.

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 disapproves the Conditional Use Authorization requested in Application No. 2010.0360C, 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 project would convert the existing commercial space previously used for an antique store (d.b.a. Curiosity) to a Full Service Restaurant.
3. **Site Description and Present Use.** The Project Site is located at 1423 Polk Street, on the west side of Polk Street between California and Pine Streets. The property is located within the Polk Street NCD, the 80-A Height and Bulk District. The Project Site is developed with a one-story commercial building with six tenant spaces. The remainder of the building is occupied by a Greek cuisine restaurant, a pizza restaurant, an antique shop and a book store. The building was constructed in 1909 and could be an historic resource. An Historic Resource Evaluation has not been conducted for this building.
4. **Surrounding Properties and Neighborhood.** The Polk Street NCD provides convenience goods and services to residents of the Polk Gulch neighborhood, the western slopes of Nob and Russian Hills, the Van Ness corridor and the eastern portion of Pacific Heights. The numerous apparel and specialty stores also draw customers from further afield, while the restaurants, bars and nighttime entertainment venues form a lively, city-wide destination. This mix of uses, and the proximity to dense residential areas, contributes to the active, urban character of the district.

The surrounding development is a variety of multi-story, mixed-use buildings. Nearby ground-floor uses include eating and drinking establishments, retail stores, and nighttime entertainment. The upper stories are generally occupied by office space, apartments, and residential hotels. The scale of development throughout the area consists of low- and mid-rise buildings (one- to four-story structures).

5. **Public Comment.** Department staff has one letter of support from Lower Polk Neighbors and 2 letters in opposition from a neighbor and from the Middle Polk Neighborhood Association.
6. **Planning Code Compliance:** The Commission finds that the Project complies with some but not all of the relevant provisions of the Planning Code in the following manner:

- A. **Use.** A Full Service Restaurant uses require Conditional Use authorization within the Polk Street NCD, pursuant to Section 723.42.

The Project Sponsor is requesting Conditional Use authorization to allow a Full Service Restaurant use, in the vacant commercial space in an existing building. At this time the Sponsor does not have a restaurant tenant for the space and the potential impact the type of restaurant and the operations thereof upon the neighborhood can not be known.

- 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 proposed for the 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. **Bar Use.** Section 723.41 permits a Bar in the Polk Street NCD only upon authorization of a Conditional Use by the Planning Commission. Section 790.22 defines a Bar to include a restaurant serving liquor.

The present request is for a Full Service Restaurant only and the sales of alcoholic beverages would be limited to on-sale beer and wine. Sales of liquor from the restaurant would require Conditional Use authorization for a bar.

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

No restaurant tenant is proposed at this time. The Project is not considered to be a Formula Retail Use as defined by Section 703.3 of the Planning Code. Were it to be determined that the eventual tenant for the space was a Formula Retail, Conditional Use authorization would be required under the provisions of Planning Code Section 703.4, Conditional Use Authorization For Formula Retail Uses, and a new notice and a new public hearing would be required for that use.

- E. **Hours of Operation.** Section 723.27 establishes hours of operation for businesses within the Polk Street NCD. Uses are principally permitted to be open for business between the hours of 6:00 a.m. and 2:00 a.m. and may be open between the hours of 2:00 a.m. and 6:00 a.m. with Conditional Use authorization.

The project Sponsor has not requested extended hours thus the restaurant could be open between the hours of 6:00 a.m. and 2:00 a.m. daily.

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 some but not 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 proposed development of a full service restaurant could enhance the neighborhood and add to the economic vitality of the area. The use would activate a vacant storefront and add a new business to the mix of uses on the block. At this time the Sponsor does not have a restaurant tenant for the space and the potential impact the type of restaurant and the operations thereof on the neighborhood can not be known. Without that information it not possible to determine the necessity or desirability of the project.

- 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;

The Project Sponsor will maintain appropriate odor control equipment to prevent any significant noxious or offensive kitchen odors from escaping the premises and will operate the proposed restaurant such that noise is kept at reasonable levels so as not to unduly disturb neighboring businesses and residents.

- 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 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 some but not all of the applicable requirements of the Planning Code, and as, at this time the Sponsor does not have a restaurant tenant for the space, the potential impact the type of restaurant and the operations thereof on the neighborhood can not be known. Without that information it not possible to determine conclusively whether or not the project will 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.

At this time the Sponsor does not have a restaurant tenant for the space and the potential impact the type of restaurant and the operations thereof upon the neighborhood can not be known. Without that information it not possible to determine that the project would consistent with the stated purpose of Polk Street NCD.

- 8. **General Plan Compliance.** The Project is, on balance, not consistent with the following Objectives and Policies of the General Plan:

COMMERCE AND INDUSTRY ELEMENT

Neighborhood Commerce

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 that has substantial undesirable consequences that cannot be mitigated.

The Project will convert a vacant commercial space to an active use thus eliminate an undesirable vacant storefront however without information regarding the type of restaurant and the operations thereof the benefits and undesirable consequences of the Project can not be known.

OBJECTIVE 6:

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

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 will convert a vacant commercial space to an active use thus eliminate an undesirable vacant storefront however without information regarding the type of restaurant and the operations thereof the opportunities for promotion of small business ownership and entrepreneurship opportunities for people living in the neighborhood can not be determined.

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 could contribute to the viability of the neighborhood commercial district and enhance opportunities for resident employment by activating a vacant storefront. However, as the Sponsor does not have a restaurant tenant for the space and the potential impact the type of restaurant and the operations thereof can not be known, it not possible to determine the impact of the project on the neighborhood.

- (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 Polk Street corridor is an extremely vibrant neighborhood serving commercial district with very high level of foot traffic. The proposed use will contribute to this vibrancy by activating the storefront and increasing the variety of restaurants and businesses in the district.

- (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. No parking is required for the use.

- (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. However, as at this time the Sponsor does not have a restaurant tenant for the space and the potential impact the type of restaurant and the operations thereof can not be known, it not possible to determine the impact of the project on the neighborhood.

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

The Project will likely include tenant improvements necessary to convert the space to restaurant use. Any construction will comply with contemporary construction standards including those for earthquake preparedness.

- (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 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 **DISAPPROVES Conditional Use Application No. 2010.0360C, with permission for the Project Sponsor to reapply for Conditional Use authorization without prejudice within 1 year if a tenant for the space is found.**

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. 18165. 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 12, 2010.

Linda Avery
Commission Secretary

AYES: Lee, Miguel, Moore, Olague, Sugaya

NAYS: Antonini, Bordon

ABSENT: None

ADOPTED: August 12, 2010