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Planning Commission Motion No. 17531

Hearing Date: January 17, 2008
Case No.: **2007.1046C**
Project Address: **1654 Haight Street**
Zoning: Haight Street Neighborhood Commercial District (NCD)
 Haight Street Alcohol Restricted Use Subdistrict
 40-X Height and Bulk District
Block/Lot: 1230/012
Project Sponsor: Frank Sandoval
 2061 Buena Vista
 Alameda, CA 94501
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ADOPTING FINDINGS RELATING TO THE **APPROVAL** OF A CONDITIONAL USE AUTHORIZATION UNDER PLANNING CODE SECTIONS 186.1(b), 303 AND 719.24 TO ALLOW THE EXPANSION AND INTENSIFICATION OF AN EXISTING RESTAURANT (D.B.A. EL BALAZO) BY ESTABLISHING AN OUTDOOR ACTIVITY AREA, TO BE USED AS AN OUTDOOR DINING AREA, IN THE REQUIRED REAR YARD OF THE SUBJECT PROPERTY WITHIN THE HAIGHT STREET NEIGHBORHOOD COMMERCIAL DISTRICT, THE HAIGHT STREET ALCOHOL RESTRICTED USE SUBDISTRICT, AND A 40-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On September 11, 2007 Frank Sandoval (hereinafter "Project Sponsor,") made an application (hereinafter "Application") for Conditional Use authorization on the property at **1654 Haight Street, Lot 012 in Assessor's Block 1230** (hereinafter "Property") to allow a new outdoor activity area (d.b.a. El Balazo), in the Haight Street Neighborhood Commercial District, the Haight Street Alcohol Restricted Use Subdistrict and 40-X Height and Bulk District, in general conformity with Plans filed with the Application and labeled "EXHIBIT B" (hereinafter "Project").

On **January 17, 2008**, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on **Conditional Use Application No. 2007.1046C**. Conditional Use authorization is required outdoor activity areas within the Haight Street NCD.

The proposed Conditional Use application was determined by the San Francisco Planning Department (hereinafter "Department") to be categorically exempt from environmental review pursuant to Title 14, Article 19, Class 1a 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.

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.** The subject property is located in the Upper Haight less than three blocks east of Golden Gate Park and less than three blocks south of the Panhandle. The property is developed with a three-story mixed use building. The ground floor is occupied by the subject restaurant and the two upper stories are occupied by residences.
3. **Surrounding Neighborhood.** The Haight Street NCD is a linear commercial strip that runs east to west from Central Avenue to Stanyan Street. The built environment abutting the subject property varies from single-story commercial to four-story wholly residential and mixed use buildings. The surrounding zoning is primarily neighborhood commercial with residential districts off the commercial corridors.

The Haight Street District controls are designed to protect the existing building scale and promote new mixed-use development which is in character with adjacent buildings. The building standards regulate large-lot and use development and protect rear yards above the ground story and at residential levels. To promote the prevailing mixed-use character, most commercial uses are directed primarily to the ground story with some upper-story restrictions in new buildings. In order to maintain the balanced mix and variety of neighborhood-serving commercial uses and regulate the more intensive commercial uses which can generate congestion and nuisance problems, special controls prohibit additional eating and drinking uses, restrict expansion and intensification of existing eating and drinking establishments, and limit entertainment and tourist hotels. Prohibitions of most automobile and drive-up uses protect the district's continuous retail frontage.

Project Description. The proposal consists of creating an outdoor dining area at the rear of an existing restaurant (d.b.a. "El Balazo," with approximately 60 seats) in the required rear yard. It also includes a minor modification to the front entrance that will retain the existing storefront configuration and interior tenant improvements to accommodate ADA accessibility. The hours of operation for the 14-seat outdoor dining area are proposed to be restricted from 8:30 AM to 10:30 PM seven days a week. Although the outdoor dining area will have a capacity of

approximately 14 seats, interior tenant improvements to make the restaurant ADA accessible will reduce the total number of seats to approximately 40 for the entire restaurant. The project is also the subject of a rear yard variance request to be considered by the Zoning Administrator.

Public Comment. As of January 10th the Department has not received any correspondence in support of or in opposition to the proposal.

4. **Planning Code Compliance:** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:

- A. **Outdoor Activity Area.** Planning Code Section 719.24 states that a Conditional Use Authorization is required for a new outdoor activity area in the Haight Street NCD.

The Project Sponsor has complied with said Section of the Code by submitting an application for conditional use authorization.

- B. **Nonconforming Use Expansion.** Planning Code Section 186.1(b) states that a Conditional Use Authorization is required for any significant alteration, expansion or intensification.

The Project Sponsor has complied with said Section of the Code by submitting an application for conditional use authorization.

- C. **Rear Yard Variance.** Planning Code Section 134 states that a Variance is required for encroachment into the required rear yard.

The Project Sponsor has complied with said Section of the Code by submitting an application for rear yard variance. Planning Code Section 134 requires a rear yard at grade level equal to 25 percent of the lot depth, but no less than 15 feet whichever is greater. The subject property has a depth of 137.5 feet and requires a rear yard depth of 34.5 feet measured from the rear property line. The proposal would replace an existing single story structure at the rear, built without benefit of a permit, and encroach approximately 14'-6" into the required rear yard, extending to within approximately 20 feet of the rear property line.

5. **Planning Code Section 303** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the project does comply with said criteria in that:

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

The proposed expansion of the existing restaurant will provide an outdoor dining experience that is desirable, in that, it will provide the Haight Street NCD with an alternative to restaurants that only offer interior seating. The existing restaurant is approximately 3,200 gross square feet. With the

proposed roof deck and outdoor seating area the restaurant will increase to approximately 3,700 square feet.

- B. The proposed project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. There are no features of the project that could be detrimental to the health, safety or convenience of those residing or working the area, in that:

- i. Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

The proposed exterior alterations include a redesigned entrance to accommodate ADA accessibility that will retain the existing storefront configuration and the outdoor dining area in the rear yard. Therefore, the alterations will not significantly change the existing appearance or character of the project vicinity.

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

The Planning Code does not require parking or loading for restaurants that do not exceed an occupied floor area of 5,000 square feet. The occupied floor area of the proposed use is less than 5,000 square feet and the expansion should not generate a significant amount of additional vehicular trips from the immediate neighborhood or citywide.

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

There will be no noxious or offensive dust or odor associated with the proposal.

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

The project does not include any new landscaping, screening, open spaces, parking or loading areas. Lighting and signage shall comply with all applicable codes.

- 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 Sponsor submitted an application for a rear yard variance that was heard by the Zoning Administrator. Otherwise, it complies with all relevant requirements and standards of the Planning Code and is consistent with objectives and policies of the General Plan as detailed below.

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

The proposed project is consistent with the stated purpose of the Haight Street NCD in that the restaurant is located at the ground floor with residential units above, and it will continue providing dining service for the immediate and surrounding neighborhoods during normal business hours.

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

COMMERCE & INDUSTRY ELEMENT, NEIGHBORHOOD COMMERCE SECTION

Objectives and Policies

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.

Authorizing the expansion of the existing El Balazo restaurant into the rear yard on a roof deck and the intensification of an existing establishment that sells alcohol for on-site consumption will increase the probability of retaining this restaurant in the Haight Street NCD, while maintaining and strengthening the viability of the Haight Street NCD. Also, by creating an outdoor dining area, it will diversify the types of dining experiences available in the Upper Haight.

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

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

The proposed outdoor dining will enhance an existing small business and may provide future opportunities for resident employment.

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

The proposal retains the existing units above the ground floor restaurant, but includes a single-story addition to the rear and a minor modification to the existing entrance in order to accommodate ADA accessibility that will retain the existing storefront configuration. Therefore, the project will conserve existing housing and neighborhood character.

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

The proposed use will not displace any affordable housing.

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

The site, located on Haight Street, is within three blocks of Stanyan Street and three blocks of Masonic Avenue, all of which are all well served by public transit. The proposed restaurant will occupy less than 5,000 square feet (the proposed outdoor dining adds less than 500 square feet of floor area to the existing restaurant) and will not generate a significant amount of additional automobile traffic congestion or parking as a result.

- 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 Project will not displace any service or industry establishment. The project will not affect industrial or service sector uses or related employment opportunities. Ownership of industrial or service sector businesses will not be affected by this project.

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

The Project is designed and will be constructed to conform to the structural and seismic safety requirements of the San Francisco Building Code. This proposal will not impact the property's ability to withstand an earthquake. The proposal will go through the standard building permit review process before any construction work can begin

- G. That landmarks and historic buildings be preserved.

A landmark or historic building does not occupy the Project site.

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

The project will have no negative impact on existing parks and open spaces. The Project does not have an impact on public open spaces.

8. 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.
9. 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. 2007.1046C** 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.. 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 **January 17, 2008**.

Linda Avery
Commission Secretary

AYES: Commissioners Olague, Antonini, B. Lee, S. Lee, Moore, Sugaya

NAYS: None

ABSENT: Commissioner Alexander

ADOPTED: January 17, 2008

Exhibit A

Conditions of Approval

1. This approval is for the expansion and intensification of an existing restaurant and establishment of an outdoor activity area, to be used as an outdoor dining area for the existing restaurant (d.b.a. El Balazo), in the required rear yard of the subject property in the Haight Street Neighborhood Commercial District. The Project approved by this Motion is in general conformity with the plans dated April 5, 2007 and revised on January 17, 2008 on file with the Department in the docket for **Case No. 2007.1046C** (labeled EXHIBIT B), reviewed and approved by the **Commission on January 17, 2008**.
2. The project authorized herein is limited to that described on the plans labeled EXHIBIT B, dated April 5, 2007 and revised on January 17, 2008. The Project Sponsor shall advise the Planning Department staff of any changes or modifications to the Project, which would result in any deviation from the plans, as approved in this **Motion No. 17531, dated January 17, 2008** (labeled Exhibit B).
3. This Conditional Use approval is to allow the expansion and intensification of an existing restaurant pursuant to Planning Code Sections 186.1(b) and 719.24.
4. The existing storefront configuration with two lighted bays and a central entrance shall be retained and modified only to the extent required to provide for ADA accessibility.
5. The hours of operation for the outdoor dining area shall be limited to the following hours:

Monday - Sunday 8:30 a.m. - 10:30 p.m.

The outdoor patio area shall be completely cleared of customers outside of these hours. Setup, cleanup and clearing of tables shall be completed within these hours. The restaurant shall regulate seating so as to comply with these hours of operation.
6. No bus stations for dishes shall be permitted in the outdoor dining area.
7. One service station, limited to clean utensils, napkins and condiments, will be permitted in the outdoor dining area.
8. Recorded or live music or amplified sound shall be prohibited in the outdoor dining area.
9. Noise from patrons using the outdoor dining area shall be contained so as not to be a nuisance to nearby residents or neighbors.
10. There shall be no bar in the outdoor dining area at the rear of the property.

11. The proposed outdoor dining area shall not be used for a standing or waiting area.
12. Lighting shall be no higher than eight feet and shall be directed downward to illuminate only the dining area.
13. Prior to the issuance of the Building Permit for the Project the Zoning Administrator shall consider a rear yard variance and approve and order the recordation of a notice in the Official Records of the Recorder of the City and County of San Francisco for the premises (Assessor's 1230, Lot 012), which notice shall state that construction has been authorized by and is subject to the conditions of this Motion. From time to time after the recordation of such notice, at the request of the Project Sponsor, the Zoning Administrator shall affirm in writing the extent to which the conditions of this Motion have been satisfied.
14. 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 \$500 a day in accordance with Planning Code Section 176.
15. 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).
16. The property owner shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean condition. Such maintenance shall include, at a minimum, daily litter pickup and disposal, and washing or steam cleaning of the main entrance and abutting sidewalks at least once each week.
17. Signs and exterior lighting for the business shall be reviewed and approved by the Planning Department before they are installed.
18. The Project Sponsor shall maintain an attractive storefront; security gates/bars shall be restricted from the exterior of the building, but permitted on the interior side of the windows.
19. The Project shall appoint a Community Liaison Officer to address issues of concern to neighbors related to the operation of this Project. The Project Sponsor shall report the name and telephone number of this Officer to the Zoning Administrator and the neighborhood for reference. The Applicant will keep the above parties apprised should a different staff liaison be designated.
20. The operator of the use shall be responsible for maintaining the sidewalk within a one-block radius of the site free of paper or litter generated by the retail establishment.
21. 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.
22. 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.

23. The Planning Commission may, in a public hearing, consider the revocation of this conditional use authorization if a site or building permit has not been issued within three (3) years of the date of the Motion approving the project. Once a site or building permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued thenceforth diligently to completion. The Commission may also consider revoking this conditional use authorization if a permit for the project has been issued but is allowed to expire and more than three (3) 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 is delayed by a City, state or federal agency or by appeal of the issuance of such permit.

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