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Planning Commission Motion No. 17541

Hearing Date: November 15, 2007
Case No.: **2007.0461C**
Project Address: **438-448 Broadway**
Zoning: Broadway Neighborhood Commercial District
65-A-1 Height and Bulk District
Block/Lot: 0144/011
Project Sponsor: Badreddine Khelifi
2757 Jo Ann Drive
Richmond, CA 94806
Staff Contact: Aaron Hollister – (415) 575-9078
aaron.hollister@sfgov.org

ADOPTING FINDINGS RELATED TO THE APPROVAL OF A CONDITIONAL USE AUTHORIZING THE EXTENSION OF THE HOURS OF OPERATION TO 3:00 AM ON THE PROPERTY AT 448 BROADWAY, ASSESSOR'S BLOCK 0144, LOT 011, LOCATED WITHIN THE BROADWAY NEIGHBORHOOD COMMERCIAL DISTRICT (NCD) AND A 65-A-1 HEIGHT AND BULK DISTRICT.

RECITALS

1. On June 11, 2007, Badreddine Khelifi (Project Sponsor), applied for a Conditional Use, Application No. 2007.0461C on the property at 438-448 Broadway, Lot 011 in Assessor's Block 0144, to operate a small self-service restaurant to 3:00 AM, in general conformity with the plans stamped Exhibit B and dated November 15, 2007 (Project), within the Broadway NCD and a 65-A-1 Height and Bulk District.
2. On November 15, 2007, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2007.0461C.
3. The Project was determined by the Planning Department (Department) to be categorically exempt from the environmental review process pursuant to Title 14 of the California Code of Regulations.
4. This Commission has reviewed and considered reports, studies, plans, and other documents pertaining to this Project.

5. 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.
6. **MOVED**, that the Commission hereby approves the conditional use requested in Application No. 2007.0461C, subject to conditions contained in Exhibit A attached hereto and incorporated by reference, 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.** The project site is located on the north side of Broadway Street mid-block between Montgomery Street and Kearney Street, Assessor's Block 0144, Lot 011. The property is located within the Broadway Neighborhood Commercial District and a 65-A-1 Height and Bulk District.

The Project Site is occupied by a three-story building which was built in 1915. The subject building is located within the North Beach Survey area, but not as a significant building. Much of the historic fabric of the building has been compromised by past alterations. There are two separate retail spaces on the ground floor and a total of 31 residential hotel rooms on the second and third floors. The current retail uses in the ground floor of the building include the subject small self-service restaurant (d.b.a. Broadway Express) and a nightclub (d.b.a. Dolce).

3. **Surrounding Neighborhood.** The Broadway NCD is part of a larger commercial area that includes North Beach, Chinatown, and Jackson Square. The Broadway NCD functions as a regional and citywide entertainment district derived from a concentration of nightclubs, music halls, adult theaters, bars, and restaurants between Grant Avenue and Montgomery Street. These places attract locals and visitors alike, mainly in the evening and late-night hours. Additionally, the district contains some retail businesses and many upper-story residential hotels.

The surrounding development is a variety of multi-story, mixed-use buildings. Nearby ground-floor uses include eating and drinking establishments, small-scale 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). The height limit in the area is 65 feet.

4. **Proposed Project.** The proposed Project is to allow the existing small self-service restaurant (d.b.a. Broadway Express) to operate between the hours of 2 AM and 6 AM. Specifically, the project proposal is to extend to the hours of operation of the subject restaurant to 3:00 AM. There

is no construction or physical expansion of the subject building or commercial space proposed under this application.

5. Pursuant to Section 714.27, conditional use authorization is required to allow the existing small self-service restaurant (d.b.a. Broadway Express) to be open between the hours of 2 AM and 6 AM in the Broadway NCD.
6. **Public Comment.** The Police Department supports the Project. The Police Department believes that an extra hour of operation will help disperse late-night crowds and lines in a more timely matter at similar nearby establishments by providing an extra food option in addition to several other similar operations that are permitted to operate outside of the permitted Broadway NCD hours of operation. Several of these establishments are permitted to stay open later than the recommended 3:00 AM recommended closing time for the Project. The Police Department has stated much of the fighting, noise, crime and violence in the area result after the patrons of adjacent bars, clubs and adult entertainment establishments wait in-line for food at several of the adjacent restaurants. In addition to the Police Department's support for the Project, the Project Applicant has submitted a list of several patrons who support the Project.

Although the Police Department and numerous patrons have been supportive of the project, Planning Department staff has received phone calls and letters from several residential neighbors who do not support the Project. The primary concern/complaint of adjacent residential neighbors stems from the noise generated by the late-night patrons of the Broadway area. Several residential neighbors also have concerns about the litter that is generated on the streets from the existing establishments in the area. While the proposed restaurant may not be the source of these problems, the members of the community believe that allowing the restaurant to operate to 3:00 AM will not necessarily improve the situation, but may further harbor crime, noise and litter that have been historically linked with the entertainment options in the area.

7. **Planning Code Compliance:** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:
 - A. **Floor Area Ratio.** Section 124 establishes basic floor area ratios (FAR) for all zoning districts. FAR is the ratio of the gross floor area of all the buildings on a lot to the total area of the lot. Under Section 124(a), the FAR for the Broadway NCD is 2.5 to 1.

With a lot area of 6,348 square feet, 15,870 nonresidential gross square feet can be developed on the Project Site. Since the Project will not include the physical expansion of the commercial space, there will be no increase in nonresidential gross floor area.
 - B. **Parking Requirement.** Section 151 requires eating and drinking establishments to provide one parking space for every 200 square feet of occupied floor area, where the occupied floor area exceeds 5,000 square feet.

With a gross floor area of under 5,000 square feet, the Project is not required to provide parking.

- C. **Loading.** Section 152 requires off-street freight loading for uses above a certain size. Eating and drinking establishments up to 100,000 square feet in gross floor area are not required to provide off-street freight loading.

With a floor area of approximately 860 square feet, the Project is not required to provide off-street loading. There are nearby yellow zones that can be used for deliveries.

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

The Project is not considered to be a Formula Retail Use as defined by Section 703.3 of the Planning Code. The proposed location would be the only outlet for this particular business.

- E. **Hours of Operation.** Section 723.27 allows hours of operation from 6:00AM until 2:00AM as of right and requires conditional use authorization to operate between the hours of 2:00AM and 6:00AM.

The Project Sponsor is seeking conditional use authorization to operate between the hours of 2:00 AM and 6:00 AM. The Project Sponsor is willing to close at 3:00 AM and re-open no earlier than 6:00 AM in accord with Police Department comments and recommendations. Based on comments from the Police Department and business owners and residents in the neighborhood, the Commission is imposing a condition of approval limiting the hours of operation from 6:00 AM to 3:00 AM.

- F. **Use Size.** Section 121.2(a) establishes size limits on nonresidential uses in all NCDs. In the Broadway NCD, conditional use authorization is required for any nonresidential use that exceeds 2,999 square feet.

At 860 square feet, the Project does not require conditional use authorization for use size.

8. **Conditional Use Findings.** Under Section 303(c), the Commission may authorize a conditional use after finding 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.

With a condition of approval limiting the hours of operation from 6:00 AM to 3:00 AM, the Project is desirable for and compatible with the neighborhood, because it will preserve and enhance a restaurant use that serves both the neighborhood and visitors to the Broadway and North Beach districts. The subject business is currently operating during permitted business hours of the Broadway NCD.

Several similar restaurant establishments are permitted to operate outside the hours of 6 AM and 2 AM in the Broadway NCD.

- 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 size and shape of the site and the size, shape and arrangement of the building are adequate for the Project. There will be no physical expansion of the subject building or commercial space.

- 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 Project will not adversely impact public transit or overburden the existing supply of parking in the neighborhood. The Project Site is well-served by public transportation (the 30 Stockton, 45 Union-Stockton, 20 Columbus, 41 Union, 12 Folsom Pacific, 9AX Bayshore Express, 30X Marina Express and 10 Townsend MUNI surface buses).

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

The conditions of approval for this Project require the Project Sponsor to ensure that noise and odors are contained within the premises so as not to be a nuisance to nearby businesses or 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 commercial ground level, therefore, no landscaping will need to be provided. All lighting and signage will comply with the requirements of the Planning Code, any approved signage program 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 all of the applicable requirements of the Planning Code and will not adversely affect the General Plan.

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

The Project will provide development that is in conformity with the purpose of the zoning controls for the Broadway NCD as set forth in Planning Code Section 714.1. The Broadway NCD controls are designed to encourage development that is compatible with the existing moderate scale and mixed-use character and further maintains the district's balance of entertainment uses, restaurants, and small-scale retail stores. Neighborhood-serving businesses are strongly encouraged. In order to protect the livability of the area, limitations apply to fast-food restaurants and adult entertainment uses. Financial services are allowed on the ground story with conditional use authorization. Non-retail services are prohibited in order to prevent encroachment of the adjoining downtown office uses. The existing restaurant's extended hours of operation request is compatible with the mixed-use character of the neighborhood, and will help to support dispersion of the large number of patrons of the entertainment uses in the area of the Broadway NCD.

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

NEIGHBORHOOD COMMERCE

Commerce and Industry Element

OBJECTIVE 6:

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

Policy 1:

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

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.

Approval of the Project will preserve and enhance a restaurant use that serves both the neighborhood and visitors to the Broadway and North Beach entertainment districts. The Project will not detract from the character of the neighborhood or discourage active retail uses. The proposed extension of hours of operation will help disperse the crowds that congregate outside several of the permitted, post-2 AM restaurants in the area.

This policy includes guidelines for specific uses. In order to maintain the balance of commercial uses, eating and drinking establishments should not occupy more than 20 percent of the commercial frontage in a district. Proposals for eating and drinking establishments which would

increase the proportion of total occupied commercial frontage above 20 percent should be reviewed to ensure that they would not reduce the variety of neighborhood-serving uses or create substantial noise, traffic, parking problems, or other nuisances. Except in districts with an established pattern of service to a broad market, such establishments should not occupy more than 25 percent of the total commercially-occupied frontage in a district.

No new restaurant establishment is being added by virtue of this Conditional Use authorization. The hours of operation of an existing restaurant are merely being extended by one hour.

Policy 3:

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

The proposed restaurant will continue to contribute to the mixed-use character of the Broadway NCD, and the Project will not adversely impact any affordable housing resources in the neighborhood.

Policy 9:

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

The Project will not adversely impact public transit or overburden the existing supply of parking in the neighborhood. The restaurant primarily serves the neighborhood and visitors who are already in the neighborhood as patrons of entertainment establishments. The Project Site is well-served by public transportation (the 30 Stockton, 45 Union-Stockton, 20 Columbus, 41 Union, 12 Folsom Pacific, 9AX Bayshore Express, 30X Marina Express and 10 Townsend MUNI surface buses.

Off-street parking is not required for the Project. Off-street loading is not required for the Project. There are nearby yellow zones that can be used for deliveries.

10. **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.

Approval of the Project will preserve and enhance a restaurant use that serves both the neighborhood and visitors to the Broadway and North Beach entertainment districts and will provide employment opportunities for local residents.

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

The Project will not have an adverse impact on neighborhood character or the cultural and economic diversity of the neighborhood.

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

The Project will 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 will not adversely impact public transit or place a burden on the existing supply of parking in the neighborhood. The Project Site is well-served by public transportation. Furthermore, the Project is intended to be a walk-in service.

- (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 will be displaced.

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

The Project does not involve any construction activities that will compromise the structural integrity of the existing building.

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

The subject building is located within the North Beach Survey area, but not as an "individually" significant building. Because no construction is proposed with the Project, the Project will not have a significant adverse impact on the historic fabric of building which has been heavily altered already.

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

The Project will not impact any parks or open spaces or their access to sunlight.

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

12. On balance, the Commission hereby finds that approval of the conditional use authorization would promote the health, safety, and welfare of the City.

**Motion 17541
November 15, 2007**

**CASE NO. 2007.461 C
438-448 Broadway**

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. 2007.0461C** 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. XXXXX. 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 November 15, 2007.

Linda Avery
Commission Secretary

AYES: President: Dwight Alexander, Commissioners: Michael J. Antonini, William L. Lee, Kathrin Moore, Hisashi Sugaya

NAYS:

ABSENT: Sue Lee & Vice President: Christina Olague

ADOPTED: January 24, 2008

Exhibit A

Conditions of Approval

1. This authorization is to allow the existing small self-service restaurant (dba Broadway Express) of approximately 860 square feet to operate from 6:00 AM to 3:00 AM on the property at 438-448 Broadway Street, Assessor's Block 0144, Lot 011, in general conformity with the plans stamped Exhibit B and dated November 15, 2007.
2. The Commission may consider revocation of this Conditional Use authorization if a permit for the project has been issued, but is allowed to expire and more than three years have passed since the Motion was approved. This authorization may be extended at the discretion of the Zoning Administrator only if the failure to issue a permit by the Department of Building Inspection within three years is delayed by a City, state or federal agency, or by appeal of the issuance of such permit.
3. The hours of operation for the restaurant shall be limited to the hours between 6:00 AM and 3:00 AM.
4. Motion No. 17541 does not include the authorization to sell alcoholic beverages. Conditional Use authorization shall be required for any license to sell alcoholic beverages.
5. Ground level storefronts in general conformity with Exhibit A (or B) shall be maintained in an attractive manner, providing transparency into the tenancy behind. Visibility of the commercial interiors and activity through all storefront windows shall be maintained in order to ensure that the ground level of the building remains visually active, provides visual interest to pedestrians, and enhances sidewalk security. Commercial interior layouts should be designed with these requirements in mind. Generally, storefront windows should not be visually obscured with the following: blinds, shades or curtains; shelving; equipment; darkly tinted, translucent or opaque film; painted, stenciled or adhesive signage applied to individual window surfaces that has an overall transparency of less than 50%, or any signage that covers more than 1/3 of the area of any individual window; full or partial height interior partition walls placed directly against or within 10 feet from the window glazing; or any other items that significantly block the vision of pedestrians through the storefront windows into the occupiable commercial space. Solid roll-down security gates shall not be installed in storefront openings. The property owner shall ensure that this condition of approval is incorporated into all commercial leases.

6. The operator of the establishment shall maintain the entrances and all sidewalks abutting the subject property in a clean condition. Such maintenance shall include, at minimum, daily sweeping, litter pickup and disposal, and washing or steam/pressure cleaning of the main entrance and abutting sidewalks at least once every two weeks.
7. Noise and odors shall be regulated so as not to be a nuisance to nearby businesses or residents.
8. A notice shall be placed upon the door or at another location readily visible urging patrons to leave the establishment and neighborhood in a quiet, peaceful and orderly fashion. This notice shall be well lit and have clearly readable lettering at least one inch in height.
9. The project sponsor shall continue to work with the Planning Department staff to further refine a signage program at the site that complies with Article 6 of the Planning Code.
10. An enclosed waste storage area shall be provided within the establishment. All trash and recycling containers shall be kept within the building until pick-up by the disposal company.
11. The Project Sponsor shall appoint a Community Liaison to address issues and matters of concern to nearby residents or commercial lessees. This liaison or designated representative shall be available at the establishment at all times during business hours. The Project Sponsor shall report the name and telephone number of this liaison to the Zoning Administrator for reference.
12. Should monitoring of the Conditions of Approval of this Motion be required, the Project Sponsor shall pay fees as established in Planning Code Section 351(e)(1).
13. Should implementation of this Project result in complaints from the Police Department, interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and are subsequently reported to the Zoning Administrator and found to be in violation of the Planning Code and/or the specific Conditions of Approval for the Project as set forth in Exhibit A of this Motion, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter in accordance with the hearing notification and conduct procedures as set forth in Sections 174, 306.3, and 306.4 of the code to consider revocation of this conditional use authorization.
14. 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.