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Planning Commission Motion No. 17550

Hearing Date: February 14, 2008
Case No.: **2007.1371C**
Project Address: **844 CLEMENT STREET**
Zoning: Inner Clement Street Neighborhood Commercial District (NCD)
40-X Height and Bulk District
Block/Lot: 1424/020
Project Sponsor: Bill Guan for Kin Chung Wong
1330 Palou Avenue
San Francisco, CA 94124
Staff Contact: Sharon M. Young – (415) 558-6346
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ADOPTING FINDINGS RELATED TO THE APPROVAL OF A CONDITIONAL USE AUTHORIZATION UNDER PLANNING CODE SECTIONS 186.1(C)(3) AND 303(C) OF THE PLANNING CODE TO LEGALIZE THE ESTABLISHMENT OF A SMALL SELF-SERVICE RESTAURANT AT 844 CLEMENT STREET (DBA NAPOLEON BAKERY & RESTAURANT), ON ASSESSOR'S BLOCK 1424, LOT 020 WITHIN THE INNER CLEMENT STREET NEIGHBORHOOD COMMERCIAL DISTRICT (NCD) AND A 40-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On November 30, 2007, Bill Guan, acting agent on behalf of Kin Chung Wong (hereinafter "Project Sponsor") made an application for Conditional Use authorization on the property at **844 Clement Street, Lot 1424 in Assessor's Block 020** (hereinafter "Property"), to legalize the conversion of a full-service restaurant (a nonconforming use) to a small self-service restaurant located within a one-story commercial building within the Inner Clement Street Neighborhood Commercial Zoning District and a 40-X Height and Bulk District, in general conformity with plans dated October 19, 2007 and labeled "Exhibit B" (hereinafter "Project").

On **February 14, 2008**, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on **Conditional Use Application No. 2007.1371C**. Under Sections 186.1(c)(3) and 303(c) of the Planning Code, Conditional Use authorization is required to allow a nonconforming full-service restaurant to be changed to an otherwise non-permitted small self-service restaurant within the Inner Clement Street Neighborhood Commercial Zoning District and a 40-X Height and Bulk District.

The proposed Conditional Use application was determined by the San Francisco Planning Department (hereinafter "Department") to be Categorically Exempt from the environmental review process pursuant to Title 14 of the California Administrative Code. The Commission has reviewed and concurs with said determination.

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

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 on the north side of Clement Street between 9th and 10th Avenues, Assessor's Block 1424, Lot 020. It is located within the Inner Clement Neighborhood Commercial District (NCD) and a 40-X Height and Bulk District. The subject lot is 7,500 square-feet (75 feet wide by 100 feet deep) in size and is occupied by a one-story commercial building built in 1912. The existing building is not listed in the Planning Department's 1976 Architectural Survey or the National or California Registers as having architectural significance. However, the existing building is included in the Inner Richmond Information Survey area.

The subject property is one of four commercial tenant space located on the ground floor at 844 Clement Street. The other tenant spaces are a book, music, and gift store (dba Tai Hing Book & Gift), a toy store (dba Heroes Club The Art of Toys), a restaurant (dba Singapore Malaysian Restaurant), and a restaurant (dba Golden Buddha Vegetarian Restaurant). The proposal is to legalize the conversion of a full-service restaurant into a small-self service restaurant (dba Napoleon Bakery & Restaurant). The conversion took place August 15, 2007 without having been authorized as a conditional use.

3. **Surrounding Neighborhood.** The surrounding development consists of a variety of commercial and mixed-use buildings mostly featuring residential uses above ground-floor commercial establishments within the Inner Clement NCD. The scale of development in the area consists primarily of one- to three-story structures. The Inner Clement NCD is located on Clement Street between Arguello Boulevard and Funston Avenue in the eastern portion of the Richmond District. The shopping area contains a variety of small-scale convenience businesses which primarily include a mix of restaurants, specialty groceries, variety merchandise stores, and personal service establishments. On the subject and opposite blocks, there does not appear to be any commercial establishments which can be considered formula retail uses under Section 703.3 of the Planning Code.

4. **Project Description.** The proposal is to legalize the conversion of a full-service restaurant (last occupied by The House of Clay Pot in 2006) into a small self-service restaurant (dba Napoleon Bakery & Restaurant, primarily selling Asian inspired cakes and pastries) on the ground floor of the subject building. The small self-service restaurant, with approximately 900 square feet in floor area, consists of a preparation/serving area, kitchen, restroom, and dining area with seating for six persons. The proposal will not involve tenant improvements to the existing commercial space or an expansion to the existing building envelope. The proposed hours of operation are 7 a.m. to 7 p.m., seven days a week. Pursuant to Section 716.27 of the Planning Code, the small self-service restaurant is allowed to operate between the hours of 6 a.m. and 2 a.m. as of right. The store would employ approximately three people.

A “nonconforming use” is defined as a use that existed lawfully at the effective date of the Planning Code, but which failed to conform to one or more of the use limitations under Code provisions applicable for the neighborhood commercial district in which the property is located at the time of the application. The current proposal, which requires Conditional Use authorization under Section 186.1(c)(3) of the Planning Code, will allow the nonconforming use (full-service restaurant) to change to another nonconforming use (small self-service restaurant) on the project site.

5. **Issues and Other Considerations.**

- The majority of the commercial establishments within this portion of the Clement Street NCD are independently owned rather than formula retail uses. The proposed small self-service restaurant is not considered a formula retail use under Section 703.3 of the Planning Code. The project sponsor has indicated that there are only two other Napoleon Bakery & Restaurant commercial establishments currently in operation nationwide.

- On the subject and opposite blocks, there are approximately 20 existing commercial establishments which are comprised of full-service restaurants, specialty stores, personal and business service establishments, and a financial institution, liquor store, and consignment shop. On the subject block, some of these commercial establishments include Coriya Hot Pot City, Healthy Dance Studio, Tai Hing Book & Gift, Hero Club The Art of Toys, Singapore Malaysian Restaurant, Golden Buddha Vegetarian Restaurant, The Good Will Store, Exploring Music, Supertime Travel, Wendy Beauty Salon, Mark Kai Watch & Jewelry Repairs, and Hamburger Haven. On the opposite block, some of these commercial establishments include Bank of the West, Happy Garden Restaurant, Pizza Orgasmica & Brewing Co, Seafood Center, Richmond Video Center, Cable Car Wine & Spirit Shop, and All Star Fantasy Inc. Movies/Music/Electronics. The proposal will provide a wider variety of neighborhood-serving retail uses within the immediate area as there are no bakeries located on the subject and opposite blocks. Within walking distance from the project site, the closest bakeries on Clement Street include Grain D’Or (236 Clement Street), Alex Bakery (431 Clement Street), Schubert’s Bakery (521 Clement Street), and Red A Bakery (634 Clement Street).

- Public transit that is in close proximity to the proposed restaurant include Muni Line 2-Clement located at a bus stop on the corner of 9th & 10th Avenues. There is on-street parking in front of the subject property and in the surrounding neighborhood.
6. **Public Comment.** As of February 4, 2008, the Planning Department has not received any letters or phone calls in opposition to the project. The Planning Department received one letter in support of the project from a local business owner indicating it would be “nice” to have an Asian bakery within their neighborhood.
 7. **Use District.** For the purposes of this action, the project site is within the Inner Clement Street Neighborhood Commercial District (NCD). The Inner Clement Street NCD is located on Clement Street between Arguello Boulevard and Funston Avenue in the eastern portion of the Richmond District. The district provides a wide selection of convenience goods and services for the residents of the Inner Richmond neighborhood. Inner Clement Street has one of the greatest concentrations of restaurants of any commercial district in San Francisco, drawing customers from throughout the City and region. There are also a significant number of professional, realty, and business offices as well as financial institutions. The pleasant pedestrian character of the district is derived from the intensely active retail frontage on Clement Street.
 8. **Planning Code Compliance:** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:
 - A. **Section 101.1(b)** establishes eight priority planning policies and requires the review of permits that authorize changes of use for consistency with said policies:
 - (1) That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced.

The proposed Project will preserve and enhance the existing neighborhood-serving retail uses by occupying a commercial space on the subject property to serve the needs of residents through the sale of bakery items. The proposed Project will provide new job opportunities to the City by employing approximately three people.
 - (2) That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

The proposed Project will preserve and enhance the cultural and economic diversity of the neighborhood by allowing a new business to remain in the area. Existing housing will not be affected by the Project since none exists.
 - (3) That the City’s supply of affordable housing be preserved and enhanced.

The proposed Project will not displace any affordable housing.
 - (4) That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

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

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

There is no commercial office development associated with the proposed Project and there would be no displacement of any existing industrial or service businesses in the area.

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

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

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

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

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

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

- B. **Section 186.1(c)(3)** requires Conditional Use authorization for a nonconforming use to change to another use described in zoning categories .41, .42, .43 or .44, as defined in Sections 790.22, 790.92, 790.90 and 790.91, respectively, may change to any another use described in zoning categories .41, .42, or .44 even though such other use is not permitted in that Neighborhood Commercial District, unless such other use is located in an Alcoholic Restricted Use Subdistrict and is prohibited by the provisions governing that Alcoholic Restricted Use Subdistrict.

The proposal Project will allow the legalization of the change of use of a nonconforming full-service restaurant to a small self-service restaurant.

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

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

The proposed Project is to legalize a small self-service restaurant on the project site. There will be no tenant improvements made to the existing commercial space or changes made to the existing building envelope.

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

- (A) Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

The size and shape of the site and the size, and the arrangement of the structures on the site are adequate for the proposed Project. There will be no physical expansion of the existing building or retail commercial space.

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

Existing traffic patterns will not be significantly affected by the proposed Project. Public transit that is in close proximity to the Napoleon Bakery & Restaurant include Muni Line 2-Clement located at a bus stop on the corner of 9th & 10th Avenues. There is on-street parking in front of the subject property and in the surrounding neighborhood.

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

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

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

The existing building, like some buildings on the block, occupies most of the entire site; no landscaping is provided on site. There will be no addition of parking spaces, loading facilities, open space or service areas. All Project signage and projections will be consistent with the controls of the Planning Code.

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

The proposed Project complies with all relevant requirements and standards of the Planning Code and is consistent with objectives and policies of the General Plan as detailed below.

- (4) 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 Inner Clement NCD in that the intended use is a neighborhood-serving business.

D. **Section 716.1** sets forth provisions applicable in the Inner Clement Street Neighborhood Commercial Zoning District. The Inner Clement NCD controls are designed to promote development that is consistent with its existing land use patterns and to maintain a harmony of uses that supports the district's vitality. The building standards allow small-scale buildings and uses, protecting rear yards above the ground story and at residential levels. In new development, most commercial uses are permitted at the first two stories, although certain limitations apply to uses at the second story. Special controls are necessary to preserve the equilibrium of neighborhood-serving convenience and comparison shopping businesses and protect adjacent residential livability. These controls prohibit additional eating and drinking establishments and financial service and limit late-night commercial uses and ground-story entertainment uses. In order to maintain the street's active retail frontage, controls also prohibit most new automobile and drive-up uses. Housing development is encouraged in new buildings above the ground story. Existing residential units are protected by prohibitions on upper-story conversions and limitations on demolitions.

E. **Section 703.3** defines a Formula Retail Use as a type of retail sales activity or retail sales establishment which has eleven or more retail establishments located in the United States and maintains two or more of the following features: a standardized array of merchandise, a standardized facade, a standardized décor and color scheme, a uniform apparel, standardized signage, and a trademark or service mark.

The proposal is to allow the establishment of Napoleon Bakery & Restaurant in San Francisco. According to the project sponsor, there are currently two other Napoleon Bakery & Restaurant commercial establishments nationwide.

F. **Section 716.27** allows hours of operation from 6 a.m. until 2 a.m. as of right and requires Conditional Use authorization to operate between the hours of 2 a.m. and 6 a.m.

The proposed hours of operation of Napoleon Bakery & Restaurant are 7 a.m. to 7 p.m., seven days a week.

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

COMMERCE AND INDUSTRY ELEMENT

NEIGHBORHOOD COMMERCE

Objectives and Policies

OBJECTIVE 6:

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

Policy 1:

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

The proposed Project would allow for the legalization of the establishment of a small self-service restaurant in the Inner Clement NCD. Napoleon Bakery & Restaurant would be compatible and complimentary with the type of uses characterizing this portion of the Inner Clement Street NCD which include a mixture of full-service restaurants, restaurants, specialty groceries, variety merchandise stores, and personal service establishments.

Policy 3:

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

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

Policy 4:

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

The proposed Project will provide retail goods and services (i.e. selling Asian Inspired cakes, pastries, and dimsum) and is accessible to all residents in this portion of the Inner Clement Street NCD.

Policy 9:

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

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

URBAN DESIGN ELEMENT

CITY PATTERN

Objectives and Policies

OBJECTIVE 1:

EMPHASIS OF THE CHARACTERISTIC PATTERN WHICH GIVES TO THE CITY AND ITS NEIGHBORHOODS AN IMAGE, A SENSE OF PURPOSE AND A MEANS OF ORIENTATION.

Policy 3:

Recognize that buildings, when seen together, produce a total effect that characterizes the City and its districts.

The Project's design would preserve the existing neighborhood character since the proposal does not include any facade and exterior changes.

NEIGHBORHOOD ENVIRONMENT

Objectives and Policies

OBJECTIVE 4:

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

Policy 15:

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

The proposed Project would improve the neighborhood environment by increasing safety during both the daytime and nighttime through the occupancy of the space.

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. 2007.1371C** 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. 17550. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

I hereby certify that the Planning Commission **ADOPTED** the foregoing Motion on **February 14, 2008**.

Linda Avery
Commission Secretary

AYES: Commissioners Alexander, Antonini, S. Lee, W. Lee, Moore, and Sugaya

NAYS: None

ABSENT: Commissioner Olague

ADOPTED: February 14, 2008

Exhibit A

Conditions of Approval

GENERAL CONDITIONS:

A. The Approved Project

- (1) This approval is to legalize the conversion of a nonconforming full-service restaurant to a small-self service restaurant (dba Napoleon Bakery & Restaurant, primarily selling Asian inspired cakes and pastries), within the Inner Clement Street Neighborhood Commercial Zoning District and a 40-X Height and Bulk District, in general conformity with Plans on file with the Department in the docket for **Case No. 2007.1371C** (labeled EXHIBIT B), reviewed and approved by the Commission on February 14, 2008.
- (2) Pursuant to Sections 186.1(c)(3) and 303(c), this Conditional Use approval will allow a nonconforming use (full-service restaurant) to change to another use (small self-service restaurant) described in zoning categories .41, .42, .43 or .44, as defined in Sections 790.22, 790.92, 790.90 and 790.91, respectively, may change to any another use described in zoning categories .41, .42, or .44 even though such other use is not permitted in that Neighborhood Commercial District, unless such other use is located in an Alcoholic Restricted Use Subdistrict and is prohibited by the provisions governing that Alcoholic Restricted Use Subdistrict.
- (3) Building area and massing authorized herein is limited to that described on the plans labeled EXHIBIT B. The Applicant shall advise the Planning Department staff of any changes or modifications to the Project, which would result in any deviation from the plans (labeled EXHIBIT B), as approved in this Motion.

B. Operation

- (1) The proposed hours of operation are 7 a.m. to 7 p.m., seven days a week. Section 716.27 of the Planning Code allows the small self-service restaurant to operate 6 a.m. until 2 a.m. as of right and requires Conditional Use authorization to operate between the hours of 2 a.m. and 6 a.m.
- (2) The Project Sponsor shall obtain all necessary permits for all aspects of operation from the Department of Public Health and the Department of Building Inspection.
- (3) Noise and odors shall be contained within the premises so as not to be a nuisance to nearby residents and businesses.

- (4) 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.
- (5) All garbage containers shall be stored within the building or designate storage areas except during collection periods.

C. Signage

- (1) All Project signage shall be consistent with the controls of Article 6 of the Planning Code. Project signage shall be reviewed and approved by the Planning Department.

D. Lighting

- (1) All Project lighting shall be directed onto the Project Site and immediately surrounding sidewalk area only, and designed and managed so as not to be a nuisance to surrounding residents and businesses. Nighttime lighting shall be the minimum necessary to ensure safety, but shall in no case be directed so as to constitute a nuisance to any surrounding property.

E. Performance

- (1) The Applicant shall obtain a building permit for this Project within three (3) years from the date of this Conditional Use authorization or the approval by the San Francisco Board of Supervisors, and construction shall thereafter be pursued diligently to completion or the said authorization/approval shall be deemed null and void.
- (2) This authorization may be extended at the discretion of the Zoning Administrator only where the failure to issue a building or site permit to construct the Project is delayed by a City agency or a state agency, or by legal challenges.
- (3) The Applicant shall appoint a community liaison officer to deal with issues of concern to neighbors related to the operation of this Project, and to meet with the neighbors on a regular basis until construction is completed. The name and telephone number of the community liaison shall be reported to the Zoning Administrator.
- (4) Should implementation of this Project result in complaints from neighborhood residents and/or businesses, which are not resolved by the Applicant and are subsequently reported to the Zoning Administrator and found to be in violation of the Planning Code and/or specific conditions of approval as set forth in this Exhibit A of this Motion, the Zoning Administrator shall report such complaints to the Planning Commission, which may thereafter hold a public hearing on the matter in accordance with the hearing notification and conduct procedures set forth in Section 174, 306.3 and 306.4 of the Code to consider revocation of this Conditional Use Authorization.
- (5) Should the monitoring of Conditions of Approval contained in Exhibit A of this Motion be required, the Applicant or successors shall pay fees as established in Planning Code Section 351(e)(1).

- (6) Failure to comply with any of the Conditions of Approval shall constitute a violation of the Planning Code or any other provisions of the Planning Code may be subject to abatement procedures and fines of up to five-hundred dollars (\$500.00) a day in accordance with Planning Code Section 176.
- (7) Prior to the issuance of a Building or Site Permit, the Zoning Administrator shall approve and order the recordation of a notice in the Official Records with the Office of the Recorder of the City and County of San Francisco, which notice shall state that construction of the project has been authorized by and is subject to the conditions of this Motion. From time to time, after the recordation of such notice, the Zoning Administrator shall affirm in writing the extent to which the conditions of this Motion have been satisfied.

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