

Subject to:(Select with check mark only if applicable)

- Inclusionary Housing
- Childcare Requirement
- Park Fund
- Art Fund
- Public Open Space Fund
- Jobs Housing Linkage Program
- Transit Impact Development Fee
- First Source Hiring
- Other:\_\_\_\_\_

**53 West Portal Avenue**  
**Case No. 2007.0879C**  
**Block: 2979A; Lot: 025**  
**Motion No. 17555**  
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## **SAN FRANCISCO PLANNING COMMISSION**

# **MOTION NO. 17555**

*Hearing Date:* February 21, 2008  
*Case No.:* **2007.0879 C**  
*Project Address:* **53 West Portal Avenue (aka 49 West Portal Avenue)**  
*Zoning:* West Portal Neighborhood Commercial District (NCD)  
26-X Height and Bulk District  
*Block/Lot:* 2979A/025  
*Project Sponsor:* Rustom Swaleh  
53 West Portal Avenue  
San Francisco, CA 94127  
*Staff Contact:* Adrian C. Putra – (415) 575-9079  
adrian.putra@sfgov.org

**ADOPTING FINDINGS RELATING TO THE APPROVAL OF A CONDITIONAL USE AUTHORIZATION UNDER PLANNING CODE SECTIONS 729.42, TO LEGALIZE A CHANGE OF USE FROM A LARGE FAST FOOD RESTAURANT (FORMERLY D.B.A. "SABELLA") TO A FULL-SERVICE RESTAURANT (D.B.A. "ROTI INDIAN BISTRO") AT 53 WEST PORTAL AVENUE, ON ASSESSOR'S BLOCK 2979A LOT 025, WITHIN THE WEST PORTAL NEIGHBORHOOD COMMERCIAL DISTRICT (NCD) AND 26-X HEIGHT AND BULK DISTRICT.**

### **Preamble**

On August 9, 2007, Rustom Swaleh (hereinafter "Project Sponsor"), made an application (hereinafter "Application") for Conditional Use Authorization on the property at 53 West Portal Avenue (aka 49 West Portal Avenue), Assessor's Lot 025 in Block 2979 (hereinafter "Property") to change the use from a large fast-food restaurant to a full-service restaurant (doing business as "Roti Indian Bistro"), in the West Portal Neighborhood Commercial District (NCD) and 26-X Height and Bulk District, in general conformity with plans filed with the Application and labeled "EXHIBIT A" (hereinafter "Project").

On February 21, 2008, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No.

2007.0879C. Conditional Use Authorization is required pursuant to Planning Code Sections 729.42, in order to change the use of the ground floor commercial establishment from a large fast-food restaurant (DBA "Roti Indian Bistro") to a full-service restaurant (DBA "Roti Indian Bistro") within the West Portal Neighborhood Commercial District (NCD).

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

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

MOVED, that the Commission hereby approves the Conditional Use requested in Application No. 2007.0879C subject to the conditions contained in "EXHIBIT B", attached hereto and incorporated herein by reference thereto, based on the following findings:

**Findings**

Having reviewed all the materials identified in the recitals above, and having heard oral testimony and arguments, this Commission finds, concludes and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.
2. **Site Description.** The Project Site is a ground floor commercial unit located at 53 West Portal Avenue, east side between Ulloa and Vicente Streets in the West Portal Neighborhood. The Project Site is located in a two-story, mixed-use building. The upper floor is devoted to two dwelling-units, and the ground floor is dedicated to three commercial spaces (including the Project Site). This two-story mixed use building contains approximately 11,700 square-feet of gross floor area and approximately 46-feet of street frontage.
3. **Neighborhood Context:** The Project Site is located within the West Portal Neighborhood Commercial District (NCD). Section 729.1 of the Planning Code defines the West Portal NCD as located in the southwestern part of the City, the West Portal Avenue Neighborhood Commercial District stretches for three long blocks along West Portal Avenue from Ulloa Street to 15<sup>th</sup> Avenue and extends one block east along Ulloa Street from the Twin Peaks Tunnel entrance to Claremont Boulevard. West Portal Avenue provides a selection of goods and services for customers coming mainly from the surrounding west of Twin Peaks and Sunset single-family residential neighborhoods. The lively, small-scale retail frontage is interrupted at several locations by large-scale financial institutions which take up a large amount of commercial ground-story frontage. More than half of the number of medical, professional, and business offices are located at the ground level.

Except for one three-screen movie theater complex, West Portal offers no entertainment uses and its restaurants are mainly family-oriented. The West Portal Avenue District controls are designed to preserve the existing family-oriented, village character of West Portal Avenue. The building standards limit building heights to 26 feet and two stories and maintain the existing pattern of rear yards at the ground level and above.

Because the District and surrounding neighborhoods are well served by the existing number of eating and drinking establishments, new bars, restaurants and take-out food uses are generally discouraged: any proposed new establishment should be carefully reviewed to ensure that it is neighborhood serving and family-oriented, and will not involve high-volume take-out food or generate traffic, parking, or litter problems.

Land uses located within the subject block of West Portal Avenue include primarily two to three-story structures with ground-floor commercial with residential above. Ground floor commercial uses that front West Portal Avenue on the subject block include a video store, the CineArts Movie Theater, two hair salons, a florist, a grocery store, a clothing store, a jewelry store, a consignment store, a wine shop, a real estate office, and four full-service restaurants (including the project site). One block to the north of the project site is the West Portal Muni Station.

**The Project:** The Project Sponsor seeks Conditional Use Authorization to legalize a change of use from a large fast food restaurant (formerly d.b.a. "Sabella") to a full-service restaurant (d.b.a. "Roti Indian Bistro") at the Subject Property, pursuant to Planning Code Section 729.42. Planning Code Section 790.92 defines a full-service restaurant as, "A retail eating or eating and drinking use which serves food to customers primarily for consumption on the premises, and is not specifically designed to attract and accommodate high customer volumes or turnover. It has seating and serves prepared, ready-to-eat cooked foods for consumption on the premises. Guests typically order and receive food and beverages, while seated at tables on the premises and pay for service after the meal is consumed."

As noted in the previous paragraph, prior to the establishment of Roti Indian Bistro, the Subject Property was the site of an existing non-conforming large fast food restaurant (DBA "Sabella"), and prior to that, it was also an existing non-conforming large fast food restaurant (DBA "La Petite Boulangerie"). However, Roti Indian Bistro has been in operation as a full-service restaurant, since opening at this location in March, 2006. Under Planning Code Section 729.43, a large fast food restaurant is not a permitted use in the West Portal NCD.

Roti Indian Bistro's initial Health Permit Zoning referral issued by the Department of Public Health was approved in error by the Planning Department as a change of ownership for an existing large fast food restaurant. In early 2007, Roti Indian Bistro added a new partner requiring the restaurant to apply for a new Health Permit, for which the Planning Department received a new Health Permit Zoning referral on April 2, 2007, but this time applying in good faith as a full-service restaurant. After planning staff reviewed this referral the Project Sponsor was notified that the Department could

not approve the Health Permit Zoning referral unless Conditional Use authorization was granted by the Planning Commission, resulting in the Project Sponsor applying for this Conditional Use application.

Roti Indian Bistro serves traditional Indian Dishes in a contemporary style, creating what the restaurant calls “modern Indian cuisine.” There is only one other Roti Indian Bistro location that is operating in Burlingame, therefore it is not a formula retail use, as defined in Section 703.3(b) of the Planning Code. The subject commercial space contains approximately 3,682 square-feet of gross floor area and 17-feet of street frontage, with approximately 752 square-feet devoted to the dining area, which contains 48 seats and 15 tables. No exterior or interior modifications to the Project Site are proposed as part of this Project.

The establishment will maintain its existing hours of operation: Monday through Sunday, from 11:00 a.m. to 2:30 p.m. for lunch, and from 5:00 p.m. to 11:00 p.m. for dinner.

4. **Support or Opposition:** As of February 11, 2008, the Planning Department has received no correspondence regarding this Project.
5. **Planning Code Compliance:** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:
6. **Planning Code Compliance:** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:
  - A. **Retail Full-Service Restaurant.** Planning Code Section 729.42 allows full-service restaurants within the West Portal NCD with Conditional Use authorization from the Planning Commission.

*The Project seeks Conditional Use Authorization to legalize an existing full-service restaurant at the Subject Property, which is located at 53 West Portal Avenue within the West Portal NCD. The subject commercial space contains approximately 3,682 square-feet of gross floor area. The establishment will utilize a large portion of the commercial space for food preparation and storage, with approximately 752 square-feet of floor area dedicated to dining area for patrons.*
  - B. **Street Frontage in Neighborhood Commercial Districts.** Section 145.1 of the Planning Code requires that NC Districts containing specific uses, including large fast food restaurants, have at least ½ the total width of the new or altered structure at the commercial street frontage devoted to entrances to commercially used space, windows or display space at the pedestrian eye-level. Such windows shall use clear, un-tinted glass, except for decorative or architectural accent. Any decorative railings or decorated grille work, other than wire mesh, which is placed in front or behind such windows, shall be at least 75 percent open to perpendicular view and no more than six feet in height above grade.

*The subject commercial space has approximately 17 feet of frontage on West Portal Avenue with approximately 14 feet devoted to either the restaurant entrance or window space. The windows are clear and unobstructed.*

- C. **Parking:** Section 151 of the Planning Code requires off-street parking for every 200 square-feet of occupied floor area, where the occupied floor area exceeds 5,000 square-feet.

*The Subject Property contains approximately 3,682 square-feet of occupied floor area and thus does not require any off-street parking.*

7. **Conditional Use Criteria:** Under the provisions of Planning Code Section 303(c), the Commission may authorize a Conditional Use only after holding a duly noticed public hearing and making findings that the proposed use will provide a development that is necessary or desirable for and compatible with the neighborhood or the community; that such use 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; and that such use will not adversely affect the General Plan. The Project is found to be consistent with the criteria of Section 303 of the Planning Code 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 project is necessary and desirable for the community because it an existing neighborhood serving business, and is currently a source of jobs for residents at all skill levels.*

- B. That such use or feature as proposed 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:

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

*The Project does not include any proposal to modify the interior or exterior of the Project Site.*

2. 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 a use of this size. The proposed use is designed to meet the needs of the immediate neighborhood and should not generate significant amounts of vehicular trips from the immediate neighborhood or citywide. The subject property is*

*well served by Muni since it is located approximately one block away from the West Portal Muni Station that serves the K, L, and M lines.*

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

*The proposed project will not significantly impact traffic circulation operating as a full-service restaurant anymore than it would as a large fast-food restaurant. The Project Site is well served by Muni, including the K, L, and M lines. Legalizing an existing full-service restaurant at the Project Site will not create noxious or offensive emissions.*

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

*There are no changes proposed to the exterior or interior of the existing structure. Parking and loading areas are not required for the proposed use because the commercial use contains less than 5,000 square-feet of gross square-footage.*

8. **General Plan Conformity:** The Project meets the criteria in Section 303(c)(3) by complying with applicable provisions of the Planning Code as established in the Finding 6 above and by affirmatively promoting the objectives and policies of the General Plan as outlined below:

**COMMERCE AND INDUSTRY ELEMENT**

**OBJECTIVE 1**

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

**Policy 1.1:**

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

**Policy 1.2:**

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

**Policy 1.3:**

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

*The proposed development will provide desirable goods and services to the neighborhood and will provide resident employment opportunities to those in the community. Further, the Project Site is located within the West Portal NCD and is thus consistent with activities in the commercial land use plan.*

**OBJECTIVE 2**

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

**Policy 2.1:**

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

*The Project will retain an existing commercial activity and will enhance the diverse economic base of the City.*

**OBJECTIVE 3**

PROVIDE EXPANDED EMPLOYMENT OPPORTUNITIES FOR CITY RESIDENTS, PARTICULARLY THE UNEMPLOYED AND ECONOMICALLY DISADVANTAGED.

**Policy 3.1:**

Promote the attraction, retention and expansion of commercial and industrial firms, which provide employment opportunities for unskilled and semi-skilled workers.

*Roti Indian Bistro is a small business that provides employment opportunities for unskilled or semi-skilled workers, and currently has 28 employees.*

**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.

*The project would not displace any commercial tenant or prevent the district from achieving optimal diversity in the types of goods and services available in the neighborhood.*

*Further, the approval of this conditional use application will not result in an over-concentration of restaurants within the West Portal NCD that runs along West Portal Avenue and is bounded by 15<sup>th</sup> Avenue to the south, Ulloa Street to the north. There are currently 20 restaurants (including the Project Site) located within the West Portal NCD. With approximately 5,443-feet of total lineal street frontage, approximately 550-feet of this street frontage is devoted to restaurants, which is 10% of the total lineal frontage and less than the 20%*

*concentration threshold established by the General Plan. Additionally, legalizing a full-service restaurant at the Project Site will not affect this existing concentration of restaurants located within the West Portal NCD.*

**Policy 6.2:**

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

*Roti Indian Bistro is an independently owned and operated small-business. The proposed use is a neighborhood serving use. This is not a Formula Retail use.*

9. **Priority Policies:** Planning Code Section 101.1(b) establishes the following eight priority planning policies and requires review of permits for consistency with said policies. The Project and this Conditional Use Application are consistent with each of these policies as follows:

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

*No retail uses will be displaced as a result of this authorization, and the establishment is not considered a Formula Retail Use, as defined under Section 703.3(b) of the Planning Code. This authorization will allow the business to retain its current number of employees as well.*

- 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 does not include any modifications to the physical character of the existing structure.*

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

*This proposal does not include any new residential units, nor does it alter the existing two residential units located above the ground-floor commercial establishment.*

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

*The Project, is not expected to impede MUNI transit service or impact the existing traffic pattern because the Roti Indian Bistro is an existing establishment and is well served by public transportation due to it's close proximity to the West Portal Muni Station (that serves the K, L, and M lines), which is located at the eastern corner of West Portal Avenue and Ulloa Street, which is one block away from the subject site.*



- 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 protect the existing service sector jobs that were created when Roti Indian Bistro initially opened in March, 2006. Granting a Conditional Use to legalize this establishment as a full service restaurant will not adversely affect any industrial or service sector jobs.*

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

*There are no alterations proposed for the existing two-story mixed-used structure. Any future alterations will be required to comply with the most current Building Code standards for the City and County of San Francisco.*

- G. That landmarks and historic buildings be preserved.

*There are no exterior modifications proposed for the existing structure, and the existing structure is not an architecturally rated building, nor is it included on any architectural survey. Therefore, no historic buildings will be adversely affected by the proposed change of use.*

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

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

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 proposed, 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 public welfare, convenience, and necessity for the reasons set forth above.

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. 2007.0879C** subject to the following conditions attached hereto as "EXHIBIT B" 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. 17555. 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 February 21, 2008.

Linda Avery  
Commission Secretary

AYES: Commissioners Michael J. Antonini, William L. Lee, Kathrin Moore, Christina Olague, Bill Sugaya, Sue Lee

NAYS: None

ABSENT: Commissioner Dwight S. Alexander

ADOPTED: February 21, 2008

**EXHIBIT B**

**CONDITIONS OF APPROVAL**

1. This Authorization is pursuant to Sections 729.42 of the Planning Code to legalize an existing full-service restaurant at 53 West Portal Avenue, in general conformance with plans filed with the Application as received on August 09, 2007 and stamped "EXHIBIT A" included in the docket for **Case No. 2007.0879C**, reviewed and approved by the Commission on February 21, 2008.
2. Prior to the issuance of the Building Permit for the Project the Zoning Administrator shall approve and order the recordation of a Notice of Special Restrictions with the Office of the Recorder of the City and County of San Francisco for the premises (Assessor's 2979A, Lot 025), 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.
3. All debris boxes shall be kept in enclosed structures.
4. Refuse containers shall be provided both inside and outside the establishment for use by patrons of the restaurant.
5. The operator shall be responsible for cleaning the sidewalk within a one-block radius daily to maintain the sidewalk free of paper or other litter during its business hours, in accordance with Article 1, Section 34 of the San Francisco Police Code.
6. Noise and odors shall be contained within the premises so as not to be a nuisance to nearby residents or neighbors.
7. The Project Sponsor shall maintain an attractive storefront providing visibility of the restaurant interior through the storefront windows.
8. 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.
9. Should monitoring of the Conditions of Approval contained in Exhibit B of this Motion be required, the Project Sponsor or successors shall pay fees as established in Planning Code Section 351(e)(1).
10. Should implementation of this Project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and are subsequently reported to the Zoning Administrator and found to be in violation of the Planning Code and/or the specific Conditions of Approval for the Project as set forth in Exhibit B of this Motion, the Zoning

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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 Section 174, 306.3 and 306.4 of the Planning Code to consider revocation of this Conditional Use Authorization.

11. 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.
12. 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.