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Planning Commission Motion No. 17564

HEARING DATE: MARCH 13, 2008

Date: March 6, 2008
Case No.: **2008.0045 C**
Project Address: **1298 CHURCH STREET**
Zoning: NC-1 (Neighborhood Commercial, Cluster)
40-X Height and Bulk District
Block/Lot: 6536/008
Project Sponsor: Charles Stern
164 27TH Street
San Francisco, CA 94110
Staff Contact: Elizabeth Watty – (415) 558-6620
Elizabeth.Watty@sfgov.org

AUTHORIZATION UNDER PLANNING CODE SECTIONS 710.42, 728.42, AND 790.92, TO ESTABLISH A NEW FULL-SERVICE RESTAURANT AT 1298 CHURCH STREET, ON ASSESSOR'S BLOCK 6536 LOT 008, WITHIN THE NEIGHBORHOOD COMMERCIAL, CLUSTER DISTRICT, AND 40-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On January 10, 2008, Charles Stern (hereinafter "Project Sponsor"), made an application (hereinafter "Application") for Conditional Use Authorization on the property at 1298 Church Street, Assessor's Lot 008 in Block 6536 (hereinafter "Property") to establish a full-service restaurant in an NC-1 (Neighborhood Commercial, Cluster) District and 40-X Height and Bulk District, in general conformity with plans filed with the Application and labeled "EXHIBIT B" (hereinafter "Project").

On March 13, 2008, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2008.0045C. Conditional Use Authorization is required pursuant to Planning Code Sections 710.42, 728.42, and 790.92, in order to establish a full-service restaurant at the ground floor of an NC-1 District that is located within ¼ mile of the 24th Street – Noe Valley Neighborhood Commercial District.

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. 2008.0045C subject to the conditions contained in "EXHIBIT A", attached hereto and incorporated herein by reference thereto, based on the following findings:

FINDINGS

Having reviewed the materials identified in the preamble 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 and Present Use.** The Property is located at 1298 Church Street, at the northwest corner of 25th Street, in the Noe Valley Neighborhood. The site is currently occupied by a two-story, mixed-use building with one ground floor commercial space, and two residential-units at the second floor. The commercial space is currently vacant, and has been since approximately June 1, 2002. It contains approximately 1,275 square-feet of usable floor area and has frontages measuring 21 feet along Church Street and 52 feet along 25TH Street.
3. **Surrounding Properties and Neighborhood.** The Subject Property is located in the NC-1 District, which is defined in Section 710.1 of the Planning Code. The NC-1 District is intended to serve as local neighborhood shopping districts, providing convenience retail goods and services for the immediately surrounding neighborhoods primarily during daytime hours. These NC-1 Districts are characterized by their location in residential neighborhoods, often in outlying areas of the City. The commercial intensity of these districts varies. Many of these districts have the lowest intensity of commercial development in the City, generally consisting of small clusters with three or more commercial establishments, commonly grouped around a corner; and in some cases short linear commercial strips with low-scale, interspersed mixed-use development. NC-1 commercial use provisions encourage the full range of neighborhood-serving convenience retail sales and services at the first story provided that the use size generally is limited to less than 3,000 square feet. Commercial uses and features that could impact residential livability are prohibited; these uses include but are not limited to auto uses, financial services, general advertising signs, drive-up facilities, hotels, and late-night activity. Eating and drinking establishments can be restricted, depending upon the intensity of such uses in nearby commercial districts.

The 24th Street – Noe Valley Neighborhood Commercial District (NCD) is the only named Commercial District within ¼ mile of the Subject Property. As such, the uses permitted at this NC-1 zoned property must adhere to the more restrictive controls of the two districts. The NC-1

District permits full-service restaurants by-right at the ground floor, while the 24th Street – Noe Valley Neighborhood Commercial District requires a conditional use for a the new full-service restaurant.

Eating and drinking establishments were prohibited in the 24th Street – Noe Valley NCD since the inception of the 24TH Street – Noe Valley Neighborhood Commercial District in 1987, in order to maintain the variety and mix of retail sales and services along the commercial strip and to control the problems of traffic, congestion, noise and late-night activity. On February 8, 2006, the Mayor signed into law legislation permitting three new full-service restaurants within the 24th Street – Noe Valley Neighborhood Commercial District. Applicants seeking one of the three full-service restaurant approvals must seek Conditional Use authorization. As of the date of this writing, the subject full-service restaurant is the second full-service restaurant to file for Conditional Use Authorization under this new legislation. The first was approved by the Planning Commission on June 8, 2006, and is located at 1320 Castro Street, between 24th and Jersey Streets.

4. **Project Description.** The Project seeks to establish a full-service restaurant at the Subject Property, which is within the NC-1 District, pursuant to Planning Code Sections 710.42, 728.42, and 790.92. This commercial space measures approximately 1,275 square-feet in gross floor area with approximately 21 feet of retail frontage along Church Street and 52 feet of frontage along 25th Street. Although the Project Sponsor has not yet selected a name for the proposed restaurant, the establishment is an independently-operated business and is not defined under the Formula Retail provisions of Planning Code Sections 703.3 and 703.4.

The establishment is currently vacant, and has been for nearly six years. The previous use at the Subject Property was a barber shop, defined under Planning Code Sections 710.52 and 790.116. Exterior and interior modifications were approved by the Planning Department in an over-the-counter permit in October 2007 (Building Permit Application No. 2007.09.19.3115). The exterior alterations include removing the stucco and faux-brick veneer and replacing it with lap siding. The existing aluminum windows will also be removed throughout the structure and replaced with wood windows.

The establishment is permitted to be open daily from 6:00 a.m. to 11:00 p.m., pursuant to the NC-1 District controls.

5. **Public Comment.** As of March 6th, 2008, the Department has received one letter in support of the Project and no correspondence in opposition.
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. **Land Use.** Planning Code Section 710.42 allows full-service restaurants, as defined in Section 790.92, in NC-1 Districts. If the Subject Property is located within ¼ mile of a more restrictive Neighborhood Commercial District, the more restrictive controls shall apply.

The Subject Property is located within ¼ mile of the 24th Street – Noe Valley Neighborhood Commercial District, and thus must adhere to those controls since they are stricter than the NC-1 District.

New full-service restaurants were not permitted in the 24th Street – Noe Valley NCD since the inception of the Neighborhood Commercial Districts in 1987. However, on February 8th, 2006, Planning Code Section 728.1 was amended through Board of Supervisor File No. 051676 to allow three new restaurants in the 24th Street – Noe Valley Neighborhood Commercial District under the Conditional Use provisions of the Planning Code. The amendment to this Section of the Planning Code also included a stipulation to allow the establishment of a bar use in existing and new full-service restaurants with Conditional Use Authorization.

Due to the ¼ mile proximity of the Subject Property from the 24th Street – Noe Valley Neighborhood Commercial District, the establishment of a new full-service restaurant at this location requires Conditional Use Authorization.

Planning Code Section 790.92 defines a full-service restaurant as a retail eating and drinking use that 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 beverage while seated at tables on the premises and pay for service after the meal is consumed. It includes, but is not limited to, lunch counters, coffee shops, soda fountains and full-service dining establishments. It may provide on-site beer and/or wine sales for drinking on the premises. If it serves liquor for drinking on the premises or does not admit minors then it shall also be considered a bar.

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

The Subject Property contains approximately 1,275 square-feet of usable floor area and thus does not require any off-street parking.

- C. Signage.** Currently, there is not a proposed sign program on file with the Planning Department. Any proposed signage will be subject to the review and approval of the Planning Department.

- 7. 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 use 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 1,275 square-foot full-service restaurant is consistent in size with other retail establishments in the surrounding NC-1 District and the 24th Street – Noe Valley Neighborhood Commercial District,

and is well below the 2,999 square foot threshold that would trigger a Conditional Use Authorization for use size alone. The proposed use is desirable in that it furthers the goal of establishing new restaurants in the Noe Valley Neighborhood, which are reflected in the 1996 changes to Article 7 of the Planning Code.

- 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 current proposal does not include any modifications to the exterior of the existing structure or the arrangement of the structure on the site. A previously approved Building Permit Application for this site authorized a rehabilitation to the exterior, including the replacement of the stucco and brick veneer siding with new lapped-wood siding, and the replacement of the existing aluminum windows with new double-hung wood windows at the second floor.

- 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 proposed use does not trigger a parking requirement because its intensity is well below the 5,000 square-foot threshold that triggers an off-street parking requirement. The Project Sponsor intends that this will be a neighborhood-serving restaurant to which residents can walk or take public transit. The Property is well served by public transit, being located on the J-Church MUNI line, and within a few blocks of the 24-Divisadero and 48-Quintara/24th Street MUNI lines.

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

The proposed use is subject to the standard conditions of approval for a full-service restaurant as outlined in Exhibit A to ensure that noise and odors are contained within the premises so as not to be a nuisance to nearby businesses or residents. Condition number seven specifically obligates the Project Sponsor to mitigate odor and noise generated by the restaurant use.

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

Parking and loading areas are not required for the proposed use. All signage and lighting will comply with the requirements of the Planning Code.

- 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 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 purposes of NC-1 Districts in that the intended use is located at the ground floor, will provide a compatible convenience service for the immediately surrounding neighborhood.

8. **General Plan Compliance.** The Project is, on balance, consistent with the following Objectives and Policies of the General Plan:

COMMERCE AND INDUSTRY

Objectives and Policies

OBJECTIVE 1:

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

Policy 1.1:

Encourage development which 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. The business owner plans to occupy the three bedroom unit above the restaurant and will offer the rehabilitated studio dwelling-unit to an employee of the restaurant. Furthermore, the Subject Property is located within a Neighborhood Commercial District 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 result in the occupancy of a commercial storefront that has been vacant for almost six years.

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.

The proposed full-service restaurant is an independently-owned and operated small business that provides employment opportunities for unskilled or semi-skilled workers. Allowing this change of use is critical to its success as a small business and its ability to offer employment opportunities for unskilled and semi-skilled workers from the neighborhood.

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.

No commercial tenant will be displaced and the Project will not prevent this District from achieving optimal diversity in the types of goods and services available in the neighborhood.

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.

The Project is sponsored by an independent entrepreneur who seeks to fill a storefront that has been vacant for approximately six years. Legislation signed into law by the Mayor in 2006 recognized the need for additional full-service restaurants in the Noe Valley Neighborhood, and this is the second of three permitted under that legislation.

9. **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 business owner is a local resident and entrepreneur who operates another full-service restaurant down the block at the corner of 29th and Church Streets. The owner plans to employ additional local residents to work in the proposed full-service restaurant at the Subject Property.

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

The existing housing will be improved by the rehabilitation of the existing two dwelling-units at the second floor, and the neighborhood character will be improved by the exterior improvements to the ground-floor commercial space.

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

This Project does not impact housing affordability, although the existing studio dwelling-unit will be offered as housing for an employee of the restaurant.

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

Due to the nature and size of the proposed establishment, it will not impede MUNI transit service or overburden the streets. Many neighborhood residents will frequent this establishment by foot or public transit, and the business owner and one employee will have housing on-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.

There is no commercial office development associated with the Project. No industrial or service sector uses will be displaced seeing as the commercial tenant space has been vacant for nearly six years.

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

Although there will be some interior tenant improvements, the Project does not involve any construction activities that will compromise the structural integrity of the existing building nor will it trigger the need for any seismic upgrades.

- G. That landmarks and historic buildings be preserved.

Although the subject building is not a landmark or historic building, the Project Sponsor has pulled a permit to rehabilitate the building's exterior. The exterior alterations include replacing the front stucco and faux brick veneer with lapped-wood siding, and replacing the second floor aluminum windows with new double-hung wood windows.

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

This Project will not adversely affect any parks or open 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 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. 2008.0045C** 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 March 13, 2008.

Linda Avery
Commission Secretary

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

NAYS: None

ABSENT: None

ADOPTED: March 13, 2008

Exhibit A

Conditions of Approval

1. This Authorization is pursuant to Sections 710.42, 728.42, and 790.92 of the Planning Code to allow a full-service restaurant at 1298 Church Street, within the NC-1 District, in general conformance with plans filed with the Application as received on January 10, 2008 and stamped "EXHIBIT B" included in the docket for **Case No. 2008.0045C**, reviewed and approved by the Commission on March 13, 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 in the Official Records of the Recorder of the City and County of San Francisco for the premises (Assessor's Block 6536, Lot 008), which notice shall state that the use 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. 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 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 Section 174, 306.3 and 306.4 of the Planning Code to consider revocation of this Conditional Use Authorization.
4. This Authorization is valid for a period of three years from the date of approval by the Planning Commission. This Authorization may be extended at the discretion of the Zoning Administrator for up to two years where the failure to implement the Project is caused by delay by any other public agency or by legal challenge.
5. 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 of no less than \$200 a day in accordance with Planning Code Section 176.
6. 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).
7. The Project Sponsor shall appoint a community liaison officer to deal with issues of concern to neighbors related to the operation of this Project. The name and telephone number of the community

liaison officer shall be reported to the Zoning Administrator for reference. The Applicant will keep the above parties apprised should a different staff liaison be designated.

8. Refuse containers shall be provided both inside and outside the establishment for use by patrons of the restaurant.
9. Trash and recycling receptacles shall be stored inside a fully enclosed building except they may be placed outside of such building for pick-up and removal of the trash or recyclable materials.
10. The operator will provide twice-daily maintenance of the sidewalk frontage to keep it clean and free of trash and graffiti. Maintenance shall include sweeping, litter removal, and scrubbing of sidewalks whenever conditions warrant. The project street frontage shall be continually maintained in a clean, orderly and attractive manner.
11. Noise and odors shall be contained within the premises so as not to be a nuisance to nearby residents or neighbors.
12. The Project Sponsor shall maintain an attractive storefront providing visibility of the restaurant interior through the storefront windows.
13. All signage and exterior lighting for the business shall be reviewed and approved by the Planning Department before they are installed.