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Planning Commission Motion No. 17569

Hearing Date: March 13, 2008
Case No.: **2007.1281C**
Project Address: **1237 Polk Street**
Zoning: Polk Street Neighborhood Commercial District
 65-A Height and Bulk District
Block/Lot: 0670/003
Project Sponsor: 1237 Polk Street, LLC
 c/o Fiachra O'Shaughnessy
 1237 Polk Street
 San Francisco, CA 94109
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ADOPTING FINDINGS RELATED TO THE APPROVAL OF A CONDITIONAL USE AUTHORIZING THE ESTABLISHMENT OF A BAR AND RESTAURANT (D.B.A "McTEAGUE'S") EXCEEDING 2000 GROSS SQUARE FEET AT 1237 POLK STREET ON ASSESSOR'S BLOCK 0670, LOT 003, LOCATED WITHIN THE POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT AND A 65-A HEIGHT AND BULK DISTRICT.

RECITALS

1. On November 7, 2007, Polk Street, LLC (Project Sponsor) applied for a Conditional Use, Application No. 2007.1281C, on the property at 1237 Polk Street, Lot 003 in Assessor's Block 0670 (Project Site), to establish a bar and restaurant (d.b.a. "McTeagues") as defined in Planning Code Sections 790.22 and 790.92 within the vacant ground-floor commercial storefront, in general conformity with plans labeled Exhibit B dated March 13, 2008 (Project). The proposed use is not formula retail as defined in Section 703.3 of the Planning Code. There would be no physical expansion of the existing building. The site is within the Polk Street NCD and a 65-A Height and Bulk District.
2. On March 13, 2008, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2007.1281C.

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. 2007.1281C, 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 west side of Polk Street, mid-block between Bush and Sutter Streets, Assessor's Block 0670, Lot 003. The property is located within the Polk Street Neighborhood Commercial District and a 65-A Height and Bulk District.

The Project Site is occupied by a three-story building which was built in 1907. The subject building was included in the Unreinforced Masonry Building Survey, the Citywide Architectural Survey of 1976 (rated "2") and the Heritage Survey (rated "B", a Building of Major Importance). The building contains one ground-level retail space and 14 apartments located on the second and third floors. Currently, the subject ground-level retail space sits vacant, but has most recently housed a restaurant and bar.

3. **Surrounding Neighborhood.** The Polk Street NCD, located in the gulch between Nob Hill, Russian Hill, and Pacific Heights, provides convenience goods and services to the residents of the Polk Gulch neighborhood and the west slopes of Nob Hill and Russian Hill. The district has a very active and continuous commercial frontage along Polk Street, while the side streets have a greater proportion of residences. The zoning controls are designed to encourage residential development above neighborhood-serving commercial uses on the ground floor.

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 apartments, and residential hotels. The scale of development throughout the area varies widely. The scale of development throughout the area consists of low- and mid-rise buildings (one- to four-story structures) and

high-rise buildings exceeding 100 feet in height. The height limits in the area range from 65 to 130 feet.

4. **Project Description.** The project proposes to establish a bar and a restaurant that will exceed 2000 square feet (d.b.a. McTeague's). The commercial tenant space at 1237 Polk Street is approximately 2750 gross square feet and the proposed bar and restaurant will occupy the entire commercial space. The business will primarily be a bar that will also serve limited food items including sandwiches and soups. The applicant has indicated that he will obtain a Type 48 liquor license which allows for a full bar with on-sale sales of liquor.

There would be no physical expansion of the building. No storefront alterations are proposed. Interior tenant improvements will be necessary to accommodate the retail space and bar. New retail display areas and bar fixtures associated with the bar are proposed within the tenant space.

5. **Public Comment.** A local neighborhood group, the Lower Polk Neighbors, supports the proposal. This neighborhood group recognizes and is concerned about the proliferation of eating and drinking establishments in the area, but is supportive of the proposal primarily because the proposed owner already operates a restaurant (d.b.a. the Holy Grail) with a positive history in the neighborhood. The neighborhood group is also supportive of the use because it will not be importing an additional liquor license from outside the neighborhood area.

Sixteen letters of support have been received from residential and commercial neighbors in the Lower Polk Street area.

Department staff received one phone call from a nearby residential neighbor who does not support the proposal. This neighbor is particularly concerned with the existing concentration of drinking establishments in the project area.

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. **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 Polk Street NCD is 2.5 to 1. Under Section 124(b), in NCDs, the floor area ratio limits listed in Subsection (a) do not apply to dwellings or other residential units.

With a lot area of 3,537 square feet, 8,842.5 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 10,000 square feet in gross floor area are not required to provide off-street freight loading.

With a gross floor area of under 10,000 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 not requesting conditional use authorization to operate between the hours of 2:00AM and 6:00AM.

- F. **Use Size.** Section 121.2(a) establishes size limits on nonresidential uses in all NCDs. In the Polk Street NCD, conditional use authorization is required for any nonresidential use that exceeds 1,999 square feet.

At 2750 gross square feet, the Project does require conditional use authorization for use size.

7. **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.

The Project has been found to be desirable and compatible with the neighborhood and community. The project is consistent with the scale and intensity of other uses in the area, and therefore is compatible with the neighborhood. The use size exceeding 2000 gross square feet is desirable for the bar and restaurant use to effectively serve customers in both capacities.

The Project is desirable for and compatible with the neighborhood because the Project would revitalize a commercial space that has been vacant. Additionally, the Project will provide an opportunity for the locally-owned business to provide employment for residents of the neighborhood. The Project has also

been found to be desirable because the Project has received support from local residential and commercial neighbors.

The proposed Project meets all applicable requirements of the Planning Code. The proposal also is consistent with the objectives and policies of the Commerce and Industry Element of the General Plan, as it would enhance the economic and social vitality of the neighborhood. The Project will also be compatible with the mixed-use character of the Polk Street NCD.

The Project was found not to be necessary because the neighborhood already is over-saturated with restaurant and bar uses. A recent survey conducted by the Department indicated that over 41 percent of the commercial storefronts in the Lower Polk Area (between California and Post Streets) in the Polk Street NCD are devoted to eating and drinking establishments. Except in districts with an established pattern of service to a broad market, such as Polk Street, the Commerce and Industry Element of the General Plan calls for no more than 25 percent of commercial storefronts in neighborhood commercial districts to be set aside for eating and drinking establishments. However, the ground-level retail space was last occupied by a restaurant and bar. Consequently, a storefront that has been recently occupied by a retail use will not be lost.

- 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.

- 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. Furthermore, the Project site is well-served by public transportation (2-Clement, 3-Jackson, 4-Sutter, 19-Polk, 27-Bryant, 38-Geary, 47-Van Ness and the 49-Van Ness-Mission). Off-street parking and loading are not required for the Project.

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

Given the nature of the Project (a bar and restaurant), it would not emit any substantial amount of glare, dust or odor. The bar use does have potential to generate increased noise, however, a Condition of Approval has been included so noise is not nuisance to neighbors.

- 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 would be required to comply with the requirements of the Planning Code, an approved signage program, the Secretary of the Interior's Standards for the Treatment of Historic Properties (Secretary Standards) 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 will comply with the applicable requirements of the Planning Code, and will be in conformity with the Priority Policies and Commerce and Industry Element of the General Plan. Although the Polk Street area already is heavily saturated with bar and restaurant uses, this proposal will help vitalize a now-vacant storefront, provide a business opportunity for a local resident, and provide employment for residents in the neighborhood, while improving the economic and social vitality of the neighborhood.

- 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 Polk Street NCD as set forth in Planning Code Section 723.1. The Polk Street NCD controls are designed to encourage development that is compatible with the existing moderate scale and mixed-use character, and that maintains the district's balance of entertainment uses, restaurants, and small-scale retail stores and services.

Furthermore, the Polk Street NCD provides convenience goods and services to the residents of the Polk Gulch neighborhood and the west slopes of Nob Hill and Russian Hill. The zoning controls are designed to encourage residential development above neighborhood-serving commercial uses on the ground floor.

The proposed bar and restaurant will be compatible with the mixed-use character of the neighborhood and the Polk Street NCD.

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

COMMERCE AND INDUSTRY ELEMENT

Neighborhood Commerce

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 would revitalize a commercial space that has been vacant and assist with the revitalization of the Lower Polk Street area in general.

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 as the North Beach, such establishments should not occupy more than 25 percent of the total commercially-occupied frontage in a district.

In the Lower Polk Area (between California and Post Streets) in the Polk Street NCD, over 41 percent of the commercial storefronts are devoted to eating and drinking establishments, which is substantially higher than the guideline set forth in the General Plan even in consideration that Polk Street bars and restaurants traditionally served a broader market. However, the ground-level retail space was last occupied by a restaurant and bar. Consequently, a storefront that was most recently occupied by a retail use will not be lost to an eating or drinking establishment. Furthermore, the proposed use will also assist in the revitalization of the Lower Polk Area, an area that has experienced high vacancy rates for commercial storefronts.

9. **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.

The Project would provide a local, small-business owner an opportunity to provide employment to residents of the neighborhood.

- (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 enhance the cultural and economic diversity of the neighborhood by filling a currently-vacant retail space and providing a local, small-business owner an opportunity to have a small business which could employ residents of the neighborhood.

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

The Project would 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 would 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.

- (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 would be displaced.

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

Although there would be some interior tenant improvements to the subject commercial space, the Project does not involve any construction activities that would compromise the structural integrity of the existing building or trigger any Building Code requirements for a seismic upgrade.

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

The subject building, constructed in 1907, was included in the Unreinforced Masonry Building Survey, the Citywide Architectural Survey of 1976 (rated "2") and the Heritage Survey (rated "B", a Building of Major Importance). If approved, any storefront alterations and signage would be required to comply with "Secretary Standards". No exterior alterations, other than signage, are proposed by the Project.

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

The Project, which does not include any physical expansion of the existing building envelope, would not impact any parks or open spaces or their access to sunlight.

10. On balance, 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. 2007.1281C.**

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this approval of a Conditional Use Authorization application 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: Dwight Alexander, Christina Olague, Michael J. Antonini, Sue Lee, William L. Lee, Kathrin Moore, Hisashi Sugaya

NAYS: None

ABSENT: None

ADOPTED: March 13, 2008

Exhibit A

Conditions of Approval

1. This authorization is to establish a bar and full-service restaurant of approximately 2,750 square feet as defined in Planning Code Sections 790.22 and 790.92 within the existing commercial/retail space on the ground-floor of the property at 1237 Polk Street, Lot 003 in Assessor's Block 0670, in general conformity with the plans identified as Exhibit B, dated March 13, 2008, and reviewed by the Commission on March 13, 2008.
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. All meals shall be served on china with metal eating utensils. Meals shall be ordered and served at tables or to customers seated at the bar counter, and shall be paid for after consumption.
4. The Project Sponsor shall work with staff to ensure that all exterior alterations, including signage, are consistent with the Secretary of Interior's Standards for Treatment of Historical Properties. Signage size shall be appropriate for the scale of the historic building, and materials and lighting shall be compatible with the historical character of the building.
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.
 9. 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.
 10. 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.
 11. 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).
 12. 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 Sections 174, 306.3, and 306.4 of the code to consider revocation of this conditional use authorization.
 13. 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.