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Planning Commission Final Motion No. 17588

HEARING DATE: APRIL 24, 2008

Date: April 24, 2008
Case No.: **2008.0024C**
Project Address: **746 ARGUELLO BLVD. (AKA 2886 GOLDEN GATE AVE.)**
Zoning: RH-2 (Residential House, Two-Family) Zoning District
 40-X Height and Bulk District
Block/Lot: 1142/021
Project Sponsor: Lisa Lane for Roy and Cathy Yih
 499 - 28th Avenue
 San Francisco, CA 94121
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ADOPTING FINDINGS RELATED TO THE APPROVAL OF A CONDITIONAL USE AUTHORIZATION UNDER PLANNING CODE SECTIONS 182(B)(1), 186, 303, AND 710.44 OF THE PLANNING CODE TO ESTABLISH A SMALL SELF-SERVICE RESTAURANT AT 746 ARGUELLO BOULEVARD / 2886 GOLDEN GATE AVENUE (DBA KALEIDOSCOOP, A FROZEN DESSERT CAFÉ), ON ASSESSOR’S BLOCK 1142, LOT 021 WITHIN THE RH-2 (RESIDENTIAL HOUSE, TWO-FAMILY) ZONING DISTRICT AND A 40-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On January 8, 2008, Lisa Lane, acting agent on behalf of Roy and Cathy Yih (hereinafter “Project Sponsor”) made an application for Conditional Use authorization on the property at **746 Arguello Boulevard (aka 2886 Golden Gate Avenue), Lot 1142 in Assessor’s Block 021** (hereinafter “Property”), to convert vacant commercial tenant space (a limited nonconforming use previously occupied by a film processing store) to a small self-service restaurant located within a three-story residential and commercial building within the RH-2 (Residential House, Two-Family) Zoning District and a 40-X Height and Bulk District, in general conformity with plans dated February 11, 2008 and labeled “Exhibit B” (hereinafter “Project”).

On **April 24, 2008**, the San Francisco Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting on **Conditional Use Application No. 2008.0024C**. Under Sections 182(b)(1), 186, 303, and 710.44 of the Planning Code, Conditional Use authorization is required to convert the vacant commercial tenant space to be changed to an otherwise

non-permitted small self-service restaurant (dba Kaleidoscoop, a frozen dessert café) within an RH-2 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.

MOVED, that the Commission hereby authorizes the Conditional Use requested in Application No. 2008.0024C, subject to the conditions contained in "EXHIBIT A" of this motion, 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 and Present Use.** The Project Site is on the northeast corner of Arguello Boulevard and Golden Gate Avenue; Assessor's Block 1142, Lot 021. It is located within the RH-2 (Residential House, Two-Family) Zoning District and a 40-X Height and Bulk District. The subject lot is 1,875 square feet (25 feet wide by 75 feet deep) in size and is occupied by a three-story residential and commercial building built in 1911. The existing building is listed in the 1976 San Francisco Architectural Survey but is not listed in the National or California Registers as having architectural significance. The subject property at 746 Arguello Boulevard (aka 2886 Golden Gate Avenue) is vacant commercial tenant space previously occupied by a film processing store (dba Bay Express Photo Lab) on the ground floor of the subject building. The film processing business vacated the space less than three years ago, according to the project sponsor.
3. **Surrounding Properties and Neighborhood.** The Project Site is located within the Inner Richmond Neighborhood. The surrounding development consists primarily of single-family and multi-family residential buildings, and a few residential and commercial buildings. There are commercial establishments located approximately one block south of the project site on the northeast corner of Arguello Boulevard and McAllister Street within an NC-1 (Neighborhood Commercial Cluster) Zoning District. These commercial establishments include a coffee store (dba Velo Rouge), business/professional service establishment (dba Bob P. Chu Public Accountant), building supply store (dba PC Kitchen Cabinet & Building), grocery store (dba Arguello Super), restaurant (dba Okina Sushi), daycare center (dba Learning Zone), and

laundromat (dba The Washing Well). In addition, approximately two blocks north of the project site is Angelo J. Rossi Playground and three blocks east of the project site is the University of San Francisco (USF Lone Mountain Campus).

4. **Project Description.** The proposal is to convert the limited nonconforming vacant commercial tenant space to a small self-service restaurant (dba Kaleidoscoop, a frozen dessert café offering soft-serve ice cream, gelato, Italian ice, and soy-based products). The proposed small self-service restaurant, with approximately 650 square feet of floor area, will consist of a preparation/serving area, restroom, and dining area with seating for 12 to 15 persons. The proposal will involve tenant improvements to the existing commercial tenant space to include a new bathroom, display cabinets, and entry door to meet the current Building Code requirements for handicap accessibility, and removing an existing wall partition. These tenant improvements will not significantly impact the architectural integrity of the building. There will be no expansion to the existing building envelope. The proposed hours of operation are 11:30 a.m. to 9 p.m., seven days a week. The proposed small self-service restaurant will employ approximately four people working in the store during normal business hours.

A “limited 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 residential district in which the property is located at the time of the application. The current proposal, which requires Conditional Use authorization under Sections 182(b)(1), 186, 303, and 710.44 of the Planning Code, will allow the limited nonconforming use (previously a film processing store) to change to another limited nonconforming use (small self-service restaurant) on the project site.

5. **Issues and Other Considerations.**
 - The proposed small self-service restaurant will be independently owned and is not considered a formula retail use under Section 703.3 of the Planning Code.
 - Public transit that is in close proximity to the proposed small self-service restaurant includes Muni Lines 5, 21, 31, 33, and 38 within walking distance of the project site. There is on-street parking in front of the subject property and in the surrounding neighborhood.
6. **Public Comment.** As of April 23, 2008, the Planning Department received one letter in opposition to the project.
7. **Use District.** For the purposes of this action, the project site is within the RH-2 (Residential House, Two-Family) Zoning District. RH-2 Zoning Districts are devoted to one-family and two-family houses, with the latter commonly consisting of two large flats, one occupied by the owner and the other available for rental. Structures are finely scaled and usually do not exceed 25 feet in width or 40 feet in height. Building styles are often more varied than in single-family areas, but certain streets and tracts are quite uniform. Considerable ground-level open space is available, and it frequently is private for each unit. The districts may have easy access to shopping facilities and transit lines. In some cases, group housing and institutions are found in these areas, although nonresidential uses tend to be quite limited.

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 vacant commercial tenant space on the subject property to serve the needs of residents through the sale of frozen desserts and other specialty items. The proposed Project will provide new job opportunities to the City by employing approximately four 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 in the area. Existing housing will not be affected by the Project.

- (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 access 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 significantly 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 182(b)(1)** allows a nonconforming use in a Residential District (other than a Residential-Commercial Combined District or Residential Enclave District), which use is located more than ¼ mile from the nearest Individual Area Neighborhood Commercial District or Restricted Use Subdistrict described in Article 7 of the Planning Code to change to another use which is permitted as a principal use at the first story and below in an NC-1 District, or it may change to another use which is permitted as a conditional use at the first story and below in an NC-1 District only upon approval of a conditional use application pursuant to the provisions of Article 3 of the Planning Code.

The proposed Project will allow the change of use of a nonconforming vacant commercial space (previously occupied by a film processing store) to a small self-service restaurant (frozen dessert café) which requires Conditional Use authorization within an NC-1 Zoning District.

- C. **Section 186** allows for the further continuance in Residential Districts of nonconforming uses of a limited commercial and industrial character which are beneficial to, or can be accommodated within, the residential areas in which they are located. Limited commercial uses may be tolerated in residential areas, and tend to provide convenience goods and services on a retail basis to meet the frequent and recurring needs of neighborhood residents within a short distance of their homes. These uses tend to be small in scale, to serve primarily a walk-in trade, and cause a minimum of interference with nearby streets and properties.

The proposal Project is a limited nonconforming use within an RH-2 Zoning District. The proposed small self-service restaurant, with approximately 650 square feet of floor area, will be small in scale catering primarily to neighborhood residents.

- D. **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 establish a small self-service restaurant on the project site. There will be minor tenant improvements made to the existing commercial tenant space and no 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 commercial tenant 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 proposed small self-service restaurant include Muni Lines 5, 21, 31, 33, and 38 within walking distance of the project site. 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 as a limited nonconforming use in an RH-2 Zoning District in that the intended use as a small self-service restaurant is a neighborhood-serving use.

- 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 Kaleidoscoop (a frozen dessert café) in San Francisco. Kaleidoscoop will be independently owned and is not a Formula Retail Use.

- F. **Section 710.1** sets forth provisions in the NC-1 (Neighborhood Commercial Cluster) Zoning District. The NC-1 Zoning Districts are intended to serve as local neighborhood shopping districts, providing convenience retail goods and services for the immediately surrounding neighborhoods primarily during daytime hours. 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 3,000 square feet. However, commercial uses and features which could impact residential livability are prohibited, such as auto uses, financial services, general advertising signs, drive-up facilities, hotels, and late-night activity; eating and drinking establishments are restricted, depending upon the intensity of such uses in nearby commercial districts.
- G. **Section 710.44** allows small self-service restaurants on the ground floor in the NC-1 Zoning District with Conditional Use authorization.

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

COMMERCE AND INDUSTRY ELEMENT

GENERAL/CITYWIDE

Objectives and Policies

OBJECTIVE 1:

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

Policy 1:

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

The proposed Project would allow for the establishment of a limited nonconforming small self-service restaurant in the RH-2 Zoning District. Kaleidoscoop would be compatible and complimentary with the other existing small-scale neighborhood-serving commercial establishments located within this portion of the Inner Richmond neighborhood.

OBJECTIVE 3:

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

Policy 1:

Promote measures designed to increase the number of San Francisco jobs held by San Francisco residents.

The proposed Project would provide enhanced opportunities for employment of neighborhood residents.

NEIGHBORHOOD COMMERCE

Objectives and Policies

OBJECTIVE 6:

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

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 frozen desserts) and is accessible to all residents in this portion of the RH-2 Zoning District.

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 major 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 vacant commercial tenant 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. 2008.0024C** 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. 17588. 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 April 24, 2008.

Linda Avery
Commission Secretary

AYES: Commissioners Antonini, S. Lee, W. Lee, Moore and Olague

NAYS: None

ABSENT: Commissioner Sugaya

ADOPTED: April 24, 2008

Exhibit A

Conditions of Approval

GENERAL CONDITIONS:

A. The Approved Project

- (1) This approval is to allow the conversion of a vacant commercial tenant space to a small-self service restaurant (dba Kaleidoscoop, a frozen dessert café), within the RH-2 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. 2008.0024C** (labeled EXHIBIT B), reviewed and approved by the Commission on April 24, 2008.
- (2) Pursuant to Sections 182(b)(1), 186, 303(c), and 710.44, this Conditional Use approval will allow a limited nonconforming use (previously a film processing store) to change to another use (small self-service restaurant).
- (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 11:30 a.m. to 9 p.m., seven days a week.
- (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.