



SAN FRANCISCO PLANNING DEPARTMENT

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Planning Commission Motion No. 17694

HEARING DATE: SEPTEMBER 11, 2008

Date: September 3rd, 2008
Case No.: **2008.0685C**
Project Address: **44 WEST PORTAL AVENUE**
Zoning: WEST PORTAL (Neighborhood Commercial District)
26-X Height and Bulk District
Block/Lot: 2931/005
Project Sponsor: Eddie Mei
319 Bright Street
San Francisco, CA 94132
Staff Contact: Sharon Lai – (415) 575-9087
sharon.lai@sfgov.org

ADOPTING FINDINGS RELATING TO CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303 AND 729.42 OF THE PLANNING CODE TO ALLOW A FULL-SERVICE RESTAURANT (D.B.A. "TUTTIMELON") WITHIN THE WEST PORTAL (NEIGHBORHOOD COMMERCIAL) DISTRICT AND A 26-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On June 12, 2008, Eddie Mei (Project Sponsor) filed an application with the Department for Conditional Use Authorization under Planning Code Section 729.42 of the Planning Code to allow a full-service restaurant (d.b.a. "Tuttimelon") within the West Portal (Neighborhood Commercial) District and a 26-X Height and Bulk District.

On September 11, 2008, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2008.0685C.

The Project was determined by the San Francisco Planning Department (hereinafter "Department") to be categorically exempt from environmental review. 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. 2008.0685C, subject to the conditions contained in "EXHIBIT A" of this motion, 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 proposed project is located at 44 West Portal Avenue, on the western side of West Portal Avenue, between Ulloa and Vincente Streets, Block 2931, Lot 005. The property is located within the West Portal (Neighborhood Commercial) District with 26-X height and bulk district. The property is developed with three commercial uses within a one-story building. The tenants are with Plain Jane's (44 West Portal Avenue) previously a retail gift shop with accessory prepackaged food sales; Joxer Daly's Irish Pub (46 West Portal Avenue); and El Toreador Restaurant (50 West Portal Avenue). The subject commercial space is currently vacant. It contains approximately 960 square feet of usable floor area and occupies 17 feet of the lot's 50 foot wide frontage along West Portal Avenue. The property also has a rear privately shared easement for vehicles, with access from Vincente Street. The lot is approximately 54% covered by the subject building.
3. **Surrounding Properties and Neighborhood.** The Project site is located in the West Portal Neighborhood Commercial District, as defined in Section 729.1 of the Planning Code. The West Portal Avenue Neighborhood Commercial District is located in the southwestern part of the City, east of Highway 1 and north of Highway 35. The Neighborhood Commercial District stretches for three blocks along West Portal Avenue from Ulloa Street to 15th Avenue and extends one block east along Ulloa Street from the Twin Peaks Tunnel entrance to Claremont Boulevard. The West Portal Neighborhood Commercial District primarily provides goods and services for the surrounding west of Twin Peaks and Sunset residents located within the RH-1(D) (Residential House, One-Family Detached) and RH-1 (Residential House, One-Family) Districts.

The West Portal Avenue Neighborhood Commercial District is characterized as lively, small-scale retail frontage with several locations by large-scale financial institutions. Except for a movie theater complex, West Portal offers minimal entertainment uses and its restaurants are mainly family-oriented. Staff conducted a survey of the West Portal NC and found that 15% of the store fronts are devoted to eating and drinking

establishments. Out of the store fronts dedicated to eating and drinking uses, full service restaurants occupy approximately 2/3 of the total (17/25, approximately 68%).

4. **Project Description.** The applicant proposes to change the use of the formerly Plain Jane's retail gift shop with accessory prepackaged food sales to a full-service restaurant, to a full-service restaurant serving frozen yogurt and other similar items. The commercial space has been used as Plain Jane's for approximately ten years. Prior to Plain Jane's, the location was occupied by West Portal Pet Shop, also a retail establishment and the tenant space for over 40 years. The proposal includes interior tenant improvements. A building permit for tenant improvements has not yet been submitted for the current proposal to convert Plain Jane's to Tuttimelon.

The existing commercial space is approximately 960 square feet in size. The project proposes to devote approximately 550 square feet towards dining area to accommodate approximately 35 patrons, and approximately 100 square feet towards take-out service. The proposed operation consists of 4 employees. 1 of the employee is wait staff, 1 will be a cashier, and a maximum of 2 employees will work in the kitchen for food preparation.

The proposed establishment is a small scale, locally owned frozen yogurt franchise. The business proposes to serve ready-to-eat frozen yogurt desserts. The food preparation mainly involves combining a standardized prefabricated frozen yogurt with a variety of fruit and dry toppings. Tuttimelon has two other operating locations within San Francisco on Irving and Chestnut Streets, and has listed 6 additional locations as either "Pending" or "Coming Soon" on the company website (5 in San Francisco and 1 in Alameda). One of the proposed locations is within the Polk Street NCD at 2125 Polk Street, and was scheduled to be heard by the Planning Commission on September 4th, 2008, for a Conditional Use Authorization as a small self-service restaurant. Tuttimelon is currently not a Formula Retail use as defined under the Formula Retail provisions of the Planning Code Sections 703.3 and 703.4. The proposal requires a change of use and Section 312-neighborhood notification that was conducted in conjunction with the Conditional Use Authorization process. The proposed use is a neighborhood-serving use.

The Tuttimelon chain currently operates as self-service restaurants at all other locations and is seeking approval to operate as a full-service restaurant at 44 West Portal Avenue. The proposed franchise will exercise uniformed operations, and a standardized menu and decor consistent with the Tuttimelon Corporation. Delivery has not been offered and the applicant does not intend to offer delivery in the future. A large percent of the operation at other locations is currently devoted to take-out dining, however the subject location is intending to operate as a full-service restaurant and anticipates a small proportion of customers opting for take-out dining.

5. **Public Comment.** The Department has received 1 letter of support from the West Portal Merchant Association and no opposition to the proposal.

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. **Formula Retail.** Planning Code Section 703.3 defines Formula Retail as a type of retail sales activity or retail sales establishment which, along with eleven or more other retail sales establishments located in the United States, maintains two or more of the following features: a standardized array of merchandise, a standardized façade, a standardized décor and color scheme, a uniform apparel, standardized signage, a trademark or a servicemark.

The proposed restaurant would share a standardized array of merchandise, a standardized décor and color scheme, standardized signage and a trademark with two other existing Tuttimelon restaurants, and presumably five other locations planned (one received approval from the Planning Commission on September 4, 2008). However, the subject business does not meet the minimum threshold of eleven related establishments, and therefore does not constitute as a Formula Retail use as defined in this code section.

- B. **Land Use – Full-Service Restaurant.** Planning Code Section 729.42 conditionally allows full-service restaurants in the West Portal Neighborhood Commercial District, and as defined in Planning Code Section 790.92.

The subject property proposes a new full-service restaurant within the West Portal NC District. Full-service restaurants with a Conditional Use authorization are permitted to operate at the ground floor.

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.

- C. **Hours of Operation.** Planning Code Section 729.27 permits hours of operation from 6a.m. to 2 a.m., as defined by Planning Code Section 790.48.

The proposed hours of operation for Tuttimelon are between 11am to 11pm from Sunday to Thursday, and 11:00a.m. to 12:00a.m. on Friday and Saturday, which complies with the zoning requirement.

- D. **Parking.** Planning 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 960 square-feet of occupied floor area and thus does not require any off-street parking.

- E. **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 15 feet devoted to either the restaurant entrance or window space. The windows are clear and unobstructed. There are no changes proposed to the commercial frontage.

- F. **Signage.** Currently, there is not a proposed sign program on file with the Planning Department. The proposed business does not have a name as of this writing. 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 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 size of the proposed use is in keeping with other storefronts on the block face. The proposed full-service restaurant will not impact traffic or parking in the District because it is not a destination restaurant. This will compliment the mix of goods and services currently available in the district and contribute to the economic vitality of the neighborhood by removing a vacant storefront.

- 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 height and bulk of the existing building will remain the same and will not alter the existing appearance or character of the project vicinity. The proposed interior tenant improvement will not affect the building envelope or use of the property.

- 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 Planning Code does not require parking or loading for a 960 square-foot full-service restaurant. The proposed use is intended to meet the needs of the immediate neighborhood and should not generate significant amounts of vehicular trips from the immediate neighborhood or citywide. The Property is also well served by public transit, being located along the K, L, and M Muni rail lines and the 17, 48, and 91 Muni bus 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 full-service restaurants and outlined in Exhibit A. Conditions 9 and 10 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;

The proposed full-service restaurant does not require any additional tenant improvements the Department shall review all lighting and signs proposed for the new business in accordance with Condition 6 of Exhibit A.

- 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 the West Portal Neighborhood Commercial Districts in that the intended use is located at the ground floor, will provide a compatible convenience service for the immediately surrounding neighborhoods during daytime hours.

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

NEIGHBORHOOD COMMERCE

Objectives and Policies

OBJECTIVE 1:

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

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 Project Site 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 retain an existing commercial activity and will enhance the economic base of the City. The Project will be the first restaurant featuring frozen yogurt in the West Portal NCD, thereby diversifying the commercial corridor.

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 would be displaced and the project would not prevent the district from achieving optimal diversity in the types of goods and services available in the neighborhood.

The following guidelines, in addition to others in this objective for neighborhood commercial districts, should be employed in the development of overall district zoning controls as well as in the review of individual permit applications, which require case-by-case review and City Planning Commission approval. Pertinent guidelines may be

applied as conditions of approval of individual permit applications. In general, uses should be encouraged which meet the guidelines; conversely, uses should be discouraged which do not.

Eating and Drinking Establishments

Eating and drinking establishments include bars, sit-down restaurants, fast food restaurants, self-service restaurants, and take-out food. Associated uses, which can serve similar functions and create similar land use impacts, include ice cream stores, bakeries and cookie stores. Guidelines for eating and drinking establishments are needed to achieve the following purposes:

- Regulate the distribution and proliferation of eating and drinking establishments, especially in districts experiencing increased commercial activity;
- Control nuisances associated with their proliferation;
- Preserve storefronts for other types of local-serving businesses; and
- Maintain a balanced mix of commercial goods and services.
- The regulation of eating and drinking establishments should consider the following:
 - Balance of retail sales and services;
 - Current inventory and composition of eating and drinking establishments;
 - Total occupied commercial linear frontage, relative to the total district frontage;
 - Uses on surrounding properties;
 - Available parking facilities, both existing and proposed;
 - Existing traffic and parking congestion; and
 - Potential impacts on the surrounding community.

There is a general concern with the potential over-concentration of food-service establishments. The Commerce and Industry Element of the General Plan contains Guidelines for Specific Uses. For eating and drinking establishments, the Guidelines state, "the balance of commercial uses may be threatened when eating and drinking establishments occupy more than 20% of the total occupied commercial frontage." Planning staff has performed a site survey of the West Portal Neighborhood Commercial District which contains the proposed building. Approximately 15% of the total West Portal Neighborhood Commercial District frontage is devoted to eating and drinking establishments, which is well below the maximum concentration.

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.

Although Tuttimelon is a chain, it is not a Formula Retail use as define by the Planning Code. The Project is consistent with the Policy in that, an independent entrepreneur sponsoring the project has purchased the franchise and is currently not an owner of other Tuttimelon locations. The subject establishment is considered a small, neighborhood serving business. The restaurant will not displace any tenants and will positively contribute to the vitality of the West Portal NCD by locating at a vacant site.

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 proposal would enhance the district by providing a full-service restaurant in an area that is not over concentrated by restaurants. The business would be locally owned and it creates 4 additional employment opportunities for the community.

- 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 units in the surrounding neighborhood would not be adversely affected, in that no changes to housing units are proposed.

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

No housing is removed for this Project.

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

The site is on West Portal Avenue and is well served by transit. It is presumable that the employees would commute by transit thereby mitigating possible impacts on street parking. West Portal Avenue is served by multiple MUNI rail lines (L, M, K or T) and bus lines (17, 48, and 91).

- 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 not displace any service or industry establishment. The project will not affect industrial or service sector uses or related employment opportunities. Ownership of industrial or service sector businesses will not be affected by this project.

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

The Project is designed and will be constructed to conform to the structural and seismic safety requirements of the City Building Code. This proposal will not impact the property's ability to withstand an earthquake.

G. That landmarks and historic buildings be preserved.

A landmark or historic building does not occupy the Project site.

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

The project will have no negative impact on existing parks and open spaces. The Project does not have an impact on open spaces.

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. 2008.0685C** 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. 17694. 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 September 11, 2008.

Linda Avery
Commission Secretary

AYES: Commissioners Olague, Antonini, Bill Lee, Moore, Borden, and Sugaya

NAYES: None

ABSENT: Commissioner Miguel

ADOPTED: September 11, 2008

Exhibit A

Conditions of Approval

1. This authorization is for a Conditional Use Authorization under Planning Code Section 729.42 of the Planning Code to allow a full-service restaurant (d.b.a. Tuttimelon) within the West Portal Avenue Neighborhood Commercial District and a 26-X Height and Bulk District, in general conformance with plans filed with the Application as received on June 12, 2008 and stamped "EXHIBIT B" included in the docket for **Case No. 2008.0685C**, reviewed and approved by the Commission on September 11, 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 in the Official Records of the Recorder of the City and County of San Francisco for the premises (Assessor's 2931, Lot 005), 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. 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 \$250 a day in accordance with Planning Code Section 176.
4. 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).
5. The property owner shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean condition. Such maintenance shall include, at a minimum, daily litter pickup and disposal, and washing or steam cleaning of the main entrance and abutting sidewalks at least once each week.
6. Signs and exterior lighting for the business shall be reviewed and approved by the Planning Department before they are installed.
7. The Project Sponsor shall maintain an attractive storefront providing visibility of the restaurant interior through the storefront windows.
8. The Project shall appoint a Community Liaison Officer to address issues of concern to neighbors related to the operation of this Project. The Project Sponsor shall report the name and telephone number of this Officer to the Zoning Administrator and the neighborhood for reference. The Applicant will keep the above parties apprised should a different staff liaison be designated.

9. The project sponsor shall maintain appropriate odor control equipment to prevent any significant noxious or offensive kitchen odors from escaping the premises.
10. The project sponsor shall operate the proposed restaurant such that noise is kept at reasonable levels so as not to unduly disturb neighboring businesses and residents.
11. Refuse containers shall be provided both inside and outside the establishment for use by patrons of the restaurant. The operator of the use shall be responsible for maintaining the sidewalk within a one-block radius of the site free of paper or litter generated by the restaurant.
12. An enclosed garbage area shall be provided within the establishment. All garbage containers shall be kept within the building until pick-up by the disposal company.
13. The hours of operation shall be limited to 6 a.m. to 2 a.m.
14. 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.
15. The authorization and right vested by virtue of this action shall be deemed void and canceled, if within 3 years of this Motion a site permit or building permit for the Project has not been secured by Project Sponsor. 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.