

File No. 101135

Committee Item No. _____

Board Item No. 26

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee _____

Date _____

Board of Supervisors Meeting

Date 10/05/10

Cmte Board

- | | | |
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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Public Correspondence |

OTHER (Use back side if additional space is needed)

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|-------------------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | Appeal of Conditional Use for 1268 Grant Avenue |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Appellant's Brief (Exhibits 1 through 10) |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |

Completed by: Joy Lamug

Date 09/23/10

Completed by: _____

Date _____

An asterisked item represents the cover sheet to a document that exceeds 20 pages. The complete document is in the file.



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**NOTICE TO BOARD OF SUPERVISORS OF APPEAL
FROM ACTION OF THE CITY PLANNING COMMISSION**

Notice is hereby given of an appeal to the Board of Supervisors from the following action of the City Planning Commission.

The property is located at 1268 GRANT AVE. SAN FRANCISCO, CA 94133.

AUGUST 5, 2010
Date of City Planning Commission Action.
(Attach a Copy of Planning Commission's Decision)

SEPTEMBER 7, 2010
Appeal Filing Date

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2010 SEP - 7 PM 4: 50
BY _____

_____ The Planning Commission disapproved in whole or in part an application for reclassification of property, Case No. _____.

_____ The Planning Commission disapproved in whole or in part an application for establishment, abolition or modification of a set-back line, Case No. _____.

The Planning Commission approved in whole or in part an application for conditional use authorization, Case No. 2010.0438C.

_____ The Planning Commission disapproved in whole or in part an application for conditional use authorization, Case No. _____.

Statement of Appeal:

a) Set forth the part(s) of the decision the appeal is taken from:

SEE PLANNING COMMISSION MOTION 18160, ATTACHED.

b) Set forth the reasons in support of your appeal:

1. OWNER/APPLICANT IS IN VIOLATION OF NOTICE OF SPECIAL RESTRICTIONS, ATTACHED.
2. PROPOSED PROJECT DOES NOT COMPLY WITH SECTION 303 OF PLANNING CODE AND IS NOT NECESSARY OR DESIRABLE FOR THE NEIGHBORHOOD OR COMMUNITY.
3. Supplemental brief to follow.

Person to Whom
Notices Shall Be Mailed

Name and Address of Person Filing Appeal:

VEDICA PURI, PRESIDENT

V.P. ~~MARSHA GARLAND~~
Name

TELEGRAPH HILL DWELLERS
Name

P.O. Box 330159 SF 94133

V.P. ~~535 GREEN ST. SF CA 94133~~
Address

P.O. Box 330159 SF CA 94133
Address

415-433-8000

V.P. ~~415-936-0777~~
Telephone Number

415-433-8000

Telephone Number



Signature of Appellant or
Authorized Agent

Pursuant to Planning Code Section 308.1(b), the undersigned members of the Board of Supervisors believe that there is sufficient public interest and concern to warrant an appeal of the Planning Commission on Case No. _____, a conditional use authorization regarding (address) _____, District _____. The undersigned members respectfully request the Clerk of the Board to calendar this item at the soonest possible date.

SIGNATURE	DATE	Supervisor
<u>David Chiu</u>	<u>8-9-10</u>	David Chiu
<u>John Avalos</u>	<u>8-9-10</u>	John Avalos
<u>David Campos</u>	<u>8-9-10</u>	David Campos
<u>Eric Mar</u>	<u>8-9-10</u>	Eric Mar
<u>Sophie Maxwell</u>	<u>8-9-10</u>	Sophie Maxwell
_____	_____	

(Attach copy of Planning Commission's Decision)



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- Inclusionary Housing (Sec. 315)
- Jobs Housing Linkage Program (Sec. 313)
- Downtown Park Fee (Sec. 139)
- First Source Hiring (Admin. Code)
- Child Care Requirement (Sec. 314)
- Other

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Planning Commission Motion 18160

HEARING DATE: AUGUST 5, 2010

Date: July 29, 2009
Case No.: 2010.0438C
Project Address: 1268 GRANT AVENUE
Zoning: North Beach Neighborhood Commercial District (NCD)
 40-X Height and Bulk District
 North Beach Special Use District (SUD)
Block/Lot: 0145/032
Project Sponsor: Marsha Garland
 535 Green Street
 San Francisco, CA 94133
Staff Contact: Rick Crawford (415) 558-6358
 rick.crawford@sfgov.org
Recommendation: Approval with Conditions

ADOPTING FINDINGS RELATED TO THE APPROVAL OF A CONDITIONAL USE AUTHORIZATION FOR AN "OTHER ENTERTAINMENT" USE WITHIN AN EXISTING RESTAURANT AND BAR (D.B.A "KING OF THAI NOODLE HOUSE") AT 1268 GRANT AVENUE WITHIN ASSESSOR'S BLOCK 0145, LOT 032, LOCATED WITHIN THE NORTH BEACH NEIGHBORHOOD COMMERCIAL DISTRICT, THE 40-X HEIGHT AND BULK DISTRICT, AND THE NORTH BEACH SPECIAL USE DISTRICT.

PREAMBLE

On June 9, 2010, Marsha Garland ("Project Sponsor") submitted a request with the City and County of San Francisco Planning Department ("Department") for a Conditional Use authorization, Application No. 2010.0438C to allow an Other Entertainment use, as defined in Planning Code Section ("Section") 790.38, in an existing restaurant and bar (d.b.a. "King of Thai Noodle House") located at 1268 Grant Avenue ("Project Site"), within the North Beach Neighborhood Commercial District ("NCD") and the North Beach Special Use District (collectively, "Project"). This authorization was requested to allow the restaurant and bar to install a Karaoke machine in the bar on the ground floor within the establishment only. Flexible seating areas would be relocated to create space to accommodate the entertainment. No other alterations are proposed for the interior or exterior of the business.

The Project was determined by the San Francisco Planning Department (hereinafter "Department") to be categorically exempt from environmental review under class 1(a). The Commission has reviewed and concurs with said determination.

On August 5, 2010, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2010.0438C.

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

MOVED, that the Commission hereby approves the Conditional Use Authorization requested in Application No. 2010.0438C, 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. **Project Description.** The existing restaurant and bar known as "King of Thai Noodle House" is located at 1268 Grant Street, at the southeast corner of Grant Avenue and Vallejo Street. The sponsor wishes to install a Karaoke machine on the ground floor in the bar portion of the facility an activity categorized as "Other Entertainment" by Planning Code Section 790.38. Conditional Use authorization is required to establish an Other Entertainment use within the North Beach Neighborhood Commercial District (NCD). The sponsor proposes to locate a Karaoke machine to the right hand side of the bar near the front of the facility. Flexible seating and tables would be relocated to accommodate the Karaoke area. No other changes are proposed to the interior or exterior of the business.
3. **Site Description and Present Use.** The Project Site is located at 1268 Grant Avenue, at the southeast corner of Grant Avenue and Vallejo Street. The property is located within the North Beach NCD, the 40-X Height and Bulk District, and the North Beach Special Use District. The Project Site is developed with a three-story mixed-use building with an office use on the top floor situated over the subject restaurant and bar which occupies both the first and second floors of the building.
4. **Surrounding Properties and Neighborhood.** The area surrounding the Project Site is mixed-use in character. A variety of commercial establishments are located within ground floor storefronts in the vicinity, including restaurants, financial institutions, apparel stores, and other types of retailers. Upper floors of buildings are generally occupied by offices, residential units, or tourist-hotels. Other uses in the vicinity include the Church of Saints Peter and Paul and Washington Square Park (located to the north).

5. **Public Comment.** Department staff has received one email from Telegraph Hill Dwellers in opposition to the project because of concerns that the restaurant and bar will become a nightclub, as well as a 12 letters of support from businesses, a veteran's group, and residents in the area. The Police Department is opposed to this request because of concerns that the restaurant and bar will become a nightclub. The Police Department is also concerned about the amount of window signage displayed by the business.

6. **Planning Code Compliance:** The Commission finds that the Project complies with the relevant provisions of the Planning Code in the following manner:

A. **Use.** Other Entertainment uses require Conditional Use authorization within the North Beach NCD, pursuant to Section 722.48.

The Project Sponsor is requesting Conditional Use authorization to allow a Karaoke machine on the ground floor bar area within the existing King of Thai Noodle restaurant and bar.

B. **Off-Street Parking.** Section 151 requires restaurant uses to provide one parking space for every 200 square feet of occupied floor area, where the occupied floor area exceeds 5,000 square feet.

The occupied floor area of the existing business measures less than 5,000 square feet. The Project proposes no physical expansion of the building. The Project is not required to provide parking.

C. **Loading.** Section 152 requires off-street freight loading for uses above a certain size. Businesses such as the existing restaurant are not required to provide off-street freight loading if they measure less than 100,000 square feet in gross floor area

With a gross floor area of under 100,000 square feet, the Project is not required to provide off-street loading.

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.

E. **North Beach Special Use District.** Section 780.3(a) of the Planning Code allows Full Service Restaurants in the North Beach Neighborhood Commercial district and establishes additional criteria for consideration by the Planning Commission. The Project complies with this Section as follows:

i. The space occupied by the proposed Full Service Restaurant was not last occupied by a Basic Neighborhood Sales or Service use or by a permitted principal use Under Section 722 (North Beach Controls).

The project complies with this criterion as the space to be occupied by the proposed use is now and will continue to be a Full Service Restaurant.

- ii. The space occupied by the proposed Full Service Restaurant is not a vacant space last occupied by a nonconforming use or a permitted conditional use under Section 722 (North Beach Controls) that has been discontinued or abandoned for more than 3 years.

The project complies with this criterion as the space has been operated continuously as a full service restaurant and bar since the use was authorized at the current size and configuration in 1987.

7. **Conditional Use Findings.** Section 303(c) establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use Authorization. The Project complies with all of the criteria in that:

- A. The proposed use or feature, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community.

The Project is desirable for the neighborhood, because it would enhance the viability of an existing business. In addition, it will contribute to the overall vibrancy of the North Beach NCD by diversifying the options for dining and entertainment experiences in the area.

The Project is situated in an area that already hosts a significant number of live entertainment establishments. However, the majority of these venues are concentrated north along Grant Avenue, with other isolated venues scattered throughout North Beach and along the Broadway corridor to the south. The proposed live entertainment at "King of Thai Noodle House" is not expected to exacerbate negative impacts that can be associated with the clustering of live entertainment venues due to the low scale of the proposed entertainment. The restaurant will be required to comply with the San Francisco Noise Ordinance, and if needed, install interior upgrades and implement management practices to attenuate noise. The project is compatible with the neighborhood.

- B. The proposed use or feature will not be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity, or injurious to property, improvements, or potential development in the vicinity, with respect to aspects including, but not limited to the following:
 - 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. The Project would not physically expand the existing building.

- 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, including provision of car-share parking spaces, as defined in Section 166 of this Code;

The Project will not adversely impact public transit or overburden the existing supply of parking in the neighborhood. The Project Site is well-served by ample public transportation, and 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;

Residents and businesses located in the vicinity of entertainment uses are often concerned about and the noise that could be generated by live entertainment. Exhibit A of this motion contains a condition requiring that all noise and odors be regulated so as not to be a nuisance to nearby businesses or residents. The live entertainment activity must also comply with the San Francisco Noise Ordinance. In addition the hours of the entertainment use could be limited so that the potential for noise is eliminated earlier than the typical business closing time of 2:00 A.M.

- 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. Any future changes in lighting and signage would be required to comply with the requirements of the Planning Code 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 complies with the applicable requirements of the Planning Code, and will not adversely affect the policies of the General Plan as discussed below.

- D. That the use as proposed would provide development that is in conformity with the purpose of the applicable Neighborhood Commercial District.

The North Beach NCD functions as a neighborhood-serving marketplace, citywide dining district, and tourist attraction. Section 722.1 acknowledges that NCD serves as a nighttime entertainment destination, with "eating, drinking, and entertainment establishments [that] remain open into the evening to serve a much wider trade area and attract many tourists." The NCD regulations are intended to avoid an overconcentration of eating and drinking establishments, and protect residential livability. Section 722.1 further states that, "Special controls limit additional ground-story entertainment uses..."

The Project would not expand the existing business, and would therefore not displace any residential or resident-serving retail uses. The North Beach NCD does not expressly prohibit ground-floor entertainment uses, but instead requires Conditional Use authorization to allow such venues that can

be located and operated properly without detracting from residential livability. The Project would reinforce the established tradition of the North Beach area as an entertainment destination. A condition of approval has been included requiring noise to be attenuated, so that the live entertainment does not create a nuisance to surrounding properties. The Project is in general conformity with the purpose of the North Beach NCD.

- E. With respect to applications filed pursuant to Article 7, Section 703.2(a), zoning categories .46, .47, and .48, that such use or feature will:

- i. Not be open between two a.m. and six a.m.;

The Project does not propose to operate the restaurant, bar, or the live entertainment functions between the hours of two a.m. and six a.m.

- ii. Not use electronic amplification between midnight and six a.m.;

The proposed Entertainment use shall be restricted to prohibit the use of amplification including the operation of a Karaoke machine, between midnight and six a.m.

- iii. Be adequately soundproofed or insulated for noise and operated so that incidental noise shall not be audible beyond the premises or in other sections of the building and fixed-source equipment noise shall not exceed the decibel levels specified in the San Francisco Noise Control Ordinance.

Residents and businesses located in the vicinity of Entertainment uses are often concerned about and the noise that could be generated by live entertainment. Exhibit A of this motion contains a condition requiring that all noise and odors be regulated so as not to be a nuisance to nearby businesses or residents. The live entertainment activity must also comply with the San Francisco Noise Ordinance. In addition the hours of the Entertainment use could be limited so that the potential for noise is eliminated earlier than the typical business closing time of 2:00 A.M. A requirement that the Entertainment activity cease at midnight could alleviate noise concerns and decrease the likelihood that the restaurant and bar could evolve into a nightclub. The installation of the requested karaoke machine was approved by the Entertainment Commission in February 2010 without conditions.

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

COMMERCE AND INDUSTRY ELEMENT

Neighborhood Commerce

OBJECTIVE 6:

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

Policy 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.

In order for a neighborhood commercial district to remain viable and be compatible with the surrounding neighborhood, it must exhibit a healthy balance of different types of commercial uses. This policy includes guidelines that discourage the overconcentration of a particular type of use, such as eating and drinking establishments, and entertainment venues. The Project would add a live entertainment function to an existing restaurant, and would not expand the restaurant or displace a neighborhood-serving retail use. Due to the scale and nature of the proposed entertainment, a Karaoke machine, the Project is not expected to exacerbate negative impacts that can be associated with the clustering of live entertainment venues. The addition of the live entertainment activity will not disrupt the balance of commercial uses in the area, and will not displace neighborhood-serving goods and services.

Policy 2:

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

The Project is desirable because it will contribute to the viability of an existing, locally-owned restaurant. The Project would not physically expand the existing restaurant or create a new, stand-alone bar establishment. The Project is desirable and compatible with the neighborhood, and will contribute to the overall vitality of the North Beach NCD.

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 not expand the existing restaurant, and would therefore not decrease the square footage that could be made available to other types of neighborhood-serving retail uses or service establishments. The Project will contribute to the viability of a locally-owned business, preserving and enhancing opportunities for resident employment.

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

No housing units will be displaced by the Project. The Project will add a Karaoke machine to an existing restaurant, reinforcing the cultural history of North Beach as an entertainment destination.

- (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 area 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.

The Project does not involve any construction activities that would compromise the structural integrity of the existing building.

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

No exterior changes are proposed for the Project. Any future storefront alterations and signage would be required to comply with applicable preservation standards.

- (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 and would not impact any parks or open spaces or their access to sunlight.

12. On balance, the Commission hereby finds that approval of the conditional use authorization would not 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. 2010.0438C.

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. 18160. 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 August 5, 2010.

Linda Avery
Commission Secretary

AYES: Antonini, Bordon, Lee, Miguel

NAYS: Moore, Olague, Sugaya

ABSENT: none

ADOPTED: August 5, 2010

Exhibit A

Conditions of Approval

1. This authorization is to allow "Other Entertainment" limited to one Karaoke machine located in the bar area on the ground floor of the building, at an existing restaurant (d.b.a. King of Thai Noodle House), located at 1268 Grant Avenue, pursuant to Planning Code Section 722.48, in general conformity with plans labeled Exhibit B; received by the Department on June 9, 2010.
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. The operator of the establishment shall obtain all necessary approvals from the San Francisco Entertainment Commission prior to hosting live entertainment events on-site, but no later than 18 months from the date of this Conditional Use authorization.
4. The use of electronic amplification, including a Karaoke machine, shall not be permitted between midnight and two a.m. and this approval does not authorize the operation of the restaurant or any live entertainment activities between two a.m. and six a.m.
5. The ground level storefront shall be maintained in an attractive manner, providing transparency into the restaurant behind. Visibility of the 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. The storefront windows shall 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 10% 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.
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.
8. The Project Sponsor shall work with staff to ensure that all future 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.
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. 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).
11. 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.
12. 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.

NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE

RECORDING REQUESTED BY:

And When Recorded Mail to:

Name: Chris Foley

Address: c/o Zephyr Real Estate
318 Brannan Street

City: San Francisco

State: California



San Francisco Assessor-Recorder
Mabel S. Teng, Assessor-Recorder
DOC- 2005-H928242-00

Check Number 1433
Monday, MAR 28, 2005 12:28:57
TCL Pd \$34.00 Nbr-0002713098
REEL 1855 IMAGE 0238
0J1/JL/1-10

Space Above This Line For Recorder's Use

We, Chris Foley and Chalerm Foley (hereinafter "Property Owner"), owner(s) of that certain real property situated in the City and County of San Francisco, State of California, more particularly described as follows:

Lot No. 44, as shown upon that certain Map entitled "PARCEL MAP, BEING A RESUBDIVISION OF LOT 31 AND 32, PORTION OF ASSESSOR'S BLOCK NO. 145, SAN FRANCISCO CALIFORNIA" filed in the Office of the Recorder of the City and County of San Francisco, on October 13, 1987 in Book 36 of Parcel Maps, Pages 16 and 17, inclusive

being Assessor's Block 145, Lot 44 commonly known as 1234 and 1268 Grant Avenue, (hereinafter "Property"), hereby give notice that there are special restrictions on the use of said property pursuant to conditions placed on the use of this Property by the City of San Francisco and further pursuant to the agreement between the Property Owner and the Telegraph Hill Dwellers, a local neighborhood association, (hereinafter "THD") concerning the right of THD to enforce the terms and conditions of these restrictions. The Property Owner intends to operate a full service restaurant at the Property.

The restrictions and conditions of which notice is hereby given are:

A. The Property Owner acknowledges that the two buildings at 1234 & 1268 Grant Avenue are contributory resources to the Upper Grant Avenue District, a fully documented district in the North Beach Survey, which survey was formally adopted by Resolution No 772-99 of the Board of Supervisors on August 27, 1999, and as such are considered historic resources. The exterior of the buildings shall be restored and maintained in conformity with the plans attached hereto as Exhibit 1, which plans have been agreed upon by and initialed on behalf of THD and the Property Owner, with the intent to reverse inappropriate alterations made to the buildings in 1998, and to preserve and maintain the architectural character of these buildings. Such plans include without limitation, the removal of the granite facing and restoration of

CERTIFIED COPY

divided clerestory windows with vertical mullions; painted wood windows and doors; removal of the existing exterior light fixtures; differentiating the two buildings with color schemes and tile schemes; and maintaining the historic elements of these buildings' facades. To further the work described above, Property Owner agrees to use the State Historic Building Code as appropriate.

B. The separate identity of the two original buildings and storefronts at 1234 & 1268 Grant Avenue shall be maintained, including the second entry and doorway to the historic La Pantera restaurant at 1234 Grant Avenue and differentiating the two buildings by using different color and tile schemes, with the intent to preserve and maintain the small storefront nature of Grant Avenue and allow for the possibility of re-subdivision of the space in the future. To further this intent, the two interior spaces shall be physically separated as much as possible without impairing handicap accessibility. The separate identity of the two original buildings will be maintained by using each of the buildings for a separate restaurant operation, which may share kitchen and restroom facilities.

C. The historic "LaPantera" sign shall be retained in place.

D. At no time shall the total area used by the public for bar and dining use exceed 2,700 gross square feet as set forth in Exhibit 1 in the areas marked for bar and dining use.

E. The uses of the space shall be limited as follows: (1) dining and bar use shall be limited to the first and second floors only; (2) there will be no dining or bar use on the second floor roof; (3) the third floor (shown as a "mezzanine" on the plans approved as a part of the 1987 CUA) of 1234 Grant Avenue and roof of 1268 Grant Avenue shall be limited to "Management and Operations" uses accessory to restaurant use and shall in no event be used for dining or bar use; (4) there will be no dining or bar use on the basement level; and (5) there will be no stove, oven or other heating element for cooking in the basement. The foregoing notwithstanding, this NSR shall not prevent the second and third floors of the Property from being converted to any use permitted for second floors and above under the North Beach Neighborhood Commercial District controls.

F. A minimum of two (2) street trees shall be planted and maintained in the sidewalk on the Vallejo Street elevation.

G. Property Owner shall not apply for a white zone or valet parking.

H. To further the maintenance of the separate identity of the two original buildings as required by Paragraph B above, the two restaurants will also have distinctively different menus.

I. The Property Owner shall not submit to the San Francisco Department of Building Inspection or the San Francisco Planning Department any plans or applications for the Property, including any plans for alteration or addenda thereto, which do not conform to the terms of this Notice of Special Restrictions and to the plans attached hereto as Exhibit 1. Any and all plans or applications for the Property shall first be submitted to the Telegraph Hill Dwellers for review and approval to assure conformity with the terms of this Notice of Special Restrictions and with the plans attached hereto as Exhibit 1. Applying for or obtaining a permit not in conformity therewith shall constitute a violation of this Notice of Special Restrictions and Property Owner's agreement with THD.

CERTIFIED COPY

J. Property Owner agrees that if at any time in the future, the Property is not being actively used and occupied by a full service restaurant for a period of 18 months or longer, the conditional uses (for full service restaurant use and for a use size that exceeds 1,999 square feet) shall be null and void.

K. THD and the Property Owner agree that this Notice of Special Restrictions shall constitute an agreement between the Property Owner and THD and that THD shall have standing to enforce the terms and conditions of this Notice of Special Restrictions independent of and in addition to any enforcement actions by the City. The current President of THD is a signatory to this Notice of Special Restrictions for the sole purpose of notifying future owners that this Notice of Special Restrictions is an agreement between THD and the Property Owner.

L. In the event of any enforcement actions by THD pursuant to paragraph K, supra, or if litigation regarding this Notice of Special Restrictions is commenced, each party is to bear its own attorneys' fees and costs.

M. No release, modification or elimination of these restrictions shall be valid unless the modification, release or elimination is approved first in writing by the Board of Directors of THD or its successor and Wilbert Wong and notice thereof is recorded on the Land Records by the Property Owner.

N. Each of the Special Restrictions set forth herein shall be and remain conditions on the Property, binding all future owners of the Property.

(Signatures on Next Page)

///

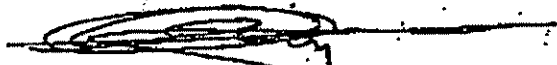
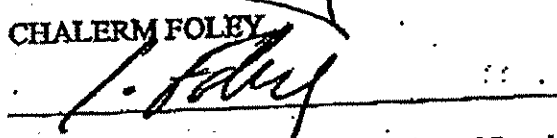
CERTIFIED COPY

O. The Property Owner shall assure the execution and recordation of these specified conditions as a Notice of Special Restrictions at the Office of the County Recorder/County Clerk.

IN WITNESS WHEREOF, the Property Owner has executed this Notice of Special Restrictions with the intent to bind themselves and all future owners of the Property.

Dated: 3-23-2005, at San Francisco, California

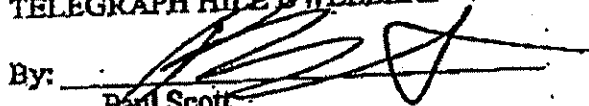
CHRIS FOLEY


CHALERM FOLEY


IN WITNESS WHEREOF, THD has executed this Notice of Special Restrictions to give notice that this is an agreement between THD and the Property Owner.

Dated: 3/23/05, at San Francisco, California

TELEGRAPH HILL DWELLERS

By: 
Paul Scott
President

173864.5

CERTIFIED COPY

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

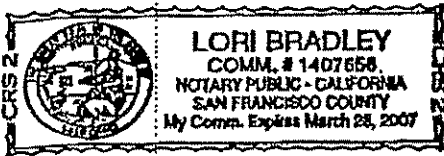
County of San Francisco } ss.

On March 23, 2005 before me, LORI BRADLEY
(Name and Title of Officer (i.e., "Jane Doe, Notary Public"))

personally appeared PAUL SCOTT
(Name(s) of Signer(s))

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Lori Bradley
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Notice of Special Restrictions Under Planning Code

Document Date: _____ Number of Pages: 7

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited; General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____



CERTIFIED COPY

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

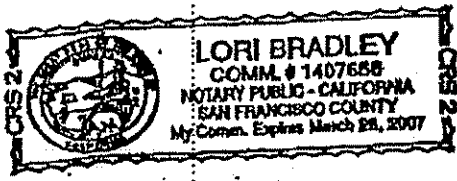
County of San Francisco } ss.

On March 23, 2005 before me, LORI BRADLEY
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Chris Foley
Name of Signer

personally known to me
 proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Lori Bradley
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Notice of Special Restrictions Under Planning Code 7

Document Date: _____ Number of Pages: _____

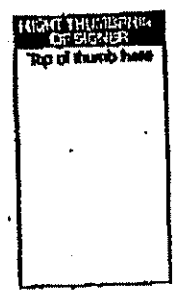
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer is Representing: _____



CERTIFIED COPY

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Francisco } ss.

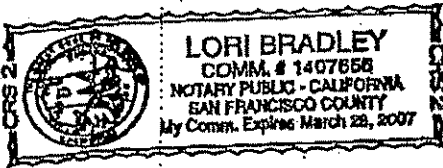
On March 23, 2005 before me,

LORI BRADLEY
Name and Title of Officer (e.g., "Notary Public")

personally appeared

Chakm Foley
Name(s) of Signer(s)

personally known to me;
 proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Lori Bradley
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Notice of Special Restrictions Under Planning Code

Document Date: _____ Number of Pages: 7

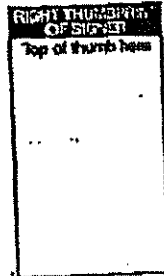
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer is Representing: _____

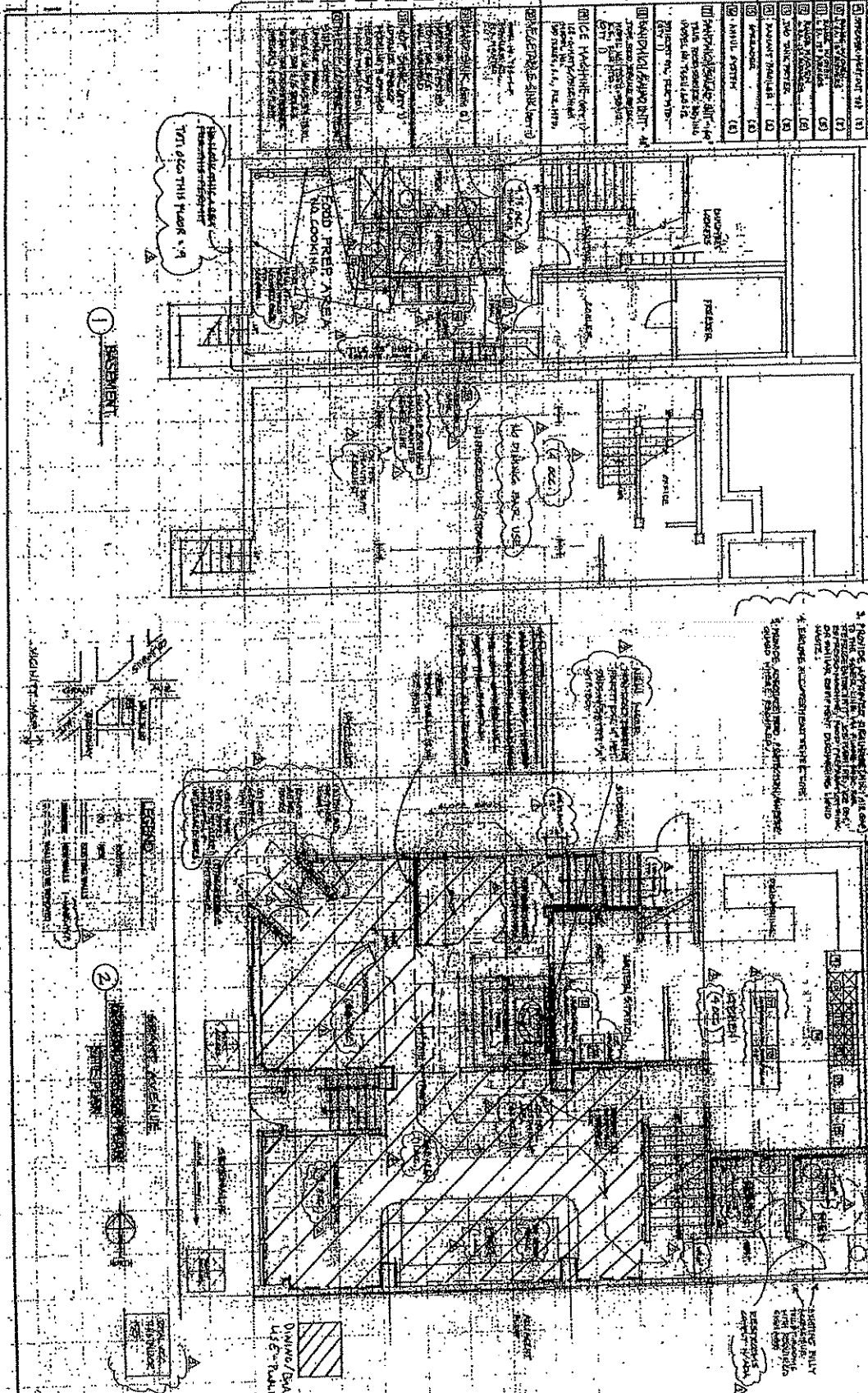


CERTIFIED COPY

EQUIPMENT SCHEDULE

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NOTES: (SEE REVISIONS)

1. PROVIDE SINKS FOR THE FOLLOWING: (1) SINK FOR THE BAR, (2) SINK FOR THE BREAKFAST ROOM, (3) SINK FOR THE KITCHEN, (4) SINK FOR THE RESTAURANT, (5) SINK FOR THE SERVICE AREA, (6) SINK FOR THE WASH AREA, (7) SINK FOR THE WASH AREA, (8) SINK FOR THE WASH AREA, (9) SINK FOR THE WASH AREA, (10) SINK FOR THE WASH AREA, (11) SINK FOR THE WASH AREA, (12) SINK FOR THE WASH AREA, (13) SINK FOR THE WASH AREA, (14) SINK FOR THE WASH AREA, (15) SINK FOR THE WASH AREA, (16) SINK FOR THE WASH AREA, (17) SINK FOR THE WASH AREA, (18) SINK FOR THE WASH AREA, (19) SINK FOR THE WASH AREA, (20) SINK FOR THE WASH AREA, (21) SINK FOR THE WASH AREA, (22) SINK FOR THE WASH AREA, (23) SINK FOR THE WASH AREA, (24) SINK FOR THE WASH AREA, (25) SINK FOR THE WASH AREA, (26) SINK FOR THE WASH AREA, (27) SINK FOR THE WASH AREA, (28) SINK FOR THE WASH AREA, (29) SINK FOR THE WASH AREA, (30) SINK FOR THE WASH AREA, (31) SINK FOR THE WASH AREA, (32) SINK FOR THE WASH AREA, (33) SINK FOR THE WASH AREA, (34) SINK FOR THE WASH AREA, (35) SINK FOR THE WASH AREA, (36) SINK FOR THE WASH AREA, (37) SINK FOR THE WASH AREA, (38) SINK FOR THE WASH AREA, (39) SINK FOR THE WASH AREA, (40) SINK FOR THE WASH AREA, (41) SINK FOR THE WASH AREA, (42) SINK FOR THE WASH AREA, (43) SINK FOR THE WASH AREA, (44) SINK FOR THE WASH AREA, (45) SINK FOR THE WASH AREA, (46) SINK FOR THE WASH AREA, (47) SINK FOR THE WASH AREA, (48) SINK FOR THE WASH AREA, (49) SINK FOR THE WASH AREA, (50) SINK FOR THE WASH AREA, (51) SINK FOR THE WASH AREA, (52) SINK FOR THE WASH AREA, (53) SINK FOR THE WASH AREA, (54) SINK FOR THE WASH AREA, (55) SINK FOR THE WASH AREA, (56) SINK FOR THE WASH AREA, (57) SINK FOR THE WASH AREA, (58) SINK FOR THE WASH AREA, (59) SINK FOR THE WASH AREA, (60) SINK FOR THE WASH AREA, (61) SINK FOR THE WASH AREA, (62) SINK FOR THE WASH AREA, (63) SINK FOR THE WASH AREA, (64) SINK FOR THE WASH AREA, (65) SINK FOR THE WASH AREA, (66) SINK FOR THE WASH AREA, (67) SINK FOR THE WASH AREA, (68) SINK FOR THE WASH AREA, (69) SINK FOR THE WASH AREA, (70) SINK FOR THE WASH AREA, (71) SINK FOR THE WASH AREA, (72) SINK FOR THE WASH AREA, (73) SINK FOR THE WASH AREA, (74) SINK FOR THE WASH AREA, (75) SINK FOR THE WASH AREA, (76) SINK FOR THE WASH AREA, (77) SINK FOR THE WASH AREA, (78) SINK FOR THE WASH AREA, (79) SINK FOR THE WASH AREA, (80) SINK FOR THE WASH AREA, (81) SINK FOR THE WASH AREA, (82) SINK FOR THE WASH AREA, (83) SINK FOR THE WASH AREA, (84) SINK FOR THE WASH AREA, (85) SINK FOR THE WASH AREA, (86) SINK FOR THE WASH AREA, (87) SINK FOR THE WASH AREA, (88) SINK FOR THE WASH AREA, (89) SINK FOR THE WASH AREA, (90) SINK FOR THE WASH AREA, (91) SINK FOR THE WASH AREA, (92) SINK FOR THE WASH AREA, (93) SINK FOR THE WASH AREA, (94) SINK FOR THE WASH AREA, (95) SINK FOR THE WASH AREA, (96) SINK FOR THE WASH AREA, (97) SINK FOR THE WASH AREA, (98) SINK FOR THE WASH AREA, (99) SINK FOR THE WASH AREA, (100) SINK FOR THE WASH AREA.

RESTAURANT
124 & 1268 GRANT AVENUE
SAN FRANCISCO, CA 94133

HTAI
ARCHITECTS
1000 MARKET STREET
SAN FRANCISCO, CA 94102
415.774.8888
www.htai.com



SAN FRANCISCO PLANNING DEPARTMENT

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

SEP 7 PM 4:50

BY [Signature]

NEIGHBORHOOD ORGANIZATION FEE WAIVER REQUEST FORM

Appeals to the Board of Supervisors

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

This form is to be used by neighborhood organizations to request a fee waiver for CEQA and conditional use appeals to the Board of Supervisors.

Reception:
415.558.6378

Should a fee waiver be sought, an appellant must present this form to the Clerk of the Board of Supervisors or to Planning Information Counter (PIC) at the ground level of 1660 Mission Street along with relevant supporting materials identified below. Planning staff will review the form and may sign it 'over-the-counter' or may accept the form for further review.

Fax:
415.558.6409

Should a fee waiver be granted, the Planning Department would not deposit the check, which was required to file the appeal with the Clerk of the Board of Supervisors. The Planning Department will return the check to the appellant.

Planning
information:
415.558.6377

TYPE OF APPEAL FOR WHICH FEE WAIVER IS SOUGHT

[Check only one and attach decision document to this form]

- Conditional Use Authorization Appeals to the Board of Supervisors
- Environmental Determination Appeals to the Board of Supervisors (including EIR's, NegDec's, and CatEx's, GREs)

REQUIRED CRITERIA FOR GRANTING OF WAIVER

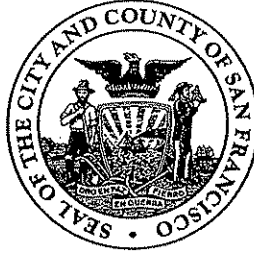
[All criteria must be satisfied. Please check all that apply and attach supporting materials to this form]

- The appellant is a member of the stated neighborhood organization and is authorized to file the appeal on behalf of that organization. Authorization may take the form of a letter signed by the president or other officer of an organization.
- The appellant is appealing on behalf of a neighborhood organization which is registered with the Planning Department and which appears on the Department's current list of neighborhood organizations.
- The appellant is appealing on behalf of a neighborhood organization, which was in existence at least 24 months prior to the submittal of the fee waiver request. Existence may be established by evidence including that relating to the organization's activities at that time such as meeting minutes, resolutions, publications, and rosters.
- The appellant is appealing on behalf of a neighborhood organization, which is affected by the project, which is the subject of the appeal.

APPELLANT & PROJECT INFORMATION [to be completed by applicant]	
Name of Applicant: <u>VEDICA PURI, President</u>	Address of Project: <u>1268 GRANT AVE.</u>
Neighborhood Organization: <u>TELEGRAPH HILL DWELLERS</u>	Planning Case No: <u>2010.0438C</u>
Applicant's Address: <u>P.O. Box 330159 SF 94133</u>	Building Permit No: <u>N/A</u>
Applicant's Daytime Phone No: <u>415-433-8000</u>	Date of Decision: <u>AUGUST 5, 2010</u>
Applicant's Email Address: <u>PRESIDENT@TELTHD.ORG</u>	

DCP STAFF USE ONLY	
<input type="checkbox"/> Appellant authorization	Planner's Name: _____
<input type="checkbox"/> Current organization registration	Date: _____
<input type="checkbox"/> Minimum organization age	Planner's Signature: _____
<input type="checkbox"/> Project impact on organization	
<input checked="" type="checkbox"/> WAIVER APPROVED	<input type="checkbox"/> WAIVER DENIED

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 544-5227

September 10, 2010

John Rahaim, Director
Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103

**File No. 101135, Planning Case No. 2010.0438C
1268 Grant Avenue Conditional Use Appeal**

Dear Director Rahaim:

This office is in receipt of an appeal from the decision of the Planning Commission by its Motion No. 18160 dated August 5, 2010, approving a Conditional Use Authorization pursuant to Application No. 2010.0438C, to allow an Other Entertainment use, as defined in Planning Code Section 790.38, in an existing restaurant and bar (dba King of Thai Noodle House) located at 1268 Grant Avenue, within the North Beach Neighborhood Commercial District (NCD), the 40-X Height and Bulk District, and the North Beach Special Use District, in Assessor's Block No. 0145, Lot No. 032.

Pursuant to Ordinance No. 121-01, Supervisors David Chiu, John Avalos, David Campos, Eric Mar, and Sophie Maxwell, subscribed to this conditional use appeal as an alternative to obtaining the signatures of 20% of the property owners within 300 feet of the subject property. The hearing on the appeal is scheduled to be heard by the Board of Supervisors on Tuesday, October 5, 2010, at 4:00 p.m.

Sincerely,

A handwritten signature in black ink, appearing to read "Angela Calvillo".

Angela Calvillo
Clerk of the Board

c:

Appellant, Vedica Puri, President, Telegraph Hill Dwellers, P.O. Box 330159, San Francisco, CA 94133
Property Owner, Saranya and Anthony Chaichana, 1268 Grant Avenue, San Francisco, CA 94133, w/copy of appeal
Project Sponsor, Marsha Garland, 535 Green Street, San Francisco, CA 94133, w/copy of appeal
Scott Sanchez, Acting Zoning Administrator, Planning Department, w/copy of appeal
Bill Wycko, Environmental Review Officer, Planning Department, w/copy of appeal
AnMarie Rodgers, Planning Department, w/copy of appeal
Tara Sullivan, Planning Department, w/copy of appeal
Rick Crawford, Planning Department, w/copy of appeal
Cheryl Adams, Deputy City Attorney, w/copy of appeal
Kate Stacy, Deputy City Attorney, w/copy of appeal
Marlena Byrne, Deputy City Attorney, w/copy of appeal

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

NOTICE OF PUBLIC HEARING

BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO

NOTICE IS HEREBY GIVEN THAT the Board of Supervisors of the City and County of San Francisco will hold a public hearing to consider the following proposal and said public hearing will be held as follows, at which time all interested parties may attend and be heard:

Date: Tuesday, October 5, 2010

Time: 4:00 p.m.

Location: Legislative Chamber, Room 250 located at City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102

Subject: File No. 101135. Hearing of persons interested in or objecting to the decision of Planning Commission's August 5, 2010, Conditional Use Authorization identified as Planning Case No. 2010.0438C, by its Motion 18160, under Planning Code Section 790.38, to allow an Other Entertainment use, in an existing restaurant and bar (dba King of Thai Noodle House) located at 1268 Grant Avenue, within the North Beach Neighborhood Commercial District (NCD), the 40-X Height and Bulk District, and the North Beach Special Use District (SUD), in Assessor's Block No. 0145, Lot No. 032. (District 3) (Filed by Vedica Puri, on behalf of the Telegraph Hill Dwellers, and subscribed by Supervisors Chiu, Avalos, Campos, Mar, and Maxwell)

Pursuant to Government Code Section 65009, notice is hereby given, if you challenge, in court, the matter described above, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Board of Supervisors at, or prior to, the public hearing.

In accordance with Section 67.7-1 of the San Francisco Administrative Code, persons who are unable to attend the hearing on these matters may submit written comments to the City prior to the time the hearing begins. These comments will be made a part of the official public records in these matters, and shall be brought to the attention of the Board of Supervisors. Written comments should be addressed to

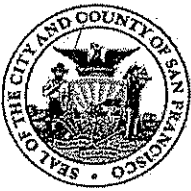
mailed - 9/24/10

Angela Calvillo, Clerk of the Board, Room 244, City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102. Information relating to this matter is available in the Office of the Clerk of the Board and agenda information will be available for public review on Thursday, September 30, 2010.



Angela Calvillo
Clerk of the Board

DATED: September 24, 2010



SAN FRANCISCO PLANNING DEPARTMENT

BOS-11
C.A. 2

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax
415.558.6409

Planning
Information:
415.558.6378

Conditional Use Authorization Appeal 1268 Grant Avenue

DATE: September 28, 2010
TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: John Rahaim, Planning Director – Planning Department (415) 558-6421
Rick Crawford, Case Planner – Planning Department (415) 558-6358
RE: BOS File No. 101135, Planning Case No. 2010.0438C
Appeal of Conditional Use Authorization for 1268 Grant Avenue
HEARING DATE: October 5, 2010

2010 SEP 29 PM 12:40

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

PROJECT SPONSOR: Marsha Garland, 535 Grant Avenue, San Francisco, CA 94133
APPELLANT: Vedica Puri, President, Telegraph Hill Dwellers, P.O. Box 330159, San Francisco, CA 94133

INTRODUCTION

This memorandum and the attached documents are a response to an appeal to the Board of Supervisors (the "Board") regarding the Planning Commission's ("Commission") August 5, 2010 approval of the application for Conditional Use Authorization under Planning Code Sections 303 (Conditional Use Authorization), and 722.48 (Other Entertainment), to allow a karaoke machine in the existing ground floor bar area at 1268 Grant Avenue - the King of Thai Noodle Restaurant - located within the North Beach Neighborhood Commercial District ("North Beach NCD") and the North Beach Special Use District.

This response addresses the documents submitted to the Board filed on September 7, 2010 and September 27, 2010 by Vedica Puri, President, Telegraph Hill Dwellers.

It has come to the attention of the Planning Department that the project sponsor has violated previous Conditional Use Authorization(s) and Notice of Special Restrictions imposed on the property. As such, the Department is requesting that the Board of Supervisors disapprove this Conditional Use Authorization and allow the Planning Commission to re-hear this case so they can review all of the outstanding issues regarding this property.

SITE DESCRIPTION & PRESENT USE

The Project Site is located at 1268 Grant Avenue at the southeast corner of Grant Avenue and Vallejo Street. The property is located within the North Beach NCD, the 40-X Height and Bulk District, and the North Beach Special Use District. The Project Site is developed with a three-

story mixed-use building with an office use on the top floor situated over the subject restaurant and bar which occupies both the first and second floors of the building.

It should be noted that the property consists of two parcels: lots 031 & 032 in block 0145.

SURROUNDING PROPERTIES AND NEIGHBORHOOD

The area surrounding the Project Site is mixed-use in character. A variety of commercial establishments are located within ground floor storefronts, including restaurants, financial institutions, apparel stores, and other types of retailers. Upper floors of buildings are generally occupied by offices, residential units, or tourist-hotels. Other uses in the vicinity include the Church of Saints Peter and Paul and Washington Square Park (located to the north).

PROJECT DESCRIPTION

The existing restaurant and bar known as "King of Thai Noodle House" is located at the southeast corner of Grant Avenue and Vallejo Street. The project is to install a karaoke machine in the existing ground floor bar area. Under Planning Code Section 790.38, a karaoke machine is classified as an 'Other Entertainment' use and requires a Conditional Use Authorization within the North Beach NCD. The karaoke machine will be located to the right hand side of the bar near the front of the facility. No other changes are proposed to the interior or exterior of the business.

BACKGROUND

1987 – Expansion of Existing Full Service Restaurant

On March 19, 1987 the Planning Commission granted a Conditional Use Authorization for the expansion of a restaurant, dba "Basta Pasta" onto the 2nd floor. At this time the first two floors of the building became used for eating and drinking uses.

1999- 2010

In 1999, the owner of Basta Pasta applied for a Conditional Use Authorization to establish an 'Other Entertainment' use. The application was eventually withdrawn by the project sponsor.

In 2004 the Planning Department authorized the continuation of the full service restaurant and associated bar use for a new Thai restaurant (dba "Citizen Thai"). Since that time the Planning Department has authorized the continuation of a number of Thai restaurants at this location, with the last authorization conducted in April 2008.

In 2004 Building Permit Application No. 2004.1123.9923 was appealed to the Board of Appeals. The Appellant contested a Letter of Determination issued by the Zoning Administrator on November 8, 2004 (and thus the Building Permit that was issued based on the letter), stating that the existing Thai restaurant, despite a change in ownership, did not have to go through the Conditional Use Authorization process to re-establish a full-service restaurant at 1268 Grant Avenue because the use had not been abandoned pursuant to Planning Code Section 186.1(d).

On April 5, 2005, the Board of Appeals adopted findings regarding the withdrawal of this appeal. The Board acknowledged that the parties had reached an agreement regarding the full service restaurant and bar use at 1268 Grant Avenue. The agreement was formalized in a Notice of Special Restriction ("NSR")

(2005-H928242-00) and placed on the property. The Board conditioned the withdrawal of the appeal on the terms of the NSR. Included in this NSR were floor plans that delineated the areas dedicated to white-cloth table service, bar areas, and office/management areas.

2008 – Change in Ownership

In early 2008, the property at 1268 Grant Avenue was sold to the existing owners. The uses in the building remained a full-service restaurant and associated bar use on the first and second floors. It is unclear whether the new owners were aware of the previous restrictions placed on the property.

2010 – Conditional Use Authorization Application filed

The project sponsor submitted a Conditional Use Authorization application on June 9, 2010 to install an 'Other Entertainment' use at the ground floor restaurant and bar.

The Project was determined by the San Francisco Planning Department to be categorically exempt from environmental review under class 1(a).

2010 – Conditional Use Authorization hearing

At the August 5, 2010 public hearing, the Commission granted a Conditional Use Authorization pursuant to Section 722.48 for an 'Other Entertainment' use consisting of the installation of a karaoke machine on the ground floor in the bar at the subject property.

PLANNING DEPARTMENT REQUEST

When the appeal of the Conditional Use Authorization to the Board of Supervisors was filed on September 10, 2010, the Department conducted a thorough investigation into the history of the property and past entitlements. The Department conducted a site visit on September 28, 2010 and determined that the current owners have intensified the bar use on the second floor without benefit of a Conditional Use Authorization.

The Planning Commission should have all of the necessary information in front of them when deciding whether to grant a Conditional Use Authorization for an Other Entertainment use at 1268 Grant Avenue. As such, the Department is requesting that the Board disapprove the Conditional Use Authorization granted on August 5, 2010 and request that the Planning Commission re-hear the item with all of the new information.



Fw: File No. 101135 - 1268 Grant Avenue Conditional Use Appeal
Board of Supervisors to: Joy Lamug, Rick Caldeira

09/24/2010 04:53 PM

From: Board of Supervisors/BOS/SFGOV
To: Joy Lamug/BOS/SFGOV@SFGOV, Rick Caldeira/BOS/SFGOV@SFGOV

From: Marsha Garland <marshagarland@att.net>
To: Board.of.Supervisors@sfgov.org
Date: 09/23/2010 04:34 PM
Subject: File No. 101135 - 1268 Grant Avenue Conditional Use Appeal

We are in receipt of the notification of appeal for our client at 1268 Grant Avenue. We are hereby requesting a postponement of this hearing since both the client and I will be traveling during that time. My travel plans were made a couple of months ago. Please let me know how to proceed with this request.

Thank you.

Marsha Garland
Garland Public & Community Relations
Buon Gusto Sausage Factory Building
535 Green Street
San Francisco, CA 94133
Phone: 415-956-0279
Mobile: 415-531-2911
E-Mail: marshagarland@att.net

Also on the Premises:

The Buon Gusto Gallery: An Art & Events Gallery



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BOS-11
CA-2
P.O.-1
P.S.-1



September 27, 2010

Supervisor David Chiu
President, Board of Supervisors
City Hall, Room 244
San Francisco, CA 94102

File 101135

BY [Signature]

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2010 SEP 27 PM 3:54

Subject: Appeal of Conditional Use Application
1268 Grant Avenue, San Francisco, CA
Planning Department Case Number 2010.0438C

Dear Supervisor Chiu and Members of the Board of Supervisors,

On June 9, 2010, Saranya and Anthony Chaichana, the property owners and owners of the King of Thai Noodle House ("Applicants") submitted a conditional use application to add "other entertainment" use to the ground floor of the restaurant. The Planning Commission ("Commission") adopted Motion No. 18160 on August 5, 2010, granting the conditional use. On September 7, 2010, the Telegraph Hill Dwellers ("THD") filed a notice with the Board of Supervisors ("Board") appealing the conditional use application granted to the Applicants.

One basis of this appeal is that critical information was not provided to the Commission before it granted the above-referenced conditional use. Another basis of the appeal is that the Applicant is slowly but surely converting a full service restaurant into a completely different kind of venue not allowed under North Beach Neighborhood District controls or an existing Notice of Special Restriction (NSR). This is not a simple issue of adding a Karaoke machine or a couple of pool tables -- it is a concerted effort by the Applicant to do an end run around well-established rules that cannot be supported.

With respect to key information withheld from the Commission, first, while the existence of a 1987 conditional use authorization was mentioned at the hearing, the Commission was not provided with a copy of that Motion. Second, the Commission was not advised of the conditions of approval imposed by the Board of Appeals in 2005 on the previous property owners and operators (of the restaurant formerly known as *Citizen Thai and the Monkey*). Third, the Applicants failed to inform the Commission of the written agreement between the previous owner, the Board of Appeals appellant and THD. Finally, and most egregious, the Applicants failed to advise the Commission of the result of that written agreement -- the binding NSR

recorded on March 28, 2005 intended to run with the property in perpetuity. All of the terms and conditions of the agreement and the NSR are binding upon the Applicants and all future property owners and operators.

This most recent conditional use approval granted by the Commission, being Commission Motion No. 18160, should be overturned because

- The Applicants failed to disclose that they had already obtained another permit for other entertainment (pool table) from the Entertainment Commission;
- The Applicants failed to disclose that they are operating a sports bar on the second floor;
- The unauthorized use of the second floor of the premise as a Sports Bar is prohibited by the Planning Code;
- The use of spaces within the premises for uses not included in the plans approved in 2005 violates the conditions imposed by the Board of Appeals; and
- The proposed uses do not meet the criteria for a conditional use application set forth in Section 303(c) of the Planning Code.

For the reasons discussed below, THD respectfully requests that the decision of the Commission be overturned.

PROJECT SITE AND BACKGROUND INFORMATION

1. Project Site

The property, which is the subject of the conditional use approval, consists of two interconnected buildings with two separate street addresses (1268 Grant Avenue and 1234 Grant Avenue, collectively referred to as the "Site"). The 1234 building is two-stories high with a partial basement, while the 1268 building has a partial third floor and a partial basement. The Site is located at the northeast corner of Grant Avenue and Vallejo Street and in the North Beach Neighborhood Commercial District and the North Beach Special Use District. Aerial photographs and photographs of the Site are attached hereto as **Exhibit 1**.

The building at 1234 Grant Avenue was the home of historic *La Pantera Restaurant*, and the building at 1268 Grant Avenue was the original *New Pizza*, both famous North Beach Restaurants dating back to the 1940s until they ceased operation in the 1980s and 1970s respectively. The *New Pizza* became the *Basta Pasta Restaurant*. In 1987, the buildings and lots were merged into one¹ by the owners of *Basta Pasta*. In 2004, Chris Foley and his wife

¹ In 1987, the former lots 21 and 32 were merged and DPW assigned a new lot number (lot 41) to this parcel.

purchased the buildings and the restaurant with the sole purpose of operating their second Thai Restaurant, *Citizen Thai and the Monkey*. Under the Foleys' ownership, the restaurant retained the dual personalities of the original 2 buildings. The La Pantera building retained its original bar on the ground floor and the remaining space on the ground floor and all of the second floor space was used as a Noodle House with an inexpensive menu and communal dining tables. The New Pizza building had an extensive restaurant menu and was operated on the ground floor and second floor as a reasonably priced fine dining restaurant complete with table clothed tables. The partial third floor of the New Pizza building was used as an office. The basement areas, which are not interconnected, housed the wine cellar, storage, cold storage, bath rooms and employees' locker area. While the bar on the ground floor of the La Pantera building was open to the public, its main purpose was to serve the patrons waiting for a table and the diners in the restaurant. In short, the restaurant, with its 2 separate menus, was a "bona-fide" full service restaurant with the bar being ancillary to the full service restaurant use, operating in accordance with the conditions of its Type 47 liquor license for "on sale general eating place."

2. Permit History

In 1987, the owners of the *Basta Pasta Restaurant* submitted a conditional use application to expand the restaurant to the second floor and to add a partial third floor to the La Pantera building.² Although very controversial at the time, this conditional use application was ultimately supported by the neighbors because it would rehabilitate the then vacant La Pantera property and would maintain and preserve the separate identity of and the significant elements of the La Pantera façade by setting back the mezzanine level from the street. A copy of the 1987 Commission Motion No. 10962 is attached hereto as **Exhibit 2**.

Shortly after the 1987 conditional use approval, the North Beach Neighborhood Commercial District (NCD) was added as part of a citywide neighborhood commercial district rezoning effort and the restaurant became a lawful non-conforming use because it exceeded the use limit of 3,999 square feet and because restaurant use is not allowed above the first floor of a building under the North Beach NCD controls.

Basta Pasta Restaurant ceased operation in 2001 as a result of the downturn in business after the dot.com bust and was listed for lease or sale with the building. With no purchaser, the owner of Basta Pasta submitted an application to reopen the restaurant with amplified live and recorded music, but withdrew said application due to strong neighborhood opposition.

After purchasing the buildings, on November 23, 2004, the Foleys filed an alteration permit application to do minor renovation to the restaurant premises, which included constructing new non-baring partitions, a wine cellar and other improvements in the basement areas. This permit application was approved over-the-counter as there was no change to the exterior of the building and only minor non-structural work was proposed.

² The term "mezzanine" was used in the 1987 conditional use approval motion, when it is a third floor under the Building Code.² The use size would be 1,999 sf as a principal permitted use, and up to 3,900 sf with conditional use. In this case, the lot area of each building is 20'x57' (or 1,140 sf).

The owner of another Thai restaurant on the next block of Grant Avenue appealed the issued permit application to the Board of Appeals (Appeal No. 04-183). THD intervened and worked extensively with the parties to resolve the issues. The parties to this appeal agreed to execute a Notice of Special Restriction ("NSR"), which became the basis of the findings and conditions of approval by the Board of Appeals. The NSR was thereafter recorded in the Office of the San Francisco Recorder as Document No. 2005-H928242-00. A copy of the NSR is attached hereto as **Exhibit 3**. A copy of the Board of Appeals' decision and findings is attached hereto as **Exhibit 4**.

The Board of Appeals specifically found that the agreement and NSR would enable the restaurant to operate in a manner that is more compatible with the current Planning Code provisions governing the North Beach NCD and with the conditions of approval contained in the 1987 conditional use authorization. The Board further found that the NSR requirement to differentiate the two buildings, both interior and exterior, including two separate restaurant operations and the use of two distinct restaurant menus, would contribute to the preservation and maintenance of the small storefront nature of Grant Avenue and allow for the possibility of re-subdivision of these spaces in the future. The specific use of each floor space or room in these buildings was clearly identified in the plans approved by the Board of Appeals. See **Exhibit 4** for copies of the plans approved by the Board of Appeals. In conflict with the plans approved by the Board of Appeals, the plans presented to the Commission by the Applicants as a part of their conditional use application show the entire ground floor area of the La Pantera building as a bar, with the area designated for Karaoke being located in an area specifically approved by the Board of Appeals as a dining area for the "Noodle Bar" restaurant. The ground floor plan that was attached to the Applicant's conditional use application is attached hereto as **Exhibit 5**.

3. **Conditions of Approval Imposed by the Board of Appeals**

The conditions of approval agreed to by the parties and imposed by the Board of Appeals in 2005 governing the use of the building are:

- Retain the historic "La Pantera" sign;
- Limit the square footage of the area used for bar and dining to less than 2,700 sf per the plans attached to the decision (see Exhibit 3, page 2);
- Disallow use of the roof areas of either building for dining or bar use;
- Limit the use of the partial third floor to an office for the management of the restaurant; and
- No dining or cooking in the basement area.

These conditions were imposed to ensure that the restaurant would be operated in a manner more compatible with the current land use regulations governing the North Beach

Neighborhood Commercial District and that the small-scale character of North Beach uses would be preserved and enhanced.

THE CONDITONAL USE AUTHORIZATION SHOULD BE OVERTURNED

1. ***The Applicants Misrepresented the Nature and Scope of the Proposed Project to the Commission and the Use of the Building violates the Planning Code.***

In its conditional use application, the Applicants listed the proposed use as a full service restaurant and bar with ground floor entertainment. However, the Applicants have already transformed the primary use from a full service restaurant with a bar that services the restaurant, to a sports bar with “other entertainment.”

The Applicants have:

- Failed to disclose that they applied for an Entertainment Permit from the Entertainment Commission for two pool tables for “King of Cha Cha” located at 1268 Grant Avenue on February 16, 2010. A copy of the Entertainment Commission calendar is attached hereto as **Exhibit 6**.
- The signage on the windows of the La Pantera Building advertising a “Sports Bar,” \$2 drinks and free snacks clearly demonstrates the intent of the Applicant to turn the primary use from a full service restaurant to a bar. Photographs of the existing window signage are attached hereto as **Exhibit 7**.
- Removed dining tables from the second floor and replaced them with leather couches, coffee tables, bar tables and big screen TVs. Photographs of the second floor bar and furnishings are attached hereto as **Exhibit 8**.
- As currently operated, with a Sports Bar on the second floor, future Karaoke on the ground floor, and a permit from the Entertainment Commission for pool tables, the bar and other entertainment uses will effectively replace restaurant operations as the primary use.

As a matter of public policy, applicants should not benefit from a conditional use authorization granted as a result of misrepresenting the entire scope of their use of the premises, or from using the premises contrary to the Planning Code, a recorded NSR, or a previous Board of Appeals’ decision.

2. ***The Use of the Premises as a Sport Bar on the Second Floor Violates Planning Code Section 722.41.***

The Applicants are currently using the second floor dining areas as a de facto sports bar/lounge as evidenced by an internet article touting the King of Thai Noodle House as “an

honest to God sports bar” with “four giant HD sets, ridiculously cheap drinks and food.” A print out from the internet article on King of Thai as the *best secret sports bar* is attached hereto as **Exhibit 9**. Customer reviews from the YELP web site on the Internet, testifying to the use and furnishings of the second floor, are attached hereto as **Exhibit 10**. This change in use was not disclosed to the Planning Commission. The San Francisco Police Department opposed this conditional use for other entertainment because such a “club-like” establishment could move criminal activities currently plaguing Broadway to Grant Avenue which is much more residential in character.

The fact that the Applicants have transformed the second floor dining areas to a sports bar was *deliberately* hidden from the Planning Department and the Planning Commission by the Applicant. Therefore, the Commission did not have all the relevant information when it acted on the challenged conditional use application.

Planning Code Section 722.41 prohibits the operation of any bar on the second floor of any building in the North Beach Neighborhood Commercial District. For this reason alone, the conditional use authorization should be overturned. And the Board of Supervisors should instruct the Planning Department to abate said violations.

3. *The Use of the Building Violates the Conditions of Approval Imposed by the 1987 Condition of Approval.*

The 1987 conditional use authorization allowing expansion of the Basta Pasta Restaurant to the second floor the La Pantera building was limited to restaurant use. The small bar allowed on the first floor was to serve the patrons of the restaurant and those awaiting a table. The use of the second floor as a sports bar, therefore, violates the conditions of approval in the 1987 Commission conditional use authorization.

4. *The Use of the Premises for “Other Entertainment” or a Billiard Parlor or a Sports Bar Violates the Conditions of Approval Imposed by the Board of Appeals.*

The first condition of approval imposed by the Board of Appeals was that renovation of the premises had to conform to the approved plans. See **Exhibit 5**. At the Commission hearing on the Conditional Use application for “other entertainment,” Commissioner Miguel and others were concerned with the broad definition of the term “other entertainment” and inquired of staff if the application would be limited to “a Karaoke Machine.” Staff responded that the Application was only for a Karaoke Machine³ and that the Entertainment Commission had approved the entertainment permit for Karaoke in February. The Applicants never informed the Commission that they had also applied for a permit from the Entertainment Commission for two pool tables (under the business name of King of Cha Cha) for the second floor of the subject

³ The conditional use application stated the “Project sponsor wants to add entertainment (Karaoke music) to the ground floor.”

premises.⁴ Addition of even one pool table will essentially eliminate dining in the La Pantera building.

The Applicants' intentions are clear. They intend to go through serial permitting to change the operation from a full service restaurant to a bar with other entertainment uses with food service being secondary.

5. **The Proposed and Actual Uses Do Not Meet the Conditional Use Criteria of Planning Code Section 303(c)**

Evaluation of any conditional use application must be performed within the context of the project site's surrounding. In this case, the site is in the North Beach Special Use District and the North Beach NCD, which can be divided into two distinct segments. The first segment is the commercial frontage along Columbus Avenue from Broadway to Washington Square that hosts specialty shopping and dining that attracts many tourists. The second segment is along Grant Avenue which contains residential/commercial mixed-use buildings which contain a large number of residential units above the ground floor; the character of the ground floor commercial uses and restaurants are more neighborhood serving and less intensive compared to those on Columbus Avenue and serve as a transition zone to the immediately adjacent residential district (RM-1) to the east. As one travels north on Grant Avenue, it becomes increasingly residential in nature. The site context is critical to the analysis of a project's compliance with the Section 303(c) criteria.⁵ No information describing the context of the site was presented by the Planning Department to the Commission.

(A) Although the Commission's approval of the addition of "other entertainment" use is limited, for now, to a karaoke machine and thus would have negligible impact on the neighborhood, the facts make it evident that the site is no longer a bona-fide full service restaurant operating consistent with a Type 47 liquor license, but is now primarily a sports bar or a bar with entertainment. This was never disclosed to nor discussed by the Commission. A sports

⁴ In an e-mail from Applicants' representative to the Entertainment Commission, which read in part, "*King of Thai Noodle at 1268 Grant Avenue has applied for an entertainment permit for two pool tables on the second floor which will come before the Entertainment Commission on February 16th. This is permitted as an accessory use although other entertainment is not permitted on the second floor of the establishment. We have contacted SFPD - Central regarding this. See Permit Officer Matthias' e-mail below. As we have explained before, this is a full service restaurant. Recently you granted permission for an entertainment permit on the first floor for karaoke music. Now we are seeking to add two pool tables to the second floor.*" Other entertainment (including pool tables) is not an accessory use under Planning Code Section 703.2(b)(1)(C)(ii), contrary to Applicants' statement to the Entertainment Commission.

⁵ Under Section 303 of the Planning Code, the criteria for granting a Conditional Use Authorization include the following: (1) That the proposed use or feature, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community; (2) That such use or feature as proposed will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity, or injurious to property, improvements or potential development in the vicinity; (3) That such use or feature as proposed will comply with the applicable provisions of this Code; and (4) That such use or feature as proposed will provide development that is in conformity with the stated purpose of the applicable Neighborhood Commercial District.

bar with entertainment is not "necessary or desirable" within the neighborhood because the site is immediately adjacent to a residential (RM-1) district and is located in the most densely populated residential mixed-use area of the North Beach Neighborhood Commercial District.

(B) Given the recent shootings and other crimes on Broadway, the Police Department is rightfully concerned with criminal activities spreading to Grant Avenue, which is much more of a residential mixed use area. Instead of continuing the hearing to obtain additional information from the Police Department, the Commission merely brushed its opposition aside. Increase in criminal activities would be "detrimental to the health, safety, convenience, and general welfare of the persons residing or working in the vicinity, and be injurious to property, improvement and potential development in the vicinity."

(C) The North Beach Neighborhood Commercial and Special Use Districts were designed to maintain the delicate balances of an area that caters both to the entire City and tourists, as well as the local residents. The premises will be used by the Applicants in a manner that would not be consistent with the predominately residential character of the project vicinity in that the premises will no longer be a bona-fide eating-place as defined in Section 790.142 of the Planning Code.⁶

(D) Both the 1987 Conditional Use Motion and the 2005 Board of Appeals' decision recognized the historic architectural character of these buildings, and the building renovation by the Foleys was designed to restore and maintain the character of these historic buildings.⁷ Until the King of Thai took over operation of these premises, the signage was discrete and in keeping with the character of these historic buildings. The current signage is loud and incompatible with the character of these historic resources. Signage also completely covers some of the elements of the façade that were required to be restored by the 2005 Board of Appeals' decision.

CONCLUSION

While the addition of a Karaoke machine on the ground floor of the La Pantera Building may not have a significant adverse affect on the neighborhood, the Applicants, however, have demonstrated their intent to convert a full service restaurant with a Type 47 liquor license into a sports bar, with entertainment and food service as the accessory use. The Applicants and their representative failed to disclose the true nature of the operation to the Planning Commission. As a result, the Board is well within its rights to and should reverse the Commission's decision to grant the conditional use authorization.

⁶ Section 790.91 of the Planning Code, governing the North Beach NCD, provides that in order for a full service restaurants to maintain an ABC license type 47, so that liquor may be served for drinking on the premises, the bar function must be operated as an integral element of an establishment which is classified both as: (A) a full-service restaurant as defined in § 790.92 and (B) a 'bona-fide eating place' as defined in § 790.142; and that the Commission may consider immediate revocation of a previous conditional use authorization should an establishment no longer comply with any of the criteria set forth above in (a) or (b) of this Section for any length of time.

⁷ The inappropriate granite cladding on the old New Pizza Restaurant was removed and the façade, including the clerestory windows, were restored to its historic character.

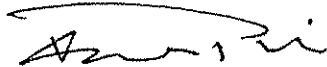
At a minimum, this Board should modify the conditions of the Commission's approval of Motion No. 18160 by adding the following additional conditions:

- (1) Incorporate the conditions in the 1987 Planning Commission Motion;
- (2) Impose as additional conditions of approval those conditions in the recorded NSR governing the operations of the subject premises, acknowledging that such conditions are currently binding on the Applicants and all future owners of the Site;
- (3) Require that the dining tables on the ground floor of La Pantera be retained;
- (4) Prohibit the use of any portion of the second floor as a bar and require that the second floor be used only as a portion of a bona-fide restaurant as defined in Section 790.142 of the Planning Code; and
- (5) Prohibit the use of any portion of the premises as a nightclub.

With the additional conditions of approval, THD believes that a conditional use application limiting the other entertainment use to just one Karaoke machine would meet the criteria of Section 303(c) of the Planning Code.

If you have any questions, please contact the undersigned directly at president@thd.org.

Sincerely yours,



Vedica Puri
President

Enclosures: Exhibits 1 through 10

cc: Supervisor Alioto-Pier
Supervisor John Avalos
Supervisor David Campos
Supervisor Carmen Chu
Supervisor Chris Daly
Supervisor Bevan Dufty
Supervisor Sean Elsbernd
Supervisor Eric Mar
Supervisor Sophie Maxwell
Supervisor Ross Mirkarimi
Angela Calvillo, Clerk of the Board

TABLE OF EXHIBITS

- Exhibit 1** Aerial photographs and photographs of the Site
- Exhibit 2** 1987 Commission Motion No. 10962
- Exhibit 3** Notice of Special Restriction recorded against the Project Site
- Exhibit 4** Board of Appeals' decision and findings
- Exhibit 5** Plans approved by the Board of Appeals
- Exhibit 6** February 16, 2010 Agenda of the Entertainment Commission
- Exhibit 7** Window signage submitted by the Applicants as part of its conditional use application
- Exhibit 8** Photograph of the second floor furnishing in the dining area
- Exhibit 9** Internet article on King of Thai as the best secret sports bar
- Exhibit 10** YELP reviews from the Internet