



SAN FRANCISCO PLANNING DEPARTMENT

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Planning Commission Motion No. 19060

HEARING DATE: JANUARY 9, 2014

Date: January 9, 2014
Case No.: **2013.1420C**
Project Address: **2168-2174 Market Street**
Zoning: Upper Market Neighborhood Commercial Transit District
40/50-X Height and Bulk District
Block/Lot: 3542/017
Project Sponsor: Enrique Landa
2170 Market Street
San Francisco, CA 94114
Staff Contact: Casey Noel – (415) 575-9125
casey.noel@sfgov.org
Recommendation: **Approval with Conditions**

ADOPTING FINDINGS RELATING TO THE APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303, 733.44, 733.21, 790.130 and 186.2 OF THE PLANNING CODE TO ALLOW THE EXPANSION OF THE EXISTING RESTAURANT/BONA FIDE EATING PLACE USE TO THREE LEVELS (BASEMENT THROUGH SECOND FLOOR) WITHIN THE UPPER MARKET NCT (NEIGHBORHOOD COMMERCIAL TRANSIT) AND A 40/50-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On October 7, 2013 Enrique Landa (hereinafter "Project Sponsor") filed an application with the Planning Department (hereinafter "Department") for Conditional Use Authorization under Planning Code Section(s) 303, 733.44, 733.21, 790.130 and 186.2 to allow the expansion of the existing Restaurant/Bona Fide Eating Place use to three levels (basement through second floor) within the Upper Market Neighborhood Commercial Transit (hereinafter "Upper Market NCT") and a 40/50-X Height and Bulk District, in general conformity with the plans filed with the Application and labeled Exhibit B (hereinafter "Project").

On January 9, 2014, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2013.1420C.

The Project is exempt from the California Environmental Quality Act ("CEQA") as a Class 1 categorical exemption under CEQA.

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. 2013.1420C, 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 project is located on Market Street between Sanchez and Church Streets within the Upper Market Street NCT (Neighborhood Commercial Transit District) and a 40/50-X Height and Bulk District. The subject location is currently occupied by the Café du Nord (Restaurant/Bona Fide Eating Place) in the basement, a recently vacated limited-restaurant (d.b.a Café Cortado) on the ground floor and the Swedish Society of San Francisco on the first through third floors.
3. **Surrounding Properties and Neighborhood.** The Upper Market Street NCT is a multi-purpose commercial district that provides limited convenience goods to adjacent neighborhoods, but also serves as a shopping street for a broader trade area. A large number of offices are located on Market Street within easy transit access to downtown. The width of Market Street and its use as a major arterial diminish the perception of the Upper Market Street NCT as a single commercial district. The street appears as a collection of dispersed centers of commercial activity, concentrated at the intersections of Market Street with secondary streets.

The district is well served by transit and is anchored by the Market Street subway (with stations Church Street and Castro Street) and the F-Market historic streetcar line. All light-rail lines in the City traverse the district, including the F, J, K, L, M, N and T, and additional key cross-town transit service crosses Market Street at Fillmore and Castro Streets. Additionally, Market Street is a primary bicycle corridor. Housing density is limited not by lot area, but by the regulations on the built envelope of buildings, including height, bulk, setbacks, and lot coverage, and standards for residential uses, including open space and exposure, and urban design guidelines. Residential parking is not required and generally limited. Commercial establishments are

discouraged or prohibited from building accessory off-street parking in order to preserve the pedestrian-oriented character of the district and prevent attracting auto traffic. There are prohibitions on access (i.e. driveways, garage entries) to off-street parking and loading on Market and Church Streets to preserve and enhance the pedestrian-oriented character and transit function.

The Upper Market Street NCT controls are designed to promote moderate-scale development, which contributes to the definition of Market Street's design and character. They are also intended to preserve the existing mix of commercial uses and maintain the livability of the district and its surrounding residential areas. To promote mixed-use buildings, most commercial uses are permitted with some limitations above the second story. In order to maintain continuous retail frontage and preserve a balanced mix of commercial uses, ground-story neighborhood-serving uses are encouraged, and eating and drinking, entertainment, and financial service uses are limited. Ground floor-commercial space is required along Market and Church Streets, and most automobile and drive-up uses are prohibited or conditional.

Land uses located within the immediate vicinity of this subject include predominantly two- and three-story buildings that contain a range of commercial uses on the ground and upper floors including retail stores (Fashion Exchange, Sui Generis), eating and drinking establishments (Bombay Indian Restaurant, Sweet Inspiration, Hi Tops Bar, Barracuda Sushi), and financial, medical, professional and personal services (Wells Fargo Home Mortgage, Creelman Farmer Dentistry, Mason McDuffie Realty, Pretty Nails). Several buildings within the block also contain multi-family dwelling units above the ground floor. This area of the Upper Market Street NCT bounds the Upper Market Street Neighborhood Commercial District (NCD) to the southwest, which begins at Noe and 16th Streets.

4. **Project Description.** The project sponsor proposes to expand the existing Restaurant/Bona Fide Eating Place use (d.b.a. Café du Nord) to three levels (basement, ground floor, second floor and mezzanine) of the existing multi-story building at 2168-2174 Market Street, pursuant to Planning Code Sections 303, 733.44 and 186.2. The Conditional Use authorization would also allow a use size above 2,999 square feet, pursuant to Planning Code Sections 733.21 and 790.130. Café du Nord currently occupies the basement level as a Restaurant/Bona Fide Eating Place and will become the single tenant leasing all the above floors as a single tenant. Planning Code Section 186.2 allows for the expansion of the Restaurant/Bona Fide Eating Place use to all floors under a single tenant.

The proposed Project would occupy approximately 6,000 sq. ft. of floor area. The Project would not result in any expansion of the existing building, although improvements would be made to the interior and exterior including the installation of new signage.

5. **Public Comment.** The Department has received 3 letters in support of the Project from the public, the Castro/Upper Market Community Benefit District and the Swedish Society of San Francisco. The Department has not received any communications in 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. **Restaurant.** Planning Code Section 733.44 specifies that a restaurant as defined in Section 790.90 is a conditionally permitted use in the Upper Market NCT.

The Sponsor seeks Conditional Use Authorization to expand the existing Restaurant/Bona Fide Eating Place use (d.b.a. Café du Nord) to three levels (basement, ground floor, second floor and mezzanine) of the Subject Property, which is located within the Upper Market NCT.

- B. **Use Size.** Planning Section 733.21 states that uses up to 2,999 sq. ft. are permitted by right and uses 3,000 sq. ft. and over require conditional use authorization in the Upper Market NCT.

The Project would occupy approximately 5,000 square-feet of occupied floor area and is applying for conditional use authorization.

- C. **Parking.** Planning Section 733.22 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 5,000 square-feet of occupied floor area and thus does not require any off-street parking.

- D. **Signage.** Any proposed signage will be subject to the review and approval of the Planning Department

Any proposed signage shall be subject to the review of the Planning Department and required to meet all provisions set forth in Article 6 of the Planning Code pending the approval of this application.

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 within the existing building is in keeping with other storefronts on the block face. The Project will provide a use that is necessary and desirable for the neighborhood in that it will provide a neighborhood serving use that will activate an inactive portion of the street frontage and occupy 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 work will not affect the building envelope. The project will be compatible with the nearby commercial, residential, and retail uses, and will not significantly alter the neighborhood character or context.

- 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;

Traffic conditions will remain substantially unaltered by this Project because the proposed use is a neighborhood-serving business that will be frequented by foot, bicycle or public transportation, and is well served by the K, L, M and T streetcar lines. The Planning Code does not require off-street parking for the proposed Project.

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

The Project will be subject to the standard conditions of approval for an eating and drinking establishment as outlined in Exhibit A to ensure that noise and odors are contained within the premises so as not to be a nuisance to nearby residents or businesses. Conditions of Approval 8 and 9 specifically obligate the Project Sponsor to mitigate odor and noise generated by the limited-restaurant.

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

There are no proposed changes to the existing conditions as they relate to landscaping, screening, open spaces, service areas and lighting. Any proposed signage shall be subject to review by the Planning Department and required to comply with all the provisions set forth in Article 6 of the Planning Code upon approval of this application.

C. That the use as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

The Project complies with all relevant requirements and standards of the Planning Code and is consistent with objectives and policies of the General Plan as detailed below.

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

The proposed project is consistent with the stated purposes of NC Districts in that the intended use will provide a compatible convenience service for the immediately surrounding neighborhoods during daytime hours.

- E. That the existing concentration of eating and drinking uses in the area should not exceed 25% of the total commercial frontage as measured in linear feet within the immediate area of the subject site. For the purposes of Section 303(p) of the Code, the immediate area shall be defined as all properties located within 300' of the subject property and also located within the same zoning district.

The existing total commercial frontage within 300 feet of the Subject Property is 2,260 linear feet, and the existing concentration of eating and drinking uses within 300 feet is 211 linear feet, or 9%. The Project would increase the concentration of eating and drinking uses in the area to 236 linear feet which equals 10% and does not exceed the 25% threshold.

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 1.1:

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

Policy 1.2:

Assure that all commercial and industrial uses meet minimum, reasonable performance standards.

Policy 1.3:

Locate commercial and industrial activities according to a generalized commercial and industrial land use plan.

The proposed development will provide a desirable use to the neighborhood that is independent and locally-owned, and the Project is consistent with the uses in this neighborhood and with the commercial land use plan for the Upper Market NCT. The addition of a restaurant into a vacant commercial space at the ground

story of the building will provide pedestrian traffic at an intensity that is suitable for the transition between the commercial activity of the Upper Market NCT and the residential districts surrounding the site.

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 diverse economic base of the City with the addition of new commercial activity.

OBJECTIVE 3:

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

Policy 3.1:

Promote the attraction, retention and expansion of commercial and industrial firms which provide employment improvement opportunities for unskilled and semi-skilled workers.

Approving the Project will potentially create entry-level employment opportunities for local unskilled and semi-skilled workers.

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 existing commercial tenant will be displaced by this Conditional Use Authorization, and the Project will not prevent the Upper Market NCT from achieving optimal diversity in the types of goods and services available in the neighborhood because the resulting concentration of eating and drinking uses in the immediate area will only be 10% and is less than the 25% threshold.

Policy 6.2:

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

The Applicant has recognized the desire for a neighborhood serving restaurant that will activate a block that currently has vacant or underused properties.

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 granting of this Conditional Use Authorization will not adversely affect the existing neighborhood serving retail uses because the existing commercial space is vacant and the proposed restaurant will increase foot traffic along the 2100 block of Market Street. Future opportunities for resident employment will potentially be increased by establishing a restaurant where no business currently exists.

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

The Project will preserve neighborhood character because no changes are proposed to the existing building envelope and no housing will be removed.

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

No housing is removed for this Project. The proposed project will not impact existing or future affordable housing projects.

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

Traffic conditions will remain substantially unaltered by the Project because the use is a neighborhood-serving business that can easily be frequented by foot, bicycle or public transportation. The Project is served by public transit and will not overburden the City's streets or neighborhood parking.

- 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. The owners of the building have initiated the process for landmark designation of the building.

- 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. 2013.1420C** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated December 16, 2013, and stamped "EXHIBIT B", 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. 19060. 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 January 9, 2014.

Jonas P. Ionin
Commission Secretary

AYES: Commissioners Hillis, Sugaya, Fong, Antonini, Borden, Moore, and Wu

NAYES: None

ABSENT: None

ADOPTED: January 9, 2014

EXHIBIT A

AUTHORIZATION

This authorization is for a conditional use to allow the expansion of the existing Restaurant/Bona Fide Eating Place use to three levels (basement through second floor) located at 2168-2174 Market Street, Block 3542 and Lot 017 pursuant to Planning Code Section(s) **303, 733.44, 733.21, 790.130 and 186.2** within the **Upper Market Neighborhood Commercial Transit** District and a **40/50-X** Height and Bulk District; in general conformance with plans, dated **December 16, 2013**, and stamped "EXHIBIT B" included in the docket for Case No. **2013.1420C** and subject to conditions of approval reviewed and approved by the Commission on **January 9, 2014** under Motion No. **19060**. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

RECORDATION OF CONDITIONS OF APPROVAL

Prior to the issuance of the building permit or commencement of use 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 subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on **January 9, 2014** under Motion No. **19060**.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. **19060** shall be reproduced on the Index Sheet of construction plans submitted with the Site or Building permit application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use authorization and any subsequent amendments or modifications.

SEVERABILITY

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a building permit. "Project Sponsor" shall include any subsequent responsible party.

CHANGES AND MODIFICATIONS

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Conditional Use authorization.

Conditions of Approval, Compliance, Monitoring, and Reporting

PERFORMANCE

1. **Validity and Expiration.** The authorization and right vested by virtue of this action is valid for three years from the effective date of the Motion. A building permit from the Department of Building Inspection to construct the project and/or commence the approved use must be issued as this Conditional Use authorization is only an approval of the proposed project and conveys no independent right to construct the project or to commence the approved use. The Planning Commission may, in a public hearing, consider the revocation of the approvals granted if a site or building permit has not been obtained within three (3) years of the date of the Motion approving the Project. Once a site or building permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. The Commission may also consider revoking the approvals if a permit for the Project has been issued but is allowed to expire and more than three (3) years have passed since the Motion was approved.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

2. **Extension.** This authorization may be extended at the discretion of the Zoning Administrator only where failure to issue a permit by the Department of Building Inspection to perform said tenant improvements is caused by a delay by a local, State or Federal agency or by any appeal of the issuance of such permit(s).

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

DESIGN

3. **Signage.** Any signs on the property shall be made to comply with the requirements of Article 6 of the Planning Code.

MONITORING

4. **Enforcement.** Violation of any of the Planning Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

5. **Revocation due to Violation of Conditions.** 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 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 to consider revocation of this authorization.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

OPERATION

6. **Garbage, composting and recycling storage.** Space for the collection and storage of garbage, composting, and recycling shall be provided within enclosed areas on the property and clearly labeled and illustrated on the architectural addenda. Space for the collection and storage of recyclable and compostable materials that meets the size, location, accessibility and other standards specified by the San Francisco Recycling Program shall be provided at the ground level of the buildings.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org.

7. **Sidewalk Maintenance.** The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Streets and Sidewalk Maintenance Standards. *For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works, 415-695-2017, <http://sfdpw.org/>*

8. **Noise Control.** The premises shall 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.

For information about compliance with the fixed mechanical objects such as rooftop air conditioning, restaurant ventilation systems, and motors and compressors with acceptable noise levels, contact the Environmental Health Section, Department of Public Health at (415) 252-3800, www.sfdph.org

For information about compliance with the construction noise, contact the Department of Building Inspection, 415-558-6570, www.sfdbi.org

For information about compliance with the amplified sound including music and television contact the Police Department at 415-553-0123, www.sf-police.org

9. **Odor Control.** While it is inevitable that some low level of odor may be detectable to nearby residents and passersby, appropriate odor control equipment shall be installed to prevent any significant noxious or offensive odors from escaping the premises.

For information about compliance with odor or other chemical air pollutants standards, contact the Bay Area Air Quality Management District, (BAAQMD), 1-800-334-ODOR (6367), www.baaqmd.gov and Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

10. **Hours of Operation.** The subject establishment is limited to the following hours of operation: 6:00 a.m. to 2:00 a.m. daily.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org