



SAN FRANCISCO PLANNING DEPARTMENT

Letter of Determination

October 27, 2016

Phil Ruppner
Upperquad
1009 Page Street
San Francisco, CA 94117

Record Number: 2016-007076ZAD
Site Address: 295 Divisadero Street
Assessor's Block/Lot: 1237/001
Zoning District: Divisadero Street NCT (Neighborhood Commercial Transit)
Staff Contact: Wayne Farrens, (415) 575 – 9172 or wayne.farrens@sfgov.org

Dear Mr. Ruppner:

This letter is in response to your request for a Letter of Determination regarding the property at 295 Divisadero Street (also known as 1001 Page Street). This parcel is located in the Divisadero Street NCT (Neighborhood Commercial Transit) Zoning District. The request is for confirmation that "Business or Professional Service" as defined in Planning Code Section 790.108, is a permitted use in the existing ground floor commercial space of the subject building.

Per Planning Code Section 746.53, Business or Professional Service uses are principally permitted in the Divisadero Street NCT on the second story and below; however, such uses are further limited by Planning Code Section 746.13b which requires an active commercial use on the ground floor for properties located along Divisadero Street between Haight and O'Farrell Streets. Use categories that satisfy this requirement are identified in Table 145.4; Business or Professional Service uses are not included in this table and are therefore not permitted on the ground floor along Divisadero Street.

As noted in your request, Planning Code Section 746.13b refers to Planning Code Section 145.4, which does not expressly identify Divisadero Street between Haight and O'Farrell Streets as an applicable street frontage. This inconsistency will be addressed in a future update to the Planning Code, but this omission on its own does not supersede the active commercial use requirement explicitly stated in Planning Code Section 746.13b.

Pursuant to Planning Code Sections 145.4(e) and 303, the active commercial use requirements may be modified by the Planning Commission through the Conditional Use process. For Conditional Use to be granted, the Planning Commission must find that 1) the proposed use will provide a development that is necessary or desirable for, and compatible with, the neighborhood; 2) the proposed use will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity; 3) the proposed use will comply with all applicable provisions of the Planning Code and will not

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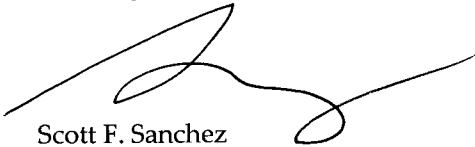
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adversely affect the General Plan; and 4) the proposed use will provide a development that is in conformity with the stated purpose of the Divisadero Street NCT Zoning District.

Please note that a Letter of Determination is a determination regarding the classification of uses and interpretation and applicability of the provisions of the Planning Code. This Letter of Determination is not a permit to commence any work or change occupancy. Permits from appropriate Departments must be secured before work is started or occupancy is changed.

APPEAL: If you believe this determination represents an error in interpretation of the Planning Code or abuse in discretion by the Zoning Administrator, an appeal may be filed with the Board of Appeals within 15 days of the date of this letter. For information regarding the appeals process, please contact the Board of Appeals located at 1650 Mission Street, Room 304, San Francisco, or call (415) 575-6880.

Sincerely,



Scott F. Sanchez
Zoning Administrator

cc: Property Owner
Neighborhood Groups
BBN Holder
Wayne Farrens, Planner

R#2016 - 007076ZAD
CK# 1171 \$645 -
D. LINDSAY (NW)

May 26, 2016

Via Email and US Mail
Mr. Scott Sanchez, Zoning Administrator
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103
Email: scott.sanchez@sfgov.org

UPPERQUAD

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RE: Request for Letter of Determination: Application of Planning Code
145.4 to the Divisadero Street Neighborhood Commercial Transit District

(1237/001)

Dear Mr. Sanchez:

I am writing on behalf of my company Upperquad to request a Letter of Determination regarding the applicability of Planning Code Section 145.4 to 1001 Page Street and 295 Divisadero Street, where Upperquad is located; this location is part of Assessor's Block 1237-001. Upperquad is in the Divisadero Street Neighborhood Commercial Transit District ("Divisadero Street NCT"); Upperquad provides graphic / web design services and has been confirmed by the Planning Department to fall under under Planning Code Section 790.108 Service, Business or Professional, a permitted use in the Divisadero Street NCT. This letter seeks two determinations.

First, we seek confirmation that Planning Code 145.4 applies to the Divisadero Street NCT. Divisadero Street is not included in Planning Code Section 145.4(b) as a street frontage to which the Section applies. As written, Planning Code 145.4 does not expressly apply to Divisadero Street.

Second, if Planning Code Section 145.4 does indeed apply to Divisadero Street, we seek confirmation that the Controls listed in Planning Code Section 145.4(d)(1) supersede permitted uses for the Divisadero Street NCT listed in Planning Code Section 746. Upperquad falls under Planning Code Section 790.108 Service, Business or Professional, as confirmed by the Planning Department, and this use is expressly and clearly permitted per Planning Code Section 746.53 for the entirety of Divisadero Street between Haight and O'Farrell Streets. However, Service, Business or Professional is not included in Table 145.4, which defines permitted Active Commercial Uses. Table 145.4 does include Sales and Services Retail, as defined by Planning Code Section 790.104, as a permitted use. Sales and Services Retail is broadly similar to Service, Business or Professional and appears to apply to Upperquad as well. To summarize, our use is expressly permitted in Planning Code Section 746.53, omitted from permitted uses in Table 145.4 and permitted in Table 145.4 under Sales and Services, Retail.

RECEIVED

MAY 26 2016

CITY & COUNTY OF S.F.
PLANNING DEPARTMENT
ZA OFFICE

RE: Request for Letter of Determination: Application of Planning Code 145.4 to the Divisadero Street Neighborhood Commercial Transit District

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Background

Upperquad has been leasing its location at 295 Divisadero and 1009 Page since July 2010, now approaching 6 years. In April 2015, we signed a 5 year lease for our existing space and the adjoining space at 1001 Page that had been recently vacated. Plans for a remodel of 1001 Page were drafted and submitted to the City by our Architect. Usage was changed from Retail to Office in the plans. Building permit no. 201505126090 was issued and the plans were approved by the Planning Department on May 22, 2015 and by the Building Department on May 27, 2015. Final sign off on the building permit by Building Department was issued on February 17, 2016.

On February 16, 2016, the day before the permits were closed and when the construction project was complete, the Planning Department issued a Notice of Enforcement (NOE). The NOE was a result of a complaint made to the Planning Department by a blogger, who had also written an one-sided article against our expansion at 1001 Page on January 8, 2016 on Hoodline.com. At the time of article, we had reached out proactively to the Planning Department to begin a dialogue.

Since receiving the NOE, Upperquad has worked closely with the Planning Department to resolve the matter as quickly as possible. All of the allegations that have been raised in the NOE are now considered resolved by the Planning Department based on the information they collected. However, there are still some questions about if Service, Business or Professional is considered a permitted use on Divisadero Street since there conflicting Sections of the Planning Code. As such is the case, we are requesting the above determinations.

About Upperquad

Upperquad started in a spare bedroom in the Outer Sunset neighborhood in 2009 and has based in San Francisco ever since. We provide professional design services, specifically graphic design, web design, illustration and web development. We are a design studio: Upperquad and all our employees are part of the American Institute of Graphic Arts (AIGA), a trade organization representing the design industry. Upperquad is a 100% locally owned and operated small business. We have one location at 1001 Page / 295 Divisadero and currently have 10 employees, most of which live in the surrounding neighborhood and walk to work. Our services are available to anyone: big, small, around the corner or international. Our clients include large companies, non-profits, writers, cake designers, illustrators and other local businesses.

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Our rationale

Planning Code Section 746.53 clearly lists Business or Professional Service as a permitted use on the first and second floors in the Divisadero NCT. Planning Code Section 145.4 is not applicable to Divisadero Street as written, since it does not list Divisadero Street as a street frontage to which it applies. In addition, referring to the omissions in the list of Active Commercial Uses in Table 145.4 to determine permitted uses for the Divisadero NCT is unnecessarily opaque and misleading when permitted uses in the Divisadero NCT are clearly and expressly listed in Planning Code Section 746. We believe that Planning Code Section 145.4, as written, does not and should reasonably not preclude expressly permitted uses listed in Planning Code Section 746 for the Divisadero NCT and, therefore, not be applied to 1001 Page or 295 Divisadero.

We're proud to be part of our community and love our neighborhood. We made the decision to stay in our location and expand our office space based off a reasonable and rational reading of the Planning Code as it is written. Planning Code Section 746 is very clear that Upperquad constitutes a permitted use. We went through the approval process with both the Planning and Building Departments for our remodel and no concerns were raised on our plans at any point. We've worked closely with the Planning Department after we received the NOE and they have agreed that all the allegations made did not apply to Upperquad. Our only intention is and has been to be compliant with the Planning Code and we believe we are. We hope these determinations will remove any lingering question around how Planning Code Section 145.4 applies to Upperquad and our neighbors on Divisadero Street.

Please let me know if you have any questions or if I can provide any additional information. I am available at your convenience.

Best regards,



Phil Ruppner
Founder / Creative Director