



PLANNING DEPARTMENT

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January 18, 2005

Mr. David Levy
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105-2482

**RE: Request for Written Determination Pursuant to Planning Code Sections 102.9 & 124
144 King Street, San Francisco
Assessor's Block: 3794; Lot: 024
Zoning: M-2 (Heavy Industrial) District
Height/Bulk: 105-F**

Dear Mr. Levy:

This is in response to your letter of November 8, 2004, requesting a written determination concerning the use of lot area on adjacent lots (which is included in a contiguous easement and revocable license with the subject property) for the purposes of calculating the floor-area-ratio (FAR) for a proposed new hotel at 144 King Street. I have reviewed the information in your letter and, based upon my examination and analysis of the circumstances, have made the determination discussed below.

Background

The 9,900 square-foot lot is bounded by 2nd and 3rd Streets between Townsend and King Streets in an M-2 Zoning District, and a 105-F Height and Bulk District. The lot is currently occupied by a one-story warehouse structure that is non-contributory to the South End Historic District.

Along the western edge of the subject lot there exists a 25-foot wide access easement, half of which is located on the subject lot and half of which is on the adjacent lot at 160 King Street (Block 3794, Lot 24). This easement continues from King Street all the way through the block to Townsend Street; therefore, it also includes a 12.5-foot wide section along the western edge of the property to the rear of the subject property, 139 Townsend Street. There is also a revocable license that provides a 15-foot wide alley for vehicular access between the aforementioned easement right-of-way and the adjacent building to the east at 128 King Street. Again, half of this access alley is located on the subject lot (7.5 feet) and half is located on the adjacent lot to the north at 139 Townsend Street (Block 3794, Lot 21).

Proposal

The Project Sponsor plans to demolish the existing, non-contributory, one-story warehouse building and construct a new 9-story hotel with ground floor commercial space. A Conditional Use application has already been filed for a hotel use in an M-2 zoning district, as well as a Certificate of Appropriateness application for new construction in the South End Historic District.

However, in order to get the maximum amount of hotel rooms within the permitted FAR of 5 to 1 and to make full use of the existing height limit of 105 feet, the Sponsor is requesting the ability to use those adjacent easement and revocable license areas (on portions of Lots 21 and 25) for calculating lot area. The combined easement and license areas on those lots, not including the portions located on the subject lot, equals approximately 6,000 square feet. The subject lot is 9,900 square feet in area. The Project Sponsor asserts that they need 14,405 square feet of lot area in order to achieve the FAR that would accommodate the size of hotel (131 rooms) that would make the project economically feasible.

In addition, the Project Sponsor proposes to locate the eight required off-street parking spaces at the adjacent building at 160 King Street because of the size constraints of the subject lot and the desire to have an active street front along King Street. The Sponsor would secure these parking spaces through a long-term lease with the owner of the 160 King Street building. Code Section 159(c) allows for the location of required parking within an 800-foot radius of the subject lot. The property at 160 King Street has parking capacity in excess of its requirement for office use, and the Conditions of Approval for that project state that the project "shall provide up to 379 parking spaces primarily to be used for occupants of the Project." The 176,000 square foot office building only requires 352 spaces; therefore there is an excess of 27 spaces.

Determination

Regarding the FAR issue, the Code specifically requires that FAR be calculated by the relationship of gross floor area to the area of the *subject* lot. The use of contiguous lot area for determining FAR is not allowed by the Code; the definition of 'lot' under Code Section 102.11 allows for using contiguous lot area only "where such combination is necessary to meet the requirements of this Code." Using the adjacent easement areas not under the control of the project sponsor is certainly not the intent of this Code Section. If this area was transferred to a lot or entity under the control of the project sponsor, this area could be used for FAR calculations.

If you wish to capture additional development rights from adjacent lots, you may do so through the Transfer of Development Rights (TDR) process allowed per Section 127. You may transfer gross floor area that is allowable under Section 124 (but not utilized) from an adjacent contributory building within the South End Historic District. This would allow you to purchase development rights from the property at 139 Townsend and 128 King Street, since they're contributory buildings, but not from 160 King Street because it's not an historic building.

The Code allows you to locate your required off-street parking spaces within 800 feet of the subject property per Code Section 159(c). Because King Street has become such a viable commercial corridor, the Department would prefer to reduce curb cuts and ground floor building frontage reserved for parking. And, given the small dimensions of the subject lot, it would seem preferable to locate the eight required spaces within the adjacent building at 160 King Street. The Department would, of course, need to review documentation of a long-term parking lease with that property owner, and would subsequently place a Notice of Special Restrictions on both 144 and 160 King Street indicating that such an arrangement had been made.

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Please direct any questions regarding this letter to Winslow Hastie at (415) 558.6381 or via email at winslow.hastie@sfgov.org.

If anyone has substantial reason to believe that there is an error in the interpretation of the Planning Code, or abuse of discretion on the part of the Zoning Administrator, this determination may be appealed to the Board of Appeals within fifteen (15) days from the date of this letter. For further information regarding the appeals process, please contact the Board of Appeals, 1660 Mission Street, Room 3036, San Francisco, or by telephone at (415) 575.6880.

Sincerely,

Lawrence B. Badiner
Zoning Administrator

cc: Winslow Hastie, SF Planning Department

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