



SAN FRANCISCO PLANNING DEPARTMENT

Letter of Determination

April 24, 2009

Reza Khoshnevisan
SIA Consulting Corporation
1256 Howard Street
San Francisco CA 94103

RE: 2500-2510 Folsom Street
Block: 3614 Lot: 001

Dear Mr. Khoshnevisan:

This letter is in response to your letter dated March 24, 2009, requesting a written determination for the above-referenced property. In your letter you request a written determination that the vacant commercial unit located on the ground floor currently maintains a lawful nonconforming use status under Planning Code Section 180. A "nonconforming use" is a use that existed lawfully at the effective date of the Planning Code and fails to conform to the use limitations under Articles 2, 6, 7 and 8 of the Planning Code. Any structure or use, for which a permit was lawfully granted prior to May 2, 1960, pursuant to the Planning Code provisions in effect on that date, is deemed to have been a lawfully existing structure or use on that date.

BACKGROUND

Pursuant to Planning Code Section 185, gradual elimination of nonconforming uses should occur after a reasonable allowance of time in order to encourage and promote the orderly and beneficial development of the land and buildings with conforming uses. The Section is intended to apply to obsolescent buildings whose use is widely at variance with the regulations of the Planning Code, and is safeguarded against unnecessary hardship in application by provision for a minimum period of continuance of 20 years, by procedures for extension and exceptions, and by the requirement of repeated notice as the buildings approach an age indicative of obsolescence. It is further declared that the requirement of eventual removal, or conversion to conforming use of such buildings, subject to the exceptions set forth, is in the public interest and is intended to promote the general welfare.

All nonconforming and limited commercial uses within residential districts were documented, cataloged and assigned a termination date. The information gathered on these distinct parcels included photographic images; land use histories, assessed valuation, and building permit history. When termination of a nonconforming use had occurred, the effected Assessor block map located with the Departments of Planning and Real Estate, were edited to indicate that its proper recordation had occurred.

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

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PROCEDURAL BACKGROUND TERMINATION DATE OF NONCONFORMING USES

Pursuant to Planning Code Section 154(f), The Zoning Administrator shall give notice by mail of the date of expiration of the periods of permitted continuance to each owner of record within four (4) years of the effective date of the Code, or the date of the amendment which caused the use to become non-conforming, and shall repeat such notice at approximate intervals of four (4) years thereafter. A final notice shall be given one (1) year before the said date of expiration in each instance. Failure to send notice by mail to any such owner where the address of such owner is not a matter of public record, or where no permit of occupancy for a non-conforming use covered by this section has been issued as provided in Section 106, shall not invalidate any proceedings under this section.

Correspondence, dated February 28, 1964, May 2 1964, and July, 12, 1968 were sent to Emma J. Schulken, property owner, informing her of the approaching termination date of May 2, 1980 for the non-conforming commercial space. The letters informed Ms. Schulken of the possibility of continuing the commercial activity at the site pursuant to Planning Code Section 154(e) by means of a conditional use authorization. Nonconforming uses, under Section 154 of the Code, would qualify for consideration by the Planning Commission for authorization as conditional uses, thereby removing the termination date." Specifically Planning Code Section 154 (e) (4) stated, "That a non-conforming building affected by this section, shall be regulated in Section 303, upon application filed at any time during the period of permitted continuance. In any R-1 through R-5 District, a professional office or offices, a motel, a mortuary, an animal hospital or clinic or **a retail store as permitted in C-1 districts**.

ABANDONMENT OF COMMERCIAL ACTIVITY

No records are on file to prove that Ms. Schulken or any other applicant representing the interest of 2500-2510 Folsom Street applied for a Conditional Use pursuant to Section 154(e) to continue the commercial activity. However, ongoing site visits to the property by the Department indicated that the subject property was vacant / abandoned for more than three (3) years consecutively. (The Planning Department began site visits to the subject property on March 11th, 1966 ending March 1971, for a total period of five (5) years.)

Pursuant to Sections 152 and 183 of the Planning code, a nonconforming use discontinued for a continuous period of three years, or whenever there is otherwise evident a clear intent on the part of the owner to abandon a nonconforming use, such use shall not after being discontinued or abandoned be reestablished, and the use of the property thereafter shall be in conformity with the use limitations of this Code for the district in which the property is located.

Planning records indicate that the commercial use was terminated by the Department on July 8, 1971 pursuant to Section 152 due to the nonconforming use having been discontinued for a continuous period of three years. Additionally, a "Notice of Termination of Commercial or Industrial Nonconforming Status Letter" was sent to Emma J. Schulken, property owner, informing her that the former nonconforming commercial status of the property had been terminated pursuant to Section 152. While records do indicate that the first letter was returned to the Department, it also indicates that a second

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letter was remailed via 1st Class and subsequently acknowledged over the phone by Emma J. Schulken (attached).

DETERMINATION

It is hereby determined that the commercial space at 2500-2510 Folsom Street is not considered an active nonconforming use and was terminated by the Planning Department on July 8, 1971 pursuant to Section 152 because the nonconforming use had been discontinued for a continuous period of three years. The Planning Department exercised its due diligence by documenting, cataloging and assigning a termination date to the subject property. It recorded the termination on the appropriate Assessor Block Book (1965 Book-sheet attached). It safeguarded against unnecessary hardship in application by provision for a minimum period of continuance of 20 years, by procedures for extension and exceptions, and by the requirement of repeated notice.

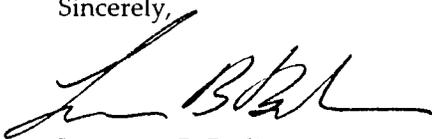
OPTION FOR REZONING

Please be advised that procedurally a rezoning option is available to allow some commercial uses on the subject site. In order to proceed, the proper application materials must be submitted and approval by the Board of Supervisors must be obtained, followed by the Mayor's signature.

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, 1650 Mission Street, Room 3036, San Francisco, or by telephone at (415) 575.6880.

Please direct any questions regarding this letter to Edgar Oropeza of my staff at (415) 558-6381.

Sincerely,



Lawrence B. Badiner
Zoning Administrator

Cc: Edgar Oropeza