Letter of Determination

August 22, 2008

Robert Shepherd 101 South Park Street San Francisco, CA 94107 415.839.3102

Re:

5 Freelon Street Block 3776/Lot 080

Dear Mr. Shepherd:

This is in response to your letter requesting clarification that your proposed use—Fuse Project—at the address listed above is "Business Service" per Planning Code Section 890.111. You have asked whether Fuse Project may occupy the building under the Planning code. Fuse Project is an industrial design and branding firm that sees a product through its entire life-cycle, including conceptualization, prototyping, testing, and branding.

PAST AND PRESENT USE

The Board of Permit Appeals' decision on Case No. 00-234 on May 2, 2001, established that the existing office on the subject property at that time was a legal nonconforming use. According to the property owner, the last tenant was an internet services company—dba LASON, which was recently purchased by HOVServices. This tenant vacated the building in mid 2007, and the building has been vacant since.

ZONING AND PERMITTED USES

Current Zoning

The property currently falls in the SLI (Service/Light Industrial District) Zoning District. The four uses most relevant to the proposed use are "Office Use" (Sec. 890.70), "Business Service" (Sec. 890.111), "Work Space of Design Professionals" (Sec. 890.28), and "Light Manufacturing" (Sec. 890.54(a)). Office Use is not permitted in the SLI District and is defined as "space within a structure intended or primarily suitable for occupancy by persons or entities which perform for their own benefit or provide to others at that location administrative services, design services, professional services, financial services or medical services as defined in Sections 890.28, 890.106, 890.108, 890.110 and 890.114. It does not include business services as defined in Section 890.111 or the office functions......which are necessary to another permitted use."

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

Reception: 415.558.6378

Fax:

415.558.6409

Planning Information: 415.558.6377 Robert Shepherd 101 South Park Street San Francisco, CA 94107 August 22, 2008 Letter of Determination 5 Freelon Street

Business Service is a permitted use in the SLI District and is defined as "a use which provides the following kinds of services to businesses and/or to the general public: radio and television stations; newspaper bureaus; magazine and trade publication publishing; desktop publishing; product testing laboratories; microfilm recording; slide duplicating; bulk mail services; parcel shipping services; parcel labeling and packaging services; messenger delivery/courier services; uniform security services; sign painting and lettering services; building maintenance services; interior decorating services."

Work Space of Design Professionals is also a permitted use in the SLI District, but is also subject to the limitations of Section 803.5(k). This use is defined as "an office us which provides professional design services to the general public to other businesses and includes architectural, engineering, interior design and industrial design services. It does not include (1) the design services of graphic artists or other visual artists which are included in the definition of arts activities described in Section 102.2.....; (2) the services of advertising agencies or other services which are included in the definition of professional service activities described in Section 890.108......or administrative services, financial services or medical service activities as identified in Section 890.106, 890.110, or 890.114....."

Light Manufacturing is also a permitted use in the SLI District and is defined—in part— as "a nonretail use which provides for the fabrication or production of goods, by hand or machinery," that may include "production and custom activities usually involving individual or special design, or handiwork, such as......furniture and fixtures.....apparel and other garment products......leather products......pottery...."

Proposed Eastern Neighborhoods Zoning

The Planning Commission adopted Resolution No. 17667 on August 7, 2008. Among other things, it directs all new development to meet the requirements of the proposed Eastern Neighborhood provisions. Those new developments that choose not to meet this requirement, and instead follow the existing code provisions, are subject to Discretionary Review by the Planning Commission.

Under the proposed Eastern Neighborhood rezonings and Planning Code amendments, the definition of Business Service is changed so that *Fuse Project* would no longer fall under such use. More specifically, the specific reference to "product testing laboratories" is removed.

A new use classification—Integrated PDR (Production-Distribution-Repair)—was created to support businesses that fall somewhere between office and PDR. Integrated PDR is generally described as 1) a land use with at least 33% PDR space, 2) all uses must be related activities of the same business, 3) office use is defined in Section 890.70 of the Code, 4) PDR use is defined as an active use that is not residential, retail, institutional, office, laboratory, or storage, and that generally fits into the use categories outlined in Sections 220 and 222-227 of the Code, 5) the PDR use cannot include typical office support functions. It is important to note, however, that while Integrated PDR is proposed as a permitted use in several Districts, at this time it is not proposed as a permitted use in the SLI District.

Robert Shepherd 101 South Park Street San Francisco, CA 94107 August 22, 2008 Letter of Determination 5 Freelon Street

Legal Nonconforming Use

The property is currently approved for office space, which was deemed a legal nonconforming use by Board of Permit Appeals Case No. 00-234 on May 2, 2001. This use may be continued, except as otherwise provided in Sections 180 through 189, and subject to the limitations of Article 1.7 of the Planning Code.

DETERMINATION

It is my determination that the two primary components of the use proposed—Fuse Project—fall under the definitions of "Office Use" per Planning Code Section 890.70 and "Light Manufacturing" per Section 890.54(a). While office use is not permitted in the SLI District, Fuse Project is permitted to occupy and operate within the existing, legal nonconforming office space established in Board of Permit Appeals Case No. 00-234, subject to the requirements and limitations of Sections 180 through 189 and Article 1.7. No additional office space may be added beyond the established nonconforming amount. The additional square footage required for Fuse Project's workshop facility may be added to the structure as light manufacturing space, subject to all other requirements of the Planning Code and adopted Planning Commission resolutions.

This determination is based on the fact that the proposed use—*Fuse Project*—is a multifaceted business that provides a large variety of services to its business clients that mostly fall under the definitions of "Office Use" (Sec. 890.70), and "Light Manufacturing" (Sec. 890.54(a)). The office use includes general office space for designing, word processing, administration, and other similar activities. The light manufacturing space includes workshop and lab space used for the manufacturing and testing of custom made prototypes, which may vary widely in terms of materials and scale. The most appropriate use classification for *Fuse Project* may be the "Integrated PDR" as proposed in the Eastern Neighborhoods Community Planning process. However, that use is not proposed to be permitted in the SLI District at this time.

Additionally, you should be aware of the ongoing Western SoMa (WSOMA) planning process and how it may eventually impact the permitted uses for the subject property (for more information go to www.sfgov.org/westernsoma). While this property does not fall within the WSOMA planning area, the Planning Code amendments initiated by this plan may impact the SLI Zoning District, and thus all properties that fall under that classification. However, please note that any use that legally occupies the subject property before these amendments are adopted may continue to function indefinitely, even if it no longer conforms to the use requirements of the District.

If you have any questions regarding this matter, please contact Corey Teague at 415.575.9081 or via e-mail at corey.teague@sfgov.org.

If anyone has substantial reason to believe that there is an error in the implementation of the Planning Code, or abuse of discretion on the part of the Zoning Administrator, this determination

SAN FRANCISCO
PLANNING DEPARTMENT

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: Corey Teague, Planner Ken Rich, Planner Paul Lord, Planner Sue Hestor

G:documents/Letters of Determination/2008/5 Freelon St.doc