

Atijera, Evamarie (CPC)

R# 2017-012814ZAD

From: 435 Duboce Avenue, LLC <dubocefillmore@gmail.com>
Sent: Thursday, October 05, 2017 9:33 AM
To: Sanchez, Scott (CPC)
Cc: Washington, Delvin (CPC); Priego, Nora (CPC); Atijera, Evamarie (CPC)
Subject: Re: 435 Duboce: 10.2.17 Letter of Determination Request

LOD REQUEST
WITHDRAWN

Understood, thank you Scott. This correspondence formally withdraws our 10.2.17 request for a LOD.

Is there additional information regarding the pending legislation to conform Sect. 186(a)(2) to include RTOs that we could share with prospective tenants?

As always, our family appreciates your continued courtesy and assistance.

Best,
Garrin

On Oct 3, 2017, at 11:18 PM, Sanchez, Scott (CPC) <scott.sanchez@sfgov.org> wrote:

Hi Garrin,

Thank you for the email. Unfortunately, my schedule does not provide flexibility to meet next week. As noted previously, the Planning Code requires a Conditional Use Authorization to establish a Retail Professional Use. If you would like an official determination that may be appealed to the Board of Appeals, please submit the Letter of Determination as noted previously.

Regards,
Scott F. Sanchez
Zoning Administrator
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103

Tel: 415.558.6350
Fax: 415.558.6409

E-mail: scott.sanchez@sfgov.org
Webpage: <http://www.sfplanning.org>

Planning Information Center (PIC):
415.558.6378
Property Information Map (PIM):
<http://propertymap.sfplanning.org>

On Oct 3, 2017, at 8:54 AM, 435 Duboce Avenue, LLC <dubocefillmore@gmail.com> wrote:

435 DUBOCE AVENUE, LLC
435 Duboce Ave. #1
San Francisco, CA 94117
DuboceFillmore@gmail.com

R # 2017- 012814 ZAD
CK # 1008 \$ 678.50
D. WASHINGTON (SW)

October 2, 2017

Scott Sanchez
Zoning Administrator
San Francisco Planning Department
1650 Mission St., Ste. 400
San Francisco, CA 94103-2479

RECEIVED

OCT 02 2017

CITY & COUNTY OF S.F.
DEPT. OF CITY PLANNING
ADMINISTRATION

Re: Principally Permitted Use for a Non-Conforming Use Without Need for a
Conditional Use Permit

Dear Scott Sanchez:

Our family seeks confirmation that the ground level non-conforming use (NCU) commercial space at 435 Duboce (Duboce) may be occupied by a financial advisor from Edward Jones to provide retail professional services as a specifically principally permitted use without the need for a conditional use permit.

The San Francisco Planning and Zoning department (Planning & Zoning) approved and permitted Duboce's construction of six residential and one ground floor commercial space. Planning & Zoning never required elimination of the commercial space. A Certificate of Final Completion and Occupancy (Certificate) was issued on February 6, 2015 for Duboce, which includes 435A Duboce an approximately 1,100 square feet of ground level commercial NCU facing the N line MUNI Duboce/Church transit intersection. Duboce is located in a Residential Transit Oriented (RTO) district, part of the Market & Octavia Plan (M&O Plan). It is less than a block from Safeway, 100 feet from the Local 6's International Brotherhood Electrical Workers, 50 feet from Maitri Compassionate Care AIDS hospice, and next door to the Rising Star Laundromat.

The building is a Type 5B and is subject to assessment for the Castro Community Benefit District. The Duboce Triangle Neighborhood Association in its November 18, 2015 letter supports 435A Duboce's continued use as a desirable and necessary active, street-level commercial use for the neighborhood. It has been diligently marketed for lease at below market rate since the issuance of the Certificate. In early 2016, our family incurred additional construction costs to finish 435A Duboce's existing shell with finished lighting, drywall, flooring and bathroom space. On June 25, 2016, the Duboce sustained property damage caused by criminal malfeasance and completion of the construction repairs was final on September 9, 2017.

Currently an African American financial advisor from Edward Jones seeks to lease 435A Duboce. He and his staff provide retail professional services such as estate planning, college savings planning, retirement advice, accounting, and investment services to the general public. No savings or checking banking services shall be offered nor any ATM, check cashing or payday lending. Services will be provided during regular business hours. The use is small in scale, serves primarily as a walk-in trade, has neither on-site parking nor requires any, and causes no

interference with nearby transit, street, and properties.

No Termination of Non-Conforming Use

The Duboce was originally zoned Residential House-3 District (RH-3), which provides for multi-family housing and nonresidential uses common in the surrounding neighborhoods. In 2010, the M&O Plan re-zoned the Duboce into RTO. M&O's Policy 1.1.9 states:

A Transit-Oriented Residential District (RTO) will encourage moderate-density, multi-family, residential infill, in scale with existing development. The high availability of transit service, proximity of retail and services within walking distance, and limitation on permitted parking will encourage construction of housing without accessory parking. *Small-scale retail activities serving the immediate area will be permitted at intersections.* (Emphasis added.)

San Francisco's Planning Code (Planning Code) Sect. 209.4 RTO District states:

Limited small-scale neighborhood-oriented retail and services is common and permitted throughout the neighborhood...[o]nly retail compatible with housing, generally those permitted in NC-1 Districts..."

Planning Code Sect. 710 states that NC-1 districts are "...intended to serve as local neighborhood shopping districts, providing convenience retail goods and services for the immediately surrounding neighborhoods primarily during daytime hours." Principally permitted uses in NC-1 include "Services, Retail Professional" which is defined under Planning Code Sect. 102 as:

A Retail Sales and Service Use that provides to the general public, general business, or professional services including, but not limited to, management, clerical, accounting, legal, consulting, insurance, real estate brokerage, and travel services.

435A Duboce is a NCU commercial space per Planning Code Sect.180(a)(1):

A "nonconforming use" is a use which existed lawfully at the effective date of this Code, or of amendments thereto, or a live/work unit which existed on the effective date of Ordinance No. 412-88 (effective October 10, 1988) (other than a live/work unit wholly or partly occupying space whose legal occupancy under the Building Code was then limited to a residential occupancy) and which fails to conform to one or more of the use limitations under Articles 2, 6, 7 and 8 of this Code that then became applicable for the district in which the property is located.

Planning Code 185 was "...intended to apply to obsolescent buildings whose use is widely at variance with the regulations of this Code" to terminate NCUs. However, the Duboce should not fall under this Code as it is a newly erected 2015 building providing greater safeties in structural integrity, fire protection and is wholly consistent with the neighborhoods' commercial

intersection at Duboce and Church streets. The NCU is necessary to the community with full support of its continued use by our family and the Duboce Triangle Neighborhood Association.

If this Planning Code section does apply, Sect. 185(b) further clarifies:

Every such building to which this Section applies may be continued in such use for at least 20 years from the effective date of this Code (May 2, 1960), or of the amendment thereto which causes it to be nonconforming, and may be continued for a longer period if it has not yet reached the age hereinafter specified, *computed from the date the building was erected*. For buildings of Type 1 or Type 2, as defined in the Building Code of the City, the specified age shall be 50 years; for Type 3 buildings it shall be 40 years; and for Type 4 and *Type 5 buildings it shall be 30 years*. (Emphasis added.)

Planning & Zoning specifically approved the Duboce for construction of the NCU as a Type 5B building, issuing a Certificate on February 6, 2015. At no time did Planning & Zoning apply Planning Code Sect. 181(b)'s prohibition against permitting "[a] structure occupied by a nonconforming use shall not be constructed, reconstructed or altered, *unless the result will be elimination of the nonconforming use...*" As such Planning Code Sect. 185's termination of a NCU, if applicable to the Duboce, would only begin 30 years from when the building was erected. Here the Duboce's February 6, 2015 date is the date the building was erected and the automatic termination period for the NCU is February 6, 2045.

No Discontinuous or Abandonment of Non-Conforming Use

If Planning & Zoning believes Planning Code Sect. 183(a) applies to Duboce, there is no discontinued or abandoned NCU. This section finds that "[w]henver a nonconforming use has been changed to a conforming use, or 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 so changed, 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." (Emphasis added.)

The Duboce's NCU has no continuous period of three years of discontinued use. The Certificate was issued February 6, 2015 thus the corresponding three-year expiration is February 6, 2018. 435A Duboce was then immediately marketed for commercial lease. Marketing efforts were only interrupted when on June 25, 2016, the Duboce was impacted by significant property damage affecting primarily the ground commercial space. This necessitated extensive construction repair, which was only completed on September 9, 2017. The damage and subsequent repair tolled the continuous three-year period for 441 days, setting the new date to *August 21, 2019*.

Our family has never evidenced a clear intent to abandon the Duboce's NCU. On the contrary, the NCU was immediately marketed for commercial lease at below leasing rate since February 6, 2015. The family made even further construction investments in 2016 by converting the shell space into a turn-key property with finished lighting, drywall, flooring and bathroom. The commercial listing was upgraded with renewed marketing efforts to promote the NCU's lease up.

During and immediately following the completion of the repairs for the June 2016 property damage, 435A Duboce was diligently marketed for lease.

Accordingly, 435A Duboce remains a valid NCU as there is neither discontinued or abandoned use.

Edward Jones' Financial Advisor is a Specifically Principally Permitted Use

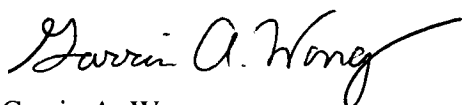
Pursuant to the Planning Code Sect. 209.4, Duboce's NCU is subject to the principally permitted uses of an NC-1 district. Said district includes, but is not limited to, the principally permitted use of a retail professional services (RPS) as defined under Planning Code Sect. 102. This includes professional services including, but not limited to, management and consulting services. NC-1 excludes Financial Service (i.e. banking services and products to the public, such as banks, savings and loans, and credit unions) and Fringe Financial Service (provides banking services and products to the public and is owned or operated by a "check casher").

A financial advisor from Edward Jones seeks to lease 435A Duboce and offer its services to the public. The general scope of a financial advisor's role is to help one invest their money to reach their financial goals. These goals could include retirement, saving for college, minimizing one's tax burden, giving to charity, budgeting, debt reduction, or generating income. He and his staff only provide these RPS to the general public. There is no savings or checking banking services provided at the location. Nor is there any ATM, check cashing or payday lending. Further the RPS (1) will be provided during regular business hours, (2) the intended use is small in scale, (3) serves primarily as a walk-in trade, (4) has neither on-site parking nor requires any, and (5) causes no interference with nearby transit, street, and properties.

A financial advisor service at Duboce complements the existing mixed use at the Duboce and Church intersection and the existing businesses such as Safeway, Local 6's International Brotherhood Electrical Workers, Maitri Compassionate Care AIDS hospice, and the Rising Star Laundromat. This use also supports the City's M&O Plan which prescribes close proximity, small-scale retail services at transit intersections such as Duboce and Church. Moreover, the use is supported by the Duboce Triangle Neighborhood Association's promotion of an active, street-level commercial use for the neighborhood.

For all of the above stated reasons, a financial advisor with Edward Jones may operate an office at 435A Duboce, a NCU, located in a RTO district with NC-1 district's principally permitted use as a RPS with no need to seek a conditional use permit.

Sincerely,



Garrin A. Wong