



SAN FRANCISCO PLANNING DEPARTMENT

Letter of Determination

October 10, 2017

Brett Gladstone, Partner
HansonBridgett
425 Market Street, 26th Floor
San Francisco, CA 94105

Site Addresses:	1231 & 1237 Douglass Street
Assessor's Block/Lots:	6583/015B & 015C
Zoning District:	RH-1 (Residential-House, One Family)
Staff Contact:	Chris Townes, (415) 575-9195 or chris.townes@sfgov.org
Record No.:	2017-002619ZAD

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

Reception:
415.558.6378

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Planning
Information:
415.558.6377

Dear Mr. Gladstone:

This letter is in response to your request for a Letter of Determination regarding the properties at 1231 & 1237 Douglass Street. The subject properties are located within the RH-1 (Residential-House, One Family) Zoning District and 40-X Height and Bulk District. Your letter requests determinations on following:

1. Whether the adjacent buildings located at 1231 & 1237 Douglass Street may be merged pursuant to the Conditional Use Authorization exemption from Planning Code Section 317(c)(5) and 317(d)(3)(A).
2. Whether the project qualifies for an exemption from a Conditional Use Authorization requirement pursuant to Planning Code Section 317(c)(3).
3. Whether the Zoning Administrator will approve a referral from the Department of Public Works for a lot merger of the properties.
4. Whether the Zoning Administrator will approve an alteration permit to remove the fire doors to effectuate the unit merger.

DESCRIPTION OF PROPOSED USE

The two adjacent properties at 1231 & 1237 Douglass Street are under one ownership and contain one two-story, single-family dwelling on each lot. The property owner proposes to merge the two lots and dwelling units and occupy the buildings as a single-family residence.

BACKGROUND

As noted in your letter, the property owner currently occupies the subject properties as a single-family dwelling in accordance with a Notice of Special Restrictions (NSR) issued by the Planning Department on

April 4, 2000 (Document No. 2000-G755457-00). The NSR includes conditions attached to the approval of Building Permit Application Nos. 9925319 and 9925320, which permitted the property owner to construct openings between the two buildings to allow them to be occupied as one single-family dwelling. The NSR states that the properties will be recognized by the Planning Department as containing two separate dwelling units subject to specific conditions. These conditions included, but were not limited to, a condition that *"when the subject property is reverted to two single-family homes in the future by the property owners, their assigns, successors-in-interest or heirs, or by any future purchaser, whether by transfer of titles or sale of the property, the openings connecting the two buildings shall be closed prior to transfer of titles of the subject property. Once the subject property is reverted to two single-family homes, the subject property shall remain as two single-family homes."* As such, although physically connected and occupied by a single family occupant, from a density perspective the Planning Department recognizes 1231 and 1237 Douglass Street as two separate single-family dwellings. While the NSR allowed for an accessory cooking facility on the second floor of the dwelling unit at 1237 Douglass Street, the NSR did not require retention of a second kitchen (the accessory kitchen was subsequently removed under Building Permit Application No. 200111143210). Work under Building Permit Application Nos. 9925319, 9925320 and 200111143210 was completed in May 2002.

RELEVANT PLANNING CODE PROVISIONS

Planning Code Section 102 defines *Residential Building* as, "Any structure containing one or more Residential Units as a principal use, regardless of any other uses present in the building."

Planning Code Section 102 defines *Residential Unit* as, "A legal conforming or non-conforming Dwelling Unit or a legal non-conforming Live/Work Unit."

Planning Code Section 102 defines *Dwelling Unit* as, "A Residential Use defined as a room or suite of two or more rooms that is designed for, or is occupied by, one family doing its own cooking therein and having only one kitchen."

Further, an interpretation of the definition of Dwelling Unit from April 2003 states: "This interpretation revokes an interpretation dated 6/93. As reflected in the Planning Commission's Policy on Dwelling Unit Mergers (December 2001), the merger of dwelling units raises significant concerns regarding the loss of housing units and the impact upon the City's overall housing stock. Two legal apartments in a multiple-unit building could be combined by opening a party wall and could be used by one family while retaining both kitchens. This situation would be considered to be two units used by one family, and is considered a dwelling unit merger subject to the Planning Commission's Policy. Although the two units still exist as legally separate units, they are, in effect, merged for the use of one family and should be reviewed against the dwelling unit merger policy, since they have a similar effect upon the City's housing stock."

Planning Code Section 317(b)(7) defines *Residential Merger* as, "the combining of two or more Residential or Unauthorized Units, resulting in a decrease in the number of Residential units and Unauthorized Units within a building, or the enlargement of one or more existing units while

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substantially reducing the size of others by more than 25% of their original floor area, even if the number of units is not reduced.”

Planning Code Section 317(b)(12) defines *Removal* as, “With reference to a Residential or Unauthorized Unit, its Conversion, Demolition, or Merger.”

Planning Code Section 317(b)(12) defines *Residential Unit* as, “A legal conforming or legal nonconforming Dwelling Unit, a legal nonconforming Live/Work Unit or Group Housing.”

Planning Code Section 317(c) [Applicability; Exemptions] establishes:

(1) “Any application for a permit that would result in the Removal of one or more Residential Units or Unauthorized Units is required to obtain Conditional Use authorization. The application for a replacement building or alteration permit shall also be subject to Conditional Use Requirements.”

(3) The Removal of a Residential Unit that has received approval from the Planning Department through administrative approval or the Planning Commission through a Discretionary Review or Conditional Use authorization prior to the effective date of the Conditional Use requirement of Subsection(c)(1) is not required to apply for an additional approval under Subsection (c)(1).

DETERMINATION

Based upon the information provided in your request, it is my determination that the two adjacent lots and buildings located at 1231 & 1237 Douglass Street may be merged, occupied and recognized by the Planning Department as a single-family dwelling subject to its conformance with the applicable underlying RH-1 Zoning District property development standards without requiring a Conditional Use Authorization. This determination is based upon my assessment that permits issued by the City on September 20, 2000 (Building Permit Application Nos. 9925319 & 9925320 – NSR 2000-G755457-00) to allow communicating openings between the two dwelling units without any requirement to separate the units at a later date constitutes a de facto Removal or Residential Merger (as defined in Planning Code Section 317 and interpretation of Dwelling Unit above). In its existing configuration and occupancy since May 2002, the proposed merger of 1231 & 1237 Douglass Street meet the exemption criteria of Planning Code Section 317(c)(3), in that building permits for the Removal of a Residential Unit or a Residential Merger were granted by the City prior to the effective date of the Conditional Use requirement of Planning Code Section 317 Subsection (c)(1). As such, subject to conformance with the underlying RH-1 Zoning District property development standards, the Planning Department may approve a referral from DPW for the proposed lot merger. Such merger approval would allow Planning Department staff to approve an alteration permit to remove the fire doors to effectuate the merger; however, a new NSR would need to be recorded to amend the existing NSR restrictions.

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.

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425 Market Street, 26th Floor
San Francisco, CA 94105

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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: Chris Townes, Planner
Property Owner
Neighborhood Groups



BRETT GLADSTONE
PARTNER
DIRECT DIAL (415) 995-5065
DIRECT FAX (415) 995-3517
E-MAIL B.Gladstone@hansonbridgett.com

R # 2017- 002619 ZAD
CK # 7087 \$ 664. -
D. WASHINGTON (SW)

March 1, 2017

VIA MESSENGER AND E-MAIL

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

Re: Request for Letter of Determination for 1231 and 1237 Douglass Street

(6583/015C + 015B)

Dear Mr. Sanchez:

We represent the owners of the property located at 1231 and 1237 Douglass Street in San Francisco (the "Property") in asking you to provide a Letter of Determination regarding the merger of the two lots and homes comprising the Property.

My clients were encouraged by the attached email from Chris Townes, which he advised us was written after consultation with you. As a result, my clients asked me to write this Letter of Determination Request. Our clients have proposed a merger of the two lots and of the two single family homes located on the Property that have been used for more than 14 years as one single family home with full knowledge and approval of the Planning Department. When the department approved the combination, it set no particular date in the future for the buildings to be separated. Separation might never occur, for example.

Over time, as a result of City-approved interior improvements and the City-approved creation of communicating openings, price appreciation in the City, and the demand for larger family homes in Noe Valley, the value of the home has increased significantly. For this reason, and for other reasons discussed below, it has become increasingly unlikely that any owner now or in the future would decide to separate these units again. The reason that our clients want to formalize the merger now and not later is that they are in their older years [69+] and certain improvements required by the Fire Code at the time the buildings were legally opened to each other now have negative health and safety implications for the couple who live there, our clients.

The immediate health and safety issue for requesting this complete merger (which will also be accomplished by an application to DPW to merge lots under the subdivision Code) has to do with the need to de-activate the complicated fire door system separating the units, a system that creates significant safety issues.

Following are the determinations sought by this Request for Determination:

1. Can the buildings be merged using the exception to the Conditional Use requirement found in Sections 317(c)(5) and 317(d)(3)(A)? Those sections contain a reference to demolition. In

addition, does the Property qualify for the exception to the Conditional Use requirement under Section 317(c)(3)?

In effect, the Planning Department administrative approval of the use of the Property as a single family home indefinitely at the time when it approved building alteration permits to join the homes and required recordation of a Notice of Special Restrictions on the Property, created a de facto merger by virtue of the fact that it did not require the home to be unmerged at any point.

3. Please also confirm that the Zoning Administrator will approve a referral from DPW for a lot merger for the Property .
4. Please also confirm that the Zoning Administrator will approve an alteration permit to remove the fire doors to effectuate the unit merger.

I. Background.

Mr. and Mrs. Gomory have owned 1237 Douglass St. in San Francisco since 1979, and they were able to purchase the next-door property at 1231 Douglass in 1998, separated by just one inch on either side of a lot line. Their original intent starting in 1998 was to demolish both houses, merge the two properties and build a larger new one as each was small and had a poor layout. However, they later discovered that it was physically and legally possible to live in separate buildings on adjoining lots subject to compliance with the Fire Code and related building codes. Those codes required sprinklers, and the creation of six (6) fire doors to protect communicating openings across a property line, which were approved in three places, two locations on the top level and one on the lower level.

In early 2000 they obtained approval from Planning Staff and the attached Notice of Special Restrictions (Exhibit A) was recorded, allowing them to use both properties as a single-family home and allowing them to convey the property as such to a new owner someday. There was no limit, and there is no limit, on the number of years into the future that the property can continue to exist as a de facto single family home.

It is important to note that the recorded NSR did not require (as the City had done in the past when our office had brought forward unit mergers prior to enactment of today's Section 317) that the openings be closed when the owners sold the property. As a result, there was no expectation by the City that at a certain point two separate units operating independently would be recreated.

Also, our office has seen instances in which the City has required that a full kitchen be kept in each building, so that it would be easy for two separate buildings, owned by different people, to be restored. The City at first required that the owners " retain an accessory cooking facility at the second floor of 1237". As a result, the plans sent for approval called for a wet bar to be kept at 1237. Then later in the same process (in 2001) the City changed its mind and told our clients that the wet bar should be removed from the plans because otherwise it would make more likely the creation of a separate rental unit. As a result, no such wet bar exists today. Since our client never created the wet bar, the client removed nearby plumbing, making it very expensive to be restored.

The owners then received two remodel permits and did two major remodels side by side. They moved back in nearly 15 years ago after they opened up approximately 25% of the length of each building at the joint property line. At the demand of the Fire Department, they then installed roll-down fire shutters which release when certain events occur (unfortunately, including power outages).

II. Discussion.

The owners are seeking a merger of the Property in part to finalize the de facto merger of units because the two units have become so dependent on each other, there will never be a time when the two units can function separately. See Section A below. Additionally, the owner is seeking to merge the two lots/units into one because of health and safety issues, which have become more and more important now that the clients are aging. See Section B below.

A. The Units Are Dependent Upon Each Other.

The owners were careful to respect City exterior design guidelines. Therefore, from the street, the units appear to be two 25-foot-wide houses. However, a visitor to the inside of the building on the Property today would perceive it as a single family home because of a complete integration of required living, dining and bath areas. Moreover, there are few if any redundancies between the two homes in terms of rooms and systems. Except for fire doors in the middle of the single family home arrangement (doors that are well hidden by interior finishes), there is no indicia of two homes from inside. For this reason and others, no one buying the units would want to close the communicating openings back up.

As is, the Property would have a market value today of roughly \$6 million or more. The two homes together contain approximately 4700 square feet of conditioned space. It is estimated to cost more than \$2 million to restore the Property to two separate single family houses. No one would spend over \$6 million to purchase, then \$2 million more to create two smaller homes.

There are several examples of why the cost to re-separate would be huge. For example, one can go from the ground floor of one building directly to the street in the upper building only. One who enters the lower home by its front door has to walk down to a basement level, and then back up, to reach the ground floor of the upper home, the floor where its front door exists. Moreover, because the City changed its mind and decided not to allow a small kitchen to remain (see above) there is only one kitchen and one dining room in the two structures. Extensive new plumbing throughout would be needed to restore a kitchen.

B. Health & Safety Issues.

Our clients' major health and safety concern driving the desire for a merger is that the complicated door closure system required by the Fire Department (a system which allows two structures to contain communicating openings across a lot line), is not able to function in a safe and efficient manner. Without a reliable means of functioning, the automatic closing fire system has the potential to greatly reduce safety to the current owner/occupants. Our clients have tried several times to repair the six fire doors, without success.

The owners wish to seek an alteration permit to de-activate the complicated fire door system that creates significant safety issues, discussed in more detail below.

The six fire doors (one on each side of the two communicating openings on the top level, and one on each side of the single communicating opening on the bottom level) come down even when there is no fire. They come down whenever power is lost due to regular PG&E dysfunctions, plus storms or earthquakes, isolating the two halves of the house from each other. At the time they come down, Mr. Gomory may be in one building, at the top level, and Mrs. Gomory may be in the other building, at the lower level. Losing quick communication is one problem. They would have to go outdoors and to a different home to reach each other, meaning for example that one would have to exit to the street, enter the other home through a door leading to the basement of that home, and then walk up a set of stairs to reach the level of the fire door.

Second, there may be portions of the house, including the single kitchen, that could present safety hazards due to unexpected tripping of the fire doors. For example, one could leave the kitchen with food cooking (creating a grease fire) only to become unable to return when the fire doors go down.

Our clients are senior citizens, concerned as their mobility decreases, as to whether they can get to the six switches one must operate to re-open the fire doors after electrical service is restored. And then they must raise each fire door manually. Our clients are concerned one will be trapped on one side of the doors and other on other side, once the six fire doors shut. And even the manual switches stick and fail to operate reliably from time to time.

III. Intent and Purposes of Section 317 of the Planning Code Are Not Being Frustrated By the Approval of a Complete Merger.

The Legislation creating Section 317 states its goal as addressing the shortage of affordable housing and preserving existing housing as the best resource for rentable and financially accessible housing.

Those goals are not met by denying a permit to complete the merger of these two lots/units. That is because neither home is demonstrably affordable or financially accessible housing, nor are they used nor likely to ever be used as rental housing. The City as a practical matter (by allowing the communicating openings to continue into the future indefinitely) has lost the ability to cause restoration of these two buildings to two completely separate users/owners.

A. Financially Accessible.

The Planning Department may approve mergers pursuant to Planning Code Section 317(c)(5) and (d)(3) when a home is in an RH-1 district and is "demonstrably not affordable or financially accessible housing". Although the wording of this section refers to "demolition" rather than "merger", the Zoning Administrator has the power to interpret the Planning Code under Section 307.

Upon application to merge the lots/units, our clients will provide a recent appraisal to demonstrate that the Property is demonstrably not affordable or financially accessible housing.

B. De Facto Merger Already Occurred.

The Code says that "The Removal of a Residential Unit that has received approval from the Planning Department through administrative approval or the Planning Commission through a

Scott Sanchez
March 1, 2017
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Discretionary Review or Conditional Use authorization prior to the effective date of the Conditional Use requirement of Subsection (c)(1) is not required to apply for an additional approval under Subsection (c)(1)."

We believe that the approval of the three large communicating openings, the disallowance of a kitchen or even wet bar to remain in one of the buildings, the approval by the Building, Planning and Fire Department of removal of any egress to the street from the ground floor of the lower building, combined together with no requirement that the communicating openings be closed at any time in the future, have the effect of a de facto approval of the merger of the two buildings. We believe the Planning Department Staff can issue a permit to allow the formal merger of the buildings by using the grandfathering language of new Section 317.

We believe that the legal criteria for a unit merger can be met at a Planning Commission hearing. However, it is taking 6 to 8 months to get to a hearing, and the safety issues, given my clients' ages, make that problematic. The question is whether, as we believe is possible, this can be administratively approved. We believe that can be done, as discussed herein.

Please feel free to contact me with any questions.

Very truly yours,



Brett Gladstone

Enclosure

cc: Paul and Beatrice Gomory via U.S. Mail and e-mail

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO
NAME: Paul L. Gomory, Jr.
ADDRESS: 1237 Douglass Street
CITY: San Francisco
STATE: CA 94131



San Francisco Assessor-Recorder
Doris M. Ward, Assessor-Recorder
DOC- 2000-G755457-00

San Francisco copy

Check Number 978
Tuesday, APR 04, 2000 12:49:18
Ttl Pd \$28.00 Nbr-0001383417

REEL H608 IMAGE 0323
0J1/GG/1-4

NOTICE OF SPECIAL RESTRICTIONS UNDER THE CITY PLANNING CODE
Paul L. Gomory, Jr. Trustee of the Paul L. Gomory, Jr. Trust, Under Declaration of
~~(Am)~~ Trust dated 9/20/95, the owner(s) of that certain real property situated in the
City and County of San Francisco, State of California, more particularly described as follows:

(PLEASE ATTACH THE LEGAL DESCRIPTION AS ON DEED)
BEING ASSESSOR'S BLOCK 6538, LOTS 015B and 015C
COMMONLY KNOWN AS 1231 and 1237 DOUGLASS STREET

hereby give notice that there are special restrictions on the use of said property under Part II,
Chapter II of the San Francisco Municipal Code (City Planning Code).

Said restrictions consist of conditions attached to the approval of Building Permit Application
Nos. 9925319 and 9925320, to permit the owner to construct communicative openings, enabling
him to occupy the adjacent buildings at 1231 and 1237 Douglass Street as a single dwelling unit
and to retain an accessory cooking facility at the second floor of the dwelling at 1237 Douglass
Street in an RH-1 (Residential, House, One-Family) District and a 40-X Height and Bulk District, in
general conformity with plans on file with this application, and are conditions that had to be so
attached in order that said application could be approved under the City Planning Code.

The restrictions and conditions of which notice is hereby given are:

1. Although the 1231 and 1237 Douglass Street buildings ("subject property") will be occupied as a single-family home or conveyed as a single-family home, they shall be recognized as two units by the Planning Department; however
2. As long as the subject property is used as a single-family home, the dwelling at 1237 Douglass Street shall not be used as a separate additional dwelling unit or rooming unit, and no boarder shall reside therein; that utility, other services, mailbox and doorbells shall be provided for this dwelling solely on a single-family basis; and

NOTICE OF SPECIAL RESTRICTIONS UNDER THE CITY PLANNING CODE

3. When the subject property is reverted to two single-family homes in the future by the property owners, their assigns, successors-in-interest or heirs, or by any future purchaser, whether by transfer of titles or sale of the property, the openings connecting the two buildings shall be closed prior to the transfer of titles of the subject property. Once the subject property is reverted to two single-family homes, the subject property shall remain as two single-family homes.
4. The owners of the subject property shall record the conditions attached to this building permit application approval on the land records of the City and County of San Francisco as a Notice of Special Restrictions in a form approved by the Zoning Administrator.
5. The proposed project must meet these conditions and all applicable City Codes, and in case of conflict, the more restrictive controls shall apply.

The use of said property contrary to these special restrictions shall constitute a violation of the City Planning Code, and no release, modification or elimination of the restrictions shall be valid unless notice thereof is recorded on the Land Records by the Zoning Administrator of the City and County of San Francisco; except that in the event that the zoning standards above are modified so as to be less restrictive and the uses herein restricted are thereby permitted and in conformity with the provisions of the City Planning Code, this document would no longer be in effect and would be null and void.

Dated: 3.31.2000 at San Francisco, California

Paul L. Gormley, Trustee
(Signature of Owner)

*PAUL L. GORMLEY, TR. TRUST, 0/2/8
9-20-95*

This signature(s) must be acknowledged by a notary public before recordation; add Notary Public Certification and Official Notarial Seal below.

EXHIBIT A

Legal description of the property commonly known as 1231 Douglass Street:

COMMENCING at a point on the easterly line of Douglass Street, distant thereon 89 feet northerly from the northerly line of 27th Street; running thence northerly and along said line of Douglass Street 25 feet; thence at a right angle easterly 80 feet; thence at a right angle southerly 25 feet; thence at a right angle westerly 80 feet to the easterly line of Douglass Street and the point of commencement.

BEING part of HORNER'S ADDITION BLOCK 224

Assessor's Lot 15-C; Block 6583

Legal description of the property commonly known as 1237 Douglass Street:

COMMENCING at a point on the easterly line of Douglass Street, distant thereon 64 feet northerly from the northerly line of 27th Street; running thence northerly and along said line of Douglass Street 25 feet; thence at a right angle easterly 80 feet; thence at a right angle southerly 25 feet; thence at a right angle westerly 80 feet to the easterly line of Douglass Street and the point of commencement.

BEING part of HORNER'S ADDITION BLOCK 224

Assessor's Lot 15-B; Block 6583

Hallie A. Makrakis

From: Townes, Chris (CPC) <chris.townes@sfgov.org>
Sent: Wednesday, January 11, 2017 5:43 PM
To: Melissa L. Vancrum
Cc: Brett Gladstone
Subject: RE: Section 317(d)(3)(A) Code Clarification as applied to a Merger

Melissa,
Yes, that is an accurate summary of our conversation.

Thank You,

CHRIS TOWNES, CURRENT PLANNING- SW QUADRANT
T| 415.575.9195 E| CHRIS.TOWNES@SFGOV.ORG
SAN FRANCISCO PLANNING DEPARTMENT
1650 MISSION STREET, SUITE 400
SAN FRANCISCO, CA 94103



WEBSITE: WWW.SFPLANNING.ORG
PLANNING FRONT DESK: (415) 575-9121
PLANNING INFORMATION CENTER (PIC): (415) 558-6377 OR PIC@SFGOV.ORG
PROPERTY INFORMATION MAP (PIM): [HTTP://PROPERTYMAP.SFPLANNING.ORG](http://PROPERTYMAP.SFPLANNING.ORG)

From: Melissa L. Vancrum [mailto:MVancrum@hansonbridgett.com]
Sent: Wednesday, January 11, 2017 3:59 PM
To: Townes, Chris (CPC)
Cc: Brett Gladstone
Subject: RE: Section 317(d)(3)(A) Code Clarification as applied to a Merger

Hi Chris,

The following confirms our conversation today regarding the Code sections listed below. If we do not hear back from you this week, we will assume that this accurately describes our conversation.

Although the Code subsections listed below do not expressly state an application to a situation of a merger, it is your understanding through discussions with the SW Team Leader and Zoning Administrator that through submission of a request for a Letter of Determination on this issue for our client's property at 1231 and 1237 Douglass, the Zoning Administrator, in his response, may be able to make such a connection.

Thanks,

Melissa

Melissa L. Vancrum
Attorney
Hanson Bridgett LLP
(415) 995-5128 Direct
(415) 995-3464 Fax

