



SAN FRANCISCO PLANNING DEPARTMENT

Revised Letter of Determination

December 21, 2016

David Nale
126 Fillmore Street
San Francisco CA 94117

Site Address: 124 – 128 Fillmore Street
Assessor's Block/Lot: 0868/021
Zoning District: Residential Transit Oriented (RTO)
Staff Contact: Sara Vellve, (415) 558 - 6263 or sara.vellve@sfgov.org
Record No.: 2016-012616ZAD

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

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Dear Mr. Nale:

This letter is in response to permit activity regarding the use of the property at 124 – 128 Fillmore Street. This parcel is located in the Residential Transit Oriented (RTO) Zoning District and 40-X Height and Bulk District. The Department would like to document activity on the property to ensure clarity of the use for recordkeeping purposes.

1. On March 8, 2005, Variance Case No. 2005.0228V was filed for the property to authorize construction of a garage within the required rear yard. At the time this application was filed, the property was located within an RH-3 (Residential-House, Three-Family) Zoning District.
2. On June 17, 2005, Building Permit Application (BPA) No. 200506175345 was filed for the property to allow construction of a garage within the required rear yard.
3. Between June 30, 2015 and July 20, 2015, neighborhood notification pursuant to Planning Code Section 311 was performed for BPA 200506175345.
4. On July 27, 2005, the Zoning Administrator held a public hearing on Variance Case No. 2005.0228V.
5. On November 10, 2005, the Zoning Administrator granted Variance Case No. 2005.0228V.
6. On May 8, 2007, BPA 200506175345 was issued by the Department of Building Inspection (DBI).
7. On May 17, 2007, Complaint No. 8899_ENF was filed on the property alleging use of the property as a bed and breakfast inn (tourist hotel).
8. On May 21, 2007, Appeal No. 07-074 was filed on the issuance of BPA 200506175345.
9. On May 30, 2007, the Zoning Administrator issued a Notice of Violation for the subject complaint finding that the property was being used illegally as a tourist hotel. This decision was not appealed.

10. On January 26, 2008, the Planning Department received a new complaint alleging that the property was being used illegally as group housing.
11. On January 30, 2008 and April 2, 2008, the Board of Appeals held public hearings on Appeal No. 07-074. At the hearings, the Permit Holder admitted to operating the subject property as a tourist hotel from May 2006 through July 2007. On April 2, 2008, the Board of Appeals granted the appeal and ordered revocation of BPA 200506175345 with findings including that the subject property was being used illegally as a tourist hotel at the time the subject permit was issued.
12. On May 30, 2008, the property was rezoned from the RH-3 to RTO as part of the implementation of the Market-Octavia Area Plan. Under the RTO controls, group housing is principally permitted with Section 311 neighborhood notification (rather than requiring a Conditional Use Authorization as under the RH-3 controls) and parking is limited to the accessory amounts listed in Planning Code Section 151.1 (rather than parking minimums under the RH-3 controls).
13. On June 22, 2009, BPA 200906220907 was filed with DBI with the following project description: *“Improvements needed for group housing use. Rear stair roof penthouse, modify front stairs to exit to roof, roof mechanical rooms, roof deck, self-closing doors, signage for exits, naming of resident rooms.”* In 2009, it was the Planning Department’s understanding that the property owner wished to convert the building’s use from 3 individual dwelling units to group housing, and make physical changes to accommodate the new use. Such permit was necessary to abate a complaint on the subject property regarding the unpermitted use of the property as a group housing use. The Planning Department processed this permit and issued Section 311 neighborhood notification between November 2, 2010 and December 2, 2010. On December 1, 2010, a request for Discretionary Review (DR) was submitted by a member of the public. On September 22, 2011 the Planning Commission conducted a DR hearing to consider the proposal. After public testimony was presented, BPA 200906220907 was approved (DRA-0228). To address the DR requestor’s concerns the property owner volunteered a set of restrictions on the property and formalized them through two documents recorded on the deed of the subject property:
 - a. 2011-J281353-00 (Notice of Special Restrictions Under the Planning Code – NSR, recorded with the Assessor’s Office on October 5, 2011) consisting of 9 conditions of approval imposed by the Planning Department on BPA 200906220907; and,
 - b. 2011-J274289-00 (Declaration and Agreement of Restrictions, recorded with the Assessor’s Office on September 22, 2011) consisting of 14 restrictions proposed by the property owner.

On November 17, 2011, document 2011-J301480-00 (First Amendment to Declaration and Agreement of Restrictions) was recorded with the Assessor’s Office to amend the expiration term outlined in document 2011-J281353-00.

BPA 200906220907 was issued by the Department of Building Inspection on February 24, 2012 and the work received a Final Inspection on October 23, 2015. At that time the Planning Department was under the impression that the property use had been changed from 3 apartments/dwelling units to group housing in accordance with the property owner’s disclosure on the permit application.

14. On April 29, 2016, BPA 201604296207 was submitted to DBI with the following project description, *“There is no construction under this permit. Affirm “3 family residence” designation for 124 – 128 Fillmore St. Property was constructed as 3 family residence in 1902. Permit 2009-0622-0907 completed some improvements needed for a group housing. The right to do group housing will no longer be pursued.”* This permit was not routed to the Planning Department for review and was issued by DBI on May 2, 2016. This permit received a Final Inspection on May 19, 2016.

15. On September 16, 2016, you submitted a request to rescind document 2011-J281353-00, the NSR with conditions of approval imposed by the Planning Department on BPA 200906220907. These conditions related to the proposed change of use to from three dwelling units to group housing. You have stated that work required by the Building Department to convert the property to group housing occupancy (including seismic, fire safety and other work) was never permitted, nor completed at the subject property and that you are abandoning the permit to convert to group housing occupancy. As such, the conditions of approval imposed by the Planning Department on BPA 200906220907 are no longer necessary. In response to your request, a Release of Notice of Special Restrictions is attached to this document. It should be noted that the subject property must be maintained in compliance with all Planning Code requirements related to dwelling units.

In order to avoid additional and unnecessary process and confusion regarding potential new development activities on your property, the Planning Department recommends that you, or an appointee, seek advice prior to any new physical work, or changes in use, by contacting the planner listed above.

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.

APPEAL: Any aggrieved person may appeal this letter to the Board of Appeals within fifteen (15) days after the date of the issuance of this letter. For further information, please contact the Board of Appeals in person at 1650 Mission Street, Room 304, or call 575-6880.

Sincerely,



Scott F. Sanchez
Zoning Administrator

Attachment: Release of Notice of Special Restrictions

cc: Sara Velve, Planner
Property Owner
Neighborhood Groups

FOR RESCISSION

R# 2016-012616ZAD

NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE

CK 1197 \$ 664 - S VELAVE (NW)

RECORDING REQUESTED BY:

And When Recorded Mail To:

Name: M. Brett Gladstone
Gladstone & Associates

Address: 177 Post Street,
Penthouse

City: San Francisco

State: California 94108

CONFORMED COPY
10/05/2011, 2011J281353

recorded

NW

on _____ with document no _____
This document has not been compared with the original
SAN FRANCISCO ASSESSOR-RECORDER

Space Above this Line For Recorder's Use

I (We) David Scott Nale 2000 Trust, David S. Nale, Trustee, 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: 0868 LOT: 021

COMMONLY KNOWN AS: 124-128 FILLMORE 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 (Planning Code).

Said Restrictions consist of conditions attached to Case No. 2010.1104D authorized by the Planning Commission of the City and County of San Francisco on September 22, 2011 as set forth in Planning Commission DRA No. 0228 and Building Permit Application 2009.06.22.0907, to establish a Group Housing use, as defined by Planning Code Sections ("Sections") 209.2(a) and 208, within the Residential Transit Oriented District ("RTO").

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

- 1. Hotel Prohibition.** The Property shall not be used as a hotel, inn or hostel as defined in Planning Code Section 209.2(d) and (e) (a use which offers rooms for compensation for the accommodation of transient overnight guests).
- 2. Recordation of Conditions of Approval.** Prior to the issuance of the building permit or commencement of use for the Project the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on September 22, 2011 under DRA No 0228.

NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE

3. **Printing of Conditions of Approval on Plans.** The conditions of approval of Planning Commission DRA No. 0228 shall be reproduced on the Index Sheet of construction plans submitted with the Site or Building permit application for the Project. The Index Sheet of the construction plans shall reference the Discretionary Review case number and any subsequent amendments or modifications.

4. **Enforcement.** Violation of any of the Planning Department conditions of approval contained in this DRA or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

5. **Monitoring.** The Project requires monitoring of the conditions of approval in this DRA. The Project Sponsor or the subsequent responsible parties for the Project shall pay fees as established under Planning Code Section 351(e) (1) and work with the Planning Department for information about compliance.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

6. **Revocation due to Violation of Conditions.** Should implementation of this Project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and found to be in violation of the Planning Code and/or the specific conditions of approval for the Project as set forth in the Planning Commission's DRA, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter to consider revocation of this authorization.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

7. **Community Liaison.** Prior to issuance of a building permit application to implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator, and the elected Supervisors of District 5 and District 8 (and to the neighborhood association called Lower Haight Merchants and Neighbors Association) written notice of the name, address, email address and telephone number of the community liaison. Should the contact information change, all those parties and the Zoning Administrator shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.

For information about compliance, contact Code Enforcement, Planning Department at (415) 575-6863, www.sf-planning.org.

NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE

8. **Garbage, Recycling, and Composting Receptacles.** Garbage, recycling, and compost containers shall be kept within the premises and hidden from public view, and placed outside only when being serviced by the disposal company. Trash shall be contained and disposed of pursuant to garbage and recycling receptacles guidelines set forth by the Department of Public Works.

For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 415-554-5810, <http://sfdpw.org>

9. **Sidewalk Maintenance.** The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Streets and Sidewalk Maintenance Standards.

For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works, 415-695-2017, <http://sfdpw.org>

The use of said property contrary to these special restrictions shall constitute a violation of the Planning Code, and no release, modification or elimination of these 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 therein restricted are thereby permitted and in conformity with the provisions of the Planning Code, this document would no longer be in effect and would be null and void.

Dated: 10/5/2011 at San Francisco, California

David Scott Nale 2000 Trust

By: 
David S. Nale, Trustee

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

SEV/jms/124-128 Fillmore Street/NSR