



SAN FRANCISCO PLANNING DEPARTMENT

Letter of Legitimization

May 14, 2013

David Silverman
Reuben & Junius, LLP
One Bush Street, Suite 600
San Francisco, CA 94104

Site Address:	One Enterprise Street
Assessor's Block/Lot:	3572/018
Zoning District:	PDR-1-G (Production, Distribution, Repair)/58-X
Staff Contact:	Julian J. Bañales (415) 558-6339 julian.banales@sfgov.org

Dear Mr. Silverman:

This letter is in response to your request for a Letter of Legitimization per Planning Code Section 179.1 regarding the property at One Enterprise Street. This parcel is sited on the north side of the street, which is located off Folsom Street between 16th and 17th Streets. It is located within the PDR-1-G (Production, Distribution, Repair, General) Zoning District and 58-X Height and Bulk District. The request is to legitimize approximate 1,800 square feet of residential space on the second and third floors of the building.

Procedural Background

The Department received the request for legitimization of the residential space at One Enterprise Street on January 13, 2012. Staff reviewed the request and associated materials and the Zoning Administrator issued a 30-day public notice of the intent to issue the Letter of Legitimization on April 10, 2013. The public notice also included a draft letter for review, and was sent to 1) all owners of property within 300 feet of the subject property, 2) all current tenants of the subject property, and 3) all individuals and neighborhood associations that had requested to receive such notice. Additionally, notice was posted on the site during the notification period. The notification period expired on May 9, 2013.

Eligibility

The land use proposed for legitimization is deemed eligible if it meets the following criteria:

- i. The land use existed as of the date of the application;

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Documentation was presented that 1,800 square feet of residential use on the second and third floors existed as of January 13, 2012, the date the application was filed with the Planning Department.

- ii. The land use would have been principally permitted or permitted with a Conditional Use Authorization under provisions of the Planning Code that were effective on April 17, 2008;

On April 17, 2008, prior to the Eastern Neighborhoods Area Plan, the subject property was zoned M-1 (Light Industrial). Planning Code Section 215 states that residential use is permitted with a Conditional Use Authorization at "a density ratio permitted in the closest residential district or no less than for an RM (Residential, Moderate Density)" in this Zoning District. The nearest residential district is RH-3 (Residential, House, Three-Family), thus, the single residential unit would be permitted through the approval of a Conditional Use Authorization.

- iii. The land use would not be permitted under current provisions of the Planning Code;

The property is currently zoned PDR-1-G (Production, Distribution, Repair, General). Planning Code Section 215 outlines what uses are permitted, not permitted, or requires a Conditional Use Authorization in the PDR-1-G Zoning District. Residential uses are not permitted pursuant to Planning Code Section 215.

- iv. The land use either has been (1) regularly operating or functioning on a continuous basis for no less than 2 years prior to the effective date of Planning Code Section 179.1, or (2) functioning in the space since at least April 17, 2008, and is associated with an organization, entity or enterprise which has been located in this space on a continuous basis for no less than 2 years prior to the effective date of Planning Code Section 179.1;

At the date of qualification on January 17, 2007,¹ the building was owned by Beth Weintraub, who used the space as an artist's studio and residence. Documentation including property insurance and utility bills show that the building was used for residential purposes. In 2005, Beth Weintraub leased a portion of the building to 'Weintraub Studios Inc.' for a thirty-year term. Grant deeds submitted with the application show that the property was sold to 'Baikonur 1701 LLC' on June 11, 2011. On July 1, 2011, the owner leased the property to two tenants: Jamie Emerick, individual, for artist's studio space on the first and second floors, and Issac Roth, individual, for residential use on the second and third floors.

The following outlines the land uses by floor:

¹ The Eastern Neighborhoods Plan Area, which rezoned the subject property from M-1 to PDR-1-G, went into effect on January 17, 2009. Section 179.1 states that for a use to qualify for legitimization it must be "regularly operating or function[ing] on a continuous basis for no less than 2 years" prior to the date this section went into effect. Therefore, under this provision, January 17, 2007, is one qualifying date for determining whether a use qualifies for legitimization.

1. First Floor: This floor contains 1,335 square feet of artist studio space, with a 115 square-foot entry to the building, which is used by both tenants. The studio space is classified as an "Arts Activity" under Planning Code Section 102.2, and is not subject to the legitimization program, as it is permitted as-of-right in the PDR-1-G District under Planning Code Section 227(p) ("Other Uses").
2. Second Floor: This floor contains two distinct spaces: 500 square feet is used as an artist's studio (the two rooms at the front, or eastern part of the floor), and 350 square feet is used as residential space (in conjunction with the residential uses on the third floor). There is a 600 square foot 'common room' which is shared by both tenants. This space does not qualify as residential use as it is shared between both uses and lease documentation does not call out this space for the residential tenant.
3. Third Floor: This floor contains 1,450 square feet of residential space.

- v. The land use is not accessory to any other use;

As detailed above, documentation was presented showing that the building is divided into two separate uses – an artist's studio space and a residential space. The residential space exceeds the threshold of ¼ the amount of the use to which it might be considered accessory. Therefore, the residential space is not accessory to the artist studio space.

- vi. The land use is not discontinued and abandoned pursuant to the provisions of Planning Code Section 183 that would otherwise apply to nonconforming uses.

Documentation submitted indicates that 1,800 square feet of space on the second and third floors have remained occupied during the required period.

Determination

It is my determination that only 1,800 gross square feet on the second and third floors meets all the required criteria of Planning Code Section 179.1 and is therefore deemed to be a legal "Residential Use" as defined in Planning Code 215. A Notice of Special Restrictions shall be filed on the subject property documenting the specific building area legitimized as residential space as listed in this letter and documented on the proposed plans, attached as Exhibit B, prior to the approval of a site or building permit establishing such residential space. This determination is **not** a project approval, or in any way a substitute for a Building Permit Application for the change of use to residential space.

Please note that before a Building Permit Application may be approved to legally convert the subject gross floor area to residential use, this project must obtain Planning Commission approval for a Conditional Use Authorization pursuant to Planning Code Sections 215 and 303 and must pay the applicable legitimization and other associated fees.

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San Francisco, CA 94104

May 14, 2013
Land Use Legitimization Letter
One Enterprise Street

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 the Letter of Legitimization. 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: Julian J. Bañales, Planner
Planning Commissioners
All Parties on the Notification Request List

EN LEGITIMIZATION APPLICATION §179.1

January 13, 2012

ID # 10151 SE J. BANALES

OK # 19862 & 588. -

By Hand Delivery

Mr. Scott Sanchez
Zoning Administrator
1650 Mission Street, 4th Floor
San Francisco, CA 94103

**Re: Residential EN Legitimization Application, Planning Code Section 179.1
One Enterprise Street (Block 3572, Lot 18)
Our File No.: 7004.01**

Dear Mr. Sanchez:

Enclosed please find the application and supporting materials, including two additional copies, for an Eastern Neighborhoods (“EN”) Legitimization request under Planning Code Section 179.1 for the residential property located at One Enterprise Street (“Property”). We are filing this application on behalf of Issac Roth who resides at the top floor and a portion of the second floor (shown on the attached floor plans), and is the manager of the trust that owns the building.

A. Introduction and Background.

The Property is located on the block bounded by Folsom Street, 16th Street, Treat Street, and 17th Street. The building covers the full lot. The Property is improved with a 3-story, 4,320-square-foot building built in 1900, and used as a residential unit on the third floor and a portion of the second floor (“Residential Unit”).

James Byrd occupied the Residential Unit for 35 years from 1977 to 2006. Beth Weintraub occupied the Residential Unit from 2006-2010. Issac Roth has continued to occupy the Residential Unit without interruption to the present.

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San Francisco Planning Department
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The ground floor is used for PDR uses and is not a part of this application. The balance of the second floor is used as storage. The zoning for the Property is PDR-1-G.

B. Floor Plans.

Floor plans for the Property are attached as **Exhibit A**. Photographs are attached as **Exhibit B**.

In total, the building contains approximately 4,320 gross square feet of floor area, of which 2448 square feet on the third floor and a portion of the second floor is the subject of this request for legitimization as residential use.

C. Evidence Supporting Eligibility.

i. The land use existed as of the date of the application;

The Residential Unit is currently used and has been used since 1971 for residential use. The residential use can be verified by visiting the site. The remainder of the building is used for PDR use.

ii. The land use would have been principally permitted or permitted with conditional use authorization under provisions of the Planning Code that were effective on April 17, 2008;

Prior to the EN rezoning, the Property was located in the M-1 (Light Industrial) Zoning District, which permitted residential uses at all levels of the building with a conditional use authorization. The new zoning, PDR-1-G (Production, Distribution, and Repair-1-General), was not adopted until June 11, 2008.

iii. The land use would not be permitted under current provisions of the Planning Code;

Upon the conclusion of the EN rezoning process, the zoning district classification was changed from M-1 to PDR-1-G. Residential use is not permitted in the PDR-1-G zoning district. (Planning Code Section 210.10).

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iv. The land use either has been (1) regularly operating or functioning on a continuous basis for no less than 2 years prior to the effective date of Planning Code Section 179.1, or (2) functioning in the space since at least April 17, 2008, and is associated with an organization, entity or enterprise which has been located in this space on a continuous basis for no less than 2 years prior to the effective date of Planning Code Section 179.1;

The Residential Unit has occupied floor 3 and a portion of floor 2 since 1971, well in excess of the two-year requirement for the EN Legitimization program under §179.1(2)(D)(1).

v. The land use is not accessory to any other use;

The Residential Unit that is being requested for legitimization is not accessory to any other use.

vi. The land use is not discontinued and abandoned pursuant to the provisions of Planning Code Section 183 that would otherwise apply to nonconforming uses.

The Property is not vacant, and has been under continuous residential use since 1971. The use has not been discontinued or abandoned within the meaning of Planning Code Section 183.

D. Notification Materials.

Mailing labels, 300-foot radius map and a list of owners within 300-foot radius are separately enclosed with this application.

E. Conclusion.

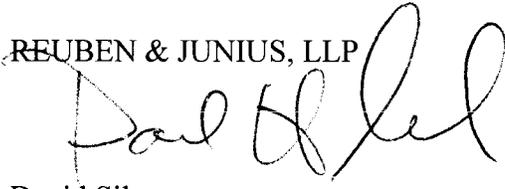
In addition to the evidence and other information and documents identified above, I have enclosed a check in the amount of \$588.00 made to the order of the Planning Department for the Department's filing fee.

Mr. Scott Sanchez
Zoning Administrator
San Francisco Planning Department
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Please do not hesitate to contact me or if you need any additional information or have any questions.

Very truly yours,

REUBEN & JUNIUS, LLP


David Silverman

Enclosures:

Exhibit A – Floor plans
Exhibit B – Photographs: Exterior and Interior
Mailing labels, map and list of owners for 300-foot radius
Check for \$588.00 for the Planning Department determination fee

cc: Issac Roth (w/o encls.)