



SAN FRANCISCO PLANNING DEPARTMENT

Letter of Determination

March 5, 2010

Jarie Bolander, President NOPNA
Ben Allison, President ASNA
Sommer Peterson, President DMA
P.O. Box 591504
San Francisco, CA 94159

**RE: 350 Divisadero Street (aka 352 Divisadero Street)
Block: 1217 Lot: 027**

Dear Ms. Bolander, Mr. Allison and Mr. Peterson:

This letter is in response to your request for a reevaluation of a Letter of Determination issued October 8, 2009, regarding the property at 350 Divisadero Street (aka 352 Divisadero Street). This parcel is located in an NC-2 (Neighborhood Commercial District, Small Scale) Zoning District, a 40-X height and bulk district and the Divisadero Street Alcohol Restricted Use District.

The request asks whether there was an intent to abandon the Medical Cannabis Dispensary (MCD) at 350 Divisadero Street, despite a recent request inquiring into the validity of the approvals for that MCD by the Planning Commission from Mr. Hallinan.

In the October 2, 2009 Letter of Determination, I stated that since the permit to change the occupancy of the space from an MCD to a gym was never finalized by the Department of Building Inspection, and no other use has operated in the space since the MCD closed, the property owner or his agent could proceed with a new application to operate an MCD at the subject property under the same restrictions required by the Planning Commission's action without being subject to another Mandatory Discretionary Review hearing or change of use (Planning Code Section 312) notification.

However, in light of the additional information provided and outlined below, I hereby determine that my October 8, 2010 Letter of Determination was incorrect for the following two reasons: 1) the MCD was in fact abandoned as there was a deliberate intent to change the use from an MCD to a gym; and 2) the MCD did not meet the requirements of Ordinance No. 255-07 (BOS File No, 07-0677, approved 10/2/07), which required that MCDs obtain a final permit from the City on or before March 1, 2008.

With regard to the first point, the MCD that was legalized by the Planning Commission, dba San Francisco Patient's Cooperative, never received a final permit from the Department of Building Inspection (DBI). According to DBI's database, the building permit for this MCD was abandoned on

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November 26, 2007 at the Plans Approval Division-Station (Permit #2007.0508.0661). For over two years, no action was taken on the permit. As a result, the permit was never finalized by DBI. Since then, there two permits have been issued by DBI, both for the conversion of the retail space into a gym: #2009.0266.2988, issued February 27, 2009, for the change of occupancy from a retail space to a gym, and #2009.0513.8290, issued May 21, 2009, for the demolition of a storefront, installation of an awning.

In addition to these permits, the property owner applied to the Mayor's Office of Community Investment for a Capital and Economic Development SH SHINES Façade Improvement Grant on May 5, 2009. The application for a new façade calls the business "Student of the Game." There is a letter from the owner of the building, Miranda Ho, that states "my tenant... and I are engaged in discussion on versions of a 5-year lease option enhancement to his existing 2 year lease at [350 Divisadero]. We are all very excited about his new fitness/gym business, The Student of The Game." The Student of The Game was given a façade improvement grant and entered into a preliminary agreement with the Mayor's Office on April 9, 2009 to complete this work.

These permits and grant application indicate that there was a clear intent to abandon the MCD at 350 Divisadero, and that the MCD was in fact abandoned for a gym use.

With regard to the second point, the Board of Supervisors passed Ordinance No. 255-07 which went into effect on October 2, 2007. This Ordinance amended the Planning Code with regard to MCDs. It specifically placed a requirement that all MCDs that [were in existence as of the date of this Ordinance] must obtain a final permit on or before March 1, 2008. In addition to receiving authorization from the Planning Commission to operate an MCD, the Mayor's Office of Disability, Department of Building Inspection, and the Department of Health must authorize and issue permits. The final authorization to operate an MCD in San Francisco is issued from the Department of Health.

350 Divisadero Street did receive authorization from the Planning Commission to operate the MCD on September 27, 2007. However, as noted above, this MCD never received a final permit from DBI (Permit #2007.0508.0661). A search into the Mayor's Office of Disability and the Department of Health's records show that no permits were issued by either agency. The MCD did not obtain a final permit from the City by March 1, 2008; therefore, it did not meet the requirement of BOS Ordinance 255-07.

If an MCD wishes to operate at 350 Divisadero Street, they must begin the application process again. They will be considered to be a 'new' MCD (rather than an existing MCD as in the previous application), and subject to all of the zoning requirements in Planning Code Section 790.141.

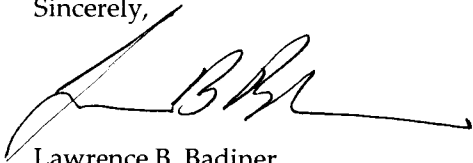
For these reasons, I hereby determine that my decision in the October 8, 2009 Letter of Determination was incorrect and that the MCD at 350 Divisadero was abandoned.

P.O. Box 591504
San Francisco, CA 94109

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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,

A handwritten signature in black ink, appearing to read 'LBB', written over a horizontal line.

Lawrence B. Badiner
Zoning Administrator

cc: Terrence Hallinan, Attorney at Law
Supervisor Mirkarimi
Tara Sullivan, Planner
Scott Sanchez, Planner
Aaron Starr, Planner