



# SAN FRANCISCO PLANNING DEPARTMENT

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## Letter of Determination

January 29, 2010

Janet Campbell, Architect  
Campbell and Associates  
Two Parker Avenue, No. 302  
San Francisco, CA 94118-2659

**RE: 416 Austin Street (aka 1843 Pine Street)**  
**Block: 0664 Lot: 062**

Dear Ms. Campbell,

This letter is in response to your request for a letter of determination regarding the property at 416 Austin Street, also known as 1843 Pine Street. This parcel is a through lot located in an RH-2 Zoning District and a 40-X height and bulk district. The subject property contains three structures; a one-unit, two-story building fronting on Pine Street, a two-unit, two-story building fronting on Austin Street and a one-story, two-car garage fronting on Austin Street. The request letter details several questions related to the development potential of the property including the location of the required rear yard line, the potential for enlarging the basement of 416 Austin Street, identifying the "legal non-conforming unit," and adding a garage door to and reconfiguring the front entry stairs of 416 Austin Street.

Regarding the location of the rear yard, because the subject lot is a through lot there are three places that the rear yard could be located on the subject lot; either fronting on Pine or Austin Street, or at the center of the lot. The first question is whether or not the rear yard is located along Austin or Pine Streets or at the center of the lot.

The subject lot is a through lot that fronts on both Pine and Austin Streets. A lot line adjustment done in 1990 made the subject property into an "L" shaped lot, increasing the frontage along Austin Street in order to capture the parking structure located on the adjacent lot. This resulted in the adjacent lot to the east maintaining its status as a through lot, but with only 6' of frontage along Austin Street. The adjacent lot to the west is also a through lot but with 25' of frontage on both Austin and Pine Streets. Both the subject lot and the adjacent lot to the west are developed with residential units facing both Austin and Pine Streets; however the adjacent property to the east does not have any development along its 6' long frontage on Austin Street.

Planning Code Section 134(c)(4)(C) states that "Where a lot is a through lot having both its front and its rear lot line along streets, alleys, or a street and an alley, and both adjoining lots are also through lots, each containing two dwellings or group housing structures that front at opposite ends of the lot, the subject through lot may also have two buildings according to such established pattern, each fronting at one end of the lot, provided all the other requirements of this Code are met."

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An interpretation of this Code section further elaborates and says that "A through lot can be developed according to provisions of this Section- 134(c)(4)(C)- even though abutting properties are not through lots but rather a set of four lots each fronting the respective streets and developed with buildings conforming to pattern described by this Section save for the absence of a lot line. Because the nature of the development is the relevant issue rather than the presence or absence of a lot line, the intent of the section was met. The only difference between this situation and that described by this Section is the "paper" presence of lot lines."

The subject property does not abut two properties that have housing structures fronting on both streets; however the development pattern on this block is such that most of the properties have buildings on both Pine and Austin Streets, save the adjacent lot to the west. Neither Code Section 134 nor the interpretation for Section 134 seems to address this unique situation. Given that the interpretation states that the intent of the Code is to consider the development pattern of the block, it seems reasonable to allow development on both sides of the subject lot given the pattern of development on the subject block, which is mainly developed with buildings fronting on both streets.

However, there is no residential structure on the adjacent lot and the Code does not permit development on both sides of a through lot when one of the adjacent properties does not have a residential structure on it. Further, defining the rear yard as the center of the lot, and allowing greater development along Austin Street on the subject lot could negatively impact the adjacent lot to the east. While the situation could be considered a hardship for the subject property given the established development pattern on the block, a Letter of Determination is not the appropriate venue to allow exceptions to the Code for situations specific to one property. Rather a Variance hearing, properly noticed and with a public hearing is the appropriate venue for such decisions. Therefore it is my determination that given that the Code does not make any exceptions for this specific situation, the rear yard for this property is not in the middle of the lot, but fronts along either Austin or Pine Street.

Planning Code Section 130 allows the property owner of a through lot to decide which frontage to use when determining the rear yard on a vacant lot. However, this property is developed and an interpretation from March of 1987 for Code Section 130 addresses this situation. It states that the development pattern on the block should be taken into consideration when the lot in question is already developed. It appears from the development pattern and the type of development on the subject lot that the front of the lot is along Pine Street. Therefore it is my determination that the rear yard fronts along Austin Street and the residential building and garage that front on Austin Street are legal noncomplying structures located within the required rear yard and subject to Planning Code Section 188.

Section 188 states that "within the limitations of this Article 1.7, and especially Sections 172 and 180 hereof, a noncomplying structure as defined in Section 180 may be enlarged, altered or relocated, or undergo a change or intensification of use in conformity with the use limitations of this Code, provided that with respect to such structure *there is no increase in any discrepancy, or any new discrepancy, at any level of the structure, between existing conditions on the lot and the required standards for new construction set forth in this Code*, and provided the remaining requirements of this Code are met (emphasis added). Therefore, increasing the size of the basement of the building at the rear would increase in the discrepancy of the

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Code, and a noncomplying structure variance in addition to a rear yard variance would be required to intensify the residential building or garage at the rear of the lot.

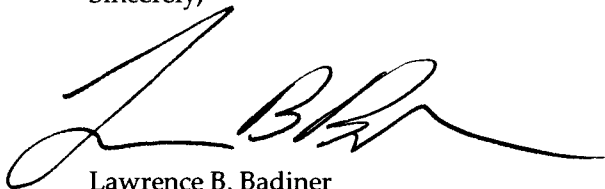
Regarding which unit is the legal non-conforming unit, according to a December 1985 interpretation for Planning Code Section 181 a property owner may choose which unit they deem to be the non-complying unit unless one of the units is located within a non-complying structure. If one of the units on the property is located within a noncomplying structure, one of those units must be considered a non-complying unit. Since I have determined that the building at the rear is a non-complying structure and there are two units in that non-complying structure, either one of those units may be deemed to be the non-complying unit. However, before any development may proceed on either building the property owner must record a Notice of Special Restriction on the property that designates which unit is a non-complying structure.

Regarding the garage door width, per Planning Code Section 311, all alterations to structures located in a residential district must conform to the Residential Design Guidelines. Further, all proposed garages on existing buildings must conform to the Zoning Administrator's bulletin 2006.1a and 2006.1b "Procedures and Criteria for Adding Garages to Existing Residential Structures". A 14' wide garage door does not comply with either document, and given that the structure along Austin Street is a potential historic resource, the proposed garage and proposed entry stair alteration would need to be reviewed by a Preservation Technical Specialist before to determine the appropriateness of the proposed alterations. Please note that in some instances the insertion of a garage opening will not be approved in a historic resource.

Your letter raises several questions about the development potential of the subject property that can not be adequately answered in this letter. Because of this, I recommend that you schedule a project review meeting to better understand your options and the development potential of the property.

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,



Lawrence B. Badiner  
Zoning Administrator

cc: Aaron Starr, Planner

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