

**TOWN OF SAN ANSELMO
PLANNING COMMISSION STAFF REPORT**

For the meeting of November 19, 2012

Agenda Item D-2

Owner and Property Address:

Ford Greene
711 Sir Francis Drake Boulevard
San Anselmo, CA

Request

Appeal of an administrative decision by the Interim Planning Director regarding the existence of a residential use in the lowest level of the building at 711 Sir Francis Drake Boulevard.¹

Recommendation

That the Planning Commission uphold the action of the Interim Planning Director, finding no proof in the materials that were submitted by the property owner that establishes that the lowest level of the building at 711 Sir Francis Drake Boulevard was legally created as a residential unit and has continuously been used as a residential unit since becoming non-conforming.

Background

On October 11, 2001, a Report of Residential Building Records (resale report) was prepared for the property at 711 Sir Francis Drake Boulevard (Attachment 2). Pursuant to Section 10-5.01 of the San Anselmo Municipal Code, "Prior to the consummation of the sale or exchange of any residential property in the Town, the owner or his authorized agent shall obtain from the Town a report of the residential building record showing the regularly authorized and legal use, occupancy and zoning classifications of such property and all other pertinent information relating thereto". The resale report prepared in October 2001 for 711 Sir Francis Drake Boulevard identified unpermitted work including a living unit which was apparently installed in the basement without permits and which was identified as substandard and not meeting Code requirements for habitable space. The resale report indicated that the "condition must be corrected or the unit not be used for living space."

¹ Numerous addresses from 711 Sir Francis Drake Boulevard through 721 Sir Francis Drake Boulevard have been used for various tenants on the subject property over the years. For simplicity purposes, the property is collectively referred to as 711 Sir Francis Drake Boulevard in this staff report.

On August 19, 2005, Building Official Keith Angerman sent a letter (Attachment 3) to Ford Greene, owner of the property at 711 Sir Francis Drake Boulevard, indicating that the Town had recently received a notice from Marin Municipal Water District of a complaint that a toilet had been installed in the rear of one of the buildings at 711 Sir Francis Drake Boulevard, and that Town records did not indicate any permit being issued for the toilet installation. Mr. Angerman cited the October 11, 2001 resale report and indicated that since no permits were obtained, "it is assumed that the space is still in use and is still deficient". Mr. Angerman directed Mr. Greene to begin the process of applying for and obtaining the proper permits within 14 calendar days of the date of his letter.

Despite numerous requests by Town staff over more than 10 years since the resale report first identified the illegal residential use of the lowest floor of the building, Mr. Greene has failed to obtain the necessary permits to allow him to legally occupy the lowest floor of the structure at 711 Sir Francis Drake Boulevard as a residential unit. In September 2011, Mr. Greene contacted the Town regarding his desire to obtain a roofing permit for the structure at 711 Sir Francis Drake Boulevard. As with any property in the Town, a property is not issued a building permit if there are outstanding violations that have not been corrected on the property. On September 12, 2011, following an inspection of the property by Town staff, Public Works Director Sean Condry sent a letter (Attachment 4) to Ford Greene telling him that he would be allowed to apply for an emergency roofing permit only at such time as he submits information necessary to reactivate expired permits and to obtain permits for work done without permits. Because of anticipated inclement weather, Mr. Condry allowed Mr. Greene to obtain a roofing permit with a \$1,000 fee deposit and a commitment to submit for a conditional use permit.

On March 1, 2012, Mr. Greene submitted an application for a conditional use permit to allow a residential use in the lowest level of the building at 711 Sir Francis Drake Boulevard. Subsequent to filing the application for use permit, in May 2012, Mr. Greene raised the issue that he believed that his residential occupancy of the lowest level of the building was a legal non-conforming use and as such should be "grandfathered in", and not subject to the Town's ordinances; therefore he should not have to pursue a use permit to legalize it. Mr. Greene was told that he should submit documentation that the lowest level of the building was legally created as a residential use and has continuously been used as a residential unit since becoming non-conforming.

On June 18, 2012 and August 1, 2012, Architect Fani Hansen (on behalf of Mr. Greene) submitted detailed information, in the form of appendices (Attachments 5 and 6), as evidence that Mr. Greene was relying on to establish the grandfathered use. On August 14, 2012, Interim Planning Director Diane Henderson, after reviewing the submitted materials, informed Ms. Hansen (Attachment 7) that there is no proof that the lowest level of that building was legally created as a residential unit and has continuously been used as a residential unit since becoming non-conforming. Therefore, if Mr. Greene wishes to occupy the lowest level of 711 Sir Francis Drake Boulevard as a residence, it is necessary for him to obtain a conditional use permit for residential use in the C-L zoning district from the Planning Commission. Mr. Greene has appealed the decision of Interim Planning Director Henderson (Attachment 1).

Staff Analysis

Section 10-3.302 of the San Anselmo Municipal Code (SAMC), the Land Use Regulations Table, referred to as Table 3A, lists uses of the land on properties in the Town of San Anselmo, and indicates whether or not each use is permitted (P), conditionally permitted (C), or not permitted (-) in each zoning district. Uses not specifically listed in the Land Use Regulations Table are specifically prohibited unless a Use Determination by the Planning Director is made which finds "the use not specifically listed is similar to another use permitted or conditionally permitted within the District."

The property at 711 Sir Francis Drake Boulevard is zoned C-L, Limited Commercial. As detailed in Land Use Regulations Table 3A, Multi-Family Residential, Single Family Attached Residential and Single Family Detached Residential are conditionally permitted uses in the C-L zoning district. Second units are not permitted in the C-L zoning district.

In 1976, the San Anselmo Town Council adopted Ordinance No. 706, amending the San Anselmo Municipal Code to provide for the establishment and regulation of residential second units. This ordinance allowed property owners to register second living units if they were established in conformity with laws in effect at the time. A handout prepared by the Planning Department at that time, *Questions and Answers Most Often Asked About 2nd Living Units* (Attachment 1 to August 14, 2012 letter from Diane Henderson to Fani Hansen), identified the type of evidence that the Town would accept to show that a second unit was legal or existing rather than new. In order to be considered a legal unit, the second unit had to have been continuously used since becoming non-conforming and evidence had to be submitted to establish the date the unit was created. As detailed in *Questions and Answers Most Often Asked About 2nd Living Units*, the date of establishment could be verified by: old rental receipts, written testimony (signature to be notarized of other persons who had the knowledge of the unit's existence), assessor's records or the type and age of materials used in construction.

While second units are not allowed in the C-L zoning district, it is appropriate that the same type of evidence used to establish the legality of a second unit in a residential zone would also establish the legality of a residential unit in a commercial zone. Applying this rationale, the Interim Planning Director reviewed the evidence submitted by Ms. Hansen on behalf of Mr. Greene and came to the conclusion that there is nothing in the materials submitted that establishes the legality of the residential use of the lowest level of the building at 711 Sir Francis Drake Boulevard.

Ms. Hansen submitted *Chronology of Occupancy of 711-721 Sir Francis Drake* (Attachment 5) and *Outline of Occupancy Set Forth in Narrative Form* (Attachment 6) detailing Mr. Greene's argument for the historic occupancy of the property, including copies of excerpts from pages of Sanborn Insurance Maps, the 1920 Fourteenth Census of the United States, Marin County Directories, A to Z Directories, Polk Directories and Haines Directories showing the names of various individuals assigned to 711 Sir Francis Drake Boulevard, and declarations from Ford Greene, Shelly Winn, Peter Penhallow, and Gerry Armstrong indicating their residencies at 711 Sir Francis Drake Boulevard. While there are names listed in the census and the various directories, and the declarations indicate that people lived in the structure at 711 Sir Francis Drake Boulevard, there is nothing in the submitted materials that confirms that anyone lived in the lowest level of the building until Mr. Greene took up occupancy there sometime during or after 1990. It should be noted that there are two legal residential units on the third level of the

mixed-use building at 711 Sir Francis Drake; staff has never questioned the legality of the two upper level units for residential use; it is understood that these units have existed for residential purposes since the building was constructed. It is the conversion and use of the lowest level, originally a bakery, and now being occupied as a residential use, that is under question. Therefore, although Ms. Hansen (on behalf of Mr. Greene) submitted statements from numerous individuals, declaring residential uses at 711 Sir Francis Drake Boulevard, none of them provides written testimony that the lowest level was a legal residential use that has continued to exist as such since it was established. Statements that bakers slept in the bakery do not establish the lowest level as a residential use.

Based on the discussion above, on August 14, 2012, Interim Planning Director Diane Henderson sent a letter (Attachment 7) to Mr. Greene's architect, Fani Hansen, AIA, indicating that "While I concur that there is evidence that the building at 711 Sir Francis Drake Boulevard has historically had residential and commercial uses, I find no proof in the materials that you submitted that establishes that the lowest level of that building was legally created as a residential unit and has continuously been used as a residential unit since becoming non-conforming". Ms. Hansen was further informed that "if Mr. Greene wishes to occupy the lowest level of 711 Sir Francis Drake Boulevard as a residence, it is necessary for him to apply for and receive a conditional use permit for residential use in the C-L zoning district from the Planning Commission". Pursuant to Chapter 4 of the San Anselmo Municipal Code, Ms. Hansen was also informed that if Mr. Greene desired to appeal the administrative decision of the Interim Planning Director, he could file an appeal to have the matter considered by the Planning Commission. On August 24, 2012, Mr. Greene filed an appeal (Attachment 1).

Subsequent to Mr. Greene filing this appeal, staff became aware of two individuals with first hand knowledge regarding the property at 711 Sir Francis Drake Boulevard, Matthew Storms and Vicki Harrison. Matthew Storms is a real estate agent and was the listing agent for the property at 711 Sir Francis Drake Boulevard when it was listed for sale in the fall of 2001. At that time, Ford Greene was a tenant at the property and ultimately purchased the property. According to a signed declaration from Matthew Storms (Attachment 8), Mr. Greene, as buyer of the property at 711 Sir Francis Drake Boulevard, was given a copy of the October 11, 2001 Report of Residential Building Records for the property. As discussed in detail above, the Report of Residential Building Records for 711 Sir Francis Drake Boulevard identified the unpermitted work including the basement living unit, indicating that the "condition must be corrected or the unit not be used for living space" (Attachment 2).

Vicki Harrison owned and operated a dress shop, Harrison & Co. in the street level unit of the subject building from approximately 1979 to 1985. According to a signed declaration from Ms. Harrison (Attachment 9), during the approximate six year period that she was a tenant in the building, the basement area was used for storage and never for residential purposes.

Although the declarations from Matthew Storms and Vicki Harrison came after the decision set forth in the August 14, 2012 letter from Interim Planning Director Diane Henderson to Fani Hansen (Attachment 7) that there is no proof that the lowest level of the building at 711 Sir Francis Drake Boulevard was legally created as a residential unit and has continuously been used as a residential unit since becoming non-conforming, in fact, the declarations provide further support for that determination.

Conclusion

As set forth in the August 14, 2012 letter from Interim Planning Director Henderson to Mr. Greene's architect, Fani Hansen, while there is evidence that the building at 711 Sir Francis Drake Boulevard has historically had residential and commercial uses, there is no proof that the lowest level of that building was legally created as a residential unit and has continuously been used as a residential unit since becoming non-conforming. Therefore, if Mr. Greene wishes to occupy the lowest level of 711 Sir Francis Drake Boulevard as a residence, it is necessary for him to obtain a conditional use permit for residential use in the C-L zoning district from the Planning Commission. Mr. Greene has made application for such use, which will be subsequently considered by the Planning Commission, depending on the Commission's action on this appeal.

Prepared By:



Diane Henderson
Interim Director of Planning

Attachments:

1. Appeal of Administrative Decision by Interim Director of Planning
2. Report of Residential Building Records, October 11, 2001
3. Letter from Building Official Keith Angerman to Ford Greene, August 19, 2005
4. Letter from Public Works Director Sean Condry to Ford Greene, September 12, 2011
5. Applicant's submittal (Appendices), June 18, 2012
6. Applicant's submittal (Appendices), August 1, 2012
7. Letter from Interim Planning Director Diane Henderson to Fani Hansen, AIA, August 14, 2012
8. Declaration of Matthew Storms, September 27, 2012
9. Declaration of Vicki Harrison, September 20, 2012
10. Letter from Property Owner's Legal Counsel, November 13, 2012
11. *Chronology of Occupancy and Zoning Development 711-715 Sir Francis Drake Boulevard*, Submitted by the Property Owner, November 13, 2012