

Tom McInerney
Mayor

Kay Coleman
Vice Mayor



Ford Greene
Councilmember

Jeff Kroot
Councilmember

Lori Lopin
Councilmember

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August 14, 2012

Fani Hansen, AIA
P.O. Box 868
Tiburon, CA 94920

RE: 711 Sir Francis Drake Boulevard, San Anselmo, CA

Dear Ms. Hansen:

This letter is in response to your submittal to the Town of San Anselmo regarding the existence of a residential use in the lowest level of the building at 711 Sir Francis Drake Boulevard, San Anselmo.

You have submitted detailed information in an attempt to establish the historic use of the lowest level of the building at 711 Sir Francis Drake Boulevard as a residential use. Your client, Ford Greene, currently lives in the unpermitted unit in the lowest level and has indicated to the Town that he believes that his residential unit should be "grandfathered in", as he indicates that it has been a residential living unit since before permits were required. The burden of proof regarding grandfathering is with Mr. Greene, and in response to such, you have submitted information to the Town that you believe proves that the lower unit has been a residence throughout the life of the building.

I have conducted a thorough analysis of the materials that you submitted and I am unable to make a determination that the lowest level of the building at 711 Sir Francis Drake Boulevard is a legal residential use. I have come to this conclusion based on the following:

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."

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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), 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 seems logical 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. Assuming this rationale, there is nothing in the materials that you submitted that establishes the legality of the residential use of the lowest level of the building at 711 Sir Francis Drake Boulevard.

You have submitted an *Outline of Occupancy Set Forth in Narrative Form* detailing your 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 various names 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.

Finally, although you have 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.


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. If Mr. Greene wishes to occupy the lowest level of 711 Sir Francis Drake Boulevard as a residence, it will be 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.

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Pursuant to Chapter 4 of the San Anselmo Municipal Code, if you wish to appeal the administrative decision set forth in this letter, you may do so by paying the necessary fee and filing an appeal setting forth the specific grounds thereof with the Town Clerk within 10 calendar days of the date of this letter. Any appeal of this determination will be scheduled for consideration by the Planning Commission.

Please contact me if you have any questions or need additional information.

Sincerely,



Diane M. Henderson
Interim Director of Planning

Attachments:

1. *Questions and Answers Most Often Asked About 2nd Living Units*

cc: Debra Stutsman, Town Manager
Bonnie Freeman, Legal Counsel
Ford Greene, Property Owner

QUESTIONS AND ANSWERS
MOST OFTEN ASKED ABOUT 2ND LIVING UNITS

QUESTION:

1. What is the purpose of registration of a unit legally established under zoning ordinances in effect at the time of establishment?

ANSWER: Registration is necessary in order to identify legally established units from those not legally established. Those not legally established must apply for a use permit to continue. Also, registration will establish "once and for all" the legality of a second living unit and will provide the owner with evidence that the Town recognizes the second unit as legal. This could be a factor in determining the value of your property when it is sold.

2. Q. How much does it cost to register a legal second unit?

A. Nothing.

3. Q. If my legal unit is abandoned or destroyed can it be re-established?

A. This might be permitted under the use permit provisions of the San Anselmo Municipal Code. It would be treated like a new unit.

4. Q. What if I don't register my legal unit before the deadline?

A. It will then be treated under the more strict regulations for illegally established units.

5. Q. What if I intend to sell my home with a second unit, before April 5, 1977; should I apply or should the new buyers register?

A. This is up to you, but if you register the property, it might sell easier or at a better price.

6. Q. What kind of evidence do I have to have to show my unit is legal or existing rather than new?

A. The date of establishment is a factor; this can be verified by:
Old Rental Receipts
Written testimony (signature to be notarized) of other persons who had knowledge of the unit's existence.

Assessor's records

Type and age of materials used in construction (most obvious when a separate structure.)

In order to be considered a legal unit the 2nd unit must also have been continuously used since becoming non-conforming.

7. Q. What if I don't apply for a use permit and my unit was not legally established?

A. It would (when discovered) be treated as a new unit. New units will be limited in number and the quota for the neighborhood may already be exceeded by units already registered in which case your unit might be abated.

8. Q. What is the final date for applying for registration or use permit for existing units (both legal and illegal)?

A. April 5, 1977.

9. Q. If my unit is found to be not legal what happens?

A. If you have an existing second unit you will be required to file an application for a use permit (\$50.00 fee). If the unit is found to be not detrimental to the neighborhood in terms of parking, traffic and other considerations a use permit will be granted provided you agree to enter into agreement with the Town to rent to persons of low or moderate income at a fair market rental which has been established by the Town.

10. Q. What is the income level that qualifies a person to rent a second unit?

A. HOUSEHOLD COMPOSITION

GROSS INCOME

1 person	& 9,500
2 persons	10,900
3 "	12,300
4 "	13,600
5 "	14,500
6 "	15,300
7 "	16,200
8 or more persons	17,100

11. Q. What are the present fair market rental rates?

A. MAXIMUM RENT ALLOWABLE PER MONTH IN DOLLARS

	<u>0-Bdrm.</u>	<u>1-Bdrm.</u>	<u>2-Bdrm.</u>	<u>3-Bdrm.</u>	<u>4-Bdrm.</u>	<u>5+Bdrm.</u>
1. Rent including parking, water & garbage service, but not inc. gas & electric.	155	176	206	282	319	356
2. Rent including parking, water, garbage, gas & elec. service.	169	193	228	317	359	401

12. What about inflation?

A. The rental rates and income levels will be adjusted from time to time by resolution of the Town Council.

13. Q. What year would my house have had to be constructed to be a legal existing unit?

A. This depends on several factors relating to the size of the property and the zoning history of the property. Any second unit occupied prior to May 23, 1939 and continuously rented since then would be a legal unit. Certain other units might also be legal but the determination is more complicated.

14. Q. Where can I get more information and application forms?

A. From the San Anselmo Planning Office, 128 Tunstead Avenue

HOURS: 8:00 a.m.---5:00 p.m. MON. WED, FRI.

7:30 a.m.---6:00 p.m. TUES. THURS.