

Planning & Development Department
Office of Director

January 17, 2020

Kristina D. Lawson
Partner
HansonBridgett LLP
VIA EMAIL – klawson@hansonbridgett.com

Dear Ms. Lawson,

On January 14, 2020, you submitted a letter on behalf of HSR Berkeley Investments, LLC, requesting that the City deem that the Use Permit for the project at 2211 Harold Way has been exercised due to the efforts and expense the developer team invested to date in furtherance of the project. Your letter also stated that, in the event the City is unable to deem that the Use Permit has been exercised by the January 20, 2020 deadline for submitting a building permit and the required fees, the project be granted a minimum 18-month extension in order to complete the necessary financing and prepare necessary submittals.

In considering your request, I reviewed the conditions of approval for the project Use Permit (#13-10000010) and Structural Alteration Permit (#13-40000002), which were granted by the City on December 8, 2015. Condition 10 of the Use Permit and Condition 8 of the Structural Alteration Permit impose a 180-day deadline to submit a Building Permit application and pay all building permit-related fees promptly when due, subject to the City's ability to grant discretionary extensions of that deadline. Three extensions of the deadline have been granted to date, the most recent being a 12-month extension to January 20, 2020.

The purpose of Use Permit Condition 10 and Structural Alteration Permit Condition 8 is to ensure that projects that receive approval from the City move forward in a timely manner to advance the goals of the City's Downtown Area Plan, which prioritizes transit-oriented development. These conditions were specifically applied to the project at 2211 Harold Way because the project holds one of only three opportunities allowed for in the Downtown Area Plan to construct a building up to 180-feet in height. The project you represent is one of the three such projects to receive its entitlements in the past four years. Of the other two projects, one is under construction, and the other recently submitted a Building Permit application and the associated fees.

Use Permit Condition 10 is all the more relevant today as Berkeley and the Bay Area experience an acute housing affordability crisis. As you know, the intent of this condition of approval is that

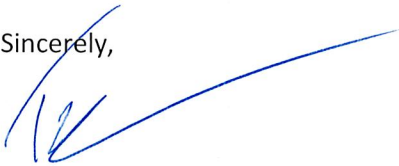
once a project gets entitled, it does not indefinitely hold one of only three opportunities to build a 180-foot building in Berkeley's Downtown. The condition of approval is designed to ensure that once a project gets approved, it gets built. If the project is unable to move forward in the required timeframe, then another housing development project has the opportunity to be initiated.

The development team for 2211 Harold Way committed to the conditions of approval for the project at the time it was approved. More than four years have passed since the City issued the Use Permit, but the development team has not fulfilled its obligation to submit the Building Permit application and pay the required fees. The development team has communicated to the City that the project, as entitled, is no longer feasible. The development team has stated that advancing the project would likely require the elimination of the planned movie theater, reduction or reconfiguration of the required parking, and potentially other significant modifications. Such modifications, if they had been proposed, would need to be considered by the Zoning Adjustments Board. Those would not be staff/administrative decisions. The development team has also communicated that the project does not have the necessary financing to move forward.

Given that the City has granted three extensions to the project, and also given the high degree of uncertainty that another extension would result in a project getting built, the City is denying your request for an 18-month extension of the deadline to submit a valid Building Permit application. As of January 20, 2020, Use Permit (#13-1000010) and Structural Alternation Permit (#13-4000002) have expired due to the applicant's failure to comply with Condition 10. (See BMC § 23B.56.070.) Because the expiration of the time limit in Condition 10 forecloses the possibility that the applicant could exercise the permits, the City need not address whether it is appropriate to declare the permits lapsed under Use Permit Condition 8 and BMC § 23B.56.100.

This is not an easy decision, as I know the project team has worked hard to bring the project to fruition. City staff have also invested significant time and energy on the project throughout the entitlement process. But the conditions of approval for the project are there for a reason, and it is time to unlock a new opportunity for our community.

Sincerely,



Timothy Burroughs
Director, Department of Planning & Development

Cc: Farimah Brown, City Attorney
Joseph Penner
Mark Rhoades