



Planning and Development Department

August 31, 2018

BY EMAIL KLawson@hansonbridgett.com

Kristina Lawson
Partner
HansonBridgett LLP
1676 N. California Blvd., Suite 620
Walnut Creek, CA 94596

RE: 2211 Harold Way – Request for Extension of Time

Dear Ms. Lawson:

On May 25, 2018, you submitted a request on behalf of HSR Berkeley Investments, LLC, for a third extension of the deadline by which an application for a building permit must be submitted for the development project at 2211 Harold Way in Downtown Berkeley. As you know, the project was granted a Use Permit (#13-10000010) and a Structural Alteration Permit (#13-40000002) by the City on December 8, 2015. Condition 10 of the Use Permit and Condition 4 of the Structural Alteration Permit impose a deadline of 180-days after that date to submit a building permit application.

Two extensions of the deadline have been granted to date. Your previous two requests for extensions were based on delays to the project associated with litigation against the City regarding the project's approval. The City granted the first extension until June 5, 2018, and the second until January 10, 2019. Alameda County Superior Court closed the two cases, and any rights to appeal were terminated on December 28, 2016.

In considering this third request, which is to extend the deadline one additional year to January 10, 2020, we have weighed several factors.

The first is the importance and rationale of the permit conditions that set a deadline by which a building permit application must be submitted. These conditions are designed to advance implementation of the City's Downtown Area Plan (DAP), which benefited from the contributions of many community members and which prioritizes mixed-use, transit-oriented development in Berkeley's Downtown. The adopted DAP allows for three buildings to be constructed up to 180-feet in height – these are projects that were envisioned to contribute housing, commercial space, and a range of significant community benefits. The project you represent was the first 180-foot building to get its entitlements, and it is holding one of only three opportunities to construct such a building in Berkeley. The permit conditions are intended to ensure that projects move forward swiftly, and that the vision of the DAP is advanced.

In order to ascertain whether or not the extension is justified, the City must conduct significant due diligence. The Use Permit allows for the Planning Department to extend the building permit application deadline, but we do not take that decision lightly.

So the other main factors we weighed were to what degree the causes of the delay in submitting the building permit application were outside of your client's control and whether or not the project team is indeed making progress as the current deadline approaches. We needed to ascertain, to the degree possible, whether one more extension would result in a building permit application being submitted and the project advancing as approved, rather than an additional year of delay that does not result in a building permit application being submitted.

For that reason, we followed up to your May 25, 2018, extension letter with requests for more information regarding the reasons for project delays and tangible steps being taken to overcome them. In June – August 2018, you responded to our requests and communicated that, along with litigation, the main reason for delays to date has been the significantly increased cost of construction, which then made project financing more difficult and time consuming to secure. You also noted that the project team has now identified a likely financing partner and had assembled a team that was actively meeting and working to initiate the process of developing construction drawings. You noted that changes in the market due to the federal Tax Cuts and Job Act of 2017 make investment in multifamily real estate projects in certain "opportunity zones," including Downtown Berkeley, more attractive and significantly contributed to the project team's ability to identify a likely capital partner.

Based on the information you provided, it appears that the project team has demonstrated tangible steps toward securing the necessary financing partners and submittal of the required building permit application, despite the documented increase in project costs. The project is consistent with the City's adopted Downtown Area Plan, but it also holds one of only three opportunities to develop a 180-foot building in the Downtown. We are granting your extension request, but the project team will need to move swiftly to demonstrate to the City and the broader community that this third extension will result in a different result and that the project will get built consistent with City approvals.

I hereby grant your request for a one-year extension, which will result in a new deadline of January 20, 2020, by which Condition 10 of Use Permit #13-10000010 and Condition 4 of Structural Alteration Permit #13-40000002 must be met.

Sincerely,

Timothy Burroughs
Director, Department of Planning & Development

cc: Farimah Brown, City Attorney
Shannon Allen, Principal Planner
Mark Rhoades, Rhoades Planning Group