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September 15, 2020

President Norman Yee
c/o Angela Calvillo, Clerk of the Board
San Francisco Board of Supervisors
San Francisco, CA 94103
Email: angela.calvillo@sfgov.org

Via First Class Mail and Email

Re: Objection to Continuance of Appeal of CEQA Final Mitigated Negative Declaration
2417 Green Street – File No. 200137

Dear President Yee:

Our office is litigation counsel for Christopher Durkin, the Project Sponsor in the above-captioned CEQA Appeal (the “CEQA Appeal”). We write to object to the proposed continuance of the Board of Supervisors hearing that is currently scheduled for September 22, 2020, and request that the CEQA Appeal be heard at that hearing. City staff have indicated that this hearing may be continued to November 10 or 17, 2020. We understand that some delays are inevitable due to the current coronavirus situation, however this project dates back to early 2017. The Board is also currently hearing CEQA appeal hearings, including for more recently-filed project applications.

The Project at issue involves proposed renovations to the single-family home at 2417 Green Street and the addition of an ADU (the “Project”). Planning staff found that the Project complies with all applicable planning and zoning regulations. Staff also conducted extensive environmental review of the Project and issued a Preliminary Mitigated Negative Declaration (“PMND”) on June 26, 2019. The Planning Commission denied the appeal of the PMND on January 9, 2020, and the Final MND was ultimately approved on July 16, 2020, when the Planning Commission approved the Project.

Despite being supported by Planning Staff at every step of the process, the final approval of the Project has been repeatedly delayed. Discretionary Review requests were first filed more than two years ago, in November 2017. These were scheduled for hearing - and then not resolved - on at least *eleven* separate occasions, including on: February 8, 2018; July 12, 2018; October 4, 2018; November 29, 2018; January 17, 2019; July 11, 2019; September 19, 2019; November 21, 2019; January 9, 2020; April 16, 2020; May 28, 2020; and June 18, 2020. We understand that several of these continuances occurred at the urging of Supervisor Stefani’s office. Our client was ultimately forced to file a lawsuit to compel the Planning Commission to hold a hearing. This litigation is currently stayed by agreement, and on the basis of the City’s representations that it would progress the Project in a timely manner.

Now that the CEQA Appeal has finally been scheduled for September 22, 2020, it is astonishing that the City is now threatening to continue this hearing. Any further delay in approving the Final MND would violate numerous state law requirements. CEQA requires that a Mitigated Negative Declaration be completed and approved within 180 days from the date when the lead agency accepted the application as complete. (14 CCR § 15107.) Here, the Project applications dates back to March 2017 – more than three years ago. The MND that is the subject of this appeal was approved by the Planning Department on June 26, 2019 – more than a year ago. By any metric, the City has significantly blown past the CEQA deadlines and is in violation of its obligations under state law. This pattern of delay is unjustified and violates the Project Sponsor’s right to a timely hearing. The lengthy delays for approval of this Project are manifestly unreasonable and raise significant due process concerns.

Moreover, the Project is a “housing development project” for the purposes of the Housing Accountability Act and SB 330, because it proposes the addition of an ADU to the existing single family home. SB 330, which came into effect on January 1, 2020, requires that no more than *five* hearings be conducted in connection with the approval of a housing development project (Gov. Code § 65905.5(a)). “Hearing” is expansively defined and *includes continued hearings* and appeals as one of the five hearings allowed. (*Id.*) CEQA appeals are not excluded from the definition of “hearings.” Here, five Planning Commission hearings (including continued hearings) have already occurred in connection with the Project in 2020, on: January 9; April 16; May 28; June 18; and July 9. The City has therefore exhausted the number of hearings it is allowed to hold.

Finally, the majority of the work proposed by the Project is to construct a new ADU located at the first floor. The ADU does not require a waiver of any Code requirements and is located within the buildable area of the existing dwelling. As such, state law requires that the ADU be “considered and approved ministerially *without discretionary review or a hearing* . . .” within 60 days of the complete application (Gov. Code § 65852.2(a)(3), *emph. added.*) Similarly, Planning Code § 207(c)(6), which has not yet been updated to comply with state law, requires ministerial approval of the ADU within 120 days of receipt of the application. CEQA review of the ADU is prohibited. (Pub. Res Code § 21080(b)(1); Cal. Code of Regs. § 15268.) Accordingly, any element of the Project that relates to the construction of the ADU, including the associated excavation and foundation upgrades, is entitled to prompt ministerial approval. By refusing to hold a timely CEQA appeal, the City is also unlawfully delaying the final approval of an ADU. The Board of Supervisors has no discretion to deny any aspect of the Project that relates to the ADU, or even hold a hearing in relation to such aspects.

Our client understands that the unprecedented coronavirus crisis has severely impacted City agencies’ usual operations. However, the delays in this matter significantly predate the current state of emergency. Our client simply seeks a hearing of the CEQA Appeal so that the Project can move forward to the next stage of the permitting process. We request that the CEQA Appeal be heard as currently scheduled, on September 22, 2020. Should the appeal not be heard

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as scheduled, our client is prepared to resume his litigation against the City to compel Project approval.

Very truly yours,

ZACKS, FREEDMAN & PATTERSON, PC



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