



City of Austin
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June 2, 2006

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Hartland Plaza
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Re: Building Permits for Buckingham Apartments, 711 W. 32nd Street

Dear Terry and Mark:

The staff has reviewed its position concerning the suspension of the building permits for the Buckingham Apartments after our meetings with the Applicant and the neighborhood on Friday. The staff has reviewed a chronology of the events leading up to the issuance of the building permit for the project and the legal arguments urged by both the Applicant and the neighborhood. We have concluded that the rescinded building permit originally issued to the Applicant on September 20, 2005 should be reinstated and the suspension of the building permit of April 14, 2006 should be lifted.

Pivotal to our decision is the extensive efforts of Mr. May in attempting to determine what redevelopment should be permitted on the site beginning in April of 2004.

1. Beginning April 5, 2004 the property was inspected after the fire, which destroyed the apartments. The report clearly provided that the owner was required to obtain permits to repair the burned structure pursuant to applicable codes.
2. On April 8, 2004 demolition permits were issued.
3. In May of 2004 Applicant's agent contacted Mr. Tim Langan concerning redevelopment of the site. The meeting(s) eventually resulted in an e-mail to Mr. Langan in which the Applicant's agent confirming the applicability of the technical codes to the redevelopment of

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the site. Ms. Whaley noted that the "project should qualify for site plan exemption and will be allowed to remain as an existing non-conforming use. While we recognize that this is not your area of authority, we note this for our mutual understanding of the project intent." Mr. Langan responded that the letter reflected City of Austin requirements. It should be noted for purposes of this letter, that the Applicant does not, at this time, contend that the redevelopment is a non-conforming use, but rather Applicant has invoked the 25-2-962 safe harbor provisions.

4. In November 2004, the applicant submitted a site plan exemption request, which was eventually approved on November 17, 2004.
5. Subsequently, the Site Plan Exemption was revised and reissued on July 28, 2005 pursuant to the revisions.
6. On September 20, 2005 a building permit was issued pursuant to the site plan exemption submitted by Applicant.
7. On March 15, 2006 the layout inspection was approved.
8. On April 6, 2006 a construction trailer was moved on site.
9. On April 7, 2006 a Temporary Restraining Order was issued by the District Court in Travis County.
10. On April 14, 2006 the building permit was rescinded.
11. The Applicant has incurred approximately \$900,000 in expenses for the redevelopment of the project.
12. The Applicant has expended considerable time and effort in his attempt to determine the standards applicable to the redevelopment of the site.

In making our decision to reissue the building permit we considered the legal arguments advanced by the Applicant and do not find them to be persuasive. No Chapter 245 rights extend either to the series of emails, unsigned letters, or the instructions provided to the Applicant concerning necessary permits. Further, invoking the provisions of 25-2-962 permits the Applicant to construct nothing other than what was permitted at the time of the original building permit issued in 1967 and governed by the applicable zoning site development regulations in effect at that time as modified by the City's technical codes.

On the other hand, we also have considered the legal arguments of the neighborhood and find those arguments unpersuasive as well. Our review of the building permit and its approval in 1967 results in a determination that the structure was a complying structure for purposes of 25-2-962 and is entitled to be treated accordingly.

Finally, we have concluded that the City is not estopped from enforcing its code requirements even though a building permit, which was substantially relied upon by the Applicant may have been issued on erroneously.

However, we have determined that the Applicant attempted to act in good faith concerning redevelopment on the site. The Applicant or his agent repeatedly attempted to determine what re-

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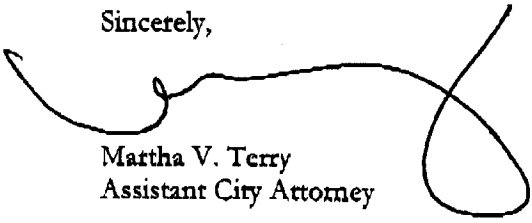
construction was permitted under the Code. The Applicant incurred considerable expense in designing the development for the site. We have concluded that this considerable expense together with the Applicant's attempts warrant the re-issuance of the building permit originally approved by the City for this site.

This accommodation is being made because of the Applicant's activities concerning reconstruction of the site and is not a recognition of, or acquiescence in, any legal arguments or theories advanced by the Applicant. Further, the City's decision in this matter is not to be construed as precedent in any future matters involving the reconstruction of a complying structure under the provisions of 25-2-962 of the Code.

It is my understanding that the Applicant has agreed to limit the height of the structure to 35 feet (as defined in Sec. 25-1-21 (46) of the City Code). The building permit that will be re-issued will reflect a re-development that will not exceed the footprint of the original structure. The building permit will not be re-issued until the building plans have been revised to show that the height does not exceed 35 feet, the maximum allowed by the zoning. In addition, a new site plan exemption showing a maximum height of 35 feet must be approved prior to re-issuance of the building permit. The mix of one and two bedroom units will deviate from the original development; the Owner is constructing more two bedroom units than previously existed. However, the redeveloped structure will be built on the same foundation and will comply with the setback requirements for the original structure. The re-development will also comply with parking and all other requirements of the current Technical Building Codes including handicapped accessibility.

Should you have any questions, do not hesitate to contact me.

Sincerely,



Martha V. Terry
Assistant City Attorney

cc: Laura Huffman
Victoria Hsu
Greg Guernsey
Sheila Rainosek
Tammie Williamson
George Zapalac