



FOSTER GRAHAM MILSTEIN & CALISHER, LLP
ATTORNEYS AT LAW

360 South Garfield Street
6th Floor Denver, CO 80209
T 303-333-9810 F 303-333-9786

DENVER – BOULDER
fostergraham.com

October 19, 2020

Via Electronic Mail to: council@bouldercolorado.gov

City Council
City of Boulder
1777 Broadway Street
Boulder, CO 80302

Re: Call-Up Item – Site Review Amendment to the Twenty Ninth Street Shopping Center – LUR2018-00075

Dear Councilmembers:

Foster Graham Milstein, & Calisher, LLP (“FGMC”) represents L&B Realty Advisors, LLP (L&B), which, through an affiliated entity, owns Two Nine North, an apartment complex located at 1955 30th Street in Boulder, Colorado (“Two Nine North”). This letter is L&B’s formal request that the Boulder City Council (“City Council”) call-up the Site Review Amendment to the Twenty Ninth Street Shopping Center, known as project number LUR2018-00075 (the “Project”) for review and consideration at a public hearing at a later date pursuant to Section 9-4-4(c) of the City of Boulder Land Use Code (the “Code”). A call-up of the Project is necessary because the Planning Board hearing on September 24, 2020 was procedurally deficient and therefore, neither L&B nor its Two Nine North staff were able to attend the hearing to express their concerns regarding the Project’s failure to meet the mandatory review criteria contained in the Code.

The Project, which is located at 1900 28th Street, is adjacent to Two Nine North. As an adjacent property owner, L&B and its Two Nine North staff have been interested parties to the Project since its inception due to the negative impact the Project will have to Two Nine North. After being promised direct email notification of future public hearings on the Project, neither L&B nor Two Nine North staff were provided email notice of the Planning Board’s hearing on the Project on September 24, 2020 (the “Planning Board Hearing”).

Specifically, Two Nine North staff was, according to an email sent by City of Boulder Staff (“City Staff”) on March 9, 2020, “on the contact list of people to be kept informed of the Site Review Amendment proposal related to the existing Macy’s building at 1900 28th St within the Twenty Ninth Street Shopping Center (LUR2018-00075).” The March 9, 2020 email stated that the Project would be reviewed by the Planning Board on March 19, 2020.

On March 13, 2020, City Staff again emailed Two Nine North staff the following email (the “March 13th Email”):

From: **Moeller, Shannon** <MoellerS@bouldercolorado.gov>
Date: Fri, Mar 13, 2020 at 1:41 PM
Subject: RE: 3/19 Planning Board Hearing - Macy's Twenty Ninth Street Site Review Amendment (LUR2018-00075)
To: Moeller, Shannon <MoellerS@bouldercolorado.gov>

Good afternoon,

Mitigating the potential spread of COVID-19 to ensure the health and well-being of our staff and community is fundamental to providing service excellence. That is why, beginning today, the City of Boulder is implementing several precautionary social distancing measures – including some public facility closures. These measures are in effect through March 29 and will be assessed regularly given the evolving nature of the pandemic.

This afternoon, the city made the decision to **cancel all public meetings including Board and Commission meetings, except City Council hearings, through March 29. This means that the planned Planning Board meeting on March 19th has been cancelled.** This item will be rescheduled to a later date and you will receive an additional email once that date is known. Should you have additional questions or concerns about this item, please contact me directly by replying to this email.

Best,

Shannon Moeller, AICP
Planner II/Code Amendment Specialist



O: 303-441-3137
moellers@bouldercolorado.gov

Planning and Development Services
1739 Broadway, Third Floor | Boulder, CO 80306-0791

Bouldercolorado.gov

As shown above, the second to last sentence of the March 13th Email stated, “[t]his item will be rescheduled to a later date and you will receive an additional email once that date is known.” However, Two Nine North staff did not receive an email notifying them of the Planning Board Hearing.

Accordingly, the Planning Board Hearing was deficient in its notice to Two Nine North staff because City Staff did not send them an email notifying them of the hearing, which was promised to them in the March 13th Email. L&B and Two Nine North staff had a right to rely on the representations contained in the March 13th Email and therefore, the Planning Board Hearing was not properly noticed. Consequently, because they did not receive notice as promised in the March 13th Email, neither L&B nor Two Nine North staff attended the Planning Board Hearing and thus, did not have a chance to present their concerns regarding the Project’s failure to meet the mandatory approval criteria in the Code to the Planning Board during public comment.

Ultimately, this means that the Planning Board issued its approval of the Project without hearing from all necessary parties, thus creating a critical failure in the due process right for an interested party to be heard by the deciding body. Therefore, L&B respectfully requests that the City Council call-up the Project for a public hearing, with proper notice, at a later date to ensure that L&B and Two Nine North staff have the opportunity to express their concerns before the deciding body regarding the Project's failure to meet the mandatory approval criteria contained in the Code.

Lastly, the Project was approved by the Planning Board by a vote of 4-3. It is L&B's position that the Planning Board's vote is indicative of a project that deserves additional review and consideration by the City Council because it is clear that several members of the Planning Board had significant concerns with the Project's ability to meet the mandatory approval criteria contained in the Code.

Thank you for your attention to this matter. For the foregoing reasons, L&B respectfully requests that City Council call-up the Project for further consideration at a future public hearing with proper notice. We look forward to the opportunity to provide additional analysis to the City Council and present comments at a future public hearing regarding the Project's failure to comply with the mandatory approval criteria contained in the Code.

Sincerely,

FOSTER, GRAHAM, MILSTEIN & CALISHER LLP



David Wm. Foster

cc: Tom Carr, City Attorney:

carrt@bouldercolorado.gov

Hella Pannewig, Assistant City Attorney:

pannewigh@bouldercolorado.gov