SAN FRANCISCO
PLANNING DEPARTMENT

Letter of Determination

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

October 9, 2008

Warner Schmalz
FORUM DESIGN LTD.
1014 Howard Street
San Francisco, CA 94103
415.252.7063

Re: 1880 Mission St
Block 3547/Lots 2A, 3, 4 and 29

Dear Mr. Schmalz:

This is in response to your letter requesting that the Zoning Administrator grant an administrative extension of the conditional use authorization granted in Case No. 2003.0758C.

CONDITIONAL USE AUTHORIZATION

The Planning Commission approved, with conditions, Conditional Use Case No. 2003.0758C on October 6, 2005. The following conditions regarding the period of authorization were included in Motion No. 17120:

> "20. This authorization is valid for a period of three years from the date of approval by the Planning Commission."
>
> "21. After three years, the Planning Commission may specifically authorize an extension for up to an additional three years. In the case where delays have been caused by a government agency or legal action, time shall be tolled and the authorization extended for such period by the Zoning Administrator."

REASON FOR REQUEST

The administrative extension is requested due to the following facts associated with legal action that created delays in the implementation of the approved project:

1. The original Project Sponsor, Armax International, was at the time of the original Conditional Use Authorization, the holder of an option to purchase the property. From that time forward Armax was unable to meet its contractual obligations under its agreement with the property owner. As a consequence, Armax's option was dismissed and a second party entered into contract to purchase the property and its entitlements. Armax International, and its successor 1884 LLC, subsequently filed two lawsuits against the current property owner, The Louis Roesch Company, and its president, Mr. Davos, beginning in 2006 and continuing to this day. To date, the first of these suits has been

dismissed by the courts in favor of the property owner, and the second is still in litigation, with a projected trial date in 2009.

2. The architect, together with the second party Project Sponsor, began the building permit process and filed final site permit documents in early 2008. All plan check reviews by DBI and the Planning Department were completed in June of 2008 consistent with the original approval. The permit is available to be picked up at this time. However, because there has been no resolution of the financing source and because there has been no resolution in the courts on the remaining lawsuit, the final site permit fees have not been submitted to the City. At this time the project is on hold at DBI.

For the reasons discussed above, you request a Determination by the Zoning Administrator that, because the project continues to meet the original Conditions of Approval and because of legal delays not of the property owner's making, there exist justifiable conditions for granting an extension to the original Conditional Use Authorization per Condition No. 21 of Planning Commission Motion No. 17120.

DETERMINATION

It is my determination that this project has been unreasonably delayed due to legal action not initiated by the project sponsor or property owner. This includes continuing litigation that will not go to trial until sometime in 2009. Per Condition No. 21 of Planning Commission Motion No. 17120, I grant a 12 month extension to the Conditional Use Authorization of Case No. 2003.0758C. The new expiration date for the Conditional Use Authorization is September 6, 2009.

If you have any questions regarding this matter, please contact Corey Teague at 415.575.9081 or via e-mail at corey.teague@sfgov.org.

If anyone has substantial reason to believe that there is an error in the implementation of the Planning Code, or abuse of discretion on the part of the Zoning Administrator, this determination may be appealed to the Board of Appeals within fifteen (15) days from the date of this letter. For further information regarding the appeals process, please contact the Board of Appeals, 1650 Mission Street, Room 304, San Francisco, or by telephone at 415.575.6880.

Sincerely,

Lawrence B. Badiner
Zoning Administrator

cc: Members Planning Commission
Sue Hestor, Representative HAC
Corey Teague, Planner

CT: G:documents/Letters of Determination/2008/1880 Mission St.doc