

KENNETH W. BROWN, AICP
DANIEL ORTIZ
JAMES B. GRIFFIN
JAMES MCKNIGHT
NINA PRADO



PAUL M. JUAREZ
OF COUNSEL

112 E. PECAN STREET
SUITE 1360
SAN ANTONIO, TEXAS 78205
TELEPHONE: 210.299.3704
FAX: 210.299.4731

January 3, 2014

RECEIVED
2014 JAN - 3 PM 1:32
CITY OF SAN ANTONIO
CITY CLERK

Ms. Leticia Vacek
City Clerk
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

Via Hand Delivery

Re: Appeal to the City Council of Decision by Building-Related and Fire Codes Appeals and Advisory Board in connection with the Friedrich Lofts Building Located at 1617 & 1631 E. Commerce Street, San Antonio, Texas (the "Project"); *Our File No. 9589.001*

Dear Ms. Vacek:

On behalf of our client, Friedrich Lofts, LTD, the owner of the above-referenced Project (the "Owner"), this correspondence serves as a formal petition to the San Antonio City Council (the "Council") for a hearing before the Mayor and Council to consider an appeal of a decision by the Building-Related and Fire Codes Appeals and Advisory Board (the "Appeals Board"). Section 10-14(j) of the City Code of San Antonio (the "City Code") states that actions taken by the Appeals Board may be appealed to the Council within seven (7) days of receipt of the Appeals Board decision by certified mail. On November 22, 2013, the Appeals Board considered the Owner's request to approve a Code Modification Request and use of alternative means for the Project (*see Exhibit "1"* for an agenda from this meeting, including all relevant application materials). At this meeting the Appeals Board denied the Owner's request, and issued a resolution to that effect (the "Resolution;" *see Exhibit "2"*). The Owner received the Resolution by certified mail on December 17, 2013, and this appeal to the decision is, therefore, timely.

This appeal stems from the City's assertion that the Project was in violation of minimum thresholds for fire and life safety required by the Unified Development Code (the "UDC").¹ According to Section 10-5 of the City Code, "whenever there are practical difficulties involved in carrying out the provisions of this chapter, the building official has the authority to grant modifications for individual cases." Pursuant to this provision, the Owner filed an application

¹ Please note that this appeal is the last in a long history of negotiations and appeals with the City, and the evidence and documentation of this history is vast. For the purpose of brevity and clarity, these exhibits have not been included, but they are available and can be provided upon request.

with the appropriate building official on December 21, 2012, requesting a finding that the Project met the minimum threshold, or through the use of alternative methods outlined by a fire professional and architect could meet minimum thresholds of safety. The City's building official denied the Owner's request in a letter dated April 12, 2013. The Owner's representative at that time then filed an appeal of the building official's decision to the Appeals Board on May 6, 2013. An initial Appeals Board hearing was held on May 14, 2013, at which time the Board deferred their decision for a period of 180 days. Through a request filed by our office (new representation) on November 12, 2013, the Appeals Board finally considered such appeal on November 22, 2013 (as discussed above).

The Project is one of importance and is well-known in the City of San Antonio; several tenants were occupying such space before the City found that certain UDC provisions were not met. According to reports by fire and building professionals who have established strong reputations in this City over many years, the Project can meet those UDC provisions, at minimum through the use of alternative means described in reports attached herein. If the Owner's request for approval by alternative means is granted, then the Project may receive certificates of occupancy and continue operating as a landmark multi-tenant building. Therefore, pursuant to the sections of the City Code outlined above, this Firm respectfully requests that the Council consider the entirety of the circumstances and approve the Owner's Code Modification Request for the Project.

Attached herein, please find a check in the amount of \$155.00 for the fee to consider this appeal. Please do not hesitate to contact me should you have any questions regarding this matter.

Sincerely,

BROWN & ORTIZ, P.C.

BY:


James McKnight

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Building-related and Fire Codes Appeals and Advisory Board Agenda
Development and Business Services Center
1901 South Alamo St.
San Antonio, TX 78204

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2013 NOV 15 AM 11:36

Friday, November 22, 2013 – 9:00 A.M.
1st Floor, Board Room

APPEALS AND ADVISORY BOARD MEMBERS

Louis Faraklas, Jr., P.E. (Alt)

Ron Caccamese

VACANT

Robert F. Jahnos

Robert Hanley

Michael O'Day

Peter S. Sitterle, III

Andre Garabedian, P.E. (Alt)

Structural Engineer

Master Electrician – Union

HVAC Contractor – Union

Master Plumber – Open Shop

Architect

Master Plumber – Union

Master Sign Electrician

Fire Protection Engineer

Jeff Beyer

Christopher C. Garcia, P.E.

Brent Anderson, AIA

Timothy D. Kerley

Mike Leonard

Michael J. Rust

Bryan E. Smith

Jack G. Uptmore

AC and Refrigeration Contractor

Plumbing/Mechanical Engineer

Commercial Bldg Owner / Rep

Master Electrician

Commercial Building Contractor

Res. Group R-2 multifamily

Registered Building Contractor

Registered Building Contractor

Rodney C. Olivier, P.E. (Chairman) Electrical Engineer

Agenda

1. 9:00 A.M. – Board Room: Public Meeting Called to Order and Roll Call
2. Approval of Minutes from previous board meeting.
3. Discussion, review and possible action regarding an appeal of the City's denial of a proposed Home Improvement Contractor Registration for Louis H. Perez, III, 431 Vine Street, San Antonio, TX.
4. Discussion, review and possible action regarding the Code Modification request and proposed alternative means of construction and occupancy previously submitted by Earl & Associates and being resubmitted by Brown & Ortiz, PC for 1617 and 1631 East Commerce (Friedrich Building) related to Chapter 10 and the National Fire Protection Association of the San Antonio City Code.
5. City Staff Report
6. Citizens to be heard
7. Board Comments / Attendance
8. Adjournment

Executive Session: At any time during the Building-related and Fire Codes Appeals and Advisory Board meeting, the Board may meet in executive session for consultation concerning (Attorney Client) matters under Chapter 551 of the Texas Government Code.

Note: The City of San Antonio Building-related and Fire Codes Appeals and Advisory Board Agenda is on the Internet at: http://www.sanantonio.gov/dsd/buildingfire_board.asp

Accessibility Statement

This meeting site is accessible to persons with disabilities. Parking is available. Auxiliary Aids and Services are available upon request (Interpreters for the Deaf must be requested forty-eight [48] hours prior to the meeting). For Assistance, Call (210) 207-7245 Voice/TTY.

EXHIBIT
1

Bloomberg No. 5208

DEVELOPMENT SERVICES DEPARTMENT
CITY OF SAN ANTONIO



2013 NOV 12 P 3:56



APPEAL TO THE
BUILDING - RELATED AND FIRE CODES APPEALS AND ADVISORY
BOARD

Date: November 12, 2013	Project or Permit No.: 5437
Applicant: James McKnight	Firm: Brown & Ortiz, PC
Mailing Address: 112 E. Pecan St. #1360	Phone: (210) 299-3704
City/State/Zip: San Antonio, TX 78205	Applicant Email: jmcknight@brownortiz.com
Property Owners Name: Friedrich Lofts, Ltd.	Project Name: Friedrich Lofts Development
Project Address: 1617 & 1631 E. Commerce and 121 N. Olive, SAT 78207	Legal Description: NCB 595, Blk 1, Misc.

TYPE OF APPEAL:

APPLICATION FEE
\$155.00

(CHECK REQUEST BELOW)

COPY

(CHECK REQUEST BELOW)

Building Mechanical
 Electrical Plumbing
 Fire Sign

City Code
 Method of Construction

SECTION(S) OF CITY CODE BEING APPEALED:

Appeal decision by director and building official regarding code modification request and alternative means - decision made on April 12, 2013. Codes include 10-12 (a), 10-6(a), 10-6(i), 10-6(n), 10-8(i), NFPS #13, and other sections and provisions referred to in the building official letter of April 12, 2013, please see attached. Further, this appeal is a continuation of an appeal that was first considered by the Board on May 14, 2013. Also attached are the original appeal application (5/6/13) and backup info regarding justification for modification.

ADDITIONAL INFORMATION BY APPLICANT

If this appeal / request is the result of an inspection disapproval, complete the following:

Type of inspection: General/C of O related Inspector's Name: Roderick Sanchez

Section of code cited: see above

Applicants Signature: _____

FILL OUT IF APPLICABLE

I hereby authorize JAMES MCKNIGHT of BROWN ORTIZ
 Located at 112 E Pecan, #1360, San Antonio Tx to represent in matters pertaining to this
 case.

FRIEDRICH LOFTS, LTD Owner's Signature: John W. Miller
 BY ITS GENERAL PARTNER
M.U.V. Inc., John W. MILLER - PRESIDENT Revised: September 2013

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DEVELOPMENT SERVICES DEPARTMENT
CITY OF SAN ANTONIO

APPEALS TO THE
BUILDING - RELATED AND FIRE CODES APPEALS AND ADVISORY
BOARD

Date: May 6, 2013	Project or Permit No.: 5437
Applicant: Friedrich Lofts, Ltd.	Firm: Earl & Associates, PC
Mailing Address: 1920 Abrams Parkway, #311	Phone: 210-222-1500, Ext. 111
City/State/Zip: Dallas, TX 75214	
Property Owner's Name: Friedrich Lofts, Ltd.	Project Name: Friedrich Lofts Development
Project Address: 1617 and 1631 E. Commerce and	Legal Description: NCB 595, BLK 1, Misc.
121 North Olive, SAT 78207	

TYPE OF APPEAL: APPLICATION FEE
\$155.00

(CHECK REQUEST BELOW)

Building Mechanical
 Electrical Plumbing
 Fire Sign

(CHECK REQUEST BELOW)

City Code
 Method of Construction

SECTION(S) OF CITY CODE BEING APPEALED:

Appeal decision by director and building official regarding code modi-

fication request and alternative means – decision made on April 12, 2013.

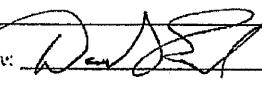
Codes include 10-12(a), 10-6(a), 10-6(i), 10-6(n), 10-8(i), NFPS #13, and
other sections and provisions referred to in the building official letter of

April 12, 2013, please see attached.

ADDITIONAL INFORMATION BY APPLICANT
If this appeal / request is the result of an inspection disapproval, complete the following:
Type of inspection: General C of O related Inspector's Name: Roderick Sanchez

Please see above.

Section of code cited:

Applicant's Signature: 

FILL OUT IF APPLICABLE
I hereby authorize David Earl of Earl & Associates, P.C.

Located at 15303 Huebner Rd., Building 15, SAT 78248 sent in matters pertaining to this
case.

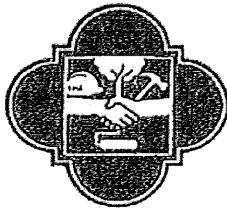
Owner's Signature: 

Revised: September 2012

Cover letter and other documents and information will be sent as part of the Appeal by mail
and/or runner due to size and weight of materials. Please consider these documents as part of the
appeal.

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CITY OF SAN ANTONIO
DEVELOPMENT SERVICES DEPARTMENT
P.O.BOX 839966 | SAN ANTONIO TEXAS 78283-3966



April 12, 2013

Megan J. Clay
Attorney at Law
EARL & ASSOCIATES, P.C.
15303 Huebner, Building 15
San Antonio, Texas 78248

Re: Friedrich Lofts, Ltd., Code Modification Request Application – Compliance by Alternative Means, Project No. 5437.

Dear Ms. Clay,

Your code modification request application payment of \$350 has been received. Accordingly, your application is now considered complete.

This is in response to your code modification request application letter dated January 22, 2013 referencing building-related issues involving Friedrich Lofts, Ltd as well as your follow-up letter dated February 7, 2013. Both letters outline specific areas of concern and include groundless accusations against the city. I address each of your concerns and your accusations below.

First, I directed electrical power to be severed to the installation primarily because of continued and lingering life-safety concerns and unsafe conditions as evidenced by your clients' failure to obtain a certificate of occupancy for the property. Again, every effort has been made to work with your clients, the building owners, over a significant period of time to achieve compliance with the City Code. Yet, compliance simply has not occurred. My office has provided numerous warnings that electrical power would be severed as a result of these concerns and conditions. Additionally, the failure to achieve compliance necessitated the lawful requirement for tenant relocation as both *new* and continued tenancy without a certificate of occupancy violates the law. Reinitializing electrical power is not warranted without a certificate of occupancy. Your clients' continued practice of leasing space in the buildings without a certificate of occupancy in violation of law further emphasizes the need to discontinue electrical service until the building is brought into compliance. Indeed, reinitializing power would provide your clients with an incentive to repopulate tenancies. Power will not be restored until compliance with city codes is accomplished and a certificate of occupancy is issued for the subject property. Regarding your clients' newly installed temporary fire alarm system, my staff confirms that permits issued and inspections were made. As repeatedly communicated to your clients, this temporary safety upgrade accommodated your tenants by allowing the tenants

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additional time to relocate. The current fire alarm system does not constitute full compliance with building-related and fire safety codes. Finally, it is unfortunate that your clients' actions, or lack thereof, has resulted in termination of insurance coverage for the referenced location but the City of San Antonio denies any wrongful or illegal action proximately causing your clients any alleged harm.

Second, every property owner has the right to submit an application for code modification. Your complete application, as evidenced by payment of the appropriate fee, has been given the attention and review it deserves and a response generated in accordance with normal procedures. Any denial of a request for alternative means, if one should issue, will be accompanied by as much explanation as is legally required. As previously relayed to your clients, in order to obtain a complete list of building code deficiencies, the owner is required to submit a building permit application with a complete set of construction documents per Sections 10-6 and 10-8 of the City Code. Further, any decision regarding your code modification request may be appealed to the Building Related and Fire Codes Appeals and Advisory Board upon application and payment of the requisite fee.

Third, although you again assert otherwise in your February 7, 2013 correspondence, there has been no prior determination by this office to deny an application for code modification for your clients prior to its submission. In this same correspondence, you complain that questions presented to you focus on demolition, ignoring your primary request for utilizing alternative means to achieve code compliance of the previously occupied office area based on existing conditions. Additionally, you question the relevancy of our inquiries and infer that the inquiries are a delaying tactic by the city. This allegation is patently false. While it is true that some of the information you reference has previously been provided to the City, your recently submitted proposed code modification request failed to clarify what these documents were and how they related to your complete proposal. I, as the Building Official, am authorized to approve an alternative material, design or method of construction where the proposed design is satisfactory and compliant with the intent of the provisions of Chapter 10, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in Chapter 10 in quality, strength, effectiveness, fire resistance, durability and safety. It is my responsibility to request and review information I feel is pertinent in rendering a sound decision and any request for clarification and/or additional information is common when reviewing and deciding upon code modification requests such as yours. That is what has been done in our most recent correspondence.

After reviewing your request for alternative means to achieve code compliance *without* demolition, we note the following obstacles:

- Issuance of a certificate of occupancy is a requirement under Section 10-12(a) of the City Code. You have no certificate of occupancy for the subject property.
- To date, you have failed to submit a current building permit application with a full set of construction documents required by Sections 10-6(a), 10-6(i) and 10-8 of the City Code.
- The informational references to old permits, inspections and plan reviews provided my office are invalid per Section 10-6(n) of the City Code as noted below:

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Page 3 of 4

2014 JAN -3 PM 1:33

Expiration. Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The Building Official is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.

- o The statement made in the Reed Fire Protection Engineering (RFPE) report and subsequent RFPE letter that the building meets City Code requirements is incorrect for the following reasons:
 1. The RFPE report bases its conclusions on the 2009 edition of the International family of codes rather than the currently adopted 2012 editions.
 2. The RFPE report states that it "does not address code issues not related to fire protection and life safety (i.e., does not [address] code compliance with such items as the electrical or mechanical code requirements)." As communicated to your clients on several occasions over the past two years, to obtain Certificates of Occupancies the building and tenant spaces have to meet all applicable City Code requirements.
 3. The RFPE report references prior building permits issued by the City. However, in accordance with all of the City's building-related codes, these permits have expired as they are past the maximum six (6) month validity period for such permits. Many of those permits were issued approximately ten (10) years ago. Further, they were reviewed under different codes and different existing building conditions.
 4. The RFPE report states that there are no code deficiencies with the building related to the City's building code provisions for maximum allowable building height and area. This is incorrect. The City's building and existing building code requires 1) this entire building to have a fully functioning and code compliant fire sprinkler system installed throughout the building, or 2) a series of independent fire walls (i.e., not fire barriers) that create separate buildings. The existing Friedrich property has neither of these two systems.
 5. The RFPE report and subsequent letter states that the existing partial fire sprinkler system is code compliant. This is likewise incorrect as the City's fire code and referenced National Fire Protection Standard 13 requires the fire sprinkler piping installed in areas subject to freezing to be designed with proper freeze protection (e.g., a dry pipe system, antifreeze system, etc.). The proposal to drain the existing building's partial fire sprinkler system when the weather gets too cold rather than install a dry-pipe or anti-freeze fire sprinkler system is authorized for maintenance purposes only, not as a design method of freeze protection. This proposal violates the City's adopted fire regulations and does not comply with any national fire standards.

I applaud your clients' stated intentions to work with the Office of Historic Preservation to address demolition concerns and procedures as we believe your secondary request for alternative

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Response to CMR # 5437 - Friedrich Building

Page 4 of 4
2014 JAN-3 PM 1:33

means to achieve code compliance with demolition to hold promise. I can approve this alternative request thereby placing you close to full compliance under the following conditions:

- You will be permitted to demolish the proposed portions of the subject property utilizing the demolition procedures for historic structures located in the UDC. A recommendation by the Historic and Design Review Commission, by itself, shall not be construed as permission to demolish;
- You must apply for all proper permits and submit the construction documents for each construction phase to the Development Services Department using normal procedures, for example, plan reviews, permit issuance, inspections, final approvals and issuance of the certificate of occupancy;
- Occupancy will not be permitted until certificates of occupancy are issued by the Development Services Department;
- Post demolition, all remaining buildings must be fire sprinkled with a fire suppression system meeting City Fire Code requirements;
- Post demolition, all remaining buildings must be at least III-B construction as defined in the City's building code.

Fourth, compliance with the City Code of San Antonio is mandatory. This office has at no time offered or agreed to waive City Code compliance for your clients. Every right authorized by law and available to all property owners will be afforded your clients in order to promote compliance with City Codes, but compliance is non-negotiable. In order to comply with the City Code, your clients must complete all required technical code inspections and be issued a certificate of occupancy to operate.

Finally, in response to your statement that inspections from this office were halted back in 2010, this is true. However, your clients shoulder the responsibility for this by failing to submit proper building permit applications and construction documents per Sections 10-6 and 10-8 of the City Code. Further, your clients did not have any valid permits for the illegally occupied spaces.

This Department will promptly respond to any diligent effort to address the numerous life and health safety issues involved.

Sincerely,



Roderick Sanchez, AICP, C.B.O.
Director and Building Official
Development Services Department

Cc: David Ellison – Assistant City Manager
Michael Shannon - Assistant Development Services Director
Norbert Hart – Deputy City Attorney
Ted Murphree – Assistant City Attorney

Please will up
to \$200 / application
fee for Frederick J. G.
appeal.

David E. Sneed
David Sneed

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December 21, 2012

VIA EMAIL: OfficeoftheCityClerk@sanantonio.gov, REGULAR MAIL & CMRR 7006 3450 0002 9275 0886
City of San Antonio
City Clerk
2nd Floor, City Hall
100 S. Flores St.
San Antonio, Texas 78201

VIA EMAIL: Roderick.Sanchez@sanantonio.gov, REGULAR MAIL & CMRR 7006 3450 0002 9275 0879
Code Modification Request Review
City of San Antonio
Development Services Department
Building Development Division
Attn: Mr. Roderick Sanchez, Director
1901 S. Alamo St.
San Antonio, TX 78204

Re: Friedrich Lofts, Ltd., Code Modification Request Application- Compliance by Alternative Means.

Dear Mr. Sanchez:

Attached is a **Code Modification Request Application** ("Application") for compliance with the Code by alternative means submitted pursuant to Chapter 10 of the San Antonio Unified Development Code ("UDC") and the City of San Antonio's Information Bulletin 114, dated October 31, 2006 and revised February 20, 2012, on behalf of Friedrich Lofts, Ltd.

This Application is based in part on the Reed Fire Protection Engineering Report dated October 1, 2012, performed by Albert W. Reed P.E., with Reed Fire Protection Engineering, a copy of which was previously to your office and should be on file in your records, and which is attached hereto by reference as if fully set out herein. This Application serves as a request for the Development Services Department to consider the use of alternative means as defined in the Code to achieve an acceptable level of life safety threshold protection as set forth in the above referenced report and other information and documentation which has been previously provided.



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The requests made show that the spirit, intent and minimum acceptable level of public health, welfare and safety are observed pursuant to the Code.

Although your office has made previous informal decisions regarding allowing occupants to remain in the above referenced building, those decisions appear to be based only on the concept of making the tenant-occupied areas temporarily safe for temporary occupancy, and did not consider the final approval or disapproval of using the alternative means set forth in the Reed Report, reports and documentations by Joe Nunley, licensed architect, and other information to satisfy permanent life-safety thresholds for alternative means to satisfy permanent occupancy standards and issuance of permanent certificates of occupancy, for the areas identified in the certificates of occupancy applications and requests.

As you aware, extensive measures have been taken, including those identified in the Reed Report, to assure proper protection of the occupiable portions of the above-referenced structures which were the subject of the certificates of occupancy applications. In addition to the above, for the first time, we are also submitting for your consideration the added concept of substantial demolition of any portions of the buildings you claim are unsafe or create a "life-safety issue" on an immediate basis to achieve the required thresholds of life-safety protection using the demolition as an "alternative means".

In past correspondence you have confirmed, as evidenced by your willingness to allow continued occupancy, that the portions of the buildings that were occupied were appropriately protected and safe in and of themselves. Your primary concern has been focused on not the occupied portions of the buildings but the alleged unsafe conditions of the adjoining or attached structures, which you have claimed pose a threat of harm or danger to the occupiable and safe areas. As such, it appears that the majority of the City's concerns stem from issues arising from portions of the buildings which are slated to be demolished under the request for alternative means. Once the buildings slated for demolition have been removed, the majority or all of the city concerns would appear to be resolved. The timeline for the demolition of these adjacent structures appears near at hand, rather than sometime in the future. Over the next several months, plans and timetables should be finalized for the removal of the buildings creating the greatest concerns to the City.

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As you will see, by the graphics and reports attached, we are proposing as an alternative means that the alleged "unsafe" portions of the buildings in contact with the "safe" portions of the building (which are stand-alone and secured) be demolished and removed from the premises.

It is both obvious and clear that the demolition of the "unsafe" portions of the structures will permanently eliminate any fire, safety, or life-safety issues or other concerns which your department has raised concerns with. Because the City has unlawfully evicted all tenants in the building forcefully, without affording due process to the building owner or tenants, there will be no life-safety issues remaining while the proposed demolition and alternative means occurs to permanently secure and add to the safety of the occupiable portions of the buildings.

Recent financial modeling indicates that the demolition of the alleged "unsafe" portions of the buildings will actually drastically increase the market value of the Friedrich property by affording open areas for parking and proper redevelopment which most likely will be consistent with the redevelopment plans that the City has been attempting to impose the building owners by voluntary and/or involuntary means. As such, approval of the attached application affords both the City and the buildings' owners a "win-win" utilizing alternative means to achieve the required and important life-safety protections demanded by your department while allowing future occupancy and economic viability of this important area in the City's near eastside.

Based on the above, we are requesting an immediate decision by your office on the approval or disapproval of this Application and in the event of disapproval, hereby request an immediate appeal to the Board within the prescribed 14 day period. Furthermore, pursuant to the protections afforded under the Code and State law, we are also asking the City to recognize an immediate "stay" on further enforcement actions pending the outcome of a decision from your office, and in the event of a denial from your office, the decision of the Board with respect to our appeal.

In light of this, we are asking for an immediate six month extension of the December 31, 2102 vacate date. This would be of benefit to all, including the City, the Friedrich ownership, the remaining Friedrich tenants and especially the neighborhood.

In our recent meeting in held in the Travis Room of the Cliff Morton Development Services Center, you generally stated that although we have the right to submit this Application

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for consideration of alternative means, it would summarily denied by your department. Although we respect your right to take this unusual position, we are nonetheless requesting that you provide us with your formal written response to this request providing us with your decision as required by the Code.

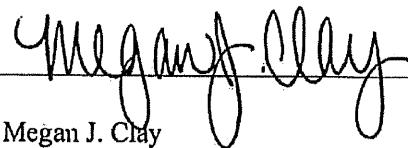
Finally, if your decision is for denial of all the above requests, it is then requested that the electrical power not be disconnected to the Friedrich (and reestablished to those areas already disconnected). The recently installed fire alarm system would no longer be functional. That is clearly not in anyone's best interest. In addition, the interior finishes of the renovated areas will suffer damage from any extended period of an unconditioned environment.

Your prompt review and written response is greatly appreciated. Because our clients are represented by our office, we request that you submit all correspondence and questions regarding this matter only to our office. In light of the fact that your office is also likewise represented by counsel, we are copying Mr. Michael Bernard, City Attorney for the City of San Antonio, on this letter and its attachments by email. Please consult with your attorney prior to taking action on this request.

Sincerely,

EARL & ASSOCIATES, P.C.

By:


Megan J. Clay

Encl.

cc: Mr. Michael Shannon (via email)

cc: Mr. Michael Bernard (via email)

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DEVELOPMENT SERVICES AND FIRE DEPARTMENTS
1901 S. Alamo, San Antonio, TX 78204

CODE MODIFICATION REQUEST APPLICATION

Project:	Friedrich Lofts
Address:	1617 E. Commerce
Owner's Name:	Friedrich Lofts, Ltd
A/P # (if applicable):	
Issue:	Various, See Attached
Applicable Code:	Various, See Attached
Code Sections:	Various, See Attached

For Office Use Only:

CMR #:

Date Received:

Receipt #:

<u>Submitted by:</u>		
Name:	Megan J. Clay	
Company:	Earl and Associates P.C.	
Address:	15303 McWanax Rd., Building 15	
City, State, Zip:	San Antonio, Texas 78249	
Tel #:	210-222-1500 ext. 115	Fax #: 210-222-9100
Email:	mclay@east-law.com	
Signature:	Megan J. Clay	

Building or Fire Code Official Action

APPROVED

APPROVED W/ COMMENTS

DENIED

Signature:

Date:

Printed Name:

Title:

Comments:

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Code Modification Request Application

Introduction: The issue at hand is whether the renovated office areas of the Friedrich complex meet the Unified Development Code ("Code"), either by meeting the threshold requirements, or, in the alternative, by utilizing the alternative approach, as set forth in the Reed Report, previously provided, and or through the demolition concepts set forth in the application and in the sealed architect's opinion letter, to achieve the appropriate fire and life safety thresholds.

The tenant office suites were constructed in the period 1999-2002. Building permits were issued based on architect and engineering 'stamped' plans. City inspections were performed during the construction of the improvements. Some of the tenant applications for Temporary Certificate of Occupancy have been located (and the outstanding item noted at that time has been resolved), but to date, no final Certificates of Occupancies for any of the tenants have been located.

Code Issues: The city has stated the renovated areas of the Friedrich, as well as the entire Friedrich complex, do not meet Code, for the following reasons:

1. May 3, 2010 Letter from R. Sanchez, Lack of Tenant Certificate of Occupancy, directed to submit plans to obtain Certificates of Occupancies.
2. Various meetings where deficiencies in structural soundness and life safety issues were cited.
3. From a May 2011 Geo Strata report ordered and paid for by the City, p. 19, "Fire and City Planning code enforcements are closed for the Friedrich property."
4. February 24, 2012, Lack of tenant Certificates of Occupancy, referencing potential noncompliance with the 2009 IBC sections 111.1, Use and Occupancy; 114.1 Unlawful Acts; 116.1 Conditions
5. March 30, 2012 Ordered to vacate the premises within 30 days, at which time the power would be disconnected. Cited reasons were:
 - a. lack of tenant certificates of occupancies;
 - b. areas observed to have significant structural damage;
 - c. areas with significant amounts of combustible storage that constitute a significant fuel loading and fire hazard;
 - d. the fire sprinkler system throughout the structure has not been maintained per the City's fire code which constitutes a distinct fire hazard;
 - e. there are several violations to the required means of egress for those tenants that are currently occupying the structure illegally;
 - f. there are several examples of non-code compliant exposed electrical wiring and several extension cords supplying power to equipment in violation of the City's electrical code which represents a distinct electrical and fire hazard to occupants in the building;
6. April 25, 2012, email from Mark Brodeur, Director City Center Development Office, to Friedrich tenants, (but not to Friedrich ownership) to update tenants "regarding the plans being made to

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bring the Friedrich Building into compliance with Health and Safety Codes." Occupancy allowed to continue, based on Friedrich commencing a fire watch;

7. July 16, 2012, from Rod Sanchez stating "This letter serves as notice that the deadline for your tenants to vacate the above referenced building has been extended to December 31, 2012";
8. July 26, 2012, email from Michael Shannon, allowing fire watch to be terminated;
9. October 9, 2012, letter from Michael Shannon rejecting the conclusions contained in the Reed Fire Protection Engineering report dated October 1, 2012, and restating the requirement that tenants need to obtain certificates of occupancies and must meet current code.

Discussion / Justification: In response to the above communications, the Friedrich has performed the following actions and obtained the following reports:

1. June 10, 2010 Structural engineering report from Persyn Engineering, concluding "it is our opinion that the Friedrich Building is structurally safe for current tenants".
2. June 25, 2010 PDI report states, "It has been shown that tenants are provided a reasonable level of safety given the existing conditions..."
3. In 2010, the unauthorized tenant storage of furniture inventory was removed, additional drywall was installed on walls that had only one side finished, and other improvements were made.
4. In April 2010, Friedrich began the process of obtaining a Certificate of Occupancy for tenants; some inspections were performed, but the process was halted by Rod Sanchez, who stated in an email on July 20, 2010, "it would not accomplish anything for us to do these inspections."
5. February 2012, Friedrich provided tenant construction documents (from construction period 1999-2002) plans to DSD, and requested that the Certificate of Occupancy inspection process started in 2010 be allowed to continue.
6. April 2012 to October 2012, Friedrich presented numerous plans to city, held numerous meetings, and performed various upgrades and repairs, including:
 - a. Installation of approximately 200 ft. of one-hour fire rated walls on 1st and 2nd levels, creating yellow buffer zone surrounding green occupied area;
 - b. Rerouted sprinkler system to avoid future courtyard area, restored service to one zone partially covering one tenant suite;
 - c. Removed all combustible storage contained in building number 9;
 - d. Installed new fire sprinkler monitoring system along with installing sight/sound notification devices (horn/strobe in unoccupied and occupied areas),
 - e. Obtained and provided an update of Persyn Structural Engineering report, dated October 4, 2012, stating no change from 2010 opinion.

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- f. Provided the City an inspection from Medina Electrical of all electrical systems in the occupied areas, and some of the non-occupied areas.
- g. October 1, 2012, delivered report from Reed Fire Protection Engineering to city. Report stated Friedrich occupied areas, as well as surrounding areas to the extent they impact the occupied areas, met or exceeded 2009 San Antonio Building Code.
- h. December 20, 2012, letter addendum to October 1, 2012 Reed Fire Protection Engineering report, concluding:
 - a. Disagreement with conclusions of city letter dated October 9, 2012,
 - b. Reaffirmed conclusion reached in October 1, 2012 report, and
 - c. That the area of Friedrich deemed in compliance in original report would, in the alternative, meet the intent and objectives of the fire and life safety code utilizing the alternative methods approach.
- 7. In addition to the above, the Friedrich has developed a proposed demolition plan, which, in the alternative, would also allow the areas of buildings four and five meet the life safety thresholds and be eligible for occupancy, in light of the above, through the demolitions shown in green shading and orange shading on the attached proposed demolition plan.

Conclusion:

Based on:

- 1. 2012 discussions with DSD regarding methods to address the city's concern;
- 2. Preparation of plans based on those discussions;
- 3. Obtaining reports based on the discussions with and requirements of the city;
- 4. Installing improvements and making repairs made to the property according to such plans;
- 5. DSD department specifically allowing occupancy to continue for six months on the result of improvements made to the Friedrich;
- 6. The opinion regarding structural safety by Persyn Engineering;
- 7. The opinion regarding code compliance of the Friedrich, and noting areas where code thresholds have either been met or exceeded;
- 8. Demolition of buildings deemed "unsafe" pursuant to the attached demolition plan.

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We request that the City recognize that compliance can be achieved using alternative methods as set forth in the attached and previously provided documentation, including but not limited to the letter from Earl & Associates P.C., the sealed opinion of our architect, Mr. Joe Nunley, and the additional letter from Albert Reed, dated December 20, 2012.

Attachments: All of the above referenced documents (except for the December 20, 2012 Reed report, which is attached) have previously been provided to the City. Additional copies can be provided as requested.



REED



FIRE PROTECTION ENGINEERING

THE EXPERTS IN FIRE/LIFE SAFETY SOLUTIONS

December 20, 2012

Mr. John Miller
Plan B Development
San Antonio, Texas

Re: Reed Fire Protection Engineering report on the existing renovated office areas of the Friedrich complex issued October 1, 2012

Mr. Miller:

Per your request, this letter is to clarify the above report.

The scope of the report, (page 2) was limited to the existing renovated office areas, and did not include any future development plans. The report addresses the surrounding existing Friedrich complex only to the extent this portion of the facility impacts the Code requirements and life safety issues for the renovated office areas.

The conclusion of the above referenced report states the existing renovated office areas of the Friedrich meet the code requirements of the 2009 IBC and IEBC for fire and life safety. On page 3 of 17 the report references the code's provisions which allow utilization of alternative approaches to achieve code compliance of the intent and objectives of the code (Code Section 104.11 of the IBC). However, the conclusion of the report (...“the renovated office areas meet or exceed code requirements contained in the 2009 San Antonio Building Code”...) on pages 1 and 15 of the report does not rely on the alternative approach to achieve code compliance.

Should there be any concerns or questions of whether the existing renovated office areas of the Friedrich meet code requirements, it is my opinion that the Friedrich fully meets the intent and objectives of the fire and life safety provisions of the 2009 IBC and IEBC utilizing the alternative approach method. For the reasons stated in the report (such as each office suite having direct access to the exterior courtyard) the fire and life safety of the occupants in the existing renovated office areas meets or exceeds the minimum threshold requirements to achieve code compliance via the alternative approach method.

In a letter from the City of San Antonio dated October 9, 2012, the city states there are major errors in the findings and conclusion of the Reed report. I disagree with the city's conclusions stated in their letter. For example, item 5 in the letter states the method for dealing with the fire sprinkler system during freezing weather does not comply with any national standards or city codes. Section 901.7 of the IFC allows for utilization of a fire watch in the manner noted in the report to address such a situation.

My conclusion in the report, as well as the basis of such conclusion, remains unchanged.



Albert W. Reed, P E
Reed Fire Protection Engineering
Texas Registration #F-5095

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December 21, 2012

To whom it may concern,

This letter opinion is being written in conjunction with the Code Modification Request Application for compliance by Alternative Means, filed by Friedrich Lofts, Ltd., on December 21, 2012.

As the architect for the Friedrich project, I am extremely familiar with all aspects of the buildings and have reviewed the same in conjunction with the Application being made by Friedrich Lofts, Ltd.

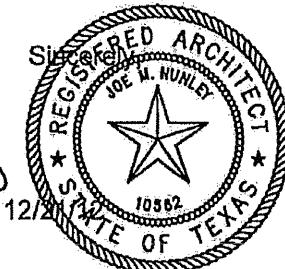
It is my professional opinion as a licensed architect that the demolition of the buildings which are shaded in green and orange on the attached demolition plan would eliminate any life safety issues located within those buildings with respect to those buildings, as well as with respect to any adjoining buildings,

Further, it is my professional opinion, provided the City approves the Application, the demolition of the buildings indicated can be achieved in a manner that does not damage or harm the architectural integrity of the remaining buildings which have been occupied, provided proper engineering, architectural, and structural methods are employed prior to, during, and after the proposed demolition. It is my opinion that a formal demolition plan can be designed which would meet these objectives upon approval of the Application for Code Modification and Compliance by Alternative Means.

Please note that the opinions made in this letter are based in part by the reports of Albert W. Reed, P.E. If you have any questions, please do not hesitate to contact me.

A handwritten signature in black ink that reads 'Joe M. Nunley'.

Joe M. Nunley, AIA

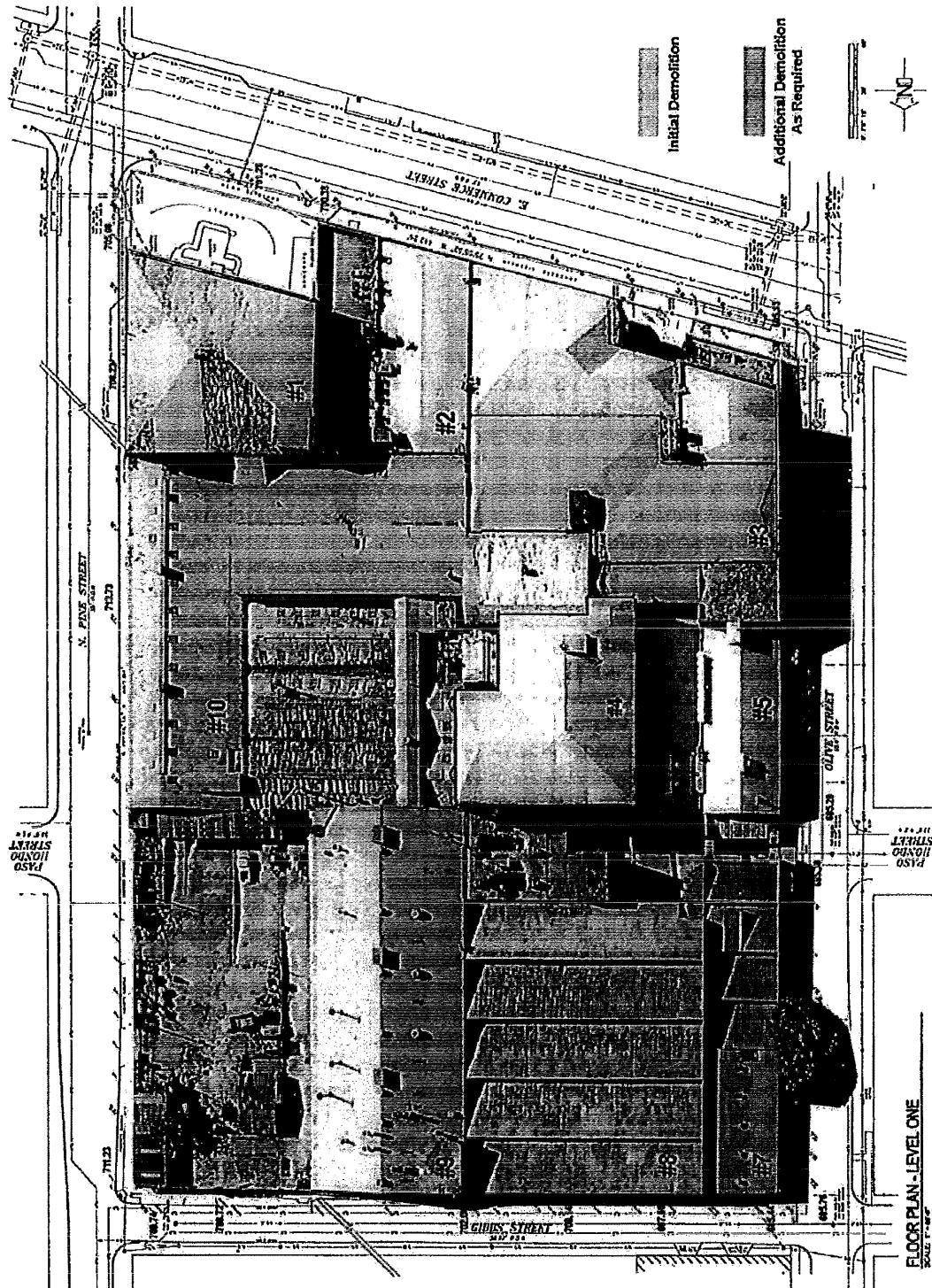


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RESOLUTION # 2013-005

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A RESOLUTION DENYING APPLICANT'S CITY BUILDING-RELATED CODE APPEAL OF THE DECISION OF THE DEVELOPMENT SERVICES DEPARTMENT DIRECTOR AND BUILDING OFFICIAL DENYING A PROPOSED CODE MODIFICATION REQUEST AND ALTERNATIVE MEANS TO ALLOW CURRENT OCCUPANCY OF THE FRIEDRICH BUILDING LOCATED AT 1617 E. COMMERCE, 1631 E. COMMERCE AND 121 NORTH OLIVE STREET IN SAN ANTONIO, TEXAS.

* * * * *

WHEREAS, Chapter 10 of City Code of San Antonio, Texas, requires that appeals of the technical codes be reviewed, considered and decided by the Building-Related and Fire Codes Appeals and Advisory Board to the City Council; and

WHEREAS, the Development Services Department followed the procedures listed in Chapter 10, Section 10-14 of the City Code of San Antonio, Texas, including requiring an appeals application to be filed with associated fee; and

WHEREAS, the Development Services Department staff sent appropriate notification to appellant apprising said party of the time and place of the appeal; and

WHEREAS, the Building-Related and Fire Codes Appeals and Advisory Board held a public hearing on November 22, 2013, where it reviewed evidence and received testimony regarding the appeal; and

WHEREAS, after careful consideration and deliberation, the Building-Related and Fire Codes Appeals and Advisory Board elected to deny appellant's appeal related to the City's denial of a proposed code modification request and alternative means to allow current occupancy of the Friedrich Building at the referenced address; NOW,

BE IT RESOLVED BY THE BUILDING-RELATED AND FIRE CODES APPEALS AND ADVISORY BOARD OF THE CITY OF SAN ANTONIO:

SECTION 1: The Building-Related and Fire Codes Appeals and Advisory Board denied an appeal of Chapter 10, Sections 10-6(a), 10-6(i), 10-6(n) and 10-8(i) and 10-12(a) of the City Code of San Antonio, Texas, related to the building's official's denial of the code modification request and alternate means request to allow occupancy of the Friedrich building located 1617 and 1631 E. Commerce and 121 north Olive Street in San Antonio, Texas. Therefore, the board upheld the decision of the City Building Official, Roderick Sanchez, regarding the denial to issue one or more certificates of occupancy for this building.



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Page 2 of 2 CITY CLERK

2014 JAN -3 PM 1:34

SIGNED this 27th day of November, 2013.

Rodney C. Oliver
Rodney Oliver, Chair

Attest:

WASL

Executive Secretary
Building-Related and Fire Codes Appeals and Advisory Board

City of San Antonio Receipt



Payer	Facility Location
Brown and Ortiz PC 112 E. Pecan Ste 1360 SAN ANTONIO TX 78205 USA	Brown and Ortiz PC 112 E. Pecan Ste 1360 SAN ANTONIO TX 78205 USA

Sale Date	Order Number	Customer Number	Responsible Department
01/03/2014	417412	1	City Clerk

Description	Quantity	Rate	Amount
Appeal to City Council	1.00	155.00	155.00

BROWN AND ORTIZ PC

112 E PECAN STE 1360,
SAN ANTONIO, TX 78205

6134

30-9/1140
52

DATE 1-2-14

PAY
TO THE
ORDER OF

City of San Antonio
One hundred fifty five & 90 \$ 155.00

DOLLARS

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FOR CC Appeal - Indem

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MP

Service Date	Ordinance No.	Reference Document	Subtotal
01/03/2014			155.00

* An amount with a negative sign is a credit or credit balance
* **City of San Antonio**

* Financial Services - Revenue Collections - P.O. Box 839975 - San Antonio, TX 78283-3975

Subtotal
155.00
Tax
0.00
Total Amount
155.00