

**ATTACHMENT C
BOARD OF ZONING APPEALS STAFF REPORT
DATED DECEMBER 16, 2015**



PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT

STAFF REPORT

DATE: DECEMBER 16, 2015
TO: BOARD OF ZONING APPEALS
FROM: KELVIN PARKER, PRINCIPAL PLANNER/ ZONING ADMINISTRATOR
SUBJECT: APPEAL OF HEARING OFFICER'S DECISION:
TIME EXTENSION FOR VARIANCE #11738 – 167 EAST WALNUT STREET

RECOMMENDATION:

It is recommended that the Board of Zoning Appeals:

1. Acknowledge that an Initial Study with a Mitigated Negative Declaration was approved for the project by the Hearing Officer at a public hearing on June 6, 2012. The Initial Study determined that the project will have less than significant environmental impacts with the incorporation of the proposed mitigation measures. The proposed time extension application will not result in any new environmental impacts. It has further been determined that there are no changed circumstances or new information as part of the proposed Time Extension application that necessitate further environmental review; and
2. Uphold the Hearing Officer's decision and approve Time Extension for Variance #11738.

EXECUTIVE SUMMARY:

On August 5, 2015, the Hearing Officer considered, at its regularly noticed hearing, Time Extension for Variance #11738. The request was to allow for a one-year extension from the expiration date of Variance #11738, which was June 19, 2015. Variance #11738 was approved by the Zoning Hearing Officer on June 6, 2012, to deviate from the height and setback requirements for the construction of a new multi-family structure containing 100 residential units. Per Section 17.64.040 of the City's Zoning Code, a permit or approval is valid for 36 months from the effective date of approval.

Staff's recommendation to the Hearing Officer was to approve Time Extension for Variance #11738 since the two required findings for granting a time extension request could be made. Specifically staff found that the findings and conditions of the original approval still apply as there have been no changes in circumstances or new information provided as part of the proposed Time Extension to warrant the original findings and conditions invalid; and other than

the height and setbacks deviations approved under Variance #11738 the project meets all other development standards applicable to the project, as these standards have not been modified. At the conclusion of the meeting, and after hearing public testimony, the Hearing Officer approved the Time Extension for Variance #11738 (Attachment B).

On August 17, 2015, The Walnut Plaza, care of Frank Cardenas Esq., submitted an appeal application (Attachment C) to the Board of Zoning Appeals citing a disagreement with the decision of the Hearing Officer. The hearing before the Board of Zoning Appeals is a *de novo* hearing where the Board has no obligation to honor the prior decision and has the authority to make an entirely different decision.

Staff recommends that the Board of Zoning Appeals uphold the Hearing Officer's August 5, 2015 decision and approve Time Extension for Variance #11738 (Attachment A).

SITE BACKGROUND:

Existing Site Characteristics:

The subject property is an irregular shaped through lot, containing frontages on East Walnut Street, North Marengo Avenue, and at the intersection of Chestnut Street and Townsend Place, where both streets end. The Metropolitan Transportation Authority (MTA) light rail tracks traverse the eastern edge of the property where the MTA owns a "tunnel" area between the elevation of the track and the elevation of the street, prohibiting access from East Walnut Street or North Marengo Avenue. Therefore, the only frontage providing access to the subject property is through the intersection of Chestnut Street and Townsend Place.

The property is currently vacant and has previously been graded approximately 30 feet deep to accommodate the light rail tracks; as such from the intersection of Chestnut Street and Townsend Place, the property contains a steep down slope to the MTA light rail tracks. Due to the slope, the structure is proposed to be 90' in height when measured from the existing grade at the light rail tracks, and 60' as measured from the existing grade at street level.

Adjacent Uses:

North – Commercial Office
South – Mixed-Use and Memorial Park
East – Commercial Office
West – Multi-Family, Single Family, and Religious Facility

Adjacent Zoning:

North – CD-1 (Central District Specific Plan, Old Pasadena Subdistrict)
South – CD-2 and OS (Central District Specific Plan, Civic Center Subdistrict and Open Space)
East – CD-1 (Central District Specific Plan, Old Pasadena Subdistrict)
West – CD-1 (Central District Specific Plan, Old Pasadena Subdistrict)

Project Description:

The applicants, John Warfel and Jan VanTilburg, have submitted a Time Extension request to allow for a one-year extension from the expiration date of Variance # 11738. Variance #11738 was approved by the Zoning Hearing Officer on June 6, 2012. Per Section 17.64.020 of the

City's Zoning Code, a decision of the Hearing Officer shall become effective on the 11th day following the date of the decision, unless an appeal is filed. No appeals were filed for the approval of Variance #11738 therefore the approval became effective on June 19, 2012. Per Section 17.64.040 of the City's Zoning Code, a permit or approval is valid for 36 months from the effective date of approval except where an extension of time is approved. The applicant is required to file a written request for a Time Extension before the expiration of the permit. On May 12, 2015, the applicants submitted the requested Time Extension, which if approved would extend the expiration date to June 19, 2016. A second one-year extension may also be granted if the applicants file a written request for a Time Extension before the expiration of the permit.

Variance #11738 allowed a new 89,795 square foot six-story multi-family building to have a height of 90', as measured from the existing grade at the Metropolitan Transportation Authority light rail tracks, where the maximum permitted height is 60'. Additionally, two Minor Variances were approved to allow the structure to provide a 136' setback from the Walnut Street frontage, where the maximum permitted setback is five-feet; and to allow a 55' setback from the Marengo Avenue frontage, where the maximum permitted setback is ten-feet.

Public Hearing

The application was presented to the Hearing Officer at a public hearing on August 5, 2015. Staff's recommendation to the Hearing Officer was to approve Time Extension for Variance #11738 since the two required findings for approving a time extension request could be made. Specifically staff found that the findings and conditions of the original approval still apply as there have been no changes in circumstances or new information provided as part of the proposed Time Extension to warrant the original findings and conditions invalid; and other than the height and setbacks deviations approved under Variance #11738 the project meets all other development standards applicable to the project, as these standards have not been modified.

One letter in opposition, prepared by the representative of the adjacent neighbors, was received prior to the hearing. At the hearing, Richard McDonald, Esq, representing the adjacent property, The Walnut Plaza, and Frank Cardenas, the owner of The Walnut Plaza, spoke in opposition of the project. Some of the reasons stated for opposing the project were:

- that the applicant has not pursued Design Review approval since staff from Design and Historic Preservation Section has notified the applicant of the expiration of the Concept Design approval on May 28, 2014;
- that in order for the time extension to be valid, the time extension is required to be filed and approved prior to the expiration of the permit; and
- that the findings and conditions of the original application do not apply because the original project approved in 2012 encroached into the adjacent property to the north without the owner's permission. Without utilizing portions of the property adjacent to the north the project would be infeasible.

During the rebuttal time, the applicant explained that they have been working on a new design for the proposed project and would be seeking Design Review approval after the time extension is approved. Furthermore, the applicant explained that they have studied feasible options for the project without encroaching into the adjacent property to the north.

In regards to the untimely filing of the time extension request, staff and the Hearing Officer are of the opinion that the City's Zoning Code is clear that the request needs to be filed prior to the expiration of the permit however it is not required to be approved prior to the expiration date.

Specifically, Section 17.64.040.C.1 of the City's Zoning Code states: "The applicant shall file a written request for an extension of time with the Department before expiration of the permit."

At the conclusion of public testimony, the Hearing Officer approved the Time Extension request for Variance #11738. This decision was based on the findings and the conditions of approval in Attachment B (Decision Letter) to this report. Furthermore, the Hearing Officer has provided an addendum with justification for the approval of the Time Extension for Variance #11738 (Attachment D).

On August 17, 2015, The Walnut Plaza, care of Frank Cardenas Esq., submitted an appeal application (Attachment C) to the Board of Zoning Appeals citing a disagreement with the decision of the Hearing Officer. The effect of an appeal is that the prior decision of the Hearing Officer is vacated. The hearing before the Board of Zoning Appeals is a *de novo* hearing where the Board has no obligation to honor the prior decision and has the authority to make an entirely different decision.

If the Board of Zoning Appeals approves the Time Extension Request, the applicant would proceed with the Design Review process with the Design Commission prior to submitting development plans to the Building and Safety Department.

GENERAL PLAN CONSISTENCY:

The subject site was designated as Central District Specific Plan in the previous General Plan Land Use Element, which was in effect during the approval of Variance #11738. The development of a multi-family residential project at the site would be consistent with the previous General Plan's Objective 1- Targeted Development, which was to "direct higher density development away from Pasadena's residential neighborhoods and into targeted areas, creating an exciting urban core with diverse economic, housing, cultural and entertainment opportunities."

The subject site is designated as Medium Mixed-Use under the newly adopted General Plan Land Use Element. The project is consistent with Policy 1.2, which encourages growth and new construction in infill areas and away from Pasadena's residential neighborhoods and open spaces by redeveloping underutilized commercial and industrial properties, especially within the Central District, Transit Villages, Neighborhood Villages, and along selected corridors. The subject site is an undeveloped lot within the Central District Specific Plan, near the Memorial Park Metro Station.

ENVIRONMENTAL REVIEW:

An Initial Environmental Study was prepared for the project and concluded that there will be less than significant impacts on the environment because mitigation measures will be incorporated to the project to reduce the traffic impact to a less-than-significant level and to ensure the interior noise level does not exceed 45 dB in any habitable room. The Mitigated Negative Declaration was adopted by the Hearing Officer on June 6, 2012. The proposed Time Extension application will not result in any new environmental impacts. It has further been determined that there are no changed circumstances or new information as part of the proposed Time Extension application that necessitate further environmental review.

CONCLUSION:

Staff concludes that the findings necessary for approving the Time Extension request can be made (Attachment A). The findings and conditions of the original approval still apply; and the proposed project meets, with the exception of the approved Variance, the remaining development requirements of the Zoning Code and is consistent with the General Plan, any applicable Specific Plan, and the Zoning Map. Therefore, staff recommends approval of the Time Extension request, subject to the findings in Attachment A.

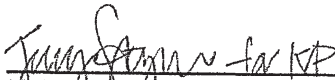
RECOMMENDATION:

It is recommended that the Board of Zoning Appeals:

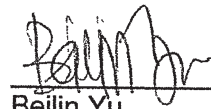
1. Acknowledge that an Initial Study with a Mitigated Negative Declaration was approved for the project by the Hearing Officer at a public hearing on June 6, 2012. The Initial Study determined that the project will have less than significant environmental impacts with the incorporation of the proposed mitigation measures. The proposed time extension application will not result in any new environmental impacts. It has further been determined that there are no changed circumstances or new information as part of the proposed Time Extension application that necessitate further environmental review; and
2. Uphold the Hearing Officer's decision and approve Time Extension Request for Variance #11738.

Respectfully Submitted,

Prepared By:



Kelvin Parker
Principal Planner/Zoning Administrator



Beilin Yu
Planner

Attachments:

- Attachment A – Zoning Administrator Recommended Specific Findings
- Attachment B – Hearing Officer Decision Letter (August 5, 2015)
- Attachment C – Appeal Application (August 17, 2015)
- Attachment D – Hearing Officer Addendum

**ATTACHMENT A
ZONING ADMINISTRATOR RECOMMENDED
FINDINGS FOR TIME EXTENSION REQUEST FOR VARIANCE #11738**

1. *The findings and conditions of the original approval still apply.* There have been no changes in circumstances or new information provided to warrant the original findings and conditions invalid. The Variance to allow the proposed multi-family structure to exceed the maximum permitted height of 60' was approved because it was found that the property contained an exceptional circumstance. Specifically, the property was previously graded 30 feet down to accommodate the MTA light rail tracks, and because the City's Zoning Code requires the maximum permitted height to be measured from the lowest grade adjacent to an exterior wall, the height of the proposed apartment building is 90' when measured from the grade at the light rail tracks and 60' when measured from the street level grade, thus exceeding the maximum permitted height. The property still contains this exceptional circumstance and therefore the findings for the original approval still apply.

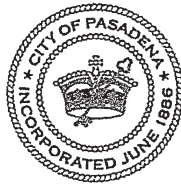
The Minor Variances to exceed the maximum permitted setback of 10' from Marengo Avenue and 5' from Walnut Street were approved because of the subject property's unique circumstances. The property contains a 130' frontage along Marengo Avenue however this frontage is mainly occupied by a "tunnel" area belonging to MTA, which is open to 30' below street level, prohibiting the development of the proposed structure in compliance with the maximum permitted 10' setback. The property contains a 45' street frontage along East Walnut Street., however the light rail tracks runs entirely through this width, and the area is also open to the tracks 30' below the street level, also prohibiting the development of the proposed structure in compliance with the maximum permitted 5' setback. The property still contains these exceptional circumstances and therefore the findings for the original approvals still apply.

2. *The proposed project meets the current height, setbacks, and floor area ratio requirements of the Zoning Code and is consistent with the General Plan, any applicable Specific Plan, and the Zoning Map.* The development standards applicable to the approved project have not been modified, and therefore the proposed project still meets the requirements of the Zoning Code, including floor area ratio, density, open space and parking.

The proposed project is consistent with the purpose of CD-1 Old Pasadena "to maintain and reinforce the historic character of the area, and to support its long-term viability as a regional retail and entertainment attraction through the development of complementary uses, including medium to high density housing near light rail station". The proposed project will provide high density housing near Gold Line Memorial Park Station.

The project is also still consistent with the General Plan's Objective 1- Targeted Development, which is to "direct higher density development away from Pasadena's residential neighborhoods and into targeted areas, creating an exciting urban core with diverse economic, housing, cultural and entertainment opportunities." The proposed project is located in an area identified to accommodate future residential growth in the Old Pasadena sub-district.

**ATTACHMENT B
HEARING OFFICER DECISION LETTER**



PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION

August 7, 2015

John Warfel & Jan Van Tilburg
201 Santa Monica Blvd #620
Santa Monica, CA 90401

RE: **Time Extension for Variance #11738**
167 East Walnut Street
Council District #3

PLN2015-00239

Dear Mr. Warfel:

Your application for a **Time Extension for Variance #11738** at **167 East Walnut Street** was considered by the **Hearing Officer** on **August 5, 2015**.

TIME EXTENSION: To allow for a one-year extension from the expiration date of **Variance #11738**, which was approved by the **Zoning Hearing Officer** on **June 6, 2012**, to deviate from the height and setback requirements for the construction of a new multi-family structure containing **100 residential units**. Per **Section 17.64.040** of the City's Zoning Code, a permit or approval is valid for **36 months** from the effective date of approval.

After careful consideration of this application, and with full knowledge of the property and vicinity, the **Hearing Officer** made the findings as shown on Attachment A to this letter.

Based upon these findings, it was decided by the **Hearing Officer** that the **Time Extension** be **approved**.

In accordance with **Section 17.64.040** of the Pasadena Municipal Code, the exercise of the right granted under **Variance #11738** must be commenced within one year from the expiration date of the initial application (**June 19, 2016**). This approval is eligible for one one-year extension. The one year extension is required to be reviewed and approved by the **Hearing Officer** at a noticed public hearing. In order for a project to be eligible for a time extension, the applicant is required to submit the required fee and time extension application to the **Permit Center** prior to the expiration date of the land use entitlement. The right granted by this approval may be revoked if the entitlement is exercised contrary to the conditions of approval of **Variance #11738** or if it is exercised in violation of the Zoning Code.

You are advised that an application for a building permit is not sufficient to vest the rights granted by this approval. The building permit must be issued and construction diligently pursued to completion prior to the expiration of this approval. It should be noted that the time

frame within which judicial review of the decision must be sought is governed by California Code of Civil Procedures, Section 1094.6.


You are hereby notified that, pursuant to Pasadena Municipal Code Chapter 17.72, any person affected or aggrieved by the decision of the Hearing Officer has the right to appeal this decision within **ten days (August 17, 2015)**. The effective date of this decision will be **August 18, 2015**. Prior to such effective date, a member of the City Council or Planning Commission may request that it be called for review to the Board of Zoning Appeals. However, if there is a request for a call for review, the appeal period will continue to run. If the tenth day falls on a day when City offices are closed, the appeal deadline shall be extended through the next day when offices are open. The decision becomes effective on the eleventh day from the date of the decision. The regular Appeal fee is \$272.95. The Appeal fee for Non-profit Community-based Organizations pre-registered with Neighborhood Connections is \$136.48.

Any permits necessary may be issued to you by the Building Division on or after the effective date stated above. A building permit application may be submitted before the appeal deadline has expired with the understanding that should an appeal be filed, your application may, at your expense, be required to be revised to comply with the decision on the appeal. A copy of this decision letter (including conditions of approval and any mitigation monitoring program) shall be incorporated into the plans submitted for building permits.

An Initial Study with a Mitigated Negative Declaration was approved for the project by the Hearing Officer at a public hearing on June 6, 2012. The Initial Study determined that the project will have less than significant environmental impacts with the incorporation of the proposed Mitigation Measures. The proposed time extension application will not result in any new environmental impacts. It has further been determined that there are no changed circumstances or new information as part of the proposed Time Extension application that necessitate further environmental review.

For further information regarding this case please contact **Beilin Yu** at **(626) 744-6726**.

Sincerely,



Paul Novak
Hearing Officer

Enclosures: Attachment A

xc: City Clerk, City Council, Building Division, Public Works, Power Division, Water Division, Design and Historic Preservation, Hearing Officer, Code Enforcement-Jon Pollard, Case File, Decision Letter File, Planning Commission (9)

ATTACHMENT A
SPECIFIC FINDINGS FOR TIME EXTENSION FOR V #11738

Time Extension Request: To allow for a one-year extension from the expiration date for Variance # 11738

1. *The findings and conditions of the original approval still apply.* There have been no changes in circumstances or new information provided to warrant the original findings and conditions invalid. The Variance to allow the proposed multi-family structure to exceed the maximum permitted height of 60' was approved because it was found that the property contained an exceptional circumstance. Specifically, the property was previously graded 30 feet down to accommodate the MTA light rail tracks, and because the City's Zoning Code requires the maximum permitted height to be measured from the lowest grade adjacent to an exterior wall, the height of the proposed apartment building is 90' when measured from the grade at the light rail tracks and 60' when measured from the street level grade, thus exceeding the maximum permitted height. The property still contains this exceptional circumstance and therefore the findings for the original approval still apply.

The Minor Variances to exceed the maximum permitted setback of 10' from Marengo Avenue and 5' from Walnut Street were approved because of the subject property's unique circumstances. The property contains a 130' frontage along Marengo Avenue however this frontage is mainly occupied by a "tunnel" area belonging to MTA, which is open to 30' below street level, prohibiting the development of the proposed structure in compliance with the maximum permitted 10' setback. The property contains a 45' street frontage along East Walnut Street., however the light rail tracks runs entirely through this width, and the area is also open to the tracks 30' below the street level, also prohibiting the development of the proposed structure in compliance with the maximum permitted 5' setback. The property still contains these exceptional circumstances and therefore the findings for the original approvals still apply.

2. *The proposed project meets the current height, setbacks, and floor area ratio requirements of the Zoning Code and is consistent with the General Plan, any applicable Specific Plan, and the Zoning Map.* The development standards applicable to the approved project have not been modified, and therefore the proposed project still meets the requirements of the Zoning Code, including floor area ratio, density, open space and parking.

The proposed project is consistent with the purpose of CD-1 Old Pasadena "to maintain and reinforce the historic character of the area, and to support its long-term viability as a regional retail and entertainment attraction through the development of complementary uses, including medium to high density housing near light rail station". The proposed project will provide high density housing near Gold Line Memorial Park Station.

The project is also still consistent with the General Plan's Objective 1- Targeted Development, which is to "direct higher density development away from Pasadena's residential neighborhoods and into targeted areas, creating an exciting urban core with diverse economic, housing, cultural and entertainment opportunities." The proposed project is located in an area identified to accommodate future residential growth in the Old Pasadena sub-district.

**ATTACHMENT C
APPEAL APPLICATION (AUGUST 17, 2015)**



PASADENA PERMIT CENTER
www.cityofpasadena.net/permitcenter

REQUEST FOR APPEAL

APPLICATION INFORMATION

Project Address. 167 East Walnut Street

Case Type (MCUP, TTM, etc) and Number. V11738

Hearing Date: August 5, 2015

Appeal Deadline: August 17, 2015

APPELLANT INFORMATION

APPELLANT: The Walnut Plaza Attn: Frank Cardenas, Esq.

Telephone (626) 584-9860

Address 215 N Marengo Avenue, Third Floor

Fax []

City Pasadena State CA Zip 91101

Email FCardenas5@gmail.com

APPLICANT (IF DIFFERENT): Walnut Marengo Investors, LLC

frank@walnutplaza.com

I hereby appeal the decision of the:

Hearing Officer

Zoning Administrator

Design Commission

Director of Planning and Development

Historic Preservation

Film Liaison

REASON FOR APPEAL

The decision maker failed to comply with the provisions of the Zoning Code, General Plan or other applicable plans in the following manner (use additional sheets if necessary):

The Hearing Officer incorrectly determined that the findings and conditions of approval are the same as before in granting the requested extension when in fact they are not. The HO further failed to properly apply the zoning code to the major changes being proposed for the project, and the impropriety of those changes under the Code and the prior MND. The HO's decision maintains certain conditions of approval that are not reasonable, nor related to the detrimental impacts of the project on the adjacent residential neighborhood. In fact, they are illusory, impossible to enforce, and thus void ab initio. Last, the HO failed to account for the applicant's failure to proceed diligently and in good faith, the staff report's failure to fully disclose the records and underlying facts, and the applicant's misrepresentations regarding its inability to secure Design Review Commission approval.

Signature of Appellant

8-13-15

Date

* OFFICE USE ONLY

PLN # PLAN 2015-00239

CASE # V # 11738

PRJ #

DESCRIPTION

DATE APPEAL RECEIVED 8/17/15

APPEAL FEES \$ 272.95

RECEIVED BY NNS

**ATTACHMENT D
HEARING OFFICER ADDENDUM**

I have reviewed the appeal of my original determination granting the time extension for Variance 11738 at 167 East Walnut Street. This Addendum addresses, separately, each of the points raised in the appeal, followed by a conclusion in support of upholding my original determination to grant the time extension request.

1. "Findings and conditions of approval are the same [as the original grant] . . . when in fact they are not."

The nature of the project—a large, multi-family, residential project—has not changed since the original determination. The lot itself has not changed: it remains an irregularly-shaped, sloping lot, adjacent to an existing rail corridor. There have been no significant changes in the development or uses on the properties which surround the subject property and in the neighborhood in general. In short, the overwhelming majority of circumstances in support of the original grant are unchanged from that time to the present, and do not necessitate wholesale revisions to the variance findings.

The appellant would have a point when it comes to conditions of approval from the original grant—namely, that, due to changes in the design of the project, some conditions may no longer apply—were it not for the fact that the applicant has not filed a request to remove or modify any conditions of approval. The applicant is required to comply with all conditions of the original approval, unless and until the applicant files a request to remove or modify conditions. It would be inappropriate to deny a request for a time extension based upon allegations about what the applicant might do in the future relative to complying with the original conditions of approval.

2. "The HO failed to properly apply the zoning code to the major changes being proposed for the project and the impropriety of those changes under the Code and the prior MND."

The original grant include a condition of approval tying the grant to a set of plans, and nothing was presented to suggest that the applicant has requested to modify the original grant to conform to a redesigned project. Further, the applicant has yet to receive design review approval. In that regard, discussion of a "changed" project is irrelevant to the request for a time extension. It would be impossible for the ZHO to "apply the major changes being proposed for the project" when that is not what is before the ZHO—the only matter that is relevant is the request for a time extension. The appellant seems to be asking the ZHO to make a time extension determination based upon a design proposal, currently the subject of design review process, which is not even before the ZHO. The time to review such a redesigned project—one that is not in compliance with the original grant—would be upon receipt of an application to modify the original grant. But that was not the subject of what was before the ZHO, nor is it what is before the BOZA on appeal.

3. "The HO's decision maintains certain conditions of approval that are not reasonable, nor related to the detrimental impacts of the project on the adjacent residential neighborhood."

With respect to the first statement ("conditions of approval that are not reasonable"), see "1," above.

With respect to the second statement, in the original grant, the ZHO considered the impacts of the proposed project, and imposed conditions of approval to address those impacts. If my memory is accurate, the applicant didn't appeal those conditions, nor was the original grant appealed by any other parties. The appellant now seems to argue that there is no legal nexus between the impacts of the project and conditions of approval in the original grant . . . which, with all due respect, is an odd argument to be made by anyone other than the project developer, and even stranger coming from someone who opposes the project in its entirety. Further, as stated previously, the nature of the request before the ZHO is a request for a time extension, and not a request to modify conditions of approval. The appellant's attempt to tie the time extension request to some notion of conditions that are "not reasonable" does not, in any substantive manner, provide adequate justification for denying the requested time extension.

4. "They [presumably, the conditions of approval from the original grant] are illusory, impossible to enforce, and thus void ab initio."

There is no elaboration of how the original conditions are either "illusory" or "impossible to enforce." Again, the conditions of approval remain in full force and effect, unless and until the applicant files an application to remove or modify certain conditions. The original grant and its associated conditions are in no way "void" by any reasonable interpretation, despite the appeal's statement to the contrary. Again, the original conditions of approval was not a matter that was before the ZHO, nor is before the BOZA on appeal.

5. "The HO failed to account for the applicant's failure to proceed diligently and in good faith, the staff report's failure to fully disclose the records and underlying facts, and the applicant's misrepresentations regarding its inability to secure Design Review Commission approval."

During the hearing, the applicant provided a rough timeline, identifying milestones (submittal of plans, public hearings, and several meetings with staff) which, all in all, suggested that the applicant was making a reasonable and good faith effort to secure Design Review approval. While it is clear that the process isn't proceeding as quickly as all parties might desire, this is neither entirely exceptional, nor unusual, for the design review process for projects in the City of Pasadena. But the appellant did not provide any substantial evidence in the hearing, nor has he done so anywhere in the appeal, to document a pattern of deliberate "inactivity" by the applicant in securing design review approval. The appellant is making assertions without documentation and backup sufficient to support those claims, which stands in marked contrast to information presented by the applicant during the hearing.

Conclusion

Although the appellant would like to make it so, a request for a time extension does not present an entirely new opportunity to "re-hear" the original variance request which was filed, and approved, years ago.

Claims that the original conditions are somehow unreasonable, unenforceable, or otherwise inappropriate, merely introduce speculation about matters that are not before the ZHO nor before the BOZA in considering an appeal. Despite the testimony at the ZHO hearing, and the information presented in the appeal, the matter at hand is a request for a time extension, plain and simple. The appellant's arguments about complying with the original conditions of approval,

however interesting they may be, are entirely irrelevant, and they do not bear any weight on whether or not a time extension should be granted.

The applicant has presented a reasonable timeline documenting his experience in attempting to secure design review approval. The appellant has merely offered unsubstantiated assertions about a "failure to proceed diligently and in good faith" and allegations about "the applicant's misrepresentations." The appellant's arguments during the ZHO Hearing, and as offered in the appeal to the BOZA, do not present a sufficient set of facts and arguments to deny the requested time extension.