

ATTACHMENT D
APPEAL APPLICATION OF HEARING OFFICER DECISION
DATED 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
- Design Commission
- Historic Preservation
- Zoning Administrator
- Director of Planning and Development
- 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.

[Handwritten Signature]

Signature of Appellant

8-13-15

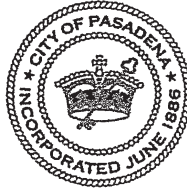
Date

* OFFICE USE ONLY

PLN # PLAN2015-00239 CASE # V # 11738 PRJ # _____

DESCRIPTION _____

DATE APPEAL RECEIVED 8/17/15 APPEAL FEES \$ 272.95 RECEIVED BY NWS



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.



City of Pasadena

Permit Center
175 N. Garfield Ave.
Pasadena, CA 91101

8/17/2015

9:19:57AM

Receipt #: 920150000000010002

Date: 08/17/2015

Project Address: 167 E WALNUT ST

Line Items:

Case No	Tran Code	Description	Revenue Account No	Amount Paid
PLN2015-00239		Appeal; Hr.Ofc/BOZA	6614-101 / 444100	265.00
PLN2015-00239		Records Mgmt 3% Surcharge	6143-204 / 447100	7.95
Line Item Total:				\$272.95

Payments:

Method	Payer	Bank No	Account No	Confirm No	How Received	Amount Paid
Check	THE WALNUT PLAZA		14755	EOC	In Person	272.95
Payment Total:						\$272.95



**ATTACHMENT E
HEARING OFFICER STAFF REPORT
DATED AUGUST 5, 2015**



PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT

STAFF REPORT

DATE: August 5, 2015

TO: Hearing Officer

SUBJECT: Time Extension Request for Variance #11738

LOCATION: 167 East Walnut Street

APPLICANT: John Warfel and Jan VanTilburg

ZONING DESIGNATION: CD-1 (Central District Specific Plan, Old Pasadena subdistrict)

GENERAL PLAN DESIGNATION: SP (Specific Plan)

CASE PLANNER: Beilin Yu

STAFF RECOMMENDATION: Acknowledge the Environmental Determination, and adopt the Specific Findings in Attachment A to **approve** Time Extension for Variance #11738.

PROJECT PROPOSAL: Time extension request for Variance #11738: Request 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.

ENVIRONMENTAL DETERMINATION: 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.

BACKGROUND:

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)

Previous zoning cases on this property:

V #11738 - 1. Variance: To allow a new 89,795 square foot six-story building containing 100 residential units over three-levels of subterranean parking with 128 spaces 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';
2. Minor Variance: To allow the new structure to provide a 136' setback from Walnut Street frontage, where the maximum permitted setback is 5'-0"; and

3. Minor Variance: To allow the new structure to provide a 55' setback from Marengo Avenue frontage, where a maximum setback of 10'-0" is permitted. Approved with conditions on June 6, 2012.

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.

ANALYSIS:

According to the information provided by the applicant, the Time Extension is being requested to allow the project additional time to complete the Design Review process. The project's design has been reviewed by the Design Commission multiple times, and still requires further review. The project was reviewed by the Design Commission on the dates listed below.

- July 11, 2011 – Preliminary Consultation was conducted
- September 26, 2011 – Preliminary Consultation was conducted
- November 26, 2012 – Concept Design was approved
- April 29, 2013 – 50% Advisory Review was conducted
- February 11, 2014 – 50% Advisory Review was conducted

Per Section 17.64.040.D of the City's Zoning Code, the review authority may approve an application for a time extension only after first finding that: 1) The findings and conditions of the original approval still apply; and 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 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.

As described earlier in the report, Variance #11738 was approved to deviate from the maximum height and setback requirements. The project meets all other development standards applicable to the project, as these standards have not been modified.

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.

ATTACHMENTS:

Attachment A: Specific Findings

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

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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.