

# Agenda Report

April 3, 2017

**TO:** Honorable Mayor and City Council

**FROM:** Planning and Community Development Department

**SUBJECT: APPEAL OF BOARD OF ZONING APPEAL'S DECISION ON  
TIME EXTENSION FOR VARIANCE #11738  
LOCATED AT 167 EAST WALNUT STREET**

**RECOMMENDATION:**

It is recommended that the City Council:

1. Find that an Initial Study with a Mitigated Negative Declaration was adopted for the project by the Hearing Officer at a public hearing on June 6, 2012, and that there are no changes to the project, changed circumstances or new information that would trigger further environmental review; and
2. Uphold the Hearing Officer's decision and approve Time Extension for Variance #11738.

**EXECUTIVE SUMMARY:**

On December 16, 2015, the Board of Zoning Appeals considered at its regularly noticed hearing, an appeal of the Hearing Officer's decision to approve a Time Extension request for Variance #11738. At the conclusion of the public hearing, the Board of Zoning Appeals made a motion to uphold the Hearing Officer's decision and acknowledge the Initial Study and Mitigated Negative Declaration and approve the Time Extension Request for Variance #11738 that resulted in a 2-2 vote by the four members present.

As a result, pursuant to Section 17.72.070.B.5, the Board of Zoning Appeal's 2-2 vote resulted in a failure of the required CEQA clearance for this discretionary project. The failure to make the required CEQA findings for the item deemed the Time Extension Request disapproved.

On December 28, 2015, the applicants of the time extension request, John Warfel and Jan VanTilberg, submitted an appeal application to the City Council. Staff has been

working with the applicant since the appeal was filed in order to address issues related to the project.

**BACKGROUND:**

Variance #11738 was approved by the Zoning Hearing Officer on June 6, 2012 to allow a new 89,795 square foot six-story multi-family building to have a height of 90-feet, as measured from the existing grade at the Metropolitan Transportation Authority (MTA) light rail tracks, where the maximum permitted height is 60-feet. Additionally, two Minor Variances were approved to allow the structure to provide a 136-foot setback from the Walnut Street frontage, where the maximum permitted setback is 5-feet; and to allow a 55-foot setback from the Marengo Avenue frontage, where the maximum permitted setback is 10-feet.

The Variance to allow the proposed multi-family structure to exceed the maximum permitted height of 60-feet 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 would be 90-feet when measured from the grade at the light rail tracks and 60-feet when measured from the street level grade, thus exceeding the maximum permitted height. This exceptional circumstance was part of the basis for the findings for the original approval.

The Minor Variances to exceed the maximum permitted setback of 10-feet from Marengo Avenue and 5-feet from Walnut Street were approved because of the subject property's unique circumstances. The property contains a 130-foot frontage along Marengo Avenue however this frontage is mainly occupied by a "tunnel" area belonging to MTA, which is open to 30-feet below street level, prohibiting the development of the proposed structure in compliance with the maximum permitted 10-foot setback. The property contains a 45-foot 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-feet below the street level, also prohibiting the development of the proposed structure in compliance with the maximum permitted 5-foot setback. These exceptional circumstances were part of the basis for the findings for the original approvals.

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 appeal was 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. 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

### **Hearing Officer**

The Time Extension request was considered by the Hearing Officer at a noticed public hearing on August 5, 2015. 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.

At the conclusion of the meeting and after hearing public testimony, the Hearing Officer approved the Time Extension for Variance #11738. The appeal period for the Hearing Officer's decision was from August 6, 2015 to August 17, 2015. On August 17, 2015, The Walnut Plaza, care of Frank Cardenas Esq., submitted an appeal application to the Board of Zoning Appeals citing a disagreement with the decision of the Hearing Officer.

### **Board of Zoning Appeals**

On December 16, 2015, the Board of Zoning Appeals considered at its regularly noticed hearing, an appeal of the Hearing Officer's decision to approve Time Extension request for Variance #11738. The hearing before the Board of Zoning Appeals was a de novo hearing for the Time Extension request only, and not a review of the original Variance request, which was approved on June 6, 2012.

During the public hearing, four people spoke against the Time Extension request, in addition to the appellant. The applicant and his representative spoke in favor of the request. Those speaking in opposition to the request had the following concerns:

- That the mitigation measures approved with the original project are infeasible and ineffective, and
- Parking and traffic impacts this project would have on the surrounding streets.

The applicant and his representative spoke regarding the timeline of the project and the required findings to approve the time extension request.

At the conclusion of the public hearing, the Board of Zoning Appeals made a motion to uphold the Hearing Officer's decision and acknowledge the Initial Study and Mitigated Negative Declaration and approve the Time Extension Request for Variance #11738 that resulted in a 2-2 vote by the four members present.

Two members of the Board of Zoning Appeals stated that the projects which have been approved in the surrounding area since 2012, and the potential projects which may be

submitted in the surrounding area, constitute changed circumstances that warrant further environmental review.

Pursuant to Section 17.72.070.B.5, the Board of Zoning Appeal's 2-2 vote resulted in a failure of the required CEQA clearance for this discretionary project. The failure to make the required CEQA findings for the item deemed the Time Extension Request disapproved.

On December 28, 2015, the applicants, John Warfel and Jan VanTilberg, submitted an appeal application to the City Council.

## **ANALYSIS:**

### **Required Findings**

As discussed earlier, 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 to development standards or changes to the project or property as part of the proposed Time Extension to render the original findings and conditions invalid.

Other than the height and setbacks deviations discussed above, the project meets all other development standards applicable to the project, such as floor area ratio, density, open space and parking, as these standards have not changed.

The proposed project was found to be 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 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.

A new General Plan was adopted on August 18, 2015. The subject site is designated as Medium Mixed-Use (in the Central District Specific Plan) under the newly adopted Land Use Element. The project is consistent with Policy 1.2 of the new adopted General Plan, 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

### **Changed Circumstances under CEQA**

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.

Once an MND has been adopted for a project, a lead agency may not require further environmental review absent the presence of triggering conditions as set forth in State CEQA Guidelines Sections 15162-15164 as follows:

1. There are substantial changes in the project;
2. There are substantially changed circumstances; or
3. There is certain new information of substantial importance.

The project has not changed since adoption of the MND. To require further environmental review, any changed circumstances must rise to the level of substantiality such that there are new significant environmental effects or a substantial increase in the severity of previously identified significant effects. Likewise, to require further environmental review new information must show the project will have significant effects not previously discussed, or previously identified significant effects will be substantially more severe, or mitigation measures or alternatives previously found infeasible or that were declined are now feasible or substantially different than previously proposed and would substantially reduce impacts. The proposed time extension application will not result in any new environmental impacts or a substantial increase in the severity of any previously identified environmental impacts. There are no changed circumstances or new information that would require further additional environmental review as a result of the proposed time extension application.

### **CONCLUSION:**

Based on the two findings required to approve a Time Extension request, Staff recommends that the City Council uphold the Hearing Officer's decision to approve the Time Extension.

Staff also recommends that the City Council acknowledge the Initial Study and Mitigated Negative Declaration prepared for the original project and 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. The approved project is part of the cumulative project list that the City maintains and subsequent projects which have been reviewed and approved by the City has considered this project as part of the cumulative impact to the surrounding area. Future projects that will be proposed in the surrounding area will be required to consider this project as part of the cumulative impact to the surrounding area.

**FISCAL IMPACT:**

There is no fiscal impact as a result of this action and will not have any indirect or support cost requirements.

Respectfully submitted,



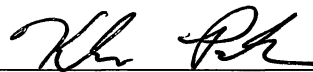
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Attachments (5)

Attachment A – Specific Findings

Attachment B – Appeal Application of Board of zoning Appeals decision dated December 28, 2015

Attachment C – Board of Zoning Appeals Staff Report dated December 16, 2015

Attachment D – Appeal Application of Hearing Officer's decision dated August 17, 2015

Attachment E – Hearing Officer Staff Report dated August 5, 2015