

Agenda Report

August 6, 2012

TO: Honorable Mayor and City Council

FROM: Planning Department

**SUBJECT: APPEAL OF REQUEST FOR TIME EXTENSION
229-247 SOUTH MARENGO AVENUE — 21-UNIT MULTI-FAMILY
COMPLEX — RM-48 DEVELOPMENT STANDARDS**

STAFF RECOMMENDATION:

It is recommended that the City Council:

- 1) **Find** that this project has been determined to be Categorical Exempt from the California Environmental Quality Act under §15332, (Class 32) "in-fill development projects", and that there are no changed circumstances or new information which would trigger further environmental review;
- 2) **Find** that an application for an extension of time with the Department was submitted before the expiration of the permit;
- 3) **Find** that the failure of the Design Commission to act in the approval of the third Time Extension for this project is an appealable action, pursuant to the Zoning Code;
- 4) **Find** that the findings and conditions of the original approval are still applicable and that finding number 2, Section D of ordinance 7215 does not apply, pursuant to the allowed exceptions, as a Vesting Tentative Tract Map (VTTM # 070403) was approved for this project in 2008; and
- 5) **Approve** the applicant's request for a third and final Time Extension to extend the original Consolidated Design Review approval granted by the Design Commission on November 26, 2007 until February 25, 2013.

DESIGN COMMISSION RECOMMENDATION:

On May 29, 2012 the Design Commission reviewed the request for a third time extension for a 21-unit courtyard-style condominium with subterranean parking. Two motions were made, one to approve and one to deny the extension, but both failed to achieve enough votes to pass.

EXECUTIVE SUMMARY:

In 2007, the applicant received concept design approval for new construction of a 21-unit courtyard-style condominium with subterranean parking. Time extensions were approved administratively on February 17, 2010, and on January 12, 2011. Pursuant to Ordinance #7215, a third and final time extension may be granted for this project if the review authority determines that the appropriate findings can be made. On May 29, 2012 staff presented the request for a third time extension to the Design Commission and recommended approval. The Design Commission could not reach consensus and all motions failed.

Pursuant to the Zoning Code, the lack of conclusive action by the Design Commission is an appealable action. The applicant is appealing the determination that no action is an appealable action, claiming instead that the non-action by the Commission violated the Permit Streamlining Act and therefore the Time Extension request is approved as a matter of course. In the event that the Council upholds the determination regarding non-action, the applicant is also appealing the Design Commission action (a de facto denial of the request) and requesting that the Council approve the request for a third time extension.

BACKGROUND:

Project Overview

The proposed project is new construction of a 21-unit courtyard-style condominium complex with subterranean parking. The project, which is replacing 18 existing units on two parcels, is on a half-acre site on the west side of South Marengo Avenue—south of Cordova Street. A two-story multi-unit Colonial Revival complex (1953, architect unknown, eligible for landmark designation) and a four-story residential building (under construction) are north of the site. A two-story Queen Anne style building (1893, Thomas Fellows/J.H. Bradbeer, listed in the National Register), borders the site to the south. A collection of bungalows, traditional style buildings, and 1980s-era townhouses are east of the site.

Time Extension Ordinance

Ordinance #7215, which became effective in December, 2011, revised the Zoning Code to permanently change the initial approval period for projects to three years and to allow two one-year extensions, for a potential total of five years. Under prior ordinances, requests for extension were approved administratively; however Ordinance #7215 requires that requests for extensions be approved by the original approval authority. Ordinance #7215 also revised the findings for granting an extension to include: 1) The findings and conditions of the original approval still apply; and, 2) The proposed project meets the current height, setback, and floor area ratio requirements of the Zoning Code and is consistent with the General Plan, and applicable Specific Plan, and the Zoning Map. Under this ordinance projects are automatically eligible for the total of five years, meaning a third and final time extension may be granted for this project if the review authority determines that the findings can be made.

Prior to Ordinance #7215, two consecutive temporary ordinances allowed an additional one year extension, beyond that which was permitted by the Zoning Code, to assist previously approved projects that had been entitled but delayed in moving forward as a result of the economy. The temporary ordinance had a sunset clause in December 2011. This project received one administrative extension under the Zoning Code (which allowed two years plus a one-year extension), and one administrative extension under the temporary ordinance (for a total of four years).

Design Commission Action

On March 12, 2012, the Design Commission, acting under the provisions of §17.61.030 of the Pasadena Municipal Code, reviewed an application for a third Time Extension for the proposed project. The Commission continued the case with a request for a more information. Specifically, the Commission requested a complete building presentation package to describe what the Design Commission sub-committee had reviewed in 2007 and how the issues from the original conditions of approval had been resolved.

On May 29, 2012, the Design Commission reviewed the updated submission package. (See Attachment A for the May 29 staff report.) The Commission expressed concerns about the appropriateness of the design and some members stated that it is not a design that they would have approved. Those commissioners felt that in consideration of the close proximity to an historic district to the south and an historic building on an adjacent lot, the building did not seem compatible with other buildings in the vicinity. Further, the Commission stated that an understanding of compliance with the conditions of approval would need to be demonstrated.

ANALYSIS:

No Action by Commission

On May 29, 2012, the Design Commission separately entertained two motions – one for approval and one for denial – and neither motion gained the necessary votes to pass.

Although the motion to deny the Time Extension did not pass, the Commission's decision not to approve the Time Extension request must serve as a de facto denial. The fact that the Design Commission did not have enough votes to pass a motion to formally deny the request is inconsequential because the effect of not approving the request is that the application will expire.

The applicant has stated that the non-action by the Commission violated the Permit Streamlining Act and therefore the Time Extension request is approved as a matter of course. That argument is incorrect as a matter of law, and as a matter of fact since it is the interpretation of the Zoning Administrator that the Commission's decision not to approve the Time Extension request is a "decision" under the Zoning Code and therefore may be appealed. More specifically, Pursuant to Municipal Code Section 17.72.040, "Decisions by the Commission, Design Commission, Arts and Culture

Commission and the Historic Preservation Commission may be appealed to the Council.” Moreover, the failure to provide an appeal process would deny the applicant due process and would result in the project remaining in a state of limbo, contrary to the intent of the Permit Streamlining Act.

Approval of Time Extension

Pursuant to Ordinance #7215, a third and final extension may be granted for this project if the findings can be made. The findings include: 1). The findings and conditions of the original approval still apply; and 2). The proposed project meets the current height, setback, and floor area ratio requirements of the Zoning Code and is consistent with the General Plan, and applicable Specific Plan, and the Zoning Map.

Staff believes that the only circumstance in which finding #1 cannot be made is in a case where the design of the project has changed. In regard to this project, the form, design details, and architectural character of the building are the same as the original design approved by the Design Commission in 2007. Therefore the findings and conditions of the original approval (See Attachment B) still apply in this case. The 2007 approval was the result of five Design Commission meetings and required the architect to work with a commission subcommittee to resolve all issues prior to approval. Specific conditions of approval were included in the approval and the applicant would have to comply with these conditions, as would any project, to receive final approval before being granted a building permit. Although some members of the current Commission have stated that they would not approve the project today, the Ordinance does not allow for denial of the time extension because a current Commission disagrees with the decision of a prior Commission.

In regard to the second finding, the project is exempt under Section E of the Ordinance which states that the second finding shall not apply to a project that has been approved with a Vesting Tentative Map. A Vesting Tentative Tract Map (VTTM # 070403) was approved by the Hearing Officer on June 4, 2008. An approved Vesting Tentative Tract Map exempts this project from compliance with any changes to the Zoning Code, General Plan, Specific Plan and/or Zoning Map that occurred after the original approval.

ENVIRONMENTAL ANALYSIS:

The original approval included findings related to CEQA and that a categorical exemption determined that the project was exempt from the California Environmental Quality Act under §15332, (Class 32) “in-fill development projects” and this finding still applies to the current project. Furthermore, circumstances in the area of the Project have not changed such that there would be any substantial increase in potentially significant effects or any new significant effects would be necessary.

COUNCIL POLICY CONSIDERATION:

The proposed project is consistent with the City-wide Design Principles in the Land-use Element of the General Plan; The City of Gardens Architectural Standards, and the Design Guidelines for Windows in Multi-unit Residential Projects and that none of the

existing buildings on the property meets the criteria for designation as landmarks, historic monuments, or for listing in the California or National Registers.

FISCAL IMPACT:

If the extension is approved and the project moves forward, the City would receive permit revenue associated with the project.

Respectfully submitted,



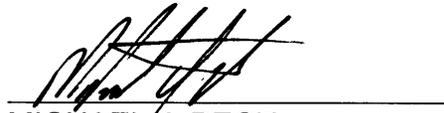
VINCENT P. BERTONI, AICP
Director of Planning

Prepared by:



for Mark Odell
Senior Planner

Approved by:



MICHAEL J. BECK
City Manager

Attachment A: Design Commission Report, May 29, 2012

Attachment B: Design Commission Report, November 26, 2007