



CITY OF BELVEDERE

Memorandum

DATE: February 18, 2020

TO: City of Belvedere Planning Commission

FROM: Irene Borba, Director of Planning & Building

SUBJECT: Final Resolution: 56 Peninsula Road – Appeal of Construction Time Limit (CTL) Extension Committee Decision

BACKGROUND

At the January 21, 2020 Planning Commission meeting, the Commission heard an appeal of a Construction Time Limit (CTL) Extension Committee decision to deny an extension request for the project at 56 Peninsula Road.

At the meeting the Commission heard from staff, the property owner/applicant and opened the public hearing; no one from the public wished to comment on the appeal of the extension request.

The Commission closed the public hearing and discussed the Extension request. After considering all evidence in the record, the Commission denied in part and granted in part the applicant's request for a Construction Time Limit extension and the appeal of the CTL Extension Committee's determination pursuant to BMC section 20.04.035(D). The Commission determined to grant an extension of 3 days representing the amount of days that construction was delayed due to the PG&E power shut off, which is an unusual factor warranting an extension per BMC 20.04.035(D)(7). The Construction Time Limit Extension is granted for a total of 3 days at \$600 per day. The initial penalty of \$12,600 is therefore be reduced by \$1800 for a total penalty of \$10,800. The resolution for the Commission's consideration memorializes this decision.

RECOMMENDATION

MOTION 1 Adopt the Resolution denying in part and granting in part the applicant's request for a Construction Time Limit extension and the appeal of the CTL Extension Committee's determination pursuant to BMC section 20.04.035(D)(7) (**ATTACHMENT 1**).

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ATTACHMENT

1. Planning Commission Resolution No. 2020 - ** denying in part and granting in part a construction time limit extension request and appeal of construction time limit extension committee decision for 56 Peninsula Road.

CITY OF BELVEDERE

RESOLUTION NO. 2020-

**A RESOLUTION OF THE PLANNING COMMISSION
OF THE CITY OF BELVEDERE DENYING IN PART AND GRANTING IN PART
CONSTRUCTION TIME LIMIT EXTENSION REQUEST AND APPEAL OF
CONSTRUCTION TIME LIMIT EXTENSION COMMITTEE DECISION FOR 56
PENINSULA ROAD**

WHEREAS, Denise Ivory is the owner of real property located at 56 Peninsula Road in Belvedere; and

WHEREAS, on April 17, 2019 the Building Department approved and issued a building permit for a remodel project for 56 Peninsula Road with a 6 month Construction Time Limit (“CTL”), which expired October 16, 2019; and

WHEREAS, on November 14, 2019, the property owner and contractor submitted an application for the extension of the assessed CTL; and

WHEREAS, under BMC 20.04.035(D) requests for CTL extensions shall be evaluated based upon whether one or more of the following factors justifies an extension: 1) Site topography; 2) Site access; 3) Geologic issues; 4) Neighborhood considerations; or 5) Other unusual factors; 6) Extreme weather events; 7) Unanticipated discovery of archeological resources; and 8) Other conditions that could not have been reasonably anticipated at the time of project application; and

WHEREAS, on November 26, 2019 the CTL Extension Committee held a meeting to consider the applicant’s request for a CTL Extension; and

WHEREAS, at the CTL Extension Committee meeting, the property owner and contractor argued that the following factors warranted a CTL extension: 1) an increase of valuation of nearly 100%, from \$60,000.00 to \$110,000.00; 2) lack of availability of sub-contractors and design professionals; and 4) the necessity to re-design the deck framing due to rot and deterioration; and

WHEREAS, after consideration of the testimony presented at the meeting, the CTL Extension Committee determined that none of the factors listed above were satisfied, and therefore it denied the request for the CTL extension; and

WHEREAS, on December 11, 2019, the applicant appealed the CTL Extension Committee’s decision to the Planning Commission; and

WHEREAS, while the extension request was pending, the project was finalized at 21 days past the CTL Deadline for a total penalty of \$12,600 at \$600 per day for 21 days; and

WHEREAS, once a final determination is made on the extension request, staff will impose the CLT penalty; and

WHEREAS, Belvedere Municipal Code provides that the Planning Commission may hear an appeal of CTL Extension Committee decision; and

ATTACHMENT 1

WHEREAS, on January 21, 2020 the City of Belvedere Planning Commission held a duly noticed public hearing regarding the CTL extension request and an appeal of the CTL Extension Committee’s decision to deny the extension request; and

WHEREAS, after consideration of all evidence in the record and public testimony presented at the hearing, the Planning Commission determined that the lack of availability of sub-contractors and design professionals, the increased cost of the project, and the necessity to re-frame the lagoon deck due to rot/deterioration did not satisfy any of the factors in BMC section 20.04.035(D); and

WHEREAS, after consideration of all evidence in the record and public testimony presented at the hearing the Planning Commission determined that the planned power outages that occurred in October during the project’s construction constituted an “unusual obstacle to complying with the standard construction time limit” pursuant to BMC section 20.04.035(D)(5) and determined grant a Construction Time Limit extension of 3 days at \$600 per day, reducing the penalty by \$1800 for a total penalty of \$10,800; and

WHEREAS, the Planning Commission’s decision is not subject to the California Environmental Quality Act (“CEQA”) as the CTL timeline extension does not constitute a “project” subject to CEQA analysis, and pursuant to the Common Sense exception, CEQA Guideline section 15061, because it can be seen with certainty that there is no possibility the decision will have a significant environmental effect.

NOW, THEREFORE, BE IT RESOLVED that based on substantial evidence in the record and the findings set forth above incorporated herein, the Planning Commission hereby denies in part and grants in part the applicant’s request for a Construction Time Limit extension and the appeal of the CTL Extension Committee’s determination pursuant to BMC section 20.04.035(D). A Construction Time Limit Extension is granted for a total of 3 days at \$600 per day. The initial penalty of \$12,600 shall therefore be reduced by \$1,800 for a total penalty of \$10,800.

PASSED AND ADOPTED at a regular meeting of the Belvedere Planning Commission on February 18, 2020, by the following vote:

- AYES:**
- NOES:**
- RECUSED:**
- ABSTAIN:**
- ABSENT:**

APPROVED: _____
Peter Mark, Planning Commission Vice Chair

ATTEST: _____
Christina Cook, City Clerk