



**Town of Atherton
Planning Department
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DATE: **APRIL 26, 2023**

TO: **PLANNING COMMISSION**

FROM: **RADHA HAYAGREEV, SENIOR PLANNER**

SUBJECT: Request for an appeal to **Building Permit (B18-00731) Construction Timeline Penalty** for a new 15,500 sq. ft. residence with outdoor patio, detached garage, separate guest house and a full landscaping package at **76 Ridge View, Atherton, CA** (Assessor's Parcel Number 073-181-450).

CEQA: The proposal is not a project pursuant to the provisions of the California Environmental Quality Act (CEQA) to CEQA Chapter 2.5 Definition, Section 21065. Project.

RECOMMENDATION:

For the reasons outlined in this staff report, staff recommend that the Planning Commission conduct the public hearing and **approve** the appeal to allow a partial refund of the Construction Timeline Penalty.(CTL)

BACKGROUND:

The applicant Behrens Curry Homes is appealing the decision of the Chief Building Official to impose a \$250,000 penalty for exceeding the Town's construction time limit. In particular, the applicants and owners would like to appeal the remaining \$180,000 of the paid fees and penalties for reasons explained below.

The applicant has submitted an appeal request letter (Attachment 3) indicating that construction delays were due to COVID related issues such as factory shutdowns, supply shortages, delayed deliveries, reduced manpower and quality issues with damaged frames and glass and missing parts and rejected deliveries, causing an estimated 15+ month delay.

The applicant exceeded the 36-month construction timeline and the 139-day extension provided by the Chief Building Official.

ANALYSIS:

[Atherton Municipal Code Section 15.40.180](#) establishes time limits for building construction and renovation. The ordinance limits a construction project with a floor area of more than 4,001 square feet for new building construction to 36 months from the date of original building permit issuance. If a property owner fails to complete construction by the applicable established time limit penalties are assessed as detailed in Table 1 below.

The construction time limit regulations were updated in 2019 in response to community concerns over the length of construction projects in town. The penalty breakdown is shown in the table below:

TABLE-1 Penalties breakdown.

Period of time that project remains incomplete beyond applicable time limit.	Penalty
First 30 days	-0-
31 st through 60 th day	\$200.00 per day (i.e. \$6,000.00 maximum penalty applicable to this 30-day period)
61 st through 120 day	\$400.00 per day (i.e. \$24,000.00 maximum penalty applicable to this 60-day period)
121 st day and every day thereafter	\$1,000.00 per day

This project at 76 Ridge View was granted additional COVID pandemic relief of 139 days .

Construction timeline

Building permit B18-00731 was issued on December 3, 2018, for a new 15,500 sq. ft. residence with outdoor patio, detached garage, separate guest house and a full landscaping package at 76 Ridge View, Atherton, CA. The construction was to be completed by December 3, 2021. This project, along with many others, had been granted a single time adjustment of 139 days due to the COVID-19 pandemic construction shut down. The newly adjusted date for expiration of construction completion was April 21, 2022.

The permit was finalized (deemed complete) by the building department on January 18, 2023 (411 days beyond the original time limit and 272 days from the new adjusted COVID extended date). A letter addressing the adjusted timeline and fair warning of consequential penalties for the permit completion was sent by certified mail to the owners/applicant on September 11, 2021. (Please refer attachment 1 for details.) To avoid a stop-work order, the applicant submitted the required deposit of \$30,000 on April 21, 2022, and \$220,000 on August 18, 2021.

Applicant's request

The applicant submitted an appeal request letter (Attachment 3) indicating that construction delays were due to COVID related issues such as factory shutdowns, supply shortages, delayed deliveries, reduced manpower and quality issues with damaged frames and glass and missing parts and rejected deliveries, causing an estimated 15+ months of delay.

The applicant has paid a total of \$250,000 in penalties and is asking for a partial refund of \$180,000.

Appeal of Building Official Decision

Atherton Municipal Code Section 15.40.120 states that the penalty may be appealed to the Planning Commission on the grounds that the property owner was unable to comply with the applicable time limit for reasons beyond the control of the property owner and the owner's representative. The applicant is further required to submit documentation and other evidence to demonstrate that the construction delays resulted from circumstances outside of the applicant's control and despite diligent and clearly documented efforts to achieve construction completion within the applicable time limits. The Municipal Code includes a provision that allows the owner to file a written statement to the Chief Building Official, if the owner believes that the failure to meet the applicable time limit was caused by circumstances beyond the owner's control.

In this case, the Chief Building Official (CBO) provided a detailed memo and recommends partial refund \$97,000.

Staff Recommendation:

Of the \$180,000 the appellant is requesting to be refunded back to them, staff is recommending the Planning Commission to approve a partial refund as follows:

- Rain Delays: 35 days total. Recommend refund \$35,000.
- COVID Pandemic delays (Manpower, Supply Chain Production and Deliveries:
62 days total (2 months). Recommended refund \$62,000.

Total Recommend Refund: \$97,000

Total Forfeit Amount: \$83,000

The decision by the Planning Commission may be further appealed to the City Council.

NOTICE

Legal advertisement of this hearing was published in *The Almanac* newspaper, 15 days prior to the hearing date. Notice of this application was mailed to all property owners within 500 feet of the subject property. To date, the Town has not received any comments for this project beyond what was initially provided by the applicant.

CONCLUSION

Chapter 15.40.210 A of the Atherton Municipal Code states that:

A penalty imposed pursuant to Sections 15.40.160 through 15.40.200 and Section 15.40.220 may be appealed to the planning commission on the grounds that

the property owner was unable to comply with the applicable time limit for reasons beyond the control of the property owner and the owner's representatives. There shall be no right to appeal until construction is completed. Any person aggrieved by the decision of the planning commission on the appeal may appeal to the Atherton city council. The provisions of Chapter 17.06 of the Atherton Municipal Code shall apply to the appeal process.

Staff has reviewed the material and letter presented for this appeal. The document demonstrated the evidence required as provided under AMC 15.40.210. The Chief Building Official recommended partial approval of this appeal.

ALTERNATIVES:

The Planning Commission could deny, approve, or modify the request for the Appeal permit.

ENVIRONMENTAL IMPACT:

The proposal is not a project pursuant to the provisions of the California Environmental Quality Act (CEQA) to CEQA Chapter 2.5 Definition, Section 21065. Project.

FORMAL MOTION FOR PARTIAL REFUND:

I move that the Planning Commission approve the staff recommendation of the Appeal to waive the Building permit Construction Timeline penalty and authorize partial refund to the owner representative for Building permit B18-00731 construction timeline penalties for a new residence at 76 Ridge View Drive, for the reasons outlined in the Staff Report.

/s/ Radha Hayagreev

Radha Hayagreev, Senior Planner

Attachments:

1. CBO memorandum and recommendation.
2. Construction time limit extension CTL notice
3. Applicant appeal letter, PC form and drawings to Planning Commission