



## AGENDA REPORT

**Meeting Date:** November 15, 2011

**Item Number:** C-1

**To:** Honorable Mayor & City Council

**From:** Susan Healy Keene, AICP, Director of Community Development

**Subject:** SET HEARING DATE FOR AN APPEAL OF THE PLANNING COMMISSION'S DECISION APPROVING A CONDITIONAL USE PERMIT FOR THE REDEVELOPMENT OF THE JIM FALK LEXUS DEALERSHIP LOCATED AT 9230 WILSHIRE BOULEVARD.

**Attachments:** Appeal Petition

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### **RECOMMENDATION**

It is recommended that the City Council schedule the public hearing to consider an appeal of the Planning Commission's decision approving a Conditional Use Permit for the redevelopment of the Jim Falk Lexus dealership located at 9230 Wilshire Boulevard for December 6, 2011 at 7:00 PM.

### **DISCUSSION**

On October 27, 2011, the Planning Commission certified a Final Environmental Impact Report and approved a Conditional Use Permit to allow the redevelopment of the Jim Falk Lexus dealership located at 9230 Wilshire Boulevard. Additionally, the Planning Commission adopted a resolution recommending the approval of a Zone Text Amendment and Encroachment Agreement in conjunction with redevelopment of the dealership.

On November 10, 2011 an appeal of the Planning Commission's decision was filed by Stephen Webb, attorney on behalf of 131 South Maple Associates, LP and 9250 Wilshire, LLC, the owners of the apartment building directly south of the dealership and the commercial office building adjacent to the dealership, respectively.

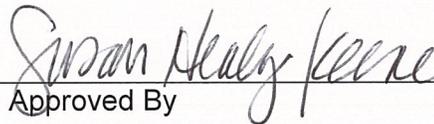
**PROCESS**

Pursuant to Beverly Hills Municipal Code Section 1-4-105, the procedure for the appeal of Planning Commission decisions to the City Council is a two-step process. The matter is first placed on the Council agenda for review of the evidence presented in the appeal petition. If the appeal petition contains new information, the Council may order that the Commission rehear the matter. Otherwise, the Council sets a public hearing to consider the appeal.

Planning Staff and the City Attorney's Office have reviewed the appeal petition and do not believe that new information beyond that already considered by the Planning Commission is presented therein. Therefore, staff recommends that the Council schedule this matter for a public hearing on December 6, 2011 to consider the appeal.

In addition to the appeal of the Final Environmental Impact Report and Conditional Use Permit, a public hearing before the City Council is required for the proposed Zone Text Amendment and Encroachment Agreement associated with the project. These project components will be scheduled for consideration by the City Council in conjunction with the appeal hearing, and will be noticed accordingly.

Susan Healy Keene, AICP  
Director of Community Development

  
Approved By

# **Attachment 1**

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November 10, 2011

VIA HAND DELIVERY

Honorable Mayor Barry Brucker  
Vice Mayor Dr. William Brien  
Council Member Jon Mirisch  
Council Member Lili Bosse  
Council Member Dr. Julian Gold  
City of Beverly Hills  
455 N. Rexford Drive  
Beverly Hills, California 90210

Re: Appeal of the Resolution of the Planning Commission of the City of Beverly Hills Conditionally Approving A Conditional Use Permit For Jim Falk Lexus of Beverly Hills at 9230 Wilshire Blvd in Beverly Hills

Dear Honorable Mayor Barry Brucker and Honorable Members of the City Council:

On behalf of our clients, 131 South Maple Associates, LP and 9250 Wilshire, LLC, the owners of the apartment building directly south of the dealership and the commercial office building adjacent to the Lexus Dealership, respectively, we hereby Appeal the October 27, 2011 decision of the Planning Commission ("Commission") adopting a Resolution Conditionally Approving a Conditional Use Permit ("CUP") to Jim Falk Lexus of Beverly Hills for the construction of a new sales and service center for each of the reasons set forth below.

The Requisite Finding that this Project "Will Not Be Detrimental To Adjacent Properties" Can Not Be Made

The business of automobile dealerships has drastically changed for many automobile brands over the past decades. Until Beverly Hills Mercedes built its separate service center in the industrial area of Beverly Hills, all automobile dealerships in our City engaged primarily in the business of selling and leasing automobiles with the "incidental" servicing and repair of vehicles in support of those sales efforts. No service facility of the magnitude of the Lexus proposed facility has ever been approved adjacent to any residential properties within the City of Beverly Hills.

What is being proposed is a substantial 70 service bay facility with sales and leasing being the incidental use. Of the 200,000 square feet of gross building area, only a combined

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39,000 square feet on the first and second floors are devoted to the sale and leasing of vehicles, which also includes administrative offices that support the service facility.

On the other hand, approximately 60,000 square feet is devoted exclusively to the actual service repair of vehicles. The remainder is for parking that supports both service and sale activities.

The repair of vehicles is more analogous to "industrial" usage than to commercial usage. An increase of from 13 to 70 service bays (a six-fold increase from what exists today), by any standard, can only have a detrimental effect on the adjacent properties. There are other areas within the City that would be more appropriate for a service facility of this magnitude, including the City's own formally designated industrial area (which is the location of Beverly Hills Mercedes). However, Lexus is insisting on this location.

As set forth in the proposed Final EIR, there are unavoidable significant impacts resulting in the necessity of the Planning Commission in finding "overriding considerations" in order to approve this project. Those "overriding considerations" are the taxes that the City has, and arguably will continue to receive from Lexus. This would apply to almost any new project. Over and over, the Applicant's attorney pointed to the loss of BMW resulting from BMW's inability to build a service center that would meet its future needs within the City of Beverly Hills.

I was on the City council at the time that BMW was seeking expanded service facilities at its location adjacent to residential properties near Robertson Blvd. At that time, I and others on the City council expressed reluctance to any expansion of the service facilities adjacent to residential properties, but did explore with BMW possible alternative options. Unfortunately, BMW realized their facility needs for servicing vehicles exceeded even those of Mercedes and what Lexus is proposing, and thus moved to the mid-Wilshire area.

The BMW sales and leasing facilities will not remain vacant and the BMW sales tax will be replaced. Audi has leased those facilities, and based on current marketing studies of the growth of Audi sales, it appears unlikely that the City will lose any sales tax revenue. Furthermore, the Audi dealership in Beverly Hills will not include the burden of a large service facility anywhere close to what Lexus is seeking.

In addition to Audi, Infinity is in discussions to open a dealership in Beverly Hills as well, also without the burden of a large service facility. As such, the demand from various automobile dealerships to have a location within the City of Beverly Hills, would undoubtedly

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result in another dealership taking Lexus's place, assuming that Lexus would actually relocate its current sales and service facility, which it owns, if the Council were to reverse or modify the decisions of the Planning Commission. As such, there can be no finding of overriding consideration based on fiscal reasons.<sup>1</sup>

The fact that the CUP requires so many conditions relating to Lexus' operations is the best evidence that this proposed service facility simply does not belong in this location. Who is actually going to be responsible for monitoring compliance with each and every one of these conditions? When there are violations of conditions, which we can all anticipate will occur from time to time, there is simply no way to realistically compel compliance, because once this CUP is granted, the willingness of the City to require Lexus to cease operations in the event of a violation and the length of time it would require to accomplish same, is an overriding factor weighing heavily against the approval of this CUP.

#### Intrusion into the R-4

The decision of the Planning Commission to allow the building to extend by almost 30 feet into the adjacent R-4 zoned property separated by only an alley from an apartment building required an unsupportable and unrealistic interpretation of the municipal code.

Although Municipal Code Section 10-3-3179 permits commercial parking on R-4 property, it does not permit any activities that are related either to service or sales. Notwithstanding the conditions imposed in an effort to meet compliance with this code section, the physical and operational aspects of the "parking only designated area" within the facility are so inextricably intertwined both physically and operationally with the sales and service activities themselves that it precludes any legal justification for approval.

At the September Planning Commission meeting, the plans submitted by Lexus relating to the R-4 area showed on the first floor plan electrical equipment and trash room; on the first basement floor plan, oil storage room; second basement floor two storage rooms, on the second floor mezzanine level, electrical and mechanical rooms; and on the fourth floor, mechanical equipment, which clearly is not permitted by the ordinance.

The Planning Commission advised the Applicant that all of those items had to be removed. However, the plans that were submitted at the second meeting on October 27, 2011 still showed a trash room and electrical equipment on the first floor in the R-4 area, and

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<sup>1</sup> There is no guarantee that during the approximate two years of construction that Lexus' temporary sales facilities will be in Beverly Hills, which would result in a loss of sales tax.

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“untitled” spaces on the first and second floor basement plans as well as in the second floor mezzanine level. It would be impossible to park cars in those designated areas in the R-4 zone. In other words, these latest plans appear to simply have removed the “labels” for those physical areas, and nothing more. The Appellant should be required to submit new plans before the City Council makes any decisions on this project; not just leave it to be worked out with Building and Safety. There are simply too many facilities that must be relocated onto the non-R-4 areas that must take space away from mandated parking and other vital services.

As indicated above, the ordinance specifically states that “no portion of the R-4 area shall be used for the sale or servicing of automobiles, the sale or storage of goods, wears, or merchandise, or for any purpose other than that of automobile parking. Such use shall not include the storage of automobiles in connection with a used or new car business.” Since Lexus is in the used and new car business, the parking of any automobiles in this area would be by its nature “in connection” with that use. The Commission has approved an interpretation of this statute that would allow for the parking of vehicles that are on site solely to be serviced.

It bears restating: any use made of space located in the R-4 zone is so inextricably tied to the sales, leasing, and service operations of the dealership, that any such usage must be prohibited. Imposing conditions that will be difficult to monitor or enforce does not solve the problem.

#### Permitted Egress from the South-East Corner of the Building onto the Alley

This project, as approved, allows for egress from (and possible ingress to) the facility at two separate locations perpendicular to each other, off the one-way alley, and which requires cars exiting the facility at these locations to drive towards or in conflict with vehicles driving easterly from Rexford on this one way alley. Enclosed is a schematic drawing reflecting traffic patterns onto the one way alley by all sources, the impacts of which have not been studied. This confluence of vehicles creates a potential for significant congestion and safety issues. While the only individuals who are permitted to use these exits will be service personnel and customers testing vehicles, the commission only sought information at the last hearing as to the number of service vehicles anticipated to be tested by service personnel each day; no information was requested as to the number of anticipated customer test drives each day.

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These anticipated combined alley trips could have significant impacts and certainly be detrimental to both 131 S. Maple and 9250 Wilshire Blvd. Both properties utilize the alley for their own ingress and egress of vehicles.<sup>2</sup>

There is no reason why vehicles being tested by either customers or service personnel cannot exit the facility on Maple Drive and turn left onto Wilshire, as everyone else. If not, there is simply no way to insure that when these vehicles exit onto the east-west alley, that they will not either proceed south, down to Charleville into the residential neighborhood, or turn towards Maple Drive, and then turn right into the residential neighborhoods. This is another example of a "condition" that will have little likelihood of being complied with or being enforced. At most, there should only be one exit on to the alley, and not two, limited solely for use by emergency vehicles. Again, it is important to keep in mind that the east-west portion of this alley from Rexford Drive to the facility, is a one-way alley only 15 feet in width.

Furthermore, as conditioned, these exits can also be utilized for off-loading of disabled vehicles. This would permit a tow truck to park in the alley for several minutes while unloading. It should also be mentioned that the left turn towards Maple, at a 45 degree angle, this will make it difficult for trucks to make a left turn. The angle at the corner of the Lexus building should be "shaved off" to make left turns more practical.

#### The Purported "Buffer Zone" To Protect the Residents of 131 South Maple Drive

The owner of 131 S. Maple Dr. requested a five foot landscaped buffer between its property and the alley. The Planning Commission believed that three feet was sufficient. A three feet buffer would never, however, be permitted adjacent to single family residences. Both the Planning Commission and the Design Review Commission regularly require the planting of 48 inch box trees to preserve the privacy in the single family residential areas. Why should residents who live in apartments be afforded less protection?

To prove this point, you only have to walk across Wilshire Blvd to the north and look at the east-west alley that separates the commercial buildings on Wilshire with the single family residences on the other side of the alley. The space between the single family residences and the alley provides a ten foot landscaped buffer!

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<sup>2</sup> While analysis of alley impacts are not required by CEQA, they should be required in connection with any decision to relocate the alley and in determining whether this will be detrimental to any of the adjacent properties as required for the adoption of a CUP.

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To the extent that this project is to be approved, then it should be conditioned with a five foot landscaped buffer between the apartment house property line (and the current six foot boundary wall) and the south side of the to be re-aligned alley to permit the planting of larger trees.<sup>3</sup>

Lexus opposed this request. Lexus' fight for every foot as being crucial to its operations only further evidences why this proposed project is being squeezed into too small an area.

#### The Loading Cut-Out on Wilshire

Lexus' original proposal for a new loading zone cut-out on Wilshire Blvd. was for 80 feet in length. Staff increased the size to 95 feet. I need not remind you of the City's expense to "beautify" Wilshire Blvd., especially the median and landscaping on Wilshire in front of the Lexus dealership. Attached is a photograph that was recently taken of an auto carrier that was parked in front of the Lexus dealership. This is not the image of Wilshire Blvd. that is appropriate for Beverly Hills. Although the Planning Commission prohibited this type of vehicular loading and unloading at this location, they did not prohibit the actual parking of this type of truck with vehicles thereon, nor any other large vehicle unloading a car or parts!

The Planning Commission further directed that this loading space must be utilized for any lunch trucks that would service the needs of the approximately 150 Lexus employees on site. How unsightly this will be during the breakfast and lunch hours, with scores of people milling around. Considering that the width of the sidewalk between the loading curb and the dealership is only five feet, it will be difficult, if not impossible, for pedestrians to utilize this sidewalk to pass through at such congested times.<sup>4</sup>

Appellants are requesting that the new loading zone be reduced to 80 feet in length, that Lexus be set back one to two feet to widen the sidewalk, and that where practicable, the unloading of parts should take place within the premises itself.

Appellants approve of Condition 34, which prohibits any employee of Lexus from "congregating, eating, drinking," etc. on any public right of way. Allowing a lunch truck at this location obviously conflicts with this important condition. Considering that there is a relatively large employee lunch room on the second floor, it would be appropriate to prohibit any off-site

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<sup>3</sup> Although the apartment structure is set back five feet from its property line, it cannot be landscaped because this setback area is all concrete walkway used to access its parking and subterranean utilities.

<sup>4</sup> This is another example of Lexus opposing even a one foot set-back at this location as it did when the Architectural Commission sought some minimal modification.

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lunch trucks, and to require Lexus to provide lunch service on site for its employees, which is not an uncommon practice for employers who employ in excess of one hundred employees.

### Roof-Top Usage

The open-air roof-top usage will not only negatively impact the residents of 131 S. Maple Drive, it will negatively impact some of the residential properties on the east side of Maple Drive that are at a 45 degree angle with the roof-top, the anticipated condominiums at the 9200 Wilshire Blvd., directly across Maple Drive from Lexus, and the office tenants at 9250 Wilshire whose windows are likewise at a 45 degree angle with the roof-top. While the Resolution requires "shielded" lighting where practicable for permanent light fixtures on the roof, there is nothing that protects residents and office tenants from headlights when the cars are moved on the roof before sunrise and after sunset. At this time of year, that can be problematic. A car driving north up the parking ramp at 7:00 p.m. at night will initially turn right (east) towards the 9200 Wilshire Blvd. proposed condominiums and then turn right again (south) towards the 131 S. Maple Drive apartments, shining headlights directly into the living areas of both properties. Because of the distances between the car and the parapet wall, the angles are such that those headlights will reflect into residences. Likewise, because the portion of the adjacent office building to the west (9250 Wilshire Blvd.) is set back substantially, cars being moved in or out of parking spaces at the back approximately one third of the roof area will also have headlights shining into the offices. There was some discussion at the Planning Commission about requiring an additional six feet of landscaped trellis at the roof level to break up these lights, but no such express conditions have been included.<sup>5</sup>

Noise will also be a significant issue emanating from roof-top usage. Because the 117 parking stalls on the roof are stacked three and in some cases four deep, it will require a fair amount of opening and closing of doors, starting of engines, etc. to move these cars around, making noise in the early morning and evening unavoidable. Likewise, there will be no way to stop employees from speaking loudly while they are conducting activities on the roof top and while that may not be a problem during the middle of the day, it will certainly be a problem, and can affect the peace and sanctity of residents, if it occurs before 8:00 a.m. and after 6:00 p.m.

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<sup>5</sup> There is a condition that the approval is subject to construction substantially conforming to the plans and there appears to be some landscaping reflected at the south parapet wall. There is nothing specific. There is no similar landscaping noted on the plans for the east and west roof-tops.

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As such, at the very least, the following conditions should be imposed:

1. Rooftop access will be prohibited before 8:00 a.m. and after 6:00 p.m. every day except in cases of emergency.
2. Some form of landscaped rooftop structures should be constructed and maintained on the south, east and west roof-top parapets that are at a reasonable height to make the rooftop more aesthetically pleasing, assist in muffling sound, and blocking light.

Conditions Regarding the Various "Openings" Around the Property and the West Wall

From the mezzanine level up, the proposed project has numerous "openings" facing Wilshire Blvd., facing east towards the 9200 Wilshire Blvd. building, some facing south towards residences, and some facing west. As described during the Planning Commission hearings, these are not windows; rather, they are openings without the glass. While no openings are permitted by code on the south facing wall that is located within the R-4 area, there are openings in the south facing wall which is set back on the fourth floor and portions of the east facing wall. The only condition imposed with respect to these openings, is Condition 9 which states that this project will be built in conformity with the Municipal Code, dealing with parking structures in the R-4 area, and nothing more. As conditioned, there is nothing that will eliminate noise and light emanating from these openings. There is absolutely no shielding at all.

Similarly, these openings will also face the proposed 9200 Wilshire Blvd. condominiums and Wilshire Blvd. Street lights from fixtures and headlights from moving cars will shine through.

The west wall, at a 45 degree angle to the 9250 building, blocks all views and is aesthetically unpleasing. It is requested by the owner of the 9250 Wilshire property that there be landscaping above the roof level and coming down the wall, and lighting installed to secure the parking at that location.

Comments Concerning Certain Specific Conditions

Section 2: The Applicant requested and the Planning Commission agreed to extend operating hours operating the service center during the week through 8:00 p.m. accrues upon the residential character and peacefulness of the neighborhood. It should be reduced to 7:00 p.m. and the sales should be reduced an hour to 8:00 p.m. On Sundays, the sales department should be closed no later than 6:00 p.m.

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Condition 3: This condition states that the project shall be constructed and operated in accordance with "... any written project proposal information and any verbal agreements or representations made to the decision making body ...." If there are any, these must be spelled out.

Conditions 8 and 9: These relate to the R-4 portion of the project and have been addressed above.

Condition 12: This appears to be once again a little sleight of hand. In one breadth, the staff represented that there was sufficient parking on-site, and in the next breadth they insisted that all employees (with the exception of fifteen) park off-site. The staff's response to inquiries from the commission regarding this were vague at best. The Council needs to question and address this issue.

Most importantly, there appears to be no minimum term of lease required for this employee parking. It could be a month-to-month lease. The only penalty to the Applicant is that they would be required to pay the City an amount that would in all likelihood be equivalent to what it would be paying if it had a lease in the first place. In the meantime, where are the employees supposed to park? What will the impacts be if Lexus is in violation of this condition?

Condition 14: Again, this relates to the hours of operation. The evening closing times should be set back.

Conditions 19 and 20: These relate to alley access and have been addressed above.

Condition 23: This permits for the loading and unloading operations in the loading zone to take place between 7:00 a.m. to 10:00 p.m. daily. However, while this might not be a problem when the loading and unloading is from the sidewalk side, it could be a significant problem if the loading and unloading was onto the street during the a.m./p.m. peak hours. Simply picture a situation in the winter at 6:00 p.m. while someone is unloading a vehicle or equipment on to the street side during rush hour. As such, loading and unloading should be prohibited during the p.m. peak hours.

Condition 28: Six months of supervision may not be sufficient. Instead of allowing the supervision to automatically end at that time, supervision should only cease at the direction of the Director of Community Development and/or Public Works, after these operations have been reviewed by them, and they are satisfied that supervision is no longer required. In other words,

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the burden should be on the dealership to prove to the City that supervision is no longer required, rather than the burden being placed on the City to establish that supervision is needed.

Condition 33: The spirit of this condition is good; however, waiting until the close of business each day to pick up trash and generally clean-up is not sufficient. Ideally, this should be done throughout the day, but at the very least, that clean-up occur first after the lunch hour (when one might expect some employees to potentially discard trash) and again, at closing.

Conditions 34 and 35: As indicated above, the permitting of a lunch truck on Wilshire Blvd. conflicts with the prohibition of employees being able to congregate outside the dealership. The Appellants strongly request, as indicated above, that there should be no food truck permitted at this location.

Condition 42: The length of the loading zone cut-out is too long on Wilshire Blvd. and should be reduced in size.

Condition 46: This relates to the 3 foot landscaped buffer adjacent to the Maple Drive apartment, and again, the request is for a 5 foot landscaped buffer.

Architectural Commission Approval:

It is requested that any final decision by the City Council not occur until the Architectural Commission can make its recommendations. In an initial meeting, the Architectural Commission had serious concerns relative to the current design of the building, and suggested greater modulation, among other things. This in turn could result in reduction of on-site parking and modification of other operations, which in turn could effect the ultimate decisions by this Council. As such, it is suggested that the Architectural Commission's recommendations come to the Council first, and that the Council at that time can finalize its decisions with respect to the entirety of the project at one time.

Construction Related Conditions

Neither of the Appellants, but in particular, the owner of the office building immediately adjacent to the construction site, have had sufficient time to meet their own construction consultants in order to review the various potential construction impacts and mitigation measures with respect thereto. As such, if the Council intends to proceed with any form of approval of this project, that it direct the Applicants' contractor to meet with the Appellants' construction experts and City staff to work out any construction related issues or disputes that might exist, that the

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Director of Building and Safety assist in this process, and retain jurisdiction to modify and/or supplement any of the construction related conditions that are ultimately approved.

Procedural Due Process Issue

Although the Municipal Code provides for fourteen days to appeal a decision once it is announced from the Planning Commission, in this particular case, the resolutions themselves that contained numerous provision and in excess of 100 conditions, as well as revised plans, were not made available to Appellants until late Tuesday afternoon, barely two days before the fourteen day appeal period expired. Appellants made a request for a couple of days of additional time, which not only was not granted, the staff did not even have the courtesy to respond to the request. As such, Appellants' counsel did his best to address all of the issues within the very limited time period, and reserves the right to supplement this Appeal.

In addition to the foregoing, the Appellants oppose the recommendation of the Planning Commission for encroachment permit and the Resolution granting the Text Amendment, which will be addressed under separate cover prior to the hearing thereon.

Conclusion

For the Planning Commission to specifically identify as one of the benefits and reasons for its approval, the fact that Lexus currently has no CUP and that the City has been unable to police and/or correct any Lexus' current operations, is a seriously flawed rationale. This is simply rewarding a property owner who has not been a good neighbor in the past, with an approval. The appropriate response from the Planning Commission should have been to require that Lexus be a good neighbor for a significant period of time before rewarding it with this heavily conditioned CUP.

It should be apparent to all that Lexus is squeezing too much into too little space, in the wrong location. If the Council would take the opportunity to review the Mercedes Service Center, which has the same number of service bays that Lexus is seeking in a much larger space (without a related sales showroom), you will see that in order to properly operate a service center, with that many service bays, requires substantially more space than is available to Lexus at this location.

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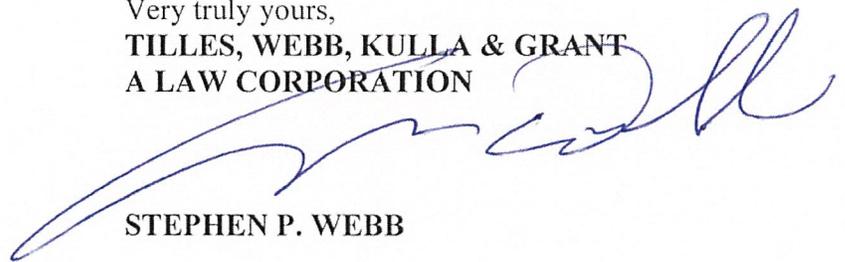
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For the reasons set forth above, by any objective standard, this project will be detrimental to the adjacent property owners, and for that reason, the requisite finding for the approval of a CUP cannot be made.

Very truly yours,

**TILLES, WEBB, KULLA & GRANT  
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A handwritten signature in blue ink, appearing to read 'S. Webb', is written over the typed name and firm name.

**STEPHEN P. WEBB**

SPW/da

# APARTMENT PARKING

