



# Planning Commission Report

**Meeting Date:** July 28, 2016

**Subject:** **228 South Beverly Drive  
Zone Text Amendment regarding rooftop uses and Development Plan Review for a new rooftop lunchroom**  
Request for a Zone Text Amendment to Beverly Hills Municipal Code Section 10-3-3107 regarding rooftop uses, and a request for a Development Plan Review to allow the construction of a 2,202 square foot rooftop lunchroom on the building located at 228 South Beverly Drive. *Continued item from March 24, 2016 Planning Commission Hearing.*

PROJECT APPLICANT: Moshe Kraiem

**Recommendation:** That the Planning Commission:

1. Conduct a public hearing and receive testimony on the project; and
2. Direct staff to prepare a resolution and draft ordinance memorializing the Planning Commission's findings and making recommendations to the City Council.

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## REPORT SUMMARY

The proposed project involves the following two items:

- Requested amendments to the development standards for rooftop uses on commercial buildings (BHMC 10-3-3107).
- A request for a Development Plan Review to construct a rooftop lunchroom on the building located at 228 South Beverly Drive, pursuant to the development standards set forth in the proposed Zone Text Amendment.

This report outlines the Planning Commission's prior consideration of this proposal, and provides new draft zone text amendment language (Attachment B) reflecting the direction both the Commission and the Commission Subcommittee provided to Staff at prior meetings regarding this item. Staff seeks direction from the Commission on whether to complete a draft ordinance with the suggested draft language, or make further modifications to the text amendment that will be forwarded to the City Council as the Planning Commission's recommendation. The currently-submitted plans (Attachment F) for the proposed rooftop lunchroom at 228 South Beverly Drive will not meet the requirements of the current draft zone

**Attachment(s):**

- A. Required Findings
- B. Draft Rooftop Uses Standards
- C. Existing Rooftop Uses Standards (BHMC §10-3-3107)
- D. March 24, 2016 Staff Report including previous draft standards
- E. February 27, 2014 Staff Report
- F. Architectural Plans (Provided as a Separate Attachment)

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text language attached to this report. The applicant would have to submit revised plans for the lunch room compliant with the Commission's recommended zone text language before staff could draft a resolution recommending approval of the 228 South Beverly Drive lunchroom development plan review.

## **BACKGROUND**

The Planning Commission originally reviewed the proposed project on February 27, 2014. The Staff report for that meeting (Attachment E) identified a number of issues pertaining to the requested amendments and recommended that the Commission deny the request. The Planning Commission generally shared Staff's concerns, but also concluded that the proposed amendments to allow certain rooftop structures on buildings that do not exceed the otherwise allowable maximum building height could be beneficial under certain circumstances. The Commission created an Ad-hoc Subcommittee consisting of Commissioners Block and Corman to further study the request. The Ad-hoc Subcommittee met on March 24, 2014 and June 26, 2015 to discuss the proposed amendments and work on resolving the issues with an equitable solution.

Based on the input received from the two ad-hoc meetings, staff prepared new draft standards for rooftop uses and presented the draft language to the Commission on March 24, 2016 for the Commission's consideration (Attachment D). After reviewing the draft zone text amendment language and re-evaluating the specific lunchroom request of the applicant, the consensus of the Planning Commission was that both the proposed zone text amendment language and the proposed lunchroom at 228 South Beverly Drive needed additional revisions. The Planning Commission recommended the project be returned to Ad-hoc Subcommittee for further review and provided Staff with the following direction for re-drafting the roof-top use regulations:

- The parking implications that result from allowing roof-top structures needs to be addressed. Additional parking requirements should be evaluated. Payment to a parking fund should be considered.
- Any modifications to the standards for rooftop structures should equitably apply to both the currently allowed "over-height" buildings and the "under-height" buildings proposed to also have rooftop structures. An overall review of the standards for roof-top structures needs to occur instead of just adding regulations for "under-height" buildings without any modification of the standards for "over-height" buildings.
- The currently allowable size of rooftop structures, which is 3,500 s.f. or 50% of the floor below, is concerning. This formula allows for too much additional floor area on smaller buildings.
- Additional setbacks or screening requirements should be considered.
- Allowing roof-top uses could be used as a loop-hole to add development intensity to a site. Roof-top structures constructed for a permitted lunchroom or gym use could easily be converted to commercial or office use. Additionally, allowing a rooftop lunchroom or gym on a roof could lead to the conversion of existing lunchroom or gym space inside an existing building into additional office or commercial space, intensifying overall use of a site.
- More consideration of the two tracks of review, Director-level and Commission-level, is needed. A method of reporting Director level approvals to the Commission should be incorporated into the process.

On May 24, 2016 the Ad-hoc Subcommittee met, with the Applicant's representative in attendance, and continued discussion on the item. The Ad-hoc Subcommittee's discussion expanded on the Commission's discussion at the March 24, 2016 hearing and provided staff with the following direction for re-drafting the regulations:

- The size of unenclosed rooftop terraces is not as much a concern as the size of the enclosed lunchroom space, which should be proportional to the building on which the lunchroom will be added.
- Add outdoor rooftop uses to the regulations. A limit of 50% of the roof-top area would be appropriate for unenclosed rooftop uses, such as terraces.
- A lower maximum size calculation for roof-top structures would be appropriate. Using 10% of the total size of the building's overall floor area is something that should be considered. This should apply to buildings both over and under the building height limit.
- Additional parking requirements should be incorporated into the ordinance.
- If possible, payment into some sort of public benefit fund dedicated with dealing with the City's parking needs should be considered.

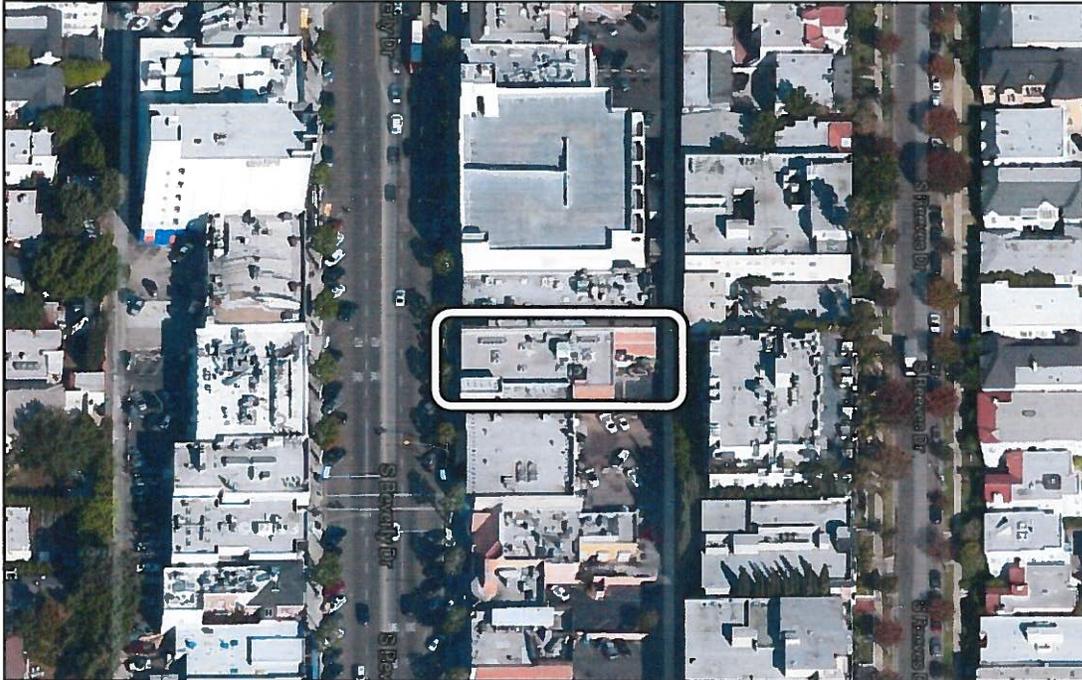
## **PROJECT DESCRIPTION**

The existing building on the project site is two stories and contains 7,820 square feet of floor area. The applicant seeks to construct a 2,202 square foot lunchroom above the second floor of the existing building. The additional floor area would ordinarily require seven additional parking spaces, which the applicant is unable to provide on site. Consequently, the applicant has requested a Zone Text Amendment to allow the lunchroom to be exempted from parking requirements. Concurrently, the applicant has submitted a request for a Development Plan Review to construct the subject lunchroom, which would be contingent upon approval of the Zone Text Amendment. The proposed lunchroom includes the following:

- Two stair shafts
- One men's restroom
- One women's restroom
- Vending machines
- An open seating area

The proposed rooftop lunchroom would have a maximum height of 14'6" above the existing roof deck of the two-story building, causing the building's height to be increased to an overall maximum of 38'4" (below the code-restricted maximum of 45'). No additional parking spaces are proposed in conjunction with the rooftop lunchroom.

The attached project plans (Attachment F) are the same as the plans reviewed by the Commission at its March 24, 2016 hearing. The applicant has indicated some willingness to modify the project's design, however, the City has not yet received modified plans from the applicant.



Project Site Looking North



Street View of Existing Facade

## REVISED DRAFT AMENDMENTS

Based on direction provided to staff on March 24, 2016 by the Planning Commission and on May 24, 2016 by the Commission's Ad hoc Subcommittee regarding this project, the zone text language provided to the Commission has been revised (Attachment B). The revised draft zone text amendment language incorporates the following changes:

- Instead of adding new regulations just for "under-height" structures, the standards for both "over-height" and "under-height" structures have been modified to provide equitable treatment to both conditions. (See draft sections 1 and 2)

- Draft language now requires Planning Commission review instead of Director level review for “under-height” structures (See Section 2).
- A new section has been added to allow Director-level approval of rooftop unenclosed outdoor terraces and unenclosed architectural features that are not associated with a lunchroom or gym. The maximum allowable size for an unenclosed terrace or architectural features approved by the Director is limited to 50% of the total area of the floor below (See Section 4); however, the Planning Commission would have authority to exceed the 50% limit.
- No modifications to the existing rooftop use regulations for the “business triangle” portion of the City.
- Modification of the formula for maximum size of a rooftop structure to add an additional limitation that a rooftop structure cannot exceed 10% of the total floor area of a building (See 1.c and 2.b).
- Allow for additions larger than 10% of the total size of a building or 50% of the floor below if the applicant provides additional parking (See 1.i and 2.i).
- A six foot tall barrier requirement for unenclosed outdoor terraces facing a public street or facing residentially zoned property. This is applicable for projects with a Director level approval.

## **ANALYSIS**

The following summary identifies the concerns raised by the Commission and the Ad hoc Subcommittee and discusses how Staff attempted to address each issue in the attached revised zone text language.

*Issue:* Increased parking needs resulting from allowing roof-top structures need to be addressed.

*Response:* Staff has included a new provision that would allow an applicant to request that the Planning Commission approve a rooftop structure that is larger than the 10% of total floor area of a building and/or 50% of the floor below if the applicant provides additional parking. The Planning Commission can determine the amount of parking that would be required for the rooftop structure as part of a Development Plan Review. If this request is made, the applicant cannot exceed the 3500 square-foot maximum size limitation for the rooftop structure.

*Issue:* Payment a “public benefit” fund should be made available to deal with any additional parking needs for a new roof-top structure.

*Response:* Staff checked with City Attorney’s office on the possibility of taking payments for a public benefit fund. The City has adopted in lieu parking districts and qualified certain areas of the City to participate in this program. It would not be possible to create an alternative fund with a similar goal so that areas that were not included in the in-lieu parking program could also make payments to mitigate parking impacts. Council has previously elected not to make the South Beverly area eligible for participation in the in lieu parking fee program.

*Issue:* There needs to be equitable treatment of both “over-height” and “under-height” structures.

*Response:* Staff has revised the proposed zone text amendment to include modifications to existing “over-height” structure regulations that substantially match modifications to “under-height” building regulations.

*Issue:* Smaller buildings should not be allowed over-sized roof-top structures.

*Response:* The maximum allowable size of a roof-top structure now includes a new limitation that the rooftop structure cannot exceed 10% of the total size of the building. This will allow rooftop structures on larger buildings to reach the existing limitations of 50% of the floor below or the cap of 3500 square feet of floor area. However rooftop structures on smaller buildings will be limited by the new restriction of 10% of floor area of the building. This will result in roof-top structures on smaller buildings being more in proportion with the overall size of the building.

*Issue:* Additional setbacks and screening requirements are needed.

*Response:* An additional requirement for a 72” high barrier, with the top of the barrier being transparent, has been added for roof-top terraces approved by the Director. An additional 5 foot setback requirement for roof-top structures has been added for structures on a building edge facing a street.

*Issue:* Allowing rooftop uses is a loophole that can be used to add development intensity to a site, because the new structure could easily be converted to another use.

*Response:* If a space is converted from an approved use to an unpermitted use, then the space will be subject to City code enforcement action. Currently, a DPR permit for a rooftop use can allow a rooftop structure to be open to the public. Additionally the Planning Commission can require additional parking on requests for larger rooftop structures if the applicant requests rooftop structure floor area based on Subsections 1.i and 2.i of the attached draft roof-top standards.

*Issue:* Provide for two tracks of review, a Director level review and a Commission level review.

*Response:* Staff has modified the language to require Planning Commission review for both “over-height” and “under-height” structures. Staff has added a new category of unenclosed rooftop terraces and architectural features that can be approved by the Director. It appears that rooftop terraces that did not include a structure were less of a concern to the Commission and the Ad-hoc Subcommittee. Therefore it was identified that this may be the appropriate level for staff-level approvals.

The 228 South Beverly Drive lunch room project, as proposed (Attachment F) would not be in compliance with the revised draft zone text amendment. A significant reduction in the floor area of the proposed roof-top structure or adding parking spaces would be required. At the time of the writing of this report, no new plans have been provided that would reduce the size of the roof-top structure or add parking spaces.

## **GENERAL PLAN POLICIES<sup>1</sup>**

The General Plan includes numerous goals and policies intended to help guide development in the City. Some policies relevant to the Planning Commission's review of the project include:

- Policy CIR 4.1 Parking Provisions. Ensure that adequate parking is provided for existing and future uses while considering shared parking opportunities, Travel Demand Management (TDM) plans, and availability of alternate modes of travel, based on the site's proximity to transit.
- Policy CIR 4.9 Parking Area. Support measures that help reduce parking demand and the space required for parking.
- Policy LU 2.4 Architectural and Site Design. Require that new construction and renovation of existing buildings and properties exhibit a high level of excellence in site planning, architectural design, building materials, use of sustainable design and construction practices, landscaping, and amenities that contribute to the City's distinctive image and complement existing development.
- Policy LU 12.2 Building, Parking Structure, and Site Design. Require that buildings, parking structures, and properties in commercial and office districts be designed to assure compatibility with abutting residential neighborhoods, incorporating such elements as setbacks, transitional building heights and bulk, architectural treatment of all elevations, landscape buffers, enclosure of storage facilities, air conditioning, and other utilities, walls and fences, and non-glare external lighting.
- Policy LU 15.1 Economic Vitality and Business Revenue. Sustain a vigorous economy by supporting businesses that contribute revenue, quality services and high-paying jobs.

## **NEXT STEPS**

Staff recommends that the Planning Commission conduct the public hearing and provide staff direction on the draft zone text amendment language, then direct staff to prepare a draft ordinance and resolutions regarding the proposed amendments and the specific rooftop project. Staff also recommends that the Planning Commission provide direction to the applicant on revising their proposed lunchroom so that it is consistent with recommended changes to the City's rooftop use regulations.

Report Reviewed By:

  
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Ryan Gohlich, AICP, Assistant Director/City Planner  
Community Development Department

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<sup>1</sup> Available online at [http://www.beverlyhills.org/services/planning\\_division/general\\_plan/genplan.asp](http://www.beverlyhills.org/services/planning_division/general_plan/genplan.asp)

# ATTACHMENT A

## Required Findings

### REQUIRED FINDINGS

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#### Zone Text Amendment

1. *The Zone Text Amendment will result in a benefit to the public interest, health, safety, morals, peace, comfort, convenience, or general welfare.*

#### Development Plan Review

1. *The proposed plan is consistent with the general plan and any specific plans adopted for the area.*
2. *The proposed plan will not adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area.*
3. *The nature, configuration, location, density, height and manner of operation of any commercial development proposed by the plan will not significantly and adversely interfere with the use and enjoyment of residential properties in the vicinity of the subject property.*
4. *The proposed plan will not create any significantly adverse traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards.*
5. *The proposed plan will not be detrimental to the public health, safety or general welfare.*

**ATTACHMENT B**  
**DRAFT ROOFTOP USE STANDARDS**  
**BHMC §10-3-3107**

## DRAFT ROOFTOP USE STANDARDS – BHMC §10-3-3107

NOTE: The following draft language would replace §10-3-3107 in its entirety. The underlined text identifies language modified from the draft reviewed by the Planning Commission on March 24, 2016:

- A. Notwithstanding any provisions to the contrary contained in this title, the following rooftop uses may be permitted in accordance with the standards outlined in this section:
1. Rooftop uses in the C-3, C-R, C-3A, and C-3B zones that exceed the height, story, and/or density limitations otherwise applicable to the development. For the purposes of this subsection A.1., rooftop uses shall include gymnasiums, lunchrooms and structures or uses ancillary to such lunchrooms, unenclosed terraces that are ancillary to a gymnasium or lunchroom, and unenclosed architectural features that are not otherwise excluded from the definition of "height of building" in section 10-3-100 of this chapter. Such rooftop uses may be permitted by the Planning Commission provided that as to any such rooftop uses:
    - a. The planning commission grants a development plan review in accordance with the procedures and findings set forth in article 31 of this chapter.
    - b. The additional height above the maximum height limit otherwise applicable to the development will not exceed fifteen feet (15'). Furthermore, in no event shall the distance between the floor and ceiling of the gymnasium or lunchroom and structures or uses ancillary to such lunchroom exceed fifteen feet (15').
    - c. The total floor area of the ~~development~~ rooftop use shall not exceed the maximum allowable floor area otherwise applicable to the development by more than 1) three thousand five hundred (3,500) square feet; or 2) fifty percent (50%) of the total area of the story immediately below the rooftop use; or 3) ten percent (10%) of the total floor area of the development, whichever is less.
    - d. The total area of any unenclosed terraces that are ancillary to a rooftop use, or unenclosed architectural features shall not exceed 50% of the total area of the story immediately below the rooftop use.

- e. Unless otherwise authorized by the planning commission as part of the development plan review, no food service, other than vending machines, shall be provided in connection with the rooftop use.
- f. The subject structure provides not less than the minimum number of parking spaces required by this section as of the date when building permits for the structure were issued. In addition, two (2) parking spaces shall be provided for any rooftop gymnasium and additional parking as may be required pursuant to subsection 1l.
- g. Unless otherwise authorized by the planning commission as part of the development plan review, only persons who work in the building or are registered hotel guests shall be permitted to use the rooftop facilities.
- h. No admittance or use fees shall be charged for the use of the rooftop facilities.
- i. The rooftop uses permitted pursuant to this subsection shall be set back from the front property line or from the required front setback line immediately adjacent thereto, whichever is the more restrictive, so that a forty five degree (45°) angle to such line is not intersected. In addition, all enclosed rooftop structures shall be set back a minimum of five feet (5') from the street-facing facade of the story immediately below.
- j. Notwithstanding the provisions of subsection 1.h., unenclosed architectural features approved pursuant to this section may intersect a forty five degree (45°) angle to the vertical plane of the nearest outside wall if the planning commission finds that such features are architecturally compatible with the building and will not adversely impact the building's scale and massing. ~~In addition, any other rooftop uses approved pursuant to this subsection may intersect a forty five degree (45°) angle to the vertical plane of the nearest outside wall provided that the rooftop use is constructed in the same plane as the exterior wall of the floor below and the additional structure will not exceed the applicable maximum allowable height otherwise permitted by more than forty five inches (45").~~
- k. Notwithstanding the provisions in the definition of "height of building" in section 10-3-100 of this chapter permitting certain elements to be

located above maximum height limits, only those elements required by law to project above the roof deck shall be permitted to exceed the fifteen foot (15') height limit of the structure enclosing the rooftop use permitted herein.

- I. The planning commission may modify the area limitations set forth in subsections 1.c.2., 1.c.3., and 1.d. above, provided that additional parking is provided for such rooftop uses. The amount of additional parking required shall be established by the planning commission as part of the development plan review.
2. Rooftop uses in the city's commercial zones that do not exceed the height, story, and density limitations otherwise applicable to the development. For the purposes of this subsection A.2., rooftop uses shall include gymnasiums, lunchrooms and structures or uses ancillary to such lunchrooms, and unenclosed terraces that are ancillary to a gymnasium or lunchroom located above the top story of the building. Such rooftop uses may be permitted by ~~the director of community development, or may be forwarded to the planning commission~~ the planning commission provided that as to any such rooftop uses for consideration provided that as to any such rooftop uses:
  - a. ~~The director of community development or~~ planning commission grants a development plan review in accordance with the procedures and findings set forth in article 31 of this chapter.
  - b. The total floor area of the rooftop use shall not exceed 1) three thousand five hundred (3,500) square feet; 2) ~~or~~ fifty percent (50%) of the total area of the story immediately below the rooftop use; or 3) ten percent (10%) of the total floor area of the development, whichever is less.
  - c. The total area of any unenclosed terraces that are ancillary to a rooftop use, or unenclosed architectural features shall not exceed 50% of the total area of the story immediately below the rooftop use.
  - d. Unless otherwise authorized as part of the development plan review, no food service, other than vending machines, shall be provided in connection with the rooftop use.

- e. The subject structure provides not less than the minimum number of parking spaces required by the municipal code as of the date when building permits for the structure were issued. In addition, two (2) parking spaces shall be provided for any rooftop gymnasium and additional parking as may be required pursuant to subsection 2.i.
  - f. Unless otherwise authorized as part of the development plan review, only persons who work in the building or are registered hotel guests shall be permitted to use the rooftop facilities.
  - g. No admittance or use fees shall be charged for the use of the rooftop facilities.
  - h. Unless otherwise authorized as part of the development plan review, the rooftop uses permitted pursuant to this subsection shall be set back from the front property line or from the required front setback line immediately adjacent thereto, whichever is the more restrictive, so that a forty five degree (45°) angle to such line is not intersected.
  - i. The planning commission may modify the area limitations set forth in subsections 1.b.2., 1.b.3., and 1.c. above, provided that additional parking is provided for such rooftop uses. The amount of additional parking required shall be established by the planning commission as part of the development plan review.
3. Rooftop uses in the in that portion of the C-3 zone, known as the business triangle, bounded to the northeast by the alley parallel to and northwest of Crescent Drive, to the southwest by the north side of Wilshire Boulevard and to the northwest by Santa Monica Boulevard north roadway, that exceed height, story and/or density regulations otherwise applicable to the development. Such rooftop uses may be permitted by the Planning Commission provided that as to any such rooftop uses:
- a. The rooftop use is not an office, storage, or restaurant use.
  - b. The planning commission grants a development plan review in accordance with the procedures and findings set forth in article 31 of this chapter.
  - c. In addition to the findings set forth in section 10-3-3104 of this chapter, the planning commission finds that the proposed rooftop use will be of

such limited intensity, frequency and/or duration so as not to significantly and adversely impact traffic and circulation in the surrounding area.

- d. The additional height above the maximum height limit otherwise applicable to the development shall not exceed fifteen feet (15').
  - e. The floor area ratio of the building shall not exceed two to one (2:1). However, if the floor area ratio of the building exceeds two to one (2:1) prior to the establishment of a rooftop use, then the rooftop use may be established if a portion of the existing building is removed or converted to a use which is not calculated as "floor area" as defined in section 10-3-100 of this chapter so that there is no net increase in the existing floor area of the building.
  - f. The combined area of the rooftop use and the area designated for mechanical equipment does not exceed fifty percent (50%) of the total area of the story immediately below.
  - g. The additional structure shall be set back from the intersection of the roof deck and the face of any exterior wall of the floor immediately below that faces a public right of way so that a forty five degree (45°) angle to the vertical plane of such exterior wall is not intersected.
  - j. Parking is provided for the use in accordance with section 10-3-2730 of this chapter.
4. Rooftop unenclosed terraces and unenclosed architectural features located in the C-3, C-R, C-3A and C-3B zones that are: 1) not ancillary to a gymnasium or lunchroom; and 2) that are not otherwise excluded from the definition of "height of building"; may be permitted by the director of community development, or may be forwarded by the director to the planning commission for consideration, provided that as to any such unenclosed rooftop uses:
- a. The director of community development or planning commission grants a development plan review in accordance with the procedures and findings set forth in article 31 of this chapter.
  - b. Unless otherwise authorized by the planning commission, the total area of the unenclosed terraces and unenclosed architectural

features shall not exceed fifty percent (50%) of the total area of the story immediately below the unenclosed rooftop use.

- c. Unless otherwise authorized as part of the development plan review, no food service shall be provided in connection with the unenclosed terraces and unenclosed architectural features.
- d. Unless otherwise authorized as part of the development plan review, only persons who work in the building or are registered hotel guests shall be permitted to use the unenclosed terraces and unenclosed architectural features.
- e. No admittance or use fees shall be charged for the use of the unenclosed terraces and unenclosed architectural features.
- f. Unless otherwise authorized as part of the development plan review, the unenclosed rooftop uses permitted pursuant to this subsection shall have a 72" tall barrier, with the use of transparent material required above 45" in height, for any building side located within five feet of a public street or facing any residentially zoned property.
- g. Unenclosed architectural features permitted pursuant to this subsection shall be set back from the front property line or from the required front setback line immediately adjacent thereto, whichever is the more restrictive, so that a forty five degree (45°) angle to such line is not intersected.

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**ATTACHMENT C**  
**EXISTING ROOFTOP USE STANDARDS**  
**BHMC §10-3-3107**

**10-3-3107: ROOFTOP USES:**  

- A. Notwithstanding any provisions to the contrary contained in this title, the planning commission may permit, pursuant to the development plan review procedure contained in this article and subject to the restrictions set forth in this subsection, development in the C-3, C-R, C-3A, and C-3B zones to exceed height, story and density limitations otherwise applicable to the development in order to permit the establishment of rooftop: 1) gymnasiums, 2) lunchrooms and structures or uses ancillary to such lunchrooms, and 3) unenclosed architectural features that are not otherwise excluded from the definition of "height of building" in section [10-3-100](#) of this chapter, provided that as to any such rooftop structures or uses:
1. The planning commission makes the findings set forth in section [10-3-3104](#) of this chapter regarding the rooftop use.
  2. The additional height above the maximum height limit otherwise applicable to the development will not exceed fifteen feet (15'). Furthermore, in no event shall the distance between the floor and ceiling of the gymnasium or lunchroom and structures or uses ancillary to such lunchroom exceed fifteen feet (15').
  3. The total floor area of the development shall not exceed the maximum allowable floor area otherwise applicable to the development by more than three thousand five hundred (3,500) square feet or fifty percent (50%) of the total area of the story immediately below the rooftop use, whichever is less.
  4. No food service, other than vending machines, shall be provided in connection with the rooftop use.
  5. The subject structure provides not less than the minimum number of parking spaces required by this section as of the date when building permits for the structure were issued. In addition, two (2) parking spaces shall be provided for any rooftop gymnasium.
  6. Unless authorized by the planning commission as part of the development plan review, only persons who work in the building or are registered hotel guests will be permitted to use the rooftop facilities.
  7. No admittance or use fees shall be charged for the use of the rooftop facilities.
  8. The additional structure permitted pursuant to this article shall be set back from the property line or from the required setback line immediately adjacent thereto, whichever is the more restrictive, so that a forty five degree (45°) angle to such line is not intersected.
  9. Notwithstanding the provisions of subsection A8 of this section, unenclosed architectural features approved pursuant to this section may intersect a forty five degree (45°) angle to the vertical plane of the nearest outside wall if the planning commission finds that such features are architecturally compatible with the building and will not adversely impact the building's scale and massing. In addition, any other additional structure approved pursuant to this section may intersect a forty five degree (45°) angle to the vertical plane of the nearest outside wall provided that the exterior wall of the additional structure permitted is constructed in the same plane as the exterior wall of the floor below and the additional structure will not exceed the applicable maximum allowable height otherwise permitted by more than forty five inches (45").
  10. Notwithstanding the provisions in the definition of "height of building" in section [10-3-100](#) of this chapter permitting certain elements to be located above maximum height limits, only those elements required by law to project above the roof deck shall be permitted to exceed the fifteen foot (15') height limit of the structure enclosing the rooftop use permitted hereby.

- B. Notwithstanding any provisions to the contrary contained in this title, the planning commission may permit, pursuant to the development plan review procedure and subject to the restrictions set forth in this subsection, development in that portion of the C-3 zone, known as the business triangle, bounded to the northeast by the alley parallel to and northwest of Crescent Drive, to the southwest by the north side of Wilshire Boulevard and to the northwest by Santa Monica Boulevard north roadway, to exceed height, story and density regulations otherwise applicable to the development in order to permit the establishment of all other rooftop uses provided that:
1. The rooftop use is not an office, storage, or restaurant use.
  2. The planning commission makes the findings set forth in section [10-3-3104](#) of this chapter regarding the rooftop use.
  3. In addition to the findings set forth in section [10-3-3104](#) of this chapter, the planning commission finds that the proposed rooftop use will be of such limited intensity, frequency and/or duration so as not to significantly and adversely impact traffic and circulation in the surrounding area.
  4. The additional height above the maximum height limit otherwise applicable to the development will not exceed fifteen feet (15').
  5. The floor area ratio of the building shall not exceed two to one (2:1). However, if the floor area ratio of the building exceeds two to one (2:1) prior to the establishment of a rooftop use, then the rooftop use may be established if a portion of the existing building is removed or converted to a use which is not calculated as "floor area" as defined in section [10-3-100](#) of this chapter so that there is no net increase in the existing floor area of the building.
  6. The combined area of the rooftop use and the area designated for mechanical equipment does not exceed fifty percent (50%) of the total area of the story immediately below.
  7. The additional structure shall be set back from the intersection of the roof deck and the face of any exterior wall of the floor immediately below that faces a public right of way so that a forty five degree (45°) angle to the vertical plane of such exterior wall is not intersected.
- C. In approving an application for a rooftop use, the planning commission may impose such conditions as it deems appropriate, including, without limitation, a condition that requires the subject property owner to record a covenant that a rooftop facility shall only be used for the specific use proposed, and requiring the applicant annually to attest at the time of application for or renewal of its city business license that the rooftop facility is only used for the specific use permitted. (Ord. 90-O-2100, eff. 9-13-1990; amd. Ord. 93-O-2168, eff. 7-2-1993; Ord. 94-O-2193, eff. 3-4-1994; Ord. 95-O-2239, eff. 7-7-1995; Ord. 97-O-2277, eff. 5-9-1997; Ord. 01-O-2389, eff. 1-10-2002; Ord. 11-O-2615, eff. 12-16-2011; Ord. 13-O-2643, eff. 8-16-2013)

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**ATTACHMENT D**  
**March 24, 2016 Staff Report**  
**(including previous draft rooftop use standards)**



## Planning Commission Report

**Meeting Date:** March 24, 2016

**Subject:** **228 South Beverly Drive**  
**Zone Text Amendment and Rooftop Lunchroom**  
Request for a Zone Text Amendment to Beverly Hills Municipal Code Section 10-3-3107 regarding rooftop uses, and a request for a Development Plan Review to allow the construction of a 2,202 square foot rooftop lunchroom with associated terrace on the building located at 228 South Beverly Drive.  
PROJECT APPLICANT: Moshe Kraiem

**Recommendation:** That the Planning Commission:

1. Conduct a public hearing and receive testimony on the project; and
2. Direct staff to prepare a resolution memorializing the Planning Commission's findings and making recommendations to the City Council.

### REPORT SUMMARY

The proposed project involves amendments to certain development standards for rooftop uses on commercial buildings, and a request for a Development Plan Review to construct a rooftop lunchroom and associated terrace on the building located at 228 South Beverly Drive, pursuant to the proposed amendments. This report outlines the Planning Commission's prior consideration of this proposal, and analyzes potential changes to the Municipal Code regarding the proposed Zone Text Amendment. In addition, this report analyzes the individual rooftop lunchroom proposed on the building located at 228 South Beverly Drive. Staff's analysis concludes that the proposed amendments could be beneficial in many instances throughout the City's commercial zones, and if appropriately administered would limit the overall impact such rooftop uses might otherwise have on existing and future development within the City. Accordingly, staff supports the proposed amendments, and recommends that the Planning Commission direct staff to prepare resolutions making recommendations to the City Council regarding the proposed amendments and conditionally approving the proposed project.

**Attachment(s):**

- A. Required Findings
- B. Draft Rooftop Use Standards
- C. February 27, 2014 Staff Report
- D. Architectural Plans (Provided as a Separate Attachment)

**Report Author and Contact Information:**

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(310) 285-1118  
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## **BACKGROUND**

The Planning Commission originally reviewed the proposed project on February 27, 2014. At that time, staff raised concerns about the proposal, and identified a number of issues pertaining to the amendments (see Attachment C) and how they may affect future development in the City. The Planning Commission generally shared staff's concerns, but also concluded that the proposed amendments could be beneficial under certain circumstances. Accordingly, an ad-hoc committee consisting of Chair Block and Commissioner Corman was established to further explore the issue. The ad-hoc committee subsequently met on March 24, 2014, and again on June 26, 2015, to discuss the proposed amendments and try to arrive at an equitable solution. Based on the input received during the ad-hoc committee meetings, draft standards have been prepared for the Commission's discussion and consideration, and are outlined further in this report.

## **PROJECT DESCRIPTION**

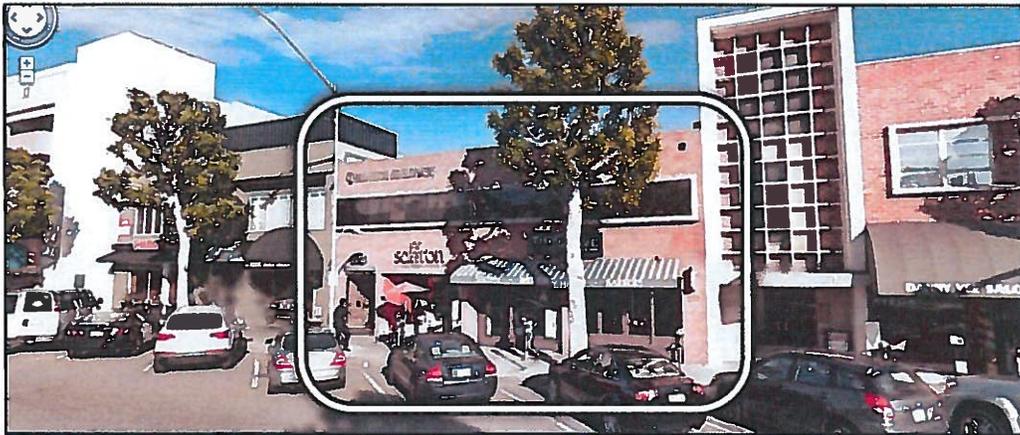
The existing building on the project site is two stories and contains 7,820 square feet of floor area. The applicant seeks to construct a 2,202 square foot lunchroom above the second floor of the existing building. The additional floor area would normally require seven additional parking spaces, which the applicant is unable to provide on site. Consequently, the applicant has requested a Zone Text Amendment to allow a rooftop employee lunchroom, which would be exempt from providing additional parking spaces. Concurrently, the applicant has submitted a request for a Development Plan Review to construct the subject lunchroom, which would be contingent upon approval of the Zone Text Amendment. The proposed lunchroom includes the following:

- Two stair shafts
- One men's restroom
- One women's restroom
- Vending machines
- An open seating area

The proposed rooftop lunchroom would have a maximum height of 14'6" above the existing roof deck of the two-story building, causing the building's height to be increased to an overall maximum of 38'4" (below the code-restricted maximum of 45'). No additional parking spaces are proposed in conjunction with the rooftop lunchroom.



**Project Site Looking North**



**Street View of Existing Facade**



## PROPOSED AMENDMENTS

The Municipal Code currently allows applicants to request a Development Plan Review for certain rooftop uses, but limits the availability of this application type to buildings that are already at or above the maximum height limits set forth in the Municipal Code. In general, the proposed standards would allow buildings that are not at or above the code-maximums to request similar privileges through a Development Plan Review approval. The proposed amendments would not modify existing code provisions, but would instead add a new subsection No. 2 to the rooftop use provisions as follows<sup>1</sup>:

2. Rooftop uses in the city's commercial zones that do not exceed the height, story, and density limitations otherwise applicable to the development. For the purposes of this subsection A.2., rooftop uses shall include gymnasiums, lunchrooms and structures or uses ancillary to such lunchrooms, and unenclosed terraces located above the top story of the building. Such rooftop uses may be permitted by the director of community development, or may be forwarded to the planning commission for consideration provided that as to any such rooftop uses:
  - a. The director of community development or planning commission grants a development plan review in accordance with the procedures and findings set forth in article 31 of this chapter.
  - b. The total floor area of the rooftop use shall not exceed three thousand five hundred (3,500) square feet or fifty percent (50%) of the total area of the story immediately below the rooftop use, whichever is less.
  - c. Unless otherwise authorized as part of the development plan review, no food service, other than vending machines, shall be provided in connection with the rooftop use.
  - d. The subject structure provides not less than the minimum number of parking spaces required by the municipal code as of the date when building permits for the structure were issued. In addition, two (2) parking spaces shall be provided for any rooftop gymnasium.
  - e. Unless otherwise authorized as part of the development plan review, only persons who work in the building or are registered hotel guests shall be permitted to use the rooftop facilities.
  - f. No admittance or use fees shall be charged for the use of the rooftop facilities.

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<sup>1</sup> The complete rooftop use standards are provided in Attachment B.



- g. Rooftop uses located outside that portion of the C-3 zone, known as the business triangle, bounded to the northeast by the alley parallel to and northwest of Crescent Drive, to the southwest by the north side of Wilshire Boulevard and to the northwest by Santa Monica Boulevard north roadway, and permitted pursuant to this subsection, shall be set back from the front façade of the story immediately below the rooftop use so that a forty five degree (45°) angle from such façade is not intersected. In addition, any such setback required by this subsection shall not be less than six (6) feet.*

## ANALYSIS

Project approval, conditional approval or denial is based upon specific findings for each discretionary application requested by the applicant. The findings that must be made in order to approve the project are provided as Attachment A, and may be used to guide the Planning Commission's deliberation of the subject project. Additionally, specific topics considered by staff and the ad-hoc committee in evaluating the project are provided below for consideration by the Commission.

**Parking.** Providing sufficient parking for development projects has previously been identified as a concern by the City Council and Planning Commission. In the case of the proposed project, 2,202 square feet of floor area would be added to the existing building without providing any additional parking spaces. Typically, an addition of that size would require seven parking spaces, whereas the existing building provides only six parking spaces<sup>2</sup>.

The existing rooftop use provisions do not require additional parking spaces to be provided for rooftop lunchrooms or terraces, as the expectation is that employees are already at the property, and the rooftop use would therefore not generate additional parking demands (or traffic). The ad-hoc committee expressed concerns regarding instances where a rooftop lunchroom or terrace might be used for employee/client events, during which additional parking may be required to accommodate such an event. The ad-hoc committee discussed the possibility of requiring in-lieu parking fees for such instances; however, because the in-lieu parking district does not include all commercial properties, it would seem inequitable to require in-lieu parking payments for some, but not all rooftop uses. Accordingly, the Planning Commission may wish to further discuss parking issues, and possible solutions such as requiring the provision of free parking during rooftop events.

**Streetscape Compatibility and Setbacks.** A key issue discussed by the ad-hoc committee pertained to the design and setbacks for rooftop uses, particularly when such rooftop uses are located outside the Business Triangle. The proposed amendments would allow rooftop uses located within the Business Triangle to be located in-line with the building's primary façade; however, rooftop uses located outside the Business Triangle would be required to

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<sup>2</sup> In order to be eligible for the rooftop lunchroom parking exemption the building would need to provide a total of seven parking spaces, which is the number required when the building was constructed. Staff believes that one additional space could be accommodated on site if necessary.



be set back from the façade at a 45° angle, but not less than 6'. The goal of the setback is to minimize the visibility of rooftop uses to maintain the lower scale of buildings outside the Business Triangle, while allowing rooftop uses within the Business Triangle to request a smaller setback or no setback through the Development Plan Review process. As drafted, the proposed amendments would allow for continued flexibility in rooftop configurations, and would require that specific findings be made for a rooftop use, which would allow for projects to be conditioned in a manner that would maintain neighborhood compatibility.

**Reviewing Authority.** Existing Municipal Code provisions establish the Planning Commission as the reviewing authority for all rooftop uses; however, the existing provisions pertain only to rooftop uses that are above the maximum allowed height. Given that the proposed provisions would pertain to rooftop uses below the maximum allowed height (and would presumably be in keeping with the character of the City), the ad-hoc committee discussed whether it would be appropriate to have the ability for a more streamlined director-level review, with the option to forward the matter to the Planning Commission depending on the nature of the request. The proposed language is currently drafted in this manner, although the ad-hoc committee indicated a desire for further discussion of the review process by the full Commission.

**Equity.** Currently, rooftop lunchrooms that exceed otherwise allowable height limitations are exempted from parking, whereas lunchrooms that do not exceed otherwise allowable height limitations are not exempted from parking. The proposed amendments would create more uniform provisions and opportunities throughout the City's business districts, and may be beneficial in encouraging reuse of existing buildings.

**Size of Lunchroom.** In the event that the Planning Commission wishes to move forward with the proposed amendment, staff recommends that the Commission consider whether the size of the specific lunchroom at 228 South Beverly Drive is appropriate in relation to the size of the existing building. The existing commercial building contains 7,820 square feet of floor area, and the lunchroom would include 2,202 square feet of floor area, which is equal to 28% of the existing building's floor area. Lunchrooms are generally intended to be ancillary to office uses, and while the Municipal Code allows an applicant to request a lunchroom of that size, the proposal appears to be somewhat disproportionate to the building's office and retail components. Given the disproportionality of the proposed lunchroom to the overall building area, staff seeks direction from the Commission on whether the size of the proposed lunchroom should be reduced. In addition, the proposed lunchroom would need to be further set back from the building's façade in order to achieve compliance with the 45° setback called for in the draft rooftop provisions.



### **GENERAL PLAN<sup>3</sup> POLICIES**

The General Plan includes numerous goals and policies intended to help guide development in the City. Some policies relevant to the Planning Commission's review of the project include:

- **Policy CIR 4.1 Parking Provisions.** Ensure that adequate parking is provided for existing and future uses while considering shared parking opportunities, Travel Demand Management (TDM) plans, and availability of alternate modes of travel, based on the site's proximity to transit.
- **Policy CIR 4.9 Parking Area.** Support measures that help reduce parking demand and the space required for parking.
- **Policy LU 2.4 Architectural and Site Design.** Require that new construction and renovation of existing buildings and properties exhibit a high level of excellence in site planning, architectural design, building materials, use of sustainable design and construction practices, landscaping, and amenities that contribute to the City's distinctive image and complement existing development.
- **Policy LU 12.2 Building, Parking Structure, and Site Design.** Require that buildings, parking structures, and properties in commercial and office districts be designed to assure compatibility with abutting residential neighborhoods, incorporating such elements as setbacks, transitional building heights and bulk, architectural treatment of all elevations, landscape buffers, enclosure of storage facilities, air conditioning, and other utilities, walls and fences, and non-glare external lighting.
- **Policy LU 15.1 Economic Vitality and Business Revenue.** Sustain a vigorous economy by supporting businesses that contribute revenue, quality services and high-paying jobs.

### **NEXT STEPS**

Staff recommends that the Planning Commission conduct the public hearing and direct staff to prepare a draft ordinance and resolutions regarding the proposed amendments and specific rooftop project. Staff would also work with the applicant to refine the design of the rooftop lunchroom, and would draft conditions specific to the proposal that would limit any potential impacts and ensure appropriate use of the lunchroom.

Report Reviewed By:

  
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Ryan Gohlich, AICP, Assistant Director / City  
Planner  
Community Development Department

<sup>3</sup> Available online at [http://www.beverlyhills.org/services/planning\\_division/general\\_plan/genplan.asp](http://www.beverlyhills.org/services/planning_division/general_plan/genplan.asp)

**DRAFT ROOFTOP USE STANDARDS - BHMC§10-3-3107**

**A. Notwithstanding any provisions to the contrary contained in this title, the following rooftop uses may be permitted in accordance with the standards outlined in this section:**

- 1. Rooftop uses in the C-3, C-R, C-3A, and C-3B zones that exceed the height, story, and/or density limitations otherwise applicable to the development. For the purposes of this subsection A.1., rooftop uses shall include gymnasiums, lunchrooms and structures or uses ancillary to such lunchrooms, unenclosed terraces, and unenclosed architectural features that are not otherwise excluded from the definition of "height of building" in section 10-3-100 of this chapter. Such rooftop uses may be permitted by the Planning Commission provided that as to any such rooftop uses:**
  - a. The planning commission grants a development plan review in accordance with the procedures and findings set forth in article 31 of this chapter.**
  - b. The additional height above the maximum height limit otherwise applicable to the development will not exceed fifteen feet (15'). Furthermore, in no event shall the distance between the floor and ceiling of the gymnasium or lunchroom and structures or uses ancillary to such lunchroom exceed fifteen feet (15').**
  - c. The total floor area of the development shall not exceed the maximum allowable floor area otherwise applicable to the development by more than three thousand five hundred (3,500) square feet or fifty percent (50%) of the total area of the story immediately below the rooftop use, whichever is less.**
  - d. Unless otherwise authorized by the planning commission as part of the development plan review, no food service, other than vending machines, shall be provided in connection with the rooftop use.**
  - e. The subject structure provides not less than the minimum number of parking spaces required by this section as of the date when building permits for the structure were issued. In addition, two (2) parking spaces shall be provided for any rooftop gymnasium.**
  - f. Unless otherwise authorized by the planning commission as part of the development plan review, only persons who work in the building or are registered hotel guests shall be permitted to use the rooftop facilities.**
  - g. No admittance or use fees shall be charged for the use of the rooftop facilities.**

- h. The rooftop uses permitted pursuant to this subsection shall be set back from the front property line or from the required front setback line immediately adjacent thereto, whichever is the more restrictive, so that a forty five degree (45°) angle to such line is not intersected.
  - i. Notwithstanding the provisions of subsection 1.h., unenclosed architectural features approved pursuant to this section may intersect a forty five degree (45°) angle to the vertical plane of the nearest outside wall if the planning commission finds that such features are architecturally compatible with the building and will not adversely impact the building's scale and massing. In addition, any other rooftop uses approved pursuant to this subsection may intersect a forty five degree (45°) angle to the vertical plane of the nearest outside wall provided that the rooftop use is constructed in the same plane as the exterior wall of the floor below and the additional structure will not exceed the applicable maximum allowable height otherwise permitted by more than forty five inches (45").
  - j. Notwithstanding the provisions in the definition of "height of building" in section 10-3-100 of this chapter permitting certain elements to be located above maximum height limits, only those elements required by law to project above the roof deck shall be permitted to exceed the fifteen foot (15') height limit of the structure enclosing the rooftop use permitted herein.
2. Rooftop uses in the city's commercial zones that do not exceed the height, story, and density limitations otherwise applicable to the development. For the purposes of this subsection A.2., rooftop uses shall include gymnasiums, lunchrooms and structures or uses ancillary to such lunchrooms, and unenclosed terraces located above the top story of the building. Such rooftop uses may be permitted by the director of community development, or may be forwarded to the planning commission for consideration provided that as to any such rooftop uses:
- a. The director of community development or planning commission grants a development plan review in accordance with the procedures and findings set forth in article 31 of this chapter.
  - b. The total floor area of the rooftop use shall not exceed three thousand five hundred (3,500) square feet or fifty percent (50%) of the total area of the story immediately below the rooftop use, whichever is less.
  - c. Unless otherwise authorized as part of the development plan review, no food service, other than vending machines, shall be provided in connection with the rooftop use.

- d. The subject structure provides not less than the minimum number of parking spaces required by the municipal code as of the date when building permits for the structure were issued. In addition, two (2) parking spaces shall be provided for any rooftop gymnasium.
  - e. Unless otherwise authorized as part of the development plan review, only persons who work in the building or are registered hotel guests shall be permitted to use the rooftop facilities.
  - f. No admittance or use fees shall be charged for the use of the rooftop facilities.
  - g. Rooftop uses located outside that portion of the C-3 zone, known as the business triangle, bounded to the northeast by the alley parallel to and northwest of Crescent Drive, to the southwest by the north side of Wilshire Boulevard and to the northwest by Santa Monica Boulevard north roadway, and permitted pursuant to this subsection, shall be set back from the front façade of the story immediately below the rooftop use so that a forty five degree (45°) angle from such facade is not intersected. In addition, any such setback required by this subsection shall not be less than six (6) feet.
3. Rooftop uses in the in that portion of the C-3 zone, known as the business triangle, bounded to the northeast by the alley parallel to and northwest of Crescent Drive, to the southwest by the north side of Wilshire Boulevard and to the northwest by Santa Monica Boulevard north roadway, that exceed height, story and/or density regulations otherwise applicable to the development. Such rooftop uses may be permitted by the Planning Commission provided that as to any such rooftop uses:
- a. The rooftop use is not an office, storage, or restaurant use.
  - b. The planning commission grants a development plan review in accordance with the procedures and findings set forth in article 31 of this chapter.
  - c. In addition to the findings set forth in section 10-3-3104 of this chapter, the planning commission finds that the proposed rooftop use will be of such limited intensity, frequency and/or duration so as not to significantly and adversely impact traffic and circulation in the surrounding area.
  - d. The additional height above the maximum height limit otherwise applicable to the development shall not exceed fifteen feet (15').
  - e. The floor area ratio of the building shall not exceed two to one (2:1). However, if the floor area ratio of the building exceeds two to one (2:1) prior to the establishment

of a rooftop use, then the rooftop use may be established if a portion of the existing building is removed or converted to a use which is not calculated as "floor area" as defined in section 10-3-100 of this chapter so that there is no net increase in the existing floor area of the building.

- f. The combined area of the rooftop use and the area designated for mechanical equipment does not exceed fifty percent (50%) of the total area of the story immediately below.
- g. The additional structure shall be set back from the intersection of the roof deck and the face of any exterior wall of the floor immediately below that faces a public right of way so that a forty five degree (45°) angle to the vertical plane of such exterior wall is not intersected.
- h. Parking is provided for the use in accordance with section 10-3-2730 of this chapter.

**ATTACHMENT E**  
**February 27, 2014 Staff Report**



**Beverly Hills  
Planning Division**

455 N. Raxford Drive Beverly Hills, CA 90210  
TEL. (310) 285-1141 FAX. (310) 858-5966

## Planning Commission Report

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**Meeting Date:** February 27, 2014

**Subject:** **228 South Beverly Drive  
Zone Text Amendment and Rooftop Lunchroom**  
Request for a Zone Text Amendment to Beverly Hills Municipal Code Section 10-3-3107 regarding rooftop uses, and a request for a Development Plan Review to allow the construction of a 2,202 square foot rooftop lunchroom on the building located at 228 South Beverly Drive.  
PROJECT APPLICANT: Moshe Kraiem

**Recommendation:** That the Planning Commission:

1. Conduct a public hearing and receive testimony on the project; and
2. Direct staff to prepare a resolution denying the requested Zone Text Amendment and Development Plan Review.

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### REPORT SUMMARY

The proposed project involves a requested Zone Text Amendment to certain development standards for rooftop lunchrooms on commercial buildings, and a request for a Development Plan Review to construct a rooftop lunchroom on the building located at 228 South Beverly Drive, pursuant to the development standards set forth in the proposed Zone Text Amendment. This report analyzes the potential changes and drawbacks that could result from the proposed Zone Text Amendment, with particular focus on parking, enforcement, employee use, redevelopment, and equity, and analyzes the individual rooftop lunchroom proposed on the building located at 228 South Beverly Drive. Staff's analysis concludes that while the proposed Zone Text Amendment could be beneficial in some instances, there are certain drawbacks that outweigh the benefits regarding the overall impact such an amendment might have on existing and future development within the City, and the recommendation in this report is for denial of the Zone Text Amendment. Staff's analysis further concludes that while it may be possible to make certain findings in support of the specific addition proposed on the building located at 228 South Beverly Drive, the addition will not be possible without the requested amendment, and therefore the recommendation in this report is for denial of the proposed rooftop lunchroom.

**Attachment(s):**

- A. Required Findings
- B. Public Notice
- C. Architectural Plans

**Report Author and Contact Information:**

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[rgohlch@beverlyhills.org](mailto:rgohlch@beverlyhills.org)

**BACKGROUND**

File Date	10/16/2013
Application Complete	11/16/2013
Subdivision Deadline	N/A
CEQA Deadline	60 days from CEQA Determination
CEQA Determination	Projects that are denied are not subject to CEQA; however, in the event the Planning Commission elects to move forward with the project, the project would be eligible for Class 5 and Class 1 Categorical Exemptions, which apply to limited changes in land use limitations (the Zone Text Amendment), as well as limited additions to existing commercial buildings (the proposed rooftop lunchroom).
Permit Streamlining	4/27/2014 without extension request from applicant
Applicant(s)	Moshe Kraiem
Owner(s)	Orbit Limited Partnership
Representative(s)	Joe Tilem
Prior PC Action	None
Prior Council Action	None

**PROPERTY AND NEIGHBORHOOD SETTING**

Property Information

Address	228 South Beverly Drive
Legal Description	Tract # 6380, Lot 2035
Zoning District	C-3
General Plan	General Commercial - Low Density
Existing Land Use(s)	Retail, Restaurant and General Offices
Lot Dimensions & Area	50' x 121.4' – 6,070 square feet
Year Built	1952
Historic Resource	The property is not listed on the City's inventory as being potentially historic, nor was it designed by a Master Architect.
Protected Trees/Grove	None

Adjacent Zoning and Land Uses

North	C-3 – Retail, Restaurant and General Offices
South	C-3 – Retail, Restaurant and General Offices
East (across alley)	R-4 – Multi-Family Residential
West	C-3 – Retail, Restaurant and General Offices

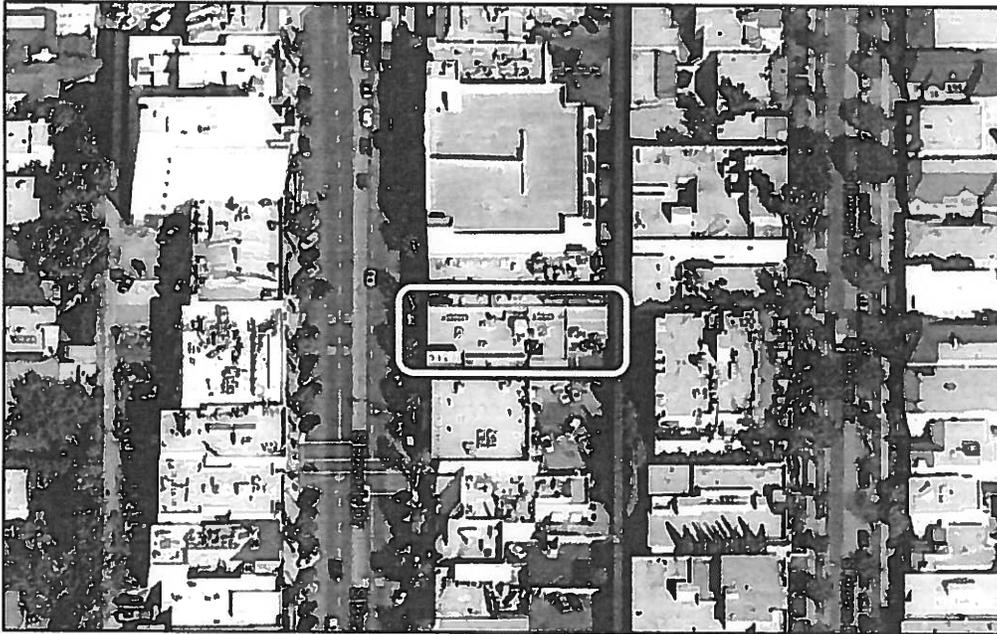
Circulation and Parking

Adjacent Street(s)	South Beverly Drive
Adjacent Alleys	One-way, 15'-wide, northbound alley located east of the property
Parkways & Sidewalks	South Beverly Drive sidewalk/parkway – 10' from face of curb to property line
Parking Restrictions	Diagonal street parking – 1-hour meters
Nearest Intersection	South Beverly Drive and Charleville Boulevard

Circulation Element	South Beverly Drive is an arterial street and Charleville Boulevard is a local street.
Estimated Daily Trips	South Beverly Drive carries approximately 8,000 daily trips, and Charleville Boulevard carries approximately 6,000 daily trips.

Neighborhood Character

The project site is located in the middle of the 200 block of South Beverly Drive. South Beverly Drive tends to have somewhat of a village-type atmosphere, with ground floors lined with smaller retail and restaurant establishments. Many of the commercial buildings are limited to one or two stories in height; however, several taller buildings such as the City parking facility and the Beverly Hills Storage building are located in close proximity to the project site. Multi-family apartment and condominium buildings are located immediately east of the project site, and tend to vary in height from two to three stories. Parking for many of the commercial and residential properties is accessed via the northbound alley east of the project site.



Project Site Looking North



Street View of Existing Facade

### **PROJECT DESCRIPTION**

The existing building on the project site is two stories and contains 7,820 square feet of floor area. The applicant seeks to construct a 2,202 square foot lunchroom above the second floor of the existing building. The additional floor area would require seven additional parking spaces, which the applicant is unable to provide on site. Consequently, the applicant has requested a Zone Text Amendment to allow the lunchroom to be exempted from parking requirements. Concurrently, the applicant has submitted a request for a Development Plan Review to construct the subject lunchroom, which would be contingent upon approval of the Zone Text Amendment. The proposed lunchroom includes the following:

- Two stair shafts
- One men's restroom
- One women's restroom
- Vending machines
- An open seating area

The proposed rooftop lunchroom would have a maximum height of 14'6" above the existing roof deck of the two-story building, causing the building's height to be increased to an overall maximum of 38'4" (below the code-restricted maximum of 45'). No additional parking spaces are proposed in conjunction with the rooftop lunchroom.

### **Requested Permits**

The applicant is seeking approval of a Zone Text Amendment and Development Plan Review (DPR) for the rooftop lunchroom described above. Ordinarily, such a lunchroom could be constructed through the approval of a DPR, provided that the lunchroom complies with all zoning codes, including the provision of code-compliant parking for the lunchroom floor area added to the structure. In the case of the proposed project, the lunchroom complies with all applicable zoning codes (including height), with the exception of providing additional parking spaces. Parking would normally be required at a rate of one space per each 350 square feet, which in the case of the 2,202 square foot lunchroom would be equal to seven additional parking spaces. The applicant is unable to provide the additional parking spaces that would otherwise be required, and instead seeks to amend existing code provisions that exempt parking requirements for rooftop lunchrooms that exceed the otherwise allowable maximum building height. The applicant's proposed amendment is intended to exempt all rooftop lunchrooms from having to

provide parking, regardless of whether the rooftop lunchroom exceeds the otherwise allowable maximum building height; however, the amendment would also allow other rooftop uses permitted under the code to be added to buildings even in such instances when the rooftop structure would not exceed the otherwise allowable maximum height. The Zone Text Amendment proposed by the applicant, which applies in most commercial districts in the City, is shown below in strikeout/underline format:

**10-3-3107: ROOFTOP USES:**

A. *Notwithstanding any provisions to the contrary contained in this title, the planning commission may permit, pursuant to the development plan review procedure contained in this article and subject to the restrictions set forth in this subsection, development in the C-3, C-R, C-3A, and C-3B zones ~~to exceed height, story and density limitations otherwise applicable to the development~~ in order to permit the establishment of rooftop: 1) gymnasiums, 2) lunchrooms and structures or uses ancillary to such lunchrooms, and 3) unenclosed architectural features that are not otherwise excluded from the definition of "height of building" in section 10-3-100 of this chapter, provided that as to any such rooftop structures or uses:*

1. *The planning commission makes the findings set forth in section 10-3-3104 of this chapter regarding the rooftop use.<sup>1</sup>*
2. *The additional height above the maximum height limit otherwise applicable to the development may exceed height, story, and density limitations otherwise applicable to the development, but may will not exceed fifteen feet (15'). Furthermore, in no event shall the distance between the floor and ceiling of the gymnasium or lunchroom and structures or uses ancillary to such lunchroom exceed fifteen feet (15').*
3. *The total floor area of the development shall not exceed the maximum allowable floor area otherwise applicable to the development by more than three thousand five hundred (3,500) square feet or fifty percent (50%) of the total area of the story immediately below the rooftop use, whichever is less.*
4. *No food service, other than vending machines, shall be provided in connection with the rooftop use.*
5. *The subject structure provides not less than the minimum number of parking spaces required by this section as of the date when building permits for the structure were issued. In addition, two (2) parking spaces shall be provided for any rooftop gymnasium.*
6. *Unless authorized by the planning commission as part of the development plan review, only persons who work in the building or are registered hotel guests will be permitted to use the rooftop facilities.*
7. *No admittance or use fees shall be charged for the use of the rooftop facilities.*

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<sup>1</sup> The findings for a Development Plan Review (Section 10-3-3104) are set forth in Attachment A of this report.

8. *The additional structure permitted pursuant to this article shall be set back from the property line or from the required setback line immediately adjacent thereto, whichever is the more restrictive, so that a forty five degree (45°) angle to such line is not intersected.*
9. *Notwithstanding the provisions of subsection A8 of this section, unenclosed architectural features approved pursuant to this section may intersect a forty five degree (45°) angle to the vertical plane of the nearest outside wall if the planning commission finds that such features are architecturally compatible with the building and will not adversely impact the building's scale and massing. In addition, any other additional structure approved pursuant to this section may intersect a forty five degree (45°) angle to the vertical plane of the nearest outside wall provided that the exterior wall of the additional structure permitted is constructed in the same plane as the exterior wall of the floor below and the additional structure will not exceed the applicable maximum allowable height otherwise permitted by more than forty five inches (45").*
10. *Notwithstanding the provisions in the definition of "height of building" in section 10-3-100 of this chapter permitting certain elements to be located above maximum height limits, only those elements required by law to project above the roof deck shall be permitted to exceed the fifteen foot (15') height limit of the structure enclosing the rooftop use permitted hereby.*

## **ZONING CODE<sup>2</sup> COMPLIANCE**

A detailed review of the proposed project to applicable zoning standards has been performed. The proposed project complies with all applicable codes, or is seeking through the requested permits, permission to deviate from certain code standards, in a manner that is consistent with the Zoning Ordinance.

### Rooftop Uses

As proposed, the rooftop lunchroom does not comply with current codes because it does not provide any parking spaces. Consequently, the applicant requests the subject Zone Text Amendment that would cause the proposed lunchroom to be exempted from parking requirements in a manner similar to that which currently applies to rooftop lunchrooms located above the otherwise allowable maximum building height.

## **GENERAL PLAN<sup>3</sup> POLICIES**

The General Plan includes numerous goals and policies intended to help guide development in the City. Some policies relevant to the Planning Commission's review of the project include:

- Policy CIR 4.1 Parking Provisions. Ensure that adequate parking is provided for existing and future uses while considering shared parking opportunities, Travel Demand Management (TDM) plans, and availability of alternate modes of travel, based on the site's proximity to transit.

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<sup>2</sup> Available online at [http://www.sterlingcodifiers.com/codebook/index.php?book\\_id=466](http://www.sterlingcodifiers.com/codebook/index.php?book_id=466)

<sup>3</sup> Available online at [http://www.beverlyhills.org/services/planning\\_division/general\\_plan/genplan.asp](http://www.beverlyhills.org/services/planning_division/general_plan/genplan.asp)

- Policy CIR 4.9 Parking Area. Support measures that help reduce parking demand and the space required for parking.
- Policy LU 2.4 Architectural and Site Design. Require that new construction and renovation of existing buildings and properties exhibit a high level of excellence in site planning, architectural design, building materials, use of sustainable design and construction practices, landscaping, and amenities that contribute to the City’s distinctive image and complement existing development.
- Policy LU 12.2 Building, Parking Structure, and Site Design. Require that buildings, parking structures, and properties in commercial and office districts be designed to assure compatibility with abutting residential neighborhoods, incorporating such elements as setbacks, transitional building heights and bulk, architectural treatment of all elevations, landscape buffers, enclosure of storage facilities, air conditioning, and other utilities, walls and fences, and non-glare external lighting.
- Policy LU 15.1 Economic Vitality and Business Revenue. Sustain a vigorous economy by supporting businesses that contribute revenue, quality services and high-paying jobs.

**PUBLIC OUTREACH AND NOTIFICATION**

Type of Notice	Required Period	Required Notice Date	Actual Notice Date	Actual Period
Posted Notice	N/A	N/A	2/21/2014	6 Days
Newspaper Notice	10 Days	2/17/2014	2/14/2014	13 Days
Mailed Notice (Owners & Residents - 300' Radius, Owners of Single-Family – 500' Radius)	10 Days	2/17/2014	2/13/2014	14 Days
Property Posting	N/A	N/A	N/A	N/A
Website	N/A	N/A	2/21/2014	6 Days

**Public Comment**

The City has not received any public comments regarding the project as of the writing of this report.

**ANALYSIS**

Project approval, conditional approval or denial is based upon specific findings for each discretionary application requested by the applicant. The findings that must be made in order to approve the project are provided as Attachment A, and may be used to guide the Planning Commission’s deliberation of the subject project. Additionally, specific topics considered by staff in evaluating the project are provided below for consideration by the Commission.

**Legislative History.** Regulations regarding rooftop lunchrooms were initially adopted by the City in 1990, and it would appear that the original intent of the regulations was to encourage lunchrooms, as well as certain other amenities within buildings. There were numerous concerns contemplated

by the City Council at the time the ordinance was adopted, including parking, traffic, and enforcement, and the below analysis revisits these concerns as well as new concerns that may not have been contemplated when the ordinance was adopted 24 years ago. However, the intent of the regulations with respect to whether they should apply to all buildings regardless of height is unclear. The applicant asserts that rooftop structures should include any structure built on the top of a building, while it is staff's belief that rooftop structures should only include structures built above the otherwise allowable maximum height. In particular, the staff reports presented to the City Council at the time the original ordinance was adopted state that the ordinance will:

*"Permit one additional story of no more than 15 feet to be constructed on an existing building of any height, or to be constructed as part of a new building."*

While the above usage of the term "any height" could be interpreted to include one-and two-story buildings, the staff reports primarily discuss buildings that are already at or above the maximum building height, and it is staff's determination that the term "any height" was an acknowledgment of the fact that over-height buildings (buildings of any height) could make such a request, and the reports specifically state that rooftop structures on the City's tallest buildings would not be visible from the street due to the height of the structures. Furthermore, the City has only approved eleven rooftop structures (lunchrooms, gyms, etc.) since adoption of the subject ordinance in 1990, and all of the approved structures exceeded the otherwise allowable maximum building height. Structures that do not exceed the maximum building height are simply considered to be additions, and not subject to the rooftop provisions. Finally, even if the original ordinance contemplated one- and two-story buildings being eligible for the parking exemption for employee lunchrooms, the code language as adopted does not support such an intent, and an amendment would be required.

**Parking.** Providing sufficient parking for development projects has previously been identified as a concern by the City Council and Planning Commission. In the case of the proposed project, 2,202 square feet of floor area would be added to the existing building without providing any additional parking spaces. Typically, an addition of that size would require seven parking spaces, whereas the existing building provides only six parking spaces<sup>4</sup>.

The original ordinance assumed that additional parking may not be required for a lunchroom since the users of the lunchroom would be employees already on site; however, staff notes that the existing building (as well as most other buildings that would be eligible for the proposed amendment) contains an employee lunchroom and restroom facilities on the second floor. The existing lunchroom and restrooms in the subject building do not occupy a substantial amount of square footage (approximately 300 square feet), but would presumably be converted to additional office space in the event the rooftop lunchroom is approved. From a policy perspective, staff recommends that the Planning Commission consider the implications of converting space previously used as a lunchroom area to office space. Depending on the nature of the office use, additional employees could be accommodated through such a conversion. For the subject building, the possibility of accommodating additional employees within the existing lunchroom area may be somewhat limited; however, conversions in larger buildings could cause a more significant increase

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<sup>4</sup> In order to be eligible for the rooftop lunchroom parking exemption the building would need to provide a total of seven parking spaces, which is the number required when the building was constructed. Staff believes that one additional space could be accommodated on site if necessary.

in the number of employees working in a building without the requirement of additional parking. Parking impacts could be somewhat limited when considered on a building-by-building basis, but the cumulative impact of multiple buildings constructing rooftop lunchrooms without parking could be detrimental. Staff recognizes that there is nothing that would currently prevent a building owner from carrying out such a conversion now if that were desired, but the proposed amendment may create added incentives to do so.

**Enforcement.** One of the challenges with allowing certain components of buildings to be exempted from parking is enforcement in making sure that such area is not converted to a different use that would require parking. The most common parking exemptions apply to stair shafts, elevator shafts, and mechanical rooms within buildings. While it is possible that these types of building components could be converted to some other use without the City's knowledge, it is generally unlikely due to the structural work that would likely be required to achieve such a conversion. However, in the case of lunchrooms, and particularly the floor plan proposed by the applicant, the floor plans tend to be open and the finishes are similar to those found throughout the building, allowing the lunchroom to function as somewhat of a flex space that could be used for meetings or additional employees with little to no modification. Monitoring how a space is used over time can be problematic from an enforcement perspective, and a lunchroom used for purposes beyond those intended in the Municipal Code could lead to increased traffic, parking, and other unanticipated impacts.

**Employee Use of Lunchroom.** The applicant asserts that allowing the construction of a well-designed lunchroom can serve as a benefit to employees of a building in that a desirable lunchroom may encourage employees to remain at the office during lunch. If employees stay in during lunch, this may have the effect of reducing traffic and parking during lunchtime hours. While this may be the case in some instances, staff notes that much of the City, including South Beverly Drive, is quite walkable and contains numerous restaurants and shops, and the number of employees that drive during lunch may already be somewhat limited due to the pedestrian-oriented nature of the surrounding neighborhood. Additionally, employees that go out during lunch to shop or dine help to support local businesses, and while it would not be the City's intent to restrict an employee's ability to eat lunch at their office, consideration should be given to the benefits that result from employees shopping and dining locally within Beverly Hills.

**Redevelopment Opportunities.** One consideration not discussed during the original adoption of the subject ordinance pertains to redevelopment opportunities in the City. The City of Beverly Hills contains a wide variety of commercial buildings that are of different ages and sizes. Some of the one- and two- story commercial buildings in the City are considered to be underdeveloped, and some of the properties that exceed current code limitations are considered to be overdeveloped. In some instances, the City may be interested in encouraging redevelopment of underdeveloped properties to sustain economic growth and promote the pedestrian experience; however, it may also be desirable to preserve some of the one- and two-story buildings, particularly when they are adjacent to residential and other sensitive uses. One way to encourage the preservation of desirable, underdeveloped buildings may be to allow the proposed amendment as an incentive for property owners to rehabilitate an existing building. Conversely, allowing rooftop lunchrooms to be exempted from parking may also serve as a disincentive to the redevelopment of properties that the City would prefer to see redeveloped. Therefore, staff recommends that the Commission weigh the effects of the proposed amendment on future redevelopment opportunities.

**Equity.** Currently, rooftop lunchrooms that exceed otherwise allowable height limitations are exempted from parking, whereas lunchrooms that do not exceed otherwise allowable height limitations are not exempted from parking. In considering the applicant’s request, and as a matter of policy, the Commission may wish to discuss whether the separate standards are equitable to property owners, and whether uniform standards should be applied to lunchrooms regardless of the height of the existing building.

**Size of Lunchroom.** In the event that the Planning Commission is able to make findings in support of the requested amendment, staff recommends that the Commission consider whether the size of the proposed lunchroom is appropriate in relation to the size of the existing building. The existing commercial building contains 7,820 square feet of floor area, and the lunchroom would include 2,202 square feet of floor area, which is equal to 28% of the existing building’s floor area. Lunchrooms are generally intended to be ancillary to office uses, and while the Municipal Code allows an applicant to request a lunchroom of that size, the proposal appears to be disproportionate to the building’s office and retail components. Given the disproportionality of the proposed lunchroom to the overall building area, staff has concerns about the intended use of the lunchroom and recommends that the Planning Commission explore why such a substantial increase in floor area is required to support an ancillary component of the building.

**Potential Pros and Cons.** A summary of the potential pros and cons identified by staff and discussed above in this report are summarized below for consideration by the Planning Commission:

Potential Pros	Potential Cons
<ul style="list-style-type: none"> <li>• Employees may utilize lunchroom more, thereby driving less and reducing parking demand</li> <li>• May serve as an incentive for preservation of one- and two-story buildings adjacent to sensitive uses</li> <li>• Creates a more equitable development standard</li> </ul>	<ul style="list-style-type: none"> <li>• Increased parking demand and traffic from existing lunchrooms being converted to office space</li> <li>• Difficult enforcement regarding use of space</li> <li>• Lunchroom may serve as flex space, causing additional parking demand and/or traffic</li> <li>• May discourage redevelopment of underdeveloped properties</li> <li>• Employees may frequent surrounding restaurants and shops less often, reducing pedestrian activity and support for local businesses</li> </ul>

**NEXT STEPS**

It is recommended that the Planning Commission conduct the public hearing and direct staff to prepare a resolution denying the requested Zone Text Amendment and Development Plan Review.

Alternatively, the Planning Commission may consider the following actions:

1. Make findings in support of the request and direct staff to prepare a resolution memorializing the findings.
2. Direct staff or applicant as appropriate and continue the hearing to a date (un)certain, consistent with permit processing timelines, and at applicant's request or consent.

Report Reviewed By:



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Jonathan Lait, AICP, City Planner

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**ATTACHMENT F**  
**Architectural Plans**  
**(provided as a separate attachment)**