



AGENDA REPORT

Meeting Date: August 19, 2008

Item Number: D-1

To: Honorable Mayor & City Council

From: Anne Browning McIntosh, AICP, Interim Director of Community Development

Subject: AN APPEAL FROM THE DECISION OF THE PLANNING COMMISSION DENYING A ZONING CODE AMENDMENT, VESTING TENTATIVE TRACT MAP, AND PLANNED DEVELOPMENT PERMIT TO ALLOW THE CONSTRUCTION OF A MULTI-FAMILY RESIDENTIAL PROJECT WITH 40 CONDOMINIUM UNITS LOCATED AT 120 PECK DRIVE, 125 SOUTH CAMDEN DRIVE AND 133 SOUTH CAMDEN DRIVE.

Attachments:

1. Letter from Appellant dated August 12, 2008
2. June 17, 2008 Agenda Report and Attachments

RECOMMENDATION

Staff recommends that the City Council remand the subject application back to the Planning Commission with direction regarding key aspects of the development proposal.

INTRODUCTION

On March 13, 2008, the Planning Commission denied the subject application. Casden Properties LLC, (the "Applicant" and "Appellant") appealed the decision to the City Council. On June 17, 2008, at the Appellant's request, the City Council continued the item to August 19, 2008. Staff's recommendation of a remand has the practical effect of continuing this item for the second time and acknowledges the issues involved with the continuation of projects as it relates to the Public Hearing process. However, staff's recommendation is based on an understanding that the applicant wishes to revise the project. Therefore, proceeding with this recommendation would afford the Planning Commission and the public the opportunity to review any revisions made to the Project prior to the City Council taking action on the subject appeal and allow the City Council the ability provide input with respect to important features of the Project.

Through a series of discussions with staff, the Planning Commission Subcommittee and Ad Hoc Committee of the City Council, the Applicant/Appellant has indicated a desire to

revise the Project. As specified in the attached letter, (Attachment 1) the Applicant has formalized their intentions to submit revised plans for this project to the City. .

DISCUSSION

BRIEF PROJECT DESCRIPTION

Although the Appellant has indicated their intention to revise the previously submitted Project, following is brief overview of the Project that was reviewed by the Planning Commission. A complete project analysis is contained in the June 17, 2008 Agenda Report (Attachment 2).

The Project contains the following elements:

- 40 residential condominium units
- A total of 99,500-square-feet;
- 55-foot in height (partial four and five story); and
- At-grade level and four subterranean levels of parking containing 327 parking spaces.
- Commercial parking for Saks

The following entitlements were requested to allow the establishment of the Project as proposed:

- **Zoning Code Amendment (Zoning Overlay)** to allow:
 1. A portion of the property to be 5-stories and 55-feet in height in lieu of the existing 4-story and 45-foot limitation;
 2. A building length of 210-feet in lieu of the existing 175-foot maximum; and
 3. Commercial parking for Saks Fifth Avenue (170 spaces);
- **Zone Change to Apply Overlay Zone to Subject Property**
- **Planned Development Permit;** and
- **Vesting Tentative Tract Map** for residential condominium subdivision.

Staff recommends that, in addition to any other aspects of the Project, the Council provide input with respect to proposed overlay elements identified above: 1) additional height; 2) building length; and 3) replacement parking for Saks 5th Avenue. A brief discussion of each of these points follows.

ADDITIONAL HEIGHT

The Project site is comprised of 6 lots. These lots are classified within two separate Height Districts: the two most northern lots are within Height District C, which allows a maximum height of 55 feet and 5 stories; while the southern four lots are located within Height District B, which allows a maximum height of 45 feet and four stories.

The Project proposes to exceed the four-story and 45-foot height limitation on the two middle lots by 10-feet. The portion of the project located on the two middle lots is proposed to be 5 stories and 55 feet in height.

BUILDING LENGTH

Zoning regulations establish a maximum building length and width of 175 feet to limit a development's bulk and mass. The Project is proposed to have a building length of approximately 210 feet, but with more building modulation than required by the Zoning Code.

REPLACEMENT PARKING FOR SAKS 5TH AVENUE

The zoning code does not allow both residential uses and commercial parking uses to be located within the R4-P zoning district. The site is currently developed with a surface parking lot containing 121 parking spaces which, as indicated by the Appellant, are utilized by patrons of the Saks Fifth Avenue Department Store and "others". While including these parking spaces within the proposed Project seems worthwhile, it is unclear exactly how the spaces will be utilized. Staff recommends that, as part of its Project revisions, the Applicant submit information as to how the commercial parking spaces will be used, whether by Saks 5th Avenue patrons, employees, area residents, or other entities.

AD HOC COMMITTEE OF THE CITY OF BEVERLY HILLS CITY COUNCIL

An Ad Hoc meeting with the Appellant was held on May 20, 2008 and on June 12, 2008. In broad terms the Ad Hoc Committee discussed various aspects of the proposed project and requested a meeting involving the Planning Commission Subcommittee of the City Council along with the Chair and the Vice-Chair of the Planning Commission to further discuss the project. At this meeting, which was held on July 10, 2008, the Subcommittee reached consensus on the following issues:

- Architectural Design: The proposed architectural design of the project should be re-studied. The design should be compatible with and complement the existing multi-family developments in the project vicinity.
- Grade Level Parking: The at-grade parking level should be eliminated and all parking located underground. The existing design results in a blank wall which begins at the sidewalk level and extends upwards over ten-feet in height across the entire length of the building along both Peck and Camden Drives. Removal of this parking level would allow the front doors of residential units to be located at grade, resulting in more residential look and feel to the building and while providing greater pedestrian experience along both street frontages.
- Building Mass: Articulation and building breaks should be incorporated to soften the building's bulk and mass.
- Ingress/Egress: Additional study is needed regarding the Project's proposed ingress/egress points with the following guidelines: existing commercial access points should be maintained and separate access for residents is preferable.
- Replacement Parking for Saks 5th Avenue: Locating the existing surface parking spaces within the Project was not opposed, but clear separation between commercial and residential parking spaces and a well-designed ingress/egress plan would be needed.
- Alley Vacation: Not against alley vacation in principle. This area should be incorporated into an overall project design that is compatible with existing built environment.

- Height: Given location approximate to 85-foot in height buildings fronting along Wilshire, additional height could be considered, provided it was compatible with overall revised building architecture and did not result simply result in a "birthday cake" effect, where each additional story is stepped back an equal distance on all sides from the story below.

PUBLIC NOTICE AND COMMENTS

Public notice of this appeal was mailed to all property owners and residential tenants within a 300-foot radius of the property, and all owners of single-family zoned properties within 500 feet of the property. Additionally, notice was published in the *Beverly Hills Courier* on Friday, June 6, 2008. This hearing is continued from June 17, 2008.

FISCAL IMPACT

No General Fund and Program Fund expenditure would result from remanding, upholding or overturning the Planning Commission's action regarding this project.

ALTERNATIVE ACTIONS

In addition to the recommended action, the Council may consider the following:

1. Uphold the decision of the Planning Commission and deny the appeal (see Attachment 2 for complete appeal analysis);
2. Overturn the decision of the Planning Commission and grant the appeal, thereby approving the project. If the Council sought this course of action, certification of the Environmental Impact Report would be required.

 For

Anne Browning McIntosh, AICP

Approved By

ATTACHMENT 1

LETTER FROM APPELLANT REGARDING REVISIONS TO PROJECT

August 12, 2008

Client-Matter: 20388-609

David Reyes, Principal Planner
City of Beverly Hills
Department of Community Development
455 N. Rexford Drive Room G-40
Beverly Hills, CA 90210

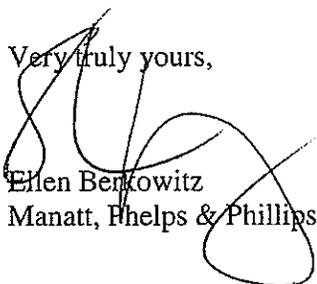
RE: RESIDENCES AT SAKS FIFTH AVENUE: PARCEL B PROJECT

Dear Mr. Reyes:

On August 5, 2008, Casden Properties ("Casden") met with two members of the City's ad hoc committee and City staff (collectively referred to herein as the "City") with regards to the proposed residential development of Parcel B (the "Project"). At this meeting, the City discussed, among other things, revising the overall design of the Project by changing the architectural style, adding more modulation/articulation and eliminating the at-grade parking component to create a more pedestrian-friendly environment on Camden and Peck Drives. The City also requested that Casden take a fresh look at the proposed ingress and egress of the parking garage to ensure the least amount of impact to the surrounding residential neighborhood. The City indicated that it would consider permitting additional height in select areas of the proposed building if sufficient articulation were incorporated into the Project's design.

Casden thanks the City for its input and will work on a redesign of the Project that incorporates the City's suggestions.

Very truly yours,


Ellen Berkowitz
Manatt, Phelps & Phillips, LLP

cc: Andrew J. Starrels, Esq.

41308513.1

ATTACHMENT 2

CITY COUNCIL AGENDA REPORT FROM JUNE 17, 2008



AGENDA REPORT

Meeting Date: June 17, 2008

Item Number: D-2

To: Honorable Mayor & City Council

From: Anne Browning McIntosh, AICP, Interim Director of Community Development
David Reyes, Senior Planner

Subject: AN APPEAL FROM THE DECISION OF THE PLANNING COMMISSION DENYING A ZONING CODE AMENDMENT, VESTING TENTATIVE TRACT MAP, AND PLANNED DEVELOPMENT PERMIT TO ALLOW THE CONSTRUCTION OF A MULTI-FAMILY RESIDENTIAL PROJECT WITH 40 CONDOMINIUM UNITS LOCATED AT 120 PECK DRIVE, 125 SOUTH CAMDEN DRIVE AND 133 SOUTH CAMDEN DRIVE.

Attachments:

1. Appeal to City Council
2. Planning Commission Resolution
3. Appellant's Proposed Overlay Zone
4. Project Plans and Tentative Map (under separate cover)

RECOMMENDATION

Staff recommends that the City Council uphold the Planning Commission decision and deny the appeal.

INTRODUCTION

On March 13, 2008, the Planning Commission denied the project known as the "Residences at Saks Fifth Avenue," a mixed-use development proposed on two separate, adjacent parcels (Parcels A and B) (See Attachment 2, Planning Commission Resolution No. 1509).

The project on **Parcel A** proposed the following:

- 20 residential condominium units;
- 12,000 square feet of ground floor commercial floor area;
- A total of 87,600 square-feet of combined residential and commercial floor area;
- 85-feet in height (seven-stories); and

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• Four levels of subterranean parking containing 70 parking spaces.
The project on **Parcel B** proposed the following:

- 40 residential condominium units
- A total of 99,500-square-feet;
- 55-foot in height (partial four and five story); and
- At-grade level and four subterranean levels of parking containing 327 parking spaces.
- Commercial parking for Saks

Casden Properties LLC, (the "Applicant" and "Appellant"), has submitted two entitlement applications to the City, one which included the development of Parcels A and B together and one for the Parcel B project only. Both applications were denied by the Planning Commission. The Appellant is only appealing the Planning Commission's denial of the **Parcel B** project. The Planning Commission's denial with respect to the Parcel A project is final and was not appealed. The Appellant sites two main reasons that the denial should be overturned and the project approved, as described in the "Appeal Issues," below.

DISCUSSION

Pursuant to BHMC Section 1-4-106, the appeal hearing shall be de novo in that an independent reexamination of the matter shall be made. In this regard, the report includes an analysis of both the Project and the Appeal.

PROJECT ANALYSIS

The Applicant's has requested the following entitlements to allow the establishment of the Parcel B project as proposed:

- **Zoning Code Amendment (Zoning Overlay)** to allow:
 - A portion of the property to be 5-stories and 55-feet in height in lieu of the existing 4-story and 45-foot limitation;
 - A building length of 210-feet in lieu of the existing 175-foot maximum
 - Commercial parking for Saks Fifth Avenue (170 spaces)
- **Zone Change to Apply Overlay Zone to Subject Property**
- **Planned Development Permit;** and
- **Vesting Tentative Tract Map** for residential condominium subdivision.

General Plan

The Land Use Element designates the subject property for High-Density Multi-Family Residential land uses. This designation allows for a maximum density of 50 dwelling units per acre and a maximum height of 60 feet. The component of the Project located on Parcel B is a multi-family residential development containing 40 condominium units with a maximum height of 55-feet. As such, the proposed structure on Parcel B does not conflict with the General Plan

Zoning Code

As proposed, the Project does not comply with the zoning regulations of the Beverly Hills Municipal Code ("BHMC"). Specifically, the Project does not comply with existing development regulations relating to its proposed use, height and massing. In order to

permit such deviations, the Appellant requests a Zoning Code Amendment in the form of a Zoning Overlay. These deviations are identified in the Chart below.

PROJECT COMPONENT	CODE REQUIREMENT	PROPOSED	COMPLIES
<i>Use</i>	Residential <u>or</u> Commercial Parking	Residential <u>and</u> Commercial Parking	NO
<i>Height</i>	Four Stories / 45-feet	Five Stories / 55-feet (for the two middle lots)	NO
<i>Massing</i>	Maximum 175-foot building length or width	210 foot building length.	NO

The Parcel B development site is comprised of 6 lots. These lots are classified within two separate Multi-Family (R-4) Zones and two Height Districts: the two most northern lots are located in a Multi-Family Residential-Parking (R-4-P) Zone and within Height District C, which allows a maximum height of 55 feet and 5 stories; while the two middle lots are located within the R-4-P Zone and Height District B, which allows a maximum height of 45 feet and four stories. The two most southern lots are located in the Multi-Family Residential (R-4X2) Zone and are also within Height District B.

The Project proposes to exceed the four-story and 45-foot height limitation on the two middle lots. The portion of the project located on the two middle lots is proposed to be 5 stories and 55 feet in height. In addition, the portion of the Project located within the R-4-P zone would contain commercial parking spaces and residential dwelling units. Mixed commercial and residential uses are not permitted within this zoning district. Finally, the underlying R-4 zone establishes a maximum building length and width of 175 feet. The component of the Project located on Parcel B is proposed to have a building length of approximately 210 feet. These deviations from existing regulations are identified below:

APPEAL ISSUES

Pursuant to BHMC Section 10-3-3908, in recommending approval of a Zoning Amendment to the City Council, the Planning Commission must find that the amendment is required for the public interest, health, safety, morals, peace, comfort, convenience, or general welfare. The Appellant has based their appeal on two points: first, that the Planning Commission did not review the Parcel B project independent from the Parcel A project; and second, that the Project would result in a number of public benefits and thereby serves the public interest and warrants approval.

With respect to an independent Parcel B project, the Appellant contends that the Planning Commission improperly based its decision to deny the Project on the belief that its approval could not be separated from the project proposed for Parcel A. The Appellant further cites a number of reasons that the Parcel B project is separate and independent of the Parcel A project, including: 1) two separate applications were submitted, one for Parcel A and one for Parcel B; and 2) The Environmental Impact Report analyzed both projects independently.

With respect to the public benefits issue, the Appellant asserts that the Project would result in a number of public benefits and thereby warrants the establishment of an

overlay zone to deviate from existing development standards. The Appellant states that the following public benefits would be derived from the Project:

1. Additional housing without displacing existing commercial or residential uses;
2. Generation of property and other taxes, Quimby fees, development fees and other revenue;
3. With respect to parking, the Project provides:
 - ancillary parking to support the Saks Fifth Avenue Department Store;
 - additional parking for customers of a future development on Parcel A;
 - opportunity for public parking for the residential neighbors during off-hours to help alleviate the City's parking shortage
4. Mitigation of noise and aesthetic impacts compared to surface parking or above ground parking structure;

APPEAL ANALYSIS

As indicated above, the Appellant had previously submitted two projects, one which included the development of Parcels A and B together, and one that included the development of Parcel B only. The Appellant asserts that the Commission denied the Parcel B Project because it was a part of the Parcel A mixed-use project fronting on Wilshire Boulevard. The Appellant further asserts that the Planning Commission erred in its determination because the establishment of the Project would result in a number of public benefits thereby warranting approval of the zoning amendment.

The Planning Commission did not deny the Project because it could not be separated from the Parcel A Project. The Planning Commission exercised their discretionary powers and determined that the proposed deviations from existing standards in the form of a zoning amendment do not serve the interests of the public or the general welfare. The Planning Commission denied the project because:

1. The Project does not comply with the City's Zoning Code:
 - a. The Project's proposed ***uses, massing*** and ***height*** deviate from existing development regulations; and
2. The Planning Commission could not support the findings necessary to recommend approval of the requested Zoning Amendment to the City Council.

The Planning Commission recognized and acknowledged that the Parcel B project is separate and unique from the Parcel A project. The Planning Commission considered the Parcel B project separate from the Parcel A Project. The Planning Commission found that portions of the Project, as proposed, would be 5 stories and 55-feet in height in lieu of existing height limits of four stories and 45-feet. In addition, the Project proposed a building length of 210 feet, exceeding the existing restriction of buildings over 175 feet in length which is intended to regulate the massing of development within multi-family zoning districts. With respect to the proposed combination of residential and commercial (parking) land uses, the Commission acknowledges the value of mixed-use development in a location that is compatible with and designed to accommodate such uses. However, as proposed, it is not clear what commercial properties would utilize the parking and how the parking structure would operate. The existing zoning regulations

permit the desired residential development of the subject property. In addition, the existing development standards relating to height and massing are intended to ensure that future development is of a compatible scale to the existing built environment. As a result, the Vesting Tentative Tract Map and Planned Development Permit, as proposed, were not consistent with the City's Zoning ordinances and were, therefore, denied on that basis.

The City's existing multi-family development regulations are meant to provide compatibility between new projects and the existing built environment. Although both the Commission and staff acknowledge that an Overlay Zone can sometimes be an effective planning tool, the establishment of an Overlay Zone as a means to deviate from the City's zoning standards for the proposed development does not serve the public interest in the instant situation. In addition, the Planning Commission concluded that there were elements of the Parcel B project that related to the Parcel A Project, such as the proposed parking layout, which is intended to serve the residents of Parcel B, Saks Fifth Avenue patrons and unknown uses on Parcel A. Notwithstanding the identified land use concerns resulting from the inconsistencies with development regulations, the Commission concurred with staff that the Project was a poor design given the influence of the commercial parking proposed for a future Parcel A Project. It was also noted that although separate applications were submitted by the applicant to develop the Parcel B project independent of the Parcel A project, separate plans were not submitted – only one set of development plans were submitted and they identify both the Parcel B project and the Parcel A project together as a single joint project.

With respect to public benefits, it is important to note that many of the public benefits identified by the Appellant that could result from the proposed project could also be realized by a code compliant project. In recommending approval of a Zoning Amendment to permit deviations from existing development regulations, the Planning Commission must find that the amendment is required for the public interest, health, safety, morals, peace, comfort, convenience, or general welfare.

The Appellant's stated public benefits of: additional housing stock; tax generation; and noise and aesthetic mitigation would also result from the establishment of a code compliant residential project and therefore do not warrant amending the zoning code. The Appellant also contends that additional public benefit would result from the project in terms of parking, because, as proposed, the Project would provide: 1) ancillary parking to support the Saks Fifth Avenue Department Store; 2) parking for customers of a future development on Parcel A; 3) opportunity for public parking for the residential neighbors during off-hours to help alleviate the City's parking shortage in this area.

Ancillary Saks Fifth Avenue Parking

The zoning code does not allow both residential uses and commercial parking uses to be located within the R4-P zoning district. The site is currently developed with a surface parking lot containing 121 parking spaces which, as indicated by the Appellant, are utilized by patrons of the Saks Fifth Avenue Department Store and "others". While including these parking spaces within the proposed Project may be worthwhile, it is unclear exactly how the spaces are and will be utilized. These spaces are not required by the City's zoning code and a parking demand study has not been submitted by the Appellant demonstrating that these spaces are needed by the Saks operation. While neither staff nor the Commission dismissed the notion of mixed-use parking in theory, there is not substantial evidence in the record indicating that allowing commercial

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parking within the proposed development is required for the public interest, health, safety, morals, peace, comfort, convenience, or general welfare.

Parking for Parcel A and Residential Neighbors

Generally, it has been City policy to require new developments to provide adequate parking to satisfy the parking needs generated by the use. In this case, the Appellant contends that providing parking for a future development on Parcel A would result in a public benefit. Since the Applicant is not currently proposing a development on Parcel A, neither staff nor the Planning Commission has had the opportunity to evaluate the need or benefit that might be derived from providing parking within this project to satisfy the parking requirements for some unknown development that may eventually be proposed on Parcel A. Similarly, it is unknown whether residential neighbors currently require additional spaces or how these neighbors might be able to utilize parking within a parking structure on Parcel B. The Appellant has not submitted a proposed parking operations plan addressing these issues to either staff, the Commission or the Council as part of this appeal.

At bottom, the Commission did not find that deviations from existing development standards in the form of a zoning amendment was required to serve the public interest, health, safety, morals, peace, comfort, convenience, or general welfare. The Appellant asserts that an amendment to the zoning code is required to allow the City to enjoy public benefits that would result from the implementation of the project as proposed. As outlined herein, the majority of the project's public benefits identified by the Appellant would also be realized from a code-compliant project absent a zoning amendment. Further, with respect to providing commercial parking within the development, there is not substantial evidence in the record indicating that allowing such parking is required for the public interest, health, safety, morals, peace, comfort, convenience, or general welfare.

ENVIRONMENTAL DETERMINATION

The Project has been environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000, et seq. ("CEQA"), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, et seq.), and the City's Local CEQA Guidelines. The City prepared an initial study and, based on the information contained in the initial study, concluded that there was substantial evidence that the Project might have a significant environmental impact on several specifically identified resources. Pursuant to Guidelines Sections 15064 and 15081, and based upon the information contained in the Initial Study, the City ordered the preparation of an environmental impact report (the "EIR") for the Project to analyze the Project's potential impacts on the environment. Staff has received public comment regarding the EIR and they are attached to this report. However, pursuant to Guidelines Section 15061(b)(4), a project that is denied or rejected by the City is exempt from the requirements of CEQA. Accordingly the Planning Commission did not adopt or certify the EIR in connection with this Project. At the Council's direction, staff can prepare a Final EIR.

AD HOC COMMITTEE OF THE CITY OF BEVERLY HILLS CITY COUNCIL

An Ad Hoc meeting with the Appellant was held on May 20, 2008 and on June 12, 2008. In broad terms the Ad Hoc Committee identified issues with the project design and inquired about whether or not a Development Agreement had been proposed.

Meeting Date: June 17, 2008

Representatives for the Appellant advised that a preliminary Development Agreement was currently being drafted and that work on a redesigned project was also underway. Given the fact that state law requires the Planning Commission to hold a public hearing on any Development Agreement and that they did not have the opportunity to provide input on a re-designed project, the Ad Hoc Committee indicated that the proper course of action may be a remand to the Planning Commission.

PUBLIC NOTICE AND COMMENTS

The Project noticed to all property owners and residential tenants within a 300-foot radius of the property, and all owners of single-family zoned properties within 500 feet of the property. The notice of proposed project and public hearing was mailed and published in the *Beverly Hills Courier* on Friday, June 6, 2008. As of this writing, staff has not received any comments regarding this notice.

FISCAL IMPACT

No General Fund and Program Fund expenditure would result from upholding or overturning the Planning Commission's denial of this action.


Anne Browning McIntosh, AICP
Approved By

ATTACHMENT 1
APPEAL TO CITY COUNCIL

**APPEAL PETITIONS MUST BE FILED WITH THE CITY CLERK'S OFFICE WITHIN
14 CALENDAR DAYS AFTER THE DATE OF THE DECISION**

APPEAL TO City Council COMMISSION OR CITY COUNCIL

PLEASE TYPE OR PRINT CLEARLY IN BLACK INK

March 27, 2008

Date

In accordance with the appeals procedure as authorized by the provisions of the Beverly Hills Municipal Code, the undersigned hereby appeals from the decision of the Planning Commission (Official, Board or Commission involved) rendered on March 13, 2008 ; which decision consisted of: The grounds submitted for this appeal are as follows: **(WARNING: State all grounds for appeal. Describe how decision is inconsistent with law. Use extra paper if necessary.)**

This is the second part of the appeal filed on March 24, 2008. See attached for more details.

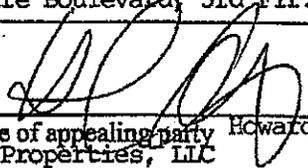
The undersigned discussed the decision being appealed with:

David Reyes, Senior Planner on March 24, 2008
(Department Head(s) Involved) Date

It is requested that written notice of the time and place for the hearing on this appeal before the City Council be sent to:

Howard Katz, Casden Properties LLC, 9090 Wilshire Boulevard, 3rd Flr., Beverly Hills, CA
Name Address 90211

RECEIVED
CITY OF BEVERLY HILLS
2008 MAR 27 P 3:53
CITY CLERK'S OFFICE


Signature of appealing party Howard Katz
Casden Properties, LLC

9090 Wilshire Boulevard, 3rd Floor

Address Beverly Hills, CA 90211

(310) 385-5064 FAX: (310) 385-5074

Telephone Number & Fax Number

Fee Paid Included in (For City Clerk's use) DATE RECEIVED
original fee of \$4,730

LOG NO. 22X08A Written Notice mailed to appellant:

Copies to: City Council, City Manager, City Attorney, Planning Department
Involved Department

ATTACHMENT A

On behalf of Casden Properties LLC (the "Applicant") and pursuant to the provisions set forth in the Beverly Hills Municipal Code ("BHMC"), we hereby appeal the Planning Commission's decision of Thursday, March 13, 2008 (the "Decision") to deny the Applicant's request to approve a Zoning Code Amendment to create an Overlay Zone, Vesting Tentative Tract Map, and Planned Development Permit to allow the construction of a multi-family residential project with 40 condominium units for property located at 120 Peck Drive, 125 South Camden Drive and 133 South Camden Drive ("Parcel B"). Additionally, although not addressed by the Planning Commission at the hearing, we reaffirm the Applicant's request to vacate the north/south alley between Peck and Camden Drives on Parcel B. (The project on Parcel B and corresponding Zoning Code Amendment, Vesting Tentative Tract Map, Planned Development Permit and Alley Vacation requests are collectively referred to herein as the "Parcel B Project").

The application for the Parcel B Project requested approval to develop 40 residential condominium units. The Applicant incorporated an ancillary commercial parking component in an effort to help meet the City's retail parking needs and ensure that such parking does not overflow into adjacent residential areas. Some of the ancillary parking was intended to serve a future development on Parcel A¹, and some was intended to continue serving as additional parking for Saks Fifth Avenue. Should the City Council ultimately decide that some or all of the ancillary commercial parking is not appropriate for the Parcel B Project, the Applicant respectfully requests that the City Council nonetheless approve the residential project – the main component of the Parcel B Project.

At the hearing, the Planning Commission did not publicly discuss its justification for denying the Applicant's request for the Parcel B Project; thus, the Applicant can only speculate as to the Planning Commission's rationale based on the information contained in the Staff Report for the Planning Commission Meeting on March 13, 2008 (the "Staff Report") and the Draft Resolution for the Parcel B Project (the "Parcel B Draft Resolution") attached to the Staff Report.² Accordingly, the Applicant's grounds for submitting this appeal are as follows:

¹ Parcel A, also owned by the Applicant, is located at 9588 Wilshire Boulevard. The Applicant requested various entitlements for a mixed use project on Parcel A, filed contemporaneously with the requests for the Parcel B Project. The Parcel A requests were also heard contemporaneously with the Parcel B Project; the Planning Commission also denied the requested entitlements for Parcel A. The Planning Commission's decision on Parcel A, described in more detail below, is not the subject of this appeal.

² Please note that the Planning Commission did not adopt the Parcel B Draft Resolution. By appealing the action of the Planning Commission denying the Parcel B Project, the Applicant does not intend to waive, and hereby reserves, all rights inuring to the Applicant as a result of the Planning Commission's failure to adopt the Parcel B Draft Resolution. Moreover, the Draft Resolution denying the application for Parcels A and B incorrectly states that Parcel B consists of two lots in the R-4-P Zone and four lots in the R-4X2 Zone; it should have stated that Parcel B

A. The Planning Commission improperly based its decision to deny the Parcel B Project on the mistaken belief that approval of the Parcel B Project could not be separated from the project proposed for Parcel A.³ To the contrary, the Parcel B Project is separate and distinct from the project proposed for Parcel A because: (1) pursuant to direction from Planning staff, the Parcel B Project was submitted under a separate application as a stand-alone project to *enable the City to consider each Parcel independently and allow the City to approve the Parcel B Project even if it denies the project proposed for Parcel A*; (2) Planning staff directed the City's environmental consultant to evaluate the Parcel B Project as a stand-alone project without a commercial parking component; (3) the December 2007 Draft Environmental Impact Report for the Residences at Saks Fifth Avenue ("Revised Draft EIR") concluded that the Parcel B Project created no significant traffic or circulation impacts; and (4) the Planning Commission could have approved the Parcel B Project as submitted or with conditions, including a condition to reduce or eliminate the ancillary commercial parking component.

B. The Parcel B Project serves the public interest, health, safety, morals, peace, comfort, convenience, and general welfare as provided in BHMC Section 10-3-3908. The Staff Report and Parcel B Draft Resolution state that the proposed Zoning Amendment to create an Overlay Zone is not in the best interest of the public or the general welfare.⁴ The Parcel B Project, however, is a well thought-out development plan, sensitive to the adjacent residential uses and superior from a land use perspective to that which is permitted by right for Parcel B under the BHMC. Further, the Parcel B Project provides for a number of public benefits not recognized or discussed by the Planning Commission including, but not limited to, the following:

1. Provides additional housing without displacing existing commercial or residential uses to help meet the City's housing needs;

2. Generates additional revenue streams for the City in the form of real property and other taxes, Quimby fees, development fees and other revenue;

3. (i) Provides ancillary parking in an enclosed underground structure to support the Saks Fifth Avenue department store ("Saks"), a major revenue source for the City, (ii) ensures that Saks parking does not overflow into the adjacent residential areas and (iii) mitigates noise and aesthetic impacts typically associated with surface parking and above-ground parking structures;

consists of four lots in the R-4-P Zone and only two lots in the R-4X2 Zone. The Applicant reserves the right to amend this appeal upon receipt of a final resolution signed by the Planning Commission that denies the Parcel B Project.

³ Statements made by Jonathon Lait, City Planner, at the Hearing.

⁴ See Staff Report, p. 10; see also Parcel B Draft Resolution, p. 3.

4. Provides additional parking for customers of a future development on Parcel A;
5. Provides the opportunity for public parking for the residential neighbors during off-hours to help alleviate the City's parking shortage;
6. Incorporates a large outdoor courtyard on top of the podium deck 35 to 45-feet in width; in lieu of the 23-foot wide building separation required by the BHMC Section 10.3.2809, to better control the mass and bulk of the proposed building and allow views through to the north;
7. Incorporates approximately 200% more modulation and articulation than required by the BHMC;
8. Incorporates a significant buffer in the form of a 45-foot tall stepdown at the southern end of the building and approximately 34-feet of separation between the proposed building and the residences to the south; and
9. Dedicates to the City the temporary east/west alley south of Parcel B and expands the width of the alley to allow traffic to safely circulate from the north/south alley east onto Camden Drive.

For these reasons, which are more particularly described below, the Applicant respectfully requests that the City Council approve the Parcel B Project as proposed and certify the Environmental Impact Report. In the alternative, if the City Council believes that ancillary commercial parking for a future development Parcel A is not appropriate on Parcel B, the Applicant respectfully requests that the City Council approve the Parcel B Project to include all parking required for the residents and guests of Parcel B and the Saks department store, as well as the requested Zoning Code Amendments. Should the City Council not grant one or more of these requests, we ask that the City Council approve the Parcel B Project subject to conditions, vacate the north/south alley, and certify the Environmental Impact Report.

I. BACKGROUND.

In 2003, the Applicant submitted a single application to develop a mixed-use commercial and residential project on Parcel A (the "Parcel A Project") and the Parcel B Project. Consistent with City staff's recommendation, the Applicant requested, among other things, approval of an Overlay Zone for each Parcel to effectuate the Zoning Code Amendment. In 2005, City staff advised the Applicant to split the application into two separate applications. Accordingly, the applicant filed an application to develop Parcels A and B jointly and an application to develop Parcel B by itself, to enable the City to consider Parcel B independently. This structure would allow the City to approve the

Parcel B Project even if it ultimately denied the Parcel A Project or wanted to study other appropriate land uses for Parcel A further.

In August 2006, the Applicant presented the Parcel A Project, Parcel B Project and circulated Draft EIR to the Planning Commission. At that hearing, the Planning Commission expressed its opposition to the uses proposed for the Parcel A Project and *directed staff to work with the environmental consultant to revise and expand the "Alternatives" section of the Draft EIR.* Specifically, the Planning Commission asked that the environmental consultant analyze other potential uses for Parcel A in some detail, with the goal of identifying one of these alternatives as the primary project for Parcel A. The Planning Commission asked staff to return to it with a Revised Draft EIR when that analysis had been completed. At that hearing, little discussion ensued with regard to the Parcel B Project.

We expected that the Parcel A Project would be presented to the Planning Commission at a second hearing, with the new Alternatives section, in relatively short order. (The Parcel B Project would also be presented to the Planning Commission at that same second hearing, in the same form as it had been at the first hearing, as the Planning Commission did not request any changes or additional analysis for the Parcel B Project.) However, because a significant amount of time had passed since the traffic study was prepared for the original Draft EIR, the City felt that a new traffic study should also be prepared, which triggered the revision of several other sections of the Draft EIR. For more than a year, the environmental consultants and staff worked on the Revised Draft EIR, which was finally recirculated for public comment on December 20, 2007. Almost five years after the original application was submitted, *the Planning Commission summarily denied the Applicant's request for both the Parcel A Project and the Parcel B Project without discussion at the March 13, 2008 Hearing.* This appeal relates only to the Planning Commission's denial of the Parcel B Project.

II. THE PARCEL B PROJECT IS SEPARATE AND DISTINCT FROM THE PARCEL A PROJECT AND PROVIDES NUMEROUS PUBLIC BENEFITS CONSISTENT WITH THE REQUIRED FINDINGS OF BPMC SECTION 10-3-3908.

As indicated above, there is no record of the Planning Commission's justification for denying the Applicant's request for the Parcel B Project; thus, the Applicant can only speculate as to the Planning Commission's rationale based on the information contained in the Staff Report and the Parcel B Draft Resolution.⁵ Notwithstanding the lack of

⁵ Vice Chairperson Reims made the only comment with respect to the Parcel B Project, stating that she believes Parcel B is a mixed-use project that requires a General Plan Amendment. Vice Chairperson Reims, however, is incorrect as the General Plan explicitly allows "parking for commercial uses . . . located on residential parcels specifically designated for such transitional use between commercial and residential uses" and does not prohibit a mix of ancillary parking and residential uses on these same parcels. (See Land Use Element, p. 6.) Thus, as recognized by Planning staff in the Staff Report, the Parcel B Project is consistent with the General Plan.

discussion, the Planning Commission apparently believed that Parcel B Project was inextricably related to the Parcel A Project and was not in the best interests of the public or general welfare. However, as discussed below, the City Council should approve the Parcel B Project because it is separate and distinct from the Parcel A Project and provides numerous public benefits consistent with BHMC 10-3-3908.

A. THE PLANNING COMMISSION IMPROPERLY BASED ITS DECISION TO DENY THE PARCEL B PROJECT ON THE MISTAKEN BELIEF THAT PARCEL B COULD NOT BE SEPARATED FROM PARCEL A.

As noted, the Planning Commission denied the Parcel B Project, in part, due to the mistaken belief that the decision to approve Parcel B could not be separated from Parcel A, based on the following statements in the Staff Report: "the Plans proposed for Parcel B by itself are the same as those contemplated for the development of both parcels together. As a result, the proposed ingress, egress and internal circulation are not appropriate for a stand alone project on Parcel B."⁶ Further, staff advised the Planning Commission that Parcel B "relates to the Commission's deliberation on Parcel A" and approval of the Parcel B Project may not be appropriate "given the significant design and relatedness of Parcel A."⁷

Contrary to Planning staff's statement, however, the Parcel B Project was designed to be separate and distinct from the Parcel A Project in order to enable the City to consider the Parcel B Project independently, so that even if the City denied the Parcel A Project, it could still approve the Parcel B Project. The Applicant submitted the Parcel B Project as a stand-alone project under a separate application. In fact, City staff itself recommended the projects be split into two separate applications to enable the City to approve the Parcel B Project independent of the Parcel A Project. Further, the Draft EIR analyzed Parcel B as a separate stand-alone project. Importantly, the Draft EIR evaluated the Parcel B Project without the ancillary commercial parking component for the Parcel A Project and concluded that there were no significant traffic or circulation impacts.

Lastly, and most importantly, the Planning Commission could have either recommended approval of the Parcel B Project as submitted or recommended approval of the Parcel B Project with conditions, including a condition to reduce or eliminate the ancillary component for Parcel A or Saks. In fact, the Planning Commission did not even publicly consider an option to condition the Parcel B Project. In failing to do so, the Planning Commission did not provide the same consideration to the Parcel B Project it has provided to nearly all other projects in the City, as required by principles of law and equity. For example, the Planning Commission has recently made significant changes to projects as originally proposed, including but not limited, to (1) eliminating entire

⁶ Staff Report, pp. 3, 9.

⁷ Statements made by Jonathon Lait, City Planner, at the Hearing.

buildings, (2) significantly reducing square footage and residential unit and hotel room counts, (3) reducing and increasing height, and (4) relocating/repositioning the location of buildings and uses.

Clearly, the changes mentioned above are much more substantial than the simple removal of the commercial parking component of the Parcel B Project. The Planning Commission did not require these other projects to submit new applications for the revised projects. The Planning Commission has made changes to development plans in the form of conditions to projects throughout the City and continues to do so. The Planning Commission did not, however, accord the same treatment to the Parcel B Project proposed by the Applicant.

B. PURSUANT TO BHMC SECTION 10-3-3908, PUBLIC INTEREST, HEALTH, SAFETY, MORALS, PEACE, COMFORT, CONVENIENCE, OR GENERAL WELFARE REQUIRES THE CITY TO APPROVE THE PARCEL B PROJECT.

As recognized in the Staff Report, the Parcel B Project – a multi-family residential development containing 40 condominium units with a maximum height of 55-feet – is consistent with the General Plan.⁸ The Parcel B Project design is a well thought-out development plan, sensitive to the adjacent residential uses, superior from a land use perspective to that which is permitted by the BHMC for Parcel B and provides for a number of public benefits not recognized or discussed by the Planning Commission.

1. Ancillary Parking

The Staff Report states that the R-4-P Zone “permit[s] either commercial parking or residential development, but not both.”⁹ While this may have seemed logical at one time, we do not believe the City intended to preclude smart and responsible urban planning. In this circumstance, combining both commercial and residential parking on one site makes good zoning sense and is permitted by law in accordance with the City’s exercise of discretion. We therefore urge the City Council to take a practical approach to the parking proposed for the Parcel B Project. As proposed, the parking spaces under Parcel B would serve the residential use on Parcel B, ancillary parking use for a future development on Parcel A and replacement parking for the Saks department store. Importantly, the residential parking is physically separated from the commercial parking component and each parking use has its own separate parking area, drive aisles, and ingress and egress.

The R-4-P Zone permits multi-family dwellings and, if approved by the Planning Commission as part of a planned development, retail ancillary uses and ancillary parking

⁸ Staff Report, p. 7.

⁹ Staff Report, p. 8.

facilities.¹⁰ Accordingly, the BHMC would permit Parcel B to be developed with only a 45-55 foot above ground parking structure to be used to support the commercial uses on Wilshire Boulevard. Under the BHMC, Parcel B could also be developed with a 45-55 foot residential building. From an environmental and urban planning standpoint, it makes no sense to have only a commercial parking structure or residential uses on this site, but not both.

One of the stated objectives of the R-4-P Zone is to “ensure that there is an appropriate transition and buffer zone between commercial uses and residential uses.”¹¹ We question whether a 45-55 foot above-ground parking structure (allowed by right under the BHMC) or an asphalt parking lot as currently exists, is a better transition or buffer zone than a residential development at a similar height with underground ancillary parking in a single integrated structure. Parking the commercial customers in a subterranean garage will more effectively mitigate noise and aesthetic impacts typically associated with surface parking and above-ground parking structures. To be perfectly clear, this is not a mixed-use project as that term is commonly used. The ancillary parking use proposed is not a primary commercial or industrial use such as a retail store or office. We understand how that type of mixed-use may not be what the City wants at this location. What is proposed here, however, represents an ancillary use intended to support a nearby commercial use, hidden in an underground garage, that at the same time makes economically viable use of the land by providing residential housing. Moreover, we are not introducing a new ancillary use, as Saks customers have been parking on this site for many years. This mix of uses should be encouraged.

Even if this parking is not required for Saks, we do not understand why the City would want to displace it, or require that Parcel B be used only for Saks parking as it is now. The Staff Report and Parcel B Draft Resolution fail to recognize or acknowledge that the provision of ancillary commercial parking in an enclosed underground structure will support Saks, a major revenue source for the City, ensure that Saks parking does not spill over into the adjacent residential areas, while at the same time developing Parcel B with residential housing – housing that fits with the site’s residential zoning designation and provides a revenue producing asset for the City. Lastly, the City is tremendously underserved in both residential and commercial parking. The Parcel B Project is providing both and, under the current project description, could have additional parking spaces that can be used by the neighboring residential uses during off-hours if they so desire.

¹⁰ BHMC Section 10-3-1533.

¹¹ BHMC Section 10-3-1532.

2. Building Length

The Staff Report and Parcel B Draft Resolution state that the underlying R-4 Zone establishes a maximum building length of 175 feet and that Parcel B exceeds the maximum permitted building length on the north and south sides.¹² The proposed building on Parcel B, however, actually is comprised of two distinct buildings, separated by a large outdoor courtyard on top of the podium deck 35 to 45-feet in width connected by a 9-foot wide transparent breezeway at each level. This building break of between 35- and 45-feet actually is greater than the 23 feet that the Code requires and will more effectively control the mass and bulk of the proposed building. Only the podium deck – approximately 11 feet in height is connected, preventing technical compliance with the building break requirement, but otherwise meeting it in spirit. The podium deck is necessary for the internal circulation of the parking garage and, the location of the courtyard on top of the podium deck buffers the outdoor courtyard from the at-grade commercial loading dock and alley used by Barney's.

The building break provision was intended to control mass and bulk as viewed from the front yards – the areas that the public sees, which are in this case, the frontage along Peck and Camden Drives. The building length on Peck and Camden Drives, however, does not exceed 175 feet. It only exceeds 175 feet on the two side yards which do not have true street frontage, only alleys – areas that the general public does not see. There is also extensive landscaping around the perimeter of the building, approximately 200% more articulation than required by the BHMC, and varied rooflines to further break up the massing of the building. Accordingly, the proposed building is a much better design from a massing and overall aesthetic perspective than required by the BHMC.

3. Height

The Applicant is requesting additional height of 10 feet for a total height of 55 feet only for the middle two lots located in the R-4-P Zone Height District B (lots 59 and 66). Importantly, the portions of the proposed building located in the R-4-P Zone Height District C – which are the northern lots 58 and 67 closest to the commercial uses on Wilshire – and R-4X2 Zone Height District B – which are the southern lots 60 and 65 closest to the residential uses – are consistent with the existing height limitations set forth in the BHMC of 55 feet and 45 feet, respectively.

This additional height is necessary for the economic success of the project and is mitigated by a number of design features. As designed, the building “steps down,” meaning it is only 45-feet at its southern end close to the nearby residences. The proposed building then steps up to 55-feet for the middle two lots closer to Wilshire Boulevard. At 55 feet, the proposed building provides an effective transition to the

¹² Staff Report, p. 8; Parcel B Draft Resolution, p. 3.

Wilshire buildings, such as Barneys and Saks department stores, which are 85 feet in height – and the even taller buildings on the north side of Wilshire which are well over 100 feet in height. Further, there is approximately 34-feet of separation between the proposed building and the residences to the south due to the 14-foot side yard and the 20-foot alley, which will remain. Accordingly, the existing residences to the south of the building are actually even farther away than most buildings are from one another because of the alley separation. In fact, the 55-foot portion of the proposed building is over 60 feet away from the closest existing residences.

C. THE ALLEY VACATION REQUEST ALSO SHOULD BE APPROVED.

Should the City Council decide to approve the Parcel B Project, it only follows that it should also approve the vacation of the north/south alley that runs through the middle of Parcel B. Upon approval, the Applicant will officially vacate the north/south alley that runs through the middle of Parcel B, which has not been used for years and officially dedicate the east/west alley at the southern boundary of Parcel B. These changes are technical in nature and will facilitate the City's ability to perfect the alley behind Barney's at a later date.¹³ As a result of this dedication, the City will be able to expand the width of the east/west alley to allow traffic to safely circulate from the north/south alley east onto Camden Drive.

III. CONCLUSION AND REQUEST

Accordingly, the Applicant respectfully requests that the City Council approve the Parcel B Project as proposed because it is a stand-alone project, separate and independent from the Parcel A Project and provides numerous public benefits consistent with BHMC Section 10-3-3908. In the alternative, if the City Council believes that ancillary commercial parking for Parcel A is not appropriate on Parcel B, the Applicant respectfully requests that the City Council approve the Parcel B Project to include all parking required for the residents and guests of Parcel B and Saks department store, as well as the requested Zoning Code Amendments. Should the City Council not grant one or more of these requests, we ask that the City Council approve the Parcel B Project subject to conditions, vacate the north/south alley, and certify the EIR.

¹³ An east/west alley currently runs along the southern boundary of the Saks property between Peck and Camden Drives, providing access to the adjacent property owned by Barney's New York Department Store ("Barney's"). We understand that part of this alley is still owned by Barney's but is used by the general public for alley circulation. Additionally, part of this alley is owned by the City but is used by Barney's for a permanent ramp to its garage and valet pick-up and drop-off for its customers. We further understand that the portion of the alley owned by Barney's has been offered for dedication to the City but the City has never formally accepted and the portion of the alley owned by the City has not been formally vacated. This portion of the alley should be formally vacated to provide egress/ingress for the Parcel B Project, and to clean up title issues that have been unresolved for years.

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**APPEAL PETITIONS MUST BE FILED WITH THE CITY CLERK'S OFFICE WITHIN
14 CALENDAR DAYS AFTER THE DATE OF THE DECISION**

APPEAL TO City Council COMMISSION OR CITY COUNCIL

PLEASE TYPE OR PRINT CLEARLY IN BLACK INK

March 24, 2008
Date

In accordance with the appeals procedure as authorized by the provisions of the Beverly Hills Municipal Code, the undersigned hereby appeals from the decision of the Planning Commission (Official, Board or Commission involved) rendered on March 13, 2008; which decision consisted of: The grounds submitted for this appeal are as follows: *(WARNING: State all grounds for appeal. Describe how decision is inconsistent with law. Use extra paper if necessary.)*

See Attached.

The undersigned discussed the decision being appealed with:

David Reyes, Senior Planner on March 24, 2008
(Department Head(s) Involved) Date

It is requested that written notice of the time and place for the hearing on this appeal before the City Council be sent to:

Brady McShane, Esq. Manatt, Phelps & Phillips, 11355 West Olympic Blvd., Los Angeles, CA

Name Address 90064

RECEIVED
CITY OF BEVERLY HILLS
2008 MAR 24 P 4: 24
CITY CLERK'S OFFICE

Brady McShane on behalf of *Cardan Properties LLC*
Signature of appealing party Brady McShane
Manatt, Phelps & Phillips, LLP
11355 West Olympic Boulevard
Address Los Angeles, CA 90064

(310) 312-4386 Fax: (310) 996-7006
Telephone Number & Fax Number

Fee Paid \$4,730 (For City Clerk's use) DATE RECEIVED

LOG NO. 22X08 Written Notice mailed to appellant:

Copies to: City Council, City Manager, City Attorney, Planning Department
Involved Department

manatt
manatt | phelps | phillips

Brady R. McShane
Manatt, Phelps & Phillips, LLP
Direct Dial: (310) 312-4386
E-mail: BMcShane@manatt.com

March 24, 2008

Client-Matter: 20388-609

City Clerk
City of Beverly Hills
455 N. Rexford Drive, Room 190
Beverly Hills, CA 90210

**RE: APPEAL TO THE CITY OF BEVERLY HILLS PLANNING COMMISSION DECISION
TO DENY VESTING TENTATIVE TRACT MAP**

Dear City Clerk:

Casden Properties LLC (the "Applicant") will be appealing the Planning Commission's decision of Thursday, March 13, 2008 to deny its request to approve a Zoning Code Amendment to create an Overlay Zone, Vesting Tentative Tract Map, and Planned Development Permit (the "Decision") to allow the construction of a multi-family residential project with 40 condominium units for property located at 120 Peck Drive, 125 South Camden Drive and 133 South Camden Drive ("Parcel B"). Pursuant to the Notice of Decision issued by the Department of Community Development, the decision must be appealed in writing to the City Council within fourteen days from the date of the decision; the last day to file the appeal is March 27, 2008 before 5:00 p.m.

However, pursuant to Beverly Hills Municipal Code Section 10-2-205, "[t]he subdivider may appeal from any action of the planning commission with respect to a tentative map to the council as provided by section 66452.5 of the Government Code of the state. Such appeal and the hearing thereon shall be conducted in the manner provided by subsections (a) and (b) of section 66452.5 of the Government Code of the state." Government Code Section 66452.5(2) states that the appeal must be filed with the City Clerk "within 10 days after the action of the advisory agency from which the appeal is being taken." Accordingly, this letter appeals the Planning Commission's decision to deny Vesting Tentative Tract Map No. 54219 to the City Council, and constitutes our fulfillment of this requirement.

The detailed basis for this appeal will be set forth in the appeal of the Planning Commission's entire decision, to be filed on March 27th. In short, however, the Planning Commission based its decision to deny the Parcel B requests on Planning staff's erroneous advise that Parcel B had to be denied if the Commission were inclined to deny Parcel A. In fact, Parcels A and B are two entirely separate lots, for which separate applications were prepared, and separate environmental analysis conducted. Additionally, the Planning Commission erroneously found that approval of the requests for Parcel B would not be in the "public interest, health, safety, morals, peace, comfort, convenience, or general welfare," when in fact, there are a number of public benefits the project provides that the Planning Commission failed to recognize

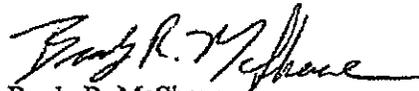
manatt
manatt | phelps | phillips

City Clerk
City of Beverly Hills
March 24, 2008
Page 2

or acknowledge. Because it did not approve the project on this basis, the Planning Commission also denied the vesting tract map request.

At noted above, in accordance with the requirements set forth in the BHMC and memorialized in the Notice of Decision, the Applicant's appeal of the Decision in its entirety will be filed with the City Clerk on or before March 27, 2008 at 5:00 p.m.

Very truly yours,



Brady R. McShane
Manatt, Phelps & Phillips, LLP

cc: Andrew J. Starrels, Esq.
Howard Katz

41220848.t

ATTACHMENT 2

PLANNING COMMISSION RESOLUTION NO. 1509

RESOLUTION NO. 1509

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS DENYING A REQUEST FOR A GENERAL PLAN AMENDMENT, A ZONING CODE AMENDMENT TO CREATE TWO OVERLAY ZONES, TWO VESTING TENTATIVE TRACT MAPS, AND TWO PLANNED DEVELOPMENT PERMITS TO ALLOW CONSTRUCTION OF A MIXED-USE PROJECT WITH 12,000 SQUARE FEET OF RETAIL/COMMERCIAL SPACE AND 60 RESIDENTIAL CONDOMINIUM UNITS FOR PROPERTY LOCATED AT 9588 WILSHIRE BOULEVARD, 120 PECK DRIVE, 125 S. CAMDEN DRIVE, AND 133 S. CAMDEN DRIVE (CASDEN SFA, LLC)

The Planning Commission of the City of Beverly Hills hereby finds, resolves, and determines as follows:

Section 1. Casden SFA, LLC, property owner (hereinafter referred to as the "Applicant"), has submitted applications requesting approval for a General Plan Amendment, a zoning code amendment to create two overlay zones, two Vesting Tentative Tract Maps to subdivide air rights, and two Planned Development Permits to allow construction of a mixed-use project with 12,000 square feet of retail/commercial space and 60 residential condominium units for property located on two development sites located at 9588 Wilshire Boulevard, 120 Peck Drive, 125 S. Camden Drive, and 133 S. Camden Drive (the "Project"). The project proposes the establishment of a mixed-use development over separate distinct parcels (Parcels A and B), which are separated by an existing alley. The proposed development on Parcel A includes an approximate 87,600 square-foot, 85-foot in height, seven-story mixed-use building containing 20 residential condominium units above 12,000 square feet of ground floor commercial floor area over four levels of subterranean parking containing 70 parking spaces. The proposed development on Parcel B includes an approximate 99,500-square-foot, 55-foot in height, partial

four and five story residential building containing 40 residential condominium units over one at-grade level and four subterranean levels of parking containing 327 parking spaces.

The Project includes the following specific applications:

- A request for a General Plan Amendment to allow residential uses and greater floor area ratio (FAR) in a commercial zone;
- A request for a zoning code amendment to create two zoning overlays: one on Parcel A to allow a mix of commercial and multi-family residential uses, with increased height and greater FAR; and one on Parcel B to allow a mix of commercial and multi-family residential uses, with increased height and greater massing than otherwise permitted by existing zoning regulations;
- A request to apply the two zoning overlays to the respective subject parcels;
- A request for two Vesting Tentative Tract Maps: one on Parcel A to subdivide the air rights on the subject property to allow the individual sale of 20 residential condominium units and a 12,000 square foot commercial space; and one on Parcel B to subdivide the air rights on the subject property to allow the individual sale of 40 residential condominium units; and
- A request for two Planned Development Permits: one on Parcel A to allow construction of a proposed mixed-use project with 12,000 square feet of commercial/retail space, and 20 residential condominium units; and one on Parcel B to allow construction of a proposed residential project with 40 residential condominium units and a mix of residential and commercial parking spaces.

Section 2. The Planning Commission held duly noticed public hearings to consider the Project and the EIR on August 10, 2006 and March 13, 2008. Evidence, both written and oral, was presented at said hearings.

Section 3. The Project site has a total area of 64,388 square feet, including both Parcels A and B. Parcel A is classified within the Commercial (C-3) Zone with a Commercial Retail Planned Development (C-R-PD) Overlay option. The C-R-PD Overlay provides alternative development standards for retail department stores. Since the Project does not involve a retail department store, the C-R-PD overlay standards are not applicable and the 2:1 floor area ratio and maximum 45-foot height limit of the underlying C-3 Zone would apply to development of this site. Parcel B is comprised of six individual lots located south of the first alley that runs parallel to Wilshire Boulevard behind Barneys of New York. The lots are separated by a north/south alley, with three lots on either side. These lots are classified within two separate Multi-Family (R-4) Zones: the two most northern lots are located in the Multi-Family Residential-Parking (R-4-P) Zone and within Height District C, which allows a maximum height of 55 feet and 5 stories; while the remaining four lots are located in the Multi-Family Residential (R-4X2) Zone and within Height District B, which allows a maximum height of 45 feet and 4 stories.

The site is located on the south side of the 9500 block of Wilshire Boulevard across from the central business district "Business Triangle" of the City. Both Parcels A and B are flat, paved with asphalt, and currently used for surface parking. Land uses immediately adjacent to Parcel A include Barneys New York department store to the east, a loading dock serving Barneys New York to the south, Saks Fifth Avenue department store to the west, and office and retail uses to the north. Land uses immediately adjacent to Parcel B include a mix of

single-family and apartment residences to the east, south, west, and Barneys New York department store to the north.

The Applicant proposes to construct a mixed-use development consisting of 12,000 square feet of ground floor and mezzanine level retail/commercial space and 20 residential condominium units on Parcel A. The building would be seven stories and 85-feet in height and contain a total of 87,600 square feet of floor area. The condominium units would range in size from 2,650 square feet to 5,320 square feet. The development would include a 1,704 square foot fitness center and 70 parking spaces located in four levels of subterranean parking. The 70 parking spaces would be reserved for residential tenants and guest of the condominium units, while parking for the commercial component would be provided on Parcel B. The applicant proposes to construct a 55-foot in height, 99,540 square foot residential building containing 40 condominium and townhouse units ranging in size from 1,840 to 4,250 square feet on Parcel B. A total of 327 parking spaces are proposed in an at grade above four (4) subterranean level parking structure. The total parking proposed for Parcel B includes 170 parking spaces for use by adjacent property; 35 spaces for the commercial component of Parcel A, and 124 spaces for the condominium residents and their guests.

Section 4. The Beverly Hills Municipal Code provides that the Planning Commission may recommend adoption of proposed amendments to the General Plan or the Zoning Ordinance provided the Planning Commission finds that the public interest, health, safety, morals, peace, comfort, convenience, or general welfare requires the proposed General Plan Amendment or Zoning Code Amendment. The Planning Commission has considered the General Plan Amendments and the Zoning Code Amendments (collectively the "Legislative Amendments") requested by the Applicant for Parcels A and B. As more fully detailed below,

the Planning Commission finds that the Legislative Amendments, as proposed, are inappropriate for the Project site, incompatible with adjacent development, and not in the best interests of the public or the general welfare and, for those reasons, hereby denies the request for the proposed amendments to the General Plan and Zoning Code.

4.1 The Planning Commission finds that the land uses, as proposed, are not appropriate for the site. Parcel A of the subject property is located across from the City's Business Triangle, which is recognized throughout the world for its upscale retail and dining establishments. Parcel A has previously been acknowledged by the City as a desirable location for the establishment of commercial uses and has established regulations granting additional height and FAR in conjunction with the development of certain commercial uses. Its development with a commercial use would further enhance the City's tax revenues compared to a residential use. The development of this site with a residential use would be incompatible with the commercial nature of the surrounding built environment and would detract from the City's tax revenues.

4.2 Although the Commission believes that mixed-use can be an effective planning tool under the proper circumstances, the Project is incompatible with land use in the area and mixed use would not be appropriate on the subject site.

Section 5. The Planning Commission considered the accompanying requests for Vesting Tentative Tract Maps and Planned Development Permits to allow construction of the proposed Project. However, because of the Planning Commission's denial of the request for a General Plan Amendment and a Zoning Code Amendment as discussed above, the project contemplated by these related applications would not be consistent with the General Plan or in conformance with the City's Zoning ordinances, and are therefore denied on that basis.

Section 6. The Project has been environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000, et seq. ("CEQA"), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, et seq.), and the City's Local CEQA Guidelines. The City prepared an initial study and, based on the information contained in the initial study, concluded that there was substantial evidence that the Project might have a significant environmental impact on several specifically identified resources. Pursuant to Guidelines Sections 15064 and 15081, and based upon the information contained in the Initial Study, the City ordered the preparation of an environmental impact report (the "EIR") for the Project to analyze the Project's potential impacts on the environment. However, pursuant to Guidelines Section 15061(b)(4), a project that is denied or rejected by the City is exempt from the requirements of CEQA. Accordingly, the Planning Commission does not adopt or certify the EIR in connection with this Project.

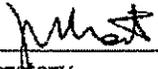
Section 7. The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and his certification to be entered in the Book of Resolutions of the Planning Commission of the City.

Adopted: **MARCH 13, 2008**



Noah Furie
Chair of the Planning Commission of the
City of Beverly Hills, California

Attest:



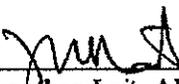
Secretary

Approved as to form:



David M. Snow
Assistant City Attorney

Approved as to content:



Jonathan Lait, AICP
City Planner 

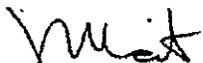
Staff Report
Residences at Saks 5th Avenue
For the Planning Commission Meeting of March 13, 2008

ATTACHMENT "C"
Draft Resolution Parcel B Project

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS.
CITY OF BEVERLY HILLS)

I, JONATHAN LAIT, Secretary of the Planning Commission and City Planner of the City of Beverly Hills, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 1509 duly passed, approved and adopted by the Planning Commission of said City at a meeting of said Commission on March 13, 2008, and thereafter duly signed by the Secretary of the Planning Commission, as indicated; and that the Planning Commission of the City consists of five (5) members and said Resolution was passed by the following vote of said Commission, to wit:

AYES: Commissioners Bosse, Cole, Marks, Vice Chair Reims, and Chair Furie.
NOES: None.
ABSTAIN: None.
ABSENT: None.



JONATHAN LAIT, AICP
Secretary of the Planning Commission/
City Planner
City of Beverly Hills, California

ATTACHMENT 3
PROPOSED OVERLAY ZONE

**ARTICLE [X]. MULTIPLE RESIDENTIAL PLANNED DEVELOPMENT
OVERLAY ZONE (MR-PD)**

[Code Section]: MR-PD ZONE CREATED.

There is hereby created an overlay zone designated as the Multiple Residential Planned Development Overlay Zone (MR-PD).

[Code Section]: APPLICATION OF MR-PD ZONE.

The MR-PD Zone shall apply to the following areas, as shown on the MR-PD Planned Development Map, a copy of which is on file in the Department of Planning and Community Development and attached as Exhibit A to this Ordinance:

Those parcels located south of the first alley south of Wilshire Boulevard between Peck Drive and Camden Drive.

[Code Section]: OBJECTIVES OF THE MR-PD ZONE.

The objectives of the MR-PD Zone shall be as follows:

- (A) To ensure that the scale of development in the MR-PD Zone provides a transition that balances the scale of development in adjacent commercial and residential zones.
- (B) To develop high quality multiple residential housing in appropriate locations with ready access to high end commercial areas.
- (C) To maintain the general scale and character of the City through new development which provides environments consistent with the character and quality of life generally associated with the City's multiple family residential and commercial areas.
- (D) To provide for the enhancement of commerce within the project area by locating residents in close proximity to retail stores, restaurants, and workplaces.
- (E) To construct a building that is compatible in design and use with other development in the area, will not interfere with the enjoyment of residential or commercial properties in the vicinity, and is consistent with the public interest and welfare.
- (F) To develop a multiple residential project to reduce automobile uses and promote livable community principles by allowing residents to walk to nearby restaurants, retail establishments, and workplaces.

(G) To promote high standards of site planning, architecture and landscape design for residential developments within the City.

(H) To protect the health, safety, and welfare of residents and visitors of the MR-PD Zone and surrounding areas.

[Code Section]: DEFINITIONS.

Unless the context otherwise requires, the following definitions shall govern the construction of this Article:

(A) **ANCILLARY PARKING FACILITIES:** Parking facilities that are accessory to, and service, a "retail department store," as defined in Article 18.2 of this Chapter, or other commercial office, retail, bank or hotel uses.

(B) **PLANNED DEVELOPMENT:** A development that is approved pursuant to the procedures of Article 18.4 of this Chapter.

(C) **UNDERLYING ZONE:** The primary zone designation which would govern development on a particular site if such development were not otherwise governed by an overlay zone.

[Code Section]: USES PERMITTED.

Except as otherwise provided or restricted by this Article, no lot, premises, building or portion thereof in the MR-PD Zone shall be used for any purpose except the following:

(A) Multiple family dwelling units; or

(B) The combination of multiple family dwelling units and residential and ancillary parking facilities that are approved by the Planning Commission as part of a planned development pursuant to Article 18.4 of this Chapter.

[Code Section]: RESTRICTIONS.

The following restrictions shall apply to multiple family developments in the MR-PD Zone.

(A) Ancillary parking facilities are not permitted on any property in which the underlying zone is R-4X2.

[Code Section]: APPLICABILITY OF UNDERLYING ZONE REGULATIONS.

Except as otherwise specifically provided in this Article, development and uses in a MR-PD Zone shall comply with the zoning regulations applicable to the underlying zone.

Nothing in this Article shall require a development to comply with the provisions of the MR-PD Zone if the development fully conforms to the requirements of the underlying zone.

[Code Section]: HEIGHT LIMITATIONS.

No building project shall be constructed, altered, or enlarged in the MR-PD Zone except in accordance with the following height restrictions:

- (A) General Limitations. No building, structure, improvement, or any part thereof, erected, constructed or maintained in the MR-PD Zone shall exceed fifty five (55) feet in height nor shall it exceed five (5) stories, measured as set forth in this Chapter, exclusive of unoccupied architectural features and rooftop uses as provided below. Notwithstanding the above, no portion of a building, structure, or improvement erected, constructed or maintained in the underlying R-4X2 Zone shall exceed forty five (45) feet in height nor shall it exceed four (4) stories.
- (B) Unoccupied Architectural Features. Notwithstanding any other provision of this Code, unoccupied architectural features, such as mansard roofs, parapets, skylights and clerestories, structures housing mechanical equipment, elevator penthouses, antennas and similar unoccupied space may exceed the fifty five (55) foot height limit established by subsection (A) of this Section by not more than ten (10) feet in height if such unoccupied architectural features are approved by the Planning Commission as part of a planned development pursuant to Article 18.4 of this Chapter.

[Code Section]: DENSITY.

The maximum permitted density for a multiple residential development in the MR-PD Zone shall comply with the zoning regulations applicable to the underlying zone.

[Code Section]: PARKING, ACCESS, AND CIRCULATION.

Notwithstanding any other provision of this Code, parking for a multiple residential development in the MR-PD Zone shall be provided in accordance with this Section.

- (A) Except as provided otherwise in this Article, parking for all uses in a multiple residential development in the MR-PD Zone shall be provided in accordance with the applicable provisions of this Chapter. Notwithstanding the foregoing, the Planning Commission may modify the parking requirements for a multiple residential development in the MR-PD Zone, as part of a planned development, if it finds that such modifications would advance the objectives of the MR-PD Zone as set forth in Section [refer to code section containing objectives] of this Article.
- (B) Notwithstanding any other provision in this Chapter, up to ten percent (10%) of the parking spaces provided in a multiple residential development in the MR-PD Zone may be compact spaces and up to twenty percent (20%) of the total number of multiple family dwelling units in a project may satisfy the parking requirements of this

Chapter through the use of tandem parking spaces. The dimensions of each tandem space shall comply with the parking standards adopted by the City Council and on file in the Community Development Department-Building and Safety.

[Code Section]: SETBACKS.

Minimum setbacks, separation, and buffer requirements for multiple residential developments in the MR-PD Zone shall be provided in accordance with the requirements of Article 28 of this Chapter.

[Code Section]: MODULATION.

Modulation and building length requirements for multiple residential developments in the MR-PD Zone shall be provided in accordance with the requirements of Article 28 of this Chapter. Notwithstanding the above, in lieu of complying with section 10-3-2809 of this Chapter, those portions of a multiple residential development in the R-4-P and R-4X2 zones above the ground level that exceed one hundred seventy five (175) feet in width or depth, shall be considered separate buildings with an assumed common lot line between them, and each portion of the building above the ground floor level shall be set back from the assumed common lot line not less than seventeen (17) feet.

[Code Section]: PERMISSIBLE ENCROACHMENTS INTO REQUIRED SETBACK AREA.

Any encroachment into the setback area created pursuant to section **[MODULATION Code Section directly above]** shall comply with section 10-3-2810 of this Chapter. Notwithstanding the above, a pedestrian bridge on each level that connects the separate buildings of a multiple residential development may encroach into the setback area created pursuant to section **[MODULATION Code Section directly above]**.

[Code Section]: LOADING FACILITIES.

Except as otherwise provided in this section, loading facilities for a building in the MR-PD Zone shall be provided in accordance with sections 10-3-2740 through 10-3-2744 inclusive of this Chapter.

[Code Section]: OUTDOOR LIVING SPACE REQUIRED.

Multiple residential developments in the MR-PD Zone shall provide outdoor living space in accordance with the requirements of Article 28 of this Chapter, or as otherwise approved as part of a planned development.