



## AGENDA REPORT

**Meeting Date:** December 15, 2009

**Item Number:** D-1

**To:** Honorable Mayor & City Council

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

**Subject:** APPEAL OF THE PLANNING COMMISSION'S DECISION DENYING A REQUEST FOR AMENDMENT OF A DEVELOPMENT PLAN REVIEW PERMIT FOR THE PROPERTY LOCATED AT 8767 WILSHIRE BOULEVARD.

**Attachments:**

1. Appeal Petition
2. BHM Section 1-4-105

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### **RECOMMENDATION**

It is recommended that the City Council schedule an appeal of the Planning Commission's decision denying a request for amendment of a Development Plan Review Permit for the property located at 8767 Wilshire Boulevard for February 2, 2010.

### **DISCUSSION**

On November 19, 2009, the Planning Commission denied a request for amendment of a Development Plan Review Permit for the property located at 8767 Wilshire Boulevard. The request was for an amendment to a previously approved Development Plan Review to revise the conditions of approval. The existing approval allows for the construction of a commercial building with general office, retail and restaurant uses and specifically prohibits medical, pharmacy and restaurant type uses designed to primarily serve tenants of the building and also requires that a minimum of 51 parking spaces to be reserved for use by the general public.

The property owner, Kobor Family Trust, sought to revise the conditions of approval to allow medical and pharmacy uses and a commercial sundry shop designed to primarily serve

tenants/and patrons of the building. In addition, the owner requested elimination of the condition of approval requiring 51 parking spaces for use by the general public.

The Planning Commission could not make the required findings to approve the proposed amendments and adopted a resolution denying the project on November 19, 2009. On November 20, 2009, the applicant filed an appeal of the Commission's decision.

## **PROCESS**

Pursuant to Beverly Hill Municipal Code Section 1-4-105, the procedure for appeals of Planning Commission decisions to the City Council is a two-step process. The matter is first placed on the Council agenda for review of the evidence presented in the appeal petition. If the evidence and information presented in the appeal is the same as was presented to the Planning Commission, the Council can then set a public hearing to consider the appeal. However, if the appeal petition contains new information, the Council may order that the Commission rehear the matter. Importantly, the Code provides that the Council shall not permit oral testimony in its determination.

The appeal petition and letter prepared by the applicant's attorney is attached to this report as Attachment 1. Planning Staff and the City Attorney's Office have reviewed the appeal petition and do not believe that new information beyond that already considered by the Planning Commission is presented therein. Therefore, staff recommends that the Council formally schedule this matter for a formal public hearing on February 2, 2010 to consider the appeal. At that time, staff will present the Council with an analysis of both the Commission's denial and the appeal petition as well as providing a recommended action.

Susan Healy Keene, AICP  
Director of Community Development



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ATTACHMENT 1  
APPEAL PETITION

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Ref: 62013-0001

November 20, 2009

**VIA HAND DELIVERY**

Byron Pope  
City Clerk  
City of Beverly Hills  
455 N. Rexford Drive  
Beverly Hills, CA 90210

Re: Appeal of Planning Commission Denial of Development Plan Review  
PL0857275

Dear Mr. Pope:

On behalf of George Kobor/Kobor Family Trust, the owner ("Owner") of the real property located at 8767 Wilshire Boulevard (the "Property"), this office formally appeals the Planning Commission's November 19, 2009 denial of the above-referenced application.

The Planning Commission decision was inconsistent with state law and City of Beverly Hills Municipal Code in that it relies on illegal, improper findings that are not supported by substantial evidence in the administrative record. Further, the Planning Commission decision denies the Owner equal protection under the law, in that it denies the Property development rights conferred on similarly situated neighboring properties.

We look forward to a hearing on this matter before City Council as soon as possible.

Sincerely,



Alex DeGood of  
Jeffer, Mangels, Butler & Marmaro LLP

**ATTACHMENT 2**

**BHMC APPEAL PROCEDURES AND REGULATIONS**

# Article 1. Appeal Of Administrative Decisions To Council

## 1-4-101: RIGHT TO APPEAL:

- A. Where a right of appeal to council exists under this code, and a procedure is not otherwise specifically set forth in this code, an appeal may be taken to the council, in accordance with the procedures set forth in this article, from any act, ruling, or determination of any commission, board, or official or from the denial, suspension, or revocation of any permit or license.
- B. No right of appeal to the council from any administrative decision made by an official of the city pursuant to any of the provisions of this code shall exist when such decision is ministerial and thus does not involve the exercise of administrative discretion or personal judgment exercised pursuant to any of the provisions of this code.
- C. No appeal pursuant to the provisions of this article may be taken from any administrative decision made by an official of the city, unless the decision to appeal has been first taken up with the official rendering the decision. (1962 Code § 1-6.101)

## 1-4-102: TIME WITHIN WHICH APPEAL PETITIONS MUST BE FILED; WITHDRAWAL OF APPEAL PETITIONS:

- A. Any appeal petition shall be filed with the city clerk within fourteen (14) calendar days after the date of the decision. In the event the last day of the filing period falls on a nonbusiness day, the appeal period shall be extended to include the next business day. The timely filing of the appeal petition is jurisdictional. The fee schedule for appeal petitions shall be approved by the council and maintained on file by the director of finance administration.
- B. If an appeal petition, filed pursuant to subsection A of this section, is withdrawn at any time prior to the council decision on the appeal petition, then subsequent to such withdrawal, the council may review the decision which was the subject of the withdrawn petition. Such review may be ordered by motion of the council duly adopted within fifteen (15) calendar days after the appeal petition is withdrawn. If the council orders a review of such a decision, the effectiveness of such decision shall be stayed until council review is final. (1962 Code § 1-6.102; amd. Ord. 94-O-2211, eff. 9-2-1994)

## 1-4-103: CONTENTS OF APPEAL PETITIONS:

Every appeal petition shall contain a statement of the facts upon which the appeal is based in sufficient detail to enable the council to understand the nature of the controversy, the basis of the appeal, and the relief requested. (1962 Code § 1-6.103)

#### **1-4-104: STAYS PENDING APPEALS:**

Upon the filing of an appeal petition, the effectiveness of any permit, entitlement to use, or other right granted by the decision appealed from shall be stayed pending a final decision by the council. (1962 Code § 1-6.104)

#### **1-4-105: CONSIDERATION OF APPEAL PETITIONS:**

After an appeal petition is filed in accordance with this article, the city clerk shall place the matter on the council agenda for council action. Based on the appeal petition and the written material presented, the council shall determine whether to refer the matter back to the commission, board, or official rendering the decision pursuant to subsection A of this section or whether to grant a hearing on the appeal pursuant to subsection B of this section. The council shall not permit oral testimony in its determination under this section.

- A. If the council finds the facts in the appeal petition contain new and material evidence not previously presented to the board, commission, or official, the council may order that the board, commission, or official rehear the matter. Written notice of the rehearing shall be mailed to the appellant and to such other persons who have appeared and addressed the board, commission, or official at the prior hearing in connection with such matter, and mailing shall be at least ten (10) days before such rehearing, and such other notice as required by law for the previous hearing shall also be given.
- B. Except as provided for in subsection A of this section, the council shall set the matter for a hearing. At least ten (10) days prior to the hearing, written notice shall be mailed to the appellant and to other persons who appeared and addressed the board, commission, or official at the prior hearing on the matter, and such other notice as required by law for the previous hearing shall also be given. (1962 Code § 1-6.105)

#### **1-4-106: HEARINGS BY THE COUNCIL:**

Unless otherwise ordered and noticed, hearings shall be held as a part of the regular meetings of the council. The hearing shall be de novo in that an independent reexamination of the matter shall be made. The appellant shall have the burden of proof in all cases, and where it appears that an appellant was served with a notice of hearing but fails to appear either in person or by

counsel, or fails to present or offer evidence, the council may adopt the determination or approve the act of the board, commission, or official, or it may itself decide the matter upon the record with or without taking any additional evidence. Any oral or documentary evidence may be received, but the mayor shall exclude irrelevant, immaterial, or unduly repetitious evidence. Unless a demand is made, witnesses will not be sworn. It shall not be a ground for objection that the evidence is hearsay or secondary, however, the council's decision shall be made upon substantial evidence. (1962 Code § 1-6.106)

#### **1-4-107: DECISIONS BY THE COUNCIL FINAL:**

Upon the hearing of the appeal, the council may refer the matter back to the board, commission, or official, with directions for further consideration, or the council may reverse, affirm, or modify the decision or may make such decision or determination as may appear just and reasonable in the light of the evidence presented. The decision of the council shall be final and conclusive at one minute after twelve o'clock (12:01) midnight on the first day after issuance. (1962 Code § 1-6.107)

#### **1-4-108: FINDINGS BY THE COUNCIL:**

The council shall prepare written findings if, prior to closing the public hearing, the appellant, the applicant, or an aggrieved party requests the council to make written findings. In such event, the council shall direct the city attorney to draft a resolution containing the facts found to be true, which findings shall be considered and adopted by resolution at a subsequent regular meeting of the council. The findings shall include the reasons for the council's ruling, including, but not limited to, findings of facts, if any, required by the code sections or ordinance upon which the appeal is based. (1962 Code § 1-6.108)