



AGENDA REPORT

Meeting Date: February 16, 2010
Item Number: F-4
To: Honorable Mayor & City Council
From: City Attorney
Subject: **RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS DENYING AN APPLICATION FOR AMENDMENT OF A DEVELOPMENT PLAN REVIEW PERMIT FOR THE PROPERTY LOCATED AT 8767 WILSHIRE BOULEVARD**

Attachment: Resolution

RECOMMENDATION

It is recommended that the City Council adopt the resolution.

INTRODUCTION

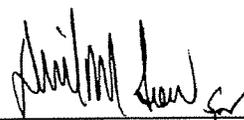
The attached resolution denies a request for an Amendment of a Development Plan Review Permit for property located at 8767 Wilshire Boulevard, and sets forth the Council's findings in support of that decision.

DISCUSSION

At its meeting of February 2, 2010, the City Council directed the City Attorney's Office to draft a resolution of findings denying the request filed by the Kobor Family Trust.

FISCAL IMPACT

There is no significant fiscal impact.



Approved By Laurence S. Wiener
City Attorney

RESOLUTION NO. 10-R-

RESOLUTION OF THE COUNCIL OF THE CITY OF
BEVERLY HILLS DENYING AN APPLICATION FOR
AMENDMENT OF A DEVELOPMENT PLAN REVIEW
PERMIT FOR THE PROPERTY LOCATED AT 8767
WILSHIRE BOULEVARD

The City Council of the City of Beverly Hills does resolve as follows:

Section 1. The Kobor Family Trust, (the “Applicant”) has submitted an application for an amendment to a Development Plan Review Permit, which was conditionally approved by City Council Resolution No. 07-R-12273, permitting the construction of a commercial building with retail, restaurant, and commercial office uses at the property located at 8767 Wilshire Boulevard (referred to as the “Project” and “Project Site,” respectively). The application requests amendment of the Permit’s conditions of approval to (1) eliminate the condition to provide 51 parking spaces for use by the general public (Condition No. 31 of Resolution No. 07-R-12273) and (2) to remove the prohibition on medical and other intense uses of the building currently under construction at the Project Site (Condition Nos. 17 and 18 of Resolution No. 07-R-12273) (collectively referred to as the “Amendment”).

The Project Site is located on the northeast corner of Wilshire Boulevard and Robertson Boulevard and is an L-shaped site consisting of six lots that were previously occupied by the BMW automobile dealership storage facility and a small commercial building (located in the southeastern portion of the site) which has been demolished as part of the construction of the Project. Adjacent to the property to the north are a variety of commercial developments including retail stores and medical and general commercial offices. Across Wilshire Boulevard to the south along Robertson Boulevard is a three-story office/medical building and Horace

Mann elementary school. Across Robertson Boulevard to the west is a two-story commercial building. Adjacent to the property to the east is a two story commercial building, and two and three story multi-family residential properties facing North Arnaz Drive. There are no alleys separating the Project Site from the adjacent properties to the east or north.

The Amendment requests revision to the previously approved Development Plan Review Permit that allows the construction of a 75,116 square-foot, four-story, 68-foot high commercial building at the Project Site. As approved, allowable uses of the building include retail, restaurant (maximum 3,000 square feet – with up to 1,500 square feet dining and bar area), vehicle storage for nearby vehicle dealerships and general commercial offices. As noted above, the use and operation of the building is restricted by the existing conditions of approval.

The Amendment would allow the following building use and square footage allocation: 54,900 square feet of medical uses, 4,696 square feet of general office uses, 2,000 square feet of restaurant/sundry shop uses, 1,116 square feet of pharmacy uses, and 12,404 square feet of retail uses. The Amendment would eliminate conditions on the Project that the Applicant accepted in connection with the initial approval of the Project by the City Council.

Section 2. Pursuant to the California Environmental Quality Act (Public Resources Code Sections 21000, *et seq.* (“CEQA”)), and the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, *et seq.*), a project that is denied or rejected is exempt from the requirements of CEQA.

Section 3. On September 24, 2009, the Planning Commission conducted a site visit and considered application for the Amendment at a duly noticed public hearing. Evidence, both written and oral, was presented at said hearing. At the conclusion of its

deliberations, the Planning Commission directed staff to prepare a resolution denying the application for the Amendment.

Section 4. The Planning Commission considered the draft Resolution at its October 22, 2009 meeting and, based on objections from the Applicant and a request for additional information from the Applicant's attorneys, continued the matter to the November 19, 2009 meeting, at which time the Commission adopted the Resolution No. 1561 denying the Amendment application.

Section 5. On November 20, 2009 the Applicant filed a timely appeal of the Planning Commission's decision. The City Council considered the appeal at its February 2, 2010 meeting, at which the City Council conducted a duly notice public hearing and considered de novo the evidence, both written and oral, that was presented at the hearing.

Section 6. Section 10-3-3104 of the Beverly Hills Municipal Code provides that the City Council shall approve a development plan review application only if it makes each of the following findings:

A. The proposed plan is consistent with the general plan and any specific plans adopted for the area;

B. The proposed plan will not adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area;

C. The nature, configuration, location, density, height and manner of operation of any commercial development proposed by the plan will not significantly and adversely interfere with the use and enjoyment of residential properties in the vicinity of the subject property;

D. The proposed plan will not create any significantly adverse traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards; and

E. The proposed plan will not be detrimental to the public health, safety or general welfare.

Section 7. Based on the foregoing, the City Council hereby finds and determines as follows with respect to the findings set forth in Section 6 above:

As proposed in the Amendment, the development plan would allow medical uses, pharmacy uses and restaurant or sundry shop uses. In addition, the Amendment would eliminate the condition to provide 51 parking spaces for use by the general public. In granting the original approval, which permitted construction of the Project, both the Planning Commission and the City Council concluded that medical uses have the potential to result in negative impacts on the adjacent commercial and residential uses, and thus imposed conditions of approval to prohibit medical uses and other similarly intense uses. At the time of the initial approval, the Applicant agreed to the conditions of approval and subsequently recorded a covenant memorializing its acceptance of the conditions of approval. Further, if medical uses had been requested at the time of the initial approval, the building design, access and egress configurations, and other project design issues would have been viewed differently.

Traffic studies prepared to analyze the proposed Amendment indicate that the proposed change from general office to medical uses increases the number of daily vehicular trips by over 225% (from 604 daily trips to 1,984 daily trips for the medical component alone). Further, additional evidence in the record suggests that the increase in traffic may exceed the projections of the traffic study. Moreover, the Amendment proposes to eliminate the 51 public

parking spaces that the Applicant previously agreed to provide at the Project Site. The intensification of land use caused by a change from general office to medical office in conjunction with the loss of planned public parking amplifies the Project's potential interference with the use and enjoyment of residential and commercial properties in the vicinity of the Project Site because the dramatic increase in traffic levels would be combined with reduced parking opportunities, which increase the likelihood of incursions of commercial and office traffic and parking into nearby residential areas. Further, as discussed below, the additional impacts anticipated from the Amendment, with or without the loss of the 51 public parking spaces, would adversely affect existing and anticipated development in the vicinity and would not promote harmonious development of the area.

Although the City Council could make the finding set forth in Section 6.A above regarding general plan consistency, it cannot make the remainder of the required findings.

Section 7.1 The City Council hereby finds that the Amendment will adversely affect existing and anticipated residential and commercial development in the vicinity and will not promote harmonious development of the area. The Amendment will result in a loss of 51 parking spaces available to the general public, a substantial increase in traffic generated by the proposed intensification of land uses, increased handicapped placard parking in on-street parking spaces in the adjacent commercial areas and on residential streets, and increased traffic on commercial and residential streets related to vehicles circling in search of on-street parking, each of which would adversely effect existing and anticipated residential and commercial development in the vicinity. Approval of the medical use would change the character of the area and would not promote harmonious development of the area because it would not result in a synergy of uses that would lead to a vibrant commercial area, and instead would inhibit

development in the area of the Project due to the impact on street parking, the impact on traffic, and the over concentration of medical uses.

Section 7.2 The City Council hereby finds that the proposed nature, location, and manner of operation of the commercial development proposed by the Amendment will significantly and adversely interfere with the use and enjoyment of residential properties in the vicinity of the subject property due to the intensification of the use that would lead to an increase in traffic levels in the Project vicinity, the reduction in public parking that would otherwise be available for the area, an increase in handicapped placard parking in residential areas, and the traffic related to vehicles searching for on-street parking. Further, approval of the requested Amendment would result in an increase in traffic on local residential streets such as Clifton Way and Arnaz Drive because of the limitations on access and egress to the building that requires medical patrons driving to the Project from the north or leaving the site with the desire to travel in a southerly direction to utilize local streets rather than Robertson or Wilshire Boulevards. Additionally, those patrons unfamiliar with the building and traveling to the building from the north or west will often drive through residential areas on Hamel Drive and Charleville Boulevard in order to access the building. Increased use of this path of travel will significantly and adversely interfere with the use and enjoyment of residential properties.

Section 7.3 The City Council hereby finds that the proposed Amendment will create significantly adverse traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards due to the additional trips that would be generated by the amended Project. Additionally, these trips, in combination with the increased use of on-street parking by persons with handicapped placards, will result in an increase in vehicles circulating for access to and egress from the building, including circulation past the Horace Mann Elementary School

during the time that children are being dismissed from school, which coincides with the peak hours for traffic generated by medical uses. Finally, the reduction in public parking opportunities within the building will also lead to increased traffic circulation along Robertson Boulevard and in nearby residential neighborhoods.

Section 7.4 The City Council hereby finds that the proposed Amendment will be detrimental to the public health, safety or general welfare for any one of the reasons discussed in Sections 7.1, 7.2 or 7.3 above. Additionally, the replacement of Class A office space with medical uses will have an adverse impact on the general welfare of the City by reducing the space available to those uses which support the community's character and diversify its economic base.

Section 8. Based on the foregoing, the City Council hereby denies the application for the Amendment to the Development Plan Review Permit, and finds that this action is exempt from the provisions of the California Environmental Quality Act, pursuant to California Public Resources Code Section 21080(b)(5) and the State CEQA Guidelines.

Section 9. The City Clerk shall certify to the adoption of this Resolution, and shall cause this Resolution and his certification to be entered in the Book of Resolutions of the City Council.

Adopted:

NANCY KRASNE
Mayor of the City of
Beverly Hills, California

ATTEST:

BRYON POPE
City Clerk

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

JEFFREY KOLIN
City Manager



SUSAN HEALY KEENE, AICP
Director of Community Development