



## CITY OF BEVERLY HILLS STAFF REPORT

**Meeting Date:** July 22, 2010  
**To:** Honorable Mayor & City Council  
**From:** David Lightner, Deputy City Manager  
**Subject:** Affordable Housing Policy: City Owned Units  
**Attachments:**

1. Keyser Marston Analysis
2. Planning Commission Staff Reports

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### **INTRODUCTION**

This report provides background information and requests City Council policy direction regarding City ownership of affordable housing units.

### **BACKGROUND**

The issue regarding City ownership of affordable housing units has been raised as a result of a private condominium development proposal currently before the Planning Commission, which includes an offer to grant the City title to two low-income restricted affordable housing units in the building as a public benefit. Although this project is not before the City Council, the following is a brief summary intended to provide context for the City Council's policy discussion.

On May 27 and July 8, 2010, the Planning Commission reviewed an application to allow construction of a 14-unit condominium building at 9936 Durant Drive (Staff Reports attached). An EIR was prepared for the project, which included identification of an unavoidable significant impact due to the proposed demolition of the existing, potentially historic, 2-story Colonial-style courtyard apartment building on the site. In order to approve the project, the Planning Commission would have to adopt a Statement of Overriding Considerations, finding that the benefits of the project outweigh the potential adverse impacts. In order to provide justification for a Statement of Overriding Considerations, thus allowing the demolition to occur, the developer has incorporated two low-income affordable housing units into the building as part of a density bonus application and offered to grant the City title to those units as a public benefit. The units are to be one-bedroom units of approximately 1,000 square feet each.

The Planning Commission preliminarily found the public benefit offer to be sufficient to justify a Statement of Overriding Considerations and has requested preparation of a

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resolution certifying the EIR and conditionally approving the project. The Commission is scheduled to take its final action on the project at their September meeting.

### DISCUSSION

The City does not currently own any housing units other than the City Manager's residence. The City was an active participant and financial partner in the creation of the mixed-use building with 150 affordable senior housing units on City property at 225 N. Crescent Drive. However, the housing component of that building is owned and operated by Menorah Housing. It should be noted that while many cities do own housing stock, or establish non-profit entities to own and operate housing, there are some risks associated with such ownership, particularly to a city that is perceived to have "deep pockets". The City Council has first-hand experience with the fervor of landlord/tenant disputes in residential properties that have over the years been brought before the City Council even without City ownership of the property.

Independent of ownership issues, the City's current Housing Element and the proposed Housing Element Update being developed by the Planning Commission both include many policies in support of the creation of affordable housing. Additionally, the State establishes targets for the creation of affordable housing through the Regional Housing Needs Assessment (RHNA). It is a fairly unique opportunity for the City to be able to produce two low-income units at no capital cost to the city, with potentially additional opportunities presented by the City's control of the units. The two units on Durant would be added to the City's RHNA compliance statistics under any of the options noted below, contributing to fulfillment of one of the City's more difficult compliance targets.

An Affordable Housing Trust Fund for the City has been proposed with the purpose of collecting and holding money for the creation of affordable housing units in the City according to priorities to be established in a housing development program. The housing development program is currently planned as an implementation effort to be initiated after the Housing Element Update, establishing new goals and policies, is adopted. The two most recent Development Agreements approved for projects in the City included monetary public benefit contributions with a total of \$4.5 million earmarked for the Affordable Housing Trust Fund. These projects (9900 Wilshire, and Hilton) have halted due to repercussions of the economic downturn, and thus no money has been collected yet to establish the Fund. It is expected that money will begin to accumulate to establish the Fund as the economy recovers and current and future Development Agreements require such funding. As units are built with these funds, the City will be faced with similar policy issues regarding ownership and management and thus the current issue should be decided with some consideration of the future when the City might have other stand-alone projects or other City-funded units in otherwise private buildings.

### Options

There are at least two options, and probably several variations on each option, in terms of City approach to opportunities such as the one presented on Durant. They include:

**Decline to own the units:** The City could still require the developer to deed-restrict the units to low-income qualified residents for a defined period, such as 100 years (likely in excess of the useful life of the building) with the proceeds of the initial sale of the two units by the developer going to the City. This money could be deposited to establish the

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Affordable Housing Trust Fund or for other uses. The City would need to monitor the property for compliance over time, but this is likely to be a new oversight requirement under all options. This scenario has the least risk to the City; the City would not be in the chain of ownership and would not have an ongoing management role. However, it does require that the affordable units be for-sale units rather than rentals and it provides the City with cash at the time of sale rather than an asset that presumably would appreciate over time.

**Accept City ownership of the units for rent:** The affordable units are being added to the number of units otherwise allowable on the site through a low income housing density bonus provision. Therefore, the City would be required to comply with low income housing requirements for the units, but would otherwise have more flexibility to be able to rent the units initially and potentially sell to low-income qualified buyers in the future. In this scenario the City would need to provide for the management of the units, maintenance and vacancy expenses, any taxes payable, Home Owners Association (HOA) fees, and an owner's reserve for potential future HOA assessments. The maximum rent that can be charged to cover these expenses is based on the Countywide Area Median Income (AMI). To qualify for low-income restricted units, a two-person household would be limited to a household income of no more than 80% of AMI. That limit is \$53,000 today, but is adjusted annually. Further, the eligible tenant cannot have total housing expenses, including an allowance for utilities, of more than 30% of their income. The maximum rent under today's limits is \$1,241/month.

In recognition of the factors noted above, the developer has offered to contractually limit the contributions from the low income units toward the ongoing expenses of the property. The proposal is to set the Homeowner Association Fees of the low income units at \$150 per month and to set the market rate units at approximately \$1,000 per month. While the developer's willingness to commit the future condominium owners to this approach is well-intended, staff has concerns that such dramatically disproportionate contributions to ongoing expenses among units that are actually quite similar, will result in resentment and future disputes among the residents of the 14 units in the building. The added expense to the developer in providing these units is balanced by the overall economic benefit his project will produce. However, the future condominium owners who will occupy the building are not before the City with a request that warrants a restriction that would cause them to bear the majority of the on-going expenses of the affordable units. It is recommended that an HOA fee structure should be developed, based on square footage or other factors that would limit the amount due on behalf of the low income units, but that would also be viewed as fair.

We have asked the housing principal with our real estate finance consultants, Kathe Head at Keyser Marston Associates, to prepare conceptual pro formas outlining estimated costs. The attached Keyser Marston memo includes discussion of affordable housing issues in general as well as for-sale and for-rent pro formas. As the for-rent pro forma shows, the likely rents achievable, less the expenses of owning the units would leave a monthly surplus of approximately \$833 per unit (\$20,000 per year total). These expenses include the assumption that there would not be a possessory interest property tax payable (based on County Tax Assessor's Opinion).

Preliminary outreach was conducted to determine interest in the marketplace for the management of two income-restricted units in Beverly Hills. The City of Santa Monica's non-profit Housing Corporation, Menorah Housing, and John Steward Company all

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expressed interest in the opportunity. The John Steward Company manages many income-restricted housing units throughout California, including the nearby units operated by the West Hollywood Community Housing Corporation and believes they could manage the two units without exceeding the fee estimated in the pro forma.

### **FISCAL IMPACT**

Pursuant to the attached pro formas, if the units were sold and the proceeds granted to the City, the estimated total amount for the two units would be \$289,400. If the units are accepted for rent, the net monthly income generated is estimated at \$1,667. It is also possible for the City to rent the units for a number of years and then sell the units at a price affordable to low-income qualified buyers or to hold the units for the minimum 30-year affordability period and then sell them at market rates.

### **RECOMMENDATION**

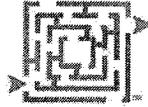
The primary issue before the City, the developer's offer to build two low-income affordable housing units and grant them to the City, appears to be a significant benefit, assisting the City in meeting State mandated housing goals and providing either the physical asset of the two units or cash to help establish the City's Affordable Housing Trust Fund. The Planning Commission's review of the tradeoff in the loss of the existing building on the site indicated that there is a net benefit to the City through their preliminary acceptance of the offer.

Regarding the secondary decision on whether to accept ownership of the units for rent or to decline ownership and take the sales proceeds, the pros and cons are more closely balanced. The rental option could produce more total income over time and allow for the creation of housing opportunities for low-income renters rather than housing opportunities for low-income buyers. There is also the benefit of future flexibility to sell in the for-rent option. The for-sale option limits the City's exposure to the risks of ownership, including the risk of expenses increasing faster than rents, but has less flexibility and does not include the potential appreciation in value of the asset.

City Council policy direction is respectfully requested.

David Lightner   
 Approved By

# Attachment 1



**KEYSER MARSTON ASSOCIATES.**  
 ADVISORS IN PUBLIC/PRIVATE REAL ESTATE DEVELOPMENT

**MEMORANDUM**

ADVISORS IN:  
 REAL ESTATE  
 REDEVELOPMENT  
 AFFORDABLE HOUSING  
 ECONOMIC DEVELOPMENT

SAN FRANCISCO  
 A. JERRY KEYSER  
 TIMOTHY C. KELLY  
 KATE EARLE FUNK  
 DEBBIE M. KERN  
 ROBERT J. WETMORE  
 REED T. KAWAHARA

LOS ANGELES  
 KATHLEEN H. HEAD  
 JAMES A. RABE  
 PAUL C. ANDERSON  
 GREGORY D. SOO-HOO  
 KEVIN E. ENGSTROM  
 JULIE L. ROMNEY  
 DENISE BICKERSTAFF

SAN DIEGO  
 GERALD M. TRIMBLE  
 PAUL C. MARRA

**To:** David Lightner, Deputy City Manager  
 City of Beverly Hills

**From:** Kathleen Head

**Date:** July 15, 2010

**Subject:** 9936 Durant Affordable Housing Issues

At your request, Keyser Marston Associates, Inc. (KMA) reviewed the affordable housing issues associated with the proposed development of a 14-unit condominium project at 9936 Durant Drive (Project). Specifically, KMA analyzed the issues associated with the developer's offer to donate two units to the City of Beverly Hills (City). These two units would be subject to long-term deed restrictions requiring that the units be rented or sold to low income households at an affordable housing cost.

**BACKGROUND STATEMENT**

The City's Planning Commission reviewed the developer's application to construct the Project, and the accompanying Environmental Impact Report (EIR). The EIR identified unavoidable significant impacts associated with the Project, which the Planning Commission preliminarily approved subject to a Statement of Overriding Considerations. This Statement of Overriding Considerations was approved in return for the developer agreeing to donate two low income units to the City as a public benefit. Both units are proposed to include one-bedroom in approximately 1,000 square feet of gross building area.

The City has requested that KMA evaluate the issues associated with renting or selling the units to low income households with the requirement that long-term income and affordability covenants be applied. In addition, KMA will identify the broader policy issues the City should consider given the fact that a substantial amount of in-lieu fee revenue is anticipated to be generated by several mixed-use projects proposed to be developed along the Wilshire Corridor.

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**Subject:** 9936 Durant Affordable Housing Issues

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## **FINANCIAL ISSUES**

The financial analyses of the rental and ownership alternatives are presented in Tables 1 and 2. These analyses should only be used to provide an order-of-magnitude perspective on the financial characteristics embodied by the two alternatives.

### **Rental Alternative (Table 1)**

Under the rental alternative, it is assumed that the City would maintain ownership of the units, and would contract with an outside entity to manage the units. Recognizing that the City may choose to sell the units at some future date, it is further assumed that the City would record long-term income and affordability covenants that would apply to any future owners of the units.

The key assumptions applied in the financial analysis are:

1. The affordable rent is set for low income households based on the following criteria:
  - a. The household income information published by the United States Department of Housing and Urban Development (HUD) in 2010 was used to set the maximum allowable income.
  - b. The household income used in this analysis is based on a two-person household earning \$53,000 per year.
  - c. Thirty percent (30%) of household income is dedicated to housing related expenses.
  - d. The achievable rent is equal to the allowable housing related expenses minus a reasonable utilities allowance. Based on the utilities allowances published by the Los Angeles County Housing Authority in July 2010, the utilities costs to be paid by the tenant are estimated at \$42 per month.
  - e. The resulting allowable rent for a low income household is set at \$1,241 per month.
2. The ongoing operating expenses are estimated as follows:
  - a. The cost to engage an outside firm to manage the units is estimated at \$150 per unit per month. This cost reflects the inefficiencies associated with managing a small number of units.

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- b. Ongoing maintenance and tenant turnover costs are estimated at \$1,000 per unit per year.
- c. The developer has instructed the City to assume that the Home Owners Association (HOA) fees for the units will be set at \$150 per unit per month. Comparatively, the HOA fees for the market rate units are currently estimated at \$1,000 per month.
- d. It is assumed that the City will receive the property tax abatement accorded to public entities that own income restricted units.
- e. A \$300 per unit per year allowance is provided to fund a reserve for future capital repairs.

Based on the preceding assumptions, the gross rent income is estimated at approximately \$29,800 per year. When that is reduced by the \$9,800 in identified operating expenses, the net operating income is estimated at \$20,000 per year.

It is important to note that the amount of income actually received by the City would be influenced by the following factors:

1. It appears that the developer is applying a substantial discount to the HOA fees for the low income units. The provision of this discount has significant potential to create ill will between the low income tenants and the owners of the 12 other units in the project. Therefore, KMA believes that it would be prudent to set the HOA fees for the low income units using a pro rata share of the units' square footage.
2. The operating expense estimates are predicated on the assumption that the low income units will not be subject to property taxation. If this assumption is not borne out, the operating expenses are estimated to increase by approximately \$3,000 per year.
3. It has been our experience that it is difficult for municipal owners to impose rent increases on income restricted rental units. Commonly, tenants will appeal directly to the City Council members to protest rent increases.

### **Ownership Alternative (Table 2)**

Under the ownership alternative, the developer would be required to sell the two units to qualifying low income households. These income and affordability restrictions would be imposed in the form of an irrevocable covenant that is recorded against the property.

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This means that if a home owner wishes to resell their home within the covenant period, they must sell the home to a qualified low income household at the then current affordable housing price.

The affordable housing cost calculation methodology can be described as follows:

1. The household size is set at two persons, and the household income is set at \$53,000 per year.
2. Thirty percent (30%) of household income is allocated to housing related expenses.
3. The ongoing expenses that will be incurred by home buyers are estimated as follows:
  - a. The HOA fees, maintenance and insurance costs are estimated at \$3,000 per year.
  - b. The utilities costs are estimated at \$118 per month, or \$1,420 per year.
  - c. The property taxes are estimated at 1.1% of the affordable price for the home.
4. The analysis is based on the assumption that the home buyers will be able to obtain fixed-rate first trust deed mortgages at a 6% interest rate, and a 30-year amortization period.
5. KMA is assuming that the home buyers will contribute down payments equal to 5% of the affordable home price.

Based on the preceding assumptions, the affordable purchase price for a low income one-bedroom unit is \$144,700. Therefore, the gross sales proceeds to be received from the sale of two units are projected at \$289,400.

#### **Financial Issues Summary**

Based on the preceding analysis, KMA projects that the City would receive the following revenues under the two alternatives being tested:

1. Rental Alternative: \$20,000 per year
2. Ownership Alternative: A one-time payment of \$289,400

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It is the KMA opinion that the revenues to be received by the City under either alternative are nominal. Therefore, it is our recommendation that the rental versus ownership decision be predicated on policy issues such as ongoing control of the units versus potential future liabilities imposed on the City.

**POLICY ISSUES**

The City’s primary affordable housing objective is to cause income restricted units to be produced that will assist in fulfilling the Regional Housing Needs Assessment (RHNA) goals for very-low and low income units. It is also envisioned that over time the City may receive in-lieu fees revenues that will be earmarked for the provision of affordable housing. Based on these factors, it is the KMA opinion that the City should consider the proposed two-unit project in the context of a larger affordable housing strategy.

**Rental versus Ownership Units**

The following table rates rental and ownership units from the City’s perspective. A checkmark indicates the stronger option for each identified ranking category:

	Rental	Ownership
Ongoing Control of the Units	√	
Ability to Enforce Covenants	√	
Administrative Involvement		√
City Liability		√
Future Flexibility	√	

A key benefit associated with rental units is that the City can control the maintenance and operation of the units over time. Another benefit is that the tenants’ primary goal is to receive discounted rent. Comparatively, home buyers expect to receive the value appreciation generated by their home over time. This makes the enforcement of resale controls on ownership units more problematic than the imposition of long-term income and affordability controls on rental units.

An advantage to selling the income restricted units to low income households is that the City would not have to bear the administrative burden associated with ensuring the units are operated properly over time. The City’s administrative role is limited to verifying that the unit continues to be occupied by the home owner of record. Another major benefit is that the City is relieved of liability for incidents occurring on the property.

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It is important to consider that the City has the option to treat the two units as rental units now, and then to convert them to ownership units at a later date. Thus, the rental alternative provides the City with future flexibility.

### **Long-Term Operating Structure**

The City has a strong policy objective to ensure that affordable housing projects in the community be operated in a high quality manner. Until a significant number of income restricted units are completed, it is likely that the City would directly administer the projects with the help of an outside property management firm. Once the City has accumulated a critical mass of units, it may be advisable to form a nonprofit housing organization under the City's auspices. The City could then transfer ownership of the City-owned properties to this organization, which would then own, manage, and operate the properties under an agreed upon set of terms.

Typically, the City Council would form the organization, create the by-laws, and appoint and reappoint the Board of Directors. Within the context of these parameters, the nonprofit organization would have the autonomy to run the organization without the requirement to receive City Council approval for their actions. This type of organization could potentially insulate the City from the day-to-day issues associated with operating the properties and making rent increase decisions.

It is important to consider that forming a nonprofit organization, and the development of its operating structure, are likely to be an expensive undertaking. Clearly, two units alone do not warrant this approach, and if the units are acquired, they should simply be managed by a professional property management firm. If the City ultimately pursues a significant number of affordable housing projects over time, the upfront costs associated with forming a nonprofit organization may be supportable at that time.

### **RECOMMENDATIONS**

It is KMA recommendation that the City formulate a near-term strategy for operating the two units currently being considered, and that a long-term strategy be created for the City's affordable housing activities. The long-term strategy should identify how large a role the City wishes to play in the ongoing management and operation of affordable housing units developed in Beverly Hills. This conclusion will assist in the decision making process for the type of ownership structure to pursue.

Based on the preceding analysis, it is the KMA conclusion that revenues should not form the basis for selecting between the rental and ownership alternatives for the two low income units. Rather, the following policy issues should guide the process:

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1. If the City believes that the Durant units will be the only affordable units pursued in the foreseeable future, KMA recommends that the two units be sold to low income households. This recommendation is based on the premise that the administrative burden outweighs the benefits provided by maintaining control over the units.
2. If the City intends to pursue a larger housing strategy, KMA recommends that the City rent the two units to low income households, and engage a private management firm to oversee the units. This strategy will allow the City to begin building an affordable housing inventory and to maintain control over the affordable units. If the strategy to expand the inventory is not ultimately implemented, the City can choose to sell the units to low income households at a later date.

TABLE 1

**RENTAL ALTERNATIVE  
2 LOW INCOME ONE-BEDROOM UNITS  
9936 DURANT DRIVE  
BEVERLY HILLS, CALIFORNIA**

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I.	<b>Rent Income</b> <sup>1</sup>	2 Units	\$1,241 /Month	\$29,800
II.	<b><u>Operating Expenses</u></b>			
	Management	2 Units	\$1,800 /Unit	\$3,600
	Maintenance & Turnover Costs	2 Units	\$1,000 /Unit	2,000
	HOA	2 Units	\$1,800 /Unit	3,600
	Property Taxes <sup>2</sup>	2 Units	\$0 /Unit	0
	Replacement Reserve	2 Units	\$300 /Unit	600
	<b>Total Operating Expenses</b>	2 Units	\$4,900 /Unit	(\$9,800)
III.	<b>Net Operating Income</b>			\$20,000

<sup>1</sup> Assumes the units include one bedroom. Rent based on the Low Income published by HUD in 2010. The rent is based on 30% of household income for a two-person household. The utility allowance is set at \$42 per month based on data published by the Los Angeles County Housing Authority in July 2010.

<sup>2</sup> Assumes that the units will be exempt from property tax obligations based on correspondence received by the City from the County Assessor's office.

TABLE 2

**OWNERSHIP ALTERNATIVE  
2 LOW INCOME ONE-BEDROOM UNITS  
9936 DURANT DRIVE  
BEVERLY HILLS, CALIFORNIA**

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<b>I.</b>	<b><u>Income Available for Housing Expenses</u></b>	
	Household Income <sup>1</sup>	\$53,000
	Income Allotted to Housing @ 30% of Income	\$15,900
<b>II.</b>	<b><u>Ongoing Expenses</u></b>	
	HOA, Maintenance & Insurance	\$3,000
	Annual Utilities Costs <sup>2</sup>	1,420
	Property Taxes @ 1.1% of Affordable Price	1,590
	<b>Total Expenses</b>	<b>\$6,010</b>
<b>III.</b>	<b>Income Available for Mortgage</b>	<b>\$9,890</b>
<b>IV.</b>	<b><u>Affordable Housing Price</u></b>	
	Supportable Mortgage @ 6.0% Interest Rate <sup>3</sup>	\$137,500
	Home Buyer Down Payment @ 5% of Affordable Price	7,200
<b>V.</b>	<b>Maximum Affordable Housing Price</b>	<b>\$144,700</b>
<b>VI.</b>	<b><u>Sales Revenue Received By City</u></b>	
	Maximum Affordable Housing Price	\$144,700
	Number of Units	2
	<b>Total Sales Revenue Received By City</b>	<b>\$289,400</b>

<sup>1</sup> Assumes the units include one bedroom. The calculations are based on the Low Income published by HUD in 2010 for a two-person household.

<sup>2</sup> Based on utilities allowances published by the Los Angeles County Housing Authority in July 2010.

<sup>3</sup> Based on conventional financing with a 30-year amortization period.

# Attachment 2



**Staff Report  
CITY OF BEVERLY HILLS**

**For the Planning  
Commission Meeting of  
July 8, 2010**

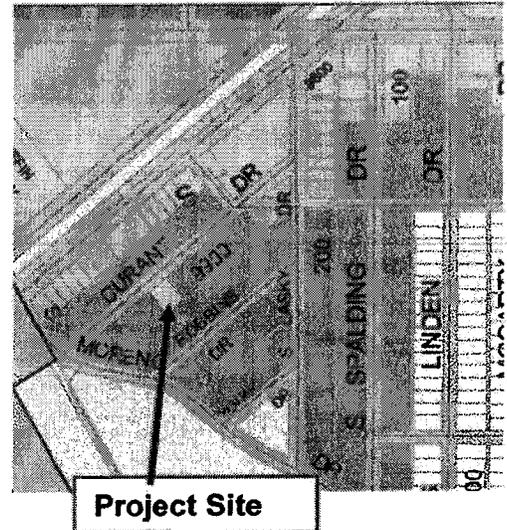
**TO:** Planning Commission

**FROM:** Rita Naziri, Senior Planner

**THROUGH:** Jonathan Lait, AICP, City Planner *JL*

**SUBJECT:** Development Plan Review (DPR),  
Tentative Tract Map (TTM No.70035),  
R-4 Permit and Density Bonus Permit  
to allow construction of a 14-unit  
Condominium Project at 9936 Durant  
Drive

**Continued from the meeting of May 27, 2010**



**RECOMMENDATION**

It is recommended that the Planning Commission direct staff to prepare a resolution certifying an Environmental Impact Report (EIR), adopting a statement of overriding considerations and conditionally approving a Development Plan Review, an R-4 Permit, Density Bonus Permit and Tentative Tract Map.

**EXECUTIVE SUMMARY**

At its meeting of May 27, 2010, the Planning Commission reviewed the revised project and requested clarification of the project benefits and further directed the applicant to meet with the already established Planning Commission Subcommittee prior to bringing the matter back to the Planning Commission for a subsequent public hearing.

After meeting with the Subcommittee on June 10, 2010, the applicant has revised the project to include two (2) low-income units versus the two moderate-income units previously proposed. State law permits a greater density bonus for projects that include low-income units compared to those with moderate income units. Consequently, the applicant is now seeking three (3) density bonus units above the code allowed eleven (11) units, resulting in a condominium project with fourteen (14) units. The applicant proposes to deed the two affordable units to the City as a component of the project.

Staff Report  
9936 Durant Drive  
July 8, 2010

The two affordable units are proposed to offset the loss of the existing historic building that would be demolished to establish the new condominium development.

### **BACKGROUND**

On May 27, 2010, the Planning Commission held a public hearing on the project and the EIR (Attachment 3, Staff Report). As detailed in the report for that meeting, staff indicated that the Statement of Overriding Considerations (SOC) required by the California Environmental Quality Act (CEQA) could possibly be made through the inclusion of two moderate income units within the development. However, the applicant proposed that the two affordable units be given to the City, less the costs of constructing those units. After receiving testimony from the applicant and deliberating, the Commission requested the applicant to return at a later meeting after first clarifying the proposed project benefits and meeting with the Subcommittee. The Subcommittee held a meeting on June 10, 2010 (Attachment 2, Subcommittee notes).

As a result of the Subcommittee meeting the applicant has revised the project to add an additional density bonus unit and has changed the income level of the two affordable units from moderate to low and has further clarified the project benefits.

### **PROPOSED PROJECT BENEFITS**

A letter from the applicant dated June 18, 2010, outlines the project benefit package (Attachment 1) as follows:

1. The project will include two affordable efficiency units which would be deeded free and clear to the City. Due to the estimated construction cost of \$500,000 for the two affordable units, the developer will post a security cash bond in the sum of \$500,000 prior or concurrent with the issuance of building permit. Upon completions of the units, the issuance of a Certificate of Occupancy and a deed being delivered to the City, the security bond shall be released.
2. The project square footage is less than allowed by Code
3. The proposed building contains additional modulation in the front of building. In addition additional front setback is provided.
4. A design that includes a fourth floor setback that provides the appearance of a 3-story building.
5. The building will comply with the City's green building ordinance.
6. The building is redesigned to be compatible with the American Colonial Revival architectural style, reinforcing the continuity of the neighborhood architectural style.

Staff Report  
9936 Durant Drive  
July 8, 2010

## **DISCUSSION**

The applicant has revised the interior layout to include a total of fourteen units, two of which are proposed to be deeded to the City in consideration of the project's significant unmitigable impact identified in the Environmental Impact Report prepared for the project. While the exterior and footprint of the building remains the same as proposed at the previous hearing, the interior has been reconfigured to allow for an additional unit. The two low-income units that are proposed to be deeded to the City will be efficiency units (studio style, no bedrooms). The remaining 12 units will be market rate.

As detailed in the previous report, the project will be in compliance with all the development standards of the City's Municipal Code, except for the reduced rear yard setback, which is requested as a development incentive for the inclusion of the affordable units.

Deeding two units to the City could be desirable because it would enhance the City's housing goals through the production of affordable housing and provide a revenue source to the City. However as previously indicated, the City does not currently own any residential units and does not have a program to manage any residential units. Therefore, any project that includes acceptance of residential units for ownership by the City would be subject to City Council approval.

## **PUBLIC NOTICE AND COMMENTS**

Notice of the proposed project and public hearing was mailed on June 25, 2010 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 from the exterior boundaries of the property, if any. The notice of this hearing was published in the *Beverly Hills Courier* on June 25, 2010 and in the *Beverly Hills Weekly* on July 1, 2010. Public comments were previously received at the first hearing in July of 2009. These comments, along with responses, are included in the Final EIR. As of the date of writing this report, one additional letter is received by the Planning Division in opposition to the proposed project (Attachment 4).

## **ALTERNATIVE ACTIONS**

In addition to the recommended action the Planning Commission could also consider the following with respect to the project:

1. Continue this matter for specific reasons;
2. Articulate revised findings and/or conditions to Approve or deny the subject application.

  
RITA NAZIRI

Staff Report  
9936 Durant Drive  
July 8, 2010

Attachments:

1. Project benefit package
2. Planning Commission Sub Committee Notes
3. May 27, 2010 Staff Report
4. Correspondence
5. BHMC Sections 10-3-1521-10-3-1530.5, Residential Density Bonus

# **Attachment 1: Project Benefit Package**

*Law Offices of*  
**MURRAY D. FISCHER**  
A PROFESSIONAL CORPORATION  
  
MURRAY D. FISCHER

433 N. CAMDEN DRIVE  
SUITE 888  
BEVERLY HILLS, CALIFORNIA 90210  
TELEPHONE (310) 276-3800  
TELECOPIER (310) 276-4345  
EMAIL: MDFRELAW@EARTHLINK.NET  
  
REFER TO FILE NO. 3454.001

June 18, 2010

Ms. Rita Naziri, Senior Planner  
Mr. David Reyes, Senior Planner  
City of Beverly Hills Planning Department  
455 N. Rexford Drive  
Beverly Hills, CA 90210

Re: 9936 Durant Drive, Beverly Hills

Dear Ms. Naziri & Mr. Reyes:

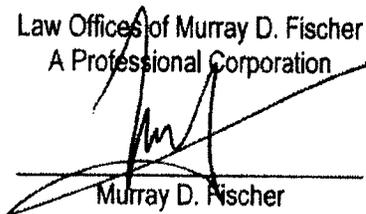
The owners of 9936 Durant Drive hereby offer the following public benefits for purposes of considering overriding circumstances.

1. This project will provide for 2 affordable efficiency units. Said units will be deeded free and clear to the City of Beverly Hills upon the completion of the project. Said units shall have a total cost factor not to exceed \$500,000.00 and to ensure the City of Beverly Hills that the developer or its successors will not transfer by sale or lease said units to any third party, developer will agree to cause a bond or other acceptable security instrument other than a cash bond in the sum of \$500,000.00 to be delivered to the City of Beverly Hills, prior to or concurrently with the issuance of the building permit. Should the owner desire to sell the property to a third party developer, said obligation to provide the affordable units shall run with the land. Upon completion of the units and the issuance of a Certificate of Occupancy and a Deed being delivered to the City of Beverly Hills, said security instrument shall be released and developer's obligation shall be fulfilled.
2. This project is designed with less square footage than allowed by code so as to lessen any feel of massing.
3. The building exceeds the modulation requirements especially in the front of the building, it provides a court yard at the front, which the other building that is being removed had at the back of the building. The front façade of the building is set back beyond the required setback so as to provide a greater distance of setback than is required, which thus reduces the sight line to the roof level, and constantly reduces the appearance of massing.
4. The building is designed so that it gives the appearance of a 3-story building. The 4<sup>th</sup> floor is further setback from the façade at the front setback to the sidewalk across the street, a total distance of approximately 85 feet. You have 10 + 4 + 5 + 5 + 50 + 5 + 5. This building further provides more parking than allowed under the code. This takes into consideration the additional unit that is being allowed pursuant to the affordable housing component as well as the 2 affordable units. The building also provides bicycle parking as it is in close proximity to the high school.
5. The building was applied for before the applicable date of the green ordinance but has been designed to meet the city's green ordinance standards, including ample space on the roof for photo voltaic cells.
6. The building is designed to be compatible with the revival style character of the existing street, reinforcing the continuity of the neighborhood.

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The owners and/or developers believe that the above items are sufficient public benefits to the City of Beverly Hills

Law Offices of Murray D. Fischer  
A Professional Corporation

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Murray D. Fischer

MDF/cam

**Attachment 2:  
Planning Commission Sub-Committee  
Notes**



**CITY OF BEVERLY HILLS  
PLANNING COMMISSION SUBCOMMITTEE**

**MEETING NOTES**

**PROJECT:** 9936 Durant Drive

**COMMISSIONERS:** Vice Chair Yukelson and Furie

**MEETING DATE:** June 10, 2010

**ATTENDEES:** Murray Fischer, Judah Farahi, Rita Naziri,  
David Reyes, Jonathan Lait, David Snow,  
David Lightner

At the Planning Commission meeting of May 27, 2010, the applicant was requested to clarify the proposed benefits of the project and to present these benefits to the Subcommittee before the matter brought back to the Planning Commission formal hearing.

Commissioner Furie summarized his understanding of the project and benefits package as follows:

The condominium project includes 9 market rate and 2 moderate income units. As such, the project qualifies for 2 density bonus units. The project further provides 1 efficiency unit (no bedrooms). The two affordable units will be efficiency units. The breakdown of units and benefits is provided below.

Market Rate Units: 12 (any size configuration applicant chooses)  
Affordable Efficiency Units: 2 (low income 600 SF to be deeded to the City)

In addition to the 2 units deeded to the City, the project will comply with the City's Green Building Ordinance.

Commissioner Furie further explained that conditions associated with the benefits would include a bond to be posted prior to issuance of a building permit equal in value to the two units.

Planning Commission Subcommittee  
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Other than the reduced rear yard setback, the project would need to comply with all other development regulations established by the Beverly Hills Municipal Code.

Mr. Fischer stated the proposal is workable; however, his client needs time to consult with his business partners. Mr. Fischer also asked, Mr. Snow, Assistant City Attorney, to study the Case Law # 127Cal.App.4<sup>th</sup> 248 which is related to City's liabilities in these situations. Mr. Farahi also confirmed that he will contact his business partners to discuss the proposal regarding the benefit package.

Commissioners Yukelson and Furie indicated that, in their opinion, the project's redesigned architectural style was more compatible with the neighborhood and the proposed footprint, height and mass did not present any readily identifiable impacts. The two Commissioners further stated that, with the benefits identified above, they would be able to make the statement of overriding considerations required to off-set the loss of the cultural resource.

The applicant was advised that a written description of the proposed benefits as proposed by the applicant, including any revised plans, would need to be submitted to the City prior to a scheduled meeting before the Planning Commission.

**Attachment 3:  
May 27, 2010 Staff Report**



**Staff Report  
CITY OF BEVERLY HILLS**

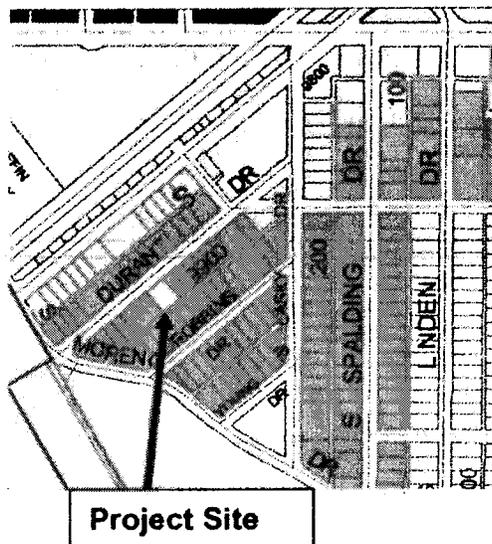
**For the Planning  
Commission Meeting of  
May 27, 2010**

**TO:** Planning Commission

**FROM:** Rita Naziri, Senior Planner

**THROUGH:** Jonathan Lait, AICP, City Planner

**SUBJECT:** Development Plan Review (DPR), Tentative Tract Map (TTM No.70035), R-4 Permit and Density Bonus Permit to allow construction of a 13-unit Condominium Project at 9936 Durant Drive



**RECOMMENDATION**

It is recommended that the Planning Commission direct staff to prepare a resolution certifying an Environmental Impact Report (EIR), adopting a statement of overriding considerations and conditionally approving a Development Plan Review, an R-4 Permit, Density Bonus Permit and Tentative Tract Map and continue the hearing to the Planning Commission meeting of July 8, 2010.

**EXECUTIVE SUMMARY**

Proposed is a four-story, 45 foot tall building containing 13 units, including two moderate income affordable units and 42 parking spaces within a two level subterranean garage. The loss of the existing building results in a significant and unavoidable impact as the current structure is eligible as a historic resource on the California Register. To approve the project, the Planning Commission would need to adopt a statement of overriding considerations (SOC).

On July 23, 2009, the Planning Commission conducted a public hearing to review the Draft EIR and the proposed project. Subsequently a subcommittee was formed and

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met once, on January 22, 2010. The project has been revised and responses to the DEIR have been prepared.

It is recommended that the Planning Commission direct staff to prepare the appropriate resolutions to approve the project, including certification of the Final EIR, and adoption an SOC.

## **BACKGROUND**

On July 23, 2009, the Planning Commission held a public hearing on the project and the EIR (See Attachment 2 Staff Report and Minutes). At the hearing, the Planning Commission requested the following information be submitted along with the Draft EIR response to comments:

- A cost analysis/feasibility study for alternatives 3 and 4 of the Draft EIR;
- A copy of the Master's Thesis by Michael F. Zimmy entitled "Robert Vincent Derrah and the Nautical Moderne, University of Virginia, 1982 (Attachment 7);
- Additional analysis to determine if project would impact alley circulation; and
- Consideration of a revised project design to be more compatible with the neighborhood.

GENERAL INFORMATION	
<b>Applicant</b>	Judah Farahi
<b>Project Owner</b>	Gale One Properties
<b>Zoning District</b>	Multi-Family Residential (R-4)
<b>Parcel Size</b>	11,991 Square Feet
<b>Permit Streamlining Act Deadline</b>	180 days from the date of certification of the EIR

## **COST ANALYSIS STUDY**

The California Environmental Quality Act (CEQA) requires an Environmental Impact Report to evaluate alternatives to the proposed project. The primary goal of evaluating alternatives is to explore whether there is another way to achieve project objectives that are better for the environment. The Commission requested a cost analysis study be provided to analyze Alternatives 3 and 4 of the Draft EIR. To assist in this analysis, the applicant provided this study and the City hired Keyser Marston Associates, Inc. (KMA) to perform a peer review of this document (Attachment 3). The study is included in the Final EIR.

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Both Alternative 3 and 4 contemplated keeping portions of the existing building, construction of new units and construction of a subterranean garage to provide the required parking for the new units. In order to keep the existing building and build subterranean parking, these alternatives proposed to relocate and store the existing structure off-site while the subterranean parking is built. The cost analysis indicates that the proposed project is projected to produce a \$3.4 million or a 17.8% profit. Due to the cost of removing and storing the existing building off-site and the reduction in units, Alternatives 3 and 4 have been projected to eliminate profitability for the development and the KMA report concludes that Alternatives 3 and 4 are not financially feasible.

## **REVISED PROJECT**

### *DESIGN CHANGES*

The Planning Commission has expressed concern regarding the compatibility of the project in relation to the surrounding neighborhood. The Commission indicated that the mass and bulk of the project, along with its modern architectural style should be re-evaluated. The applicant has hired an historian architect to modify the project design in response to concerns expressed by members of the Planning Commission related to compatibility with the neighborhood at the first hearing. Subsequently, Commissioners Furie and Yukelson were appointed to a Subcommittee for this project and met on January 13, 2010. At that meeting, the applicant's architect presented a revised conceptual façade that had been designed to be more compatible with the neighborhood. The revised concept exhibited features common within the American Colonial Revival Style of architecture. Although it was consensus of the subcommittee that the new design was an improvement over the previously proposed design, concern was expressed that the mass and scale of the revised design could still be an issue. (Attachment 5, Subcommittee Meeting Notes).

Subsequent to the subcommittee meeting, the applicant submitted revised plans on May 9, 2010. The revised project includes a design which is more relevant to the existing street character, a reconfiguration of the units layouts, more articulation along the front facade achieved by stepping back the building on the ground floor and fourth floor and creating a 12-foot recessed area at the building entrance. The new design provides the same design elements for all four sides of building.

The required front setback for this project is 10 feet. In response to subcommittee comments, the revised building façade is set back 14-feet from the front property line with architectural features extending four feet from the façade. The prior design included a building façade at the 10' feet setback line. The building is set back an additional 10 feet from the edge of building on fourth floor to reduce the building mass as viewed from the street. Further, the building entrance is within a recessed setting

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that is setback at least 10 feet from the front facade. This recessed area /courtyard is covered with a glass element on third level.

The following table compares the original building design with the revised project:

<b>PROJECT COMPONENT</b>	<b>PROJECT REVIEWED ON JULY 2009.</b>	<b>REVISED SUBMITTAL MAY 2010</b>
<i>Architectural Style</i>	Contemporary/International	American Colonial Revival/Georgian
<i># of Units</i>	11 units plus 2 affordable units Total: 13 units	11 units plus 2 affordable units Total: 13 units
<i>Units area &amp; Number of bedrooms</i>	Units size range from 1,415 sq.ft. to 3,161 sq.ft.  Two affordable units 635 sq.ft. and 710 sq.ft. in size	Units size range from 1,304 sq.ft. to 2,643 sq.ft.  Two affordable units 1,014sq.ft. and 1,060 sq.ft. in size
<i>Height</i>	45 feet in height and 4 stories.	45 feet in height and 4 stories and a mansard roof parapet that extends 30 inches in height above maximum height of the building
<i>Front façade modulation</i>	Required 1,035 sq.ft. Provided 1048 sq.ft.	Required 1,055 sq.ft. Provided 1,257 sq.ft.
<i>Step-backs</i>	None	On ground floor the building is set back 4 feet from the front setback line. Fourth floor is step-back 10' from the edge of the front facade wrap around the building sides up to 22'
<i>Outdoor living area</i>	Required: 2,600 sq.ft. Provided: 3,670 sq.ft.	Required: 2,600 sq.ft. Provided: 2,840 sq.ft.
<i>Parking</i>	Required 39 spaces Provided 41 spaces.	Required: 39 spaces Provided: 42 spaces and 1 bicycle
<i>Front Setback</i>	Required:10 feet Provided: 10 feet	Required : 10 feet Provided: 10 feet (building façade is set back 14 feet)
<i>Side Setbacks</i>	North: 10 feet South: 9 feet (19 feet combined)	North: 9.5 feet South: 9.5 feet (19 feet combined)
<i>Rear Setback</i>	Required:15 feet Provided: 15 feet and 2.5' alley Dedication	Required:15 feet Provided: 10'5" (incentive for affordable units) and 2.5' alley dedication
<i>Front yard paving</i>	Two 5-foot walkways and an accessible ramp(exempt) and exit stairs	Two walk walkways, a 6'4" main entry walk and 3'8" garage exit walkway. Exit stairs were removed from the front yard.

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### **NEIGHBORHOOD COMPATIBILITY**

Durant Drive is a residential, tree-lined street occupied by two-story Period-style multi-family structures and three, four and five story contemporary apartment structures. An existing 5-unit Colonial Revival apartment building with a Monterey Revival central entry area will be demolished to establish the proposed project. Views to the commercial buildings of Century City and Beverly Hills are visible from Durant Drive due to its northeast/southwest orientation. Despite these commercial views and the fact that the volume of high school related pedestrian and vehicular traffic increases during morning and afternoon hours, the street is distinctly residential. Older Period-style buildings establish much of the residential quality of this street. These structures typically incorporate generous courtyards or enhanced side yards and lush landscaping.

To the west of the site is a recent boxy, five-story stucco structure, "Durant Towers". This building incorporates a vehicle entrance to subterranean parking immediately to the west of the project site. To the immediate east of the project site is a two story eclectic Period-style structure with both Regency and Italianate influences.

The revised project is more compatible than the previously proposed project to the existing street character and the design elements are carried to all four sides of building. The four-story design, while larger than other the buildings on the street, provides a transition to the five-story building abutting the site to the west. The project design includes a mansard roof with skylights. It is the applicant's intent that this element be considered a clerestory and be allowed to extend beyond the allowed 45-foot height limit. As proposed, this element is not considered a clerestory. As such, should the project be approved, it is recommended that conditions requiring the final clerestory design to be reviewed and approved by the Director of Community Development for code compliance prior to the issuance of a building permit and that the Architectural Commission pay particular attention to this element for design purposes. In addition, while the revised design is more compatible with the existing buildings along this portion of Durant Drive, it is further recommended that any approval require the Architectural Commission to focus on the front façade which, as shown on the plans submitted, appear overly busy.

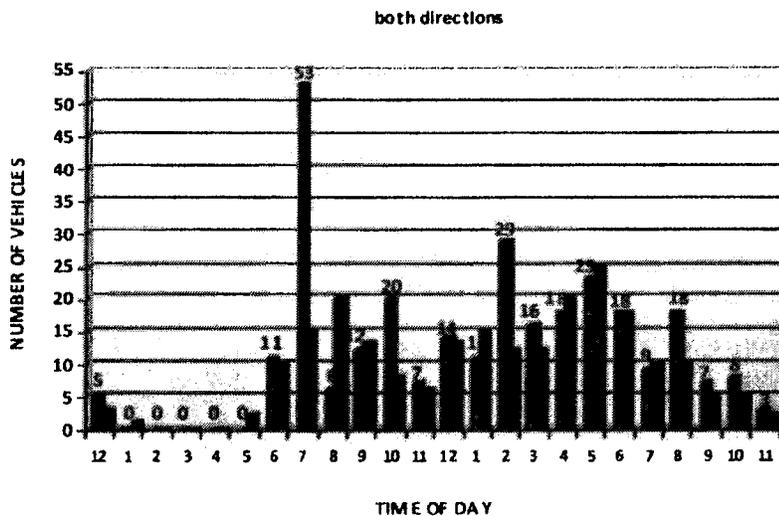
### **ALLEY TRAFFIC**

The Planning Commission requested that additional analysis be prepared to evaluate potential project impacts to the existing alley circulation. Staff conducted 24 hour traffic counts in the residential east-west alley between Durant and Robbins Drives on September 17 and 18, 2009. The automatic counts were taken at two ends of the alley to obtain the average hourly counts as shown in the graphs below.

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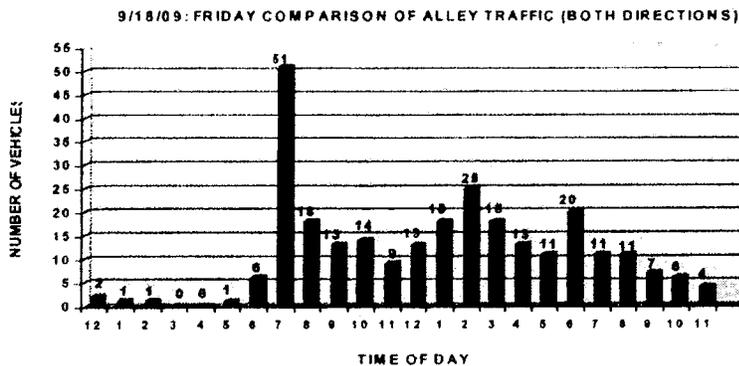
The traffic counts studied shows that the alley traffic is similar to any residential alley in the area with an exception that between the hours of 7 to 8 am, the volume increases by as much as 25 vehicles. These are mostly high school students driving to school (most of this increase occurs specifically between the hours of 7:45 and 8 am when the high school opens). A small increase of traffic is also observed between the hours of 2 to 3 pm. This could be indicative of small number of high school students using this alley to leave school. During other hours the trend of traffic in the alley appears to be used by residents that have garage access to this alley.

The City does not have any adopted threshold criteria for determining impacts to alleys. Moreover, traffic was studied as part of the EIR and no impacts were identified. It is not anticipated that the project would significantly affect alley use or circulation patterns.



Traffic count for two-way alley between Durant Drive and Robbins Drive Thursday September 17, 2009

- Durant/Robbins alley Count
- Comparable alley Count located south of Olympic Boulevard between Roxbury and Camden Drives



Two-way alley traffic counts Friday 9.18.09

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## **DENSITY BONUS**

Under the City's existing development density standards, the subject property may be developed with 11 units. The applicant is proposing that two of the units be provided for moderate income households. Consistent with State Law and the City's Density Bonus ordinance, the project qualifies for a thirteen percent (13%) density bonus and one development incentive.

Other California Cities have adopted local density bonus ordinances that provide a list of specific construction incentives that a developer can request for providing a density bonus. The City of Beverly Hills does not have a menu of incentives incorporated into its Density Bonus Ordinance. Therefore, applicants can propose preferred construction incentives. The applicant is proposing a reduced rear yard (from 15' to 10'5") as the development incentive. The proposed rear setback reduction allows for additional step-backs on the ground and fourth floors without losing any of the project's square footage. The design goal of this front step-back is to minimize the mass of the project from Durant Drive. Alley access to the garage is not affected by the reduced setback.

Previously the applicant had requested a development incentive that would reduce the minimum unit size for the affordable units. The revised project now has code compliant unit sizes, for these one-bedroom units (1,000 square feet).

## **FINAL EIR**

### ***Final EIR/Response to Comments***

A total of seven letters and sixteen petition signatures were received on the project and DEIR during comment period and one additional letter was received after the close of the comment period. These letters are listed in the Comments and Responses document. In addition, the Final EIR includes responses to the Planning Commission's concerns regarding the alley and feasibility study. The EIR concludes that implementation of the project will result in significant environmental impacts in the areas of neighborhood compatibility and loss of an individual historic resource.

### ***Statement of Overriding Considerations (SOC)***

Pursuant to CEQA regulations, when a public agency decides to approve a project that will cause one or more significant environmental effects, the agency shall prepare a statement of overriding considerations (SOC) which reflects the ultimate balancing of competing public objectives. Specifically, the public agency must find that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.

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The applicant has identified proposed project benefits in an email included with this report as Attachment 6. To offset the environmental impacts of the project, the applicant is proposing to deed the two affordable units to the City and to build a project that complies with the City's Green Building Ordinance.

In balancing the loss of the cultural resource with the project benefits, there are several issues that need to be addressed. Deeding two units to the City is, in theory, a potentially desirable benefit because it would further the City's Housing Goals through the production of affordable housing and provide a revenue source to the City that could go into the City's General Fund, or a yet to be developed affordable housing trust fund. However, at present, the City does not own any residential units and does not have a program in place to manage any units. There are ongoing maintenance, liability and managing costs associated with being a residential landlord and the terms of an agreement between the developer and the City have not been established. Moreover, only the City Council has the ability to accept these units from the applicant and, given the lack of an affordable housing program, it is unclear whether these units would be accepted.

While the applicant's proposal to deed the units may not be appropriate at this time, two affordable units deed restricted to low income families for a 30 year period, regardless of ownership, is a benefit to the City because it would still advance the City's Goal of providing affordable housing in the City. Further, although this project does not have to comply with the City's Green Building Ordinance as it was deemed complete prior to its effective date, voluntary compliance would result in the City's first "green" multi-family residential building.

## **FINDINGS**

The proposed project is subject to discretionary review before the Planning Commission and subject to appeal to the City Council. The findings contained in this section of the report are staff recommended findings. The Planning Commission or City Council on appeal may arrive at an alternative conclusion on the project and different findings based on the administrative record, applicant and public testimony.

### **Development Plan Review Findings**

The Planning Commission may authorize a multi-family residential project involving five or more units if the following DPR findings are made:

#### **A. The proposal is consistent with the General Plan and any specific plans adopted for the area.**

If the Density Bonus Permit is granted, the development as proposed meets Zoning Code requirements, particularly regarding use, density, parking and height except for the architectural projections on the roof. The proposed project would be

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consistent with the adopted General Plan of the City which designates this as a high density multiple-family residential area. The project consistent with the General Plan LU 5.10 goal which sufficiently supports the development of affordable housing as mandated by state law and the current Housing Element Objective 2.2, which states the City should "expand supply of housing affordable to lower income households" and Program 2.5 which states the City should promote utilization of the density bonus ordinance.

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

As proposed, the project will not adversely effect existing and anticipated development in the vicinity. While the existing development in the block is predominantly two-stories, the current zoning standards allow for four stories. The 13-unit, 45-story project incorporates a fourth floor step-back to reduce the mass of the proposed structure as viewed from Durant Drive. The project contains architectural features associated with the American Colonial Style of Architecture, which is a prominent style in the district. As proposed and conditioned, the project will comply with applicable development regulations, will be subject to Architectural Review and is anticipated to be harmonious with the neighborhood.

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

A traffic impact analysis was conducted by Willdan who prepared an EIR for the proposed project to assess the potential impacts of the proposed condominium project. The traffic analysis was conducted based on the traffic, parking and circulation study that was prepared by Coco Traffic Planners, Inc. As proposed, the proposed project will result in a net increase of 50 new daily trips, including five new AM peak hour trips and four net new PM peak hour trips. There is only a small net increase in traffic because the project increases the net number of units on the site by eight units. During the project hearing on July 23, 2009, the Planning Commission requested that additional traffic counts for the alley behind the property be provided. Staff conducted additional 24 hour traffic counts in the residential east-west alley behind the property on two consecutive days (September 18 and 19, 2009) and compared the alley operation with a residential alley in the vicinity and found that the alley traffic trend is similar to any residential alley with an exception that between the hours of 7:00 to 8:00 a.m., the traffic volumes increases by as much as 25 vehicles which appears to be related to high school students who use the alley to get to school. Therefore, staff concludes that the traffic generated by the proposed multi-family project does not impact the alley. Therefore, it is not anticipated that the project would generate adverse traffic

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impacts, traffic hazards, pedestrian/vehicle conflicts, or pedestrian safety hazards if the project were to be approved by the Commission. Access to nearby schools has been studied and the proposed project should not conflict with schoolchildren and other pedestrians who may travel in front of the project site. Regulatory measures are proposed during construction period to offset any temporary impacts which would occur over an approximately 18-month construction period.

**D. The project will not be detrimental to the public health, safety or general welfare.**

The project would be constructed in accordance with the City's Building Code standards and is consistent with the zoning for the area. Prior to the issuance of building permits, a construction management plan is required for review and approval by the Engineering Division and Building and Safety Division. Public safety issues such construction staging, hauling, off-site parking, and construction hours are addressed. Therefore, the project will not be detrimental to the public health, safety or general welfare.

**Tentative Tract Map Findings**

The Planning Commission may authorize a tentative tract map if the findings can be made (Government Code Section 66474):

**(a) That the proposed tentative tract map and the design or improvements or improvements of the proposed subdivision are consistent with the General Plan of the City.**

As proposed, the Project's design and improvements are consistent with the General Plan of the City. The proposed Project is compatible with the objectives, policies, general land uses, and programs specified in the General Plan. The General Plan designation for the proposed site is "Multi-family Residential – high density". This designation identifies a maximum density for this project of 14 DU and a maximum height of 60 feet. The project site is located in the R-4 Multiple Residential Zone which allows a maximum density for this site of 13-unit with the granting of a density bonus and a maximum height of 45'. The Project involves the construction of a 13-unit four-story 45' in height residential condominium building, which is in keeping with the Land Use designation and requirements of the zone.

**(b) That the site is physically suitable for the type of development and the proposed density.**

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The site is zoned for high density multi-family residential development and suitable for development such as the proposed project. The proposed density of 13 units meets current code requirements with the granting of a density bonus and is appropriate to the site. All necessary utilities are in place to adequately serve the proposed project.

- (c) That the design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.**

The attached EIR indicates that the Project will not cause substantial environmental damage or substantial and avoidable injury to fish or wildlife or their habitat. The EIR found no significant impacts to fish, wildlife, or habitat. The EIR identified aesthetics significant unmitigable adverse impact and significant unavoidable adverse impact on cultural resource impacts. However a statement of overriding considerations will be adopted in connection with the project.

- (d) That the design of the subdivision or type of improvements are not likely to cause serious public health problems and that the design of the subdivision or the type of improvements will not conflict with any public easement.**

The project design has been preliminarily reviewed by the Public Works Department and the Building and Safety Division for code compliance. The project will not encroach into any public easement areas. Therefore, the design of the subdivision and types of improvements are not likely to cause serious public health problems or conflict with any public easement. Access to nearby schools has been studied and the proposed project should not conflict with schoolchildren and other pedestrians who may travel in front of the project site.

- (e) That the discharge of waste water from the proposed subdivision into the existing sewer systems will not result in a violation of existing requirements presented by the California Water Quality Act Control Board.**

The project has been preliminarily reviewed by the Public Works Department. Discharge of waste from the proposed subdivision into the existing sewer system will not result in a violation of existing requirements prescribed by the California Regional Water Board provided the NPDES water requirements are complied with. Appropriate conditions of approval are recommended to require compliance with the NPDES permit requirements. Therefore, the discharge of waste water from the proposed subdivision into the existing sewer systems will not result in a violation of existing requirements presented by the California Water Quality Act Control Board.

As conditioned, the project meets the five criteria as listed above.

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### **Density Bonus Permit Findings**

Both State of California Government Code Section 65915 and BHMC Article 15.2 provide that the City shall offer a 20% density bonus and one development incentive if the project contains 10% of total units of a housing development for lower income households. As conditioned, the project is in compliance with the affordable housing requirements of State and local law. The Planning Commission may determine the exact construction incentive to be offered to a project. The incentive of rear setback reduction appears to be suitable for the multi-family residential zone in which the project is located. As proposed, the proposed project has included 4th story stepped back from the edges of the building to reduce the mass impacts from the proposed building height compared to the existing buildings on Durant Drive.

### **R-4 PERMIT FINDINGS**

The Planning Commission may grant the equivalent of one five-foot (5') wide walkway in the front yard per fifty feet (50') of frontage along the front line of the subject site, in any configuration if the Planning Commission finds:

**That the proposal is compatible with the nearby streetscape; and, that the proposal is compatible with the scale of surrounding development.**

- (a) The subject lot is 100 feet wide; therefore, a maximum 10-foot wide walkway is permitted if authorized by an R-4 Permit. A 6'4" walkway is proposed in the middle of the site to gain access to the building. The second 3'8" walkway will provide access to the required exit from the subterranean garage. Although, no landscape plan is provided at this time, but the site plans notes that the front setback will be landscaped with a variety of planting materials and greenery in the front yard of the project offsetting the paved areas. As noted before, the project including the exterior improvements will be reviewed by the Architectural Commission to make sure that the landscape plan will enhance the streetscape. Therefore, the proposed walkways would be compatible with the scale of the structure and consistent with other structures in the multi-family residential zones.

### **PUBLIC NOTICE AND COMMENTS**

Notice of the proposed project and public hearing was mailed on May 14, 2010 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 from the exterior boundaries of the property, if any. The notice of this hearing was published in the

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*Beverly Hills Courier* on May 14, 2010 and in the *Beverly Hills Weekly* on May 20, 2010. Public comments were previously received at the first hearing in July of 2009. These comments, along with responses, are included in the Final EIR. As of the date of writing this report, no additional comments have been received.

## ALTERNATIVE ACTIONS

In addition to the recommended action the Planning Commission could also consider the following with respect to the project:

1. Continue this matter for specific reasons;
2. Articulate revised findings and/or conditions to Approve or Deny the subject application.



RITA NAZIRI

### Attachments:

1. Final EIR including the Comments and Responses and Draft Environmental Impact Report (DEIR)
2. July 23, 2009 Staff Report and Planning Commission Minutes
3. Applicant's Financial Feasibility Statements & KMA Peer Review
4. BHMC Sections 10-3-1521-10-3-1530.5, Residential Density Bonus
5. Planning Commission Sub Committee Notes
6. Applicant's e-mail regarding Project benefits
7. A copy of the Master's Thesis by Michael F. Jimmy entitled "Robert Vincent Derrah and the Nautical Moderne, University of Virginia, 1982

## **Attachment 4: Correspondence**

Received  
City of Beverly Hills

**TERRANCE B. RODSKY**

ATTORNEY AT LAW

JUN 3 2010

PLANNING Division  
COMMUNITY DEVELOPMENT

POST OFFICE BOX 6947  
BEVERLY HILLS, CALIFORNIA 90212  
TEL. 310-553-1915 - FAX 310-553-6346  
terrancerodsky@sbcglobal.net

June 2, 2010

City of Beverly Hills  
Department of Community Development/Planning Services  
455 North Rexford Drive, Suite 100  
Beverly Hills, California 90210  
ATTN: Rita Naziri, Senior Planner

Re: Proposed 13-Unit Condominium Project; 9936 Durant Drive ("Project")

Dear Ms. Naziri:

I own the duplex directly across the street (9933 – 9935 Durant Drive) from the Project. I attended the Planning Commission meeting of May 27, 2010 and reviewed the relevant material posted on the website regarding the Project.

I previously wrote in opposition to this Project on July 8, 2009. I renew my opposition based on aesthetic as well as practical considerations.

The graphics displayed on the screen, as well as the model provided for inspection on May 27, lacked sufficient detail and clarity to allow the Commission to properly evaluate this Project.

The building to be demolished was designed by Robert Derrah. It has historical significance and is worthy of conservation as a "character contributing building". The Colonial Revival style adds value to the neighborhood, encourages tenants and owners to look upon their apartments and condominiums as homes, not housing units.

While the current architectural design is a vast improvement over the previous design, the Project remains at odds with the remaining two story buildings on Durant Drive, many of which possess cross-gabled roofs and court yards, porticos and bay windows, pediment crowns and multi-pane sash windows. More of these features should be incorporated into the final design?

At the May 27 meeting, a discussion was held of what constitutes the "neighborhood". Is it Durant Drive only? Or is it the entire subdivision? I urge the Commission, for purposes of evaluating this Project, to define Durant Drive itself as the neighborhood. It is logical to do so. The aesthetics of Durant Drive differ from the broader area. An observer standing in the middle of Durant Drive, either looking west or east, is limited to vistas that incorporate only the unique charms of Durant Drive. Why dilute or degrade the "existing character or quality of the site and its surroundings."

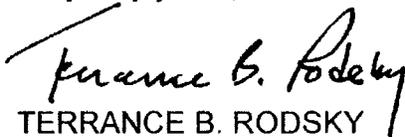
A further discussion ensued on May 27 concerning the two units being deeded to the City of Beverly Hills. I too was confused about this subject. Does recoupment of costs of construction of these two units by the developer rely upon a calculation of "costs" based solely upon the average cost of construction per square foot of the building as a whole, or upon the actual "costs" of the construction of these two particular units? Are "costs" inclusive of all monies incurred to date (e.g. the prior architectural design expenses, legal fees in obtaining approval of the Project) as well as non-construction expenses to be incurred in the future (e.g. legal fees to evict current tenants, compensation to current tenants to have them move)?

Traffic remains a concern. As I wrote previously, the Circulation Study conducted by Coco Traffic Planners, Inc. is unpersuasive and counterintuitive. Replacement of 5 apartments centered around an open courtyard all accessible on the ground level with 13 condominiums does not lead to the conclusion that "motorists will not be able to detect any change in traffic operations due to the traffic generated by the proposed project.

Finally, I found a remark made in support of the Project that the City of Beverly Hills should somehow be held responsible for future higher permit fees because the Commission insists upon discharging its duties to the citizens of Beverly Hills, to be off-putting.

I urge the Commission to carefully consider the Proposal in the context of what is being destroyed and what will replace it.

Very truly yours,

  
TERRANCE B. RODSKY

TBR:az

**Attachment 5:  
BHMC Sections 10-3-1521 through 10-3-  
1530.5, Residential Density Bonus**

## Article 15.2. Residential Density Bonus

### 10-3-1520: PURPOSE:

This article specifies the method of providing developer incentives pursuant to California Government Code sections 65915 and 65915.5, or any successor statutes thereto, and provides procedures for waiving or modifying development procedures which would otherwise inhibit the utilization of density bonus incentives on specific sites. (Ord. 05-O-2482, eff. 9-16-2005)

### 10-3-1521: DEFINITIONS:

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

**CHILDCARE FACILITY:** Shall have the same meaning ascribed to that term by California Government Code section 65915, or its successor statute.

**DENSITY BONUS:** Shall have the same meaning ascribed to that term by California Government Code section 65915, or its successor statute.

**ELIGIBLE HOUSEHOLDS:** Includes lower income households, persons and families of low or moderate income, qualifying senior residents, and very low income households.

**ELIGIBLE UNITS:** Dwelling units that are restricted to occupancy by eligible households.

**LOWER INCOME HOUSEHOLDS:** Shall have the same meaning ascribed to that term by California Health and Safety Code section 50079.5, or its successor statute.

**PERSONS AND FAMILIES OF LOW OR MODERATE INCOME:** Shall have the same meaning ascribed to those terms by California Health and Safety Code section 50093, or its successor statute.

**QUALIFYING SENIOR RESIDENT:** Shall have the same meaning ascribed to the term "qualifying resident" by section 51.3 of the California Civil Code, or its successor statute.

**SENIOR CITIZEN HOUSING DEVELOPMENT:** Shall have the same meaning ascribed to that term by section 51.3 of the California Civil Code, or its successor statute.

**VERY LOW INCOME HOUSEHOLDS:** Shall have the same meaning ascribed to that term by California Health and Safety Code section 50105, or its successor. (Ord. 05-O-2482, eff. 9-16-2005)

### 10-3-1522: DENSITY BONUS PERMIT REQUIRED:

No developer shall be granted a density bonus or other incentive pursuant to this article unless that developer has been issued a density bonus permit pursuant to the procedures set forth in this article. (Ord. 05-O-2482, eff. 9-16-2005)

### **10-3-1523: APPLICABILITY OF OTHER REGULATIONS:**

Except as otherwise specifically authorized by a density bonus permit, no development shall be constructed pursuant to this article except in compliance with each provision of this chapter that is applicable to the zone in which the development is located, including any requirement for discretionary review of a development project, such as development plan review. (Ord. 05-O-2482, eff. 9-16-2005)

### **10-3-1524: APPLICATIONS:**

In addition to any other discretionary review required for a proposed housing project, applications for a density bonus permit shall be filed with the director of community development on a form approved by the director. The application shall be filed concurrently with an application for a development plan review. The fee for processing a density bonus permit application shall be one-half ( $1/2$ ) the fee for processing a development plan review application. (Ord. 05-O-2482, eff. 9-16-2005)

### **10-3-1525: REVIEW OF APPLICATION:**

The planning commission shall process the application for a density bonus permit in the same manner as, and concurrently with, the application for a development plan review that is required by article 31 of this chapter for development of a density bonus project. (Ord. 05-O-2482, eff. 9-16-2005)

### **10-3-1526: GRANT OF DENSITY BONUS:**

- A. Section 65915 Projects: Except as otherwise provided in this article, the planning commission shall grant a density bonus permit to any project for which a density bonus and incentives or concessions are required pursuant to California Government Code section 65915. The density bonus permit shall provide for a density bonus and at least one of the construction incentives described in section 10-3-1526.5 of this article in accordance with the following criteria:

**1. Base Density Bonus:**

- a. The planning commission shall grant a density bonus permit that authorizes development of a project with a twenty percent (20%) density bonus and at least one of the construction incentives set forth in section 10-3-1526.5 of this article when the applicant for a housing development agrees to construct at least any one of the following:
- (1) Five percent (5%) of the total units of a housing development for very low income households; or
  - (2) Ten percent (10%) of the total units of a housing development for lower income households; or
  - (3) A senior citizen housing development.
- b. The planning commission shall grant a density bonus permit that authorizes development of a project with a five percent (5%) density bonus and at least one of the construction incentives set forth in section 10-3-1526.5 of this article when the applicant for the housing development agrees to construct ten percent (10%) of the total dwelling units in a condominium project, as defined in subdivision (f) of section 1351 of the California Civil Code or its successor statute, or in a planned development, as defined in subdivision (k) of section 1351 of the California Civil Code or its successor statute, for persons and families of moderate income.

**2. Additional Density Bonus:** In addition to the base density bonus granted by the planning commission pursuant to subsection A1 of this section, a density bonus permit issued pursuant to this article shall authorize an additional density bonus under the following circumstances:

- a. For each one percent (1%) increase in the number of units above the initial five percent (5%) threshold of units affordable to very low income households, the density bonus shall be increased by two and one-half percent (2.5%) up to a maximum of thirty five percent (35%); or
- b. For each one percent (1%) increase in the number of units above the initial ten percent (10%) threshold of units affordable to lower income households, the density bonus shall be increased by one and one-half percent (1.5%) up to a maximum of thirty five percent (35%); or
- c. For each one percent (1%) increase in the number of units in a condominium development above the initial ten percent (10%) threshold of units affordable to moderate income households, the density bonus shall be increased by one percent (1%) up to a maximum of thirty five percent (35%).

**B. Section 65915.5 Projects:** If the city is required to issue a density bonus under California Government Code section 65915.5, the density bonus permit shall authorize development of a project with either a twenty five percent (25%) density bonus or with other incentives that are of equivalent financial value to the twenty five percent (25%) density bonus. Such

other incentives shall be limited to financial incentives or any combination of density bonus, financial incentives, and construction incentives set forth in this section and section 10-3-1526.5 of this article.

With regard to construction incentives granted pursuant to this section, any requirement to designate units for lower income or very low income households may be satisfied by designating such units for persons and families of low and moderate income. Similarly, for the purpose of construction incentives granted pursuant to this section, any reference in section 10-3-1526.5 of this article to units designated for lower and very low income households shall include units designated for persons and families of low and moderate income.

C. Fractional Units: For the purposes of this section, all density calculations resulting in fractional units shall be rounded up to the next whole number. (Ord. 05-O-2482, eff. 9-16-2005)

### **10-3-1526.5: GRANT OF CONSTRUCTION INCENTIVES:**

A. Number Of Incentives: In addition to the density bonus granted pursuant to section 10-3-1526 of this article, an applicant for any project for which a density bonus and incentives or concessions are required pursuant to California Government Code section 65915 shall be entitled to receive the following number of construction incentives:

1. One incentive for a project that includes at least ten percent (10%) of the total units for lower income households, at least five percent (5%) for very low income households, or at least ten percent (10%) for persons and families of moderate income in a condominium or planned development.
2. Two (2) incentives for a project that includes at least twenty percent (20%) of the total units for lower income households, at least ten percent (10%) for very low income households, or at least twenty percent (20%) for persons and families of moderate income in a condominium or planned development.
3. Three (3) incentives for a project that includes at least thirty percent (30%) of the total units for lower income households, at least fifteen percent (15%) for very low income households, or at least thirty percent (30%) for persons and families of moderate income in a condominium or planned development.

B. Qualifying Incentives: The exact construction incentive(s) to be offered to a project that qualifies for a density bonus pursuant to Government Code section 65915 and section 10-3-1526 of this article shall be determined by the planning commission as part of its review of each application.

C. **Exceptions:** Notwithstanding the requirements of this section, with regard to developments that qualify for a construction incentive pursuant to California Government Code section 65915, the planning commission need not provide a construction incentive in addition to the applicable density bonus if the commission makes a written finding, based upon substantial evidence, that either:

1. The requested incentive is not required to encourage the provision of housing at affordable housing costs as defined in California Health and Safety Code section 50052.5 nor is the incentive necessary to encourage the provision of housing at rents that are set as specified in California Government Code section 65915; or
2. The requested incentive would have a specific adverse impact, as defined in California Government Code section 65589.5 or its successor statute, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low and moderate income households. (Ord. 05-O-2482, eff. 9-16-2005)

### **10-3-1527: LAND DONATIONS; CHILDCARE FACILITIES:**

- A. **Land Donations:** If an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to the city as provided in California Government Code section 65915, or its successor statute, the planning commission shall grant a density bonus permit that authorizes a density bonus as required by section 65915, or its successor statute.
- B. **Childcare Facilities:** If the applicant for a project that qualifies for a density bonus pursuant to section 10-3-1526 of this article proposed to include a childcare facility on the premises of, as part of, or adjacent to, the project, the planning commission shall grant the applicant one of the following:
1. An additional density bonus in an amount equal to or greater to the square footage in the childcare facility; or
  2. An additional construction incentive set forth in section 10-3-1526.5 of this article that contributes significantly to the economic feasibility of the construction of the childcare facility.

Notwithstanding the foregoing, the planning commission shall not grant an additional density bonus or construction incentive for a childcare facility if, the commission finds, based on substantial evidence, that the community is already served by adequate childcare facilities. (Ord. 05-O-2482, eff. 9-16-2005)

**10-3-1528: OCCUPANCY PRIORITY:**

A. Displaced Tenants: If tenants are required to vacate existing dwelling units so that an owner or developer may perform any construction, renovation or addition pursuant to a density bonus permit, then each tenant shall be given a right of first refusal to occupy any unit for which the tenant qualifies in the newly constructed or renovated building. Tenants shall be offered the units in the following priority:

1. Households in which at least one member is sixty two (62) years of age or older;
2. Households with the lowest annual income.

B. Lower And Very Low Income Households: After accommodating displaced tenants as provided in subsection A of this section, during the affordability period described in section 10-3-1529 of this article for rental units designated for lower and very low income households, and subject to any limitations imposed by federal or state law, the owner or developer shall offer the designated affordable units in the following priority:

1. Qualified households in which at least one member is:
  - a. Employed by the Beverly Hills Unified School District as a state certified classroom teacher; or
  - b. Employed by the Beverly Hills police department as a sworn law enforcement officer; or
  - c. Employed by the Beverly Hills fire department as a sworn firefighter;
2. Households with the lowest annual income;
3. All other qualified households.

C. Moderate Income Households:

During the initial sale of units designated for sale to moderate income households, and subject to any limitations imposed by federal or state law, the owner or developer shall offer the designated units in the following priority:

1. Qualified households in which at least one member is:
  - a. Employed by the Beverly Hills Unified School District as a state certified classroom teacher; or
  - b. Employed by the Beverly Hills police department as a sworn law enforcement officer; or

- c. Employed by the Beverly Hills fire department as a sworn firefighter;
2. Households with the lowest annual income;
3. All other qualified households. (Ord. 05-O-2482, eff. 9-16-2005)

### **10-3-1529: ELIGIBILITY GUARANTEES:**

Prior to the construction of a development project pursuant to a density bonus permit, the developer shall ensure continued affordability of units designated for lower and very low income households to the satisfaction of the city attorney and as required by California Government Code section 65915 or its successor statute.

Also prior to the construction of a development project pursuant to a density bonus permit, with regard to dwelling units designated for qualifying senior residents, the developer shall ensure continued restriction of those units to qualifying senior residents and qualified permanent residents to the satisfaction of the city attorney and as provided in California Civil Code section 51.3 or its successor statute.

Additionally, prior to the issuance of a density bonus permit for a development in which the units will be sold to moderate income households, the developer shall ensure that the initial occupants of such units meet the applicable income limits to the satisfaction of the city attorney and as required by California Government Code section 65915 or its successor statute. In addition, the developer shall ensure that, upon resale, the city recaptures its proportionate share of the appreciation of such units to the satisfaction of the city attorney and as required by California Government Code section 65915 or its successor statute. (Ord. 05-O-2482, eff. 9-16-2005)

### **10-3-1529.5: WAIVERS:**

In addition to any construction incentive requested by an applicant pursuant to section 10-3-1526.5 of this article, if an applicant for a density bonus permit demonstrates that certain zoning or development standards are the sole reason that eligible units cannot be developed in an economically feasible manner on a specific site, and the applicant demonstrates that no other incentive provided in this article will cause development of the eligible units to become economically feasible, then the planning commission may grant a waiver of the subject zoning or development standards as part of the density bonus permit. The applicant shall bear the burden of proving, through substantial evidence, that the waiver or modification is necessary to make the affordable housing units economically feasible. At a minimum, any request for a waiver of zoning or development standards pursuant to this section shall be accompanied by a pro forma or other financial analysis prepared by a qualified expert demonstrating that the proposed waiver or modification is necessary to make the affordable units economically feasible. (Ord. 05-O-2482, eff. 9-16-2005)

**10-3-1530: APPEALS:**

Any decision of the planning commission made pursuant to this article may be appealed by the applicant or any other interested party as provided in title 1, chapter 4, article 1 of this code. (Ord. 05-O-2482, eff. 9-16-2005)

**10-3-1530.5: GUIDELINES:**

All applications for a density bonus permit shall be processed pursuant to the guidelines for density bonus permit applications approved by the city council and on file in the department of community development. (Ord. 05-O-2482, eff. 9-16-2005)