



## AGENDA REPORT

**Meeting Date:** February 15, 2011  
**Item Number:** D-1  
**To:** Honorable Mayor & City Council  
**From:** Susan Healy Keene, AICP, Director of Community Development  
**Subject:** AN APPEAL FROM THE DECISION OF THE PLANNING COMMISSION CERTIFYING THE ENVIRONMENTAL IMPACT REPORT (EIR), ADOPTING A STATEMENT OF OVERRIDING CONSIDERATION, ADOPTING A MITIGATION MONITORING PROGRAM, CONDITIONALLY APPROVING TENTATIVE TRACT MAP NO. 70035, A DENSITY BONUS PERMIT, AN R-4 PERMIT AND A DEVELOPMENT PLAN REVIEW TO ALLOW CONSTRUCTION OF A FOURTEEN-UNIT RESIDENTIAL CONDOMINIUM STRUCTURE ON THE PROPERTY LOCATED AT 9936 DURANT DRIVE

**Attachments:**

1. Appeal Statement including Supplemental Appeal
2. Final Environmental Impact Report (FEIR)
3. Planning Commission Resolutions including Mitigation Monitoring Program (Resolution No. 1584 & 1585)
4. Planning Commission Staff Reports
5. Cost Analysis
6. Planning Commission Minutes
7. Letters
8. Michael Zimny Thesis
9. Applicant Submission
10. Project Plans

---

### **RECOMMENDATION**

It is recommended that the City Council direct Staff to prepare a resolution denying the appeal and upholding the decision of the Planning Commission certifying the environmental impact report and conditionally approving the project.

## **INTRODUCTION**

On September 23, 2010, the Planning Commission certified the Final Environmental Impact Report and approved a 14-unit condominium project including two low-income affordable units by a vote of 4-1 (Commissioner Corman voted No).

On October 4, 2010, an appeal of the Commission's decision was filed by David J. Siegel (Appellant). Subsequent to filing the appeal, Mr. Siegel identified a group "Save 9936 Durant Drive" as Appellant, but Mr. Siegel is listed in the appeal as the Appellant. Additional information related to the appeal was submitted on December 15, 2010 (Attachment 1). The Appellant resides south of the project site at 9950 Durant Drive.

A neighborhood petition with over 200 signatures of area residents and merchants opposing to the proposed project was submitted and attached. The Appellant contends that the project should be denied due to the following:

- The Appellant was not properly noticed.
- The project will demolish a historical building; therefore contradicting the City's General Plan and will impact historical Tract 7710.
- The Statement Overriding Consideration is insufficient.
- The project alternatives were not evaluated properly or given full consideration of feasibility.
- The approved project includes several exceptions from the City's Municipal Code
- Approval of the proposed project will have several environmental impacts on the neighborhood.

This report provides a background of the project description, commission action, environmental review process and addresses the Appellant's arguments.

## **PROJECT DESCRIPTION**

Gale One properties, LLC, property owner (hereinafter referred to as the "Applicant"), submitted applications requesting approval for a four story, 45 foot high, 14 unit condominium building. A detailed review of zoning standards applicable to the proposed project is provided below:

Project Data Summary

| REGULATIONS                      | PERMITTED / ALLOWED   | PROPOSED PROJECT                                   | NOTES   |
|----------------------------------|---|--|---|
| <b>Primary Building</b>          |   |  |   |
| Height                           | 45'<br>(BHMC 10-3-2804)   | 45'  |   |
| Lot Coverage / Floor Area        | No Limit  | 27,207 sq.ft. residential square footage           | Area of garage: 23,167 sq.ft.<br>Total Gross area: 50,374 sq.ft.  |
| Density                          | 11 Units plus 3-density bonus units<br>(BHMC 10-3-2801 & 10-3-1526)           | 14 Units including 2 low-income affordable units   | Two low-income affordable units are donated to the City free and clear  |
| Front Setback                    | 10'<br>(BHMC 10-3-2806)   | 10'  | The building is setback an additional 4' at front setback which includes non-allowable architectural encroachments by BHMC.                                   |
| Rear Setback                     | 15'<br>(BHMC 10-3-2808)   | 10'4.5"  | Reduced rear setback as a construction incentive pursuant to BHMC 10-3-2811   |
| Side Setback                     | 19' total, each side min. 8'<br>(BHMC 10-3-2807)                              | 9.5' on each side                                  |   |
| Modulation                       | 1,055 sq.ft.<br>(BHMC 10-3-2806)  | 1,257 sq.ft.                                       |   |
| Open Space                       | 2,800 sq.ft.<br>(BHMC 10-3-2803)  | 2,841 sq.ft.                                       |   |
| <b>Parking &amp; Circulation</b> |   |  |   |
| Parking Spaces                   | 42 parking spaces including 4 guest parking spaces<br>(BHMC 10-3-2816 & 2817) | 42 parking spaces including 4 guest parking spaces | State law allows reduced parking for the project s that includes density bonus units; however, the developer has elected to provide parking pursuant to BHMC. |
| Loading Zones                    | N/A   | N/A  |   |
| Aisle Width                      | 20-feet   | 20-feet  |   |
| Vertical Clearance               | 8-feet  | Varies 8'4" feet                                   |   |



Proposed New 14-unit Condominium Project (Front Elevation)

The Project includes the following specific applications:

- A request for Tentative Tract Map (TTM No. 70035) to subdivide the air rights on the subject property to allow the individual sale of 12 market rate units and two one-bedroom low income affordable units to be deeded to the City free and clear.
- A request for a Development Plan Review (DPR) to allow construction of a proposed 14-unit condominium project with 42 parking spaces within a two level subterranean garage accessed from the alley. The portion of alley located at the rear of the subject site would be widened by two feet six inches for dedication as required by the Beverly Hills Street Master Plan.
- A request for a Density Bonus Permit for a density bonus and one development incentive. Consistent with State law and the City's Density Bonus Ordinance, the project qualifies for thirty two percent (32%) density bonus (maximum of 4 density bonus units). The Applicant requested three density bonus units, two of which will be low-income affordable units (18% affordable units).

- The Applicant is proposing a reduction in the rear setback from 15 feet to 10 foot 5 inches. The project, as proposed, would include three (3) density bonus units above the code allowed eleven units, resulting in a project which would include fourteen units. The Applicant proposes two one-bedroom low-income units that are proposed to be deeded to the City.
- A request for an R-4 Permit to allow for additional walkway within the front setback area.

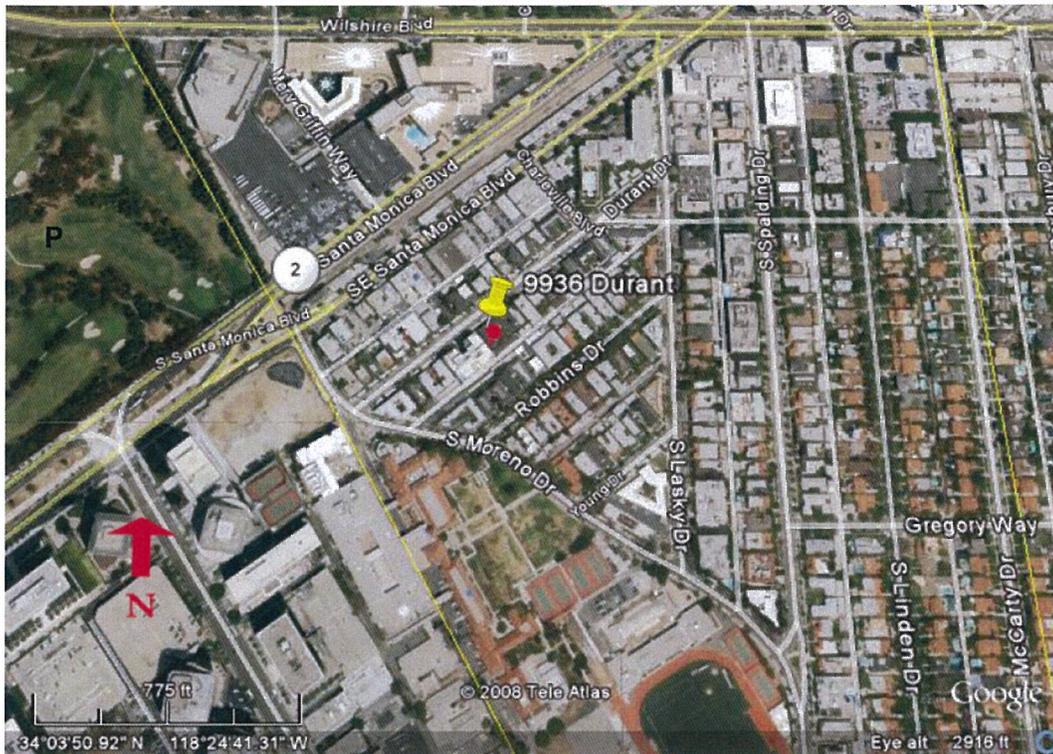
### **Durant Drive Neighborhood**

The project site is located in the Speedway Tract (7710). This tract includes a significant concentration of multifamily dwellings that is reflective of revival-style residential development in Beverly Hills in the period between the two World Wars. Tract 7710 contains primarily two story duplexes, fourplexes, and six and eight unit apartment buildings designed in a variety of period revival architectural styles including French Eclectic, Spanish Colonial Revival, Monterrey Revival, Colonial Revival, and English Tudor Revival.

The Durant Drive is one block long located in Tract 7710 and is oriented in a northeast-southwest direction. It is located close to the western City boundary and is bounded on the east by Lasky Drive and on the west by Moreno Drive. It is one block south of, and parallel to, Santa Monica Boulevard. Beverly Hills High School is located at the western end of Durant Drive, immediately west of South Moreno Drive.

The street is 50 feet in width which is wider than surrounding residential streets. There are 30 parcels on Durant Drive, all of which contain at least one multi-family residential building. Twenty-five of the thirty properties were constructed between 1935 and 1941. Of the remaining five properties, one was constructed in 1954 (9973 Durant Drive, located at the corner of Moreno Drive), three in the early 1960s (9955 Durant Drive, 9950 Durant Drive, and 9930 Durant Drive), and one in 1985 (9921 Durant Drive).

The project site is located on the south side of Durant Drive. An alley runs along the southern (rear) edge of the project site.



### Existing Building

The project site is currently developed with a two-story, 28 foot tall, and 9,169 square foot apartment building with five dwelling units. The existing Colonial Revival-style apartment building was constructed in 1935. It was designed by architect Robert V. Derrah who is best known for his Streamline Moderne designs at the Southern California Gas Company, the Coca-Cola Bottling Plant and Crossroads of the World. The symmetrical building's center section is open on the ground floor and functions as a passageway to a center landscaped courtyard. Within the formally landscaped courtyard are brick paths flanked by low, clipped hedges, a center lawn area, a pavilion, and climbing vines and bougainvillea on wood trellises. Eight one-story rectangular garages open onto the rear (south) alley.



View of the existing building at 9936 Durant Drive

### **COMMISSION ACTION**

The project was reviewed at four public hearings. At the meeting of September 23, 2009, the Planning Commission directed the Applicant to revise the project to be more compatible with the neighborhood and requested the Applicant to provide additional information on the feasibility of project alternatives and alley traffic. The Applicant hired an historian architect to redesign the project. Additionally, the Applicant revised the project to dedicate two low income units to the City.

### **ENVIRONMENTAL REVIEW**

The Project consists of demolition of the existing, 2-story Colonial-style courtyard apartment building and construction of a condominium development. The City's historic resource consultant, Chattel Architecture prepared a report and concluded the subject property was individually eligible for the California Register and as contributor to Tract 7710 MFR Historic District (the Speedway Tract).

As required by the California Environmental Quality Act (CEQA), the City prepared an initial study and based on the information contained in the applications filed by the Applicant including the historic resources reports, concluded that there was substantial

evidence that the project might have significant unavoidable impacts due to the demolition of the potential historic structure. The City ordered the preparation of an environmental impact report (the "EIR") for the Project to analyze the project's potential impacts on the environment. The Environmental Impact Report was released on June 30, 2009, and the public comment period extended through August 14, 2009. As required by CEQA, mitigation measures have been included to avoid or reduce potentially significant impacts created by the proposed project. The EIR also found that the project would have significant unavoidable impacts on the neighborhood compatibility and cultural resources even with the project revisions and the implementation of mitigation measures as detailed in Resolution No. 1584 (Attachment 3). CEQA also requires that if the project causes significant unavoidable adverse impacts, the City must adopt a Statement Overriding Considerations prior to approving the project (Attachment 3, Resolution No. 1584, Exhibit B). The Planning Commission found that the project benefits would warrant approval of the project notwithstanding the unavoidable environmental impacts of the project on cultural resources including demolition of an historic resource and adverse impact potential historic Speedway Tract Historic District; and neighborhood compatibility impact. The Planning Commission certified the Final Environmental Impact Report, adopted findings pursuant to the CEQA, adopted the Statement of Overriding Considerations and adopted the Mitigation Monitoring and Reporting Program (Attachment 3, Resolution No. 1584, Exhibit B & C) on September 23, 2010.

### **Summary of Appeal Issues and Responses to Issues Raised in the Appeal**

The Appellant's statement is included in Attachment 1. A summary of these issues raised in the appeal Statement follows in bold text, followed by a response.

- **Issue 1: Appellant contends that no public hearing notices were received by him even though he is the owner of record of condominium unit at 9950 Durant Drive since August 11, 2009.**

**Noticing:** During the hearing process, public notice was provided through mailings and publication in two local news papers. Notices were mailed and published for the following meetings/hearings as follows:

- Notice of Preparation of Environmental Impact Report (NOP) for the EIR Scoping Meeting on December 15, 2008,
- Planning Commission hearing on July 23, 2009,
- Planning Commission hearing on May 27, 2010, and
- Planning Commission hearing on July 8 2010.

During the course of the public hearings, the Planning Division received several letters and petitions from the neighbors concerned about the proposed project during that time. The Final EIR included the letters and petitions received during hearing process (Attachment 2).

The first two notices listed above were issued before the Appellant purchased the property at 9950 Durant Drive, although the notice was provided to the prior owner. As to the notices issued after the Appellant purchased the condominium at 9950 Durant Drive, the Appellant did not receive the mailing notices due to the change of ownership and because the list of ownership was not updated when notice of the May of 2010 hearing before the Planning Commission was issued. Nonetheless, the Appellant attended the meeting of September 23, 2010 and commented on the project and submitted a letter of opposition (Attachment 7). After considering the evidence in the record, including the Appellant's testimony, the Planning Commission made its final decision on the project. The Appellant has been notified of the subject appeal hearing.

- **Issue 2: Appellant contends that the demolition of existing building will have: (A) significant environmental impacts on an individual cultural resource and historical district and such action is not consistent the City's General Plan and Mills Act; (B) the project alternatives were not properly evaluated and (C) reasons given in the Statement of Overriding Considerations are insufficient to approve the project:**

**(A) Cultural resource impact & General Plan Consistency<sup>1</sup>:** The proposed project necessitates demolition of the existing building and would result in unmitigable significant impacts under CEQA. The Planning Commission acknowledged the impacts identified in the project EIR, but found that the project

---

<sup>1</sup> The City has not received any letters from Michael Zimny or Christopher Denzel, contrary to the note on page 1 of the Supplemental appeal information.

benefits outweigh the impacts and are warranted by adoption of Statement of Overriding Considerations.

The Planning Commission found that the project is consistent with the General Plan. The proposed project is designated for Multi-Family Residential in the Land Use Element of the City's General Plan and is zoned Multi-Family Residential (R-4) consistent with that land use designation. The proposed project represents a continuation of multi-family residential uses on the project site which allows up to 50 dwelling units acre.

The Historic Preservation Element of the General Plan sets goals and policies to preserve and maintain the historic and cultural resources in the City. Currently, the City does have any historic preservation ordinance and does not participate in the Mills Act Program. The Mills Act Program is a State law that provides an incentive to the owners of historic structures by reducing the property tax of historic structures in exchange for the continued preservation. The City Council directed staff to prepare and implement a Mills Act ordinance for the fiscal year of 2011-2012. However, these programs are identified in the City's General plan for consideration in the future. The EIR found that the subject property is eligible for local designation as a contributor to a potential historic district and individually. It is a contributor to a potential Speedway Tract (7710) historic district. The property appears eligible separately for its remarkable representation of the multi-family property type and for its association with Edward Dentzel, developer and architect Robert Derrah and its exceptional colonial revival design integrated with courtyard housing.

**(B) Project Alternatives:** As required by the CEQA, the project EIR described a range of reasonable alternatives to the project or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. Alternatives analysis in an EIR need not consider every conceivable alternative to a project; rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision-making and public participation. The EIR analyzed five alternatives to the project including:

- Alternative 1 – No Project / No Change

- Alternative 2 – Condo Conversion of the existing building
- Alternative 3 -- New Four Story Building At Rear of Existing Building
- Alternative 4 – New Four Story Building At Rear of Existing Building  
With Truncated East and West Wings
- Alternative 5 – Contemporary Compatible Design

The EIR found Alternative 2-Condominium Conversion would be the environmentally superior alternative, but, would fail to meet many of the project objectives, and therefore, it was rejected as infeasible in favor of the proposed project as revised by the Applicant.

The Planning Commission found that the project alternatives would not meet the fundamental project objectives including:

- To realize an increased economic return on the property.
- To convert the use on the Project site from rental property to condominium units suitable for sale.
- To comply with the City's Green Building Program.
- To maximize water conservation and waste water management.
- To maximize energy conservation.
- To provide overall planning efficiency for development of a multi-family structure.
- To provide two low-income affordable units.
- To provide parking that complies with current Municipal Code requirements and relieves the impact of necessary street parking in the immediate area.

During the hearing process, the Planning Commission also requested the Applicant to provide a cost analysis study. The City's consultant peer reviewed the report and concluded that neither Alternative 3 nor Alternative 4 is financially feasible when compared to the proposed project. Alternative 2 was not studied for financial feasibility because the existing building and garage with attached garden pavilion would remain on the site with no major alteration, except for conformance to mandatory minimum zoning and building codes standards, as required. Maintenance of the property would continue at current level and such a conversion would not require any alteration to the building exterior.

The Appellant states that the project description changed by adding one additional unit to the project. The Planning Commission found that the EIR remains sufficient even with one additional unit in the proposed project. The new configuration and design did not substantially change the building envelope, the required setbacks except for minor reduction of rear setback and the number of required parking spaces. As the inclusion of low income units allows for a greater density bonus, the Applicant increased the number of units in the building from an original 13 units to 14 units. To provide a greater benefit to the City, the Applicant included two low income affordable units which will be deeded to the City free and clear.

**(C) Statement of Overriding Considerations:** The California Environmental Quality Act (CEQA) requires the decision-making agency to balance the economic, legal, social, technological or other benefits of a project against its unavoidable environmental risks when determining whether to approve a project. If the benefits of the project outweigh the unavoidable adverse effects, those effects may be considered acceptable. The FEIR found the proposed project would have a significant, unavoidable impact due to demolition if a potentially historic structure. The Statement of Overriding Considerations is provided in Attachment 3, Resolution No. 1584, Exhibit B. The Planning Commission found that each one of the following benefits of the Project, independent of the other benefits, would warrant approval of the Project notwithstanding the unavoidable environmental impacts of the project as identified in the Final EIR:

- Increase of multi-family housing stock in the City
- Provision of two low-income affordable housing units that will be deeded to the City free and clear and aid the City in meeting the affordable housing needs in the community.
- Compliance with the City's Green Building Standards (BHMC Section 10-3-4600) and advance sustainable development practices within the City. Since approval of the project, the green building ordinance is repealed and all new developments are subject to a mandatory green ordinance mandated by the State of California.

Pursuant to the City's General Plan Housing Element, each city and county is required to develop local housing programs to meet the existing and future housing

needs of the community. The number of housing units required in each community is determined by the State, and is based on demographic and income data for that specific community. During the 2006-2014 planning cycle, the City is required to plan for 146 "Very Low", 113 "Low", 117 "Moderate", and 178 "Above Moderate" new residential housing units (554 new units total). The Appellant suggests that the 9900 and 9876 Wilshire Boulevard projects would satisfy the housing needs of the City. Those two projects together would include 345 new market rate residential units (9876 Wilshire is entitled for 110 units and 9900 Wilshire is entitled for 235 units). Pursuant to the State of California in the Regional Housing Needs Allocation (RHNA), the housing need of the City for the Planning period of 2006-2014 are 554 new residential units of which 178 units are to be "Above Moderate" or market rate. These two projects do in fact count towards meeting the City's housing needs for market rate housing in the planning cycle; however, there remains a housing need of 376 residential units targeted at "Moderate", "Low" and "Very Low" income households. Although the projects at 9876 and 9900 Wilshire, if built, would provide funds to the City for the establishment of a housing trust fund, which in turn may eventually result in the development of affordable housing units, the projects themselves do not provide affordable units and therefore the City is left with an unmet housing need of 376 affordable units. The Durant project provides two affordable units on site which can be counted towards meeting the City's unmet housing need. The Durant project will also donate these two units to the City free and clear. Due to increase of number of affordable units in the project, the proposed project would not have any surplus parking, but it will provide the mandated code required parking for the units in the building and for the guests per BHMC. In addition, the new building will meet the recently enacted State of California Green Building Ordinance, which requires greater energy efficiency in building materials and design.

The Planning Commission found that the project EIR was prepared in accordance with CEQA requirements, and that the specific benefits of the project outweighed the environmental impacts.

- **Issue 3: Appellant contends that the EIR did not sufficiently address: (A) the impacts to alley congestion from the project; (B) project parking benefit; (C) project noise during construction period and after completion of project; (D)**

**potential damage to the adjacent property due to the excavation for the proposed subterranean garage and shoring; (E) the release hazardous materials during demolition period; (F) potential impact on hydrology; (G) shade/shadow impact on adjacent properties; (H) Seismic impacts of the project and (I) visual impact on the Durant neighborhood:**

**(A) Alley Operation:** Under this topic the Appellant has noted several issues. The subject property is bound by a two-way, 15-foot alley at the rear. The project is required to provide two feet six inches dedication to widen the alley as required by the Street Master Plan. The alley is used by residents living on the south side of Durant Drive and on the north side of Robbins Drive, whose parking is located at the rear of their respective buildings. The alley is also used by a small number of students walking or driving to or from Beverly Hills High School. Due to concerns expressed by residents unrelated to the project, pavement markings specifying a speed limit of 15 miles per hour (MPH) have been placed by the City at frequent locations along the alley. In addition, the City has increased Police presence to enforce the 15 MPH speed law in the alley. The alley is functional and is not unique compared to the alleys in the vicinity.

The parking for the existing 5-unit apartment building on the site consists of eight individual garages accessed from the alley. The proposed 14-unit condominium project would include a 42-stall parking garage located underground, accessed from the alley. The City does not have any threshold of significance to determine impact to alleys, but the EIR included a study of the alley operation and traffic counts were performed on two different days and found that the project would not result in negative Impacts to the alley operation.

The study concluded that the alley traffic is similar to other residential alleys 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 Planning

Commission approval included a condition to install a silent lighted warning device at vehicular entrance/exit to provide warning to on-coming vehicular and pedestrian traffic.

In addition, in the event of an emergency, the City emergency response teams (Fire & Police) are prepared through proper training and safety drills, to safely execute an evacuation process of any given building by following the guidelines and procedures set forth in the plan. The entitlement of the project is not anticipated to interfere with any emergency operation plans. Emergency operations are traditionally conducted from the roadways not alleys.

**(B) Surplus Parking:** The proposed project would provide 42 parking spaces in a subterranean garage. The project provides the BHMC required parking spaces including guest parking.

As required by BHMC, the project provides guest parking which will be available to visitors of the building. Therefore, the project is not anticipated to result in any parking impact. The existing buildings do not meet current code required parking standards. Therefore, the proposed project is expected to result in a beneficial effect on parking in the area compared to existing conditions. Moreover, under the State Density Bonus law, the Applicant is eligible for a subsidized reduction to parking. Based on Sate law, only 28 spaces would be required. The Applicant has elected not to take advantage of that provision and is providing 14 additional spaces.

**(C) Noise:** The proposed residential project will generate vehicle trips that may increase traffic noise levels in the surrounding roadway areas. However, given the new net traffic generation of 50 daily trips and the fact that the increases in traffic volumes that would be caused by the proposed project are small in relation to existing volumes, this percentage increase in roadway volumes would not cause a noticeable increase in roadway noise<sup>2</sup>. Therefore, no significant long-term noise impacts are

---

<sup>2</sup> Noise is measured on a logarithmic scale of sound pressure levels that is known as a decibel (dB). A doubling of sound energy results in a 3.0 dB (A) increase in sound, which means that a doubling of sound energy (e.g., doubling the volume of traffic on a roadway) would result in a barely perceptible change in sound level.

anticipated from the project. There could be some high levels of noise generated by the project during construction period, but construction noise is temporary and is restricted by the City to the times of day when residential areas are least sensitive. Given the distance of sensitive receptors such as schools from the project site, the exterior-to-interior reduction achieved by residential buildings, and Municipal Code construction time limitations, construction noise impacts are anticipated to be less than significant. The Planning Commission approval includes additional mitigation measures to further reduce short-term construction noise impact including submission of a construction management plan prior to issuance of building permit to enforce noise attenuation measures during the project construction period (Attachment 3-Resolution 1584, Mitigation Monitoring & Reporting Program, Noise -1).

The driveway access to the project's garage will be located off the rear alley via a 20-foot wide driveway. The garage gates will be located 45 feet from the property line, under the proposed structure. It is anticipated that an intercom system will be located about 10 feet from the property line, on the west side of the driveway, in a position such that visitors will be able to activate it from their vehicles by pressing the code number relative to a resident. Due to the location of the gate and the intercom system, it is not anticipated that any significant amount of noise would be audible from the operation of the gate or intercom system.

The City of Beverly Hills Public Works Department, Solid Waste Division is responsible for solid waste collection in the City. The City contracts with Crown Disposal, Inc., a private hauling contractor, for the removal of waste from properties in the multi-family or commercial areas when there would be a trash enclosure that is located within a subterranean garage. Pursuant to Public Works Department, Solid Waste Division, the frequency of the trash pick-up estimated to be an average of twice a week from the alley, similar to other buildings on the street.

**(D) Potential damage to the adjacent building due to subterranean garage and excavation:** Construction of the proposed project requires excavation for the subterranean garage which extends 22 feet below the existing grade. The impacts of the proposed excavation are analyzed in the EIR. The project is subject to all standard regulatory requirements by the Uniform Building Code. As required by the Building and Safety Division, shoring and grading plans prepared by a registered civil engineer must be submitted and approved by the Building & Safety Division prior to issuance of any permits. Indemnity and grading bonds also must be submitted to the

City prior to excavation. Notification to adjacent property owners of pending excavation is also required as mandated by California Building Code.

**(E) Release of hazardous materials during demolition:** Implementation of the proposed project would include demolition of the existing building which was constructed in 1935. Building materials sometimes contain hazardous materials that could be released during demolition. The most common hazardous building materials are mercury from old lighting fixtures, asbestos, and lead. Due to the age of the building the building may contain those materials. Given the age of the existing apartment building, there is the potential for project demolition to result in exposure to hazardous materials such as lead and asbestos. However, measures are required for asbestos and lead paint abatement if discovered. Any lead-based paint or asbestos materials would be required to be removed in accordance with existing regulatory requirements and standard industry practices which ensure safe handling of the materials as specified in Mitigation Monitoring and Reporting Program, (Attachment 3, Resolution No. 1584, Exhibit C, Mitigation Measures HAZ-1 & 2).

**(F) Project impact on hydrology:** Construction of the proposed project requires excavation for the subterranean garage which extends 22 feet below the existing grade. Pursuant to T.K. Engineering Corp, seepage water was encountered in the test boring at a depth of 26 feet. The Planning Commission approval includes specific conditions to ensure that the project will not result in impact to hydrology as specified in Mitigation Monitoring & Reporting Program (Attachment 3, Resolution No. 1584, Exhibit C, Mitigation Measures Hydro1-5).

**(G) Shade and Shadow impact of the proposed project:** The project is consistent with height limits and setbacks specified in the City's Municipal Code for the zone which it is located. The Planning Commission reviewed a shade and shadow analysis study prepared for the project. The existing five-story building at 9950 Durant Drive has a shadow pattern which extends in the late morning partially onto the front yard of building immediately across the street from the project site, therefore, the project will produce no significant shade/shadow impact on residential uses as it would merely act to widen the moving shadow cast by the 9950 Durant Drive, resulting in a limited increase (approximately 1 hour) of shadow in the time during the days buildings affected by 9950 Durant Drive would remain in shadow.

**(H) Seismic/Geology impact:** The proposed project site is located within seismically active Southern California region. However, there is no substantial evidence of any earthquake fault on or close to (within two miles of) the project site. The project is required to comply with the California Building Code that establishes regulations for structures in potentially hazardous areas. The Planning Commission approval is also conditioned the project as specified in Mitigation Monitoring & Reporting Program (Attachment 3, Resolution 1584, Exhibit C -Measure Geo-1).

**(I) Visual Impact on the Durant neighborhood:** The project site is not located within a canyon and views of the hills from the project vicinity are largely blocked by existing buildings and trees. Therefore, the project would not have a substantial adverse effect on the scenic vista or scenic resources. The EIR found that the project has the potential to be incompatible with the surrounding neighborhood. Changes or alterations have been required in or incorporated into the project to attempt to lessen any neighborhood compatibility impact. Although the Applicant has revised the project to address this concern; however, this impact is still considered significant and unavoidable even with the project revisions and a mitigation measure which requires review and approval of the project by the Architectural Commission for materials, finishes and design elements. The Planning Commission condition of approval is specified in Mitigation Monitoring & Reporting Program (Attachment 3, Resolution 1584, Exhibit C-Measure Aesthetics-1).

- **Issue 4. Appellant contends that the Planning Commission should not approve a project based on economic benefit of the project.**

CEQA requires the Planning Commission to consider the economic, legal, social, technological or other benefits of a project when project approval results in significant unavoidable impacts. After consideration of the evidence and the benefits of the project verses the anticipated impacts, the Planning Commission balanced the environmental impacts and the various benefits of the project, and thereafter adopted a Statement of Overriding Considerations in accordance with CEQA requirements.

- **Issue 5. There are many unanswered questions including those in previous letters to the Planning Commission as to the total effect of this project during and after construction.**

In accordance with the CEQA, an initial study was conducted for project. Environmental impacts were identified in the Initial Study and Final EIR and those were either less than significant and do not require mitigation or were identified to be potentially significant, but can be reduced to less than significant level with mitigation. The Initial study and the Final EIR also identified environmental impacts that were considered as significant and unavoidable despite of all feasible mitigation measures. The EIR was circulated for a 45-day review period to obtain public input with respect to the adequacy of the document. The Final EIR contains a "Response to Comments" document which responds to all letters and petitions received during hearing process. Construction is a common activity in an urban environment and nothing about this project suggests that its construction would be unusual in any way.

## **DISCUSSION**

The project which includes a request for a development plan review permit, a Tentative Tract Map (TTM No. 70035), a Density Bonus Permit and a R-4 Permit was approved by the Planning Commission after four public hearings and two sub-committee meetings. The appeal hearing before the City Council is a de novo hearing, and the City Council may consider any and all issues associated with the matter being appealed. However, the City Council similar to the Planning Commission may only approve a project if all the following findings are made:

- **Development Plan Review Findings**
  - A. The proposed plan is consistent with the general plan and any specific plans adopted for the area.
  - B. The proposed plan will not adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area.
  - C. The nature, configuration, location, density, height and manner of operation of any commercial development proposed by the plan will not significantly and adversely interfere with the use and enjoyment of residential properties in the vicinity of the subject property.

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

o **Tentative Tract Map Findings**

(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.

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

(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.

(d) That the design of the subdivision or type of improvements is 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.

(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.

o **Density Bonus Permit Findings**

Both State of California Government Code Section 65915 and BHMC Article 15.2 provide that the City shall offer a 30% 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 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.

o **R-4 PERMIT FINDINGS**

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

After receiving a staff report and supporting materials, receiving oral and written testimony from the project Applicant and members of the public, and deliberating, the Planning Commission concluded that it was able to make the required findings to conditionally approve the project.

**CONCLUSION**

Based on forgoing issue analysis, staff concludes that the Planning Commission appropriately evaluated each of the points raised in the appeal thoroughly and consistent with State law. Therefore, staff recommends the City Council to uphold the Planning Commission decision certifying the FEIR and approving the project.

**PUBLIC NOTICE AND COMMENTS**

Notice of the City Council public hearing for the Appeal was provided to all property owners and residential tenants within a 300-foot radius of the property, and all owners of single-family zoned properties within 500 feet of the property. The notice of proposed project appeal and public hearing was mailed on February 4, 2011. In addition, notice of the proposed project was published in the Beverly Hills Courier on Friday, February 4, 2011 and in the Beverly Hills Weekly on Thursday, February 10, 2011.

**FISCAL IMPACT**

No fiscal impacts to the City are expected as a result of this appeal.

Susan Healy Keene, AICP  
Director of Community Development

  
Approved By

**Background Information  
Attachments  
for  
9936 Durant Appeal**

Table of Content

|  |        |
|--|--------|
| Appeal Statement including Supplemental Appeal   | Tab 1  |
| Final Environmental Impact Report (FEIR)   | Tab 2  |
| Planning Commission Resolutions including Mitigation Monitoring Program (Resolution No. 1584 & 1585) | Tab 3  |
| Planning Commission Staff Reports  | Tab 4  |
| Cost Analysis  | Tab 5  |
| Planning Commission Minutes  | Tab 6  |
| Letters (not included in the FEIR)   | Tab 7  |
| Michael Zimny Thesis   | Tab 8  |
| Applicant Submission   | Tab 9  |
| Project Plans  | Tab 10 |