



AGENDA REPORT

Meeting Date: September 8, 2011

Item Number: F-5

To: Honorable Mayor & City Council

From: City Attorney

Subject: A RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS APPROVING A FAÇADE REMODEL AND SIGN ACCOMMODATION ASSOCIATED WITH THE ESTABLISHMENT OF AN EQUINOX EXERCISE CLUB, FOR THE PROPERTY LOCATED AT 9465 WILSHIRE BOULEVARD.

Attachments: 1. Resolution

RECOMMENDATION

It is recommended that the City Council adopt the attached resolution.

INTRODUCTION

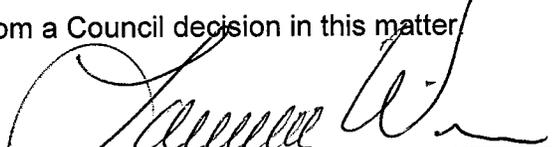
The attached resolution approves a façade remodel and Sign Accommodation associated with the establishment of an Equinox exercise club.

DISCUSSION

At its meeting on August 2, 2011, the City Council directed the City Attorney's Office to prepare a draft resolution of findings memorializing the Council's approval of the façade remodel and Sign Accommodation.

FISCAL IMPACT

No fiscal impact to the City is anticipated from a Council decision in this matter.



Laurence S. Wiener, City Attorney

Attachment 1

RESOLUTION NO.

A RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS APPROVING A FAÇADE REMODEL AND SIGN ACCOMMODATION ASSOCIATED WITH THE ESTABLISHMENT OF AN EQUINOX EXERCISE CLUB, FOR THE PROPERTY LOCATED AT 9465 WILSHIRE BOULEVARD.

The City Council of the City of Beverly Hills hereby finds, and resolves as follows:

Section 1. Equinox Fitness Club (the “Applicant”) submitted an application for a façade remodel and Sign Accommodation associated with an Equinox exercise club located at 9465 Wilshire Boulevard. An exercise club is a permitted use within the City’s commercial zones; however, the City Council previously approved a CUP for the exercise club in order to allow the exercise club to: (1) be located on the ground floor of a building within the Business Triangle, (2) occupy more than 25 feet of street frontage within the City’s Pedestrian Oriented Area, and (3) utilize shared parking facilities.

The project includes a new pedestrian entrance along the North Beverly Drive façade of the building, new business identification signs along North Beverly Drive and Wilshire Boulevard, installation of window film to obscure exercise areas, and new landscaping within existing planters.

Section 2. Notice of the Project and public hearing before the Architectural Commission was mailed on April 18, 2011 to all property owners and residential tenants within a 100-foot radius of the property. On April 27, 2011 and May 18, 2011 the Architectural Commission considered the application at duly noticed public meetings. On May 18, 2011, the Architectural Commission approved the façade remodel and Sign Accommodation.

Section 3. An appeal from the decision of the Architectural Commission was filed by Todd Elliot, attorney on behalf of Ron and Sharon Gart and Neighbors Organized to Protect the Environment in Beverly Hills (N.O.P.E Beverly Hills) (hereinafter referred to as the “Appellant”).

Section 4. Notice of the appeal hearing was mailed on July 22, 2011 to the Applicant, the Appellant, and all parties who received notice of the Architectural Commission hearing. On August 2, 2011, the City Council held a de novo public hearing to consider the façade remodel and Sign Accommodation.

Section 5. The Project has been environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000, *et seq.* (“CEQA”), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, *et seq.*, the “State Guidelines”), and the City’s Local CEQA Guidelines (the “City Guidelines”). Class 1, Class 2, and Class 32 Categorical Exemptions have been issued in accordance with the requirements of Sections 15301, 15302, and 15332 of the State Guidelines. The Class 1, Class 2 and Class 32 exemptions are applicable because the Project results in minor interior and exterior changes to an existing commercial building, demolition and reconstruction of a commercial space within an existing commercial building, and in-fill development within an existing urban area. The exemptions are further supported by the technical environmental analysis prepared and reviewed in conjunction with the Project.

No exceptions to the categorical exemptions apply. The City Council finds that the Project will not cause a substantial adverse change in the significance of an historic resource. The Bank of America building has not been identified as a historic resource itself, but as a contributor to a potential historic district. Based on the analysis contained in the staff report and

the limited scope of work, as well as the report from Mr. George Taylor Loudon (a qualified historic consultant), the Council finds that the proposed changes to the Bank of America building would not alter character defining features of the Bank of America building, would be reversible, and would not result in a significant environmental impact.

Section 6. In considering the request for the CUP, the City Council was able to make the following findings as further detailed in Section 7:

1. The plan for the proposed building or structure is in conformity with good taste and good design and in general contributes to the image of Beverly Hills as a place of beauty, spaciousness, balance, taste, fitness, broad vistas and high quality;

2. The plan for the proposed building or structure indicates the manner in which the structure is reasonably protected against external and internal noise, vibrations, and other factors which may tend to make the environment less desirable;

3. The proposed building is not in its exterior design and appearance of inferior quality such as to cause the nature of the local environment to materially depreciate in appearance and value;

4. The proposed building or structure is in harmony with the proposed developments on land in the General area, with the General Plan for Beverly Hills, and with any precise plans adopted pursuant to the General Plan; and

5. The proposed building or structure is in conformity with the standards of this Code and other applicable laws insofar as the location and appearance of the buildings and structures are involved.

Section 7. Based on the evidence presented at the hearing, including the staff report and written and oral testimony, the City Council hereby finds and determines as follows:

1. The proposed façade remodel and signs create a dynamic façade and interesting visual appearance. The materials proposed are of a high quality. The proposed business identification signs are appropriately simple in design. The design is in keeping with (and in some cases superior to) the quality of nearby shops and other businesses. The proposed facade remodel and business identification signs are in conformity with good taste and good design and in general contribute to the image of Beverly Hills as a place of beauty, spaciousness, balance, taste, fitness, broad vistas and high quality.

2. The proposed façade remodel and new signs do not appear to modify any existing barriers to external or internal noise and is not anticipated to make the environment less desirable than under current conditions. Although the project includes a new pedestrian opening along North Beverly Drive, the opening will include doors to replace existing windows. The doors will continue to protect against external and internal noise, vibrations, and other factors in the same manner as the existing windows.

3. The materials proposed for the facade remodel and new signs do not appear to be inferior in quality or execution and would therefore not degrade the local environment in appearance or value.

4. The proposed facade remodel and signage is in conformity with the prevailing uses in the general area and with other similar projects approved by the Commission. Furthermore, the overall composition and design of the façade and

signage would be in harmony with proposed or future uses in the area as would be allowed in compliance with the current General Plan for Beverly Hills, and with any precise plans adopted pursuant to the General Plan.

5. The proposed façade remodel and new signage are in conformity with the standards of the Beverly Hills Municipal Code and other applicable laws insofar as the location and appearance of the buildings and structures involved.

6. The subject property has been identified as a potential contributor to a potential “California Register district of ...Post World War II modern office buildings.” At present there is no established Post World War II modern office building historic district. The City Council finds that the subject building is not a historic resource on that ground, and is not a historic resource itself, as shown by the resource review records. Further, the City Council finds that even if the building were to be deemed a historic resource, the Project will not cause a substantial adverse change in the significance of the structure. Specifically, new window displays, a pedestrian entrance, introduction of a small retail component, and installation of a 33 foot opaque storefront will not individually or cumulatively result in a substantial change in the appearance of the building, much less a substantial adverse change to the alleged historic resource. Further, any changes are fully reversible, and no evidence was presented to suggest that the minor building modifications would result in substantial adverse changes to the building appearance. Finally, the proposed changes were reviewed by a qualified historian to ensure the changes would not result in a substantial adverse change to the building. Therefore, the City Council finds that

the minor exterior changes that would result from the Project will not cause a substantial adverse change in the significance of the building.

Section 8. Based on the foregoing, the City Council hereby denies the appeal and grants the requested façade remodel and Sign Accommodation, subject to the following conditions:

1. Final plans shall substantially conform to the plans submitted to and reviewed by the City Council on August 2, 2011.
2. This approval by the City Council is for design only; the project is subject to all applicable City regulations for the construction of the project (including zoning, building codes and Public Works requirements.)
3. Any future modifications to this approval shall be presented to staff for a determination as to whether the change may be approved by staff (minor) or requires review by the Architectural Commission. Changes made without City approval shall be required to be restored to match the City approved plans.
4. Any projections within the public-right-of way shall be reviewed and approved by the Public Works and Transportation Department.
5. A copy of the City's approval letter shall be scanned onto the final plans.
6. RECORDATION. This resolution approving the façade remodel and Sign Accommodation shall not become effective until the Applicant and the owner of the Project site record a covenant, satisfactory in form and content to the City Attorney, accepting the conditions of approval set forth in this resolution. The covenant shall include a copy of this resolution as an exhibit. The Applicant shall

deliver the executed covenant to the Department of Community Development **within 60 days** of the City Council's adoption of this resolution. At the time that the Applicant delivers the covenant to the City, the Applicant shall also provide the City with all fees necessary to record the document with the County Recorder. If the Applicant fails to deliver the executed covenant within the required 60 days, this resolution approving the Project shall be **null and void and of no further effect**. Notwithstanding the foregoing, the Director of Community Development may, upon a request by the Applicant, grant a waiver from the 60 day time limit if, at the time of the request, the Director determines that there have been no substantial changes to any federal, state or local law that would affect the Project.

7. TERMINATION. The exercise of rights granted by this approval shall be commenced within three (3) years after the adoption of this resolution. If such rights have not been exercised within such time, then this approval shall automatically terminate and shall be of no further force and effect.

8. In the event of any court action or proceeding challenging the approval of this resolution or otherwise challenging the approval of this façade remodel and Sign Accommodation, the Project, or the environmental review conducted in conjunction with this Project, the Applicant shall defend, at its own expense, the action or proceeding. In addition, the Applicant shall reimburse the City for the City's cost of defending any such court action or proceeding. The Applicant shall also pay any award of costs, expenses and fees that the court having jurisdiction over such challenge makes in favor of any challenger and against the City. The Applicant shall cooperate with the City in any such defense as the City may

reasonably request and may not resolve such challenge without the agreement of the City. In the event the Applicant fails or refuses to reimburse the City for its cost to defend any challenge to the approval of this conditional use permit, the Project, or the environmental review conducted in conjunction with this Project, the City shall have the right to revoke this conditional use permit approval.

In order to ensure compliance with this condition, within twenty (20) days after notification by the City of the filing of any claim, action or proceeding to attack, set aside, void or annul the approval of this conditional use permit or the Project, the Applicant shall deposit with the City cash or other security in the amount of seventy five thousand dollars (\$75,000), satisfactory in form to the City Attorney, guaranteeing indemnification or reimbursement to the City of all costs related to any action triggering the obligations of this condition. If the City is required to draw on that cash or security to indemnify or reimburse itself for such costs, the Applicant shall restore the deposit to its original amount within thirty (30) days after notice from the City. Additionally, if at any time the City Attorney determines that an additional deposit or additional security up to an additional fifty thousand dollars (\$50,000.00) is necessary to secure the obligations of this section, the Applicant shall provide such additional security within thirty (30) days of notice from the City Attorney. The City shall promptly notify the Applicant of any claim, action or proceeding within the scope of this condition.

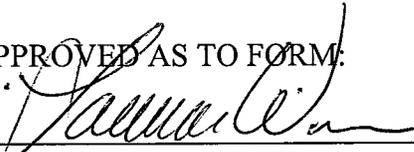
Section 9. The City Clerk shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and his Certification to be entered in the Book of Resolutions of the City.

Adopted:

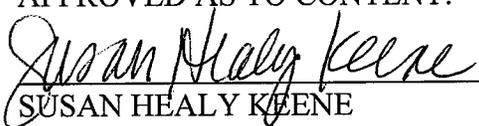
BARRY BRUCKER
Mayor of the City of
Beverly Hills, California

ATTEST:

_____ (SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:


LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:


SUSAN HEALY KEENE
Director of Community Development