



## AGENDA REPORT

**Meeting Date:** December 17, 2013  
**Item Number:** G-3  
**To:** Honorable Mayor & City Council  
**From:** Jonathan Lait, AICP, Assistant Director of Community Development  
**Subject:** REQUEST BY COUNCILMEMBER KRASNE FOR CITY COUNCIL REVIEW OF THE PLANNING COMMISSION DECISION REGARDING 8767 WILSHIRE BOULEVARD (KOBOR COMMERCIAL BUILDING).  
**Attachments:** 1. Planning Commission Resolution  
2. Municipal Code Excerpts BHMC Section 1-4-201, et seq.

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### **RECOMMENDATION**

It is recommended that the City Council make a determination as to whether the subject Planning Commission action will be called up for review.

### **BACKGROUND**

Councilmember Krasne has requested this item be placed on the City Council's agenda to determine if there is Council support to call the subject Planning Commission decision for review. If the City Council orders the review, this matter would be scheduled for consideration at a future public hearing on January 7, 2014.

### **DISCUSSION**

On December 12, 2013 the Planning Commission unanimously denied a request for a Medical Use Overlay Zone, Planned Development Permit, Development Plan Review, and Conditional Use Permit to allow medical offices, a luxury vehicle showroom, pharmacy uses, and an expanded restaurant within the recently-constructed commercial building located at 8767 Wilshire Boulevard. The applications for the entitlements were submitted pursuant to a settlement agreement between the City Council and the applicant. Upon reviewing the applications the Planning Commission was unable to make the necessary findings in support of the project, and denied the project on the basis that the project would create adverse traffic and parking impacts, and would be detrimental to existing and anticipated commercial and residential development in the vicinity of the project site. A copy of the the Resolution adopted by the Planning Commission, which outlines the Commission's findings with respect to the project, is provided as Attachment 1 for reference. Ordinarily, the legislative component (Medical Use Overlay Zone) of the project would be forwarded to the City Council for final action;

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8767 Wilshire Boulevard

however, because the Planning Commission was not able to make findings in support of the Medical Use Overlay Zone, the request does not get forwarded to the City Council as a matter of course (unless appealed within 14 days of the resolution adoption date).

Pursuant to Beverly Hills Municipal Code Section 1-4-201, et seq., the City Council may order a review of any decision made by any commission, board, or official of the city. The process to initiate this review and set a hearing is specifically set forth in the Municipal Code, and those provisions are provided as Attachment 2 for reference. The City Council must order any review within 30 days of the Planning Commission's approval, which was on December 12, 2013. If a review is ordered, the Planning Commission's action will be stayed until the Council review is final.

### **FISCAL IMPACT**

This report seeks Council direction regarding the requested call-up. A de novo public hearing before the City Council will result in cost to the City associated with staff time and public notices. Staff time would be accommodated within existing resources, and the public notice cost would total approximately \$1,700.00, which would be appropriated from the City Clerk's budget.

### **RECOMMENDATION**

It is recommended that the City Council make a determination as to whether the subject Planning Commission action will be called up for review.

Susan Healy Keene, Director of  
Community Development

  
Approved By

**ATTACHMENT 1**

**PLANNING COMMISSION RESOLUTION**

RESOLUTION NO. 1700

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS DENYING APPLICATIONS FOR A MEDICAL USE OVERLAY ZONE, PLANNED DEVELOPMENT PERMIT, DEVELOPMENT PLAN REVIEW, AND CONDITIONAL USE PERMIT ASSOCIATED WITH MODIFICATIONS TO CONDITIONS OF APPROVAL AND THE TYPES OF LAND USES ALLOWED WITHIN A PREVIOUSLY APPROVED COMMERCIAL BUILDING ON THE PROPERTY LOCATED AT 8767 WILSHIRE BOULEVARD

The Planning Commission of the City of Beverly Hills hereby finds, resolves, and determines as follows:

Section 1. Tom Levyn and Clare Bronowski, representatives on behalf of 8767 Wilshire Boulevard, L.P. (the "Applicant"), have submitted applications for a Medical Use Overlay Zone, Planned Development Permit, Development Plan Review, and Conditional Use Permit associated with the establishment of medical offices, a pharmacy, expanded restaurant uses, and an automobile sales showroom within the property located at 8767 Wilshire Boulevard (the "Project").

Section 2. Development of a commercial building at the Project site was previously approved by the Planning Commission on September 14, 2006 pursuant to Planning Commission Resolution No. 1442. The Planning Commission's approval included a variance for additional building height and a requirement for additional parking (51 spaces) to be made available to the public, and authorized general office, retail, and restaurant uses, and specifically prohibited medical uses among others. The Planning Commission's approval of the commercial

building was appealed to the City Council. The appeal was denied by the City Council, which upheld the Planning Commission's approval of the general office and retail building (City Council Resolution No. 07-R-12273). Construction of the general office building commenced in 2009.

After the start of construction on the subject commercial building in 2009, the applicant requested an amendment to the original project approvals to allow medical uses to occupy 54,900 square feet or 73% of the building. Upon reviewing the request, the Planning Commission determined that it could not make all required findings in support of the proposed medical offices, and denied the request (Planning Commission Resolution No. 1561). Subsequent to the Planning Commission's denial, the applicant filed an appeal of the decision so that the matter could be heard by the City Council. The City Council heard the appeal, and adopted a resolution denying the appeal on February 16, 2010 (City Council Resolution No. 10-R-12736). The City's denial was challenged, and the case is currently pending in the Court of Appeal. Pursuant to a settlement agreement with the City, the Applicant submitted a new application to the City on November 4, 2013 seeking approvals for the Project elements that are the subject of this resolution.

Section 3. The entitlements currently requested by the Applicant include the following:

- Medical Office Space: Allow up to 33,802 square feet of medical office space to be located within the building (45% of the building's floor area), but not on the ground floor.

- Vehicle Sales: Allow a luxury vehicle sales showroom (no service) on the building's ground floor (up to 15,520 square feet). The specific tenant would be subject to review and approval by the City Council.
- Expanded Restaurant Space: Allow up to 7,010 square feet of restaurant space (4,206 square feet of dining and bar area plus 2,804 square feet of back-of-house areas), subject to City Council review and approval of a specific tenant.
- Pharmacy Use: Allow a pharmacy use to occur on any floor except for the ground floor.
- Public Parking: The applicant is currently required to provide 51 parking spaces available for use by the public, which spaces were intended to provide needed parking for surrounding developments and limit commercial parking intrusion into surrounding residential neighborhoods. The Project proposal would allow the applicant to utilize the 51 public spaces to accommodate a restaurant expansion identified above instead, and make 230 self-parking spaces available to the public at discounted rates on weekdays after 6:00 PM and on weekends throughout the day. The rates would vary depending on the time of day, but would generally be comparable to rates charged at City-owned facilities.

Section 4. Pursuant to the California Environmental Quality Act (Public Resources Code Sections 21000, et seq. ("CEQA")), and the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, et seq.), a project that is denied or rejected is exempt from the requirements of CEQA.

Section 5. Notice of the Project and public hearing was mailed on November 8, 2013 to all property owners within a 300-foot radius of the Project site and all residential occupants within a 500-foot radius of the Project site. Notice was also published in two newspapers of local circulation, the *Beverly Hills Courier* and the *Beverly Hills Weekly*. On November 21, 2013 the Planning Commission considered the application at a duly noticed public hearing. Evidence, both written and oral, was presented at the meeting. At the conclusion of its deliberations, the Planning Commission directed staff to prepare a resolution denying the application for the Project. The Planning Commission considered and adopted this resolution denying the Project at its December 12, 2013 meeting.

Section 6. In reviewing the request for a zoning amendment for the Medical Use Overlay Zone, the Planning Commission considered the following:

1. Whether the amendment is required for the public interest, convenience, and general welfare, and that such amendment is consistent with the general objectives, principles, and standards of the General Plan.

Section 7. Based on the foregoing, the Planning Commission hereby finds and determines as follows with respect to the zoning amendment for the Medical Use Overlay Zone:

1. As proposed, the zoning amendment would allow medical uses at the subject property. The medical uses would adversely affect existing and anticipated residential and commercial development in the vicinity and would not promote harmonious development of the area. The medical uses would be an intensification of land uses that would result in a substantial increase in traffic, increased handicapped placard parking in on-street parking spaces

in the adjacent commercial areas and on residential streets, and increased traffic on commercial and residential streets related to vehicles traveling to and from the Project site and circling in search of on-street parking, each of which would adversely impact existing and anticipated residential and commercial development in the vicinity. The proposed medical use would change the character of the area and would not promote harmonious development of the area because it would not result in a synergy of uses that would lead to a vibrant commercial area, and instead would inhibit development in the area of the Project. Due to these impacts, the zoning amendment would be inconsistent with the public interest, convenience, and general welfare, and would not support the general objectives, principles, and standards of the General Plan.

Section 8. In reviewing the request for a Planned Development Permit, the Planning Commission considered whether the Project would satisfy the following objectives of the Medical Use Overlay Zone:

1. Medical uses in the particular location are consistent with the elements of the city's general plan and purpose and intent of the Medical Use Overlay Zone;
2. The proposed development and medical use will not result in detrimental impacts to existing or anticipated residential or commercial development in the vicinity of the project with regard to density, height, scale and massing of the streetscape, garden quality of the city, or any combination thereof; unless the reviewing authority finds the development benefits outweigh the detrimental impacts;
3. The proposed development and medical use will promote harmonious development in the area;
4. The proposed development and medical use will not adversely interfere with the use and enjoyment of residential properties in the vicinity of the proposed development;

5. The proposed development and medical use will not result in detrimental impacts to existing or anticipated residential or commercial development in the vicinity of the project with regard to traffic levels, traffic safety, pedestrian-vehicle conflicts, pedestrian safety hazards, parking demand, parking design, loading or manner of operation, unless the reviewing authority finds the development benefits outweigh the detrimental impacts. The development shall provide parking that is designed for ease of use and efficiency, with vehicle ingress and egress and patient drop off and pick up locations that would not adversely impact adjacent properties;

6. The proposed development and medical use will contribute to and enhance the character of the neighborhood and location, will contribute positively to the image of the city, shall not undermine efforts to maintain and foster an appropriate mix of uses in the city including a pedestrian friendly environment in the vicinity of the development;

7. The proposed development and medical use contribute to and enhance the city's economic base and granting the request will leave ample space available for future commercial growth including business headquarters, entertainment businesses, information/technology businesses, retail businesses and other businesses as determined by the city; and

8. A public benefit shall be offered to the city and the public benefit shall, at a minimum, offset any long term impacts to the city that result from allowing a medical use in the city's limited commercial areas.

Section 9. Based on the foregoing, the Planning Commission hereby finds and determines as follows with respect to the objectives of the Medical Use Overlay Zone:

The Project would not satisfy any of the objectives of the Medical Use Overlay Zone. In particular, the Project would result in increased vehicle traffic and parking demand in the vicinity of the Project site, and a decrease in the week day daytime parking supply available to the public that would be detrimental to existing and anticipated commercial and residential development. The proposed medical use would also change the character of the area and would not promote harmonious development of the area because it would not result in a synergy of uses that would lead to a vibrant commercial area, and instead would inhibit development in the area of the Project. This would undermine the City's efforts to maintain and foster an appropriate mix of uses in the city including a pedestrian friendly environment in the vicinity of the development, and would not contribute positively to the City's economic base. Furthermore, the public benefit in the form of the proposed reduced rate public parking on weekends and weekday evenings is not sufficient to offset the long-term impacts to traffic, parking, and inharmonious development of the area that would otherwise result from the Project.

Section 10. In reviewing the request for a Development Plan Review, the Planning Commission considered whether the following findings could be made in support of the Project:

1. The proposed plan is consistent with the general plan and any specific plans adopted for the area;
2. The proposed plan will not adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area;
3. 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;

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

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

Section 11. Based on the foregoing, the Planning Commission hereby finds and determines as follows with respect to the Development Plan Review:

1. The Project would allow medical uses, pharmacy uses, expanded restaurant uses, and automobile showroom uses. In granting the original approval, which permitted construction of the existing commercial building, both the Planning Commission and the City Council concluded that medical uses have the potential to result in negative impacts on the adjacent commercial and residential uses, and thus imposed conditions of approval to prohibit medical uses and other similarly intense uses. At the time of the initial approval, the Applicant agreed to the conditions of approval and subsequently recorded a covenant memorializing its acceptance of the conditions of approval. Further, if medical uses had been requested at the time of the initial approval, the building design, access and egress configurations, and other project design issues would have been viewed differently.

Traffic studies prepared to analyze the proposed Project indicate that the proposed changes in land use would increase the number of daily vehicle trips by 1,280 additional trips (from 1,664 daily trips for the previously approved project to 2,944 daily trips for the proposed Project). The intensification of land use caused by a change from general office to medical

office would result in potential interference with the use and enjoyment of residential and commercial properties in the vicinity of the Project site because the dramatic increase in traffic levels and the likelihood of incursions of commercial traffic and parking into nearby residential areas. Further, as discussed below, the additional impacts anticipated from the Project, would adversely affect existing and anticipated development in the vicinity and would not promote harmonious development of the area.

2. The Project would adversely affect existing and anticipated residential and commercial development in the vicinity and would not promote harmonious development of the area. The Project would result in a substantial increase in traffic generated by the proposed intensification of land uses, increased handicapped placard parking in on-street parking spaces in the adjacent commercial areas and on residential streets, and increased traffic on commercial and residential streets related to vehicles circling in search of on-street parking, each of which would adversely affect existing and anticipated residential and commercial development in the vicinity. Approval of the Project would change the character of the area and would not promote harmonious development of the area because it would not result in a synergy of uses that would lead to a vibrant commercial area, and instead would inhibit development in the area of the Project due to the impact on street parking, the impact on traffic, and the over concentration of medical uses.

3. The proposed nature, location, and manner of operation of the Project will significantly and adversely interfere with the use and enjoyment of residential properties in the vicinity of the subject property due to the intensification of the use that would lead to an increase in traffic levels in the Project vicinity, the reduction in public parking that would otherwise be available for the area, an increase in handicapped placard parking in residential areas, and the

traffic related to vehicles searching for on-street parking. Further, approval of the Project, as documented in the updated traffic study dated November 12, 2013 prepared for the Project, would result in an increase in traffic on local residential streets such as Clifton Way and Arnaz Drive. Additionally, those patrons unfamiliar with the building and traveling to the building from the north or west will often drive through residential areas on Hamel Drive and Charleville Boulevard in order to access the building. Increased use of this path of travel would significantly and adversely interfere with the use and enjoyment of residential properties.

4. The Project would create significantly adverse traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards due to the additional 1,280 vehicle trips that would be generated by the Project. Additionally, these trips, in combination with the increased use of on-street parking by persons with handicapped placards, would result in an increase in vehicles circulating for access to and egress from the building, including circulation past the Horace Mann Elementary School during the time that children are being dismissed from school, which coincides with the peak hours for traffic generated by medical uses.

5. The Project would be detrimental to the public health, safety or general welfare for any one of the reasons discussed in this Section 11 herein. Additionally, the replacement of Class A office space with medical uses would have an adverse impact on the general welfare of the City by reducing the space available to those uses which support the community's character and diversify its economic base.

Section 12. In reviewing the request for a Conditional Use Permit for an automobile showroom, the Planning Commission considered whether the following findings could be made in support of the Project:

1. The proposed use is compatible with the area and surrounding uses;
2. The proposed use will have adequate buffering between the use and residential areas;
3. The proposed use will not create an adverse traffic impact or a traffic safety hazard to pedestrians or to vehicles, including, but not limited to, an adverse impact on traffic circulation or parking;
4. The proposed use will not create excessive noise, unpleasant odors, noxious fumes, excessive lighting, or substantial interference with neighboring properties or uses due to the activities associated with the proposed use or its hours of operation; and
5. The proposed location of any such use will not be detrimental to adjacent property or to the public welfare.

Section 13. Based on the foregoing, the Planning Commission hereby finds and determines as follows with respect to the Conditional Use Permit:

Although the Planning Commission determined that it may be possible to make findings in support of an automobile showroom as a standalone project, the Commission determined that the necessary findings could not be made in support of the automobile showroom in conjunction with the other land uses proposed by the Project. In particular, the Project as a whole would result in increased vehicle traffic and parking demand in the vicinity of the Project site that would be detrimental to existing and anticipated commercial and residential

development. The Project would also change the character of the area and would not promote harmonious development of the area because it would not result in a synergy of uses that would lead to a vibrant commercial area, and instead would inhibit development in the area of the Project. The combination of uses within the Project would undermine the City's efforts to maintain and foster an appropriate mix of uses in the city including a pedestrian friendly environment in the vicinity of the development, and would not contribute positively to the City's economic base.

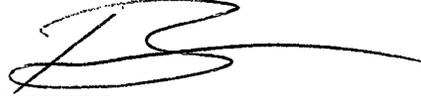
Section 14. Based on the foregoing, the Planning Commission hereby denies the requested Medical Use Overlay Zone, which pursuant to Beverly Hills Municipal Code Section 10-3-3911 will become final unless the decision is appealed or ordered for review by the City Council. Further, based on the foregoing, the Planning Commission hereby denies the Planned Development Permit, Development Plan Review, and Conditional Use Permit, and finds that this action is exempt from the provisions of the California Environmental Quality Act, pursuant to California Public Resources Code Section 21080(b)(5) and the State CEQA Guidelines Section 15270.

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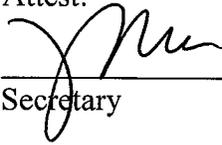
Section 15. The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and his/her Certification to be entered in the Book of Resolutions of the Planning Commission of the City.

Adopted: December 12, 2013

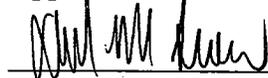


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Brian Rosenstein  
Chair of the Planning Commission of the  
City of Beverly Hills, California

Attest:

  
\_\_\_\_\_  
Secretary

Approved as to form:

  
\_\_\_\_\_  
David M. Snow  
Assistant City Attorney

Approved as to content:

  
\_\_\_\_\_  
Jonathan Lait, AICP  
City Planner 

STATE OF CALIFORNIA            )  
COUNTY OF LOS ANGELES    )    SS.  
CITY OF BEVERLY HILLS        )

I, JONATHAN LAIT, Secretary of the Planning Commission and City Planner of the City of Beverly Hills, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 1700 duly passed, approved and adopted by the Planning Commission of said City at a meeting of said Commission on December 12, 2013, and thereafter duly signed by the Secretary of the Planning Commission, as indicated; and that the Planning Commission of the City consists of five (5) members and said Resolution was passed by the following vote of said Commission, to wit:

AYES:           Commissioners Block, Corman, Yukelson, Vice Chair Fisher, Chair  
                  Rosenstein.

NOES:           None.

ABSTAIN:       None.

ABSENT:        None.

  
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JONATHAN LAIT, AICP  
Secretary of the Planning Commission /  
City Planner  
City of Beverly Hills, California

**ATTACHMENT 2**

**MUNICIPAL CODE EXCERPTS**

**BHMC §1-4-201, ET SEQ.**

## **Article 2. Council Ordered Review of Administrative Decisions**

### **1-4-201: RIGHT TO REVIEW:**

The council may order a review of any decision made by any commission, board, or official of the city, except as otherwise provided in this code. Such review may be ordered by motion of the council duly adopted within thirty (30) calendar days after the issuance of the decision. If the council orders a review of a decision, the effectiveness of such decision shall be stayed until council review is final. (1962 Code § 1-6.201; amd. Ord. 94-O-2211, eff. 9-2-1994)

### **1-4-202: SETTING HEARINGS:**

Upon the adoption of an order for a review of a decision, the mayor shall fix a time and place for the hearing. At least ten (10) days prior to the hearing, written notice shall be mailed to the applicant and such other persons who appeared and addressed the board, commission, or official at the previous hearing on the matter, and such other notice as required by law for the previous hearing shall also be given. (1962 Code § 1-6.202)

### **1-4-203: HEARINGS BY THE COUNCIL:**

Unless otherwise ordered and noticed, hearings shall be held as a part of the regular meetings of the council. The hearings shall be do novo in that an independent reexamination of the matter shall be made. The council may decide the matter upon the record or may take additional evidence. Any oral or documentary evidence may be received, but the mayor shall exclude irrelevant, immaterial, or unduly repetitious evidence. It shall not be a ground for objection that the evidence is hearsay or secondary, but the council's decision shall be made upon substantial evidence. (1962 Code § 1-6.203)

### **1-4-204: DECISIONS AND FINDINGS:**

The provisions of sections 1-4-107 and 1-4-108 of this chapter shall be applicable to the decisions of the council. (1962 Code § 1-6.204)