



AGENDA REPORT

Meeting Date: February 2, 2016

Item Number: E-1

To: Honorable Mayor & City Council

From: Ryan Gohlich, AICP
Assistant Director of Community Development / City Planner

Subject: AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING BEVERLY HILLS MUNICIPAL CODE SECTIONS 10-3-2804(B) AND 10-3-2850 REGARDING THE HEIGHT LIMITS FOR ADDITIONS TO LEGALLY NONCONFORMING BUILDINGS IN MULTIPLE-FAMILY RESIDENTIAL ZONES

Attachments:

1. Ordinance
2. Planning Commission Resolution No. 1761
3. December 10, 2015 Planning Commission Staff Report (Without Attachments)
4. 310 N. Crescent Drive Project Plans (Provided as a Separate Attachment)

RECOMMENDATION

Staff recommends that the City Council move to waive the full reading of the ordinance and that the ordinance entitled "AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING BEVERLY HILLS MUNICIPAL CODE SECTIONS 10-3-2804(B) AND 10-3-2850 REGARDING THE HEIGHT LIMITS FOR ADDITIONS TO LEGALLY NONCONFORMING BUILDINGS IN MULTIPLE-FAMILY RESIDENTIAL ZONES" be introduced and read by title only.

INTRODUCTION

This is an applicant-initiated ordinance that would amend the Municipal Code to allow additions to multi-family buildings with legally nonconforming heights to match the existing heights of those buildings through the issuance of an R-4 Permit. This item was heard by the City Council at their August 4, 2015 meeting as an appeal from the Planning Commission's decision to deny the request. The item was referred back to the Planning Commission to develop a revised

approach and recommendation for Council consideration. The Planning Commission recommended adoption of a revised ordinance at their December 10, 2015 meeting.

ENVIRONMENTAL ASSESSMENT

The Project has been assessed in accordance with the authority and criteria contained in 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.) and the City's Local CEQA Guidelines. Amendments resulting in minor changes in land use limitations pertaining to building height limitations in areas with an average slope of less than 20%, which do not result in any changes to land use or density, are categorically exempt from CEQA pursuant to Section 15305 of the State CEQA Guidelines. This amendment includes changes to the municipal code to allow additions to multi-family residential buildings with legally nonconforming height. Therefore, this project has been determined to be exempt from further environmental review.

PUBLIC OUTREACH AND NOTIFICATION

Public notice was provided for the City Council hearing on February 2, 2016 in the form of newspaper publication and direct mailing. The Planning Commission also held duly noticed public hearings on March 12, 2015, April 23, 2015, and December 10, 2015, where members of the public provided oral comments on the project. As of the writing of this report, staff has not received any additional written public comments on this matter.

BACKGROUND & ANALYSIS

This amendment is associated with a proposed project at the property located at 310 N. Crescent Drive. The proposed project consists of increasing the floor area of two existing penthouse units through additions that would extend each of the units toward the rear of the building. The building is 4 stories, 42' in height, and is located in Height District A, which allows for a maximum height of 3 stories or 33' – thus, the building is currently legally nonconforming with respect to height. The additions would be consistent with the existing height of the building and would add approximately 526 square feet to each penthouse unit, resulting in a total increase in floor area of 1,052 square feet. The project would not add any additional bedrooms or dwelling units. The existing building currently has 41 underground parking spaces, and no new parking is proposed or required as part of the project. The project will result in no changes to the front façade of the building, however the additions would change the appearance of the building if viewed diagonally from the south.

The proposed zone text amendment would create a provision in the code allowing additions to multi-family residential buildings to match legally nonconforming heights. Zoning regulations currently do not have any provisions to allow these partially built out buildings to add floor area to their nonconforming stories within the legally nonconforming height envelope.

After two separate public hearings, the Planning Commission concluded that they could not support the requested zone text amendment without a provision requiring applicants to convey a public benefit to the City in order to become eligible to apply for the associated R-4 Permit. After further discussion, the Planning Commission could not reach a consensus on the type of public

benefit they would recommend, both for the proposed project, and for future projects that may submit applications pursuant to the proposed zone text amendment. Subsequently, the Planning Commission voted unanimously to deny the requested Zone Text Amendment and R-4 Permit.

On May 6, 2015 an appeal of the Planning Commission's decision was filed by the applicant. At the August 4, 2015 City Council Formal Meeting, the City Council reviewed the appealed application for the proposed amendments to the Municipal Code and the associated R-4 Permit request. In general, the Councilmembers expressed concern about the proposed ordinance's potential to apply to a large number of nonconforming buildings, indicating a preference for language that would limit the ordinance to applying to a more limited number of potential buildings. There were also mixed responses regarding public benefits, where some Councilmembers felt that public benefits, such as affordable housing, should be required as part of the R-4 Permit request, while at least one Councilmember felt that public benefits were not necessary for these types of requests. There was consensus amongst the Councilmembers that a requirement that the building be brought into full compliance with all current building codes was not practical and should not be included in the ordinance. In summary, the City Council remanded the matter back to the Planning Commission with direction to craft language that would limit the ordinance's scope and application to fewer buildings, and for the Planning Commission to make a recommendation as to whether public benefits should be required for these types of R-4 Permit applications, and if so, what types of public benefits would be appropriate.

On December 10, 2015, the Planning Commission considered a revised ordinance that limited the eligible properties to those that are in an R-4 zone and adjacent to the business triangle. Based on staff's analysis, this results in a total of approximately seven properties (including the 310 N. Crescent property) that could potentially be eligible for the R-4 permit created by the zone text amendment. The Planning Commission also concluded that a public benefit should be offered as part of a request for an R-4 permit to extend legally nonconforming height, and that such public benefit should offset any long-term impacts to the affordability of the City's housing inventory that result from the granting of such an R-4 permit. At the conclusion of the meeting, the Planning Commission adopted a resolution conditionally approving the requested R-4 permit for the proposed project, which includes a condition that the applicant pays a fee equal to 15% of the construction valuation for the additions as determined by the Community Development Department into the City's affordable housing trust fund. The Planning Commission felt that a 15% fee would be an appropriate amount, given the scope of work proposed for the project. The Planning Commission also adopted a resolution recommending that the City Council adopt the ordinance that is currently before the City Council, and which contains the following eligibility criteria:

2. Additions to Buildings with legally nonconforming height: If a legally constructed building located adjacent to the business triangle in an R-4 zone does not conform to the height restrictions set forth in this section, additions to existing dwelling units on the nonconforming story of such building may exceed the height restrictions set forth in this Article provided that:
 - a. The additions do not exceed the maximum existing height of the legally nonconforming building as defined in Article 1 of this Chapter;
 - b. The additions do not cause the nonconforming story of the building to occupy more than 40% of the floor area of the floor immediately below it;

- c. The additions are compatible with the building design, the nearby streetscape, and surrounding development. To ensure compliance with this requirement, any additions proposed pursuant to this section shall be subject to the provisions of Article 30 of this chapter concerning architectural review;
- d. The additions do not result in the creation of any new bedrooms;
- e. The additions are not located in the rear 33% of the existing building footprint if the building is located on a property where the rear property line is adjacent to a residential zone; and
- f. Pursuant to the provisions of Article 28.5 of this Chapter, the reviewing authority issues an R-4 permit upon finding that the additions will not adversely affect the privacy of neighboring properties, access of neighboring properties to light and air, or the integrity of the streetscape.
- g. A public benefit is offered to the City that offsets any long-term impacts to the affordability of the City's housing inventory that result from the additions.

With regard to criterion (g), which requires a public benefit, the Planning Commission intended that the amount of public benefit be determined on a case-by-case basis, taking into account the scope of the proposed additions subject to the R-4 Permit, as well as the overall impact on housing affordability throughout the City. The public benefit that was required for the 310 N. Crescent Drive project met this criteria by requiring that a fee equal to 15% of the valuation of the work be paid into the affordable housing trust fund, which can be utilized for facilitating construction of affordable housing in the City, or administering any affordable housing units that are already built or in the pipeline.

FISCAL IMPACT

The recommendation in this report does not have significant budget or fiscal impacts for the City.

RECOMMENDATION

Staff recommends that the City Council move to waive the full reading of the ordinance and that the ordinance entitled "AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING BEVERLY HILLS MUNICIPAL CODE SECTIONS 10-3-2804(B) AND 10-3-2850 REGARDING THE HEIGHT LIMITS FOR ADDITIONS TO LEGALLY NONCONFORMING BUILDINGS IN MULTIPLE-FAMILY RESIDENTIAL ZONES" be introduced and read by title only.

Susan Healy Keene, AICP
Director of Community Development


Approved By _____

ATTACHMENT 1

ORDINANCE

ORDINANCE NO. 16-O-_____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS
AMENDING BEVERLY HILLS MUNICIPAL CODE
SECTIONS 10-3-2804(B) AND 10-3-2850 REGARDING THE
HEIGHT LIMITS FOR ADDITIONS TO LEGALLY
NONCONFORMING BUILDINGS IN MULTIPLE-FAMILY
RESIDENTIAL ZONES

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS HEREBY ORDAINS AS
FOLLOWS:

Section 1. On December 10, 2015, the Planning Commission held a duly noticed public hearing after which it adopted Resolution No. 1762, recommending that the City Council amend portions of Title 10 (Planning and Zoning) of the Beverly Hills Municipal Code to allow the Planning Commission to issue an R-4 Permit that would allow an extension of a legally nonconforming height on a multiple-family residential development (collectively, the “Amendments”). On February 2, 2016, the City Council held a duly noticed public hearing, received public testimony, and thereafter introduced this Ordinance.

Section 2. This Ordinance and the Amendments were assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. The City Council finds that adoption of the Amendments will not have a significant environmental impact and is exempt from CEQA pursuant to Section 15305 of Title 14 of the California Code of Regulations. The City Council finds that a Class 5 exemption is applicable to the amendment because the amendment results in minor changes in land use limitations pertaining to building height limitations in areas with an average slope of less than 20%, which do not result in any changes to land use or density. In addition, the Planning Commission adopted a Class 1 Categorical

Exemption for the multi-family residential project associated with the amendment. Thus, the amendment is exempt from CEQA pursuant to CEQA Guidelines Sections 15305.

Section 3. The Amendments are consistent with the objectives, principles, and standards of the General Plan. Specifically, the Amendments are consistent with or advance the following General Plan Policies: LU 2.1 City Places: Neighborhoods, Districts, and Corridors. Maintain and enhance the character, distribution, built form, scale, and aesthetic qualities of the City's distinctive residential neighborhoods, business districts, corridors, and open spaces; Policy LU 2.4 Architectural and Site Design. Require that new construction and renovation of existing buildings and properties exhibit a high level of excellence in site planning, architectural design, building materials, use of sustainable design and construction practices, landscaping, and amenities that contribute to the City's distinctive image and complement existing development; Policy LU 5.1 Neighborhood Conservation. Maintain the uses, densities, character, amenities, and quality of the City's residential neighborhoods, recognizing their contribution to the City's identity, economic value, and quality of life; Policy LU 5.2 Infill and Replacement Housing. Accommodate new and renovated housing within existing neighborhoods that is consistent with contextual parcel sizes, densities, built form and scale.

Section 4. The City Council hereby amends Section 10-3-2804 of Article 28 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows with all other provisions in 10-3-2804 remaining in effect without amendment:

“No building or structure located on a site that is less than or equal to sixty feet (60') in width shall exceed three (3) stories or thirty three feet (33') in height.

In addition, no building or structure shall exceed the relevant height limitation imposed by districts A through C as identified on the height district maps adopted by the city

council and on file in the office of the city clerk and in the department of planning and community development.

A. Height Limits of Districts: The following height limitation districts are hereby established in the multiple-family residential zones of the city:

1. Height district A: Structures shall not exceed three (3) stories nor thirty three feet (33') in height.

2. Height district B: Structures shall not exceed four (4) stories nor forty five feet (45') in height.

3. Height district C: Structures shall not exceed five (5) stories nor fifty five feet (55') in height.

B. Exceptions

1. Rooftop Bathrooms: A maximum of two (2) rooftop bathrooms associated with rooftop swimming pools or spas may exceed the height limit of a building in an R-3, R-4, R-4X1, or R-4X2 zone, provided that:

a. The maximum total area of all rooftop bathrooms does not exceed two hundred (200) square feet;

b. Such structures do not exceed ten feet (10') in height as measured from the adjacent roof deck;

c. Such structures do not exceed thirty three percent (33%) of the roof area upon which they are located;

d. Such structures do not exceed or intersect a line projecting from the perimeter of the roof upward at an angle of forty five degrees (45°) from the horizontal;

e. Pursuant to the provisions of article 28.5 of this chapter, the reviewing authority issues an R-4 permit upon a finding that the subject structures will not adversely affect the privacy of neighboring properties or access of neighboring properties to light, nor will the subject structures significantly increase noise to adjacent properties.

2. Additions to Buildings with Legally Nonconforming Height: If a legally constructed building located adjacent to the business triangle in an R-4 zone does not conform to the height restrictions set forth in this section, additions to

existing dwelling units on the nonconforming story of such building may exceed the height restrictions set forth in this Article provided that:

- a. The additions do not exceed the maximum existing height of the legally nonconforming building as defined in Article 1 of this Chapter;
- b. The additions do not cause the nonconforming story of the building to occupy more than 40% of the floor area of the floor immediately below it;
- c. The additions are compatible with the building design, the nearby streetscape, and surrounding development. To ensure compliance with this requirement, any additions proposed pursuant to this section shall be subject to the provisions of Article 30 of this chapter concerning architectural review;
- d. The additions do not result in the creation of any new bedrooms;
- e. The additions are not located in the rear 33% of the existing building footprint if the building is located on a property where the rear property line is adjacent to a residential zone; and
- f. Pursuant to the provisions of Article 28.5 of this Chapter, the reviewing authority issues an R-4 permit upon finding that the additions will not adversely affect the privacy of neighboring properties, access of neighboring properties to light and air, or the integrity of the streetscape.
- g. A public benefit is offered to the City that offsets any long-term impacts to the affordability of the City's housing inventory that result from the additions.

For the purposes of this exception, the 'business triangle' shall be defined as the area bounded by the centerline of Wilshire Boulevard, the centerline of Santa Monica Boulevard, south roadway, and the centerline of North Crescent Drive."

Section 5. The City Council hereby amends Section 10-3-2850 of Article 28.5 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to add a new Subsection J. as follows with all other provisions in 10-3-2850 remaining in effect without amendment:

"J. Section 10-3-2804 regarding extension of legally nonconforming height."

Section 6. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall be and remain in full force and effect.

Section 7. Publication. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage in accordance with Section 36933 of the Government Code, shall certify to the adoption of this Ordinance, and shall cause this Ordinance and his certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

Section 8. Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

Adopted:

Effective:

JULIAN A. GOLD, M.D.
Mayor of the City of
Beverly Hills, California

ATTEST:

_____(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:



DAVID SNOW
Interim City Attorney

APPROVED AS TO CONTENT:

MAHDI ALUZRI
City Manager



SUSAN HEALY KEENE
Director of Community Development

ATTACHMENT 2

PLANNING COMMISSION RESOLUTION No. 1761

RESOLUTION NO. 1761

A RESOLUTION OF THE PLANNING COMMISSION
OF THE CITY OF BEVERLY HILLS
RECOMMENDING ADOPTION OF AN ORDINANCE
OF THE CITY OF BEVERLY HILLS AMENDING
BEVERLY HILLS MUNICIPAL CODE SECTIONS 10-3-
2804 AND 10-3-2850 REGARDING THE HEIGHT
LIMITS FOR ADDITIONS TO LEGALLY
NONCONFORMING BUILDINGS IN MULTIPLE-
FAMILY RESIDENTIAL ZONES

WHEREAS, the Planning Commission has considered the proposed amendment to the City of Beverly Hills Municipal Code, as set forth and attached hereto as Exhibit A and more fully described below (the "Amendment"); and

WHEREAS, the Planning Commission conducted duly noticed public hearings on March 12, 2015, April 23, 2015, and December 10, 2015, at which times it received oral and documentary evidence relative to the proposed Amendment; and

WHEREAS, the Planning Commission finds that the proposed Amendment will result in a benefit to the public interest, health, safety, morals, peace, comfort, convenience, or general welfare, and that such Amendment is consistent with the general objectives, principles, and standards of the General Plan.

NOW, THEREFORE, the Planning Commission of the City of Beverly Hills does resolve as follows:

Section 1. The Amendment 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.), and the City’s Local CEQA Guidelines (hereafter the “Guidelines”). The Planning Commission finds that adoption of the Amendment will not have a significant environmental impact and is exempt from CEQA pursuant to Section 15305 (Class 5) of Title 14 of the California Code of Regulations. The Class 5 exemption is applicable to the amendment because the amendment results in minor changes in land use limitations pertaining to building modulation and setbacks, and applies to properties with an average slope not exceeding 20%. In addition, the Planning Commission found that the construction of the proposed additions to the existing multi-family residential building associated with the zone text amendment represent minor additions to an existing building that will not have a significant environmental impact, and therefore is exempt from CEQA pursuant to Section 15301 of the State CEQA Guidelines. Thus, the Planning Commission hereby finds that the amendment is exempt from CEQA pursuant to CEQA Guidelines Sections 15305.

Section 2. The Planning Commission does hereby find that the proposed Zone Text Amendment is intended to provide flexibility for additions to existing multiple-family buildings with legally nonconforming height in cases where the additions would enhance the City’s housing stock without causing adverse impacts. This is accomplished by allowing a reviewing authority to issue an R-4 Permit to allow additions to existing buildings to be built up to the existing, legally nonconforming height, provided that the proposed development is located adjacent to the business triangle in an R-4 zone; would not exceed the maximum existing height of the legally nonconforming building; would not cause the nonconforming story of the building

to occupy more than 40% of the floor area of the floor immediately below it; is compatible with the building design, nearby streetscape, and surrounding development; does not result in the creation of any new bedrooms; is not located in the rear 33% of the existing building footprint if the building is located on a property where the rear property line is adjacent to a residential zone; a reviewing authority finds that the development will not adversely affect the privacy of neighboring properties, access of neighboring properties to light and air, or the integrity of the streetscape; and that a public benefit is offered to the City that offsets any long-term impacts to the affordability of the City's housing inventory that result from the project. For these reasons, the Amendment serves to benefit the public interest, health, safety, morals, peace, comfort, convenience, and general welfare of both the business and residential communities.

Section 3. The Planning Commission does hereby recommend to the City Council the adoption of an ordinance approving and enacting the proposed Amendment substantially as set forth in Exhibit A, which is attached hereto and incorporated herein by reference.

Section 4. 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 10, 2015



Alan Robert Block
Chair of the Planning Commission of the
City of Beverly Hills, California

Attest:



Secretary
Ryan Gohlich, AICP

Approved as to form:



David M. Snow
Interim City Attorney

Approved as to content:



Ryan Gohlich, AICP
Assistant Director of Community
Development / City Planner

EXHIBIT A

[DRAFT]

[DRAFT] ORDINANCE NO. 14-O-_____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING BEVERLY HILLS MUNICIPAL CODE SECTIONS 10-3-2804 AND 10-3-2850 REGARDING THE HEIGHT LIMITS FOR ADDITIONS TO LEGALLY NONCONFORMING BUILDINGS IN MULTIPLE-FAMILY RESIDENTIAL ZONES.

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS HEREBY ORDAINS AS FOLLOWS:

Section 1. On December 10, 2015, the Planning Commission held a duly noticed public hearing after which it adopted Resolution No. 1762, recommending that the City Council amend portions of Title 10 (Planning and Zoning) of the Beverly Hills Municipal Code to allow the Planning Commission to issue an R-4 Permit that would allow an extension of a legally nonconforming height on a multiple-family residential development (collectively, the “Amendments”). On _____, 2016, the City Council held a duly noticed public hearing, received public testimony, and thereafter introduced this Ordinance.

Section 2. This Ordinance and the Amendments were assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. The City Council finds that adoption of the Amendments will not have a significant environmental impact and is exempt from CEQA pursuant to Section 15305 of Title 14 of the California Code of Regulations. The City Council finds that a Class 5 exemption is applicable to the amendment because the amendment results in minor changes in land use limitations pertaining to building height limitations in areas with an average slope of less than 20%, which do not result in any changes to land use or density. In addition, the Planning Commission adopted a Class 1 Categorical

[DRAFT]

Exemption for the multi-family residential project associated with the amendment. Thus, the amendment is exempt from CEQA pursuant to CEQA Guidelines Sections 15305.

Section 3. The Amendments are consistent with the objectives, principles, and standards of the General Plan. Specifically, the Amendments are consistent with or advance the following General Plan Policies: LU 2.1 City Places: Neighborhoods, Districts, and Corridors. Maintain and enhance the character, distribution, built form, scale, and aesthetic qualities of the City's distinctive residential neighborhoods, business districts, corridors, and open spaces; Policy LU 2.4 Architectural and Site Design. Require that new construction and renovation of existing buildings and properties exhibit a high level of excellence in site planning, architectural design, building materials, use of sustainable design and construction practices, landscaping, and amenities that contribute to the City's distinctive image and complement existing development; Policy LU 5.1 Neighborhood Conservation. Maintain the uses, densities, character, amenities, and quality of the City's residential neighborhoods, recognizing their contribution to the City's identity, economic value, and quality of life; Policy LU 5.2 Infill and Replacement Housing. Accommodate new and renovated housing within existing neighborhoods that is consistent with contextual parcel sizes, densities, built form and scale.

Section 4. The City Council hereby amends Section 10-3-2804 of Article 28 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows with all other provisions in 10-3-2804 remaining in effect without amendment:

"No building or structure located on a site that is less than or equal to sixty feet (60') in width shall exceed three (3) stories or thirty three feet (33') in height.

In addition, no building or structure shall exceed the relevant height limitation imposed by districts A through C as identified on the height district maps adopted by the city

council and on file in the office of the city clerk and in the department of planning and community development.

A. Height Limits of Districts: The following height limitation districts are hereby established in the multiple-family residential zones of the city:

1. Height district A: Structures shall not exceed three (3) stories nor thirty three feet (33') in height.
2. Height district B: Structures shall not exceed four (4) stories nor forty five feet (45') in height.
3. Height district C: Structures shall not exceed five (5) stories nor fifty five feet (55') in height.

B. Exceptions

1. Rooftop Bathrooms: A maximum of two (2) rooftop bathrooms associated with rooftop swimming pools or spas may exceed the height limit of a building in an R-3, R-4, R-4X1, or R-4X2 zone, provided that:

- a. The maximum total area of all rooftop bathrooms does not exceed two hundred (200) square feet;
- b. Such structures do not exceed ten feet (10') in height as measured from the adjacent roof deck;
- c. Such structures do not exceed thirty three percent (33%) of the roof area upon which they are located;
- d. Such structures do not exceed or intersect a line projecting from the perimeter of the roof upward at an angle of forty five degrees (45°) from the horizontal;
- e. Pursuant to the provisions of article 28.5 of this chapter, the reviewing authority issues an R-4 permit upon a finding that the subject structures will not adversely affect the privacy of neighboring properties or access of neighboring properties to light, nor will the subject structures significantly increase noise to adjacent properties.

2. Additions to Buildings with Legally Nonconforming Height: If a legally constructed building located adjacent to the business triangle in an R-4 zone

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does not conform to the height restrictions set forth in this section, additions to existing dwelling units on the nonconforming story of such building may exceed the height restrictions set forth in this Article provided that:

a. The additions do not exceed the maximum existing height of the legally nonconforming building as defined in Article 1 of this Chapter;

b. The additions do not cause the nonconforming story of the building to occupy more than 40% of the floor area of the floor immediately below it;

c. The additions are compatible with the building design, the nearby streetscape, and surrounding development. To ensure compliance with this requirement, any additions proposed pursuant to this section shall be subject to the provisions of Article 30 of this chapter concerning architectural review;

d. The additions do not result in the creation of any new bedrooms;

e. The additions are not located in the rear 33% of the existing building footprint if the building is located on a property where the rear property line is adjacent to a residential zone; and

f. Pursuant to the provisions of Article 28.5 of this Chapter, the reviewing authority issues an R-4 permit upon finding that the additions will not adversely affect the privacy of neighboring properties, access of neighboring properties to light and air, or the integrity of the streetscape.

g. A public benefit is offered to the City that offsets any long-term impacts to the affordability of the City's housing inventory that result from the additions.

For the purposes of this exception, the 'business triangle' shall be defined as the area bounded by the centerline of Wilshire Boulevard, the centerline of Santa Monica Boulevard, south roadway, and the centerline of North Crescent Drive.

Section 5. The City Council hereby amends Section 10-3-2850 of Article 28.5 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to add a new Subsection J. as follows with all other provisions in 10-3-2850 remaining in effect without amendment:

"J. Section 10-3-2804 regarding extension of legally nonconforming height."

[DRAFT]

Section 6. **Severability.** If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall be and remain in full force and effect.

Section 7. **Publication.** The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage in accordance with Section 36933 of the Government Code, shall certify to the adoption of this Ordinance, and shall cause this Ordinance and his certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

Section 8. **Effective Date.** This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

[DRAFT]

Adopted:

Effective:

JULIAN A. GOLD, M.D.
Mayor of the City of
Beverly Hills, California

ATTEST:

_____(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

DAVID SNOW
Interim City Attorney

MAHDI ALUZRI
City Manager

SUSAN HEALY KEENE
Director of Community Development

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

I, RYAN GOHLICH, 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. 1761 duly passed, approved and adopted by the Planning Commission of said City at a meeting of said Commission on December 10, 2015, 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 Gordon, Fisher, Corman, Vice Chair Shooshani, Chair Block.
NOES: None.
ABSTAIN: None.
ABSENT: None.



RYAN GOHLICH
Secretary of the Planning Commission /
City Planner
City of Beverly Hills, California

ATTACHMENT 3
PLANNING COMMISSION STAFF REPORT
(DECEMBER 10, 2015)



Planning Commission Report

Meeting Date: December 10, 2015

Subject: **310 North Crescent Drive**
Zone Text Amendment and R-4 Permit

Request for a Zone Text Amendment to allow the Planning Commission to grant an R-4 Permit to allow an extension of legally nonconforming height for multi-family residential development; and a request for an R-4 Permit to allow an extension of legally nonconforming height for an addition to an existing multi-family residential condominium development. Pursuant to the provisions set forth in the California Environmental Quality Act (CEQA), the Planning Commission will consider a determination of exemption from CEQA.

PROJECT APPLICANT: Murray D. Fischer and Stephen Webb

Recommendation: That the Planning Commission:

1. Conduct a public hearing and receive testimony on the Project; and
 2. Adopt the attached resolutions memorializing the Commission's findings and making recommendations to the City Council.
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REPORT SUMMARY

A request for an R-4 Permit and a Zone Text Amendment has been made to allow an addition to two penthouse units on an existing multi-family residential condominium development at 310 North Crescent Drive. The project would involve enclosing portions of the rooftop area adjacent to two existing penthouse units on an existing 31-unit residential building. Currently, the municipal code does not allow additions to multi-family residential buildings that would extend a legally nonconforming height. Thus, the applicant has requested a Zone Text Amendment that would create a provision to allow a reviewing authority to issue an R-4 Permit to allow additions to existing multi-family residential buildings that would extend the legally non-conforming height. The Planning Commission considered this request at two prior meetings, which resulted in a vote to deny the requests. The denial was appealed to the City Council, and after a public hearing, the City Council remanded the item back to the Planning Commission with direction to reconsider the proposed zone text amendment language and develop a recommendation. This report presents a summary of the changes that have been made to the proposed ordinance, provides additional analysis, and recommendations for the Planning Commission's consideration.

Attachment(s):

- A. Required Findings
- B. Public Notice
- C. Draft Resolution – Zone Text Amendment (with updated Draft Ordinance)
- D. Draft Resolution – R-4 Permit
- E. March 12, 2015 Planning Commission Staff Report
- F. April 23, 2015 Planning Commission Staff Report
- G. August 4, 2015 City Council Agenda Report
- H. Architectural Plans

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PROJECT BACKGROUND

The Planning Commission reviewed the proposed project at two previous hearings; the first held on March 12, 2015 and a subsequent hearing held on April 23, 2015. During the March 12, 2015 hearing, the Planning Commission reviewed the proposed amendments to the Municipal Code. There was discussion amongst the Commissioners regarding the number of buildings that would potentially be affected by the amendment, the policy goals of allowing extensions to nonconforming height, and the possibility of using the proposed text amendment as an incentive to derive various types of public benefits. At the conclusion of the discussion, the Commission directed staff to make several amendments to the proposed ordinance to include additional criteria that govern the types of projects that would be eligible to request the proposed R-4 Permit. These criteria included restricting eligible properties to those located on North Crescent Drive and adjacent to the Business Triangle. The revised code language also required that as part of the proposed project, the existing building would need to be brought into full compliance with all current building codes as a form of public benefit.

Staff returned at the April 23, 2015 Planning Commission meeting with a revised ordinance pursuant to the Planning Commission's direction. There was some concern regarding the practicality of the eligibility criteria, and the applicants also clarified that the requirement to bring the project into full compliance with all building codes would not be feasible. The Planning Commission then discussed potential alternative public benefits that could be required of projects requesting the proposed R-4 Permit, but was unable to reach a consensus on the specifics of such a public benefit. Thus, at the conclusion of the April 23, 2015 meeting, the Planning Commission voted unanimously to deny the requested Zone Text Amendment and associated R-4 Permit. The applicants appealed this decision to the City Council, which considered the matter at its meeting on August 4, 2015. During this meeting, the City Council reviewed the proposal, and voted to remand the matter back to the Planning Commission with direction to amend the ordinance in such a way that would reduce the number of properties that could be affected, and to return with a recommendation on whether public benefits should be required, and if so, what types of public benefits would be appropriate.

GENERAL PLAN¹ POLICIES

The General Plan includes goals and policies intended to help guide development in the City. Some policies relevant to the Planning Commission's review of the project include:

- **Policy LU 2.1 City Places: Neighborhoods, Districts, and Corridors.** Maintain and enhance the character, distribution, built form, scale, and aesthetic qualities of the City's distinctive residential neighborhoods, business districts, corridors, and open spaces.
- **Policy LU 2.4 Architectural and Site Design.** Require that new construction and renovation of existing buildings and properties exhibit a high level of excellence in site planning, architectural design, building materials, use of sustainable design and construction practices, landscaping, and amenities that contribute to the City's distinctive image and complement existing development.

¹ Available online at http://www.beverlyhills.org/services/planning_division/general_plan/genplan.asp

- **Policy LU 2.8 Pedestrian-Active Streets.** Require that buildings in business districts be oriented to, and actively engage the street through design features such as built-to lines, articulated and modulated facades, ground floor transparency such as large windows, and the limitation of parking entries directly on the street. Parking ingress and egress should be accessed from alleys where feasible.
- **Policy LU 5.1 Neighborhood Conservation.** Maintain the uses, densities, character, amenities, and quality of the City’s residential neighborhoods, recognizing their contribution to the City’s identity, economic value, and quality of life.
- **Policy LU 5.2 Infill and Replacement Housing.** Accommodate new and renovated housing within existing neighborhoods that is consistent with contextual parcel sizes, densities, built form and scale.

ENVIRONMENTAL ASSESSMENT

The Project has been assessed in accordance with the authority and criteria contained in 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.) and the City’s Local CEQA Guidelines. Projects which involve minor additions to existing buildings, as well as amendments resulting in minor changes in land use limitations pertaining to building height limitations in areas with an average slope of less than 20%, which do not result in any changes to land use or density, are categorically exempt from CEQA pursuant to Sections 15301 and 15305 of the State CEQA Guidelines. The project represents additions to two penthouse units on an existing multi-family residential building. Also, the project includes changes to the municipal code to allow such additions to buildings with legally nonconforming height. Therefore, this project has been determined to be exempt from further environmental review.

PUBLIC OUTREACH AND NOTIFICATION

Type of Notice	Required Period	Required Notice Date	Actual Notice Date	Actual Period
Posted Notice	N/A	N/A	12/3/2015	7 Days
Newspaper Notice	10 Days	11/30/2015	11/27/15	13 Days
Mailed Notice (Owners & Occupants - 500' Radius)	10 Days	11/30/2015	11/30/2015	10 Days
Property Posting	10 Days	11/30/2015	11/30/2015	10 Days
Website	N/A	N/A	12/3/2015	7 Days

Public Comment

Public notice was provided for the March 12, 2015 hearing in the form of newspaper publication, direct mailing, and on-site posting. The hearing was continued to a date certain (April 23, 2015) and therefore did not require further notice. Public comment was received by the Planning Commission at its hearings on March 12, 2015 and April 23, 2015. The decision of the Planning Commission was appealed to the City Council, and public notice of the appeal hearing, which was held on August 4, 2015, was provided in

the form of newspaper publication, direct mailing, and on-site posting. Public comment was received by the City Council at its hearing on August 4, 2015. The City Council remanded the matter back to the Planning Commission for further review at a public hearing. Public notice for this hearing by the Planning Commission on December 10, 2015 was provided in the form of newspaper publication, direct mailing, and on-site posting. Staff did not receive any public comment prior to the previous hearings, and as of the writing of this report, staff had not received any public comments prior to this hearing.

ANALYSIS²

Project approval, conditional approval or denial is based upon specific findings for each discretionary application requested by the applicant. The specific findings that must be made in order to approve the project are provided as Attachment A to this report, and may be used to guide the Planning Commission's deliberation of the subject project.

In reviewing the requested entitlements, the Commission may wish to consider the following information as it relates to the project and required findings:

City Council Direction. At the August 4, 2015 City Council Formal Meeting, the City Council reviewed the appealed application for the proposed amendments to the Municipal Code and the associated R-4 Permit request. In general, the Councilmembers expressed concern about the proposed ordinance's potential to apply to a large number of nonconforming buildings, indicating a preference for language that would limit the ordinance to applying to a more limited number of potential buildings. There were also mixed responses regarding public benefits, where some Councilmembers felt that public benefits, such as affordable housing, should be required as part of the R-4 Permit request, while at least one Councilmember felt that public benefits were not necessary for these types of requests. There was consensus amongst the Councilmembers that a requirement that the building be brought into full compliance with all current building codes was not practical and should not be included in the ordinance. In summary, the City Council remanded the matter back to the Planning Commission with direction to craft language that would limit the ordinance to fewer buildings, and for the Planning Commission to make a recommendation as to whether public benefits should be required for these types of R-4 Permit applications, and if so, what types of public benefits would be appropriate.

Buildings Potentially Affected. Subsequent to the City Council appeal hearing, staff has conducted additional research in an effort to quantify, to the extent feasible, the number of buildings potentially affected by the proposed ordinance. Based on a review of existing studies that were prepared prior to the establishment of the R-4 Height Districts, there appear to be approximately 96 buildings throughout the City's multi-family areas that would be legally nonconforming based on today's height district limitations. Based on observations in the field, there appear to be a total of 7 buildings located on North Crescent Drive (including the subject

² The information provided in this section is based on analysis prepared by the report author prior to the public hearing. The Planning Commission in its review of the administrative record and based on public testimony may reach a different conclusion from that presented in this report and may choose to make alternate findings. A change to the findings may result in a final action that is different from the staff recommended action in this report.

property) and adjacent to the business triangle that are legally nonconforming with regard to height, and could potentially qualify for the proposed zone text amendment.

Revised Eligibility Criteria. After taking into account the comments provided by the Planning Commission at its hearings on the project, as well as the direction provided by the City Council, staff has developed a slightly revised list of eligibility criteria that a project would have to meet in order to request an R-4 Permit that would allow the extension of legally nonconforming height on multi-family buildings. The following list represents the eligibility criteria as amended by staff for the Planning Commission's consideration:

- a) The additions do not exceed the maximum existing height of the legally nonconforming building as defined in the zoning code;
- b) The additions do not cause the nonconforming story of the building to occupy more than 40% of the floor area of the floor immediately below it;
- c) The additions are compatible with the building design, the nearby streetscape, and surrounding development. To ensure compliance with this requirement, any additions proposed pursuant to this section shall be subject to architectural review;
- d) The additions do not result in the creation of any new bedrooms;
- e) The additions are not located in the rear 33% of the existing building footprint if the building is located on a property where the rear property line is adjacent to a residential zone.

In addition to these criteria, this ordinance would only apply to legally constructed buildings in an R-4 zone that is adjacent to the business triangle. For the purposes of this criterion, the "business triangle" will be defined as the area bounded by the centerline of Wilshire Blvd., the centerline of Santa Monica Blvd., south roadway, and the centerline of North Crescent Drive.

Public Benefits: While there is precedent in the City of Beverly Hills to require public benefits for certain types of developments, such as medical uses or large-scale specific plans that have enabled significant projects such as hotels, it is staff's recommendation that the Planning Commission carefully consider whether public benefits should be required for the types projects that would be enabled through this zone text amendment. With the proposed eligibility criteria in the draft ordinance, it is unlikely that a large number of properties would be affected by this ordinance, and furthermore, the types of additions that would be enabled would be fairly limited in size and scale. Therefore, it is staff's recommendation that public benefits not be required for these types of R-4 Permit requests. If, however, the Planning Commission feels that public benefits are necessary and should be incorporated into the ordinance, staff recommends that the public benefit requirements have a clear nexus with these types of requests. Such public benefits could involve provisions that further the City's goals relating to affordable housing, such as a contribution toward the City's affordable housing trust fund in an amount that is comparable and appropriate for the size of the additions that are being requested.

NEXT STEPS

It is recommended that the Planning Commission conduct the public hearing and adopt the attached resolutions memorializing the Commission's findings and making recommendations to the City Council.

Report Reviewed By:



Ryan Gohlich, AICP, Assistant Director of Community
Development / City Planner

ATTACHMENT 4

310 N. CRESCENT DRIVE PROJECT PLANS

(PROVIDED AS A SEPARATE ATTACHMENT)