



STAFF REPORT

Meeting Date: July 19, 2016
To: Honorable Mayor & City Council
From: Ryan Gohlich, Assistant Director of Community Development
Subject: Request by Mayor Mirisch for City Council Review of the Planning Commission's Decision Approving a Conditional Use Permit and Minor Accommodation to Allow the Construction of a New Three-Story Commercial Building Located at 9206 and 9212 Olympic Boulevard
Attachments: 1. Municipal Code Excerpts BHMC Section 1-4-201, et seq.
2. Draft Planning Commission Resolution

BACKGROUND

Mayor Mirisch 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 up for review. If the City Council orders the review, this matter would be scheduled for consideration at a future public hearing.

DISCUSSION

The Planning Commission approved an application for a Conditional Use Permit and Minor Accommodation on July 14, 2016, to allow the construction of a new three-story commercial building with a height of 35 feet located at 9206 and 9212 Olympic Boulevard.

The Resolution adopted by the Planning Commission is attached hereto to provide a more detailed explanation of the Commission's determination¹ as to the Conditional Use Permit and Minor Accommodation.

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 attached for reference.

¹ The Resolution adopted by the Planning Commission is pending final signatures. A draft of the adopted Resolution is attached to this report for the City Council's reference.

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The City Council must order any review within 30 days of the Planning Commission's approval, which was on July 14, 2016. If a review is ordered, the Planning Commission's action will be stayed until the Council review is final.

The decision to order a review at the July 19th City Council Meeting shall be limited to the question of whether to call the item up for a hearing before the City Council at a future formal meeting, and shall not include any evaluation or assessment of the merits or circumstances of the case or the Planning Commission's action. That discussion would take place at a noticed public hearing at an upcoming Council meeting.

FISCAL IMPACT

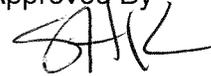
The recommendation in this report does not have significant budget or fiscal impacts for the City. It is noted that a City Council public hearing will result in cost to the City associated with public notices. The public notice cost would total approximately \$2,500.00 and would be appropriated from the City Clerk's budget.

RECOMMENDATION

It is recommended that the City Council make a determination as to whether or not the subject Planning Commission action will be called up for review.

Susan Healy Keene, AICP

Approved By



Attachment 1

Municipal Code Excerpts BHMC
Section 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)

Attachment 2

Draft Planning Commission
Resolution

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS CONDITIONALLY APPROVING A CONDITIONAL USE PERMIT AND MINOR ACCOMMODATION TO ALLOW THE CONSTRUCTION OF AN APPROXIMATELY 20,244 SQUARE FOOT COMMERCIAL BUILDING ON THE PROPERTY LOCATED AT 9206-9212 OLYMPIC BOULEVARD.

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

Section 1. EHI-9222, LLC, applicant and property owner (the “Applicant”), has submitted an application for a Conditional Use Permit to allow a floor area ratio of 1.69 to 1 and a height of 35’ (3 stories) in a C-3T-2 zone, and a Minor Accommodation to allow a deviation in the openings of the perimeter wall located to the rear of the property, both of which are associated with the construction of a new commercial building on the property located at 9206-9212 Olympic Boulevard (the “Project”). The entitlements required to approve the Project may be approved by the Planning Commission if specific findings can be made in support of the Project.

Section 2. The Project site is located on the south side of Olympic Boulevard, between South Palm Drive and South Maple Drive. The Project site measures 100’ by 120’ and is made up of two individual parcels of land, each measuring 50’ by 120’. The Project site totals 12,000 square feet in area and is immediately bordered by low-rise commercial buildings across Olympic Boulevard to the north, two- and three-story multi-family properties across at 15-foot alley to the south, a two-story commercial building to the east, and a commercial property

improved with a small one-story structure to the west. Development on this portion Olympic Boulevard is characterized by one- and two-story commercial buildings and small multi-tenant shopping centers.

The Project involves construction of a new 3-story commercial building totaling 20,244 square-feet. The Project will have three retail/restaurant spaces at the ground floor and two levels of general office space above the ground floor. The first level will contain approximately 6,900 square feet of retail space and/or restaurant space with a maximum of 1,000 square feet of bar and dining area, the second level of development will consist of approximately 7,253 square feet of general office space, and the third level of development will consist of approximately 6,091 square feet of general office space. The Project will be a 35' tall, 3-story building with an additional 6' clerestory as permitted by the Beverly Hills Municipal Code.

As proposed, the Project requires 58 parking spaces, and the applicant has provided 58 full-size (9' x 19') parking spaces in three subterranean levels. A new driveway from the existing alley at the rear of the site will provide access to the proposed underground on-site parking. A proposed 60' long loading zone would be located perpendicular to the alley at the rear of the site. The loading zone would be accessible via two 15' wide openings in the proposed three-foot tall wall separating the property from the alley to the rear of the property. Pedestrian access to the building would occur from Olympic Boulevard through the building's front entrance.

Section 3. The request to construct a new office building results in the need for specific entitlements as follows:

1. Conditional Use Permit. A Conditional Use Permit is required for

the construction of a structure that exceeds two stories or 35' in height and/or has a floor area ratio greater than 1.33 to one in the C-3T-2 zone. The Project includes the construction of a structure that is three stories and 35' in height and has a floor area ratio of 1.69 to one.

2. Minor Accommodation. A Minor Accommodation is required in order to accommodate additional openings in the required masonry wall located on the rear property line adjacent to the alley. The maximum opening allowed is 25 linear feet per parcel. With the Minor Accommodation the Applicant may request 30 linear feet of opening per parcel. The Project proposes a total of 52 linear feet of opening spread across the two existing parcels.

Section 4. The Project has been environmentally reviewed pursuant to 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 environmental regulations of the City. Projects characterized as in-fill development that meet certain criteria are categorically exempt from CEQA pursuant to Section 15332 of the State CEQA Guidelines. A Class 32 Exemption Report was prepared for a version of the Project that was previously submitted, which is substantially similar to the proposed project, and the project meets all five of the following criteria set forth in Section 15332 of the State CEQA Guidelines for in-fill development projects:

a.) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.

- b.) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
- c.) The project site has no value as habitat for endangered, rare, or threatened species.
- d.) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- e.) The site can be adequately served by all required utilities and public services.

Therefore, the Planning Commission hereby finds that the project is exempt from further environmental review under CEQA.

Section 5. Notice of the Project and public hearing was mailed on April 15, 2016, to all property owners and residential occupants within a 500-foot radius plus block-face of the property. Additionally, notices were also published in the City's two newspapers, the *Beverly Hills Courier* and *Beverly Hills Weekly*, on April 15, 2016 and April 21, 2016, respectively. An on-site posted notice was displayed on the property beginning on April 15, 2016. On April 28, 2016, the Planning Commission considered the application at a duly noticed public hearing and continued the item to the June 9, 2016 regularly scheduled Planning Commission meeting. On June 9, 2016 the Planning Commission continued the item to the June 23, 2016 regularly scheduled Planning Commission meeting. On June 23, 2016 the Planning Commission considered the application and continued the item to the July 14, 2016 meeting. On July 14, 2016 the Planning Commission considered the application. Evidence, both written and oral, was presented at the meetings.

Section 6. In reviewing the request for a Conditional Use Permit, the Planning Commission considered whether it could make the following findings in support of the Project:

1. The additional height and density would not be detrimental to adjacent property or to the public welfare.

Section 7. Based on the foregoing, the Planning Commission hereby finds and determines as follows with respect to the Conditional Use Permit:

1. As conditioned, the proposed project would not be detrimental to adjacent property or to the public welfare. The project is designed to meet the conditions set forth in Beverly Hills Municipal Code §10-3-1632 that commercial projects must adhere to in order to request a Conditional Use Permit for additional height and density in the C-3T-2 zone. These conditions include:

- a. An additional setback shall be required from the rear property line; provided, further, such additional setback shall not exceed thirty three percent (33%) of the lot depth for any portion of the structure below two (2) stories and shall not exceed fifty percent (50%) of the lot depth for the third story.
- b. The design of the facade and the structure facing residential uses shall be harmonious with the adjacent residential character in architectural style, color, and material.

- c. Landscaping or other parklike amenities shall be required within the rear setback in conjunction with the design for loading, parking, trash removal, and access to and from the site.
 - d. Appropriate restrictions shall be imposed upon the use of the structure, including the hours of operation, additional parking, and parking restrictions in order to assure adequate on-site parking and to limit the types of uses creating problems of noise, odor, or glare.
 - e. The intensity of use shall not exceed either sixteen (16) vehicle trips per hour, or two hundred (200) vehicle trips per day for each one thousand (1,000) gross square feet of floor area for uses as specified in the most recent edition of the Institute of Traffic Engineers' publication entitled "Trip Generation", and if the use is not specified in such publication, the vehicle traffic generation for the proposed use shall be designated by the director of transportation.
2. The proposed project meets the above required conditions, which are meant to ensure the compatibility of the building with the surrounding neighborhood. The Project includes setbacks on the second and third floors in order to provide additional privacy, and light and air to the existing multi-family properties across the alley to the south of the project site. This also provides additional space to provide planting materials between the proposed building and the alley between the building and the residential uses, which will further enhance privacy and soften the look of

the building from the alley. The Project is designed to enhance the neighborhood and the style of the building complements the existing development in the area. Further, the provision of underground parking with alley access both contributes to a positive pedestrian experience along Olympic Boulevard by reducing potential conflicts between pedestrians and vehicles, as well as increases opportunities for street parking located in front of the project site by eliminating a pre-existing curb cut. Landscaping and other park-like amenities are provided toward the rear of the Project facing the residential buildings to shield the loading area and electrical transformer from view of the adjacent residential uses. Restrictions have been placed on the Project in the form of conditions of approval to ensure that the use will be compatible with the neighborhood. These conditions include restrictions on loading times and frequency, time restrictions on the use of outdoor areas of the Project, and various conditions to ensure the improvement of the alley and safe use of the loading zone and alley by visitors to the building. A traffic study was conducted for the project and the projected number of daily trips falls below the sixteen (16) vehicle trips per hour, or two hundred (200) vehicle trips per day for each one thousand (1,000) gross square feet of floor area as required by the Beverly Hills Municipal Code. Therefore, construction of the project will not be detrimental to the adjacent property or the public welfare.

Section 8. In reviewing the request for a Minor Accommodation, the Planning Commission considered whether it could make the following findings in support of the Project:

1. The increased size of the opening will not have a substantial adverse impact on traffic safety, noise, the scale and massing of the streetscape, or garden quality of the City.

Section 9. Based on the foregoing, the Planning Commission hereby finds and determines as follows with respect to the Minor Accommodation:

1. As conditioned, the increased size of the opening in the perimeter wall abutting the alley will not have a substantial adverse impact on traffic safety, noise, the scale and massing of the streetscape, or garden quality of the City. The additional openings in the masonry wall to the rear of the property will provide a loading zone that allows trucks to safely maneuver into the loading zone from the 17.5' wide alley. Further, allowing additional openings in the wall provides for the ability to separate the access for the parking garage from the access to the loading zone, which will increase vehicular safety. The scale and massing of the streetscape will not be negatively impacted by the proposed openings in the rear wall of the building, and the Project includes landscaped areas that screen the loading zone and building from view of the adjacent residential properties to ensure that the garden quality of the City is not compromised.

Section 10. Based on the foregoing, the Planning Commission hereby grants the requested Conditional Use Permit and Minor Accommodation, subject to the following conditions:

1. The Planning Commission hereby approves a floor area ratio of 1.69 to one, a height of three stories and 35' (excluding an up to 6' clerestory), and a total of 52 linear feet of openings in the required 3-foot tall masonry wall located on the rear property line. The openings are approved to consist of one 22' opening to the subterranean garage, and two 15' openings to the loading zone.

2. Prior to the issuance of any building permits, the two parcels associated with the development of the Project shall be legally tied to form one parcel. The lot-tie covenant is subject to review and approval by the City Attorney and shall be recorded with the Los Angeles County Assessor's Office.

3. The Project shall be subject to review and approval by the Architectural Commission.

4. After completion of architectural review, and prior to issuance of the certificate of occupancy, the Applicant is required to comply with the Public Art Ordinance. An application is required to be submitted to the Fine Art Commission for review and approval of any proposed art piece or, as an alternative, the Applicant may choose to pay an in-lieu art fee.

5. To prevent potential noise impacts to neighboring residents, use of the third-floor deck area shall be limited to the hours of 7:00 a.m. to 7:00 p.m. daily, and signage indicating such restrictions shall be installed on the deck.

6. Amplified music shall be prohibited on the third-floor deck area.

7. The third-floor deck area shall be used exclusively by employees of the building.

8. Landscape screening, subject to review and approval by the Director of Community Development, shall be provided at the rear of the third-floor deck, facing the multi-family properties across the alley.

9. To prevent potential noise impacts to neighboring residents, use of the ground floor patio area shall be limited to the hours of 9:00 a.m. to 9:00 p.m. daily.

10. Amplified music shall be prohibited on the ground-floor patio area.

11. Unless otherwise authorized by the Planning Commission, the total square footage of all bar and dining areas (excluding back-of-house operations) on the Project site shall be less than 1,000 square feet.

12. The Project shall operate at all times in a manner not detrimental to surrounding properties or residents by reason of lights, noise, activities, parking, or other actions.

13. The Project shall operate at all times in compliance with Municipal Code requirements for Noise Regulation.

14. Employees shall be provided with free parking and retail and/or restaurant patrons shall be provided with two-hour validated parking.

15. Signs shall be placed in appropriate locations to direct building parking and deliveries to the alley.

16. To ensure visibility for egress traffic, a silent visual alarm device shall be installed at the exit ramp by the alley. This device shall light up when a vehicle is leaving the garage, alerting the oncoming traffic in the alley. The device shall be adequately shielded as to not disturb the residential units in the multi-family

buildings across the alley from the project. Parabolic mirrors shall be placed at the intersection of the east-west alley and the north-south alley at the rear of the Project site.

17. All deliveries shall be made to the property between 10 a.m. and 4:00 p.m. to avoid peak traffic on the adjacent alleys.

18. The loading zone shall be a minimum of 60' by 12' with two 15' openings per the approved plans. Trucks shall be instructed to approach the site from eastbound Olympic Boulevard, turn right (southbound) onto Palm Drive, and continue in a clockwise direction, exiting the alley onto Maple Drive after completing loading activities in the designated loading area.

19. The loading zone shall have clear signage prohibiting parking by any vehicle other than a delivery vehicle at the time it is making a delivery.

20. The Applicant shall provide improved illumination in the alley. The illumination must be appropriately shielded from the adjacent multi-family buildings. Any illumination shall be subject to review by the City.

21. A clear and identifiable street address shall be placed in a visible location.

22. Two and a half feet (2.5') for public use at the southern side of the property shall be dedicated to the City of Beverly Hills to widen the alley according to the Street Master Plan adopted by the City Council.

23. The pavement and center drainage gutter in the alley at the rear of the property shall be removed and replaced according to the City standards, and the full cost of such work shall be paid for by the Applicant.

24. Sidewalk, and curb and gutter fronting the site on Olympic Boulevard shall be removed and replaced (according to City standards), and the full cost of such work shall be paid for by the Applicant. The existing driveway on Olympic Boulevard shall be removed.

25. The applicant shall work with the City to provide improved lighting and other street amenities to provide safe pedestrian access.

26. A Sewer Area Study may be required based on final approved use and occupancy in order to analyze the existing sewer lines within the City of Beverly Hills which will convey the flow from the subject project. The Applicant shall pay for the sewer system upgrades (if needed) due to the additional proposed sewage generated from this project.

27. In accordance with the requirements set forth in City Council Resolution 71-R-4269, the applicant shall file a formal written request with the Civil Engineering Division for approval of any type of temporary construction encroachment (steel tieback rods, etc.) within the public right-of-way. Shoring plans and elevations prepared by a registered civil engineer must be submitted for review by the Civil Engineering Division. Shoring elements shall not project in to the alleys. An indemnity bond must be submitted and approved by the City Attorney prior to excavation.

28. The Applicant shall protect all existing street trees adjacent to the subject site during construction of the Project. Every effort shall be made to retain mature street trees. No street trees, including those street trees designated on the

preliminary plans, shall be removed and/or relocated unless written approval from the Recreation and Parks Department and the City Engineer is first obtained.

29. Removal and/or replacement of any street trees shall not commence until the Applicant has provided the City with an improvement security to ensure the establishment of any relocated or replaced street trees. The security amount will be determined by the Director of Recreation and Parks, and shall be in a form approved by the City Engineer and the City Attorney.

30. The Applicant shall provide that all roof and/or surface drains discharge to the street. All curb drains installed shall be angled at 45 degrees to the curb face in the direction of the normal street drainage flow. The Applicant shall provide that all groundwater discharges to a storm drain. All ground water discharges must have a permit (NPDES) from the Regional Water Quality Control Board. Connection to a storm drain shall be accomplished in the manner approved by the City Engineer and the Los Angeles County Department of Public Works. No concentrated discharges onto the alley surfaces will be permitted.

31. The Applicant shall provide for all utility facilities, including electrical transformers required for service to the proposed structure(s), to be installed on the subject site. No such installations will be allowed in any City right-of-way.

32. The Applicant shall underground, if necessary, the utilities in adjacent streets and alleys per requirements of the Utility Company and the City.

33. The Applicant shall make connection to the City's sanitary sewer system through the existing connections available to the subject site unless otherwise approved by the City Engineer and shall pay the applicable sewer connection fee.

34. The Applicant shall make connection to the City's water system through the existing water service connection unless otherwise approved by the City Engineer. The size, type, and location of the water service meter installation will also require approval from the City Engineer.

35. The Applicant shall obtain the appropriate permits from Civil Engineering for the placement of construction canopies, fences, etc., for construction of any improvements in the public right-of-way, and for use of the public right-of-way for staging and/or hauling certain equipment and materials related to the Project.

36. The Applicant shall remove and reconstruct any existing improvements in the public right-of-way damaged during any construction operations associated with the Project.

37. Condensation from HVAC and refrigeration equipment shall drain to the sanitary sewer, not curb drains.

38. The Applicant shall submit a Construction Management Plan to the Departments of Building and Safety, Public Works, and Transportation for review and approval prior to issuance of a building permit. The Construction Management Plan shall include, at a minimum the following:

- a. Written information about the construction parking arrangements, and hauling activities at different stages of construction to be reviewed and approved by the Engineering Division of Public Works and the Building & Safety Department.

- b. Information regarding the anticipated number of workers, the location of parking with respect to schedules of the construction period, the arrangements of deliveries, hauling activities, the length of time of operation, designation of construction staging area and other pertaining information regarding construction related traffic.
- c. The proposed demolition/construction staging for this project to determine the amount, appropriate routes and time of day of heavy hauling truck traffic necessary for demolition, deliveries, etc., to the subject site.
- d. A sign shall be posted on the temporary construction fence with the name and contact information of the general contractor and construction supervisor during construction of the Project.
- e. No parking of construction vehicles or vehicles related to the construction of the Project in the alley during construction except pursuant to a permit issued by the City.

39. The Project shall be constructed in substantial compliance with the plans and specifications approved by the Planning Commission on July 14, 2016.

40. APPEAL. Decisions of the Planning Commission may be appealed to the City Council within fourteen (14) days of the Planning Commission action by filing a written appeal with the City Clerk. Appeal forms are available in

the City Clerk's office. Decisions involving subdivision maps must be appealed within ten (10) days of the Planning Commission Action. An appeal fee is required.

41. RECORDATION. The resolution approving a Conditional Use Permit and Minor Accommodation shall not become effective until the owner of the Project site records 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 the resolution as an exhibit. The Applicant shall deliver the executed covenant to the Department of Community Development **within 60 days** of the Planning Commission decision. 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.

42. EXPIRATION. Conditional Use Permit and Minor Accommodation: The exercise of rights granted in such approvals shall be commenced within three (3) years after the adoption of such resolution unless otherwise extended.

43. VIOLATION OF CONDITIONS: A violation of any of these conditions of approval may result in a termination of the entitlements granted herein.

44. This approval is for those plans submitted to the Planning Commission on July 14, 2016, a copy of which shall be maintained in the files of the City Planning Division. Project development shall be consistent with such plans, except as otherwise specified in these conditions of approval.

45. Minor amendments to the plans shall be subject to approval by the Director of Community Development. A significant change to the approved Project shall be subject to Planning Commission Review. Construction shall be in conformance with the plans approved herein or as modified by the Planning Commission or Director of Community Development.

46. Project Plans are subject to compliance with all applicable zoning regulations, except as may be expressly modified herein. Project plans shall be subject to a complete Code Compliance review when building plans are submitted for plan check. Compliance with all applicable Municipal Code and General Plan Policies is required prior to the issuance of a building permit.

47. APPROVAL RUNS WITH LAND. These conditions shall run with the land and shall remain in full force for the duration of the life of the Project.

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Section 11. 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: July 14, 2016

Farshid Joe Shooshani
Chair of the Planning Commission of the
City of Beverly Hills, California

Attest:

Secretary

Approved as to form:

Approved as to content:

David M. Snow
Assistant City Attorney

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