



STAFF REPORT  
CITY OF BEVERLY HILLS

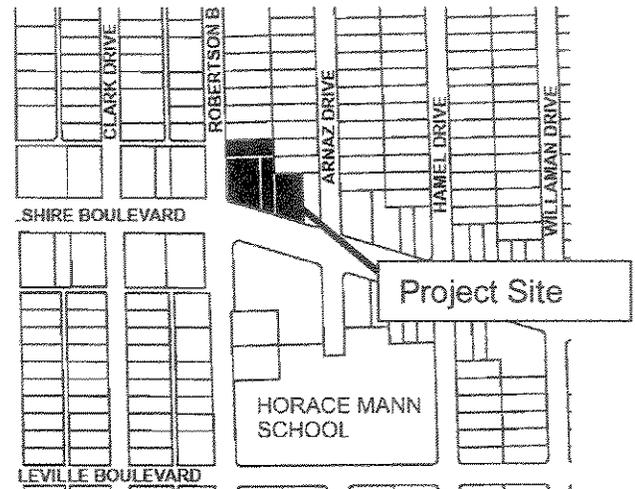
For the Planning  
Commission Meeting of  
November 19, 2009

TO: Planning Commission

FROM: Georgana Millican, Associate Planner

THROUGH: Jonathan Lait, AICP, City Planner *Done for*

SUBJECT: Resolution of the Planning Commission of the City of Beverly Hills denying a request for amendment of a Development Plan Review Permit for the property located at **8767 Wilshire Boulevard** – Continued from October 22, 2009



**RECOMMENDATION**

It is recommended that the Planning Commission adopt the resolution denying the request for amendment of a Development Plan Review Permit for the property located at **8767 Wilshire Boulevard**.

**BACKGROUND**

At the September 24, 2009, Planning Commission public hearing, the Commission held a duly noticed public hearing to hear the request for an amendment to a Development Plan Review to revise the conditions of approval. The existing approval allows for the construction of a commercial building with general office, retail and restaurant uses and specifically prohibits medical, pharmacy and restaurant type uses designed to primarily serve tenants of the building and also requires that a minimum of 51 parking spaces to be reserved for use by the general public.

The Planning Commission determined that they were unable to make the findings in the affirmative to approve the proposed project. The Planning Commission directed staff to prepare a resolution of denial for their review scheduled for October 22, 2009. The attached Resolution is a reflection of the Planning Commission action.

On October 21, 2009, Benjamin Reznik, applicant/attorney for the property owners, submitted a letter to the Planning Commission stating that the resolution findings use an incorrect potential impact standard and the resolution improperly ties the project to conditions of approval for a previous project (letter attached). The Planning Commission held a public hearing on October 22, 2009 to consider the resolution of denial. At the hearing the Commission expressed concern that they had not had sufficient time to properly analyze the Applicant's letter. In addition, the Commission desired to give the Applicant additional time to provide legal authority on the positions stated in the letter. With the Applicant's concurrence, the Commission continued hearing until November 19, 2009.

The Applicant submitted a letter on November 4, 2009 (attached) citing further legal support for the statements to the October 21, 2009 letter. In addition, the Applicant submitted a letter on November 9, 2009 (attached) comparing the previous approval for medical conversion at 9090 Wilshire Boulevard to the subject request for 8767 Wilshire Boulevard. The letters have been reviewed by staff and the City Attorney's Office and no changes to the attached resolution are proposed.

  
Georgana Millican

Attachments:

1. Draft Resolution
2. Letter from Applicant dated October 21, 2009
3. Letter from Applicant dated November 4, 2009
4. Letter from Applicant dated November 9, 2009

# ATTACHMENT 1

## Draft Resolution

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION  
OF THE CITY OF BEVERLY HILLS DENYING A  
REQUEST FOR AMENDMENT OF A DEVELOPMENT  
PLAN REVIEW PERMIT FOR 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. The Kobor Family Trust, (the "Applicant") has submitted an application for an amendment to a Development Plan Review, which was conditionally approved by City Council Resolution No. 07-R-12273, permitting the construction of a commercial building with retail, restaurant, and commercial office uses at the property located at 8767 Wilshire Boulevard (referred to as the "Project" and "Project Site," respectively). The Applicant requests amendment of the conditions of approval to (1) eliminate the condition to provide 51 parking spaces for use by the general public (Condition No. 31 of Resolution No. 07-R-12273) and (2) to remove the prohibition on medical and other intense uses of the building currently under construction at the Project Site (Condition Nos. 17 and 18 of Resolution No. 07-R-12273) (collectively referred to as the "Amendment").

The Project Site is located on the northeast corner of Wilshire Boulevard and Robertson Boulevard and is an L-shaped site consisting of six lots that were previously occupied by the BMW automobile dealership storage facility and a small commercial building (located in the southeastern portion of the site) which has been demolished as part of the construction of the building that is currently underway. Adjacent to the property to the north are a variety of commercial developments including retail stores and medical and general commercial offices.

Across Wilshire Boulevard to the south is a three-story office/medical building. Across Robertson Boulevard to the west is a two-story commercial building. Adjacent to the property to the east is a two story commercial building; and two and three story multi-family residential properties facing North Arnaz Drive. There are no alleys separating the Project Site from the adjacent properties to the east or north. The Project's conditions of approval require construction of a right-turn lane on west-bound Wilshire Boulevard to north-bound Robertson Boulevard as a mitigation measure.

The Amendment is a request to revise the previously approved Development Plan Review that allows the construction of a 75,116 square-foot, four-story, 68-foot high commercial building at the Project Site. As approved, allowable uses of the building include retail, restaurant (maximum 3,000 square feet – with up to 1,500 square feet dining and bar area), vehicle storage for nearby vehicle dealerships and general commercial offices. As identified above, the use and operation of the building is restricted by the existing conditions of approval.

The Applicant requests the Amendment to allow the following building use and square footage allocation: 54,900 square feet of medical uses, 4,696 square feet of general office area, 2,000 square feet of restaurant/sundry shop area, 1,116 square feet of pharmacy uses, and 12,404 square feet of retail uses. The Applicant also seeks to eliminate the condition requiring provision of 51 parking spaces for public use, a condition the Applicant accepted during the proceedings leading to approval of the Project by the City Council.

Section 2. 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.*) Section 15061(b)(4), a project that is denied or rejected is exempt from the requirements of CEQA.

Section 3. Notice of the Amendment and public hearing was mailed on September 14, 2009 to all property owners and residential tenants within a 300-foot radius of the Project Site, and all single-family zoned properties within a 500-foot radius of the exterior boundaries of the Project Site. A courtesy notice with an address clarification was sent out on September 17, 2009 to the notice radius. The revised hearing notice was also published in the Beverly Hills Courier on September 18, 2009. On September 24, 2009, the Planning Commission conducted a site visit and considered the Amendment request at a duly noticed public hearing. Evidence, both written and oral, was presented at said hearing.

Section 4. In considering the application for the Amendment to the Development Plan Review Permit, the Planning Commission considered the following criteria:

- A. Whether the Amendment is consistent with the general plan and any specific plans adopted for the area;
- B. Whether the Amendment will adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area;
- C. Whether the nature, configuration, location, density, height and manner of operation of any commercial development proposed by the Amendment will significantly and adversely interfere with the use and enjoyment of residential properties in the vicinity of the subject property;

D. Whether the Amendment will create any significantly adverse traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards; and

E. Whether the Amendment will be detrimental to the public health, safety or general welfare.

Section 5. Based on the foregoing, the Planning Commission hereby finds and determines as follows with respect to the findings set forth in Section 4 above:

As proposed, the Amendment would allow medical uses, pharmacy uses and restaurant or sundry shop uses designed to primarily serve the tenants of the building. In addition, the Amendment would eliminate the condition to provide 51 parking spaces for use by the general public. In granting the original approval, which permitted construction of the building, both the Planning Commission and the City Council concluded that medical uses have the potential result in negative impacts on the adjacent residential uses, and thus imposed conditions of approval to prohibit medical uses and other similarly intense uses. Technical traffic studies prepared to analyze the medical uses sought by the Amendment indicate that the proposed change in use from the original approval of general office to medical uses increases the number of daily vehicular trips by over 225% (from 604 daily trips to 1,984 daily trips for the medical component alone). Moreover, the Amendment proposes to eliminate the 51 public parking spaces that the Applicant previously agreed to provided at the Project Site, which agreement is memorialized as a recorded covenant and agreement accepting the terms and conditions of the City's prior approval. The intensification of land use combined with the loss of planned public parking amplifies the Project's potential interference with the use and enjoyment

of residential and commercial properties in the vicinity of the Project Site because of the dramatic increase in traffic levels and reduced parking opportunities, which increase the likelihood of incursions of commercial and office traffic and parking into nearby residential areas. Further, the additional impacts anticipated from the Amendment, including the loss of the 51 public parking spaces and increased traffic would adversely affect existing and anticipated development in the vicinity and would not promote harmonious development of the area. The Planning Commission also finds that there have been no significant changes in circumstances that would warrant reconsideration of the restrictions imposed on the Project approval to address the concerns related to impacts on nearby residential and commercial land uses.

Although the Planning Commission could make Finding A regarding general plan consistency, it cannot make the remainder of the required findings.

Section 5.1 The Planning Commission hereby finds that the Amendment has the potential to adversely affect existing and anticipated residential and commercial development in the vicinity and will not promote harmonious development of the area due to the loss of the 51 public parking spaces, the increase in traffic generated by the proposed uses, and the adverse impacts of the parking reduction and traffic impact on existing and future land uses.

Section 5.2 The Planning Commission hereby finds that the proposed nature, configuration, location, density, height and manner of operation of the commercial development proposed by the Amendment has the potential to 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 with the proposed medical use, the related increase in traffic levels in the Project vicinity, and the reduction in public parking that would otherwise be available for the area.

Section 5.3 The Planning Commission hereby finds that the proposed Amendment has the potential to create significantly adverse traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards due to the additional trips that would be generated by the amended Project and the reduction in public parking supply that would otherwise be available for the area.

Section 5.4 The Planning Commission hereby finds that the proposed Amendment has the potential to be detrimental to the public health, safety or general welfare, as well as to both residential and commercial neighbors, due to the loss of the 51 public parking spaces, the intensification of the use and associated additional traffic in the residential areas near the Project Site.

Section 6. Based on the foregoing, the Planning Commission hereby denies the Development Plan Review Permit, and finds that this action is exempt from the provisions of the California Environmental Quality Act, pursuant to State Guidelines Section 15061(b)(4) for project denials.

Section 7. 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:

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Nanette Cole  
Chairman of the Planning Commission of  
the City of Beverly Hills, California

Attest:

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Secretary

Approved as to form:

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David M. Snow  
Assistant City Attorney

Approved as to content:

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Jonathan Lait, AICP  
City Planner

ATTACHMENT 2  
Letter from Applicant dated  
October 21, 2009

Benjamin M. Reznik  
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Ref: 62013-0007

October 21, 2009

Nanette H. Cole, Chair  
Lili Bosse, Vice Chair  
Daniel Yukelson, Commissioner  
Noah Furie, Commissioner  
Craig Corman, Commissioner  
City of Beverly Hills Planning Commission  
455 N. Rexford Drive  
Beverly Hills, CA 90210

Re: 8767 Wilshire Boulevard - Development Plan Review (PL0857275)

Dear Chair Cole, Vice Chair Bosse and Members of the Planning Commission:

As you know, this office represents George Kobor, the owner ("Owner") of the real property located at 8767 Wilshire Boulevard that is the subject of the above-referenced application (the "Project"). Following the Planning Commission's ("Commission") September 24, 2009 hearing on the Project, City Planning staff ("Staff") prepared a draft resolution ("Resolution") denying the Project. Having reviewed the Resolution, this office finds that the Resolution makes insufficient and incorrect findings to sustain a denial of the Project, as detailed below.

**I. THE RESOLUTION FINDINGS USE AN INCORRECT "POTENTIAL IMPACT" STANDARD**

To approve a development application, the Commission must make the findings outlined in City Municipal Code ("Code") Section 10-3-3104. These findings mandate that the Commission find that a project will not have a significant and adverse effect on existing and anticipated area development, the use and enjoyment of surrounding residential properties, traffic, and the public health in general, among other considerations. The Code language does not provide for findings that equivocate or purport to find "potential" adverse impacts. For example, Code Section 10-3-3104(B) requires a finding that a project "will not adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area." (emphasis added).

The Resolution does not make the findings mandated by the Code, as it repeatedly substitutes an improper, uncodified standard of "potential" impacts in place of requirements detailed above. In Section 5.1 the Resolution finds that the Project "has the potential to

adversely affect existing and anticipated residential and commercial development in the vicinity." Section 5.2 states that the Project "has the potential to significantly and adversely interfere with the use and enjoyment of residential properties in the vicinity." Section 5.3 states that the Project "has the potential to create significantly adverse traffic impacts." Finally, Section 5.4 states that the Project "has the potential to be detrimental to the public health." (emphasis added).

These are not valid findings. Virtually every project has the potential to create significant adverse impacts on surrounding properties or the general development of the City. Such language is not a finding, but merely a statement of the obvious that is unrelated to any individualized analysis of the particular Project before the Commission.

The Resolution's insufficient and improper findings are unsurprising, however, given that extensive environmental review, unchallenged by Staff, shows that the Project will not have significant traffic, air quality, or noise impacts. Further, given that the Project will provide validated, code-compliant parking, Staff are precluded from asserting that the Project will create an adverse parking demand. Staff is therefore left with nothing but conjecture, unsupported by any objective evidence.<sup>1</sup> Again, an unsubstantiated assertion regarding potential impacts is not legally sufficient to maintain a denial of a development application for a use that is permitted within a particular zone, and permitted under the General Plan.

Further, findings must be supported by substantial evidence. Therefore, simply eliminating the word "potential" will not save these inadequate findings from being arbitrary and capricious absent substantial evidence in the record to support actual impacts. The record before you fails to provide evidence of any actual adverse impacts.

## **II. THE RESOLUTION IMPROPERLY TIES THE PROJECT TO CONDITIONS OF APPROVAL FOR A PREVIOUS PROJECT THAT IS NOT BEFORE THE COMMISSION**

The Resolution repeatedly asserts that the Project will result in the "loss" of 51 public parking spaces. Putting aside the logical fallacy of counting spaces that do not currently exist, and have never existed, the Resolution improperly imports analysis of a previous project rather than addressing the impacts (if any) of the Project currently before the Commission.

While it is of course true that the Owner previously received a different entitlement for construction at the Project address, the Project before the Commission is the result of a new Development Plan Review ("DPR") application, and has undergone extensive new environmental review. Every new facet of the Project has been studied de novo. The

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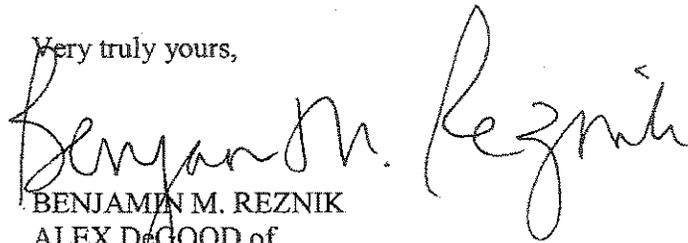
<sup>1</sup> The only objective evidence cited in the Resolution concerns the higher traffic counts generated by medical offices as compared to general offices. However, under the City's own traffic standards, the Project will not create a significant traffic impact, rendering the Project's traffic numbers immaterial for purposes of a significant impact finding.

Commission can no more use a condition of approval from a previous entitlement as a basis for denial of the Project than the Owner can use an old traffic study completed for a different proposed use to satisfy the Project's environmental review.

The Resolution uses a condition of approval for a previous entitlement to bolster its insufficient findings of the Project's purported adverse impacts. This approach, in what appears to be an attempt to divert attention from the findings' improper potential impact standard, raises an obvious question. If the Commission may base its denial of a project on the relationship between the project and a previous entitlement, is there any limit to how far back the Commission may go in comparing projects? What if a project on a particular site fares well in comparison to the previous entitlement awarded for the site, but does not look so good when compared to various entitlements awarded years before the previous entitlement? Does the Commission get to dig into a site's entitlement history until it finds some condition of approval it likes that a current project will "eliminate," and therefore get to deny a project based on this elimination? Such a process would be absurd, and would forever tether a site's land use to the vagaries of approvals awarded in prior years.

The Commission is charged with making an objective assessment of the particular project application before it. Addressing conditions of approval for a previous entitlement may be an interesting exercise, but it is not an assessment of whether the particular contours of the current Project will adversely impact surrounding areas or the City at large. Absent any objective showing that the particulars of the current Project will cause significant, adverse impacts, a denial of a permitted use is legally unsustainable.

Very truly yours,



BENJAMIN M. REZNIK  
ALEX DeGOOD of  
Jeffer, Mangels, Butler & Marmaro LLP

BMR/AMD:ki

cc: David M. Snow, Assistant City Attorney  
Susan Healy Keene, Director of Community Development  
Jonathan Lait, City Planner  
David Reyes, Principal Planner  
Georgana Millican, Associate Planner

ATTACHMENT 3  
Letter from Applicant dated  
November 4, 2009

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Ref: 62013-0007

November 4, 2009

**VIA E-MAIL AND U.S. MAIL**

Nanette H. Cole, Chair  
Lili Bosse, Vice Chair  
Daniel Yukelson, Commissioner  
Noah Furie, Commissioner  
Craig Corman, Commissioner  
City of Beverly Hills Planning Commission  
455 N. Rexford Drive  
Beverly Hills, CA 90210

Re: 8767 Wilshire Boulevard - Development Plan Review (PL0857275)

Dear Chair Cole, Vice Chair Bosse and Members of the Planning Commission:

This letter serves to provide the Planning Commission ("Commission") with further legal support for the statements contained in this office's October 21, 2009 letter regarding the unsustainable findings stated in the proposed resolution ("Resolution") denying the above-referenced application (the "Project").

**I. FINDINGS MUST BE SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE ADMINISTRATIVE RECORD**

The requirement that administrative actions such as a determination on a Development Plan Review ("DPR") application be supported by findings that are in turn supported by substantial evidence in the administrative record is a bedrock principal of California law.<sup>1</sup> *Topanga Ass'n for a Scenic Community v. County of Los Angeles* 11 Cal.3d 506 (1974); Code of Civil Procedure Section 1094.5; see also *Village Laguna of Laguna Beach v. Board of Supervisors* 134 Cal.App.3d 1022, 1034 (1982) [in CEQA context findings must be "accompanied by a statement of the facts supporting each finding"]; *Orinda Ass'n v. Board of Supervisors* 182 Cal.App.3d 1145 (1986) [granting of variance for mixed-use office/retail project improper where findings only addressed desirability of proposed development and economic difficulties of developing property under current zoning as opposed to property's special

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<sup>1</sup> Some legislative acts also require findings supported by substantial evidence in the record when mandated by local ordinances or state law. See, e.g. Government Code § 65589.5(j).

circumstances]; *Honey Springs Homeowners Ass'n v. Board of Supervisors* 157 Cal.App.3d 1122, 1151 (1984) [mandatory finding regarding contiguity of development for Williamson Act purposes made "perfunctorily" and "without defining its analytical base" and was therefore unsustainable].

In *Topanga*, Los Angeles County approved a proposed 93-unit mobile home park, which required a variance because each lot was smaller than the one acre required by the underlying zoning. The County Regional Planning Commission produced findings that discussed the project's open space, landscaping, economic viability, and provision of affordable housing. The California Supreme Court rejected these findings as insufficient because they did not address how, upon application of the underlying zoning to the property, special circumstances would deprive the property of privileges enjoyed by surrounding properties, the central foundation of a variance. The court held that an administrative body must construct findings that "bridge the analytic gap between the raw evidence and ultimate decision or order." *Topanga*, 11 Cal.3d at 515. Reviewers of an agency's decision must be able to trace "the analytic route the administrative agency traveled from evidence to action." *Id.* Because there was virtually no evidence regarding the property's special circumstances, and therefore nothing to support the ultimate decision, the variance approval could not be sustained.

Substantial evidence is not merely the presence of any evidence that supports a particular conclusion; rather, as the term implies, the evidence in the administrative record must be of "ponderable legal significance... It must be reasonable[ ], credible, and of solid value[.]" *Kuhn v. Department of General Services* 22 Cal.App.4th 1627, 1632-1633 (1994) [internal citations omitted]; cf. *Pacifica Corp. v. City of Camarillo* 149 Cal.App.3d 168 (1983) [transcript of City Council debate is not by itself substantial evidence or a *Topanga* finding]. In addition, the presence in the administrative record of potentially substantial evidence does not insulate a determination from attack if the determination does not clearly indicate how the evidence supports the final determination, "bridg[ing] the analytic gap" as required by *Topanga*.

## **II. THE RESOLUTION'S FINDINGS ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE ADMINISTRATIVE RECORD**

Placed against the requirements outlined above, the Resolution's findings clearly fail. The findings contain statements for which there is no evidence in the administrative record, statements which the evidence contradicts, and statements that are simply illogical. Further, as noted previously, the findings employ an improper potential impact standard not supported by the City's Municipal Code ("Code").

### **A. The Resolution Findings Use an Improper Potential Impact Standard**

As noted in our October 21, 2009 letter, to approve a development application, the Commission must make the findings outlined in Code Section 10-3-3104. These findings mandate that the Commission find that a project will not have a significant and adverse effect on

existing and anticipated area development, the use and enjoyment of surrounding residential properties, traffic, and the public health in general, among other considerations.

The Code language does not provide for findings that equivocate or purport to find "potential" adverse impacts. For example, Code Section 10-3-3104(B) requires a finding that a project "will not adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area." (emphasis added). The Resolution does not make the findings mandated by the Code, as it repeatedly substitutes an improper, uncodified standard of "potential" impacts in place of requirements detailed above. *See J.L. Thomas, Inc. v. County of Los Angeles* 232 Cal.App.3d 916 (1991) [CUP denial set aside because County Planning Commission findings did not address the applicable criteria mandated by County Code].

These are not valid findings. Virtually every project has the potential to create significant adverse impacts on surrounding properties or the general development of the City. Such language is not a finding, but merely a statement of the obvious that is unrelated to any individualized analysis of the particular Project before the Commission.

**B. Resolution Section 5.1 - Effect on Existing Development and Promotion of Harmonious Development**

The Resolution states that the Project may potentially adversely affect existing and anticipated development in the vicinity and will not promote harmonious development of the area due to a "loss" of 51 public parking spaces and an increase in traffic. This finding suffers from both a logical fallacy and a complete lack of evidence. First, the referenced 51 public parking spaces do not exist, and have never existed. There can be no adverse impact from the loss of something that never existed. To suggest otherwise is nonsensical.

Further, the record contains virtually no evidence regarding deleterious impacts on surrounding development due to increased traffic. Staff merely states the number of increased trips due to a medical use as compared to a general office use and leaps immediately from this fact to a finding of potential adverse impacts. No study is presented. No economic analysis was undertaken. This is understandable, given that by the City's own standards the increased traffic will not cause a significant environmental impact. There is no explanation as to why the City ignores its longstanding criteria for measuring traffic impacts.

In addition, peak medical office traffic occurs mid-morning and mid-afternoon when overall traffic is lower, ensuring that the surrounding streets are able to handle the traffic. The traffic study approved by the City's own traffic engineer confirms this fact. Medical traffic is also distributed much more evenly throughout the day than that of a general office building. Thus the record contains no evidence of adverse traffic impacts because no such evidence exists.

Moreover, a proper finding requires much more than the speculative reasoning displayed in Resolution Section 5.1. The Resolution's leap from one fact (increased traffic) to a

host of supposed impacts (or, again, potential impacts) is precisely the kind of "analytic gap" *Topanga* forbids. Parties to a proceeding, or a reviewing court, should not have to "grope through the record to determine whether some combination of credible evidentiary items which supported some line of factual and legal conclusions supported the ultimate order or decision of the agency." *Topanga*, 11 Cal.3d at 516. As it stands, the Project owner and the community at large are left simply to take the Commission's word that a host of adverse impacts will materialize if the Project is approved.

**C. Resolution Section 5.2 - Potential to Significantly and Adversely Interfere with Use and Enjoyment of Surrounding Residential Properties**

Resolution Section 5.2 states that the Project "has the potential to significantly and adversely interfere with the use and enjoyment of residential properties in the vicinity" due to increased traffic and a "reduction" in public parking. While no evidence is offered in support of these contentions in this Resolution section, it appears that Staff is referencing an earlier portion of the Resolution that states that increased traffic and reduced parking opportunities "increase the likelihood of incursions of commercial and office traffic and parking into nearby residential areas."

Here again the evidence directly contradicts the stated contentions. As to traffic, the majority of traffic generated by the Project will travel on Wilshire and Robertson during daytime off-peak hours, and therefore will not impact surrounding residential properties. Further, there is no objective evidence in the record that indicates the Project will cause a severe adverse impact on any portion of the surrounding neighborhood, residential or otherwise, from increased traffic. Regarding parking, the Resolution's contention is both nonsensical and disproven by the City's own code. The Project will meet the City's extremely high parking requirement for medical office use (a requirement that ensures that the Project will have excess parking at all times), and will offer all patrons fully validated parking. Thus not a single car traveling to the Project will need to enter the surrounding residential neighborhood for parking. When the most minimal analysis of the facts leads to an opposite conclusion from that advanced in the Resolution, a finding lacks all evidence, let alone substantial evidence.

**D. Resolution Section 5.3 - Potential Significant Traffic Impacts**

Resolution Section 5.3 continues the theme of relying on a wrong and illegal standard of potentially significant traffic impacts, and adds that the Project has the potential to create significantly adverse "traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards" due to increased traffic and a "reduction" in public parking. The lack of any evidence in the record for this finding is striking. Once again, what evidence does exist flatly contradicts the finding. The Project underwent substantial traffic analysis, and the City itself determined the Project does not create significant traffic impacts. As to the other potential hazards cited, the record is bereft of any discussion, analysis or showing that the Project increases the risks of such hazards in any way. The finding is utterly indefensible.

**E. Resolution Section 5.4 - Detriment to Public Safety, Health or Welfare**

Resolution Section 5.4 reiterates the same traffic and parking findings detailed above. It provides no additional support for the supposed impacts it cites, and is therefore as deficient as the Resolution's other findings.

**F. Substantial Evidence Must be Demonstrated by Expert Opinion or Objective, Verifiable Documentation**

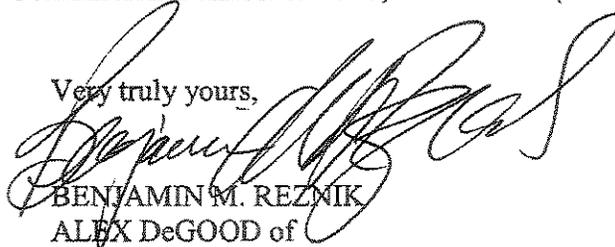
A number of California cases illustrate what may constitute substantial evidence. Expert staff opinion coupled with supporting documentation can provide substantial evidence. *Coastal Southwest Development Corp. v. California Coastal Zone Conservation Comm'n* 55 Cal.App.3d 525 (1976) [opinion of environmental planning staff that hotel project on coastal bluff would eliminate an area's best remaining ocean view site, supported by photographic documentation, held to constitute substantial evidence of significant adverse environmental effect]; see also *Big Rock Mesas Property Owners Ass'n v. Board of Supervisors* 73 Cal.App.3d 218 (1977) [analysis of hillside terrain and road construction requirements by County road commissioner was substantial evidence to support County allowing construction of road at greater than 10 percent grade]. Quite tellingly, all of the expert opinion in the Project's record (traffic, air quality) holds that the Project will not cause a significant environmental impact. There is no informed expert opinion in the record that supports Staff's contentions regarding the Project's potential impacts. While staff opinion can constitute substantial evidence, case law illustrates that such opinion must be based on far more than mere conjecture and speculation.

Objective proof of impacts may also provide substantial evidence. *Ross v. City of Rolling Hills* 192 Cal.App.3d 370 (1987) [photographic evidence of view impairment by proposed two story home addition qualified as substantial evidence]. As detailed earlier, Staff can point to no objective evidence of impacts caused by the Project.

**III. ABSENT DEFENSIBLE FINDINGS OF ADVERSE PROJECT IMPACTS, THE COMMISSION MUST APPROVE THE PROJECT**

A project denial is valid only if the Commission is able to affirmatively find, based on substantial evidence in the record, that a project will cause an identifiable adverse impact. As demonstrated above, the Commission is unable to do so, and it must therefore approve the Project.

Very truly yours,



BENJAMIN M. REZNIK  
ALEX DeGOOD of  
Jeffer, Mangels, Butler & Marmaro LLP

BMR:AMD:ki

Nanette H. Cole, Chair  
November 4, 2009  
Page 6

cc: David M. Snow, Assistant City Attorney  
Susan Healy Keene, Director of Community Development  
Jonathan Lait, City Planner  
David Reyes, Principal Planner  
Georgana Millican, Associate Planner

ATTACHMENT 4  
Letter from Applicant dated  
November 9, 2009

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Ref: 62013-0007

November 9, 2009

VIA EMAIL AND U.S. MAIL

Nanette H. Cole, Chair  
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Craig Corman, Commissioner  
City of Beverly Hills Planning Commission  
455 N. Rexford Drive  
Beverly Hills, CA 90210

Re: 8767 Wilshire Boulevard - Development Plan Review (PL0857275)

Dear Chair Cole, Vice Chair Bosse and Members of the Planning Commission:

As you know, we represent the Owner of 8767 Wilshire Boulevard in conjunction with the above-referenced application (the "Project"). As part of our on-going research, we came across a recent approval for a project at 9090 Wilshire Boulevard ("9090 Wilshire"). Attached for your easy reference is 9090 Wilshire's Planning Department report and Resolution No. 1556, approved at the Planning Commission's ("Commission") June 11, 2009 meeting. As you likely recall, 9090 Wilshire involved the conversion of 20,101 square feet of general office space to medical office space at 9090 Wilshire Boulevard, and the provision of 44 offsite parking spaces at 9150 Wilshire Boulevard due to the fact that 9090 Wilshire Boulevard did not have sufficient parking for the proposed medical use.

The approval of 9090 Wilshire should give the Commission great pause in light of the Commission's draft resolution denying a similar medical conversion at 8767 Wilshire for the reasons detailed below.

1) The Commission just approved the conversion of a substantial portion of a building to medical office use by allowing offsite parking because 9090 Wilshire does not have enough parking for the medical conversion. The Commission agreed with the Planning Department report that states that medical offices uses "are an important and needed land use in the city that provide a valuable and potentially life-saving service to the City's residents and employers." 9090 Wilshire Boulevard Planning Department Report, page 5. Further, 9090 Wilshire's approval Resolution states that because 9090 Wilshire is located outside of the Business Triangle, medical uses are an acceptable use of the building. Resolution No. 1556,

page 7. You will note that 8767 Wilshire is even further removed from the Business Triangle than 9090 Wilshire.

2) The Commission approved 9090 Wilshire's conversion notwithstanding the fact that the conversion would result in additional vehicle trips as compared with general office uses. The Commission accepted the City's standards for measuring significant environmental impacts caused by increased traffic, finding that a traffic study prepared by the 9090 Wilshire applicant and peer reviewed by the City's Transportation Division indicated that additional trips "will not create any significant impact related to traffic or circulation." Resolution No. 1556, pages 8 -9.

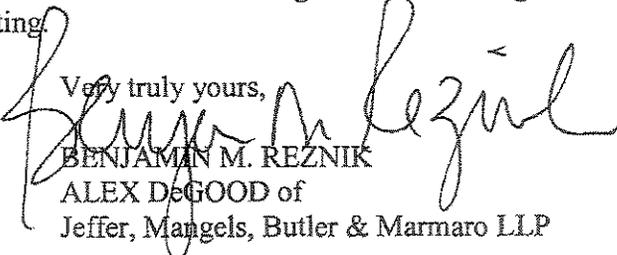
This aligns exactly with the traffic study prepared for 8767 Wilshire, yet the Commission seems intent on ignoring the City's environmental impact standards for the Project, concocting in their place an impermissible "potential impact" standard. We are at a loss to explain how cars travelling to appointments at 8767 Wilshire (where they would all park onsite free of charge) would cause a host of negative impacts in the surrounding neighborhood, but cars traveling a few blocks down the same street for similar appointments at 9090 Wilshire will cause none.

3) The Commission approved conversion to a medical use despite the fact that 9090 Wilshire does not meet code parking for such use. Faced with a building that was clearly not suited for additional medical conversion due to a significant, 44 space parking deficiency, the Commission took the extreme measure of allowing offsite parking over two blocks away so that 9090 Wilshire could "meet" City parking requirements.

The approved conversion of 9090 Wilshire is shocking in view of the Planning Department's reports for 8767 Wilshire, and Commission comments made about the Project at the Commission's September 24 and October 22, 2009 meetings. The positions expressed in these reports and meetings regarding 8767 Wilshire's proposed medical conversion raise serious questions about the equal treatment of similarly situated properties within the City in light of the 9090 Wilshire approval. Further, the incongruous treatment of 8767 Wilshire and 9090 Wilshire raises additional questions regarding the potential preference of certain developers in the City over others who seek similar approvals.

In view of the 9090 Wilshire approval, the Commission's attempt at findings that deny a similar medical conversion at 8767 Wilshire are all the more suspect and vulnerable to legal challenge and damages. We look forward to discussing these matters in greater detail at the Commission's November 19th meeting.

Very truly yours,

  
BENJAMIN M. REZNIK

ALEX DeGOOD of

Jeffer, Mangels, Butler & Marmaro LLP

BMR:AMD:ki

Nanette H. Cole, Chair  
November 9, 2009  
Page 3

cc: David M. Snow, Assistant City Attorney  
Susan Healy Keene, Director of Community Development  
Jonathan Lait, City Planner  
David Reyes, Principal Planner  
Georgana Millican, Associate Planner



STAFF REPORT  
CITY OF BEVERLY HILLS

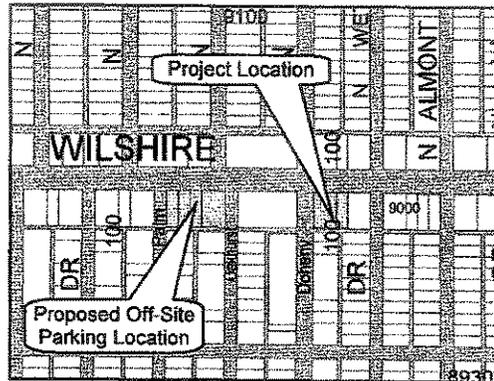
For the Planning Commission  
Meeting of June 11, 2009

TO: Planning Commission

FROM: Ryan Gohlich,  
Assistant Planner

THROUGH: Jonathan Lait, AICP, *David Berg*  
City Planner *Tom*

SUBJECT: A request for a Conditional Use Permit to allow the use of 44 off-site parking spaces in conjunction with a medical office conversion for the property located at 9090 Wilshire Boulevard.



*Continued from the meeting of May 28, 2009.*

**RECOMMENDATION**

It is recommended that the Planning Commission adopt the attached resolution approving the request, subject to conditions, to allow the use of 44 off-site parking spaces.

**EXECUTIVE SUMMARY**

The applicant seeks to convert the third floor (20,101 square feet) of the subject property (9090 Wilshire Boulevard) to medical offices. The third floor is currently used as general office space and conversion of the space to medical offices requires 44 additional parking spaces that cannot be provided on-site. Because the 44 additional parking spaces cannot be provided on-site, the applicant proposes that this additional parking be provided at 9150 Wilshire Boulevard, which has surplus parking. Off-site parking requires a Conditional Use Permit, which the Planning Commission may grant if it finds that such off-site parking will not be detrimental to adjacent property or to the public welfare.

This report examines policy considerations associated with medical land uses in the city, the project's parking inventory and demand, as well as circulation to and from both buildings, with the purpose of identifying and preventing potential impacts that could be generated by the proposed project. Project-specific conditions are also recommended.

GENERAL INFORMATION	
Applicant	Casden Properties
Project Owner	Casden Doheny Property LP
Zoning District	Commercial (C-3)
Permit Streamlining Act Deadline	July 5, 2009 (without time extension)

### BACKGROUND

On April 16, 2009 the subject application was submitted. Previously, the subject property and the proposed off-site parking property received discretionary approval from the City's now disbanded Environmental Review Board for their original construction as outlined below:

**9090 Wilshire Boulevard.** 9090 Wilshire Boulevard is a three-story building that was approved by the Environmental Review Board at its April 17, 1985 meeting. Free validated parking was required to be provided for visitors of a proposed banking operation to deter visitors from parking on the residential streets and reducing the availability of parking to residential occupants, but the banking operation has since been discontinued and the specific condition is no longer applicable based on the building's current tenants. Although the condition regarding the bank use is no longer applicable, more recently imposed conditions require free valet parking to be provided for patients and visitors of the existing medical offices. The building was originally occupied entirely by general office space; however, the first and second floors of the building were converted to medical office space by way of re-stripping the parking garage on two occasions between 2000 and 2004.

Presently the subject site has 83 standard parking spaces, 57 compact parking spaces, 40 tandem parking spaces (counted as 1 car per tandem space), and 6 handicap accessible spaces, for a total of 186 parking spaces in the three-level parking garage accessed via South Doheny Drive.

Re-stripping a parking garage to create additional parking spaces is no longer a permitted activity; however, re-stripping was permitted and considered to be a ministerial activity at the time permits were issued. The re-stripping resulted in tandem and compact parking spaces and a requirement for free valet service to access the re-stripped spaces.

**9150 Wilshire Boulevard.** 9150 Wilshire Boulevard is a three-story building that was also approved with conditions as a general office building by the Environmental Review Board at its March 16, 1988 meeting. Conditions were imposed to mitigate potential traffic and parking impacts associated with the project.

The Environmental Review Board's approval of the building was ultimately appealed to the City Council due to continued concerns related to traffic, parking, and other potential impacts related to the project. After review, the City Council upheld the Environmental Review Board's approval, and modified the conditions of approval to guard against potential future impacts. The modified conditions of approval are as follows:

1. Medical office uses shall not exceed a cumulative total of 5,000 square feet.
2. Free parking shall be provided for all employees of tenants in the building.
3. Free validated parking shall be provided for all visitors of tenants in the building.
4. Signs adequately informing users of the building of the parking validation program shall be posted in conspicuous and visible locations.
5. A parking attendant and/or security guard shall be maintained on duty during the business hours of the building to supervise the exiting of vehicles from the building and to ensure that all such vehicles turn left (north) toward Wilshire Boulevard.
6. Eighty-six (86) parking spaces in excess of Municipal Code requirements shall be provided.

The building consists of approximately 85,592 square feet of development. The building is currently used entirely for general office uses, and is, therefore, parked at a rate of one space per each 350 square feet (245 parking spaces required). However, the subterranean parking garage accessed via South Oakhurst Drive contains 333 parking spaces, which provides a surplus of 88 parking spaces over the code-required spaces (consistent with the City Council's approval). Based on the over-assignment of parking spaces to employees as identified in the traffic and parking study, 68 of the 88 surplus parking spaces remain available for use. Per the City Council's approval the building is permitted to contain up to 5,000 square feet of medical office space. If the applicant were to request 5,000 square feet of medical office space, an additional 11 parking spaces would need to be provided. Providing 11 additional parking spaces would reduce the number of surplus parking spaces to 57, which is a sufficient amount to accommodate the applicant's request for off-site parking.

Although the building was constructed with a surplus of parking spaces as required by the City Council, the surplus spaces were intended to anticipate future parking demands and potential impacts. Based on existing conditions identified in the traffic and parking study, it is evident that the surplus parking spaces are not being fully utilized, and have not been needed to accommodate any unanticipated parking demand. Therefore, it is possible for the proposed project to utilize the surplus parking

spaces without circumventing the intent of the City Council to guard against parking impacts.

### SITE CHARACTERISTICS

Both sites (9090 and 9150 Wilshire Boulevard) are located on the south side of Wilshire Boulevard, and are surrounded by commercial buildings that vary between one and ten stories in height. Commercial development in the area consists of retail, general office, and medical office space. In addition to the commercial uses, 9090 Wilshire Boulevard is located immediately north of single-family and commercial development, while 9150 Wilshire Boulevard is located immediately north of multi-family residential development. Separation between uses is provided by a one-way alley that is located south of the subject properties. The properties are located within approximately 382 feet of each other, which is within the 500 foot maximum allowed for off-site parking uses.

### PROJECT DESCRIPTION

**Project Description.** The applicant proposes the conversion of 20,101 square feet of existing general office space to medical office space on the third floor of the building located at 9090 Wilshire Boulevard. As proposed, the third floor would be occupied by an existing tenant of the building that currently operates medical offices on the second floor. The conversion of general office space to medical office space is permitted within the Municipal Code without the need for discretionary approval, but requires a greater number of parking spaces (44 additional spaces) than can be accommodated on-site. Consistent with Section 10-3-2733 of the Municipal Code, and as authorized by the issuance of a Conditional Use Permit, the applicant proposes to satisfy the required 44 parking spaces through the use of off-site parking located at 9150 Wilshire Boulevard. The parking garage located at 9150 Wilshire Boulevard is accessed via South Oakhurst Drive and contains a surplus of 68 parking spaces that could be used to accommodate the proposed medical office conversion.

In order to limit the amount of new vehicle trips generated by the conversion (by way of preventing off-site valet trips), the applicant proposes to require 51 of the medical office employees to park at the off-site location and then walk to 9090 Wilshire Boulevard. By requiring employees to park off-site and then walk to their office, the need for off-site valet trips transferring cars between properties is avoided and increases in traffic are kept to a minimum. The purpose for requiring 51 off-site parking spaces, rather than 44 as would be needed to meet Municipal Code requirements, is to appropriately serve the anticipated ratio of patients versus employees of 9090 Wilshire Boulevard as outlined in the traffic and parking study.

## PUBLIC NOTICE AND COMMENTS

Notice of the proposed project and public hearing was mailed on May 13, 2009 to all property owners and residential tenants within a 300-foot radius of the property. Additionally, notice was published in two newspapers of general circulation and notice was provided to the surrounding neighborhood groups. One letter of concern has been received in regard to the proposed project and is included in this report as Attachment 2.

## ENVIRONMENTAL DETERMINATION

This proposed project has been 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, and has been found to be exempt pursuant to Section 15301 (Class 1) of the CEQA Guidelines. A Class 1 Categorical Exemption may be issued to allow changes in operations associated with an existing commercial building provided such change does not result in a significant environmental impact. To ensure that no environmental impacts would be generated by the proposed project, a traffic impact study was prepared, which demonstrated that the change in operations is not expected to significantly impact traffic and circulation in the surrounding area. The traffic impact study has been provided for the Commission's reference as Attachment 2, and is further discussed in this report.

## ANALYSIS

The proposed project meets current zoning requirements. However, there are several project-specific issues related to the issuance of a Conditional Use Permit that merit further discussion. These issues have been outlined below:

**Medical Office Uses.** While medical office uses are a permitted use within the C-3 zoning designation, there has been recent community discussion as part of the City's General Plan effort questioning the appropriateness of medical offices in some parts of the city because they do not promote the kind of pedestrian-oriented environments that retail or other establishments do. For instance, medical patients do not typically spend their time before or after appointments shopping or eating at local restaurants, which is known to have fiscal implications for the city.

Nevertheless, medical uses are an important and needed land use in the city that provides a valuable and potentially life-saving service to the City's residents and employers.

At the subject location, medical office is a permitted land use in the Municipal Code and, therefore, approving the medical use is not directly before the Planning Commission. However, the discretionary need for off-site parking to accommodate the medical land use is and needs to be balanced with the requirement to ensure the

anticipated conversion does not detrimentally impact the general welfare. In its evaluation of the project, it is recommended that the Planning Commission take into consideration the location of the subject site to the proximity of the pedestrian-oriented Business Triangle and surrounding land uses, including the residential neighborhood to the south.

**Circulation Between Properties.** Off-site parking typically raises issues about circulation between the property using the parking and the property providing the parking. Requiring patients or visitors of a building to park off-site is often inconvenient, and deters the use of off-site parking. In addition, it is possible that some patients may be unable to use off-site parking facilities. To prevent an inconvenience to visitors or patients the practice of utilizing a valet service to move vehicles between properties is sometimes used, thereby preventing any inconvenience. Unfortunately, providing a valet service between sites creates additional vehicle trips and unnecessarily adds to existing traffic congestion. In order to address the potential issues related to off-site parking and ensure that the off-site spaces are being used effectively and as intended, the applicant proposes that 51 parking spaces (used by medical office employees only) will be provided off-site at 9150 Wilshire Boulevard. By requiring employees of 9090 Wilshire Boulevard to park off-site at 9150 Wilshire Boulevard, rather than patients and visitors, there will be no valet trips generated between the two properties. In order to ensure that no off-site valet trips occur, staff recommends a condition of approval to provide assurance that the off-site spaces will be used by employees only. The recommended condition requires the applicant to submit written lease agreements demonstrating that a minimum of 51 off-site parking spaces have been assigned to employees of 9090 Wilshire Boulevard. Further, staff recommends a condition requiring the off-site parking be provided to employees free of charge to ensure that the parking is used.

**Neighborhood Circulation.** Although no off-site valet trips will be generated by the proposed conversion to medical office space, it is important to note that an additional number of overall trips will be generated when compared to current uses. The traffic and parking study prepared by the applicant and peer reviewed by the City's Transportation Division, indicates that the additional trips generated by the proposed project do not create any significant impact related to traffic or circulation. While it is anticipated that additional vehicles may travel north on the surrounding neighborhood streets (South Oakhurst and South Doheny Drives) to access the subject sites, current and projected traffic patterns identified in the traffic and parking study indicate that approximately 85% to 90% of vehicles existing both parking garages do not turn south down the residential streets and instead go north to Wilshire Boulevard to utilize nearby traffic signals. As required by previous conditions of approval, vehicles are required to turn north when existing both parking garages in order to avoid placing additional traffic on the residential streets. Existing signage alerts drivers of this requirement, but it may be possible to improve the visibility of such signage and increase the rate at which drivers comply with these requirements. In order to accomplish this, staff recommends

a condition that would require signage to be added or relocated to better inform drivers of turn requirements.

**Parking.** The building located at 9150 Wilshire Boulevard was constructed with 88 parking spaces more than required by the Municipal Code in order to provide additional parking in the area. As evidenced by the traffic and parking study and field counts, much of the surplus parking remains available to this day and could reasonably be used to accommodate the off-site parking request without impacting current parking operations.

The Municipal Code identifies parking requirements based on use and is intended to account for employees and visitors, but it does not provide guidance in determining the distribution of parking spaces between employees and visitors. In order to accurately assess the true parking demand, which may sometimes be different from code-required parking, the traffic and parking study utilized data from the Urban Land Institute (ULI) *Shared Parking* publication. The ULI data states that approximately 67% of the total parking for a medical office space should be provided for use by patients. In order to achieve this ratio and ensure that adequate patient parking is provided on-site, the traffic and parking study recommends, and staff supports, assigning 51 off-site employee parking spaces. Such an assignment of spaces will provide for 157 on-site patient/visitor spaces, 29 on-site employee spaces, and 51 off-site employee spaces, all of which would meet Municipal Code requirements and ULI recommendations for all uses taking place in the building. Therefore, staff recommends a condition requiring the assignment of 51 off-site parking spaces, rather than the applied-for 44 off-site parking spaces.

## **FINDINGS**

Pursuant to Section 10-3-38 "Conditional Use Permits", the Planning Commission may authorize conditional uses if it makes the following finding:

- 1) The proposed location of any such use will not be detrimental to adjacent property or to the public welfare.***

The proposed project will utilize existing on- and off-site parking spaces to satisfy the parking requirements for medical office space, which is not anticipated to be detrimental to adjacent property or to the public welfare. As demonstrated through the traffic and parking study, and through site visits, the proposed project will not significantly impact the surrounding area, and will allow the existing parking garages to operate independently of each other without the need for off-site valet trips. Project-specific conditions of approval require that off-site parking spaces will be used by employees of the medical offices only, and that a sufficient number of spaces will be provided within 9090 Wilshire Boulevard to accommodate all patients and visitors. Although the proposed project does create an increase in vehicle trips over the current general office uses, the increase in trips does not significantly impact any of the surrounding intersections. Analysis of the subject sites shows that vehicles predominantly turn north

out of the parking garages and utilize Wilshire Boulevard and its nearby signalized intersections, and staff recommends a condition to ensure that this practice continues. Because the proposed project will not generate off-site valet trips, provides a sufficient number of parking spaces to meet zoning requirements and Urban Land Institute recommendations, and will not increase the number of vehicles utilizing nearby residential streets to the point of creating an impact, it is anticipated that the proposed project will not be detrimental to adjacent property or to the public welfare.

### **RECOMMENDATION**

It is recommended that the Planning Commission adopt the attached resolution approving the Conditional Use Permit, subject to the following project-specific conditions of approval:

1. Free valet and/or self parking shall be provided to all employees of tenants in the building located at 9090 Wilshire Boulevard.
2. The applicant shall demonstrate, through written lease agreements to the satisfaction of the City Attorney and Community Development Director, that a minimum of 51 off-site parking spaces have been assigned to medical office employees of the building located at 9090 Wilshire Boulevard.
3. Free valet parking validation shall be provided to all patients and/or visitors of the medical offices located at 9090 Wilshire Boulevard. Signage identifying the validation program shall be placed in a conspicuous location and shall be to the satisfaction of the Community Development Director.
4. Left turns shall be prohibited for vehicles exiting the property located at 9090 Wilshire Boulevard. Signage alerting drivers to this requirement shall be placed in a conspicuous location and shall be to the satisfaction of the Community Development Director.
5. Right turns shall be prohibited for vehicles exiting the property located at 9150 Wilshire Boulevard. Signage alerting drivers to this requirement shall be placed in a conspicuous location and shall be to the satisfaction of the Community Development Director.
6. The applicant shall record a covenant against the property located at 9090 Wilshire Boulevard identifying the off-site parking requirements, including the number of spaces and their location. The covenant shall be executed to the satisfaction of the City Attorney and Community Development Director.

7. The applicant shall record a covenant against the property located at 9150 Wilshire Boulevard identifying the off-site parking requirements, including the number of spaces and their location. The covenant shall be executed to the satisfaction of the City Attorney and Community Development Director.
8. A total of 51 off-site parking spaces shall be maintained at 9150 Wilshire Boulevard for use by 9090 Wilshire Boulevard throughout the life of the project.
9. The 51 off-site parking spaces located at 9150 Wilshire Boulevard shall be clearly marked/identified for use by employees of 9090 Wilshire Boulevard only.
10. The City expressly reserves jurisdiction relative to traffic and parking issues. In the event the Director determines that operation of the use at this site is having unanticipated traffic and parking impacts, the Director shall require the Applicant to pay for a parking demand analysis. After reviewing the parking demand analysis, if, in the opinion of the Director, the parking and traffic issues merit review by the Planning Commission, the Director shall schedule a hearing in front of the Planning Commission in accordance with the provisions of Article 19.5 of Chapter 3 or Title 10 of the Beverly Hills Municipal Code. The Planning Commission shall conduct a noticed public hearing regarding the parking and traffic issues and may impose additional conditions as necessary to mitigate any unanticipated traffic and parking impacts caused by the proposed Project, and the Applicant shall forthwith comply with any additional conditions at its sole expense.
11. Any significant amendment to the approved parking plan, as determined by the Community Development Director, shall be subject to Planning Commission review and approval.

  
Ryan Gohlich  
Assistant Planner

Attachments:

1. Draft Planning Commission Resolution
2. Letter of Concern Regarding the Project
3. Memo From Transportation Division
4. Traffic and Parking Study

RESOLUTION NO. 1556

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS CONDITIONALLY APPROVING A CONDITIONAL USE PERMIT TO ALLOW THE USE OF 44 OFF-SITE PARKING SPACES IN CONJUNCTION WITH THE CONVERSION OF 20,101 SQUARE FEET OF GENERAL OFFICE SPACE TO MEDICAL OFFICE SPACE FOR THE PROPERTY LOCATED AT 9090 WILSHIRE BOULEVARD.

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

Section 1. Casden Properties, Applicant, on behalf of Casden Doheny Property LP, (collectively the "Applicant") seeks to convert the third floor (20,101 square feet) of the subject property located at 9090 Wilshire Boulevard (the "Project") to medical offices. The third floor of the subject property is currently used as general office space, and conversion of the space to medical offices requires 44 additional parking spaces that cannot be provided on-site. Because the 44 additional parking spaces cannot be provided on-site, the Applicant proposes, and the property owner of 9150 Wilshire Boulevard agrees, that this additional parking can be provided at 9150 Wilshire Boulevard, which has a surplus of parking. Off-site parking requires a Conditional Use Permit, which the Planning Commission may grant if it finds that such off-site parking will not be detrimental to adjacent property or to the public welfare. To ensure that the off-site parking does not generate impacts that would cause detriment to adjacent property or to the public welfare, certain project-specific conditions are included in this Resolution.

Section 2. The Project sites (9090 and 9150 Wilshire Boulevard) are located on the south side of Wilshire Boulevard, and are surrounded by commercial buildings that vary between one and ten stories in height. Commercial development in the area consists of retail, general office, and medical office space. In addition to the commercial uses, 9090 Wilshire Boulevard is located immediately north of single-family and commercial development, while 9150 Wilshire Boulevard is located immediately north of multi-family residential development. Separation between uses is provided by a one-way alley that is located immediately south of the subject properties. The subject properties are located within approximately 382 feet of each other, which is within the 500 foot maximum allowed for off-site parking uses.

Section 3. 9090 Wilshire Boulevard is a three-story building that was approved by the Environmental Review Board at its April 17, 1985 meeting. Under the building's approval free validated parking was required to be provided for visitors of a proposed banking operation to prevent visitors from parking on the residential streets. The banking operation has since been discontinued, and the condition is no longer applicable. The building was originally occupied entirely by general office space; however, over time, portions of the building were converted to medical office space by way of re-striping the parking garage. Re-striping took place on two occasions (between 2000 and 2004), and provided sufficient parking to allow the entire first and second floors of the building to be converted to medical offices.

Re-striping a parking garage to create additional parking spaces is no longer a permitted activity; however, re-striping was permitted, and considered to be a ministerial activity, at the time permits were issued to allow the restriping of 9090 Wilshire Boulevard. The re-striping resulted in tandem and compact parking spaces, and a requirement of the re-striping was that free valet service be provided to access the re-striped parking spaces. The traffic and

parking study submitted by the Applicant indicates that 12 off-site parking spaces are provided at 9150 Wilshire Boulevard to accommodate a portion of the medical office conversions, but staff is unable to locate records indicating that such an approval took place. Moreover, the building permits issued to allow the re-striping provided a sufficient number of parking spaces to accommodate all parking on-site, and off-site parking is not required. It may be that the operator of 9090 Wilshire Boulevard has assigned off-site parking spaces to some of its employees as a means of providing additional parking in excess of the Municipal Code requirements, but City records do not indicate the use of any off-site parking spaces to accommodate medical office conversions.

The first and second floors of the building (26,449 square feet in all) are currently occupied by medical office uses. The third floor of the building consists of 20,101 square feet and is currently occupied entirely by general office uses. The Project calls for the entire third floor to be converted to medical offices. Parking for the building is located within a subterranean parking garage accessed via South Doheny Drive. The traffic and parking study submitted by the Applicant indicates the availability of 189 parking spaces; however, there are actually 186 spaces on site, consistent with the plans reviewed by the Commission.

Section 4. 9150 Wilshire Boulevard is a three-story building that was approved with conditions by the Environmental Review Board at its March 16, 1988 meeting. The project was approved subject to conditions related to potential traffic and parking impacts.

The Environmental Review Board's approval of the building was ultimately appealed to the City Council due to continued concerns related to traffic, parking, and other potential impacts related to the project. After review, the City Council upheld the Environmental

Review Board's approval, and modified the conditions of approval in anticipation of potential future impacts. The modified conditions of approval are as follows:

1. Medical office uses shall not exceed a cumulative total of 5,000 square feet.
2. Free parking shall be provided for all employees of tenants in the building.
3. Free validated parking shall be provided for all visitors of tenants in the building.
4. Signs adequately informing users of the building of the parking validation program shall be posted in conspicuous and visible locations.
5. A parking attendant and/or security guard shall be maintained on duty during the business hours of the building to supervise the exiting of vehicles from the building and to ensure that all such vehicles turn left (north) toward Wilshire Boulevard.
6. Eighty-six (86) parking spaces in excess of Municipal Code requirements shall be provided.

The building consists of approximately 85,592 square feet of development. The building is used entirely for general office uses, and is, therefore, parked at a rate of one space per each 350 square feet (245 parking spaces required). However, the subterranean parking garage accessed via South Oakhurst Drive contains 333 parking spaces, which provides a surplus of 88 parking spaces over the code-required spaces (consistent with the City Council condition of approval). Based on the over-assignment of parking spaces (beyond the code-required spaces)

identified in the traffic and parking study, 68 of the 88 surplus parking spaces remain available for use.

Although the building was constructed with a surplus of parking spaces as required by the City Council conditions of approval, the surplus spaces were intended to guard against future parking demands and potential impacts. Based on existing conditions identified in the traffic and parking study, the Commission found that the surplus parking spaces are not being utilized, and have not been needed to accommodate any unanticipated parking demand. Therefore, it is possible for the Project to utilize the surplus parking spaces without circumventing the intent of the City Council to guard against parking impacts.

Section 5. The Applicant proposes the conversion of 20,101 square feet of existing general office space to medical office space within the third floor of the building located at 9090 Wilshire Boulevard. The conversion of general office space to medical office space is permitted within the Municipal Code without the need for discretionary approval, but requires a greater number of parking spaces (44 additional spaces) than can be accommodated on-site. Consistent with Section 10-3-2733 of the Municipal Code, and as authorized by the issuance of a Conditional Use Permit, the Applicant proposes to satisfy the required 44 parking spaces through the use of off-site parking located at 9150 Wilshire Boulevard. The parking garage located at 9150 Wilshire Boulevard is accessed via South Oakhurst Drive, and contains a surplus of 68 parking spaces, which will be used to satisfy the increased parking demand generated by the medical office conversion.

In order to limit the amount of new vehicle trips generated by the conversion, the Applicant will require 51 of the medical office employees to park at the off-site location and then walk to 9090 Wilshire Boulevard, which is approximately 382-feet away. By requiring

employees to park off-site and then walk to their office, the need for off-site valet trips transferring cars between properties is avoided, and increases in traffic are kept to a minimum. The purpose for requiring 51 employees to park off-site, rather than 44 as would be needed to meet Municipal Code requirements, is to appropriately serve the anticipated ratio of patients versus employees of 9090 Wilshire Boulevard as outlined in the traffic and parking study.

Section 6. 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 City's environmental guidelines. A Class 1 Categorical Exemption has been issued based on a change in the operation of existing facilities. Further, a traffic and parking study was prepared, which demonstrates that said change in operations is not expected to significantly impact traffic and circulation in the surrounding area. Therefore, the Project is not anticipated to generate any significantly adverse environmental impacts.

Section 7. Notice of the Project and public hearing was mailed on May 13, 2009 to all property owners and residential tenants within a 300-foot radius of the property, and notice was published in two newspapers of general circulation. On May 28, 2009 the Planning Commission considered the application at a duly noticed public meeting. Evidence, both written and oral, was presented at said meeting.

Section 8. In reviewing the Project, the Commission discussed issues related to use, circulation between properties, neighborhood circulation, and parking as follows:

1. Medical Office Uses. While medical office uses are a permitted use within the C-3 zoning designation, the Commission noted that there has been recent community discussion as part of the City's General Plan effort questioning the appropriateness of medical offices in some parts of the city because they do not promote the kind of pedestrian-oriented environments that retail or other establishments do. For instance, medical patients do not typically spend their time before or after appointments shopping or eating at local restaurants, which is known to have fiscal implications for the city. For these reasons, uses that contribute to existing commercial operations and enhance the pedestrian experience are typically preferred within the Business Triangle. Because the Project is located outside the Business Triangle, and because medical offices already exist within the Project site, the Commission determined that the Project would be an acceptable use of the building.

2. Circulation Between Properties. Off-site parking typically raises issues about circulation between the property using the parking and the property providing the parking. Requiring patients or visitors of a building to park off-site is often inconvenient, and deters the use of off-site parking. Additionally, it is possible that some patients may be unable to use off-site parking facilities. To prevent an inconvenience to visitors or patients the practice of utilizing a valet service to move vehicles between properties is

sometimes used, thereby preventing any inconvenience. Unfortunately, providing a valet service between sites creates additional vehicle trips, and unnecessarily adds to existing traffic congestion. In order to address the potential issues related to off-site parking, the Commission discussed the Applicant's proposal to require 51 medical office employees to use the off-site parking at 9150 Wilshire Boulevard. By requiring employees of 9090 Wilshire Boulevard to park off-site at 9150 Wilshire Boulevard, rather than patients and visitors, there will be no valet trips generated between the two properties. In order to ensure that no off-site valet trips occur, a condition has been included in this Resolution to provide assurance that the off-site spaces will be used by employees only. The condition, as outlined below, requires the Applicant to submit written lease agreements demonstrating that a minimum of 51 off-site parking spaces have been assigned to employees of 9090 Wilshire Boulevard. Further, a condition has been included in this Resolution that requires the off-site parking to be provided to employees free of charge to ensure that parking is used.

3. Neighborhood Circulation. Although no off-site valet trips will be generated by the conversion to medical office space, an additional number of overall trips will be generated when compared to current uses. The traffic and parking study prepared by the Applicant, and peer reviewed by the City's Transportation Division, indicates that the additional trips

generated by the Project will not create any significant impact related to traffic or circulation. While it is anticipated that additional vehicles may travel north on the surrounding neighborhood streets (South Oakhurst and South Doheny Drives) to access the subject sites, current and projected traffic patterns identified in the traffic and parking study indicate that approximately 85% to 90% of vehicles existing both parking garages do not turn south down the residential streets, and instead go north to Wilshire Boulevard to utilize nearby traffic signals. As required by previous conditions of approval, vehicles are required to turn north when existing both parking garages in order to avoid placing additional traffic on the residential streets. Existing signage alerts drivers of this requirement, and a condition is included in this Resolution to improve the visibility and location of such signage and increase the rate at which drivers comply with turn restrictions.

4. Parking. A traffic and parking study was prepared by the Applicant, and peer reviewed by the City's Transportation Division, in order to accurately assess the parking situations on both sites and ensure that adequate supply is available to accommodate the Project. The building located at 9150 Wilshire Boulevard was constructed with 88 parking spaces more than required by the Municipal Code in order to guard against potential parking demand. As evidenced by the traffic and parking study, and by field counts, much of the surplus parking remains available to this day, and can

reasonably be used to accommodate the Project without impacting current parking operations.

The Municipal Code identifies parking requirements based on use, and does not provide guidance in determining the distribution of parking spaces between employees of a building and its patrons. In order to accurately assess the true parking demand, which is often different from code-required parking, the traffic and parking study utilized data from the Urban Land Institute (ULI) Shared Parking publication. The ULI data states that approximately 67% of the total parking for a medical office space should be provided for use by patients. In order to achieve this ratio and ensure that adequate patient parking is provided on-site, the traffic and parking study recommended, and staff supported, assigning 51 off-site employee parking spaces. Such an assignment of spaces provides for 157 on-site patient/visitor spaces, 29 on-site employee spaces, and 51 off-site employee spaces, all of which meet Municipal Code requirements and ULI recommendations. Therefore, a condition requiring the assignment of 51 off-site parking spaces, rather than the applied-for 44 off-site parking spaces is included in this Resolution.

Section 9. In considering the application for a Conditional Use Permit, the Planning Commission considered the following criteria:

1. Whether the proposed location of any such use will be detrimental to adjacent property or to the public welfare.

Section 10. Based on the foregoing, the Planning Commission hereby finds and determines as follows:

1. As conditioned, the Project will utilize existing on- and off-site parking spaces to satisfy the parking requirements for medical office space, which is not anticipated to be detrimental to adjacent property or to the public welfare. As demonstrated through the traffic and parking study, and through site visits, the Project will not significantly impact the surrounding area, and will allow the existing parking garages to operate independently of each other without the need for off-site valet trips. Project-specific conditions of approval require that off-site parking spaces will be used by employees of the medical offices only, and that a sufficient number of spaces will be provided within 9090 Wilshire Boulevard to accommodate all patients and visitors. Although the Project does create an increase in vehicle trips over the current general office uses, the increase in trips does not significantly impact any of the surrounding intersections. Analysis of the subject sites shows that vehicles predominantly turn north out of the parking garages and utilize Wilshire Boulevard and its nearby signalized intersections, and a condition is included in this Resolution to ensure that this practice continues. Because the Project will not generate off-site valet trips, provides a sufficient number of parking spaces to meet zoning requirements and Urban Land Institute recommendations, and will not increase the number of vehicles utilizing nearby residential streets to the point of creating an

impact, it is anticipated that the Project will not be detrimental to adjacent property or to the public welfare.

Section 11. Based on the foregoing, the Planning Commission hereby approves the Conditional Use Permit, subject to the following conditions:

1. Free valet and/or self parking shall be provided to all employees of tenants in the building located at 9090 Wilshire Boulevard.

2. The Applicant shall demonstrate, through written lease agreements to the satisfaction of the City Attorney and Community Development Director, that a minimum of 51 off-site parking spaces have been assigned to medical office employees of the building located at 9090 Wilshire Boulevard.

3. Free valet parking validation shall be provided to all patients and/or visitors of the medical offices located at 9090 Wilshire Boulevard. Signage identifying the validation program shall be placed in a conspicuous location, and shall be to the satisfaction of the Community Development Director.

4. Left turns shall be prohibited for vehicles exiting the property located at 9090 Wilshire Boulevard. Signage alerting drivers to this requirement shall be placed in a conspicuous location, and shall be to the satisfaction of the Community Development Director.

5. Right turns shall be prohibited for vehicles exiting the property located at 9150 Wilshire Boulevard. Signage alerting drivers to this requirement shall be placed in a conspicuous location, and shall be to the satisfaction of the Community Development Director.

6. The Applicant shall record a covenant against the property located at 9090 Wilshire Boulevard identifying the off-site parking requirements, including the number of spaces and their location. The covenant shall be executed to the satisfaction of the City Attorney and Community Development Director.

7. The Applicant shall record a covenant against the property located at 9150 Wilshire Boulevard identifying the off-site parking requirements, including the number of spaces and their location. The covenant shall be executed to the satisfaction of the City Attorney and Community Development Director.

8. A total of 51 off-site parking spaces shall be maintained at 9150 Wilshire Boulevard for use by 9090 Wilshire Boulevard throughout the life of the Project.

9. The 51 off-site parking spaces located at 9150 Wilshire Boulevard shall be clearly marked/identified for use by employees of 9090 Wilshire Boulevard only.

10. The City expressly reserves jurisdiction relative to traffic and parking issues. In the event the Director determines that operation of the use at this site is having unanticipated traffic and parking impacts, the Director shall require the Applicant to pay for a parking demand analysis. After reviewing the parking demand analysis, if, in the opinion of the Director, the parking and traffic issues merit review by the Planning Commission, the Director shall schedule a hearing in front of the Planning Commission in accordance with the provisions of Article 19.5 of Chapter 3 or Title 10 of the Beverly Hills Municipal Code. The Planning Commission shall conduct a noticed public hearing regarding the parking and traffic issues and may

impose additional conditions as necessary to mitigate any unanticipated traffic and parking impacts caused by the Project, and the Applicant shall forthwith comply with any additional conditions at its sole expense.

11. Any significant amendment to the approved parking plan, as determined by the Community Development Director, shall be subject to Planning Commission review and approval.

12. The Project shall substantially comply with the plans submitted to and reviewed by the Planning Commission at its meeting of May 28, 2009.

13. These conditions shall run with the land and shall remain in full force for the duration of the life of the Project.

14. This resolution approving the Conditional Use Permit 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 this resolution as an exhibit. The Applicant shall deliver the executed covenant to the Department of Planning & 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 Planning & 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.

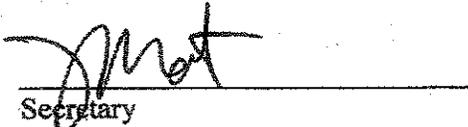
Section 9. The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and his/her Certification to be entered in the Book of Resolutions of the Planning Commission of the City.

Adopted: 6/11/2009



Nanette H. Cole  
Chair of the Planning Commission of the  
City of Beverly Hills, California

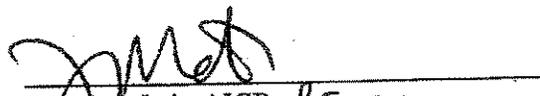
Attest:

  
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      )

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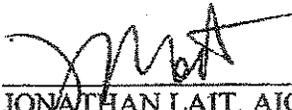
I, JONATHAN LAIT, Secretary of the Planning Commission and City Planner of the City of Beverly Hills, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 1556 duly passed, approved and adopted by the Planning Commission of said City at a meeting of said Commission on June 11, 2009, 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:           Commissioner Yukelson, Vice Chair Bosse and Chair Cole.

NOES:           Commissioners Corman and Furie.

ABSTAIN:       None.

ABSENT:         None.

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