



Planning Commission Report

Meeting Date: February 24, 2011

Subject: **9399 Wilshire Boulevard/160 N. Canon Drive**
A request for a Conditional Use Permit (CUP) to allow a non-retail use to occupy an existing ground floor space of an existing office building located in a designated pedestrian oriented area.
PROJECT APPLICANT: Joseph N. Tilem

Recommendation: It is recommended that the Planning Commission adopt the resolution for the requested Conditional Use Permit.

REPORT SUMMARY

The proposed project involves the establishment of an approximately 4,093 square foot non-retail use within an existing building located at 9399 Wilshire Boulevard/160 N. Canon Drive with a designated pedestrian area. The proposed use would occupy the building's ground floor and be accessible from Wilshire Boulevard and North Canon Drive, and would utilize an on-site surface parking lot located behind the building. The applicant notes that the property owner is not successful to find a retail tenant to occupy the building ground floor due to its location, tenant space interior height, lack of pedestrian traffic, and limitation on-street parking adjacent to the project site.

Attachment(s):

- A. [Zoning Compliance Table](#)
- B. [Staff Recommended Findings and Conditions of Approval](#)
- C. [Public Notice](#)
- D. Correspondence
- E. Resolution
- F. Architectural Plans

Report Author and Contact Information:

Rita Naziri, Senior Planner
(310) 285-1136
rnaziri@beverlyhills.org

BACKGROUND

File Date 12/15/2010
 Application Complete February 11,2011
 Subdivision Deadline N/A
 CEQA Deadline 60 days from CEQA Determination
 Permit Streamlining 4/11/20 11without extension request from applicant

Applicant(s) Joseph N. Tilem
 Owner(s) New Pacific Canon, LLC
 Representative(s) Joe N. Tilem

Prior Project Previews None
 Prior PC Action None
 Prior Council Action None

PROPERTY AND NEIGHBORHOOD SETTING

Property Information

Address 9399 Wilshire Boulevard/160 N. Canon Drive
 Legal Description BEVERLY EX OF ST LOT 5 AND SE 10.29 FT , MEASURED ON NE LINE OF LOT 4 BLK 13
 Zoning District C-3 General Commercial
 General Plan General Commercial - Low Density
 Existing Land Use(s) Vacant
 Lot Dimensions & Area Varies, 9,120 sq.ft.
 Year Built 1954
 Historic Resource The property is not listed on any local, state or federal inventory
 Protected Trees/Grove None

Adjacent Zoning and Land Uses

North C-3 General Commercial-Coldwell Banker Real Estate Office and Spago Restaurant (Pedestrian-Oriented Area)
 South (across Wilshire) C-3 General Commercial- Rolex Building (Non Pedestrian-Oriented Area)
 East C-3 General Commercial & Mixed Use Planned Development Overlay Zone (M-PD-2)-Bridal Shop, Restaurant and The Crescent Project (Non Pedestrian-Oriented Area)
 West C-3 General Commercial- High Rise building with Citi Bank and Bank of west on the ground floor (Pedestrian-Oriented Area)

Circulation and Parking

Adjacent Street(s) Wilshire Boulevard to the south and North Canon Drive to the west
 Adjacent Alleys alley at rear (east side) of property. One-way circulation – North to South
 Parkways & Sidewalks Eastern sidewalk/parkway along North Canon Drive - 12' from

	face of curb to property line. Southern sidewalk/parkway along Wilshire Boulevard - 15' from face of curb to property line.
Parking Restrictions	On-street parking is generally provided by 1-hour meters on Canon Drive. No on-street parking on Wilshire Boulevard (red curb, No parking or stopping is permitted).
Nearest Intersection	Wilshire Boulevard and North Canon Drive.
Circulation Element	Wilshire Boulevard serves as an arterial street and Canon Drive serves as a local commercial street.
Estimated Daily Trips	Wilshire Boulevard carries approximately 43,350 daily trips, and Canon Drive carries approximately 13,650 daily trips.

Neighborhood Character

The project site is located on the northeast corner of Wilshire Boulevard and Canon Drive, in the City's Business Triangle. The existing land uses within the vicinity of the project consists of a variety of commercial developments and a mixed-use commercial/residential development. The commercial uses are predominantly occupied by retail and general office uses including banks and financial institutions. The surrounding development contains banking/lending uses, such as Bank of West, Citi Bank and Coldwell Banker Real Estate Office which are also located in the Pedestrian Oriented Area.



The commercial building at the subject property was built in 1954, with a total of 10,000 square feet in area, 2 stories and a maximum height of 25 feet. The subject building was remodeled in January 2010 with a contemporary design. The subject ground floor space of 4,093 square feet was used for several types of businesses. The previous occupant of the tenant space was Jonathon Arndt, Inc., a Jewelry

designer. Before that, the tenant was occupied by Caesars Palace Hotel, sells office. Retail uses typically dominate the ground floors of buildings located within the Business Triangle; however, many of commercial buildings located along Wilshire Boulevard and Canon Drive contain financial and banking services.



North Canon Drive View

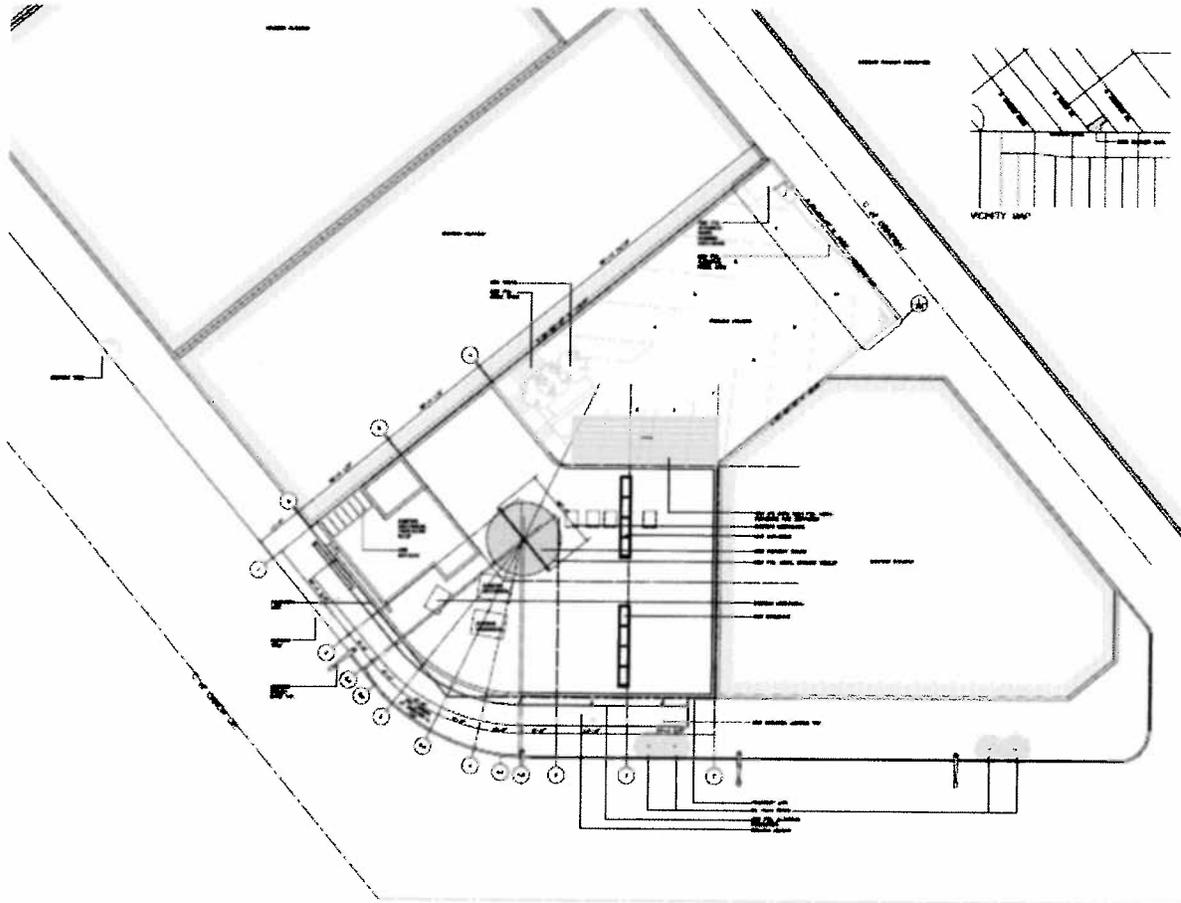


Wilshire Boulevard View

PROJECT DESCRIPTION

The proposed project consists of an approximately 4,039 square feet of space within the ground floor of an existing two-story commercial building. The subject property is irregular in shape and the ground floor street frontage of the space is approximately 47.3-foot wide facing Wilshire Boulevard and 48.8-foot wide facing Canon Drive. A surface parking with 10 parking spaces is located off the rear alley. The

applicant notes that the property has been vacant since its renovation was finalized over a year ago and attempts to acquire a retail tenant has been unsuccessful and the applicant is trying to find a non-retail use such as a financial institution, travel agency, entertainment related business, real estate related business, computer science business, insurance/employment agency, foreign currency trader or any other permitted non-retail uses which would not result in any substantial adverse impact to any surroundings uses. The Zoning Code restricts non-retail uses which exceed a ground floor street frontage of 25-feet in width, both on Wilshire Boulevard and on Canon Drive, to be located within this area unless authorized by a CUP.



Project Site Plan

Requested Permits

The applicant is seeking approval of a Conditional Use Permit to allow a non-retail use to occupy more than 25 feet of ground-floor street frontage within the Pedestrian Oriented Area (48.8 feet of street frontage along North Canon Drive and 47.3 feet of street frontage along Wilshire Boulevard).

ZONING CODE¹ COMPLIANCE

A detailed review of the proposed project to applicable zoning standards is provided in Attachment A. The proposed project complies with all applicable codes, or is seeking through the requested permits,

¹ Available online at http://www.sterlingcodifiers.com/codebook/index.php?book_id=466

permission to deviate from certain code standards, in a manner that is consistent with the Zoning Ordinance.

Pedestrian Oriented Use

Pursuant to Beverly Hills Municipal Code §10-3-1650² which regulates non-retail uses in the Pedestrian Oriented Area of the City, any uses other than retail or restaurant is listed as a “non-retail use.” Canon Drive, including adjoining parcels on Wilshire Boulevard, is located within the designated Pedestrian-Oriented Area. As such, non-retail uses are restricted from occupying a space with a ground floor street frontage of more than 25 feet (also applies to the corner of two streets) in a Pedestrian-Oriented Area, unless authorized by a CUP. The subject space contains street frontage totaling 96.1 feet along Wilshire Boulevard and Canon Drive, which is exceeding the allowable frontage.

Agency Review³

The following City Departments conducted a preliminary project review as it relates to other technical provisions of local and state law:

- TRANSPORTATION DIVISION. The Transportation Division reviewed the plans and noted that the office traffic generation is usually lower than retail establishments; therefore, it is not anticipated that the office use would have any negative traffic impacts in the area.

Due to limited scope of work, other City departments were not consulted about the proposed change of use.

GENERAL PLAN⁴ POLICIES

The General Plan includes several goals and policies. Some policies relevant to the Planning Commission’s review of the project include:

- Policy LU 2.8 Pedestrian-Active Streets. Require that buildings in business districts be oriented to, and actively engage the street through design features such as build-to lines, articulated and modulated facades, ground floor transparency such as large windows, and the limitation of parking entries directly on the street. Parking ingress and egress should be accessed from alleys where feasible.
- Policy LU 11.1 Preservation of Pedestrian-Oriented Retail Shopping Areas. Preserve, protect and enhance the character of the pedestrian-oriented retail shopping areas, which are typified by a variety of retail shops with displays to attract and hold the interest of pedestrian shoppers, to ensure the continuity of the pedestrian experience.
- Policy LU 11.3 Retail Street Frontages. Require that development and street frontages in districts containing retail uses be designed and developed to promote pedestrian activity

² The intent of the CUP requirement for banks within pedestrian oriented areas is to provide some controls over the concentration of non-retail uses and prevent these designated areas from being dominated by non-retail uses. With the exception of the 25-foot street frontage limit, banks, like other general retail uses, are allowed to occupy existing commercial spaces within the Pedestrian Oriented Area by-right.

³ Recommended conditions of approval by other departments are provided in the Analysis section of this report.

⁴ Available online at http://www.beverlyhills.org/services/planning_division/general_plan/genplan.asp

including: (a) location and orientation of the building to the sidewalk; (b) transparency of and direct access to the ground floor elevation from the sidewalk; (c) articulation of street-facing elevations to promote interest and sense of quality; (d) inclusion of uses and public spaces that extend interior functions to the sidewalk such as cafes and plazas; and (e) use of pedestrian oriented signage and lighting.

ENVIRONMENTAL ASSESSMENT

The subject project has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines⁵, and the environmental regulations of the City. The project qualifies for a categorical exemption pursuant to Section 15301 (Class 1) of the Guidelines. Specifically, the proposed project would result in operational changes within an existing commercial building. The operational changes do not result in any significant environmental impacts, including traffic and parking, and are therefore exempt from further review under the provisions of CEQA.

PUBLIC OUTREACH AND NOTIFICATION

Type of Notice	Required Period	Required Notice Date	Actual Notice Date	Actual Period
Posted Notice	N/A	N/A	N/A	N/A
Newspaper Notice	10 Days	2/11/2011	2/11/2011	13 Days
Mailed Notice (Owners & Residents - 300' Radius)	10 Days	2/11/2011	2/11/2011	13 Days
Property Posting	N/A	N/A	N/A	N/A
Website	N/A	N/A	2/15/2011	9 Days

Applicant Outreach Efforts

As of the date of the preparation of this report, staff is unaware of any outreach efforts undertaken by the applicant.

Public Comment

The City has received two inquiries over the phone regarding the details of the proposed project as of the date of the preparation of this report. The first caller was requested general information about the proposal. The second caller was concerned about the limited parking in the area and the parking location for the future employees or tenant of the subject space.

⁵ The CEQA Guidelines and Statute are available online at <http://ceres.ca.gov/ceqa/guidelines>

ANALYSIS⁶

Project approval, conditional approval or denial is based upon specific findings for each discretionary application requested by the applicant. Draft findings are included with this report in Attachment B and may be used to guide the Planning Commission's deliberation of the subject project.

The required findings for the Conditional Use Permit generally relate to preservation of surrounding neighborhoods, preservation of the City's Pedestrian Oriented Areas, and an ability to show that the project will not result in any parking or traffic related impacts. Based on staff's analysis, the proposed project will not result in any adverse impacts. Specific discussion related to key issues associated with the project is provided below, and draft findings in support of the project are provided as Attachment B.

Summary

The City's General Plan provides specific policies for maintaining and improving the pedestrian experience within the City's commercial areas. The proposed use for non-retail use is not considered to be a pedestrian oriented use under the zoning code. Therefore, in addition to consideration regarding compliance with the General Plan, specific findings must be made in order to grant a Conditional Use Permit to allow the a non-retail use to be located on the ground floor of the building.

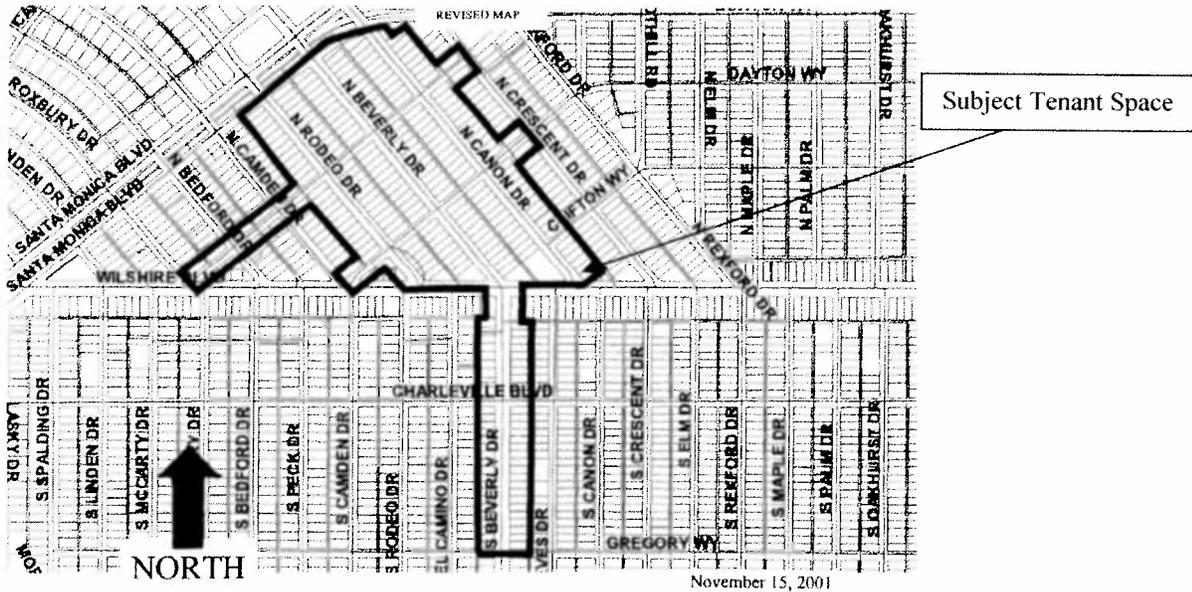
The ground floor of the subject property is currently vacant. The applicant notes that its attempts to find a retail tenant to occupy the spaces have been unsuccessful. The applicant has identified the following reasons in support of the CUP:

- Limited number of retail establishments in the immediate vicinity of the subject tenant space;
- Lack of Pedestrian traffic at the corner of Wilshire Boulevard and Canon Drive where the property is situated;
- Location of the tenant space at a corner of busy intersection;
- Lack of on-street parking adjacent to the site; and
- Low ceiling volume of the tenant space.

The applicant concludes that the subject tenant space does not appear to be suitable for conducting retail business despite marketing efforts to lease this space to a tenant not requiring a CUP.

The subject building is located at the easterly border of Pedestrian-Oriented Area as shown on the map below:

⁶ The analysis provided in this section is based on draft findings prepared by the report author prior to the public hearing. The Planning Commission in its review of the administrative record and based on public testimony may reach a different conclusion from that presented in this report and may choose to modify the findings. A change to the findings may result in a final action that is different from the staff recommended action in this report.



Adjacent uses include restaurants such as Spago on Canon Drive and Shanghai Grill on Wilshire Boulevard and retail spaces such as the bridal shops to the east on Wilshire Boulevard. Other ground floor spaces in the immediate vicinity are occupied by financial institutions including a real estate office and a bank. The subject tenant space is located at a busy vehicle intersection, but is located within walking distance of Beverly Hills Gardens and other restaurants and shops within the Business Triangle which encourage pedestrian activities. The newly constructed Beverly Hills Gardens and Montage Hotel contains over 1,000 parking spaces which has public parking available to the merchants and patrons of the area. According to project plans, the subject tenant space is about ten foot tall which may not be suitable for a retail space which typically is desired to be 14 feet high.

While the future of the development in this area may be one of increased pedestrian activity to support pedestrian oriented uses similar to the other areas of the triangle and South Beverly Boulevard, it does not appear so at present. Its proximity to Wilshire Boulevard coupled with the destination type (versus pedestrian) retail uses appear to make the establishment of a general office or similar use more appropriate at this location at this time.

Special Conditions of Approval

The recommendation in this report is for approval. In addition to standard conditions of approval, the following project-specific conditions are recommended (also see Attachment A):

1. **Limited Term CUP.** If approved, the Conditional Use Permit (CUP) shall expire five (5) years from the date of the resolution and all rights granted by this CUP shall terminate at that time, unless is renewed. The purpose of this condition is to not foreclose the opportunity of establishing more pedestrian-oriented uses in the future. The Planning Commission may want to discuss whether a longer term expiration is appropriate.
2. **On-site Parking.** Due to limited on-site parking spaces, the project site shall maintain the 10 on-site parking spaces for the customers and tenants of the building. (Special Condition 2)

3. **Employee Parking.** The applicant shall provide free on- or off-site parking for the employees of the tenant space to ensure they do not impact surrounding uses. (Special Condition 3)
4. **Permitted Uses.** Only uses that require parking at a rate of one space per 350 square feet of area shall be permitted. This would preclude the establishment of medical office buildings, fitness gyms or similar, higher traffic-generating uses. (Special Condition 4)
5. **Parking and Traffic.** 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 resulting in such impacts, procedures are established to allow for a review of the issues. (Special Condition 5)

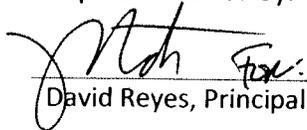
NEXT STEPS

It is recommended that the Planning Commission conduct the public hearing and approve the resolution conditionally approving the requested Conditional Use Permit.

Alternatively, the Planning Commission may consider the following actions:

1. Approve the project with modified findings or conditions of approval.
2. Deny the project, or portions of the project, based on revised findings.
3. Direct staff or applicant as appropriate and continue the hearing to a date (un)certain, consistent with permit processing timelines, and at applicant's request or consent.

Report Reviewed By:



David Reyes, Principal Planner

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ATTACHMENT B

Draft Findings and Conditions of Approval

DRAFT FINDINGS

Conditional Use Permit

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

Pursuant to range of uses mentioned by the applicant in a letter dated February 10, 2011 (attached), a non-retail use within the ground floor of the project site would be consistent with ongoing commercial operations in the vicinity of the project site. The City's Transportation Division commented that although the am or pm peak times of a retail use verses an office use will be different, however such a non retail use will not result in any significant traffic related impacts in the area. As a result, the proposal will not be detrimental to adjacent properties or to the public welfare.

2. *The proposed restricted use is compatible with and will not result in any substantial adverse impacts to surrounding uses;*

Considering the examples of uses that have been provided by the applicant, it appears any of the mentioned uses will be compatible with the existing surrounding uses in the area and will be consistent with commercial operations in the vicinity of the project site. Therefore, the change of use will not result in any substantial adverse impact to surrounding uses.

3. *Granting the request for a conditional use permit will not result in an over concentration of non-pedestrian oriented uses in the block in which the proposed restricted use will be located;*

The granting of the CUP for the development of a non-retail use will not result in over concentration of non-pedestrian uses in the block in which the proposed restricted use will be located⁷. The project is located in the Business triangle, on the east side of Canon Drive which is surrounded by variety of retail and office uses. The project will occupy a tenant space that was previously occupied by a jewelry design studio that was only open to its clients by appointments and has remained vacant since its renovation in 2010. The establishment of the proposed non-retail use in this location will not disrupt or threaten the existing or future pedestrian retail character of the area.

4. *Granting the request for a conditional use permit will not adversely impact the public health, safety or general welfare and will leave ample space available for future retail growth in designated pedestrian oriented areas; and*

The proposal would not entail any substantial physical changes to the exterior of the building and would not introduce any new construction to the site. The existing driveway access and building entrances would be maintained. Therefore, granting the CUP would not pose any threat or adversely impact the public health, safety or general welfare.

⁷ Pursuant to BHMC 10-3-100, Block defined as: A property that is abutting on one side of a street and is lying between the two (2) nearest intersecting or intercepting streets or between the nearest intersecting or intercepting street and its own termination.

5. *The configuration of the building in which the proposed space is located is not suited to pedestrian oriented retail uses and does not contribute to the pedestrian experience.*

The subject commercial office building is located on the corner of a busy street intersection, used heavily by vehicle traffic. The building is a legal non-conforming building with a limited number of on-site parking spaces. The parking facility is located off the rear alley and is not accessible from Wilshire Boulevard or Canon Drive. There are limited metered parking spaces available along Canon Drive and no metered spaces are provided along Wilshire Boulevard adjacent to the tenant space (red curb). Although, there is a public parking facility within the Beverly Hills Gardens with over 1,000 parking spaces located within walking distance of the subject tenant space, the parking is not directly available for retail shoppers. Additionally, the architecture of the building, with low ceiling height and its interior configuration, presents challenges leasing the space out to a retail tenant. Considering the above mentioned factors, it does not appear that the subject tenant space is suited for pedestrian-oriented retail uses and does not contribute to the pedestrian experience.

DRAFT CONDITIONS

Project Specific Conditions

1. **Limited Term CUP.** The Conditional Use Permit (CUP) shall expire five (5) years from the date of the resolution and all rights granted by this CUP shall terminate at that time. Unless the CUP is renewed, or a new CUP granted, the applicant shall immediately cease operation at this location. The applicant shall have the right to submit requests for renewal of the CUP but shall have no right to renewal of the CUP. Any application for renewal of the CUP or a new CUP must be filed at least sixty (60) days prior to the expiration of these approvals. If the Planning Commission does not renew the CUP, the CUP shall expire and all rights possessed under the CUP shall be terminated. Provided, however, if the applicant files an application for a renewal, any existing CUP shall be extended until the City takes final action on the application. Any application for a renewal of this CUP shall be subject to the application fee established by resolution of the City Council. Upon expiration of the renewal and any future renewal, the applicant may apply for further extensions pursuant to the procedures set forth above. The length of any future renewals granted shall be governed by the provisions of the Beverly Hills Municipal Code.
2. **On-Site Parking.** The project site shall maintain the 10 on-site parking spaces for the customers and tenants of the building.
3. **Employee Parking.** The applicant shall provide free on-site or off-site parking for the employees of the tenant space. Documentation of free employee parking shall be submitted to the Director of Community Development prior to the issuance of any building permit or occupancy of the space.
4. **Permitted Uses.** Only uses that require parking at a rate of one space per 350 square feet shall be permitted.
5. **Parking and Traffic.** 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 38 of Chapter 3 of 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.

Standard Conditions

6. **Substantial Compliance.** The project shall be in substantial conformance with the plans as conditioned and approved by the Planning Commission on February 24, 2011.
7. **Run with the Land.** These conditions shall run with the land and shall remain in full force for the duration of the life of the Project.
8. **Covenant.** This resolution granting the requested 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 Property Owner shall deliver the executed covenant to the Department of Planning & Community Development within 60 days of any City Council approval of the Amendments. At the time that the Property Owner delivers the covenant to the City, the Property Owner shall also provide the City with all fees necessary to record the document with the County Recorder. If the Property Owner 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 Property Owner, 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.

ATTACHMENT C
Public Notice



NOTICE OF PUBLIC HEARING

DATE: February 24, 2011
TIME: 1:30 PM, or as soon thereafter as the matter may be heard
LOCATION: Council Meeting Room 280A
Beverly Hills City Hall
455 North Rexford Drive
Beverly Hills, CA 90210

The Planning Commission of the City of Beverly Hills, at its REGULAR meeting on Thursday, February 24, 2011, will hold a public hearing beginning at **1:30 PM**, or as soon thereafter as the matter may be heard to consider:

A Conditional Use Permit (CUP) to allow a non-retail use, to occupy an existing ground floor space of a building located in a designated pedestrian oriented area at **9399 Wilshire Boulevard/160 N. Canon Drive**. The proposed location is at the northeast corner of Wilshire Boulevard and Canon Drive. The ground floor street frontage of the space is approximately 47.3-foot wide facing Wilshire Boulevard and 48.8-foot wide facing Canon Drive. The Zoning Code restricts non-retail uses which exceed a ground floor street frontage of 25-feet in width, both on Wilshire Boulevard and on Canon Drive, to be located within this area unless authorized by a CUP.

This 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. The project qualifies for a Class 1 Categorical Exemption for operational changes within an existing commercial facility, and the project has been determined not to have a significant environmental impact and is exempt from the provisions of CEQA.

Any interested person may attend the meeting and be heard or present written comments to the Commission. According to Government Code Section 65009, if you challenge the Commission's action in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City, either at or prior to the public hearing.

If there are any questions regarding this notice, please contact **Rita Naziri, Senior Planner** in the Planning Division at 310.285.1136, or by email at rnaziri@beverlyhills.org. Copies of the applications, plans, and Categorical Exemption are on file in the Community Development Department, and can be reviewed by any interested person at 455 North Rexford Drive, Beverly Hills, CA 90210.

A handwritten signature in black ink, appearing to read "David Reyes".

David Reyes, Principal Planner

Mailed & Published: February 11, 2011

ATTACHMENT D
Correspondence

Law Offices of
DAWSON TILEM & GOLE

*MITCHELL J. DAWSON
JOSEPH N. TILEM
GARY M. GOLE*

*9454 Wilshire Boulevard, Penthouse
Beverly Hills, California 90212
Telephone: (310) 285-0880; (310) 273-3313
Facsimile: (310) 285-0807*

February 10, 2011

City of Beverly Hills
Planning and Community Development Department
455 N. Rexford Drive
Beverly Hills, Ca., 90210

Re: CUP for 9399 Wilshire Blvd. (160 N. Canon Drive)

Sirs:

Supplementing the application for a Conditional Use Permit for the above property, please consider the following:

1. The store has not been used as a retail location for decades. From our research, the former uses were never retail. The previous occupant of the space, Johnathon Arndt, Inc., did not do business with the general public; it did not utilize the windows to display merchandise. The windows were blacked out, with only a sign showing the name of the tenant. The tenant had divided the space into a series of private offices. Two photos of the prior use will be submitted to the Planning Commission as evidence
2. Before that, another prior use of the corner was by CAESARS PALACE, a hotel in Las Vegas. It was used to market their Las Vegas hotel. According to a map dated in 1994, the store was used to sell tickets, presumably for events at that hotel.
3. The store has no customer parking. The 9 spaces behind the building are used by the upstairs tenant, the current owner of the building. There is no street parking except several limited time meters, which are generally occupied during business hours.
4. The street curb in front of the store is painted RED, so no parking or stopping is permitted, according to the signs posted.
5. The adjacent uses are restaurants (Spago's and a Chinese restaurant near the alley). banks and real-estate related businesses. No retail businesses are located in the immediate vicinity except a bridal shop that recently opened on Wilshire Boulevard, just east of the site. Their business is primarily done by appointment. Retail uses are not prevalent in the area.

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6. A non-retail use, such as a financial institution, travel agency, entertainment related business, real estate related business, computer science business, insurance agency, employment agency, foreign currency trader and any number of otherwise permitted non-retail uses one can imagine, will not result in any substantial adverse impact to any surrounding uses.

7. There is little pedestrian traffic at that corner where the property is situated.

8. The height of the stores and the configuration of the interior (shallow depth) do not lend themselves to retail uses. A typical retail use configuration requires more depth for selling space and ceiling heights of 18 to 20 feet; this store is only about 12 feet high.

9. The property has been vacant for over one year; no retail tenant has been found because the real estate brokers who tried to rent it for the owner advised the owner that it was not suitable for retail uses.

The Applicant submits, therefore, that the required findings can be made to support the application for the Conditional Use Permit to allow non-retail uses. Granting the application will not result in an overconcentration of non-pedestrian oriented uses in the block, nor will it adversely affect the public health, safety or general welfare.

Respectfully submitted,



Joseph N. Tilem
Attorney for Applicant

ATTACHMENT E
Draft Resolution

RESOLUTION NO.

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS CONDITIONALLY APPROVING A CONDITIONAL USE PERMIT TO ALLOW A NON-RETAIL USE WITHIN THE PEDESTRIAN ORIENTED AREA OF THE CITY ON THE PROPERTY LOCATED AT 9399 WILSHIRE BOULEVARD/160 North CANON DRIVE

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

Section 1. Joseph N. Tilem, representative of New Pacific Canon, LLC (collectively the “Applicant”), has applied for a Conditional Use Permit to allow a non-retail use to occupy the existing ground floor space of a building located at 9399 Wilshire Boulevard/160 N. Canon Drive (the “Project”) that falls within the City’s Pedestrian Oriented Area. Pursuant to BHMC §10-3-1650, a non-retail use is restricted to a maximum 25-foot ground floor street frontage. Since the subject space contains approximately 47.3 feet of street frontage along Wilshire Boulevard and 48.8 feet of street frontage along Canon Drive, a Conditional Use Permit is required to permit a non-retail use to occupy the space.

Beverly Hills Municipal Code Section 10-3-1655 B authorizes the Planning Commission to issue a Conditional Use Permit to allow a non-retail use to occupy a space with ground floor street frontage of more than twenty five (25) feet in the Pedestrian Oriented Area provided certain findings can be made.

Section 2. The subject 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. The project qualifies for a categorical exemption pursuant to

Section 15301 (Class 1) of the Guidelines. Specifically, the proposed project would result in operational changes within an existing commercial building. The operational changes do not result in any significant environmental impacts, including traffic and parking, and are therefore exempt from further review under the provisions of CEQA.

Section 3. The Planning Commission conducted a duly noticed public hearing on February 24, 2011, at which time oral and documentary evidence was received concerning the application.

Section 4. The subject site is located on the northeast corner of Wilshire Boulevard and Canon Drive. The subject building is a 2-story office building with a 10-stall parking facility located at the rear of the building and accessed from the alley. The site is located in a C-3 zone, and is surrounded by commercial buildings in the north, west and south of the property and a mixed-use development and commercial buildings to the east. Canon Drive, north of Wilshire, is characterized by retail, restaurant, hotel and office uses and Wilshire Boulevard consists of commercial buildings with retail and offices, including a number of ground floor financial institutions in the vicinity of the subject tenant space.

The commercial building at the subject property was built in 1954, with a total of 10,000 square feet in area, 2 stories and a maximum height of 25 feet. The subject building was remodeled in January 2010 with a contemporary design. The subject ground floor space of 4,093 square feet was used for several type of businesses including a designer jewelry store or office uses. Retail uses typically dominate the ground floors of buildings located within the Business Triangle; however, many of commercial buildings located along Wilshire Boulevard and Canon Drive contain financial and banking services.

Section 5. Pursuant to Beverly Hills Municipal Code Section 10-3-3800 and 10-3-1655, the Planning Commission may authorize a Conditional Use Permit to allow a non-retail use to occupy a space with ground floor street frontage of more than twenty five (25) feet in the Pedestrian Oriented Area if the Planning Commission finds that:

- (1) The proposed location of any such use will not be detrimental to adjacent property or to the public welfare;
- (2) The proposed restricted use is compatible with and will not result in any substantial adverse impacts to surrounding uses;
- (3) Granting the request for a conditional use permit will not result in an over concentration of non-pedestrian oriented uses in the block in which the proposed restricted use will be located;
- (4) Granting the request for a conditional use permit will not adversely impact the public health, safety or general welfare and will leave ample space available for future retail growth in designated pedestrian oriented areas;
- (5) The configuration of the building in which the proposed space is located is not suited to pedestrian oriented retail uses and does not contribute to the pedestrian experience.

Section 6. Based upon the evidence presented at the hearings, including the Staff Report and oral and written testimony, the Planning Commission, hereby finds as follows:

6.1 Pursuant to range of uses proposed the applicant, a non-retail use within the ground floor of the project site would be consistent with ongoing commercial operations in the vicinity of the project site. The City's Transportation Division commented that although the am or pm peak times of a retail use verses an office use will be different, however such a non retail use will not result in any significant traffic related impacts in the area. As a result, the proposal will not be detrimental to adjacent properties or to the public welfare.

6.2. Considering the examples of uses that have been provided by the applicant, it appears any of the mentioned uses will be compatible with the existing surrounding uses in the area and will be consistent with commercial operations in the vicinity of the project site. Therefore, the change of use will not result in any substantial adverse impact to surrounding uses.

6.3. The granting of the CUP for the development of a non-retail use will not result in over concentration of non-pedestrian uses in the block in which the proposed restricted use will be located. The project is located in the Business triangle, on the east side of Canon Drive which is surrounded by variety of retail and office uses. The project will occupy a tenant space that was previously occupied by a jewelry design studio that was only open to its clients by appointments and has remained vacant since its renovation in 2010. The establishment of the proposed non-retail use in this location will not disrupt or threaten the existing or future pedestrian retail character of the area.

6.4. The proposal would not entail any substantial physical changes to the exterior of the building and would not introduce any new construction to the site. The existing driveway access and building entrances would be maintained. The new use would conduct business during normal business hours. Therefore, granting the CUP would not pose any threat or adversely impact the public health, safety or general welfare.

6.5. The subject commercial office building is located on the corner of a busy street intersection, used heavily by vehicle traffic. The building is a legal non-conforming building with a limited number of on-site parking spaces. The parking facility is located off the rear alley and is not accessible from Wilshire Boulevard or Canon Drive. There are limited metered

parking spaces available along Canon Drive and no metered spaces are provided along Wilshire Boulevard adjacent to the tenant space (red curb). Although, there is a public parking facility within the Beverly Hills Gardens with over 1,000 parking spaces located within walking distance of the subject tenant space, the parking is not directly available for retail shoppers. Additionally, the architecture of the building, with low ceiling height and its interior configuration, presents challenges leasing out the space to a retail, pedestrian-oriented, tenant space.

Section 7. Based on the foregoing, the Planning Commission hereby grants a Conditional Use Permit subject to the following conditions:

Project Specific Conditions

1. **Limited Term.** The Conditional Use Permit (CUP) shall expire five (5) years from the date of the resolution and all rights granted by this CUP shall terminate at that time. Unless the CUP is renewed, or a new CUP granted, the applicant shall immediately cease operation at this location. The applicant shall have the right to submit requests for renewal of the CUP but shall have no right to renewal of the CUP. Any application for renewal of the CUP or a new CUP must be filed at least sixty (60) days prior to the expiration of these approvals. If the Planning Commission does not renew the CUP, the CUP shall expire and all rights possessed under the CUP shall be terminated. Provided, however, if the applicant files an application for a renewal, any existing CUP shall be extended until the City takes final action on the application. Any application for a renewal of this CUP shall be subject to the application fee established by Resolution of the City Council. Upon expiration of the renewal and any future renewal, the applicant may apply for further extensions pursuant to

the procedures set forth above. The length of any future renewals granted shall be governed by the provisions of the Beverly Hills Municipal Code.

2. **On-site Parking.** The project site shall maintain the 10 on-site parking spaces for the customers and tenants of the building.
3. **Employee Parking.** The applicant shall provide free on-site or off-site parking for the employees of the tenant space. Documentation of free employee parking shall be submitted to the Director of Community Development prior to the issuance of any building permit or occupancy of the space.
4. **Permitted Uses.** Only uses that require parking at a rate of one space per 350 square feet shall be permitted.
5. **Parking and Traffic.** 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 38 of Chapter 3 of 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.

Standard Conditions

6. **Substantial Compliance.** The project shall be in substantial conformance with the plans as conditioned and approved by the Planning Commission on February 24, 2011.
7. **Condition run with the Land.** These conditions shall run with the land and shall remain in full force for the duration of the life of the Project.
8. **Covenant.** This resolution granting the requested 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 Property Owner shall deliver the executed covenant to the Department of Planning & Community Development within 60 days of any City Council approval of the Amendments. At the time that the Property Owner delivers the covenant to the City, the Property Owner shall also provide the City with all fees necessary to record the document with the County Recorder. If the Property Owner 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 Property Owner, 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 8. The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and his certification to be entered in the Book of Resolutions of the Planning Commission of the City.

Adopted: February 24, 2011

Lili Bosse
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

Jonathan Lait, AICP
City Planner

