



Planning Commission Report

Meeting Date: December 13, 2012

Subject: **320 North Beverly Drive**
Nespresso

Request for Open Air Dining Permit to establish open air dining on private property and the public right-of-way, and a request for a waiver of four code-required parking spaces associated with the open air dining.

PROJECT APPLICANT: Nespresso USA, represented by Stephen Webb

Recommendation: That the Planning Commission:

1. Conduct a public hearing and receive testimony on the project; and
2. Adopt the attached resolution conditionally approving the requested Open Air Dining Permit and waiver of four parking spaces.

REPORT SUMMARY

The proposed project involves the establishment of a Nespresso retail store and café within an existing commercial building located at 320 North Beverly Drive. In conjunction with establishing the retail store and cafe, Nespresso seeks to establish open air dining both on private property and on the public right-of-way. The request includes a request for waiver of four code-required parking spaces that would otherwise be required for the open air dining located on private property. This report analyzes the project's consistency with the existing streetscape, as well as parking demand and parking supply for the establishment. Staff's analysis concludes that approval of the project will be a beneficial addition to the City and that granting the open air dining and parking waiver will not result in any adverse impacts to the surrounding area.

Attachment(s):

- A. Staff Recommended Findings and Conditions of Approval
- B. Public Notice
- C. Draft Resolution
- D. Photographs of Nespresso Establishments
- E. Architectural Plans

Report Author and Contact Information:

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BACKGROUND

File Date	11/16/2012
Application Complete	12/5/2012
Subdivision Deadline	N/A
CEQA Deadline	60 days from CEQA Determination
Permit Streamlining	2/4/2012

Applicant(s)	Nespresso - USA
Owner(s)	Beverly-Dayton LLC
Representative(s)	Stephen Webb

Prior PC Action	None
Prior Council Action	None

PROPERTY AND NEIGHBORHOOD SETTING

Property Information

Address	320 North Beverly Drive
Legal Description	Lot 8 and 9, Block 6 of Beverly Tract
Zoning District	C-3
General Plan	General Commercial - Low Density
Existing Land Use(s)	Retail
Lot Dimensions & Area	100' x 150' – 15,000 square feet
Year Built	1940
Historic Resource	The property is not listed on the City's inventory as being potentially historic.
Protected Trees/Grove	None

Adjacent Zoning and Land Uses

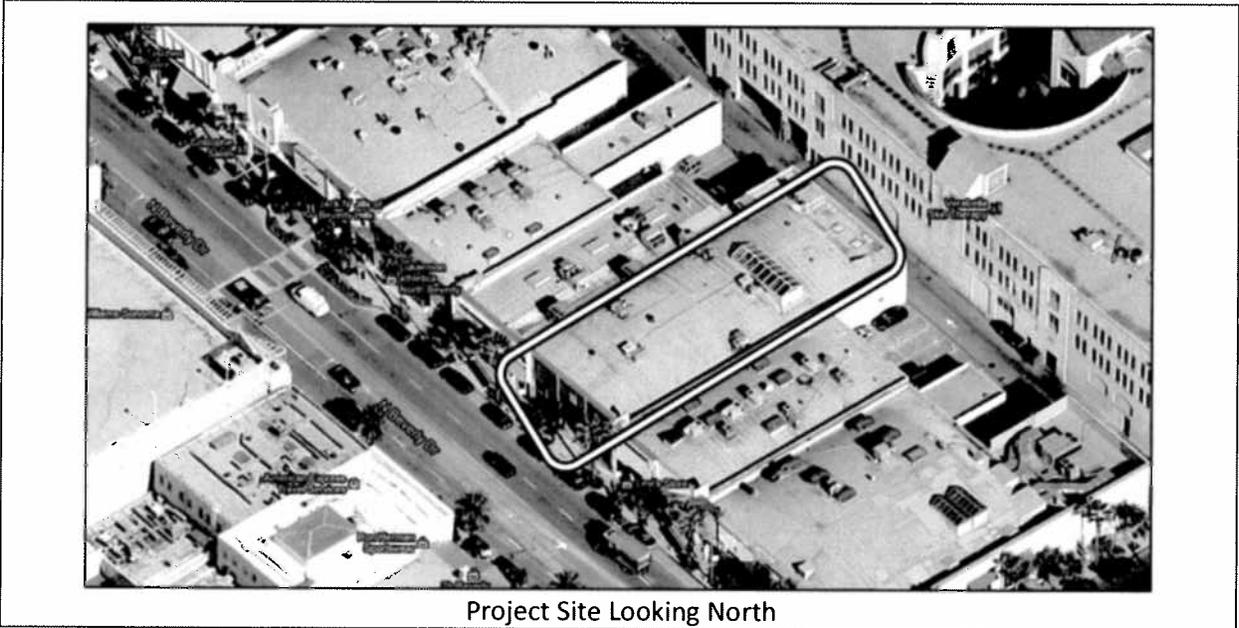
North	C-3 General Commercial - Retail
South	C-3 General Commercial - Retail
East	C-3 General Commercial - Retail
West	C-3 General Commercial - Retail

Circulation and Parking

Adjacent Street(s)	North Beverly Drive
Adjacent Alleys	One-way alley (northbound) located at rear of property
Parkways & Sidewalks	North Beverly Drive sidewalk/parkway - 12' from face of curb to property line
Parking Restrictions	Parking meters with a 1-hour maximum restriction
Nearest Intersection	North Beverly Drive and Dayton Way
Circulation Element	North Beverly Drive is an arterial street, and Dayton Way is a local street

Neighborhood Character

The subject property is located within the Business Triangle area of the city, along the 300 block of North Beverly Drive. Development in the vicinity of the project site typically consists of retail, restaurant, and office uses within buildings that are predominantly two to four stories in height. The area is very pedestrian-oriented and is lined with ground-floor retail establishments.



Project Site Looking North

PROJECT DESCRIPTION

The proposed project consists of the establishment of a combination retail and café use operated by Nespresso. The café component of the establishment includes indoor seating areas, as well as outdoor seating areas. The project proposes a total of 998 square feet of indoor seating, 144 square feet of outdoor seating on private property (6 tables and 12 chairs), and 95 square feet of outdoor seating on the public right-of way (3 tables and 6 chairs). In conjunction with the request to establish open air dining, the applicant requests that four parking spaces that would otherwise be required for the outdoor seating on private property be waived.

ZONING CODE¹ COMPLIANCE

A detailed review of the proposed project's compliance with applicable zoning standards has been performed. The proposed project complies with all applicable codes, or is seeking through the requested permits permission to deviate from certain code standards, in a manner that is consistent with the Zoning Ordinance.

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

Parking Requirements

Indoor seating facilities for the café are permitted to occupy up to 999 square feet without the need for additional parking, and the applicant proposes a total of 998 square feet of indoor seating facilities. Outdoor seating on the public right-of-way does not require any parking²; however, outdoor seating on private property is required to be parked at a rate of one space per each 45 square feet of floor area. This results in the need for four additional parking spaces to serve the 144 square feet of outdoor seating on private property proposed by the applicant. Pursuant to BHMC §10-3-2730 B.8.³ the Planning Commission has the authority to modify or waive the parking requirements for outdoor seating on private property if certain findings are made. Therefore, the applicant seeks waiver of the four additional parking spaces triggered by the 144 square feet of outdoor seating on private property.

GENERAL PLAN⁴ POLICIES

The General Plan includes several goals and policies relevant to the Planning Commission's review of the project:

- 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 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.

² BHMC §10-3-2730 B.7.: *Open air dining on public property: No additional parking required.*

³ BHMC §10-3-2730 B.8.: *Open air dining on private property: ... the planning commission may establish parking requirements for open air dining areas that are different than those set forth in this section if the planning commission determines that the open air dining area will generate a need for parking different than the amount of parking required by this section or the planning commission determines that parking demand will be met by means other than those means specified in this section.*

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

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 interior and exterior improvements to an existing commercial building without the addition of new floor area. The alterations to the existing building do not result in any significant environmental impacts, 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	12/7/2012	6 Days
Newspaper Notice	N/A	N/A	N/A	N/A
Mailed Notice (Owners & Residents - 300' Radius)	10 Days	12/3/2012	12/3/2012	10 Days
Property Posting	N/A	N/A	N/A	N/A
Website	N/A	N/A	12/7/2012	6 Days

Public Comment

The City has not received any comments or letters concerning the project as of the writing of this report.

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 A and may be used to guide the Planning Commission’s deliberation of the subject project.

The required findings for the Open Air Dining Permit and associated parking waiver relate to minimizing impacts to the surrounding area and public welfare, and determining that the code-required parking can be satisfied by other means. The following analysis is provided to help guide the Commission’s review of the project.

Open Air Dining. Open air dining, particularly on the public right-of-way, has not always been an allowed use within the city. However, the City Council, through the General Plan and various ordinances, has established policies and regulations to encourage the establishment of open air dining. Open air dining is considered to be a beneficial use within commercial areas because it helps to extend business uses out to the street, which enlivens the streetscape and contributes to the overall synergy of commercial districts and neighborhoods. These benefits have led to the incentives for open air dining that currently exist today, such as a code provision that

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

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.

requires zero parking to be provided for open air dining on public property, and another code provision that allows the Planning Commission to modify or waive the parking requirements for open air dining on private property. These incentives have encouraged Nespresso to establish a Beverly Hills location, and the waiver of parking requirements will help to make the project viable. In order to carry out the City's goal to activate streets and encourage pedestrian activity, staff recommends that the Commission consider past policies and the positive effect that open air dining has had and can continue to have on the streetscape.

Neighborhood Compatibility. The project is proposed be located in a prominent storefront along North Beverly Drive that has sat vacant for the past several years. The proposed use is pedestrian-oriented and provides a mix of services, including retail sales and casual café dining. As proposed, the seating area would extend approximately 5 feet into the adjacent, 12-foot wide sidewalk, and would not obstruct pedestrian travel. The proposed façade improvements, as well as an extension of the café onto the adjacent sidewalk will be a beneficial addition to the existing retail environment along North Beverly Drive, and will help to enliven the streetscape. The subject property is entirely surrounded by commercial uses, and is not anticipated to result in any of the potential impacts that can result from a dining area located adjacent to residential uses. Staff's analysis concludes that the open air dining and storefront remodel will be a compatible and beneficial addition to the neighborhood.

Parking Waiver. The City's code-required parking standards for outdoor seating are based on the average parking demand expected to be generated by a dining establishment. However, the proposed use provides a mix of retail and dining, and is unique in comparison to a traditional dining establishment. In fact, it is anticipated that many of the of patrons of the retail portion of the establishment will transition their retail shopping experience into a light meal or drink at the café once they have completed a purchase, and that the café will generally not serve as the primary destination. Additionally, as shown in the attached plans (Attachment E) and documented in sample photographs of other Nespresso establishments (Attachment D), the seating areas are somewhat spread out and are not designed to accommodate high volumes of patrons. The Nespresso establishment will have access to four on-site parking spaces, 20 off-site, covenanted parking spaces located in the Village on Canon parking structure, and the usual public parking spaces that can be found at adjacent parking meters or in the City's public parking garages. Based on the unique type of use proposed and the availability of parking in and around the project site, staff's analysis concludes that the four code-required parking spaces for the outdoor seating on private property, that would otherwise be required, will not be necessary for operation of the project.

Alternate Parking Options. The proposed project requests waiver of four parking spaces for open air dining purposes. Alternate methods of providing the four parking spaces include in-lieu parking and off-site parking. In-lieu parking would allow the applicant to pay money into the City's in-lieu parking fund in order to waive the four parking spaces. The cost of in-lieu spaces on North Beverly Drive is currently set at \$37,605.80 per space, which equals \$150,423.20 for four parking spaces. Off-site parking would allow the applicant to secure parking spaces at a location within 750 feet of the project site, but would require that any spaces secured be unencumbered and covenanted to the project site. Based on communications with the applicant, the in-lieu parking option is cost prohibitive, and the off-site parking option is not feasible because covenanted spaces cannot be secured. Although these alternate parking

options appear to be prohibitive to the applicant, staff recommends that the Commission discuss all available options as they relate to the City's policies that are intended to support the establishment of restaurants that engage the street and contribute to pedestrian activity.

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):

- *"The square footage of outdoor seating on private property shall not exceed 180 square feet."* (Special Condition 1)

The purpose of the above condition is to clearly indicate the maximum square footage of outdoor seating on private property that would otherwise be permitted via the four parking spaces waived in conjunction with the project.

- *"Except as otherwise specified herein, all open air dining areas shall be constructed and maintained in accordance with all development standards set forth in BHMC §10-3-3502."* (Special Condition 2)

The purpose of the above condition is to clearly indicate that this approval does not grant any waivers (with the exception of parking) of open air dining development standards.

- *"The City expressly reserves jurisdiction relative to parking issues. In the event the Director determines that operation of the use at this site is having unanticipated 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 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 Title 10 of the Beverly Hills Municipal Code. The Planning Commission shall conduct a noticed public hearing regarding the parking issues and may impose additional conditions as necessary to mitigate any unanticipated parking impacts caused by the proposed Project, and the Applicant shall forthwith comply with any additional conditions at its sole expense."* (Special Condition 3)

The purpose of the above condition is to ensure that the project does not result in any unanticipated impacts related to parking. Should issues arise, this condition gives the Director and Commission the latitude to re-review the project relative to parking impacts.

NEXT STEPS

It is recommended that the Planning Commission conduct the public hearing and adopt the attached resolution conditionally approving the requested Open Air Dining 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:



Ryan Gohlich, Senior Planner

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ATTACHMENT A
Staff Recommended Findings and Conditions of Approval

DRAFT FINDINGS

Open Air Dining

1. *The proposed open air dining use is consistent with the general plan and any specific plans adopted for the area;*

The proposed open air dining use is consistent with the general plan, and specifically promotes Policy LU 11.3 of the general plan, which states:

Retail Street Frontages. Require that development and street frontages in districts containing retail uses be designed and developed to promote pedestrian activity 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.

The open air dining allows for the extension of the café into the public right-of-way, which promotes pedestrian activity, and is therefore consistent with the general plan. The subject property is not located within any specific plan.

2. *The proposed open air dining use will not adversely affect existing and anticipated development in the vicinity and will promote the harmonious development of the area;*

The proposed open air dining will be established in conjunction with a retail and café establishment, within an existing commercial building located in the Business Triangle. The open air dining will enliven the streetscape and help to promote harmonious development of the area.

3. *The nature, configuration, location, density, and manner of operation of any open air dining use proposed will not significantly and adversely interfere with the use and enjoyment of residential properties in the vicinity of the subject property;*

The subject property is located approximately 500 feet from the nearest residential uses, and is therefore not anticipated to interfere with the use and enjoyment of any residential properties.

4. *The proposed open air dining use will not create any significant traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards and will not impede the safe and orderly flow of pedestrians along the public right of way;*

The open air dining area will be located within an existing commercial building, and is anticipated to serve as a supporting use to the retail portion of the establishment. Consequently, the open air dining is anticipated to generate a negligible amount of vehicle trips, and will therefore not result in any traffic impacts, traffic safety hazards, or pedestrian vehicle conflicts. Finally, the open air dining area has been designed in accordance with the City's development standards for open air dining areas, which establishes minimum clearances for the safe passage and flow of pedestrians around the open air dining area. Therefore, the open air

dining area is not anticipated to impede the safe and orderly flow of pedestrians along the public right-of-way.

5. *The proposed open air dining use will not create any significantly adverse parking impacts as a result of employee or patron parking demands;*

The proposed use is provided with a total of 24 on- and off-site parking spaces, which will serve employee and patron parking demands. Furthermore, the proposed use is located in close proximity to street parking and City parking facilities, which are capable of accommodating any overflow parking. Therefore, the open air dining will not create any significantly adverse parking impacts as a result of employee or patron parking demands.

6. *The proposed open air dining use will not create any significantly adverse impacts on neighboring properties as a result of the accumulation of garbage, trash or other waste, noise created by operation of the restaurant or by employees or visitors entering or exiting the restaurant, light and glare, or odors and noxious fumes;*

The proposed open air dining use must be maintained daily in accordance with Beverly Hills Municipal Code requirements, is located within a commercial district that provides all necessary public services and also contains other dining establishments, and will therefore not result in the accumulation of garbage, trash, or other waste. The open air dining use will occupy a limited area of 239 square feet, will close each night at 8:00 PM, and is therefore not anticipated to result in significantly adverse impacts on neighboring properties related to noise, light and glare, odors or noxious fumes.

7. *The proposed open air dining use will not be detrimental to the public health, safety, or general welfare; and*

The proposed open air dining use has been designed in accordance with, and is conditioned to comply with, all applicable development standards for the safe and orderly flow of pedestrians. Furthermore, the proposed use will be a beneficial addition to the North Beverly Drive business district and will help to enliven the streetscape. Therefore, the open air dining use is not anticipated to be detrimental to the public health, safety, or general welfare.

8. *The proposed open air dining use will generate a need for parking different than the amount of parking required by the Municipal Code, parking demand will be met by means other than those means specified in the Municipal Code.*

The proposed open air dining use is a component of a unique mix of retail and café uses, and will generally serve as a supporting component of the Nespresso retail store establishment. Due to the unique combination of uses, it is anticipated that patrons of the retail portion of the establishment will transition their retail shopping experience into a light meal or drink at the café once their purchases are complete, and the café will generally not serve as the primary destination. Additionally, the proposed use will be served by a combination of 24 on- and off-site parking spaces, and will have access to nearby parking meters and City parking facilities. As a result of the unique mix of on-site uses, and the availability of on- and off-site parking options, the proposed open air dining use will generate a lower need for parking than required by the Municipal Code, and will be served by a variety of parking options different from those specified

in the Municipal Code. Therefore, a waiver of four parking spaces for open air dining areas on private property is appropriate.

DRAFT CONDITIONS

Project Specific Conditions

1. The square footage of outdoor seating on private property shall not exceed 180 square feet.
2. Except as otherwise specified herein, all open air dining areas shall be constructed and maintained in accordance with all development standards set forth in BHMC §10-3-3502.
3. The City expressly reserves jurisdiction relative to parking issues. In the event the Director determines that operation of the use at this site is having unanticipated 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 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 Title 10 of the Beverly Hills Municipal Code. The Planning Commission shall conduct a noticed public hearing regarding the parking issues and may impose additional conditions as necessary to mitigate any unanticipated parking impacts caused by the proposed Project, and the Applicant shall forthwith comply with any additional conditions at its sole expense.

Standard Conditions

4. **APPEAL.** Decisions of the Planning Commission may be appealed to the City Council within fourteen (14) days of the Planning Commission action by filing a written appeal with the City Clerk. Appeal forms are available in the City Clerk's office. Decisions involving subdivision maps must be appealed within ten (10) days of the Planning Commission Action. An appeal fee is required.
5. **RECORDATION.** The resolution approving an Open Air Dining 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 the resolution as an exhibit. The Applicant shall deliver the executed covenant to the Department of Community Development **within 60 days** of the Planning Commission decision. At the time that the Applicant delivers the covenant to the City, the Applicant shall also provide the City with all fees necessary to record the document with the County Recorder. If the Applicant fails to deliver the executed covenant within the required 60 days, this resolution approving the Project shall be **null and void** and of no further effect. Notwithstanding the foregoing, the Director of Community Development may, upon a request by the Applicant, grant a waiver from the 60 day time limit if, at the time of the request, the Director determines that there have been no substantial changes to any federal, state or local law that would affect the Project.
6. **EXPIRATION.** Open Air Dining Permit: The exercise of rights granted in such approval shall be commenced within three (3) years after the adoption of such resolution.
7. **VIOLATION OF CONDITIONS.** A violation of any of these conditions of approval may result in a termination of the entitlements granted herein.

8. This approval is for those plans submitted to the Planning Commission on December 13, 2012, a copy of which shall be maintained in the files of the City Planning Division. Project development shall be consistent with such plans, except as otherwise specified in these conditions of approval.
9. Minor amendments to the plans shall be subject to approval by the Director of Community Development. A significant change to the approved Project shall be subject to Planning Commission Review. Construction shall be in conformance with the plans approved herein or as modified by the Planning Commission or Director of Community Development.
10. Project Plans are subject to compliance with all applicable zoning regulations, except as may be expressly modified herein. Project plans shall be subject to a complete Code Compliance review when building plans are submitted for plan check. Compliance with all applicable Municipal Code and General Plan Policies is required prior to the issuance of a building permit.
11. APPROVAL RUNS WITH LAND. These conditions shall run with the land and shall remain in full force for the duration of the life of the Project.
12. The Project shall operate at all times in a manner not detrimental to surrounding properties or residents by reason of lights, noise, activities, parking or other actions.
13. The Project shall operate at all times in compliance with Municipal requirements for Noise Regulation.
14. The Applicant shall protect all existing street trees adjacent to the subject site during construction of the Project. Every effort shall be made to retain mature street trees. No street trees, including those street trees designated on the preliminary plans, shall be removed and/or relocated unless written approval from the Recreation and Parks Department and the City Engineer is obtained.
15. Removal and/or replacement of any street trees shall not commence until the Applicant has provided the City with an improvement security to ensure the establishment of any relocated or replaced street trees. The security amount will be determined by the Director of Recreation and Parks, and shall be in a form approved by the City Engineer and the City Attorney.
16. The Applicant shall obtain the appropriate permits from the Civil Engineering Department for the placement of construction canopies, fences, etc., and construction of any improvements in the public right-of-way, and for use of the public right-of-way for staging and/or hauling certain equipment and materials related to the Project.

ATTACHMENT B

PUBLIC NOTICE



NOTICE OF PUBLIC HEARING

DATE: December 13, 2012

TIME: 1:30 PM

LOCATION: Commission 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, December 13, 2012, will hold a public hearing beginning at or after **1:30 PM** to consider:

A request to establish open-air-dining associated with a new café and retail store (Nespresso) on the property located at **320 North Beverly Drive**. The request for open-air-dining includes a total of 9 tables and 18 chairs, which would be located both on private property and portions of the public right-of-way. In addition to establishing the open-air-dining, the applicant is requesting a waiver of 4 code-required parking spaces that would otherwise be required to accommodate the portion of open-air-dining located on private property.

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 interior and exterior modifications to an existing commercial structure, 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 **Ryan Gohlich, Senior Planner** in the Planning Division at 310.285.1194, or by email at **rgohlich@beverlyhills.org**. Copies of the applications, plans, and environmental review 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.

Sincerely:



Ryan Gohlich, Senior Planner

Mailed December 3, 2012

ATTACHMENT C
DRAFT RESOLUTION

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS CONDITIONALLY APPROVING AN OPEN AIR DINING PERMIT AND WAIVING FOUR REQUIRED PARKING SPACES FOR THE PROPERTY LOCATED AT 320 NORTH BEVERLY DRIVE (NESPRESSO).

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

Section 1. Stephen Webb, Applicant on behalf of Nespresso USA and the property owners of 320 North Beverly Drive (the “Applicant”), has submitted an application for an Open Air Dining Permit to allow the establishment of 239 square feet of open air dining area and a waiver of four parking spaces for the property located at 320 North Beverly Drive (Nespresso) (the “Project”). The Project is associated with a combination retail and café use operated by Nespresso. The café component of the establishment includes indoor seating areas, as well as outdoor seating areas. The project proposes a total of 998 square feet of indoor seating, 144 square feet of outdoor seating on private property (6 tables and 12 chairs), and 95 square feet of outdoor seating on the public right-of way (3 tables and 6 chairs). In conjunction with the request to establish open air dining, the applicant requests that four parking spaces that would otherwise be required for the outdoor seating on private property be waived pursuant to BHMC §10-3-2730 B.8.

Section 2. 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 pursuant to CEQA Guidelines Section 15301 (existing facilities). Specifically, a Class 1 exemption applies to interior and exterior alterations to existing structures. The proposed project results in interior and exterior alterations to an existing commercial structure, and is therefore eligible for the Categorical Exemption.

Section 3. Notice of the Project and public hearing was mailed on December 3, 2012 to all property owners and residential tenants within a 100-foot radius of the Project. On December 13, 2012, the Planning Commission considered the application at a duly noticed public meeting. Evidence, both written and oral, was presented at said meeting.

Section 4. In considering the application for an Open Air Dining Permit and waiver of parking, the Planning Commission was required to make the following findings:

1. The proposed open air dining use is consistent with the general plan and any specific plans adopted for the area;
2. The proposed open air dining use will not adversely affect existing and anticipated development in the vicinity and will promote the harmonious development of the area;
3. The nature, configuration, location, density, and manner of operation of any open air dining use proposed will not significantly and adversely interfere with the use and enjoyment of residential properties in the vicinity of the subject property;

4. The proposed open air dining use will not create any significant traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards and will not impede the safe and orderly flow of pedestrians along the public right of way;

5. The proposed open air dining use will not create any significantly adverse parking impacts as a result of employee or patron parking demands;

6. The proposed open air dining use will not create any significantly adverse impacts on neighboring properties as a result of the accumulation of garbage, trash or other waste, noise created by operation of the restaurant or by employees or visitors entering or exiting the restaurant, light and glare, or odors and noxious fumes;

7. The proposed open air dining use will not be detrimental to the public health, safety, or general welfare; and

8. The proposed open air dining use will generate a need for parking different than the amount of parking required by the Municipal Code, parking demand will be met by means other than those means specified in the Municipal Code.

Section 5. Based on the foregoing, the Planning Commission hereby finds and determines as follows with respect to the Open Air Dining Permit and waiver of parking spaces:

1. The proposed open air dining use is consistent with the general plan, and specifically promotes Policy LU 11.3 of the general plan, which states:

Retail Street Frontages. Require that development and street frontages in districts containing retail uses be designed and developed to promote pedestrian activity 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.

The open air dining allows for the extension of the café into the public right-of-way, which promotes pedestrian activity, and is therefore consistent with the general plan.

The subject property is not located within any specific plan.

2. The proposed open air dining will be established in conjunction with a retail and café establishment, within an existing commercial building located in the Business Triangle. The open air dining will enliven the streetscape and help to promote harmonious development of the area.

3. The subject property is located approximately 500 feet from the nearest residential uses, and is therefore not anticipated to interfere with the use and enjoyment of any residential properties.

4. The open air dining area will be located within an existing commercial building, and is anticipated to serve as a supporting use to the retail portion of the establishment. Consequently, the open air dining is anticipated to generate a negligible amount of vehicle trips, and will therefore not result in any traffic impacts, traffic safety hazards, or pedestrian vehicle conflicts. Finally, the

open air dining area has been designed in accordance with the City's development standards for open air dining areas, which establishes minimum clearances for the safe passage and flow of pedestrians around the open air dining area. Therefore, the open air dining area is not anticipated to impede the safe and orderly flow of pedestrians along the public right-of-way.

5. The proposed use is provided with a total of 24 on- and off-site parking spaces, which will serve employee and patron parking demands. Furthermore, the proposed use is located in close proximity to street parking and City parking facilities, which are capable of accommodating any overflow parking. Therefore, the open air dining will not create any significantly adverse parking impacts as a result of employee or patron parking demands.

6. The proposed open air dining use must be maintained daily in accordance with Beverly Hills Municipal Code requirements, is located within a commercial district that provides all necessary public services and also contains other dining establishments, and will therefore not result in the accumulation of garbage, trash, or other waste. The open air dining use will occupy a limited area of 239 square feet, will close each night at 8:00 PM, and is therefore not anticipated to result in significantly adverse impacts on neighboring properties related to noise, light and glare, odors or noxious fumes.

7. The proposed open air dining use has been designed in accordance with, and is conditioned to comply with, all applicable development standards for the safe and orderly flow of pedestrians. Furthermore, the proposed use will be a beneficial addition to the North Beverly Drive business district and will help to

enliven the streetscape. Therefore, the open air dining use is not anticipated to be detrimental to the public health, safety, or general welfare.

8. The proposed open air dining use is a component of a unique mix of retail and café uses, and will generally serve as a supporting component of the Nespresso retail store establishment. Due to the unique combination of uses, it is anticipated that patrons of the retail portion of the establishment will transition their retail shopping experience into a light meal or drink at the café once their purchases are complete, and the café will generally not serve as the primary destination. Additionally, the proposed use will be served by a combination of 24 on- and off-site parking spaces, and will have access to nearby parking meters and City parking facilities. As a result of the unique mix of on-site uses, and the availability of on- and off-site parking options, the proposed open air dining use will generate a lower need for parking than required by the Municipal Code, and will be served by a variety of parking options different from those specified in the Municipal Code. Therefore, a waiver of four parking spaces for open air dining areas on private property is appropriate.

Section 6. Based on the foregoing, the Planning Commission hereby approves the Open Air Dining Permit and waiver of four parking spaces, subject to the following conditions:

1. The square footage of outdoor seating on private property shall not exceed 180 square feet.

2. Except as otherwise specified herein, all open air dining areas shall be constructed and maintained in accordance with all development standards set forth in BHMC §10-3-3502.

3. The City expressly reserves jurisdiction relative to parking issues. In the event the Director determines that operation of the use at this site is having unanticipated 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 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 Title 10 of the Beverly Hills Municipal Code. The Planning Commission shall conduct a noticed public hearing regarding the parking issues and may impose additional conditions as necessary to mitigate any unanticipated parking impacts caused by the proposed Project, and the Applicant shall forthwith comply with any additional conditions at its sole expense.

4. APPEAL. Decisions of the Planning Commission may be appealed to the City Council within fourteen (14) days of the Planning Commission action by filing a written appeal with the City Clerk. Appeal forms are available in the City Clerk's office. Decisions involving subdivision maps must be appealed within ten (10) days of the Planning Commission Action. An appeal fee is required.

5. RECORDATION. The resolution approving an Open Air Dining 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 the resolution as an exhibit. The Applicant shall deliver the executed covenant to the Department of Community Development **within 60 days** of the Planning Commission decision. At the time that the Applicant delivers the covenant to the City, the Applicant shall also provide the City with all fees necessary to record the document with the County Recorder. If the Applicant fails to deliver the executed covenant within the required 60 days, this resolution approving the Project shall be **null and void** and of no further effect. Notwithstanding the foregoing, the Director of Community Development may, upon a request by the Applicant, grant a waiver from the 60-day time limit if, at the time of the request, the Director determines that there have been no substantial changes to any federal, state, or local law that would affect the Project.

6. EXPIRATION. Open Air Dining Permit: The exercise of rights granted in such approval shall be commenced within three (3) years after the adoption of such resolution.

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

8. This approval is for those plans submitted to the Planning Commission on December 13, 2012, a copy of which shall be maintained in the files of the City Planning Division. Project development shall be consistent with such plans, except as otherwise specified in these conditions of approval.

9. Minor amendments to the plans shall be subject to approval by the Director of Community Development. A significant change to the approved Project shall be subject to Planning Commission Review. Construction shall be in

conformance with the plans approved herein or as modified by the Planning Commission or Director of Community Development.

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

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

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

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

14. The Applicant shall protect all existing street trees adjacent to the subject site during construction of the Project. Every effort shall be made to retain mature street trees. No street trees, including those street trees designated on the preliminary plans, shall be removed and/or relocated unless written approval from the Recreation and Parks Department and the City Engineer is first obtained.

15. Removal and/or replacement of any street trees shall not commence until the Applicant has provided the City with an improvement security to ensure the establishment of any relocated or replaced street trees. The security

amount will be determined by the Director of Recreation and Parks, and shall be in a form approved by the City Engineer and the City Attorney.

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

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: December 13, 2012

Craig Corman
Chair of the Planning Commission of the
City of Beverly Hills, California

Attest:

Secretary

Approved as to form:

Approved as to content:

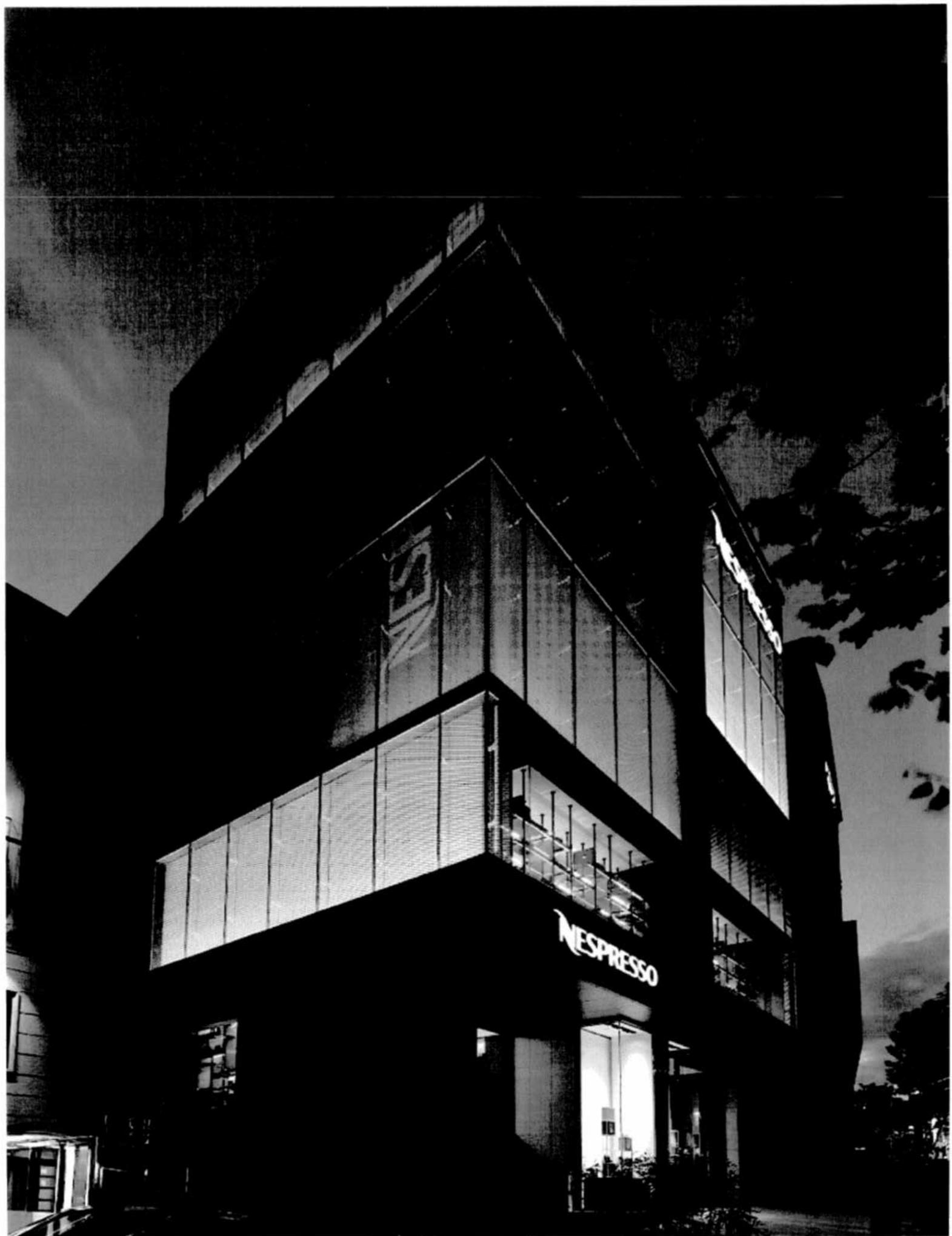
David M. Snow
Assistant City Attorney

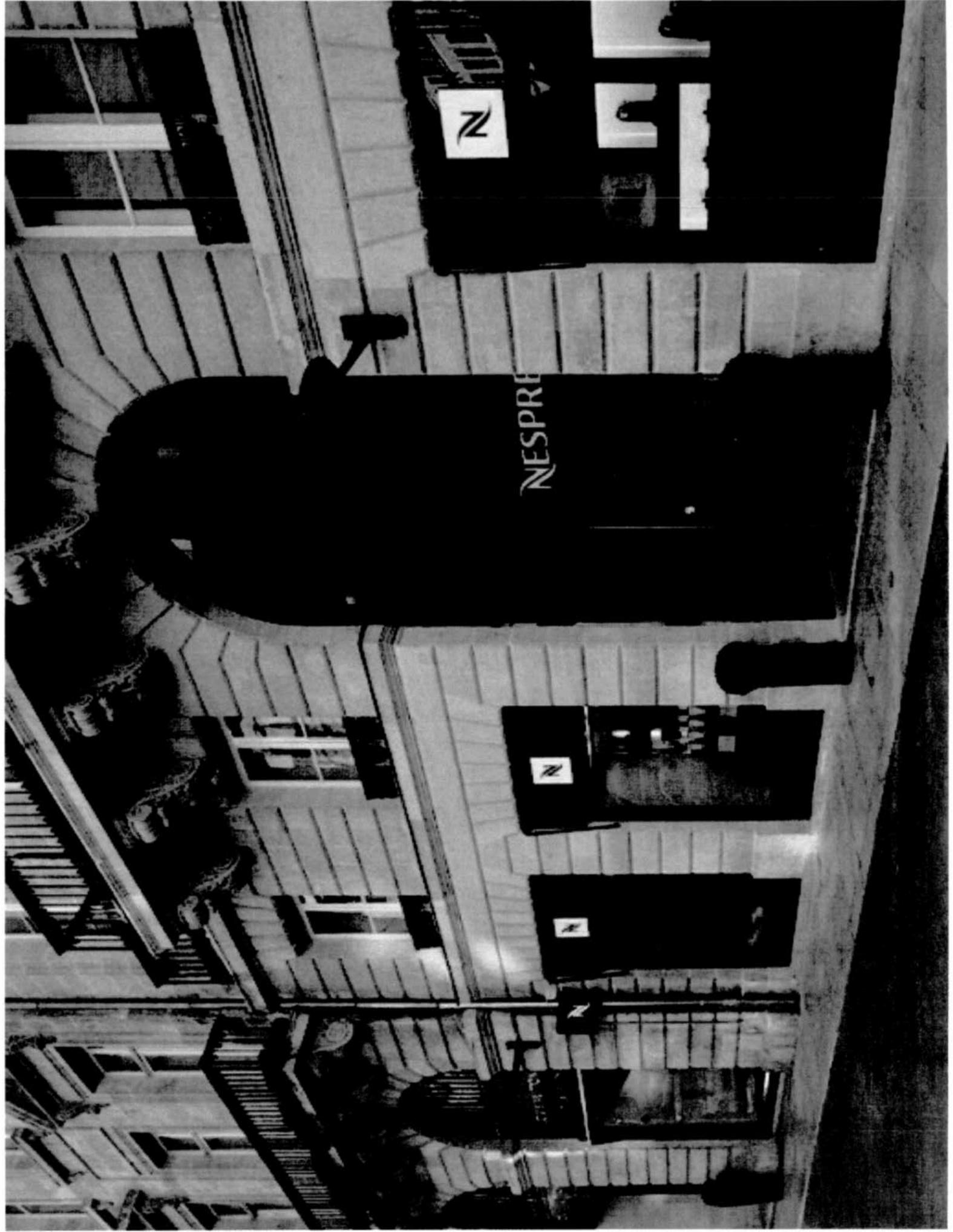
Jonathan Lait, AICP
City Planner

ATTACHMENT D

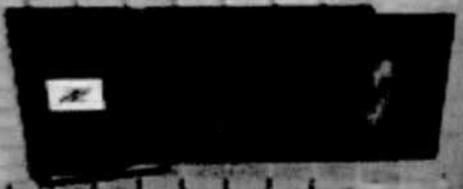
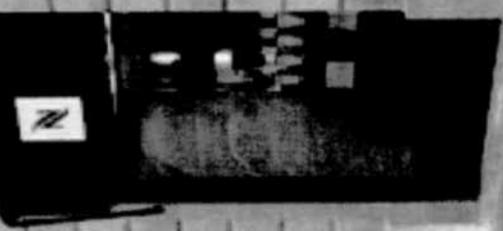
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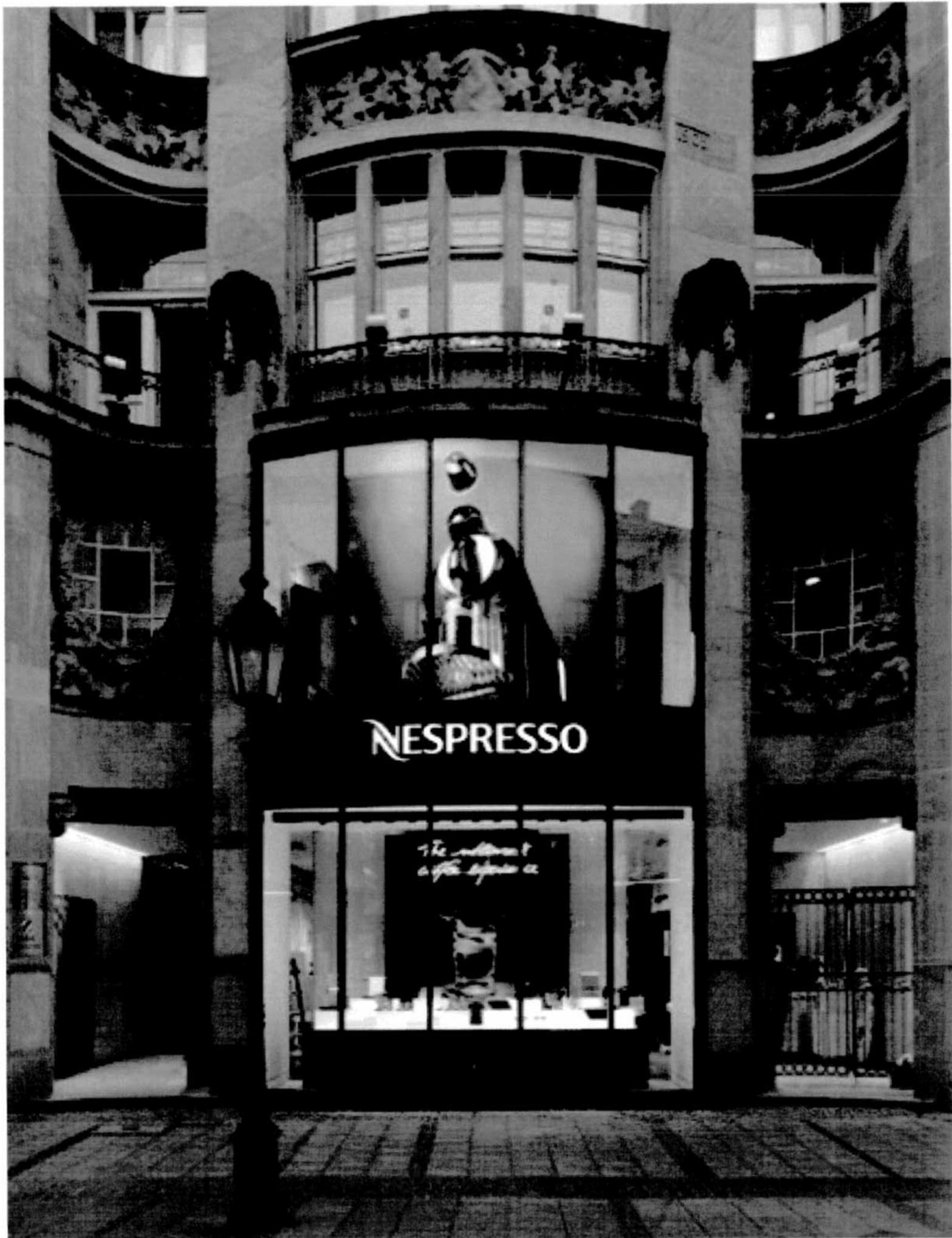






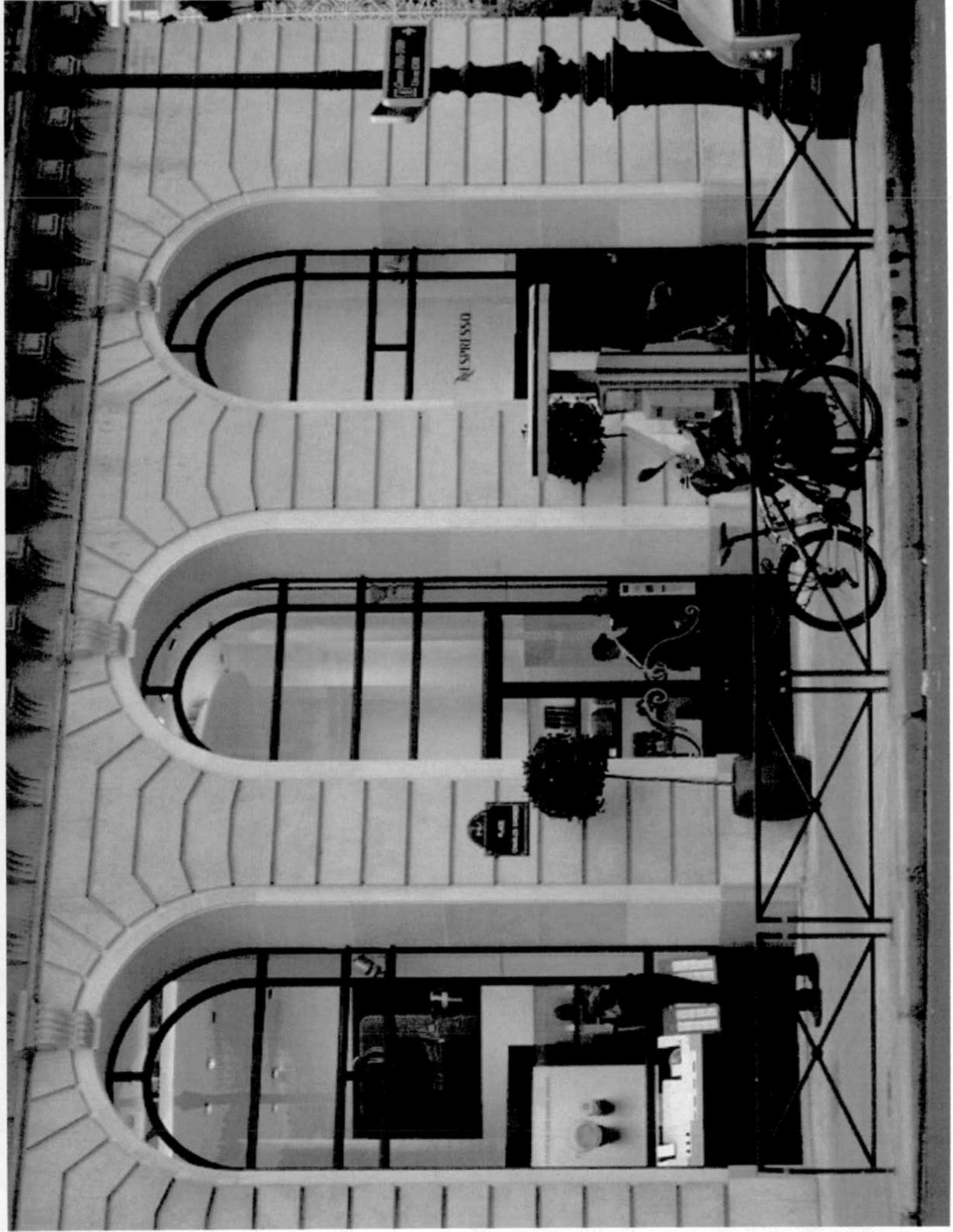
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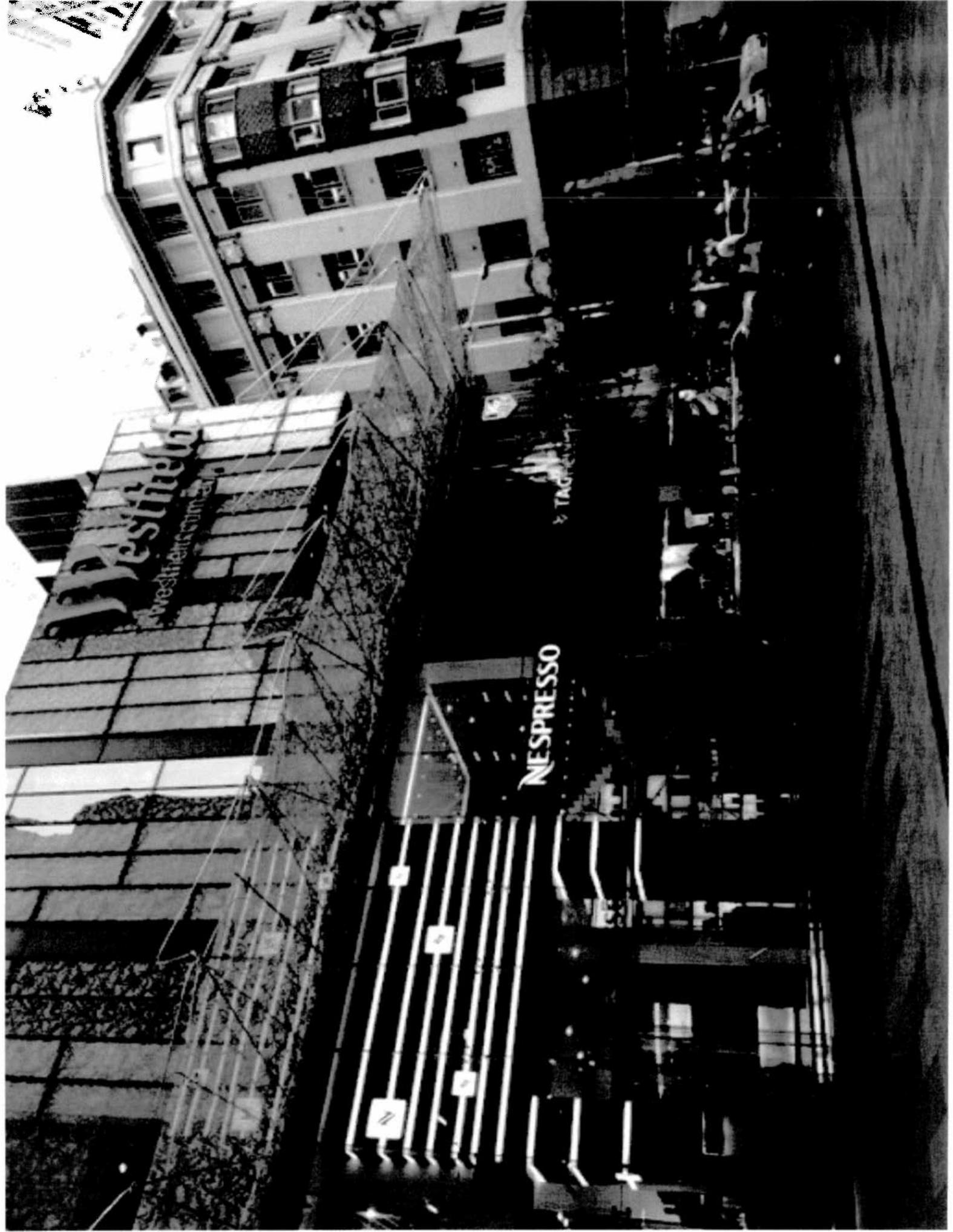




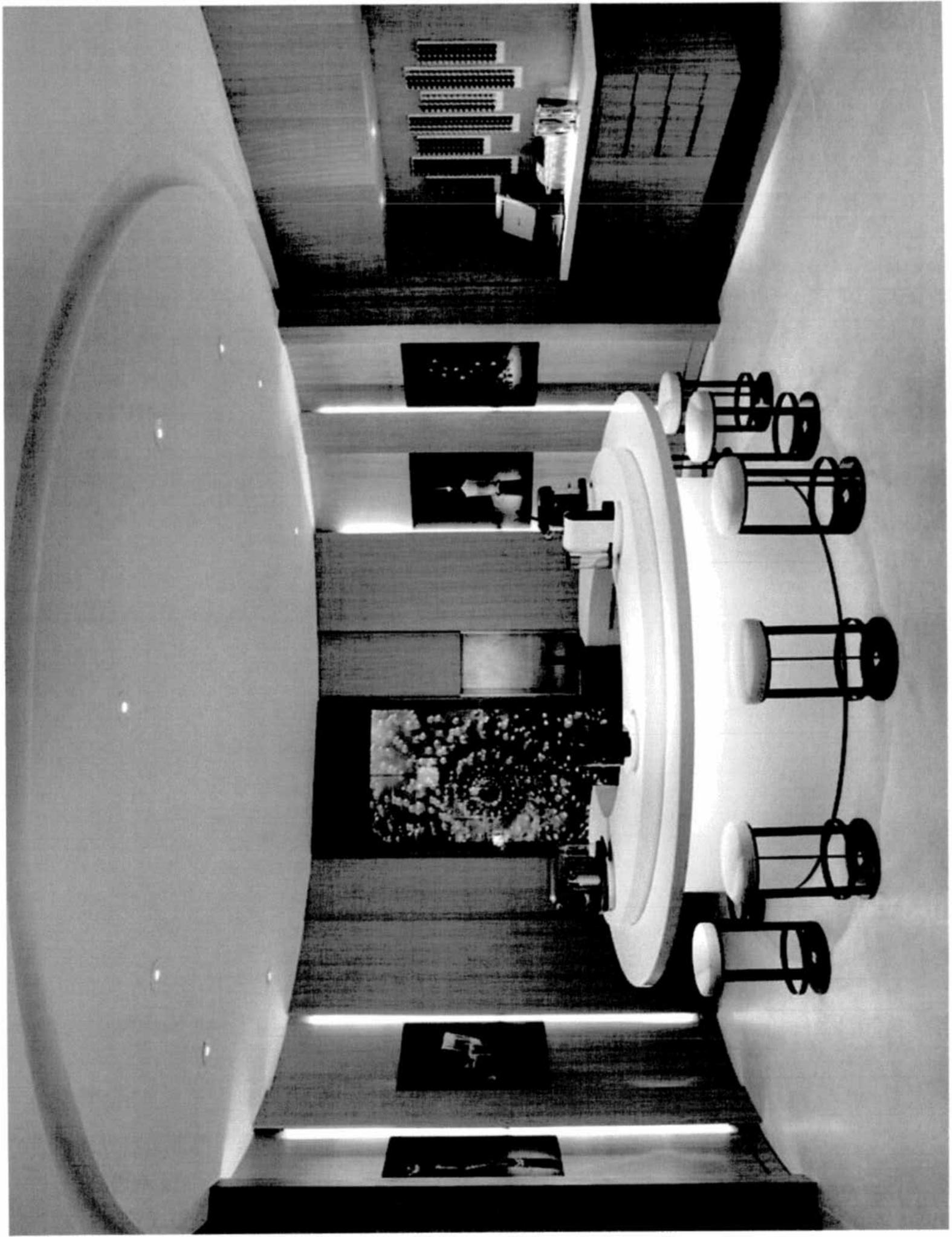
NESPRESSO

*The ultimate
coffee experience*





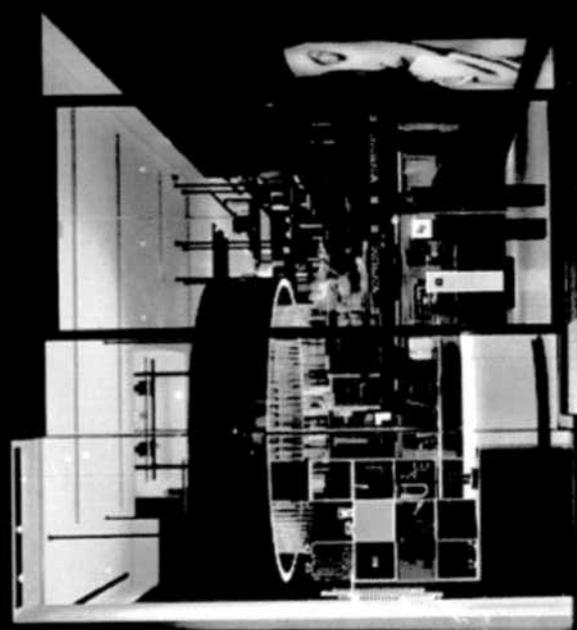
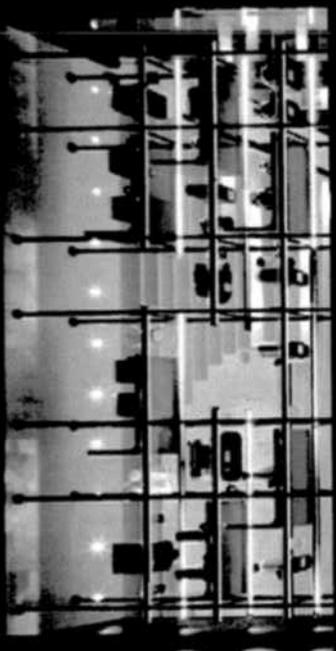








NESPRESSO



ATTACHMENT E
ARCHITECTURAL PLANS