Beverly Hills
Planning Division
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Planning Commission Report

Meeting Date: April 23, 2015

Subject: **310 North Crescent Drive**
Zone Text Amendment and R-4 Permit
Request for a Zone Text Amendment to allow a reviewing authority to grant an R-4 Permit to allow an extension of legally nonconforming height for multi-family residential development; and a request for an R-4 Permit to allow an extension of legally nonconforming height for an addition to an existing multi-family residential condominium development. Pursuant to the provisions set forth in the California Environmental Quality Act (CEQA), the Planning Commission will consider a determination of exemption from CEQA.
PROJECT APPLICANT: Murray D. Fischer and Stephen Webb

Recommendation: That the Planning Commission:
1. Conduct a public hearing and receive testimony on the Project; and
2. Direct staff to prepare resolutions memorializing the Commission's findings.

REPORT SUMMARY

A request for an R-4 Permit and a Zone Text Amendment have been made to allow an addition to two penthouse units on an existing multi-family residential condominium development at 310 North Crescent Drive. The project would involve enclosing portions of the rooftop area adjacent to two existing penthouse units on an existing 31-unit residential building. Currently, the municipal code does not allow additions to multi-family residential buildings that would extend a legally nonconforming height. Thus, the applicant has requested a Zone Text Amendment that would create a provision to allow a reviewing authority to issue an R-4 Permit to allow additions to existing multi-family residential buildings that would extend the legally non-conforming height. The Planning Commission considered the request at its March 12, 2015 meeting, and directed staff to return with modified resolutions and an ordinance to establish standards for the construction of such extensions of legally non-conforming height. This report presents the requested resolutions and ordinance for consideration, and includes analysis of the revised development standards. Staff's analysis of the revised development standards identifies concerns with respect to the practicality of the ordinance, and the recommendation in this report is to either modify the ordinance to be more practical, or to deny the requested Zone Text Amendment and R-4 Permit.

Attachment(s):
A. Required Findings
B. Public Notice
C. Draft Resolution – Zone Text Amendment (with amended Draft Ordinance)
D. Draft Resolution – R-4 Permit
E. March 12, 2015 Staff Report
F. Architectural Plans

Report Author and Contact Information:
Andre Sahakian
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asahakian@beverlyhills.org

PROJECT DESCRIPTION AND BACKGROUND

The proposed project consists of increasing the floor area of two existing penthouse units through additions to that would extend each of the units toward the rear of the building. The building is located in Height District A, and is currently legally nonconforming with regard to height. The additions would be within the existing height of the building and add approximately 526 square feet to each penthouse unit, resulting in a total increase in floor area of 1,052 square feet. This will result in the penthouse units, which are currently nonconforming with regard to minimum unit size, to become conforming. The project would not add any additional bedrooms or units. The existing building currently has 41 underground parking spaces, and no new parking is proposed as part of the project. The project will result in no changes to the façade of the building.

The proposed zone text amendment would create a provision in the code that would allow additions to multi-family residential buildings to match legally nonconforming heights. There are currently three height districts set forth in the zoning code that govern allowable heights in multi-family zones. The height districts take into account proximity to commercial corridors, residential areas, and lot widths. In general, properties wider than 60' that are closer to commercial corridors with dense commercial development are allowed more height than properties with smaller lot widths that are closer to single-family residential areas. When the height districts were put in place in 1996, a number of existing multi-family buildings became legally nonconforming because they were taller than what height districts allowed. While some of these buildings were fully built out on their uppermost story, a number of multi-family buildings were only partially built out on their uppermost story.

Zoning regulations currently do not have any provisions to allow these partially built out buildings to add floor area to their nonconforming stories within the legally nonconforming height envelope. At the March 12, 2015 Planning Commission meeting, staff presented an applicant-initiated zone text amendment that would create a provision that would allow a reviewing authority, after making required findings, to issue an R-4 Permit that would allow such additions provided that the proposed project met certain criteria and that a reviewing authority could make certain findings.

GENERAL PLAN[1] POLICIES

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

- **Policy LU 2.1 City Places: Neighborhoods, Districts, and Corridors.** Maintain and enhance the character, distribution, built form, scale, and aesthetic qualities of the City's distinctive residential neighborhoods, business districts, corridors, and open spaces.

- **Policy LU 2.4 Architectural and Site Design.** Require that new construction and renovation of existing buildings and properties exhibit a high level of excellence in site planning, architectural design, building materials, use of sustainable design and construction practices, landscaping, and amenities that contribute to the City's distinctive image and complement existing development.

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

- **Policy LU 2.8 Pedestrian-Active Streets.** Require that buildings in business districts be oriented to, and actively engage the street through design features such as built-to lines, articulated and modulated facades, ground floor transparency such as large windows, and the limitation of parking entries directly on the street. Parking ingress and egress should be accessed form alleys where feasible.

- **Policy LU 5.1 Neighborhood Conservation.** Maintain the uses, densities, character, amenities, and quality of the City's residential neighborhoods, recognizing their contribution to the City's identity, economic value, and quality of life.

- **Policy LU 5.2 Infill and Replacement Housing.** Accommodate new and renovated housing within existing neighborhoods that is consistent with contextual parcel sizes, densities, built form and scale.

ENVIRONMENTAL ASSESSMENT

The Project has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act [Public Resources Code Sections 21000, et seq. (CEQA)], the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, et seq.) and the City's Local CEQA Guidelines. Projects which involve minor additions to existing buildings, as well as amendments resulting in minor changes in land use limitations pertaining to building height limitations in areas with an average slope of less than 20%, which do not result in any changes to land use or density, are categorically exempt from CEQA pursuant to Sections 15301 and 15305 of the State CEQA Guidelines. The project represents additions to two penthouse units on an existing multi-family residential building. Also, the project includes changes to the municipal code to allow such additions to buildings with legally nonconforming height. Therefore, this project has been determined to be exempt from further environmental review.

PUBLIC OUTREACH AND NOTIFICATION

Public notice was provided for the March 12, 2015 hearing in the form of newspaper publication, direct mailing, and on-site posting. The hearing was continued to a date certain (April 23, 2015) and therefore does not require further notice. Public comment was received by the Planning Commission at its hearing on March 12, 2015. Staff did not receive any public comment prior to that hearing, and as of the writing of this report, staff had not received any public comments since the hearing.

ANALYSIS[2]

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

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

Planning Commission Comments. At the March 12, 2015 Planning Commission meeting, the Planning Commission reviewed the proposed amendments to the Municipal Code. There was discussion amongst the Commissioners regarding the number of buildings that would potentially be affected by the amendment, the policy goals of allowing extensions to nonconforming height, and the possibility of using the proposed text amendment as an incentive to derive various types of public benefits. At the conclusion of the discussion, the Commission directed staff to make several amendments to the proposed ordinance to include additional criteria that govern the types of projects that would be eligible to request the proposed R-4 Permit. The following list represents the eligibility criteria as amended by the Planning Commission, with the Planning Commission's amendments underlined:

a) The building is located in an R-4 zone;
b) The additions do not exceed the maximum existing height of the legally nonconforming building as defined in the zoning code;
c) The additions do not cause the nonconforming story of the building to occupy more than 40% of the floor area of the first floor below it;
d) The additions are compatible with the building design, the nearby streetscape, and surrounding development. To ensure compliance with this requirement, any additions proposed pursuant to this section shall be subject to architectural review;
e) The additions do not result in any changes to the front façade of the existing building;
f) The additions do not result in the creation of any new bedrooms
g) The building is on a property that is located on North Crescent Drive and is adjacent to the business triangle. For the purposes of this exception, the "business triangle" shall mean the area bounded by the centerline of Wilshire Boulevard, the centerline of Santa Monica Boulevard, south roadway, and the centerline of North Crescent Drive;
h) The additions are not located in the rear 33% of the existing building footprint if the building is located on a property where the rear property line is adjacent to a residential zone; and
i) As part of the proposed project, the existing building is brought into full compliance with the current building, mechanical, plumbing, electrical, energy, green building standards, and fire codes adopted by the City.

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

Based on the direction received from the Planning Commission, updated resolutions and a draft ordinance that reflects the above criteria are provided as attachments to this report for consideration by the Commission.

Practicality of Eligibility Criteria. Subsequent to the March 12, 2015 Planning Commission hearing, staff analyzed the proposed eligibility criteria to determine how they might affect utilization of the proposed ordinance. Based on this analysis, staff believes that the eligibility requirements in the draft ordinance (particularly full compliance with all current building codes) are restrictive to the point that few (if any) building owners would find it practical or financially feasible to utilize the draft ordinance. Staff's conclusion results from the fact that building codes change every few years (generally to be more restrictive), and somewhat substantial code changes have occurred over the past decade with respect to structural design and fire protection, handicap accessibility, and energy efficiency.

Given that any building seeking extension of legally nonconforming height would already be a minimum of 19 years old (the number of years it has been since the City's height standards were modified), the degree of construction required to achieve full code compliance would be substantial, and appears to be insurmountable in most circumstances. In fact, the work required would likely result in exceedance of the City's 50% demolition threshold for maintaining nonconforming buildings, thereby requiring elimination of the nonconforming height and negating the purpose of the draft ordinance. The project applicant has also indicated that they would not be able to achieve compliance with the eligibility criteria due to cost and the extensive construction involved, and would thus not be able to utilize the amendment they are seeking.

Potential Alternatives. While the eligibility criteria in the draft ordinance would likely deem the subject property ineligible to apply for the proposed R-4 Permit, there may be alternative eligibility requirements that the Planning Commission may wish to consider that could allow the proposed project to proceed while achieving the goals of the proposed zone text amendment. These include but are not limited to the following:

- Seismic retrofit requirement
- Reduction in water consumption
- Providing electric vehicle charging stations (public or private)
- Bicycle parking (public or private)
- General public benefit requirement

Conclusion. Amendments to the Municipal Code typically occur multiple times throughout the year, and can be a very effective tool for addressing situations (good or bad) that may not have been contemplated at the time the Municipal Code was originally written. However, from a planning and policy perspective, amendments to the Municipal Code should be as functional and equitable as possible, and the amendments contemplated herein may fall short of that standard. Accordingly, staff recommends that in addition to reviewing the draft ordinance, the Commission should consider taking the following actions:

- Explore alternative eligibility criteria as discussed above and provide staff with direction for moving forward; or
- Direct staff to prepare resolutions denying the proposed project if the Commission is unable to reach a consensus as to eligibility criteria that is both appropriate and functional.

NEXT STEPS

It is recommended that the Planning Commission conduct the public hearing and direct staff to prepare resolutions memorializing the Commission's findings.

Alternatively, the Planning Commission may consider the following actions:

1. Adopt the attached resolutions (as presented or with amendments) and forward a recommendation to the City Council.

Report Reviewed By:

Michele McGrath, Principal Planner

ATTACHMENT A

REQUIRED FINDINGS

ATTACHMENT A
Required Findings

Zone Text Amendment Findings. In considering the application for a Zone Text Amendment, the Planning Commission shall consider whether the Zone Text Amendment will result in a benefit to the public interest, health, safety, morals, peace, comfort, convenience, or general welfare.

R-4 Permit Findings. The Planning Commission may permit additions to buildings with legally nonconforming height that exceed the height restrictions set forth in the Municipal Code through the issuance of an R-4 permit, if the Planning Commission finds that:

a) The additions will not adversely affect the privacy of neighboring properties; and

b) The additions will not adversely affect neighboring properties' access to light and air;

c) The additions will not adversely affect the integrity of the streetscape.

ATTACHMENT B

PUBLIC NOTICE

NOTICE OF PUBLIC HEARING

DATE: March 12, 2015

TIME: 1:30 PM, or as soon thereafter as the matter may be heard

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, March 12, 2015, will hold a public hearing beginning at **1:30 PM**, or as soon thereafter as the matter may be heard to consider a request to allow additions to an existing multi-family residential building located at **310 North Crescent Drive**. Construction of the proposed project requires the following entitlements:

> **Zone Text Amendment.** The project includes a request to amend portions of the Beverly Hills Municipal Code. The proposed Zone Text Amendment would amend BHMC §10-3-2804B and §10-3-2850 to allow additions to existing buildings with legally nonconforming height through an R-4 Permit application.
>
> **R-4 Permit.** The proposed project includes a request for an R-4 permit pursuant to the abovementioned Zone Text Amendment to allow for additions to two existing penthouse units at the subject property. The R-4 Permit would allow the additions to be built up to the same height as the existing legally nonconforming building, which has a height of approximately 42 feet. The project would result in a total increase of approximately 1,300 square feet to the uppermost story of the existing building. This provision is contingent upon the approval and implementation of the proposed Zone Text Amendment.

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 Class 1 and Class 5 Categorical

Exemptions. The exemptions are applicable to projects characterized as minor additions to existing buildings, as well as minor changes in land use limitations such as the amendment to the zoning code to allow an R-4 Permit to allow additions to nonconforming buildings, 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 **Andre Sahakian, Associate Planner** in the Planning Division at (310) 285-1127, or by email at **asahakian@beverlyhills.org**. Copies of the project plans and associated application materials 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:

Andre Sahakian, Associate Planner

Mailed: March 2, 2015

ATTACHMENT C

DRAFT RESOLUTION

ZONE TEXT AMENDMENT
(WITH AMENDED DRAFT ORDINANCE)

RESOLUTION NO.

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

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

WHEREAS, the Planning Commission conducted a duly noticed public hearing on March 12, 2015, at which time it received oral and documentary evidence relative to the proposed Amendment; and

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

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

Section 1. The Amendment has been environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000, et seq.("CEQA"), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, et seq.), and the City's Local CEQA Guidelines (hereafter the "Guidelines"). The Planning Commission finds that adoption of the Amendment will not have a significant environmental impact and is exempt from CEQA pursuant to Section 15305 (Class 5) of Title 14 of the California Code of Regulations. The Class 5 exemption is applicable to the amendment because the amendment results in minor changes in land use limitations pertaining to building modulation and setbacks, and applies to properties with an average slope not exceeding 20%. In addition, the Planning Commission found that the construction of the proposed additions to the existing multi-family residential building associated with the zone text amendment represent minor additions to an existing building that will not have a significant environmental impact, and therefore is exempt from CEQA pursuant to Section 15301 of the State CEQA Guidelines. Thus, the Planning Commission hereby finds that the amendment is exempt from CEQA pursuant to CEQA Guidelines Sections 15305.

Section 2. The Planning Commission does hereby find that the proposed Zone Text Amendment is intended to provide flexibility for additions to existing multiple-family buildings with legally nonconforming height in cases where the additions would enhance the City's housing stock without causing adverse impacts. This is accomplished by allowing a reviewing authority to issue an R-4 Permit to allow additions to existing buildings to be built up to the existing, legally nonconforming height, provided that the proposed development would not exceed the maximum existing height of the nonconforming building; would not cause the nonconforming story of the building to occupy more than ~~50~~40% of the floor area of the first

floor below it; is compatible with the building design, nearby streetscape, and surrounding development; the project does not result in any changes to the front façade of the existing building; the project does not result in the creation of any new bedrooms; the project is located on North Crescent Drive and is adjacent to the business triangle; the project is not located in the rear 33% of the existing building footprint if the building is located on a property where the rear property line is adjacent to a residential zone; the project consists of the existing building being brought into full compliance with the current building, mechanical, plumbing, electrical, energy, green building standards, and fire codes adopted by the City; and that a reviewing authority finds that the development will not adversely affect the privacy of neighboring properties, access of neighboring properties to light and air, or the integrity of the streetscape. For these reasons, the Amendment serves to benefit the public interest, health, safety, morals, peace, comfort, convenience, and general welfare of both the business and residential communities.

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

Section 4. The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and his/her Certification to be entered in the Book of Resolutions of the Planning Commission of the City.

Adopted: April 23, 2015

Howard S. Fisher
Chair of the Planning Commission of the
City of Beverly Hills, California

Attest:

Secretary
Ryan Gohlich
City Planner

Approved as to form:

David M. Snow
Assistant City Attorney

Approved as to content:

Ryan Gohlich
City Planner

EXHIBIT A

[DRAFT]

[DRAFT] ORDINANCE NO. 14-O-_____

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

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

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

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

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

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

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

> "No building or structure located on a site that is less than or equal to sixty feet (60') in width shall exceed three (3) stories or thirty three feet (33') in height.
>
> In addition, no building or structure shall exceed the relevant height limitation imposed by districts A through C as identified on the height district maps adopted by the city

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

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

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

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

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

B. Exceptions

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

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

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

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

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

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

2. Additions to Buildings with Legally Nonconforming Height: If a legally constructed building in an ~~R-3,~~ R-4~~, R-4X1, or R-4X2~~ zone does not conform

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

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

b. The additions do not cause the nonconforming story of the building to occupy more than ~~50~~40% of the floor area of the first floor below it;

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

d. The additions do not result in any changes to the front façade of the existing building;

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

f. The building is on a property that is located on North Crescent Drive and is adjacent to the business triangle. For the purposes of this exception, the "business triangle" shall mean the area bounded by the centerline of Wilshire Boulevard, the centerline of Santa Monica Boulevard, south roadway, and the centerline of North Crescent Drive;

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

h. As part of the proposed project, the existing building is brought into full compliance with the current building, mechanical, plumbing, electrical, energy, green building standards, and fire codes adopted by the City; and

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

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

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

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

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

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

Adopted:

Effective:

LILI BOSSE
Mayor of the City of
Beverly Hills, California

ATTEST:

_____(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:

LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

JEFFREY C. KOLIN
City Manager

SUSAN HEALY KEENE
Director of Community Development

ATTACHMENT D

DRAFT RESOLUTION

R-4 PERMIT

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS APPROVING AN R-4 PERMIT TO ALLOW ADDITIONS TO TWO PENTHOUSE UNITS IN A MULTIPLE-FAMILY CONDOMINIUM BUILDING WITH LEGALLY NONCONFORMING HEIGHT ON THE PROPERTY LOCATED AT 310 NORTH CRESCENT DRIVE.

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

Section 1. Murray D. Fischer and Stephen Webb, representatives of 310 Crescent Condos, LLC (the "Applicant"), has submitted an application for an R-4 Permit to allow additions to two existing penthouse units in a multiple-family condominium building with legally nonconforming height on the property located at 310 North Crescent Drive (the "Project"). The Project does not meet all by-right development standards, and therefore requires entitlements that can be granted by the Planning Commission pursuant to the issuance of an R-4 Permit.

Section 2. The Project consists of increasing the floor area of two existing penthouse units through additions that would extend each of the units toward the rear of the building. The building is currently legally nonconforming with a height of four stories measuring 41'-7.5". The additions would be within the existing maximum height of the building and add approximately ~~422~~ 526 square feet to each penthouse unit, resulting in a total increase in floor area of ~~844~~ 1,052 square feet. The project would not add any additional bedrooms or units. The existing building currently has 41 underground parking spaces, and no new parking is proposed

as part of the project. The project will result in no changes to the façade of the building, and the building will maintain a front setback of approximately 16'-5". While the existing penthouse units have side setbacks of 4'-8" each resulting in a total of 9'-4", the additions will provide setbacks of 9'-7" each resulting in a total of 19'-2". The existing building has approximately 3,873 square feet of common outdoor space and a modulation area of 2,688 square feet. No changes are being made to the front façade, modulation area, or amount of common outdoor space as part of the proposed project. The Applicant seeks approval of an R-4 Permit to allow the additions to match the maximum height of the existing building, which is legally nonconforming because it exceeds the height limit of 3 stories and 33' required by current development standards set forth in the Beverly Hills Municipal Code. The request to allow the additions to match the existing, legally nonconforming maximum height of the building requires the approval of a Zone Text Amendment, which is separately addressed by Planning Commission Resolution No. _____.

Section 3. The Project has been environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000, *et seq.*("CEQA"), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, *et seq.*), and the environmental regulations of the City. Projects which involve minor additions to existing buildings are categorically exempt from CEQA pursuant to Section 15301 of the State CEQA Guidelines. Therefore, the Planning Commission hereby finds that the project is exempt from further environmental review under CEQA.

Section 4. Notice of the Project and public hearing was mailed on March 2, 2015 to all property owners and residential occupants within a 500-foot radius (plus block face) of the property, and published in two newspapers of local circulation, the *Beverly Hills* Courier and the *Beverly Hills* Weekly. On March 12, 2015 the Planning Commission considered the application at a duly noticed public hearing. Evidence, both written and oral, was presented at the meeting. After deliberations, the Planning Commission continued the hearing to its April 23, 2015 meeting. On April 23, 2015, the Planning Commission considered the application at a duly noticed public hearing. Evidence, both written and oral, was presented at the meeting.

Section 5. In reviewing the request for an R-4 permit to allow the additions to exceed the height restrictions set forth in Beverly Hills Municipal Code Section 10-3-2804, the Planning Commission considered whether it could make the following findings in support of the Project:

1. The additions will not adversely affect the privacy of the neighboring properties;

2. The additions will not adversely affect neighboring properties' access to light and air; and

3. The additions will not adversely affect the integrity of the streetscape.

Section 6. Based on the foregoing, the Planning Commission hereby finds and determines as follows with respect to the R-4 Permit to allow the proposed project to exceed the height restrictions set forth in Beverly Hills Municipal Code Section 10-3-2804:

1. The subject site consists of an existing 4-story multi-family condominium building adjacent to three-story multi-family buildings on either side. The project consists of additions to the two existing penthouse units on the fourth story of the building. Due to the difference in height between the existing building and the two buildings on either side, there are currently no views from the existing penthouse units into any residential units on the adjacent properties. Furthermore, the proposed additions will provide setbacks of 9'-7" on each side. As such, any additions to these units will not exacerbate any existing privacy impacts, nor will they create any new privacy impacts.

2. The subject site consists of an existing 4-story multi-family condominium building adjacent to three-story multi-family buildings on either side. The project consists of additions to the two existing penthouse units on the fourth story of the building. Based upon a review of the shade and shadow study provided by the applicant, the proposed additions would not result in any new shadows being cast on nearby properties, and will result in minimal shadows being cast on the common open spaces on the roof deck of the subject property during the winter or summer solstice months. Thus, the additions will not result in any adverse impacts on neighbors' access to light and air.

3. The proposed project consists of additions to the rear of two existing penthouse units on the top floor of the existing condominium building. The additions will be consistent in height with the existing portions of the units, and will have increased setbacks from the edge of the roof such that the additions will comply with current side setback requirements for the building. Furthermore,

no changes are being proposed to the front of the building, which already has approximately 1,200 square feet more modulation than is currently required by code. Finally, since the proposed additions will be located on the nonconforming story toward the rear of the building and will be set back farther than the existing building, the additions will not be visible from the street and will not have any adverse impacts on the integrity of the streetscape.

Section 7. Based on the foregoing, the Planning Commission hereby grants the requested R-4 Permit subject to the following conditions:

1. This resolution shall not become effective unless and until the associated zone text amendment that would allow a reviewing authority to issue an R-4 permit to allow extensions of legally nonconforming height for multi-family residential development has been duly adopted by the City Council and has taken effect.

2. All components of the entire building at 310 N. Crescent Drive shall fully comply with all current building, mechanical, plumbing, electrical, energy, green building standards, and fire codes adopted by the City of Beverly Hills.

~~2.~~3. The project shall be subject to architectural review pursuant to Article 30 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code.

~~3.~~4. The proposed additions to the existing penthouse units shall conform to the current applicable side yard setback requirements.

5. The project shall be constructed in substantial compliance with the plans and specifications approved by the Planning Commission on April 23, 2015.

This resolution shall not become effective unless and until the applicant provides a complete set of plans with all drawings printed to scale.

~~4.~~6. 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.~~7. RECORDATION. The resolution approving a Development Plan Review and R-4 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.~~8. EXPIRATION. R-4 Permit: The exercise of rights granted in such approval shall be commenced within three (3) years after the adoption of such resolution unless otherwise extended.

~~7.~~9. VIOLATION OF CONDITIONS: A violation of any of these conditions of approval may result in a termination of the entitlements granted herein.

~~8.~~10. This approval is for those plans submitted to the Planning Commission on April 23, 2015, 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.~~11. 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.~~12. 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.~~13. 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.~~14. Prior to the issuance of a building permit, all applicable Park and Recreation Facilities Taxes required by the Municipal Code shall be paid.

~~13.~~15. 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.

~~14.~~16. The Project shall operate at all times in compliance with Municipal Code requirements for Noise Regulation.

~~15.~~17. The Applicant shall remove and replace all public sidewalks surrounding the Project site that are rendered defective as a result of Project construction.

~~16.~~18. The Applicant shall remove and replace all curbs and gutters surrounding the Project site that are rendered defective as a result of Project construction.

~~17.~~19. 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.

~~18.~~20. 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.

~~19.~~21. The Applicant shall provide that all roof and/or surface drains discharge to the street. All curb drains installed shall be angled at 45 degrees to the curb face in the direction of the normal street drainage flow. The Applicant shall provide that all groundwater discharges to a storm drain. All ground water discharges must have a permit (NPDES) from the Regional Water Quality Control Board. Connection to a storm drain shall be accomplished in the manner approved by the City Engineer and the Los Angeles County Department of Public Works. No concentrated discharges onto the alley surfaces will be permitted.

~~20.~~22. The Applicant shall provide for all utility facilities, including electrical transformers required for service to the proposed structure(s), to be installed on the subject site. No such installations will be allowed in any City right-of-way.

~~21.~~23. The Applicant shall underground, if necessary, the utilities in adjacent streets and alleys per requirements of the Utility Company and the City.

~~22.~~24. The Applicant shall make connection to the City's sanitary sewer system through the existing connections available to the subject site unless otherwise approved by the City Engineer and shall pay the applicable sewer connection fee.

~~23.~~25. The Applicant shall make connection to the City's water system through the existing water service connection unless otherwise approved by the City Engineer. The size, type, and location of the water service meter installation will also require approval from the City Engineer.

~~24.~~26. 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.

~~25.~~27. The Applicant shall remove and reconstruct any existing improvements in the public right-of-way damaged during construction operations performed under any permits issued by the City.

~~26.~~28. Condensation from HVAC and refrigeration equipment shall drain to the sanitary sewer, not curb drains.

Section 14. 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: April 23, 2015

_____
Howard S. Fisher
Chair of the Planning Commission of the
City of Beverly Hills, California

Attest:

_____
Secretary
Ryan Gohlich
City Planner

Approved as to form:

_____
David M. Snow
Assistant City Attorney

Approved as to content:

_____
Ryan Gohlich
City Planner

ATTACHMENT E

MARCH 12, 2015 STAFF REPORT

Beverly Hills
Planning Division
455 N. Rexford Drive Beverly Hills, CA 90210
TEL. (310) 285-1141 FAX. (310) 858-5966

Planning Commission Report

Meeting Date: March 12, 2015

Subject: **310 North Crescent Drive**
Zone Text Amendment and R-4 Permit
Request for a Zone Text Amendment to allow a reviewing authority to grant an R-4 Permit to allow an extension of legally nonconforming height for multi-family residential development; and a request for an R-4 Permit to allow an extension of legally nonconforming height for an addition to an existing multi-family residential condominium development. Pursuant to the provisions set forth in the California Environmental Quality Act (CEQA), the Planning Commission will consider a determination of exemption from CEQA.
PROJECT APPLICANT: Murray D. Fischer and Stephen Webb

Recommendation: That the Planning Commission:
1. Conduct a public hearing and receive testimony on the Project; and
2. Adopt the attached resolutions conditionally approving an R-4 Permit and recommending that the City Council adopt a Zone Text Amendment.

REPORT SUMMARY

A request for an R-4 Permit and a Zone Text Amendment have been made to allow an addition to two penthouse units on an existing multi-family residential condominium development at 310 North Crescent Drive. The project would involve enclosing portions of the rooftop area adjacent to two existing penthouse units on an existing 31-unit residential building. Currently, the municipal code does not allow additions that would extend a legally nonconforming height for multi-family residential buildings. Thus, the applicant has requested a Zone Text Amendment that would create a provision to allow a reviewing authority to issue an R-4 Permit to allow additions to existing multi-family residential buildings that would extend the legally non-conforming height. This report analyzes key project components including scale and massing, urban design, privacy, access to light and air, and the merits of the proposed zone text amendment. Based on the analysis contained in this report, the proposed project is not anticipated to result in any significantly adverse impacts, and the recommendation in this report is for project approval.

Attachment(s):
A. Required Findings
B. Public Notice
C. Draft Resolution – Zone Text Amendment
D. Draft Resolution – R-4 Permit
E. Architectural Plans

Report Author and Contact Information:
Andre Sahakian
(310) 285-1127
asahakian@beverlyhills.org

BACKGROUND

File Date	11/25/2014
Application Complete	12/24/2014
Subdivision Deadline	N/A
CEQA Deadline	60 days from CEQA Determination
CEQA Determination	Class 1 categorical exemption for minor additions to existing buildings and Class 5 categorical exemption for amendments resulting in minor changes in land use limitations pertaining to building height limitations in areas with an average slope of less than 20%, which do not result in any changes to land use or density,
Permit Streamlining	6/10/2015
Applicant(s)	Murray D. Fischer and Stephen P. Webb
Owner(s)	310 Crescent Condos, LLC
Representative(s)	Murray D. Fischer and Stephen P. Webb
Prior PC Action	None
Prior Council Action	None
CC/PC Liaison	None
CHC Review	None

PROPERTY AND NEIGHBORHOOD SETTING

Property Information

Address	310 North Crescent Drive, PH1 and PH2
Assessor's Parcel No.	4343-002-061 and 4343-002-062
Zoning District	R-4
General Plan	Multiple Residential Zone
Existing Land Use(s)	Multi-Family Residential Condominiums
Lot Dimensions & Area	151' x 100' – approx. 15,100 square feet
Year Built	1961
Historic Resource	None
Protected Trees/Grove	None

Adjacent Zoning and Land Uses

North	R-4 – Multi-Family Residential
East	R-1.8X – Single Family Residential
South	R-4 – Multi-Family Residential
West (across Crescent)	RMCP – Parking structure with ground-floor retail

Circulation and Parking

Adjacent Street(s)	North Crescent Drive and Dayton Way
Traffic Volume	Average Daily Trips on N. Crescent Drive: Approx. 5,050 NB, 3,170 SB Average Daily Trips on Dayton Way: Approx. 2,980 EB, 1,430 WB
Adjacent Alleys	Two-way, north-south alley at east end of property
Parkways & Sidewalks	N. Crescent Drive sidewalk – 12' on east side, 6' on west side of street

Neighborhood Character

The project site is currently developed with a 4-story, 31-unit multi-family condominium building. The lot is approximately 100' wide and 151' deep. The project site is located on the east side of the 300 block of North Crescent Drive, near the Dayton Way intersection. The site is located just outside of the eastern edge of the business triangle, with multi-family residential developments on the east side of the street and a 4-story mixed use building consisting of a parking structure with ground floor retail on the west side of the street. The site is adjacent to single-family homes that are mostly one story to the rear across the alley. Adjacent multi-family buildings vary in height from 2 to 4 stories, and have lot widths ranging from 50' to 150' due to lot ties. North Crescent Drive is a moderately busy street used as a connection between Santa Monica Boulevard and Wilshire Boulevard. Dayton Way is a moderately busy commercial street that runs one-way eastbound to the west of North Crescent Drive, and becomes a relatively quiet, two-way residential street to the east of North Crescent Drive.

Project Site and Vicinity

Building Frontage Viewed from North Crescent Drive

Building Rooftop Viewed from the Rear

PROJECT DESCRIPTION

The proposed project consists of increasing the floor area of two existing penthouse units through additions to that would extend each of the units toward the rear of the building. The building is located in Height District A, and is currently legally nonconforming with regard to height. The additions would be within the existing height of the building and add approximately 422 square feet to each penthouse unit, resulting in a total increase in floor area of 844 square feet. This will result in the penthouse units, which are currently nonconforming with regard to minimum unit size, to become conforming. The project would not add any additional bedrooms or units. The existing building currently has 41 underground parking spaces, and no new parking is proposed as part of the project. The project will result in no changes to the façade of the building. A summary of relevant development standards is provided in the table below:

REGULATIONS	ALLOWED/ REQUIRED	EXISTING BUILDING	PROPOSED ADDITION	NOTES
Height	3 stories and 33'	4 stories and 41'-7.5"	4 stories and 41'-7.5"	Additions will match existing legally nonconforming height
Density	10	31	31	No new units or bedrooms proposed
Minimum Unit Size	1,000 SF minimum	997 SF	1,419 SF	Per one-bedroom PH unit. Total increase of 844 SF for both PH units.
Front Setback	15'	16'-5"	16'-5"	No change to front of building.
Side Setback (north)	8' minimum each side, 19' minimum sum	4'-8"	9'-7"	
Side Setback (south)	8' minimum each side, 19' minimum sum	4'-8"	9'-7"	
Rear Setback	15'	2'	2'	No change.
Parking	55	41	41	No new parking would be required since no new units or bedrooms are proposed.
Common Outdoor Space	6,200 SF	3,872.88	3,872.88	No net change.
Modulation	1,500 SF	2,688.52 SF	2,688 SF	No change to front of building.

Required Approvals. As proposed, the project requires the following approvals in order to be established:

- **Zone Text Amendment:** Currently, there is no provision in the Zoning Code to allow a building with legally nonconforming height to make otherwise code compliant additions within the same height as the existing building. This request would amend Beverly Hills Municipal Code Sections 10-3-3804B and 10-3-2850 to allow additions to existing multiple-family buildings with legally nonconforming height through the issuance of an R-4 Permit.

- **R-4 Permit:** The proposed project includes a request for an R-4 permit pursuant to the abovementioned Zone Text Amendment to allow for additions to two existing penthouse units at the subject property. The R-4 Permit would allow the additions to be built up to the same height as the existing legally nonconforming building. The R-4 permit is contingent upon the approval and implementation of the proposed Zone Text Amendment.

GENERAL PLAN[1] POLICIES

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

- **Policy LU 2.1 City Places: Neighborhoods, Districts, and Corridors.** Maintain and enhance the character, distribution, built form, scale, and aesthetic qualities of the City's distinctive residential neighborhoods, business districts, corridors, and open spaces.

- **Policy LU 2.4 Architectural and Site Design.** Require that new construction and renovation of existing buildings and properties exhibit a high level of excellence in site planning, architectural design, building materials, use of sustainable design and construction practices, landscaping, and amenities that contribute to the City's distinctive image and complement existing development.

- **Policy LU 2.8 Pedestrian-Active Streets.** Require that buildings in business districts be oriented to, and actively engage the street through design features such as built-to lines, articulated and modulated facades, ground floor transparency such as large windows, and the limitation of parking entries directly on the street. Parking ingress and egress should be accessed form alleys where feasible.

- **Policy LU 5.1 Neighborhood Conservation.** Maintain the uses, densities, character, amenities, and quality of the City's residential neighborhoods, recognizing their contribution to the City's identity, economic value, and quality of life.

- **Policy LU 5.2 Infill and Replacement Housing.** Accommodate new and renovated housing within existing neighborhoods that is consistent with contextual parcel sizes, densities, built form and scale.

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

ENVIRONMENTAL ASSESSMENT

The Project has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act [Public Resources Code Sections 21000, et seq. (CEQA)], the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, et seq.) and the City's Local CEQA Guidelines. Projects which involve minor additions to existing buildings, as well as amendments resulting in minor changes in land use limitations pertaining to building height limitations in areas with an average slope of less than 20%, which do not result in any changes to land use or density, are categorically exempt from CEQA pursuant to Sections 15301 and 15305 of the State CEQA Guidelines. The project represents additions to two penthouse units on an existing multi-family residential building. Also, the project includes changes to the municipal code to allow such additions to buildings with legally nonconforming height. Therefore, this project has been determined to be exempt from further environmental review.

PUBLIC OUTREACH AND NOTIFICATION

Type of Notice	Required Period	Required Notice Date	Actual Notice Date	Actual Period
Posted Notice	N/A	N/A	3/5/2015	7 Days
Newspaper Notice	10 Days	3/2/2015	2/27/2014	13 Days
Mailed Notice (Owners & Occupants - 500' Radius)	10 Days	3/2/2015	3/2/2015	10 Days
Property Posting	10 Days	3/2/2015	3/2/2015	10 Days
Website	N/A	N/A	3/5/2015	7 Days

Public Comment

As of the writing of this report, staff had not received any public comments regarding the project.

ANALYSIS[2]

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

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

> **Zone Text Amendment.** The proposed zone text amendment would create a provision in the code that would allow additions to multi-family residential buildings to match legally nonconforming heights. There are currently three height districts set forth in the zoning code

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

that govern allowable heights in multi-family zones. The height districts take into account proximity to commercial corridors, residential areas, and lot widths. In general, properties wider than 60' that are closer to commercial corridors with dense commercial development are allowed more height than properties with smaller lot widths that are closer to single-family residential areas. When the height districts were put in place in 1996, a number of existing multi-family buildings became legally nonconforming because they were taller than what height districts allowed. While some of these buildings were fully built out on their uppermost story, a number of multi-family buildings were only partially built out on their uppermost story.

Zoning regulations currently do not have any provisions to allow these partially built out buildings to add floor area to their nonconforming stories within the legally nonconforming height envelope. The proposed zone text amendment would create a provision that would allow a reviewing authority, after making required findings, to issue an R-4 Permit that would allow such additions provided that the additions would not increase the height of the legally nonconforming building. The proposed text amendment would require a reviewing authority to make findings that protect adjacent properties from potentially adverse impacts to privacy, light and air, and the integrity of the streetscape. The text amendment also ensures that additions maintain a high level of architectural design by requiring architectural review as part of the approval process. Additionally, to prevent the perception of increased density or massing, it is recommended that a limit be placed on the allowed ratio of coverage a nonconforming story can have as compared to the story below. This would encourage additions to legally nonconforming buildings to be located further away from adjacent properties and prevent the perception that an entire new story was allowed to be built. Staff feels that such a ratio would provide a balance between maintaining the intent of the height districts while allowing minor additions to existing buildings that might improve the multi-family housing stock in the City.

Staff does not anticipate a substantially high number of multi-family buildings to be affected by this proposed zone text amendment due to the restrictions a building would have to comply with to qualify. The number of potentially impacted buildings would not be substantially high compared to the total amount of multi-family properties in the City because of other zoning requirements that would restrict these types of additions. Some of these limitations include parking requirements, density restrictions, and setback requirements. Finally, since an R-4 Permit is required to allow the extension of legally nonconforming height, any request to grant such an extension would be subject to discretionary review either by the Director of Community Development or the Planning Commission.

Per the applicant's request, the proposed zone text amendment is drafted to limit eligibility for this exception to additions to existing dwelling units. However, the Planning Commission may wish to consider amending the draft ordinance to be more flexible such that eligible projects would not just be limited to additions to existing dwelling units, but new dwelling units could be added or enclosed amenities such as gyms could be provided that match the existing nonconforming height. One consideration is that other development standards set forth in the code are self-regulating, and would only allow properties that have adequate parking and setbacks to add units provided that they are within the allowed density. For example, if the proposed ordinance were amended to allow new dwelling units, an owner of a legally nonconforming building could only add a new unit to their building as long as they could provide the required parking and were within the allowed density restrictions.

R-4 Permit Findings

Following is a discussion of the proposed R-4 Permit findings as applied to the subject project.

Privacy, Light, and Air. The subject site consists of an existing 4-story multi-family condominium building adjacent to three-story multi-family buildings on either side. The project consists of additions to the two existing penthouse units on the fourth story of the building. Due to the difference in height between the existing building and the two buildings on either side, there are currently no views from the existing penthouse units into any residential units on the adjacent properties. As such, any additions to these units will not exacerbate any existing privacy impacts, nor will they create any new privacy impacts. With regard to shade or shadow impacts, based on staff's review of the shade/shadow study provided by the applicant, the proposed additions would not result in any new shadows being cast on nearby properties, open spaces, or common open spaces on the existing property, and thus there will be no adverse impacts.

Scale, Mass, and Streetscape. The proposed project consists of additions to the rear of two existing penthouse units on the top floor of the existing condominium building. The additions will be consistent in height with the existing portions of the units, and will have increased setbacks from the edge of the roof such that the additions will comply with current side setback requirements for the building. Furthermore, no changes are being proposed to the front of the building, which already has approximately 1,200 square feet more modulation than is currently required by code. Finally, since the proposed additions will be located on the nonconforming story toward the rear of the building and will have further setbacks than the existing building, the additions will not be visible from the street and will not have any adverse impacts on the scale and massing of the building as viewed from the street.

Based on this analysis, staff believes that the proposed zone text amendment will provide flexibility in multi-family developments that could potentially lead to improved housing stock and more conforming dwelling unit sizes while protecting against impacts to neighbors and maintaining the integrity of the streetscape by requiring discretionary review for these types of projects.

Potential Pros and Cons. A summary of the potential pros and cons identified by staff and discussed above in this report are summarized below for consideration by the Planning Commission:

Pros	Cons
Zone Text Amendment	
• Encourages increased conformity for penthouse units that do not conform to minimum dwelling unit square footage. • Provides flexibility in development standards while maintaining discretionary review. • Allows property owners to capture additional value while maintaining existing heights.	• Potentially allows for an increase in nonconformity with regard to height of multi-family buildings.
R-4 Permit	
• Brings two units into conformance with minimum unit size requirements. • Will not result in any new privacy impacts due to height difference with adjacent properties. • Does not increase scale or mass of the building as viewed from the street.	• May increase perception of mass as viewed from adjacent properties.

NEXT STEPS

It is recommended that the Planning Commission conduct the public hearing and adopt a resolution conditionally approving the proposed project and recommending City Council approval of the proposed zone text amendment.

Alternatively, the Planning Commission may consider the following actions:

1. Deny the project, or portions of the project, based on specific findings.
2. Direct staff or applicant as appropriate and continue the hearing to a date (un)certain, consistent with permit processing timelines.

Report Reviewed By:

Michele McGrath

Michele McGrath, Principal Planner

ATTACHMENT F

ARCHITECTURAL PLANS

(PROVIDED AS A SEPARATE ATTACHMENT)