AGENDA REPORT

Meeting Date: March 2, 2010

Item Number: D-2

To: Honorable Mayor & City Council

From: Susan Healy Keene, AICP, Director of Community Development

Subject: CITY COUNCIL REVIEW OF AN R-1 DESIGN REVIEW PERMIT ISSUED BY THE DESIGN REVIEW COMMISSION CONDITIONALLY APPROVING DESIGN REVISIONS TO A PREVIOUSLY APPROVED SINGLE-FAMILY RESIDENCE LOCATED AT 264 SOUTH RODEO DRIVE.

Attachments:

1. Design Review Commission Resolution No. DR-92-09
2. Design Review Commission Resolution No. DR-35-07
3. Additional Background Information
4. BHMC Excerpts - §10-3-4415 (Design Review Criteria) and §10-3-2420 (Walls, Fences and Hedges)
5. Photographs of As-Built Project (Taken on 2/9/2010 and 2/22/2010)
6. Covenant Accepting Original Conditions of Approval
7. Letter from Property Owners
8. Letters of Support from Neighboring Properties

RECOMMENDATION

It is recommended that the City Council uphold the Design Review Commission's decision to limit the front yard gate height and add a climbing vine to the sideyard wall subject to the conditions of approval outlined in Design Review Commission Resolution No. DR-92-09.

INTRODUCTION

This is a City Council ordered review of a Design Review Commission (DRC) approval of revisions to a previously issued R-1 Design Review Permit for the residence located at 264 South Rodeo Drive. This new residence was approved with conditions by the Design Review Commission at its July 9, 2007 meeting (Resolution No. DR-35-07, Attachment 2).

The 2007 approval contained a condition that prohibited fencing in the front yard (Condition No. 7), and allowed a wrought iron fence (as opposed to a block wall) along the side yard (as reflected on the approved 2007 plans). These conditions were agreed to by the applicant and formalized in the resolution. No appeal of this decision was filed by the applicant.

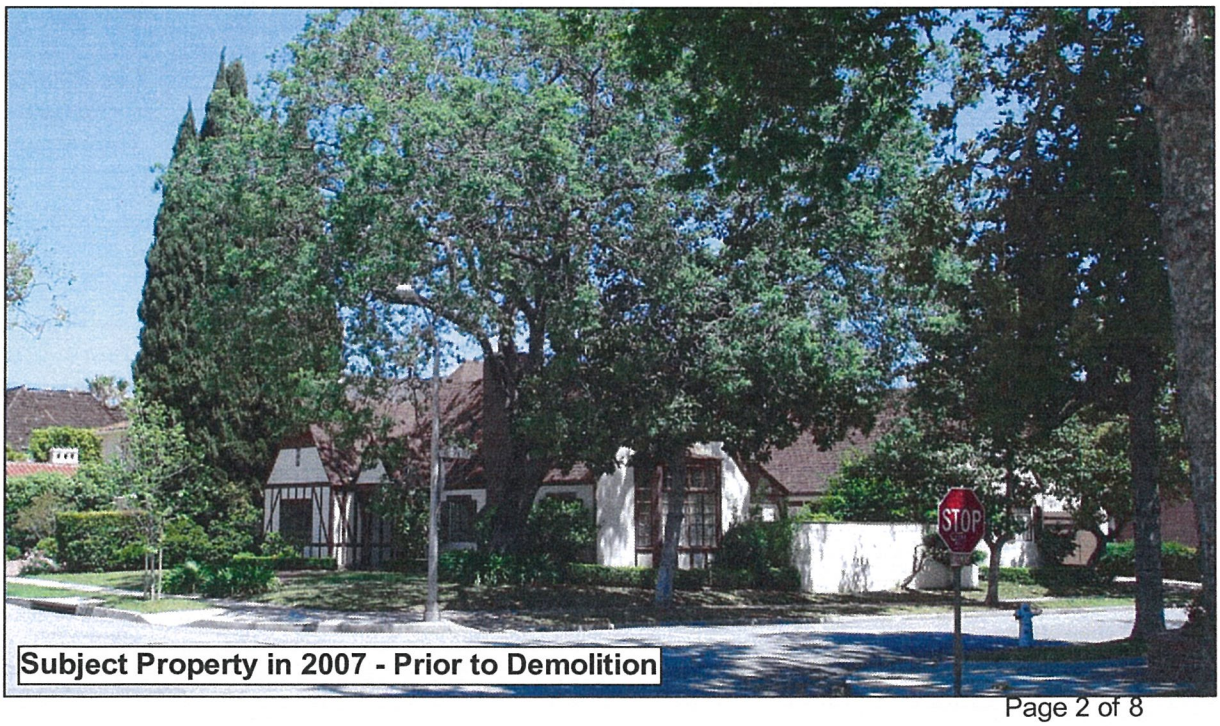
As the project was being built, the property owner's representative applied for a building permit for improvements that violate the conditions and City staff issued a permit in error to allow a fence in the front yard and a solid wall along the sideyard. The error was identified during a routine Planning inspection toward the end of the construction process. The applicant was advised to comply with the original approval or apply for a revision to the original R-1 Design Review Permit.

Subsequently, the applicant applied for a revision to allow the fence and wall modifications to remain in place without changes. The DRC approved all requested revisions with the exception of the 6-foot tall front yard gate and pilasters, and required the addition of climbing ivy to the sideyard wall for screening purposes.

BACKGROUND

2007 Approval

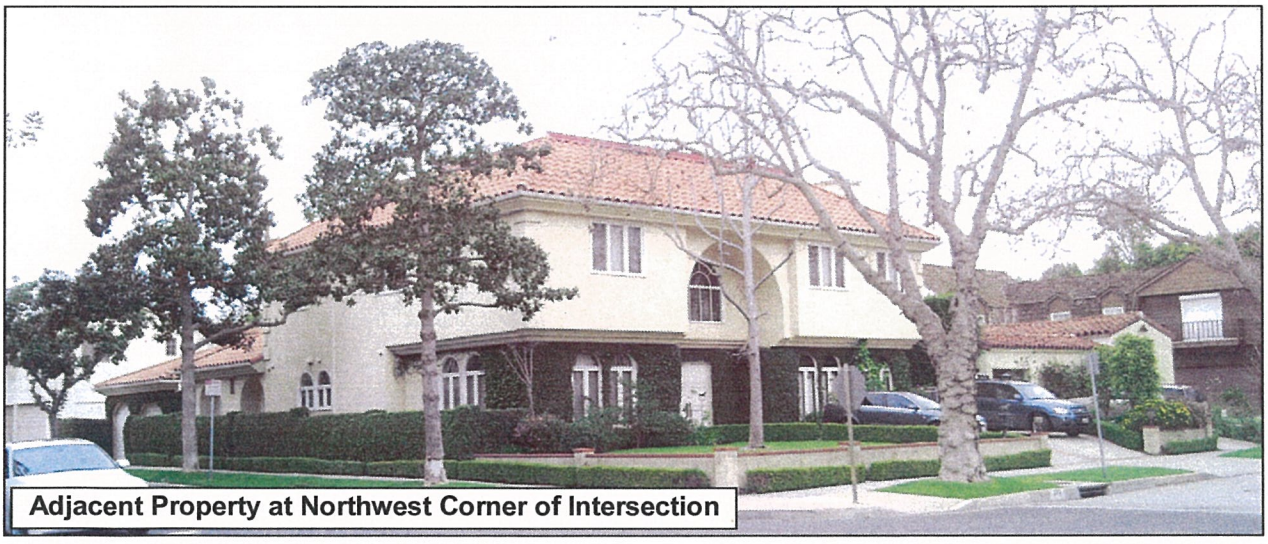
During the DRC's 2007 review of the subject project numerous design issues were considered; however, maintaining the character and context of the subject property and its surroundings was an important topic during deliberations. As a result of these deliberations the DRC imposed conditions of approval, which included restrictions on fencing and walls located within the front and street-side setbacks. The purpose of these conditions was to preserve prevailing design patterns and neighborhood compatibility, and to enhance the appearance of the neighborhood. These considerations are part of the findings required for approval, and are analyzed in conjunction with every project reviewed by the DRC. In order to illustrate the context in which the original project was reviewed, as well as the conditions imposed, photographs are provided below showing the previous residence and the surrounding corner properties.



Subject Property in 2007 - Prior to Demolition

Adjacent Property at Southeast Corner of Intersection

Adjacent Property at Southwest Corner of Intersection



Adjacent Property at Northwest Corner of Intersection

2009 Revisions

As stated above, the applicant did obtain a building permit for the fence and wall. Although the front yard fence and the solid wall were specifically precluded by the DRC, the applicant obtained a building permit from the Community Development Department. The building permit was issued in error because it allowed the construction of front and side yard fences/walls that were specifically prohibited by the prior approval. While the Community Development Department has recently implemented measures that would prevent similar errors from occurring in the future, these procedures were not in place at the time the subject wall and fence permit was issued.[1]

To correct the inconsistencies between the approved resolution and the as-built fence and wall the applicant submitted an application for a revision to the original Design Review Permit. Upon review of the as-built fence and wall the DRC again considered the context of the subject project and its surroundings, and the DRC reiterated its desire to preserve prevailing site design and neighborhood compatibility, while improving the appearance of the neighborhood. These considerations are consistent with the required findings that must be made to approve a project, including (complete findings are provided in Attachment 4):

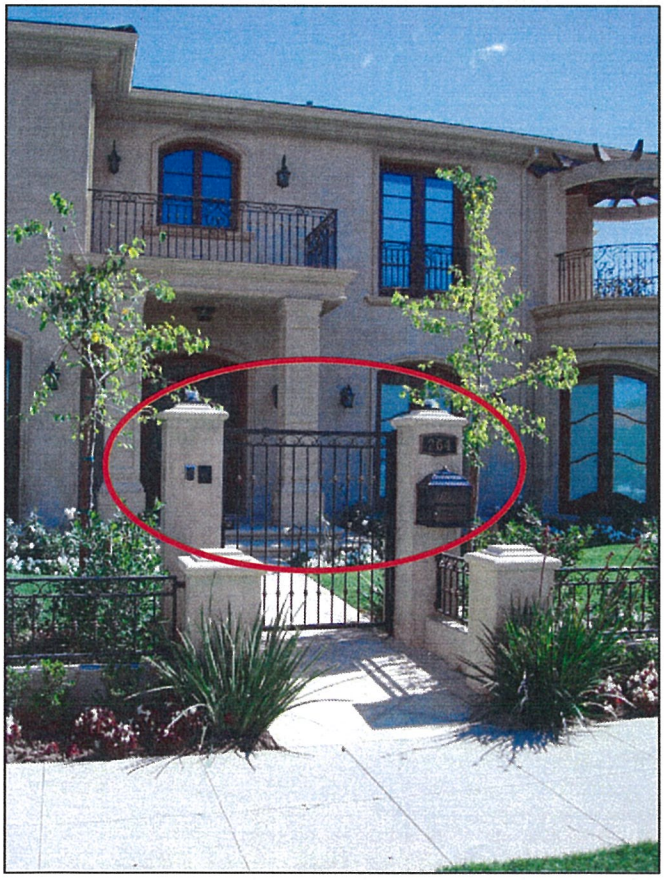
BHMC §10-3-4415 (Required Findings)

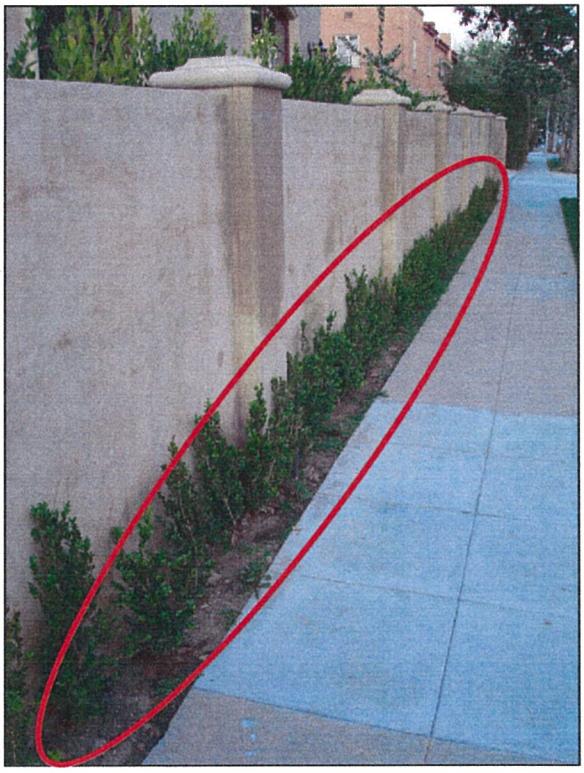
- *The proposed development will enhance the appearance of the neighborhood; and*
- *The proposed development respects prevailing site design patterns, carefully analyzing the characteristics of the surrounding group of homes, and integrates appropriate features that will ensure harmony between old and new.*

Upon deliberation the DRC approved a majority of the revisions, including the low fence in the front yard as well as the solid block wall in the side yard; however, the DRC imposed conditions that the 6-foot tall fencing and pilasters within the front yard be removed, and that climbing ivy be planted along the wall on the street side of the property. Photos identifying the fencing and landscaping subject to these conditions of approval are shown on the following page.

[1] The Community Development Department has recently implemented the following measures to minimize permit issuance errors:

1. Conditions of approval are now printed on the building plans and attached to the City's electronic permit system.
2. All building plans and revisions to previously approved projects are now reviewed by both Planning and Building & Safety to ensure compliance with all conditions of approval.
3. Planners are now performing more frequent inspections of projects under construction.





1. 6-foot tall gate and pilasters were required to be removed pursuant to conditions of approval. All other fencing was approved by the DRC.
2. Hedges along street side wall were required to be replaced with climbing ivy pursuant to conditions of approval. All other landscaping was approved by the DRC.

Design Review Commission's Project Analysis

During the Council discussion to call up this matter for review, the issue was raised that the DRC might have acted outside its scope and authority in placing restrictions on the construction of fences and walls, as the Municipal Code allows them to be built by-right if they meet certain height and visual permeability requirements achieved by wrought iron or other means.

While walls and fences are permitted by-right if code requirements are met, the City may, through the discretionary entitlement process, impose conditions to preclude such structures in order to meet specific criteria associated with findings for approval of a project. In reviewing the procedures for review outlined in the Beverly Hills Municipal Code, staff believes that the Design Review Commission acted within its scope of authority in restricting the fence and wall from being included in the project in the 2007 approval, and in placing the condition on the 2009 approval requiring the front gate and pilasters to be lowered in height.

The Commission considered the issue of how fences, walls and hedges are integrally connected to the overall design and appearance of projects in the single-family zones, and exercised this discretion in reviewing the subject property and its associated fences and walls. The basis for this regulation is found under BHMC §10-3-4408 (Design Review Required), which sets forth the requirement for Design Review as follows:

> A. *Design Review Tracks: No single-family residence located in a Central R-1 zone shall be erected, constructed, altered or remodeled unless the elevations and plans for the exterior portions and areas visible from the street have been first reviewed and approved by the director of planning and community development (the "director") or the design review commission, as appropriate, in accordance with the provisions of this article.*

Further, BHMC Section 10-3-4415 authorizes the DRC to "impose such conditions as it deems necessary to bring the proposed development into conformity with the provisions of the [design review] article."

ANALYSIS

Although this review by the Council is de novo and the project revisions requested by the applicant may be reviewed in their entirety, the primary issues are outlined below:

1. Condition 2 (DR-92-09): *"The 6-foot tall fence and gate along the entry walk shall be removed."*

   The Commission's determination for this condition of approval was that the majority of fencing within the front setback is 36" in height (the maximum permitted by code along the front property line). The addition of the two six-foot tall pilasters and gate along the front walk adds to the bulk and mass of the house, is not compatible with the 36" high front yard fence, is not consistent with prevailing design patterns in the area, and would not contribute to the appearance of the neighborhood. Therefore, the Commission could not make the findings to approve the pilasters and gate.

2. Condition 3 (DR-92-09): *"A climbing ivy vine shall be planted, and adequate irrigation shall be installed, to screen the street side block wall on Gregory Way from the public right-of-way."*

   The applicant had agreed to plant Boston Ivy along the wall; however, Japanese Boxwood hedges were planted instead. In allowing the applicant to retain the solid side yard wall instead of the approved wrought iron wall, the Commission felt it appropriate to buffer the mass of the wall with a climbing vine as opposed to the low hedges.

As further detailed in the approving Resolution (Attachment 1), the DRC concluded that these two outstanding issues resulted in an inconsistent design scheme, increased the overall mass and scale of the project, and were inconsistent with other improvements in the area. (Section 6, Findings 1, 2, 5)

The remaining conditions of approval contained within Resolution No. DR-92-09 have either already been complied with or are Beverly Hills Municipal Code requirements that need to be brought into compliance before the City can issue a final Certificate of Occupancy. These are more specifically addressed in Attachment 3.

POLICY CONSIDERATIONS

The Design Review Commission routinely reviews single family home developments to ensure the design:

- Has an internally compatible scheme
- Minimizes scale and mass
- Enhances the garden-like quality of the city and neighborhood
- Balances expectations of development rights and privacy rights of neighbors
- Respects the characteristics of surrounding homes

As noted above, the DRC has the authority to impose conditions to ensure a new home meets the above criteria. When evaluating projects, it is necessary from time to time to impose conditions that may reduce a property owner's ability to take advantage of the full development potential that might otherwise be permitted in the code. The subject case involves restrictions on perimeter fence/wall and landscaping, which otherwise comply with applicable regulations. In other projects, where building mass and scale are a concern, the DRC has imposed conditions that have the effect of reducing floor area below the 'by-right' standard set forth in the municipal code.

The authority to impose conditions that achieve the above goals has been exercised by the Commission since its inception. The Commission's review is not limited to a consideration of colors and materials. However, if it is the Council's concern that role of the Commission has been expanded beyond its original intent and the Council's wants to clarify that authority, it would be appropriate to direct staff to prepare a text amendment that would modify the standard of design review for new homes. At present design review applies to single family homes in the

central part of the city. The City Council has also asked staff to explore extending design review to the Hillside and possibly Trousdale areas of the city. That policy initiative is expected to begin during the next fiscal year.

FISCAL IMPACT

No fiscal impact to the City is anticipated from a Council decision in this matter. However, since the item was called up to Council rather than being reviewed through the appeal process, the $4,982.90 appeal fee was not collected to cover staff time.

PUBLIC NOTICE AND COMMENTS

A public hearing notice was mailed on February 19, 2010 to all owners and residential occupants within a 100-foot radius of the subject property. As of the preparation of this staff report, several letters in support of the project have been received, and are provided as Attachment 8 for reference.

RECOMMENDED ACTION

Staff recommends that the City Council direct the City Attorney to prepare a resolution upholding the DRC's 2009 action as set forth in Resolution No. DR-92-09 (Attachment 1).

Susan Healy Keene, AICP
Director of Community Development

Susan Healy Keene

Approved By

ATTACHMENT 1

Design Review Commission Resolution No. DR-92-09

RESOLUTION NO. DR-92-09

RESOLUTION OF THE DESIGN REVIEW COMMISSION OF THE CITY OF BEVERLY HILLS CONDITIONALLY APPROVING AN R-1 DESIGN REVIEW PERMIT TO ALLOW FENCE AND WALL REVISIONS TO A PREVIOUSLY APPROVED TWO STORY SINGLE-FAMILY RESIDENCE ON THE PROPERTY LOCATED AT 264 SOUTH RODEO DRIVE.

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

Section 1. Hamid Gabbay, applicant on behalf of the property owner (the "Applicant"), has applied for an R-1 Design Review Permit to allow revisions to a previously approved two story single-family residence located in the Central Area of the City, south of Santa Monica Boulevard, at 264 South Rodeo Drive (the "Project"). The proposed revisions include adding fencing and walls within the front setback, and changing an "open-to-view" fence along the street side property line to a solid block wall.

The previously approved project was reviewed and approved by the Design Review Commission at its July 9, 2007 meeting, subject to numerous conditions of approval (Design Review Commission Resolution DR-35-07). Based on the original findings made by the Design Review Commission, and based on the previously adopted conditions of approval, the two-story residence was to be built with no fences or walls within the front setback. Additionally, the Project was required to provide an open-to-view wrought iron fence along its street side property line. Despite these requirements, the Applicant was able to obtain a building permit for fences and walls within the front setback, and for a solid block wall along the street side property line.

Although a building permit was issued by City staff, at the time of final inspections for the project it was discovered by staff that the fences and walls that were installed were not permitted per Design Review Commission Resolution DR-35-07. Because of this inconsistency the Applicant submitted an application to revise the original approval and requested that the as-built fences and walls be approved with no modifications.

Pursuant to Beverly Hills Municipal Code Section 10-3-4415, the request for a Design Review Permit may be approved, provided the Design Review Commission makes certain findings.

Section 2. The Project site averages 67 feet wide by 127 feet long, and is located on the east side side of the 200 block of South Rodeo Drive, between Gregory Way and Charleville Boulevard. The lot is currently developed with a two-story single-family residence that was approved by Design Review Commission Resolution DR-35-07.

The requested modifications to the original approval include the installation of a 3 foot tall perimeter fence within the front setback, a 6 foot tall pedestrian gate with pilasters within the front setback, and a 7 foot tall solid block wall along the street side property line.

Section 3. The Project has been environmentally reviewed pursuant to the California Environmental Quality Act (CEQA), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000 *et seq*, hereafter the "Guidelines"), and the City's environmental guidelines. The City has determined that the Project qualifies for a Class 3(e) Categorical Exemption (New Accessory Structures) in accordance with the requirements of Section 15303 of the Guidelines because the Project involves the construction of new fences and walls, which are appurtenant to the primary structure on the site. Therefore, no significant impacts to the environment are anticipated.

Section 4. On September 3, and November 5, 2009 the Design Review Commission held a duly noticed public hearing to consider the application. Evidence, both written and oral, was presented at said hearing, and the Commission directed staff to prepare a resolution conditionally approving the requested modifications to the Project. On December 8, 2009, this resolution was presented for the Commission's consideration. Public notice for the December 8, 2009 meeting was mailed to all owners and residential occupants within a 100-foot radius of the Project, and written comments in support of the Project were received from the owner of the Project site. Subsequently, this resolution was adopted, conditionally approving the requested revisions to the Project.

Section 5. In reviewing the application and pursuant to Beverly Hills Municipal Code Section 10-3-4415, the Design Review Commission considered whether the proposed Project meets the following criteria:

1. The proposed development's design exhibits an internally compatible design scheme;
2. The proposed development's design appropriately minimizes the appearance of scale and mass and enhances the garden like quality of the City and appropriately maximizes the use of required open space within the proposed architectural style;
3. The proposed development will enhance the appearance of the neighborhood;
4. The proposed development is designed to balance the reasonable expectation of development for the owner with the reasonable expectation of privacy of neighbors; and
5. The proposed development respects prevailing site design patterns, carefully analyzing the characteristics of the surrounding group of homes, and integrates appropriate features that will ensure harmony between old and new homes.

Section 6. Based upon the evidence presented at the hearing, including the staff report, the Design Review Commission hereby finds:

1. Findings were previously made in support of the primary residence on the Project site. These findings were based on having the subject property maintain an open yard area, and therefore did not allow for the installation of perimeter fences and walls. A building permit was later issued in error for the fences and walls in question. After careful consideration, the Commission determined that the requested revisions could be conditioned in a manner so as to preserve the integrity of the Project's original approval. Pursuant to the conditions of approval below, the 6 foot tall pedestrian gate and pilasters within the front setback will be eliminated, hedges within the front setback will be eliminated, and additional landscaping will be provided. As conditioned, the requested revisions create a balanced and consistent design which results in an internally compatible design scheme. Therefore, it is possible to make the required finding.

2. As conditioned, the Project revisions will be consistent with the scale and massing of the originally approved Project. Elimination of the 6 foot tall pedestrian gate and hedges, as well as the installation of additional landscaping, helps to reduce the scale and mass associated with the requested revisions. Therefore, the requested revisions, as conditioned, are consistent with the scale and mass of the primary residence and the required finding can be made in support of the Project.

3. Findings were previously made in support of the primary residence on the Project site. As conditioned, the requested revisions will be consistent with the design, character, and scale of the primary residence, therefore, the required finding can continue to be made in support of the Project.

4. Findings were previously made in support of the primary residence on the Project site. The requested revisions are located within the front and street side setbacks and do not alter the privacy currently enjoyed by the adjacent property owners. Therefore, the required finding can continue to be made in support of the Project.

5. The Project, as conditioned, respects prevailing site design by incorporating a low fence within the front setback that includes appropriate landscaping. Although the majority of properties within the vicinity of the Project site do not have fences within front setbacks, the Project has been conditioned to maintain an open-to- view appearance in order to be consistent with its surroundings. Therefore, as conditioned, the Project revisions act as a harmonious addition to the existing neighborhood.

Section 7. Based on the foregoing, the Design Review Commission hereby grants the R-1 Design Review Permit for the Project, subject to the following conditions:

1. Fence, wall and hedge heights on the property shall be brought into conformance with all applicable Code requirements, including:

   a. All 6-foot tall hedges abutting the wall parallel to the front property line shall be removed; and
   b. The maximum wall/fence height within the front setback shall not exceed 36 inches, including any caps or lights on the top of each pilaster.

2. The 6-foot tall fence and gate along the entry walk shall be removed.

3. A climbing ivy vine shall be planted, and adequate irrigation shall be installed, to screen the street side block wall on Gregory Way from the public right-of-way.

4. Irrigation shall also be installed for all areas along the property between the

sidewalk and walls that fall within the property boundary.

5. Two large trees (48-inch box size) shall be planted in the front yard to replace the oak tree removed during construction.

6. Any approval by the Commission is for design only; the Project is subject to all applicable City zoning regulations.

7. Any future modifications to this approval shall be presented to staff for a determination as to whether the change may be approved by staff (minor) or to the Commission for review. Changes made without City approval may be required to be restored to match the City approved plans.

Standard Conditions:

8. Prior to the issuance of building permits, the Applicant shall prepare a construction management plan for review and approval by the Department of Community Development. The plan shall include the location of construction parking, loading and hauling routes and locations, and number of construction employees anticipated on site. All construction-related parking, staging and hauling shall conform to the construction parking and hauling plan submitted to and approved by the Building Official and the City Engineer.

9. The Applicant shall maintain the site in an orderly condition prior to commencement of and during construction, including, but not limited to, maintenance of the orderly appearance of existing structures and landscaping on the site, dust suppression for areas cleared by demolition, maintenance of safety barriers and adjacent public sidewalks, and provision of a contact person directly accessible to the public by telephone in the event that the public has any concerns regarding maintenance of the site. The name and telephone number of the contact person shall be transmitted to the Director of Community Development and the Building Official. In addition, the Applicant shall post the name and telephone number of the

contact person on the site in a location readily visible to the general public and approved by the Director of Community Development.

10. These conditions of approval shall run with the land and shall remain in full force and effect for the duration of the life of this approval. This resolution approving the R-1 Design Review Permit shall not become effective until the owner of the Project site records a covenant, satisfactory in form and content to the City Attorney, accepting the conditions of approval set forth in this resolution. The covenant shall include a copy of this resolution as an exhibit.

The Applicant shall deliver the executed covenant to the Department of Community Development **within 60 days** of the Design Review 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 R-1 Design Review **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 R-1 Design Review.

Section 8. The Secretary of the Design Review Commission shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and certification to be entered in the Book of Resolutions of the Design review Commission of the City.

Adopted: **December 8, 2009**

Susan Strauss
Vice Chair of the Design Review
Commission of the City of Beverly Hills,
California

Attest:

Secretary

Approved as to content:

Jonathan Lait, AICP
City Planner

STATE OF CALIFORNIA)

COUNTY OF LOS ANGELES) SS.

CITY OF BEVERLY HILLS)

I, JONATHAN LAIT, City Planner, Department of Community Development of the City of Beverly Hills, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. DR-92-09 duly passed, approved and adopted by the Design Review Commission of said City at a meeting of said Commission on December 8, 2009, and thereafter duly signed by the Secretary of the Design Review Commission, as indicated; and that the Design Review Commission of the City consists of five (5) members and said Resolution was passed by the following vote of said Commission, to wit:

AYES: Commissioners Weiss, Gilbar and Vice Chair Strauss.

NOES: Commissioner Szabo.

RECUSED: Chair Gabbay.

JONATHAN LAIT, AICP, City Planner
Department of Community Development
City of Beverly Hills, California

ATTACHMENT 2

Design Review Commission Resolution No. DR-35-07

RESOLUTION NO. DR-35-07

A RESOLUTION OF THE DESIGN REVIEW COMMISSION OF THE CITY OF BEVERLY HILLS CONDITIONALLY APPROVING AN R-1 DESIGN REVIEW PERMIT TO ALLOW THE CONSTRUCTION OF A NEW SINGLE-FAMILY PRIMARY DWELLING STRUCTURE AT THE PROPERTY LOCATED AT 264 SOUTH RODEO DRIVE.

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

Section 1. Gabbay Architects, project architect on behalf of Mr. and Mrs. Tehrani, property owners, (together, the "Applicant"), has applied for an R-1 Design Review Permit to allow the construction of a new single-family primary dwelling structure on a property located in the Central Area of the City, south of Santa Monica Boulevard, at 264 South Rodeo Drive (the "Project"). As proposed, the Project meets all required zoning standards, including height, setbacks, parking and floor area.

Pursuant to Beverly Hills Municipal Code Section 10-3-4408, no single-family residence located in a Central R-1 Zone shall be erected, constructed, altered or remodeled unless the elevations and plans for the exterior portions and areas visible from the street are reviewed and approved by the City. The Design Review Commission is the reviewing authority if it has first been determined that the design does not otherwise substantially adhere to a pure architectural style as outlined in a style catalogue adopted by resolution of the City Council. The proposed design was found not to substantially adhere to a pure architectural style and therefore warranted review by the Commission.

Pursuant to Beverly Hills Municipal Code Section 10-3-4415, the request for a Design Review Permit may be approved, provided the Design Review Commission makes certain findings.

Section 2. The project site is an approximately 68-foot wide by 128-foot long lot, located on the east-side of the 200 block of South Rodeo Drive on the north-side of Gregory Way. The lot is developed with a one-story, Tudor-style residence that is listed with the Los

Angeles County Assessor's Office as originally constructed in 1928. The floor area is approximately 2,856 square feet. The existing home, and the existing one-story accessory structure (garage) in the rear would be demolished and a new, two-story house built. There is a mature oak tree located within or near the front-yard and street side-yard setback. This tree is of heritage status and is a native species. This tree is proposed to be removed as part of this proposal and two similar 48-inch box grown oak trees would be planted in the front yard in its place.

Section 3. The Project has been environmentally reviewed pursuant to the California Environmental Quality Act (CEQA), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000 *et seq*, hereafter the "Guidelines"), and the City's environmental guidelines. The City has determined that the Project qualifies for a Class 3 Categorical Exemption (New Construction) in accordance with the requirements of Section 15303(a) of the Guidelines "One single-family residence in a residential zone".

Section 4. On May 24, 2007, the Design Review Commission held a duly noticed public hearing to consider the application. Evidence, both written and oral, was presented at said hearing, and the hearing was continued to June 7, 2007 and to July 9, 2007. On July 9, 2007, revised plans addressing the Commission's concerns were presented for the Commission's consideration in conjunction with this Resolution.

Section 5. In reviewing the application and pursuant to Beverly Hills Municipal Code Section 10-3-4415, the Design Review Commission considered whether the proposed Project meets the following criteria:

1. The proposed development's design exhibits an internally compatible design scheme;

2. The proposed development appropriately minimizes the appearance of scale and mass and enhances the garden like quality of the City and appropriately maximizes the use of required open space within the proposed architectural style;

3. The proposed development will enhance the appearance of the neighborhood;

4. The proposed development is designed to balance the reasonable expectation of development for the owner with the reasonable expectation of privacy of neighbors; and,

5. The proposed development respects prevailing site design pattern and integrates appropriate features that will ensure harmony between old and new homes.

Section 6. Based upon the evidence presented at the hearing, including the staff report, the Design Review Commission hereby finds:

1. As conditioned, the Project exhibits a design that is internally consistent as a result of the following design changes requested by the Commission and incorporated into the final plans:

- The railing above the entry door shall be wrought iron railing;
- Fencing in the front yard was removed. Fencing along the Gregory Way is to be wrought iron railing.
- The round, corner element was redesigned to enhance the internal compatibility of the structure's design.

2. As conditioned, the Project appropriately minimizes the appearance of scale and mass because the design includes elements that tend to reduce the overall size and magnitude of the project. These include: windows and doors that are proportional to the size of the structure, modulation along both street sides (reduces massing at the street corner), finish details such as molding and cornice that are proportional to the windows and doors (further articulates the design and softens the building walls). As conditioned, a sufficient number and variety of plants shall be provided and maintained in order to soften the building walls and to reduce the on-street impact of the home. There is an existing tree within the front yard and side yard setbacks. This tree is proposed to be removed as part of the project. Two 48-inch box grown oak trees of similar species shall be planted in the front yard to replace this tree.

3. The subject property is located on a street corner and is adjacent to two-story houses. The prominent location of the property will increase the street presence of the proposed 30-foot high home. However, the existing two-story homes on either side of the property and across the street from the subject property (S. Rodeo Dr.) will reduce the relative mass of the new home. Additionally, the property is located on a residential block consisting of a mix of old and new one-story and two-story homes built in a variety of styles. The addition of another two-

story home would be compatible and not be out of character for the neighborhood. There is a mature tree at the corner of Rodeo and Gregory. This tree currently obscures the existing one-story home and tends to reduce the street presence of the structure while enhancing both the appearance of the neighborhood and increasing the garden like quality of the city. Removal of this tree will increase the impact of the new residence at the intersection; however, as conditioned, replacing the tree with two sizable trees in the front yard will soften the building walls and will enhance the neighborhood.

4. As conditioned, the Project is designed to balance the reasonable expectation of development for the owner with the reasonable expectation of privacy of neighbors with an eight foot setback and six foot wall to the north along the side property line, and a five foot setback along the street side yard (Gregory Way). The side setbacks meet code. As conditioned by this resolution, additional landscaping will be provided along the front yard and side yard setbacks.

5. As conditioned, the Project, with the revisions and features described above, respects prevailing site design pattern and integrates appropriate features that will ensure harmony between old and new homes.

Section 7. Based on the foregoing, the Design Review Commission hereby grants the R-1 Design Review for the Project, subject to the following conditions:

1. The Applicant shall submit final working drawings to the Director of Community Development for review and approval prior to the issuance of a building permit. Prior to approval of the project, the applicant shall incorporate all changes and revisions and submit the plan set to the Planning Division for review and approval. The plans shall be in substantial conformance with the plans submitted and reviewed by the Design Review Commission and all revisions the Commission requests shall be incorporated.

2. The Project shall be built in substantial conformance with the plans submitted on June 25, 2007 for the July 9, 2007 Design Review Commission meeting. The design of the round corner element shall be the conceptual design 'option A' of said plans which are on file with the Department of Community Development. 'Option A' includes a round corner element with solid walls on the first floor and an open-air, circular porch and ramada on the second floor. The roof of the ramada is to be flat and shall intersect the roof of the main structure at the roof

plate. Any modifications to the plans shall be approved by the Planning Department prior to any work being done on the Project; however, if corrections of building or zoning code issues result in a greatly altered design, the revised design must be reviewed for approval by the Design Review Commission.

3. Additional landscaping shall be provided along both the front yard and street side property lines to maintain the garden quality of the City. The additional landscaping shall be reviewed by staff.

4. The project shall be built in substantial conformance with the City of Beverly Hills Municipal Code and General Plan.

5. All fencing, hedges and walls shall be in substantial conformance with the City's development standards; this includes all provisions for maximum allowable height, required setbacks and landscaping along the front and street sides of such fencing, hedges and walls.

6. The protective barrier above the front entrance shall be wrought iron railing;

7. There shall be no fencing in the front yard.

8. Two 48-inch, box grown oak trees of similar species to the existing oak tree shall be planted and maintained in the front yard.

Standard Conditions:

9. Prior to the issuance of building permits, the Applicant shall prepare a construction management plan for review and approval by the Department of Community Development. The plan shall include the location of construction parking, loading and hauling routes and locations, and number of construction employees anticipated on site. All construction-related parking, staging and hauling shall conform to the construction parking and hauling plan submitted to and approved by the Building Official and the City Engineer.

10. The Applicant shall maintain the site in an orderly condition prior to commencement of and during construction, including, but not limited to, maintenance of the orderly appearance of existing structures and landscaping on the site, dust suppression for areas cleared by demolition, maintenance of safety barriers and adjacent public sidewalks, and provision of a contact person directly accessible to the public by telephone in the event that the public has any concerns regarding maintenance of the site. The name and telephone number of the contact person shall be transmitted to the Director of Community Development and the Building Official. In addition, the Applicant shall post the name and telephone number of the

contact person on the site in a location readily visible to the general public and approved by the Director of Community Development.

11. These conditions of approval shall run with the land and shall remain in full force and effect for the duration of the life of this approval. This resolution approving the R-1 Design Review Permit shall not become effective until the owner of the Project site records a covenant, satisfactory in form and content to the City Attorney, accepting the conditions of approval set forth in this resolution. The covenant shall include a copy of this resolution as an exhibit.

The Applicant shall deliver the executed covenant to the Department of Community Development **within 60 days** of the Design Review 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 R-1 Design Review **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 R-1 Design Review.

Section 8. The Secretary of the Design Review Commission shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and certification to be entered in the Book of Resolutions of the Design review Commission of the City.

Adopted: July 9, 2007

Marilyn Weiss
Chair of the Design Review
Commission of the City of Beverly Hills,
California

Attest:

Secretary

Approved as to form:

David M. Snow
Assistant City Attorney

Approved as to content:

Vincent P. Bertoni, AICP
Director of Community Development

STATE OF CALIFORNIA)

COUNTY OF LOS ANGELES) SS.

CITY OF BEVERLY HILLS)

I, VINCENT P. BERTONI, Director of Community Development (the "Director") of the City of Beverly Hills, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. DR-35-07 duly passed, approved and adopted by the Design Review Commission of said City at a meeting of said Commission on July 9, 2007, and thereafter duly signed by the Secretary of the Design Review Commission, as indicated; and that the Design Review Commission of the City consists of five (5) members and said Resolution was passed by the following vote of said Commission, to wit:

AYES: Commissioners Gilbar, Szabo, and Chair Weiss.

NOES: None.

RECUSED: Commissioner Gabbay.

ABSENT: Vice Chair Schapa.

VINCENT P. BERTONI, AICP
Director of Community Development
City of Beverly Hills, California

ATTACHMENT 3

Additional Background Information

Additional Background Information

Design Review Commission Authority and Findings

- The DRC is charged with the review of all exterior portions and areas of all single-family projects located within the Central Area of the City.

- Findings for approval require that each project exhibits an internally compatible design scheme; appropriately minimizes the appearance of scale and mass; contributes to the garden quality of the City; enhances the appearance of the neighborhood; balances development with privacy; and respects prevailing site design patterns (BHMC §10-3-4415).

- The DRC must make all required findings in the affirmative. If the DRC is unable to make all required findings, the DRC may condition any portion of the project so that the required findings can be made, or the DRC may deny the project.

Original Findings and Conditions of Approval (2007)

The DRC originally reviewed the project in 2007 over the course of three meetings. The project was ultimately approved, as memorialized by DRC Resolution No. DR-35-07 (Attachment 2). A number of conditions were included in the 2007 approval in order for the DRC to be able to make the required findings to approve the project. These conditions arose as a result of the following considerations:

- Prior to the current development the property had a large, open front yard with a large oak tree planted at the corner. To maintain this historical context the DRC imposed conditions regarding fencing and landscaping.

- The overall scale and mass of the project, as well as the project's compatibility with the appearance of the neighborhood and its prevailing site design patterns. Because the project was designed in a larger, bulkier architectural style (compared to the more traditional Spanish and Tudor styles common to the area), the Commission determined that eliminating the proposed fence within the front setback and requiring a wrought iron fence instead of a solid wall along the street side yard would help alleviate the project's appearance of scale and mass.[1]

- Because the project is located on a corner property (at the intersection of South Rodeo Drive and Gregory Way) the DRC determined that the above conditions regarding fences and walls were needed to maintain visibility and an open appearance at the street corner, thereby maintaining the existing tone of development for the block.

---

[1] Of the original conditions imposed on the project, the conditions that were not complied with at the time of final inspection are as follows:

1. DR-35-07, Section 7, Item 7 states that "There shall be no fencing in the front yard."
2. DR-35-07, Section 6, Item 1 states that "Fencing along the Gregory Way is to be wrought iron."

During the June 2007 public hearing, the applicant agreed to remove the fence and wall, and eliminated these items from the building plans. The conditions of approval were agreed to by the applicant, and the property owner signed a notarized covenant (Attachment 6) accepting all conditions of approval outlined in DRC Resolution No. DR-35-07. No appeal was filed after that 2007 decision.

BHMC Code Compliance Issues

Additional discrepancies (code violations) were noted by staff at the time the project was inspected for compliance with conditions of approval and zoning requirements. The discrepancies noted, as well as the current status of each discrepancy, are outlined as follows:

1. 6-foot tall hedges were planted within the front setback to form a visual barrier around the front of the property. This is a violation of BHMC §10-3-2420 (Walls, Fences, and Hedges).

   Status: The 6-foot tall hedges within the front setback have been cut down to a maximum height of 3-feet, and proper spacing has been provided in order to meet all Municipal Code requirements. No further action is required to be taken by the property owner.

2. Several pilasters (including their associated lights), both in the front and street side setbacks were constructed in excess of the maximum permitted height for said pilasters as outlined in the Municipal Code. This is a violation of BHMC §10-3-2420 (Walls, Fences, and Hedges).

   Status: No adjustments to the height of the pilasters have been made; however, several of the nonconforming lights have been removed by the property owner.

ATTACHMENT 4

BHMC Excerpts - §10-3-4415 (Design Review Criteria)

and §10-3-2420 (Walls, Fences and Hedges)

BHMC Excerpts

10-3-4415: REQUIRED FINDINGS:

The design review commission may approve, approve with conditions, or disapprove the issuance of a building permit in any matter subject to its jurisdiction after considering whether the proposed development complies with the following criteria:

A. The proposed development's design exhibits an internally compatible design scheme;

B. The proposed development's design appropriately minimizes the appearance of scale and mass and enhances the garden like quality of the city and appropriately maximizes the use of required open space within the proposed architectural style;

C. The proposed development will enhance the appearance of the neighborhood;

D. The proposed development is designed to balance the reasonable expectation of development for the owner with the reasonable expectation of privacy of neighbors; and

E. The proposed development respects prevailing site design patterns, carefully analyzing the characteristics of the surrounding group of homes, and integrates appropriate features that will ensure harmony between old and new.

If the criteria set forth in this section are met, the application shall be approved. When the proposed development does not comply with the criteria set forth in this section, the reviewing authority may impose such conditions as it deems necessary to bring the proposed development into conformity with the provisions of this article. (Ord. 04-O-2444, eff. 5-21-2004)

10-3-2420: WALLS, FENCES AND HEDGES:

In addition to any requirements imposed pursuant to title 9 of this code, a building permit shall be required for any wall or fence greater than six feet (6') in height and shall also be required for any wall or fence, regardless of its height, that is located in a front yard.

A. Thickness: No wall or fence shall exceed two feet (2') in thickness. Cavities or spaces within a wall or fence shall not be used for the support, storage, shelter, or enclosure of persons, animals, or personal property.

B. Supporting Elements: No column, pillar, post, or other supporting element of a wall or fence shall be more than twenty four inches (24") in width.

C. Front Yards: The maximum allowable height of a wall, fence, or hedge located within the first twenty percent (20%) of the front yard, measured from the front lot line, shall be three feet (3').

The maximum allowable height of a wall, fence, or hedge located within the front yard at a

distance from the front lot line of more than twenty percent (20%) of the front setback shall be six feet (6'); provided, however, any portion of such wall, fence, or hedge which exceeds three feet (3') in height shall be open to public view.

D. Side Yards: The maximum allowable height for that portion of a wall, fence, or hedge located in both a side yard and a front yard shall be six feet (6'); provided, however, that any portion of such wall, fence, or hedge which exceeds three feet (3') in height shall be open to public view.

The maximum allowable height for that portion of a wall, fence, or hedge located in a side yard, but not in a front yard, shall be seven feet (7'), except that the maximum allowable height shall be eight feet (8') for such a wall, fence, or hedge located within five feet (5') of a rear lot line and parallel to such rear lot line.

Furthermore, any portion of such wall, fence or hedge that exceeds three feet (3') in height and is located in a street side yard shall be open to public view or the wall, fence or hedge shall be set back an average of at least one foot (1') and no less than six inches (6") from the street side lot line for the purpose of providing landscaping on the street side of the wall.

E. Rear Yards: The maximum allowable height for a fence, wall or hedge located solely in a rear yard shall be eight feet (8'). (Ord. 80-O-1771, eff. 10-16-1980; amd. Ord. 84-O-1934, eff. 10-11-1983; Ord. 92-O-2147, eff. 9-4-1992; Ord. 95-O-2239, eff. 7-7-1995; Ord. 01-O-2384, eff. 11-2-2001; Ord. 02-O-2403, eff. 9-6-2002)

ATTACHMENT 5

Photographs of As-Built Project (Taken on 2/9/2010 and 2/22/2010)

264

264

ATTACHMENT 6

Covenant Accepting Original Conditions of Approval

Recording requested by
and when recorded mail to:

City Clerk
City of Beverly Hills
455 North Rexford Drive
Beverly Hills, CA 90210-4817

COVENANT
(Acceptance of Conditions of
_____)
[FILL IN TYPE OF PERMIT]

RECITALS:

A. SHAHLA TEHRANI, a _____ ***[insert name of owner of property – note: be sure to properly describe Owner's legal status, e.g., corporation, partnership, trust, etc.]***(the "Owner") hereby represents and warrants that it is the record owner of the following described real property (the "Property") located at 264 South Rodeo Drive ***[street address of the Property]*** in the City of Beverly Hills, County of Los Angeles, State of California, identified by Los Angeles County Assessor's Parcel Number(s) 4328-031-018 ***[fill in APN(s) for the Property]*** and more particularly and legally described as follows:

[fill in legal description]

Tract # 7710, Lot 122

B. SHAHLA TEHRANI, a _____ ***[name of applicant – be sure to describe Applicant's legal status (i.e. corporation, partnership, trust, etc.)]***(the "Applicant") submitted an application to the City of Beverly Hills for construction of a two-story home that included the removal of a heritage class oak tree under the provision that two similar oak trees would be planted and maintained in perpetuity in the front yard.

C. OWNER ***[describe the legal relationship between the Owner and the Applicant, e.g., "Applicant leases the Property from the Owner"]***

D. On July 9, 2007 ***[date the Design Review Commission adopted the Resolution]***, Applicant obtained a Design Review (R-1) Permit ***[fill in type of permit(s)]*** from the City of Beverly Hills

pursuant to Design Review Commission Resolution No. DR-35-07 (the "Resolution"). A copy of the Resolution is attached hereto and incorporated by this reference as Exhibit "A." The Applicant wishes to avail itself of the benefits of the Resolutions.

E. The Beverly Hills Planning Commission issued the A-1 Design Review Permit [*fill in type of permit(s)*] subject to various conditions set forth in the Resolution. Condition No. 11, set forth in Section 7 of the Resolution, requires recordation of a covenant, in a form satisfactory to the City Attorney, accepting the conditions of approval of the Resolution.

NOW, THEREFORE, in consideration of the foregoing, the Owner and the Applicant do agree, for the benefit of the City of Beverly Hills, as follows:

1. The Owner and the Applicant hereby agree to accept all of the conditions of approval set forth in Design Review Commission Resolution No. DR-35-07.

2. It is the intention hereof that this shall constitute a covenant running with the land owned by the Owner and running with the property interest possessed by the Applicant. This covenant shall be jointly and severally binding upon the Owner, the Applicant, and each of their heirs, representatives, successors and assigns.

Executed this 30 day of Oct, 2007

CITY OF BEVERLY HILLS:

Approved as to content:

Vincent P. Bertoni, AICP
Acting Director of Community Development

OWNER:

X SHAHLA TEHRANI *
[Name of Owner]

By: X _____ *
Name:
Title:

By: _____ *
Name:
Title:

Approved as to form:

Laurence S. Wiener
City Attorney

APPLICANT:

X SHAHLA TEHRANI*
[Name of Applicant]

By: X _____ *
Name:
Title:

By: _____ *
Name:
Title:

*/ **Attach ALL PURPOSE ACKNOWLEDGMENT**

Note if the Owner or Applicant is a corporate entity, signatures from two corporate officers are required as follows: it must be signed by the chairman of the board, president, or any vice president, and also by any one of the following officers: 1) the secretary, 2) any assistant secretary, 3) the chief financial officer, or 4) any assistant treasurer of the corporation.

SHAHLA TEHRANI (Name of Owner)

Shahla Tehrani 11/2/07

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles } ss.

On Nov. 2, 2007 (Date), before me, R.C. Berris, Notary Public (Name and Title of Officer (e.g., "Jane Doe, Notary Public")),

personally appeared Shahla Hakimian Tehrani (Name(s) of Signer(s)),

☐ personally known to me

☑ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

R. C. BERRIS
Commission # 1518050
Notary Public - California
Los Angeles County
My Comm. Expires Oct 7, 2008

WITNESS my hand and official seal.

Place Notary Seal Above

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: CITY CLERK City of Beverly Hills "COVENANT"

Document Date: Nov. 2, 2007 Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____

☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

© 2004 National Notary Association • 9350 De Soto Ave., P.O. Box 2402 • Chatsworth, CA 91313-2402 Item No. 5907 Reorder: Call Toll-Free 1-800-876-6827

ATTACHMENT 7

Letter From Property Owners

Vice Chair Susan Strauss

Commissioners, Marylin Weiss, Gary Gilbar and Howard Szabo

RE: 246 South Rodeo Drive

My name is Shahla Tehrani, and with my husband, Javid Tehrani, we are the owners of the aforementioned house that I am sure you are familiar with.

I'm writing this letter to clarify a misunderstanding and to ask for your consideration towards our situation.

I would like to make it clear that if we did not attend the prior public hearings, it is because of the way our business is. We have a small jewelry shop in Downtown Los Angeles. My Husband often goes to Israel to purchase diamonds, and I have to be in the shop to run the business.

Furthermore, we were under the impression that our project had quality design and its presentation, by a qualified Architect, would not require our presence. It appears that we were wrong, which is why I plan to attend the Design Review Commission Meeting of December 8th, 2009 and personally present our case as follows:

I would like you to know that we've spent a considerable amount of money to build the house and this was during the height of the Market. Everything that has been built in this house has been designed, permitted, and inspected. We haven't done anything illegal or, above and beyond zoning and/or building code. Considerable amounts of money were spent to build the pilasters, gate, the electrical and low voltage wiring, the lights, the hedges, and the paving.

Security System

Now because my Architect, the Planning Departments, and the Building Department made a mistake and issued the permit to build the aforementioned, I have to spend, again, lots of money to have it torn down and to rebuild something else, while everybody else has the right to have pilasters, gates, and fences even taller than mine. (picture attach)

I find your decision unfair, punitive and a major hardship to us.

Therefore, my husband and I are kindly begging you to allow us to keep what we have, the way it is, and not tear down the pilasters, etc.

With my Best Regards,

Shahla Tehrani

Shahla Teh

C.C.

City Council Members

Planning Commissioners

ATTACHMENT 8

Letters of Support From Neighboring Properties

Honorable Mayor of the City of Beverly Hills
Council Members

Re: 264 S. Rodeo Dr. Pilasters and Gate

This is a good opportunity to cordially let you know that we appreciate and support the design of the two pilasters and its pedestrian gate on the aforementioned home of Mr. & Mrs. Tehrani.

We find that the low wall, fence and gate's design, not only add to the beauty of the house, but blends with the house's neighborhood all the while providing the homeowners with a sense of security.

This beautiful gate and two pilasters add symmetry and balance to the design of the house, as well as, increasing the value to not only the premises, but the entire neighborhood.

NAME	ADDRESS	SIGNATURE
Sidney Maxman	305 S. Rodeo Dr	[signature]

Honorable Mayor of the City of Beverly Hills
Council Members

Re: 264 S. Rodeo Dr. Pilasters and Gate

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NAME	ADDRESS	SIGNATURE
Joanne Gerby	340 S Rodeo Dr.	Joanne Gerby

Honorable Mayor of the City of Beverly Hills
Council Members

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This beautiful gate and two pilasters add symmetry and balance to the design of the house, as well as, increasing the value to not only the premises, but the entire neighborhood.

NAME	ADDRESS	SIGNATURE
Farshid Nejad	237 S. Rodeo Drive	

Honorable Mayor of the City of Beverly Hills
Council Members

Re: 264 S. Rodeo Dr. Pilasters and Gate

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This beautiful gate and two pilasters add symmetry and balance to the design of the house, as well as, increasing the value to not only the premises, but the entire neighborhood.

NAME	ADDRESS	SIGNATURE
JOSEPH SACHIAN	229 S. RODEO DR	

Honorable Mayor of the City of Beverly Hills
Council Members

Re: 264 S. Rodeo Dr. Pilasters and Gate

This is a good opportunity to cordially let you know that we appreciate and support the design of the two pilasters and its pedestrian gate on the aforementioned home of Mr. & Mrs. Tehrani.

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This beautiful gate and two pilasters add symmetry and balance to the design of the house, as well as, increasing the value to not only the premises, but the entire neighborhood.

NAME	ADDRESS	SIGNATURE
STEPHEN MACHT	248 S. Rodeo Dr, B. H.	