



CITY OF BEVERLY HILLS STAFF REPORT

Meeting Date: June 16, 2009

To: Honorable Mayor & City Council

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

Subject: City Council Consideration of an Order to Review the Planning Commission Approval of a Central R-1 Permit for 305 S. Rodeo Drive

Attachments:

1. Municipal Code Excerpts BHMC Section 1-4-201, et seq.
2. Planning Commission Staff Report, dated May 28, 2009
3. Planning Commission Resolution for 305 S. Rodeo.

INTRODUCTION

The Planning Commission approved a discretionary Central R1 Permit application to allow a garage door to face the public street within 38 feet from the front setback line on May 28, 2009. This approval was sought to remedy a construction error that occurred in association with a new home development at 305 S. Rodeo Drive. The approved construction drawings included the front-facing garage, however the discrepancy with respect to the City's code requirements was not recognized until the framing stage of development. Copies of the staff report presented to the Planning Commission and the Resolution adopted by the Planning Commission are attached hereto to provide a more detailed explanation of the history of this project and the Commission's determination as to the garage orientation.

The subject property also has a chimney that was not built to current code standards. However, the applicant has not submitted a variance application to allow the chimney to remain and the Planning Commission took no action regarding the chimney. The property owner will be required to bring the chimney into compliance with applicable regulations prior to receiving a final certificate of occupancy for the structure.

The Mayor has requested this item be placed on the City Council's agenda to determine if there is support among the Council to call the subject Planning Commission decision for review by the City Council at a future formal meeting. If the Council orders the review this matter would be scheduled for consideration at a future public hearing.

DISCUSSION

Pursuant to Beverly Hills Municipal Code Section 1-4-201, et seq., the City Council may generally order a review of any decision made by any commission, board, or official of the city. The process to initiate this review and set a hearing is specifically set forth in the municipal code, and those provisions are attached for reference.

Meeting Date: June 16, 2009

DISCUSSION

Pursuant to Beverly Hills Municipal Code Section 1-4-201, et seq., the City Council may generally order a review of any decision made by any commission, board, or official of the city. The process to initiate this review and set a hearing is specifically set forth in the municipal code, and those provisions are attached for reference.

The City Council must order any review within 30 days of the final city action, which in this case was May 28, 2009, when the Planning Commission approved the request. If a review is ordered, the effectiveness of the Planning Commission's action will be stayed until the Council review is final.

The decision to order a review at the June 16 City Council Meeting shall be limited to the question of whether to call the item up for hearing before the City Council at a future formal meeting and shall not include any evaluation or assessment of the merits or circumstances of the case or the Planning Commission's action. That discussion would take place at noticed public hearing at an upcoming Council meeting.

FISCAL IMPACT

The recommendation in this report does not have any significant budget or fiscal impacts for the City. Any staff time dedicated to this effort can be managed within existing resources but will not be paid for by the applicant.

RECOMMENDATION

It is recommended that the City Council make a determination as to whether or not the subject Planning Commission's action will be ordered for review.

 Susan Healy Keene, AICP

Approved By

Meeting Date: June 16, 2009

ATTACHMENT 1

Article 2. Council Ordered Review of Administrative Decisions

1-4-201: RIGHT TO REVIEW:

The council may order a review of any decision made by any commission, board, or official of the city, except as otherwise provided in this code. Such review may be ordered by motion of the council duly adopted within thirty (30) calendar days after the issuance of the decision. If the council orders a review of a decision, the effectiveness of such decision shall be stayed until council review is final. (1962 Code § 1-6.201; amd. Ord. 94-O-2211, eff. 9-2-1994)

1-4-202: SETTING HEARINGS:

Upon the adoption of an order for a review of a decision, the mayor shall fix a time and place for the hearing. At least ten (10) days prior to the hearing, written notice shall be mailed to the applicant and such other persons who appeared and addressed the board, commission, or official at the previous hearing on the matter, and such other notice as required by law for the previous hearing shall also be given. (1962 Code § 1-6.202)

1-4-203: HEARINGS BY THE COUNCIL:

Unless otherwise ordered and noticed, hearings shall be held as a part of the regular meetings of the council. The hearings shall be do novo in that an independent reexamination of the matter shall be made. The council may decide the matter upon the record or may take additional evidence. Any oral or documentary evidence may be received, but the mayor shall exclude irrelevant, immaterial, or unduly repetitious evidence. It shall not be a ground for objection that the evidence is hearsay or secondary, but the council's decision shall be made upon substantial evidence. (1962 Code § 1-6.203)

1-4-204: DECISIONS AND FINDINGS:

The provisions of sections 1-4-107 and 1-4-108 of this chapter shall be applicable to the decisions of the council. (1962 Code § 1-6.204)



**STAFF REPORT
CITY OF BEVERLY HILLS**

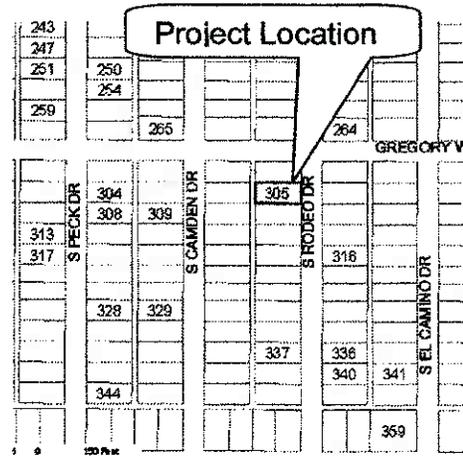
**For the Planning
Commission Meeting of
May 28, 2009**

TO: Planning Commission

FROM: Georgana Millican,
Associate Planner

THROUGH: Jonathan Lait, AICP *ditto*
City Planner

SUBJECT: Application for a Central R-1 Permit (PL0912958) to allow a garage with vehicular access to be located facing the street less than 38-feet behind the front yard setback for property located at 305 South Rodeo Drive.



RECOMMENDATION

It is recommended that the Planning Commission adopt the attached resolution conditionally approving the request for a Central R-1 Permit.

EXECUTIVE SUMMARY

The subject single family home was recently constructed after receiving an administrative Design Review Permit and a building permit from the Community Development Department. During construction, some zoning code violations were identified, including the location and orientation of the home's attached garage as well as a chimney was constructed in the required side yard setback area. The zoning code allows the location and orientation of the garage to exist as currently constructed, subject to approval of a Central R-1 Permit, but does not authorize the subject chimney encroachment; therefore, the issue before the Commission relates only to the garage and not the chimney. Both violations were inadvertently approved on the building permit and subsequent efforts to remedy these issues have resulted in the filing of this application. The homeowners are currently living in the new home with the issuance of a Temporary Certificate of Occupancy Permit. A final Certificate of Occupancy is pending resolution of all outstanding code violations. The abutting property owner to the north

Planning Commission Staff Report
 305 South Rodeo Drive
 May 28, 2009

has expressed strong opposition to the construction of the home and the violations at the site.

The subject property is located within the Single-Family Residential Zone, in the Central Area of the City, south of Santa Monica Boulevard.

GENERAL INFORMATION	
Applicant	Mitchell Dawson
Project Owner	Mr. and Mrs. Sidney Mathalon
Zoning District	Single Family Residential - Central Area – South of Santa Monica Boulevard
Parcel Size	7,680 square feet

BACKGROUND

The applicant’s request is one for “after the fact” approval, meaning that approval of the requested Central R-1 Permit would allow the residence to remain as it is exists today. Below is a chronology of important dates/events that have lead to the existing situation:

- **PRE-APPLICATION:** In August 2007, a pre-application review was submitted for a proposed new single family house. Pre-application review includes a preliminary Zoning Code compliance review and a determination whether the design of a particular house can be reviewed administratively or requires Commission review¹. The plans were reviewed by staff and it was determined the house could be reviewed at staff level, but the subject zoning violations were not recognized.
- **DESIGN REVIEW PERMIT:** In October, 2007, the applicant submitted a formal application for a for staff level Design Review Permit. Staff approved the R-1 Design Review Permit for the new Spanish Mission Revival single family house. In addition to being a pure architectural style, the design includes façade modulation, a human-scaled entry, high quality materials and extensive landscaping as required by the Design Review. Staff did not identify the zoning violations at this time.
- **BUILDING PERMIT/PLAN CHECK:** On September 27, 2007, the applicant submitted an application for a building permit, including complete architectural and structural plans for the new house. The subject zoning violations were once again not identified.

¹ Pursuant to BHMC Section 10-3-4408, a staff level Design Review Permit is limited to a determination of consistency with the approved style catalogue. If the required review determines that the proposed development adheres to an architecturally pure style and meets all of the applicable development standards set forth in this chapter, the development may be granted a building permit without further design review.

Planning Commission Staff Report
 305 South Rodeo Drive
 May 28, 2009

- **BUILDING PERMIT ISSUANCE:** On November 30, 2007, a building permit (BS0753529) was issued to allow the construction of the subject house, including the non compliant chimney and garage.
- **CORRESPONDENCE FROM NEIGHBOR:** On April 21, 2008, the City received the first of several letters from the abutting property owner regarding the construction of the subject home. The letter expresses the neighbor's concern that the subject home (which was under construction at the time) larger than other homes in the area and was out of scale with the neighborhood. Subsequent letters have focused on the need to remedy the zoning violations identified below.
- **ZONING CODE VIOLATIONS:** On June 17, 2008, staff informed the applicant that the project was in violation of development regulations for single-family homes in the Central Area of the City. Specifically, that the garage faces the street without being 38-feet from the front yard setback line and that a chimney encroaches 2-feet into a required side yard setback when a maximum 1-foot encroachment is permitted.
- **BOND PAID:** On April 29, 2009, the property owner deposited a \$10,000 bond to ensure completion of all outstanding work for the building permit of the new home as required by City Code, including the possible removal of the non-compliant chimney.
- **CENTRAL R-1 APPLICATION:** On April 15, 2009, the property owner submitted an application to the City for a Central R-1 Permit to allow the garage to be located in its current location.
- **ISSUANCE OF A TEMPORARY CERTIFICATE OF OCCUPANCY:** A temporary Certificate of Occupancy was issued on April 29, 2009 to allow the homeowners to live in the house. Temporary occupancy has been allowed until July 29, 2009. The temporary certificate was issued based on the completion of all required fire and life safety issues and after the owner showed a good faith effort towards remediation of the zoning violations, specifically, filing of the subject application and posting a bond with the Community Development Department which could be used to pay for the demolition of that portion of the chimney that is located within the required side yard setback. A final Certificate of Occupancy will not be issued until the zoning violations are remedied.

The chimney and garage elements identified above were inadvertently approved as part of both the Design Review and plan check/building permit process. The garage orientation and chimney encroachment violate the Beverly Hills Municipal Code and were constructed in error and must be remedied prior to the issuance of a final Certificate of Occupancy. Notwithstanding the inadvertent errors and missed opportunities to correct these violations, this report analyzes the applicant's request to locate the garage entrance facing the street within 38-feet of the front yard setback. This request is permitted in the zoning code and is authorized with the approval of a Central R-1 Permit². This application can be approved or denied by the Planning Commission based on findings related to building scale and mass, neighbors' access to

² Pursuant to BHMC Section 10-3-2450 A, the Planning Commission may establish the location and orientation of garage entrances in the central area of the City.

Planning Commission Staff Report
305 South Rodeo Drive
May 28, 2009

light and air, neighbors' privacy and project's impact on the garden quality of the City. As mentioned above, the chimney encroachment is not a part of this application; the zoning code permits a chimney to encroach into a side yard setback by 12-inches, and there is no relief authorized in the code beyond that. As of the date of writing this report, the subject chimney encroachment remains a violation and an impediment to the issuance of a final Certificate of Occupancy.

PROJECT DESCRIPTION

The subject property is 7,680 square foot in area and is improved with a new, 4,570 square-foot, two-story, single family residence of a Spanish Mission Revival design and includes an attached two car garage located at the northern portion of the front of the residence facing the street. The façade of the main residence maintains the required 25 foot front yard setback and as designed is modulated with varying roof heights. The entrance to the garage is setback an additional two feet (2') from the setback line. Along the southern side property line, the residence has a nine-foot setback for the entire length of the residence³. The northern side property line setback is five feet. In the rear, the property has a swimming pool and landscaping and a thirty-two foot setback (required is 29 feet) from the rear property line.

The Central R-1 Permit is required to allow the garage to maintain its existing orientation towards the street/front lot line rather than be perpendicular to the front lot line when located less than 38-feet from the front setback line.⁴

AREA CHARACTERISTICS

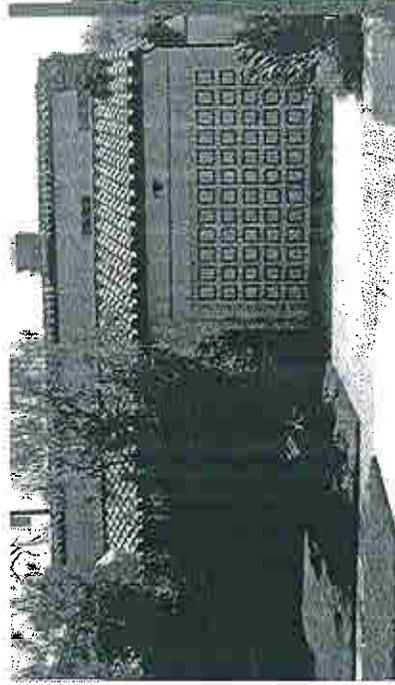
The subject property is located on the west side of the 300 block of South Rodeo Drive, between Gregory Way and Olympic Boulevard. The property is the second lot south of Gregory Way. The street is zoned single family (R-1.5X) and is in the Central Area of the City, south of Santa Monica Boulevard. The subject property is surrounded by existing one- and two-story single-family homes, which for the most part are comprised of older residential structures of a smaller size than the subject residence. There are a total of 24 single family homes along this block (12 on each side of the street). Of the total, five residences (approximately 17%), including both one and two-story, have garage entrances at the front setback line that are oriented toward the street, similar to the subject request. All of these other five homes were constructed prior to existing development regulations relative to garage orientation and are depicted below.

³ Pursuant to BHMC Section 10-3-2406 B, "The side setback for buildings located south of Santa Monica shall be five feet (5') on one side. On the other side, the side setback shall be nine feet (9') for the first thirty eight feet (38') behind the front setback line and five feet (5') for the remainder of the site area. Parking may be provided in this nine foot (9') area pursuant to section 10-3-2419 of this article."

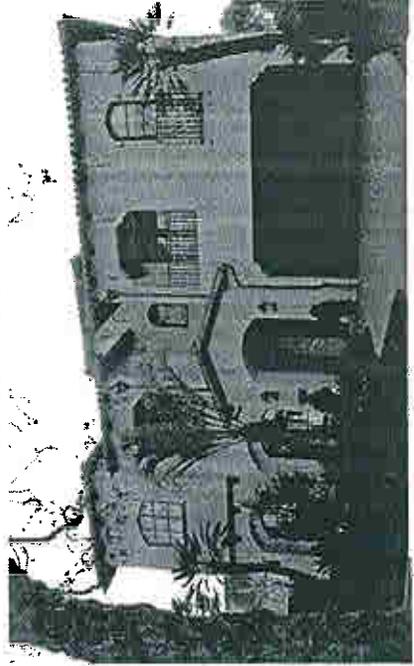
⁴ Pursuant to BHMC Section 10-3-2416 B, "With regard to those site areas located south of Santa Monica Boulevard...if the vehicular entrance to a garage is located less than thirty eight feet (38') behind the front setback line, then the entrance shall be perpendicular to the front lot line."



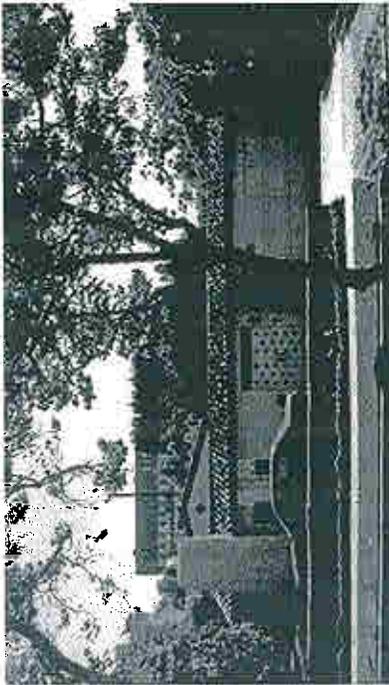
333 South Rodeo Drive



336 South Rodeo Drive



Subject Property 305 South Rodeo Drive



312 South Rodeo Drive



341 South Rodeo Drive



337 South Rodeo Drive

PROJECT DESCRIPTION CHART

305 SOUTH RODEO DRIVE			
Zoning District	Single-Family Residential - Central Area, South of Santa Monica Blvd.		
Category	Existing	Proposed	Required/Allowed (Per BHMC)
General Development Standards			
Lot Size:	7,680 square feet	No Change	N/A
Floor Area:	4,570 square feet (does not include the 367 square foot garage)	No Change	40% of the Lot Area + 1,500 Square Feet = 4,572 square feet (BHMC 10-3-2402)
Paving: (Front Yard)	386 square feet	No Change	400 square foot maximum
Parking:	Three spaces (two within the garage and one in the rear yard setback with access from the alley)	No Change.	Three spaces outside of the required front yard setback <u>No covered parking spaces are required</u>

ANALYSIS

The majority of the homes in the central area of the City were constructed without attached garages located towards the front of the lot. Instead, these homes do not provide *covered* parking or have a garage or carport located towards the rear of the property. In order to preserve this neighborhood quality, the code requires garage entrances facing the street to be set back a minimum of 38-feet beyond the required front yard setback (which varies by street from 20- to 35-feet). This results in a required garage entrance that is setback a minimum of 58-feet from the sidewalk (front property line). Because the lots in the central area of the City range in depth from 110-to 150-feet, implementing this development regulation ensures that garages that are oriented toward the street will be located towards the rear half of the property. However, the Planning Commission may approve a garage entrance facing the street to be located in the front of the lot provided the resulting residence will not have an adverse impact on

Planning Commission Staff Report
305 South Rodeo Drive
May 28, 2009

the scale and massing of the streetscape, the neighbor's access to light and air, the neighbor's privacy or the garden quality of the City. An analysis of potential impacts relative to these issues as well as how parking regulations can influence site planning is presented below.

Should the Commission deny the project because of a finding that the proposal would result in an adverse impact relative any one or more of the applicable issue areas, the residence would have to be modified. First, two additional parking spaces would be required to be provided. These could be provided in the southerly side yard setback area or in the rear of the property. If provided in the rear, modifications to the proposed site plan would be required. Second, if the project were denied, the garage area could not be used as a garage and its area would therefore not be able to be deducted from the property's maximum allowable square footage. This would result in the home having approximately 365 square feet more than allowed by the zoning code. This issue could be resolved through either the removal of an equal amount of square footage in other areas of the home (side or rear either first or second floor), or through the conversion of this area to a covered patio. In order to consider this area a covered patio, two of its four enclosed walls would need to be removed – based on the design, this would mean that the northerly side wall and garage doors would likely be eliminated with structural columns remaining.

PARKING REQUIREMENTS/SITE PLANNING

Although the zoning code requires a minimum number of parking spaces for new single-family residences depending on the number of bedrooms (minimum of 2 spaces, maximum of 4), the code does not require that such spaces be located in a garage or even that they be covered, just the spaces be provided outside of the front yard setback area. As an incentive to providing a garage, the code allows up to 400 square feet of garage area to be deducted from a property's total allowable floor area. Despite this incentive, the vast majority of new single-family residences south of Santa Monica Boulevard do not include garages and generally provide the required parking for the site within the required side yard setback alongside the main residence. The desire to maximize a site's allowable floor area combined with the fact that the zoning code does not specifically require a garage contributes to this trend.

While building a new home in the central area of the city with a garage is not common, it is even more uncommon for a new home to include a garage within the principal building area of a lot (that area outside of the required front, rear and side setbacks), such as is the case with the subject application. The residence must fit within this principal building area and is restricted to a maximum height (25-feet for flat roofs and 30-feet for sloped roofs). Building a new home with an attached garage in the principle building area results in design challenges and less flexibility in the placement of the habitable areas of the house because the interior functionality of the living space must consider the location of the garage. Additionally, designing a house with an attached garage within the principle building area reduces the size of the principle building area

Planning Commission Staff Report
305 South Rodeo Drive
May 28, 2009

which can accommodate living area. In fact, this design is so rare, that this case represents the first one of its kind based on research dating back over the last six years.

POTENTIAL IMPACTS

Mass and Scale

The subject residence is larger than most other homes in the neighborhood. Based on the given design, the home is basically built to the minimum front yard setback, to the maximum height, with a slightly articulated roof and modulation of the front façade. Given this approach, if the home were designed without an attached garage in its current location, this area would be utilized for habitable living area. Therefore, if this request were not approved, the garage space could be converted to habitable living area. However, this would result in the home having approximately 367 square feet of floor area more than allowed by the code. Although it is not known exactly where this reduction would occur if required, based on the given design, it is likely that it would be removed from the rear portion of the property. This would result in a mass and scale identical to the existing structure as viewed from the street. Alternatively, this garage space, with additional modification, could be converted to a covered patio area. This alternative would also not result in a reduction of the home's scale as viewed from the street as the second story height and mass would remain unchanged. While the existing home is larger than other homes in the neighborhood, it is not necessarily a result of this garage location or orientation, but rather the usual case of a property owner building the maximum amount of floor area permitted by the municipal code and therefore, approval of this request is not anticipated to have any impact on the mass and scale of the neighborhood.

Impacts to Neighbors (Light, Air, Privacy)

Accessibility to light and air can be impacted by a building's mass and/or its proximity to an adjacent building. In the instant situation, it does not appear that the building's mass would be altered based on either the approval or the denial of the subject application. Similarly, the location and proximity of the garage portion of the house in relation to the abutting neighbor would otherwise remain unchanged whether or not this application is approved or denied because it is location within the principal building area of the lot, i.e., outside of the required setbacks. Therefore, the approval of the garage entrance facing the street in its current location does not appear to result in an adverse impact on the neighbor's access to light and air.

The requested garage orientation is not anticipated to adversely impact the neighbors' privacy. The proposed garage door and garage do not have any windows on the side elevation of the main residence that would provide any visual access to the neighboring properties and additionally the opening to the garage would be oriented to the front lot line away from the neighbors with the granting of the request. Therefore it is not anticipated that the orientation of the garage to the front lot line would have an adverse impact on the neighbors' privacy. However, cars coming into the driveway from the

Planning Commission Staff Report
305 South Rodeo Drive
May 28, 2009

south (Olympic Boulevard) at night could inadvertently shine their headlights into the window of the neighbor to the north. Therefore, should the Commission approve this project, the following condition is recommended to lessen the potential for impacts to neighbors' privacy:

Prior to the issuance of a final Certificate of Occupancy, the applicant shall construct and maintain wall along the northern side property line to ensure that light emanating from vehicular headlights does not spill over into the abutting property owner. Such wall shall be constructed to the satisfaction of the City Planner or his designee.

As proposed and conditioned, approval of the request is not anticipated to have an adverse impact on neighbors' privacy.

Garden Quality of the City

The garden quality of the City is maintained and advanced through compliance with the City's regulations relating to front yard paving and the establishment of an appropriate landscape plan. The maximum amount of paving permitted in the front yard area is 400 square feet and the project has 386 square feet. As part of the application for Design Review, a landscape plan was required and in accordance with that plan, the entire front yard has been extensively landscaped with the exception of the driveway to the garage. The approved landscape plan includes an appropriate mix of shrubs, ground cover and trees that add to the garden quality of the City. With the garage and driveway as designed, the property's southern side lot line has been landscaped as indicated on the Planting Plan dated August 21, 2007. This side lot line set back is required to be 9-feet for the first 38-feet of the lot depth then may be reduced to 5-feet for the remainder of the lot. Importantly, this 9-foot setback area can accommodate a car, if the area were to be paved, and thereby detract from the garden quality of the City. Therefore, if the Commission should approve the project, the following condition is recommended:

The required southern side yard setback landscaping shall be maintained and no paving shall be installed along this area.

As proposed and conditioned, the orientation and location of the garage is will not have an adverse impact on the garden quality of the City.

Central R-1 Permit

Pursuant to Beverly Hills Municipal Code 10-3-2416 (B), for those site areas located south of Santa Monica Boulevard, if the vehicular entrance to a garage is located less than thirty-eight feet (38') behind the front setback line, then the entrance shall be perpendicular to the front lot line. However, the Planning Commission may grant a

Planning Commission Staff Report
305 South Rodeo Drive
May 28, 2009

Central R-1 Permit to establish width and orientation requirements for garages in the Central Area, if the appropriate findings can be made.

Required Findings for Central R-1 Permit:

Pursuant to Beverly Hills Municipal Code Section 10-3-2450, the Planning Commission may issue a Central R-1 permit if it finds that the project will not have a substantial adverse impact on any of the following:

The scale and massing of the streetscape.

The garage as designed and built is oriented toward the street/front lot line rather than being perpendicular to the front lot line and is integrated within the main residence rather than being a separate accessory structure. The main residence is just under the maximum square footage allowed by Code which is in keeping with the majority of new residences built in the City. However, it is larger than the neighboring properties, which were all originally built in the 1920's or 1930's with the exception of one house that was built in 1991. The design features of the residence including modulated façade, multiple roof heights, human scale single front door, human scale windows and garage opening serve to help to soften the appearance of scale and mass of the residence. The garage door complements the home's architectural style in both material and design, made of high quality wood, and is appropriately scaled to the front entrance of the home so as not to add to the scale and mass of the streetscape. In addition, five other residences on the same block also have similar two-car garages that are located at the front setback line and are oriented to the front lot line. While the main residence is larger in scale, it does not appear that the garage orientation has a substantial adverse impact on the scale and massing of the streetscape.

Neighbors' access to light and air.

The garage that is the subject of the request is located at the ground level of the residence and does not extend into any required setbacks. The overall height and location of the main residence would remain unchanged regardless of the orientation of the garage door. Therefore it is not anticipated that the orientation of the garage door to the front lot line rather than perpendicular to the front lot line would generate any adverse impacts related to the neighbors' access to light and air.

Neighbors' privacy.

The proposed garage door is oriented to the front lot line away from the neighbors and access to and from the main residence via the garage is not anticipated to result any impacts on the neighbors' privacy. However, cars coming into the driveway from the south (Olympic Boulevard) at night could inadvertently shine their headlights into the window of the neighbor to the north. The project has been conditioned to require a wall to prevent such spillover lighting. Therefore as proposed and conditioned, it is not anticipated that the orientation of the garage to the front lot line would have an adverse impact on the neighbors' privacy.

Planning Commission Staff Report
305 South Rodeo Drive
May 28, 2009

The Garden Quality of the City

As part of the application for Design Review, a landscape plan was required and in accordance with that plan, the entire front yard has been extensively landscaped with the exception of the driveway to the garage. The approved landscape plan includes an appropriate mix of shrubs, ground cover and trees that add to the garden quality of the City. With the garage and driveway as designed, the property's southern side lot line has been landscaped as indicated on the Planting Plan dated August 21, 2007. This side lot line set back is required to be 9-feet for the first 38-feet of the lot depth then may be reduced to 5-feet for the remainder of the lot. This 9-foot setback area can accommodate a car, if the area were to be paved, which could detract from the garden quality of the City. Therefore, as conditioned, as long as the garage area is used for parking purposes, the southern side property setback area shall remain landscaped and shall not be paved. As proposed and conditioned, the orientation and location of the garage will not have an adverse impact on the garden quality of the City.

PUBLIC NOTICE AND COMMENTS

Notice of the proposed project and public hearing was mailed on May 14, 2009 to all property owners and residential tenants within a 300-foot radius of the property from the exterior boundaries of the property. As of the date of the preparation of this report, no correspondence has been received regarding this request for a Central R-1 Permit.

However, as part of the background relating to this request, the City has received several letters from the abutting property to the north. These letters, as well as correspondence from the City are attached to this report.

ENVIRONMENTAL DETERMINATION

The subject project is categorically exempt from the provisions of the California Environmental Quality Act pursuant to Class 3, Section 15303(a) of the State Implementation Guidelines (New Construction or Conversion of Small Structures), which exempts the construction of single family homes in urbanized areas. The subject project relates to the orientation of garage doors toward the public street and is connected to and associated with the construction of a new single family residence.

RECOMMENDATION

Based on the foregoing analysis staff believes the required findings can be made to support the issuance of a Central R-1 Permit to allow a garage to be oriented facing the street rather than perpendicular to the front lot line. Staff recommends that the Planning Commission approve the request for a Central R-1 Permit, subject to the following conditions of approval, and adopt the attached resolution memorializing this action.

Conditions of Approval:

Planning Commission Staff Report
305 South Rodeo Drive
May 28, 2009

1. The garage shall be maintained for covered vehicular parking use only. No habitable use of the garage shall be permitted.
2. The required southern side yard setback landscaping shall be maintained and no paving shall be installed along this area.
3. No walls or fences shall be permitted in the required front yard setback facing the street.
4. Prior to the issuance of a final Certificate of Occupancy, the applicant shall construct a wall along the northern side property line to ensure that light emanating from vehicular headlights does not spill over into the abutting property owner. Such wall shall be constructed to the satisfaction of the City Planner or his designee.



Georgana Millican, Associate Planner

Attachments:

1. Draft Planning Commission Resolution
2. Correspondence from abutting property owner
3. Correspondence from City Planner
4. Temporary Certificate of Occupancy
5. Site Photos Depicting Views of Neighborhood

ATTACHMENT 1
DRAFT RESOLUTION

RESOLUTION NO.

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS CONDITIONALLY APPROVING A CENTRAL R-1 PERMIT TO ALLOW A GARAGE ENTRANCE TO FACE THE STREET AND BE LOCATED LESS THAN 38-FEET FROM THE FRONT SETBACK LINE FOR PROPERTY LOCATED AT 305 SOUTH RODEO DRIVE

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

Section 1. Mitchell Dawson, applicant on behalf of the property owners, Sidney and Tracy Mathalon (collectively the "Applicant"), has applied for a Central R-1 Permit to allow after the fact approval to keep an attached garage in its existing location, which is less than 38-feet from the front setback line and facing the street. A new two story single-family residence has recently been constructed at the 305 South Rodeo Drive ("subject property") and the detached garage was inadvertently approved on the building permit and constructed in violation of the zoning ordinance.

Beverly Hills Municipal Code Section (BHMC) 10-3-2416 B states that if the vehicular entrance to a garage is located less than thirty eight feet (38') behind the front setback line, then the entrance shall be perpendicular to the front lot line. However BHMC Section 10-3-2450 (A) authorizes the Planning Commission to issue a Central R-1 Permit to establish the location and orientation of garage entrances in the central area of the City, provided that certain findings can be made.

Section 2. 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 Implementation Guidelines (California Code of Regulations, Title 14, Sections 15000, *et seq.*), and the City’s Local CEQA Guidelines. The subject project is categorically exempt from the provisions of the California Environmental Quality Act pursuant to Class 3, Section 15303(a) of the State Implementation Guidelines (New Construction or Conversion of Small Structures), which exempts the construction of single family homes in urbanized areas. The subject project relates to the orientation of garage doors toward the public street and is connected to and associated with the construction of a new single family residence, and a Class 3(a) “new construction of second dwelling unit in a residential zone” Categorical Exemption has been issued in accordance with the requirements of Section 15303(e) of the Guidelines.

Section 3. The Planning Commission conducted a duly noticed public hearing on May 28, 2008, at which time oral and documentary evidence was received concerning the application.

Section 4. The subject property is located on the west side of the 300 block of South Rodeo Drive, between Gregory Way and Olympic Boulevard. The property is the second lot south of Gregory Way. The street is zoned single family (R-1.5X) and is in the Central Area of the City, south of Santa Monica Boulevard. The subject property is surrounded by existing one- and two-story single-family homes, which for the most part are comprised of older

residential structures.

The subject property is 7,680 square foot in area and is improved with a new, 4,570 square-foot, two-story, single family residence of a Spanish Mission Revival design and includes an attached two car garage located at the northern portion of the front of the residence facing the street. The façade of the main residence maintains the required 25 foot front yard setback and as designed is modulated with varying roof heights. The entrance to the garage is setback an additional two feet (2') from the setback line. Along the southern side property line, the residence exhibits a nine-foot setback for the entire length of the residence. The northern side property line setback is five feet. In the rear, the property has a swimming pool and landscaping and a thirty-two foot setback (required is 29 feet) from the rear property line.

The subject property is surrounded by existing one- and two-story single-family homes, which for the most part are comprised of older residential structures of a smaller size than the subject residence. There are a total of 24 single family homes along this block (12 on each side of the street). Of the total, five residences (approximately 17%), including both one and two-story, have garage entrances at the front setback line that are oriented toward the street, similar to the subject request.

Section 5. In accordance with the requirements of Beverly Hills Municipal Code Section 10-3-2450 (A), in reviewing the application for the Central R-1 Permit to allow a garage entrance to face the street and be located less than 38-feet behind the front yard setback

area, the Planning Commission considered whether the proposed development will have a substantial adverse impact on:

- (1) The scale and massing of the streetscape;
- (2) Neighbors' access to light and air;
- (3) Neighbors' privacy;
- (4) The garden quality of the city;

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

6.1. As proposed, the Project will not have a substantial adverse impact on the scale and massing of the streetscape. The garage as designed and built is oriented toward the street/front lot line rather than being perpendicular to the front lot line and is integrated within the main residence rather than being a separate accessory structure. The main residence is just under the maximum square footage allowed by Code which is in keeping with the majority of new residences built in the City. However, it is larger than the neighboring properties which were all originally built in the 1920's or 1930's with the exception of one house that was built in 1991. The design features of the residence including modulated façade, multiple roof heights, human scale single front door, human scale windows and garage opening serve to help to soften the appearance of scale and mass of the residence. The garage door is scaled appropriately and does not add to the scale and mass of the streetscape. In addition, five other residences on the same block also have similar two-car garages that are located at the front setback line and are oriented to the front lot line. While the main residence is larger in scale, it does not appear that

the garage orientation has a substantial adverse impact on the scale and massing of the streetscape.

6.2. As proposed and conditioned, the Project will not substantially impact the neighbors' access to light and air. The garage that is the subject of the request is located at the ground level of the residence and does not extend into any required setbacks. The overall height and location of the main residence would remain unchanged regardless of the orientation of the garage door. Therefore it is not anticipated that the orientation of the garage door to the front lot line rather than perpendicular to the front lot line would generate any adverse impacts related to the neighbors' access to light and air.

6.3. As proposed and conditioned, the Project will not have a substantial adverse impact on neighbors' privacy. The proposed garage door is oriented to the front lot line away from the neighbors and access to and from the main residence via the garage is not anticipated to result any impacts on the neighbors' privacy. However, cars coming into the driveway from the south (Olympic Boulevard) at night could inadvertently shine their headlights into the window of the neighbor to the north. The project has been conditioned to require a wall to prevent such spillover lighting. Therefore as proposed and conditioned, it is not anticipated that the orientation of the garage to the front lot line would have an adverse impact on the neighbors' privacy.

6.4. As conditioned, the proposed Project will not adversely affect the garden quality of the city. As part of the application for Design Review, a landscape plan was required and in accordance with that plan, the entire front yard has been extensively landscaped with the

exception of the driveway to the garage. The approved landscape plan includes an appropriate mix of shrubs, ground cover and trees that add to the garden quality of the City. With the garage and driveway as designed, the property's southern side lot line has been landscaped as indicated on the Planting Plan dated August 21, 2007. This side lot line set back is required to be 9-feet for the first 38-feet of the lot depth then may be reduced to 5-feet for the remainder of the lot. This 9-foot setback area can accommodate a car, if the area were to be paved, which could detract from the garden quality of the City. As conditioned, as long as the garage area is used for parking purposes, the southern side property setback area shall remain landscaped and shall not be paved. Therefore, as proposed and conditioned, the orientation and location of the garage will not have an adverse impact on the garden quality of the City.

Section 7. Based on the foregoing, the Planning Commission hereby grants a Central R-1 Permit and Second Unit Use Permit subject to the following conditions:

1. The project shall be built in substantial conformance to the plans submitted to and reviewed by the Planning Commission at the 5/28/09 meeting.
2. The garage shall be maintained for covered vehicular parking use only. No habitable use of the garage shall be permitted.
3. The required southern side yard setback landscaping shall be maintained and no paving shall be installed along this area.
4. No walls or fences shall be permitted in the required front yard setback facing the street.
5. Prior to the issuance of a final Certificate of Occupancy, the applicant shall

construct a wall along the northern side property line to ensure that light emanating from vehicular headlights does not spill over into the abutting property owner. Such wall shall be constructed to the satisfaction of the City Planner or his designee.

6. 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 Central R-1 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 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 Central R-1 Permit 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 Central R-1 Permit.

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

Adopted:

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

Attest:

Secretary

Approved as to form:

David M. Snow
Assistant City Attorney

Approved as to content:

Jonathan Lait, AICP
City Planner

ATTACHMENT 2
CORRESPONDENCE FROM ABUTTING PROPERTY
OWNER

MARSHALL FLAUM PRODUCTIONS, INC.

301 So. Rodeo Drive • Beverly Hills, California 90212 • 310-553-5020 • FAX: 310-553-0352

October 23, 2008

Ms. Nancy Krasne
Beverly Hills City Council

Dear Ms. Krasne,

I hope the enclosed will be of interest to you. Other than from the good Mayor, I have been getting little response -- and none at all in the last couple of months - from the City. Apparently, Mr. Yelton and his cohorts feel if they do nothing this scandalous situation will simply go away.

I am sending you this material because I feel the Beverly Hills City Council should know what's been going on - especially since I've just been threatened with a lawsuit by Sidney Mathalon's lawyer for, in effect, complaining to the City about the horrendous situation.

Sincerely,


Marshall Flaum

MARSHALL FLAUM PRODUCTIONS, INC.

301 So. Rodeo Drive • Beverly Hills, California 90212 • 310 553-5020 • Fax: 310 553 0352

April 21, 2008

Ms. Michelle McGrath
B.H. Planning Commission
455 W. Rexford Dr.
Beverly Hills, Ca. 90210

Dear Ms. McGrath:

Ever since your visit to my home several weeks ago, I've been desperately trying to live with the ever more monstrous reality of this enormous residence - so disproportionate to its site and to the neighborhood - that is being built next door at 305 S. Rodeo. But I can bear it no longer. As a matter of fact, the shocking growth of this horrendous structure, totally out of keeping with the more gracious and modestly elegant homes on the block, is being looked upon as an unseemly assault on the entire outraged neighborhood. Residents stand and stare at this looming behemoth shaking their heads in disbelief.

Although apparently sympathetic, you told me any future complaint on my part would be futile since this monstrosity was being built "to code." Well, I say damn the code when it wantonly permits the intolerable destruction of my quality of life after living contentedly for more than 40 years in one of the most beautiful Spanish homes in this area of Beverly Hills. Both physically and emotionally, it is making me sick.

When I told you that my home has been a kind of sanctified paradise for me and my family for more than 40 years, I was pretty shocked by your reply that I was lucky to have been living here for as long as those 40 good years. Is that a polite way for Beverly Hills to tell me that now I can drop dead!

The city of Beverly Hills, its Council and Planning Commission have allowed this unbearable abomination to be built with total disregard for its ruinous impact on my home. No one from the city ever bothered to see what that impact might be. No one ever visited us or uttered a single word about this enormous, ungainly erection that we would be forced to endure for as long as the rest of our lives. Shame!

The mammoth structure being built at 305 is simply too big for the lot. It has an interior garage the measurement of which is not included in the total footage allotted for the house in order to make this house even bigger than would have been allowed otherwise. The side of the building - to the north - radically impinges on my house. It is only a few feet from my house and cuts off not only all sunlight, but virtually all daylight to this side of the house which includes my breakfast room, kitchen, laundry room and my office. Most significantly, my office and kitchen - without sunlight or daylight - have to be artificially lighted all day and night. How dare the Beverly Hills powers allow this intolerable situation to exist! It's hardly energy efficient and my electric bills have skyrocketed! Perhaps we can help pay these bills by selling tickets to tourists who want to see what living in Beverly Hills today is really like.

2.

Do you realize how oppressive and depressing living like this becomes. A darkness of the soul creeps in. It did not do me much good when you explained that these days people try to make their houses as large as possible, utilizing every inch they can squeeze out of the code, so that it would increase the value of their house when they wanted to sell it. The larger the house, the more valuable it is, you said. How nice! WHAT ABOUT THE VALUE OF MY HOME? In order to satisfy the greed of new residents, the city has betrayed the interests of someone who has been a grateful, upstanding, even distinguished, citizen of Beverly Hills since 1962. Who will ever want to buy my home to live in even with its very special, original Spanish appointments. What housewife, or anyone else for that matter would accept a black hole of a kitchen with not only no sun, but no daylight. THE HOUSE NEXT DOOR IS BEING CONSTRUCTED AT MY EXPENSE BY DIMINISHING THE VALUE OF MY HOME AS WELL AS MY QUALITY OF LIFE.

Walking the length of my home from front to back on that side, one is always overwhelmingly aware of the oppressively close proximity of the building next door. The coup de grace is that the monster's large back balcony which is only a few feet away, directly overlooks my back patio where I've sunbathed for 40 years and where my daughter was married. HOW DARE THE CITY ALLOW SUCH A GROSS, UNSPEAKABLE INVASION OF MY PRIVACY!! While the balcony faces my patio on one side, in front it provides a magnificent view of the alley.

Talking about privacy, my grandson recently went to the bathroom adjoining a bedroom upstairs and was taken aback by a construction worker peering at him only a few feet away. No Jimmy Stewart telescope or binoculars needed here! (Hitchcock, who made a guest appearance in one of my films, would have quickly realized there was not much of a mystery to what was happening here.)

In short, this grotesque monument to selfish greed and tasteless piggishness - as well as, to the uncaring irresponsibility of the city of Beverly Hills has recklessly impaired my quality of life at a time when I should be basking in the glow of my life's final fulfillment.

Whatever the cost, this atrocious structure should be removed and be replaced by a home of tasteful grace and charm - one more in keeping with the rest of the homes in this area.

Incidentally, have you seen this building lately? It very much resembles an early 20th century Public Library. My wife thinks it looks like a Masonic Lodge - while many residents here say it looks more like a hotel. My Sparkletts delivery man has the last word. He says it looks like it's going to house an army - not a very friendly one, I would say -- nor will it be producing many friendly neighbors in this neighborhood.

Sincerely,



Marshall Flaum

CC: Mayor Barry Brucker
Linda Briskman BH City Council
Noah Furie BH Planning Board
Sidney Mathalon

MARSHALL FLAUM PRODUCTIONS, INC.

301 So. Rodeo Drive • Beverly Hills, California 90212 • 310-553-8020 • Fax: 310-553-0352

August 25, 2008

TO WHOM IT MAY CONCERN

This is part 2 in the saga of producer-writer Marshall Flaum – multiple Emmy winner, 2 time Oscar nominee, and 46 year resident of Beverly Hills – versus the new construction at 305 S. Rodeo Dr.

In response to a copy of my letter of April 21, 2008 to Michelle McGrath, written weeks after her visit to my home, I was visited by Mayor Brucker himself, on or about June 6, 2008 (almost 3 months ago) so that he might inspect the troublesome construction next door. The Mayor expressed shock at the degree of encroachment on my home and called the new structure “a monster.”

Mayor Brucker told me that the wall separating the 2 properties had been built on my property and belonged to me. The Mayor then removed his jacket and with a yardstick twice measured the distance between the new structure and my property and declared that apparently there had been a violation of the building code. He explained that, according to the code, there had to be 5 feet between the properties but only 33 inches separated the chimney from my wall – and the distance between the side of the house of which the chimney was a part measured only 57 inches from my property. He said George Chavez, a top man from the City, would be calling me to look into the situation.

A couple of weeks later I had not yet heard from Mr. Chavez when I received a call from the new building's owner, Sidney Mathalon, asking if he could come over to see me, which he did, accompanied by his wife. Mathalon seemed very perturbed when he informed me that "the City" had called him to say the chimney had not been built to code, and must be torn down. Mathalon thought he might strike a deal with me. He said if I would allow the chimney to remain, he would refrain from building a "7 foot wall" around his house – and instead of putting in the swimming pool next to my house, he would build it on the other side of his yard next to our neighbor Judy Okun's house "so that she would get the rats" from the pool's construction instead of me. I rejected the offer saying that probably the whole side of the house would have to come down along with the chimney.

NO PART OF THAT SIDE OF THE HOUSE NEXT DOOR IS 60 INCHES FROM MY PROPERTY. FURTHERMORE, THE TILED ROOF ABOVE IS IN VIRTUALLY PERFECT ALIGNMENT WITH THE CHIMNEY, ONLY 33 INCHES FROM MY PROPERTY.

When I rejected their offer, Mrs. Mathalon became very agitated. She kept repeating ' was playing "tit for tat" – in effect, saying I was wronging them for the wrong they were doing me. When I said it was too bad that the enormity of their house did not allow room for gracious gardens and patios, Mrs. Mathalon exclaimed those things "do not matter; the only thing that matters when you sell a house is its size, the larger the house the more money you can get for it." With her husband, she left muttering that I didn't want to be a "good neighbor."

The next day I received a call from David Yelton who said he worked under George Chavez at City. He made an appointment to visit me and asked if I would mind if he brought Michelle McGrath. I mentioned that if she, like the mayor, had done a little measuring months before, when only the building's frame was up, she would have quickly discovered the building was not being built to code, as she so insistently declared. It would have been a comparatively simple thing to take action there and then. Shortly after, I received a call from Mr. Chavez saying he would be coming to the meeting along with Mr. Yelton and Ms. McGrath would not be attending.

At the meeting, I asked Mr. Yelton if he was the one who had told Mr. Mathalon that the chimney had to come down. He said he was. During the course of the meeting, Yelton and Chavez seemed very conciliatory. Yelton said, "the city had erred." He proposed that skylights be built in my kitchen and office – and that cypresses be planted on the Mathalon's property to give me a measure of privacy. He said if I agreed that the chimney would not have to be brought down, he would put his plan into action immediately. It would all happen without delay the very next day and we'd all have nothing to be concerned about any more. I suddenly felt things were happening too fast – that I was being rushed into something – so I said I wanted to confer with my lawyer before I made a decision. When Yelton asked if I would mind if Mathalon built a 6 foot wall (where one does not now exist) between his garage and my kitchen windows in order to create a passageway to the back of his house. (There is now only a temporary chain link fence they've

put up.) When I discovered that the wall would be less than 4 feet from my kitchen windows, I said it would be totally unacceptable. When I gave Mr. Yelton my final negative reply on the phone the next day, he seemed out of sorts when he said he would then be calling the city attorney about carrying out the demolition of the chimney.

That was the last contact I have had with anyone in connection with the building next door. Soon after, my wife became gravely ill, and I, myself, have not been well. Consequently I have been somewhat diverted from this cause - but am now prepared to follow this struggle to a successful conclusion. From now on the matter is completely in the hands of my attorney, Kenneth Spencer.

I understand there are problems with the placement of the garage as well as with the height of the building but they are beyond the scope of this report.


Marshall Flaum

MARSHALL FLAUM PRODUCTIONS, INC.

301 So. Rodeo Drive • Beverly Hills, California 90212 310-553-5020 • Fax: 310-553-0352

September 18,2008

FROM MARSHALL FLAUM

TO WHOM IT MAY CONCERN

PART THREE

At a meeting on August 27,2008 at Buildings & Safety, which was also attended by neighbors Rose Norton and Judy Okun, I mentioned to David Yelton and Michelle McGrath that when Mayor Brucker visited my home he had said that the wall that separated my property from 305 S. Rodeo belonged to me, I was shocked to hear David Yelton say in an exceedingly disparaging way: "What does he know!"

This harsh comment was perhaps inspired by his knowledge that the construction of the building next door – so blatantly and admittedly in violation of the zoning code with total disregard of it's encroachment on my property – had been approved and begun by the former mayor's administration.

Mr. Yelton has continued to insist that ownership of the wall dividing the 2 properties is shared equally by the 2 parties until the wall suddenly diverges completely onto my property becoming exclusively mine. When I ask: "Why in the world would the wall not be built in a straight line, unless perhaps the builder was drunk?" Mr. Yelton replies that in olden times (from the Parthenon to at least the Chrysler Building, I guess) they weren't very careful about such things. As proof, he points to the survey map of 305 S. Rodeo prepared by Jerry Crowley Engineering Services for Sidney Mathalon. Even if this map favors the interests of the owner, it allows that only about the first 25 feet of the wall separating the 2 properties is

shared. The rest of the wall - measuring about 56 feet going all the way back to the alley is SOLELY ON MY PROPERTY. My wall, according to this map, faces not only the considerable width of the entire chimney next door but also the rest of the building's north wall that includes the balcony hatefully overlooking my back patio -- as well as anything else that might yet be constructed all the way to the alley.

I adamantly insist that the 5 foot setbacks called for by the code be honored. The chimney is a mere 33 inches from my property. And the entire side of the building, of which it is a part, is also less than 5 feet from my property.

Mr. Yelton had previously said that the entire chimney, in violation of the code, had to come down. Now, at our last meeting, he suggested that they might "shave" 12 inches from it. That would still make the chimney only 45 inches from my property, which is unacceptable.

The chimney must be moved back 27 inches more from my property. During the designing and construction of the building, the whole north wall could have been set back to accommodate the projection of the chimney so that it would have been no closer to my property than 5 feet.

Additionally, the roof eaves which are in line with the chimney -- only 33 inches from my property -- must also be moved back, along with all the other protuberances and projections ("decorative" and functional) that now exist on that side of the building.

Greedy, rather than fairness, taste and common sense sired this construction and must not be condoned or allowed any violation of the code.

I could not believe my ears when Ms. McGrath and Mr. Yelton informed me that zoning codes need not be adhered to if the city, at its discretion, so decides. How is it decided who is to be penalized for violations and who is not? What a travesty! If it is true that some select few may be absolved of code violations, it certainly demands public airing and inquiry.

My family and I could be accurately described as victims of code violations. At this last meeting, both McGrath and Yelton admitted to code violations in the construction of 305 S. Rodeo, particularly with regard to the chimney and the garage. They called these violations “mistakes” that had “gotten past them.” I would like to know how these gross violations – the chimney, the garage, the less than 5 foot setbacks, and god knows what else that may yet be revealed – happened in the first place! – Are we to believe that the developer, the architect, the owner and the contractor, designed and built this structure without referring to the applicable codes? (Give me a break!) Or did they simply believe they could do whatever they liked with impunity?

I have been protesting this hotel-like building for almost a year during which its oppressive proximity has caused me torment and any sense of well being. Now I feel it is being rushed to completion in order to

present my neighbors and me with a fait accomplit before any changes are made. I insist that the changes, in total accordance with the existing code, be made before a fait accomplit becomes a cause celebre!

A handwritten signature in black ink, appearing to read "Marshall Flaum", with a long horizontal flourish extending to the right.

Marshall Flaum

MARSHALL FLAUM PRODUCTIONS, INC.

301 So. Rodeo Drive • Beverly Hills, California 90212 • 310-553-5020 • Fax: 310-553-0352

October 12, 2008

AN ADDENDUM
TO THOSE WHOM IT MAY CONCERN

I am astounded by the newly created elevated walkway (raised about one foot) at 305 S. Rodeo Dr. This walkway next to my home -- there is another, even wider passageway on the other side of the building -- is amazingly built into the foundation of the house next door -- beginning with the garage wall then extending all the way back, wending around the already protruding chimney and continuing beyond. This walkway literally adjoins the entire north wall of this structure becoming an adjunct and integral part of that side of the building -- all of it now little more than one foot from my property!

Codes ignored, this massively sized structure squeezed into a modestly sized lot is growing ever more scandalously inappropriate to its site -- and to the neighborhood.



Marshall Flaum

MARSHALL FLAUM PRODUCTIONS, INC.

301 So. Rodeo Drive • Beverly Hills, California 90212 310-553-5020 • Fax: 310-553-0352

December 14, 2008

To: Mr. David Yelton
Ms. Michelle McGrath

From: Marshall Flaum

QUESTIONS THAT WAKE ME IN THE MIDDLE OF THE NIGHT:

1. When Ms. McGrath visited my home almost a year ago and spread out the building plans for 305 S. Rodeo on my dinning room table to prove that the structure was being built to code - and it was, therefore, futile for me to complain further, did she or did she not know that the garage was grossly and incredibly 38 feet in violation of the code? It is particularlyy troublesome that the garage was discussed at length. (See my letter of April 21, 2008 -) It is amazing that this City Planning professional could not realize the garage was not set back 38 feet from the front of the house at a time when it would have been comparatively simple to alter the construction.
2. Similarly, did the developer, architect, contractor and the rest of the owner's team draw up their plans for the building without referring to the building and zoning codes which would clearly indicate that the garage, at least, would be in flagrant violation of the code (along with other lesser violations) - or had they been led to believe everything was okay? And how had they been led to believe that?
3. Why has the chimney, admitted months ago to be in violation of the code, not been demolished? Six months ago, the owner and his wife came to see me at their request and informed me that Mr. Yelton had told them the chimney must come down because it was in violation of the code. (That was confirmed to me by Mr. Yelton the next day.) Mr. Mathalon, the owner, wanted to make a deal with me saying if I allowed the chimney to remain he would not build a 7 foot wall around his house - and he would not put in the pool next to my property as he planned, but next to the neighbor, on the other side so that she, rather than I would get the rats that would come with the pool's construction. (See my letter of August 25, 2008 -) As you know, I turned down his deal - but to this date, you have done nothing about the chimney - despite your declarations.
4. Why have I not had a single response from you on my claimss that the roof of 305 S. Rodeo - in perfect alignment with the encroaching chimney - is also in violation of the code. (See my letters of August 25 & September 18, 2008 -) I am totally disheartened by your lack of response to my entreaties all these many months. Whose interests do you serve? I have been an upstanding resident of Beverly Hills since 1962 - and have resided at 301 S. Rodeo for 42 years. Yet for the most part, I have been treated by you as an unwelcome, disrespected interloper. Perhaps you felt that by not responding your problem (and mine) would simply go away. But I don't think that's going to happen.

5. Are you ever going to address the problem that no part of the building next door honors the required 5 foot set backs from my property? (Incidentally, my prospective neighbors have unwittingly acknowledged that the entire wall separating us is completely on my property. After killing the ficus vines that covered both sides of the wall, leaving both sides filthy, they, of course painted only their side of the wall - but significantly failed to paint the top of the wall, 6 inches wide - correctly understanding that the wall was on my property.)

6. As the structure nears completion, are you going to be true to your word that there will be no Certificate of Occupancy issued until this whole matter is successfully resolved?

7. Why were the plans for this structure never presented to the Design Review Commission? During the day this building looks like a San Juan hotel and at night with all the exterior lights on undimmed, it doesn't even faintly resemble a residence. It looks like an establishment on the Las Vegas main strip. That's what you've done! You have brought Las Vegas to this serene Beverly Hills neighborhood - and my home, by this awful proximity, becomes part of this cheapened transformation. Perhaps you will take comfort from having produced another Beverly Hills tourist attraction comparable to those notorious nude statues that once glorified Sunset Boulevard.

8. Finally, where do we go from here? This whole situation has made me sick - seriously impaired my quality of life - and diminished the value of my home. At this stage of the game - I am now 83 years old - I can't bear the thought of becoming the central figure in a public controversy, but if I don't hear from you in two weeks, I will do whatever I must even if in the end, it proves that old adage, "you can't beat City Hall" - especially in the once glorious, gracious, and habitable Beverly Hills.



Marshall Flaum

cc: Mayor Barry Brucker
Nancy Krasne B. H. City Council
Noah Furie B. H. Planning Board
Madeline Weiss Design Review Commission

ATTACHMENT 3

CORRESPONDENCE FROM CITY PLANNER

COMMUNITY DEVELOPMENT
PLANNING
(310) 285-1123
FAX: (310) 858-5966



455 N. Rexford Drive
Beverly Hills, CA 90210-4817

October 31, 2008

Abe Kamara/AMT Enterprises, Inc.
120 El Camino Drive, #300
Beverly Hills, California 90212

RE: 305 South Rodeo Drive

Dear Mr. Kamara:

This letter is written in reference to the single family residential development project at 305 South Rodeo Drive in Beverly Hills for which you are listed as the project applicant. The project does not currently comply with the Beverly Hills Municipal Code with regard to Zoning (BHMC Title 10, Chapter 3). It is the applicant's responsibility to ensure the project is built in compliance with the City's Codes, including the Zoning Code. It is the City's expectation that all aspects of the project that do not conform with the City's Zoning Code will be corrected. The City has identified the following non-conforming zoning issues (municipal code sections attached):

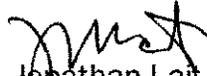
- North Side Chimney Encroachment – The chimney at the north side of the subject property extends into a required setback and must be reduced by 12" (1-foot) to meet zoning requirements (See BHMC Section 10-3-2409).
- Garage Entrance - Pursuant to BHMC Section 10-3-2416 "Garage Entrance Restrictions," Subsections B and D, "if the vehicular entrance to a garage is located less than thirty eight feet (38') behind the front setback line, then the entrance shall be perpendicular to the front lot line" except as may be modified by a Central R-1 Permit issued pursuant to BHMC Section 10-3-2450. The garage as built on the subject property does not conform to zoning requirements as it is located less than 38' behind the front setback line and is parallel, rather than perpendicular to the front lot line.

October 31, 2008
Page 2 of 2

While the north side chimney would need to be corrected to meet Code, you may apply for a Central R-1 Permit to request a modification from the vehicular entrance width and orientation requirements set forth above. This is a discretionary application, meaning it requires a public hearing before the Planning Commission and may be appealed to the City Council by any interested party. There is a fee associated with the application, which is \$9,319.66.

If you have questions about the process to reconstruct the north side chimney in compliance with the Zoning Code, please contact Building Inspection Manager David Yelton in the Community Development Department at (310) 285-1154. For questions about applying for a Central R-1 Permit to allow the garage on the subject site with its current orientation, please contact Principal Planner David Reyes at (310) 285-1164. I too am available should you want to meet and discuss this matter further; I can be contacted at (310) 285-1118.

Sincerely,



Jonathan Lait, AICP
City Planner



Jonathan Lait, AICP, Assistant Director / City Planner
Community Development Department

March 9, 2009

Mitchell Dawson, Attorney
Dawson Tilem & Gole
9454 Wilshire Boulevard
Penthouse
Beverly Hills, CA 90212

Re: Construction Violations at 305 S. Rodeo Drive

Dear Mr. Dawson:

This letter serves to follow up on prior telephone conversations and meetings that have occurred over the last several months between city staff and with you as representative to the property owners at the subject address.

As previously discussed, new construction at the subject property does not comply with city regulations in two important instances:

1. The north side chimney encroaches into the required sideyard setback 12 inches further than permitted in the Beverly Hills Municipal Code (Section 10-3-2409).
2. The garage entrance and garage door was constructed parallel to and facing S. Rodeo Drive, which is a violation of Beverly Hills Municipal Code Section 10-3-2416.

Both of the above cited violations must be remedied. Item 2 on the list may be remedied with the submittal and discretionary approval of a Central R1 Permit (Beverly Hills Municipal Code Section 10-3-2450). This permit is reviewed by the Planning Commission and is subject to appeal. Appeals are considered by the City Council. Failure to receive discretionary approval will require the garage to be re-oriented or reconstructed in a manner that complies with code.

Moreover, it has come to our attention that your clients may be occupying the residence without the benefit of a (temporary) Certificate of Occupancy. If substantiated, this is a matter of paramount concern for the city and requires immediate resolution. A building inspector will be visiting site shortly to verify and identify what actions may be required to remedy this situation, as appropriate.

Please contact David Yelton, Building Inspection Manager at 310 285-1154 promptly to resolve these outstanding issues.

Sincerely,



Jonathan Lait, AICP, Assistant Director of Community Development / City Planner

cc: Anne Browning-McIntosh, AICP, Interim Director of Community Development
George Chavez, Assistant Director of Community Development / Building Official
David M. Snow, Assistant City Attorney
David Reyes, Principal Planner



Jonathan Lait, AICP, Assistant Director / City Planner
Community Development Department

March 11, 2009

Marshall Flaum
301 S. Rodeo Drive
Beverly Hills, CA 90210

Subject: 305 S. Rodeo Drive

Dear Mr. Flaum:

This letter provides an update to the complaint you filed concerning the subject property. The City has identified two issues with the new home construction at 305 S. Rodeo Drive. Specifically,

1. The north side chimney encroaches into the required sideyard setback 12 inches further than permitted in the Beverly Hills Municipal Code (Section 10-3-2409).
2. The garage entrance and garage door was constructed parallel to and facing S. Rodeo Drive, which is a violation of Beverly Hills Municipal Code Section 10-3-2416.

The property owner's representative has been contacted and instructed to remedy these two violations. The second item identified above may be remedied with the submittal of an application, subject to a noticed public hearing and approval from the Planning Commission. If the owners of the subject property apply for such permit, you will be contacted and noticed of any hearing scheduled before the Planning Commission. Decisions of the Planning Commission are appealable to the City Council. No application has been submitted as of the date of this letter.

As these two issues do not present any life safety hazards to potential occupants or the general public, the city may permit temporary occupancy of the home under certain conditions. No final inspection, approval, or certificate of occupancy will be issued until these two outstanding violations are remedied.

City staff continues to monitor this situation and will keep you apprised of further city action. In the meantime, if you have further questions or like additional clarification, please do not hesitate to contact David Yelton, Building Inspection Manager at 310 285-1154, or by email at dyelton@beverlyhills.org. You may also contact me if you need further assistance.

Sincerely,



Jonathan Lait, AICP, Assistant Director/City Planner

cc: Anne Browning-McIntosh, AICP, Interim Director of Community Development
George Chavez, Assistant Director of Community Development/Building Official
David M. Snow, Assistant City Attorney
David Yelton, Building Inspection Manager
David Reyes, Principal Planner

ATTACHMENT 4

TEMPORARY CERTIFICATE OF OCCUPANCY

CITY OF BEVERLY HILLS

DEPARTMENT OF COMMUNITY DEVELOPMENT
BUILDING AND SAFETY

CERTIFICATE OF OCCUPANCY

Permit No: **BS0753529**

Date issued: **November 30, 2007**

Address: **305 S. RODEO DR., BEVERLY HILLS, CA. 90212**

Occupancy Group & Division:

R-3

Building Type:

V/N

Use: **TWO-STORY SINGLE FAMILY RESIDENCE. BUILDING IS FULLY SPRINKLERED.**

ACTUAL BUILDING HEIGHT: 30' ABOVE AVERAGE NATURAL GRADE.

ACTUAL FLOOR AREA: 4,570 SQ. FT., ALLOWABLE FLOOR AREA: 4,570 SQ. FT.

5 BEDROOMS, 4 BATHROOMS, 1 POWDER ROOM.

3 PARKING SPACES REQUIRED, 3 PARKING SPACES PROVIDED.

SETBACKS REQUIRED: FRONT= 25', N. SIDE=5', S. SIDE=9', REAR=29'.

SETBACKS ACTUAL: FRONT= 25', N. SIDE=5', S. SIDE= 9', REAR=32'.

BUILDING APPROVED AS A TRACT-1, SPANISH COLONIAL STYLE.

ASSESSOR'S PARCEL NUMBER: 4328029002.

PLANNING CASE NUMBER: PL0756704.

Owner:

SIDNEY AND TRACY MATHALON

Owner's Address:

**305 S. RODEO DRIVE
BEVERLY HILLS, CA. 90212,**

To the best of undersigned's knowledge the above described building was constructed in compliance with the Municipal Codes and other applicable codes in effect at the time the Building Permit was issued. The building is hereby certified for the occupancy listed herein.

The Certificate of Occupancy shall be posted in a conspicuous place on the premises.



Date:

April 29, 2009

Status:

Temporary

By:

Department of Building & Safety

RESOLUTION NO. 1555

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS CONDITIONALLY APPROVING A CENTRAL R-1 PERMIT TO ALLOW A GARAGE ENTRANCE TO FACE THE STREET AND BE LOCATED LESS THAN 38-FEET FROM THE FRONT SETBACK LINE FOR PROPERTY LOCATED AT 305 SOUTH RODEO DRIVE

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

Section 1. Mitchell Dawson, applicant on behalf of the property owners, Sidney and Tracy Mathalon (collectively the "Applicant"), has applied for a Central R-1 Permit to allow after the fact approval to keep an attached garage in its existing location, which is less than 38-feet from the front setback line and facing the street. A new two story single-family residence has recently been constructed at the 305 South Rodeo Drive ("subject property") and the detached garage was inadvertently approved on the building permit and constructed in violation of the zoning ordinance.

Beverly Hills Municipal Code Section (BHMC) 10-3-2416 B states that if the vehicular entrance to a garage is located less than thirty eight feet (38') behind the front setback line, then the entrance shall be perpendicular to the front lot line. However BHMC Section 10-3-2450 (A) authorizes the Planning Commission to issue a Central R-1 Permit to establish the location and orientation of garage entrances in the central area of the City, provided that certain findings can be made.

Section 2. 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 Implementation Guidelines (California Code of Regulations, Title 14, Sections 15000, *et seq.*), and the City’s Local CEQA Guidelines. The subject project is categorically exempt from the provisions of the California Environmental Quality Act pursuant to Class 3, Section 15303(a) of the State Implementation Guidelines (New Construction or Conversion of Small Structures), which exempts the construction of single family homes in urbanized areas. The subject project relates to the orientation of garage doors toward the public street and is connected to and associated with the construction of a new single family residence, and a Class 3(a) “new construction of second dwelling unit in a residential zone” Categorical Exemption has been issued in accordance with the requirements of Section 15303(e) of the Guidelines.

Section 3. The Planning Commission conducted a duly noticed public hearing on May 28, 2008, at which time oral and documentary evidence was received concerning the application.

Section 4. The subject property is located on the west side of the 300 block of South Rodeo Drive, between Gregory Way and Olympic Boulevard. The property is the second lot south of Gregory Way. The street is zoned single family (R-1.5X) and is in the Central Area of the City, south of Santa Monica Boulevard. The subject property is surrounded by existing one- and two-story single-family homes, which for the most part are comprised of older

residential structures.

The subject property is 7,680 square foot in area and is improved with a new, 4,570 square-foot, two-story, single family residence of a Spanish Mission Revival design and includes an attached two car garage located at the northern portion of the front of the residence facing the street. The façade of the main residence maintains the required 25 foot front yard setback and as designed is modulated with varying roof heights. The entrance to the garage is setback an additional two feet (2') from the setback line. Along the southern side property line, the residence exhibits a nine-foot setback for the entire length of the residence. The northern side property line setback is five feet. In the rear, the property has a swimming pool and landscaping and a thirty-two foot setback (required is 29 feet) from the rear property line.

The subject property is surrounded by existing one- and two-story single-family homes, which for the most part are comprised of older residential structures of a smaller size than the subject residence. There are a total of 24 single family homes along this block (12 on each side of the street). Of the total, five residences (approximately 17%), including both one and two-story, have garage entrances at the front setback line that are oriented toward the street, similar to the subject request.

Section 5. In accordance with the requirements of Beverly Hills Municipal Code Section 10-3-2450 (A), in reviewing the application for the Central R-1 Permit to allow a garage entrance to face the street and be located less than 38-feet behind the front yard setback

area, the Planning Commission considered whether the proposed development will have a substantial adverse impact on:

- (1) The scale and massing of the streetscape;
- (2) Neighbors' access to light and air;
- (3) Neighbors' privacy;
- (4) The garden quality of the city;

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

6.1. As proposed, the Project will not have a substantial adverse impact on the scale and massing of the streetscape. The garage as designed and built is oriented toward the street/front lot line rather than being perpendicular to the front lot line and is integrated within the main residence rather than being a separate accessory structure. The main residence is just under the maximum square footage allowed by Code which is in keeping with the majority of new residences built in the City. However, it is larger than the neighboring properties which were all originally built in the 1920's or 1930's with the exception of one house that was built in 1991. The design features of the residence including modulated façade, multiple roof heights, human scale single front door, human scale windows and garage opening serve to help to soften the appearance of scale and mass of the residence. The garage door is scaled appropriately and does not add to the scale and mass of the streetscape. In addition, five other residences on the same block also have similar two-car garages that are located at the front setback line and are oriented to the front lot line. While the main residence is larger in scale, it does not appear that

the garage orientation has a substantial adverse impact on the scale and massing of the streetscape.

6.2. As proposed and conditioned, the Project will not substantially impact the neighbors' access to light and air. The garage that is the subject of the request is located at the ground level of the residence and does not extend into any required setbacks. The overall height and location of the main residence would remain unchanged regardless of the orientation of the garage door. Therefore it is not anticipated that the orientation of the garage door to the front lot line rather than perpendicular to the front lot line would generate any adverse impacts related to the neighbors' access to light and air.

6.3. As proposed and conditioned, the Project will not have a substantial adverse impact on neighbors' privacy. The proposed garage door is oriented to the front lot line away from the neighbors and access to and from the main residence via the garage is not anticipated to result any impacts on the neighbors' privacy. Therefore as proposed and conditioned, it is not anticipated that the orientation of the garage to the front lot line would have an adverse impact on the neighbors' privacy.

6.4. As conditioned, the proposed Project will not adversely affect the garden quality of the city. As part of the application for Design Review, a landscape plan was required and in accordance with that plan, the entire front yard has been extensively landscaped with the exception of the driveway to the garage. The approved landscape plan includes an appropriate mix of shrubs, ground cover and trees that add to the garden quality of the City. With the garage and driveway as designed, the property's southern side lot line has been landscaped as indicated

on the Planting Plan dated August 21, 2007. This side lot line set back is required to be 9-feet for the first 38-feet of the lot depth then may be reduced to 5-feet for the remainder of the lot. This 9-foot setback area can accommodate a car, if the area were to be paved, which could detract from the garden quality of the City. As conditioned, as long as the garage area is used for parking purposes, the southern side property setback area shall remain landscaped and shall not be paved. Therefore, as proposed and conditioned, the orientation and location of the garage will not have an adverse impact on the garden quality of the City.

Section 7. Based on the foregoing, the Planning Commission hereby grants a Central R-1 Permit and Second Unit Use Permit subject to the following conditions:

1. The project shall be built in substantial conformance to the plans submitted to and reviewed by the Planning Commission at the 5/28/09 meeting.
2. The garage shall be maintained for covered vehicular parking use only. No habitable use of the garage shall be permitted.
3. The required southern side yard setback landscaping shall be maintained and no paving shall be installed along this area.
4. No walls or fences shall be permitted in the required front yard setback facing the street.
5. 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 Central R-1 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 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 Central R-1 Permit 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 Central R-1 Permit.

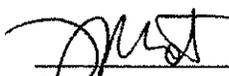
Section 8. The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and his certification to be entered in the Book of Resolutions of the Planning Commission of the City.

Adopted: **MAY 28, 2009**

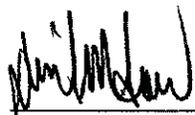


Nanette H. Cole
Chair of the Planning Commission of the
City of Beverly Hills, California

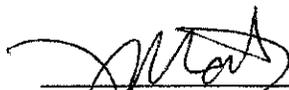
Attest:


Secretary

Approved as to form:


David M. Snow
Assistant City Attorney

Approved as to content:


Jonathan Lait, AICP
City Planner

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS.
CITY OF BEVERLY HILLS)

I, JONATHAN LAIT, Secretary of the Planning Commission and City Planner of the City of Beverly Hills, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 1555 duly passed, approved and adopted by the Planning Commission of said City at a meeting of said Commission on May 28, 2009, and thereafter duly signed by the Secretary of the Planning Commission, as indicated; and that the Planning Commission of the City consists of five (5) members and said Resolution was passed by the following vote of said Commission, to wit:

AYES: Commissioner Yukelson, Vice Chair Bosse, and Chair Cole.

NOES: Commissioners Corman and Furie.

ABSTAIN: None.

ABSENT: None.



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