



## AGENDA REPORT

**Meeting Date:** July 21, 2009

**Item Number:** D-1

**To:** Honorable Mayor & City Council

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

**Subject:** APPEAL OF THE ARCHITECTURAL COMMISSION'S DECISION DENYING ARCHITECTURAL REVISIONS TO A PREVIOUSLY APPROVED 13-UNIT CONDOMINIUM BUILDING LOCATED AT 155 NORTH HAMILTON DRIVE.

**Attachments:**

1. Appeal Petition
2. BHMC Section 1-4-105

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### **RECOMMENDATION**

It is recommended that the City Council schedule an appeal of the Architectural Commission's decision denying architectural revisions to a previously approved 13-unit condominium project at 155 North Hamilton Drive for September 15, 2009.

### **DISCUSSION**

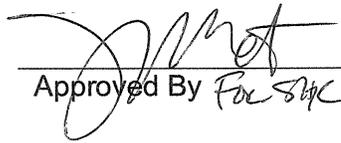
On May 20, 2009, the Architectural Commission denied architectural revisions proposed for the exterior of a 13-unit condominium building located at 155 North Hamilton Drive. The Architectural Commission originally approved the front façade of this condominium building at its February 9, 2005 meeting. Since that time the project has been fully constructed; however, the as-built project is not consistent with the plans approved by the Architectural Commission. To remedy the inconsistencies, the applicant submitted an application to the Architectural Commission seeking approval of the as-built construction. After several meetings the Architectural Commission denied the requested architectural revisions. On June 2, 2009, the applicant filed an appeal of the Commission's decision.

**PROCESS**

Pursuant to Beverly Hill Municipal Code Section 1-4-105, the procedure for appeals of Architectural Commission decisions to the City Council is a two-step process. The matter is first placed on the Council agenda for review of the evidence presented in the appeal petition. If the evidence and information presented in the appeal is the same as was presented to the Architectural Commission, the Council can then set a public hearing to consider the appeal. However, if the appeal petition contains new information, the Council may order that the Commission rehear the matter. Importantly, the Code provides that the Council shall not permit oral testimony in its review and determination of the appeal materials and whether further consideration by the Commission should be required.

The appeal petition and letter prepared by the applicant's attorney is attached to this report as Attachment 1. Planning Staff and the City Attorney's Office have reviewed the appeal petition and do not believe that new information beyond that already considered by the Architectural Commission is presented therein. Therefore, staff recommends that the Council formally schedule this matter for a formal public hearing on September 15, 2009 to consider the appeal. At that time, staff will present the Council with an analysis of both the Commission's denial and the appeal petition as well as providing a recommended action.

Susan Healy Keene, AICP  
Director of Community Development



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Approved By *For SK*

**ATTACHMENT 1**

**APPEAL PETITION**

**APPEAL PETITIONS MUST BE FILED WITH THE CITY CLERK'S OFFICE WITHIN  
14 CALENDAR DAYS AFTER THE DATE OF THE DECISION**

APPEAL TO \_\_\_\_\_ COMMISSION OR CITY COUNCIL

PLEASE TYPE OR PRINT CLEARLY IN BLACK INK

6/2/09  
Date

In accordance with the appeals procedure as authorized by the provisions of the Beverly Hills Municipal Code, the undersigned hereby appeals from the decision of Architectural (Official, Board or Commission involved) rendered on May 20, 2009; which decision consisted of:

The grounds submitted for this appeal are as follows: (WARNING: State all grounds for appeal. Describe how decision is inconsistent with law. Use extra paper if necessary.)

- 1. Violation of BH 3-3010
- 2. Capricious & Arbitrary, w/o rational basis under California U.S. Constitution,
- 3. Exceeds Jurisdiction of Commission.
- 4. BH 10-3-3010 mandatory approval meeting the criteria

Denial of approval of 155 N. Hamilton in Beverly Hills

See Attached Memorandum

The undersigned discussed the decision being appealed with: Ryan Goltich & Donna Serex Planning Division

4 Hearings with Commission on 1/21, 3/18, 4/23, 5/20, 2009  
(Department Head(s) Involved) Date

It is requested that written notice of the time and place for the hearing on this appeal before the City Council be sent to:

James Montensen 3700 Wilshire suite 520  
Name Address Los Angeles, CA 90010

Signature of appealing party [Signature] 155 Hamilton Development LLC  
3700 Wilshire, Suite 520  
Address LA, CA 90010  
213-387-7414 213-387-8414  
Telephone Number & Fax Number

Fee Paid \$4,928.70 (For City Clerk's use) DATE RECEIVED

LOG NO. 19x09 Written Notice mailed to appellant:

Copies to: City Council, City Manager, City Attorney, Community Development/Planning  
Involved Department

RECEIVED  
CITY OF BEVERLY HILLS  
2009 JUN -2 P 12:29  
CITY CLERK'S OFFICE

1 James Mortensen CA BAR # 234364  
2 3700 Wilshire Blvd. #520  
3 Los Angeles, CA 90048  
4 PHONE: (213) 387-7414  
5 FAX: (213) 387-8414  
6 Attorney for 155 Hamilton Development, LLC (Developer)

7 CITY COUNCIL OF CITY OF BEVERLY HILLS

8 STATE OF CALIFORNIA

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APPEAL OF DENIAL BY  
ARCHITECTURAL COMMISSION OF

**MEMORANDUM IN SUPPORT OF  
APPEAL**

PROJECT AT :

**DATE :  
TIME :  
PLACE :**

155 North Hamilton Drive, Beverly Hills, CA  
(*VILLA FIORITA*)

20 **MEMORANDUM IN SUPPORT OF APPEAL**

21 **INTRODUCTION**

22 The current owners of the developer started to be come involved in the project in  
23 2007, obtained the temporary Certificate of Occupancy in June 2008 and took ownership in  
24 the fall of 2008 with the financial viability of the *VILLA FIORITA* at stake. Since the fall of  
25 2008, the present owners have been attempting to get the final architectural approval from the  
26 Architectural commission so that the final Certificate of Occupancy can be issued. Repeated  
27 appearances before the Architectural Commission over the last six months and the  
28 expenditure of tens of thousands of dollars to execute their specific requests has ended with  
29 the commission unanimously voting to deny approval over the recommendation of their own

1 staff to approve.

2 The denial was after the owners seriously examined and enacted most of the  
3 commission's suggestions at great expense or included them in the proposed plans. The  
4 owners offered to essentially surrender control of the look of the project to the commission.  
5 At the March meeting if they would just make a joint decision that the applicants could rely  
6 on so that the project could be completed and receive the certificate of occupancy. These  
7 changes have caused resulted in significant financial costs and delays and will require more  
8 still.

9 This project began in 2003. The project ran into significant difficulty because of  
10 excess water in the soil and many other problems that increased the cost and delayed the  
11 project.

12 At this time, the current owners have spend several hundred thousand dollars  
13 completing and correcting the building and with further investment obtained all building and  
14 safety approvals in the fall of 2008.

15 The real estate market had made the project nonviable if further delays and expense  
16 are incurred to acquire the certificate of occupancy because of the depressed sales and value  
17 of the project compared with the cost of completion, sale, and debt service. A bankrupt and  
18 abandoned project entangled in litigation will certainly look much worse than the planned  
19 project than the attractive and substantially completed building presently on the location. If  
20 this state of affairs ensues, it will certainly persist for a very long period.

21 After taking ownership, it was determined that there were several undisclosed  
22 problems with the project relating to the Architectural Approval :

23  
24 1: The prior owners had been in a dispute with the architect and as a result, he had not been  
25 involved in the project for several months.

26 2: The prior owners and architect had initially had many problems when the project plans  
27 were initially approved with the commission.

28 3: The prior owner's field manager and / or general contractor made design changes to the  
29 face of the building in terms of some of the precast trim and layout of faux shutters that they

1 did not get approved by the commission.

2 4: The architect had made an ambiguity on the plans. The front elevations shows the  
3 windows of the recreation room such that they could be interpreted as being flush with the  
4 face of the building. Actually they are set back over the garage drive way several feet. The  
5 leaves an opening over the garage gates that makes the building unsecured. That opening was  
6 filled with wrought iron bars matching the garage gate to resolve the security issue. The result  
7 is a classic and regal looking garage entrance that the architect and owners believe was he  
8 best solution to the ambiguity in the plans.

9 5: The hand trowled plaster color scheme was simplified during the course of construction.

10 6: A fountain in the entrance that had been included in the initial commission approval was  
11 eliminated.

### 12 THE GUIDELINES FOR APPROVAL

13 Even with the changes from the original approval, the project complies with the  
14 architectural guidelines and should have been approved by the commission. The commission  
15 also made several suggestions for changes to match the personal tastes of the commissioners  
16 that the applicants complied with and in reliance spent tens of thousands of dollars and the  
17 project was further delayed. Finally, despite the money and time spent to satisfy the  
18 commissioners' preferences, the commissioners unanimously denied approval over their  
19 staff's recommendation to approve the project at the May 20, 2009 meeting.

20 The architectural commission has jurisdiction only over what parts of the building are  
21 visible from a city street or right of way.

22 The guidelines for approval in Beverly Hills that the commission was required to  
23 follow are and were BH 10-3-3010 :

24 **(a) The plan for the proposed building or structure is in conformity with the**  
25 **good taste and good design and in general contributes to the image of Beverly Hills as a**  
26 **place of beauty, spaciousness, balance, taste, fitness, broad vistas and high quality.**

27 Although this guideline is rather vague as to the specifics, the building successfully  
28 complies by providing a beautiful building with amenities significantly over the general level  
29 of the surrounding buildings and neighborhood. It would be difficult for anyone to seriously

1 argue that Villa Fiorita is the best building on the street in the best condition with the best  
2 quality of exterior appearance in terms of its hand trowled Tuscan plaster, imported marble  
3 entrance fountain, custom wrought iron gate and balcony rails, massing and tower, and  
4 overall theme and design.

5 **(b) The plan for the proposed building or structure indicates the manner in**  
6 **which the structure is reasonably protected against external and internal noise,**  
7 **vibrations, and other factors which may tend to make the environment left desirable.**

8 The building is fully constructed in all relevant aspects relating to noise and  
9 vibrations. *VILLA FIORITA* was inspected by building and safety during construction and  
10 afterward to ensure it complies with all requirements of the city in terms of soundproofing,  
11 structural stability in terms of vibration. It passed all such inspections in the spring of 2008  
12 and was granted its temporary certificate of occupancy.

13 **(c) The proposed building is not in its exterior design and appearance of inferior**  
14 **quality such as to cause the nature of the local environment to materially depreciate in**  
15 **appearance and value.**

16 As noted above, *Villa Fiorita* is the best building on its street in terms of condition,  
17 appearance, and consistent theme. If anything, it has improved the general standard of its  
18 neighborhood and caused an appreciative effect on its neighbors property values. Please  
19 observe the photos in exhibit one which show *Villa Fiorita* in comparison to some of its  
20 neighbors. Please see Exhibit 1.

21 **(d) The proposed building or structure is in harmony with the proposed**  
22 **developments on land in the general area, with the General Plan for Beverly Hills, and**  
23 **with any precise plans adopted pursuant to the general plan.**

24 The project was approved in 2005 and its planned appearance has only changed in  
25 minor ways. The project was approved for its use and for the area in 2005 and does not  
26 conflict with the city's general land use plan or any specific land use plan promulgated by the  
27 city.

28 **(e) The proposed building or structure is in conformity with the standards of this**  
29 **code and other applicable laws insofar as the location and appearance of the buildings**  
and structures are involved.

1 As noted above, the building is substantially completed. It received approval as to it  
2 location and the character of the structure in 2005. In June of 2008 it had passed all plan  
3 checks and most significant inspections. At that time it received its temporary certificate of  
4 occupancy. It passed all remaining inspections in about October of 2008. *Villa Fiorita* has  
5 been verified by the city inspections that it is in full compliance with the building code and  
6 laws relating to appearance as early as September of 2008.

7  
8 **BH 10-3-3010 states that : If the criteria set forth in this section are met, the**  
9 **application shall be approved.**

10  
11 All of the changes and complaints of the Architectural Commission relate to personal  
12 taste items regarding the number of paint colors, their desire to have additional faux shutters  
13 installed, their dislike of the wrought iron garage gate, etc. All of these are essentially items  
14 of personal tastes. They do not identify any items that are not in compliance with codes and  
15 ordinances of the city. The complaints of the commission also focus exclusively on finished  
16 structures and areas and suggest that they might be changed in various ways. There is no  
17 indication that any part of the building is in conflict with any code or ordinance of the city  
18 relating to appearance or location.

19 **Attempt to Obtain Final Approval from Commission Staff**

20 In November and December of 2008, the current owners met with the architect, the  
21 architectural commission staff, and worked toward having the staff give final approval on the  
22 project and its variations from the original plans. This is the common procedure for projects  
23 with previous commission approval. The present owner had been trying to get an inspection  
24 from the staff for three months to verify the lowering of a transformer. The city had required  
25 that a green colored Con Edison transformer and concealed behind shrubbery be lowered into  
26 the ground to shorten its aspect by about 18" to make it less visible. This move required  
27 about \$25,000 and resulted in the transformer having to move downhill closer to the street.  
28 This eliminated any room for the shrubbery to be replaced between the sidewalk and the  
29 transformer.

1 In December, 2008, the staff informed the present owners that they would not give  
2 final approval. This required the present owners to ask the commission for approval of the  
3 variations from the original approval in 2005. Given plan submission deadlines, the next  
4 possible commission meeting to do this was January, 21, 2009. An examination of the  
5 meetings on the project shows that despite the project meeting all criteria for approval, the  
6 applicant went to great lengths to accommodate the commissions preferences. At the  
7 meetings, the architect and project were subjected to disparagement, open hostility, and ad  
8 hominem attacks related to the artistic design and the changes in construction by the  
9 previous owners of the project.

#### 10 **THE COMMISSION MEETING ON JANUARY 21, 2009**

11 After meeting with architectural commission staff personnel, resolving disputes of the  
12 previous owners with the architect, the present owners paid the architect to create “as built”  
13 plans and renderings. These were submitted to the commission previous to the meeting.

14 At the meeting, the staff report noted that the more prominent changes to the project  
15 were the deletion of some window surrounds, the reduction in the size of the molding around  
16 the entryway outside the front door, the removal of vents under the eaves of the tower roof (the  
17 venting was moved to the back of the tower for the elevator shaft), a faux trellis over the  
18 bridge was not installed, and the recreation room windows are now behind the upper part of  
19 the parking garage gate because of the security issue discussed above and the ambiguity in  
20 the plans. The actual location of the windows on the plans never changed.

21 The staff report recommended that the commission provide feedback to the applicants  
22 as to what changes they would like to see in the finished building, if any.

23 The architect appeared and addressed the commission. The architect noted that in  
24 2005, the commission objected to the ornate nature of the 2005 plans at that 2005 meeting  
25 and wanted the appearance of the project to be simplified and some of the detail eliminated.  
26 Most of the items eliminated from the 2005 plans were either specifically recommended by  
27 the commission in 2005 or were in line with the general recommendations of the commission  
28 included in the conditional approval or to simplify the appearance of the project as  
29 recommended by the commission.

1 The chairman strongly objected to the changes that were made during construction  
2 and noted that only two of the original commissioners were still on the commission.

3 Commissioner Pepp who was on the commission in 2005 stated that she never liked  
4 the project in 2005 and did not like it now. That she was very angry at the changes to the  
5 original plans and characterized the applicants as having just “disregarding the commission  
6 and doing whatever they wanted”. (It should be noted that the project desired by the original  
7 developers in 2005 was markedly different than the one approved but was changed  
8 considerably and many things were eliminated and changed at the request of the architectural  
9 commission in 2005 such as the elimination of an entire garage entrance.)

10 Commissioner Pepp went on to characterize *Villa Fiorita* as a “flat board” with no  
11 detail. She wanted changes to add detail on the face of the tower, objected to the garage gates  
12 and entrance,

13 Commissioner Meyers who had been on the commission in 2005 stated that the  
14 project looked better than the original plans because it was “less busy” and expressed a desire  
15 not to delay the project or require a lot of changes given the economy and terrible real estate  
16 market. He noted that any delays on a project like this are very costly and The chairman said  
17 that the commission wanted to assist in getting the building open so it could be put to use and  
18 not be bogged down any longer.

19 Commissioner Lang who was on the commission in 2005 stated that expressed a  
20 desire to make some changes through a subcommittee working with the applicant and noted  
21 that the commission only looked at the front side of the building and wanted changes on that.

22 Commissioner Rubins stated that the garage entrance looked like a “prison” and  
23 complained that the recreation room windows twenty feet behind the gate would be looking  
24 out from bars like a prison. During the coming meetings, three of the commissioners  
25 repeatedly disparaged the look of the building and repeatedly referred to the garage gates as  
26 “the cage”. The commission then sent the project to subcommittee for restudy.

27 **The Subcommittee**

28 The subcommittee recommended that the applicant add a fountain in the entranceway,  
29 add faux shutters to the tower, and dress up the gate to soften its look.

1 In response, the applicant prepared plans with several options in line with the  
2 suggestions of the commissioners. The options that were prepared included different faux  
3 window configurations on the tower and medallions, different trim arrangements, fountain  
4 options, different varieties of wrought iron trim to dress up the gate and the area over it in  
5 order to make it softer. An imported marble fountain was purchased and placed in the  
6 entranceway to restore the focal point as recommended by the subcommittee. A three color  
7 hand textured antique finish was prepared and for the commission's review per the  
8 subcommittees suggestions.

9  
10 **THE COMMISSION MEETING ON March 18, 2009**

11 The staff recommended that the commission give feedback on the options given and  
12 approve subject to conditions of what changes the commission thought were appropriate.

13 The areas of concern of the sub committee and the commission were addressed by the  
14 applicant as follows :

15 Commissioner Rubins complained that all three faux window options were too high  
16 and proposed that grate above the gate be removed and replaced with a hanging wall. To  
17 compensate for the darkness in the garage entrance, permanent lighting would be installed.  
18 This would leave the recreation room windows looking at the back of a blank wall.  
19 Commissioner Rubins referred to the gate as a prison and suggested that the solution was to  
20 frost the windows so that persons inside could not see out and use outside lights to make the  
21 inside of the window look like they did have a view to the outside.

22 Commissioner Rennet objected that the drain pipe plaster was not done well. This is  
23 despite the fact that the pipe was not visible from the street and therefore not in the  
24 commissions jurisdiction. He also suggested that the one single faux window be applied to  
the window instead of two.

25 At approximately 32 minutes into the audio record of the commission's review  
26 of the project, a commissioner can be heard to say "the hell with this", while the  
27 architect was addressing a question of the commission. After another half hour of  
28 criticism from the commission, it was sent back for restudy.

29 Commissioner Meyers suggested putting the same finish on the ground floor to the

1 fronts of the balconies to tie in the parts of the building to each other. He also preferred the  
2 option of having two faux windows on the tower, wanted to add a band on the tower on at the  
3 roof line, and adding precast across the bridge area. The commission generally agreed with  
4 these suggestions.

5 One of the commissioners commented that the several plants and planters were the  
6 “cheapest you could buy” and that obviously the owner did not want to fix anything. Possibly  
7 the HOA would realize that in the future and “fix” the building.

8 Approximately half of the commission wanted the gate dressed up and the other half  
9 commented that any embellishment would draw attention to the “jail”. The commission  
10 objected to any decorative iron work on the iron gate as an option for that reason. Other  
11 suggestions were to take out the iron work over the gate and replace it with a large pane of  
12 glass over the driveway or to replace it with a stucco wall that would block out the windows  
13 of the recreation room, both would be obviously unreasonable for safety, security, and  
14 aesthetics.

15 Again, *Villa Fiorita* was sent back for restudy.

16 **THE COMMISSION MEETING ON April 22, 2009**

17 Based on a drawing by commissioner Meyers, the applicant painted the balconies on  
18 the front of the building as suggested by commissioner Meyers and included four elevations  
19 for the front of the building showing options for addressing most of the suggestions of the  
20 commission.

21 Four options of faux windows on the tower were given, multiple options for the  
22 wrought iron work on the garage with and without decorative iron work. The new paint  
23 suggested was applied and shown on the plans. The precast trim on the bridge suggested by  
24 commissioner Meyers and original trellis on the bridge was shown as options. The  
25 commission was requested to pick whatever options they could reach agreement on and that  
26 the property owner would comply with whatever options for the various items the  
27 commission favored.

28 At this meeting, the commission expressed a desire to have the painting extended to  
29 the north, south and back side of the building. This was in contrast to the comments at the

1 January meeting where the commission stated that they were not concerned with the sides of  
2 the building, but only the front of the building. At this meeting, the commission noted that if  
3 they stood on La Cieniga, they could see over the intervening restaurant to the top of the back  
4 of the building and so they asserted jurisdiction over those sides too.

5 Also, for the first time, a commissioner objected to three galvanized zinc fireplace  
6 vents on an inside wall of the entrance way. Only part of one of these small vents is visible  
7 from the street. He believed that they had been newly added to the building since the last  
8 meeting and objected that they were not painted to match the wall.

9 These small vents are emitting the hot exhaust from the fireplaces in each  
10 condominium and cannot be painted because of their temperature when the fireplaces are in  
11 operation. The vents were installed when the building was built.

12 Commissioner Pepp was again under the impression that the recreation room was a  
13 residential unit and suggested that the grill over the garage gate be removed and bars be  
14 placed over the recreation room windows for security. Of course this would not secure the  
15 garage.

16 The commission ended by taking a "straw poll" on each item based on the options and  
17 elevations provided.

18 As to the faux windows on the tower, the commission had a majority in favor in two  
19 windows on the mid face of the tower - "option one".

20 As to the bridge, a majority was in favor of the precast molding - "option one".

21 As to the garage gate, the commission again referred to it as a "cage" several times  
22 and objected to any decoration or ornamentation but suggested that the wrought iron be  
23 replaced with glass. Since there were only six commissioners present, there was a tie on  
24 approving the garage gate as built.

25 The commission also wanted the painting to be done on all balconies on all floors and  
26 shown on the plans.

27 Chairman Rubins also wanted the fireplace vents on the inside of the entrance to be  
28 painted to match the wall.  
29

1                    **THE COMMISSION MEETING ON May 20, 2009**

2                    At the May 20, 2009 meeting, the applicant addressed the directions of the  
3 commission from the last meeting as follows :

4                    As to the faux windows on the tower, the 5 commission had a majority in favor in two 6 windows on the mid face of the tower - 7 "option one".	8                    The applicant provided a new elevation 9 drawing of the building proposing the faux 10 window arrangement favored by the 11 commission.
12                    As to the bridge, a majority was in favor of 13 the precast molding - "option one".	14                    The applicant incorporated the precast 15 molding option into the bridge area as 16 favored by the commission.
17                    As to the garage gate, the commission again 18 referred to it as a "cage" several times and 19 objected to any decoration or ornamentation 20 but suggested that the wrought iron be 21 replaced with glass. Since there were only 22 six commissioners present, there was a tie 23 on approving the garage gate as built.	24                    The applicant incorporated minimal 25 ornamentation into the garage gate as 26 suggested by the commission but did not 27 incorporate the commission's ideas to 28 suspend a large sheet of glass over the 29 driveway or suspend a wall in front of the recreation room windows.
30                    The commission also wanted the painting as 31 completed on the front of the building to be 32 done on all balconies on all floors and 33 shown on the plans.	34                    The applicant had the painter paint the sides 35 and back of the building on the balconies 36 and reflected this on the elevation drawing.
37                    Chairman Rubins also wanted the fireplace 38 vents on the inside of the entrance to be 39 painted to match the wall.	40                    The applicant check on the possibility of 41 painting these fireplace vents but found the 42 high temperatures during the use of the 43 fireplaces would make any paint peel from 44 the galvanized metal and discolor from the 45 heat.

46                    **The commission staff recommended approval of the project** conditioned on  
47 making the changes matching the submitted plans, because the applicant had substantially  
48 addressed all the requests of the commission.

49                    At the hearing, commissioner Cohen complained that no color renderings were  
50 submitted to show the paint color on the building. When it was pointed out that the  
51 commissioners had visited the actual building with the paint substantially completed on two  
52 or more occasions times, she commented that it was not possible to evaluate the look of the  
53 paint on the building from looking at the actual building.

54                    Commissioner Cohen also complained that a rain gutter down spout on the South side  
55 of the building was in a contrasting color to the wall and was not on the plans. (The architect

1 considered this immaterial for the plans and focused on the building itself.) What is  
2 interesting is that this down spout 1) was pre finished matching all the rain gutters and down  
3 spouts on all sides of the building, 2) Had been on the building for over a year with the other  
4 down spouts and rain gutters and was present for the multiple physical inspections and bus  
5 tours of the commission starting in January, 2009, and 3) is arguably not in the commission's  
6 jurisdiction since it is on the side of the building and not easily visible from the road without  
7 standing in traffic or very careful positioning. 4) This is the first time it was mentioned as a  
8 problem by the commission.

9 After some discussion, the commissioners unanimously voted to deny approval.

10 This appeal follows.

11 **CONCLUSION AND REQUEST FOR RELIEF**

12 155 Hamilton Development, LLC and its current owners ask the city council to  
13 approve building as presently built so that they can obtain their permanent certificate of  
14 occupancy. With this and luck, they can still preserve the project and prevent it from  
15 becoming another victim of the current real estate decline and thereby a legal, financial, and  
16 visual quagmire on the doorstep to the city. It is not proper for the commission to insert itself  
17 in place of the owner and architect to bully changes in appearance based on personal  
18 preference and deny approval of projects that comply with all applicable codes and  
19 ordinances. Not only is it not proper, it creates unnecessary costs in the untold millions of  
20 dollars for the owners and builders and interferes with the artistic visions of the architects on  
21 these projects. It makes Beverly Hills a much less desirable place to invest in, develop, and  
22 renovate properties.

23  
24 Most preferable, the applicant asks the city council to approve the project as built and  
25 requested of the commission at the January meeting, since it fulfills all the requirements for  
26 approval as discussed in the beginning of this memorandum.

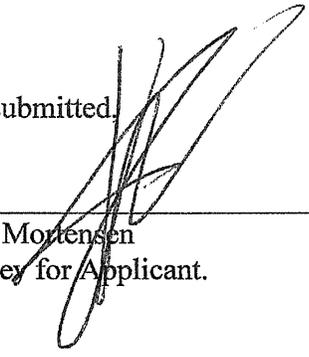
27  
28 Second most preferable, the applicant asks the council to approve the project without  
29 the faux windows on the tower. The owner and architect prefer the soaring look of the tower

1 with the unbroken expanse on the upper portion but inserted the faux windows on the plan  
2 because a majority of the commission indicated they would approve the project with that  
3 change, then denied approval.

4  
5 If the council does not approve one of the above options, then the applicant asks that  
6 the plan and elevation presented to the commission at its last meeting in May, 2009 be  
7 approved.

8  
9 Date : 8/2/09

Respectfully submitted,



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James Mortensen  
Attorney for Applicant.

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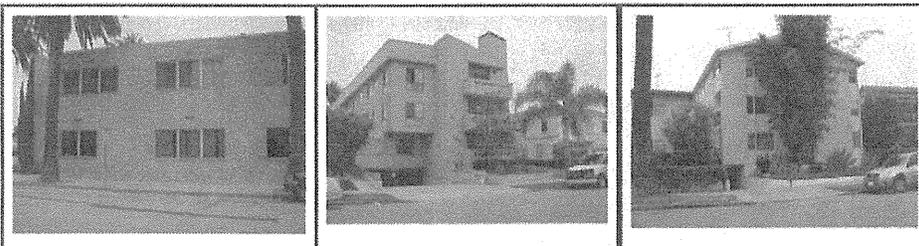
**EXHIBIT 1**

**VILLA FIORITA COMPARED WITH THE OTHER MULTIFAMILY BUILDINGS ON  
HAMILTON BETWEEN WILSHIRE AND SAN VICENTE**

**VILLA FIORITA**



**Other Multifamily Buildings on the Same Street**



**ATTACHMENT 2**

**BHMC SECTION 1-4-105**

## **Beverly Hills Municipal Code Section 1-4-105**

### **1-4-105: CONSIDERATION OF APPEAL PETITIONS:**

After an appeal petition is filed in accordance with this article, the city clerk shall place the matter on the council agenda for council action. Based on the appeal petition and the written material presented, the council shall determine whether to refer the matter back to the commission, board, or official rendering the decision pursuant to subsection A of this section or whether to grant a hearing on the appeal pursuant to subsection B of this section. The council shall not permit oral testimony in its determination under this section.

- A. If the council finds the facts in the appeal petition contain new and material evidence not previously presented to the board, commission, or official, the council may order that the board, commission, or official rehear the matter. Written notice of the rehearing shall be mailed to the appellant and to such other persons who have appeared and addressed the board, commission, or official at the prior hearing in connection with such matter, and mailing shall be at least ten (10) days before such rehearing, and such other notice as required by law for the previous hearing shall also be given.
  
- B. Except as provided for in subsection A of this section, the council shall set the matter for a hearing. At least ten (10) days prior to the hearing, written notice shall be mailed to the appellant and to other persons who appeared and addressed the board, commission, or official at the prior hearing on the matter, and such other notice as required by law for the previous hearing shall also be given. (1962 Code § 1-6.105)