

APPEAL APPLICATION

GENERAL INFORMATION: (Please print)

Date: June 18, 2012

Appellant: Prominent Victoria Corp. / c/o Odyssey Development Services

Mailing Address: 51 West Dayton Street

City: Pasadena

State: California Zip: 91105

Phone #: (day) 626.683.8159 (evening) 626.683.8159 Fax #: 626.683.2897

Contact Person: Burke Farrar Phone #: 626.683.8159

E-mail Address of Contract Person: BurkeFarrar@EarthLink.net

Applicant (if different from appellant): _____

APPEAL APPLICATION

Application # ^{PLN2006-00348} PLN2010-0469 ^{non-} Date of Decision May 29, 2012 Appeal Deadline June 18, 2012

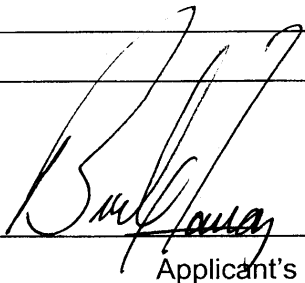
Property Address: 229-243 South Marengo Avenue

I hereby appeal the ^{non-} decision of the: Design Commission

The decision maker failed to comply with the provisions of the zoning ordinance in the following manner:

See attached. "Request for Appeal," Letter dated June 8, 2012 and Exhibit A - Reasons for Appeal

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CITY OF PASADENA



If necessary, please attach additional sheets

Applicant's Signature

June 18, 2012

Date of Application

Activity # _____

Application Fee: \$ _____

Date Received: _____

Appeal Hearing Date _____

Received by: _____



REQUEST FOR APPEAL

APPLICATION INFORMATION

Property Address: 229-243 South Marengo Avenue
Case Type (MCUP, TTM, etc.) and Number: Time Extension PLN2006-00348/PLN2010-00469
Hearing Date: May 29, 2012 Appeal Deadline: June 18, 2012

APPELLANT INFORMATION

APPELLANT: Prominent Victoria Corp., c/o Odyssey Development Telephone: [626] 683-8159
Address: Fifty-one West Dayton Street, Suite 200 Fax: [626] 683-2897
City: Pasadena State: CA Zip: 91105 E-mail: BurkeFarrar@EarthLink.net
APPLICANT (IF DIFFERENT): _____

I hereby appeal the decision of the:

- Hearing Officer
- Design Commission
- Historic Preservation
- Zoning Administrator (Environmental)
- Director of Planning and Development
- Film Liaison

REASON FOR APPEAL

The decision maker failed to comply with the provisions of the Zoning Code, General Plan or other applicable plans in the following manner (use additional sheets if necessary):

At a Special Hearing on May 29, 2012, the Design Commission failed to act on the time extension request. This time extension request was made pursuant to the provisions of Ordinance #7202. Two motions were presented, and both motions failed to obtain a majority vote of the Design Commission. In a letter from Mr. Leon White, Acting Principal Planner, June 8, 2012, a determination is made that this failure to act "is an appealable action, pursuant to the Zoning Code." *see attached letter and Exhibit A - Reasons for Appeal*.

Signature of Appellant

June 18, 2012
Date

* Official Use Only
PLN # _____ CASE # _____ PRJ # _____
DESCRIPTION: _____
DATE APPEAL RECEIVED: _____ APPEAL FEE: _____ RECEIVED BY: _____

Exhibit A
Reasons for Appeal
Time Extension PLN2006-00348/PLN2010-00469
229-243 South Marengo Avenue

By letter dated June 8, 2012 (attached), City staff alleges, contrary to PMC Section 17.72.040D, that the Design Commission's May 29, 2012 failure to act on our application for a time extension is a "decision" which must be appealed.

This letter is badly written and full of contradictory and totally illogical statements. For example, "The *failure* of the Design Commission *to act*, however, *is an* appealable *action*, pursuant to the Zoning Code." It is completely illogical and contradictory to conclude, as this sentence does, that a, "*failure... to act... is an... action.*"

Prominent Victoria Corporation has no choice but to file two appeals in order to protect its rights:

First, an appeal to the Board of Zoning Appeals, appealing the staff determination set forth in the letter that a *failure to act is an action* resulting in a "decision" as defined under the Zoning Code.

Second, an appeal to the City Council appealing the May 29 "decision," and the staff alleges that we have no approved time extension due to the Design Commission's failure to act.

We allege the Design Commission's failure to act results in an approval under the Permit Streamlining Act (Cal Gov't Code Sections 65920-64). A failure to act cannot nullify the rights granted to applicants under the Act.

We are only appealing to the Board of Zoning Appeals and the City Council because the staff opined that we must appeal in the June 8 letter. Our position is that the staff determination that a *failure to act is an action* resulting in a "decision" is absurd on its face and an obvious violation of the PMC. We also assert that the City Council has no jurisdiction to hear an appeal of a failure to act. Only "decisions" can be appealed, and the Design Commission's failure to act on May 29, 2012 is not a "decision," as defined in the PMC.



PLANNING DEPARTMENT
PLANNING DIVISION

June 8, 2012

Odyssey Development Services
51 West Dayton Street, Suite #200
Pasadena, Ca. 91150

ATTN: Burke Farrar

RE: NOTICE OF DECISION

Application for Time Extension

Consolidated Design Review

**Project: 229-247 South Marengo Avenue—21 Unit Multi-family Complex
PLN2006-00348/PLN 2010-00469**

Dear Mr. Farrar:

We are in receipt of the letter from your attorney, Ann H. Higginbotham, to the City Attorney, dated June 1, 2012, in which Ms. Higginbotham asserts that your application has been deemed approved, pursuant to the Permit Streamlining Act. Specific notice that your application could be deemed approved by operation of law is a prerequisite to such a claim (Cal. Gov't Code § 65956; see also Mahon v. County of San Mateo (2006) 139 Cal.App.4th 812). The public notice for the Design Commission hearing, however, did not contain the prerequisite language, nor did you avail yourself of the ability to provide such language as allowed in Cal. Gov't Code § 65956(b). Accordingly, your application is not deemed approved pursuant to the Permit Streamlining Act.

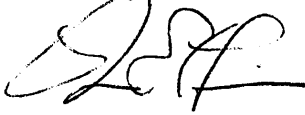
On May 29, 2012 at a public hearing in the Permit Center Hearing Room, the Design Commission, acting under the provisions of §17.61.030 of the Pasadena Municipal Code, reviewed your application for a Time Extension for the proposed new construction of a new 21-unit multi-family residential project at the above-referenced address. Two motions to approve or disapprove the project were voted on at this hearing by the commission but no consensus was reached. The failure of the Design Commission to act, however, is an appealable action, pursuant to the Zoning Code. Therefore, the appeal period, as referenced below, is applicable for this project. The appeal period has been extended, in this instance, in order to give the Planning Department additional time to analyze the unique facts presented by the Design Commission with regard to this action.

Effective Date Call for Review Appeal

You are hereby notified, therefore, that **this decision, confirming the inaction of the hearing body and the lack of approval for the time extension for this project, becomes effective on Tuesday, June 19, 2012.** Before the effective date, the City Council may call for a review of

this decision. If the Council calls for a review of this decision, it becomes void, and the application will be considered as a new item. In addition, you or any person affected by this decision may appeal it to the City Council before the effective date by filing an appeal in writing with the City Clerk (room S228, City Hall, 100 N. Garfield Avenue) along with an appeal fee of \$262.65. The last day to file an appeal is **Monday, June 18, 2012**. Appeals must cite a reason for objecting to a decision. Please note that appeals and calls for review are conducted as de novo hearings, meaning that the lower decision is vacated and the entire decision is reviewed anew. Please contact **Mark Odell at (626) 744-7101** to find out if any appeal has been filed or a call for review has been requested for this project or to further discuss the issues raised in this letter.

Sincerely

A handwritten signature in black ink, appearing to read 'L. White', written over a horizontal line.

Leon White
Acting Principal Planner

xc: Case File; Mayor and City Council; District (6) Field Representative; City Clerk; Director of Planning; Tidemark
Cases PLN2006-00348/PLN2010-00469