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Tony Fischer
Attorney at Law
2208 Anacapa Street
Santa Barbara, CA 93105
Tel: 805 563 6784
fischlaw@cox.net

April 26, 2012

Mayor Helene Schneider and Councilmembers
City of Santa Barbara
City Hall
Santa Barbara CA 93101

Re: Fresh & Easy project at 336 N. Milpas Street. Appeal of ABR (April 16, 2012) and staff approvals for "as-built" wall over six feet maximum as limited by Mayor and City Council and waiver of minimal landscape requirements (from 5 feet to 3.5 feet) on east and south property lines.

Dear Mayor Schneider and Council Members:

This Appeal is filed on behalf of the Mary Z. Frangos Trust. The Trust owns the property at 318-320 North Milpas and the property across the street at 325 North Milpas. The 318-320 North Milpas property is immediately adjacent on Milpas Street to the Fresh and Easy Neighborhood Market project proposed at 336 N. Milpas Street, Santa Barbara, CA.

Last summer this project came before the City Council on appeal of changes after final ABR and staff approval for the proposed Fresh & Easy project which severely crowded the Milpas Street sidewalk and enclosed the parking lot with block walls eight feet tall. After a site visit to the sidewalk and site, the City Council required Fresh & Easy, to move the building a minimum of two feet from Milpas Street (hopefully more) and to reduce the block wall on the south property line to a maximum height of six feet. (Exhibit 1) Thereafter, drawings were submitted and approved by staff which relocated the building the minimum two feet from Milpas Street and reduced the south wall to a maximum of 6 feet.

In that review process, ABR staff and Fresh & Easy took the position that movement of the building more than two feet would severely squeeze the parking lot behind the building and would require reducing the landscaping which was already the minimal allowed. Staff repeatedly informed the neighbor in numerous emails and in-person communications that it had achieved the maximum building movement possible and that it would strictly enforce all the conditions of approval including the wall height. As you know, the Building Official did authorize construction to begin in early October 2011 before the building permit was ready to be issued and before approvals were obtained from public works and others. The Building Permit was issued in November 2011.

Unknown to the neighbor, when the Applicant asked in December 2011 for approval to pour the concrete footings for the walls on the south and east sides, the wall locations were moved from the property line by 18" on the east side and 21 inches on the south side. The net effect is the reduction of the landscaped areas along the two walls by approximately 30%. There was no notice to the neighbor to the south and the approval of the relocation was not recorded by the Building Inspection team in any public record.

When the contractor was building the block wall in December of 2011, it appeared, based upon the scaffolding, the amount of blocks at the site, and comments by the workers that the height limits on the property line would be violated. That concern was communicated to the building inspection staff. Eventually, a building inspector issued a correction notice (Exhibit 2) which requested the Contractor to provide a survey to be used to verify that the conditions of approval would not be violated. The Building Official overruled that request. He allowed the construction to proceed. He stated in an email with copies to council members that he would insist upon full compliance with the approved plans. (Exhibit 3) As he noted, page C-7 of the approved plans included the following statement:

"WALL HEIGHT = 6' MAX. FROM EITHER ADJACENT
PROPERTY OR FRESH & EASY PROPERTY. CONTRACTOR TO
VERIFY ADJACENT ELEVATIONS FOR FINISHED WALL HEIGHT."

The neighbor's concern with the height of the walls continued. In review of the drawings and the actual construction, it became clear that the block wall on the south side of the parking lot had been moved 21" from the location shown on the approved plans. When questioned about this discrepancy, the Building Official indicated he understood the distance to be minimal, approximately a foot.

In anticipation of the ABR hearing, the Applicant stated that for the movement of the wall was at the request of the neighbor. That is false. The neighbor did not discuss the relocation of the wall and was unaware of the relocation until after it was built.

The Applicant's stated reasons for the reduction in landscaping are also not consistent with facts. As the site visit will confirm, the property owner to the east has a driveway. It extends into the block less than one-third of the width of the Fresh & Easy lot. Even if the accommodation of the neighbor is a basis to waive a code requirement, that explains only a portion of the east wall; Part of the property to the east (behind the gate in the wall) is actually owned by Fresh & Easy and there was and is no reason to not follow the property line or to provide additional landscaping to make up for the reduction. The remainder of the property on the east side is fenced by an approximately 8 foot tall wooden fence and the location of the block wall creates an 18' wide space between the fence and the block wall. (Exhibit 4). If ABR had done a site visit, these facts would have been obvious.

The height of the block wall on the south side does exceed six feet. That was confirmed by Mr. Limon, Planning Process Supervisor, after the ABR hearing. He has yet to produce the actual

record of the measurements. The height, according to **Section 28.04.140 of the Municipal Code**, is measured at all points from the natural or finished grade, whichever is lower. The drawing submitted by the Applicant to the ABR merely states that the height is 6 feet but does not set forth the actual "as built" heights which staff confirms are higher.

The ABR was encouraged by Mr. Limon to waive the landscape requirements. At the last minute, at the urging of Mr. Limon, it voiced a finding to support the waiver of the amount of landscaping required by the Code. It approved a finding that is simply not logical: the smaller amount does the same as the larger amount. The SBMC requires much more.

"Santa Barbara Municipal Code Section 28.90.050 Landscaping and Lighting.

1. GENERAL. In an effort to encourage the development of more attractive parking lots in commercial, industrial, and multiple-family use areas, to provide for attractive and durable screening between such parking lots and adjoining areas, and to lessen the effect of commercial and industrial uses upon adjoining residential uses, the following requirements shall be met. Landscape plans shall be prepared by an architect or landscape architect registered in the State of California, unless said requirement is waived by the Architectural Board of Review, or the Historic Landmarks Commission if the property is located within El Pueblo Viejo Landmark District or another landmark district or if the structure is a designated City Landmark, in projects containing fewer than twenty (20) parking spaces. The landscaping standards set forth below are required for all parking areas, parking lots, automobile service stations and automobile service stations/mini-markets except for one- or two-family dwellings.

.....

3. PERIMETER PLANTERS. Where such parking areas and/or driveways abut a street, a planting area at least five (5) feet in depth shall be provided and an ornamental wall or fence three-and-one-half (3-1/2) feet in height shall be provided, except if the planting area is eight (8) feet or greater in depth and suitable screen planting is provided, the ornamental fence or wall may be omitted. **Where parking areas or driveways abut a neighboring building or a property line not adjoining a street, a planting area at least five (5) feet in depth shall be provided.** The Architectural Board of Review, or the Historic Landmarks Commission if the property is located within El Pueblo Viejo Landmark District or another landmark district or if the structure is a designated City Landmark, **may reduce or waive the requirement regarding the five (5) foot planting area where alternative landscaping and designs are presented that result in landscaping and designs that are equally effective.**

4. INTERIOR PLANTERS. In addition to the perimeter planters, there shall be planting areas to relieve the expanse of paving. Said interior planters shall be at least four (4) feet in width, and shall be located in such a way that there will be not more than eight (8) parking spaces without an intervening planter. Said planters shall have trees and either shrubs or ground cover. The Architectural Board of Review, or Historic Landmarks Commission if the property is located within El Pueblo Viejo Landmark District or another landmark district or if the structure is a

Appeal of ABR approvals of 336 North Milpas,
Date: April 26, 2012
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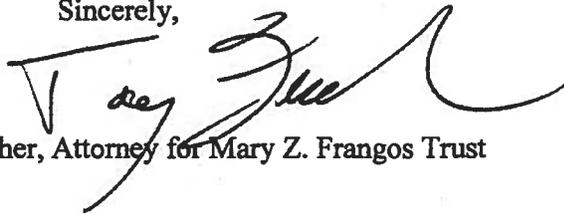
designated City Landmark, **may reduce or waive the requirement regarding the four (4) foot interior planter where alternative landscaping and designs are presented that result in landscaping and designs that are equally effective.” (Emphasis added.)**

The approval of a reduction in landscaping as proposed by staff and ABR sets a dangerous precedent that any project can reduce the amount of landscaping by 30% and the ABR and staff will find the lesser landscaping to be equal to the amount required.

It is noted that the agenda of the ABR for the April 16, 2012 meeting did not give notice to the public that ABR would be considering the approval of walls exceeding the height limit. It only mentioned the need to waive the amount of landscaping; although it did not indicate that the applicant was asking for approval of a reduction but without submitting “alternative landscaping and designs that are equally effective.”

We respectfully request that the Mayor and City Council require that the walls not exceed the permitted height and that the project be required to provide additional landscaping to meet the requirement which exists city-wide and to not water down the quality of development within the Milpas area.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tony Fischer', written over a printed name.

Tony Fischer, Attorney for Mary Z. Frangos Trust

With attachments:

1. Minutes of City Council June 7 2011
2. Correction Notice 1-3-2012
3. Estrella email 1-4-2012
4. East wall -- existing
5. Parking lot corner -- existing

Minutes of Santa Barbara City Council (partial) June 7, 2011

PUBLIC HEARINGS

23. Subject: Appeal Of The Architectural Board of Review Approval Of The Review After Final Of 336 North Milpas Street (640.07)

Recommendation: That the Council deny the appeal of Tony Fischer on behalf of the Mary Z. Frangos Trust, and uphold the Architectural Board of Review (ABR) approval of the Review After Final of the application of Fresh & Easy Neighborhood Market for changes to an entry tower, entry ramps, doors, and a roof parapet.

2011 JUN 07 CAR APPEAL OF ABR APPROVAL OF 336 NORTH MILPAS - 1.DOC
2011 JUN 07 CAR APPEAL OF ABR APPROVAL OF 336 NORTH MILPAS - 2.PDF
2011 JUN 07 CAR APPEAL OF ABR APPROVAL OF 336 NORTH MILPAS - 3.PDF
2011 JUN 07 CAR APPEAL OF ABR APPROVAL OF 336 NORTH MILPAS - 4.PDF
2011 JUN 07 CAR APPEAL OF ABR APPROVAL OF 336 NORTH MILPAS - 5.PDF
2011 JUN 07 CAR APPEAL OF ABR APPROVAL OF 336 NORTH MILPAS - 6.PDF
2011 JUN 07 CAR APPEAL OF ABR APPROVAL OF 336 NORTH MILPAS - 7.PDF

Documents:

- June 7, 2011, report from the Assistant City Administrator/Community Development Director.
- PowerPoint presentation prepared and made by Staff.
- Undated letter from Edward St. George.

Public Comment Opened:

5:46 p.m.

Speakers:

- Staff: Senior Planner Jaime Limon. Supervising Transportation Planner Steven Foley, City Attorney Stephen Wiley, Assistant City Administrator/Community Development Director Paul Casey.
- Appellant: Attorney Tony Fischer, Constantino Frangos.
- Applicant: Architect Sean Unsell; Randy Jones and Linda Haynes, Fresh & Easy Neighborhood Market.

Public Comment Closed:

7:03 p.m.

Motion:

Councilmembers House/Rowse to approve the recommendation, denying the appeal and upholding the Architectural Board of Review's project approval, but refer the project to Staff for compliance with the following additional conditions:

- 1) reduce the proposed 8-foot wall at the perimeter of the site to 6 feet along the property line shared with 318-320 N. Milpas Street; and
- 2) increase the width of the sidewalk along the Milpas Street frontage to the maximum extent feasible given the site constraints and the building design reflected in the working drawings, but in any case at least a minimum of 2 feet at the street tree pinch points.

Vote:

Unanimous voice vote.

[Exhibit 1]

CORRECTION NOTICE



City of Santa Barbara
Building & Safety Section
630 Garden Street
(805) 564-5485

Inspector's Office Hours - 7:30-8:30 A.M. & 3:30-4:30 P.M. Daily

ISSUED TO: 336 N Milpas
(JOB ADDRESS/PERSON)

- Obtain permits before continuing with work. Cease Work
- Before the work or installation authorized by a permit can be approved, concealed, energized, or used, the following deficiencies shall be corrected. Call for reinspection when all corrections have been made.

BUILDING ELECTRICAL GRADING PLUMBING
HEAT-REFRIG. BOILERS ELEVATORS OTHER

① ok to grow 12' ht
N. 1/2 of E side site
wall.

② Contractor to provide
finished grade survey
prior to 2nd ht
in order to ensure
that walls do not
exceed max height
required by approved
plans

③ Revision to be issued
prior to next inspection

Date 1-3-12 Inspector B. Gronnebeck

Exhibit 2

Tony Fischer

From: "Estrella, George" <GEstrella@SantaBarbaraCA.gov>
To: <czfrangos@aol.com>; "Cassidy, Lonnie J" <LoCassidy@SantaBarbaraCA.gov>
Cc: "Armstrong, Jim" <JArmstrong@SantaBarbaraCA.gov>; "Schneider, Helene" <HSchneider@SantaBarbaraCA.gov>; <fischlaw@cox.net>; <fischlaw@gmail.com>; "Casey, Paul" <PCasey@SantaBarbaraCA.gov>; <ssinovic@newspress.com>; "Cassidy, Larry" <LCassidy@SantaBarbaraCA.gov>
Sent: Wednesday, January 04, 2012 4:50 PM
Subject: RE: 336 6 foot wall maximum
 Mr. Frangos,

The note on page C-7 of the approved plans clearly indicate that the maximum wall height abutting your property line and that of Fresh & Easy is 6 feet. We will not final the project unless the entire project is in compliance with the approved plans including the height of the wall. As such, no violation of the wall has been observed by our inspection staff and the contractor is permitted to continue working on the wall. The contractor, the Fresh & Easy representatives and the City are very much aware of this issue. We have spent a considerable amount of staff time regarding the wall height issue with additional site visits and email responses. We simply cannot continue expending any more staff time on a violation that does not exist. Again, the approved plans clearly indicate the maximum wall height and the wall will not be approved if exceeded.

Thank You,

George A. Estrella
 Chief Building Official
 City of Santa Barbara
 (805) 564-5485

Most City ADMINISTRATIVE OFFICES will be closed due to an unpaid leave, or furlough, for City employees from Monday, December 19th thru Monday, January 2nd. Offices will reopen on Tuesday, January 3, 2012. For more details, please visit the City's website at: www.SantaBarbaraCA.gov. This includes the Community Development Department and Administrative Offices located at 630 Garden Street.

There will be no counter, records or archives staff available during this 2 week period.

From: czfrangos@aol.com [mailto:czfrangos@aol.com]
Sent: Wednesday, January 04, 2012 12:30 PM
To: Cassidy, Lonnie J
Cc: Estrella, George; Armstrong, Jim; Schneider, Helene; fischlaw@cox.net; fischlaw@gmail.com; Casey, Paul; ssinovic@newspress.com
Subject: 336 6 foot wall maximum

Ms. L Cassidy,

Let me get this straight, You the, City of Santa Barbara, are allowing the applicant to build a wall, subject to being torn down, even though you do not have the survey that shows the elevations for the property? Should you have had those elevations in the application process for the building permit.

Our first phone call, you indicated that they would stop work on the wall subject to the elevation survey. When I got to the department, you said after discussing it with Mr. Estrella, you allowed them to build whatever subject to be torn down to comply with Mayors and Councils condition that the wall be no more than 6 feet high, which was taken down from the proposed 8' foot block wall.

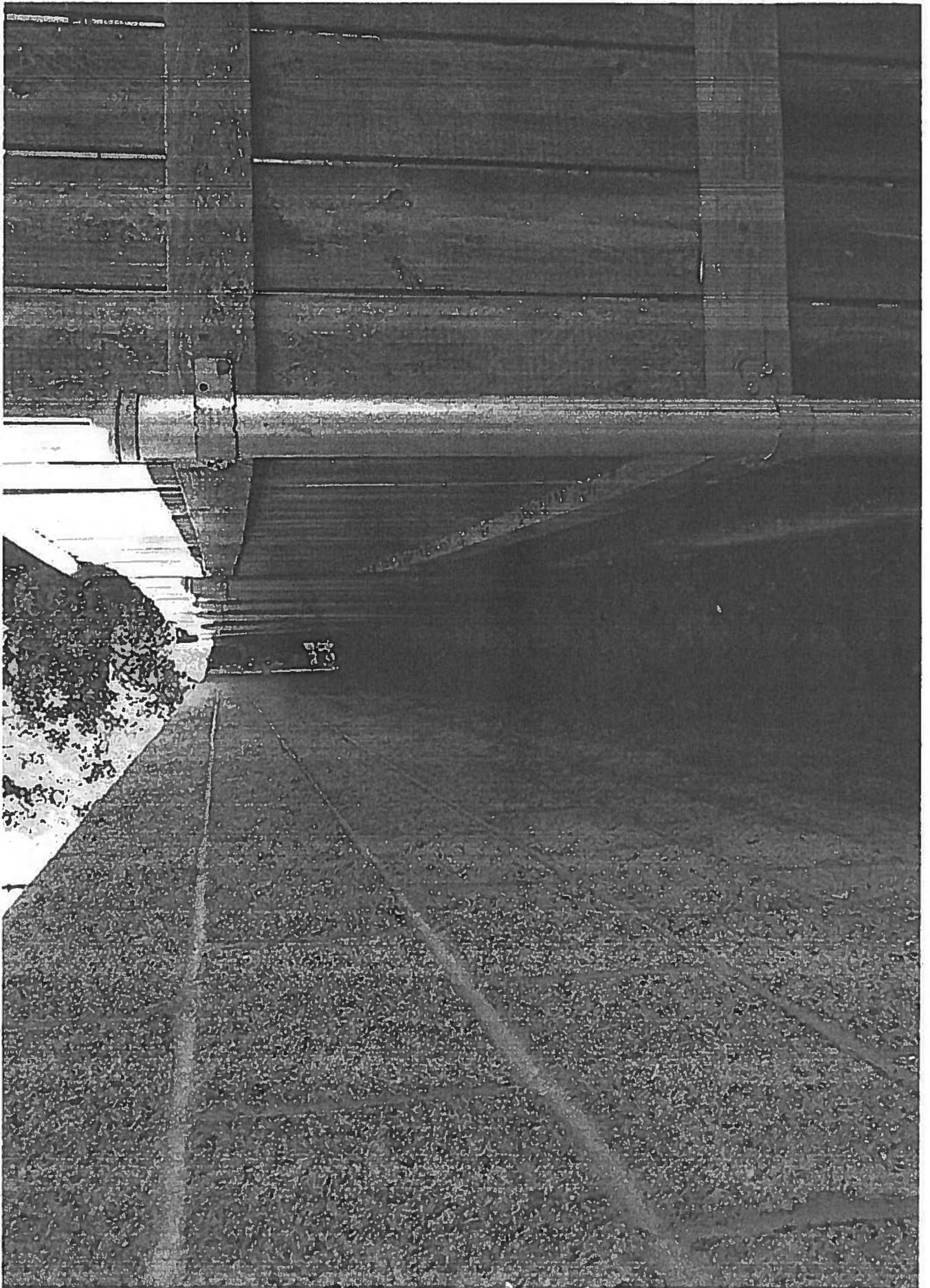
Mr Limon had shown me those plans with the 6 foot cap on the wall on the Fresh and Easy side before the building permit had been issued. We had agreed with Mr. Limon, that was the acceptable outcome of My Request and the Council Action. Are you telling me now that you do not know the elevations/plans that are part of the application for Fresh & Easy? You do not know yet it is ok for Fresh and Easy to just build the wall.

4/26/2012

You and Mr. Estrella are allowing Fresh and Easy to building in Violation of the City of Santa Barbara building codes and Mayor & Councils Conditions. But you do reserve the right to correct them later.....How many other applicants receive this treatment.?

You sure are giving this applicant a lot of leeway in our building process.

Thank You
Constantinos Frangos





90" to finish grade
not the 72" as required