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April 13, 2011

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

Re: Appeal of ABR approvals for building at 336 N. Milpas St.

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.

This appeal is filed for the following reasons:

1. **Inadequate notice of hearings at ABR.** The processing of this project failed to comply with due process by failure to give required notice. This project began as a drug store in 2006 and was presumed abandoned only to find out that it received several extensions without notice to neighbors and then received a demolition permit. Then, it was scheduled for review on the ABR's "consent agenda" on March 7, 2011 for major revisions to the corner/tower design, building height, additional refrigeration equipment on the roof, etc., as requested by "Fresh and Easy." Frangos Trust objected to the review on consent which was being done without notice to the neighborhood. The project was forwarded from the consent agenda to the full board and the project was rejected even without the benefit of the concerns of the immediate neighbor. Review was continued for two weeks to March 21 only to be continued again by the Applicant for two weeks to April 4, 2011. At that hearing, the project was approved by 4 ABR members despite the recognition by some ABR members of valid concerns related to (a) the eight foot (8') high bare cinder block walls (very suitable for graffiti on both sides) around the parking lot and along the southerly property line; (b) the inaccurate drawings showing the existing trees and potential damage to the mature trees due to required excavation; (c) the lack of information regarding actual building height (drawings only show height above finished floor); (d) the blockage of mountain/Riviera views by construction of a 28 foot tall single story building with no setback; (e) failure to comply with recommendations in the Historic Structures Report regarding design and setbacks; and, (f) the lack of a required grading plan despite a known requirement to excavate and remediate

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contaminated soils identified in the 1990s. Despite being a neighbor, adequate notice, consistent with due process has not been sent or received and these valid concerns were not adequately considered.

2. The required environmental assessment of project impacts has not been completed. Impacts of removal and remediation of the soil contamination which was identified by the County Fire Department in the 1990's, has not been assessed. Significant impacts on views were not assessed.
3. There is no grading plan despite the extensive grading (cut and fill) and hauling required for the project. A grading plan is required to be submitted and approved by ABR per Chapter 22.68 of SB Municipal Code. Without a grading plan for review and approval by ABR, the project does not have all required reviews and approval. A complete grading plan would help with evaluation of building height, impact on existing trees, and existence of utility easements, flood control and drainage compliance issues.
4. Site has contaminated soil. The contamination must be removed to an appropriate disposal site. That removal alone involves enough cut and fill to require a grading plan. The Architect mentioned at the hearing the potential for a finished floor height based upon flood control maps. Showing that information on a grading plan would help in determining the final design in order to verify that project will not grow taller during construction to comply with those maps and would help to determine if the building height is excessive.
5. The project building and the parking lot's tall bare cinder block wall will obstruct significant existing views. True height of building is not on drawings. All elevations are based upon "finish floor" and not based upon existing grade.
6. Project will construct eight feet (8') tall bare cinder block walls suitable for graffiti on both sides. The views from the project's parking lot and the neighbors view of the project site will be negatively impacted. It is noted that the architect indicated at the ABR hearing that lowering the wall likely would be acceptable to Fresh and Easy and that the 8 foot height was proposed because that height was believed to be a requirement of the City. The surrounding area is rustic with wooden building and wooden property line walls shorter than 8 feet. A wooden fence would be compatible with the neighborhood. Block wall is not compatible. More greenery would also be more consistent with the neighborhood.
7. Drawings do not reflect actual conditions related to location of street trees adjacent to the property and the size of the trees.
8. Existing street trees on Milpas are to be retained. However, project is contrary to law because at the location of the trees there is inadequate sidewalk width. As proposed, the project violates SBMC sections 22.60.110 and 22.60.290 which establish minimum

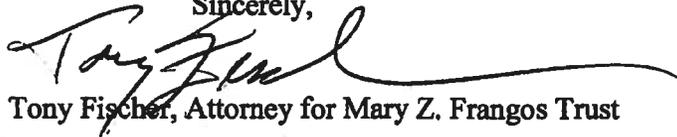
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sidewalk width. If the project had more suitable setback (none proposed), the project would comply and the trees could be protected.

9. ABR failed to make findings required by Chapter 22.68 of the Code.
10. The existence and location of utility easements through the property is not a part of the documentation submitted to the ABR. Those easements may impact the design. Any relocation of utilities needs to be shown on the drawings.
11. As part of environmental review, the project as currently proposed for Fresh and Easy, will have noise and use impacts. Restrictions on hours of operation and the hours for deliveries would be appropriate and necessary to minimize impacts on residential uses in the area. It is believed that restrictions were imposed on the operation of Trader Joes on De La Vina.
12. At the time of approval of the Historic Study report in 2006, the two recommendations were: (1) keep the setbacks; and (2) have an art deco design in keeping with the existing and neighboring buildings. This project violates both recommendations.

We reserve the right to provide additional information related to this appeal and respectfully request that the City Council take appropriate action to improve the project and to comply with applicable requirements.

Sincerely,



Tony Fischer, Attorney for Mary Z. Frangos Trust

cc: Fresh and Easy