INSERT B

By granting permit number 10016-20000-11787, the Department of Building and Safety ("Department") has effectively given the Applicant over-the-counter variances by (1) failing to require the Applicant to provide 11 additional parking spaces mandated by the Municipal Code for change of use; (2) approving "tandem" parking in a manner not allowed under the Municipal Code; (3) approving plans for valet parking that create barriers to entry for handicapped persons, in violation of federal, state and local laws; and (4) failing to require the placement of restrooms within the restaurant site, as mandated by the Municipal Code. Doing so violates Municipal Code Section 12.27, which strictly forbids the granting of zone variances outside the public process and without the mandated Zoning Administrator findings. The Department has thereby violated the public's rights as follows:

1. The Department erred by failing to require the Applicant to seek and obtain a "change of use" to "restaurant" despite the actual change of use from "retail," as provided in the 2010 MND, or "grocery/bakery," as provided in the 2006 Certificate of Occupancy, to "restaurant."

A. The Department violated Section 12.21.A.4 of the City's Zoning Code by failing to increase the number of required parking spaces upon the change of use from "retail" or "grocery/bakery" to "restaurant."

B. The Department erred by failing to apply the Code-mandated parking requirement for the change of 1,820 sq. ft. of space from retail to restaurant, despite the Applicant's concession that the project involves a change to 1,820 sq. ft. of restaurant use and not a mere 100 sq. ft. change of use to so-called "accessory dining" as erroneously stated in the Application ("T.I. to convert 100 sqft of existing market to accessory dining area.").

2. The Department erred by approving tandem parking in a manner not authorized by Code, which creates hazardous conditions within the parking lot and, by doing so along handicap-access routes, also creates barriers to handicap access in violation of the Americans with Disabilities Act ("ADA").

3. The Department erred by approving valet parking plans that fail to provide reasonable and equal access to handicapped individuals, in violation of the ADA.

4. The Department erred by failing to require the Applicant to install restrooms on the premises of the restaurant in violation of Section 6302.4 of the City's Building Code.

INSERT C

1. <u>The Department erred by failing to require the Applicant to seek and obtain a "change of use" to "restaurant</u>." The Applicant is operating a restaurant, FARMshop, on the premises. On December 6, 2010, the Applicant submitted a document to the Planning Department as part of an application for a Conditional Use to permit the sale and dispensing of beer and wine for on-site and off-site consumption, attached as **Exhibit 1**, describing FARMshop's floor plan as "showing the restaurant to be 1,820 square feet and the market-bakery to be 4,256 square feet."[1] The prior tenant, City Bakery, which vacated the premises in April 2009, did not operate a restaurant – it operated a grocery store with an accessory bakery use. [The Certificate of Occupancy is attached as **Exhibit 3**.] Before City Bakery, the premises were occupied by Bristol Farms and Fireside Market, which were categorized as grocery uses. Despite the fact that 1,820 square feet of the prior grocery/bakery use has been changed to a "restaurant" use, the Applicant has never sought the code-mandated change of use to restaurant.

The Applicant has submitted applications and related documents that erroneously describe restaurant as a pre-existing use – which it is not – to avoid a change of use, and with it more stringent Municipal Code requirements. The Application For Building Permit And Certificate of Occupancy No. 04016-30000-20841, attached as **Exhibit 3**, describes the then-existing use as "(16) Grocery Store" and the proposed use as "(16) Grocery Store; (16) Bakery" – with the work described as "Tenant Improvement For New Market/Retail And Create A New Portion For Eating Area (349 SF.) With 7 Fixed Seats At Bar Take-Out Bar Area." The Certificate of Occupancy, status dated February 6, 2006, states that "Bakery" is the primary use and lists "Grocery Store" as "other" use. Yet, despite the lack of any change of use to restaurant, the Application for Tenant Improvements, date stamped August 11, 2010, lists the **existing use** as "(16) Retail; **(17) Restaurant**," even though there has never been a change of use to "restaurant." Further, the Application describes the work to be performed as follows: "1) T.I. to convert 100 sqft of **existing market** to accessory dining area. 2) Increase the seating from 20 to 49 for the same dining area." [This is attached as **Exhibit 4**.] The "dining area" referenced in Exhibit 4, however, is a restaurant -- there is no "existing market." The prior market and its accessory uses vacated the premises in April 2009 and, while the Applicant plans to open a market in the future in another section of the premises, not in this 1,820 square foot section of the premises, that possible future market is not part of this application.

[1] This 1,820 square foot measurement for the restaurant space is also confirmed by the Applicant's calculations, which appear in the upper left-hand corner of the Applicant's Construction Phasing Plans, A1.2, which is attached as **Exhibit 2**.

A. <u>The Department violated Municipal Code by failing to increase the number of parking spaces upon the change of use to "restaurant</u>." The FARMshop restaurant opened for business on Friday, November 26, 2010. The prior tenant, City Bakery, which closed its doors in April of 2009, was categorized as grocery (16) and bakery (16). [See **Exhibit 3**.] Code required parking for grocery and bakery uses is 4/1000. FARMshop, as a 1,820 sq. ft. restaurant (17), must be parked at 10/1000. Thus, a change of use from bakery or grocery (16) to restaurant (17) requires an additional 11 parking spaces. *See* **Exhibit 5**, Zoning Code Manual and Commentary, Section 12.21.A.4 (describing calculation of parking for change of use for a new use that requires more parking spaces).

Because the Applicant never applied for a change of use to restaurant, the parking requirements were never increased – despite the actual change of use. As indicated in the Applicant's Master Land Use Permit Application (attached as **Exhibit 6**) and the MND (**Exhibit 7**), the proposed and, as of November 26, 2010, actual use is for restaurant (with an accessory bakery and, eventually, a market in *another* section of the premises).[2] While there should have been a change of use application, which would have triggered an increase in parking by 11 spaces, the Applicant's (improper) decision not to seek a change of use does not eliminate the code-mandated parking increase.[3]

The Department has effectively given the Applicant an over-the-counter variance by failing to require the Applicant to provide the 11 additional parking spaces mandated by the Municipal Code. This is a violation of Municipal Code Section 12.27, which strictly forbids the granting of zone variances outside the mandated public process and without the mandated findings.

B. <u>The Department erred by failing to apply the Code-mandated parking requirement for the change of *1,820 sq. ft.* of space to restaurant</u>. The so-called "Supplemental" Application for Building Permit and Certificate of Occupancy, attached as **Exhibit 8**, which purports to "clarify" two prior permits, was improperly approved by the Department. The Supplemental states that the existing parking shall increase from 1 to 9 new parking spaces, in an apparent recognition that the change of use to restaurant increased the number of code-required parking spaces.

[2] Per Section 12.21.A.4(c)(4), (5), pp. 87-88, of the Zoning Code Manual and Commentary, **Exhibit 16**, 1,820 sq. ft. of the leased premises are attributable to the site's restaurant use and 4,256 sq. ft. for the grocery use, which is scheduled for Phase II of the project.

[3] The 11 additional parking spaces are confirmed by the Applicant's own calculations, which appear in the upper left-hand corner of the Applicant's Construction Phasing Plans, A1.2, which is attached as **Exhibit 2**.

But the Supplemental is based on an erroneous calculation of the restaurant's square footage. The space that must be deemed "restaurant" for purposes of the parking calculation is 1,820 square feet, not the 1,580 square feet stated in **Exhibit 8**. The 1,820 square footage of restaurant use is confirmed by the Applicant's own floor plan, submitted to the Planning Department on December 6, 2010, and the calculations contained in the Applicant's Construction Phasing Plans, A1.2, attached as **Exhibits 1** and **2**, respectively.

But the Supplemental contradicts these documents by stating that the restaurant use covers just 1,580 square feet, instead of the 1,820 previously represented, thereby reducing the number of additional mandated parking spaces due to the change of use from 11 to 9. The 1,580 figure stated in the Supplemental apparently excludes space within the restaurant that the Applicant intends to use for an accessory use. But Section 12.21.A.4 of the Zoning Code Manual and Commentary, attached as **Exhibit 9**, precludes any such reduction in the restaurant calculation: "The parking requirements for a specified main commercial use applies to accessory areas within the tenant space." The restaurant parking ratio therefore applies to the entire tenant space of 1,820 square feet – without reduction for accessory uses, corridors, etc., within the tenant space. The Zoning Code Manual and Commentary provides the following illustration: "[I]n calculating the parking requirements for a restaurant, the total floor area of the dining room, kitchen, restrooms, corridors, storerooms, etc. must be included to compute the total number of spaces at the required ratio for the restaurant." See also **Exhibit 16**. Consequently, the Municipal Code requires that the entire tenant space of 1,820 square feet be used to calculate the number of required parking spaces at the ratio mandated for restaurant use. That requires 11 additional parking spaces.

2. <u>The Department erred by approving illegal tandem parking</u>. The Applicant obtained from the Department a permit to provide 11 tandem parking spaces, which, at the time the Applicant claimed were being sought on a "voluntary" basis because it claimed that no additional parking was required. It is now clear that this was simply a hedge against the risk that the 11 additional parking spaces required by the change of use would eventually be discovered.

The tandem parking spaces, however, are not configured in the manner required by code. *First*, the three "tandem" parking spaces located directly behind the Country Mart, which provide for perpendicularly parked vehicles behind five angle-parked vehicles, are not properly configured. [See **Exhibit 10**, which identifies by hand-drawing the tandem parking spaces.] But, as expressly stated in Section 12.21.A.5(h) of the Zoning Code Manual and Commentary, attached as **Exhibit 11**, "Perpendicular tandem parking is not permitted." Indeed, Figure 35 of the Manual uses the exact

same parking configuration approved by the Department to illustrate the type of perpendicular layout that is "not tandem and is not allowed."

Further, these three "tandem" parking spaces are located across from FARMshop's two (of three) handicap parking spaces and the handicap access through the eastern gates. This is too much activity for such a small area. There is barely enough room for vehicles to proceed down the parking aisle, much less maneuver into and out of the perpendicular "tandem" parking spaces adjacent to handicapped parking and a handicap-access path. This precarious positioning is illustrated by the photographs attached as **Exhibits 12 and 15**.

Second, the remaining eight tandem parking spaces (1) do not meet the requirements specified in IB P/ZC No. 2002-01 and (2) are situated in an area that cannot safely accommodate the required tandem-parked vehicle maneuvering. Vehicles traveling down the one-way southbound lane on the eastern edge of the parking lot, behind the Country Mart, meet two-way traffic at the "Stop Sign" located behind the southeastern edge of the Country Mart. The eight tandem spaces are located just south and east of this 3-way intersection. *See* **Exhibit 13**. Even without the added hazard of tandem parking, traffic can become treacherous at this location. Moreover, east-traveling vehicles routinely turn left at the Stop Sign into the one-way traffic coming from the north parking lot and, upon realizing their mistake, typically back out through the 3-way intersection. If tandem parking is provided, vehicles will be backing into this already-dangerous T-intersection. Further, five of the eight tandem spaces back into the Country Mart's third handicapped parking space and alongside the handicap access path between that parking space and the Country Mart. An on-site visit would quickly clarify just how hazardous the tandem parking would be at this already over-burdened location within the parking lot. *See* **Exhibit 14**.

3. <u>The Department erred by approving valet parking plans</u>. The Americans with Disabilities Act requires that valet parking facilities "shall provide a passenger loading zone . . . located on an accessible route of travel (complying with [California Building Code] Section 1114B.1.2)." IB P/BC No. 2008-084, p. 2. This requires placement of the valet drop-off and loading zone along the "shortest accessible route of travel" – meaning "as near as practical to an accessible entrance." This requires that the valet station be located by the eastern gate, which provides the only reasonable and equal access to the restaurant. *See* IB P/BC No. 2008-084, p. 2 (describing valet station requirements and noting that access requirements under California Building Code Sections 1129B and 1130B also apply to valet stations).

The approved plans (See Plot Plan Attachment, **Exhibit 10)**, however, provide for a valet stand on 26th Street, which would violate the ADA because (1) there is no area on 26th Street that meets the valet station requirements, including the requirement to

provide "an access aisle at least 60 inches wide and 20 feet long adjacent and parallel to the vehicle pull-up space," and the curb ramp requirements; (2) the path of travel between the proposed 26th Street valet station and FARMshop is not the "shortest accessible route of travel;" and (3) the only travel routes between the proposed valet station and FARMshop are inaccessible due to curbs, stairs, obstructed and narrow sidewalks, and cobblestone paths. See **Exhibit 15**.

4. <u>The Department erred by failing to require the Applicant to install restrooms on the premises of the restaurant</u>. FARMshop has no restrooms on the premises. Per Section 6302.4 of the City's Building Code, however, restrooms must be provided within food establishments. A "food establishment" is a "building or portion thereof appropriated to the processing, storage or sale of food or drink for human consumption." A "food establishment" like FARMshop must provide at least one toilet room and, for food establishments with four or more employees, separate facilities must be provided for each sex. Further, food establishments that serve alcohol for on-site consumption must provide additional fixtures. City Code requires that these "toilet rooms shall be located on the premises of the food establishment." The Department's failure to require the Applicant to provide such on-premises restrooms violates Section 6302.4. This is consistent with the County Health Code, which also requires that, where alcohol is sold for on-site consumption, "toilet rooms must be located *<u>within the food facility</u>*" – a requirement that is made clear in the Retail Construction Guideline issued by the County of Los Angeles Public Health Department, p. 12:

> "**<u>Where alcoholic beverages</u>** are sold or given away for consumption on the premises there shall be provided for use by the public, separate toilet rooms for each gender, with the men's toilet room having at least one urinal. At least one lavatory shall be provided in conjunction with and convenient to each toilet room. The toilet rooms must be located within the food facility and where consumers, guests, and invitees do not pass through food preparation, storage, or utensil washing areas to reach the toilet facilities. Los Angeles County Code, Title 11.38.570(D)."