

BRENTWOOD RESIDENTS COALITION

January 26, 2011

Kenneth S. Murray, R.E.H.S.
Director, Bureau of District Surveillance & Enforcement, Region 1
Los Angeles County Department of Public Health
Environmental Health Division
5050 Commerce Drive, Baldwin Park, CA 91706

**Re: BRC Opposition to Variance Request
Brentwood Country Mart FARMshop
225 S. 26th Street, Los Angeles 90049**

Dear Mr. Murray:

The Brentwood Residents Coalition (“BRC”)¹ is writing in opposition to FARMshop’s request for a variance from Los Angeles County Code, Title 11.38.570(D), which requires that, where alcohol is sold for on-site consumption, “toilet rooms must be located within the food facility” – a requirement that is made clear in the Retail Construction Guideline issued by the County of Los Angeles Public Health Department.²

A. There Is No Justification For A Variance

Variances may be granted only (1) in cases of *true* hardship and (2) where the alternative is at least the equivalent of the requirement for which the variance is sought. But *neither* of these prerequisites are satisfied in this case.

¹ The BRC is a grass roots, non-profit advocacy group whose purposes are to preserve and enhance the environment and quality of life in Brentwood, to protect the integrity of residential neighborhoods, to assist with planning, to uphold zoning and municipal codes, to encourage traffic safety, and to educate the public on issues that affect quality of life and the environment.

² “**Where alcoholic beverages** 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).”

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1. There is no hardship

FARMshop seeks a hardship exemption from Title 11.38.570(D) based on its claim that its 6,000+ square foot “tenant space” is too small for on-site restrooms. FARMshop states that installing restrooms “within the tenant space would require such a large percentage of the floor area that FARMshop would be un-operable,” thereby establishing hardship. Its claim of hardship is invalid for two reasons.

First, FARMshop has chosen to dedicate 1,820 square feet of its 6,076 square foot tenant space to restaurant use accommodating 49 restaurant patrons. Even if FARMshop were limited to placing the restrooms within the 1,820 square foot area that it has currently allocated for restaurant use, this is not “too small” of a space to include restrooms. FARMshop’s competitors along the San Vicente Corridor have installed restrooms in alcohol-serving restaurants of approximately the same square footage or less, serving approximately the same number of patrons, within complexes that have common restrooms within approximately the same distance. These restaurants have not sought and have not been granted variances from Title 11.38.570(D).

A review of recent public records reveals that compliance with Title 11.38.570(D) by similar alcohol-serving restaurants is the norm:

SugarFISH, 11640 West San Vicente Blvd. In May 2009, the City approved a conditional use permit to allow the sale of beer and wine for on-site consumption in a **1,400 square-foot restaurant**, with seating for **49 patrons**. SugarFISH, which replaced a restaurant that did not provide on-premises restrooms, installed male and female restroom facilities within the restaurant premises, despite separate common restrooms in the public breezeway immediately outside the restaurant. *Case No. ZA-2009-0053(CUB)*.

Nagao Sushi, 13050 San Vicente Blvd., Units 109-110. In September 1997, the City approved a conditional use permit to allow the sale of beer and wine for on-site consumption in an **800 square-foot restaurant** seating **40 patrons**. Nagao Sushi installed male and female restroom facilities within restaurant premises, despite separate common restrooms in the Shopping Center. *Case No. ZA-97-0543(CUB)*.

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Toscana, 11633 San Vicente Blvd. In October 1988, the City approved a conditional use permit for the sale of beer and wine for on-site consumption in an **1,872 square-foot restaurant** accommodating approximately **40 patrons**. Toscana, which replaced a pharmacy, installed separate male and female restroom facilities within the restaurant premises, despite separate common restrooms down the hallway of the office building. *Case No. ZA-88-0990 (CUB)*.

Stuzzichini, 11633 San Vicente Blvd. In March 2010, the City approved a conditional use permit for the sale and on-site consumption of a full line of alcoholic beverages, in a **1,459 square-foot restaurant** accommodating **34 patrons**. Stuzzichini (renamed “Bar Toscana”), which replaced a retail art gallery, installed male and female restroom facilities within the restaurant premises, despite separate common restrooms down the hallway of the office building. *Case No. ZA-2009-1468-CUB-1A*.

LPQ (Le Pain Quotidien), 13050 San Vicente Blvd., Units 112-115. In March 2010, the City denied a conditional use permit for the sale of beer and wine for on-site consumption in an existing **1,505 square-foot restaurant** accommodating **36 patrons**. LPQ, which replaced an existing restaurant that did not provide restrooms, installed male and female restroom facilities within the restaurant, despite separate common restrooms in the Shopping Center. *Case No. ZA-2009-0250(CUB)*.

Second, FARMshop’s tenant space is not simply the 1,820 square foot space that it has allocated to restaurant use. There is an additional 4,256 square feet of tenant space where restrooms can be installed. This is a large tenant space for a large project, where restrooms could have been and should now be installed.

The size of the tenant space and the magnitude of the project are stated in the Proposed Mitigated Negative Declaration, which states:

PROJECT DESCRIPTION

A conditional use to permit the sale and dispensing of beer and wine for on-site and off-site consumption in conjunction with **the renovation of an existing retail space into an approximately 6,076 square-foot restaurant/bakery/market** with hours of operation from 7:00am to 10:00pm daily . . . *See Exhibit 1*.

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This Project involved a complete renovation of the 6,076 square foot retail space, which had been vacated since April 2009. *See Exhibits 2 & 3.* The Project is for a multi-use restaurant/bakery/market facility. *Exhibit 4.* Upon completion of the Project, FARMshop will be the second largest tenant space in the Brentwood Country Mart – second in square footage only to a home furnishings store – and it will have the most patron and employee traffic within the Mart. *See Exhibit 5.* And, if FARMshop obtains the requisite alcohol permits, it will intensify use of the Country Mart by becoming its first alcohol-serving establishment ever permitted for on-site service. The FARMshop facility will have (1) 10-20 employees per shift/on-site [*Exhibit 4*]; (2) capacity for 49 patrons dining in the restaurant [*Exhibit 4*]; (3) an unlimited number of take-out patrons who will effectively expand the size of the restaurant (and the burden on the common restrooms) by taking their food to the two courtyard dining areas; and (4) patrons of the planned market.

Further, the letter-request for a variance implies that a variance is necessary because FARMshop will be operating “within an existing tenant space . . . without major modification to the existing Brentwood Country Mart historic structure.” But installing restrooms within the FARMshop tenant space would not require any alteration of the Country Mart’s barn-like structure. No exterior modifications would be necessary to install restrooms within the 6,076 square foot tenant space.

2. A variance would establish precedent subverting the code

If this variance is granted, despite the absence of any true hardship, it would establish precedent to nullify Title 11.38.570(D) whenever alcohol-serving restaurants are located near common restrooms. That would undermine and weaken Title 11.38.570(D), thereby subverting its underlying policy. Granting a variance simply because the tenant would *rather* dedicate the space needed for restrooms solely to profit-generating uses would improperly circumvent code requirements and provide an unfair competitive advantage to businesses, like FARMshop, that prefer not to comply with the code requirement.

3. A variance would overburden the Country Mart’s common restrooms

The Applicant’s proposed “alternative” to providing its own restrooms is to send its 10-20 employees per shift, its 49 on-site restaurant patrons, and its take-out and market patrons to compete with patrons and employees of the Country Mart’s 29 other

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businesses for use of the common restroom facilities. FARMshop's proposed alternative to code compliance is inadequate under California law.

California Law precludes the granting of a variance unless the alternative is "at least the equivalent" of the protection that is required by code. *California Health & Safety Code Section 114417.2*. The alternative here, to send all FARMshop patrons and employees to the Mart's common restrooms, is not "at least the equivalent" of on-premises restrooms because the Country Mart's common restrooms are already overburdened by the patrons and employees of the **29 other retail and restaurant** establishments within the Country Mart's **40,000 square feet of leasable space**. *See Exhibits 4 & 5*.

The County requirement that restroom facilities be provided on the premises of restaurants that service alcohol for on-site consumption is based on public health policy. Alcohol-serving restaurants draw more patrons than restaurants that do not serve alcohol, and thereby create greater demands on restroom facilities. The County requires that alcohol-serving restaurants provide restrooms within such food-serving facilities to avoid potentially excessive burdens on common restrooms, even those in close proximity to such restaurants. If common restrooms are overburdened, as are those of the Brentwood Country Mart, employees and patrons of alcohol-serving restaurants are more likely to be deterred from using such common facilities, thereby creating health and safety risks. That is why Title 11.38.570(D) requires on-premises restrooms for alcohol-serving restaurants.

The Brentwood Country Mart has just one set of common restrooms, with only three stalls (two regular and one for handicapped users) and two sinks in each restroom. This one set of common restrooms must be shared by all patrons and employees within the Country Mart's 40,000 square feet of leasable space – comprised of 30 retail spaces, including six restaurants.³ The purpose of Title 11.38.570(D) would be nullified if the rule could be avoided by substituting on-premises restrooms with over-burdened common restrooms that are shared by 30 businesses. There would be long lines due to the overburdening of the common restroom facilities. And there would be no restroom availability when the common restrooms are closed for cleaning or repair. *See Exhibit 6*.

³ The six restaurants are: FARMshop, Reddi Chick, Frida Taqueria, Barney's Burgers, Sweet Rose Creamery, and Caffe Luxxe.

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Further, the Country Mart's common restrooms are accessible only by walking outdoors, to the far south-eastern corner of the Country Mart. This will inhibit use of the common restrooms in times of inclement weather, which likewise implicates the sanitary issues on which Title 11.38.570(D) is based.

In sum, FARMshop's proposed use of the Country Mart's common restrooms is not "at least the equivalent" of having restrooms within the restaurant tenant space. Consequently, the variance cannot be granted.

B. The Americans with Disabilities Act Precludes Issuance Of A Variance

The variance request is also improper because the common restrooms are not accessible to handicapped patrons and employees of the FARMshop restaurant, in violation of the federal Americans with Disabilities Act (the "ADA"). The ADA requires that restroom facilities be reasonably accessible to disabled persons. But there is no such access between FARMshop and the Country Mart's common restrooms.

There are three potential access routes between FARMshop and the common restrooms, all of which originate from FARMshop's south doorway. *See Exhibit 7.* The **first access route** is down a stairway, which is not accessible for those unable to climb or descend stairs. This is clearly not a proper handicap-access route.

The **second access route** is down a handicapped ramp and through the south courtyard. This route is cluttered with barriers for the handicapped, including a planter on the ramp, a mechanical children's ride and trash bin at the foot of the ramp, and then a virtual obstacle course of densely arranged tables and chairs, without an accessible pathway. This constitutes a barrier to entry in violation of the ADA.

The **third access route** is down a sidewalk to the east parking lot, behind parked vehicles and back through a gate leading to the common restrooms. Under the ADA, not even handicapped *parking spaces* may be situated in a manner requiring handicapped persons to walk or wheel behind parked cars. *See Exhibit 8* [City of Los Angeles IB P/BC No. 2008-084, p. 1 (applying California Building Code Section 1129B) (requiring that "that persons with disabilities are not compelled to wheel or walk behind parked cars other than their own.")] It is obviously illegal under the ADA to situate restrooms in a manner that would require handicapped persons to walk or wheel behind parked vehicles en route between a restaurant and the only available restrooms.

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Thus, there is no ADA-compliant access between FARMshop and the common restrooms. This is an independent basis for denying the variance request.

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FARMshop's request for a variance must therefore be **denied** because (1) there is no true hardship in complying with the County's on-premises restroom requirement; (2) a variance in this case would establish precedent that would undermine Title 11.38.570(D); (3) the "alternative" of using the Country Mart's common restrooms in lieu of on-premises restrooms is not "at least the equivalent" of restrooms on the restaurant premises; and (4) there is no ADA-sufficient access route between FARMshop and the common restrooms.

We ask that you deny the variance request. If the variance is granted, however, please provide the undersigned with notice and instruction on any administrative process for appealing or otherwise challenging the issuance of such a variance.

Respectfully submitted,



Thomas R. Freeman



Wendy-Sue Rosen

Donald G. Keller

Donald G. Keller