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August 31, 2006

VIA HAND DELIVERY

Board of Supervisors
c/o Pamela Miller, Clerk
County of Napa
1195 Third Street
Napa, CA 94559

Re: Appeal of Denial of Application For Special Fence Permit; Ronald and Kathye Citron; 4189 Silverado Trail; 4/27/06 Notice of Violation; APN 021-020-010-000

Dear Napa County Supervisors:

This law office represents Ron and Kathye Citron in the above-referenced matter. The Citrons respectfully submit this appeal of Napa County Planning Department's denial of the Citrons' Application For Special Fence Permit. This appeal package includes the underlying Application for Special Fence Permit, which contains a similar but longer argument in favor of allowing the fence to stand, and other exhibits.

All Supervisors are respectfully urged to visit the site before the appeal hearing, to confirm that visibility is not at issue with the subject fence. Please contact me at any time if you wish to visit the property, meet and confer, or to request further information.

Thank you.

Sincerely,



Montgomery G. Frankel

APPEAL OF DENIAL OF SPECIAL FENCE PERMIT APPLICATION

Summary of Appeal. In March 2006, Ron and Kathye Citron replaced their existing front yard fence on the subject property. The 4/27/06 Notice of Violation herein claims the fence is both too high and within the road setback, thus violating two sections of the County Code. But the fence is exactly the same height and in exactly the same location as the old fence it replaced and which existed on the Citron property since 1943. The property is located adjacent to a curve on the Silverado Trail that is both dangerous and very noisy due to highway speed traffic. The Citrons obtained a Certificate of Legal Nonconformity to build their home on the property's historical footprint of the 1943 farmhouse. During their remodel, the Citrons were told by the County to erect a barrier to block off their northern driveway because of the proximity to the curve. This situation is therefore unique. The Citrons' Application for Special Fence Permit should have been granted here because, in the parlance of Napa County Code Section 18.104.270.3.A.2, a need has been "demonstrated, due to the unique nature of the parcel or surrounding environment, for the proposed fence design." No one opposes the fence, and no justifiable reason exists to deny this appeal.

The Planning Department prejudicially abused its discretion in denying the Special Fence Permit Application herein. The Citrons will be horribly, financially prejudiced if this appeal is denied, whereas no one in the County will be damaged in any way if it is granted. The Citrons thus respectfully urge the Board of Supervisors to exercise the discretion given them by the Code, and grant this timely appeal.

Background Chronology. This following chronology is undisputed. The Planning Department has never--not in the Director's denial letter, the Department's Notice of Violation, or in any personal communications--disputed these background facts, or claimed the Citrons intentionally violated any law.

In April 2000, the Citrons purchased the subject property, containing a farmhouse built in 1943 and a fence in the front yard, between the house and the Silverado Trail. The property is zoned Agricultural Preserve, and is located in the unincorporated portion of Napa County, between St. Helena and Calistoga. Historically, the property had two driveways onto the Trail, one to the north and one to the south.

The Citrons planned to rebuild the farmhouse, guesthouse, and fence. During the remodel project, they obtained design and building permits for the main house and guesthouse, a permit for their backyard septic leach field, and an encroachment permit for their driveway. The County Fire Department told them how much driveway space was required between the fence and main house, for fire truck access. On May 20, 2004, the Citrons applied to the County for a determination of Legal Nonconformity, because the existing 1943 farmhouse footprint was too close to the Silverado Trail to comply with the current setback code. The Citrons applied to raze the existing structure and replace it with a new home on the same footprint. The septic system and other existing structures on the property did not permit the home to be moved any further to the west, away from the Silverado Trail. The Citrons' request for Legal Nonconformity was granted on July 19, 2004, to permit the new

home to be built within the 90-foot road setback, and the 20-foot front yard setback. The Citrons thus sought and were given permission to rebuild their home in its historic location. (See attached Certificate of Legal Non-Conformity.)

During the same time frame (6/10/04), the County ordered the Citrons to remove and place a barrier across the northern driveway entrance to their property from the Silverado Trail, citing the danger due to the driveway's proximity to the dangerous curve on the Silverado Trail, where traffic proceeds at very high velocities. The other (southern) driveway was to be relocated, and the County recommended that the southern driveway be moved farther southward to place as much distance as possible between the driveway and the Trail's dangerous curve. The County's concern over the curve's danger was based in part on at least three accidents involving vehicles driving around the curve at high velocities, one of which involved a vehicle coming to rest against the Citrons' old fence. The Citrons again complied.

In late August 2004, Kathye Citron spoke to Mike Shepherd with Napa County's Public Works Department, regarding the new driveway. Ms. Citron told Mr. Shepherd she planned to stucco the existing fence. Mr. Shepherd told her this "sounded like a good idea." Ms. Citron left the Shepherd meeting with the erroneous impression that she would not need an additional permit to stucco over the existing fence.¹

On September 2, 2004, the Citrons' encroachment permit was granted. On September 7, 2004, their building permit was issued. It is undisputed that the Citrons, who are novice owner-builders of their home, not professional contractors, diligently and conscientiously did everything in their power to comply with every County permit requirement of which they were aware.

In early 2006, the Citrons learned they could not merely stucco over the fence, and instead needed to start over and include structural engineering in the fence design. The Citrons did not realize that a permit was required for the new fence: 1) because the County had ordered them to construct a barrier across the northern driveway; 2) because they had been issued a Certificate of Legal Non-Conformity by the County; and 3) because the replacement fence was the same height and in the same location as the old fence. (See six attached before and after photographs.)² The Citrons replaced their old fence with their new one—without a permit—in March 2006, complete with rebar and structural engineering appropriate for the weight of the fence. (Photographs of the fence's internal rebar construction are included in the attached application).

¹ This fact is noted not because the Citrons in any way mean to suggest Mr. Shepherd misled them, but merely to explain the source of their confusion on the fence permit issue. Mr. Shepherd may even have told Ms. Citron she would need another permit for the fence, but she does not recall him saying so.

² The Citrons did not realize the fence height Code section had been revised at that time, and correctly believed that under the prior Code, a permit for a six-foot fence would not be required.

On April 26, 2006, the Citrons were ordered to stop work on the fence. The following day, Mr. Colby issued the attached Notice of Violation letter citing the setback and height codes.³

On or about May 9, 2006, Mr. Shepherd informed the Citrons that the County could not locate the medallion marker indicating the center of Silverado Trail, that, as a result, the location of the road setback could not be determined, and that the setback violation was no longer at issue. Mr. Shepard also apparently emailed the Planning Department and informed them that the Department of Public Works does not consider the *location* of the fence--in the same exact place as the historic fence--to be objectionable. County planners referred to Mr. Shepard's email, but a copy was not provided to the Citrons or their attorney. The *height* of the fence may therefore be the only subject of this special permit application: the director's 8/14/06 denial letter does not explain the basis of the denial, so it is unclear whether the alleged setback violation is moot or still at issue.

The structural portion of the fence is done. The only work remaining on the fence is stuccoing and planting the surrounding foliage. (See attached artist's rendering.) The Special Fence Permit Application therefore sought a building permit for a completed fence. For the reasons set forth below, the special permit application should have been granted.

The Applicable Napa County Code Section. ORDINANCE NO. 1227, SECTION 3, 18.104.270.A.2 of the Napa County Code reads in pertinent part:

2. A special fence permit may be granted by the Director to modify the requirements of this section of the ordinance, provided that a need can be demonstrated, due to the unique nature of the parcel or surrounding environment, for the proposed fence design....

E. For the purposes of this section, fence heights shall be measured from natural grade that exists prior to fence construction.

(Note: 18.104.270 is reproduced in its entirety in the attached copy of the Citrons' Special Fence Permit Application.) Thus, while fence heights of four-, six-, or even eight-feet are allowed by the County Code in various situations, under Section 18.104.270, section 3.A.2, the County may also grant a special fence permit modifying the requirements of the fence code in general, and should have granted this particular request for a special permit, due to the unique nature of the subject fence. The Supervisors are therefore empowered to conclude that *this fence presents a unique situation* and exercise their discretionary power *under the existing ordinance* without any change to the County Code, and grant this appeal.

³ The Citrons received the Notice of Violation on 4/27/06. They filed their Application For Special Fence Permit on 6/7/06. The Planning Department denied the application on 8/14/06, and this appeal was then timely filed. Copies of the Notice of Violation, the Application For Special Fence Permit, and Napa Planning Director Hillary Gitelman's denial letter are attached as exhibits to this appeal.

The New Fence is Exactly the Same Height, and in Exactly the Same Location as the Historical Fence, a Unique Fact Justifying the Granting of This Appeal. The County is urged to bear in mind, throughout this review process, that the new, replacement fence is precisely the same height, and in precisely the same location as the historic fence on the property. The new fence, made of reinforced cinder block, is a total of six feet, eight inches high. The old fence, which had been on the property for decades (perhaps since 1943), was a six-foot fence constructed atop a stone berm of eight inches, for a total height of six feet, eight inches. (See six attached photographs, showing three pairs of “before and after” views of the fence.)

Comparison of historical and current photographs of the fence unequivocally confirms that no change in height or location occurred when the new fence replaced the old one. The new fence simply replaced the fence that presumably existed on the site since 1943. Unlike other applicants, the Citrons are not seeking to replace their old fence with a higher one. This is a unique fact warranting the grant of this appeal.

This Property is Unique, and This Appeal Should be Granted Because the County Issued the Citrons a Certificate of Legal Non-Conformity to Build Their Home in the Road Setback, and Ordered Them to Erect a Barrier Across Their Northern Driveway. When the County issued the Citrons the attached Certificate of Non-Conformity to rebuild their home in the road setback in its historical location, the Citrons were not told they *also* needed a permit to replace their fence in *its* historical location. When the County ordered the Citrons to erect a barrier across their northern driveway to avoid the adjacent dangerous curve on the Silverado Trail, they agreed. In complying with the County’s instructions to block off the northern driveway with the new fence, the Citrons did not realize that the County also expected them to obtain another permit for the very work the County had ordered them to perform. Other applicants presumably did not obtain Certificates of Legal Non-Conformity, nor were they ordered to fence across their existing driveways. These facts are unique to this property and, in and of themselves, justify the granting of this appeal.

The Unique Location of the Citron Property Near the Dangerous Silverado Trail Curve Justifies Granting this Appeal. As stated above, the Citron property is located adjacent to a very dangerous curve on the Silverado Trail. The numerous accidents occurring on this curve, including the incident involving a vehicle coming to rest against the old fence, remains a very great cause for concern for the Citrons. Their two-year old grandson has his own room in the northeast portion of the house, and plays in the Citrons’ yard during his frequent visits. The County acknowledged the special danger inherent in this particular curve when it ordered the Citrons to cease using and barricade their historic northern driveway onto the Silverado Trail. A four-foot fence would simply not provide adequate safety for the Citrons, their grandson, other guests, and their new home. An errant truck or automobile, careening out of control in the vicinity of this very dangerous curve (like

the other vehicles involved in the prior accidents there) would not be restrained by a four-foot fence.⁴

The rebuilt fence provides adequate safety from the vehicular traffic on the Trail, and is the primary reason the Supervisors should exercise their discretion, based on the “unique nature of the parcel or surrounding environment,” and grant this appeal.

The Very High Noise Levels Along This Stretch of Silverado Trail Justify Granting This Appeal. High noise levels are generated by traffic on the Trail immediately adjacent to the Citron property, because of the high velocity at which traffic moves in both directions. Motorcycles accelerate out of the curve, and rapidly driving northbound vehicles, especially semi trucks, downshift gears loudly, winding down in anticipation of the upcoming dangerous curve. Noise levels on the Citron property are then amplified by the much higher fence on their neighbor’s property across the Trail. Traffic noise reverberates and echoes off the neighbor’s high fence, bouncing back toward the Citron property, in a shockingly loud “double-whammy” effect. The Citrons measured the level of this traffic noise with a decibel meter, and found it to be in excess of 85 decibels. Noise levels outside the fence were recently measured to be 10 to 12 decibels higher than levels inside the fence. A low fence would not provide a noise barrier.

This very loud, dual source, reverberating traffic noise is another reason the Supervisors should properly exercise their discretion, based on the “unique nature of the parcel or surrounding environment,” and grant this appeal. The fence should properly be deemed a “noise barrier,” similar to the high stone fence along Highway 29 in Oakville.

There are No Adverse Visibility Consequences With the New Fence. While the director’s 8/14/06 denial letter is silent as to its basis, staff may argue at the hearing that the visibility intent of the subject ordinances justify denial here. However, there are no adverse visibility issues with the new fence. As was seen when County Planners and Supervisors viewed the fence this summer, visibility from the Citrons’ driveway extends hundreds of feet to the north and south of their driveway. At the point on the driveway where a driver emerges from the fence, he or she is still 23 feet from the traffic lane on the Silverado Trail, a safe distance as wide again as the Trail itself. Due to other obstacles on the adjacent properties, drivers exiting the Citron driveway must proceed out *past the subject fence* to view oncoming traffic before proceeding onto the Trail. It would not affect drivers’ visibility if the subject fence were two feet or two hundred feet high, because, a driver must proceed beyond the Citron fence anyway to view oncoming traffic. The fence height is irrelevant to the visibility of drivers, and visibility issues should not preclude granting this appeal.

⁴ In fact, the higher fence provides greater safety for drivers as well. Unless a vehicle were to slam headlong into the fence—in which case neither a six-foot nor a four-foot fence is likely to provide much safety—the higher fence will be safer in that it will better prevent vehicles from flipping over the wall. (Professional racetracks provide very tall retaining barriers around the roadways because a lower wall will not prevent flip-overs as well as a higher wall. A higher retaining fence is therefore safer for both the occupants of the property and occupants of any vehicles involved in accidents on the Trail.) It should be noted that two of the automobile accidents referred to above involved flipping vehicles.

The “Natural Grade” Elevation is Actually Higher Than the Base of the Fence. As the Code cited above sets forth, “fence heights shall be measured from natural grade that exists prior to fence construction.” However, the term “natural grade” is not defined. When measured from the ground surface, the new fence is--and the old fence was--six feet, eight inches high. However, if measured from the elevation of the middle of the Trail, the fence is five feet, eight inches tall or less. (See attached cross section with elevations on attached application exhibit.) The echoing fence and underlying berm on the neighbor’s property directly across the Trail, uphill, as viewed from the front of the Citron’s house, is visibly much higher than the Citron fence.

The Code section refers to “natural grade,” because it was not intended to simply measure the height of the fence above the ground precisely where the fence sits. Otherwise, the code would simply say, “six feet above the ground surface,” rather than “from natural grade.” As measured above the “natural grade,” the fence is less than six feet tall. Since fence heights are to be measured from “natural grade *that exists prior to fence construction*” the calculation of fence height must also take into account the fact that the old fence sat on a rocky berm of at least eight inches in height. (See historic “before” fence photos.) The height of the new fence is thus at most five feet above the historical, decades-long, pre-existing “natural grade,” as measured from the center of the Trail.

This Appeal Should be Granted and the Fence Should be Completed for Aesthetic Reasons Consistent With the General Plan. At every step in their building project process, the Citrons attempted to conform to the local rural aesthetics of their community. They built their new home in the same location as the dilapidated farmhouse, using its historic footprint for their beautiful new home. They used native materials including rock tilled from their own property, and natural, earth-toned, pleasing to the eye color schemes in designing the exterior of the house. They created an elegant, attractive farmhouse and fence that are logical and aesthetic replacements of, and natural improvements upon, the 1943 farmhouse and fence they purchased. The Citrons very much agree with and wish to further the County’s goal of preserving and maintaining the traditional rural character of the community. They have sought to blend in and be consistent with the older farmhouse properties and undeveloped vineyards in the area. (See attached artist’s rendering of completed fence.)

The Citrons have placed as much aesthetic emphasis on their new fence as they have on their dwelling structure. As the attached artist’s rendering attests, the new fence, when completed will be elegant, earth-toned, attractive, bedecked with rich, beautiful, noise-damping trees and foliage on the outside of the fence. It is hoped that any objective viewer will agree that the beautiful new fence will be a vast improvement over the old, bush covered deer fence that existed on the property for many decades. In the parlance of the General Plan, the new fence serves to “enhance the sense of place,” and “improve on the quality of life” of both those living inside the fence, and those viewing it from the outside. There is no risk that the portion of the Silverado Trail in the vicinity of the Citron property will be transformed into a tunnel of fences, because the Citron fence is the only fence of its kind in the area, the

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majority of neighboring properties consisting of open vineyards. The Supervisors should grant this appeal, even if it were submitted on aesthetic merits alone.

There are numerous examples of other fences in excess of five and six feet, including the six-foot, nine inch plus fence referred to as a "noise barrier" located at 7789 Hwy 29. (Photographs of many other high fences are listed in the attached Special Fence Permit Application.) The Citron fence is no more egregious than any of these fences.

Conclusion. The Citrons have spent \$44,000 replacing their fence, *thus far*, in an effort to make it safe and aesthetically pleasing before realizing their mistake that yet another permit had been required to replace the fence (see cost breakdown on attached application exhibit). The County has never, to our knowledge, demanded that a lay owner-builder tear down a completed fence, let alone an elegant, structurally engineered replacement fence like this one.

The Citrons are not trying to "get away with anything" here. They diligently obtained the many permits required for this project of which they were aware. They did not realize yet another permit was required to replace an existing fence, after having been ordered by the County to construct the barrier, and after having obtained the Certificate of Legal Non-Conformity. Recognizing their administrative error, the Citrons are doing everything in their power to comply with the County's requirements and wishes. If any Supervisors have not yet done so, they are invited and urged to view the site.

In light of the uniqueness of these facts, it would not be reasonable or equitable to force the Citrons to tear down an expensive, perfectly functional, attractive fence, merely to serve rote compliance with the letter, but not the spirit, of the County Code. Tearing down the new fence would render meaningless and worthless the tens of thousands of hard earned dollars the Citrons have spent thus far on the fence (before having to retain legal counsel). The County should not compel the Citrons to spend tens of thousands of dollars more on demolition costs and re-building their fence. To avoid injustice, the Supervisors should exercise their discretion and grant this very reasonable appeal.⁵

No one on earth, not the County, not the Citrons' neighbors, not passing pedestrians or drivers, no one will be prejudiced if this application is granted. The Citrons will be horribly prejudiced if it is not.

Respectfully submitted,



Montgomery G. Frankel

Attorney for Ron and Kathye Citron

⁵ Please contact this law office at any time if you require further information or wish to meet and confer on this matter. The Citrons look forward to showing you the site.



FILE # _____

NAPA COUNTY
CONSERVATION, DEVELOPMENT & PLANNING DEPARTMENT
1195 Third Street, Suite 210, Napa, California, 94559 (707) 253-4416

APPLICATION FOR SPECIAL FENCE PERMIT

FOR OFFICE USE ONLY

ZONING DISTRICT: _____ Date Submitted: _____
REQUEST: _____ Date Complete: _____

CDPD BOS APPEAL
Date: _____
Action: _____

TO BE COMPLETED BY APPLICANT
(please print or type)

Applicant's Name: RONALD AND KATHYE CITRON Telephone No: 963-8150 (atty)
Email Address: MGF.LAW@GMAIL.COM Fax No: 963-0434 (atty)
Mailing Address: 1304 OAK AVENUE ST. HELENA CA 94574
No Street City State Zip

Status of Applicant's Interest in Property: OWNERS

Property Owner's Name: RONALD + KATHYE CITRON Telephone No: 963-8150 (atty)
Address: 4189 SILVERADO TRAIL CALISTOGA CA 94515
No Street City State Zip

Site Address of Proposed Fence or Fence Structure: 4189 SILVERADO TRAIL " " "
Assessor's Parcel # 021-020-010-000 No. Street City State Zip

ALL APPLICATIONS MUST INCLUDE:

1. Application form - completely filled out and signed.
2. Location map/site plan - showing location of fence or fence structure in relation to property lines and rights-of-way.
3. Detailed elevations of fence or fence structure.

I certify that all the information contained in this application, including but not limited to the fence or fence structure location map/site plan, fence or fence structure elevations, and any supplemental information, is complete and accurate to the best of my knowledge.

[Signature] 6/6/06
Signature of Applicant Date
RONALD OR KATHYE CITRON
PRINT NAME

[Signature] 6/6/06
Signature of Property Owner Date
RONALD OR KATHYE CITRON
PRINT NAME

TO BE COMPLETED BY CONSERVATION, DEVELOPMENT AND PLANNING DEPARTMENT

*Application Fee Deposit: \$5608.00 Receipt # _____ Received by _____ Date _____
*Total Fees will be based on actual time and materials

Montgomery G. Frankel
Attorney at Law
1304 Oak Avenue
St. Helena, California 94574
tel: 707.963.8150 • fax: 707.963.0434

June 6, 2006

VIA HAND DELIVERY

Office of Conservation, Development & Planning
County of Napa
1195 Third Street
Napa, CA 94559

Re: Ronald and Kathye Citron; 4189 Silverado Trail; Application For Special Fence Permit; 4/27/06 Notice of Violation; APN 021-020-010-000

Dear Planning Department:

This law office represents Ron and Kathye Citron in the above-referenced matter. This letter and the enclosed attachments comprise the Citrons' Application For Special Fence Permit, following the 4/27/06 Notice of Violation herein, a copy of which is attached. I have been retained to file this application, and, if necessary, an appeal to the Board of Supervisors.

In the strongest possible terms, the Citrons and I request an opportunity to present this application *on location*, to the person or persons reviewing this application.

This application includes: this letter; the County's Application for Special Fence Permit form, signed by the Citrons; the 4/27/06 Notice of Violation herein; six before and after photographs showing three portions of the fence; a breakdown of the costs of the solid fence and gate (totaling over \$44,000 as of 5/1/06); an architect's site plan of the property including the fence and gate; a plan view illustration showing the length of each element of the fence and gate; an elevation photograph depicting the front of the fence with dimensions superimposed; a cross section showing the fence height and the natural grade on either side of the Silverado Trail; a schematic cross section of the fence itself (rebar not shown); seven photographs showing the new fence's construction with rebar; 31 pages of photographs depicting other fences adjacent to rights-of-way, whose height's exceed six feet; and an artist's rendering of the Citrons' finished fence.

BACKGROUND CHRONOLOGY

In April 2000, the Citrons purchased the subject property containing a farmhouse built in 1943, containing a fence along the front of the property, on the Silverado Trail. The fence that is the subject of this application is in the same exact location, and is the same exact height as the historical fence that existed on the property for

decades. The property is zoned Agricultural Preserve, and is located in the unincorporated portion of Napa County, between St. Helena and Calistoga. Historically, the property had two driveways onto the Trail, one to the north and one to the south.

The Citrons purchased the property with the goal of rebuilding the house, other structures, and fence. On May 20, 2004, the Citrons applied to the County for a determination of Legal Nonconformity, as the existing farmhouse was built too close to the Silverado Trail to comply with current codes. The Citrons applied to raze the existing structure and replace it with a new home on the same footprint. The septic system and other existing structures on the property did not permit the home to be moved to the west, away from the Trail. The Citrons' request for Legal Nonconformity was granted on July 19, 2004, to allow the new home to be built within the 90-foot road setback, and the 20-foot front yard setback. The Citrons thus applied for and were granted permission to rebuild their home in its historic location.

During the same time frame (6/10/04), the County demanded that the Citrons remove and place a barrier upon the northern driveway entrance to their property from the Silverado Trail, citing the danger due to the driveway's proximity to a dangerous curve on the Silverado Trail, where traffic proceeds at very high velocities. The remaining (southern) driveway was to be re-located, and the County recommended that it be moved far to the south to place as much distance as possible between the driveway and the Trail's dangerous curve. The County's concern over the danger near this curve was based in part on no less than three accidents involving vehicles driving around the curve at high velocities. Police reports were filed for some or all of these accidents, and in one accident, the vehicle actually came to rest against the Citrons' old fence.

In late August 2004, Kathye Citron spoke to Mike Shepherd with Napa County's Public Works Department at his Silverado Trail office, regarding the new driveway. When asked, Ms. Citron told Mr. Shepherd that she planned to stucco the existing fence, and Mr. Shepherd responded that this sounded like a good idea. Ms. Citron erroneously left the Shepherd meeting with the impression that she would not need an additional permit to stucco over the existing fence. This fact is noted not because the Citrons in any way mean to suggest they were misled by Mr. Shepherd, but merely to explain the source of their confusion on the fence permit issue. Mr. Shepherd may even have told Ms. Citron she would need another permit for the fence, but she does not recall him saying so. When the County ordered her to place a barrier closing the northern driveway on the property, however, Ms. Citron justifiably believed she would not be required to obtain yet another permit for the County-ordered fence work. The Citrons also did not realize the fence height Code section had been revised at that time, and correctly believed that under the prior Code, a permit for a six-foot fence would not be required.

On September 2, 2004, the Citrons' encroachment permit was granted. On September 7, 2004, their building permit was issued. It should be noted that the Citrons who are novice owner-builders of their home, not professional contractors,

diligently and conscientiously did everything in their power to comply with every County permit requirement of which they were aware.

In February and March 2006, the Citrons received bids for stuccoing over their existing front fence. They learned they could not merely stucco over the fence, and that they would instead have to start over and include structural engineering in the fence design. The Citrons did not realize that a permit was required for the fence-work. They understandably believed no fence permit was required: 1) because the County had ordered them to construct a barrier across the northern driveway; and 2) because the new fence was the same height and in the same location as the old fence. They demolished their old fence and built their new one in March 2006, complete with rebar and structural engineering appropriate for the weight of the fence (see attached photographs of the fence's internal rebar construction). They did so without having applied for another permit.

The new fence is six feet, eight inches high, exactly the same height as the old fence. The new fence is completed except for its stucco outer layer and the coordinated landscaping (see attached artist's rendering).

On April 26, 2006, the Citrons were ordered to stop work on the fence. The following day, Mr. Colby issued the attached Notice of Violation letter citing the setback and height codes. The structural portion of the fence is done. The only work remaining on the fence is stuccoing and planting the surrounding foliage.

On or about May 9, 2006, Mr. Shepherd informed the Citrons that the County could not locate the medallion marker indicating the center of Silverado Trail, and that the setback violation was no longer at issue. Thus, it would appear that the Department of Public Works does not consider the *location* of the fence, in the same exact place as the historic fence, to be a problem. The *height* of the fence is therefore the subject of this special permit application.

This special permit application therefore seeks a building permit for the fence already constructed, which is the exact same height and in the exact same location as the historical fence. For the reasons set forth below, this special permit should be granted.

THE APPLICABLE NAPA COUNTY CODE SECTIONS

ORDINANCE NO. 1227, reads in pertinent part:

SECTION 3. Section 18.104.270 of the Napa County Code entitled "**Fences**," is amended to read in full as follows:

18.104.270 Fences.

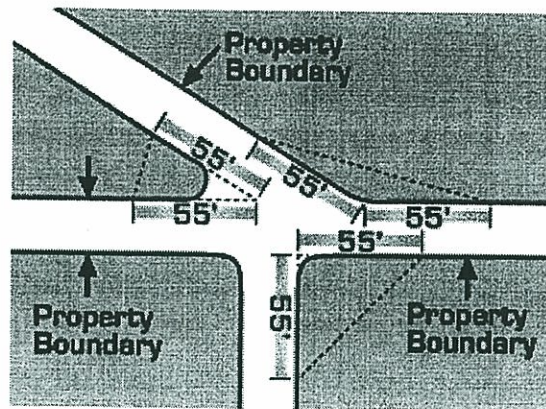
A. Fence height standards for all districts, except as specified in subsections (C) and (D) below, are as follows:

1. Fences up to a height of four feet are permitted in the designated front yard setback, except that see-through deer fencing up to 8 feet is permitted to support agricultural uses. Fences up to eight feet in height are permitted in side and rear yard

setbacks. Fences that exceed a height of six feet in a side or rear yard setback area shall be see-through in nature (e.g., deer or other wire fencing, lattice, or chain link) above the six foot level, unless a special fence use permit is granted pursuant to subsection (A)(2) below.

2. A special fence permit may be granted by the Director to modify the requirements of this section of the ordinance, provided that a need can be demonstrated, due to the unique nature of the parcel or surrounding environment, for the proposed fence design....

4. At intersections and driveway entrances, solid fence height in all districts shall not exceed forty-two inches in height within a fifty-five foot corner vision triangle as shown in the diagram below.



B. No structure (i.e., a fence requiring a building permit) shall be located within the road setback unless a special fence permit is obtained per A.2 above....

E. For the purposes of this section, fence heights shall be measured from natural grade that exists prior to fence construction.

Thus, while fence heights of four-, six-, or even eight-feet are allowed by the County Code in various situations, under Section 18.104.270, section 3.A.2, the County may also grant a special fence permit modifying the requirements of the fence code in general, and granting this particular request for a special permit, due to the unique nature of the subject fence. For the reasons set forth below, the County should conclude that *this fence presents a unique situation* and exercise its discretionary power under this code section to grant this permit request.

THE NEW FENCE IS EXACTLY THE SAME HEIGHT, AND IN EXACTLY THE SAME LOCATION AS THE HISTORICAL FENCE

The County is urged to bear in mind, throughout this review process, that the new fence is precisely the same height, and in precisely the same location as the historic fence on the property. The new fence, made of reinforced cinder block is a total of six

feet, eight inches high. The old fence, which had been on the property for decades (presumably since the house was built in 1943), was a six-foot fence constructed atop a stone berm of eight inches, for a total height above ground of six feet, eight inches. (See six attached photographs, showing three pairs of “before and after” views of the fence.)

Comparison of three historical photographs of the fence, with current photos of the new fence visually and unequivocally confirms that no change in height or location occurred when the new fence replaced the old one. The fact that the new fence is exactly the same height, and in exactly the same location as the fence that presumably existed on the site since 1943, is a unique fact militating in favor of granting this permit application.

**THE UNIQUE LOCATION OF THE HOUSE NEAR A VERY DANGEROUS
CURVE IN THE SILVERADO TRAIL JUSTIFIES GRANTING THIS
REQUEST**

As stated above, the Citron property is located adjacent to a very dangerous curve in the Silverado Trail. The numerous accidents occurring on this curve, including the incident involving the vehicle coming to rest against the subject fence, remains a very great cause for concern for the Citrons. Their young grandson has his own room in the northeast portion of the house, and plays in the Citrons’ yard during his frequent visits. The County acknowledged the special danger inherent in this particular curve when it ordered the Citrons to cease using the historic northern driveway onto the Silverado Trail. A four-foot fence would simply not provide adequate safety for the Citrons, their grandson and other guests, and their new home. An errant truck or automobile, careening out of control in the vicinity of this very dangerous curve, like the other vehicles involved in the prior accidents there, would not be restrained by a four-foot fence.

In fact, the higher fence provides greater safety for drivers as well. Unless a vehicle were to slam headlong into the fence—in which case neither a six-foot nor a four-foot fence is likely to provide much safety—the higher fence will be safer in that it will better prevent vehicles from flipping over the wall. (Professional racetracks provide very tall retaining barriers around the roadways because a lower wall will not prevent flip-overs as well as a higher wall. A higher retaining fence is therefore safer for both the occupants of the property and occupants of any vehicles involved in accidents on the Trail.) It should be noted that two of the automobile accidents referred to above involved flipping vehicles.

The current fence provides adequate safety from the vehicular traffic on the Trail, and is the primary reason the County should properly exercise its discretion, based on the “unique nature of the parcel or surrounding environment,” and grant this request for special permit.

**THERE ARE NO ADVERSE VISIBILITY CONSEQUENCES WITH THE
NEW FENCE**

There are no adverse visibility issues with the new fence. As will be seen when the county views the fence, visibility from the Citrons' driveway extends hundreds of feet to the north, and hundreds of feet the south from their driveway (see attached site plan). At the point in the driveway where a driver in a car emerges from the fence, he or she is still 23 feet from the traffic lane on the Silverado Trail, a distance as wide again as the Trail itself. There are thus no visibility issues precluding the County from granting this application.

**THE "NATURAL GRADE" ELEVATION IS ACTUALLY HIGHER THAN
THE BASE OF THE SUBJECT FENCE**

As the code cited above sets forth, "fence heights shall be measured from natural grade that exists prior to fence construction." However, the term "natural grade" is not further defined. Applicants and regulators are thus left without guidance as to whether "natural grade" refers to the particular point on the ground where the fence sits, or to the average "natural grade" of the surrounding ground.

The ground surface in the subject area slopes downward from the Trail toward the fence. The height of the fence thus varies depending on which elevation is used as the "natural grade." The center of the Silverado Trail adjacent to the subject fence, is 35 feet east of the fence. When measured from the ground surface, the new fence is, and the old fence was, six feet, eight inches high. However, if measured from the elevation of the middle of the Trail, the fence is only five feet, eight inches tall (see attached cross section with elevations). The attached cross section also shows the fence and underlying berm on the neighbor's property directly across the Trail, uphill, as viewed from the front of the Citron's house, is at least *thirteen feet* above the elevation of the middle of the Trail.

The Citrons respectfully suggest that the code section refers to "natural grade," because it was not intended to simply measure the height of the fence above the ground precisely where the fence sits. Otherwise, the code would say, "six feet above the ground surface," rather than "from natural grade." As measured above the "natural grade," the fence is only five feet, eight inches tall. Furthermore, since fence heights are to be measured from "natural grade *that exists prior to fence construction*" the calculation of fence height must also take into account the fact that the old fence sat on a rocky berm of at least eight inches in height. (See historic "Before" fence photos.) Since the "natural grade" existing prior to the new fence's construction included the rocky berm, the height of the fence above natural grade is less than the height of the fence above the current ground surface.

The height of the new fence is thus approximately five feet, eight inches above the historical, decades-long, pre-existing "natural grade."

THE HIGH NOISE LEVELS ON THIS STRETCH OF THE SILVERADO TRAIL JUSTIFY GRANTING THIS REQUEST

High noise levels are generated by the traffic on the Trail immediately adjacent to the Citron property, because of the high velocity at which traffic travels in both directions, with motorcycles accelerating out of the curve, and rapidly driving northbound vehicles, especially semi trucks, downshifting gears loudly, winding down in anticipation of the upcoming dangerous curve. Noise levels on the Citron property are then amplified by the fence on the neighbor's property across the Trail up on its high berm. Traffic noise reverberates and echoes off the neighbor's high fence, bouncing back toward the Citron property, in a shockingly loud "double-whammy." The Citrons measured the level of this noise with a decibel meter, and found it to be frequently in excess of 85 decibels. A low fence would not prevent this direct and reflected noise from disturbing the Citrons and their guests.

This very loud, dual source, reverberating traffic noise is another reason the County should properly exercise its discretion, based on the "unique nature of the parcel or surrounding environment," and grant this request for special permit. The fence should properly be deemed not just a fence, but also a "noise barrier."

THIS REQUEST SHOULD BE GRANTED AND THE SUBJECT FENCE SHOULD BE COMPLETED FOR AESTHETIC REASONS CONSISTENT WITH THE GENERAL PLAN

At every step in their building project process, the Citrons attempted to conform with the local rural aesthetics of their community. They built their new home in the same location as the dilapidated farmhouse, using its historic footprint for their beautiful new home. They used native materials including rock tilled from the property, and natural, earth-toned, pleasing to the eye color schemes in designing the exterior of the house. As a result, they have created an elegant, attractive farmhouse which is a logical and aesthetic extension of, if not improvement upon, the 1943 farmhouse and fence that they purchased. The Citrons very much agree with and wish to further the County's goal of preserving and maintaining the traditional rural character of the community. They have sought to blend in with and be consistent with the older farmhouse properties and undeveloped vineyards in the area. (See attached artist's rendering of completed fence.)

The Citrons have placed as much aesthetic emphasis on their new fence as they have with their dwelling structure. As the attached artist's rendering attests, the new fence, when completed will be elegant, earth-toned, attractive, bedecked with rich, beautiful, noise-damping trees and foliage on the outside of the fence. It is hoped that any objective viewer will agree that the beautiful new fence will be a vast improvement over the old, bush covered deer fence that existed on the property for those many decades. In the parlance of the General Plan, the new fence serves to "enhance the sense of place," and "improve on the quality of life" of both those living inside the fence, and those viewing it from the outside. This fence is an unequivocal improvement over its predecessor. The County should grant this application, even if it were submitted on aesthetic merits alone.

**THIS REQUEST SHOULD BE GRANTED FOR A NUMBER OF OTHER
MISCELLANEOUS REASONS**

The Citrons spent over \$44,000 on the fence, *thus far*, in an effort to make it safe and aesthetically pleasing before realizing their mistake that yet another permit was required to build the fence (see attached cost breakdown).

The Citrons might have avoided the subject Notice of Violation had they simply built a three-foot berm under a four-foot fence, similar to the neighbor's fence on the high berm across the Silverado Trail. But the Citrons were unable to do so because the County Fire Department required sufficient turn around space for fire engines and other vehicles inside the fence. Construction of such a berm would have run afoul of the driveway turnaround requirements of the fire department.

The Citrons could have called the front of their house the back, and called the back the front, to avoid the four-foot height limit, and thus be permitted to build a six-foot fence. Since absolutely no one will be prejudiced in any way by leaving the fence at its current height, the County is urged to grant this special application. (In a sense, the Citrons are simply requesting that the subject fence be scrutinized as though it were a back- or side-yard fence, which may be six feet tall.)

There are numerous examples of other fences in excess of five and six feet: 4750 Silverado Trail, 3071 Silverado Trail, 3097 Silverado Trail; 1223 Tubbs Lane; 3251 Hwy 128; 2999A Hwy 128, 1808 Hwy 128; 3251 Bus. Hwy 128; 1601 Foothill, 1607 Foothill, 1716 Foothill, 3243 Foothill; 347 North Crane; 7789 Hwy 29 (six-foot, nine inch plus fence referred to as a "noise barrier"); corner of Dunaweal and Hwy 29; 6220 Washington; the property directly across from 4189 Silverado Trail; 474 Glass Mountain Road; 478 Glass Mountain Road; 870 Crystal Springs Road; 878 Sanitarium Road; 900 Sanitarium Road; 994 Sanitarium Road; 656 Deer Park Road; 1060 Deer Park Road; 1080 Crestmont Road; across the street from 1230 Crestmont Road; 541 Sunset; 319 White Cottage Road; 360 White Cottage Road; 225 Clark; and 625 Howell Mountain Road (see 31 pages of attached photographs showing these walls, all of which appear to violate the Code sections set forth above). The new Citron fence is no more egregious than any of these fences.

The County has never, to our knowledge, demanded that a lay owner-builder tear down a completed fence, let alone an elegant, structurally engineered fence like the Citrons'.

There is no risk that the portion of the Silverado Trail in the vicinity of the Citron property will be transformed into a tunnel of fences, because the Citron fence is the only fence of its kind in the area, the majority of neighboring properties consisting of open vineyards.

June 6, 2006

CONCLUSION

The Citrons are not trying to "get away with anything" here. They diligently obtained every permit required for this project of which they were aware. They made a mistake in not realizing that yet another permit was required to build a fence of exactly the same height, in exactly the same place as the pre-existing fence, after having been ordered by the County to construct a barrier. Having recognized their administrative error, the Citrons are doing everything in their power to comply with the County's requirements and wishes.

Please come view the site and allow the Citrons to present this application in that context. We believe the Planning Department will agree it would not be reasonable or fair to force the Citrons to tear down an expensive, perfectly functional, attractive fence, merely to serve rote compliance with the letter, but not the spirit, of the County Code. Tearing down the new fence would render meaningless and worthless the tens of thousands of hard earned dollars the Citrons have spent thus far on the fence (before having to retain legal counsel). The County should not compel the Citrons to spend tens of thousands of dollars more on an appeal or on demolition costs, before re-building their fence. To be fair, the County should exercise its discretion and grant this very reasonable application.

No one on earth, not the County, not the Citrons' neighbors, not passing pedestrians or drivers, no one will be prejudiced if you grant this application. But the Citrons will be horribly prejudiced if you do not.

Please contact me at any time if you require further information or wish to meet and confer on this matter. The Citrons look forward to showing you the site. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Monte Frankel".

Montgomery G. Frankel



COUNTY of NAPA
OFFICE OF CONSERVATION, DEVELOPMENT & PLANNING
BUILDING INSPECTION DIVISION

HILLARY GITELMAN
Director

PATRICK LYNCH, AICP
Assistant Director

Darrell Mayes
Chief Building Official

RANDY SCHMELING
Plans Examiner

JOHN KAYLOR
Plans Examiner

STACIE VAZQUEZ
Plans Examiner

OLAF KLASCHIK
Plans Examiner

CHRISTINA BEYE
Permit Technician

MAC MACCOLL
Field Inspection
Supervisor

JOHN MORROW
Building Inspector

DAVID DELONG
Building Inspector

RICK BLAIR
Building Inspector

JOHN HAMMOND
Building Inspector

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Building Inspector

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NOTICE of VIOLATION

Ronald & Kathye J. Citron TR
4189 Silverado Trail
Calistoga, CA 94515-9610

April 27, 2006

SUBJECT: NAPA COUNTY CODE & CALIFORNIA BUILDING CODE VIOLATIONS
LOCATION: 4189 SILVERADO TRAIL APN 021-020-010

Dear Property Owner(s):

It has come to our attention that the following conditions and/or discrepancies exist on the property identified above.

NAPA COUNTY CODE:

- Chapter 18.104.270 (Fences) = *Fences exceeding four feet in height are not permitted within the combined distance of 90 feet from the centerline of Silverado Trail. (AP zone front yard setback of 20 ft.+ road setback of 70 ft.) No fence structure requiring a building permit (> 6 ft. high) shall be located within the road setback unless a special fence permit is granted by the Director to modify said requirements due to the unique nature of a parcel. Note: Solid fences shall not exceed 42 inches within a 55 foot corner vision triangle at driveway entrances.*

CALIFORNIA BUILDING CODE:

- Section 106.1 (Permits Required) = *Building permits are required for any fence above 6 feet in height as measured from the natural grade prior to construction.*

Please call me at (707) 259-8226 within seven (7) days of the date of this letter to discuss the resolution of this matter. Your cooperation is now requested, however, failure to *stop work*, as per Order To Comply dated April 26, 2006, and also take prompt and appropriate action to correct the violations may result in the issuance of Administrative Citations and/or a referral to County Counsel for the initiation of legal action.

Sincerely, 
Edward S. Colby, Planner III
Code Compliance Unit

Cc: Brad Wagenknecht, Supervisor District 1
Hillary Gitelman, Director
Patrick Lynch, Assistant Director
Darrell Mayes, Chief Building Official
Robert Nelson, Supervising Planner
Greg Baxter, Building Inspector II, Code Compliance Unit