

2007 MAR -01 PM 2:33

REVISED

OAKLAND CITY COUNCIL

RESOLUTION NO. 80456 C.M.S.

INTRODUCED BY COUNCILMEMBER _____

Mark P. Oswald

RESOLUTION UPHOLDING THE APPEAL AND OVERTURNING THE DECISION OF THE PLANNING COMMISSION THEREBY DENYING THE ESTABLISHMENT OF A SERVICE-ENRICHED PERMANENT HOUSING RESIDENTIAL ACTIVITY FOR 8 ADULTS WITHIN AN EXISTING STRUCTURE LOCATED AT 2815 WEST STREET

WHEREAS, on May 19, 2006, Carolyn Robinson, representing East Bay Transitional Housing (Applicant), filed for a Major Conditional Use Permit to conduct a Service-Enriched Permanent Housing Residential Activity for 16 adults within an existing structure located at 2815 West Street; and

WHEREAS, pursuant to Oakland Planning Code section 17.134.020, the matter was referred to the Oakland City Planning Commission for review and action: and

WHEREAS, on October 4, 2006 the Planning Commission conducted a duly noticed public hearing on the matter, which was continued in order to allow the Applicant to meet with community representatives; and

WHEREAS, on October 18, 2006 the Planning Commission again conducted a duly noticed hearing, which was also continued in order to allow the Applicant to again meet with community representatives; and

WHEREAS, on November 1, 2006 the Planning Commission again conducted a duly noticed hearing, closed the hearing and then voted to approve the Conditional Use Permit, with revised conditions of approval, including a reduction in the number of residents from 16 to 8; and

WHEREAS, on November 13, 2006, the Beat Six Advocates (Appellant) filed an appeal of the City Planning Commission decision, specifying four grounds for the appeal; and

WHEREAS, after giving due notice to the Appellant, the Applicant, all interested parties and the public, the Appeal came before the City Council for a public hearing on January 16, 2007; and

WHEREAS, the Appellant, the Applicant, supporters of the application, those opposed to the application and interested neutral parties were given ample opportunity to participate in the public hearing by submittal of oral and/or written comments; and

WHEREAS, the public hearing on the Appeal was closed by the City Council on January 16, 2007; and

WHEREAS, the City Council took a vote directing City Planning Staff to return with findings for upholding the appeal/denying the application; and

WHEREAS, after giving due notice to the Appellant, the Applicant, all interested parties and the public, the Appeal came again before the City Council on March 20, 2007; and

WHEREAS, the Appellant, the Applicant, supporters of the application, those opposed to the application and interested neutral parties were again given ample opportunity to participate in the meeting by submittal of oral and/or written comments; now therefore, be it

RESOLVED: That the City Council, having independently heard, considered and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Application, the City Planning Commission's decision, and the Appeal, finds that the Appellant has shown, by reliance on evidence already contained in the record before the City Planning Commission, that the City Planning Commission's decision was made in error, that there was an abuse of discretion by the Commission and/or that the Commission's decision was not supported by substantial evidence in the record; and be it

FURTHER RESOLVED: Accordingly, the Appeal is upheld, the Planning Commission's decision is overturned and the application is denied; and be it

FURTHER RESOLVED: That in support of the City Council's decision to overturn the Oakland Planning Commission approval of the Project, the City Council rejects the January 16, 2007, City Council Agenda Report and the October 4, 2006 City Planning Commission Report (with revised conditions), and instead, hereby adopts and incorporates by reference, as if fully set forth herein, the Findings for Denial contained in Exhibit A. Each finding therein provides a separate and independent basis to overturn the Planning Commission decision and deny the application, and, when viewed collectively, provides an overall basis to deny the application; and be it

FURTHER RESOLVED: That the City Council finds and determines that this Resolution complies with CEQA, as the denial of the project is exempt from CEQA under Section 15270 of the State CEQA Guidelines; and be it

FURTHER RESOLVED: That the record before this Council relating to this application and appeal includes, without limitation, the following:

1. the application, including all accompanying maps and papers;

2. all plans submitted by the Applicant and his/her representatives;
3. the notice of appeal and all accompanying statements and materials;
4. all final staff reports, final decision letters and other final documentation and information produced by or on behalf of the City, including without limitation and all related/supporting final materials, and all final notices relating to the application and attendant hearings;
5. all oral and written evidence received by the City Planning Commission and City Council during the public hearings on the application and appeal; and all written evidence received by relevant City Staff before and during the public hearings on the application and appeal;
6. all matters of common knowledge and all official enactments and acts of the City, including, without limitation (a) the General Plan; (b) Oakland Municipal Code, (c) Oakland Planning Code, (d) other applicable City policies and regulations, and, (e) all applicable state and federal laws, rules and regulations; and be it

FURTHER RESOLVED: That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) Community & Economic Development Agency, Planning & Zoning Division, 250 Frank H. Ogawa Plaza, 2nd Floor, Oakland CA.; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, CA; and be it

FURTHER RESOLVED: That, the recitals contained in this Resolution are true and correct and are an integral part of the City Council's decision.

In Council, Oakland, California, MAR 20 2007 2007


PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, KERNIGNHAN, NADEL, QUAN, BROOKS, REID, CHANG, and
PRESIDENT DE LA FUENTE - 8

NOES- 0

ABSENT- 0

ABSTENTION- 0

ATTEST: 
LATONDA SIMMONS
City Clerk and Clerk of the
Council of the City of
Oakland, California

LEGAL NOTICE: ANY PARTY SEEKING TO CHALLENGE THIS FINAL DECISION IN COURT MUST DO SO WITHIN NINETY (90) DAYS OF THE DATE OF THE ANNOUNCEMENT OF THIS DECISION, PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 1094.6, UNLESS A SHORTER PERIOD APPLIES.

EXHIBIT A

FINDINGS FOR DENIAL:

This proposal does **not** meet the required findings under Section 17.134.050, General Use Permit Criteria and Section 17.102.212 Special Regulations Applying to Residential Care, Service-enriched Permanent Housing, Transitional Housing, and Emergency Shelter Residential Activities as set forth below. Required findings are shown in **bold** type; explanations as to why these findings cannot be made are in regular type. Each and every finding must be met in order to approve the application. Conversely, failure to make just one finding results in the application being denied.

Section 17.134.050 (General Use Permit Criteria):

- A. That the location, size, design, and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.**

The operating characteristics of the proposed development will not be compatible with the livability or appropriate development of the neighborhood. The neighborhood has a high density of liquor stores, street drugs, and crime. People in recovery at the proposed facility may be tempted to relapse and may commit crimes that adversely impact the neighborhood.

Although the facility is located more than 300 feet from the nearest Residential Care, Transitional Housing, or Emergency Shelter, this Beat 6 neighborhood in particular, and West Oakland in general, contain a high number of social service facilities such as, but not limited to, Oakland Housing Authority Scattered Site Housing, affordable Senior Housing, Licensed housing and recovery housing, unlicensed facilities for under 6 residents, Out-Patient, and Community Services. Approval of the application would add to an already existing overconcentration of similar social service activities and may cause adverse off-site impacts, such as crime, loitering, and noise, and prevent or impede the development of the surrounding neighborhood. Here, the General Plan goals of the Mixed Housing Type classification state that development should “create, maintain, and enhance residential areas typically located near the City’s major arterials and characterized by a mix of single family homes, townhouses, small multi-family businesses, and neighborhood businesses where appropriated.” The desired character and uses section of the General Plan states that primary future uses should be “residential, small commercial enterprises, schools, and other small scale, compatible civic uses possible in appropriate locations.” The proposed use is not appropriate in this location because of the overconcentration of similar uses that may increase crime, loitering, and noise.

Although the applicant has many years experience in the field of treating those with chemical dependencies in an out-patient setting, she does not have any specific experience running a Service Enriched Permanent Housing Activity and this will exacerbate existing nuisance activities in the general area. Experience with similar facilities has demonstrated that operators with a long track record generate few complaints regarding nuisance activity.

- B. That the location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant.**

Although the facility is located more than 300 feet from the nearest Residential Care, Transitional Housing, or Emergency Shelter, this Beat 6 neighborhood in particular, and West Oakland in general, contain a high number of social services such as, but not limited to Oakland Housing Authority

Scattered Site Housing, affordable Senior Housing, Licensed housing and recovery housing, unlicensed facilities for under 6 residents, Out-Patient, and Community Services. Approval of the application would add to an existing overconcentration of similar social service activities and may cause adverse off-site impacts as described above, nuisance activity will impede or prevent the development of a convenient and functional living, working, shopping, or civic environment by discouraging investment and maintenance in surrounding properties.

Although the applicant has many years experience in the field of treating those with chemical dependencies in an out-patient setting, she does not have any experience running a Service Enriched Permanent Housing Activity.

- C. That the proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region.**

The proposal will not enhance the successful operation of the surrounding area in that the proposal will impede (and/or prevent) the attainment of mixed land use development. Instead, the facility would impede or prevent the successful operation in the surrounding area and will not provide an essential service to the community because the presence of an overconcentration of similar facilities.

- D. That the proposal conforms to all applicable design review criteria set forth in the design review procedure at Section 17.136.070.**

- E. That the proposal conforms in all significant respects with the Oakland Comprehensive Plan and with any other applicable plan or development control map which has been adopted by the City Council.**

Section 17.102.212, Special Regulations Applying to Residential Care, Service-enriched Permanent Housing, Transitional Housing, and Emergency Shelter Residential Activities:

- A.**
- 1. That the staffing of the facility is in compliance with any State Licensing Agency requirements.**
 - 2. That if located in a residential zone, the operation of buses and vans to transport residents to and from off-site activities does not generate vehicular traffic substantially greater than that normally generated by Residential Activities in the surrounding area.**
 - 3. That if located in a residential zone, the on-street parking demand generated by the facility due to visitors is not substantially greater than that normally generate by the surrounding Residential Activities.**
 - 4. That if located in a residential zone, arrangements for delivery of goods are made within the houses that are compatible with and will not adversely affect the livability of the surrounding properties.**
 - 5. The facility's program does not generate noise at levels that will adversely affect the livability of the surrounding properties.**
- B. Restriction on Overconcentration of Residential Care, Service-Enriched Permanent Housing, Transitional Housing, and Emergency Shelter Residential Activities. No Residential Care, Service-Enriched Permanent Housing, Transitional Housing, or Emergency Shelter Residential Activities shall be located closer than three hundred (300) feet from any other such Activity or Facility.**

Although the facility is located more than 300 feet from the nearest Residential Care, Transitional Housing, or Emergency Shelter, there is nothing prohibiting the City from nevertheless finding an overconcentration of such facilities in a particular circumstance, such as here. This provision merely requires automatic denial of an application if located within 300 feet of a similar facility. The provision was not meant to, nor does it, mean that there is no overconcentration problem if the minimum 300 foot separation requirement is met. As such, the proposal would be a part of the general overconcentration of similar facilities found within the Beat 6 area and the greater West Oakland Area.