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REVISED

OAKLAND CITY COUNCIL

RESOLUTION NO. 80792 C.M.S.

INTRODUCED BY COUNCILMEMBER _____

Mark P. Wood

RESOLUTION DENYING THE APPEAL AND UPHOLDING THE PLANNING COMMISSION'S APPROVAL OF 32 RESIDENTIAL CONDOMINIUMS OVER GROUND FLOOR COMMERCIAL AT 5300 SAN PABLO AVENUE, OAKLAND (CASE FILE NUMBER DV06-220 & TPM-9153) WITH REVISED, ADDITIONAL CONDITIONS OF APPROVAL

WHEREAS, the project applicant, Dogtown Development, filed an application on May 4, 2006, to construct a mixed use project containing 32 residential units and less than 3,000 square feet of commercial space at 5300 San Pablo Avenue (Case File No DV06-220 and TPM-9153) (Project), and

WHEREAS, the Design Review Committee of the Planning Commission considered the design review aspects of the Project at a duly noticed public meeting on February 28, 2007, and

WHEREAS, the City Planning Commission took testimony and considered the project at its duly noticed public meeting of April 18, 2007. At the conclusion of the public hearing, the Commission deliberated the matter and voted (5-0-0) to approve the Project; and

WHEREAS on April 30, 2007, an appeal of the Planning Commission's approval and a statement setting forth the basis of the appeal was filed by Charles Porter; 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 July 17, 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 Appellant agreed to withdraw the appeal based upon the imposition of the revised, additional conditions of approval, and the applicant agrees with the imposition of said conditions, and

WHEREAS, the public hearing on the Appeal was closed by the City Council on July 17, 2007,

Now, Therefore, Be It

RESOLVED That, the City Council, having heard, considered and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Application, the Planning Commission's decision, and the Appeal, finds that the Appellants have **not** shown, by reliance on evidence already contained in the record before the City Council that the Planning Commission's Decision of April 18, 2007 was made in error, that there was an abuse of discretion by the Planning Commission or that the Commission's decision was not supported by substantial evidence in the record based on the April 18, 2007 Staff Report to the City Planning Commission (attached as Exhibit "A") and the July 17, 2007 City Council Agenda Report (attached as Exhibit "B"), hereby incorporated by reference as if fully set forth herein. Accordingly, the Appeals are denied, the Planning Commission's approval is upheld, subject to the findings contained in Exhibits "A" and "B", each of which is hereby separately and independently adopted by this Council in full, and be it

FURTHER RESOLVED: That, in support of the Planning Commission's decision to approve the Project, the City Council affirms and adopts (i) the April 18, 2007 Staff Report to the City Planning Commission (including without limitation the discussion, findings, conclusions and conditions of approval (each of which is hereby separately and independently adopted by this Council in full)), attached as Exhibit "A", and (ii) the July 17, 2007 City Council Agenda Report, attached hereto as Exhibit "B" (including without limitation the discussion, findings, and conclusions (each of which is hereby separately and independently adopted by this Council in full)), except where otherwise expressly stated in this Resolution, and be it

FURTHER RESOLVED: That the City Council adopts the following revised, additional conditions of approval in order to implement the agreement reached with the applicant and the Appellant:

- a. The preference of the community is for a quality retail tenant to occupy the ground floor space. The developer will use best faith efforts to secure a "high quality" retail tenant to occupy the ground floor space.
- b. If the developer is unable to secure such a tenant, an office tenant is permitted, provided, however, the ground floor windows will remain transparent to the street. In any event, the ground floor space designated for commercial will remain commercial space in the future.
- c. The 53rd Street frontage of the proposed building, from the stairwell east to the rear lot, will be set-back by 3 5 feet. In the space created by the increased set-back, greenery will be planted.
- d. The ground-floor retail space will be 12-15 feet in height.

FURTHER RESOLVED That, the City Council finds and determines that this Resolution complies with CEQA and the Environmental Review Officer is directed to cause to be filed a Notice of Exemption with the appropriate agencies, 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 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 appeals, 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, JUL 17 2007, 2007

PASSED BY THE FOLLOWING VOTE:

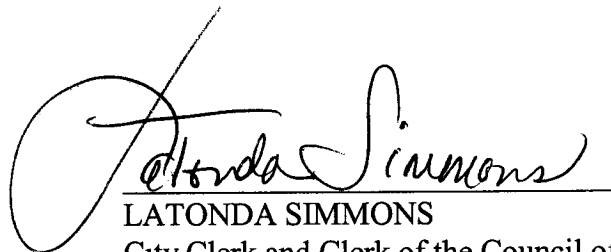
AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, KERNIGHAN, AND
PRESIDENT DE LA FUENTE - 8

NOES- 0

ABSENT- 0

ABSTENTION- 0

ATTEST



Latonda Simmons

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

Exhibit A

[April 18, 2007 Planning Commission Staff Report]

Exhibit B

[July 17, 2007 City Council Agenda Report]

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RESOLVED That, the City Council, having heard, considered and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Application, the Planning Commission's decision, and the Appeal, finds that the Appellants have **not** shown, by reliance on evidence already contained in the record before the City Council that the Planning Commission's Decision of April 18, 2007 was made in error, that there was an abuse of discretion by the Planning Commission or that the Commission's decision was not supported by substantial evidence in the record based on the April 18, 2007 Staff Report to the City Planning Commission (attached as Exhibit "A") and the July 17, 2007 City Council Agenda Report (attached as Exhibit "B"), hereby incorporated by reference as if fully set forth herein. Accordingly, the Appeals are denied, the Planning Commission's approval is upheld, subject to the findings contained in Exhibits "A" and "B", each of which is hereby separately and independently adopted by this Council in full, and be it

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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

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In Council, Oakland, California, _____, 2007

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AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, KERNIGHAN, AND
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST

LATONDA SIMMONS
City Clerk and Clerk of the Council of
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