

2003 NOV 26 AM 9:53

OAKLAND CITY COUNCIL

Mark P. Wall

= 78206

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER _____

**RESOLUTION DENYING THE APPEAL AND SUSTAINING THE
DECISION OF THE CITY PLANNING COMMISSION IN
APPROVING THE APPLICATION FOR A MAJOR VARIANCE TO
CONSTRUCT A SIX UNIT RESIDENTIAL PROJECT AT 436
OAKLAND AVENUE, OAKLAND**

WHEREAS, the property owner, Bill Levinson, filed an application on July 1, 2003 to construct a six unit residential project at 436 Oakland Avenue; and

WHEREAS, The City Planning Commission took testimony and considered the matter at its meeting held September 17, 2003. At the conclusion of the public hearing held for the matter, the commission deliberated the matter, and voted. The project was approved, 5-0-0; and

WHEREAS on September 29, 2003, an appeal of the Planning Commission's approval and a statement setting forth the basis of the appeal was received; 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 November 18, 2003; 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 November 18, 2003;

Now, Therefore, Be It

RESOLVED: The requirements of the California Environmental Quality Act (CEQA) of 1970, as prescribed by the Secretary of Resources, and the City of Oakland's environmental review requirements, have been satisfied, and, in accordance the adoption of this resolution is exempt from CEQA under Section 15332 "In-Fill Development" of the State CEQA Guidelines.

FURTHER 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 City Planning Commission's decision, and the Appeal, finds that the Appellant has not 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 or that the Commission's decision was not supported by substantial evidence in the record based on the September 17, 2003 Staff Report to the City Planning Commission (attached as Exhibit "A") and the November 18, 2003, City Council Agenda Report (attached as Exhibit "B") hereby incorporated by reference as if fully set forth herein. Accordingly, the Appeal is denied, the Planning Commission's CEQA findings and decision are upheld, and the Project is approved (Major Variance, Minor Variance, Minor Conditional Use Permit, and Design Review), subject to the findings and conditions of approval contained in Exhibits "B" in the Staff Report for this item prepared for the City Council meeting of November 18, 2003, and subject to the additional conditions contained herein.

FURTHER RESOLVED: That, in support of the City Council's decision to approve the Project, the City Council affirms and adopts the September 17, 2003 Staff Report to the City Planning Commission (including without limitation the discussion, findings, conclusions and conditions of approval) all attached as Exhibit "A", as well as the November 18, 2003, City Council Agenda Report, attached hereto as Exhibit "B," (including without limitation the discussion, findings, and conclusions) except where otherwise expressly stated in this Resolution.

FURTHER RESOLVED: That the following additional conditions of approval are imposed on the project:

- A. Prior to the issuance of a building permit, amended building elevations which reduce the height of the building by one-foot shall be submitted to the Zoning Administrator for review and approval.
- B. Prior to the issuance of a building permit, amended plans that illustrate the removal of the roof deck shall be submitted to the Zoning Administrator for review and approval. The applicant shall dedicate the funds that would have been required for construction of the roof deck to Mosswood Park in care of the Office of Parks and Recreation. Prior to issuance of a building permit, proof of payment to the Office of Parks and Recreation, and the method of calculating such payment, shall be submitted to the Zoning Administrator.
- C. Prior to the issuance of a building permit, amended building elevations that illustrate the removal of the portion of the rear stair tower that extends beyond the eave line of the building shall be submitted for review and approval by the Zoning Administrator.

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.

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 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.

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, 3rd Floor, Oakland CA.; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, CA.

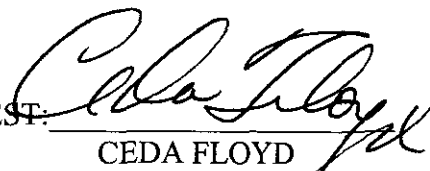
FURTHER RESOLVED: That, the recitals contained in this Resolution are true and correct and are an integral part of the City Council's decision.

NOV 18 2003

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2003

PASSED BY THE FOLLOWING VOTE:

**BROOKS, BRUNNER, CHANG,
NADEL, REID, QUAN, WAN
AND PRESIDENT DE LA FUENTE -8AYes**

ATTEST: 
CEDA FLOYD
City Clerk and Clerk of the
Council of the City of
Oakland, California