

OAKLAND CITY COUNCIL

2004 MAY -6 AM 11:19

RESOLUTION No. **78559** C.M.S.

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

*Mark P. Wall*

**RESOLUTION DENYING THE APPEAL AND SUSTAINING THE  
DECISION OF THE CITY PLANNING COMMISSION IN  
APPROVING CONSTRUCTION OF A NEW SINGLE-FAMILY  
RESIDENCE LOCATED ON A VACANT LOT ADJACENT TO 3601  
LAKESHORE AVENUE (CASE FILE NUMBER VMD03-401)**

**WHEREAS**, the Applicant, JVC Construction, filed an application (a major variance for lot size and width and special residential design review) on June 4, 2003, to construct a new single-family dwelling on a vacant lot located on Lakeshore Avenue (adjacent to 3601 Lakeshore Avenue); and

**WHEREAS**, at a duly noticed hearing, the City Planning Commission took testimony and considered the matter at its meeting held November 19, 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; and

**WHEREAS** on December 1, 2003, an appeal of the Planning Commission's approval with 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 duly noticed public hearing on May 18, 2004; 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 May 18, 2004;

**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 15303 “New Construction or Conversion of Small Structures” 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 November 19, 2003, Staff Report to the City Planning Commission (attached as Exhibit “A”) and the May 18, 2004, City Council Agenda Report (attached as Exhibit “B”), both 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), subject to the findings and conditions of approval contained in Exhibit “A.”

**FURTHER RESOLVED:** That, in support of the City Council’s decision to approve the Project, the City Council affirms and adopts the November 19, 2003, Staff Report to the City Planning Commission (including without limitation the discussion, findings, conclusions and conditions of approval), all attached as Exhibit “A”, and also adopts the May 18, 2004, City Council Agenda Report, attached as Exhibit “B.”

**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, 3<sup>rd</sup> Floor, Oakland CA.; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1<sup>st</sup> 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.

**MAY 18 2004**

In Council, Oakland, California, \_\_\_\_\_, 2004

**PASSED BY THE FOLLOWING VOTE:**

AYES- **BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, AND WAN - 7**

NOES- **0**

ABSENT- **0**

ABSTENTION- **0**

**EXCUSED - DE LA FUENTE - 1**

ATTEST



CEDA FLOYD

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

## Exhibit A

November 19, 2003 Planning Commission Staff Report

## **Exhibit B**

**May 18, 2004 City Council Agenda Report**