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OAKLAND

OAKLAND CITY COUNCIL



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RESOLUTION No. 78287 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 REOPEN AN ALCOHOLIC BEVERAGE SALES COMMERCIAL ACTIVITY WITHIN 1,000 FEET OF AN SIMILAR USE LOCATED AT 4822 TELEGRAPH AVENUE, OAKLAND

WHEREAS, On September 17, 2003, the Oakland Planning Commission, approved a Major Variance to conduct Alcoholic Beverage Sales Commercial Activity (Bar without Cabaret Activity) located at 4822 Telegraph Avenue; and

WHEREAS, On September 29, 2003 Mr. Larry Bellinger filed an appeal of the Planning Commission decision; and

WHEREAS, A public hearing of the appeal was initially scheduled before the City Council on December 2, 2003, but continued to January 6, 2004; 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 6, 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 held and then closed by the City Council on January 6, 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, in part, on the September 17, 2003 Staff Report to the City Planning Commission (attached as Exhibit "B") and the December 2, 2003/January 6, 2004, City Council Agenda Report (attached as Exhibit "A") 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 (the Major Variance).

FURTHER RESOLVED: That, in support of the City Council's decision to approve the Project, the City Council affirms and adopts both the September 17, 2003 Staff Report to the City Planning Commission, all attached as Exhibit "B", as well as the December 2, 2003/January 6, 2004, City Council Agenda Report, attached hereto as Exhibit "A," (including without limitation the discussion, findings, and conclusions) except where otherwise expressly stated in this Resolution.

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. the notice of appeal and all accompanying statements and materials;
3. all final staff reports 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;
4. 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;
5. 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 Conditions of Approval on the September 17, 2003, Staff Report attached hereto as Exhibit "B" are added to or amended as follows:

- (a) New Condition 14. "14. Air Conditioning System. The applicant shall install a working air conditioning system at the premises before it begins operation under this permit."
- (b) New Condition 15. "15. The planning staff shall inspect the facility and provide a Compliance and Operational status report, including Oakland Police Department crime data and community input, to the Planning Commission at a scheduled public hearing six months after the approval date of the land use permit; The District One Council Member has discretion to call a hearing before the City Council on the facility's compliance with all Conditions of Approval at that time."
- (c) Clarification that the Planning Commission's Condition of Approval Number 8 is that the operating hours will be 11:00 a.m. until **1:30 a.m.** each day, not 11:00 a.m. until 2:00 a.m as stated.
- (d) Correction of the Planning Commission's Condition of Approval Number 12(b), so that the word "Broadway" shall be replaced by the words "Telegraph Avenue."

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.

In Council, Oakland, California, JAN 6 2004, 2004

PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, CHANG, NADEL, QUAN, WAN, AND PRESIDENT DE LA FUENTE -6

NOES-0
~~EXCUSED~~ - REID, BROOKS - 2

ABSTENTION- 0

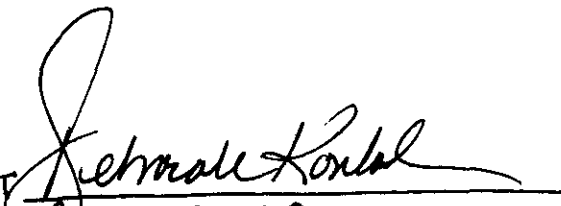
ATTEST 
CEDA FLOYD
CITY CLERK and CLERK
of the CITY COUNCIL
OAKLAND, CALIFORNIA

Exhibit A

[Copy of the December 3, 2003 City Council Agenda report and attachments]

Exhibit B

[Copy of the September 17, 2003 Planning Commission staff
report and attachments]

Exhibit C

[Copy of the new proposal received September 3, 2003]

Exhibit D

[Copy of the applicants appeal submittal]