

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2003 OCT -9 PM 1:00

OAKLAND CITY COUNCIL



RESOLUTION No. 78143 C.M.S.

INTRODUCED BY COUNCILMEMBER _____

**RESOLUTION DENYING THE APPEAL AND SUSTAINING THE
DECISION OF THE CITY PLANNING COMMISSION IN DENYING
THE APPLICATION FOR A MAJOR CONDITIONAL USE PERMIT
TO ESTABLISH A SERVICE ENRICHED PERMANENT HOUSING
RESIDENTIAL ACTIVITY WITHIN AN EXISTING STRUCTURE
LOCATED AT 2375 FRUITVALE AVENUE, OAKLAND**

WHEREAS, the Code Compliance Officers for the City of Oakland investigated nuisance activity at 2375 Fruitvale Avenue throughout 2002 and part of 2003; and

WHEREAS, on January 27, 2003, the Zoning Administrator determined that the activity at this location constituted a Service Enriched Permanent Housing Residential Activity and informed the appellant that a Conditional Use Permit is required for the activity; and

WHEREAS, appellant appealed the Zoning Administrator determination to the Planning Commission; and

WHEREAS, on April 16, 2003, the Oakland Planning Commission upheld the determination that the activity constituted a Service Enriched Permanent Housing Residential Activity; and

WHEREAS, on June 9, 2003, the appellant filed for a Major Conditional Use Permit to conduct a Service Enriched Permanent Housing Residential Activity; and

WHEREAS, on September 3, 2003, the Oakland Planning Commission held a public hearing and denied the Major Conditional Use Permit; and

WHEREAS, on September 11, 2003, the appellant appealed Planning Commission decision; 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 October 21, 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 October 21, 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 inasmuch as CEQA does not apply to the denial of a project.

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, and other matters included with the record of this Application, 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 3, 2003 Staff Report to the City Planning Commission, (attached as Exhibit "A"), the minutes of the September 3, 2003 Planning Commission hearing and decision on this matter, (attached as Exhibit "B"), and the October 21, 2003, City Council Agenda Report (attached as Exhibit "C") 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 denied (the Major Conditional Use Permit).

FURTHER RESOLVED: That, in support of the City Council's decision to approve the Project, the City Council affirms and adopts the September 3, 2003 Staff Report to the City Planning Commission (including without limitation the discussion, findings, conclusions) attached as Exhibit "A", as well as the October 21, 2003, City Council Agenda Report, attached hereto as Exhibit "C," (including without limitation the discussion, findings, and conclusions) except where otherwise expressly stated in this Resolution.

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; and all minutes of all public meetings where this matter was considered; and

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.

In Council, Oakland, California, OCT 21 2003, 2003

PASSED BY THE FOLLOWING VOTE:

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

NOES- 0
ABSENT- 0
ABSTENTION- 0

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