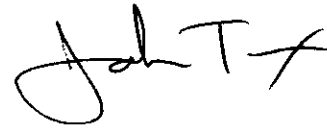


OAKLAND CITY COUNCIL



RESOLUTION NO. 78059 C.M.S.

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

03 AUG 25 4:15 PM 2:42

**RESOLUTION DENYING THE APPEAL OF E. FELIZARDO AND UPHOLDING THE PLANNING COMMISSION DECISION TO APPROVE THE DESIGN REVIEW AND VARIANCES FOR THE RESTORATION AND REHABILITATION OF FENTON'S CREAMERY AT 4226 PIEDMONT AVENUE AND FURTHER DIRECTING THE PLANNING COMMISSION TO REVIEW ALL ASPECTS OF FENTON'S CURRENT FACILITIES AND TO MAKE APPROPRIATE DETERMINATIONS CONCERNING CONFORMITY WITH THE APPLICABLE PROVISIONS OF THE ZONING CODE PERTAINING TO LEGAL NON-CONFORMING USES**

**WHEREAS**, Fenton's Creamery located at 4226 Piedmont Avenue was damaged by fire in November, 2001; and

**WHEREAS**, as part of the restoration and rehabilitation of the building, Fenton's applied for Design Review and Variance Applications (DV03-111) including the rebuilding and expansion of a rear structure and exterior modifications to the building; and

**WHEREAS**, on April 2, 2003 the Planning Commission, after a duly and properly notice public hearing, reviewed and considered the Design Review and Variance applications and approved them subject to conditions and requirements; and

**WHEREAS**, an appeal was filed objecting to the Planning Commission approval by E. Felizardo; and

**WHEREAS**, on July 29, 2003, after a duly and properly notice public hearing, the City Council reviewed and considered the appeal filed by E. Felizardo; and

**WHEREAS**, the Appellant, the Project Applicant, and all other interested parties were given opportunity to participate in the public hearing by submittal of oral and written comments; and

**WHEREAS**, the public hearing on the Appeal was closed by the City Council on July 29, 2003; and

**WHEREAS**, on July 29, 2003, the City Council, having fully reviewed, considered and evaluated the staff reports, public testimony and all documents and other evidence submitted on this matter, determined that the appellants failed to demonstrate where there was an error or abuse of discretion by the Commission or where its decision was not supported by the evidence in the record, and thereupon resolved as follows:

**NOW, THEREFORE, BE IT RESOLVED** that the City Council, as the final decision making body for this matter, hereby upholds the Planning Commission's findings and approval of the Design Review and Variance Applications as set forth in the staff report and minutes of the meeting where the matter was considered by the Planning Commission, subject to the conditions imposed by the Planning Commission, as well as the following additional Conditions of Approval:

**NOISE:**

1. Within 30 days, the applicant will sound proof all compressors or rooftop equipment as recommended in the June 23, 2003 report from Wilson, Ihrig and in accordance with applicable Oakland Noise Ordinances.
2. There shall be no outdoor amplified sound.
3. The operator shall establish and enforce a list of rules for employees to conduct themselves in the exterior areas of the property and when going to and from transportation, particularly in regard to controlling excessive noise and loitering. These rules shall be submitted for review and approval to the Planning Department within 30 days of this approval.
4. Applicant shall install a sign, with a minimum dimension of 2ft. x 2ft., clearly visible to patrons leaving Fenton's stating, "Please keep the noise and disturbance level down for our neighbors."

**ZONING**

5. Hours of operation shall be 9:00 a.m. to 12:00 a.m. Sunday through Thursday and 9:00 a.m. to 1:00 on Fridays and Saturdays. All employees are to leave the premises within two hours of closing time.

**TRAFFIC**

6. All deliveries to Fentons shall be limited to weekdays and Saturdays from 7:00am to 7:00pm
7. Applicant shall notify, in writing, all delivery services using trucks in excess of one ton to use Piedmont Avenue for entering Fenton's parking lot to make deliveries. There shall be no use of Entrada for loading or unloading purposes.
8. An arrow must be painted on the asphalt at the exit of the parking lot directing traffic to the right and a sign put up on Fenton's property stating "Right Turn Only."
9. Applicant must keep the Fenton's parking lot open to patrons during all operating hours.

**GARBAGE**

10. All garbage and garbage receptacles shall be kept in an enclosure completely screened from public

view. All garbage receptacles will have lids that shall be completely secured at all times such that they can be firmly in place so as to control garbage odors and pests. Operator shall establish a weekly trash pick-up schedule commensurate with trash storage capacity.

11. Applicant will maintain the sidewalks immediately adjacent to Fenton's by placing trash cans on each adjacent street corner (at Glenwood and Entrada), emptying the trash cans on a regular schedule and picking up litter at least twice per day, and washing down the sidewalks at least once per day to remove spilled ice cream. Applicant will be responsible for litter within a one block radius of Fenton's. Trash cans shall meet or exceed standards for such cans maintained by the city elsewhere on Piedmont Ave., with regard to design and construction. Operator shall complete a maintenance agreement with the City and submit a security deposit during a two year period to assure compliance with this condition.

### **GENERAL OPERATING CONDITIONS**

12. All exterior lights will be adjusted to eliminate glare into neighbors' windows.

13. All ingress and egress shall be through the main door on Piedmont Avenue with the exception of employees using the loading dock or cold storage area located immediately adjacent to the parking lot, at the South corner of the building. Ingress and egress from the warehouse on Glenwood is also permitted for the purposes of moving goods to and from the warehouse.

14. Operator shall designate a complaint manager during all hours of operation and until all employees are off the premises. All complaints shall be logged in writing and responded to within 72 hours, either by resolving the complaint or stating a time certain for taking corrective action. This log may be reviewed by the City upon request.

15. The applicant shall pay to move the two north-facing windows at the rear of the apartment building immediately behind Fenton's (located on Entrada) to preserve solar access, if the owner of the building so desires.

**FURTHER RESOLVED:** That the City Council, as the final decision making body of this matter, request that the Planning Commission, consider within 45 days, all aspects of Fenton's current facilities and operations to ensure that it is operating in conformance with its rights as a preexisting legal non-conforming use.

**FURTHER RESOLVED:** That the City Council directs the Planning Commission, after their review of Fentons current facilities and operations, to make a determination of conformity with the applicable provisions of the Zoning Ordinance.

**FURTHER RESOLVED:** That the City Council, further directs that if the Planning Commission finds that Fentons current facilities are not in conformance with the provisions of the Zoning Ordinance concerning preexisting, legal non-conforming uses, then Fenton's shall apply for the required Use Permits or terminate such uses within 60 days of the Planning Commission's determination. Appeal is denied, and the Planning Commission's CEQA findings are upheld as set forth in Exhibit A.

**FURTHER RESOLVED:** That the City Council determines that the referral to the Planning Commission for review and consideration of Fenton's current facilities and operations shall not compromise any rights it may have as a pre-existing legal non-conforming use.

**FURTHER RESOLVED:** That the record before this Council relating to this application and Appeal includes, without limitation, the information set forth in all final staff reports prepared both for the Planning Commission hearing as well as the appeal to the City Council, including all final documentation and information produced by or on behalf of the City, all oral and written evidence and testimony received by the City Planning Commission and City Council during the public hearings on the application and Appeal; all written evidence received by relevant City staff before and during public hearings on the application and appeal; any matters reflected in the minutes or recorded proceedings for these meetings, including any and all deliberation of the Planning Commission and the City Council, and all matters of common knowledge and all official enactments of the City such as the General Plan, Oakland Municipal Code, Oakland Fire Code, Oakland Planning Code, other applicable City policies and regulations and 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: 1) the Community and Economic Development Agency (CEDA), Planning Division, 250 Frank Ogawa Plaza, suite 3300, Oakland, CA and 2) the Office of the City Clerk, 1 Frank 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.

**FURTHER RESOLVED:** That this resolution confirms the City Council action taken on July 29, 2003, and that all time limits set forth herein are in effect and shall run from July 29, 2003.

In Council, Oakland, California, SEP 16 2003, 2003

**PASSED BY THE FOLLOWING VOTE:**

AYES: BRUNNER, CHANG, BROOKS, NADEL, REID, WAN, AND QUAN - 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