

2011 MAY 26 PM 4: 25

REVISED MAY 17, 2011

APPROVED AS TO FORM AND LEGALITY


DEPUTY CITY ATTORNEY

OAKLAND CITY COUNCIL

RESOLUTION NO. 83366 C.M.S.

A RESOLUTION DENYING THE APPEAL (CASE NO. A10-324), THEREBY SUSTAINING THE PLANNING COMMISSION DECISION APPROVING REVISIONS (REV10-018) TO A MAJOR CONDITIONAL USE PERMIT FOR A MCDONALD'S AT 4514 TELEGRAPH AVENUE FOR FAST FOOD AND DRIVE-THROUGH COMMERCIAL ACTIVITY, WITH A REVISED SITE PLAN AND RELATED CONDITIONS

WHEREAS, the applicant Ed Smith ("Applicant") owns and operates a Fast Food and Drive-Through Commercial Facility (McDonalds Restaurant) which was built and opened at 4514 Avenue approximately thirty-four years ago, and which in 1977 and 1991 received Conditional Use Permits; and

WHEREAS, on September 13, 2010 Mr. Smith filed application REV10-018 to rebuild and expand the facility, including repositioning of the Drive-Through facility and parking, and to expand the activity to 24 hours (Project); and

WHEREAS, on December 1, 2010, at a duly noticed public hearing, the Planning Commission took testimony, closed the hearing and voted to approve the Project ; and

WHEREAS, on December 13, 2010, twenty-three (23) residents timely filed an appeal of the Planning Commission decision to approve the Project; and

WHEREAS, after giving due notice to the Appellants, the Applicant, all interested parties, and the public, the Appeal came before the City Council in a duly noticed public hearing on May 3, 2011, which was continued to May 17, 2011; and

WHEREAS, the Appellants, Applicant and all other interested parties were given the 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 May 17, 2011; now, therefore, be it

RESOLVED: The City Council independently finds and determines that this Resolution complies with the California Environmental Quality Act (CEQA), as the Project is exempt from CEQA pursuant to CEQA Guideline sections 15301 (Existing Facilities); 15302 (Replacement or Reconstruction); and/or 15183 (Projects Consistent with Community Plan, General Plan or Zoning); each of which provides a separate and independent basis for CEQA compliance; and be it

FURTHER RESOLVED: That the City Council, having independently heard, considered, and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Application, the Planning Commission's decision, and the Appeal, finds that the Appellant has not shown, by reliance on evidence in the record, that the Planning Commission's decision was made in error, or that there was an abuse of discretion by the Commission, and/or that the Commission's decision was not supported by sufficient, substantial evidence in the record. This decision is based, in part, on the May 3, 2011 City Council Agenda Report and the December 1, 2010 Planning Commission Report, which are hereby incorporated by reference as if fully set forth herein. Accordingly, the Appeal is denied, the Planning Commission's decision approving the Project is sustained, as amended by a revised site plan and related supplemental conditions (which supersede any conflicting conditions imposed by the City Planning Commission) contained in a May 17, 2011 memorandum from Councilmember Jane Brunner (as modified to allow the southernmost driveway on Telegraph to be a maximum of twenty-five (25) feet in width), incorporated into this Resolution by reference; and the application is approved; and be it

FURTHER RESOLVED: That, in support of the City Council's decision to deny the appeal of the Project, the City Council affirms and adopts as its findings and determinations the May 3, 2011 City Council Agenda Report and the December 1, 2010 Planning Commission Report [including without limitation the discussion, analysis, findings, conclusions and conditions of approval (each of which is hereby separately and independently adopted by this Council in full)]; and be it

FURTHER RESOLVED: That the record before this Council relating to this Project application and appeal includes, without limitation, the following:

1. the Project application, including all accompanying maps and papers;
2. all plans submitted by the Applicant and his representatives;
3. all final staff reports, decision letters and other documentation and information produced by or on behalf of the City.
4. all oral and written evidence received by the City staff, Planning Commission and City Council 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, such as (a) the General Plan and the General Plan Conformity Guidelines; (b) Oakland Municipal Code, including, without limitation, the Oakland real estate regulations; (c) Oakland Fire Code; (d)

Oakland Planning Code; (e) other applicable City policies and regulations; and, (f) all applicable state and federal laws, rules and regulations; and be it

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, Suite 2114, Oakland, CA.; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, CA; and be it

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 17 2011

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2011

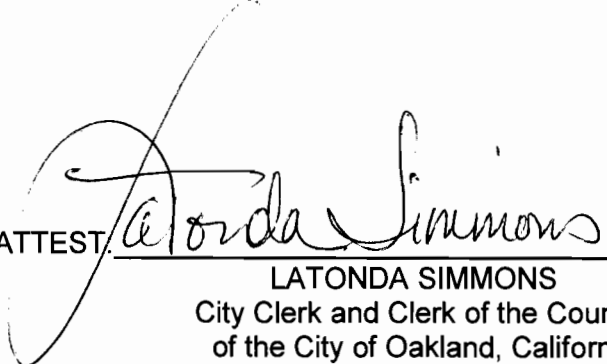
PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF,
AND PRESIDENT REID - 8

NOES- 0

ABSENT- 0

ABSTENTION- 0

ATTEST. 
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

LEGAL NOTICE:

ANY PARTY SEEKING TO CHALLENGE THIS FINAL DECISION IN COURT MUST DO SO WITHIN NINETY (90) DAYS OF THE DATE OF THE ANNOUNCEMENT OF THIS DECISION UNLESS A SHORTER PERIOD APPLIES.

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