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OFFICE OF THE CITY CLERK
2003 JUL -2 PM 4:52

OAKLAND CITY COUNCIL

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RESOLUTION NO. _____ 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 CONDITIONAL
USE PERMIT TO ALLOW A THREE UNIT RESIDENTIAL
BUILDING LOCATED AT 1725 12TH AVE, OAKLAND**

WHEREAS, the property owner, Ben Phan, filed an application on June 5, 2000 to add two units to the property at 1725 12th Avenue; and

WHEREAS, The City Planning Commission took testimony and considered the matter at its meeting held March 19, 2003. Action on the matter was continued until May 7, 2003. At the conclusion of the public hearing held for the matter, the commission deliberated the matter, and voted. The project was approved, 6-1; and

WHEREAS on May 19, 2003, an appeal of the Planning Commission's approval and 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 public hearing on July 15, 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 July 15, 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, 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 May 7, 2003 Staff Report to the City Planning Commission (attached as Exhibit "A") and the July 15, 2003, City Council Agenda Report (attached as Exhibit "B") 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 Conditional Use Permit), subject to the findings and conditions of approval contained in Exhibits "B" in the Staff Report for this item prepared for the City Council meeting of July 15, 2003.

FURTHER RESOLVED: That, in support of the City Council's decision to approve the Project, the City Council affirms and adopts the May 7, 2003 Staff Report to the City Planning Commission (including without limitation the discussion, findings, conclusions and conditions of approval) all attached as Exhibit "A", as well as the July 15, 2003, City Council Agenda Report, attached hereto as Exhibit "B," (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. 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, 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, JUL 15 2003, 2003

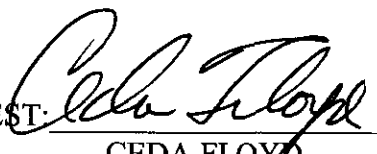
PASSED BY THE FOLLOWING VOTE:

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

NOES- Ø

ABSENT- Ø

ABSTENTION- Ø

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