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# OAKLAND CITY COUNCIL

RESOLUTION No. \_\_\_\_\_ C.M.S.

**A RESOLUTION UPHOLDING THE APPEAL BY UNITE HERE LOCAL 2850, AND THUS DENYING THE OAKLAND CITY PLANNING COMMISSION'S APPROVAL OF 1) A MAJOR CONDITIONAL USE PERMIT TO CONSTRUCT A SIX-STORY BUILDING CONSISTING OF 220 HOTEL ROOMS MEASURING APPROXIMATELY 142,813 SQUARE FEET OF FLOOR AREA, 2) A MINOR CONDITIONAL USE PERMIT FOR TRANSIENT HABITATION (HOTELS) AND NON-RESIDENTIAL TANDEM PARKING, 3) A MINOR VARIANCE FOR FRONT SETBACK REDUCTION, AND 4) RELATED CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS FOR THE PROPOSED BUILDING LOCATED AT 0 MANDELA PARKWAY (PROJECT CASE NO. PLN16394)**

**WHEREAS**, the project applicant, Architectural Dimensions, filed an application on November 4, 2016 to construct a 220-room hotel facility of approximately 142,813 square feet at 0 Mandela Parkway; and

**WHEREAS**, the Design Review Committee of the Planning Commission considered the design review aspects of the Project at a duly noticed public meeting on January 25, 2017 and recommended the applicant make further revisions to improve the building design; and

**WHEREAS**, UNITE HERE Local 2850 submitted a comment letter dated January 5, 2018 raising issues regarding the CEQA analysis, the required conditional use permit for the hotel, and citing concerns about the impact of the project on housing and about the requested variance for building in the front yard setback; and

**WHEREAS**, the City Planning Commission took testimony and considered the Project at its duly noticed public meeting of January 10, 2018, and voted to continue the item to a date certain on February 21, 2018; and directed the applicant to hold at least one community meeting and to address specific design considerations prior to the anticipated February Planning Commission meeting; and

**WHEREAS**, the project applicant, Architectural Dimensions, conducted community meetings on January 31, 2018 and February 7, 2018; and reported the results of those meetings to the Planning Commission; and

**WHEREAS**, the City Planning Commission at its duly noticed public meeting of February 21, 2018, and upon the applicant's request continued the item to a date certain on March 21, 2018; and

**WHEREAS**, UNITE HERE Local 2850 submitted a second letter on March 12, 2018 supplementing their prior comment about the alleged toxicity of the project site, and the CEQA analysis of the proposal; and

**WHEREAS**, the City's environmental consultant firm, Lamphier-Gregory, prepared a memorandum responding to the March 12, 2018 comment letter from UNITE HERE Local 2850 for the Planning Commission's review and deliberation; and

**WHEREAS**, the City Planning Commission at its duly noticed public meeting of March 21, 2018, and upon the applicant's request to have additional meetings with community groups, continued the item to a date certain on April 4, 2018; and

**WHEREAS**, the project applicant, Architectural Dimensions, requested the Planning Commission to continue the item from the scheduled April 4, 2018 public meeting to a date uncertain because the applicant needed more time to meet with community groups, and make further design improvements to the project; and

**WHEREAS**, at a duly noticed public hearing on June 6, 2018, the Planning Commission approved the project, consisting of the following: 1) a Major Conditional Use Permit to construct a six-story building consisting of 220 hotel rooms measuring approximately 142,813 square feet of floor area, 2) a Minor Conditional Use Permit for Transient Habitation (Hotels) and Non-residential Tandem Parking, 3) a Minor Variance of the front setback, and 4) related California Environmental Quality Act (CEQA) findings for the proposed building located at 0 Mandela Parkway Oakland CA; and

**WHEREAS** on June 18, 2018, an appeal of the Planning Commission's approval and a statement setting forth the basis of the appeal was filed by Ty Hudson on behalf of UNITE HERE Local 2850; and

**WHEREAS**, after giving due notice to the Appellant, the Applicant, all interested parties and the public, the Appeal came before the City Council at a duly noticed public hearing on February 26, 2019; and

**WHEREAS**, the Appellant, the Applicant, supporters of the application, those opposed to the application and other interested parties were given opportunity to participate in the public hearing by submittal of oral and/or written comments; and

**WHEREAS**, on February 26, 2019 the City Council continued the item to the March 12, 2019 City Council meeting; and

**WHEREAS**, the continued item scheduled for the March 12, 2019 City Council meeting was withdrawn and rescheduled to a later date by the Rules and Legislation Committee on March 7, 2019; and

**WHEREAS**, on the March 21, 2019 City Council meeting, the continued item was referred to go to the April 16, 2019 City Council meeting; and

**WHEREAS**, on April 4, 2019 and May 9, 2019, the Rules and Legislation Committee rescheduled the item to a later City Council meeting date; and

**WHEREAS**, on July 7, 2019 and September 19, 2019, the Rules and Legislation Committee withdrew and rescheduled the item to a later City Council meeting date; and

**WHEREAS**, after giving due notice to the Appellant, the Applicant, all interested parties and the public, the Appeal came before the City Council at a duly noticed public hearing on November 19, 2019; and

**WHEREAS**, the Appellant, the Applicant, supporters of the application, those opposed to the application and other interested parties were given opportunity to participate in the public hearing by submittal of oral and/or written comments; and

**WHEREAS**, the City Council did not make a determination on the appeal, but continued the item to the February 18, 2020 City Council meeting, and directed staff to prepare a supplemental report to include: a) further analysis of the Conditional Use Permit finding for transient habitation, and b) analysis of compliance with and enforcement of Measure Z; and

**WHEREAS**, after giving due notice to the Appellant, the Applicant, all interested parties and the public, the City Council held a public hearing on February 18, 2020; and

**WHEREAS**, the Appellant, the Applicant, supporters of the application, those opposed to the application and other interested parties were given opportunity to participate in the public hearing by submittal of oral and/or written comments; and

**WHEREAS**, at the February 18, 2020 public hearing, the City Council heard the appellant's appeal arguments as follows: a) the Planning Commission abused its discretion by deliberately ignoring Planning Code Section 17.103.050(A)(2) that states "*That the proposal considers the impact of the employees of the hotel or motel on the demand in the City for housing, public transit and social services*", b) the Planning Commission erred in granting a variance for a reduced setback, and c) the Planning Commission based its affirmation of the staff's environmental determination on erroneous information.

**WHEREAS**, after considering the record and public testimony at public hearings at the February 18, 2020 City Council meeting, Councilmember McElhaney made a motion, seconded by Councilmember Gallo, to continue the item to the March 17, 2020 City Council meeting while keeping the public hearing open, and directed staff to prepare a Resolution upholding the appeal and denying the development application based on the City Council's findings; and

**WHEREAS**, the City Council's motion was based on its determination that the Planning Commission erred in making required findings specifically for: a) a Minor Variance for front setback reduction; and b) the finding related to Conditional Use Permit for Transient Habitation-Hotels at Planning Code Section 17.103.050.A.2 that requires consideration of the impact of the hotel employees on the demand in the City for housing, transit, and social services; and

**WHEREAS**, the motion passed by a vote of six ayes, one absence, and one excused; now, therefore, be it

**RESOLVED:** That the City Council finds and determines that the Planning Commission erred in making required findings specifically for: (1) a Minor Variance for front setback reduction and (2) Planning Code Section 17.103.050.A.2, which requires consideration of the impact of the hotel employees on the demand in the City for housing, transit, and social services; and be it

**FURTHER RESOLVED:** That the City Council also finds and determines that the variance to allow a one-foot setback instead of the normally required 20-foot setback constitutes a special privilege unavailable to comparable property owners. Staff indicates support for this variance by citing to the West Oakland Specific Plan Design Guidelines, which does call for setbacks to create a street wall along Mandela Parkway. However, this setback is not in the service of creating a street wall, but rather only for a small corner of the building; and be it

**FURTHER RESOLVED:** That the City Council also finds and determines that the project did not "meet with the spirit and intent of Planning Code Section 17.103.050" in that: (1) the applicant has not provided any evidence or provided any way for the City to guarantee that 50 percent of the workers would be hired from Oakland, and (2) there is a concern about adequate wages being paid to hotel workers, and (3) the applicant has not provided evidence of a willingness to comply with Measure Z to protect hotel workers susceptible to sexual assault and other safety concerns. In sum, the Planning Commission erred in not fully considering the impact concerning this land use because of the reasons stated above; 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) Department of Planning & Building, Bureau of Planning, 250 Frank H. Ogawa Plaza, Suite 2114, Oakland CA; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1<sup>st</sup> 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.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, TAYLOR, THAO AND PRESIDENT KAPLAN

NOES -REID

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_

LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California