

CITY OF ALAMEDA RESOLUTION NO. _____

DENYING APPEAL FILED BY BRIAN TREMPER OF THE MAY 28 AND JULY 22, 2019 PLANNING BOARD DECISIONS FOR A 172-ROOM HOTEL AND RESTAURANT AT 2900 HARBOR BAY PARKWAY (PLN18-0381) AND UPHOLDING PLANNING BOARD RESOLUTION PB19-16

WHEREAS, Robert Leach for Harbor Bay Hospitality, LLC submitted an application requesting Design Review and Development Plan Amendment for the construction of a new 172-room five-story hotel and restaurant located on approximately 5.5 acres within the Harbor Bay Business Park, as case number PLN18-0381 (“project”); and

WHEREAS, the subject property is designated Business Park on the General Plan Diagram; and

WHEREAS, the subject property is located within the C-M-PD, Commercial Manufacturing - Planned Development District; and

WHEREAS, on December 10, 2018, the Planning Board conducted a duly noticed public hearing and adopted Resolution PB18-23 approving the Design Review and Final Development Plan for PLN 18-0381, subject to Condition No. 6 that required that the applicant return at a later date for Planning Board review and approval of the final architectural details, colors and material selections, and landscape materials; and

WHEREAS, the Planning Board decision to approve the project was timely appealed by Brian Tremper and Laborers International Union of North America, Local Union 304; and

WHEREAS, on February 5, 2019, the City Council conducted a duly noticed public hearing and adopted Resolution No. 15488 denying the appeals and approving the Design Review and Final Development Plan for the project, thereby upholding the Planning Board’s decision; and

WHEREAS, on May 28, 2019, the Planning Board conducted a duly noticed public hearing and reconsidered and reaffirmed the building setback; and

WHEREAS, on June 6, 2019, Brian Tremper (“appellant”) filed a timely appeal of the Planning Board’s May 28 decision; and

WHEREAS, on July 22, 2019 the Planning Board conducted a duly noticed public hearing and adopted Resolution PB19-16 approving final architectural details, colors and material selections, and landscape materials for the project, as required by Condition No. 6; and

WHEREAS, on August 19, 2019, appellant supplemented the June 6, 2019 appeal

by electronic mail to reflect the Planning Board's July 22 decision; and

WHEREAS, the appeal was considered by the City Council at a duly noticed public hearing on September 17, 2019; and

WHEREAS, the appellant, the applicant, supporters of the project, those opposed to the project and interested neutral parties were given the opportunity to participate in the public hearing by submittal of oral and/or written comments.

NOW, THEREFORE, BE IT RESOLVED, that the City Council finds that adoption of this resolution is not subject to the California Environmental Quality Act under *McCorkle Eastside Neighborhood Group v. City of St. Helena* (2018) 31 Cal.App.5th 80, which found that design review for by right projects is a ministerial decision under Public Resources Code section 21080; 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 Board's decisions, and the appeal, hereby finds and determines that the appellant has not shown that the Planning Board's decision was not supported by substantial evidence in the record. This decision is based, in part, on the May 28, 2019, and July 22, 2019 Planning Board staff reports and resolutions, each of which is hereby incorporated by reference as if fully set forth herein, on the reports and testimony provided at the hearing, and on the City's General Plan, Zoning Code, and other planning regulations as set forth below; and

BE IT FURTHER RESOLVED, that the appeal is hereby denied, and the Planning Board's July 22, 2019 decision (Resolution No. PB19-16) to approve the final setback and architectural and landscape details for a 172-room hotel and restaurant located at 2900 Harbor Bay Parkway is affirmed, subject to the conditions of approval adopted by the Planning Board, each of which is hereby incorporated by reference and separately and independently adopted by this Council in full as though set forth herein; and

BE IT FURTHER RESOLVED, that in support of the City Council's decision to deny the appeal and approve the final setback and architectural and landscape details, the City Council affirms and adopts as its own independent findings and determinations the May 28, 2019 and July 22, 2019 Planning Board staff reports, project plans and resolutions approving the project (Exhibits 4 through 10 to the September 17, 2019 City Council staff report, including without limitation the discussion, findings and conclusions, each of which is hereby separately and independently adopted by this Council in full); and

BE IT FURTHER RESOLVED, the record before this Council relating to this project application and the appeal includes, without limitation, the following:

1. The application, including all accompanying maps and papers;
2. All plans submitted by the applicant and its representatives;
3. The Petition for Appeal and all accompanying statements and materials, as

- revised by the appellant on August 19, 2019;
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 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 Planning Board 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
 6. All matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan; (b) the Alameda Municipal Code; (c) 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 located at the Office of the City Clerk located at 2263 Santa Clara Avenue, Room 380, Alameda, CA 94501; and

BE IT FURTHER RESOLVED, if litigation is filed challenging this decision, or any subsequent implementing actions, then the time period to begin actual construction of authorized construction-related activities stated in Condition of Approval #24 of Planning Board Resolution No. PB18-23 is automatically extended for the duration of the litigation. The applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Alameda, the Alameda Planning Board and their respective agents, officers, and employees from any claim, action, or proceeding (including legal costs and attorney's fees) against the City of Alameda, Alameda City Council, Alameda Planning Board and their respective agents, officers or employees to attack, set aside, void or annul, an approval by the City of Alameda, the Planning, Building and Transportation Department, Alameda Planning Board or City Council relating to this project. The City shall notify the applicant of any claim, action or proceeding and the City shall cooperate in such defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action or proceeding; and

BE IT FURTHER RESOLVED, the recitals contained in this Resolution are true and correct and are an integral part of the City Council's decision.

* * * * *

I, the undersigned, hereby certify that the foregoing Resolution was duly and regularly adopted and passed by the City Council of the City of Alameda in a regular meeting assembled on the 17th day of September, 2019, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the seal of said City this 18th day of September 2019.

Lara Weisiger, City Clerk
City of Alameda

Approved as to Form:

Yibin Shen, City Attorney
City of Alameda