

20 MAY 21 PM 4:15

CITY ATTORNEY'S OFFICE

## PETITION FOR APPEAL

Planning & Building  
2263 Santa Clara Ave., Rm. 190  
Alameda, CA 94501-4477  
alamedaca.gov  
510.747.6800 • F: 510.865.4053  
Hours: 7:30 a.m.-3:30 p.m., M-Th

Please print clearly. This petition is hereby filed as an appeal of the decision of the:

Planning Board, which  
(Planning, Building & Transportation Director / Zoning Administrator / Planning Board / Historical Advisory Board)Established Conditions for application  
(Denied/Granted/Established Conditions)Universal Residential Design waiver number PLN20-0121  
(Application Type) (Application Number)at 2229-2235 Clement Avenue on May 11, 2020  
(Street Address) (Date of Action)

State the reasons or justification for an appeal (attach additional sheets if needed):

See attached

## Appellant

Name: Boatworks, LLC Phone: 510-653-6871Address: 6050 Hollis St., Emeryville, CA 94608Email: shona.armstrong@harperarmstrong.com + ncollins@fdcollins.com

Alameda Municipal Code (AMC) 30-25, Appeals and Calls for Review, provides that within ten (10) days a decision of the Planning, Building & Transportation Director or Zoning Administrator may be appealed to the Planning Board, and decisions of the Planning Board or the Historical Advisory Board may be appealed to the City Council. In addition to the appeal process, decisions of the Planning, Building & Transportation Director or Zoning Administrator may be called for review within ten (10) days to the Planning Board by the Planning Board or by the City Council and decisions of the Planning Board or the Historical Advisory may be called for review by the City Council or a member of the City Council.

## Fees (must accompany this petition)

Single-Family Residential and Multi-family Residential / Commercial / Industrial \$2,082 as of 2019 - 2020  
(Please contact Planning Dept. at (510)747-6805 to confirm current fees)  
Appellant SignatureShona Armstrong - Attorney for Boatworks, LLC  
Print nameMay 20, 2020  
Date

## FOR OFFICE USE ONLY

Received by: \_\_\_\_\_ Date Received: \_\_\_\_\_

Revised 8/19/2019

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# HARPER & ARMSTRONG, LLP

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Ph: (510) 420-8455 • Fax: (510) 858-5953 • shona.armstrong@harperarmstrong.com

BY ~~EMAIL~~

*Hand Delivery to Celena Chen*

May 21, 2020

Andrew Thomas Planning Director Alameda City Hall #190 2263 Santa Clara Avenue Alameda, CA 94501 (510) 510-747-6800 <a href="mailto:athomas@alamedaca.gov">athomas@alamedaca.gov</a>	City Attorney Yibin Shen Alameda City Hall 2263 Santa Clara Avenue, Rm 280 Alameda, CA 94501 (510) 747-4750 <a href="mailto:yshen@alamedacityattorney.org">yshen@alamedacityattorney.org</a>
City Clerk Alameda City Hall 2263 Santa Clara Avenue #380 Alameda, CA 94501 510-747-4800 <a href="mailto:clerk@alamedaca.gov">clerk@alamedaca.gov</a>	Deputy City Attorney Celena Chen 2263 Santa Clara Avenue, Rm 280 Alameda, CA 94501 (510) 747-4750 <a href="mailto:cchen@alamedacityattorney.org">cchen@alamedacityattorney.org</a>

**Re: Appeal to City Council from Planning Board Conditional Approval of Universal Design Waiver Request granted Monday, May 11, 2020, and/or Request for Approval of Concession pursuant to Density Bonus application**

Dear Andrew Thomas and Members of the City Council,

The Universal Residential Design Ordinance (Alameda Municipal Code ["AMC"] 30-18) provides for waivers of its requirements when "necessary to avoid an undue and substantial financial hardship caused by topographical conditions on the site; the size or configuration of the site; and/or other site constraints; and/or legal constraints and equivalent facilitation is not available." AMC §30-18.5.a.3. On March 10, 2020, Boatworks requested such a waiver pursuant to the Density Bonus ordinance. The Planning Board considered the request on March 23, 2020, and the City Council considered the request on April 7, 2020. The Planning Board and the City Council both chose to defer decision on this waiver request pending consideration by the Universal Design Commission. On May 6, 2020, the Commission on Disability reviewed the request and provided comments.

At 4:18 pm on the afternoon of May 11, 2020, Sarah Henry, a representative of the Commission on Disability provided the Planning Director with a list of proposed conditions for approval of the requested waiver. Neither the Planning Director nor Boatworks nor the Planning Board had more than two hours to review and consider the details or implications of the proposed conditions before the Planning Board convened at 7:00 pm on May 11th to consider Boatworks' requested waiver. The Planning Board unanimously approved Boatworks' requested waiver, but imposed conditions on the waiver drawn from Ms. Henry's email sent earlier that day.

Subsequent to that Planning Board meeting, Boatworks has had more time to review the proposed waiver conditions in detail. In light of its research, Boatworks is now appealing some of the conditions placed on the waiver approval. Boatworks is concerned that the conditions as written into the current resolution are vague, overbroad, and unreasonably restrictive, and several of the conditions require expensive finishes that: (a) do not make sense in homes being marketed generally; and (b) can be easily and more appropriately modified post-purchase by any homeowner who desires such features.

To clarify the exact nature of Boatworks' appeal, this letter includes a redlined proposal for the specific changes Boatworks requests the City Council make to the existing Planning Board resolution approving the waiver from the requirements of the Universal Design Ordinance.

**1. Appeal from Conditions on Planning Board Approval of Universal Residential Design Ordinance waiver per AMC 30-18.5.**

Boatworks' research shows that it is not possible to commit to satisfying a mandate to include the following features either because of subjective testing standards and ill-defined performance criteria and/or because including these features in all homes precipitates unforeseen complications, significant cost increases, and/or marketability impacts:

- Slip resistant flooring and low glare materials in kitchens and bathrooms
- Kitchen counters with a tactile method for edge detection
- Automatic stove shut off features for all built-in ovens
- Windows that do not require more than 5 pounds of force to open or close

Boatworks also requests that proposed Condition 3 be modified, because Boatworks has already committed to provide as much accessibility and visitability as is feasibly and practicably possible in a townhome project of this density with the requisite amount of publicly accessible open space. Boatworks has already provided the civil engineering studies demonstrating that site constraints render additional ramping, landings, retaining walls, guardrails, etc., infeasible. In fact, it was Boatworks' in depth, rigorous review of possible engineering solutions that prompted Boatworks to request this waiver. While Boatworks will continue to strive to provide accessibility where possible, requiring further engineering studies only adds needless expense to the project and further delays.

As such, Boatworks requests that the conditions of approval for the Resolution approved Monday, May 11, 2020, be modified as follows:

... BE IT FURTHER RESOLVED, that the Planning Board approves the requested Universal Residential Design waiver, subject to the following conditions:

1. The Design Review plans submitted for Planning Board review shall provide evidence that:

- At least 28 units meet all the requirements for universal design pursuant to AMC Section 30-18;
- At least 91 units meet all the requirements for Visitability pursuant to Section 30-18
- At least 14 waterfront single family homes will meet all of the universal design requirements of Section 30-18 for the interior of the homes except that the kitchen and laundry facilities in some units may include adaptable features rather than full "accessibility"; and
- The waterfront clubhouse meets all the requirements for visitability pursuant to Section 30-18, and
- The waterfront park play equipment includes equipment for children with disabilities.

2. (a) The Design Review plans submitted for Planning Board review shall provide evidence that all 182 units include the following features to improve the adaptability of the units for seniors, people with lower mobility, and people with other needs or disabilities:

- Blocking within the walls of all hallways, stairways, and bathrooms to support future installation of grab bar/hand rails;
- Rocker light switches, electrical receptacles, and environmental controls will be placed at accessible heights.
- ~~Windows that do not require more than 5 pounds of force to open or close~~
- ~~Doors, cabinets, faucets equipped with loop or lever type handles~~
- ~~Shower/bath with offset controls and connection for hand-held shower head~~
- Adjustable shelves and rods in all closets.
- 32" clear opening at all passage doors, where possible

(b) The Design Review plans submitted for Planning Board review shall provide evidence that the first floor of all "Universally Designed" units and all "Visitable" units include the following features to improve the adaptability of the units for seniors, people with lower mobility, and people with other needs or disabilities:

- Doors, cabinets, faucets equipped with loop or lever type handles
- Shower/bath with offset controls and connection for hand-held shower head (where the unit includes a shower/bath located on first floor)
- ADA height toilets

~~The applicant shall also attempt to provide:~~

- ~~• Slip resistant flooring and low glare materials in kitchens and bathrooms,~~
- ~~• Kitchen counters with a tactile method for edge detection~~
- ~~• Automatic stove shut off features for all built-in ovens~~
- ~~• 32" clear opening at all passage doors, where possible~~
- ~~• ADA height toilets~~

3. ~~The Design Review plans submitted for Planning Board review shall provide detailed grading plans, landscape plans, and pathway plans for all 182 units which clearly depict why only 50% of the units can meet the requirement for accessibility from the exterior of the unit. The applicant's architects shall endeavor to provide adaptable access to additional units beyond the 50% via either the front door or the garage through creative grading and pathway design and shall endeavor to provide features to increase adaptability such as: Slip resistant flooring and low glare materials in kitchens and bathrooms, Kitchen counters with a tactile method for edge detection, windows that can open without excessive force, and/or Automatic stove shut off features for all built-in ovens.~~

4. Upon review of the Design Review plans and the recommendations of the applicant, the Planning Board may approve Design Review plans that vary from the adaptability requirements of Condition #2 and landscape plans and pathway plans that do not increase the number of units beyond 50% ~~if needed to ensure a financially feasible and well-designed residential development.~~

5. **HOLD HARMLESS.** The applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Alameda, the Alameda City 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 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 City Planning Board, the City of Alameda or the Alameda City Council related to this project. The City shall promptly 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. No judicial proceedings subject to review pursuant to California Code of

*Civil Procedure Section 1094.5 may be prosecuted more than ninety (90) days following the date of this decision plus extensions authorized by California Code of Civil Procedure Section 1094.6.*

....

## **2. Request for Concession or Incentive granting requested waiver of Universal Residential Design ordinance requirements.**

As the City Council has already determined, Boatworks qualifies for concessions and incentives pursuant to Government Code §65916 and AMC §30-17.9. Section 65916(k) defines an incentive or concession as: “[a] reduction in site development standards or modification of zoning code requirements [etc]... that results in identifiable and actual cost reductions, to provide for affordable housing costs” and “[o]ther regulatory incentives or concessions proposed by the developer, [city, or county] that result in identifiable and actual cost reductions to provide for affordable housing costs....”

Government Code section 65916(d)(2) sets a minimum number of incentives or concessions that a city must grant if requested. But Government Code section 65916(n) clarifies that: “If permitted by local ordinance, nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section.” The statute is written to protect the developer from restrictions, not to limit the City’s options in favor of more liberal granting of concessions. Consequently, while the state law requires the City to provide at least one incentive or concession (see 65916(d)(2)(a)), nothing in the AMC prohibits the City from exercising its discretion to provide a greater number of incentives or concessions in order to facilitate the development of housing and, in particular, affordable housing. See, e.g., AMC §§30-17.9(a) and 30-17.10(b). Furthermore, AMC §30-17.10 provides that

For large development projects, defined as projects on sites with at least one acre of land area, an applicant may be granted exceptions to the caps and limits set forth in subsection 17.10(b) through the density bonus application process if it can be shown such exceptions are needed to allow more flexibility that promotes superior site design and architectural excellence.

As such, the City may grant the requested waiver from the requirements of the Universal Residential Design ordinance pursuant to the state and local Density Bonus laws.

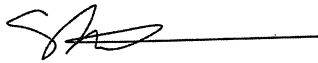
## **3. Conclusion**

Alameda’s Universal Residential Design ordinance goes well beyond the state-wide requirements of the California Building Code (Ch. 11 and 11A), which sets standards for newly constructed multi-family buildings, but not for single family homes, duplexes, or townhomes. See Cal. Building Code Administrative section 1.1.7.3.1. The Boatworks project exceeds the requirements of the statewide accessibility requirements.

Boatworks has done extensive review of its plans in an effort to maximize the number of units that can meet the Alameda Universal Residential Design ordinance standards. Unfortunately, as Boatworks’ engineering drawings demonstrate, given project constraints

related to infrastructure requirements, townhome design, and open space requirements, the Project requires the requested waiver. If the Council is not comfortable granting the waiver pursuant to Alameda Municipal Code section 30-18.5 with the Planning Board's conditions modified as requested by Boatworks above, then the Council still has the option to grant the waiver pursuant to the Density Bonus Statute (Government Code §65916 and AMC 30-17.9). Boatworks requests that the City Council grant the requested waiver with conditions modified as requested herein, under whichever authority it feels is most appropriate.

Regards,

A handwritten signature in black ink, appearing to be 'SLA', followed by a horizontal line.

Shona L. Armstrong

cc: Francis Collins  
Nicoley Collins  
Phil Banta  
Robert McGillis  
Greg Harper, Esq.  
Tom Roth, Esq.