

CITY OF ALAMEDA RESOLUTION NO. _____

APPROVING APPEAL FILED BY BOATWORKS, LLC AND APPROVING A WAIVER OF THE UNIVERSAL RESIDENTIAL DESIGN REQUIREMENTS (ALAMEDA MUNICIPAL CODE SECTION 30-18) FOR THE BOATWORKS DEVELOPMENT AT 2229 - 2235 CLEMENT AVENUE (PLN20-0121)

WHEREAS, on March 3, 2020, the City Council approved a Settlement Agreement with Boatworks, LLC (Boatworks) to resolve three existing lawsuits filed by Boatworks against the City of Alameda (City) and allow for the development of the property located at 2229-2235 Clement Avenue for much needed new housing and waterfront access; and

WHEREAS, on April 7, 2020, the City Council adopted Resolution No. 15641 approving a Development Plan, Tentative Map, and other entitlements for development of 182 residential units, approximately 1.5 acres of publicly accessible open space, and other improvements on the property; and

WHEREAS, on the same date, the City Council determined Boatworks' request for a waiver from the Universal Design requirements to be premature because Boatworks had not yet followed the process outlined in Alameda Municipal Code (AMC) Section 30-18 (Universal Design Ordinance, or Ordinance), which includes review by the Disability Commission (Commission) and action by the City Planning Board; and

WHEREAS, on April 14, 2020, pursuant to AMC Section 30-18.5, Boatworks requested a waiver from the provisions of AMC Section 30-18 Universal Residential Design to reduce the visitability requirement from 100% to 50% (91 units would be visitable) and reduce the universal design requirement from 30% to 15% (28 units would meet the universal design standard), and on April 24, 2020, Boatworks submitted a supplemental memorandum in support of the waiver request; and

WHEREAS, on May 6, 2020, the Commission conducted a special public meeting to review the waiver request and provide comments to the Planning Board; and

WHEREAS, on May 11, 2020, the Planning Board held a duly noticed public hearing to review the requested waiver and the Commission's comments, and adopted Resolution No. PB-20-10 approving a Universal Design Waiver subject to findings and conditions of approval; and

WHEREAS, on May 21, 2020, appellant Boatworks, LLC filed a timely appeal of certain conditions of approval imposed by the Planning Board's decision to approve the waiver; and

WHEREAS, after giving due notice to the appellant/applicant, all interested parties, and the public, the appeal came before the City Council in a duly noticed public hearing on June 16, 2020; and

WHEREAS, the appellant/applicant, supporters of the application, those opposed to the application and interested neutral parties were given the opportunity to participate in the public hearing; and

WHEREAS, the City Council held a de novo public hearing on the waiver request on June 16, 2020, at which time the Council considered the entirety of the record, including all submitted materials and public comments regarding the requested waiver; and

WHEREAS, the public hearing on the appeal was closed by the City Council on June 16, 2020; and

WHEREAS, the City Council considered the appeal, the public testimony, and all pertinent maps and reports and evidence in the record as a whole, and made the following findings concerning the waiver request; and

NOW, THEREFORE, BE IT RESOLVED, that the City Council finds that this Resolution complies with the California Environmental Quality Act (CEQA), as no further review is required for the requested waiver pursuant to Public Resources Code section 21166 and Section 15162 of the CEQA Guidelines because the environmental effects of the proposed project were considered and disclosed in the Final Environmental Impact Report (EIR), and there have been no changes to the project or the circumstances in which it is undertaken that would result in new significant or substantially more severe environmental effect than was identified in the previously certified EIR; and

BE IT FURTHER RESOLVED, that the City Council, having conducted a de novo hearing and independently heard, considered and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the requested waiver, the Planning Board's decision, and the appeal, hereby approve the appeal and affirm the Planning Board's decision to approve the requested waiver, subject to the findings for approval and modified conditions of approval set forth below; and

BE IT FURTHER RESOLVED that the City Council makes the following finding pertaining to Boatworks' request for a waiver from the provisions of AMC Section 30-18:

The requested waiver is 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; and

BE IT FURTHER RESOLVED, that the City Council 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 home;
 - 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;
 - Adjustable shelves and rods in all closets; and
 - 32" clear opening at all passage doors, where possible.
- (b) The Design Review plans submitted for the designated universal design units and designated visitable units shall include the following features for all facilities on the ground floor:
- 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 on ground floor); and
 - ADA height toilets.
- (c) The Design Review plans submitted for Planning Board review 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 the following 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 do not require more than 5 pounds of force to open or close, and automatic stove shut off features for all built-in ovens.
3. 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 design, landscape plans and pathway plans that do not increase the number of visitable units beyond 50%.

4. 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; and

BE IT FURTHER RESOLVED, that the record before the City Council relating to the requested waiver 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;
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, The applicant shall defend (with counsel reasonably acceptable to the City), indemnify, and hold harmless the City of Alameda and its agents, elected and appointed officials, officers, and employees from any claim, action, or proceeding (including legal costs and attorney's fees) against the City of Alameda and its agents, elected and appointed officials, officers or employees to attack, set aside, void or annul an approval or decision by the City of Alameda 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 Council of the City of Alameda in a regular meeting assembled on the 16th day of June 2020, 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 17th day of June 2020.

Lara Weisiger, City Clerk
City of Alameda

Approved as to Form:

Yibin Shen, City Attorney
City of Alameda

NOTICE. 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.