

**RESOLUTION NO. 23-08**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RICHMOND UPHOLDING THE PLANNING COMMISSION'S APPROVAL OF A CONDITIONAL USE PERMIT FOR A DENSITY BONUS, DESIGN REVIEW PERMIT, AND VARIANCE/EXCEPTIONS FOR A ±28,290 SQUARE FOOT MIXED-USE BUILDING (23 RESIDENTIAL UNITS AND 5,768 SQUARE FEET COMMERCIAL/OFFICE/ RETAIL SPACE) AT 3601-3627 CUTTING BOULEVARD, AND DIRECTION TO STAFF TO PREPARE AN AMENDMENT TO THE DENSITY BONUS ORDINANCE TO ALLOW ROUNDING AN ODD NUMBER OF UNITS UP TO THE NEXT EVEN NUMBER**

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**WHEREAS**, the applicant, East Bay Community Development Corporation, requested approval from the City of Richmond (the "City") of a Conditional Use Permit for a Density Bonus, Design Review Permit, and Variance/Exception for the construction of a 28,290 square foot mixed-use building consisting of 24 very low-income and senior-restricted residential units and 5,768 square feet of commercial space ("Project"); and

**WHEREAS**, on November 14, 2007, the Design Review Board ("Board") considered the subject project and recommended approval to the Planning Commission of the Project; and

**WHEREAS**, on December 10, 2007, the Planning Commission ("Commission") of the City of Richmond held a duly noticed public hearing to consider the Project, and voted unanimously to approve the Project with modifications, in particular with the elimination of one residential unit in accordance with the current Density Bonus Ordinance (RMC Section 15.04.810.050); and

**WHEREAS**, on December 20, 2007, EastBay Community Development Corporation filed a timely appeal of the Commission's action, asserting the opinion that the Commission's decision was in error because they failed to approve the 24 units requested; and

**WHEREAS**, on February 19, 2008, the City Council of the City of Richmond held a duly noticed public hearing to consider the merits of the project and the appeal, and heard testimony in favor of, and in opposition to, the proposed Project; and

**WHEREAS**, the City Council reviewed all oral and written information presented at the hearing, including a discussion of environmental and infrastructure conditions, and considered the appeal in light of all such other related and relevant information as was presented; and

**WHEREAS**, the project is Categorically Exempt from the California Environmental Quality Act (CEQA) under Section 15332, In-fill Development, meeting the requirements of the CEQA Guidelines and Statutes.

**NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF RICHMOND** denies the appeal without prejudice, and directs staff to prepare an amendment to the Density Bonus Ordinance that would allow the rounding of an odd number of residential units up to the next even number in certain instances when a density bonus is invoked with approval of a conditional use permit.

**The City Council finds and determines as follows:**

**Design Review Permit Findings:**

1. The proposed design is suitable for its purpose, is harmonious with and relates properly to the surrounding neighborhood, contiguous parcels and the site itself.

Statement to Support Finding: *Criterion conditionally satisfied.* With implementation of the conditions of approval, the proposed project would complement the aesthetic character of the existing neighborhood. The design provides variations in the roof and wall planes that will provide an upgrade in the quality of the streetscape along this portion of Cutting Boulevard.

2. The location, size, design and characteristics of the proposed project will be compatible with and will not be detrimental to the public health, safety, or welfare of persons residing in or working in or adjacent to the proposed project.

Statement to Support Finding: *Criterion Conditionally Satisfied.* The location, configuration, and design of the proposed mixed-use building will not be detrimental to the public's health, safety, or welfare of residents and workers in the area as the project will be built in compliance with the California Building Code and the regulations and standards of the City of Richmond. Compliance with the conditions of approval will reduce the massing of the structure and make the building's design visually consistent with the existing neighborhood.

3. The overall design will be of a quality that will preserve the integrity of, and upgrade, the existing neighborhood.

Statement to Support Finding: *Criterion Conditionally Satisfied.* With compliance of the conditions of approval, the proposed project will preserve the integrity of the site and existing neighborhood, and provide a quality project for the neighborhood and community.

4. The design of the proposed project is in accordance with the General Plan of the City of Richmond and all applicable provisions of the Zoning Ordinance.

Statement to Support Finding: *Criteria Conditionally Satisfied.* Section 15.04.810.050 of the Richmond Zoning Ordinance limits the density bonus the City can grant to a maximum of 35 percent. The applicant has requested a 41 percent density bonus by providing a 24<sup>th</sup> dwelling unit in the structure. The total number of units must be reduced by one units to 23 for the proposed project to comply with the goals, policies and implementation measures of the General Plan, and the applicable provisions of the Zoning Ordinance. Otherwise, approval of a General Plan Amendment and Rezoning is required for the project to proceed as designed.

**The City Council finds and determines as follows:**

**Variance/Exceptions Findings:**

1. Special circumstances or conditions exist on the subject property, including size, shape, topography, or location, that will deprive such property of privileges enjoyed by other property owners in the vicinity and zone in which the property is situated.

Statement to Support Finding: *Criterion Conditionally Satisfied.* The proposed project is an infill development within the C-1 Neighborhood Commercial zoning district. Other commercial structures in the area are developed with similar floor-area-ratios (FAR), landscaping, site coverage, and uses.

2. The issuance of the exceptions will not be detrimental or injurious to property or improvements in the vicinity of the subject property, or the public health, safety or general welfare.

Statement to Support Finding: *Criterion Conditionally Satisfied.* If the exceptions are granted and the conditions of approval are satisfied, the proposed development will not impose any harmful impacts on public health, safety or general welfare, and will provide affordable housing for seniors.

3. The exceptions are consistent with the purposes the Knox Freeway/Cutting Boulevard Corridor Specific Plan and will not constitute a grant of special privilege inconsistent with limitations on other properties in the vicinity and same zoning district.

Statement to Support Finding: *Criterion Satisfied.* The proposed exceptions requested are to allow an increase in the floor-area-ratio (FAR), reduce the percentage of landscaping required, and exceed the maximum site coverage

normally allowed. These exceptions are similar to those characterizing the surrounding area. Granting an exception for FAR, landscaping, and coverage will not constitute a grant of special privilege inconsistent with other properties development in the vicinity and same zoning district.

4. The exceptions granted will not authorize a use or activity which is not otherwise expressly authorized by the zoning regulations governing the parcel of property.

Statement to Support Finding: Criterion Satisfied. Mixed-Use Developments are allowed in the Neighborhood Commercial zoning district by Section 15.04.210 of the Zoning Ordinance and the 922A land use designation of the Richmond General Plan which governs this parcel of property.

5. All findings shall be based upon the factual presentation to the hearing body.

Statement to Support Finding: Criterion Satisfied. The Planning Commission's decision upheld by the City Council is based upon information submitted in the application and at the public hearing including testimony by the public.

**The City Council finds and determines as follows:**

**Conditional Use Permit/Density Bonus Findings:**

1. That the density bonus will contribute significantly to the economic feasibility of providing the affordable housing units.

Statement to Support Finding: Criteria Satisfied. Providing the required common open space area for each unit and additional surface parking or structured parking would greatly reduce the number of units and commercial space that could be provided on the .48 acre site, which would affect the economic feasibility and viability of the project for the project sponsor.

2. That the incentive(s) or concession(s) is required in order to make the affordable housing units economically feasible or to set rents at qualifying levels for senior citizens and for moderate income, lower income or very low income households.

Statement to Support Finding: Criteria Satisfied. Providing the required common open space and off-street parking for all the units could impact the number and size of the units that could be constructed on the property which would impact the economic feasibility and viability of the project as affordable housing for seniors on limited incomes.

3. That the increased density and incentive(s) or concession(s) will not cause significant adverse effects on the character of the surrounding neighborhood or public health and safety.

Statement to Support Finding: Criteria Conditionally Satisfied. The proposed density, massing, and concessions would be consistent with the character of the surrounding uses and structures with the implementation of the conditions of approval.

4. That there will be no adverse traffic, noise, parking, or other impacts resulting from the proposed density bonus and/or incentives/concessions.

Statement to Support Finding: Criteria Conditionally Satisfied. The density bonus and concessions granted will not cause adverse impacts on noise, traffic or parking in the neighborhood. The site is serviced by AC Transit and a local street network. The commercial uses proposed in the building will serve the local neighborhood and future senior tenants.

5. That the design, siting and income thresholds of the affordable housing units substantially comply with all of the requirements and standards set forth in this section.

Statement to Support Finding: Criteria Satisfied. The proposed design, location, and income threshold for the affordable units comply with the requirements of Section 15.04.810.050 of the Zoning Ordinance.

6. That, prior to issuance of any building or grading permit for the housing development, there will exist an enforceable recorded agreement to maintain the affordability of the affordable housing units for the duration required by this section.

Statement to Support Finding: Criteria Conditionally Satisfied. Per Condition of Approval 6 listed below, a deed restriction must be recorded ensuring the affordability in accordance with Section 15.04.810.050 of the Zoning Ordinance prior to issuance of a grading or building permit.

7. That the overall housing development will be of a quality that will preserve the integrity of, and upgrade, the existing neighborhood.

Statement to Support Finding: Criteria Conditionally Satisfied. The recommended Conditions of Approval as listed below will ensure that the housing development will be of a quality that would preserve the integrity of the area and upgrade the existing neighborhood.

**NOW, THEREFORE BE IT FURTHER RESOLVED** the Conditional Use Permit for a Density Bonus, Design Review Permit, and Variance/Exceptions is hereby approved, subject to the following standards and conditions of approval:

#### PLANNING

1. The final plans submitted for building permits shall be in substantial compliance with the approved project plan, prepared by Kodama Deseño, as shown in Exhibit A, dated received on November 26, 2007, and on file in the Planning Department, except as modified by the conditions approved as part of this action. All exterior colors and materials shall match those on the colors and materials board in Exhibit B. Any modifications to the approved plans shall be subject to review and approval by the Planning and Building Services Director or his/her designee.
2. The final project plans shall omit the 24<sup>th</sup> housing unit in the residential portion of the project, and reduce the total number of residential units to 23.
3. All landscaped areas shall be served by a low-volume automatic irrigation system and be fully maintained. Irrigation plans shall be submitted for review and approval by the Building Regulations Department prior to installation. All landscaping (including street trees) shall be located outside the sight distance of the existing driveways and intersection.
4. One of the senior/community meeting rooms shall be converted into a fitness center, game room, television room, or other activity space for the exclusive use of the residents prior to occupancy of the building, subject to review and approval by the Planning and Building Services Director or his/her designee.
5. The exterior staircase element facing Cutting Boulevard shall be revised to include hardi-plank lapped siding. The proposed windows shall be replaced with single-hung windows to be consistent with the other windows along this façade.
6. A deed restriction shall be recorded by the applicant for the property ensuring that all of the residential units will be restricted to seniors with very-low incomes, as defined in Section 50105 of the California Health and Safety Code, for a minimum of 30 years from occupancy. The deed restriction shall be binding upon sale or transfer, and shall be recorded with the Contra Costa County Recorder's Office prior to issuance of a grading and building permit by the Building regulations Division. The language of the deed restriction shall be reviewed and approved by the Planning and Building Services Director and the City Attorney prior to recording.
7. A Stormwater Management and Control Plan demonstrating compliance with the

Contra Costa County C.3 Standards for the use and site conditions shall be submitted for review and approval by the Planning and Building Services Director and City Engineer prior to issuance of building permits. Landscaped areas shall be integrated into the stormwater control plan to effectively meet the C.3 program goals.

8. The design of the entry tower element on the east façade shall be modified to be wider and more visually significant for consistency with the design of the two gable elements on each side of the entry, and to emphasize the entrance to the residential component. The redesign shall be subject to review and approval by the Planning and Building Services Director or his/her designee.
9. The lot line between the two subject parcels shall be eliminated. A lot line adjustment merging the two subject lots shall be submitted and approved, and recorded prior to issuance of a building permit.
10. Decorative paving shall be provided at all the driveways, including the sidewalk area. The system and paving design shall be subject to review and approval by the Planning and Building Services Director or his/her designee.
11. Prior to commencing construction, construction signs shall be posted informing existing residences and businesses of future construction on the site. The Developer shall install temporary improvements during construction for the safety, convenience and coordination of those existing residents and businesses as determined by the Planning and Building Services Director.
12. The areas identified as senior/community meeting space are part of the residential development and shall be labeled as such on the plan, and cannot be converted into commercial space in the future.
13. The landscape plans shall be revised to include the planter areas in front of the existing commercial building, as shown on the First Floor Plan in Exhibit A. A planter shall also be added in front of the Cutting Boulevard staircase.
14. The future photovoltaic panels shall be subject to a separate review and approval process by the Planning and Building Services Department.

#### PUBLIC SERVICES/ENGINEERING

15. All missing or broken curbs, sidewalks, or gutters shall be repaired by the building contractor to the satisfaction of the Director of Public Services/City Engineer prior to issuance of a final occupancy permit.
16. The new driveway cuts shall be installed per City specifications and standards. The old driveway cuts shall be replaced with standard curb, gutter and sidewalk per City specifications and standards to the satisfaction of the City Engineer.
17. The Applicant and development shall comply with these conditions of approval and applicable provisions of the Richmond Municipal Code (Zoning, Subdivision, Building Code, etc.), Richmond General Plan, and City Center Specific Plan, except as modified by this approval. The applicant shall defend, indemnify, and hold harmless the City and its official and employees in any action brought by a third party to overturn, set aside, or void any permit, entitlement, or approval.
18. Prior to issuance of a grading/building permit, the Developer shall prepare a demolition plan overlay to the grading plan, or top boundary, survey showing what improvements and trees are to be removed and preserved. Protective orange fencing shall be installed at the drip line of any tree to be preserved prior to grading.
19. An encroachment letter shall be signed by the Developer for any signage, canopies, and/or balconies overhanging in the right-of-way prior to issuance of building permits. Encroachment permits shall also be obtained for all work proposed within the public right-of-way. The Developer shall pay for all City fees for obtaining such permit.

20. Any relocation of existing improvements or public utilities shall be accomplished under the direction of that utility company's requirement at no expense to the City or Utility Company.
21. A grading plan, stamped by a Civil Engineer licensed in the State of California, shall be submitted for review and approval by the Planning and Building Services Director or his/her designee prior to Building Permit submittal. There is approximately a two foot grade difference between the front and rear of the property. If a retaining wall is required, the exposed portions of the retaining wall shall be scored, split-face, or textured.

#### FIRE

22. Fire hydrants shall be installed at locations specified by the Fire Department per City requirements.
23. An automatic fire sprinkler and auto fire alarm system shall be provided. Plans shall be submitted to the Fire Department for review and approval prior to installation.
24. A Knox entry system shall be provided for emergency access at all locations specified by the Fire Department during construction plan review.
25. Illuminated building street address numbers and interior unit signage per Fire Department approval shall be provided.
26. No Parking areas for emergency vehicle personnel shall be provided per the Fire Department's requirements.

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I CERTIFY that the foregoing Resolution was passed and adopted by the City Council of the City of Richmond, California at a regular meeting held on March 4, 2008, by the following vote:

- AYES: Councilmembers Bates, Butt, Marquez, Rogers, Sandhu, Thurmond, and Mayor McLaughin  
NOES: Councilmember Viramontes  
ABSENT: None  
ABSTAIN: Councilmember Lopez

DIANE HOLMES  
CLERK OF THE CITY OF RICHMOND

[SEAL]

APPROVED:

GAYLE McLAUGHLIN  
MAYOR

Approved as to Form:

LOUISE RENNE, Interim  
City Attorney

State of California            }  
County of Contra Costa    : ss.  
City of Richmond            }

I certify that the foregoing is a true copy of Resolution No. 23-08, finally passed and adopted by the Council of the City of Richmond at a meeting held on March 4, 2008.