

## RESOLUTION NO. 18-\_\_\_\_

**Resolution Of The City Council Of The City Of Emeryville Approving Modifications To The Conditions Of Approval And Approved Plans Of A Conditional Use Permit To Add Square Footage, To Add Private Open Space In The Form Of Room Decks, And To Make Exterior Modifications To Two Previously Approved Residential Units At 1258 Ocean Avenue (APNS: 049-1489-18 And -19)**

**WHEREAS**, on January 9, 2007 Ali Eslami submitted an application for a Conditional Use Permit and Design Review to construct two detached approximately 1,700 square foot single family units, and a variance to allow a 4-foot rear yard setback where 15 feet is the required minimum at 1258 Ocean Avenue; and

**WHEREAS**, the Planning Commission considered the project at a duly and properly noticed public hearing on March 22, 2007 and made no recommendation to the City Council with three votes to approve the project, three votes not to approve the project and one recusal; and

**WHEREAS**, the Emeryville City Council held a duly and properly noticed public hearing and approved the project on April 17, 2007; and

**WHEREAS**, the Emeryville City Council held a duly and properly noticed public hearing on January 20, 2009 and approved a one year extension with a new expiration date of April 17, 2009; and

**WHEREAS**, on April 6, 2010 the Emeryville City Council approved an Interim Ordinance (ORD10-006) to allow case-by-case extensions of permits for a maximum of five years from the final approval date; and

**WHEREAS**, the Emeryville City Council held a duly and properly noticed public hearing on April 20, 2010 and considered a second extension of the permits for the Ocean Lofts project for two years; and

**WHEREAS**, the Emeryville City Council expressed a desire to see demolition of the existing residential structure as soon as possible; and

**WHEREAS**, the Emeryville City Council directed staff to make appropriate modifications to Section 9-4.65.7 of Chapter 4 of Title 9 and Section 8-1.1.04 Chapter 1 of Title 8 that would allow demolition of a residential structure prior to the issuance of a building permit of the replacement structure; and

**WHEREAS**, staff prepared such modifications which were reviewed and approved by the Planning Commission on July 22, 2010 and adopted by the City Council by Ordinance No.10-013 on September 21, 2010; and

**WHEREAS**, the Planning Commission held a duly and properly noticed public hearing on December 9, 2010 and considered a request for a permit extension for two years and to demolish the existing residential structure before the building permit for the replacement structure is issued; and

**WHEREAS**, the Planning Commission, on a 4-2 vote, with one recusal, recommended that the City Council deny the request to extend the planning permits and to demolish the existing residence; and

**WHEREAS**, the City Council held a duly and properly noticed public hearing on January 18, 2011 to review and consider and to solicit public comments on the request for an extension as well as to consider the request to demolish the existing building, and continued the hearing to February 1, 2011; and

**WHEREAS**, following the public hearing on February 1, 2011 the City Council on a 4-1 vote approved the request to grant the two-year extension due to the additional time that was needed to resolve the issue of access rights to Peabody Lane, but did not grant permission to demolish the existing structure prior to the issuance of the building permit of the replacement structure and directed to staff to prepare appropriate findings and a condition that the existing building be secured prior to its demolition for adoption at the February 15, 2011 meeting; and

**WHEREAS**, on February 15, 2011 a resolution memorializing the February 1, 2011 City Council action was passed on a 4-1 vote; and

**WHEREAS**, the applicant submitted a tree removal permit application (TREE12-001) on June 15, 2012 to provide for a driveway on Ocean Avenue, and the tree removal permit was approved by the Planning Commission at a duly and properly noticed public hearing on September 27, 2012; and

**WHEREAS**, on March 13, 2014, the City received a letter from the Alameda County District Attorney saying that the applicant was the victim of a crime by which the property was fraudulently “sold” several times beginning on March 8, 2011 when a deed with a forged signature was recorded with the Alameda County Recorder; and

**WHEREAS**, the Alameda County District Attorney requested the City to “place the property rights back into position held as of March 8, 2011” and thus planning and building permits were still considered valid and were reactivated after a temporary suspension; and

**WHEREAS**, building permits were approved and ready to be issued in December 2016 pending payment of permit fees; and on December 12, 2016, the City received a permit application to demolish the existing house; and the demolition permit was issued on June 2, 2017; and building permits for the two new units were issued on June 7, 2017; and

**WHEREAS**, an application to modify the approved plans and conditions of approval to add square footage to the unit along Peabody Lane, and to make exterior modifications and add private open space to both units was submitted on December 4, 2017; and

**WHEREAS**, the Emeryville Planning Commission held a duly and properly noticed public hearing on the proposed modifications on January 25, 2018 to solicit public comments and review and consider the application; and then voted 4-1 to recommend approval to the City Council with one Commissioner abstaining and one Commissioner absent; and

**WHEREAS**, the Emeryville City Council held a duly and properly noticed public hearing on the proposed modifications on March 6, 2018 to solicit public comments and review and consider the application; and

**WHEREAS**, the Emeryville City Council has reviewed and considered the staff report and attachments thereto, the plans, all public comments, and the proposed modifications to the project at 1258 Ocean Avenue subject to the conditions and requirements set forth in Exhibit A attached to this Resolution and the applicable standards of the Emeryville Planning Regulations (“the Record”); now therefore, be it

**RESOLVED**, that the City Council of the City of Emeryville hereby finds that the project is exempt from the California Environmental Quality Act (CEQA) under State CEQA Guidelines Section 15303 which applies to construction of small, new structures; and be it further

**RESOLVED**, that in approving the proposed modifications to the conditions of approval and approved plans of UP07-01; DR07-02; VAR07-01 the City Council makes the following findings as required by the Emeryville Planning Regulations:

**Conditional Use Permit Findings Pursuant to Section 9-7.505:**

1. The proposed use is consistent with the General Plan.

**LU-G-4      *A mix of housing types- A diversity of housing types to accommodate a variety of household sized and incomes.***

**The proposed project maintains the existing unit mix while providing for more private open space in the form of roof decks for both units, and adds additional floor area providing more bathroom and closet space for the Peabody Lane unit.**

**LU-G-5      *Preservation of residential neighborhoods- Residential use, structures, low-rise scale, and character of the Triangle, Doyle Street, and Watergate neighborhoods preserved, and the scale of other areas of stability maintained.***

**The proposed project preserves the residential use, scale, and character of the Ocean Avenue neighborhood because it does not change the footprint of the building, and conforms to the maximum permitted height limit while providing more green-space in the unique form of a living wall.**

***LU-P-10      Maximum building height will be defined by the Maximum Building Heights diagram, Figure 2-4.***

**The proposed project is consistent with the maximum building height of 30 feet as set forth in Figure 2-4.**

***LU-P-11      Maximum floor area ratios (FARs) and residential densities for sub-areas of the city, will be defined by Figure 2-3 and 2-6, respectively.***

**The proposed project is consistent with the maximum floor area ratio and residential densities as set forth in Figure 2-3 and 2-6.**

2. The location, size, coverage, density, design and operating characteristics of the proposed use will be compatible with, and will not adversely affect, the surrounding area, including neighborhood character, street design and capacity, safety, noise, and lighting.

**The proposed project is consistent with the coverage, density, design, and operating characteristics of the surrounding area, as required by the Planning Regulations. Neighborhood character, design, and quality will not be adversely affected because the previously approved two residential units are maintained in a neighborhood that is primarily residential.**

3. The proposed use is consistent with the capability of the water supply, wastewater disposal, fire, and police systems to operate adequately and cost effectively.

**The proposed project is consistent with the capability of the water supply, waste water disposal, fire, and police systems to operate adequately and not add to their burden because the proposed development maintains the existing residential use and is compliant with all maximum FAR, building height, and residential density maps (Figures 2-3, 2-4, and 2-6) in the General Plan.**

4. The proposed use at its proposed location will provide a service or facility that will contribute to the general well being of the surrounding neighborhood or community.

**The proposed project maintains the number of approved dwelling units at this location and will contribute to the general well being of the surrounding neighborhood and community by providing additional green scaping and local renewable energy production.**

5. The proposed use complies with all applicable standards and requirements of these Planning Regulations.

**The proposed project complies with all applicable standards and requirements of the Planning Regulations, as outlined in the above section titled “Zoning Analysis.”**

#### **Major Design Review Findings Pursuant to Section 9-7.407:**

1. The design of the project is consistent with the General Plan, including but not limited to its Urban Design goals and policies.

***UD-G-2      A diversity of building types and scales – Variation to reinforce the identity of individual districts and foster a variety of options for living and working, with continuity in development scale and character and careful transitions between densities and design typologies.***

The proposed project is consistent with the North Hollis neighborhood, which contains a variety of buildings including brick, tilt-ups, residential homes with gabled roofs, and modern condominium complexes. The residential use type supports the identity of the district by maintaining the existing residential use and conforming to the Emeryville Design Guidelines and Planning Regulations. The roof decks provide privacy and screening using living walls that provide a unique design feature that is consistent in development scale and character with the surrounding area.

***UD-G-5      Neighborhood Preservation - Preservation of the existing small-scale residential quality of older neighborhoods.***

**The proposed project maintains the previously approved two residential units.**

2. The design of the project conforms to the Emeryville Design Guidelines and any other applicable design guidelines or criteria. If strict compliance with the

provisions of such design guidelines or criteria is not achieved, the applicant must convincingly demonstrate that the intent of the guidelines or criteria is met.

***F-2 Find opportunities for creativity with architectural features, such as integrating art into doors and entrance areas, and through colors and details.***

**By utilizing living walls the proposed project finds a creative way to maximize the utilization of roof top space for renewable energy production and private open space while providing privacy for both the occupants and neighbors.**

***G-3 Where balconies are provided, allow room for small gardens for growing plants.***

**The proposed project provides planter boxes on the roof decks.**

3. The project is of a high design quality that is compatible with, and will not adversely affect, the surrounding area:

**The proposed project modifies an approved design to incorporate more private open space, renewable energy infrastructure, and green-scaping through the use of living walls and roof top gardens. The living walls are used to screen the proposed roof decks, providing desirable features that are of a high design quality that is compatible with, and will not adversely affect the surrounding area.**

**Development Bonuses Findings Pursuant to Section 9-4.204(f)(1):**

1. That the proposed project is compatible with the surrounding neighborhood with regard to building scale, form, and materials, and street orientation.

**The proposed project is compatible with the surrounding neighborhood with regard to building scale, form, materials, and street orientation and does not require an expansion in building footprint.**

2. That the proposed project has been designed to minimize the appearance from the street of driveways, parking spaces, maneuvering aisles, and garage doors as much as possible given the size and shape of the lot, and that at least 70% of the street frontage is devoted to active non-parking related uses, except that a driveway of up to ten feet in width shall be allowed.

**The proposed project does not modify the approved driveways, parking spaces, or garage doors. The lot is 50 feet wide, and the driveway and**

**garage entrance are 10 feet wide, so at least 70% of the street frontage is devoted to active non-parking related uses.**

and be it further

**RESOLVED**, that the City Council hereby approves an amendment to the conditions of approval attached here as Exhibit A for **UP07-01; DR07-02; VAR07-01** to add a total of 28 square feet of floor area, to add private open space in the form of roof decks, and to make exterior modifications to the two previously approved residential units at 1258 Ocean Avenue, as submitted on December 4, 2017 and plans dated January 17, 2018 subject to the Conditions of Approval attached hereto and the applicable standards of the City of Emeryville Municipal Code.

**APPROVED** by the City Council of the City of Emeryville at a regular meeting held on Tuesday, March 6, 2018 by the following votes:

AYES: \_\_\_\_\_  
NOES: \_\_\_\_\_  
ABSTAIN: \_\_\_\_\_  
ABSENT: \_\_\_\_\_

\_\_\_\_\_  
MAYOR

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY CLERK

  
\_\_\_\_\_  
CITY ATTORNEY