RESOLUTION #2012-45

RESOLUTION OF THE CITY OF ALBANY CITY COUNCIL

APPROVING

DENSITY BONUS LAW DEVELOPMENT STANDARD REDUCTION FOR

PARCEL B OF THE

UNIVERSITY VILLAGE MIXED USE DEVELOPMENT

WHEREAS, Planning and Zoning Code Section 20.40.040 provide Density Bonus incentives and development standard waivers and/or reductions for the production of housing units for eligible households (including senior housing) in accordance with California Government Code Sections 65915 through 65918.

WHEREAS, the senior citizen housing development proposed for Parcel B of the University Village at San Pablo Avenue Mixed Use Development project (the "project") qualifies for Density Bonus because it is designated as a senior citizen housing development containing a minimum of 175 independent and assisted living residential units and includes a separate and secured Alzheimer's Care area.

WHEREAS, the Density Bonus development standard reduction/waiver process, set out in Government Code Section 65915(e)(1) allows an applicant to submit to the City a proposal for waiver or reduction of any development standard, and states that in no case may a city apply any development standard that will have the effect of physically precluding the construction of a housing development project that qualifies for a density bonus.

WHEREAS, Government Code Section 65915(o)(1) defines "development standard" to include, among other things, a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.
WHEREAS, Government Code Section 65915(e)(1) does not explicitly require that a senior citizen housing development project include affordable housing in order for a waiver or reduction to be granted.

WHEREAS, Planning and Zoning Code Section 20.40.040(H)(3) requires that applications for a density bonus shall include, in summary, the following items:

- a. The desired density increase;
- b. Incentives or concessions requested;
- c. Waivers or reductions in development standards that are requested;
- d. The number, type, location, size and construction scheduling of all units;
- e. A project financial report to allow the City to evaluate the financial need for the incentives, concessions, waivers or reductions of zoning of City standards is necessary to make the project economically feasible.
- f. Any other relevant information that the Community Development Director may determine to be necessary in the evaluation of the proposal.

WHEREAS, on April 16, 2012, the applicant submitted an application, and provided evidence, including relevant financial data and construction information, to demonstrate that the waiver or reduction is necessary to make the development of senior housing units economically feasible and to not physically preclude the construction of the development.

WHEREAS, on April 20, 2012, the Community Development Department determined that the application for a Density Bonus was complete.

WHEREAS, The Planning and Zoning Commission held a public hearing on the application for a Density Bonus on June 27, 2012.
WHEREAS, Notice of the public hearing was provided on April 13, 2012 according to Planning and Zoning Code subsection 20.100.010.E.

WHEREAS, the Planning and Zoning Commission considered all written testimony and public comments and approved a motion recommending to the City Council approval of the density bonus.

WHEREAS, Government Code Section 65915 and Planning and Zoning Code Section 20.40.040(H)(4) provides that following the rendering of a recommendation by the Planning and Zoning Commission, the City Council shall be the decision-making body on all applications involving a density bonus.

WHEREAS, The City Council held a public hearing on the application for a Density Bonus on July 9, 2012.

WHEREAS, Notice of the public hearing was provided on June 29, 2012 according to Planning and Zoning Code subsection 20.100.010.E.

WHEREAS, on ____, the City Council approved a resolution certifying the Final Environmental Impact Report pursuant to the requirements of the California Environmental Quality Act.

WHEREAS, the City Council considered all written testimony and public comments;

NOW THEREFORE, BE IT RESOLVED, that the City Council makes all of the following Findings for approval of a Density Bonus:

a. The proposed development standard waiver/reduction is consistent with the criteria identified in Government Code Section 65915(b)(1),
65915(e)(1) and 65915(o)(1) allowing for a waiver or reduction of the
development standard for a senior housing development that qualifies for a
density bonus.

b. without waiver or reduction of parking ratio standards, the City’s
development standards will have the effect of physically precluding the
construction of the senior residential housing units that qualify the
development project for a density bonus and would make it economically
infeasible.

c. The proposed waiver/reduction is not materially detrimental to the public
health, safety, and welfare, nor injurious to property and/or improvements
in the vicinity of the development.

d. the waiver or reduction of development standards will not have a specific,
adverse impact upon the health, safety or the physical environment, and
for which there is no feasible method to satisfactorily mitigate or avoid the
specific adverse impact.

NOW THEREFORE, BE IT FURTHER RESOLVED, that the City
Council approves a modification to the requirements of Planning and Zoning Code
Section 20.28.030 (Parking Space Requirements) Table 4 are modified for Parcel B of
the project to allow 0.6 parking spaces per senior residential housing unit.

NOW THEREFORE, BE IT FURTHER RESOLVED, that the City
Council approves the following CONDITIONS OF APPROVAL associated with the
Density Bonus development standard waiver/reduction approval:

1. Project Approval: except as may be modified by conditions herein, this
Density Bonus approval is for the Parcels shown and described on sheet A0.4 of plans
prepared by Peter Waller (Pyatok Architects), date received April 4, 2011, as
presented to the Planning and Zoning Commission on May 24, 2011, as may be
modified or supplemented by presentations to the Planning and Zoning Commission
on September 14, 2011, September 27, 2011, June 27, 2012 and to the City Council

2. This Density Bonus waiver/reduction is granted for Parcel B of the project
described in the Environmental Impact Report certified by the City Council on ___
and including a senior citizen housing development containing a minimum of 175
independent and assisted living residential units and includes a separate and secured
Alzheimer’s Care area. Subsequent approvals relying on this Density Bonus shall be
in substantial compliance with the project described in this Environmental Impact
Report.

3. This Density Bonus is granted for the reduction to standards of development
specifically described in these findings and conditions of approval. Approval of the
Density Bonus does not constitute an express or implied approval of other required
actions, including but not limited to design review, conditional use permit, variances,
subdivision, encroachment permits, stormwater management permits, grading
permits, or building permits. The size and location of buildings and other on-site and
off-site improvements may be required to be modified to comply with regulatory
requirements that are part of subsequent applications.

4. The approval of this Density Bonus does not constitute a development
agreement as authorized by Government Code 65864 and does not represent a grant
of a vested right to develop the proposed project. The City retains its authority to
adopt policies rules, regulations, standards, and conditions of approval that may affect
the proposed project until such time that the project approvals are vested by issuance
and substantial reliance on a building permit.

5. Project Approval Expiration: This Density Bonus approval shall expire five
years from the date on which this approval becomes effective unless a design review
application has been submitted and diligently pursued.
6. Hold Harmless Agreement. Pursuant to Government Code Section 66474.9(b) and Albany Municipal Code section 20.100.010(e), but subject to the terms of this Section 6, the applicant (including any agent thereof) shall defend, indemnify, and hold harmless, the City of Albany and its agents, officers and employees, from any claim, action or proceeding against the City or its agents, officers or employees to attack, set aside, void or annul the City’s approval concerning this application, which action is brought within the time period provided for in Section 66499.37. The City will obtain the applicant’s approval before filing the CEQA notice of determination. The City will promptly notify the applicant of any such claim, action or proceeding and cooperate fully in the defense in good faith consultation with the applicant. This indemnification shall include, but not be limited to, damages, fees and/or costs awarded against the City, if any, and cost of suit, attorneys’ fees, and other costs liabilities and expenses incurred in connection with such proceeding whether incurred by the applicant, the City and/or the parties initiating or bringing such proceeding. The applicant shall also defend, indemnify and hold harmless the City, its agents, officers, employees and attorneys for all costs incurred in additional investigation and/or study of, or for supplementing, preparing, redrafting, revising, or amending any document (such as an EIR), if made necessary by said proceeding and if the applicant desires to pursue securing such approvals, after initiation of such proceeding, which are conditioned on the approval of such documents. The applicant shall also indemnify the City for all the City’s costs, fees, and damages which the City incurs in enforcing the indemnification. The applicant may propose counsel of its choice to represent jointly the applicant and the City; provided, however, the City shall have right to retain separate counsel if the City reasonably determines, after consultation with the applicant, that such separate counsel is necessary in order effectively represent the interests of the City. The City shall retain the right to approve all significant decisions concerning the City’s defense of the matter and any and all settlements, which approval shall not be unreasonably withheld. In addition, the applicant shall have the right to withdraw the project application in order to remove the cause for any claim, action or proceeding in accordance with the provisions of this Section 6, in which case the City may elect to
render rescind any approvals granted pursuant to this Resolution, as well as any approvals related to the project associated with this Resolution, making such approvals null and void.

PASSED, APPROVED and ADOPTED this 4th day of July, 2012.

AYES: Council Members Wile, Thomsen, Vice Mayor Atkinson, Mayor Javandel
NOES: Council Member Lieber
ABSENT: None
ABSTAIN: None

Mayor, Farid Javandel

ATTEST:

Eileen Harrington
City Clerk, Deputy

Eileen Harrington
RESOLUTION NO.  2012-45

PASSED AND APPROVED BY THE COUNCIL OF THE CITY OF ALBANY,

The 9th day of July, 2012, by the following votes:

AYES:  Council Members Wile, Thomsen, Vice Mayor Atkinson and Mayor Javandel

NOES:  Council Member Lieber

ABSENT:

ABSTAINED:

RECUSED:


/Eileen Harrington/

Eileen Harrington
DEPUTY CITY CLERK

The City of Albany is dedicated to maintaining its small town ambience, responding to the needs of a diverse community, and providing a safe, healthy and sustainable environment.