



STAFF REPORT

SAUSALITO CITY COUNCIL

AGENDA TITLE:

Resolution Granting the Appeal to the City Council and overturning the Planning Commission's action to deny a Conditional Use Permit and Tentative Map for a Condominium Conversion for Application No. TM/UP/EP 05-033 to convert the existing duplex into two condominium units with surrounding common area, and a Conditional Use Permit and an Encroachment Permit to allow the existing tandem parking configuration on the site which extends into the public right-of-way located at 108-110 Edwards Avenue.

RECOMMENDED MOTION:

Staff recommends that the City Council adopt the attached Resolution Approving the Condominium Conversion, Conditional Use Permit, Tentative Map, and Encroachment Permit Application No. TM/UP/EP 05-033 for 108-110 Edwards Avenue.

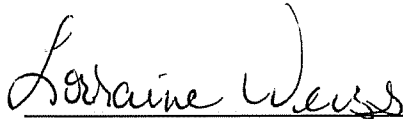
SUMMARY

This item was continued from the January 8, 2008 City Council meeting to the January 29, 2008 meeting to allow staff to prepare a resolution which reflects the City Council's decision to grant the appeal. The City Council Resolution with findings and conditions are provided in Attachment 1 of this memo.

ATTACHMENT

1. City Council Resolution No. 2008-__ with Attachment A – Plans, Attachment B – Findings, Attachment C - Conditions
2. Encroachment Agreement

PREPARED BY:




Lorraine Weiss, Contract Planner

REVIEWED BY (Department Head):



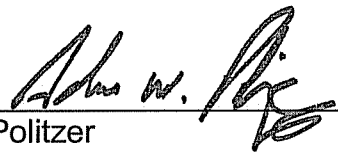
Diane Henderson, Interim Community
Development Director

REVIEWED BY



Mary Wagner, City Attorney

SUBMITTED BY:



Adam Politzer
City Manager

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RESOLUTION NO. 2008-__

**RESOLUTION OF THE SAUSALITO CITY COUNCIL GRANTING THE APPEAL OF
GARY T. RAGGHIANI ON BEHALF OF ROBERT W. SIMPSON AND VALERIE
FOX, OVERTURNING THE PLANNING COMMISSION'S DENIAL AND THEREBY
APPROVING OF APPLICATION NO. TM/UP/EP 05-033 FOR CONDOMINIUM
CONVERSION, CONDITIONAL USE PERMIT AND ENCROACHMENT AGREEMENT
TO ALLOW TANDEM PARKING TO EXTEND INTO THE PUBLIC RIGHT-OF-WAY
LOCATED AT 108-110 EDWARDS AVENUE
(APN 065-293-23)**

WHEREAS, an application has been filed pursuant to Sausalito Municipal Code Title 10 (Zoning) by Linda Carruthers on behalf of Robert W. Simpson and Valerie S. Fox, property owners, requesting Planning Commission approval of a Condominium Conversion, including a Tentative Map, to convert the existing duplex into two condominium units with surrounding common area, and a Conditional Use Permit and an Encroachment Agreement to allow the existing tandem parking configuration on the site which extends into the public right-of-way located at 108-110 Edwards Avenue; and

WHEREAS, the Planning Commission conducted a duly noticed public meeting on April 26, 2006, in the manner prescribed by local ordinance, at which time all interested persons were given an opportunity to be heard; and

WHEREAS, the Planning Commission reviewed and considered the Tentative Map project plans titled "108-110 Edwards Avenue A Condominium Project Lands of Simpson & Fox", dated September 2005 and stamped received by the City of Sausalito on October 11, 2005; and

WHEREAS, the Planning Commission received and considered oral and written testimony on the subject application and obtained evidence from site visits; and

WHEREAS, the Planning Commission reviewed and considered the information contained in the April 26, 2006 staff report for the proposed project; and

WHEREAS, the Planning Commission reviewed the requirements of the General Plan and Zoning Code as outlined the staff report; and

WHEREAS, the Planning Commission was unable to make the findings for approval of the requested Conditional Use Permit and Encroachment Permit for the Condominium Conversion as outlined in the Planning Commission findings; and

WHEREAS, Robert Simpson and Valerie Fox filed a timely appeal of the Planning Commission's decision within the 10-day time period on May 4, 2006; and

WHEREAS, Gary T. Ragghianti, representing the property owners, submitted a letter dated September 19, 2006, outlining the reasons for the appeal;

WHEREAS, the City Council conducted a duly noticed public hearing on January 8, 2008; and

WHEREAS, the City Council on January 8, 2008 reviewed and considered oral and written testimony, evidence obtained from site visits, staff reports, project plans and materials, prior minutes of the Planning Commission and Planning Commission Resolution No. 2006-12; and

WHEREAS, the City Council considered all issues as presented by the appeal subject to the provisions of the Sausalito General Plan and the Sausalito Municipal Code; and

WHEREAS, based on the record of this proceeding, including the testimony and materials received and described above, the City Council finds that there are existing physical circumstances that will not be changed by the condominium conversion and thereby overturns the Planning Commission decision to deny the Condominium Conversion, Conditional Use Permit, Tentative Map, and Encroachment Permit and makes the findings to approve Application No. TM/UP/EP 05-033.

NOW, THEREFORE, THE CITY COUNCIL HEREBY FINDS AND RESOLVES AS FOLLOWS:

The City Council hereby approves the appeal and overturns the decision of the Planning Commission, and thereby approves the Condominium Conversion, Conditional Use Permit, Tentative Map, and Encroachment Permit based on the plans provided in Attachment A, findings outlined herein as Attachment B, and subject to conditions provided in Attachment C.

RESOLUTION PASSED AND ADOPTED at the regular meeting of the City of Sausalito City Council on the 29th day of January, 2008, by the following vote:

AYES: **Councilmember:**
NOES: **Councilmember:**
ABSENT: **Councilmember:**
ABSTAIN: **Councilmember:**

MAYOR OF THE CITY OF SAUSALITO

ATTEST:

DEPUTY CITY CLERK

Item #: 42B1
Meeting Date: 1/29/08
Page #: 4



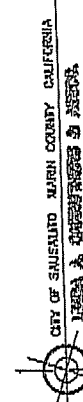
ELEVATION TABLE

UNIT 1	HIGHEST CEILING
FINISH FLOOR 194.80'	194.80'
UNIT 2	HIGHEST CEILING
FINISH FLOOR 200.20'	219.50'

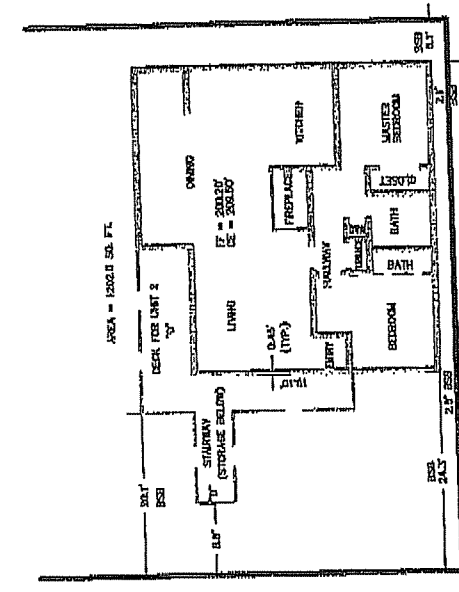
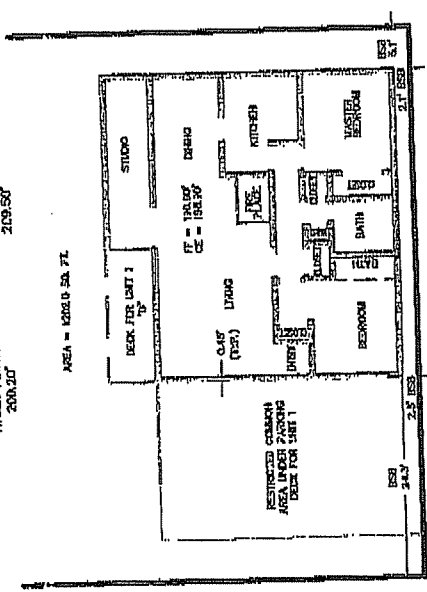
UNIT	SO. FT.	ROOMS
UNIT 1	1202.0	3015.0
UNIT 2	1202.0	3015.0
TOTAL	2404.0	6030.0

- This is a plan of a "Condominium Project" as that term is defined in section 1501 of the California Civil Code and the "Declaration" attached hereto is subject to the provisions of the California Civil Code, the Condominium Act, the California Common Interest Development Act, the California Health and Safety Code, and the California Civil Code.
- "Unit" shall mean the elements of a condominium which are not used in common with the owners of the Condominium in this Project. Each Unit is shown, numbered and delineated on this plan.
- "Common Area" means the entire Project, except for the Units as defined in the Declaration and as shown on this plan.
- A. Subdivision of Condominiums, Conditions and Restrictions establishing a plan of condominium ownership for 100 units located at 1499 and 1501 Edwards Avenue, A Condominium Project shall be prepared for the Common Area. In this event there is a conflict between the definitions on this plan and the definition in the Declaration, the provisions of this Declaration shall control.
- A Condominium Map and a Condominium Plan shall be submitted for this project according to the Subdivision of Land and Airspace (Condominiums) requirements by the City of San Jose.
- This Condominium Project consists of air space units and common area.
- The owner of each Unit shall own an undivided interest in common area as shown on the 7th Table for Unit Area and Percent of Common Area.
- Each unit consists of air space numbered UNIT 1, and UNIT 2, the boundaries of which are delineated on this plan.
- The boundaries of each unit shall be the following: The interior unfinished surfaces (exclusive of paint, paper, wax, tile, enamel or other finishes) of the doors, egress, interior beams and columns, perimeter walls (door and window casings) as designated on this plan. The unit shall include the walls, floor and ceiling, including any utility conduit to the unfinished surfaces of any such walls.
- Each space designated Deck "D" shall be owned by the unit which the deck or stairway is attached as shown on this plan.
- Parking areas identified as "P" and a unit number are designated as common areas assigned to the unit whose number appears in the "P". Parking designated P1A and P2A will be by encroachment permit.
- The basis of bearings for this survey is according to Unit Certain Record of Survey prepared for 100 and 1001 Edwards Avenue recorded in Book 2000 Maps Page 16, San Jose County Records.
- Vertical Control for this project is based on City of San Jose Bench Mark 63, M-7, City of San Jose Monument, being a C. Lemo and cover with a 12" concrete monument on the east side of Edwards Avenue. Elevation 152.25 MLLT.
- All distances and dimensions are shown in feet and decimals thereof.
- Damaged roadway fronting the property to be repaired as directed by the City Engineer.

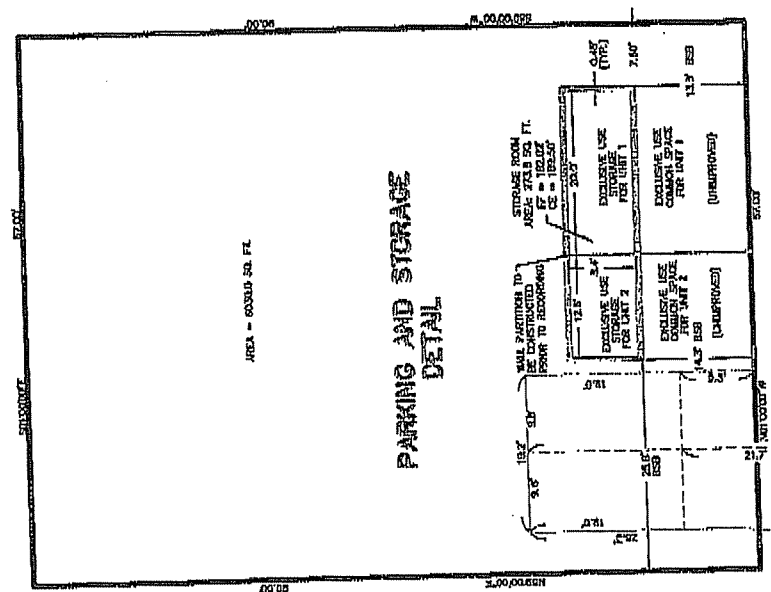
1499 AND 1501 EDWARDS AVENUE
A CONDOMINIUM PROJECT
LANDS OF SIMPSON & FOX
D.M. 2000-44357



CITY OF SAN JOSE, SAN JOSE COUNTY, CALIFORNIA
LINDA A. CARRUTHERS & ASSOCIATES
SCALE: 1"=10'
DATE: SEPT 2006
REVISION 1: 12/15/07 JOB NO. 04-458
SHEET 2 OF 2 A.P.N. 085-283-2



UNIT BOUNDARY AND EXISTING FLOOR PLAN



EDWARDS AVENUE

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CITY COUNCIL HEARING
JANUARY 29, 2008
APPLICATION NO. TM/UP/EP 05-033
108-110 EDWARDS AVENUE

ATTACHMENT B: FINDINGS

I. ENCROACHMENT FINDINGS

- A. The proposed project is in conformance with the City's Encroachment Permit Finding A: "The proposed encroachment is compatible with the surrounding area and will either improve or not significantly diminish visual or physical public enjoyment of the streetscape upon which encroachment is proposed."

The proposed encroachment continues an existing tandem parking configuration on the driveway apron which extends beyond the property line. The requested Encroachment Permit is necessary to approve the Conditional Use Permit, which in turn is required to meet the required findings for a condominium conversion. Many other properties in the vicinity of the subject property have similar configurations and encroach into the public right-of-way. The project does not alter the physical development of the property or the streetscape along Edwards Avenue.

- B. The proposed project is in conformance with the City's Encroachment Permit Finding B: "The encroachment will not adversely affect the usability or enjoyment of adjoining parcels nor create or extend an undesirable land use precedent."

The project will not adversely affect the usability or enjoyment of adjoining parcels. The encroachment is located along the subject property frontage on Edwards Avenue and is an existing situation. No physical changes to the property are created as a result of the proposed request. The surrounding neighborhood is comprised almost solely of duplex structures along Edwards Avenue. Most of these existing duplex structures appear to be constructed in generally the same time period as the proposed condominium conversion project and many of them are served by two on-site parking spaces contained on a parking deck. As is the case with the subject application, the existing tandem parking is not entirely contained on-site and extends into the public right-of-way, though would remain on the concrete driveway and not obstruct the movement of vehicular traffic along Edwards Avenue.

- C. The proposed project is in conformance with the City's Encroachment Permit Finding C: "The encroachment is necessary to the reasonable use and enjoyment of the property and the extent of the encroachment is justifiable."

The proposed project continues the existing use of the concrete driveway for tandem parking which is necessary to provide the required parking for the two dwelling units at the subject property. This condition exists regardless of the conversion from rental units to condominium units as parking is currently in tandem which extends beyond the property line by 10 feet into the concrete driveway. Because the encroachment reflects an existing situation, and physical changes to the property are not being made, the

extent of the encroachment is justifiable and does not result in an obstacle to traffic along Edwards Avenue.

- D. The proposed project is in conformance with the City's Encroachment Permit Finding D: "The proposed encroachment will not adversely affect the public circulation nor create or constitute a hazard to public safety."

The proposed encroachment will not affect the public circulation or create a hazard to the public safety as the area of encroachment, 10 feet of depth into the driveway, is not actively used by the public and is not in the part of the right-of-way where vehicles and pedestrians circulate.

- E. The proposed project is in conformance with the City's Encroachment Permit Finding E: "The value of the proposed improvements will not prejudice a policy decision to terminate the encroachment nor preclude or make difficult the establishment or improvement of streets or pedestrian ways."

While the encroachment is only for the driveway, the encroachment agreement may be revoked at any time should the City need to make improvements to the public right-of-way. The property owner is fully on notice that his/her right to use the City owned right-of-way is subject to termination for any reason; therefore, the City's decision regarding its use of the right-of-way should not be prejudiced by the property owner's decision to locate the improvements herein.

II. CONDITIONAL USE PERMIT FINDINGS

- A. The proposed project is in conformance with the City's Conditional Use Permit Finding A: "The proposed use is allowed with issuance of a Conditional Use Permit, pursuant to Chapters 10.20 through 10.28 or Section 10.46.040, Chapter 10.44 or any other applicable section of this Title 10.

Pursuant to Chapter 10.24 of the Zoning Ordinance, the proposed two-family use is a permitted use in the R-2-2.5 (Two Family Residential) Zoning District. Findings for the requested Encroachment Permit (Chapter 10.56) are necessary to approve the Conditional Use Permit, which is in turn required to meet the required findings for a condominium conversion (Chapter 10.66).

- B. The proposed project is in conformance with the City's Conditional Use Permit Finding B: "The proposed use is consistent with the General Plan, the purposes of the Zoning Ordinance, and the purposes of the applicable zoning district."

Sausalito Municipal Code § 10.40.120 (Design and Improvement of Parking) outlines the City's parking design and development standards. Pursuant to this section, required parking shall be located on-site and designed as provided by this section." Section A of this Municipal Code section describes the City's standards for design and layout of parking stalls within the City. Section B provides for exceptions to the design and layout of parking spaces and allows for a Conditional Use Permit to achieve a tandem parking arrangement for two and multiple family dwellings. Due to the fact that the proposed tandem parking arrangement, which extends into the public right-of-way, already exists, the proposed project is in conformance with Section 10.40.120, as it

would not worsen an existing situation nor create a traffic hazard along Edwards Avenue. While the tandem configuration extends beyond the property line, it encroaches 10 feet in depth and into the driveway only.

- C. The proposed project is in conformance with the City's Conditional Use Permit Finding C: "The proposed use, together with the applicable conditions, will not be detrimental to the public health, safety, or general welfare of the City."

The residential dwelling units have been upgraded to meet the current Uniform Building Code and the encroachment into the public right-of-way for parking extends beyond the property line 10 feet depth only into the concrete driveway area and does not pose an obstacle for vehicular or pedestrian circulation along Edwards Avenue. Therefore, the project, as conditioned, is not detrimental to the public health, safety, or general welfare of the City.

- D. The proposed project is in conformance with the City's Conditional Use Permit Finding D: "The proposed use complies with each of the applicable provisions of the Zoning Ordinance."

As conditioned and described herein, the project complies with the applicable provisions of the Zoning Ordinance.

- E. The proposed project is in conformance with the City's Conditional Use Permit Finding E: "The proposed use or facility is properly located relative to the community as a whole and to land uses and transportation and service facilities in the vicinity.

The project converts two existing housing units from rental to condominium units. There is no physical change to the existing property as a result of this conversion and the housing exists in an area that is zoned for two family residences.

- F. The proposed project is in conformance with the City's Conditional Use Permit Finding F: "The size and shape of the subject property is adequate to provide features needed to ensure reasonable compatibility with land uses normally permitted in the surrounding area. Features may include but not be limited to yards, open spaces, walls and fences, parking, loading, landscaping, and such features as may be required by this Title or the Commission."

The requested Conditional Use Permit is to authorize the existing historical tandem parking arrangement pursuant to Section 10.40.120(B)(1) of the Sausalito Municipal Code. The tandem parking extends beyond the property, though, remains on the driveway and does not extend into street. Many other properties on Edwards Avenue are similar in configuration with tandem parking extending into the public right-of-way.

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III. TENTATIVE MAP/CONDOMINIUM FINDINGS

- A) The Planning Commission has received and reviewed an overall assessment report from the Community Development Department regarding the general condition of all buildings and listing all code violations.

A Physical Elements Report that describes the condition of the existing building was submitted and provided as an attachment to the Planning Commission Staff Report.

- B) Factors identified in Section 10.66.040 (Public Notice and Hearing) have been fully considered by the Planning Commission.

The Planning Commission is aware of the requirements for noticing and holding a public hearing on the project.

- C) The condominium project will conform to all applicable laws, ordinances and regulations, including but not limited to those pertaining to housing, building, fire, and subdivision.

The proposed project as conditioned complies with applicable laws, ordinances and regulations of the General Plan, Zoning Ordinance, Municipal Code, and Subdivision Ordinance. The project was reviewed for building and fire regulations when improvements were made previously to upgrade the building through the building permit process.

- D) The condominium project conforms to the Sausalito General Plan.

As indicated in the previous response, the project conforms to the Sausalito General Plan.

- E) The City approves the declaration of restrictions required by California Civil Code §1355 for the project, as specified in Section 10.66.060 (Conditions of Approval).

The applicant has submitted the declaration of restrictions with the project that have been forwarded to the Planning Commission with the project staff report.

- F) Approval of the proposed condominium project will not adversely affect the provision of adequate housing for all segments of the community, and adequate replacement housing for displaced tenants is available. The vacancy rate for comparable units shall be considered in evaluating the adequacy of replacement housing.

Information regarding the tenancy of the existing rental units has been submitted with the project application. The project would not displace tenants.

- G) No deficiency of multiple family rental housing and two-family rental dwelling units exists within the City of Sausalito, consistent with the Housing Element.

There is not a deficiency of multiple family rental housing and two-family rental dwelling units within the City of Sausalito based on review of rental stock available at the time the project was reviewed.

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H) All provisions of this article are met; or

The minimum number of parking spaces required by this article is being met, any existing nonconformities are not being increased, and to the greatest extent practicable, some existing nonconformities are being decreased.

The project provides the minimum number of parking spaces required by the Zoning Ordinance with use of the driveway which encroaches 10 feet in depth beyond the property line and is subject to an encroachment permit.

I) The overall design and physical condition of the condominium conversion achieves a high degree of appearance, quality, and safety.

The existing structure has been updated per the Uniform Building Code with appropriate permits and has a high degree of appearance, quality, and safety and is compatible with the surrounding neighborhood. The proposed condominium conversion does not alter the physical development or characteristics of the site.

J) The proposed project will not convert during the current calendar year more than 5% of the potentially convertible rental units in Sausalito for the current calendar year except as otherwise provided in this article, consistent with Section 10.66.150 (effect on City's Low- Moderate-Income Housing Supply).

There have not been approved 5% of the potentially convertible rental units in Sausalito for the current calendar year; nor would this project, if approved, bring the figure up to 5%.

K) Vacancies in the project have not been intentionally increased for the purpose of preparing the project for conversion.

There have not been any vacancies in this building during the application period for condominium conversion.

L) There has been no new construction over 300 square feet within the past three (3) years.

Building records indicate that there has been no new construction over 300 square feet within the past three (3) years.

M) The project will not result in the eviction of a senior citizen tenant.

The current tenants are not of senior age.

N) The project will not result in a loss of low and moderate income housing stock of the City.

The dwelling units on the property are market rate units.

CITY COUNCIL HEARING
January 29, 2008
APPLICATION NO. TM/UP/EA 05-033
108-110 Edwards Avenue

ATTACHMENT C: CONDITIONS OF APPROVAL

1. Approval of this Application is limited to the project plans titled "Tentative Map 108-110 Edwards Avenue A Condominium Project Lands of Simpson & Fox" stamped received by the City of Sausalito on October 25, 2007; and
2. This approval will expire in five (5) years from the date of adoption of this resolution if the property owner has not exercised the entitlements hereby granted.
3. In accordance with Ordinance No. 1160, the applicant shall pay any and all City costs arising out of or concerning the proposed project, including without limitation, permit fees, attorneys' fees, engineering fees, license fees and taxes, whether incurred prior to or subsequent to the date of this approval. Applicant acknowledges and agrees that City's costs shall be reimbursed prior to this approval becoming valid.
4. The applicant shall indemnify the City for any and all costs, including without limitation attorneys' fees, in defending this project or any portion of this project and shall reimburse the City for any costs incurred by the City's defense of the approval of the project.

Prior to Recordation of Parcel Map:

5. Utility Easements shall be depicted on the Parcel Map. The owners statement on the Final Map shall define rights and responsibilities with regard to utilities including but not limited to water lines, sewer lines, storm drains, gas lines, electrical facilities, cable TV, and telephone.
6. The Conditions, Covenants and Restrictions (CC&Rs) shall include that the homeowner's association shall be responsible for maintaining the driveway area which encroaches into the public right-of-way along the property frontage on Edwards Avenue.

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**ATTACHMENT 2
CITY OF SAUSALITO
ENCROACHMENT AGREEMENT**

This **ENCROACHMENT AGREEMENT** (“Agreement”) is entered into this ___ day of January, 2008 (the “Effective Date”) by and between **ROBERT W. SIMPSON AND VALERIE S. FOX** (“Owners”) and the **CITY OF SAUSALITO**, a municipal corporation (“City”).

RECITALS

The following Recitals are a substantive part of this Agreement:

A. The City Council of the City of Sausalito did duly pass and adopt Resolution No. 2008-XX and did thereby approve the Condominium Conversion, including a Tentative Map and Conditional Use Permit, for Application No. TM/UP/EA 05-033 allowing conversion of the existing duplex into two condominium units with surrounding common area, and a second Conditional Use Permit and an Encroachment Permit to allow the existing tandem parking configuration on the site which extends into the public right-of-way located at 108-110 Edwards Avenue (APN 065-293-23).

B. Application No. TM/UP/EA 05-033 includes a tandem parking configuration which extends 10 feet of depth on the driveway into the public right-of-way along the Edwards Avenue property frontage, which requires City Council approval of an Encroachment Agreement. In accordance with Chapter 10.56 of the City’s Municipal Code the Community Development Director has reviewed the proposed encroachment and has recommended that the City Council approve the encroachment.

C. The City has the authority to regulate the use of the public right of way and is willing to allow Owner the encroachments as set forth on and in accordance with the Plans in accordance with Titles 10 and 17 of the Sausalito Municipal Code under certain terms and conditions as set forth below.

NOW, THEREFORE, Owner and City hereby agree as follows:

1. Description of Encroachments. The encroachment covered by this Agreement is 10 feet of depth in the driveway along the Edwards Avenue property frontage in the public right-of-way as set forth in the Project Plans titled, “Tentative Map 108-110 Edwards Avenue A Condominium Project, Lands of Simpson & Fox”, stamped received October 25, 2007 (the “Encroachments”).

2. Term. The term of this Agreement is one (1) year after which it shall be automatically renewed on an annual basis unless City issues a notice of non-renewal.

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3. Condition of Encroachments and Right of Way. Owner shall maintain all Encroachments and the City owned property affected thereby in good and safe condition and free from any nuisance to the satisfaction of the City Engineer.
 - a. The Conditions, Covenants and Restrictions (CC&Rs) shall include that the homeowner's association shall be responsible for maintaining the concrete driveway in the public rights-of-way fronting the property along Edwards Avenue.
4. Removal or Relocation. Owners acknowledges and agrees that it shall remove or relocate the Encroachment(s) at its sole cost and expense if the Encroachment(s) interferes with any lawful governmental or proprietary purpose of the City of Sausalito; is detrimental to governmental activities; and/or the right of way or street is being vacated. If the Owner fails to remove the Encroachment(s) within the time specified by the City Engineer, City may cause the work to be done at the Owners' expense.
5. Taxes. Owners shall be responsible for payment of all fees and taxes charged in connection with the right, title and interest in the Encroachments.
6. Indemnification. Owners hereby agree to indemnify, defend (with counsel reasonably acceptable to City and hold harmless City and its elected and appointed officials, officers, employees, consultants, agents, volunteers and successors in interest from any and all claims, demands, causes of action, damages, liabilities and obligations arising from or in any way related to this Agreement and/or Owner's use of the right of way.
7. Termination. This Agreement may be terminated by either party with or without cause upon thirty (30) days written notice. Upon such termination, the Encroachment(s) must be removed as specified by and within the time required by the City Engineer. In addition, the City owned right of way must be restored to the condition required by the City Engineer. In the event that Owners fail to remove the Encroachment(s) and/or restore the right of way as required by the City Engineer within the specified time, City shall have the right to perform the work and charge Owners.
8. No Grant. This Agreement is not a grant by City of any property interest but is made subject and subordinate to the prior and continuing right of City and its assigns to lawfully use any or all of the right of way for public facilities, including but not limited to, public use as a street and for the purpose of laying, installing, maintaining, repairing, protecting, replacing and removing sanitary sewers, water mains, storm drains, gas mains, poles, overhead and underground electric and telephone wires, television and other utility and municipal uses together with appurtenances thereof and with right of ingress and egress along, over, across and in the right of way. No use of any right of way or other interest under this Agreement shall create or vest in Owners any ownership interest in the right of way; nor shall anything in this Agreement be deemed or construed to grant or create any franchise rights.
9. Condemnation. If the right-of-way is taken totally by condemnation, this Agreement shall

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terminate on the date of the taking with no compensation to Owners therefore. If a portion of the right of way is taken by condemnation, then this Agreement shall remain in effect as to the part not taken.

10. Standard Conditions. Owners shall comply with any and all Standard Conditions for Encroachment Permits required by the City Engineer.

11. Compliance with Laws. Owners shall comply with all applicable laws, any permit issued by the City pursuant to this Agreement and any general or specific conditions required by the City Engineer.

12. Notices. All notices required or permitted to be given under the terms of this Agreement shall be in writing and shall be deemed to be given as of the time of hand delivery to the addresses set forth below, or three (3) days after deposit in the United States mail, postage prepaid, by register or certified mail, return receipt requested, addressed as follows:

Owners:
Robert W. Simpson, & Valerie S. Fox
110 Edwards Avenue
Sausalito, CA 94965

City of Sausalito
420 Litho Street
Sausalito, CA 94965
Attention: City Engineer

13. Assignment. This Agreement is not assignable unless City consents in writing, which consent shall be withheld unreasonably. Such consent to assignment shall bind and insure to the benefit of the respective successors and assigns of the parties. This requirement for consent shall not apply to: (a) any disposition of all or a portion of the Property; or (b) any collateral assignment, security interest or pledge of this Agreement by Owner(s) to any lender.

14. Waivers. The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce the same. No waiver by any party of any condition, or of any breach of any term, covenant, representation, or warranty contained herein, in any one or more instances, shall be deemed to be construed as a further or continuing waiver of any such condition or breach or waiver of any other condition or of any breach of any other term, covenant, representation or warranty.

15. Severability. If one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable or unenforceable, such provision shall be deemed severable from the remaining provisions of this Agreement and shall not affect the legality, validity or constitutionality of the remaining portions of the Agreement.

16. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters addressed herein.

17. Modification. This Agreement may not be amended unless made in writing and signed by each party.

18. California Law. The interpretation and enforcement of this Agreement shall be governed by the laws of the State of California. In the event that suit shall be brought by either party to this Agreement, the parties agree that venue shall be exclusively vested in the State courts of the County of Marin or where appropriate, in the United States District Court, Northern District of California.

19. Attorneys' Fees. Should any legal proceeding be commenced between the parties to this Agreement seeking to enforce any of its provisions, the prevailing party in such a proceeding shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for attorneys' fees which shall be determined by the court or forum in such a proceeding or in a separate action brought for that purpose. For purposes of this provision, "prevailing party" shall include a party which dismisses an action for recovery hereunder in exchange for payment of the sum allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action or proceeding.

20. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.

21. Authority. The parties represent that the individuals signing this Agreement have the authority to do so.

22. No Personal Liability. No member, official or employee of City shall be personally liable to Owners or any successor in interest in the event of any default or breach by City or on any obligation under the terms of this Agreement.

IN WITNESS WHEREOF, the parties have hereto set their signatures as of the date first above named herein.

OWNERS:

CITY:

By: _____
Robert W. Simpson

By: _____
Amy Belser, Mayor

Valerie S. Fox

RECOMMENDED FOR APPROVAL:

APPROVED AS TO FORM:

4281
16

Encroachment Agreement

City Engineer

City Attorney

ATTEST:

City Clerk

42131
5 17

