



## STAFF REPORT SAUSALITO CITY COUNCIL

---

### AGENDA TITLE

Encroachment Agreement to allow the reconstruction of a parking deck and new stairway for the single-family residence located at 44 Marie Street (APN 064-193-09), with a portion of the improvements encroaching into the Marie Street public right-of-way, as recommended for approval by the Planning Commission for Application No. DR/EA 07-026.

### RECOMMENDED MOTION

Staff recommends that the City Council adopt the attached Resolution of Approval for an Encroachment Agreement to allow the reconstruction of a parking deck and new stairway for the single-family residence located at 44 Marie Street (APN 064-193-09), with a portion of the improvements encroaching into the Marie Street public right-of-way, as recommended for approval by the Planning Commission pursuant to Resolution No. 2008-07 for Application No. DR/EA 07-026.

---

### SUMMARY AND BACKGROUND

The applicant and owner, Merl Arthur Charles, requests City Council approval of an Encroachment Agreement to reconstruct a parking deck with a new stairway for the single-family residence. The proposed concrete slab parking deck measures 30 feet by 20 feet and would replace an existing elevated concrete slab parking deck. The proposal includes a new stairway adjacent to the southern side of the parking deck to provide access to the lower floor of the residence, which creates 15 square feet of new impervious surfaces, increasing total impervious surfaces to 31.8%. No changes are proposed to the building coverage or floor area. The driveway, parking deck, and stairway encroach approximately 18 feet into the Marie Street public right-of-way, and therefore require approval of an Encroachment Agreement.

The Planning Commission reviewed the application on January 23, 2008 and recommended approval of the Encroachment Agreement to permit the continuation of an off-street parking area and provide for new street access to the residence.

### ENGINEERING DIVISION REVIEW

The City Engineer reviewed the subject application on September 28, 2007 (Attachment 3) and recommended approval of the project conditioned on the submittal of driveway and stairway details and that the driveway shall be designed to channel drainage to the street. These have been included as conditions of approval in the attached draft resolution.

### ENCROACHMENT REVIEW

Chapter 10.56 of the Sausalito Municipal Code provides that the Planning Commission shall review encroachments for structures within the public right-of-way, such as those included in

---

Item #: 488  
Meeting Date: 01/29/08  
Page #: 1

Application No. DR/EA 07-026, which shall be forwarded to the City Council for final decision making authority. The Planning Commission reviewed the proposed encroachment based on the Encroachment Agreement findings listed in Zoning Ordinance Section 10.56.060 and recommended approval of an Encroachment Agreement to allow the continuation of an existing off-street parking area encroaching into the public right-of-way and to permit additional site access from the street. The Planning Commission approved the Design Review Permit and recommended approval of an Encroachment Agreement to the City Council, as stated in Resolution 2008-07 (Attachment 2). The following is a list of the requisite findings followed by a description of their application to the requested encroachments:

**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 the encroachment is proposed.**

The encroachment of the parking deck has existed since 1971, and was previously permitted by the City. The new parking deck would replace the existing and would not diminish public enjoyment of the streetscape, but rather provide off-street parking. The new stairway is compatible with the existing structure and would not diminish the visual or physical public enjoyment of the streetscape.

**B. The encroachment will not adversely affect the usability or enjoyment of adjoining parcels nor create or extend an undesirable land use precedent.**

The encroachment would be the continuation of an existing encroachment that has been in place since 1971 without negatively affecting adjoining parcels. The encroachment is necessary in order to provide off-street parking for the site, a common type of encroachment in the neighborhood, and thus would not establish an undesirable land use precedent.

**C. The encroachment is necessary to the reasonable use and enjoyment of the property and the extent of the encroachment is justifiable.**

The parking deck is necessary to provide off-street parking and access to the upper level of the residence. The new stairway is necessary to provide access to the lower level of the home from the street. The provision of access would constitute a reasonable use and enjoyment of the property, and thus the encroachments can be considered justifiable.

**D. The proposed encroachment will not adversely affect the public circulation nor create or constitute a hazard to public safety.**

The proposed encroachments are located outside of the roadway and would not affect the public circulation nor create or constitute a hazard to public safety. The City Engineer reviewed the encroachments and expressed no concerns with impacts to public circulation.

**E. The value of the proposed improvement will not prejudice a policy decision to terminate the encroachment nor preclude or make difficult the establishment or improvements of streets or pedestrian ways.**

The proposed encroachments are essentially the continuation of an existing condition and maintain the site's current off-street parking and access from the street. Staff does not anticipate that the proposed improvements will prejudice any future policy decisions to terminate the encroachment nor preclude or make difficult the establishment or improvement of streets or pedestrian ways.

**FISCAL IMPACT**

There is no anticipated fiscal impact for the requested Encroachment Agreement.

**STAFF RECOMMENDATIONS**

Staff recommends that the City Council adopt the attached Resolution of the Sausalito City Council (Attachment 1), approving an Encroachment Agreement (Exhibit A) to allow the reconstruction of a parking deck and new stairway for the single-family residence located at 44 Marie Street (APN 064-193-09), with a portion of the improvements encroaching into the Marie Street public right-of-way, as indicated in the plans titled "Merl Charles, 44 Marie Street" and date-stamped received November 1, 2007 (Exhibit B of Attachment 1).

**ATTACHMENTS**

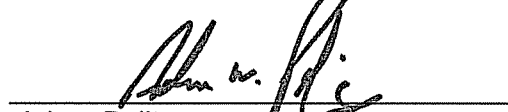
1. Draft Resolution of the City Council of the City of Sausalito approving an Encroachment Agreement by and between Merl Arthur Charles, property owner of 44 Marie Street, and the City of Sausalito (Exhibit A), and as shown in the approved project plans date-stamped received November 1, 2007 (Exhibit B)
2. Planning Commission Resolution No. 2008-07
3. January 23, 2008 Planning Commission Staff Report
4. Site Photos

PREPARED BY:



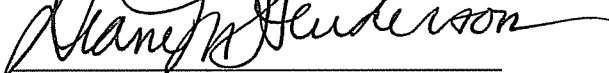
Sierra Russell  
Associate Planner

SUBMITTED BY:

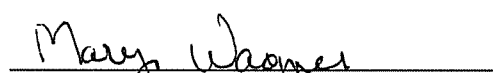


Adam Politzer  
City Manager

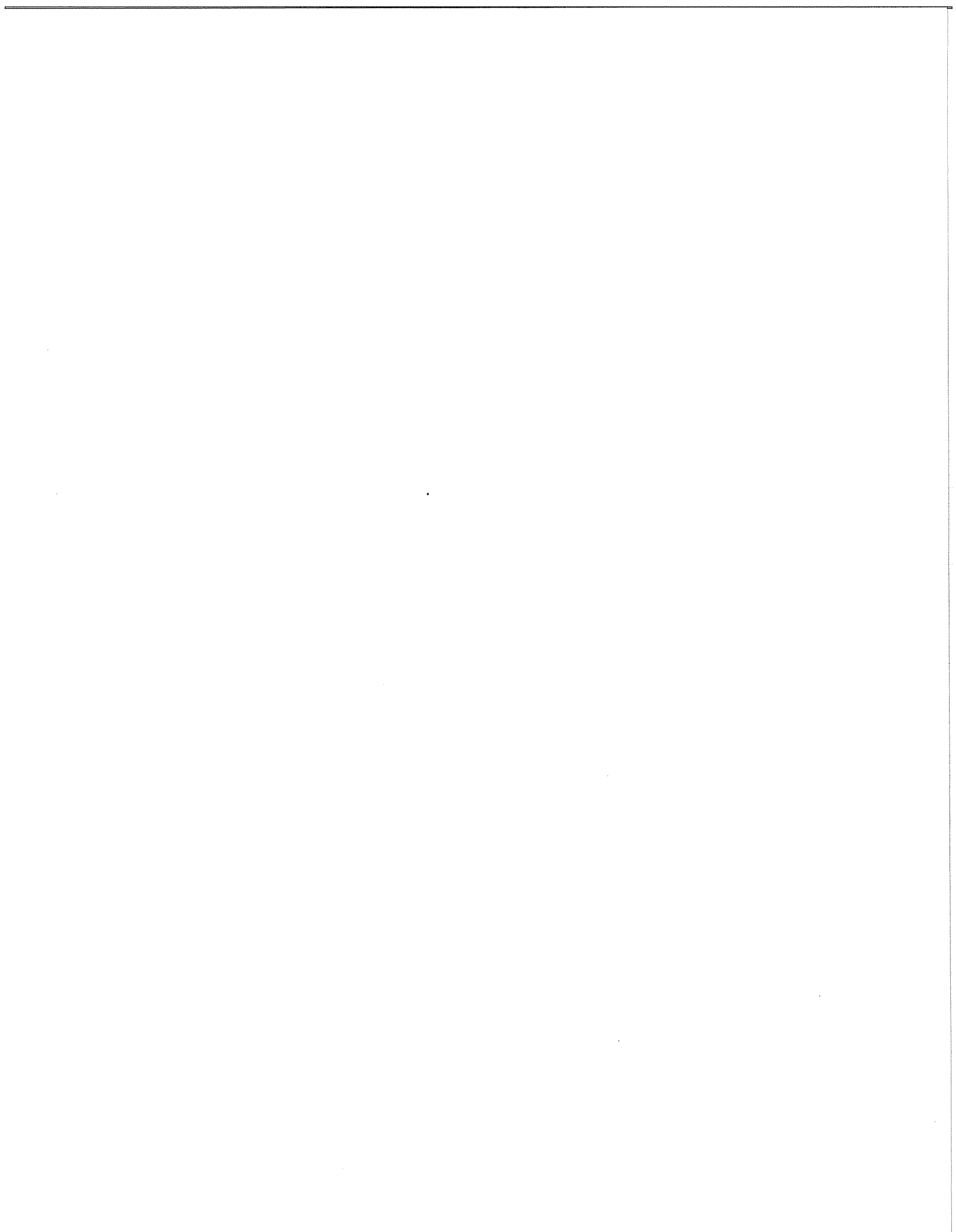
REVIEWED BY:



Diane Henderson  
Interim Community Development Director



Mary Wagner  
City Attorney



# DRAFT

## RESOLUTION NO. XXXX

### RESOLUTION OF THE SAUSALITO CITY COUNCIL APPROVING AN ENCROACHMENT AGREEMENT (APPLICATION NO. DR/EA 07-026) TO ALLOW THE RECONSTRUCTION OF A PARKING DECK WITH A NEW STAIRWAY FOR THE RESIDENCE LOCATED AT 44 MARIE STREET (064-193-09) WITH A PORTION OF THE IMPROVEMENTS LOCATED IN THE PUBLIC RIGHT-OF-WAY

---

**WHEREAS**, an application has been filed by the applicant and owner, Merl Arthur Charles, requesting Planning Commission approval of a Design Review Permit and recommendation of approval to the City Council for an Encroachment Agreement to allow the reconstruction of a parking deck and new stairway for the single-family residence located at 44 Marie Street (APN 064-193-09), with a portion of the improvements encroaching into the Marie Street public right-of-way; and

**WHEREAS**, the Planning Commission conducted duly noticed public meetings on January 23, 2008, 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 plans titled "Merl Charles, 44 Marie Street" and date-stamped received November 1, 2007; and

**WHEREAS**, the Planning Commission reviewed and considered the information contained in the January 23, 2007 staff report; and

**WHEREAS**, the Planning Commission found that, as conditioned herein, the proposed project complies with requirements of the Zoning Code and the General Plan, as outlined in the January 23, 2007 staff report; and

**WHEREAS**, the Planning Commission found that the proposed project is categorically exempt from the requirements of CEQA pursuant to Section 15301 (e); and

**WHEREAS**, the Planning Commission adopted Resolution No. 2008-07 on January 23, 2008, approving Design Review Permit No. DR/EA 07-026 and recommending approval to the City Council for the requested encroachments in the public right-of-way; and

**WHEREAS**, the City Council has reviewed and considered the Planning Commission's recommendation of the Encroachment Agreement; and

**WHEREAS**, the City Council has reviewed and considered the project plans titled "Merl Charles, 44 Marie Street" and date-stamped received November 1, 2007; and

**WHEREAS**, the City Council has received and considered written testimony on the subject application and obtained evidence from site visits; and

438  
5

**WHEREAS**, the City Council agrees with the Planning Commission that the proposed project is categorically exempt from the requirements of the California Environmental Quality Act pursuant to CEQA Guidelines Section 15301 (e).

**NOW, THEREFORE, THE CITY COUNCIL HEREBY** approves the Encroachment Agreement for Application No. DR/EA 07-026 to allow the reconstruction of a parking deck and new stairway for the single-family residence located at 44 Marie Street (APN 064-193-09), with a portion of the improvements encroaching into the Marie Street public right-of-way, as included in Exhibit A (Encroachment Agreement) and Exhibit B (Plans and Elevations), and subject to the conditions of approval contained herein.

**Section 1. Conditions of Approval**

1. Approval of this Application is limited to the project plans titled "Merl Charles, 44 Marie Street" date-stamped received November 1, 2007.
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. Construction materials, equipment, vehicles, and debris boxes shall be placed to minimize obstruction of roads and gutters, shall be maintained in a clean and safe condition, and shall not be maintained in a manner that becomes a nuisance to the neighborhood.
4. Pursuant to Ordinance 1143, the operation of construction, demolition, excavation, alteration, or repair devices within all residential areas or within a 500 foot radius of residential zones shall be limited to the following hours:
  - a. Weekdays – Between 8 a.m. and 7 p.m.
  - b. Saturdays – Between 9 a.m. and 5 p.m.
  - c. Holidays – Between 9 a.m. and 7 p.m.

Such operation is prohibited on Sundays except by a homeowner residing on the property. Such work shall be limited to 9 a.m. to 7 p.m.

5. Dumping of residues from washing of painting tools, concrete trucks and pumps, rock, sand, dirt, agricultural waste, or any other materials discharged into the City storm drain system that is not composed entirely of storm water is prohibited pursuant to Sausalito Municipal Code (SMC) Chapter 11.17. Liability for any such discharge shall be the responsibility of person(s) causing or responsible for the discharge. Violations constitute a misdemeanor in accordance with SMC Section 11.17.060.B.
6. As a condition of this approval, no alternative or unrelated construction, site improvements, tree removal and/or alteration, exterior alterations and/or interior alterations and/or renovations not specified in the project plans, or alterations approved by the Planning Director, shall be

488  
6

performed on the project site. In such cases, this approval shall be rendered null and void unless approved by the Community Development Department as a modification to this approval.

7. In the event that any condition imposing a fee, exaction, dedication or other mitigation measure is challenged by the project sponsors in an action filed in a court of law or threatened to be filed therein which action is brought within the time period provided by law, this approval shall be suspended pending dismissal or final resolution of such action. If any condition is invalidated by a court of law, the entire project shall be reviewed by the City and substitute conditions may be imposed.
8. 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.
9. 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.
10. An approval granted by the Planning Commission does not constitute a building permit or authorization to begin any construction. An appropriate permit issued by the Building Division must be obtained prior to constructing, enlarging, moving, converting, or demolishing any building or structure within the City.
11. The Community Development Department is authorized to administratively approve minor modifications to the approved plans. Major design modifications to the approved project will require further review and approval by the Planning Commission.

Prior to issuance of a building permit:

12. Driveway details (driveway profile, joints, connection) and stair details (profile, landing, connection) shall be prepared and shall be subject to the approval of Community Development Department staff.
13. The driveway shall be designed for positive drainage from the garage flow to the street gutter, which shall be indicated on the plans.
14. A construction traffic control, parking, and staging plan and construction schedule shall be submitted for review and approval by the City Engineer. The applicant shall inform the City Engineer on the extent of traffic on San Carlos Avenue during construction, and the number of workers to be transferred to and from the site. The staging plan shall show where dumpsters, equipment, and construction material are to be stored during construction and any areas within the street right-of-way to be used for off-loading material and equipment. An encroachment permit is required for any such storage in the City right-of-way.

468  
7

15. Any exterior security lighting to be installed shall be downward facing and must be submitted for review and approval by the Community Development Department.
16. The applicant shall execute an encroachment agreement with the City subject to standard conditions in the model agreement.
17. The owner shall obtain an encroachment permit from the Engineering Division for any construction work or storage of construction materials in the right-of-way.
18. Demolition and excavation activities shall only occur between April 1 and October 15.

**Section 2. Judicial Review**

The time within which judicial review of this decision may be sought is governed by the provisions of section 65009 of the Government Code, section 1094.6 of the Code of Civil Procedure and all other applicable law.

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

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

---

MAYOR AMY BELSER

ATTEST: \_\_\_\_\_  
 CITY CLERK

488  
8



**EXHIBIT A**  
**CITY OF SAUSALITO**  
**ENCROACHMENT AGREEMENT**

This **ENCROACHMENT AGREEMENT** ("Agreement") is entered into this 29<sup>th</sup> day of January, 2008 (the "Effective Date") by and between **MERL ARTHUR CHARLES** ("Owner") and the **CITY OF SAUSALITO**, a municipal corporation ("City").

**RECITALS**

The following Recitals are a substantive part of this Agreement:

A. Application No. DR/EA 07-026 was submitted by applicant and property owner Merl Arthur Charles to allow the reconstruction of parking deck and new stairway for the single-family residence located at 44 Marie Street (APN 064-193-09), with a portion of the improvements encroaching into the Marie Street public right-of-way.

B. Application No. DR/EA 07-026 includes the placement of approximately eighteen (18) feet of a parking deck, driveway, and access stairway.

C. The Planning Commission of the City of Sausalito did duly pass and adopt Resolution No. 2008-01 on January 9, 2008 and did thereby approve the Design Review Permit for Application No. DR/EA 07-025 and recommended approval to the City Council of an Encroachment Agreement.

D. The City Council adopted Resolution No. XXX on January 29, 2008 approving the Encroachment Agreement subject to specific conditions contained in Section 1 of said Resolution.

E. 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 the portion of driveway, parking deck, and stairway that encroaches into the public right-of-way as depicted on and subject to the plans titled "Merl Charles, 44 Marie Street" date-stamped received November 1, 2007, a copy of which is attached hereto as Exhibit B and incorporated herein by this reference.
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.
3. Condition of Encroachments and Right of Way. Owner shall maintain all Encroachments

428  
9

and the City owned property affected thereby in good and safe condition and free from any nuisance to the satisfaction of the City Engineer.

4. Removal or Relocation. Owner 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 Owner's expense.

5. Taxes. Owner shall be responsible for payment of all fees and taxes charged in connection with the right, title and interest in the Encroachments.

6. Indemnification. Owner hereby agrees 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 Owner fails 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 Owner.

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 Owner 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 terminate on the date of the taking with no compensation to Owner 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. Owner shall comply with any and all Standard Conditions for Encroachment Permits required by the City Engineer.

4B8  
10

11. Compliance with Laws. Owner 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:

<b>Owner:</b>	Merl Arthur Charles 44 Marie Street Sausalito, CA. 94965	Attention: City Engineer City of Sausalito 420 Litho Street Sausalito, CA. 94965
---------------	--	---

13. Assignment. This Agreement is not assignable unless City consents in writing, which consent shall not 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

438  
11

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.

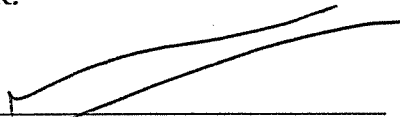
21. Authority. The parties represent that the individuals signing this Agreement have the authority to do so.

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.

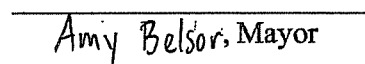
OWNER:

By:

  
Merl Arthur Charles

CITY:

By:

  
Amy Belsor, Mayor

RECOMMENDED FOR APPROVAL:

\_\_\_\_\_  
Todd Teachout, City Engineer

APPROVED AS TO FORM:

\_\_\_\_\_  
Mary Wagner, City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk

4/30  
12

**Acknowledgment**

State of California )  
 )  
County of MARIN

On 22 JANUARY 2008 before me, PEGGY C. GILL, personally  
Peggy C. Gill, Notary, State of California

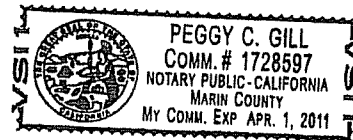
appeared MERL ARTHUR CHARLES who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Peggy C. Gill*

(This area for notary stamp)



488  
13

**EXHIBIT B**  
**PLANS AND ELEVATIONS**

4/28  
14



DATE	NOV 19 1988
BY	JULY 20 1988
CHKD	BY
APP'D	BY
DESIGN	BY
CONTRACT NO.	
PROJECT NO.	

PLANS  
 DRAWN BY  
 CHECKED BY  
 DATE  
 PROJECT NO.

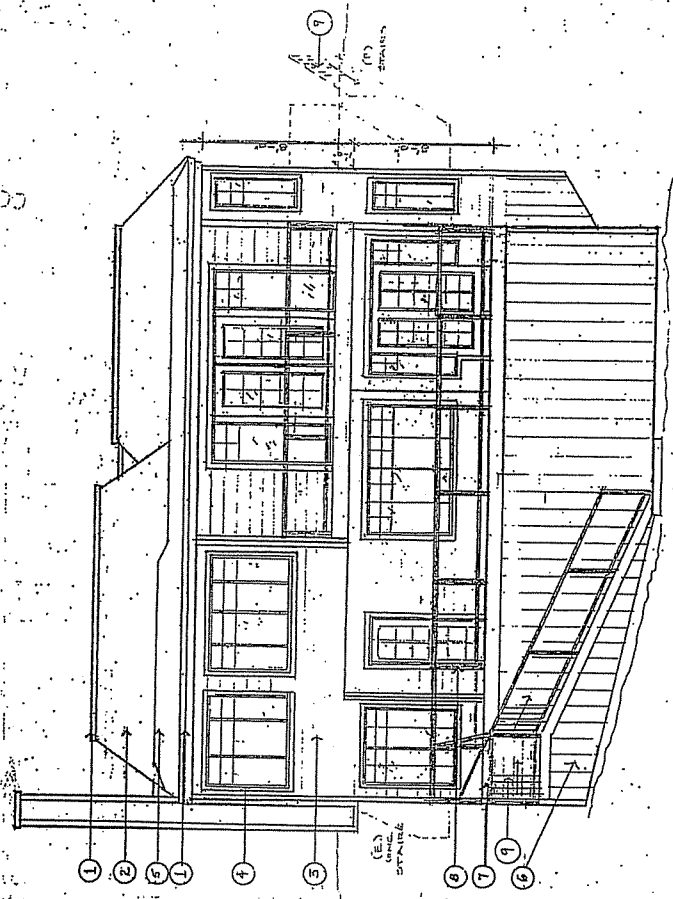
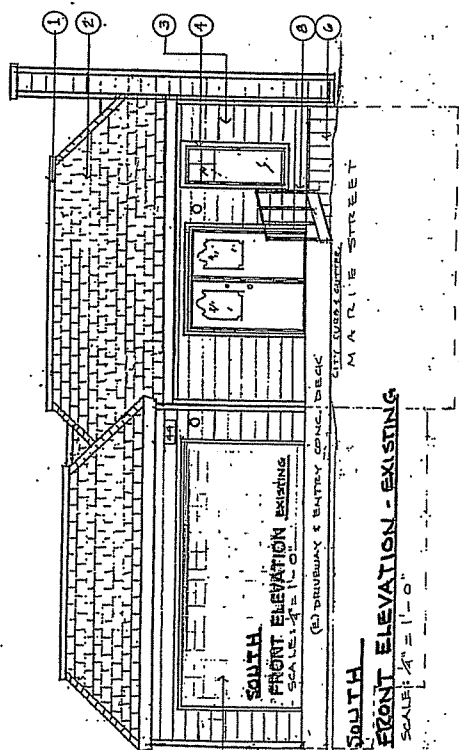
DR. ART CHARLES  
 MAKING ADDRESS:  
 1885 SCENIC DR.  
 LAGUNA BEACH, CA 92651  
 PHONE: (714) 761-5538 (419) 332-5229

RENOVATION  
 44 MARIE ST.  
 SANMATEO, CA 94065

DATE OF CONTRACT  
 DATE OF ISSUE  
 DRAWING NUMBER  
 SHEET NO. OF TOTAL SHEETS

RECEIVED  
 NOV 01 1988  
 CITY OF SANMATEO  
 COMMUNITY DEVELOPMENT DEPARTMENT

- FINISHES**
1. Metal Flush Gutters (white)
  2. Ceramic Tile Floor (White)
  3. 20' x 20' x 1/2" Thick Tiles or equal (concrete)
  4. 2" x 4" x 1/2" Thick Tiles or equal (concrete)
  5. 2 1/2" x 4 1/2" x 1/2" Tiles (concrete)
  6. 2" x 4" x 1/2" Tiles (concrete)
  7. Polished Rim Bath (concrete)
  8. Polished Rim Tub (concrete)
  9. Exhaust Fan (concrete) (see notes)
  10. Auto clean, brush, wire.



NORTH REAR ELEVATION - EXISTING  
 SCALE 1/4" = 1'-0"

468  
 76





# STAFF REPORT

Agenda Item Number 2

## SAUSALITO PLANNING COMMISSION HEARING

**PROJECT:** 44 Marie Street (APN 064-193-09)  
Application No. DR/EA 07-026

**MEETING DATE:** January 23, 2008

**STAFF:** Sierra Russell, Associate Planner

**APPLICANT:** Merl Arthur Charles

**PROPERTY OWNER:** Merl Arthur Charles

### REQUEST

The applicant and owner, Merl Arthur Charles, requests Planning Commission approval of a Design Review Permit and recommendation of approval of an Encroachment Agreement to the City Council to reconstruct a parking deck with a new stairway for the single-family residence. The addition creates 15 square feet of new impervious surfaces, increasing total impervious surfaces to 31.8%. No changes are proposed to the building coverage or floor area. The driveway, parking deck, and new stairway encroach into the Marie Street right-of-way and therefore require approval of an Encroachment Agreement.

### REGULATORY FRAMEWORK

**Zoning:** R-1-6 (Residential Single-Family)

**General Plan:** Low Density Residential (up to 5.4 du/acre)

**Special Regulations:** Design Review Findings (10.54.050)  
Encroachment Agreement Findings (10.56.060)

**CEQA:** Class 1 Categorical Exemption pursuant to Section 15301 (e)

**Required Permits:** Design Review Permit  
Encroachment Agreement

### EXISTING SETTING

**Subject Parcel:** The subject 8,700 square foot parcel is located on Marie Street near the intersection of Woodward Avenue and contains a single family residence.

**Neighborhood:** The parcel is located in the Spring Street Valley district, southwest of the Caledonia Street corridor towards the Toyon Terraces. The adjacent parcels contain residential single-family structures.

488  
18

**PROJECT HISTORY AND BACKGROUND**

Records from the Community Development Department indicate the residence was constructed in 1971. Since that time, the owner has completed a minor remodel and reconstructed the rear decks in 2004. Upon notice to the Community Development Department of plans to rebuild the parking deck and add a new stairway, staff requested the submittal of a Design Review and Encroachment Agreement application, as a portion of the project encroaches the into the Marie Street right-of-way. Although an Encroachment Agreement was approved in 1971 for the driveway, the proposed project would reconfigure the driveway to add a new stairway, and thus requires approval of a new Encroachment Agreement. The owner submitted the application on August 9, 2007, with final materials submitted on November 1, 2007.

**PROJECT DESCRIPTION**

**Structures**

The proposed concrete slab parking deck measures 30 feet by 20 feet and would replace an existing elevated concrete slab parking deck. The proposal includes a new stairway adjacent to the southern side of the parking deck to provide access to the lower floor of the residence. The stairs are designed to match the existing home, which is illustrated in photos Exhibit 5.

**Encroachment**

The majority of the parking deck and new stairs are located within the Marie Street public right-of-way, and encroach approximately 18 feet. The portion of the new stairway that does not encroach consists of the stair landing and would increase the site's impervious surfaces by 15 square feet. The project would not alter the site's building coverage or floor area. As demonstrated in the following table, the project is compliant with the maximum site development standards for the R-1-6 single-family zoning district in which the project is located:

	Existing	Required	Proposed	Compliance
<b>Parcel Area:</b>	8,700 sq. ft.	<b>6,000 sq. ft.</b>	No change	<b>Yes</b>
<b>Land Use:</b>	Single-family Residential	<b>Single-family Residential</b>	No change	<b>Yes</b>
<b>Density:</b>	1 du/ parcel	<b>1 du/ parcel</b>	No change	<b>Yes</b>
<b>Off-street Parking:</b>	2 spaces	<b>2 spaces</b>	No change	<b>Yes</b>
<b>Setbacks North side:</b>	6'	<b>5'</b>	No change	<b>Yes</b>
<b>South side:</b>	4'	<b>5'</b>	No change	<b>Legal Nonconforming</b>
<b>Building Coverage:</b>	2,625 sq. ft. 30.1%	<b>35% maximum</b>	No change	<b>Yes</b>
<b>Floor Area:</b>	2,519 sq. ft. 29%	<b>45% maximum</b>	No change	<b>Yes</b>
<b>Impervious Surface:</b>	2,750 sq. ft. 31.6%	<b>67.5% maximum</b>	2,765 sq. ft. 31.8%	<b>Yes</b>

488  
19

## CEQA

Staff has determined that the subject application is Categorically Exempt, as per Section 15301 (e) of the CEQA Guidelines (2007). The project is an addition to an existing structure that is less than 2,500 square feet, which is a Class 1 Categorical Exemption.

## ANALYSIS

### ***Engineering Division Review***

The City Engineer reviewed the subject application on September 28, 2007 (Exhibit 3) and recommended approval of the project conditioned on the submittal of driveway and stairway details and that the driveway shall be designed to channel drainage to the street. These have been included as conditions of approval in the attached draft resolution.

### ***Design Review and Encroachment Agreement Findings***

The subject encroachment requires Planning Commission review subject to Design Review Procedures (Zoning Ordinance Section 10.56.030.C). As part of the Design Review, the Planning Commission must also assess the encroachments based on the Encroachment Agreement findings listed in Zoning Ordinance Section 10.56.060 and provide a recommendation to the City Council. Staff believes the requisite findings can be made to approve the project, as summarized in the following:

#### *Design Review Findings*

The parking deck and new stairway will not change the architectural character or site design, and thus will be compatible with the existing architecture, massing, and materials of the existing residence and surrounding homes. The project would not obstruct views, as only the 3' high railing of the new stairway will be visible from the street. Natural features and effects on light/air are also not anticipated. Thus, staff believes the project satisfies Design Review findings and supports approval of the project.

#### *Encroachment Agreement Findings*

The Encroachment Agreement findings require that the project is compatible with the neighborhood, will not establish a negative land use precedent, is necessary for the reasonable use of the property, and will not pose a hazard to public safety or circulation. As the parking deck currently provides the sole off-street parking for the property, and both the parking deck and stairway provide necessary access to the residence and would not affect public circulation, staff believes the encroachment findings can be made and recommends approval of the Encroachment Agreement.

## GENERAL PLAN CONSISTENCY

To approve the proposed project, the Planning Commission must determine that the project is consistent with all applicable General Plan policies. Staff has identified the following policies and programs of the Land Use Element as most relevant to the proposed project:

***Policy CD-1.3: Provide that all new residential structures, all residential structures that are to be removed and replaced, and those structures that are to be significantly remodeled, are designed to complement their setting and other buildings in the neighborhood.*** The new parking deck would be consistent with the parking deck previously located at the residence. The new stairway is designed with materials to match the existing home. Neither the parking deck nor stairway would alter the aesthetics of the neighborhood and surrounding structures.

428  
20

**Program CD-5.1.2: Consider the balance between parking, traffic congestion, and right-of-way beautification when reviewing requests for encroachments for private benefit on public rights-of-way.** The encroachment of the parking deck would be the continuation of an existing encroachment with the addition of a stairway, most of which is not visible from the street, and thus will not negatively alter the existing streetscape design. Permitting continuation of the encroachment allows for off-street parking in a neighborhood where parking is limited, and the new stairway will provide necessary access to the residence.

### **PUBLIC NOTICE AND FEEDBACK**

**Notice:** 10 days prior to the hearing date, notice of this proposal was posted and was mailed to all residents and property owners within 300 feet of the subject parcel.

**Written feedback:** At the time of preparation of the staff report, no letters from neighbors were received.

### **STAFF CONCLUSIONS**

**Staff Recommendation:** Staff believes that the proposed application for a Design Review Permit and Encroachment Agreement meets the requirements of the Sausalito Municipal Code and is consistent with the goals and objectives of the General Plan. Staff believes that all necessary findings can be made for the required Encroachment Agreement and Design Review Permit, and recommends that the Planning Commission adopt the attached draft resolution of approval. Additionally, the Planning Commission may:

1. Approve the application with modifications;
2. Continue the application for additional information and/or project revisions; or
3. Deny the application and direct Staff to return with a Resolution of Denial.

### **EXHIBITS**

1. Resolution Approving Application No. DR/EA 07-026 with Exhibit A – Findings for Design Review and Encroachment Agreement, Exhibit B – Plans and Elevations, and Exhibit C – Conditions of Approval
2. Vicinity Map
3. Memorandum from the City Engineer, dated September 28, 2007
4. Letter from the property owner dated November 1, 2007
5. Site photos

488  
21

**RESOLUTION NO. 2008- XX**

**RESOLUTION OF THE SAUSALITO PLANNING COMMISSION  
APPROVING DESIGN REVIEW PERMIT APPLICATION NO. DR/EA 07-026 AND  
RECOMMENDING APPROVAL OF AN ENCROACHMENT AGREEMENT TO ALLOW THE  
RECONSTRUCTION OF A PARKING DECK WITH A NEW STAIRWAY FOR THE RESIDENCE  
LOCATED AT 44 MARIE STREET (064-193-09) WITH A PORTION OF THE IMPROVEMENTS  
LOCATED IN THE PUBLIC RIGHT-OF-WAY**

---

WHEREAS, an application has been filed by the applicant and owner, Merl Arthur Charles, requesting Planning Commission approval of a Design Review Permit and recommendation of approval to the City Council for an Encroachment Agreement to allow the reconstruction of parking deck and new stairway for the single-family residence located at 44 Marie Street (APN 064-193-09), with a portion of the improvements encroaching into the Marie Street public right-of-way; and

WHEREAS, the Planning Commission conducted a duly noticed public meeting on January 23, 2008 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 finds that the proposed project is categorically exempt from the requirements of CEQA pursuant to CEQA Guidelines Section 15301 (e); and

WHEREAS, the Planning Commission has reviewed and considered the project plans titled "Merl Charles, 44 Marie Street" and date-stamped received on November 1, 2007; and

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

WHEREAS, the Planning Commission has reviewed and considered the information contained in the January 23, 2008 staff report for the proposed project; and

WHEREAS the Planning Commission finds that, as conditioned herein, the proposed project complies with the requirements of the Zoning Code as outlined in the staff report; and

WHEREAS, the Planning Commission finds that, as conditioned herein, the proposed project complies with the General Plan as outlined in the staff report; and

WHEREAS, the Planning Commission recommends approval of the encroachments into the public right-of-way as continuations of an existing encroachment that are compatible with the neighborhood and existing site development.

NOW, THEREFORE, THE PLANNING COMMISSION HEREBY RESOLVES AS FOLLOWS:

1. The Design Review Permit is approved, and the Encroachment Agreement is recommended for approval by the City Council, as outlined in the attached findings (Attachment A).

488  
22

2. The Design Review Permit is approved and the Encroachment Agreement is recommended for approval by the City Council for project plans titled " Merl Charles, 44 Marie Street" and date-stamped received November 1, 2007 (Attachment B), subject to the attached conditions of approval (Attachment C)

RESOLUTION PASSED AND ADOPTED, at the regular meeting of the Sausalito Planning Commission on the 23rd day of January 2008, by the following vote:

AYES:           Commissioner:  
NOES:           Commissioner:  
ABSENT:        Commissioner:  
ABSTAIN:       Commissioner:

---

SECRETARY TO THE PLANNING COMMISSION

4/28  
23

PLANNING COMMISSION HEARING  
JANUARY 23, 2008  
APPLICATION NO. DR/EA 07-026  
44 MARIE STREET

ATTACHMENT A: FINDINGS

**DESIGN REVIEW FINDINGS**

Pursuant to the Sausalito Municipal Code Section 10.54 (Design Review Procedures), it has been found that the permit requested may be issued based on the following findings:

- 1) The proposed project is consistent with the General Plan, any applicable specific plans and this chapter.

*The project is consistent with General Plan policies, particularly those relating to neighborhood compatibility and encroachments.*

- 2) The proposed architecture and site design complements the surrounding neighborhood and/or district by either: a) Maintaining the prevailing design character of the neighborhood and/or district or b) Introducing a distinctive and creative solution which takes advantage of the unique characteristics of the site and contributes to the design diversity of Sausalito.

*The proposed parking deck would replace an existing parking deck in the same design and form, and thus would not impact the design character of the existing home or neighborhood. The new stairway leads downhill away from the street, and thus only the entrance railing will be visible from the street, creating a minimal impact on streetscape views, and would thus be compatible with the surrounding neighborhood and district.*

- 3) The proposed project is consistent with the general scale of structures and buildings in the surrounding neighborhood and/or district.

*The proposed project does not alter the height of any existing structures and would replace an existing parking deck and provide a new stairway that leads downhill and will only be minimally visible from the street. The project is thus consistent with the scale of existing structures and buildings in the neighborhood.*

- 4) The proposed project has been located and designed to minimize obstruction of public views and primary views from private property.

*The only alteration to existing public views would be the stairway, as the uppermost stairway railing and entrance to the stairs would be visible from the street. This would constitute a minimal change that would not impact public or private views.*

- 5) The proposed project will not result in a prominent building profile (silhouette) above a ridgeline.

*The proposed project is not located on a ridgeline to create such impacts.*

428  
24



- 6) The proposed landscaping provides appropriate visual relief, complements the buildings and structures on the site, and provides an attractive environment for the enjoyment of the public.

*The proposed project does not include new landscaping and will maintain all existing landscaping.*

- 7) The design and location of buildings provide adequate light and air for the project site, adjacent properties, and the general public.

*The proposed project does not affect the design and location of existing buildings on the site, other than replacing a parking deck and providing a new stairway, both of which do not impact adjacent properties.*

- 8) Exterior lighting, mechanical equipment, and chimneys are appropriately designed and located to minimize visual, noise and air quality impacts to adjacent properties and the general public.

*The proposed project does not include new lighting or mechanical equipment. A condition of approval has been attached that any exterior lighting to be installed shall be downward facing and will require review and approval by the Community Development Department.*

- 9) The project provides a reasonable level of privacy to the site and adjacent properties, taking into consideration the density of the neighborhood, by appropriate landscaping, fencing, and window deck and patio configurations.

*The parking deck is similar to other parking decks in the neighborhood, and would not impact privacy to the site and adjacent properties.*

- 10) Proposed entrances, exits, internal circulation, and parking spaces are configured to provide an appropriate level of traffic safety and ease of movement.

*The project does not alter existing parking and circulation, which is currently adequately configured for the site. The encroachment does not project into the street nor interfere with traffic safety and ease of movement along Marie Street.*

- 11) The proposed design preserves protected trees and significant natural features on the site to a reasonable extent and minimizes site degradation from construction activities and other potential impacts.

*No alterations to trees or natural features are proposed, and thus will not create such impacts.*

- 12) The project site is consistent with the guidelines for heightened review for projects which exceed 80% of the maximum allowed Floor Area Ratio and/or site coverage, as specified in subsection E (Heightened Review Findings).

*The project is not subject to Heightened Review.*

4B8  
25

## ENCROACHMENT REVIEW AND AGREEMENT FINDINGS

Pursuant to the City of Sausalito Municipal Code Chapter 10.56 (Encroachment Agreements), it has been found that the Planning Commission can recommend approval of the requested Encroachment Agreement based on the following findings

- 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 the encroachment is proposed.

*The encroachment of the parking deck has existed since 1971, and was previously permitted by the City. The new parking deck would replace the existing and would not diminish public enjoyment of the streetscape, but rather provide off-street parking. The new stairway is compatible with the existing structure*

- B) The encroachment will not adversely affect the usability or enjoyment of adjoining parcels nor create or extend an undesirable land use precedent.

*The encroachment would be the continuation of an existing encroachment that has been in place since 1971 without negatively affecting adjoining parcels. The encroachment is necessary in order to provide off-street parking for the site, a common type of encroachment in the neighborhood, and thus would not establish an undesirable land use precedent.*

- C) The encroachment is necessary to the reasonable use and enjoyment of the property and the extent of the encroachment is justifiable.

*The parking deck is necessary to provide off-street parking and access to the upper level of the residence. The new stairway is necessary to provide access to the lower level of the home from the street. The provision of access would constitute a reasonable use and enjoyment of the property, and thus the encroachments can be considered justifiable.*

- D) The proposed encroachment will not adversely affect the public circulation nor create or constitute a hazard to public safety.

*The proposed encroachments are located outside of the roadway and would not affect the public circulation nor create or constitute a hazard to public safety. The City Engineer reviewed the encroachments and expressed no concerns with impacts to public circulation.*

- 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.

*The proposed encroachments are essentially the continuation of an existing condition and maintain the site's current off-street parking and access from the street. Staff does not anticipate that the proposed improvements will prejudice any future policy decisions to terminate the encroachment nor preclude or make difficult the establishment or improvement of streets or pedestrian ways.*

488  
26

PLANNING COMMISSION HEARING  
JANUARY 23, 2008  
APPLICATION NO. DR/EA 07-026  
44 MARIE STREET

ATTACHMENT B: PLANS AND ELEVATIONS

488  
27

PLANNING COMMISSION HEARING  
JANUARY 23, 2008  
APPLICATION NO. DR/EA 07-026  
44 MARIE STREET

ATTACHMENT C: CONDITIONS OF APPROVAL

1. Approval of this Application is limited to the project plans titled "Merl Charles, 44 Marie Street" date-stamped received November 1, 2007.
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. Construction materials, equipment, vehicles, and debris boxes shall be placed to minimize obstruction of roads and gutters, shall be maintained in a clean and safe condition, and shall not be maintained in a manner that becomes a nuisance to the neighborhood.
4. Pursuant to Ordinance 1143, the operation of construction, demolition, excavation, alteration, or repair devices within all residential areas or within a 500 foot radius of residential zones shall be limited to the following hours:
  - a. Weekdays – Between 8 a.m. and 7 p.m.
  - b. Saturdays – Between 9 a.m. and 5 p.m.
  - c. Holidays – Between 9 a.m. and 7 p.m.

Such operation is prohibited on Sundays except by a homeowner residing on the property. Such work shall be limited to 9 a.m. to 7 p.m.

5. Dumping of residues from washing of painting tools, concrete trucks and pumps, rock, sand, dirt, agricultural waste, or any other materials discharged into the City storm drain system that is not composed entirely of storm water is prohibited pursuant to Sausalito Municipal Code (SMC) Chapter 11.17. Liability for any such discharge shall be the responsibility of person(s) causing or responsible for the discharge. Violations constitute a misdemeanor in accordance with SMC Section 11.17.060.B.
6. As a condition of this approval, no alternative or unrelated construction, site improvements, tree removal and/or alteration, exterior alterations and/or interior alterations and/or renovations not specified in the project plans, or alterations approved by the Planning Director, shall be performed on the project site. In such cases, this approval shall be rendered null and void unless approved by the Community Development Department as a modification to this approval.
7. In the event that any condition imposing a fee, exaction, dedication or other mitigation measure is challenged by the project sponsors in an action filed in a court of law or threatened to be filed therein which action is brought within the time period provided by law, this approval shall be suspended pending dismissal or final resolution of such action. If any condition is invalidated by a court of law, the entire project shall be reviewed by the City and substitute

438  
28

conditions may be imposed.

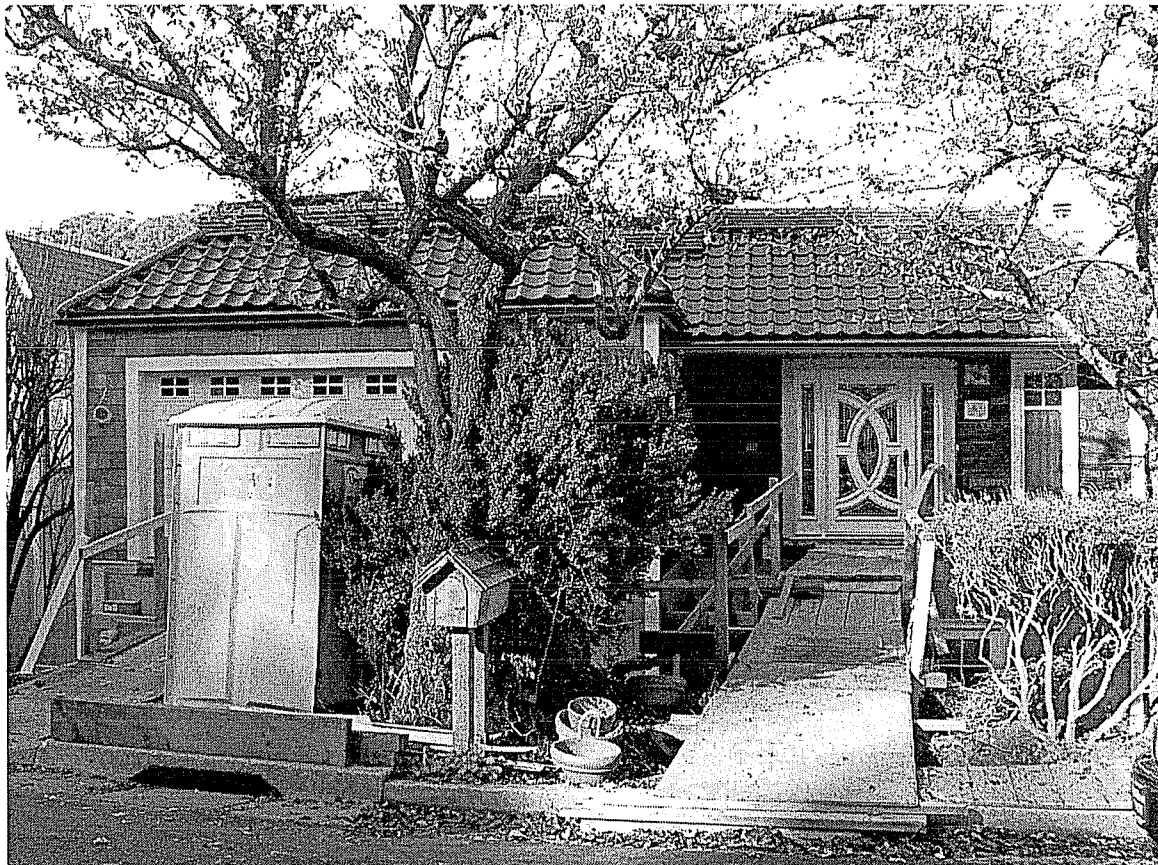
8. In accordance with Ordinance No. 1160, the applicant shall pay any and all City costs arising out of or concerning the proposed project, including without limitation, permit fees, attorneys' fees, engineering fees, license fees and taxes, whether incurred prior to or subsequent to the date of this approval. Applicant acknowledges and agrees that City's costs shall be reimbursed prior to this approval becoming valid.
9. 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.
10. An approval granted by the Planning Commission does not constitute a building permit or authorization to begin any construction. An appropriate permit issued by the Building Division must be obtained prior to constructing, enlarging, moving, converting, or demolishing any building or structure within the City.
11. The Community Development Department is authorized to administratively approve minor modifications to the approved plans. Major design modifications to the approved project will require further review and approval by the Planning Commission.

Prior to issuance of a building permit:

12. Driveway details (driveway profile, joints, connection) and stair details (profile, landing, connection) shall be prepared and shall be subject to the approval of Community Development Department staff.
13. The driveway shall be designed for positive drainage from the garage flow to the street gutter, which shall be indicated on the plans.
14. A construction traffic control, parking, and staging plan and construction schedule shall be submitted for review and approval by the City Engineer. The applicant shall inform the City Engineer on the extent of traffic on San Carlos Avenue during construction, and the number of workers to be transferred to and from the site. The staging plan shall show where dumpsters, equipment, and construction material are to be stored during construction and any areas within the street right-of-way to be used for off-loading material and equipment. An encroachment permit is required for any such storage in the City right-of-way.
15. Any exterior security lighting to be installed shall be downward facing and must be submitted for review and approval by the Community Development Department.
16. The applicant shall execute an encroachment agreement with the City subject to standard conditions in the model agreement.
17. The owner shall obtain an encroachment permit from the Engineering Division for any construction work or storage of construction materials in the right-of-way.
18. Demolition and excavation activities shall only occur between April 1 and October 15.

488  
29

Site Photos



4B8  
30