



STAFF REPORT SAUSALITO CITY COUNCIL

AGENDA TITLE

Encroachment Agreement for improvements conducted in the public right-of-way as part of an approved Design Review and Encroachment Permit (Application No. DR/EP 00-63) for the construction of a new single-family home with an attached garage located at 178 Santa Rosa Avenue (APN 065-142-30).

RECOMMENDED MOTION

Staff recommends that the City Council adopt the attached Resolution of Approval for an Encroachment Agreement for the improvements constructed on the property located at 178 Santa Rosa Avenue that encroach into the public right-of-way, as recommended by the Planning Commission pursuant to Resolution No. 2002-27.

BACKGROUND

On November 13, 2007, the City Council reviewed and discussed the request by William Miller of the Tarom Group, on behalf of property owner Rodeo Lane, LLC, for approval of an Encroachment Agreement for improvements located in the right-of-way at 178 Santa Rosa Avenue that were constructed as part of the Planning Commission approved Design Review Permit and Encroachment Permit Application No. DR/EP 00-63. The encroachments include a driveway parking deck, planter, elevated wood stairs, pedestrian bridge, roof overhang, replacement retaining wall, and landscape features. A more detailed description of the project background and history is included in the attached November 13, 2007 staff report (Attachment 2).

During the November 13, 2007 hearing, several neighbors reported concerns that construction of the approved project was not adhering to permitted hours of construction, required tree protection measures were not being implemented, and that the project has been prolonged over several years. There were also concerns expressed by the Council as to whether the project was compliant with the conditions of approval and whether an Encroachment Permit had been obtained. The Council directed staff to investigate several matters, which are stated below, followed by staff's response.

1) Have the conditions of approval been satisfactorily met?

Planning staff conducted a site inspection on March 10, 2008 to identify whether the project conditions and approvals have been satisfactorily implemented. The project is compliant with all conditions of approval as required by Resolution 2002-27. There are several items staff requested the applicant to complete prior to final approval, including installation of all shielded exterior lighting on the front elevation, removal of a temporary stairway along the western

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property line, removal of fire wood stored in the rear yard, and submittal of a landscape bond to cover the cost of the landscape improvements not yet completed.

It should be noted that execution of an Encroachment Agreement was not included as a condition of approval pursuant to Resolution 2002-27. However, because the Zoning Code has changed since that time, Staff has requested the applicant execute a current Encroachment Agreement for final project approval.

2) Should the Encroachment Agreement be adjudicated under the current Zoning Code (2003) or the previous Zoning Code (2002) in which the project was approved?

The subject encroachments were permitted through Planning Commission Resolution 2002-27, which approved a Design Review Permit and Encroachment Permit for the 178 Santa Rosa Avenue structure. At the time of approval, Sausalito Municipal Code Chapter 17.16 regulated encroachments on public streets or property, which is still in effect and identifies the City Council as the final decision making authority for such encroachments. The process by which encroachments on public property are approved was later codified in SMC Chapter 10 (Zoning) with the 2003 Zoning Ordinance update, which further refined the review and approval of encroachment agreements. Although the current Zoning Ordinance was not in effect at the time of project approval, SMC Chapter 17.16 was in full effect and required that the City Council be the final approving authority for encroachments in the public right-of-way. Because the 178 Santa Rosa Avenue encroachments have not yet been approved by the City Council as required by SMC Section 17.16.020, staff is bringing forward an Encroachment Agreement for the project to formalize the approval of improvements projecting into the public right-of-way under the City's current Encroachment Agreement terms and conditions.

3) Was an Encroachment Permit issued?

Two Encroachment Permits were issued for the project, one to allow construction activities to occur in the public right-of-way and one to complete excavation for utility trenching. The former was issued in 2004 and the latter in 2005. The Planning Commission Resolution of Approval in 2002 also states approval of an Encroachment Permit, based on their determination that the Encroachment Permit findings could be favorably made for the encroachments (Attachment 3). The final approval necessary for the encroachments is by the City Council in order to execute a legally binding Encroachment Agreement for the constructed improvements.

FISCAL IMPACT

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

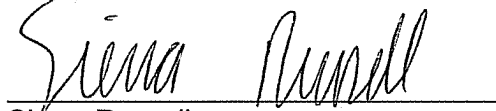
STAFF RECOMMENDATIONS

Staff recommends that the City Council adopt the attached Resolution (Attachment 1) approving an Encroachment Agreement (Exhibit A) for improvements constructed on the property located at 178 Santa Rosa Avenue (APN 065-142-30) that encroach into the public right-of-way, as approved by the Planning Commission pursuant to Resolution No. 2002-27 and indicated in the approved plans received October 8, 2007 (Exhibit B).

ATTACHMENTS

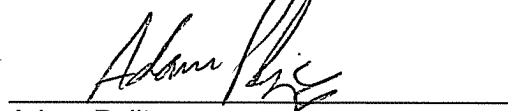
1. Draft Resolution of the City Council of the City of Sausalito approving an Encroachment Agreement by and between Rodeo Lane LLC, property owner of 178 Santa Rosa Avenue, and the City of Sausalito (Exhibit A), as shown in the approved project plans date-stamped received October 8, 2007 (Exhibit B)
2. City Council Staff Report dated November 13, 2007
3. Planning Commission Resolution 2002-27 with attached Staff Report with findings dated June 26, 2002
4. Site photos

PREPARED BY:



Sierra Russell
Associate Planner

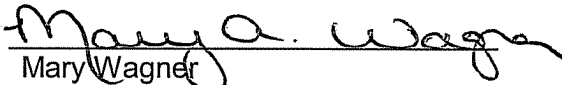
SUBMITTED BY:



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 FOR IMPROVEMENTS CONDUCTED IN THE PUBLIC RIGHT-OF-WAY AS PART OF DESIGN REVIEW PERMIT AND ENCROACHMENT PERMIT APPLICATION NO. DR/EP 00-63 LOCATED AT 178 SANTA ROSA AVENUE (APN 065-142-30)

WHEREAS, an application has been filed by the applicant, William Miller of the Taron Group, on behalf of property owner Rodeo Lane LLC, requesting City Council approval of an Encroachment Agreement for improvements approved by Planning Commission Resolution 2002-27 that encroach into the public right-of-way located at 178 Santa Rosa Avenue (APN 065-142-30) including a driveway parking deck, planter, elevated wood stairs, pedestrian bridge, roof overhang, retaining wall, and landscape features; and

WHEREAS, the Planning Commission conducted duly noticed public meetings on May 9 and June 13, 2001, and May 22, June 26 and July 10, 2002, 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 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 May 9 and June 13, 2001, and May 22, June 26 and July 10, 2002 staff reports for the proposed project; and

WHEREAS, the Planning Commission found that, as conditioned, the Architectural and Site Plan Review and Encroachment Permit application complied with the requirements of the Zoning Code and General Plan in place at the time, as outlined in the June 26, 2002 staff report; and

WHEREAS, the Planning Commission found that the project is categorically exempt from the requirements of CEQA pursuant to CEQA Guidelines Section 15303(a); and

WHEREAS, the Planning Commission approved Application No. DR/EP 00-63 on July 10, 2002, pursuant to Resolution 2002-27 and subject to the stated conditions of approval; and

WHEREAS, the Planning Commission findings for approval of Application No. DR/EP 00-63 are substantially consistent with current Zoning Code findings for approval of Encroachment Agreements; and

WHEREAS, the applicant has submitted plans titled "178 Santa Rosa Avenue Encroachment Agreement" and date-stamped received October 8, 2007 illustrating encroachments that are consistent with the project plans approved by the Planning Commission titled "Taroni Residence", dated June 11 and July 1, 2002 and stamped received July 3, 2002, and the revised plans presented to the Commission at the July 10, 2002 meeting; and

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WHEREAS, the City Council has reviewed and considered the project plans titled "178 Santa Rosa Avenue Encroachment Agreement" and date-stamped received October 8, 2007; and

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

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 15303(a).

NOW, THEREFORE, THE CITY COUNCIL HEREBY approves the Encroachment Agreement for Application No. DR/EP 00-63 to allow the improvements located at 178 Santa Rosa Avenue (APN 065-142-30) as recommended by Planning Commission Resolution 2002-27 to encroach into the public right-of-way adjacent to the property, as described in Exhibit A (Encroachment Agreement) and Exhibit B (Plans) 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 "178 Santa Rosa Avenue Encroachment Agreement" date-stamped received October 8, 2007.
2. 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 Community Development 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.
3. 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.
4. 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.
5. 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

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the City for any costs incurred by the City's defense of the approval of the project.

6. 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 Community Development Director or the Planning Commission.
7. The applicant shall execute an Encroachment Agreement with the City subject to standard conditions in the model agreement prior to final project approval.
8. An encroachment permit shall be obtained from the Engineering Division for any improvements in the public right-of-way.
9. All fire wood stored on the site shall be removed prior to final project approval.

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 25th day of March 2008, by the following vote:

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

MAYOR AMY BELSER

ATTEST: _____
CITY CLERK

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EXHIBIT A

**CITY OF SAUSALITO
ENCROACHMENT AGREEMENT**

This **ENCROACHMENT AGREEMENT** ("Agreement") is entered into this March 25, 2008 (the "Effective Date") by and between **RODEO LANE LLC** ("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/EP 00-63 was approved by the Planning Commission on July 10, 2002 pursuant to Resolution 2002-27 to allow the construction of a new single family home with attached garage at 178 Santa Rosa Avenue (APN 065-142-30).

B. Application No. DR/EP 00-63 includes the construction of improvements that encroach into the Santa Rosa Avenue public right-of-way including a driveway parking deck, planter, elevated wood stairs, pedestrian bridge, roof overhang, retaining wall, and landscape features.

D. The City Council adopted Resolution No. ___ on March 25, 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 encroachments covered by this Agreement are a driveway parking deck, planter, elevated wood stairs, pedestrian bridge, roof overhang, retaining wall, and landscape features located within the public right-of-way as depicted on and subject to the plans titled "178 Santa Rosa Avenue Encroachment Agreement" date-stamped received October 8, 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 and the City owned property affected thereby in good and safe condition and free from any

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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.

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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:

Owners:	Rodeo Lane LLC	City of Sausalito
	46 A Main Street	Attention: City Engineer
	Tiburon, CA. 94920	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 shall be

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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 Owner 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:

CITY:

By:

Representative William Miller
Rodeo Lane LLC

By:

Amy Belser, Mayor

RECOMMENDED FOR APPROVAL:

APPROVED AS TO FORM:

Todd Teachout, City Engineer

Mary Wagner, City Attorney

ATTEST:

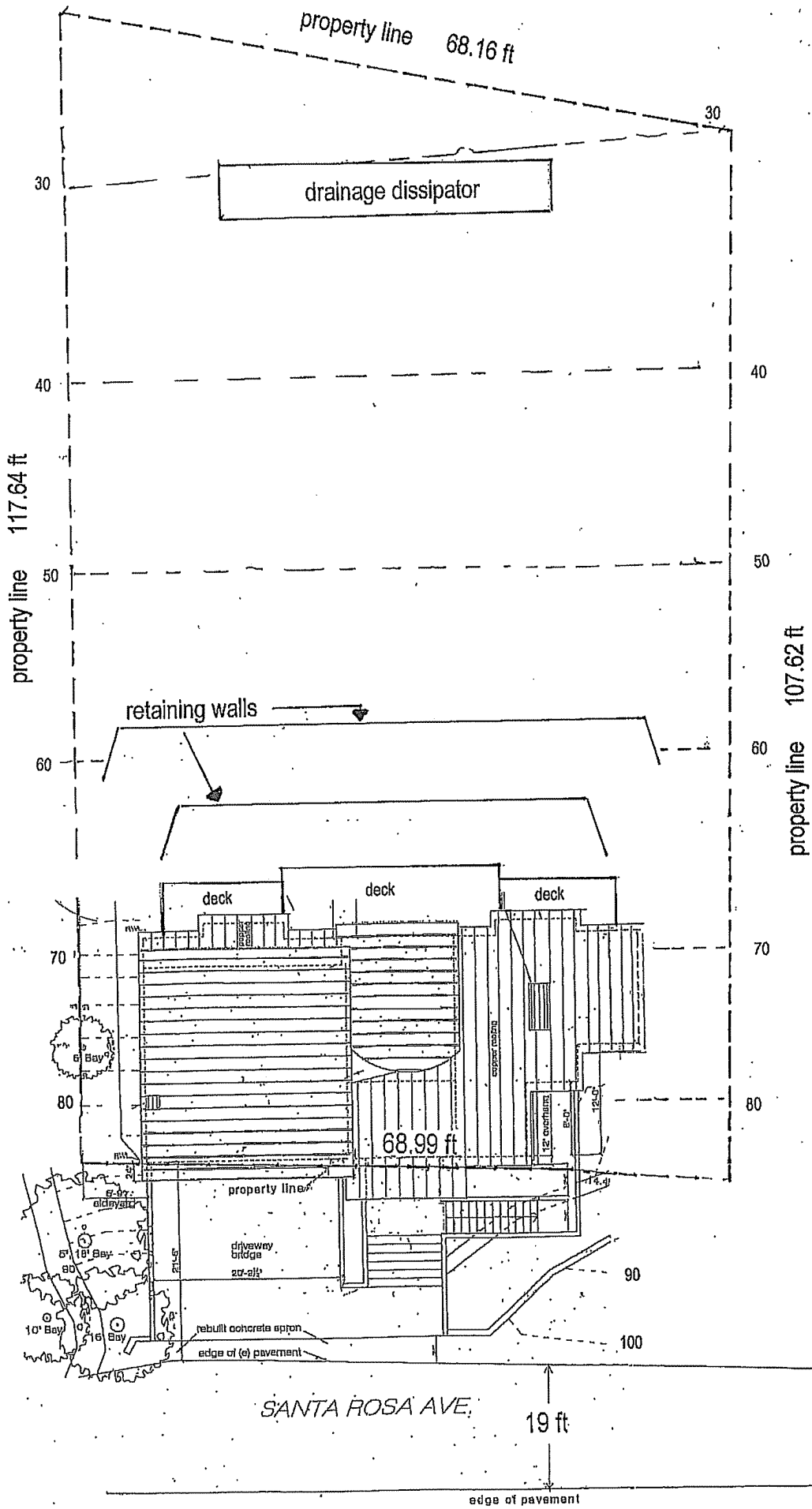
City Clerk

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EXHIBIT B

PLANS RECEIVED OCTOBER 8, 2007

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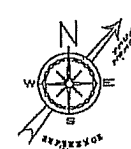


178 Santa Rosa Avenue Encroachment Agreement Oct. 16, 2007

Architect: Bexton Associates
 640 Santana Rd., Novato CA 94945
 415-897-8629, phone; 415-897-6699, fax
 bexton@vbbm.com

Owner: Rodeo Lane LLC Builder: Tarom Group Inc.
 46A Main St., Tiburon CA 94920
 415-789-5000, phone; 415-789-5084, fax
 wmiller@taromgroup.com

scale: 1" = 15'



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STAFF REPORT SAUSALITO CITY COUNCIL

AGENDA TITLE

Encroachment Agreement for improvements conducted in the public right-of-way as part of an approved Design Review and Encroachment Permit (Application No. DR/EP 00-63) for the construction of a new single-family home with an attached garage located at 178 Santa Rosa Avenue (APN 065-142-30).

RECOMMENDED MOTION

Staff recommends that the City Council adopt the attached Resolution of Approval for an Encroachment Agreement for the improvements constructed on the property located at 178 Santa Rosa Avenue that encroach into the public right-of-way, as recommended by the Planning Commission pursuant to Resolution No. 2002-27.

BACKGROUND

The applicant, William Miller with the Tarom Group, is requesting City Council approval of an Encroachment Agreement for improvements located in the right-of-way at 178 Santa Rosa that were constructed as part of the approved Design Review Permit and Encroachment Permit Application No. DR/EP 00-63, which include a driveway parking deck, planter, elevated wood stairs, pedestrian bridge, roof overhang, replacement retaining wall, and landscape features. The project was approved by the Planning Commission on July 10, 2002 pursuant to Resolution 2002-27 after being reviewed during three previous Planning Commission meetings. The architectural and site plan review conducted by the Planning Commission included an encroachment review to allow a parking deck, planter, stairs, garage eaves, and landscaping improvements within the public right-of-way. Although the encroachments were approved by Resolution 2002-27, an Encroachment Agreement review by the City Council was not executed. During review of the Building Permit application, the City Engineer requested the applicant file an application for an Encroachment Agreement to be approved by the City Council to legalize the portion of the project located in the public right-of-way. Upon execution of an Encroachment Agreement, the City Engineer expressed no concerns with the encroachments. The applicant submitted plans on October 8, 2007, which Staff is forwarding to the City Council for approval of an Encroachment Agreement.

ENCROACHMENT AGREEMENT REVIEW

Design Review Permit and Encroachment Permit Application No. DR/EP 00-63 was approved under the previously adopted version of the Zoning Ordinance in place prior to the 2003 Zoning Ordinance update. At the time in which the project was approved, Encroachment Review procedures and findings were not codified as they currently are in the City's most recently adopted Zoning Ordinance (January, 2003). The findings in which the Planning Commission approved the Encroachment Permit are listed in the attached June 26, 2007 staff report, which

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are consistent with the intent of the current findings required for approval of an Encroachment Agreement. In order to execute a current version of the City's Encroachment Agreement, Staff has prepared findings under the current Zoning Code in which the previously approved findings are incorporated, as listed in the following:

- 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 encroachments are compatible with the surrounding area and approved Design Review application, and do not appear to diminish the public enjoyment of the right-of-way.

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

The proposed encroachments do not appear to adversely affect the usability of adjoining parcels. Given that the encroachments were approved by the Planning Commission prior to the adoption of the current Zoning Ordinance, and the execution of an Encroachment Agreement will allow the improvements to be terminated should future street improvements be necessary, staff does not believe the project will create 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 encroachments are necessary to provide vehicular and pedestrian access to the project site and are thus justifiable.

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

The proposed encroachments of the driveway and retaining wall are not anticipated to affect public circulation or maneuverability of traffic along Santa Rosa Avenue, and were reviewed and approved by the City Engineer at the time in which the application was processed. The current City Engineer has also reviewed the encroachments and is supportive of approval with the execution of a current Encroachment Agreement.

- 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.**

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.

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STAFF RECOMMENDATIONS

Staff recommends that the City Council adopt the attached Resolution (Attachment 1) approving an Encroachment Agreement (Exhibit A) for improvements constructed on the property located at 178 Santa Rosa Avenue (APN 065-142-30) that encroach into the public right-of-way, as approved by the Planning Commission pursuant to Resolution No. 2002-27 and indicated in the approved plans received October 8, 2007 (Exhibit B).

ATTACHMENTS

- 1. Draft Resolution of the City Council of the City of Sausalito approving an Encroachment Agreement by and between Rodeo Lane LLC, property owner of 178 Santa Rosa Avenue, and the City of Sausalito (Exhibit A), as shown in the approved project plans date-stamped received October 8, 2007 (Exhibit B)
- 2. Vicinity Map
- 3. Planning Commission Resolution 2002-27 and attached June 26, 2002 staff report with findings

PREPARED BY:

SUBMITTED BY:

Sierra Russell
Associate Planner

Adam Politzer
City Manager

REVIEWED BY:

Kevin Bryant, AICP
Deputy Planning Director

Mary Wagner
City Attorney

RESOLUTION 2002-27

**RESOLUTION OF THE SAUSALITO PLANNING COMMISSION
APPROVING ARCHITECTURAL AND SITE PLAN REVIEW, AND ENCROACHMENT
PERMIT, APPLICATION NO. DR/EP 00-63, 178 FOR A NEW HOME AT 178 SANTA
ROSA (APN 065-142-30)**

WHEREAS, an application has been filed by the architect, Michael Rex, on behalf of the property owner, Siamak Taromi, requesting Planning Commission approval of an Architectural & Site Plan Review and an Encroachment Permit, pursuant to Sausalito Municipal Code Section 10.912.1(j)(2), for the property located at 178 Santa Rosa Street; and

WHEREAS, the Planning Commission has conducted duly noticed public meetings on May 9 and June 13, 2001, and May 22, June 26 and July 10, 2002, 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 has reviewed and considered the project plans titled "Taromi Residence", dated June 11 and July 1, 2002 and stamped received July 3, 2002, and the revised plans presented to the Commission at the July 10, 2002 meeting; 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 July 10, 2002 staff report for the proposed project; and

WHEREAS the Planning Commission finds that, as conditioned herein, the proposed Architectural and Site Plan Review and Encroachment Permit application complies with the requirements of the Zoning Code, including the required Design Review and Encroachment Permit criteria as outlined in the staff report, except as may otherwise be noted in this resolution; 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 finds that the project is categorically exempt from the requirements of CEQA pursuant to Section 15303(a); and

NOW, THEREFORE, THE PLANNING COMMISSION CONCLUDES, based on the above-noted criteria, that it can approve Application No. DR/EP 00-63, subject to the

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following conditions of approval:

- 1) This approval is limited to the proposed plans titled "Taroni Residence", dated June 11 and July 1, 2002 and stamped received July 3, 2002, with revisions presented at the July 10, 2002 meeting (that include the originally-proposed pyramid skylight at the entry).
- 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. Pursuant to Section 10.901.12 of the Sausalito Municipal Code, a one (1) year extension may be granted by the Community Development Department if a request is submitted prior to the one (1) year expiration date.
- 3) 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:
 - i) Weekdays – Between 8 a.m. and 7 p.m.
 - ii) Saturdays – Between 9 a.m. and 5 p.m.
 - iii) 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.

- 4) A Construction Staging Plan and construction schedule shall be submitted to the City Engineer for review and approval. The plan shall show the location of material storage, portable restrooms, equipment, vehicles, and debris boxes placed to minimize obstruction of roads and gutters, and shall be maintained in a clean and safe condition, and shall not be maintained in a manner that becomes a nuisance to the neighborhood.
- 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) The construction plans and Zoning Permit shall be subject to the review and approval of the Community Development Department prior to issuance of a building permit.
- 7) Prior to issuance of a building permit the exterior lighting of the proposed stairways shall be subject to the review and approval of the Community Development

Department. Proposed exterior lighting shall be small fixtures that are shielded and downward facing.

- 8) Approval of this project does not include a second unit, the addition of a kitchen or the installation of any infrastructure suitable to servicing a kitchen is not permitted.
- 9) Prior to issuance of a building permit the following work shall be performed:
 - a) The existing sanitary sewer lateral shall be video filmed. Any defects found shall be repaired during construction of the building project. The sewer work shall be completed prior to issuance of an occupancy permit.
 - b) An erosion control plan, traffic control plan and construction staging plan shall be submitted for review and approval.
 - c) A grading permit shall be obtained for the project. A work schedule for grading, installation of temporary and permanent erosion control measures, shall be submitted for review and approval. The truck route for any import or off haul of earth materials shall be defined.
- 10) The driveway on Santa Rosa Avenue shall be reconstructed to conform to the existing street pavement and the new driveway to the garage.
- 11) A 160' sight distance shall be provided for vehicles entering and exiting the driveway.
- 12) All work within the public right-of-way will require issuance of an encroachment permit.
- 13) The utility service laterals shall be placed underground.
- 14) The Community Development Department is authorized to administratively approve minor modifications to the approved plans. Major design modifications to the approved project will necessitate supplemental review and approval by the Planning Commission.

RESOLUTION PASSED AND ADOPTED, at the regular meeting of the Sausalito Planning Commission on the 10th day of July, 2002, by the following vote:

AYES: Commissioner: Pettitt, Snyder, Williams
NOES: Commissioner:
ABSTAIN: Commissioner:
ABSENT: Commissioner: Leone

SECRETARY TO THE PLANNING COMMISSION

Attachment: June 26, 2002 staff Report to the Planning Commission

STAFF REPORT

SAUSALITO PLANNING COMMISSION

Agenda Item Number 3

PROJECT: DR/EP 00-63, 178 Santa Rosa Avenue

MEETING DATE: June 26, 2002

STAFF: Drummond Buckley, Planning Director

APPLICANT: Michael Rex, Architect

PROPERTY OWNER: Siamak Taromi

REQUEST

The applicant requests Planning Commission approval of an Architectural and Site Plan Review and an Encroachment Permit for the construction of a new single-family home with an attached garage on Santa Rosa Avenue. The new home is proposed to have a building coverage of 2,565 square feet (34%) and a floor area of 3,004 square feet (40%). The Encroachment Permit application is to allow a parking deck, stairs, garage eaves, and some landscaping improvements within the public right-of-way.

REGULATORY FRAMEWORK

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

General Plan: Medium Low Density Residential

Special Regulations: Heightened review; down-sloping lot standards; encroachment permit findings.

CEQA: Categorically Exempt pursuant to CEQA section 15303 (a) (New Structures—Single Family Residences)

EXISTING SETTING

Neighborhood: The neighborhood consists of single-family homes as allowed by zoning, and thick vegetation.

Subject Parcel: The project site is a steep downhill lot from Santa Rosa Avenue. The parcel is vacant and contains trees and other vegetation, with a grove of bays at the lower reaches of the parcel. The prior house on this lot burned down.

PROJECT DESCRIPTION

Structures: The proposed structure will have 3 stories with an additional fourth level providing a street-level garage and entryway. The architect proposes to connect the 2-car garage and front pedestrian entryway with an interior stairway access and to run wooden stairs the length of the house and within the side yard setbacks at the East and West elevations. In addition to the access provided by the external wooden side yard stairs, access to the lower reaches of the property will be provided through the children's playroom, which will have exterior access to a lawn area retained by a manufactured, stone-colored retaining wall system.

The applicant requests the following structures within the Santa Rosa Avenue right-of-way: a driveway parking deck and planter, elevated wood stairs, pedestrian bridge, roof overhang, replacement retaining wall, stairs on grade, and landscape features. There is also a roof overhang over a sewer easement.

Design: Vertical cedar siding is proposed for the building's exterior in conjunction with a roof system that is designed to combine the following three roof elements: barrel vault, flat roof and a curved roof shape. All of these various roof elements will be composed of copper roofing material. Hunter green window color and trim for the windows. A pyramid skylight is proposed above the front entry hall.

Land Use/Density: The proposed single-family home is consistent with the land use density of the R-1-6 zone.

Tree Protection: The submitted Arborist Report recommends removing two protected oak trees that were scorched by the fire and are now showing signs of sudden oak death syndrome. Only pruning is required in order to rectify the heat stress and fire damage of the trees along the northeastern edge of the property. The landscape plan includes measures to be taken to preserve the bay trees at the lower reaches of the parcel.

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New Landscaping:

Deciduous shrubs located within low-lying planter boxes are proposed between the entry walk and the car deck. In place of one of the fire-damaged trees, a lawn play area is proposed. Four 15-gallon trees are proposed throughout the site. All of the healthy existing trees onsite will be retained, and these native trees will be supplemented with introduced shrubs and ornamental shade plants for the front yard garden and backyard lawn area border. Flowering vines are proposed at the base of the lawn retaining walls.

PROJECT SUMMARY TABLE

	Existing	Required	Proposed	Compliance
Parcel Area:	7,470.5 sq. ft.	6,000 sq. ft. min.	No change	yes
Land Use:	vacant	Single-family	Single-family	yes
Dwelling Units:	0	1 max.	1	yes
Parcel Area/Unit:	N/A	N/A	1	yes
Rear Yard:	N/A	15' min.	75'	yes
Right Side Yard:	N/A	5' min.	6' (with a 1' roof overhang)	yes
Left Side Yard:	N/A	5' min.	6'9" (with a 1' roof overhang)	yes
Height (general):	N/A	32' max. from a.g.	32'	yes
Max. garage	N/A	40' max from a.g.*	38.53'	yes
Downhill reqm't:	N/A	24' max from roadway	Approx. 16'	yes
Overall Max.	N/A	50' to ground below	45' at highest point	yes
Building Coverage:	N/A	2,609 sq. ft (35%)	2,565 sq. ft. (34%)	yes
Floor Area:	N/A	3,362 sq. ft. (45%)	3,004 sq. ft. (40%)	yes

The code allows the roof of the garage to exceed 32 feet only if "the portion of new proposed structures exclusive of covered parking not exceed the 32 foot height limit." The skylight, as a roof projection, exceeds the 32-foot limit.

PRIOR REVIEW

The Planning Commission was originally scheduled to hear this project on May 9, 2001. A staff report was prepared by Assistant Planner Amy Anton but the item was continued without discussion because no story poles had been installed by the May 9 hearing. Story poles were later installed, but not certified, for consideration by the Planning Commission at its meeting of June 13, 2001.

The Commission minutes for the June 13 meeting are attached to this report. Commissioners expressed the following concerns with the project:

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- Concern that the story poles accurately reflect the project, including proposed decks.
- Concern that the project decks may impact the privacy and views of neighbors to the west.
- Concern regarding the extent of improvements proposed within the right-of-way, in particular the pedestrian gate and a 'gate canopy' over that gate, and the extent of the proposed fence within the right-of-way.
- Concern regarding the fact that the building "maxes out" the 32' height limitation. (The minutes reflect that the architect explained that the height of the building would actually be 1'1.5" below the maximum, contrary to what was shown on the plans, because of an inaccuracy on the topo map for the project; however, the current plans do not reflect the change, and the attached zoning permit for the current plans also calls out the house as 32' above average grade.)
- A request to see a record of survey for the project site.
- Concern regarding the use of 100% of the maximum floor area and lot coverage for the site, especially given the steep slope of the lot.
- Concern regarding the prominence of the garage on the building elevation and the relationship of the garage to the house.

A letter from the architect responding to many of these issues is attached to this report. Also, the elevation plan sheets contain information regarding changes made since the June 13 hearing.

On May 22, the Planning Commission reviewed the project a second time and considered public testimony. Concern was raised regarding the overall size of the home, the proposed improvements in the public right of way, the effect of the project on the view from the street, and the potential effect of the project on neighbor's views and privacy. The Commission asked that the architect meet with the neighbors, make changes to the project to address these concerns, and return with the revised design. This report describes the revised design. The architect's list of the changes that were made is attached to this report. They include reductions in the footprint and floor area of the structure, increased setbacks, reduction in the depth and size of decks, a smaller skylight, and the elimination of the proposed fence and trellis in the public right of way.

GENERAL PLAN CONSISTENCY

General Plan Policy LU -1.9.1 requires heightened review when considering development applications requesting a lot coverage and floor area that is greater than 80% of the maximum permitted bulk. The proposed structure is nearly 100% of the maximum building coverage allowance and 89% of the maximum floor area allowance. Although specific guidelines have not yet been adopted to address such a circumstance, the General Plan calls for special consideration of the following:

Tree Preservation: The two trees (protected oaks) proposed for removal are diseased, according to the arborist report.

Lot Configuration: The subject parcel is a nearly rectangular lot, and the project conforms to the minimum required setbacks.

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- Public Safety:** The project poses no special public safety concerns. The Fire Department's requirements for this project are outlined in the attached letter from the Fire Prevention Officer.
- Required Grading:** The project proposes 440 cubic yards of cut and 440 cubic yards of fill. A grading permit will be required concurrent with the issuance of a building permit.
- Parking:** The project provides two garage parking spaces onsite plus two parking spaces within the public right-of-way on the parking deck leading to the garage, in conformance with the minimum parking requirement of two onsite parking spaces per single-family home.
- Landscaping:** Minimal new landscaping is proposed and it appears to be consistent with relevant General Plan policies.
- Slope / Topography:** The project site slopes steeply down from Santa Rosa. The project is designed to cut into this steep slope, with each of the four levels directly on top of the next.

In addition to the above General Plan land use and heightened review policies, the Planning Commission must determine whether the project is consistent with the following General Plan policies and programs:

Program CD-1.2, Design Findings of Approval; Program CD-1.2.2, Design Guidelines: These General Plan programs stipulate that the City shall establish findings for design approval that encourage design initiative, and shall prepare design guidelines that support positive, creative, and/or innovative design solutions for appropriate development. In the absence of such findings and guidelines, the project has been evaluated by the comparable "guiding principles" of external design as well as the "site development criteria" found in SMC Sections 10.912.7 and 10.912.8. These principles and criteria have been used below to evaluate the proposal.

Policy CD-1.3, Neighborhood Compatibility: This General Plan policy was written to encourage that structures be designed to complement their setting and other buildings in the neighborhood. An analysis of the project's neighborhood compatibility is contained below in the design review criteria discussion.

Program CD-1.3.1, Size and Mass: This General Plan program was drafted to revise the zoning ordinance to clarify the authority of the Planning Commission in making findings of design compatibility related to the size and mass of proposed structures.

DESIGN REVIEW CRITERIA

Prior to approving this application, the Planning Commission must determine whether the proposed project is in conformance with the design guidelines specified in Sections 10.912.7 (Guiding Principles, External Design) and 10.912.8 (Site Development Criteria) of the Sausalito Municipal Code:

Overall Objectives 10.912.7(a) It is not the purpose of this section that control of architectural character should be so rigidly enforced that individual initiative is stifled in the design of any particular building or substantial additional expense is required; rather, it is the intent of this section that any control exercised be a minimum necessary to achieve the overall objectives of this title.

Project Analysis: The proposed project appears to incorporate individual design initiative in a manner that is not stifled by an attempt to meet any one objective of the zoning code.

Suitability, appropriateness, harmony 10.912.7(b) Good architectural character is based upon the suitability of a building for its purposes; upon the appropriate use of sound materials; upon the principles of harmony and proportion in the elements of the building.

Project Analysis: The proposed structure is a single-family home that uses cedar siding and wood trim painted green on the exterior walls, and a variety of curved roof forms. The building materials and architectural style appear suitable and appropriate for the neighborhood, and the architectural elements of the building appear to be in proportion and harmonious with one another.

Good Architectural Character 10.912.7(c) Good architectural character is not, in itself, more expensive than poor architectural character, and is not dependent upon the particular style of architecture selected.

Project Analysis: The proposed structure appears to incorporate materials and colors in a manner consistent with good architectural character.

Relationship to Surroundings
10.912.7(d) The relationship of a building to its surroundings is of greater importance than the quality of design of the individual structure.

Project Analysis: The main issue here is the relation of the building to the street. The height of the project roofs are will obscure side views of Richardson Bay from Santa Rosa. It is feasible that the project could be carried out while preserving some outlying views from the street, either by: requiring an open carport rather than a garage for the parking area; reducing the square footage or ceiling height in order to lower the roof and preserve some outlying views from the road; and/or reducing the roof height by 'pushing' the house further down the hill. This latter solution is problematic, however, because if the lowest point at which the structure touches natural grade is pushed much lower down the hill, the roof of the garage structure will exceed the maximum permitted height, and the house will also be pushed horizontally away from the road, thereby potentially blocking views from the neighbor to the west.

Although views from the street are a legitimate issue to consider, this particular segment of Santa Rosa does not seem to pose any particularly sensitive view concerns.

The architect's April 29, 2002 letter indicates that, in order to address the concerns of the neighbor to the west, the depth of the deck at the kitchen/living level is now proposed to be reduced by 2 feet. This appears to be the primary compatibility issue with neighboring properties.

Light and Air 10.912.8(a) Design and location of building in relation to the provision of adequate light and air to itself and its neighbors.

Project Analysis: The project complies with the required yard setbacks that are intended to provide light and air to the proposed structure and its neighbors, and is fairly shallow in depth from Santa Rosa Avenue, which has the effect of minimizing the building mass along the sideyards, further protecting light and air of adjacent residences.

Landscaping 10.912.8(b) Landscaping, screening, and fencing to preserve privacy and mitigate negative effects on neighboring properties.

Project Analysis: A number of plants are proposed within the western sideyard that could have the effect of preserving privacy to this neighbor.

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Traffic Safety 10.912.8(c) Location of entrances and exits and layout of internal circulation to in relation to traffic safety and ease and convenience of movement.

Project Analysis: The City Engineer's memorandum contains a condition requiring that a sight line of 160 feet be maintained for vehicles entering and exiting the driveway. This condition addresses the only safety consideration posed by the project.

Lighting 10.912.8(d) Arrangement of night lighting in relation to public safety and effect on adjoining properties.

Project Analysis: The project proposes exterior lighting on both sides of the garage and lighting would also be anticipated at the entry door. Provided that it is downward facing, such lighting would not be anticipated to have a negative effect on adjacent properties.

Tree Preservation 10.912.8(d) Preservation of trees from damage by construction activities or from other sources.

Project Analysis: The landscape plan indicates measures that will be taken to preserve the bay trees at the lower reaches of the parcel during the construction and grading phase of the project pursuant to the recommendations of the arborist. Also per the arborist, two diseased oak trees are proposed for removal.

ENCROACHMENT PERMIT FINDINGS

The applicant requests the following structures within the Santa Rosa Avenue right-of-way: a driveway parking deck and planter, elevated wood stairs, pedestrian bridge, roof overhang (12"-27"), replacement retaining wall, stairs on grade, and landscape features. To approve an Encroachment Permit the following criteria must be met:

Compatibility Is the proposed encroachment compatible with the surrounding area? Would the granting of the permit adversely affect the usability or enjoyment of adjoining parcels? Would the encroachment create or extend an undesirable land use precedent? Does the proposed encroachment conflict with the General Plan, adopted ordinance or any precise plan of the City of Sausalito?

Project Analysis: Most of the proposed encroachment, which has been reviewed by the City Engineer, appears to be compatible with the surrounding area.

Need Is the extent of the proposed encroachment justifiable?

Project Analysis: To the extent that the proposed encroachment is necessary to provide vehicular and pedestrian access to the project site, it is justifiable.

Public Enjoyment Would the proposed encroachment significantly diminish public enjoyment either visual or physical, of the open space to be encroached upon? Is the assignment of open space to private use and enjoyment justifiable in terms of public interest? Could the value of the

Project Analysis: The proposed encroachment does not appear to diminish the public enjoyment of the right-of-way.

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proposed improvements prejudice a policy decision to terminate the encroachments?

Public Circulation Would the proposed encroachment adversely affect existing rights-of-way and preclude or make difficult the establishment of existing or potential streets or pedestrian ways? Would the proposed encroachment adversely affect the existing circulation of vehicles or pedestrians?

Project Analysis: The proposed encroachment of the driveway and retaining wall is not anticipated to affect the circulation or maneuverability of traffic along Santa Rosa Avenue.

Public Safety Would the granting of the encroachment application constitute a hazard to public safety?

Project Analysis: The proposed encroachments do not appear to represent a hazard to public safety.

PUBLIC NOTICE AND FEEDBACK

Notice:

More than 10 days prior to the May 22, 2002 hearing date, notice of proposal was published in the Marin Scope and was mailed to all residents and property owners within 300 feet of the subject parcel.

Written feedback:

Two letters expressing concern regarding the project are attached to this report.

STORY POLES

Installation:

Story poles demonstrating the outline of the building envelope were installed more than 10 days prior to the May 22 hearing date and have been verified by a licensed surveyor (verification attached). The story poles show the extent of the proposed decks, and at the architect has indicated that the deck at the kitchen/entry level will be pulled back 2 feet to address neighbor concerns (the story poles show the location of this deck before this change—in other words, they over-emphasize the extent of deck proposed). The applicant has not modified the story poles to reflect the reductions to the building envelope represented in the plans submitted for the June 26 meeting.

View and Light/Air Impacts:

The story poles illustrate the proposed height and mass of the structure and demonstrate the view effects to the neighbor to the west (from the deck mentioned above). The main view impact would be to the view from the street. Potential impacts to the light and air appear to be minimal given the shallow depth of the structure.

ISSUES

Right-of-way improvements.

The Commission needs to determine if the encroachment permit findings can be made for the proposed right-of-way improvements.

Size of home.

The Commission needs to determine if the size of the home, which maximizes the allowable floor area and building coverage, is appropriate for this steep site.

View impacts.

The Commission needs to determine that the project will not substantially impair the neighbor's view or the view from the street.

STAFF CONCLUSIONS

External Design Principles:

The project appears to conform to the external design principles contained in the code.

Site Development Criteria:

The project appears to comply with site development criteria identified in the code. The steepness of this Downsloping lot and the vegetation at the lower reaches of the lot have the effect of allowing a relatively large structure to be built without the appearance of mass one would normally anticipate on a lot of this size.

Encroachment Criteria:

The project appears to comply with encroachment permit criteria identified in the code.

Overall Staff Recommendation:

Staff recommends that the Commission review the merits of this project as proposed and hear public testimony. The Commission may:

1. Approve the application as submitted.
2. Approve the application subject to specific conditions and/or modifications.
3. Continue the application for additional information and/or project revisions.
4. Deny the application on the basis that the project does not comply with Section 10.912.7 and/or 10.912.8 of the Municipal Code.

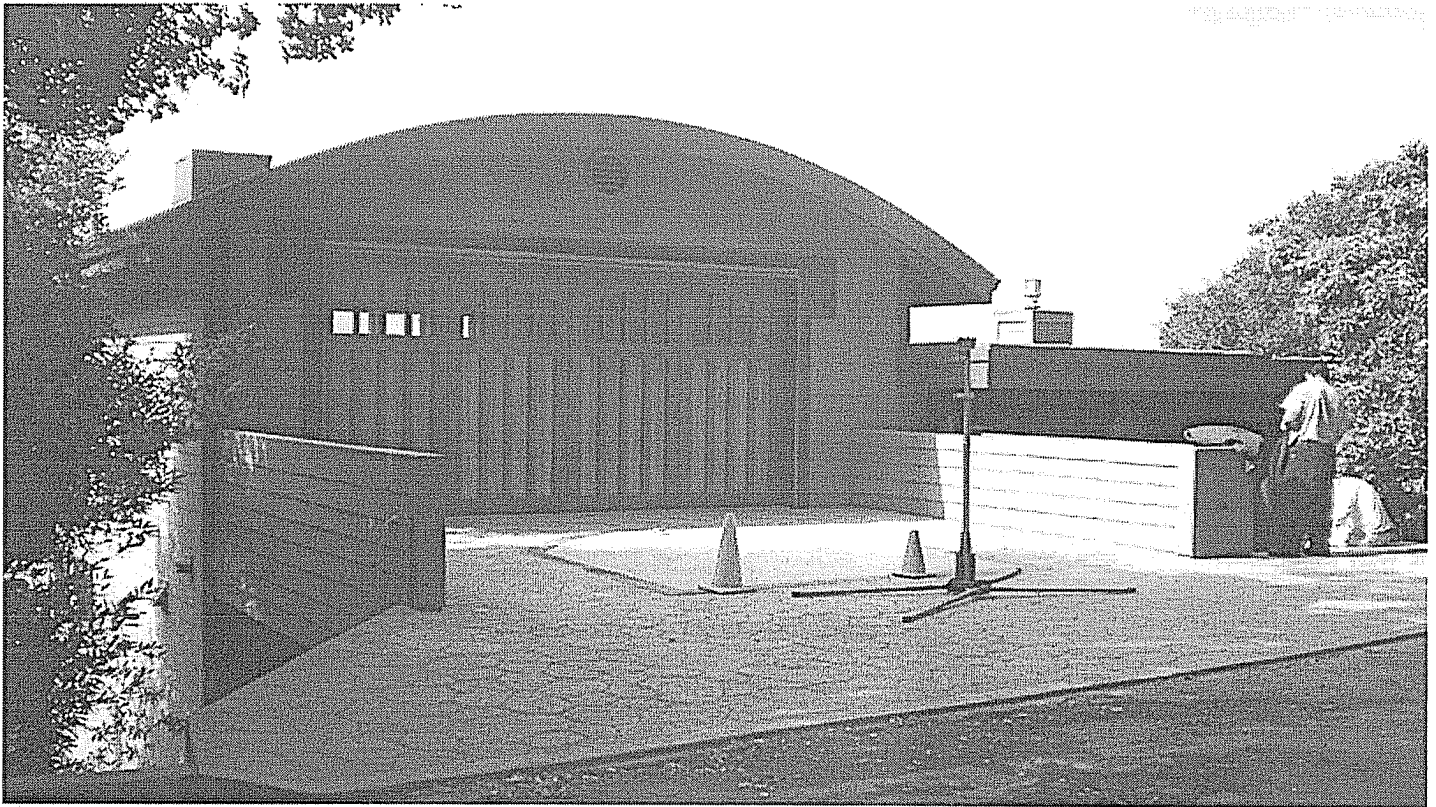
Staff will return with a resolution reflecting the Commission's decision if the Commission approves or denies the project at the June 12 meeting. Staff requests that the Commission take action on this project at this time.

EXHIBITS

1. Zoning Permit
2. Vicinity Map
3. Memorandum from City Engineer dated May 15, 2002
4. Memorandum from Fire Department dated May 13, 2002
5. May 22, 2002 Planning Commission Minutes
6. Arborist Report

7. Story Pole Certification
8. April 5, 2001 Letter from Michael Rex (explaining overall project features and design for the originally-proposed project)
9. April 29, 2002 Letter from Michael Rex (responding to Commission concerns and explaining changes to the project)
10. June 12, 2002 Letter from Michael Rex
11. Neighbor Correspondence
12. Record of Survey
13. Reduced Plans that were Presented at May 22 Meeting
14. Revised Project Plans (full-sized)

Site Photos



View of driveway encroachments with project near completion (March, 2008)



View of project during construction (November, 2007)

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