



STAFF REPORT

SAUSALITO CITY COUNCIL

AGENDA TITLE

Encroachment Agreement for Various Improvements in the Public Right-of-Way at 155 Santa Rosa Avenue (DR/EA 08-015)

RECOMMENDED MOTION

The Planning Commission and staff recommend the City Council adopt the attached resolution approving an encroachment agreement to allow various improvements including fencing, retaining walls, steps, gates, paths, and landscaping at 155 Santa Rosa Avenue to encroach into the public right-of-way fronting the subject property.

SUMMARY

The applicant, Jeff George, on behalf of property owners Sean Callaway and Russell Zink, requests City Council approval of an Encroachment Agreement to allow improvements as shown in the attached site plan

BACKGROUND

On September 10, 2008 the Planning Commission reviewed and approved a design review permit (DR / EA 08-015) and recommended City Council approval of an Encroachment Agreement to allow various improvements including metal picket fencing, retaining walls, concrete and stone steps, a driveway gate, a pedestrian path and gate, and landscaping to encroach into the public right-of-way fronting the subject property at 155 Santa Rosa Avenue (APN 065-151-02).

DISCUSSION

Encroachment Review

Chapter 10.56 of the *Zoning Ordinance* provides that the Planning Commission must review encroachment of structures in the public right-of-way, such as those included in the subject application, and forward a recommendation to the City Council for approval of an encroachment agreement.

The encroachments are shown on the attached site plan and include the following:

- Construction of a metal picket fence partially located in the public right-of-way;
 - Construction of a pedestrian pathway gate and shifting an existing pathway approximately two feet away from an existing oak tree;
 - Construction of a driveway gate partially located in public right-of-way;
 - Installation of landscaping;
 - Existing stone and stucco retaining walls; and
 - Existing stone and concrete steps.
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Item: 487
Meeting Date: 10-07-2008
Page: 1

The City Engineer has reviewed the subject application and supports approval of the encroachment agreement. The Planning Commission reviewed the proposed encroachment and recommended approval of an encroachment agreement based on the findings provided in **Exhibit A** of the **Attachment**.

FISCAL IMPACT

No fiscal impact.


RECOMMENDATION

The Planning Commission and staff recommend the City Council adopt the attached resolution approving an encroachment agreement to allow various improvements including fencing, retaining walls, steps, gates, paths, and landscaping at 155 Santa Rosa Avenue to encroach into the public right-of-way fronting the subject property.

ATTACHMENT

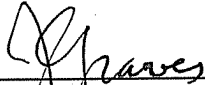
Resolution Approving an Encroachment Agreement for 155 Santa Rosa Avenue [Draft]

PREPARED BY:



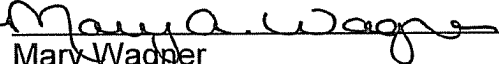
Brian Stanke
Contract Planner

REVIEWED BY:




Jeremy Graves
Community Development Director

REVIEWED BY:



Mary Wagner
City Attorney

SUBMITTED BY:



Adam W. Politzer
City Manager

RESOLUTION NO. XX

**A RESOLUTION OF THE SAUSALITO CITY COUNCIL
APPROVING AN ENCROACHMENT AGREEMENT TO ALLOW VARIOUS
IMPROVEMENTS INCLUDING FENCING, RETAINING WALLS, STEPS, GATES,
PATHS, AND LANDSCAPING TO ENCROACH INTO THE PUBLIC RIGHT-OF-WAY
FRONTING 155 SANTA ROSA AVENUE
(DR / EA 08-015)**

WHEREAS, Jeff George on behalf of property owners Sean Callaway and Russell Zink, requested Planning Commission approval of a Design Review Permit and a recommendation of City Council approval of an Encroachment Agreement to allow various improvements including metal picket fencing, retaining walls, concrete and stone steps, a driveway gate, a pedestrian path and gate, and landscaping in the public right-of-way fronting 155 Santa Rosa Avenue (APN 065-151-02); and

WHEREAS, on September 10, 2008 the Planning Commission conducted a public hearing and considered the information contained in the staff report as well as the plans titled "155 Santa Rosa Avenue", date stamped July 17, 2008; and

WHEREAS, the Planning Commission found that, as conditioned, the proposed project complies with requirements of the Zoning Ordinance and the General Plan; and

WHEREAS, on September 10, 2008, the Planning Commission adopted Resolution No. 2008-22 which approved a Design Review Permit and recommended City Council approval of the requested encroachment agreement for the improvements in the public right-of-way; and

WHEREAS, on September 24, 2008, the applicant submitted updated plans that were determined by the city engineer and the project planner to be in compliance with Conditions of Approval 1, 2, and 3 of Planning Commission Resolution No. 2008-22; and

WHEREAS, on October 07, 2008, the City Council reviewed and considered the project plans for the proposed encroachment agreement titled "155 Santa Rosa Ave, Schematic Landscape Plan", date stamped September 24, 2008; and

WHEREAS, the City Council considered all written testimony on the subject application; and

WHEREAS, the City Council agrees with the Planning Commission that the proposed project is categorically exempt from the requirements of CEQA pursuant to Section 15303(e) of the State CEQA Guidelines.

ATTACHMENT 487
(11 PAGES) 3

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

Section 1. Approval of Encroachment Agreement

Based upon the findings provided in **Exhibit A**, the Encroachment Agreement provided in **Exhibit B** is approved to allow the listed improvements in the public right-of-way along the Santa Rosa Avenue property frontage at 155 Santa Rosa Avenue.

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.

THIS RESOLUTION WAS PASSED AND ADOPTED at the regular meeting of the City Council of the City of Sausalito on the 7th day of October 2008, by the following vote:

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

MAYOR AMY BELSER

ATTEST: _____
CITY CLERK

Exhibit A: Encroachment Agreement Findings
Exhibit B: Encroachment Agreement

EXHIBIT A

**ENCROACHMENT AGREEMENT FINDINGS
155 SANTA ROSA AVENUE (DR / EA 08-015)**

Pursuant to the Sausalito Municipal Code Section 10.56.060 (Encroachment Review and Agreements), the Planning Commission recommends City Council approval of an Encroachment Agreement at 155 Santa Rosa Avenue based upon 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 proposed encroachment along Santa Rosa Avenue will enhance the streetscape along the frontage of this site and provide for safe ingress and egress to and from the residential development proposed on the property.

- 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 encroachment in front of 155 Santa Rosa Avenue is several feet above the grade of the roadway, and will not impede the use of adjacent parcels, nor create an undesirable precedent.

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

The encroachment along Santa Rosa Avenue would provide a more consistent elevation for the fencing than if it strictly followed the property line, improving the appearance from neighboring parcels, providing additional safety near a steep grade, and allowing the continued use of an existing walkway.

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

The proposed encroachment will not affect access and circulation on Santa Rosa Avenue.

- 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 steep topography makes road widening in the future unlikely. However, the value of proposed fencing and landscaping improvements would not make difficult the establishment or improvement of streets or pedestrian ways.

EXHIBIT B

CITY OF SAUSALITO ENCROACHMENT AGREEMENT

This ENCROACHMENT AGREEMENT ("Agreement") is entered into this ___ day of _____, 2008 (the "Effective Date") by and between SEAN CALLAWAY AND RUSSELL ZINK ("Owners") of the property at 155 Santa Rosa Avenue (APN 065-151-02), and the CITY OF SAUSALITO, a municipal corporation ("City").

RECITALS

The following Recitals are a substantive part of this Agreement:

A. Improvements in the public right-of-way along the Santa Rosa Avenue property frontage located at 155 Santa Rosa Avenue, require City Council approval of an Encroachment Agreement (DR / EA 08-015). In accordance with Chapter 10.56 of the City's Municipal Code, the Planning Commission reviewed the proposed encroachment and recommended City Council approval of the encroachment.

B. The City has the authority to regulate the use of the public right-of-way and is willing to allow Owners the encroachments as shown in the attached site plan and 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 improvements in the public right-of-way along the Santa Rosa Avenue property frontage at 155 Santa Rosa Avenue including metal picket fencing, retaining walls, concrete and stone steps, a driveway gate, a pedestrian path and gate, and landscaping along the northern and eastern property boundary as shown in the attached site plan (see **Exhibit 1**) which is incorporated herein (the "Encroachments").
2. Term. The term of this Agreement is one (1) year after which it shall be automatically renewed on an annual basis unless City issues a notice of non-renewal.
3. Condition of Encroachments and Right-of-Way. Owner shall maintain all Encroachments and the City-owned property affected thereby in good and safe condition and free from any nuisance to the satisfaction of the City Engineer.
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 Owners' expense.

4B7
6

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, including the Conditions of Approval (see **Exhibit 2**) which are incorporated herein.

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:

Sean Callaway and Russell Zink
155 Santa Rosa Avenue
Sausalito, CA 94965

City:

City Engineer
420 Litho Street
Sausalito, CA 94965

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

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

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

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

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

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

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

4B7
8

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

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

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

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

OWNERS:

CITY:

Sean Callaway

Amy Belser, Mayor

Russell Zink

RECOMMENDED FOR APPROVAL:

APPROVED AS TO FORM:

Todd Teachout, City Engineer

Mary Wagner, City Attorney

EXHIBITS:

1. Site Plan, entitled, "155 Santa Rosa Ave, Schematic Landscape Plan", date stamped September 24, 2008;
2. Encroachment Agreement Conditions of Approval

EXHIBIT 1

**SITE PLAN, ENTITLED
"155 SANTA ROSA AVE, SCHEMATIC LANDSCAPE PLAN",
DATE STAMPED SEPTEMBER 24, 2008.**

EXHIBIT 2

ENCROACHMENT AGREEMENT CONDITIONS OF APPROVAL

1. Approval of this Agreement is limited to the project plans entitled "155 Santa Rosa Ave, Schematic Landscape Plan", date stamped September 24, 2008.
2. The encroachment agreement is predicated on construction of the improvements. If the improvements are not constructed, the encroachment agreement is void.

Prior to Issuance of a Building / Grading Permit:

3. The applicant shall apply for an encroachment permit from the Engineering Division prior to commencing construction in the public right-of-way.
4. The applicant shall have a sewer inspection (video or pressure test) performed subject to City verification and approval, prior to final inspection. This requirement will be waived if a sewer inspection has been performed within the last three years.
5. The driveway profile be evaluated and the centerline profile comply with Uniform Standards All Cities and County of Marin Drawing No. 140, after the overlay.
6. The applicant shall obtain a grading permit from the Engineering Division prior to beginning excavation work. An erosion control plan will be further required if work is to be performed between October 1 and April 1 of a given year.

During Construction / Grading

7. The applicant's contractor shall limit grading operations to times specified in the City Noise Ordinance, except Sunday when grading is prohibited.
8. Grading on hillside land with geologic formation known to slide will be limited to between April 15 and October 15.
9. The applicant's contractor shall provide adequate dust control measures during grading.
10. The applicant's contractor shall implement erosion control measures as per the erosion control plan and incorporating guidelines and measures from the most current ABAG manual for erosion and sediment control if grading work is not completed by October 15.
11. To the maximum extent feasible, drainage from paved surfaces shall be routed through grassy swales, buffer strips or sand filter prior to discharge into the storm drainage system.

4B7
12

12. For any damage to existing public improvements due to construction activities, Developer shall repair, at their expense, damage prior to issuance of a Certificate of Occupancy. Contractor must protect all existing and new improvements.

13. 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:

Weekdays – Between 8 a.m. and 7 p.m.

Saturdays – Between 9 a.m. and 5 p.m.

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.

14. Construction materials, equipment, vehicles, and debris boxes shall be placed on-site 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. Construction materials, equipment, vehicles, and debris boxes placed off-site shall be done only after securing an encroachment permit from the Community Development Department.

15. 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.

16. The applicant shall provide reasonable advance notice of the proposed excavation to be given to the owners of adjoining lands and the adjoining owners must be given at least 14 calendar days within which to take steps to protect their improvements.

17. The applicant, subject to the satisfaction of the City Engineer, shall install appropriate temporary construction signage and pavement markings.

18. Project construction shall not obstruct traffic along Santa Rosa Avenue on weekdays between 8:00 AM and 10:00 AM, and between 3:00 PM and 7:00 PM.