



# STAFF REPORT

## SAUSALITO CITY COUNCIL

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### AGENDA TITLE:

Encroachment Agreement for carport structure at 37-39 Filbert Avenue (DR/VA/EA 07-032).

### RECOMMENDED MOTION:

The Planning Commission and staff recommend the City Council adopt the attached resolution approving an encroachment agreement to allow the existing carport at 37-39 Filbert Avenue to encroach into the Cazneau Avenue public right-of-way.

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### BACKGROUND AND DISCUSSION

On November 13, 2007, the City Council approved an Encroachment Agreement to allow the construction of two retaining walls that encroach in the Filbert Avenue public right-of-way. During the review of the application, an existing carport (attached to an existing garage) was identified to be encroaching into the Cazneau Avenue public right-of-way on the opposite end of the property. While a building permit had been issued for the existing garage (constructed in 1953), no permits were located for the carport structure. Thus the aforementioned encroachment agreement was conditioned to require an additional encroachment agreement for an after-the-fact approval of the carport.

The encroachment of the carport is shown on the attached site plan. The property owners, Patricia and Jason Roberts, are seeking an after-the-fact approval for the existing carport. No modifications to the carport are proposed.

The City Engineer has reviewed the application and supports approval of the subject encroachment agreement. On July 23, 2008 the Planning Commission reviewed and approved a design review permit and variance for the carport, and also recommended City Council approval of an Encroachment Agreement for the carport.

### FISCAL IMPACT

No fiscal impact.

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**RECOMMENDATION**


The Planning Commission and staff recommend the City Council adopt the attached resolution approving an encroachment agreement to allow the existing carport at 37-39 Filbert Avenue to encroach into the Cazneau Avenue public right-of-way.

**ATTACHMENT:** Draft Resolution Approving an Encroachment Agreement

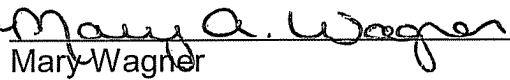
PREPARED BY:

  
\_\_\_\_\_  
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Associate Planner

REVIEWED BY:

  
\_\_\_\_\_  
Jeremy Graves, AICP  
Community Development Director

REVIEWED BY:

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

SUBMITTED BY:

\_\_\_\_\_  
Adam W. Politzer  
City Manager

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**RESOLUTION NO. XX**

**A RESOLUTION OF THE SAUSALITO CITY COUNCIL  
APPROVING AN ENCROACHMENT AGREEMENT TO ALLOW THE AFTER-THE-FACT  
APPROVAL OF AN EXISTING CARPORT STRUCTURE WITHIN THE CAZNEAU AVENUE  
PUBLIC RIGHT-OF-WAY FOR THE USE OF 37-39 FILBERT AVENUE  
(DR/EA 07-032)**

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**WHEREAS**, applicant/owners, Patricia and Jason Roberts requested Planning Commission approval of a Variance and Design Review Permit and recommendation to the City Council for the approval of an Encroachment Agreement to allow after-the-fact approval for an existing carport located in the public right-of-way along the Cazneau Avenue rear property line frontage at 37-39 Filbert Avenue (APN: 064-212-02); 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 July 23, 2008, the Planning Commission approved Resolution No. 2008-32 which approved a Variance and Design Review Permit and recommended City Council approval of the requested encroachment agreement for the after-the-fact improvements in the public right-of-way; and

**WHEREAS**, on February 10, 2009, the City Council reviewed and considered the project plans for the proposed encroachment agreement titled "Roberts Residence", date stamped October 23, 2007; and

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

**WHEREAS**, the City Council finds that proposed project is categorically exempt from the requirements of CEQA pursuant to Section 15304(a) and (b) of the State CEQA Guidelines.

**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 after-the-fact improvements in the public right-of-way along the Cazneau Avenue rear property frontage at 37-39 Filbert 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 \_\_\_\_ day of \_\_\_\_\_ 2009, by the following vote:

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

\_\_\_\_\_  
Mayor Jonathan Leone

ATTEST: \_\_\_\_\_  
City Clerk

Exhibit A: Encroachment Agreement Findings  
Exhibit B: Encroachment Agreement

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**EXHIBIT A**

**ENCROACHMENT AGREEMENT FINDINGS  
37-39 FILBERT AVENUE (DR /VA/ EA 07-032)**

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 37-39 Filbert 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 Cazneau Avenue will bring the subject property into conformance with parking requirements specified in the Zoning Ordinance without removing on-street parking on Sausalito Boulevard 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 runs parallel with Cazneau Avenue and does not impede the use of adjacent parcels.*

- 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 Cazneau Avenue will allow the continued use of the existing carport and maintain adequate off-street parking for the existing duplex.*

- 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 Cazneau 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 existing carport location neither currently impedes the Cazneau Avenue traveled way, nor would impede future improvements to the traveled way and/or pedestrian ways due to the distance and topography changes relative to the existing carport and the traveled way.*

**EXHIBIT B**

**CITY OF SAUSALITO  
ENCROACHMENT AGREEMENT**

This **ENCROACHMENT AGREEMENT** ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_, 2009 (the "Effective Date") by and between **PATRICIA AND JASON ROBERTS** ("Owners") of the property at 37-39 Filbert Avenue (APN 064-212-02), and the **CITY OF SAUSALITO**, a municipal corporation ("City").

**RECITALS**

The following Recitals are a substantive part of this Agreement:

A. After-the fact approval of a carport in the public right-of-way along the Cazneau Avenue rear property frontage located at 37-39 Filbert Avenue require City Council approval of an Encroachment Agreement (DR/VA/EA 07-032). In accordance with Chapter 10.56 of the City's Municipal Code, the Community Development Director has reviewed the proposed encroachment and has recommended that the City Council approve the encroachment.

B. The City has the authority to regulate the use of the public right-of-way and is willing to allow Owner 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 allows the after-the-fact approval for an existing carport located in the public right-of-way along the Cazneau Avenue rear property line frontage at 37-39 Filbert Avenue, 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.
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:

**Owner:**

Patricia and Jason Roberts  
37-39 Filbert 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.

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:

CITY:

\_\_\_\_\_  
Patricia and Jason Roberts

\_\_\_\_\_  
Jonathan Leone, Mayor

RECOMMENDED FOR APPROVAL:

APPROVED AS TO FORM:

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

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

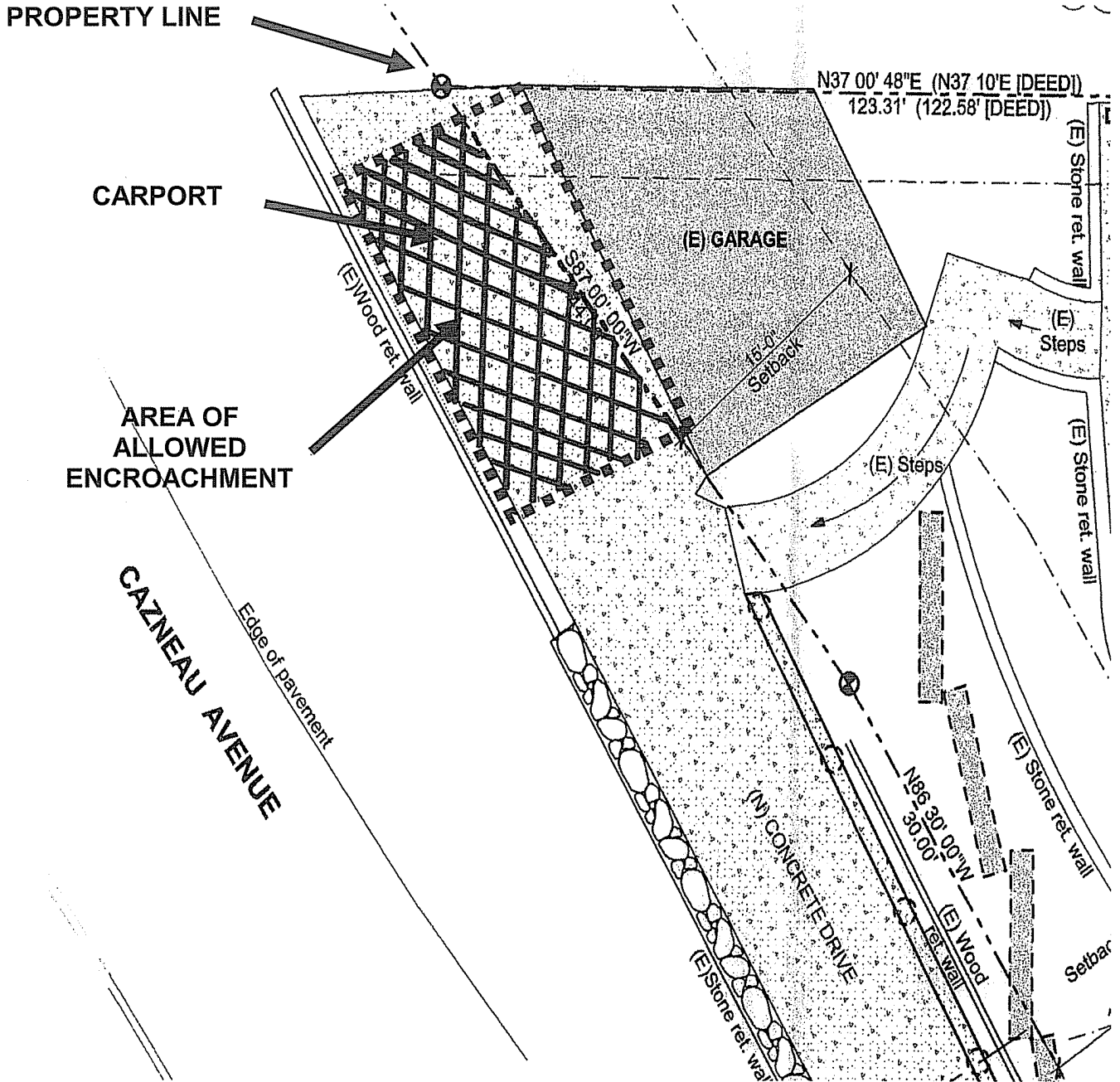
EXHIBITS:

1. Detail from Site Plan Titled "Roberts", date stamped October 23, 2007"
2. Encroachment Agreement Conditions of Approval

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EXHIBIT 1

Detail from Site Plan Titled  
"Roberts Residence,"  
Date-stamped October 23, 2007



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## EXHIBIT 2

### ENCROACHMENT AGREEMENT CONDITIONS OF APPROVAL

These conditions apply to the project plans "Roberts Residence", date-stamped received October 23, 2007.

1. Approval of this Application is limited to the project plans titled "Roberts' Residence", date stamped received October 23, 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 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 Planning Commission.
7. The Variance has been granted only for the portion of the carport extending in the side yard setback, as illustrated in the plans included in Attachment C. Should the structure dilapidate or any voluntary or involuntary demolition occur, the structure is not permitted to be rebuilt in the side yard setback.

8. The applicant shall purchase and plant two 24 box trees within the Cazneau public right-of-way. The location and plant type shall be approved by both the City Engineer and the Community Development Director.