



STAFF REPORT

SAUSALITO CITY COUNCIL

AGENDA TITLE:

Revelle Encroachment Agreement/515 North Street/DR/EA 09-110

RECOMMENDED MOTION:

Approve the attached resolution for an Encroachment Agreement to allow the construction of parking pad, retaining wall, stairs, and landscaping within the North Street public right-of-way along the frontage of 515 North Street.

BACKGROUND AND DISCUSSION

On March 10, 2010, the Planning Commission unanimously approved a Design Review Permit and a recommendation for City Council approval of an encroachment agreement for the construction of a 24-foot long by 9-foot wide parking pad, a seven-foot tall concrete retaining wall, stairs on grade, and landscaping in the public right-of-way and along the frontage of 515 North Street (APN 065-233-18).

Pursuant to Section 10.56.030.E of the Zoning Ordinance, the "City Council shall have the final decision-making authority to approve Encroachment Agreements, thereby authorizing the use of City-owned rights-of-way, easement or property." To satisfy this requirement, the property owner is seeking City Council approval of an Encroachment Agreement in order to proceed with the construction of the aforementioned improvements within the City's public right-of-way.

FISCAL IMPACT

No fiscal impact.

RECOMMENDATION

The Planning Commission recommends the City Council adopt the attached resolution approving an encroachment agreement for the construction of a parking pad, retaining wall, stairs, and landscaping within the North Street public right-of-way along the frontage of 515 North Street.

ATTACHMENT:

Draft Resolution Approving an Encroachment Agreement for 515 North Street.

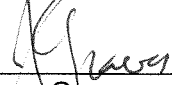
Item: 4810
Meeting Date: 4/6/10
Page: 1

PREPARED BY:



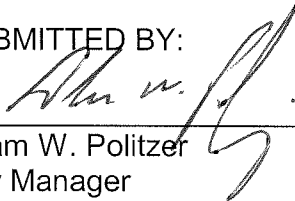
Heidi Burns, AICP
Associate Planner

REVIEWED BY:



Jeremy Graves, AICP
Community Development Director

SUBMITTED BY:



Adam W. Politzer
City Manager

I:\CDD\PROJECTS - ADDRESS\North 515\DR-EA-VA 09-110\CCSR EA 4-6-10.doc

Item: 4B10
Meeting Date: 4/6/10
Page: 2

RESOLUTION NO. XX

**A RESOLUTION OF THE SAUSALITO CITY COUNCIL
APPROVING AN ENCROACHMENT AGREEMENT FOR THE CONSTRUCTION OF A
PARKING PAD, RETAINING WALL, STAIRWAY, AND LANDSCAPING IN THE NORTH
STREET PUBLIC RIGHT-OF-WAY ALONG THE FRONTAGE OF 515 NORTH STREET
(DR-EA 09-110)**

WHEREAS, an application has been filed by Carolyn Revelle, requesting City Council approval of an Encroachment Agreement for the construction of a 24-foot long by 9-foot wide parking pad, a seven-foot tall stained concrete retaining wall, stairs on grade, and landscaping within the North Street public right-of-way fronting 515 North Street (APN 065-233-18); and

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

WHEREAS, on March 10, 2010, the Planning Commission approved a Design Review Permit and recommended City Council approval of an Encroachment Agreement to allow the construction of a parking pad, retaining wall, stairway, and landscaping within the North Street public right-of-way fronting 515 North Street; and

WHEREAS, on April 6, 2010, the City Council reviewed and considered the project plans for the proposed encroachment agreement titled "Revelle Residence" date-stamped received on December 8, 2009; 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 CEQA Guidelines Section 15303(e) (New Construction of Accessory Structures).

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 improvements in the public right-of-way along the North Street property frontage at 515 North Street.

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.

4810
3

THIS RESOLUTION WAS PASSED AND ADOPTED at the regular meeting of the City Council of the City of Sausalito on the ___ day of _____ 2010, 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

I:\CDD\PROJECTS - ADDRESS\North 515\DR-EA-VA 09-110\515 North Street ea creso 4-6-10.doc

EXHIBIT A

ENCROACHMENT AGREEMENT FINDINGS
515 NORTH STREET (DR-EA 09-110)

Pursuant to Zoning Ordinance 10.56.060 (Encroachment Review and Agreements), the Community Development Director recommends City Council approval of an Encroachment Agreement at 515 North Street 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 encroachments related to the project improvements within the North Street public right-of-way will have a positive impact on the aesthetics of the streetscape by utilizing high quality materials, design, and landscaping. Additionally the project will not disrupt traffic flow, pedestrian access, and parking in the neighborhood by maintaining the existing traveled way and below street sidewalk.

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

The encroachment in front of 515 North Street will not impact the adjoining parcels nor set a new land use precedent due to the location, orientation, and topography of the site. As summarized in the staff report, 39 percent of the properties within North Street have been granted Encroachment Agreements for the private use of public property. Additionally, conditions of approval have been imposed on the project so to not negatively impact existing traffic circulation, on-street parking, and pedestrian access.

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

The project will allow the property owner exclusive use of a newly created parking space, whereas currently the property owner of 515 North Street has to use street parking. North Street is considered an impacted parking area and the creation of an additional parking space in an area that currently does not allow for parking will alleviate the parking demand in the neighborhood by one parking space.

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

The encroachment, as conditioned, will not affect access and circulation on North Street because the travelled way will remain unchanged.

- 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 value of the proposed improvements in the right of way would not preclude or make difficult the establishment or improvement of streets or pedestrian ways in the future.

EXHIBIT B

**CITY OF SAUSALITO
ENCROACHMENT AGREEMENT**

This **ENCROACHMENT AGREEMENT** ("Agreement") is entered into this ___ day of ___, 2010 (the "Effective Date") by and between **Carolyn Revelle** ("Owner") of the property at 515 North Street (APN 065-233-18), and the **CITY OF SAUSALITO**, a municipal corporation ("City").

RECITALS

The following Recitals are a substantive part of this Agreement:

A. New construction of a 24-foot long by 9-foot wide parking pad, a seven-foot tall stained concrete retaining wall, stairs on grade, and landscaping to be located in the public right-of-way along the North Street property frontage located at 515 North Street require City Council approval of an Encroachment Agreement (DR/EA 09-110). 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 new construction of a parking pad, retaining wall, stairs, and landscaping within the public right-of-way along the frontage of 515 North Street, 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(s):

Carolyn Revelle
515 North Street
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.

OWNERS:

CITY:

Carolyn Revelle

Jonathan Leone, Mayor

RECOMMENDED FOR APPROVAL:

APPROVED AS TO FORM:

Todd Teachout, City Engineer

Mary Wagner, City Attorney

EXHIBITS:

1. "Revelle Residence" date-stamped received on December 8, 2009
2. Encroachment Agreement Conditions of Approval

EXHIBIT 2

ENCROACHMENT AGREEMENT CONDITIONS OF APPROVAL

These conditions apply only to the project plans "Revelle Residence" date-stamped received on December 8, 2009.

1. The encroachment agreement is predicated on the project for the new construction of a parking pad, retaining wall, stairs, and landscaping as shown on the project plans titled, "Revelle Residence" date-stamped received on December 8, 2009.
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. 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.
5. Prior to installation of the retaining wall, the applicant shall obtain the necessary building permits and encroachment permit for the construction within the North Street public right-of-way from the Building Division and Engineering Division.
6. Construction materials, equipment, vehicles, and debris boxes shall be placed to minimize obstruction of roads and gutters, shall be maintained in a clean and safe condition, and shall not be maintained in a manner that becomes a nuisance to the neighborhood.

Advisory Notes

Advisory notes are provided to inform the applicant of Sausalito Municipal Code requirements, and requirements imposed by other agencies. These requirements include, but are not limited to, the items listed below.

7. This approval will expire in two (2) years from the date of adoption of this resolution if the property owner has not exercised the entitlements hereby granted or applied for an extension.

8. An approval granted by the Planning Commission does not constitute a building permit or authorization for construction. Appropriate construction permit(s) issued by the Building Division must be obtained prior to construction.
9. All applicable City fees as established by City Council resolutions and ordinances shall be paid.
10. Construction Impact Fees shall be paid in accordance with the Construction Impact Fee Ordinance. The fee is due prior to issuance of Building Permit.
11. Encroachment permit, grading permit, third party review fees (cost plus 10%) fees shall be paid.
12. An encroachment permit shall be obtained from the Public Works Department prior to working in the public right of way.
13. Grading/drainage permit(s) shall be obtained from the Public Works Department for any earthwork in excess of 50 cubic yards.
14. Grading and excavation work will be limited to between April 15 and October 15 without written approval of the City Engineer.
15. Pursuant to Municipal Code Chapter 11.17, 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. 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 Section 11.17.060.B.
16. Pursuant to Municipal Code Section 12.16.140, the operation of construction, demolition, excavation, alteration, or repair devices and equipment within all residential zones and areas within a 500 foot radius of residential zones shall only take place during the following hours:
 - Weekdays – Between 8:00 a.m. and 6:00 p.m.
 - Saturdays – Between 9:00 a.m. and 5:00 p.m.
 - Sundays – Prohibited
 - City holidays (not including Sundays) – Between 9:00 a.m. and 7:00 p.m.
17. Permits required by other agencies having jurisdiction within the construction area must be obtained in accordance with the respective agency's regulations.
 - a. Marin Municipal Water District – (415-945-1400), including landscaping and irrigation regulations;
 - b. Southern Marin Fire Protection District – (415-388-8182);
 - c. Sausalito-Marín City Sanitary District – (415-332-0244); and
 - d. Bay Conservation and Development Commission – (415-352-3600)

18. The Community Development Director may authorize minor alterations to the approved plans and conditions of approval in accordance with Section 10.50.180 of the Zoning Ordinance. Major changes and alterations to the approved plans and conditions of approval shall be reviewed and approved by the Planning Commission in accordance with Section 10.84.070(B)(2) of the Zoning Ordinance.
19. The Planning Commission may approve a time extension to the above time frames to establish the approved use in accordance with Section 10.50.140 of the zoning Ordinance.
20. Pursuant to Municipal Code Section 10.54.100, construction activities under taken in accordance with a design review permit shall comply with the construction time limit regulations based upon the project's valuation. Construction projects which are not completed within the time limits are subject to daily penalties.
21. Pursuant to Municipal Code Section 18.12.100, the existing sanitary sewer lateral shall be inspected by video for integrity and necessary repairs prior to issuance of a building permit.

I:\CDD\PROJECTS - ADDRESS\N\North 515\DR-EA-VA 09-110\515 North Street ea creso 4-6-10.doc