



STAFF REPORT

SAUSALITO CITY COUNCIL

AGENDA TITLE:

Encroachment Agreement for continued use of existing wooden parking decks, concrete retaining walls and driveway apron, stairs and two parking spaces in the Sausalito Boulevard right of way in the public right-of-way at 396/398 Sausalito Boulevard (TM/CCP/EA 09-161).

RECOMMENDED MOTION:

The Planning Commission and Staff recommend City Council approval of the attached resolution which approves an encroachment agreement for existing wooden parking decks, concrete retaining walls and driveway apron, stairs and two parking spaces in the Sausalito Boulevard right of way in the public right-of-way at Sausalito Boulevard right of way.

BACKGROUND AND DISCUSSION

In 1960 a building permit was issued for construction of a duplex at 396/398 Sausalito Boulevard and a parking deck for two vehicles. In 1960 an Encroachment Permit was also issued for the duplex with off street parking platforms to accommodate two vehicles. In an unknown year an Encroachment Agreement was issued for a concrete drive apron, retaining wall and ramp in the right-of way. The Agreement is missing the date of approval, Staff presumes that it was in the same timeframe as the Encroachment Permit (1960) as the property owner is identical and the form appears to be older with a form revision date of 1959.

On January 6, 2010 the Planning Commission reviewed and approved Resolution No. 2010-01 for a tentative map and condominium conversion for the subject duplex and recommended City Council approval of an Encroachment Agreement to update the existing Encroachment Permit/Agreement for the continued use of existing wooden parking decks, concrete retaining walls and driveway apron, stairs and two parking spaces in the Sausalito Boulevard right of way in the public right-of-way.

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The property owner is seeking City Council approval of an Encroachment Agreement in order to proceed with the recordation of the Final Map and Condominium subdivision. Approval of the Encroachment Agreement would update the wording of the property owner's agreement with the City and would not allow any expansion of the current encroachments in the right-of-way.

FISCAL IMPACT

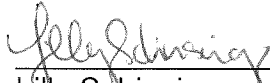
No fiscal impact.

RECOMMENDATION

The Planning Commission and staff recommend the City Council approve the attached resolution approving an Encroachment Agreement to allow the existing wooden parking decks, concrete retaining walls and driveway apron, stairs and two parking spaces in the Sausalito Boulevard right of way.

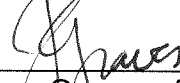
ATTACHMENT: Draft Resolution Approving an Encroachment Agreement for 396/398 Sausalito Boulevard.

PREPARED BY:




Lilly Schinsing
Associate Planner

REVIEWED BY:



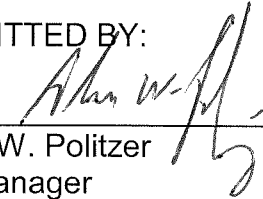
Jeremy Graves, AICP
Community Development Director

REVIEWED BY:



Mary Wagner
City Attorney

SUBMITTED BY:



Adam W. Politzer
City Manager

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RESOLUTION NO. XXXX

**A RESOLUTION OF THE SAUSALITO CITY COUNCIL
APPROVING AN ENCROACHMENT AGREEMENT TO ALLOW EXISTING WOODEN
PARKING DECKS, CONCRETE RETAINING WALLS AND DRIVEWAY APRON, STAIRS AND
TWO PARKING SPACES IN THE SAUSALITO BOULEVARD RIGHT OF WAY IN THE PUBLIC
RIGHT-OF-WAY AT 396/398 SAUSALITO BOULEVARD
(EA 09-161)**

WHEREAS, an application has been filed by Tricia Higgins and Sean McArdle, requesting City Council approval of an Encroachment Agreement for existing wooden parking decks, concrete retaining walls, driveway apron, stairs and two parking spaces in the Sausalito Boulevard right of way (APN 065-252-26); 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 January 6, 2010, the Planning Commission approved Resolution No. 2010-01 which approved a tentative map and a condominium conversion and recommended City Council approval of an encroachment permit to allow the continued use of existing wooden parking decks, concrete retaining walls, driveway apron, stairs and two parking spaces in the Sausalito Boulevard right of way; and

WHEREAS, on April 6, 2010 the City Council reviewed and considered the project plans for the proposed encroachment agreement titled "Tentative Condominium Map of 396/398 Sausalito Blvd" date-stamped received December 14, 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 15301 (Existing Facilities).

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 Sausalito Boulevard property frontage at 396/398 Sausalito Boulevard.

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.

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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 OF THE CITY OF SAUSALITO

ATTEST:

Deputy City Clerk

Exhibit A: Encroachment Agreement Findings
Exhibit B: Encroachment Agreement

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EXHIBIT A

ENCROACHMENT AGREEMENT FINDINGS 396-398 SAUSALITO BOULEVARD (EA 09-161)

Pursuant to Zoning Ordinance 10.56.060 (Encroachment Review and Agreements), the Planning Commission recommends City Council approval of an Encroachment Agreement at 396-398 Sausalito Boulevard 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 Sausalito Boulevard for wooden parking decks, concrete retaining walls and driveway apron, stairs and two parking spaces allow the off-street storage of four vehicles, on Sausalito Boulevard and provide for safe ingress and egress to and from the residential development 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 Sausalito Boulevard 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 Sausalito Boulevard will allow the continued use of the existing parking deck and maintain adequate off-street parking for the existing two-unit residential building.

- 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 Sausalito Boulevard.

- 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 wooden parking decks, concrete retaining walls and driveway apron, stairs and two parking spaces neither currently impedes the Sausalito Boulevard 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 encroaching areas and the traveled way.

EXHIBIT A

ENCROACHMENT AGREEMENT FINDINGS 396-398 SAUSALITO BOULEVARD (EA 09-161)

Pursuant to Zoning Ordinance 10.56.060 (Encroachment Review and Agreements), the Planning Commission recommends City Council approval of an Encroachment Agreement at 396-398 Sausalito Boulevard 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 Sausalito Boulevard for wooden parking decks, concrete retaining walls and driveway apron, stairs and two parking spaces allow the off-street storage of four vehicles, on Sausalito Boulevard and provide for safe ingress and egress to and from the residential development 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 Sausalito Boulevard 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 Sausalito Boulevard will allow the continued use of the existing parking deck and maintain adequate off-street parking for the existing two-unit residential building.

- 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 Sausalito Boulevard.

- 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 wooden parking decks, concrete retaining walls and driveway apron, stairs and two parking spaces neither currently impedes the Sausalito Boulevard 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 encroaching areas and the traveled way.

EXHIBIT B

**CITY OF SAUSALITO
ENCROACHMENT AGREEMENT**

This **ENCROACHMENT AGREEMENT** ("Agreement") is entered into this ___ day of _____, 20___ (the "Effective Date") by and between **PATRICIA HIGGINS AND SEAN MCARDLE** ("Owners") of the property at 396-398 Sausalito Boulevard (APN 065-252-26), and the **CITY OF SAUSALITO**, a municipal corporation ("City").

RECITALS

The following Recitals are a substantive part of this Agreement:

A. Continued use of a previously approved encroachment permit/encroachment agreement for an existing wooden parking decks, concrete retaining walls, driveway apron, stairs and two parking spaces in the public right-of-way along Sausalito Boulevard property frontage located at 396-398 Sausalito Boulevard require City Council approval of an Encroachment Agreement (TM/EA 09-161). In accordance with Chapter 10.56 of the City's Municipal Code, the Planning Commission 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 allow existing wooden parking decks, concrete retaining walls, driveway apron, stairs and two parking spaces in the public right-of-way along Sausalito Boulevard property frontage located at 396-398 Sausalito Boulevard, 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. Prior Encroachment Agreement(s) Superseded. This Encroachment Agreement supersedes all prior Encroachment Agreements/Permits granted for wooden parking decks, concrete retaining walls, driveway apron, stairs, and two parking spaces in the public right-of-way along Sausalito Boulevard property frontage at 396-398 Sausalito Boulevard.
4. 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.
5. 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.

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

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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):
Patricia Higgins
Sean McArdle
396-398 Sausalito Boulevard
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:

Patricia Higgins

Jonathan Leone, Mayor

Sean McArdle

RECOMMENDED FOR APPROVAL:

APPROVED AS TO FORM:

Todd Teachout, City Engineer

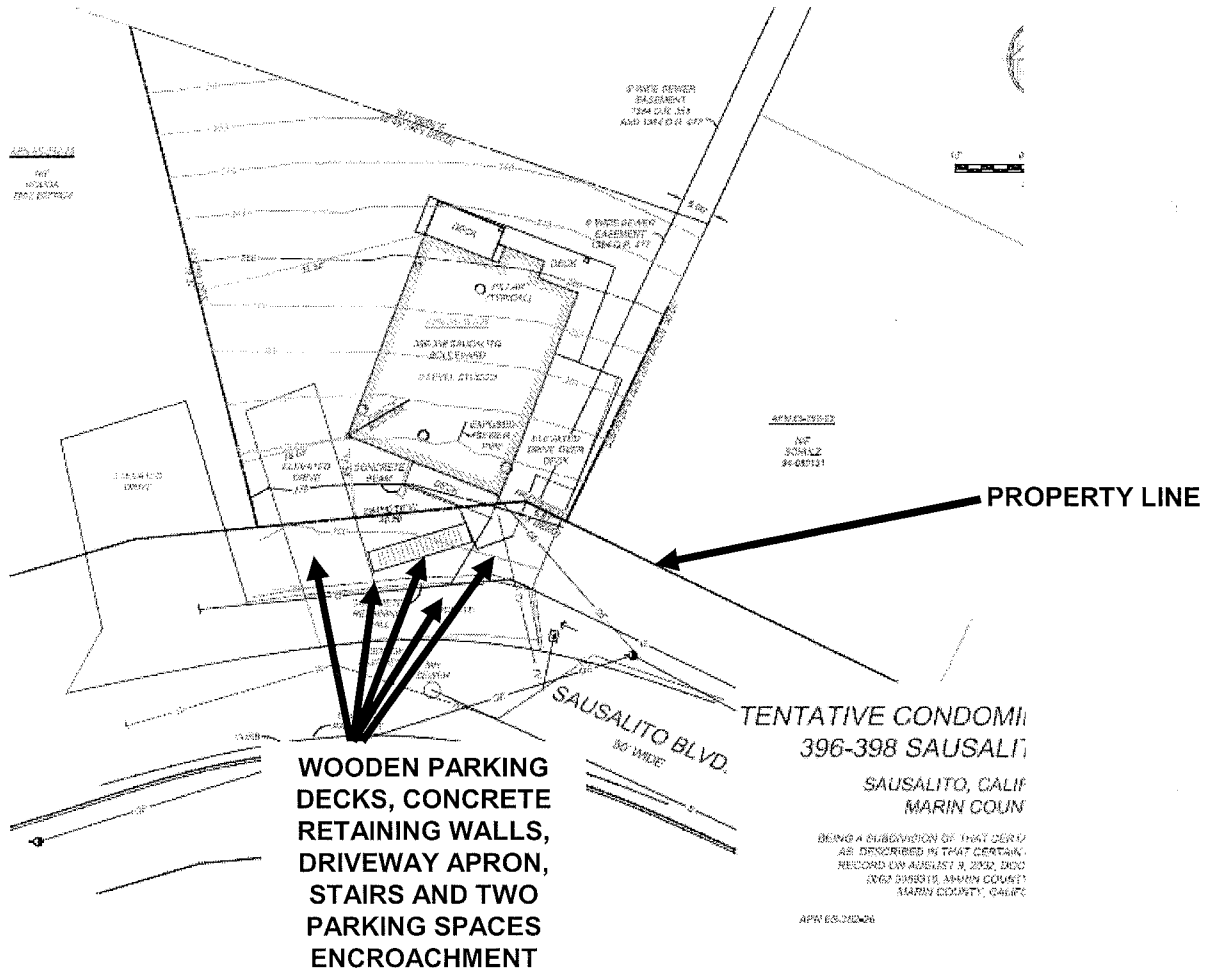
Mary Wagner, City Attorney

EXHIBITS:

1. "Tentative Condominium Map of 396/398 Sausalito Blvd" date-stamped received December 14, 2009; and
2. Encroachment Agreement Conditions of Approval

EXHIBIT 1

Detail from Site Plan Titled
"Tentative Condominium Map of 396/398 Sausalito Blvd"
date-stamped received December 14, 2009



TENTATIVE CONDOMINIUM MAP
396-398 SAUSALITO BLVD.
SAUSALITO, CALIF
MARIN COUNTY

BEING A SUBDIVISION OF THAT CERTAIN
AS DESCRIBED IN THAT CERTAIN
RECORD ON AUGUST 9, 2002, DDC
2002 008810, MARIN COUNTY,
MARIN COUNTY, CALIF.

APPROVED 08/11/09

EXHIBIT 2

ENCROACHMENT AGREEMENT CONDITIONS OF APPROVAL

These conditions apply only to the project plans "Tentative Condominium Map of 396/398 Sausalito Blvd" date-stamped received December 14, 2009.

1. The encroachment agreement is predicated on the continued use of the existing wooden parking decks, concrete retaining walls, driveway apron, stairs and two parking spaces in the Sausalito Boulevard right of way as shown on the project plans titled, "Tentative Condominium Map of 396/398 Sausalito Blvd" date-stamped received December 14, 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.

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.

1. 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.
2. All applicable City fees as established by City Council resolutions and ordinances shall be paid.
3. Pursuant to Municipal Code Chapter 8.54, applicants shall submit a Recycling Management Plan to the Community Development Department prior to the issuance of any construction permits, unless the requirement is waived pursuant to Section 8.54.050.

4. 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.