



# STAFF REPORT

## SAUSALITO CITY COUNCIL

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### AGENDA TITLE

Encroachment Agreement to reconstruct a parking deck partially within the public right of way and public stairway entirely within the public right-of-way at 154 Santa Rosa Avenue.

### RECOMMENDED MOTION

Staff recommends that the City Council adopt the attached Resolution of Approval for an Encroachment Agreement to reconstruct a parking deck partially within the public right of way and public stairway entirely within the public right-of-way at 154 Santa Rosa Avenue, as recommended by the Planning Commission pursuant to Resolution No. 2007-29.

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### SUMMARY

The applicant, Don Olsen, on behalf of the property owner Paul Gelburd, is requesting Planning Commission approval of a Variance and Design Review Permit, and recommendation of approval to the City Council of an Encroachment Agreement, to rebuild an existing car deck in the public right of way and in a side setback as well as to rebuild a public stair into the public right-of-way to the property located at 154 Santa Rosa Avenue. The Encroachment Agreement's review triggers a Design Review.

The residence exceeds fifty years in age, but as the work is on the car deck which is less than 50 years in age, the project is not subject to review by the Historic Landmarks Board.

### ENCROACHMENT AGREEMENT REVIEW

Chapter 10.56 of the Sausalito Municipal Code provides that the Planning Commission shall review encroachments for structures on public property such as those included in Application No. DR/EA/VA 07-018. The Planning Commission's recommendation shall be forwarded to the City Council for the final decision making authority to approve an Encroachment Agreement. The City Council may grant the requested encroachment in the event that the findings set forth in Section 10.56.060 can be made. The following is a list of the requisite findings followed by a description of their application to the requested encroachments:

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- 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 will be compatible with the surrounding area, as it will replace in-kind existing two-car parking.

- 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 will not have aesthetic or circulation impacts on the adjacent parcels and will merely replace an existing encroachment of parking into the public right-of-way that is also enjoyed by 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 reconstruction of the parking deck will continue to provide the required amount of off-street parking.

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

The City Engineer has reviewed the project and recommends approval.

- 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.**

The reconstruction of the parking deck and stairways in the public right-of-way would not prejudice a policy decision to terminate the encroachment nor preclude future City improvements to the public right-of-way at this location.

## **FISCAL IMPACT**

No impact.

## **STAFF RECOMMENDATIONS**

Staff recommends that the City Council adopt the attached Resolution of the Sausalito City Council (Attachment 1) approving an Encroachment Agreement allowing a reconstruction of the existing parking deck to partially encroach and the public stair to entirely encroach into the public right-of-way at 154 Santa Rosa Avenue.

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## ATTACHMENTS

1. Draft Resolution of the City Council of the City of Sausalito approving an Encroachment Agreement to reconstruct a parking deck partially within the public right of way and public stairway entirely within the public right-of-way at 154 Santa Rosa Avenue
2. Location Map
3. Project Plans titled "154 Santa Rosa Avenue/Gelburd Residence", stamped received July 17, 2007

PREPARED BY:

SUBMITTED BY:

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Debra Lutske  
Assistant Planner

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Adam Politzer  
City Manager

REVIEWED BY:

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Diane Henderson  
Interim Community Development Director

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RESOLUTION NO. \_\_\_\_\_

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAUSALITO  
APPROVING AN ENCROACHMENT AGREEMENT FOR  
APPLICATION NO. DR/EA/VA 07-018 FOR THE RECONSTRUCTION OF  
A PARKING DECK THAT PARTIALLY ENCROACHES AND FOR  
A PUBLIC STAIRWAY THAT ENTIRELY ENCROACHES INTO  
THE PUBLIC RIGHT-OF-WAY AT 154 SANTA ROSA AVENUE**

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**WHEREAS**, a development project application for an Encroachment Agreement, Variance and Design Review Permit was filed on May 22, 2007 by applicant Don Olsen, on behalf of the property owner, Paul Gelburd, of a Variance for relief from the required side yard setback for a parking deck and a Design Review Permit, and recommending approval to the City Council for an Encroachment Agreement to allow a parking deck and public stairway to be rebuilt within the public right-of-way at 154 Santa Rosa Avenue (APN 065-112-40); and

**WHEREAS**, the City Council has reviewed and considered the information contained in the October 2, 2007 City Council Staff Report regarding the proposed project; and

**WHEREAS**, the City Council has reviewed and considered the project plans titled "Parking Deck Reconstruction: 154 Santa Rosa Avenue" stamped received by the City of Sausalito on July 17, 2007; and

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

**WHEREAS**, on September 26, 2007, the Planning Commission adopted Resolution No. 2007-29 approving the requested Variance and Design Review Permit and recommending approval of the proposed encroachment to the City Council; and

**WHEREAS**, the Planning Commission found that the proposed project is categorically exempt from the requirements of CEQA pursuant to Section 15301(d); and

**WHEREAS**, the conditions of approval contained in Planning Commission Resolution No. 2007-29 remain in effect.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Sausalito hereby approves the Encroachment Agreement for Application No. DR/EA/V 07-018 to reconstruct a

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parking deck partially in the public right-of-way and to reconstruct a public stair entirely in the public right-of-way at 154 Santa Rosa Avenue, 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 “Parking Deck Reconstruction: 154 Santa Rosa Avenue” stamped received by the City of Sausalito on July 17, 2007.
2. This approval will expire in one (1) year from the date of adoption of this resolution if the property owner has not exercised the entitlements hereby granted.
3. This approval does not include any other construction, site improvements, tree removal and/or alteration, exterior alterations and/or renovations.
4. 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.

5. All exterior security lighting must be small fixtures that are shielded and downward facing, and subject to the review of the Community Development Department prior to final sign off of the building permit.
6. 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.
7. An approval granted by the City Council does not constitute a building permit or authorization to begin any construction. An appropriate permit issued by the Building Division must be obtained prior to constructing, enlarging, moving, converting, or demolishing any building or structure within the City.

8. The Community Development Director 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.

**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.

**PASSED AND ADOPTED** at the regular meeting of the City Council of the City of Sausalito on the \_\_\_\_ day of \_\_\_\_\_, 2007, by the following vote:

AYES: Councilmembers:  
NOES: Councilmembers:  
ABSENT: Councilmembers:  
ABSTAIN: Councilmembers:

\_\_\_\_\_  
Mayor of the City of Sausalito

ATTEST:

\_\_\_\_\_  
Deputy City Clerk

**CITY OF SAUSALITO  
ENCROACHMENT AGREEMENT**

This **ENCROACHMENT AGREEMENT** ("Agreement") is entered into this 2<sup>nd</sup> day of October, 2007, (the "Effective Date") by and between Paul Gelburd ("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/EA/V 07-018 was submitted by Paul Gelburd on May 22, 2007 to allow a parking deck and public stair to be rebuilt (encroachment description) within the public right-of-way fronting property located at 154 Santa Rosa Avenue (address) (APN: 065-112-40) .

B. Application No. DR/EA/V 07-018 includes the reconstruction of parking deck partially encroaching in the public right of way and a public stair entirely encroaching in the public right of way, 20 feet as measured from back of curb (edge of pavement) to the parking deck.

C. The Planning Commission of the City of Sausalito did duly pass and adopt Resolution No. 2007-29 and did thereby approve the Design Review Permit and Variance, recommending approval to the City Council an Encroachment Agreement.

D. The City Council adopted Resolution No. \_\_\_\_ on October 2<sup>nd</sup>, 2007 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 to allow the reconstruction of parking deck partially encroaching in the public right of way and a public stair entirely encroaching in the public right of way (description) at 154 Santa Rosa Avenue/Gelburd Residence (the "Encroachments") a copy of which is attached hereto 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.

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

6. Indemnification. Owners hereby agree 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 Owners.

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 Owners 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.

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10. Standard Conditions. Owner shall comply with any and all Standard Conditions for Encroachment Permits required by the City Engineer.

11. Compliance with Laws. Owners 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:	Paul Gelburd	City of Sausalito
	154 Santa Rosa Avenue	420 Litho Street
	Sausalito, CA 94965	Sausalito, CA 94965
		Attention: City Engineer

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(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.

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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:  
By: \_\_\_\_\_  
Paul Gelburd

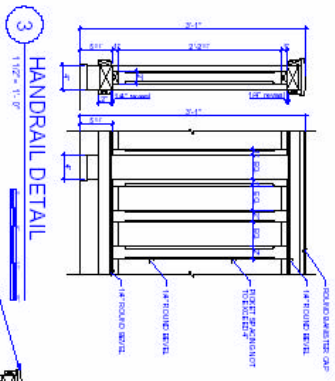
CITY:  
By: \_\_\_\_\_  
D. Michael Kelly, Mayor

RECOMMENDED FOR APPROVAL:  
\_\_\_\_\_  
City Engineer

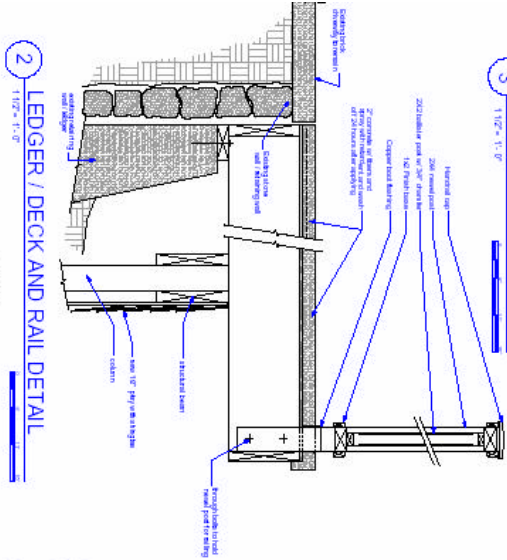
APPROVED AS TO FORM:  
\_\_\_\_\_  
City Attorney

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

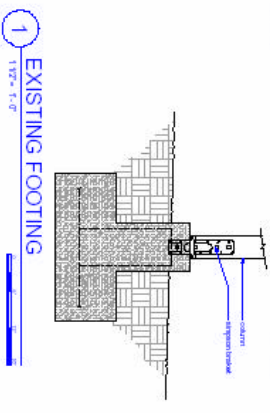
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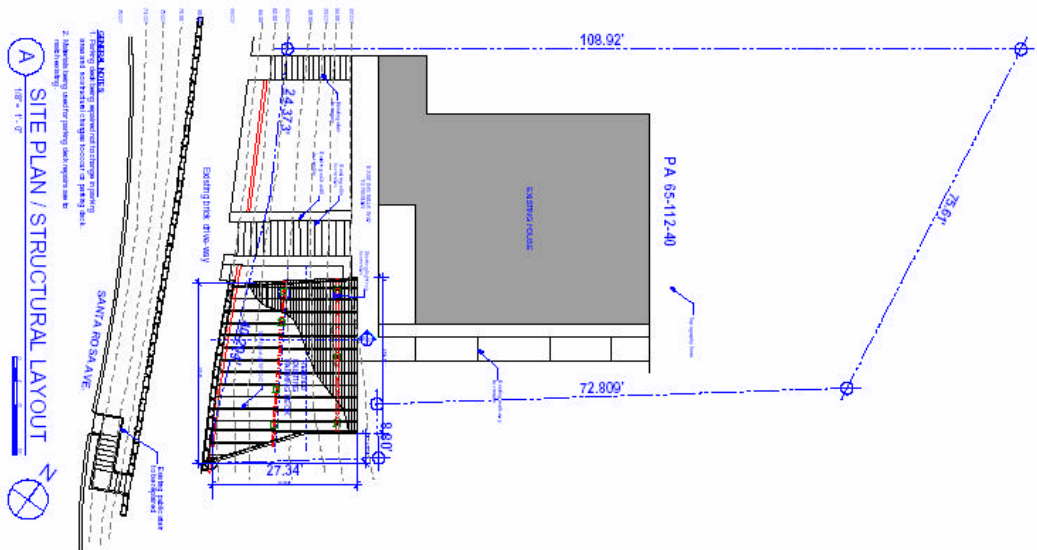
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1/16" = 1'-0"



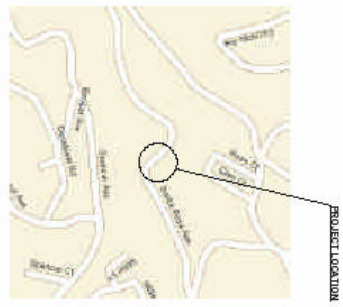
2 LEDGER / DECK AND RAIL DETAIL  
1/16" = 1'-0"



1 EXISTING FOOTING  
1/16" = 1'-0"



A SITE PLAN / STRUCTURAL LAYOUT  
1/8" = 1'-0"



VICINITY MAP

**OWNER**  
Donal D. Solis

**CONSULTANTS**  
DONALD SOLIS ARCHITECTS  
154 SANTA ROSA AVE  
SAUSALITO, CA 94965  
TEL: 415.232.5297  
WWW.DONALDSOLISARCHITECTS.COM

**PROJECT INFORMATION**  
PROJECT NAME: PARKING DECK RECONSTRUCTION  
PROJECT ADDRESS: 154 SANTA ROSA AVE, SAUSALITO, CA 94965  
PROJECT NUMBER: 065-112-40  
PROJECT DATE: 02-11-2018

**APN**  
065-11240

**ZONING**  
R1-6

**CONSTRUCTION TYPE**  
V

**PARCEL SIZE**  
700 sq ft

**DWELLING UNITS**  
One

**STRUCTURE**  
No changes to occur

**HEIGHT**  
No changes to occur

**BLDG. COVERAGE**  
No change to occur

**IMPERVIOUS SURFACE**  
No change to occur

**FLOOR AREA**  
No change to occur

**SHEET INDEX**  
A00 Site Plan, Preparation, Drawings, User/Client  
A01 Foundation Details  
A02

**PARKING DECK RECONSTRUCTION**  
154 SANTA ROSA  
SAUSALITO, CA 94965  
A.P.N. #065-112-40

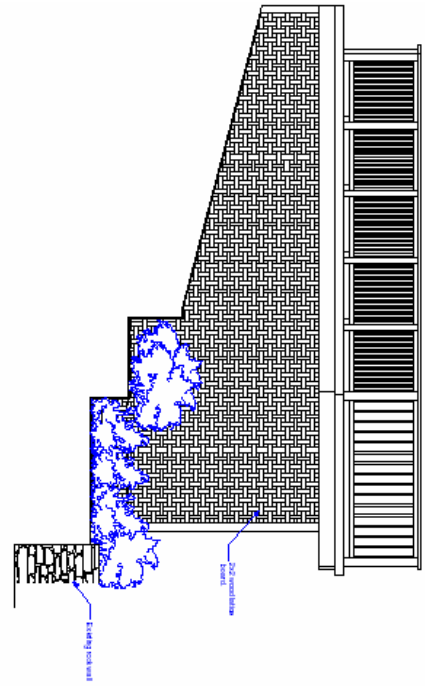
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REV 10.2018

DATE	NO.

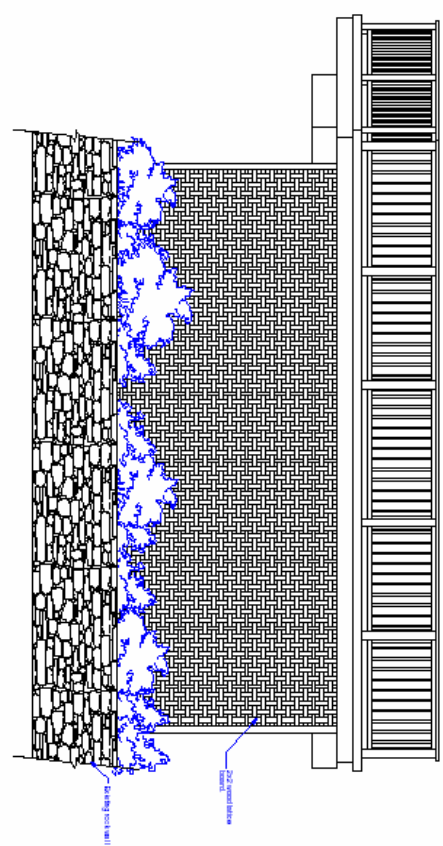
**D O N A L D S O L I S**  
A S S O C I A T E S A R C H I T E C T S

666 Bridgeway, Sausalito, CA 94965 | tel 415.232.5297 | fax 415.232.5569 | email don@donaldsolis.com

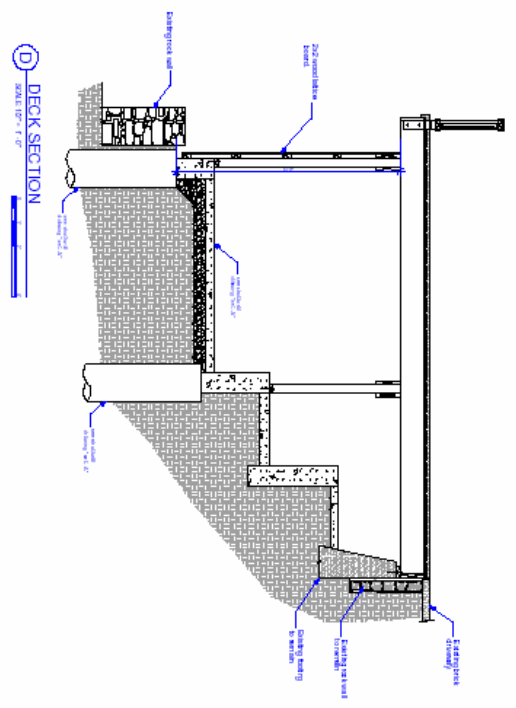
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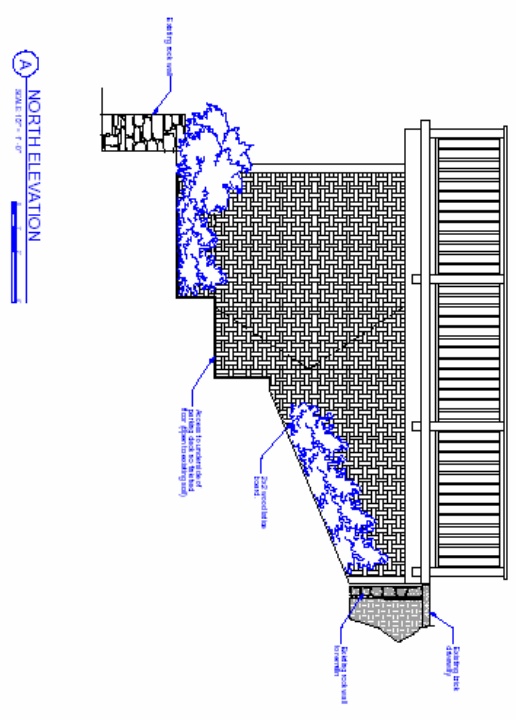
Ⓒ SOUTH ELEVATION  
SCALE: 1/4" = 1'-0"



Ⓓ EAST ELEVATION  
SCALE: 1/4" = 1'-0"



Ⓔ DECK SECTION  
SCALE: 1/4" = 1'-0"



Ⓐ NORTH ELEVATION  
SCALE: 1/4" = 1'-0"

**A2.0**  
MAY 10, 2007

**PARKING DECK RECONSTRUCTION**  
154 SANTA ROSA  
SAUSALITO, CA 94965  
A.P.N. #065-112-40

**DONALD OLSEN**  
ASSOCIATES ARCHITECTS  
766 Bridgeway, Sausalito, CA 94965 tel 415/332-0287 fax 415/332-5869 email dok@donolSEN.com

