

**CITY OF CARMEL-BY-THE-SEA
CITY COUNCIL**

RESOLUTION NO. 2024-071

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA DENYING A PERMEANT ENCROACHMENT APPLICATION (EN 24031, DAS) FOR THE LEGALIZATION OF, AND MODIFICATION TO, EXISTING ENCROACHMENTS IN THE PUBLIC RIGHT-OF-WAY, ADJACENT TO A SINGLE-FAMILY RESIDENCE LOCATED AT THE NORTHEAST CORNER OF STERLING WAY AND PERRY NEWBERRY WAY. APN: 009-162-025-000.

WHEREAS, on February 20, 2024, Anatoly Ostretsov, (“Applicant”) submitted an application on behalf of Tony and Bernice Das (“Owner”) requesting approval of a Permeant Encroachment Permit application EN 24-031 (Das) described herein as (“Application”); and

WHEREAS, the Application has been submitted for the property located at the northeast corner of Sterling Way and Perry Newberry Way in the Single-Family Residential (R-1) District; and

WHEREAS, the Applicant is proposing the applicant is requesting to legalize and maintain existing non-conforming encroachments in the right-of-way; and

WHEREAS, CMC 12.08.125.A states, *At the transfer of property ownership or the issuance of a building permit, the Building Official shall inspect the public right-of-way adjacent to the affected private property. He/she shall require the abatement of any nonconforming encroachments or the property owner may submit an application for an encroachment permit that will be processed in accordance with CMC 12.08.050; and*

WHEREAS, the application has been referred to the City Council in accordance with CMC 12.08.050.D, which states: *If the proposed encroachment does not conform to these standards (CMC 12.08.060), or it is the opinion of the City Administrator that the nature of the encroachment is contrary to the public interest or should be referred to the City Council for determination; and*

WHEREAS, on July 26, 2024, a notice of the public hearing scheduled for July 6, 2024, was published in the Carmel Pine Cone in compliance with State law (California Government Code 65091) and mailed to owners of real property within a 300-foot radius of the project indicating the date and time of the public hearing; and

WHEREAS, on or before July 27, 2024, the Applicant posted the public notice on the project site and hand-delivered a copy of the public notice to each property within a 100-foot radius of the project site indicating the date and time of the public hearing; and

WHEREAS, on July 6, 2024, the City Council held a public hearing to receive public testimony regarding the Encroachment Permit, including without limitation, information provided to the City Council by City staff and through public testimony on the conceptual design of the project; and

WHEREAS, this Resolution and its findings are made based upon evidence presented to the Council at the hearing including, without limitation, the staff report and attachments submitted by the Community Planning and Building Department; and

WHEREAS, the City Council did hear and consider all said reports, attachments, recommendations and testimony herein above set forth and used their independent judgement to evaluate the project; and

WHEREAS, the California Environmental Quality Act (California Public Resources Code §§

21000, *et seq.*, “CEQA”), together with State Guidelines (14 California Code Regulations §§ 15000, *et seq.*, the “CEQA Guidelines”) and City Environmental Regulations (CMC 17.60) require that certain projects be reviewed for environmental impacts and that environmental documents be prepared; and

WHEREAS, according to Section 15270 of the California Environmental Quality Act (CEQA), State CEQA guidelines, and local environmental regulations, CEQA does not apply to projects which a public agency rejects or disapproves. Further, the physical removal of the encroaching features was considered as part of the associated Design Study (DS 23-171) as all encroaching features were proposed to be removed as part of that project. That project was found by the Planning Commission to be Categorically Exempt under Section 15303 (Class 3) – New Construction or Conversion of Small Structures; and

WHEREAS, the facts set forth in the recitals are true and correct and are incorporated herein by reference.

NOW THEREFORE, BE IT RESOLVED, that the Planning Commission of the City of Carmel-By-The-Sea made the following findings and determinations regarding Encroachment Permit Application EN 24-031 (Das):

- 1) There is no justifiable need for the encroachment;
- 2) The encroachment may impact the public’s right to access the right-of-way (visual and physical);
- 3) The encroachment is incompatible with the policies, ordinances, and design guidelines for the treatment of the right-of-way; and
- 4) The encroachment would diminish the ability to enhance and improve the public greenbelt.

BE IT FURTHER RESOLVED that the City Council of the City of Carmel-by-the-Sea does hereby:

DENY a Permeant Encroachment Application (EN 24-031) for the legalization of, and modification to, existing encroachments in the public right-of-way, adjacent to a single-family residence located at the northeast corner of Sterling Way and Perry Newberry Way. APN: 009-162-025-000. Encroachments shall be removed and right-of-way improvements shall be carried out consistent with the Design Study Approval, DS 23-171, and the associated Conditions of Approval (Resolution 2024-034-PC).

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 6th day of August, 2024, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

Dave Potter, Mayor

Nova Romero, MMC, City Clerk