

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

RESOLUTION NO. 2024-078

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA APPROVING A PERMANENT 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” & “Permittee”) requesting approval of a Permanent 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 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 August 6, 2024, the City Council held a public hearing to receive public testimony regarding the Application, including without limitation, information provided to the City Council by City staff and through public testimony; and

WHEREAS, at the August 6, 2024 City Council hearing, Staff had recommended denial of the Application and had prepared a resolution for denial; and

WHEREAS, at the August 6, 2024 hearing, following deliberations and consideration of the facts of Application, the Council moved to approve the Application; and

WHEREAS, staff has prepared a revised resolution based on the findings and direction made by the City Council at the August 6, 2024 hearing for approval and adoption and has returned to the City Council at this September 10, 2024 meeting for adoption of the findings and conditions; and

WHEREAS, this Resolution and its findings and conditions are made based upon

evidence presented to the Council at the August 6, 2024 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, the City Council finds that pursuant to CEQA regulations, the Application is categorically exempt under Section 15303 (Class 3) – New Construction or Conversion of Small Structures, and Section 15305 (Class 5) – Minor Alterations in Land Use Limitations, and no exceptions to the exemption exist pursuant to section 15300.2 of the CEQA Guidelines; 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 City Council of the City of Carmel-By-The-Sea does hereby make the following findings and determinations regarding Encroachment Permit Application EN 24-031 (Das):

- 1) The proposed encroachment would not create a hazard to public health or safety;
- 2) The subject encroaching wall supports the drainage pattern for the block;
- 3) The encroachment allows for the free and safe movements of pedestrians and vehicles as the encroachment limits vehicular parking in the street that may otherwise create a “pinch point” in the street by allowing more access to parking, should the encroachment be removed;
- 4) The encroachment fits the character of the surrounding neighborhood; and
- 5) The existing vegetation contained within the area of the encroachment is significant and removal of the encroachment would diminish landscaped area, and the walls protects the trees within the right-of-way.

BE IT FURTHER RESOLVED that the City Council of the City of Carmel-by-the-Sea does hereby **APPROVE** a Permeant Encroachment Application (EN 24-031) to legalize, and modify, 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, subject to the following Conditions of Approval:

CONDITIONS OF APPROVAL	
No.	
1.	Authorization. This approval authorizes a Permeant Encroachment Application (EN 24-031) to legalize, and modify, 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.
2.	Validity. The property owner (permittee) shall apply for and obtain a permanent encroachment permit from the Community Planning and Building Department in

	accordance with CMC 12.08.040 within six (6) months of the date of this action. Failure to apply for and obtain the encroachment permit within six months shall render this decision null and void.
3.	Conditions of Approval. All Conditions of Approval of this Resolution, Resolution 2024-078, shall be Conditions of the subject Encroachment Permit as described in Condition of Approval #2, above. This Resolution, Resolution 2024-078, shall be submitted with the Encroachment Permit Application described in Condition of Approval #2, above.
4.	Authorized Encroachments. The City Council of the City of Carmel-By-The-Sea does hereby authorize the encroachments expressly shown/listed in Exhibit A (attached to this Resolution) and no other encroachments provided an encroachment permit is obtained, as described in Condition of Approval #2, above.
5.	Encroachments to be Abated. City Council of the City of Carmel-By-The-Sea does hereby require the abatement of the encroaching brick wall and fence within the right-of-way located near the southeast corner of the site, as depicted in Exhibit A (attached to this Resolution) prior to final inspection for the associated building permit for the project (BP 240329). Further, all new improvements within this vicinity shall: 1) be located on private property (except for landscaping, which may be located in the right-of-way), 2) conform to the underlying zoning requirements and residential design guidelines, and 3) be shown on the project plans for appropriate review and approval.
6.	Hold Harmless & Insurance. Prior to issuance of the encroachment permit (refer to Condition of Approval #2, above), the permittee shall execute an agreement holding the City harmless from any and all claims, actions and demands of third parties of any kind, character and description arising out of or due to any accident or mishap in, on or about said encroachment so constructed or maintained or any error or omission resulting in personal injury or property damage. The permittee shall provide a certificate of insurance and an endorsement naming the City as an additional insured for the term of the maintenance of the encroachment establishing that the permittee has \$2,000,000 in combined single limit insurance for personal injury and/or property damage per occurrence and \$4,000,000 in aggregate caused by or due to the presence of the encroachment in the CC, SC, RC and R-4 districts and \$500,000 of this coverage in the R-1 district unless some other insurance is approved by the City Administrator or the designee of the City Administrator. The limit of insurance and any other requirements relating to the insurance required may be adjusted by the City Council from time to time by resolution. The insurance carrier shall certify that the insurance is currently in force and that it will notify the City 10 days in advance of any material change in the policy, including cancellation or nonrenewal thereof. This insurance shall be primary over any other collectible or valid insurance the City may have. In addition, the bonding requirement set forth in Chapter 12.16 CMC shall be met for an encroachment involving excavation work. The City shall have the executed hold harmless agreement recorded with the Monterey County Recorder's office. The recorded document becomes a permanent record, and an encroachment permit and its conditions run with the land. In the event of change of ownership of the property, the terms and conditions of the hold harmless agreement are conveyed with the title.
7.	Revocation. The City Council reserves the right to revoke any encroachment permit at any time if the permit is not in the public interest or if it fails to meet the other requirements of this chapter. Failure of the permit holder to maintain the required insurance or pay an assessed fee shall result in the immediate revocation of the permit. The City Council may order the removal of the encroachment by the permittee. Should a permittee fail to comply with the Council's order for removal, the City may undertake the removal of the encroachment. In that event, the City's costs of removal shall be assessed against the

	permit holder and/or the property and become a lien against the property.
8.	Indemnification. The Permittee agrees, at his or her sole expense, to defend, indemnify, and hold harmless the City, its public officials, officers, employees, and assigns from any liability; and shall reimburse the City for any expense incurred, resulting from, or in connection with any project approvals. This includes any appeal, claim, suit, or other legal proceedings to attack, set aside, void, or annul any project approval. The City shall promptly notify the Applicant of any legal proceeding and cooperate fully in the defense. The City may, at its sole discretion, participate in any such legal action, but participation shall not relieve the Applicant of any obligation under this condition. Should any party bring any legal action in connection with this project, the Superior Court of the County of Monterey, California, shall be the situs and have jurisdiction for resolving all such actions by the parties hereto.

PASSED, APPROVED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 10th day of September, 2024, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

Dave Potter
Mayor

Nova Romero, MMC
City Clerk

Exhibit A Authorized Encroachments

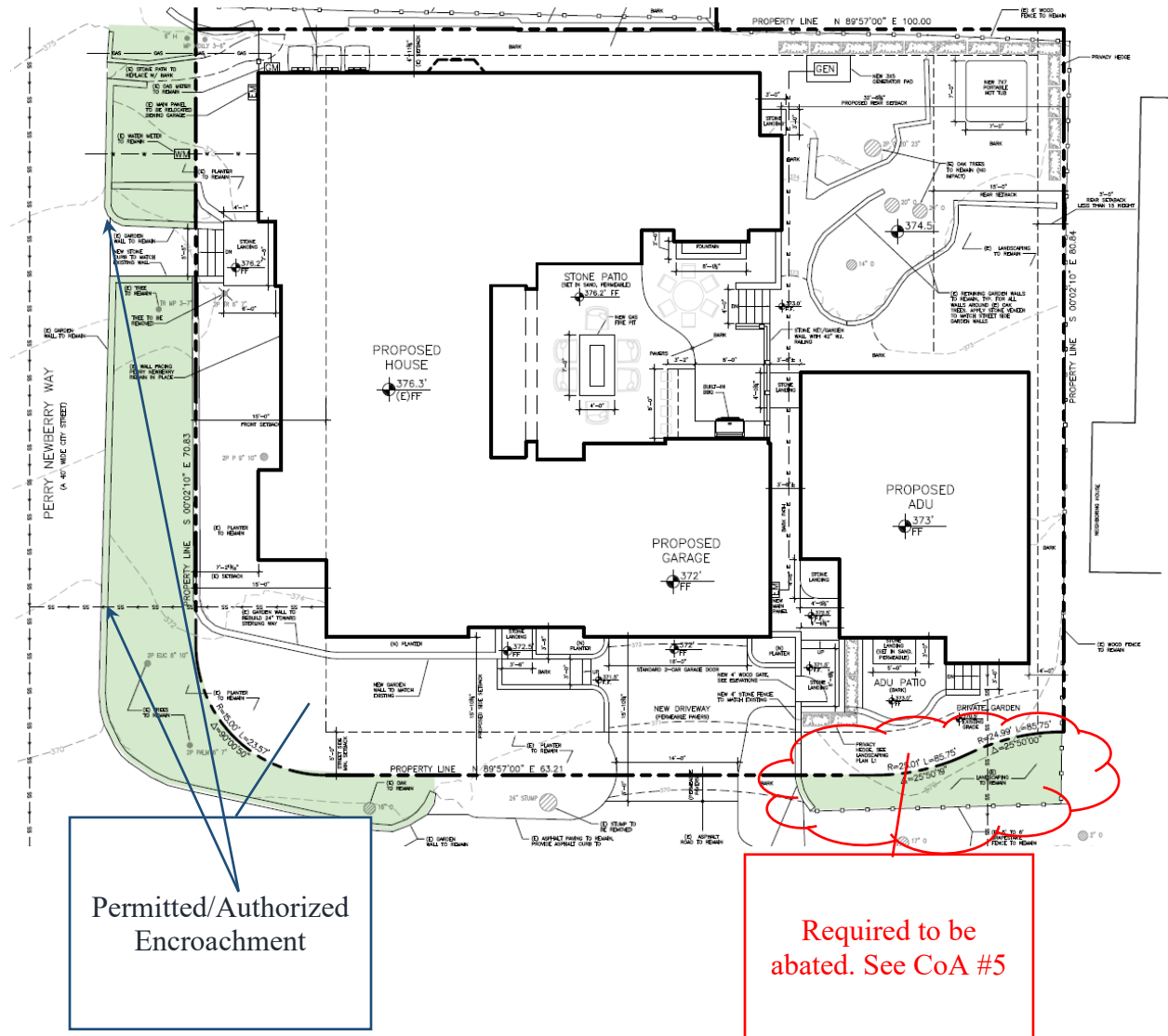


Figure 1. Applicant’s proposed site plan for encroachment permit EN 24-031. Encroachments authorized under this approval include the existing and proposed encroachments in the right-of-way shown on the site plan between **Point A** and **Point B** (moving linearly along the property line from north to south, generally). The existing encroachments between **Point C** and **Point D** (moving linearly along the property line from west to east, generally) shall be abated in accordance with Condition of Approval #5. No other encroachments are authorized under this approval.