



CITY OF CARMEL-BY-THE-SEA

Encroachment Permit EN 240031 (Das)

City Council Meeting
September 10, 2024

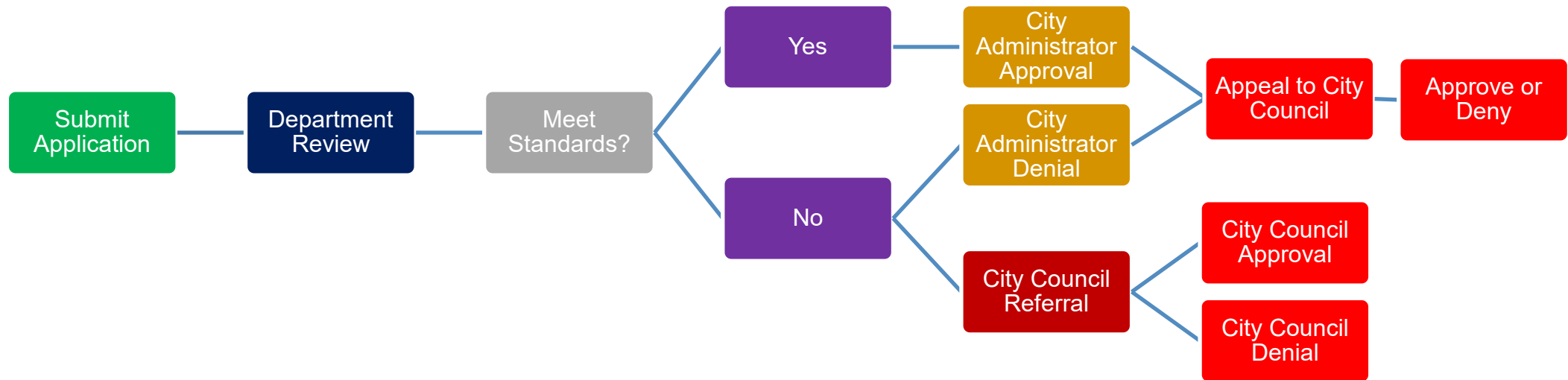


Background

- May 8, 2024
 - PC Approved Track 2 Design Study
 - Conditions of Approval: Remove encroachment or obtain encroachment permit
- August 6, 2024
 - Encroachment Permit Application Considered by Council
 - Staff recommended denial and prepared resolution accordingly
 - Council moved 3-2 to approve encroachments
- September 10, 2024 - **TODAY**
 - Staff returned with Resolution for approval for adoption based on August 6, 2024 discussion.



Review Process





Standard of Review

12.08.050 Permit – Process and Determination.

- A. NOT APPLICABLE (review standard for commercial districts)
- B. The Director of Community Planning and Building shall forward the application for encroachment permit to the City Administrator after the appropriate City department(s) has reviewed the application and made recommendations.
- C. **The City Administrator, or his/her designate, may approve the application if it conforms to the standards set forth in CMC 12.08.060 below.**
- D. **If the proposed encroachment does not conform to these standards, 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, then the application shall be scheduled for action by the City Council.** In all other cases, the decision of the City Administrator shall be final, unless appealed as provided for in CMC 12.08.090. The applicant shall be notified by the City Administrator within 10 days of the City Administrator's decision to grant, deny, or refer any application.
- E. NOT APPLICABLE (review standard for wireless facilities)

12.08.060 Encroachment Application Review Standards.

- A. Need. The applicant shall be determined to have a justifiable need for the encroachment, and the encroachment shall not be contrary to the public interest.
- B. Safety. The granting of an encroachment permit shall not create a hazard to public health or safety.
- C. Drainage. The proposed encroachment shall not adversely affect the normal drainage of surface water, unless an acceptable mitigation is included that will be advantageous to the general public and meet the standards herein.
- D. Circulation and Parking.
- E. Public Use and Enjoyment.
- F. Compatibility.
- G. Public Property/Greenbelt.



Mandatory Findings

- Staff - Must make all 5 to approve
- Council - Not required to make all 5 (Discretion allowed)
 - **12.08.050 Permit – Process and Determination.**
 - A. Applications for encroachments involving properties in the CC, SC, RC and R-4 districts which accompany applications for design review shall be forwarded to the Planning Commission for its consideration and recommendation.
 - B. The Director of Community Planning and Building shall forward the application for encroachment permit to the City Administrator after the appropriate City department(s) has reviewed the application and made recommendations.
 - C. The City Administrator, or his/her designate, may approve the application if it conforms to the standards set forth in CMC [12.08.060](#) below.
 - D. If the proposed encroachment does not conform to these standards, 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, then the application shall be scheduled for action by the City Council. In all other cases, the decision of the City Administrator shall be final, unless appealed as provided for in CMC [12.08.090](#). The applicant shall be notified by the City Administrator within 10 days of the City Administrator's decision to grant, deny, or refer any application.
 - E. Notwithstanding CMC [12.08.040](#)(A) and [12.08.050](#)(A), (B), (C) and (D), for applications that are subject to both Chapters [12.08](#) and [17.46](#) CMC, the reviewing authority under Chapter [17.46](#) CMC shall process and decide both applications concurrently under the procedures in Chapter [17.46](#) CMC, including any appeals. (Ord. 2023-06 § 4, 2023; Ord. 89-9 § 1, 1989).



Findings

12.08.060 Encroachment Application Review Standards.

Need.

Council Finding: No specific finding was made for this standard

Safety.

Council Finding: The proposed encroachment would not create a hazard to public health or safety.

Drainage.

Council Finding: The subject encroaching wall supports the drainage pattern for the block.

Circulation and Parking.

Council Finding: The encroachment allows for the free and safe movements of pedestrians and vehicle: 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.

Public Use and Enjoyment.

Council Finding: No specific finding was made for this standard

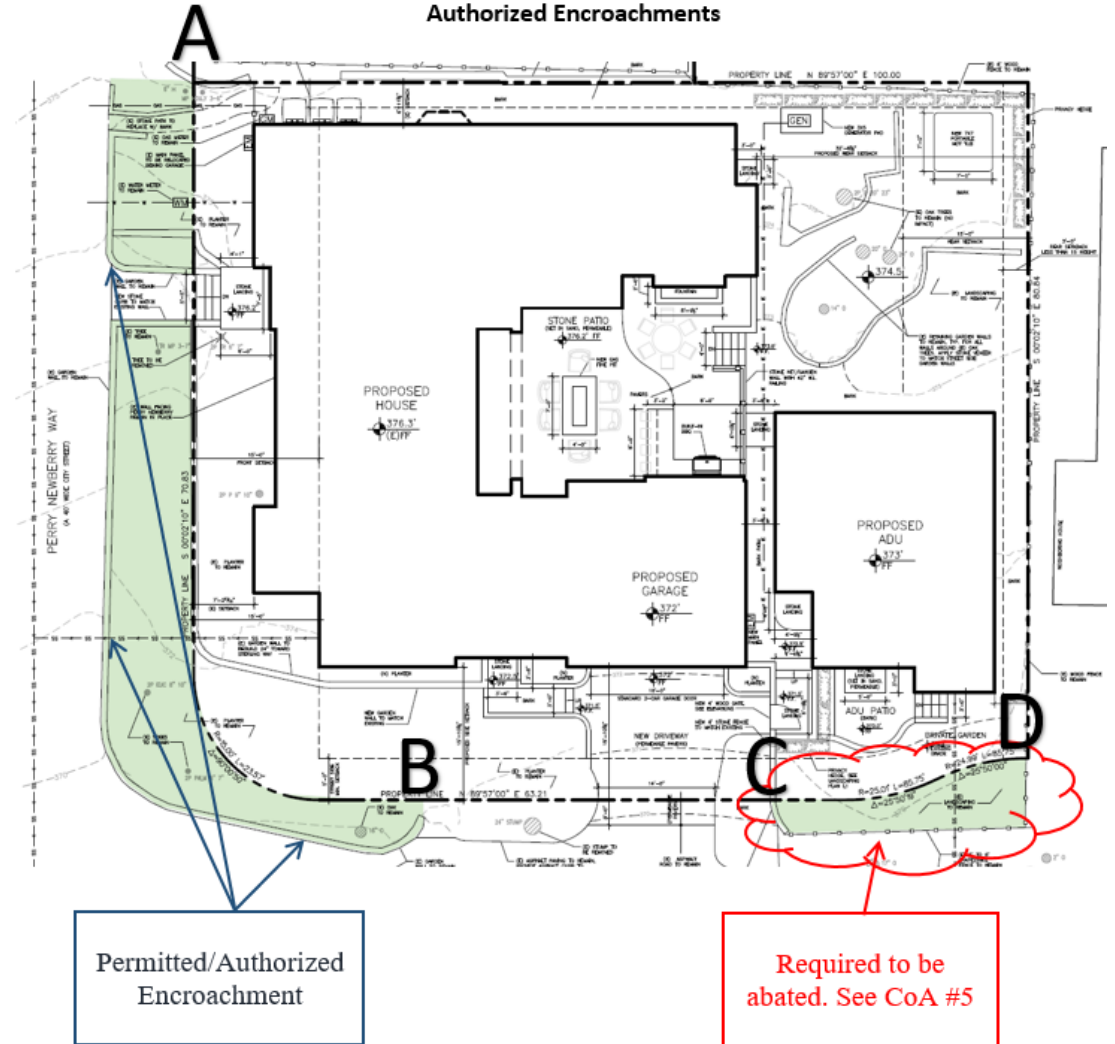
Compatibility.

Council Finding: The encroachment fits the character of the surrounding neighborhood.

Public Property/Greenbelt.

Council Finding: The existing vegetation contained within the area of the encroachment is significant and removal of the encroachment would diminish landscaped area, and the walls protect the trees within the right-of-way.

Exhibit A
Authorized Encroachments





Recommendation

Adopt a resolution (attachment 1) approving a Permanent Encroachment Application (EN 240031) 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.