

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

RESOLUTION NO. 2025-026

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA GRANTING PARTIAL APPROVAL OF A PERMANENT ENCROACHMENT APPLICATION (EN 250005, SALEHI) ALLOWING THE LEGALIZATION AND MAINTENANCE OF A PLANTER-STYLE RETAINING WALL WITHIN THE PUBLIC RIGHT-OF-WAY EAST OF AND ADJACENT TO THE DRIVEWAY FRONTING 1ST AVENUE, AND DENYING THE LEGALIZATION AND MAINTENANCE OF NON-CONFORMING PERIMETER RETAINING/GARDEN WALLS, PLANTER CURBS, AND STEP LANDINGS IN THE PUBLIC RIGHT-OF-WAY LOCATED AT THE SOUTHWEST CORNER OF SANTA RITA STREET AND 1ST AVENUE IN THE SINGLE-FAMILY RESIDENTIAL (R-1) DISTRICT. APN: 010-027-001-000.

WHEREAS, on January 9, 2025, Amy Denney, (“Applicant”) submitted an application on behalf of Amir and Elmira Salehi (“Owner”) requesting approval of a Permanent Encroachment Permit application EN 250005 (Salehi) described herein as (“Application”); and

WHEREAS, the Application has been submitted for the property located at the southwest corner of Santa Rita Street and 1st Avenue in the Single-Family Residential (R-1) District; and

WHEREAS, on August 12, 2024, Planning staff approved Design Study Application, DS 24115 (Salehi), authorizing additions to the historic “Mary Haven House” (1941), following a Determination of Consistency with the *Secretary of the Interior’s Standards for the Treatment of Historic Properties* by the Historic Resources Board (Resolution 2024-004-HRB); and

WHEREAS, a building permit was issued on February 4, 2025; and

WHEREAS, in accordance with Carmel-by-the-Sea Municipal Code (CMC) Section 12.08.125, Nonconforming Existing Encroachments, at the issuance of a building permit, nonconforming encroachments shall be abated or the property owner may submit an application for an encroachment permit; and

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

WHEREAS, in accordance with CMC Section 12.08.030 (Permit-Required), a permit is required to create, erect, construct, place, operate, or maintain any obstruction, structure, or encroachment, including utility lines, sanitary system transmission lines, or reclaimed water system lines in, over, under or on any sidewalk area, street, public right-of-way, park or parkway; and

WHEREAS, in accordance with CMC Section 12.08.050 (Permit-Process and Determination), the City Administrator or his/her designee may approve the application if it conforms to the standards set forth in CMC 12.08.060 (Encroachment Application Review Standards); and

WHEREAS, 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; and

WHEREAS, on February 14, 2025, a notice of the public hearing scheduled for December 3, 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 February 20, 2025, 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 March 4, 2025, the City Council held a duly noticed public hearing to receive public testimony regarding the Permanent Encroachment Permit application, including without limitation, information provided to the City Council by City staff and through public testimony; 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 15301 of the California Environmental Quality Act (CEQA), State CEQA guidelines, and local environmental regulations, the project is categorically exempt from CEQA under Class 1, Existing Facilities, and no exceptions to the exemption exist; 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; 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 250005 (Salehi):

- 1) There is a justifiable need for the planter-style retaining wall in the public right-of-way immediately east of and adjacent to the driveway fronting 1st Avenue, due to topography; and
- 2) There is no justifiable need for any of the remaining retaining/garden walls, planter curbs, or step landings, which are contrary to public interest; may impact the public's right to access the right-of-way (visual and physical); are incompatible with the policies, ordinances, and design guidelines for the treatment of the right-of-way; and may 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 **GRANT** partial approval of Permanent Encroachment Application (EN 250005, Salehi) allowing the legalization and maintenance of a planter-style retaining wall within the public right-of-way east of and adjacent to the driveway fronting 1st Avenue, and denying the legalization and maintenance of non-conforming perimeter retaining/garden walls, planter curbs, and step landings in the public right-of-way located at the southwest corner of Santa Rita Street and 1st Avenue in the Single-Family Residential (R-1) District. APN: 010-027-001-000.

PASSED, APPROVED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 4th day of March, 2025, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

Dale Byrne
Mayor

Nova Romero, MMC
City Clerk