

130 41st Street/November 5, 2014

7.36.065 - Required findings and Staff analysis of findings

The Director of Community Development, in granting approval of an encroachment permit application, shall make the following findings:

A.

The granting of the encroachment permit will not be materially detrimental to the public health, safety, convenience, and welfare or injurious to property and improvements in the same vicinity and zone in which the property is located;

The proposed project will be detrimental to public safety because of the possibility for accidental run-off on the adjacent street and driveways, particularly if there were a vehicle collision as this is a drive street and the presence as an attractive nuisance.

B.

The granting of the encroachment permit will be in conformity with the policies and goals of the General Plan;

The granting of the encroachment permit is not in conformity with the General Plan Policy I-1.10 (Encroachment Standards) because water features and other structures are prohibited from encroaching in the public right of way unless approved by the City Council.

C.

The proposed encroachment will comply with the provisions of this chapter, including any specific condition required;

The proposed encroachment does not comply with the encroachment standards because the existing permitted improvements (planter) that have been made non-conforming by changes to these standards may remain provided any nonconforming element is not increased or expanded. The intent is to cause nonconforming encroachments to be brought into conformity concurrent with major alterations or entirely new structures constructed on adjoining private property which has not occurred since construction of the initial encroachment. Converting the planter to a fountain intensifies the nonconforming use.

D.

The proposed encroachment will not encroach into the area of the right of way occupied by an improved paved sidewalk or pedestrian or vehicular accessway or stairway, except as expressly provided in this chapter;

The water fountain feature is located 2' minimum from the existing street improvements and 41st Street does not have paved sidewalks or other pedestrian access.

E.

The proposed encroachment will not reduce or adversely impact public pedestrian access along the paved and improved portion of the sidewalk, walk street, alley or stairway and does not reduce or adversely impact the vehicular access along the improved alley.

The proposed encroachment will utilize the previously existing planter box; there are no proposed changes to dimensions or distance from the street improvements.

F.

For properties that are located in the coastal zone, the proposed encroachment will be consistent with the public access and recreation policies of Chapter 3 of the California Coastal Act of 1976, as follows:

1.

The proposed encroachment will not impact public access to the shoreline, adequate public access is provided and shall be maintained in the public right of way adjacent to the subject property (Section 30212 (a)(2)).

The proposed encroachment will not impact public access, and will maintain existing right of way clearance on 41st Street.

2.

The present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area (Section 30221).

The Municipal Code does not allow for public or commercial recreational activities to be conducted on residential properties.