

STAFF REPORT

SAUSALITO ZONING ADMINISTRATOR

Project Pizzeria Rossetti / 45 Caledonia Street
Minor Use Permit, Sidewalk Dining Encroachment Permit
MUP/EP 10-332

Meeting Date November 18, 2010

Staff Alison Thornberry, Assistant Planner



REQUESTS

- Approval of a **Minor Use Permit** to allow an outdoor dining area with four tables and eight seats in front of Pizzeria Rossetti.
- Approval of a **Sidewalk Dining Encroachment Permit** to allow the outdoor dining area to be located in the public right-of-way at 45 Caledonia Street.

PROJECT INFORMATION

Applicant Maurizio Rossetti

Property Owners William Rota

Location/Size 45 Caledonia Street; APN 065-056-21
14,476 square feet (see **Exhibit A** for vicinity map)

General Plan Mixed Residential Commercial

Zoning Commercial Residential (CR) Zoning District

Authority Minor Use Permit (Zoning Ordinance Section 10.58.020)
Sidewalk Dining Encroachment Agreement (Zoning Ordinance Section 10.44.220.C.2)

BACKGROUND

The proposed project site has a long history of restaurant uses. In 1974 a Conditional Use Permit was approved for a 16-seat restaurant, Benkei Sukiyaki, with alcohol service. The most-recent restaurant was Fukusuke, a Japanese restaurant, which closed in 2006. Pizzeria Rossetti was approved and opened in 2010.

On October 14, 2010 the applicant, Maurizio Rossetti, submitted an application for a Minor Use Permit and Sidewalk Dining Encroachment Permit for an outdoor dining area located in the public right-of-way located immediately in front of the Pizzeria Rossetti at 45 Caledonia Street.

PROJECT DESCRIPTION

The proposed outdoor dining area is for a restaurant located at 45 Caledonia Street, known as "Pizzeria Rossetti". The restaurant currently is permitted to have 16 seats, and the new outdoor dining area will add four small, bistro tables with eight outdoor seats along the sidewalk. The dining

area will be placed directly in front of the building, which currently provides for an approximately 10 foot wide pedestrian passageway within the sidewalk and where there is an existing tree well, there is an approximately 6.75 foot wide passageway. The installation of the tables will create a passageway of 8 feet from the tables to the curb, and a slightly smaller passageway of 4.9 feet from the table to the existing tree well.

A review of records on file with the Community Development Department indicates that there are no specific conditions that would prohibit the location of the outdoor dining in front of Pizzeria Rossetti. As such, staff concludes that the addition of the outdoor dining would not violate any specific property conditions.

PROJECT ANALYSIS

GENERAL PLAN CONSISTENCY

To approve the proposed project the Zoning Administrator must determine that the project is consistent with all applicable General Plan policies. Staff has identified the following programs and policies as most relevant to the proposed project:

Land Use Consistency

Policy CP-1.5 Encroachments. Manage encroachment of public street rights-of-way by private development.

Staff Comment: The location of outdoor dining in sidewalks is a permitted use through the issuance of a Minor Use Permit, and a Sidewalk Dining Encroachment Permit as stipulated in Section 10.44.220.C of the Zoning Ordinance. Conditioned on compliance with the requirements for outdoor dining, staff concludes the encroachment can be appropriately managed and will enhance and enliven the streetscape.

Policy LU-2.0 Promote and Enhance Commercial Economic Diversity. Promote and enhance economic viability of all commercial areas throughout the City, while continuing to recognize residential needs, by establishing distinct commercial districts that preserve the variety of uses serving residents and visitors.

Staff Comment: The subject restaurant is one of the many restaurants in the immediate area. Enhancement of the restaurant and outdoor dining will attract customers and promote the establishment's economic viability as a local business that serves local residents, visitors, and employees in Sausalito.

Summary

The outdoor dining site design is consistent with important features identified in the General Plan with respect to encroachments and economic diversity compatibility with surrounding property owners and businesses.

ZONING CONSISTENCY

The following outlines the applicable Zoning Ordinance regulations for the requested outdoor dining area.

Minor Use Permit

In order to approve or conditionally approve the Minor Use Permit, the Zoning Administrator must determine that proposed project is in conformance with the findings listed in Section 10.58.050 of the Zoning Ordinance. Staff concludes the requisite findings for the Minor use Permit can be made to approve the permit, as summarized in the following analysis and in the findings listed in the attached Resolution (see **Exhibit B**).

Outdoor Dining Regulations

Pursuant to Section 10.44.220.C of the Zoning Ordinance, outdoor eating areas located in the sidewalk are subject to approval of a Minor Use Permit by the Zoning Administrator and a Sidewalk Dining Encroachment Permit by the Community Development Department. The following summarizes the applicable regulations from this Section and the project's compliance. As indicated in the table below, the proposed outdoor dining area is compliant with the requirements for outdoor dining. Conditions of approval stipulated by Section 10.44.220.C of the Zoning Ordinance have been included in the attached draft resolution of approval.

Outdoor Dining Regulations (10.44.220.C)	Analysis
<p>a. Safe Passage. Safe and adequate passage of 48" width shall be provided both along the sidewalk and from the curb to the sidewalk (to provide for two pedestrians walking side by side or by a single wheelchair.) No tables or chairs shall be placed or allowed to remain on any sidewalk that inhibits passage.</p>	<p>The outdoor dining area provides a pedestrian passageway of 8 feet at its widest point and 4.9 feet at its narrowest point, which adequately meets the safe passage requirements.</p>
<p>b. Location. Permits shall only be issued to allow the use of sidewalk immediately adjacent to the restaurant seeking the permit.</p>	<p>The outdoor dining area is immediately adjacent to the restaurant, and thus satisfies this requirement.</p>
<p>c. Food Service. The establishment obtaining the Permit shall be engaged in food service and shall provide such service at the tables subject to the Permit.</p>	<p>The outdoor dining will serve a restaurant providing food service, which satisfies this requirement.</p>
<p>d. Capacity of outdoor eating area. An outdoor eating area on private property shall not exceed the most restrictive of the following limits, unless otherwise authorized by the Zoning Administrator in the required Minor Use Permit:</p> <ol style="list-style-type: none"> 1. 25 percent (25%) of the indoor dining area of the restaurant; or 2. 5 tables; or 3. A capacity of 20 people. 	<p>The proposed outdoor dining area is exempt from this regulation, since the outdoor dining area is located on public right-of-way and not on private property.</p>
<p>e. Parking. Eating establishments with outdoor eating areas in public rights-of-way shall be exempt from additional parking requirements.</p>	<p>The outdoor dining area is exempt from additional off-street parking requirements.</p>

CONCLUSION

In summary, staff finds merit in the project design and outdoor dining site plan. The project promotes and enhances economic viability in the Commercial Residential Zoning District, by creating a use that preserves variety for residents and visitors.

PUBLIC NOTICE AND CORRESPONDENCE

- November 5, 2010 – Notices were mailed to all residents and property owners and interested persons within 300 feet of the project site.
- Staff received one written correspondence from Neil and Elly Gibbs of 6 Bonita Street, in support of the outdoor dining at Pizzeria Rossetti (see **Exhibit C**)

RECOMMENDATION

Staff recommends the Zoning Administrator approve the attached draft resolution (**Exhibit B**) which takes the following actions regarding the proposed outdoor dining at 45 Caledonia Street:

- Approval of a **Minor Use Permit** to allow an outdoor dining area with four tables and eight seats in front of the Pizzeria Rossetti.
- Approval of a **Sidewalk Dining Encroachment Permit** to allow the outdoor dining area to be located in the public right-of-way at 45 Caledonia Street.

Additionally, the Zoning Administrator may:

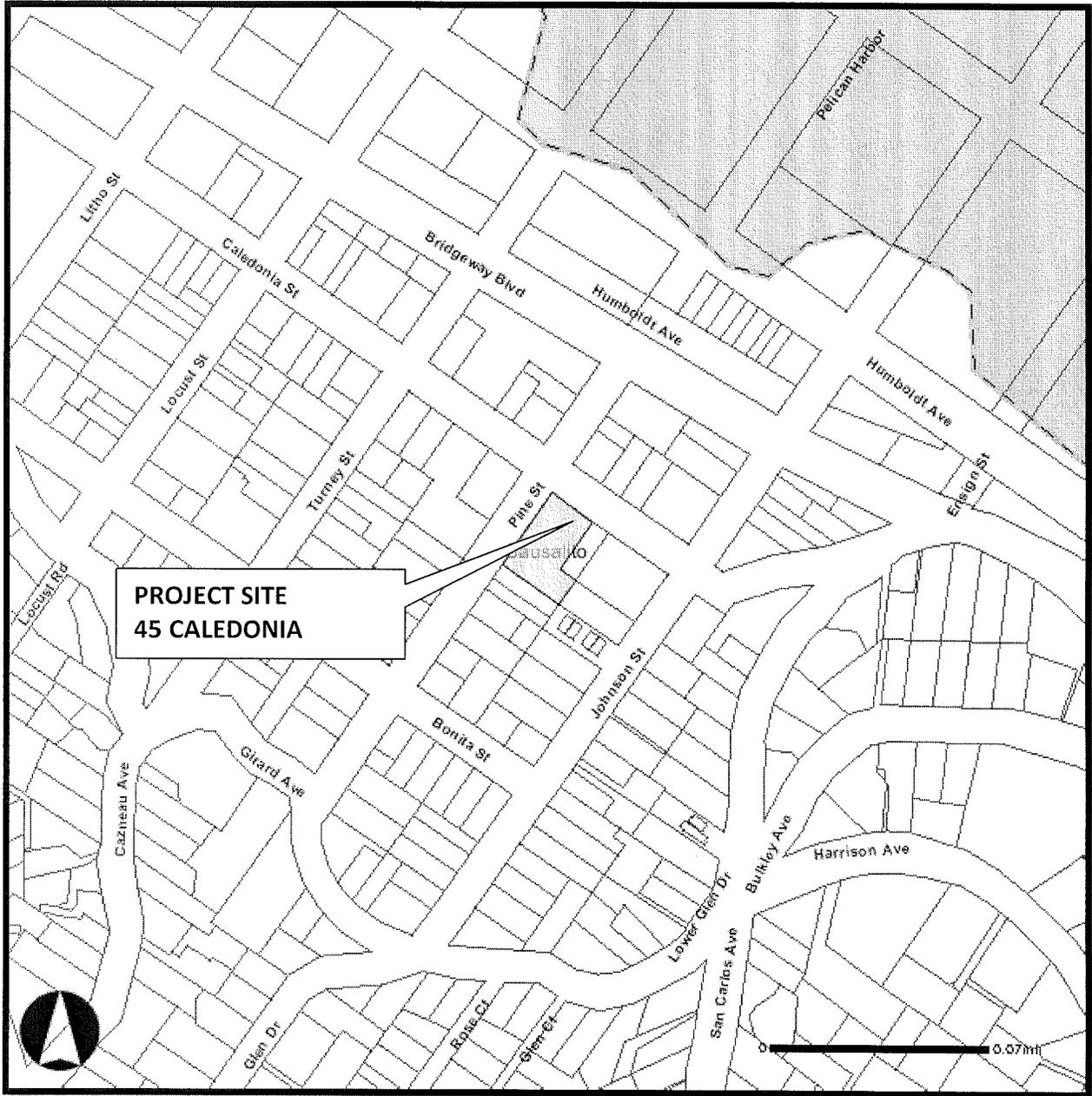
- Approve the application with modifications;
- Continue the application for additional information and/or project revisions; or
- Deny the application and direct Staff to return with a Resolution of Denial.

EXHIBITS

- A. Vicinity Map
- B. Resolution (Draft)
- C. Correspondence from Neil and Elly Gibbs, dated stamped November 10, 2010

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Vicinity Map



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Exhibit A

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**SAUSALITO ZONING ADMINSTRATOR
RESOLUTION NO. 2010-XX**

**A RESOLUTION APPROVING A MINOR USE PERMIT AND SIDEWALK DINING
ENCROACHMENT PERMIT FOR AN OUTDOOR DINING AREA LOCATED ON THE
SIDEWALK ADJACENT TO PIZZERIA ROSSETTI AT 45 CALEDONIA STREET
(MUP/EP 10-332)**

WHEREAS, an application has been filed by applicant, Maurizio Rossetti, requesting Zoning Administrator approval of a Minor Use Permit and Sidewalk Dining Encroachment Permit to allow an outdoor dining area in the public right-of-way, adjacent to the restaurant, Pizzeria Rossetti, located at 45 Caledonia Street (APN 065-056-21); and

WHEREAS, the Zoning Administrator conducted a duly noticed public hearing on November 18, 2010 at which time all interested persons were given an opportunity to be heard; and

WHEREAS, the Zoning Administrator has reviewed and considered the project plans titled "Pizzeria Rossetti – 45 Caledonia Street" date-stamped received on October 14, 2010; and

WHEREAS, the Zoning Administrator has considered all oral and written testimony on the subject application; and

WHEREAS, the Zoning Administrator has considered the information contained in the staff report dated November 18, 2010; and

WHEREAS, the Zoning Administrator finds that the proposed project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301; and

WHEREAS, the Zoning Administrator finds that, as conditioned herein, the proposed project complies with the requirements of the General Plan and Zoning Ordinance as described in the staff report dated November 18, 2010.

NOW, THEREFORE, THE ZONING ADMINISTRATOR HEREBY RESOLVES AS FOLLOWS:

Minor Use Permit and Sidewalk Dining Encroachment Permit MUP/EP 10-332 to allow an outdoor dining area with four tables and eight seats in front of the restaurant located at 621 Bridgeway is approved based upon the findings in **Attachment 1**. The project plans are provided as part of **Attachment 2**. The Property Owner is required to enter into a Sidewalk Dining Encroachment Agreement generally in the form as provided in **Attachment 2**.

Date

Jeremy Graves, AICP
Zoning Administrator

ATTACHMENTS

- 1- Findings
- 2- Sidewalk Dining Encroachment Agreement

ATTACHMENT 1: FINDINGS
ZONING ADMINISTRATOR RESOLUTION NO. 2010-XX
MUP/EP 10-332
Pizzeria Rossetti – 45 Caledonia Street

MINOR USE PERMIT FINDINGS

Pursuant to Sausalito Municipal Code Section 10.58 (Minor Use Permits), it has been found that the permit is approved based on the following findings:

- A. The proposed use is allowed with issuance of a Minor Use Permit, pursuant to Chapters 10.20 through 10.28 (Zoning District Regulations), Chapter 10.44 (Specific Use Requirements) or any other applicable section of this Title 10.

Outdoor dining areas located on sidewalks in the public right-of-way and are permitted in the Commercial Residential Zoning District with a Minor Use Permit (Zoning Ordinance Section 10.24.030) and subject to the requirements outlined in Zoning Ordinance Section 10.44.220.

- B. The proposed use is consistent with the General Plan, the purposes of the Zoning Ordinance, and the purposes of the applicable zoning district.

The proposed outdoor dining area is consistent with General Plan policies for managing encroachments in the public right-of-way and for promoting the economic viability for commercial neighborhood uses (General Plan Policies CP 1.5 and LU 2.13). The outdoor dining area is also consistent with all applicable Zoning Ordinance regulations for outdoor dining, as conditioned.

- C. The proposed use, together with the applicable conditions, will not be detrimental to the public health, safety, or general welfare of the City

The outdoor dining area provides an adequate pedestrian passageway within the sidewalk on Princess Street, 8 feet at its widest point and 4.9 feet at its narrowest. As such, the dining area will not be detrimental to the public health, safety, or general welfare of the City.

- D. The proposed use complies with all of the applicable provisions of the Zoning Ordinance.

The proposed use complies with all applicable provisions of the Zoning Ordinance, including requirements for outdoor dining areas in sidewalks (Section 10.44.220.C), as described in the staff report dated November 18, 2010.

- E. The proposed use or facility is properly located relative to the community as a whole and to land uses and transportation and service facilities in the vicinity.

The dining area is immediately adjacent to an existing restaurant, and is properly located in a sidewalk area that provides adequate passageway along Caledonia Street. The dining area will enhance the establishment in a commercial area that supports local residents, visitors, and employees in Sausalito.

- F. The size and shape of the subject property is adequate to provide features needed to ensure reasonable compatibility with land uses normally permitted in the surrounding area. Features may include but not be limited to yards, open spaces, walls and fences, parking, loading, landscaping, and such features as may be required by this Title or the Commission.

The outdoor dining area will be placed along the restaurant frontage maintaining a minimum of a 4.9 foot passageway in the public right-of-way, and thus will not limit the required pedestrian access along Caledonia Street. Outdoor dining is a use normally permitted in the sidewalk, subject to the requirements stipulated by Zoning Ordinance Section 10.44.220.C, and thus is deemed adequate for the subject site.

- G. Public utilities and facilities are or will be adequate to serve the proposed use, including streets and highways paved (and of adequate width) for the quantity and type of traffic it will generate.

All public utilities and facilities are adequate for the proposed use. It is not anticipated that the use will generate additional traffic impacts to Caledonia Street, and will not adversely impact pedestrian traffic.

- H. The proposed use will not materially adversely affect nearby properties or their permitted uses.

The outdoor dining area is confined to the adjacent sidewalk area in the public right-of-way along the storefront only, and will not extend to nearby properties, and is also located away from nearby single-family residential properties. The new dining area will maintain the required safe passage area on the sidewalk for pedestrians and will not block or diminish the sidewalk passageway. As such the proposed use will not materially adversely affect nearby properties or the public right-of-way.

- I. Findings required by Chapter 10.44 (Specific Use Requirements) for the approval of specific uses are made.

There are no additional findings required by Chapter 10.44 for outdoor dining areas.

**ATTACHMENT 2
ZONING ADMINISTRATOR RESOLUTION NO. 2010-XX**

**CITY OF SAUSALITO
SIDEWALK DINING ENCROACHMENT PERMIT AGREEMENT**

This **SIDEWALK DINING ENCROACHMENT PERMIT AGREEMENT** ("Agreement") is entered into this ___ day of _____, 2010 by and between **Maurizio Rossetti** ("Owner") of the property at 45 Caledonia Street (APN 065-056-21, the "Project Site"), and the **CITY OF SAUSALITO**, a municipal corporation ("City").

RECITALS

The following Recitals are a substantive part of this Agreement:

A. The Owner has requested City approval of a Minor Use Permit and Sidewalk Dining Encroachment Permit (MUP/EA 10-332) to allow an outdoor dining area in the public right-of-way, adjacent to the Project Site; and

B. In accordance with Sections 10.58.020 and 10.44.220 of the Municipal Code, the Zoning Administrator has reviewed and approved a Minor Use Permit and Sidewalk Dining Encroachment Permit for the outdoor dining area; and

C. The City has the authority to regulate the use of the public right-of-way and is willing to allow Owner the encroachments as shown in the attached site plan and in accordance with Titles 10 and 17 of the Sausalito Municipal Code under certain terms and conditions as set forth below.

NOW, THEREFORE, Owner and City hereby agree as follows:

1. Description of Encroachments. The encroachments covered by this Agreement allow the use of the public right-of-way, located directly in front of the Project Site, to be used for an outdoor dining area containing four tables and eight seats, two chairs per table as shown in the attached site plan (see **Exhibit**) which is incorporated herein (the "Encroachments"). No chairs other than the approved eight chairs may be placed in the outdoor dining area.
2. Term. The term of this Agreement is one (1) year after which it shall be automatically renewed on an annual basis unless City issues a notice of non-renewal.
3. Prior Encroachment Agreement(s) Superseded. This Encroachment Agreement supersedes all prior Encroachment Agreements/Permits granted to the Owner for the use of the public right-of-way located directly in front of the Project Site.
4. Condition of Encroachments and Right-of-Way. Owner shall maintain all Encroachments and the City-owned property affected thereby in good and safe condition and free from any and all nuisances to the satisfaction of the Community Development Director.
5. Removal or Relocation. The Owner acknowledges and agrees that it shall remove or relocate the Encroachment(s) at its sole cost and expense if the Encroachment(s) interferes with any lawful governmental or proprietary purpose of the City of Sausalito; is detrimental to governmental activities; and/or the right of way or street is being vacated. If the Owner fails to remove the Encroachment(s) within the time specified by the Community Development Director, City may cause the work to be done at the Owners' expense.

5. Taxes. The Owner shall be responsible for payment of all fees and taxes charged in connection with the right, title and interest in the Encroachments.
6. Fee. The Owner agrees to pay the City an annual permit fee, based upon square footage of the permit area, as established by resolution of the City Council.
7. Indemnification. The Owner hereby agrees to indemnify, defend (with counsel reasonably acceptable to City) and hold harmless City and its elected and appointed officials, officers, employees, consultants, agents, volunteers and successors in interest from any and all claims, demands, causes of action, damages, liabilities and obligations arising from or in any way related to this Agreement and/or Owner's use of the right of way.
8. Safe Passage. The Owner shall maintain a safe and adequate passage of 48" width shall be provided along the sidewalk at all times. Should tree grates be installed on the sidewalk reduce the passageway to less than 48", the Owner shall submit plans to provide adequate passage for the review and approval of the Community Development Department.
9. Cleanliness. The Owner shall remove debris, litter, and/or food matter from the sidewalk, street, and surrounding property at least once each day during operating hours and at the time the tables and chairs are removed from the sidewalk.
10. Food Service. In order to maintain the validity of the permits, the Owner shall be engaged in food service and shall provide such service at the outdoor dining area.
11. Orderliness. The Owner shall remove all tables and chairs from the sidewalk whenever the restaurant is closed or when the restaurant is not serving patrons in the dining area. The placement of tables and chairs in the dining area is for the use of diners only. No entertainment shall be permitted along the sidewalk by the restaurant. No food preparation shall take place along the sidewalk, and no serving trays or bus stations shall be located along the sidewalk or in the dining area.
12. Insurance. The Owner shall obtain liability insurance with policy limits of at least Five Hundred Thousand Dollars (\$500,000) per incident. The City shall be named an additional insured and the policy shall remain in force at all times that this Agreement is in effect.
13. Preeminence. The Owner acknowledges that its use of the sidewalk pursuant to this Agreement is subordinate to the public's right to use the sidewalk for passage and travel. This Agreement shall be revocable from time to time by order of the City to allow for a public event or other public use of the sidewalk subject to this Agreement or if the use of the sidewalk for dining purposes conflicts with any public use of the sidewalk. The Owner also acknowledges that the use of the sidewalk is subject to temporary suspension any time the City or any utility company or easement holder requires access to the sidewalk or any utility under the sidewalk, or requires use of the sidewalk in conjunction with any construction project.
14. Compliance with All Regulations. The Owner shall comply with all regulations of State Alcoholic Beverage Control and the County of Marin Department of Public Health, and any other agency that controls the operations of the restaurant.
15. Revocable. All Sidewalk Dining Encroachment Permits shall be subject to permanent revocation by the City at any time.

16. Termination. This Agreement may be terminated by either party with or without cause upon thirty (30) days written notice. Upon such termination, the Encroachment(s) must be removed as specified by and within the time required by the Community Development Director. In addition, the City owned right of way must be restored to the condition required by the Community Development Director. In the event that Owner fails to remove the Encroachment(s) and/or restore the right of way as required by the Community Development Director within the specified time, City shall have the right to perform the work and charge Owner.

17. No Grant. This Agreement is not a grant by City of any property interest but is made subject and subordinate to the prior and continuing right of City and its assigns to lawfully use any or all of the right of way for public facilities, including but not limited to, public use as a street and for the purpose of laying, installing, maintaining, repairing, protecting, replacing and removing sanitary sewers, water mains, storm drains, gas mains, poles, overhead and underground electric and telephone wires, television and other utility and municipal uses together with appurtenances thereof and with right of ingress and egress along, over, across and in the right of way. No use of any right of way or other interest under this Agreement shall create or vest in Owner any ownership interest in the right of way; nor shall anything in this Agreement be deemed or construed to grant or create any franchise rights.

18. Condemnation. If the right-of-way is taken totally by condemnation, this Agreement shall terminate on the date of the taking with no compensation to Owner therefore. If a portion of the right of way is taken by condemnation, then this Agreement shall remain in effect as to the part not taken.

19. Compliance with Laws. Owner shall comply with all applicable laws, any permit issued by the City pursuant to this Agreement and any general or specific conditions required by the Community Development Director.

20. Notices. All notices required or permitted to be given under the terms of this Agreement shall be in writing and shall be deemed to be given as of the time of hand delivery to the addresses set forth below, or three (3) days after deposit in the United States mail, postage prepaid, by register or certified mail, return receipt requested, addressed as follows:

Owner(s):
Maurizio Rossetti
45 Caledonia Street
Sausalito, CA 94965

City:
Community Development Director
420 Litho Street
Sausalito, CA 94965

21. Waivers. The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce the same. No waiver by any party of any condition, or of any breach of any term, covenant, representation, or warranty contained herein, in any one or more instances, shall be deemed to be construed as a further or continuing waiver of any such condition or breach or waiver of any other condition or of any breach of any other term, covenant, representation or warranty.

22. Severability. If one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable or unenforceable, such provision shall be deemed severable from the remaining provisions of this Agreement and shall not affect the legality, validity or constitutionality of the remaining portions of the Agreement.

23. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters addressed herein.

24. Modification. This Agreement may not be amended unless made in writing and signed by each party.

25. California Law. The interpretation and enforcement of this Agreement shall be governed by the laws of the State of California. In the event that suit shall be brought by either party to this Agreement, the parties agree that venue shall be exclusively vested in the State courts of the County of Marin or where appropriate, in the United States District Court, Northern District of California.

26. Attorneys' Fees. Should any legal proceeding be commenced between the parties to this Agreement seeking to enforce any of its provisions, the prevailing party in such a proceeding shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for attorneys' fees which shall be determined by the court or forum in such a proceeding or in a separate action brought for that purpose. For purposes of this provision, "prevailing party" shall include a party which dismisses an action for recovery hereunder in exchange for payment of the sum allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action or proceeding.

27. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.

28. Authority. The parties represent that the individuals signing this Agreement have the authority to do so.

29. No Personal Liability. No member, official or employee of City shall be personally liable to Owners or any successor in interest in the event of any default or breach by City or on any obligation under the terms of this Agreement.

IN WITNESS WHEREOF, the parties have hereto set their signatures as of the date first above named herein.

OWNER:

CITY:

Maurizio Rossetti

Jeremy Graves, Community Development Director

APPROVED AS TO FORM:

Mary Wagner, City Attorney

Exhibit: Project Plans, date stamped October 14, 2010

EXHIBIT
PROJECT PLANS

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Alison Thornberry
Assistant Planner
City of Sausalito
City hall
420 Litho St.
Sausalito, CA 94965

RECEIVED

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CITY OF SAUSALITO
COMMUNITY DEVELOPMENT DEPT

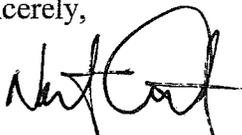
November 7, 2010

Re: MUP/EP 10-332 Rossetti sidewalk encroachment

Dear Ms. Thornberry,

My wife, children and I live around the block from Rossetti's on Bonita St.. We are thrilled with the opening of new restaurants on Caledonia St. and whole heartedly support those establishments that offer sidewalk dining. We urge you to approve Mr. Rossetti's application for a Minor Use Permit and Sidewalk Dining Encroachment Permit.

Sincerely,



Neil and Elly Gibbs
6 Bonita St.
Sausalito

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