

June 27, 2007

Honorable Mayor and Members of
the Hermosa Beach City Council

Regular Meeting of
July 10, 2007

**APPEAL OF DENIAL OF ENCROACHMENT PERMIT
FOR SKATEBOARD RAMP AT 2035 CIRCLE DRIVE**

Recommendation:

It is recommended that the City Council:

1. Uphold staff's recommendation to deny an encroachment permit for a "half-pipe" skateboard ramp at 2035 Circle Drive; and
2. Uphold staff's direction to the property owner to have said ramp removed from the public right-of-way

Summary:

Staff received a letter dated May 15, 2007 (see Attachment #1), requesting an Encroachment Permit to allow a "half-pipe" skateboard ramp to remain within the public right-of-way at 2035 Circle Drive.

Circle Drive is a 20-foot wide street within a 60-foot wide right-of-way. There are no sidewalks along this portion of Circle Drive which leaves approximately 20-feet of public right-of-way between the curb and the property line. Many residential properties have constructed a variety of improvements within this encroachment area, some of which have been permitted (such as fences).

The request for a permit for the skate-ramp was denied for the following reasons given in a letter to the applicant dated June 4, 2007 (see Attachment #2):

- The definition of approvable "encroachments" (HBMC Section 12.16.010) does not include active recreational equipment. The half-pipe is easily accessible from the adjacent sidewalk and not under constant supervision; it presents a potential liability for the City should someone be injured.
- The use of a skateboard ramp has the potential to become a public nuisance due to noise. HBMC Section 8.24.030 states "no person shall...permit to be made upon public right-of-way...any unnecessary and unreasonable noises...which are so harsh or so prolonged...to cause discomfort of any persons within the neighborhood...which interferes with the peace and comfort of residents..." As you know, we have already received noise complaints from your neighbors regarding the use of this skate ramp, particularly in the evening hours.

The above notice also directed the property owner to remove the skateboard ramp from the public right-of-way.

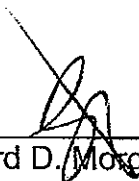
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The applicant received the above notice and requested to appeal staff's decision to City Council. The letter dated June 20, 2007 (see Attachment #3) requesting appeal was received within the required 10-days from when he received the notice.

Attachments:

1. Request letter dated May 15, 2007 from applicant
2. Denial letter dated June 4, 2006 from City
3. Appeal letter dated June 20, 2007 from applicant

Respectfully submitted,



Richard D. Morgan, P.E.
Director of Public Works/City Engineer

Concur:



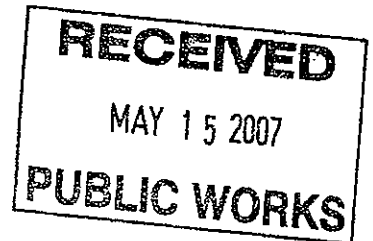
Stephen R. Burrell
City Manager

2035 CIRCLE DRIVE,
HERMOSA BEACH
CA 90254

DELIVERED BY HAND

May 15, 2007

City of Hermosa Beach
Valley Drive
Hermosa Beach,
CA 90254



Dear Sirs,

This letter supports my application for an Encroachment permit for a six months period to allow for a temporary "half pipe" skate ramp which is placed partially on the city right of way and partially on my property. The total area is enclosed by an old wood fence. The totally moveable "half pipe" which has been moved once already from the driveway in compliance with the city building departments prior requirement and demand letter dated January 8th 2007. (Copy attached). Which for the record, was complied with fully and in a very timely manner? The part of the half pipe on my property conforms with building regulations and outside the tenets of the public works department.

The "half pipe" for which this permit is requested conforms to all terms of the city codes and in particular with **section 12.16. 010** of the municipal code and the definition therein of a conforming encroachment which states:

"Encroachments" are structures, objects, uses or landscaping owned by a private real property owner and located on or over adjoining public right-of-way for the property owner's private use and enjoyment. Permissible encroachments are those which place a minimal burden on the right-of-way, are easily removable and do not materially alter the character of the right-of-way as open space, and include landscaping, fencing, movable personal property (such as furniture and planters), patios, decks, landscape irrigation and lighting systems and similar structures and objects, in accordance with the standards, conditions and requirements of this Chapter. No building or structural element of a building (including walls, roofs, structural supports, balconies, stairwells, and the like) shall be permitted to encroach on or over a public right-of-way. "Encroachment" means and includes any obstruction, tower, pole, pole line, pipe, wire, cable, conduit, wall, fence, balcony, deck, stand or building, or any structure or object of any kind or character which is placed in, along, under, over or across public right-of-way.

The Encroachment permit is required for a six month period only and as such meets all the requirements outlined in the municipal code section **12.16. 080 Requirements and conditions of approval.**

My application is in compliance with **Municipal Code Ordinance No. 96-1161, § 4; dated 07/09/96** and Complies with section **12.16. 070.**

Furthermore, I agree to conform to **Municipal Code Section 12.16. 120 Maintenance of encroachment.** *It shall be the responsibility of the adjacent property owner to maintain the encroachment in a condition satisfactory to the city*

I also agree to hold the city harmless from any problems, lawsuits or litigation with regard to the half pipe apart from the discriminatory issues if not granted, which have factored into the city involvement. I further confirm that I carry insurance for all my property (real and person but can post any additional bonds if required).

It should be noted that the high rails are to be removed and with the natural drop of topography the "half pipe" is really in conformance with the 42" height limit, that is if the curb height and retaining wall height to the south upslope height is taken into account, it actually does not exceed the 42' limit based on the four corner rule of measuring height and therefore does not need a permit, but the application is made to fully conform with all possible requirements. Therefore it should be granted.

The topography of the area in question shows a steep drop from the north to south, in addition to the east west direction. The north south drop is 20" to 14" and the east west direction is 16" , there is also a boundary increase due to the retaining wall of an increase of 6" to 8'. Factoring these factors into the height reduces the height of the half pipe from its actual height due the city four corner rule and is in fact below the 42" limit and exempt as a result.

Finally, my next door neighbor at 2025 circle who complained about the "half pipe" has an encroachment permit on file for a 12' high deck support in the right of way contrary to any the regulations. There is a metal structure in the right of way at 2055 Circle which exceeds the 42' height limit and the fence at 20 Circle is in excess of the 42" height limit, as appears to be the walls at 20—Circle. Aerial photos and photos of encroachments attached in the addendum. I therefore believe this sets the president for my temporary permit. Or remove this other encroachments, if mine is not approved.

I therefore fully believe that no valid reason exists not to grant the temporary encroachment permit.

The Encroachment permit should be granted for the six month period to avoid an appeal to the city council which shall be definitely made and the permit would probably expire prior to the matter running it full appeals process. This would save everybody a great amount of time and wasted effort.

Finally, I am extremely upset because my neighbor who resides at 2025 Circle Drive, has stated to my wife in an extremely aggressive manner that "**he knows people in the city**" and has influence and that they have provided confidential information to him which should not have been disseminated to him, and which was racially discriminating in nature, as it referred to the "English neighbor /person" namely myself. (City employee quote) I hope that any further leaks, breach of confidence by the public works department/city or bias immediately stops and that no further discrimination or dissemination of confidential information occurs again as a result of my English background, especially with regards to my application for a **temporary six month permit**, merely as I am foreign born and English, especially in light of the fact that my application is for the kids benefit only.

I have not pursued this complaint, as I hope that these matters can be resolved by the granting of the temporary permit, but rest assured that if it is not immediately grant the appeal application will also include a formal complaint on this issue from my attorney to the city council.

I am litigious by nature and fully believe no reasonable objection based on the codes exists, unless based on discrimination. My neighbor's comments are nothing more than a thinly veiled attempt at discrimination and intimation, especially as he has a conforming encroachment permit on file, which I hope the city does not support or further.

I look forward top the issuance of a temporary six month encroachment permit without delay.

Thanking you in advance

Yours sincerely,


Anthony Fitzgerald

CC - Derrick Fisher (Attorney)
- Rick Brown (Land America Title Company)

11/11/07

City of Hermosa Beach



Civic Center, 1315 Valley Drive, Hermosa Beach, CA 90254-3885

June 4, 2007

Mr. Anthony Fitzgerald
2035 Circle Drive
Hermosa Beach, CA 90254

RE: Request for Encroachment Permit for Skateboard Ramp

Dear Mr. Fitzgerald:

I have reviewed your request for a six-month encroachment permit to allow a temporary "half pipe" skateboard ramp within the public right-of-way adjacent to your property. I am denying your request for the following reasons:

- The definition of approvable "encroachments" (HBMC Section 12.16.010) does not include active recreational equipment. The half pipe is easily accessible from the adjacent sidewalk and not under constant supervision; it presents a potential liability for the City should someone be injured.
- The use of a skateboard ramp has the potential to become a public nuisance due to noise. HBMC Section 8.24.030 states: "no person shall permit to be made upon public right-of-way...any unnecessary and unreasonable noises...which are so harsh or so prolonged as to cause discomfort of any persons within the neighborhood, which interferes with the peace and comfort of residents..." As you know, we have already received noise complaints from your neighbors regarding the use of this skate ramp, particularly in the evening hours.

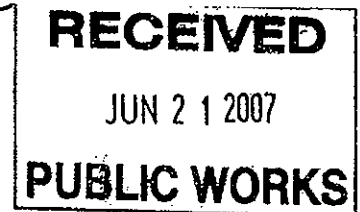
For the above reasons, your request for an encroachment permit is denied and you are hereby directed to remove the skateboard ramp from the public right-of-way.

If you wish, you have a right to appeal my decision to City Council. You must inform me of your intention to appeal within 10 (ten) days of this mailing. In accordance with HBMC Section 12.16.110.B, your filing fee of \$240 is not refundable.

Sincerely,

Richard D. Morgan, P.E.
Director of Public Works/City Engineer

2035 CIRCLE DRIVE
HERSOA BEACH
CA 90254



June 20, 2007

Mr. Richard Morgan
City of Hermosa Beach
Civil Center
1315 Valley Drive
Hermosa Beach
CA 90254

Dear Mr. Morgan,

I am in receipt of your letter mailed June 18, 2007 only today.

I am surprised it was dated June 4, 2007 as it would appear your time limit expired prior to mailing.

As expressed to you in writing and verbally when we spoke on the telephone, I formally wish to appeal your decision which I fully believe is without any basis in fact or law to the full City Council.

Furthermore, why did you fail to address my complaints regarding the other non conforming structures on Circle Drive and my complaint against your department's disclosure of my complaint to my neighbor at 2025?

Yours sincerely,



A. E. Fitzgerald