



## **STAFF REPORT**

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### **Approving a Permanent Encroachment Agreement for Construction of a Retaining Wall within the Public Right-of-Way at 1302 North Road**

Honorable Mayor and City Council:

#### **Summary**

The property owner at 1302 North Road has applied for a Permanent Encroachment Permit to replace a failing concrete block retaining wall within the public right-of-way. The work proposed under the permit will improve slope stability and provide structural support for a new driveway approach. A resolution is provided for consideration approving the encroachment as recommended, with conditions.

#### **Background and Discussion**

The property owner of 1302 North Road has applied for a Permanent Encroachment Agreement to replace a retaining wall, which is in a state of disrepair. The new retaining wall will be located along the southern edge of the driveway approach. It will encroach approximately six feet into the public right-of-way. The height of this retaining wall above the ground will vary from 6 inches to 1 foot.

The Belmont Municipal Code, Chapter 22, Article 1, describes the process and requirements for obtaining approval to encroach upon the public right-of-way. Section 22-6(1) defines the City Council as the sole authority allowed to issue written permits for major encroachments including retaining walls within the public right-of-way. Section 22-7(C) requires the Director of Public Works to review all major encroachment applications and if he finds the application in accordance with the code, recommend its approval with such conditions he deems necessary to protect the health and safety of the public and protect the City.

The City Council may choose to approve or to conditionally approve the application if it finds that there is some public benefit the encroachment. Section 22-7(C)(1) provides examples of acceptable public benefit, which are included but not limited to the following:

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1. A retaining wall that allows added on-street parking, sidewalk, or safer sight distance.
2. Retaining walls that reduce the amount of grading.
3. Encroachments that replace or improve an existing undesirable physical condition.

The City Staff has reviewed the encroachment application for the 1302 North Road retaining wall and found it to be in compliance with the City Code. The public right-of-way extends approximately 9 feet beyond the edge of street pavement, which is not a sufficient distance to construct a parking pad. There is no sidewalk on that side of North Road.

City Staff believes that the new retaining wall will fulfill the obligation to provide the required public benefit. The public benefit is that it will improve an existing undesirable physical condition. The new retaining wall is an improvement over the existing wall and will improve slope stability and provide structural support for a new driveway approach.

As a result, City Staff recommends allowing the construction of the concrete block retaining wall within the public right-of-way at 1302 North Road and recommends City Council approve the resolution with the following conditions of approval:

- 1) The retaining wall shall be constructed according to the approved plans unless otherwise approved by the Director of Public Works and be included as part of the project; and,
- 2) The retaining wall shall be constructed in accordance with Municipal Code Section 9-47, "Retaining wall design"; and,
- 3) The property owner shall be responsible and bear all costs necessary to repair or replace the proposed retaining wall. This is required for periodic maintenance or in the event of an emergency as determined by the Director of Public Works; and,
- 4) The City of Belmont shall have no obligation whatsoever to accept or maintain said improvements, and the owner shall pay a license fee of \$100.00 each 5 years that the encroachment remains in the public right-of-way; and,
- 5) The property owner shall be responsible for any restoration required as a consequence of work authorized by the City of Belmont within the public right-of-way; and,
- 6) The applicant agrees to begin and complete said improvements to the City's satisfaction within 180 calendar days from and after the passage date of this Council Resolution approving this agreement; and,
- 7) The applicant shall obtain a renewable license for the use of public right-of-way within 30 days of receiving such notice to license.

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On April 16, 2004, letters were mailed to residents within a 300-foot radius of the neighborhood. No comments were received as of April 21, 2004.

### **Fiscal Impact**

There is no fiscal impact to the City. All costs are property owner's responsibility.

### **Recommendation**

It is recommended that the City Council adopt the attached resolution approving, with conditions of approval, a Permanent Encroachment Agreement for a retaining wall within the public right-of-way at 1302 North Road.

### **Alternatives**

1. Reject the application
2. Continue to the next Council meeting

### **Attachments**

1. Resolution
2. Exhibit A

Respectfully submitted,

Bozhena Palatnik  
Engineering Technician

Raymond E. Davis, P.E. PTOE  
Director of Public Works

Jere A. Kersnar  
City Manager

**RESOLUTION NO. \_\_\_\_**

**CITY OF BELMONT  
San Mateo County, California**

**RESOLUTION OF THE CITY OF BELMONT APPROVING A PERMANENT  
ENCROACHMENT AGREEMENT FOR CONSTRUCTION OF RETAINING WALL WITHIN  
THE PUBLIC RIGHT-OF-WAY AT 1302 NORTH ROAD - APN 044-132-150**

WHEREAS, the City of Belmont is authorized by Municipal Code Sec. 22-5 to issue encroachment permits for construction of structures in the public right-of-way; and,

WHEREAS, the property owner of 1302 North Road has applied for a Permanent Encroachment Agreement; and,

WHEREAS, the Belmont City Council has made the following findings required by Municipal Code Sec. 22-6 for approval of a permanent encroachment agreement:

- (1) There is a public benefit to the encroachment as it will improve slope stability; and,
- (2) The encroachment will not unduly restrict the public right-of-way or public water course for other typical uses; and,
- (3) The City will be duly protected from liability for injury to persons and property; and,
- (4) The required bonds will guarantee the faithful performance of all conditions and requirements specified in the permit.

WHEREAS, approval of this permanent encroachment agreement is subject to the following conditions:

- (1) The retaining wall shall be constructed according to the approved plans unless otherwise approved by the Director of Public Works and be included as part of the project; and,
- (2) The retaining wall shall be constructed in accordance with Municipal Code Section 9-47, "Retaining wall design"; and,
- (3) The property owner shall be responsible and bear all costs necessary to repair or replace the proposed retaining wall. This is required for periodic maintenance or in the event of an emergency as determined by the Director of Public Works; and,
- (4) The City of Belmont shall have no obligation whatsoever to accept or maintain said improvements, and the owner shall pay a license fee of \$100.00 each 5 years that the encroachment remains in the public right-of-way; and,
- (5) The property owner shall be responsible for any restoration required as a consequence of work authorized by the City of Belmont within the public right-of-way; and,

(6) The applicant agrees to begin and complete said improvements to the City's satisfaction within 180 calendar days from and after the passage date of this Council Resolution approving this agreement; and

(7) The applicant shall obtain a renewable license for the use of public right-of-way within 30 days of receiving such notice to license.

WHEREAS, the structures built in connection with this agreement shall be constructed in accordance with City standards and with the benefit of a Construction Inspection Permit to provide for inspection of said construction, issuance of which is hereby conditionally approved, subject to the payment of inspection fees and posting of required surety to the Department of Public Works.

NOW, THEREFORE, IT IS HEREBY RESOLVED that:

(1) The Belmont City Council finds the Permanent Encroachment Agreements in compliance with the City code; and,

(2) The Belmont City Council approves the Permanent Encroachment Agreement with Sabino Madariaga, his heirs, successors, executors, administrators and assigns, jointly and severally, and with successors in interest of the real property for construction of the concrete block retaining wall located within the public right-of-way at 1302 North Road as described above and as shown on the attached exhibits and its continuing maintenance by the property owner; and,

(3) The Belmont City Council authorizes the City Manager to execute the Permanent Encroachment Agreement on behalf of the City of Belmont; and,

(4) The Belmont City Council authorizes the City Clerk to file said Agreement with the County Recorder.

\* \* \* \* \*

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of Belmont at a regular meeting thereof held on this 27th day of April, 2004.

AYES, COUNCILMEMBER(S): \_\_\_\_\_

NOES, COUNCILMEMBER(S): \_\_\_\_\_

ABSTAIN, COUNCILMEMBER(S): \_\_\_\_\_

ABSENT, COUNCILMEMBER(S): \_\_\_\_\_

\_\_\_\_\_  
Clerk of the City of Belmont

APPROVED:  
  
\_\_\_\_\_  
Mayor of the City of Belmont