



STAFF REPORT

Approving a Permanent Encroachment Agreement for Construction of a Fence within the Public Land at 507 Davey Glen Road

October 28, 2003

Honorable Mayor and City Council:

Summary

The property owners at 507 Davey Glen Road wish to obtain a Permanent Encroachment Agreement for a fence within the public land. A resolution is provided for consideration approving the encroachment as recommended with conditions.

Background and Discussion

The property owners of 507 Davey Glen Road purchased their residence in 1971. Soon after the purchase they constructed a 6-foot high wooden fence in the rear of the property to protect their lot from deer and debris from the adjacent undeveloped lots further known as the "Ross Woods" development.

In 2001 Regis Homes developed the subdivision at 1 Davey Glen Road. Regis Homes dedicated a one-acre "Parcel A" of the subdivision to the City of Belmont for park use. After Brian Kangas Foulk engineers prepared a final subdivision map, it appeared that the portion of the fence located along the rear of the property at 507 Davey Glen Road was encroaching approximately 10 feet into the public land of Parcel A dedicated to the City by Regis Homes.

The Public Works staff has met with the property owners of 507 Davey Glen Road regarding their fence encroaching into the public land. The property owners stated that the corners of the property lines of 507 Davey Glen Road were provided by the builder of their house, Challenge Homes, and they were unaware that one of the corners was not in the correct place.

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The property owners expressed the desire to obtain a permanent encroachment agreement for this fence. They agreed to maintain the portion of the park located within their property. Staff has discussed the proposed encroachment with the City Attorney to obtain a legal approval of the foresaid permanent encroachment agreement. It was determined that the encroachment will not unduly restrict the public use of the undeveloped park lands. The Parks & Recreation Department staff visited the Davey Glen Park site to inspect the proposed encroachment and determined that the proposed encroachment will not interfere with or have a detrimental effect on the future development of the park site.

City Staff believes that the applicant has fulfilled his obligation to provide the required public benefit by building and maintaining the fence. Otherwise the City would have had to build the fence to separate the park and the adjacent property. As a result, City staff recommends allowing the construction of the fence within the public land at 507 Davey Glen Road and recommends City Council approve the resolution with the following conditions of approval:

- 1) The fence shall be made of timber. All required elements of this encroachment agreement must meet City standards; and,
- 2) The applicant shall obtain a Construction Inspection Permit for the fence and associated drainage improvements located within the public land from the Department of Public Works; and,
- 3) The fence shall not exceed 6 feet in height at any location within the public land, unless otherwise approved by the Director of Public Works; and,
- 4) The applicant shall obtain a renewable license for the use of public land within 30 days of receiving such notice to license.

On October 10, 2003 letters were mailed to residents within a 300-foot radius of the neighborhood notifying of the proposed action. As of October 15, 2003, no comments were received.

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 developed by staff, a Permanent Encroachment Agreement for the fence within the public land at 507 Davey Glen Road.

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Alternatives

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

Attachments

1. Resolution approving encroachment
2. Plans and map

Respectfully submitted,

Bozhena Palatnik, E.I.T.
Engineering Technician

Raymond E. Davis III, 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 COUNCIL OF THE CITY OF BELMONT APPROVING
A PERMANENT ENCROACHMENT AGREEMENT FOR THE CONSTRUCTION
OF A FENCE WITHIN THE PUBLIC LAND AT 507 DAVEY GLEN AVENUE,
APN 044-382-060**

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

WHEREAS, the City has received an application for a permanent encroachment agreement for the construction of a fence within the public land at 507 Davey Glen Avenue; and,

WHEREAS, the Belmont City Council has made the following findings required Municipal Code Sec. 22-5 for approval of a permanent encroachment agreement:

- (1) That the encroachment will not unduly restrict the public right-of-way or public water course for other typical uses; and,
- (2) That the City will be duly protected from liability for injury to persons and property; and,
- (3) That the City retains the right to re-acquire the public right-of-way in the event of public need; 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 fence shall be made of timber. All required elements of this encroachment agreement must meet City standards; and,
- (2) The applicant shall obtain a Construction Inspection Permit for the fence and associated drainage improvements located within the public right-of-way from the Department of Public Works; and,

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- (3) The fence shall not exceed 6 feet in height at any location within the public land, unless otherwise approved by the Director of Public Works; and,
- (4) The applicant shall obtain a renewable license for the use of public land within 30 days of receiving such notice to license.

NOW, THEREFORE, IT IS HEREBY RESOLVED, that the Belmont City Council approves the Permanent Encroachment Agreement with Richard J. and Gloria C. Meriwether, their heirs, successors, executors, administrators and assigns, jointly and severally, and with successors in interest of the real property for construction of the fence located within the public right-of-way at 507 Davey Glen Avenue as described in the Permanent Encroachment Agreement, and authorizes the City Manager to execute the Permanent Encroachment Agreement on behalf of the City of Belmont and 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 28th day of October, 2003.

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

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