



Staff Report

REQUEST FOR A PERMANENT ENCROACHMENT AGREEMENT FOR
CONSTRUCTING A FENCE WITHIN THE PUBLIC RIGHT-OF-WAY AT 1117 NORTH
ROAD - APN 044-142-010 (CONTINUED FROM 2/22/2005)

Honorable Mayor and Council Members:

Summary

The property owners at 1117 North Road are appealing the decision of the Public Works Director denying a Permanent Encroachment Agreement for a fence within the public right-of-way.

Background

Public Works staff issued a stop work notice at 1117 North Road when they discovered a contractor performing work within the public right-of-way without the required encroachment permits. The work involved construction of columns for a new fence and a landscaped island. The property owners applied to the City for a permanent encroachment permit but were denied by the Public Works Director.

Discussion

The property at 1117 North Road is located at the corner of North Road and Hillman Avenue. The purpose for the construction of the proposed fence is to replace an old chain-link fence with overgrown hedges. The new fence will be black iron fence with masonry columns that shall not obstruct the driver's line of sight. The fence will encroach approximately 5 feet into the public right-of-way. The street right-of-way line is approximately 13 feet from the existing edge of pavement. This is considered to be a major permanent encroachment because it is an above ground structure in the street right-of-way.

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 within

the public right-of-way. Section 22-7(C) requires the Public Works Director to review all major encroachment applications and if he finds the applications in accordance with the code, recommend approval with such conditions, as 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 for the encroachment. Section 22-7(C)(1) provides examples of acceptable public benefit, which are included, but not limited to the following:

- An encroachment that allows added on-street parking, sidewalk, or safer sight distance.
- An encroachment that replaces or improves an existing undesirable physical condition.

Public Works staff has reviewed the application in light of the code requirements and cannot make the finding of public benefit from allowing the fence encroachment in the City right-of-way. The current location of the fence benefits only the property owners by extending their useful property into the public right-of-way. However, the property owners believe they have provided other public benefits such as: 1) Created a new parking pad in front of their property by relocating a nearby landscaped island. 2) Constructed a new curb and paved the area at the corner of North Road and Hillman Avenue adjacent to their property.

City staff has denied the application and met with the property owners to discuss the possibility of relocating the fence back to the property line. The property owners stated that an old fence was there for the last 30 years. They indicated they wanted to appeal the Public Works Director's decision to the City Council.

Fiscal Impact

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

Public Contact

An updated notice was sent to all affected properties within 300 feet of the project location that the City Council would be considering the item on March 8th per the City's requirements.

Recommendation

It is recommended that the City Council deny the application based on the finding that there is no public benefit for the fence encroachment.

Alternatives

1. Adopt the attached resolution approving the permanent encroachment agreement for

constructing a fence within the public right-of-way at 1117 North Road based on the finding that other public benefits are provided.

2. Refer back to staff for more information.

Attachments

- A. Resolution
- B. Exhibit A- Aerial of Location
- C. Site photos and sketches submitted by the applicant

Respectfully submitted,

Gilbert Yau, PE
Senior Civil Engineer

Raymond E. Davis III, PE, PTOE
Public Works Director

Daniel Rich
Interim City Manager

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT APPROVING A PERMANENT ENCROACHMENT AGREEMENT FOR CONSTRUCTING A FENCE WITHIN THE PUBLIC RIGHT-OF-WAY AT 1117 NORTH ROAD – (APN 044-142-010)

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 owners of 1117 North Road have 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:

There is a public benefit to the encroachment as new parking pad will enhance public safety; and,

The encroachment will not unduly restrict the public right-of-way for other typical uses; and,

The City will be duly protected from liability for injury to persons and property; and,

The required bonds will guarantee the faithful performance of all conditions and requirements specified in the encroachment agreement.

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

The fence 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,

The fence shall be constructed in accordance with Municipal Code Section 9-47, “Fence design,” and,

The property owner shall be responsible and bear all costs necessary to repair or replace the proposed fence. This is required for periodic maintenance or in the event of an emergency as determined by the Director of Public Works; and,

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,

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,

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:

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

The Belmont City Council approves the Permanent Encroachment Agreement with George K. & Sandra D. Giobres, his heirs, successors, executors, administrators and assigns, jointly and severally, and with successors in interest of the real property for construction of the masonry columns and black iron fence within the public right-of-way at 1117 North Road as described above and as shown on the attached exhibits and its continuing maintenance by the property owner; and,

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

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 March 8, 2005 by the following vote:

AYES, COUNCILMEMBERS: _____

NOES, COUNCILMEMBERS: _____

ABSTAIN, COUNCILMEMBERS: _____

ABSENT, COUNCILMEMBERS: _____

CLERK of the City of Belmont

APPROVED:

MAYOR of the City of Belmont

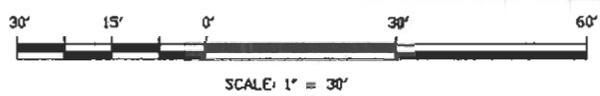
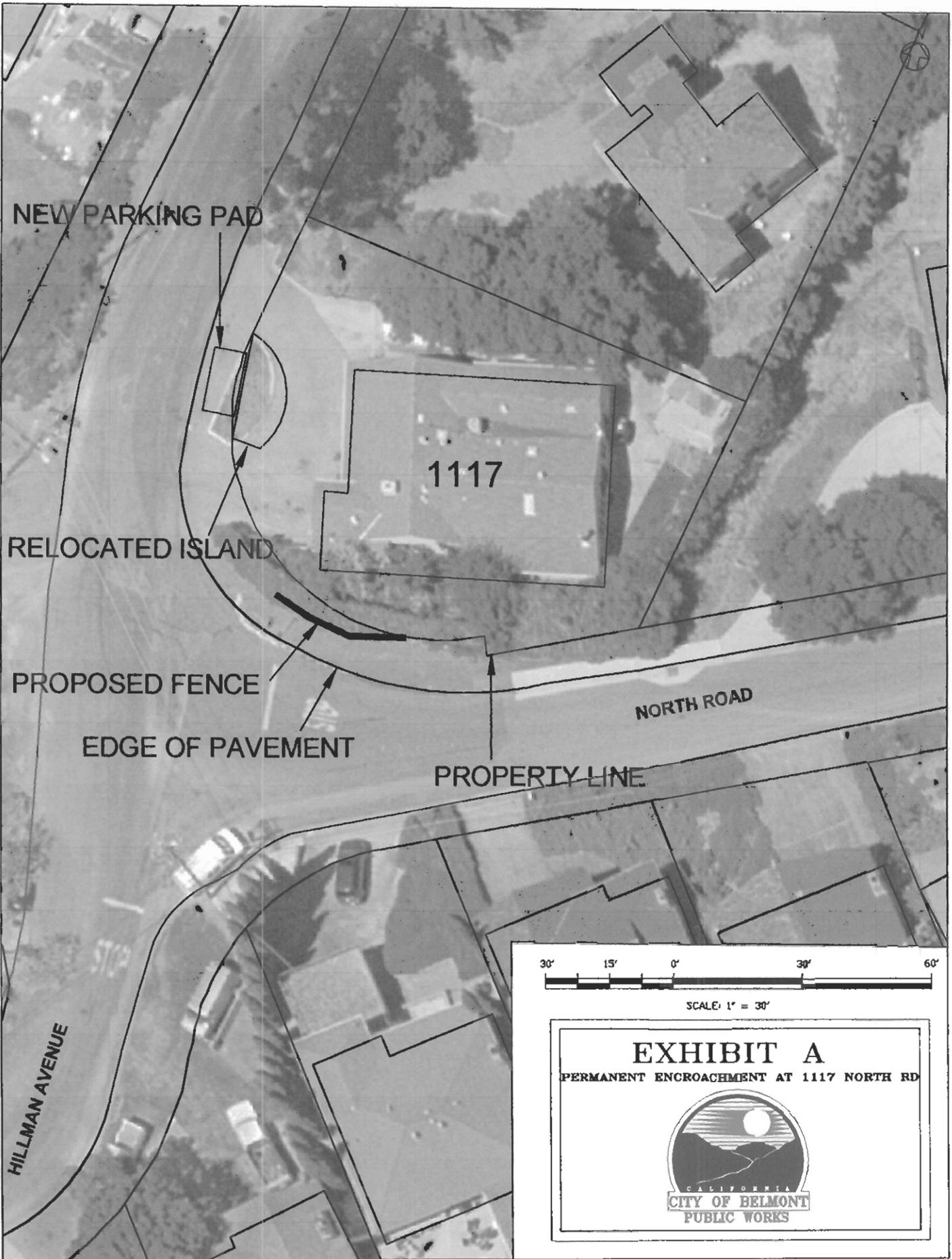


EXHIBIT A
PERMANENT ENCROACHMENT AT 1117 NORTH RD

CALIFORNIA
CITY OF BELMONT
PUBLIC WORKS