



Staff Report

RESOLUTION APPROVING A PERMANENT ENCROACHMENT AGREEMENT FOR REPLACING AN EXISTING RETAINING WALL AND FENCE WITHIN THE PUBLIC RIGHT-OF-WAY AT 2006 FOREST AVENUE

Honorable Mayor and Council Members:

Summary

The property owners at 2006 Forest Avenue wish to enter into a Permanent Encroachment Agreement with the City to replace an existing retaining wall and 6-foot fence within the public right-of-way. A resolution is provided for Council consideration approving the encroachment with conditions.

Background

The property owners of 2006 Forest Avenue have applied for a Permanent Encroachment Agreement to replace a retaining wall and 6-foot fence within the public right-of-way. The proposed concrete retaining wall and wood fence will encroach approximately 5 feet into the public right-of-way. The work proposed under the agreement will improve an existing undesirable physical condition by replacing a deteriorating wood wall and fence.

Discussion

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 a retaining wall 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 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:

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

Staff has reviewed the encroachment application for the 2006 Forest Avenue retaining wall and fence, and found it to be in compliance with the City Code. The public right-of-way in front of 2006 Forest Avenue extends approximately 13 feet beyond the edge of street pavement. The property owners propose to reconstruct a parking pad, driveway, and curb and gutter adjacent to the retaining wall in order to improve the appearance of the area. They will also replace the existing deteriorating wood fence on top of the wall to prevent residents from falling. The new fence will comply with City height and sight distance restrictions. Staff believes that the new retaining wall, fence, parking pad, and driveway will fulfill the obligation to provide the required public benefit.

A notice was sent to all affected properties within 300 feet of the project location that the City Council will be considering the item on April 26th per the City's requirements.

Fiscal Impact

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

Public Contact

Public contact included posting of City Council agenda and mailing notices to the properties within a 300-foot radius.

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 and fence within the public right-of-way at 2006 Forest Avenue.

Alternatives

1. Reject the application.
2. Refer back to staff for more information.

Attachments

- A. Resolution
- B. Exhibit A – Aerial of Location
- C. Letter from Resident (Council Only)
- D. Schematics (Council Only)

Respectfully submitted,

Phillip Esqueda
Engineering Technician

Raymond E. Davis III
Director of Public Works

Daniel Rich
Interim City Manager

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT APPROVING A PERMANENT ENCROACHMENT AGREEMENT FOR REPLACING AN EXISTING RETAINING WALL AND FENCE, WITHIN THE PUBLIC RIGHT-OF-WAY AT 2006 FOREST AVENUE (APN 044-081-130)

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 2006 Forest Avenue have applied for a Permanent Encroachment Agreement to replace an existing retaining wall and fence within the public right-of-way; 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 the new concrete retaining wall will replace a deteriorating wood wall that is an improvement of an existing undesirable physical condition; 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 encroachment agreement.

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

- (1) The retaining wall and 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,
- (2) The retaining wall shall be constructed in accordance with Municipal Code Section 9-47, "Retaining wall design"; and,
- (3) The property owners shall be responsible and bear all costs necessary to repair or replace the proposed retaining wall and fence. This is required for periodic maintenance or in the event of an emergency as determined by the Director of Public Works; and,
- (4) The property owners 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,
- (5) 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, BE IT RESOLVED that the City Council of the City of Belmont:

- (1) Finds the Permanent Encroachment Agreement application in compliance with the City code; and,
- (2) Approves the Permanent Encroachment Agreement with Ralph Kerwin and Cynthia Ruby Kerwin, their heirs, successors, executors, administrators and assigns, jointly and severally, and with successors in interest of the real property for construction of the concrete retaining wall and a fence within the public right-of-way at 2006 Forest Avenue as described above and as shown on the attached exhibits and its continuing maintenance by the property owners; and,
- (3) Authorizes the Interim City Manager to execute the Permanent Encroachment Agreement on behalf of the City of Belmont; and,
- (4) 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 April 26, 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



FOREST AVENUE

CITY LIMITS

CITY OF SAN MATEO
CITY OF BELMONT

2006

8' WIDE PARKING PAD

NEW RETAINING WALL

PROPERTY LINE

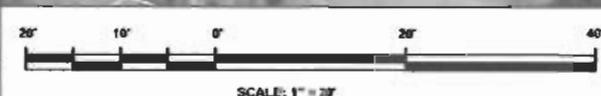


EXHIBIT A
PERMANENT ENCROACHMENT
AT 2006 FOREST AVENUE

