



## **Staff Report**

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### RESOLUTION APPROVING A PERMANENT ENCROACHMENT AGREEMENT FOR REPLACING AN EXISTING RETAINING WALL WITHIN THE PUBLIC RIGHT-OF-WAY AT 100 VIRGINIA AVENUE

Honorable Mayor and Council Members:

#### **Summary**

The property owners at 100 Virginia Avenue wish to enter into a Permanent Encroachment Agreement with the City to replace an existing deteriorating wood retaining wall within the public right-of-way. The new retaining wall will be constructed in the same location as the existing wall. A resolution is provided for Council consideration approving the encroachment with conditions.

#### **Background**

The property owners at 100 Virginia Avenue have applied for a Permanent Encroachment Agreement to replace a retaining wall within the public right-of-way. The proposed wood retaining wall will encroach approximately six 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.

In September, 2005, the City issued a Stop Work Notice to the property owners for installing a retaining wall without a permit. The owners indicated the wall is deteriorating and will endanger their house and the adjacent city street. Because of the proximity of the wall to the building foundation and the public right-of-way, it is imperative that the wall be reinstalled immediately to prevent the slope from failing.

The owners have requested a building permit be issued prior to the approval of the permanent encroachment agreement so that they can install the wall immediately. The owner has posted a \$5000 security cash deposit with the City as a guarantee to correct any conditions as required by the City Council for execution of this agreement. The owners also signed a letter stating they will hold the City harmless for issuing a building permit prior to the approval of the permanent encroachment agreement and that they agree to remove/relocate the wall at their own cost if the permanent encroachment agreement is not approved by the City Council.

## **Discussion**

The City Council adopted Ordinance Number 994 regulating encroachments into the public right-of-way on December 9, 2003. As codified in Section 22-6 of the Municipal Code, this ordinance gives the City Council the sole authority to issue permits for major or unusual encroachments including aboveground structures such as retaining walls, fences, poles, and awnings. This class of encroachment is commonly known as “permanent encroachments,” although the City retains the right to revoke the permit and require removal if the structure is not being used or if it interferes with planned public improvements. Section 22-6(b) 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 only if it finds that there is some public benefit for the encroachment. Section 22-7(e)(1) provides examples of acceptable public benefits, such as added on-street parking, added sidewalk, safer sight distance, reduced amount of grading, and replacement or improvement of an existing undesirable physical condition.

When Council adopted Ordinance 994, it gave staff direction that it would generally find public benefit in applications to replace existing retaining walls in the public right-of-way. Council would also allow reconstruction of fences atop existing retaining walls. Council would generally not find public benefit in applications for new retaining walls or fences when the purpose of these structures was to increase the usable yard area of a private residence or business. The staff recommendation for this application is in accordance with Council’s direction.

Staff has reviewed the encroachment application for the retaining wall at 100 Virginia Avenue and found it to be in compliance with the City Code. The public right-of-way along 100 Virginia Avenue extends approximately eight feet beyond the edge of street pavement. Because of the concern of slope stability and proximity of the building foundation, a building permit was issued so that the retaining wall can be reinstalled immediately. The new wood retaining wall is at the same location as the existing wall.

In accordance with the Municipal Code 22-6(d), notice was sent to all affected properties within 300 feet of the project location that the City Council would be considering the item on October 25<sup>th</sup>. The applicant has paid the encroachment permit fee to cover staff time to process the Permanent Encroachment Agreement.

## **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 replacement of a retaining wall within the public right-of-way at 100 Virginia Avenue.

**Alternatives**

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

**Attachments**

- A. Resolution
- B. Exhibit A – Aerial of Location

Respectfully submitted,

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Gilbert Yau, PE  
Senior Civil Engineer

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

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Jack Crist  
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 WITHIN THE PUBLIC RIGHT-OF-WAY AT  
100 VIRGINIA AVENUE (APN 044-195-050)**

**WHEREAS**, the City of Belmont is authorized by Municipal Code Sec. 22-6 to issue encroachment permits for construction of structures in the public right-of-way; and,

**WHEREAS**, the property owners at 100 Virginia Avenue have applied for a Permanent Encroachment Agreement to replace an existing retaining wall within the public right-of-way; and,

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

- (1) There is a public benefit to the encroachment as the new wood 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 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. 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 Hui Ling Ding and De Kun Ding, their heirs, successors, executors, administrators and assigns, jointly and severally, and with successors in interest of the real property for construction of the wood retaining wall within the public right-of-way at 100 Virginia 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 October 25, 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



**MIDDLE ROAD**

REPLACE  
EXISTING  
DETERIORATED  
WOOD WALL  
WITH NEW  
WOOD  
WALL

EDGE OF PAVEMENT

PROPERTY  
LINE

**100**

**VIRGINIA AVENUE**

**EXHIBIT A**

AERIAL OF LOCATION  
100 Virginia Avenue  
(APN: 044-195-050)

1" = 20'



CITY OF BELMONT

10/13/2005