



## **Staff Report**

---

REQUEST FOR A PERMANENT ENCROACHMENT AGREEMENT FOR  
CONSTRUCTING A FENCE AND RETAINING WALL WITHIN THE PUBLIC RIGHT-OF-  
WAY AT 1570 WINDING WAY (APN 044-123-330)

Honorable Mayor and Council Members:

### **Summary**

The property owners at 1570 Winding Way are appealing the decision of the Public Works Department to deny a Permanent Encroachment Agreement for a fence and retaining wall within the public right-of-way.

### **Background**

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) of the code 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.

Public Works staff issued a stop work notice at 1570 Winding Way when they discovered a contractor performing work within the public right-of-way without the required encroachment permits. The work involved construction of a new retaining wall and grading to level the property front yard. The property owners applied for a Permanent Encroachment Agreement but were denied by the Public Works Department in April, 2005 and again in October, 2005.

In April 2005, the property owners originally applied for a permanent encroachment agreement to install a new 4-foot tall retaining wall to allow them to create a flat area in their front yard. They proposed installing a 6-foot high fence to protect pedestrians from falling down the

retaining wall. They also proposed installing a trellis and 6-foot fence in the front yard at the area that was re-graded. Staff denied the application in accordance with the Municipal Code Section 22-6 because there was no evidence the public benefit would be derived from the proposed encroachment and the subject improvements would benefit the adjacent property owner by expanding their front yard into public right-of-way.

### **Discussion**

The property owners at 1570 Winding Way are now applying to the City to replace the former fence that they removed. The owners state that the old wood fence also served as a retaining wall to hold back soil from the adjacent cut slope. This old fence encroached approximately sixteen feet into the public right-of-way and the owners propose installing the new fence/retaining wall at the same location.

The proposed new retaining wall would be 2 feet in height along the northerly boundary of the property and approximately 10 feet along Winding Way. The top of the retaining wall will be at grade with the sidewalk. The owners propose to install a 6-foot fence on top of the retaining wall and around the remaining portion of the front yard where the former fence was located. Staff requested a picture of the old site to better understand the previously existing conditions but the owners were not able to provide this record. The City's aerial photographs do not show the former condition of this property due to the obstruction of overhanging trees.

Public Works staff reviewed the application and cannot make a finding of public benefit for allowing the fence/retaining wall to encroach into the City right-of-way. The fence benefits only the property owners by extending their useful property into the public right-of-way. The need for the proposed retaining wall can also be eliminated by minor grading to correct "mud hole" drainage problem of concern to the property owners. Drainage system can also be installed by the property owner in the front yard area to intercept rain water from draining towards the building structure which is a common practice for similar hillside properties.

City staff has denied the application and discussed with the property owners the possibility of re-grading the property. The property owners stated that the old fence had been there since they owned the property. They asked to appeal the Public Work Department's decision to the City Council.

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(e)(1) of the City Code provides examples of acceptable public benefits including 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 stated it would generally not find public benefit in

applications for new retaining walls or fences when the purpose of these structures is to increase the usable yard area of a private residence or business. The staff recommendation for this application is in accordance with Council’s stated direction.

**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 of 1570 Winding Way.

**Recommendation**

It is recommended that the City Council adopt a resolution denying the application based on the finding that there is no public benefit from the proposed retaining wall and fence encroachment into the public right-of-way.

**Alternatives**

1. Adopt a resolution approving the permanent encroachment agreement for constructing a retaining wall and fence within the public right-of-way at 1570 Winding Way 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 Graphic of Location
- C. Site Photos – Council Only
- D. Letters from Owner and Neighbors – Council Only

Respectfully submitted,

---

Gilbert Yau, PE  
Senior Civil Engineer

---

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

---

Jack Crist  
Interim City Manager

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

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT DENYING A REQUEST FOR PERMANENT ENCROACHMENT AGREEMENT FOR CONSTRUCTING A FENCE & RETAINING WALL WITHIN THE PUBLIC RIGHT-OF-WAY AT 1570 WINDING WAY (APN 044-123-330)**

**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 of 1570 Winding Way have applied for a Permanent Encroachment Agreement for construction of a retaining wall and fence in the public right-of-way; and,

**WHEREAS**, the Public Works Department denied the permit upon finding that there was no public benefit to the proposed encroachment; and,

**WHEREAS**, the property owners appealed that decision to the City Council; and,

**WHEREAS**, the Belmont City Council has considered the application and finds it cannot make the following findings required by Municipal Code Sec. 22-6:

- (1) There would a public benefit derived from the fence and retaining wall encroachment; and,
- (2) The encroachment will not restrict the public right-of-way for other typical uses.

**NOW, THEREFORE, IT IS HEREBY RESOLVED** that The Belmont City Council denies the request for a Permanent Encroachment Agreement to construct a fence and retaining wall within the public right-of-way at 1570 Winding Way.

\* \* \* \* \*

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 November 22, 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