



Staff Report

RESOLUTION APPROVING A PERMANENT ENCROACHMENT AGREEMENT TO ALLOW THE INSTALLATION OF RETAINING WALLS WITHIN THE PUBLIC RIGHT-OF-WAY AT 1501 FOLGER DRIVE (APN 044-351-200)

Honorable Mayor and Council Members:

Summary

The property owners of 1501 Folger Drive, Frederick and Laurie DeMartini, request approval of a Permanent Encroachment Agreement with the City to allow the replacement of retaining walls within the public right-of-way. A resolution approving the encroachment agreement with conditions is provided for Council consideration.

Background

The existing wooden railroad tie retaining walls located at 1501 Folger Drive are deteriorating and are in need of replacement. (The property owners began removal and excavation, but were informed by staff that a permanent encroachment permit is required.) The property owners submitted an application for permanent encroachment. The proposed new masonry retaining walls will be installed in the same location as the existing and would extend approximately ten feet into the public right-of-way.

Discussion

The City Council adopted Ordinance Number 994 as codified in Section 22-6 of the Municipal Code regulating encroachments into the public right-of-way on December 9, 2003. This ordinance gives the City Council the sole authority to issue permits for major or unusual encroachments that include above ground 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. If the Director finds the application is in compliance with the Municipal code, the Director will recommend approval with conditions necessary to protect the health and safety of the public and the City.

Staff has reviewed the encroachment application for the retaining walls at 1501 Folger Drive and found it to be in compliance with the City Code. 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 off-street parking, or sidewalk, safer sight distance, reduced amount of grading, and replacement or improvement of an existing undesirable physical condition. The public right-of-way along 1501 Folger Drive extends approximately fifteen feet beyond the edge of street pavement. Staff believes that installing these new masonry retaining walls will fulfill the obligation to provide the required public benefit by correcting an 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 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 the above general direction.

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 January 8, 2008. The applicant has paid the encroachment permit fee to cover staff time to process the Permanent Encroachment Agreement.

General Plan/Vision Statement

The project is consistent with the General Plan.

Fiscal Impact

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

Public Contact

Public contact includes 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, with conditions, approving a Permanent Encroachment Agreement for installation of new retaining walls within the public right-of-way at 1501 Folger Drive.

Alternatives

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

Attachments

- A. Resolution
- B. Exhibit A – Aerial of Location
- C. Site Photos (Council Only)

Respectfully submitted,

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Senior Civil Engineer

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Director of Public Works

Jack R. Crist
City Manager

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RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT APPROVING
A PERMANENT ENCROACHMENT AGREEMENT TO ALLOW THE INSTALLATION
OF RETAINING WALLS WITHIN THE PUBLIC RIGHT-OF-WAY AT
1501 FOLGER DRIVE (APN 044-351-200)**

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, Frederick and Laurie DeMartini, property owners, have applied for a Permanent Encroachment Agreement to replace existing retaining walls within the public right-of-way adjacent to 1501 Folger Drive; 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 retaining walls will improve the 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; and,

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

1. The retaining walls 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 walls 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 walls 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 Frederick and Elizabeth DeMartini, their heirs, successors, executors, administrators and assigns, jointly and severally, and with successors in interest of the real property for construction of the masonry retaining walls within the public right-of-way at 1501 Folger Drive as described above and as shown on the attached exhibits and its continuing maintenance by the property owners; and,
3. Authorizes the 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 January 8, 2008 by the following vote:

AYES, COUNCILMEMBERS: _____

NOES, COUNCILMEMBERS: _____

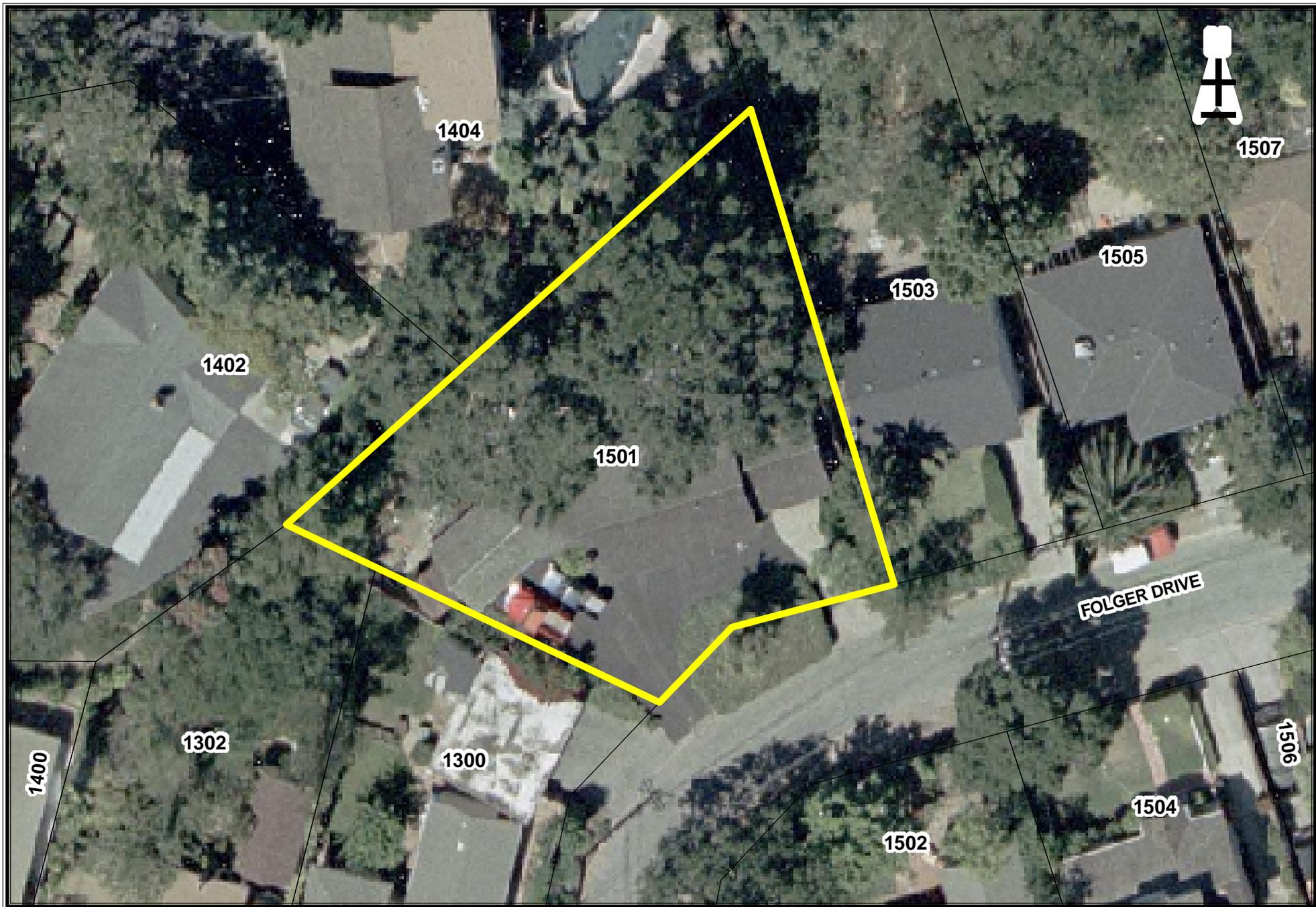
ABSTAIN, COUNCILMEMBERS: _____

ABSENT, COUNCILMEMBERS: _____

CLERK of the City of Belmont

APPROVED:

MAYOR of the City of Belmont



VICINITY OF FOLGER DRIVE

1 INCH EQUALS 30 FEET

8/31/2007

NOTE: THIS IS NEITHER A PLAT NOR A SURVEY. IT IS FURNISHED MERELY AS A CONVENIENCE TO AID YOU IN LOCATING THE LAND INDICATED HEREON WITH REFERENCE TO STREETS AND OTHER LAND AND IS TO BE USED FOR REFERENCE PURPOSES ONLY.