



Staff Report

RESOLUTION APPROVING A PERMANENT ENCROACHMENT AGREEMENT TO ALLOW A RETAINING WALL WITHIN THE PUBLIC RIGHT-OF-WAY AT 2810 BELMONT CANYON ROAD (APN: 043-072-650) AND 2820 BELMONT CANYON ROAD (APN: 043-072-290)

Honorable Mayor and Council Members:

Summary

The property owners of 2810 Belmont Canyon Road, Mark and Carolyn Bruguera, and 2820 Belmont Canyon Road, Tsutomu and Mieko Kozuka, request approval of a Permanent Encroachment Agreement with the City to allow a new retaining wall within the public right-of-way. A resolution for each address approving the encroachment agreement with conditions is provided for Council's consideration.

Background

In December 2005, a stop work notice was issued to the property owner of 2810 Belmont Canyon Road for construction on private property without permits. After investigations, it was determined that the subject new retaining wall is a replacement of an old deteriorating wall. The property owner believed that the old wall was on his property and constructed the new wall at the same location. However, after a survey by a licensed land surveyor, the owner realized the retaining wall is in fact located within the City right-of-way and also fronted his neighbor's property at 2820 Belmont Canyon Road. Both the property owners at 2810 and 2820 Belmont Canyon Road have submitted a permanent encroachment application.

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 aboveground structures such as retaining walls, fences, poles, and awnings. This class of encroachment is commonly known as "permanent encroachment," 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.

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Staff has reviewed the encroachment application for the retaining wall at 2810 and 2820 Belmont Canyon Road 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 2810 and 2820 Belmont Canyon Road extends approximately 22 feet beyond the edge of street pavement. The new retaining wall is located below street level and is constructed to replace an old deteriorating wall. Staff believes that the installation of this new retaining wall will provide the required public benefit by correcting an undesirable physical condition. The retaining wall extends five to seven feet into the public right-of-way.

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 May 13, 2008. The applicants have paid the encroachment permit fee to cover staff time to process the Permanent Encroachment Agreement.

General Plan/Vision Statement

The project will meet the following goal and policy in the General Plan:

Policy 2081.6 *“Street and road improvement standards, including rights-of-way, pavement width and grade, should provide for reasonable safety and recognize variations in local physical conditions.”* - The installation of a new retaining wall will maintain the stability of the adjacent roadway.

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 resolutions, with conditions, approving a Permanent Encroachment Agreement for installation of new retaining walls within the public right-of-way at 2810 and 2820 Belmont Canyon Road.

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,

Gilbert Yau, P.E.
Senior Civil Engineer

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

Jack R. Crist
City Manager

Staff Contact:
Gilbert Yau
(650) 595-7467
gyau@belmont.gov

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT APPROVING A PERMANENT ENCROACHMENT AGREEMENT TO ALLOW A RETAINING WALL WITHIN THE PUBLIC RIGHT-OF-WAY AT 2810 BELMONT CANYON ROAD (APN 043-072-650)

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, Mark and Carolyn Bruguera, property owners, have applied for a Permanent Encroachment Agreement to install a new retaining wall within the public right-of-way adjacent to 2810 Belmont Canyon Road; 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 wall 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 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 Mark and Carolyn Bruguera, their heirs, successors, executors, administrators and assigns, jointly and severally, and with successors in interest of the real property for construction of the retaining wall within the public right-of-way at 2810 Belmont Canyon Road 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 May 13, 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

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT APPROVING A
PERMANENT ENCROACHMENT AGREEMENT TO ALLOW A RETAINING WALL
WITHIN THE PUBLIC RIGHT-OF-WAY AT 2820 BELMONT CANYON ROAD
(APN 043-072-290)**

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, Tsutomu and Mieko Kozuka, property owners, have applied for a Permanent Encroachment Agreement to install a new retaining wall within the public right-of-way adjacent to 2820 Belmont Canyon Road; 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 wall 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 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 Tsutomu and Mieko Kozuka, their heirs, successors, executors, administrators and assigns, jointly and severally, and with successors in interest of the real property for construction of the retaining wall within the public right-of-way at 2820 Belmont Canyon Road 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 May 13, 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



4/7/2008

1 INCH EQUALS 30 FEET

VICINITY OF 2810 and 2820 BELMONT CANYON ROAD

EXHIBIT A