

To: Mayor and City Council

From: Irene Borba, Director of Planning & Building

Subject: Approve revocable license for existing private improvements in the City easement right-of-way at the front of the property at 28 Eucalyptus Road

Recommended Motion/Item Description

That the City Council approve the revocable license agreement for 28 Eucalyptus Road for existing private improvements in the City easement right-of-way in front of the property as part of the Consent Calendar.

Background and Findings

Proposed encroachment on City property – 28 Eucalyptus Road – APN 060-182-11

The attached license agreement requires the property owner to assume liability and maintenance responsibilities for:

Existing elements including concrete stairs, landscaping, driveway and a garage eave in the street right-of-way in front of 28 Eucalyptus Road. (Refer to attached draft Revocable License No. 2017.19 and associated exhibit.)

Background of current application

On November 15, 2016, the Belvedere Planning Commission approved application requests for design review and variance for encroachment into the side yard setback for an addition at the property of 28 Eucalyptus Road. The project proposal included a new master bath and closet addition at the front of the house. New exterior materials including a combination of: new hardie board cladding and horizontal wood siding and stone cladding to each of the elevations. New metal roofing is proposed and the roof will be raised slightly to accommodate the installation of insulation as well as other additional minor exterior improvements to the property.

In December 2016, a revocable license was executed for the subject property for existing improvements (wooden stairs) in the street right-of-way behind 28 Eucalyptus Road (on Belvedere Avenue).

A building permit was submitted for review/approval and, during the review of the plans submitted for permit, it was determined that a revocable license was required to capture existing

improvements in the right of-way along Eucalyptus Road. Said improvements include concrete stairs, landscaping, driveway and a garage eave in the street right-of-way.

The encroachment on Eucalyptus Road is necessary to provide pedestrian/vehicle access to the residence. The revocable license is appropriate to validate already existing improvements in the public right-of-way for the purpose of shifting the City's potential liability for injuries and damages to the private property owners using the right-o-way for private purposes in accordance to Administrative Policy 272.05 1-E.

Future improvements

The license covers any future improvements within the revocable license area which receive staff or Planning Commission design review approval and which meet one or more of the criteria for approval of revocable license listed in the City's Administrative Policy Manual, Policy 272.05, as adopted by City Council resolution. Applications for substantial, potentially permanent and/or obstructive structures within the City right-of-way, which fall outside the criteria, will still be required to go to the City Council for consideration and approval/denial. Detailed records at City Hall, maintained in the Planning Department file for this address, will always be available to show exactly what structures have been approved within the license area. This will save considerable staff time that would be devoted to bringing a revised license and staff report to the City Council and in issuing, recording, and archiving a new license agreement.

Recommended Action

That the City Council approve the revocable license agreement for 28 Eucalyptus Road for existing private improvements in the street right-of-way in front of the property as part of the Consent Calendar.

Attachments

- Draft license agreement with attached exhibit.
- Site plan.
- Picture showing existing improvements in the right-of-way.

RECORDING REQUESTED BY:
City Clerk, City of Belvedere
RECORD WITHOUT FEE PER G.C. 27383

AND WHEN RECORDED MAIL TO:

City Clerk
City of Belvedere
450 San Rafael Avenue
Belvedere, CA 94920-2336

CITY OF BELVEDERE

REVOCABLE LICENSE NO. 2017.19

ASSESSOR'S PARCEL NO.: **060-182-11**
ADDRESS: **28 Eucalyptus Road, Belvedere, California 94920**
OWNER: **Denise L Ellison 2005 Trust UTD March 29 2005**
DATE ISSUED: **November 13, 2017**

The City of Belvedere, California, a municipal corporation (hereinafter referred to as "City"), hereby authorizes and licenses the owner of the land described above and in Exhibit "A" (hereinafter referred to as "Licensee"), at its own cost and expense, to encroach upon the adjoining land owned by the City of Belvedere (hereinafter referred to as "Premises") for the following purpose: Existing elements including concrete stairs, landscaping, driveway, and a garage eave.

The above-described improvements received City design review approval. This license shall cover any future improvements within the revocable license area which receive design review approval and which meet one or more of the criteria adopted by City Council resolution for the granting of revocable licenses. Any future revocable license application which does not meet the criteria must be approved by the City Council.

This revocable license is granted subject to the following terms and conditions:

1. Licensee shall save and hold harmless the City of Belvedere from any loss, damage, or injury of any kind or character whatsoever that may arise from anything done, or omitted to be done, by Licensee, its agents, employees or contractors in connection with or in any way related to the matters authorized by this License. Licensee agrees to hold City harmless and indemnify City (including, but not limited to, attorney fees, expert witness costs and court costs), without limitation, from and against any and all claims, injuries, damage, liability and/or cause of action which may ever arise as a result of injury and/or damage to property claimed to be the result of construction and/or failure to maintain said property or improvements by Licensee in, on, under, or above City property which is the subject of the revocable license granted Licensee by City.
2. To the extent this License authorizes the erection or installation of any building, fence, wall, or other structure or facility in or upon land owned by City, Licensee agrees to erect and install the same in accordance with plans and specifications approved by the Planning Commission of the City of Belvedere and further agrees to maintain the same at all times in good condition and repair, all at Licensee's sole cost and expense.
3. To the extent this License authorizes the erection or installation of any infrastructure improvements which are subject to the Americans With Disabilities Act ("the Act"), Licensee agrees to construct and maintain those improvements in full compliance with the requirements of the Act.

4. If Licensee shall fail to comply with the terms and conditions of this License, the City, at its option may immediately terminate and revoke this License by mailing or delivering written notice thereof to Licensee at the address hereinabove stated. Licensee shall not restrict access by the public and/or by adjacent property owners to the licensed area.
5. Licensee shall execute this License by: signing the License; making an acknowledgement of the License before a notary public or an officer specified by the State to take the acknowledgement of instruments of writing; and delivering the signed License and certificate of acknowledgement to the City. If Licensee shall fail to execute this License within thirty days of the date issued, the City may immediately terminate and revoke this License by mailing or delivering written notice thereof to Licensee at the address hereinabove stated.
6. Anything herein to the contrary notwithstanding, this License shall be revocable at the pleasure of the City Council of the City of Belvedere. The election to revoke this License may be exercised at any time by mailing or delivering to Licensee at the address hereinabove stated a notice of revocation and termination. Within the time specified in said notice, Licensee shall, at its own cost and expense, remove from the Premises the encroachment and all structures and facilities placed thereon or therein by Licensee.
7. That upon the failure of Licensee to comply with any of the agreements contained herein, City may declare said improvements to be a public nuisance, and may take such action as may be authorized by law to abate said nuisance. The City shall be entitled to recover from Licensee costs of suit and reasonable attorney's fees, to be determined by the court. The remedy of City as contained in this paragraph shall not be exclusive.
8. The Licensee acknowledges that the property interest created hereunder by issuance of this license may be subject to possessory interest taxation and said Licensee in whom such possessory interest is vested recognizes and agrees that it/they shall be solely responsible for payment of all such taxes levied upon said possessory interest.
9. The Licensee shall deliver this license to any successor in interest to the above-described land.
10. The agreements contained herein are covenants and servitudes running with the land and shall be binding upon Licensee and its successors, assignors, executors, administrators, and personal representatives.
11. The Licensee shall obtain an encroachment permit from the City prior to the commencement of any work on City property.
12. Revocable License No. 2016.29 previously issued for this property shall remain in effect. Any other previous revocable licenses issued to this property are now null and void.

Issued by direction of the City Council of the City of Belvedere pursuant to action taken at its meeting of November 13, 2017.

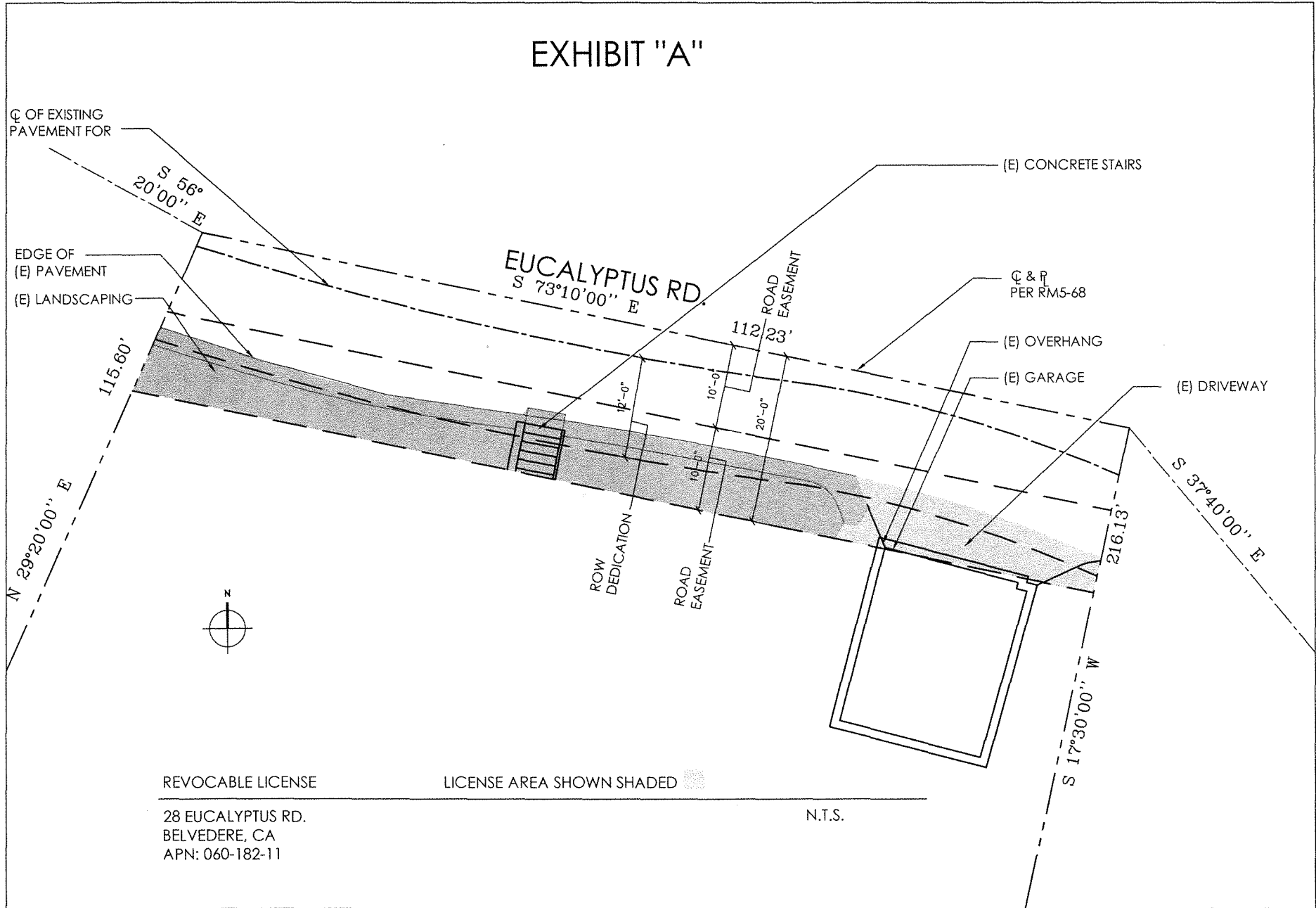
Craig Middleton, City Manager

The foregoing License is accepted and its terms and conditions are agreed to:

Denise L Ellison 2005 Trust UTD March 29 2005, Licensee

By: _____
Denise L. Ellison, Trustee

EXHIBIT "A"



Ellison
Residence
Addition &
Renovation

28 Eucalyptus Road
Belvedere, CA, 94920
APN: 060-128-11

Proposed
Site Plan
Scale 3/32" = 1'-0"



no.	revisions	date
	DESIGN REVIEW	09/27/2016

date issued: 10/20/2016

drawn by: NL checked by: DH

job#: 6060-2016

drawing number

A0.2

of sheets

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