
To: Mayor and City Council

From: Irene Borba, Director of Planning & Building

Subject: Approve revocable license for private improvements in the City street right-of-way in front of 285 Bayview Avenue

Recommended Motion/Item Description

That the City Council approve the revocable license agreement for 285 Bayview Avenue for improvements in the street right-of-way as part of the Consent Calendar.

Background and Findings

Proposed encroachment on City property – 285 Bayview Avenue – APN 060-194-18

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

Concrete stairs, retaining walls, driveway (existing), storm drain outlet pipes and dissipater (new) in the street right-of-way in front of 285 Bayview Avenue. (Refer to attached draft Revocable License No 2018.09 and associated exhibit.)

Background of current application

A revocable license was approved by the City Council in April 2011 for improvements constructed in the Bayview Avenue right-of-way adjacent to 285 Bayview Avenue, including portions of concrete stairs, retaining walls and driveway (Revocable License No. 2011-09). Now, a new revocable license is requested to reflect proposed modifications to private improvements constructed in the Bayview Avenue right-of-way.

In 2014, the Planning Commission approved Design review, Variance and Exception to Floor Area entitlements to allow for the construction of various improvements to the residence, replacement of existing retaining walls, and the construction of new retaining walls in the front, side, and rear yards. The project scope also included an exception to floor area to allow for an entry addition and three Variances for encroachments into the setbacks for retaining walls (PC Resolutions Nos. 2014-047, 048 & 049). The project proposal is under construction.

Additionally, in March 2018, a Design Review Exemption for minor modifications to approved plans was approved by staff and in early January of this year, a Design Review Exception (DRE) was approved for additional minor modifications to approved plans. Said modifications included the addition of new drainage improvements in the City right-of-way. Because these additional

drainage improvements in the City right-of-way are new improvements and not captured in the previously approved revocable license, a new revocable license is required.

The encroachment for the drainage improvements are necessary to provide adequate drainage from the property to occur.

Compliance with Administrative Policy Manual Section 272.05, Revocable Licenses

In accordance with Section 272.05 of the City's Administrative Policy Manual (as revised May 14, 2018), a revocable license for private use of excess street right-of-way may be granted at the discretion of the City Council when there is some benefit to the public, and provided that any proposed encroachment into the right-of-way complies with the design review requirements of Title 20 of the Belvedere Municipal Code. The proposed drainage improvements conform to policy *d* of Administrative Policy Manual for revocable licenses.

- d. Where the public right-of-way will be used to construct retaining walls, drainage structures or other facilities that the City considers necessary to protect or maintain the public infrastructure;*
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The project proposal is for drainage improvements in the City right-of-way. Drainage improvements are specifically listed as examples of necessary infrastructure; therefore conforming to policy *d*.

Public Benefit

The project benefits the public as it will allow for adequate and proper drainage from the property to occur, protecting the subject property, neighboring properties, and City property.

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 285 Bayview Avenue for improvements in the street right-of-way as part of the Consent Calendar.

Attachments

Draft license agreement with attached exhibit.

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. 2019.05

ASSESSOR'S PARCEL NO.: **060-194-18**
ADDRESS: **285 Bayview Avenue, Belvedere, California 94920**
OWNERS' NAMES: **Zackary T. Taylor and Mathew C. Lundberg**
DATE ISSUED: **January 14, 2019**

The City of Belvedere, California, a municipal corporation (hereinafter referred to as "City"), hereby authorizes and licenses the owners of the land described above and in Exhibit "A" (hereinafter referred to as "Licensees"), at their 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: Concrete stairs, retaining walls, driveway (existing), storm drain outlet pipes and dissipater (new).

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. Licensees 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 Licensees, their agents, employees or contractors in connection with or in any way related to the matters authorized by this License. Licensees agree to hold City harmless, defend with counsel determined by the City in its discretion, 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 Licensees in, on, under, or above City property which is the subject of the revocable license granted Licensees 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, Licensees agree to erect and install the same in accordance with plans and specifications approved by the Planning Commission of the City of Belvedere and further agree to maintain the same at all times in good condition and repair, all at Licensees' sole cost and expense.
3. If Licensees 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 Licensees at the address hereinabove stated.

4. 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”), Licensees agrees to construct and maintain those improvements in full compliance with the requirements of the Act.
5. Licensees shall not restrict access by the public and/or by adjacent property owners to the licensed area.
6. Licensees 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 Licensees 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 Licensees at the address hereinabove stated.
7. 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 Licensees at the address hereinabove stated a notice of revocation and termination. Within the time specified in said notice, Licensees shall, at their own cost and expense, remove from the Premises the encroachment and all structures and facilities placed thereon or therein by Licensees.
8. That upon the failure of Licensees 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 Licensees 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.
9. The Licensees acknowledges that the property interest created hereunder by issuance of this license may be subject to possessory interest taxation and said Licensees in whom such possessory interest is vested recognizes and agrees that they shall be solely responsible for payment of all such taxes levied upon said possessory interest.
10. The Licensees shall deliver this License to any successor in interest to the above-described land.
11. The agreements contained herein are covenants and servitudes running with the land and shall be binding upon Licensees and their successors, assignors, executors, administrators, and personal representatives.
12. The Licensees shall obtain an encroachment permit from the City prior to the commencement of any work on City property.
13. Any previous revocable licenses issued to this property (Revocable License No. 2011.09) 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 January 14, 2019.

Craig Middleton, City Manager

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

Zackary T. Taylor, Licensee

Mathew C. Lundberg, Licensee

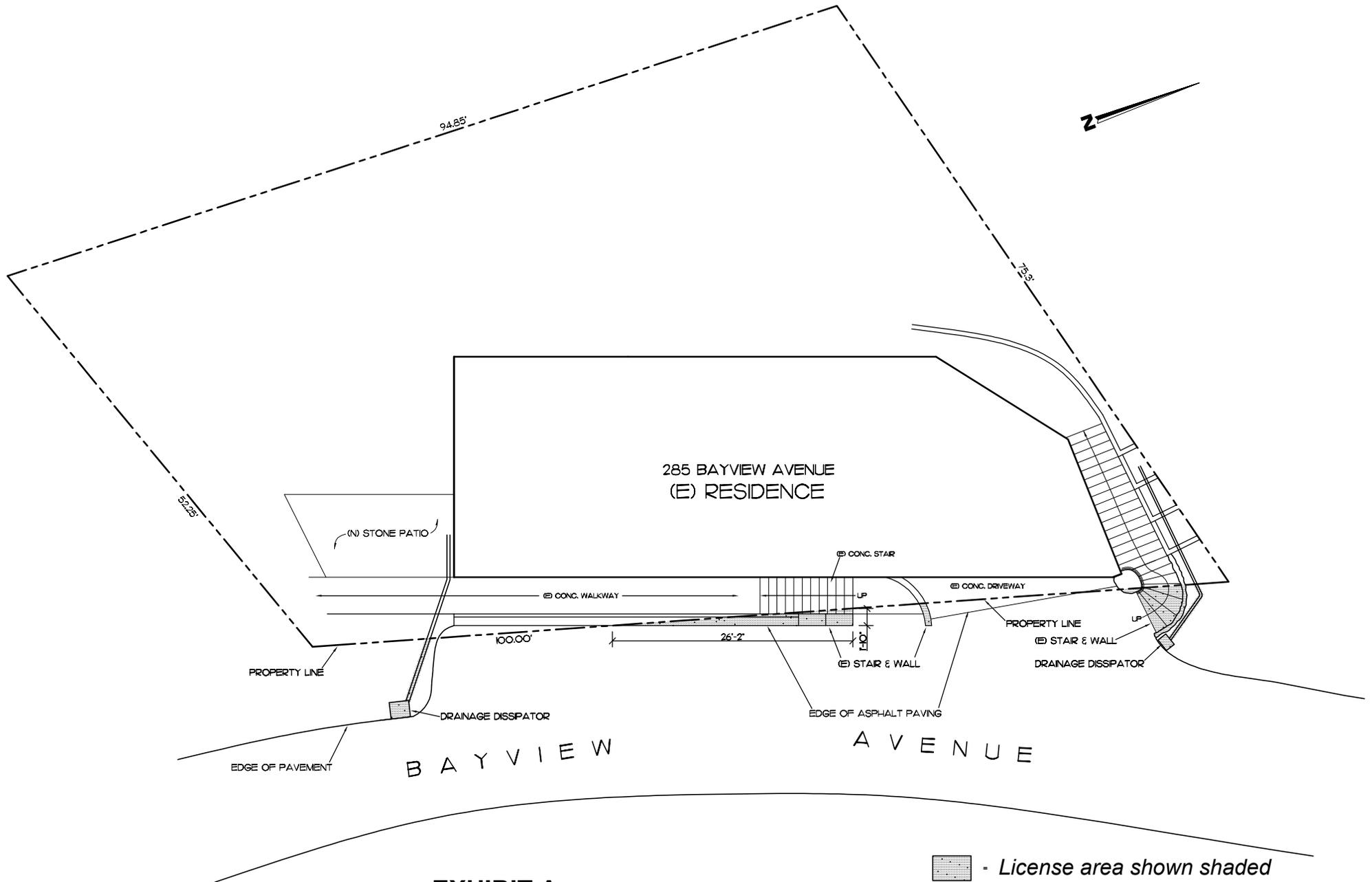


EXHIBIT A

 - License area shown shaded

TAYLOR / LUNDBERG RESIDENCE
 285 BAYVIEW AVENUE
 BELVEDERE, CA.
 APN: 060-194-18

SCALE: NTS