

**INDIVIDUAL
CONSENT CALENDAR**

**BELVEDERE CITY COUNCIL
MARCH 11, 2019**

To: Mayor and City Council

From: Rebecca Markwick, Associate Planner

Subject: **Approve revocable license for private improvements in the City street right-of-way in front of 333 Bella Vista Avenue**

Recommended Motion/Item Description

1. That Council Member McAuliffe state for the record that her residence is within 500 feet of the subject property and therefore she must recuse herself from this item. [She need not leave the dais.]
2. That the City Council approve the revocable license agreement for 333 Bella Vista Avenue for improvements in the street right-of-way.

Background and Findings

Proposed encroachment on City property – 333 Bella Vista Avenue – APN 060-211-17

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

Driveway, curb, driveway gate, retaining wall, stone wall, pedestrian gate, stairs, and landscaping in the street right-of-way in front of 333 Bella Vista Avenue. (Refer to attached draft Revocable License No 2018.20 and associated exhibit.)

Background of current application

A revocable license was approved by the City Council in June 1983 for improvements constructed in the Bella Vista Avenue right-of-way, including the driveway, retaining wall, and stairs. According to a note in the address file, logging and processing of revocable license agreements was spotty during 1983 and it was not part of the process at that time to have the executed license agreements recorded.

A new revocable license is required to reflect proposed modifications to private improvements constructed in the Bella Vista Avenue right-of-way.

On August 1, 2018, City staff and the Planning Commission Chair approved application requests for Design Review for modifications to the existing landscaping and hardscape. The project included a new driveway gate, an extension (41 feet) of the exiting rock wall in the right of way, replacement of the existing pedestrian gate in the right of way, the replacement and extension of

the existing stone steps in the right of way, new retaining walls throughout the property and a new patio with a hot tub, and fire pit.

On October 8, 2018, the City Council reviewed a revocable license for a driveway, curb, driveway gate, retaining wall, stone veneer wall, pedestrian gate, stairs, handrail, landscaping and a pathway in the street right of way in front of 333 Bella Vista. The City Council had concerns about the proposed rock wall. The concerns included that the wall would create a narrowed, walled-off effect and that cars would be reluctant to pull close to the stone wall versus the ivy that is currently covering the wall. The Council also had concerns about the location of the proposed gate violating the recently revised City Council Revocable License Policy.

In response to the City Council's comments, the applicant has removed the stone veneer from the wall, moved the driveway gate so that it is 36 feet from the improved street, and is proposing landscaping where the retaining walls were proposed.

Staff notes that the following are existing improvements in the right-of-way: wire fence, fire hydrant, curb, retaining wall, driveway, pedestrian path, pedestrian gate, stone wall, stone stairs and curb. The new improvements include: driveway gate, landscaping, and replacement of the existing pedestrian gate with a new gate further up on the property, all which are still proposed in the right-of-way.

Staff recommends approval of the revocable license in this case. Staff finds that encroachment is necessary to provide pedestrian and vehicular access from private property to the adjacent public street and use of the public right-of-way will permit landscaping that will enhance the aesthetic qualities of the neighborhood, while also maintaining views from the public right-of-way.

Compliance with Administrative Policy Manual Section 272.05, Revocable Licenses

In accordance with Section 272.05 of the City's Administrative Policy Manual, 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 policy lists the following criteria to consider when determining whether to grant a revocable license for private use of excess right-of-way. Below please find the factors and staff's analysis.

- a. *Where necessary to provide pedestrian or vehicular access from private property to the adjacent public street;*
-

The proposed improvements help to provide pedestrian and or vehicle access from private property to public property. Such improvements in the right-of-way include gates and stairs, a driveway apron/access.

- b. *Where use of the public right-of-way will permit landscaping and/or related improvements to be installed that the City Council determines will enhance the aesthetic qualities of the streetscape. Any such landscaping and/or related improvements should not significantly*

impede public views or views from neighboring properties, or infringe on the privacy of neighboring properties;

As designed, new landscaping will be provided along the property frontage in the public right-of-way. The new landscaping will enhance the aesthetic qualities of the streetscape, screen and soften the property from the street and will not significantly impede public views or views from neighboring properties or infringe on privacy. As designed, the proposed project will be an improvement over what currently exists. Landscaping along the property frontage in the right-of-way includes prunus laurocerasus (laurels).

- c. *Where use of the public right-of-way will permit the creation of an off-street parking area, and will thereby relieve parking or traffic congestion on the adjacent City street;*

The driveway apron, specifically the approximate 36 feet in the right-of-way creates a driveway approach that relieves traffic congestion on the street. The long driveway can also be used when there is traffic congestion on the street.

- 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;*

There are existing retaining walls along the front of the property which protect the street from the hillside above. There are no new retaining walls proposed with this project.

- e. *Where appropriate to validate already existing private 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-of-way for private purposes.*

All existing improvements currently in the right-of-way include the curb, fire hydrants, driveway, wire fence, retaining wall, walkway, stairs and pedestrian gate. The approval of the revocable license shifts the City's potential liability for injuries and damages to the private property owners, shifts maintenance responsibilities away from the City to the property owner, and validates already existing improvements.

- f. *Where necessary to protect or enhance public safety; and/or*

The subject property has a steep slope and slopes upward from the street. The existing retaining wall protects the street from the hillside. If the retaining wall were not in place, there would be problems with erosion and dirt on the street. The retaining wall is a safety measure for the street and pedestrians on the street.

- g. *Where use of the public right-of-way will provide an area for street-level refuse and recycling containers on property that would otherwise not have an area for such improvements.*

There are no street level refuse and recycling proposed with this project.

Public Benefits

The proposal includes a new vehicle gate and existing retaining walls in the City right-of-way. As designed, the wall protects the street and pedestrians from the hillside collapsing.

The driveway gate is open metal and 6 feet in height and 36 feet from the improved street. The driveway will provide a safe place for vehicles to pull out of the way on the narrow bend in the road on Bella Vista. The proposed landscaping will provide screening of the home, as well as creating visual interest on the 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 involved in issuing, recording, and archiving any new license agreement.

Recommended Action

1. That Council Member McAuliffe state for the record that her residence is within 500 feet of the subject property and therefore she must recuse herself from this item. [She need not leave the dais.]
2. That the City Council approve the revocable license agreement for 333 Bella Vista Avenue for improvements in the street right-of-way.

Attachments

- Draft license agreement with attached exhibit.
- Photos of existing conditions.
- Elevation drawing.
- Letter from applicant dated 3/1/2019 and additional information about the proposed gates.

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. 2018.20

ASSESSOR'S PARCEL NO.: **060-211-17**
ADDRESS: **333 Bella Vista Avenue, Belvedere, California 94920**
OWNER: **California Northern 2914 Trust**
DATE ISSUED: **March 11, 2019**

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: Driveway, curb, driveway gate, retaining wall, stone wall, pedestrian gate, stairs, and landscaping.

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. Any previous revocable licenses issued to this property (Unnumbered Revocable License issued June 6, 1983) 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 March 11, 2019

Craig Middleton, City Manager

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

California Northern 2914 Trust, Licensee

By: _____
Linda Mendell, Trustee

- (EX) CURB - REFACE IN CONCRETE
- (EX) FIRE HYDRANT
- (N) VEHICULAR GATE 36' + FROM STREET
- (EX) 6' WIRE FENCE
- (N) 6' PRUNUS LAUROCERASUS 15# 3' APART

- (EX) PINE TREE
- (EX) 7' PT & I-BEAM RET. WALL
- (EX) CONCRETE DRIVEWAY
- (N) 6' PRUNUS LAUROCERASUS 15# 3' APART
- (EX) PATHWAY

- (EX/REP/MOVE) PEDESTRIAN GATE
- (EX) HISTORIC STONE WALL
- (EX) HISTORIC STONE STAIRS
- (EX) CURB
- (N) 6' PRUNUS LAUROCERASUS 15# 3' APART

BELLA VISTA AVE

PROPERTY LINE



REVOCABLE LICENSE EXHIBIT A

333 BELLA VISTA AVE.

BELVEDERE, CA

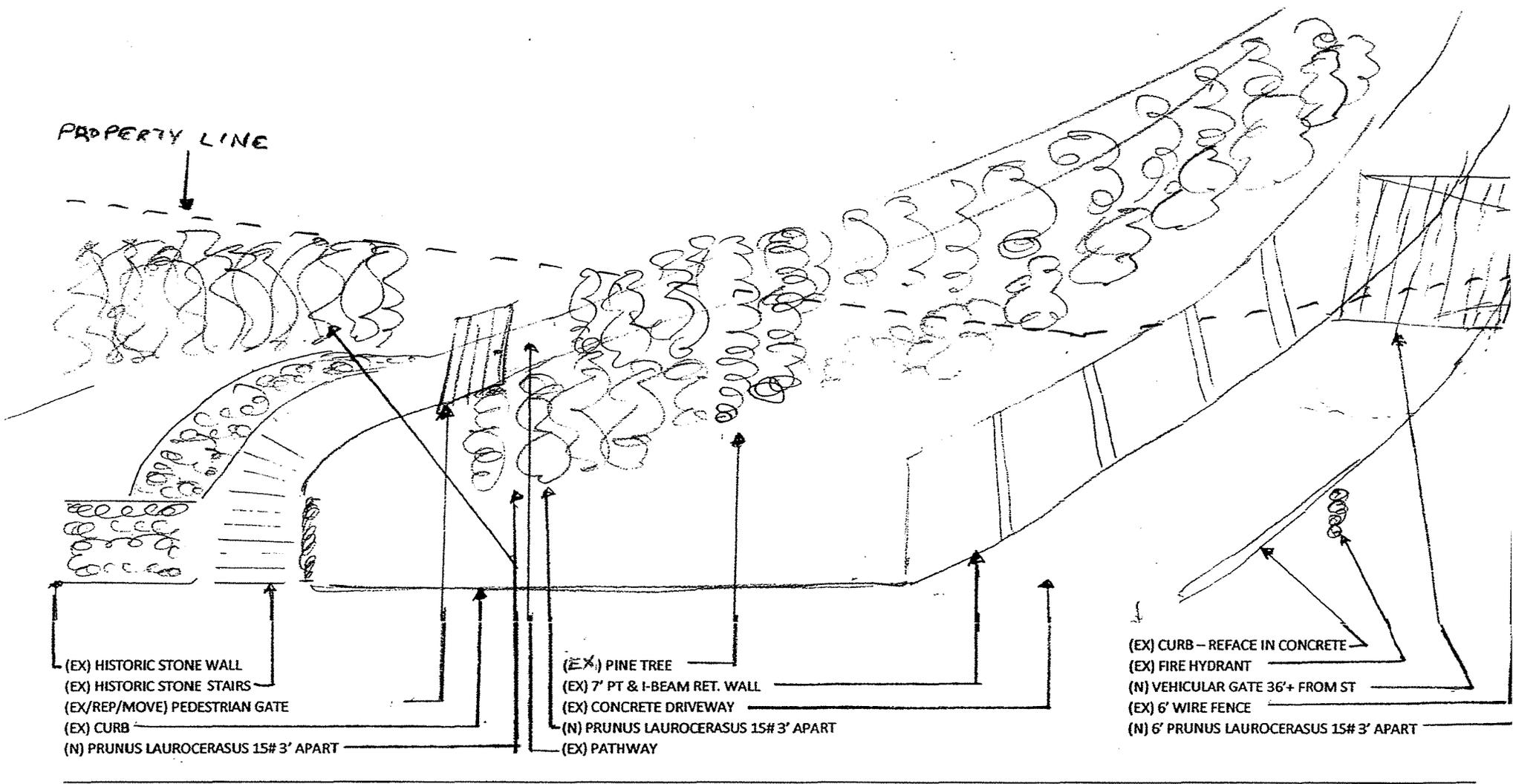
APN: 060-211-17

LICENSED AREA SHOWN SHADED

SCALE: 1/16" = 1.0"







333 BELLA VISTA AVE.
 BELVEDERE, CA
 APN: 060-211-17

3/1/2019

RE: Revocable License for 333 Bella Vista Ave.

Dear City Council,

Thank you for reviewing my RL application. After meeting with 2 representatives of the council last fall, I have made several changes at their suggestion. The changes are reflected in the updated application form and Exhibit A. Here is a list of the changes:

1. Abandon the extension of the rock wall along the roadway.
2. Move the pedestrian gate to the top of the existing staircase so as to not impede traffic with an opening gate swinging into the street and to line up with the privacy planting of the Prunus Laurocerasus.
3. Move the driveway gate 5' further up the driveway to ensure vehicles are completely off the road when the driveway gate is opening. The driveway gate is now 36'+ from the street.
4. After consulting with several arborists, we would like to remove the existing Monterey Pine in the front yard – it is leaning and unhealthy and several large branches have fallen off in recent storms.

Once again, thank you very much,

A handwritten signature in cursive script that reads "Linda Mendell". The signature is written in black ink and is positioned above the printed name.

Linda Mendell

RECEIVED

MAR 26 2018

City of Eugene, Ore

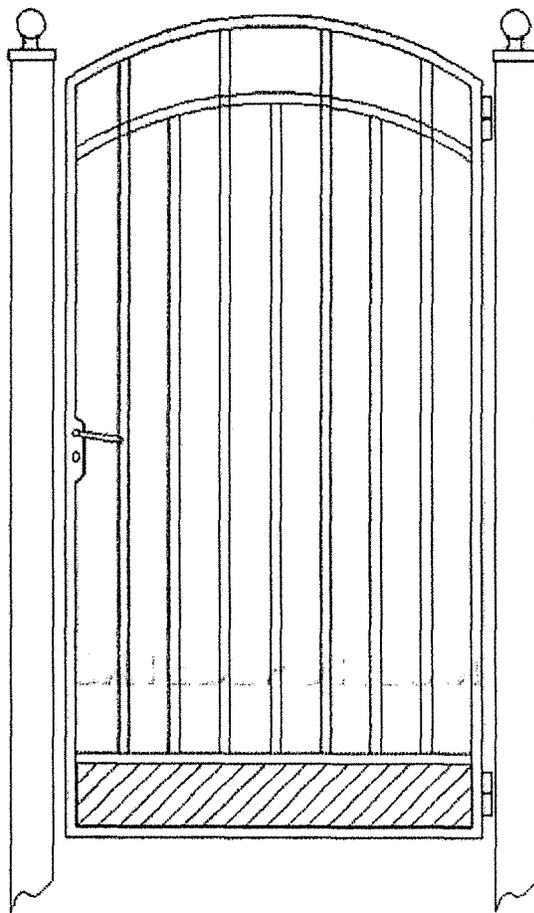
3/26/18

333 BELLA VISTA AVENUE – Linda and Andy Mendell

RE: DESIGN REVIEW EXCEPTION 11/9/17

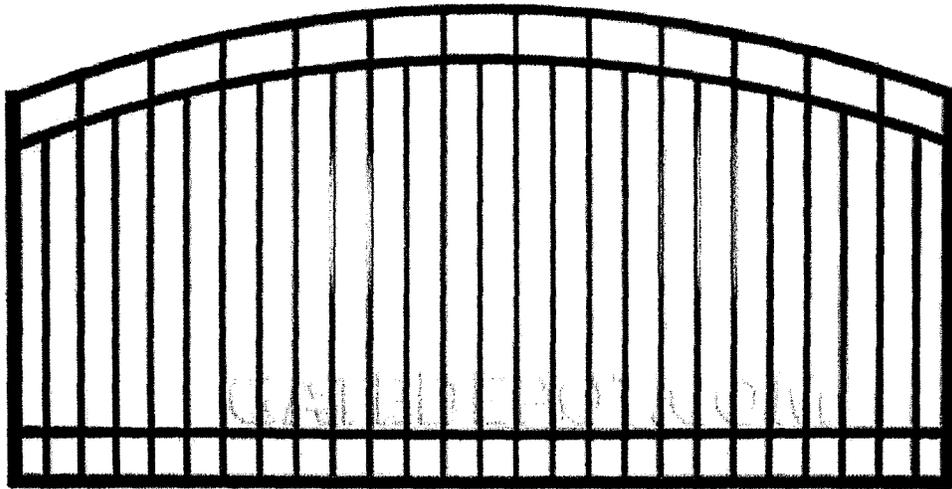
RESPONSE TO 11/27/17 – ADDITIONAL INFORMATION REQUEST

1. Please see attached site plan.
2. Please see attached Revocable License Application and fee receipt dated 2/8/18.
3. 1A – Pedestrian gate will be 6'- 7' high in black steel, similar to this design:



4. 1C – The current rock wall adjacent to the existing pedestrian gate is 5' high. The rock wall will be extended from the existing rock wall adjacent to the pedestrian gate to the existing driveway retaining wall – about 41' long. The proposed rock wall will maintain the same 5' in height. Color and material will be matched as best as possible with the current rock/stone wall - Belvedere rock/stone in a dark gray.

5. 1B – Driveway gate will be 6' – 7' high in black steel, similar to this design:



6. Revocable License requirements noted.
7. 1D – Cut back driveway retaining wall. The retaining wall will be replaced with a retaining wall of the same material: Steel I-beam posts and horizontal wood beams. There are about 28 linear feet proposed in the cut back with the height ranging from about 24" to 40".
8. Remove 4 east facing outlooker windows (2 on the ground level and 2 on the 2nd story level) and replace with 2 rectangular windows of the same size (each new window is the size of 2 combined outlooker windows). See attached photo mock-up.