
To: Mayor and City Council

From: Irene Borba, Director of Planning & Building

Subject: Approve revocable license for private improvements in the City roadway easement in front of 20 Eucalyptus Road

Recommended Motion/Item Description

That the City Council approve the revocable license agreement for 20 Eucalyptus Road for improvements in the roadway easement as part of the Consent Calendar.

Background and Findings

Proposed encroachment on City property – 20 Eucalyptus Road – APNs 060-162-16

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

A portion of the existing carport, driveway, wood stairs, landscaping, and a portion of a guardrail in the roadway easement in front of 20 Eucalyptus Road. (Refer to attached draft Revocable License No 2019.09 and associated exhibit.)

Background of current application

A review of City records indicates that no existing revocable licenses are on file/approved for the subject property. According to the City Engineer, a revocable license is required for existing improvements within the 20-foot wide roadway easement as the easement is for “roadway” purposes. Existing improvements include: driveway, carport, wood stairs, landscaping and a section of guardrail.

Planning Commission

On March 19, 2019, the Planning Commission approved, with conditions, application requests for Design Review and Exception to Total Floor Area, and revocable license requests for an interior remodel and addition to the existing residence for the property located at 20 Eucalyptus Road. The project proposes to repair/replace the existing foundation of the residence and to construct an addition on the lower level to create a new master bedroom suite, guest room, media room, and deck. Additionally, an addition at the front entry of the home is proposed for an expansion of the living room and to create a new vestibule connecting the main house to an existing bedroom. The project proposes a deck expansion on the rear of the main residence, a roof deck on the middle level of the residence, and other minor site improvements.

Compliance with Administrative Policy 11.7, Revocable Licenses

In accordance with Policy 11.7 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 existing improvements help to provide pedestrian and or vehicle access from private property to public property.

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;*

Minimal existing landscaping (a hedge) is in this area, which enhances aesthetics of the streetscape. The landscaping does not impede public views or views from neighboring property, nor infringe on privacy.

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 existing improvements help to provide pedestrian and vehicle access from private property to public property, since the carport provides access between the private residence and 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;*

Not applicable.

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;*

Staff suggests that the revocable license is warranted to validate the several existing private improvements that already exist in the right-of-way. As noted above, a review of City records indicates that no revocable licenses currently exist for the subject property for any of the existing improvements located in the right-of-way. The existing improvements include: Existing driveway & carport and wood stairs and a section of a guardrail and landscaping. These improvements are long-standing. Therefore, a revocable license is necessary to validate the existing improvements and shift potential liability for injury and damages away from the City and to the private property owner.

f. Where necessary to protect or enhance public safety:

The improvements are existing improvements which have existed for some time and will remain unchanged. A guardrail also exists which helps to provide protection from falls along 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.

Not applicable as no street-level refuse area is proposed with this project.

Additionally, the Policy further states that “*Where fencing is proposed on City property, with the exception of where said fencing would be located on a very steep slope and would serve as a safety measure for vehicles and pedestrians said fencing should normally be avoided as this effectively turns public property into private property and potentially creates the unwanted image of a ‘tunnel effect’ along our city streets. Fences and other similar barriers, including landscaping, that enclose public property for private use should be avoided.*”

Not applicable as no fencing exists or is proposed on city property; however, a guardrail does exist but helps to provide protection from falls along the street.

Explained above and as conditioned, staff suggests the project complies with the revocable license policy factors.

Public Benefit

The project benefits the public, as these existing improvements enhance the aesthetic appeal of the property frontage along Eucalyptus Road and provide access to the residence and carport. Additionally, approval of a Revocable License will shift liability for injury and damage that may occur away from the City and to the property owner.

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 11.7, 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 20 Eucalyptus Road for existing improvements within the 20-foot wide roadway easement as part of the Consent Calendar.

Attachments

- Draft license agreement with attached exhibit.
- Photos of existing conditions.

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. 2019.09

ASSESSOR'S PARCEL NO.: **060-162-16**
ADDRESS: **20 Eucalyptus Road, Belvedere, California 94920**
OWNER: **Elizabeth Robinson Mitchell 2010 Family Trust**
DATE ISSUED: **April 8, 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: A portion of the existing carport, driveway, wood stairs, landscaping, and a portion of a guardrail in the Eucalyptus Road roadway easement.

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 are now null and void.

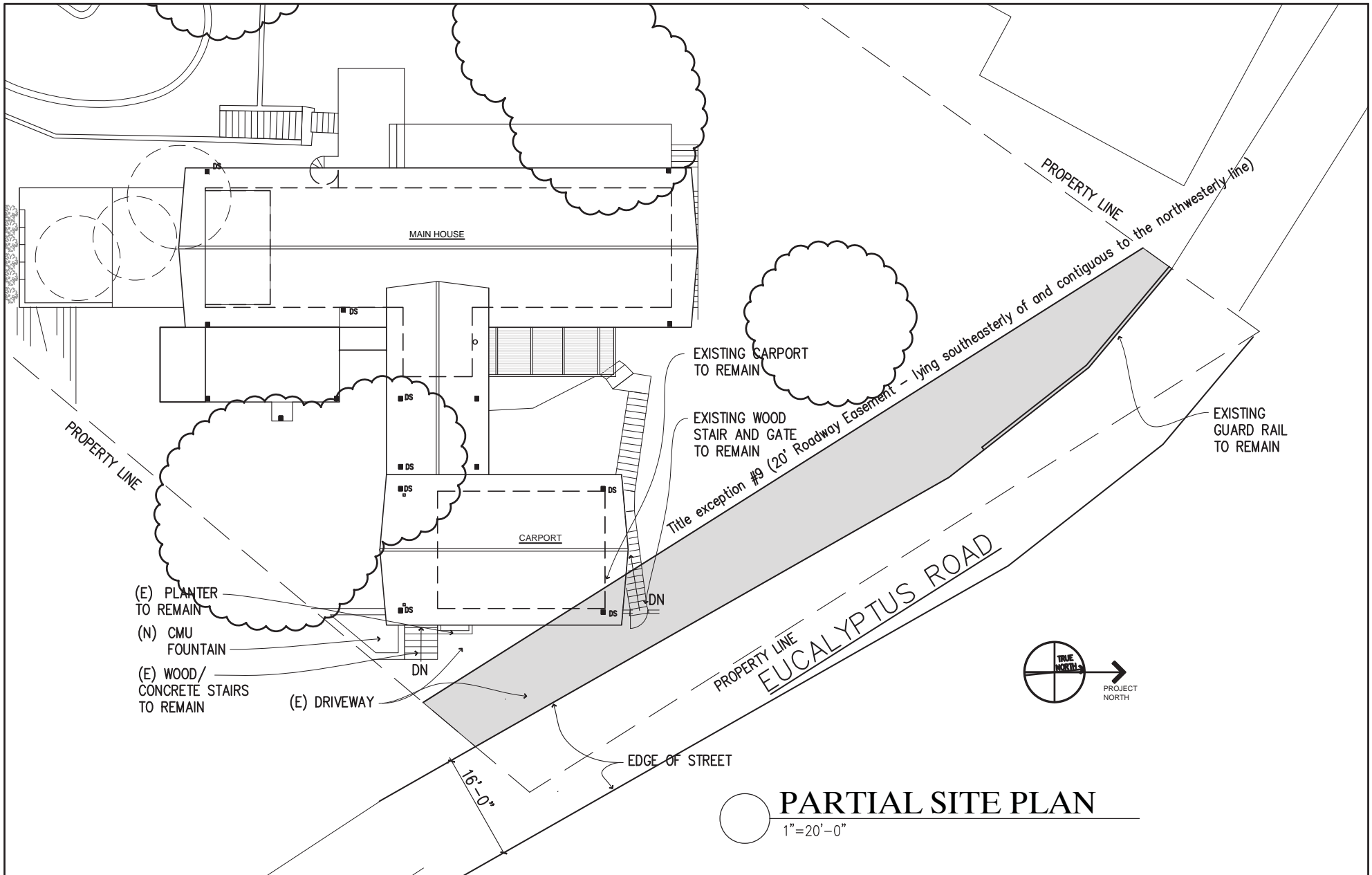
Issued by direction of the City Council of the City of Belvedere pursuant to action taken at its meeting of April 8, 2019.

Craig Middleton, City Manager

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

The Elizabeth Robinson Mitchell 2010 Family Trust, Licensee

By: _____
Elizabeth R. Mitchell, Trustee



REVOCABLE LICENSE EXHIBIT "A"

LICENSE AREA SHOWN SHADED

Scale: 1"=20'-0"

MITCHELL RESIDENCE

20 EUCALYPTUS ROAD
 BELVEDERE, CALIFORNIA

APN - 060-162-16









