
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 6 West Shore Road

Recommended Motion/Item Description

That the City Council approve the revocable license agreement for 6 West Shore Road for improvements in the street right-of-way as part of the Consent Calendar.

Background and Findings

Proposed encroachment on City property – 6 West Shore Road – APN 060-272-03

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

Landscaping, driveway and entry path in the street right-of-way in front of 6 West Shore Road. (Refer to attached draft Revocable License No 2019.11 and associated exhibit.)

Background of current application

There are no existing revocable licenses for the property at 6 West Shore Road. On May 21, 2019, the Belvedere Planning Commission approved application requests for Design Review and an Exception to Total Floor Area for a new single family home, attached garage, detached pool house and pool and other associated site improvements at 6 West Shore Road. The Planning Commission approved the proposed home and recommended approval for the proposed encroachments into the public right-of-way.

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.

Staff suggests that the project complies with Revocable License Policy (a) and (b):

- 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 vehicle access from private property to public property. Staff suggests that this factor is satisfied.

- 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;

The proposed landscaping in the City right-of-way will help soften and screen the property along the street and improves the aesthetic qualities of the streetscape. Said landscaping will not significantly impede public views from what currently exists or infringe on the privacy of neighboring properties.

- 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 proposed project does not change the existing onsite parking. A portion of the driveway will encroach into the right-of-way, which creates access to the garage and on-site parking, thereby relieving parking pressure on the adjacent 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 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.

As noted above, a review of City records indicates that there are no revocable licenses for the existing landscaping and driveway at 6 West Shore Road. Therefore, a revocable license is necessary to validate the new improvements and shift potential liability for injury and damages to the private property owner.

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

There are no new improvements proposed that will protect or enhance public safety.

- 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.*
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There are no street-level refuse and recycling proposed in the right-of-way. The project will store refuse containers in the garage.

Here, the proposed project will significantly improve landscaping in the area, including at the entry and project frontage, which will enhance the aesthetic qualities of the streetscape. The landscaping will not significantly impede views or infringe on privacy. The Commission/staff finds that encroachment is necessary to permit landscaping that will enhance the aesthetic qualities of the neighborhood, while also maintaining views from the public right-of-way.

Public Benefit

The project benefits the public as it will beautify the streetscape with landscaping, which will benefit the community as a whole.

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 6 West Shore Road for improvements in the street right-of-way as part of the Consent Calendar.

Attachments

- Draft license agreement with attached exhibit.
- Elevation.

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. 2019.11

ASSESSOR'S PARCEL NO.: **060-272-03**
ADDRESS: **6 West Shore Road, Belvedere, California 94920**
OWNER: **The Holland-Jaeger Family Trust**
DATE ISSUED: **June 10, 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: Landscaping, driveway and entry path.

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 June 10, 2019.

Craig Middleton, City Manager

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

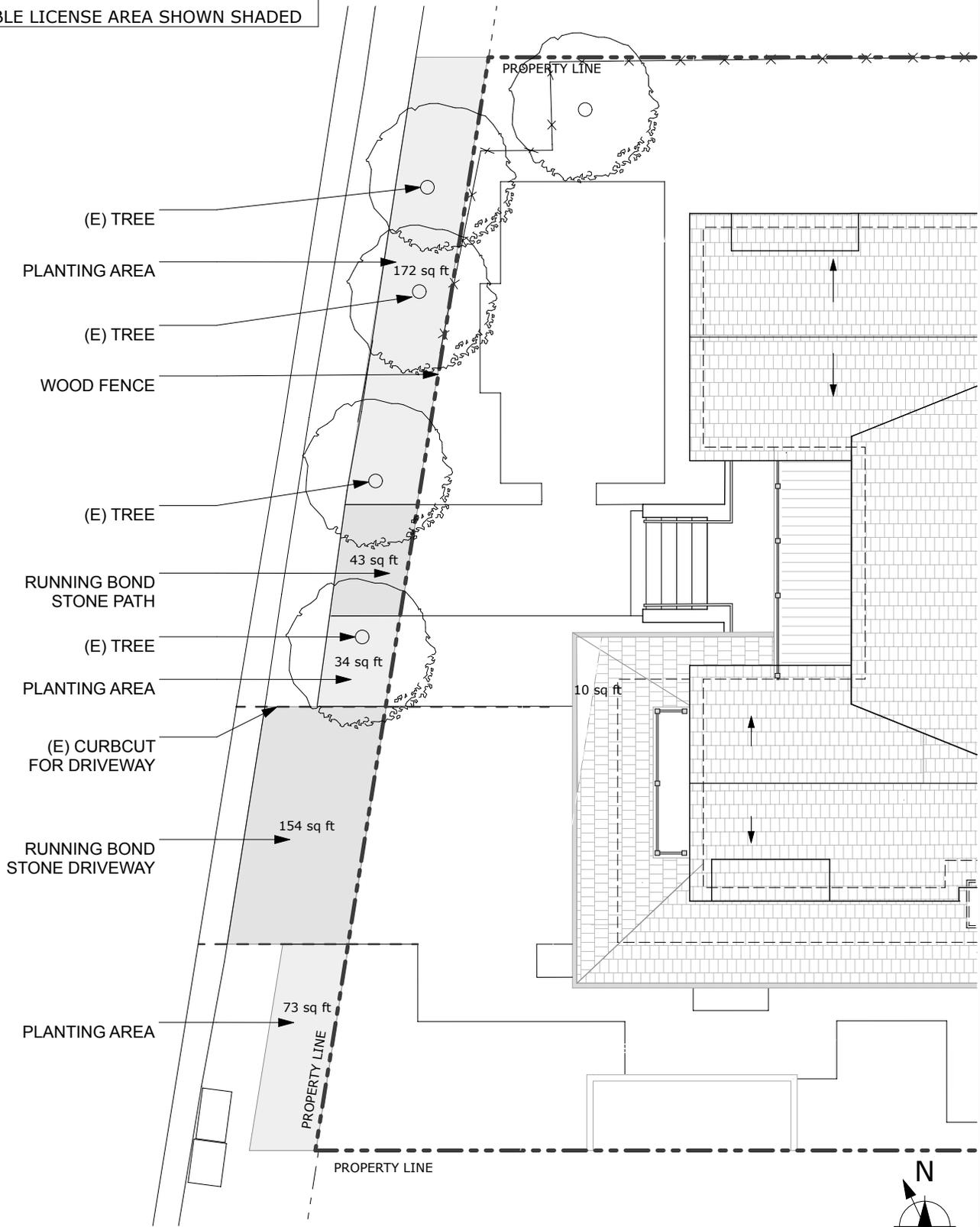
The Holland-Jaeger Family Trust, Licensee

By: _____

NOTE:

- REVOCABLE LICENSE AREA SHOWN SHADED

WEST SHORE ROAD



JOB NO: 1803

DRAWING REF: A0.2

DATE: 4/15/2018

SCALE: 3/32"=1'-0"

REVOCABLE LICENSE EXHIBIT "A"

6 WEST SHORE ROAD, BELVEDERE, CA 94920



JOB NO: 1803	DRAWING REF: A0.2	DATE: 4/15/2018	SCALE: 3/32"=1'-0"
		REVOCABLE LICENSE ELEVATION 6 WEST SHORE ROAD, BELVEDERE, CA 94920	