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Introduced By
2011 APR 13 PM 6:16
Councilmember

Approved For Form And Legality


City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. 83318 C.M.S.

**RESOLUTION GRANTING GERRIE SCOTT A REVOCABLE AND
CONDITIONAL PERMIT TO ALLOW PORTIONS OF EXISTING BUILDINGS
AND A FENCE AT 1506 CENTER STREET AND 1438 15th STREET TO
ENCROACH INTO THE PUBLIC RIGHT-OF-WAY AND PUBLIC EASEMENT**

WHEREAS, Gerrie Scott, trustee of the Hess/ Scott 1993 Trust – Survivor’s Trust, who is the owner of the properties described in a trust transfer and grant deed, recorded December 22, 1994, series no. 94390571, by the Alameda County Auditor-Recorder, and identified by the Alameda County Assessor as parcel numbers 005-0371-010-01 and 005-0371-010-02, and identified respectively by the City of Oakland as 1438 15th Street and 1506 Center Street, and more particularly described in *Exhibit A* attached hereto, has made an application to the City Engineer of the City of Oakland for a permit (ENMJ 11051) to allow the front façade of an existing detached garage on 15th Street to encroach approximately one (1) foot into the public right-of-way and roof eaves of an existing dwelling on Center Street to encroach approximately one (1) foot over the abutting five (5) feet wide public sewer easement; and

WHEREAS, the limits of the encroachment are delineated in *Exhibit B* attached hereto; and

WHEREAS, said owner has also applied to the Director of Planning of the City of Oakland for a permit (PMW1100475) to adjust the common property line separating said two (2) parcels; and

WHEREAS, the required boundary survey for said property line adjustment revealed that portions of said existing buildings and a wooden fence encroach nominally into said public rights-of-way and over said public easement; and

WHEREAS, the widths of public sidewalks along 15th Street and Center Street are approximately fourteen (14) feet and ten (10) feet respectively; and

WHEREAS, section 12.08.030 of the Oakland Municipal Code requires that applications for permanent encroachments in the public right-of-way and public easements receive approval from the City Council as a condition of permit issuance; and

WHEREAS, said encroachments into the public right-of-way and over the public easement and their locations beyond the limits of said parcel and easement boundaries have not interfered with the use by the public of the sidewalk and buried utilities since the buildings were constructed circa 1954; and

WHEREAS, the Council of the City of Oakland has previously approved similar encroachments of buildings and fences into the public right-of-way and public easements throughout Oakland.

WHEREAS, the encroachment is categorically exempted from the requirements of the California Environmental Quality Act (CEQA) in accordance with, but not limited to, each of the following California Code of Regulations: Section 15332 (Class 32: Infill Projects), Section 15301 (minor alteration to existing structures), and Section 15304 (minor alterations to land); now, therefore, be it

RESOLVED: That the encroachment complies with the requirements of the California Environmental Quality Act; and be it

FURTHER RESOLVED: That the encroachment, as conditioned herein and delineated in *Exhibit B*, is hereby granted for a revocable permit to allow portions of two (2) existing buildings and a fence to encroach into the public right-of-way along 15th Street and Center Street and over a public easement; and be it

FURTHER RESOLVED: That the encroachment is hereby conditioned by the following special requirements:

1. the Permittee (Gerrie Scott) is responsible for the relocation of all existing public utilities including but not limited to fire alarm cable, master signal cable, street lighting and intersection signal cable, as required; and
2. after notice to the Permittee, this permit shall be revocable at the sole discretion of the Council of the City of Oakland, expressed by resolution of said Council; and
3. the Permittee, by the acceptance of this conditional and revocable permit, hereby disclaims any right, title, or interest in or to any portion of the public right-of-way area, underlying the encroachments or the air space above and agrees that said temporary use of the area does not constitute an abandonment on the part of the City of Oakland of any of its rights for street purposes and otherwise; and
4. the Permittee shall maintain in force and effect at all times that the encroachments occupy the public right-of-way, valid and sufficient Commercial General Liability insurance in an amount not less than \$2,000,000.00 for each occurrence with a property damage sub-limit in the amount not less than \$1,000,000.00 for each occurrence, including contractual liability and naming as additional insured the City of Oakland, its directors, officers, agents, representatives, employees, and volunteers against any and all claims arising out of the existence of said encroachments in said right-of-way area, and that a certificate of such insurance and subsequent notices of the renewal thereof, shall be filed with the City Engineer of the City of Oakland and that such certificate shall state that said insurance coverage shall not be canceled, materially changed, or be permitted to lapse without thirty (30) days' written notice to the City Engineer. The Permittee also agrees that the City of Oakland may review the type and amount of insurance required at any time and may require the Permittee to increase the amount of and/or change the

type of insurance coverage required. In addition, the insurance amounts stated above shall be automatically adjusted upwards cumulatively consistent with the Consumer Price Index (CPI) in the Bay Area every five (5) years; and

5. the Permittee, by the acceptance of this conditional permit agrees and promises to defend, hold harmless, and indemnify the City of Oakland and its officials, officers, employees, agents, representatives, and volunteers from any and all claim, demand, lawsuit and judgment for damages of any kind and nature whatsoever arising out of or caused by the existence, installation or maintenance of the encroachments into the public right-of-way and regardless of responsibility for negligence; and that this indemnification shall survive termination of this Permit; and
6. the Permittee shall make no changes to the encroachments hereby allowed either structurally, with regard to dimension, or with respect to use, without the prior written consent of the City Engineer and understands that the City of Oakland may impose reasonable fees and considerations for processing permits required for such proposed changes. The Permittee also understands that the City of Oakland is not obligated to grant any changes requested by the Permittee; and
7. the Permittee, by the acceptance of this conditional permit shall be solely and fully responsible for the repair or replacement of any portion or all of the improvements in the event that the improvements shall have failed or have been damaged to the extent of creating a menace or of becoming a hazard to the safety of the general public; and that the Permittee shall be solely liable for the expenses connected therewith; and
8. upon the termination of the permission herein granted, the Permittee shall immediately remove the encroachments from within the public right-of-way, restore the premises to its original condition, and shall repair any resulting damage to the satisfaction of the City Engineer; and
9. the Permittee shall file with the City of Oakland for recordation, a disclaimer and agreement that Permittee accepts and shall comply with and shall be bound by each and all of the terms, conditions and provisions of this resolution; and that the disclaimer and agreement shall be subject to the approval of the City Attorney and the City Engineer; and
10. the plans and exact location of the encroachments hereby granted are subject to the review and approval of the City Engineer and that the Permittee shall obtain all necessary permits prior to commencing said work; and that the encroachment shall be located as set forth in **Exhibit B**; and
11. the Permittee acknowledges that the City of Oakland makes no representations or warranties as to the conditions beneath the encroachments; and that by accepting this conditional revocable permit, the Permittee agrees that it will use the encroachment area at its own risk, that it is responsible for the proper coordination of its activities with all other permittees, underground utilities, contractors, or workmen operating within the encroachment area, and that it is responsible for its own safety and the safety any of its personnel in connection with its entry under this conditional revocable permit; and

12. the Permittee acknowledges that the City of Oakland is unaware of the existence of any hazardous substances beneath the encroachment areas, and hereby waives and fully releases and forever discharges the City of Oakland and its officers, directors, employees, agents, and volunteers from any and all claims, demands, liabilities, damages, actions, causes of action, penalties, fines, liens, judgments, costs, or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise out of or in any way connected with the physical condition, or required remediation of the excavation area or any law or regulation applicable thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), the Clean Water Act (33 U.S.C. Section 466 et seq.), the Safe Drinking Water Act (14 U.S.C. Sections 1401-1450), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Toxic Substance Control Act (15 U.S.C. Sections 2601-2629), the California Hazardous Waste Control Law (California Health and Safety Code Sections 25100 et seq.), the Porter-Cologne Water Quality Control Act (California Health and Safety Code Section 13000 et seq.), the Hazardous Substance Account Act (California Health and Safety Code Section 25300 et seq.), and the Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code Section 25249.5 et seq.); and
13. the Permittee further acknowledges that it understands and agrees that it hereby expressly waives all rights and benefits which it now has or in the future may have, under and by virtue of the terms of California Civil Code Section 1542, which reads as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR"; and
14. the Permittee recognizes that by waiving the provisions of Civil Code Section 1542, it will not be able to make any claims for damages that may exist, and to which, if known, would materially affect its decision to execute this encroachment agreement, regardless of whether Permittee's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause; and
15. the hereinabove conditions shall be binding upon the Permittee and the successive owners and assigns thereof; and be it

FURTHER RESOLVED: That the Council of the City of Oakland, at its sole discretion and at future date not yet determined, may impose additional and continuing fees as prescribed in the Master Fee Schedule, for use and occupancy of the public right-of-way and public easements; and be it

FURTHER RESOLVED: That this resolution shall take effect when all the conditions hereinabove set forth shall have been complied with to the satisfaction of the City Engineer of the City of Oakland and shall become null and void upon the failure of the Permittee to comply with the conditions hereinabove set forth after notice and failure to cure such conditions; and be it

FURTHER RESOLVED: That the City Engineer is hereby authorized to file a certified copy of this resolution for recordation by the Alameda County Clerk-Recorder.

IN COUNCIL, OAKLAND, CALIFORNIA, MAY 3 2011 , 2011

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE, ~~KAPLAN~~; KERNIGHAN, NADEL,
SCHAAF, AND PRESIDENT REID - 7

NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused- Kaplan - 1

ATTEST:

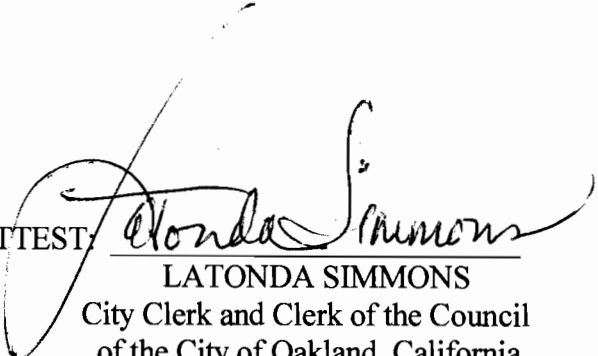

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Exhibit A

metes and bounds of the Lands of Gerrie Scott, as shown in a trust transfer and grant deed, recorded December 22, 1994, series no. 94390571, by the Alameda County Auditor-Recorder

Being Lots 1 and 2, Block 582A, "Map of the Bagge Tract," filed August 18, 1873, Map Book 5, page 24, Alameda County Records, described as follows:

Beginning at the intersection of the Eastern line of Center Street with the Northern line of 15th Street, as said streets are shown on the Map herein referred to; thence Northerly along said line of Center Street 54 feet, 9 inches; thence Easterly parallel with said line of 15th Street, 110 feet, 2 inches; thence at right angles Southerly 54 feet, 9 inches to said line of 15th Street; and thence Westerly thereon 109 feet, 10 inches to the point of beginning.

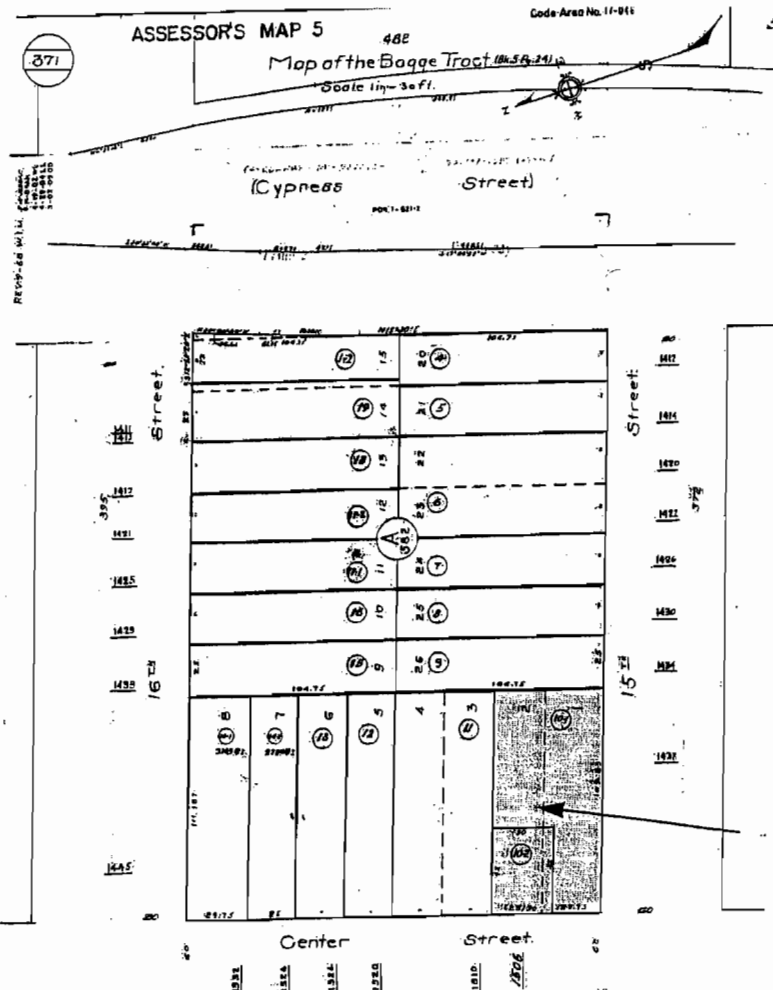


Exhibit B

limits of the existing building and fence encroachments

