



April 24th, 2023

To: Mayor Kudron and Town Trustees
From: Kimberly White, Community Development Department

RE: Resolution 12-2023; A Resolution Granting A License For The Encroachment Into The Public Right-Of-Way Of Certain Improvements Located Adjacent To Parcel 4, Daven Haven Cottages Of The Town Of Grand Lake

Purpose

During the Planned Development Review of the Daven Haven Planned Development Third Amendment on March 5th, 2023, the Board of Trustees instructed the Carey Barnes (“Owner”) to obtain an encroachment permit for the concrete slab, dumpster, grease bin existing on the Cairns right of way and to add a fence to obstruct the view of the encroachment from Cairns Ave. Major encroachments, such as permanent concrete drives, require Board of Trustee Approval.

Background Information

Encroachment agreements are for the purpose of allowing items of a more permanent nature to be placed in the Town Right of Way with the understanding that the owner will retain public liability insurance on said encroachment, and, upon proper notification by the Town, the Owner shall remove said encroachment within 45 days. The Owner’s have recently finalized the Third amendment plat for the Daven Haven Cottages PD and the existing concrete slab for the trash was surveyed and found to be located 3.8’ x 7’ into the Cairns right of way.

Municipal Code

Section 11-6-1: Public Property Encroachments

A. Encroachment Defined - An encroachment is any item that is placed, erected or built on the public right-of-way by a private property owner. A property owner shall seek permission from the Town to encroach onto Rights of Ways or municipal property prior to the encroachment occurring. Where an encroachment exists without Town approval, the owner shall be required to remove the encroachment at his own expense or seek permission from the Town for the encroachment to remain.

B. Types of Encroachments

1. Major Encroachments are considered encroachments that are more permanent in nature. Examples include, but are not limited to: buildings or structures, driveways, fences and retaining walls, decks and patios, some components of public utilities, as well as other immovable objects other than minor landscaping.

C. When Encroachments Will Not Be Granted

The following encroachment license or agreement requests will not be granted:

- 1. Additions to existing buildings or other structures that would encroach or do encroach onto municipal property or road Rights of Ways, or*
- 2. The encroachment poses a danger to the public, or*

D. When Encroachments May Not Be Granted

The following encroachment license or agreement requests may not be granted, as determined by the Town Board of Trustees:

- 1. The proposed encroachment is in conflict with applicable Town Departments and/or applicable utility companies, or*
- 2. When construction has commenced prior to the issuance of a required permit from the Town.*

E. Application

- 1. A Narrative Request; and*
- 2. A Site Plan indicating exact measurements of the proposed encroachment and its position to the property boundaries; and*



3. *Applicable Deposits and/or Fees, as set by Town of Grand Lake Board of Trustees Resolution; and*

4. *Any other information determined by Town staff applicable to the review of the request.*

F. Review and Approval Process

1. *Major Encroachments shall be reviewed by the Town Board of Trustees.*

The item will be placed on the Town Board of Trustees agenda. The Board shall approve, approve with conditions, or deny the application at a public meeting. No later than 14 days prior to the meeting, Town staff shall cause certified mailings to be sent, return receipt requested, to all utility companies.

The Board may continue the application review to a later date (not to exceed 45 days) in order to obtain more information about the request or to conduct site inspections. If approved, an Encroachment License will be issued.

G. Indemnification and Insurance Requirements

The property owner is required to indemnify and save harmless The Town of Grand Lake against any and all damages which may result from the encroachment. Insurance may be required. The certificate of insurance shall be submitted to the Town prior to the execution or issuance of the Encroachment License or Agreement.

Additional Information

The Municipal Code requires the Town to contact all utility companies informing them of encroachment requests. Staff sent certified letters to each utility company. Staff has received one letter of concern from the gas company, due to the screening fence to be added. Xcel gas has requested gas line locates to be called in by the Owner before they can give their consent. *"Hopefully the locates don't find the gas main as close as it appears. If it is then it may hinder the installment of a fence. Fences should be 5' away from any gas line or the edge of any pad or structure/foundation."* All other utilities do not have concern with this existing encroachment.

The Public Works Director and the Water Superintendent have reviewed the application and have indicated that it does not interfere with the Town utilities at this time. The Planning Commission and the Board of Trustees require the entire concrete slab and trash area to be screened from the Cairns Avenue right of way.

Staff Recommendation

Staff recommends if the Board grants the encroachment license for the existing improvements, they should adopt the resolution as presented which contains the following conditions:

1. That all affected utilities are found to not interfere with the proposed fencing.
2. The License is limited to the Existing Improvements as shown on the site plan (hereinafter the "Encroachment"); and,
3. The Licensee must maintain the Encroachment at its sole expense; and,
4. This License shall remain in full force and effect for the benefit of the Licensee, their heirs, successors and assigns, until such time as the Town, in its sole determination, determines that this license should end. At such time, within 45 days of the Town providing notice to the Licensee, Licensee shall remove the Encroachment and restore that portion of the Town right of way to pre-existing condition or better at Licensee's expense. The Licensee may perform normal maintenance and repairs to the Encroachment, but may not expand the Encroachment further into or enlarge the Encroachment above the public right-of-way; and,
5. The granting of this License shall not be considered a precedent for any future encroachments; and
6. The granting of this License does not limit any public use of the Cairns Drive right of way; and
7. The Licensee agrees to pay the License fee to the Town in the amount of One Hundred Dollars (\$100.00); and,
8. To maintain public liability insurance in an amount not less than \$300,000 per person and \$900,000 per accident to protect Licensee and the Town from any liability to the public as a result of the encroachment onto the Town's right-of-way and to furnish the Town proof of such insurance upon request. Said insurance shall be maintained at all times during the term of this easement.



9. The Licensee delivers the Town a fully executed Encroachment License and Agreement.

Board Discussion

The Board should discuss the public property encroachment request.

Board Action

The Board has several options to consider including:

1. Granting the encroachment request by adopting the resolution; or
2. Grant the request with other conditions; or
3. Continue the request until May 22nd, 2023.

Suggested Motions for 604 Marina Dr.:

1. **I move to adopt Resolution 12-2023, as written**

Or

2. **I move to adopt Resolution 12-2023, with the following conditions**

Or

3. **I move to continue the encroachment request until more information from the gas company is received and reviewed.**