



City of Ketchum

April 19, 2021

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Recommendation to approve Right-of-Way Encroachment Agreement 20618 for concrete pavers in the City Right-of-Way.

Recommendation and Summary

Staff is recommending Council approve the attached Encroachment Agreement and adopt the following motion:

"I move to authorize the Mayor to sign Encroachment Agreement 20618 with Don Dickerson."

The reasons for the recommendation are as follows:

- The pavers in the ROW were installed prior to 2004
- Formalize the existing paver driveway and nonconforming parking area

Introduction and History

In 2019 Don Dickerson submitted a building permit to add a 376 sq. ft. addition and deck to their existing home at 231 Edelweiss. At final review and Certificate of Occupancy sign off, an existing paver driveway and parking area within the ROW was noted. Current right-of-way (ROW) standards do not permit paver parking areas; however paver driveways are permitted through an encroachment agreement. The new addition did not qualify as a substantial improvement therefore ROW improvements were not required for the project. Based on historic photos, the pavers appear to have been installed prior to 2004. At that time the City did not have approved ROW standards. The City requested Don Dickerson submit a Right-of-Way Encroachment Permit application for the existing pavers within the ROW. The agreement is intended to permit the existing nonconforming parking area and driveway until ROW upgrades are triggered or the pavers become problematic for City operations.

City code requires a right-of-way encroachment permit for any permanent encroachment in the public right-of-way. These agreements are intended to help protect the City in the event the proposed encroachments were to ever pose an issue requiring repair, relocation, or removal of the encroachment.

Analysis

The existing encroachment currently does not impact public access or city operations.

Financial Impact

There is no financial impact resulting from approval of this encroachment agreement.

Attachments:

Encroachment Agreement 20618

WHEN RECORDED, PLEASE RETURN TO:

**OFFICE OF THE CITY CLERK
CITY OF KETCHUM
POST OFFICE BOX 2315
KETCHUM, IDAHO 83340**

RIGHT-OF-WAY ENCROACHMENT AGREEMENT 20618

THIS AGREEMENT, made and entered into this ____ day of ____, 2021, by and between the CITY OF KETCHUM, IDAHO, a municipal corporation ("Ketchum"), whose address is Post Office Box 2315, Ketchum, Idaho and DON DICKERSON, (collectively referred to as "Owner"), whose address is 207 PALM SPRINGS AVE., CHEYENNE, WY 82009.

RECITALS

WHEREAS, Owner is the owner of real property described as 231 Edelweiss Ave. ("Subject Property"), located within the City of Ketchum, State of Idaho; and

WHEREAS, Owner wishes to permit placement of a paver driveway and parking area within the right-of-way on Edelweiss. These improvements are shown in Exhibit "A" attached hereto and incorporated herein (collectively referred to as the "Improvements"); and,

WHEREAS, Ketchum finds that said Improvements will not impede the use of said public right-of-way at this time subject to the terms and provisions of this Agreement;

NOW, THEREFORE, in contemplation of the above stated facts and objectives, it is hereby agreed as follows:

TERMS AND CONDITIONS

1. Ketchum shall permit Owner to maintain the improvements identified in Exhibit "A" within the public right-of-way of Edelweiss Ave. in Ketchum, Idaho, until notified by Ketchum to remove the improvements at which time Owner shall remove improvements at Owner's expense.

2. Owner shall be responsible for the maintenance of said Improvements. Any modification to the improvements identified in Exhibit "A" shall be approved by the City of Ketchum prior to any modifications taking place.

3. In consideration of Ketchum allowing Owner to maintain the Improvements in the public right-of-way, Owner agrees to indemnify and hold harmless Ketchum from and against any and all claims of liability for any injury or damage to any person or property arising from the Improvements constructed, installed and maintained in the public right-of-way. Owner shall further indemnify and hold Ketchum harmless from and against any and all claims arising from any breach or default in the performance of any obligation on Owner's part to be performed under this Agreement, or arising from any negligence of Owner or Owner's agents, contractors or employees and from and against all costs, attorney's fees, expenses and liabilities incurred in the defense of any such action or proceeding brought thereon. In the event any action or proceeding is brought against Ketchum by reason of such claim, Owner, upon notice from

Ketchum, shall defend Ketchum at Owner's expense by counsel satisfactory to Ketchum. Owner, as a material part of the consideration to Ketchum, hereby assumes all risk of damages to property or injury to persons in, upon or about the Improvements constructed, installed and maintained in the public right-of-way arising from the construction, installation and maintenance of said Improvements and Owner hereby waives all claims in respect thereof against Ketchum.

4. Ketchum shall not be liable for injury to Owner's business or loss of income therefrom or for damage which may be sustained by the person, goods, wares, merchandise or property of Owner, its tenants, employees, invitees, customers, agents or contractors or any other person in or about the Subject Property caused by or resulting from the Improvements constructed, installed, removed or maintained in the public right-of-way.

5. Owner understands and agrees that by maintaining the Improvements in the public right-of-way pursuant to this Agreement, Owner obtains no claim or interest in said public right-of-way which is adverse to that of Ketchum and that Owner obtains no exclusive right to said public right-of-way nor any other right to use the public right-of-way not specifically described herein.

6. This Agreement shall be a covenant running with the Subject Property and the terms and provisions hereof shall inure to the benefit of and be binding upon the parties and the respective heirs, personal representatives, successors and assigns of the parties hereof.

7. In the event either party hereto retains an attorney to enforce any of the rights, duties and obligations arising out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorney's fees at the trial and appellate levels and, whether or not litigation is actually instituted.

8. This Agreement shall be governed by, construed, and enforced in accordance with the laws and decisions of the State of Idaho. Venue shall be in the District Court of the fifth Judicial District of the State of Idaho.

9. This Agreement sets forth the entire understanding of the parties hereto, and shall not be changed or terminated orally. It is understood and agreed by the parties hereto that there are no verbal promises or implied promises, agreements, stipulations or other representations of any kind or character pertaining to the Improvements maintained in the public right-of-way other than as set forth in this Agreement.

10. No presumption shall exist in favor of or against any party to this Agreement as the result of the drafting and preparation of this document.

11. This Agreement shall be recorded with the Blaine County Recorder by Ketchum.

12. The parties fully understand all of the provisions of this Agreement, and believe them to be fair, just, adequate and reasonable, and accordingly accept the provisions of this Agreement freely and voluntarily.

OWNER:

CITY OF KETCHUM:

By: _____
Don Dickerson

By: _____
Neil Bradshaw
Its: Mayor

STATE OF _____,)
County of _____,) ss.
_____.

On this ____ day of _____, 2021, before me, the undersigned Notary Public in and for said State, personally appeared DON DICKERSON, known to me to be the person who executed the foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public for _____
Residing at _____
Commission expires _____

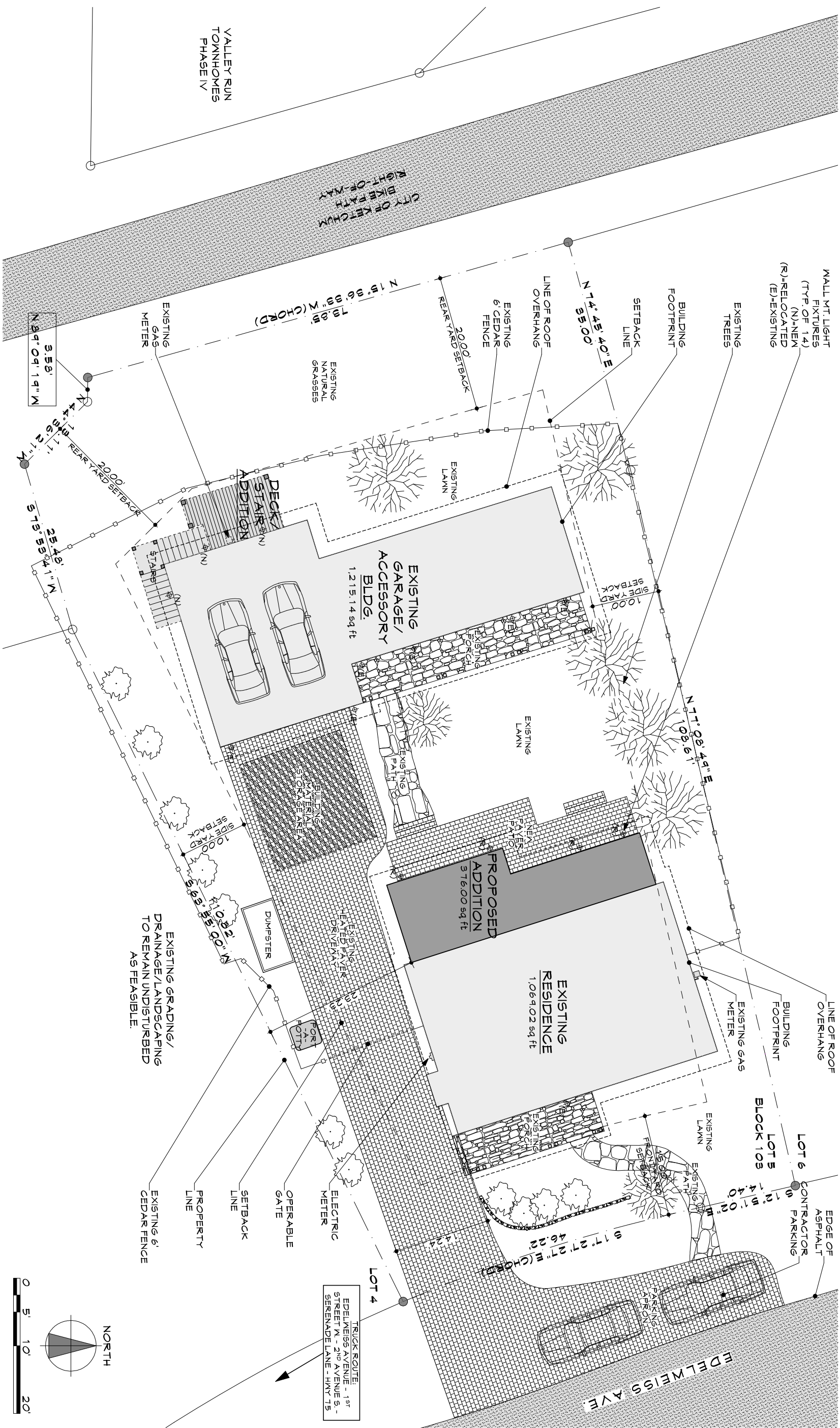
STATE OF IDAHO)
) ss.
County of Blaine)

On this ____ day of _____, 2021, before me, the undersigned Notary Public in and for said State, personally appeared NEIL BRADSHAW, known or identified to me to be the City Administrator of the CITY OF KETCHUM, IDAHO, and the person who executed the foregoing instrument on behalf of said municipal corporation and acknowledged to me that said municipal corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.

Notary Public for _____
Residing at _____
Commission expires _____

EXHIBIT “A”



(SHOWING CONSTRUCTION ACTIVITY PLAN)

STHPLAN

SCALE: 1" = 10'



City of Ketchum

OFFICIAL USE ONLY

Date Received:

By:

Permit Fee:

Date Paid:

RIGHT-OF-WAY ENCROACHMENT PERMIT APPLICATION

Property Owner: Don Dickerson, MD
Owner Mailing Address: 207 Palm Springs Ave, Cheyenne, WY 82009
Project Contact: Don Dickerson, MD
Contact Email: wizardsmail@me.com
Contact Phone Number: 307-421-7800
Property Street Address: 231 Edelweiss Ave, Ketchum
Encroachment(s) in Right-of-Way (be specific as possible):
Pavers - street encroachment

Name or Description of Right-of-Way Affected: 231 Edelweiss Ave

Width of Right-of-Way: _____

Dimensions of Right-of-Way Encroachment(s): _____

Attach diagram identifying streets and/or alleys, total width of right-of-way, dimensions of right-of-way encroachment, types(s) of encroachment and visual aids sufficient to show the impacts of the encroachment.

Owner's Signature Don Dickerson MD Date: 2-27-21

Administrative Use Only

Date Received: _____ Date of Council Meeting: _____

Council Meeting Date: _____

Action Taken by Council: _____

Date approved: _____ Date Denied: _____

**CITY OF KETCHUM**

P.O. Box 2315
Ketchum ID 83340
Phone: (208) 726-7801
Fax: (208) 726-7812

INVOICE

Date	Number	Page
03/10/2021	4642	1

Bill To: Dickerson, Don
207 Palm Springs Ave
Cheyenne WY 82009

Customer No. 1610
Project: 231 Edelweiss Ave
Terms: Due Upon Receipt
Invoice Due Date: 03/10/2021

Quantity	Description	Unit Price	Net Amount
1	RIGHT OF WAY ENCROACHMENT AGREEMENT	150.00	150.00
		Amount	150.00
		Balance Due	<u>150.00</u>

Please remit payment to:
City of Ketchum
Post Office Box 2315
Ketchum, Idaho 83340

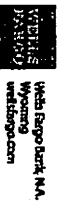
LORI R DICKERSON 02/11
DON R DICKERSON
207 PALM SPRINGS AVE
CHEYENNE, WY 82009-6105

4193
99-109/1023 12040

PAY TO THE
ORDER OF

City of Kelletts

\$ 150.00



FOR DEPOSIT ONLY - OUTSTANDING PRINT COPY

Don Dickerson

⑆302301092⑆ 5308433688⑈ 04193