THE CITY OF ASHEVILLE

STAFF REPORT

Council Meeting Date: January 27, 2026

Subject: Grant of an easement on city-owned property (ROW adjacent to 44 Elk Mountain Ridge Road, Asheville, NC) to Marie E. and William Cross.

Staff Resource(s): Amy Deyton, Public Works Director
Derek Wainscott, Stormwater Division Manager
Jannice Ashley, Deputy City Attorney

Action Requested: Adoption of a resolution to authorize the City Manager to execute an Easement Agreement with Marie and William Cross for a portion of right-of-way located adjacent to their property at 44 Elk Mountain Ridge Road.

Background:

- In October, the City approved installation of a private entrance walkway and driveway located at 44 Elk Mountain Ridge Road, Sherwood Heights Subdivision, Asheville, NC identified as PIN 9741-60-4303 which encroaches into the City right of way.
- When the improvements were first approved, the property owners were told they could be granted an encroachment agreement and the property owners agreed, not realizing that per City Code encroachment agreements allow the City to require removal of any encroaching improvements upon 30 days notice.
- The property owners, Marie and William Cross, consulted with their attorney and have requested an easement be granted rather than an encroachment agreement, since it secures a greater right to use the property for the improvements that were a significant investment and are necessary for improved access to their property.
- The Public Works Director has agreed to allow an easement right, rather than an encroachment, because the plans allowing the improvements in the right of way had already been approved by the City and construction had begun. The property owners have agreed that the easement document will make clear that the City will not have any responsibility for repair or replacement of the improvements should the City need to do work in the right of way in the future that may disrupt or damage the improvements.
- The permanent easement area(s) within the right of way is approximately 800 SF+/- as shown on the attached plat map recorded in Plat Book 254 Page 121.
- Public Work's Staff have determined that this permanent easement will not substantially impair or hinder the use of the right of way as a way of passage.
- Public Work's Staff recommend that no cost be assessed for the granting of this easement, since the City (Grantor) is being indemnified by the property owners (Grantees) and relieved of all responsibility for any repair or replacement of the improvements located within the right of way should they be damaged by future City work, thus diminishing the monetary value of said easement.

Council Goal(s):

- A well-planned and livable community.

Committee(s):

- None

Pro(s):

- The easement will not substantially impair or hinder the use of the right of way and the City will have no responsibility for repair or replacement of the improvements.
- Approval of an easement addresses property owners' concern about the ability of the improvements in which they have invested to remain in the right of way.

Con(s):

- None identified

Fiscal Impact:

- Public Work's Staff recommend that no cost be assessed for the granting of this easement, since the City (Grantor) is being indemnified by the property owners (Grantees) and relieved of all responsibility for repair or replacement of the improvements located within the right of way should they be damaged by future City work, thus diminishing the monetary value of said easement which is only 800 SF+/-.

Suggested Motion:

- Motion to adopt a resolution authorizing the City Manager to execute an agreement granting an easement on city right of way to the property owners of 44 Elk Mountain Ridge Rd., Marie and William Cross, for the purpose of constructing a private entrance walkway and driveway that encroach into the right of way in accordance with the terms and conditions described herein and to take all actions necessary to give effect to this resolution.

Attachment(s):

- Resolution
- Easement Plat

RESOLUTION NO. 26-

RESOLUTION AUTHORIZING THE CITY MANAGER TO GRANT AN EASEMENT ON CITY OWNED RIGHT OF WAY LOCATED ADJACENT TO PROPERTY AT 44 ELK MOUNTAIN RIDGE ROAD TO MARIE AND WILLIAM CROSS FOR PURPOSES OF ALLOWING THE ENCROACHMENT OF A PORTION OF A NEWLY CONSTRUCTED PRIVATE ENTRANCE WALKWAY AND DRIVEWAY.

WHEREAS, pursuant to N.C.G.S. § 160A-272, the City has the authority to convey easements in, on, over, or under City property; and

WHEREAS, in October 2025, the City approved installation of a private entrance walkway and driveway located at 44 Elk Mountain Ridge Road, Sherwood Heights Subdivision, Asheville, NC identified as PIN 9741-60-4303 and owned by Marie and William Cross which encroach into the City right of way; and

WHEREAS, the property owners, Marie and William have requested an easement be granted rather than an encroachment agreement, since it secures a greater right to use the property for the improvements that were a significant investment and are necessary for improved access to their property; and

WHEREAS, the Public Works Director has agreed to allow an easement right, rather than an encroachment, because the plans allowing the improvements in the right of way had already been approved by the City and construction had begun and the property owners have agreed that the easement document will make clear that the City will not have any responsibility for repair or replacement of the improvements should the City need to do work in the right of way in the future that may disrupt or damage the improvements; and

WHEREAS, the requested permanent easement area(s) within the right of way is approximately 800 SF+/- as shown on the attached plat map; and

WHEREAS, Public Work's Staff have determined that this permanent easement will not substantially impair or hinder the use of the right of way as a way of passage; and .

WHEREAS, Public Work's Staff recommend that no cost be assessed for the granting of this easement, since the City (Grantor) is being indemnified by the property owners (Grantees) and relieved of all responsibility for repair or replacement of the improvements located within the right of way should they be damaged by future City work, thus diminishing the value of said easement; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

The City Manager is hereby authorized to execute an agreement granting an easement on city right of way to the property owners of 44 Elk Mountain Ridge Rd., Marie and William Cross, for the purpose of constructing a private entrance walkway and driveway that encroach into the right of way in accordance with the terms and conditions described herein and to take all actions necessary to give effect to this resolution.

Read, approved and adopted this 27th day of January, 2026.

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City Clerk Mayor

Approved as to form:

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City Attorney