



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: EN-2021-3

File ID: EN-2021-3 **Type:** Encroachment **Status:** Consent Item

Version: 1 **Reference:** Item 15 **In Control:** City Council

Department: Legal Department **Cost:** **File Created:** 08/28/2020

File Name: Consent to Encroach 816 Cedarbrook Drive **Final Action:**

Title: CONSENT TO ENCROACH EN-2021-3: FOR LOT 7, BLOCK 8, BROOKHAVEN NO. 31 ADDITION, CITY OF NORMAN, CLEVELAND COUNTY, OKLAHOMA. (816 CEDARBROOK DRIVE)

Notes: ACTION NEEDED: Motion to approve or reject Consent to Encroachment EN-2021-3; and, if approved, direct the filing thereof with the Cleveland County Clerk.

ACTION TAKEN: _____

Agenda Date: 09/08/2020

Agenda Number: 15

Attachments: 816 Cedarbrook Consent Form, City Clerk Memo, Request to Encroach, Photos, Site Plan, Memo from Planning, Memo from Public Works, Memo from Utilities

Project Manager: Beth Muckala, Assistant City Attorney

Entered by: sarah.encinias@normanok.gov

Effective Date:

History of Legislative File

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
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Text of Legislative File EN-2021-3

Body

BACKGROUND: An encroachment request has been filed in the office of the City Clerk by property owners, Patricia Davis and John W. Cooper, requesting a Consent to Encroach into a utility easement at the above-described property.

DISCUSSION: The application for the Consent to Encroachment concerns the encroachment upon a City of Norman and Norman Utilities Authority (NUA) ten foot (10') utility easement for the installation of pavement and retaining wall along with an existing pergola. The owner is requesting that the pavement, retaining wall, and existing pergola be allowed to encroach upon the existing utility easement located on the west side of the lot. At the present time, the City and

the NUA do not have a utility in this easement.

The applicants have obtained a response from Cox Communications, Oklahoma Gas & Electric, and Oklahoma Natural Gas, which have indicated that they have facilities located in the easements, however they are not opposed to the encroachment so long as the owner abides by the certain requirements as indicated in #6 below. AT&T and Oklahoma Electric Cooperative made no objection to the encroachment request.

Staff has reviewed the application and the “hold harmless” clauses. From a legal perspective, it protects the City’s and the NUA’s concerns with respect to damage to the property owners’ property should the City and the NUA or other authorized entity be required to perform work within its easement. There are some conditions applied to this Consent to Encroachment as listed below:

1. The property owner(s), and property owners’ heirs, successors, or assigns (hereafter collectively the “Owner Parties”) will be responsible for the cost to repair any damages to the City’s and the NUA’s utilities caused by any excavation, piercing or other construction activities conducted by the Owner Parties or their agents;
2. The Owner Parties will be required to apply for and receive any applicable permits prior to commencing work;
3. The Owner Parties will be responsible for the cost the City and the NUA incurs to remove any pavement, retaining wall, pergola, deck, fence, curb, landscaping, and/or any other structure if needed to maintain or repair NUA facilities;
4. The Owner Parties will be responsible for the cost to repair or replace any pavement, retaining wall, pergola, deck, fence, curb, landscaping or any other structure after such repair;
5. The Owner Parties will waive and release any claims against the City and the NUA for any damages to the residence and related improvements caused by failure or repair and maintenance of the City’s and the NUA’s utilities within the easement area;
6. Cox Communications, Oklahoma Gas & Electric, and Oklahoma Natural Gas have facilities located in the easement however they are not opposed to the encroachment, so long as Owner Parties contact OKIE811 location services and that the facility owners are notified should their respective facility need to be relocated to accommodate excavation or construction. AT&T and Oklahoma Electric Cooperative have also stated that they do not object;
7. By encroaching on said easement, the Owner Parties release Cox Communications, Oklahoma Gas & Electric, Oklahoma Natural Gas, AT&T, and Oklahoma Electric Cooperative for any damages caused by any excavation by these utility companies for purposes of maintaining or replacing the City’s and the NUA’s utility facilities within the easement area; and

8. Damages to Cox Communications, Oklahoma Gas & Electric, Oklahoma Natural Gas, AT&T, and Oklahoma Electric Cooperative facilities resultant from any current/future construction may carry possible financial charges to the Owner Parties.

The benefit to having the consent to encroach on file is that it is evidence of the property owners' understanding that, while the City and the NUA is allowing them to encroach upon the easement, the City and the NUA are not liable and will not be responsible for damage to the property owners' property in the event maintenance has to be performed within the easement.

All necessary City departments have responded on this item and have no objection to the proposed Consent Agreement, with the conditions stated therein. Please note that this Consent Agreement and Covenant concerns only the City's consent to encroach where a project is otherwise permissible under City Code. Further evaluation will occur once such an application has been submitted by applicant relating to this project.

RECOMMENDATION: Based upon the above and foregoing, the City Attorney's office is forwarding the above Consent to Encroach, EN-2021-3, for Council consideration.