



Legislation Details (With Text)

File #: EN-2021-8 **Version:** 1 **Name:** Consent to Encroach 500 Yarmouth Road
Type: Encroachment **Status:** Passed
File created: 1/19/2021 **In control:** City Council
On agenda: 2/9/2021 **Final action:** 2/9/2021
Title: CONSENT TO ENCROACH EN-2021-8: FOR LOT 19, BLOCK 12, VINEYARD 3 ADDITION, CITY OF NORMAN, CLEVELAND COUNTY, OKLAHOMA. (500 YARMOUTH ROAD)

Sponsors:

Indexes:

Code sections:

Attachments: 1. City Council Staff Report, 2. Consent Agreement and Covenant (2021-8), 3. City Clerk Memo, 4. Request to Encroach, 5. Plot Plan, 6. Memo from Planning, 7. Memo from Public Works, 8. Memo from Utilities

| Date | Ver. | Action By | Action | Result |
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| 2/9/2021 | 1 | City Council | | |

CONSENT TO ENCROACH EN-2021-8: FOR LOT 19, BLOCK 12, VINEYARD 3 ADDITION, CITY OF NORMAN, CLEVELAND COUNTY, OKLAHOMA. (500 YARMOUTH ROAD)

BACKGROUND: An encroachment request has been filed in the office of the City Clerk by the property owner, Curtis McCarty, C. A. McCarty Construction, L.L.C., requesting a Consent to Encroach into a drainage 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) drainage easement for the expansion of a concrete driveway. The owner is requesting that the expansion of the concrete driveway (no above-ground structures) be allowed to encroach upon the existing drainage easement located across the west side of the property.

A platted 20-foot drainage easement exists along the west property line and will be encroached upon for the proposed expansion of the concrete driveway. A 24-inch corrugated metal drainage pipe is located within this easement and the proposed driveway will lie directly above this drainage pipe.

Utility companies were not notified because this encroachment is located within a City-owned drainage easement.

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 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 utilities or infrastructure 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 any costs that the City and the NUA incur to remove any paving, curb, landscaping, retaining wall, and/or any other item if needed to maintain or repair NUA facilities;
4. The Owner Parties will be responsible for the cost to repair or replace any paving, curb, landscaping, retaining wall, or any other item after such repair;
5. No above-ground structures shall be constructed by Owner Parties within the drainage easement encroachment allowed.
6. 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;

The benefit to having the consent to encroach on file is that it is evidence of the property owner's understanding that, while the City and the NUA are 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 and Covenant, 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-2021-8, for Council consideration.