CITY OF JOPLIN
COUNCIL AGENDA ITEM

ITEM:
CB 2021-286 – Encroachment Agreement

MEETING DATE:
October 4, 2021

ORIGINATING DEPARTMENT:
Planning, Development and Neighborhood Services

REVIEWED BY:
Director of Planning, Development & Neighborhood Services-Troy Bolander, Director of Finance-Leslie Haase, City Attorney- Peter Edwards, City Manager- Nicholas Edwards.

SUMMARY REQUEST:
Case 052-21: Encroachment Agreement – A request to encroach in the public right-of-way located at 512-520 S. Virginia Ave. – Jeff Neal

BACKGROUND:
City staff has determined that the encroachment proposed would not result in an inconvenience to loss to the public. The alley that remains was provided as access to a now-vacated North-South alley on this block. This alley was not vacated at the time and is still considered public-right-of-way. Due to an existing skybridge over the alley and limited space for maneuverability beyond that, emergency vehicles do not access the building via this alley.

PLANNING & ZONING COMMISSION TESTIMONY:
Jeff Neal, 307 Meadowood Circle, Carl Junction, MO. We are requesting an encroachment into a public alley that was mandated in a 1916 ordinance that runs to a vacated alley behind the buildings. The purpose of this encroachment would be to allow for new tenant access to the north side of the building. The entire building is being redeveloped and $3.7 million renovation using historic tax credits for approximately 21 to 24 apartments upstairs. The entire downstairs is leased except this space opening to the north which is reserved for lobby. The vacant lot to the north, which we own, will be renovated as green space for the tenants.

PUBLIC COMMENT;
None.

FUNDING SOURCE
These payments are included in the FY 2020-21 budget of the Community Planning Fund.

RECOMMENDATION:
Staff recommends approval of Case 052-21.
Planning and Zoning Commission approved Case 052-21 (6 Favor, 1 Absent,)

ATTACHMENTS:
CB 2021-286, Planning Report, Commission Minutes, Exhibit A

Case 052-21: Encroachment Agreement – A request to encroach in the public right-of-way located at 512-520 S. Virginia Ave. – Jeff Neal

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Ms. Bruckner-Sears asked if any of the Commissioners had any questions. They did not. Ms. Bruckner-Sears asked if there was anyone in the audience to speak in favor of this request? There was not. Ms. Bruckner-Sears asked if there was anyone opposed to this request? There was not.

MS. PHILLIPS MOVED, SECONDED BY MR. KIMBLE THAT CASE 052-21 BE FORWARDED TO THE CITY COUNCIL WITH THE RECOMMENDATION FOR APPROVAL. MOTION CARRIED WITH MS. BRUCKNER-SEARS, MR. EASTMAN, MR. MCCULLOUGH, MR. KIMBLE, MS. PHILLIPS, AND MS. WARREN "AYE", (6 IN FAVOR, 1 ABSENT)

Z&P Meeting: September 13, 2021
City Council Meeting: October 4, 2021

STAFF PLANNING REPORT
Encroachment Agreement

CASE 052-21 A request to encroach in the public right-of-way.

LOCATION 512-520 S. Virginia Ave.

APPLICANT Jeff Neal

EXISTING CONDITIONS

Zoning	Land Use	Property Size
R-1	Vacant	Approx. 0.3 Acres

SITE CONTEXT

	North	East	South	West
Existing Zoning	C-2	C-1	C-2	C-2
Land Use	Vacant Downtown Commercial	Parking Lot	Downtown Commercial Use	Downtown Commercial Use

FUTURE LAND USE

Joplin's Future Land Use Map describes this property as future retail commercial.

TRANSPORTATION

Streets with access	Classification	Right-of-way width
S. Virginia Ave.	Local	60'

UTILITIES

Utilities are existing.

FLOOD PLAIN

This property is not in the flood plain.

STAFF ANALYSIS

WILL THE PUBLIC SUFFER A LOSS OR INCONVENIENCE BY THE ENCROACHMENT INTO THE RIGHT-OF-WAY?

No. City staff has determined that the encroachment proposed would not result in an inconvenience to loss to the public. The alley that remains was provided as access to a now-vacated North-South alley on this block. This alley was not vacated at the time and is still considered public-right-of-way. Due to an existing skybridge over the alley and limited space for maneuverability beyond that, emergency vehicles do not access the building via this alley.

REASON FOR ENCROACHMENT AGREEMENT.

Jeff Neal has requested an encroachment agreement in a side alley to allow for an entrance to the Pennington Building – to be known as 500 Commons Development. This project is a redevelopment and renovation of the existing building into 48 apartment units. The encroachment would be 76 feet long and extend 8 feet into the alley right-of-way. This would allow space for an entrance to the apartments as the grade of the alley and that of the door misalign. The existing alley is 20 feet wide and 130 feet long.

Staff recommends approval of Case 052-21.

ATTACHMENTS

- Map

Case 052-21 - 512-520 S. Virginia Ave. - Encroachment Agreement



Case 051-21: Final Plat Review – A request to review the Final Plat of Abernathy Subdivision located at the Southwest corner of the intersection of W. 22nd St. and S. Schifferdecker Ave. – Jon Abernathy

N

0 20 40 80 120 160 Feet

ENCROACHMENT AGREEMENT

THIS AGREEMENT made this _____ day of _____, 2021, by and between Jeff Neal hereinafter referred to as "Owner" and the City of Joplin, Missouri, a Municipal Corporation, hereinafter referred to as "City".

RECITALS

1. Jeff Neal is the owner of the tract of property generally located at 512-520 S. Virginia, Joplin, Jasper County, Missouri, abutting City right-of-way, said City right-of-way being described as:

   > The South eight (8) feet of the north twenty-one (21) feet of Lot 72 in Porter's Addition to Murphysburg, now a part of the City of Joplin, extending thirty-three (33) feet from the Virginia Avenue on the east to 23 feet from the Porter Alley on the west.

2. The owner wishes to encroach the side alley to allow for entrance to the Pennington Building. The encroachment would be Seventy-Six (76) feet long and extend eight (8) feet into the alley right-of-way.

3. In consideration of the sum of One Dollar ($1.00) and other valuable considerations, the receipt of which is hereby acknowledged, the City grants Owner, his/her heirs, successors and assigns, the ability to maintain the encroachment as described herein and as illustrated on the attached Exhibit "A" (map).

4. Owner and his/her heirs, successors, and assigns agree that City shall not be held liable for any damage to property or structures located within the encroachment due to normal maintenance or repair activities of the City of its assigns. The owner and his/her heirs, successors, and assigns, agree to indemnify and hold harmless the City, its officers, employees, agents, and the members of the City Council from any and all liability claims, suits, actions, damages, costs, or other consequences resulting from the encroachment and use thereof.

5. Nothing herein shall grant unto Owner or his/her heirs, successors, or assigns, the right to extend the encroachment beyond the area described above, although Owner shall maintain the same in compliance with the Code of Ordinances of the City of Joplin.

6. In the event City determines that the encroachment described herein materially impacts upon the City's or general public's ability to utilize City's property, Owner agrees, at their sole and exclusive cost, to move or otherwise remove such encroachment described herein so that it no longer encroaches upon City's right-of-way, within sixty (60) days after notification by City.

7. The provisions herein shall operate as a covenant running with the land.

IN WITNESS WHEREOF, the parties hereunto have executed this Agreement, this _____ day of _____, 2021.

CITY OF JOPLIN, MISSOURI

A Municipal Corporation

By: _____
David Hertzberg
Director of Public Works

By: _____
Owner

STATE OF MISSOURI)
) ss.
COUNTY OF JASPER)

On this _____ day of _____, 2021, before me personally appeared _____, to me known to the be the persons described in and who acknowledge that he or she, as Owner, executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal in my office in Joplin, Missouri, the day, and year last above written.

_____
Notary Public

My Commission Expires:

STATE OF MISSOURI)
) ss.
COUNTY OF JASPER)

On this _____ day of _____, 2021, before me personally appeared David Hertzberg, to me personally known, who being by me duly sworn did state that he is the Director of Public Works of the City of Joplin, Missouri, that the seal affixed to the foregoing instrument is the Corporate Seal of said Corporation, and that the instrument was signed on behalf of said corporation by authority of its City Council pursuant to Ordinance No. _____ ___, passed by the City Council of the City of Joplin, Missouri, on _____ for the consideration stated therein and no other, and the said Director of Public Works acknowledges said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid the day and year above written.

_____
Notary Public

My Commission Expires:

IN THE RECOREDER'S OFFICE

STATE OF MISSOURI)
) ss.
COUNTY OF JASPER)

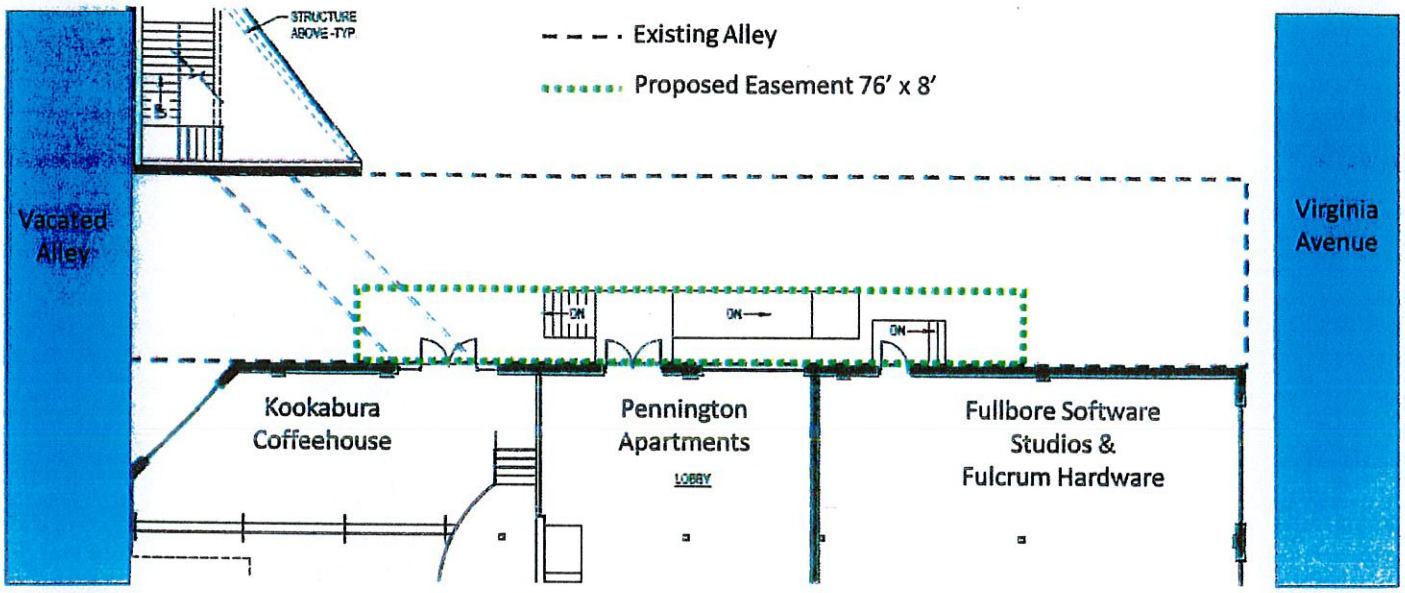
I, _____ Recorder of Deeds of Jasper County, do hereby certify that the within instrument of writing was, with the certificate thereon, at _____ o'clock and __ _____ minutes on __ M. on the _____ day of _____, 2021, duly filed for record in this office, and is recorded in the records of this office in Book _____ at Page _____.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at __ _____, this _____ day of _____, 2021.

RECORDER

By: _____

EXHIBIT A



200 Block Commons, LLC: Easement Request for Pennington Apartments Development

COUNCIL BILL NO. 2021-286 ORDINANCE NO.

AN ORDINANCE authorizing the City to enter into an Encroachment Agreement by and between the City of Joplin and Jeffery Neal, authorizing the Public Works Director, or his designee, to execute said Agreement by and on behalf of the City.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, as follows:

Section 1. That the Encroachment Agreement by and between the City of Joplin, Missouri and Jeffery Neal, a true and accurate copy of the same being attached hereto and marked Exhibit "A", be and the same is hereby approved.

Section 2. That the Public Works Director, or his designee, is hereby authorized, upon recommendation and approval of the City Council, to execute said Agreement in substantially similar form, by and on behalf of the City of Joplin.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this _____ day of _____, 2021, by a vote of _____.

_____
Ryan D. Stanley, Mayor

ATTEST:

_____
Barbara J. Gollhofer, City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney