



## Legislation Details (With Text)

**File #:** 17-1093      **Version:** 1      **Name:**  
**Type:** Resolution      **Status:** Passed  
**File created:** 5/23/2017      **In control:** City Commission Regular Meeting  
**On agenda:** 6/13/2017      **Final action:** 6/13/2017  
**Title:** Resolution No. 2017-R-16 and Petition No. VAC-17-068, the request of Alexandra Openchowski to vacate a portion of the platted 20-foot rear drainage maintenance easement for 5861 Brickell Drive in North Port, Florida, Lot 20, Block 188 Second Addition to Port Charlotte Subdivision (PID #1004018820) Section 34, Township 39S, Range 21 East. (Quasi-Judicial)

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. VAC-17-068-Commision Staff Report, 2. Resolution 2017-R-16

Date	Ver.	Action By	Action	Result
6/13/2017	1	City Commission Regular Meeting	motion to approve	Pass

**TO:** Honorable Mayor & Members of the North Port Commission

**FROM:** Peter D. Lear, CPA, CGMA, Interim City Manager

**TITLE:** Resolution No.2017-R-16 and Petition No. VAC-17-068, the request of Alexandra Openchowski to vacate a portion of the platted rear 20-foot drainage maintenance easement for 5861 Brickell Drive in North Port, Florida, Lot 20, Block 188, Second Addition to Port Charlotte Subdivision (PID # 1004018820) Section 34, Township 39S, Range 21 East. (Quasi-Judicial)

### Recommended Action

City Commission approve VAC-17-068, Resolution No. 2017-R-16, 5861 Brickell Drive (Openchowski) Partial Vacation of the platted 20-foot rear drainage maintenance easement.

### Background Information

Alexandra Openchowski is requesting to vacate a 4.5-foot portion of the 20-foot rear drainage maintenance easement. Approximately 145.80 square feet of the concrete deck is constructed into the easement.

The encroachment has existed for over twenty-years when the home was first constructed. The in-ground swimming pool and deck were constructed at the same time but under a separate building permit. It was discovered the swimming pool permit never received a final inspection and therefore remained an open status permit. City policy for retention of records is based upon the State of Florida General Records Schedule GS1-SL which requires a local government to retain residential building permits for up to ten years after a Certificate of Occupancy (CO) is issued. Although the City maintains a historical electronic data base of building permits, paper or scanned copies of this building permit could not be located. As a result, it is not certain the City ever received a copy of the boundary survey which would have alerted City staff to the encroachment. In 1997, boundary surveys were not required in order to receive a Certificate of Occupancy. Today, safety measures have been implemented in the construction process by requiring a survey at the time of the formation of the pool before concrete is poured. A survey is also required for a residential building permit before a CO can be issued. These extra steps will aid in the avoidance of possible future encroachments.

The applicant has a pending sale on the house that cannot be completed until clear title can be gained through a variance approval for the encroachment into the 20-foot rear setback and a vacation of easement approval for the encroachment into the 20-foot rear drainage maintenance easement. The only other option for the applicant is to remove the deck from the easement. Because the pool is encased in a concrete deck, it may not be structurally possible to remove the deck without damaging the swimming pool.

All affected utilities were notified of the encroachment and staff received responses of no objection and recommended approval from all agencies. The easement is not needed to provide City service to any property and not necessary to any extension of City service to any property in the future. The North Port Public Works commented the easement has not caused any concerns for the City since the structure was placed upon it in 1997.

The request for a variance was heard on May 12, 2017 by the Zoning Board of Appeals and unanimously approved. This approval remedied the rear setback encroachment. The applicant plans to pursue all required building inspections for the deck and swimming pool.

The Planning and Zoning Advisory Board at their regularly scheduled meeting of May 18, 2017, recommended the City Commission approve Resolution No. 2017-R-16, Petition No. VAC-17-068, the request of Alexandra Openchowski to vacate a portion of the platted 20-foot rear drainage maintenance easement to allow for an existing swimming pool and deck to remain with a unanimous four to zero (4-0) vote.

The Unified Land Development Code (Section 53-267 D.) provides for vacation of platted easement in accordance with F.S. Chapter 177.

### **Strategic Plan**

Goal: Financially Responsible City Providing Quality Municipal Services

### **Financial Impact**

Not applicable

### **Procurement**

Not applicable

Attachments:

1. VAC-17-068 Staff Report
2. Resolution No. 2017-R-16

**Prepared by:** Mary McNish

**Department Director:** Scott Williams