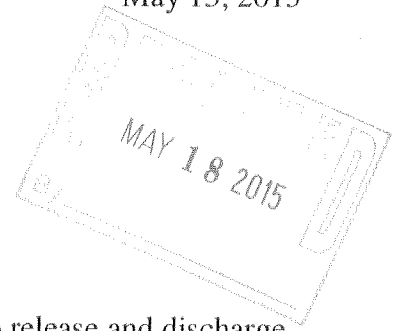


City of Concord City Council
41 Green Street
Concord, NH 03301

May 15, 2015



Re: Request to Release “Paper Street” on Locke Road

Honorable Mayor Bouley and Members of the City Council,

On behalf of Fournier Foods, LLC, I hereby petition the Council to release and discharge from all public servitude the dedicated portion of Locke Road northerly of the 1990 Phase II acceptance, as shown on Plan 9120, pursuant to RSA 231:51, as described in detail herein.

Overview of Request

The Planning Board has approved a site plan for a poultry processing plant to be constructed and operated at 52 Locke Road (also known as Tax Map 121, Block 1, Lot 17, formerly known as Tract No. 8207, Lot No. 2) (the “Lot”), which is located at the end of Locke Road. During the site plan process, the Planning Board voted to recommend to the City Council that the Council release from public servitude the dedicated portion of Locke Road that remains as a “paper street.” See attached 12/26/14 Letter of Decision.

As discussed subsequently, because Phase III of Locke Road was dedicated but never accepted, it is in the interests of both Fournier Foods and the City of Concord to clarify its status by approving this petition. A clear release of what rights may have accrued to the City would free the City from liability for construction, maintenance, or any other responsibilities associated with Phase III, and would free the Lot from a possible encumbrance.

Applicable Law: RSA 231:51

The requested release from public servitude should occur pursuant to the provisions of RSA 231:51 because the dedication is older than twenty years. Pursuant to RSA 231:51, the release requires an affirmative vote of the City Council.

Access Easement & Utilities

Note that access for the City-owned lot to the north will not be interrupted or impaired in any way. Also, as you may know, several utility lines extend along Locke Road, including that portions of the lines extend onto the Lot. As part of the Site Plan process, Fournier Foods is already required to address both of these issues to the satisfaction of the City Solicitor and Engineering Division, as follows:

Condition Precedent No. 5 from the Site Plan Approval: “The following legal document, in a form acceptable to the City Solicitor and Engineering Division, suitable for recording



in the Merrimack County Registry of Deeds, shall be provided to the Planning Division along with recording fee(s):

- a) A revised Access Easement, complete with bearings and distances, across the applicant's property to the City Conservation property to the north, including the right to access the existing cell tower on City property. Plan sheets to be revised as necessary."

Condition Precedent No. 6 from the Site Plan Approval: "Plans to be revised to the satisfaction of the Engineering Division to show the installation of a sewer manhole on the applicant's property, immediately adjacent to their front property line (this structure will be used as the delineation between public and private utilities). A similar plan revision to be made for the storm drain line."

Concurrent with this request, Fournier Foods is working with the City Solicitor and Engineering Division to satisfy these requirements.

Initial Conception of Locke Road

Locke Road was initially contemplated to be much longer than it currently is. Phase I was constructed in 1981 and 1982, followed by Phase II in 1990. However, Phase III has never been constructed. Now, because of current regulation of wetlands and floodplain and the conveyance of several conservation easements, further northerly construction of Locke Road is no longer feasible.

Details of Phase I

On October 29, 1980, the Planning Board approved Phase I, shown on an unrecorded subdivision plan dated Sept. 26, 1980. The corresponding Easement Deed to the City for Phase I is recorded at the Merrimack County Registry of Deeds ("MCRD") at Book 1386, Page 1057, dated 12/9/1980, and recorded on 1/21/1981. City Council accepted Phase I on 1/12/1982. The cul-de-sac shown on this plan and described in the Easement Deed is a permanent easement.

Details of Phase II

On 6/25/86, the Planning Board approved Phase II, shown Plan Number 9120, dated 6/24/86, approved by the Planning Board on 6/25/86, and recorded on at the MCRD on 9/9/1986. (Phase II is also shown on two other plans on record at the MCRD: Plan Number 10570, dated 5/98, approved by the Planning Board on 6/15/98, and recorded on 8/3/1988; and Plan Number 11807, dated 9/ 22/89, approved by the Planning Board on 11/15/89, and recorded on 9/24/1990. The corresponding easement deed to the City for Phase II of Locke Road is recorded at the MCRD at Book 1837, Page 1464, dated 10/30/89, and recorded on 5/8/90. The legal description in Book 1837, Page 1464 corresponds to all three plans (9120, 10570, 11807) to definitively identify the limits of Phase II. The City Council accepted Phase II on 4/16/1990. The cul-de-sac shown on plans 10570 and 11807, and described in the easement deed, is a temporary easement



and shall “terminate upon the proposed northerly extension of Locke Road and its acceptance as a public highway by the City of Concord.”

Details of Phase III

While Phase III was never dedicated by an easement, Plan Number 9120, approved on 6/25/86 and recorded on 9/9/86 at the Merrimack County Registry of Deeds, clearly dedicates Phase III of Locke Road across the Lot to the Lot’s northerly property line. While Phase III was dedicated, the City of Concord has not accepted this portion of Locke Road. As a result, Phase III is considered a “paper street.”

Timing and Process

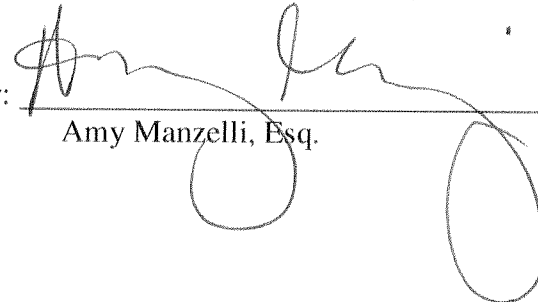
I request that this matter be placed on the City Council agenda for its June meeting. I understand that following the Council’s consideration of this petition at its June meeting, the Council will refer the matter to the appropriate City Divisions for their input, so that the Council may vote on this request, with the benefit of such input, at the Council’s July meeting.

Conclusion

On behalf of Fournier Foods, I respectfully request that the City Council approve this petition to release from public servitude at its July meeting.

If you have any further needs or questions please do not hesitate to call me at (603) 225-2585 or email me at manzelli@nhlandlaw.com.

Sincerely,
BCM Environmental & Land Law, PLLC

By: 
Amy Manzelli, Esq.

AM/nmm

cc: Paul Gendron, City Surveyor
James Kennedy, City Solicitor
Nancy Larson, City Planner
Katie Weiss, Bedford Design Consultants, Inc.
clients



CITY OF CONCORD, NEW HAMPSHIRE Planning Board

CITY HALL • 41 GREEN STREET • CONCORD, NH 03301 • TEL. 603-225-8515 • FAX 603-228-2701



December 26, 2014

Attorney Amy Manzelli
BCM Environmental Land Law, PLLC
3 Maple Street
Concord, NH 03301

Re: Major Site Plan for Fournier Foods, 52 Locke Road (2014-41)

Dear Attorney Manzelli:

Please be advised that the City Planning Board, at its regular meeting on December 17, 2014, **granted Architectural Design Review Approval** for the site and building design for the construction of a 5,524 sq. ft. poultry processing facility, a 1,558 sq. ft. garage/storage building, and a 1,225 sq. ft. covered outdoor storage area with parking, drainage, lighting, landscaping and other associated site improvements as submitted.

In a related action, the Planning Board **voted to recommend to City Council** that they release from public servitude, the dedicated portion of Locke Road that remains as a "paper street" across #52 Locke Road, pursuant to RSA 231:51. The Board also **voted to remove the screening requirement for the proposed roof and ground mounted mechanical equipment**, pursuant to Section 26.02 of the Site Plan Regulations.

The Board then granted Final Conditional Site Plan Approval for the construction of a 5,524 sq. ft. poultry processing facility, a 1,558 sq. ft. garage/storage building, and a 1,225 sq. ft. covered outdoor storage area with parking, drainage, lighting and other associated site improvements, **subject to the following precedent conditions to be fulfilled prior to endorsement of the site plan by the Planning Board Chairman and City Planner, unless otherwise specified:**

1. The applicant shall provide to the City Solicitor a financial guarantee for the site stabilization in an amount approved by the City Engineer, and in a form acceptable to the City Solicitor.
2. The applicant shall address to the satisfaction of the City Engineer, review comments received in a memo to Laura Aibel, PE from Jeff Warner, PE dated October 7, 2014. (See attached)
3. The City Fire Marshall shall approve in writing (email is sufficient), the proposed location and dimensions of the Fire Lane along the easterly side of the driveway, adjacent to the

processing facility and the proposed location of a hydrant at the end of the built portion of Locke Road.

4. The City of Concord and NHDES wastewater permits as well as the NHDES Sewer Connection Permit are to be obtained. Copies of said permits to be forwarded to the Planning Division for filing. A note also to be added to the plan.
5. The following legal document, in a form acceptable to the City Solicitor and Engineering Division, suitable for recording in the Merrimack County Registry of Deeds, shall be provided to the Planning Division along with recording fee(s):
 - a) A revised Access Easement, complete with bearings and distances, across the applicant's property to the City Conservation property to the north, including the right to access the existing cell tower on City property. Plan sheets to be revised as necessary.
6. Plans to be revised to the satisfaction of the Engineering Division to show the installation of a sewer manhole on the applicant's property, immediately adjacent to their front property line (this structure will be used as the delineation between public and private utilities). A similar plan revision to be made for the storm drain line.
7. Planning staff to confirm that the proposed landscape plan complies with the City's landscaping requirements. Any additional landscaping requested by the Board and agreed upon by the applicant, shall be added to the landscape plan.
8. Applicant to submit a current Operations and Maintenance (O&M) Plan, incorporating the recommendations set forth in the GZA report. The current O&M Plan and any subsequent revisions are to be approved by the City of Concord, General Services Division, or other appropriate City Department(s).
9. The following notes to be added to the plan:
 - a. The Fat, Oil, and Grease (FOG) Interceptor shall be cleaned and pumped out completely during each cleanout. The interval between cleanouts shall not exceed every 90 days, unless otherwise agreed upon by the City of Concord, General Services Division, or other appropriate City Department(s).
 - b. The use of dumpsters for the collection of offal is strictly prohibited. An employee of the facility shall be present during offal pickups to ensure that any spills are cleaned up promptly and that offal storage bins are then properly stored.
 - c. A current Operations & Maintenance Manual is on file with the City of Concord Planning Division for public viewing.
 - d. Any complaints will be addressed in accordance with Article 28-9-8, Enforcement, of the Code of Ordinances. Any violations of the site plan approval shall be immediately resolved by the applicant in a timely manner and to the satisfaction of the Planning Division.
 - e. Notes of general and subsequent conditions approved by the Planning Board.

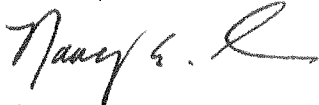
The following general and subsequent conditions are also placed on the approval:

- 1) Pursuant to RSA 231:51, applicant to receive approval from the City Council to release from public servitude, the previously dedicated portion of Locke Road that remains as a “paper street” across the applicant’s parcel. Approval to be secured prior to issuance of any building permits.
- 2) Prior to issuance of any building permits for the site, traffic impact fees shall be assessed for any non-residential construction contained within the limits of the approved site plan. The impact fees and procedures shall be those in effect at the time of the issuance of a building permit as set forth in the City of Concord Code of Ordinances, Title IV, Subdivision Code: Chapter 29.2, Public Capital Facilities Impact Fee Ordinance. The specific fees assessed are those contained in Section 29.2.1-1 Assessment and Collection; subsection (b) Computation of the Amount of Impact Fees; Table 3, Transportation Facilities Impact Fee per Variable Unit.
 - i. Transportation Facilities – General light industrial in the amount of \$7,507. (Please see attached worksheet.)
- 3) Prior to commencement of construction activity, payment of inspection fees in an amount approved by the City Engineer shall be made.
- 4) Prior to commencement of tree clearing activities on the site, the “existing trees to be preserved to meet landscape tree regulations” as noted on Sheet 4 of 14 are to be flagged in the field, protected with silt fencing and inspected by the Planning Division.
- 5) A pre-construction meeting shall be required prior to the start of any construction activities on the site. Prior to the pre-construction meeting, seven copies of the final approved site plan shall be provided to the Planning Division for endorsement by the City Engineer as “approved for construction.”
- 6) Prior to commencement of construction activity, payment of inspection fees in an amount approved by the City Engineer shall be made.
- 7) Prior to issuance of any building permits for the site, the City of Concord and NHDES wastewater permits as well as the NHDES Sewer Connection Permit are to be obtained. Copies of said permits to be forwarded to the Planning Division for filing.
- 8) Prior to the issuance of a certificate of occupancy, the NHDES General State Permit is to be obtained. A copy of said permit to be forwarded to the Planning Division for filing.
- 9) Prior to the issuance of a certificate of occupancy, as-built drawings shall be provided to the City Engineer in accordance with Section 12.09 of the Site Plan Review Regulations. The as-built drawings shall be surveyed on NH State Plane coordinates and NAVD 88 Datum.
- 10) Prior to the issuance of a certificate of occupancy, digital information shall be provided to the City Engineer for incorporation into the City of Concord Geographic Information System (GIS) and tax maps. The information shall be submitted in accordance with Section 12.08 of the Site Plan Review Regulations and all information shall be converted to a vertical datum of NAVD 88.

Please be advised that any party to the action or proceedings, or any party directly affected thereby, may appeal the Board's decision within 30 days, in accordance with RSA 677:15.

If you should have any questions, please contact me at the Planning Division at 225-8515.

Sincerely,



Nancy E. Larson
Clerk

Cc: File
Jay W. Stewart, Jay W. Realty Holdings, LLC, PO Box 2824, Concord, NH 03302-2824

Ec: Katie Weiss & Bob Baskerville, Bedford Design, Inc.
Craig Fournier & Omar Khudari, Fournier Foods, LLC
Laura Aibel, P.E., Associate Engineer
Jeff Warner, P.E., Project Manager
Sean Brown, Fire Marshall
Craig Walker, Code Administrator
Kathy Temchack, City Assessor