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CITY OF CONCORD
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Community Development Department

REPORT TO THE MAYOR AND CITY COUNCIL

FROM: Beth Fenstermacher, Assistant City Planner
DATE: May 18, 2017
SUBJECT: Ordinance Amending the CODE OF ORDINANCES, Title IV, Zoning Code, Chapter 29.3, Issuance of Building Permits on Certain Lots on Unaccepted Streets

Recommendation

Amend the Zoning Code as follows: Amend the CODE OF ORDINANCES, Title IV, Zoning Code; Chapter 29.3, Issuance of Building Permits on Certain Lots on Unaccepted Streets and establish a new Article 29.3-3 to allow the Issuance of building permits on Private Roads within the St. Paul's School Campus.

Background

RSA 674:41 provides that where a Planning Board has been granted authority to approve or disapprove plats by a municipality (RSA 674:35), no building permit for the erection of a building shall be issued unless the street giving access to the lot upon which such building is proposed to be placed is an accepted City street, a street shown on an approved subdivision plat, or on the official map.

Discontinuance of the portions of Silk Farm Road and Dunbarton Road which run through St. Paul's School campus was originally approved by City Council in July 2000, and became effective on June 24, 2008, upon the final acceptance of Langley Parkway. The discontinuance of these roads created a condition where building permits could no longer be issued for lots with frontage on private roads without an appeal to the Zoning Board of Adjustment (ZBA).

RSA 674:4,I(d) allows for the issuance of a building permit on a private road, provided that the local governing body (the City Council), after review and comment by the Planning Board, has voted to authorize the issuance of building permits for the erection of buildings on said private road, or portion thereof.

Discussion

While the Zoning Ordinance contains the option for authorization of a building permit by action of the ZBA on a case by case basis, the statutory requirements for practical difficulty or unnecessary hardship can represent a burden on St. Paul's School. The impact on the issuance of building permits was not considered at the time of the public highway discontinuance, it should have been resolved at that time.

Staff agrees that it is appropriate given the circumstances to amend the Zoning Code to authorize the issuance of building permits for lots on private roads within the main campus. The proposed amendment is proposed to be placed Chapter 29.3 of the Code of Ordinances for the issuance of building permits for single family residences on certain private roads within the City, which was adopted by the City Council in 2008. The principal statutory reference is 674:41 I(d), which essentially provides an exemption from the ban on the issuance of building permits with access to unaccepted streets. The proposed amendment incorporates lots which are located on certain private roads within the St. Paul's School main campus.

Such an ordinance would not excuse St. Paul's School from compliance with the Zoning Ordinance for matters other than lot frontage on an accepted street, or from compliance with all other State, federal, and local laws, rules, and regulations.

By authorizing the issuance of building permits on these private roads, RSA 674:41, I(d)(2) requires that the City neither assumes responsibility of said private roads nor liability for any damages resulting from the use thereof. In 2010, St. Paul's School granted to the City a public right of way easement for pedestrian, bicycle, and emergency vehicle access over the discontinued portions of these public ways provided that St. Paul's continues to maintain those former public ways as internal roadways within the St. Paul's School property to at least the same size and condition of other School roads currently in use for emergency vehicle, pedestrian, and bicycle traffic.

Further, per 674:41, I(d)(3), a notice be recorded at the Merrimack County Registry of Deeds by the applicant upon passage of the ordinance acknowledging that the City is not liable for damages to the applicant related to the unmaintained road and that the City is not responsible for maintaining the road.

Staff presented the proposed Ordinance to the Planning Board at the May 17, 2017 meeting for review and comment. The Planning Board unanimously approved the recommendation to City Council to amend the Zoning Ordinance.

A draft ordinance that implements the proposed amendment is attached.