

Docket Item #17
VACATION #2005-0002

Planning Commission Meeting
June 7, 2005

ISSUE: Consideration of a request for vacation of public right-of-way.

APPLICANT: Stevens Switch, LLC
by Duncan Blair

LOCATION: 211 Franklin Street/632 South Fairfax Street

ZONE: CL/Commercial low

STAFF RECOMMENDATION: Staff recommends **approval** subject to compliance with all applicable codes and ordinances and the permit conditions found in Section III of this report.

I. DISCUSSION

REQUEST

The applicant, Stevens Switch, LLC, by Duncan Blair, requests the vacation of an area of right-of-way at the northwest corner of Franklin and South Fairfax Streets.

SITE DESCRIPTION

The subject property is a portion of right of way with 10 feet of frontage on South Fairfax Street, 82 feet of frontage on Franklin Street, and a total area of 819 square feet. The applicant is the owner of the adjacent property at 211 Franklin Street/632 South Fairfax Street, which is one lot of record with approximately 38 feet of frontage on South Fairfax Street, 82 feet of depth, and a total lot area of 4,793 square feet. The property is occupied by a deli and dry cleaners. The applicant also owns the property immediately to the north at 630 South Fairfax, which is occupied by a single family dwelling. The surrounding area is occupied by single family and townhouse residences.



PROJECT DESCRIPTION

The applicant requests a vacation of 819 square feet of Franklin Street to consolidate it with the existing property at 211 Franklin/632 South Fairfax Streets (see attached plat). If the vacation request is approved, the applicant's total lot area will be approximately 5,612 square feet, adding 10 feet of frontage on South Fairfax Street.

The applicant uses and maintains the subject property, which is currently occupied by brick pavers and grass. The applicant has submitted an application to the Board of Architectural Review to demolish the existing building on the adjacent property at 211 Franklin/632 South Fairfax Street. According to the applicant, there are no immediate plans to build on the adjacent property. The applicant has agreed not to use the vacated land area to derive any increased development rights for the adjacent property.

BACKGROUND

From a right-of-way perspective, City Council adopted a policy in 1979 stating that the City would entertain requests to vacate the public right-of-way along Franklin Street by the adjacent property

owners (Ordinance #2425). Since that time, the City Council has approved a number of requests for vacations along Franklin Street (see attached map). Some recent approvals include: 302 square feet at 109 Franklin Street (VAC#2001-0004), 50 square feet at 108 Franklin Street (VAC #2000-0002), 599 square feet at 111 Franklin Street (VAC#99-0008), 1,108 square feet at the southeast corner of South Royal and Franklin Streets (VAC#2003-0006), and 1,062 square feet at the southeast corner of South Lee and Franklin Streets (VAC#2004-0001). In 1989, Ordinance No. 3426 (VAC#1989-0014) approved the vacation of 1,101.7 square feet of the same right of way (only 28 feet longer along Franklin Street). The applicant requesting the vacation failed to act upon the approved vacation, and it was determined by the City Attorney that the rights conferred by the adoption of the ordinance and the action and effect of the ordinance had terminated. In that case, no specific development limitations were attached to the vacation so that the property owner had permission to build structures in accordance with the applicable zoning regulations.

ZONING / MASTER PLAN

The subject property is zoned CL/Commercial low zone, and is located in the Old Town Small Area Plan.

II. STAFF ANALYSIS

Staff supports the applicant's request for a vacation of the public right-of-way located adjacent to 632 South Fairfax/211 Franklin Street, and notes that the proposed vacation request is similar to other vacations that the City Council has previously granted along Franklin Street. The proposed vacation will leave sufficient public right-of-way as required by the 1979 ordinance.

Staff is concerned about the loss of public land, especially green areas, and about creating additional development opportunities through the sale of public land to private owners. Two years ago, when a similar case seeking to vacate right-of-way at South Royal Street was before the City, Council discussed its policy in terms of open space and with regard to the valuation of the land to be vacated. As a result of its discussion of vacation policy, Council acted in two ways. First, it approved the South Royal Street vacation application, but required that the approval include the condition recommended by staff that precluded future development potential from the vacated public land. Second, on February 10, 2004, Council adopted a new valuation policy for vacated city land, essentially distinguishing between those cases where development rights accrue to the purchaser of city land and those where they do not. In addition, Council asked that staff advise about new vacation cases early in the process, and directed that the proceeds from right-of-way vacations be allocated to the City's Open Space Fund.

In this case, Planning staff provided Council with a copy of the vacation case when it was filed, and when the revision was filed. In addition, the applicant is agreeable to a condition that specifically prevents the creation of any additional development rights as a result of this vacation. Finally, the Office of Real Estate Assessments has calculated the value of the land pursuant to Council's adopted policy, given the limitation on future development.

Therefore, consistent with Council's action on the last two Franklin Street vacation cases, and consistent with its policy discussions last year, staff recommends approval.

III. RECOMMENDED PERMIT CONDITIONS

Staff recommends **approval** subject to compliance with all applicable codes and ordinances and the following conditions:

1. The vacated area is to be consolidated into the adjoining property, and the plat of consolidation filed with the Departments of Planning and Zoning and Transportation and Environmental Services. (T&ES) (P&Z)
2. Easements must be reserved for all existing public and private utilities within the area to be vacated. (T&ES)
3. The property owners may not construct any buildings, or improvements, including driveways and parking spaces, on the vacated area other than approved perimeter fencing and may not use the vacated land area to derive any increased development rights for the lands adjacent to the vacated area, including increased floor area, subdivision rights or additional dwelling units. This restriction shall appear as part of the deed of vacation and shall also appear as a note on the consolidation plat, both of which shall be approved by the Director of Planning and Zoning prior to recordation. (P&Z)

STAFF: Eileen P. Fogarty, Director, Department of Planning and Zoning;
Richard Josephson, Deputy Director;
Valerie Peterson, Urban Planner.

CITY DEPARTMENT COMMENTS

Legend: C - code requirement R - recommendation S - suggestion F - finding

Transportation & Environmental Services:

- F-1 Staff supports the proposed vacation request.
- R-1 Applicant to pay fair market value for the vacated area as determined by the Office of Real Estate Assessment.
- R-2 Vacated Right-of-Way is to be consolidated with the adjoining property.
- R-3 The applicant shall grant easements for all public and private utilities where necessary.

Code Enforcement:

- F-1 No comments.

Recreation, Parks & Cultural Activities (Arborist):

- F-1 If there is a condition restricting development on the proposed land, and consistent with Council policy, we support the vacation application.

Real Estate Assessments:

- F-1 This memorandum is consistent with the Policy adopted by both the Planning Commission and City Council in February 2004. Based upon my review of current assessment data and subject to the limiting conditions stated in this memorandum, it is my opinion that the right-of-way to be vacated had a value to the adjacent property owner as of the date of the application for vacation (March 31, 2005), of:

Sixteen Thousand Seven Hundred Dollars (\$16,700)

Per your request, we have reviewed the proposed right-of-way to be vacated adjacent to the property at 632 South Fairfax Street. The area proposed for vacation is 10 feet wide and runs the length of Tax Map 080.02-07-42 for a distance of 81.92 linear feet, and consists of 819 square feet. The adjacent lot (Lot 42) comprises a total land area of 3,195 square feet. Therefore, the total proposed site would contain a total of 4,014 square feet (3,195 SF + 819 SF = 4,014 SF) after the vacation.

I have estimated the value of the right-of-way to be vacated using the latest real estate assessments (2005) for the nearby properties of similar size and zone, and considering the restrictions which will preclude any increase in the development potential of the site above what is currently allowed for with 3,195 square feet of land area. The January 1, 2005 land assessment of Lot 42 was \$325,900 or \$102.00 per square foot ($\$325,900/3,195 \text{ SF} = \102.00 per square foot). This is consistent with the per-square-foot assessment of lots of similar size and zone in the immediate area. Therefore, the fee simple value of the proposed vacated parcel if unencumbered would be \$83,538. ($819 \text{ SF} \times \$102.00 = \$83,538$).

Accordingly, with the vacated area to remain as open space we have discounted the indicated value based on surrounding assessments by the 80 percent (80%). The remaining value at 20% of the indicated value above is \$16,700 ($\$83,538 \times .20 = \$16,700$ rd).

It should be clearly understood that an appraisal has not been made of the subject properties or of the properties abutting the right-of-way. Further, my opinion of value considers the zoning and permitted land uses in place as of the date of valuation that may affect "highest and best use" determinations. Finally, the discounted value above is contingent upon the assumption that any development rights inherent in the vacated parcel are limited as proscribed in the deed that transfers the vacated parcel from the City to the property owner.

Police:

F-1 The Police Department has no objections to the vacation.