

CITY COUNCIL MEETING

AGENDA ITEM VII



September 12, 2016 City Council Meeting

From: Richard Lewis, Planning & Zoning Director

Subject: Edison Chae, Private Road Building Permit Application
Planning Board Recommendation

Recommended Motion:

"I move that the Franklin City Council approve the issuance of a Building Permit for Edison Chae for a proposed shed on parcel 128-042-00, and authorize the City Manager to execute the Agreement and Notice of Release from Municipal Responsibility and Liability between the City of Franklin and Mr. Chae.

Overview: When an individual wishes to construct a structure on a private roadway in Franklin, the provisions of State RSA 674:41 apply; the permit must be approved by the governing body and the Planning Board must provide a recommendation on the permit application. In this specific case, Mr. Chae proposes to construct a shed on his parcel that fronts onto Gile Pond Road, which is a private road. Part of the approval process for this proposed structure is the need to endorse and record the Release of Municipal Responsibility. A copy of the proposed document for Mr. Chae is attached. The model for this document was reviewed and approved by the City Attorney.

The Planning Board discussed this matter at their meeting of August 24, 2106, and the Board voted to send a positive recommendation to the City Council to approve the permit. One important fact that the Planning Board took into account is that on the property directly abutting the Chae parcel there is an existing year-round residential structure.

It is my professional opinion that there are no credible reasons to deny this building permit application, and I concur with the recommendation of the Planning Board.

Fiscal Impact: There are no anticipated costs to the City related to this request.

Alternatives: The City Council can either approve or deny the issuance of the Building Permit.

Attachments/Exhibits: copy of the draft Release of Municipal Responsibility

Agreement and Notice of Release from Municipal Responsibility and Liability

This Agreement is made this 12th day of September, 2016, by and between Edison Chae (“the Applicant”), of Andover, MA, and the City of Franklin (“the City”), New Hampshire, a municipal corporation organized under the laws of the State of New Hampshire.

WHEREAS, the Applicant owns certain real property in the City of Franklin, New Hampshire, identified as Tax Map/Lot 128-042-00, and described in a deed recorded at Book 3508, Page 1397, at the Merrimack County Registry of Deeds [hereinafter “the property”]; and

WHEREAS, the property fronts on Gile Pond Road, which is a private way, and is accessed through other another private way; and

WHEREAS, as a private way, the City currently bears no, nor assumes any, responsibility for the maintenance or upkeep, including, but not limited to, plowing, sanding or salting, grading, drainage repairs, damage from erosion and run-off, or the repairs of potholes, or any liability from the use of said roadway;

WHEREAS, the City has agreed to the issuance of a building permit for the construction of a shed on the property, with said use subject to the terms and conditions contained in the building permit and in the present Agreement and Release between the Applicant and the City and upon the filing and recording of this notice pursuant to N.H. RSA 674:41;

NOW, THEREFORE, the City and the Applicant agree as follows:

1. The City shall not accept or incur any responsibility for maintenance, including, but not limited to, plowing, sanding or salting, grading, drainage repairs, damage from erosion and run-off, or the repairs of potholes, nor liability for any damages resulting from the use by the Applicant, or any other persons using said private road for access to the property of the Applicant.
2. The Applicant, singularly, or in concert with other persons or property owners shall be responsible for maintaining access to the property over said road in a reasonable and safe condition and hereby release and discharge the City and its officers, agents, and employees from maintaining said road in any way.
3. Prior to issuance of a Certificate of Use and Occupancy by the City, the Applicant shall comply with all of the conditions of the building permit.

4. The Applicant shall indemnify and hold harmless the City from and against any claim or liability of any nature, whether in at law or in equity, including those incurred through non-provision of any municipal service, including police, fire, and ambulance services, arising out of the condition of the aforesaid road as a Class VI highway or private way, in any way arising from the condition of the said road.
5. The Applicant shall assume responsibility for maintenance and repair of the aforesaid road and agree that at his/her own expense or at the expense of him/herself and other owners of property similarly located on said road, they will clear and maintain said roadway to a width of not less than twenty (20) feet, and to repair and maintain the traveled portion of the said road in a good and passable condition. All proposed changes and improvements to the said road are to be approved in advance in writing by City's Municipal Services Director, in consultation with other appropriate city officials.
6. Construction and occupancy or use of the structure alluded to above shall not be deemed to constitute evidence of public necessity and convenience requiring layout or alteration of the said road as a Class V road.
7. The Applicant shall be responsible for any cost of filing a copy of this Agreement in the Merrimack County Registry of Deeds.
8. This agreement shall be binding on the Applicant and all heirs, successors and assigns.

Executed this 12th day of September, 2016.

Edison Chae, Applicant

Elizabeth Dragon, City Manager,
Duly Authorized by the Franklin City
Council

STATE OF NEW HAMPSHIRE)
COUNTY OF MERRIMACK) ss.

Before me, on this 12th day of September, 2016, personally appeared Edison Chae and Elizabeth Dragon, personally known (or satisfactorily proved) to me to be the same, and executed this instrument for the purposes within stated.

Justice of the Peace/Notary Public
Typed/printed name: _____
My commission expires: _____