THE CITY OF ASHEVILLE

STAFF REPORT

Council Meeting Date: December 12, 2023

Subject: Permanently close an unopened right-of-way between Sulphur Springs Road and Lane Avenue.

Staff Resource(s): Ken Putnam, PE, Transportation Department Director
Jessica Morriss, AICP, Transportation Department Assistant Director

Action Requested: Adoption of a resolution to permanently close an unopened right-of-way between Sulphur Springs Road and Lane Avenue.

Background:

- Council passed a resolution on November 14, 2023 to set a public hearing for the proposed right-of-way closure on December 12, 2023.
- North Carolina General Statute § 160A-299 grants cities the authority to permanently close streets and alleys.
- The statute requires City Council to consider whether the closure of the right of way has a negative impact to the public interest and whether the closure would impede access to parcels, utilities, and other public infrastructure.
- Mr. Jeremy Cohen (owner of 158 Sulphur Springs Road) wishes to permanently close an unopened right-of-way that runs roughly north-south between Sulphur Springs Road and Lane Avenue between the following properties:
    - 158 Sulphur Springs Road (Applicant)
    - 160 Sulphur Springs Road
    - 17 Lane Ave
    - 23 Lane Ave
- All property owners abutting the unopened right-of-way have signed affidavits approving of the proposed closure.
- All of these properties also have access to streets independent of the unopened right-of-way, giving them reasonable means of ingress and egress to their property, even if the unopened right-of-way is closed.
- The closure does not appear to deprive reasonable means of ingress and egress to any other property.
- The Applicant has indicated that the purpose of the closure is to allow for the construction of additional housing units on the property.
- The City has not yet received a development application.
- If the Council approves the closure, the unopened right-of-way will be divided among the 4 properties and a new plat will be filed.
- The Technical Review Committee (TRC) reviewed the application at their meeting on July 17, 2023 and recommended that the proposal move forward.
    - As part of this review, staff determined that there are no utility conflicts present and that no viable transportation-related connection could be achieved using this right-of-way due to the topography.
    - Additionally, there are other parallel transportation connections nearby therefore a connection using this right-of-way would have limited demand.

    - Therefore, staff determined that there would be no negative public impact from its closure.
    - Additionally, as part of the TRC review, it was noted that there was an unpermitted retaining wall within the unopened right-of-way adjacent to the residence at 23 Lane Avenue (not the applicant).
    - Records indicate that the property was issued a stop work order in 2021. A permit could not be issued due to the wall having been constructed in the right-of-way.
    - Approval of this right-of-way closure request would also bring the wall into compliance and a permit could be issued.
- The Multimodal Transportation Commission (MMTC) reviewed the request on August 23, 2023, and voted to recommend that the City Council deny the right-of-way closure request (5-2).
- The MMTC recommendation to deny the request was largely due to concerns regarding the presence of the unpermitted retaining wall at 23 Lane Avenue and the desire to have staff complete a comprehensive study of all unopened rights-of-way within the City to identify possible opportunities for transportation connections to be made, particularly for bicyclists, pedestrians, and people with disabilities.
    - Staff advised the MMTC that the unpermitted wall would be brought into compliance if the right-of-way were closed and that the presence of the unpermitted wall did not seem to be within the scope of the factors that the City Council would consider, per statute, in deciding to close the right-of-way.
    - Separately, staff advised the MMTC that a comprehensive review of all unopened rights-of-way within the City would be an extensive project that is not currently on staff's work program.
- For all of these reasons, staff believes that the right-of-way closure is not contrary to the public interest and that no individual owning property in the vicinity of the right-of-way would be deprived of reasonable means of ingress and egress to their property by closing the right-of-way.

Council Goal(s):
- A Well-Planned and Livable Community

Committee(s):
- Technical Review Committee - July 17, 2023 - Recommended approval
- Multimodal Transportation Commission - August 23, 2023 - Recommended denial (5-2). See above information.

Pro(s):
- There are no utility conflicts, nor any transportation connectivity opportunities associated with this unopened right-of-way.
- The existing unpermitted retaining wall that was constructed within the unopened right-of-way would become compliant and a permit can be issued.

Con(s):
- None.

Fiscal Impact:
- This action requires no City resources and has no fiscal impact.

Suggested Motion:
- Motion to adopt a resolution to permanently close an unopened right-of-way between Sulphur Springs Road and Lane Avenue.

Attachment(s):

- Location Map
- Additional photos and relevant information
- Resolution

THE CITY OF ASHEVILLE

Right Of Way Closure
Between Sulphur Springs Road and Lane Avenue

N



Legend

- Local Interstate Highways
- Local US Highways
- Local NC Highway
- Local Highway Ramps
- Local Streets/Roads
- Private Streets/Roads
- Streets
- Proposed Easement
- Proposed Closure Area
- Parcel lines

2019 Orthoimagery



Existing connectivity and sidewalk map



23 Lane Avenue photo of unpermitted retaining wall - looking north



160 Sulphur Springs Road - looking south



RESOLUTION NO. 23-___

RESOLUTION TO PERMANENTLY CLOSE AN UNOPENED RIGHT-OF-WAY BETWEEN SULPHUR SPRINGS ROAD AND LANE AVENUE.

WHEREAS, pursuant to section 160A-299 of the North Carolina General Statutes, the City of Asheville has the authority to permanently close streets and alleys, including unopened rights-of-way; and

WHEREAS, an unopened right-of-way exists between Sulphur Springs Road and Lane Avenue; and

WHEREAS, the City of Asheville has held a public hearing on closure of said right-of-way; and

WHEREAS, after said hearing, the City Council has determined that closure of said right-of-way is not contrary to the public interest and that no individual owning property would be deprived of reasonable means of ingress and egress to their property by this closure; and

WHEREAS, said right-of-way is not under the control of the N.C. Department of Transportation;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

The City Council hereby permanently closes an unopened right-of-way between Sulphur Springs Road and Lane Avenue, described as:

> All of that 25 foot wide right-of-way for Cedar Lane as shown on the survey titled "Property of C.W. Teague" as recorded in Plat Book 23, Page 116 of the Public Records of Buncombe County, North Carolina, being more particularly described as follows:
>
> BEGINNING at the Southwest corner of Lot 2, Block "A" of said plat, being the Southwest corner of Deed Book 5933, Page 1182, and a point in the North line of the right-of-way for Lane Avenue; Thence South 71°35'03" West along said North line, a distance of 25.28 feet to the West line of said right-of-way for Cedar Lane, and the Southeast corner of Deed Book 5283, Page 414; Thence North 9°53'03" West along the West line of said right-of-way, and the East line of deed book 5283, page 414, a distance of 157.34 feet; Thence continuing along said West line North 10°08'44" West, a distance of 201.75 feet to the Northeast corner of Deed Book 6312, Page 1377, and the South line of that right-of-way for Sulphur Springs Road, as shown on said plat; Thence North 84°39'13" East along said South line, a distance of 25.09 feet to the Northwest corner of Deed Book 6037, Page 465, and the East line of said right-of-way for Cedar Lane; Thence South 10°08'44" East along said East line, a distance of 199.71 feet to the Southwest corner of Deed Book 6037, Page 465, and the Northwest corner of Deed Book 5933, Page 1182; Thence continuing along the East line of said right-of-way, South 9°53'03" East, a distance of 153.65 feet to the Point of Beginning. Said lands contain 8,906 square feet, 0.2045 acres.

A certified copy of this resolution and order shall be filed in the Office of the Buncombe County Register of Deeds.

Read, approved and adopted this the 12th day of December, 2023.

_____ _____

City Clerk Mayor

Approved as to form:

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City Attorney