

AN ORDINANCE TO APPROVE THE REMOVAL OF A PORTION OF SEVENTH AVENUE FROM THE OFFICIAL CITY MAP

WHEREAS, the City of Wilmington (the “City”) is authorized to establish and revise plans of streets and alleys by the provisions of the City Charter, Sections 1-101, 2-306, and 5-400, such actions to be done in accordance with applicable provisions of State law and in accordance with Section 42-11 of the City Code; and

WHEREAS, New Riverfront Associates, LLC (“New Riverfront”) is the current owner of the property located at 415 Seventh Avenue, consisting of eight parcels that are located on the eastern end of Seventh Avenue; and

WHEREAS, New Riverfront has requested that a portion of Seventh Avenue located between Duncan Street and the Penn Central Railroad right-of-way, which is more particularly depicted and described on Exhibit “A” attached hereto, be removed from the Official City Map; and

WHEREAS, the Law Department has determined that the City’s ownership of the portion of Seventh Avenue proposed to be removed from the Official City Map cannot be established; and

WHEREAS, at its regular meeting on March 17, 2015, the City Planning Commission adopted the Planning Commission Resolution 1-15, a copy of which is attached hereto and made a part hereof as Exhibit “B,” which recommended approval of New Riverfront’s request to remove the portion of Seventh Avenue located between Duncan Street and the railroad right-of-way, subject to certain conditions set forth in the resolution; and

#4036

Sponsor:

Council
Member
Dorsey Walker

WHEREAS, the Council deems it necessary and appropriate to approve the removal of the portion of Seventh Avenue located between Duncan Street and the railroad right-of-way from the Official City Map.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON HEREBY ORDAINS:

SECTION 1. That the removal from the Official City Map of that portion of Seventh Avenue located between Duncan Street and the Penn Central Railroad right-of-way, which is more particularly depicted and described on Exhibit "A" attached hereto, is hereby approved, subject to the conditions set forth in City Planning Commission Resolution 1-15.

SECTION 2. The City's Departments of Public Works, Planning, Fire, Real Estate, Licenses and Inspection, and Law are hereby authorized to take any and all necessary actions required for the proposed removal of said portion of Seventh Avenue from the Official City Map.

SECTION 3. This Ordinance shall become effective immediately upon its date of passage by the City Council and approval by the Mayor.

First Reading..... April 2, 2015
Second Reading....April 2, 2015
Third Reading..... June 4, 2015

Passed by City Council

June 4, 2015



President of City Council

ATTEST: Traci R. Owens
Deputy City Clerk

Approved as to form this 2nd day of
April, 2015

Danny Shatt

Assistant City Solicitor

Approved this 9 day of
June, 2015

Dennis P. Williams

Mayor

SYNOPSIS: This Ordinance authorizes the removal from the Official City Map portion of Seventh Avenue located between Duncan Street and the Penn Central Railroad right-of-way.

ATTACHMENT A

HOWARD L. ROBERTSON, INC.

Registered Professional Engineers and Land Surveyors

801 BRANDYWINE BLVD. - WILMINGTON, DE. 19809.

TELEPHONE - (302) 764-2456 FAX - (302) 764-7022

ALL that certain lot, piece or parcel of land situate in the City of Wilmington, New Castle County and State of Delaware, said parcel being a portion of 7th Avenue to be vacated and being more particularly bounded and described on a recent survey by Howard L. Robertson, Inc., Registered Professional Engineers and Land Surveyors entitled "Street Vacation Plan - A Portion of 7th Avenue", dated 7/16/2014, as follows, to-wit:

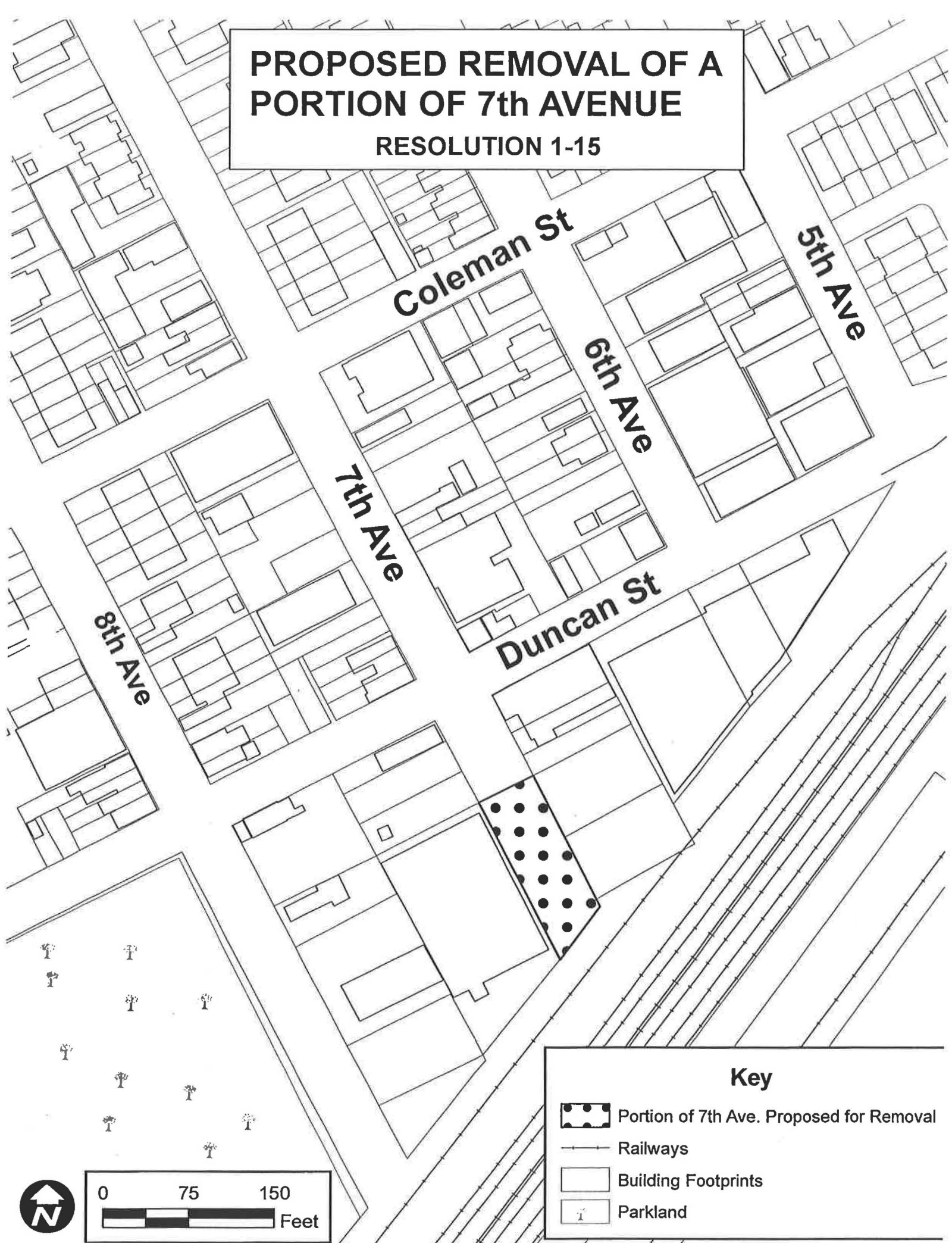
BEGINNING at the point on the Northeasterly side of 7th Avenue (at 50' wide), a corner for Tax Parcels 26-049.30-008 and 26-049.30-009, said point of beginning being distant S 28° 00' 00" E 80.00' from the Intersection of the Southeasterly side of Duncan Street (at 40' wide) and the Northeasterly side of 7th Avenue (at 50' wide); Thence from said point of beginning along said Northeasterly side of 7th Avenue S 28° 00' 00" E 130.80' to the Southeasterly terminus of 7th Avenue, a corner for Tax Parcel 26-049.30-010 and a point in line of lands of Penn Central Railroad; Thence along said Southeasterly terminus of 7th Avenue and lands of Penn Central Railroad S 35° 59' 15" W 55.64' to a point on the Southwesterly side of 7th Avenue (at 50' wide), a corner for Tax Parcel 26-048.40-053; Thence along said Southwesterly side of 7th Avenue N 28° 00' 00" W 155.20' to a corner for Tax Parcel 26-048.40-047; Thence crossing 7th Avenue N 62° 00' 00" E 50.00' to a point on the Northeasterly side of 7th Avenue (at 50' wide), the point and place of BEGINNING.

CONTAINING within said metes and bounds 0.1641 Acres, be the same, more or less.



PROPOSED REMOVAL OF A PORTION OF 7th AVENUE

RESOLUTION 1-15



Attachment B

**CITY PLANNING COMMISSION
OF THE DEPARTMENT OF PLANNING AND DEVELOPMENT
CITY OF WILMINGTON
RESOLUTION 1-15**

WHEREAS, Section 2-306 and Section 42-11 of the Wilmington City Code require the City Planning Commission to review all plans for the physical development of the city, including the removal of City streets; and

WHEREAS, the City of Wilmington received a request from New Riverfront Associates LLC (Applicant) to remove a portion of 7th Avenue between Duncan Street and the railroad right-of-way from the Official City Map; and

WHEREAS, the Applicant owns all parcels on both sides of this portion of 7th Avenue and is proposing to market the property for use under the M-1 zoning; and

WHEREAS, in 1986, the City approved an encroachment permit requested by the former owner which allowed a fence with locking gate to be constructed across the 7th Avenue right-of-way, generally limiting public access to the portion of 7th Avenue between Duncan Street and the railroad right-of-way that has been proposed for removal from the Official City Map; and

WHEREAS, the subject portion of 7th Avenue does not materially contribute to the surrounding traffic circulation or distribution system nor does it serve the community at large, and in fact is completely surround by the Applicant's property and is primarily used by the Applicant and its business interests; and

WHEREAS, the Department of Planning and Development has consulted with other City Departments regarding this street removal request; and

WHEREAS, the Law Department has concluded that the City of Wilmington does not hold legal title to the portion of 7th Avenue between Duncan Street and the railroad right-of-way, and noted that the City shall take such actions as shall be necessary to confirm for the adjoining property owner that the vacated portion of 7th Avenue is not owned by the City of Wilmington; and

WHEREAS, the procedures for City street closings and right-of-way disposition are prescribed in Section 42-11 of the City Code, which states that where City ownership of the property used for a City street cannot be established, and the abutting property owners' deeds are bounded by that right-of-way, as is the case with the portion of 7th Avenue proposed for removal from the Official City Map, then there can be a legislative finding of lack of public interest in the right-of-way, and by ordinance of City Council, the City street may be removed from the Official City Map, but the determination of property rights in the right-of-way shall be a judicial determination in accordance with applicable state statutes; and

WHEREAS, the Department of Public Works offered no objections to the proposed street removal, but noted that: 1) there is a water main and a sewer main within the 7th Avenue roadbed which will require customary maintenance services from time to time, necessitating an easement to grant safe access to the buried utility mains and their connections to the adjacent parcels; 2) there is the need for a permanent easement that grants safe access to the railroad right-of-way in case of an emergency requiring use of fire or emergency rescue equipment; 3) the construction of any type or of any structure that permanently blocks access to the utilities within the affected roadbed, or to the railroad, is prohibited; and 4) the Delmarva Power and Light Company operated street light may require customary maintenance services from time to time, which will also require access; and

WHEREAS, the Deputy Chief Fire Marshal has advised that while the Fire Department has no objections to the proposed street removal, but recommends that the fence gate be secured by a Noxbox Lock which allows access by the Fire Department in cases of emergency without the need to destroy the gate or fence;

WHEREAS, the Department of Licenses and Inspections advised that an encroachment permit had been issued in 1986 which led to the fencing off of the subject portion of 7th Avenue, and staff advised that a new permit request be submitted in the event the roadbed is not removed from the Official City Map; and

WHEREAS, a public notice of the Planning Commission's March 17, 2015 meeting was mailed to property owners and interested parties within the immediate area on February 25, 2015 and the agenda for the meeting was also posted in the lobby of the Louis L. Redding City/County Building and on the City's website and was mailed to the standard Commission mailing list recipients on March 10, 2015; and

WHEREAS, the Planning Commission considered the analysis as prepared by the Planning Department and other information in the public record when making its determinations.


CPC Resolution 1-15

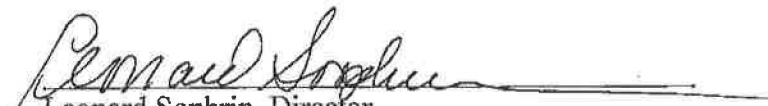
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March 17, 2015

NOW, THEREFORE, BE IT RESOLVED, that the City Planning Commission recommends to City Council that approval of the removal of a portion of 7th Avenue between Duncan Street and the railroad right-of-way from the Official City Map, subject to the conditions stipulated by the Departments of Fire, Law, Licenses and Inspections, Planning, and Public Works; as stated below:

1. The gate on the fence, currently located within the 7th Avenue right-of-way, should be secured by a Noxbox Lock to allow access by the Fire Department in cases of emergency without destroying the gate or fence;
2. An access easement is necessary to grant safe access to the buried sewer and water mains and to their connections to adjacent parcels, commensurate with safe maintenance or construction practices;
3. A permanent easement is also necessary to grant safe access to the railroad right-of-way via the eastern terminus of 7th Avenue in case of an emergency requiring use of fire or emergency rescue equipment access; and
4. Construction of any type or of any structure that permanently blocks access to the utilities within the affected roadbed, or to the railroad, shall be prohibited.


Polly Weir, Chairperson
City Planning Commission


Leonard Sophrin, Director
Department of Planning and Development

Date: March 17, 2015

Attachments

PROPOSED REMOVAL OF A PORTION OF 7th AVENUE

RESOLUTION 1-15

