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*In cc
 packets
 11/21/08*

Bernard F. Lynch
 City Manager

TO: Mayor Edward Caulfield
 And
 Members of the Lowell City Council

FROM: Bernard F. Lynch, City Manager *[Signature]*

DATE: November 20, 2008

SUBJECT: **MOTION OF 10/14/08 BY COUNCILOR MARTIN
 "REQUEST THE CITY COUNCIL CONSIDER AMENDING
 THE APPLICABLE ORDINANCE(S) TO ELIMINATE NEED
 FOR COUNCIL APPROVAL FOR DRIVEWAYS MORE THAN
 32 FEET IN LENGTH WHEN THEY ARE PART OF A
 PROJECT WHICH HAS BEEN APPROVED BY THE
 PLANNING BOARD".**

Regarding the above-mentioned motion, I have been in contact with Aaron Clauson, Associate Planner / Planning Board & George Proakis, Planning & Permitting Director. They have made the following conclusions.

The City Code Section 17.1(7) specifies that:

"No application for the lowering or removing of curbing or edgestones for more than a distance of 32 feet . . . shall be approved."

Each time a project applicant wants a curbcut in excess of 32 feet, the Council must vote an exemption to this regulation. At the time this ordinance was adopted, the Zoning Ordinance did not have maximum curbcut requirements. Today, the zoning ordinance limits curbcuts by district as follows:

<u>District</u>	<u>Maximum Curbcut</u>
SSF, TSF, TTF, USF	15 feet
UMF, TMF, NB, UMU, TMU, SMF, SMU, RR, DMU	25 feet
HRC, INST, OP, PDMI, LI, GI	32 feet

In no district are curbcuts allowed that are greater than 32 feet in length. Any development proposing a curbcut greater than 32 feet has to pursue a variance from the Board of Appeals and meet the three-point test established by the state Zoning Act and Section 11.2.3 of the Lowell Zoning Ordinance. The applicant would have to establish a special hardship, ensure that the need does not detract from the public good, and establish that the project does not nullify the intent of the zoning.

Mayor Edward Caulfield &
Members of the Lowell City Council
Page 2
November 20, 2008

In general, the City discourages large curbcuts because they:

- a. Create conflicts for crossing pedestrians
- b. Are usually coupled with projects that have significant front-yard paving
- c. Often require the removal of on-street parking spaces available to the public to serve off-street parking benefiting only a particular use

In cases where a developer proposes a curbcut in excess of 32 feet in length, an applicant has needed to secure a ZBA variance and then also secure a vote from the Council subject to Section 17.1(7) of the city code. Since many of these projects also require site plan review and/or special permits from the Planning Board, applicants can be subject to three public hearings where three different boards have the opportunity to address the curbcut. Nonetheless, there have been a number of cases in recent years where developers have made compelling cases to the ZBA and the Planning Board for a larger curbcut.

Since the passage of the 2003 Master Plan, the City's policy has been to simplify the development review process to the minimum number of fair hearings necessary to ensure public and city staff input into a project. It appears that, in cases where both Planning Board and ZBA support a project that requires a curbcut variance, the additional step set up by Section 17.1(7) is not necessary. As requested in the motion from Councilor Martin, DPD will work with the Law Department to develop an Ordinance for the Council that would exempt projects from Section 17.1(7) where they also require Planning Board approval.

If you have any questions, please do not hesitate to contact me.

Thank you.

cc: Adam Baacke, Assistant City Manager / DPD Director
Aaron Clausen, Associate Planner – Planning Board
George Proakis, Planning and Permitting Director