



## ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item  
Meeting of February 21, 2009**

### SUPPLEMENTAL REPORT

**DATE:** February 18, 2009

**SUBJECT:** SP #105 METROPOLITAN PARK PHASE 3 FINAL SITE PLAN (SP-9) to construct approximately 411 dwelling units, approximately 16,350 square feet of retail. (RPC #35-003-009, -010).

**DISCUSSION:** Staff is recommending that several conditions be modified as a result of negotiations between staff and the applicant. The revisions serve to clarify the intent of the conditions. Condition #11.e. now reflects the standard construction hours for site plan buildings, since Phase 1, and possibly Phase 2, will be occupied by the time construction starts on Phase 3. Condition #17 is revised to permit the County to install conduit or fiber optic cable in trenches excavated by the developer, provided the installation does not result in additional costs or delays to the project. Condition #41 changes clarify the necessary wall check submissions for below-grade construction. Changes to Conditions #71, 72, and 78 regarding liability in Easement Areas are the result of negotiations between attorneys for the County and the applicant, and are consistent with condition language approved in Phase 2 of Metropolitan Park. Condition #82 specifies the exact size of the Phase 3 site area that will be used for construction of Phase 4. In response to the Transportation Commission, Condition #6 has been revised to require the applicant to provide Costco a copy of its plan for temporary pedestrian and vehicular circulation during construction, as well as notify Costco in advance of any street closures. Condition #70 has been revised to require the applicant to attempt to achieve an additional five (5) LEED credits, for a total of 33 credits, with the goal of achieving LEED Silver. While the applicant is committed to achieving LEED Certification through the USGBC, staff would monitor the project's efforts to achieve the additional credits. Finally, a new Condition #83 is recommended to require the applicant to provide conduit for the Arlington County Government and Arlington Public Schools Fiber Optics Communication Network. The applicant has agreed to the revised and new conditions. Staff recommends approval of the updated and new Conditions below,

County Manager: \_\_\_\_\_

County Attorney: \_\_\_\_\_

Staff: Freida Wray, DCPHD, Planning Division  
Colin Dentel-Post, DCPHD, Planning Division  
Robert Gibson, DES, Transportation Division  
Betts Abel, DCPHD, Housing Division

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revised from what was previously shown in the County Manager's report dated February 12, 2009.

### **Plan for Temporary Circulation During Construction**

6. The developer agrees to develop and implement (after approval) a plan for temporary pedestrian and vehicular circulation during construction. This plan shall identify temporary sidewalks, interim lighting, fencing around the site, construction vehicle routes, and any other feature necessary to ensure safe pedestrian and vehicular travel around the site during construction. Exceptions may be made only during an emergency as defined below, during actual demolition, and for such limited periods as are unavoidable for utility upgrades. The developer agrees to submit this plan to, and obtain approval of the plan from, the County Manager as meeting these standards, before the issuance of the Clearing, Grading and Demolition Permit. The developer agrees to provide a copy of the approved plan to all owners of the Pentagon Centre PDSP, Costco and the appropriate civic associations. The County Manager may approve subsequent amendments to the plan, if consistent with this approval.

The developer agrees, during the hours of construction, to provide "flagmen" to assist in the direction of traffic along or around a street any time that any driving lane of such a street is partially or fully blocked due to temporary construction activities. In addition, the developer agrees to notify the appropriate civic associations and all abutting property owners, including all owners of the Pentagon Centre PDSP, and Costco, in writing (or, by mutual agreement, by e-mail) at least seven calendar days in advance of any street closure, except in the case of an emergency, of more than one hour duration on any street. "Emergency" street closures may include, but not be limited to, those relating to rupture or potential rupture of a water or gas main, insecure building façade, or similar unforeseeable public danger. "Emergency" street closures shall not include closures for setting up or dismantling of a crane, exterior building construction, materials deliveries, or utilities work, or similar situations.

Where county street lighting has been removed *or disconnected* due to construction and not yet replaced *or reconnected*, the developer agrees to maintain lighting around the perimeter of the site between the start of construction and completion of the project. The lighting shall be designed to illuminate the temporary pedestrian walkways and roads around the perimeter of the site. The developer may do this by means of overhead lights (e.g. "cobra head" lights) that meet the lighting standards for Arlington County streets, or by stringing lamps of the kind used in "used car" lots or similar along sidewalks and streets along the perimeter of the site. If lighting is accomplished by the latter, such lighting shall be with 75 watt bulbs (or approximate equivalent) placed no more than 25 feet apart and 6 to 10 feet high. Lighting shall be turned on between dusk and dawn 7 days a week. Any high-intensity overhead lighting, such as lighting placed on construction cranes, shall be used only during construction hours (except lower levels after hours for safety and security reasons), and shall be placed so as not to directly illuminate residential dwellings or be a nuisance to neighboring property owners. For purposes of this condition, "completion of the project" shall mean the time when the

County standard lighting fixtures are in place and operational around the perimeter of the site.

The developer agrees to maintain street surfaces adjacent to the site in a clean, smooth condition devoid of potholes at all times during the construction period. Whenever a significant portion of an adjacent road surface is disturbed for reasons relating to the construction, including utility work, the developer agrees to repair promptly the disturbed portion(s) of pavement with hot patching to return the road surface to a clean, smooth condition. Additionally, the developer will replace any temporary or cold patch pavement with hot patching to return the road surface to a smooth, clean condition matching the appropriate contour of the street within 30 days or when weather permits such repairs, whichever comes first. The developer agrees to insure that the road surface is promptly repaired regardless of whether the excavation work or other damage to the road surface was done by the developer, the developer's contractors, or private utility companies. The developer agrees to make reasonable efforts to schedule construction work so that digging in the street surfaces will not occur during the winter months. However, if the road surface is disturbed during the winter months, the developer may temporarily restore the road surface using cold patching and then hot patch the disturbed surface at the earliest opportunity when weather conditions permit. If cold patching is used, it shall be properly maintained and resurfaced as necessary to maintain a clean, smooth road condition. The term "significant portion of a road" is understood to include, but not be limited to, a cut in the road surface that exceeds 10 feet in length or 100 square feet in size. This condition is in addition to any other conditions in this site plan and any County requirements relating to reconstruction and repaving of streets at the completion of construction.

On the north side of 12<sup>th</sup> Street South between South Fern and South Eads Streets, the developer agrees to construct and maintain a 10-foot wide temporary pedestrian asphalt walkway with temporary lighting, connecting South Fern Street and South Eads Street, as shown in final engineering plans, prior to the issuance of the Clearing, Grading and Demolition Permit. The temporary lighting must provide between 1 and 2 foot candles of light along the entire length of the path. Should the temporary lighting not meet County standards, the developer shall maintain the temporary lighting until it is removed. The Developer agrees to mark and sign the walkway/path as a multi-purpose trail for use by pedestrians and bicyclists.

The developer agrees to maintain the lighting along the exterior wall of the existing buildings, along the north side of the buildings, adjacent to the existing pedestrian path, until the issuance of the Clearing, Grading and Demolition Permit.

### **Community Liaison and Activities During Construction**

11. e. The developer agrees that construction activity, except for construction worker arrival to the construction site and indoor construction activity, will commence no earlier than 7:00 a.m. and end by ~~6:30~~ **9:00** ~~6:30~~ p.m. on weekdays and will commence no earlier than 10:00 a.m. and end by 6:30 p.m. on Saturdays, Sundays, and holidays. "Holidays" are defined as New Year's Day, Martin Luther

King Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving, and Christmas. Indoor construction activity defined as activity occurring entirely within a structure fully enclosed on all sides by installed exterior walls, windows, and/or doors shall end at midnight each day, and any such activity that occurs after **9:00 p.m. on weekdays or 6:30 p.m. on Saturdays, Sundays, and holidays** shall not annoy or disturb reasonable persons of normal sensitivities. The developer agrees to place a minimum of one sign per street front around the construction site, indicating the permissible hours of construction, to place one additional sign within the construction trailer containing the same information, to provide a written copy of the permissible hours of construction to all subcontractors, and to require its subcontractors to observe such hours.

### **Utility Company Contacts**

17. The developer agrees to contact all utility companies, including the electric, telephone and cable television companies, and offer them access to the site at the time of utility installation to install their underground cables. In order to comply with this condition the developer agrees to submit to the Zoning Administrator copies of letters from the developer to the utility companies offering them access as stated above for each phase of the project. The developer agrees to also contact the Development Services Bureau Chief, Transportation Division of the Department of Environmental Services in Arlington County not less than two (2) months prior to its planned commencement of utility undergrounding for each phase of the project to offer the County, at no cost to the County, access to the locations where the developer plans to excavate trenches or similar areas to install underground utilities so the County may install its fiber optic cable and/or conduit in those places concurrently with the developer's utility installation. **Access by the County will not result in additional cost or schedule impacts to the developer.** Such access, and the terms and conditions under which access to the site will be provided and the undergrounding activities of the County and the developer will be coordinated, shall be set forth in an agreement approved by the County Manager and the County Attorney.

### **Wall Check Survey**

41. The developer agrees to submit to the Zoning Administrator one (1) original and three (3) copies of separate wall check surveys to confirm their consistency with the plans approved by the County Board, as referenced in Conditions #1 and #10 above, as follows:
  - a. A wall check survey showing the location of the four walls and **spot elevations of the poured** slab at the bottom (G-3) level, upon completion of the walls **and slab**;
  - b. A wall check survey showing the location of the four walls and slab at the middle (G-2) level, prior to the issuance of the final building permit; and,
  - c. A wall check survey showing the location of a portion of the top garage level (G-1) slab, as determined by the Zoning Administrator, and the elevation of the at-grade slab and walls, prior to completion of the second floor deck.

### **LEED Credits and Sustainable Design Elements**

70. a. The developer agrees to ~~hire~~ include a LEED Accredited Professional ~~certified consultant~~ as a member of the design and construction team. The LEED AP ~~consultant~~ shall work with the team to incorporate sustainable design elements and innovative technologies into the project so that numerous building components ~~may~~ shall earn the developer points under the U.S. Green Building Council's LEED for New Construction (LEED-NC) green building rating system ~~for LEED at the Certified level or higher~~. Specifically, the developer agrees to include sustainable elements in design and construction that are sufficient to meet the requirements ~~of all of the for seven (7) LEED~~ prerequisites and include at least "28" LEED points, achieving the Certified level or higher, including at least two (2) points from LEED Section EA.1, "Optimize Energy Performance." Five (5) additional credits will be attempted with the goal of achieving LEED Silver. The developer agrees to register the project, submit documentation, and receive final LEED Certified certification from the USGBC. The number of credits and LEED version for the Final Site Plan shall be based on the LEED green building rating system under which the building is registered with the USGBC version 2.2 (or a more current version of the LEED rating system as approved by the County Manager). ~~The developer agrees to use commercially reasonable efforts to achieve additional LEED points which would qualify the building for certified levels.~~

### **Public Use and Access Easement (South Elm Street)**

71. The developer agrees to grant to the County Board of Arlington County ("County" or "County Board"), for the benefit of the County and the public at large, a public use access easement for access to and use of, at all times except for temporary street closures necessary for street maintenance and repairs, South Elm Street, running from 12<sup>th</sup> Street South to 13<sup>th</sup> Street South, as South Elm Street is further shown on the attached plans dated January 21, 2009 ("South Elm Street Easement"). The spatial area of the South Elm Street Easement shall include the area of the street and all adjacent sidewalk areas (jointly, "Street" or "Streets") shown on the site plan as approved by the final site engineering plan ("Easement Area"). The South Elm Street Easement shall be granted to the County by the developer prior to the issuance of the first Certificate of Occupancy allowing tenant occupancy of any portion of Metropolitan Park, Phase 3. The developer agrees that the County shall have the right to use, control, and regulate the Streets, and use thereof, to the same extent and in the same manner as any other streets in the County system including, but not limited to, the regulation of traffic and parking thereon. The South Elm Street Easement shall require the developer, at its sole cost and expense, to maintain, repair, replace, remove, care, clean and reconstruct the Streets, including all snow and ice removal thereof, located within the easement area. The South Elm Street Easement further shall allow the County to use the Easement Area for utilities, and to issue permits to others for such use, to the extent that any utilities are not inconsistent physically with the utilities and structures required by this site plan as approved by the final site engineering plan thereof.

The developer further agrees that the South Elm Street Easement shall provide, among other things, that the grantor, its successors and assigns, shall, **except due to the sole negligence of the County**, indemnify and hold harmless the County Board, its elected and appointed officials, officers, employees, agents and contractors from any and all liability, personal injury, death, claims, damages, losses, costs and expenses, of whatsoever nature, concerning or arising out of the design, construction, installation, repair, maintenance, replacement, removal, care, cleaning, use, access and regulation of the Easement Area or any facility or structure therein, or thereon, or thereunder arising out of the use and access of the Easement Area by the County, the public at large, the developer, the tenants, and others.

The developer agrees that the South Elm Street Easement shall be granted by deed, in substance acceptable to the County Manager and in form acceptable to the County Attorney, and shall include, or incorporate by reference, the terms set forth in this condition and shall be recorded among the land records of Arlington County, Virginia.

The developer agrees that, prior to the issuance of the first Certificate of Occupancy for tenant occupancy of any part of the last building authorized to be constructed pursuant to the Pentagon City PDSP for Parcel 3 (Metropolitan Park), the developer, or **its his** successor or assigns, shall dedicate the Easement Area to Arlington County in fee simple, subject to previously enacted encroachment ordinances, and further subject to the developer first obtaining the enactment by the County Board of all other required encroachment ordinances permitting all structures (which will be encroaching into the dedicated fee simple area) to continue to exist within such area.

**Public Use and Access Easement (Park)**

72. The developer agrees to grant to the County Board of Arlington County, Virginia (“County” or “County Board”), for the benefit of the County and the public at large, a public use and access easement (“Public Use and Access Easement”), providing for public use and access to, at all times, for the purpose of a park, for the area bounded by South Fair Street, 12<sup>th</sup> Road South, South Elm Street, and 13<sup>th</sup> Street South and identified on the 4.1 plans last revised January 21, 2009 (“Easement Area”) and as such park is further identified in the *Metropolitan Park Design Guidelines (Dated January 23, 2004 and approved by the County Board February 10, 2004)*, *Metropolitan Park Project Booklet (November 12, 2003)*, prior to the issuance of the first Certificate of Occupancy allowing tenant occupancy for any portion of Metropolitan Park, Phase 3. The developer agrees to construct a park within the Easement Area, as required by the site plan as approved by the final site engineering plan and the landscaping plan.

The uses of and purposes for the park may include, but may not be limited to, outdoor gathering, exhibits, public art, concerts, organized outdoor markets, and special events sponsored by the developer and/or the County. The developer shall post, with the approval of the County, appropriate signage in the park. The Public Use and Access Easement shall not obligate or require the County to construct or maintain the park, but shall permit public use and access of the Easement Area for park and park related

purposes. The Public Use and Access Easement shall provide, among other things, that the grantor, its successors and assigns, shall, **except due to the sole negligence of the County**, indemnify and hold harmless the County Board, its elected and appointed officials, officers, employees and agents from any liability, personal injury, death, claims, damages, losses, costs and expenses of whatsoever nature concerning or arising out of the design, construction, installation, repair, replacement, removal, care, cleaning, maintenance, use, access and regulation of the park (i.e., the Easement Area) by the developer, the County, the general public or the grantor of the Public Use and Access Easement.

The Public Use and Access Easement shall be granted by deed, in substance acceptable to the County Manager and in form acceptable to the County Attorney, shall include, or incorporate by reference, the terms set forth in this condition. The Real Estate Bureau Chief is authorized to accept such Public Use and Access Easement on behalf of the County Board, which thereafter shall be recorded among the land records of the Clerk of the Circuit Court of Arlington County. Construction of all of the improvements to the park required by the site plan as approved in the final engineering plan and the landscape plan shall be completed prior to the issuance of the first Certificate of Occupancy allowing tenant occupancy of any portion of Metropolitan Park, Phase 3 and prior to the granting of the Public Use and Access Easement by the developer or its successors or assigns. The developer shall be, and the Public Use and Access Easement shall state that the developer, its successors and assigns, shall be responsible for, at its sole cost and expense, maintaining, repairing, replacing, cleaning, caring for, and reconstructing the park (i.e., the Easement Area) bounded by South Fair Street, 12<sup>th</sup> Road South, South Elm Street, and 13<sup>th</sup> Street South.

**Public Use and Access Easement (12<sup>th</sup> Road South and South Fair Street)**

78. The developer agrees to grant to the County Board of Arlington County (“County or “County Board”), for the benefit of the County and the public at large, a public use access easement for access to and use of, at all times except for temporary street closures necessary for street maintenance and repairs, 12<sup>th</sup> Road South/South Fair Street, running from South Elm Street to 13<sup>th</sup> Street South, as South Elm Street is further shown on the attached plans dated January 21, 2009 (“12<sup>th</sup> Road/South Fair Street Easement”). The area of the 12th Road South/South Fair Street Easement shall include the area of the street and all adjacent sidewalk areas (jointly, “Street” or “Streets”) shown on the site plan as approved by the final site engineering plan (“Easement Area”). The 12<sup>th</sup> Road/South Fair Street Easement shall be granted to the County by the developer prior to the issuance of the first Certificate of Occupancy allowing tenant occupancy of any portion of Metropolitan Park, Phase 3. The developer agrees that the County shall have the right to use, control, and regulate the Streets, and to regulate the use thereof, to the same extent and in the same manner as any other streets in the County system, including but not limited to the regulation of traffic and parking thereon. The 12th Road South/South Fair Street Easement shall require the developer, at its sole cost and expense, to maintain, repair, replace, remove, care, clean and reconstruct the Streets, including all snow and ice removal thereof, located within the easement area. The 12th Road

South/South Fair Street Easement further shall allow the County to use the Easement Area for utilities, and to issue permits to others for such use, to the extent that any utilities are not inconsistent physically with the utilities and structures required by this site plan as approved by the final site engineering plan thereof. However, any party subsequently permitted to install utilities within the Easement Area shall be required to promptly repair and restore any disturbed area(s) at such party's expense.

The developer further agrees that the 12th Road South/South Fair Street Easement shall provide, among other things, that the grantor, its successors and assigns, shall, except due to the sole negligence of the County, indemnify and hold harmless the County Board, its elected and appointed officials, officers, employees, agents and contractors from any and all liability, personal injury, death, claims, damages, losses, costs and expenses, of whatsoever nature, concerning or arising out of the design, construction, installation, repair, maintenance, replacement, removal, care, cleaning, use, access and regulation of the Easement Area or any facility or structure therein, or thereon, or thereunder arising out of the use and access of the Easement Area by the County, the public at large, the developer, the tenants, and others.

The developer agrees that the 12th Road South/South Fair Street Easement shall be granted by deed, in substance acceptable to the County Manager and in form acceptable to the County Attorney, and shall include, or incorporate by reference, the terms set forth in this condition and shall be recorded among the land records of Arlington County, Virginia.

**Site Area Appendage**

82. The developer agrees that 9,688 square feet of land that is a part of the site area for Metropolitan Park Phase 3, located east of South Elm Street adjacent to the southeast corner of the intersection of 12th Street South and South Elm Street, shall be used for construction of the future Metropolitan Park Phase 4, pending approval of a final site plan for Phase 4. This site area was used in computations involving the Phase 3 site area and shall not be used twice for the same similar computations involving Phase 4.

**Provision of Conduit for Arlington County Government and Arlington Public Schools Fiber Optics Communication Network**

83. The developer agrees to show on the final engineering plans up to four (4), 2-inch conduits, along the length of the project's South Fern Street and 12<sup>th</sup> Street South frontages, designed in accordance with Arlington County's technical guidelines for the Arlington County Government and Arlington Public Schools Fiber Optics Communication Network. The conduits shall be constructed prior to issuance of the first Certificate of Occupancy for occupancy of the applicable phase of the project.