



ARLINGTON COUNTY, VIRGINIA

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

DATE: February 2, 2009

SUBJECT: Enactment of an Ordinance to Allow an Encroachment of an Electric Vault into a Portion of a County Public Use Access Easement for Street, Sidewalk, Utilities and Related Purposes, Such Portion Located East of the Northeast Corner of the Intersection of South Fern Street and the Proposed 13th Street South, Lot 6, Pentagon Industrial Center, RPC No. 35003008 and Adjacent to Lot 7, Pentagon Industrial Center, RPC No. 35003009, with Conditions.

Applicants/Owners: CLPF-Metropolitan Two Venture, L.P.
CLPF-Metropolitan Three Venture, L.P.

By: Benjamin T. Danforth, Esquire
Lawson, Tarter & Charvet, P.C.
6045 Wilson Boulevard, Suite 100
Arlington, Virginia 22205

C. M. RECOMMENDATIONS:

1. Enact the attached Ordinance (“Ordinance”) to Allow an Encroachment of an Electric Vault into a Portion of a County Public Use Access Easement for Street, Sidewalk, Utilities and Related Purposes (“County Easement”), Such Portion Located East of the Northeast Corner of the Intersection of South Fern Street and the Proposed 13th Street South, Lot 6, Pentagon Industrial Center, RPC No. 35003008 and Adjacent to Lot 7, Pentagon Industrial Center, RPC No. 35003009, with Conditions (“Attachment 1”).
2. Authorize the Real Estate Bureau Chief, Engineering and Capital Projects Division, Department of Environmental Services, to execute, on behalf of the County Board, all documents necessary to effectuate the Ordinance, subject to approval as to form by the County Attorney.

ISSUE: This request for an encroachment into the County Easement is to facilitate development of the property under Site Plan #105 (Metropolitan Park, Phase 3), which is being heard by the County Board contemporaneously with this application for an encroachment. There are no issues identified with this request for an encroachment.

County Manager: _____

County Attorney: _____

Staff: Linda Collier, DES, Real Estate Bureau

SUMMARY: The Applicants/Owners have requested the County Board to enact an Ordinance to permit encroachment into the County Easement for construction of a portion of a below grade electric transformer vault in the County Easement as required by the site plan for Metropolitan Park Phase 3, Site Plan #105. If enacted, the requested Ordinance would permit the encroachment to continue in effect until the below grade electric transformer vault encroachment is destroyed, removed, no longer in use or not continuously and promptly maintained by the Applicants/Owners. The proposed encroachment is consistent with Site Plan #105 which is scheduled to be considered by the County Board at the same meeting as this encroachment request.

BACKGROUND: The Metropolitan Park Phase 3, Site Plan #105 (“Site Plan”) consists of an 18-story building containing 411 residential units and 16,350 square feet of ground floor retail in addition to a 1/3 acre park and is bounded by South Fern Street, 12th Street South, South Elm Street and 13 Street South (RPC No. 35003008). The subject encroachment is located in the County Easement on the adjoining property, Metropolitan Park, Phase 2 (RPC No. 35003008) and is adjacent to the property boundary lines for the Site Plan. The requested encroachment will be physically located in an area designated for sidewalk on the north side of 13th Street South between the face of the street curb and the proposed building. (See Attached Exhibit B, Vicinity Map.)

CLPF-Metropolitan Two Venture, the Owner of the underlying property where the subject encroachment would be physically located, obtained the underlying property by deed recorded on October 2, 2007 in Deed Book 4138 at Page 2635 among the land records of Arlington County, Virginia (“Land Records”). The County obtained the County Easement by Deed of Easements recorded among the Land Records on June 6, 2008 at Deed Book 4195 at Page 1723.

DISCUSSION: In conjunction with the plans for redevelopment of the property, the Applicants/Owners have requested Encroachment Ordinances to permit the construction of an underground electric transformer vault in an area designated for sidewalk on the north side of 13th Street South between the face of the street curb and the proposed building, in an area of County Easement located on Metropolitan Park, Phase 2 (RPC No. 35003008), which area is adjacent to the property boundary lines for the Site Plan. The dimensions of the proposed encroachment would be 20.5 feet deep, 5.23 feet wide and 78 feet long, consisting of approximately 408 square feet. The proposed encroachment is more specifically shown on a plat entitled, “Exhibit Showing the Encroachment of an Underground Transformer Vault into a Portion of 13th Street South (Public Use Access Easement) Deed Book 4195, Page 1723, Lot 6 Pentagon Industrial Center Deed Book 1085, Page 133, Arlington County, Virginia”, Sheet 1 of 2 and Sheet 2 of 2, prepared by VIKA Incorporated, dated November 13, 2008, attached hereto as Exhibit A-1 and A-2 (“Plats”).

Legal and Physical Description: The County Easement for 13th Street South was established by Deed of Easements recorded among the Land Records on June 6, 2008 at Deed Book 4195 at Page 1723.

Public Notice: Public notice was given in accordance with the Code of Virginia. Notices were placed in the January 27, 2009 and February 3, 2009 issues of the Washington Times for the February 21, 2009 County Board Meeting.

Compensation: In keeping with the County's current practice of not requiring compensation to be paid to the County for electric transformer vault encroachments, if the below grade electric transformer vault encroachment is approved, then there would be no compensation required for the aforementioned encroachment into and under the County Easement.

FISCAL IMPACT: There is no fiscal impact for the encroachment of the electric transformer vault.

CONCLUSION: It is recommended that the County Board enact the attached Encroachment Ordinance in Attachment 1.

ATTACHMENT 1

ORDINANCE TO ALLOW THE ENCROACHMENT OF AN ENCROACHMENT OF AN ELECTRIC VAULT INTO A PORTION OF A COUNTY PUBLIC USE ACCESS EASEMENT FOR STREET, SIDEWALK, UTILITIES AND RELATED PURPOSES, SUCH PORTION LOCATED EAST OF THE NORTHEAST CORNER OF THE INTERSECTION OF SOUTH FERN STREET AND THE PROPOSED 13TH STREET SOUTH, LOT 6, PENTAGON INDUSTRIAL CENTER, RPC NO. 35003008 AND ADJACENT TO LOT 7, PENTAGON INDUSTRIAL CENTER, RPC NO. 35003009, WITH CONDITIONS.

BE IT ORDAINED by the County Board of Arlington County, Virginia, that the Applicants/Owners, CLPF-Metropolitan Two Venture, L.P. and CLPF-Metropolitan Three Venture, L.P. (jointly "Applicants/Owners"), (CLPF-Metropolitan Three Venture, L.P., being the owner of the project known as Metropolitan Park Phase 3, Site Plan #105), are hereby permitted to construct a portion of a below grade electric transformer vault into a portion of an existing County Public Use Access Easement for Street, Sidewalk, Utilities and Related Purposes, such portion of the public use access easement located east of the northeast corner of the intersection of South Fern Street and the proposed 13th Street South, Lot 6, Pentagon Industrial Center, RPC No. 35003008 and adjacent to Lot 7, Pentagon Industrial Center, RPC No. 35003009, with conditions set forth herein. The dimensions (length, width and depth (by elevations)), and spatial location of the permitted encroachment are depicted in Exhibit A-1 and Exhibit A-2 attached to the County Manager's February 2, 2009 Report, entitled "Exhibit Showing the Encroachment of an Underground Transformer Vault into a Portion of 13th Street South (Public Use Access Easement) Deed Book 4195, Page 1723, Lot 6 Pentagon Industrial Center Deed Book 1085, Page 133, Arlington County, Virginia", Sheet 1 of 2 and Sheet 2 of 2, prepared by VIKA Incorporated, dated November 13, 2008 ("Plats"). Such below grade electric transformer vault, and all equipment and facilities therein, are only permitted to serve the building authorized by Site Plan #105, approved by the County Board on February 21, 2009, and any approved amendments thereto. The dimensions, the elevations, the depth below grade, the spatial location, the characteristics of the permitted underground electric transformer vault, and the spatial area of the permitted encroachment, are shown on the Plats. No other structures are permitted to be installed or constructed by Applicants/Owners, or to exist within the County property shown on the Plats.

BE IT FURTHER ORDAINED that this permission for the encroachment shall continue until such time as that portion of the under grade electric transformer vault, encroaching within the public use access easement or the public right-of-way, as the case may be, is destroyed, removed, no longer in use, or not continuously and promptly maintained by the Applicants/Owners. Nothing in this Ordinance shall be construed either: to allow the installation by Applicants/Owners of any above ground structure or any structure other than the below grade electric transformer vault within the area as shown on the Plats; or to allow any greater encroachment beyond the dimensions and spatial area shown on the Plats.

BE IT FURTHER ORDAINED that the Applicants/Owners, their successors and assigns, shall continuously and promptly maintain the below grade electric transformer vault, and

maintain, restore, repair, and replace all County owned facilities, within and adjacent to the public right-of-way, including any sidewalk, curb and gutter, and paved surface, which are damaged by the installation, maintenance, destruction, continued existence, repair or removal of the underground electric transformer vault, in accordance with Site Plan #105, and all applicable County standards, codes and ordinances.

BE IT FURTHER ORDAINED that this Ordinance shall not be construed to release the Applicants/Owners, their successors and assigns, of negligence on their part on account of such encroachment, and the Applicants/Owners, by constructing, or causing to be constructed and by continuing to have the below grade electric transformer vault encroach within the public use access easement or any dedicated public right-of-way, thereby agrees for themselves, their successors and assigns, to indemnify and hold harmless the County Board of Arlington County, Virginia and County officials, officers, employees, and agents from all claims, negligence, damages, costs and expenses arising out of the construction, maintenance, repair and removal of the below grade electric transformer vault, and the permission for the below grade electric transformer vault to encroach within the public use access easement or any public right-of-way permitted by this Ordinance.

BE IT FURTHER ORDAINED that prior to recording this Ordinance, the Applicants/Owners shall record a document(s) in the land records of the Arlington County Circuit Court ("Land Records") which specifically references this Ordinance and the encroachment depicted on the Plats and which document(s) demonstrates, to the satisfaction of the County, that CLPF-Metropolitan Three Venture, L.P., or any of its successors in interest and/or assigns, has the legal permission of CLPF-Metropolitan Two, L.P., or any of its successors in interest and/or assigns, to locate, maintain and use a portion of the property identified as Lot 6, Pentagon Industrial Center, RPC No. 35003008 for the underground electric transformer vault depicted on the Plats.

BE IT FURTHER ORDAINED that on or before February 21, 2012, the Applicants/Owners, at their sole expense, shall cause a certified copy of this Ordinance and the Plat, approved by the Director of the Department of Environmental Services or his designee, to be recorded in the Land Records thereof shall be promptly delivered by the Applicants/Owners to the Real Estate Bureau Chief, Engineering and Capital Projects Division, Department of Environmental Services.

EXHIBIT A-1 ENCROACHMENT PLAT – Sheet 1 of 1

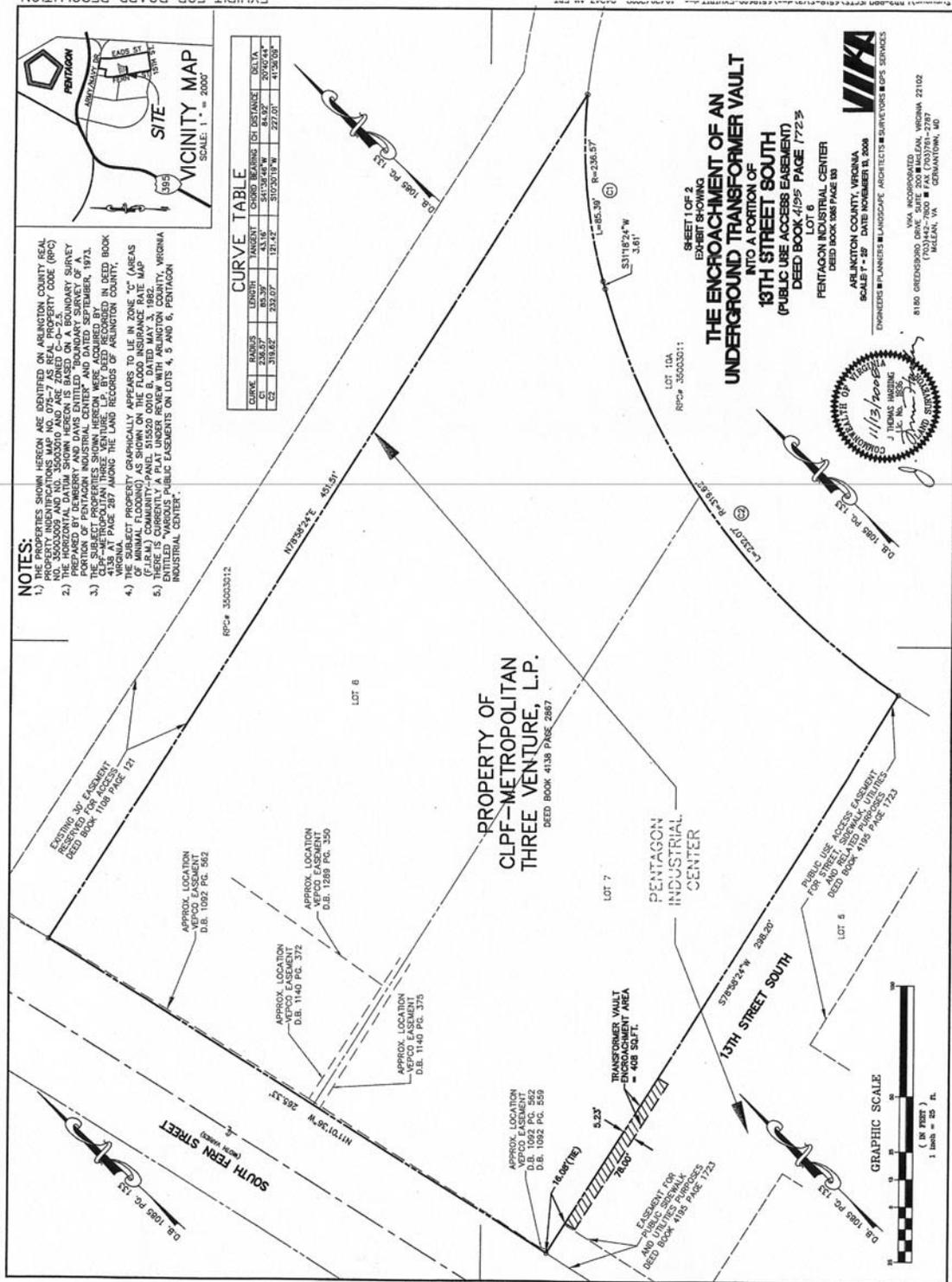
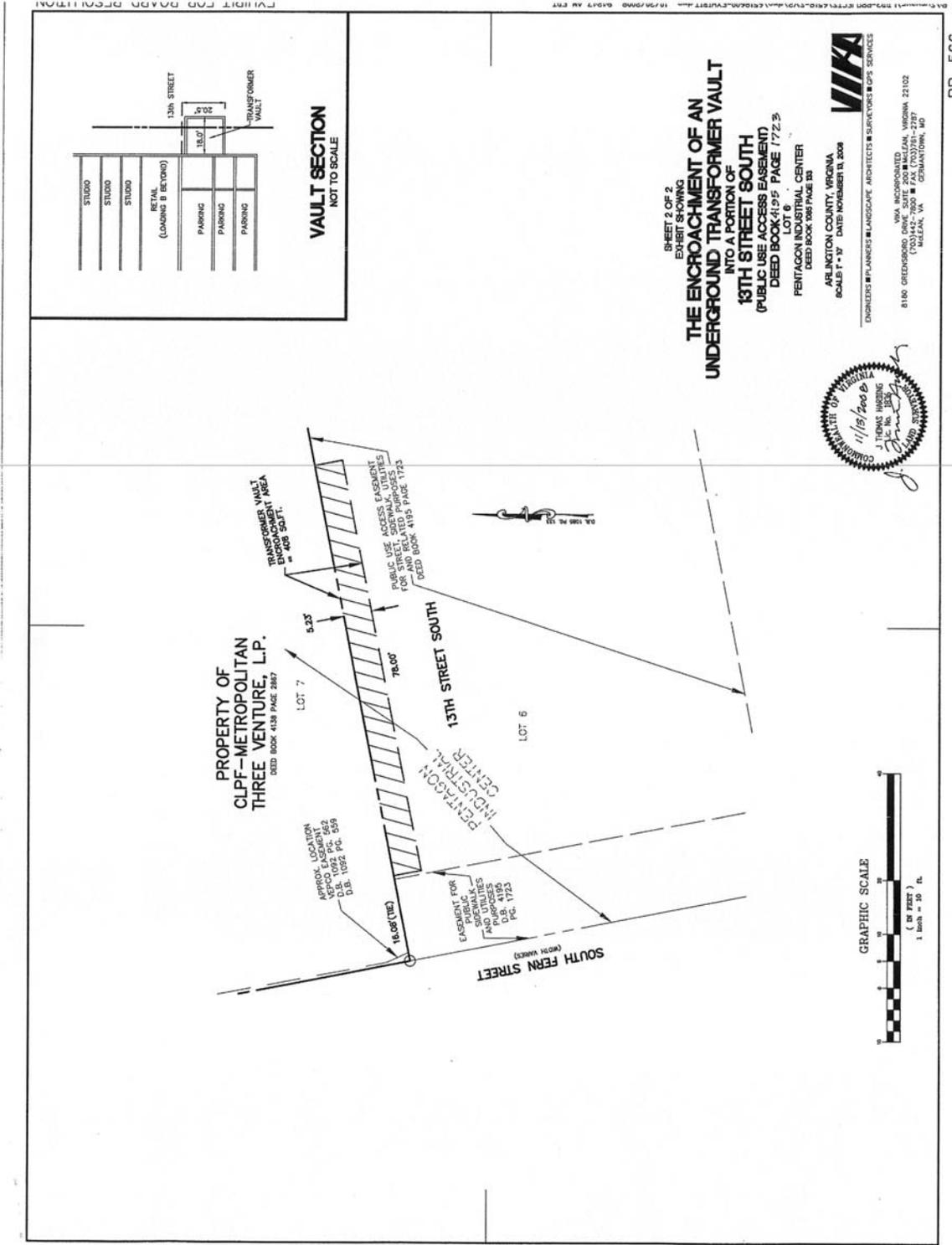


EXHIBIT A-2 ENCROACHMENT PLAT – Sheet 2 of 2



RP-566

**EXHIBIT B
VICINITY MAP**

