



ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item Meeting of June 13, 2009

DATE: June 1, 2009

SUBJECT: Approval of a Resolution Granting Density Credit for 984 square feet to the Property Known as Macedonia Baptist Church, located at 2237, 2229 and 2219 Shirlington Road, RPC Nos. 31025047, 31025048 and 31025049 ("Church Property"), in exchange for a 984 Square Foot Portion of said Church Property to be Dedicated in Fee Simple to the County Board of Arlington County, Virginia, for Public Street and Utilities Purposes.

C. M. RECOMMENDATION:

1. Approve the Resolution, attached hereto as Exhibit C ("Resolution"), to grant a density credit for 984 square feet to the Church Property in exchange for the fee simple dedication to the County Board of Arlington County, Virginia, of a 984 square foot portion of said Church Property for public street and utilities purposes; and
2. Authorize the County Manager or his designee, to execute on behalf of the County Board of Arlington County, Virginia, the Deed of Resubdivision, Vacation, Rededication, Easements and Dedication, attached hereto as Exhibit D, subject to approval as to form by the County Attorney.

ISSUE: Approval of the Resolution granting density credit, recordation of the Deed of Resubdivision, Vacation, Rededication, Easements and Dedication, and compliance within one year with the provisions of Section 36. L. of the Arlington County Zoning Ordinance is required for the applicant to meet Condition No. 35 of the County Board's September 13, 2008 approval of U-3185-07-1 for Macedonia Baptist Church.

SUMMARY: This is a request for approval of a density credit in exchange for the voluntary dedication in fee simple, which is permitted by Section 36. L. of the County's Zoning Ordinance. The density credit will permit the owners of the Church Property to retain the density resulting from the 984 square foot fee simple dedication to the County Board of Arlington County, Virginia, for public street and utilities purposes. The dedicated area is located in existing Public Street and Utilities Easements which constitute a portion of the current street area of Shirlington Road.

County Manager: _____

County Attorney: _____

Staff: Linda Eichelbaum Collier, DES, Real Estate Bureau

Report Date: 6/1/2009

BACKGROUND: On September 13, 2008, the County Board granted Macedonia Baptist Church (“Macedonia”) a Unified Commercial/Mixed Use Development (UC/MUD) Use Permit, U-3185-07-1 (“Use Permit”) to construct 36 dwelling units and office space on the Church Property. As a condition of the Use Permit, in order to ensure adequate density for the project, Condition No. 35 requires that Macedonia complete the requirements of Section 36. L. of the Zoning Ordinance for the fee simple dedication of at least 983.84 square feet of right of way for the portion of the Church Property that is located in the right of way for Shirlington Road (“Dedication Area”) within one year from the date of the County Board approval of the Use Permit.

The Dedication Area is 5.74 feet wide and is located in an area that currently exists as a portion of Shirlington Road, over which the County possesses street and utilities easement(s), as shown on the attached “*Plot and Location Plan The Macedonia Apartments*” dated December 21, 2007, prepared by William H. Gordon Associates, Inc. and attached hereto as Exhibit B. The Church Property and the Dedication Area are more particularly shown on a plat entitled “Plat Showing Parcel A Trustees of the Macedonia Baptist Church Being the Resubdivision, Vacation, and Rededication of Lots B and C Archie M. Turner Resubdivision Deed Book 299, Page 536 and Lots 10, 11, and 12 William A. Rowe Subdivision Deed Book 219, Page 434 and Part of Lot 9 Thomas H. West Subdivision Deed Book 267, Page 518 Arlington County, Virginia”, dated March 1, 2008, revised January 32, 2009, prepared by William H. Gordon Associates, Inc. and attached hereto as Exhibit A.

DISCUSSION: As part of and as a condition of the Use Permit approval, Macedonia agreed to dedicate the Dedication Area to the County in fee simple. In return for such dedication, and in order to retain sufficient density for the project, Macedonia has requested a density credit for the 984 square foot portion of the Church Property that Macedonia will dedicate to the County. This 984 square foot portion includes the 983.84 square foot area for which the Applicant is required to obtain density credit under the requirements of Condition No. 35 of the UC/MUD.

Staff supports and recommends that the requested density credit be granted because the dedication of the 984 square foot portion of Shirlington Road furthers the County’s practice of obtaining fee ownership of County streets. The density credit would be applied/given to the remaining Church Property, as shown on the plat attached hereto as Exhibit A. The recommended density credit is permitted by Section 36. L. [Density Credit] of the Arlington County Zoning Ordinance, upon the following findings by the County Board of Arlington County, Virginia, all of which findings are applicable to the recommended dedication, and are recited in the Resolution attached hereto as Exhibit C:

- The portion of the Church Property to be dedicated for public street and utilities purposes is needed by the County for a public use/purpose (i.e., public street and utilities purposes), specifically, to obtain the fee simple ownership of a portion of Shirlington Road;
- The portion of the Church Property to be dedicated for said public street and utilities purposes is suitable in location, size, shape, condition and topography for such public use/purpose in that the Dedication Area is presently serving as street;

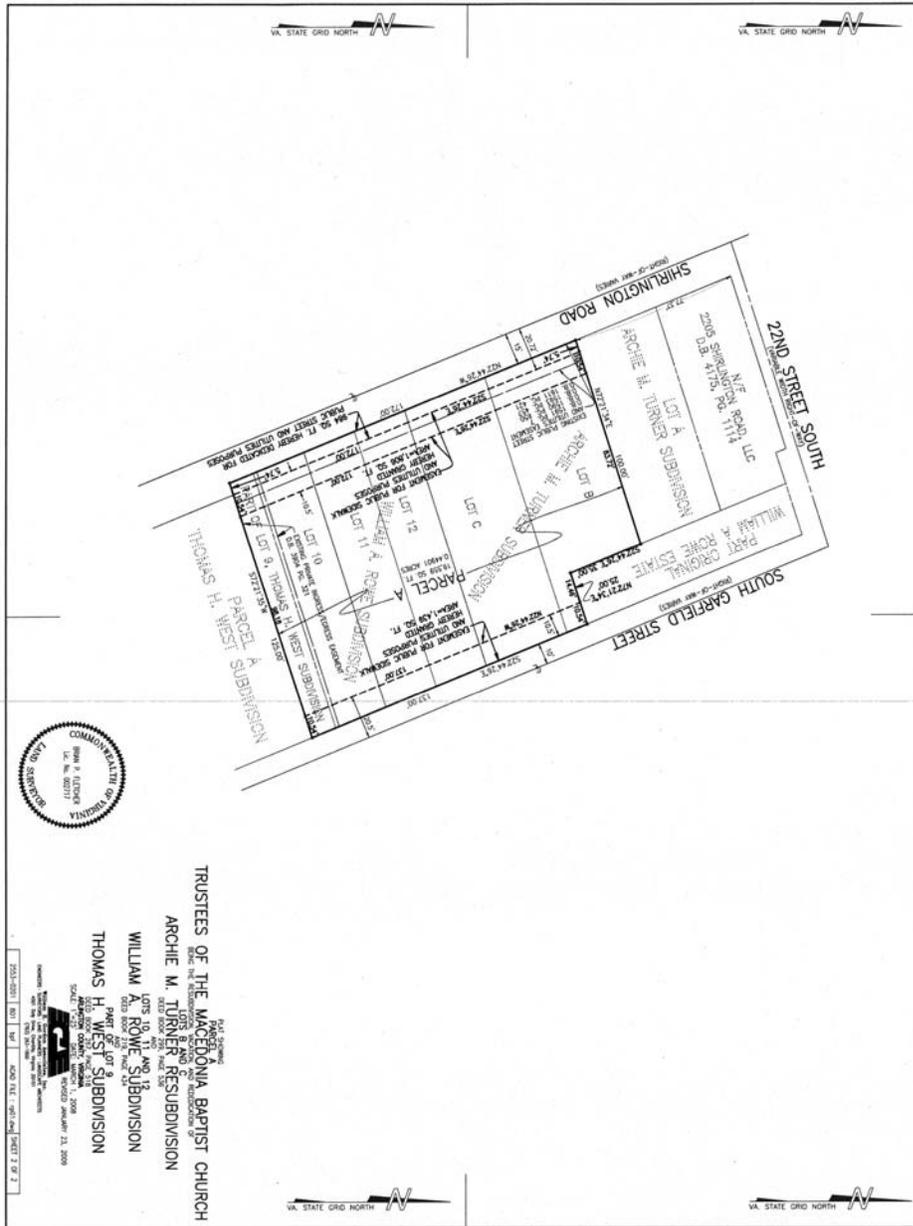
- There are no encumbrances, title restrictions, or survey exceptions to such portion of the Church Property that would restrict, adversely affect, or otherwise interfere with public use of said portion of the Church Property for such public street and utilities purpose or any other;
- The portion of the Church Property to be dedicated for such public street and utilities purposes is in accordance with the County's Comprehensive Plan and the dedication of such portion of the Church Property will contribute to the implementation of County Board approved transportation plans as such Dedication Area is presently serving as street; and
- The portion of the Church Property for which density credit is to be granted will be dedicated to the County Board without monetary or other compensation except the granting of the density credit.

The dedication for public street and utilities purposes will be accomplished by including the dedication on a resubdivision and consolidation plat of the Church Property that must be submitted for review and approval by DES. The density credit will be reflected on the said plat and in the Deed of Resubdivision, Vacation, Rededication, Easements and Dedication, which also must be submitted for review and approval by DES and approval as to form by the County Attorney.

FISCAL IMPACT: None. The dedication by Macedonia and the preparation of all associated documents will be done at Macedonia's sole cost and expense.

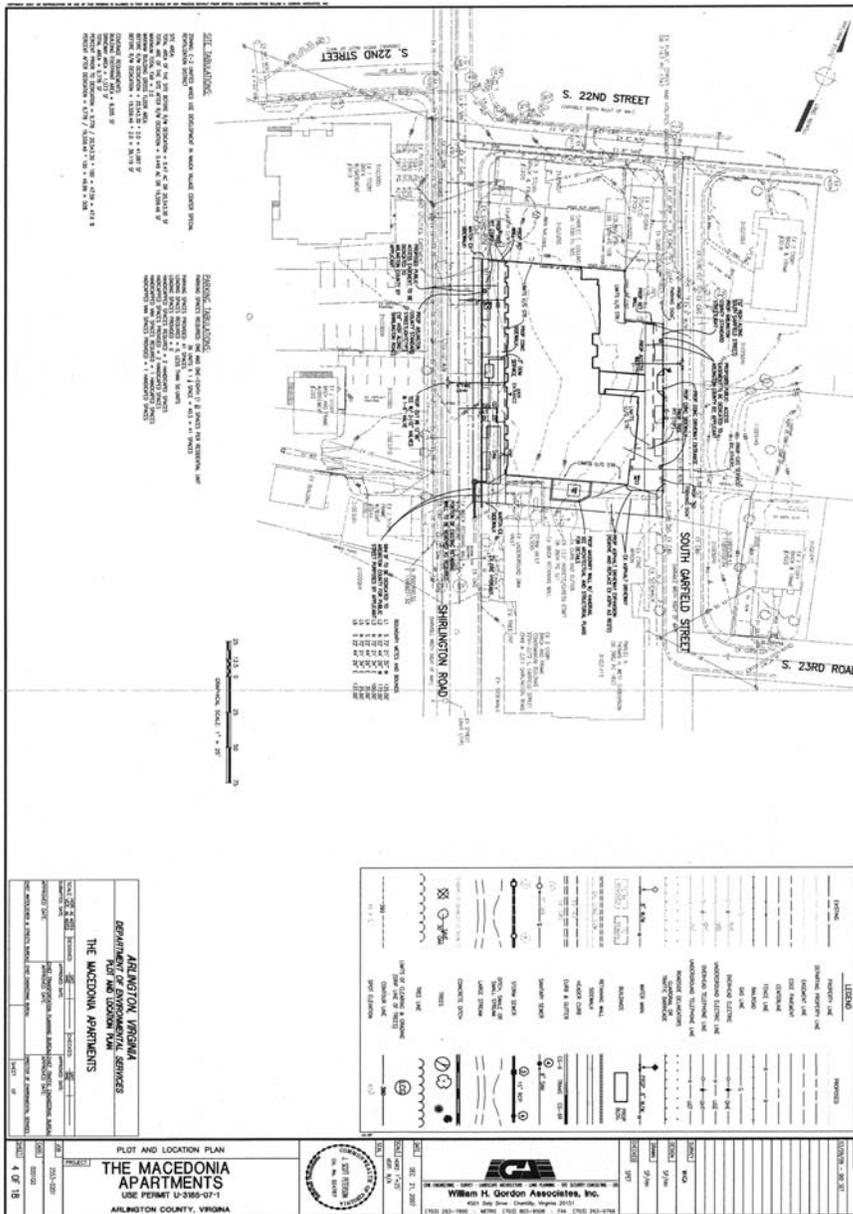
EXHIBIT A

Resubdivision, Vacation and Rededication Plat for the Property-Page 2



TRUSTEES OF THE MACEDONIA BAPTIST CHURCH
 ARCHIE M. TURNER RESUBDIVISION
 WILLIAM A. ROWE SUBDIVISION
 THOMAS H. WEST SUBDIVISION
 PARCELS A, B AND C
 LOTS 10, 11 AND 12
 SCALE: 1" = 200' (AS SHOWN)
 DATE: 11/11/2008
 BY: [Signature]
 TITLE: [Title]
 FIRM: [Firm Name]
 ADDRESS: [Address]
 PHONE: [Phone Number]
 FAX: [Fax Number]
 E-MAIL: [Email Address]

EXHIBIT B
Plot and Location Plan The Macedonia Apartments



Grant of Density Credit
 Macedonia Baptist Church - RPC Nos. 31025047, 31025048 & 31025049

EXHIBIT C

RESOLUTION GRANTING DENSITY CREDIT

WHEREAS, the County Manager has recommended that, in conjunction with the proposed resubdivision and consolidation of a parcel of real property known as Macedonia Baptist Church, located at 2237, 2229 and 2219 Shirlington Road, RPC Nos. 31025047, 31025048 and 31025049 (“Church Property”) and in exchange for the dedication of a portion of the Church Property for public use, the County Board of Arlington County, Virginia, approve the grant of a density credit pursuant to Section 36. L. of the Arlington County Zoning Ordinance in the amount of density that would be yielded by 984 square feet of land area (the area of the Church Property being dedicated for public street and utilities purposes which area includes the 983.84 square foot area required for density credit under the requirements of Condition 35 of U-3185-07, also sometimes called “Dedication Area”) to the remaining subdivided and consolidated Church Property designated as Parcel A on Exhibit A attached to the report of the County Manager dated June 1, 2009; and

WHEREAS, upon consideration of the report of the County Manager dated June 1, 2009, and other information presented at the time of consideration of this matter, the County Board finds that:

- The portion of the Church Property to be dedicated for public street and utilities purposes is needed by the County for a public use/purpose (i.e., public street and utilities purposes), specifically, to obtain the fee simple ownership of a portion of Shirlington Road;
- The portion of the Church Property to be dedicated for said public street and utilities purposes is suitable in location, size, shape, condition and topography for such public use/purpose in that the Dedication Area is presently serving as street;
- There are no encumbrances, title restrictions, or survey exceptions to such portion of the Church Property that would restrict, adversely affect, or otherwise interfere with public use of said portion of the Church Property for such public street and utilities purpose or any other;
- The portion of the Church Property to be dedicated for such public purposes is in accordance with the County’s Comprehensive Plan and the dedication of such portion of the Church Property will contribute to the implementation of County Board approved transportation plans as such Dedication Area is presently serving as street; and
- The portion of the Church Property for which density credit is to be granted will be dedicated to the County Board without monetary or other compensation except the granting of the density credit.

NOW, THEREFORE, BE IT RESOLVED, that in conjunction with the proposed resubdivision and consolidation of a parcel of real property known as Macedonia Baptist

Grant of Density Credit
Macedonia Baptist Church - RPC Nos. 31025047, 31025048 & 31025049

Church, located at 2237, 2229 and 2219 Shirlington Road, RPC Nos. 31025047, 31025048 and 31025049 (“Church Property”) and in exchange for the dedication of a portion of the Church Property for public use, the County Board of Arlington County, Virginia, pursuant to Section 36. L. of the Arlington County Zoning Ordinance, hereby approves the grant of a density credit in the amount of density that would be yielded by 984 square feet of land area (the area of the Church Property being dedicated for public street and utilities purposes, which area includes the 983.84 square feet required for density credit under Condition No. 35 of U-3185-07-1) to the remaining resubdivided and consolidated Church Property as shown on Exhibit A attached to the report of the County Manager dated June 1, 2009.

EXHIBIT D

Prepared by/Return to:
H. Mark Goetzman
Walsh, Colucci, Lubeley, Emrich & Walsh, PC
2200 Clarendon Blvd., 13th Floor
Arlington, VA 22201

RPC NOS. 31025047, 31025048 &
31025049

DEED OF RESUBDIVISION, VACATION, REDEDICATION, EASEMENTS AND DEDICATION

This Deed of Resubdivision, Vacation, Rededication, Easements and Dedication (the "Deed"), is made this ____ day of _____, 2009, by and among **DRUCELLA PERKINS, RONNIE GOODWIN AND JANICE PRESTON CLARKE, TRUSTEES OF THE MACEDONIA BAPTIST CHURCH OF ARLINGTON**, Grantor (also called "Owner") and **THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA**, a body corporate and politic, Grantee (the "County").

RECITALS

WHEREAS, Owner is the owner of certain real property located in Arlington County, Virginia, by virtue of certain deeds recorded in Deed Book 2982 at page 934, in Deed Book 3578 at page 1775 and in Deed Book 4042 at page 1945 (the "Property"), all among the land records of Arlington County, Virginia (the "Land Records"); and

WHEREAS, the Property is not subject to the lien of any deed of trust; and

WHEREAS, on September 13, 2008, the County Board of Arlington County, Virginia adopted an ordinance pursuant to application U-3185-07-1 approving a use permit for a Unified Mixed Use Development to construct 36 dwelling units and office space for the parcel of real property known as 2219, 2229, 2237 Shirlington Road (the "Use Permit"); and

WHEREAS, the Use Permit is subject to several conditions, including condition number 31, that requires the Owner to dedicate to the County, in fee simple, in form and substance acceptable to the County Manager, and approval as to form by the County Attorney, approximately 984 square-feet of right-of-way along the westerly portion of the site along Shirlington Road, for public street and utilities purposes prior to the issuance of the first certificate of occupancy; and

WHEREAS, the Use Permit also is subject to condition number 32, that requires, among other things, the Owner to submit all required public deeds of easement and deeds of dedication to the Division of Transportation prior to the issuance of the Excavation/Sheeting and Shoring Permit, and the Owner to obtain certain approvals of such deeds and record them upon approval, among the land records of the Clerk of the Circuit Court of Arlington County, before the issuance of the Final Building Permit; and

WHEREAS, the Use Permit also is subject to condition number 35 which conditioned the approval of the Use Permit upon the Owner completing the requirements of Zoning Ordinance Section 36. L [Density Credit] for the fee simple dedication of 983.84 square feet for the portion of the site within the Shirlington Road right-of-way within one year of the Use Permit approval (September 13, 2009); and

WHEREAS, at a regular meeting on _____, 2009, the County Board of Arlington County, Virginia approved a Resolution, attached hereto as Exhibit A, pursuant to Section 36.L of the Arlington County Zoning Ordinance, to grant a density credit in the amount of density that would be yielded by 984 square feet of land area to the remaining portion of the consolidated property of the Trustees of the Macedonia Baptist Church of Arlington, RPC #31025047, RPC #31025048 and RPC #31025049, in

exchange for the dedication of 984-square-foot fee simple dedication for public street and utilities purposes (the "Resolution"); and

WHEREAS, it is the desire of the Owner to resubdivide the Property, to vacate and rededicate the subdivision name of the Property; to dedicate grant and convey, in fee simple, 984 square feet for public street and utilities purposes; to acknowledge the density credit approved for the Property pursuant to the Resolution; and to create, grant and convey unto the County a 1,439 square foot Easement for Public Sidewalk and Utilities Purposes and a 2,580 square foot Easement for Public Sidewalk and Utilities Purposes, all as hereinafter set forth, described and shown on a plat prepared by William H. Gordon Associates, Inc., entitled "PLAT SHOWING PARCEL A, TRUSTEES OF THE MACEDONIA BAPTIST CHURCH, BEING THE RESUBDIVISION, VACATION AND REDEDICATION OF LOTS B AND C, ARCHIE M. TURNER RESUBDIVISION, DEED BOOK 299, PAGE 536, AND LOTS 10, 11 AND 12, WILLIAM A. ROWE SUBDIVISION, DEED BOOK 219, PAGE 434, AND PART OF LOT 9, THOMAS H. WEST SUBDIVISION, DEED BOOK 267, PAGE 518, ARLINGTON COUNTY, VIRGINIA", dated March 1, 2008, revised through _____, prepared by William H. Gordon Associates, Inc. attached hereto and made a part hereof (the "Plat").

RESUBDIVISION, VACATION AND REDEDICATION

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner does hereby vacate and rededicate the subdivision name of the Property, and does hereby resubdivide the Property to be

hereafter known as Parcel A, Trustees of the Macedonia Baptist Church, as more particularly shown and described on the Plat attached hereto and made a part hereof.

DEDICATION FOR PUBLIC STREET AND UTILITIES PURPOSES

THIS DEED FURTHER WITNESSETH, that in consideration of the sum of Ten Dollars (\$10.00) cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner does hereby dedicate, grant and convey unto the County, its successors and assigns, in fee simple, free and clear of all liens, encumbrances and improvements, that certain portion of the Property designated as "984 SQ. FT. HEREBY DEDICATED FOR PUBLIC STREET AND UTILITIES PURPOSES", as more particularly shown and described on the Plat.

ACKNOWLEDGEMENT OF DENSITY CREDIT

NOW, THEREFORE, the County and the Owner do hereby acknowledge the establishment of a density credit in the amount of density that would be yielded by 984 square feet of land area, such density to be applied to Parcel A as more particularly described on the Plat, The density credit was granted in exchange for the aforesaid 984-square-foot fee simple dedication for public street and utilities purposes, and pursuant to the aforesaid Resolution, a certified copy of which is attached to, made a part hereof, and incorporated herein as Exhibit A.

EASEMENTS FOR PUBLIC SIDEWALK AND UTILITIES PURPOSES

THIS DEED FURTHER WITNESSETH, that in consideration of the sum of Ten Dollars (\$10.00) cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner does hereby

create, grant and convey unto the County, its successors and assigns, easements for public sidewalk and utilities purposes, over, under, across and through the Property, described as "Easement for Public Sidewalk and Utilities Purposes Hereby Granted Area=1,439 Sq. Ft." and "Easement for Public Sidewalk and Utilities Purposes Hereby Granted Area=2,580 Sq. Ft." in the locations and dimensions shown on the Plat (the "Easements"), for the purposes of construction, maintenance, removal, repair, reconstruction, replacement and relocation of present or future public sidewalks and utilities within the areas of said Easements. The aforesaid Easements are subject to the following terms and conditions:

1. The County and its agents shall have full and free use of the Easements for the purposes named, and shall have all rights and privileges reasonably necessary to exercise the use of the Easements, including the right of access to and from the Easements, and the right to use the adjoining land of the Owner where necessary; provided, however, that this right to use adjoining land shall be exercised only during periods of actual construction, maintenance, removal, repair, reconstruction, replacement and relocation, and further, this right shall not be construed to allow the County to erect any building, structure or facility of a permanent nature on such adjoining land.
2. The County shall have the right to trim, cut and remove trees, shrubbery, fences, structures or other obstructions or facilities in or reasonably near the Easements; provided, however, that the County at its own expense shall restore, as nearly as practicable, the premises to their original condition, such restoration to include the backfilling of trenches, the replacement of shrubbery and the reseeding or resodding of lawns, but not the replacement of structures, trees or obstructions.
3. The Owner reserves the right to use the Property in any manner which is not inconsistent with the rights herein conveyed, or does not interfere with the use of the Easements for the purposes named.
4. The Owner covenants that Owner is seized of and has the right to convey the Easements for Public Sidewalk and Utilities Purposes, and that Owner shall make no use of the easement areas which is inconsistent with the easement rights hereby granted.

COVENANTS REAL

The Owner declares that the agreements and covenants stated in this Deed are not covenants personal to the Owner, but are covenants real, running with the land.

FREE CONSENT

This Deed is made with the free consent and in accordance with the desire of the undersigned Owner of the Property, and is in accordance with the statutes of Virginia and the ordinances in force in Arlington County governing the platting and subdivision of Land, and is approved by the proper authorities as is evidenced by their endorsements on said Plat attached hereto and make a part hereof.

The Deed shall be construed, interpreted and applied according to the law of the Commonwealth of Virginia.

The Recitals are incorporated into this Deed.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES.]

WITNESS the following signatures and seals:

**MACEDONIA BAPTIST CHURCH OF
ARLINGTON**

DRUCELLA PERKINS, TRUSTEE

STATE OF _____ :
COUNTY OF _____: to-wit

The foregoing instrument was acknowledged before me this _____ day of _____, 2009, by Drucella Perkins, Trustee for the Macedonia Baptist Church of Arlington.

Notary Public

My Commission Expires: _____
Notary ID #: _____

RONNIE GOODWIN, TRUSTEE

STATE OF _____ :
COUNTY OF _____ : to-wit

The foregoing instrument was acknowledged before me this ____ day of _____, 2009, by Ronnie Goodwin, Trustee for the Macedonia Baptist Church of Arlington.

Notary Public

My Commission Expires: _____
Notary ID #: _____

APPROVED AS TO FORM:

COUNTY ATTORNEY

**THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA**

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By: _____
[SEAL]

Title: County Manager

COMMONWEALTH OF VIRGINIA
COUNTY OF ARLINGTON, to-wit:

The foregoing instrument was acknowledged before me by
_____, on behalf of THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA, this _____ day of _____ 2009.

Notary Public

My Commission Expires: _____
Notary ID #: _____

EXHIBIT E

Vicinity Map 1

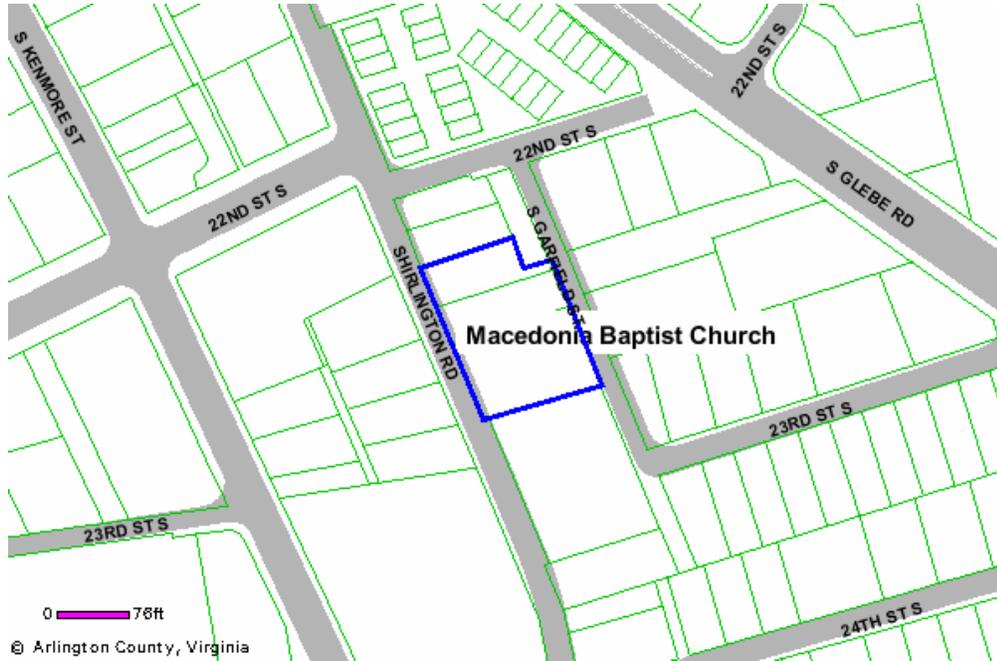


EXHIBIT E

Vicinity Map 2

