



## ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item  
Meeting of September 26, 2009**

**DATE:** September 16, 2009

**SUBJECT:** Amendment and Re-enactment of an “Ordinance to Vacate a Sanitary Sewer Easement, a 10-foot wide Storm Sewer Easement, and a Storm and Sanitary Sewer Easement, which easements are located on the Property owned by Arlington Heights Properties, a Virginia Limited Partnership, at 2501 and 2405 Columbia Pike, Arlington, Virginia (RPC #25-016-006 and #25-016-009, respectively), and to Vacate a Portion of a Sanitary Sewer Easement on Part of the Property owned by Arlington Heights Properties, a Virginia Limited Partnership, at 2501 Columbia Pike (RPC #25-016-006), with Conditions,” enacted on October 24, 2006, to be hereafter entitled an “Ordinance to Vacate a Sanitary Sewer Easement, a 10-foot wide Storm Sewer Easement, and a Storm and Sanitary Sewer Easement, which easements are located on the Property owned by Penrose Square Associates, LLC, a Virginia Limited Liability Company, at 2501 Ninth Road South, Arlington, Virginia, (RPC #25-016-012 and #25-016-013), and to Vacate a Portion of a Sanitary Sewer Easement on Part of the Property owned by Penrose Square Associates, LLC, a Virginia Limited Liability Company, at 2501 Ninth Road South, Arlington, Virginia, (RPC #25-016-013), with Conditions.”

**Original Applicant & Extension Applicant:** Carbon Thompson Development, L.L.C.

**By:** M. Catharine Puskar, Esquire  
Walsh, Colucci, Lubeley, Emrich & Walsh, P.C.  
2200 Clarendon Blvd., 13<sup>th</sup> Floor  
Arlington, VA 22201

### **C.M. RECOMMENDATIONS:**

1. Enact the attached Ordinance to Amend and Re-enact an “Ordinance to Vacate a Sanitary Sewer Easement, a 10-foot wide Storm Sewer Easement, and a Storm and Sanitary Sewer Easement, which easements are located on the Property owned by Arlington Heights Properties, a Virginia Limited Partnership, at 2501 and 2405 Columbia Pike, Arlington, Virginia (RPC #25-016-006 and #25-016-009, respectively), and to Vacate a Portion of a Sanitary Sewer Easement on Part of the Property owned by Arlington Heights Properties, a Virginia Limited Partnership, at 2501 Columbia Pike (RPC #25-016-006), with Conditions,” enacted on October 24, 2006, to be hereafter entitled an “Ordinance to Vacate a Sanitary Sewer Easement, a 10-foot wide Storm Sewer Easement, and a Storm

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

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

Staff: Lynne T. Porfiri and Linda Eichelbaum Collier, Real Estate Bureau, DES

and Sanitary Sewer Easement, which easements are located on the Property owned by Penrose Square Associates, LLC, a Virginia Limited Liability Company, at 2501 Ninth Road South, Arlington, Virginia, (RPC #25-016-012 and #25-016-013), and to Vacate a Portion of a Sanitary Sewer Easement on Part of the Property owned by Penrose Square Associates, LLC, a Virginia Limited Liability Company, at 2501 Ninth Road South, Arlington, Virginia, (RPC #25-016-013), with Conditions” (Attachment 2).

2. Authorize the Real Estate Bureau Chief, or his designee, to execute the Deed of Vacation and all related documents referenced in the above described Ordinance on behalf of the County Board, subject to approval of such deed(s), as to form, by the County Attorney.

**ISSUE:** The applicant has requested a two year extension of a previously enacted Ordinance of Vacation to allow for time to construct the relocated public storm and sanitary sewer facilities. There are no issues identified in this request.

**SUMMARY:** The applicant has requested the amendment and re-enactment of an Ordinance of Vacation associated with SP#402 (Penrose Square site plan), for the purpose of extending, for two additional years, the expiration date of the ordinance originally enacted by the County Board on October 24, 2006 (2006 ordinance). As provided in the 2006 ordinance, the applicant has until noon on October 14, 2009, to complete all of the conditions contained therein.

The approved site plan is currently under construction and the applicant received the footing to grade permit in early September 2009. Despite the progression of the project, all of the conditions of the 2006 ordinance have not been satisfied and will not be satisfied by the applicant by the existing ordinance expiration date of October 14, 2009. The applicant seeks the two year extension to permit time for the applicant to construct and relocate all of the existing storm and sanitary sewer facilities within the easements to be vacated into the public right-of-way of 9<sup>th</sup> Street South, South Adams Street and Columbia Pike, subject to the applicant obtaining County and Virginia Department of Transportation (“VDOT”) approvals of design plans for the said relocation and required permits.

Upon enactment of the Amended Ordinance (Attachment 2), the applicant would be given two additional years to satisfy the conditions of the 2006 ordinance. With completion of the conditions specified in the amended ordinance and recordation of the Deed of Vacation by the applicant before the expiration date of the amended ordinance, the County’s interests in the vacated storm and sanitary sewer easement areas will be extinguished.

**BACKGROUND:** On October 24, 2006, the County Board approved a special exception to the Penrose Square site plan, allowing redevelopment of the property to construct approximately 299 dwelling units, approximately 61,500 sq. ft. grocery store, and approximately 36,000 sq. ft. retail. At the same time, in order to facilitate the redevelopment of the property, the County Board enacted the 2006 ordinance.

The 2006 ordinance vacated, subject to conditions, a sanitary sewer easement, a 10-foot wide storm sewer easement, a storm and sanitary sewer easement and a portion of a sanitary sewer easement, all as described therein and below in this report. As of present, all of the conditions of the 2006 ordinance have not been satisfied by the applicant.

**DISCUSSION:** The 2006 ordinance requires the applicant to construct the relocated public storm and sanitary sewer facilities and have them accepted by the Director of DES, or his designee, before the Deed of Vacation is executed by the County. The sanitary sewer has been relocated, but the relocation of the onsite storm sewer into the Columbia Pike right-of-way has not yet been completed. The County is reviewing applicant's utilities relocation plan and will determine the most appropriate place to connect the sewer within the Columbia Pike street cross-section. Once the connection location has been determined, and the applicant's utilities relocation plan approved, the relocation of the public facilities must be completed after the applicant obtains County and Virginia Department of Transportation permits. The amended ordinance extending the expiration date will grant the applicant the additional time necessary to complete the facilities relocation. In addition to extending the expiration date to September 26, 2011, the amended ordinance deletes Condition #5 of the 2006 ordinance. To avoid confusion and redundancy it is the present practice of real estate staff not to include general site plan Condition #35 (Recordation of Public Easements and Dedications) as a condition of an ordinance of vacation. Thus, the amended ordinance deletes Condition #5.

The public utility easement areas that are the subject of the amended ordinance are depicted on a plat attached hereto as Exhibit "A" entitled "Exhibit Showing Vacation of Various Easements on Penrose Square, Existing Conditions Plan, Deed Book 4249, Page 1774, Arlington County, Virginia", prepared by Walter L. Phillips, Inc., dated July 27, 2009" ("Plat"). Vicinity maps of the project are attached hereto as Exhibit "B" and Exhibit "C".

The amended ordinance (Attachment 2) is subject to a number of conditions that are designed to ensure construction of the relocated public facilities by the applicant and acceptance of the relocated public facilities by the County. Once the relocated facilities constructed by the applicant are accepted by the County and all other conditions of the ordinance are satisfied, then the County will execute the Deed of Vacation.

With the enactment of the ordinance, upon satisfaction of the conditions, and upon recordation of the Deed of Vacation, the County's interest in the vacated portions of the subject easements will be extinguished.

Legal and Physical Description: The Property is located on the north side of Columbia Pike, west of South Adams Street. The site is now owned by Penrose Square Associates, LLC. The easements requested to be vacated are as follows:

- 1) 5-foot wide and 10-foot wide Sanitary Sewer Easement, 10-foot wide Storm Sewer Easement, and 13.5 foot-wide Storm and Sanitary Sewer Easement shown on a plat attached to An Ordinance Vacating a Portion of a Sanitary Sewer Easement Between 9<sup>th</sup> Street South, and Columbia Pike on the Property of B.M. Smith, Jr., et al, recorded in Deed Book 2052, at Page 1249, on November 16, 1981; and
- 2) Remaining portion of a 5-foot wide Sanitary Sewer Easement approximately 20 feet long, that was granted to the County by an Agreement recorded in Deed Book 368, at page 474 on June 8, 1935, a portion of which was vacated by the County Board on

August 21, 1981, also depicted on a plat attached to An Ordinance Vacating a Portion of a Sanitary Sewer Easement Between 9<sup>th</sup> Street South, and Columbia Pike on the Property of B.M. Smith, Jr., et al, recorded in Deed Book 2052, at Page 1249, on November 16, 1981.

Public Notice: Public notice was given in accordance with the Code of Virginia. Notices were placed in the September 1, 2009 and September 8, 2009 issues of the Washington Times for the County Board meeting of September 26, 2009.

Compensation: Staff recommends that no compensation be required from the applicant for extending the date by which it must fulfill the conditions of the 2006 ordinance which is consistent with the current County practice of not requiring compensation for the vacation of public utility easements when the facilities will be relocated for development at the applicant's or developer's expense.

**FISCAL IMPACT:** None. The applicant will relocate the storm and sanitary sewer facilities, at its own expense, at no cost to the County.

**CONCLUSION:** It is recommended that the County Board enact the attached ordinance to amend and re-enact an "Ordinance to Vacate a Sanitary Sewer Easement, a 10-foot wide Storm Sewer Easement, and a Storm and Sanitary Sewer Easement, which easements are located on the Property owned by Arlington Heights Properties, a Virginia Limited Partnership, at 2501 and 2405 Columbia Pike, Arlington, Virginia (RPC #25-016-006 and #25-016-009, respectively), and to Vacate a Portion of a Sanitary Sewer Easement on Part of the Property owned by Arlington Heights Properties, a Virginia Limited Partnership, at 2501 Columbia Pike (RPC #25-016-006), with Conditions," enacted on October 24, 2006, to be hereafter entitled an "Ordinance to Vacate a Sanitary Sewer Easement, a 10-foot wide Storm Sewer Easement, and a Storm and Sanitary Sewer Easement, which easements are located on the Property owned by Penrose Square Associates, LLC, a Virginia Limited Liability Company, at 2501 Ninth Road South, Arlington, Virginia, (RPC #25-016-012 and #25-016-013), and to vacate a portion of a Sanitary Sewer Easement on Part of the Property owned by Penrose Square Associates, LLC, a Virginia Limited Liability Company, at 2501 Ninth Road South, Arlington, Virginia, (RPC #25-016-013), with Conditions."

ATTACHMENT 1

**ORDINANCE TO AMEND AND RE-ENACT AN “ORDINANCE TO VACATE A SANITARY SEWER EASEMENT, A 10-FOOT WIDE STORM SEWER EASEMENT, AND A STORM AND SANITARY SEWER EASEMENT, WHICH EASEMENTS ARE LOCATED ON THE PROPERTY OWNED BY ARLINGTON HEIGHTS PROPERTIES, A VIRGINIA LIMITED PARTNERSHIP, AT 2501 AND 2405 COLUMBIA PIKE, ARLINGTON, VIRGINIA (RPC #25-016-006 AND #25-016-009, RESPECTIVELY), AND TO VACATE A PORTION OF A SANITARY SEWER EASEMENT ON PART OF THE PROPERTY OWNED BY ARLINGTON HEIGHTS PROPERTIES, A VIRGINIA LIMITED PARTNERSHIP, AT 2501 COLUMBIA PIKE (RPC #25-016-006), WITH CONDITIONS,” ENACTED ON OCTOBER 24, 2006, TO BE HEREAFTER ENTITLED AN “ORDINANCE TO VACATE A SANITARY SEWER EASEMENT, A 10-FOOT WIDE STORM SEWER EASEMENT, AND A STORM AND SANITARY SEWER EASEMENT, WHICH EASEMENTS ARE LOCATED ON THE PROPERTY OWNED BY PENROSE SQUARE ASSOCIATES, LLC, A VIRGINIA LIMITED LIABILITY COMPANY, AT 2501 NINTH ROAD SOUTH, ARLINGTON, VIRGINIA, (RPC #25-016-012 AND #25-016-013), AND TO VACATE A PORTION OF A SANITARY SEWER EASEMENT ON PART OF THE PROPERTY OWNED BY PENROSE SQUARE ASSOCIATES, LLC, A VIRGINIA LIMITED LIABILITY COMPANY, AT 2501 NINTH ROAD SOUTH, ARLINGTON, VIRGINIA, (RPC #25-016-013), WITH CONDITIONS.”**

**BE IT ORDAINED** that an Ordinance to Amend and Re-enact an “Ordinance to Vacate a Sanitary Sewer Easement, a 10-foot wide Storm Sewer Easement, and a Storm and Sanitary Sewer Easement, which easements are located on the Property owned by Arlington Heights Properties, a Virginia Limited Partnership, at 2501 and 2405 Columbia Pike, Arlington, Virginia (RPC #25-016-006 and #25-016-009, respectively), and to Vacate a Portion of a Sanitary Sewer Easement on Part of the Property owned by Arlington Heights Properties, a Virginia Limited Partnership, at 2501 Columbia Pike (RPC #25-016-006), with Conditions,” enacted on October 24, 2006, to be hereafter entitled an “Ordinance to Vacate a Sanitary Sewer Easement, a 10-foot wide Storm Sewer Easement, and a Storm and Sanitary Sewer Easement, which easements are located on the Property owned by Penrose Square Associates, LLC, a Virginia Limited Liability Company, at 2501 Ninth Road South, Arlington, Virginia, (RPC #25-016-012 and #25-016-013), and to Vacate a Portion of a Sanitary Sewer Easement on Part of the Property owned by Penrose Square Associates, LLC, a Virginia Limited Liability Company, at 2501 Ninth Road South, Arlington, Virginia, (RPC #25-016-013), with Conditions” is hereby amended and re-enacted to read in its entirety as follows:

**BE IT FURTHER ORDAINED** that, pursuant to a request by Carbon Thompson Development LLC (“Applicant”), on file in the offices of the Department of Environmental Services, that a Sanitary Sewer Easement, a 10-foot wide Storm Sewer Easement, and a Storm and Sanitary Sewer Easement, which easements are located on the Property owned by Penrose Square Associates, LLC, a Virginia Limited Liability Company, at 2501 Ninth Road South, Arlington, Virginia, (RPC #25-016-012 and #25-016-013); and a Portion of a Sanitary Sewer Easement on Part of the Property owned by Penrose Square Associates, LLC, a Virginia Limited

Liability Company, at 2501 Ninth Road South, Arlington, Virginia, (RPC #25-016-013); as shown on an plat attached as Exhibit "A" to the County Manager's Report dated September 16, 2009, entitled "Exhibit Showing Vacation of Various Easements on Penrose Square, Existing Conditions Plan, Deed Book 4249, Page 1774, Arlington County, Virginia", prepared by Walter L. Phillips, Inc., dated July 27, 2009; are hereby vacated, subject to the following conditions:

1. A. The Applicant shall submit, for review and approval, to the Department of Environmental Services ("DES"), a utility relocation and engineering design plan for the construction, relocation, removal, replacement or abandonment of the storm and sanitary sewer facilities located, in whole or in part, within the portions of the easements vacated by this Ordinance of Vacation ("Plan") in compliance with the Arlington County DES Construction Standards and Specifications. The Plan shall, among other things, demonstrate to the satisfaction of the Director of DES, or his designee, that the hydraulic capacity of the replacement storm sewer facilities and sanitary sewer facilities will be maintained. The Plan shall be subject to approval by the Director of DES, or his designee.
- B. The Applicant shall submit to the Director of DES, or his designee, a bond, letter of credit, or other security, in an amount and in a form as determined by, and acceptable to, the County Manager or his designee, for the construction, relocation, removal, replacement or abandonment of the storm and sanitary sewer facilities pursuant to the approved Plan.
2. Before the Deed of Vacation is executed on behalf of the County, and delivered to the Applicant, the Applicant shall construct the relocated public storm and sanitary sewer facilities, and such facilities shall have been accepted by the Director of DES, or his designee.
3. The Applicant shall pay all costs and expenses associated with the design, removal, and construction of the existing and relocated storm and sanitary sewer facilities (as the case may be), and the acquisition of all permits (including, but not limited to, Virginia Department of Transportation permits) required for relocation the storm and sanitary sewer facilities, as determined by the Director of DES, or his designee.
4. The County Board shall have approved Site Plan #402.
5. The Applicant shall prepare and submit, to the County, a Deed of Vacation, all required plats, and other documents necessary to satisfy the conditions of this Ordinance of Vacation, subject to the approval of such deeds and documents by the County Manager, or his designee, and acceptable in substance and in form by the County Attorney.
6. The Applicant shall record all plats and the Deed of Vacation.
7. The Applicant shall pay all fees, including the fees for review, approval, and recording of

all required documents associated with the Ordinance of Vacation.

8. The Deed of Vacation shall not be executed on behalf of the County Board until all the requirements of this Ordinance are satisfied.
9. All conditions of the Ordinance of Vacation shall be met by noon on September 26, 2011, or this Ordinance of Vacation shall become null and void without the necessity of any further action by the County Board.

## ATTACHMENT 2

**ORDINANCE TO AMEND AND RE-ENACT AN "ORDINANCE TO VACATE A SANITARY SEWER EASEMENT, A 10-FOOT WIDE STORM SEWER EASEMENT, AND A STORM AND SANITARY SEWER EASEMENT, WHICH EASEMENTS ARE LOCATED ON THE PROPERTY OWNED BY ARLINGTON HEIGHTS PROPERTIES, A VIRGINIA LIMITED PARTNERSHIP, AT 2501 AND 2405 COLUMBIA PIKE, ARLINGTON, VIRGINIA (RPC #25-016-006 AND #25-016-009, RESPECTIVELY), AND TO VACATE A PORTION OF A SANITARY SEWER EASEMENT ON PART OF THE**

**PROPERTY OWNED BY ARLINGTON HEIGHTS PROPERTIES, A VIRGINIA LIMITED PARTNERSHIP, AT 2501 COLUMBIA PIKE (RPC #25-016-006), WITH CONDITIONS,” ENACTED ON OCTOBER 24, 2006, TO BE HEREAFTER ENTITLED AN “ORDINANCE TO VACATE A SANITARY SEWER EASEMENT, A 10-FOOT WIDE STORM SEWER EASEMENT, AND A STORM AND SANITARY SEWER EASEMENT, WHICH EASEMENTS ARE LOCATED ON THE PROPERTY OWNED BY PENROSE SQUARE ASSOCIATES, LLC, A VIRGINIA LIMITED LIABILITY COMPANY, AT 2501 NINTH ROAD SOUTH, ARLINGTON, VIRGINIA, (RPC #25-016-012 AND #25-016-013), AND TO VACATE A PORTION OF A SANITARY SEWER EASEMENT ON PART OF THE PROPERTY OWNED BY PENROSE SQUARE ASSOCIATES, LLC, A VIRGINIA LIMITED LIABILITY COMPANY, AT 2501 NINTH ROAD SOUTH, ARLINGTON, VIRGINIA, (RPC #25-016-013), WITH CONDITIONS.”**

**BE IT ORDAINED** that an Ordinance to Amend and Re-enact an “Ordinance to Vacate a Sanitary Sewer Easement, a 10-foot wide Storm Sewer Easement, and a Storm and Sanitary Sewer Easement, which easements are located on the Property owned by Arlington Heights Properties, a Virginia Limited Partnership, at 2501 and 2405 Columbia Pike, Arlington, Virginia (RPC #25-016-006 and #25-016-009, respectively), and to Vacate a Portion of a Sanitary Sewer Easement on Part of the Property owned by Arlington Heights Properties, a Virginia Limited Partnership, at 2501 Columbia Pike (RPC #25-016-006), with Conditions,” enacted on October 24, 2006, to be hereafter entitled an “Ordinance to Vacate a Sanitary Sewer Easement, a 10-foot wide Storm Sewer Easement, and a Storm and Sanitary Sewer Easement, which easements are located on the Property owned by Penrose Square Associates, LLC, a Virginia Limited Liability Company, at 2501 Ninth Road South, Arlington, Virginia, (RPC #25-016-012 and #25-016-013), and to Vacate a Portion of a Sanitary Sewer Easement on Part of the Property owned by Penrose Square Associates, LLC, a Virginia Limited Liability Company, at 2501 Ninth Road South, Arlington, Virginia, (RPC #25-016-013), with Conditions” is hereby amended and re-enacted to read in its entirety as follows:

**BE IT FURTHER ORDAINED** that, pursuant to a request by Carbon Thompson Development LLC (“Applicant”), on file in the offices of the Department of Environmental Services, that a Sanitary Sewer Easement, a 10-foot wide Storm Sewer Easement, and a Storm and Sanitary Sewer Easement, which easements are located on the Property owned by Penrose Square Associates, LLC, a Virginia Limited Liability Company, at 2501 Ninth Road South, Arlington, Virginia, (RPC #25-016-012 and #25-016-013); and a Portion of a Sanitary Sewer Easement on Part of the Property owned by Penrose Square Associates, LLC, a Virginia Limited Liability Company, at 2501 Ninth Road South, Arlington, Virginia, (RPC #25-016-013); as shown on an plat attached as Exhibit “A” to the County Manager’s Report dated September 16, 2009, entitled “Exhibit Showing Vacation of Various Easements on Penrose Square, Existing Conditions Plan, Deed Book 4249, Page 1774, Arlington County, Virginia”, prepared by Walter L. Phillips, Inc., dated July 27, 2009; are hereby vacated, subject to the following conditions:

1. A. The Applicant shall submit, for review and approval, to the Department of Environmental Services (“DES”), a utility relocation and engineering design plan for the construction, relocation, removal, replacement or abandonment of the storm and sanitary sewer facilities located, in whole or in part, within the portions of the easements vacated by this

Ordinance of Vacation (“Plan”) in compliance with the Arlington County DES Construction Standards and Specifications. The Plan shall, among other things, demonstrate to the satisfaction of the Director of DES, or his designee, that the hydraulic capacity of the replacement storm sewer facilities and sanitary sewer facilities will be maintained. The Plan shall be subject to approval by the Director of DES, or his designee.

- B. The Applicant shall submit to the Director of DES, or his designee, a bond, letter of credit, or other security, in an amount and in a form as determined by, and acceptable to, the County Manager or his designee, for the construction, relocation, removal, replacement or abandonment of the storm and sanitary sewer facilities pursuant to the approved Plan.
- 
- 2. Before the Deed of Vacation is executed on behalf of the County, and delivered to the Applicant, the Applicant shall construct the relocated public storm and sanitary sewer facilities, and such facilities shall have been accepted by the Director of DES, or his designee.
  - 3. The Applicant shall pay all costs and expenses associated with the design, removal, and construction of the existing and relocated storm and sanitary sewer facilities (as the case may be), and the acquisition of all permits (including, but not limited to, Virginia Department of Transportation permits) required for relocation the storm and sanitary sewer facilities, as determined by the Director of DES, or his designee.
  - 4. The County Board shall have approved Site Plan #402, as amended.
  - 5. The Applicant shall prepare and submit, to the County, a Deed of Vacation, all required plats, and other documents necessary to satisfy the conditions of this Ordinance of Vacation, subject to the approval of such deeds and documents by the County Manager, or his designee, and acceptable in substance and in form by the County Attorney.
  - 6. The Applicant shall record all plats and the Deed of Vacation.
  - 7. The Applicant shall pay all fees, including the fees for review, approval, and recording of all required documents associated with the Ordinance of Vacation.
  - 8. The Deed of Vacation shall not be executed on behalf of the County Board until all the requirements of this Ordinance are satisfied.
  - 9. All conditions of the Ordinance of Vacation shall be met by noon on September 26, 2011, or this Ordinance of Vacation shall become null and void without the necessity of any further action by the County Board.



# EXHIBIT B

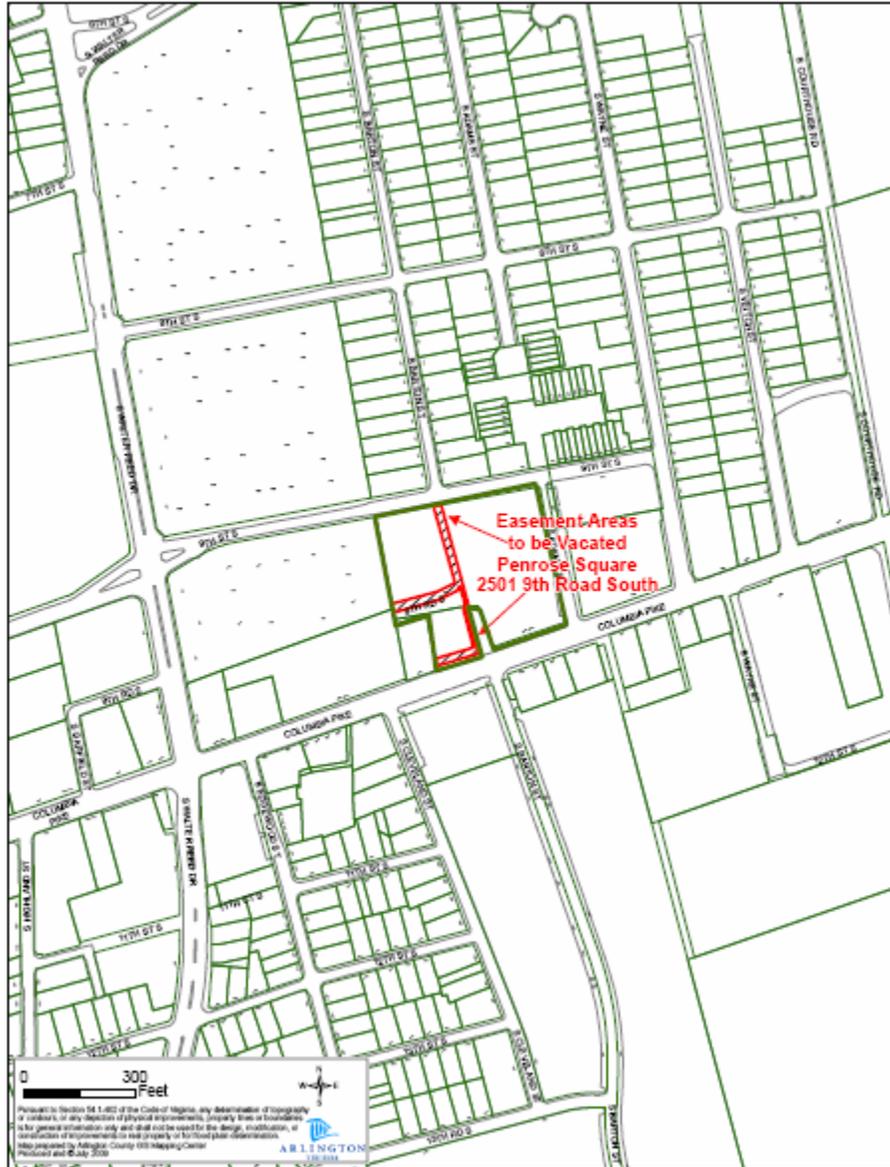


## Vicinity Map #1

PENROSE SQUARE

2501 Ninth Road South

# EXHIBIT C



## Vicinity Map #2

PENROSE SQUARE

2501 Ninth Road South