



## ARLINGTON COUNTY, VIRGINIA

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

**DATE:** September 9, 2009

**SUBJECTS:** **A.** Enactment of an Ordinance to Permit the Encroachment of: 1) Portions of an Above Ground Building Façade (Overhang) into the Airspace above the County Surface Easement for Public Street and Utilities Purposes on a Portion of the Vacated Alley located between North 18<sup>th</sup> Street and Wilson Boulevard, and on Lot 10, along the Northerly End of such Vacated Alley and the Northerly Side of such Lot; 2) A Portion of an Above Ground Building Façade (Overhang) into the Airspace above the County Right-of-Way for North Oak Street and into the Airspace above a County Easement for Public Sidewalk Purposes on Lots 5 and 6, along the Easterly Side of such Lots; and 3) A Portion of an Above Ground Surface Building Façade into the County Surface Easement for Public Street and Utilities Purposes on Lot 1, along the Southerly Side of such Lot, all said Lots and Vacated Alley being a Part of Eddy's Addition to Rosslyn Farms, on Property Known as 1501 Wilson Boulevard, Rosslyn (RPC No. 16033001).

**B.** Enactment of an Ordinance to Permit the Encroachment of Portions of an Above Ground Surface Building Façade on Lots 16, 19 and 20, and Portions of an Above Ground Building Façade (Overhang) on Lots 17 and 18, into the County Surface Easement for Public Street and Utilities Purposes, along the Southerly Side of such Lots, all said Lots being a Part of Eddy's Addition to Rosslyn Farms, on Property known as 1515 Wilson Boulevard, Rosslyn (RPC No. 16033004).

**Applicant/Owner:** Art Property Associates LLC

**By:** Nan E. Walsh  
Walsh Colucci Lubeley Emrich & Walsh PC  
2200 Clarendon Boulevard, Suite 1300  
Arlington, Virginia 22201

**C. M. RECOMMENDATION:**

A. Enact the attached Ordinance (Attachment 1) to Permit the Encroachment of:

1) Portions of an Above Ground Building Façade (Overhang) into the Airspace above the County Surface Easement for Public Street and Utilities Purposes on a Portion of the Vacated Alley located between North 18<sup>th</sup> Street and Wilson Boulevard, and on Lot 10, along the

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

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

Staff: Betsy Herbst, DES, Real Estate Bureau

Northerly End of such Vacated Alley and the Northerly Side of such Lot; 2) A Portion of an Above Ground Building Façade (Overhang) into the Airspace above the County Right-of-Way for North Oak Street and into the Airspace above a County Easement for Public Sidewalk Purposes on Lots 5 and 6, along the Easterly Side of such Lots; and 3) A Portion of an Above Ground Surface Building Façade into the County Surface Easement for Public Street and Utilities Purposes on Lot 1, along the Southerly Side of such Lot, all said Lots and Vacated Alley being a Part of Eddy's Addition to Rosslyn Farms, on Property Known as 1501 Wilson Boulevard, Rosslyn (RPC No. 16033001).

B. Enact the attached Ordinance (Attachment 2) to Permit the Encroachment of Portions of an Above Ground Surface Building Façade on Lots 16, 19 and 20, and Portions of an Above Ground Building Façade (Overhang) on Lots 17 and 18, into the County Surface Easement for Public Street and Utilities Purposes, along the Southerly Side of such Lots, all said Lots being a Part of Eddy's Addition to Rosslyn Farms, on Property known as 1515 Wilson Boulevard, Rosslyn (RPC No. 16033004).

**ISSUE:** This is a request to permit encroachment of portions of building façades into County property interests to facilitate renovation and increased retail density of properties which are the subject of approved Site Plans #34 and #67, as amended. No issues have been identified.

**SUMMARY:** Art Property Associates LLC ("Applicant") has requested that the County Board enact Ordinances to permit encroachment of building facades into: two County surface easements for public street and utility purposes; a County easement for public sidewalk purposes; and the County's North Oak Street right-of-way, on properties located at 1501 and 1515 Wilson Boulevard ("Properties"). The Applicant's request is in conjunction with an amendment to Site Plan #34 increasing the retail density of 1501 Wilson Boulevard, which was approved by the County Board on July 14, 2009 ("SP #34"), and Site Plan #67, which was approved by the County Board in 1968 (SP #67)(SP #34 and SP #67, jointly "Site Plans"). If enacted, the requested Encroachment Ordinances would continue in effect until the portions of the respective building façades encroaching into the County easements and right-of-way are destroyed, removed, no longer in use or not continuously and promptly maintained by the Applicant.

**BACKGROUND:** The subject site is located in Rosslyn in the block surrounded by Wilson Boulevard to the south, N. Oak Street to the east and 18<sup>th</sup> Street N. to the north (see Attachments 3 and 4, Vicinity Maps). The parcel located at 1501 Wilson Boulevard is currently developed with a 13-story office building which is the subject of SP #34, originally approved on January 8, 1966. The parcel located at 1515 Wilson Boulevard is currently developed with a 12-story office building which is the subject of SP #67, originally approved on June 22, 1968. In conjunction with its plans to renovate and upgrade the ground level space of the building located at 1501 Wilson Boulevard, the Applicant obtained approval of an amendment to SP #34 from the County Board on July 14, 2009 to allow increased retail density to provide for a better design of the existing retail space at ground level. The Applicant is seeking an administrative change to the Site Plans to obtain permission to add certain design elements of these upgrades.

The Applicant acquired the Properties from Art Associates, its wholly owned affiliate, by virtue of a Special Warranty Deed dated June 10, 2005, and recorded in Deed Book 3852 at Page 608, among the Arlington County land records (“Land Records”). Art Associates had previously acquired the Properties by virtue of seven instruments recorded among the Land Records, including: (1) Deed dated March 9, 1966, recorded in Deed Book 1616 at Page 86; (2) Deed dated June 2, 1966, recorded in Deed Book 1622 at Page 575; (3) Deed dated September 28, 1967, recorded in Deed Book 1658 at Page 66; (4) Deed dated June 17, 1968, recorded Deed Book 1676 at Page 348; (5) Ordinance adopted June 22, 1968, recorded in Deed Book 1689 at Page 587; (6) Deed dated December 15, 1965, recorded in Deed Book 1608 at Page 600; and (7) Deed dated November 22, 1967, recorded in Deed Book 1662 at Page 125. County staff is recommending approval of the two Encroachment Ordinances associated with SP #34 and SP #67.

**DISCUSSION:** In conjunction with the plans for refurbishment of the Properties, the Applicant has requested Encroachment Ordinances to permit the construction of portions of privately owned and maintained building facades, including overhangs, within and above: a County easement for public street and utility purposes on Lots 1 and 10, and a portion of the vacated alley located between 18<sup>th</sup> Street N. and Wilson Boulevard; and into the airspace above the County right-of-way for N. Oak Street and a County easement for public sidewalk purposes on Lots 5 and 6, RPC No. 16033001; and within and above a County surface easement for public street and utility purposes on Lots 16, 17, 18, 19 and 20, RPC No. 16033004, all said lots and vacated alley being part of Eddy’s Addition to Rosslyn Farms.

The proposed encroachments of the building façades, including four areas of overhang into County property interests, range in height from approximately twelve to thirty nine feet (12-39’) above the surface grade, and consist of approximately three hundred thirty square feet (330 sq. ft.) in area. The proposed encroachments are more specifically shown on plats entitled, “Exhibit Showing Building Encroachment Areas into Existing Surface Easements for Public Street, Sidewalk and Utility Purposes, Deed Book 1642 Page 311, Deed Book 1711, Page 409, Part of Lots 1, 5, 6, 10, 16, 17, 18, 19 and 20, Vacated Alley and Right of Way of North Oak Street, Eddy’s Addition to Rosslyn Farms, Deed Book N., No. 4 Page 170, Arlington County, Virginia”, prepared by VIKA Incorporated, dated August 25, 2009, attached hereto as Exhibit A (“Plats”) and the plans entitled, “1501/1515 Wilson Boulevard, Arlington, VA 22209, Encroachment Permit Submittal”, prepared by OTJ Architects, Inc., dated August 26, 2009, attached hereto as Exhibit B (“Plans”).

**Legal and Physical Description:** The surface easement for public street and utility purposes, on Lots 1 and 10 and the vacated portion of the alley, and the easement for public sidewalk purposes on Lots 5 and 6, were created by Deed of Easement dated July 21, 1966, recorded in Deed Book 1642 at Page 311 among the Land Records. The County right-of-way for N. Oak Street was created by plat dated May 24, 1887, recorded in Liber H-4 at Folio 68 among the Land Records. The surface easement for public street and utilities purposes on Lots 16-20 was created by Deed of Easement dated September 9, 1969, recorded in Deed Book 1711 at Page 409 among the Land Records. The alley between North 18<sup>th</sup> Street and Wilson Boulevard was vacated by the County Board at its regular meeting on June 22, 1968, as shown in the certified excerpts from the

minutes of the County Board and the vacation plat recorded in Deed Book 1689 at Page 587 among the Land Records.

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

**Compensation:** In conjunction with the County Board's approval, on July 14, 2009, of an amendment to SP #34 increasing the amount of retail density, and in part as consideration for the proposed encroachments, the Applicant previously agreed (as a condition of the SP #34, as amended) to contribute \$80,000.00 for the design, construction and other such costs for the County's streetscape improvements along the length of the building's North Oak Street frontage.

**FISCAL IMPACT:** As required by Condition #9 of the amendment to SP #34, prior to the issuance of the first building permit for the building improvements related to amended SP #34, the Applicant will contribute \$80,000.00 to the County to be applied toward the County's cost of designing and constructing the streetscape improvements along North Oak Street. The County's projected total cost estimate for the streetscape improvements along North Oak Street is approximately \$200,000.00.

**CONCLUSION:** If the County Board approves the encroachment of the above ground surface building façade and overhangs into County easements and right-of-way, then it is recommended that the County Board enact the two Ordinances attached hereto as Attachments 1 and 2.

## ATTACHMENT 1

**ORDINANCE TO PERMIT THE ENCROACHMENT OF: 1) PORTIONS OF AN ABOVE GROUND BUILDING FAÇADE (OVERHANG) INTO THE AIRSPACE ABOVE THE COUNTY SURFACE EASEMENT FOR PUBLIC STREET AND UTILITIES PURPOSES ON A PORTION OF THE VACATED ALLEY LOCATED BETWEEN NORTH 18<sup>TH</sup> STREET AND WILSON BOULEVARD, AND ON LOT 10, ALONG THE NORTHERLY END OF SUCH VACATED ALLEY AND THE NORTHERLY SIDE OF SUCH LOT; 2) A PORTION OF AN ABOVE GROUND BUILDING FAÇADE (OVERHANG) INTO THE AIRSPACE ABOVE THE COUNTY RIGHT-OF-WAY FOR NORTH OAK STREET AND INTO THE AIRSPACE ABOVE A COUNTY EASEMENT FOR PUBLIC SIDEWALK PURPOSES ON LOTS 5 AND 6, ALONG THE EASTERLY SIDE OF SUCH LOTS; AND 3) A PORTION OF AN ABOVE GROUND SURFACE BUILDING FAÇADE INTO THE COUNTY SURFACE EASEMENT FOR PUBLIC STREET AND UTILITIES PURPOSES ON LOT 1, ALONG THE SOUTHERLY SIDE OF SUCH LOT, ALL SAID LOTS AND VACATED ALLEY BEING A PART OF EDDY'S ADDITION TO ROSSLYN FARMS, ON PROPERTY KNOWN AS 1501 WILSON BOULEVARD, ROSSLYN, RPC NO. 16033001, WITH CONDITIONS:**

BE IT ORDAINED by the County Board of Arlington County, Virginia, that the Applicant, Art Property Associates, LLC ("Applicant"), as developer of the project known as 1501 Wilson Boulevard, Site Plan #34, as amended, is permitted to construct: 1) Portions of an Above Ground Building Façade (Overhang) into the Airspace above the County Surface Easement for Public Street and Utilities Purposes on a Portion of the Vacated Alley located between North 18<sup>th</sup> Street and Wilson Boulevard, and on Lot 10, along the Northerly End of such Vacated Alley and the Northerly Side of such Lot; 2) A Portion of an Above Ground Building Façade (Overhang) into the Airspace above the County Right-of-Way for North Oak Street and into the Airspace above a County Easement for Public Sidewalk Purposes on Lots 5 and 6, along the Easterly Side of such Lots; and 3) A Portion of an Above Ground Surface Building Façade into the County Surface Easement for Public Street and Utilities Purposes on Lot 1, along the Southerly Side of such Lot, all said Lots and Vacated Alley being a Part of Eddy's Addition to Rosslyn Farms, on Property Known as 1501 Wilson Boulevard, Rosslyn, RPC No. 16033001. The dimensions (length, width and height elevations) and spatial location of the permitted encroachments are depicted in Exhibit A attached to the County Manager's Report dated September 9, 2009, entitled "Exhibit Showing Building Encroachment Areas into Existing Surface Easements for Public Street, Sidewalk and Utility Purposes, Deed Book 1642, Page 311, Deed Book 1711, Page 409, Part of Lots 1, 5, 6, 10, 16, 17, 18, 19 and 20, Vacated Alley and Right of Way of North Oak Street, Eddy's Addition to Rosslyn Farms, Deed Book N., No. 4 Page 170, Arlington County, Virginia", prepared by VIKA Incorporated, dated August 25, 2009 ("Plats"), and in Exhibit B attached to the County Manager's Report dated September 9, 2009, entitled, "1501/1515 Wilson Boulevard, Arlington, VA 22209, Encroachment Permit Submittal", prepared by OTJ Architects, Inc., dated August 26, 2009 ("Plans"). Such above ground building façade (overhang) and above ground surface building facade are only permitted to be attached to a building authorized to be constructed by Site Plan #34, as amended, originally approved by the County Board on January 8, 1966. The dimensions, the elevations, the spatial location, the

characteristics of the permitted above ground building façade (overhang) and the above ground surface building façade and the spatial area of the permitted encroachments, are shown on the Plats and Plans. No other structures are permitted to be installed or constructed by Applicant, or to exist within the County property shown on the Plats and Plans.

BE IT FURTHER ORDAINED that this permission for the encroachments shall continue until such time as the portions of the above ground building façade (overhang) and the above ground surface building facade, encroaching within the County easement are destroyed, removed, no longer in use, or not continuously and promptly maintained by the Applicant. Nothing in this Ordinance shall be construed either: to allow the installation by Applicant of any structure other than the above ground building façade (overhang) and the above ground surface building façade within the area as shown on the Plats and Plans; or to allow any greater encroachments beyond the dimensions and spatial area shown on the Plats and Plans.

BE IT FURTHER ORDAINED that the Applicant, its successors and assigns, shall continuously and promptly maintain the above ground building façade (overhang) and the above ground surface building façade, and maintain, restore, repair, and replace all County owned facilities, within and adjacent to the County easements, including any sidewalk, curb and gutter, and paved surface, which are damaged by the installation, maintenance, destruction, continued existence, repair or removal of the above ground building façade (overhang) and the above ground surface building facade.

BE IT FURTHER ORDAINED that this Ordinance shall not be construed to release the Applicant, its successors and assigns, of negligence on their part on account of such encroachment, and the Applicant, by constructing, or causing to be constructed and by continuing to have the above ground building façade (overhang) and the above ground surface building façade encroach within the County easements, thereby agrees for itself, its 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 above ground building facade (overhang) or the above ground surface building facade, and the permission for the above ground building facade (overhang) and the above ground surface building façade to encroach within the County easements permitted by this Ordinance.

BE IT FURTHER ORDAINED that on or before September 26, 2012, the Applicant, at its sole expense, shall cause a certified copy of this Ordinance and the Plats and Plans, approved by the Director of the Department of Environmental Services or his designee, to be recorded in the land records of the Arlington County Circuit Court and evidence thereof shall be promptly delivered by the Applicant to the Real Estate Bureau Chief, Engineering and Capital Projects Division, Department of Environmental Services.

## ATTACHMENT 2

**ORDINANCE TO PERMIT THE ENCROACHMENT OF PORTIONS OF AN ABOVE GROUND SURFACE BUILDING FAÇADE ON LOTS 16, 19 AND 20, AND PORTIONS OF AN ABOVE GROUND BUILDING FAÇADE (OVERHANG) ON LOTS 17 AND 18, INTO THE COUNTY SURFACE EASEMENT FOR PUBLIC STREET AND UTILITIES PURPOSES, ALONG THE SOUTHERLY SIDE OF SUCH LOTS, ALL SAID LOTS BEING A PART OF EDDY’S ADDITION TO ROSSLYN FARMS, ON PROPERTY KNOWN AS 1515 WILSON BOULEVARD, ROSSLYN, RPC NO. 16033004, WITH CONDITIONS:**

BE IT ORDAINED by the County Board of Arlington County, Virginia, that the Applicant, Art Property Associates, LLC (“Applicant”), as developer of the project known as 1515 Wilson Boulevard, Site Plan #67, as amended, is permitted to construct portions of an Above Ground Surface Building Façade on Lots 16, 19 and 20, and Portions of an Above Ground Building Façade (Overhang) on Lots 17 and 18, into the County Surface Easement for Public Street and Utilities Purposes, along the Southerly Side of such Lots, all said Lots being a Part of Eddy’s Addition to Rosslyn Farms, on Property known as 1515 Wilson Boulevard, Rosslyn, RPC No. 16033004. The dimensions (length, width and height elevations) and spatial location of the permitted encroachment are depicted in Exhibit A attached to the County Manager’s Report dated September 9, 2009, entitled “Exhibit Showing Building Encroachment Areas into Existing Surface Easements for Public Street, Sidewalk and Utility Purposes, Deed Book 1642, Page 311, Deed Book 1711, Page 409, Part of Lots 1, 5, 6, 10, 16, 17, 18, 19 and 20, Vacated Alley and Right of Way of North Oak Street, Eddy’s Addition to Rosslyn Farms, Deed Book N., No. 4, Page 170, Arlington County, Virginia”, prepared by VIKA Incorporated, dated August 25, 2009 (“Plats”), and in Exhibit B attached to the County Manager’s Report dated September 9, 2009, entitled, “1501/1515 Wilson Boulevard, Arlington, VA 22209, Encroachment Permit Submittal”, prepared by OTJ Architects, Inc., dated August 26, 2009 (“Plans”). Such above ground surface building façade and above ground building façade are only permitted to be attached to a building authorized to be constructed by Site Plan #67, as amended, originally approved by the County Board June 22, 1968. The dimensions, the elevations, the spatial location, the characteristics of the permitted above ground surface building façade and the above ground building façade (overhang), the spatial area of the permitted encroachments, are shown on the Plats and Plans. No other structures are permitted to be installed or constructed by Applicant, or to exist within the County property shown on the Plats and Plans.

BE IT FURTHER ORDAINED that this permission for the encroachments shall continue until such time as the portions of the above ground surface building façade and the above ground building façade (overhang), encroaching within the County easement are destroyed, removed, no longer in use, or not continuously and promptly maintained by the Applicant. Nothing in this Ordinance shall be construed either: to allow the installation by Applicant of any structure other than the above ground surface building façade and the above ground building façade (overhang) within the area as shown on the Plats and Plans; or to allow any greater encroachments beyond the dimensions and spatial area shown on the Plats and Plans.

BE IT FURTHER ORDAINED that the Applicant, its successors and assigns, shall continuously and promptly maintain the above ground surface building façade and the above ground building façade (overhang), and maintain, restore, repair, and replace all County owned facilities, within and adjacent to the County easement, including any sidewalk, curb and gutter, and paved surface, which are damaged by the installation, maintenance, destruction, continued existence, repair or removal of the above ground surface building façade.

BE IT FURTHER ORDAINED that this Ordinance shall not be construed to release the Applicant, its successors and assigns, of negligence on their part on account of such encroachments, and the Applicant, by constructing, or causing to be constructed and by continuing to have the above ground surface building façade and the above ground building façade (overhang) encroach within the County easement, thereby agrees for itself, its 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 above ground surface building façade and the above ground building façade (overhang), and the permission for the above ground surface building facade and the above ground building façade (overhang) to encroach within the County easement permitted by this Ordinance.

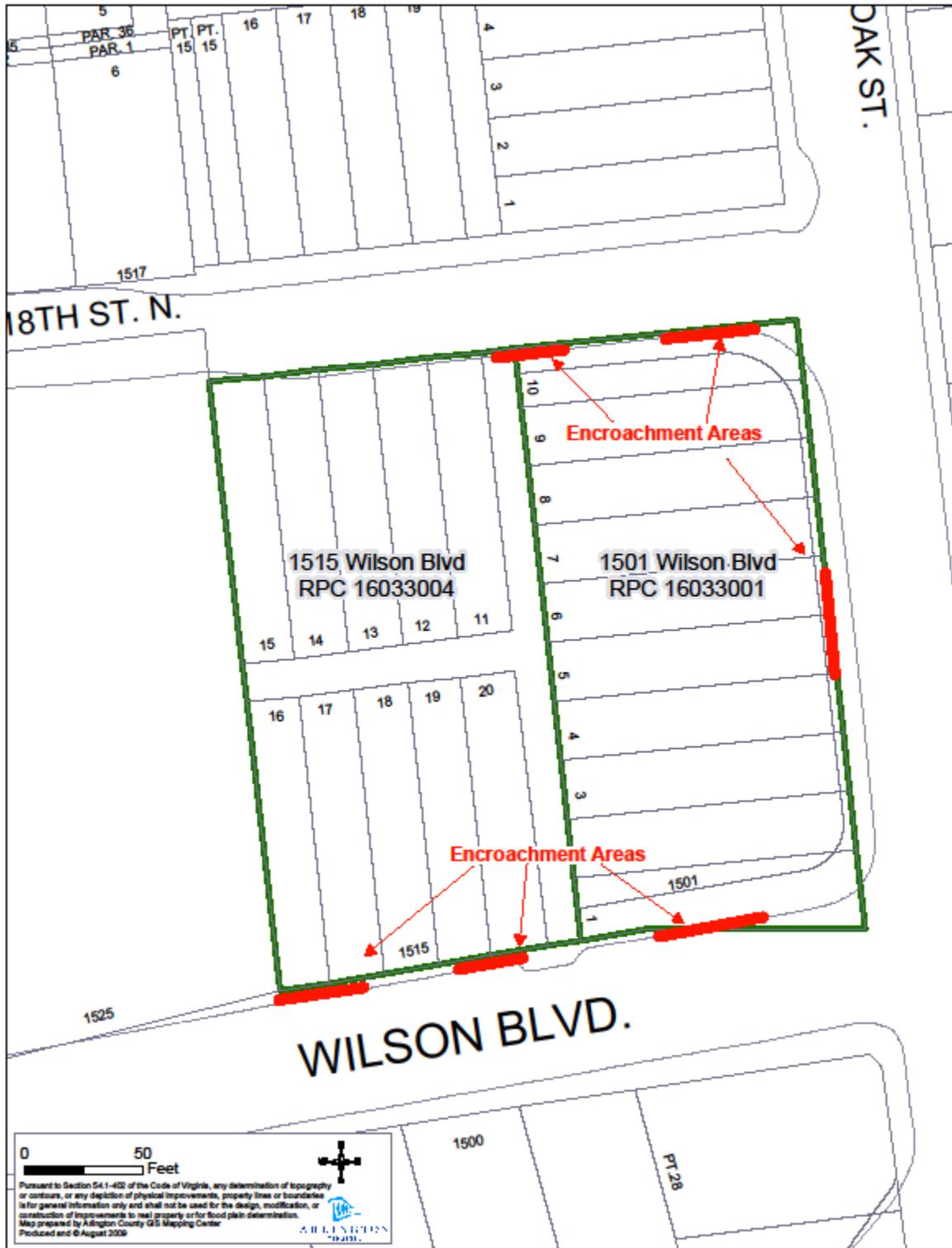
BE IT FURTHER ORDAINED that on or before September 26, 2012, the Applicant, at its sole expense, shall cause a certified copy of this Ordinance and the Plats and Plans, approved by the Director of the Department of Environmental Services or his designee, to be recorded in the land records of the Arlington County Circuit Court and evidence thereof shall be promptly delivered by the Applicant to the Real Estate Bureau Chief, Engineering and Capital Projects Division, Department of Environmental Services.

**EXHIBIT A**  
**ENCROACHMENT PLATS**

**EXHIBIT B**  
**ENCROACHMENT PLANS**

# ATTACHMENT 3

## VICINITY MAP SHOWING ENCROACHMENT AREAS



# ATTACHMENT 4

