



ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item
Meeting of October 24, 2009**

DATE: October 5, 2009

SUBJECT: Enactment of an Ordinance to Allow Encroachment of: 1) an Underground Storm Water Detention Vault with Associated Manholes and a Portion of a Retaining Wall into a Portion of a County Easement for Public Sidewalk and Utilities Purposes, such Portion Located on Parcel A, Trustees of the Macedonia Baptist Church, adjacent to the East Side of Shirlington Road, RPC No. 31025115 (formerly, RPC Nos. 31025047, 31025048, 31025049), with Conditions; and 2) an Underground Garage and a Portion of a Retaining Wall into a Portion of a County Easement for Public Sidewalk and Utilities Purposes, such Portion Located on Parcel A, Trustees of the Macedonia Baptist Church, adjacent to the West Side of South Garfield Street, RPC No. 31025115 (formerly, RPC Nos. 31025047, 31025048, 31025049), with Conditions.

Owner: Trustees of the Macedonia Baptist Church

Applicant: Nauck Development Partners-1, LP

Agent: AHC Inc.,
2230 N. Fairfax Drive, Suite 100
Arlington, Virginia 22201

C. M. RECOMMENDATIONS:

1. Enact the attached Ordinance to Allow Encroachment of an Underground Storm Water Detention Vault with Associated Manholes and a Portion of a Retaining Wall into a Portion of a County Easement for Public Sidewalk and Utilities Purposes, such Portion Located on Parcel A, Trustees of the Macedonia Baptist Church, adjacent to the East Side of Shirlington Road, RPC No. 31025115 (formerly, RPC Nos. 31025047, 31025048, 31025049), with Conditions ("Attachment 1").
2. Enact the attached Ordinance to Allow Encroachment of an Underground Garage and a Portion of a Retaining Wall into a Portion of a County Easement for Public Sidewalk and Utilities Purposes, such Portion Located on Parcel A, Trustees of the Macedonia Baptist Church, adjacent to the West Side of South Garfield Street, RPC No. 31025115 (formerly, RPC Nos. 31025047, 31025048, 31025049), with Conditions ("Attachment 2").

County Manager: RC/GA

County Attorney: BAU/SAM

Staff: Linda Collier, DES, Real Estate Bureau

ISSUE: This request for encroachments into a County Easement for Sidewalk and Utilities Purposes is to facilitate development of property, which is the subject of Use Permit #U-3185-07-01 approved by the County Board at its regular meeting on September 13, 2008. There are no issues identified with this request for encroachment.

SUMMARY: The applicant/owner have requested the County Board to enact two Ordinances of Encroachment (“Ordinances”) which would permit: 1) encroachment of an underground storm water detention vault with associated manholes and a portion of a retaining wall into a portion of a County Easement for Public Sidewalk and Utilities Purposes; and 2) encroachment of an underground garage and a portion of a retaining wall into a portion of a County Easement for Public Sidewalk and Utilities Purposes (collectively “Encroachments”). If enacted, the requested Ordinances would permit the Encroachments to continue in effect until the underground garage, underground storm water detention vault with associated manholes and the two portions of the retaining walls are destroyed, removed, no longer in use, or not continuously and promptly maintained by the applicant/owner. The Encroachments are consistent with Use Permit #U-3185-07-01, Macedonia Baptist Church, which was approved by the County Board on September 13, 2008.

BACKGROUND: The Use Permit for Macedonia Baptist Church, Use Permit #3185-07-01 (“Use Permit”) provides for construction of a unified mixed use development consisting of 36 dwelling units and office space at 2219, 2229 and 2237 Shirlington Road (“Project”). The Project is bounded by Shirlington Road on the west and South Garfield Street on the east. The applicant/owner have requested the Ordinances to permit: 1) encroachment of an underground storm water detention vault and associated manholes and a portion of a retaining wall into an Easement for Sidewalk and Utilities Purposes recently dedicated by the Owner to the County (“Easement”) and adjacent to the east side of Shirlington Road; and 2) encroachment of a portion of an underground garage and a portion of a retaining wall into the Easement adjacent to the west side of the Easement. (See Vicinity Maps attached as Exhibits C-1 and C-2).

DISCUSSION: The dimensions of the Encroachment for the underground storm water vault would be 7.67 feet deep, 7.34 feet wide and 39.84 feet long, consisting of approximately 2,242.90 cubic feet. The dimensions of the Encroachment for the retaining wall adjacent to the east of Shirlington Road would be 2 feet deep below ground, 2 feet high above ground, 1 foot wide and 11 feet long, consisting of approximately 44 cubic feet. The dimensions of the Encroachment for the underground garage would be 22.34 feet deep, 4.25 feet wide and 89.31 feet long, consisting of approximately 8,479.54 cubic feet. The dimensions of the Encroachment for the retaining wall adjacent to the west of South Garfield Street would be 2 feet deep below ground, a half a foot high, 1 foot wide and 5.07 feet long, consisting of approximately 12.675 cubic feet. The Encroachments are more specifically shown on a plat entitled, “Proposed Conditions Plat Showing the Proposed Encroachments Into Public Access Easement Deed Book 4308, Page 1744 on Parcel A Trustees of the Macedonia Baptist Church Deed Book 4308, Page 1744 Arlington County, Virginia”, Sheet 1 of 1, prepared by William H. Gordon Associates, Inc., dated September 29, 2009, attached hereto as Exhibit A and “Easements for Public Sidewalk and Utilities Purposes Encroachment Exhibit” Sheets 1 of 3, 2 of 3 and 3 of 3, prepared by William H. Gordon Associates, Inc., dated October 8, 2009, attached hereto as Exhibit B (Exhibit A and Exhibit B collectively, “Plats”).

The Encroachments are necessitated by the Owner's conveyance of the Easement as part of a Deed of Resubdivision, Vacation, Rededication, Easements and Dedication ("Deed") which was recorded by the Owner on September 11, 2009. The locations of the encroaching improvements were previously approved as part of the use permit approval process. Once the Deed was recorded, a County property interest was created in the area of the Encroachments, necessitating these Ordinance approvals. Staff has no objections to the location of the Encroachments in this instance.

Legal and Physical Description: The Easements were established by Deed of Resubdivision, Vacation, Rededication, Easements and Dedication recorded among the land records of Arlington County, Virginia ("Land Records") on September 11, 2009 at Deed Book 4308 at Page 1744. The Owner resubdivided the property upon which the Project is located by the same Deed, recorded in the Land Records on September 11, 2009 at Deed Book 4308, Page 1744.

Public Notice: Public notice was given in accordance with the Code of Virginia. Notices were placed in the October 6, 2009 and October 13, 2009 issues of the Washington Times for the October 24, 2009 County Board Meeting.

Compensation: In keeping with the County's current practice of not requiring compensation to be paid to the County for similar encroachments not within the County right of way, if the Ordinance is enacted, then there would be no compensation required for the Encroachments into and under the Easement.

FISCAL IMPACT: There is no fiscal impact for the Encroachments.

CONCLUSION: It is recommended that the County Board enact the attached Encroachment Ordinances in Attachment 1 and Attachment 2.

ATTACHMENT 1

ORDINANCE TO ALLOW THE ENCROACHMENT OF AN UNDERGROUND STORM WATER DETENTION VAULT WITH ASSOCIATED MANHOLES AND A PORTION OF A RETAINING WALL INTO A PORTION OF A COUNTY EASEMENT FOR PUBLIC SIDEWALK AND UTILITIES PURPOSES, SUCH PORTION LOCATED ON PARCEL A, TRUSTEES OF THE MACEDONIA BAPTIST CHURCH, ADJACENT TO THE EAST SIDE OF SHIRLINGTON ROAD, RPC NO. 31025115 (FORMERLY, RPC NOS. 31025047, 31025048, 31025049), WITH CONDITIONS.

BE IT ORDAINED by the County Board of Arlington County, Virginia, that the Owner, Trustees of the Macedonia Baptist Church, and the Applicant, Nauck Development Partners-1, LP, being the owner and developer respectively of the project known Macedonia Baptist Church, Use Permit #U-3185-07-01, are hereby permitted to construct an underground storm water detention vault with associated manholes and a portion of a retaining wall, to serve the project authorized by Use Permit #U-3185-07-01, into a portion of the existing County Easements for Public Sidewalk and Utilities Purposes (“Easement”) located on Parcel A, Trustees of the Macedonia Baptist Church, adjacent to the east side of Shirlington Road, RPC No. 31025115 (formerly, RPC Nos. 31025047, 31025048 and 31025049), with conditions set forth herein. The dimensions (length, width and depth (by elevations)), and spatial location of the permitted encroachments (“Encroachments”) are depicted in Exhibit A entitled “Proposed Conditions Plat Showing the Proposed Encroachments Into Public Access Easement Deed Book 4308, Page 1744 on Parcel A Trustees of the Macedonia Baptist Church Deed Book 4308, Page 1744 Arlington County, Virginia”, Sheet 1 of 1, prepared by William H. Gordon Associates, Inc., dated September 29, 2009 and Exhibit B “Easements for Public Sidewalk and Utilities Purposes Encroachment Exhibit” Sheets 1 of 3, 2 of 3 and 3 of 3, prepared by William H. Gordon Associates, Inc., dated October 8, 2009, both Exhibit A and Exhibit B as attached to the County Manager’s October 5, 2009 Report (Exhibit A and Exhibit B collectively, “Plats”).

BE IT FURTHER ORDAINED that this permission for the Encroachments shall continue until such time as the underground storm water detention vault with associated manholes and the portion of the retaining wall, encroaching within the Easement are destroyed, removed, no longer in use, or not continuously and promptly maintained by the Applicant and/or Owner. Nothing in this Ordinance shall be construed either: to allow the installation by Applicant or Owner, or permit to exist, any structure whatsoever other than the underground storm water detention vault with associated manholes and the portion of the retaining wall within the Encroachments shown on the Plats; or, to allow any greater encroachments beyond the dimensions and spatial area shown on the Plats.

BE IT FURTHER ORDAINED that the Applicant and Owner, their successors and assigns, shall continuously and promptly maintain the underground storm water detention vault with associated manholes and the retaining wall, and maintain, restore, repair, and replace all County owned facilities, within and adjacent to the Easement, including any sidewalk, curb and gutter, landscaping and paved surface, which are damaged by the installation, maintenance, destruction, continued existence, repair or removal of the underground storm water detention vault with associated manholes and the retaining wall, in accordance with Use Permit #U-3185-07-01, and all applicable County standards, codes and ordinances.

BE IT FURTHER ORDAINED that this Ordinance shall not be construed to release the Applicant or Owner, their successors in title and interest and assigns, of negligence on their part on account of such Encroachments, and the Applicant and Owner, by constructing, or causing to be constructed, and by continuing to have the underground storm water detention vault with associated manholes and the retaining wall encroach within the Easement, thereby agrees for themselves, their successors in title and interest, and assigns, to indemnify and hold harmless the County Board of Arlington County, Virginia and County officials, officers, employees, contractors, subcontractors and agents from all claims, negligence, damages, costs and expenses arising out of the location, construction, maintenance, repair and removal of the underground storm water vault with associated manholes and the retaining wall, and the permission for the underground storm water detention vault with associated manholes and the retaining wall to encroach within the Easement permitted by this Ordinance.

BE IT FURTHER ORDAINED that on or before October 24, 2012, the Applicant or Owner, at their sole cost and 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 of Arlington County, Virginia and a copy thereof shall be promptly delivered by the Applicant or Owner to the Real Estate Bureau Chief, Engineering and Capital Projects Division, Department of Environmental Services.

ATTACHMENT 2

ORDINANCE TO ALLOW ENCROACHMENT OF AN UNDERGROUND GARAGE AND A PORTION OF A RETAINING WALL INTO A PORTION OF A COUNTY EASEMENT FOR PUBLIC SIDEWALK AND UTILITIES PURPOSES, SUCH PORTION LOCATED ON PARCEL A, TRUSTEES OF THE MACEDONIA BAPTIST CHURCH, ADJACENT TO THE WEST SIDE OF SOUTH GARFIELD STREET, RPC NO. 31025115 (FORMERLY, RPC NOS. 31025047, 31025048, 31025049), WITH CONDITIONS.

BE IT ORDAINED by the County Board of Arlington County, Virginia, that the Owner, Trustees of the Macedonia Baptist Church, and the Applicant, Nauck Development Partners-1, LP, being the owner and developer respectively of the project known Macedonia Baptist Church, Use Permit #U-3185-07-01, are hereby permitted to construct an underground garage and a portion of a retaining wall, to serve the project authorized by Use Permit #U-3185-07-01, into a portion of the existing County Easements for Public Sidewalk and Utilities Purposes (“Easement”) located on Parcel A, Trustees of the Macedonia Baptist Church, adjacent to the east side of Shirlington Road, RPC No. 31025115 (formerly, RPC Nos. 31025047, 31025048 and 31025049), with conditions set forth herein. The dimensions (length, width and depth (by elevations)), and spatial location of the permitted encroachments (“Encroachments”) are depicted in Exhibit A entitled “Proposed Conditions Plat Showing the Proposed Encroachments Into Public Access Easement Deed Book 4308, Page 1744 on Parcel A Trustees of the Macedonia Baptist Church Deed Book 4308, Page 1744 Arlington County, Virginia”, Sheet 1 of 1, prepared by William H. Gordon Associates, Inc., dated September 29, 2009 and Exhibit B “Easements for Public Sidewalk and Utilities Purposes Encroachment Exhibit” Sheets 1 of 3, 2 of 3 and 3 of 3, prepared by William H. Gordon Associates, Inc., dated October 8, 2009, both Exhibit A and Exhibit B as attached to the County Manager’s October 5, 2009 Report (Exhibit A and Exhibit B collectively, “Plats”).

BE IT FURTHER ORDAINED that this permission for the Encroachments shall continue until such time as the underground garage and the portion of the retaining wall, encroaching within the Easements are destroyed, removed, no longer in use, or not continuously and promptly maintained by the Applicant and/or Owner. Nothing in this Ordinance shall be construed either: to allow the installation by Applicant or Owner, or permit to exist, any structure whatsoever other than the underground garage and the portion of the retaining wall within the Encroachment 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 Applicant and Owner, their successors and assigns, shall continuously and promptly maintain the underground garage and the retaining wall, and maintain, restore, repair, and replace all County owned facilities, within and adjacent to the Easement, including any sidewalk, curb and gutter, landscaping and paved surface, which are damaged by the installation, maintenance, destruction, continued existence, repair or removal of the underground garage and the retaining wall, in accordance with Use Permit #U-3185-07-01, and all applicable County standards, codes and ordinances.

BE IT FURTHER ORDAINED that this Ordinance shall not be construed to release the Applicant or Owner, their successors in title and interest and assigns, of negligence on their part on account of such Encroachments, and the Applicant and Owner, by constructing, or causing to be constructed, and by continuing to have the underground garage and the retaining wall

encroach within the Easement, thereby agrees for themselves, their successors in title and interest, and assigns, to indemnify and hold harmless the County Board of Arlington County, Virginia and County officials, officers, employees, contractors, subcontractors and agents from all claims, negligence, damages, costs and expenses arising out of the location, construction, maintenance, repair and removal of the underground garage and the retaining wall, and the permission for the underground garage and retaining wall to encroach within the Easement permitted by this Ordinance.

BE IT FURTHER ORDAINED that on or before October 24, 2012, the Applicant or Owner, at their sole cost and 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 of Arlington County, Virginia and a copy thereof shall be promptly delivered by the Applicant or Owner to the Real Estate Bureau Chief, Engineering and Capital Projects Division, Department of Environmental Services.

EXHIBIT C-1

RPC No. 31025115 (formerly RPC Nos. 31025047, 31025048, 31025049)



