



ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item
Meeting of June 11, 2011**

DATE: June 3, 2011

SUBJECT: U-3224-09-1 USE PERMIT AMENDMENT Ethiopian Community Development Council, Inc., for modification of Condition #44 regarding emergency vehicle access, Condition #27 regarding parking, and Condition #19 regarding undergrounding of aerial utilities; located at 1036, 1100 and 1106 S. Highland St. (RPC# 32-007-167, -168 and -022).

Applicant:

Ethiopian Community Development Council, Inc.

By:

Nan E. Walsh, Esq. and Elizabeth McKeeby
Walsh, Colucci, Lubeley, Emrich & Walsh, PC
2200 Clarendon Boulevard, 13th Floor
Arlington, Virginia 22201

C.M. RECOMMENDATION:

Approve the use permit amendment for the modification of Conditions #27 and #44 of the Axumite Village development regarding parking and emergency vehicle access, subject to all previously approved conditions and the modified Conditions #27 and #44 of the staff report. Defer the request for modification of Condition #19, regarding undergrounding of aerial utilities, to the July 9, 2011 County Board meeting.

ISSUES: The developer is requesting a modification to Condition #19 regarding undergrounding of existing aerial utilities at the site. The developer has not provided documentation requested by staff as to why compliance with Condition #19 is not feasible. The developer requests deferral of the request to modify undergrounding requirements to allow additional time to resolve issues related to undergrounding utilities.

County Manager:

BMD/GA

County Attorney:

[Signature]

Staff: Matthew Pfeiffer, DCPHD, Planning Division
Jennifer Smith, DCPHD, Planning Division
Linda Collier, DES, Real Estate Division
Dolores Kinney, DES, Transportation Division

7.

PLA-5911

SUMMARY: The developer is requesting a modification to Condition #44 of the Axumite Village project located in the Columbia Pike Special Revitalization District. In Condition #44 the developer agreed to obtain and record an off-site easement to allow emergency vehicle access through the adjacent property to the west of the site prior to the issuance of the Clearing, Grading, and Demolition Permit. The owner of the adjacent parcel to the west (the parcel currently occupied by the Brown Automotive Group and henceforth referred to as the Brown's site) raised concerns regarding the requirement of Condition #44 to indemnify and hold harmless the County Board from any liability arising from the easement. The developer is proposing a modification to Condition #44 that would continue the developer's obligation to indemnify and hold harmless the County Board, and also require the project's future homeowner's association to provide general liability insurance for purposes of insuring the County Board for any liability arising from use of the easement on the Brown's site. The developer is also requesting that the condition be revised to provide an additional method for termination of the easement, and a clarification as to County signage and regulation permitted in the easement. In the event that an agreement cannot be reached with the owners of the Brown's site, the developer is proposing an option whereby a "hammerhead" emergency vehicle turnaround could be provided within the on-site alley, (see attached plans). Should this option be pursued, it would result in the loss of one (1) required parking space and one (1) shared parking space from the on-site alley. The developer would be responsible for securing an off-site space within the Form Based Code parking zone to compensate for the lost required space, and would pay a one-time monetary contribution (an in-lieu fee) of \$20,000 to compensate for the shared space, prior to the issuance of the Certificate of Occupancy for the project's final unit. In the event that the hammerhead turnaround is no longer needed at the time of occupancy for the final unit, the developer could return the two (2) spaces to the alley. Condition #27 regarding required parking would need to be amended to allow for this scenario.

The developer is also proposing a modification to Condition #19, which requires undergrounding of aerial utilities and removal of utility poles on site and along the periphery of the site. The developer is requesting relief from the approved condition as compliance would require the developer to obtain agreements from approximately eight (8) single-family homeowners to allow undergrounding of utilities to connections within the dwellings. The developer's proposal (see attached exhibit depicting proposed dry utility scope of work) would include leaving two (2) existing utility poles on the site's rear property line, adding one (1) pole at the southwest corner of the site, and adding two (2) poles at locations on the east side of South Highland Street. The developer has not provided sufficient documentation that surrounding single-family property owners would object to undergrounding utilities on their property. In addition, the developer has provided insufficient documentation that no alternatives exist to installing two (2) new aerial utility poles along South Highland Street. The developer has agreed to a deferral of the request for modification to Condition #19 to the July County Board meeting to allow the developer additional time to work with staff and the community to resolve the issues and propose a design acceptable to all parties. Therefore, staff recommends approval of the use permit amendment for the modification of Conditions #27 and #44 of the Axumite Village development regarding parking and emergency vehicle access, subject to all previously approved conditions and the modified Conditions #27 and #44 of the staff report. Staff recommends deferral of the request for modification of Condition #19 to the July 9, 2011 County Board meeting.

BACKGROUND: The developer requests modifications to Conditions #19, #27 and #44 of the use permit for the Axumite Village project. The County Board approved this use permit on July 11, 2009 along with a concurrent rezoning to “CP-FBC,” Columbia Pike Form Based Code District. The project consists of 36 condominium units, and the County Board approved the use permit with modifications for alley location, streetscape details, and sign regulations. The site is located at 1036, 1100, and 1106 S. Highland Street, and is described as follows:

Site: The site is bounded on the north by single-family residences, commercial uses, and Columbia Pike, on the east South Highland Street, on the west by the Brown’s Used Car Super Center site, and on the south single-family residences and 12th Street S.

Zoning: The site is zoned “CP-FBC” Columbia Pike Form Based Code Districts.

Land Use: The site is designated on the General Land Use Plan (GLUP) as “Low Residential” 1-10 units/acre. The site is located within the Columbia Pike Special Revitalization District.

Neighborhood: The site is located within the Douglas Park Civic Association. Staff has contacted the civic association but has not received a response as of the date of this writing.

DISCUSSION:

Condition #44: Because there is not sufficient space for on-site emergency vehicle turnaround, Condition #44 requires the developer to obtain an off-site easement from the adjacent property located to the west of the Axumite Village site. The property, owner (Lucille B. Lambert and Bruce E. Lambert, deceased (“Lambert Estate”), and ground leased to “Brown Automotive Group” has objected to several provisions in Condition #44 primarily, the requirement that they indemnify and hold harmless the County Board in the event of liability, personal injury, death, claims, damages, losses, costs and expenses concerning or arising out of the design, construction, installation, care, cleaning, maintenance, repair, use, access, regulation, repair, and removal of the easement. The developer is also requesting that the condition be revised to provide an additional method for termination of the easement, and to clarify how the easement will be regulated by the County, including the provision of signage.

As an alternative to requiring indemnification from the property owner, the developer is proposing that when Axumite Village, or any portion thereof, is conveyed to or governed by a Homeowners or Condominium Owners Association, a provision be included in the Homeowners or Condominium Association documents requiring that the County be named an additional insured entity under a commercial general liability insurance policy. The developer remains required to indemnify and hold harmless the County Board, and is also required to obtain a commercial general liability insurance policy naming the County as an additional insured. Because such an insurance policy would provide protection for the County during development and once the project transfers to a Homeowners or Condominium Owners Association, staff recommends approval of this change.

Further modifications to the condition include the provision of an additional method for termination of the easement, and clarification on the County’s right to allow signs marking the

easement. The changes include striking language allowing the County to regulate motor vehicle traffic, pedestrian traffic, and parking within the easement. Because the language provides the County with full and free use of the easement area twenty-four hours a day, seven days a week, and signs marking the easement area would be required, staff recommends approval of the change in the County's permitted authority to regulate the easement area.

Condition #44, Alternative Option: The use permit was approved in 2009 with 36 on-site spaces, and five (5) shared spaces, which brought the total parking ratio for the site up to 1.125. One (1) of the shared parking spaces was provided on-site in the alley, and four (4) were provided at an "interim parking lot" at the northeast corner of the site. Per the 2009 approval, the four (4) shared spaces in the "interim parking lot" were to be provided on street at a future date when 11th Street is constructed. In the event an agreement cannot be reached with the Lambert Estate regarding the provision of an emergency vehicle access easement through the Brown's site, the developer proposes to construct a "hammerhead" turnaround in the on-site alley. The developer has worked with the Fire Marshal to design a turnaround that would meet fire code requirements. However, this design would result in the loss of two (2) parking spaces in the alley, as well as the elimination of parking islands and narrower planted green strips along the rear lot line in two (2) locations. The two (2) spaces lost in the alley include one (1) required space and one (1) shared space.

In order to compensate for the loss of these two (2) spaces from the alley should the developer decide to proceed with construction of the hammerhead, staff is recommending condition language whereby a Certificate of Occupancy for the project's final unit would not be issued until the spaces are accounted for. This would ensure that the parking ratio for required parking is maintained at 1.0 until the developer can determine a course of action regarding the spaces. If the hammerhead is still necessary when the developer is applying for a Certificate of Occupancy for the final unit, then the developer would be responsible for acquiring one (1) required space off site within the Form Based Code parking zone for the project and paying the "in lieu" fee for the one (1) lost shared space (see explanation below). In the event that the hammerhead, for whatever reason, is no longer required (most likely due to construction of the subject alley through to S. Glebe Road, thus providing an outlet for emergency vehicles), then the developer could return the two (2) spaces to the alley.

Staff supports the developer's proposed alternative to Condition #44 should an agreement not be reached with the owners of the Brown's site, as it provides a workable design solution to allow emergency vehicles to reach the site. Staff is also recommending a modification to Condition #27 regarding parking. This is necessary to allow the developer to construct less parking should it decide to pursue the hammerhead option.

In-Lieu Fee: Providing an "in lieu" fee for shared parking is allowed by the Form Based Code Parking regulations and was originally established as part of a set of parking strategies to help facilitate and incentivize revitalization when the parking itself was a significant barrier. This provision indicates that the County may accept a one-time payment from an applicant and the amount would be set annually by the County Manager based on the cost to construct structured parking. This provision has not been utilized since the Code was approved. Staff's review of this provision initiated a policy discussion on the procedures involved in establishing a rate and when

it should be used. Staff examined the initial parking strategies set forth for the Columbia Pike Revitalization District. These strategies emphasized a flexible, diverse and creative parking approach using a variety of tools to achieve a walkable corridor, where users are encouraged to park once and reach multiple destinations, where on-street parking is maximized, and, when needed, flexibility for smaller sites would be considered in order to facilitate revitalization. Staff also discussed that where parking relief is granted or incentives provided, the loss of spaces should not negatively impact the immediate surrounding area. To this end, staff concluded that some additional criteria may ultimately be needed in the FBC to clarify the County's acceptance of an in-lieu fee in exchange for parking spaces.

The parking strategy also promoted use of the Tax Increment Public Infrastructure (TIPIF) Policy to achieve the parking goals, meaning that if an in lieu fee is collected the County would likely be the entity to create the foregone parking spaces at some future time, thus providing sufficient parking in the general area. Therefore, the payment(s) collected should be generally sufficient for the County to construct underground parking, or assist a prospective developer in building additional spaces in the future, the form of development anticipated under the Code. For the present year, this amount is estimated to range from approx. \$23,000 to \$42,000. The County recognizes that each site has its own unique set of conditions, and as a result an average of the high and low costs (\$33,000) would set a reasonable basis for establishing construction costs. Further, the County would have the option of sharing revenues with the prospective private entity who would ultimately build the foregone parking spaces, which would likely result with a revenue sharing agreement. In establishing the cost of parking spaces then, the County takes into account this revenue offset, and sets the in lieu fee based on an estimated value of the spaces to the County. Therefore, the amount established for calendar year 2011 is \$20,000 per parking space.

In the case of the Axumite Village project, staff has reviewed the issues and given that the need to provide fire and emergency turnaround access, and given the site size and configuration, and the necessary alley spatial requirements for safe turning and travel movements, and the placement of buildings pursuant to the form based code regulations, there is sufficient justification to support acceptance of the in lieu fee for this project. Staff does not consider the loss of this one parking space to negatively impact the area. A large supply of parking is available to the public in the Halstead project, which is located approximately one-half block away (~250 feet) from the alley connection on 11th Street South to the Axumite Village property frontage on South Highland Street.

Condition #19: The developer is proposing a modification to Condition #19 regarding the undergrounding, and removal of all aerial utility poles along the site and the periphery of the site. The developer is proposing to amend Condition #19, because it would require rewiring electrical connections within each of the single-family homes located adjacent to the site's rear property line due to the age of the homes. The developer indicates that if one (1) single-family homeowner objects to the rewiring of electrical connections, then it would not be able to comply with Condition #19.

The developer proposes to underground utilities and remove utility poles along South Highland Street at the property's frontage to the nearest clean pole at the corner of South Highland Street and 12th Street S. Two (2) existing poles located along the site's rear lot line would remain in

order to serve the six (6) adjacent single-family homes. These poles would be able to be “topped” from 40-ft. in height to 30-ft. in height. In addition, the developer would add one (1) “terminal” utility pole at the site’s extreme south-west corner which would serve to underground the electrical lines coming from the adjacent Brown’s site to the west. The developer has submitted that undergrounding the electrical line into the Brown’s site is not possible due to an existing sanitary line (see attached exhibit). On the east side of the site, across South Highland Street, the developer proposes to erect two (2) new lift poles adjacent to four (4) single-family dwellings. As these dwellings receive their electricity from the aerial lines along the frontage of the Axumite site that the developer is proposing to underground, the developer is proposing undergrounding these lines across the street and then making the connections to the dwellings through new aerial lift poles. The developer is proposing condition language that would give these four (4) single-family homeowners on the east side of South Highland Street the option of receiving funds from the developer to rewire the electrical connections within their homes to allow undergrounding, or, if they declined the offer or did not answer within a certain period of time, the lift poles would be erected.

Staff does not support the developer’s current proposal for several reasons. When the developer first approached staff regarding relief from Condition #19, staff informed the developer that in order to consider relief from this condition, documentation would need to be provided certifying that all or some of the eight (8) single-family homeowners objected to rewiring their electrical connections, thus making compliance with Condition #19 not practical. The developer has not provided that documentation. Should the developer provide the documentation requested, staff would consider leaving the two (2) existing utility poles along the rear lot line in place, as well as the addition of the new terminal pole at the southwest corner of the site, as utility poles in those locations would not have as significant an impact. Staff believes that the developer has not exhausted all alternative options to the addition of these two (2) lift poles on the east side of South Highland Street, and is unconvinced that the subject proposal is the only design solution possible for this site. Therefore, staff recommends, and the applicant has agreed, that the proposal for modification of Condition #19 be deferred in order to allow the developer additional time to work with staff and the community on resolving the issues mentioned above.

CONCLUSION: The developer is requesting a modification to Condition #44 for the Axumite Village project. The developer is proposing, and staff supports, new condition language requiring general liability insurance to be made a requirement of the developer and any new Homeowners Association formed for the project, thus ensuring that the County is protected once the developer no longer has control of the property. In the event that the developer is unable to secure an emergency vehicle access easement through the adjacent Brown’s site to the west, the developer is proposing a new design for the alley whereby a hammerhead turnaround could be accommodated. Should the developer decide to pursue this design solution it would result in the loss of one (1) shared space and one (1) required space from the alley. The developer would be responsible for providing the one (1) required space lost from the alley at an off-site location within the Form Based Code parking zone and paying an “in-lieu” fee for the one (1) shared space, or by returning the two (2) spaces to the alley if the hammerhead is no longer needed. Finally, the developer is proposing a new Condition #19 which would result in the removal of two (2) aerial utility poles, the retention of two (2) poles, and the addition of three (3) new aerial utility poles. The developer has not provided sufficient documentation that compliance with

Condition #19 as written is not practical. In addition, the developer has not demonstrated that there are no additional alternatives to the addition of new aerial utility poles along South Highland Street. Therefore, staff recommends approval of the use permit amendment for the modification of Conditions #27 and #44 of the Axumite Village development regarding parking and emergency vehicle access, subject to all previously approved conditions and the modified Conditions #27 and #44 of the staff report. Staff recommends deferral of the request for modification of Condition #19 to the July 9, 2011 County Board meeting.

Modified Conditions:

Parking

27. The developer agrees to ensure that all parking spaces comply with the requirements of Section 33 of the Zoning Ordinance and the Columbia Pike Form Based Code and as shown on the drawings dated May 22, 2009. Unless otherwise approved by the County Board, the number of compact spaces may not exceed the Zoning Ordinance requirement. The developer shall submit drawings showing that these requirements are met, and shall obtain approval by the Zoning Administrator before the issuance of the Footing to Grade Structure Permit.

The developer agrees to construct 41 spaces as part of the development and agrees that up to 36 of these spaces may be reserved for residential occupants and at least 5 of these spaces shall be made available at all times to the public and visitors to the site on a non-reserved basis per the Columbia Pike Form Based Code. The developer agrees that 4 out of the 5 required non-reserved spaces will be constructed within the future 11th Street South right-of-way with access from S. Highland Street as shown on plans dated May 22, 2009 and further agrees that the four spaces will be relocated as on-street parallel parking spaces on 11th Street South once the area is dedicated to the County, per Condition #23, where the spaces will remain available for the public and visitors to the site on a non-reserved basis.

The developers agrees to develop a parking management plan which outlines how guest and visitor parking and parking for residents, and general public parking will be provided, and where the parking will be located. The parking management plan shall also include the location of any secure areas, including bicycle storage, and the location of security gates or other measures to restrict access, if applicable. The parking management plan shall encourage parking by visitors of the project, through ease of access to the parking spaces, and signage. The developer shall submit the parking management plan to the Zoning Administrator and it shall be reviewed and approved by the County Manager prior to the issuance of the first Certificate of Occupancy for any portion of the site.

If the developer, for any reason, decides to pursue constructing a hammerhead emergency vehicle turnaround in the on-site alley, as depicted on the plan entitled Axumite Village Hammerhead Turnaround Alternate plan, by VIKA and dated May 16, 2011, as allowed by Condition #44, then the developer may construct parking spaces as detailed in the above-referenced plan. The developer shall submit drawings showing that these requirements are met, and shall obtain approval by the Zoning Administrator of such plan

as meeting these requirements before the issuance of the Footing to Grade Structure Permit.

Emergency Vehicle Access Easement

44. The developer agrees that, prior to the issuance of any Clearing, Grading, and Demolition Permit for the project that is the subject of this Use Permit, the developer shall obtain and record an Easement~~easement~~, running to the County Board, for emergency vehicle, fire, and police vehicle access (“Easement”). Such Easement shall provide access from the subject property upon which this Use Permit is located (“Property”) to a public right-of-way, across the property to the west of the site, RPC No. 32-007-014, which property presently is owned by Lucille B. Lambert and Bruce E. Lambert, deceased and ground leased to “Brown Automotive Group.” The Easement shall be at a location and of dimensions acceptable to the Fire Marshal for use for emergency vehicles and further shall be acceptable in substance to the County Fire Marshal and the County Manager as meeting the needs of the County for emergency vehicle access to the site, and subject to approval as to form ~~to~~by the County Attorney. The developer further agrees that the Easement shall include, among other items, the following provisions:

a. ~~The Easement shall provide t~~The County, its employees and agents, shall have full and free use, without temporary or permanent obstruction, of the Easement area for the limited purpose of fire, police, and other emergency vehicle access over, across, and through the Easement area twenty-four hours a day, seven days a week. The limited rights granted to the County by the Easement do not include any right for the public at large to use the Easement for vehicular or pedestrian travel.

b. ~~The Easement is~~shall granted without monetary compensation and shall automatically terminate without the need for further of County Board action to authorize such termination upon the earlier of: i) at such time that as a document~~deed~~ dedicating and that a deed conveying to the County Board a public street or public right of way or an alternative ingress and egress easement for fire, police, and other emergency vehicles to the Property is approved by the County Fire Marshal, accepted on behalf of the County Board, and recorded in the Arlington County land records (“Alternative Street or Easement”); and ~~or ii) the area within the boundaries of the Alternative Street or Easement are improved and accepted by the County as evidenced by a confirmation letter provided by the County Manager.~~

c. The developer and the grantors of the Easement, their respective successors in title and interest, and their assigns shall be responsible, at their sole cost and expense, to perform and pay for the continued care, cleaning, and maintenance, including by way of illustration and not limitation, snow removal, repair, replacement, installation, and removal of the Easement area.

d. The developer and the grantors of the Easement, their respective successors in title and interest, and their assigns shall indemnify and hold harmless

the County Board, its elected and appointed officials, officers, employees, and agents from all liability, person injury, death, claims, damages, losses, costs, and expenses of whatsoever nature concerning or arising out of the design, construction, installation, care, cleaning, maintenance, repair, use, access, regulation, repair, and removal of the Easement ~~by the developer, the County, the general public or the property owners.~~

e. The developer, and its successors in title and interest, including any Homeowners or Condominium Owners Association (jointly, "Association"), shall maintain, at all times, the policy or policies of commercial general liability insurance described below. If the developer, and its successors in title and interest, cause the Property, or any portion thereof, to be conveyed to or governed by an Association, then the developer, and its successors in title and interest, also shall be obligated to ensure that such Association's documents, whether or not recorded, shall include the following provision:

The Association shall maintain, at all times, until such time as the Easement is vacated, a policy or policies of commercial general liability insurance, insuring against liability, person injury, death, claims, damages, losses, costs, and expenses of whatsoever nature concerning or arising out of the design, construction, installation, care, cleaning, maintenance, repair, use, regulation, and removal of the Easement by the County or the property owners. Such policy or policies shall afford protection to a limit of at least \$1,000,000 per occurrence and \$5,000,000 in the aggregate for bodily injury, death and property damage. The County shall be named as an additional insured under the policy or policies.

f. ~~The County may, but is not required to, regulate motor vehicle traffic, parking, and pedestrian traffic, within the Easement area and to install any signage and/or pavement markings to regulate the above or a sign to indicate the Easement area.~~

g. ~~The developer, and its successors in title and interest, agree to obtain the prior written approval of the Fire Marshal for the design and selection of any gates, barriers, bollards, or other structures or facilities that may be proposed to be installed by the developer, or its successors in title and interest, at the western end of the alley to restrict or block access to the Adjacent Property so that in the event that fire, police, and other emergency vehicle access is needed, such gates, barriers, bollards, or other structures or facilities can be immediately opened or removed by the County emergency, police, or fire staff, without any liability or obligation whatsoever accruing to the County or the County staff. The developer, and its successors in title and interest, further agrees, at ~~its~~their own cost and expense, to install, maintain, repair, replace, and remove any such gates, barriers, bollards, or other structures or facilities that may be erected, removed, or otherwise damaged.~~

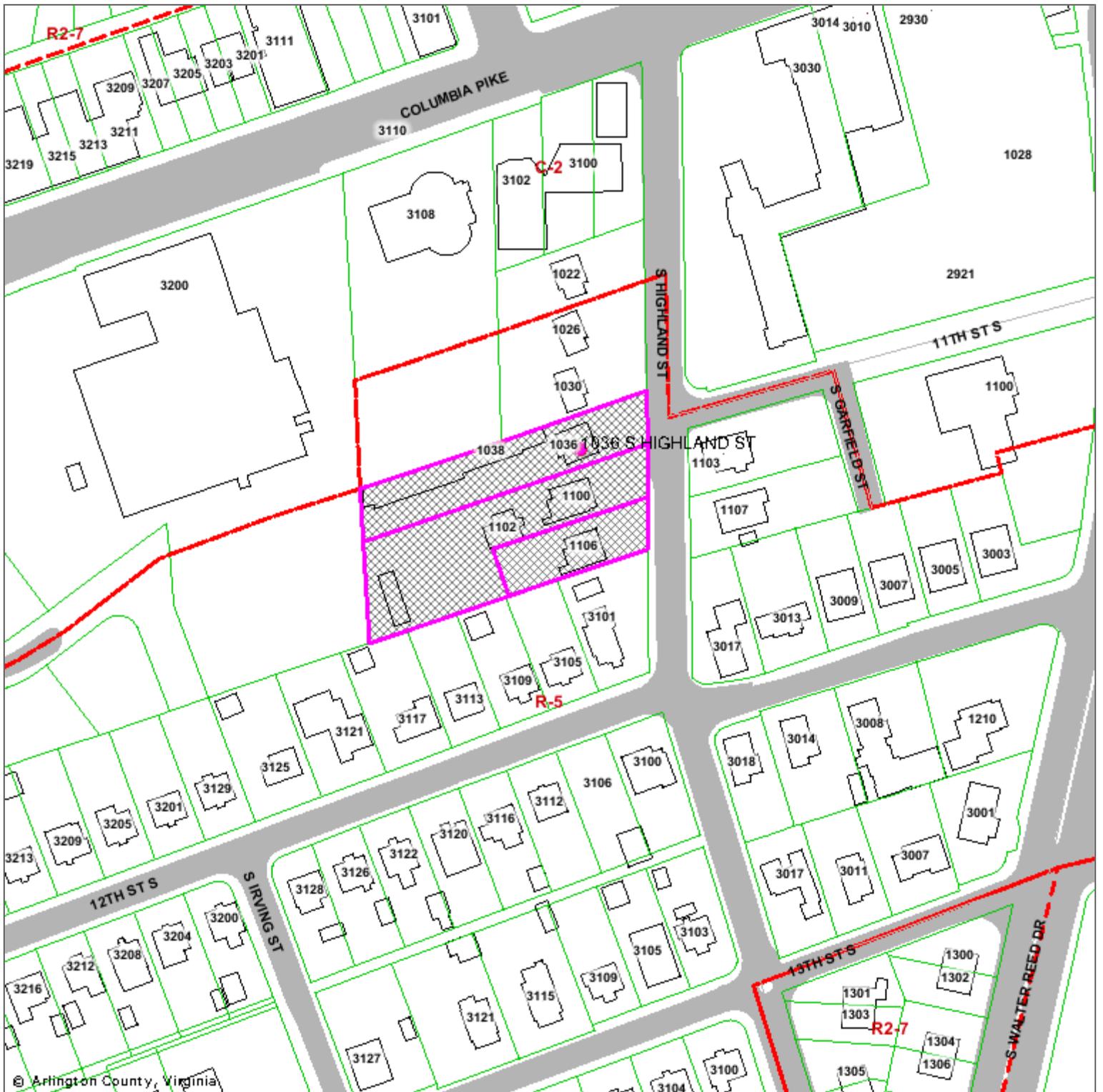
If the developer, for any reason, is not able to obtain and record the Easement described in this condition prior to the issuance of any Clearing, Grading, and Demolition Permit for the project the developer may, as an alternative plan, construct the (attached) site design solution (a hammerhead style turn around), as depicted on the plan entitled Axumite Village Hammerhead Turnaround Alternate, by VIKA and dated May 16, 2011. The developer further agrees that, prior to the issuance of the Certificate of Occupancy for the project's 36th unit, the developer shall either 1) obtain one off-site space within the Form Based Code parking zone to compensate for the loss of one required parking space, and pay a one-time, in lieu fee of \$20,000 to Arlington County to compensate for the loss of one on-site shared parking space; or 2) return two parking spaces to the on-site alley should circumstances allow this option. If the developer decides to pursue option 2), established shade trees moved to accommodate a hammerhead turnaround may remain in place, provided that the Form Based Code shade tree requirement is met.

PREVIOUS COUNTY BOARD ACTIONS:

U-3224-09-1, Use Permit Amendment
Axumite Village
PLA-5911

July 11, 2009

Approved Z-2546-09-1 and U-3224-09-1 rezoning of property 1036, 1100, and 1106 S. Highland Street to Columbia Pike Form Based Code District and use permit for Axumite Village; 36 condominium units with appropriate modifications for the alley location, streetscape details, and sign regulations



U-3224-09-1
1036, 1100, and 1106 S. Highland Street
RPC # 32-007-022, -167, and -168

Note: These maps are for property location assistance only.
 They may not represent the latest survey and other information.



Not To Scale

