



ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item Meeting of May 19, 2012

DATE: April 17, 2012

SUBJECT: Fourth Amendment to an Ordinance to Vacate Certain Easements at Liberty Center, 875 North Randolph Street, 888 North Quincy Street, 818 North Quincy Street, and 4075 Wilson Boulevard (RPC # 14-044-018, 14-044-PCA, 14-044-021 and 14-044-022).

Applicants/Property Owners: Ballston Investor Group I, LLC, Ballston Investor Group II, LLC, Unit Owners Association of The Residences at Liberty Center, A Condominium, EQR-Liberty Tower, LLC, and Ballston Investor Group IV, LLC (“Applicants”)

By: Tim Sampson, Agent/Attorney
Walsh Colucci Lubeley Emrich & Walsh PC
2200 Clarendon Boulevard, 13th Floor
Arlington, Virginia 22201

C. M. RECOMMENDATION:

1. Enact an Ordinance for a Fourth Amendment to an Ordinance to Vacate Easements for Public Street and Utilities Purposes, and Easements for Public Sidewalk and Utilities Purposes on Parcels 1, 2A, 3, and 4, Liberty Center, 875 North Randolph Street, 888 North Quincy Street, 818 North Quincy Street, and 4075 Wilson Boulevard, such parcels bounded on the North by 9th Street North, on the East by North Quincy Street, on the South by Wilson Boulevard and on the West by North Randolph Street, (RPC# 14-044-018, 14-044-PCA, 14-044-021 and 14-044-022), with Conditions (“Fourth Amended Ordinance”) (Attachment 1).
2. Authorize the Real Estate Bureau Chief, Engineering and Capital Projects Division, Department of Environmental Services, or his designee, to execute, and to accept, on behalf of the County Board, all documents necessary to effectuate the Fourth Amended Ordinance, subject to approval as to form by the County Attorney.

ISSUES: The Applicant and County staff are requesting this Ordinance Amendment to extend, from the existing June 11, 2012 to June 10, 2015, the deadline by which the Applicant must

County Manager:

BMD/GA

County Attorney:

[Handwritten signatures]

18.

Staff: Lynne Porfiri and Linda Collier, Department of Environmental Services

satisfy all of the conditions of a previously enacted Ordinance of Vacation. The previously enacted Ordinance allowed the conditions to be met separately as to each of the four parcels comprising the Liberty Center project. The reason for this extension is to allow additional time for the Applicant to fulfill the conditions of the Ordinance relating to Parcel 2A. The conditions as they relate to Parcels 1, 3, and 4 have already been fulfilled. There are no outstanding issues.

SUMMARY: The County Board enacted the original Ordinance of Vacation on June 16, 2009, which eliminated existing underground parking garage encroachments related to Parcels 1, 3, and 4 in exchange for the Applicants' dedication, in fee simple, of certain portions of existing street and utilities easements within portions of the travel way of the streets. The Fourth Amended Ordinance is requested to extend the time period during which the Applicant may fulfill the conditions related to Parcel 2A of the previously enacted Ordinance of Vacation, including recordation of the Deed of Vacation for Parcel 2A and the plat related thereto and recordation of the Deeds of Dedication for Parcel 2A and plat related thereto. Under the Fourth Amended Ordinance, the deadline for fulfilling the conditions would be extended from June 11, 2012 to June 10, 2015. The extension will provide the Applicant additional time for the execution of required documents. The conditions of the Fourth Amended Ordinance, like those of the original Ordinance of Vacation, require the Applicants to grant to the County the specified fee dedication(s) and all necessary sidewalk and utilities easements. As a result of these actions, if the owners of each of the parcels timely fulfill the conditions of the vacation ordinance, then all existing sidewalk and utilities easements will be consolidated into one continuous and contiguous easement.

BACKGROUND: The subject site is located in Ballston, bounded on the North by 9th Street North, on the East by North Quincy Street, on the South by Wilson Boulevard and on the West by North Randolph Street ("Property"). (See Vicinity Maps attached hereto as Exhibits A, B, and C). In conjunction with plans for redevelopment of the Property, the Applicant filed a major site plan amendment to Site Plan #20 ("SP 20"). SP 20 was approved by the Board on January 22, 2002 and provided for the demolition of the then existing office buildings on the Property that had been constructed in the 1960s and the redevelopment of the Property with four new buildings; two high rise offices and two residential buildings (a condominium and an apartment building) along with underground parking garage. At the time the Liberty Center project was completed, the County recognized the existing public street easements, but did not require dedication of the land for the public street in fee simple. While the redevelopment reduced the physical area of previously existing underground garage encroachment, areas where the underground garage encroaches into portions of adjacent County public street easements remain. The Ordinance of Vacation and the grant to the County of specified fee dedication(s) and all necessary sidewalk and utility easements will eliminate the existing underground parking garage encroachments, further the County's practice of owning the vehicular travel way portions of County streets in fee simple, and consolidate the existing sidewalk and utilities easements into one continuous and contiguous easement.

DISCUSSION: The effect of enactment of the Fourth Amended Ordinance, and satisfaction of the conditions, will be that the recently-built underground parking garage encroachments into various portions of existing public street and utilities easements will be eliminated, and be allowed to remain under the proposed consolidated easement for public sidewalk and utilities

purposes. The County will own, in fee simple, the portions of the property improved for vehicular travel ways as approved for the reconstruction of the four streets along the frontages of the new development. For the Applicants, meeting the conditions of the vacation ordinance before the expiration date (June 10, 2015), will result in the consolidation of the corresponding public sidewalk and utilities easements on the Property. Any existing County utility facilities or lines located within the area proposed to be vacated, including four water meter vaults, will also be covered by the conveyance of sidewalk and utilities easements or other easements required to be dedicated by the Applicants before the expiration date, as a condition of the Fourth Amended Ordinance.

As of the date of this report, the Applicant has met the conditions of the Third Amended Ordinance as they relate to Parcels 1, 3, and 4. The Fourth Amended Ordinance is necessary because the remaining Parcel 2A is subject to a condominium regime. As such, there are complex issues that must be resolved to determine the proper party(ies) with legal authority to execute the documents dedicating the fee and easement interests from the condominium to the County. The Fourth Amended Ordinance will provide Applicant and staff additional time to address these issues.

Legal and Physical Description: The Easements that are the subject of this vacation request are described on the Plat attached as Exhibit D. The County acquired the Easements by seven instruments as follows:

1. 6,402 square feet of Easement for Public Street and Utilities Purposes, created by a Deed, dated January 27, 1965, recorded at Deed Book 1576, Page 252 among the land records of Arlington County (“Land Records”);
2. 12,975 square feet of Easement for Public Street and Utilities Purposes, created by a Deed, dated April 27, 1967, recorded at Deed Book 1647, Page 417 among the Land Records;
3. 3,011 square feet of Easement for Public Street and Utilities Purposes, created by a Deed, dated February 8, 1968, recorded at Deed Book 1668, Page 662 among the Land Records;
4. 14,697 square feet of Easement for Public Street and Utilities Purposes, created by a Deed, dated August 13, 1968, recorded at Deed Book 1682, Page 166 among the Land Records;
5. 1,887 square feet of Easement for Public Sidewalk and Utilities Purposes, created by a Deed, dated November 20, 2002, recorded at Deed Book 3410, Page 2140 among the Land Records;
6. 4,553 square feet of Easement for Public Sidewalk and Utilities Purposes, created by a Deed, dated July 18, 2005, recorded at Deed Book 3877, Page 517 among the Land Records; and
7. 235 square feet of Easement for Public Sidewalk and Utilities Purposes, created by a Deed, dated April 10, 2006, recorded at Deed Book 4002, Page 1599 among the Land Records.

The areas proposed for Fee Dedication for Public Street and Utilities Purposes and for Easement for Public Sidewalk and Utilities Purposes are on the Plat attached as Exhibit E.

Compensation: In exchange for vacations of 43,760 square feet (37,085 sq. ft. in public street and utilities easements and 6,675 sq. ft. in public sidewalk and utilities easements), the Applicants collectively will dedicate, in the aggregate, to the County 18,477 square feet in fee simple, for public street and utilities purposes; and grant and convey 23,300 square feet, in the aggregate, as an easement for public sidewalk and utilities purposes. Based upon the relative square footage and the nature of the interests to be vacated, the value of the fee simple public street dedication from the Applicants and of the consolidated easement for public sidewalk and utilities purposes separately within each Parcel is of equal or greater value than the value of the corresponding easements to be vacated by the County on such Parcel.

Public Notice: Public notice of the proposed vacation was given in accordance with the Code of Virginia. Notices were placed in the April 24, 2012 and the May 1, 2012 issues of The Washington Times for the County Board Meeting of May 19, 2012.

FISCAL IMPACT: None.

ATTACHMENT 1

AN ORDINANCE FOR A FOURTH AMENDMENT TO AN ORDINANCE TO VACATE EASEMENTS FOR PUBLIC STREET AND UTILITIES PURPOSES, AND EASEMENTS FOR PUBLIC SIDEWALK AND UTILITIES PURPOSES ON PARCELS 1, 2A, 3, AND 4, LIBERTY CENTER, 875 NORTH RANDOLPH STREET, 888 NORTH QUINCY STREET, 818 NORTH QUINCY STREET, AND 4075 WILSON BOULEVARD, SUCH PARCELS BOUNDED ON THE NORTH BY 9TH STREET NORTH, ON THE EAST BY NORTH QUINCY STREET, ON THE SOUTH BY WILSON BOULEVARD AND ON THE WEST BY NORTH RANDOLPH STREET, (RPC# 14-044-018, 14-044-PCA, 14-044-021 AND 14-044-022), WITH CONDITIONS.

BE IT ORDAINED, that, per the conditions of the Third Amendment to an Ordinance to Vacate Easements for Public Street and Utilities Purposes, and Easements for Public Sidewalk and Utilities Purposes on Parcels 1, 2A, 3, and 4, Liberty Center, 875 North Randolph Street, 888 North Quincy Street, 818 North Quincy Street, and 4075 Wilson Boulevard, such Parcels Bounded on the North by 9th Street North, on the East by North Quincy Street, on the South by Wilson Boulevard and on the West by North Randolph Street, (RPC# 14-044-018, 14-044-PCA, 14-044-021 and 14-044-022), with Conditions, the conditions relating to Parcels 1, 3, and 4 have been fulfilled as of the date of the County Manager's Report to which this Ordinance is attached.

BE IT FURTHER ORDAINED, that, pursuant to a request by Ballston Investor Group I, LLC (Parcel 1), Ballston Investor Group II, LLC (Parcel 2A), Unit Owners Association of The Residences at Liberty Center, A Condominium (Parcel 2A), EQR-Liberty Tower, LLC (Parcel 3), and Ballston Investor Group IV, LLC (Parcel 4) (individually as it relates to each parcel, and collectively for all parcels known as "Applicant/Property Owner"), on file in the offices of the Department of Environmental Services: 1) 6,402 square feet of Easement for Public Street and Utilities Purposes, created by a Deed, dated January 27, 1965, recorded at Deed Book 1576, Page 252 among the land records of Arlington County ("Land Records"); 2) 12,975 square feet of Easement for Public Street and Utilities Purposes, created by a Deed, dated April 27, 1967, recorded at Deed Book 1647, Page 417 among the Land Records; 3) 3,011 square feet of Easement for Public Street and Utilities Purposes, created by a Deed, dated February 8, 1968, recorded at Deed Book 1668, Page 662 among the Land Records; 4) 14,697 square feet of Easement for Public Street and Utilities Purposes, created by a Deed, dated August 13, 1968, recorded at Deed Book 1682, Page 166 among the Land Records; 5) 1,887 square feet of Easement for Public Sidewalk and Utilities Purposes, created by a Deed, dated November 20, 2002, recorded at Deed Book 3410, Page 2140 among the Land Records; 6) 4,553 square feet of Easement for Public Sidewalk and Utilities Purposes, created by a Deed, dated July 18, 2005, recorded at Deed Book 3877, Page 517 among the Land Records; and, 7) 235 square feet of Easement for Public Sidewalk and Utilities Purposes, created by a Deed, dated April 10, 2006, recorded at Deed Book 4002, Page 1599 among the Land Records (collectively "Easements"), which Easements are located on Parcels 1, 2A, 3, and 4, Liberty Center, 875 North Randolph

Street, 888 North Quincy Street, 818 North Quincy Street, and 4075 Wilson Boulevard, RPC# 14044018, 14044PCA, 14044021 and 14044022, and which Easements are shown on an exhibit entitled “Exhibit Showing Proposed Vacation of Easements for Public Street and Utilities Purposes Deed Book 1576, Page 252, Deed Book 1647, Page 417, Deed Book 1668, Page 166, Deed Book 1682, Page 662, and Easements for Public Sidewalk and Utilities Purposes Deed Book 3410, Page 2140, Deed Book 3877, Page 517, Deed Book 4002, Page 1599 on Parcels 1, 2A, 3 and 4 Liberty Center Arlington County, Virginia”, dated March 25, 2008 and revised March 10, 2009, prepared by VIKA Incorporated and attached to the County Manager’s April 17, 2012 report as Exhibit D, are hereby vacated, subject to the following conditions:

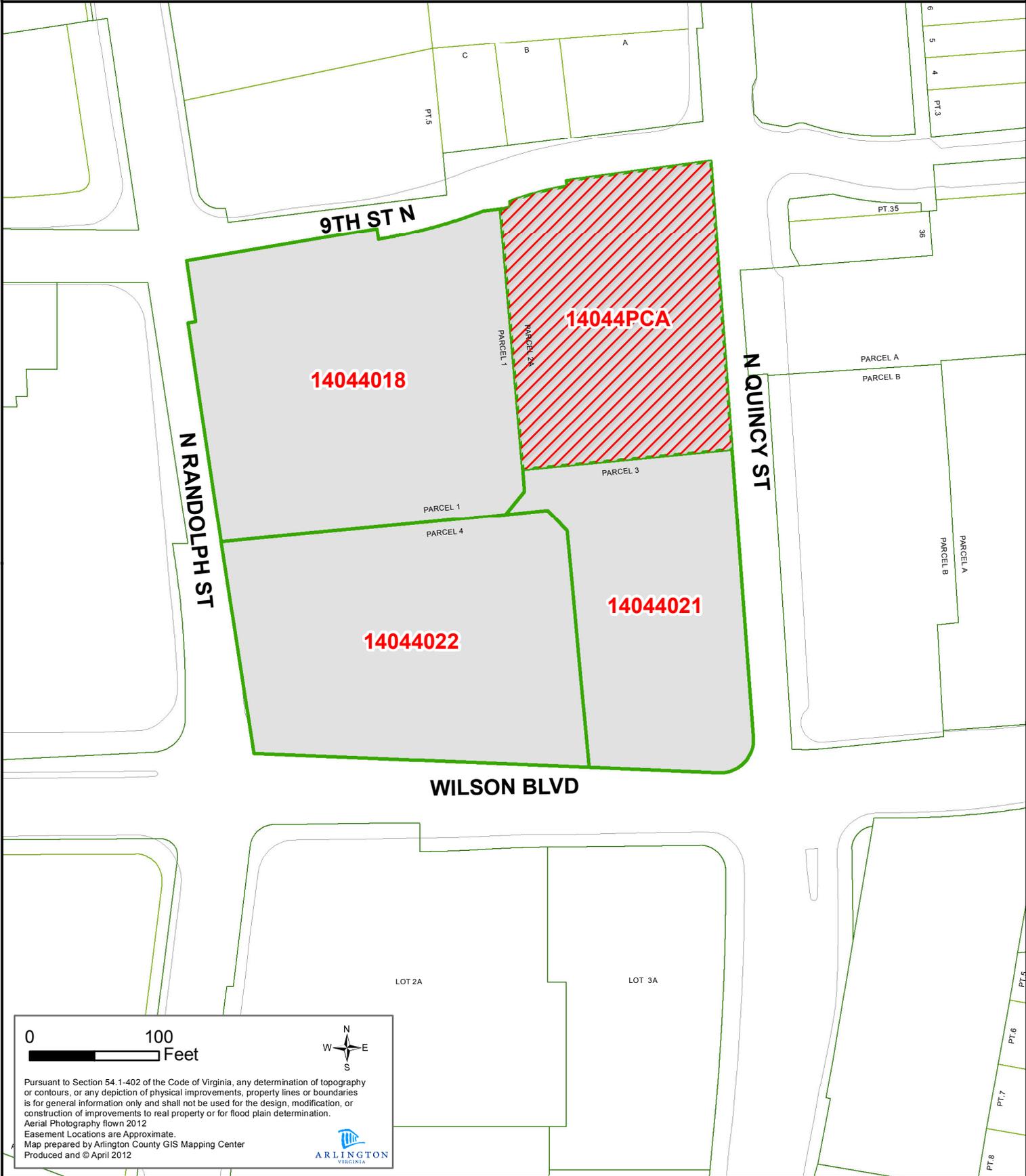
1. The Applicant /Property Owner, separately for each of Parcels 1, 2A, 3 and 4, Liberty Center, (separately “Parcel” and collectively “Parcels”), shall prepare and submit to Arlington County (“County”) for review and approval, the Deed(s) of Vacation and all required plats, subject to approval thereof by the County Manager, or his designee, as to substance, and approval of the deeds, as to form, by the County Attorney.
2. Separately for each Parcel, the Applicant/Property Owner shall pay all fees, including the fees for review, approval, and recordation of the required documents associated with the Ordinance of Vacation.
3. As a condition of this Ordinance of Vacation, the Applicant/Property Owner separately for each Parcel shall: 1) dedicate, in fee simple, to the County that portion of the 18,477 square feet lying within the Parcel for Public Street and Utilities Purposes; 2) grant and convey, to the County in Easement for Public Sidewalk and Utilities Purposes that portion of the 23,300 square feet lying within the Parcel, as such fee simple and easement areas are designated on an exhibit entitled “Exhibit Showing Proposed Fee Dedication for Public Street and Utilities Purposes and Proposed Easement for Public Sidewalk and Utilities Purposes on Parcels 1, 2A, 3 and 4 Liberty Center Arlington County, Virginia” dated March 25, 2008, revised March 10, 2009, prepared by VIKA Incorporated (“Dedication and Easement Plat”) and attached to the County Manager’s June 1, 2009 Report as Exhibit D; and, 3) to grant and convey, to the County that area lying within each Parcel required for any of the four existing water meter vaults shown on the site design plans for One Liberty Center approved by the Director of the Department of Public Works on July 19, 2004 and the site design plans for Liberty Center approved by the Director of the Department of Environmental Services on January 2, 2007, and not included in the above easement area.
4. Separately for each Parcel, the Applicant /Property Owner shall prepare and submit to the County for review and approval: (1) the Deed(s) of Dedication and Deed(s) of Easement required to dedicate, grant and convey the areas designated on the Dedication and Easement Plat and any other additional required areas; and (2) all required plats for such Deed(s) of Dedication and Deed(s) of Easement (the “Plats”). The Deeds and Plats shall be subject to approval thereof by the County Manager, or his designee, as to substance, and the Deed(s) of Dedication and Deed(s) of Easement shall be subject to approval, as to form, by the County Attorney.

5. Separately for each Parcel, the Applicant/Property Owner shall record all plats and the Deed(s) of Vacation, Deed(s) of Dedication and Deed(s) of Easement required by this Condition among the Land Records.

6. Each of the conditions of this Ordinance of Vacation as applicable to each Parcel shall be met, separately as to each such Parcel, by noon on June 10, 2015 (“Expiration Date”): Otherwise, the Ordinance of Vacation shall, without the necessity of any further action by the County Board, become null and void, but only as to each Parcel for which the applicable conditions have not been met by the Expiration Date.

Vicinity Map
Liberty Center

RPC # 14044018, 14044PCA, 14044021 & 14044022



Vicinity Map
Liberty Center
RPC # 14044018, 14044PCA, 14044021 & 14044022

EXHIBIT B

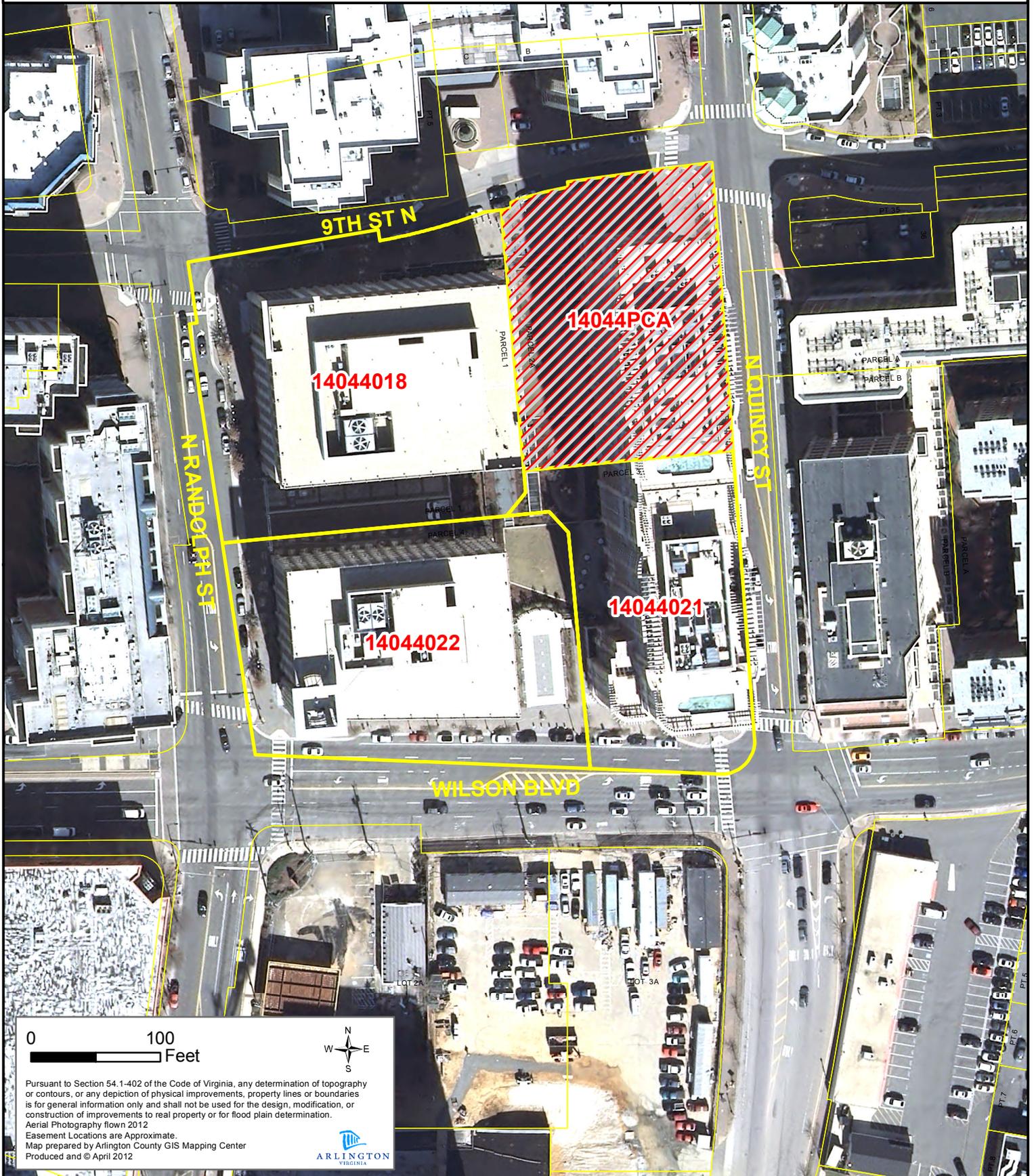
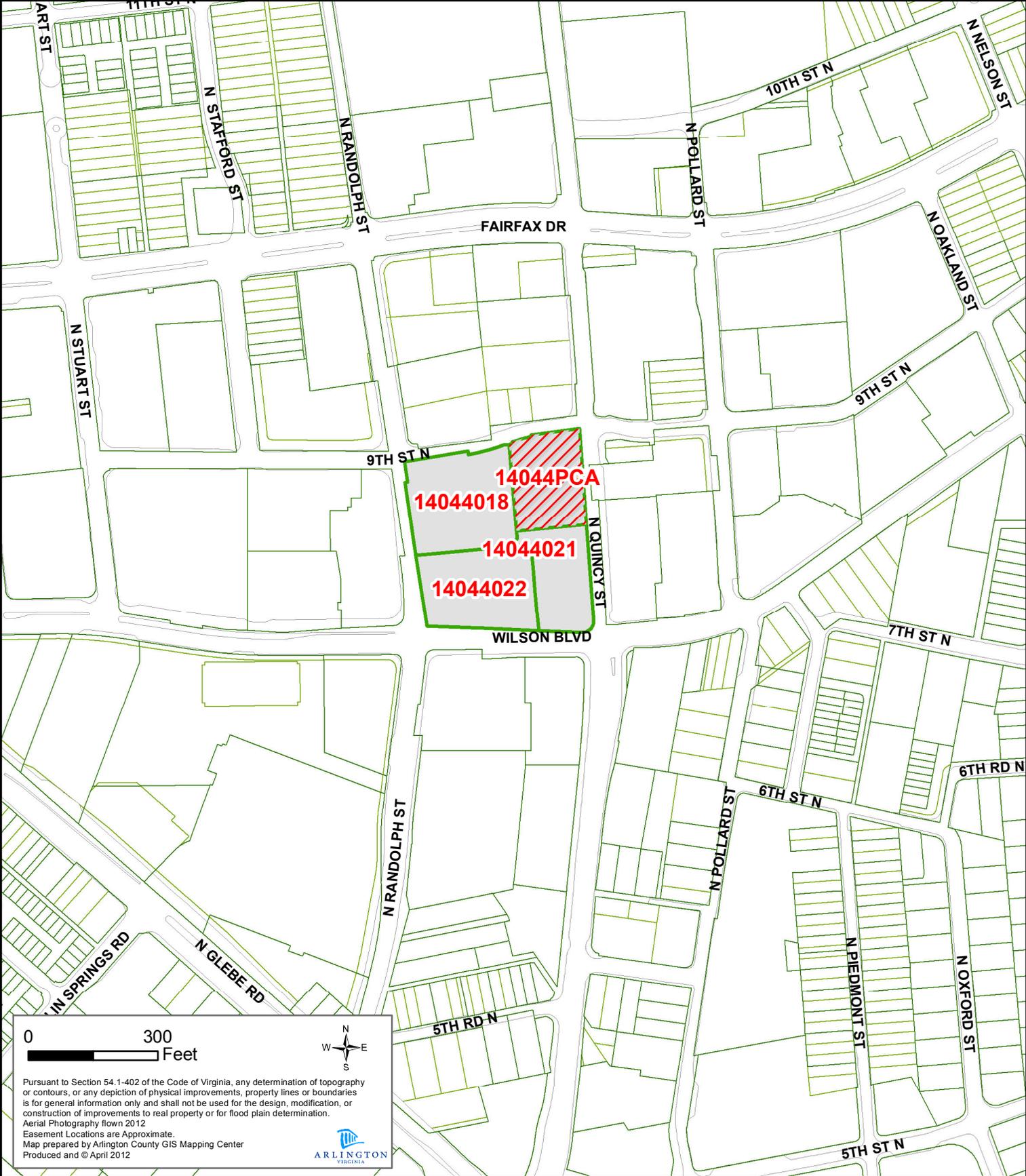


EXHIBIT C

Vicinity Map Liberty Center

RPC # 14044018, 14044PCA, 14044021 & 14044022



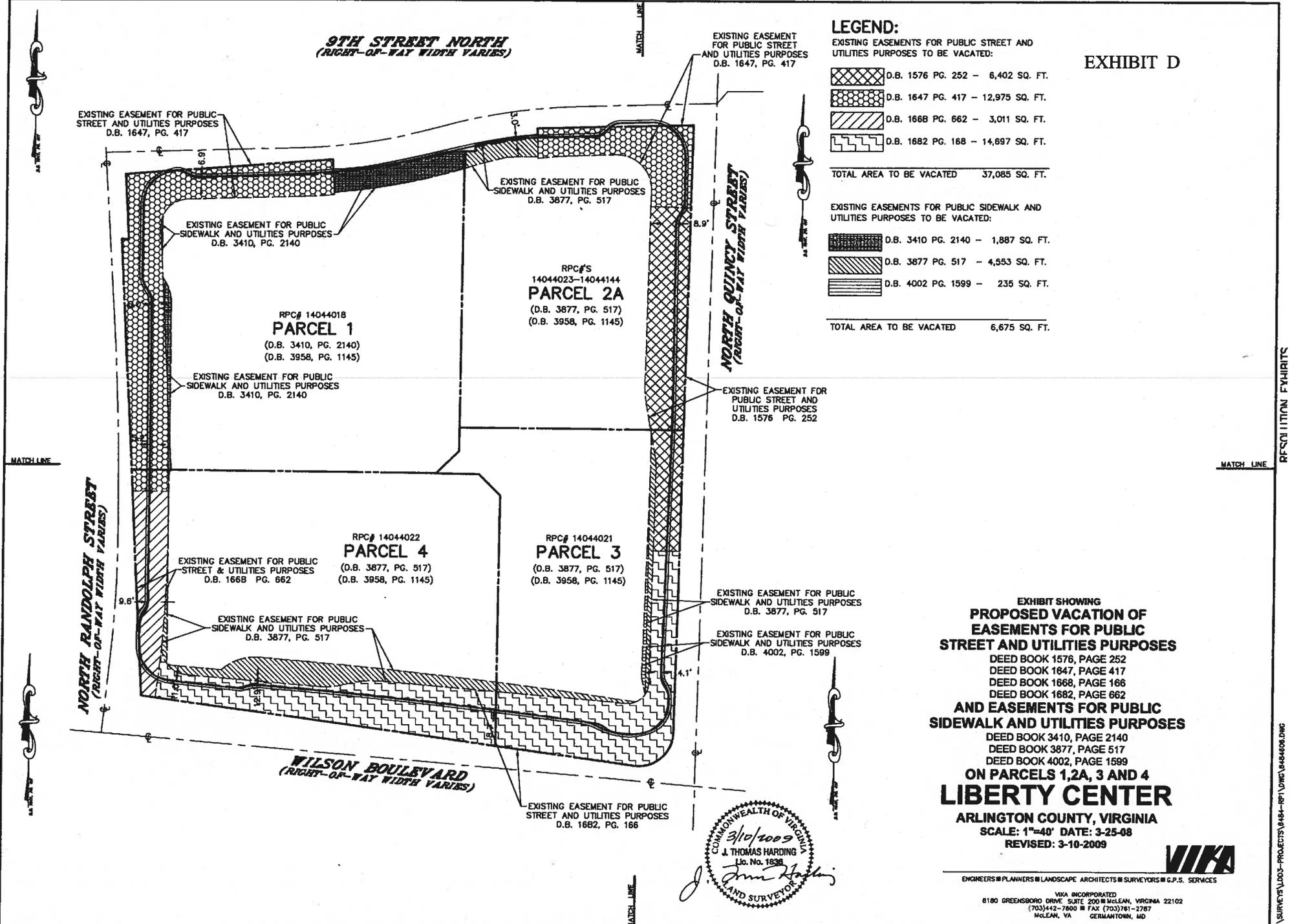
0 300 Feet



Pursuant to Section 54.1-402 of the Code of Virginia, any determination of topography or contours, or any depiction of physical improvements, property lines or boundaries is for general information only and shall not be used for the design, modification, or construction of improvements to real property or for flood plain determination.

Aerial Photography flown 2012
Easement Locations are Approximate.
Map prepared by Arlington County GIS Mapping Center
Produced and © April 2012





LEGEND:

- EXISTING EASEMENTS FOR PUBLIC STREET AND UTILITIES PURPOSES TO BE VACATED:
- D.B. 1576 PG. 252 - 6,402 SQ. FT.
 - D.B. 1647 PG. 417 - 12,975 SQ. FT.
 - D.B. 1668 PG. 662 - 3,011 SQ. FT.
 - D.B. 1682 PG. 168 - 14,897 SQ. FT.

TOTAL AREA TO BE VACATED 37,085 SQ. FT.

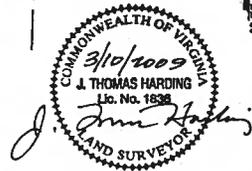
EXISTING EASEMENTS FOR PUBLIC SIDEWALK AND UTILITIES PURPOSES TO BE VACATED:

- D.B. 3410 PG. 2140 - 1,887 SQ. FT.
- D.B. 3877 PG. 517 - 4,553 SQ. FT.
- D.B. 4002 PG. 1599 - 235 SQ. FT.

TOTAL AREA TO BE VACATED 6,675 SQ. FT.

EXHIBIT D

EXHIBIT SHOWING
**PROPOSED VACATION OF
 EASEMENTS FOR PUBLIC
 STREET AND UTILITIES PURPOSES**
 DEED BOOK 1576, PAGE 252
 DEED BOOK 1647, PAGE 417
 DEED BOOK 1668, PAGE 166
 DEED BOOK 1682, PAGE 662
**AND EASEMENTS FOR PUBLIC
 SIDEWALK AND UTILITIES PURPOSES**
 DEED BOOK 3410, PAGE 2140
 DEED BOOK 3877, PAGE 517
 DEED BOOK 4002, PAGE 1599
**ON PARCELS 1, 2A, 3 AND 4
 LIBERTY CENTER**
 ARLINGTON COUNTY, VIRGINIA
 SCALE: 1"=40' DATE: 3-25-08
 REVISED: 3-10-2009



PROPOSITION EXHIBITS

P:\SURVEYS\1003-PROJECTS\6484-RP1\DWG\6484608.DWG

EXHIBIT E

LEGEND

-  EXISTING CURB AND GUTTER
-  EXISTING BUILDINGS
-  EXISTING GARAGE WALLS
-  PROPOSED FEE DEDICATION FOR PUBLIC STREET AND UTILITIES PURPOSES
-  PROPOSED EASEMENT FOR PUBLIC SIDEWALK AND UTILITIES PURPOSES

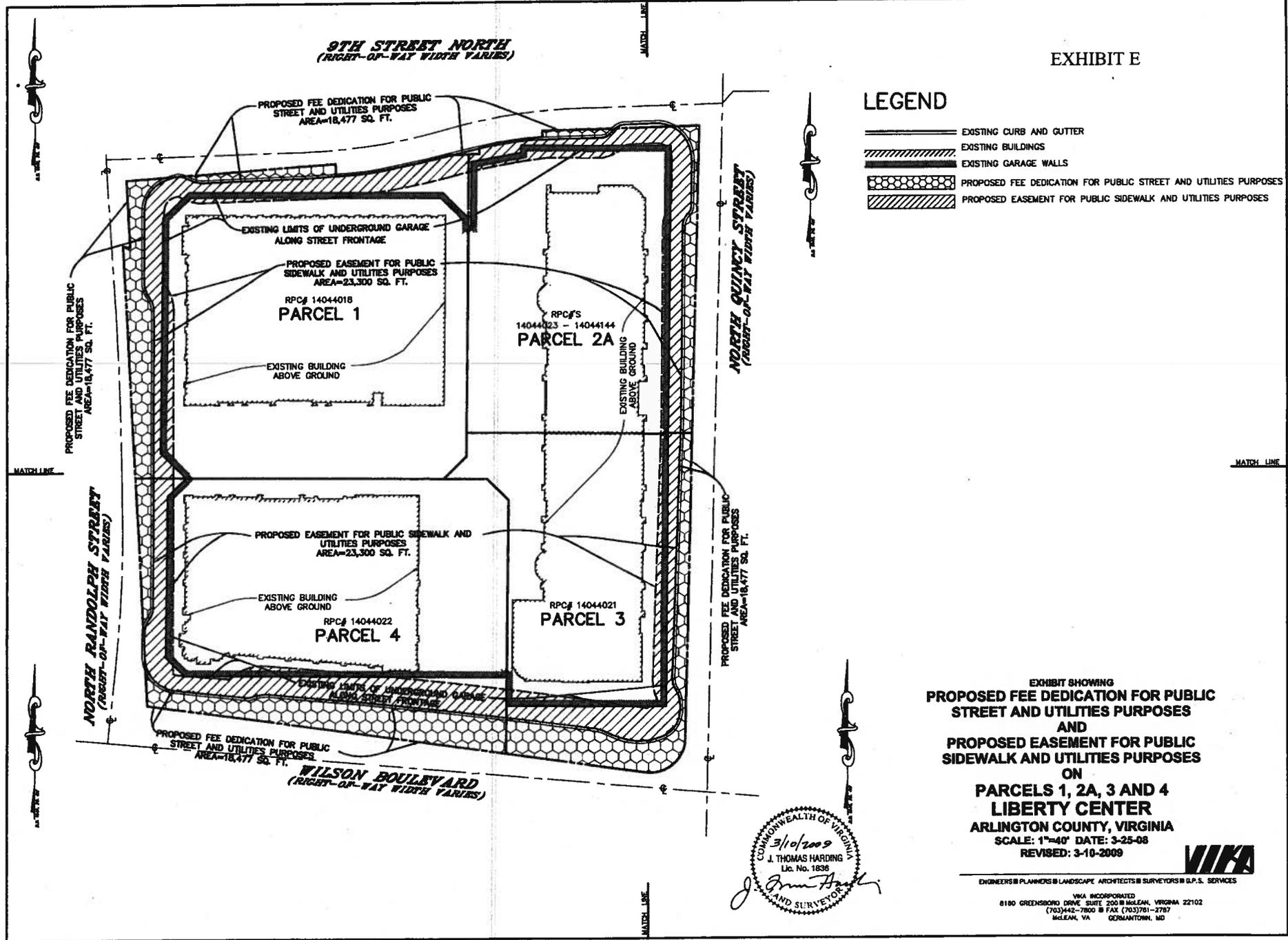


EXHIBIT SHOWING
PROPOSED FEE DEDICATION FOR PUBLIC STREET AND UTILITIES PURPOSES AND PROPOSED EASEMENT FOR PUBLIC SIDEWALK AND UTILITIES PURPOSES ON PARCELS 1, 2A, 3 AND 4 LIBERTY CENTER ARLINGTON COUNTY, VIRGINIA
 SCALE: 1"=40' DATE: 3-25-08
 REVISED: 3-10-2009

COMMONWEALTH OF VIRGINIA
 3/10/2009
 J. THOMAS HARDING
 Lic. No. 1836
 LAND SURVEYOR

VIVA
 ENGINEERS ■ PLANNERS ■ LANDSCAPE ARCHITECTS ■ SURVEYORS ■ D.P.S. SERVICES
 VIVA INCORPORATED
 8180 GREENSBORO DRIVE, SUITE 200 ■ McLEAN, VIRGINIA 22102
 (703)442-7800 ■ FAX (703)781-2787
 McLEAN, VA GERMANTOWN, MD