



ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item
Meeting of April 19, 2008**

DATE: March 17, 2008

SUBJECT: Enactment of an Ordinance to Permit the Encroachment of an Underground Electrical Transformer Vault into a Portion of an Easement for Public Purposes, and into a Portion of South Wayne Street Right of Way, Abutting the West Side of South Wayne Street, North of Columbia Pike, Adjacent to Parcel "A-1," Woodfield Siena Park, Known as 2301 Columbia Pike (RPC #25017098), with Conditions.

Applicant/ Owner: Woodfield Columbia Pike, LLC

By: Catharine Puskar, Esq.
Walsh, Collucci, Lubeley, Emerich, & Walsh, PC
2200 Clarendon Boulevard
Arlington, VA 22201

C.M. RECOMMENDATIONS:

1. Enact the attached Ordinance to Permit the Encroachment of an Underground Electrical Transformer Vault into a Portion of an Easement for Public Purposes, and into a Portion of South Wayne Street Right of Way, Abutting the West Side of South Wayne Street, North of Columbia Pike, Adjacent to Parcel "A-1," Woodfield Siena Park, Known as 2301 Columbia Pike (RPC #25017098), with Conditions.
2. Authorize the Real Estate Bureau Chief, Engineering and Capital Projects Division, Department of Environmental Services, or his designee, to execute, on behalf of the County Board, all documents necessary to effectuate the ordinance, subject to approval as to form by the County Attorney.

ISSUE: The Board is being requested to enact an ordinance to permit encroachment of an underground electrical transformer vault into an Easement for Public Purposes and into the right of way of South Wayne Street ("Ordinance"). The enactment of the Ordinance is requested to supplement the spatial area of a previously enacted encroachment ordinance.

County Manager: _____

County Attorney: _____

Staff: Kevin Connolly, Real Estate Bureau, Department of Environmental Services

SUMMARY: Woodfield Columbia Pike, LLC (the “Applicant”), has requested permission to construct and maintain an underground electrical transformer vault (“Vault”) into a portion of an Easement for Public Purposes and into a portion of the public right-of-way of South Wayne Street. The proposed encroachment is to be built adjacent to the northeast corner of Parcel “A-1,” Woodfield Siena Park, at the west side of South Wayne Street, north of Columbia Pike. See the Vicinity Map attached hereto as Exhibit B. The Vault is being built as part of the mixed use redevelopment plan (Use Permit #U-3144-05-01) for 2301 Columbia Pike (RPC #25017098”). Enacting the proposed Ordinance would allow the construction of portions of a privately-owned Vault to exist in portions of public right-of-way and in portions of an Easement for Public Purposes. If enacted, the Ordinance will continue in effect until the Vault encroaching into the right of way and Easement for Public Purposes is destroyed, removed or no longer in use.

BACKGROUND: The proposed Ordinance has been requested in furtherance of the redevelopment plan (Use Permit #U-3144-05-01) for 2301 Columbia Pike (RPC #25017098”) (“Use Permit”), approved at the October 14, 2006 meeting of the County Board. The proposed redevelopment calls for thirty four thousand three hundred forty-one (34,341) square feet retail on the first floor, fourteen thousand six hundred fifty (14,650) square feet of office, and one hundred eighty-eight (188) residential condominiums on the upper levels. The current plans indicate that the building will be six-stories tall.

At a recessed meeting of the County Board on October 24, 2006, an ordinance was enacted to allow encroachment of the Vault into a small portion of the right of way of South Wayne Street (“Prior Ordinance”). The Prior Ordinance permitted encroachment of the Vault into South Wayne Street adjacent to the northeast corner of the property known as 2301 Columbia Pike (RPC #25017098) In compliance with condition #6 of the Use Permit, the Applicant dedicated to the County Board a portion of the northeast corner of Applicant’s property for public street and utility purposes and granted to the County Board an Easement for Public Purposes on an area immediately adjacent to the area dedicated for public street and utility purposes. The Applicant’s dedication for public street and utility purposes and of the Easement for Public Purposes, required by condition #6 of the Use Permit, has created an area, as shown on the plat attached hereto as Exhibit A, within which the Vault cannot be constructed without the enactment of an additional ordinance of encroachment. It is for this reason that the Applicant is requesting the enactment of the attached Ordinance.

DISCUSSION: The Applicant has requested an Ordinance to permit the construction of a privately owned and maintained Vault into a portion of an easement for public purposes and into a portion of the dedicated right-of-way of South Wayne Street. The total area of the Proposed Encroachment is three hundred eighty four (384) square feet. Upon enactment of the Ordinance, one hundred ninety nine (199) square feet of the proposed Vault will be permitted to encroach into the dedicated right of way for South Wayne Street. The residual one hundred eighty five (185) square feet will be permitted to encroach into an adjoining Easement for Public Purposes immediately adjacent to the dedicated right of way for South Wayne Street.

The proposed Vault encroachment is depicted in greater detail on the attached Exhibit A, entitled “Plat Showing Transformer Vault Encroachment Area into an Easement for Public Purposes and into South Wayne Street Adjacent to Parcel “A-1” Woodfield Siena Park Arlington County, Virginia” dated March 25, 2008, prepared by VIKA Incorporated (the “Plat”). Upon enactment,

the Ordinance will permit encroachment of the Vault into both the portion of the northeast corner of the Property dedicated for public street and utilities purposes and the easement for Public Purposes that were not covered by the Prior Ordinance.

Legal and Physical Description: The South Wayne Street public right-of-way and the Easement for Public Purposes subject to the proposed encroachments were, respectively, dedicated and granted to the County Board by Deed of Resubdivision, Vacation, Rededication, Dedication and Easements, recorded in Deed Book 4153, Page 211, among the Land Records of Arlington County, Virginia.

Public Notice: Public Notice was given in accordance with § 15.2-1427(F) of the Code of Virginia. Notices were placed in the March 25, 2008 and April 1, 2008 issues of the Washington Times for the April 19, 2008 County Board Meeting.

Compensation: Staff recommends that no compensation be required for this Vault encroachment. This is in accordance with the current County practice to not require compensation for vault encroachments that are part of new developments or redevelopments and are constructed at the Applicant's/Owner's expense.

FISCAL IMPACT: None.

CONCLUSION: It is recommended that the County Board enact the attached Ordinance (Attachment 1) permitting the encroachment of a Vault into a portion of Easement for Public Purposes, and within a portion of dedicated public right-of-way of South Wayne Street, adjacent to Parcel "A-1," Woodfield Siena Park (RPC #25017098), 2301 Columbia Pike, Arlington, Virginia, with conditions.

ATTACHMENT 1

ORDINANCE TO PERMIT THE ENCROACHMENT OF AN UNDERGROUND ELECTRICAL TRANSFORMER VAULT INTO A PORTION OF AN EASEMENT FOR PUBLIC PURPOSES, AND INTO A PORTION OF SOUTH WAYNE STREET RIGHT OF WAY, ABUTTING THE WEST SIDE OF SOUTH WAYNE STREET, NORTH OF COLUMBIA PIKE, ADJACENT TO PARCEL "A-1," WOODFIELD SIENA PARK, KNOWN AS 2301 COLUMBIA PIKE (RPC #25017098), WITH CONDITIONS.

BE IT ORDAINED by the County Board of Arlington County, Virginia, that Woodfield Columbia Pike, LLC, a Virginia corporation, owner of the property known as 2301 Columbia Pike, is permitted, along with its successors in title and interest ("Owner"), to construct an underground electrical transformer vault, containing a transformer, switches and related equipment, which electrical transformer vault will encroach underground within public right-of-way of South Wayne Street dedicated to the County Board for public street and utility purposes by Deed of Resubdivision, Vacation, Rededication, Dedication and Easements in Deed Book 4153 Page 211 in the Arlington County Land Records and into an Easement granted to the County Board for Public Purposes, each by Deed of Resubdivision, Vacation, Rededication, Dedication and Easements in Deed Book 4153 Page 211 in the Arlington County Land Records adjacent to Parcel "A-1," Woodfield Siena Park (RPC #25017098), 2301 Columbia Pike. The dimensions and location of the permitted encroachment are depicted in the attached Exhibit A, "Plat Showing Transformer Vault Encroachment Area into an Easement for Public Purposes and into South Wayne Street Adjacent to Parcel "A-1" Woodfield Siena Park Arlington County, Virginia" dated March 25, 2008, prepared by VIKA Incorporated (the "Plat"). The dimensions, the location, elevations, depth and the characteristics of the permitted underground electrical transformer vault and the spatial area of the permitted encroachment are shown on the Plat. No other structures are permitted to be installed or constructed by Owner, or to exist within the County right-of-way as shown on the Plat.

BE IT FURTHER ORDAINED that this permission for the encroachment shall continue until such time as that portion of the underground electrical transformer vault encroaching into the Easement for Public Purposes and into the dedicated public right of way is destroyed, removed, no longer in use, or not continuously and promptly maintained by the Owner. Nothing in this Ordinance shall be construed to either allow the installation by Owner of any above ground structure within the dedicated right-of-way as shown on the Plat; or to allow any greater encroachment beyond the area shown on the Plat.

BE IT FURTHER ORDAINED that the Owner shall continuously and promptly maintain the underground electrical transformer vault, and maintain, restore, repair, and replace all County owned facilities, into the Easement for Public Purposes and into the dedicated public right of way, including any sidewalk, curb and gutter, which are damaged by the installation, maintenance, destruction, continued existence, or removal of the underground electrical transformer vault.

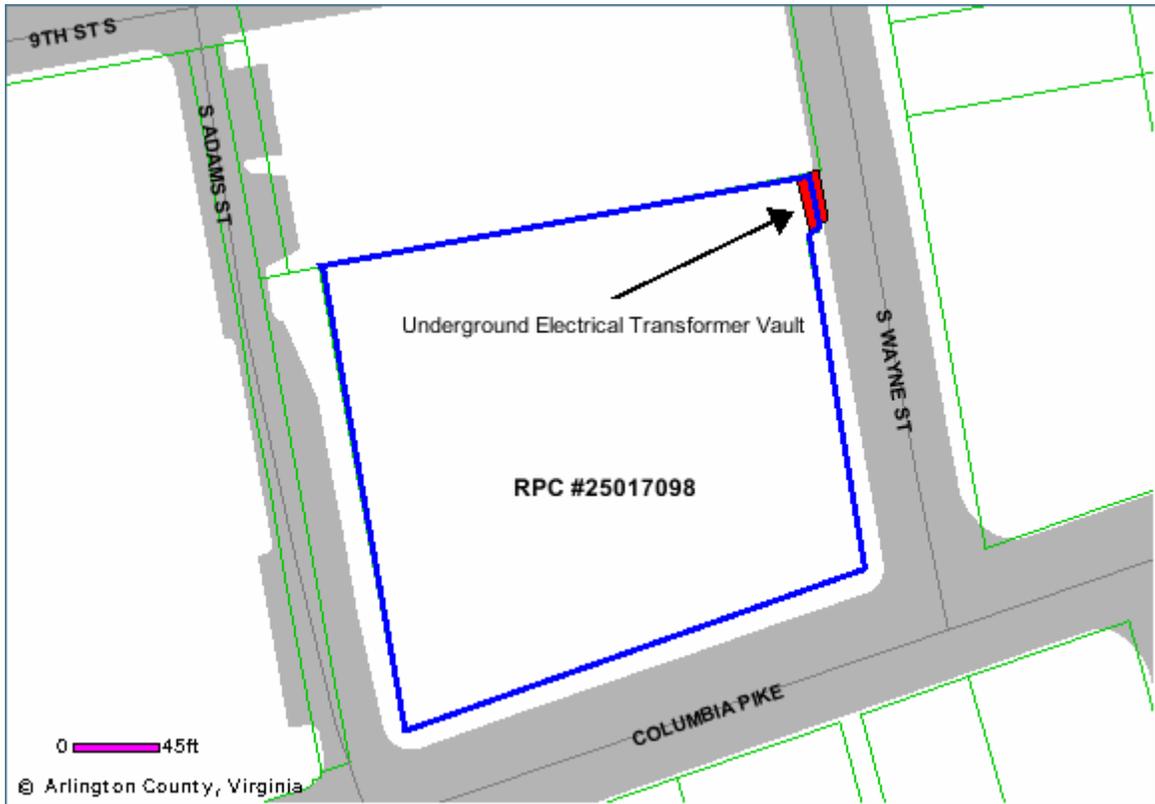
BE IT FURTHER ORDAINED that this Ordinance shall not be construed to release the Owner of negligence of their part on account of such encroachment, and the Owner, by continuing to have the underground electrical transformer vault encroach into the Easement for

Public Purposes and into the dedicated public right of way, thereby agrees for itself 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 permission for underground electrical transformer vault to encroach into an Easement for Public Purposes and into the dedicated public right of way permitted by this Ordinance.

BE IT FURTHER ORDAINED that prior to noon on October 14, 2009, the Owner, at its sole expense, shall cause a certified copy of this Ordinance and a copy of the Plat to be recorded in the land records of the Arlington County Circuit Court. Evidence of such recordation shall be promptly submitted by the Owner to the Real Estate Bureau Chief, Engineering and Capital Projects Division, Department of Environmental Services.

EXHIBIT B

VICINITY MAP SHOWING SUBJECT PROPERTY LOCATION INTO WHICH THE UNDERGROUND TRANSFORMER VAULT IS TO BE CONSTRUCTED AND MAINTAINED



The red area on the schematic indicates the Proposed Encroachment Area.

The blue area on the schematic indicates periphery of site area for proposed Redevelopment pursuant to U-3144-05-01.

Vicinity Map

Woodfield Siena Park
(2301 Columbia Pike)