



## ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item  
Meeting of May 17, 2008**

**DATE:** May 5, 2008

**SUBJECT:** Enactment of an Ordinance of Vacation to Vacate portions of two Five (5)-Foot-Wide Sanitary Sewer Easements Located Within a Parcel of Real Property Owned by CARS-DB1, LLC, Located at 2631 Shirlington Road (RPC No. 31034001), with Conditions.

**Applicant:** BMW of Arlington

**By:** Martin D. Walsh, Agent/Attorney  
Walsh Colucci Lubeley Emrich & Walsh PC  
2200 Clarendon Boulevard, 13<sup>th</sup> Floor  
Arlington, Virginia 22201

**Owner:** CARS-DB1, L.L.C.

**C. M. RECOMMENDATION:**

1. Enact the attached Ordinance of Vacation to Vacate portions of two Five (5)-Foot-Wide Sanitary Sewer Easements Located Within a Parcel of Real Property Owned by CARS-DB1, LLC, Located at 2631 Shirlington Road (RPC No. 31034001), with Conditions.
2. Authorize the Real Estate Bureau Chief, Engineering and Capital Projects Division, Department of Environmental Services, to execute, on behalf of the County Board, all documents necessary to effectuate the Ordinance of Vacation, subject to approval as to form by the County Attorney.

**ISSUES:** The requested vacation will enable the Applicant to design and redevelop this property with the by-right construction of a BMW automobile dealership and service center on a site presently unoccupied, but zoned for this type of use. County staff has worked with the Applicant to improve the proposed project, resulting in a better overall by-right project from the environmental and planning perspectives.

**SUMMARY:** The Applicant has requested enactment of an Ordinance of Vacation for the vacation of portions of two five (5)-foot-wide sanitary sewer easements (“Ordinance of

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

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

Staff: Michael R. Halewski, Real Estate Bureau, DES

Vacation”) running through the property of CARS-DB1, LLC. The vacation of these two sections of sanitary sewer easement will enable the by-right redevelopment of this site as a BMW automobile dealership and service center. Conditions of the Ordinance of Vacation will include the relocation of the existing sanitary sewer facilities, at Applicant’s sole cost and expense, to an alternate location on the same property, and dedication of a new twenty (20)-foot-wide easement for public utilities purposes (“Deed of Easement”) in that alternate location to accommodate the relocated facilities, all at the Applicant’s sole expense.

With the enactment of the Ordinance of Vacation and satisfaction of the conditions contained therein, including, but not limited to, the recordation of the Deed of Vacation, the recordation of the Deed of Easement, and the submittal by the Applicant of an acceptable bond and performance agreement to guarantee the removal and relocation of the existing sanitary sewer facilities, the County’s interests in the vacated portions of the two sanitary sewer easements will be extinguished.

**BACKGROUND:** The subject site is located at the south end of Nauck, west of Shirley Highway (I-395), north of the Four Mile Run stream, fronting on an extended segment of a public right-of-way lying to the southeast of Shirlington Road, having a physical address of 2631 Shirlington Road, and an Real Property Code number of 31034001 (the “Property”). The Property is more particularly shown on the Vicinity Map attached hereto as Exhibit “D”. The Property was formerly used as an automobile storage and service facility for Rosenthal Chevrolet. The Applicant plans to redevelop the site by-right as a BMW automobile dealership and service center. To accommodate the placement and construction of the proposed buildings, the Applicant has requested the vacation of portions of the following two easement areas:

1) a 1,480-square-foot portion of a five (5)-foot-wide sanitary sewer easement, depicted as, “Approximate Location, Exist. 5’ San Sew Esm’t (D.B. 381, PG. 70)(D.B. 407, PG. 348)(D.B. 407, PG. 358), Area = 1,480 S.F., Hereby Vacated,” on a plat entitled “Plat Showing Vacation of Sanitary Sewer Easements, Deed Book 381 Page 70, Deed Book 407 Page 348, Deed Book 407 Page 358, Deed Book 1362 Page 138, Property of CARS-DB1, LLC, Deed Book 2946 Page 1537, Arlington County, Virginia,” dated April 2, 2008, prepared by VIKA (“Plat”), said Plat being attached to this report as Exhibit “A”; and

2) a 1,878-square-foot portion of a five (5)-foot-wide sanitary sewer easement, depicted as, “Approximate Location, Ex. 5’ San Sew Esm’t (D.B. 1362, PG. 138), Item #2, Area = 1,878 S.F., Hereby Vacated,” on the Plat.

The easement areas to be vacated are collectively herein referred to as the “Easement Areas.” There are currently County sanitary sewer lines located within the Easement Areas.

The County acquired the Easement Areas via four documents: 1) an Agreement dated June 19, 1935, and recorded in Deed Book 381 at Page 70, among the land records of Arlington County, Virginia (hereinafter, the “Land Records”) on March 6, 1937; 2) an Agreement dated June 19, 1935, and recorded in Deed Book 407 at Page 348 among the Land Records, on March 6, 1937; 3) an Agreement dated June 19, 1935, and recorded in Deed Book 407 at Page 358 among the

Land Records on March 6, 1937; and 4) a Deed of Easement dated March 17, 1959, and recorded in Deed Book 1362 at Page 138, among the Land Records on March 24, 1959.

**DISCUSSION:** The Applicant's proposed by-right development of the BMW automobile dealership and service center includes two new buildings located within the existing Easement Areas. The Applicant's request to vacate both the 1,480-square-foot portion of a five (5)-foot-wide sanitary sewer easement, and the 1,878-square-foot portion of another five (5)-foot-wide sanitary sewer easement, as depicted on the Plat, if approved by the County Board, will enable the construction of the two new buildings, as shown on a plan entitled "Proposed Condition" attached to this report as Exhibit "B."

There are existing County sanitary sewer facilities located within the Easement Areas. The Applicant has agreed to relocate the existing sanitary sewer facilities, and to dedicate a twenty (20)-foot-wide easement for public utilities purposes to accommodate the relocated facilities in an alternate location on the Property. The location of the proposed twenty (20)-foot-wide easement for public utilities purposes is more particularly shown in Exhibit "C", attached to this report. The Applicant will also be required to provide a bond and a performance agreement satisfactory to the County, to guarantee the removal and relocation of the said sanitary sewer facilities.

The County's Department of Environmental Services' ("DES") staff and Department of Community Planning and Housing Development's ("DCPHD") staff have coordinated extensively with the Applicant regarding this by-right development. The result of this coordination is a better by-right project from both an environmental and a planning perspective.

Some of the environmental benefits that the Applicant has agreed to undertake include locating the proposed buildings farther away from a stream that runs along the northern property line of the Property. This will provide an increased vegetative buffer between the buildings, the paved surface, and the stream. The Applicant has also agreed to install water quality treatment facilities to treat the storm water runoff from the development, and apply pollution prevention "best practices" to the automotive activities on the Property.

The planning measures to be implemented by the Applicant include the dedication of an additional five (5) feet of real property for public street and utilities purposes. The dedicated areas will provide for the widening of the existing access roadway from 25 to 30 feet to accommodate the development. The area will also provide sufficient space for the construction and installation of a two (2)-foot-wide curb and gutter, a four (4)-foot-wide green strip, and a six (6)-foot-wide sidewalk. All of the new improvements will be constructed and installed at the Applicants sole cost and expense. The Applicant has also agreed to the construction of a vehicular turnaround at the end of the access road leading from Shirlington Road. This turnaround will ease vehicular ingress to and egress from an otherwise dead-end street. The turnaround will also be located in an area that will assist with future street connectivity as proposed in the Nauck Village Center Action Plan. The Applicant also had a traffic impact analysis performed, and provided DES staff with a copy of the results of this analysis. This traffic study will assist staff with analyzing the traffic impacts of this development and future developments in the immediate area.

Legal and Physical Description: The Easement Areas that are the subject of this vacation request are shown and described on the Plat of this site attached to this report as Exhibit "A." The subject site is located at the south end of Nauck, west of Shirley Highway (I-395), north of the Four Mile Run stream, fronting on an extended segment of a public right-of-way, lying to the southeast of Shirlington Road, having a physical address of 2631 Shirlington Road, and is identified by Arlington County Real Property Code Number 31034001.

Compensation: Staff recommends that no compensation be required from the Applicant for vacating the portions of the sanitary sewer easements proposed to be vacated within property. This follows the established practice of not requiring compensation for vacation of utilities easements when an easement is no longer necessary or, as in this case, will be relocated for a development at the Applicant's or developer's sole cost and expense.

Public Notice: Public notice of the proposed vacation was given in accordance with the Code of Virginia. Notices were placed in the April 22, 2008 and the April 29, 2008 issues of the Washington Times for the County Board Meeting of May 17, 2008.

**FISCAL IMPACT:** None.

**CONCLUSION:** It is recommended that the County Board enact the Ordinance of Vacation to Vacate portions of two Five (5) Foot Wide Sanitary Sewer Easements Located Within a Parcel of Real Property Owned by CARS-DB1, LLC, Located at 2631 Shirlington Road (RPC No. 31034001), with Conditions.

## ATTACHMENT 1

### **AN ORDINANCE OF VACATION TO VACATE PORTIONS OF TWO FIVE (5) FOOT WIDE SANITARY SEWER EASEMENTS LOCATED WITHIN A PARCEL OF REAL PROPERTY OWNED BY CARS-DB1, LLC, LOCATED AT 2631 SHIRLINGTON ROAD (RPC NO. 31034001), WITH CONDITIONS.**

BE IT ORDAINED that, pursuant to a request by BMW of Arlington (“Applicant”), with the consent of CARS-DB1, LLC (“Property Owner”), owners of the real property known as 2631 Shirlington Road, RPC No. 31034001 (the “Property”), said request existing on file in the offices of the Department of Environmental Services, to vacate a 1,480-square-foot portion of a sanitary sewer easement, and a 1,878-square-foot portion of a second sanitary sewer easement (“Easements”), which portions of the Easements to be vacated are located within the Property, and were created by: 1) an Agreement dated June 19, 1935, and recorded in Deed Book 381 at Page 70, among the land records of Arlington County, Virginia (hereinafter, the “Land Records”) on March 6, 1937; 2) an Agreement dated June 19, 1935, and recorded in Deed Book 407 at Page 348 among the Land Records, on March 6, 1937; 3) an Agreement dated June 19, 1935, and recorded in Deed Book 407 at Page 358 among the Land Records on March 6, 1937; and 4) a Deed of Easement dated March 17, 1959, and recorded in Deed Book 1362 at Page 138, among the Land Records on March 24, 1959, as such vacated portions of the Easements are shown on a plat entitled, “Plat Showing Vacation of Sanitary Sewer Easements, Deed Book 381 Page 70, Deed Book 407 Page 348, Deed Book 407 Page 358, Deed Book 1362 Page 138, Property of CARS-DB1, LLC, Deed Book 2946 Page 1537, Arlington County, Virginia,” dated April 2, 2008, prepared by VIKA (“Plat”), said Plat being attached to the County Manager’s report dated May 5, 2008 as Exhibit “A”, are hereby vacated, subject to the following conditions:

1. The Applicant shall prepare and submit to Arlington County (“County”) for review and approval, the Deed of Vacation and all required plats. These documents shall be subject to approval by the County Manager, or his designee, as to substance, and approval of the deeds, as to form, by the County Attorney.
2. The Applicant shall, at its own cost and expense, remove, relocate and reconstruct all existing public utilities located within the portion of the Easements herein vacated, with new utilities and related appurtenant facilities of sizes, dimensions and at locations acceptable to the Department of Environmental Services (“DES”), in strict accordance with Arlington County Construction Standards and Specifications, and all applicable laws, ordinances, regulations and policies. Such new utilities and related appurtenant facilities so removed, relocated and reconstructed by the Applicant shall be operational, and DES shall have indicated in writing that such facilities comply with all acceptance requirements, before the Deed of Vacation is executed on behalf of the County Board of Arlington County, Virginia.
3. The Applicant/Property Owner shall create, grant and convey to the County twenty (20)-foot-wide public utility easements necessary to accommodate all relocated facilities, as required by the County. The Real Estate Bureau Chief, Department of Environmental Services, or his designee, is authorized to accept all public utility easements on behalf of the County, subject to approval as to form by the County Attorney. Any such public utility easements shall be recorded

by the Applicant/Property Owner, at the Applicant/Property Owner's sole cost and expense, among the land records of the Clerk of the Circuit Court of Arlington County immediately before recording the Deed of Vacation.

4. The Applicant shall submit, for review and approval, to the DES, a utility relocation and engineering design plan ("Plan") for the construction, relocation, removal, replacement and/or abandonment of all public utilities located, in whole or in part, within the Easements vacated by this Ordinance of Vacation in compliance with the Arlington County Construction Standards and Specifications. The Plan may be made part of the civil site design engineering plans for the redevelopment of the Property, and shall be subject to approval by the Director of DES, or his designee.

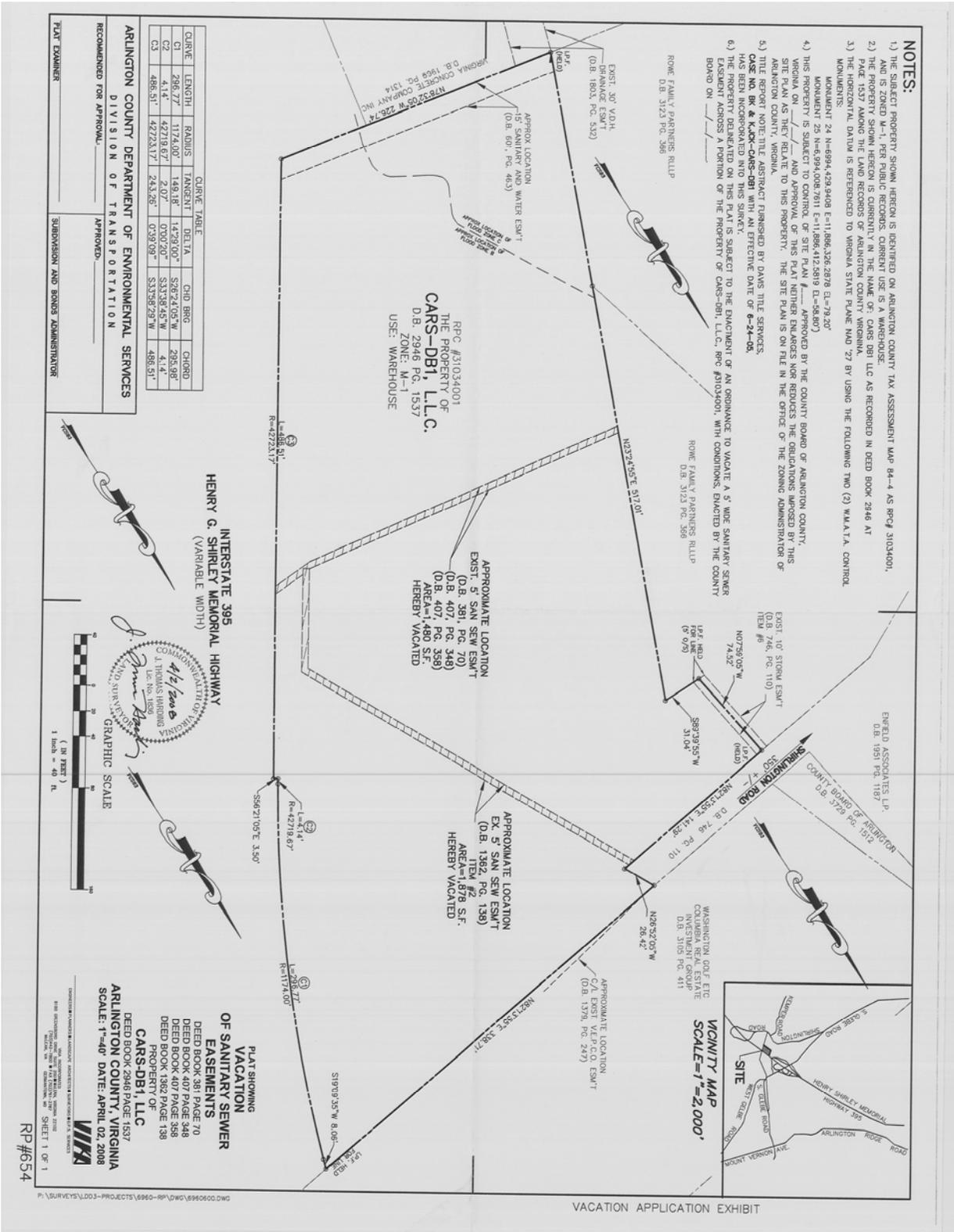
5. The Applicant shall submit to the Director of DES, or his designee, a bond, letter of credit, or other security, in an amount and in a form as determined by, and acceptable to, the County Manager or his designee, for the construction, relocation, removal, replacement or abandonment of all public utilities pursuant to the approved Plan.

6. The Applicant/Property Owner shall record all plats, the Deed of Vacation, and all deeds of easement required by this Condition among the land records of the Clerk of the Circuit Court of Arlington County.

7. 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.

8. All conditions of the Ordinance of Vacation shall be met by noon on May 17, 2011, or this Ordinance of Vacation shall become null and void, without the necessity of any further action by the County Board.

# Vacation Plat



**NOTES:**

- 1.) THE SUBJECT PROPERTY SHOWN HEREON IS IDENTIFIED ON ARLINGTON COUNTY TAX ASSESSMENT MAP 84-4 AS PG# 31034001, AND IS ZONED M-1, PER PUBLIC RECORDS. CURRENT USE IS A WAREHOUSE.
- 2.) THE PROPERTY SHOWN HEREON IS CURRENTLY IN THE NAME OF CARS DB1 LLC AS RECORDED IN DEED BOOK 2946 AT PAGE 1537.
- 3.) THE HORIZONTAL DATUM IS REFERENCED TO VIRGINIA STATE PLANE NAD 27 BY USING THE FOLLOWING TWO (2) M.A.T.I.A. CONTROL MONUMENTS:  
MONUMENT 24 N=6894,429.9408 E=11,866,326.2878 E.A.=79.20'  
MONUMENT 25 N=6994,008.7811 E=11,866,412.5819 E.A.=58.80'
- 4.) THIS PROPERTY IS SUBJECT TO CONTROL OF THE EASEMENT OF AN ORDINANCE TO VACATE A 5' WIDE SANITARY SEWER ESM'T AND APPROVAL OF THIS PLAT NEITHER ENLARGES NOR REDUCES THE OBLIGATIONS IMPOSED BY THE ARLINGTON COUNTY ORDINANCE TO THIS PROPERTY. THE SITE PLAN IS ON FILE IN THE OFFICE OF THE ZONING ADMINISTRATOR OF ARLINGTON COUNTY, VIRGINIA.
- 5.) TITLE REPORT NOTE: THE ABSTRACT FURNISHED BY DAVE TITLE SERVICES, CASE NO. BK & K-400-CARS-DB1 WITH AN EFFECTIVE DATE OF 6-24-06, HAS BEEN INCORPORATED INTO THIS SURVEY.
- 6.) THE PROPERTY DELINEATED ON THIS PLAT IS SUBJECT TO THE EASEMENT OF AN ORDINANCE TO VACATE A 5' WIDE SANITARY SEWER ESM'T ACROSS A PORTION OF THE PROPERTY OF CARS-DB1, L.L.C., RPC #31034001, WITH CONDITIONS, ENACTED BY THE COUNTY BOARD ON \_\_\_\_\_.

CURVE	LENGTH	RADIUS	TANGENT	DELTA	CHD BRG	CHORD
C1	298.27'	1174.00'	148.00'	103.00°	S87°41'05"W	283.98'
C2	41.41'	42218.67'	2.012'	170.00°	S89°35'55"W	41.41'
C3	486.51'	42223.17'	243.26'	67°39'09"	S33°59'29"W	486.51'

ARLINGTON COUNTY DEPARTMENT OF ENVIRONMENTAL SERVICES  
DIVISION OF TRANSPORTATION  
RECOMMENDED FOR APPROVAL: \_\_\_\_\_  
APPROVED: \_\_\_\_\_  
SUBVISION AND BONDS ADMINISTRATOR

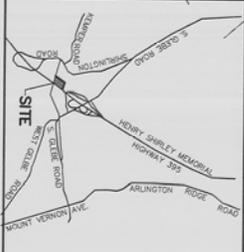
INTERSTATE 395  
HENRY G. SHIRLEY MEMORIAL HIGHWAY  
(VARIABLE WIDTH)

COMMONWEALTH OF VIRGINIA  
J. Anne Hines  
LAND SURVEYOR  
1 THOUSAND HARBINGERS  
LAW OFFICES, P.C.  
1101 S. GARDNER ST.  
ALEXANDRIA, VA 22304

GRAPHIC SCALE  
1 Inch = 40' Ft.

PLAT SHOWING  
VACATION  
OF SANITARY SEWER  
EASEMENTS  
DEED BOOK 381 PAGE 70  
DEED BOOK 407 PAGE 348  
DEED BOOK 1382 PAGE 348  
DEED BOOK 1382 PAGE 138  
PROPERTY OF  
CARS-DB1, LLC  
DEED BOOK 2946 PAGE 1537  
ARLINGTON COUNTY, VIRGINIA  
SCALE: 1"=40' DATE: APRIL 02, 2008

WVA  
WEST VIRGINIA ASSOCIATION OF SURVEYORS



RP#654

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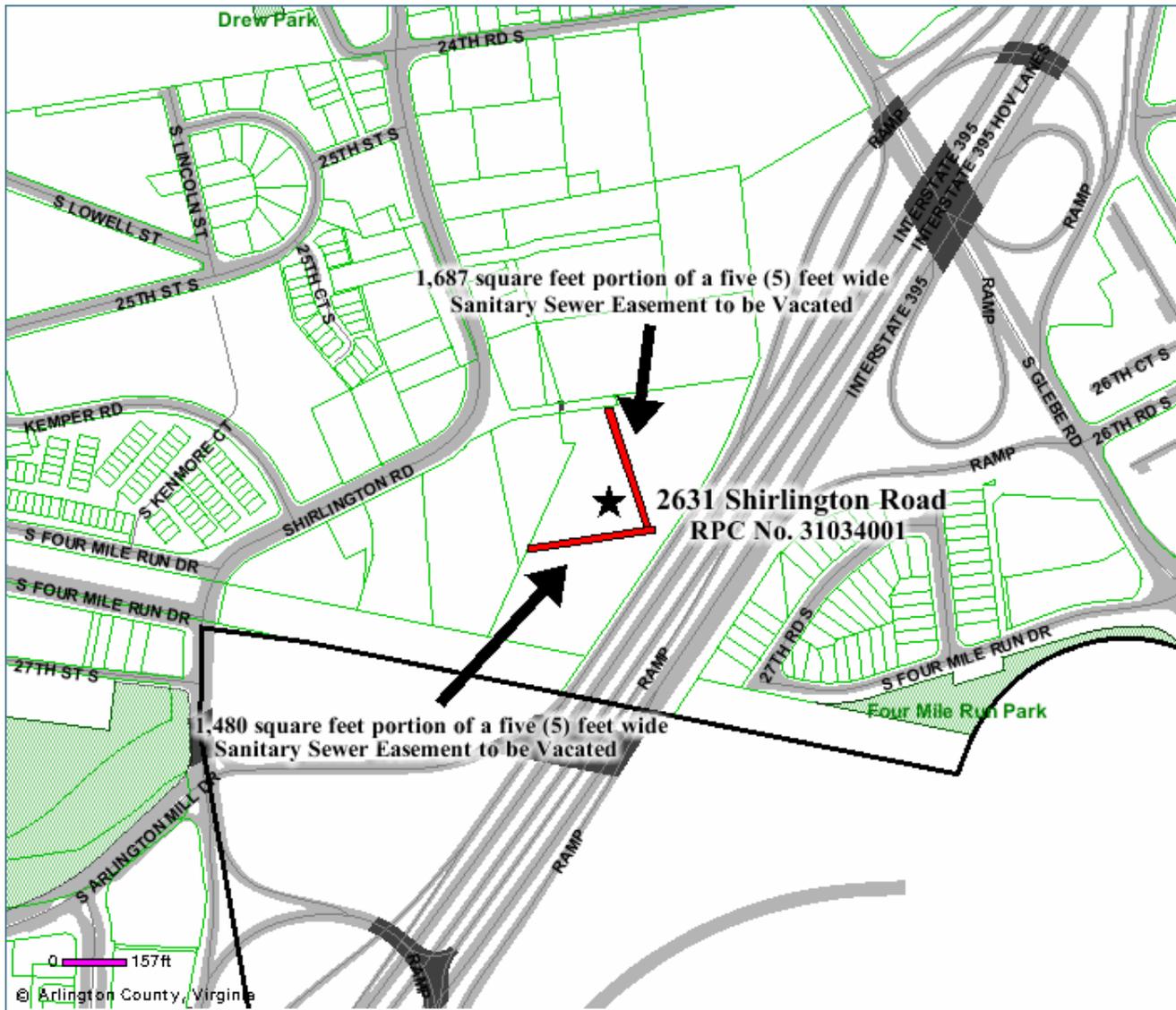
VACATION APPLICATION EXHIBIT

Proposed Conditions





VICINITY MAP



**Property of CARS-DB1, LLC  
2631 Shirlington Road  
Arlington, Virginia  
RPC No. 31014001**