



## ARLINGTON COUNTY, VIRGINIA

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

**DATE:** June 09, 2008

**SUBJECT:** Enactment of an Ordinance to Permit the Encroachment of a Portion of an Underground Electrical Transformer Vault Along the Surface and Subsurface of the Eastern Boundary of the North Garfield Street Right of Way, Beginning Approximately 7.58 Feet South of 10<sup>th</sup> Street North, Abutting Lot 1 Gateway II's Addition to Clarendon, Known as 925 North Garfield Street (RPC #18029007), with Conditions.

**Applicant/ Owner:** GWAY II, LLC

By: Benjamin T. Danforth, Esq.  
Lawson, Tarter & Charvet, P.C.  
6045 Wilson Boulevard, Suite 100  
Arlington, VA 22205

### **C.M. RECOMMENDATIONS:**

1. Enact the Attached Ordinance to Permit the Encroachment of a Portion of an Underground Electrical Transformer Vault Along the Surface and Subsurface of the Eastern Boundary of the North Garfield Street Right of Way, Beginning Approximately 7.58 Feet South of 10<sup>th</sup> Street North, Abutting Lot 1 Gateway II's Addition to Clarendon, Known as 925 North Garfield Street (RPC #18029007), 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 of such documents as to form by the County Attorney.

**ISSUE:** The Board is being requested to enact the attached Ordinance to permit encroachment of a portion of an underground electrical transformer vault into the surface and subsurface right of way of North Garfield Street ("Ordinance").

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

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

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

**SUMMARY:** The Applicant, has requested permission to construct and maintain a portion of an underground electrical transformer vault into the surface and subsurface portion of the public right of way of North Garfield Street. A portion of the proposed vault is to be built on the northwest corner of Lot 1 Gateway II's Addition to Clarendon and a portion of the proposed vault is to encroach into the surface and subsurface of the east side of North Garfield Street, 7.58 feet south of the intersection of 10<sup>th</sup> Street North and North Garfield Street (see the Vicinity Map attached hereto as Exhibit B). The vault is being constructed in furtherance of the Garfield Park conditional zoning proffer (Z-2372-89-1), as amended on June 4, 2004. Enacting the proposed Ordinance would allow the construction of portions of a privately-owned vault to exist in the surface and subsurface portions of the dedicated public right of way. If enacted, the Ordinance will continue in effect until the portion of the vault encroaching into the surface and subsurface portions of the dedication right of way is destroyed, removed, is no longer in use, or is not continuously and promptly maintained by the Applicant.

**BACKGROUND:** The proposed Ordinance has been requested in furtherance of a conditional zoning proffer agreement (Z-2372-89-1) for 2900 North 10<sup>th</sup> Street, also known as 925 North Garfield Street ("Proffer"). The Proffer was originally approved at the November 9, 1989 meeting of the County Board, and was amended at the June 4, 2004 meeting of the County Board. The Proffer calls for the development of a mixed use redevelopment with one hundred forty nine (149) dwelling units, twenty four thousand eight hundred forty two (24,842) square foot of retail/commercial and office space, and a two hundred eighty three (283) space garage, all housed in a fifty five (55) foot tall building with a two (2) level underground garage. The Applicant filed an application for encroachment of the proposed vault ("Vault") on March 24, 2008, and revised the plans associated with the application for encroachment of the Vault on May 1, 2008, to incorporate a minor revision to the dimensions of the Vault ("Application"). The dimensions of the Vault have been revised to account for a conflict with the proposed location of a storm water line which will also service the redeveloped property.

**DISCUSSION:** In conjunction with the redevelopment of Lot 1 Gateway II's Addition to Clarendon, known as 2900 North 10<sup>th</sup> Street or 925 North Garfield Street (RPC #18029007) ("Property"), the Applicant has requested the enactment of an Ordinance to permit the construction of a portion of a privately owned and privately maintained Vault into the surface and subsurface portions of the dedicated right of way of North Garfield Street. The Vault is sixty four (64) feet long, twenty (20) feet deep and is eighteen (18) feet wide. The Vault will encroach eight and a quarter (8.25) feet into the surface and subsurface portions of the right of way and the encroachment will be sixty four (64) feet long. The total surface area of the Proposed Encroachment is five hundred twenty eight (528) square feet. The Vault is to begin twenty (20) feet below the surface of the sidewalk and the Vault will extend up to the surface of the sidewalk. At the sidewalk level, a portion of the spatial area under which the vault will be located is to be finished with a Vault access panel which may be opened periodically for the maintenance of the Vault. The Vault access panel will be flush with the surrounding surface of the sidewalk and shall be constructed of a concrete material or other compliant surface treatment subject to the approval of the County Manager or his designee. The portion of the proposed Vault which is to encroach into the surface and subsurface portions of the dedicated right of way of North Garfield Street is depicted in greater detail on the attached Exhibit A, entitled "Plat Showing Encroachment of Electric Vault on North Garfield Street Arlington County, Virginia"

dated May 1, 2008, prepared by VIKA Incorporated (“Exhibit A”). Enactment of the Ordinance will permit the encroachment of the Vault into North Garfield Street as shown on Exhibit A.

**Legal and Physical Description:** The North Garfield Street right of way, subject to the proposed encroachment, was dedicated to the County Board by Deed of Dedication, recorded in Deed Book 120, Page 332, 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 June 24, 2008 and July 1, 2008 issues of the Washington Times for the July 19, 2008 County Board Meeting.

**Compensation:** Staff recommends that no compensation be required for the Vault encroachment. This recommendation is in accordance with the current County practice to not require compensation for vault encroachments that are constructed at the Applicant’s/Owner’s expense as part of new development or redevelopment.

**FISCAL IMPACT:** None.

**CONCLUSION:** It is recommended that the County Board enact the attached Ordinance (Attachment 1) permitting the encroachment of a Vault into the surface and subsurface portions of the dedicated public right of way of North Garfield Street, adjacent to the Property, with conditions.

## ATTACHMENT 1

AN ORDINANCE TO PERMIT THE ENCROACHMENT OF A PORTION OF AN UNDERGROUND ELECTRICAL TRANSFORMER VAULT ALONG THE SURFACE AND SUBSURFACE OF THE EASTERN BOUNDARY OF THE NORTH GARFIELD STREET RIGHT OF WAY, BEGINNING APPROXIMATELY 7.58 FEET SOUTH OF 10<sup>TH</sup> STREET NORTH, ABUTTING LOT 1 GATEWAY II'S ADDITION TO CLARENDON, KNOWN AS 925 NORTH GARFIELD STREET (RPC #18029007), WITH CONDITIONS.

BE IT ORDAINED by the County Board of Arlington County, Virginia, that GWAY II, LLC, a Virginia corporation, owner of Lot 1 Gateway II's Addition to Clarendon, is permitted, along with its successors in title and interest ("Owner"), to construct and maintain a portion of an underground electrical transformer vault, containing a transformer, switches, a maintenance access panel and related equipment, into the surface and subsurface portions of the public right of way of North Garfield Street dedicated to the County Board by Deed of Dedication in Deed Book 120 Page 332 in the Arlington County Land Records. The dimensions, location, elevations, depth and the characteristics of the permitted underground electrical transformer vault and the spatial area of the permitted encroachment are depicted in the attached Exhibit A, "Plat Showing Encroachment of Electric Vault on North Garfield Street Arlington County, Virginia" dated May 1, 2008, prepared by VIKA Incorporated (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 surface and subsurface portions of the dedicated public right of way is destroyed, removed, no longer in use, or is not continuously and promptly maintained by the Owner.

BE IT FURTHER ORDAINED that the vault access panel shall be located flush with the surrounding surface of the dedicated right of way above the underground vault, and shall be constructed of concrete material or other ADA compliant surface treatment, and as approved by the County Manager or his Designee. 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 surface improvements, and maintain, restore, repair, and replace all County owned facilities, 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.

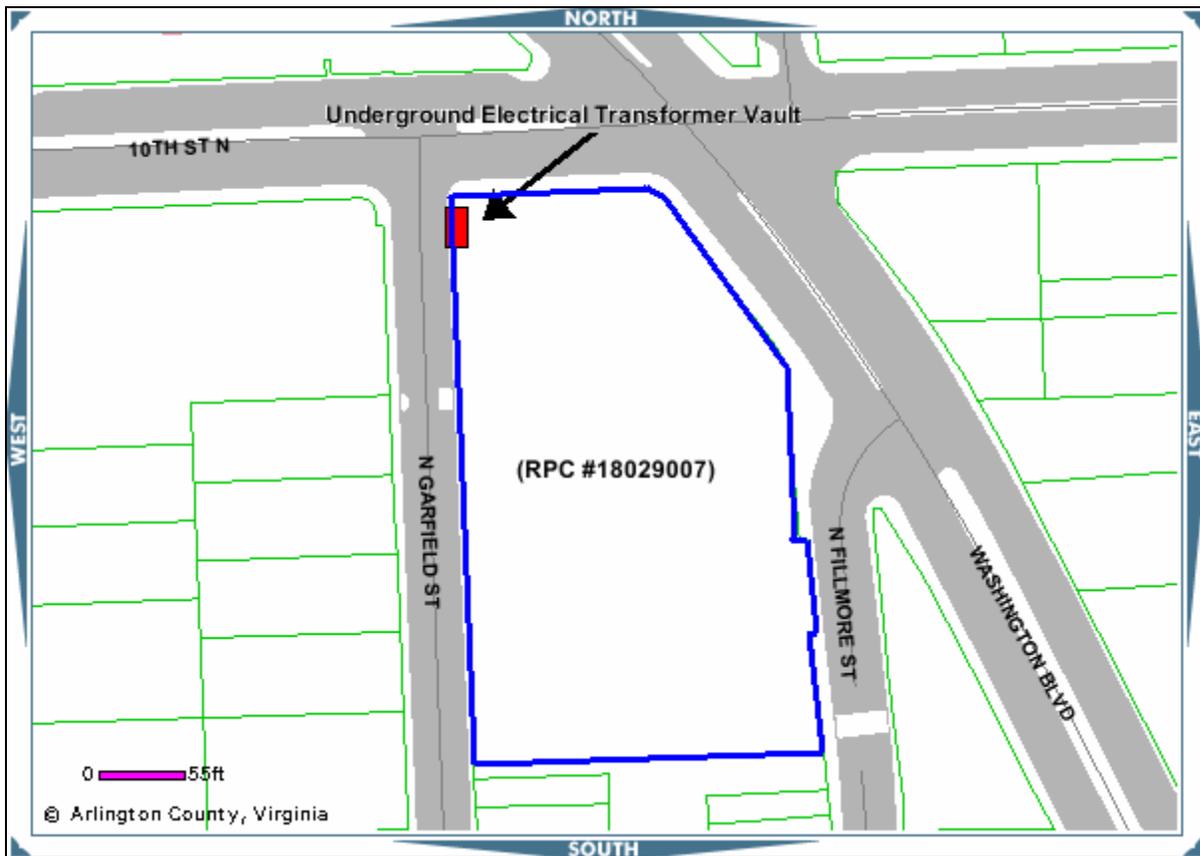
BE IT FURTHER ORDAINED that this Ordinance shall not be construed to release the Owner of negligence of their part on account of such encroachment, and the Owner, by continuing to have the underground electrical transformer vault encroach into the surface and subsurface portions of the dedicated public 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 the surface and subsurface portions of the dedicated public right of way permitted by this Ordinance.

BE IT FURTHER ORDAINED the Owner, at its sole expense, shall cause a certified copy of this Ordinance and a copy of the approved 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 the conditional zoning proffer Z-2372-89-1.

Vicinity Map  
Garfield Park  
(925 North Garfield Park)