



ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item
Meeting of November 5, 2016**

DATE: October 27, 2016

SUBJECT: U-3223-09-1 USE PERMIT AMENDMENT to revise condition #23 pertaining to the recordation of public easements and deeds of dedication to change the width of the public sidewalk and utility easement on 11th Street South from six feet to approximately five and one half feet to reflect the as-built condition (Columbia Place); located at 1100 S. Edgewood St. (RPC# 32-005-047).

Applicant/Owner:
EVG-CP, LLC

By:
Noah Klein
1775 Wiehle Avenue
Reston, VA 20190

C.M. RECOMMENDATION:

Approve the use permit amendment subject to all previously approved conditions and the amended Condition #23 of the staff report.

ISSUES: This is a request to change a condition to reduce the width of the public sidewalk and utility easement on 11th Street South from six (6) feet to approximately five and one half (5.5) feet to reflect an as-built condition per approved plans. No issues have been identified.

SUMMARY: This is a request to amend Condition #23 of the Columbia Place use permit, approved on July 11, 2009 under the Commercial Form Based Code (FBC). Condition #23 (Recordation of Deeds of Public Easements and Deeds of Dedication) specifies, among others, the exact width for a public sidewalk and utility easement required along 11th Street South. The easement was recorded in 2015, however, upon review of detailed survey plats recently submitted by the applicant to obtain their Master Certificate of Occupancy, County staff has

County Manager:

MJS/GA

County Attorney:

[Signature]

MNC

11. A.

Staff: Matt Mattauszek, DCPHD, Planning Division

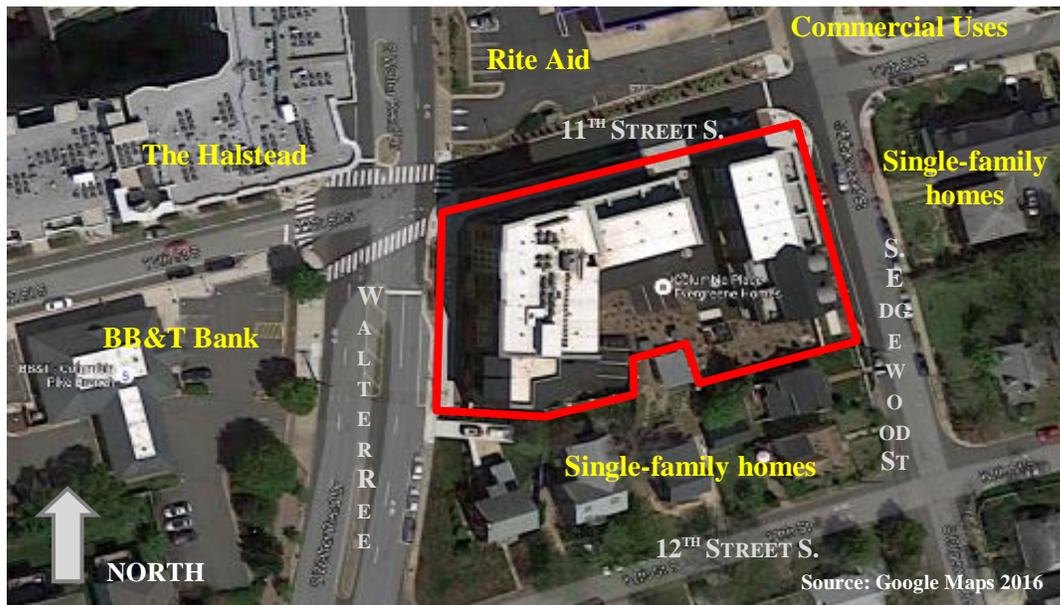
PLA-7385

determined that a portion of this easement is unnecessary and will need to be vacated in order to match the approved plans and now built northern building façade. Since Condition #23 specifies the exact width of that easement, a practice that has since been discontinued, the approved use permit will need to be revised to change the width from six (6) feet to approximately five and one half (5.5) feet. The proposed use permit amendment has no impact on the required clear sidewalk located along 11th Street South and the constructed streetscape complies with all minimum width requirements in the FBC.

Staff does not anticipate this type of conflict in the future since standard condition language for FBC use permit projects has been revised to only reference approved plans when identifying required easements and dedications and indicates that such plans may be adjusted to maintain consistency with the final engineering plans. In addition, the applicant is requesting to vacate a six-inch portion of the easement, which would accurately reflect the location of the existing building façade within the County’s Land Records. This request is the subject of a separate staff report prepared by DES Real Estate Bureau. Once both actions are taken by the County Board and all associated conditions are satisfied, the applicant will be able to obtain a Master Certificate of Occupancy for the Columbia Place project.

BACKGROUND: U-3223-09-1 was approved by the County Board in July 2009 and completed in 2016. This development includes a 14-unit condominium building with approximately 3,000 square feet of ground floor retail, and eight (8) townhouse units. The subject property, bordered by Walter Reed Drive, new segment of 11th Street South, and South Edgewood Street, is located within the Columbia Pike Special Revitalization District, and was approved under the Commercial Form Based Code (see Exhibit 1).

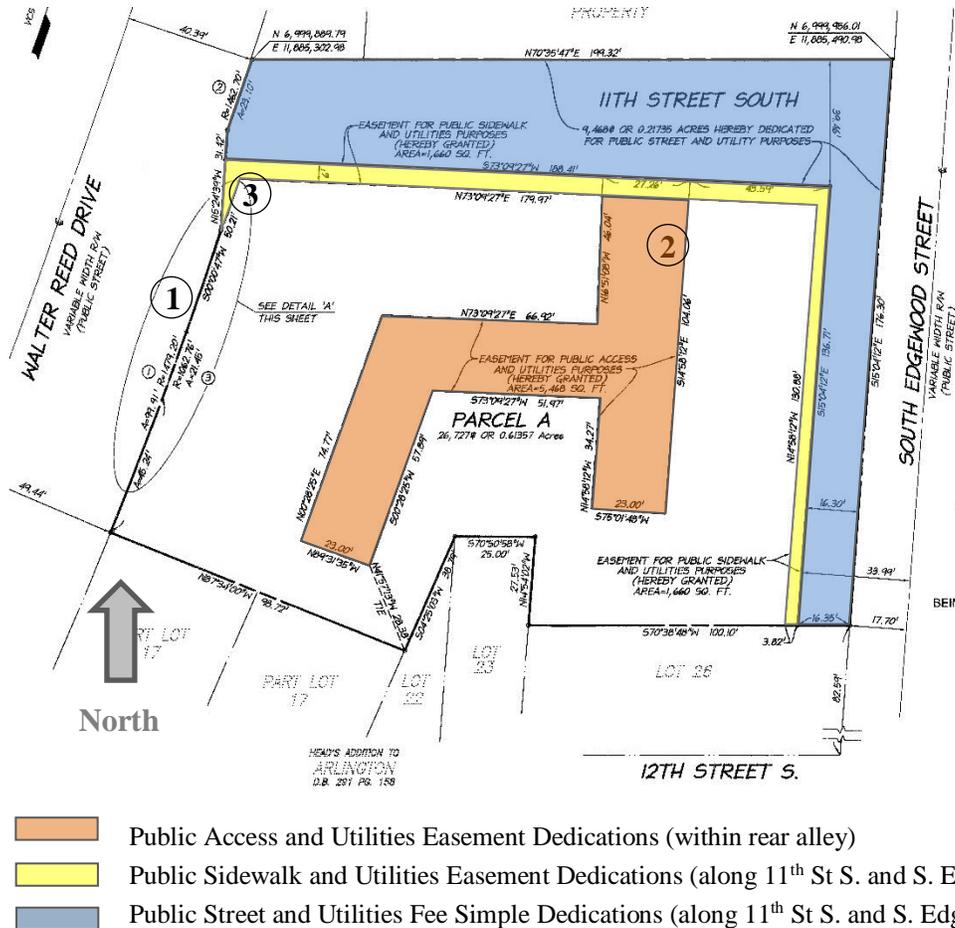
Exhibit 1: Columbia Place Context Map



 Subject Property

Previously Recorded Easement Dedications and Fee Simple Dedications: Consistent with approved plans and condition requirements for the Columbia Place use permit, on June 10, 2015, the applicant dedicated easements for public access and utilities (internal alley/parking lot) and public sidewalk and utilities, as well as dedicated public streets and utilities in fee. Exhibit 2 shows the various dedications throughout the subject property.

Exhibit 2: Approved Dedications for Columbia Place



Previously Approved Encroachments: Following the recordation of the three abovementioned dedications among the County Land Records, and as part of the subsequent construction process, County inspectors identified several areas where portions of the new buildings encroached into some of the dedicated areas, however some of these elements were anticipated by the applicant prior to construction. Specifically, this occurred in the following cases:

1. Architectural awning and roof overhangs into the County's public street and utilities dedication; located along the South Walter Reed Drive (see #1 in Exhibit 2 above);
2. Constructed balconies and window boxes overhanging from the respective townhouse units into the County's public access and utilities easement; located along the eastern edge of the internally alley/parking lot (see #2 in Exhibit 2 above); and

3. Constructed entry awning, eaves and upper floor overhangs projecting from the building into the County's public sidewalk and utilities easement; generally located along the block corner of 11th Street South and Walter Reed Drive (see #3 in Exhibit 2 above).

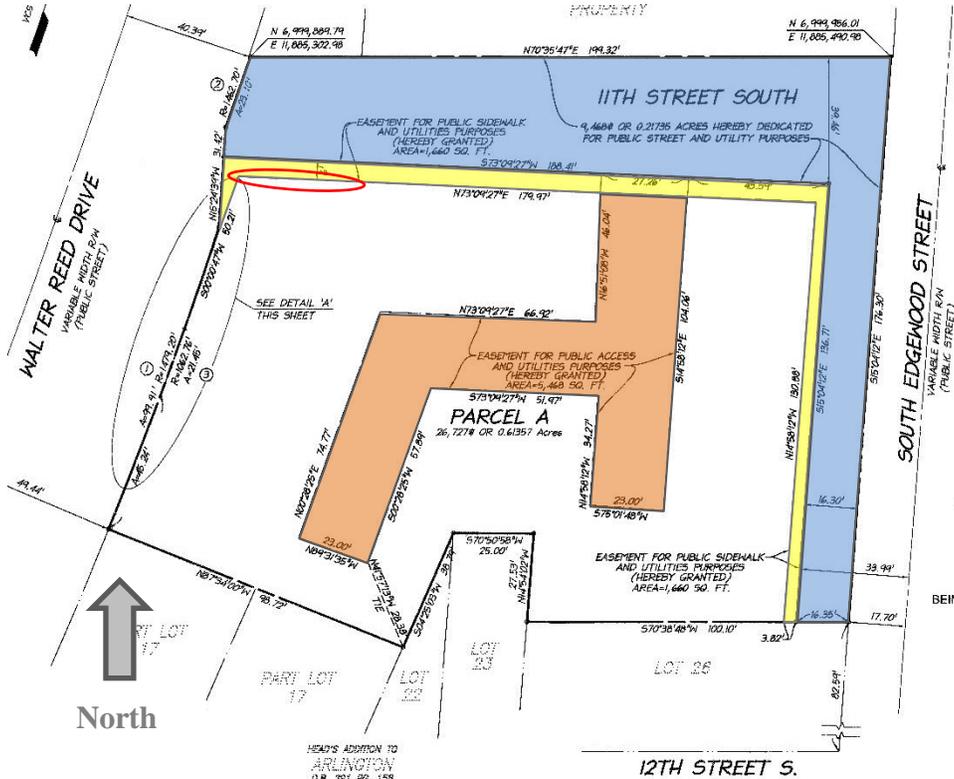
Each of the above encroachments represented approved design elements of the Columbia Place project and are consistent with the FBC Architectural Standards. In order to address those issues, the applicant requested, and the County Board approved, encroachments of the aforementioned building structures into the County dedications on May 18, 2013 and November 14, 2015.

DISCUSSION: The developer is requesting an amendment to Condition #23 of the Columbia Place project, approved in 2009 as a Form Based Code use permit. Currently, Condition #23, (Recordation of Deeds of Public Easements and Deeds of Dedication), identifies the post-approval process required for the execution of various dedications, previously agreed upon as part of this Form Based Code redevelopment. Condition #23.b.ii also describes the exact dimensions of each dedication area throughout the subject property, which fronts three separate right-of-ways, including Walter Reed Drive, 11th Street South, and South Edgewood Street.

The applicant has recorded all dedications for this project to fulfill condition requirements of the Columbia Place use permit and the County Board enacted two Ordinances to permit encroachments that were identified after those recordations took place. However, as part of a final detailed survey plat review needed to issue the Master Certificate of Occupancy, County staff has determined that a portion of the public sidewalk and utilities easement along 11th Street South is unnecessary and does not match the approved plans and built northern building façade of this project. The purpose of this easement was to allow for public access up to the building edge and to also reserve the right for the applicant to place appendages of the building protruding over the sidewalk (i.e. for canopies or awnings). As a result, County staff determined that a vacation would be the appropriate action to correct the location of the previously recorded easement (see Exhibit 3). The applicant submitted a request for a vacation which is the subject of a separate staff report prepared by DES Real Estate Bureau. Concurrent with that report, the approved use permit also needs to be amended as a result of the detailed nature of Condition #23 which specifically identified the exact width of the public sidewalk and utilities easement along 11th Street South. The subject use permit amendment would revise Condition #23 to reduce the width of the public sidewalk and utilities easement from six (6) feet to approximately five and one half (5.5) feet along 11th Street South. This change, combined with the associated vacation request, would reflect the built facade and correct the dimension of the easement dedication within the Land Records.

The proposed use permit amendment has no major impact on the 11th Street South streetscape and maintains the minimum shy zone required by the FBC (see Exhibit 3). Staff does not anticipate this type of conflict in the future since standard condition language for FBC use permit projects has been revised to only reference approved plans when identifying required easements and dedications. Additionally, the standard condition language now indicates that such plans may be adjusted, during the course of survey plat review and prior to recordation among Land Records, to maintain consistency with the final engineering plans.

Exhibit 3: Proposed Change to 11th Street South Easement



-  Area of Proposed Reduction along 11th Street South
-  Public Access and Utilities Easement Dedications (within rear alley)
-  Public Sidewalk and Utilities Easement Dedications (along 11th St S. and S. Edgewood St)
-  Public Street and Utilities Fee Simple Dedications (along 11th St S. and S. Edgewood St)

CONCLUSION: The proposed use permit amendment is consistent with the Commercial Form Based Code and resolves a known conflict between the built Columbia Place project and previously recorded public sidewalk and utility easement along 11th Street South. Therefore, staff recommends approval of the proposed use permit amendment subject to all previously approved conditions and the amended Condition #23.

Amended Condition:

23. Recordation of Deeds of Public Easements and Deeds of Dedications.

The developer agrees that all required plats, deeds of conveyance, deeds of dedication, and deeds of easement associated with, and/or required by the final approved site engineering plans, for the construction of any public street, or sidewalk, alley, public infrastructure, public utility, public facility or public improvement (jointly “Public Improvements”), shall be: a) submitted by the developer to the Department of Environmental Services for review prior to the issuance of any Excavation/Sheeting and Shoring Permit for the project that is the subject of this Use Permit; and; b) approved by the County Manager, or his designee, as to substance and the County Attorney, as to form; and c) recorded by the developer, among the land records of the Circuit Court of Arlington County, all before the issuance of the first Certificate of Occupancy for tenant occupancy of the building(s) or any portion thereof. Real estate interests conveyed by the developer to the County for public street or public right-of-way purposes shall be conveyed in fee simple, free and clear of all liens and encumbrances. Real estate interests conveyed by the developer to the County for Public Improvements or public uses, including, but not limited to, sidewalk, street trees, other streetscape planting, water mains, storm sewers, sanitary sewers, and other public utilities and facilities, which other Public Improvements are not located, or to be located, in the public street or public right-of-way may be granted to the County by deed(s) of easement, provided, however, that in the deed(s) conveying such real estate interests to the County, all liens and encumbrances shall be subordinated to the easement rights of the County

In addition to any other easements or dedications that may be otherwise required by this Use Permit, the developer, its successors in interest and title and assigns agrees to make the following conveyances and dedications, the deeds for which shall comply with the requirements of the above paragraph in this Condition #23 unless otherwise specifically provided below.

- a. To grant and convey, to the County Board, an easement for public sidewalk and utilities purposes, approximately 105 square feet in area, running the length of the western property line from the Required Building Line (“RBL”) to the western property line of the property upon which the Use Permit project is located (“Property) and as further shown on a plan entitled “Exhibit Showing Proposed Street Dedications and Easements”, dated (not provided) (“Plan”) (see Attachment 2). Such easement for public sidewalk and utilities purposes may provide a reservation unto the Developer, within the boundaries of the easement, to construct and locate above grade only building features, appendages or other protrusions within the easement area, provided, however, that such building features, appendages or other protrusions are consistent with and required by the Columbia Pike Form Based Code and the final engineering plans approved by DES. The developer, its successor in interest and title and assigns agrees, at its sole cost and expense, to perform and pay for all care, cleaning, maintenance, including snow and ice removal, repair, replacement, installation and removal of any curbs, signage, pavement marking, street trees and other landscaping, benches, trash receptacles, bicycle racks, lighting, sidewalk paving, fire hydrants,

parking meters, and other similar facilities (collectively “Facilities”) and all areas located in such public sidewalk and utilities easement. Developer agrees obtain enactment of an ordinance of encroachment as required by Condition #8 for any above grade building feature, appendages or other protrusions which are proposed to be located in the public right of way abutting and outside of the sidewalk and utilities easement area.

- b. i) To dedicate in fee simple, to the County Board, for public street and utility purposes, an area which is approximately 38 feet in width, running along the entire northern property line of the Property from the northern property boundary line of the Property to a line which is located at the edge of the required 6-foot wide clear sidewalk closest to the Required Building Line along future 11th Street South to the northern Property line and as further shown on the attached Plan. After the time of dedication in fee simple, the developer agrees to continue, at its sole cost and expense, to perform and pay for all care, cleaning, maintenance, including snow and ice removal, repair, replacement, installation and removal of any Facilities (as defined in subsection a. above) located within that portion of the dedicated area containing the sidewalk.

(ii) Notwithstanding the above subsection (i), in that area adjacent to the RBL for the mixed use building to be constructed at the corner of South Walter Reed Drive and 11th Street South and located along 11th Street South for approximately 50 feet, the developer shall grant and convey to the County Board an approximately five and one half (5.5) foot six feet wide easement for public sidewalk and utilities purposes and as further shown on the attached Plan. Such easement for public sidewalk and utilities purposes may provide a reservation unto the Developer, within the boundaries of such easement, to construct and locate above grade only building features, appendages or other protrusions within the easement area, provided, however, that such building features, appendages or other protrusions are consistent with and required by the Columbia Pike Form Based Code and the final engineering plans approved by DES. The developer, its successors in interest and title and assigns agrees, at its sole cost and expense, to perform and pay for all care, cleaning, maintenance, including snow and ice removal, repair, replacement, installation and removal of any Facilities (as defined in subsection a. above) located in the public sidewalk and utilities easement shown on the Plan and for all areas in such public sidewalk and utilities easement.

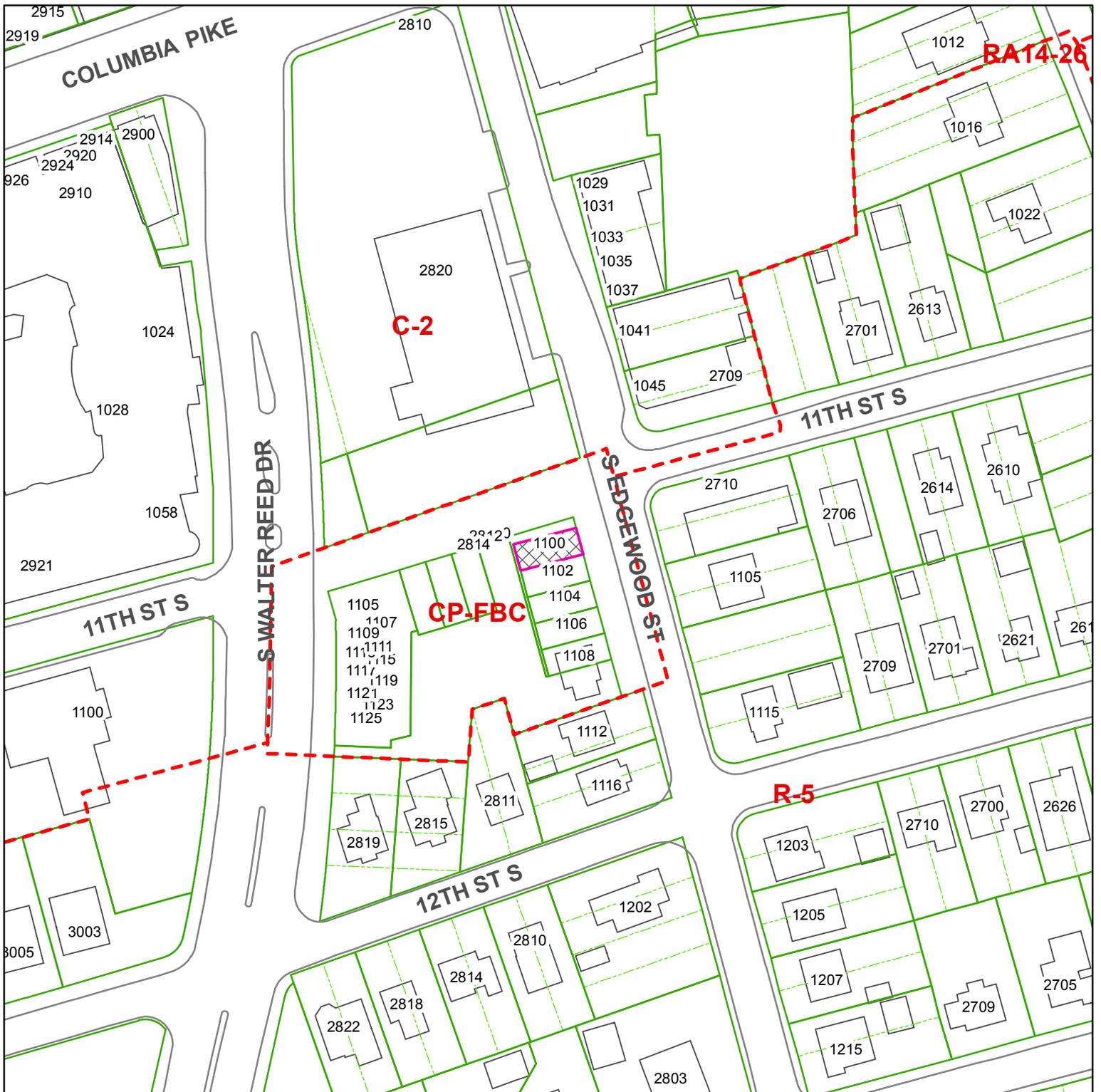
- c. To dedicate in fee simple, to the County Board, for public street and utility purposes, an area which is approximately 17 feet in width, running along the entire eastern property line of the Property from the eastern property boundary line of the Property to a line which is located at the edge of the required 6-foot wide clear sidewalk closest to the Required Building Line along future South Edgewood Street to the eastern Property line and as further shown on the attached Plan. After dedication in fee simple, the developer agrees to continue, at its sole cost and expense, to perform and pay for all care, cleaning, maintenance,

including snow and ice removal, repair, replacement, installation and removal of the Facilities (as defined in subsection a. above) located within that portion of the dedicated area containing the sidewalk.

- d. To grant and convey, to the County Board, an easement for public access and utilities purposes, approximately 5,405 square feet in area which is shown as the alley in the plans dated May 11, 2009 and as further shown on the Plan, and approximately 23 feet in width from 11th Street to the rear of all townhouse units and the mixed-use building.
 - i. The developer may construct and locate any roadbed, roadway, pavement, curbs, signage, pavement marking, street trees and other landscaping, benches, trash receptacles, bicycle racks, lighting, sidewalk paving, fire hydrants, parking meters, and other similar facilities (“Facilities”) in the area of the alley shown on the Plan.
 - ii. The developer, its successors in interest and title and assigns, agree, at its sole cost and expense, to perform and pay for the continued care, cleaning, maintenance, including snow and ice removal, repair, replacement installation and removal of the Facilities (as defined in subsection d.i. above) in the areas of the public access and utilities easement for the alley outlined herein and for the area of the alley shown on the Plan.
 - iii. In addition, the developer, its successors in interest and title and assigns, agree to indemnify and hold harmless the County Board, its elected and appointed officials, officer, employees and agents from any liability, personal 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 Facilities located in the areas of the public access and utilities easement for the alley outlined herein or for the area of the alley shown on the Plan.

PREVIOUS COUNTY BOARD ACTIONS:

1955 (No month known)	Designated as “One Family” on County Land Use Plan
August 1961	Designated as “Undetermined Uses” on the General Land Use Plan
January 1964	Designated “General Business Commercial” on the General Land Use Plan
April 1975	Designated “Low Medium” (16-30 units per acre) on the General Land Use Plan
November 15, 1986	General Land Use Plan amended to include the Columbia Pike Special Revitalization District. Designated as “Service Commercial”
December 17, 2002	Columbia Pike Special Revitalization District boundaries amended on the General Land Use Plan
February 25, 2003	Columbia Pike Form Based Code (Article 11.1) of the Zoning Ordinance) adopted
February 10, 2004	Columbia Pike Street Space Plan adopted and Form Based Code amended to include new Required Buildings Lines
July 11, 2009	Approved U-3223-09-1 for a Commercial Form Based Code Use Permit containing 14 condominium units, approximately 3,000 square feet of retail, eight townhouse units, and rear surface parking lot
May 18, 2013	Enacted Ordinance to permit encroachment into South Walter Reed Drive right-of-way of portions of above-grade architectural awning and roof overhangs.
November 14, 2015	Enacted Ordinances to permit the encroachment of portions of balcony and box window overhangs within an easement for public access and utilities purposes and portions of entry awning, eave, and upper building overhangs within an easement for public sidewalk and utilities purposes.



U-3223-09-1

1100 S. Edgewood St.

RPC # 32-005-025



 Case Location(s)
Scale: 1:1,200

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

Department of Community Planning, Housing and Development

County Use Only
Date Placard Posted _____
By _____
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