



## ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item  
Meeting of July 9, 2011**

**DATE:** July 5, 2011

**SUBJECT:** U-3224-09-1 USE PERMIT AMENDMENT Ethiopian Community Development Council, Inc., for modification of Form Based Code Streetscape standards and Condition #19 regarding undergrounding of aerial utilities; located at 1036, 1100 and 1106 S. Highland Street (RPC#'s 32-007-167, -168 and -022).

**Applicant:**

Tsehaye Teferra, Ph.D.  
Ethiopian Community Development Council, Inc.  
901 S. Highland Street  
Arlington, Virginia 22204

**By:**

Gene Edgecombe, Principle  
VMS, LLC Developers

**C.M. RECOMMENDATION:**

Approve the use permit amendment for the modification of Form Based Code Streetscape standards and Condition #19 regarding undergrounding of aerial utilities, subject to the modified Condition #19 and the new Condition #45 of the staff report.

**ISSUES:** The developer is requesting a modification of Form Based Code Streetscape standards and to Condition #19 regarding undergrounding of existing aerial utilities at the site, and no issues have been identified.

**SUMMARY:** The developer is proposing a modification to Condition #19, which requires undergrounding of aerial utilities and removal of utility poles on site and along the periphery of the site. The proposal would also require a modification to the Form Based Code Streetscape

County Manager: *BMD/GA*

County Attorney: *[Signature]*

Staff: Matthew Pfeiffer, DCPHD, Planning Division  
Maureen Markham, DCPHD, Housing Division  
Dolores Kinney, DES, Transportation Division  
Abe Bibizadeh, DES, Engineering Program Coordinator

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standards, which include undergrounding of aerial utilities. This request was deferred one (1) month from the June, 11, 2011 County Board meeting to allow the developer additional time to work with staff and the community on a solution. The developer is requesting relief from the approved condition as compliance would require the developer to obtain agreements from eight (8) single-family homeowners to allow undergrounding of utilities to connections within the dwellings; and the securing of an easement from two (2) single-family homeowners for undergrounding of aerial lines across the respective properties (see attached exhibit depicting proposed dry utility scope of work). The developer has met with the surrounding property owners and has proposed a plan whereby if individual owners secured contracts for undergrounding utilities to their homes, the developer would pay an amount for the work within a specified time period. This would ensure that the developer is not liable for undergrounding to each residence, in the event that any of the property owners decline to have their services undergrounded (which would make the developer unable to meet the terms of Condition #19 as currently written). The developer has agreed to escrow funds in the amount of \$32,000 (\$10,000 for two (2) homes on S. Highland Street and \$2,000 for six (6) homes on 12<sup>th</sup> Street S.) to draw upon for payment for undergrounding services to the eight (8) residences. As this plan would allow each of the eight (8) affected property owners to choose whether services are undergrounded to their homes, it would potentially result in the addition of two (2) new aerial utility poles on private property on the east side of S. Highland Street, and the retention of two (2) existing poles along the site's rear property line, assuming a scenario where no property owner chooses to underground (see detailed explanation in Discussion section of this report). In addition, the developer is proposing to install one (1) new aerial utility pole on the south-western corner of their property to connect to utilities on the adjacent Brown's Automotive site, because there is a sanitary sewer line preventing undergrounding into this site. Staff supports the developer's proposal for relief from undergrounding requirements because of the site's location in proximity to a large number of single-family residences and the unique burden that places on the developer with respect to undergrounding. The developer has agreed to commit to provide affordable housing with this project in lieu of undergrounding in compliance with Condition #19. There was no requirement for the provision of affordable housing when the use permit was approved because affordable housing is not a requirement of the Form Based Code. However, the developer has discussed with County Housing staff ensuring that 10% of the project's units would be sold at 80% Area Median Income (AMI). The developer has sent a letter to the County outlining their commitments with respect to affordable housing (see attached), and had also agreed to a new Condition #45 affirming these commitments. Therefore, staff recommends approval of the developer's proposal for a modification to Form Based Code Streetscape standards and of Condition #19 regarding undergrounding of aerial utilities, subject to the modified Condition #19 and the new Condition #45 of the staff report.

**BACKGROUND:** The developer requests a modification to the Form Based Code Streetscape standards and Condition #19 of the use permit for the Axumite Village project. The County Board approved this use permit on July 11, 2009 along with a concurrent rezoning, which rezoned the property to "CP-FBC," Columbia Pike Form Based Code District. The project consists of 36 condominium units, and the County Board approved the use permit with modifications for alley location, streetscape details, and sign regulations. The site is located at 1036, 1100, and 1106 S. Highland Street, and is described as follows:

Site: The site is bound on the north by single-family residences, commercial uses, and Columbia Pike, on the east S. Highland Street, on the west by the Brown's Used Car Super Center site, and on the south single-family residences and 12<sup>th</sup> Street S.

Zoning: The site is zoned "CP-FBC" Columbia Pike Form Based Code Districts.

Land Use: The site is designated on the General Land Use Plan (GLUP) as "Low Residential" 1-10 units/acre. The site is located within the Columbia Pike Special Revitalization District.

Neighborhood: The site is located within the Douglas Park Civic Association. A meeting between the developer, County DES and CPHD staff, and the ten (10) affected surrounding property owners was held at the developer's offices on June 16, 2011. Eight (8) of the subject property owners attended the meeting. The developer explained the background of the requirements of Condition #19 and that they would not be able to comply should any of the surrounding property owners decline to underground their services (or grant an easement, as in the case of 3017 and 3013 12<sup>th</sup> Street S). The developer also explained that, should the property owners decide to underground their services, the developer would pay them a certain amount within a specified time period (specific details of the payment scheme, including a maximum dollar amount, were not discussed at the meeting). The attendants of the meeting were generally receptive to the developer's plan regarding undergrounding, and made clear that they understood the issues and the options presented to them.

**DISCUSSION:** The developer is proposing a modification to Form Based Code Streetscape standards and a modification to Condition #19 regarding the undergrounding of aerial utilities and removal of aerial utility poles along the site and the periphery of the site. There are eight (8) single-family properties located on the periphery of the site, and undergrounding the utilities and removing the aerial utility poles along this lot line would require consent from each of the single-family property owners. In addition, due to the age of these homes undergrounding may require rewiring home electrical connections in some or all of the homes. The developer indicates that if even one (1) of the subject single-family homeowners objects to undergrounding, including possibly rewiring home electrical connections, the developer would not be able to comply with Condition #19.

The developer's proposal includes the undergrounding of utilities and removal of utility poles along S. Highland Street at the property's frontage to the nearest clean pole at the corner of S. Highland Street and 12<sup>th</sup> Street S. The proposal would leave two (2) existing poles along the rear lot line of the site in order to serve the six (6) adjacent single-family homes. These poles would be able to be "topped" from 40-ft. in height to 30-ft. in height, and services prepared for undergrounding into the adjacent homes. If all adjacent properties agree to underground (via the developer's payment scheme described below), then these two (2) poles would be removed. The developer would underground service across the street from two existing poles located on the site's frontage on South Highland Street to the east side of South Highland Street. The developer would prepare service to be undergrounded into the two (2) homes located at 1103 and 1107 South Highland Street, should the property owners choose to underground. In the event that one (1) or both of the owners of these properties decline to underground services, a new lift pole would be installed on private property in order to ensure service to the subject residences. The

developer would also underground to the first clean pole (serving 3017 and 3013 12<sup>th</sup> Street South) on the east side of South Highland Street. This work would require the developer to secure easements from these two (2) property owners for undergrounding across their property. If one (1) or both of these property owners objected to providing an easement, then the developer would install a new lift pole on private property in order to ensure service to the subject residences. These two (2) property owners (3017 and 3013 12<sup>th</sup> Street South) are not eligible for payment under the developer's proposed scheme, as undergrounding into these residences was not required by Condition #19. In addition, the developer would add one (1) "terminal" utility pole at the site's extreme south-west corner which would serve to underground aerial lines from the adjacent Brown's Automotive site to the west. The developer has submitted that undergrounding the line into the Brown's Automotive site is not possible due to an existing sanitary line (see attached exhibit). Staff supports the addition of this pole in this location, as it would not impact 12<sup>th</sup> Street South, and could be removed in the event that the adjacent Brown's Automotive site redevelops through the Form Based Code.

The developer has agreed to new condition language or contributing funds to the eight (8) affected property owners should they decide to underground their utility service. Under this scheme, the property owners would be responsible for securing contracts for undergrounding their services. This would allow the developer to be released from any liability associated with connecting utility service to the subject homes. The property owners would be able to submit the contracts to the developer within six (6) months of the issuance of the Clearing, Grading, and Demolition permit for the project, and be receive payment by the developer up to a maximum amount of \$2,000 per home for the six (6) homes located on 12<sup>th</sup> Street S., and \$10,000 per home for the two (2) homes along S. Highland Street. In order to assure payment, the developer has agreed to escrow funds in the amount of \$32,000 ( $\$2,000 \times 6 + \$10,000 \times 2$ ) which would be used for payment to property owners for undergrounding should they choose to take advantage of the offer. Should property owners fail to respond to the developer within six (6) months of notice that they have executed contracts for their utilities to be undergrounded, the developer would have no further obligation for undergrounding and the funds reserved in escrow would be returned to the developer. The developer has agreed that all undergrounding work associated with the site and its periphery are to be completed prior to the issuance of the first Certificate of Occupancy for the first unit of the project.

The developer has agreed to provide a higher maximum amount for payment for undergrounding to the two (2) homes located on S. Highland Street because of the possibility that new aerial utility poles would be installed to retain utility service to the subject homes should the owners not agree to underground their services. In contrast, should the owners of the subject properties located along 12<sup>th</sup> Street S. decide not to pursue undergrounding, no new aerial poles would be installed. As such, the developer's provision of \$10,000 would cover the majority of the cost of undergrounding, acting to incent the S. Highland Street owners to underground. While \$2,000 would likely not cover the entire cost of undergrounding to the 12<sup>th</sup> Street S. homes, it would still provide some measure of incentive for the owners to pursue undergrounding. Staff is in support of the applicant's request for relief from undergrounding requirements because of the project's proximity to single-family residences and the burdens of undergrounding to such residences. The proposed solution would release the developer from liability associated with undergrounding to single-family homes while still providing incentive to accomplish the County's undergrounding

goals.

As part of the discussions with the staff regarding relief from utility undergrounding requirements, the developer has agreed to commit to provide affordable housing for this project. Ethiopian Community Development Council (ECDC) is a nonprofit developer and has been in discussions with County Housing staff since 2009 regarding the provision of affordable housing through the County's Moderate Income Purchase Assistance Program (MIPAP). Affordable housing was not required as part of the approved use permit, however the developer has agreed to a new condition which would require 10% of the units (4 units) to be sold at prices affordable to three (3)-person households at 80% AMI. The developer has also provided a letter to the County outlining their commitments to providing affordable housing for this project (see attached).

**CONCLUSION:** The developer is requesting relief from Condition #19 as it requires the developer to underground aerial utility service to eight (8) single-family homes located on the periphery of the site. Failure to secure an agreement for undergrounding to even one (1) of the subject homes would result in the developer not being able to fulfill the requirements of Condition #19. As such, the developer is proposing a modified Condition #19 whereby affected homeowners would contract utility undergrounding to their homes on an individual basis and the developer would provide some funds towards the cost of undergrounding. The developer has agreed to place \$32,000 in escrow towards this purpose. In lieu of providing full undergrounding for this project, the developer has agreed to commit to provide affordable housing.. The developer has agreed to a new condition requiring it to sell 10% of units to buyers at 80% AMI. Staff supports the developer's proposal because it releases the developer from the burdens of undergrounding to eight (8) separate single-family homes while providing incentives for undergrounding to be accomplished, and it provides four (4) committed affordable housing units along the Columbia Pike Corridor. Therefore, staff recommends approval of the developer's proposal for a modification to Form Based Code Streetscape standards and of Condition #19 regarding undergrounding of aerial utilities, subject to the modified Condition #19 and a new Condition #45 of the staff report.

Modified Condition #19:

**Underground Existing Aerial Utilities**

19. The developer agrees to remove and/or place underground all existing aerial utilities ~~within or~~ along South Highland Street on the eastern periphery of the entire Use Permit site plan site, as shown on the final site development and landscape plan and the final engineering plan approved by the County Manager and the plan entitled Axumite/Condition #19 exhibit, prepared by Utility Professional Services, Inc., dated May 12, 2011, and on the final engineering plan approved by the County Manager, with the following exception:

- A. Up to two existing poles along the rear of the southern property line of the site, labeled UE39/253H and PNT/253G on the exhibit specified above, may be retained if any of the Owners of properties adjacent to the site and fronting 12<sup>th</sup> Street South that are served by these poles do not have service to their properties placed underground per subsection (iv)1 below.

Any utility improvements necessary to provide adequate utility services to this development or utility work necessary to provide a terminus to the underground facilities shall be paid for by the developer and shall not result in the installation of any additional utility poles or aerial devices, with the exception of the following:

- a. One new terminal pole at the southwest corner of the site, labeled TPXX1, as shown on the plan titled Axumite/Condition #19 exhibit.
  - b. One new service pole on private property on the east side of South Highland Street to serve 1103 and/or 1107 South Highland Street if the Owner of either property does not have service to their property placed underground per subsection (iv)1 below.
  - c. One new service pole on private property on the east side of South Highland Street to serve 3017 and 3013 12<sup>th</sup> Street South if the Owner of either property does not provide an easement for undergrounding to the nearest available existing pole east of South Highland Street.
- B. Relative to utility undergrounding associated with the single family homes at 3101, 3105, 3109, 3113, 3117 and 3121 12<sup>th</sup> Street S. and 1103 and 1107 S. Highland Street ("Single Family Homes"):
- (i) The developer agrees to place in escrow \$32,000 ("Escrow Fund") prior to the issuance of the Clearing, Grading, and Demolition Permit to be used as a contribution toward the actual incurred cost of undergrounding of utilities by others, as follows:
    - (a) A maximum of \$10,000 per home for the 2 homes addressed on S. Highland Street.
    - (b) A maximum of \$2,000 per home for the 6 homes addressed on 12<sup>th</sup> Street South. In the event that, prior to posting the Escrow Fund an Owner receives a contract from the utility company and consultants for the utility work and that contract amount is less than the amount allocated above for their home, then the amount required to be posted in the Escrow Fund attributable to that home may be reduced accordingly.
  - (ii) Prior to the issuance of the Clearing, Grading and Demolition Permit, the developer shall provide the County with documentation that certified letters have been mailed by the developer to each of the record Owners of the Single Family Homes requesting the Owners to confirm in writing with the developer within six (6) months of receipt of the letter whether they choose to pursue or not to pursue utility undergrounding to their Single Family Homes.

Should an Owner not respond in writing within said six (6) months or chooses not to pursue undergrounding, that will serve to confirm that they elect not to underground, and the developer shall have no further obligation as to that Single Family Homes. The language in the certified letters shall be reviewed and approved by DES staff prior to being sent to the Owners.

(iii) Within six (6) months of an Owner indicating in writing that they choose to pursue utility undergrounding to their home, the Owner shall provide the developer with a fully executed contract to complete the undergrounding as described herein to their home. The developer shall disperse funds from the Escrow Fund (defined above) to the Owner, as required by their contract (i.e., deposits, final payments) but in no event to exceed the maximum dollar amounts set forth in this condition. The Owner shall be responsible for providing the developer with the receipt certifying completion of the utility work within four (4) months from execution of the contract. In the event that an Owner does not enter a contract to do the work or complete the work in a timely fashion as stipulated herein, then the developer shall be under no further obligation to disperse funds to that Owner.

(iv) The scope of the work to be contracted for by the Owners shall include the following:

1. This work by others will include conversion of all existing aerial services from overhead to underground at each of the affected homes. These existing utility services are typically power, phone, and cable lines which will be buried underground. This may require boring across these properties with placement of possible conduits to protect the cable. The homes' meter bases may also need to be changed from overhead type to underground type. In some cases, it may require some internal upgrades as determined by a certified electrician.

2. As to scope of work for the 12<sup>th</sup> Street South addressed homes only, funding for the interior work within a home shall be limited to work up to and including replacement of the circuit breaker box, if necessary.

Further, if the Owner contracts for work that is outside the scope described herein, or exceeds the maximum Escrow Fund contribution stipulated herein for their home, the funding for the work outside the scope or exceeding the allocated amount in the Escrow Fund shall be the responsibility of the Owner and not the developer.

The developer agrees to also contact the Development Services Bureau Chief, Transportation Division, of the Department of Environmental Services in Arlington County not less than two (2) months prior to its planned commencement of utility undergrounding ~~for each phase of the project~~ to offer the County, at no cost to the County, access to the locations where the developer plans to excavate trenches or similar areas to install underground utilities so the County may install its fiber optic cable and/or conduit in those places concurrently with the developer's utility installation. Such access, and the terms and conditions under which access to the site will be provided and the undergrounding activities of the County and the developer will be coordinated, shall be set forth in an agreement approved by the County Manager and the County Attorney. All utility relocation shall be completed prior to the issuance of the Certificate of Occupancy for the first unit. ~~Shell and Core Certificate of Occupancy~~. The developer agrees that this condition does, and shall not be construed to grant, to the developer, any rights or permissions for the developer to install utilities and related facilities underground within any land in which the County has a property interest, unless the developer first obtains from the County all approvals and permissions which authorize such installation(s).

New Condition #45:

**Affordable Housing Plan**

45. The applicant agrees that 10% of the units will be sold at prices affordable to 3-person households with incomes at or below 80% of the Area Median Income (AMI) as determined and annually published by the U.S. Department of Housing and Urban Development (HUD). Not less than five (5) business days prior to closing on the sale of any of the units, the applicant agrees to send to the County Manager a copy of the sales agreement for the unit and other evidence of the sales price for the unit.



PREVIOUS COUNTY BOARD ACTIONS:

July 11, 2009

Approved Z-2546-09-1 and U-3224-09-1 rezoning of property 1036, 1100, and 1106 S. Highland Street to Columbia Pike Form Based Code District and use permit for Axumite Village; 36 condominium units with appropriate modifications for the alley location, streetscape details, and sign regulations

June 11, 2011

Approved amendment to U-3224-09-1 for Condition #44 regarding emergency vehicle access; deferred modification to FBC Streetscape standards and to Condition #19 regarding utility undergrounding to the July 9, 2011 CB meeting.



Barbara Donnellan  
County Manager  
Arlington, VA

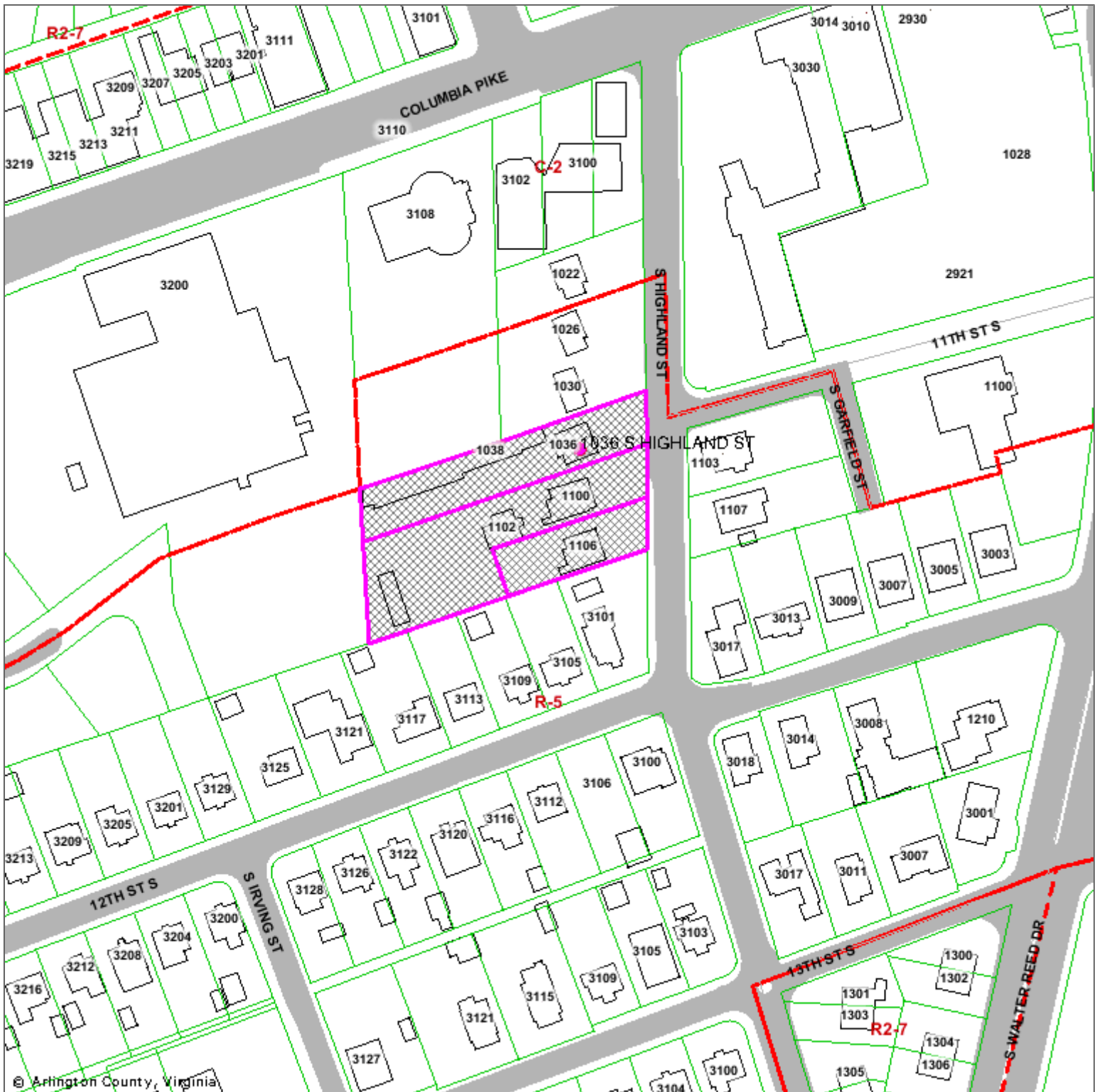
Ms. Donnellan,

Thank you for a very productive meeting in the interest in lending your assistance to help mitigate some of the cost impact associated with the Condition #19 burial of electric lines on ECDC's Axumite project. As you are aware, staff has offered further modifications to the Condition language which we have accepted.

Further, it has always been the intention of ECDC to set price points so that many of the units in the Axumite Village project will be affordable to low and moderate income families. Therefore, at this time ECDC commits that at least 10% of the units or 4 units will be sold at prices affordable to 3 person households with incomes at or below 80% of the Area Median Income (AMI) as determined and annually published by the US Department of Housing and Urban Development (HUD). We are also in discussion with County Housing staff regarding the County's Moderate Income Purchase Assistance Program (MIPAP) to make 10 additional units affordable to households from 60% to 80% of AMI.

Again, thank you and your staff for the good work in bringing us closer to a resolve in this matter, and being a part of furthering the objectives of this worthy project.

Tsehay Teferra, PhD  
ECDC



**U-3224-09-1**  
**1036, 1100, and 1106 S. Highland Street**  
**RPC # 32-007-022, -167, and -168**

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



Not To Scale

