

# CITY OF CHARLOTTESVILLE, VIRGINIA CITY COUNCIL AGENDA



<b>Agenda Date:</b>	June 5, 2017
<b>Actions Required:</b>	Yes (First of two readings)
<b>Staff Presenter:</b>	Craig Brown, City Attorney
<b>Staff Contacts:</b>	Craig Brown, City Attorney
<b>Re:</b>	Cemetery Access easement at Buford Middle School

## **Background:**

Nancy O'Brien of 501 9<sup>th</sup> Street is requesting a permanent easement through the Buford Middle School property that is located adjacent to her home. The purpose of the easement will be to allow access through the Buford site to the Fife family cemetery, which is located at the rear of Ms. O'Brien's property. If approved the easement would only be available for use after Ms. O'Brien no longer owns 501 9<sup>th</sup> Street.

## **Discussion:**

The proposed easement is a 40-foot nonexclusive easement that would allow visitors to the cemetery to have access from Cherry Avenue. While the City of Charlottesville holds legal title to the Buford Middle School property, its use as school property means that the City School Board has ultimate control over whether the easement is granted.

The six terms and conditions for use of the easement listed on pages 1 and 2 of the Deed of Easement were negotiated between Ms. O'Brien and the City School administration. They are designed to allow access to the family cemetery while minimizing any impact on school operations. This Deed of Easement was approved by the Charlottesville City School Board at their regular meeting on May 4, 2017.

## **Community Engagement:**

There has been no prior community engagement, but there is an advertised public hearing scheduled before City Council on the granting of the easement.

## **Budget Impact:**

The granting of the easement will have no impact on the City budget.

**Recommendation:**

Staff recommends adoption of the attached ordinance.

**Alternatives:**

City Council can decline to approve the easement, or propose different terms and conditions. If the proposed terms of the easement are changed it will need to be considered again by the City School Board.

**Attachments:**

Proposed Ordinance

AN ORDINANCE  
APPROVING A DEED OF EASEMENT FROM THE CITY OF CHARLOTTESVILLE,  
VIRGINIA AND THE SCHOOL BOARD OF THE CITY OF CHARLOTTESVILLE,  
VIRGINIA, AS GRANTORS, AND NANCY K. O'BRIEN AND EXPEDITION TRUST  
COMPANY, AS CO-TRUSTEES OF THE FRANCIS HARRISON FIFE RESIDENCE TRUST,  
AS GRANTEES, ACROSS THE BUFORD MIDDLE SCHOOL PROPERTY  
AT 1000 CHERRY AVENUE.

BE IT ORDAINED by the Council for the City of Charlottesville, Virginia that the attached Deed of Easement between the City of Charlottesville, Virginia and the School Board of the City of Charlottesville, Virginia, as Grantors, and Nancy K. O'Brien and Expedition Trust Company, as Co-Trustees of the Francis Harrison Fife Residence Trust, as Grantees, is hereby approved. The Mayor is authorized to execute the Deed and any other documents necessary to consummate the transaction on behalf of the City, in form approved by the City Attorney.

Prepared by: S. Craig Brown (VSB #19286)  
City Attorney's Office, 605 East Main Street  
Charlottesville, VA 22902  
Tax Map Reference: 230192000 (1000 Cherry Avenue)

**This deed is exempt from state recordation tax imposed under Va. Code Sec. 58.1-802,  
pursuant to Va. Code Sec. 58.1-811(C)(4)**

THIS DEED OF EASEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between **THE SCHOOL BOARD OF THE CITY OF CHARLOTTESVILLE, VIRGINIA**, whose address is 1562 Dairy Road, Charlottesville, Virginia 22903, and the **CITY OF CHARLOTTESVILLE, VIRGINIA**, whose address is 605 East Main Street, Charlottesville, Virginia 22902, together referenced as "Grantors" herein, and **NANCY K. O'BRIEN and EXPEDITION TRUST COMPANY, CO-TRUSTEES OF THE FRANCIS HARRISON FIFE RESIDENCE TRUST** and their successors and assigns, the "Grantee" herein, whose address is 310 4<sup>th</sup> Street, NE, Suite 102, Charlottesville, Virginia 22902.

WITNESSETH:

That for and in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other good and valuable consideration, the receipt of all of which is hereby acknowledged by the Grantors, the Grantors do hereby GRANT and CONVEY unto Grantee, its successors and assigns, the following described permanent cemetery access easement, to-wit:

A nonexclusive perpetual easement of right-of-way forty feet (40') in width, as shown by crosshatching and designated as "New 40' Cemetery Access Easement" on the plat of Commonwealth Land Surveying, LLC, entitled "Physical Survey and New Cemetery Access Easement TMP 30-169 Francis Harrison Fife Trust", dated August 14, 2015, attached hereto. The aforesaid easement crosses property identified on City Real Property Tax Map 23 as Parcel 192, and commonly known as Buford Middle School, 1000 Cherry Avenue, Charlottesville, Virginia.

The permanent cemetery access easement is conveyed to the Grantee by the Grantors subject to the following conditions:

- (1) The easement shall only be for the purposes of ingress to and egress from the family cemetery located on the lands of the Grantee and labeled "Fife Family Cemetery" on the attached plat.

- (2) Grantee's use of the easement shall be limited to future burials in and family visitations to said family cemetery. Burials within the family cemetery shall be scheduled in advance with the Buford Middle School administration office, or if unavailable due to a school holiday or vacation period, then with the central school administration office of the City of Charlottesville (as applicable, the "School Office"). Any visitations to the family cemetery which occur while school is in session shall only be made following prior written notification to the School Office.
- (3) The access easement described herein will not be used by the Grantee until such time as Grantee no longer owns the property currently identified on City Real Property Tax Map 30 as Parcel 169, and commonly known as 501 9th Street, S.W., Charlottesville, VA.
- (4) The easement granted herein shall terminate if and when the existing traffic circulation pattern of the Buford Middle School campus is changed so that the primary entrance to the school is from 9th Street, S.W., rather than from Cherry Avenue; provided, however, that the easement will terminate only if Grantors grant to the Grantee a replacement permanent cemetery access easement between the 9th Street entrance and the family cemetery, under the same terms and conditions as provided herein.
- (5) Grantee shall install and maintain, at its own expense, a gate with a lock in the existing chain link fence that separates the Buford Middle School property and the family cemetery, to allow direct access from the easement to the cemetery. Grantee shall provide the School Office with a key to the lock upon request.
- (6) The Grantee agrees to hold the Grantors harmless from any liability, responsibility, or damages caused by reason of the use of the access easement by the Grantee, its successors or assigns.

This Deed of Easement shall be binding upon and inure to the benefit of the Grantors and Grantee and their successors and assigns, and shall be subject to all covenants, conditions, restrictions, and other easements of record insofar as they may legally affect the easement.

WITNESS the following signatures and seals.

[Signature panels on following pages]

**Grantor:**

**SCHOOL BOARD OF THE CITY OF  
CHARLOTTESVILLE, VIRGINIA**

By: \_\_\_\_\_

Title: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA  
City of Charlottesville

The foregoing Deed of Easement was acknowledged before me, a Notary Public for and in the aforesaid Commonwealth and City, on this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by \_\_\_\_\_, on behalf of the School Board of the City of Charlottesville, Virginia.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public  
Registration #: \_\_\_\_\_

**Grantor:**

**CITY OF CHARLOTTESVILLE, VIRGINIA**

By: \_\_\_\_\_  
A. Michael Signer, Mayor

COMMONWEALTH OF VIRGINIA  
City of Charlottesville

The foregoing Deed of Easement was acknowledged before me, a Notary Public for and in the aforesaid Commonwealth and City, on this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by A. Michael Signer, Mayor, on behalf of the City of Charlottesville, Virginia.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public  
Registration #: \_\_\_\_\_

**Grantee:**

**FRANCIS HARRISON FIFE RESIDENCE TRUST**

\_\_\_\_\_  
Nancy K. O'Brien, Co-Trustee

Expedition Trust Company, Co-Trustee

By: \_\_\_\_\_

Title: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA  
City of Charlottesville

The foregoing Deed of Easement was acknowledged before me, a Notary Public for and in the aforesaid Commonwealth and City, on this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by Nancy K. O'Brien, as Co-Trustee of the Francis Harrison Fife Residence Trust.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public  
Registration #: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA  
City of Charlottesville

The foregoing Deed of Easement was acknowledged before me, a Notary Public for and in the aforesaid Commonwealth and City, on this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by \_\_\_\_\_, on behalf of Expedition Trust Company, as Co-Trustee of the Francis Harrison Fife Residence Trust.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public  
Registration #: \_\_\_\_\_

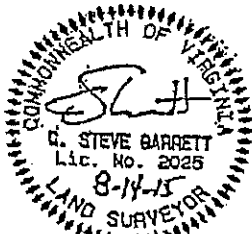
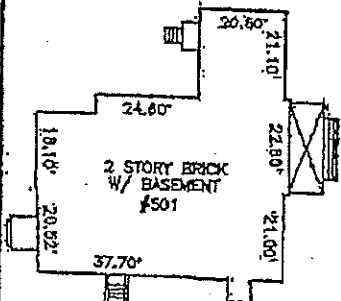


ON APRIL 22, 2015 I SURVEYED THE PROPERTY SHOWN ON THIS PLAT AND THE TITLE LINES AND WALLS OF THE BUILDINGS ARE SHOWN HEREON.

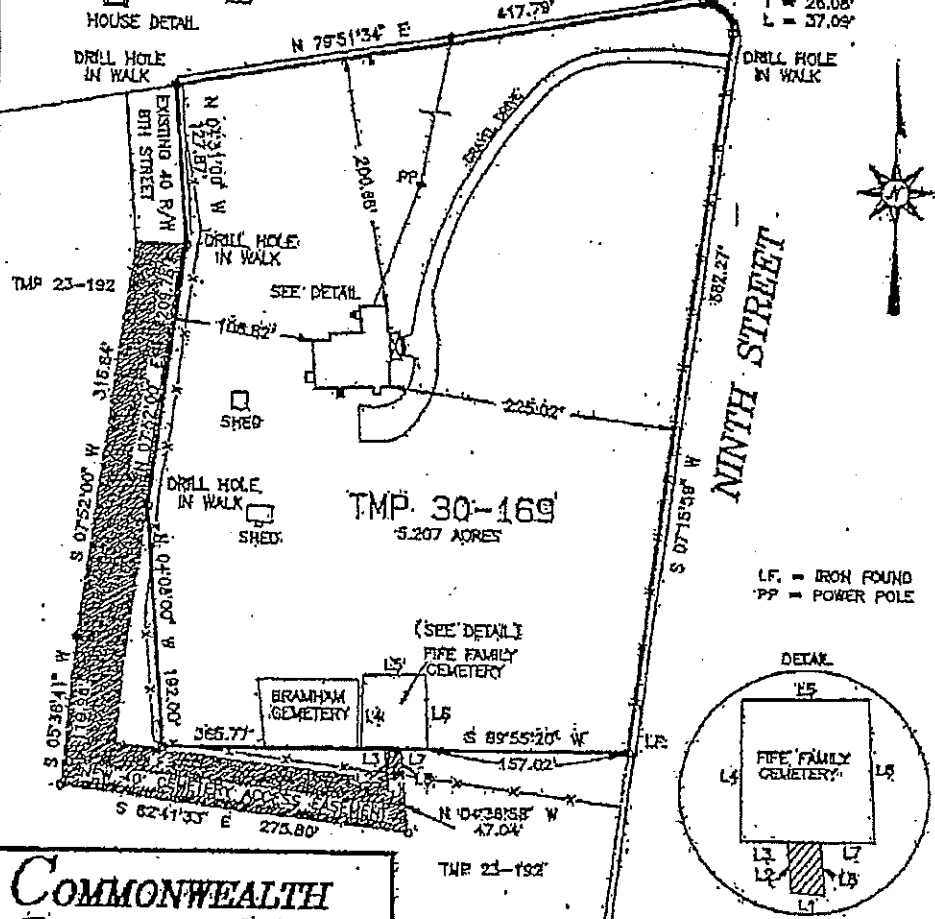
PROPERTY IS NOT IN A H.U.O. DESIGNATED 100 YEAR FLOOD ZONE BUT IS LOCATED IN FLOOD ZONE "X" AS SHOWN ON COMMUNITY PANEL NO. 51003C 0288D.

INSTR. #: 2008:2445

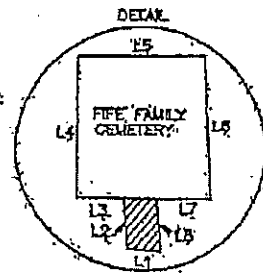
LINE	DIRECTION	DISTANCE
L1	N 85°12'48" W	12.00'
L2	N 04°38'58" W	20.43'
L3	S 89°55'20" W	18.21'
L4	N 00°19'01" E	57.25'
L5	N 89°02'10" E	49.47'
L6	S 02°24'11" E	99.27'
L7	S 89°55'20" W	21.21'
L8	S 04°36'53" E	21.30'



CHERRY AVENUE



LF = IRON FOUND  
PP = POWER POLE



**COMMONWEALTH  
LAND  
SURVEYING, LLC.**  
1484 GREENBRIER PLACE  
CHARLOTTESVILLE VIRGINIA 22901  
PH: 434-973-0513

PHYSICAL SURVEY AND  
NEW CEMETERY ACCESS EASEMENT  
**TWP 30-169**  
FRANCIS HARRISON FIFE TRUST  
CHARLOTTESVILLE, VIRGINIA  
SCALE: 1" = 100' AUGUST 14, 2015

318 - CSE

PS 10065720151030-169.DWG

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