

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
COMMITTEE REPORT**

1350 Pennsylvania Avenue, NW, Washington, DC 20004

TO: All Councilmembers

FROM: Chairman Phil Mendelson
Committee of the Whole

DATE: December 17, 2019

SUBJECT: Report on Bill 23-474, the “Closing of Public Street and Alley abutting Squares 3765 and 3767, S.O. 18-41561, Act of 2019”

The Committee of the Whole, to which Bill 23-474, the “Closing of Public Street and Alley abutting Squares 3765 and 3767, S.O. 18-41561, Act of 2019,”¹ was referred, reports favorably thereon with amendments, and recommends approval by the Council.

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I. BACKGROUND AND NEED

On June 7, 2019, Bill 23-474, the “Closing of Public Street and Alley abutting Squares 3765 and 3767, S.O. 18-41561, Act of 2019,” was introduced by Councilmember Kenyan McDuffie. Bill 23-474 would order the legal closing of 4th Street N.E., between Kennedy Street N.E., and Ingraham Street N.E., and the closing of the public alley in Square 3765, in Ward 5. The purpose of this street and alley closure is to allow for the development of the second phase of the Art Place at Fort Totten Project. The project will include multiple buildings with retail space and residential uses. There will be approximately 270 residential units, 30 of which will be reserved as affordable for a period of 20 years at 60% area median family income.

¹ Formerly the “Closing of Public Street and Alley and Elimination of Building Restriction Lines and abutting Squares 3765 and 3767, S.O. 18-41561, Act of 2019.”

Legal Background

The Street and Alley Closing and Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code § 9-201 *et seq.*) (“Act”) establishes procedures for closing streets and alleys, opening new streets and alleys, naming public spaces, and other procedures related to streets and alleys. The Act authorizes the Council to close all or part of a street or alley and establishes one standard for reviewing a street or alley closing application: whether the street or alley is determined by the Council to be needed for street or alley purposes. The Act also authorizes the Council to make approval of a street or alley closing contingent upon: (1) the dedication of land for street or alley purposes if the public interest would be served by such action; (2) the granting to the District of specific easements for public purposes; and (3) any other condition that the Council considers necessary.

Pursuant to the Act, street and alley closing applications are submitted to the Surveyor of the District of Columbia, who assigns a Surveyor’s Order (S.O.) number and collects applicable fees. The Surveyor requests comments from executive branch agencies and public utilities. A plat is prepared, and the application is forwarded through the Mayor’s Office of Policy and Legislative Affairs, which also solicits comments from executive branch agencies. When these reviews are completed, the application is transmitted to the Council in the form of a bill from the Mayor. Councilmembers may also initiate an alley or street closing by introducing a bill. In such cases, the Act provides that the Council cannot consider such a bill until the required reviews have been completed. Regarding Bill 23-474, all of the reviews have been completed with one objection. DDOT objected to Council action until the following conditions are met:

- DDOT either confirms 1) the adjacent portion of Ingraham Street has been built to DDOT standards, or 2) the applicant agrees to do additional work to the roadway to bring it up to DDOT standards.
- The applicant must pay DDOT fair market value for the street and alley that would be closed or replace in kind with an equivalent dedication of new ROW.
- The applicant compensates the District in the amount of \$29,160 for the removal of existing street trees in the area proposed for closure.
- The applicant compensates the District in the amount of \$6,475.50 for the removal of existing DDOT streetlights in the area proposed for closure.
- Removal of the request to eliminate the building restriction lines on the south side of the 300 block of Kennedy Street NE between South Dakota Avenue NE and on the east side of the 5400 block of 3rd Street NE.

The applicant has agreed to the conditions to compensate the District for removal of existing street trees and streetlights and the retention of the building restriction lines on the south side of the 300 block of Kennedy Street NE between South Dakota Avenue NE and on the east side of the 5400 block of 3rd Street NE.

The Committee requested that DDOT drop its objection regarding payment of fair market value for the street and alley that would be closed in a letter dated November 13, 2019. Under federal regulations, payment of fair market value is required for “the use or disposal of all real property interests if those real property interests were obtained with title 23, United States Code,

funding except as provided in paragraphs (e)(1) through (6)...”² DDOT was unable to provide evidence that the segment of 4th Street N.E. to be closed was obtained through title 23 United States Code funding. DDOT Director Jeff Marootian responded to the Committee’s concerns in a letter dated November 20, 2019, where he stated that DDOT would drop this objection.

The Committee requested but did not receive an explanation of how Ingraham St. NE between South Dakota Ave. NE and the public alley between 3rd and 4th St NE was built without approval from DDOT. The Committee does not believe that this issue should stall development of the project. As such, it is not a condition in the bill.

The Act establishes notice requirements for street and alley closing legislation. The Council is required to publish notice of a street or alley closing in the *District of Columbia Register*. Further, the applicant is required to give written notice to all property owners abutting a block or alley affected by the proposed street or alley closure. The applicant is also required to post signs at each end of a block or each entrance to an alley affected by the street or alley closing legislation. The applicant is required to give the Council certification of compliance with these requirements. Regarding Bill 23-474, these requirements have been met.

After the street or alley closing legislation becomes law and all conditions required by the Council, and the Act have been satisfied, the Surveyor records a copy of the act and plat in the Office of the Surveyor. Thereafter, the street or alley is deemed closed and title to the land reverts or vests in fee simple to the abutting record owners, as shown on the plat. The land becomes subject to tax and zoning laws in the same manner as the abutting land. The right of the public to use the street or alley typically ceases, and any proprietary interest of the United States or the District of Columbia in the street or alley ceases. If a closing plat shows an easement or dedication of land for public purposes, the land encompassed by the easement or dedication becomes available for the specified public purposes.

Background Pertinent to Bill 23-474

The developer has requested the street and alley closure, as well as the elimination of building restriction lines, to facilitate the development of the second stage of the Art Place at Fort Totten. The first phase of the project, which includes a mixed-use residential building with 141 income-restricted units and ground-floor retail known as The Modern, is located on property that is bound by South Dakota Avenue N.E., Ingraham Street N.E., and Galloway Street N.E. Additionally, Council passed Law 18-247, the “Closing of Public Streets and a Public Alley and Dedication and Designation of Land for Street Purposes in Squares 3765, 3767, 3768, and 3769 Act of 2010” to facilitate the development of The Modern. Phase one was approved as a Planned Unit Development (PUD) by the Zoning Commission on June 30, 2014.³

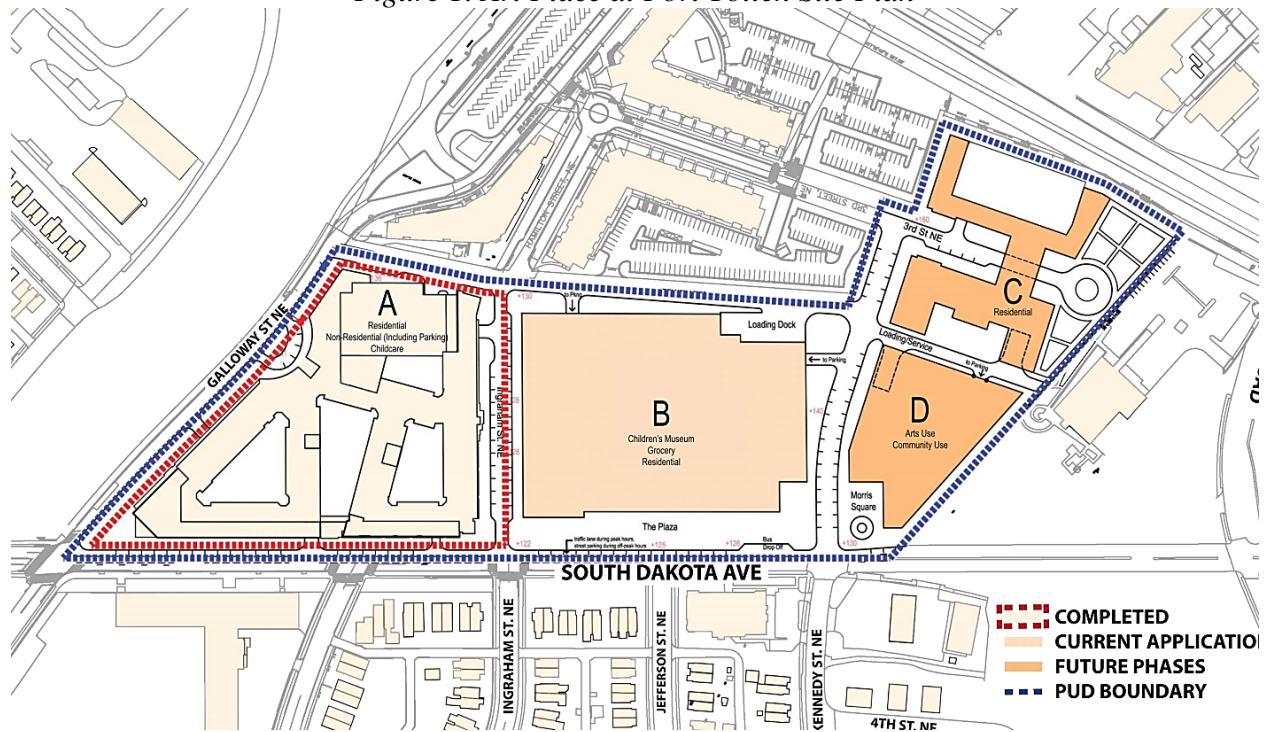
The second phase of the Art Place at Fort Totten development will include a mixed-use building known as the Family Entertainment Zone, containing retail space, event space, cultural space, and residential uses. The project will provide approximately 750 parking spaces and a total

² 23 Code of Federal Regulations § 710.403(e).

³ Zoning Commission Order No. 6-10C.

gross floor area of 549,996 square feet. The residential towers will include approximately 270 units, 30 of which will be reserved as affordable for a period of 20 years at 60% area median family income.

Figure 1. Art Place at Fort Totten Site Plan



Advisory Neighborhood Commission 5A voted unanimously to support the development at a meeting on March 27, 2019. The Zoning Commission voted unanimously to approve the second stage of the PUD at a public meeting on June 10, 2019.

The Committee requested an opinion from the Council's Office of General Counsel regarding the effect that the closing of a public street has on building restriction lines that were measured from that closed street. As the memorandum notes:

*".. it is our conclusion that when the Council closes a public street and title reverts to private owners, any associated building restriction lines are rendered unenforceable by the act of the closure. Accordingly, it is not necessary for the Council to affirmatively order the removal of such lines in the land records."*⁴

As such, the Committee Print does not include reference to the building restriction lines in Bill 23-474 as introduced.

Given these facts and history, the Committee recommends Council approval of Bill 23-474.

⁴ D.C. Council Office of General Counsel Memorandum to Chairman Phil Mendelson, December 13, 2019, Re: Effect of the Closing of a Public Street on Associated Building Restriction Lines," pg. 4.

II. LEGISLATIVE CHRONOLOGY

- October 7, 2019 Bill 23-474, the “Closing of Public Street and Alley abutting Squares 3765 and 3767, S.O. 18-41561, Act of 2019” was introduced by Councilmember Kenyan McDuffie.
- October 11, 2019 Notice of Intent to Act on Bill 23-474 is published in the *District of Columbia Register*.
- October 18, 2019 Notice of a Public Hearing on Bill 23-474 is published in the *District of Columbia Register*.
- October 22, 2019 Bill 23-474 is “read” at a legislative meeting; on this date the referral of the bill to the Committee of the Whole is official.
- November 7, 2019 The Committee of the Whole holds a public hearing on Bill 23-474.
- December 17, 2019 The Committee of the Whole marks-up Bill 23-474.

III. POSITION OF THE EXECUTIVE

Everett Lott, Deputy Director of the District Department of Transportation, testified at the Committee’s public hearing on October 10, 2019. Mr. Lott testified that DDOT objects to the proposed action until the following conditions are met:

- DDOT either confirms 1) the adjacent portion of Ingraham Street has been built to DDOT standards, or 2) the applicant agrees to do additional work to the roadway to bring it up to DDOT standards.
- The applicant must pay DDOT fair market value for the street and alley that would be closed or replace in kind with an equivalent dedication of new ROW.
- The applicant compensates the District in the amount of \$29,160 for the removal of existing street trees in the area proposed for closure.
- The applicant compensates the District in the amount of \$6,475.50 for the removal of existing DDOT streetlights in the area proposed for closure.
- Removal of the request to eliminate the building restriction lines on the south side of the 300 block of Kennedy Street NE between South Dakota Avenue NE and on the east side of the 5400 block of 3rd Street NE.

Roland Dreist, D.C. Surveyor, testified at the Committee’s public hearing on October 10, 2019. He stated that the purpose of this street and alley closure and building restriction elimination is to allow for the development of the second phase of the Art Place at Fort Totten Project. Mr. Dreist said the most probable value for the closing of the street and alley in abutting Squares 3765 and 3767 as of January 1, 2019 is estimated at \$1,392,620 (48,271 S.F. X 28.85).

IV. COMMENTS OF ADVISORY NEIGHBORHOOD COMMISSIONS

Advisory Neighborhood Commission 5A submitted a report to Roland Driest, D.C. Surveyor, noting that the Commission voted unanimously to support the project on March 27, 2019. ANC 5A's report is attached.

V. NATIONAL CAPITAL PLANNING COMMISSION REVIEW

Diane Sullivan, Director of Urban Design and Plan Review at the National Capital Planning Commission (NCPC), provided comments to the Council finding that the proposed street closing falls under an exception in Chapter 8 (Exceptions and Project Changes) of NCPC's submission guidelines and is exempt from Commission Review. NCPC's letter is attached.

VI. SUMMARY OF TESTIMONY

The Committee of the Whole held a public hearing on several bills, including Bill 23-474, on Thursday, November 7, 2019. The testimony summarized below pertains to Bill 23-474. Copies of written testimony are attached to this report.

Paul Tummonds, land use counsel at Goulston & Storrs, PC, testified in support of the bill. Mr. Tummonds noted that he had not seen DDOT's comments before the morning of the hearing. Mr. Tummonds said the applicant agreed with the request to retain building restriction lines not impacted by the development and to compensate DDOT for the removal of existing trees and streetlights. He said the applicant has been working with DDOT to certify that Ingraham Street was properly constructed. Mr. Tummonds stated the applicant does not agree with the condition to pay fair market value for the 4th Street N.E. right-of-way.

Tomas Quijano, a project architect at Perkins Eastman, testified in support of the bill.

Everett Lott, Deputy Director of the District Department of Transportation, testified on behalf of the Executive. His testimony is summarized in Section III.

Roland Driest, Surveyor of the District of Columbia, testified on behalf of the Executive. His testimony is summarized in Section III.

VII. IMPACT ON EXISTING LAW

Bill 23-474 has no impact on existing law. The Street and Alley Closing and Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code § 9-201 *et seq.*) ("Act") establishes procedures for closing streets and alleys, opening new streets and alleys, naming public spaces, and other procedures related to streets and alleys. Additionally, it authorizes the Council to close all or part of a street or alley. In approving Bill 23-474, the Committee finds that the requirements of the Act have been satisfied.

VIII. FISCAL IMPACT

The attached fiscal impact statement from the District's Chief Financial Officer states that funds are sufficient in the FY 2019 through FY 2022 budget and financial plan to implement the bill. The D.C. Surveyor estimates that the most probable value of the land being added to the tax rolls is \$1,392,620, and the closing of a public street and alley and building restriction line elimination will facilitate a development project that will likely bring additional tax revenue to the District.

IX. SECTION-BY-SECTION ANALYSIS

<u>Section 1</u>	Short title.
<u>Section 2</u>	Orders the closing of a public street and public alley abutting Squares 3765 and 3767, as shown in Surveyor's plat filed under S.O. 18-41561.
<u>Section 3</u>	States that the approval of the street and alley closure is contingent upon conditions in the bill.
<u>Section 4</u>	Fiscal impact statement.
<u>Section 5</u>	Effective date.

X. COMMITTEE ACTION

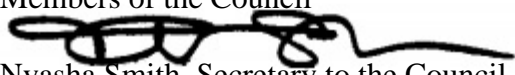
XI. ATTACHMENTS

1. Bill 23-474 as introduced.
2. Written Testimony.
3. NCPC Comments.
4. Plat on file with the Surveyor's Office
5. Fiscal Impact Statement for Bill 23-474.
6. Legal Sufficiency Determination for Bill 23-474.
7. Committee Print for Bill 23-474.

COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington D.C. 20004

Memorandum

To : Members of the Council

From : 
Nyasha Smith, Secretary to the Council

Date : October 08, 2019

Subject : Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Office of the Secretary on Monday, October 7, 2019. Copies are available in Room 10, the Legislative Services Division.


TITLE: "Closing of Public Street and Alley and Elimination of Building Restriction Lines and abutting Squares 3765 and 3767, S.O. 18-41561, Act of 2019", B23-0474

INTRODUCED BY: Councilmember McDuffie

The Chairman is referring this legislation to the Committee of the Whole.

Attachment

cc: General Counsel
Budget Director
Legislative Services


Councilmember Kenyan R. McDuffie

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To order the legal closing of 4th Street N.E., between Kennedy Street N.E., and Ingraham Street N.E., the closing of the public alley in Square 3765, and the elimination of building restriction lines along 4th Street N.E., Kennedy Street N.E., and Ingraham Street N.E., abutting Squares 3765 and 3767, S.O. 18-41561, in Ward 5.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Closing of Public Street and Alley and Elimination of Building Restriction Lines in and abutting Squares 3765 and 3767, S.O. 18-41561, Act of 2019”.

Sec. 2 Pursuant to section 201 of the Street and Alley Closing and Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code § 9-202.01), the Council finds that the public street and public alley in and abutting Squares 3765 and 3767, as shown on the Surveyor’s plat filed under S.O. 18-41561, are unnecessary for street and alley purposes and orders them closed, with title to the land to vest as shown on the Surveyor’s plat. The approval of the Council of this closing is contingent upon the satisfaction of all conditions set forth in the official file of S.O. 18-41561.

Sec 3. The Council finds that the building restriction lines along 4th Street N.E., Kennedy Street N.E., and Ingraham Street N.E., abutting Squares 3765 and 3767, as shown on the Surveyor’s plat filed under S.O. 18-41561, are unnecessary and orders them eliminated.

Sec. 4. Fiscal impact statement.

28 The Council adopts the fiscal impact statement in the committee report as the fiscal
29 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
30 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

31 Sec. 5. Transmittal.

32 The Council shall transmit a copy of this act, upon its effective date, to the Office of the
33 Surveyor and the Office of the Recorder of Deeds.

34 Sec. 6. Effective date.

35 This act shall take effect upon its approval by the Mayor (or in the event of veto by the
36 Mayor, action by the Council to override the veto), and a 30-day period of Congressional review
37 as provided in section 603(c)(1) of the District of Columbia Home Rule Act, approved December
38 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
39 Columbia Register.

B23-474 (STREET AND ALLEY CLOSING/BRL REMOVAL)
TESTIMONY OF PAUL TUMMONDS, GOULSTON & STORRS COUNSEL TO THE
MORRIS & GWENDOLYN CAFRTIZ FOUNDATION

Good morning Mr. Chairman and members of the Committee of the Whole. I am Paul Tummonds with Goulston & Storrs. I serve as the zoning and land use counsel for the Morris & Gwendolyn Cafritz Foundation. We are here this morning to seek your approval of an application that will close 4th Street, NE between Ingraham Street and Kennedy Streets NE, to close an alley that runs parallel to South Dakota Avenue and the to-be-closed Fourth Street between Ingraham Street and Kennedy Street, and to remove certain Building Restriction Lines located adjacent to 4th Street, Kennedy Street, and Ingraham Street, NE. This application is the final administrative hurdle that we need to overcome in order to complete the entitlement process for Block B of the Art Place at Fort Totten PUD Project.

Block B of the Art Place at Fort Totten will include a mixed-use building, known as the Family Entertainment Zone, fronting on South Dakota Avenue, NE. The FEZ will contain: retail space; theater/interactive space; cultural space - including Meow Wolf (an innovative arts collective) and the Explore! Children's Museum; a food hall, an Aldi grocery store; artist maker space and residential uses. A residential building on the west side of the closed 4th Street will contain two towers connected by an amenity terrace, ground floor retail uses and artist/studio maker spaces. The east and west residential buildings will be connected by a pedestrian bridge over 4th Street and will include approximately 270 residential units. Multiple outdoor plazas, and a pedestrian-oriented outdoor area will be located on a portion of the to-be-closed 4th Street, as well as along South Dakota Avenue, Ingraham Street, and Kennedy Street. The proposed alley and street closings will allow for a more efficient site plan and the creation of an active pedestrian area between the residential and cultural/arts-related elements of the project.

On November 4, 2019, we submitted to the Committee of the Whole our statement and materials in support of the proposed street and alley closing and building restriction line removal. As we noted in the statement, this application satisfies all applicable requirements of the D.C. Code, and the approval of this legislation will further the goals and policies of the Comprehensive Plan and is consistent with the Zoning Commission's Second-Stage PUD approval for Block B. As we also noted in our statement, the Block B PUD Project received the support of ANC 5A and the Lamond Riggs Citizens Association. There was no opposition to this project during the PUD process.

Each affected agency and utility has approved, approved with conditions, or has no objection to the application. In regard to the conditional support of the Office of Planning, we agree with their request to retain the Building Restriction Lines that are not impacted by the development of Block B. With regard to DDOT's comments, we had not seen a copy of their report prior to this morning. As noted above, we agree with OP and DDOT that the Building Restriction Line that does not impact the development of Block B does not need to be removed at this time. With regard to DDOT's first condition, we believe that Ingraham Street was properly constructed and we have been working earnestly with DDOT's technical staff on this issue. We will also work with DDOT staff regarding the cost of tree replacement and streetlight replacement. The biggest surprise to us is the condition that the Applicant pay Fair Market Value for the 4th Street right-of-way. The Applicant does not agree with this proposed condition from DDOT and the Applicant will continue to work with DDOT on this issue.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS**



Public Hearing
On
Bill 23-474, the “Closing of a Public Street and Elimination of Building Restriction Lines and
Abutting Squares 3765 and 3767, S.O. 18-41561, Act of 2019”

Testimony of
Roland Dreist
Surveyor of the District of Columbia
Department of Consumer and Regulatory Affairs

Before the
Committee of the Whole
Chairman Phil Mendelson

John A Wilson Building
Room 500
1350 Pennsylvania Avenue, NW
Washington, DC 20004

November 7, 2019
10:00 am

Good Morning, Chairman Mendelson, members, and staff of the Committee of the Whole. I am Roland Dreist, Surveyor of the District of Columbia with the Department of Consumer and Regulatory Affairs. I appear before you today to present testimony on Bill 23-474, the "Closing of a Public Street, a Public Alley and Elimination of Building Restriction Lines abutting Squares 3765 and 3767, S.O. 18-41561, Act Of 2019." This bill would order the closing of a portion of a public street, close a public alley, and eliminate building restriction lines in and abutting Squares 3765 and 3767, bounded by Kennedy Street, N.E., South Dakota Avenue, N.E., Galloway Street, N.E. Hamilton Street, N.E., and 3rd Street, N.E. in Ward 5.

The purpose of this street and alley closure and building restriction elimination is to allow for the development of the second stage of the Art Place at Fort Totten project. The project will include multiple buildings, one containing retail and residential uses, one containing artist housing and one containing mixed retail, grocery, museum and family entertainment. The project will provide approximately 765 parking spaces. The street (4th Street) to be closed was established by a plat recorded May 22, 1952 in Subdivision Book 129, Page 61. The building restriction lines to be removed were established by the same plat. The 16-wide public alley to be closed was established by a "dedication of public land for public alley" plat recorded in the Office of the Surveyor in Subdivision Book 136, Page 126 on January 31, 1955. Title to the street and alley to be closed could not be determined to be held by the District of Columbia or the United States. The most probable value for the closing of the street and alley in abutting Squares 3765 and 3767 as of January 1, 2019 which represents tax year 2019 is estimated at \$1,392,620.00 (48,271 S.F. x 28.85).

The applicant for this closure is The Morris and Gwendolyn Cafritz, Foundation, who is represented by Goulston & Storrs. The Surveyor's Office notified the relevant Executive Branch agencies on January 30, 2019. The Office of Planning responded in a letter dated October 30, 2019, that they had no objection to the closing of 4th Street and the elimination of the building restriction line associated with 4th Street. They had no objection to the closing of the 16-foot alley. They do object to the elimination of the building restriction lines along Kennedy Street, N.E. and 3rd Street N.E., pending Zoning Commission approval of the final plans for the future phases of the PUD. The Department of Transportation has responded in a letter dated November 6, 2019 objecting to the proposed action until certain conditions were met. These conditions are outlined in DDOT's testimony today. The remaining Executive Branch agencies have no objections. The utility companies were notified of this application on January 30, 2019 and have no objections to this closing.

Pursuant to D.C. Official Code § 9-202.02(3), the Surveyor's Office notified the National Capital Planning Commission (NCPC) of this application on January 30, 2019. In a letter dated February 25, 2019, NCPC determined that the proposed project falls under an exception listed in Chapter 8 (Exceptions and Project Changes) of NCPC's submission guidelines. Pursuant to D.C. Official Code § 9-202.02(5), the Surveyor's Office notified Advisory Neighborhood Commission 5A of this application on January 30, 2019. In a letter dated March 27, 2019, ANC 5A supported this application. Pursuant to D.C. Official Code § 9-202.02(6), the Surveyor's Office notified the abutting property owners, who in this case are the applicants. The Office of the Surveyor will forward any further comments when they are received.

This concludes my testimony. I appreciate the opportunity to appear before you today and welcome any questions regarding this matter. Thank you.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

District Department of Transportation



Public Hearing on

Bill 23-251, Abandonment of the Highway Plan for 39th Street, N.W., S.O 18-41885 Act of 2019

Public Resolution 23-444, Modification of the Highway Plan to Remove a Portion of 39th Street,
N.W., S.O. 18-41885, Resolution of 2019

Bill 23-332, Abandonment of the Highway Plan for Anacostia Avenue, N.E., S.O. 19-04866, Act
of 2019

Bill 23-474, Closing of Public Street and Elimination of Building Restriction Lines and Abutting
Squares 3765 and 3767, S.O. 18-41561, Act of 2019

Testimony of Everett Lott
Deputy Director
District Department of Transportation

Before the Committee of the Whole
Council of the District of Columbia

Thursday, November 7, 2019
10:00 a.m.
Hearing Room 500
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004



Good morning, Chairman Mendelson, Members of the Committee, and staff. My name is Everett Lott, Deputy Director of the District Department of Transportation, commonly referred to as DDOT. I am here today to present testimony on behalf of Mayor Muriel Bowser on

- Bill 23-251, Abandonment of the Highway Plan for 39th Street, N.W., S.O. 18-41885 Act of 2019 and Public Resolution 23-444, Modification of the Highway Plan to Remove a Portion of 39th Street, N.W., S.O. 18-41885, Resolution of 2019 which would remove a portion of 39th Street, NW located within Lot 801 in Square 1823 from the Plan of Permanent Systems of Highways (the “DC Highway Plan”) to facilitate mixed use development;
- Bill 23-332, Abandonment of the Highway Plan for Anacostia Avenue, N.E., S.O. 19-04866, Act of 2019 which would remove a portion of Anacostia Avenue, NE located within Lot 806 in Square 5113 from the DC Highway Plan to facilitate development of a multi-unit senior citizen affordable assisted living facility; and
- Bill 23-474, Closing of Public Street and Elimination of Building Restriction Lines and Abutting Squares 3765 and 3767, S.O. 18-41561, Act of 2019



which orders the legal closing of 4th Street N.E., between Kennedy Street N.E., and Ingraham Street N.E., the closing of the public alley in Square 3765, and the elimination of building restrictions lines along 4th Street N.E., Kennedy Street N.E., and Ingraham, Street N.E., abutting Squares 3765 and 3767.

I will now discuss DDOT's specific recommendations for each of the proposed bills.

*Bill 23-251, Abandonment of the Highway Plan for 39th Street, N.W and
Public Resolution 23-444, Modification of the Highway Plan to Remove a Portion
of 39th Street, N.W*

The developer applicant is seeking approval to remove a portion of 39th Street, NW from the District of Columbia Highway Plan to facilitate the redevelopment of the site. The portion of the 39th Street, NW to be removed is the northernmost terminus, located adjacent to the existing 39th Street cul-de-sac north of Rodman Street. The 90-foot right-of-way called for in the Highway Plan for this segment of 39th Street has not been dedicated to DDOT.

DDOT has no objection to the removal of the subject portion of 39th Street from the Highway Plan.



Bill 23-332, Abandonment of the Highway Plan for Anacostia Avenue, N.E.

The developer applicant is seeking approval to remove portions of both Anacostia Avenue, NE and Eastern Avenue, NE from the Highway Plan to facilitate the redevelopment of the site. DDOT understands that approval is needed to create a record lot and receive a building permit. Currently, the encumbrance of the Highway Plan prevents a record lot from being legally created. Since the entirety of the lots are the basis for zoning calculations, the portion of the site where the Highway Plan is designated cannot be severed off into its own record lot.

DDOT objects to the removal of portions of Anacostia Avenue and Eastern Avenue NE, until the following conditions are met:

- For Lot 806, a non-restrictive easement should be recorded for an 80 foot section (not 90 feet), as measured from the northern edge of the Highway Plan section; and
- For Parcel 185/38, a non-restrictive easement should be recorded for the entirety of the parcel including the 10-foot by 290-foot strip of land outside of the 90-foot Highway Plan section, which likely will be needed in the future to ‘straighten out’ the alignment of Eastern Avenue.



Bill 23-474, Closing of Public Street and Elimination of Building Restriction Lines and Abutting Squares 3765 and 3767

The developer applicant is seeking approval to close 4th Street, NE between Kennedy Street and Ingraham Street, the public alley in Square 3765, and to eliminate building restriction lines along 4th Street, NE, Kennedy Street, NE, and Ingraham Street, NE abutting Squares 3765 and 3767.

It is important to note that DDOT is the responsible agency that gives guidance to the opening and closing of District public rights of way. Beyond ensuring that our own standards are met, as outlined in DDOT's Right of Way Policies and Procedures Manual, the agency is also bound to meet federal right of way regulations. The Federal Highway Administration (FHWA) sets these guidelines which require that non-transportation use or disposal of a property interest determined to be excess to transportation needs must be for fair market value and the proceeds used for future Title 23 eligible transportation projects.¹ These regulations provide exceptions to the requirement that disposals be for fair market value only under certain circumstances, including disposals to utilities or railroads, or for use as bikeways or pedestrian walkways. Failure to comply with federal

¹ 23 CFR 710.403.(e)



regulations will put DDOT at risk of receiving federal funds for our transportation projects. As of the date of this hearing, the proposed closure does not conform to the federal requirements as implemented in the current version of the District's Right of Way Manual and it is DDOT's position that this closure should not move forward without first adhering to federal and District regulations.

We also note that this closure request is the second phase of a larger three-phased development plan. The applicant has been coordinating with DDOT regarding another potential right-of-way transfer adjacent to the proposed closure. The applicant constructed a one block extension of Ingraham Street, NE between Hamilton Street and South Dakota Avenue as part of this larger development and has expressed interest in dedicating this block as a public street. However, the street was built without DDOT review of the design plans or inspection of the construction. We are currently reviewing this block to determine if it was built to DDOT standards and, therefore, a candidate for public street acceptance.

Finally, DDOT objects at this time to the requested elimination of the building restriction lines on the south side of the 300 block of Kennedy Street NE between South Dakota Avenue NE and on the east side of the 5400 block of 3rd Street NE. These requested closures pertain to a portion of the PUD that received Stage 1



approval, but for which 2nd Stage PUD plans have not yet been submitted to the Zoning Commission. DDOT finds it would be more appropriate to consider the removal of these building restriction lines after the Zoning Commission has approved final plans for future phases of the PUD. These phases may propose re-aligning portions of Kennedy Street, which would be subject to Council review at that time.

DDOT objects to the proposed action until the following conditions are met:

- DDOT either confirms 1) the adjacent portion of Ingraham Street has been built to DDOT standards, or 2) the applicant agrees to do additional work to the roadway to bring it up to DDOT standards.
- The applicant must pay DDOT fair market value for the street and alley that would be closed or replace in kind with an equivalent dedication of new ROW.
- The applicant compensates the District in the amount of \$29,160 for the removal of existing street trees in the area proposed for closure. A list of these trees is attached to this testimony (Attachment A).



- The applicant compensates the District in the amount of \$6,475.50 for the removal of existing DDOT streetlights in the area proposed for closure. The streetlight equipment estimate is attached to this testimony (Attachment B).
- Removal of the request to eliminate the building restriction lines on the south side of the 300 block of Kennedy Street NE between South Dakota Avenue NE and on the east side of the 5400 block of 3rd Street NE.

I appreciate the opportunity to testify before you today and look forward to answering any questions you may have.





COUNCIL OF THE DISTRICT OF COLUMBIA
1350 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004

Phil Mendelson
Chairman

Office: (202) 724-8032
Fax: (202) 724-8085

November 13, 2019

Mr. Jeff Marootian, Director
District Department of Transportation
55 M Street, SE Suite 400
Washington DC 20003

RE: Street/Alley Closing Payments

Dear Director Marootian:

At a Thursday, November 7th hearing on Bill 23-474 concerning the closing of a segment of 4th Street, NE near Fort Totten, when I asked why I had not received a response to my August 16th letter, I was provided an unsigned copy of a response, purportedly from you and dated October 17th. I have checked my in-box and my email and I have no signed copy. My August 16th letter asked why DDOT is charging applicants for the fair market value of rights-of-way to be closed, and further requested the agency's legal basis.

The testimony at the hearing on Bill 23-474 and the unsigned letter both claim that the legal basis is found in "federal regulation which requires that non-transportation use or disposal of a property interest determined to be excess to transportation needs must be for fair market value and the proceeds used for future Title 23 eligible transportation projects." Unfortunately, that is not what the federal regulations require:

§710.403(e) "Current fair market value must be charged for the use or disposal of all real property interests if those real property interests were obtained with title 23, United States Code, funding except as provided in paragraphs (e)(1) through (6)..."

No one – I repeat, no one – has offered any evidence that the segment of 4th Street, NE to be closed under Bill 23-474 was "obtained with title 23, United States Code, funding." Accordingly, federal regulations cannot be the legal basis authorizing DDOT to require fair market value for Bill 23-474, or for that matter, most street closings.

With almost every street/alley closing bill that comes before the Council, the right of way was created by a dedication of land recorded with the D.C. Surveyor. Rarely is the right of way purchased or title conveyed in any way, which is why, when the right-of-way is determined to be no longer necessary for public purposes, the land reverts to the abutting property owners. There is no fee simple interest. Almost every time the Surveyor states that "Title to the street and alley to be closed could not be determined to be held by the District of Columbia or the United States." Indeed, that was his statement for Bill 23-474.

Mr. Jeff Marootian, Director
RE: Street/Alley Closing Payments

November 13, 2019
Page Two

I write with some anger about this for several reasons. First, I resent the cavalier approach DDOT has taken in supposedly responding to my August 16th letter. Second, the common law regarding street/alley dedications is well-settled, and DDOT's new position is violative. Third, DDOT's unilateral policy – not found in law nor even promulgated through rulemaking (if that were legally possible) – is disruptive to the development community having to seek and argue over appraisals and then make costly payments. The most probable value for 4th Street under Bill 23-474 is at least \$1.4 million. Payment for what? As successors-in-interest, it is for land they already own.

I request that DDOT revise its July 2019 edition of its Right of Way Policies and Procedures Manual to accurately reflect federal requirements. I request that DDOT drop its objection to Bill 23-474 (“DDOT objects to the proposed action until the Applicant pays for the fair market value of the public right-of-way that would be closed”). Alternatively, if you prefer, we could discuss this matter more fully, including the development community, at a public hearing.

I await your prompt, signed response.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Phil Mendelson', with a long, sweeping underline.

Phil Mendelson
Chairman

PM/ms

Government of the District of Columbia

Department of Transportation



d. Office of the Director

Re: Street and Alley Closings

November 20, 2019

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W., Suite 504
Washington, D.C. 20004

Dear Chairman Mendelson:

Thank you for your November 13th letter regarding the testimony presented at the November 7, 2019 hearing on Bill 23-474. I apologize for the confusion regarding DDOT's response to your August 16th letter.

I share your concerns about the legal basis for requiring fair market value for the land transfer proposed in B23-474, and as such DDOT will not object to the bill based on the absence of payment in this instance. Through our efforts to come into full compliance with the Federal Highway Administration's statutory requirements, DDOT has worked in good faith to align our standard operating procedures with federal standards. While I believe this effort has been largely successful, this particular issue is one that I agree requires further legal analysis. As such, DDOT will suspend the application of this provision of the Right of Way Manual until further conversations with the Federal Highway Administration can take place.

I will keep you apprised of any new developments regarding this matter.

Sincerely,


Jeff Marootian
Director

BY HAND DELIVERY

November 21, 2019

Committee of the Whole,
Council of the District of Columbia
c/o Blaine Stum
Legislative Policy Advisor
1350 Pennsylvania Avenue, NW
Suite 410
Washington, DC 20001

Re: B23-474 – Post-Hearing Submission of the Morris & Gwendolyn Cafritz
Foundation (“Applicant”)

Dear Members of the Committee of the Whole:

The record in the above-mentioned case was left open until November 21, 2019. In response to issues that arose during the course of the November 7, 2019 public hearing, the Applicant hereby provides the following information.

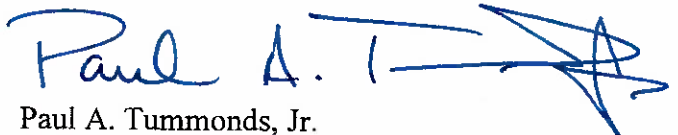
- **Written testimony of the Applicant’s representative** – a copy of the testimony that I presented to the Committee of the Whole is attached.
- **Confirmation of the Square Number for Lot 7** - a copy of a DC Surveyor’s Plat, dated December 7, 2012, which shows that Lot 7 (highlighted in yellow), which is located on the west side of 4th Street, NE, is located in Square 3765.
- **Additional response to the conditions proposed by the District Department of Transportation (DDOT)** – As noted during the public hearing, the Applicant was not able to review DDOT’s report in this case until immediately before the November 7, 2019 public hearing. After further review of the DDOT Report, the Applicant responds to each of DDOT’s proposed conditions as follows.
 - **Acceptance of Ingraham Street, NE** – The extension of Ingraham Street, NE was approved in DC Law 18-247 and the Applicant constructed the one block extension of Ingraham Street, NE (between South Dakota Avenue, NE and Hamilton Street, NE) in accordance with all applicable District laws, regulations and requirements. The Applicant continues to work with DDOT representatives to effectuate the District’s acceptance of this portion of Ingraham Street, NE. The Applicant does not believe that the acceptance of Ingraham Street is related

to B23-474 and therefore does not believe that the satisfaction of this condition proposed by DDOT should be required in B23-474.

- Requirement to pay Fair Market Value for the street and alley proposed to be closed – DDOT’s report noted that the Federal Highway Administration (FHWA) sets guidelines which require that “disposal of a **property interest** determined to be excess to transportation needs must be for fair market value” (**emphasis added**). As noted in the testimony presented by the DC Surveyor in this case, the District of Columbia is not able to establish title to either the alley to be closed, or the portion of 4th Street, NE to be closed. Thus, there is no disposal of a property interest by the District of Columbia in closing the street and alley and the Applicant should not be required to pay fair market value for the proposed closings. Therefore, the Applicant does not believe that that the satisfaction of this condition proposed by DDOT should be required in B23-474.
- Applicant to compensate the District for the loss of street trees and removal of streetlights – The Applicant agrees with this condition proposed by DDOT and believes that it is appropriate to include this condition in B23-474.
- Removal of the request to remove Building Restriction Lines that are not impacted by the development of Block B – As noted in the Applicant’s testimony on November 7, 2019, this is a request which is similar to the request made by the Office of Planning. The Applicant agrees with this condition proposed by DDOT (and the Office of Planning) and believes that it is appropriate to include this condition in B23-474.

Please feel free to contact the undersigned if you have any questions regarding this submission.

Respectfully Submitted,


Paul A. Tummonds, Jr.

Enclosures

cc: Roland Dreist (By e-mail)



IN REPLY REFER TO:
NCPC File No. 8044

February 25, 2019

Mr. Roland Dreist
Government of the District of Columbia
Department of Consumer and Regulatory Affairs
Office of the Surveyor
1100 4th Street, SW
Washington, DC 20024

Re: S.O. 18-41561 - Closing of a Portion of 4th Street, NE, and an alley in Square 3765

Dear Mr. Dreist:

The purpose of this letter is to respond to your referral of a proposed street and alley closing for National Capital Planning Commission (NCPC) review and comments to the Council of the District of Columbia pursuant to DC Code § 9-202.02.

Upon review of the case documents, NCPC staff has determined that the proposed project falls under an exception listed in Chapter 8 (Exceptions and Project Changes) of NCPC's submission guidelines. In particular, the project meets the requirements of Exception 8, as the street is not located adjacent to federal property and does not provide access to federal property or affect other federal interests. In addition, the proposed street and alley closing is located outside the boundary of the L'Enfant City. The project was also made available for public review on the NCPC website and no comments were received. Accordingly, staff has determined that this project is exempt from Commission review.

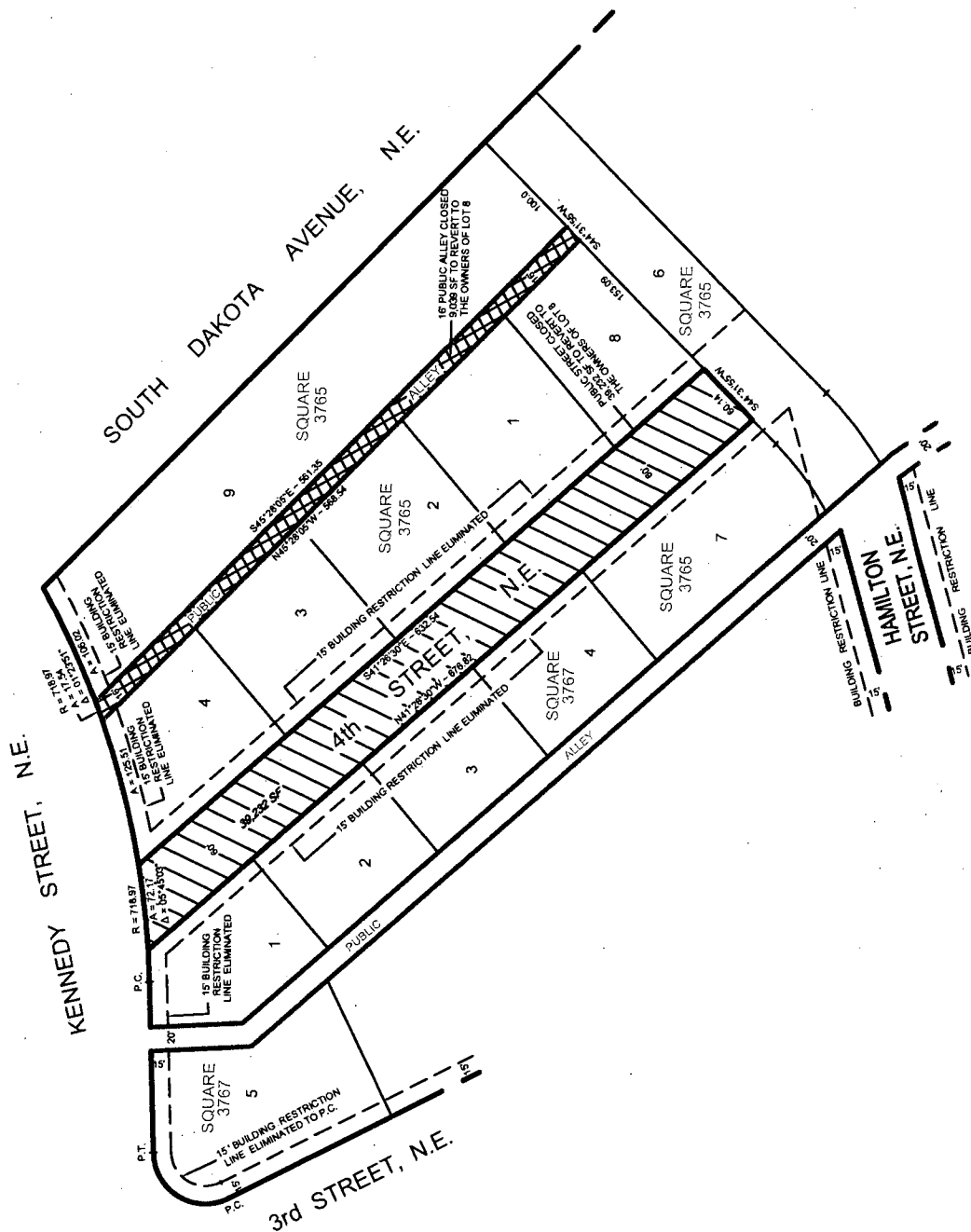
This determination applies only to the project listed above. Determinations as to whether a particular project falls within one of the Commission's exceptions are done on a case-by-case basis, either during early consultation or upon request for review. Please note that the applicant cannot make this determination independently and must submit projects to NCPC to confirm that an exception is warranted.

If you have any questions or need additional information, please contact Carlton Hart at (202) 482-7252 or carlton.hart@ncpc.gov.

Sincerely,

Diane Sullivan
Director, Urban Design and Plan Review

PUBLIC STREET CLOSED, ALLEY CLOSED AND BUILDING RESTRICTION LINES ELIMINATED SQUARES 3765 AND 3767



PURSUANT TO MAYOR'S ORDER THE PUBLIC STREET SHOWN THUS: [Hatched Pattern] IS CLOSED, AND TITLE REVERTS AS SHOWN UPON RECORDATION OF THIS PLAT. THE ALLEY SHOWN THUS: [Hatched Pattern] IS CLOSED AND TITLE VESTS AS SHOWN UPON RECORDATION OF THIS PLAT. THE BUILDING RESTRICTION LINES SHOWN ARE ALSO HEREBY ELIMINATED.

OFFICE OF THE SURVEYOR, D.C.
 _____, 2019

I CERTIFY THAT THIS PLAT IS CORRECT AND IS RECORDED.

 SURVEYOR, D.C.

SURVEYOR'S OFFICE, D.C.	
Made for: GOULSTON & STORRS	
Drawn by: L.E.S.	Checked by: B. MYERS
Recorded and computations by: B. MYERS	
Recorded in: _____	Page: _____
Recorded in Book: _____	SR-18-08654
Scale: 1 inch = 60 feet	File No. 18-41561
2018 STREET_CLOSING SR-18-08654-SQ.3765	


Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer 

DATE: December 10, 2019

SUBJECT: Fiscal Impact Statement – Closing of Public Street and Alley and
Elimination of Building Restriction Lines in and abutting Squares 3765
and 3767, S.O. 18-41561, Act of 2019

REFERENCE: Bill 23-474, As Introduced

Conclusion

Funds are sufficient in the fiscal year 2020 through fiscal year 2023 budget and financial plan to implement the bill.

Background

The bill authorizes the closure of a public street and alley bounded by Kennedy Street, N.E., South Dakota Avenue, N.E., Galloway Street, N.E., Hamilton Street N.E., and 3rd Street N.E., in Ward 5.¹ The closures will allow for the development of the second phase of the Art Place at Fort Totten project.² There are no current objections by relevant utilities or executive agencies to the closure of the alley.

Financial Plan Impact

Funds are sufficient in the fiscal year 2020 through fiscal year 2023 budget and financial plan to implement the bill. The property will become taxable to the District, but any tax revenues generated will depend on the final assessed value of the property.

¹ For tax and assessment purposes, the street and alley are located in abutting Squares 3765 and 3767, and are shown in the Surveyor's plat filed in S.O. 18-41561.

² Phase 2 is expected to include a grocery store and children's museum. (Website accessed December 10, 2019 <http://hrretail.com/properties/art-place-at-fort-totten/>)

1 **DRAFT COMMITTEE PRINT**
2 **Committee of the Whole**
3 **December 17, 2019**

4
5
6
7 A BILL

8
9 23-474

10
11
12 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
13

14 _____
15
16 To order the legal closing of 4th Street N.E., between Kennedy Street N.E., and Ingraham Street,
17 N.E., the closing of the public alley in Square 3765, abutting Squares 3765 and 3767,
18 S.O. 18-41561, in Ward 5.
19

20 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
21 act may be cited as the “Closing of Public Street and Alley abutting Squares 3765 and 3767, S.O.
22 18-416561, Act of 2019.”

23 Sec. 2. Pursuant to section 201 of the Street and Alley Closing and Acquisition
24 Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code § 9-
25 202.01), the Council finds that the public street and public alley in and abutting Squares 3765
26 and 3767, as shown on the Surveyor’s plat filed under S.O. 18-41561, are unnecessary for street
27 and alley purposes and orders them closed, with title to the land to vest as shown on the
28 Surveyor’s plat.

29 Sec. 3. The approval of the Council of the street and alley closure is contingent upon the
30 applicant compensating the District of Columbia in the amount of \$29,610 for the removal of
31 existing street trees, \$6,475.50 for the removal of existing District Department of Transportation
32 streetlights in the area proposed for closure, and the retention of the building restriction lines on

33 the south side of the 300 block of Kennedy Street N.E., between South Dakota Avenue N.E. and
34 on the east side of the 5400 block of 3rd Street N.E.

35 Sec. 4. Fiscal impact statement.

36 The Council adopts the fiscal impact statement in the committee report as the fiscal
37 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
38 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

39 Sec. 5. Effective date.

40 This act shall take effect following approval of the Mayor (or in the event of veto by the
41 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
42 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
43 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
44 Columbia Register.

45