



ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item Meeting of December 9, 2006

DATE: November 27, 2006

SUBJECT: SP #331 SITE PLAN AMENDMENT to modify Condition #77 regarding reimbursement to the developer for certain costs incurred by the developer and assignment to the County of design drawings produced by the developer; 4420 Fairfax Dr. (RPC #14-051-019).

Applicant:

JBG/Fairfax Drive, L.L.C.

By:

Timothy S. Sampson, Agent/Attorney
Walsh, Colucci, Lubeley, Emrich and Walsh
2200 Clarendon Blvd., 13th Floor
Arlington, VA 22201

C.M. RECOMMENDATION:

Deny the applicant's request to modify Condition #77 of SP #331.

ISSUES: None

SUMMARY: The applicant, JBG/Fairfax, L.L.C. ("developer"), applied for a minor site plan amendment to allow for the reimbursement to the developer for certain costs accrued to date and also the assignment to the County of certain design drawings produced by the developer relative to conditions as agreed to SP #331. Arlington County is not legally obligated to pay the developer for any costs incurred for design work or any other work associated with SP #331 to date. The County Board should not approve the developer's request because the developer has not met the terms of Condition #77 and because the developer has delayed development of the site indefinitely.

BACKGROUND: On January 21, 2006, the County Board approved a major amendment to the Arlington Gateway Site Plan (SP #331) to incorporate additional site area, to demolish the existing Fairmont Building at 4420 Fairfax Drive, and to construct a new multi-family residential building with ground floor retail. As part of that approval, the developer agreed to design, and to construct a portion of, a new pedestrian entrance to the Ballston-MU Metro station at the west end of the station ("West Entrance"). Based on an earlier study by Arlington County and the Washington Metropolitan Area Transit Authority ("WMATA") which determined need and

County Manager: _____

County Attorney: _____

Staff: Blanche Buergler, DES, Transportation Division

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location, the West Entrance is to be located at the corner of North Fairfax Drive and North Vermont Street, on the south side of the intersection, adjacent to the developer's residential development.

The scope of the developer's commitment for the West Entrance is detailed in Condition #76 of SP #331 and the financial agreement for the West Entrance is detailed in Condition #77 of SP #331. Condition #76 states the developer agrees to prepare and obtain approval of 35% design and engineering documents of the West Entrance and also to prepare and obtain approval of 100% detailed design drawings and specifications for the part of the West Entrance that the developer agreed to build. Under the terms of Condition #77, parts of the developer's obligation were conditioned on the County "fronting" some of the costs. Condition #77 specifies that the developer submit a firm, fixed-price construction bid along with the construction contract for County approval prior to the County Board appropriating funds to cover the developer's upfront costs for design and construction work related to the West Entrance.

The developer initiated design work on the West Entrance and on May 26, 2006, submitted the draft 35% design drawings to WMATA and Arlington County for review and approval. However, the developer decided in June of 2006 to put the residential development on indefinite hold and cease further work on the West Entrance. WMATA and the County decided to postpone approval of the design drawings produced by the developer. The developer did not submit a firm construction bid to the County in accordance with Condition #77. Therefore the condition did not yet call for any appropriation of funds.

Nonetheless, on July 14, 2006, the applicant submitted a request for a minor site plan amendment that would modify Condition #77 of the SP #331 to provide for reimbursement to the developer for certain costs accrued to date and also provide for the assignment to the County of design drawings related to the West Entrance. County staff entered into discussions with the applicant and subsequently requested the applicant provide detailed cost information and the design contract related to West Entrance.

On September 16, 2006, the County Board deferred consideration of the applicant's request until the October 14, 2006, County Board meeting to allow time for County staff to examine the request, consider any proposed modifications to Condition #77, and assess pros and cons. Because the County staff had not received information from the applicant, the County Board deferred consideration a second time on October 14, 2006, until the Board meeting on December 9, 2006, to allow time for County staff to review detailed cost and contract information submitted by the applicant on October 3, 2006.

DISCUSSION: County staff has assessed the developer's request and supporting information and concluded that the requested modifications to Condition #77 are not required nor are in the County's interest at this time, given the uncertainty of the developer's residential development. As part of SP #331 approved on January 21, 2006, the developer agreed to submit a firm, fixed-price construction bid along with the construction for County approval prior to the County Board appropriating funds to cover the developer's upfront costs for work on the West Entrance. Without an approved fixed price construction bid, the County Board should not pay the developer for design drawings produced to date, because it is not clear that the project will ever

move forward. Therefore, it is also not clear that the drawings prepared to date will ever be of any use to the County. Staff has concluded that, until the developer's project is definitely proceeding, the County should not advance funds.

FISCAL IMPACT: None

PREVIOUS COUNTY BOARD ACTIONS:

- April 6, 1963 Approved a use permit (U-1541-63-1) for a public garage at 905 North Glebe Road and 928 North Vermont Street, subject to conditions.
- May 9, 1970 Approved a use permit (U-1838-70-1) for a public garage at 901 North Glebe Road, subject to conditions.
- July 29, 1978 Approved a rezoning from “C-2” to “C-O-2.5” for 901-941 North Glebe Road, and from “C-3” to “C-O-2.5” for 801 North Glebe Road.
- November 25, 1980 Approved a General Land Use Plan Amendment to “Coordinated Mixed Use Development District” , and a rezoning from “C-O-2.5” to “C-O-A”, for 801 and 901-941 North Glebe Road.
- September 10, 1983 Approved a use permit (U-2395-83-2) for an automobile service station, subject to conditions and with a one year review, at 901 North Glebe Road.
- April 1, 1996 Took no action on a site plan request (SP #311), a site plan amendment (SP #6), and a request to vacate a portion of North Vermont Street, to construct an office development.
- July 20, 1996 Approved a site plan (SP #321) for a 123-car motor vehicle storage lot on a temporary basis, subject to conditions and a one year review, at 801-941 North Glebe Road.
- July 19, 1997 Continued a site plan (SP #321) for a 123-car motor vehicle storage lot, subject to conditions and amended condition #3 which continues the temporary use for two years to July 1999, at 801-941 North Glebe Road.
- November 14, 1998 Approved a new site plan (SP #331) for a mixed-use office, retail, residential and hotel development consisting of two office buildings containing first floor retail, and one residential/hotel building, at 801-941 North Glebe Road, and the intersection of North Glebe Road, North Fairfax Drive and North Vermont Street.
- November 16, 1999 Deferred a major site plan amendment (SP #331) request for a mixed-use office, retail, residential and hotel development consisting of one office building containing first floor retail, one residential building and one hotel building, at 801-941 North Glebe Road, and the intersection of North Glebe Road, North Fairfax Drive and North Vermont Street.

December 15, 1999	Approved a major site plan amendment (SP #331) request for a mixed-use office, retail, residential and hotel development consisting of one office building containing first floor retail, one residential building and one hotel building, at 801-941 North Glebe Road, and the intersection of North Glebe Road, North Fairfax Drive and North Vermont Street.
May 18, 2002	Deferred a major site plan amendment to convert the approved hotel to residential use.
July 24, 2002	Deferred a major site plan amendment to convert the approved hotel to residential use.
September 14, 2002	Deferred a major site plan amendment to convert the approved hotel to residential use.
October 19, 2002	Deferred a major site plan amendment to convert the approved hotel to residential use.
December 7, 2002	Deferred a major site plan amendment to convert the approved hotel to residential use.
April 26, 2003	Deferred a request to incorporate Site Plan #133 into Site Plan #331, modify the approved hotel to reduce parking and exclude GFA from density calculations, and to construct a new office building.
June 17, 2003	Approved a request to incorporate Site Plan #133 into Site Plan #331, modify the approved hotel to reduce parking and exclude GFA from density calculations, and to construct a new office building.
September 17, 2005	Deferred a request to incorporate Site Plan #6 into Site Plan #331 and to construct a new residential building.
October 15, 2005	Deferred a request to incorporate Site Plan #6 into Site Plan #331 and to construct a new residential building.
November 15, 2005	Deferred a request to incorporate Site Plan #6 into Site Plan #331 and to construct a new residential building.
January 21, 2006	Approved a request to incorporate Site Plan #6 into Site Plan #331 and to construct a new residential building.
September 16, 2006	Deferred a request to modify Condition #77 of SP #331.
October 14, 2006	Deferred a request to modify Condition #77 of SP #331.