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Redevelopment Board Minutes 04/13/2009

Arlington Redevelopment Board

Approved May 6, 2009

Minutes of April 13, 2009

Members Present:

Andrew West, Chair
Christopher Loreti, Vice Chair
Ed Tsoi
Roland Chaput
Bruce Fitzsimmons

Also Present:

Kevin J. O'Brien
Laura Wiener
Joey Glushko

Andy West called the meeting to order at 6:30 and introduced Tom O'Brien of JPI representing Symmes Redevelopment Associates. Tom O'Brien introduced Doug Manz and Richard Dickason who accompanied him and explained that they were at the meeting to request an extension of the date by which they must obtain and pay for building permits for the Symmes project. Tom O'Brien explained that they have been in talks with Wood Partners whom Richard Dickason represents and that Wood Partners may purchase the land and the project. Rick Dickason indicated that they are doing due diligence of the project and are very interested in it. Tom O'Brien explained that JPI has essentially written off its investment in the project and that Wood Partners would assume the land loan, the vendor debts, and Town taxes and would seek financing to build the project. Tom O'Brien continued that the missing piece in the deal is getting the land loan written down. The amount of the loan attached to the project is important in determining the financial feasibility of the project for the Wood Partners. He explained that JPI would have a minor role in the project and that E.A. Fish would have no role. Rick Dickason described Wood Partners to the Board. Tom O'Brien said that they were pushing to a closing in June and asked for an extension to June 30th.

Roly Chaput asked Rick Dickason if he would convert the units to condominiums if the market improved. Rick Dickason replied that there was no way to make them efficient as rentals and that they would convert to condominiums when they could. Chris Loreti asked about the encumbrances on the project. Doug Manz explained that there were about 2 million in vendor claims, the land loan was 13.6 million and JPI had contributed funds to make the total about 24 to 25 million.

Rick Dickason explained that they were getting construction costing in about two to three weeks and would then begin to work with lenders. Bruce Fitzsimmons said that he'd like to give this plan an opportunity to work and was inclined to grant the extension to June 30th, but that he would want to see at least a term sheet from a lender by that date. The market shows signs of recovery and the Board has the ability to take the land back and sell it to another developer. The Town is losing money and cannot wait forever. Tom O'Brien suggested that they could come back in May and explain their progress.

Andy West asked for questions or comments from the audience. Michele Barry said that SNAC had submitted a letter with requests and that it didn't make sense at this time to talk about alternatives for the MOB site because the future of the residential portion was uncertain. She expressed concern for the condition of the site and asked that Kevin Nigro be brought in to formulate a safety plan for the site. Tom O'Brien said he'd read SNAC's letter and will respond. Karen Johnson said that she wanted the Board to realize that the site wasn't economically viable and that if the project cost is written down, the Board should consider if this is the right project for the site.

Andy West asked Kevin O'Brien to explain the votes the Board should consider, then Roly Chaput moved and Bruce Fitzsimmons seconded a motion that the Board approves the June 30, 2009 deadline for the issuance of building permits, providing that SRA report to the Board on its progress at the Board's meeting on May 11, and notwithstanding the language of Section 5(a) of the Land Disposition Agreement, finds SRA to be in compliance with said document, provided that, pursuant to Section 5(b) of said Land Disposition Agreement, on or before June 30, 2009, SRA furnishes satisfactory evidence of having obtained from a recognized institutional source a construction loan for financing the making of the Improvements on the Property, and provided further that if SRA does not furnish such satisfactory evidence on or before June 30, 2009, it shall at a minimum furnish to the ARB a plan showing how any liens on the property shall be removed and showing how the Town shall receive the fees for the building permits associated with the Symmes Residential Component Improvements. The Board voted 5 to 0 to approve.

The Board then considered the time period during which Symmes Redevelopment Associates retains ownership of the MOB site (up until the "cut-off" date) and Chris Loreti then moved to waive the provisions of Section 8(c)(iii) of the Land Disposition Agreement for the period up until June 30, 2009, and approve the June 30, 2009 cut-off date. Bruce Fitzsimmons seconded the motion and the Board voted 5 to 0 to approve.

Andy West then opened the continued hearing on warrant articles that propose to amend the Zoning Bylaw. Chris Loreti observed that Kevin O'Brien had heard from the Building Inspector that one could not keep hens in Arlington without changing the Zoning Bylaw and he moved to close the public comment portion of the hearing. Ed Tsoi seconded the motion and the Board voted 5 to 0 to approve. Chris Loreti then moved that the Board vote to approve the language on Articles 5 through 10 as it appears in the draft ARB Report to Town Meeting dated April 9, 2009. Bruce Fitzsimmons seconded the motion and the Board voted 5 to 0 to approve.

The Board then briefly discussed proposed Article 11 and considered the changes Chris Loreti proposed to the article and Bruce Fitzsimmons moved and Ed Tsoi seconded a motion that the Town vote to amend the Zoning Bylaw in Article 5, Section 5.04, Table of Use Regulations, by adding a new use numbered 8.23 immediately after use 8.22 as follows, "8.23 Keeping of no more than six hen chickens (but no roosters) for egg-laying, pet, or other non-commercial purposes in an enclosure in the rear yard of a property at least six feet from all property lines and at least 25 feet from residences on adjacent lots".

At 7:35, Andy West then opened the continued hearing on the application for special permit to build a CVS drug store at 821-37 Mass. Ave. He reviewed the subjects that he wanted the applicant to present and said he would take questions and comments after the Board heard from the applicant on landscaping, stormwater, and architecture. The applicant, Paul Beck introduced William Flemming, landscape architect who then presented the landscaping for the proposal. Roly Chaput encouraged him to use native plantings and Chris Loreti asked if they could put landscaping along the front of the building. William Flemming replied that he would put landscaping there. Chris Loreti then asked if they wanted to consider creating a 9.5 foot buffer in the front of the parking spaces that abut Mass. Ave. so they could have four spaces there as opposed to the three that had been agreed upon at last meeting. Phil Henry, engineer for the project replied that he had looked into the idea of making some of the parking spaces narrower which allowed him to make the buffer in front 9.5 feet. The Board agreed that it was a good idea. Kevin O'Brien then asked about some landscaping on the right side of the building near the street. The landscape architect said he would suggest something for that location.

The hearing room was very crowded and someone reported that the Town Hall was now available so at 8:10, Chris Loreti moved to recess the meeting in order to move downstairs to the Town Hall auditorium. Bruce Fitzsimmons seconded the motion and the Board voted 5 to 0 to approve.

Andy West called the hearing back to order in the Town Hall auditorium. Andy West asked about the fence that would be installed on the high school side of the property. Phil Henry indicated that it would be a wooden stockade fence. Andy West said that the location was much more suited to a black wrought iron fence that could be seen through. Kevin O'Brien pointed out that the Bylaw calls for a solid fence. Andy West asked Kevin O'Brien to see if there were any way the fence could be changed. Andy West then asked the applicant to explain the treatment of stormwater. After Phil Henry gave a brief explanation, Roly Chaput asked what happened to the water that was directed to the concrete channel at the rear of the site. Phil Henry responded that it was just as it was today but cleaner and with less water. Chris Loreti asked if the Town Engineer had okayed the storm drain proposal. Kevin O'Brien replied that he had and had some slight concern about the concrete channel, but the project had to go before the Conservation Commission and he was content to see if it satisfied the commission. Kevin O'Brien indicated that the Board's special permit would be contingent upon the applicant successfully getting an Order of Conditions from the Conservation Commission.

Andy West asked the applicant to move on to architectural issues. The applicant's architect, Kevin Patton described the changes that had been made to the design to respond to comments from the Board and indicated that the height had been reduced to 34 feet 10 inches. Kevin O'Brien asked if there were to be signs on the drive-thru. Kevin Patton replied that he was recommending that there be such signs. Chris Loreti asked if it made sense for there to be shutters on some of the windows and the Board generally agreed that the shutters should stay. Chris Loreti then asked for some detail about the windows facing the street, specifically asking if advertising would be placed there and if anything could block the view into the store above the interior shutters. Kevin Patton replied that it was not possible to put ads or anything else in the windows because there was not enough room. There followed some discussion about putting historic photos in the but no conclusions were reached.

Bruce Fitzsimmons asked why the building was so high and Kevin Patton explained that it was to make it look correctly proportioned. Bruce Fitzsimmons then asked if the drive thru roof could be made wider and Kevin Patton replied that the slanted roof had been removed at the Board's suggestion and that making it wider made it look too thin.

Andy West then asked if there were questions or comments from the audience. Beate Becker asked if the permit were a done deal because in her mind, it did not meet the standard in Section 10.11.a,2 because it was not essential or desirable, and did not meet Section 10.11.a,7 because there was an excess of use. She concluded that there was a failure of imagination and understood that there were other plans that had been done by the planning board.

David Wright cited the same two bylaw sections and asked if the benefits outweigh the costs. He showed a map of Arlington which showed seven stores that sell the same kind of goods. He said it was not essential, it was redundant development and argued that the proposal did not provide benefit. Carol Band said she appreciated the effort of the ARB, but that this was a dog of a project. She showed pictures of the Medford CVS and the proliferation of signs there. She said she understood the project requires 40 some spaces and asked why there were 73. Diane Gordon cited standard no. 10.11.a,6 saying that the traffic would be very bad and would be a danger to the kids who were frequently in the street. She showed a picture of kids in the street and a map of the area she thought would be affected.

Wynell Evans said that she thought the project represented a failure of vision. The Town needed modest housing and storefronts with some housing above would be more appropriate. She formerly lived in East Arlington and walked everywhere, now she lives near the Highland Fire Station and there is no place to walk to. Velasqua von Allworden said she didn't like the project. An Arlington High School teacher from Irving St. said she didn't like the idea of the students having access to the products sold at CVS. Susan MacMillan was concerned about the idling cars at the drive-thru. Bill Berkowitz uses CVS, likes it, but is concerned with the fit of the project. He said the question for the Board is this the best use of the space, is this the best the Town can do? That is part of the ARB mission. We have a vacant space and we should use it, but should we settle for this? Some neighbors have offered to seek possible users of the site and requested a delay in the Board's decision to allow them to identify alternate uses. The Board should deputize them for a time and see what they can do.

Bob Radochia said he'd like to see a CVS built in the center of town, the other big pharmacies are at the ends of the town. In an ideal world a wealthy resident would buy the property and turn it into a dog park and bird watching place but that didn't happen. He knows change brings discomfort, but the proposal can't be denied because some people don't like it. The project is different from the Osco proposal which was in the intersection at Jason and Mill Streets. This is 700 feet away. Regarding the objection that there are too many drug stores, he thought it is not a concern. There used to be 15 or 17 drugstores in Arlington and three were within 400 feet of the High School. The Town should welcome those who want to do business in Arlington. Unlike 50 years ago, when he went to high school, most drive to school today, and two thirds of those who walk enter through Mill Brook Drive so don't come up to Mass. Ave. and those that do use the cross walk. Regarding engine emissions, he thinks there are more emissions generated by people having to sit at traffic lights driving to other pharmacies.

Nancy Salzer said she came for the Mass. Ave. project, but doesn't like the project. She'd like the Board to look for another use. There is room for vision. She'd like to see housing or something. She said she was told there were other plans on the table. Lizbeth Gronlund pointed out that the height of the building, though only one story, is same as three story house next door. she continued, saying that the buildings across the street were a human scale. She said of the other two CVS's the one in East Arlington is okay but the one in the center is dismal. She has no confidence that CVS will keep up this one.

Dorothy Nash Webber referred to Bylaw Section 10.11(a)(6) regarding the exhaust of idling cars and the effects on the kids at the playing fields. She went to a Waltham CVS and observed that 66% idled 2 minutes, and 33% idled 5 to 8 minutes. She asked if there would be no idling signs and if so what would people do. Mary Winstanley O'Connor said they would do what they do at Johnnie's Foodmaster. Dorothy Nash Webber continued saying that she was part of Arlington Committee for Responsible Development and they would like to volunteer to find a developer if this permit is denied.

Susan Liese of Jason Street said it was nice to meet all her neighbors here and she agreed that the traffic on side streets would be problem for years. People are supposed to drive at 25 MPH but they drive 50. Thomas Davison of Churchill Ave questioned that a drive-thru was a permitted use. Kevin O'Brien explained that the Building Inspector had determined that it was use 8.17. Thomas Davison also asked how many real time drive-thru's there are in a day. He called Waltham who said they fill 500 scripts per day, another store fills 700 scripts per day. He said he gave a petition to the Planning office that day. He then asked if it were appropriate that Mary Winstanley O'Connor serves as counsel for CVS. Mary Winstanley O'Connor is a member of the Town Board of Assessors. He had looked at the State web site and read a bit from it. He was not accusing Mary Winstanley O'Connor of any wrongdoing but it is a perceived conflict. The duties of the assessors are to value land and the CVS land now has a value of \$2,137,600 and a total value of \$3,908,900. CVS was asked if it would consider a mixed use on the site and they said, "no". Though it is private property, the public good must be considered. He thought there is will to make the property viable.

Mary Winstanley O'Connor responded that she has represented the Noyes family for fifteen years and it was definitely not a conflict of interest. She was formerly on the ZBA and never represented them then because that would be a conflict. She recuses herself if a client of hers appears before the Assessors. Thomas Davison asked who vetted Mary Winstanley O'Connor, did anyone ask Town Counsel? There was no response.

Andy West said he'd like to address some of the comments. The Town is now doing a commercial development plan because we are concerned about commercial development, we want it. When CVS came before us on November 17, we considered that there could be second floor and that there were too many drug stores just as there are too many banks. We looked to improve the proposal. We didn't want an ATM. We wanted to keep the house. We looked upon keeping the house as a big step toward mixed use on the site. We had a proposal from the Housing Corporation of Arlington to use the house for affordable housing. The proposal is not before us, but the preservation of the house and the room for an addition to the rear is part of the plan. This is one step better than the original proposal. Also, CVS wanted a pad site store with the building in the middle of the parking lot. We insisted that the store be moved to the street which was a complicated battle. Now one can walk into the building without walking through the parking lot.

Next we dealt with traffic concerns. We know it is a vehicular use, but we reduced the amount of parking and moved it to the back which created a compromise. We moved the entrance away from Carey Drive, which is one way. We had a lot of concerns and got \$90,000 worth of mitigation, four bump-outs for safer pedestrian crossing and an additional \$50,000 to mitigate possible problems. We looked at the crosswalks, worked with the TAC and their memo accepted the project with the mitigation around the store and also to the Jason and Mill Streets intersection. Tom Davison asked about the cut through traffic. Andy West responded that this helps move traffic on Mass Ave to lessen need to cut through. Andy West continued, saying that the high school principal says the project is okay. Throughout the process, we have moved this imperfect project toward our vision. We would like to see better, but we have worked hard the last four months to improve this and make it safe.

Someone asked about the neighborhood cut through traffic and the morning arrival of students on Mass. Ave. Andy West replied that there are a lot of commuters on Mass. Ave. and he is not sure this store will make a difference. Tom Davison insisted that this store needs traffic and our streets will be affected.

Beate Becker said she appreciated the Board's work. The meeting tonight has a big turn out of responsible people who want the best. Dorothy Nash Webber proposed that the Board study the neighborhood for two or three weeks. This use is the busiest use after fast food. The Board should consider a study of the cut through impact. She said the high school principal was for it because he wanted a collaboration with the store for his students. The Superintendent did speak up about a traffic concern.

Andy West said he heard the superintendent's concern and he wanted to make sure of safety at the start. They will work with TAC during the early period and if there is a lot of pedestrian traffic, they will suggest a crossing guard. Mary Winstanley O'Connor said that she had spoken to Superintendent Bodie who asked for a police officer for a month and CVS agreed.

Dorothy Nash Webber said that that would not help the cut through traffic. Ed Tsoi said it is a difficult decision, to put another use on the site will take another seven months. Tom Davison said there are no other drive-thru's in town except at banks and are there any between a school and a church.

Mary Winstanley O'Connor said that we've been here five months, the project has evolved. It is not like the Osco proposal, it is not in a failed intersection and the Osco proposal did not blend with its two historical abutters. The church said it is a good proposal, high school principal Skidmore said it is a good proposal. We've spent months on traffic, TAC says it is not opposed. It is now an abandoned building. The CVS is 140 feet further from the high school and is two thirds the size of the existing building and it keeps the Atwood House. All the standards have been satisfied.

David Wright said he appreciates the time spent and the changes, but we should think about if the community likes it. He doesn't think that their coming late limits the need to continue the process.

Roly Chaput said that he'd been on the board for a long time and has had the same situation many times. You're here now, you won't be at the next project that we have. We do our best, the Bylaw has worked well for thirty years. We've been on this project six months. If you have a problem with our decision, you have options like at Osco. We try for what is best for the community. Also, he has talked to many who favor the proposal.

Harris Band said that he objected to the idea that this group is focused on a particular part of town, this is a town issue. Someone said that she was concerned about east Arlington and thought maybe the Board was out of touch. Someone else said that he or she thought the Board showed disdain by not allowing talk about certain issues. If there had been better outreach, the Board would have heard more earlier.

Bruce Fitzsimmons reminded that last week and throughout, the Board had allowed comment on all issues. He continued saying that he appreciated the feedback. In a special permit application, The Board has to approach it according to the Bylaw standards. It would be inappropriate to say we don't like drug stores. The question before the Board is does the proposal meet the standards.

Andy West then said that he was closing the public comment period of the hearing so the Board can deliberate. He asked the Board to talk about the general and special conditions first in case they made a difference in the way a Board member viewed a standard. He asked to discuss special condition #4 first. Mary Winstanley O'Connor had suggested some changes to the draft condition and suggested dropping the language that allowed the Board to change the hours of operation. Bruce Fitzsimmons said that the Board didn't want to give up the ability to restrict the hours. Paul Beck asked that they come back to that one so he could talk with CVS about it. The Board agreed and went through the other conditions.

Debbie Constantine of CVS, taking up Special condition #4 again said they wanted an 8 AM opening for the drive thru. The Board agreed and added that language to the condition. Mary Winstanley then explained that in her conversation with School Superintendent Bodie, the superintendent asked to have a police officer for two weeks, then if needed for two more weeks when the store first opens and school is in session. Mary Winstanley O'Connor said that CVS agrees and will send the superintendent a letter agreement to that effect. Kevin O'Brien asked the ARB be copied on the agreement.

The Board then went through each special permit standard to ascertain how Board members felt about each standard before voting on the permit.

Section 10.11(a)(1) – the Board agrees that proposal meets the standard.

Section 10.11(a)(2) – the Board agrees that proposal meets the standard.

Section 10.11(a)(3) – the Board agrees that proposal meets the standard, and commented that all traffic studies should be listed.

Section 10.11(a)(4) – the Board agrees that proposal meets the standard.

Section 10.11(a)(5) – the Board agrees that proposal meets the standard.

EDR - 1 – the Board agrees that proposal meets the standard, and commented that existing landscaping that is to be preserved be mentioned.

EDR - 2 – the Board agrees that proposal meets the standard.

EDR - 3 – the Board agrees that proposal meets the standard.

EDR - 4 – the Board agrees that proposal meets the standard, and commented that the proposal reduces the driveways at the site from two to one, and that the number of and location of bike racks should be shown on the 50% drawings.

EDR - 5 – the Board agrees that proposal meets the standard.

EDR - 6 – the Board agrees that proposal meets the standard.

EDR - 7 – the Board agrees that proposal meets the standard and recognized that the proposal includes oversize directional signs within the parking lot at the drive-thru and they should be shown on the 50% drawings.

EDR - 8 – the Board agrees that proposal meets the standard.

EDR - 9 – the Board agrees that proposal meets the standard, and indicated that lighting of the east side of the building should be located on and controlled by the occupants of the Atwood House, and should be shown on the 50% drawings.

EDR - 10 – the Board agrees that proposal meets the standard.

EDR - 11 – the Board agrees that proposal meets the standard.

EDR - 12 – the Board agrees that proposal meets the standard and will update the LEED checklist and narrative with the 50% Drawings.

Section 10.11(a)(1) – the Board agrees that proposal meets the standard.

Section 10.11(a)(1) – the Board agrees that proposal meets the standard.

The Board then discussed the special condition regarding the covering of the windows in the store and decided that the window on the east side of the building closest to the street could be covered in order to provide a display in the window.

Bruce Fitzsimmons then moved that the Board grant the special permit with the general and special conditions shown in the draft decision and as amended tonight. Roly Chaput seconded the motion and the Board voted 5 to 0 in favor.

The meeting adjourned at 11:25 PM.

Respectfully submitted,
Kevin J. O'Brien