



## ARLINGTON COUNTY, VIRGINIA

### County Board Agenda Item Meeting of May 19, 2012

**DATE:** April 25, 2012

**SUBJECT:** #U-3199-08-2 USE PERMIT AMENDMENT to modify Condition #26 to eliminate the requirement that affordability continue after foreclosure and bring this use permit into compliance with VHDA financing requirements; located at 901 South Dinwiddie Street (Arlington Mill Residences) (RPC# 22-001-724).

**Applicant:**

Arlington Mill Development Corporation  
Nina Janopaul  
2704 North Pershing Drive  
Arlington, Virginia 22201

**C.M. RECOMMENDATION:**

Approve the subject use permit amendment for the Arlington Mill Residences to modify Condition #26, to eliminate the requirement that affordability restrictions continue in the event of a foreclosure.

**ISSUES:** This is a request for an amendment to the Arlington Mill Residences use permit in order to allow the project to meet VHDA requirements for financing. No issues have been identified.

**SUMMARY:** The Arlington Mill Development Corporation is applying for a use permit amendment for the Arlington Mill Residences located at 901 South Dinwiddie Street. The proposed amendment would revise use permit Condition #26 to make the use permit language consistent with terms in the Ground Lease which provide that in the event of foreclosure, the affordable housing requirements would no longer apply to the property. The language change is required so that the project can meet the requirements for financing by the Virginia Housing Development Authority (VHDA), which is lending money for construction of the improvements.

County Manager:

*BMD/GA*

County Attorney:

*[Signature]*

*[Signature]*

Staff: Natalie Sun, DCPHD, Planning  
Maureen Markham, DCPHD, Housing

9.

PLA-6191

Under the terms of the proposed Ground Lease the County has the right to cure a default before a foreclosure event occurs, and therefore has the ability to ensure that the units do remain affordable for the life of the lease term (75 years). Therefore, staff supports the proposed use permit amendment subject to all previously approved conditions with an amended Condition #26.

**BACKGROUND:** The use permit for the Arlington Mill Residences (the Project) was approved under the Columbia Pike Form-based code in February 2011 for the construction of a 122-unit apartment building at 901 South Dinwiddie Street, adjacent to the site of the new Arlington Mill Community Center. The Project will be situated upon a parcel of land that is owned by Arlington County and leased to the Applicant for an initial lease term of 75 years (the Ground Lease). Condition #26 requires that 121 of the units in the Project be affordable to households earning 60% of the Area Medium Income (AMI) or such lower amounts as the Developer and County may mutually agree for the life of the Ground Lease.

**DISCUSSION:** The Applicant is applying for construction and permanent financing for the leasehold improvements from Virginia Housing Development Authority (VHDA). In order for VHDA to approve the financing application, it must also approve the Ground Lease. Under VHDA's Policy on the Financing of Leasehold Estates any ground lease that is to be approved by the VHDA Commissioners must contain terms that terminate the income rent restrictions for the balance of the lease term upon foreclosure by any lender. Condition #26 of the subject Use Permit provides that affordability restrictions will remain for the life of the Ground Lease (at least 75 years). Thus, as currently written, the affordability restrictions would survive a foreclosure event and would preclude the foreclosing lender from removing the income rent restrictions.

In order for VHDA to approve the Ground Lease and the financing application, the language in Condition #26 of the use permit needs to be amended to be consistent with the Ground Lease and VHDA's policy. This will create a circumstance in which the committed units may no longer be affordable after foreclosure but, absent the changes, the project may not go forward. In the unlikely event of a foreclosure situation, the County would have the right to cure a default before the foreclosure occurs under the proposed Deed of Ground Lease, and therefore has the ability to maintain the units as committed affordable.

**CONCLUSION:** The Arlington Mill Residences project is an opportunity to create a significant amount of affordable housing in the County and continue the revitalization of the Columbia Pike corridor. The proposed amendment does not constitute a serious threat to the County's ability to sustain committed affordable units at Arlington Mill Residences because foreclosure is unlikely and the County could cure a default under Article V of the First Amendment to the Deed of Ground Lease. Therefore, staff recommends that the County Board amend the subject use permit amendment to modify Condition #26 to make this use permit consistent with the Ground Lease which allows the elimination of the affordability requirements in the event of foreclosure by the lender. The use permit would then continue as approved subject to all previous conditions with Condition #26 amended as follows:

**The following unique site specific conditions (#26) are valid for the life of the Use Permit and must be met before the issuance of the permit specified in each condition.**

**Affordable Housing**

26. The developer agrees that the land underlying the Arlington Mill Residences is being made available to the housing developer through a Ground Lease for the purpose of providing affordable housing. Therefore, the developer agrees that no permits will be issued for this project until a lease for the subject property that is acceptable to the County Manager, has been executed by both the County and the developer. The developer agrees that the lease will provide, among other things, that 99% of the apartments will be affordable (121 of 122 units) to households earning 60% of the Area Median Income (AMI) and such lower amounts as the Developer and County may mutually agree in the terms of the lease for so long as such requirements are applicable under the Ground Lease. Rents for the 121 units will remain affordable for the life of the Ground Lease (at least 75 years). The developer agrees to implement and comply with the affordability requirements described in the Deed of Ground Lease for Arlington Mill Residences, particularly in Article IV Section 4.04 and with Exhibit C Affordable Housing Program of the Ground Lease approved on October 31, 2011 and as may be amended from time to time by mutual agreement of the parties, for so long as such requirements are applicable under the Ground Lease.

PREVIOUS COUNTY BOARD ACTIONS:

- May 1942 “C-1” zoning as shown in Zoning Map book.
- August 1961 Designated “Neighborhood Shopping” on the General Land Use Plan.
- April 1975 Designated “Service Commercial” on the General Land Use Plan
- April 13, 1996 Ratified the offer to acquire property located at 4975 Columbia Pike
- June 4, 1996 Ratified the Agreement of Sale with Safeway, Inc. for the purchase of property located at 4975 Columbia Pike and reallocated funds for acquisition
- November 16, 1996 Found that the location, character and extent of a proposed community center which will provide school, recreation, and other community services at 4975 Columbia Pike, (formerly a Safeway grocery store) is substantially in accord with the Comprehensive Plan for Arlington County.
- Approved General Land Use Amendment GP-255-96-1 from “Service Commercial” (Personal and business services; and “Low-Medium” Residential (16 to 36 units per acre) to “Public” (Parks [local, regional and federal]); Schools [public]; Parkways, major unpaved rights-of-way; Libraries and cultural facilities) at 4975 Columbia Pike.
- Adopted an ordinance for a rezoning approval for a reclassification from zoning district “C-1” Local Commercial District, to zoning district “S-3A” Special District.
- Approved use permit (U-2897-96-1) for an adult education program (high school) and a by-right Department of Parks, Recreation and Community Resources facility, subject to conditions with a review in two (2) years, with the use permit expiring at the end of the 2001-2002 school year. (November 1998)

December 16, 1997	Approved use permit amendment (U-2897-96-1) to permit three 3 programs for children: a preschool program for 15 children, an after-school program for 45 children and a cooperative parent play group subject to conditions and with a review in one (1) year. (December 1998)
November 14, 1998	Continued use permit (U-2897-96-1) for an adult education program (high school) with a review in four (4) years. (November 2002)
December 12, 1998	Continued use permit amendment (U-2897-96-1) to permit three (3) programs for children: a preschool program for 15 children, an after-school program for 45 children and a cooperative parent play group subject to conditions and with a review in three (3) years. (December 2002)
December 8, 2001	Continued use permit amendment (U-2897-96-1) to permit three 3 programs for children: a preschool program for 15 children, an after-school program for 45 children and a cooperative parent play group subject to conditions and with a review in five (5) years. (December 2006)
July 20, 2002	Continued use permit (U-2897-96-1) for an adult education program (high school) with a review in three (3) years. (July 2005)
December 17, 2002	General Land Use Plan amended to include the “Columbia Pike Special Revitalization District”.
February 25, 2003	Columbia Pike Form Based Code (Section 20 of the Zoning Ordinance) adopted
February 10, 2004	Columbia Pike Street Space Plan adopted and Form Based Code amendment to include new Required Building Lines
December 9, 2006	Continued use permit amendment (U-2897-96-1) to permit three 3 programs for children: a preschool program for 15 children, an after-school program for 45 children and a cooperative parent play group subject to conditions and with a review in one (1) year. (December 2007)

December 15, 2007

Continued use permit amendment (U-2897-96-1) to permit three 3 programs for children: a preschool program for 15 children, an after-school program for 45 children and a cooperative parent play group subject to conditions and with a review in three (3) years, or until redevelopment of the site occurs. (December 2010)

General Land Use Plan amended to redraw the "Columbia Pike Special Revitalization District" boundary to include the northern portion of the County-owned Arlington Mill Community Center property

Columbia Pike Form Based Code amendment to redraw the Columbia Pike Revitalization District boundary to include the northern portion of the County-owned Arlington Mill Community Center property; and 2) Designate a portion of the Dinwiddie Street frontage that is 250' from the centerline of Columbia Pike to the north along the east side of South Dinwiddie Street and within the Revitalization District as an Avenue Site

January 29, 2008

Columbia Pike Form Based Code amendment to modify the distance between the Dinwiddie Street Required Building Lines from 91' to a dimension of 80' south of 9<sup>th</sup> Street and 65' north of 9<sup>th</sup> Street

Resolution to endorse Arlington Mill Community Center Concept Plan for development by Special Exception Use Permit under the Columbia Pike Form Based Code.

Approval of affordable housing program and financial plan.

Approval of an option to ground lease between the County Board and Public Private Alliances, LLC.

April 19, 2008

Authorized advertisement of amendments to the Arlington County Comprehensive Plan - Master Transportation Plan Map - to add a new two-lane neighborhood-minor-street segment of 9th Street South between South Dinwiddie Street and South

Arlington Mill Drive, and to delete a segment of South Arlington Mill Drive from Columbia Pike to a point approximately 200 feet to the north. The public hearings by the Planning Commission and the County Board to consider the proposed amendments will be concurrent with the public hearings for the use permit for the Arlington Mill Community Center development.

May 17, 2008

Authorized advertisement of public hearings by the Planning Commission on June 2, 2008, and the County Board on June 17, 2008, on the Special Exception Use Permit Form Based Code application for the proposed Arlington Mill Community Center.

June 24, 2008

Approval of a use permit for a residential building with 159 units; a 6-story mixed-use building with approximately 40,000 square feet of community center uses including gymnasium, approximately 3,000 square feet of retail uses, and 33 residential units; an underground parking garage; and a public plaza at 4975 Columbia Pike.

July 22, 2008

Approval of ground lease between Arlington County and Public Private Alliances, LLC for 4975 Columbia Pike.

December 15, 2009

Authorized the County Manger to modify plans the plans for the approved Arlington Mill Community Center redevelopment project as needed to construct the public portion independently from the housing portion of the project with a target opening in the first quarter of 2013.

Authorized the County Manager to pursue a development partner for the residential housing to be built on the northern portion of the site.

January 26, 2010

Authorization of sole source award to Davis Carter Scott Architects for design services for Phase I of the Arlington Mill Community Center.

March 16, 2010

Approval of the ground lease termination between Arlington County and Public Private Alliances, LLC, dated July 22, 2008 for 4975 Columbia Pike.

September 25, 2010

Approved use permit amendment for plan modifications to the Arlington Mill Community Center to construct an approximately 65,700 sq. ft. community center facility with gymnasium and retail and eliminated the residential portion of the project from Phase 1.

January 22, 2011

Approved a Memorandum of Agreement between the Arlington Mill Limited Partnership (AMLPLP) and Arlington County Board for the County to design the residential portion of the County parking garage for the Arlington Mill Community Center.

Approved an increase in the contract award amount for contract 182-10 for design services related to the residential portion of the County parking garage.

Authorized the Purchasing Agent to execute necessary amendments to the contract documents.

Allocated up to \$270,000 in FY 2011 for design-related costs of the residential portion of the County parking garage.

February 12, 2011

Approved use permit amendment for a 122-unit affordable residential project with modifications of sign regulations located at 4975 Columbia Pike.

February 12, 2011

Approved the Resubdivision of the County's Arlington Mill property;

Adopted a resolution approving an Option to Ground Lease of Parcel A, created by such Resubdivision, between the County Board of Arlington County, Virginia and the Arlington Mill Limited Partnership;

Authorized the Real Estate Bureau Chief, or his designee, to execute, on behalf of the County Board, the Option to Ground Lease and all related documents, including, without limitation, deeds or other instruments necessary to resubdivide the Arlington Mill property, subject to approval as to form by the County Attorney.

June 11, 2011

Approved a contract award between the Arlington County Board and HITT for construction of the Arlington Mill Community Center and the adjacent residential parking garage shell.

Authorized the County Manager or his/her designee, to execute a Construction MOA and all related documents necessary to construct the residential garage shell.

Allocated bridge financing for FY 2011 for construction and related costs for the residential parking garage shell.

Approved an amendment to an agreement between the County Board and Davis Carter Scott, Ltd. For Arlington Mill Community Center design services.

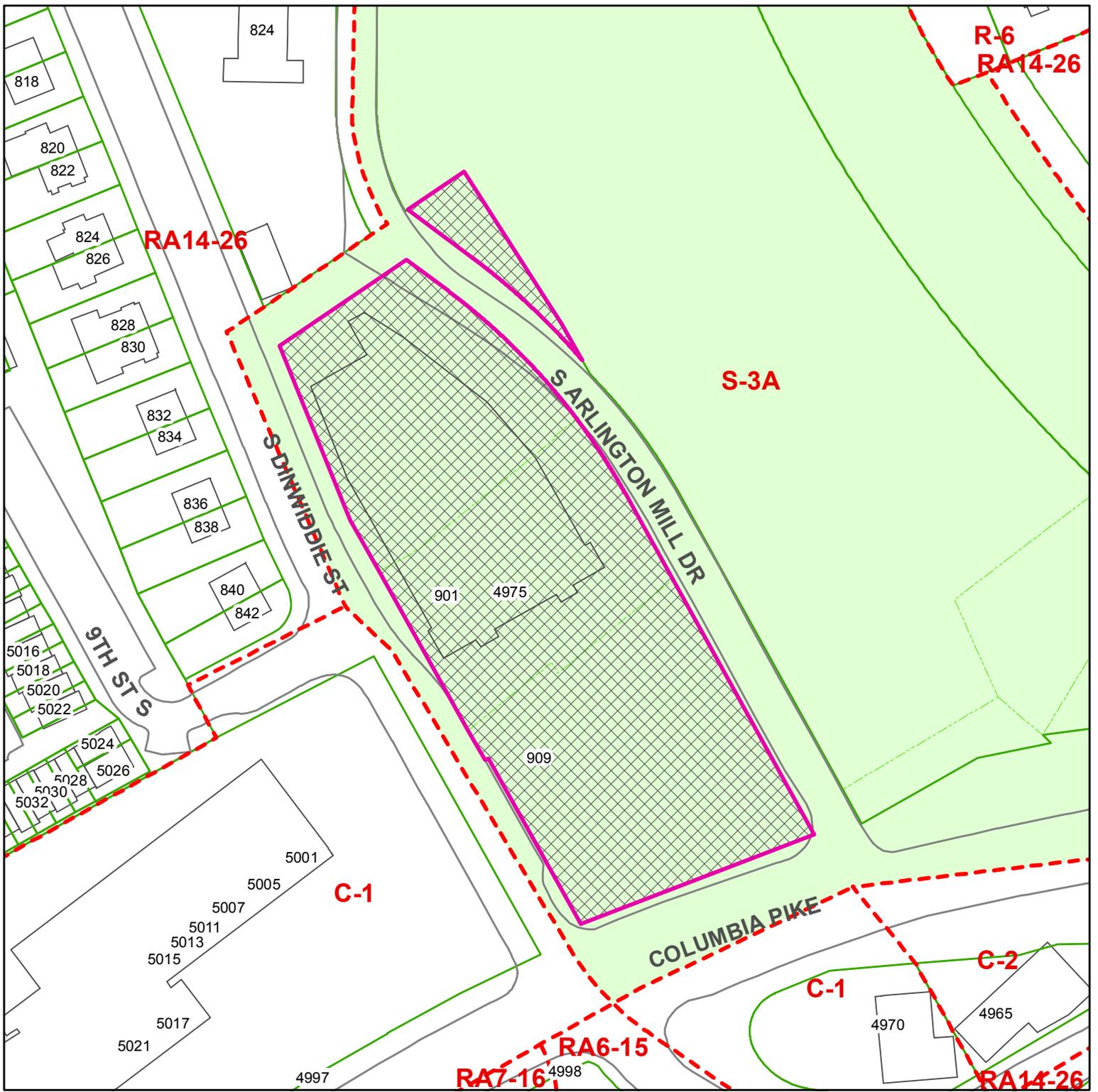
Authorized the Purchasing Agent to execute necessary amendments to the contract documents.

October 15, 2011

Approved a Ground Lease between the Arlington County Board and the Arlington Partnership for Affordable Housing (APAH) on County property located at 901 S. Dinwiddie St.

Authorized the Real Estate Bureau Chief, or his/her designee, to execute the Ground Lease and all related documents.

Authorized the County Manager, or his/her designee, to execute any amendments to the Ground Lease or other documents required in order for APAH to obtain a Permitted Leasehold Mortgage or other permitted financing.



**U-3199-08-2**

**901 S. Dinwiddie St.**

**RPC# 22-001-724**

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

**Department of Community Planning, Housing and Development**



 Case  
 Location(s)  
 Scale: 1:1,200

**Planning Division**