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Date: Mon, 20 Jul 2020 11:09:00 -0400
Subject: ARB Docket 3625: Public Comments to be Entered into the Hearing Record

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Dear ARB Chair Bunnell and Members:

The following are public comments for the special permit hearing on 882-892 Mass. Ave. (Docket 3625). I request that they be made part of the record for the hearing.

These comments pertain to the open space proposed by the developer for the site, and its failure to meet the requirements of the Arlington Zoning Bylaw (hereafter referred to as "the bylaw").

1. Comments have been made to the effect that the existing development is currently non-conforming with respect to usable open space. That is not correct. Usable open space is only required for residential uses. Since there are no residential uses on the site at present, zero usable open space is entirely conforming with the bylaw.
2. Once the use of a site changes, all of the dimensional requirements for the new use apply. The developer does not get to choose only those that are less stringent, and claim that those it cannot now meet as a result of the change in use are somehow grandfathered.
3. The developer has improperly calculated usable and landscaped open space in its latest submission, and the usable open space clearly does not meet the minimum 25 foot dimensional requirement in the definition of "usable" open space.
4. The ARB is allowed to grant relief from the dimensional requirements of the bylaw only when explicitly authorized to do so by the bylaw. The bylaw provides no such authority for reducing the amount of required landscaped and usable open space, nor does it provide any authority for changing the definition of usable open space.
5. The developer has two options for obtaining the special permit: change the plans to conform with the bylaw's open space requirements or obtain a variance from the Zoning Board of Appeals.
6. Because the proposed development does not meet the open space requirements of the bylaw and the ARB lacks the authority to grant relief in this regard, until the developer makes use of one of the two options listed above, it would be arbitrary, capricious, and contrary to the law for the ARB to grant a special permit for this development.

7. Members of the ARB must understand that they are acting in a quasi-judicial capacity when they are acting on special permits. While some, including an unfortunate number of town officials, would have you believe you are judging a popularity contest, your vote on special permits must be in accordance with the bylaw.

Finally, I would note that compliance with the open space requirements of the bylaw is a continuing problem with the mixed-use proposals that come before the ARB. I urge you to work with the Town Manager and the Select Board to ensure that Inspectional Services provides a written review of all such proposals documenting compliance with the open space and the other dimensional requirements of the bylaw before the special permit hearings begin. If a proposal fails to meet the dimensional requirements of the bylaw, as this one does, then Inspectional Services must refer it to the Zoning Board of Appeals for a variance before the ARB begins its EDR special permit hearing.

Sincerely,

Christopher Loreti
56 Adams St.
Arlington

cc: Arlington Select Board
Arlington Town Manager
Arlington Town Counsel
Chair, Arlington Zoning Board of Appeals