

Town of Arlington
2021 Annual Town Meeting — Substitute Motion

ARTICLE NO. 39

I, Jon Gersh, do hereby submit the following SUBSTITUTE Motion:

VOTED:

That the definition of "Mixed-Use" in Section 2 of the Town of Arlington Zoning Bylaw is hereby amended by inserting immediately before the concluding period the words:

"provided that each distinct land use is individually allowed within the same zoning district"

Such that the revised definition reads in its entirety:

Mixed-Use: A combination of two or more distinct land uses, such as commercial, lodging, research, cultural, artistic/creative production, artisanal fabrication, residential in a single multi-story structure to maximize space usage and promote a vibrant, pedestrian-oriented live-work environment provided that each distinct land use is individually allowed within the same zoning district.

Signed: _____

Precinct: 18

Date: April 20, 2021



Date Voted: _____

Action Taken: _____

EXPLANATION FOR ARTICLE 39 SUBSTITUTE MOTION

Town Meeting is Responsible for Determining the Allowed Land Uses in Each Zoning District

One of the basic functions of Arlington's Zoning Bylaw is to establish which land uses are allowed within each zoning district of the town. Distinct land uses, for example, a convenience store or a 2-family home, may be:

- Allowed By Right, i.e., with no special permit approval (only a building permit is needed),
- Allowed By Special Permit, i.e., with special permit approval from the ARB or ZBA, or
- Not Allowed, i.e., the use cannot receive a special permit (e.g., a gas station in a residential zone)

Town Meeting, and only Town Meeting, is responsible for establishing which of these three categories the distinct land use fall into in each zoning district. It does so by approving the Zoning Bylaw.

The ARB is Now Usurping Town Meeting's Authority to Set Land Use Policy in Mixed-Use Developments

At the time the mixed-use zoning bylaw amendment came before Town Meeting in 2016, I offered an amendment that would have the same effect as this substitute motion. I did so because I was concerned the very loose definition of "mixed-use"—the combination of any two or more land uses—would be used to seek special permit approval of uses in a mixed-use that on their own would be prohibited.

The two ARB attorneys who spoke on the article, including the Chair, stated repeatedly that my interpretation of the amendment was incorrect and that only land uses allowed individually could be allowed in a mixed-use development, and that the ARB was committed to interpreting the mixed use bylaw in that way. The ARB cited agreement with Town Counsel and the Head of Inspectional Services on this point. (See: <https://youtu.be/1vDEkBYqFOw>.) Based upon these representations, Town Meeting had no need to adopt my amendment and the article passed without it.

Now, with almost entirely new membership, the ARB takes the absurd position that prohibited uses can be allowed within a zoning district as long as they are part of a mixed-use development. This means, for example, that while Town Meeting has determined that gas stations are allowed by special permit in only one of the six business zoning districts (B4), the ARB can permit them in any business district if the gas station is combined with a second use like a convenience store. The result of this misinterpretation has already led to one legal challenge to a mixed-use special permit (of the two cases where the ARB has allowed prohibited uses), and will likely lead to more.

Contrary to the ARB's misleading discussion of this article, it does not create new limitations on the distinct land uses allowed in mixed-use developments. It merely affirms that Town Meeting has already determined how those land uses are limited, and that the ARB respects Town Meeting's decisions.

Moreover, this article does nothing to prevent housing in mixed-use developments. Housing is already allowed in all six business zoning districts where mixed use is allowed. Apartment buildings are allowed in all of those districts, except B1¹. If the ARB wishes to allow apartment buildings (or other prohibited uses) in the B1 zone, it need merely obtain approval from Town Meeting for a change to the Zoning Bylaw. It should not be allowing prohibited uses to be snuck in through a vague "Mixed-Use" definition.

Town Meeting Should Support this Substitute Motion Because it:

- Affirms the ARB's and Town Meeting's intent when the mixed-use bylaw was enacted,
- Recognizes that Town Meeting, not the ARB, has the ultimate authority to designate prohibited land uses within the town's zoning districts,
- Eliminates the absurd inconsistency that the ARB has created by allowing prohibited uses within mixed-use developments while the exact same uses are prohibited on their own, and
- Reduces the chance of future litigation

¹ As described in the Zoning Bylaw, in the B1 district, *...predominant uses include one- and two-family dwellings, houses with offices on the ground floor, or office structures which are in keeping with the scale of adjacent houses ...*