

July 26, 2021

Christian Klein, Chair
Arlington Zoning Board of Appeals
50 Grove Street
Arlington, MA 02476

Re: Comprehensive Permit, 1165R Massachusetts Ave.

Dear Mr. Klein and ZBA Members:

I write in reference to consideration by the Zoning Board of Appeals (the “ZBA” or the “Board”) of the above-referenced Comprehensive Permit application.

First, I strongly support approval of the proposed project, which will provide 31 units of affordable housing, with rents restricted, in perpetuity, without the investment of public dollars. It is well established that Arlington does not have adequate restricted affordable housing to meet the needs of our residents or to do our fair share to meet the affordable housing needs of our region. The draft decision itself recites the fact that the number of low or moderate income housing units in the Town is only 5.7% of the total housing units in the Town, falling short of the ten percent (10%) goal that has been embedded in state law since 1968. Neither this development nor any other single development will be adequate to reach this goal, but each contributes to the goal and the mix of solutions and strategies Arlington will need to pursue, over the long term to meet the 10% goal. This project includes these units in a mixed-income development, integrating residents of varying incomes in a single, diverse apartment community.

Thank you for your careful consideration of community concerns and your thoughtful balancing of Town interests in your review of this project. My remaining comments relate to the specific terms and conditions of the Board’s draft decision¹ with respect to the subject Comprehensive Permit request. Specifically, I encourage the ZBA to (1) eliminate local preference from the approval conditions for the subject development; (2) retain approval rights over the development’s Affirmative Fair Housing Marketing Plan; (3) consider options for increasing the likelihood that the development’s affordable units will be accessible to applicants with incomes below 80% of area median; and (4) in coordination with other Town bodies, adopt a voluntary goal of meeting the 10% affordability goal set forth in the Comprehensive Permit statute.

Reconsidering Local Preference

The ZBA’s draft decision includes, at Condition B.4., a requirement that a portion of the Affordable Units included in the proposed development be reserved for households that meet a “local preference.” The ZBA’s rules make the following applicants eligible for local preference units: current residents and their immediate family members, municipal employees, employees of private

¹ See the first and second drafts of the decision published as an attachment to the online agenda for the ZBA’s July 19, 2021 meeting, <https://arlington.novusagenda.com/agendapublic/CoverSheet.aspx?ItemID=11917&MeetingID=1375>.

and/or nonprofit businesses located in Town, and households with children enrolled in the Arlington Public Schools.

The ZBA's Comprehensive Permit Regulations, updated April 14, 2020, require applicants for Comprehensive Permits in Arlington to use local preferences to the maximum extent permissible.² The Commonwealth's Comprehensive Permit Guidelines set 70% as the maximum such preference permissible, to mitigate the discriminatory impact of such preferences. The first draft of the decision relating to the subject development included a 70% local preference, consistent with this maximum. The second draft reduces that requirement to 50%. While I appreciate the apparent movement away from maximizing local preference, I encourage the ZBA to instead eliminate the requirement of a local preference altogether – for this and subsequent projects.

The use of local preferences in communities that are predominantly white and relatively affluent can serve to perpetuate and exacerbate discriminatory impacts and racial segregation. The Town recently issued a [Fair Housing Action Plan](#), in furtherance of its obligation to affirmatively further fair housing, with the intent of framing steps the Town can take to eliminate housing discrimination and segregation. Following are just a few findings from the plan, which underscore the importance of both creating affordable housing and making it available to members of protected classes who are under-represented in Arlington, including but not limited to people of color.

- Like nearly every community in the United States, Arlington and greater Boston have a history of discriminatory practices in its housing and land use policies, which has led to persistent racial segregation and inequity regionally and in town.
- Arlington's residents are 78% White, 12% Asian, 4% Latino, 2% Black, 3% two or more races, less than 1% are Native American, and less than 1% are some other race.
- Arlington's residents of color have higher levels of opportunity than many people of color residing in the comparison region. However, the town's low share of people of color means that the relative opportunity afforded by residence in Arlington does not benefit a proportionate share of people of color.
- Arlington's median rent is not affordable to the median Black or Latino households within our region; the typical Black and Latino households in the comparison region would need approximately \$600 in additional monthly income to afford the typical Arlington rental. Given the limited representation of these demographic groups in our population, failure to make rent-restricted affordable housing available to people who do not live here now might be anticipated to have a discriminatory impact.
- The Fair Housing Action Plan proposes 41 strategies for affirmatively furthering fair housing, which specifically include "Amend Arlington's local preference policy to be more welcoming to nonresidents."

² I refer to the requirement, incorporated at section 2.3 of the ZBA's Comprehensive Permit Regulations, as amended 4/14/20, that "To the maximum extent allowed under G.L. c. 40B, comprehensive permit developments shall provide for local preference tenant or homeowner selection procedures."

<https://www.arlingtonma.gov/home/showdocument?id=26024> The regulations make the following applicants eligible for local preference: current residents and their immediate family members, municipal employees, employees of private and/or nonprofit businesses located in Town, and households with children enrolled in the Arlington Public Schools.

- And in the section relating to Arlington’s Inclusionary Zoning bylaw, the Plan states that “The Town also sought to maximize preference for Arlington residents in available affordable housing units, which can make sense to address local housing need. In Arlington, though, the existing population has proportionally fewer members of protected classes than the surrounding region. Therefore, by preferencing existing residents who [are] disproportionately not members of protected classes, the local preference policy could exacerbate existing patterns of segregation. Ultimately, inclusionary zoning policies are only effective for fair housing when paired with housing production and an openness to outsiders.”

I refer you also to the letter of Zane T. Krute, President of the Mystic Valley branch of the NAACP, to the ZBA on March 26, 2021, drawing the Board’s attention to the fact that affordable housing is a critical racial equity issue. As Mr. Krute’s letter states, “Building affordable housing and making it available to those most in need of it is a critical way of demonstrating our commitment to racial justice. Not doing so is a vote in favor of the system that continues to replicate racial inequality.

Although DHCD regulations require a process called pool balancing to mitigate the discriminatory effect of local preference, a commitment to furthering fair housing and equity requires us to honestly consider the potentially discriminatory impact of local preference in a Town where people of color and other protected classes are underrepresented. Exclusionary zoning and local preferences did not create racial segregation or income inequality, but they can and do perpetuate and exacerbate them. For these reasons, I urge the ZBA and other Town bodies to consider eliminating or dramatically reducing the use of local preference when leasing this and future affordable housing units permitted or financed by the Town.

Affirmatively Furthering Fair Housing Marketing Plan

The draft decision appropriately incorporates the legal requirement that the developer create and apply an Affirmatively Furthering Fair Housing Marketing Plan for the development, which must be approved by MassHousing. I encourage the ZBA to take an additional step, and to retain Town approval rights over this document, which will give it the ability to review the marketing strategy in the context of the Affordable Housing Action Plan and propose specific outreach, language access or other measures to increase the likelihood that the marketing strategy effectively attracts diverse applicants. While the plan would still need to be approved by the Subsidizing Agency, I encourage the Town to assert a proactive role to ensure this development advances the Town’s commitment to affirmatively furthering fair housing.

Seeking Deeper Affordability

While the project as proposed will cap rents at amounts affordable to households making 80% of area median income or less, some of the households most in need of affordable housing will still find these rents out of reach. It is possible for such units to be accessible to residents with lower incomes if they have a housing voucher that help them pay rent. A tenant with a housing voucher will, very generally, pay 30% of household income for rent, with a public agency paying the rest of the rent up to a maximum rent. There are not enough of these vouchers for all tenants who need them, but they are awarded and administered by local housing authorities like the Arlington Housing Authority, and other state and local agencies, as part of the Federal Section 8 program and the state Massachusetts Rental Voucher Program (MRVP). In high cost markets, it is sometimes difficult for a voucher holders to find homes in the community that provided the voucher, because

market rents exceed the maximum rent that the government will pay. But rent-restricted units like these can, make it possible for voucher holders to live in a high cost community.

Accordingly, I encourage the ZBA to consider additional conditions affirming that the landlord will accept mobile housing vouchers, as well as affirmative outreach by the ZBA or other Town officials to the Arlington Housing Authority to explore opportunities to market these affordable units to voucher holders, or to make housing vouchers available by other means for some or all of the affordable units in this development and other affordable housing units permitted by the ZBA under the Comprehensive Permit statute or the Inclusionary Zoning bylaw.

In addition, with respect to future Comprehensive Permit applications, I suggest that the Board collaborate with other Town bodies and officials, including the Town Manager, Department of Planning and Community Development, Select Board, Redevelopment Board, Affordable Housing Trust Fund, CPA Committee and Arlington Housing Authority, to incentivize applicants for Comprehensive Permits to provide more than 25% affordable units, or to provide units affordable to lower income residents. The ZBA's authority to provide comprehensive zoning relief, when combined with a proactive strategy and subsidy resources or flexibility from another Town body, has the potential to attract more affordable housing developers who will further leverage State and Federal resources to achieve greater affordability. To this end, I encourage Board members to actively participate in the housing production planning process that is currently underway in Arlington, to participate in building a common understanding of our challenges and opportunities and to identify opportunities for collaboration across Town entities with housing responsibilities.³

Committing to 10% Affordable Housing

The draft decision references the Town's recent assertion in another pending comprehensive permit application that there are existing affordable housing units that are on sites that comprise more than one and one half percent (1.5%) of the total land area of the Town that is zoned for residential, commercial or industrial use. The intent of this assertion was to demonstrate satisfaction of the statutory minimum on the basis of land area, for purposes of that application. While the argument has not thus far prevailed, the draft Decision makes clear that the Town does not waive its right to make this assertion for other purposes or at other times.

While I appreciate the Board's election not to make a similar assertion in this matter, I ask the Board to consider adopting, together with other Town bodies with authority or responsibility for housing affordability, a **voluntary goal of meeting the 10% affordability requirement** as a reflection of its commitment to housing affordability. To be clear, I am not suggesting the Town should, in doing so, waive its legal discretion to approve or not approve any particular project or application or to assert or not assert any legal argument. Rather, I suggest that the Board and other Town bodies signal a voluntary commitment to proactively pursue strategies to meet the 10% goal, over a period of years. This would clarify the Board's desire to attract applications from developers interested in constructing, creating or preserving affordable housing who are willing to build in additional affordability and experienced at leveraging state and federal subsidy programs to make such developments financially feasible.

³ Information about the housing planning process is available on the Housing Plan Implementation Committee's page on the Town website: <https://www.arlingtonma.gov/town-governance/boards-and-committees/housing-plan-implementation-committee>

I am aware that I am suggesting some steps and roles for the Board that may be outside the usual scope of your role, consistent with my hope that the Town is poised to more proactively leverage its authority and its resources to increase housing affordability and equity in Arlington. I offer these suggestions as a resident, Town Meeting Member and advocate for a proactive affordable housing strategy, with the expectation that the Board and the Town will rely on the advice of its expert staff and counsel to determine the appropriate way for the Board to respond to these suggestions, should you wish to.

The Zoning Board of Appeals plays an important role in advancing housing affordability, diversity and racial equity in Arlington. I am grateful for your time and service, and for your thoughtful consideration of the subject development and these comments.

Sincerely,



Karen E. Kelleher
Town Meeting Member, Pct. 5
Member, Housing Plan Implementation Committee
k.kelleher76@comcast.net