

Arlington Town Meeting — Motion to Amend

ARTICLE NO. 38

Dated: May 27, 2022

I, Josephine Babiarz, do hereby move to amend the recommended vote of the Arlington Redevelopment Board under Article 38 of the 2022 Annual Town Meeting as follows:

1): adding to 5.4.2A, Table of Dimensional and Density Regulations, R District Building Height and Floor Area Ratio Regulations, at the asterisk, at the end of the first sentence, the following “Two-family and duplex-dwelling uses with deed restrictions shall be allowed as of December 1, 2023.”

And further;

2), adding to 5.4.3 Use Regulations to Residential Districts, at the asterisk, at the end of the sentence to following: “Two-family and duplex-dwelling uses with deed restrictions shall be allowed as of December 1, 2023.”

So that the vote language, Definitions of the R0 and R1 districts in Section 5.4.1(A) reads in relevant part as follows (amended language in bold and italics):

R District Building Height and Floor Area Ratio Regulations (see 5.4.2(B) for exceptions)				
District	Use	Maximum Allowed		
		Maximum Height (ft.)	Maximum Height (stories)	Maximum Floor Area Ratio (FAR)
R0, R1	Single Family detached dwelling, <u>two family dwelling*, duplex dwelling*</u>	35	2 ½	-----

* By deed restriction neither unit of a two-family dwelling or a duplex dwelling shall exceed 1,850 square feet of heated living space. ***Two family and duplex-dwelling uses with deed restrictions shall be allowed as of December 1, 2023.***

5.4.3 Use Regulations for Residential Districts

Class of Use	R0	R1	R2	R3	R4	R5	R6	R7
Residential								
Single-family detached dwelling	Y	Y	Y	Y	Y	Y	Y	Y
Six or more single family dwellings on one or more contiguous lots	SP	SP	SP	SP	SP	SP	SP	SP
Two-family dwelling, duplex	<u>Y*</u>	<u>Y*</u>	Y	Y	Y	Y	Y	Y

* By deed restriction neither unit of a two-family dwelling or a duplex dwelling shall exceed 1,850 square feet of heated living space. **Two-family and duplex-dwelling uses with deed restrictions shall be allowed as of December 1, 2023.**

Comment:

This provision must be extended because town residents do not have sufficient information to evaluate the vote and its impact on town services, schools and quality of life, to allow the town to have final guidance issued by the Department of Housing & Community Development and to allow the Attorney General to express an opinion on certain clauses in the guidance, whenever it is finalized. This delay allows the town to consider the impact of the final guidance, which is unlikely to be issued by this lame duck administration and an opportunity to assess the financial implications.

The lack of affordable and median income housing is a crisis in Massachusetts, and does threaten the growth and sustainability of our Commonwealth. Arlington is also one of the most densely populated towns, which is primarily residential and not commercial in nature. This high residential ratio means that homeowners bear a higher percentage of property tax burden than communities like Cambridge, where the residential tax is \$5.92/\$1,000 versus Arlington at \$11.42/\$1,000 and Somerville.

The proponents have not released a feasibility study that would project how many units would be built in this economy. Recent sales data provided by The Home Advantage Team on their website shows the average sales price of a two-family home in 2021 was \$1,168,580. The average sale price of a single-family home was \$1,069,072. Someone would have to renovate a single-family into a two family for \$100,000 and sell the two units at break even. What is more feasible, and ALLOWED under the guidance, is a four-family house. At 1,850 square feet, a 4 family may cost \$1,850,000 to build; including the cost of the single family, puts each unit at \$712,500. The draft guidance leaves “reasonable size” open to debate. A brief look at Arlington building permit prices demonstrate that 2-family builds are not viable.

The town has no plan to enforce this provision requiring changes to deeds, nor has the town budgeted for such an enforcement position. The town department that must sign off on any sale of residential property is the fire department, which checks that there are smoke detectors properly installed. Are we going to ask the Fire Department to review the deeds? Are we going to send a town representative to each property closing to inspect a deed? And what are the penalties if a seller does not include the language in the deed?

The town has no feasibility studies to allow the town to evaluate and consider the financial, educational, and service impacts of this zoning change. We should know the impact of these changes on the school system, the police and fire departments, trash collection, parking and congestion. We have been informed by the Finance Committee and the Select Board Chair that we are facing a substantial override. While the Finance Committee does not evaluate zoning changes, it does plan ahead to estimate costs that accrue from additional future services. In calculating new growth, you can only take what is essentially added. So, if a single family is valued at \$1.0M, and the new two family is valued at \$1.2M, the amount of new growth is \$200,000, not \$1.2. If the new starter home is a residence for 2 school-aged children, or an elder needing services, costs of additional police, fire, trash, school and other costs have to be estimated to determine if the new growth will offset the additional costs.

There is no final guidance issued by the Department of Housing & Community Development. However, sections of the draft guidance invalidate certain assumptions that town has concerning its authority over Arlington zoning.

The draft guidance will invalidate many of Arlington's current zoning protections. Section 4, Allowing Multi-Family Housing "As of Right" will control any other zoning or by-law passed by the town, except for those dealing with public safety and convenience. This means that the current set-backs, FAR, height restrictions, tree protection, etc that Arlington enjoys are void if these requirements are not key to public safety and convenience. These additional zoning requirements which may be raised as part of a site plan review "may not be used to deny a project that is allowed as of right, nor may it impose conditions that make it infeasible or impractical to proceed with a multi-family use that is allowed as of right". This draft guidance defines "multi-family housing" as a building with 3 or more residential dwelling units or 2 or more buildings on the same lot with more than 1 residential dwelling unit in each building. Given the definition and empowerment of the guidance, it is questionable that Arlington's requirement that there be 2 family residences of 1850 square feet each, can be upheld.

The guidance at 5 Determining "reasonable size", Section b, Minimum multi-family unit capacity, says : "If the estimate of the number of multi-family units that can be constructed in the multi-family district is less than the minimum unit capacity, then the MBTA community must change the boundaries of the multi-family district or make changes to dimensional regulations applicable to that district (or to other local ordinances or by-laws) to allow for the development of a greater number of multi-family units as of right".

This law has not been tested in a court case yet, but real estate appraisers have suggested that changing single-family zoning to two or multi-family zoning constitutes a taking without compensation.

Respectfully submitted,

Josephine Babiarz, Precinct 15