



Town of Arlington, Massachusetts
Department of Planning & Community Development
730 Massachusetts Avenue, Arlington, Massachusetts 02476

Memorandum

To: Arlington Town Meeting Members
Greg Christiana, Town Meeting Moderator
Rachel Zsembery, Chair, Arlington Redevelopment Board

From: Claire V. Ricker, AICP, Director of Planning and Community Development and
Secretary Ex Officio, Arlington Redevelopment Board

Subject: 2023 Town Meeting – Warrant Article 30

Date: May 5, 2023

Please accept this memo in response to the discussion/debate concerning Warrant Article 30, the text of which is as follows:

ZONING BYLAW AMENDMENT / ONE AND TWO-FAMILY USABLE OPEN SPACE

To see if the Town will vote to complete removal of the Usable Open Space requirements for one and two-family uses; or take any action related thereto.

(Inserted at the request of James Fleming and ten registered voters)

The following information seeks to provide answers and clarifications to questions and concerns raised by Town Meeting members while discussing the proposed amendment to the zoning bylaw.

Usable Open Space Definition

Open Space, Usable: The part or parts of a lot designed and developed for outdoor use by the occupants of the lot for recreation, including swimming pools, tennis courts, or similar facilities, or for garden or for household service activities such as clothes drying; which space is at least 75% open to the sky, free of automotive traffic and parking, and readily accessible by all those for whom it is required. Such space may include open area accessible to and developed for the use of the occupants of the building and located upon a roof not more than 10 feet above the level of the lowest story used for dwelling purposes. Open space shall be deemed usable only if at least 75% of the area

has a grade of less than 8%, and no horizontal dimension is less than 25 feet. For newly constructed single-, two-family, and duplex dwellings with surface parking, no horizontal dimension shall be less than 20 feet.

As the ARB report to Town Meeting indicates, the current Zoning Bylaw’s definition of “usable open space” presents an outdated view of how open space should or can function by referencing tennis courts, patios, swimming pools, and clothes drying—some of which could result in large impervious areas—and prioritizing flat lawn areas. The modern interpretation of “open space” is focused on air quality, environmental resiliency, and restoration and maintenance of natural resources. It should be noted that neither “usable open space” nor “landscaped open space” are required to have permeable surfacing in the current zoning bylaw; thus, although parking is disallowed, impermeable surfacing is both allowed and encouraged.

The Arlington Master Plan of 2015 specifically calls out teardowns and “mansionization” as an issue for maintaining neighborhood character and scale. Usable open space requirements for *new* one- and two-family construction allows for a 225 ft² reduction in “usable open space” to a minimum 20x20 ft² area which could encourage teardowns that result in development of larger principal residential structures. Moreover, to achieve the required grade and 75% ‘open to the sky’ area dimension, the “usable open space” requirement for new construction a developer or property owner may be forced to remove ledge and/or mature trees and could lead to the destabilization of existing mature trees, landscape, and stormwater runoff patterns. Existing homeowners and property owners are likewise incentivized to reconfigure and grade their property when building an addition or renovating if their property is large enough to maintain a 25x25ft² “usable open space” area.

Impact to Business Districts

While it is true that the existing zoning bylaw allows one- and two-family residences to be built in “Business Districts” removal of the “usable open space” requirement will likely not result in redevelopment of property currently zoned for business into one- and two-family residences. Arlington’s land values are so high that it makes no financial sense for a developer to purchase an existing commercial building, demolish the building, and build a one- or two-family house on the parcel, regardless of a requirement for “usable open space.” Furthermore, as mixed-use developments are allowed in Arlington’s business districts via special permit, any developer seeking to maximize the use of their property would likely look to add residential units *above* first floor commercial space. A development of this type is subject to many dimensional requirements exclusive to the use. Concerns over residential development of one- and two-family units replacing small businesses is not relevant to this zoning warrant article, as it proposes eliminating usable open space *only* for one- and two-family residential uses.

Relevance to the 2015 Arlington Master Plan and Impact to the Zoning Bylaw

There are several instances in the 2015 Arlington Master Plan that mention the need for flexible open space requirements. Using the digital version of the Master Plan for reference, under the Key Recommendation for Land Use section - item 8 on page 12 recommends amending open space requirements for certain business uses. Under the Housing Recommendations, item 3 on

page 13, advises that the Town “*Address the quality and condition of aging housing stock, including offering financial assistance programs for homeowners and landlords. Improvements to the structure and aesthetics of one house on a block often spurs further investment on adjacent properties.*” Mr. James Fleming makes the argument in his presentation and petition for an amendment to the zoning bylaw, that the arbitrary requirement to provide “usable open space” at a certain dimension means that those who own “conforming” properties are left without a pathway to improve their property as would best serve their needs, while at the same time granting those with “non-conforming” properties the ability to make at least some modifications. Removing the requirement for “usable open space” is a **zero-cost** action the Town can take to support improvement of the existing housing stock.

There are at least six actions listed in the implementation program summary on page 185 of the Master Plan that are supported, if not achieved by removing the “usable open space” requirement including:

1. Recodify and update the Zoning Bylaw.
2. Reduce the number of uses that require a special permit; replace some special permits with a system of uses by right subject to performance standards.
21. Study and consider amending setbacks, floor-area-ratios and other techniques that could address concern for neighbor impacts of new large homes constructed in existing established residential neighborhoods.
28. Consider Zoning Bylaw amendments to allow flexibility in dimensional requirements and use regulations for projects that will preserve historic properties.
38. Review open space requirements in Zoning Bylaw. Consider roof gardens and other usable open space.
81. Address the quality and condition of aging housing stock, including financial assistance programs for homeowners and landlords, as part of Housing Production Plan

The Master Plan is also clear about the need to simplify the zoning bylaw and remove any inconsistencies or over-lapping dimensional and other requirements. Evaluation of proposals and projects on a “case by case” basis by the Board of Appeals could leave the Town vulnerable to charges of decision making that is *arbitrary and capricious* – where rules for one non-conforming property are different from another and where conforming properties are subject to the highest thresholds for relief.

The Redevelopment Board noted that under this Article proposed by Mr. Fleming, the public and environmental services or “goods” provided by open space – pervious areas, natural habitat, space for landscaping, trees, and pollinators — would still be provided through front, side, and rear yard setbacks, lot coverage, and landscaped open space requirements. And perhaps most importantly, the article does not create new nonconformities, but rather would bring nonconforming single- and two-family homes who do not currently meet usable open space dimensional requirements (not uncommon due to the irregularity of many Arlington lot sizes and terrain configurations) into conformance with the Zoning Bylaw. This further creates simplicity and straightforward requirements for homeowners and property owners to evaluate when considering improvements to their property.