



Report of the Arlington Redevelopment Board to the 2009 Annual Town Meeting April 27, 2009

The Arlington Redevelopment Board (ARB), acting as the Town's planning board, is required to issue a report with recommendations to the Town Meeting on each warrant article that proposes to amend the "Town of Arlington Zoning Bylaw". The ARB must first hold an advertised public hearing on each such warrant article. The advertisements appeared in the "Arlington Advocate" as required on February 26th and March 5th, 2009. The public hearing was held on Monday, March 16, 2009 and April 13, 2009. At the meeting on April 13, 2009, the ARB voted on the recommended bylaw language shown below. In each of the warrant articles, the Board's vote was unanimous.

Appearing below are the seven articles that propose amendments to the Zoning Bylaw. The intent of each article is briefly explained, followed by the ARB's vote on each article, which constitute its recommendation. Town Meeting members should take particular note of the fact that the recommendations of the ARB, and not the original warrant article, constitute the actual motion that will be considered by the Town Meeting. An ARB vote of "no action" means that the Town Meeting will be asked to vote that no action be taken on the proposed warrant article.

Warrant article language may be quite general or very specific. The vote, however, must be specific in order to precisely tell how the Zoning Bylaw will be modified. Even when the language in the warrant is specific, the vote or recommendation shown in this report may differ slightly from the warrant language. This occurs when errors are discovered, or testimony at the public hearing convinces the ARB that a change from the original warrant article should be recommended. In such cases, the recommended change cannot exceed the scope of the original warrant article. When there is question about the scope of the change, the Town Moderator will determine whether the change exceeds the scope of the original warrant article. Changes to an article that has specific language in the warrant are noted in the votes shown below: additions to the original warrant article text appear as underlined text, while any deletions to the original warrant article text appear as ~~strike through~~ text. The same method of underline and ~~strike through~~ is used in the examples of the resulting bylaw text to show differences from the existing bylaw text.

Article 5

To see if the Town will vote to amend the Zoning Bylaw in Article 8, Section 8.06 in the first sentence by deleting the words, "three hundred (300) feet" and inserting in place thereof the words, "six hundred (600) feet"; or take any action related thereto.

This article was submitted by the Redevelopment Board, and proposes to make the Zoning Bylaw consistent in allowing required parking to be provided off-site. Last year, Town Meeting, with the recommendation of the Redevelopment Board, made it easier for businesses to provide required parking by, among other things, locating parking for which the business had an agreement in place at a location apart from the business location. The Bylaw requires that such parking must be within 600 feet of the business. The Bylaw has long permitted such parking if owned by the business. The proposal changes the requirement for "owned" spaces to also be within 600 feet instead of the current 300 feet.

VOTE:

That the Town vote to amend the Zoning Bylaw in Article 8, section 8.06 in the first sentence by deleting the words, "three hundred (300) feet" and inserting in place thereof the words, "six hundred (600) feet".

TEXT

Section 8.06 - Location of Parking Spaces

ART. 12, ATM 5/91, ART. 11, ATM 4/08

Required off-street parking spaces shall be provided on the same lot as the principal use they are required to serve or when practical difficulties as determined by the ZBA, or in cases subject to Section 11.06, the ARB, prevent their establishment upon the same lot, they shall be established no further than ~~three hundred (300) feet~~ six hundred (600) feet from the premises to which they are appurtenant. Such spaces may be located out of doors or within a structure designed as a public or private garage. Projects subject to Environmental Design Review under Section 11.06, may provide parking off site within six hundred (600) feet, where it can be shown that a long-term agreement has been made to secure off site parking.

Article 6

To see if the Town will vote to amend the Zoning Bylaw in Article 10, Section 10.11 in the first paragraph, second sentence by deleting the words "applicable conditions" and inserting in place thereof the words, "special permit standards"; and in Section 10.11(a) in the first sentence by deleting the words, "general conditions to be fulfilled" and inserting in place thereof the words, "special permit standards to be met"; and in Section 10.11(b) in the first sentence by deleting the words, "in addition to any applicable conditions specified in the Bylaw or any special permit"; and in Section 10.11(c) in the first sentence by deleting the word, "restrictions", and inserting in place thereof the words, "special permit standards"; or take any action related thereto."

This article was submitted by the Redevelopment Board and is intended to standardize the language in the Zoning Bylaw referring to special permit standards and to avoid any confusion with special permit conditions. The language in Section 10.11 applies to permits

issued by the ARB and also by the Zoning Board of Appeals which also supports this clarification.

VOTE:

That the Town vote to amend the Zoning Bylaw in Article 10, section 10.11 in the first paragraph, second sentence by deleting the words “applicable conditions” and inserting in place thereof the words, “special permit standards”; and in Section 10.11(a) in the first sentence by deleting the words, “general conditions to be fulfilled” and inserting in place thereof the words, “special permit standards to be met”; and in Section 10.11(b) in the first sentence by deleting the words, “in addition to any applicable conditions specified in the Bylaw or any special permit”; and in Section 10.11(c) in the first sentence by deleting the word, “restrictions”, and inserting in place thereof the words, “special permit standards”.

TEXT***Section 10.11 - Special Permits**

...

- a. Before granting an application for a special permit for a use listed in Section 5.04, the ZBA or the ARB with due regard to the nature and condition of all adjacent structures and uses, and the district within which the same is located, shall find all of the following ~~general conditions to be fulfilled~~ special permit standards to be met:
1. The use requested is listed in the Table of Use Regulations as a special permit in the district for which application is made or is so designated elsewhere in this Bylaw.
 2. The requested use is essential or desirable to the public convenience or welfare.
 3. The requested use will not create undue traffic congestion, or unduly impair pedestrian safety.
 4. The requested use will not overload any public water, drainage or sewer system or any other municipal system to such an extent that the requested use or any developed use in the immediate area or in any other area of the Town will be unduly subjected to hazards affecting health, safety or the general welfare.
 5. Any special regulations for the use, set forth in Article 11, are fulfilled.
 6. The requested use will not impair the integrity or character of the district or adjoining districts, nor be detrimental to the health, morals, or welfare.
 7. The requested use will not, by its addition to a neighborhood, cause an excess of that particular use that could be detrimental to the character of said neighborhood.

ART. 86, ATM 3/79

The ZBA or the ARB shall also impose ~~in addition to any applicable conditions specified in this Bylaw or any special permit~~ such additional conditions as it finds reasonably appropriate to safeguard the neighborhood, or otherwise serve the purposes of this Bylaw, including, but not limited to, the following: front, side, or rear yards greater than the minimum required by this Bylaw; screening buffers or planting strips, fences, or walls, as specified by the Board; modification of the exterior appearance of the structures; limitation upon the size, number of occupants, method and time of operation, time duration of permit, or extent of facilities; regulation of number and location of driveways, or other traffic features; and off-street parking or loading or other special features beyond the minimum required by this Bylaw.

Such conditions shall be imposed in writing, and the applicant may be required to post bond or other security for compliance with said conditions in an amount satisfactory to the ZBA or the ARB. Any special permit granted under this section shall lapse within two years if a substantial use thereof has not sooner commenced except for good cause, in the case of permit for construction, if construction has not begun by such date except for good cause.

ART. 12, ATM 5/91; ART. 4, ATM 4/94

- c. In order that the ZBA, or in cases subject to Section 11.06, the ARB may determine that the above-mentioned ~~restrictions~~ special permit standards are to be met, a site plan shall be submitted, in duplicate, to the ZBA, or ARB as appropriate, by the applicant. In the case of Special Permits for uses, listed in the Table of Use Regulations, all such site plans shall be prepared, signed and stamped by a professional land surveyor or professional engineer registered in Massachusetts unless the Special Permit Granting Authority waives the requirement in writing

Said site plan shall show, among other things, all existing and proposed buildings, structures, parking spaces, driveway openings, driveways, service areas, and other open uses, all facilities for sewage, refuse and other waste disposal, and for surface water drainage, and all landscape features, such as fences, walls, planting areas and walks.

The ZBA shall within ten (10) days after receipt thereof transmit one copy of such plan to the ARB. The ARB may, in its discretion, investigate the case and report in writing its recommendations to the ZBA.

The ZBA shall not take final action on such plan until it has received a report thereon from the ARB or until said ARB has allowed thirty (30) days to elapse after receipt of such plan without submission of a report thereon.

Article 7

To see if the Town will vote to amend the Zoning Bylaw in Section 5.04, Table of Use Regulations, at use number 8.19 by deleting the word "Yes" in the columns headed B2, B3 and B5, and inserting in place thereof the letters "SP"; or take any action related thereto.

This article was submitted by the Redevelopment Board, and proposes to make consistent across the business zoning districts the provision of dwelling units in buildings that contain a business or service use. This amendment proposes to make such use require a special permit in all business districts. By making this a special permit use in these three zoning districts, the Zoning Bylaw's flexibility regarding the location of the required parking and open space for the residential use may be taken advantage of, which would not be the case otherwise.

VOTE:

That the Town vote to amend the Zoning Bylaw in Article 5, in Section 5.04, Table of Use Regulations, at use number 8.19 by deleting the word "Yes" in the columns headed B2, B3 and B5, and inserting in place thereof the letters "SP"

TEXT

SECTION 5.04 - TABLE OF USE REGULATIONS (Continued)

Principal Use	District											T	OS		
	R0	R7	B1	B2	B2A	B3	B4	B5	MU	PUDI					
8.18	Activities, accessory to a principal use permitted as a right, that are necessary in connection with scientific research or scientific development or related production	//	//												
SP		//		SP	SP	SP	SP	SP	SP				SP		
8.19	Up to three dwelling units in a building containing a business or service use in accordance with the residential standards for that district	//	//												
		//	Yes	SP	Yes SP	SP	Yes SP	SP	Yes SP				SP		
		//													

Article 8

To see if the Town will vote to amend the Zoning Bylaw in Article 8, by adding a new subsection after Section 8.07 as follows: “Section 8.07(a) – Parking in Commercial Districts -- For properties located in the B1, B2, B2A, B3, B4, and B5 districts, no parking shall be permitted in the front yard, nor shall any driveways directly in front of a structure be permitted without a finding by the ZBA or, in cases subject to Section 11.06, the ARB, that the driveway is necessary and convenient to the public interest.”; or take any action related thereto.

This article was submitted by the Redevelopment Board, and proposes to prevent the location of parking spaces and driveways between a business establishment and the street. Such spaces or driveways as exist today will remain, but new development will be prevented, for example, from having parking spaces or a driveway in front of a store. The Redevelopment Board has long encouraged new business structures to be located on the sidewalk to provide an active pedestrian environment and to maintain the appearance of business activity without the interruption along the streetscape of large gaps created by parking lots. This amendment would make it clear from the start what kind of building is permitted in Arlington and avoid the costly and lengthy permitting process that begins with a building unsuitable for the Arlington streetscape. Where an unusual situation warrants parking in front of a building, the Zoning Board of Appeals or the Redevelopment Board may allow such parking or driveway by special permit.

The proposed vote differs slightly from the warrant to make sure that it is clear that both parking or a driveway may be allowed by special permit.

VOTE:

That the Town vote to amend the Zoning Bylaw in Article 8, by adding a new subsection after Section 8.07 as follows: “Section 8.07(a) – Parking in Commercial Districts -- For properties located in the B1, B2, B2A, B3, B4, and B5 districts, no parking shall be permitted in the front yard, nor shall any driveways directly in front of a structure be permitted without a finding by the ZBA or, in cases subject to Section

11.06, the ARB, that the parking or driveway is necessary and convenient to the public interest.”

TEXT

Section 8.07 - Parking in Residential Districts

- a.
- b.
- c. ...

Section 8.07(a) - Parking in Commercial Districts

For properties located in the B1, B2, B2A, B3, B4, and B5 districts, no parking shall be permitted in the front yard, nor shall any driveways directly in front of a structure be permitted without a finding by the ZBA or, in cases subject to Section 11.06, the ARB, that the parking or driveway is necessary and convenient to the public interest.

Article 9

To see if the Town will vote to amend the Zoning Bylaw in Article 2, Section 2.01 by adding after the definition for “Family” a new definition as follows, “Facade: The full exterior face of a building as illustrated in an architect’s elevation.”; and in Article 11, Section 11.06(b)(1) in the first sentence by inserting directly after the words, “or a change in use,” the words “or appearance”; or take any other action related thereto.

This article was submitted by the Redevelopment Board, and proposes to add a definition for “facade”, a word that is used in the bylaw. It is intended that the definition will establish the common usage as the definition referred to in the bylaw, and make clearer what is a change to a facade. The change proposed to Section 11.06(b)(1) of the bylaw is intended to make the language more precise so that it is clearer that under certain conditions altering the facade of a building makes it subject to special permit.

VOTE:

That the Town vote to amend the Zoning Bylaw in Article 2, Section 2.01 by adding after the definition for “Family Essential Services” a new definition as follows, “Facade: The full exterior face of a building, exposed to public view, and as illustrated in an architect’s elevation.”; and in Article 11, Section 11.06(b)(1) in the first sentence by inserting directly after the words, “or a change in use,” the words “or appearance”.

TEXT

Section 2.01 - General

...

Essential Services:

Services provided by public utility or governmental agencies through erection, construction, alteration, or maintenance of gas, electrical, steam, or water transmission or distribution systems and collection, ... furnishing of adequate service by such public utility or governmental agencies for the public health, safety, or general welfare.

Facade:

The full exterior face of a building, exposed to public view, and as illustrated in an architect's elevation.

Section 11.06 - Environmental Design Review

a. PURPOSE. The purpose of this section is to provide individual detailed review of certain uses and structures which have a substantial impact upon the character of the town and upon traffic, utilities and property values therein, thereby affecting the public health, safety and general welfare thereof. The environmental design review process is intended to promote the specific purpose listed in Section 1.03 of this Bylaw. For the purpose of implementation of this Section, the ARB is designated as the Special Permit Granting Authority in accordance with the provisions of Chapter 40A, Section 1.

b. APPLICATION.

ART. 74, ATM 3/77; ART. 80, ATM 4/80; ART. 8, ATM 4/94; ART. 11, STM 5/97; ART. 9, ATM 4/98

1. In any instance where a new structure, or a new outdoor use, or an exterior addition or a change in use or appearance a) requires a building permit, b) is subject to a special permit in accordance with Section 5.04, Table of Use Regulations, or alters the facade in a manner that affects the architectural integrity of the structure, and c) is one of the uses included in subparagraphs (a), (b), (c), (d), (e), (f), (g), or (h) below, the aforementioned special permit shall be acted upon by the Arlington Redevelopment Board in accordance with the environmental design review procedures and standards hereinafter specified.

Article 10

To see if the Town will vote to amend the Zoning Bylaw in Article 9, Section 9.02(d) in the first sentence by deleting the words, "The alteration of any single or two-family structure which is not otherwise permitted as a matter of right by the above paragraphs in this section 9.02(d), may be allowed providing that no such alteration shall be permitted", and by inserting in place thereof the words, "The extension of an exterior wall of a single or two-family residential structure along a line at the same nonconforming distance within a required setback may be allowed providing that the extension creates no new nonconformities, nor increases any open space nonconformities, and that no such extension shall be permitted unless"; and, later in the same sentence by deleting the word, "alteration", and inserting in place thereof the word, "extension"; or take any action related thereto.

This article was submitted by the Redevelopment Board, and proposes to make clearer a section of the bylaw that was modified some years ago (1991). At that time, and at the recommendation of the Zoning Board, the ability to expand houses that did not conform to zoning was made a bit easier. The problem at the time was that houses with inadequate side yards could not add an addition with the same side wall even at the rear of the house without getting a variance. The current language of Section 9.02(d) was written to allow by special permit an addition to such a house that would continue the inadequate side yard. The change made it a much easier process for the owners of Arlington's many nonconforming structures. It was intended that all other aspects of such an addition would have to conform to zoning. The

language, however, is general enough that other violations of the bylaw have been permitted. The proposed change limits the ability of a special permit to the original intent.

The existing language mirrors the language of MGL Chap. 40A which enables communities to include such provisions in its zoning bylaws, but it is intended that communities would be selective about what type of alterations it would allow and that could be found to be “not substantially more detrimental”. The proposed amendment specifies the type of alteration for Arlington.

VOTE:

That the Town vote to amend the Zoning Bylaw in Article 9, Section 9.02(d) in the third paragraph, in the first sentence by deleting the words, “The alteration of any single or two-family structure which is not otherwise permitted as a matter of right by the above paragraphs in this section 9.02(d), may be allowed providing that no such alteration shall be permitted”, and by inserting in place thereof the words, “The extension of an exterior wall of a single or two-family residential structure along a line at the same nonconforming distance within a required setback may be allowed providing that the extension creates no new nonconformities, nor increases any open space nonconformities, and that no such extension shall be permitted unless”; and, later in the same sentence by deleting the word, “alteration”, and inserting in place thereof the word, “extension”.

TEXT

Section 9.02 - Extension and Alteration

- a. Any nonconforming use, except for agriculture, horticulture, or floriculture, of any open space on a lot outside a structure, or of a lot not occupied by a structure, shall not be extended.
- b. Any nonconforming principal use of a structure shall not be extended.
- c. Any nonconforming accessory use of a portion of a structure or any conforming accessory use of a portion of a nonconforming structure may be extended up to a maximum of forty (40) percent of the floor area of the existing structure.

ART. 103, ATM 4/87; ART. 5, ATM 4/89; ART. 8, ATM 5/91; ART. 30, ATM 4/97

- d. Any nonconforming structure may be altered and the conforming use extended throughout the altered portion, provided that any resultant alteration shall not cause the structure to further violate the dimensional and density regulations of the district in which it is located.

A single or two-family residential structure may be altered and the conforming use extended throughout the altered portion provided that the resultant alteration does not increase the nonconforming nature of the structure. An alteration that is completely within the existing foundation walls shall be deemed not to increase the nonconforming nature of the structure.

~~The alteration of any single or two-family structure which is not otherwise permitted as a matter of right by the above paragraphs in this section 9.02 d., may be allowed providing that no such alteration shall be permitted~~ The extension of an exterior wall of a single or two-family residential structure along a line at the same nonconforming distance within a required setback may be allowed providing that the extension creates no new nonconformities, nor increases any open space nonconformities, and that no such extension shall be permitted unless there is a finding by the special permit granting authority that the alteration extension shall not be substantially more

detrimental to the neighborhood than the existing nonconforming structure. In making such a finding, the special permit granting authority shall assess the dimensions and proposed setback of the alteration in relationship to abutting structures and uses.

Article 11

To see if the Town will vote to amend the Zoning Bylaw in Article 5, Section 5.04, Table of Use Regulations, by adding a new use numbered 3.03 immediately after use 3.02 as follows, “3.03 Keeping of no more than six hen chickens (as opposed to roosters) for egg-laying, pet, or other purposes.” and by adding the words “Yes” in the columns headed R0, R1, and R2, immediately thereafter; or take any action related thereto.

This article was submitted by Pam Calloway and ten registered voters and proposes to allow the keeping of hens on residential lots. The Inspector of Buildings has determined based on the historical interpretation of the bylaw that the prohibition in use 3.02 stating, “except the raising of livestock or poultry” means that the Zoning Bylaw will have to be changed in order to allow the keeping of hens.

After hearing testimony in support of the bylaw change, the Board decided to support the bylaw amendment but added language to make clear that the use is not commercial and to assure minimum dimensional separation from adjacent uses. The proposed use was also given a different ‘use’ number to indicate that it is an ‘accessory use’ and that it may not be the ‘principal use’ of a property.

VOTE:

That the Town vote to amend the Zoning Bylaw in Article 5, Section 5.04, Table of Use Regulations, by adding a new use numbered ~~3.03~~ 8.23 immediately after use ~~3.02~~ 8.22 as follows, “~~3.03~~ 8.23 Keeping of no more than six hen chickens (but no roosters) permitted by the Arlington Board of Health for egg-laying, pet, or other non-commercial purposes in an enclosure in the rear yard of a property at least six feet from all property lines and at least 25 feet from residences on adjacent lots”, and by adding the words “Yes” in the columns headed R0, R1, and R2, immediately thereafter.

TEXT

SECTION 5.04 - TABLE OF USE REGULATIONS (Continued)

		District									
		R0	R1	R2	R3	R4	R5	R6	R7	B1	
	Accessory Use										//
8.21	Cable television studio and/or head end site including antenna and satellite reception facility	SP	SP	SP	SP	SP	SP				//
8.22	Catering Service								Yes	Yes	//
<u>8.23</u>	<u>Keeping of no more than six hen chickens (but no roosters) permitted by the Arlington Board of Health for egg-laying, pet, or other non-commercial purposes in an enclosure in the rear yard of a property at least six feet from all property lines and at least 25 feet from residences on adjacent lots</u>	Yes	Yes	Yes							//