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 To: Rachel Zsembery <rzsembery@town.arlington.ma.us>, KLau@town.arlington.ma.us,
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 keinstein@town.arlington.ma.us
 Cc: Jenny Raitt <jraitt@town.arlington.ma.us>
 Date: Mon, 25 Jan 2021 10:01:48 -0500
 Subject: Fwd: Proposed Amendments to ARB Rules and Regulations

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Dear ARB Members:

I noticed that a public hearing on amendments to the ARB's rules and regulations is on your meeting agenda for this evening. The only posted material for this agenda item is the proposed draft of those amendments.

In December, I sent the attached email containing comments on the draft. If it was not included in your packet for tonight's meeting, it should have been. And it should have been posted with the meeting materials.

Here it is again for your consideration.

Sincerely,
 Chris Loreti

----- Forwarded Message -----

Subject: Proposed Amendments to ARB Rules and Regulations
Date: Wed, 9 Dec 2020 14:51:04 -0500
From: Chris Loreti <cloreti@verizon.net>
To: Rachel Zsembery <rzsembery@town.arlington.ma.us>, KLau@town.arlington.ma.us,
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Dear ARB Chair Zsembery and ARB Members:

Because I did not see an opportunity for public participation in tonight's ARB meeting agenda, I am writing to you directly.

As a former ARB member and chair, I am very concerned about the proposed changes to the ARB's rules, as well as certain aspects of the way the board has been conducting itself. These procedural changes from past practices reflect a lack of respect for public participation as well as the due process rights of parties in interest for the ARB's special permits.

1. The posting of meeting materials should be earlier, not later.

The proposed rule changes would allow meeting materials, including special permit application materials, to be posted as little as 48 hours before a meeting or hearing. This is insufficient for both the ARB members and the public. It is also completely unnecessary. Public hearings must be advertised weeks in advance, and staff must have the completed application materials before the legal notice can be properly created. In addition, staff have to review the submitted materials before preparing their own meeting materials. There is no need for application materials to be withheld until 48 hours in advance of the meeting when the board's rules require that they be submitted a week in advance.

2. The ARB rules should state that members of the public will be given adequate time to speak during public hearings.

Public hearings are required by state law in order to give the public the right to be heard by the board. These rights should not be restricted by arbitrary time limits. While recognizing some public hearings may generate intense interest, and thus limitations on the time people are initially given to speak. They should also be permitted to speak again when time permits. Limiting total public speaking time to less than 10 minutes, as occurred this past Monday when only three members of the public wished to speak, is unacceptable.

3. The ARB rules should be revised to prohibit ex parte communications by board members.

I have previously indicated to the ARB the impropriety of its members having ex parte communications with applicants that come before it. Nevertheless, it appeared at Monday's hearing on 400 Mass. Ave. that one member of the ARB was planning to meet with representatives of the developer outside of the public hearing. The ARB rules should ban such meetings and any other ex parte communications.

Attorney Robert Annese has also objected to the town's quasi-judicial bodies holding ex parte communication, noting that board members are acting much like a judge in court, where such communications would be unethical (see his June 29, 2020 letter to the Select Board posted here:

<https://arlington.novusagenda.com/agendapublic/MeetingView.aspx?MeetingID=1070&MinutesMeetingID=743&doctype=Agenda>).

You can read about the problems with such communications in the following links. The latter two links are examples of prohibitions of ex parte communications in two professionally managed towns in Massachusetts.

<https://digitalcommons.law.wne.edu/cgi/viewcontent.cgi?article=1764&context=lawreview>

<https://www.mcle.org/psvideos/ZONEPRCPSV/Materials.pdf>

<https://www.eastham-ma.gov/sites/g/files/vyhlf4371/f/uploads/document6.pdf>

https://www.mashpeema.gov/sites/g/files/vyhlf3426/f/uploads/public_hearing_and_meeting_procedures.pdf

You will note that one of these documents was prepared by the Citizen Planner Training Collaborative (<https://masscptc.org/>) which offers training for zoning and planning board members on their roles and responsibilities among other things. When I served on the ARB, the town would cover the nominal cost for these training sessions, and I presume it would do so today. I recommend that ARB members avail themselves of the training sessions related to special permits.

Thank you for considering these comments.

Christopher Loreti
56 Adams St.