TOWN OF ARLINGTON
DEPARTMENT OF PLANNING and
COMMUNITY DEVELOPMENT

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MEMORANDUM

To: Arlington Redevelopment Board

From: Jennifer Raitt, Director, Planning and Community Development
Erin Zwirko, Assistant Director, Planning and Community Development
Kelly Lynema, Senior Planner, Planning and Community Development

Date: February 25, 2021

RE: Review of Warrant Articles 28, 29, 30, 31, 32, 33, 34, 39, and 40 for 2021 Annual Town Meeting

Staff reviewed the following Warrant Articles to provide the Board with information for further consideration as part of the public hearing and review process. There are nine articles with public hearings for the evening of March 1st. This memo provides information about each article being reviewed, including any additional information provided by the petitioner, and additional factors for the Board's consideration.

A Warrant Article to amend the Zoning Bylaw has been refiled by the Redevelopment Board on behalf of Christopher Loreti and 10 registered voters:

Article 39 ZONING BYLAW AMENDMENT/ CLARIFICATION OF DEFINITION OF MIXED-USE
To see if the Town will vote to amend the definition of Mixed Use in the Zoning Bylaw to clarify that as enacted by Town Meeting, land uses individually prohibited in any particular zoning district are also prohibited as part of Mixed Use developments in the same zoning district; or take any action related thereto.

(Inserted at the request of the Redevelopment Board on behalf of Christopher Loreti and 10 registered voters)

Mr. Loreti provides the following amendment:

> That the definition of "Mixed-Use" in Section 2 of the Town of Arlington Zoning Bylaw is hereby amended by inserting immediately before the concluding period the words:
>
> "provided that any such distinct land uses are not otherwise prohibited by this bylaw as individual land uses in the same Zoning District" such that the revised definition reads in its entirety:
>
> Mixed-Use: A combination of two or more distinct land uses, such as commercial, lodging, research, cultural, artistic/creative production, artisanal fabrication, residential in a single multi-story structure to maximize space usage and promote a vibrant, pedestrian-oriented live-work environment provided that any such distinct land uses are not otherwise prohibited by this bylaw as individual land uses in the same Zoning District.

The staff provides the following additional considerations relevant to this article:

- **Predictability of uses** – Requiring that the uses in a mixed-use structure are only those that are allowed in the applicable Zoning District may provide some predictability in any mixed-use proposal. This may be seen as a benefit for developers and abutters. While predictability is fundamentally important as part of any permitting process, this Warrant Article could limit flexibility in creating beneficial and creative projects that also fulfill community goals. Mixed-use projects are reviewed by the Redevelopment Board through a discretionary Special Permit process. Compatibility of proposed uses is considered in relationship to the surrounding neighborhood as part of that process. Further, the Town regulates vacant commercial properties. This Warrant Article could have a negative impact on both filling those spaces and expanding them by creating more use restrictions.

- **Intent versus impact –** As described in Town Counsel's August 31,2020 memo on the Scope and Limits of ARB Authority[1], the ARB is charged with reviewing commercial, industrial, larger scale residential, or mixed-use proposals "which have a substantial impact on the character of town and on traffic, utilities, and property values, thereby affecting the public health, safety, and general welfare." As such, the Board is provided certain flexibility in interpreting the Zoning Bylaw in exchange for applying the more rigorous scrutiny of Environmental Design Review to proposals along Arlington's commercial corridors. While the intent of Mr. Loreti's amendment is to provide the predictability as described in the bullet above, the impact would be to limit the ARB's ability to achieve a broader range of community goals in its review of development proposals. The ability to review and guide the development of mixed-use proposals enables the ARB to make progress toward a range of Town goals, including economic, housing development, and transportation goals, which is clearly outlined by the American Planning Association in a recent publication on mixed use development[2]. Providing housing units as part of a mixed-use development increases the economic viability of developments, allows the town to meet consumer demand by integrating a variety of uses into a single development project, improves the walkability of Arlington's commercial districts, and allows with some constraints the ARB to incorporate locally strong performing sectors into projects.

- **Very few instances where uses of underlying districts could potentially be in conflict** – The majority of Arlington's Business Zoning Districts are small, some only containing two parcels of land, and primarily located along the Massachusetts Avenue and Broadway corridors. There are nine instances where a neighborhood block of on average 390 linear feet (approximately 4 to 5 buildings) is split by two or more different Business Zoning Districts:

    - Mass Ave between Clark Street and Forest Street (B2 and B4)
    - Mass Ave between Fessenden Road and Quincy Street (B1 and B4);
    - Mass Ave between Quincy Street and Robbins Road (B1 and B4);
    - Both sides of Mass Ave between Pond Lane and Wyman Street (B1 and B2);
    - Mass Ave between Wyman Terrace and Linwood Street (B1, B2A, and B4);
    - Mass Ave between Foster Street and Tufts Street (B1 and B4);
    - Mass Ave at Lafayette Street (B1, B2A, and B4); and
    - Broadway at Sunnyside Avenue (B2A and B4).

[1] Memo from Doug Heim, Town Counsel, *Opinion Re: Scope and Limits of ARB Authority.* 8/13/2020: https://www.arlingtonma.gov/home/showpublisheddocument?id=52673

[2] American Planning Association, *Benefits of Compact, Mixed Use Development.* Accessed 2/23/21: https://planning.org/knowledgebase/compactbenefits/

These blocks contain multiple lots and are owned by multiple property owners. Assembling parcels for potentially larger-scale development is challenging and not always possible, further limiting the instances of potentially conflict of uses. Note there are instances where neighborhood blocks are split by Residential and Business Districts; mixed-use is not an allowed use in the Residential Districts.

In the instances noted above, B1 differs the most from B4, but B2A allows more uses and the most different uses in comparison to B1 or B4. The most different uses could be considered auto repair shop (allowed by Special Permit in the B4 district) and a funeral home (allowed by-right in the B1 district, allowed by Special Permit in the B2A district, and not allowed in the B4 district). This combination of uses, although not expressly permitted in these districts could be considered mixed-use under the existing Zoning Bylaw. However, because this is always a Special Permit process as noted in the point above, the Board would need to make a determination that would allow such a combination of uses to proceed while staying in compliance with the Special Permit criteria that protects the integrity of character of the Zoning District or neighboring Districts established as part of the Environmental Design Review.

- **Consistency with the Master Plan** – The Master Plan recommends supporting vibrant commercial areas by encouraging mixed-use redevelopment. By limiting the uses that could be considered as part of a mixed-use development, this Warrant Article is not consistent with the goals of the Master Plan. Further limiting development and mixture of uses is not in keeping with the Town's desire to increase its tax base; this Warrant Article could have a deleterious effect on future development in Arlington.

Amend SECTION 2:

Mixed-Use: A combination of two or more distinct land uses, such as commercial, lodging, research, cultural, artistic/creative production, artisanal fabrication, residential in a single multi-story structure to maximum space usage and promote a vibrant, pedestrian live-work environment <u>provided that any such distinct land uses are not otherwise prohibited by this bylaw as individual land uses in the same Zoning District</u>.

A Warrant Article to amend the Zoning Bylaw has been refiled by the Redevelopment Board on behalf of John L. Worden III and 10 registered voters:

Article 40 ZONING BYLAW AMENDMENT/ CONVERSION OF COMMERCIAL TO RESIDENTIAL

To see if the Town will vote to amend the Zoning Bylaw in Section 5.2.4, by inserting in the last sentence of said section, after the word footprint, the words "if allowed by special permit" and by inserting, after the words residential use, the words "provided that the addition or expansion is for affordable housing" so that said sentence will read as follows: In the case of an existing commercial use, the addition or expansion of residential use within the building footprint if allowed by special permit shall not require adherence to setback regulations for residential uses, provided that the addition or expansion is for affordable housing, even if the residential use becomes the principal use of the building; or take any action related thereto.

(Inserted at the request of the Redevelopment Board on behalf of John L. Worden III and 10 registered voters)

Mr. Worden's proposed amendment has been carried over after deferral from 2020 Annual Town Meeting. The proposed amendment is embedded in the Warrant Article. He provided the same commentary with his article submission as was provided in 2020:

> Under the law as it presently stands, a mixed-use building, with its minimal setbacks could be converted entirely into residential uses, by right. Since the only kind of additional housing that Arlington needs is affordable housing, the ability to do that would be limited under this amendment, and subject to public review.

The staff provides the following additional considerations relevant to this article:

- **Chilling effect on property reinvestment** – This Warrant Article mandates the creation of only affordable housing in certain mixed-use developments. Unfortunately, it is unclear how this achieves either Arlington's affordable housing or commercial development goals. Without any incentives, this Warrant Article would appear to deter rather than encourage the creation of affordable housing. This chilling effect is caused by limiting the flexibility property owners currently have in reinvesting in properties in Arlington. If the only option available for residential space is to create affordable housing, a property owner may not be able to balance a pro forma to see a return on their investment in their property. Small-scale development of any type is challenging and costly, particularly creating a development with only affordable housing units. Further, the added requirement to seek a Special Permit creates another barrier to property owners reinvesting in buildings in Arlington, increasing time and costs. Lastly, the seemingly mandatory nature of requiring that one to five units of housing must be affordable in most mixed-use development is in direct conflict with the existing Zoning Bylaw's Inclusionary requirements found in Section 8.2.

  The cost of developing affordable housing often exceeds available local and state funding sources, even for projects that only have 10-20% of total housing units designated as affordable. The table below outlines the major categories that comprise the total cost of development and the funding sources that are sometimes available to mitigate those costs.

Cost	Explanation	Funding sources
Land acquisition	Cost of buying the land or property to be (re)developed	Can be eliminated if public land is donated to the developer for the project.
Development costs	Largely determined by market forces. In 2019, these averaged $205/square foot nationally.[3] In Greater Boston, from 2011-2015, construction costs averaged $219.12/square foot for for-profit housing developers and $255.37/ square foot for non-profit housing developers.[4]	Debt, which is repaid after housing is rented or sold, and public subsidies. Construction costs can be reduced if the special permit granting authority reduces development requirements such as parking minimums and other design regulations.
Developer fee	Allocated to paying developer and staff for the work of developing a project.	Affordable housing developers can choose to defer a portion of the fee, which is recouped after rents are paid over time.
Other fees (design fees, construction loan interest, permanent financing fees, reserves, project management fees)	Costs of designing, financing, managing, and operating housing and mixed-use development.	Debt, which is repaid after housing is rented or sold, and public subsidies.

Private developers recoup the cost of developing affordable housing in several ways: using inclusionary housing bonuses (e.g., height bonuses, unit bonuses) to offset the costs of providing affordable housing, charging more in rent or purchase costs for housing not designated as affordable housing, and applying for public subsidies (e.g., CDBG funding, CPA funding, housing trust funds, federal tax credits). These development scenarios include primarily market rate housing in order for a private developer to break even on a project, especially given limited public funding resources and subsidies.

- **Creation of affordable housing** – Private entities create and preserve affordable housing in Arlington. In recent years, inclusionary zoning requirements led to the creation of one new rental housing unit at 483 Summer Street, a mixed-use development. Three new affordable units have been approved for 882-892 Mass Ave, another mixed-use development. The Housing Corporation of Arlington (HCA), a mission-driven community development corporation, received Community Preservation Act, Community Development Block Grant, and HOME funds to construct 34 affordable rental units at 19R Park Avenue (Downing Square) and 14 affordable rental units at 117 Broadway, a mixed-use development, both of which are now under construction. HCA previously applied for and received these funds to support the construction of nine affordable rental units at 20 Westminster Avenue, which was granted a Comprehensive Permit by the Zoning Board of Appeals in a R1 District. The Town has made a long-standing and commitment to providing resources to HCA to create and preserve affordable housing. The ARB enforces Inclusionary Zoning requirements as projects are permitted.

[3] https://www.fanniemae.com/media/33131/display
[4] https://www.tbf.org/tbf/51/~/media/ACFE028AAA5647188A3B23184C21DAFB.pdf

- **Creation of non-residential space** – In the mixed-use projects that received a Special Permit by the ARB, non-residential space has been created. The mixed-use building at 887-889 Massachusetts Avenue replaced an abandoned 1,572 square foot vehicular-oriented structure in the B4 district with 2,477 square feet of modern commercial space and residential homes. The renovation of the mixed-use structure at 925-927 Massachusetts Avenue gained three residential units and did not lose any commercial space. At 117 Broadway, Arlington Eats will move from 1,458 square feet to 2,360 square feet on the first floor with affordable homes on the upper floors once the new building is constructed. The mixed-use structure at 1500 Mass Ave will provide commercial space on the main level with four residential units above on a parcel which previously had three residential units and no commercial space. These examples illustrate that mixed-use has created an overall net gain of commercial space in Arlington while adding needed residential units.

- **Consistency with the Master Plan and Housing Production Plan –** Both the Master Plan and Housing Production Plan encourage the creation of more affordable housing, which benefits the community and helps meet local housing needs. This Article is at odds with the Master Plan goal of promoting high value mixed-use development through redevelopment incentives. By requiring that all new or expanded housing must be affordable and requiring a Special Permit, the Warrant Article does not appear to be supporting the varied goals of either plan or ultimately, the stated goal of creating more affordable housing.

Amend SECTION 5.4.2:

5.2.4. Multiple Principal Uses

A lot or structure located in the R6, R7, B1, B2, B2A, B3, B4, B5, PUD, I, MU, and T districts may contain more than one principal use as listed in Section 5.4.3 Use Regulations for Residential Districts, Section 5.5.3 Use Regulations for Business Districts, or Section 5.6.3 Use Regulations for MU, PUD, I, T, and OS Districts. For the purposes of interpretation of this Bylaw, the use containing the largest floor area shall be deemed the principal use and all other uses shall be classified as accessory uses. In the case of an existing commercial use, the addition or expansion of residential use within the building footprint <u>if allowed by special permit</u> shall not require adherence to setback regulations for residential uses, <u>provided that the addition or expansion is for affordable housing,</u> even if the residential use becomes the principal use of the property.

Article 34 **ZONING BYLAW AMENDMENT/MARIJUANA USES**

To see if the Town will vote to amend the Zoning Bylaw to allow Marijuana Delivery-Only Retailers and other amendments for consistency with the state regulations for the adult use of marijuana and the medical use of marijuana by amending SECTION 2 DEFINITIONS, SECTION 5.5.3. USE REGULATIONS FOR BUSINESS DISTRICTS, SECTION 5.6.3. USE REGULATIONS FOR MU, PUD, I, T, AND OS DISTRICTS, and SECTION 8.3 STANDARDS FOR MARIJUANA USES; or take any action related thereto.

(Inserted at the request of the Redevelopment Board)

Background

On November 30, 2020, the Cannabis Control Commission approved new medical- and adult-use regulations, which brought more parity to the two programs. The regulations approved by the Commission were promulgated and published on January 8, 2021. Due to these updates, Section 2 and Section 8.3 of the Zoning Bylaw require updates. Specifically, the new regulations created a "Marijuana Delivery Operator" license allowing an operator to buy product wholesale from growers and manufacturers, store the product, and sell to their own customers. Marijuana Delivery Operators are not allowed a public retail presence in the same way that Apothca and Eskar have retail establishments. However, it is important for Arlington to consider zoning amendments to ensure that this new establishment type is reviewed appropriately. Additionally, citations and definitions in the Zoning Bylaw are proposed to be updated.

Delivery Licenses

The regulations create two new types of Delivery licenses, the "Marijuana Courier" and the "Marijuana Delivery Operator License":

- The Marijuana Courier is substantially the same as the previously existing Delivery-Only License, allowing delivery from Marijuana Retail Stores.
- The Marijuana Delivery Operator License allows a licensee to purchase wholesale products from a cultivator, microbusiness, craft marijuana cooperative, or product manufacturer for resale. This licensee is authorized to sell and deliver products to customers via delivery but cannot operate a retail establishment accessible to the public. A Marijuana Delivery Operator is required to operate a warehouse for the storage of product within the host community. Simply put, a customer may place an order with the Marijuana Delivery Operator, who would package the order and deliver it directly to customers.

Practically speaking, these two licenses may result in three types of delivery activities:

1. Retail Direct Delivery – This type of activity is the direct fulfillment of delivery orders by a Marijuana Retail Establishment through telephone or online orders, similar to placing a delivery order from a restaurant. This type of activity is captured under the Marijuana Courier License (if the owner of the Marijuana Retail Establishment held a retail license and Marijuana Courier license).
2. Third-Party Delivery – This type of delivery activity involves browsing products through a third-party clearinghouse of several different existing establishments, placing an order directly through one of the establishments, and then delivery is facilitated through a third-party, in the same way that Drizly, Grubhub or Uber Eats operates. This type of activity is captured under the Marijuana Courier License.
3. Distribution Center - This type of activity involves browsing products from a wholesaler/reseller and placing an order with the wholesaler/reseller, who then packages and delivers orders separate from a bricks-and-mortar retailer, in the way that Amazon fulfills orders from its sellers. This type of activity is captured under the Marijuana Delivery Operator License.

The regulations make both licenses exclusively available to Economic Empowerment Applicants and Social Equity Program Participants for a minimum of three years. Neither Apothca or Eskar are Economic Empowerment Licensees or Social Equity Program Participants nor are the two establishments seeking the third Host Community Agreement for a retail establishment.

Zoning Amendments – Marijuana Delivery-Only Retailer
The main purpose of the amendment is to define and provide for the new license type, Marijuana Delivery Operator License as described as the distribution center above. The amendment creates a new use "Marijuana Delivery-Only Retailer" and defines it consistent with the regulations. Because this use requires a warehouse type facility to store products, its land use is similar to the existing Marijuana Production Facility use defined and allowed in the Zoning Bylaw. As such, the amendment proposes to allow this use, with a Special Permit from the ARB, in the B4 and Industrial Zoning Districts.

In addition to creating the new use, existing Marijuana Establishment types may receive a "Delivery Endorsement" allowing direct retail sales as described above. Those Marijuana Establishment types include Marijuana Microbusinesses, Marijuana Retailers, and Medical Marijuana Treatment Centers. Please note that the amendment does not provide for a "Delivery Endorsement" for Production Facilities outright; however, if a Production Facility were to operate in Arlington, it is limited to 5,000 square feet of growing space, and if producing non-medical product, it must be licensed as a Microbusiness.

Finally, the third practical use of these new license types is the third-party delivery. This is not described in the zoning amendment as its only land use may be an office. Please note that the state regulations require sale recordation, age verification, product labeling, security and delivery of products, among other stipulations to operate as a Courier, which is handled by the Cannabis Control Commission.

Zoning Amendments – Other Amendments
Two minor amendments are also included in the proposed zoning amendment. The definition of Medical Marijuana Treatment Center was updated to reference the new state regulations at 935 CMR 501.101. Additionally, in Section 8.3.B, a new subparagraph was added to address how buffer distances are measured. The previous version of the regulations did not specify how a buffer is measured, and there was inconsistency across the state as how municipalities interpretated the measurement. The recently promulgated regulations specify at 935 CMR 500.110(3)(a): "…The buffer zone distance of 500 feet shall be measured in a straight line from the geometric center of the Marijuana Establishment Entrance to the geometric center of the nearest School Entrance, unless there is an Impassable Barrier within those 500 feet; in these cases, the buffer zone distance shall be measured along the center of the shortest publicly-accessible pedestrian travel path from the geometric center of the Marijuana Establishment Entrance to the geometric center of the nearest School Entrance…". The amendment includes a reference to this section of the regulations.

Amend SECTION 2:

Marijuana Delivery-Only Retailer: An entity licensed by the Massachusetts Cannabis Control Commission to deliver directly to consumers from a Marijuana Retailer or a Medical Marijuana Treatment Center and that does not provide a retail location accessible to the public.

Marijuana Establishment: A Marijuana Cultivator, Craft Marijuana Cooperative, Marijuana Product Manufacturer, Marijuana Retailer, Marijuana Delivery-Only Retailer, Independent Testing Laboratory, Marijuana Research Facility, or any other type of licensed marijuana-related

business except not a Medical Marijuana Treatment Center, also known as a Registered Marijuana Dispensary or RMD.

Marijuana Microbusiness: A co-located Marijuana Establishment that can be either a Tier 1 Marijuana Cultivator or Product Manufacturer or both, pursuant to 935 CMR 500.00, in compliance with the operating procedures for each license, and if in receipt of a Delivery Endorsement issued by the Cannabis Control Commission, may deliver Marijuana or Marijuana Products produced at the licensed location directly to consumers in compliance with establish regulatory requirements for retail sale as it relates to delivery. A Microbusiness that is a Marijuana Product Manufacturer may purchase no more than 2,000 pounds of marijuana per year from other Marijuana Establishments, pursuant to 935 CMR 500.00.

Marijuana Production Facility: An establishment authorized to cultivate, manufacture, process or package marijuana products, in accordance with applicable state laws and regulations. A Marijuana Production Facility may be licensed to operate as a Marijuana Microbusiness, Marijuana Cultivator or Marijuana Product Manufacturer, or registered as Medical Marijuana Treatment Center (also known as a Registered Marijuana Dispensary or RMD), or a co-located medical and non-medical establishment, in accordance with applicable state laws and regulations.

Marijuana Retailer: An entity licensed to purchase and transport Marijuana Products from Marijuana Establishments and to sell or otherwise transfer this product to Marijuana Establishments and to consumers. ~~Retailers are prohibited from off-site delivery of Marijuana Products to consumers; and from offering Marijuana Products for the purposes of on-site social consumption on the premises of a Marijuana Establishment.~~ A Marijuana Retailer can deliver Marijuana or Marijuana Products to consumers in accordance with the regulations at 935 CMR 500.00. A Marijuana Retailer may not allow on-site social consumption by consumers on the premises of the Marijuana Establishment.

Marijuana Use: A Marijuana Production Facility (See "Marijuana Cultivator", "Marijuana Product Manufacturer", "Marijuana Microbusiness", and "Marijuana Production Facility"), Marijuana Research and Testing Facility (See "Independent Testing Laboratory" and Marijuana Research Facility"), Marijuana Retailer, Marijuana Delivery-Only Retailer, or Medical Marijuana Treatment Center as defined in this Zoning Bylaw.

Medical Marijuana Treatment Center: ~~An establishment registered with the Commonwealth pursuant to 105 CMR 725.100,~~ An entity licensed under 935 CMR 501.101, also known as a "registered marijuana dispensary" (RMD), that acquires, cultivates, possesses, processes (including development of related products such as ~~food~~edibles, marijuana-infused products, tinctures, aerosols, oils, or ointments), repackages, ~~transfers,~~ transports, sells, ~~offers for sale,~~ distributes, delivers, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers for medical use~~purposes in accordance with applicable state laws and regulations~~. Unless otherwise specified, Medical Marijuana Treatment Center refers to the site(s) of dispensing, cultivation, and preparation of cannabis or marijuana for medical use.

Amend SECTION 5.5.3.:

Retail	B1	B2	B2A	B3	B4	B5
Marijuana Delivery-Only Retailer					SP	

Amend SECTION 5.6.3.:

Retail	MU	PUD	I	T	OS
Marijuana Delivery-Only Retailer			SP		

Amend SECTION 8.3:

8.3 Standards for Marijuana Uses

For all marijuana uses, the following standards apply:

A. General

(1) Marijuana Establishments and Medical Marijuana Treatment Centers shall be allowed only after the granting of an Environmental Design Review Special Permit by the Arlington Redevelopment Board, subject to the requirements of Section **Error! Reference source not found.** and this Section.

(2) Marijuana Retailers, Marijuana Delivery-Only Retailers, and Marijuana Production Facilities, as defined in **Error! Reference source not found.**, may be established to provide Marijuana Products for medical use, non-medical use, or both, in accordance with applicable state laws and regulations.

(3) Marijuana Establishments and Medical Marijuana Treatment Centers shall be located only in a permanent building and not within any mobile facility, with the exception that Marijuana Microbusiness with a Delivery Endorsement and Marijuana Delivery-Only Retailers may conduct mobile deliveries in accordance with 935 CMR 500.000. All sales, cultivation, manufacturing, and other related activities shall be conducted within the building, except in cases where home deliveries are authorized to serve qualified medical marijuana patients pursuant to applicable state and local regulations and except that Marijuana Microbusiness with a Delivery Endorsement and Marijuana Delivery-Only Retailers may conduct sales in accordance with 935 CMR 500.000.

(4) Marijuana Production Facilities shall not be greater than 5,000 square feet in gross floor area, and shall be licensed as a Marijuana Microbusiness if Marijuana Products are cultivated or produced for non-medical use.

(5) A Marijuana Retailer or Marijuana Production Facility that has previously received an Environmental Design Review Special Permit from the Arlington Redevelopment Board for a Medical Marijuana Treatment Center shall be required to amend its previously issued Special Permit to authorize the conversion to or co-location of a Marijuana Establishment for the non-medical use of marijuana.

B. Location

(1) Pursuant to 935 CMR 500.110, Marijuana Establishments shall not be permitted within 500 feet of a pre-existing public or private school providing education in kindergarten or any of grades one through 12. This standard also applies to Medical Marijuana Treatment Centers not already permitted by the date of this bylaw.

(2) Marijuana Establishments and Medical Marijuana Treatment Centers, not already permitted by the date of this bylaw, shall not be located within 300 feet of Town-owned playgrounds and recreational facilities and 200 feet of public libraries, unless a finding of the Arlington Redevelopment Board determines that the location, based on site-specific

factors, or if the Applicant demonstrates, to the satisfaction of the Arlington Redevelopment Board, that proximity to the aforementioned facilities will not be detrimental based upon criteria established in 3.3.3 and 3.3.4.

(3) A Marijuana Retailer shall not be permitted within 2,000 feet of another Marijuana Retailer; A Medical Marijuana Treatment Center shall not be permitted within 2,000 feet of another Medical Marijuana Treatment Center.

(4) The distances referred to in this section shall be measured as defined in 935 CMR 500.110(3)(a).

C. Cap on the number of Special Permits for Marijuana Retailers

(1) The Arlington Redevelopment Board shall not grant a special permit if doing so would result in the total number of Marijuana Retailer licenses to exceed a maximum of three.

Article 28 ZONING BYLAW AMENDMENT/ AFFORDABLE HOUSING REQUIREMENTS

To see if the Town will vote to amend the Zoning Bylaw to increase the time during which the affordable housing requirements apply from a two-year period to a three-year period in alignment with G.L. c.40A § 9 by amending SECTION 8.2.2. APPLICABILITY; or take any action related thereto.

(Inserted at the request of the Redevelopment Board)

Background

Section 30 of Chapter 219 of the Acts of 2016 broadened Chapter 40A, § 9, by extending the term of Special Permit from two years to three years. When this law was passed, the goal was to provide more flexibility in construction schedules to adapt to changing economic, labor, and market conditions without having a seek an extension from the special permit granting authority.

The Zoning Bylaw in Section 3.3.5.B references the correct three-year term in accordance with this law, which was updated as part of the Zoning Bylaw recodification completed in 2018. Section 8.2 continues to reference the two-year term of special permits and should be updated to be consistent with Chapter 40A Section 9.

Amend SECTION 8.2.2.:

8.2.2. Applicability

The provisions of this Section 8.2 shall apply to all new residential development with six or more units subject to Section 3.4, Environmental Design Review, comprised of any or all of the following uses:

- Single-family detached dwelling
- Two-family dwelling
- Duplex dwelling
- Three-family dwelling
- Townhouse structure
- Apartment building
- Apartment conversion
- Single-room occupancy building

Any residential development of the uses listed above involving one lot, or two or more adjoining lots in common ownership or common control, for which special permits or building permits are sought within a ~~two-year~~ three-year period from the first date of special permit or building permit application shall comply with the provisions of this Section 8.2.

Article 29 **ZONING BYLAW AMENDMENT/ APARTMENT CONVERSION**

To see if the Town will vote to amend the Zoning Bylaw to include a definition of apartment conversion by amending SECTION 2 DEFINITIONS; or take any action related thereto.

(Inserted at the request of the Redevelopment Board)

Background

Apartment conversion is a use listed in the Table of Uses, but has no definition associated with it, although there are standards listed in the Table of Uses: "Conversion to apartments, up to 18 units per acre, with no alteration to the exterior of the building." Apartment conversion is allowed with a Special Permit in the R4 and R5 districts and the B1 district.

Apartment conversions are referenced in the description of the R4 Townhouse District. Section 5.4.1.B(1) notes that "the predominant uses in the R4 district are one- and two-family dwellings in large, older houses. Conversions of these old homes to apartments or offices are allowed to encourage their preservation." The description of the B1 Neighborhood Office District also references the predominant uses as one- and two-family dwellings.

Using these clues in the Zoning Bylaw, we crafted a definition that references the conversion of a structure originally designed for one- and two-family use with no exterior addition or expansion to the exterior of the structure.

Amend SECTION 2:

Apartment Conversion: The conversion of an existing structure originally designed for one-family or two-family use to an apartment building with no addition to or expansion of the exterior of the structure.

ARTICLE 30 ZONING BYLAW AMENDMENT/ GROSS FLOOR AREA

To see if the Town will vote to amend the Zoning Bylaw to clarify how landscaped and usable open space is calculated relative to gross floor area by amending SECTION 5.3.22. GROSS FLOOR AREA to add subsection C; or take any action related thereto.

(Inserted at the request of the Redevelopment Board)

Background

In the pre-recodification Zoning Bylaw, there was a reference in the Table of Density and Dimensional Regulations that noted the landscaped and usable open space requirements are a percentage of gross floor area. This note was not carried through to the recodified Zoning Bylaw, however providing this clarification would be helpful for applicants and consultants reviewing the Zoning Bylaw.

As such, we propose amendments to the definitions of Landscaped Open Space and Usable Open Space. An additional amendment is proposed in Section 5.3.22, Gross Floor Area, to identify the standard by which these two requirements are calculated.

Amend SECTION 5.3.22.:

5.3.22. Gross Floor Area

A. For the purposes of this bylaw, the following areas of buildings are to be included in the calculation of Gross Floor Area:

(1) Elevator shafts and stairwells on each floor;

(2) Attic areas with headroom, measured from subfloor to the bottom of the roof structure, of seven feet ~~three inches~~ or more, except as excluded in (4) below;

(3) Interior mezzanines;

(4) Penthouses;

(5) Basement areas except as excluded in (2) below;

(6) Cellars in residential uses;

(7) All-weather habitable porches and balconies; and

(8) Parking garages except as excluded in (1) below.

B. For the purposes of this bylaw, the following areas of buildings are to be excluded from the calculation of Gross Floor Area:

(1) Areas used for accessory parking, or off-street loading purposes;

(2) Basement areas devoted exclusively to mechanical uses accessory to the operation of the building;

(3) Open or lattice enclosed exterior fire escapes;

(4) Attic and other areas used for elevator machinery or mechanical equipment accessory to the operation of the building; and

(5) Unenclosed porches, balconies, and decks.

C. For the purposes of this bylaw, the district dimensional requirements for Usable Open Space and Landscaped Open Space are calculated based on Gross Floor Area.

Amend SECTION 2:

Open Space, Landscaped: Open space designed and developed for pleasant appearance in trees, shrubs, ground covers and grass, including other landscaped elements such as natural features of the site, walks and terraces, and also including open areas accessible to and developed for the use of the occupants of the building located upon a roof not more than 10 feet above the level of the lowest story used for dwelling purposes. Refer to Section 5.3.22.C. for on how to calculate landscaped open space.

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. Refer to Section 5.3.22.C. for on how to calculate usable open space.

ARTICLE 31 **ZONING BYLAW AMENDMENT/ PROHIBITED USES**

To see if the Town will vote to amend the Zoning Bylaw to indicate that uses without a "Y" or "SP" in the Tables of Uses are prohibited by amending SECTION 5.2.2. PROHIBITED USES to add subsection C; or take any action related thereto.

(Inserted at the request of the Redevelopment Board)

Background

An additional paragraph is proposed in Section 5.2.2., Prohibited Uses, that indicates that a use without a "Y" (Yes, use allowed) or "SP" (Special Permit required) is a use that is not permitted unless it is authorized elsewhere in the bylaw.

Amend SECTION 5.2.2.:

5.2.2. Prohibited Uses

A. Any use not listed in the Tables of Uses for various districts in Section 5 or otherwise allowable under the provisions of this Bylaw is prohibited.

B. All uses that pose a present or potential hazard to human health, safety, welfare, or the environment through emission of smoke, particulate matter, noise or vibration, or through fire or explosive hazard, or glare, are expressly prohibited in all districts.

C. Any use not designated with a "Y" (Yes, use allowed) or "SP" (Special Permit required) in the Tables of Uses for various districts is prohibited in that district, unless otherwise authorized by this bylaw.

ARTICLE 32 **ZONING BYLAW AMENDMENT/**
OTHER DISTRICTS DIMENSIONAL AND DENSITY REGULATIONS

To see if the Town will vote to amend the Zoning Bylaw to include the legend for tables by amending SECTION 5.6.2. DIMENSIONAL AND DENSITY REGULATIONS; or take any action related thereto.

(Inserted at the request of the Redevelopment Board)

Background

Sections 5.4.2. and 5.5.2. include a legend to assist in interpretating the shorthand notations in the tables. This amendment carries this legend to Section 5.6.2 for the MU, I, T, PUD, and OS Districts.

Amend SECTION 5.6.2.:

5.6.2. Dimensional and Density Regulations

The dimensional and density requirements in this Section apply to principal and accessory uses and structures in the MU, I, T, PUD, and OS districts. Additional dimensional and density regulations affecting all districts can be found in Section 5.3.

LEGEND FOR TABLES	
Sq.ft.	Square feet
ft	Feet
L	Length
H	Height
W	Width
ROW	Right-of-Way
SP	Special Permit
Y	Yes (use allowed)

ARTICLE 33 ZONING BYLAW AMENDMENT/ADMINISTRATIVE AMENDMENTS

To see if the Town will vote to amend the Zoning Bylaw to make the following administrative corrections;

1. Correcting references to Board of Selectmen in subparagraph B of SECTION 3.1.4. PENALTY and in Section 3.2.1. ESTABLISHMENT;
2. Removing gendered terms in subparagraph A of SECTION 3.2.3. RULES AND REGULATIONS and subparagraph D of SECTION 6.2.7. NONCONFORMING SIGNS;
3. Correcting reference to August, 1975 in subparagraphs C and D in SECTION 5.4.2. DIMENSIONAL AND DENSITY REQUIREMENTS;
4. Correcting reference to Section 7 in SECTION 3.3.4.A SPECIAL PERMIT CONDITIONS; and
5. Correcting reference to seven feet three inches in subsection A(1) in SECTION 5.3.22. APPLICABILITY;

or take any action related thereto.

Background

This article proposes specific administrative corrections including: updating references to the Select Board, removing gendered terms in the Zoning Bylaw, inserting a date, updating a section reference, and making a cross reference update consistent with an article passed at the 2019 ATM.

Amend SECTION 3.1.4.B:

B. The Building Inspector may, with the approval of the ~~Board of Selectmen~~ Select Board, institute the appropriate criminal action or proceeding at law or in equity to prevent any unlawful action, use or condition, and to restrain, correct or abate such violation. Penalties for violations may, upon conviction, be affixed in an amount not to exceed three-hundred dollars ($300.00) for each offense. Each day, or portion of a day, in which a violation exists shall be deemed a separate offense.

Amend SECTION 3.2.1.:

3.2.1. Establishment

There shall be a Zoning Board of Appeals ("Board of Appeals") consisting of five members and two associate members appointed by the ~~Board of Selectmen~~ Select Board. All members of the Board of Appeals shall be Arlington residents, one member shall be an attorney-at-law, and at least one of the remaining members shall be a registered architect or a registered professional engineer. The appointment, service, and removal or replacement of members and associate members and other actions of the Board of Appeals shall be as provided for in G.L. c. 40A.

Amend SECTION 3.2.3.A:

A. The ~~Chairman~~ Chair of the Board of Appeals, or in ~~his~~ their absence the Acting ~~Chairman~~ Chair, may administer oaths, but must do so for hearings involving G.L. c. 40B, summon witnesses and call for the production of papers. All hearings shall be open to the public. The Board of Appeals and all permit and special permit granting authorities shall hold hearings and render decisions in accordance with the applicable time limitations as set forth in G.L. c. 40A §§ 9 and 15. The Board of Appeals shall cause to be made a detailed record of its proceedings which in the case of G.L. c. 40B hearings shall require that all testimony be electronically recorded, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and setting forth clearly the reasons for its decisions, and of its other official actions, copies of

all of which shall be filed within14 days in the office of the Town Clerk and the office of the Arlington Redevelopment Board and shall be a public record, and notice or decisions shall be mailed immediately to the petitioner and to the owners of all property deemed by the Board of Appeals to be affected thereby, including the abutters and the owners of land next adjoining the land of the abutters, notwithstanding that the abutting land or the next adjoining land is located in another city or town, as they appear on the most recent local tax list, and to every person present at the hearing who requests that notice be sent to ~~him~~ them and states the address to which such notice is to be sent. Upon the granting of a limited or conditional zoning variance or special permit, the Board of Appeals shall issue to the land owner a notice, certified by the ~~chairman~~ chair or clerk, containing the name and address of the land owner, identifying the land affected, and stating that a limited or conditional variance or special permit has been granted which is set forth in the decision of the Board on file in the office of the Town Clerk. No such variance or permit shall take effect until such notice is recorded in the Middlesex County Registry of Deeds.

The fee for recording such notice shall be paid by the owner and the notice shall be indexed in the grantor index under the name of the owner of record.

The concurring vote of all members of the Board shall be necessary to reverse any order or decision of any administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this Bylaw, or to effect any variance in the application of this Bylaw.

Amend SECTION 6.2.7.D:

D. Removal of a nonconforming sign, or replacement of a nonconforming sign with a conforming sign, is required when the use of the sign and/or the property on which the sign is located has been abandoned, ceased operations, become vacant, or been unoccupied for a period of 180 consecutive days or more as long as the period of non-use is attributable at least in part to the property owner, tenant, or other person or entity in control of the use. For purposes of this Section, rental payments or lease payments and taxes shall not be considered as a continued use. In the event this should occur, these conditions will be considered as evidence of abandonment, requiring removal of the nonconforming sign by the owner of the property, ~~his/her~~ their agent, or person having the beneficial use of the property, building or structure upon which the nonconforming sign or sign structure is erected within 30 days after written notification from the Building Inspector. If, within the 30-day period, the nonconforming sign is not removed, enforcement action consistent with Section 3.1 shall be pursued.

Amend SECTION 5.4.2.:

C. One exception is made for attached single-family dwellings on Sunnyside Avenue, Gardner Street, Silk Street, Marrigan Street, and Fremont Street. Attached single-family dwellings existing in August 28, 1975, on these streets are permitted as a right.

D. In the R0, R1 and R2 districts no new licensed nursing home, rest home, convalescent home facilities shall be constructed except at sites whereon these facilities existed as of August 28, 1975. These existing facilities may be reconstructed to meet code requirements in accordance with a special permit under 3.3 and 3.4.

Amend SECTION 3.3.4.A:

E. Dimensional standards more restrictive than those set forth in ~~Section 7~~Section 5 of this Bylaw;

Amend SECTION 5.3.22.A(2):

A. For the purposes of this bylaw, the following areas of buildings are to be included in the calculation of Gross Floor Area:

(1) Elevator shafts and stairwells on each floor;

(2) Attic areas with headroom, measured from subfloor to the bottom of the roof structure, of seven feet ~~three inches~~ or more, except as excluded in (4) below;

(3) Interior mezzanines;

(4) Penthouses;

(5) Basement areas except as excluded in (2) below;

(6) Cellars in residential uses;

(7) All-weather habitable porches and balconies; and

(8) Parking garages except as excluded in (1) below.