

Supporting Information for Article 39 of the 2021  
Annual Town Meeting of the Town of Arlington  
Submitted by Christopher Loreti  
February 23, 2021

**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 by the Redevelopment Board at the request of Christopher Loreti and 10 registered voters)

**PROPOSED VOTE:**

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.*

**REASON FOR THIS AMENDMENT:**

When Town Meeting voted to adopt the mixed-use zoning amendment in 2016, it did not grant the ARB the discretion to allow in mixed-use developments uses that are prohibited individually in the same district. Two ARB members made this very clear multiple times before the vote. See:

- Attachment 1, excerpts from the certified transcript of the 2016 Annual Town Meeting previously submitted to the ARB.
- Video excerpts from the same Town Meeting, <https://youtu.be/1vDEkBYqFOw>
- And the entire Town Meeting debate on the article: <https://youtu.be/mz82YS4p2Ow?t=2606>

In making these statements, the ARB was saying that a similar amendment I submitted at the time was unnecessary. The ARB could not interpret the definition of mixed use to allow otherwise prohibited uses within a zoning district. Town Counsel and the Head of Inspectional services were cited as agreeing with this interpretation, and my amendment was not adopted.

It is important for Town Meeting Members (and others) to understand that Town Meeting is the ultimate decider as to whether a land use is allowed by right (that is, without a special permit), whether it is prohibited, or whether it may be allowed by special permit—that is whether it can be allowed by a vote of the Zoning Board of Appeals or the Redevelopment Board. These decisions are codified in the Table of Use Regulations. Neither the ZBA nor the ARB has the authority to unilaterally change a use from the prohibited to the special permit category.

Unfortunately, since the 2016 vote, the ARB has reversed the representations it made to Town Meeting, and adopted the absurd position that prohibited uses can be allowed within a zoning district as long as they are part of a mixed use development. The ARB now claims it need only issue a special permit for the mixed use containing the prohibited use.

In addition to being completely contrary to the representations made to Town Meeting at the time the mixed-use bylaw was passed, this interpretation conflicts with other provisions of the Zoning Bylaw that require a use be listed as a Special Permit use in order for a Special Permit to be granted.

The ARB has already been sued once as a result—by the abutters of the proposed Hotel Lexington—which the ARB allowed on one lot where hotels are prohibited. While this case was dismissed on procedural grounds, the judge accepted as true the contention that the ARB represented to Town Meeting that prohibited uses could not be allowed as part of mixed-use projects, writing: *Notwithstanding these assurances, the Board issued the decision that approves a hotel to be constructed on a parcel that is partially within the B2 zoning district, even though hotels are not allowed in that district.* Similar suits can be expected in the future.

In summary, the ARB and Town Meeting should support this amendment because it:

- Confirms the intention of Town Meeting in passing the mixed-use bylaw amendment in 2016
- Recognizes that Town Meeting, not the ARB, has the ultimate authority to designate prohibited land uses within the town's zoning districts
- Eliminates the absurd inconsistency that the ARB has created by allowing prohibited uses within mixed-use developments while the exact same uses are prohibited on their own
- Reduces the chance of future litigation

#### **ATTACHMENTS:**

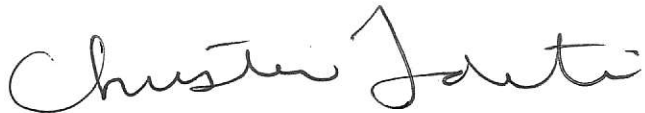
Attachment 1\_2016 ATM Article 6 Transcript Submitted by C. Loreti 1-27-20.pdf

Documentation in Support of the Testimony of Christopher  
Loreti for the Arlington Redevelopment Board Hearing on  
Special Permit Docket #3602  
(1207-1211 Massachusetts Avenue)

January 27, 2020

The attached pages are excerpts from the certified transcript of Article 6 of the April 25, 2016 Annual Town Meeting, which amended Arlington's Zoning Bylaw to allow mixed-use developments. These excerpts demonstrate that at least three times members of the Arlington Redevelopment Board (Chair Andrew Bunnell and then member Michael Cayer) testified that only uses individually allowed in a zoning district could be permitted as part of a mixed-use development in the same zoning district. Thus a hotel use, which is not allowed in the B2 zoning district, cannot be permitted as part of a mixed-use development in the B2 zoning district as proposed in Docket 3602. See statements in brackets followed by an asterisk on pages 48, 50, and 67.

I respectfully request that this documentation be entered into the public record for this docket as part of this public hearing.

A handwritten signature in cursive script, reading "Christopher Loreti". The signature is written in dark ink on a white background.

ORIGINAL

**TOWN OF ARLINGTON  
ANNUAL TOWN MEETING**

**MONDAY, APRIL 25, 2016**

**Session 1**

Robbins Memorial Town Hall Auditorium

730 Massachusetts Avenue

Arlington, Massachusetts 02476



**CAMBRIDGE TRANSCRIPTIONS**

675 Massachusetts Avenue

Cambridge, MA 02139

(617) 547 -- 5690

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1 I live on Lombard Terrace, close to three blocks, two long  
2 blocks from Mass. Ave. I'll be voting against this, I  
3 believe. But I'd like to say a few things. I think it's  
4 dreadful that we're presented with all these changes as one  
5 article. Some I would vote for, some I would vote against.  
6 I attended at least one of the meetings about this,  
7 approximately a week and a half or two weeks ago. I find  
8 all this difficult to absorb, and it's too multifaceted for  
9 me to swallow one vote. And that's part of the reason why  
10 I would vote no. I would recommend that ARB postpone the  
11 vote to give people another vote, at least to give us time  
12 to want to vote yes. But as it is, tonight I would vote  
13 no.

14 What is the neighborhood business district?  
15 There's a paragraph in this thing about a neighborhood  
16 business district, and I'm wondering -- I read it but --

17 MR. JOHN LEONE: Ms. Weiner? Or Mr. Bunnell  
18 (Indiscernible)

19 MR. ANDREW BUNNELL: The feature of the  
20 neighborhood district, business district --

21 MR. JOHN LEONE: Introduce yourself.

22 MR. ANDREW BUNNELL: Andrew Bunnell, Chair of the  
23 Redevelopment Board. If you could bring out my slides  
24 again, I could point out where that is on the map.

25 (Indiscernible). It's a little unclear on the map, but the

1 second line [ on our key here is B2, neighborhood business  
2 district. And these are interspersed throughout town.  
3 They are traditionally small businesses, districts with  
4 smaller businesses.

5 You won't see major developments going in in this  
6 kind of a district. It usually comes into a neighborhood -  
7 - it has to comply with what's already permitted in that  
8 district. ] \* And it also has to be within the character of  
9 the neighborhood. And part of the reason that the ARB has  
10 decided to keep special permit review over this is so that  
11 we can be assured that we're protecting neighborhoods from  
12 being overrun and seeing that "Palo Alto effect" that the  
13 other speaker talked about. It is important to us that  
14 there is some review over these projects from the  
15 beginning, so that we're not seeing monstrosities coming to  
16 town, and seeing the kinds of things that people don't  
17 want.

18 It is an open process, the special permit is a  
19 collaborative, open process where people do have the  
20 opportunity to come in and speak their case, and advise the  
21 ARB on how we should be voting and what projects we should  
22 be looking at, what projects we should say, maybe time to  
23 go back to the drawing board and come back with something a  
24 little more appropriate for the neighborhood and for the  
25 use that you're requesting.

1 MR. ANDREW FISCHER: -- and the answer was yes,  
2 so I def --

3 MR. ANDREW BUNNELL: Well, that's actually not  
4 true. [Mixed use is any use that would be more than one  
5 use. It can't be sold as residential. Again, it has to  
6 fit with a permitted use; a parking garage won't be  
7 permitted in there, because a parking garage isn't  
8 permitted. A residential on top of a gas station won't be  
9 permitted if that use is not already permitted. It has to  
10 fit what's already allowed under zoning,\*] and it has to fit  
11 within the character of the neighborhood being considered.

12 MR. JOHN LEONARD: At any rate, I would support  
13 Mr. Loreti's amendment, for the reason I just said. And  
14 the other reason I'm going to vote no is that I can't find  
15 anybody that wants higher density in the town, not in my  
16 precinct, anyway, when I talk with people. And the theory  
17 that we're obligated to go higher and higher density  
18 because of the world and greenness, I don't buy it. I  
19 happen to think we're at optimal density right now. I  
20 think we've already done more than our job. There are  
21 equally valid reasons to say high density is not healthy.  
22 So, that's my feeling then. I would repeat everything that  
23 the previous speaker also said. Thank you.

24 MR. JOHN LEONE: Thank you very much. Mr.  
25 Worden.

1 it that said "5,000." There wasn't any intent to change  
2 that. So, instead of the dash, the scrivener's error that  
3 we've corrected now with the Town Clerk and provided to the  
4 Clerk and the Moderator, is to change that dash to a  
5 "5,000." So, hopefully, that's clear.

6 MR. JOHN LEONE: If you'll all make that change  
7 administratively to your report, we'll just go with it as  
8 we proceed. Go ahead, Mr. Cayer.

9 MR. MIKE CAYER: Thank you. So, I want to start  
10 by saying, zoning is hard. It's hard and we do it first,  
11 which, frankly, I think is a disservice to both zoning and  
12 for helping the town move some of these things forward.

13 But, be that as it may, that's what we're doing.  
14 We're here tonight to talk about Articles 6 and 7,  
15 hopefully, eventually.

16 [ So, the first thing I want to talk about is  
17 correct a couple of things that were talked about earlier.  
18 There was a statement made that said that any commercial  
19 use can be snuck in to the mix -- the definition that's  
20 been put forth before you, in a mixed use development. So,  
21 you know, you can put a meat-processing plant on the first  
22 floor if you so choose, and if those rascals on the  
23 Redevelopment Board approve it, then you're going to have a  
24 meat-packing plant on the first floor.

25 That's not correct. We've worked with both the



1 Inspectional Services, the head of Inspectional Services,  
2 as well as Town Counsel on the wording that's before you.  
3 And only the uses that are permitted in a particular  
4 district are the ones that can happen in a mixed use in  
5 that district. So, just to clarify on that point. ] \*

6 The second point I want to bring up is, with  
7 respect to height, I think we've clarified a few things  
8 with respect to height. But I want to clarify two others.

9 Number one is, is, you've heard some people talk  
10 about a four-story buffer, okay? What that is, is what  
11 we're really talking about there is if a proposed mixed use  
12 is next to resident, then, instead of being five stories,  
13 you can only build four. That's a buffer zone, okay? You  
14 cannot go all the way up, and what's already in there stays  
15 in there, okay? It's only in the more commercial spine,  
16 where you've got other big buildings around you, that  
17 you'll be able to go to the maximum height.

18 Now, the important thing on this, though, is that  
19 what this does is it actually, from the streetscape, limits  
20 the height of the buildings even further down, because what  
21 you've also heard is about stepbacks. And a stepback means  
22 that as you go up to that fifth floor, or as you go above  
23 three, you have to move those next floors back seven and a  
24 half feet. So that from the streetscape now, you're only  
25 going to see three stories.

C E R T I F I C A T E

I, Buchanan Ewing, do hereby certify that the foregoing transcript is a true and accurate record of the aforementioned matter prepared to the best of our knowledge, skill, and ability.



Buchanan Ewing

6/2/16

Date

Notary Public No. 17610 DNP

My commission expires June 15, 2018

CAMBRIDGE TRANSCRIPTIONS

Approved Court Transcriber