



TOWN OF ARLINGTON
DEPARTMENT OF PLANNING and
COMMUNITY DEVELOPMENT

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17MEMORANDUM

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: March 11, 2021

RE: Review of Warrant Articles 38, 41, 42, 43, and 45 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 five articles with public hearings for the evening of March 15th. 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 Note about the Cumulative Effect of Town Meeting Articles

There are 17 zoning and non-zoning Town Meeting Warrant Articles that are related to or may have an impact on housing production and development. During the March 15th hearing the Redevelopment Board will learn about four articles that are directly related to housing production and a fifth article that is tangentially related. The staff have considered the cumulative effect of all these articles on housing production and general development in Arlington. It is our opinion that the cumulative effect could have a deleterious impact on new development in Arlington.

The Redevelopment Board adopted, and Town Meeting endorsed the Master Plan in 2015 which guides land use and development policy. The Redevelopment Board and the Select Board adopted the existing Housing Production Plan (HPP) in 2016, which laid out housing needs and demand, the development constraints, capacity, and opportunities, and an implementation plan consisting of housing goals and strategies to achieve them. The Housing Production Plan (HPP) update will be underway very soon. The broad engagement envisioned as part of that process would enable the community to have wide ranging conversations about what housing production in Arlington might look like, how it could be implemented, and where it should be focused in the community. The zoning and non-zoning Warrant Articles, which all have good intentions, represent a piecemeal and uncoordinated approach to creating and preserving housing for all present and future community members. The HPP update is intended to provide a coordinated and engaged approach to a community-supported plan for housing production for all income levels and all types of households.

Terminology

Regarding terminology, the phrase "affordable housing" is used in many different contexts. Deed restricted affordable housing is often referred to as "Capital A" affordable housing, meaning that a process has established the characteristics of an eligible household and has determined the housing cost

at no more than 30 percent of a household's monthly income. When used in this memo, we are referencing affordable housing which conforms to Section 8.2 of the Zoning Bylaw, titled Affordable Housing Requirements, which is housing in conformance with M.G.L. Chapter 40B. This Section of the Zoning Bylaw outlines specific requirements that relate to affordable housing units, including regulatory agreements and deed restrictions. The Regulatory Agreement outlines the eligibility thresholds, housing costs, and ongoing monitoring by the Town and other agencies. In many cases, the deed restriction requires that the unit remains affordable in perpetuity. Affordable housing as discussed here is subject to Affirmative Fair Housing and Marketing Plans which ensure broad outreach to populations in need of housing and to remove barriers to housing opportunity.

For reference, many inclusionary bylaws and ordinances are frequently aimed to provide housing options for households earning up to 80% of the area median income (AMI). Currently, for a family of four, HUD has determined that to be \$96,250 for the Boston-Cambridge-Newton, MA-NH Metropolitan Statistical Area. Section 8.2 of the Zoning Bylaw has a little more nuance and differentiates between rental and ownership projects. For rental units, an eligible household is one where the household members earn up to 70% AMI, yet the rent is calculated on 60% AMI. For the lottery held last summer for the two-bedroom unit at 483 Summer Street, which attracted over 170 applicants, an eligible household of four could earn up to \$89,530 and the monthly rent was set at \$1,232. For homeownership units, the Zoning Bylaw identifies eligible households are those where the household members earn up to 80% AMI, but the sale price is calculated on 70% AMI. While the sale price depends on the unique property being sold, the down payment and interest rates, and the community it is in, a purchase price in the low \$300,000s would be set for an eligible household of four earning up to \$96,250.

The other type of affordable housing often reference in public discourse is "little a" affordable housing. This often references those homes that may be priced below market, but which do not have any deed restrictions or other protections for tenants and are not subject to affirmative fair housing and marketing requirements. What is affordable to one household may not be affordable to another. Without additional information, it is hard to determine who may find a unit affordable. In 2020, Arlington had one of the region's highest median single-family home prices at \$860,000¹ and an average market rent of approximately \$1,730². In 2020, only 22 homes, all condominiums, sold for less than \$350,000 based on data from the Assessor's Office.

¹ Banker and Tradesman for calendar year 2020

² 2015-2019 American Community Survey

A Warrant Article to amend the Zoning Bylaw has been submitted by John Sanbonmatsu, Laura Kiesel, and 10 registered voters:

Article 45

**ZONING BYLAW AMENDMENT/
TO INCREASE THE PERCENTAGE OF AFFORDABLE HOUSING UNITS**

To see if the Town will vote to amend Section 8.2.3A of the Zoning Bylaw to increase the percentage of affordable housing units required in any development subject to Section 8.2 of the Zoning Bylaw from 15% to a percentage between 25 and 30%; or take any action related thereto.

(Inserted at the request of John Sanbonmatsu, Laura Kiesel, and 10 registered voters)

- **Arlington's current affordable housing requirements** – Section 8.2 of the Zoning Bylaw sets forth the affordable housing requirements for residential development in Arlington. Adopted by a vote of Town Meeting in 2001, the bylaw requires that 15% of any new residential development of six or more units (which is subject to Section 3.4, Environmental Design Review) must be affordable to households earning 70% or 80% of Area Median Income (AMI) for rental units and ownership units, respectively.³ Housing units created through this measure must be affordable in perpetuity, built on site, and integrated into the development. To incentivize developers to build affordable units, the bylaw allows for reduced parking requirements. Since 2001, the bylaw has resulted in the development of 59 affordable housing units.

Arlington's affordable housing requirement is on par with that of our peer communities. Staff reviewed the affordability requirements in 14 communities in the greater Boston region, and found that most inclusionary provisions are based on a 10 to 15% set-aside of affordable housing units.⁴ In 2005, an empirical study of the outcome of inclusionary zoning policies found that only minimal production of affordable housing had taken place because of those policies.⁵ In the intervening 15 years, many communities have sought to improve affordable housing production through expansion of their approach to inclusionary zoning; one common approach is through defining specific districts or an overlay zone such as a smart growth district, mixed use district, affordable housing overlay, or downtown district. In these types of districts, municipalities often require higher percentages of affordable housing (17.5-20%, and sometimes up to 25%), although they couple these requirements with greater incentives such as height or FAR bonuses, parking reductions, or reductions of the number of affordable units required if the new units are pegged to households earning a lower percentage of AMI.

Actual production of affordable housing that has resulted exclusively from these provisions has varied. In municipalities with high rates of housing production overall, such as in Somerville or Cambridge, greater production of affordable housing has occurred. Conversely, municipalities with lower rates of housing production or high inclusionary housing requirements, affordable

³ The Zoning Bylaw identifies eligible households at 70% and 80% for rental and ownership opportunities, respectively. The rent or purchase price is set at 60% to 70%, respectively, to create "breathing room" for the eligible households.

⁴ Belmont (10-15%), Brookline (15%), Cambridge (20%), Medford (10-15%), Melrose (15%), Milton (10%), Natick (15-20%), Needham (10-12.5%), North Andover (20-25%), Reading (10-25%), Somerville (20%), Stoneham (n/a), Watertown (12.5-15%), and Winchester (10%). Typically, in communities with ranges the lower number is for smaller residential developments (6-12 units) and the higher number reflects requirements for larger developments (20+ units) or developments in specific districts.

⁵ Dain, Amy. 2005. Residential Land Use Regulation in Massachusetts: a study of 187 communities. Accessed at http://www.masshousingregulations.com/pdf/land_use_regulation.pdf

housing production has been minimal. Overall, the region continues to suffer from an inadequate supply of housing affordable to households earning a low or moderate income.

- **A regional dynamic** – Developers take a regional perspective when considering where to construct housing. When given the option to develop housing in municipalities with extensive and lengthy review process by multiple boards or to do so in a community that offers an expedient review process, a developer will choose the latter. Similarly, developers will choose to build housing in a municipality requiring a lower percentage of affordable housing units unless a suitable incentive that offsets the cost of developing those units is offered in exchange.⁶ Finally, if the process of securing a building permit is onerous, or the regulations placed on developments too financially restrictive, it can be potentially more practical for a developer to apply for a permit through the Comprehensive Permit Process (Chapter 40B) than through local inclusionary zoning provisions.
- **Affordable housing requirements and incentives** – As suggested above, there is a need to carefully balance the proportion of new development required to be affordable with incentives in order for municipalities to achieve actual gains in its total supply of affordable housing. In a 2016 memo addressing affordable housing, Somerville Director of Planning George Proakis noted the calculus involved in determining regulations that would be both appropriate for the community and would result in new units of affordable housing:

“Comprehensive inclusionary ordinances are more complicated than a single percentage of required units. The inclusionary ordinance works like a set of dials and switches, each one controlling a separate factor. These factors include: the percentage of required units, whether they are on-site, if bonuses are provided, what the income requirements are, what interior finishes are required, the size of the living units, what other factors might impact affordability (landscape, parking, design, application fees, permitting etc.), and what number of units triggers inclusionary zoning.”⁷

He went on to note the factors to be considered, such as deciding how difficult a community wants to make development, and therefore development of affordable units, in the first place by requiring special permits and significantly restricting the size of projects.

The petitioner seeks to raise Arlington’s affordable housing requirement for developments of six or more units from 15% to 25% without any corresponding changes to the incentive structure. At the Town’s current requirements, we expect five market rate units to cover the subsidy for the remaining affordable unit in a six-unit development. Under the proposed amendment we would expect four market rate units to cover the subsidy. This is a significant change, and one that economic analysts for other communities have suggested could discourage private investment, particularly for smaller multi-unit projects.⁸

For Arlington, where the inclusion of affordable housing for developments of six or more units is already mandatory, the appropriate balance between incentives and requirements must be

⁶ See the discussion of Article 40 in the DPCD 2/25/2021 memorandum to the Arlington Redevelopment Board *Review of Warrant Articles 28, 29, 30, 31, 32, 33, 34, 39, and 40 for 2021 Annual Town Meeting* for a discussion of the costs and funding sources that go into the development of affordable housing.

⁷ Proakis, George. 2/18/2016. *An ordinance amending the Somerville Zoning Ordinance Sections 13.2, 1.3.3, 13.3.7, 13.3.4, 13.4.1, 13.5, 13.6.2, & 13.6.3, to address affordable housing in the City*, pg. 10. Available at: <https://www.somervillema.gov/sites/default/files/inclusionary-housing-staff-report-draft-2-18-2016.pdf>

⁸ Ibid. See outline of RKG Associates key findings on page 16.

sought. If a pro forma for a project does not balance out, the affordable housing requirement, special permit requirements, and other conditions can undermine a development or lead a developer to choose to build something sufficiently small to not require the development of affordable units. If developing affordable housing through inclusionary zoning is overly restrictive, it may be more practical for a developer to apply for a permit through the Comprehensive Permit process (Chapter 40B) than through local inclusionary zoning provisions, or not work in Arlington at all as there are significant costs (time and money) to pursue a Comprehensive Permit.

In short, Arlington's affordable housing requirements need to provide meaningful benefits and incentives to offset developers' revenue losses. A threshold set too high, especially when accompanied by an extensive review and permitting process, may actually incentivize developers to build elsewhere.

- **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 partially addresses the Housing Production Plan's Strategy 4 to amend inclusionary zoning by suggesting an increase to the percentage of development required to be affordable. However, it does not address the other components of strategy 4—reconsidering types of incentives that should accompany such an increase and considering what percent of AMI the additional requirements should be pegged to—and therefore represents an incomplete approach to the challenge of encouraging the development of affordable housing.

As described in the preface to this memorandum, the Town is commencing an update to the Housing Production Plan. A significant component of this planning process will be to understand the community's goals for developing affordable housing and researching how the Town's existing strategies can be enhanced to best reach those goals. DPCD looks forward to looking holistically at a coordinated set of strategies for updating key components of the Town's affordable housing requirements.

Amend SECTION 8.2.3.A.:

- A. In any development subject to this Section 8.2, ~~15%~~^{25%} of the dwelling units shall be affordable units as defined in Section 2 of this Bylaw. For purposes of this Section 8.2, each room for renter occupancy in a single-room occupancy building shall be deemed a dwelling unit. In determining the total number of affordable units required, calculations of a fractional unit of 0.5 or more shall be rounded up to the next whole number.

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

Article 41 ZONING BYLAW AMENDMENT/ DEFINITION OF FOUNDATION

To see if the Town will vote to amend the Zoning Bylaw in Section 2, by adding a new definition as follows:
Building Foundation: The masonry or concrete structure in the ground which supports the building. It does not include porches, decks, sheds, patios, one story attached garages, carports, or the like; or take any action related thereto.

(Inserted at the request of the Redevelopment Board on behalf of Patricia
B. Worden and 10 registered voters)

Mrs. Worden's proposed amendment has been carried over after deferral from 2020 Annual Town Meeting. Mrs. Worden provided commentary with her supporting information, which is attached with the agenda.

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

- **Oversimplification of Construction Terminology:** Section 2 (Definitions) of the Zoning Bylaw defers to the State Building Code for "terms and words not defined herein but defined in the State Building Code. Words not defined in either place shall have the meaning given in the most recent edition of Webster's Unabridged Dictionary."⁹ The Massachusetts State Building Code – 780 CMR does not have a single definition for foundations, but rather devotes an entire chapter to this building component. This is due to the complex and multifactored conditions that require variations in regulations instead of a single blanket definition. The dictionary defines a foundation as "an underlying base or support."

Staff consulted with the Inspectional Services Department (ISD) to clarify how foundations are considered. Per ISD, the building code does not have a single definition for foundations because in the construction industry there are many types of foundations that vary in their structure and design. The 2015 International Building Code breaks down foundations into two categories. The first category is shallow foundations which include individual or strip footings, mat foundations, slab-on-grade foundations or a similar foundation element. The second category is deep foundations, which includes all other foundation elements that do not satisfy the definition of a shallow foundation. Examples of deep foundations would be piers and piles. Additionally, the 2015 International Building Code allows building officials to approve other types of deep foundations.

Across Arlington's varied topography, some structures sit on masonry or concrete footings, while other structures perch on granite slab; in other areas with steep slopes garages sit upon a foundation but underneath the principal structure. The varied land conditions in Arlington require both a broader understanding of foundations and more nuanced application of foundation regulations than the proposed definition allows. Maintaining the Zoning Bylaw's deference to the building code on such matters upholds the intent of the building code, which is to govern the physical features of a building, primarily around safety and accessibility.

- **Local precedent:** Staff reviewed the zoning bylaws and ordinances for 14 peer municipalities in Massachusetts.¹⁰ In general, municipalities refrain from cross referencing building code

⁹ Town of Arlington Zoning Bylaw, Section 2 (Definitions), page 2-1.

¹⁰ Belmont, Brookline, Cambridge, Medford, Melrose, Milton, Natick, Needham, North Andover, Reading, Somerville, Stoneham, Watertown, and Winchester.

definitions in their zoning regulations. None of these municipalities provides a definition of a foundation in their zoning bylaws or ordinances, and most explicitly defer to the State Building Code and then the dictionary for industry-specific terminology.

- **Conflicts with Massachusetts General Laws:** Massachusetts General Laws c.40A §3 expressly states, “no zoning ordinance or by-law shall regulate or restrict the use of materials, or methods of construction regulated by the state building code”. By limiting the definition of foundation to masonry or concrete, the proposed definition places unwarranted restriction on the use of materials. The warrant article text specifies masonry or concrete, yet the main motion below expands the scope of materials to be used for a foundation, perhaps acknowledging this limitation in MGL C.40A.

Amend SECTION 2:

Building Foundation: The entity supporting the building and constructed of masonry or concrete or other material of appropriate industry standards for such purpose, whether insulated or non-insulated. It does not include porches, decks, attached storage facilities which are not part of the original structure, patios, one story attached private garages (except in the case of a single story building), carports, any accessory structure or the like.

A Warrant Article to amend the Zoning Bylaw has been submitted by the Redevelopment Board:

Article 38

**ZONING BYLAW AMENDMENT/
ENERGY EFFICIENT HOMES ON NONCONFORMING LOTS**

To see if the Town will vote to amend the Zoning Bylaw to allow new construction of energy efficient foundations and homes on nonconforming lots in the R0, R1, and R2 Districts that meet certain energy efficiency industry standards; or take any action related thereto.

(Inserted at the request of the Redevelopment Board)

The Clean Energy Future Committee presented this amendment to the Redevelopment Board in early January for consideration. The Redevelopment Board agreed to submit the warrant article. The staff provides the following additional considerations relevant to this article:

- **Implementation of the Net Zero Plan** – The Net Zero Plan was recently adopted by the Clean Energy Future Committee. The Net Zero Plan will guide Arlington to net zero greenhouse gas pollution by 2050. The Net Zero Plan states: “Existing Arlington bylaws at times create various barriers to, and/or do not encourage, renovating or constructing net zero energy buildings. For example, high efficiency buildings require insulated foundations¹¹ but approximately 30-40% of Arlington’s lower-density residential lots¹² are considered ‘non-conforming’ and the zoning bylaws do not allow foundations to be removed and replaced on those lots.”
- **Scope of Amendment** – This Article seeks to address the issue identified by the Net Zero Plan by establishing industry standards as thresholds and a reasonable process to address the limitations of the existing Zoning Bylaw for residential structures in the R0, R1, and R2 Zoning Districts. The amendment will only affect existing residential structures in those zoning districts. It does not enable the creation of new non-conforming lots. It does not enable new home construction where an existing principal structure does not already exist.

Property owners who seek to reconstruct their home and foundation to the identified industry standards are allowed to reconstruct the foundation if the parcel has at least 5,000 square feet. If the property owner wants to include an addition of up to 750 square feet, the home and foundation can be reconstructed. If the property owner wants to include an addition of 750 square feet or more, the property owner will still need a special permit from the ZBA in accordance with Section 5.4.2.B(6) on Large Additions. A special permit is also needed if the lot has less than 5,000 square feet and there is an existing structure.

The Clean Energy Future Committee noted that the amendment makes Arlington property owners of non-conforming lots equally eligible as property owners of conforming lots for certain federal and state incentives and tax credits that are only available to those who build high efficiency homes.

- **Potential Effect of Amendment** – DPCD worked with the Town’s Director of GIS/Systems Analyst to analyze parcels in the R0, R1, and R2 zoning districts to understand the scope and potential effect of this article. The Town’s GIS was used to calculate and compile attributes of all

¹¹ For example, Passive House construction requires foundations or slabs to have an insulating R-value between 30 and 50 which can typically only be achieved with new foundations that are insulated from the exterior and from below. In addition, an existing foundation may not have sufficient structural integrity to support a new energy efficient building that may be heavier.

¹² The 30-40% estimate applies to the approximately 92% of residential lots in Arlington that are in Zones R0, R1 and R2 (approximately 11,000 of the approximately 12,000 total residential lots in town are in Zones R0-R2).

parcels in R0, R1, and R2 zoning districts. This was accomplished by merging the Town's GIS parcel layer with a point layer containing frontage and lot size. The point layer containing frontage and lot size does not exist for every parcel in Town. In instances when data was absent, the frontage and/or lot size was calculated using GIS analysis tools. In addition, the Assessor's database was merged to include zoning district and O-Lots designations.

Several queries were run to select and categorize each parcel in the R0, R1, and R2 zoning districts. Based on the output from these queries, parcels were categorized as disqualified, potentially exempt, non-conforming, or nonconforming. It should be noted that all parcels identified by the Assessor as O-Lots, i.e. vacant lots, were omitted from the results. Definitions of each category are provided below:

- Disqualified: A parcel was disqualified from the analysis if it completely lacks street frontage or if it has a 0-Lot address. Of the 11,675 parcels in the R0, R1, and R2 Zoning Districts, 11,273 are qualifying parcels and 402 (3.4%) parcels were disqualified.
- Potentially Exempt¹³: In the R0 district, parcels identified as potentially exempt have a frontage between 50 and 75 feet and a parcel size of 5,000 square feet or more, or parcels that have a frontage of 50 feet or greater and a parcel size between 5,000 and 9,000 square feet. In the R1 and R2 district, parcels identified as potentially exempt have a frontage between 50 and 60 feet and a parcel size of 5,000 square feet or more, or parcels that have a frontage of 50 feet or greater and a parcel size between 5,000 and 6,000 square feet.
- Nonconforming: In any of the three zoning districts, parcels identified as nonconforming have a frontage of less than 50 feet or a parcel size less than 5,000 square feet.
- Conforming: Parcels identified as conforming meet the minimum frontage and lot size set forth in the zoning bylaw (75-foot frontage and 9,000 square foot lot size for R0, 60-foot frontage and 6,000 square foot lot size for R1 and R2).

As shown in the table below, within the R0, R1, and R2 zoning districts, 47% of all qualifying parcels conform to the minimum frontage and parcel area in the Zoning Bylaw. Nearly 31% of all qualifying parcels are nonconforming with the dimensions outlined in the query, and 16.1% are considered exempt. Note that the proportion of conforming parcels within an individual zoning district varies significantly based on the zoning district: more than 82% of all R0 parcels are conforming, while only 22% of R2 parcels are conforming.

District	Total Qualifying Parcels	Potentially Exempt	Nonconforming	Conforming	Disqualified ¹⁴
R0	516	83	9	424	38
R1	7,157	1,460	1,641	4,056	313
R2	3,600	1,296	1,511	793	56
Total	11,273	2,839 (25.2%)	3,161 (28%)	5,273 (46.8%)	402

Ultimately, structures can be demolished to foundation on any of these parcels through existing processes. This article allows existing and future community members to rebuild foundations and their homes while achieving certain energy efficiency industry standards that help the Town reach our net zero goals.

¹³ Parcels meeting the thresholds as defined in this category are nonconforming unless they meet the exceptions described in Section 5.4.2 (B)(1) of the Zoning Bylaw. The specific dates by which a parcel was issued deed or on which a principal structure was constructed were not available for this analysis.

¹⁴ Tallies of disqualified parcels were not included in overall percentages.

- **Relationship to Article 41** – Article 41 seeks to add a definition for foundation to the Zoning Bylaw. The interaction between Article 41 and this article is relative to the limits of a foundation. Depending on how foundation is defined and what might be excluded, the additional square footage of the excluded features of a home that provide interior space may cause more energy efficient homes to need to pursue a special permit for a Large Addition.
- **Consistency with the Master Plan and Housing Production Plan** – The Master Plan and Housing Production Plan discuss energy efficiency in different ways than the Net Zero Plan. In both documents, concern is expressed over the efficiency of older housing units in town as well as Town buildings and facilities. The documents do not contemplate the goal of this article to reduce greenhouse gas pollution in Arlington.

Amend SECTION 5.4.2.B(4):

- (4) Front Yard Minimum Lot Width Requirements and Exceptions. The minimum front yard lot width shall be 50 feet at all points between the front lot line and the nearest building wall, except that such minimum front yard lot width shall not apply to (i) any lot excepted under Section **Error! Reference source not found.**(B)(1) or **Error! Reference source not found.**(B)(2) or 5.4.2(B)(8) or (ii) restoration of any principal building that existed on a lot or for which a building permit was issued prior to February 1, 1988.

Add SECTION 5.4.2.B(8):

- (8) Exemption for energy efficient homes on R0, R1 or R2 lots with an existing principal building. The minimum frontage and lot area requirements shall not apply to homes constructed to the lower of either (i) Home Energy Rating System (HERS) Score of 44 or below, or (ii) the maximum allowed HERS Score defined in the International Energy Conservation Code as adopted and amended by Massachusetts, and:
- The new structure is built within the existing foundation footprint, or with an addition that is not a Large Addition as defined in Section 5.4.2.B(6), or
 - The lot has at least 5,000 square feet of area, or
 - By special permit.

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

Article 42

**ZONING BYLAW AMENDMENT/ AFFORDABLE HOUSING
ON PRIVATELY OWNED PARCELS OF “NON-CONFORMING” SIZE**

To see if the Town will vote to allow the development of new sources of permanently affordable housing (affordable in perpetuity and affordability as defined in Arlington Zoning By-Laws) by modifying the requirements for constructing housing units to enable construction on smaller lots as long as those units are permanently committed to be available for rental or ownership according to official regional guidelines (see (Zoning Bylaw Section 2, Basic Provisions, Definitions Associated with Affordable Housing) of affordability.

Such construction would be permissible in all zoning districts allowing residential use, providing the tracts were laid out prior to July 1, 2019, and receive a special permit from the ZBA. Ownership, sale, repurchase and rentals of each property would be overseen by the Arlington Housing Trust Fund or a comparable entity that would have the authority to enforce the affordability guidelines in perpetuity; or take any action related thereto.

(Inserted at the request of the Redevelopment Board on behalf of Barbara Thornton and 10 registered voters)

Ms. Thornton’s proposed amendment has been carried over after deferral from 2020 Annual Town Meeting. Ms. Thornton provided commentary with her supporting information, which is attached with the agenda.

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

- **Proposed Main Motion** – The main motion provided by the petitioner inserts language in Section 5.4.2, which outlines a series of exceptions for residential uses and is consistent with the goal of this proposal. The main motion identifies the density and dimensional requirements for a non-conforming lot to be built on as long as the new lot and dwelling receives a special permit and conforms to the requirements of Section 8.2, Arlington’s inclusionary zoning provisions.
- **Benefits of the Proposal** – Smaller homes reduce resources needed to build and maintain housing, and they can contribute to sustaining rapidly changing communities. Allowing smaller homes through smart regulations is one component of addressing housing needs across the greater Boston area. The information provided indicated that the homes built will tend to be smaller in comparison to new homes being constructed (range from 1,500 square feet of gross floor area to 1,800 square feet of gross floor area, with two-family structures allowed a larger gross floor area). The petitioner’s other proposal, which allows detached accessory dwelling units may be the more straight-forward proposal that achieves a similar, smaller housing type.
- **Number of lots that could become buildable** – The article appears to allow a two-fold approach to creating new affordable housing units in the R0, R1, and R2 districts: allowing owners of existing over-sized lots to subdivide an adjacent non-conforming lot and allowing the construction on existing non-conforming lots. In either case, the main motion outlines the uses and density and dimensional requirements.

The universe of lots in the R0, R1, and R2 districts is 11,675. The article would allow existing property owners to subdivide off a non-conforming lot as long as the lot with the existing structure remains conforming. First, DPCD looked at lots that meet the minimum lot that would be required for a property owner to take advantage of the proposed amendment. Due to the

limitations of the data, staff were unable to assess other aspects of the existing lot and structure, so the analysis yields a conservative estimate of 1,546 lots (13.2%) where a smaller lot could be created.

Additionally, the article does not seem to preclude the construction of a new home on an existing lot (a 0-Lot) that meets the minimum lot area and minimum frontage in the article. There are 203 lots (1.2%) that could become buildable if all conditions of the article are met.

In sum, this article could affect nearly 15% of the total number of lots zoned R0, R1, and R2.

District	Total Number of Lots	Lot Size Necessary for the Article ¹⁵	Total Number of Lots that Meet or Exceed the Minimum Required	0-Lots With Minimum Lot Size and Frontage per the Article ¹⁶
R0	549	13,000 sf	173	15
R1	7,470	9,000 sf	1,242	167
R2	3,656	10,000 sf	131	21
Total	11,675		1,546	203

- **Allowing the creation of undersized lots and inconsistency with MGL c.40A** – The Zoning Bylaw sets forth minimum lot sizes and minimum required frontages, and new lots that are created that do not meet these requirements are inconsistent with the Zoning Bylaw. There is nothing in the Board of Survey regulations that suggest that the Town has the power to create nonconforming lots through a Special Permit process. It would appear that this part of the amendment is in conflict with the Zoning Bylaw, the Board of Survey regulations, and state law under MGL c.40A. Cottage-style developments are typically regulated through residential open space developments (previously known as cluster development in Chapter 40A) and PUDs, which are promoted through the Zoning Act. In Arlington’s Zoning Bylaw, PUDs are allowed, but are used in a different way than what this Warrant Article seeks to accomplish.
- **Economics of the proposal** – The Warrant Article may not be economical for many developers or homeowners to take on. The point above regarding consistency with the Zoning Bylaw, the Board of Survey regulations, and state law aside, the Warrant Article requires a Special Permit process and that the unit be sold or rented at an affordable price consistent with Section 8.2. The discretionary review process by the ZBA and the lower profits may lead a developer to choose the 40B pathway to achieve their goals. The economics may become feasible if, in addition to allowing construction on nonconforming lots, the Town provided a subsidy, potentially through the Affordable Housing Trust. The Affordable Housing Trust was just adopted by Town Meeting in November 2020. As part of the public process to develop an action plan, this Board could consider if this type of subsidy is an activity the Trust wants to pursue.
- **Relationship to Article 25** – A non-zoning Town Meeting warrant, Article 25, seeks to request that the Town study and implement an Affordable Housing Overlay District. By way of example, the City of Cambridge adopted an Affordable Housing Overlay District in 2020, which seeks to help affordable housing developers create new, permanently affordable homes more quickly,

¹⁵ The lot sizes noted in the chart are the requirement of the underlying zones plus the requirement for a new lot created via this article.

¹⁶ Note that there is some overlap between the total number of 0-Lots and those which meet the minimum lot sizes that would be required under this proposed amendment; individual lots have not been evaluated to determine whether they have an appropriate location, topography, or a suitable use for future development.

more cost effectively, and in areas of Cambridge where there are currently fewer affordable housing opportunities. Should Article 25 be adopted by Town Meeting, the goals of this Article 42 could reasonably align with a future study enabling a more holistic approach to incentivizing the development of permanently deed restricted affordable housing in Arlington.

- **Consistency with the Housing Production Plan** – Strategy 2 of the Housing Production Plan recommends amending the Zoning Bylaw in order to facilitate development of a range of housing types (page 60). One of the specific suggestions is to allow more than one structure on a lot, which is currently prohibited in the Zoning Bylaw to facilitate a cluster-style development or planned development. This recommendation might be a simpler solution to what this Warrant Article seeks to accomplish.

While the intention of this article is notable, it may not have the impact that the petitioner seeks to achieve. As noted in the introduction of this memo, the update to the Housing Production Plan (HPP) will be underway shortly. Through the public engagement process and review of the 2016 HPP, the concept proposed in this article could be refined and recommended with broad support from the community.

Amend Section 5.4.2:

- E. Exceptions for affordable housing. In the R0, R1, and R2 districts, a lot may be built upon with a single- or two-family use provided that the Board of Appeals, acting pursuant to Section 3.3, issues a special permit and the dwelling(s) complies with Section 8.2, and provided that the following use, density, and dimensional requirements are met:

(1) R0

- Only single-family structures are allowed.
- Lot area and frontage. The minimum lot size is 4,000 square feet and the minimum frontage is 50 feet.
- Yards. The following minimum yards shall apply: the front yard shall be 25 feet, the side yard shall be 10 feet, and the rear yard shall be 20 feet.
- Floor area ratio. The floor area ratio shall be 0.45.
- Open space. The minimum open space shall be 20 percent with a minimum horizontal dimension in any one direction of 20 feet.
- Maximum lot coverage. The maximum lot coverage shall be 35 percent.
- Maximum building height. The maximum building height shall be 35 feet and the maximum stories shall be 2 and one-half stories.

(2) R1

- Only single-family structures are allowed.
- Lot area and frontage. The minimum lot size is 3,000 square feet and the minimum frontage is 40 feet.
- Yards. The following minimum yards shall apply: the front yard shall be 15 feet, the side yard shall be 5 feet on one side and 10 feet on the second side, and the rear yard shall be 20 feet.
- Floor area ratio. The floor area ratio shall be 0.50.
- Open space. The minimum open space shall be 20 percent with a minimum horizontal dimension in any one direction of 20 feet.
- Maximum lot coverage. The maximum lot coverage shall be 35 percent.
- The maximum building height. The maximum building height shall be 35 feet and the maximum stories shall be 2 and one-half stories.

(3) R2

- Single or two-family structures are allowed.
- Lot area and frontage. The minimum lot size is 4,000 square feet and the minimum frontage is 40 feet.
- Yards. The following minimum yards shall apply: the front yard shall be 15 feet, the side yard shall be 5 feet on one side and 10 feet on the second side, and the rear yard shall be 20 feet.
- Floor area ratio. The floor area ratio shall be 0.85 for a two-family dwelling. The floor area ratio shall be 0.45 for a single-family dwelling.
- Open space. The minimum open space shall be 20 percent with a minimum horizontal dimension in any one direction of 20 feet.
- Maximum lot coverage. The maximum lot coverage shall be 35 percent.
- The maximum building height. The maximum building height shall be 35 feet and the maximum stories shall be 2 and one-half stories.

Further, a lot may be subdivided that meets the requirements as outlined above. However, the existing lot must meet all conforming lot requirements in accordance with Section 5.

A Warrant Article to amend the Zoning Bylaw has been submitted by Barbara Thornton and 10 registered voters:

Article 43

ZONING BYLAW AMENDMENT/

ARTICLE TO PROPOSE THE ADOPTION OF ACCESSORY DWELLING UNITS

To see if the Town will vote to the purpose of this article is to see if the Town will amend the Zoning Bylaw to allow Accessory Dwelling Units (ADUs) on the property of single family, two-family, and duplex dwellings; or take any action related thereto.

(Inserted at the request of Barbara Thornton and 10 registered voters)

Ms. Thornton has provided additional information to support this Article. It is attached to the agenda. The staff provides the following additional considerations relevant to this article:

- **Substantially different than previous proposals** – This amendment is substantially different than the previous accessory dwelling unit proposals considered by Town Meeting, most recently at the 2020 Special Town Meeting and the 2019 Annual Town Meeting. In particular, the amendment considered by the 2019 Town Meeting required a special permit for the use and was limited to the R0 and R1 Zoning Districts; this amendment allows Accessory Dwelling Units (ADUs) by right in single-family, two-family, and duplex dwellings in any residential and commercial district. The amendment considered by the 2020 Special Town Meeting included a very different definition for ADUs that specified the number of rooms necessary and provided scant limits on the size of the ADU. This amendment brings together pieces of the 2019 and 2020 amendments that have been identified by the ARB previously.
- **Why allow Accessory Dwelling Units?** – ADUs provide a number of benefits to property owners: allow additional flexibility on using space within the home; allow for options that may create supplementary income; allow aging in place or multigenerational families on the property; and increase long-term rental housing opportunities while balancing potential impacts to existing neighborhoods. These benefits are consistent with the goals of the Housing Production Plan and are encouraged to facilitate a range of housing types to help meet the needs of specific demographics, such as seniors, multi-generational households, individuals with disabilities, low-to-middle income family households, and singles (p. 60).
- **How many Accessory Dwelling Units will be created?** – *The State of Zoning for Accessory Dwelling Units*¹⁷ provides an excellent overview of how Massachusetts municipalities choose to allow or not allow ADUs. This study highlights the fact that even when municipalities allow ADUs by right with some limitations as is the case in this amendment, the actual number of units that are created is still quite low. While there may be heightened initial demand should this amendment be adopted by Town Meeting, Ms. Dain's report states that, "...2.5 units on average are permitted annually per municipality that allows ADUs (including those that are restricted to relatives)." There is a high cost of constructing the space that meets the requirements of building and safety codes, which may limit to who would actually take on the construction. These facts coupled with the number of units generated from similar zoning bylaws in other municipalities demonstrate that there would be likely minimal impact on the residential zoning districts.

¹⁷ <https://ma-smartgrowth.org/wp-content/uploads/2019/01/ADU-MSG-Pioneer-paper-2018.pdf>

- **Preservation of existing housing** – Accessory Dwelling Units provide financial and social incentives for owners to preserve the façade of existing housing, thereby maintaining the appearance of the streetscape while increasing the number and range of housing options.
- **Supports Arlington Families** – ADUs have the potential to support families in Arlington throughout life stages because the amendment allows the owner to live in the principal dwelling unit or the ADU. By developing an ADU on a property, middle-age homeowners have the ability to provide independent housing to their adult children, who then have the ability to live in Arlington at lower or more affordable rental rates. They also provide middle-age homeowners with the flexibility to invite aging parents to move in and provide them material, physical, and emotional support. As homeowners grow older, ADUs permit seniors to live in intergenerational housing while remaining in their home, access a new income stream, or live independently while inviting their adult children to move into the home.
- **Relationship to Chapter 358 of the Acts of 2020** – Chapter 358 of the Acts of 2020 made a series of revisions to Chapter 40A, including lowering the voting threshold for amendments that allow ADUs by-right either within the principal dwelling or within a detached structure on the same lot. This amendment can be enacted by a simple majority instead of a two-thirds majority vote.¹⁸ The proposed amendment is aligned with the other standards outlined in Chapter 358 of the Acts of 2020 for ADUs, including the definition and standards.¹⁹
- **Consistency with the Housing Production Plan (HPP)** – The Housing Production Plan adopted by the Select Board and Redevelopment Board and approved by the Massachusetts Department of Housing and Community Development in 2016 identifies various regulatory and zoning amendments in order to create and preserve affordable housing in Arlington. The plan identifies zoning amendments to allow for ADUs as a method to facilitate development of a range of housing types to help meet the needs of specific demographics, such as seniors, multi-generational households, individuals with disabilities, low-to-middle income family households, and singles (p. 60).

Amend Section 2:

Accessory Dwelling Unit: A self-contained housing unit, inclusive of sleeping, cooking and sanitary facilities on the same lot as a principal dwelling.

Amend Section 5.4.3:

Class of Use	R0	R1	R2	R3	R4	R5	R6	R7
Accessory Uses								
<u>Accessory Dwelling</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>

Amend Section 5.5.3:

Class of Use	B1	B2	B2A	B3	B4	B5
Accessory Uses						
<u>Accessory Dwelling</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>

¹⁸ <https://www.mass.gov/doc/guidance-on-zoning-act-voting-thresholds-02-26-21/download>

¹⁹ <https://malegislature.gov/Laws/SessionLaws/Acts/2020/Chapter358>

Add Section 5.9.2:

5.9.2 Accessory Dwelling Units

A. Purpose. The purpose of this Section 5.9.2 includes:

- (1) Promoting the use of accessory dwelling units as a means of providing Arlington property owners with an opportunity to age in place, to create independent living space for elderly, disabled or other family or household members, to downsize or to earn supplemental income from investing in their properties.
- (2) Helping Arlington residents to conserve and grow their own property values.
- (3) Encouraging housing for persons of all income levels and ages.
- (4) Encouraging an orderly expansion of the tax base without detracting from the existing character of the affected neighborhoods.

B. Requirements.

- (1) In any Residential District or Business District, an accessory dwelling unit is permitted as an accessory use to any single-family dwelling, two-family dwelling, or duplex dwelling, if all of the following conditions are met:
 - An accessory dwelling unit shall be not larger in floor area than one-half the floor area of the principal dwelling or 900 square feet, whichever is smaller. For the avoidance of doubt, where an accessory dwelling unit is created by converting a portion of an existing principal dwelling to an accessory dwelling unit, the floor area of the resulting accessory dwelling unit shall be measured relative to the floor area of the resulting principal dwelling (as affected by or in connection with the conversion).
 - An accessory dwelling unit shall maintain a separate entrance, either directly from the outside or through an entry hall or corridor shared with the principal dwelling, sufficient to meet the requirements of the State Building Code for safe egress.
 - No more than one (1) accessory dwelling unit is allowed per principal dwelling unit.
 - An accessory dwelling unit may be located in (i) the same building as the principal dwelling unit or as an expansion to such building (provided such expansion complies with the applicable requirements of this Bylaw, including, if applicable thereto, Section 5.4.2B(6)); (ii) a building that is attached to the principal dwelling unit; or (iii) an accessory building, which accessory building shall not constitute a principal or main building by the incorporation of the accessory dwelling unit.
 - An accessory dwelling unit shall not be used as a short-term rental, in accordance with Title V, Article 18, Section 3 of the By-Laws of the Town of Arlington.
 - An accessory dwelling unit shall be subject to all applicable requirements of the State Building Code and Fire Department regulations (including any such requirements, if and as applicable, which prohibit openings, including windows, in exterior walls of dwellings located within a certain distance from the property line).
- (2) The creation or addition of an accessory dwelling unit shall not change the zoning classification of the property in question and shall not affect any zoning relief previously obtained for such property. By way of example only (and without limitation), a single-family dwelling having an accessory dwelling unit shall continue to be classified as a single-family dwelling for single-family use under the Zoning Bylaw; a two-family dwelling having an

- accessory dwelling unit shall continue to be classified as a two-family dwelling for two-family use under the Zoning Bylaw; and a duplex having an accessory dwelling unit shall continue to be classified as a duplex dwelling for duplex use under the Zoning Bylaw.
- (3) No off-street parking spaces are required in connection with the creation or addition of an accessory dwelling unit.
- (4) An accessory dwelling unit shall not be owned separately from the principal dwelling unit with which such accessory dwelling unit is associated.

C. Administration

- (1) Prior to the issuance of a building permit for an accessory dwelling unit, the owner must deliver an affidavit to the building inspector stating that the owner or a family member of the owner will reside in either the principal dwelling unit or the accessory dwelling unit upon completion of the accessory dwelling unit.
- (2) The creation or addition of an accessory dwelling unit to a principal dwelling unit shall not be subject to the foregoing paragraph 5.9.2.C(1) if the principal dwelling unit and accessory dwelling unit are owned by a non-profit or governmental entity and the accessory dwelling unit is restricted as an affordable unit.
- (3) This Section 5.9.2 shall be effective as of the date on which it is enacted at Town Meeting in accordance with applicable law, except for clause (iii) of Section 5.9.2.B.(1), fourth bullet, which clause (iii) shall be effective as of the date occurring six (6) months after the date on which this Section 5.9.2 is enacted at Town Meeting.
- (4) In the event of any conflict or inconsistency between the provisions of this Section 5.9.2 or Section 8.1.3.E, on the one hand, and any other provisions of this Bylaw, the provisions of this Section 5.9.2 and Section 8.1.3.E shall govern and control.

Amend Section 8.1.3:

- E. The creation or addition of an accessory dwelling unit within an existing single-family dwelling, two-family dwelling, or duplex dwelling, or within an existing accessory building on the same lot as any such dwelling, does not increase or affect the nonconforming nature of said existing dwelling or accessory building, and shall not cause such dwelling or accessory building to become non-conforming or result in any additional dimensional requirements with respect to such dwelling or accessory building, provided that such creation or addition of an accessory dwelling unit neither expands the footprint nor the height of said dwelling or accessory building (with the exception of changes necessary to provide for required egress or other modification to meet the State Building Code and Fire Department regulations, and with the exception of any items which are permitted under Section 5.3.9 to extend beyond the minimum yard regulations otherwise provided for the district in which the applicable structure is located).