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Subject: A Brief History of the Upper Story Stepback Zoning Bylaw

Correspondence regarding Docket 3602

A Brief History of the Upper Story Stepback Zoning Bylaw

5.3.17. Upper-Story Building Step Backs

For buildings more than three stories in height, an additional 7.5-foot step-back (upper story building setback) shall be provided beginning at the third story level or 30 feet above grade, whichever is less. The upper story step-back shall be provided along all building elevations with street frontage, excluding alleys.

This zoning bylaw has had a short, troubled history. It was passed at the 2016 Town Meeting as part of the article establishing Mixed Use development in Arlington. Its intent was to reduce the visual massing effect from taller buildings, particularly those with little or no front yard setbacks. It was reassurance to Town Meeting members that the Mixed Use bylaw would not lead to massive street walls.

The first project to which it should have applied was the mixed use project at 117 Broadway which came before the Arlington Redevelopment Board in the fall of 2016. This was for a four story building designed to have the stepback only at the fourth floor. Neither Building Inspections nor the Planning Department noticed that this was a violation of the newly passed bylaw. No one on the Redevelopment Board picked up on it either, and no one from the public made any objection, and the special permit was approved. This could hardly be considered a precedent-setting decision as none of the parties involved appear to have been even aware of the bylaw. There was no discussion by the ARB on this matter.

The first time that the Redevelopment Board reconsidered the upper story setback bylaw was one year ago in March 2019. Warrant Article 10 proposed changing the required stepback from the third to the fourth floor. The Board decided against this change and voted unanimously for no action. Town Meeting later confirmed this decision in April 2019.

Three months later, the issue came up for the second time with the application for a four story hotel at 1207-1211 Mass Ave. This time the Planning Department noted the stepback problem, *Section 5.3.17 requires that building more than three stories in height, such as the proposal, an additional 7.5-foot step-back (upper story building setback) shall be provided beginning at the third story level or 30 feet above grade, whichever is less. As part of the EDR jurisdiction, these requirements should be further addressed until the Board is satisfied that the building is well-situated on the parcels.*

It is not clear what the Planning Dept means by “these requirements should be further addressed

until the Board is satisfied that the building is well-situated on the parcels”. The Redevelopment Board does not have the authority to simply waive this bylaw requirement.

The Board has yet to address this matter in the hearings to date, and the applicant has not submitted a design that would conform with the bylaw. Rather than comply with the law, he has submitted a warrant article that would change the existing bylaw to conform with his design. He asks that the required setback begin at the fourth floor or 35 feet, whichever is lower. It is not coincidental that his design shows a fourth floor at the elevation of 34 feet, 8 inches.

In order to support this article, the Board would need to explain to Town Meeting what has changed in the last year to justify a reversal of its unanimous decision of just last year. It would be a poor precedent to ask Town Meeting to reverse zoning bylaws simply because a developer finds them inconvenient.

Don Seltzer