

**From:** Chris Loreti <cloreti@verizon.net>  
**To:** JHurd@town.arlington.ma.us  
DMahon@town.arlington.ma.us, JCurro@town.arlington.ma.us, SDecourcey@town.arlington.ma.us,  
**Cc:** LDiggins@town.arlington.ma.us, Marie Krepelka <mkrepelka@town.arlington.ma.us>, Adam Chapdelaine  
<achapdelaine@town.arlington.ma.us>  
**Date:** 06/22/2020 12:16 PM  
**Subject:** Fwd: Additional Comments: Docket 3624, 400-402 Massachusetts Avenue

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Dear Select Board Chair Hurd,

I am forwarding to you a message I just sent to the ZBA regarding tomorrow's public hearing for the property at 400-402 Massachusetts Avenue. Ordinarily, I would not copy such correspondence to the Select Board, but in this case, I am making an exception given your business relationship with the applicant and the Select Board's role in appointing the ZBA.

As you well know, the subject property is the location of your professional office. You should also know that as an elected official you are prohibited not only from having an actual conflict of interest but also from giving the appearance of a conflict of interest. In the case of this proposed development, the special treatment afforded by the town to your landlord, namely by ignoring significant requirement of the town's zoning bylaw, raises serious questions about the latter.

The town's referral of the proposed development to the ZBA for a special permit fails to comply with the town's zoning bylaw in that the ZBA is not authorized to grant special permits for mixed-use developments (such developments requiring Environmental Design Review by the ARB) and due to the fact that the proposal includes an apartment building use prohibited in the B1 zoning district of the property. You can read the attached message and my earlier emails to the ZBA for additional information.

Given your role as the Chair of the town's Select Board and your business relationship with the applicant for this special permit, I strongly suggest that you ensure that Arlington's zoning bylaw be followed to the letter, and in particular that the mixed-use zoning bylaw be applied in accordance with the way it was presented to and passed by Town Meeting in 2016.

Sincerely,

Christopher Loreti  
56 Adams St.

p.s. to Marie Krepelka, please make this email string and attachment part of the Select Board's official correspondence.

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

**Subject:**Additional Comments: Docket 3624, 400-402 Massachusetts Avenue

**Date:**Mon, 22 Jun 2020 11:42:30 -0400

**From:**Chris Loreti <[cloreti@verizon.net](mailto:cloreti@verizon.net)>

**To:**[CKlein@town.arlington.ma.us](mailto:CKlein@town.arlington.ma.us)

**CC:**[zba@town.arlington.ma.us](mailto:zba@town.arlington.ma.us)

Dear ZBA Chair Klein:

Last week, I wrote to you concerning the fact that the subject special permit hearing has been directed to the wrong board. Since only the ARB can grant special permit for mixed uses, this proposal must be heard by the ARB if the applicant wishes to obtain a special permit for a mixed use.

Upon further review of the application, it is clear that the proposal does not even qualify for a mixed-used special permit. When the mixed-use zoning bylaw amendment was passed in 2016, the ARB made clear to Town Meeting that uses not individually allowed in a particular zoning district could not be allowed merely by making them part of a mixed-use development. Yet that is exactly what is happening for the 4-unit apartment building proposed for the subject property. Under Arlington's zoning bylaw, once a residential structure has more than 3 units, it is considered to be an apartment building, and apartment buildings are not allowed in the B1 zoning district, including the subject property.

I have attached excerpts of the certified transcript of the 2016 Annual Town Meeting at which the mixed-use zoning change was approved. You can see from the testimony of ARB Chair Andrew Bunnell (Page 50, Line 3) that any proposed use must fit with what is already allowed under zoning (i.e., it must also be allowed by right or special permit outside of a mixed use development). ARB member Mike Cayer emphasized this point (Page 66, Line 16) stating that "only the uses that are permitted in a particular district are the ones that can happen in a mixed use in that district" noting that the ARB had worked with the head of Inspectional Services and Town Counsel on the wording resulting in that interpretation. It was on this basis that Town Meeting approved mixed use.

Thus it is notable that the staff memo that attempts to justify an apartment building at the subject property comes not from the head of Inspectional Services (the town's Zoning Enforcement Officer) or Town Counsel, but rather from a relatively new employee in the Planning Department who has no authority to enforce the zoning bylaw and to my knowledge was not even employed by the town at the time of the Town Meeting vote to amend the zoning bylaw to include mixed use.

Notwithstanding the fact that the ZBA is the wrong board to hear this proposal, it is important for the ZBA to understand the absurd outcomes that could result from the Planning Department's incorrect interpretation of the mixed-use bylaw amendment. By this incorrect interpretation not just a 4-unit apartment building and office could be permitted, but a 10-unit apartment building with a fast food



restaurant or bank could also be permitted as mixed-uses in this B1 district, even though none of those uses are allowed individually. Or a mixed use consisting of a gas station and a convenience store could be permitted on this B1 lot even though neither is allowed in the B1 district.

As you know, the first finding that the special permit granting authority must make before granting a special permit is that the requested use is listed as a special permit use for the applicable district (Arlington Zoning Bylaw Section 3.3.3 (A)). Clearly, this proposal fails to meet that basic criterion for the proposed apartment building. In addition, if the applicant suggests there is ambiguity or inconsistency in the Zoning Bylaw with respect to individual uses in mixed-use developments, the bylaw requires that the provision that imposes the greater restriction or the higher standard shall govern (Arlington Zoning Bylaw Section 1.4), and thus the provisions of Section 3.3.3 (A) must prevail for the individual uses making up the mixed-use.

Thank you for considering these comments and attached document. I request that you make them part official the record for this hearing and share them with your colleagues on the ZBA.

Sincerely,

Christopher Loreti  
56 Adams St.

**Attachments:**

File: [Article 6 Excerpts 2016  
ATM.PDF](#)

Size:  
1412k

Content Type: application/pdf

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

[www.ctran.com](http://www.ctran.com)

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