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**Subject:** ZBA and ARB Special Permit Hearings: 339 Mass. Ave and 882-892 Mass Ave.

**Date:** Thu, 9 Jul 2020 15:23:00 -0400

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Dear Select Board Chair Hurd and Colleagues:

I am writing to you as the appointing authority for the Zoning Board of Appeals and as the authority that approves the four members of the Redevelopment Board appointed by the Town Manager. I write in response to Attorney Robert Annese's June 29 letter to you.

I will not address Mr. Annese's baseless accusations against me regarding the June 23 hearing of the Zoning Board of Appeals on 339 Massachusetts Avenue. Previously, I sent you the link to the video of that hearing. I suggest if you watch it, you will see just how on-point my comments were.

You will also see, contrary to the claims of Mr. Annese, how well Chairman Klein ran the meeting. The ZBA has a long tradition of allowing the public to be heard, which is the very reason for holding a public hearing, and Mr. Klein should be complimented, not criticized, for preserving it. Mr. Annese may not have liked what I said, but pointing out both administrative and substantive issues are relevant comments for zoning hearings, and you should be grateful that Mr. Klein understands this.

In contrast, at a July 6 hearing of the Arlington Redevelopment Board, immediately before opening the hearing to public comment, the Chair ambushed the public with the announcement that comments would be limited to three minutes. No such notice was placed in the agenda, and his announcement directly contradicts the rules of the ARB that state the board must announce any time limits it has established before the meeting begins. Had the board voted to close the hearing to public comment that night, it would have raised serious questions about whether the public's right to be heard was being infringed.

But these are not my primary reasons for writing. Mr. Annese make some valid points towards the end of his letter, ones I believe your board needs to address. First, the Select Board must improve the administrative process for special permits, starting before the permit hearings begin. It can do that by making enforcement of Arlington's Zoning Bylaw a priority. This is true for both by-right developments and those requiring special permits.

In the case of the latter, any and all forms of zoning relief must be identified before the public hearing begins and be listed in the legal notice for the hearing. Where the special permit granting authority lacks the

authority to grant such relief (e.g., the failure of many mixed-use projects to comply with the Zoning Bylaw's open space requirements) the proposals must first be directed to the ZBA for a variance.

Unfortunately, too many proposals are directed to the ARB and ZBA without adequate prior review by staff. The hearings then turn into a game in which attorneys seek to privilege their clients with violations of the zoning bylaw by telling the special permit granting authority it may grant relief even when the Zoning Bylaw does not allow it.

This has happened multiple times for mixed-use development proposals. If the relief sought was spelled out from the outset with only the relief allowed by the bylaw being the subject of the special permit hearing, and the hearing limited to the board's decisions on whether or not to grant that relief, I believe the process would run much more smoothly and expeditiously.

Regarding Mr. Annese's comments about ex parte communications, it is important to remember that boards often solicit comments in writing before the hearings begin. This gives the boards much-needed time to consider the comments and should not be limited. The problem is in the lack of sharing of communications, including those from the proponent's team, town staff, and interested members of the public.

I have asked to no avail for the ARB to publicly post in one place the full record of submissions for each of its hearings and to promptly update the postings as additional documents are received. Instead, relevant documents are spread among multiple meeting agendas, sometimes included under the subject of the hearing, other times under "Correspondence Received" even on dates outside of the hearings. Recently, documents for multiple hearings have been posted together, some old, some new, making it very difficult to sort out all the materials. In addition, documents are often posted late, resulting in inadequate time to review them.

The ZBA still has not come into full compliance with the warrant article it agreed to more than 18 months ago to post its meeting materials online. As I've noted previously, key documents were missing for the 339 Mass Ave. hearing, and at least one other. The Select Board needs to ensure that staff resources are made available to promptly and publicly post for all public hearings, all of the hearing materials, arranged by docket, so that anyone may review them.

I strongly agree with Mr. Annese that there should be no in-person communication taking place between members of the quasi-judicial boards and interested parties outside of a public hearing once the hearing process commences. To my knowledge, that did not happen when I served on the Redevelopment Board.

Thus, I was very surprised to learn that Mr. Annese and/or his team had met with a member of the Redevelopment Board recently regarding the special

permit they are seeking for 882-892 Mass. Ave., and are planning to do so again. I request that you put a stop to these meetings immediately.

From the special permit hearings of the past few weeks, it should be clear to the Select Board that neither the applicants and their attorneys, nor members of the public, are satisfied with the way the hearing processes are working. I suspect the same is true for the board members themselves. I hope you will take these issues seriously and work to achieve a prompt and equitable resolution.

Sincerely,

Christopher Loreti  
56 Adams St.