



## **Town of Arlington**

### **ARLINGTON REDEVELOPMENT BOARD**

### **2022 Special Town Meeting Draft Zoning Bylaw Amendments**

Rachel Zsembery, Chair

Kin Lau, Vice Chair

Eugene Benson

Melisa Tintocalis

Stephen Revilak

Jennifer Raitt

Secretary Ex-Officio

Director of Planning and Community Development

Voted as amended May \_\_\_\_, 2022

## **Introduction and Overview**

The Arlington Redevelopment Board (ARB) has statutory authority over M.G.L. c. 40A as the Town's planning board (Section 2 of Section 17 of the Town Manager Act) and M.G.L. c. 41 § 81 as the Redevelopment Authority. The ARB was created by a Town Meeting-adopted home rule petition, followed by a State Legislature act to form the ARB in 1971. The Department of Planning and Community Development was created in 1969. The authority and role of the ARB is included in Article 17 of the Town Manager Act. As a planning board, the ARB is charged with developing Arlington's Master Plan; proposing bylaws, regulations, and rules to implement the Master Plan; and applying those bylaws, regulations, and rules. Lastly, the ARB serves as a special permit granting authority. The ARB is also a duly constituted redevelopment authority formed under the authority of M.G.L. c. 121B. As a redevelopment authority, the ARB can buy, sell, and hold property and it is because of these powers that the ARB acts as landlord, responsible for many properties that the Town Meeting has seen fit to put under the Board's jurisdiction. With Town Meeting approval, the Board may hold property to improve and rehabilitate to meet community development goals.

The members of the ARB are as follows:

Rachael Zsembery, Chair (Term through 6/30/2023)

Kin Lau, Vice Chair (Term through 3/20/2024)

Eugene Benson (Term through 1/31/2023)

Melisa Tintocalis (Term through 1/31/2023)

Stephen Revilak (Term through 9/22/2023, Gubernatorial designee)

Jennifer Raitt, Secretary Ex-Officio

Director of the Department of Planning and Community Development

## **Zoning Articles Overview**

The ARB review process for 2022 Special Town Meeting began in March with the close of the Warrant and will culminate after Town Meeting with a submission by the Town Clerk of any approved zoning amendments to the Attorney General. A detailed description of the submission, review process, and schedule is posted on the [ARB website](#).

When any warrant article proposes to amend the "Town of Arlington Zoning Bylaw," the ARB is required to issue a report with recommendations to Town Meeting. Appearing below are articles that propose to amend the Zoning Bylaw. This report includes a brief discussion of the intent of each proposed amendment followed by a recommended vote of the ARB. The ARB's vote constitutes its recommendation to Town Meeting. The recommendations of the ARB, and not the original warrant articles, are the actual motions that will be considered by the Town Meeting. An ARB vote of "No Action" means that Town Meeting will be asked to vote that no action be taken on the proposed warrant article. Changes to the Zoning Bylaw text are shown beneath the recommended votes. Additions to the original Zoning Bylaw text appear as underlined text, while any deletions to the original Zoning Bylaw text appear as strike through text.

The ARB advertisement for the public hearings on the Warrant Articles proposed to amend the Zoning Bylaw appeared in the *Arlington Advocate* as required on March 24 and March 31, 2022. In accordance with the provisions of the Arlington Zoning Bylaw and Massachusetts General Laws Chapter 40A, the ARB held a public hearing and heard public comments remotely on Zoom on the proposed amendments on Thursday, April 7, 2022. The ARB voted on recommended bylaw language at their meeting on April 25, 2022. The ARB voted \_\_\_\_\_ on this report as amended at their meeting on May 4, 2022.

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### Summary of Recommended Votes of the Redevelopment Board

Article No.	Date of ARB Hearing (With link to ACMi Recording)	Recommendation to Town Meeting
Article 2	<a href="#">April 7, 2022</a>	Favorable Action
Article 3	<a href="#">April 7, 2022</a>	Favorable Action
Article 4	<a href="#">April 7, 2022</a>	Favorable Action

## **Zoning Bylaw Amendments: Family Child Care**

**Additions to the Zoning Bylaw shown in underline format. Deletions shown in ~~strikeout format~~.**

### **ARTICLE 2**

### **ZONING BYLAW AMENDMENT / FAMILY CHILD CARE**

To see if the Town will vote to amend the Zoning Bylaw to update Section 2 Definitions, Section 5.4.3 Use Regulations for Residential Districts, Section 5.5.3 Use Regulations for Business Districts, and Section 5.6.3 Use Regulations for MU, PUD, I, T, and OS DISTRICTS to allow family child care as a by right use and to set standards and requirements in all Residential, Business, and MU districts; or take any action related thereto.

(Inserted at the request of the Redevelopment Board)

#### **Discussion:**

This Article aligns with the 2019 Annual Town Meeting vote to amend the Zoning Bylaw to comply with the Dover Amendment. The Dover Amendment refers to certain protections that religious, non-profit educational, and childcare facilities receive under the Massachusetts Zoning Act, General Law, chapter 40A, § 3 which at the time were not clearly prescribed for the Zoning Bylaw. State Law limits review of religious, non-profit educational, and childcare facilities to the reasonable regulation of bulk and height of structures and in determining yard sizes, lot area, setbacks, open space, parking, and building coverage requirements.

Family Child Care was not included in the 2019 amendment of the Zoning Bylaw; at present, the Zoning Bylaw requires applicants seeking to open or operate a family childcare facility as an accessory use to obtain a special permit in all but the PUD Zoning District. The use is also not currently allowed in the Industrial District. The ARB noted that family child care facilities must comply with strict standards and annual monitoring by the Massachusetts Department of Early Education and Care to receive and renew their operating licenses.<sup>1</sup>

This amendment makes clear that Family Child Care is included as a childcare facility and does not need to seek an Environmental Design Review special permit from the ARB. It also clarifies that the Board will add this review to its existing Board Rules and Regulations and provides a footnote referring readers to where an applicant can reference Board Rules and Regulations. The Board will amend its rules to include administrative review of these uses. This regulatory amendment is consistent with policy in neighboring municipalities, which allow family childcare as an accessory use as of right with minimal administrative review.

**ARB Vote and Recommendation to Town Meeting:** The Redevelopment Board voted (5-0-0) to recommend Favorable Action on Article 2 as amended that the Zoning Bylaw be and hereby is amended as follows:

#### **Amend SECTION 2:**

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Family Child Care: a private residence which is licensed by the Massachusetts Department of Early Childhood Education and Care and which on a regular basis, receives for temporary custody and care

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<sup>1</sup> Massachusetts Department of Early Education and Care, *Self-Assessment Tool*, accessed at <https://www.mass.gov/doc/self-assessment-tool-0/download>

## Zoning Bylaw Amendments: Family Child Care

Additions to the Zoning Bylaw shown in underline format. Deletions shown in ~~strikeout format~~.

during part or all of the day, children under 7 years of age, or children under 16 years of age if those children have special needs, and receives for temporary custody and care for a limited number of hours children of school age under regulations adopted by the board. The total number of children under 16 in a family child care shall not exceed 10, including participating children living in the residence.

### Amend SECTION 5.4.3:

Class of Use	R1	R2	R3	R4	R5	R6	R7
Accessory Uses							
Family child care <sup>1</sup>	SP Y	SP Y	SP Y	SP Y	SP Y	SP Y	SP Y

<sup>1</sup>When in compliance with the Commonwealth of Massachusetts Standards for the Licensure or Approval of Group Day Care Centers, and subject to and in compliance with the Arlington Redevelopment Board Rules and Regulations.

### Amend SECTION 5.5.3:

Class of Use	B1	B2	B2A	B3	B4		B5
Accessory Uses							
Family child care <sup>1</sup>	SP Y	SP Y	SP Y	SP Y	SP Y		SP Y

<sup>1</sup>When in compliance with the Commonwealth of Massachusetts Standards for the Licensure or Approval of Group Day Care Centers, and subject to and in compliance with the Arlington Redevelopment Board Rules and Regulations.

### Amend SECTION 5.6.3:

Class of Use	MU	PUD	I	T	OS
Accessory Uses					
Family child care <sup>1</sup>	SP Y	Y			

<sup>1</sup>When in compliance with the Commonwealth of Massachusetts Standards for the Licensure or Approval of Group Day Care Centers, and subject to and in compliance with the Arlington Redevelopment Board Rules and Regulations.

## **Zoning Bylaw Amendments: Signs**

**Additions to the Zoning Bylaw shown in underline format. Deletions shown in ~~strikeout format~~.**

### **ARTICLE 3**

### **ZONING BYLAW AMENDMENT / SIGNS**

To see if the Town will vote to amend the Zoning Bylaw to update Section 2 Definitions and Section 6.2 Signs to create a new sign type located at shared mobility and electric vehicle charging stations; or take any action related thereto.

(Inserted at the request of the Redevelopment Board)

#### **Discussion:**

Town Meeting voted to adopt substantial revisions to Section 6.2, Signs, of the Zoning Bylaw at 2019 Annual Town Meeting. At the time, very few publicly accessible electrical vehicle (EV) charging stations were provided in town and most were located on municipal lots. Similarly, the Town then had a contract with Lime Bikes for dockless bike share. In the intervening years, the Department of Planning and Community Development has received several requests from commercial businesses to install public EV charging stations on private lots. These electric vehicle charging stations typically feature an area for advertising, which offsets the cost of the installation of the station on public or private parking lots. The Town has also entered a multi-year contract with BLUEBikes, a bike share company where bikes are docked at stations located in East Arlington and Arlington Center, and eventually Arlington Heights. Bike docking stations typically feature a non-illuminated sign area. Signs displayed are typically for BLUEbikes and community-related events or activities. Should the Town identify local business sponsors of the docking stations, then there may be an opportunity for advertising space for that business on one side of the sign panel.

Wayfinding and ad/sponsor panels are an important part of marketing and funding bike share systems and electric vehicle charging stations. Within bike share docking stations, these panels can stand alone or be integrated into the kiosk and are typically placed at the ends of stations to maximize visibility. At EV charging stations, they are located at the end of the parking station and integrated into charging equipment. Additional attention is paid to pedestrian sight lines when siting large, tall panels near intersections as part of the Select Board review and approval process. The ARB discussed that, like station locations, the content of advertising or sponsor panels may be subject to Select Board review and approval.

**ARB Vote and Recommendation to Town Meeting:** The Redevelopment Board voted (5-0-0) to recommend Favorable Action on Article 3 as amended that the Zoning Bylaw be and hereby is amended as follows:

#### **Amend SECTION 2:**

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Mobility Station: A freestanding station with docks or charging options located on public or private property. A mobility station includes:

Shared Mobility Docking Station: Parking for bicycles, e-bicycles, or other micromobility options that is made available for a rental fee as part of a business operating docking stations.

## Zoning Bylaw Amendments: Signs

Additions to the Zoning Bylaw shown in underline format. Deletions shown in ~~strikeout format~~.

Electric Vehicle Charging Station: A structure that supplies electric energy for the recharging of electric vehicles.

### Amend SECTION 6.2.3

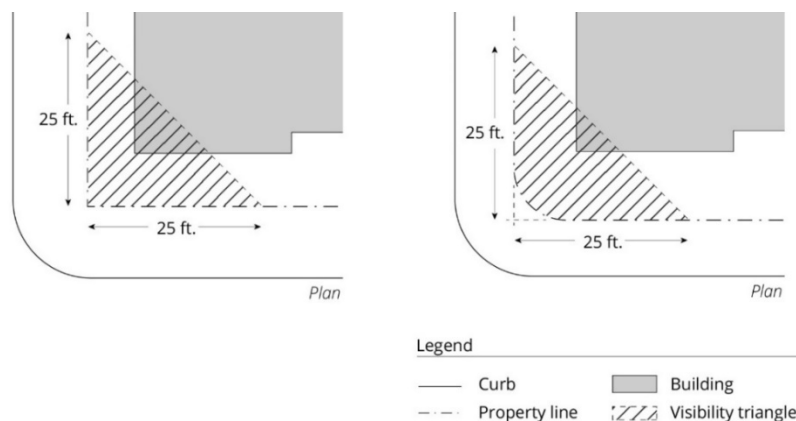
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#### 6.2.3 General Restrictions for All Signs

A. Location Restriction. Except where specifically authorized in this Section, signs may not be placed in the following locations:

- (1) Within, on, or projecting over public property, Town rights-of-way, and the Minuteman Bikeway, or waterways, except signs specifically authorized by this Section 6.2, including Shared Mobility Docking Stations;
- (2) Any location that obstructs the view of any authorized traffic sign, signal, or other traffic control device;
- (3) On property at any corner formed by intersecting streets, within the triangular area formed between the property lines and a diagonal line joining points on the property lines 25 feet from the point of their intersection, or in the case of rounded property line corners, the triangular area between the tangents to the curve at such corner and a diagonal line joining points on the tangents 25 feet from the point of their intersection;

Traffic Visibility at Intersections



(See Section 6.2.3(A)(3))

This diagram is included for illustrative purposes only. It is not part of the Arlington Zoning Bylaw.

- (4) Areas allowing for ingress to or egress from any door, window, vent, exit way or fire lane required by the Building Code or Fire Department regulations currently in effect;
- (5) Off the premises of the business to which the commercial advertising sign refers, except as provided in Section 6.2.6;

## Zoning Bylaw Amendments: Signs

Additions to the Zoning Bylaw shown in underline format. Deletions shown in ~~strikeout format~~.

- (6) On fuel tanks, storage containers and/or solid waste receptacles or their enclosures, except for a manufacturer's or installer's identification, appropriate warning signs and placards, and information required by law;
- (7) Where they cover the architectural features of a building, such as dormers, insignias, pilasters, soffits, transoms, trims, or another architectural feature;
- (8) Tacked, painted, burned, cut, pasted, or otherwise affixed to trees, rocks, light and utility poles, posts, fences, ladders, benches, or similar supports that are visible from a public way except for notices as defined in Title V, Article 1, of the Town Bylaws; and
- (9) On the roof of a building or structure.

### Amend SECTION 6.2.5(C):

C. Allowed Sign Types by Sign District. The table below establishes which sign types are allowed in each Sign District.

Allowed Sign Types by Sign District						
Sign Type	Residential <sup>1</sup> (R0, R1, R2, R3)	Residential/ Business <sup>1</sup> (R4, R5, R6, R7, B1, B2)	Business <sup>1</sup> (B2A, B3, B4, B5)	Industrial <sup>1</sup> (I, T)	Multi-Use <sup>1</sup> (MU, PUD)	Open Space <sup>1</sup> (OS)
<b>Building Mounted Signs<sup>2</sup></b>						
Awning Sign		Y	Y	Y	Y	
Bracket Sign		Y	Y		Y	
Canopy Sign			Y		Y	
Directional Sign		Y	Y	Y	Y	
Directory Sign		Y	Y	Y	Y	
Marquee Sign			Y			
Porch Sign	Y	Y				
Projecting Sign			Y	Y	Y	
Service Island Canopy Sign			Y	Y		
Wall Sign	Y	Y	Y	Y	Y	
Window Sign	Y	Y	Y	Y	Y	
<b>Freestanding Signs</b>						
Directory Sign	Y			Y	Y	
Directional Sign		Y	Y	Y	Y	
Freestanding Projecting Sign				Y	Y	Y
Monument Sign			Y	Y		
Post Sign		Y	Y	Y	Y	Y

## Zoning Bylaw Amendments: Signs

Additions to the Zoning Bylaw shown in underline format. Deletions shown in ~~strikeout format~~.

Mobility Station	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
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End Note:

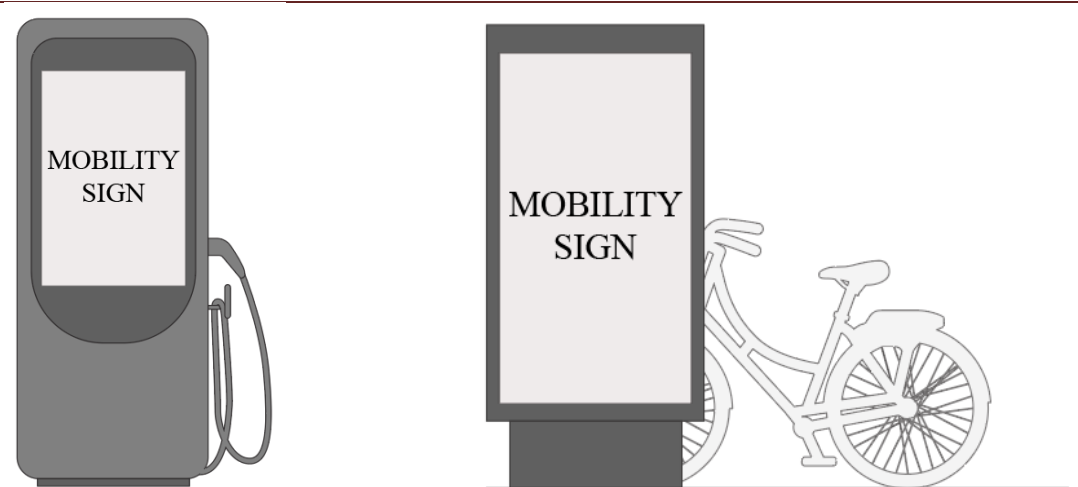
<sup>1</sup> For Religious and Educational Uses in all Districts, all permanent sign types are allowed except for the following:

- Awning Sign
- Marquee Sign
- Projecting Sign
- Service Island Canopy Sign

<sup>2</sup> In all districts, a building may have no more than two of either an awning sign, wall sign, or a window sign.

### Amend SECTION 6.2.5(E):

(5) Mobility Station Sign. Mobility Station signs must comply with the standards provided in the table below.

Mobility Station Sign Standards	
<u>Standard</u>	<u>Requirements</u>
<u>Number of Signs</u>	<u>Max. 1 per shared mobility docking station or electric vehicle charging station</u>
<u>Sign Area</u>	<u>21 sq. ft. display area per shared mobility docking station; 12 sq. ft. display area per electric vehicle charging station.</u>
<u>Station Height</u>	<u>Max. 8 ft. from nearest grade.</u>
<u>Illumination</u>	<u>Non-illuminated, internally illuminated, or externally illuminated only. See Section 6.2.4(C).</u>
<u>Permitting</u>	<u>Sign permit not required if above criteria are met.</u>
 <p>This diagram is included for illustrative purposes only. It is not part of the Arlington Zoning Bylaw.</p>	
<p>End Note:</p> <p><u>In all districts, Mobility Station signs are not counted toward a building's maximum allowable signs.</u></p> <p><u>Solar panels used to provide power to a Mobility Station do not contribute to the overall sign area calculation or station height.</u></p>	

**ARTICLE 4**

**ZONING BYLAW AMENDMENT/ NONCONFORMING SINGLE-FAMILY  
OR TWO-FAMILY DWELLINGS**

To see if the Town will vote to amend the Zoning Bylaw to update Section 8.1.3 Nonconforming Single-Family or Two-Family Dwellings to modify or remove Section 8.1.3 C; or take any action related thereto.

(Inserted at the request of the Redevelopment Board)

**Discussion:**

Arlington has a considerable number of nonconforming single- and two-family homes, which is similar to most communities in Massachusetts where zoning was codified after the development of residential neighborhoods. Zoning has not codified existing conditions with regard to the lot size, frontage, setbacks, and other dimensional characteristics of existing neighborhoods.

To address this, Massachusetts General Law (M.G.L.) Chapter 40A § 6 lays out a “second except” clause. The second except clause provides single- and two-family homes additional rights relative to existing *prior* nonconformities—e.g., nonconformities on older properties that resulted from zoning codification—than these same homes would have for a new nonconformity. Prior non-conformance rights of such structures and uses are allowed to continue as they are with certain qualifications under state law. Chapter 40A and the Arlington Zoning Bylaw (Section 8.1.3(B)) also set forth the criteria for expanding or intensifying those non-conformities. However, Section 8.1.3(C) limits the prior non-conformance rights in certain kinds of projects and as such conflicts with state law in the specific scenario where a single- or two-family home seeks to extend an exterior wall further than the furthest non-conforming point of the same exterior.

The Massachusetts Supreme Judicial Court’s decision on the 2019 case, *Bellalta v. Zoning Bd. of Appeals Brookline*,<sup>2</sup> confirmed the conflict between M.G.L. Chapter 40A § 6’s second except clause and Section 8.1.3(C) of the Town’s Zoning Bylaw. The Court noted that a variance is not required for expansions of existing prior nonconformities, and if a prior nonconformity is not being intensified, then a building permit should be issued as of right. The second exempt clause is specific to single- and two-family homes. Further, the special rights only relate to *existing* non-conformities. If a *new* non-conformity is created, a variance is required.

To reconcile the conflict, it is the recommendation of the Zoning Board of Appeals, Director of Inspectional Services, and Town Counsel that Section 8.1.3(C) be stricken from the Bylaw. The ARB concurred noting that Section 8.1.3(C) is surplus content and does not lead to clarity in the Zoning Bylaw and conflicts with property rights as allowed under state law.

**ARB Vote and Recommendation to Town Meeting:** The Redevelopment Board voted (5-0-0) to recommend Favorable Action on Article 4 that the Zoning Bylaw be and hereby is amended as follows:

**Amend Section 8.1.3(C):**

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<sup>2</sup> *Bellalta v. Zoning Bd. of Appeals of Brookline*, 481 Mass. 372, 116 N.E.3d 17 (2019)

**Zoning Bylaw Amendments: Nonconforming Single-Family or Two-Family Dwellings**  
**Additions to the Zoning Bylaw shown in underline format. Deletions shown in ~~strikeout format~~.**

**8.1.3 Nonconforming Single-Family or Two-Family Dwellings**

- A. Alteration, reconstruction, extension, or structural change to a single or two-family residential structure that is completely within the existing foundation walls does not increase the nonconforming nature of said structure.
- B. No alteration, reconstruction, extension, or structural change to a single or two-family residential structure that increases the nonconforming nature of said structure shall be permitted unless there is a finding by the Board of Appeals that the proposed alteration, reconstruction, extension, or structural change will not be substantially more detrimental to the neighborhood.
- ~~C. The extension of an exterior wall of a single-family or two-family residential structure along a line at the same nonconforming distance within a required setback may be allowed providing that the extension creates no new nonconformities, nor increases any open space nonconformities, and that no such extension shall be permitted unless there is a finding by the Special Permit Granting Authority that the extension shall not be substantially more detrimental to the neighborhood than the existing nonconforming dwelling. In making such a finding, the Special Permit Granting Authority shall assess the dimensions and proposed setback of the alteration in relationship to abutting structures and uses.~~
- ~~D.~~C. Any lot lawfully laid out by plan or deed duly recorded which complies (at the time of recording) with the minimum area, frontage, width, and depth requirements, if any, of the zoning bylaw then in effect, may be built upon for residential use provided it has a minimum area of 5,000 square feet, with a minimum front footage of 50 feet, and is otherwise in accordance with the provisions of [G.L. c. 40A, § 6](#).
- ~~E.~~D. 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, in each case except (i) for changes necessary to provide for required egress or other modification to meet the State Building Code and State Fire Code, (ii) for any projects allowed under Section 5.3.9, and (iii) to the extent authorized by a special permit issued pursuant to clause (iii) of Section 5.9.2.B(1), fifth bullet.