



REPORT OF THE ARLINGTON REDEVELOPMENT BOARD Special Town Meeting October 19, 2016

The Arlington Redevelopment Board (ARB), acting as the Town's planning board, is required to issue a report with recommendations to the Town Meeting on each warrant article that proposes to amend the "Town of Arlington Zoning Bylaw." The ARB must first hold an advertised public hearing on each such warrant article. The advertisements appeared in the *Arlington Advocate* as required on September 29, 2016 and October 6, 2016. The public hearing was held on Monday, October 17, 2016. At its meeting on October 17, 2016 the ARB voted on the recommended bylaw language shown below. This report to the Annual Town Meeting was approved at the October 17, 2016 ARB meeting.

Appearing below are the two (2) Warrant Articles that propose amendments to the Arlington Zoning Bylaw as submitted by two separate citizen groups. The intent of each article is briefly explained, followed by a brief discussion on the article, and the ARB's vote on each article, which constitutes its recommendation. Town Meeting members should take particular note of the fact that 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 the Town Meeting will be asked to vote that no action be taken on the proposed warrant article.

Warrant article language may be quite general or very specific. The vote, however, must be specific in order to precisely tell how the Zoning Bylaw will be modified. Even when the language in the warrant is specific, the vote or recommendation shown in this report may differ slightly from the warrant language. This occurs when errors are discovered, or testimony at the public hearing convinces the ARB that a change from the original warrant article should be recommended. In such cases, the recommended change cannot exceed the scope of the original warrant article. When there is question about the scope of the change, the Town Moderator will determine whether the change exceeds the scope of the original warrant article.

ARTICLE 10

ZONING BYLAW AMENDMENT/ ROCK REMOVAL REGULATED

Amend the Zoning Bylaw by adding Section 11.03, Removal of Sand, Gravel, Quarry, or Other Earth Materials, to require a special permit and a hearing before the Zoning Board of Appeals for the removal of quarry stone, rock, or ledge.

(Inserted at the request of the John L. Worden III and 100 Registered Voters)

Issue Summary/Recommendation:

Arlington's residential housing market is under extraordinary pressure given current market conditions, availability of affordable housing, and housing demand in the Greater Boston region. The tight housing market with limited options for new construction in Arlington, has led to an increase in the number of teardowns, lot subdivisions, and replacement housing. As part of the teardown process, some properties contain ledge and stone that require drilling or chipping. Without appropriate control measures, the removal of quarry stone, rock, or ledge through hydraulic drilling or other chipping methods may create public health and safety.

These issues have created the impetus for this Article to strengthen requirements for public notice and regulations for removal of rock. As proposed, Article 10 presents several challenges: the definition of rock and type of equipment used to remove rock; the jurisdiction of the Zoning Board of Appeals (ZBA); the notice for public hearings; and the noted exemptions. Another fundamental challenge with Article 10 is that many of the requirements are found in Arlington's current Town Bylaws, including Article 3 Open Excavations and Article 12 Noise Abatement. As a resolution of the 2016 Annual Town Meeting, the Residential Study Group formed to recommend bylaw changes to address neighborhood concerns that result from the construction of new housing in existing neighborhoods. The group has met four times since September and is interested in an opportunity to review a proposal such as Article 10 but has not been provided an adequate opportunity to do so to date.

Specific issues with Article 10 include the following. First, the definition of rock and type of equipment used to remove rock does not align with best practices for earth removal bylaws. Most bylaws note more detailed examples of rock being removed and also do not list types of equipment used. Describing the type of rock and the type of equipment used is a way of addressing noise issues. This might be more easily addressed by strengthening an existing Town bylaw.

Second, the proposed amendment to the Zoning Bylaw places special permit decisions with the ZBA. The ZBA public hearing process should be reserved for special permit appeals or variances as required under MGL Chapter 40A Section 14. The appropriate entity to issue special permits as part of site plan review is the Arlington Redevelopment Board (ARB), the town's Planning Board. A proactive approach to planning for new residential uses occurs through Planning Boards.

Third, the public hearing notification to abutters exceeds the current ZBA requirement by 1,000 feet. The standard notification to abutters as required under MGL Chapter 40A Section 11 is for notification to occur to abutters within three hundred (300) feet of the property line of the petitioner as they appear on the most recent applicable tax list. This is generally accepted to be adequate.

The fourth challenge with Article 10 as written is that the first noted exemption states that 50 cubic yards or less of rock removed will not be subject to a public hearing. However, the ZBA will still be required to meet and make a decision about applicability before issuing any notice to proceed. Further, the majority of rock removal operations will be subject to ZBA permission. The average cubic footage of rock removed from a single-family home demolition is 6,000 cubic yards. A typical threshold for these types of bylaws is 2,500-3,000 cubic yards or more of material removed per calendar year. The second noted exemption states that “no work can be done in one 8-hour day (or on several days for a total of not more than 8 hours)” which is, even in limited removal operations, burdensome and unlikely to occur. Rock types vary by site and removal operations also vary.

More realistic exemptions might include: the earth removal is limited to no more than a certain number of contiguous lots and does not exceed a certain number of acres; the operation is not conducted, maintained, and/or left in a condition so as to alter the natural drainage flow beyond the property; or to cause dust, silt, soil, or other materials to be deposited on adjacent properties; or to otherwise cause nuisances, hazards, or other objectionable conditions detrimental to health, safety, or property values in adjacent areas; earth removal associated with the installation of foundations for new buildings and/or building additions, which shall be governed by MGL Chapter 143 and the Commonwealth of Massachusetts Building Code (780 CMR); earth removal proposed for land falling within the Town’s floodplain; or earth removal falling within a wetland or associated buffer zones is administered by the Conservation Commission, and the Massachusetts Wetlands Protection Act.

Lastly, the proposed bylaw could be strengthened as suggested above or existing Town Bylaws could be strengthened. Additionally, the following information could be provided to Inspectional Services as part of a building permit process when rock removal is involved:

- Topographic plan that includes existing grade of the subject property and the proposed post-construction grade and building elevations;
- Pre-ledge removal survey of the subject property prepared by a professional geotechnical engineer;
- Erosion prevention plan that includes calculations and measures to prevent erosion and undermining of the subject property and abutting properties; and
- Drainage calculations that demonstrate that post-removal runoff will not exceed pre-removal runoff.

Given the challenges as outlined above, the ARB recommends that the matter be referred to the Residential Study Group to determine which bylaws should be amended and how and to recommend amendments to a future Town Meeting.

ARB Vote:

The Redevelopment Board voted unanimously (4-0) to recommend a vote of No Action on this Article. (Kin Lau, Andrew West, Andrew Bunnell, and David Watson were present for this hearing.)

ARTICLE 11

ZONING BYLAW AMENDMENT/MEDICAL MARIJUANA TREATMENT CENTERS, REGISTERED MARIJUANA DISPENSARIES SITING 500 FEET FROM SCHOOLS, AND NOT WITHIN THE SAME BUILDING AS EARLY EDUCATION PROGRAMS

Amend the Zoning Bylaw Section 5.04, Use 7.10, to institute a buffer zone as a criteria for obtaining a special permit for Medical Marijuana Treatment Centers (Registered Marijuana Dispensaries) as defined in Chapter 369 of the Acts of 2012, namely being a 500 foot buffer from Medical Marijuana Treatment Centers to elementary schools, middle schools, or high schools that are under the supervision of the Massachusetts Department of Elementary and Secondary Education, as well as a prohibition on Medical Marijuana Treatment Centers from locating within the same building or structure as an early education child care program licensed by the Massachusetts Department of Early Education and Care, as well as create a buffer of 1,000 feet between any Medical Marijuana Treatment Centers.

(Inserted at the request of Valerio Romano and 100 Registered Voters)

Issue Summary/Recommendation:

Buffering between medical marijuana dispensaries, as well as buffering between child-based educational facilities and dispensaries is an important issue that municipalities can control through zoning by adopting a local buffer zone.

By proactively identifying a local buffer zone by amending the Zoning Bylaw, Article 11 attempts to promote local control and less delay and confusion caused by ambiguities in the state's regulation. As presented, however, Article 11 is very limited in scope and does not allow the town adequate ability to have discussions about these important issues, particularly the types of uses allowed in a buffer zone. In addition to the need for the Town to have these discussions, the ARB believes that this Article as proposed is too limiting and does not satisfy the intent of Town Meeting when the original zoning was adopted to incorporate the State buffer zone regulation within the Bylaw.

ARB Vote: The Redevelopment Board voted unanimously (5-0) to recommend a vote of No Action on this Article. (Kin Lau, Andrew West, Andrew Bunnell, David Watson, and Michael Cayer were present for this hearing.)