



Article: 53

Warrant Article Title:

ZONING BYLAW AMENDMENT / ADMINISTRATIVE CLARIFICATION TO BONUS PROVISIONS FOR MULTI-FAMILY DEVELOPMENT

Warrant Article Text:

To see if the Town will vote to amend Section 5.8.4.E(1) Bonuses, of the Zoning Bylaw, to clarify the definition of the words, “where the ground floor at street level will be at least 60% occupied by eating and drinking establishments, businesses services, childcare, or retail uses,” so as to clarify the proportion of the ground floor that must be occupied by the specified commercial uses in order to qualify for the bonus provision in either of the MBMF overlay districts.

Requested By:

Joanne Cullinane and Larry Slotnick and ten registered voters

Report Excerpt:

The Board recommends No Action (4-1 Ms. Zsembery dissenting).

Article 53 proposes to clarify the definition of the words “ground floor at street level” to clarify the proportion of the ground floor that must be occupied by commercial uses in order for a development in the Massachusetts Avenue / Broadway Multi-Family (MBMF) Housing Overlay District to qualify for a mixed-use bonus provision. Per Section 5.9.4.E.(1) of the Zoning Bylaw, the mixed-use bonus provision on Broadway allows for an additional floor above the four-story maximum, as well as a zero-foot front setback. Further, the mixed-use bonus provision on

Mass Ave allows for two additional floors above the four-story maximum and a zero-foot setback. The majority of the Board has interpreted the meaning of “ground floor at street level” as the enclosed ground floor space and not the total building area. Article 53 proposes to define the ground floor at street level as all enclosed and non-enclosed building area within the horizontal projection of the roof or floors above it, which would include covered parking areas.

The Redevelopment Board has discussed this issue at multiple meetings, and Board members have not been unanimous in their interpretation. During the public hearing for Article 53, the proponents and Board members referenced regulatory definitions and procedures that were central to the discussion. These included MA Law 780 CMR 502.1 of the Massachusetts Building Code, which defines the term Building Area as “everything under the horizontal projection of the roof or floors above,” which the proponents believe is the most appropriate way to define “ground floor at street level.” One member of the Board indicated that according to MA Law 780 CMR 1002.1, the term Gross Floor Area is “the floor area within the inside perimeter of the exterior walls of the building under consideration, exclusive of vent shafts and courts, without deduction for corridors, stairways, closets, the thickness of interior walls, columns, or other features,” which the majority of Board members believe is the most appropriate definition. In addition, one member of the Board noted that Town Assessor’s Office bases its square footage calculation for taxation purposes of ground floor areas with covered parking on two different rates, one rate for the enclosed ground floor area and a different rate for open parking areas underneath buildings.

The majority of Board members did not support the article because they felt it would reduce the opportunities for mixed-use development on the Mass Ave and Broadway corridors. If approved, the main effect of the article would likely be a reduction in the size of both the residential portion and the commercial portion of projects as developers sought to comply with the regulations by reducing the upper story sizes. Most Board

members felt that developers may not use the mixed-use bonus at all given the difficulty of fitting in necessary building services and required parking on the ground floor, as well as the required amount of commercial space. Several Board members felt that the article would be unlikely to create larger commercial spaces because it does not address parking requirements. One Board member noted that for a version of this proposal to be successful, it would have to account for the fact that the ground floor is unlike any other floor, with many demands on its space, including parking.

The dissenting Board member agreed with the proponents of the article who stated that the article would clarify the ambiguity in the bylaw around how to define “ground floor at street level” to determine the amount of commercial space that should be provided in order for a project to qualify for the mixed-use bonus. The dissenting Board member agreed that requiring commercial use of a percentage of only the enclosed ground floor space will result in commercial spaces that are too small to be viable. She believes that developers often do the bare minimum to qualify for the bonus, which is evidenced not only by the small sizes of commercial spaces but also the way façades and signage are treated. For the magnitude of the bonus provided and the sizes of these developments, the dissenting Board member said that Arlington should receive meaningful commercial spaces. The dissenting Board member agreed with the proponents’ interpretation of how to define “ground floor at street level” and supported the article.

Board members agreed that clearer language to describe the mixed-use bonus is needed in the Bylaw. Some members raised additional concerns about the wording of the article which may introduce new ambiguity regarding whether spaces such as covered outdoor dining areas, bank drive-thrus, and roof overhangs would be included in calculations of ground floor area. Furthermore, any change to the MBMF or Neighborhood Multi-Family Housing (NMF) overlay districts would be subject to review for compliance with Section 3A of Massachusetts General Law

Chapter 40A, which requires MBTA Communities such as Arlington to zone for multi-family housing by right. The state has determined that Arlington's Multi-Family Housing Overlay Districts are currently compliant with those requirements.

Board members agreed that the three bonus provisions in Section 5.8 are intended to incentivize development in the overlay districts. Some members noted that during community engagement for the MBTA Communities zoning (as well as for the Comprehensive Plan Update over the past year), many people expressed a desire to have more spaces for small businesses in town, and the mixed-use bonus was intended to encourage builders to build such spaces. The Board will continue to work to maximize the productivity of the commercial spaces created in the overlay districts regardless of the interpretation of the square footage required. However, the majority of Board members believe that Article 53, if approved, would hinder rather than help this process.

Vote Language:

That no action be taken on Article 53.

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