

HOUSE No. 3471

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act Establishing the Arlington Redevelopment board as the board of survey.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1: PREAMBLE

2 Notwithstanding any general or special law to the contrary, including, without limitation,
3 any provision of Chapter 41 of the General Laws, including Sections 81K through Section 81GG
4 of the subdivision control law, the provisions of Chapter 247 of the Acts of 1897 establishing a
5 Board of Survey in the Town of Arlington, Chapter 738 of the Acts of 1971 establishing the
6 Arlington Redevelopment Board for the Town of Arlington and Chapter 503 of the Acts of 1952
7 establishing a Town Manager Form of Government for the Town of Arlington as each has been
8 from time to time amended, there is hereby established a Board of Survey for the Town of
9 Arlington. The Arlington Redevelopment Board shall constitute the Board of Survey. The
10 responsibility of such Board shall be to protect the safety, convenience and welfare of the
11 inhabitants of the Town, in regard to the laying out and construction of private ways. The process
12 of the Board's review will be initiated by the filing of a plan of the proposed development.

13 SECTION 2: DEFINITIONS

14 The following words shall have the following meaning, unless a contrary
15 intention clearly appears:-

16 "Applicant" shall include an owner or his agent or representative, or his assigns. "Board"
17 shall mean the Arlington Redevelopment Board, acting in its capacity as the Board of Survey
18 under this law.

19 "Commission" shall mean the Historic District Commission having jurisdiction
20 over a district in which a way is proposed.

21 "Day" shall mean a calendar day.

22 "Development" shall mean the division of a tract of land into two or more lots, where
23 such division shall require the construction of one or more ways to ensure the development's
24 compliance with the access and/or frontage requirements of the town's zoning by-law, and
25 provided that a deed evidencing such division has not been recorded at the registry of deeds prior
26 to the effective date of the law.

27 "Lot" shall mean an area of land in one ownership, with definite boundaries, used, or
28 available for use, as the site of one or more buildings.

29 "Notice" shall mean, for the purposes of the law, publication in a newspaper of general
30 circulation in the Town of Arlington once in each of two successive weeks, the first publication
31 to be not less than fourteen days before the day of the hearing, and posting such notice in a
32 conspicuous place in the town hall for a period of not less than fourteen days before the day of
33 the hearing.

34 "Plan" shall mean a plan of the private way or ways and the development that such ways
35 will serve, including all utilities, drainage systems, and other site improvements, together with
36 such elements of an application as the board may require, and submitted to the board for its
37 approval in accordance with the provisions of the law and the board's rules and regulations.

38 "Registered mail" shall mean registered or certified mail.

39 "Registry of deeds" shall mean the Middlesex County (Southern District) Registry of
40 Deeds, or, for registered land, the Middlesex County (Southern District) Registry District of the
41 Land Court.

42 "Utility" shall mean public or private utilities serving a development, including water,
43 sewerage, gas, and electricity.

44 "Way" shall mean a private way that provides access to one or more lots, the construction
45 of which is required to ensure the compliance of a development with the access and frontage
46 requirements of the town's zoning by-law.

47 SECTION 3: PURPOSES OF LAW

48 The law has been enacted for the purpose of protecting the safety, convenience and
49 welfare of the inhabitants of the town by regulating the laying out and construction of ways in
50 developments, and to further other public purposes including the provision of adequate utility
51 services and the protection of environmental resources. The Board shall require, inter alia, that
52 such plan for the laying out of ways, utilities, drainage, and other site improvements shall be
53 drawn with due consideration of the following factors:

54 To mitigate congestion in such ways and adjacent private or public ways.

55 To secure the public safety in the case of fire, flood, or other public emergencies and to
56 ensure adequate emergency vehicle access for police, fire, and other municipal services.

57 To ensure compliance with the zoning bylaw.

58 To secure adequate provision for access to the town's water supply.

59 To secure adequate provision of sanitary sewer service, utility services and street lighting.

60 To provide for adequate curbs, sidewalks and side slopes as appropriate.

61 To apply design standards for the grade, width, direction and location of such roadways.

62 To ensure adequate protection of environmental resources, including open spaces,
63 vegetation, and wildlife habitat, along with provisions for storm water management and drainage
64 to prevent flooding and protect water quality.

65 To advance the goals of the town's comprehensive plan, its open space plan, and any
66 special or district plan or policy.

67 SECTION 4: RULES AND REGULATIONS

68 The board is authorized and directed to adopt and from time to time thereafter to amend,
69 after notice and a public hearing, rules and regulations in furtherance of the purposes stated in
70 Section 3 herein. Such rules and regulations may prescribe the size, form, contents, style and
71 number of copies of plans and the standards and procedures for the submission and approval
72 thereof. The rules and regulations may permit the board to impose a fee in an amount calculated
73 to pay the cost of any engineering, inspection or other services directly related to the proposed
74 development.

75 A true copy of the rules and regulations, with their most recent amendments, shall be kept
76 on file available for inspection in the office of the board, and in the office of the town clerk.
77 Once a plan has been submitted to the board, and written notice has been given to the town clerk
78 and until final action has been taken thereon by the board or the time for such action has elapsed,
79 the rules and regulations governing such plan shall be those in effect at the time of the
80 submission of such plan.

81 SECTION 5: SUBMISSION AND REVIEW OF PLANS

82 No person shall construct any way on a development unless he has first submitted to the
83 board for its approval a plan of such ways and development and the board has approved such
84 plan in the manner hereinafter provided. After the approval of a plan the location and
85 configuration of ways, utilities, drainage systems, and other site improvements shown thereon
86 shall not be changed unless the plan is amended accordingly as provided herein.

87 A plan shall be submitted under this section when delivered by hand to the board, with a
88 copy to the town clerk. The clerk shall, if requested, give a written receipt therefore to the person
89 who delivered the plan. Before approval, modification and approval, or disapproval of the plan is
90 given, notice shall be given and a public hearing shall be held by the board. In addition to the
91 notice requirements of Section 2, the applicant shall mail, at its own expense, notice to all
92 owners of land abutting the parcel of land being developed and to abutters to the abutters within
93 300 feet of the property line of the parcel, as such owners appear on the most recent tax list, and
94 to such other persons as the board shall identify in its sole discretion.

95 After the hearing, the board shall approve by a vote of the majority of the board's
96 members, or, if such plan does not comply with the law or the rules and regulations of the board,

97 shall modify and approve or shall disapprove such plan. In the event of disapproval, the board
98 shall state in detail wherein the plan does not conform to the rules and regulations of the board.
99 Within less than 15 days of a disapproval, the applicant may resubmit an amended plan, and the
100 board shall revoke its disapproval without prejudice and approve within 60 days of such
101 resubmission a plan which, as amended, conforms to such rules and regulations or
102 recommendations. The board shall file a certified copy of its action with the town clerk within 15
103 days of its decision, and it shall send notice of such action by registered mail, postage prepaid, to
104 the applicant at his address stated on the application. The failure of the board either to take final
105 action regarding a complete plan submitted by an applicant within 60 days after such submission,
106 or such further time extension as may be agreed upon at the written request of the applicant, or to
107 file with the town clerk a certified copy of such action within a further 15 days, shall be deemed
108 to be an approval thereof. Notice of such extension of time shall be filed forthwith by the board
109 with the town clerk.

110 The board's approval of a plan, or any modification, amendment, or renewal thereof, shall
111 not take effect until a copy of the decision bearing the certification of the town clerk that 20 days
112 have elapsed after the decision has been filed in the office of the town clerk and that no appeal
113 has been filed, or if it is a plan which has been approved by reason of the failure of the board to
114 act thereon within the time prescribed, a copy of the application accompanied by the certification
115 of the town clerk stating the fact that the board failed to act within the time prescribed, and that
116 no appeal has been filed within that time, and that the grant of the application resulting from the
117 failure to act has become final, is recorded in the registry of deeds and indexed in the grantor
118 index under the name of the owner of record or is recorded and noted on the owner's certificate
119 of title.

120 SECTION 6: WAIVERS

121 The board may in any particular case, where such action is in the public interest and not
122 inconsistent with the intent and purpose of the law, waive strict compliance with its rules and
123 regulations, upon such conditions as it may reasonably impose.

124 SECTION 7: MODIFICATIONS OF PLANS

125 The board may on its own motion, or on the petition of any person interested, have the
126 power to modify, amend or rescind its approval of any plan or to require a change in a plan as a
127 condition of its retaining the status of an approved plan, in accordance with the standards and
128 procedures set forth in Section 5 and subject to all other provisions of the law. No such
129 modification, amendment or rescission of the approval of a plan or change in such plans shall
130 affect lots in such development which have been sold or mortgaged for valuable consideration
131 without the approval of the owner of such lots and the mortgagee in question. The board may
132 identify, in its rules and regulations or as a condition of a plan approval, categories of minor
133 modifications that may be reviewed and approved administratively, without the requirements for
134 notice and public hearing set forth in Section 5. A minor modification shall not affect the vested
135 rights of a plan accruing under Section 11.

136 SECTION 8: CONSOLIDATED REVIEW

137 If a development is otherwise subject to review by the board under the special permit or
138 other provisions of the zoning by-law, then the review of the development for the purposes of
139 this law shall be consolidated with such zoning review into a single hearing, and the time periods
140 and other procedures of such zoning review shall govern. However, the board's decision in such

141 zoning review shall incorporate all of its powers of review set forth in this law and the board's
142 rules and regulations.

143 If the development is located in whole or in part within a local historic district, the
144 applicant shall submit a copy of the plan to the commission, along with such other materials as
145 the commission may require for an application pursuant to its own by-law. If the commission
146 determines within 14 days, in accordance with Section 11 of M.G.L. ch. 40C, that the
147 development involves any features which are subject to its approval, then the review of the
148 development for the purposes of this law shall be consolidated with such historic district review
149 into a single hearing, and the time periods and other procedures of such historic district review
150 shall govern. The commission and the board shall alternate the chair from one hearing to the
151 next. Notwithstanding the consolidated review procedure, nothing in this section shall expand or
152 limit the powers of the board and the commission each to render a decision pursuant to its own
153 rules or bylaw respectively, provided that no decision of approval by the board shall be deemed
154 final until and unless a Certificate of Appropriateness has been issued by the commission, nor
155 shall anything in this section limit the power of the commission to subsequently review any
156 building or structure, the design of which had not yet been determined as of the time of the
157 consolidated review.

158 SECTION 9: SECURITY

159 As a condition of its approval of a plan, the board may require such security as it deems
160 necessary to guarantee the completion of proposed ways and other site improvements and the
161 time within which such improvements shall be completed, which shall not exceed three years
162 from the date of filing approval of the plan with the town clerk or from the date of final judgment

163 in any legal appeal in which the approval is upheld. Such security may include one or all of the
164 following methods: (1) a proper bond; (2) a deposit of money, letter of credit, or negotiable
165 securities; (3) a covenant, executed and duly recorded by the owner of record, running with the
166 land; or (4) an agreement executed after the recording of a first mortgage covering the premises
167 shown on the plan or a portion thereof, which agreement shall be executed by the applicant and
168 the lender and shall provide for the retention by the lender of funds sufficient in the opinion of
169 the board and otherwise due the applicant, to secure the completion of proposed improvements.
170 All work shall be subject to the approval of the Town Engineer. Such security shall from time to
171 time be reduced or increased by the board so that the amount bonded, deposited or retained
172 continues to reflect the actual expected cost of work remaining to be completed.

173 Upon the completion of the improvements in accordance with the rules and regulations of
174 the board and the conditions of the board's approval of the plan, and subject to the approval of
175 the Town Engineer, the board shall, upon written request by the applicant, agree to release the
176 security. If the Town Engineer determines that said improvements have not been completed, the
177 board shall so specify in a notice sent by registered mail to the applicant and to the town
178 clerk. Upon failure to issue such agreement or notice within 45 days after the receipt by the board
179 of the applicant's request, all obligations under the bond shall cease and terminate by operation
180 of law, any deposit shall be returned, and any such covenant or agreement shall become void,
181 and the town clerk shall issue a certificate to such effect, duly acknowledged. Any such security
182 may be applied by the board for the benefit of the town, upon failure, following reasonable
183 notice and opportunity to cure, of the performance for which any such bond or deposit was given
184 to the extent of the reasonable cost to the town of completing such construction and installation.

185 SECTION 10: ENFORCEMENT

186 The town's inspector of buildings shall not issue any permit for the erection of a building
187 until first satisfied that the lot on which the building is to be erected is not within a development,
188 or that a way furnishing the access to such lot as required by the law is shown on a duly
189 approved plan, and that any condition of a plan approval limiting the right to erect or maintain
190 buildings on such lot have been satisfied, or waived by the board.

191 The Middlesex County superior court and the land court shall have jurisdiction in equity
192 on petition of the board, or of ten taxable inhabitants of the town, to review any action of any
193 municipal board or officer in disregard of the provisions of this section and to annul and enjoin
194 such action, to enjoin the erection of a building in violation of this section, and otherwise to
195 enforce the provisions of the law and any rules or regulations lawfully adopted and conditions on
196 the approval of a plan lawfully imposed thereunder, and may restrain by injunction violations
197 thereof or make such decrees as justice and equity may require. No proceeding under this
198 paragraph shall be instituted more than one year after the act or failure to act upon which such
199 petition is based.

200 SECTION 11: VESTED RIGHTS

201 When a plan has been submitted to the board and is subsequently approved under Section
202 5, any zoning amendment for which the first notice of public hearing was published after the date
203 of the plan's submission shall not apply to the development shown on such plan for a period of
204 three years from the date of filing approval of the plan

205 with the town clerk or from the date of final judgment in any legal appeal in which the
206 approval is upheld.

207 SECTION 12: APPEALS

208 Any person, whether or not previously a party to the proceedings, or any municipal
209 officer or board, aggrieved by any decision of the board concerning a plan, or by the failure of
210 the board to take final action concerning a plan within the required time, may appeal to the
211 Middlesex County superior court or to the land court; provided, that such appeal is entered
212 within 20 days after such decision has been recorded in the office of the town clerk or within 20
213 days after the expiration of the required time as aforesaid, as the case may be, and notice of such
214 appeal is given to such town clerk so as to be received within such 20 days. The court shall hear
215 all pertinent evidence and shall annul such decision if found to be unsupported by the evidence
216 or to exceed the authority of the board, or remand the case for further action by the board, or
217 make such other decree as justice and equity may require. The foregoing remedy shall be
218 exclusive, but the parties shall have all rights of appeal and exceptions as in other equity cases.

219 Costs shall not be allowed against the board unless it shall appear that the board acted
220 with gross negligence or in bad faith. The court may require nonmunicipal appellants to post a
221 surety or cash bond in a sum of not less than two thousand nor more than fifteen thousand dollars
222 to secure the payment of any costs incurred by the appellee as a result of the appeal of a decision
223 approving a plan, if it appears to the court that said appellant or appellants acted in bad faith or
224 with malice in making the appeal to the court. All issues in any proceeding under this section
225 may be advanced for speedy trial over other civil actions and proceedings.

226 SECTION 13: APPLICATION OF LAW: DAMAGES: OTHER POWERS OF BOARD:
227 EFFECTIVE DATE: SEVERABILITY

228 The law shall not abridge the powers of the selectmen, or any other municipal officer, in
229 regard to public ways in any manner except as herein provided, and shall not authorize the taking

230 of land nor authorize the town to layout or construct any way which may be indicated on any
231 plan until such way has been laid out as a public way in the manner prescribed by law; nor shall
232 action under such law render the town liable for damages. The modification, amendment or
233 rescission of the approval of a plan shall not entitle any person to damages, unless and to the
234 extent that he shall have changed his position or made expenditures in reliance upon such
235 approval.

236 No damages shall be awarded for the modification, amendment or rescission of the
237 approval of a plan obtained as a result of material misrepresentation of facts, whether willful or
238 otherwise, by the persons submitting the plan.

239 The board and its officers and agents may, as far as they deem it necessary in carrying out
240 the law, enter upon any lands and there make examinations and surveys and place and maintain
241 monuments and marks.

242 The law shall take effect upon passage. If a court of competent jurisdiction should
243 determine that any provision of this law is invalid, then such decision of invalidity shall not
244 render invalid any other provision.