



TOWN OF ARLINGTON
DEPARTMENT OF PLANNING and
COMMUNITY DEVELOPMENT

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MEMORANDUM

To: Arlington Redevelopment Board
From: Claire Ricker, AICP, Director, Planning and Community Development
Kelly Lynema, AICP, Assistant Director, Planning and Community Development
David Morgan, Environmental Planner/Conservation Agent, Planning and Community Development
Date: March 2, 2023
RE: Review of Warrant Articles 31, 26, 27, and 28 for 2023 Annual Town Meeting

Staff reviewed the following Warrant Articles to provide the Board with information for further consideration as part of the public hearing and review process. There are four articles with public hearings for the evening of March 6th. This memo provides information about each article being reviewed, including any additional information provided by the petitioner, and additional factors for the Board's consideration.

A Warrant Article to amend the Zoning Bylaw has been filed by Kristin Anderson and 10 registered voters:

Article 31 ZONING BYLAW AMENDMENT / INDUSTRIAL DISTRICT ANIMAL DAYCARE USE
To see if the Town will vote to amend the Zoning Bylaw to update Section 5.6.3 USE REGULATIONS FOR MU, PUD, I, T, and OS DISTRICTS, to allow animal daycare; or take any action related thereto.
(Inserted at the request of Kristin Anderson and 10 registered voters)

Ms. Anderson provided the following:

Amend SECTION 5.6.3:

By adding the letter "Y" to the "Use Regulations for MU, PUD, IT, T, and OS Districts" table in Section 5.6.3, in the row labeled "Veterinary and animal care; accessory overnight boarding only for veterinary/medical care in an enclosed building" under the column labeled "I"; so that last row under "Personal, Consumer, and Business Services" in the table reads as follows:

5.6.3 Use Regulations for MU, PUD, I, T, and OS Districts

Class of Use	MU	PUD	I	T	OS
Personal, Consumer, and Business Services					
Veterinary and animal care; accessory overnight boarding only for veterinary/medical care in an enclosed building		Y	<u>Y</u>		

Background

In 2021, Warrant Article 35, Industrial Uses, was filed by the ARB to address the antiquated table of uses and density and dimensional requirements that prevented the attraction of new and modern uses to Arlington's Industrial Districts. New uses were added to expand on existing artistic and creative production uses. During this update, discussion around uses focused on aligning opportunities in the

Industrial Districts with the needs of the creative economy as described in the Arts and Culture Action Plan. Review of other potential uses was not contemplated at the time.

Since the adoption of the Industrial District zoning amendments, staff have been contacted twice regarding whether a doggie daycare or animal daycare use would be allowed in the Industrial Zoning District. In both instances, an individual was seeking to create a new business in town within an existing structure where care of animals would be provided during daytime hours. A change of use would have been required, however the “Veterinary and animal care” use is not presently allowed in the Industrial Zoning Districts. Within Arlington there are currently only two animal daycare facilities in other zoning districts; both programs are full and not taking new clients, and offer a waiting list.

“Veterinary and animal care” is presently allowed by right in the B2, B2A, B3, B4, B5, and PUD districts. Most animal daycare websites recommend providing between 40 to 100 square feet of space per dog, depending on the breed, with the average doggy daycare business taking on 20 to 30 dogs (requiring up to 3,000 square feet, plus outdoor dog runs)¹. The use is sometimes seen as incompatible with residential neighborhoods due to concerns about noise and waste disposal; online resources recommend searching for warehouse-style real estate with an open floor plan and some outdoor space.

Zoning bylaws and ordinances from Arlington’s adjacent communities vary in whether they allow animal daycare in their industrial districts. Some permit the use by right; others do not allow it. Those that allow animal daycares with a special permit often establish specific criteria for review. For example, while Somerville permits animal daycare in the Commercial Industry district by right, in other districts where the use requires a special permit the zoning ordinance specifies that methods or techniques for noise mitigation, operational procedures for cleaning the interior and exterior of the site and trash storage and removal, and on-site landscaping must be provided.

¹ <https://splashanddashfranchise.com/doggie-day-care-pet-franchise-understanding/>
<https://smallbusiness.chron.com/starting-dog-kennel-business-4444.html>
<https://thedoggurus.com/how-much-space-do-you-need-for-your-dog-daycare>

Article 26 ZONING BYLAW AMENDMENT/ INDUSTRIAL DISTRICT DEVELOPMENT STANDARDS

To see if the Town will vote to amend the Zoning Bylaw to update Section 5.6.2 DEVELOPMENT STANDARDS to establish the design storm or other criteria that must be met for stormwater retention and treatment to receive an exception to maximum height regulations in the Industrial District; or take any action related thereto.

(Inserted at the request of the Redevelopment Board)

Background

The staff provide the following additional considerations relevant to this article:

- **Applicability of proposed amendment:** This amendment applies to proposals in the Industrial District in which an applicant seeks an exception to the maximum height of 39 feet or 3 stories. Applicants seeking a height exception must demonstrate compliance with an additional three development standards *above and beyond* the six development standards required of all development in the Industrial District. The third additional standard presently requires applicants to “retain and treat 100% of stormwater on site,” which lacks sufficient specificity and concordant standards by which the Board can review proposals and determine compliance.
- **Follows a standard approved by the Town Engineer and Environmental Planner/Conservation Agent, and supported by state policies:** The recommended amendment text includes two critical elements: design storm and contaminant loading standards. Meeting these elements requires compliance with a number of other performance standards, however elaborating the specific details of those standards within the Zoning Bylaw is neither necessary (as standards would be met in order to fulfill the two required elements) and would overly complicate the bylaw.

The present upper bound of the 90% confidence interval for the 100-year storm in Arlington, as defined in NOAA Atlas 14, Volume 10, is 10.5”. Given 72 hours for full infiltration, projects would need to achieve a 0.15 in/hr infiltration rate. This rate is suitable for 99% of Arlington soils according to the USDA Soil Survey.

Treatment of a minimum of 80% of Total Suspended Solids (TSS) is a standard benchmark. Arlington’s Stormwater Management Bylaw specifies 90% for major projects. TSS is considered the target pollutant constituent for many removal standards because of its widespread contribution to water quality and aquatic habitat degradation, because many other pollutant constituents including heavy metals, bacteria and organic chemicals adsorb to sediment particles, and because available data sets for BMP removal efficiency reveal that TSS has been the most frequently and consistently sampled constituent. Massachusetts DEP Stormwater Policy currently requires a minimum rate of 44% TSS removal prior to discharge to an infiltration BMP, however this may change over time. Staff recommend referring to the policy instead of establishing a specific minimum rate.

Overall, these recommended thresholds exceed standard benchmarks, so as to justify the exception from the height maximum and accommodate a high level of storm, but are still achievable. Staff also drafted language such that it would respond to changes to external standards or other Town policies without requiring subsequent amendments to the bylaw.

Amend SECTION 5.6.2:

5.6.2(D)(7) Development Standards, Exceptions to Maximum Height Regulations in the Industrial District

For new development or additions that would otherwise be subject to Section 5.3.19, heights over 39 feet or three stories are allowed subject to the following development standards:

- Demonstrate that new buildings or additions shall allow for full sun at least half the time or 50% sun coverage all the time on March 21, June 21, September 21, and December 21 on the lots within the required residential buffer as defined in Section 5.3.19. The Redevelopment Board or Board of Appeals, as applicable, shall find that any shadow on abutters with existing solar panels would be negligible to allow the higher height limit.
- Provide one (1) of the following sustainable roof infrastructure components. In the case of a building that is solar ready per Section 5.6.2.D(1), the component should cover the remaining roof area where appropriate:
 - Install a vegetated or green roof over 50% of the roof area.
 - Use diffuse, highly reflective materials on 75% of the roof area.
 - Install solar energy panels tied to the electrical system of the building. For new commercial or mixed-use building, provide solar PV and/or solar thermal on a minimum of 50 percent of the roof area.
 - Provide 100% highly reflective concrete topping.
 - Install a blue roof over 50% of the roof area to provide initial temporary water storage and then gradual release of stored water.
- ~~Retain and treat 100% of stormwater on site.~~ Demonstrate that the proposed activity shall not result in stormwater runoff or discharge from the site during storm events, based on the best currently available rainfall data (the upper bound of 90% confidence interval of the 100-year storm) defined in NOAA Atlas 14, Volume 10, or its successor. All infiltration Best Management Practices (BMPs) must be able to drain fully within 72 hours.

Remove stormwater pollution to the maximum extent possible, at minimum 90% of Total Suspended Solids (TSS) and 60% of Total Phosphorous. A minimum TSS removal prior to discharge to an infiltration BMP(s) must comply with current Massachusetts DEP Stormwater Policy.

ARTICLE 27

ZONING BYLAW AMENDMENT/ SOLAR BYLAW IN INDUSTRIAL DISTRICTS

To see if the Town will vote to amend the Zoning Bylaw to update Section 5.6.2 DEVELOPMENT STANDARDS to reflect the inclusion of Section 6.4 SOLAR ENERGY SYSTEMS; or take any action related thereto.

(Inserted at the request of the Redevelopment Board)

Background

On December 20, 2022, the Massachusetts Attorney General's office approved Article 30, the Solar Bylaw amendment, from 2022 Annual Town Meeting. With the addition of Section 6.4, Solar Energy Systems, to the Zoning Bylaw, several references in the Industrial District Development Standards need to be updated.

Section 5.6.2, Development Standards, describes a series of standards that development proposals or additions of more than 50% of an existing footprint within the Industrial Districts must meet. In subsection 7, it lays out additional criteria for proposals that exceed the Industrial district's maximum height regulations. Both the base development standards and the exception criteria refer to the provision of solar energy systems, which under Section 6.4 are required of projects requiring Environmental Design Review.

This amended language updates references to solar energy systems requirements to ensure compliance and consistency between Sections 5.6.2 and 6.4.

Amend SECTION 5.6.2:

5.6.2(D)(1) Development Standards, Renewable Energy Installations

D. Development Standards. In the Industrial District, the following requirements apply to all new development or additions over 50% of the existing footprint:

(1) Renewable Energy Installations

- The Redevelopment Board may, by special permit, allow adjustments to the height and setbacks in order to accommodate the installation of solar photovoltaic, solar thermal, living and other eco-roofs, energy storage, and air-source heat pump equipment. Such adjustments shall not create a significant detriment to abutters in terms of noise or shadow and must be appropriately integrated into the architecture of the building and the layout of the site, consistent with the other requirements of this section.
- All new commercial and mixed-use buildings ~~shall be solar ready~~ comply with Section 6.4, Solar Energy Systems.
- Additions over 50% of the footprint of existing buildings shall be solar ready to the extent feasible.

5.6.2(D)(7) Development Standards, Exceptions to Maximum Height Regulations in the Industrial District

For new development or additions that would otherwise be subject to Section 5.3.19, heights over 39 feet or three stories are allowed subject to the following development standards:

- Demonstrate that new buildings or additions shall allow for full sun at least half the time or 50% sun coverage all the time on March 21, June 21, September 21, and December 21 on the lots within the required residential buffer as defined in Section 5.3.19. The Redevelopment Board or

Board of Appeals, as applicable, shall find that any shadow on abutters with existing solar panels would be negligible to allow the higher height limit.

- Provide one (1) of the following sustainable roof infrastructure components. Projects requiring Environmental Design Review are subject to section 6.4, Solar Energy Systems, and must therefore provide one additional component. In the case of a building that is solar ready per Section 5.6.2.D(1), the component should cover the remaining roof area where appropriate:
 - Install a vegetated or green roof over 50% of the roof area.
 - Use diffuse, highly reflective materials on 75% of the roof area.
 - Install solar energy panels tied to the electrical system of the building under the standards set forth in Section 6.4. For new commercial or mixed-use building, provide solar PV and/or solar thermal on a minimum of 50 percent of the roof area.
 - Provide 100% highly reflective concrete topping.
 - Install a blue roof over 50% of the roof area to provide initial temporary water storage and then gradual release of stored water.
 - Retain and treat 100% of stormwater on site.

ARTICLE 28

ZONING BYLAW AMENDMENT/ BUILDING INSPECTOR, ENFORCEMENT

To see if the Town will vote to amend the Zoning Bylaw to update Section 3.1(B) BUILDING INSPECTOR; ENFORCEMENT to remove a section that was deemed unenforceable by the Attorney General; or take any action related thereto.

(Inserted at the request of the Redevelopment Board)

Background

2020 Special Town Meeting approved an amendment to Section 3 of the Zoning Bylaw that the Massachusetts Attorney General's office later stated was inconsistent with state law. The ARB had recommended a vote of no action on the amendment (Article 17), but it was brought back to Special Town Meeting through a substitute motion.

Article 17 amends the Town's zoning by-laws, Section 3, "Administration and Enforcement," Subsection 3.1 (B), "Building Inspector; Enforcement," to add additional text to the end of Subsection 3.1 (B), as follows (new text in underline):

No person shall erect, construct, reconstruct, convert or alter a structure, or change the use or lot coverage, increase the intensity of use, or extend or displace the use of any structure or lot without applying for and receiving the required permit(s) from the Building Inspector. No such permit shall be issued until the Building Inspector finds that the applicant is in compliance with the applicable provisions of Title VI, Article 7 of the Town Bylaws.

The Attorney General noted that the zoning bylaw, specifically Subsection 3.1(B), cannot be applied to authorize the withholding of a building permit for failure to comply with general bylaw requirements. The State Building Code governs the issuance of a building permit, and requires the Building Inspector to issue building permits where the applicant has demonstrated compliance with the State Building Code and the town's *zoning* bylaws. Under state law, building permits may be withheld only if an applicant's proposed project is in violation of the Town's zoning bylaws, not for failure to comply with the town's general, or non-zoning, bylaw requirements. As such, the zoning bylaw must be amended to strike the sentence underlined above.

Amend SECTION 3.1:

- A. The Building Inspector appointed under the provisions of [G.L. c. 143](#) is hereby designated and authorized as the officer charged with the administration and enforcement of this Bylaw.
- B. No person shall erect, construct, reconstruct, convert, or alter a structure, or change the use or lot coverage, increase the intensity of use, or extend or displace the use of any structure or lot without applying for and receiving the required permit(s) from the Building Inspector. ~~No such permit shall be issued until the Building Inspector finds that the applicant is in compliance with the applicable provisions of Title VI, Article 7 of the Town Bylaws².~~

²Per the Massachusetts Attorney General decision on zoning amendments approve by 2020 Special Town Meeting, Subsection 3.1(B) cannot be applied to authorize the withholding of a building permit for failure to comply with general bylaw requirements. See <https://www.arlingtonma.gov/home/showdocument?id=63690&t=638097422294281171> for the full text.