

February 19, 2019

Zoning Articles Proposed for 2019 Annual Town Meeting

The proposed zoning changes described in this document have been submitted into the 2019 annual town meeting warrant. The Planning Board is required by law to hold a public hearing on every zoning bylaw and zoning map change regardless of sponsor, and the public hearing date of each is noted below. The draft language of the Planning Board's articles may be modified after review by Town Counsel and following the public hearing, and the Board may also decide not to proceed with an article.

Public participation is an integral part of the process. Comments may be voiced at the public hearing, and may also be sent via mail or email to the Board in advance of the hearing (mail to Planning Board, 18 Main St., Hopkinton, MA 01748; email to Elaine Lazarus at elainel@hopkintonma.gov)

In addition to the several Planning Board articles, there are 4 citizens' petitions which propose changes to the Zoning Bylaw. The Planning Board articles are listed first, and the citizens' petitions follow.

Many of the articles refer to specific zoning districts. To see where they are located, see the Zoning Map: https://drive.google.com/file/d/0B_K9oi9FHiWPY09SSTEyMEJ1cFU/view

Public Hearing - February 25, 2019 at 7:30 pm, Town Hall Room 215/216

1. Temporary Banners – Sponsor: Planning Board
2. Commercial Solar Photovoltaic Installations – Sponsor: Planning Board
3. Educational Uses in Industrial A, Industrial B & Professional Office Districts – Sponsor: Planning Board
4. Indoor Recreation Uses in Industrial A and Industrial B Districts – Sponsor: Planning Board
5. Accessory Retail to Manufacturing Use, Industrial A & Industrial B Districts – Sponsor: Planning Board
6. Restaurants in Industrial B Districts – Sponsor: Planning Board
7. Car Wash Uses – Sponsor: Planning Board
8. OSMUD Overlay District/Restricted Land-Recreational Parcel Amendments – Sponsor: Planning Board
9. OSMUD Overlay District, Senior Housing Development Issues: Residents of Age Restricted Housing and Affordable Housing – Sponsor: Planning Board
10. OSMUD Overlay District, Live-In Managers at Assisted Living Facility – Sponsor: Planning Board
11. Self-Storage Facilities in the Industrial A District – Sponsor: Paul Mastroianni/Citizens Petition

Public Hearing - March 25, 2019 at 7:30 pm, Town Hall Room 215/216

12. One-Year Growth Restriction – Sponsor: Amy Ritterbusch et al./Citizens Petition
13. Subdivision, Garden Apartment & Village Housing Phasing – Sponsor: Amy Ritterbusch et al./Citizens Petition
14. Board of Selectmen/Select Board – Sponsor: Amy Groves/Citizens Petition

1. Temporary Banners – Public Hearing Feb. 25, 2019 at 7:30 PM - Sponsor: Planning Board

This proposal would change the zoning regulations as they pertain to banners hung over streets. At the present time, banners may only be displayed over Main Street. The proposal would:

- Allow banners to be hung over any public way (not just Main St.);
- Increase the maximum number of days a banner may be displayed, from 14 days to 30 days; and
- Increase the maximum size of banners from 75 sq. ft. to 180 sq. ft.

The purpose of the change is to increase flexibility with respect to displaying banners over streets. The banners would remain subject to approval by the Board of Selectmen. The changes do not affect banners on private property or on buildings.

Proposed changes:

Temporary banners may be displayed over **public roadways** ~~Main Street~~ if authorized by the Board of Selectmen and subject to such limitations as it shall require. Such banners shall not be displayed for more than **30** ~~14~~ days and may not exceed **180** ~~75~~ square feet in area.

2. Commercial Solar Photovoltaic Installations – Public Hearing Feb. 25, 2019 at 7:30 PM – Sponsor: Planning Board

The proposed article would add new language to the zoning bylaw provision which pertains to the permitting of Commercial Solar Photovoltaic Installations (i.e. solar farms). Such facilities require a special permit from the Planning Board, and the proposed language would address concerns raised relative to the need to provide more screening to abutters. The new language would require an effective year round screen.

Proposed change:

The visual impact of the commercial solar photovoltaic installation, including all accessory structures and appurtenances, shall be mitigated. All accessory structures and appurtenances shall be architecturally compatible with each other. Whenever reasonable, structures shall be shielded from view by vegetation **forming an effective year round screen** and/or joined and clustered to avoid adverse visual impacts. Methods such as the use of landscaping, natural features and fencing may be utilized.

3. Educational Uses in Industrial A, Industrial B & Professional Office Districts – Public Hearing Feb. 25, 2019 at 7:30 PM – Sponsor: Planning Board

The proposal is to add language to the Industrial A, Industrial B and Professional Office districts that would allow educational uses/vocational schools by right. At the present time the uses are not listed as permitted in the districts, but educational uses are allowed in every district pursuant to MGL 40A sec. 3 (i.e. the “Dover Amendment”), which states in part:

No zoning ordinance or by-law shall regulate or restrict the interior area of a single family residential building nor shall any such ordinance or by-law prohibit, regulate or restrict the use of land or structures for

religious purposes or for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements.

The purpose of the proposed change in these Districts is to increase visibility and the potential that an educational use would locate in these areas. In each of the Districts, the following would be added to the “permitted uses” section, clarifying that the use is allowed by right:

Educational uses/vocational schools.

4. Indoor Recreation Uses in Industrial A and Industrial B Districts – Public Hearing Feb. 25, 2019 at 7:30 PM – Sponsor: Planning Board

The proposal is to add “indoor recreation” as a use by right in the Industrial A district and to change it from a use by special permit to a use by right in the Industrial B district. The zoning bylaw already defines the use as:

INDOOR RECREATION – A facility, within a permanent building or structure, designed and equipped for the conduct of sports, athletic and other leisure-time activities; provided that all activities are conducted entirely within the building and no noise generated within the facility may be heard at the property line. Such activities may include swimming, skating, indoor skydiving, soccer, bowling and other similar uses; but shall not include arcades and billiard halls unless accessory to another indoor recreation use.

The use was defined and added to the bylaw in 2015 because of the growing popularity of some of the activities, and the desire to have more indoor recreation in Hopkinton. The proposed changes are intended to increase that likelihood, while continuing to restrict it to commercial areas. In both Districts, the following provision would be added to the “permitted uses” section, clarifying that the use is allowed by right, and in the Industrial B District, the use would be deleted from the listing of uses allowed by special permit:

Indoor recreation uses.

5. Accessory Retail to Manufacturing Use, Industrial A & Industrial B Districts – Public Hearing Feb. 25, 2019 at 7:30 PM – Sponsor: Planning Board

This proposal would allow a manufacturing use in the Industrial A and Industrial B districts to have an associated accessory retail use within the same District, with a maximum area of up to 5,000 sq. ft. Some of the manufacturing uses currently allowed involve the production of goods such as apparel, furniture and wood products, and it may be beneficial for these uses to have a small retail area where they can sell the goods locally. The use would be allowed by right.

The following language would be added to the list of uses allowed by right in the Industrial A District:

Retail uses which are accessory to a manufacturing use located within the Industrial A District. The area of such retail use shall not exceed 5,000 square feet.

The following language would be added to the list of uses allowed by right in the Industrial B District:

Retail uses which are accessory to a manufacturing use located within the Industrial B District. The area of such retail use shall not exceed 5,000 square feet.

6. Restaurants in Industrial B Districts – Public Hearing Feb. 25, 2019 at 7:30 PM – Sponsor: Planning Board

At the present time, restaurants in the Industrial B district with 100 seats or less are allowed by right, and those with more seats require a special permit. The proposal is to remove the special permit requirement for restaurants with more than 100 seats in the Industrial B District and which are also within the Hotel Overlay District. These areas are: 1) a roughly 500 ft. wide strip of land adjacent to and parallel to Rt. 495 in the Elmwood Industrial Park area; and 2) all or a portion of lots on the west side of Lumber St. adjacent to Rt. 495 (numbers 20 through 60 on the even numbered side of the street). The change is proposed to increase the likelihood of attracting restaurants to this particular area.

The associated language changes are:

a. Change the by-right provision

From: Restaurants that contain no more than 100 seats and that are not open for business after 11:00 PM.

To: Restaurants that contain no more than 100 seats and that are not open for business after 11:00 PM. This restriction on number of seats shall not apply to restaurants location within the Hotel Overlay District portion of the Industrial B District.

b. Change the special permit provision

From: Restaurants that contain more than 100 seats or are open for business after 11:00 PM.

To: Restaurants that contain more than 100 seats and are not located in the Hotel Overlay District, or are open for business after 11:00 PM.

7. Car Wash Uses – Public Hearing Feb. 25, 2019 at 7:30 PM – Sponsor: Planning Board

The Industrial A district is proposed to be amended to allow car wash facilities that operate with sustainable and efficient use of resources, as a use by special permit. At the present time, car wash facilities are allowed by special permit in the Business and Downtown Business districts. The proposed change would expand the locations in which they could locate.

The following language would be added to the list of uses allowed by special permit in the Industrial A District:

Car wash facilities that operate with sustainable and efficient use of resources.

8. OSMUD Overlay District/Restricted Land-Recreational Parcel Amendments – Public Hearing Feb. 25, 2019 at 7:30 PM – Sponsor: Planning Board

The Town owns a 19 acre parcel on East Main St. (the “Recreation Parcel”), which was donated by the Legacy Farms master developer. The land is within the OSMUD Overlay District that covers Legacy Farms, so any uses on the parcel that the Town chooses to locate there are subject to the OSMUD zoning restrictions. One of the uses that the Town is considering hosting is an International Marathon Center (IMC), which is an allowed use within the District.

However, the parcel is also subject to a Restricted Land Covenant, which means that it counts toward the minimum 500 acres of Open Land required in Legacy Farms. The definition of “Restricted Land” in the zoning bylaw does not include the language that allows the IMC, so the presence of an IMC would require the removal of the 19 acres from the Open Land total, which was not the intent. Therefore, the proposed bylaw language would allow the parcel to remain in the Restricted Land category if an IMC is located there.

The proposed bylaw changes involve inserting “cultural or educational uses” in three places where uses of Restricted Land are discussed, as follows (proposed language is **bold and underlined**):

In the Definition of Restricted Land:

Land devoted to uses permitted by § 210-170A, which may include (1) open space land left substantially in its natural state; (2) open space land that is restored or landscaped, including irrigation, detention and/or retention ponds or stormwater catchment areas and subsurface utilities; (3) open space land used for agricultural purposes; (4) open space land improved for active and passive recreational uses, including pedestrian, bicycle and equestrian trails; (5) land improved for other municipal, **cultural, or educational** uses; (6) food preparation and sales areas, restrooms, parking and access areas, and similar uses, structures or portions thereof, operated in association with other Restricted Land uses; and (7) A total of no more than 30 acres of land, which may be restricted for the benefit of landowners within a particular area of the OSMUD District. Restricted Land shall not include land set aside for road and/or parking uses that are not accessory to other Restricted Land Uses.

In two places in the bylaw section entitled “Restricted Land”:

Restricted Land may be used for active and passive recreation, conservation, forestry, agriculture, natural buffers, underground utilities, **cultural or educational uses**, municipal purposes and other similar purposes necessary for the convenience and enjoyment of the OSMUD District or the Town, as well as other purposes customarily associated with a use authorized by this Subsection.

And

Restricted Land may be (i) owned by a Landowners’ Association, (ii) owned by a non-profit entity, a principal purpose of which is land conservation or the provision of recreational facilities **or cultural or educational uses**, (iii) conveyed to the Town, or (iv) owned by, made subject to easement rights benefiting, or leased to third parties. In all such cases the uses permitted by such deeds, easements or leases of required Restricted Land shall be consistent with the provisions of this §210-170, the Master Plan Special Permit and the applicable Restricted Land Covenant. A Landowners’ Association or other party responsible for Restricted Land may adopt reasonable rules and regulations to govern the use of the Restricted Land under its control and to prevent encroachment thereon.

9. OSMUD Overlay District, Senior Housing Development Issues: Residents of Age Restricted Housing and Affordable Housing - Public Hearing Feb. 25, 2019 at 7:30 PM – Sponsor: Planning Board

Bylaw amendments are proposed that would address an issue that has come up with respect to the Senior Housing Development portion of Legacy Farms, which is now under construction (“The Trails at Legacy Farms”, Heritage Properties). The bylaw requires that the development provide 10% of the units as affordable housing, and the bylaw also requires that no child under the age of 18 may be a resident of the development. In order for the units to count as “affordable” on the State’s Subsidized Housing Inventory, they must be approved by the Mass. Dept. of Housing and Community Development (DHCD), and the units will then become deed-restricted. DHCD will not approve any affordable units if the zoning, condominium documents and other restrictions prohibit children. DHCD will not approve the affordable units in the Trails as it currently stands.

DHCD will approve age-restricted affordable units if the restrictions state that one resident of the unit must be 55 or over – and this is consistent with the definition of “Senior Housing Development” elsewhere in the OSMUD. So the Town has at least 3 choices, all of which are proposed as possible bylaw changes:

- 1) change the zoning bylaw to remove the requirement for affordable units,
- 2) change the zoning bylaw to allow a payment in lieu of providing the affordable units,
- 3) change the zoning bylaw to replace the prohibition on children with language requiring at least one resident be age 55 or over.

	Retain Requirement for Affordable Units, No Payment in Lieu Option	Remove Requirement for Affordable Units	Adopt Payment in lieu of Affordable Units Option	No Children under Age of 18 Language Removed and Replaced
Solves Problem	X			X
Solves Problem		X		
Solves Problem			X	
Solves Problem				X
Solves Problem			X	X

If the Town does nothing, the developer will be in violation of the zoning bylaw (at a minimum) because the affordable housing units can’t be provided. There is nothing that the developer can

do about it – only Town Meeting can make a change to the bylaw, and there is no non-zoning fix.

If the Town adopts a payment in lieu option, it should determine the calculation of the payment. The draft language is the same that is used elsewhere in the Zoning Bylaw already, in the Flexible Community Development section (Article XI).

- 1) Proposed language to change the zoning bylaw to remove the requirement for affordable units (210-166.A):

Dwelling Uses within the OSMUD District shall be limited to 940 new Dwelling Units constructed after May 5, 2008, plus 180 Dwelling Units in Senior Housing Developments constructed after May 4, 2015, provided, however, that the owner or owners of any such additional Dwelling Unit in Senior Housing Developments shall require, through deed restrictions, condominium documents, leases, rental agreements or other appropriate instruments, the form and adequacy of which has been approved by the Planning Board, that ~~no child under the age of 18 may be a resident in any such Dwelling Unit~~ **at least one resident of every Dwelling Unit be 55 years of age or older.** No more than 50 of the 1120 new Dwelling Units so constructed may be single-family dwellings, and the remainder shall be multi-family dwellings, including attached dwellings, garden apartments, units in mixed-use buildings and Senior Housing Developments.

- 2) Proposed language to allow a payment in lieu of providing the affordable units:

An applicant may contribute funds to the Town of Hopkinton Affordable Housing Trust Fund to be used for the development or creation of affordable housing in lieu of constructing and offering the units. For each affordable unit not constructed or provided, the fee-in-lieu of a unit shall be an amount equal to the purchase price of a three-bedroom home that is affordable to a qualified affordable housing unit purchaser, as contained in the Department of Housing and Community Development Local Initiative Program (LIP) guidelines regardless of what type of dwelling units are proposed, approved or constructed in the Development Project. Fees-in-lieu of units payments shall be made according to a schedule agreed upon by the Planning Board and the applicant.

- 3) Proposed language to remove affordable housing requirements:

Delete Section 210-167.C in its entirety.

~~In addition to the Affordable Housing requirements provided in Subsection A of this Section, to the extent that the Senior Housing Developments create a total number of Dwelling Units within the OSMUD District in excess of 940, those Senior Housing Developments shall require the provision of, in the aggregate, one Dwelling Unit of Affordable Housing for every 10 Dwelling Units in Senior Housing Developments, but not to exceed twenty (18) Dwelling Units of Affordable Housing in the aggregate. The additional Dwelling Units of~~

~~Affordable Housing required under this section may be provided anywhere within the OSMUD District.~~

And amend Section 210-167.A:

- A. Except as otherwise provided in the following paragraph of this Section, not fewer than sixty (60) Dwelling Units within the OSMUD District shall be Affordable Housing, which shall be located within one or more Development Projects containing, in the aggregate, not fewer than two hundred forty (240) Dwelling Units eligible for inclusion in the Massachusetts Department of Housing and Community Development's Subsidized Housing Inventory. ~~These requirements shall be in addition to the Affordable Housing requirements provided in Subsection C of this Section.~~

Notwithstanding the foregoing, if, prior to the issuance of a building permit for a Development Project that contains Affordable Housing, either (i) M.G.L. c. 40B, §§ 20 through 23 is no longer in effect, or (ii) the rules, regulations or guidelines of the Massachusetts Department of Housing and Community Development issued pursuant to M.G.L. c. 40B, §§ 20 through 23 no longer provide that all of the units in a rental development that contains at least 25% affordable housing units are eligible for inclusion on the Subsidized Housing Inventory, then not fewer than ninety-four (94) Dwelling Units within the OSMUD District shall be developed as Affordable Housing, ~~in addition to the Affordable Housing requirements provided in Subsection C of this Section.~~

10. OSMUD Overlay District, Live-In Managers at Assisted Living Facility – Public Hearing Feb. 25, 2019 at 7:30 PM – Sponsor: Planning Board

This change would address an issue raised by the owners of Fairview Estates, the retirement community on East Main Street, which is within Legacy Farms. When the facility was under construction, it was determined by the Town that the on-site apartments for live-in managers which are part of their model of care, would count toward the total number of dwelling units allowed in Legacy Farms if they were constructed to function as separate dwelling units.

Therefore, the two units were constructed without kitchens. The owners have been operating the facility for a few years, and it has been difficult to attract and retain the live-in managers because they do not have a full apartment in which to live. The apartment is their residence, and they are employees who are responsible for facility and resident care, and they live on-site.

The proposed language would exempt the units from the dwelling unit cap and would require that at least one occupant of the apartment is a full time employee of the facility, and it would limit the number of apartments to 2.

The tenant units do not count toward the overall dwelling unit cap, and this would not change.

A new paragraph would be added to Section 210-166.A as follows:

No on-site apartment which provides a permanent live-in residence for 24-hour on-site responsible staff of a Continuing Care Retirement Community or Assisted Living Facility shall be deemed a Dwelling Unit for the purposes of this Intensity of Use limitation, provided that such apartment is located within the Facility, one occupant of the apartment is a full-time employee of the Facility, and that there shall be no more than two such apartments per Community/Facility.

11. Self-Storage Facilities in the Industrial A District – Public Hearing Feb. 25, 2019 at 7:30 PM – Sponsor: Paul Mastroianni/Citizens Petition

The proposal would add “self-storage facilities” as a use by right in the Industrial A District, and adopt a parking requirement of 2 spaces per 10,000 square feet of gross floor area. The amendment request was reviewed by the Zoning Advisory Committee, which did not recommend the change to the Planning Board.

12. One-Year Growth Restriction – Public Hearing March 25, 2019 at 7:30 PM – Sponsor: Amy Ritterbusch/Citizens Petition

The proposal would impose a temporary cap on the construction of new dwelling units. It would allow for the issuance of 12 building permits for new dwellings before the bylaw automatically expires on 7/1/2020. No more than 2 building permits could be issued to any one applicant.

The proposed language states that the purposes of the bylaw are to promote orderly growth, phase growth so as not to strain the community’s ability to provide basic education, public facilities and services, to provide the town with information, time and capacity to incorporate community input into updated zoning regulations, and to preserve and enhance community character and value of property. The bylaw states that an updated growth bylaw proposal will be presented at the 2020 annual town meeting.

13. Subdivision, Garden Apartment & Village Housing Phasing – Public Hearing March 25, 2019 at 7:30 PM – Sponsor: Amy Ritterbusch/Citizens Petition

This proposal would impose a 3-year cap on the construction of new dwelling units within subdivisions, Garden Apartment and Village Housing developments. It would allow for the issuance of 10 building permits in any 12 month period within such developments, and would automatically expire on 7/1/2022.

The proposed language states that the purposes of the bylaw are:

- To ensure growth and development occur in accordance with the planning objectives of the town, in an orderly manner and at a rate that can be supported by town services;
- To provide the town with the opportunity to study the effect of growth on the infrastructure, finances, character and municipal services of the town and to plan for capital improvements;
- To ensure that the pace of residential development is related to the town’s ability to provide adequately for public safety, schools, road, municipal infrastructure and human services;
- To preserve and enhance the character of the community and its property values; and
- To allow departures from the strict application of the bylaw when appropriate to encourage those types of residential growth which address housing needs of specific population groups or which significantly reduce residential density. To that end, the bylaw exempts from the cap building permits that are on lots not created by a definitive subdivision plan, subdivision

lots approved by the Planning Board prior to the effective date of the bylaw, and dwelling units approved in comprehensive permits issued by the Board of Appeals.

14. Board of Selectmen/Select Board – Public Hearing March 25, 2019 at 7:30 PM – Sponsor: Amy Groves/Citizens Petition

This proposal would change all references in the Zoning Bylaw to “Board of Selectmen” and “Selectmen”, to “Select Board” and “Select Board Members”. A companion petition would make similar changes to the General Bylaws. The changes would accomplish the re-naming of the *Board of Selectmen* to *Select Board*.