



City Charter Section 9.06 Case #2021-00002

Alexandria Industrial Park Covenants

Application	General Data	
Request: Review whether support of dissolution of the Alexandria Industrial Park Covenants by the City of Alexandria for City-owned property, and the resulting change in use of that property, is consistent with the City of Alexandria Master Plan pursuant to Section 9.06 of the City Charter.	Planning Commission Hearing:	June 24, 2021
	City Council Hearing:	July 6, 2021 (For Information Only)
	Zone:	I - Industrial
Address: 731 South Pickett St	Small Area Plan(s):	Eisenhower West

Staff Reviewers:

Alfred Coleman, Deputy Director, General Services alfred.coleman@alexandriava.gov
Maya Contreras, Principal Planner, Planning & Zoning maya.contreras@alexandriava.gov

Staff Recommendation: Staff recommends that the Planning Commission **approve** this request, finding that the proposal is consistent with Section 9.06 of the City Charter of Alexandria, Virginia, and with the City's Master Plan.

PLANNING COMMISSION ACTION, JUNE 24, 2021: On a motion by Vice Chair McMahon, seconded by Commissioner Lyle, the Planning Commission voted to find the proposed dissolution of a private covenant agreement associated with a parcel owned by the City of Alexandria consistent with the City of Alexandria Master Plan pursuant to Section 9.06 of the City Charter. The motion carried on a vote of 7-0.



PROJECT LOCATION MAP

I. DISCUSSION

The City has received a request to support dissolution of the Alexandria Industrial Park Covenants, which impacts one City-owned parcel. Section 9.06 of the City's Charter requires that the Planning Commission review any acquisition or sale of public land. The Planning Commission is charged with ensuring that any such acquisition, sale or change is consistent with the City's Master Plan. In this instance, the City Attorney has determined that removal of the Covenant limitations results in a change that requires review.

Staff has reviewed the request and determined that dissolution of the Alexandria Industrial Park Covenants would be consistent with the Eisenhower West Small Area Plan. Support of the dissolution of the Covenants does not impact the City's ownership of the City-owned parcel and use of the 9.06 process would not result in the surplus or sale of the parcel

The City Manager and the City Council concurred with staff's recommendation. The City Council voted to agree to support the dissolution at the May 11, 2021, Legislative meeting. If the Planning Commission finds that the proposal is consistent with the City's Master Plan, staff will draft a memorandum for signature to the concerned parties reflecting the City's support of the dissolution of the Covenant.

II. CONSISTENCY WITH THE MASTER PLAN

Eisenhower West (2015)

The Eisenhower West Small Area Plan was adopted by Ordinance 4980 in December 2015., with this area reimagined as "Neighborhood #1 – Van Dorn Innovation District". It was anticipated to be primarily residential, with office, retail and mixed-use also permitted.

The Covenants as currently written restrict the associated properties to by-right uses as permitted in the City's I-1 Industrial Zone district, circa 1961. Therefore, uses anticipated in the SAP would not be permitted, including residential and PWR.

The SAP anticipated establishment of Production/Wholesale/Repair ("PWR") Uses. Such uses are defined on Page 32 of the SAP as "*a wide variety of businesses that are traditionally located in light-industrial or warehouse-type spaces... and include light industrial uses, spaces for start-up companies, technology companies, innovation and "maker" businesses... also includ[ing] pet services, catering/food services, sports facilities, and contractor offices.*"

III. BACKGROUND

The Alexandria Industrial Park Covenants are a set of private agreements that cover 17 tax parcels, generally located along South Pickett St, between Van Dorn and the Fairfax County border. The Covenants are dated September 1, 1961 and were recorded with the City on September 25, 1961. Among other things, the Covenants restrict the associated properties to by-right uses as permitted in the City's I-1 Industrial Zone district, as such

restrictions existed in the Zoning Ordinance on the date of recordation. See Covenants, Clause III, § B, attached.

The original term of the Covenants was 25 years from September 1, 1961, the Effective Date, and the Covenants automatically renew for subsequent 20-year periods. However, affected owners may “*release all or any part of the land so restricted*” from the Covenants or “*may change or modify*” the Covenants by recording a document in the land records at least five (5) years before the next renewal period, with 75% of ownership agreeing. An owner’s percentage interest is established based upon the number of square feet owned as compared to the total area restricted.

At present, three (3) entities control a majority of the fee-simple ownership subject to the Covenants. The City owns one parcel within the area, located at 731 S Pickett St. This parcel is 19,906 SF, which accounts for 0.97% of the total Covenant area. It is almost completely covered by an unnamed tributary to Backlick Run. Because of this, it is within the floodplain and the associated Resource Protection Area (RPA), and so has virtually no development potential.

There is a second parcel within the Covenant Area that the City will ultimately, own, located at 620 Burnside Place. This parcel is entirely within the Backlick Run RPA and Backlick Run floodplain and had been used as a parking lot. As part of DSUP#2018-0006, Public Storage, the applicant agreed to remove the paving, remediate the parcel and convey the land to the City. Staff has confirmed that the applicant will not be conveying the property to the City until later this year, so for purposes of the Covenant vote, Public Storage has the authority and does not affect the City’s percentage of ownership at this time.

The Eisenhower West Small Area Plan (SAP) was adopted by Ordinance 4980 in December 2015, with this area reimagined as “Neighborhood #1 – Van Dorn Innovation District”. It was anticipated to be primarily residential, with office, retail and mixed-use also permitted.

The Covenants as currently written restrict the associated properties to by-right uses as permitted in the City’s I-1 Industrial Zone district, circa 1961. Therefore, a number of uses anticipated in the SAP would not be permitted, including residential and PWR.

Based on the Effective Date, the Covenants will renew again on September 1, 2026. Therefore, any document intending to terminate the Covenants must be recorded on or before September 1, 2021.

IV. STAFF RECOMMENDATION

Staff recommends that the Planning Commission find that the proposed change is consistent with Section 9.06 of the City Charter of Alexandria, Virginia and with the City’s Master Plan, including specifically the Eisenhower West Small Area Plan.

ATTACHMENTS:

1. Covenants, Clause III, § B

P. 4, B. 39
9-27-61

BOOK 540 PAGE 373

HSB:let 782-61

THIS DECLARATION, made the 1st day of September, 1961, by ALEXANDRIA INDUSTRIAL PARK, INC., a corporation duly organized and existing under and by virtue of the laws of the State of Virginia, hereinafter called the Grantor, or Corporation.

W I T N E S S E T H:

WHEREAS, Grantor is the owner of the real property described in Clause 1 of this declaration, and is desirous of subjecting the real property described in Clause 1 to the conditions, covenants, restrictions, reservations and easements hereinafter set forth, each and all of which is and are for the benefit of said property and for each owner thereof, and shall enure to the benefit of and pass with said property, and each and every parcel thereof, and shall apply to and bind the successors in interest and any owner thereof.

NOW, THEREFORE, the said Alexandria Industrial Park, Inc. hereby declares that the real property described in and referred to in Clause 1 hereof, is and shall be, held, transferred, sold, conveyed and occupied subject to the conditions, covenants, restrictions, reservations and easements hereinafter set forth.

CLAUSE 1

Definition of Terms

"Building Site" shall mean any lot, or portion thereof, or two or more contiguous lots or portions thereof, or a parcel of land upon which a commercial or light industrial building or buildings and appurtenant structures may be erected in conformance with the requirements of these covenants.

"Corporation" or "Grantor" shall mean Alexandria Industrial Park, Inc., its successors and assigns, unless the context indicates otherwise.

"Improvements" shall mean and include a commercial or light industrial building or buildings, outbuildings appurtenant thereto, parking areas, loading areas, fences, masonry walls, hedges, lawns, mass planting and any structures of any type or kind located above ground.

"Building line or lines" shall mean the minimum distance which commercial or light industrial buildings and outbuildings or any structures of any type or kind located above ground shall be set back from the property or street lines, and reference is hereby made to the recorded plat of the subdivision on which

is located the real property hereby subjected to these covenants for the location of such building lines.

"Side building site line" shall mean the boundary or property line dividing two adjoining building sites.

Property Subject to this Declaration

The real property which is, and shall be, conveyed, transferred, occupied and sold subject to the conditions, covenants, restrictions, reservations and easements set forth herein is located in the City of Alexandria, State of Virginia, and is more particularly described as follows, to-wit:

All that portion of Parcel 3530-01-01, of the Subdivision known as SECTION ONE, ALEXANDRIA INDUSTRIAL PARK, as the same appears duly platted, dedicated and recorded among the land records of said City in Deed Book 515 at Page 187, located within lines 300 feet from and parallel to the South right of way line of South Pickett Street,

AND

All of Parcels 3541-01-01-01 and 3541-01-01-03, of a Resub-division of Parcel 3541-01-01-02 of the Subdivision known as SECTION ONE, ALEXANDRIA INDUSTRIAL PARK, as the same appears on a plat attached to a deed from William N. Cafritz and James E. Cafritz, joint tenants, to Alexandria Industrial Park, Inc., bearing even date herewith, and intended to be recorded among the land records of said City prior hereto.

CLAUSE II

General Purposes of Conditions

The real property described in Clause I hereof is subjected to the conditions, covenants, restrictions, reservations and easements hereby declared to insure proper use and appropriate development of each building site thereof; to protect the owners of building sites against such improper use of surrounding building sites as will depreciate the value of their property; to guard against the erection thereof of structures built of improper or unsuitable material; to insure adequate and reasonable development of said property; to encourage the erection of attractive improvements thereon, with appropriate locations thereof on building sites; to prevent haphazard and inharmonious

improvement of building sites; to secure and maintain proper set-backs from streets and adequate free spaces between structures; and in general to provide adequately for a high type and quality of improvement in said property.

CLAUSE III

General Restrictions

A. No noxious or offensive trade or activity shall be carried on, nor shall anything be done thereon which may be or become an annoyance or nuisance to the said Alexandria Industrial Park hereby restricted by reason of unsightliness or the excessive emission of odors, dust, fumes, smoke or noise.

B. Without otherwise limiting the provisions of Paragraph A of this Clause III, or of any of the other terms and conditions of these restrictions, the buildings or premises, except as otherwise provided in these covenants, may be used for any use permitted under Section 35-18, Article III of the Alexandria City Code of 1953, as the same now exists, entitled "I-1 Industrial Zone", sub-section (a), entitled "Uses Permitted".

C. These covenants shall and do hereby provide that no improvements as herein defined shall be erected, placed or altered on any building site in said development until the building or other improvement plans, specifications, and plot plan showing the location of such improvements on the particular building site have been submitted to and approved in writing as to conformity and harmony of external design with existing structures in the development, and as to location of the improvements on the building site, giving due regard to the anticipated use thereof as may affect adjoining structures, uses, and operation, and as to location of the improvements with respect to topography, grades and finished ground elevation, by Alexandria Industrial Park, Inc., unless and until such right has been expressly assigned, and then such right will pass to such assignee, provided, however, that the Grantor, its successors or assigns, shall not be liable in damages to anyone so submitting plans for approval or to any owner or owners of land covered by this instrument by reason of mistake in judgment, negligence or non-feasance of itself, its agents or employees, arising out of or in connection with the approval or disapproval, or failure to approve any such plans; likewise anyone so submitting plans to the Grantor

for approval, by the submitting of such plans and any owner by so acquiring title to any of the property covered hereby, agrees that he or it will not bring any action or suit to recover for any such damages against the Grantor. In the event the Grantor fails to approve or disapprove such design and location within thirty days after said plans and specifications have been submitted to it, this covenant will be deemed to have been fully complied with. If the construction or alteration of improvements or extension of trackage is begun in violation of the terms and conditions of this Paragraph C or without the written approval required in other paragraphs hereof and no suit to enjoin the erection, establishment or alteration of such improvements or extension of trackage has been commenced within sixty days of the beginning of such erection or change, this covenant will be deemed to have been fully complied with.

D. No structure or building shall be located closer than thirty feet to any street line where the width of the public street is greater than fifty-one feet. Where the width of the public street adjacent to any part of a lot or parcel is less than fifty-one feet, no structure or building shall be located closer than twenty-five feet to such a street line. In addition to the above requirements, no structure or building shall be located closer than fifteen feet to any side line or rear line of a lot or parcel.

E-1. Lawn and landscape areas shall be provided along all street lines and all side lot lines, except in the areas required for paved driveways running directly from the building areas to public streets and alleys or in the right of way of railroad trackage. However, each front yard shall have a minimum lawn and landscape area wherein the aggregate width of such lawn and landscape area, measured at right angles or radial to the street, will be at least twenty feet.

E-2. Each lot will have lawn and landscaped area adjacent to side lot lines for a depth of one hundred feet measured from adjacent street lines. Such lawns will have a minimum width of ten feet, at any point, on any side lot line and an average of thirty feet of width for the sum of both side yards; except however, where drainage ways or other permanent open spaces are located adjacent to the side lot lines of any lot or parcel, one-half of the width of such open space shall be used to calculate the width of the lawn area on such

adjacent lot or parcel. On a corner lot, the lawn along one street frontage may be used to determine this average, provided the front yard requirements in Paragraph E-1 above are complied with.

F. No loading dock, platform, loading area or building opening shall be so located or arranged that any part of such facilities will be located in any part of the thirty foot front yard area, and no truck, trailer or other vehicle will be allowed to occupy any part of such thirty foot front yard area at any time while using such facilities.

G. Power used in or developed or obtained from within areas subject to these restrictions for the operation of any establishment within the confines of the area subjected to these restrictions shall be confined to electrical or substantially equivalent type of power using only gas or liquid petroleum products in its production, or other products which do not produce excessive smoke, odors or fumes.

H. For each premises within the area subject to this covenant, adequate off-street automobile parking facilities shall be provided; such facilities shall be deemed adequate if they conform generally to the standards set forth in the applicable sections of the Zoning Ordinances of the City of Alexandria. However, Alexandria Industrial Park, Inc. reserves the right to modify such provision to conform with unusual uses of any given premises.

I. The storage of bulk commodities shall be confined to locations and screening thereof as approved in writing by Alexandria Industrial Park, Inc., but in no case shall the screening requirements be less than those required by the Zoning Ordinances of the City of Alexandria.

J. Railroad right of way easements may be granted by the Grantor on any property hereby restricted so long as it is the owner in fee simple of said property. The same right is reserved to any subsequent owner in fee simple of property covered by these covenants.

K. No billboards or advertising signs other than those identifying the name, business and product of the person or firm occupying the premises shall be permitted, except that a sign not to exceed ten feet by twenty feet in size offering the premises for sale or lease may be permitted. All signs in excess

of twelve square feet shall be approved for size, content, lighting and location by Alexandria Industrial Park, Inc., prior to installation of such sign or components thereof.

L. No fence, masonry wall, hedge or mass planting shall be permitted to extend beyond the building lines established herein, except upon approval in writing by Alexandria Industrial Park, Inc.

M. Fuel storage tanks as a part of the heating equipment of any establishment shall be permitted only if located under ground and in full compliance with the rules and regulations of any governmental agency or agencies having jurisdiction over such matters. Bulk storage of all liquids including gasoline or petroleum products except as noted above outside of buildings shall be permitted only upon written consent of Alexandria Industrial Park, Inc. in locations as approved by it in writing, and if same be underground, at a depth as approved by it in writing, and subject to compliance with rules and regulations of any governmental agency or agencies having jurisdiction over such matters.

N. Whenever the written approval of the Grantor is required in connection with any improvements to be installed, erected or altered, or is otherwise required by the provisions of these covenants, same shall be governed by the conditions set forth in Paragraph C, Clause III, hereof.

O. Whenever a lot or parcel of land on which a structure or structures has been erected in conformance with prior approval by Alexandria Industrial Park, Inc., as set forth herein, is divided into two or more ownerships, or when prior approval by Alexandria Industrial Park, Inc. has been granted in writing for the proposed division of a structure or structures located on a single parcel or lot, or when prior approval has been granted to construct structures on two or more adjoining parcels of land having a common party wall, each parcel of land so created on which a structure for a portion of the aforementioned structure is situated shall conform to the covenants set forth herein and the applicable ordinances of the City of Alexandria, then current, insofar as the requirements for off-street parking, loading and unloading and the provisions for side yards set forth in Paragraph E-2 herein shall be waived insofar as interior parcels within the original parcel or lot are concerned.

P. Each of the conditions, covenants, restrictions and reservations set forth above shall continue and be binding upon the Grantor and upon its successors and assigns and upon each of them and all parties and all persons claiming under them for a period of twenty-five years from the date hereof, and automatically be continued thereafter for successive periods of twenty years each; provided, however, that the owners of seventy-five per cent of the fee simple of the property subjected to these restrictive covenants, based on the number of square feet owned as compared to the total area restricted, may release all or any part of the land so restricted from any one or more of said restrictions or may change or modify any one or more of said restrictions at the end of this twenty-five year period or any successive twenty year period thereafter, by executing and acknowledging an appropriate agreement or agreements in writing for such purposes and filing the same for record in the Office of the Clerk of the Corporation Court of the City of Alexandria, Virginia, at least five years prior to the expiration of this first twenty-five year period or any successive twenty year period thereafter, provided, however, that within ten years from the date hereof, these covenants, or any part thereof, may be changed in whole or in part upon written approval of the owners of ninety per cent of the fee simple of the property subjected to these covenants, based on the number of square feet owned as compared to the total area restricted, such written instrument to be properly recorded in the Office of the Clerk of the Corporation Court of the City of Alexandria, Virginia, before same becomes binding and in force and effect.

Q. The covenants set forth herein shall run with the land and bind the present owner, its successors and assigns, and all parties claiming by, through or under it shall be taken to hold, agree and covenant with the owner of said building sites, its successors and assigns, and with each of them, to conform to and observe said restrictions as to the use of building sites, and the construction of improvements thereon, but no restrictions herein set forth, shall be personally binding on any corporation, person or persons, except in respect to breaches committed during its, his or their seisin of, or title to said land, and the Grantor or the owner or owners of any of the above land shall

have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of the restrictions above set forth, in addition to ordinary legal action for damages, and the failure of the Grantor and the owner of any other lot or lots or building sites hereby restricted to enforce any of the restrictions herein set forth at the time of its violation, shall in no event be deemed to be a waiver of the right to do so as to any subsequent violation. The violation of these restrictions shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value.

R. Invalidation of any one of these covenants or any part thereof by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, the said Alexandria Industrial Park, Inc., acting pursuant to authorization from its Board of Directors, has caused this instrument to be executed on its behalf and its corporate seal to be hereunto affixed and attested by its duly authorized officers, all on the date first above written.

ATTEST:

ALEXANDRIA INDUSTRIAL PARK, INC.

BY:

President

Secretary

STATE OF VIRGINIA }
~~INSTRUMENT XXXXXXXXXXXX~~ SS:
 CITY OF ALEXANDRIA }

City

I, the undersigned Notary Public in and for the ~~City~~ ~~State~~ aforesaid, whose commission as Notary expires on the 12th day of May, 1965, do hereby certify that WILLIAM N. CAFRITZ, whose name as President of ALEXANDRIA INDUSTRIAL PARK, INC. is signed to the foregoing writing bearing date on the 1st day of September, 1961, has acknowledged the same before me in the ~~City~~ ~~State~~ aforesaid as the act and deed of the said ALEXANDRIA INDUSTRIAL PARK, INC., and made oath before me in said ~~City~~ ~~State~~ that the said deed is signed and acknowledged by due authority.

GIVEN under my hand and seal this 1st day of September, 1961.

VIRGINIA:

In the Clerk's Office of the Corporation Court of the City of Alexandria on Sept. 25, 1961, this deed was received and with the annexed certificate, admitted to record at 10:15 A.M.

Testes

Clerk

Notary Public