



PLANNING BOARD

Report to Town Meeting

Article 31. Zoning – Marijuana Uses (Planning Board)

To see if the Town will amend Article 3, Use Regulations, and Article 12, Definitions, of the Zoning Bylaw, as follows:

~ SEE WARRANT ~

Recommendation

The Planning Board voted 6-0-2 (with two members abstaining and one member absent) to recommend that Town Meeting adopt Article 31, which adds a number of marijuana-related uses to the Use Chart and to the Definitions in the Zoning Bylaw. Article 31 also modifies, adds and/or clarifies standards and conditions that are appropriate to these uses and that are in accordance with new state regulations.

Background and Purpose

At the November 2016 state general election, Massachusetts voters voted to legalize the recreational use of marijuana, with retail sales to begin in 2018. The vote in Amherst was 74% in favor. Since then, the Massachusetts legislature has refined and supplemented the rules under which legalization will happen and the roles and responsibilities of the specific departments, agencies, and commissions that will have oversight jurisdiction at the state level. In addition the Cannabis Control Commission has recently issued rules and regulations associated with the sale of marijuana. The basic timeline for the new law, rules and regulations is as follows:

- August 2017: Cannabis Control Commission (CCC) was established and populated.
- March 15, 2018: CCC promulgated regulations that prospective recreational marijuana retailers will have to observe.
- April 1, 2018: Prospective recreational marijuana retailers may apply for a license from the state.
- July 1, 2018: Licensees may open for business.

An important feature of this landscape both in terms of the state's process and how it will play out in Amherst is that medical marijuana was legalized in Massachusetts several years ago and four companies have already applied to operate medical marijuana establishments in Amherst and are at various stages in the permitting process. One of them is very close to opening its establishment. The state recreational marijuana rules and regulations provide that medical marijuana entities may convert their applications for medical sales to recreational sales. Therefore Amherst potentially

already has as many as four recreational marijuana permits to consider, for those medical marijuana facilities that are already in the pipeline.

Recreational marijuana retailers may be for-profit enterprises. Until recently medical marijuana dispensaries were required to operate as non-profit entities. This rule has changed to allow medical marijuana dispensaries to convert to for-profit status.

Because Amherst's demographics and political sensibilities are favorable toward the use of marijuana for recreational purposes, it is very likely that Recreational Marijuana Retailers and other marijuana-related uses will be interested in locating here. The town has already received several inquiries about establishing marijuana establishments of various types in town.

The Cannabis Control Commission released its rules and regulations in March 2018, in the Code of Massachusetts Regulations, 935 CMR 500.000: ADULT USE OF MARIJUANA. This document introduces several new uses associated with the recreational marijuana business, and recommends or requires that certain conditions and standards be applied to these uses.

Mechanics

Last fall, at the November 2017 Special Town Meeting, changes were made to the Zoning Bylaw to accommodate the adult use of marijuana. Town Meeting approved creating a new use category, Section 3.363, Marijuana Uses, in the Use Chart. The two existing marijuana uses, Medical Marijuana Treatment Center (MMTC) and Off-Site Medical Marijuana Dispensary (OMMD) were moved out of Section 3.360, Medical Uses, and into this new use category. In addition, a new use subcategory, Recreational Marijuana Retailer, was created and the standards and conditions governing marijuana sales in general were revised to cover all three marijuana-related uses.

At that time Town Meeting members were told that it was likely that we would need to revisit and revise the Marijuana Uses section of the Zoning Bylaw once the new CCC regulations were published. That time has come and the changes that are being proposed now for this Annual Town Meeting are reflective of the new CCC regulations.

Town Meeting is being asked to do the following:

- 1) To adopt the state CCC's definition for Recreational Marijuana Retailer (RMR), which is slightly different from the definition adopted last fall by Town Meeting;
- 2) To add twelve new marijuana-related uses, most of which are described in 935 CMR 500.000, to the list of Definitions in Article 12 of the Zoning Bylaw;
- 3) To add these new marijuana-related uses to the Use Chart in Section 3.3 of the Zoning Bylaw, under Marijuana Uses;
- 4) To spell out how these new marijuana-related uses would be permitted or not permitted in the various zoning districts in town;
- 5) To adopt the CCC's stricter buffer for the distance between marijuana establishments and K through 12 schools;
- 6) To add, modify or clarify the standards and conditions associated with Marijuana Uses.

As always, any new commercial enterprise proposed for Amherst has to be fit into the zoning Use Chart somewhere. The new marijuana uses are proposed to be added to the Use Chart, under Section 3.363, Marijuana Uses, and the standards and conditions that apply to Marijuana Uses are being revised to accommodate these new uses and to be in accordance with the new CCC regulations.

The new marijuana uses are allowed in similar places in town as the existing marijuana uses, with the exception of research and testing and manufacturing, which would be allowed in the PRP (Professional Research Park) and R-VC (Residential Village Center) districts of town, where non-marijuana related uses of this sort (i.e. testing, research and light manufacturing) are already allowed.

All of the new uses are proposed to be by Special Permit from the Zoning Board of Appeals with the exception of Independent Marijuana Testing Laboratory, Marijuana Research Facility and Marijuana Product manufacturer and Marijuana Micro-business, which may be allowed by Site Plan Review from the Planning Board in certain business districts, since they do not include sales to the public.

Where marijuana uses could be located

Most Marijuana Uses would be allowed in the business zoning districts, General Business (B-G), Limited Business with a Research and Development Overlay (B-L/R&D), Commercial (COM), Office Park (OP), Limited Industrial (LI), by Special Permit from the ZBA.

Some of the Marijuana Uses that do not include sales to the public would be allowed in the Professional Research Park (PRP) district and the Residential Village Center (R-VC) district.

Some of the Marijuana Uses such as Independent Marijuana Testing Laboratory, Marijuana Product Manufacture and Micro-business and Marijuana Research Facility would be allowed by Site Plan Review since they do not involve sales to consumers.

Some of the Marijuana Uses, such as Marijuana Social Consumption Operation, Marijuana Social Consumption Operator & Marijuana Social Club, would not be allowed at all in any zoning district. These uses are listed in the Definitions section of the Bylaw, but are marked as “N” in all districts, meaning they are not allowed. The state has not allowed these uses in the current edition of the state regulations, although there is some indication that the state may allow such uses in the future. So the Planning Board felt that it was best to include these uses in the list of Definitions, but not to allow them in any district. Note that the town may wish to reconsider whether to allow these uses at a future date.

Marijuana Uses would not be allowed in any Residential zoning district, with the exception of the Residential Village Center (R-VC) district where Independent Testing Laboratory, Marijuana Product Manufacturer & Marijuana Micro-business and Marijuana Research Facility may be allowed by Special Permit from the ZBA.

Limiting the number of marijuana retailers

The article would clarify the cap on the total number of recreational marijuana retailers throughout town by making it clear that the cap is related to the “locations” and not to the “marijuana establishments” or companies doing business. In other words, one marijuana establishment could operate two separate locations, if it received a license from the state and the appropriate permit from the town.

The General Bylaw also contains a limitation of 8 on the number of marijuana establishment locations in town. Its wording is not in need of clarification.

Marijuana Use definitions

Finally, the article adds a definition for each of the following uses that is in accord with the definition in the CCC regulations, with the exception of the last three uses, which the state does not presently include. The town's reasons for including them in the Definitions are explained above under "*Where marijuana uses could be located*":

- Craft Marijuana Cultivator Cooperative
- Marijuana Cultivator
- Independent Marijuana Testing Laboratory
- Marijuana Product Manufacturer
- Marijuana Micro-business
- Marijuana Transporter
- Marijuana Research Facility
- Marijuana Social Consumption Operation
- Marijuana Social Consumption Operator
- Marijuana Social Club
- Marijuana Delivery-Only Retailer

Host Community Agreement

All marijuana establishments are required by state law and CCC regulations to sign a Host Community Agreement with the municipality in which they are located. The funds from the Host Community Agreement are designated to be used to compensate municipalities for costs incurred as a result of the controlling and enforcing regulations related to the new use and dealing with its impacts. The zoning amendment adds a condition that would make a violation of the Host Community Agreement a cause for revocation of a Special Permit or Site Plan Review approval.

Buffer from K-12 Schools

The CCC regulations include a recommendation for a 500' buffer zone between marijuana establishments and K through 12 schools, both public and private. The proposed zoning amendment includes this new, stricter buffer zone, which will be measured from property line to property line. This is different from the 300' buffer zone that was adopted last fall and that remains in place for other protected uses like residences and libraries, and is measured from the building being buffered to the nearest point where the marijuana business operates. The Attorney General's Office has advised the town that the 500' buffer zone from K – 12 schools may not be increased by the town.

Benefits

This amendment would give the Building Commissioner and the ZBA a set of guidelines to regulate businesses that propose to sell or otherwise deal with marijuana for non-medical (recreational) purposes. Not having these guidelines wouldn't mean that marijuana establishments couldn't locate in Amherst; it would mean that the places and ways they do start to operate in Amherst would become the de facto standards, and we'd end up having to tailor regulations around existing businesses rather than requiring businesses to conform to regulations we establish.

Risks

The proposed amendment includes uses that towns in Massachusetts do not have experience in regulating. We may find that we will need to amend the Zoning Bylaw again once the Town of Amherst and other towns in Massachusetts gain experience in dealing with these types of uses.

There are health and safety risks associated with the use of marijuana. There are also risks associated with more prevalent use of marijuana in that children, people under the age of 21 may come in contact with the substance.

Process

Members of the Select Board and the Planning Board and Town staff including the Town Manager and representatives from the Planning, Health, and Economic Development departments have been meeting regularly since early in 2017 to get a handle on how the state will implement the legalization of marijuana; what health, licensing, and operating regulations will be enacted; and how it will impact Amherst.

Last fall the full landscape was not known, and the decision was made to focus on retail sales and to put a retail use category in place.

Now that the CCC has issued its regulations we have a better understanding of how the state will regulate these uses the Planning Board, with the support and guidance of the internal marijuana working group, has determined that the Town of Amherst would do well to recognize and regulate these uses.

A public hearing on this article was held on March 21 and continued to April 4, at which time the Planning Board discussed the history, merits and mechanics of the article.

The Principal of Amherst Regional High School and a Regional School Committee member testified about their concerns about any marijuana establishment being located near a school, no matter what the buffer zone might be. They also spoke in opposition to allowing any marijuana establishment to operate in Downtown Amherst, because of the numbers of students who normally congregate there after school.

No other input was received from the general public.

The Board was in agreement about most of the provisions of the article, but some members expressed concern about including Uses and Definitions that are not currently included in the CCC regulations. Others had questions about the buffer zones.

After closing the public hearing, the Planning Board recommended that Town Meeting adopt the zoning amendment by a vote of 6-0-2 with two members abstaining and one member absent.