



PLANNING BOARD

Report to Town Meeting

**Article 13. Zoning – Medical Marijuana Uses
(Planning Board)**

To see if the Town will amend Section 3.360, Medical Uses, and Article 12, of the Zoning Bylaw, as follows:

~ SEE WARRANT ~

Recommendation

The Planning Board voted 7-0, with two members absent, to recommend that Town Meeting adopt Article 13.

Background

History – Article 13 is Amherst’s response to the November 6, 2012 passage of a state-wide ballot measure under which medical marijuana became legal in Massachusetts. Anticipating the need for local zoning, the Amherst Planning Department began working with other western Massachusetts communities and the Pioneer Valley Planning Commission in February 2013, to evaluate the meaning of the new law, and develop a model zoning bylaw which western Massachusetts communities could use as a basis for developing their own regulations. The Planning Board and its Zoning Subcommittee received regular reports on this work, which is ongoing.

In May, the Massachusetts Dept. of Public Health (DPH) published state regulations (105 CMR 725.000) to governing the conduct of medical marijuana cultivation, processing and dispensing. Interpretation of how those regulations enable or limit potential local zoning regulations has been ongoing since. The Planning Board’s Zoning Subcommittee began work on Amherst’s own medical marijuana zoning regulations following the 2013 Annual Town Meeting.

At the end of August, the state accepted applications for prospective operators of medical marijuana dispensaries, and 5 of the 6 applicants for Hampshire County passed that first phase hurdle. There is a second review in progress. At least one prospective operator is in discussions with staff about operating a facility in Amherst. Currently there is no highly logical zoning use category under which a medical; marijuana facility could be operated, but the Zoning Bylaw requires that any use be placed in the category “to which it is most similar” and regulated under that category. For

Amherst, without adopting new zoning regulations, a medical marijuana facility might have to be regulated as a retail use (the category under which pharmacies are regulated), which would be allowed by right through Site Plan Review approval in most mixed-use center districts. Article 13 creates new use categories tailored for this purpose and responding to the requirements of state law.

The Planning Board understands that there is a level of concern about these uses, but the Board strongly believes that these are medical facilities, no different from facilities like pharmacies which dispense controlled substances as medicine to alleviate pain and suffering. These facilities will serve a needed and legitimate medical purpose. In many ways, the stringent controls of the state regulations are a reflection of the slow cultural transition from responding to marijuana as a dangerous illegal substance to a growing understanding of marijuana as a substance with an ancient history of both medical and recreational use which can and should be regulated in a reasonable manner. While remaining within the very cautious framework established by state regulations, Article 13 accommodates and encourages medical marijuana uses in appropriate areas of the community.

The State Framework – All local zoning governing medical marijuana uses has to operate within the framework established by the Mass. DPH regulations. Those regulations establish the range of possibility for the operation of these facilities in several important ways:

- **Two Types** – The state regulations refer to all medical marijuana facilities as Registered Marijuana Dispensaries, but recognize that these facilities may be operated as two different kinds of uses: 1) facilities which cultivate and process medical marijuana and may also (but are not required to) dispense it on-site, and 2) facilities which primarily dispense (and may deliver) already-processed medical marijuana. This essentially creates two different kinds of land uses in need of local zoning regulation, and that is why Article 13 proposes to regulate them as two distinct use categories.
- **Must be Non-Profit** – The entities operating medical marijuana facilities must be non-profit entities, and must go through a rigorous state review before being certified to operate. Five (5) prospective applicants have applied to be eligible to operate facilities in Hampshire County.
- **How Many?** – For the first year, the state has authorized only 35 dispensaries (of whatever kind) state-wide. In order to disperse these facilities closer to potential patients, the state is requiring that each county have no fewer than one (1) facility, and no more than five (5).
- **Ownership & Control** – Any non-profit entity involved must own facilities which conduct all three elements of the process—cultivation, processing, and dispensing. This ensures both control over and responsibility for the entire process. Except during limited emergency circumstances spelled out in the state regulations, non-profit entities can only dispense medical marijuana that they themselves have cultivated and processed. There will be no ‘free market’ of cultivated medical marijuana in Massachusetts.

- **How Close?** – Within the requirement for there to be 1-5 dispensaries per county, there is no geographic limitation on the operation of the different elements of medical marijuana uses. As long as they are operated by the same non-profit entity, all of Massachusetts is available. The same non-profit entity which operates a cultivation and processing facility in Amherst could dispense the resulting processed medical marijuana at a facility it owns in Newton, or vice-versa.

Security – The cultivation, processing, and dispensing of medical marijuana can occur only in highly secured facilities. The levels of security required effectively rule out cultivation in open fields or greenhouses with a tall fence around them. Essentially, the cultivation and processing of medical marijuana will most often occur inside a secured building and will be conducted like an industrialized process. There will be no fields of tall green plants, waving in the sun. For reasons of security, none of the cultivation and processing will be visible.

- **Buffers** - Medical marijuana uses must be set at a minimum distance from any strictly residential uses or any building or facility which is used on a regular basis by children. State regulations establish a default buffer of 500 feet if a community does not set its own distance. Article 14 proposes a buffer of 300 feet for Amherst, which is the setback proposed in the regional model bylaw and is the same setback required by the state for drug treatment centers.

What Article 13 Would Do

Article 13 proposes to allow medical marijuana uses only in selected mixed-use or business zoning districts. They would be allowed only under a Special Permit.

Responding to State Regulations - Many of the provisions of Article 13 are a direct reflection of the state regulations. These include:

- Identification and current contact information for all those responsible for owning, controlling and operating the use, including all designated contact persons.
- Additional requirements, over and above the normal requirements for submission of applications, including the submission of plans showing all security measures
- Regulations governing the conduct of the uses:
 - No consumption of medical marijuana on the premises
 - 8 a.m. to 8 p.m. limit on hours of operation
 - Enclosure of the building and visual screening of operations
 - No outside storage
 - Ventilation keeping cultivation/processing chemicals and odors within the facility
 - Control of signs and marketing, on and off-site
 - Reporting and contact requirements
 - Required steps when ownership of a facility is transferred or the facility is discontinued.
- Findings required over and above the normal Special Permit findings.

What's Unique to Amherst – Here's how the regulations proposed under Article 14 have been tailored to Amherst:

- **Use Categories** – The use is divided into two categories: 1) Medical Marijuana Treatment Centers (MMTC)—the use category involving cultivation and processing, which may also include dispensing, and 2) Off-Site Medical Marijuana Dispensary (OMMD)—the use category which only involves dispensing.
- **Size** – Buildings for MMTCs (cultivation, processing, dispensing) are limited to 25,000 sq. ft. in gross floor area. This is in the mid-to-low range of the size for such facilities in other states. OMMDs (dispensaries only) are limited to 2,500 sq. ft. for that portion of a dispensary that is available to patients. This would exclude any secured, employee-only space like administrative offices and storage space.
- **Buffers** – As previously noted, Article 13 sets a 300 foot required buffer between medical marijuana uses and residence-only buildings, schools, or other buildings/facilities frequented on a regular basis by children. Article 13 also applies this buffer to any building owned or operated by an institution of higher learning. Article 13 deliberately does not require a buffer for mixed-use buildings which include residential units. Mixed-use buildings are traditionally located in busy centers filled with a range of fairly intensive uses like retail stores, restaurants, bars, offices, etc. Someone choosing to live in a mixed use building is choosing its setting, as well. Amherst is also seeking to encourage the development of mixed use buildings, as a more responsible way to develop our centers and provide needed new housing in the process.

All buffers are measured between buildings containing the uses in question, not between property lines. The Planning Board is proposing 300 foot buffers not only because of the precedent in state-mandated setbacks for drug treatment centers, but because an analysis of the zoning districts involved has shown that any larger buffer, including the 500 foot 'default' buffer in state law, would make it impossible to site a medical marijuana use in most of the districts in Amherst where the use would logically be permitted.

- **Co-Occurring with Other Uses** – The Mass. DPH regulations prohibit the operation of a medical marijuana use in the same building as a pharmacy or the offices of a doctor or anyone else authorized to prescribe medical marijuana. The state wants to avoid the establishment of medical marijuana “mills”, where people come to get prescriptions from medical professionals and then walk next door to pick up their medication. Article 14 repeats this prohibition.

There are, however, numerous other medically-related uses that would be of value to people suffering from the medical conditions that are relieved by medical marijuana. For that reason, Article 14 would allow the Special Permit Granting Authority to permit the operation of other “palliative and therapeutic care uses” such as acupuncture, therapeutic massage, etc., in the same building with an MMTC or an OMMD.

Public Hearing

The Planning Board held a public hearing on Article 13 on September 11 and 18. The Zoning Subcommittee presented its recommendation at both meetings and explained proposed revisions made between meetings.

During the public hearing, concern was expressed that the residents of mixed-use buildings were being treated differently than other residents in terms of being protected from the proximity of medical marijuana uses. Board members noted that mixed-use buildings were typically located near other intensive uses in centers and that applying buffers to mixed-use buildings would render many districts unusable for these uses. Further, the Board noted that Town Meeting has for some time been encouraging the development of mixed-use buildings in Amherst centers and it made no sense to unintentionally complicate and thereby discourage their development by establishing buffers for entirely different uses.

Some citizens recommended that the zoning districts and permitting paths chosen ensure that medical marijuana uses are accessible by public transit and can be located near concentrations of elderly housing, since elders represented a significant population of potential patients.

The Board discussed and accepted the revisions which had been proposed between meetings.

After further discussion, the Planning Board voted 7-0, with two members absent, to recommend that Town Meeting adopt Article 13.