Article 6. Zoning – Recreational Marijuana Retailer (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 7-0-2 (two members abstaining) to recommend that Town Meeting adopt Article 6, which creates and defines a use category for recreational marijuana retailers, delineates where they may be located within Amherst, and caps the total number of such retailers allowed in town.

Background and Purpose

At the November 2016 general election, Massachusetts voters voted to legalize the recreational use of marijuana, with retail sales beginning in 2018. The vote in Amherst was 74% in favor. Since then, the Massachusetts legislature has begun to refine and supplement 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. The basic timeline for rollout is as follows:

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

An important wrinkle in 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. The state recreational marijuana rules will require towns to allow these entities to convert their applications for medical sales to recreational sales – meaning Amherst potentially already has as many as four recreational marijuana permits to consider. As recreational marijuana retailers may be for-profit enterprises (whereas medical marijuana dispensaries were required to operate as nonprofits), and because Amherst’s demographics and political sensibilities are favorable toward the use of marijuana for recreational purposes, it is very
likely – approaching certainty – that others will be interested in locating here.

So legalization is coming, and though the state’s regulatory framework is not yet in place, by law it will be in place before we will have a chance to react to it at another scheduled Town Meeting. This article is not about whether there should be recreational marijuana retailers in town – that has already been decided – but about how the town should regulate them.

Any new commercial enterprise proposed for Amherst, such as a marijuana retailer, has to be fit into the zoning use chart somewhere, and in the absence of a recreational marijuana retailer use (which is the current condition) a logical solution would be to place it in the medical marijuana dispensary category and apply the regulations and standards and conditions that exist for that use. There are a couple of problems with that option, though: First, some of the medical marijuana standards and conditions just don’t make sense for recreational retail uses, so it’s not a great fit; and second, the state is going to regulate recreational use differently than it does medical use, so a make-do classification is vulnerable to appeal and potential loss of the town’s ability to regulate it as we might want to. Therefore, it’s a good idea to come up with specific zoning regulations for recreational marijuana retailing so that we have some control over how and where the businesses that we know are coming will be able to operate here.

**Mechanics**

The Planning Board’s approach has been to propose creation of a new recreational marijuana retailer use category and then adapt the existing medical marijuana zoning standards and conditions so that they broadly apply to both recreational marijuana retailers and the medical marijuana use categories.

**Revising standards and conditions**

First, the medical marijuana use categories would be taken out from under the “Medical Uses” heading in the use chart and put under a new “Marijuana Uses” heading, where both medical and recreational uses would be located. Then the existing standards and conditions would be revised to:

- insert references to recreational marijuana retailers (RMRs) where appropriate;
- remove references to “medical” when plain “marijuana” is sufficient;
- generalize references to state laws, application procedures, and licensing and regulatory bodies;
- eliminate extraneous or outdated language;
- clean up some clunky language that was introduced with the original medical marijuana amendment in 2013 that tried too hard to be cautious and comprehensive but which doesn’t actually add any value to the zoning bylaw, either because state law already prevails or because the intended effect is irrelevant with the legalization of marijuana for recreational purposes.

The article includes a “clean” version of the revised standards and conditions because it is structured as a wholesale deletion of the existing language and the addition of brand new language, post-revision. Appended to this report is an excerpt from the use chart that shows how the standards and conditions were revised, using **lineouts** and **bold italics**. These revisions do not make any substantive changes in where a marijuana establishment of any kind could locate in town (with one small exception); however, the Planning Board plans to make a slight amendment to the printed language when it moves the article at Town Meeting, which *would* have that effect.
Where marijuana uses could be located

The exception to the Planning Board’s approach in adapting existing medical marijuana regulations to recreational retailers is that recreational retail sales would not be allowed in the Office Park zone, whereas medical dispensaries are and would continue to be allowed there. Otherwise, recreational retailers would be allowed in each of the other zones that medical dispensaries are allowed: General Business (B-G), Limited Business (B-L), Village Center Business (B-VC), Commercial (COM), and Light Industrial (LI) – by special permit in all cases. Since other retail uses are not allowed in the Office Park zone, the Planning Board does not recommend introducing a marijuana retail use there.

The Planning Board’s amended motion would allow marijuana uses to take place in the same building as residential uses – i.e., in mixed-use buildings. The existing regulations allow a medical marijuana dispensary to be sited adjacent to a mixed-use building, but not in the same building, an example of the Planning Board’s arguably too-cautious approach to the issue of marijuana in 2013. This restriction further limits what is already a relatively small number of places that a marijuana retailer can locate, and since the zoning bylaw places no formal restriction on alcohol or cigarette retail sales taking place in a mixed-use building, the justification for retaining it does not seem strong.

Limiting the number of marijuana retailers

The article would cap the total number of recreational marijuana retailers throughout town at a level matching that voted in a General Bylaw amendment earlier in the same Town Meeting (the Planning Board’s motion will reflect the outcome of the vote on that article). The Attorney General has advised towns that wish to implement a cap to include that provision in both General and Zoning Bylaws. At this point, we don’t know how attractive the Amherst market will be nor how many retailers might be interested in setting up shop. Although presumably the market would eventually filter out the excess, it seems prudent to limit at least initially the potential for marijuana-related businesses to overwhelm the areas of town where they will be allowed and the capacity of the ZBA to process permits.

In any case, the ballot language and subsequent legislation – as well as the fact that permitted medical marijuana dispensaries will be allowed to convert to recreational marijuana retailers – prevents the town from limiting the total to less than four. The number proposed – eight – corresponds roughly to the number of mixed-use centers in Amherst, which are appropriate places for retail establishments to be, and provides room for Town Meeting to adjust that number downward if it wishes. However, the cap cannot be lowered below four without a town-wide referendum. On the other hand, it could be removed altogether.

Recreational marijuana retailer definition

Finally, the article adds a definition for recreational marijuana retailer. There are other kinds of recreational uses that this article does not cover – notably recreational marijuana cultivator or processor – but the Planning Board does not think those are likely to be of immediate concern for the town, and if necessary they can be fit into the existing medical marijuana treatment center use category, which includes cultivation and processing. It may be useful at a future Town Meeting to consider one or more new marijuana-related use categories and/or refinements of the regulations contained in this amendment.
Benefits

This amendment would give the Building Commissioner and the ZBA a set of guidelines to regulate businesses that propose to sell marijuana for non-medical (recreational) purposes. Not having these guidelines wouldn’t mean that marijuana retailers 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.

Extending the allowable siting of a marijuana retailer to mixed-use buildings would increase the options for such businesses to find a suitable location in town, and give the developers of mixed-use buildings another possible tenant, contributing to a diverse and interesting streetscape.

Risks

The proposed amendment was written without the full state regulatory framework in place. It may turn out that we have proposed more liberal rules than are necessary or advisable, and that eight (or more) marijuana retailers will enter the permitting pipeline before we have a chance to adjust the zoning.

The cap being proposed may be too high – or too low – and we may end up with more (or fewer) marijuana retailers than we want or than may be appropriate.

It may be inappropriate to locate residential units and marijuana sellers in the same building, though there are no restrictions against residential units and cigarette or alcohol retailers being located in the same building, and under existing zoning marijuana sales can already take place in buildings directly adjacent to mixed-use buildings.

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 this year 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. Because the full landscape will not be known until the spring, the decision was made to focus on retail sales and further to put a retail use category in place. Rather than attempt to guess what the state might do with regard to retail-specific regulations, and because members of the ZSC did not want to treat retail marijuana sales much differently than most other kinds of consumer products, we decided to simply adapt the medical standards and conditions so that retailers would be able to fit under them. The ZSC’s work was informed closely by feedback from the citizen-staff working group, and it was decided to also bring forward an article that would allow Town Meeting to impose a moratorium on the permitting of retailers until more information is known.

A public hearing on this article was held on September 19, at which time the Planning Board discussed the history, merits, and mechanics of the article. Additional background and commentary was provided by a member of the Select Board and by the Economic Development Director. No input was received by the general public. The Board was in agreement about most of the provisions of the article, but some members expressed concern about the number of retail establishments that
might end up being allowed in town, citing issues of health and safety, the town’s image, and potential consequences to the overall business climate of the town. It was pointed out that Amherst will disproportionately experience the impacts of the consumption of marijuana whether or not marijuana is available for purchase in town, because of the presence of UMass and the colleges. It may therefore be argued that the town has an affirmative interest in allowing retailers to locate in Amherst so that a local option sales tax surcharge and Host Community Agreement payments can be collected to offset some or all of the potential expenses associated with these impacts.

After closing the public hearing, the Planning Board recommended that Town Meeting adopt the parts of the article that would adapt existing medical marijuana regulations to cover recreational marijuana retailers and allow retail sales of marijuana in mixed-use buildings by a 7-0-0 vote (two members were absent), and the part that would cap the total number of recreational marijuana retailers in town at eight by a 5-2-0 vote. Those members voting in the minority preferred a lower cap rather than no cap.

After feedback from town counsel that resulted in a reformatting of the warrant language for this article (without any change in its effect), the Planning Board re-voted its recommendation at its October 4 meeting, this time recommending the entire article by a 7-0-2 vote with two abstentions. The members abstaining were not present at the original public hearing and chose not to participate in the vote on the Board’s recommendation.
This Chart shows the differences between proposed ARTICLE 6 and Existing Bylaw language.

**Marijuana Uses**

<table>
<thead>
<tr>
<th>Bylaw Number</th>
<th>Land Use Classifications</th>
<th>Standards &amp; Conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.363</td>
<td><strong>Medical Marijuana Treatment Center (MMTC)</strong></td>
<td>N N N N N SP SP* SP N SP SP SP N N</td>
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<tr>
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<td>*Allowed only in those B-L Districts which co-occur with the R&amp;D overlay district.</td>
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<tr>
<td></td>
<td><strong>Off-Site Medical Marijuana Dispensary (OMMD)</strong></td>
<td>N N N N N SP SP SP N SP SP SP N N</td>
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<tr>
<td></td>
<td><strong>Recreational Marijuana Retailer (RMR)</strong></td>
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### Standards and Conditions (applies to MMTCs, OMMDs, and RMRs):

1. Purposes. It is recognized that the nature of the substance cultivated, processed, and/or sold by medical marijuana treatment centers and off-site medical marijuana dispensaries and recreational marijuana retailers may have objectionable operational characteristics and should be located in such a way as to ensure the health, safety, and general well-being of the public as well as patients seeking treatment and customers seeking to purchase marijuana for recreational use. The specific and separate regulation of Registered Marijuana Dispensaries (RMDs) as Medical Marijuana Treatment Centers (MMTCs) and Off-site Medical Marijuana Dispensaries (OMMDs) facilities and Recreational Marijuana Retailers (RMRs) is necessary to advance these purposes and ensure that such facilities are not located within close proximity of minors and do not become concentrated in any one area within the Town of Amherst.

2. Application Requirements. Above and beyond the standard application requirements for Special Permits, an application for a use under this section shall include the following:
   a. The name and address of each owner of the facility/operation;
   b. Copies of all required RMD registrations, documentation demonstrating appropriate application status under state law, or registration or license, issued to the applicant by the Commonwealth of Massachusetts and any of its agencies for the facility;
   c. Evidence that the Applicant has site control and the right to use the site for a facility in the form of a deed or valid purchase and sale agreement, or, in the case of a lease, a notarized statement from the property owner and a copy of the lease agreement;
   d. A notarized statement signed by the organization’s Chief Executive Officer and corporate attorney disclosing all of its designated representatives, including officers and directors, shareholders, partners, members, managers, directors, officers, or other similarly-situated individuals and entities and their addresses. If any of the above are entities rather than persons, the Applicant must disclose the identity of all such responsible individual persons;
   e. In addition to what is normally required in a site plan pursuant to Section 11.2, details showing all exterior proposed security measures for the premises, including lighting, fencing, gates and alarms, etc. ensuring the safety of employees and patrons and to protect the premises from theft or other criminal activity.
   f. A Management Plan as required under the Rules and Regulations of the Special Permit Granting Authority, including a description of all activities to occur on site, including all provisions for the delivery of medical marijuana, marijuana and related products to OMMDs and RMRs or off-site direct delivery to patients;
   g. A traffic impact report as set forth in the Rules and Regulations of the Special Permit Granting Authority shall be developed and submitted with the application.

3. Regulations. The following regulations shall apply to uses under this section:
   a. Use Regulations.
2. J) No marijuana shall be smoked, eaten or otherwise consumed or ingested on the premises.

1. J) The hours of operation shall be set by the Special Permit Granting Authority, but in no event shall a facility be open to the public, nor shall any sale or other distribution of marijuana occur upon the premises or via delivery from the premises, between the hours of 8:00 p.m. and 8:00 a.m.

b. Locational and Physical Requirements

1) All aspects of a MMTC or OMMD or RMR relative to the acquisition, cultivation, possession, processing, sales, distribution, dispensing, or administration of marijuana, products containing marijuana, related supplies, or educational materials must take place at a fixed location within a fully enclosed building and shall not be visible from the exterior of the business.

2) No outside storage of marijuana, related supplies, or educational materials is permitted.

3) No MMTC shall have a gross floor area in excess of 25,000 square feet.

4) No OMMD or RMR facility shall have a gross floor area accessible to patients or customers which is in excess of 2,500 square feet, except as may be permitted under 3., e., 1), c). Space in an OMMD facility or Recreational Marijuana Retailer which is dedicated to administration or operations and is accessible only to employees of the facility shall not be included in this limitation.

5) Ventilation – all facilities shall be ventilated in such a manner that:
   a) No pesticides, insecticides or other chemicals or products used in the cultivation or processing are dispersed into the outside atmosphere; and
   b) No odor from marijuana or its processing can be detected by a person with an unimpaired and otherwise normal sense of smell at the exterior of the MMTC or OMMD facility or RMR or at any adjoining use or property.

6) A number of signs determined to be sufficient by the Special Permit Granting Authority shall be displayed on the exterior of the facility’s entrance in plain sight of clients stating that “Registration Card Issued by the MA Department of Public Health Required” in text two inches in height.

c. Reporting Requirements

1) All Special Permit holders for uses under this section shall provide the Police Department, Fire Department, Building Commissioner, Board of Health, and Special Permit Granting Authority with the names, phone numbers, mailing and email addresses of all management staff and key-holders, including a minimum of two (2) operators or managers of the facilities identified as designated contact persons to whom notice should be made if there are operating problems associated with any use under this section. All such contact information shall be updated as needed to keep it current and accurate.

2) The designated contact persons shall notify the Police Department, Fire Department, Building Commissioner, Board of Health, and Special Permit Granting Authority in writing:
   a) A minimum of thirty (30) days prior to any change in ownership or management of a facility regulated under this section, and
   b) A minimum of twelve (12) hours following a violation, a potential violation, or any attempts to violate any applicable law, or any criminal, potential criminal, or attempted criminal activities at a facility regulated under this section.

3) The designated representatives of permitted facilities shall file an annual report with the Special Permit Granting Authority and shall appear before said Authority to present the report no later than January 31st of each year, providing a copy of all current applicable state licenses for the owners and facilities, to demonstrate continued compliance with the conditions of the Special Permit.

4) The designated contact persons shall be required to respond by phone or email within twenty-four (24) hours of the time of contact and inquiry regarding operation of the facility by a town official to the telephone number or email address provided as the contact for the business.

d. Transfer/Discontinuance of Use

1) A Special Permit granted under this Section is non-transferable and shall have a term limited to the duration of the applicant’s ownership or leasing of the premises as a MMTC or OMMD or RMR.

2) Any MMTC or OMMD or RMR permitted under this section shall be required to remove all material, plants equipment and other paraphernalia in compliance with 105 CMR 725.105 (J), (O) prior to expiration of its DPH Registration or immediately following revocation or voiding of its DPH Registration or following expiration, revocation or voiding of its license issued by the Cannabis Control Commission.

e. Prohibitions

1) The building(s) in which the proposed uses occur shall not be located:
   a) Within three hundred (300) feet of any a building:
      i. containing another MMTC or OMMD or RMR, except for facilities that are owned or leased by the same operator; or
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ii. in which is located a public or private elementary school, middle school, secondary school, preparatory school, licensed daycare center, or any other facility in which children commonly congregate in an organized ongoing formal basis; or

iii. owned by and operated as part of the campus of any private or public institution of higher learning, or

iv. housing a public library; or

v. containing any residential use, excepting a mixed-use building under Section 3.325 of the Zoning Bylaw.

b) Within, on the same lot as, or on a lot immediately adjacent to a licensed pharmacy; or

c) Within buildings that contain any pharmacy, medical doctor offices or the offices of any other professional practitioner authorized to prescribe the use of medical marijuana.

An exception shall be that the Special Permit Granting Authority may grant permission for palliative and therapeutic care uses in the same building in which an MMTC or OMMD or RMR is operated; or

d) Within a building containing residential units, including transient housing or group housing such as hotels, motels, lodging houses, or dormitories.

2) The proposed use shall not display:

   a) Off-premises signage; or

   b) On-premises signage or other marketing on the exterior of the building or in any manner visible from a public way, which, in the opinion of the Special Permit Granting Authority, may promote or encourage the use of marijuana or other drugs by minors.

   a) The use or abuse of marijuana or other drugs for non-medical purposes; or

   b) The use or abuse of marijuana or other drugs by minors; or

   c) The active marketing of marijuana or other drugs for medicinal purposes.

   An exception shall be that the Special Permit Granting Authority shall not prohibit signage which is required by the MA Department of Public Health.

4. Findings. In addition to the findings required under Section 10.38, and meeting the provisions of Articles 7, 8, and all other applicable sections of this Bylaw, the Special Permit Granting Authority shall find that the proposed use:

   a. Meets a demonstrated need.

   b. Meets all of the permitting requirements of all applicable agencies within the Commonwealth of Massachusetts and will as proposed be in compliance with all applicable state laws and regulations.

   b. Will provide copies of registrations and licenses and a copy of a signed Host Agreement with the Town of Amherst, in accordance with M.G.L. Chapter 94G and subsequent regulations to the Building Commissioner prior to the Issuance of a Certificate of Occupancy.

   c. Is designed to minimize any adverse visual or economic impacts on abutters and other parties in interest.

   d. Provides a secure indoor waiting area for patients.

   e. Provides an adequate pick-up/drop-off area.

   f. Provides adequate security measures to ensure that no individual participant will pose a direct threat to the health or safety of other individuals, and that the storage and/or location of cultivation of marijuana is adequately secured in enclosed, locked facilities.

   g. f. Adequately addresses issues of vehicular and pedestrian traffic, circulation, parking and queuing, especially during peak periods at the facility, and adequately mitigates the impacts of vehicular and pedestrian traffic on neighboring uses.

5. Limitation on the number of RMRs - No more than eight (8) Recreational Marijuana Retailers shall be permitted to be located in the Town of Amherst.
Potential Recreational Marijuana Retailer Locations in Amherst

Legend:
- Potential Recreational Parcel
- Potential Mixed-use Building
- Likely Medical Establishment

North Amherst
5 parcels

University Drive
10 parcels

Downtown
12 parcels
1 mixed-use building

Pomeroy Village
3 parcels

College Street
2 parcels

Atkins Corner
1 parcel

33 parcels and 1 mixed-use building
Potential Recreational Marijuana Retailer Locations – North Amherst Detail

Legend:
- Potential Recreational Parcel
- Potential Mixed-use Building
- Likely Medical Establishment
Potential Recreational Marijuana Retailer Locations – University Drive Detail

Legend:
- Potential Recreational Parcel
- Potential Mixed-use Building
- Likely Medical Establishment
Potential Recreational Marijuana Retailer Locations – Downtown Detail

Legend:
- Red: Potential Recreational Parcel
- Blue: Potential Mixed-use Building
- Purple: Likely Medical Establishment
Potential Recreational Marijuana Retailer Locations – College Street Detail

Legend:
- Red: Potential Recreational Parcel
- Blue: Potential Mixed-use Building
- Purple: Likely Medical Establishment
Potential Recreational Marijuana Retailer Locations – Pomeroy Village Detail

Legend:
- Red: Potential Recreational Parcel
- Blue: Potential Mixed-use Building
- Purple: Likely Medical Establishment
Potential Recreational Marijuana Retailer Locations – Atkins Corner Detail