



Town of Arlington
ARLINGTON REDEVELOPMENT BOARD

Report to:
Special Town Meeting, Wednesday, December 5, 2018

Voted as amended on Monday, November 19, 2018

Andrew Bunnell, Chair, (Term through 1/31/2020)
Andrew West, Vice Chair, (Term through 6/30/2020)
Eugene Benson (Term through 1/31/2020)
Kin Lau (Term through 1/31/2019)
David Watson (Term through 9/22/2023)

Jennifer Raitt, Secretary Ex-Officio

Introduction and Overview

The Arlington Redevelopment Board (ARB) is the Town's Planning Board, under M.G.L. Chapter 41 § 81. There are five members of the Board. Four are appointed by the Town Manager and the fifth is a gubernatorial designee appointed by the Massachusetts Department of Housing and Community Development. The Board serves as the Town's special permit granting authority for projects which require an Environmental Design Review (EDR) as identified in the Zoning Bylaw. The ARB is also the Town's Urban Renewal Authority under M.G.L. Chapter 121; with Town Meeting approval, the Board may hold property to improve and rehabilitate them to meet community development goals.

When any warrant article that proposes to amend the "Town of Arlington Zoning Bylaw" is put to a vote before Town Meeting, the ARB is required to issue a report with recommendations to Town Meeting. Appearing below is a warrant article that proposes an amendment to the Zoning Bylaw. The intent of the article is briefly explained, followed by the ARB's vote which constitutes its recommendation to Town Meeting. The recommendations of the ARB, and not the original warrant articles, are the actual motions that will be considered by the Town Meeting. Changes to the Zoning Bylaw text are shown beneath the recommended vote. Additions to the original Zoning Bylaw text appear as underlined text, while any deletions to the original Zoning Bylaw text appear as ~~strike through~~ text.

The ARB advertisement for Special Town Meeting (STM) appeared in the *Arlington Advocate* on October 18, 2018 and October 25, 2018. The Public Hearing was opened on Monday, November 5, 2018 and continued to November 7. At the November 7th meeting, the ARB voted unanimously on the recommended bylaw language for STM as shown below. This report as amended was unanimously approved at the November 19th ARB meeting.

Special Town Meeting, Warrant Article 2

ARTICLE 2

ZONING BYLAW AMENDMENT/ MEDICAL AND RECREATIONAL MARIJUANA ESTABLISHMENTS

To see if the Town will vote to amend the Zoning Bylaw to address Medical and Recreational Marijuana Establishments by: amending existing SECTION 2 DEFINITIONS "Medical Marijuana Treatment Center" and "Recreational Marijuana Establishments"; amending SECTION 3.4 ENVIRONMENTAL DESIGN REVIEW to include Recreational Marijuana Establishments as required to obtain an Environmental Design Review Special Permit; amending SECTION 5 DISTRICT REGULATIONS to create new use categories for Marijuana Establishments and amend existing use categories for Medical Marijuana Treatment Centers and to allow Recreational Marijuana Establishments and Medical Marijuana Treatment Centers in Business and Industrial zones; amending SECTION 8 SPECIAL REGULATIONS to remove the Temporary Moratorium on Recreational Marijuana Establishments and create a new section on marijuana uses; or take any action related thereto.

(Inserted by the Redevelopment Board)

Discussion:

STM Warrant Article 2 is an amendment to the Zoning Bylaw to include the definitions, use, and appropriate requirements for recreational marijuana establishments prior to the end of the moratorium on December 31, 2018. The Article also addresses medical marijuana treatment centers to address inconsistencies with state regulations in the Zoning Bylaw.

The Town of Arlington convened a Marijuana Study Committee comprised of town officials, including the Town Manager, the Director of Planning and Community Development, the Director of Health and Human Services, the Director of Inspectional Services, the Police Chief, Town Counsel, the chair of the Select Board, and the chair of the Redevelopment Board, as well as five residents. The Public Health Director and a Police Captain also participated in the meetings. The Marijuana Study Committee met twice on October 10 and October 17, 2018, and will continue to meet as necessary.

The Study Committee reviewed how other Massachusetts municipalities zoned for adult-use recreational marijuana establishments. In general, other communities across the Commonwealth were applying consistent elements in the wide variety of regulations. Those elements include creating new use categories for marijuana establishments ranging from retailers to product manufacturers, requiring a special permit for such uses, adopting the 500-foot buffer from public and private schools serving students in grades kindergarten through twelve, establishing a cap on the number of retailers, applying density limitations to retailers, and considering applying a buffer to other land uses.

The amendments include a range of definitions to address the new adult-use recreational marijuana establishments. These establishments fall into three general categories: marijuana retailers, marijuana research and testing facilities, and marijuana production facilities. By comparing where similar non-marijuana uses are allowed, the new marijuana uses were allowed in B2A, B3, B4, and B5, as well as the Industrial District, with the exception of marijuana production facilities which are only allowed in the B4 zoning district and the Industrial District. The zoning districts where medical marijuana treatment centers (MMTC) are allowed, currently B3 and B5, were expanded to include the B2A, B4, and Industrial District. An analysis of the buffer zones suggested that the MMTCs would not have viable options for locating if the zoning continued to limit the use to B3 and B5. The Study Committee wanted to minimize concentration of these establishments and ensure broad distribution throughout town. In keeping with our existing zoning districts, the Study Committee did not recommend zoning for these establishments in the B1 (Neighborhood Office) or B2 (Neighborhood Business) zones which are primarily for one- and two-family dwellings and small retail and service establishments.

The Study Committee recommended the allowed maximum 500-foot buffer around pre-existing public or private school providing education in kindergarten or any of grades one through 12, a 200-foot buffer around public libraries, and a 300-foot buffer around Town-owned playgrounds and recreational facilities. Applying these buffers without allowing an expansion of the zoning districts where marijuana uses could locate, would effectively cause

the use to be prohibited in the town. Therefore, the ARB supported the expansion of zoning districts from what was adopted in support of MMTCs as the use, both recreational and medical, would be located along major corridors, in commercial centers, and accessible by public transportation.

The Study Committee also wished to develop a consistent set of rules for all establishments. All recreational marijuana establishments and medical marijuana treatment centers must obtain an Environmental Design Review Special Permit from the Redevelopment Board. Additionally, a new Special Permit is required for a previously-permitted medical marijuana treatment center if the establishment converts to a marijuana retailer or a co-located establishment. The ARB is well-equipped to handle this Special Permit review, and supported the requirement as recommended by the Study Committee.

Focusing on the public-facing, consumer-oriented marijuana establishments, namely marijuana retailers, the proposed amendments include a cap on the number of marijuana retailers and a density limitation between such establishments. State regulations allow municipalities to impose a cap on the number of marijuana retailers to not less than 20% of the number of licenses for off-premises alcohol consumption (package stores). Application of this cap effectively limits the number of marijuana retailers to 2 licenses¹ which was supported by the Study Committee. The ARB's vote raises the maximum number to three (3) which allows for a modest number of retailers and decouples the number of licenses for marijuana retailers from the number of licenses for package stores. Additionally, a marijuana retailer may not be located within 2,000 feet of another marijuana retailer. This essentially limits Arlington Center to one marijuana retailer avoiding a saturation of the market in any one area of Arlington.

Other limitations are imposed on marijuana production facilities. Production facilities can be a marijuana cultivator, marijuana product manufacturer, or a marijuana microbusiness. Production facilities are limited to 5,000 square feet in gross floor area, and if the marijuana products that are cultivated and produced for non-medical use, the production facility must be licensed as a Tier 1 marijuana microbusiness meaning that the marijuana canopy contained within the building may not be more than 5,000 square feet.

Five people spoke at the public hearings, including three members of the Study Committee. Committee members commented on the process and proposal. The Committee had active discussions, grappling with issues of density and location, but ultimately agreeing to a proposal that they believed would meet community standards. One community member expressed concern that the cap would prevent these types of establishments from growing. Another community member expressed concern that retail establishments would be allowed in the Industrial Zone. While the district "discourages... retail business uses, or uses which

¹ Following the vote at Special Town Meeting in May 2018, the Town of Arlington is awaiting passage of special legislation to raise the number of licenses for off-premises alcohol consumption (package stores) to 6 licenses.

would otherwise interfere with the intent of [the] Bylaw,” (5-35, Arlington Zoning Bylaw) it does not forbid retail businesses, nor does it forbid retail within mixed-use buildings.

VOTED (5-0) that the Zoning Bylaw be and hereby is amended by:

Amend Section 2, DEFINITIONS, to add the following general definitions related to marijuana:

Marijuana: Also known as Cannabis, means all parts of any plant of the genus Cannabis not excepted below and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; clones of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol as defined in M.G.L. c. 94G, § 1; provided that cannabis shall not include: (a) the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil, or cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination; (b) hemp; or (c) the weight of any other ingredient combined with cannabis or marijuana to prepare topical or oral administrations, food, drink or other products.

Marijuana Products: Marijuana and its products unless otherwise indicated. These include products that have been manufactured and contain marijuana or an extract from marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

Marijuana Use: A Marijuana Production Facility (See “Marijuana Cultivator”, “Marijuana Product Manufacturer”, “Marijuana Microbusiness”, and “Marijuana Production Facility”), Marijuana Research and Testing Facility (See “Independent Testing Laboratory” and “Marijuana Research Facility”), Marijuana Retailer, or Medical Marijuana Treatment Center as defined in this Zoning Bylaw.

Amend Section 2, DEFINITIONS, to strike the existing definition for Recreational Marijuana Establishment and replace with the definition for Marijuana Establishment:

~~Recreational Marijuana Establishment: A non-medical marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business.~~

Marijuana Establishment: A Marijuana Cultivator, Craft Marijuana Cooperative, Marijuana Product Manufacturer, Marijuana Retailer, Independent Testing Laboratory, Marijuana Research Facility, or any other type of licensed marijuana-related business except not a Medical Marijuana Treatment Center, also known as a Registered Marijuana Dispensary or RMD.

Amend Section 2, DEFINITIONS, to add the following definitions related to marijuana establishments:

Marijuana Cultivator: An entity licensed to cultivate, process and package marijuana, and to transfer marijuana to other Marijuana Establishments, but not to consumers. A Craft Marijuana Cooperative is a type of Marijuana Cultivator, pursuant to 935 CMR 500.00.

Marijuana Product Manufacturer: An entity licensed to obtain, manufacture, process and package marijuana products and to transfer these products to other Marijuana Establishments, but not to consumers.

Marijuana Retailer: An entity licensed to purchase and transport Marijuana Products from Marijuana Establishments and to sell or otherwise transfer this product to Marijuana Establishments and to consumers. Retailers are prohibited from off-site delivery of Marijuana Products to consumers; and from offering Marijuana Products for the purposes of on-site social consumption on the premises of a Marijuana Establishment.

Independent Testing Laboratory: A laboratory that is licensed by the Cannabis Control Commission (the Commission) and is: (a) accredited to the International Organization for Standardization 17025 (ISO/IEC 17025: 2017) by a third-party accrediting body that is a signatory to the International Laboratory Accreditation Accrediting Cooperation mutual recognition arrangement or that is otherwise approved by the Commission; (b) independent financially from any Medical Marijuana Treatment Center (also known as a Registered Marijuana Dispensary or RMD), Marijuana Establishment or licensee for which it conducts a test; and (c) qualified to test marijuana in compliance with 935 CMR 500.160 and M.G.L. c. 94C, § 34.

Marijuana Research Facility: A Marijuana Research Facility is an academic institution, non-profit corporation or domestic corporation or entity authorized to do business in the Commonwealth of Massachusetts. Such Marijuana Research Facility may cultivate, purchase or otherwise acquire marijuana for the purpose of conducting research regarding Marijuana and Marijuana Products. Any research involving humans must be authorized by an Institutional Review Board. A Marijuana Research Facility may not sell marijuana it has cultivated.

Marijuana Microbusiness: A co-located Marijuana Establishment that can be either a Tier 1 Marijuana Cultivator or Product Manufacturer or both, pursuant to 935 CMR 500.00, in compliance with the operating procedures for each license. A Microbusiness that is a Marijuana Product Manufacturer may purchase no more than 2,000 pounds of marijuana per year from other Marijuana Establishments, pursuant 935 CMR 500.00.

Marijuana Production Facility: An establishment authorized to cultivate, manufacture, process, or package marijuana products, in accordance with applicable state laws and regulations. A Marijuana Production Facility may be licensed to operate as a Marijuana Cultivator or Marijuana Product Manufacturer, or registered as a Medical Marijuana Treatment Center (also known as a Registered Marijuana Dispensary or RMD), or a co-located medical and non-medical establishment , in accordance with applicable state laws and regulations.

Amend Section 2, DEFINITIONS, to revise the existing definition for Medical Marijuana Treatment Center:

Medical Marijuana Treatment Center: An ~~not-for-profit~~ establishment registered with the Commonwealth pursuant to 105 CMR 725.100, also known as a “Registered Marijuana Dispensary” (RMD) that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, offers for sale, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers for medical purposes in accordance with applicable state laws and regulations. Unless otherwise specified, Medical Marijuana Treatment Center refers to the site(s) of dispensing, cultivation, and preparation of cannabis or marijuana for medical use.

Amend SECTION 3.4 ENVIRONMENTAL DESIGN REVIEW, to include Marijuana Establishments as required to obtain an Environmental Design Review Special Permit:

Section 3.4.2. Applicability

The following uses shall also be acted upon by the Arlington Redevelopment Board in accordance with the environmental design review procedures and standards of this Section 3.4:

- (1) Any use permitted as a right or by special permit in the Planned Unit Development District and the Multi-Use District.
- (2) Parking in the Open Space District.
- (3) Medical Marijuana Treatment Center.
- (4) Marijuana Establishment.

Amend SECTION 5 DISTRICT REGULATIONS, to create new use categories for Marijuana Establishments and amend existing use categories for Medical Marijuana Treatment Centers:

Amend table in Section 5.5.3:

Class of Use	B1	B2	B2A	B3	B4	B5
Retail						
<u>Marijuana Retailer</u>			<u>SP</u>	<u>SP</u>	<u>SP</u>	<u>SP</u>
Research, Laboratory, Related Uses						
<u>Marijuana Research and Testing Facility</u>			<u>SP</u>	<u>SP</u>	<u>SP</u>	<u>SP</u>
Light Industry						
<u>Marijuana Production Facility</u>					<u>SP</u>	
Other Principal Uses						
Medical Marijuana Treatment Center			<u>SP</u>	SP	<u>SP</u>	SP

Amend table in Section 5.6.3:

Class of Use	MU	PUD	I	T	OS
Retail					
<u>Marijuana Retailer</u>			<u>SP</u>		
Research, Laboratory, Related Uses					
<u>Marijuana Research and Testing Facility</u>			<u>SP</u>		
Light Industry					
<u>Marijuana Production Facility</u>			<u>SP</u>		
Other Principal Uses					
<u>Medical Marijuana Treatment Center</u>			<u>SP</u>		

Amend SECTION 8, Special Regulations, to delete temporary moratorium and replace with standards for marijuana uses

~~8.3 TEMPORARY MORATORIUM ON RECREATIONAL MARIJUANA ESTABLISHMENTS~~

~~8.3.1 Purpose~~

~~By vote at the State election on November 8, 2016, the voters of the Commonwealth approved a law regulating the cultivation, processing, distribution, possession and use of marijuana for recreational purposes (G.L. c. 94G, "Regulation of the Use and Distribution of Marijuana Not Medically Prescribed"). Effective December 15, 2016, the law allowed certain personal use and possession of marijuana, and further requires the Cannabis Control Commission to issue regulations regarding the licensing of commercial marijuana activities on or before March 15, 2018, and subsequently, to accept license applications for commercial operations beginning on April 1, 2018. The Cannabis Control Commission adopted regulations on or about March 6, 2018; transmitted to the Secretary of State on March 9, 2018. Non-medical Marijuana Establishments as defined by G.L. c. 94 are not otherwise contemplated or addressed under the present Zoning Bylaw. The regulations to be promulgated by the Cannabis Control Commission provide important guidance on aspects of local regulation of Recreational Marijuana Establishments, as well as details on how the Town may further restrict commercial sales of recreational marijuana by local ballot questions, but were not finalized in sufficient advance of the Annual Town Meeting. Moreover, the regulation of recreational marijuana raises novel legal, planning and public safety issues, potentially necessitating time to study and consider the regulation of Recreational Marijuana Establishments and address such issues, as well as to address the potential impact of the aforementioned State regulations on local zoning; and to undertake a planning process fully informed by the new Cannabis Control Commission regulations to consider amending the Zoning Bylaw regarding regulation of Recreational Marijuana~~

~~Establishments. The Town intends to continue its temporary moratorium on the use of land and structures in the Town for Recreational Marijuana Establishments so as to allow the Town sufficient time to engage in a planning process to address the effects of such structures and uses in the Town and to adopt provisions of the Zoning Bylaw in a manner consistent with sound land use planning goals and objectives now that the parameters of retail marijuana have been fully and finally defined by the Commission.~~

8.3.2 ——— Temporary Moratorium

~~For the reasons set forth above and notwithstanding any other provision of the Zoning Bylaw to the contrary, the Town hereby adopts a temporary moratorium on the use of land or structures for Recreational Marijuana Establishments. The moratorium shall be in effect through December 31, 2018, or until such time as the Town adopts Zoning Bylaw amendments that regulate Recreational Marijuana Establishments, whichever occurs earlier. During the moratorium period, the Town shall undertake a planning process to address the potential impacts of non-medical recreational marijuana in the Town, consider the Cannabis Control Commission regulations regarding Recreational Marijuana Establishments and related uses, and shall consider adopting new Zoning Bylaws in response to these new issues.~~

8.3.3 ——— Severability

~~The provisions of this by law are severable. If any provision, paragraph, sentence, or clause of this bylaw or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this bylaw.~~

8.3. Standards for Marijuana Uses

For all marijuana uses, the following standards apply:

A. General

- (1) Marijuana Establishments and Medical Marijuana Treatment Centers shall be allowed only after the granting of an Environmental Design Review Special Permit by the Arlington Redevelopment Board, subject to the requirements of Section 3.4 and this Section.
- (2) Marijuana Retailers and Marijuana Production Facilities, as defined in Section 2, may be established to provide Marijuana Products for medical use, non-medical use, or both, in accordance with applicable state laws and regulations.
- (3) Marijuana Establishments and Medical Marijuana Treatment Centers shall be located only in a permanent building and not within any mobile facility. All

sales, cultivation, manufacturing, and other related activities shall be conducted within the building, except in cases where home deliveries are authorized pursuant to applicable state and local regulations.

- (4) Marijuana Production Facilities shall not be greater than 5,000 square feet in gross floor area, and shall be licensed as a Marijuana Microbusiness if Marijuana Products are cultivated or produced for non-medical use.
- (5) A Marijuana Retailer or Marijuana Production Facility that has previously received an Environmental Design Review Special Permit from the Arlington Redevelopment Board for a Medical Marijuana Treatment Center shall be required to amend its previously issued Special Permit to authorize the conversion to or co-location of a Marijuana Establishment for the non-medical use of marijuana.

B. Location

- (1) Pursuant to 935 CMR 500.110, Marijuana Establishments shall not be permitted within 500 feet of a pre-existing public or private school providing education in kindergarten or any of grades one through 12. This standard also applies to Medical Marijuana Treatment Centers not already permitted by the date of this bylaw.
- (2) Marijuana Establishments and Medical Marijuana Treatment Centers, not already permitted by the date of this bylaw, shall not be located within 300 feet of Town-owned playgrounds and recreational facilities and 200 feet of public libraries, unless a finding of the Arlington Redevelopment Board determines that the location, based on site-specific factors, or if the Applicant demonstrates, to the satisfaction of the Arlington Redevelopment Board, that proximity to the aforementioned facilities will not be detrimental based upon criteria established in 3.3.3. and 3.3.4.
- (3) A Marijuana Retailer shall not be permitted within 2,000 feet of another Marijuana Retailer; A Medical Marijuana Treatment Center shall not be permitted within 2,000 feet of another Medical Marijuana Treatment Center.

C. Cap on the number of Special Permits for Marijuana Retailers

- (1) The Arlington Redevelopment Board shall not grant a special permit if doing so would result in the total number of Marijuana Retailer licenses to exceed a maximum of three.

-- End of Report --