

Planning Board Proposal – Ban on Marijuana Establishments – September 27, 2020

The Planning Board has made a preliminary decision to recommend a ban on all types of marijuana establishments in Carlisle. This decision applies to the siting of establishments in town. Such a ban would not prevent residents from personally consuming marijuana, or from growing a limited number of marijuana plants for personal use, as allowed by state law.

The Planning Board seeks comment from residents. Please send us an email at planning@carlislema.gov or attend one of our meetings to provide your views. Later in the fall, after providing an opportunity for resident feedback, the Planning Board will make a final decision and proceed to draft a bylaw and warrant article for Spring 2021 Town Meeting.

Frequently Asked Questions about the Planning Board’s Proposed Marijuana Ban

What types of Marijuana Establishments did the Planning Board consider?

The Planning Board considered the eight types of marijuana establishments allowed under state law, including transporter, cultivator, craft cooperative, independent testing laboratory, standards testing laboratory, product manufacturer, marijuana retailer, and microbusiness. The Planning Board devoted the greatest amount of consideration to marijuana retailers and cultivators (both regular and craft cooperative cultivators). Retailers, unique among the types of establishments, allow for a town-imposed sales tax. Regular marijuana cultivators and craft cooperative cultivators could be viewed as being aligned with the town’s rural nature and support for agriculture. Because these three types of marijuana establishments seemed the most likely to provide benefits or to fit into Carlisle’s existing character, we spent the most time discussing these three types of establishments.

Why are you recommending a ban?

The Planning Board has carefully considered possible locations for marijuana establishments and determined that, due to our existing land use patterns and zoning, there are no appropriate locations. Because there are no appropriate locations, we are recommending a ban on marijuana establishments for our town.

Carlisle has three types of existing zones: residential (1 acre minimum in town center; 2 acres elsewhere), several scattered business districts in the town center, and three business districts located along Bedford Road. With respect to these zones, the Planning Board considered feasibility, the possible benefits from a marijuana establishment, and possible negative impacts to neighbors and to the town. Each area will be discussed in turn.

The Center Business District

First, the Planning Board does not recommend allowing marijuana establishments in the Center Business District. The Planning Board discussed the possibility of allowing a marijuana retailer and/or a marijuana laboratory in the town center, devoting the most attention to the possibility of a marijuana retailer, as this type of business would allow the Town to collect the 3% sales tax. Upon consideration of the possible benefits, including the 3% sales tax, weighed against the possible costs or negative impacts, the Planning Board has determined to recommend banning marijuana establishments in the town center.

First, several of the town center business district locations are within 500 feet of the Carlisle Public School. Other business district locations are close to other places children congregate, such as Fern's Country Store and the Gleason Library. Although the state marijuana statute establishes a 500-foot buffer zone from schools, the town could vary that distance, or do away with a buffer zone completely. However, the Planning Board agrees with the public policy behind the 500 foot buffer zone and accordingly, believes that there are sound reasons for prohibiting marijuana establishments from locating near the Carlisle school, Gleason Library and other popular locations in the town center.

We recognize that residents have voiced the opinion that Fern's Country Store sells alcohol, and that alcohol and marijuana are in many respects equivalent. In response, the Planning Board notes that it does not express an opinion regarding the health effects of alcohol versus marijuana. The Planning Board also notes that the safety concerns arising from marijuana and alcohol sales may not be equivalent. A legal market for marijuana is still relatively new, and there still may exist a black market for marijuana. Marijuana remains illegal under federal law. Marijuana products, in the form of vapes and/or candy-like products, may be more readily disguised and attractive to children. Accordingly, the perceived risks to public and child safety from marijuana establishments are not at present time equivalent to those for alcohol sales.

Other possible impacts from a marijuana establishment in town center include increased traffic and the need for increased parking. We recognize that these impacts are difficult to assess without knowing the size and range of operations of any potential establishment.

Finally, many of the business district areas in the town center are small, irregularly shaped and comprise only part of a property, with the other portions of the property being zoned residential. For these reasons, it is likely not practical to develop a new business within the confines of many of the existing business districts. To really attract a new business, Carlisle would likely need to rezone additional adjacent areas and increase the size of the business districts. We could end up with zoning that allows for marijuana establishments in theory in the Center Business District, while no actual lot is suitable for such development.

We have posted a zoning map to our website that shows the outlines of the business districts in the town center.

The Bedford Road Business Districts

The partial lots along Bedford Road are also likely not suitable for development as marijuana establishments. Like the business districts in the town center, the Bedford Road business districts are small and several of them comprise only a portion of the property on which they are situated. These business districts appear to have been designated based on historical uses for business establishments that were not perceived as inconsistent with the surrounding residential neighborhoods. One business district is now in residential use with a recently constructed house on it. Another use in that district, the Kimball's ice cream stand, is subject to a Conservation Restriction that would likely prohibit siting a marijuana establishment there. The other business areas are fully developed with an office building and an auto body shop, a workshop, and another office building.

In response to the question, why not allow marijuana establishments on these small business lots, on the chance that someone would find it feasible to locate their business there, the Planning Board does

not recommend allowing additional uses for these districts that are inconsistent with the limitations of the sites, including small lot sizes relative to parking requirements and the surrounding residential uses.

Similar to the town center business districts, locating a marijuana establishment along Bedford Road might increase traffic congestion and would likely require additional parking.

Carlisle's Residential Zones

The vast majority of Carlisle's non-restricted and open space land is zoned residential and most of it is developed with single-family homes. The Planning Board does not believe it would be consistent with this residential zoning to allow retailers or laboratories in residential areas and accordingly, did not consider this course of action. However, the Planning Board did seriously consider allowing marijuana cultivators and craft cultivators to locate in residential areas. As part of this discussion, the Planning Board also considered whether cultivators could be limited to parcels of land larger than five acres.

On the one hand, the Planning Board recognizes that agriculture is an important part of Carlisle's history and current identity, and some consider marijuana cultivation as a form of agriculture. On the other hand, the current methods of cultivating marijuana bear closer resemblance to an industrial activity than to traditional agriculture. At present, marijuana is not grown outdoors in Massachusetts. Rather, it is grown indoors in warehouse type structures. These structures use generators, mechanical ventilation, and lots of water, and they can generate odors. The town would likely not benefit from a growing facility through increased taxes or otherwise. Upon consideration of these potential impacts upon residential neighborhoods, the Planning Board does not recommend allowing commercial marijuana cultivation in residential zones.

Why not create a Marijuana Overlay Zone?

Apart from the three zones discussed above, the Town could create a so-called marijuana overlay district. In effect, we would draw lines around a particular area of town and decide to allow marijuana establishments within this newly drawn area, in addition to preserving the existing allowed uses. The Planning Board does not believe there is an area of town, distinct from other areas, that would be a suitable marijuana overlay location. We encourage any resident who believes there is such a suitable district to please email us and provide your thoughts.

Could the Town earn revenue from a Marijuana Establishment?

Under state law, the Town could impose a 3% sales tax on the revenues of a marijuana retailer. The Town would not earn any significant increased revenue from any of the other types of establishments.

State law also provides for the Town to assess a community impact payment on any marijuana establishment that locates here. However, this payment is limited to compensating the Town for identifiable costs it incurs due to the establishment, such as for police overtime. The community impact payment is not a means for the town to earn new net revenue or to profit from a marijuana establishment.

What about property tax revenue? Wouldn't we get increased property taxes from a marijuana establishment?

The Town would probably not collect increased property taxes from a marijuana establishment, no matter how profitable it might become. The Town is required to use a residential method of property valuation that looks to the value of the land and building; this method does not capture the revenues and profits of the business. Because most marijuana establishments currently are housed in low-value warehouse types of buildings, it is unlikely that the value per square foot for such a building would approach the value of residential construction.

If a resident were to construct a barn or similar growing facility on their residential property, in addition to their home, that barn would be taxed as an improvement and could result in a modest additional amount of tax revenue. Further, the town is entitled to tax business equipment as personal property, and therefore equipment such as growing lights in a marijuana business could be taxed.

There is a risk that allowing marijuana establishments in residential neighborhoods would negatively affect property valuations and thus town tax receipts. No other towns in the metropolitan Boston area with comparable residential real estate markets, income levels, or property values have allowed marijuana establishments into their residential areas, so there are no case studies to look to.

What are the other benefits of allowing Marijuana Establishments?

Except for retail stores, there are no benefits to the Town. As noted above, the Town could earn a 3% sales tax based on the sales of a marijuana retailer.

However, allowing marijuana establishments might provide benefits to the individuals and landowners who wish to engage in these activities. Individuals and landowners, unlike the Town, might be able to earn revenues and profits from marijuana establishments. In addition, residents who wish to purchase marijuana products could do so in a convenient location, if a retail store were to open in town.

What are the costs or disadvantages of allowing Marijuana Establishments?

There are potential impacts to neighbors, abutters and to the town. It is impossible to know exactly how great these impacts would be, until the precise size, location and operations of a marijuana establishment are known for certain. Accordingly, the discussion of possible costs or disadvantages should be viewed as an assessment of the town's tolerance for the risk of negative impacts.

Marijuana growers overwhelmingly conduct their operations in indoor growing facilities. Most of the current examples are large and unattractive warehouse style buildings with outdoor ventilation shafts and generators. Current examples of these facilities in other towns generate odors. They are prolific users of water, and protecting our drinking water supply has always been of paramount importance to Carlisle. These facilities might generate increased traffic and a need for parking; how significant the impact of increased traffic and parking is partially dependent on the location of the establishment.

What steps has Carlisle previously taken to regulate Marijuana?

In the 2016 statewide referendum vote, Carlisle residents voted 1720 to 1556 (52.5%) in favor of legalizing marijuana. Thereafter, at the 2017 Town Meeting, Carlisle enacted a temporary moratorium on the establishment of marijuana businesses in town. This moratorium lasted from 5/02/2017 to 12/31/2018.

In 2018, Carlisle Town Meeting voted in favor of a third moratorium, extending the term of the 2017 temporary ban from 12/31/18 to 6/30/19 . However, the Attorney General's office did not allow this extension to go into effect, viewing it as inconsistent with the provisions of the state marijuana law. By the time of this third moratorium vote, the state Cannabis Control Commission had promulgated regulations, thus removing what had been a source of uncertainty for towns considering whether to allow establishments. Given that this uncertainty had been removed, Carlisle (and other similarly situated towns) were required to follow the procedures in the state law before banning marijuana establishments, including holding a ballot box vote.

At spring 2019 Annual Town Meeting, voters defeated two proposed bylaws sponsored by the Planning Board regarding marijuana establishments. One was a total ban on all types of marijuana establishments. Although a majority voted in favor of the ban, it failed to garner the necessary two-thirds approval to enact a Zoning Bylaw change. The other proposed bylaw would also have banned marijuana establishments, except it would have allowed growers and craft cooperatives in the Bedford Road business districts. This bylaw also garnered a majority at Town Meeting, but it too did not achieve the necessary two-thirds approval. Both bylaws passed at the subsequent Town (ballot) election, with 550 voters in favor of the total ban, with 310 opposed, and 115 blank votes. The ballot box vote for the partial ban was 529 in favor, 301 opposed and 145 blanks.

Is it necessary to do anything? Why not just leave things as they are?

Although it is far from assured that, in the absence of regulation, a marijuana establishment would attempt to locate here, or that existing local zoning would necessarily permit all establishments in all locations, the Planning Board nonetheless recommends adopting a bylaw to regulate this land use. In the absence of a definitive regulation, uncertainty would exist. Such uncertainty could potentially allow an unscrupulous entity seeking to locate a marijuana establishment here to exploit the uncertainty and strengthen their bargaining position vis-à-vis the Town. An argument could be raised that the Town's current zoning is too restrictive to actually allow an establishment, and that this violates state law because the town did not go through the required procedures to enact a ban, thus handing an additional legal argument to an operator seeking to take advantage of the lack of clarity. Further, over time, certainty as to permitted uses is beneficial for long-term planning, including by the Town, as well as by individuals considering the purchase of real estate. On the flip side, having an uncertain legal climate is also likely not an incentive for reputable businesses that might considering locating here. Thus, there is no logical reason or benefit for the Town to allow uncertainty to exist.

If the total ban on marijuana establishments proposed by the Planning Board does not pass Town Meeting, the Planning Board will need to continue its work to craft a bylaw acceptable to a two-thirds majority of Town Meeting voters, and the uncertainty will continue until that time.

Finally, the state-mandated requirement to enter into a host community agreement between an applicant and the Town for marijuana establishments is not a substitute for clear zoning regulations. The Board of Selectmen could not arbitrarily refuse to enter into a host community agreement. In the absence of standards set forth ahead of time, the Board of Selectmen would be left to address potential applications on a case-by-case basis. Because they would not have pre-existing community standards in the form of zoning to refer to, the BOS's job would be very difficult. Further, the areas covered by the host community agreement would not be equivalent to the areas covered by zoning regulations.

