



## TOWN OF GREAT BARRINGTON MASSACHUSETTS

### PLANNING BOARD

#### **Report of the Planning Board to the June 7, 2021 Annual Town Meeting Regarding Proposed Zoning Bylaw Amendments**

This report is provided to Town Meeting in accordance with MGL Ch. 40A, sec. 5. After finalizing its draft zoning amendment during public meetings, the Planning Board transmitted its proposed article to the Selectboard on February 4, 2021. The Selectboard referred this article to the Planning Board to hold the required Public Hearing. In addition, two new citizen petition zoning articles, and the three zoning articles from the adjourned September 15, 2020 Special Town Meeting, were heard by the Planning Board. The required public hearings were duly noticed and advertised, and were convened on March 25, 2021 and April 8, 2021. After the hearing process, the Board made recommendations on each of the proposed zoning articles, as summarized below.

**Article 24: Downtown Mixed Use B-3 District.** If voted, this Article will update the B-3 zone, which was adopted in 2007 and is now out of date. While well intentioned and aspirational in nature, the B-3 zone has not served its primary purposes, which included stimulation of development at two large, abandoned sites – the former Searles-Bryant school and the Log Homes property – both on Bridge Street. The bylaw, however, is a complicated set of design controls, open space and affordable housing bonus provisions, and onerous parking requirements, all wrapped into a complicated special permit process. The B-3 zone also included several lots on Church and School Street, none of which is large enough to lend itself to the sort of transformative development that the B-3 was designed to encourage; unfortunately, the B-3 could be used in a way to demolish small existing buildings in order to build new.

This proposed update specifies the types of developments that can occur as of right, eliminates the complicated density bonuses and affordable housing requirements, which have never been used, but retains site plan review controls for new development.

The Planning Board recommends that Town Meeting approve this proposal.

**Article 25: Amend Section 7.18, Marijuana Establishments.** This article is proposed by Citizen Petition. The Planning Board notes that this article is a slightly revised version of the article which was Article 28 of the September 2020 special town meeting.

If voted, this article would make changes to the location requirements and physical requirements of marijuana establishments. First, while the current zoning bylaw and state law require marijuana establishments have a buffer distance from preexisting K-12 schools, the proposal would increase the types of uses from which marijuana establishments must be buffered to also include child care facilities, preschools and daycare centers, and facilities where children may commonly congregate (such as libraries, parks and playgrounds), and places of worship. It would also increase the buffer distance from 200 feet to

500 feet, while leaving in place the possibility that the Selectboard may waive the distance requirement via Special Permit. Second, the proposal would prohibit any marijuana establishment from a Residential District; currently only cultivation may be permitted, by Special Permit, and only on parcels 5 acres or greater in R2 and R4 zones. Third, the proposal adds requirements that govern possible nuisance, hazard, odor, noise, and light impacts on adjacent properties, and increases outdoor cultivation setbacks from 50 feet to 200 feet from any property line. Finally, the proposal prohibits outdoor home cultivation from within 50 feet of any property line, which effectively bans home cultivation from most residential lots in town.

The Planning Board believes the proposed 500-foot buffer requirements would rule out marijuana retailers in the downtown area, where several are already operating, and that this is akin to banning new retailers, despite the fact that Town Meeting in 2020 opposed placing a limit on the number of these establishments. The Board noted that state law explicitly allows home cultivation for personal use, but this proposal would effectively ban cultivation on lots that are 100 feet wide or less. The Board has noted that available farmland lies mostly in the R2 and R4 zones, yet this proposal would ban marijuana establishments in these areas. The town does not impose such restrictive requirements on other agricultural uses.

For these reasons, the Planning Board opposes the proposal. The Planning Board does not recommend Town Meeting approval of this article.

**Article 26: Special Permits.** This article is proposed by Citizen Petition. The article appears to ask Town Meeting to limit so-called unsubstantiated opinion when weighing the criteria by which Special Permits are reviewed, and asks that the Selectboard direct a review of criteria. The article does not contain any proposed language for how the existing Special Permit criteria should be revised and provides no new criteria to be included. For that reason the proposal is problematic.

The Planning Board believes the petition asks the Board to ignore experts in the field of development and to favor the opinions of abutters. The Board also noted that while the article is specific to the Planning Board's review of Special Permits, both the Selectboard and the Zoning Board of Appeals follow the same criteria. Changing the criteria for one grant authority, but not the others, is questionable.

For these reasons, the Planning Board opposes the proposal. The Planning Board does not recommend Town Meeting approval of this article.

***ARTICLES FROM THE ADJOURNED SESSION OF THE SEPTEMBER 15, 2020 SPECIAL TOWN MEETING:***

**Article 26: Amend Section 9.11, Mixed Use Transitional Zone (MXD) and the Zoning Map.** This article is proposed by Citizen Petition.

The Planning Board notes that the petition was not accompanied by a map illustrating the proposed changes, but understands that the amendment, if voted, would re-map approximately 59 parcels within the MXD district into an R3 district. The Planning Board believes this proposal would dramatically alter the Zoning Map in a way that is not in keeping with the intent of the MXD or the Master Plan. Nor would this proposed R3 district, which would include multiple commercial and mixed-uses, be consistent with the residential character prevailing in other R3 districts in Town.

The Town Meeting in May 2016 supported the Planning Board's recommendation to rezone this general area away from old general businesses (B2) designation to mixed use (MXD), because the old zoning allowed for substantial commercial development and parking lots in a zone that is now, and has been

historically, a mixed use area. In fact, the Planning Board's 2016 report to the Town Meeting stated that the MXD would "bring most nonconforming lots and structures into conformance and encourage development to reflect the existing scale and setback patterns," and that the amendment was "proposed pursuant to the recommendations of the 2013 Master Plan to update the zoning to preserve and enhance the mix of residential and retail uses, and to reflect the context of the existing built fabric. This area is characterized by a mix of residential and commercial uses, often in structures predating zoning, on small lots, with many structures close to the front lot line."

The current proposal would transform an area that is residential-commercial mixed-use in character into a zone that allows only single- and two-family dwellings. It would instantly change approximately 18 of 59 parcels into nonconforming uses in a residential zone. And it would instantly make approximately 40 structures on the 59 parcels nonconforming.

When a use or structure is nonconforming under zoning, it means, in a sense, that the Town does not want such uses or structures, or has not considered such uses or structures. And because nonconformities create a substantial amount of red tape, needlessly delaying needed structural and life safety improvements possibly prohibiting the creation of housing opportunities, the Planning Board does not believe that zoning proposals such as this are in the town's best interest. Furthermore, the Planning Board has carefully considered this area, and both the Master Plan and the Town Meeting have indicated that the MXD furthers the Town's land use and housing goals.

For these reasons, the Planning Board opposes the proposal. The Planning Board does not recommend Town Meeting approval of this article.

**Article 27: Amend row C(13) of Section 3.1.4, Table of Use Regulations.** This article is proposed by Landowner and Citizen Petition. If voted, this amendment will change the permission for marijuana manufacturing uses in the I2 (industrial manufacturing/multi-family) district from Prohibited, to Special Permit/Selectboard.

The Planning Board discussion included consideration that the proposal would apply only to marijuana manufacturing, and only in the I2 district. The Planning Board also discussed that while the I2 zone has historically been industrial in character, it is also proximate to downtown and residential areas. Finally, the Planning Board noted that the proposal would require a special permit and not make the use by-right.

The Planning Board recommends that Town Meeting approve this article.

**Article 28: Amend Section 7.18, Marijuana Establishments.** This article is proposed by Citizen Petition. The Planning Board notes that this article has been slightly revised by new Article 25 of the June 2021 Town Meeting, discussed previously. For all of the reasons discussed in relation to that article, the Planning Board opposes the proposal. The Planning Board does not recommend Town Meeting approval of this article.

For the Planning Board,



Brandee Nelson, Chair  
May 25, 2021