



TOWN OF GREAT BARRINGTON MASSACHUSETTS

PLANNING BOARD

Report of the Planning Board to the 2020 Special 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 amendments during public meetings, the Planning Board transmitted its proposed articles to the Selectboard on February 5, 2020. In addition to the drafts proposed by the Board, one zoning article was proposed by the Selectboard and four zoning articles were proposed by petition. The Board advertised for the required Public Hearing twice in the Berkshire Eagle, on Tuesday, February 25 and again on Tuesday, March 3. On March 12 the Board convened the first session of its public hearing. The hearing was continued to March 26 and was concluded that evening. After the hearing process, the Board made recommendations on each of the proposed zoning articles, as summarized below.

Most of the Planning Board's proposed zoning amendments are intended to further the Town's goals to provide additional housing opportunities at a variety of price levels and in a variety of locations. Others are "clean ups" to the zoning bylaw, intended to ensure the bylaw is consistent, clear, and useable.

Article 11: Editorial Amendments. If voted, this Article will make zoning bylaw edits so references to the Special Permit Granting Authority (or "SPGA") are accurate, and will rename "Board of Selectmen" to Selectboard, to be consistent with the Town Charter.

The Planning Board recommends that Town Meeting approve this proposal.

Article 12: Amend Section 3.1.4, permitted uses in the Downtown B District. This amendment will update the Table of Use Regulations for the downtown business district so that permitted and prohibited uses are consistent with the purpose of the district

The Planning Board recommends that Town Meeting approve this proposal.

Article 13: Amend Section 3.2, Accessory Uses. This amendment will update the setback and height regulations for accessory buildings. Taller accessory buildings, from 15 feet up to 25 feet maximum, must comply with a zone's setback requirements. Buildings 15 feet high or shorter can be within the side or rear setback areas, as indeed many already are, but cannot be closer than 10 feet to the side or rear line. It will delete the requirement for separation from the primary building, and the requirement restricting ADU size as a percentage of lot area.

The Planning Board recommends that Town Meeting approve this proposal.

Article 14: Amend Section 3.1.4, Accessory Uses. This amendment will add a row to the Table of Use Regulations to clarify that ADUs are permitted in all districts, as is already set forth in Section 8.2. It does not change the existing law.

The Planning Board recommends that Town Meeting approve this proposal.

Article 15: Amend Section 8.2, Accessory Dwelling Units. This amendment will allow ADUs to be slightly larger, 900 square feet versus the current 650 square feet, will remove unnecessary design requirements which are covered by Site Plan Review already, and will allow for the possibility of multiple ADUs for farmworker housing. All ADU's would continue to be by-right but subject to Planning Board site plan approval and Board of Health approval.

The Planning Board recommends that Town Meeting approve this proposal.

Article 16: Definitions of Accessory Dwelling Units and Movable Tiny Houses. This amendment will update the definitions of ADUs, clarifying that an ADU can be in a separate structure from the main dwelling, and that an ADU may be in a Movable Tiny House. It will also add a new definition for Movable Tiny Houses (MTH). The provision for an MTH responds to the growing demand for these types of dwelling units. This proposed regulation includes provisions to ensure an MTH has a sense of permanence and adequate utilities.

The Planning Board recommends that Town Meeting approve this proposal.

Article 17: Amend Section 4.1.2, Maximum Lot Coverage. This amendment will allow for small but conforming lots in the R3, R1B, and R1A zones to be built in accordance with current setback regulations, and not be constrained by a percent of lot coverage. In these zoning districts, which are served by public utilities, the existing maximum lot coverage regulation penalizes small but conforming lots by keeping building area artificially small. This amendment could increase the possibility of providing additional housing opportunities on conforming lots.

The Planning Board recommends that Town Meeting approve this proposal.

Article 18: Amend the Design Advisory Committee and Design Review regulations. This article updates the Design Advisory Committee (DAC) regulations. The DAC was established as part of the downtown business (B) district regulations (Section 9.5), but over the years the DAC's actual jurisdiction has grown to beyond the B district. Recognizing the importance of the DAC's review in ensuring development complements and enhances the Town's community character and distinctive architectural legacy, this article moves the DAC out of the specific downtown regulations, and creates a special section of the bylaw for the DAC. This article also clarifies the DAC's membership, authority and jurisdiction, and its review standards. Finally, this article includes in the Special Permit and Site Plan Review regulations specific reference to the DAC. The DAC and the Planning Board feel these amendments will make the design review process clearer for everyone, including applicants and the DAC itself.

The Planning Board recommends that Town Meeting approve this proposal.

Article 19: Amend Section 8.5, Planned Unit Residential Development. These amendments will amend PURD regulations so they encourage compact and efficient subdivision design in keeping with the density already permitted by the zoning of the site. The Planning Board proposes these amendments to further the Land Use and Housing goals of the Master Plan.

The PURD bylaw is meant to encourage compact and efficient subdivision design. Unfortunately the existing density requirements of Section 8.5 are antithetical to this purpose because they allow less than half the number of units that the underlying zoning allows. In other words, under existing regulations, a developer could achieve more units in a conventional subdivision than in a PURD. If this amendment passes, the current disincentives of a PURD will be eliminated, and developers would be more likely to choose a compact, sensitively-designed PURD and not a conventional sprawling subdivision.

The Planning Board recommends that Town Meeting approve this proposal.

Article 20: Amend Section 3.1.4, Swimming Pool regulations. This amendment will change the strict requirements for swimming pools in the Table of Use Regulations so the zoning bylaw does not conflict with or impose stricter standards than the Building Code.

The Planning Board recommends that Town Meeting approve this proposal.

Article 21: Amend Section 3.1.4, Residential Use permissions and Special Permit Granting Authority. This amendment will make changes to subsection A of the Table of Use Regulations in Section 3.1.4 of the Zoning Bylaw, designating the Planning Board (PB) as the Special Permit Granting Authority for most residential uses, move three family dwelling units up to row (2) thereby allowing three family in more districts by right, and changing the permissions of multifamily uses in some districts. This amendment is proposed with the support of the Selectboard/Planning Board joint housing subcommittee.

After its public hearing, on March 26, 2020, the Planning Board voted to recommend that Town Meeting approve this proposal.

Article 22: Amend Section 9.2, Water Quality Protection Overlay District. The Planning Board recommends that Town Meeting pass over and take no action on this article.

Article 23: Amend Section 8.4, Mixed Use regulations. This amendment will clarify the amount of floor space required for nonresidential uses in order for a development to be considered “mixed-use.”

The Planning Board recommends that Town Meeting approve this proposal.

Article 24: Add new section, for conversion of nursing homes to multifamily use. This amendment will provide a way for existing nursing homes to be converted to much-needed multifamily housing. In Great Barrington, all three of our existing nursing homes are in residential zones, but if and when they close, the existing zoning regulations would not permit the buildings to be repurposed—existing zoning limits development to eight units. But these existing facilities are served by water and sewer utilities, have their own onsite parking, and their scale and neighborhood impacts are known. Redevelopment of sites like these, served by infrastructure, would further the housing and land use goals of the Master Plan. This

amendment would provide a special permit path for future conversions, so that the Town and abutters could weigh the impacts and benefits of the conversion.

The Planning Board recommends that Town Meeting approve this proposal.

Article 25: Amend Section 7.18, Marijuana Establishments, to establish a maximum number of - retail establishments. This amendment, originally proposed by the Selectboard, would propose a limit of seven (7) retail marijuana establishments in Town. At this time there is currently one (1) retailer in operation, and there are five (5) others that have host agreements with the Town.

The Planning Board recommends that Town Meeting approve this proposal.

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 for 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 of the 59 parcels nonconforming structures.

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 recommends Town Meeting not approve this proposal.

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 have been industrial in character, they are also in proximity 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. 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 could 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.

The Planning Board believes the proposal would impose a 500-foot buffer requirements that would rule out marijuana establishments in the downtown area, where four retailers, already in the state permitting process, have Host Community Agreements and Site Plan Approvals issued. The Board noted that most farmland is in R2 and R4 zones, and farmland is an appropriate place for marijuana cultivation. The town does not impose such restrictive requirements on other agricultural uses.

For these reasons, the Planning Board opposes the proposal. The Planning Board recommends Town Meeting not approve this proposal.

For the Planning Board,



Brandee Nelson, Chair
September 2, 2020