

BROOKFIELD PLANNING BOARD
REPORT ON TOWN MARIJUANA ZONING BYLAW AMENDMENTS
Annual Town Meeting, Thursday, June 1, 2023

At a Public Hearing on Wednesday, April 5, 2023, at which a quorum was present, the Brookfield Planning Board reviewed and voted 5 to 0 to support the following amendments to the Town’s current Adult/Recreational Marijuana Bylaw. A summary and rationale for these amendments are below:

The overall objective of these proposed amendments is as follows:

1. Eliminates the Marijuana Overlay District, allowing for Marijuana Facilities in specific Zoning Districts in the Town of Brookfield, subject (with certain exceptions) to the Brookfield Planning Board’s Special Permit process;
2. Maintains local control over “the siting, placement, safety, monitoring, modification, and removal” of Marijuana Facilities and minimizes adverse impacts of these facilities on adjacent properties as per Section 8(G)(1) of the Marijuana Zoning Bylaw
3. Reduces ambiguity in certain sections and subsections of the existing Marijuana Zoning Bylaw.
4. Brings certain sections into conformity with the Massachusetts Cannabis Bylaw.

Changes to Section 8(G)(1)(b) “Purpose”:

This proposed amendment:

- Eliminates the reference to “and other places where children congregate.”
- Brings this section into conformity with state guidelines as well as proposed amendments to Section 8(G)(10)(a) “Buffer” (below).

Changes to Section 8(G)(3) “Definitions”:

This proposed amendment:

- Adds the State’s definition for “Marijuana Courier” to the Bylaw.
- Adds a specific definition for “Marijuana Greenhouse” to the Bylaw to eliminate ambiguity.
- Adds the phrase “accessories and branded goods” to “Marijuana Retailer” to conform to the definition wording in State law.

Changes to Section 8(G)(5) (“Eligible Locations for Marijuana Facilities – Marijuana Facilities Overlay District”:

This proposed amendment:

- Eliminates the current Marijuana Overlay District (restricting the establishment of Marijuana Establishments to designated sections of West Main Street and South Maple Street).
- Allows for applications for Marijuana Establishments in the Town of Brookfield, subject to the Use Regulation Table (as per the proposed amendment below).

Proposed Changes to Section 8(G)(7)(a)(3) “Additional Requirements/Use Requirements”:

This proposed amendment:

- Changes the wording in this section from “retail Marijuana Facilities” to “Marijuana Retailers.”
- Brings the wording into conformity with Section 8(G)(3), “Definitions.”

Proposed Changes to Section 8(G)(7)(c)(1) “Additional Requirements/Location and Physical Requirements”:

This proposed amendment:

- Removes the word “cultivation” from the requirement that all Marijuana Facilities aspects be conducted within a fully enclosed building.
- Allows for outdoor cultivation, either in the open, or within a greenhouse structure as defined in Section 8(G)(3).

Proposed Changes to Section 8(G)(7)(a)(4) “Additional Requirements/Use Requirements”:

This proposed amendment:

- Eliminates the requirement that Marijuana Retailers employ a “by appointment only” system for retail sales to all Adult Use marijuana customers.

Proposed Changes to Section 8(G)(8) “Restrictions”:

This proposed amendment:

- Removes “such that no odors from the marijuana facility shall be detected from abutting land” in subsection b.
- Removes the above because the restriction on odors is addressed in the first part of that section.
- Adds a new subsection “c.” which reiterates restrictions on the construction of septic systems in a Flood Plain District.

Proposed Changes to Section 8(G)(10)(a) “Buffer”:

This proposed amendment:

- Strikes the words “the following or preexisting uses” and adds the words “any public or private school providing education in kindergarten or grades 1 through 12.”
- Strikes subsections 1 through 5 denoting other areas subject to buffer zones from the bylaw.
- Eliminates the current 500-foot buffer zones for Marijuana Facilities around churches, libraries, playgrounds, and similar locations where children might regularly congregate (except for public and private K-12 schools)
- Brings this section into conformity with the state guidelines.

Proposed Changes to Section 8(G)(10)(b) “Buffer”:

This proposed amendment:

- Strikes the words “use in question” and adds the words “school, as specified in Section 10.a.”
- Makes the method of measurement for buffer zones more specific and in conformity with state guidelines.

Proposed Changes to Section 8(G)(11)(b) “Transfer/Discontinuance of Use”:

This proposed amendment:

- Adds the words “at their own expense” to this subsection.
- Ensures that the Town of Brookfield will not have to pay for the costs of removal of the material, plants, equipment, and other paraphernalia if a Marijuana Facility should cease operation for any reason.

Proposed Changes to Section 8(G)(12)(a - b) “Outside Consultants and Review Fees”:

This proposed amendment:

- Strikes subsections “a” through “c” and replaces them with “All costs for legal and/or engineering consultations shall be borne by the Special Permit applicant.
- Eliminates the need for ascertainment by the Planning Board of escrow deposit amounts for potential hiring of consultants.

Other proposed changes:

Amendment to Section 4.D, “Use Regulation Table”:

This proposed amendment:

- Eliminates the requirement that all Marijuana Facilities be located within a Marijuana Overlay District.
- Replaces Section 6(k) of the Table with eight new subsections denoting allowable Marijuana Facilities, as determined by Zoning District.
- Requires that all Marijuana Facilities where allowed obtain a Special Permit, except for Marijuana Couriers in Business A and Business B Districts, where such use is allowed “by right.”
- Defines minimum setbacks for Outdoor and Indoor Marijuana Cultivators by Zoning District.

It is the opinion of the Planning Board that these proposed changes to Brookfield’s existing Adult/ Medical Use Marijuana Zoning Bylaw will provide increased opportunities for residents and businesses to apply for, establish and operate legal marijuana businesses as allowed under Massachusetts General Law, while maintaining the local land use controls, protections and safeguards afforded to the town’s neighborhoods and residents under that Bylaw.

PROPOSED ZONING BYLAW CHANGES—2023 ANNUAL TOWN MEETING
Sections shown below are the only ones subject to amendments under the proposed warrant article. *Proposed additions are in ITALICS.* Provisions to be eliminated are indicated by a strikethrough.

To see if the Town will vote to AMEND Zoning Bylaw Section 8.G (“Medical/Adult Use Marijuana Facilities” and Section 4.D (6) (“Use Regulation Table”) as follows:

G. Medical/Adult Use Marijuana Facilities

1. Purpose

- b. To minimize the adverse impacts of Marijuana Facilities on adjacent properties, residential neighborhoods, schools and other places where children congregate, and other land uses potentially incompatible with Marijuana Facilities.

3. Definitions

**MARIJUANA COURIER – An entity which enters into a delivery agreement with a Marijuana Retailer to deliver finished marijuana products, marijuana accessories, and marijuana branded goods directly to consumers or with a Medical Treatment Center to deliver to patients or caregivers. It cannot wholesale, warehouse, process, repackage, or white label these products.*

**MARIJUANA GREENHOUSE – A structure enclosed with a translucent glass or plastic roof and a minimum of two glass or plastic sidewalls, without supplemental lighting, used for the outdoor cultivation, protection and/or maintenance of marijuana plants or seedlings.*

**MARIJUANA RETAILER – An entity licensed to purchase and transport marijuana and marijuana products, accessories and branded goods from Marijuana Facilities and to sell or otherwise transfer marijuana and marijuana products to Marijuana Facilities and to consumers.*

~~5. Eligible Locations for Marijuana Facilities – Marijuana Facilities Overlay District~~

~~Marijuana Facilities shall be allowed within the Marijuana Overlay District (MOD), which was established by prior vote of Town Meeting and is identified on the Town of Brookfield Zoning Map on file with the Town Clerk.~~

~~Within the MOD, all requirements of the underlying zoning district remain in effect, except where these regulations provide an alternative to such requirements. Land within the MOD may be used for Adult Use and Medical Marijuana Facilities, in which case the requirements set forth in this Section shall apply; or a use allowed in the underlying district, in which case the requirements of the underlying district shall apply. Where the provisions of the MOD do not provide for specific regulation, the requirements of the underlying district shall apply. If the provisions of the MOD conflict with the requirements of the underlying district, the requirements of the MOD shall control.~~

7. Additional Requirements

a. Use Requirements

- 3. The hours of operation of retail Marijuana *Retailers* Facilities shall be set by the Special Permit Granting Authority.

~~4. Retail Marijuana Facilities approved for operation shall employ a “by appointment only” system for all retail sales to recreational marijuana customers. Registered medical marijuana patients may access retail Marijuana Facilities without an appointment.~~

c. Location and Physical Requirements

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

8. Restrictions

b. No use shall be allowed at a Marijuana Facility which creates a nuisance to abutters or to the surrounding area, or which creates any hazard, including but not limited to, fire, explosion, fumes, gas, smoke, odors, obnoxious dust, vapors, offensive sound or vibration, flashes, glare, objectionable effluent or electrical interference, that may impair the normal use and peaceful enjoyment of any property, structure or dwelling in the area. Cultivation and product manufacturing facilities shall install odor control technology and regularly maintain such equipment in working order. ~~such that no odors from the marijuana facility shall be detected from abutting land.~~

c. *No new building associated with a Marijuana Facility requiring a septic system shall be constructed in a Flood Plain District, as per Section 3.A.5.b “Establishment of Districts/Flood Plain District (FP)”.*

10. Buffer

a. No Marijuana Facility shall be located within 500 feet of ~~the following or preexisting uses: any public or private school providing education in kindergarten or grades 1 through 12.~~

~~1. any public or private school providing education in kindergarten or grades 1 through 12;~~

~~2. any drug or alcohol rehabilitation facility;~~

~~3. any half way house, or similar facility;~~

~~4. any library, playground or athletic fields, recreational facilities, youth center, or similar facility in which children commonly congregate for regularly scheduled activities or instruction; or~~

~~5. any church or designated place of worship~~

b. The distance specified above shall be measured by a straight line from the point of the front door for which the proposed Marijuana Facility is to be located to the property line of ~~the use in question. school, as specified in Section 8.G.10.a.~~

11. Transfer/Discontinuance of Use

b. Any permit holder under this Section shall be required to remove all material, plants, equipment and other paraphernalia upon registration or licensure revocation, expiration, termination, relocation to a new site, or any other cessation of operation, *at their own expense*, as regulated by the CCC in compliance with applicable state regulations.

12. Outside Consultants and Review Fees

- a. ~~A Special Permit review escrow deposit shall accompany the application for Special Permit. The escrow for review fees is intended to cover the Planning Board's potential cost of hiring consultants to review the applicant's compliance with the Special Permit requirements under this bylaw to include provisions set forth in Article V., Section 4 of the Brookfield Planning Board Rules and Regulations and may include legal counsel fees. The escrow deposit amount shall be set by the Planning Board on a case-by-case basis when such consultants or counsel are deemed necessary. Any unexpended monies in the escrow account will be returned to the applicant only after all obligations are satisfied. Failure to fulfill escrow requirements may render an application incomplete and be considered sufficient grounds for its denial.~~
- b. ~~The applicant may appeal the selection of a consultant(s) whose fees are to be paid from the escrow deposit to the Board of Selectmen. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree in or related to the field at issue or three or more years of practice in the field at issue or a related field. Pursuant to M.G.L. c. 44, § 53G, the required time limits for action upon the application by the Special Permit Granting Authority shall be extended by the duration of the appeal. If no decision is made by the Board of Selectmen within one month following the filing of the appeal, the Special Permit Granting Authority's selection shall stand.~~
- c. ~~The escrow deposit shall be deposited in a special account established by the Town Treasurer pursuant to M.G.L. c. 44, § 53G. Funds from the special account shall be administered in accordance with M.G.L. c. 44, § 53G, and may be expended only for the purposes described above.~~

All costs for legal and /or engineering consultations shall be borne by the Special Permit Applicant.

SECTION 4.

D. Use Regulation Table

Activity or Use	RR	V	BA	BB	FP	PGA
6. Commercial and Manufacturing Use						
k. Marijuana Facilities			SP in MOD			
i. <i>Marijuana Cultivators (outdoor) with 200' setbacks from all property lines</i>	SP	N	N	N	SP	PB
ii. <i>Marijuana Cultivators (indoor) with 200' setbacks from all property lines</i>	SP	N	N	SP	N	PB
iii. <i>Marijuana Adult Use Retailers</i>	N	N	SP	SP	N	PB
iv. <i>Marijuana Medical Retailers</i>	N	N	SP	SP	N	PB
v. <i>Marijuana Product Manufacturers</i>	N	N	N	SP	N	PB

<i>vi. Marijuana Courier</i>	<i>SP</i>	<i>SP</i>	<i>Y</i>	<i>Y</i>	<i>N</i>	<i>PB</i>
<i>vii. Marijuana Testing Facility</i>	<i>N</i>	<i>N</i>	<i>N</i>	<i>SP</i>	<i>N</i>	<i>PB</i>
<i>viii. Marijuana Social Consumption Facility</i>	<i>N</i>	<i>N</i>	<i>N</i>	<i>N</i>	<i>N</i>	<i>PB</i>

Or take any action relative thereto. *(Sponsored by the Planning Board)*