



# Town of Charlton

www.townofcharlton.net

37 MAIN STREET  
CHARLTON, MA 01507  
508-248-2241

DEPARTMENT of BUILDING  
INSPECTIONAL SERVICES

[Building.ZEO@townofcharlton.net](mailto:Building.ZEO@townofcharlton.net)

June 13, 2018

Board of Selectmen  
Robin Craver, Town Administrator  
Town of Charlton

## Marijuana and Zoning

Below is the response the Building Commissioner/Zoning Enforcement Officer (BC/ZEO) generated on March 20, 2018, to the question “if a marijuana growing facility and retail sales operation would be permissible at 44 Old Worcester Road?” The response quoted here was generated after consultation with KP-Law, our special council advising Charlton on zoning issues.

In response to your inquiry as to a whether a proposed medical marijuana dispensary and cultivation facility would be allowed under the Town’s Zoning Bylaws on property that is partially within the Community Business District (CB) and partially within the Agricultural District (A). Based upon my review of your email, the opinion of your counsel and the Zoning Bylaws, it is my opinion that the proposal you describe would be allowed as of right. The retail (dispensary) component of the project would be allowed with site plan approval from the Planning Board in the CB portion of the property.

Please be advised that this opinion is advisory only, does not constitute a decision or order for purposes of G.L. c.40A, §15, may not be relied upon for any purpose. Please also be advised that this opinion is based upon the current Zoning Bylaws of the Town. Charlton Town Meeting has not yet considered what if any zoning regulations to adopt with respect to medical or adult use marijuana establishments.

As the proposal has moved forward, there has been mention of combined cycle generating facilities and research components to the growing operation. Operations that support a principle use or are a derivative of the product of the principle use have been allowed by the courts as part of the use.



Curtis Meskus - Building Commissioner/Zoning Enforcement Officer  
William LePage – Local Inspector  
Peter Starkus – Plumbing & Gas Inspector  
Joseph Ostrowski – Inspector of Wires  
Nancy Shields– Administrative Assistant

## Back Ground

Like many communities Charlton is struggling with the up-and-coming medical and recreational marijuana industry. On November 4, 2016 the citizenry of Charlton voted yes to Question 4, legalizing marijuana.

Since that time, at various public meetings there has been considerable discussion and concern for where, when and if various marijuana facilities should be sited in Charlton.

Comprehensive zoning in Charlton was adopted in May 1987, making us one of the last communities in the Commonwealth to enact a community wide plan that included various zones and a use table that designates a multitude of uses and what uses are allowed in each of the zoning districts.

The use table found in section 200-3.2 B Use Regulations Schedule across the top shows the various zones and throughout its numerous categories below, what uses are allowed by right, site plan approval, special permit or not allowed. A use table is constructed with the premise that if the proposed use is not in the table or does not fit within the use prescribed in the table, it is not allowed.

Zoning use tables are constructed in this prohibitory fashion as it would be impossible at the point in time they are developed to predict future uses that may not have been developed when presented for adoption. For example consider cellular phone technology, in 1987 what we now know as wireless communication was limited to ham radio operators, emergency services, commercial fleet operations and a few that had the money to support radio telephones.

In 1997-1998 Charlton, when faced with the coming of cell towers had to modify its zoning use table to include allowances for cell tower siting or run afoul of the rights of what has been defined as a public utility structures in the community. Until the use table was modified cell towers were not allowed in Charlton.

## Marijuana laws

Through legislation, marijuana facilities were made an exception to the standard premise that if a proposed use does not fit in the use table it is not allowed. Rather, the Legislature established, in [MGL c. 94G § 3 subsection \(e\)](#), a 2 step process that a community must follow to prohibit or impose certain limitations on marijuana establishments, if that community voted “yes” on the legalization ballot question in 2016;

If a municipality voted in *favor* of Question 4 on November 8, 2016 [i.e., a majority of voters casting ballots voted “yes” on the question], then two votes must be taken before an ordinance or bylaw can be effective – (1) it must be approved by the voters by ballot at an annual or special election, and (2) the ordinance or bylaw must be approved by the local legislative body.<sup>1</sup>

---

<sup>1</sup> A Guild to the Revised Law Legalizing Recreational Use of Marijuana, 2017 KP Law, P.C.

Since Charlton has not followed this process, the BC/ZEO is left to deal with marijuana uses as what they most closely resemble in the current Charlton Zoning Bylaw. For example, a marijuana retail establishment should be viewed in the same way as any other retail use.

The Zoning Act [MGL c. 40A](#) enacted in 1975 gives procedures, process, appeals and in § 3 activities that are exempt for local zoning control; one being agricultural uses on a parcel of 5 acres or more. Given the broad definition of agricultural in [MGL c. 40A § 3](#), the [Acts of 2016 Chapter 351](#) the legislators passed and the Governor signed into law an amendment to the definition of agricultural to exclude the cultivation of marijuana from this particular zoning exemption.

### Prior to May 2018 town meeting

Charlton’s zoning use table had the following uses listed that most closely resemble the proposed marijuana growing sales and processing.

| Principal Uses  | Districts |      |       |    |   |    |    |     |
|---|-----------|------|-------|----|---|----|----|-----|
|   | N         | R-40 | R- SE | NB | V | CB | IG | BEP |
| <b>(1) Agricultural, Floriculture and Horticultural Uses</b>  |           |      |       |    |   |    |    |     |
| (d) Indoor commercial horticulture/floriculture establishments (e.g., greenhouses)  | Y         | Y    | Y     | Y  | Y | Y  | Y  | Y   |
| <b>(5) Business Uses</b>  |           |      |       |    |   |    |    |     |
| [Amended 5-21-2012 ATM by Art. 28]  |           |      |       |    |   |    |    |     |
| (a) Retail establishments serving the convenience goods needs of a local area, including but not limited to: grocery, delicatessen, baker, supermarket, drugstores and similar uses, having less than twenty thousand (20,000) square feet of gross building area | N         | N    | P     | P  | P | P  | SP | N   |

In a consultation regarding Charlton’s current zoning and the applicable marijuana regulations with Jonathan M. Silverstein, Katherine D. Laughman of KP-Law, Mr. Scanlon and myself, it was clear that the prohibition of an indoor greenhouse or the sales in retail building, because of its product, would not be a defensible position. This is because:

- The Town had not voted to impose a moratorium on marijuana establishments; and
- The Town had not followed the above-referenced process to prohibit or limit the number of marijuana establishments.

### Proposed marijuana by law voted May 21, 2018

Given the legislative activity surrounding the marijuana industry it was clear that the Town of Charlton through its Planning Board needed to develop, propose and adopt a new use for inclusion in the zoning use table that would give the community tools for oversight on the location, site construction and neighbor impacts of marijuana uses.

Through the prescribed process of [MGL c.40A § 5](#), the Planning Board developed, had the required public hearing and brought forth to the annual town meeting a recommended marijuana zoning bylaw amendment that those present debated, modified and overwhelmingly adopted. As part of the required process the adopted by law has been sent to the Attorney General's office for review, that office has 90 days to examine the document in which time they can approve deny or possibly, deny in part the bylaw.

## **Landowner protections**

A difficulty with imposing zoning regulations is the rights to the landowner to develop a property and through the allowed uses not render a parcel valueless, as overly restrictive regulation or changes in regulation could be considered a taking without compensation.

To protect the property owner or developer who is either contemplating in the process of bringing forth a use on a certain parcel of land, there are 2 actions the landowner can exercise to enact what is known as a zoning freeze and thereby being allowed to develop a use under the existing rules prior to the modification of the zoning bylaw at a town meeting.

The first is the filing of a preliminary subdivision plan which has to be accepted during a Planning Board meeting, followed within 7 months by a definitive subdivision plan which then has to have a public hearing. The filing of the subdivision plans freezes existing zoning requirements for a period of 8 years. Additionally the subdivision does not have to be constructed to obtain the 8 year protection. . [MGL c. 40A § 6](#) paragraph 5.

The second is presenting to the Planning Board an Approval Not Required plan (ANR) for endorsement and recording at the Registry of Deeds. The endorsed ANR plan provides at a minimum, freeze on changes of use that may be voted at any town meeting. [MGL c. 40A § 6](#) paragraph 6.

## **Where we are now**

The applicant for the proposed project at 44 Old Worcester Road has filed a preliminary subdivision plan and has followed that up with a definitive plan, which the Planning Board had scheduled a hearing on this plan for June 6, 2018, however the applicant has requested a continuance until June 20, 2018. The hearing on the proposed subdivision will only deal with the subdivision of the property into two lots and the construction of the cul-de-sac road way.

Under the Host Community Agreement, the applicant for the proposed project at 44 Old Worcester Road, has agreed to submit the project for Site Plan Review and approval by the Planning Board in accordance with § 7.1.4 of the Charlton Zoning Bylaw, even though this would not have been required under the Zoning Bylaw.

The process of Site Plan Review, found section 200-7.1 D (1), will examine in a public forum;

For the purpose of ensuring adequate stormwater management, wastewater disposal, screening, parking and loading spaces, utilities, water supply and pressure, landscaping, protection of significant natural and man-made features, lighting, and erosion and sedimentation control, compatible site design, safe pedestrian and vehicular access, protection of the natural environment, and compliance with the provisions of this bylaw, a site plan shall be submitted for review and approval to the Planning Board,...

In addition the applicant will have to comply with including, but not limited to:

Security requirements of the Charlton Police Department  
Marijuana Regulations of the Charlton Board of Health  
Regulations of the Cannabis Control Commission 935 CMR  
Massachusetts State Building Code 780 CMR  
Massachusetts Fuel Gas and Plumbing Codes 248 CMR  
Massachusetts State Fire and Electrical Code 527 CMR  
Town of Charlton General Bylaws including water and sewer regulations

## **What can be done**

For the proposed project, from a zoning perspective very little. The applicant has fulfilled the steps to obtain a zoning freeze allowing the project to move forward under the Zoning Bylaw in effect April 25, 2018.

To move forward with the licensing application to the Cannabis Control Commission the applicant has conducted a Community Outreach Meeting and will need to have a valid Host Community Agreement.

If the community wishes to prohibit additional recreation marijuana establishments, the appropriate petition (ask town clerk about process) to have ballot vote which would affect only recreational marijuana, followed by a petition with appropriate language to change the zoning bylaw.

Links to

Cannabis Control Commission <https://mass-cannabis-control.com/>

Guidance documents <https://mass-cannabis-control.com/guidance-documents/>

A Guild to the Revised Law Legalizing Recreational Use of Marijuana, 2017 KP Law, P.C.

[https://www.westminster-ma.gov/sites/westminsterma/files/uploads/act\\_to\\_ensure\\_safe\\_access\\_to\\_marijuana\\_-\\_with\\_sample\\_docs\\_0.pdf](https://www.westminster-ma.gov/sites/westminsterma/files/uploads/act_to_ensure_safe_access_to_marijuana_-_with_sample_docs_0.pdf)

Respectfully,



Curtis Meskus  
Building Commissioner  
Zoning Enforcement Officer