

## **Warrant Article 6**

To see if the Town will vote to amend the Zoning Bylaws to allow accessory apartments, associated with single-family residences owned by seniors, and located in R0 and R1 zoning districts; or take any action related thereto. (Inserted at the request of Richard Lacroix and ten registered voters)

### **Information for town meeting members and proposed by-law amendments and regulations**

For years, many seniors have sought to allow small accessory apartments within existing single family homes in Arlington, all while preserving the character and owner-occupied nature of the single-family zoning districts. As a matter of fact, a not inconsequential number of seniors and their families have created what are popularly called “in-law apartments” as a means to fulfill the need for separate living space. It can be argued, among other things, that accessory apartments allow an elderly homeowner to afford to stay in his or her home or to accommodate a live-in caregiver; it would allow “aging in place” often in lieu of institutionalization.

The proposed amendment would allow senior homeowners in the R0 and R1 single-family districts to apply for a Special Permit to create an accessory apartment with a total footprint not to exceed 700 square feet, either within the existing home, or in an auxiliary structure, such as a garage or a barn. To help preserve the character of the single family neighborhoods, the proposed amendment requires that the senior owner occupies the home, that the home complies with all zoning at the time the application is made, and that a total of three parking spaces are provided onsite. The accessory apartment would also have to have its own kitchen and bathroom, and two means of egress, ensuring the safety of occupants.

### **Proposed Vote:**

VOTED: That Section 11 of the Zoning Bylaws be, and hereby is, amended by inserting a new section 11.09: Accessory Apartments and by amending Section 5.04: Table of Use Regulations, of the Zoning Bylaw by adding a new use, numbered 8.00: Accessory Apartments and by adding “SP” in the R0 and R1 columns.

### **Proposed text changes:**

Section 11.09 Accessory Apartments:

a. DEFINITION. An Accessory Apartment is a second dwelling unit associated with a single family home, subordinate in size to the principal dwelling unit, and physically separated from it, with its own kitchen, bathroom, and two means of egress, and held under common ownership with the primary dwelling unit.

b. CONDITIONS AND REQUIREMENTS. The Zoning Board of Appeals may grant a Special Permit for an Accessory Apartment in a single family dwelling in an R0 or R1 zoning district provided that all of the following conditions and requirements are met:

1. The owner of the principal dwelling unit is a senior, i.e. is at least 65 years of age.
2. There shall be no more than one Accessory Apartment on a lot.
3. The lot area shall be at least the minimum required under Section 6 of the current version of the Zoning bylaw at the time the Special Permit application is filed.
4. The gross floor area of an Accessory Apartment cannot exceed 700 square feet.
5. There shall be provided at least three (3) off street parking spaces, two for the primary dwelling unit and one for the Accessory Apartment. Parking spaces shall meet all criteria within the Zoning Bylaw and Town Bylaws as they exist at the time the Special Permit application is filed.
6. The Accessory Apartment unit and the associated dwelling must comply with all of the provisions of the Zoning Bylaw and Town Bylaws at the time the Special Permit application is filed. Pre-existing nonconforming structures or lots shall not be deemed in compliance with the zoning bylaw for the purpose of applications under this section 11.09.

7. The Accessory Apartment shall not encroach into any of the required yard setbacks, or in other ways violate the zoning bylaw.
8. The owner(s) of the property on which the Accessory Apartment is located must occupy one of the dwelling units as their primary residence.

c. PROCEDURES

1. No Accessory Apartment shall be constructed or altered without issuance of a Special Permit by the Zoning Board of Appeals, pursuant to Section 10.11—Special Permits, and a building permit issued by the Inspector of Buildings.
2. No Accessory Apartment shall be occupied prior to issuance of a Certificate of Occupancy by the Building Inspector.
3. Prior to issuance of a Certificate of Occupancy, the owner must submit to the Building Inspector a notarized affidavit signed under pains and penalties of perjury stating that the owner currently occupies one of the dwelling units on the premises as the owner's primary residence.
4. When a dwelling containing an Accessory Apartment previously permitted under this section is sold or otherwise conveyed, the special permit for that Accessory Apartment will become null and void.

**FREQUENTLY ASKED QUESTIONS  
MEDICAL MARIJUANA LAW**

**Juliana Rice  
Town Counsel  
March 2013**

**Question 3: An Act for the Humanitarian Medical Use of Marijuana**

By vote at the state election in November 2012, the voters of the Commonwealth adopted a law permitting certain individuals to obtain and use marijuana to address medical issues without threat of state criminal prosecution. This law, Chapter 369 of the Acts of 2012, went into effect on January 1, 2013. The law provides that individuals with written medical authorization may obtain, possess, and use up to a 60-day supply of marijuana without threat of state criminal prosecution. The primary supply source for this marijuana is intended to be up to 35 dispensaries operated by non-profit corporations and located throughout the state. At least one dispensary -- and up to five -- will be licensed in each county. These dispensaries, as well as anyone working at them, will be registered by the state Department of Public Health ("DPH"). Additional dispensaries may be registered in future years. Opening of these dispensaries in communities raises novel and complex local issues of public health, safety, and welfare. Please see "FAQs" below for more information on local marijuana dispensaries.

**1. Does the Town license or approve these marijuana dispensaries?**

Not necessarily. Registration will be primarily done at the state level by DPH, which has until May 1, 2013, to issue regulations governing dispensaries. In addition to state regulations, local boards of health may impose "reasonable health regulations" on the operation of marijuana dispensaries, which could include local permitting requirements.

**2. Can the Town decide whether, and where, to allow these dispensaries?**

To some extent, yes. Through zoning changes, such as those proposed under Article 7 of the Town Meeting warrant, the Town could regulate the placement of these dispensaries. In addition to, or instead of, this type of change, the Town may impose a temporary moratorium on the opening of such dispensaries. Two Massachusetts towns (Wakefield and Reading) have already changed their zoning bylaws to prohibit marijuana dispensaries altogether. There is some doubt whether these zoning changes will be approved by the Attorney General. That decision could be issued by the end of March. The Town of Burlington has voted to impose a moratorium on all marijuana dispensaries until June 30, 2014. That amendment has not yet been approved by the Attorney General. The City of Cambridge is considering a moratorium as well.

**3. When might these dispensaries be opening?**

DPH must issue its regulations by May 1, 2013. Once regulations are issued, the Department will have 90 days to consider applications for registration. Therefore, the first local dispensaries may be seeking to open in the fall of 2013.

**4. Who will operate these dispensaries?**

The dispensaries must be operated by non-profit corporations.

**5. Is public use of marijuana authorized under this law?**

No. Arlington has a Town Bylaw prohibiting the use of marijuana in public, violation of which is punishable by a \$300 fine. See Title VIII, Article 7. The new state law does not change this bylaw.

**6. Can the Town regulate the sale and use of marijuana?**

Yes. The Board of Health has the authority to issue reasonable health regulations. For example, it has issued regulations concerning the sale and use of tobacco products within the Town, including requiring a local permit to sell them. Local health regulations may not conflict with the rights granted under the state law.

**7. Has the Town taken steps to regulate dispensaries?**

Yes. The Town Manager has placed two articles in the warrant for the 2013 Annual Town Meeting to amend the Zoning Bylaws relating to the local siting of marijuana dispensaries. The Manager's proposal under Article 7 would limit these dispensaries to the B5 zoning district (the Central Business District) and would require a special permit from the Redevelopment Board as well as a permit from the Board of Health. The Manager's proposal under Article 8 would impose a temporary moratorium on dispensaries until after the 2014 Annual Town Meeting to allow time to evaluate forthcoming guidance from DPH and the Attorney General and to propose additional regulatory or zoning changes. The 2013 Annual Town Meeting begins on April 22.

The Board of Health is also considering the adoption of health regulations governing the operation of dispensaries in Town.

**ARTICLE 7**

**ZONING BYLAW AMENDMENT/MEDICAL MARIJUANA DISPENSARY SITING**

**To see if the Town will vote to amend the Zoning Bylaws to govern the use of land and buildings within the Town for “medical marijuana treatment centers” as defined in Chapter 369 of the Acts of 2012, adopted through the state initiative-petition process in November 2012; or take any action related thereto.**

**(Inserted at the request of the Town Manager)**

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VOTED: That the Zoning Bylaws be and hereby are amended by: (a) adding the definition of “Medical Marijuana Treatment Center” to Article 2 (Definitions) immediately after “Marquee,” as follows:

“Medical Marijuana Treatment Center:

An establishment that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, offers for sale, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials for ostensibly medical purposes”;

(b) amending Section 5.04 (Table of Use Regulations) by adding a new use numbered 7.10 as follows: “Medical Marijuana Treatment Center, permitted as such by the Arlington Board of Health” and “SP” under the B5 column for Use 7.10; (c) adding a new Section 5.07, as follows:

“Section 5.07 - Medical Marijuana Treatment Center Use Restrictions

In addition to restrictions set forth elsewhere in this Zoning Bylaw, the following restrictions apply to Use 7.10 (Medical Marijuana Treatment Center):

- a. No goods or wares shall be displayed or kept in such a way as to be visible from outside the premises;
- b. No equipment or process shall be used, nor any activity performed, in any Medical Marijuana Treatment Center that creates noise, dust, vibration, glare, fumes, odors, or electrical or other interference detectable to normal senses outside the Medical Marijuana Treatment Center;
- c. In no case shall the operation of a Medical Marijuana Treatment Center or the acquisition, cultivation, possession, processing, development, transfer, transport, sale, offer for sale, distribution, dispensing, or administration of marijuana, products containing marijuana, or related supplies for any purpose be considered accessory to any use.;
- d. No Medical Marijuana Treatment Center or other establishment that

acquires, cultivates, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), possesses, transfers, transports, sells, offers for sale, distributes, dispenses, or administers marijuana, products containing marijuana, or related supplies for any purpose that is not in continuous conformance with all registration, licensing, and permitting requirements of the state Department of Public Health as well as any applicable permitting and other requirements of the Arlington Board of Health shall operate within the Town.; and

(d) amending Section 11.06 (“Environmental Design Review”) by adding to the end of Section 11.06(b) the following new numbered paragraph 4, “Use 7.10 (Medical Marijuana Treatment Center) shall be subject to the environmental design review procedures and standards hereinafter specified.”

**ARTICLE 8 ZONING BYLAW AMENDMENT/MEDICAL MARIJUANA DISPENSARY MORATORIUM**

**To see if the Town will vote to amend the Zoning Bylaws to prohibit for some period of time the use of land and buildings within the Town for “medical marijuana treatment centers” as defined in Chapter 369 of the Acts of 2012, adopted through the state initiative-petition process in November 2012; or take any action related thereto.**

**(Inserted at the request of the Town Manager)**

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VOTED: That the Zoning Bylaws be and hereby are amended by adding a new Section 11.09, as follows:

“Section 11.09 - Temporary Prohibition of Medical Marijuana Treatment Centers

a. PURPOSE:

By vote at the state election in November 2012, the voters of the Commonwealth adopted a law permitting qualifying individuals to obtain and use marijuana to address medical issues without threat of state criminal prosecution. This law, Chapter 369 of the Acts of 2012, went into effect on January 1, 2013. The de-criminalization of marijuana under this law raises novel and complex legal, planning, health, and safety issues that the Town needs time to consider in order to allow for its orderly implementation with appropriate mitigation of potential negative consequences. Under the law, the state Department of Public Health will issue regulations governing, among other things, the registration and regulation of local dispensaries of marijuana, marijuana products, and related supplies. The siting and operation of these dispensaries is of specific municipal interest and, currently, the content of the Department of Public Health regulations is unknown. The temporary prohibition of marijuana dispensaries under this section will enable the Town to thoroughly and responsibly consider location and other reasonable restrictions on the operation of any marijuana dispensaries that may be opened within the Town, consistent with the law and the regulatory approach to be adopted by the state.

b. DEFINITIONS:

Medical Marijuana Treatment Center:

is defined as it is in Chapter 369 of the Acts of 2012, for purposes of this section

Medical Marijuana Planning Period:

is the period of the temporary prohibition set forth herein

c. TEMPORARY PROHIBITION:

For the reasons set forth above and notwithstanding any other provision of this Zoning Bylaw or any general or special law to the contrary, no land or buildings shall be used

within the Town of Arlington for operation of a Medical Marijuana Treatment Center before the dissolution of the 2014 Annual Town Meeting. During this Medical Marijuana Planning Period, the Town will: (i) evaluate regulations and other guidance promulgated by the state Department of Public Health concerning Medical Marijuana Treatment Centers and related uses; (ii) undertake a planning process to address the potential effects that the presence of Medical Marijuana Treatment Centers in the Town would have upon the general health, safety, and welfare as well as on other property uses; (iii) consider amending these Zoning Bylaws to govern the operation and impact of Medical Marijuana Treatment Centers; and (iv) through its Board of Health, consider the adoption of reasonable health regulations and permitting procedures applicable to Medical Marijuana Treatment Centers consistent with state requirements, rights, and obligations.