

PLANNING BOARD

John R. Bethoney, Chair
Michael A. Podolski, Esq., Vice Chair
James E. O'Brien IV, Clerk
Jessica L. Porter
James F. McGrail, Esq.
Ralph I. Steeves, Associate



Town Hall
26 Bryant Street
Dedham, MA 02026-4458
T: 781-751-9242

Planning Director
Jeremy Rosenberger

**TOWN OF DEDHAM
PLANNING BOARD**

November 14, 2019

This Report summarizes and explains the two (2) zoning articles (12 & 13) that appear in the 2019 Fall Annual Town Meeting Warrant and the Planning Board's Recommendations to Town Meeting.

Article 12 Purpose

Article 12 would authorize new language regulating retail firearms businesses, and allowing them, by special permit, in the existing Adult Use Overlay District (AUOD).

Background Summary

On August 8, 2019, the Planning Board began discussing potential zoning regulations for firearms dealers at a regularly scheduled meeting in which over a hundred community members expressed concern regarding Dedham's existing zoning bylaws. The Board of Selectman voted on August 15, 2019 to partner with the Planning Board by sending a proposed zoning amendment to the Planning Board providing for the prohibition or regulation in all zoning districts of the Town of retail and wholesale businesses involving the purchase or sale of firearms for review. As a reminder, the Planning Board is statutorily charged with the duty of holding public hearings and evaluating any proposed amendments to the Dedham Zoning By-Law and the Zoning Map for the Town.

Over the course of three public hearings held on September 12, 2019, October 3, 2019 and October 24, 2019, the Planning Board listened to and heard from many Dedham community members regarding this sensitive topic. Based on the comments and personal observations from attendees in support of and against the regulation of retail firearms businesses, research on zoning bylaws in other communities, and substantial analysis by our Town Planner and GIS Department, the Board found that a legally defensible regulation of the use could be contained within the existing AUOD. As such, after much community discussion, the Planning Board voted 5-0 to recommend the proposed zoning amendments which are found in the 2019 Fall Annual Town Meeting Warrant book. However, due to time constraints and further refinement by Town Counsel, the Planning Board met again on November 7, 2019 to clarify some of the language with regard to the article. At that meeting, the Planning Board voted 5-0 to approve an updated recommendation by Town Counsel only as to Section 6.1.6.11, Operation of Firearms Businesses to Fall 2019 Town Meeting, which will be introduced as a **Substitute Motion**. The updated recommendation is below.

By the Planning Board. To see if the Town will vote to amend the Dedham Zoning By-Law as follows, or take any other action relative thereto:

1. Amend Section 6.1.1 (Purpose) to add the underlined and emboldened language as follows:

The purpose of this Bylaw is to address the well-documented secondary effects of Adult Uses, as defined herein, **and to provide a suitable location for Firearms Businesses**. Such secondary effects of Adult Uses have been found to include increased levels of crime, blight resulting from the clustering and concentration of Adult Uses, adverse impacts on the business climate of municipalities, and adverse impacts on property values of residential and commercial properties. Late night noise and traffic also increase due to the late hours of operation of many of these establishments. This Section is enacted pursuant to G.L. c. 40A, s. 9A, with the purpose and intent of addressing and mitigating the secondary effects of Adult Uses that are adverse to the health, safety, and welfare of the Town and its inhabitants.

2. Amend Section 6.1.3 (Definitions) to insert the following new definitions:

Firearm: A gun, pistol, or any weapon capable of firing a projectile and using an explosive charge as a propellant.

Firearms Business: A retail or wholesale operation involving the purchase or sale of firearms, with or without sale of ammunition and/or firearms accessories, by a federally licensed firearms dealer.

3. Amend Section 6.1.4 (Scope of Permitting Authority) to add the underlined and emboldened language as follows:

Adult Uses **and Firearms Businesses**, as defined in this Section, may be permitted in the AUOD upon the granting of a Special Permit by the Board of Appeals, subject to requirements, conditions, and limitations as specified in this Section. Adult Uses **and Firearms Businesses** are not allowed in the Town, other than in the AUOD **in accordance with the requirements of this Section.**

- a. Adult Uses **and Firearms Businesses** shall not be considered accessory uses.
- b. A Public Hearing shall be held on an application for a Special Permit for an Adult Use **or Firearms Business**, and the Board of Appeals shall act on the application in accordance with the provisions of G.L. c. 40A, ss. 9, 9A, and 11; provided, however, that the hearing shall be closed no later than sixty (60) days after the opening of the hearing, and the Board of Appeals shall act on the application within thirty (30) days after the hearing is closed, unless the applicant consents in writing to an extension of such time periods.

4. Amend Section 6.1.5.1 (Special Permit Submittal Requirements) to delete the following strikethrough word and add the underlined and emboldened language as follows:

A completed application and form shall be submitted pursuant to the rules and regulations of the Board of Appeals. The completed application must also include *all of the following*:

- a. Name, address, business address, and telephone numbers of the legal owner or owners of the proposed Adult Use **or Firearms Business**
- b. Name, address, business address, and telephone number of the manager of the proposed Adult Use **or Firearms Business**
- c. Name, address, business address, and telephone numbers of all persons having any equity, including beneficiaries or other interest in such Adult Use **or Firearms Business**, including but not limited to security interest, liens, mortgages, or other interest. In the event that a corporation, partnership, trust, or other entity is listed, the name, address, business address, and telephone number of every person who is an officer, director, shareholder, or trustee of the entity must be listed, in order that the Board of Appeals may know who are the persons

who actually own and control that Adult Use or Firearms Business

- d. A sworn statement that neither the application, the manager, nor any person having any equity or other interest in the Adult Use or Firearms Business has been convicted of violating the provisions of G.L. c. 119, s. 63 or G.L. c. 272, s. 28, or similar laws in other states
 - e. The total number of employees
 - f. Proposed ~~revisions~~ provisions for security within and without the Adult Use or Firearms Business
 - g. The physical layout of the interior of the structure in which the Adult Use or Firearms Business will be located
 - h. A full description of the intended nature of the business.
5. Amend Section 6.1.6 (Special Permit Submittal Requirements and Conditions) to add the underlined language as follows:

1. General

A Special Permit for an Adult Use or Firearms Business shall be granted by the Board of Appeals upon its written determination that the requirements and conditions of this Section 6.1.6 have been satisfied. The Board of Appeals may impose such reasonable conditions on the operation of the Adult Use or Firearms Business as the Board of Appeals deems appropriate for the protection of public health, safety, and welfare, including reasonable limits on the hours of operation. Section 9.3.2 of the Bylaw shall not apply to the consideration of an application for a Special Permit for an Adult Use.

2. Location

No Adult Use or Firearms Business may be located less than 150 feet from a residential use or residential zoning district, school, library, church or other religious use, child-care facility, park, playground, recreational areas where large numbers of minors regularly travel or congregate, any establishment licensed under the provisions of G.L. c. 138, s. 12, or another Adult Use and Firearms Business. The distance specified above shall be measured by a straight line from the structure in which the Adult Use or Firearms Business is to be located to the nearest boundary line of a residential zoning district, or the nearest property line of any of the designated uses set forth herein.

3. Display

No signs, graphics, pictures, publications, videotapes, movies, covers, merchandise or other implements, items, or advertising depicting, describing, or relating to sexual content or sexual excitement as defined in G.L. c.272, s. 31 shall be displayed in the windows of, or on the building of, any Adult Use, or be visible to the public from the pedestrian sidewalks or walkways or from other areas outside such Uses. No exterior display of Adult Use or Firearms Business product or services is allowed.

4. Screening

All building openings, entries, and windows shall be screened in such a manner as to prevent visual access by the public to the interior of the Adult Use **or Firearms Business**. The Board of Appeals may impose conditions requiring that fencing or plantings be installed along rear and side lot lines to screen the premises from adjoining properties.

5. Building Appearance

The appearance of the building in which the Adult Use **or Firearms Business** is to be located shall be consistent with the appearance of buildings in similar (but not specifically “adult”) use in the Town, and shall not employ unusual colors or building design that would attract attention to the premises.

6. Interior Booths

If the Adult Use allows for the showing of films or videos within the premises, the booths in which the films or videos are viewed shall not be closed off by curtains, doors, or screens. All such booth openings shall be clearly seen from the center of the establishment.

7. Minors

No Adult Use shall be allowed to disseminate adult matter to minors, to cause Adult Use displays to be viewed by minors, or to allow minors to linger on the premises. **No minors shall have access into or within a Firearms Business unless accompanied by an adult.**

8. Parking

Adult Uses **and Firearms Businesses** are subject to the requirements set forth in Section 5.1 of the Zoning Bylaw.

9. Lighting

No exterior lighting (or internal lighting visible from the exterior of the building) shall be flashing or intermittent in nature.

10. Owners And Managers

A Special Permit for an Adult Use shall not be granted if the Adult Use is owned by or to be managed by any person or persons convicted of violating the provisions of G.L. c. 119, s. 63 or G.L. c.272, s. 28, or similar laws in other states.

A Special Permit for a Firearms Business shall not be granted if the Firearms Business is owned by or to be managed by any person or persons convicted of violating the provisions of G.L. c.140, s.122B, G.L. c.140 s.130, G.L. c.140 s.131N, or similar laws in other states.

11. Operation of Firearms Businesses

Firearms Businesses shall be subject to the following operational requirements to the extent such requirements do not conflict or prevent compliance with applicable Federal and State law:

a) **Videotaping the Point of Sale for All Firearms Transactions. Permitted retailers**

shall videotape the point- of-sale of all firearms transactions and maintain videos for six months to deter illegal purchases and monitor employees.

- b) Computerized Crime Gun Trace Log and Alert System. Permitted Retailers shall maintain a computerized system to log crime gun traces. If a customer who has a prior trace at that retailer attempts to purchase a firearm, the sale shall be electronically flagged, but may proceed at the dealer's discretion.
- c) Purchaser Declaration. For sales flagged by the trace alert system, permitted retailers shall ask purchasers to fill out a declaration indicating that they meet the legal requirement to purchase the firearm.
- d) Deterring Fake IDs. Permitted retailers shall only accept valid federal- or state-issued picture IDs as primary identification. Retailers shall utilize additional ID checking mechanisms.
- e) Consistent Visible Signage. Permitted retailers shall post signage to alert customers of their legal responsibilities at the point-of-sale.
- f) Employee Background Checks. Permitted retailers shall conduct criminal background checks for all employees selling or handling firearms.
- g) Employee Responsibility Training. Permitted retailers shall conduct or otherwise provide a training program for employees focused on deterring illegal purchasers.
- h) Inventory Checking. Permitted retailers shall conduct daily and quarterly audits of firearms within their stores.
- i) No Sales Without Background Check Results. Permitted retailers shall prohibit sales based on "default proceeds," which are permitted by law when the background check has not returned a result within 3 days.
- j) Securing Firearms. Participating retailers shall maintain firearms kept in customer accessible areas in locked cases or locked to racks.

6. Amend Section 6.1.7 (Termination of Special Permit for Adult Uses) to add the underlined language as follows:

- 1. A Special Permit for an Adult Use or Firearms Business shall be issued to the owner of the Adult Use or Firearms Business, and is not transferrable upon a sale, transfer, or assignment of the Adult Use or Firearms Business, except with the approval of the Board of Appeals.
- 2. If there is a change in the identity of the manager of the Adult Use or Firearms Business, the Building Commissioner and the Board of Selectmen shall be notified of such change. Failure to comply with this provision shall terminate the Special Permit.
- 3. A Special Permit for an Adult Use or Firearms Business shall be terminated if the owner or manager of the Adult Use or Firearms Business is found to have been convicted of violating G.L. c. 119, s. 63, or GL c. 272, s.28, or similar laws in other states.
- 4. A Special Permit for a Firearms Business shall be terminated for violating G.L. c.140, s.122B, G.L. c.140 s.130, G.L. c.140 s.131N, or similar laws in other states.

Article 13 Purpose

The purpose of Article 13 is to allow the Planning Board to extend a temporary moratorium on the issuance of special permits for Mixed-Use Developments until May 31, 2019.

Background Summary

At the Spring 2019 Town Meeting, Town Meeting voted to approve a study of the community impacts of Mixed-Use Developments initially adopted in Dedham in 2004. In addition to appropriating funding for the study, the article also imposed a seven-month moratorium on the issuance of a special permit for a Mixed-Use Development. The seven-month time frame was calculated to span the time between the date of the first public hearing advertisement for the warrant article and the start of the 2019 Fall Town Meeting (November 25, 2019). While the intention of the Planning Board was to have the study completed and any recommendations about zoning by-law amendments stemming from the study ready to be considered at the 2019 Fall Town Meeting, the study was unavoidably delayed and new zoning bylaw amendments won't be finished in time for the 2019 Fall Town Meeting. The Planning Board voted 3-2 to extend the moratorium until the next Town Meeting, with the following language:

ARTICLE THIRTEEN: *By the Planning Board.* To see if the Town will vote to amend the Dedham Zoning By-Laws to extend the temporary moratorium on the granting of special permits for mixed use developments, as follows:

Delete Section 7.4.5.2 (Temporary Moratorium) in its entirety and replace with the following new Section 7.4.5.2:

7.4.5.2 Temporary Moratorium.

For the reasons set forth above and notwithstanding any other provision of the Zoning Bylaw to the contrary, the Town hereby adopts a temporary moratorium on issuance of special permits for the use of land or structures for mixed use developments. The moratorium shall be in effect through May 31, 2020 or the date on which the Town adopts amendments to the Zoning Bylaw concerning Mixed Use Development, whichever occurs earlier. During the moratorium period, the Town shall continue to undertake a planning process to study, review, analyze and address whether any revisions the Zoning Bylaw relative to Mixed Use Development are needed or desirable to provide for mixed use development consistent with the Town's future general planning goals for economic development and housing; or take any other action relative thereto.

Referred to Planning Board for study and report.