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October 14, 2022

TO: Supervisor DiMezza and Town Board Members  
FROM: Town of Amsterdam Planning Board  
RE: Marijuana Dispensaries

In June the Town Board referred to the Planning Board to review restrictions on time, manner, place and hours of marijuana dispensaries.

After the 5 months of review, the board decision was:

The Planning Board hereby forwards the memo (attached) from Adam Yagelski, Town Engineer, dated July 28, 2022 to the Town Board endorsing the recommendation contain there in with the following revisions:

- Dispensaries are allowed in B-1, B-2 and M-1 zones
- 500 ft setback for schools and daycares
- 200 ft setback for healthcare facilities and houses of worship
- 500 ft setback from residential parcels
- 1500 ft between dispensaries

Motion by: Kelly Joyce  
Second by: Charles Archinal

Respectfully submitted,

Alex Kuchis  
Planning Board Chairman



# MEMO

**DATE:** July 28, 2022  
**TO:** Town of Amsterdam Planning Board  
Chuck Schwartz, Esq. – Planning Board Attorney  
**FROM:** Adam Yagelski *AJ*  
**SUBJECT:** Cannabis Dispensaries Recommendation

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On May 18, 2022, the Town of Amsterdam Town Board referred to the Planning Board for its consideration a proposal to amend the Town's Zoning Law (the "Zoning Law") to "locate [marijuana] dispensaries in B-1, B-2, and M-1 districts with restrictions on time, manner, and hours of operation." At its meeting on July 6, 2022, the Planning Board held a public hearing and did conduct preliminary workshop discussions with regard to the referral.

The Planning Board requested Delaware's assistance in the preparation of a recommendation on the referral, and we have prepared this memo in response to that request. The next section presents a summary of our findings and recommendations; the remainder of this memo provides supporting information and advances the recommendations in more detail.

## Summary of Recommendations

Cannabis Adult-Use Retail Dispensaries are similar to other allowed uses in the Town's B-1, B-2, and M zones, such as retail shops, and would, therefore, not conflict with the Town's comprehensive plan. NYS cannabis regulations are forthcoming, but the law that legalized recreational use in NYS does require buffers from schools and churches. We outline a list of potential zoning and land use issues and suggest that the Town require Dispensaries obtain site plan and special permit approval. We suggest a number of use-specific requirements, including setbacks from residential areas, odor control, and traffic plans geared toward initial opening; other issues, like lighting, parking, and signage, can be addressed by the Town's existing zoning law for retail shops. We suggest requiring an application package with information about the building design and floor plan, odor control plan, traffic management plan, and other information addressing unique aspects of Dispensaries as a land use.

## Background and NYS Regulations

The Marijuana Regulation and Taxation Act (MRTA) legalized cannabis for adults 21 years of age or older. MRTA set out various adult-use license types relating to cannabis production,



processing, and retail businesses. Among these is "Adult-Use Retail Dispensary" (hereinafter "Dispensary"), and the Town will allow Dispensaries to operate in Town.

According to MRTA: "'Retailer' means any person who sells at retail any cannabis product, to cannabis consumers. A retail dispensary license authorizes the acquisition, possession, sale and delivery of cannabis from the licensed premises of the retail dispensary by such licensee to cannabis consumers." MRTA also set certain ownership limits for this license type in an effort to prevent ownership concentration and vertical integration: "No person may own more than three retail dispensary licenses. Retail licensees may not own or have any interest in a licensee in the cultivation, processing or distribution tier."<sup>1</sup>

MRTA created the Cannabis Control Board (CCB), which is the approval and oversight body of the Office of Cannabis Management (OCM), a new regulatory agency charged with creating and implementing adult—use regulations. The Board is responsible for approving the comprehensive regulatory framework for New York's cannabis industry, including issuing applications and licenses to cannabis businesses and approving the rules and regulations governing the new industry. As of the date of this writing, no regulations have been issued.

However, MRTA does prescribe certain siting and advertising requirements for dispensaries that the OCM must follow in making its rules. These include:

- At § 72,
  - Dispensaries "shall be located in a store, the principal entrance to which shall be from the street level and located on a public thoroughfare in premises which may be occupied, operated or conducted for business, trade or industry"
  - "No cannabis retail licensee shall locate a storefront within five hundred feet of a school grounds as such term is defined in the education law or within two hundred feet of a house of worship."
- At § 86, there is explicit prohibition of advertising in connection with a Dispensary that:
  - "is within or is readily observed within five hundred feet of the perimeter of a school grounds, playground, child day care providers, public park, or library"; and
  - "is in the form of a billboard."

OCM is also empowered to regulate hours of operation. It is worth noting that the NYS Dept. of State said, summarizing case law, that planning and zoning boards' power to regulate hours is limited "unless there appear[s] to be substantial evidence relating the hours of the business's operation to its impact on the surrounding neighborhood."<sup>2</sup>

#### List of Issues and Zoning Concerns

We have reviewed the MRTA legislation, OCM fact sheets, expert commentary, and similar legislation from other NYS municipalities and other states. Please see Table 1, below.

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<sup>1</sup> [https://cannabis.ny.gov/system/files/documents/2022/03/cannabis-management-fact-sheet-adult-use-license\\_030222.pdf](https://cannabis.ny.gov/system/files/documents/2022/03/cannabis-management-fact-sheet-adult-use-license_030222.pdf)

<sup>2</sup> <https://dos.ny.gov/legal-memorandum-lu15-regulating-hours-operation>



Detailed Recommendations

1. In general, the B-1, B-2, and M zones allow "Retail store or shop" as a permitted use. This would broadly encompass Dispensaries and would presumably include liquor stores, so allowing Dispensaries in these zones seems reasonable.
2. Definitions – We suggest adding a definition to the Town's Zoning Law similar to the following:

"Cannabis Retail Dispensary: A retail facility that sells at retail any cannabis product, the sale of which requires an Adult-Use Retail Dispensary license under the provisions of the New York State Marijuana Regulation and Taxation Act."<sup>3</sup>

3. Site plan, special permit approval and application requirements – We recommend that Dispensaries require site plan and special permit approval. We recommend that several additional application requirements be attached, as set forth in item 5, below.
4. Use-specific requirements – We recommend that a new section entitled "Cannabis Retail Dispensaries" be added to Article VIII – Supplementary Regulations to address the following site plan items:
  - a. Operation Size – It appears possible to limit the size (i.e., gross floor area) of both the dispensary in general as well as the amount of space open to the public. Other jurisdictions limit size to, e.g., 3,000 sf<sup>4</sup>. This would be akin to distinguishing between large-scale and small-scale retail. The Town could require that the 5,000 sf maximum allowed in the B-2 Restricted Business zone applies to all Dispensaries.
  - b. Setbacks – MRTA requires a 500' setback from schools and 200' from houses of worship. Setbacks can be required for other uses, like parks, playgrounds, athletic fields, daycare facilities, and drug treatment facilities. Setbacks between Dispensaries are commonly required in order to prevent concentration of these uses in a particular area. 500' to 1,500' is commonly applied. In addition, because portions of the B-1 and B-2 districts adjoin residential districts, we suggest including greater setbacks from residential districts and/or uses. For example, Section 27 of the Zoning Law requires that Drive-in Food Services be 200' for a Residential District (note that this use differs from Dispensaries, as business is transacted inside Dispensaries).
  - c. Outside visibility of product – The OCM may prohibit that cannabis products be able to be seen from the outside. We recommend balancing any such requirement with minimizing opaque facades. There is also evidence from advocates of crime prevention through environmental design (CPTED) that lack of visibility into a structure can hinder first responders.

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<sup>3</sup> Cf. <https://www.townofwarwick.org/wp-content/uploads/2021/08/Local-Law-No-4-of-2021-Amend-Zoning-Overlay-Create-District.pdf>

<sup>4</sup> <https://www.cuddyfeder.com/wp-content/uploads/2022/05/New-York-Zoning-Law-and-Practice-Report-Cannabis-and-Land-Use-and-Zoning-Regulation-in-New-York.pdf>

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- d. Parking and Loading – As a retail use, we suggest applying the Zoning Law's existing parking requirements for Retail stores and banks, which is "1 space for each 250 square feet of floor space devoted to customer use." Section 38 of the Zoning Law provides off-street loading requirements applicable to Dispensaries.
  - e. Security – We suggest that the Town's Police Department be involved in security plan review and approval, should a security plan be required.
  - f. Prohibitions on reuse of pre-existing nonconforming buildings – Use of structures pre-dating zoning and not in compliance with, e.g., setbacks, may present land use conflicts. At the same time, such conflicts may be able to be addressed during review of the special permit application, as re-use of buildings can spur investment in existing structures and parcels.
5. In support of recommendations 2 and 3, above, the following site plan and special permit application requirements should be incorporated, depending on the final Supplementary Regulations for Dispensaries adopted by the Town Board:
- a. Copy of licenses and permits from NYS OCM/CCB – Consider also requesting a complete copy of the information submitted to NYS for licensure under MRTA.
  - b. Evidence of site control, in the form of a deed or lease arrangement or as required by OCM
  - c. All proposed signage
  - d. Floor plan showing areas for customer use and other areas
  - e. Traffic Plan – The traffic plan should address potential impacts from normal operations of a Dispensary use. It should also specifically address the traffic plan for Opening Day, and may also address weekends or holidays during the first six months of operation – times when traffic to the new use may peak, in the discretion of the Planning Board.
  - f. Odor Control Plan – This can involve physical controls, design and/or siting considerations, and employee training and practices.
  - g. Security Plan – It is likely that OCM will regulate security, similar to those for medical marijuana.<sup>5</sup>
6. Hours of Operation – It is common for local zoning regulations to limit the hours Dispensaries may operate to between 7:00 AM and 10:00 PM, and we recommend including similar hours of operation limitations. However, because the OCM will likely also regulate hours of operation, and given the above-cited NYSDOS guidance, we also recommend that any hours of operation limitations be tied to OCM's regulations when available

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<sup>5</sup> <https://regs.health.ny.gov/content/section-100413-security-requirements-manufacturing-and-dispensing-facilities>



<b>Category</b>	<b>Land Use/Zoning Concern</b>	<b>Zoning Tools/Strategies to Address</b>
Place	B-1, B-2, M-1 zoning districts	Consistent with other uses in the district
Manner	Odor emissions	Require a plan outlining physical and operational odor controls
Manner	Façade appearance where product visibility is restricted	<ul style="list-style-type: none"> <li>• Require renderings be included with Special Permit application</li> <li>• Encourage building/architectural designs that integrate into the existing streetscape</li> </ul>
Place	Saturation of Dispensaries in an area	<ul style="list-style-type: none"> <li>• Require setbacks between Dispensaries</li> </ul>
Time/ Manner	Conflicts with adjacent land uses and/or zoning districts	<ul style="list-style-type: none"> <li>• Limit hours of operation</li> <li>• Buffering</li> <li>• Setbacks, including from residential uses</li> <li>• Restricting zoning district types within which Dispensaries may be located (e.g., must be non-residential)</li> </ul>
Manner	Traffic congestion and safety	<ul style="list-style-type: none"> <li>• Require a traffic impact analysis</li> <li>• Require a traffic management plan for busy time periods, such as Opening Day and the initial 6 months of operating</li> <li>• Require Police Dept. input to Traffic Plan</li> </ul>
Manner	Signage	<ul style="list-style-type: none"> <li>• Require signage details to be presented to the Planning Board as part of Special Permit review</li> <li>• Adhere to existing sign codes which address free-standing, building mounted, and temporary signs for businesses</li> <li>• OCM may adopt regulations governing signage</li> </ul>
Manner	Safety and security of employees and customers	<ul style="list-style-type: none"> <li>• Require a security plan be developed as part of Special Permit review</li> <li>• If included in OCM regulations, request a copy of the OCM licensing submittal</li> </ul>
Manner	Intensity of use and size of retail dispensary operation within and between sites	<ul style="list-style-type: none"> <li>• Limit gross floor area of dispensaries</li> <li>• Impose a cap on the total number of dispensaries allowed in Town</li> <li>• Require setbacks between Dispensaries</li> </ul>
Manner	Conflicts with land uses on the subject parcel	<ul style="list-style-type: none"> <li>• Limit the types of uses which can occur with dispensaries on a parcel</li> <li>• Require that a parcel be used exclusively for dispensaries and that no land uses may co-locate</li> </ul>
Place	Location of Dispensaries in relation to "sensitive" uses, like schools	<ul style="list-style-type: none"> <li>• MRTA requires 500' setback from a school grounds or within 200 feet of a house of worship</li> <li>• Develop required setbacks for other uses as may be identified by the Town</li> <li>• Be clear as to how setbacks are measured (e.g., from the property lines)</li> </ul>
Manner	Parking and Loading	<ul style="list-style-type: none"> <li>• Encourage shared or use of banked parking</li> <li>• Ensure that the Zoning Law is updated to</li> </ul>



<b>Category</b>	<b>Land Use/Zoning Concern</b>	<b>Zoning Tools/Strategies to Address</b>
		include parking requirements for Dispensaries <ul style="list-style-type: none"><li>• Require a narrative outlining the logistics needs and operating plan for deliveries</li></ul>
Manner	Waste management	Require a narrative addressing waste generation and disposal methods
Manner	Water/sewer impacts	Require an Engineer's report detailing anticipated water use and wastewater generation
Manner	Lighting	<ul style="list-style-type: none"><li>• Require a lighting plan</li><li>• Require a photometric analysis/plan of the proposed lighting design</li></ul>