

New Jersey Appellate Court Provides Guidance on License Application Requirements - *Cannabis Business Executive*

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Four days before NJ Governor Murphy signed into law legislation creating an adult use cannabis industry in New Jersey, a NJ appellate court issued a decision on February 18, 2021 resolving initial appeals from a 2019 round of medical marijuana license applications. The decision allows that 2019 round of applications to move forward after significant delay, but more importantly for people interested in applying for an adult use license, the decision provides the first judicial guidance on a few common application requirements.

New Jersey's cannabis license application process has historically required applicants to submit responses to a "Part A" mandatory information section and a detailed "Part B" section that is scored. Three of the mandatory Part A questions have required applicants to provide evidence of (i) municipal approval, (ii) site control and (iii) compliance with local codes. The appellate ruling clarified what is required to satisfy those questions.

To demonstrate "municipal approval" applicants are required to provide evidence of "written verification of the approval of the community or governing body of the municipality in which the [ATC] ... will be located." The Department of Health (DOH) has stated that evidence of municipal approval could be some form of "documentation that the municipal government ... is in favor of ... [an ATC] operating within that particular jurisdiction." The DOH had suggested that this standard required some type of governmental indication of approval. But the

Appellate Division clarified that the municipal approval requirement contained in N.J.A.C. 8:64-7.1(b)(2)(x) can be satisfied with documentation demonstrating support of members of the community or the municipality's governing body -- both are not required. The court then reversed the DOH's determination that an applicant who submitted with its Part A application three letters of support from prominent members of the community in which they planned to open failed to meet that requirement. The court concluded that three letters of support from prominent community members satisfied the "community support" option under the municipal approval requirement. The court agreed with the DOH that the following submissions failed to satisfy the municipal approval requirement in Part A: (i) a proposed host community agreement signed by the applicant, but not by the town; (ii) a binding option to lease a property from a member of the community – that is, the support of a single property owner is insufficient to meet "community support"; (iii) support letters from respected community leaders submitted with Part B of the application but not included with Part A. That last finding also makes clear that applicants should submit all information that is responsive to Part A as an attachment to the Part A application.

To demonstrate "site control" applicants are required to submit written "evidence of ownership or lease of the proposed site." The DOH has stated that applicants could submit "conditional letters of agreement or leases" for the property where they intended to locate but did not need an actual signed lease or to own the property. The DOH has advised that applicants must submit sufficient information to demonstrate that the applicant has "exclusive rights to that property" and that "a lease or a purchase can be executed quickly." The Appellate Division agreed with the DOH that an applicant's submission of a letter of intent to purchase a property, which expressly stated it was not binding, failed to satisfy the site control requirement. Similarly deficient was a letter from a town stating that it was willing to work with the applicant to identify town owned property that could be used for an ATC.

A third requirement of Part A has been the requirement to demonstrate compliance with local zoning codes. The DOH has been clear that final zoning approval is not required, but has advised that applicants should include "a map or documentation of the ATC at its proposed location being [in] compliance with local ordinances." The Appellate Division agreed with the DOH that an aerial map of a proposed ATC location was insufficient to demonstrate compliance with local ordinances where nothing on the map showed the distance from the proposed ATC to a school, any places of worship or other places potentially affected by local ordinances. Similarly a letter opinion from an attorney stating that an ATC was not a prohibited use at the proposed location was insufficient in part because the letter admitted that a previous attempt to locate an ATC nearby was rejected and the attorney only opined that there was "a good chance" the town could be "convinced" to approve the application.

This guidance from the court will hopefully avoid some common application pitfalls whenever the first adult use license applications become available possibly later this year.