

Be Mindful of Potential Zoning Hurdles to Rhode Island Marijuana Licenses

Description

Regulations governing the issuance of certain marijuana-related state licenses in Rhode Island do not require that applicants have specific municipal approvals but do require evidence of compliance with local zoning laws. This can create a hurdle that applicants do not anticipate in . In one recent decision, the Superior Court upheld the City of Pawtucket's zoning decision not to grant a special use permit to a potential cultivation facility.

In *Medi-Green, LLC v. City of Pawtucket Zoning Board of Review* (C.A. No. PC-2019-0053), the court considered the zoning board's decision, the stated findings supporting it, and the difficult standard a challenger faces trying to overcome a written zoning decision. In *Medi-Green, LLC*, the Pawtucket board had found that the proposed use would "adversely affect the quality of life and character of the surrounding neighborhood" and therefore that the requested Special Use Permit was inconsistent with the City's comprehensive plan.

Medi-Green had sought a Special Use Permit under Pawtucket's city ordinances for pharmaceutical manufacturing. The City's Zoning Board held a public hearing on their application, at which no objection was raised by any third parties. The City's Department of Planning and Redevelopment nonetheless recommended denial of the application because the proposed location abutted a residential district, and that utilizing the location for medical marijuana production and cultivation was, in their words, "inconsistent with the City Comprehensive Plan because it would adversely affect the quality of life and character of the surrounding neighborhood."

The Zoning Board concluded that the applicant had not provided "sufficient evidence that would aid the Board in determining whether the proposed use would not endanger the neighboring community in any manner." The applicant, unable to prove a negative, was left with appealing an adverse decision to the courts. While there was some indication in the record of the zoning proceedings that the zoning board may have been prejudiced against marijuana businesses, the court found that the board had properly documented the facts and reasoning for its decision.

Critically, the question before the courts on such an appeal is not "did zoning make the right decision?" but rather "was the zoning decision supported by reliable evidence in the record" and "was the procedure undertaken by the board in compliance with the law?" Here, the decision not to grant a special use permit was documented by a record and decision that complied with Rhode Island law, according to the Superior Court.

Zoning should always be considered early in the planning process for any Rhode Island marijuana license application, to identify pitfalls and local adversaries and allies. Zoning issues, and the potential need for *de facto* local approval of a marijuana business due to the requirement that applicants for state marijuana licenses obtain proof of compliance with local zoning laws, can create trouble even for an applicant with an otherwise rock-solid business plan and application.

Partridge Snow & Hahn's [Cannabis Advisory Practice Blog](#) provides updates on marijuana law and policy, covering some of the risks and opportunities in the industry, and makes recommendations regarding best practices. If you are interested in receiving these updates via email, please email us at marketing@psh.com.

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