From: Benjamin Sobczak <BMS@enjoypleasantrees.com>
Sent: Tuesday, December 8, 2020 11:40 AM
To: Markee, Kimberly <kmarkee@waterfordmi.gov>
Subject: Medical Marihuana Facility License Ordinance Question

Ms. Markee,

I write seeking clarity on an issue relative to the residential setback requirement featured in Section 10-299 of the applicable ordinance. That provision essentially states that provisioning centers may not exist within 500 feet of a residentially zoned property, unless otherwise separated by a five lane road. (Sec. 10-299(a)(1)). An application for a facility not in compliance with that requirement will be denied outright, without consideration of the review criteria set forth in Section 10-304. (Sec. 10-303(d)(1)).

Imporantly, Section 10-301(b)(8) allows for submission of written approvals of a proposed facility by adjourning properties. Additionally, applications may be "approved with conditions" relative to the "plans, programs, commitments, or other aspects of the proposed facility and its operation . . . ." (Sec. 10-303(e)). In such an instance, such conditions must be met within one year of the Township Board's final decision, or such other time as allowed by the Township Board. (Sec. 10-303(i)). Also of note, standard variances from minimum licensing requirements are not allowed in this setting. (Sec. 10-303(g)).

With the above Ordinance provisions in mind, I would like to know whether or not it would be possible for an applicant to apply using a location which is within 500 feet of a residentially zoned property, if such application also promised, as a condition of full licensure, to have that residential property (which is abutted on both sides by commercial use) rezoned and also put to commercial use as well. This could be accomplished through an agreement with the residential property owner, or through the applicant's purchase of residential property outright. In support of either approach, legally binding documentation with that residential property owner would be submitted in the application, along with a letter of support by said property owner. In such an instance, would the application automatically be denied pursuant to Section 10-303(d)(1)? Or, would it be given consideration on its merits and, if approved, be subject to the conditional process outlined in Section 10-303(i)?

Please forward this inquiry to the Township's attorney for review and comment at your earliest convenience, as time is of the essence.

I hereby acknowledge that this inquiry, and the response thereto, will be posted to the Township's website.

Benjamin M. Sobczak *- CLO*

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TOWNSHIP RESPONSES

Ordinance Section 10-299(a) answers this question in its lead sentence which says, “A facility license is not authorized and shall not be applied for, approved, or issued:”, followed by a list of 8 minimum requirements, the first of which is the minimum 500 feet separation from residentially zoned property.

The Ordinance make no provision for conditional applications such as suggested, and as the question acknowledges, prohibits Township Board variances from minimum licensing requirements.

Just as Section 10-299(a) prohibits facility license applications for locations that do not meet all 8 of its minimum requirements, it also prohibits Township Board approvals of such applications. An approval with a condition such as suggested, would nevertheless be an approval which the Ordinance does not allow to be granted.

As provided in Ordinance Section 10-299(b), filing an application in violation of Section 10-299(a) will result in the application fee being forfeited to the Township.