



So You Secured Your Conditional Cannabis License? Beware Land Use Hurdles

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Obtaining a conditional, or temporary, cannabis license is a feat, but the applicant should know that converting the conditional license to an annual license is another hurdle the applicant must clear, provided they understand the MLUL.

By **Michael Schaff and Jennie Miller** | January 3, 2023

Sixteen months have passed since the New Jersey Cannabis Regulatory Commission (the CRC) released its initial set of rules to govern the state's recreational cannabis industry. Meanwhile, New Jersey cannabis attorneys have been keeping up to date on the legalization legislation, better known as the Cannabis Regulatory Enforcement Assistance and Marketplace Modernization Act (the CREAMM Act), as well as the licensing process. But what about the impact of the Municipal Land Use Law (MLUL), which governs how an applicant obtains the necessary permits and approvals for land development prior to the construction and operation of the cannabis facility? Obtaining a conditional, or temporary, cannabis license is a feat, but the applicant should know that converting the conditional license to an annual license is another hurdle the applicant must clear, provided they understand the MLUL.

Applicants and their attorneys need to be keenly aware of two deadlines imposed by the CRC: first, under N.J.A.C. 17:30-7.6(d), during the conditional cannabis license phase and once the conditional license is issued, the applicant has 120 days to gain control of the proposed site to operate through lease, purchase or other means; obtain approval from the municipality; and prepare and submit the application to convert the conditional license to an annual license. This conditional license may be extended an additional 45 days at the discretion of the CRC. Second, pursuant to N.J.A.C. 17:30-7.8(a)(4), zoning approval is required in order to convert a conditional license to an annual license, which consists of a letter or affidavit from appropriate municipal officials that the location (and its operations as a proposed cannabis business premises) will conform to municipal zoning requirements. This leaves, at most, 165 days from the issuance of the conditional license to comply with these deadlines.

Most land use attorneys will caution that these stringent timeframes imposed by the CRC make compliance nearly impossible when compared to the timeframes set forth under MLUL to actually apply for and receive the necessary municipal board permits and approvals to operate in the facility. Further, you should note that many municipalities require formal site plan approval even for interior fit-outs, or "change of use" applications where the subject building already exists.

If formal site plan approval is required, an applicant must prepare and submit a site plan application to the planning or zoning board (depending on the relief required), which should include all necessary documents, including but not limited to the requisite site plans, architectural plans, forms, and fees. Then, under the MLUL, a planning or zoning board has 45 days from the date of submission to review the application for completeness. Generally, the 45-day review period actually lasts longer than 45 days, since an applicant might make common mistakes such as miscalculating the fees owed, omitting a document, or submitting an incorrect number of copies to the board for review, which could extend the 45-day period. Once that 45-day (or longer) review period expires, the applicable board then has another 95 days from the date the application is deemed complete to grant or deny a variance-free application, or, alternatively, 120 days to approve or deny an

application with variances. During this time, the applicant, the attorney and related professionals must appear before the planning or zoning board for one or more public hearings. Then, assuming the application is approved, the planning or zoning board has another 45 days to adopt the resolution of approval—which must then be published in the local newspaper. Keep in mind that the last 45-day appeal period begins to run only upon this publication, and if the applicant starts any construction before the appeal period expires, the applicant runs the risk that the approval would be overturned and any construction ordered razed. Also critical is that the local board approval is typically subject to obtaining any other permits and approvals from outside agencies with jurisdiction over the site, including but not limited to the New Jersey Department of Environmental Protection and the relevant county planning board. Of course, these agencies have their own timeframes, many of which are longer than those proposed under the MLUL.

The above-referenced timeframes are by no means exhaustive of the timeframes imposed on an applicant under the MLUL. Plus, there are many other issues, such as scheduling conflicts or public opposition to the application, which might cause additional delays and hurdles during the application process.

Clearly, there is a potential disconnect between the deadlines imposed by the CRC and the MLUL. As such, it is important that cannabis attorneys be aware of these deadlines so they can properly advise and prepare their client of what to anticipate after issuance of the conditional license.

There are several ways to mitigate these timing issues and to avoid the time-crunch:

1. Be prepared and conduct due diligence. Clients should be encouraged to find a site, confirm the use is permitted in the zone, be aware of any potential operational restrictions on the property, and retain the necessary professionals so that any plans are ready-to-go when the time comes to apply for zoning approval.
2. Apply for a zoning permit. A zoning permit is a cost effective and timely way to find out if the proposed cannabis use is permitted on the property. A zoning permit typically costs around \$50, depending on the municipality, which is a fraction of the costs that might be incurred when compared to the hefty site plan application and escrow fees owed for a more formal site plan application and the professional fees to prepare the necessary plans. It should be noted that the municipal zoning officer must approve or deny the zoning permit within ten (10) business days; otherwise, the permit is deemed approved as a matter of law.
3. Consider a request for a technical review committee meeting (TRC) with the planning board professionals. This will afford the applicant an opportunity to “meet the players” and gauge the board’s amenability to the proposed cannabis use. At the TRC meeting, the applicant has the opportunity to show the proposed plan and to potentially resolve any design or safety concerns that may be raised by the board professionals. This provides the applicant and their professionals an opportunity to resolve some of the concerns prior to the public hearing.
4. Hire an experienced land use attorney. Many cannabis attorneys may be familiar with the licensing aspect, but not the specific potential land use hurdles to follow.

Disclaimer: Cannabis remains a scheduled narcotic under federal law, and anyone considering entering this field should first consult with competent counsel.

Michael F. Schaff is a shareholder with Wilentz Goldman & Spitzer, and co-chair of the corporate, health care and cannabis departments. He is a trustee of the New Jersey State Bar Association (NJSBA), the immediate past co-chair of the NJSBA cannabis law committee and is currently on its executive c Committee. **Jennie M. Miller** is an Associate with Wilentz, Goldman & Spitzer, P.A., where she focuses her legal practice on land use, environmental and cannabis law.

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