

To: Gardiner Planning Board
From: Mark Eyerman
Subject: Marijuana Performance Standards
Date: July 27, 2021

Here are a few thoughts about how the Planning Board should apply the performance standards of Section 10.29 dealing with separation distances. I have taken the relevant sections of the ordinance and then added my thoughts in italics:

10.29.1 Any property line of the lot upon which a marijuana establishment is located shall be a minimum of one thousand (1,000) feet from any property line of a lot upon which a public or private school, athletic field or playground is located. A “school” includes public school, private school, or public preschool program as defined in 20-A M.R.S §1, or any other educational facility that serves children from prekindergarten to grade 12; provided however, a functional equivalent minimum setback of five hundred (500) feet may apply provided that the Planning Board finds that any of the following are met:

*The basic standard is the 1000 foot separation from property line to property line. This is the straight line distance. Essentially this draws a line 1000 feet from the property line of the protected facility and says a marijuana establishment cannot be located inside that line except for the specific situations addressed in 10.29.1.1 and 10.29.1.2. The section **allows but does not require** the Planning Board to reduce the separation distance down to 500 feet if the conditions are met. I think the operative word here is **may**. The objective of the separation requirement is to mitigate the possible impacts of a marijuana establishment on the users of the protected facility. The ordinance doesn't address these factors but they probably include things like odors, traffic and people accessing the facility.*

10.29.1.1 The location of the buildings or areas actively used on either or both lots results in the entrance to the marijuana establishment being more than one thousand (1,000) feet from the area of the protected lot that is actively used or that provides access to the building or facilities;

This provision allows the 1000 foot minimum separation to be measured from the entrance to the marijuana establishment to the portion of the protected facility that is actively used. I think this was intended to be the straight line distance. This was added to address the situation where a marijuana establishment or a protected facility might be located on a large lot far from the property line. For example a marijuana facility in the middle of a large lot in a rural area might be far more than 1000 feet from the protected facility. Or vice versa a nursery school on a large rural lot could block a marijuana

establishment that is much more than 1000 feet from the protected facility. So this provision allows the distance from the actual locations to be considered rather than just the distance between property lines.

10.29.1.2 The marijuana establishment is physically separated from the protected lot by a natural or other physical feature that makes pedestrian access between the two lots impractical.

This provision was included to address the limited situations where it is essentially not realistic to walk between the protected facility and the marijuana establishment. I think the key here is that it is a permanent feature that is not simply a barrier that is under the control of an applicant or other property owner. During the ORC discussions the provision was included to address situations such as the Cobbosseecontee or the Interstate where the 1000 foot separation around a protected facility could extend the other side of the physical feature.