

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

MEHRAN RAFIZADEH d/b/a
TRICHOME & CALYX

LOCATION ADDRESS:
3809 DELRIDGE WAY SW, SUITE B,
SEATTLE, WA 98106

APPLICANT

LICENSE APPLICATION NO. 415234

LCB NO. M-25,205

OAH NO. 2015-LCB-0089

FINAL ORDER OF THE BOARD

The above-captioned matter coming on regularly before the Board, and it appearing that:

I. PROCEDURAL BACKGROUND

1. The Licensing Division of the Liquor Control Board (Licensing) issued a Statement of Intent to Deny Marijuana Retailer License dated June 16, 2014, asserting that the location selected by the applicant was within 1000 feet of a restricted entity, specifically the Alki Beach Academy, as a daycare.

2. The applicant timely submitted a request for administrative hearing, which was held before Senior Administrative Law Judge Terry A. Schuh (ALJ) on February 6, 2015. After the hearing, the record was held open for the parties to submit post-hearing briefs. The Licensing Division, through Assistant Attorney General Susie Giles-Klein, submitted a post-hearing brief on March 6, 2015. The Applicant's attorney, Nancy Pacharzina, submitted a post-hearing brief on March 10, 2015, along with a Motion to Supplement the Record, Conduct Discovery and Resume Hearing. The Licensing Division moved to strike the Applicant's post-hearing brief,

and the Applicant's Motion to Supplement the Record and supporting exhibits. ALJ Schuh denied the Motion to Strike the post-hearing brief, and also denied the Motion to Supplement the Record, Conduct Discovery and Resume Hearing.

3. On May 5, 2015, ALJ Terry Schuh issued an Initial Order reversing the Board's denial of the application. On May 22, 2015, the Board received Licensing's Petition for Review of the Initial Order, challenging Findings of Fact Nos. 4.4, 4.5, 4.21, 4.22, 4.23, 4.27, and 4.28 of the Initial Order. Licensing also took exception to Conclusions of Law Nos. 5.5, 5.6, as well as the Initial Order reversing the denial of the application. The Applicant replied to Licensing's Petition for Review on June 1, 2015. The Board reviewed the records and files in these cases, including Licensing's Petition for Review and the Applicant's Reply.

4. The Board hereby ORDERS that the Initial Order is AFFIRMED, and enters its Findings of Fact, Conclusions of Law and Final Order as follows:

ORDER SUMMARY

The Applicant's proposed location is within 1000 feet of a child care center as listed in WAC 314-55-050(10) and RCW 69.50.331(8). The Liquor Control Board may not issue a marijuana retailer license to the Applicant at that location. Nevertheless, the Statement of Intent to Deny the Applicant's application is reversed, with direction to the License Division to allow the Applicant to find an alternate location within the city of Seattle, and to process that application in accord with normal license processes.

II. SUMMARY OF HEARING

1. An administrative hearing was held on February 6, 2015, before Senior Administrative Law Judge Terry A. Schuh. The Applicant, Mehran Rafizadeh dba Trichome & Calyx, was

represented by Attorney Nancy A. Pacharzina. The Applicant called the following as witnesses: Mehran Rafizadeh, Applicant, and Tom Gordon, Realtor.

2. The Licensing Division of the Liquor Control Board was represented by Assistant Attorney General Susie Giles-Klein. The following witnesses testified on behalf of the Licensing Division: Timothy Lynch, Licensing Specialist, Liquor Control Board Rebecca Smith, Marijuana Mgr., Liquor Control Board.

3. The administrative law judge admitted Exhibits 1 through 9, proffered by the Licensing Division, and Exhibits A through F, and H through O, offered by the Applicant. Exhibit O was admitted only for demonstrative purposes.

4. Observers: Nicholas Rafizadeh attended as an observer on behalf of the Applicant. Chad Standifer, Jong Lee, and Aryna Anderson, Assistant Attorneys General, appeared as observers on behalf of the Liquor Control Board.

5. The ALJ granted the parties permission to file and serve post-hearing briefs no later than February 27, 2015, and subsequently granted an extension of that deadline through March 6, 2015. The Liquor Control Board filed its post-hearing brief on March 6, 2015. The Applicant filed its post-hearing brief on March 10, 2015. As addressed in the Order Granting in Part and Denying in Part Licensing's Motion to Strike and Order Denying Applicant's Motion to Supplement the Record, Conduct Discovery, and Resume Hearing, the ALJ accepted the Applicant's post-hearing brief and included it in the record for this hearing, closing the record at that time. As addressed in that same Order, the ALJ denied the Applicant's motion to re-open the record.

6. Senior Administrative Law Judge Terry A. Schuh issued an Initial Order on May 5, 2015, reversing the Statement of Intent to Deny Marijuana Retail License.

7. The Licensing Division filed a Petition for Review of the Initial Order on May 22, 2015, and on June 1, 2015, the Applicant submitted Applicant's Response to Agency Petition for Review. The Board has considered the Initial Order, the Petition for Review, the Applicant's Response, and has had the opportunity to review the entire record in the proceedings before the Administrative Law Judge. The Board therefore enters the following:

III. FINDINGS OF FACT

1. On June 16, 2015, the Licensing Division of the Liquor Control Board (Licensing) issued a Statement of Intent to Deny Marijuana License to the Applicant. Ex. 1.

2. On July 3, 2014, Mehran Rafizadeh dba Trichome and Calyx (Mr. Rafizadeh) filed a Request for Hearing. Ex. 2.

3. Mr. Rafizadeh filed three license applications during the window for doing so in November-December 2013. Exs. A and I. The Licensing Division created a "Master File" for the three applications, to keep track of the information about the applications. Ex. 6, Testimony of Lynch. Of Mr. Rafizadeh's three applications, only license application No. 415234 is at issue here. The proposed location for this application is within 1000 feet of Alki Beach Academy, a licensed daycare center.

4. When Mr. Rafizadeh filed the application at issue on December 20, 2013, the location to be licensed was identified as 8411 State Route 92, Unit 7, Granite Falls, Washington 98252-8771. Ex. A, p. 45; Ex. 6, p. 1; Ex. 10, p. 2.

5. Subsequently, Mr. Rafizadeh decided instead upon the location at 3809 Delridge Way SW, Suite B, Seattle, WA 98106 (Delridge location). Ex. A, p. 49. The Master file maintained by the Licensing Division contained a Letter of Intent from the landlord of the

Delridge location signed on December 8, 2013. The legal description of the property for this letter of intent contains the same King County tax parcel number as the Letter of Intent Mr. Rafizadeh submitted on March 19, 2014 as the location of the application at issue in this case. Ex. 5, p. 23, Ex. H, p. 3.

6. On February 12, 2014, the Department of Early Learning (DEL) issued a license to Alki Beach Academy to operate a day care at 2414 SW Andover St., Suite F-102, Seattle, WA 98106. Ex. 8. Alki Beach Academy is 379 feet from the Delridge location. Ex. 4.

7. Due to the large number of applicants for marijuana retail licenses and the comparatively small number of licenses to be issued, the Board decided to hold a lottery for communities that had a large ratio of applications compared to licenses to be issued. Ex. F. Moreover, Licensing decided to employ a pre-screen process to glean applications that were disqualifying based upon one or more of selected criteria that Licensing determined were critical. Ex. F. One of those criteria was location, critical for a number of reasons, including determining if the proposed location was within 1000 feet of a restricting entity. Ex. F. Accordingly, applicants were required to specifically identify the address of the location proposed for licensure. Ex. F; Ex. 5.

8. Applicants were provided a 30-day window from late February 2014 through late March 2014 to submit the required pre-screen information and supporting documentation. Ex. F. Mr. Rafizadeh timely submitted his pre-screen materials for the application at issue on March 19, 2014. Ex. 5.

9. Mr. Rafizadeh identified the address of his proposed location as 3809 Delridge Way SW, Suite B, Seattle, WA 98106. Ex. 5, p. 11. He certified that this was the address he had selected for the retail lottery. Ex. 5, p. 11 and provided a signed Letter of Intent from the

Landlord. Ex. A, pp. 31-33.

10. Applicants could change the location listed on the pre-screen documents until their 30-day window closed. Testimony of Smith.

11. Mr. Rafizadeh's 30-day window opened on February 23, 2014, Ex. 5, and closed on March 23, 2014. He did not change the location he proposed on his pre-screen materials.

12. Licensing placed Mr. Rafizadeh's application in the lottery for Seattle.

13. The first time that Licensing received information that DEL had licensed Alki Beach Academy to operate a daycare was April 1, 2014. Licensing first included that information on its GIS map used to screen applicants on April 18, 2014. Stipulation of the parties. Alki Beach Academy was licensed as a daycare center effective February 12, 2014. Ex. 8.

14. The Board held the lottery in late April 2014. Ex. F. On May 1, 2015, Licensing issued a letter to Mr. Rafizadeh informing him that his application no. 415334 had been selected number one in the Seattle lottery. Ex. 3.

15. Receiving a "winning" lottery number did not guarantee a license, merely an enviable spot on the queue for being investigated. See ex. 3. Passing such an investigation was a prerequisite for licensure. Ex. 3.

16. On May 7, 2014, Licensing discovered that Mr. Rafizadeh's Delridge location was within 1000 feet of Alki Beach Academy. Ex. 5, p. 1.

17. On May 13, 2014, Mr. Lynch called Mr. Rafizadeh and informed him that the Delridge location was disqualifying and that the Board would deny him a license. Ex. 5, p. 1.

18. Mr. Rafizadeh first learned of the Alki Beach Academy day care when he received a call from Licensing. Testimony of Rafizadeh. Mr. Rafizadeh, through his legal counsel at

the time, asked Licensing LCB to allow him to find a qualified location, Ex. A, p. 50.

19. Licensing does not permit lottery "winners" whose location does not qualify under the provisions of RCW 69.50.331(8) and/or WAC 314-55-050(10) to move their location. Ex. E, p. 1. On the other hand, Licensing permits lottery "winners" to move for a variety of other reasons, including, but not limited to, a landlord who has changed his/her mind and decided not to lease or sell, zoning or other local authority restrictions that precluded using the property for a marijuana retail outlet, or objections to the location from local authority. Ex. E, p. 1.

20. Licensing determined that Mr. Rafizadeh's proposed Delridge location was disqualifying because of the proximity of the location to the Alki Beach Academy day care. Because Licensing was not notified that Mr. Rafizadeh wanted to use the Delridge location for this application until he included it in his pre-screen materials, and Mr. Rafizadeh's proposed location was disqualifying at the time the pre-screen materials were filed, the Licensing Division did not allow him to relocate. See Ex. E, and Testimony of Smith.

21. On June 16, 2014, Licensing issued the Statement of Intent to Deny Marijuana License to Mr. Rafizadeh. Ex. 1.

22. The burden to timely find a qualifying location was on the applicant. Testimony of Smith.

23. Mr. Rafizadeh testified that he had no knowledge of Alki Beach Academy until Licensing told him on May 13, 2014. Mr. Gordon, the realtor that Mr. Rafizadeh hired to find a suitable location did not know about the Alki Beach Academy. Eight other applicants listed the Delridge location as their proposed location. Ex. C.

24. There is no evidence in the record regarding when Alki Beach Academy opened or when it developed its location such that its presence was detectable.

25. There is no evidence in the record suggesting how Mr. Rafizadeh could or should have become aware of Alki Beach Academy prior to March 23, 2014, his deadline for submitting prescreen materials, including the identification of his proposed location, because the ALJ ruled that evidence relating to notice of the day care's proximity to the proposed location was not relevant to the decision in this case, only the factual information about when the daycare was licensed.

IV. CONCLUSIONS OF LAW

Based on the facts above, we make the following conclusions:

1. The Board has jurisdiction over the persons and subject matter of this case under RCW 69.50.334, Chapter 34.05 RCW, Chapter 34.12 RCW, and WAC 314-55-070.
2. The Board shall not issue a license to Mr. Rafizadeh at the Delridge location. The relevant statutes and rules are as follows:

"The state liquor control board shall not issue a license for any premises within one thousand feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, or library, or any game arcade admission to which is not restricted to persons aged twenty-one years or older." RCW 69.50.331(8)(emphasis added).

"The board shall not issue a new marijuana license if the proposed licensed business is within one thousand feet of the perimeter of the grounds of any of the following entities: ... child care center." WAC 314-55-050{10}(d)(in pertinent part)(emphasis added).

3. Alki Beach Academy day care is within 1000 feet of the Delridge location.

Accordingly, the Board shall not issue Mr. Rafizadeh a marijuana retail license for that

location. However, the decision of the Licensing Division to deny Mr. Rafizadeh's application

should be reversed.

4. Both the statute and the regulation proscribe the Board from issuing Mr. Rafizadeh a marijuana license at the Delridge location. Neither provision directs the Board to deny the underlying application. Nevertheless, the Board has broad discretionary authority to do so. *See* RCW 69.50.331(1) and WAC 314-55-050.

5. Here, Mr. Rafizadeh acknowledged that the Board cannot license the Delridge location. Rather, he argued that he should be allowed to relocate to a qualifying location. Licensing declined to allow relocation because the Delridge location was disqualified during the prescreen process, due to the licensing of the daycare within 1000 feet. There is no evidence in the record that either Mr. Rafizadeh or Licensing knew about the presence of Alki Beach Academy and its day care license until after March 23, 2014, too late by Licensing standards to move. Moreover, eight other applicants also listed the Delridge location, apparently believing it to be qualifying.

6. Licensing's discretionary practice has been to decline to allow an applicant to relocate if that applicant's proposed location was disqualifying during the prescreen process, regardless of when that disqualification was discovered. Based upon that consideration alone, Licensing is consistent in seeking denial of Mr. Rafizadeh's application. However, Mr. Rafizadeh's circumstances do not fit cleanly into that designation because neither Licensing nor Mr. Rafizadeh determined during the prescreen process that the Delridge location was disqualifying. Mr. Rafizadeh's circumstances were more like an applicant who encountered a zoning problem, an objection from local authority, or a belated inability to negotiate a lease or purchase of the proposed location – all reasons for which Licensing permitted relocation.

The distinction is that typically the identification and selection of a qualifying location is readily

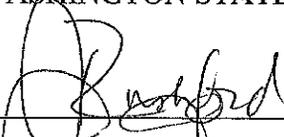
within the applicant's knowledge and control whereas the other circumstances are not. It was within Licensing's discretion whether to permit Mr. Rafizadeh's request to find a qualifying location. Given the unique circumstances in this case, the Board holds that the Licensing Division should treat Mr. Rafizadeh's application as qualifying for relocation under the policies applied to applications that become disqualifying after being selected in the lottery. Accordingly, the Licensing Division's decision to deny Mr. Rafizadeh's application should be set aside.

IV. FINAL ORDER

The Licensing Division's Statement of Intent to Deny the marijuana retail license application filed by Mr. Rafizadeh dba Trichome and Calyx is SET ASIDE. The Applicant should be allowed to seek a different location within the city of Seattle for application No. 415234, within standard timeframes normally allowed by the Licensing Division for other marijuana retail license applicants.

DATED at Olympia, Washington this 21st day of JULY, 2015.

WASHINGTON STATE LIQUOR CONTROL BOARD



Ruthann Keurose

Reconsideration. Pursuant to RCW 34.05.470, you have ten (10) days from the mailing of this Order to file a petition for reconsideration stating the specific grounds on which relief is

FINAL ORDER OF THE BOARD
LCB NO. M-25,205
MEHRAN RAFIZADEH dba
TRICHOME & CALYX
APPLICATION NO. 415234

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Washington State Liquor
Control Board
3000 Pacific Ave, S.E.
P.O. Box 43076
Olympia, WA 98504-3076
Phone: 360-664-1602

requested. A petition for reconsideration, together with any argument in support thereof, should be filed by mailing or delivering it directly to the Washington State Liquor Control Board, Attn: Kevin McCarroll, 3000 Pacific Avenue Southeast, PO Box 43076, Olympia, WA 98504-3076, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Board's office. RCW 34.05.010(6). A copy shall also be sent to Mary M. Tennyson, Senior Assistant Attorney General, 1125 Washington St. SE, P.O. Box 40110, Olympia, WA 98504-0110. A timely petition for reconsideration is deemed to be denied if, within twenty (20) days from the date the petition is filed, the agency does not (a) dispose of the petition or (b) serve the parties with a written notice specifying the date by which it will act on the petition. An order denying reconsideration is not subject to judicial review. RCW 34.05.470(5). The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review.

Stay of Effectiveness. The filing of a petition for reconsideration does not stay the effectiveness of this Order. The Board has determined not to consider a petition to stay the effectiveness of this Order. Any such request should be made in connection with a petition for judicial review under chapter 34.05 RCW and RCW 34.05.550.

Judicial Review. Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).



Washington State
Liquor Control Board

July 21, 2015

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Olympia, WA 98504-0100

RE: FINAL ORDER OF THE BOARD
APPLICANT: Mehran Rafizadeh
TRADE NAME: Trichome & Calyx
LOCATION: 3809 Delridge Way SW Ste B, Seattle, WA 98106
LICENSE APPLICATION NO. 415234
LCB HEARING NO. M-25,205
OAH NO. 2015-LCB-0089
UBI: 603-353-196-001-0003

Dear Parties:

Please find the enclosed Final Order of the Board and Declaration of Service by Mail in the above-referenced matter.

If you have any questions, please contact me at (360) 664-1602.

Sincerely,

Kevin McCarroll
Adjudicative Proceedings Coordinator

Enclosures (2)

cc: Becky Smith, Licensing Director, WSLCB
Frank O'Dell, Licensing Supervisor, WLSCB
Linda Thompson, Licensing Adjudications Coordinator, WSLCB

WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

MEHRAN RAFIZADEH d/b/a
TRICHOME & CALYX

LOCATION ADDRESS:
3809 DELRIDGE WAY SW, SUITE B,
SEATTLE, WA 98106

APPLICANT

LICENSE APPLICATION NO. 415234

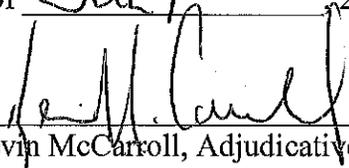
LCB NO. M-25,205
OAH NO. 2015-LCB-0089

DECLARATION OF SERVICE BY
MAIL

I certify that I caused a copy of the FINAL ORDER OF THE BOARD in the above-referenced matter to be served on all parties or their counsel of record by US Mail Postage Prepaid via Consolidated Mail Service for applicants and licensees, by electronic mail for WSLCB offices, and Campus Mail via Consolidated Mail Services for state offices on the date below to:

NANCY PACHARZINA ATTORNEY FOR APPLICANT PACHARZINA LAW PLLC 601 UNION STREET, STE 4200 SEATTLE, WA 98101-4036	OFFICE OF THE ATTORNEY GENERAL MAIL STOP 40100, GCE DIVISION SUSIE GILES-KLEIN, ASSISTANT ATTORNEY GENERAL
MEHRAN RAFIZADEH TRICHOME & CALYX CORP. d/b/a TRICHOME & CALYX CORP. 2862 44 TH AVE W SEATTLE, WA 98199-2427	

DATED this 21st day of July, 2015, at Olympia, Washington.


Kevin McCartoll, Adjudicative Proceedings Coordinator