



BERCOW RADELL FERNANDEZ & LARKIN
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VIA ELECTRONIC SUBMITTAL & HAND DELIVERY

May 6, 2019

Thomas Mooney, Director
Planning Department
City of Miami Beach
1700 Convention Center Drive, 2nd Floor
Miami Beach, Florida 33139

Re: Board of Adjustment Application in Connection with a CVS Pharmacy to be included in a Target Store located at 1045 5th Street, Miami Beach, Florida

Dear Mr. Mooney:

This law firm represents Target Corporation (the "Applicant") the tenant of the above referenced property ("Property"). Please consider this letter the Applicant's letter of intent in support of an application to the Board of Adjustment ("BOA") to (1) waive the distance separation variance, (2) waive the requirement for a medical cannabis dispensary or pharmacy to be divided by a one-hour fire wall from the remainder of the Target store, and to (3) waive the requirement for a pharmacy to be less than 7,500 square feet in size.

Property Description. The Property is located along 5th Street to the south, Lenox Avenue to the west, and a public alleyway to the east, known as Michigan Court. It is comprised of approximately 43,500 square feet (approximately 1 acre) located at the northeast corner of the intersection of Lenox Avenue and 5th Street. The Property is identified by Miami-Dade County Folio Nos. 02-4204-002-0040. The Property is located within the local Ocean Beach Historic District and is zoned C-PS2, Commercial Performance Standard, General Mixed-use Commercial ("C-PS2"), a zoning district allowing a wide range of commercial uses as a main permitted use. The Property is currently under construction pursuant to Building Permit Nos. BC1704186, RV1909115, and RV1908579.

Approved Development Program. The Planning Board ("PB") and Historic Preservation Board ("HPB"), through PB Orders PB16-0053 and PB17-0152, HPB Orders

HPB16-0059 and HPB18-0245 (the "Development Approvals"), approved a 4-story development with rooftop parking, consisting of a parking garage and multiple retail bays (the "Approved Development"). The first two (2) levels of the structure will serve as solely retail. The third level will have retail along the south and west facades and parking in the interior. There will be two (2) additional levels of parking located on the fourth floor and the rooftop level. The majority of the parking fronting 5th Street and Lenox Avenue will be lined with retail uses and the remaining will be screened with decorative design features. On December 11, 2018, pursuant to HPB18-0245, the Applicant obtained numerous sign variances for the Property, including sign variances for a Target, CVS Pharmacy, and a Starbucks. See Sign Variance Package.

Building Permit History. From the beginning of the permitting process the Applicant has been a responsible developer, following each requirement diligently and earnestly. Through the traditional permitting process and adjusting to the complex process it has become, the Applicant has not wavered in its intention to comply with the requirements necessary to obtain its building permit.

The construction on the Property began pursuant to Building Permit number BC1704186 ("Shell Permit"), issued in November 2017, for the construction of a new 4-story, mixed use building with parking and retail. This permit was for the building structure only, with the individual tenants providing for their own permit process.

In July 2018, pursuant to building permit number BC1808243 ("Target Plans") the Applicant submitted their tenant improvement plans to begin the interior buildout of the second floor retail space. The Target Plans include a CVS Pharmacy, Starbucks, and a grocery plan including an alcohol sales area. See Exhibit A, Target Plans. In August 2018, staff provided the Applicant with numerous comments, including the need to have the plans provide more information in connection with the permit plans submitted as part of the Approved Development ("Shell Permit Plans") and its revisions. As noted in staff comments, the plans were in the "Applied status" and were still under review. Moreover, staff noted that the permit for the Target Plans would not be issued until the owner obtained either a Certificate of Completion ("CC") or a Certificate of Occupancy ("CO") with regard to the Shell Permit Plans. See Exhibit B, Target Plan Comments. Accordingly, the Applicant could not move forward until the Shell Permit and the subsequent revisions were approved.

The Applicant immediately began to address staff's comments, including finding a solution to the prohibition on obtaining a building permit with regard to the Target Plans until a CO was obtained with regard to the Shell Permit Plans. Shortly after the

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comments were issued, the Applicant hired the Permit Doctor to facilitate discussions regarding issues with Shell Permit and Target Plans and potential integration of the plans to expedite the permitting process.

In September 2018, the Applicant obtained preliminary approval from the City's Building Official to integrate the Target Plans with the Shell Permit plans. The revisions to all of the permit plans were submitted to the City on March 8, 2019.

Legislation History. In June 2017, the Florida Legislature adopted regulations implementing Amendment 2 to the Florida Constitution, establishing medical marijuana dispensing facility regulations and allowing for municipalities to determine the location of dispensing facilities. In addition, the legislation prohibited municipalities from creating regulations that restricted medical marijuana facilities more than pharmacies.

On November 14, 2018, the City Commission, reviewed the City's Controlled Substance Regulations and requested the Land Use Development Committee ("LUDC") and the Quality Education Committee ("QEC") to make recommendations for review by the City Commission.

On December 18, 2018, the Planning Board (PB) reviewed the recommendations made by the LUDC and QEC, and transmitted to the City Commission the LUDC Amendments and their own Amendments. Both amendments included a distance separation of 300 feet for Medical Cannabis Treatment Centers and for Pharmacies. The City Commission discussed both versions on January 16, 2019, and ultimately approved the LUDC version.

Before adopting the proposed amendments during 2nd reading on February 13, 2019, the City Commission made a last second amendment of their own, directly on the floor, to increase the distance separation between medical marijuana treatment centers and between pharmacies from 300 to 1,200 feet. There was no advance notice of this change in the scope of the legislation.

Practical Difficulty. Pursuant to Article 1, Section 2 of the Related Special Acts, where there are practical difficulties, the Board of Adjustment has the power to vary or modify regulations or provisions relating to the use so that the spirit of the Zoning Ordinance shall be observed, public safety and welfare secured, and substantial justice done. The Applicant adjusting to the regulations that went into effect after its Development Approvals, being forced to join the Shell Permit and being at the mercy, and significant delays, of others represents a practical difficulty, especially when if not

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for the aforementioned delays, the Applicant would have complied with all existing land development regulations, and the permit including the CVS Pharmacy would have issued well in advance of City Commission second reading on February 13, 2019.

The requested variances allow for a mixed use development that is accommodating to modern standards. The variances help to maintain the character of the neighborhood by reducing multiple independent uses and creating a centralized and efficient retail center. The pharmacy use is already allowed in this neighborhood and the proposed pharmacy is within the maximum square footage allowed. The requested increase in excess of 7,500 square foot is merely a technical requirement as the proposed pharmacy is approximately 700 square feet but the combination of the 30,000 square foot retail store with the pharmacy increases the space to over 7,500 square feet.

The reduction in the distance separation buffer and increase in size variance is the only feasible alternative. The Applicant has exerted substantial effort, time, and resources to obtain development approvals and permits to develop the proposal. The Applicant started the process long ago, nearly a year before the regulations were adopted. The request is not a substantial request, it is a minor deviation of what is already allowed. Further, it is in line with what was recommended by the PB and LUDC throughout the legislative process. The City Commission amended the legislation on the floor during second reading. The unexpected substantial deviation from the proposed legislation did not allow the Applicant the opportunity to rebut or mitigate any impacts. The previous version of the amendment was for a 300 foot distance separation requirements. The Applicant complied with this separation requirement.

The proposal does not adversely impact the conditions on the area. A pharmacy is already an allowed use in this area pursuant to Sec. 142-1502. Moreover, the proposal has been reviewed and approved by the HPB. The HPB approved sign variances for a "CVS Pharmacy" to be an accessory use to the retail store. With the approval of a sign variance for a pharmacy sign and determination that there is no adverse impact, it follows that a pharmacy will be located and similarly have no adverse impact. In fact, the pharmacy is likely to have the opposite effect. Adding a retail store with a grocery component and an accessory pharmacy will improve the health and welfare of the community. Moreover, mixed uses reduce traffic and overall trip generation which will improve the safety of the area.

Description of Variance Requests. The Applicant respectfully requests the following variances:

1. The Applicant is seeking a variance of Section 142-1502(b)(5), to waive the minimum required 1,200 foot separation between pharmacies. The Applicant wishes to operate a CVS Pharmacy within the Target Store, and has submitted plans and obtained approvals in furtherance of operating a Pharmacy. At the time the Applicant began the permitting process in July 2018, the Code Section was not applicable as it was not adopted by the City Commission until February 13, 2019. The Applicant submitted the Target Plans in July 2018 which show in detail the location of the proposed pharmacy within the retail area. See Sheet A321. The Applicant, throughout all phases of development has been honest and diligent in their work. The inclusion of a pharmacy has been present in the Applicant's proposals since the beginning. The nearest pharmacy to the Applicant is nearly 700 feet away and all versions of the proposed amendment indicated a separation of 300 feet. As such, at no time, was there ever any indication that the proposed use would be an issue.
2. The Applicant seeks a variance of Sec 142-1503(e), to waive the requirement for a medical cannabis dispensary or pharmacy to be divided by a one-hour fire separation from any adjacent business. This provision was intended for medical cannabis dispensaries due to the flammable materials. A pharmacy does not have hazardous materials requiring a division between uses. As a means of safety and safeguarding the pharmaceuticals, the pharmacy is divided on three sides by walls and only has a small opening along the main counter for the interaction between pharmacist and patron. This opening is closed during closing times by a slide-down metal gate.
3. Additionally, the Applicant seeks a variance from Section 142-1503(f) which requires a pharmacy to be less than 7,500 square feet. In this case, the pharmacy is an accessory use to the Target Store and is calculated within the same 32,000 square feet. The Code Section was intended to regulate primary, standalone pharmacies from being massive structures within the City. The pharmacy area within the Target Store is less than 7,500 square feet. The Applicant request this variance to operate the pharmacy as noted on the plans. Although, this variance is requested to address the technical requirements of the Code, the Project will be in compliance with the intent of the Code as the pharmacy area is less than 7,500 square feet.

Sea Level Rise and Resiliency Criteria. The proposed project advances the sea level rise and resiliency criteria in Section 133-50(a) as follows:

- (1) **A recycling or salvage plan for partial or total demolition shall be provided.**

The Applicant will provide a recycling or salvage plan during permitting.

- (2) **Windows that are proposed to be replaced shall be hurricane proof impact windows.**

The structure has hurricane impact windows throughout the Property.

- (3) **Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.**

Not applicable. The proposed development does not affect the windows. Furthermore, the existing building was recently constructed and features appropriate windows.

- (4) **Resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) shall be provided, in accordance with Chapter 126 of the City Code.**

Not Applicable.

- (5) **The project applicant shall consider the adopted sea level rise projections in the Southeast Florida Regional Climate Action Plan, as may be revised from time-to-time by the Southeast Florida Regional Climate Change Compact. The applicant shall also specifically study the land elevation of the subject property and the elevation of surrounding properties.**

Not applicable.

- (6) **The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land and shall provide sufficient height and space to ensure that the entry ways and exits can be modified to accommodate a higher street height up to three (3) additional feet in height.**

Not applicable. The existing building was recently constructed and features appropriate height.

- (7) **As applicable to all new construction, all critical mechanical and electrical systems shall be located above base flood elevation. All redevelopment projects shall, whenever practicable and economically reasonable, include the relocation of all critical mechanical and electrical systems to a location above base flood elevation.**

Mechanical and electrical systems are located above base flood elevation.

- (8) **Existing buildings shall, wherever reasonably feasible and economically appropriate, be elevated up to base flood elevation, plus City of Miami Beach Freeboard.**

Not applicable.

- (9) **When habitable space is located below the base flood elevation plus City of Miami Beach Freeboard, wet or dry flood proofing systems will be provided in accordance with Chapter of 54 of the City Code.**

Not applicable.

- (10) **As applicable to all new construction, stormwater retention systems shall be provided.**

Not Applicable.

- (11) **Cool pavement material or porous pavement materials shall be utilized.**

Not Applicable.

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- (12) **The design of each project shall minimize the potential for heat island effects on-site.**

Not Applicable.

Conclusion. We believe that the approval of the proposed variances will provide for an effective application of the Approved Development. We look forward to your favorable review of the request. Please contact me on my direct line at (305) 377-6236 should you have any questions or concerns.

Sincerely,



Michael W. Larkin

cc: Robert Behar

PLAN CORRECTIONS REPORT (HPB18-0245)

PLAN ADDRESS: 1045 5 St
Miami Beach, FL -331396504

PARCEL: 0242040020040

APPLICATION DATE: 09/13/2018

SQUARE FEET: 0

DESCRIPTION: sign variance

EXPIRATION DATE:

VALUATION: \$10,000.00

CONTACTS	Name	Company	Address
Applicant	Kim Seyer	The Seyer Group	7321 Merchant Ct Sarasota, FL 34240

Submittal Intake Version: 1 Date Received: 09/18/2018 Date Completed: 09/28/2018

1. HPB Zoning Review - Fail

Irina Villegas Ph: email: ivillegas@miamibeachfl.gov

Comments: Comments issued on September 28

Note that variances are assessed per sign and per section of the Code:

Staff has preliminary assessed the following variances:

Ground floor facing Lenox Avenue.

7 variances to exceed the maximum area allowed per linear frontage. (each per tenant)

1 variance to install a wall sign without providing direct access from the street to the store (target sign). Sec 138-13 (1).

Ground floor facing 5th Street.

6 variances to exceed the maximum area allowed per linear frontage.(each per tenant)

1 variance to exceed the maximum area allowed for a directory sign. Maximum 6 sf.

Second floor facing Lenox Avenue

2 variances to exceed the maximum area for a projecting sign. Maximum 15 sf.(target)

2 variances to exceed the maximum area for exempted signs directing traffic.(parking)

5 variances to install 4 projecting signs (2 target + 2 parking) and 1 wall sign (target) at the second floor.

3 variances to install 3 signs without providing direct access from the street to the store (target signs). Sec 138-13 (1).

Second floor facing 5th Street

1 variance to exceed the maximum area for exempted signs directing traffic.(parking)

2 variances to install a non-permitted projecting signs at the second floor (target and parking)

1 variance to install a non-permitted wall sign at the second floor (target)

1 variance to exceed the maximum area for a projecting sign. Maximum 15 sf.(target)

2 variances to install a non-permitted sign at the second floor (Starbucks and CVS)

1 variance to exceed the maximum area for an accessory use sign (CVS). Maximum 20 sf.

4 variances to install 4 signs without providing direct access from the street to the store. Sec 138-13 (1).

1 variance to exceed the maximum sign area allowed for a business. All target signs combined on all floors.

Third floor facing 5th Street

3 variances to install a non-permitted wall sign at the second floor (tenants).

3 variances to install a wall sign without providing direct access from the street to the store. Sec 138-13 (1).

3 variances to exceed the maximum sign area allowed.

1. Location of signs shall be clearly identified on floor plans.

2. In a floor plan indicate area of wall sign, area of projecting sign and total area of signs for each tenant space.

3. On second floor plan indicate length of the storefront for target on both street sides. Do not include stairs, lobby area, elevators, common corridor, etc.

4. On third floor plan indicate length of space 16 and space 14 fronting a street.

5. Floor plans shall provide a north symbol for orientation.

6. Identify streets on floor plans.

7. Survey is not legible.

8. Revise letter of intent to clearly indicate variances requested and explain in detail how the variances satisfy the hardship/practical difficulties criteria.

9. Both sides of a projecting sign count only once.

10. The dimensions of each tenant on elevation fronting Lenox Avenue are confusing. There are 7 tenant spaces in the floor plan, 6 walls signs on elevation, 7 projecting signs on elevation. Door location on elevation does not match floor plans.

11. Provide a larger detail of the graphics/wayfinding on the garage entrance.

12. Indicate in a larger elevation location of enlarged details of the signs.

13. The total area combined of a projecting sign and wall sign for a business cannot exceed the maximum area allowed of 0.75 x length of the storefront with minimum 15 sf. Each tenant having a projecting sign in addition to the wall sign require a variance to exceed the maximum area allowed.

14. Provide daytime and nighttime renderings for illuminated signs.

15. Provide technical details and section of the signs.

2. HPB Admin Review - Fail

Victor Nunez Ph: email: VictorNunez@miamibeachfl.gov

Comments: Comments Issued: September 28, 2018

Applicant affidavit must signed and notarized.

Provide full legal description of the property and attach as "Exhibit A"

1. Advertisement - \$1,500

2. Board Order Recording - \$100

3. Posting - \$100

4. Courier - \$70

5. Mail Label Fee (\$4 per mailing label) \$ 384

Total Outstanding Balance = \$ 2,154

NOTE: All fees MUST BE PAID by October 10 or the application will not move forward.

In addition to the fees, the following shall be provided to the Department no later than October 17th 12:00pm Final Paper submittal deadline:

- One (1) original application (Proper signed and notarized affidavits and Disclosures must be provided).
- One (1) original Letter of Intent.
- One (1) original set of architectural plans signed, sealed and dated.
- One (1) original signed, sealed and dated Survey.
- Any additional information/documents provided
- 14 collated sets including copies of all the above: application form, letter of intent, plans, and any additional information/documents provided (plans and survey should be 11x17).
- Mailing labels must be provided including Letter certifying the labels, radius map, gummed labels, and Labels CD done with the proper Excel format specified by the Planning Department.
- A CD/DVD containing a digital version of the documents and plans submitted. The CD must be in the proper format specified by the Planning Department (each document must be less than 15MB).

NOTE: Please make sure you identify the final submittal by the file number -when dropping it.

3. HPB Plan Review - Fail

James Seiberling Ph: email: JamesSeiberling@miamibeachfl.gov

Comments: First submittal: September 17, 2018
Comments issued: September 28, 2018
Final submittal (CAP & Paper): October 5, 2018
Notice to proceed issued: October 15, 2018
Agenda finalized & all fees paid by: October 17, 2018
Tentative HPB meeting agenda date: December 11, 2018

SUBJECT: HPB18-0245, 1045 5th Street

1. APPLICATION
 - a. The request to delete the signage condition in the previously issued Final Order must be requested in the Letter of Intent.
2. DEFICIENCIES IN ARCHITECTURAL PRESENTATION
 - a. Provide shop drawings for the Target signage, indicate connection details and conduit placement, exterior conduit is not recommended.
 - b. The renderings must show the proposed signage and placeholder signage.
 - c. Provide an enlarged example of the proposed signage for one of the ground floor retail bays
 - d. Provide enlarged details of the proposed garage ramp signage.
 - e. Identify if ground level signage is illuminated or non-illuminated.
3. DESIGN/APPROPRIATENESS COMMENTS (Recommendations)
 - a. N/A

File Naming

All PDF files must be named with the submittal deadline date and the type of document in the following format 'MM-DD-YYYY Document Name'. For example, if the deadline for first submittal is October 29, 2017 the file name would be '10-29-2017 Application'. Use this naming format for first and final CAP submittals. The uploaded file retains the name as it has been saved on your computer. The file name cannot be changed and the file cannot be deleted once it is uploaded.

Please use names for the most common types of files. If the document type is not listed below, please use a document name that clearly identifies the file.

Document Name	Description
Application	Completed Land Use Board Application form including Exhibit A
LOI	Letter of Intent
Checklist	Pre-application Checklist
Labels	Mailing Labels, List of Property Owners, Certified Letter and Map
BTR	Copies of Previous Business Tax Receipts
Survey	Recent Signed and Sealed Survey
Plans	Architectural Plans and Exhibits
Landscape	Landscaping Plans and Exhibits
HRR	Historic Resources Report
Microfilm	Building Card and Microfilm
Traffic	Traffic Study
Sound	Sound Study

All pages of a document must be uploaded in one PDF file. Do not upload individual pages of a document. Documents that have not been revised from first to final submittal do not have to be re-uploaded.