

August 14, 2020

Mr. Thomas Mooney, Director  
Planning Department  
City of Miami Beach  
1700 Convention Center Drive, 2<sup>nd</sup> Floor  
Miami Beach, Florida 333139

Re: **Publix Super Market / 1100 6<sup>th</sup> Street / Board of Adjustment Application for Variances / Publix Pharmacy / Letter of Intent**

Dear Mr. Mooney,

On behalf of Publix Super Markets, Inc. (the "Applicant"), the tenant and operator of the Publix Super Market store (the "Publix") located at 1100 6<sup>th</sup> Street in Miami Beach, Florida (the "Property"), we respectfully submit this letter of intent in support of an application to the Board of Adjustment for variances from (1) Section 142-1502(b)(5) to waive the minimum 1,200 foot separation between pharmacy stores, (2) Section 142-1502 (e) to waive the requirement that a pharmacy be divided by a one-hour fire separation from adjacent businesses, and (3) Section 142-1503(f) to waive the requirement that a pharmacy be less than 7,500 square feet in floor area.

This Publix is located within the Fifth & Alton condominium building which is situated on the block between 5<sup>th</sup> and 6<sup>th</sup> Streets, west of Lenox Avenue and east of Alton Road. 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 which permits a wide range of commercial uses as a main permitted use. The Publix was originally constructed along with the rest of the shopping center in 2009. At the time of the original construction, pharmacy stores were permitted without a distance separation requirement, a firewall separation requirement, or a limitation on the size of the pharmacy store. The Applicant made an initial investment in the construction of the store in 2009 with the expectation that it would be able to incorporate a pharmacy at a future time. In November of 2019, the Applicant submitted building permit plans indicating a pharmacy as part of the renovation of the Publix. Building Permit No. BC1912307 for the renovation of the Publix was issued without comment as to the pharmacy store in March 2020. Subsequently, the City alerted the Applicant that the pharmacy, which had always been indicated on the building plans, was subject to the Code provisions referenced above and Building Permit No. BC1912307 was then revoked in July 2020, after four months during which the Applicant expended significant resources and work. Building Permit No. BC1912307 was subsequently reinstated when the plans were revised to delete reference to the pharmacy.

It is important to note that the proposed pharmacy exists within the larger Publix store and is not a standalone pharmacy store. This point is significant because it is the basis for two of the requested variances. The request to waive the limitation in floor area of the pharmacy is really a technicality as the actual pharmacy floor area is only 505 square feet and accordingly does not exceed the maximum 7,500 square feet permitted pursuant to the Zoning Code. Similarly, the request to waive the firewall separation is also a technicality. The greater Publix store is separated from adjacent businesses by the required fire separation wall; however, it would be impractical for the functionality of the pharmacy to be separated in such a manner from the Publix, particularly because they function as one consolidated operation. Publix has found that it can most effectively operate a high-quality pharmacy, which is an additional convenience to its shoppers, when it is part of the greater Publix store. We should also note that the fire wall requirement was enacted to address concerns regarding flammable materials associated with cannabis dispensaries and not the sort of materials contained in a standard pharmacy, such as the one being proposed for this Publix, which are not flammable in nature. The request to waive the separation wall requirement and the maximum floor area requirement are the only feasible alternatives for this pharmacy store which was the subject of a validly issued permit, that in turn resulted in substantial effort, time, and resources spent by the Applicant.

Pursuant to Article 1, Section 2 of the Related Special Acts, where there are practical difficulties or unnecessary hardships, 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. We respectfully submit that our requests for variances from (1) Section 142-1502(b)(5) to waive the minimum 1,200 foot separation between pharmacy stores, (2) Section 142-1502 (e) to waive the requirement for a pharmacy to be divided by a one-hour fire separation from adjacent businesses, and (3) Section 142-1503(f) to waive the requirement that a pharmacy be less than 7,500 square feet in floor area, comply with the applicable criteria provided in Section 118-353(d) of the City's Zoning Code, as follows:

- (1) *Special conditions and circumstances exist which are peculiar to the land, structure, or building involve and which are not applicable to other lands, structures, or buildings in the same zoning district;*

The regulations from which variances are being requested in this case were adopted principally in response to the opioid crisis and the legalization of medicinal marijuana. The improper sale of opioids and medicinal marijuana tend to take place in standalone establishments and not in pharmacies which are incorporated into grocery stores. Accordingly, the proposed layout of this pharmacy within a grocery store, as opposed to a standalone location, constitute a special condition or circumstance which is peculiar to this Property.

Additionally, the commencement of the renovation of the store on the Property pursuant to a validly issued building permit has created a special condition and circumstance peculiar to the land, which is not applicable to other lands, structures, or buildings in the same zoning district. The Applicant has already invested significant resources in the proposed pharmacy store by relying on the City's issuance of a building permit, which was valid for four months before the City suspended the building permit. Further, the original build out of the Publix store contemplated that

eventually the store could be renovated to include a pharmacy. The initial investment, prior to the enactment of the pharmacy regulations, was also unique reliance that distinguishes this Property from others. Although reliance that zoning regulations would not change, does not constitute a hardship, it is important to note that the restriction limiting pharmacies within 1,200 feet of each other was revised on the floor of the City Commission, without prior notice, as staff had presented a version of the regulation that limited pharmacies within 300 feet of each other. The Applicant accordingly, did not have an opportunity to express its opposition to this regulation; and that coupled with the Applicant's significant investment in the Publix at the time of original construction as well as the significant investment in the Publix as a result of the issuance of a valid building permit for the renovation do constitute a hardship.

- (2) *The special conditions and circumstances do not result from the action of the applicant;*

The special condition here with respect to the current renovation is the issuance by the City of a building permit. It is the City's action that created the special condition. The Applicant did not misrepresent its intention to construct a pharmacy at this location. With respect to Publix's initial investment in the store, the special condition justifying a variance arose upon the City's enactment of the current pharmacy regulations. No matter which way you look at the special conditions applicable to this property, it is the City's actions which created the hardship and not the Applicant's actions.

- (3) *Granting the variance requested will not confer on the applicant any special privilege that is denied by these land development regulations to other lands, buildings, or structures in the same zoning district;*

The variance requested confers the same treatment to the applicant as to the owners of other properties in the same zoning district. Several other pharmacies are located within the C-PS2 zoning district.

- (4) *Literal interpretation of the provisions of these land development regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these land development regulations and would work unnecessary and undue hardship on the applicant;*

Literal interpretation of the provisions of these land development regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district. As mentioned above, there are several other pharmacies in the C-PS2 zoning district including across the street from the subject Property.

- (5) *The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;*

Given the existing hardship, the variance granted is the minimum variance that will make possible the reasonable use of the land and existing building. Pharmacies are a common use affiliated with grocery stores.

- (6) *The granting of the variance will be in harmony with the general intent and purpose of these land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare;*

The grant of the variance is in harmony with the general intent and purpose of the land development regulations and would not be detrimental to the public welfare; on the contrary, it would be in harmony with the public welfare as the applicant relied in good faith on the issuance of a permit by the City and made a substantial change in position resulting in substantial expenses. It is in the best interest of the public that it be able to rely on an issued permit. Furthermore, the proposed pharmacy enhances public health by providing access to medicine and healthcare while avoiding the negative impacts which the regulations being varied from were intended to protect against.

Additionally, it is important to note that a pharmacy is already an allowed use in this area pursuant to Sec. 142.1502. Waiver of the maximum floor area and the fire separation wall would permit the proposed pharmacy to function in the tried and true manner as part of the larger Publix store, which the Applicant has deemed the most effective and responsible way for its pharmacies to operate. Indeed, this setup permits additional safeguards, some of which was the intent of the regulations from which variances are being requested. The pharmacy being proposed is nowhere close to the irresponsible “pill mill” or marijuana dispensary which the regulations in question were meant to protect against. The applicant is a responsible corporate citizen well-known for a long history of business excellence and community involvement. It runs several pharmacies regionally in conjunction with its grocery stores. These pharmacies are responsibly maintained and do not place a burden on the community. In that vein, it is clear, that the variances would be in harmony with the general intent and purpose of the land development regulations.

- (7) *The granting of this request is consistent with the comprehensive plan and does not reduce the levels of service as set forth in the plan. The planning and zoning director may require applicants to submit documentation to support this requirement prior to the scheduling of a public hearing or any time prior to the board voting on the applicant's request;*

The granting of these variances will not reduce any concurrency levels of service.

- (8) *The granting of the variance will result in a structure and site that complies with the sea level rise and resiliency review criteria in chapter 133, article II, as applicable.*

The granting of this variance will result in a structure and site that complies with the sea level rise and resiliency review criteria in chapter 133, article II, as applicable.

Accordingly, for the foregoing reasons, we respectfully request your favorable consideration of our requests for variances in connection with the proposed pharmacy for the Publix. The Publix has, in its 10 years of existence at this location in the City, been a good corporate citizen. The Applicant wishes to continue and expand its service to the City and its

residents, as well as to those who visit the City, by providing a well-run pharmacy within its existing store in a similar manner as many other stores in the City which also have pharmacy components. If you have any questions or wish to discuss the requested variances further, please do not hesitate to contact me at (305)376-6061 or [MGarcia-Serra@gunster.com](mailto:MGarcia-Serra@gunster.com). Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Mario Garcia-Serra". The signature is written in a cursive, flowing style.

Mario Garcia-Serra