


MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Board of Adjustment

TO: Chairperson and Members
Planning Board

FROM: Thomas R. Mooney, AICP 
Planning Director

SUBJECT: **ZBA20-0119**
1100 6th Street – Pharmacy Store

DATE: November 6, 2020

An application has been filed requesting variance(s) regarding the distance separation, size limitation, and related items for the operation of a pharmacy located within an existing retail establishment.

RECOMMENDATION

Denial of the requested variances.

ZONING/SITE DATA

Address:	1100 6 th Street
Folio:	02-4203-352-0001
Legal Description:	See Exhibit A
Zoning:	CPS-2, Commercial Performance Standard, General Mixed Use
Future Land Use Designation:	CPS-2, Commercial Performance Standard, General Mixed Use
Lot Size:	124,425 SF
Building Use:	Commercial – Retail
Year Constructed:	2005
Surrounding Uses:	North: Religious Institution West: Vacant/Construction Site South: Commercial East: Commercial

THE PROJECT

The applicant, Publix Super Markets, Inc., has submitted the following plans and documents:

- Letter of intent, dated August 14, 2020
- Plans, entitled Publix #1209 Proposed Pharmacy, by Little Diversified Architectural Consulting, dated August 14, 2020.
- Boundary Survey, by Schwebke-Shiskin & Associates Inc., dated August 10, 2020.
- Specific Purpose Survey, by Schwebke-Shiskin & Associates Inc., dated August 10, 2020

The applicant is requesting variances associated with the proposed introduction of a pharmacy store within an existing grocery store. Specifically, the applicant is requesting the following variances:

1. **A variance to reduce by 822 feet, the minimum distance separation of 1,200 feet between pharmacy stores, to allow a pharmacy to be located within 378 feet of another pharmacy store.**

- Variance requested from:

Sec. 142-1502. Zoning districts allowing medical cannabis treatment centers, pharmacy stores, and related uses, prohibited locations, and nonconforming uses.

* * *

- (b) *Location of uses.*

* * *

(5) No pharmacy store shall be located within 1,200 feet of another pharmacy store.

The proposed pharmacy store is located approximately 378 feet from an existing Target pharmacy, located on the east side of Lenox Avenue. The code requires a minimum 1,200-foot distance separation from other pharmacy stores. The distance separation is determined by measuring a straight line from the entrance and exit of each business.

2. **A variance to waive the requirement for a medical cannabis dispensary or pharmacy store to be divided by a one-hour fire separation from an adjacent business.**

- Variance requested from:

Sec. 142-1503. Requirements for medical cannabis treatment centers and pharmacy stores.

* * *

- (e) All cannabis treatment center or pharmacy store establishments shall be divided within a building from floor to ceiling. Unless higher performance is required by applicable law, there must be a minimum of a one-hour fire separation between a medical cannabis treatment center or pharmacy store and any adjacent business.

The proposed pharmacy store will be integrated into a larger grocery store. It will have walls on three sides and a counter that opens into the grocery store. The counter opening will be closed when the pharmacy is not operating.

3. **A variance to exceed the maximum allowed square footage for a pharmacy store of 7,500 square feet by 24,843 square feet, to permit the operation of a pharmacy store located within a 32,343 square foot retail establishment.**

- Variance requested from:

Sec. 142-1503. Requirements for medical cannabis treatment centers and pharmacy stores.

- * * *
- (f) Each Individual cannabis treatment center or pharmacy store establishment shall not exceed 7,500 square feet, exclusive of required parking. This limitation shall not apply to establishments located in area 2.

The proposed pharmacy store will be integrated into a large grocery store. The pharmacy area itself will be approximately 505 square feet, while the grocery store is approximately 45,139 square feet. The pharmacy will open into the larger grocery store where customers will queue and receive their prescriptions. Even though the pharmacy area itself will be below 7,500 square feet, because customers will be queuing within a larger grocery store, the pharmacy store would be part of store that is larger than 7,500 square feet.

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

Based on the plans and documents submitted with the application, and the reasons set forth in the analysis, staff has concluded that the requested variances do not satisfy Article 1, Section 2 of the Related Special Acts, allowing the granting of a variance if the Board finds that practical difficulties exist with respect to implementing the proposed project at the subject property.

Additionally, staff has concluded that the plans and documents with the application indicate the following, as they relate to the hardship criteria requirements of Section 118-353(d), Miami Beach City Code:

1. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district.
Not Satisfied
2. That the special conditions and circumstances do not result from the action of the applicant.
Not Satisfied
3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, buildings, or structures in the same zoning district.
Not Satisfied
4. That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Ordinance and would work unnecessary and undue hardship on the applicant.
Not Satisfied
5. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.
Not Satisfied
6. That the granting of the variance will be in harmony with the general intent and purpose of this Ordinance and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.
Not Satisfied

7. That 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.

Satisfied

COMPLIANCE WITH ZONING CODE:

The application, as submitted, appears to be consistent with the applicable requirements of the City Code, with the exception of the variances requested herein. This shall not be considered final zoning review or approval. These and all zoning matters shall require final review and verification by the Zoning Administrator prior to the issuance of a Building Permit.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 133-50(a) of the Land Development Regulations establishes the following criteria for sea level rise and resiliency that must be considered as part of the review process for development orders. The following is an analysis of the request based upon these criteria:

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

Not Applicable

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

Not Applicable

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

Not Applicable

- (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-way 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 of up to three additional feet in height.

Not applicable

- (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.

Satisfied

- (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 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 materials or porous pavement materials shall be utilized.

Not applicable

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

Satisfied.

ANALYSIS

In accordance with Section 381.986(11)(c) of the Florida Statutes, municipalities may not enact ordinances for permitting or for determining the location of medical cannabis dispensing facilities that are more restrictive than its ordinances permitting or determining the locations for pharmacies licensed under chapter 465. Based on this state legislation, the City adopted regulations to treat medical cannabis dispensaries and pharmacies equally.

On September 25, 2017, the City Commission adopted Ordinance No. 2017-4133, entitled Medical Cannabis Treatment Centers and Pharmacy Stores. The ordinance established requirements for pharmacy stores and medical cannabis treatment centers, including a size limitation of 7,500 square feet. On February 13, 2019, the City Commission approved Ordinance No. 2019-4247, which established a 1,200-foot distance separation requirement between medical cannabis treatment centers. In order to comply with state requirement, this distance separation also applies to pharmacy stores.

The Publix grocery store at 1100 6th Street has existed at the subject location since 2009 and has never contained a pharmacy. The applicant first proposed the addition of a pharmacy in November of 2019, nine (9) months after the adoption of the distance separation requirement. As such, no special conditions and circumstances have been presented as part of this application.

The granting of the requested variances, based on the submitted application, would not be in harmony with the general intent and purpose of Ordinance No. 2019-4247, as it was the intent of this legislation to limit the number of pharmacies within a designated Medical Cannabis Treatment Center/Pharmacy Store subarea. Additionally, the denial of the requested variances will not restrict the reasonable use of the land, building or structure, as the existing grocery store has been in continuous operation since 2009.

The introduction of a pharmacy within the existing grocery store is not expected to result in any negative impact on the immediate area. Additionally, pharmacies are a customary accessory use to a grocery store.

Notwithstanding, based upon the information provided in the application, the applicant has not substantiated a hardship or practical difficulty that would support the granting of a variance. Based on the lack of a supportable practical difficulty or hardship, staff does not recommend in favor of the requested variances. If the applicant is able to provide additional information that

satisfies the practical difficulty or hardship criteria, and the Board approves the requested variances, staff recommends that the variances be approved subject to conditions in the the attached draft final order.

RECOMMENDATION

In view of the foregoing analysis, staff recommends that the requested variances be **denied**. If the Board concludes that the applicable hardship criteria and/or practical difficulty standards have been satisfied, and approves the requested variances, it is recommended that any such approval be in accordance with the attached draft order.

ZONING/SITE MAP



EXHIBIT A

LEGAL DESCRIPTION

LOT 1 THROUGH 16 IN BLOCK 104, OF OCEAN BEACH FLORIDA, ADDITION NO. 3, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGE 81, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA LESS THE SOUTH 10 FEET OF LOT 8 AND LOT 9 IN BLOCK 104 OF OCEAN BEACH, AND ALSO LESS A PORTION OF SAID LOT 9, AS SHOWN ON RIGHT OF WAY MAP, SECTION 87060-2202, ROAD No. A-1-A, DATED 3-8-57, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCE AT THE S.W. CORNER OF SAID LOT 9, THENCE NORTH 01 DEGREES 57 MINUTES 11 SECONDS WEST FOR 10.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 01 DEGREES 57 MINUTES 11 SECONDS WEST, LAST MENTIONED TWO COURSES BEING COINCIDENT WITH THE EAST RIGHT OF WAY LINE OF ALTON ROAD, AS SHOWN ON SAID RIGHT OF WAY MAP, SECTION 87037-2507, FOR 41.32 FEET TO A POINT OF CUSP WITH A CIRCULAR CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 42.00 FEET, SAID POINT BEARING SOUTH 88 DEGREES 02 MINUTES 49 SECONDS WEST FROM THE CENTER OF SAID CURVE; THENCE SOUTHEASTERLY ALONG SAID CIRCULAR CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 79 DEGREES 40 MINUTES 43 SECONDS FOR AN ARC DISTANCE OF 58.41 FEET TO A POINT OF CUSP; THENCE SOUTH 88 DEGREES 02 MINUTES 35 SECONDS WEST, ALONG THE NORTH LINE OF THE SOUTH 10 FEET OF LOT 9, FOR 34.47 TO A POINT OF BEGINNING.

AND TOGETHER WITH

THAT CERTAIN 20 FOOT WIDE ALLEY, BOUNDED ON THE EAST BY THE WEST BOUNDARY OF LOTS 1 THROUGH 8, BLOCK 104, OCEAN BEACH FLORIDA ADDITION NO. 3, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGE 81 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA; BOUNDED ON THE WEST BY THE EAST LINE OF LOTS 9 THROUGH 16, OF SAID BLOCK 104; BOUNDED ON THE NORTH BY THE NORTH LINE OF LOT 1 OF SAID BLOCK 104 PROJECTED WESTERLY; AND BOUNDED ON THE SOUTH BY THE NORTH LINE OF THE SOUTH 10 FEET OF LOT 8 OF SAID BLOCK 104 PROJECTED WESTERLY.

LYING AND BEING IN SECTION 03, TOWNSHIP 54 SOUTH, RANGE 42 EAST, CITY OF MIAMI BEACH, MIAMI- DADE COUNTY, FLORIDA.

**BOARD OF ADJUSTMENT
CITY OF MIAMI BEACH, FLORIDA**

MEETING DATE: November 6, 2020

PROPERTY: 1100 6th Street

FOLIO: 02-4203-352-0001

FILE NO. ZBA20-0119

IN RE: An application has been filed requesting variance(s) regarding the distance separation, size limitation, and related items for the operation of a pharmacy located within an existing retail establishment.

**LEGAL
DESCRIPTION:** See Exhibit A

F I N A L O R D E R

The applicant, Publix Super Markets, Inc., filled an application with the Planning Department for the following variances:

1. A variance to reduce by 822 feet, the minimum distance separation of 1,200 feet between pharmacy stores, to allow a pharmacy to be located within 378 feet of another pharmacy store.
- **Approved by the Board**
2. A variance to waive the requirement for a medical cannabis dispensary or pharmacy store to be divided by a one-hour fire separation from an adjacent business.
- **Approved by the Board**
3. A variance to exceed the maximum allowed square footage for a pharmacy store of 7,500 square feet by 24,843 square feet, to permit the operation of a pharmacy store located within a 32,343 square foot retail establishment.
- **Approved by the Board**

The City of Miami Beach Board of Adjustment makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the record for this matter:

- A. Based on the plans and documents submitted with the application, testimony and information provided by the applicant, and the Planning Department Staff Report, the project as submitted satisfies the requirements of Section 118-353(d) of the Miami Beach Code. Accordingly, the Board of Adjustment has determined the following:

That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;

That the special conditions and circumstances do not result from the action of the applicant;

That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, buildings, or structures in the same zoning district;

That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Ordinance and would work unnecessary and undue hardship on the applicant;

That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;

That the granting of the variance will be in harmony with the general intent and purpose of this Ordinance and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare; and

That 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.

B. The Board hereby **Approves** the requested variances and imposes the following conditions based on its authority in Section 118-354 of the Miami Beach City Code:

1. The final building plans shall be consistent with plans submitted to the Board of Adjustment, "Publix #1209 Proposed Pharmacy", by Little Diversified Architectural Consulting, dated August 14, 2020.
2. Substantial modifications to the plans submitted and approved as part of the application, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval of the modified plans, even if the modifications do not affect variances approved by the Board.
3. A copy of all pages of the recorded Final Order shall be scanned into the plans submitted for building permit and shall be located immediately after the front cover page of the permit plans.
4. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
5. Satisfaction of all conditions is required for the Planning Department to give its approval on a Certificate of Occupancy; a Temporary Certificate of Occupancy or Partial Certificate of Occupancy may also be conditionally granted Planning Departmental approval.
6. The conditions of approval herein are binding on the applicant, the property's owners and all successors in interest and assigns.

7. The final order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.
8. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code, except to the extent of the variance(s) granted herein.
9. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.

The decision of the Board regarding variances shall be final and there shall be no further review thereof except by resort to a court of competent jurisdiction by petition for writ of certiorari.

IT IS HEREBY ORDERED, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which are adopted herein, including staff recommendations, as modified by the Board of Adjustment, that the application for Variance(s) Approval is GRANTED for the above-referenced project, subject to those certain conditions specified in Paragraph B hereof, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans submitted to the Board of Adjustment with modifications in accordance with the conditions set forth in this Order, as applicable, with staff review and approval.

No building permit may be issued unless and until all conditions of approval that must be satisfied prior to permit issuance as set forth in this Order have been met. The issuance of this Order does not relieve the applicant from obtaining all other required Municipal, County and/or State reviews and permits, including final zoning approval.

When requesting a building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions set forth in this Order.

If the Full Building Permit for the project is not issued within eighteen (18) months of the meeting date at which the original Variance Approval was granted, the subject Approval will expire and become null and void, unless the applicant makes application to the Board for an extension of time, in accordance with the requirements and procedures of Chapter 118 of the City Code; the granting of any such extension of time shall be at the discretion of the Board. At the hearing on any such application, the Board may deny or approve the request and modify the above conditions or impose additional conditions. If the Full Building Permit should expire for any reason (including but not limited to construction not commencing and continuing, with required inspections, in accordance with the applicable Building Code), and not reinstated by the Building Official or designee, the Variance Approval will expire and become null and void.

Filed with the Clerk of the Board of Adjustment on _____ ()

EXHIBIT A

LEGAL DESCRIPTION

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**BOARD OF ADJUSTMENT
CITY OF MIAMI BEACH, FLORIDA**

MEETING DATE: November 6, 2020

PROPERTY: 1100 6th Street

FOLIO: 02-4203-352-0001

FILE NO. ZBA20-0119

IN RE: An application has been filed requesting variance(s) regarding the distance separation, size limitation, and related items for the operation of a pharmacy located within an existing retail establishment.

**LEGAL
DESCRIPTION:** See Exhibit A

FINAL ORDER

The applicant, Publix Super Markets, Inc., filled an application with the Planning Department for the following variances:

1. A variance to reduce by 822 feet, the minimum distance separation of 1,200 feet between pharmacy stores, to allow a pharmacy to be located within 378 feet of another pharmacy store.
2. A variance to waive the requirement for a medical cannabis dispensary or pharmacy store to be divided by a one-hour fire separation from an adjacent business.
3. A variance to exceed the maximum allowed square footage for a pharmacy store of 7,500 square feet by 24,843 square feet, to permit the operation of a pharmacy store located within a 32,343 square foot retail establishment.

The City of Miami Beach Board of Adjustment makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the record for this matter:

- A. Based on the documents submitted with the application, testimony, and information provided by the applicant, and for the reasons stated in the Planning Department Staff Report, the project as submitted does NOT satisfy the practical difficulties or unnecessary hardship standard in Article I, Section 2 of the Related Special Acts, and does NOT satisfy the hardship criteria in City Code Section 118-353(d), as more specifically noted herein.

That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;

That the special conditions and circumstances do not result from the action of the applicant;

That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, buildings, or structures in the same zoning district;

That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Ordinance and would work unnecessary and undue hardship on the applicant;

That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;

That the granting of the variance will be in harmony with the general intent and purpose of this Ordinance and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare; and

That 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.

IT IS HEREBY ORDERED, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which are adopted herein, including staff recommendations, as modified by the Board of Adjustment, that the application for Variance Approval is **DENIED** for the above-referenced project.

Dated this _____ day of _____, 2020.

BOARD OF ADJUSTMENT
CITY OF MIAMI BEACH, FLORIDA

BY: _____
Steven Williams
Chief of Planning Services
For the Chair

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by Steven Williams, Chief of Planning Services of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

Notary:
Print Name:

[NOTARIAL SEAL]

Notary Public, State of Florida
My Commission Expires:
Commission Number:

Approved As To Form:
City Attorney's Office ()

Filed with the Clerk of the Board of Adjustment on _____ ()

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