

ZONING, LAND USE AND ENVIRONMENTAL LAW

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#### VIA ELECTRONIC SUBMITTAL

October 12, 2020

Steven Williams, Chief of Planning Services Planning Department City of Miami Beach 1700 Convention Center Drive, 2<sup>nd</sup> Floor Miami Beach, Florida 33139

#### Re: Letter of Intent - ZBA20-0120 – Application for Variance From Spacing Requirements for Property Located at 1531 Alton Road, Miami Beach, FL 33139

Dear Steven:

This law firm represents SWC Miami Beach Botanicals, LLC DBA Surterra Wellness (the "Applicant"), the prospective tenant of the property located at 1531 Alton Road in the City of Miami Beach (the "City"). The Applicant's goal is to move its existing fully licensed and approved medical cannabis treatment center from its current location at 1523 Alton, to a larger unit within the same shopping center located at 1531 Alton road (the "Property"). This letter serves as the letter of intent in connection with the application for a variance from the spacing requirements applicable to medical cannabis treatment centers in Section 142-1502 of the Miami Beach Code (the "Code").

<u>Property Description.</u> The Miami-Dade County Property Appraiser's Office identifies the shopping center that contains the Property with Folio No. 02-3234-018-0480 <u>See</u> Exhibit A, Property Appraiser Report. The shopping center is located on the east side of Alton Road, between 15<sup>th</sup> and 16<sup>th</sup> Street and is approximately 60,000 square feet in size. The Property is one of ten (10) commercial units within the shopping center and is approximately 5,487 square feet in size. With regard to zoning, the Property is within the CD-2 Medium Intensity Commercial District. Further, the Property is within one of six designated areas in which medical cannabis treatment centers are permitted.

<u>Request.</u> Pursuant to Section 142-1502(b)(4) of the Code, medical cannabis treatment centers are not permitted within 1,200 feet of another medical cannabis treatment center. As mentioned, the Applicant operates an existing medical cannabis

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treatment center at 1523 Alton Road, within the same shopping center as the Property (the "Existing Use"). <u>See</u> Exhibit B, BTR 003914-03-2018. The Existing Use became the first cannabis treatment center licensed in the City when it completed the detailed administrative application process required by the Code in April of 2018. <u>See</u>, BTR Approval BLPL2018-0339.

In July 2018, prior to adoption of the spacing requirement,<sup>1</sup> the City approved another medical cannabis treatment center within the property located 1439 Alton Road and identified by Folio No. 02-4203-009-9150. <u>See</u> Exhibit C, Building Permit No. BC 1808403. This proposed medical cannabis treatment center has been in development since 2018 and has yet to obtain an active Business Tax Receipt. However, the active building permit at this location triggers the spacing requirement and prohibits the establishment of any medical cannabis treatment centers within 1,200 feet. Due the Applicant's successful integration into the community, the Applicant has outgrown the 1,260 square foot unit it currently occupies seeks to move the Existing Use to the Property. However, it is prohibited from doing so because the Property is located approximately 620 feet from the proposed medical cannabis treatment center at 1439 Alton Road. Accordingly, the Applicant seeks a variance from the spacing requirement to permit it to move to the Property.

<u>Satisfaction of Section 118-353 Criteria.</u> The Applicant's request satisfies all variance criteria provided in Section 118-353 of the Code criteria as follows:

# (1) 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;

The Property is within one of six overlay zones designated for medical cannabis treatment centers. Specifically, it is within the medical cannabis treatment center overlay area that applies to CD-1 and CD-2-zoned properties fronting Alton Road between 13<sup>th</sup> and 16<sup>th</sup> street. (the "Alton MCTC Overlay"). The Applicant was the first medical cannabis treatment center in the Alton MCTC Overlay and has operated successfully since 2018. In that time, the Applicant has complied with all applicable state and local regulations and has never been cited for a code enforcement violation. The Applicant has established itself as a community institution, providing important wellness treatments to eligible patients and often collaborating with other local business for community events.

<sup>&</sup>lt;sup>1</sup> The 1,200-foot spacing requirement between medical cannabis treatment centers was adopted in February of 2019 through Ordinance No. 2019-4247.

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> In December 2018, the City issued Building Permit No. BC1808403 for a proposed medical cannabis treatment center at 1439 Alton Road. In February 2019, the City enacted the 1,200 spacing requirements between medical cannabis treatment centers. These two events create a condition that forces the Applicant to remain in its current undersized space despite the fact that the proposed medical cannabis treatment center at 1439 Alton Road has never obtained an active business tax receipt. This special condition does not apply to other properties within the CD-2 District, as the spacing requirement is use specific, and other properties within this CD-2 District are outside the Alton MCTC Overlay. Further, the entire Alton MCTC Overlay is within 1,200 feet the proposed medical cannabis treatment center at 1439 Alton Road. Thus, there is no location within the Alton MCTC Overlay where the Applicant can move the existing use without seeking the variance requested herein. Accordingly, the impact of the proposed medical cannabis treatment center at 1439 Alton Road on the Property is a special condition that is peculiar the Property and not applicable to other properties in the zoning district.

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

The special conditions and circumstances of the Property do not result from the action of the Applicant. The Property was originally the only medical cannabis treatment center in the Alton MCTC Overlay. Through no action of the Applicant, a medical cannabis treatment center obtained a building permit for a location within 1,200 feet of the Property and the Existing Use less than 60 days before the adoption of the 1,200-foot spacing requirement. Through successful integration into the community as provider of medical cannabis to City residents who are constitutionally entitled, the Applicant has outgrown its existing space and now seeks to move to a more spacious location. However, the impact of the proposed medical cannabis treatment center at 1439 Alton prohibits this reasonable expansion.

## (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;

Granting the variance requested does not confer on the Applicant any special privilege denied to other properties in the same zoning district. It merely permits an existing fully licensed medical cannabis treatment center to move within the same shopping center. There are no other existing and fully licensed medical cannabis treatment centers in the Alton MCTC Overlay. Accordingly, granting the variance to allow this proposed move does not confer on the Applicant any

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privilege that is denied to other medical cannabis treatment centers in the Alton MCTC.

(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;

The purpose of establishing the Alton MCTC Overlay was to designate certain commercial areas in the City where medical cannabis treatment centers would be compatible with the existing built-out context. In accordance with this intent, the Applicant established a successful medical cannabis treatment center that has become part of the community by serving patients in need of medical cannabis for the last two (2) years. Literal interpretation of these land development regulations forces the Applicant to remain in its current location that is no longer suitable for its needs. Thus, literal interpretation of the Land Development Regulations imposes an undue hardship upon the Applicant that can be avoided through the granting of the variance requested herein.

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

The requested variance is the minimum variance that makes possible the reasonable relocation of the Existing Use to a larger space. Granting the variance results in a greater distance between the Applicant's medical cannabis treatment center and the proposed medical cannabis treatment center at 1439 Alton Road. The Applicant merely seeks reasonable use of the Property that was deliberately included in the Alton MCTC Overlay, an area specially designated for medical cannabis treatment centers like the one operated by the Applicant. The Applicant is the only currently operating medical cannabis treatment center in the Alton MCTC Overlay, and the variance only permits the Applicant the reasonable use of a similar, more spacious, location within the same shopping center.

(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; and;

The general intent and purpose of the Land Development Regulations applicable to medical cannabis treatment centers is to limit their location to developed commercial areas while preventing an over-concentration of medical cannabis treatment centers in any one area of the City. Granting the variance does not Steven Williams, Chief of Planning Services October 12, 2020 Page 5 of 8

impact any of these objectives. The Property is within the Alton MCTC Overlay, which is a specific area designate for such uses. Further, granting the variance will not result in an inappropriate concentration of medical cannabis treatment centers in this area, as the variance is simply intended to allow the Existing Use to change locations within the same shopping center. Because granting the variance does not result in the location of a medical cannabis treatment center in an area not designated for such use, and does not cause any net increase in the number of medical cannabis treatment centers in the City, granting the variance is in harmony with the general intent and purpose of the Code.

Moreover, granting the variance is in the public interest, as patients who are constitutionally entitled to medical cannabis have come to rely on the Applicant's services. In order to effectively provide services and treatments to these vulnerable members of the community with debilitating medical conditions, the Applicant requires a more spacious location. This is especially true in light of social distancing guidelines implemented to prevent the spread of COVID-19. Many of the Applicant's patients are among the most vulnerable to COVID-19 and therefore desire a location where they can seek treatment in a safe, socially distanced environment. Granting the variance permits the Applicant to provide the same treatments and services that its patients have become accustomed to in a safe and socially distanced environment.

(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 of adjustment voting on the applicant's request.

The variance request is consistent with the City's Comprehensive Plan and does not reduce the levels of service as set forth in the plan.

<u>Practical Difficulty</u>. The location of the Property within a relatively small specialized zoning overlay for medical cannabis treatment centers is a practical difficulty that justifies the granting of a variance. The three square-block area that comprises the Alton MCTC Overlay in combination with the 1,200 spacing requirement adopted in 2019 effectively means that only one medical cannabis treatment center should be permitted in the Alton MCTC Overlay. As mentioned, the Applicant's medical cannabis treatment center was the first in the Alton MCTC Overlay, and the first in the City overall. However, because the proposed medical cannabis treatment center at 1439 Alton Road obtained its building permit prior to the adoption of the 1,200 foot spacing requirement between medical cannabis treatment centers, the Applicant is in the unique position of being one of two permitted medical cannabis treatment centers in an area where only one

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should be permitted. This unique situations is a practical difficulty that justifies a variance to allow to allow the Applicant to move the Existing Use within the same shopping center.

<u>Sea Level Rise and Resiliency Criteria</u>. The new home advances the sea level rise and resiliency criteria in Section 133-50(a) of the City Code, as follows:

#### 1. A recycling or salvage plan for partial or total demolition shall be provided.

A recycling and salvage plan for demolition of the existing home will be provided at permitting.

### 2. Windows that are proposed to be replaced shall be hurricane proof impact windows.

The Applicant does not propose changes to the existing windows at the shopping center located at 1511 Alton Road.

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

The Applicant will provide, where feasible, passive cooling systems.

### 4. Whether resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided.

The landscaping will be Florida friendly and resilient.

# 5. Whether 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, including a study of land elevation and elevation of surrounding properties were considered.

The Applicant does not propose changes to the elevation of the Property. To the extent appropriate for the use of the Property, the Applicant will consider the Southeast Florida Regional Climate Action Plan.

### 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.

The Applicant does not propose any new driveways or ramping.

### 7. Where feasible and appropriate. All critical mechanical and electrical systems are located above base flood elevation.

All mechanical and electrical systems will be located above base flood elevation.

### 8. Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.

The Applicant is merely one tenant in a larger shopping center constructed in 1991. To the extent the Applicant has input with respect to elevation of the existing shopping center, the Applicant will encourage raising the shopping center to base flood elevation.

# 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.

Any areas below base flood elevation plus freeboard will implement appropriate flood mitigation measures to protect the property.

#### 10. Where feasible and appropriate, water retention systems shall be provided.

Where feasible, water retention systems will be provided.

#### 11. Cool pavement materials or porous pavement materials shall be utilized.

Cool pavement materials or porous pavement materials will be utilized where possible.

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

The design of the project will minimize the potential for heat island effects on site.

<u>Conclusion.</u> The Applicant is the City's longest standing medical cannabis treatment center and has fully complied with all City requirements since its establishment in 2018. It has established ties to the community and provided important treatments and services to those who need it. Due to Applicant's success in operating its existing medical cannabis treatment center and the current demands of the market for more spacious commercial units to comply with required social distancing, the Applicant seeks to reestablish the Existing Use in a larger unit within the same shopping center. This modest request is consistent with the intents and purpose of the Code as it does not lead to any increase in the number or concentration of the medical cannabis treatment centers in the City. In fact, grating the variance makes it less likely that medical cannabis treatment

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centers will become inappropriately concentrated, as the larger space for the Applicant is likely to outcompete smaller medical cannabis treatment centers who have yet to establish a consistent patient base.

Accordingly, we look forward to your favorable review of the application. If you have any questions or comments in the interim, please give me a call at 305-377-6236.

Sincerely,

Michael W. Larkin, Esq.

Attachments

CC:

Nicholas J. Rodriguez, Esq.





# **OFFICE OF THE PROPERTY APPRAISER**

### Summary Report

Generated On : 9/21/2020

Property Information			
Folio:	02-3234-018-0480		
Property Address:	1511 ALTON RD Miami Beach, FL 33139-3301		
Owner	BB PLAZA LTD		
Mailing Address	523 MICHIGAN AVE MIAMI BEACH, FL 33139-6317		
PA Primary Zone	6400 COMMERCIAL - CENTRAL		
Primary Land Use	1111 STORE : RETAIL OUTLET		
Beds / Baths / Half	0/0/0		
Floors	1		
Living Units	0		
Actual Area	19,182 Sq.Ft		
Living Area	19,182 Sq.Ft		
Adjusted Area	17,803 Sq.Ft		
Lot Size	60,000 Sq.Ft		
Year Built	1991		

Assessment Information				
Year	2020	2019	2018	
Land Value	\$15,000,000	\$14,620,000	\$13,500,000	
Building Value	\$3,800,000	\$3,705,000	\$749,000	
XF Value	\$0	\$0	\$0	
Market Value	\$18,800,000	\$18,325,000	\$14,249,000	
Assessed Value	\$16,911,061	\$15,373,692	\$13,976,084	

Benefit	Туре	2020	2019	2018
Non-Homestead Cap	tead Assessment Reduction \$1,888,939 \$2,951,308 \$2		\$272,916	
Note: Not all benefits are applicable to all Taxable Values (i.e. County, School Board, City, Regional).				

Short Legal Description	
33-34 53 42	
COMMERCIAL SUB PB 6-5	
LOTS 13 THRU 20 BLK 65	
LOT SIZE 400.000 X 150	
OR 14820-1400 1290 1	



Taxable Value Information				
	2020	2019	2018	
County	· · · ·			
Exemption Value	\$0	\$0	\$0	
Taxable Value	\$16,911,061	\$15,373,692	\$13,976,084	
School Board	· · ·			
Exemption Value	\$0	\$0	\$0	
Taxable Value	\$18,800,000	\$18,325,000	\$14,249,000	
City	· · ·			
Exemption Value	\$0	\$0	\$0	
Taxable Value	\$16,911,061	\$15,373,692	\$13,976,084	
Regional	· · · ·			
Exemption Value	\$0	\$0	\$0	
Taxable Value	\$16,911,061	\$15,373,692	\$13,976,084	

Sales Information				
Previous Sale	Price	OR Book-Page	Qualification Description	
12/01/1990	\$1,650,000	14820-1400	Sales which are qualified	
02/01/1988	\$350,000	13564-0620	Sales which are qualified	
07/01/1978	\$188,333	10091-1767	Sales which are qualified	
04/01/1977	\$150,400	00000-00000	Sales which are qualified	

The Office of the Property Appraiser is continually editing and updating the tax roll. This website may not reflect the most current information on record. The Property Appraiser and Miami-Dade County assumes no liability, see full disclaimer and User Agreement at http://www.miamidade.gov/info/disclaimer.asp

Version:

#### CITY OF MIAMI BEACH CERTIFICATE OF USE, ANNUAL FIRE FEE, AND BUSINESS TAX RECEIPT

1700 Convention Center Drive Miami Beach, Florida 33139-1819

TRADE NAME:SWC Miami Beach Botanicals, LLCDBA:Surterra Wellness

IN CARE OF: ADDRESS: 1523 Alton Rd MIAMI BEACH. FL -331393301

A penalty is imposed for failure to keep this Business Tax Receipt exhibited conspicuously at your place of business.

A Business Tax Receipt issued under this article does not waive or supersede other City laws, does not constitute City approval of a particular business activity and does not excuse the licensee from all other laws applicable to the licensee's business.

This Receipt may be transferred:

FROM:

A. Within 30 days of a bonafide sale, otherwise a complete annual payment is due.

B. To another location within the City if proper approvals and the Additional Information Approved for soft gels, oils, and patches; Smokable Products Permitted.

EMPLOYEE NAME	BLPL APPROVAL NUMBER	APPROVAL
DATE		
CHRISTIAN JAMES PEREZ	BLPL2018-03414	04/17/2018
TERESE CERNA DRISCOLL	BLPL2018-03423	04/18/2018
ZACHARY FLEMING	BLPL2018-03424	05/02/2018
CHRISE CHILDS	BLPL2019-07054	07/08/2020
Storage Locations		

LICENSE NUMBER: BTR003914-03-2018 Beginning: 10/02/2020

Expires: 09/30/2021 Parcel No: 0232340180480

#### TRADE ADDRESS: 1523 Alton Rd

Code	Business Type
95012100	MEDICAL CANNABIS TREATMENT

PRESORTED FIRST CLASS U.S. POSTAGE PAID MIAMI BEACH, FL PERMIT No 1525

SWC Miami Beach Botanicals, LLC

1523 Alton Rd MIAMI BEACH, FL -331393301

CITY OF MIAMI BEACH

**1700 CONVENTION CENTER DRIVE** 

MIAMI BEACH, FL 33139-1819

#### Permit Number: BC1808403

#### Permit Details | Tab Elements | Main Menu

Туре:	Commercial Buildings (Including Condo) - Alterations	Status:	Issued	Project Name:
Applied Date:	07/27/2018	Issue Date:	12/21/2018	
District:	CD-2	Expire Date:	02/23/2021	
Square Feet:	1,866.00	Valuation:	\$184,150.23	Finalized Date:
Description:	INTERIOR ALTERATIOS (BUI DOORS AND INTERIOR DOC			BING, NEW ELECTRICAL, NEW HVAC, EXTERIOR WINDOW AND
Summary Locations Locations  Next Tab  Permit Locations		spections Attachments	Contacts	Sub-Records Holds Meetings More Info Sort Main
Type: Location Address US 1439 ALTON RD, MIAMI BEACH, FL, -331393813, MainitAddtetss⊡ Parcel Number 0242030099150				