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Michael Larkin

Nicholas Rodriguez

200 S. Biscayne Boulevard

Suite 300, Miami, FL 33131

[www.brzoninglaw.com](http://www.brzoninglaw.com)

305.377.6231 office

305.377.6222 fax

[mlarkin@brzoninglaw.com](mailto:mlarkin@brzoninglaw.com)

[nrodriguez@brzoninglaw.com](mailto:nrodriguez@brzoninglaw.com)

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: **ZBA20-0124** – Letter of Intent – Application for Variance from Spacing Requirements for Property located at 1427 Alton Road, Miami Beach, Florida 33139

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Dear Mr. Williams:

This law firm represents Care Resource Community Health Centers Incorporated (the "Applicant") with regard to the above-referenced property (the "Property") within the City of Miami Beach (the "City"). The Applicant intends to establish a pharmacy for patients of its existing non-profit community health clinic located at 1680 Michigan Avenue in the City. This letter serves as the Applicant's letter of intent in support of its application for a variance from spacing requirements applicable to pharmacies under Section 142-1502(d) of the Miami Beach Code of Ordinances (the "Code").

Property Description. Miami-Dade County Property Appraiser's Office identifies the shopping center that contains the Property with Folio No. 02-4203-009-9120. The shopping center is located on the east side of Alton Road, between 14th and 15th Street and is approximately 15,000 square feet in size. The Property contains several commercial units, including a 776 square foot unit on the second floor at the north end of the Property that is the intended location for the Applicant's proposed pharmacy. With regard to zoning, the Property is within the CD-2 Medium Intensity Commercial District, and is within one of six designated areas in which pharmacies may be permitted.

Applicant Background. The Applicant is a 501(c)(3) not for profit corporation that operates four (4) federally qualified community health centers in the Miami area, including one at 1680 Michigan Avenue in Miami Beach ("Care Resource"). Care Resource was founded out of necessity during the early 1980's HIV/AIDS epidemic, which challenged conventional health care norms and created a significant need for crisis intervention, social support, and educational programs. Over the years Care Resource implemented innovative fundraising programs such as its well-known "White Party" and "AIDS Walk Miami," which cemented itself as an important community institution in South Florida. Indeed, in 2019, the Florida Association of Community Health Centers estimated that Care Resource provided close to \$12 million in charitable care to indigent patients, generated an economic benefit of \$127 million within the community, and accounted for 695 jobs (324 direct and 371 indirect or induced).

Today, Care Resource is able to offer a wide variety of community health services to its patients including pediatric care, dental care, gynecological care, general primary care, community-based research, diagnostic testing, HIV screening, and immunizations.

One vitally important service that Care Resource offers is providing prescription medication to its patients at federally subsidized prices. Traditionally, this has been accomplished through the federal 340B "Contract Pharmacy" program, whereby Care Resource could contract with retail pharmacies such as Walgreens and CVS to buy and dispense prescription medication at discounted prices on its behalf. However, due to regulatory changes at the federal level, manufacturers of prescription medication have stopped providing discounted medications to large corporate retail pharmacies. This means that in order to continue obtaining and distributing life-saving medications to its patients at federally subsidized costs, Care Resource must have its own pharmacy facilities that can purchase the discounted medication directly from manufacturers. As it has always done, Care Resource is rising to this new challenge by seeking to operate small retail pharmacies for the purpose of continuing to provide discounted prescription medications to its own patients.

Request. Pursuant to Section 142-1502(b)(5) of the Code, pharmacies must not be located within 1,200 feet of another pharmacy. The Applicant's proposed pharmacy at the Property would be located within 1,200 feet of the CVS Pharmacy at 1421 Alton Road, and a similar community health center-based pharmacy known as AIDS Healthcare Foundation ("AHF"), located within the building at 1613 Alton Road. Accordingly, the Applicant requires a variance from the spacing requirement in Section 142-1502(b)(5) in order to continue providing necessary prescription medications for the patients of its existing community health clinic at 1680 Michigan Avenue.

Satisfaction of Section 118-353 Criteria. 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 special circumstances applicable to the Property involve the changing landscape of federal subsidized prescription medications. While technically classified as a retail pharmacy similar to Walgreens or CVS, the Applicant performs a very different role than those retail pharmacies. Indeed, many prescription medication manufacturers have stopped distributing subsidized pharmaceuticals to these retail pharmacies, leaving vulnerable patients who rely on federal community health centers without a location to fill their prescriptions. The interplay between the current federal regulatory landscape applicable to pharmacies that dispense federally subsidized medication and the City regulations that treat all pharmacies alike is a special circumstance applicable only to the Applicant and the Property involved.

**(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 Applicant has assisted patients at its Miami Beach location at 1680 Michigan Ave since 2013. Throughout this time, Care Resource has partnered with pharmacies such as Walgreens to obtain and distribute subsidized prescription medications on its behalf. Through no fault of the Applicant, prescription drug manufacturers have refused to provide discounted medications to traditional retail pharmacies. This significant shift in the supply chain is not the fault of the Applicant, and justifies the Applicant's desire to open a small retail pharmacy to serve its own patients despite the presence of traditional retail pharmacies in the same area.

**(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. Granting the variance merely permits the Applicant to continue providing patients with the same discounted life-saving prescription medications that it has always provided, except from its own location rather than through a contracted third party. Granting the variance does not result in a concentration of similar pharmacy uses, which is what the spacing requirement applicable to pharmacies intended to prevent. Rather, granting the variance permits a unique pharmacy use that is readily distinguishable from the adjacent retail pharmacies.

**(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 land development regulations deprives the Applicant of a critical aspect of its mission – providing discount medication to its own patients. The Applicant's proposed pharmacy use is distinguishable from typical retail pharmacies that are permitted within the same zoning district as the Property. Accordingly, interpreting the land development regulations to prohibit the Applicant's unique and important pharmacy use would work an unnecessary and undue hardship on the Applicant.

**(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 use of the Property as a support pharmacy for its existing community health center at 1680 Michigan Avenue. Granting the variance will not result in an observable concentration of retail pharmacies in a single area, as Care Resource does not utilize exterior advertising, signage, or storefront. The Applicant's proposed pharmacy will only be 776 square feet in size, and hardly visible to the general public, as the Applicant intends for the proposed pharmacy to only be utilized by its own patients that are sent there from the existing community health center at 1680 Michigan Avenue.

**(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 pharmacies is to limit their location to developed commercial areas while preventing an over-concentration in any one area of the City. Further, the City applies identical regulations to pharmacies as it does to medical cannabis treatment centers pursuant to state law, which recognizes the ability of pharmacies to obtain additional licensure to become medical cannabis treatments. Granting the variance does not impact any of these objectives.

As mentioned, the Applicant's proposed pharmacy will have no public presence and will not result in a perceptible increase in the number of retail pharmacies in the immediate vicinity of the Property. Moreover, the Applicant has no intention of ever seeking the

licensure needed to dispense medical cannabis, and is willing to agree to conditions or proffer a declaration of use that prohibit it from ever operating as a medical cannabis treatment center. Further, the Property is within a specific commercial area determined to be appropriate for pharmacy uses. The Applicant's patients depend on the discounted prescription medication that the Applicant provides, which are, or no longer will be, available at traditional retail pharmacies. Thus, granting the variance is consistent with the general intent and purpose of the land development regulations and is beneficial to the public interest.

**(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.

**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 requested variance does not impact the resilience of the Property.

Practical Difficulty. The regulatory and economic changes applicable to manufacturers of prescription medications cause a practical difficulty for the Applicant by altering the manner in which it can provide necessary prescription medication to its patients. Without the requested variance, the Applicant will have to forego an important service it provides for its patients, and leaves its patients with few choices for locations to obtain discounted prescriptions.

Sea Level Rise and Resiliency Criteria. 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 will be provided at the time of 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 Property.

**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 specific unit in which the Applicant's pharmacy is proposed does not provide enough space for landscaping.

**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 1988. 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.

Conclusion. The Applicant's proposed pharmacy is necessary to serve life-saving medications to vulnerable and underprivileged members of the community. Changes at the federal level necessitate a change in the structure and operation of the Applicant's

community health facility to continue providing federally subsidized medications to members of the Miami Beach community. Denial of the requested variance would work an unnecessary and undue hardship on the Applicant and Miami Beach residents who rely on its community health services.

In light of the above, the Applicant respectfully request your favorable review and recommendation of this application. If you have any questions or comments with regard to the application, please contact me at (305) 377-6231.

Sincerely,



Michael W. Larkin

CC:  
Stewart Stein  
Nicholas Rodriguez, Esq.