

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Board of Adjustment

TO: Chairperson and Members
Planning Board

DATE: February 5, 2021

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **ZBA20-0120**
1531 Alton Road – Medical Cannabis Treatment Center

An application has been filed requesting variance(s) regarding the distance separation for the relocation of an existing medical cannabis treatment center

RECOMMENDATION

Approval of the requested variance.

ZONING/SITE DATA

Address:	1531 Alton Road
Folio:	02-3234-018-0480
Legal Description:	Lots 13 Thru 20, Block 65 of Commercial Subdivision, according to the plat thereof as recorded in Plat Book 6 at Page 5 of the Public Records of Miami-Dade County, Florida.
Zoning:	CD-2, Commercial Medium Intensity
Future Land Use Designation:	CD-2, Commercial Medium Intensity
Lot Size:	60,000 SF
Building Use:	Commercial – Retail/Restaurant
Year Constructed:	1991
Surrounding Uses:	North: Commercial West: Commercial/Residential South: Commercial East: Commercial

THE PROJECT

The applicant, SWC Miami Beach Botanicals, LLC., has submitted the following plans and documents:

- Letter of intent, dated October 12, 2020
- Plans, entitled "Surterra – Miami Beach Relocation", by ASD/SKY, dated October 10, 2020.
- Boundary Survey, by Blanco Surveyors Inc., dated September 11, 2009.
- Specific Purpose Survey, by K2M Design, signed and sealed by Steven S. Grasley, dated October 8, 2020

The applicant is requesting a variance associated with the relocation of an existing medical cannabis treatment center. Specifically, the applicant is requesting the following variance:

1. **A variance to reduce by 850 feet, the minimum distance separation of 1,200 feet between medical cannabis treatment centers, to allow a medical cannabis treatment center to be located within 620 feet of another medical cannabis treatment center.**

- 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.

(4) No medical cannabis treatment center shall be located within 1,200 feet of another medical cannabis treatment center.

The proposed medical cannabis treatment center would be located approximately 620 feet from an approved medical cannabis treatment center, located at 1439 Alton Road. The code requires a minimum 1,200-foot distance separation between medical cannabis treatment centers. The distance separation is determined by measuring a straight line from the entrance and exit of each business.

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 variance does 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.
Satisfied
2. That the special conditions and circumstances do not result from the action of the applicant.
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.

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.

Satisfied

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

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.

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

The applicant, SMC Miami Beach Botanicals, was issued a BTR for a medical cannabis treatment center, doing business as Surterra Wellness, located at 1523 Alton Road in 2018. In 2018 a permit was also issued for a proposed medical cannabis treatment center located at 1439 Alton Road.

Since Surterra Wellness has been in operation, the City's Land Development Regulations pertaining to medical cannabis treatment centers have been modified. Specifically, 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. As such, the existing Surterra Wellness, located at 1523 Alton Road and the approved medical cannabis treatment center located 1439 Alton Road are legal non-conforming because there are less than 1,200 feet apart.

The applicant is proposing the relocation of Surterra Wellness from 1523 Alton Road to 1531 Alton road, within the same shopping center. Although, the new location, 1531 Alton Road, is

greater distance from the approved medial cannabis treatment center located at 1439 Alton road, it does not comply with the 1,200-foot distance separation.

The general intent of Ordinance No. 2019-4247 was to prevent the clustering or concentration of medical cannabis treatment centers within a permitted area. Staff feels that the granting of the requested variance would be in harmony with this intent, as the number of medical cannabis treatments centers in the area will not be increased. Additionally, the proposed relocation further separates the two medical cannabis treatment centers, thereby reducing the extent of the non-conformance.

Staff is supportive of the proposed variance; however, staff is recommending conditions to ensure that operations cease at 1523 Alton Road before commencing at 1531 Alton Road. Based on the forgoing analysis, staff is supportive of the requested variance.

RECOMMENDATION

In review of the forgoing analysis, staff recommends that the Board of Adjustment **approve the requested variance**, subject to the conditions enumerated in the attached draft order.

ZONING/SITE MAP



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

MEETING DATE: February 5, 2021

PROPERTY: 1531 Alton Road

FOLIO: 02-3234-018-0480

FILE NO. ZBA20-0120

IN RE: An application has been filed requesting variance(s) regarding the distance separation for the relocation of an existing medical cannabis treatment center

LEGAL

DESCRIPTION: Lots 13 Thru 20, Block 65 of Commercial Subdivision, according to the plat thereof as recorded in Plat Book 6 at Page 5 of the Public Records of Miami-Dade County, Florida.

FINAL ORDER

The applicant, SWC Miami Beach Botanicals, LLC., has filed an application with the Planning Department for the following variance:

1. A variance to reduce by 850 feet, the minimum distance separation of 1,200 feet between medical cannabis treatment centers, to allow a medical cannabis treatment center to be located within 620 feet of another medical cannabis treatment center.
- **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, "Surterra – Miami Beach Relocation", by ASD/SKY, dated October 10, 2020.
2. This approval is granted to SWC Miami Beach Botanicals, LLC. only. Any changes in ownership or operator shall require the new owner or operator to submit an affidavit approved by City to the City of Miami Beach Planning Department transferring approval to the new owner or operator and acknowledging acceptance of all conditions established herein prior to the issuance of a new Certificate of Use/Business Tax Receipt.
3. Storefronts shall not be obstructed, and windows shall be transparent.
4. Prior to the issuance of a building permit, an executed affidavit shall be provided, in a form approved by the City Attorney's Office, confirming that the medical cannabis treatment center located at 1523 Alton Road, currently operated by the applicant, will cease its operations and vacate the property prior to the issuance of a temporary certificate of occupancy (TCO) or certificate of occupancy (CO) for 1531 Alton Road.
5. Prior to issuance of a Certificate of Use/Business Tax Receipt for a medical cannabis treatment center at 1531 Alton Road, evidence that the 1523 Alton Road location has been vacated must be provided to the Planning Department.
6. Prior to the issuance of a Certificate of Use/Business Tax Receipt for a medical cannabis treatment center at 1531 Alton Road, an affidavit must be submitted, in a form approved by the City Attorney's Office, formally abandoning the medical cannabis treatment center use at 1523 Alton Road (including any City approvals or permits to operate a medical cannabis treatment center). This affidavit must also acknowledge and agree that, pursuant to the land development regulations, the subject property at 1523 Alton Road will not be used as a medical cannabis treatment center in the future.
7. 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.

8. 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.
9. A copy of all pages of the recorded Final Order shall be submitted with the application for Certificate of Use/Miami Beach Business Tax Receipts.
10. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
11. 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.
12. The conditions of approval herein are binding on the applicant, the property's owners and all successors in interest and assigns.
13. 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.
14. 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.
15. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit, Certificate of Use or Miami Beach Business Tax Receipt.

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.

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.

[NOTARIAL SEAL]

Notary:
Print Name:
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 _____ ()