

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Board of Adjustment

TO: Chairperson and Members
Planning Board

DATE: March 5, 2021

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **ZBA20-0124**
1427 Alton Road – Pharmacy Store

An application has been filed requesting variance(s) for the distance separation of a proposed pharmacy.

RECOMMENDATION

Denial of the requested variance.

ZONING/SITE DATA

| | |
|------------------------------|---|
| Address: | 1427 Alton Road |
| Folio: | 02-4203-009-9120 |
| Legal Description: | Lots 19 and 20 in Block 10, of Ocean Beach 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. |
| Zoning: | CD-2, Commercial, Medium Intensity Zoning District |
| Future Land Use Designation: | CD-2, Commercial, Medium Intensity |
| Lot Size: | 15,000 square feet |
| Building Use: | Commercial – Retail/Office |
| Year Constructed: | 1988 |
| Surrounding Uses: | North: Commercial West: Residential, Single-Family South: Commercial East: Commercial |

THE PROJECT

The applicant, Care Resource Community Health Centers, Inc., has submitted the following plans and documents:

- Letter of intent, dated December 14, 2020
- Plans, entitled Care Resource Patient Pharmacy, by DNB Design Group, dated January 4, 2021.
- Boundary Survey, by Longitude Surveyors, dated January 5, 2021.
- Radial Survey, by Longitude Surveyors, dated January 5, 2021.

The applicant is requesting a variance associated with the proposed pharmacy store on the second floor of an existing 2-story commercial shopping center. Specifically, the applicant is requesting the following variance:

1. **A variance to reduce by 1,036 feet, the minimum distance separation of 1,200 feet between pharmacy stores, to allow a pharmacy to be located within 164 feet of an existing 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 164 feet from an existing CVS pharmacy, located to the south on the east side of Alton Road, immediately adjacent to the subject property. 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.

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.

Not applicable

- (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.

Not applicable

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 Statute, 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 requirements, this distance separation also applies to pharmacy stores.

The proposed pharmacy is a new use that would be occupying a vacant retail space. Based on the applicant's letter of intent, the pharmacy would be for the exclusive use of patients from the existing non-profit community health clinic located at 1680 Michigan Avenue.

Further, the applicant's letter of intent states that due to regulatory changes, the non-profit community health clinic is now required to have its own pharmacy to provide their patients with federally subsidized medications. The applicant has not provided any documentation related to

these regulatory changes that would substantiate any limitations or requirements for the location of the pharmacy in reference to location of the medical clinic.

Staff recognizes the community benefits of the existing non-profit medical clinic. Additionally, the introduction of the proposed pharmacy would likely not result in any negative impact on the immediate area. However, the City Code regulations pertaining to minimum distance separation between pharmacies is clear and the proposed new pharmacy on Alton Road does not meet these requirements.

Based upon the information provided in the application, staff has not been able to conclude that the applicant has substantiated a hardship or practical difficulty that would support the granting of a variance. As such, due to the lack of a supportable practical difficulty or hardship, staff does not recommend in favor of the requested variance. 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 any such approval be approved subject to conditions in the attached draft final order.

RECOMMENDATION

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

ZONING/SITE MAP

