

# MIAMI BEACH

## PLANNING DEPARTMENT

### Staff Report & Recommendation

### Board of Adjustment

TO: Chairperson and Members  
Planning Board

DATE: June 4, 2021

FROM: Thomas R. Mooney, AICP  
Planning Director

SUBJECT: **ZBA21-0127**  
**6948-6988 Abbott Avenue and 6957-6965 Byron Avenue – Pharmacy Store**

An application has been filed requesting variances for locating a pharmacy within a separate establishment, maximum size limitation, and minimum separation from another pharmacy, for the operation of a pharmacy located within a proposed mixed-use development.

#### **RECOMMENDATION**

**Denial** of the requested variances.

#### **ZONING/SITE DATA**

Address:	6948 Abbott Avenue	02-3211-002-1010
	6956 Abbott Avenue	02-3211-002-1020
	6957 Byron Avenue	02-3211-002-0990
	6964 Abbott Avenue	02-3211-002-1030
	6965 Byron Avenue	02-3211-002-0970
	6972 Abbott Avenue	02-3211-002-1040
	6988 Abbott Avenue	02-3211-002-1050

Legal Description: Lots 3, 4, 5, 7, 8, 9, 10 of Block 13, and lots 11 and 12 as less the west 50 feet thereof, of Normandy Beach South, according to the plat thereof, as Recorded in Plat Book 21, Page 54, of the Public Records of Miami-Dade County, Florida.

Zoning: TC-C, Town Center - Central Core

Future Land Use Designation: TC-C, Town Center - Central Core

Lot Size: 49,820 SF

Building Use: Proposed - Commercial and Residential

Year Constructed: Under Construction

Surrounding Uses:  
North: Commercial/Parking  
West: Residential  
South: Commercial/Parking  
East: Commercial/Residential

#### **THE PROJECT**

The applicant, Target Corporation, has submitted the following plans and documents:

- Letter of intent, dated April 5, 2021.
- Plans, entitled Board of Adjustment – Final Submittal, by Cube 3, LLC., dated March 2, 2021.
- Boundary Survey, by John Ibarra & Associates, Inc., dated February 24, 2021.
- Specific Purpose Survey, by John Ibarra & Associates, Inc., dated March 2, 2021

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

1. **A variance to reduce by 407 feet, the minimum distance separation of 1,200 feet between pharmacy stores, to allow a pharmacy to be located within 793 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 entrance of the proposed Target store is located approximately 793 feet from an existing pharmacy, located on the north east corner of Dickens Avenue, Indian Creek Drive and 71<sup>st</sup> Street. 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 retail store, Target. It will have walls on three sides and a counter that opens into the store.

3. **A variance to exceed the maximum allowed square footage for a pharmacy store of 7,500 square feet by 22,500 square feet, to permit the operation of a pharmacy store**

**located within a 30,000 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 retail store. The pharmacy area itself will be approximately 702 square feet, while the retail store is approximately 30,000 square feet. The pharmacy will open into the larger retail 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 a 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 subject pharmacy would be integrated into a proposed Target store, located on the ground floor of a proposed mixed-use building. Construction of the mixed-use building has not started. However, the project has been reviewed and approved by both the Design Review Board and Planning Board, as noted hereto:

- Design Review Board, DRB19-0424, approved October 6, 2020
  - Design Review Board approval for the construction of a new multistory mixed-use residential and retail development, including one or more waiver, and one or more variances from the street class frontage requirements to replace existing surface parking lots.
- Planning Board, PB19-0303. approved February 25, 2020 and modified by PB20-0410, approved January 26, 2021.

- Conditional use permit for a retail establishment over 25,000 SF, which is part of a new proposed 12-story mixed-use development in the TC-C zoning district.

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 proposed development, including the Target store, may still be constructed and utilized.

The introduction of a pharmacy within the proposed retail store is not expected to result in any negative impact on the immediate area. Additionally, pharmacies are a customary accessory use to retail stores of this nature and are typically a component of Targets throughout the country.

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 the requested variances. 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 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

