

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

**PROPERTY:** 1045 5<sup>th</sup> Street

**FILE NO.** ZBA19-0094

**IN RE:** An application has been filed requesting variance(s) regarding distance separation, size limitation, and related items for the operation of a pharmacy located within a retail establishment.

**LEGAL**

**DESCRIPTION:** Lots 9 through 11, Block 98 of McGuires' Subdivision, as recorded in plat book 6, page 83 and lots 12 through 14, Block 98 of Ocean Beach Addition Number 3, as recorded in plat book 2, page 81 of the records of Miami-Dade County, Florida

**FOLIO NUMBER:** 02-4204-002-0040

**MEETING DATE:** July 12, 2019

**ORDER**

The applicant, Target Corporation, has filed an application with the Planning Department requesting the following variance(s):

1. A variance to reduce, by 520 feet, the minimum distance separation of 1,200 feet between pharmacy stores, to allow a pharmacy to be located within 680 feet of another pharmacy store.  
**- Approved by the Board**
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 adjacent business.  
**-Approved by the Board**
3. A variance to exceed, by 24,843 square feet, the maximum allowed square footage for a pharmacy store of 7,500 square feet to permit the operation of a pharmacy store located within a 32,343 square foot retail establishment.  
**-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. 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.
2. The Board of Adjustment shall retain jurisdiction of this file.
3. This approval is granted to Target Corporation and CVS only. Any changes in operator shall require the new operator to submit an affidavit, approved by City, to the City of Miami Beach Planning Department transferring approval to new operator and acknowledging acceptance of all conditions established herein prior to the issuance of a new Business Tax Receipt or Certificate of Use.
4. The property owner shall be responsible for compliance with all the conditions of this variance. The current operator and any subsequent operators of the business shall be specially apprised of all conditions.
5. These variances are for the establishment of a pharmacy store only. The sale of medical cannabis or medical cannabis paraphernalia shall be prohibited.


6. If there is any change in the use or operation of the establishment, or in the event the use ceases to exist for any reason (except for temporary closure during a season or remodeling, both for a period up to six (6) months), the variance shall be subject to Section 118-356, City Code, for revocation or modification of the variance.
7. The Board of Adjustment shall retain the right to call the operators back before the Board and modify the conditions of approval should the City issue any written warnings and/or notices of violation about pertaining to the operation of the pharmacy store use.
8. The conditions on this Order are binding on the applicant, the property's owners and all successors in interest and assigns.
9. This 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.
10. 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 granted herein.
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. This Order shall be recorded, in the Public Records of Miami-Dade County; prior to the issuance of a City Business Tax Receipt or Certificate of Use.
13. 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.

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 to modify the previously approved 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.

Dated this 15<sup>th</sup> day of July, 2019.

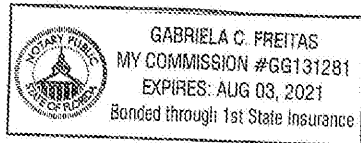
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Meeting Date: July 12, 2019  
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CITY OF MIAMI BEACH, FLORIDA


BY:   
Rogelio Madan, AICP  
Chief of Community Planning & Sustainability  
For the Chair

STATE OF FLORIDA )  
COUNTY OF MIAMI-DADE )

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of July, 2019, by Rogelio Madan, Chief of Community Planning and Sustainability 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: Gabriela Freitas  
Notary Public, State of Florida  
My Commission Expires: 8-3-21  
Commission Number: gg131281

Approved As To Form:  
City Attorney's Office (Nick Allegro) 7/25/2019

Filed with the Clerk of the Board of Adjustment on Josie Gully (7/26/19)