

Town of Lauderdale-By-The-Sea
Regular Planning and Zoning Board

Agenda

Wednesday, September 4, 2024

6:00 PM



Jarvis Hall 4505 N. Ocean Drive
www.Lauderdalebythesea-fl.gov

LAUDERDALE-BY-THE-SEA TOWN COMMISSION

Regular Planning and Zoning Board

Wednesday, September 4, 2024, 6:00 PM
Jarvis Hall 4505 N. Ocean Drive, 33308

1. **CALL TO ORDER**

2. **PLEDGE OF ALLEGIANCE TO THE FLAG**

3. **APPROVAL OF MINUTES**

3.a. June Minutes

4. **PUBLIC COMMENTS**

5. **NEW BUSINESS**

5.a. Appeal from an Administrative Decision (2024-AAD-01) (the “Appeal”) pursuant to Chapter 30, “Unified Land Development Regulations,” ARTICLE IX, “Appeals,” Section 30-531 of the Town Code of Ordinances (“Town Code”) for approval to be classified as a drug store/pharmacy (with no on-site prescription writing for controlled substances identified in Schedule II, III, or IV in F.S. §§ 893.03, 893.035, or 893.0355) as such is a permitted use within the B-1 zoning district pursuant to Section 30-271 a (1) (z) of the Town Code.

6. **OLD BUSINESS**

7. **UPDATES/BOARD MEMBER COMMENTS**

8. **ADJOURNMENT**

THE TOWN OF LAUDERDALE-BY-THE-SEA WILL FURNISH APPROPRIATE AUXILIARY AIDS AND SERVICES NECESSARY TO AFFORD INDIVIDUALS AN EQUAL OPPORTUNITY TO PARTICIPATE IN MEETINGS OF THE TOWN COMMISSION. IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT AND FLORIDA STATUTE 286.26, PERSONS WITH DISABILITIES NEEDING SPECIAL ACCOMMODATION TO PARTICIPATE IN THIS PROCEEDING

SHOULD CONTACT THE TOWN CLERK NO LATER THAN TWO (2) DAYS PRIOR TO THE MEETING AT (954) 640-4200 FOR ASSISTANCE.

IF ANY PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE TOWN COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING OR HEARING, HE/SHE WILL NEED A RECORD OF THE PROCEEDINGS AND FOR SUCH PURPOSES MAY NEED TO ENSURE THAT A VERBATIM RECORDING OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

PROCEDURES FOR PUBLIC COMMENTS:

Public Comments may address issues that are not on this meeting's agenda, but should relate to the business of the Town, and should not contain personal attacks. If your comment requires follow up, the Town Manager will have a staff person respond to your concerns, and will advise us of the outcome.

The Town Clerk will read off the names of those who have signed up to speak. When your name is called, please come to the podium, state your name for the record, and indicate whether you are a Town resident. Do not state your address. You have up to three minutes to make your comments, but there is no requirement to use the entire time. If you wish to address a particular Commissioner or member of Town Administration, please do so by use of their title.

If you wish to approach the Commission dais to hand out a document or for some other reason, please request permission and state your reason for doing so. All documents to be provided to the Commission should be handed to the Town Clerk for distribution.

These procedures have been developed to assure that the Town Commission meeting time is efficiently used, and that meetings are conducted in a polite and respectful manner. More information on the decorum rules for Town Commission meetings is

available in Section 2-23 of the Town Code of Ordinances.

INVOCATION:

The Invocation before each Town Commission meeting is a voluntary service of a private citizen, offered to serve the spiritual needs of the members of the Town Commission and solemnize the meeting. It is not intended to be an opportunity to advance or disparage one faith or belief over another. The views expressed in the Invocation have not been previously reviewed by the Town and do not necessarily represent the beliefs of any Town employee or official. No person is required to be present at or participate in the Invocation, and the decision whether to be present or participate in the Invocation will not affect any person's right to actively participate in the official business of the Town or obtain any benefit from the Town. The Town's written Invocation policy is available on its website, and upon written request to the Town Clerk.all static



Agenda Item No: 3.a.

Planning and Zoning Board Agenda Item Report

Meeting Date: September 4, 2024

Submitted By: Jhanelle Campbell, Development Services Director

Submitting Department: Development Services

Item Type: Presentation

Agenda Section: APPROVAL OF MINUTES

Subject Title: June Minutes

Explanation:

Recommendation:

Exhibits:

1. June Planning and Zoning Board Meeting Minutes

NON APPROVED

**TOWN OF LAUDERDALE-BY-THE SEA
PLANNING AND ZONING BOARD MEETING MINUTES
JARVIS HALL, 4505 N OCEAN DRIVE, 33308
Wednesday, June 5, 2024**

1. CALL TO ORDER

Vice Chair Blake called the in-person Planning and Zoning (P&Z) Board meeting for the Town of Lauderdale-By-The-Sea (L-B-T-S) to order at approximately 6:00PM.

2. PLEDGE OF ALLEGIANCE TO THE FLAG

The Pledge of Allegiance was recited.

ROLL CALL & WELCOME

Board Clerk Megan Small called the roll and present in-person were Vice Chair Karen Blake, Board Members Ron Piersante, Jeff Goldman, and William (Bill) Ferrante. The absent were Chair Sylvester, Board Members Leslie Richardson, and Patrick Ucci. Present in person were Town Attorney Narinah Jean-Batiste, Development Services Director Jhanelle Campbell, Assistant Development Services Director Muriel Bryan Ramiriz and Board Clerk Megan Small.

3. APPROVAL OF MINUTES

a. Planning & Zoning (P&Z) Meeting Minutes – May 1, 2024

Board Member Ferrante made a motion to approve the minutes of the P&Z Meeting of May 1, 2024 as written. The motion was seconded by Board Member Piersante. The motion to approve the May 1, 2024 minutes as written carried 4-0.

4. PUBLIC COMMENTS

Vice Chair Blake opened the meeting to the public for any comments but if a member of the public wished to speak on a specific agenda item, that person could choose to wait until public comment opened on that item. As no one wished to speak now and the Vice Chair closed this portion of Public Comments.

5. NEW BUSINESS

5.a.

ORDINANCE 2024-06 AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AMENDING CHAPTER 30 "UNIFIED LAND DEVELOPMENT REGULATIONS," ARTICLE I "IN GENERAL," SECTION 30-11, "DEFINITIONS" AND SECTION 30-154 "PROHIBITED USES" TO MODIFY, CLARIFY AND FURTHER DELINEATE REQUIREMENTS RELATED TO MARIJUANA; PROVIDING FOR CODIFICATION; SEVERABILITY; CONFLICTS; AND FURTHER PROVIDING FOR AN EFFECTIVE DATE.

The Vice Chair requested Staff to present the item and Development Services Director (DSD) Jhanelle Campbell gave a brief history and stated that on the November ballot, there was a question which was Florida Amendment 3, Marijuana Legalization Initiative (2024). A "yes" vote supported legalizing marijuana for adults 21 years and older and individuals could possess up to 3 ounces of marijuana. A "no" vote opposed legalizing marijuana for adult use. If this

was approved, the effective date would be six months after voter approval. If it was approved, it would only apply to Florida law and did not change or immunize violations of Federal law. Town Code currently prohibited medical marijuana retail centers pursuant to Section 30-154(a) and needed to establish clear regulations for adult personal use of marijuana. This would prevent inconsistencies in interpretation and would allow for enforcement. It was important that any ambiguity be removed from the Code and to include necessary details in the Town's marijuana regulations. She explained that the ordinance before the Board did all this and Staff was recommending approval of Ordinance 2024-06 by the Planning and Zoning Board. There were no Board Questions and no Public Comments.

The Vice Chair called for Board Comments. Board Member Piersante asked how this would affect the smoke shops in Town. DSD Campbell answered that there should be no effect on smoke shops which were regulated under tobacco paraphernalia, a separate set of regulations. Board Member Ferrante inquired about in the future if the Town did not want to have marijuana shops, they would have to pass a new ordinance and with the new State law going into effect, would the Town be able to do that. The DSD answered that currently, the Town prohibited medical marijuana centers. If the law passed, it meant that a person would be able to carry and utilize for personal use up to three ounces without medical clearance. Vice Chair Blake wanted to know if in the definition and in the amendment, was hemp and things that were cannabis included. DSD Campbell said that this amendment did not include hemp which was handled under separate State parameters. The Vice Chair asked if the Town wanted to discourage this, we would have to have a separate ordinance if permitted by State law and not preempted for which DSD Campbell answered that she was correct. Town Attorney Narinah Jean-Batiste further explained what department dictated the sale of hemp, hemp extract, and what that meant and what one could do. The Town would not be able to just prohibit it as the State had a regulatory framework for that. Vice Chair Blake wanted to know if the Town's zoning could prohibit the sale of it and it was decided that additional research would be required to answer that question. The Vice Chair just wanted to ensure if the Board passed this tonight, hemp was not included and it was not. The Town Attorney would definitely take a look at zoning but per Florida Statutes, hemp was not a part of the definition of marijuana. Board Member Goldman asked about line 24 in the ordinance which talked about ambiguous and DSD Campbell said that the Code was a living document and over time, sometimes the language needed to be changed. The Motion to approve Ordinance 2024-06 was unanimously passed (4-0).

5.b.

ORDINANCE 2024-07 AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, CREATING CHAPTER 30 "UNIFIED LAND DEVELOPMENT REGULATIONS," ARTICLE IV "DEVELOPMENT PERMITS – APPLICATIONS, REQUIREMENTS AND REVIEW PROCEDURES," SECTION 30-125 "UNITY OF TITLE OR COVENANT IN LIEU OF UNITY OF TITLE" AND PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS, AND FOR AN EFFECTIVE DATE.

The Vice Chair requested Staff to present the item and also called for Public Comment but as there wasn't any, Public Comment was closed. Development Services Director Campbell explained that municipalities were able to use various methods to control mixed-use development which could result in multiple ownerships. They typically use the Unity of Title as the document to accommodate these situations. However, there were instances when there were multiple parcels with multiple owners and Unity of Title did not work. Covenant in Lieu might then be used. The Town has used Unity of Title in the past but regulations never had

been formerly established in the Code. The Town thought it was important to establish these regulations and that would be the ordinance before the Board. Recently, a hotel owner requested using Covenant in Lieu instead of Unity of Title and that was the basis for establishing these regulations. Board Member Piersante wanted to know what would happen if there were five or six owners in a parcel, would they all be responsible. DSD Campbell explained that the Covenant in Lieu stayed with the property because Covenants stayed with the property and not with the owner(s). As there were no other Board Questions or anyone requesting to speak, the Vice Chair called for a motion.

Board Member Goldman made a motion to approve Ordinance 2024-07. The motion was seconded by Board Member Piersante. The motion to approve Ordinance 2024-07 as written carried 4-0.

6. OLD BUSINESS

None.

7. UPDATES/BOARD MEMBER COMMENTS

None.

8. ADJOURNMENT

Board Member Ferrante made a motion to adjourn at approximately 6:16PM. The motion was seconded by Board Member Goldman. The motion to adjourn carried 4-0.

ATTEST:

Vice Chair Karen Blake

Date Accepted: _____



Planning and Zoning Board Agenda Item Report

Meeting Date: September 4, 2024

Submitted By: Jhanelle Campbell, Development Services Director

Submitting Department: Development Services

Item Type: Presentation

Agenda Section: NEW BUSINESS

Subject Title: Appeal from an Administrative Decision (2024-AAD-01) (the “Appeal”) pursuant to Chapter 30, “Unified Land Development Regulations,” ARTICLE IX, “Appeals,” Section 30-531 of the Town Code of Ordinances (“Town Code”) for approval to be classified as a drug store/pharmacy (with no on-site prescription writing for controlled substances identified in Schedule II, III, or IV in F.S. §§ 893.03, 893.035, or 893.0355) as such is a permitted use within the B-1 zoning district pursuant to Section 30-271 a (1) (z) of the Town Code.

Explanation: The purpose of this staff report is to provide Staff’s analysis and recommendation concerning the Appeal application filed by Elite CBD Life (the “Applicant”) related to the operation of a proposed retail store selling cannabidiol (CBD) products (the “Proposed Business”) located at 238 Commercial Blvd., Lauderdale By The Sea, Florida, 33308 (the “Property”). The Applicant seeks an Appeal pursuant to Section 30-531 of the Town Code for approval to be classified as a drug store/pharmacy (with no on-site prescription writing for controlled substances identified in Schedule II, III, or IV in F.S. §§ 893.03, 893.035, or 893.0355) as such is a permitted use within the B-1 zoning district pursuant to Section 30-271 a (1) (z) of the Town Code.

The Town Code lists all permitted and conditional uses allowed within the B-1 District as set forth in Sec. 30-271(a), (Exhibit 1). On July 10, 2024, the Applicant submitted a request to the Town for zoning approval to operate the Proposed Business. Town Staff further inquired with the Applicant as to the operation and inventory of the Proposed Business. The Applicant confirmed that the operation and inventory of the Proposed Business is focused on health and fitness by offering a range of CBD supplements and pain relief products designed to support health, fitness, athletic performance and overall well-being. The Proposed Business inventory does not include the sale of nicotine products and/or tobacco paraphernalia.

After several rounds of email exchanges with the Applicant concerning classification of the Proposed Business, Town Staff denied requests to be classified and considered a health and fitness center, retail sales and drugstore/pharmacy, the Applicant decided to pursue the subject Appeal concerning Town Staff denial to be classified as a permitted drugstore/pharmacy use. As such, the Applicant filed the subject Appeal application with the Town on August 19, 2024, to classify and permit the Proposed Business as a

drugstore/pharmacy (with no on-site prescription writing for controlled substances identified in Schedule II, III, or IV in F.S. §§ 893.03, 893.035, or 893.0355) as such is a permitted use within the B-1 zoning district pursuant to Section 30-271 a (1) (z) of the Town Code (Exhibit 2).

Pursuant to Section 30-531 of the Town Code, appeals from administrative decisions may be timely filed by an aggrieved party concerning a decision of an administrative official in the interpretation and application of Chapter 30 "Unified Land Development Regulations" (Exhibit 3).

Development Services Department (DSD) Staff has reviewed the subject Appeal application pursuant to Section 30-531(e)(1) of the Town Code as follows :

(a) The Department's agreement or disagreement with the applicant's statement of the law or fact in question.

Staff Analysis: DSD Staff does not agree with the applicant's interpretation of the Proposed Business as a "drug store/pharmacy" which is permitted within the B-1 zoning district. Chapter 465, Florida Statutes, (the "Florida Pharmacy Act") establishes the regulatory framework as it relates to the operation of pharmacies within the State. More specifically, Section 465.003, Florida Statutes, provides various regulatory definitions, including "Medicinal Drugs", "Pharmacy" and "Prescription" as follows:

(15) "Medicinal drugs" or "drugs" means those substances or preparations commonly known as "prescription" or "legend" drugs which are required by federal or state law to be dispensed only on a prescription but shall not include patents or proprietary preparations as hereafter defined.

* * * * *

(20)(a) "Pharmacy" includes a community pharmacy, an institutional pharmacy, a nuclear pharmacy, a special pharmacy, and an Internet pharmacy.

1. The term "community pharmacy" includes every location where medicinal drugs are compounded, dispensed, stored, or sold or where prescriptions are filled or dispensed on an outpatient basis.

2. The term "institutional pharmacy" includes every location in a hospital, clinic, nursing home, dispensary, sanitarium, extended care facility, or other facility, hereinafter referred to as "health care institutions," where medicinal drugs are compounded, dispensed, stored, or sold.

3. The term "nuclear pharmacy" includes every location where radioactive drugs and chemicals within the classification of medicinal drugs are compounded, dispensed, stored, or sold. The term "nuclear pharmacy" does not include hospitals licensed under chapter 395 or the nuclear medicine facilities of such hospitals.

4. The term "special pharmacy" includes every location where medicinal drugs are compounded, dispensed, stored, or sold if such locations are not otherwise defined in this subsection.

* * * * *

(23) "Prescription" includes any order for drugs or medicinal supplies written or transmitted by any means of communication by a duly licensed practitioner authorized by the laws of the state to prescribe such drugs or medicinal supplies and intended to be dispensed by a pharmacist.

The term also includes an orally transmitted order by the lawfully designated agent of such practitioner. The term also includes an order written or transmitted by a practitioner licensed to practice in a jurisdiction other than this state, but only if the pharmacist called upon to dispense such order determines, in the exercise of her or his professional judgment, that the order is valid and necessary for the treatment of a chronic or recurrent illness. The term “prescription” also includes a pharmacist’s order for a product selected from the formulary created pursuant to s. 465.186. Prescriptions may be retained in written form or the pharmacist may cause them to be recorded in a data processing system, provided that such order can be produced in printed form upon lawful request.

The Applicant has provided no evidence to DSD Staff which suggest that the Proposed Business use is a “pharmacy” where “medicinal drugs” are compounded, dispensed, stored, or sold or where “prescriptions” are filled or dispensed on an outpatient basis.

(b) The interpretation of the Department with regard to the law or fact in question.

Staff Analysis: DSD Staff does not believe the Proposed Business aligns with the proposed use of drugstore/ pharmacy in the B-1 zoning district as set forth in Section 30-271 of the Town Code.

(c) The basis for the Department’s interpretation.

Staff Analysis: DSD Staff reviewed all permitted uses listed in the B-1 section and Staff does not believe the proposed business use aligns with the proposed use of drugstore/pharmacy in the B-1 zoning district as set forth in Section 30-271 of the Town Code.

(d) The reason why the Department believes its interpretation, application or determinations is correct in law or fact.

Staff Analysis: Staff does not classify or consider the Proposed Business use as a pharmacy based upon the regulatory framework and definitions provided under Chapter 465, Florida Statutes (the “Florida Pharmacy Act”).

Notices were sent to all the property owners in the surrounding 300 feet and the Property was posted in accordance with Section 30-139 of the Town Code. To date, the Town has not received any correspondence for or against this request.

Exhibits:

1. Town Code Section 30-271
2. Application & Reason for Appeal
3. Town Code Section 30-531

Recommendation: DSD Staff has reviewed the subject Appeal application and recommends denial of this request, as the Proposed Business use is not classified as a “pharmacy” based

upon the regulatory framework and definitions provided under Chapter 465, Florida Statutes (the “Florida Pharmacy Act”) and accordingly, is not a drugstore/pharmacy use (with no on-site prescription writing for controlled substances identified in Schedule II, III, or IV in F.S. §§ 893.03, 893.035, or 893.0355) permitted within the B-1 zoning district pursuant to Section 30-271 a (1) (z) of the Town Code. “

Exhibits:

1. Exhibit 1-Sec. 30-271. B-1 district Business. (4)
2. Exhibit 2-Application and Reason for Appeal
3. Exhibit 3-Sec. 30-531 Appeals from administrative decisions

EXHIBIT 1

Sec. 30-271. B-1 district—Business.

(a) *B-1 uses permitted.*

- (1) *Permitted uses.* No building or premises shall be used and no building with the usual accessories shall be erected or altered other than a building or premises arranged, intended, or designed for any of the following uses, not to exceed 10,000 square feet in gross floor area, except for waterfront hotel uses:
- a. Antiques store,
 - b. Art galleries,
 - c. Arts and crafts supply store,
 - d. Automobile rental or leasing agencies (no outdoor display),
 - e. Bait and tackle shop,
 - f. Bakery,
 - g. Bank,
 - h. Barber shops and hair salons,
 - i. Bicycle rental shop with no outside storage,
 - j. Book store,
 - k. Business and professional employment agency,
 - l. Camera and photographic supply store,
 - m. Card and stationery store,
 - n. Catering businesses,
 - o. Church and place of worship,
 - p. Clothing store,
 - q. Coin-operated dry cleaning and laundry and/or pickup station,
 - r. Community theaters, dinner theaters and cultural centers,
 - s. Computer/software store,
 - t. Consignment store,
 - u. Cooking schools,
 - v. Copy center,
 - w. Courier service,
 - x. Delicatessen,
 - y. Dental laboratory,
 - z. Drug store/pharmacy (no on-site prescription writing for controlled substances identified in Schedule II, III, or IV in F.S. §§ 893.03, 893.035, or 893.0355),
 - aa. Fabric/needlework/yarn shop,
 - bb. Fishing pier,

EXHIBIT 1

- cc. Florist shop,
- dd. Formal wear sales and rental,
- ee. Fruit and produce store,
- ff. Furniture and home furnishings,
- gg. Gift shop,
- hh. Government administration,
- ii. Grocery/food store/supermarket,
- jj. Hardware store,
- kk. Health and fitness center,
- ll. Household appliances store,
- mm. Ice cream/yogurt store,
- nn. Interior decorator,
- oo. Jewelry store,
- pp. Library branch,
- qq. Linen/bath/bedding store,
- rr. Luggage/handbag/leather goods store,
- ss. Mail/postage/fax service,
- tt. Marine parts and supplies store,
- uu. Reserved,
- vv. Massage therapist (licensed therapist to be on premises at all times of operation; see subsection (j) below for supplemental regulations),
- ww. Meat and poultry store,
- xx. Medical supplies sales, medical/dental office,
- yy. Motorized scooter sales or moped sales and rentals (indoor only, outdoor sales, storage or display prohibited),
- zz. Museum,
- aaa. Music/musical instrument store, Tapes/videos/music CD/vinyl record stores
- bbb. Office building,
- ccc. Optical store,
- ddd. Reserved,
- eee. Photographic studio,
- fff. Police and fire substation,
- ggg. Retail electronic sales and repair,
- hhh. Restaurant, which may also include the following accessory uses:

EXHIBIT 1

1. Sidewalk cafés which would be appurtenant to, and a part of, a restaurant, subject to the requirements of chapter 17, article VI, sidewalk cafés.
 2. Outside seating for restaurants, on private property other than a sidewalk, that is accessory to the principal restaurant use and that is not regulated under chapter 17, article VI, and subject to the regulations set forth in subsection (h), below.
 3. Walk-up windows for food and/or beverage service.
- iii. Seafood store,
- jjj. Shoe sales and repair,
- kkk. Shop for marking articles sold at retail on the premises,
- lll. Reserved,
- mmm. Sporting goods store, including dive shops,
- nnn. Studios for artists, photographers, musicians (including recording studios), and dance,
- ooo. Reserved,
- ppp. Tailor/dressmaking store, direct to the customer,
- qqq. Reserved,
- rrr. Tool rental (small tools and equipment, indoor display only),
- sss. Toy/game store,
- ttt. Reserved,
- uuu. Travel agency,
- vvv. Veterinarian or animal grooming with all activities enclosed within the building with no outside noise,
- www. Watch and jewelry repair,
- xxx. Cigar store (not meeting the definition of tobacco paraphernalia store, no customer service area),
- yyy. *Uses not listed.*
1. Any use not covered by the above list may be authorized in the B-1-A district by the Town Manager or designee only if the proposed use is similar to a listed use; otherwise, an amendment to this chapter is required.
 2. The Town Manager or designee shall consult with the Town Commission on any proposal to find that a use is similar, prior to authorizing such use in the B-1-A district.
 3. Whenever a use is approved as a similar use, the Town Manager shall report such finding in the written Town Manager report at a subsequent Town Commission meeting.
- (2) *Conditional uses.* The following conditional uses may be permitted upon approval pursuant to the conditional use procedures of this Code:
- a. Bicycle taxi (no outside storage or display).
 - b. Reserved.
 - c. Reserved,
 - d. Charter and sightseeing boat.

EXHIBIT 1

- e. Child and adult day-care centers.
 - f. Convenience store, subject to the requirements as set forth in subsection (i), below.
 - g. Drive-through services that are accessory to a primary use, provided that any approval of the drive-through use by the Town Commission shall specifically establish the location and traffic flow pattern of the drive-through.
 - h. Dry cleaner.
 - i. Marina, subject to the requirements as set forth in subsection (i) below.
 - j. Mixed use, subject to the requirements as set forth in subsection (i) below.
 - k. "Paid private parking" on parcels with a primary use, excluding standalone parking lots subject to the requirements as set forth in subsection (i) below.
 - l. Parking garage.
 - m. Permitted use exceeding 10,000 square feet in gross floor area.
 - n. Pet store (see subsection (k) below for supplemental regulations).
 - o. Pool supply store.
 - p. Outside storage of propane tank cabinets for the storage, sale or rental of propane tanks.
 - q. Water craft sales and rental (new or used).
 - r. Waterfront hotel.
 - s. *Conditional uses not listed.*
 - 1. Permission to apply for conditional uses not covered by the above list in the B-1 district may be granted by the Town Manager or designee only if the proposed conditional use is similar to a listed conditional use; otherwise, an amendment to this chapter is required.
 - 2. The Town Manager or designee shall consult with the Town Commission on any proposal to determine that a conditional use is similar to those listed, prior to authorizing the filing of an application to seek approval of that conditional use in the B-1 district.
 - 3. Whenever a use is approved as a similar use, the Town Manager shall report such finding in the written Town Manager report at a subsequent Town Commission meeting.
 - 4. Approval of a conditional use shall also be subject to the requirements for conditional use review as set forth in section 30-126 of the Town Code.
- (b) *Height.*
- (1) No building shall be erected to a height greater than two stories on lots less than 50 feet in width, nor greater than three stories on any other lots.
 - (2) Lots which are adjacent may be combined and developed as one parcel, and may utilize the wider lot height restrictions if a joinder of the lots under a unity of title or covenant-in-lieu is provided in a form acceptable to the Town Attorney.
- (c) *Lot coverage.* Buildings not used for residential purposes shall occupy no more than 90 percent of the lot area.
- (d) *Design.*
- (1) Construction shall be limited to one building on lots 50 feet or less in width.

EXHIBIT 1

- (2) All buildings shall be of C.B.S. construction.
 - (3) Except on waterfront properties, no parking spaces constructed after March 28, 2017 shall be located along the primary street frontage and to the maximum extent feasible without losing required parking, as determined by the DSD, existing parking along the primary street frontage shall be removed from the primary street frontage for any redevelopment.
 - (4) Curbcuts providing access to parking areas shall be located on streets other than Commercial Boulevard, except where a property only has access from Commercial Boulevard, or it is determined based on a traffic study that access from Commercial Boulevard is necessary for safe and efficient vehicular and pedestrian circulation.
 - (5) Each structure shall have its own sustaining walls; party walls are prohibited.
 - (6) There shall be at least one front entrance and one rear entrance to buildings.
 - (7) The first floor of a building extending from street to street on inside lots, shall have two front facades and entrances.
 - (8) There must be a ground floor storefront facing the primary street. If the property is a corner lot, there must be a ground floor storefront facing both streets.
 - (9) Building façades on the second or third stories shall be physically and visually diverse, incorporating features such as balconies, alternate or varied setbacks, eyebrows or other artistic and architectural features on at least 40 percent of the linear frontage per story above the first. The DSD shall review and approve compliance with this criteria through the architectural review process, and may decrease the 40 percent standard by ten percent if the DSD finds that such a change enhances the Mid-century Modern façade and remains consistent with the architectural design guidelines.
 - (10) Building façades on the majority of the length of the first floor must incorporate architectural features such as eyebrows, awnings, canopies or other artistic and architectural features to create shade.
- (e) *Minimum building size.* No building shall be erected on any lot, that is not a waterfront lot, which does not comprise at least 1,200 ground floor square feet of floor space, exclusive of utility rooms, porches, garages and carports; and no building shall be erected on any waterfront lot, the main structure of which does not comprise at least 1,300 ground floor square feet of floor space, exclusive of utility rooms, porches, garages, and carports.
- (f) *Setbacks.*
- (1) *Front setback.* Buildings shall not be set back on the front except those erected on Ocean Drive (A1A) or Bougainvilla Drive which shall have the following setbacks:
 - a. Ocean Drive (A1A), front setback of not less than 50 feet from the centerline of said thoroughfare; and
 - b. Bougainvilla Drive, front setback of 25 feet from property line.
 - (2) *Side setback.*
 - a. Buildings erected on Blocks 5, 6, 13, and 14 siding on El Mar Drive shall have a side setback of eight feet from the respective property lines of said thoroughfare;
 - b. Buildings erected on Blocks 13, 14, 20 and 21 siding on Ocean Drive (A1A) shall have a side setback of not less than 50 feet from the centerline of said thoroughfare; and
 - c. Where windows are required or present along an interior side lot line, a setback of not less than five feet shall be provided;
 - d. Otherwise, buildings require no side setback.

EXHIBIT 1

- (3) *Rear setback:*
- a. No building or any part thereof shall be erected on any lot closer than ten feet from the rear lot line.
 - b. No building or any part thereof shall be erected on any lot closer than 30 feet from the rear lot line in the following designated areas:
 1. All of Block B except Lots 1, 2, 3, 12, 13, and 14 in Silver Shores Section of the Town of Lauderdale-By-The-Sea, Unit "A," according to the plat thereof, recorded in Plat Book 28, page 39, Public Records of Broward County, Florida. Lots 1, 2, 3, 12, 13, and 14 shall be required to comply with the rear setback described in subsection (3)(a) herein.
 2. All of Block E except Lots 1, 2, 3, 12, 13, and 14 of a subdivision of Track "D" of Silver Shores Section of the Town of Lauderdale-By-The-Sea, Unit "A," according to the plat thereof, recorded in Plat Book 29, page 21, Public Records of Broward County, Florida. Lots 1, 2, 3, 12, 13, and 14 shall be required to comply with the rear setback described in subsection (3)(a) herein.
 3. All of Blocks J and K except Lots 1, 2, 3, 12, 13, and 14 of Silver Shores Section of the Town of Lauderdale-By-The-Sea, Unit "B," according to the plat thereof, recorded in Plat Book 31, page 3, Public Records of Broward County, Florida. Lots 1, 2, 3, 12, 13, and 14 shall be required to comply with the rear setback described in subsection (3)(a) herein.
- (4) *Roof cornice setbacks.* Roof cornices, if ten feet or more above the sidewalk, may project over the public street, provided the roof cornices are set back a minimum of two feet from the curbline.
- (5) *Double front yard setbacks.* Double front yard setbacks shall not be required for buildings that extend from street to street on inside lots.
- (g) *Lot subdivision.* Subdivision of lots to a width less than 25 feet is prohibited.
- (h) Outside seating for restaurants, on private property other than a sidewalk, that is accessory to the primary restaurant use may be permitted subject to the following regulations:
- (1) *Permit required.* It shall be unlawful for any person to provide outside seating for a restaurant on private property within the Town without first obtaining a permit from the Town. The location of an outside seating area for a restaurant shall be approved by the Town Manager or designee.
 - (2) *Permit fee.* The fee for a permit for outside seating for a restaurant shall be as established by resolution of the Town Commission, shall be non-refundable, and shall accompany the outdoor seating application.
 - (3) *Permit application.* Application for a permit to provide outside seating for a restaurant shall be commenced by the filing of a complete application on a form provided by the Town with the Development Services Department. Such application shall include the following:
 - a. Name, address and telephone number of the applicant.
 - b. Name and address of business.
 - c. A copy of a valid Town of Lauderdale-By-The-Sea business tax receipt to operate a restaurant adjacent to the outside seating area which is the subject of the application.
 - d. An 8½ × 11 inch drawing or larger at a minimum scale of one inch equals 20 feet showing the following:
 1. The store front and all openings (doors, windows).

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2. The location and dimensions of the private property area being utilized for the outside seating area, including: structures located thereon; proposed location, dimension and number of tables, chairs, and umbrellas proposed within the outside seating area;
 3. Clear delineation of the boundary between private property and the public right-of-way;
 4. The location of tables and chairs complying with the Americans with Disabilities Act (ADA) standards.
- e. When the outside seating area is visible from a public right-of-way, the application shall also include:
1. Photographs and/or manufacturer brochures fully describing the appearance of all proposed chairs, tables, umbrellas and other private features, including but not limited to lighting to be used in the proposed outside seating area.
 2. A trash management and maintenance plan for the outside seating area, which shall include a plan for pickup and disposal of any trash or food on or around the tables and chairs or sidewalk, and periodic pressure cleaning of the area used for outside seating area. This plan shall ensure that the outside seating area is maintained in a neat and orderly appearance at all times and the area shall be cleared of all debris on a periodic basis during the day and at the close of each business day to ensure a healthy and safe environment.
- f. Written consent from the building owner for the proposed outside seating area.
- g. In the event the outside seating area is proposed in front of an adjacent owner's property, the applicant must provide written consent from the adjacent property owner for use of this area.
- h. Non-refundable application fee.
- (4) *Permit Application Review.* The Town Manager or designee shall review applications for compliance with the standards and requirements set forth in this article as well as any other applicable Town Code provisions.
- a. No application shall be accepted until it is deemed complete.
 - b. The Town Manager or designee shall review the submitted application within 20 business days and either accept the application if it is complete or, if incomplete, reject the application with a written notice of incompleteness, specifying the data missing from the application.
 - c. If an application is rejected, the applicant may resubmit the application with the additional information required. Upon each resubmittal, the Town Manager or designee shall have ten business days to review the resubmitted application and either accept the application as complete or provide written notice of any corrections, revisions or deficiencies. This process shall continue until the applicant has submitted a complete application or demands that the application be reviewed as is, without further revisions.
 - d. If an applicant fails to provide the additional information as requested by the Town Manager or designee within 60 days of the request for additional information, the Town Manager or designee may deem the application to be withdrawn by the applicant and the application considered null and void. Upon request, the applicant shall be entitled to one 60-day extension, provided the extension request is granted prior to the expiration of the above referenced 60-day time period.
 - e. For any application in which the outdoor seating area is not located directly in front the associated restaurant, the Town will send a courtesy notice to those businesses directly abutting the proposed outdoor seating. Any affected person may provide written comments to the Town Manager or designee within ten days of the date of the mailed notice, for the consideration of

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the Town Manager or designee. Failure to mail or receive such courtesy notice shall not affect actions taken under this article.

- f. Prior to issuance of an outdoor seating permit or annual renewal, the Town Clerk shall certify that there are no outstanding fines, fees, taxes or other charges owed to the Town by the current or past owners or operators of the property requesting an outdoor seating permit. An outdoor seating permit may not be issued until all outstanding fees and/or fines owed to the Town are paid in full.
 - g. The Town Manager or designee shall approve, approve with conditions, or deny an application based on the requirements of this article and compliance with the Town Code. Approval shall be in the form of an outdoor seating permit and as provided for in this article. A denial of an outdoor seating application shall be made in writing and shall provide the reasons for such denial. The applicant or an affected property owner whose property directly abuts the property, which is the subject matter of the application, may appeal the Town Manager or designee's decision on the outdoor seating permit application to the Town Commission.
- (5) *Location requirements.* The location of an outside seating area for a restaurant shall be subject to the following locational regulations:
- a. An outside seating area shall only be permitted on private property that is adjacent to a licensed restaurant business to which the permit is issued.
 - b. Tables and chairs shall not be permitted within a ten-foot proximity of bus stops, taxi stands, fire hydrants, a pedestrian crosswalk, driveway or handicap ramp.
 - c. The Town Manager or designee may permit an exception to the distance requirement of subsection b. above from ten feet to five feet where established pedestrian and tram paths shall not be obstructed and where public safety shall not be adversely affected.
 - d. Markers approved by the Town Manager or designee shall be embedded into the property to distinguish the approved boundaries of the outside seating area. This requirement may be waived by the Town Manager or designee if the proposed outside seating area is not on or adjacent to any private or public sidewalk, parking or other pedestrian area or the area is otherwise clearly delineated.
- (6) *Additional regulations for outside seating for a restaurant.*
- a. The outside seating area shall be accessory to and under the same ownership or control as the primary restaurant, which is operated within a permanently enclosed building located on the same or adjacent parcel. The outdoor seating permit shall be personal to the permittee only and shall not be transferrable. The outdoor seating permit issued shall be specific to the location and is not transferrable to another location.
 - b. Live and/or amplified music shall be prohibited within the confines of the outdoor seating area. Speakers emitting music from inside the restaurant or food store serving the outdoor seating area shall be placed and directed in such a manner that the music's amplification is directed internally into the restaurant or food store.
 - c. Food preparation shall only occur in the fully enclosed area of the licensed primary restaurant.
 - d. Hours of operation shall not exceed the hours of operation established for the principal licensed restaurant.
 - e. All fabrics shall be fire-retardant, pressure-treated or manufactured of fire resistive material.

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- f. No objects shall be permitted around the perimeter of the outside seating area that is occupied by tables and chairs which would have the effect of forming a physical or visual barrier discouraging the use of a sidewalk by the general public.
- g. Additionally, when the outside seating area is visible from a public right-of-way:
 - 1. No tables, chairs, or any other part of an outside seating area shall be permanently attached, chained, or in any manner affixed to any tree, post, sign or other fixtures, curb or sidewalk within or near the permitted area.
 - 2. Tables, chairs, umbrellas, canopies, awnings, and any other objects utilized as part of the outside seating area shall be of quality design, materials, size, elevation and workmanship both to ensure the safety and convenience of users, and to enhance the visual quality of the urban environment.
 - 3. Design, materials and colors shall be approved by the Town Manager or designee prior to the issuance of the permit to allow the outside seating.
- h. Shade structures.
 - 1. Umbrellas. Shall be no larger than eight and one-half feet in diameter and shall maintain a minimum vertical clearance from the sidewalk of not less than eight feet in height.
 - 2. Tents, canopies and pergolas or other similar structures are prohibited.
- i. Outdoor seating. The maximum seating capacity shall be limited to one seat per ten square feet of outdoor seating area for chairs and one barstool seat per 24 inches of the linear outside bar area.
- j. Greeting podiums and service stations.
 - 1. All furniture and fixtures, including any greeting podium and/or service station, shall remain within the confines of the designated outdoor seating area, located as close to the building as feasibly possible and shall not impede the public right-of-way.
- (7) Prior to issuance of a permit for outside seating, the Town Clerk shall certify that there are no outstanding fines, moneys, fees, taxes or other charges owed to the Town by the current or past owners or operators of the property requesting a permit for outside seating. A permit to allow outside seating will not be issued until all outstanding debts to the Town are paid in full.
- (8) Any primary restaurant which obtains a permit to have outside seating as an accessory use to the primary restaurant, pursuant to this section may redesign the face of their establishment to allow for doors or panels that permit the establishment to have open sides allowing for an indoor/outside restaurant design. Any proposed alterations, modifications or changes to the building shall require the issuance of a building permit, compliance with the Town Code and payment in full of all applicable fees.
- (i) *Specific conditional use requirements.*
 - (1) *Convenience store criteria.* A convenience store may be permitted within the B-1 zoning district only on property that is located west of State Road A1A and subject to the following regulations:
 - a. A convenience store shall have frontage on Commercial Boulevard;
 - b. A convenience store may not be located within 500 feet of any other convenience store, as measured by airline measurement from the main entrance to the main entrance of each place of business; and

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- c. A convenience store shall also be subject to the requirements of F.S. § 812.1701 as may be amended.
- (2) *Marina uses.* The Town may approve a conditional use for a marina, subject to all of the following requirements:
 - a. *Application.* In addition to the standard site plan (if applicable), and conditional use application requirements, an application for a marina shall provide:
 - 1. A scaled drawing, or set of scaled drawings, containing the following information:
 - i. The dimensions of the proposed standard mooring area, marina mooring area, if applicable, and the navigational channel;
 - ii. Any existing or proposed boat slips and all structures in the proposed mooring area(s) and in the waterway within 100 feet of the proposed mooring areas;
 - iii. Upland buildings;
 - iv. Parking areas;
 - v. A table that details the uses on the upland property, the required number of parking spaces for those uses and the number of spaces available for the marina; and
 - vi. Any other information staff deems necessary to evaluate the conditional use application.
 - 2. The name, address, email address and phone numbers of the designated marina agent.
 - 3. A clean marina best practices plan (the "plan") for approval as part of the conditional use approval. The plan shall be based on the Florida Clean Marina Program's best management practices that are applicable for a marina of its type and services provided and will include a timeline for the implementation of each best practice.
 - b. *Approval.* Any Town Commission approval of a conditional use shall specifically identify the following:
 - 1. The dimensions of the marina mooring area and standard mooring area, as applicable, and the navigational channel in the waterway within 100 feet of the proposed marina mooring area.
 - 2. The area(s) designated for mooring or docking watercraft.
 - 3. The maximum number of watercraft to be moored or docked.
 - c. *Conditions of approvals.* In addition to any other conditions imposed by the Town Commission, the following requirements shall be included as conditions of the development order:
 - 1. The applicant shall provide a scaled drawing of the affected waterway that shows the approved marina mooring area, if applicable, the navigational channel and the standard mooring areas as approved by the Commission, which shall be an exhibit to the development order.
 - 2. The property owner shall keep the name, address, email address and phone numbers of the designated marina agent on file and current with the Town at all times. Such agent shall have the following duties:
 - i. Be available by phone 24 hours a day, seven days a week;

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- ii. Be able and willing to physically appear at the marina within three hours following notification from the Town of issues related to the marina use;
 - iii. Receive service of any notice of violation of the conditional use approval or the Code; and
 - iv. Monitor the marina at least weekly to assure continued compliance with the requirements of this section and the development approval.
 3. The marina shall maintain compliance with the clean marina best practices plan as approved by the Town Commission as part of the conditional use approval. The plan may be reviewed annually by the Town Commission and modifications may be required to ensure continued operation is consistent with current Florida Clean Marina best practices. Failure to adhere to the plan will be considered to be a material default of a conditional use permit.
 4. If the marina is or becomes eligible for certification as a Florida Clean Marina, then the marina shall be certified as a Florida Clean Marina by the Florida Department of Environmental Protection within nine months after either the conditional use approval date or the date of eligibility for certification and shall maintain such certification thereafter.
- (3) *Mixed use requirements.* The following provisions govern applications for approval of "mixed use" development as a conditional use in the B-1 district.
 - a. *Purpose.* The purpose of encouraging mixed use development is to:
 1. Accommodate mixed use buildings with neighborhood-serving retail, service, and other commercial uses on the ground floor, and residential units above the non-residential space;
 2. Encourage development that exhibits the physical design characteristics of pedestrian-oriented, storefront-style shopping streets; and
 3. Promote the health and well-being of residents by encouraging physical activity, alternative transportation, and greater social interaction.
 - b. *Mixed use development on commercially designated parcels.* The Town may approve a conditional use for mixed use development on B-1 zoned property when the property has a commercial land use designation in the Broward County Land Use Plan, if all of the following requirements are met:
 1. Flexibility units are available, in accordance with section 30-100, Flexibility rules, of the Town Code;
 2. The number of units and floor area limitations of this section are satisfied for the residential uses; and
 3. The property is located within 250 feet of Commercial Boulevard measured by airline measurement from the Commercial Boulevard right-of-way line. If any portion of a property lies within the 250-foot measurement, the whole property shall be eligible for mixed use development.
 - c. *Limitations on residential uses.*
 1. *Maximum number of units.* No mixed use development may be assigned more than ten percent of the flexibility units in its flexibility zone. If ten percent of the units is not a whole number, it shall be rounded up to the next whole number.
 2. *Limitations on location of uses.*

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- i. Non-residential use or space is prohibited on or above any floor which contains any residential use or space.
 - ii. Residential use or space is prohibited on the ground floor.
 - 3. *Floor area and lot coverage.*
 - i. The residential floor area of the mixed use development shall not exceed 50 percent of the gross floor area of the building.
 - ii. No building which includes residential uses shall occupy an area greater than 70 percent of the entire lot.
 - iii. The required lot area per apartment or kitchen unit shall be not less than 800 square feet. The required floor area per apartment or kitchen unit shall not be less than 250 square feet minimum.
 - iv. The required floor area for a hotel room shall not be less than 200 square feet.
 - 4. *Affidavit of understanding.* Residential uses located east of A1A must include an affidavit of understanding, in a form acceptable to the Town Attorney regarding special event activity, street closures and noise ordinance waivers that periodically takes place downtown.
 - 5. *Lease notice requirement.* Residential uses east of State Road A1A must include the following notice to all tenants in all leases and contracts:

This unit is located in the core of downtown Lauderdale-By-The-Sea. Special event activities periodically take place in this area on the streets directly below this unit. On any given occasion, street closures may take place and the noise ordinance may be waived. Such circumstances and inconveniences are accepted as part of this agreement.
 - 6. *Rental restrictions.* Dwelling units that are used for rental purposes shall be limited as follows:
 - i. On properties with less than four dwelling units, short term rentals are permitted as an accessory use if a rental certificate is first obtained pursuant to section 30-327; or
 - ii. On properties located west of Seagrape Drive with more than four dwelling units, a minimum residency of 120 consecutive days is required.
 - d. *Parking requirements.*
 - 1. The total number of required off-street parking spaces for a mixed use development shall be equal to the sum of the required parking for each use as if provided separately.
 - 2. A minimum of one parking space per residential unit must be provided on-site.
 - 3. For a unit that combines both residential and non-residential uses, the total required parking will be equal to the parking required for the non-residential use only. See sections 30-314 through 30-324 regarding off-street parking.
 - e. *Landscaping and open space requirements.* Mixed use developments shall be required to meet the vehicular use area requirements as provided in article VII, Landscape Code, of chapter 30, Unified Land Development Regulations, for non-residential uses.
- (4) Paid private parking may be approved as a conditional use subject to the following:
- a. During business operational hours, only non-required parking spaces may be used as paid private parking.

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- b. After business hours, required parking may also be used for paid private parking.
 - c. The price for parking shall be displayed at all times paid private parking is available in the manner approved by the Town Manager.
- (5) *Call center requirements.* The following provisions govern applications for approval of call centers as a conditional use in the B-1 district.
- a. The applicant for a call center conditional use shall provide to the Town an operational plan containing information needed to assess the potential impact on parking and traffic, including the number of employees, a shift schedule including the maximum number of employees arriving from and leaving the call center during the shift change and any steps that may be proposed for mitigating parking and/or traffic impacts. Examples of mitigation measures include shifts schedules to avoid arriving and leaving at peak traffic hours, and providing incentives for employees using public transportation or ridesharing arrangements.
 - b. If determined by the DSD to be necessary, submittal of a traffic impact statement and/or parking study may be required to ensure that adequate parking will be available. If such traffic statement or parking study is required, the applicant shall be responsible for any costs incurred by the Town in reviewing such statement or study.
- (6) *Waterfront hotel criteria.* A waterfront hotel may be permitted within the B-1 zoning district only on properties containing frontage located on or adjacent to intra-coastal, canal or ocean water bodies and subject to the following regulations:
- a. A waterfront hotel may provide the following permitted accessory uses for guests and residents: restaurants, gift shops, retail stores, personal service shops, parking and convention facilities. Such uses shall be located within the principal building(s) although outside seating may be provided in conjunction with a restaurant, as specified in subsection 30-271(h). A minimum of 30 percent of the total building square footage shall be dedicated to permitted accessory retail commercial uses located on the ground floor within the principal building(s) and shall contain ground floor storefront facing the primary street. If the property is a corner lot, there must be a ground floor storefront facing both streets.
 - b. Bicycle parking when accessory to a hotel use, shall be permitted in lieu of providing required off-street parking, as specified in section 30-318.
 - c. A waterfront hotel, including all permitted accessory uses, shall provide a minimum 60 percent of the required parking to be located on-site. The remainder of required on-site parking may be satisfied by utilizing the Town PILOP program, as specified in section 30-321. The use of Town property for overflow valet parking may only be permitted pursuant to a license agreement approved by the Town.
 - d. Waterfront hotel rooms shall be a minimum of 200 square feet in gross floor area exclusive of bathrooms, toilets, closets or similar appurtenances.
 - e. A waterfront hotel rooftop may only be used for passive recreation as specified in subsection 30-313(y).
 - f. Notwithstanding the minimum side and rear setback requirements established pursuant to subsection 30-271(f) for properties within the B-1 zoning district, the minimum side and rear setback requirements for properties developed with waterfront hotel uses shall be the same as those zoning district setback requirements established for neighboring properties which share a common lot line with another lot or parcel of land.
- (j) *Massage therapists—Supplemental regulations.*

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- (1) *Massage therapist certificate required.* No establishment shall offer or provide massage services without obtaining a massage therapist certificate issued pursuant to this subsection (j), and maintaining such certificate. All persons providing massage services at the establishment shall be duly licensed under F.S. § 480.041 et seq.; approved as a massage therapy apprentice as defined in F.S. § 480.033, or possess another valid health care practitioner license duly issued by the Florida Department of Health pursuant to F.S. ch. 456.
- a. *Application for businesses.* All establishments providing massage services as defined within this Code shall apply for a massage therapist certificate from the Town. Any establishment applying for a massage therapist certificate shall include the following information on a form provided by the Town:
1. Proof of valid Florida Board of Massage Therapy license issued to the establishment in accordance with F.S. § 480.043 et seq.; and
 2. Proof of valid Florida Board of Massage Therapy or other state health care practitioner license for all personnel providing massage services at the establishment, in accordance with F.S. § 480.041 et seq. or F.S. ch. 456; or proof of Florida Board of Massage apprenticeship approval as defined in F.S. § 480.033, if applicable; and
 3. Proof of valid Florida driver's license or other government-issued identification for every person and massage therapist working at the establishment.
- b. *Term of massage therapist certificate for businesses.* Once issued, a massage therapist certificate shall remain valid for a period of one year, or until there is a change of the use, ownership, name, location of the establishment from that specified on the approved certificate, or until such time that the Town-issued business tax receipt (BTR) expires.
1. The operator of any massage establishment that holds a certificate shall submit an application to renew the certificate within 30 days prior to the expiration date of the current certificate in order to continue operating.
 2. When there is a change of the use, ownership, business name, or establishment name, or establishment location from that specified on the approved certificate, a new certificate shall be required.
- c. *Requirement to supply updated information.* In the first week of each quarter during the term of a massage therapist certificate, each establishment holding a certificate shall supply the Town with the following information on a form and in the manner prescribed by the Town:
1. Revocation, expiration, or change to the status of the state licenses described in subsection a. above; and
 2. Updated state driver's license or other government-issued identification information for all personnel providing massage services at the establishment, including new staff members.
 3. Proof of valid licensure of any new employees within seven days of employment, regardless of monthly report due date.
- d. *Display of certificate.* Establishments shall display the valid certificate in a place easily visible to any person entering the establishment and shall maintain proof of valid licenses and identification of each staff member on the premises of the establishment at all times during operation.
- e. *Revocation.*
1. *Grounds for revocation.* The following shall be nonexclusive grounds for revocation of a massage therapist certificate:

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- i. Noncompliance with any provision of this subsection (j); or
- ii. Noncompliance with F.S. ch. 480; or
- iii. The Town's determination that issuance of a certificate was granted based upon false information, misrepresentation of fact, or mistake of fact by the representative of the establishment holding the certificate, or his or her agent; or
- iv. Failure to remain "in good standing" as defined herein.

2. *Revocation procedure.* In the event the Town determines there are grounds for revocation, the Town shall schedule a hearing before the Town Manager and notify the certificate holder in writing and the grounds upon which such action is proposed, no less than seven days prior to the date of the hearing. In the event of an emergency the hearing may be held no less than 24 hours after notice to the certificate holder. Notice shall be deemed given when a notice has been properly addressed to the address as provided by the certificate holder on the certificate application, stamped and deposited in a U.S. Postal depository or collected by an employee of the U.S. Postal Service. Emergency notice shall be attempted by all available avenues including hand delivery. Proof shall be by clear and convincing evidence.

The Town Manager may:

- i. Find no violation;
- ii. Temporarily suspend the certificate for a time period as determined appropriate by the Town Manager;
- iii. Revoke the certificate for the remainder of its term.
- iv. Depending on the facts and circumstances, the Town Manager may suspend or revoke a license immediately subject to appeal as provided herein. Such appeal shall not stay the revocation or other action of the Town Manager.

A finding of violation twice within a one-year period shall require revocation of the license for the remainder of its term. Nothing in this subsection (j) shall take away other enforcement powers of the Town, Special Magistrate or any other agency provided by the Code or statute.

- f. *Exemptions.* Massage services in state-licensed hospitals and hospices, or those massages provided by a massage therapist acting under the direction of a licensed medical provider or practitioner, shall be exempt from the massage therapist certificate requirements of this subsection (j).
- (2) *Penalties.* Violations of this subsection (j) shall be punishable in a manner to be prescribed by the Town and may result in the revocation or suspension of a massage therapist certificate, the imposition of fines, or any other penalty applicable pursuant to any other law.
- (3) *"In good standing" defined.* For purposes of this subsection (j), the term "in good standing" means:
- a. That the applicant's state license is current;
 - b. That the applicant's state license will not expire during the fiscal year for which the massage therapy services certificate is issued (or if such the case, that a renewal for the state license has been filed);
 - c. That there are no pending Department of Health Administrative complaints against the applicant which seek permanent revocation or suspension of the applicant's state license;

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- d. That there are no pending Department of Health Administration complaints against the applicant's state license seeking a restriction of practice or placement on probation (the Town may disregard this evidence if it receives a resolution from the Board of Massage Therapy, or a letter from the Executive Director of the Department of Health indicating that the remedy sought will not preclude the applicant from pursuing the massage therapy services certificate); and
 - e. That the applicant is not being prosecuted, and does not have criminal charges pending at the state or federal prosecutor, at the time the Town must approve or deny the application for the massage therapist certificate.
- (k) *Pet stores, supplemental regulations.*
- (1) *Definitions.*

Animal care facility means an animal control center or animal shelter, maintained by or under contract with any state, county, or municipality, whose mission and practice is, in whole, or significant part, the rescue and placement of animals in permanent homes or rescue organizations, and which does not obtain animals from a breeder or broker for payment or compensation.

Animal rescue organization means any not-for-profit organization which has tax-exempt status under Section 501(c)(3) of the United States Internal Revenue Code, whose mission and practice is, in whole or in significant part, the rescue, sheltering and placement of animals in permanent homes or whose primary purpose is the prevention of cruelty to animals. This term does not include an entity that breeds or brokers animals or obtains animals from breeders or brokers for payment or compensation.

Certificate of source means a document from the source and declaring the source of origin of a dog or cat showcased on the premises. A certificate of source shall include at a minimum: (i) a brief description of the dog or cat, the name, address, telephone number, and e-mail address of the source of the dog or cat; and (ii) the pet store's certification of the accuracy of the certificate.

Pet store means a retail establishment where dogs or cats are sold, exchanged, bartered, offered for sale or adoption, advertised for sale, auctioned, given away or otherwise disposed of as pet animals to the general public at retail, including by appointment. Such definition shall not include an animal care facility or animal rescue organization, as defined herein.

Showcase means that an animal care facility or animal rescue organization temporarily displays to the public an adoptable dog or cat at a pet store, in order to facilitate the adoption of the dog or cat from that organization or facility. Dogs or cats may only be showcased during the hours of operation of the pet store, and shall be returned to the organization or facility during the hours that the pet store is closed.
 - (2) *Prohibition.* It is prohibited and unlawful for a pet store to offer, deliver, offer for sale, barter, auction, rent, lease, give away, or otherwise transfer or dispose of a dog or cat in the Town.
 - (3) *Exception.* Nothing in this section shall prohibit pet stores from collaborating with animal care facilities or animal rescue organizations to offer space for such entities to showcase adoptable dogs or cats, provided the pet store shall not have any ownership interest in the dogs or cats offered for adoption and shall not receive a fee for providing space for the adoption of any of these dogs or cats.
 - (4) *Certificate of source.* A pet store shall post and maintain in a conspicuous place, on or within three feet of each dog's or cat's kennel, cage or enclosure, a certificate of source for each dog or cat being showcased at a pet store. Falsification of a certificate of source by a pet store, pet store operator, or any other person is hereby declared unlawful.
 - (5) *Record-keeping.* Pet stores shall maintain records, stating the name, address, telephone number and emails of the animal care facility or animal rescue organization that showcase from which each dog or cat was acquired for one year following the date of acquisition and maintaining a copy of the previous

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year. These records are subject to inspection by a Town official charged with enforcing these provisions upon request.

- (6) *Applicability to existing pet stores.* Any pet store operating in conformance with a Town conditional use approval issued prior to the adoption of this section may continue to operate in accordance with that approval and with all applicable laws. If the pet store ceases operation for more than 60 days or if the conditional use is revoked by the Town or otherwise invalidated, then the pet store shall thereafter conform to the requirements of this section.
- (7) *Penalty.* Any person who violates this section is subject to enforcement pursuant to Section 1-12 of this Code.

(Ord. No. 316, § 1, 1-9-90; Ord. No. 348, § 2, 6-14-94; Ord. No. 363, § 2, 3-28-95; Ord. No. 2004-08, § 2, 6-22-04; Ord. No. 2004-12, § 8-10-04; Ord. No. 2005-15, § 2, 11-22-05; Ord. No. 2007-11, § 2, 9-25-07; Ord. No. 2007-14, § 2(Exh. A), 9-25-07; Ord. No. 2009-10, § 6, 7-28-09; Ord. No. 2009-36, § 3, 2-23-2010; Ord. No. 2010-15, § 3, 11-9-2010; Ord. No. 2011-09, § 3, 5-24-2011; Ord. No. 2012-01, § 4, 3-27-2012; Ord. No. 2012-15, § 3, 10-9-2012; Ord. No. 2014-13, § 2, 10-28-2014; Ord. No. 2015-17, § 4, 5-24-2016; Ord. No. 2017-03, § 3, 3-28-2017; Ord. No. 2017-07, § 2, 6-13-2017; Ord. No. 2019-07, § 2, 9-12-2019; Ord. No. 2020-01, § 2, 2-11-2020; Ord. No. 2020-09, § 2, 11-10-2020; Ord. No. 2021-10, § 2, 1-11-2022)

LAUDERDALE•BY•THE•SEA

Universal Development Application

AUG 16 '24 15:27



4501 N. OCEAN DRIVE, LAUDERDALE-BY-THE-SEA, FL 33308
(954)-640-4210
ZONING@LBTS-FL.GOV
M-F 8:30-4:30 PM

Administrative Purpose

Application Number: 2024 - AAD - 01
BTR #: _____
Date Application Submitted: 8/14/2024
Date Application found Completed: 8/19/2024
Pre-Application Meeting Date: _____
Non-Refundable Application Fee: \$ 900.00
Cost Recovery Fee: \$ 400.00

In accordance with Section 30.111-30.113 of the Town's Unified Land Development Regulations: Development applications are required to be provided before any development permit is issued. Please refer to the Town's website to obtain a copy of the corresponding Application Checklist and Fee Schedule.

Check appropriate application and block:

- | | |
|---|---|
| ☐ Appeal of Administrative Decision | ☐ Historic Designation |
| ☐ Site Plan | ☐ Certificate of Appropriateness |
| ☐ Site Plan Level 1 Modification | ☐ Zoning Relief |
| ☐ Site Plan Level 2 Modification | ☐ Rezoning |
| ☒ Conditional Use <u>Natural wellness, vitamin & supplement store</u> | ☐ Right-of-Way Vacation |
| ☐ Conditional Use Modification _____ | ☐ Comprehensive Plan Amendment |
| ☐ Administrative Adjustment _____ | ☐ Payment in Lieu of Parking |
| ☐ Variance _____ | ☐ Parking Reduction _____ |
| ☐ Plat _____ | ☐ Other: _____ |
| ☐ Architectural Review _____ | |

Project Name: Elite CBD

Folio Numbers: 4943 18 05 0160

Street Address: 238 Commercial Blvd. #2 LBS 33308

Legal Description: Silver Shores Unit A 28-39 B Lot 10 BLK B

Name of Property Owner: Vestor Venturino Property Owner's Phone #: 954 309 6977

Address of Property Owner: 1699 Las Casas Road Boca Raton FL 33486

Property Owner's Email Address: _____

Name of Applicant: Aviv Fhima ^{Elite CBD} Applicant's Phone #: 954-9182003

Applicant's Address: 1200 Hibiscus Ave #1802 Pompano Beach 33062

Applicant Email Address: Aviv.Fhima@gmail.com

Name of Agent (e.g. Contractor Representing the Project): Gary M. Carmen

Agent's Email Address: Gary.carmen@gary-robinson.com Agent's Phone #: 305-913 03 57

Agent's Address: 333 SE 2nd Ave #3200 Miami FL 33131

Land Use Plan Designation: _____ Zoning District: _____

Existing Use of the Subject Property: Vacant

Proposed Use of the Subject Property: Natural wellness, vitamin & Supplement Store

APPROVAL OF WAIVER OF TIME ALLOWED TO REVIEW APPLICATION

I Aviv Fhima (Applicant/ Property Owner) hereby waive my rights as to the required review time stated in House Bill 7103 as it relates to time limits to review applications for approval of a development permit or development order.

Print Name of Property Owner: N.L.V. Inc. Nestor Ventorino Date: 8.16.24

Signature of Property Owner: _____

DEVELOPMENT APPLICATION SIGNATURE SECTION

Property Owner

Print Name of Property Owner: N.L.V. Inc. Nestor Ventorino Date: 8.16.24

Signature of Property Owner: _____

State of Florida: _____

County: _____

SWORN AND SUBSCRIBED before me by means of ☐ physical presence or ☐ online notarization, this day _____ of _____, 20_____.

The person signing is ☐ personally known to me or has ☐ produced identification

Print Notary Name: _____ My Commission Expires: _____

Notary Signature: _____

Applicant

Print Name of Property Owner: Aviv Fhima Date: 8.16.24

Signature of Property Owner: _____

State of Florida: _____

County: _____



SWORN AND SUBSCRIBED before me by means of ☒ physical presence or ☐ online notarization, this day

16th of Aug., 2024

The person signing is ☒ personally known to me or has ☐ produced identification

Print Notary Name: Daisa Nolasco My Commission Expires: 5.17.26

Notary Signature: *Daisa Nolasco*



5/28/2020
Universal Application



TWENTY-FOUR SEVEN CBD LLC.

DBA: Elite CBD Life

1200 Hibiscus Ave. #1802

Pompano Beach, FL 33062

954-918-2003

EliteCBDelish@gmail.com

Date: 08/21/2024

Town of Lauderdale-by-the-Sea

Zoning and Planning

4501 N. Ocean Drive

Lauderdale-by-the-Sea, FL 33308

Re: Appeal of Denial for Elite] CBD Store

Dear Jhanelle,

I am writing to formally appeal the recent denial of my application to open a CBD store in the Silver Shores of Lauderdale-by-the-Sea. Below, I have addressed each required element of the appeal:

1. Statement of the Provision in Question: The provision in question is the interpretation of the permitted uses within the Silver Shores as outlined in the Lauderdale-by-the-Sea zoning code. Specifically, whether my proposed CBD store falls under the category of a "drug store/pharmacy" or a similar use that is permitted within this zoning district.

2. Interpretation, Application, or Determination Made by the Administrative Official: The administrative official determined that a CBD store does not fall within the permitted use categories in the Silver Shores, specifically not qualifying under the "drug store/pharmacy" classification or any similar use.

3. Applicant's Interpretation, Application, or Determination: I, as the applicant, assert that my CBD store should be classified as a "drug store/pharmacy" or a similar use within the permitted uses for the following reasons: - The primary purpose of my store is to sell health and wellness products, specifically CBD products, which are used by customers for therapeutic and medicinal purposes. - My store will offer products similar to those found in traditional drug stores, such as over-the-counter supplements, creams, and other wellness products. - Like a drug store, my business will focus on promoting health, wellness, and pain relief, which aligns with the intent of the "drug store/pharmacy" category.

4. Reason for Believing the Interpretation is Correct in Law or Fact: I believe my interpretation is correct for the following reasons: - **Legal Similarity:** The products sold at my

CBD store are legally recognized and are often carried by drug stores and pharmacies across the state. The focus on health and wellness products is a defining characteristic of a drug store/pharmacy. - ****Zoning Intent:**** The intent of the zoning code is to allow businesses that serve the health and wellness needs of the community. My store aligns with this intent by providing legal, health-focused products to the public. - ****Precedent and Regulatory Compliance:**** Many jurisdictions within the state categorize CBD stores under the same or similar zoning categories as drug stores or health shops, recognizing their role in public health. - ****Public Need and Benefit:**** The community benefits from having access to alternative health products, and my store would fulfill a growing demand for CBD products, which are widely recognized for their therapeutic benefits.

5. Hardship and Community Benefit: I would also like to highlight that the current state of the property presents a hardship to the city, as it may be underutilized or not contributing fully to the economic and social vibrancy of the area. By allowing a natural health store like mine to operate in this space, the city would benefit in several ways: - ****Enhanced Economic Activity:**** My store will attract customers to the plaza, increasing foot traffic and potentially benefiting neighboring businesses. This can help revitalize the area and improve the overall economic health of the plaza. - ****Public Health and Wellness:**** Offering natural health products aligns with the growing demand for alternative wellness options, meeting the needs of the community in a positive way. - ****Compliance with Zoning Intent:**** My business aligns with the intent of the zoning district, which aims to foster establishments that contribute to the health and well-being of residents. Given these considerations, I believe that approving my application will not only address a current hardship but also bring significant benefits to the zoning district and the community as a whole.

6. Community Education and Outreach: In addition to the economic and health benefits, our store is committed to serving as an educational resource for the community. We recognize that there is currently limited knowledge about natural health and wellness, particularly regarding CBD and its health benefits. Our goal is to bridge this gap by providing educational materials, workshops, and consultations that will inform the community about the safe and effective use of CBD products. By fostering a better understanding of natural health options, we aim to empower residents to make informed decisions about their wellness. This educational component aligns with the broader mission of promoting public health and can significantly enhance the community's overall well-being.

Given these points, I request that the town reconsider the classification of my business and approve the application to open a CBD store in the Silver Shores.

Thank you for your consideration of this appeal. I am available to discuss this matter further if needed.

Sincerely,

Ester Fhima



WILTON SIMPSON
COMMISSIONER

Florida Department of Agriculture and Consumer Services
Division of Food Safety

**ANNUAL FOOD PERMIT
HEMP FOOD ESTABLISHMENT**

Chapter 500, Florida Statutes
Rule Chapter 5K-4.020 Florida Administrative Code
(850) 245-5520 | www.FDACS.gov

July 10, 2024

Twenty Four Seven CDB
1200 Hibiscus Ave Apt 1802,
Pompano Beach, FL 33062-6538

PERMIT TYPE: 140
PERMIT NUMBER: 2025-N-2139439
FOOD ENTITY NUMBER: 422168

PERMITTED LOCATION ADDRESS:
Elite CBD
238 Commercial Blvd
Fort Lauderdale, FL 33308-1067

The attached permit will expire on July 9, 2025

This annual food permit must be detached and shall be displayed in a conspicuous location at the permitted location.
Failure to conspicuously display the permit may result in administrative action for violation of 5K - 4.020, F.A.C.

The renewal fee for all food permits shall be the same as the food permit fee required by subsection 5K-4.020(4), F.A.C., and shall be due annually on or before July 9. A late fee of \$100 will be imposed in accordance with Chapter 500, F.S., if the renewal fee for this food establishment is received by the Department after July 9. This fee is in addition to the food permit fee required by subsection 5K-4.020(4), F.A.C. It is the business owner's responsibility to ensure the accuracy of their account. Rule 5K-4.020(7), F.A.C., requires food establishments to notify the department within 30 days of closing. Updates to the owner contact information, email, and mailing addresses can be made at <https://foodpermit.fdacs.gov> or at (850) 245-5520.

THIS FOOD PERMIT IS NOT TRANSFERABLE

FDACS-14414 Rev. 08/23



WILTON SIMPSON
COMMISSIONER

Florida Department of Agriculture and Consumer Services
Division of Food Safety

2025

**ANNUAL FOOD PERMIT
HEMP FOOD ESTABLISHMENT**

Chapter 500, Florida Statutes
Rule Chapter 5K-4.020 Florida Administrative Code
(850) 245-5520 | www.FDACS.gov

PERMIT TYPE: 140
FOOD ENTITY NUMBER: 422168

EXPIRATION DATE: July 9, 2025

LOCATION:
Elite CBD
238 Commercial Blvd
Fort Lauderdale, FL 33308-1067

OWNER:
Twenty Four Seven CDB
1200 Hibiscus Ave Apt 1802,
Pompano Beach, FL 33062-6538

This permit must be conspicuously displayed at the permitted location. Rule 5K-4.020(7), F.A.C., requires food establishments to notify the department within 30 days of closing.

THIS FOOD PERMIT IS NOT TRANSFERABLE

FDACS-14414 Rev. 08/23

EXHIBIT 3

Sec. 30-531. Appeals from administrative decisions.

- (a) The party aggrieved by a decision of an administrative official in the interpretation and application of this chapter shall file an appeal under this section.
- (b) Unless otherwise provided in this chapter, no application for interpretation shall be permitted with regard to an application which is pending before the Town Commission for review, it being the intent of these appeal provisions that this process not be used as a substitute for review of decisions made by the Town Commission. Any appeals arising from related matters, such as an appeal of an interpretation on a site plan and an appeal of an interpretation related to the application of architectural design standards to structures proposed to be built on the site plan, shall be heard concurrently with the related matter by the Town Commission.
- (c) No appeal may be considered under this section where the appeal is filed more than 30 days after issuance or denial of the permit in question. No appeal may be considered under this section where the appeal is filed more than 30 days from the date the applicant knew or with reasonable diligence should have known of the decision which forms the basis of the appeal.
- (d) Application. An application for an appeal from an interpretation, application or determination made by an administrative official in the enforcement of this chapter shall include:
 - (1) A statement as to each provision of this chapter which is in question;
 - (2) The interpretation, application or determination made by the administrative official or department from which the applicant appeals;
 - (3) A statement of the interpretation, application or determination of law or fact advanced by the applicant; and
 - (4) The reason why the applicant believes his or her interpretation, application or determination is correct in law or fact.
- (e) Review process.
 - (1) *Department review.* The DSD shall prepare a report which shall include:
 - a. The Department's agreement or disagreement with the applicant's statement of the law or fact in question;
 - b. The interpretation of the Department with regard to the law or fact in question;
 - c. The basis for the Department's interpretation; and
 - d. The reason why the Department believes its interpretation, application or determination is correct in law or fact.
 - (2) *Process.* The application shall be processed as a Level 2 review—with review and recommendation by the Planning and Zoning Board.
 - (3) *Criteria.* The criteria for review is whether the administrative interpretation, application or determination at issue is clearly erroneous.
- (f) Order. The final order of the Town Commission shall either affirm, in whole or in part, the interpretation, application or determination made by the administrative official as correct in accordance with the above criteria, or reverse, in whole or in part, the interpretation, application or determination made by the administrative official as incorrect in accordance with the above criteria.
- (g) Effective date of order. The final order shall take effect 30 days from the date of filing of the executed order with the Town Clerk.

EXHIBIT 3

- (h) Effect of order. Upon entry of a final order, the law or fact as interpreted by the Town Commission shall be applicable to all applications for a development permit which have not been reviewed by the Town Commission.

(Ord. No. 2014-08, § 3, 7-7-2014; Ord. No. 2020-08, § 4, 10-13-2020)