

APPROVED
TOWN OF LAUDERDALE-BY-THE SEA
PLANNING AND ZONING BOARD MEETING MINUTES
JARVIS HALL, 4505 N OCEAN DRIVE, 33308
Wednesday, September 4, 2024

1. CALL TO ORDER

Chair Karen Sylvester 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 6:03PM.

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 Chair Karen Sylvester, Vice Chair Karen Blake, Board Members Ron Piersante, Leslie Richardson, Jeff Goldman, and 1st Alternate William (Bill) Ferrante. The absent member was 2nd Alternate Patrick Ucci. Present in person were Town Attorney James White, Development Services Director (DSD) Jhanelle Campbell, and Board Clerk Megan Small.

For the record, as five board members were present for a quorum, 1st Alternate Ferrante would participate but could not vote. The discussions and actions taken, etc. during the meeting were not limited to what was typed.

3. APPROVAL OF MINUTES

a. Planning & Zoning (P&Z) Meeting Minutes – June 5, 2024

Board Member Piersante made a motion to approve the minutes of the P&Z Meeting of June 5, 2024 as written. The motion was seconded by Board Member Richardson. The motion to approve the June 5, 2024 minutes as written carried 5-0.

4. PUBLIC COMMENTS

Chair Sylvester 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 comments opened on that item.

Marc Pearson, resident, explained that in his neighborhood some years ago, a neighbor was told to remove an unauthorized recreation area on top of his roof. He said that another neighbor completely rebuilt his home and was told that they could not have a recreation area on top of their roof because of privacy. Mr. Pearson was here tonight to see if the Board could give him assistance with an issue that the Development Services Director and Town Attorney know about. He explained about his email dated July 15, 2024 to the Town regarding concerns he had about a house built about two streets over from his. He sent a follow-up email communication on July 19, 2024 asking about status. He received an email from Development Services Director (DSD) Campbell at 6:07PM that day which stated there was no problem and everything was fine. A couple of emails later and a couple of Town Commission Meetings, he had a meeting. For clarity, he met with Town Manager Connors and Development Services Director Campbell at that meeting. He then requested and received some information from the Town through the Freedom of Information Act (FOIA) like Revision 7 of the Plan dated July 19, 2024 which did not make

sense to him. He ordered more documents through FOIA and he learned that the house he originally emailed about was permitted in 2022 with things like a rooftop recreation area, a structure up there that he would call a third floor, and a roof terrace with glass railings and lighting. He wanted them to agree that this was wrong. The revisions he received on July 19th did not change the size of the structure on top but they did get rid of the wording "third floor" and added "future solar panels" and they changed "rooftop terrace" to "maintenance area". He felt that it was still an activity area up there violating the ordinance. The structure was way too big and the ordinance gave permission solely for a stairway. His time was up and Mr. Pearson asked the Board for their advice. Chair Sylvester asked Mr. Pearson if he filed an appeal. He answered that he has a son who is a lawyer and he explained the type of law firm that his son worked for. Mr. Pearson was informed that the appeal he submitted thirty days after his July 15th email got rejected by the Town because he did not meet the reasonable time period. His son advised him that it was reasonable and Mr. Pearson was thinking of appealing the appeal and that was why he brought this up tonight at the Planning and Zoning Board. As no one else wished to speak now, the Chair closed this portion of 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.

Development Services Director Campbell presented this item stating that the applicant, Elite CBD Life, submitted an appeal application for the operation of a proposed retail store selling cannabidiol (CBD) products at the proposed business located at 238 Commercial Boulevard. The applicant was seeking 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) and as such was a permitted use within the B-1 zoning district pursuant to Section 30-271 (a) of the Town Code. She would explain Staff's analysis and recommendation concerning the appeal application.

On July 10, 2024, the applicant submitted a request to the Town for zoning approval to operate the proposed business. The applicant said that inventory would be focused on health and fitness offering a range of CBD supplements and pain relief products designed to support health, fitness, athletic performance and overall wellbeing. Inventory did not include the sale of nicotine products and/or tobacco paraphernalia. Several email communications later, Town Staff denied requests to be classified and considered a health and fitness center, retail sales and drug store/pharmacy. The applicant filed on August 19, 2024 an appeal concerning the Town Staff denial and that was why this appeal was in front of the Board tonight.

Development Services Director Campbell's report explained that 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" pursuant to Section 30-531 of the Town Code. She said that Staff has reviewed the subject appeal application pursuant to Section 30-531(e)(1) of the Town Code and did not agree with the applicant's interpretation of the proposed business as a "drug store/pharmacy" which was permitted in the B-1 zoning district. Chapter 465, Florida Statutes, (the "Florida Pharmacy Act") established the regulatory framework for the operation of pharmacies within the State. More

specifically, Section 465.003, Florida Statutes, provided various regulatory definitions, including "Medicinal Drugs", "Pharmacy", "Prescription" and various other terms. Based on the review of the Florida Statutes, Staff felt that the applicant did not provide any evidence to support classifying this proposed use as a drug store/pharmacy. The Development Services Director's report reflected that 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. Staff was recommending that the proposed business use not to be classified as a drug store/pharmacy. Board Member Goldman asked in L-B-T-S, was CVS classified as a pharmacy and the Development Services Director answered that it was. There were no other Board questions at this time.

Attorney Gary Carman, GrayRobinson, was representing the applicant. He gave a brief history starting with his client looking in the Town for a retail store and perhaps being a vitamin store. Before they could apply, they went to the State of Florida for an approval and a license - a copy of which was in the Board Packet. He said that the State of Florida classified CBD products as food supplements or food products. He reported the reasons that people use CBD products were from pain issues to beauty issues. They already have a store in the Coral Ridge Mall which is quite beautiful. They would be part of the community and have books to sell to help educate. There was nothing illegal as to what they did. There was no cannabis in their products. He explained the company's inventory of products that was first class and first rate. He gave the Board Clerk his catalog, information about the business, and the store in the Coral Ridge Mall to pass around to the Board Members. They even sell CBD for pets. He explained that he felt they were a drug store because they sell supplements and medicinal products but there was no pharmacist because they did not take prescriptions but have products that were sold in pharmacies. His client was paying rent on this store that they could not open and reported that they were directed to open a pharmacy. He said the clients were here tonight to answer questions. They were just asking for cooperation and assistance.

Board Member Ferrante clarified that they were denied under pharmacy which was the conditional use they came in under and there were no other categories that fit their needs currently. Discussion ensued. Attorney Carman showed photos of stores in the area that were vitamin/supplement stores and answered Board Member Ferrante that they were not located in L-B-T-S but nearby. He just wanted to show what other stores like theirs were called in nearby municipalities. Chair Sylvester asked about the education provided to the community and what certifications did staff working in the store have. Ester Fhima went to the podium and said they owned 27 stores for more than a decade. Employees were all trained and she explained how. The books showed the benefits of CBD and there were also studies written about in the books. They also have laboratories. She answered that this was regulated by the FDA. Board Member Goldman asked the Development Services Director if pharmacies like CVS also get looked over to practice. He pointed out a food permit in the Board Packet. The DSD answered that different usages required different licenses so each store had to get the requisite licenses. She further answered him that she was not aware of any other stores in L-B-T-S that sold CBD products. She said two stores (not CBD stores) came in under Specialty Shops but that category was eliminated and those stores were gone. Board Member Richardson wanted to know what category CVS was classified as. Development Services Director Campbell answered CVS was a pharmacy/drug store and she explained why irrespective of all the other things they sell. Board Member Richardson then wanted to know why Retail was denied as a use and the DSD answered there was no general Retail category on the Town's list. Board Member Ferrante asked the Director if there was any other way for them to come in under an existing category and she answered she did not evaluate any category that they would fit under but what they asked to come in under was not a fit for them. Development Services Director Campbell said that the applicant's son used

Artificial Intelligence (AI) to evaluate the code and that was why they came in under the category that they did. Each of their proposals was evaluated under their own merit and none were acceptable. She further clarified that she did not know what categories businesses were in other municipalities. Attorney Carman wanted to answer whether they could fall under food store. He said that the State of Florida treated their product as food and gave them a license as a food product. He felt he could come in as a grocery store but he was not selling milk, juice or other grocery products. So his clients were really at their mercy. They were trying to open up a business, minimize their losses, and do what was right for the community. Their trained staff would be able to answer someone's questions and make recommendations.

Board Member Goldman wanted to know the research they did as they chose L-B-T-S and the attorney answered. Ester Fhima also answered and then spoke about the benefits of her products. She also said that she looked into this Town and thought the store would be a great location. She then spoke about the State permit and how she chose pharmacy/drug store. Chair Sylvester said she struggled with the fact that there was no pharmacist onsite and she was answered that there were no prescriptions. Board Member Goldman said that if he was looking for a place to put a place, he would know where it fit. Development Services Director Campbell said that Ester was probably talking about a conversation she had with the Development Services Assistant Director Ramirez about the types of licenses which was not an approval as zoning approval was never obtained. Board Member Piersante said he looked through all the categories and he could not find anything that this fell into. Staff felt the same way. He then asked if they looked over the bridge in Fort Lauderdale and also wanted to know why they picked a Town of only 6,000 people. Attorney Carman read into the record regarding if conditional uses were not listed and what could be done. He felt that if everything came together, perhaps they could come up with a new conditional use that fit his category. Chair Sylvester said that before the Board today was for the pharmacy/drug store conditional use. For clarification, Development Services Director Campbell read into the record about conditional uses not listed and then continued reading into the record a list of the acceptable conditional uses. A conditional use could not be suggested because the proposed use did not fall under the allowed list of conditional uses in L-B-T-S. The attorney took exception as to what she said because when he looked at permitted conditional uses, there were categories that he could put his "toe" in and get wet but could not put his entire "body" in but was asking for assistance. Board Member Goldman wanted to know which permitted conditional use he could put his "toe" in. The attorney read about four into the record. Vice Chair Blake wanted to make a motion based on everything she heard and saw tonight and uphold Staff's decision.

Vice Chair Blake made a motion to deny by upholding Staff's decision that the proposed business use was not to be classified as a drug store/pharmacy. The motion was seconded by Board Member Ferrante. The motion to deny carried 5-0.

** (At the October 2, 2024 Meeting, Vice Chair Blake made the following corrections (1) underlined wording added to the motion (see directly below) and (2) requested Staff puts the reasoning in their future reports so that the Town Commission knew why.

**Corrected version:

Vice Chair Blake made a motion to deny by upholding Staff's decision that the proposed business use was not to be classified as a drug store/pharmacy because the appellant did not show that the Staff's interpretation of the phrase was clearly erroneous. The motion was seconded by Board Member Ferrante. The motion to deny carried 5-0.

As the attorney thanked everyone for their time and courtesy, Vice Chair Blake reminded that there was the recourse to have the code amended. She said that as it was presented tonight for

a drug store/pharmacy, the Board just could not grant it. Development Services Director Campbell said that this item would go in front of the Town Commission on September 12, 2024 for a final approval or denial.

6. OLD BUSINESS

At the last meeting the Board had, Vice Chair Blake said, talked about an update from the Town Attorney's Office. She asked that they read the minutes from the last meeting as a reminder for that update.

7. UPDATES/BOARD MEMBER COMMENTS

None.

8. ADJOURNMENT

Board Member Richardson made a motion to adjourn at approximately 6:55PM. The motion was seconded by Board Member Goldman. The motion to adjourn carried 5-0.


Chair Karen Sylvester

ATTEST:

Date Accepted: 9/3/25