



## DEVELOPMENT SERVICES DEPARTMENT STAFF REPORT

**Project Name:** Learning Together Academy

**Applicant:** Dean & Mercedes Fleming

**Project Location:** 5350 West Atlantic Blvd

**Hearing No.** BA-06-2018

**Hearing Date:** 12-04-2018

**Board:** Board of Adjustment

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### **I. RECOMMENDATION:**

**DENY**

### **II. EXECUTIVE SUMMARY:**

The subject property of this application is an existing 3,687 square foot vet hospital located at 5350 West Atlantic Boulevard. The applicant is requesting to relocate his existing day care center from Coconut Creek Parkway and Banks Road to the subject property referenced above. Section 3.22 of the Margate Zoning Code requires a minimum separation of 1,000 feet from a business licensed to serve alcohol for consumption on the premise from any proposed house of worship, school, or daycare location. The subject property is located in the proximity of less than 1,000 feet from two existing businesses licensed to serve alcohol for consumption on the premises. Petitioner is requesting permission to establish a child care center that is 804 feet from a business that is licensed to sell alcohol for consumption on premises.

#### **Description.**

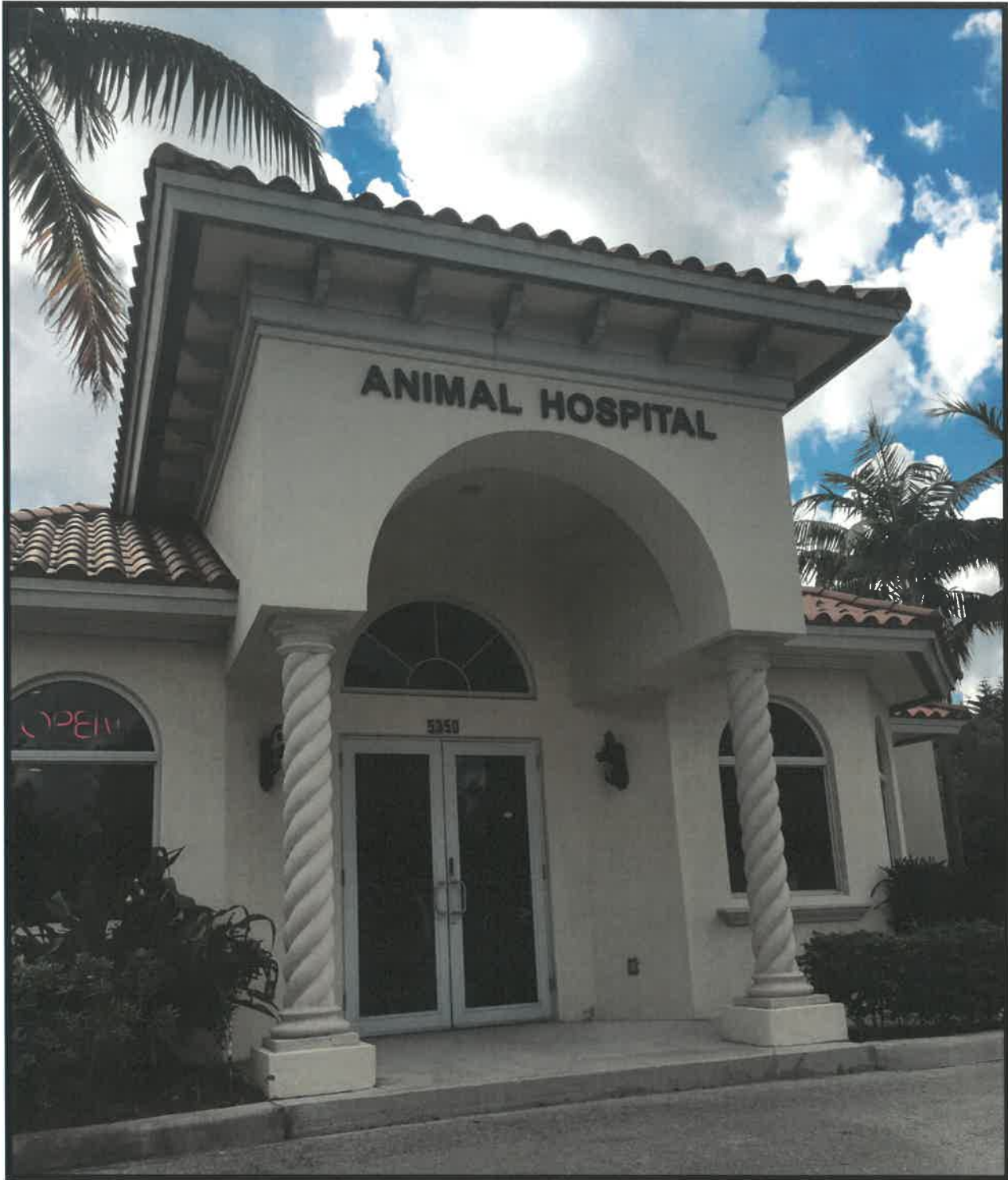
The subject property has a land use designation of Transit Oriented Corridor, and a zoning designation of Transit Oriented Corridor TOC-C zoning district. The property is a 3,687 square foot stand-alone building presently occupied as a vet clinic.

There is one restaurant called Atlantic Pho which is licensed to serve alcohol within the 1,000-foot separation requirement from the proposed day care center location.



Exhibit 1: Proposed Day Care Center Location





**Exhibit 2: North Elevation: Main Entrance of Proposed Day Care Center**





**Exhibit 3: Measured Distance from Subject Property To Atlantic Pho**





**Exhibit 4: Atlantic Pho Entrance**

### **1) Compliance with Zoning Code.**

The proposed use of a day care center is a permitted use within the Transit Oriented Corridor-Gateway (TOC-G), except for the variance to the distance restriction in Section 3.22. The intent of the above reference code requirement is a simple form of use-separation from protected uses and regulated uses.

Section 2-78 of the Margate Zoning Code provides that a decision to grant a variance by the Board of Adjustment must be in conformance with three specified criteria. Those criteria are as follows:

#### **1) What special conditions and circumstances exist which, if there is a literal and strict enforcement of the provisions of a zoning ordinance, would constitute a hardship or practical difficulty in the use of the property involved?**

The following statement by the applicant:

*"The potential property falls just short of a 1,000 feet from a Vietnamese restaurant who serves alcohol "*

The location of the subject property is located 804 feet from one restaurant licensed to serve alcohol. The applicant would like to relocate his current daycare center to the subject property. The literal and strict enforcement of the code is requiring a distance separation for any location within any zone designated under any business classification to which a license for the sale of liquor or beer and wine for consumption on the premises has previously been issued, and which license is subsisting and in use, no house of worship, public or private elementary, middle, or high school, or child care center shall be permitted within one thousand (1,000) feet of said location. Therefore, staff does not constitute a hardship in the use of the property involved because the applicant is choosing to relocate to a space that is not meeting the intent of the code.

#### **2) How will granting the variance not be contrary to the public interest or the general purpose sought to be accomplished by the zoning ordinances?**

The following statement by the applicant:

*"Because currently there is a church in the same parking lot as the potential building for our preschool and there is a preschool across the street that is currently running. They had the same issue and the city accepted the preschool"*

The justification for separating "regulated" uses such as businesses licensed to serve alcohol and "protected" uses like a daycare center is based on deleterious, detrimental, or blighting effects that the higher-impact, nuisance-like uses can have on residential areas or vulnerable populations gathering in an area like school children. The granting of the variance would be contrary to the general purpose of the code. However, the code does not specify the true intent of the code.

#### **3) What circumstances and conditions constitute the hardship or practical difficulties upon which the variance is based?**

The following statement by the applicant:

*"We were recently notified that they're going to demolish our current building and we have seventy children enrolled. Our goal is to provide a new building for our kids. It wouldn't be fair to make parents find a new school in the middle of the school year."*

The third criteria is based upon a variance to the distance restrictions from a house of worship, school, or daycare to a business licensed to sell alcohol. The applicant is choosing to relocate at the subject property that is located within one business licensed to serve alcohol. Additionally, the applicant has

not proved why alternative locations are not suitable for a daycare. Therefore, staff finds there are no circumstances or conditions that constitute a hardship for which the variance is based on.

**2) Consistency with Comprehensive Plan.**

The plan is silent on this matter.

**3) Compatibility with surrounding area.**

Not applicable.

**IV. RATIONALE:**

The analysis provided has failed to meet the three criteria's. Therefore, staff recommends denial. However, we do want the Board of Adjustment aware of the past variances that have been approved:

- April 7, 2005 (BA-13-2005) Permission to waive 1, 000 ft distance requirement from a school or daycare Approved 5-0
- December 8, 2005 (BA-26-2005) Permission to waive distance restrictions for sale of beer and wine (2-COP), in an establishment located less than 1,000 feet from a daycare. Approved 4-0
- December 8, 2005 (BA-28-2005) Permission to waive distance restrictions for sale of beer, wine and liquor (4-COP), in an establishment located less than 1,000 feet from a daycare. Approved 4-0
- April 6, 2006 (BA-6-2006) Permission to waive distance restrictions for sale of beer and wine (2-COP), in an establishment located less than 1,000 feet from a school. Approved 5-0
- May 3, 2007 (BA-9-2007) Permission to waive distance restrictions for sale of beer and wine (2-COP), in a ballroom located approximately four hundred fifty (450) feet from a house of worship and one hundred fifty (150) feet from a child day care center Approved 3-0
- (BA-2-09) Permission to waive distance restrictions for the sale of beer and wine (2-COP) in a restaurant that is located approximately 160 feet from a child care center and 180 feet from a house of worship. Approved 3-0



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Robert Massarelli, AICP  
Director of Economic Development Services