




INTEROFFICE MEMORANDUM FROM THE DEVELOPMENT SERVICES DEPARTMENT

TO: Cale Curtis, City Manager

THRU: Elizabeth Taschereau, Development Services Director

FROM: Andrew Pinney, AICP, Senior Planner 

DATE: July 17, 2020

RE: 603 Melaleuca Drive Request For A Reasonable Accommodation

This memo is issued to provide an analysis of the request for a reasonable accommodation to permit a Residential Treatment Facility at 603 Melaleuca Drive. The applicant of the request is noted as "Margate Care for Heroes." As of the date of this interoffice memorandum, this is not the property owner of record and the Florida Division of Corporations does not show the existence of such an entity. However, the application is signed by Miryam Jimenez, who is the same person presenting all previous applications at this address.

Although no written business plan is attached to the application, it is presumed that this request is for the same business plan that was submitted by Ms. Jimenez with the applications for a Local Business Tax Receipt in June 2019, May 2020 and June 2020 and the zoning change application in June 2020. Therein, it was proposed that the use be a Veterans Inpatient Residential Treatment facility licensed by the Agency for Health Care Administration and the Department of Children and Families. Moreover, the Reasonable Accommodation Request attaches a proposed approval letter for licensure by both state agencies. The plan indicates that medical treatment will be provided to patients occupying 36 beds (18 rooms with up to 2 beds per room) and will employ 49 persons to provide the inpatient medical services. The total occupant load on the renovation plans was 104. The site plan submitted shows only 21 parking spaces on the premises plus one handicapped space. The previously submitted applications for LBTR were rejected since the proposed use was not permitted in the R-3 residential zone.

On June 2, 2020, the applicant submitted an application to change the zoning for this specific property from R-3 to CF-1, the latter of which provides for medical uses, including a medical detoxification facility as a permitted use. This application is pending.

Before the City can grant a reasonable accommodation, an applicant must demonstrate the following:

- The applicant has a qualifying disability; and
- The accommodation is reasonable; and
- The accommodation is necessary.

When the request is related to housing for a disabled individual, the Federal Fair Housing Act, (FFHA) provides that a reasonable accommodation may be necessary to provide a disabled individual an equal opportunity to enjoy the housing of their choice. Applicants must demonstrate that the request is reasonable, and does not amount to a “fundamental alteration” of the zoning program. Applicants must demonstrate that the accommodation is necessary in that the accommodation addresses the particular needs of the individual caused by the disability. Finally, the accommodation is only to provide an equal opportunity to a handicapped person, it does not allow for any special privileges or benefits that are not afforded to other individuals similarly situated.

The subject property is located within the Multiple Dwelling R-3 zoning district. This is a residential zoning district. Permissible uses of this zoning district are either uniquely residential in nature, or determined by local elected officials to be both complementary and compatible with residential uses. Permitted uses in the R-3 zoning district consist of the following:

- Single-family detached dwellings; and
- Two-family dwellings (duplex); and
- Multiple-family dwellings (townhomes, apartments, condos, etc); and
- Recreation facilities owned and operated by the City; and
- Recreational and social centers not operated for profit and constructed as an integral part of as an integral part of the surround neighborhood (HOA clubhouse); and
- Church, synagogue and other religious institution and parochial school incidental and on the same premises. Except for a rectory, parish house or similar individual dwelling, no residential use shall be permitted on the site; and
- Sewage or water treating pump and storage plants; and
- Sewage lift or pump stations; and
- Transformer substations; and
- Uses accessory and clearly incidental to delineated permitted uses; and
- Home occupations, excluding retail sales; and
- Community residential homes; and
- Recovery residences.

There are no special exception uses allowed under the current code regulating the R-3 zoning district, which is the code in effect on the date of the application. The above referenced permitted uses of the R-3 zoning district do not include any medical or quasi-medical uses; such medical uses are permitted in other zoning districts of the City. Thus, the proposed use is incompatible with the surrounding land use in this zoning district and would constitute a fundamental alteration of the zoning plan.

The City of Margate implements a functional zoning strategy, where each and every zoning district of the City provides a specified list of permitted uses unique to that particular zoning district, and

any use that is not specifically identified and listed as a permitted use is thereby prohibited. Section 16.2 of the Margate Zoning Code provides the following language when providing for permitted uses of the R-3 zoning district, “No building or structure, or part thereof, shall be erected, altered or used, or land or water used, in whole or in part, for other than one (1) or more of the following specified uses.” This regulation and control of uses is a fundamental function of the City’s zoning strategy as it ensures clustering of compatible uses and separation of incompatible uses.

The Margate Board of Adjustment has the authority to hear or deny such variances from the Code of the City as will not be contrary to the public interest or the general purposes sought to be accomplished by the zoning ordinances and where, owing to special conditions, a literal enforcement of the provisions of the zoning ordinances will result in unnecessary hardship in the use of the property involved. However, this power is limited by Section 2-78(c) of the Code of the City of Margate in the following manner, “The board shall not have jurisdiction to consider any variance allowing any use of buildings or lands not permitted within any designated zoning classification.” No board of the City has the authority to consider an application and permit a use that is prohibited in a given zoning district, which further establishes the functional zoning architecture that the City implements as an essential function of said zoning laws. Further, the City has not waived or made concessions on these prohibitions for any individual, whether disabled or not.

The request for accommodation seeks approval of a use that is prohibited within the R-3 zoning district. Staff questions the reasonableness of this request because it would require a fundamental alteration of the City’s zoning plan. This is corroborated by the applicant’s concurrent submittal of an application for zoning change, from R-3 to CF-1. Moreover, given the nature of this request, staff finds that the applicant seeks to receive not an equal opportunity, but a benefit not afforded to anyone else in this zoning category.

The reasonable accommodation application is unclear as to the qualifying disability or handicap. The application reads, “The prospective patients of Margate Care for Heroes (“MCH”) suffer from post-traumatic stress disorder (PTSD) *and other co-occurring disabilities*, including substance abuse.” As this was not a definitive statement of the disabilities, staff questions the merits of the applicant’s arguments for the necessity of the request against possible unknown “co-occurring disabilities” when an exhaustive list or description has not been provided. How can it be determined that this particular choice of housing addresses specific needs caused by the applicant’s prospective residents’ disabilities, when the application alludes to multiple disabilities and those disabilities have not been fully disclosed within the application? It raises the possibility that this location may be detrimental to some disabilities of the prospective residents, since all of the disabilities are not fully known at this time.

Applicant has not provided any evidence as to why a 36-bed capacity is necessary to the accommodation, nor whether this capacity offers any meaningful benefit to the treatment being offered to the disabled residents, so an accommodation for a facility of this size does not appear necessary and would most certainly grant special rights not offered to anyone else.

Moreover, the applicant refers to substance abuse and substance use disorders frequently in the application and that the facility will provide treatment for the same, which would then necessarily

include or lead to operation of a medical detoxification facility at this location. Indeed, the legal argument in the application is premised on the same legal cases that were utilized in the previous lawsuit's attempt to establish a medical detoxification facility at the approved assisted living facility.

The reference to the prior lawsuit brought by Ms. Jimenez on behalf of MMJ Financial Inc. and Quality of Life, Inc. is not relevant to the current application. The applicant's counsel, both verbally and in writing, has represented to the City: "The lawsuit is done and over." However, as references to the summary judgement have been included in the application, staff, with the assistance of counsel, will address it.

In the lawsuit, there was never a stipulation by the City to a medical use at this location. Indeed, this was the major issue in the suit that was lost by Plaintiff. The attempt by Plaintiff in that suit to broaden the approval granted by the City Commission in January 2015 was roundly rejected since Plaintiff represented under oath that she was presenting an Assisted Living Facility, which was a residential use. As Judge Bloom noted: "Defendants (the City) approvals at all times were premised on those representations, some of which were under oath." Also, regarding the change in zoning in May 2017, Judge Bloom confirmed that "Defendant has always represented that Plaintiffs (1) may proceed with an assisted living facility as approved and (2) must seek a change of use before the City Commission to operate a detoxification facility (a medical use)."

Moreover, in response to the claim of "vested rights" to a medical use under equitable estoppel, Judge Bloom held that "The January 21, 2015 hearing and ensuing resolution thus cannot be the basis for Plaintiffs' purported vested rights to operate anything other than an assisted or independent living facility." P. 39. "Simply put, Plaintiffs do not and cannot have vested rights in "operating a medical facility" because they were never approved for, nor did they ever even apply to operate one." P. 44. Thus, the statement the applicant continues to try and change is that the Plaintiffs' could open and operate what they were approved for – an independent or assisted living facility, but not a medical treatment facility." P.45.

The applicant attempts to leverage the 2015 approval for an assisted living facility at this location against a 2017 legislative action by the City Commission, in order to exchange the use of assisted living facility for a Residential Treatment Facility. The 2017 code update accomplished several things, which, among other things, included an update to the vocabulary used in the Margate Zoning Code. Section 16.2 of the Margate Zoning Code no longer provides for Group Care Facilities as a special exception use in the R-3 zoning district. Group Care Facilities are not listed in Section 2.2 of the Margate Zoning Code.

What the applicant struggles with is that this code change made approval for the assisted living facility on the subject property a legally nonconforming due to the size of the facility. Section 31.5 of the Margate Zoning Code provides that, "In any residential district, a nonconforming use in a nonconforming building or structure shall be changed only to a conforming use." This means that if the property owner wants to use this property for any other use, it must be one that is permitted under the current code in effect. The Margate Zoning Code's careful control of uses, noted as an essential and fundamental function of zoning, prohibits the requested exchange of one nonconforming use for another nonconforming use.

The applicant attempts to argue that the accommodation would not be a fundamental alteration and points to another assisted living facility existing in the R-3 zoning district. However, this facility is also considered legally nonconforming. Legally nonconforming uses may have been lawfully permitted at one time, but due a number of possible reasons, (rezoning, regulatory change, etc.), the use is no longer permitted in its particular zoning district. The City provides regulations to control and limit these nonconforming uses. The intent of those regulations for nonconforming uses is to provide a delicate balance between a property owner's vested rights to a use and the City's desire to implement a vision of a given zoning district which no longer provides for such a use. The granting of an accommodation that adds to the nonconformity of a zoning district would irreparably skew this delicate balance. Since the City's Codes are used to implement a vision established by policymakers, this again represents a fundamental alteration of established policy.

When arguing that the accommodation is necessary for the prospective disabled residents to enjoy housing at this location, applicant states that there are no "*Veterans-only* Community Residential Treatment Facilities in Broward county or Palm Beach County currently." This argument is unpersuasive to the request at hand because veteran status is not a type of disability. Thus, the analysis provided should be reviewing whether other licensed Residential Treatment Facilities (RTF) are available. When this veil is lifted, the number of facilities are drastically different than what has been presented by the applicant. The Florida Agency for Healthcare Administration website shows 16 addresses in Broward County for licensed "Residential Treatment Facilities," which is the same license sought by applicant. Please see the list of facilities attached to this memo. Further, the applicant has failed to provide rationale for why the services offered by an RTF are necessary at this particular location and at this level of occupancy. The applicant has failed to provide prima facie evidence of any type of community need for these services, and the applicant has failed to provide citations for any of the "statistics" or "facts" included in the request. Staff has not been persuaded that the requested accommodation for residence and services at this particular location is shown to be necessary.

The R-3 zoning district offers both Recovery Residences and Community Residential Homes (CRH) as opportunity for both disabled and non-disabled individuals to enjoy group living. Section 2.2 of the Margate Zoning Code defines a Recovery Residence as, "A residential dwelling unit, or other form of group housing, that is offered or advertised through any means, including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer-supported, alcohol-free and drug-free living environment. The number of unrelated residents and distance requirements set forth by Type 1 and Type 2 community residential homes shall apply to these facilities." It is important to note that this is peer supported group housing that does not provide the typical intensive therapies provided by professionals in a Residential Treatment Facility, and these Recovery Residences are limited in size and location to the same limitations imposed on Community Residential Homes.

Chapter 419 of the Florida Statutes imposes preemptive language on both size limitations and locations where it is appropriate to establish Community Residential Homes. This statute defines a CRH as, "a dwelling unit licensed to serve residents who are clients of the Department of Elderly Affairs, *the Agency for Persons with Disabilities*, the Department of Juvenile Justice, or the Department of Children and Families or licensed by the Agency for Health Care Administration which *provides a living environment for 7 to 14 unrelated residents who operate as the functional equivalent of a family*, including such supervision and care by supportive staff as may be necessary

to meet the physical, emotional, and social needs of the residents.” This definition clearly provides that this is housing, focused on custodial needs of the residents, which may include incidental medical services.

When a Community Residential Home provides housing for six or fewer residents, the statute provides that such CRH shall be deemed a single family unit, and a noncommercial, residential use for the purpose of local laws and ordinances. Chapter 419 clearly preempts local governments on the issue since, “Homes of six or fewer residents which otherwise meet the definition of a community residential home shall be allowed in single-family or multifamily zoning without approval by the local government, provided that such homes are not located within a radius of 1,000 feet of another existing such home with six or fewer residents or within a radius of 1,200 feet of another existing community residential home.” The statute offers an opportunity for a local government to exercise discretion when the size of the CRH increases to 7-14 residents. F.S. 419(3) has been copied into this memo, below:

“(3)(a) When a site for a community residential home has been selected by a sponsoring agency in an area zoned for multifamily, the agency shall notify the chief executive officer of the local government in writing and include in such notice the specific address of the site, the residential licensing category, the number of residents, and the community support requirements of the program. Such notice shall also contain a statement from the licensing entity indicating the licensing status of the proposed community residential home and specifying how the home meets applicable licensing criteria for the safe care and supervision of the clients in the home. The sponsoring agency shall also provide to the local government the most recently published data compiled from the licensing entities that identifies all community residential homes within the jurisdictional limits of the local government in which the proposed site is to be located. The local government shall review the notification of the sponsoring agency in accordance with the zoning ordinance of the jurisdiction.

(b) Pursuant to such review, the local government may:

1. Determine that the siting of the community residential home is in accordance with local zoning and approve the siting. If the siting is approved, the sponsoring agency may establish the home at the site selected.
2. Fail to respond within 60 days. If the local government fails to respond within such time, the sponsoring agency may establish the home at the site selected.
3. Deny the siting of the home.

(c) *The local government shall not deny the siting of a community residential home unless the local government establishes that the siting of the home at the site selected:*

1. Does not otherwise conform to existing zoning regulations applicable to other multifamily uses in the area.

2. Does not meet applicable licensing criteria established and determined by the licensing entity, including requirements that the home be located to assure the safe care and supervision of all clients in the home.

3. *Would result in such a concentration of community residential homes in the area in proximity to the site selected, or would result in a combination of such homes with other residences in the community, such that the nature and character of the area would be substantially altered.* A home that is located within a radius of 1,200 feet of another existing community residential home in a multifamily zone shall be an overconcentration of such homes that substantially alters the nature and character of the area. *A home that is located within a radius of 500 feet of an area of single-family zoning substantially alters the nature and character of the area."*

The state legislation provides through Chapter 419 of the Florida Statutes that when a Community Residential Home of 7-14 residents that is to be located within 500 feet of an area of single-family zoning that it would substantially alter the nature and character of the area, and thus, the local government is authorized to deny such siting. The subject property of this request abuts single family homes along its north and west property lines. The only possible appropriate Community Residential Home which could locate at the subject property would be for a home of six or fewer residents.

Pursuit of a Residential Treatment Facility concept within a Community Facilities CF-1 zoning district would not require a reasonable accommodation. The CF-1 zoning district provides both detoxification facilities and long term care facilities as uses permitted by right, with no specified limitation of bed capacity in given facility. Indeed, the applicant has concurrently submitted an application to rezone the subject property to CF-1.

Another significant factor regarding this requested change of use would be the traffic and parking congestion produced by the proposed use. As noted above, the applicant proposes 49 employees and potentially 36 patients who are allowed visitors and who are allowed to leave the facility. Thus, the patients may have their own vehicles at the facility. With only 21 parking spaces and one handicapped space, it is clear that the insufficient parking spaces will lead to on-street parking in the neighborhood.

In the application for a zoning change, the applicant submits that the change would be minimal based on a comparison of the uses of an apartment use and a nursing home. The application concedes that apartment use is not applicable since the building is not presently configured for 10 individual apartments that was in place prior to the renovation to an assisted living facility. The applicant contends that the present configuration is similar to a nursing home which generates 55 weekday daily trips. However, this analysis is flawed. Changing the use to CF-1 would allow for a medical treatment facility or a hospital use. Under ITE 610 code for hospitals, the average daily trip generation is 414. This is taken from the traffic analysis done and submitted by Atlantic

Margate Medical Center when it applied to the City of Margate for a zoning change to CF-1 to operate a medical detoxification facility in 2015.

Thus, the change of use to CF-1 would lead to nearly 8 times the average daily trips generated from even a nursing home use. This level of traffic congestion, considering both the volume of trips and parking demands generated by the proposed use, would severely impact the character of the R-3 residential streets, again amounting to a fundamental alteration of the neighborhood and zoning district.

Based upon the evidence presented by the applicant regarding the reasonableness and necessity to accommodate the request to allow a Residential Treatment Facility with a capacity of 36 beds, and a total occupant load of 104, at the subject property, staff finds that the City's current zoning regulations provide for such a use if it was proposed to be located in a CF-1 zone that currently exists. However, this request to establish this use at the current location would require a waiver of the use restrictions of the R-3 zoning district to change it to a CF-1 which would fundamentally alter the City's zoning strategy and the neighborhood character that surrounds the property and afford the applicant rights not enjoyed by other persons residing in the same residential zoning district. Thus, the denial of this request for reasonable accommodation would be fully justified. Indeed, since an application to change the zoning to CF-1 is pending, which will be evaluated by the Development Review Committee, Planning & Zoning Board and the City Commission and be the subject of public hearings, it seems more appropriate that the same request for a change in zoning be addressed by the City in that procedure.

Residential Treatment Facilities - BROWARD

Name	Address
Archways Inc	1142 NE 5TH AVE, FT LAUD 1133 NE 5TH TER, FT LAUD 1720 NE 11TH ST, FT LAUD 2617 NW 9TH LN, WILTON MANORS
Arete Detox	1300 HIBISCUS DR, PEMBROKE PINES 1901 JOHNSON ST UNITS 1,2,& 3, HOLLYWOOD
Compassion Behavioral Health	
Deerfield Florida House, Inc	504 S FEDERAL HWY, DEERFIELD BEACH
Destination Hope Inc	8301 WEST MCNAB ROAD, TAMARAC
Gulf Coast Community Care	201 NE 40TH CT, OAKLAND PARK
Henderson Behavioral Health	5800 NW 27TH CT, LAUDERHILL 5700 NW 27TH CT, LAUDERHILL 868 SW 10TH ST, POMPANO BEACH 5700 NW 27TH CT, BLD D, LAUDERHILL
Lifeskills South Florida	1431 SW 9TH AVE, DEERFIELD BEACH 2525 EMBASSY LAKES DRIVE SOUTH, HOLLYWOOD
Milestones in Recovery	
Renfrew Center of Florida	7700 NW 48TH AVE, COCONUT CREEK