

## PLANNING AND ZONING BOARD REPORT

**PZB Project Number 22-00500007:** A Blanket Conditional Use request for multiple conditional uses as provided for in LDR Section 23.3-6 for Gifted Kids Therapy located at 409 South Dixie Highway. Gifted Kids Therapy is requesting consideration of the establishment of an applied behavior analysis center designated as an outpatient clinic/medical office use by LDR Section 23.3-6. The subject site is zoned Mixed Use - Dixie Highway (MU-DH) and has a future land use designation of Mixed Use – East (MU-E).

**Meeting Date:** July 20, 2022

**Property Owner:** Zahir Esmail – Tropical Point Plaza, Inc.

**Applicant:** Zahir Esmail – Tropical Point Plaza, Inc.

**Project Manager:** Yigsy Lemos – Gifted Kids Therapy

**Address:** 409 S Dixie Hwy # 4 & 5

**PCNs:** 38-43-44-21-15-149-0210

**Size:** 0.2946 ac Lot / 5,420 sf. Existing Structures

**General Location:** West side of Dixie Highway (US Highway 1) between 4<sup>th</sup> Avenue South and 5<sup>th</sup> Avenue South

**Existing Land Use:** Retail/Commercial

**Current Future Land Use Designation:** Mixed Use – East (MU-E)

**Zoning District:** Mixed Use – Dixie Highway (MU-DH)

Location Map



## RECOMMENDATION

The documentation and materials provided with the application request were reviewed for compliance with the applicable guidelines and standards found in the City of Lake Worth Beach Land Development Regulations (LDRs), and for consistency with the Comprehensive Plan and Strategic Plan. The proposed Blanket Conditional Use Permit request is consistent with the Comprehensive Plan, Strategic Plan, and LDRs, as conditioned, and, therefore, a **recommendation of approval with conditions** is provided to the Planning and Zoning Board. The conditions are located on page 6 of this report.

## PROJECT DESCRIPTION

The applicant, Zabir Esmail, is requesting a Blanket Conditional Use Permit (CUP) to allow for several uses less than 7,500 square feet that could occur within the 5,420-sf commercial structure, as follows:

- Outpatient Clinics/Medical Office (including the 1,840 square feet Gifted Kid Therapy business)
- Financial Institution without Drive Through
- Printing Services
- Veterinary Office without Kennels
- Health Clinics/Urgent Care
- Pet Grooming without Boarding
- Personal Grooming & Day Spa
- Gyms/Studio, Fitness or Dance
- Dry Cleaning Establishment with on-site cleaning
- Single-destination Retail
- Administrative/Professional Office

## COMMUNITY OUTREACH

Staff has not received any letters of support or opposition for this application.

## BACKGROUND

Below is a summary of the property based on Palm Beach Property Appraiser's records and City records:

**Construction:** The existing structure was constructed in 1977. Per the survey provided, the existing building is 5,420 sf.

**Use:** The property's use is commercial/retail.

**Code Compliance:** There are no active code cases on the subject site.

## ANALYSIS

### Consistency with the Comprehensive Plan and Strategic Plan

The subject site has a Future Land Use (FLU) designation of Mixed Use – East (MU-E). The MU-E FLU is intended to provide for a mixture of residential, office, service and commercial retail uses within specific areas east of I-95, near or adjacent to the central commercial core and major thoroughfares of the City. The maximum density of permitted residential development is 30 dwelling units per acre. The preferred mix of uses area-wide is 75% residential and 25% non-residential. While mixed-use projects are allowed on a single site, it is not a requirement that each site within the category incorporate multiple uses. Zoning regulations implementing the Mixed-Use East category shall permit the establishment and expansion of residential (including single family, two-family and multi-family), office, service and commercial retail uses either as uses permitted by right or through conditional use permit provisions. All buildings are required to provide

transitional buffering and design features to mitigate impact of the MU-E sites adjacent to residential zoning districts. The proposed request is seeking to add multiple conditional uses to be allowed in the existing 5,420 square foot commercial building.

The City's Strategic Plan focuses on fostering safer neighborhoods, encouraging community pride, building a vibrant and diverse economy, planning for the future, and enhancing the natural, historic, and cultural environment of the City. Pillar IV.A and Pillar IV.D of the Strategic Plan state that the City shall achieve economic and financial sustainability through a versatile and stable tax base, and influence the supply and expansion of jobs. Because the proposed Blanket Conditional Use will allow for the establishment of several medium to low-intensity uses that will contribute towards the City's tax base and sustain or increase jobs, the proposal is consistent with Pillar IV.A and Pillar IV.D.

Based on the analysis above, the proposed Blanket Conditional Use request is consistent with the goals, objectives, and policies of the City of Lake Worth Beach's Comprehensive Plan and Strategic Plan.

#### **Consistency with the Land Development Regulations**

The **Mixed Use-Dixie Highway (MU-DH) zoning district** *is intended to provide the establishment and expansion of a broad range of office and commercial uses, including higher density residential use. Certain commercial uses are not permitted in the district because they will be detrimental to the shopping or office functions of the area. The establishment of certain uses is subject to conditional use review to ensure they will not have a negative impact on nearby residential uses or on the commercial viability of their neighbors. The district implements in part the downtown mixed-use land use category of the Lake Worth Comprehensive Plan.*

**Analysis:** The applicant is requesting a Blanket Conditional Use Permit to allow several low (use area less than 2,500 square feet and low intensity impact uses) to medium-intensity (use area less than 7,500 square feet and/or medium intensity impact uses) uses. A majority of the uses requested will have low impacts to the adjacent properties. Based on the data and analysis provide by the applicant, the proposed conditional uses are not anticipated to impact the surrounding area greater than multiple uses permitted by right or greater than the previous radio station use on the property. The building will be served by municipal services, including water, sewer, refuse, fire and police. The site is located on an arterial roadway. Therefore, no additional public expenditures are required to service the proposed use.

The applicant initially requested an outpatient clinic/medical office per LDR Section 23.3-6, to be located at this site. The use requires a conditional use permit and is also subject to additional supplemental regulations per LDR Section 23.4-13(c)15., *Medical related uses*. During the application process, the owner indicated that tenant occupancy has been difficult in some cases due to the approval process for specific requested uses. Staff recommended the applicant request a blanket conditional use permit to minimize continued challenges with tenant occupancy. The blanket conditional use permit request will not capture all of the low to medium intensity uses related to residential, industrial, institutional, commercial and retail use classifications that may have adverse impacts or are generally not compatible in a small-scale building and will require a separate review by the Planning and Zoning Board (PZB).

The outpatient clinic/medical office and the health clinics/urgent care uses are added to the conditional use permit request. Both uses are subject to additional supplemental regulations per LDR Section 23.4-13(c)15., *Medical related uses*. The uses are consistent with the intent of the MU-DH zoning district as conditioned. The analysis for the blanket conditional use permit is provided in this section below and as consistent with the review criteria located in Attachment A.

The Department of Community Sustainability is tasked in the LDRs to review conditional use applications for consistency with the City's LDRs (Section 23.2-29(i)), for compliance with the following findings for granting conditional uses and to provide a recommendation on the proposed project.

**Section 23.2-29.a), Conditional Use Permits:** *Conditional uses are defined as generally compatible with the other uses permitted in a district, but that require individual review of their location, design, structure, configuration, density and intensity of use, and may require the imposition of pertinent conditions to ensure the appropriateness and compatibility of the use at a particular location and to prevent or minimize potential adverse impacts to the surrounding area.*

**Section 23.2-29.b), Approval Authority:** *The planning and zoning board, in accordance with the procedures, standards and limitations of this section, shall approve, approve with conditions, or deny an application for a development permit for a conditional use permit after review and recommendation by the development review official.*

**Analysis:** A recommendation by the development review official is provided on page 2 of this report, under Recommendation.

**Section 23.2-29.c), General Procedures:** *The department for community sustainability shall review the application in accordance with these LDRs and prepare a report that summarizes the application and the effect of the proposed conditional use, including whether the application complies with each of the findings for granting conditional uses stated below and provide a recommendation for whether the application should be approved, approved with conditions, or denied.*

**Staff Analysis:** The structure on the property was constructed in the 1970s. The existing site conditions do not conform to the current LDRs; therefore, the nonconformities section of the land development regulations, LDR Section 23.5-3 is applicable. The existing nonconformities are not proposed to be increased or negatively impacted by the subject Conditional Use request. **The proposed Conditional Use is consistent with the City's LDRs on the following data and analysis:**

**Per LDRs Section 23.4-10.f)2.A., Exceptions.** *Parking is not required for changes in use or occupancy or remodeling of existing buildings which do not increase floor area or number of overall existing dwelling units, located outside of the single-family residential SF-R zoning district.*

**Staff Analysis:** The request is for the conditional uses without increasing the existing building floor area; therefore, additional parking spaces are not required.

**Signage:** Signage is required to comply with the size and design requirements in the Land Development Regulations. Any proposed signage will be reviewed at building permit for consistency with these requirements.

**Section 23.6-1. - Landscape regulations:** *The objective of this section is to provide minimum standards for the installation and maintenance of landscaping within the city. Per Section 23.6-1(c)(2), "on the site of a building or open-lot use providing an off-street parking, storage or other vehicular use area, where such an area will not be screened visually by an intervening building or structure from an abutting right-of-way or dedicated alley, shall require landscaping".*

**Analysis:** The site currently contains 3 trees amongst shrubbery, all of which is located around the parking lot in front of the building. The application and site were reviewed by city staff for current compliance with the landscape code. Upon visiting the site, staff observed 1 of the required Green Buttonwood Trees is missing, and found the site to be out of conformance with the Major Thoroughfare Design Guidelines. As such, staff has provided a condition of approval which would require the replacement of the missing tree that will place the property into further conformance with the Major Thoroughfare Design Guidelines as well as Section 23.6-1.

#### **Findings for Granting Conditional Uses**

*Prior to approving any conditional use permit, the decision-making authority shall find based on competent and substantial evidence that the following criteria related to conditional uses are met:*

**Section 23.2-29.d) General findings relating to harmony with LDRs and protection of public interest.**

**Staff Analysis:** The proposed conditional uses are in general harmony with the surrounding area and consistent with development of the corridor. The requested uses are anticipated uses in the Mixed-Use Dixie Highway (MU-DH) zoning district. The proposed uses will not result in less public benefit nor will it result in more intensive development than anticipated in the zoning district in the comprehensive plan. However, it was noted in the review that there is no existing screened refuse area on the property and the existing pole sign is required to be removed per Section 23.5-1.i). Therefore, staff has proposed two conditions of approval addressing these concerns.

**Section 23.2-29.e) Specific findings for all conditional uses.**

**Staff Analysis:** The proposed conditional uses are not anticipated to impact the surrounding area greater than uses allowed on the property and within the zoning district. The building is already served by municipal services, including water, sewer, refuse, fire and police. The site is located on an arterial roadway. Therefore, no additional public expenditures are required to service the proposed use. The proposed use will not impact traffic circulation on the site and staff will condition additional landscaping provisions to ensure adequate screening is continuously provided. However,

**Section 23.2-29.g) Additional requirements.**

**Staff Analysis:** As of the date of this report transmittal, there are no active code compliance cases for the subject property.

**CONCLUSION AND CONDITIONS**

The Mixed Use-Dixie Highway (MU-DH) zoning district is intended to provide the establishment and expansion of a broad range of office and commercial uses, including higher density residential use. Certain commercial uses are not permitted in the district because they will be detrimental to the shopping or office functions of the area. The establishment of certain uses is subject to conditional use review to ensure they will not have a negative impact on nearby residential uses or on the commercial viability of their neighbors. The district implements in part the downtown mixed-use land use category of the Lake Worth Comprehensive Plan. Development in the mixed-use land use category should be guided to minimize negative impacts on nearby mixed-use areas. Uses identified as conditional uses are subject to additional review to ensure they will not have a negative impact on nearby residential uses or on the commercial viability of their neighbors. Based on the data and analysis in this report and the supporting materials by the applicant, the uses requested are not anticipated to negatively impact adjacent properties. Further, the proposed conditional uses will be compatible with the neighboring uses. Therefore, a recommendation of approval is provided to the PZB with the following conditions:

**Planning & Zoning**

1. The Blanket Conditional Use Permit (CUP) includes the following uses within the approximately 5,420 sf commercial building subject to all applicable conditions of approval and business license approval:
  - a. Outpatient Clinics/Medical Office (including the 1,840 square feet Gifted Kid Therapy business)
  - b. Financial Institution without Drive Through
  - c. Printing Services
  - d. Veterinary Office without Kennels
  - e. Health Clinics/Urgent Care
  - f. Pet Grooming without Boarding
  - g. Personal Grooming & Day Spa
  - h. Gyms/Studio, Fitness or Dance
  - i. Dry Cleaning Establishment with on-site cleaning
  - j. Single-destination Retail

- k. Administrative/Professional Office
2. Health Clinics/Urgent Care and Outpatient Clinics/Medical Office shall comply with the following supplemental regulations per LDR Section 23.4-13(c)15., *Medical related uses*:
  - a. Hours of operation shall be weekdays anytime between 8:00 a.m. to 8:00 p.m., unless an operational waiver allowing expanded hours is granted by the appropriate board. A waiver may be granted if it can be established that operating hours beyond the specified times will not constitute a nuisance or negatively affect surrounding properties. Under no circumstances shall a waiver be granted if the property is located next to a residential zoning district.
  - b. Once established, said use may not be expanded without conditional use approval regardless of increased size of use.
  - c. All medical services to be provided at said location must be included on the business license application and updated annually should the array of services change or expand. Changes in services and/or expansion of types of services will be evaluated to determine whether the additional services would constitute an expansion of use requiring an updated conditional use approval.
3. Within one (1) year after the issuance the development order, the property shall submit a minor site plan to address the removal of the pole sign and the addition of a fully screened refuse area. The removal of two (2) parking spaces shall be permitted to accommodate a screened refuse area. The location of the screened refuse area shall comply LDR requirements and be approved by the Public Works Department.
4. Documentation that PBC Wellfield Permit affidavit of notification is required to be submitted to PBC Environmental Resources Management is required for all tenants prior to the issuance of a business license.
5. The use, handling, production and storage of regulated substances in wellfield zones as defined in the PBC Unified Land Development Code shall be prohibited as provided for in the requirements of the PBC Wellfield Ordinance (ULDC, Article 14, Chapter B).
6. All uses shall meet all the requirements and stipulations set forth in City Code Section 15-24, Noise control.
7. Per City Code Section 14-32 and LDR Section 23.2-23, the occupant must obtain and maintain the applicable annual Use and Occupancy Certificates (U&O) and Business Tax Receipts (BTR) for the new use and will need to maintain the license with renewals. This occupant must also obtain a City of Lake Worth Beach business license. This approval letter only applies to this address, 409 South Dixie Highway, and will not constitute approval for any new location.
8. The City shall revoke the business license and the approval of the conditional use permit if the property is declared a chronic nuisance as result of or related to the operations of either the requested uses.
9. All uses shall comply with the use occupancy requirements for each tenant space as required by the Florida Building Code.
10. Signage shall be reviewed through the building permit process for consistency with the requirements of the Land Development Regulations.

#### Landscaping Services

1. Prior to issuance of a business license, a landscape permit to plant one (1) Green Buttonwood tree in the landscape area south of the driveway adjacent to South Dixie Highway.
2. Landscaping shall be installed and inspected prior to issuance of a business license.

#### BOARD POTENTIAL MOTION:

I move to **approve with conditions** the request for PZB Project Number 22-00500007 Conditional Use Permit based on upon the competent and substantial evidence provided in the staff report and in the testimony at the public hearing.

I move to **disapprove** the request for PZB Project Number 22-00500007 Conditional Use Permit. The project does not meet the conditional use criteria for the following reasons [Board member please state reasons.].

**Consequent Action:** *The Planning & Zoning Board's decision will be final decision for the Conditional Use Permit and Major Site Plan. The Applicant may appeal the Board's decision to the City Commission.*

**ATTACHMENTS**

- A. Conditional Use Findings
- B. Application Package (survey, site plan, architectural plans & supporting documents)

**ATTACHMENT A - Findings for Granting Conditional Uses**

<b>Section 23.2-29(d) General findings relating to harmony with LDRs and protection of public interest.</b>	<b>Analysis</b>
1. <i>The conditional use exactly as proposed at the location where proposed will be in harmony with the uses which, under these LDRs and the future land use element, are most likely to occur in the immediate area where located.</i>	<b>In compliance</b>
2. <i>The conditional use exactly as proposed at the location where proposed will be in harmony with existing uses in the immediate area where located.</i>	<b>In compliance</b>
3. <i>The conditional use exactly as proposed will not result in substantially less public benefit or greater harm than would result from use of the site for some use permitted by right or some other conditional use permitted on the site.</i>	<b>In compliance</b>
4. <i>The conditional use exactly as proposed will not result in more intensive development in advance of when such development is approved by the future land use element of the comprehensive plan.</i>	<b>In compliance</b>
<b>Section 23.2-29(e) Specific findings for all conditional uses.</b>	<b>Analysis</b>
1. <i>The proposed conditional use will not generate traffic volumes or movements which will result in a significant adverse impact or reduce the level of service provided on any street to a level lower than would result from a development permitted by right.</i>	<b>In compliance</b>
2. <i>The proposed conditional use will not result in a significantly greater amount of through traffic on local streets than would result from a development permitted by right and is appropriately located with respect to collector and arterial streets</i>	<b>In compliance</b>
3. <i>The proposed conditional use will not produce significant air pollution emissions, or will appropriately mitigate anticipated emissions to a level compatible with that which would result from a development permitted by right.</i>	<b>In compliance</b>
4. <i>The proposed conditional use will be so located in relation to the thoroughfare system that neither extension nor enlargement nor any other alteration of that system in a manner resulting in higher net public cost or earlier incursion of public cost than would result from development permitted by right.</i>	<b>In compliance</b>
5. <i>The proposed conditional use will be so located in relation to water lines, sanitary sewers, storm sewers, surface drainage systems and other utility systems that neither extension nor</i>	<b>In compliance</b>

*enlargement nor any other alteration of such systems in a manner resulting in higher net public cost or earlier incursion of public cost than would result from development permitted by right.*

6. *The proposed conditional use will not place a demand on municipal police or fire protection service beyond the capacity of those services, except that the proposed facility may place a demand on municipal police or fire protection services which does not exceed that likely to result from a development permitted by right.* **In compliance**
7. *The proposed conditional use will not generate significant noise, or will appropriately mitigate anticipated noise to a level compatible with that which would result from a development permitted by right. Any proposed use must meet all the requirements and stipulations set forth in section 15.24, Noise control.* **In compliance**
8. *The proposed conditional use will not generate light or glare which encroaches onto any residential property in excess of that allowed in section 23.4-10, Exterior lighting.* **In compliance**

<b>Sec. 23.4-13.(c)15. - Administrative uses and conditional uses/Standards/Medical related uses</b>	<b>Analysis</b>
1. <i>All such uses shall front a major thoroughfare;</i>	<b>In compliance</b>
2. <i>Hours of operation shall be weekdays anytime between 8:00 a.m. to 8:00 p.m., unless an operational waiver allowing expanded hours is granted by the appropriate board. A waiver may be granted if it can be established that operating hours beyond the specified times will not constitute a nuisance or negatively affect surrounding properties. Under no circumstances shall a waiver be granted if the property is located next to a residential zoning district;</i>	<b>In compliance as conditioned</b>
3. <i>Sufficient/adequate parking shall be documented to serve the needs of the doctors, staff, clients and patients of said use;</i>	<b>In compliance</b>
4. <i>In the DT zoning district, said uses may be established only if fronting Dixie Highway. No waiver or variance shall be granted for this requirement;</i>	<b>Not applicable</b>
5. <i>Said uses may not be established on properties that have frontages on either Lake Avenue or Lucerne Avenue. No waiver or variance shall be granted for this requirement;</i>	<b>Not applicable</b>
6. <i>Once established, said use may not be expanded without conditional use approval regardless of increased size of use;</i>	<b>In compliance as conditioned</b>
7. <i>All medical services to be provided at said location must be included on the business license application and updated annually should the array of services change or expand. Changes in services and/or expansion of types of services will be evaluated to determine whether the additional services would constitute an expansion of use requiring an updated conditional use approval.</i>	<b>In compliance as conditioned</b>