



Neil M. Schiller, Esq. | (561) 771-9330 office | nschiller@govlawgroup.com

December 22, 2022

Chairman Chris Davey and the  
Honorable Planning and Zoning Board  
City of Delray Beach  
100 NW 1<sup>st</sup> Avenue  
Delray Beach, Florida 33444

**Re: Determination of similarity of use**

Dear Chairman Davey and the Honorable Planning and Zoning Board:

Please be advised that the Government Law Group, represents Ziphealth Inc. in relation to the above request. My client, Ziphealth, leased space at 1876 Doctor Andres Way, Suite 83, in Delray Beach, seeking to expand its growing business. This is in the Mixed Residential, Office and Commercial (MROC) District. Ziphealth is a pharmacy that does compounding and non-compounded prescription medications. We have a business model to primarily mail prescriptions to patients but is licensed to operate as a community pharmacy. My client seeks a determination of similarity of use to “pharmacy” so as to be a permitted use in MROC.

Ziphealth should be considered a pharmacy and be permitted to operate at the location addressed above. My client has leased 4,000 SF of which 75% of the space is dedicated to the prescription department (50%), pharmaceutical compounding (15%) and storage (10%). The prescription department prints labels, counts pills, fills orders, verify orders, package the medications, and scan them out of the system. The other space consists of patient pickup (5%), office/breakroom (15%) and the shipping department (5%). Ziphealth engages with a majority of its patients online via telehealth, with an even larger percentage of patients receiving their medications through the mail. For patients that need assistance, there are staff on site to address any questions or concerns they may have. Further evidence that my client is operating a pharmacy is their NAICS code is 446110, the code for pharmacies and drug stores. Ziphealth is a 503A pharmacy that is not registered with the FDA. This is not a drug store, wherein other products are offered to the public for retail sale. Ziphealth does offer medicated skin care products to its patients on site.

MROC allows general retail uses as principal uses in the zoning district. (Sec. 4.4.29(B)(3)) Pharmacy is listed as a retail use specifically in subsection (a). (Sec. 4.4.29(B)(3)(a)) My client’s Zoning Certificate of Use for the subject property was denied as a “distribution” use is not a permitted use in MROC. We understand Staff’s rationale for considering the use to be “distribution”; however we believe that the subject use should be considered similar to “pharmacy.” Pharmacy is defined as,

December 22, 2022

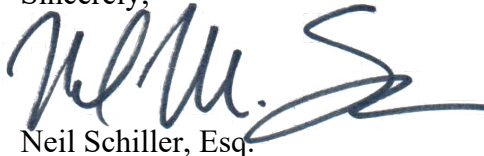
Chairman Chris Davey and the Honorable Planning and Zoning Board

*“a retail establishment primarily offering goods for retail sale and on-site dispensing of prescription drugs, nonprescription drugs or both. A retail pharmacy may also offer accessory services such as photo processing, eyeglass care, etc. No more than 15% of the total number of prescriptions sold within a thirty (30) day period can be derived from the sale of Schedule II controlled substances as listed in Florida Statute 893.03, as determined by an audit/information obtained from an entity that has jurisdiction to request and review such information. All pharmacies shall be staffed by a state licensed pharmacist.”*  
(Appendix A – Definitions)

Ziphealth’s proposed use is the retail sale and on-site dispensing of prescription drugs. This requires a state licensed pharmacist to oversee and be present at the facility and this is what differentiates the pharmacy use from distribution. Distribution is not a defined term or use in the Code; however it is expressed in the Code alongside wholesaling and storage, in the Industrial, Light Industrial, Planned Commerce Center, Mixed Industrial and Commercial, General Commercial, and Central Business Districts. These industrial and commercial zoning districts include “distribution” as a permitted use, because of the perceived impact of traffic needed for the actual distribution of the product or material. Ziphealth differs from the traditional distribution activity by using private package carriers like UPS and Fedex and the United States Postal Service, instead of a fleet of vehicles. Additionally, they fill perscriptions on-site for their local customers. Ziphealth should be considered a pharmacy.

Ziphealth is a pharmacy and should be considered as such. They could not engage in their business without a state licensed pharmacist, despite the method of delivery of their patient’s perscriptions. We respectfully ask that the Planning and Zoning Board consider this request that Ziphealth’s business is similar to a pharmacy, which allow them to operate at the situs property.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Neil Schiller', with a stylized flourish extending to the right.

Neil Schiller, Esq.