

MIAMIBEACH

PLANNING DEPARTMENT

BOARD OF ADJUSTMENT STAFF REPORT

FROM: Thomas R. Mooney, AICP 
Planning Director

DATE: November 6, 2015 Meeting

RE: BOA File No. 2891
1070-1080 Alton Road – Restaurant

The applicant, Tanuki, LLC., is requesting modifications to conditions of approval for a previously approved variance associated with the sale/service of alcohol within the minimum required distance separation from an educational facility. Specifically the applicant is requesting to change the name of the owner/operator.

HISTORY:

The application was originally approved by the Board of Adjustment on September 6, 2002. On February 6, 2004 modifications to the conditions of approval were approved by the Board. On August 7, 2009 modifications to the conditions of approval were approved by the Board. On March 1, 2013 modifications to change the owner /operator were approved by the Board.

LEGAL DESCRIPTION:

Lots 6 & 7, Block 84 of "Third Commercial Subdivision", According to the Plat Thereof, as recorded in Plat Book 7 at Page 160 of the Public Records of Miami-Dade County, Florida.

SITE DATA:

Zoning -	CD-2 (Commercial, Medium Intensity)
Future Land Use Designation-	CD-2 (Commercial, Medium Intensity)
Lot Size -	17,250 S.F.
Existing FAR -	~7,783 S.F.* / ~0.45
Maximum FAR -	25,875 S.F./ 1.5
Height -	One story
Existing Use -	Commercial / Retail / Restaurant
Proposed Use -	Same

*As per Miami Dade Properties Information.

REQUEST:

The applicant requests to modify Condition No. 6 of the March 1, 2013 BOA Modification Order No. 2891, which granted the approval of the variance to the previous applicant and operator to permit the transfer of approval to Tanuki, LLC. as follows:

6. This approval is granted to ~~1080 Alton Road, LLC~~ Tanuki, LLC only. Any changes in ownership or operator shall require new owner or operator to return to the Board of Adjustment and seek a modification to the final Order transferring approval to the new owner or operator.

STAFF ANALYSIS:

The site contains a one story commercial building constructed in 1941. The building has two restaurants and a dry cleaner. The restaurant space located at the corner of Alton Road and 11th Street is the subject of this application. In 2002 the Board of Adjustment granted the original variance for a restaurant serving beer and wine within the minimum required distance separation from an educational facility, in this case 192 feet from the School located at 1140 Alton Road. In 2004, the restaurant increased its capacity to 60 seats with a license to sell beer, wine and liquor. A specific condition of approval for this variance states that if any change of operator or ownership by more than 50% occurs, a modification to the conditions shall be required to transfer the approved variance to the new operator who shall be introduced to the Board to express understanding of the conditions imposed for the operation of the establishment.

The space is currently being renovated, including modifications to the storefront. Staff would note that the existing enclosed waste area facing 11th Street is very unappealing and constitute an eyesore along this side of the property that has a great deal of pedestrian traffic. Staff recommends that as part of the overall site renovation, the waste area be relocated or removed and that additional landscape be provided within the parking area. These improvements will enhance the appearance of the rear of the property as seen from 11th Street to be more in context with the urban character of the area.

With these conditions added, staff is supportive of the application and recommends that the modifications be APPROVED.

RECOMMENDATION:

In view of the foregoing analysis, staff recommends **approval** of the requested modification, subject to the following conditions. Strike-through denotes deletion of previous language and underlining denotes new language:

1. The establishment shall not be converted to a bar or dance hall and the full menu shall be available at all times that the establishment is open.
2. The applicant shall satisfy any City Liens prior to the issuance of a revised Certificate of Use and Occupational License.
3. The Board of Adjustment shall retain jurisdiction of this file. The applicant must present a progress report in three months to the Board; the Board shall then determine the necessity and timing of subsequent reports.
4. Substantial modifications to the plans submitted and approved as part of the application, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval of the modified plans, even if the modifications do not affect variances approved by the Board.
5. No dance or entertainment license to be approved.

6. This approval is granted to ~~1080 Alton Road, LLC~~ Tanuki, LLC, only. Any changes in ownership or operator shall require new owner or operator to return to the Board of Adjustment and seek a modification to the final Order transferring approval to the new owner or operator.
7. The existing enclosed trash area fronting 11th Street shall be relocated in a manner to be reviewed and approved by staff before the issuance of a business license.
8. Additional landscape shall be provided on site. A revised landscape plan, and corresponding site plan, shall be submitted to and approved staff, prior to the issuance of a building permit. The species type, quantity, dimensions, spacing, location and overall height of all plant material shall be clearly delineated.
9. A fully automatic irrigation system with 100% coverage and an automatic rain sensor shall be provided in order to render the system inoperative in the event of rain. Right-of-way areas shall also be incorporated as part of the irrigation system.
10. Where one or more parcels are unified for a single development, the property owner shall execute and record an unity of title or a covenant in lieu of unity of title, as may be applicable, in a form acceptable to the City Attorney
11. The property owner shall be responsible for compliance with all of the conditions of this variance. The current operator and any subsequent operators of the business shall be specially apprised of all conditions. Subsequent operators shall be required to appear before the Board of Adjustment to affirm their understanding of the conditions listed, herein.
12. If there is any change in the use or operation of the establishment, including but not limited to the establishment attempting to become a stand-alone bar, or a dance hall and/or entertainment establishment, or in the event the use ceases to exist for any reason (except for temporary closure during a season or remodeling, both for a period up to six (6) months), the variance shall be subject to Section 118-356, City Code, for revocation or modification of the variance.
13. The applicant shall comply with all conditions imposed (if applicable) by the Public Works Department.
14. The conditions on this Order are binding on the applicant, the property's owners and all successors in interest and assigns.
15. This order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.
16. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code, except to the extent of the variance granted herein.

17. The Board of Adjustment shall retain the right to call the operators back before them and modify the hours of operation or the occupant should there be issuance of written warnings and/or notices of violation about loud, excessive, unnecessary, or unusual noise.
18. A violation of Chapter 46, Article IV, "Noise," of the Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as may be amended from time to time, shall be deemed a violation of this Order and subject to the remedies as described in the Code of the City of Miami Beach, Florida.
19. Satisfaction of all conditions is required for the Planning Department to give its approval on a Certificate of Occupancy; a Temporary Certificate of Occupancy or Partial Certificate of Occupancy may also be conditionally granted Planning Departmental approval.
20. A copy of all pages of the recorded Final Order shall be scanned into the plans submitted for building permit, and shall be located immediately after the front cover page of the permit plans.
21. This modified Order shall be recorded, ~~at the expense of the applicant~~, in the Public Records of Miami-Dade County; ~~the original or a certified copy shall be provided to the Planning Department~~ prior to the issuance of a Building Permit.

TRM:MAB:IV

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