

# MIAMI BEACH

## PLANNING DEPARTMENT

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### BOARD OF ADJUSTMENT STAFF REPORT

FROM: Thomas R. Mooney, AICP  
Planning Director



DATE: February 05, 2016 Meeting

RE: BOA File No. 3797  
**405 - 407 15<sup>th</sup> Street – Commercial Building**

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The applicant, Spit Fire, LLC., is requesting a variance to reduce the minimum required number of seats for a restaurant serving beer and wine for consumption on the premises.

#### **STAFF RECOMMENDATION:**

Approval of the variance with conditions.

#### **LEGAL DESCRIPTION:**

Lot 1, Block 58 of "Pine Ridge Subdivision", According to the Plat Thereof, as recorded in Plat Book 6 at Page 34 of the Public Records of Miami-Dade County, Florida.

#### **SITE DATA:**

Zoning -	CD-2
Future Zoning-	CD-2
Lot Size -	8,100 SF
FAR	
Existing	~7,371 SF
Proposed-	same
Existing Use-	Restaurant
Proposed Use-	Same

#### **EXISTING STRUCTURE:**

Year Constructed:	1948
Architect:	A.H. Mathes
Vacant Lot:	No
Demolition:	None

#### **THE PROJECT:**

The applicant has submitted documents dated November 18, 2015.

The applicant is requesting a variance to reduce the minimum required number of seats for a restaurant to sell beer and wine for consumption on the premises.

The applicant is requesting the following variance:

1. A variance to reduce by fifteen (15) seats the minimum required thirty (30) seats for a restaurant selling beer and wine in order to operate a fifteen (15) seat restaurant serving beer and wine for consumption on the premises.

- Variance requested from:

**Sec. 142-1302. Permitted main and accessory uses.**

*Vendors shall be permitted to sell alcoholic beverages within the zoning districts listed in section 142-1301 if such district permits as a permitted main use or accessory use one of the following: Restaurant, bar, alcoholic beverage establishment, outdoor cafe, private club, or golf clubhouse pursuant to the following standards:*

*(1) Permitted main uses.*

*a. Restaurants, alcoholic beverage establishments, and private clubs shall be permitted to sell alcoholic beverages for consumption on the premises based upon the following: when beer and wine are served a minimum of 30 seats shall be provided; and when, beer, wine and liquor are served, a minimum of 60 seats shall be provided.*

The Code requires a minimum of thirty (30) seats on private property in order to sell beer and wine for consumption on the premises. The applicant proposes fifteen (15) seats on the interior space and fifteen (15) seats on the sidewalk. However, the seating for the sidewalk café does not count toward the minimum required number of seats to sell alcoholic beverages. As shown on the plans submitted, the available seating area for the restaurant does not appear to accommodate the required 30 seats. There are two (2) bathrooms, preparation area, kitchen area, display counter and other service areas. Required egress and accessible clearances are also required for the safety of the customers. The applicant, as a small business operator, seeks to operate effectively and remain competitive with other nearby restaurants that offer alcoholic beverages with meals. The space has an area of approximately 1,200 s.f.

Staff finds that the existing space constraints create practical difficulties for the applicant that result in the request of this variance. Based on the space limitation and the fact that this variance has been commonly granted to several restaurants within commercial districts, staff recommends approval of the applicant's request.

**PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA**

The applicant has submitted plans and documents with the application that satisfy Article 1, Section 2 of the Related Special Acts, allowing the granting of a variance if the Board of Adjustment finds that practical difficulties exist with respect to implementing the proposed project at the subject property.

The applicant has submitted plans and documents with the application that also indicate the following, as they relate to the requirements of Section 118-353(d), Miami Beach City Code:

That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;

That the special conditions and circumstances do not result from the action of the applicant;

That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, buildings, or structures in the same zoning district;

That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Ordinance and would work unnecessary and undue hardship on the applicant;

That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;

That the granting of the variance will be in harmony with the general intent and purpose of this Ordinance and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare; and

That the granting of this request is consistent with the comprehensive plan and does not reduce the levels of service as set forth in the plan.

**COMPLIANCE WITH ZONING CODE:**

A preliminary review of the project indicates that the application, as proposed, appears to be inconsistent with the following sections of the City Code, in addition to the requested variance:

1. The applicant shall obtain a building permit for the awning sign located at the front of the restaurant.
2. The freestanding menu board located outside the building is prohibited. A menu board affixed to a window, and limited to an area of three square feet is permitted. When affixed to the building wall, it shall be limited to an overall area of four square feet.

The above noted comments shall not be considered final zoning review or approval. These and all zoning matters shall require final review and verification by the Zoning Administrator prior to the issuance of a Building Permit.

**STAFF ANALYSIS:**

The site is located in the CD-2 commercial district at the corner of Washington Avenue and 15<sup>th</sup> Street. The existing "Contributing" structure constructed in 1948 is a commercial building with five (5) restaurants. The applicant as the new operator of the space, previously occupied by another restaurant, is seeking to sell beer and wine with meals in order to operate a competitive business in the area. At least 30 seats are required for a restaurant to sell beer and wine. The existing space appears to accommodate a maximum of 15 seats indoors which triggers the request for a variance. The business hours of operations are Sunday thru Wednesday from 11 am to 3 am and Thursday thru Saturday from 11 am to 5 am. The format of the establishment consists of artesian pocket-style breads with a choice of proteins and light salads.

Because this type of variance has been granted to other establishments in the commercial district along Washington Avenue, staff believes that, with proper operating conditions imposed by the Board, the reduction of the minimum required number of seats should be acceptable without causing negative impacts to the surrounding neighborhood, which is surrounded primarily by other restaurants and retail establishments.

The area limitations of the existing space creates practical difficulties that staff has concluded meet the criteria established for the granting of this variance. In summary, staff recommends approval of the variance requested.

**RECOMMENDATION:**

In view of the foregoing analysis, staff recommends **approval** of the variance as requested, subject to the following conditions:

1. 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.
2. As proffered by the applicant, the package sales of single cans/bottles of beer shall not be permitted.
3. Beer and wine shall only be served with meals. There shall be no sale of package goods.
4. Music shall be limited to ambient background music only and no dance or entertainment license shall be approved.
5. Except as may be required by the Fire, Building, or Life Safety Codes, no loudspeakers shall be affixed to or otherwise located on the exterior of the premises.
6. The establishment shall not be converted to a stand-alone bar, or dance hall.
7. The Operator shall be responsible for maintaining the areas adjacent to the facility, such as the sidewalk on 15<sup>th</sup> Street, in a clean condition, free of all refuse, at all times.
8. The Board of Adjustment shall maintain jurisdiction over this file. Within ninety (90) days after obtaining a City business tax receipt to sell beer and wine, the operator shall make a progress report to the Board. The Board reserves the right to modify the conditions of this approval at the time of a progress report, in a non-substantive manner, including modifications to the hours of operation, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports.
9. This approval is granted to "Spit Fire, LLC". only. Any change of operator, or ownership by fifty (50) percent or more of stock ownership, partnership interest, or the equivalent, shall require review and approval by the Board of Adjustment as a modification to this Order. If deemed necessary, at the request of the Planning Director, the applicant shall provide a progress report to the Board. The Board reserves the right to modify the Variance(s) approved herein at the time of a progress report in a non-substantive manner, to impose additional conditions to address problems and to determine the timing and need for future progress reports.
10. 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 appraised of all conditions. Subsequent operators shall be required to appear before the Board of Adjustment to affirm their understanding of the conditions listed, herein.

11. If there is any change in the use or operation of the establishment, including but not limited to any attempt by the establishment to convert to a stand-alone bar, 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.
12. The applicant shall comply with all conditions imposed (if applicable) by the Public Works Department.
13. 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.
14. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
15. The applicant shall comply with all conditions imposed by the Public Works Department.
16. The conditions of approval herein are binding on the applicant, the property's owners and all successors in interest and assigns.
17. The final 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.
18. 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(s) granted herein.
19. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.