

MIAMI BEACH

PLANNING DEPARTMENT

BOARD OF ADJUSTMENT STAFF REPORT

FROM: Thomas R. Mooney, AICP
Planning Director



DATE: February 05, 2016 Meeting

RE: BOA File No. 3800
540 West 41st Street – Commercial Building

The applicant, The Kugel Factory, is requesting a variance for the reduction from the minimum required 300 foot distance separation between a business that sells alcoholic beverages and an existing educational facility in order to sell beer and wine for consumption off the premises.

STAFF RECOMMENDATION:

Approval of the variance with conditions.

LEGAL DESCRIPTION:

Lot 8 less the South 10 feet thereof, Block 55 of "Orchard 2 and 3 Subdivision", According to the Plat Thereof, as recorded in Plat Book 2 at Page 116 of the Public Records of Miami-Dade County, Florida.

SITE DATA:

Zoning -	CD-3
Future Zoning-	CD-3
Lot Size -	4,800 SF
FAR	
Existing	~5,529 SF
Proposed-	same
Existing Use-	Retail
Proposed Use-	Same

EXISTING STRUCTURE:

Year Constructed:	1938
Architect:	T. Hunter Henderson
Vacant Lot:	No
Demolition:	None

THE PROJECT:

The applicant has submitted documents and survey dated December 11, 2015.

The applicant is requesting a variance to reduce the minimum required 300 foot distance separation between a business that sells alcoholic beverages and an existing educational facility in order to sell beer and wine for consumption off the premises.

The applicant is requesting the following variance:

1. A variance to reduce by 120 feet the minimum required 300 foot separation between a business that sells alcoholic beverages and an educational facility in order to sell alcoholic beverages at a food store for consumption off-the premises at a distance of 180 feet from North Beach Elementary School, located at 4100 Prairie Avenue.
 - Variance requested from:

Section 6-4. - Location and use restrictions:

(a) Generally. The following location and use restrictions are applicable for facilities selling or offering alcohol beverages for consumption:

(1) Educational facilities. No alcohol beverage shall be sold or offered for consumption in a commercial use within 300 feet of any property used as a public or private school operated for the instruction of minors in the common branches of learning.

The applicant recently obtained a license for a retail store to sell kosher food and beverage mainly for the Jewish community. It is necessary for the establishment to offer wine as a service because it is widely used in many Jewish observances, as indicated by the applicant in the letter of intent. The City Code restricts the sale of alcoholic beverages within 300 feet of a school facility. The North Beach Elementary School has been used as an educational facility since it was constructed in 1936, and is located 180 feet from the main door of the store. The business hours of operations for the store are Monday through Thursday from 12 pm to 7 pm and Fridays from 10 am to 3 pm. As shown on the floor plan submitted, the display of alcoholic beverages will be located inside the space, and will not be primarily visible from the sidewalk. The space fronts 41st Street, one of the main commercial corridors in the city with a high volume of pedestrian and vehicle traffic.

Based on the hours of operation, the sale of beer and wine at this establishment for off-premises consumption should not have a negative impact on neighboring properties. Staff finds that the location of the school in the commercial district for many years creates the practical difficulties that justify the requested variance.

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:

The application, as submitted, appears to be consistent with the applicable requirements of the City Code, with the exception of the variance(s) requests herein. This 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 subject site is situated in the CD-2 district, and fronts 41st Street. The space, one of three retail businesses in the building, is licensed to sell food and beverages. The applicant proposes the sale of wine in the establishment, because it is located within 300 feet of a school. In this case, the distance between the business and the North Beach Elementary School is 180 feet.

This type of variance has been approved many times in the commercial corridor along Espanola Way and Washington Avenue. Staff believes that in this case, based on the size of the establishment, hours of operations, and the recommended conditions outlined below, the granting of this variance would not be detrimental to the site or have a negative impact on the surrounding properties. The existence of the school since 1936 in the commercial corridor creates the practical difficulties that warrant the approval of the variance requested. Staff has no objection to the applicant's request and recommends approval of the variance as proposed.

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. All sales of alcoholic beverages for consumption off the premises shall be in a sealed container. The sale of beer and wine shall be limited to 5:00 P.M. to midnight on school days and 8:00 AM to midnight on non-school days.
3. As proffered by the applicant, the package sales of single cans/bottles of beer shall not be permitted.
4. The Operator shall be responsible for maintaining the areas adjacent to the facility, such as the sidewalk on 41th Street in excellent condition, keeping these areas in a clean condition, free of all refuse, at all times.
5. 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.
6. This approval is granted to "The Kugel Factory" 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 Variances approval 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.
7. 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.
8. 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.
9. The applicant shall comply with all conditions imposed (if applicable) by the Public Works Department.
10. 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.
11. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.

12. The applicant shall comply with all conditions imposed by the Public Works Department.
13. The conditions of approval herein are binding on the applicant, the property's owners and all successors in interest and assigns.
14. 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.
15. 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.
16. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.

TRM:MAB:IV

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