

# MIAMI BEACH

## PLANNING DEPARTMENT

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### BOARD OF ADJUSTMENT STAFF REPORT

FROM: Thomas R. Mooney, AICP   
Planning Director

DATE: March 4, 2016 Meeting

RE: BOA File No. 3804  
**1400 – 1420 20<sup>th</sup> Street – Commercial Building**

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The applicant, Maia Spirits & Wines, LLC. d/b/a Azul Spirits & Wines, is requesting a variance to reduce the required number of seats, in order to sell alcoholic beverages including liquor for on premises consumption.

**STAFF RECOMMENDATION:**

Approval of the variance with conditions.

**LEGAL DESCRIPTION:**

Lot 5, Block 14 A of "Island View Addition", According to the Plat Thereof, as recorded in Plat Book 9 at Page 144 of the Public Records of Miami-Dade County, Florida.

**SITE DATA:**

Zoning -	CD-2
Future Zoning-	CD-2
Lot Size -	~8,850 SF
Existing Use-	Commercial, Retail
Proposed Use-	Same

**EXISTING STRUCTURE:**

Year Constructed:	1948
Architect:	L. Murray Dixon
Vacant Lot:	No
Demolition:	None

**THE PROJECT:**

The applicant has submitted a floor plan entitled "Sidewalk café seating at Spirits & Wines" as prepared by Alberto J. Corrales, PE, dated November 24, 2015 and survey dated January 20, 2016.

The applicant is requesting a variance to reduce the minimum required number of seats for an alcoholic beverage establishment selling beer, wine and liquor for consumption on the premises.

The applicant is requesting the following variance:

1. A variance to reduce by fifty-nine (59) seats the minimum required sixty (60) seats for an alcoholic beverage establishment selling beer, wine and liquor in order to

operate a one-seat (1) alcoholic beverage establishment serving beer, wine and liquor 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 current state alcohol license of the store (3PS) does not allow the sales of alcoholic beverages for consumption on the premises, as it includes the sales of package goods. As the applicant wishes to continue doing so, a modification to the existing license to sell liquor is required. The applicant intends to seek approval for a 4COP license which allows for beer, wine and liquor for package sales and for the sale of drinks for consumption on the premises. However, in order to obtain this license, the City requires that a minimum of sixty (60) seats be provided on the premises. As indicated in the hardship letter, the applicant's intentions are to sell only beer and wine for consumption on the premises. One seat with a table indoors and 6 seats with 3 tables on the sidewalk are proposed, which requires a separate sidewalk café permit. Light meals will also be offered for sale. The current business is a liquor store with approximately 1236 s.f; that has been open for business for several years. The available seating area for the space does not appear to accommodate the required 60 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.

Due to the recent changes in elevation of the adjacent 20<sup>th</sup> Street and surrounding street work, as part of the city's flooding mitigation in the area, direct access from the sidewalk has been removed and customers can only access the store through a lower walkway. A new elevated sidewalk, approximately 3 feet above the building's first floor elevation has been constructed, including railings that limit visibility for potential customers, as it partially blocks the front of the store. Staff finds that this condition and the space constraints of the store, as shown on the photographs provided create practical difficulties for the applicant that justify the need for the 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 property located in the CD-2 commercial district is surrounded by Purdy Avenue, Bay Road and 20<sup>th</sup> Street. The two-story structure on-site is a commercial building constructed in 1948. The applicant occupies a mid-block retail space in the first floor facing 20<sup>th</sup> Street. The business is currently a liquor store that has been in operations for several years. The applicant is seeking to sell food and alcoholic beverages for consumption on the premises. However, the number of seats proposed inside the store does not comply with the minimum required by the Code and a variance is requested.

As part of the drainage improvements and flood mitigation in the area, the City is in the process of raising the elevation of several streets in the Sunset Harbor neighborhood. The subject property is within the area of work. A new elevated street and sidewalk approximately 3 feet above the building's finish floor has been constructed along 20<sup>th</sup> Street, Purdy Avenue and Bay Road. Guardrails have also been installed due to the difference in elevations, which makes the entrance of the store visually recessive, as shown on the photographs provided by the applicant. The store is adjacent to the main entrance to other offices and business located at the second floor of the building. Direct access to the main lobby and the applicant's store is not available from the new sidewalk as before, and

customers have to walk to either corner of the building to take a stair or a ramp to get to the store. The building finish floor elevation is 4.00 NGVD while base flood elevation for the property is 8.00 NGVD.

The applicant, nearby residents and other affected business have requested to the Public Works Department the addition of a mid-block access to the building. The proposal was evaluated and it was considered not appropriate. A copy of the correspondence with the City's officials has been provided by the applicant.

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 business hours of operations are from 10:00 am to 10:00 pm on weekdays, and Fridays and Saturdays 10:00 am to 11:30 pm. Although, seating outside is proposed, only the seating indoors count toward the minimum required number of seats to sell alcoholic beverages. Staff would note that there are no open violations for the business at the time of this report.

Staff finds that the applicant's request meets the practical difficulties criteria established for the granting of this variance, based on the site conditions and space restrictions. This type of variance has been granted to other establishments in commercial districts and in this case 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.

**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. Only beer, wine and food shall be served for consumption on the premises, including any exterior areas. The sale for consumption on the premises of liquor shall be prohibited at all times.
4. Music shall be limited to ambient background music only and no dance or entertainment license shall be permitted.
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 provide food service at all times seating is available and 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 adjacent sidewalk on 20<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, wine and liquor, 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 "Maia Spirits & Wines, LLC. d/b/a Azul Spirits & Wines" 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 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.
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.

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