


# MIAMI BEACH

## PLANNING DEPARTMENT

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### BOARD OF ADJUSTMENT STAFF REPORT

FROM: Thomas R. Mooney, AICP   
Planning Director

DATE: February 7, 2020 Meeting

RE: File No. ZBA19-0098  
**1676 James Avenue – Hostel/Bar**

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The applicant, Beds N Drinks Hostel, LLC., is requesting variance(s) to reduce the required 300-foot distance separation between a business that sells alcoholic beverages and an existing educational facility and place of worship.

#### **STAFF RECOMMENDATION:**

Approval of the requested variances with conditions.

#### **LEGAL DESCRIPTION:**

Lot 10, and the north 30 feet of Lot 9, Block 31, of "Fishers First Subdivision of Alton Beach", according to the plat thereof, as recorded in Plat Book 2, Page 77, of the Public Records of Miami- Dade County, Florida.

#### **SITE DATA:**

Folio Number-	02-3234-019-0700
Zoning -	CD-3 (Commercial, High Intensity)
Future Land Use Designation-	CD-3 (Commercial, High Intensity)
Lot Size -	12,000 S.F.*
Existing FAR -	~14,880 S.F.*
Existing Use -	Commercial / Hostel
Proposed Use -	Commercial / Hostel / Bar

*\*As per submitted plans.*

#### **THE PROJECT:**

The applicant has submitted the following plans:

- Boundary Survey, sheet 1 of 1, by Lannes and Garcia, Inc., dated September 10, 2019
- Specific Purpose Survey, sheet 1 of 1, by Biscayne Engineering, dated June 18, 2019
- Bed N' Drinks, by Studio MC+G Architecture
  - Sheet A0.01, Index and Data, dated November 7, 2019
  - Sheet A0.02, Context Plan, dated November 7, 2019
  - Sheet A0.03 – A0.05, Existing Photography, dated November 7, 2019
  - Sheet A0.06 – A0.07, Existing Context Elevations, dated November 7, 2019

- Sheet A1.00, Existing Site Plan, dated November 7, 2019
- Sheet A1.01, Proposed Level 1 Plan, dated November 7, 2019
- Sheet A1.02, Existing Level 2 Plan, dated November 7, 2019
- Sheet A1.03, Existing Level 3 Plan, dated November 7, 2019
- Sheet A2.00, East & West Elevations, dated November 7, 2019
- Sheet A2.01, North & South Elevations, dated November 7, 2019

The existing operation consists of a 29-room hostel, which has been in operation since 2014. The applicant is proposing the introduction of a bar and/or café which will serve alcoholic beverages. The proposed alcoholic beverage establishment has triggered the subject variance request.

The applicant is requesting the following variance(s):

1. A variance to reduce by 11 feet of the minimum required 300-foot separation between a business that sells alcoholic beverages for consumption on premises and an existing educational facility, in order to sell alcoholic beverages for on-site consumption at a distance of 289 feet from a school.

- 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 alcoholic beverages for consumption:*

*(1) Educational facilities: No alcoholic 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 property is located 289 feet from the property line of private school. A variance to sell alcoholic beverages less than the minimum distance separation of 300 feet from a school is being requested. The main entrance to the hostel is located on the east side of the property fronting James Avenue. The existence of a school, The Muss Family Montessori School at Temple Emanu-El, within the commercial district creates practical difficulties for the operation of these types of businesses that commonly include the sales of alcoholic beverages.

It should be noted that the provided survey identifies two additional educational uses, the Florida English Center and The Mind Fuel School, located at 235 Lincoln Road. However, these facilities do not meet the definition of a school, as defined in Section 6-36 of the City Code of Ordinances.

2. A variance to reduce 11 feet of the minimum required 300-foot separation between a business that sells alcoholic beverages for consumption on premises and an existing place of worship, in order to sell alcoholic beverages for on-site consumption at a distance of 289 feet from a place of worship.

- Variance requested from:

**Section 6-4 Location and use restrictions**

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

*(2) Places of worship: No alcohol beverage shall be sold or offered for consumption in an alcoholic beverage establishment, including bottle clubs, within 300 feet of any property used as a place of worship, except in restaurants operating with full kitchens and serving full meals for consumption on the premises.*

The property is located 289 feet from the property line of a place of worship. A variance to sell alcoholic beverages less than the minimum distance separation of 300 feet from a place of worship is being requested. The main entrance to the hostel is located on the east side of the property fronting James Avenue. The existence of a place of worship, Temple Emanu-El Synagogue, within the commercial district creates practical difficulties for the operation of these types of businesses that commonly include the sales of alcoholic beverages.

**PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA**

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

Additionally, staff has concluded that the plans and documents with the application comply with the following hardship criteria, as they relate to the requirements of Section 118-353(d), Miami Beach City Code:

1. 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;
2. That the special conditions and circumstances do not result from the action of the applicant;
3. 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;
4. 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;
5. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;

6. 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
7. 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 SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA**

Section 133-50(a) of the Land Development establishes review criteria for sea level rise and resiliency that must be considered as part of the review process for board orders. The following is an analysis of the request based upon these criteria:

- (1) A recycling or salvage plan for partial or total demolition shall be provided.  
**Not Applicable**
- (2) Windows that are proposed to be replaced shall be hurricane proof impact windows.  
**Not Applicable**
- (3) Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.  
**Not Applicable**
- (4) Whether resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided.  
**Not Applicable**
- (5) Whether adopted sea level rise projections in the Southeast Florida Regional Climate Action Plan, as may be revised from time-to-time by the Southeast Florida Regional Climate Change Compact, including a study of land elevation and elevation of surrounding properties were considered.  
**Not Applicable**
- (6) The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land.  
**Not Applicable**
- (7) Where feasible and appropriate, all critical mechanical and electrical systems shall be located above base flood elevation.  
**Not Applicable**
- (8) Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.  
**Not Applicable**
- (9) When habitable space is located below the base flood elevation plus City of Miami Beach Freeboard, wet or dry flood proofing systems will be provided in accordance with Chapter of 54 of the City Code.

**Not Applicable**

- (10) Where feasible and appropriate, water retention systems shall be provided.  
**Not Applicable**

**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 variances requested 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 located in the CD-3, Commercial High Intensity zoning district, and fronts James Avenue. The alcoholic beverage establishment is proposed to be located on the ground floor, within the existing lobby, existing courtyard, and proposed lounge space.

The existing hostel use and proposed sale of alcoholic beverages are permitted within the CD-3 Zoning District, and there are other existing alcoholic beverage establishments in the area. It should be noted that if this venue contained a full kitchen, the variance related to the place of worship would not be needed. Also, because the school was issued a conditional use permit in 2017, many of the existing alcoholic venues that were legally established prior to 2017 would require a similar variance if they were applying for an alcohol license today.

Staff believes that the proposed reduction of the minimum distance separation requirements for the sale of alcoholic beverages would not be detrimental to the surrounding neighborhood, which is surrounded primarily by other hotels, restaurants, and alcoholic beverage establishments. However, in an abundance of caution staff is recommending conditions to mitigate any potential impacts.

Staff has no objection to the applicant's request and recommends approval of the variances as requested.

**RECOMMENDATION:**

In view of the foregoing analysis, staff recommends **approval** of the variances as requested, subject to the conditions enumerated in the attached Draft Order.

ZONING/SITE MAP



**BOARD OF ADJUSTMENT  
CITY OF MIAMI BEACH, FLORIDA**

**PROPERTY:** 1676 James Avenue

**FILE NO.** ZBA19-0098

**IN RE:** The application for variance(s) to reduce the required 300-foot distance separation between a business that sells alcoholic beverages and an existing educational facility and place of worship.

**LEGAL DESCRIPTION:** Lot 10, and the north 30 feet of Lot 9, Block 31, of "Fishers First Subdivision of Alton Beach", according to the plat thereof, as recorded in Plat Book 2, Page 77, of the Public Records of Miami- Dade County, Florida.

**Folio Number:** 02-3234-019-0700

**MEETING DATE:** February 7, 2020

**ORDER**

The applicant, Beds N Drinks Hostel, LLC., filed an application with the Planning Department for the following variances:

1. A variance to reduce 11 feet of the minimum required 300 foot separation between a business that sells alcoholic beverages for consumption on premises and an existing educational facility, The Muss Family Montessori School at Temple Emanu-El, in order to sell alcoholic beverages for on-site consumption at a distance of 289 feet from the school.
2. A variance to reduce 11 feet of the minimum required 300 foot separation between a business that sells alcoholic beverages for consumption on premises and an existing place of worship, Temple Emanu-El Synagogue, in order to sell alcoholic beverages for on-site consumption at a distance of 289 feet from the school.

The City of Miami Beach Board of Adjustment makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the record for this matter:

- A. Based on the documents submitted with the application, testimony and information provided by the applicant, and the Planning Department Staff Report, the project as submitted satisfies the requirements of Section 118-353(d) of the Miami Beach Code. Accordingly, the Board of Adjustment has determined the following:

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.

B. The Board imposes the following conditions based on its authority in Section 118-354 of the Miami Beach City Code:

1. The existing Business Tax Receipt shall be corrected with the City's Finance Department, changing the business type from "Rooming House" to "Hostel", prior to approval of any alcohol sales.
2. There shall be no sale of package goods.
3. The establishment shall not be converted to a dance hall.
4. Music shall be limited to only ambient background music and no 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. 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.
7. The Board of Adjustment shall retain jurisdiction of this file.
8. This approval is granted to Beds N Drinks Hostel, LLC. only. Any changes in ownership or operator shall require the new owner or operator to submit an affidavit approved by City to the City of Miami Beach Planning Department transferring



approval to the new owner or operator and acknowledging acceptance of all conditions established herein prior to the issuance of a new Business Tax Receipt.

9. 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.
10. The Operator shall be responsible for maintaining the areas adjacent to the facility, such as the sidewalk on James Avenue in excellent condition, keeping these areas in a clean condition, free of all refuse, at all times.
11. If there is any change in the use or operation of the establishment, including but not limited to the establishment attempting to become a dance hall, 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 Board of Adjustment shall retain the right to call the operators back before the Board and modify the hours of operation or the occupant load should the City issue any written warnings and/or notices of violation about loud, excessive, unnecessary, or unusual noise.
13. 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.
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. 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. If a building permit is not required, a copy of the recorded Final Order shall be submitted with the application to modify the Business Tax Receipt.
18. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
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

Filed with the Clerk of the Board of Adjustment on \_\_\_\_\_ ( )