

MIAMI BEACH

PLANNING DEPARTMENT


Staff Report & Recommendation

Board of Adjustment

TO: Chairperson and Members
Planning Board

DATE: October 13, 2023

FROM: Thomas R. Mooney, AICP
Planning Director

 for TRM

SUBJECT: **ZBA23-0155**
725 71st Street

An application has been filed requesting a distance separation variance from religious institutions in association with the sale of beer & wine. This application has been filed pursuant to Section 2.1.5.1 of the city's Land Development Regulations and Chapter 6 of the city's General Ordinances.

RECOMMENDATION

Approval.

ZONING/SITE DATA

Folio: 02-3211-002-0090

Legal Description: Easterly 30 FT of Lots 5 & 6, Block 2, of Normandy Beach South, according to the Plat thereof, as recorded in Plat Book 21, Page 54 of the Public Records of Miami-Dade County, Florida.

Zoning: TC-1, North Beach Town Center Core

Future Land Use Designation: TC-1, Town Center Core

Lot Size: 2,264 square feet

Year Constructed: 1949

Surrounding Uses:
North: 4-story residential building
East: 1-story commercial building
West: Surface parking lot
South: 1-story commercial building

THE PROJECT

The applicant has submitted plans and exhibits entitled "725 71st Street Gelato To Go", as prepared by Gustavo S. Frances, dated 6/11/22. The subject operation includes an existing restaurant with 25 seats, serving light-fare including paninis, pasta, salads, pastries, and gelato. The hours of operation are from 7:00 a.m. to 9:00 p.m.

The applicant is requesting the following variance:

1. A variance from the minimum 300-foot distance separation requirement between an alcoholic beverage establishment and a place of worship.

- Variance requested from:

Sec. 6-4. Location and Use Restrictions

(a)(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.

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.

Additionally, staff has concluded that the plans and documents submitted with the application comply with the following hardship criteria, as they relate to the requirements of Section 2.8.3 of the Land Development Regulations:

- i. 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;
- ii. The special conditions and circumstances do not result from the action of the applicant;
- iii. Granting the variance requested will not confer on the applicant any special privilege that is denied by these land development regulations to other lands, buildings, or structures in the same zoning district;
- iv. Literal interpretation of the provisions of these land development regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these land development regulations and would work unnecessary and undue hardship on the applicant;
- v. The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;
- vi. The granting of the variance will be in harmony with the general intent and purpose of these land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare;
- vii. 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; and
- viii. The granting of the variance will result in a structure and site that complies with the sea level rise and resiliency review criteria in chapter 7, article I, as applicable.

COMPLIANCE WITH ZONING CODE:

A preliminary review of the project indicates that the application, as proposed, appears to be consistent with the City Code, with the exception of the requested variance. 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.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 7.1.2.4(a)(i) of the Land Development Regulations 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. Resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) shall be provided, in accordance with Chapter 4 of the Land Development Regulations.
Not Applicable
5. The project applicant shall consider the 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. The applicant shall also specifically study the land elevation of the subject property and the elevation of surrounding properties.
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 and shall provide sufficient height and space to ensure that the entry ways and exits can be modified to accommodate a higher street height of up to three (3) additional feet in height.
Not Applicable
7. In all new projects, all critical mechanical and electrical systems shall be located above base flood elevation. Due to flooding concerns, all redevelopment projects shall, whenever practicable, and economically reasonable, move all critical mechanical and electrical systems to a location above base flood elevation.
Not Applicable

8. Existing buildings shall be, where reasonably feasible and economically appropriate, elevated up to base flood elevation, plus City of Miami Beach Freeboard.

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. In all new projects, water retention systems shall be provided.

Not Applicable

11. Cool pavement materials or porous pavement materials shall be utilized.

Not Applicable

- (12) The project design shall minimize the potential for a project causing a heat island effect on site.

Not Applicable

ANALYSIS

The subject operation includes an existing restaurant with 25 seats, serving light-fare including paninis, pasta, salads, pastries, and gelato. The existing establishment has been in operation for a relatively short time period and the applicant is requesting a variance in order to server beer and wine.

VARIANCE ANALYSIS

The applicant is requesting the following variance:

1. A variance from the minimum 300 foot distance separation requirement between an alcoholic beverage establishment and a place of worship.

- Variance requested from:

Sec. 6-4. Location and Use Restrictions

(a)(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 nearest places of worship that are located less than 300 feet from the subject esablishment are the King Jesus Interntaional Ministry located at 730 71st Street, and the Calvary Chapel located at 7141 Indian Creek Drive. Unless an alcoholic beverage establishment is also operating as a restaurant with a full kitchen, the minimum distance separation requirements apply. As proposed, the establishment does not include a kitchen.

As indicated by the applicant, the hours of operation will be from 7:00 a.m. to 9:00 p.m., daily, and all seating is table seating with no bar counter. Based upon the hours of operation, minimal

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seating, and location within the commercial 71st Street corridor, staff does not anticipate any negative impacts on the surrounding community with the proposed addition of beer and wine sales.

Staff is supportive of the application, with the hours of operation noted, and provided that any future expansion, beyond 40 seats, shall require a modification to the variance. Finally, staff recommends that a progress report be presented to the Board within 90 days of the issuance of an alcohol license for the establishment, at which time the hours of operations for the establishment can be further evaluated.

RECOMMENDATION

In view of the foregoing analysis, staff recommends the application be **approved**, including the requested variance, subject to the conditions enumerated in the attached Draft Order, which address any inconsistencies with the Practical Difficulty and Hardship Criteria and Sea Level Rise criteria.