

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

PROPERTY: 540 West 41st Street

FILE NO. 3800

IN RE: The application for 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.

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.

MEETING DATE: February 5, 2016

ORDER

The applicant, The Kugel Factory, filed an application with the Planning Department for the following variance in order to sell beer and wine for consumption off the premises:

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.

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 plans and 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;

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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. 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.
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.

IT IS HEREBY ORDERED, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which are adopted herein, including staff recommendations, as modified by the Board of Adjustment, that the application for Variance(s) Approval is GRANTED for the above-referenced project, subject to those certain conditions specified in Paragraph B (Condition Nos. 1-16, inclusive) hereof, to which the applicant has agreed.



PROVIDED, the applicant shall build substantially in accordance with the plans approved by the Board of Adjustment, as determined by staff, dated December 11, 2015, modified in accordance with the conditions set forth in this Order and staff review and approval.

No building permit may be issued unless and until all conditions of approval that must be satisfied prior to permit issuance as set forth in this Order have been met. The issuance of this Order does not relieve the applicant from obtaining all other required Municipal, County and/or State reviews and permits, including final zoning approval. If adequate handicapped access is not provided on the Board-approved plans, this approval does not mean that such handicapped access is not required.

When requesting a building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions set forth in this Order.

If the Full Building Permit for the project is not issued within eighteen (18) months of the meeting date at which the original Variance Approval was granted, the subject Approval will expire and become null and void, unless the applicant makes application to the Board for an extension of time, in accordance with the requirements and procedures of Chapter 118 of the City Code; the granting of any such extension of time shall be at the discretion of the Board. At the hearing on any such application, the Board may deny or approve the request and modify the above conditions or impose additional conditions. If the Full Building Permit should expire for any reason (including but not limited to construction not commencing and continuing, with required inspections, in accordance with the applicable Building Code), and not reinstated by the Building Official or designee, the Variance Approval will expire and become null and void.

Dated this 11th day of FEBRUARY, 2016.

BOARD OF ADJUSTMENT
CITY OF MIAMI BEACH, FLORIDA

BY: Michael Belush
Michael Belush, AICP
Planning and Zoning Manager
For the Chair

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 11th day of February, 2016, by Michael Belush, Planning and Zoning Manager of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

MB

Meeting Date: February 15, 2016

BOA File No. 3800

[NOTARIAL SEAL]




Notary:

Print Name:

Notary Public, State of Florida

My Commission Expires: 07-26-2017

Commission Number:

Approved As To Form:

City Attorney's Office 

Filed with the Clerk of the Board of Adjustment on

2/25/16 