

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Board of Adjustment

TO: Chairperson and Members
Planning Board

DATE: October 11, 2024

FROM: Thomas R. Mooney, AICP 
Planning Director

SUBJECT: **ZBA24-0162**
1691 Michigan Avenue

An application has been filed requesting a variance to permit an alcoholic beverage establishment that is closer than 300 feet from an educational facility and closer than 300 feet from a place of worship.

RECOMMENDATION

Approval.

HISTORY

On October 11, 1999, the Design Review Board (DRB) approved a six and seven-story office and public parking structure, with ground level retail (DRB File No. 12108). On October 6, 2015 and April 5, 2016, the DRB approved exterior alterations to the façade of the existing six-story building. On September 3, 2024, the DRB approved exterior design modifications to the existing commercial building (File No. DRB24-1009).

ZONING/SITE DATA

Folio: 02-3234-004-0690
02-3234-004-0695

Legal Description: Lots 7 through 10, inclusive, and Lots 14 through 20, inclusive, in Block 37, PALM VIEW SUBDIVISION, according to the plat thereof, as recorded in Plat Book 6, Page 29, of the Public Records of Miami-Dade County, Florida, less and except the Improvements located thereon.

TOGETHER WITH FEE SIMPLE ESTATE:

The Improvements located on Lots 7 through 10, inclusive, and Lots 14 through 20, inclusive, in Block 37, PALM VIEW SUBDIVISION, according to the plat thereof, as recorded in Plat Book 6, Page 29, of the Public Records of Miami-Dade County, Florida.

Zoning: CD-3, Commercial High Intensity
GU, Government Use District

Future Land Use Designation: High Intensity Commercial (CD-3)
Public Facilities: Governmental Use (PF)

Lot Size: 76,500 square feet

Year Constructed: 2002

Surrounding Uses: East: Office/Parking Garage w/ ground floor retail
North: Palm View Historic District
South: Two-story retail / office building
West: Municipal surface parking lot
South: 1-story commercial building

THE PROJECT

The applicant, RK RIVANI LLC, has submitted plans and exhibits entitled “THE LINCOLN BL. 3RD FLOOR/ SPEAKEASY @ EMP. LOUNGE”, as prepared by BGArchitects, dated 8/4/24. The applicant is proposing an indoor alcoholic beverage establishment that will be open to the public on the 3rd floor of an existing office building.

The establishment is proposed to have 97 seats and entertainment played at ambient background levels. The proposed hours of operation are as follows:

- From 8:00 a.m. to 5:59 p.m., seven (7) days per week, for building tenants by reservation only.
- From 6:00 p.m. to 3:00 a.m., seven (7) days per week, the establishment will be open to both building tenants and the general public.

The applicant is requesting the following variances:

1. A variance from the minimum 300-foot distance separation requirement between an alcoholic beverage establishment and an educational facility.

- Variances requested from:

Sec. 6-4. Location and Use Restrictions

(a)(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.

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

- Variances 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.
Consistent
3. Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.
Consistent
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.
Consistent
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.
Consistent
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.
Consistent
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.

Consistent

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

Consistent

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

Consistent

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

Consistent

ANALYSIS

The proposal is for speakeasy-style bar located on the 3rd floor of an existing office building that will be undergoing renovations soon. The establishment will offer alcoholic beverages, including liquor, non-alcoholic drinks, and light food. The establishment will be fully enclosed and not visible from the street. The occupancy load will be for 137 persons and 97 seats will be provided.

The applicant has provided an operations plan demonstrating the establishment will be accessed from the building's main entrance lobby on Michigan Avenue, as well as from within a covered driveway on the east side of the building. Additionally, valet parking will be provided through the covered driveway, which is accessed from 17th Street. Self-parking will also be available in the building's garage, which is accessed at the southwest corner of the site, on Michigan Avenue. The operations plan indicates that the building will offer security 24 hours a day, 7 days per week.

VARIANCE ANALYSIS

The applicant is requesting the following variances:

1. A variance from the minimum 300-foot distance separation requirement between an alcoholic beverage establishment and an educational facility.
 - Variances requested from:

Sec. 6-4. Location and Use Restrictions

(a)(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 nearest educational facility that is located less than 300 feet from the subject establishment is the Lincoln-Marti School Daycare, which is 189 feet from the nearest entrance to the subject building. During hours the educational facility is open, the establishment will be limited to the use of building tenants by reservation only. Based upon the proposed operations, hours of operation, scale, and fully enclosed location within an office building along the 17th Street corridor, staff does

not anticipate any negative impacts on the educational facility or students accessing the facility by the proposed establishment.

2. A variance from the minimum 300-foot distance separation requirement between an alcoholic beverage establishment and a place of worship.
 - Variances 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 place of worship that is located less than 300 feet from the subject establishment is the Cuban Hebrew Congregation of Miami/Temple Beth Shmuel located at 1700 Michigan Avenue. The place of worship is located 216 feet from the nearest entrance to the subject building. 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.

It appears that during general hours of worship, the proposed establishment will only be used by tenants of the building, and by reservation. Based upon the proposed operations, hours of operation, scale, and enclosed location within an office building along the 17th Street corridor, staff does not anticipate any negative impacts on the surrounding community by the proposed establishment.

As noted in the letter of intent, the location of the site presents a hardship, as well as practical difficulties for the applicant. Based on the letter of intent, and subject to additional mitigation, staff is supportive of the application.

SUMMARY

Although the applicant has addressed the hardship and practical difficulty criteria for the approval of the requested variances, staff believes additional mitigation measures are in order, to ensure the proposed use has no adverse impacts on the existing residential building to the immediate east of the subject property, as well as the low scale Palm View district to the north of 17th Street. In this regard, the following is recommended:

1. The applicant design, permit, construct, and fully complete a sound attenuation enclosure along the entire east side of the covered driveway. A proposal for this sound wall is currently pending before the Design Review Board (DRB), and staff would suggest that the condition in the draft order be included to ensure that any type of sound or noise from within the driveway is not audible from the residential building abutting the property to the east.
2. The hours of operation should cease at 2:00 a.m., not 3:00 a.m.

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 requested variances be **approved**, 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.

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

MEETING DATE: October 11, 2024

PROPERTY: **1691 Michigan Avenue**

FOLIO: 02-3234-004-0690
02-3234-004-0695

FILE NO. **ZBA24-0162**

IN RE: An application has been filed requesting a variance to permit an alcoholic beverage establishment that is closer than 300 feet from an educational facility and closer than 300 feet from a place of worship.

LEGAL

DESCRIPTION: Lots 7 through 10, inclusive, and Lots 14 through 20, inclusive, in Block 37, PALM VIEW SUBDIVISION, according to the plat thereof, as recorded in Plat Book 6, Page 29, of the Public Records of Miami-Dade County, Florida, less and except the Improvements located thereon.

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FINAL ORDER

The applicant, RK RIVANI LLC, filed an application with the Planning Department for the following variance:

1. A variance from the minimum 300-foot distance separation requirement between an alcoholic beverage establishment and an educational facility.
2. A variance from the minimum 300 foot distance separation requirement between an alcoholic beverage establishment and places of worship.

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 2.8.3 of the Land Development Regulations. Accordingly, the Board of Adjustment has determined the following:
 - 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.
- B. The Board hereby **Approves** the requested variance and imposes the following conditions based on its authority in Section 2.8.4 of the Land Development Regulations.
1. This approval is granted to RK RIVANI LLC as owner/operator of THE LINCOLN BL. 3RD FLOOR/ SPEAKEASY @ EMP. LOUNGE. Any change of operator or fifty percent (50%) or more stock ownership shall require the new owners or operators to submit an affidavit, approved by City, to the City of Miami Beach Planning Department transferring approval to the new owners and/or operators and acknowledging acceptance of all conditions established herein, prior to the issuance of a new Certificate of Use/Business Tax Receipt.
 2. The approval herein is for a maximum occupancy content of no more than 137 persons and no more than 97 seats within the entirety of the establishment. Any expansion of the establishment, including, but not limited to, any increase in the occupancy content and/or number of seats, shall require a modification to this approval and shall be subject to the review and approval of the Board.
 3. Substantial modifications to the plans submitted and approved as part of the application, as determined by the Planning Director or designee, shall 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.
 4. Alcohol sales shall only be permitted as follows, seven (7) days a week:
 - From 8:00 a.m. to 5:59 p.m. for tenants of 1691 Michigan Avenue and their invited guests by reservation only.

- From 6:00 p.m. to 2:00 a.m. open to the public.
5. Prior to the issuance of a certificate of use (CU) and business tax receipt (BTR) for the establishment, the applicant shall design, permit, construct, and fully complete a sound attenuation enclosure along the entire east side of the covered driveway, as approved by the Design Review Board (DRB). Such enclosure shall ensure that any type of sound or noise from within the driveway shall not be audible from the residential building abutting the property to the east.
 6. The applicant shall return to the Board for a progress report within 90 days of the issuance of an alcohol license, at which time the Board may modify the conditions in a non-substantive matter, including hours of operations for the sale of alcohol.
 7. The Board of Adjustment shall retain jurisdiction of this file.
 8. 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.
 9. 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.
 10. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
 11. The conditions of approval herein are binding on the applicant, the property's owners and all successors in interest and assigns.
 12. 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.
 13. 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.
 14. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit, Certificate of Use or Miami Beach Business Tax Receipt.

The decision of the Board regarding variances shall be final and there shall be no further review thereof except by resort to a court of competent jurisdiction by petition for writ of certiorari.

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 approval is GRANTED for the above-referenced project, subject to those certain conditions specified in Paragraph B hereof, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans submitted to the Board of Adjustment in accordance with the conditions set forth in this Order, as applicable, with staff review and approval.

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 the alcohol license 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 Section 2.2.4.6 of the Land Development Regulations; the granting of any such extension of time shall be at the discretion of the Board.

In accordance with Chapter 2 of the Land Development Regulations, the violation of any conditions and safeguards that are a part of this Order shall be deemed a violation of the land development regulations of the City Code. Failure to comply with this **Order** shall subject the application to Chapter 2 of the Land Development Regulations, for revocation or modification of the application.

Dated _____.

BOARD OF ADJUSTMENT
CITY OF MIAMI BEACH, FLORIDA

BY: _____
Rogelio A. Madan, AICP
Development & Resiliency Officer
For the Chair

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by Rogelio Madan, Development & Resiliency Officer of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

[NOTARIAL SEAL]

Notary:
Print Name:
Notary Public, State of Florida
My Commission Expires:
Commission Number:

Approved As To Form:
City Attorney's Office _____ ()

Filed with the Clerk of the
Board of Adjustment on _____ ()