

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

MEETING DATE: October 11, 2024

PROPERTY: 411 Michigan Avenue

FOLIO: 02-4203-010-0030

FILE NO. ZBA24-0163

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.

LEGAL

DESCRIPTION: Parcel 1: Lot 8, Block 83, OCEAN BEACH, FLA ADDITION NO. 3, according to the Plat thereof, as recorded in Plat Book 2, page 81, of the Public Records of Miami-Dade County, Florida.

Parcel 2: Lot 9, Block 83, OCEAN BEACH, FLA ADDITION NO. 3, according to the Plat thereof, as recorded in Plat Book 2, page 81, of the Public Records of Miami-Dade County, Florida.

Parcel 3: The South 50 feet of Lots 1, 2, 3, 4 and 5, of WHITHAM'S RESUBDIVISION OF LOTS 10, 11 AND 12, IN BLOCK 83 OF OCEAN BEACH FLA. ADDITION NO. 3, according to the Plat thereof, as recorded in Plat Book 9, page 10, of the Public Records of Miami-Dade County, Florida.

FINAL ORDER

The applicant, 411 Michigan Sofi Owner 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.

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;

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- 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 411 Michigan Sofi Owner LLC as owner/operator of Sant Ambroeus restaurant. 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 up to a maximum of 260 seats within the entirety of the establishment. Any expansion of the establishment, and any increase in the 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. The establishment shall not be converted to a stand-alone bar.
5. Alcohol sales shall only be permitted from 8:00 AM to 2:00 AM. During school hours, alcohol shall only be served with meals.
6. There shall be no sale of package goods with the exception of wine and Prosecco.
7. 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.

8. The Board of Adjustment shall retain jurisdiction of this file.
9. 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.
10. 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.
11. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
12. The conditions of approval herein are binding on the applicant, the property's owners and all successors in interest and assigns.
13. 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.
14. 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.
15. 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 11/8/2024 | 5:46 PM EST

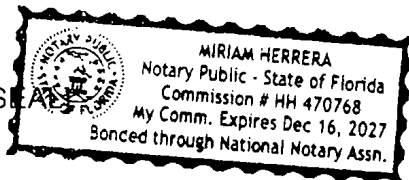
BOARD OF ADJUSTMENT
CITY OF MIAMI BEACH, FLORIDA

DocuSigned by:
Rogelio Madan
BY: CB1F035D134F4AE
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 13 day of November, 2024, 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]



Miriam Herrera
Notary:
Print Name: Miriam Herrera
Notary Public, State of Florida
My Commission Expires: 12-16-27
Commission Number: HH 470768

Approved As To Form:
City Attorney's Office

Signed by:

Steven Rothstein

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11/8/2024 | 4:55 PM EST

Filed with the Clerk of the
Board of Adjustment on

DocuSigned by:

Jessica Gonzalez

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11/12/2024 | 9:47 AM EST