



200 S. Biscayne Boulevard
Suite 300, Miami, FL 33131
www.brzoninglaw.com

305.377.6231 office
305.377.6222 fax

mlarkin@brzoninglaw.com
nrodriguez@brzoninglaw.com

VIA ONLINE SUBMITTAL

August 2, 2024

Rogelio A. Madan, Development and Resiliency Officer
Planning Department
City of Miami Beach
1700 Convention Center Drive, 2nd Floor
Miami Beach, Florida 33139

RE: **ZBA24-0163** – Letter of Intent – Application for Variance from Location and Use Restrictions Applicable to Establishments Offering Alcoholic Beverages for Consumption for the Property located at 411, 419 Michigan Avenue, and 944 5th Street, Miami Beach, Florida

Dear Mr. Madan:

This law firm represents 411 Michigan SOFI Owner LLC (the "Applicant") with regard to the above-referenced property (the "Property") within the City of Miami Beach (the "City"). The Applicant intends to establish a restaurant with alcoholic beverage service within the office building and single-family contributing home currently under construction on the Property. This letter serves as the Applicant's letter of intent in support of an application to the Board of Adjustment ("BOA") for a variance from the minimum 300-foot spacing requirement from public or private educational facilities applicable to establishments offering alcohol beverages for consumption under Section 6-4(a)(1) of the Miami Beach Code of Ordinances (the "Code").

Background. The proposed restaurant will be the ground floor tenant of the Class-A office build under construction on the Property (the "Project"). The Project was approved by the Historic Preservation Board ("HPB") under File No. HPB21-0486 on June 14, 2022. See Exhibit A, HPB21-0486 Order. The Project consists of a new, five-story office building and the restoration and renovation of the contributing single-family home and garage on the Property. A Conditional Use Permit for mechanical parking was also granted by the Planning Board for the Project on January 25, 2022. The proposed restaurant will occupy the first-floor commercial space and the contributing single-family home.

Property Description. The Property is identified by Miami-Dade Property Appraiser Folio No. 02-4203-010-0030. The Property is located along the major 5th Street Corridor. It is comprised of approximately 21,000 square feet (0.48 acres) located on the southeast corner of the intersection of 5th Street and Michigan Avenue and abuts an alley on the east. A Unity of Title recorded at the official Records Book 32832 at Page 2215 of the Public Records of Miami-Dade County unified the three prior parcels at 944 5th Street, 419 Michigan Avenue, and 411 Michigan Avenue as one unified development site. The Property is located in the Ocean Beach Local Historic District and is zoned C-PS2, Commercial Performance Standard, General Mixed-Use Commercial ("C-PS2"), which allows for a wide range of commercial uses.

South Pointe Elementary School. The Property is located within 300 feet of Miami Beach South Pointe Elementary School (the "School"). See Figure 1. Aerial, below. A liquor survey providing a variance diagram for the distances between the two structures on the Property and the School has been provided as part of this application.

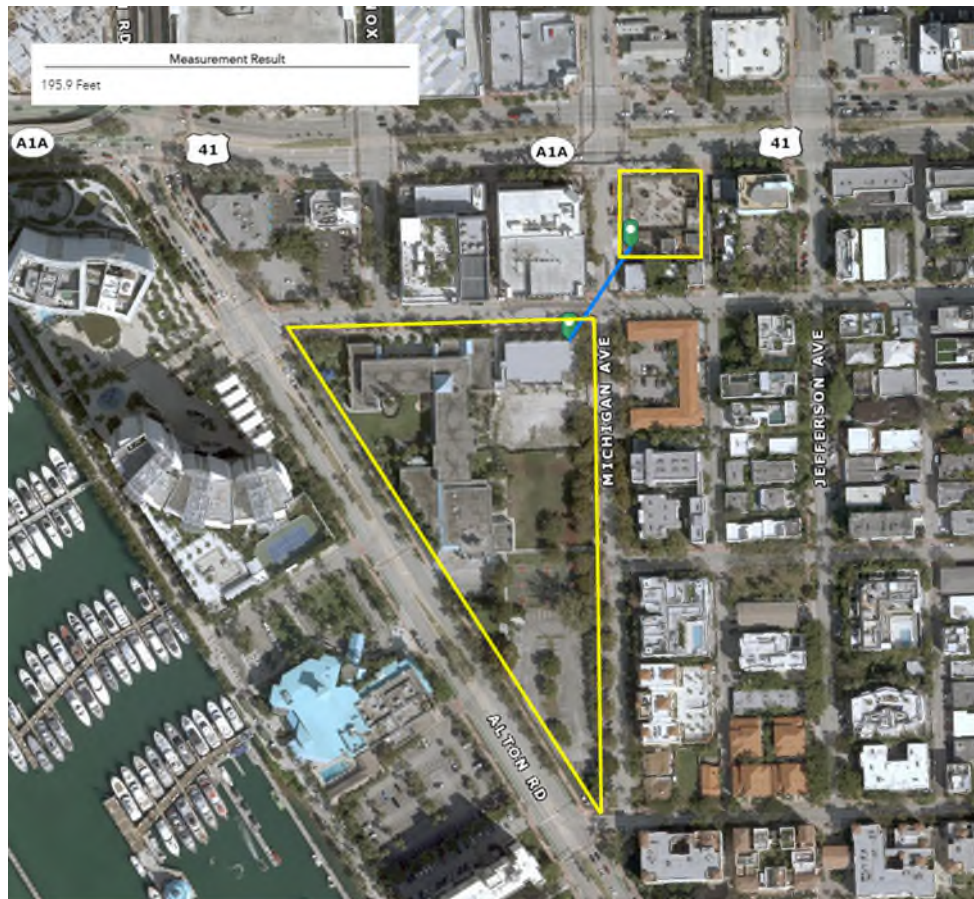


Figure 1. Aerial.

Proposed Restaurant. The proposed restaurant will be an internationally celebrated Italian fine dining, coffee, light bites, and bakery concept started in Milan, Italy with several locations in Manhattan and the Hamptons, Palm Beach, Aspen, and Milano, Italy (the "Restaurant"). The Restaurant, named "Sant Ambroeus", intends to awaken a universal passion for the Italian experience by providing a distinctive and personalized experience of Italian excellence, rooted in culture, lifestyle, and a commitment to the craft. The Applicant intends to bring its renowned concept to Miami Beach as the first location in Miami. Although consistent with respect to theme and programming, each of the restaurants is tailored to its specific location and neighborhood. Sant Ambroeus Miami Beach will be no different, as the design and programming will be tailored to serve the residents and visitors to the South of Fifth neighborhood. The Property represents the perfect space to implement this concept in a way that is adapted to fit the character of the South of Fifth neighborhood.

The Restaurant will include a kitchen and indoor and outdoor dining areas on the first floor of the office building, a mezzanine dining area in the office building, as well as

an additional kitchen and dining areas in the contributing single-family home and its courtyard on the Property. The contributing building will likely be used for the coffee bar and bakery. The Restaurant will include sixty-five (65) seats and between seven (7) and eleven (11) bar seats in the indoor dining area, between sixty-seven (67) and eighty-five (85) seats in the outdoor dining area, between fifty (50) and sixty-eight (68) seats in the contributing single-family home and its courtyard, and between forty-nine (49) and sixty (60) seats in the mezzanine. Proposed hours of operation for the Restaurant include 8:00 AM through 11:00 AM for breakfast, 11:00 AM through 5:00 PM for lunch, and 5:00 PM through 2:00 AM for dinner. The remaining details of the operation of the Restaurant can be found in the Proposed Operational Plan attached to this application.

The total cost estimate for the Restaurant is \$287,160. The estimate can be broken down to \$241,620 towards the interior and \$45,540 towards the exterior.

Request. Pursuant to Section 6-4 of the Code, no alcohol beverage may 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. Accordingly, the Application requests a variance from the required 300-foot distance from schools in order to permit the Restaurant to operate with alcoholic beverage service on the Property.

Satisfaction of Section 2.8.3 Criteria. The Applicant's requests satisfy all variance criteria provided in Section 2.8.3 of the Miami Beach Resiliency Code (the "Resiliency Code") criteria as follows:

(1) 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;

The special circumstances applicable to the Property is the Property's unique location in the South of Fifth Neighborhood on the highly-trafficked corner of 5th Street and Michigan Avenue. Due to the City's dense urban layout, the Property is faced with the special conditions of being located in the premier location for a fine dining establishment, yet also located within 300 feet of the School. The very small neighborhood is currently full of many fine dining establishments, all within walking distance of the School.

(2) The special conditions and circumstances do not result from the action of the applicant;

The special conditions and circumstances of the Property do not result from the action of the Applicant, as the existing conditions are not due to any action of the Applicant. Further, the unique location of the Property along a major corridor while within 300 feet of the School is not a result of any action of the Applicant.

(3) Granting the variances 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;

Granting the variance requested does not confer on the Applicant any special privilege denied to other properties in the same zoning district, as restaurants serving alcoholic beverages are permitted uses of the Property. Further, the Property will follow all requirements for alcoholic beverage serving establishments within its zoning district and within the South of Fifth neighborhood. Granting the requested variances merely permits the Applicant to bring a carefully selected Restaurant that perfectly matches the atmosphere and ethos of the neighborhood to the Property. The Restaurant will be seamlessly and gracefully integrated into the structures currently being built and restored on the Property. This is directly consistent with the purposes of the C-PS2 District.

(4) 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;

Literal interpretation of the land development regulations deprives the Applicant of the ability to operate a fine dining restaurant, which is a common practice within commercial buildings in the South of Fifth neighborhood. The overall Project to develop a commercial building and restore a contributing structure has been approved on the Property. In the C-PS2 zoning district and within the South of Fifth neighborhood, commercial properties enjoy the ability to offer fine dining restaurants as tenants in their buildings. The Class-A office space, the primary use for the Project, pairs perfectly with a fine dining establishment, coffee shop, and bakery, and the Property's location on the major 5th Street corridor creates a significant opportunity for restaurant uses enjoyed by all other similar situated properties nearby. The Applicant has made substantial investment towards developing the Project which will serve as an anchor building in the core of the South of Fifth neighborhood, and denial of the ability to operate the Restaurant within the Project would be an unnecessary and undue hardship.

(5) The variances granted are the minimum variances that will make possible the reasonable use of the land, building or structure;

The requested variance is the minimum variance that makes possible the reasonable use of the Property, as the restaurant with alcoholic beverage service is permitted on the Property. The request is not a substantial request, restaurants with alcoholic beverage service are permitted within the C-PS2 District and align with the overall intent of the district. Accordingly, the requested variances are minimal requests to make possible to reasonable use of the Property consistent with the relevant C-PS2 District regulations.

(6) The granting of the variances will be in harmony with the general intent and purpose of these land development regulations and that such variances will not be injurious to the area involved or otherwise detrimental to the public welfare;

The Restaurant is directly in harmony with the general intent and purpose of the land development regulations applicable to the C-PS2 District. Further, the general intent and purpose of the land development regulation for alcoholic beverage establishments requiring a distance of at least 300 feet from any public or private school is to protect the children who are on the school premises on a daily basis. The Restaurant will be diligently managed and is at its core a fine dining establishment. While the Restaurant offers the sale of alcohol, it is not the primary, or even secondary, appeal of this fine dining establishment. The high prices typically associated with fine dining establishments will further discourage the gravitation of the children towards the Restaurant. As such, the general intent and purpose of these land development regulations are maintained, as the type of alcoholic beverage establishment considered by the Code is distinct from the Restaurant, and as a result of the nature of the Restaurant, the risk of any injury or detriment to public welfare is minimal. Lastly, the Applicant will voluntarily proffer the condition that during school hours, alcohol shall only be served with meals.

(7) 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

The variance request is consistent with the City's Comprehensive Plan and does not reduce the levels of service as set forth in the plan.

(8) 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.

The requested variance does not impact the resilience of the Property.

Practical Difficulty. Pursuant to Article 1, Section 2 of the Related Special Acts, where there are practical difficulties, the Board of Adjustment has the power to vary or modify regulations or provisions relating to the use so that the spirit of the Zoning Ordinance shall be observed, public safety and welfare secured, and substantial justice done. Since its inception, the City's secret to success has been its dense urban configuration within a constraining but desirable topographic environment. This dense urban configuration has required a variety of diverse uses to be in close proximity, including but not limited to residential uses, commercial uses, civic uses, educational uses, and entertainment uses. As a result, the City has thrived over time, with residents and visitors enjoying increased walkability, convenience, access, variety, efficiency, sense of community, and so on.

Section 6-4 of the Code serves a valid purpose protecting students from establishments selling or offering alcohol for consumption. However, this creates practical difficulties in a dense urban environment where schools, residences, restaurants, and a plethora of other uses all exist in close proximity. The Restaurant is distinct from the typical establishment selling or offering alcohol for consumption on the premises that Section 6-4 of the Code protects children from. Alcohol service is merely ancillary to the Restaurant, which is viewed as one of the most elegant and understated dining venues in the country and is celebrated for its fine dining experience, ambiance, and popular coffee bar and bakery. The Restaurant is perfectly suited for its location in the South of Fifth neighborhood and as the ground floor tenant for the Class-A office building currently under construction.

Sea Level Rise and Resiliency Criteria. The new office building and home advance the sea level rise and resiliency criteria in Section 7.1.2.4 of the Resiliency Code, as follows:

1. A recycling or salvage plan for partial or total demolition shall be provided.

A recycling and salvage plan will be provided at the time of permitting.

2. Windows that are proposed to be replaced shall be hurricane proof impact windows.

The Applicant proposes hurricane proof impact windows as part of the Project.

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

The Applicant will provide, where feasible, passive cooling systems.

4. Resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided.

The Project of which the proposed restaurant will be a part has an approved landscaping plan with Florida friendly plantings.

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.

During the approval process for the Project, sea level rise projections were considered, as well as the elevation of the development and adjacent development.

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 3 additional feet in height.

The Project provides driveways and garage ramping that are adaptable to future raising of public rights of way and adjacent lands.

7. As applicable to all new construction, all critical mechanical and electrical systems are located above base flood elevation. All redevelopment projects shall, whenever practicable and economically reasonable, include the relocation of all critical mechanical and electrical systems to a location above base flood elevation.

All mechanical and electrical systems will be located above base flood elevation.

8. Existing buildings shall, where reasonably feasible and appropriate, be elevated to the base flood elevation plus City Freeboard.

The Project of which the proposed restaurant will be a part is elevated to base flood elevation plus City freeboard.

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.

Any areas below base flood elevation plus freeboard will implement appropriate flood mitigation measures to protect the property.

10. As applicable to all new construction, storm water retention system shall be provided.

Where feasible, water retention systems will be provided.

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

Cool pavement materials or porous pavement materials will be utilized where possible.

12. The design of each project shall minimize the potential for heat island effects on-site.

The design of the Project will minimize the potential for heat island effects on site.

Conclusion. The Applicant proposes a common and effective configuration under which an accessory restaurant is the first-floor tenant of a larger Class-A office building that will be an anchor building in the South of Fifth neighborhood. The Code recognizes the benefits of such centralized and integrated uses within a mixed-use development by encouraging such development in this area of the City. The Applicant's proposal is part of a cohesive and transformative project that will benefit the South of Fifth community for years to come, and the proposed restaurant will serve the neighborhood well and aligns perfectly with the other restaurants in the area.

In light of the above, the Applicant respectfully request your favorable review and recommendation of this application. If you have any questions or comments with regard to the application, please contact me at (305) 377-6231.

Sincerely,

A handwritten signature in blue ink, consisting of a stylized, flowing line that starts with a small loop on the left, rises to a peak, and then descends to the right.

Michael W. Larkin

CC: Alessandro Pallaoro
Saif Sumaida
Xinyi Wang
Benjamin Sherry