

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: **ZBA24-0163**
411 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.

RECOMMENDATION

Approval.

HISTORY

On January 25, 2022, the Planning Board approved a conditional use permit for a new five-story mixed use development exceeding 50,000 square feet, including a mechanical parking (File No. PB21-0469).

On June 14, 2022, the Historic Preservation Board (HPB) granted a Certificate of Appropriateness for the total demolition of one existing building, the renovation, restoration, and relocation of one existing building, the construction of a new office building, a variance to eliminate the open court requirement and one or more waivers (File No. HPB21-0486).

ZONING/SITE DATA

Folio: 02-4203-010-0030

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.

Zoning:	C-PS2, General Mixed-Use Commercial Performance Standard District
Future Land Use:	General Mixed Use Commercial Performance Standard (C-PS2)
Historic District:	Ocean Beach Historic District
Lot Size:	21,000 SF
Existing Use:	Vacant
Surrounding Uses:	North: Gas Station West: Office Building South: Residential Building East: Commercial Building

THE PROJECT

The applicant, 411 Michigan Sofi Owner LLC, has submitted plans and exhibits entitled “THE FIFTH LEVEL 1 AND MEZZANINE F&B SPACE PLAN”, as prepared by Alvarez Studio, Inc., dated 7/31/2024. The applicant is proposing a restaurant with alcoholic beverage service in an office building and a contributing historic structure on a unified development site that is currently under construction. The establishment is proposed to have a total of 230 seats between the new office building and the contributing building. The proposed hours of operation are from 8:00 a.m. to 2:00 a.m. seven (7) days per week.

The applicant is requesting the following variance:

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.

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.
Consistent
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.
Consistent
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 applicant is proposing a restaurant with alcoholic beverage service, known as Sant Ambroeus, in an office building and a contributing historic structure on a unified development site that is currently under construction. The occupancy load will be for a total of 270 persons and 230 seats will be provided. The establishment will have the following areas:

- Office Building: 214 Occupant Content / 184 Seats
 - Indoors: 63 seats
 - Indoor Bar: 8 seats
 - Ground Floor Outdoor Terrace: 67 seats
 - Mezanine Outdoor Terrace: 46 seats
- Contributing Historic Structure: 56 Occupant Content / 51 Seats
 - Café Courtyard: 29 seats
 - Outdoor Café: 22 seats

The proposed hours of operation are from 8:00 a.m. to 2:00 a.m. seven (7) days per week. The establishment will not have entertainment, as it is prohibited in the South of Fifth neighborhood. The applicant has provided an operations plan that indicates that establishment will be accessed from both buildings' main entrances on Michigan Avenue. Valet service will be provided through the driveway on the southern portion of the parcel and utilize the onsite mechanical parking.

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 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 South Point Elementary School. The facility is located 120 feet from the nearest entrance to the subject building. This represents a practical difficulty, as the use would otherwise be permitted as of right in the C-PS2 district, and the space was designed to accommodate food service establishments, which typically rely on the sale of alcoholic beverage. In order to mitigate any potential impacts, staff recommends that during school hours that alcohol only be served in conjunction with a meal.

Overall, staff is supportive of the application, with the hours of operations and condition noted above, and provided that any future expansion beyond 230 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 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: 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.

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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;

- 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 230 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. There shall be no sale of package goods.
 - 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 _____ ()