

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Board of Adjustment

TO: Chairperson and Members
Planning Board

DATE: July 9, 2021

FROM: Thomas R. Mooney, AICP
Planning Director

SUBJECT: **ZBA21-0128**
743 Washington Avenue – Entertainment Establishment

An application has been filed requesting a modification to a previously approved variance to reduce the required 300-foot distance separation between dance hall/entertainment establishments licensed to sell alcoholic beverages and not operating as a restaurant with full kitchen and serving full meals. Specifically, the applicant is requesting to change the name of the owner/operator.

RECOMMENDATION

Approval of the name change.

ZONING/SITE DATA

Address:	743 Washington Avenue
Folio:	02-4203-004-0690
Legal Description:	Lot 14 thru 16, Block 33 of OCEAN BEACH ADDITION #1, According to the Plat Thereof, Recorded in Plat Book 3, Page 11 of the Public Records of Miami-Dade County, Florida.
Zoning:	CD-2, Commercial, Medium Intensity Zoning District
Future Land Use Designation:	CD-2, Commercial, Medium Intensity
Lot Size:	19,500 square feet*
Year Constructed:	1965
Building Use:	Commercial

HISTORY

- The application was originally approved by the Board of Adjustment on June 5, 2009.
- A modification to the order was approved on June 3, 2011, transferring to a new operator, Jack Flechner as a Member of Washington Entertainment, LLC.
- A modification to the order was approved on June 5, 2015, transferring to a new operator, 743 Associates, LLC, as well as a modification to a condition in the final order.

THE REQUEST

The applicant, Mansourandco, LLC, has submitted a letter of intent and supporting documents, dated May 10, 2021. The applicant is requesting a modification to the order of a previously

approved variance, originally approved June 5, 2009 and subsequently modified, associated with the operation of a dance hall/entertainment establishment that is not also operating as a restaurant. The establishment did not meet the minimum required distance separation from another dancehall/entertainment establishment which necessitated the requested variance.

The last modification to the originally approved variance was issued on June 5, 2015, in order to approve a change of owner/operator, from Jack Flechner/Member of Washington Entertainment, LLC to 743 Associates, LLC.

The applicant is now requesting to modify the order to transfer ownership and operator from 743 Associates, LLC. to Mansourandco, LLC., pursuant to condition (B)(3) of the June 5, 2015 Modified Final Order for BOA File No. 3420, which requires any change in operator or ownership to be reviewed and approved by the Board as a modification. For reference purposes, the original approval and modified orders are attached as "Exhibit A".

The subject dance hall/entertainment establishment is also subject to a Conditional Use Permit. A similar modification to the Planning Board Final Order is currently scheduled to be heard by the Planning Board on July 27, 2021, to transfer the Conditional Use Permit to the new owner/operator.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 133-50(a) of the Land Development Regulations establishes the following criteria for sea level rise and resiliency that must be considered as part of the review process for development 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.
Not Applicable
- (3) Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.
Not Applicable
- (4) Resilient landscaping (salt tolerant, highly water-absorbent, native, or Florida-friendly plants) shall be provided, in accordance with chapter 126 of the city Code.
Not Applicable
- (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.
Not Applicable
- (6) The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-way 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 additional feet in height.

Not Applicable

- (7) As applicable to all new construction, all critical mechanical and electrical systems shall be 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.

Not Applicable

- (8) Existing buildings shall, wherever reasonably feasible and economically appropriate, be 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 54 of the city Code.

Not applicable

- (10) As applicable to all new construction, stormwater retention systems shall be provided.

Not Applicable

- (11) Cool pavement materials or porous pavement materials shall be utilized.

Not Applicable

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

Not Applicable

ANALYSIS

Staff supports the requested modification, approving the transfer of the original variance to the new owner(s)/operator. Additional conditions/modifications are also being recommended, and are identified within the attached draft final order.

RECOMMENDATION

In view of the foregoing analysis, staff recommends **approval** of the requested modification, subject to the conditions outlined in the attached final order.

SITE MAP



Exhibit A.



CFN 2015R0388530
OR BK 29660 Pgs 1715-1719 (5Pgs)
RECORDED 06/17/2015 12:54:08
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

BOARD OF ADJUSTMENT CITY OF MIAMI BEACH, FLORIDA

PROPERTY: 743 Washington Avenue

FILE NO. 3420

IN RE: The application for modifications to conditions of approval for a previously approved variance for the reduction from the minimum required 300 foot distance separation between dance hall/entertainment establishments licensed to sell alcoholic beverages and not operating as a restaurant with full kitchen and serving full meals. Specifically, the applicant is requesting to change the name of the owner/operator.

LEGAL DESCRIPTION: Lot 14 thru 16, Block 33 of OCEAN BEACH ADDITION #1, According to the Plat Thereof, Recorded in Plat Book 3, Page 11, of the Public Records of Miami-Dade County, Florida.

MEETING DATE: June 5, 2015

MODIFIED ORDER

The applicant, Keith Paciello / 743 Associates, LLC., filed an application with the Planning Department for modifications to a previously approved variance granted on June 5, 2009 to reduce the minimum required 300 foot distance separation between dance hall/entertainment establishments licensed to sell alcoholic beverages and not operating as a restaurant with full kitchen and serving full meals. The applicant requests to modify Condition No. 3 of the June 3, 2011 BOA "Modification Order" No. 3420, which granted the approval of the variance to the previous applicant and operator to permit the transfer of approval to Keith Paciello / 743 Associates, LLC., as follows:

3. This Order is issued modified approval is granted to Keith Paciello / 743 Associates, LLC. as operator of the establishment restaurant/lounge. Any subsequent owners or operators shall be required to appear before the Board to affirm their understanding of the conditions listed herein.

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;

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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;

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. Strike-through denote previous language stricken and underlining denotes new language:

1. The applicant shall comply with all conditions imposed by the Planning Board File No. 2053 (fka 1906).
2. If there is any change in the of use or operation of the establishment, ~~including but not limited to the establishment attempting to become a stand-alone bar, or a 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.
3. This ~~Order is issued~~ modified approval is granted to Keith Paciello / 743 Associates, LLC, as operator of the establishment restaurant/lounge. Any subsequent owners or operators shall be required to appear before the Board to affirm their understanding of the conditions listed herein.
4. ~~Security personnel shall take measures to enforce the Patron Age Restriction of the City Code during the hours of operation.~~
5. ~~The hours of operation for the restaurant/lounge shall be as follows:~~
~~Monday-Friday: 10:30 a.m. to 5:00 a.m.~~
~~Saturday & Sunday: 5:00 p.m. to 5:00 a.m.~~

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6. ~~As shown on the plans, the existing double door vestibule shall be maintained at the main entrance.~~
7. ~~A revised floor plan that shows the seating arrangement shall be submitted to staff for review and approval prior to obtaining a building permit. In addition, security personnel shall be posted in close proximity to the rear exit door.~~
8. ~~The garbage holding room opening towards the alley shall be enclosed and air conditioned in order to contain maledorous garbage and to avoid any garbage escaping to the alley.~~
9. ~~Prior to the issuance of a building permit, the applicant shall participate in a Transportation Concurrency Management Area Plan (TCMA Plan), if deemed necessary, by paying its fair share cost, as determined by the Transportation/Concurrency Management Division. A final concurrency determination shall be conducted prior to the issuance of a Certificate of Occupancy or Certificate of Completion. Mitigation fees and concurrency administrative costs shall be paid prior to the project receiving the Business Tax Receipt.~~
10. ~~The applicant shall coordinate with the Parking Department and the Transportation Manager the location of valet drop off/pick up and sufficient spaces for the queuing of vehicles waiting to be serviced by the valet operator.~~
11. ~~Once the applicant enters into a contract with the valet operator, a valet staffing plan and a vehicle storage plan shall be submitted to staff for review and approval.~~
12. ~~The applicant shall submit for staff review and approval specific noise attenuation measures inclusive of interior proofing prior to the issuance of a Business Tax Receipt.~~
13. ~~Any window treatment that may be proposed shall be such that there is a clear view from the sidewalk in order to activate the area. Such treatments shall be included in the building permit plans and shall be reviewed and approved by staff.~~
14. ~~Street flyers and handouts shall not be permitted, including handbills from third-party promotions.~~
15. ~~Queuing of persons on the sidewalk shall be prohibited. Queuing shall take place within the premises, as shown in the plans submitted, and controlled by The Gates security personnel so that there is no spillover that could conflict with pedestrian flow in front of the subject establishment.~~
16. ~~The applicant shall be responsible for maintaining the frontage and exterior of the building and the property in excellent condition, including keeping the sidewalk, curb and gutter in front and side of the building in a clean and sanitary condition, free of all refuse, at all times. When sweeping the sidewalk in front of the establishment, the personnel doing the sweeping shall ensure that they do not merely push the refuse in front of another building, but pick up all trash and dispose~~

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~~of it appropriately. In addition, at the end of business each day sidewalks shall be swept and hosed down.~~

- ~~17. The applicant shall resolve outstanding violations and fines, if any, prior to the issuance of a certificate of use.~~
- ~~18. This Order shall be recorded in the Public Records of Miami-Dade County, Florida at the expense of the applicant.~~
19. The Board of Adjustment shall retain jurisdiction to call operators back before them to add additional conditions and modify these conditions including the hours of operation should there be complaints (as determined by Code Compliance) about late night noise. Violation of the Miami-Dade County Code Section 21-28 (a/k/a "noise ordinance") shall be deemed a violation of this Variance and subject to the remedies as described in Sec. 118-194 of the City Code.
20. 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.
21. The applicant shall comply with all conditions imposed by the Public Works Department.
22. The conditions on this modified Order are binding on the applicant, the property's owners and all successors in interest and assigns.
23. This modified 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.
24. This modified Order shall be recorded, at the expense of the applicant, in the Public Records of Miami-Dade County; the original or a certified copy shall be provided to the Planning Department prior to the issuance of a Building Permit.
25. The conditions on this Order are binding on the applicant, the property's owners and all successors in interest and assigns.
26. 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 granted herein.

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

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specified in Paragraph B (Condition Nos. 1-26, inclusive) hereof, to which the applicant has agreed.

Dated this 11th day of JUNE, 2015.

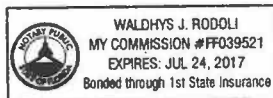
BOARD OF ADJUSTMENT
CITY OF MIAMI BEACH, FLORIDA

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 June, 2015, 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.

[NOTARIAL SEAL]



Waldhys J. Rodoli
Notary:
Print Name: Waldhys J. Rodoli
Notary Public, State of Florida
My Commission Expires: 7-24-2017
Commission Number: FF 039521

Approved As To Form:
City Attorney's Office

Filed with the Clerk of the Board of Adjustment on

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

MEETING DATE: July 9, 2021

PROPERTY: 743 Washington Avenue

FOLIO NO.: 02-4203-004-0690

FILE NO.: ZBA21-0128

IN RE: An application has been filed requesting a modification to a previously approved variance to reduce the required 300-foot distance separation between dance hall/entertainment establishments licensed to sell alcoholic beverages and not operating as a restaurant with full kitchen and serving full meals. Specifically, the applicant is requesting to change the name of the owner/operator.

LEGAL DESCRIPTION: Lot 14 thru 16, Block 33 of OCEAN BEACH ADDITION #1, According to the Plat Thereof, Recorded in Plat Book 3, Page 11 of the Public Records of Miami-Dade County, Florida.

MODIFIED FINAL ORDER

The applicant, Mansourandco, LLC, filed an application with the Planning Department for modifications to a previously approved variance, to reduce the required 300-foot distance separation between dance hall/entertainment establishments licensed to sell alcoholic beverages and not operating as a restaurant with full kitchen and serving full meals; originally approved June 5, 2009 and last modified June 5, 2015:

"A variance to waive the minimum distance separation of 300 feet required between dance hall/entertainment establishments licensed to sell alcoholic beverages, and not also operating as a restaurant with full kitchen and serving full meals."

The applicant requests to modify Condition (B)(3) of the June 5, 2015 Order, under Case No. BOA 3420, which granted the approval of the variance to the previous applicant, in order to permit the transfer of approval to Mansourandco, LLC. The last modified approval is attached as "Exhibit A" for reference. The conditions approved on June 5, 2015 are superseded as follows:

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;

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. The applicant shall comply with all conditions imposed by the Planning Board.
2. If there is any change of use of the 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 of the City Code for revocation or modification of the variance.
3. This modified approval is granted to Mansurandco, LLC, Keith Paciello / 743 Associates, LLC, as operator of the establishment. Any subsequent owners or operators shall ~~be required to appear before the Board to affirm their understanding of the conditions listed herein.~~ submit an affidavit, approved by the City Attorney, to the Planning Department, transferring approval to the new owner and/or operator and acknowledging acceptance of all conditions established herein prior to the issuance of a new certificate of use, provided the establishment is still subject to a Conditional Use Permit. In the event that the Conditional Use Permit is no longer applicable, subsequent owners or operators shall be required to appear before the Board to affirm their understanding of the conditions listed herein.
4. The Board of Adjustment shall retain jurisdiction to call operators back before them to add additional conditions and modify these conditions including the hours of operation should there be complaints (as determined by Code Compliance) about late night noise. Violation of the Miami-Dade County Code Section 21-28 (a/k/a "noise ordinance") shall be deemed a violation of this Variance and subject to the remedies as described in Sec. 118-194 of the City Code.

5. 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.
6. The conditions on this modified Order are binding on the applicant, the property's owners and all successors in interest and assigns.
7. This modified 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.
8. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit or Certificate of Use.
9. The conditions on this Order are binding on the applicant, the property's owners and all successors in interest and assigns.
10. 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 granted herein.

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 to modify the previously approved Variance(s) Approval is GRANTED for the above-referenced project, subject to those certain conditions specified in Paragraph B hereof, to which the applicant has agreed.

Dated this _____ day of _____, 2021.

BOARD OF ADJUSTMENT
CITY OF MIAMI BEACH, FLORIDA

BY: _____
Steven Williams
Chief of Planning Services
For the Chair

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by Steven Williams, Chief of Planning Services 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 _____ ()

Exhibit A.



CFN 2015R0388530
OR BK 29660 Pgs 1715-1719 (5Pgs)
RECORDED 06/17/2015 12:54:08
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

BOARD OF ADJUSTMENT CITY OF MIAMI BEACH, FLORIDA

PROPERTY: 743 Washington Avenue

FILE NO. 3420

IN RE: The application for modifications to conditions of approval for a previously approved variance for the reduction from the minimum required 300 foot distance separation between dance hall/entertainment establishments licensed to sell alcoholic beverages and not operating as a restaurant with full kitchen and serving full meals. Specifically, the applicant is requesting to change the name of the owner/operator.

LEGAL

DESCRIPTION: Lot 14 thru 16, Block 33 of OCEAN BEACH ADDITION #1, According to the Plat Thereof, Recorded in Plat Book 3, Page 11, of the Public Records of Miami-Dade County, Florida.

MEETING DATE: June 5, 2015

MODIFIED ORDER

The applicant, Keith Paciello / 743 Associates, LLC., filed an application with the Planning Department for modifications to a previously approved variance granted on June 5, 2009 to reduce the minimum required 300 foot distance separation between dance hall/entertainment establishments licensed to sell alcoholic beverages and not operating as a restaurant with full kitchen and serving full meals. The applicant requests to modify Condition No. 3 of the June 3, 2011 BOA "Modification Order" No. 3420, which granted the approval of the variance to the previous applicant and operator to permit the transfer of approval to Keith Paciello / 743 Associates, LLC., as follows:

3. This ~~Order is issued~~ modified approval is granted to Keith Paciello / 743 Associates, LLC, as operator of the ~~establishment restaurant/lounge.~~ Any subsequent owners or operators shall be required to appear before the Board to affirm their understanding of the conditions listed herein.

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;

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. Strike-through denote previous language stricken and underlining denotes new language:

1. The applicant shall comply with all conditions imposed by the Planning Board File No. 2053 (fka 1906).
2. If there is any change in the of use or operation of the establishment, ~~including but not limited to the establishment attempting to become a stand-alone bar, or a 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.
3. This ~~Order is issued~~ modified approval is granted to Keith Paciello / 743 Associates, LLC, as operator of the establishment ~~restaurant/lounge~~. Any subsequent owners or operators shall be required to appear before the Board to affirm their understanding of the conditions listed herein.
4. ~~Security personnel shall take measures to enforce the Patron Age Restriction of the City Code during the hours of operation.~~
5. ~~The hours of operation for the restaurant/lounge shall be as follows:~~
~~Monday-Friday: 10:30 a.m. to 5:00 a.m.~~
~~Saturday & Sunday: 5:00 p.m. to 5:00 a.m.~~

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- ~~6. As shown on the plans, the existing double door vestibule shall be maintained at the main entrance.~~
- ~~7. A revised floor plan that shows the seating arrangement shall be submitted to staff for review and approval prior to obtaining a building permit. In addition, security personnel shall be posted in close proximity to the rear exit door.~~
- ~~8. The garbage holding room opening towards the alley shall be enclosed and air conditioned in order to contain malodorous garbage and to avoid any garbage escaping to the alley.~~
- ~~9. Prior to the issuance of a building permit, the applicant shall participate in a Transportation Concurrency Management Area Plan (TCMA Plan), if deemed necessary, by paying its fair share cost, as determined by the Transportation/Concurrency Management Division. A final concurrency determination shall be conducted prior to the issuance of a Certificate of Occupancy or Certificate of Completion. Mitigation fees and concurrency administrative costs shall be paid prior to the project receiving the Business Tax Receipt.~~
- ~~10. The applicant shall coordinate with the Parking Department and the Transportation Manager the location of valet drop-off/pick up and sufficient spaces for the queuing of vehicles waiting to be serviced by the valet operator.~~
- ~~11. Once the applicant enters into a contract with the valet operator, a valet staffing plan and a vehicle storage plan shall be submitted to staff for review and approval.~~
- ~~12. The applicant shall submit for staff review and approval specific noise attenuation measures inclusive of interior proofing prior to the issuance of a Business Tax Receipt.~~
- ~~13. Any window treatment that may be proposed shall be such that there is a clear view from the sidewalk in order to activate the area. Such treatments shall be included in the building permit plans and shall be reviewed and approved by staff.~~
- ~~14. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.~~
- ~~15. Queuing of persons on the sidewalk shall be prohibited. Queuing shall take place within the premises, as shown in the plans submitted, and controlled by The Gates security personnel so that there is no spillover that could conflict with pedestrian flow in front of the subject establishment.~~
- ~~16. The applicant shall be responsible for maintaining the frontage and exterior of the building and the property in excellent condition, including keeping the sidewalk, curb and gutter in front and side of the building in a clean and sanitary condition, free of all refuse, at all times. When sweeping the sidewalk in front of the establishment, the personnel doing the sweeping shall ensure that they do not merely push the refuse in front of another building, but pick up all trash and dispose~~

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~~of it appropriately. In addition, at the end of business each day sidewalks shall be swept and hosed down.~~

- ~~17. The applicant shall resolve outstanding violations and fines, if any, prior to the issuance of a certificate of use.~~
- ~~18. This Order shall be recorded in the Public Records of Miami-Dade County, Florida at the expense of the applicant.~~
19. The Board of Adjustment shall retain jurisdiction to call operators back before them to add additional conditions and modify these conditions including the hours of operation should there be complaints (as determined by Code Compliance) about late night noise. Violation of the Miami-Dade County Code Section 21-28 (a/k/a "noise ordinance") shall be deemed a violation of this Variance and subject to the remedies as described in Sec. 118-194 of the City Code.
20. 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.
21. The applicant shall comply with all conditions imposed by the Public Works Department.
22. The conditions on this modified Order are binding on the applicant, the property's owners and all successors in interest and assigns.
23. This modified 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.
24. This modified Order shall be recorded, at the expense of the applicant, in the Public Records of Miami-Dade County; the original or a certified copy shall be provided to the Planning Department prior to the issuance of a Building Permit.
25. The conditions on this Order are binding on the applicant, the property's owners and all successors in interest and assigns.
26. 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 granted herein.

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

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specified in Paragraph B (Condition Nos. 1-26, inclusive) hereof, to which the applicant has agreed.

Dated this 11th day of JUNE, 2015.

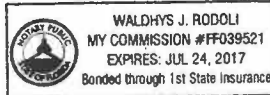
BOARD OF ADJUSTMENT
CITY OF MIAMI BEACH, FLORIDA

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 June, 2015, 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.

[NOTARIAL SEAL]



Waldhys J. Rodoli
Notary:
Print Name: Waldhys J. Rodoli;
Notary Public, State of Florida
My Commission Expires: 7-24-2017
Commission Number: FF 039521

Approved As To Form:
City Attorney's Office

Filed with the Clerk of the Board of Adjustment on 6/11/2015
06/11/15

MB