

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

PROPERTY: 1334 Washington Avenue

FILE NO. ZBA19-0090 f/k/a BOA 3651

IN RE: The application for a modification to a previously approved variance to reduce the required 300 foot distance separation between a business that sells alcoholic beverages and an existing educational facility in order to operate a restaurant and sell alcoholic beverages for consumption on premises. Specifically the applicant is requesting changes to the conditions of approval, including a change of owner/operator.

LEGAL

DESCRIPTION: Lot 5, Block 21, OCEAN BEACH NO 3, According to the Plat Thereof, as Recorded in Plat Book 6, Page 17, of the Public Records of Miami-Dade County, Florida.

FOLIO NUMBER: 02-3234-011-0020

MEETING DATE: June 07, 2019

ORDER

The applicant, Biscayne Cowboys 305, LLC, filed an application with the Planning Department for modifications to a previously approved variance granted on September 9, 2013, associated with the sale/service of alcohol within the minimum required distance separation from an educational school and/or place of worship:

"A variance to waive 71.6 feet of the minimum required 300 foot separation between a business that sells alcoholic beverages for consumption and an existing educational facility, Fisher-Feinberg Elementary School in order to sell beer, wine and liquor for consumption on the premises with a distance of 228.4 feet to the school."

The applicant requests to modify Condition (B)(6) of the September 9, 2013 Order, under Case No. BOA 3651, which granted the approval of the variance to the previous applicant, in order to permit the transfer of approval to Biscayne Cowboys 305, LLC. The original approval is attached as "Exhibit A" for reference. The conditions approved on September 9, 2013 are superseded as follows: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. During school hours, alcohol shall only be served with meals. There shall be no sale of package goods.
2. 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.
3. The establishment shall not be converted to a stand-alone bar, or dance hall.
4. The applicant shall satisfy any City Liens prior to the issuance of a revised Certificate of Use and Business Tax Receipt for alcohol.
5. The Board of Adjustment shall retain jurisdiction of this file.
6. This approval is granted to Biscayne Cowboys 305, LLC only. Any changes in ownership or operator shall require the new owner or operator to submit an affidavit, approved by City, to the City of Miami Beach Planning Department transferring approval to the new owner or operator and acknowledging acceptance of all conditions established herein prior to the issuance of a new Business Tax Receipt.

7. The property owner shall be responsible for compliance with all the conditions of this variance. The current operator and any subsequent operators of the business shall be specially apprised of all conditions.
8. The Operator shall be responsible for maintaining the areas adjacent to the facility, such as the sidewalk on Washington Avenue, in excellent condition, keeping these areas in a clean condition, free of all refuse, at all times.
9. If there is any change in the use or operation 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, City Code, for revocation or modification of the variance.
10. 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.
11. 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.
12. The conditions on this Order are binding on the applicant, the property's owners and all successors in interest and assigns.
13. This 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 granted herein.
15. Satisfaction of all conditions is required for the Planning Department to give its approval on a Certificate of Occupancy; a Temporary Certificate of Occupancy or Partial Certificate of Occupancy may also be conditionally granted Planning Departmental approval.
16. This modified Order shall be recorded, in the Public Records of Miami-Dade County; prior to the issuance of a City Business Tax Receipt.

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

Meeting Date: June 7, 2019

ZBA19-0090 f/k/a BOA 3651

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.

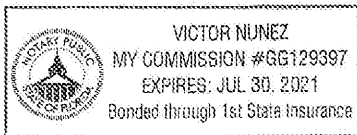
Dated this 26th day of June, 2019.

BOARD OF ADJUSTMENT
CITY OF MIAMI BEACH, FLORIDA

BY: [Signature]
Rogelio Madan, AICP
Chief of Community Planning & Sustainability
For the Chair

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 26 day of June, 2019, by Rogelio Madan, Chief of Community Planning and Sustainability of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.



[NOTARIAL SEAL]

[Signature]
Notary:
Print Name:
Notary Public, State of Florida
My Commission Expires: JULY 30, 2021
Commission Number: GG129397

Approved As To Form:
City Attorney's Office (Nick Vallejo) 7/1/2019

Filed with the Clerk of the Board of Adjustment on Jessie Gentry (7/9/19)

EXHIBIT A



CFN 20130829156
 DR Bk 28872 Pgs 3715 - 3718; (4pgs)
 RECORDED 10/18/2013 11:24:29
 HARVEY RUVIN, CLERK OF COURT
 MIAMI-DADE COUNTY, FLORIDA

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

PROPERTY: 1334 Washington Avenue

FILE NO. 3651

IN RE: The application for a variance to waive the minimum required 300 foot separation between a business that sells alcoholic beverages for consumption and an existing educational facility, in order to sell beer, wine and liquor for consumption on the premises of a new restaurant.

LEGAL

DESCRIPTION: Lot 5, Block 21, OCEAN BEACH NO 3, According to the Plat Thereof, as Recorded in Plat Book 6, Page 17, of the Public Records of Miami-Dade County, Florida.

MEETING DATE: September 9, 2013

ORDER

The applicant, Indochine Miami, LLC, filed an application with the Planning Department for the following variance in order to sell beer, wine and liquor at a restaurant:

1. *A variance to waive 71.6 feet of the minimum required 300 foot separation between a business that sells alcoholic beverages for consumption and an existing educational facility, Fisher-Feinberg Elementary School in order to sell beer, wine and liquor for consumption on the premises with a distance of 228.4 feet to the school.*

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;

Page 2 of 4
 Meeting Date: September 9, 2013
 BOA File No. 3651

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. During school hours, beer, wine and liquor shall only be served with meals. Otherwise, the sale of beer, wine and liquor shall be limited to non-school hours (5:00 P.M. to 5:00 A.M.) and non-school days. There shall be no sale of package goods.
2. 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.
3. The establishment shall not be converted to a stand-alone bar, or dance hall.
4. The applicant shall satisfy any City Liens prior to the issuance of a revised Certificate of Use and Occupational License for liquor.
5. The Board of Adjustment shall retain jurisdiction of this file. The applicant must present a progress report in three months to the Board; the Board shall then determine the necessity and timing of subsequent reports.
6. This approval is granted to Indochine Miami, LLC only. Any change of operator, or ownership by fifty (50) percent or more of stock ownership, partnership interest, or the equivalent, shall require review and approval by the Board of Adjustment as a modification to this Order. If deemed necessary, at the request of the Planning Director, the applicant shall provide a progress report to the Board. The Board reserves the right to modify the Variance approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address problems and to determine the timing and need for future progress reports.
7. The property owner shall be responsible for compliance with all of the conditions of this variance. The current operator and any subsequent operators of the business shall be apprised of all conditions. Subsequent operators shall be required to appear

before the Board of Adjustment to affirm their understanding of the conditions listed, herein.

8. If the restaurant use should cease, and/or there is any change in the use or operation of the establishment to become a stand-alone bar, or a stand-alone dance hall or a stand-alone 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, excluding periods during which an active building permit is in effect or there is evidence of non-intent to abandon the premises), the variance shall be subject to Section 118-356, City Code, for revocation or modification of the variance.
9. The applicant shall comply with all conditions imposed (if applicable) by the Public Works Department.
10. The conditions on this Order are binding on the applicant, the property's owners and all successors in interest and assigns.
11. This 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.
12. 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.
13. This 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.

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 (Condition Nos. 1-13, inclusive) hereof, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans approved by the Board of Adjustment, as determined by staff, entitled "Indochine Restaurant" as prepared by Jorge Eduardo Gonzalez, AIA, dated July 8, 2013 and September 6, 2013, modified in accordance with the conditions set forth in this Order and staff review and approval.

No building permit may be issued unless and until all conditions of approval that must be satisfied prior to permit issuance as set forth in this Order have been met. 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 adequate handicapped access is not provided on

OR BK 28872 PG 3718
LAST PAGEPage 4 of 4
Meeting Date: September 9, 2013
BOA File No. 3651

the Board-approved plans, this approval does not mean that such handicapped access is not required.

When requesting a building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions set forth in this Order.

If the Full Building Permit for the project 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 Chapter 118 of the City Code; the granting of any such extension of time shall be at the discretion of the Board. At the hearing on any such application, the Board may deny or approve the request and modify the above conditions or impose additional conditions. If the Full Building Permit should expire for any reason (including but not limited to construction not commencing and continuing, with required inspections, in accordance with the applicable Building Code), and not reinstated by the Building Official or designee, the Variance Approval will expire and become null and void.

Dated this 3rd day of October, 2013.

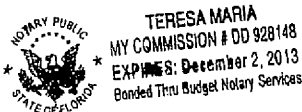
BOARD OF ADJUSTMENT
CITY OF MIAMI BEACH, FLORIDA

BY: 

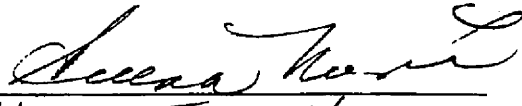
Richard G. Lorber, AICP, LEED AP
Acting Planning Director
For the Chair

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 3rd day of October, 2013 by Richard G. Lorber, Acting Planning Director 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: Teresa Maria
Notary Public, State of Florida
My Commission Expires: 12-2-13
Commission Number: DD 928148

Approved As To Form:
City Attorney's Office (9/20/13)

F:\PLAN\szba\FINALORD\3651 - Order - 1334 Washington Ave.docx