

**BOARD OF ADJUSTMENT  
CITY OF MIAMI BEACH, FLORIDA****MEETING DATES:** July 9, 2012; February 3, 2023**PROPERTY:** 1908 Collins Ave**FOLIO:** 02-3226-001-0110**FILE NO.** ZBA22-0142; a.k.a. BOA File No. 3562**IN RE:** An application for modifications to a previously approved variance to exceed the allowable hours of operation of an accessory outdoor bar counter for a restaurant. Specifically, this application includes a change of operator or ownership.**LEGAL****DESCRIPTION:** The north 57.5' of the south 62.5' of lots 1, 2, and 3 of Block D, of Miami Beach Improvements Co. Ocean Front property amended, according to the plat thereof recorded in Plat Book 5, at page 7, of the public records of Miami-Dade County, Florida.**FINAL ORDER**

The applicant, Trademark Miami, Inc., filed an application with the Planning Department for modifications to the following variances:

1. A variance to to exceed the allowable hours of operation for an accessory outdoor bar counter until 2:00 am.

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 the literal interpretation of the provisions of this Ordinance would cause unnecessary and undue hardship on the applicant;

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
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 hereby **Approves** the requested modification to the variance and imposes the following conditions based on its authority in Section 118-354 of the Miami Beach City Code (Strikethrough signifies deletions; Underlining signifies new language) from the prior Order.

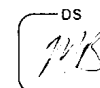
1. The outdoor bar counter as well as the outdoor garden dining area shall cease operation at 2:00 am.
2. The applicant shall comply with all conditions imposed by Planning Board File No. 1988.
3. No dance or entertainment license to be approved for the outdoor garden dining area.
4. The outdoor garden dining area shall not be converted to a stand-alone bar, or dance hall.
5. The Board 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 Trademark Miami, Inc. 1906 Collins, LLC only. Any change of operator or ownership, including 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. Any change of operator or 50% (fifty percent) or more stock ownership shall require the new operator or owner to submit an affidavit, approved by City, to the City of Miami Beach Planning Department, transferring approval to the new operator or owner and acknowledging acceptance of all conditions established herein prior to the issuance of a new Certificate of Use/Business Tax Receipt.
7. If there is any change in the use or operation of the outdoor garden dining area, including but not limited to the outdoor garden dining area 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.
8. 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.

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9. A landscape plan for the entire site, prepared by a Professional Landscape Architect, inclusive of street trees as per the City of Miami Beach Master Street Tree Plan, shall be submitted to and approved by staff before a building permit is issued for construction.
10. The applicant shall comply with all conditions imposed by the Public Works Department.
11. All improvements in the public right-of-way associated with the subject project shall be subject to the final review and approval of the Planning Department Director, Public Works Director, and the Parks and Recreation Department Director, and shall require an agreement, subject to the review and approval of the City Attorney, providing for the assumption of maintenance and liability obligations by the Applicant, and its successors and assigns, executed and recorded before the issuance of a building permit.
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. The Board of Adjustment shall retain the right to call the operators back before them and modify the hours of operation or the occupant should there be issuance of written warnings and/or notices of violation about loud, excessive, unnecessary, or unusual night noise.
16. 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 section 118-194, Code of the City of Miami Beach, Florida.
17. 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.

**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

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Page 4 of 4  
 February 3, 2023  
 ZBA22-0142

modified by the Board of Adjustment, that the application for modifications to the 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.

PROVIDED, the applicant shall build substantially in accordance with the plans submitted to the Board of Adjustment with modifications in accordance with the conditions set forth in this Order, as applicable, with staff review and approval.

Dated 3/8/2023 | 2:21 PM EST

BOARD OF ADJUSTMENT  
 CITY OF MIAMI BEACH, FLORIDA

DocuSigned by:

*Michael A. Belush*

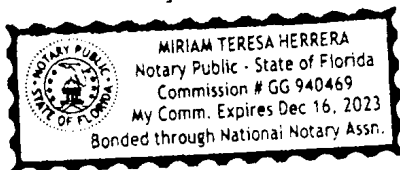
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Michael Belush, AICP  
 Planning & Design Officer  
 For the Chair

STATE OF FLORIDA )  
 COUNTY OF MIAMI-DADE )

The foregoing instrument was acknowledged before me this 8 day of March, 2023, by Michael Belush, Planning & Design Officer of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

[NOTARIAL SEAL]



*Miriam Herrera*

Notary:

Print Name: *Miriam Herrera*

Notary Public, State of Florida

My Commission Expires: *12-16-23*

Commission Number: *66940469*

Approved As To Form:  
 City Attorney's Office

DocuSigned by:

*Steven Rothstein*

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Filed with the Clerk of the  
 Board of Adjustment on

DocuSigned by:

*Jessica Gonzalez*

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