

# MIAMI BEACH

PLANNING DEPARTMENT  
Staff Report & Recommendation

Board of Adjustment

TO: Chairperson and Board Members

DATE: April 14, 2023

FROM: Thomas R. Mooney, AICP  
Planning Director



for TRM

SUBJECT: **ZBA23-0148**  
**1439 Alton Road**  
**Folio: 02-3222-001-0820**

An application has been filed requesting a distance separation variance from a religious institution in association with a new bar.

**RECOMMENDATION:**

Approval with conditions.

**LEGAL DESCRIPTION:**

Lot 22, Block 109, of 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.

**BACKGROUND:**

On March 8, 2023, the Design Review Board approved exterior modifications to the subject site.

**SITE DATA:**

Zoning: CD-2  
Future Land Use: CD-2  
Lot Size: 7,500 SF  
Maximum FAR: 11,250 SF | 1.5  
Tenant Space:  
New Bar: 1,680 SF (inside)  
756 SF (outside)

Two-Story commercial  
Year: 1935  
Architect: Unknown

**SURROUNDING PROPERTIES:**

East: 1949 single family home  
North: One-story commercial  
South: Two-story commercial  
West: One-story commercial

**THE PROJECT:**

The applicant has submitted plans entitled "INTERIOR BUILT-OUT FOR NEW BAR ON EXISTING SPAEC: FORMER KNOX MEDICAL PERMIT #BC18084", as prepared by **The Weber Studio**, dated signed and sealed January 10, 2023.

The applicant is proposing interior and exterior improvements to an existing commercial building as part of a new bar. The site contains three separate structures, and the proposed scope of work is for the rear two-story building facing Lenox Court.

The applicant is requesting the following variance:

1. A variance from the minimum 300 foot distance separation requirement between an alcoholic beverage establishment and a place of worship.
  - Variance requested from:

**Sec. 6-4. Location and Use Restrictions**

**(a)(2) Places of worship. No alcohol beverage shall be sold or offered for consumption in an alcoholic beverage establishment, including bottle clubs, within 300 feet of any property used as a place of worship, except in restaurants operating with full kitchens and serving full meals for consumption on the premises.**

**PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA**

The applicant has submitted plans and documents with the application that satisfy Article 1, Section 2 of the Related Special Acts, allowing the granting of a variance if the Board finds that practical difficulties exist with respect to implementing the proposed project at the subject property.

The applicant has submitted plans and documents with the application that indicate the following, as they relate to the requirements of Section 118-353(d), Miami Beach City Code:

- 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.

- 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 133, article II, as applicable.

**COMPLIANCE WITH ZONING CODE:**

A preliminary review of the project indicates that the application, as proposed, appears to be inconsistent with the following sections of the City Code:

**Sec. 130-33. Off-street parking requirements for parking districts nos. 2, 3, 4, 5, 6, 7, 8, and 9.**

(C) *[Parking district no. 6.] Except as otherwise provided in these land development regulations, when any building or structure is erected or altered in parking district no. 6, off-street automobile parking spaces shall be provided for the building, structure or additional floor area as follows. For uses not listed below, the off-street parking requirement shall be the same as for parking district no. 1 in section 130-32.*

(3) *Restaurant, outdoor cafe or bar: There shall be no parking requirement for individual establishments of 60 seats or less or 1,500 square feet or less of eating and/or drinking areas, up to a total aggregate square footage of 5,000 square feet per development site. For individual establishments over 60 seats or 1,500 square feet of eating and/or drinking areas, or for development sites with a total aggregate square footage of more than 5,000 square feet of these uses, there shall be one space per four seats or one space per 60 square feet of space not used for seating. A covenant running with the land, approved by the city attorney, shall be recorded to ensure that individual stores will not be reconfigured internally in a way that would increase the minimum parking requirement without conditional use approval and payment of a one-time parking impact fee for each required parking space.*

- A preliminary review indicates that 23 parking spaces are required for the proposed 91 seat bar. An annual fee, in-lieu of providing the required spaces on site, will be required. The total number of required spaces may be reduced as per Section 118-33(c)(6).
- Bicycle parking is required, in accordance with Section 118-33(c)(7).

Since the application was submitted, the applicant has indicated that the number of seats will be reduced so as to not trigger a parking requirement.

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 133-50(a) of the Land Development 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 Satisfied; Applicant will provide a recycle/salvage plan for demolition at time**

**of permitting.**

2. Windows that are proposed to be replaced shall be hurricane proof impact windows.  
**Satisfied**
3. Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.  
**Satisfied**
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 Satisfied**
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-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.  
**Not Applicable**
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.  
**Satisfied**
8. Existing buildings shall be, where reasonably feasible and economically appropriate, 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 of 54 of the City Code.  
**Not Applicable**
10. In all new projects, water retention systems shall be provided.  
**Not Applicable**
11. Cool pavement materials or porous pavement materials shall be utilized.  
**Satisfied**

12. The project design shall minimize the potential for a project causing a heat island effect on site.

**Satisfied**

**ANALYSIS:**

The applicant is proposing a new bar in an existing two-story building on Alton Road. The site contains three existing buildings - two one-story buildings at the front separated by a covered terrace leading to the third subject two-story building. The applicant is proposing to convert the existing building located at the rear of the site into a new bar with a variety of seating areas.

As part of the commercial build-out the Design Review Board recently approved exterior site modifications. These modifications include an outdoor seating area under three (3) new canopy trees, three (3) re-configured parking spaces perpendicular to and accessed from Lenox Court, and landscaped medians between the new parking and outdoor seating area. The proposed new landscaping will enhance the appearance of the property as viewed from the alley.

**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 a place of worship.
  - Variance requested from:

**Sec. 6-4. Location and Use Restrictions**

**(a)(2) Places of worship. No alcohol beverage shall be sold or offered for consumption in an alcoholic beverage establishment, including bottle clubs, within 300 feet of any property used as a place of worship, except in restaurants operating with full kitchens and serving full meals for consumption on the premises.**

The nearest place of worship, Pentcostal Church of God, is located approximately 204 feet from the proposed new bar, at 1431 Alton Road. Unless an alcoholic beverage establishment is also operating as a restaurant with a full kitchen, the minimum distance separation requirements apply. As proposed, the establishment does not include a kitchen.

The subject property, like others along Alton Road, is zoned CD-2; however the properties immediately to the east, separated only by an alley, are zoned single family and part of the Flamingo Park Historic District. Due to the close proximity to this historic single family district, staff has some concerns regarding the outdoor seating associated with the proposed new bar. These concerns have been expressed to the applicant, and a concerted effort has been made to limit potential negative impacts to the adjacent homes. This includes the applicant agreeing to no amplified music at anytime in the outdoor area, and patrons entering and exiting the outdoor area from Alton Road only, with the exception of emergency egresses. Additionally the applicant is propsoing to cease outdoor operations by 10:00 p.m. Sundays – Wednesdays and 11:00 p.m. Thursdays – Saturdays.

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Staff is recommending that the outdoor outdoor portions of the business close by 9:00 p.m. Sunday through Thursday, and 10:00 p.m. Saturday and Sunday. Additionally, staff is recommending that the entire business, including the interior portion, close by 2:00 a.m. every day. These restrictions are warranted in order to mitigate the variance requested and the potential negative impacts due to the close proximity of the establishment to the adjacent single family district.

Staff is also recommending that any expansion of the establishment, as well as any increase in the number of seats above the 60 seats proposed by the applicant, 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 a business tax receipt (BTR) for the establishment, at which time the hours of operations for the establishment can be evaluated.

**RECOMMENDATION:**

In view of the foregoing analysis, staff recommends the application be **approved, including the requested variance**, subject to the conditions enumerated in the attached Draft Order, which address any inconsistencies with the aforementioned Practical Difficulty and Hardship Criteria and Sea Level Rise criteria.

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

**MEETING DATE:** April 14, 2023

**PROPERTY:** 1439 Alton Road

**FOLIO:** 02-3222-001-0820

**FILE NO.** ZBA23-0148

**IN RE:** An application for a distance separation variance from a religious institution in association with a new bar.

**LEGAL**

**DESCRIPTION:** Lot 22, Block 109, of 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.

**FINAL ORDER**

The applicants, Abbey Casita LLC / Ray Rigazio, Manager, 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 a place of worship.

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;

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 variance and imposes the following conditions based on its authority in Section 118-354 of the Miami Beach City Code:
1. This approval is granted to Abbey Casita 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.
  2. The approval herein is for up to a maximum of 60 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 indoor portion of the establishment shall close no later than 2:00 a.m., seven days a week.
  5. All outdoor areas of the establishment shall cease all operations no later than 9:00 p.m. from Sunday to Thursday and no later than 10:00 p.m. on Friday and Saturday. Patrons of the establishment shall be prohibited in these areas after these times.
  6. Outdoor speakers shall be prohibited anywhere on the property, except for life safety purposes.
  7. With the exception of emergency egress, all patrons shall enter and exit from the west side of the building. Signage shall be included along the alley indicating this requirement, subject to the review and approval of staff.
  8. All loading shall take place from the alley between 8:00 am and 3:00 pm.
  9. Daily trash pick-up shall be required.
  10. The applicant shall return to the Board for a progress report within 90 days of the issuance of a business tax receipt (BTR) for the establishment, at which time the Board may modify the conditions in a non-substantive matter, including hours of operations for the outdoor areas.



11. A copy of all pages of the recorded Final Order shall be scanned into the plans submitted for planning permit and shall be located immediately after the front cover page of the permit plans.
12. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
13. The conditions of approval herein are binding on the applicant, the property's owners and all successors in interest and assigns.
14. 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.
15. 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.
16. 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(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.

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.

When requesting a planning permit, the plans submitted to the Planning 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 Planning 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,

