

**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:

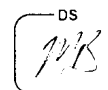
- A. Based on the plans and documents submitted with the application, testimony and information provided by the applicant, and the Planning Department Staff Report, the project as submitted satisfies the requirements of Section 118-353(d) of the Miami Beach Code. Accordingly, the Board of Adjustment 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;

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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 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. All outdoor areas of the establishment shall cease all operations no later than 10:00 p.m. from Sunday to Thursday and no later than 11:00 p.m. on Friday and Saturday. Patrons of the establishment shall be prohibited in these areas after these times.
5. As proffered and agreed to by the applicant, the applicant agrees and acknowledges that the applicant does not hold a vested property right in permitted hours for the sale of alcoholic beverages. As such, the subject establishment is not entitled to "grandfather" status as to its existing hours of sale. The establishment shall be required to comply with any and all future Ordinances adopted by the City Commission with regard to alcohol hours of sale.
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.

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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, 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 Planning Permit should expire for any reason, and not reinstated by the Planning Director or designee, the Variance Approval will expire and become null and void.

5/15/2023 | 3:11 PM EDT

Dated \_\_\_\_\_.

BOARD OF ADJUSTMENT  
CITY OF MIAMI BEACH, FLORIDA

DocuSigned by:

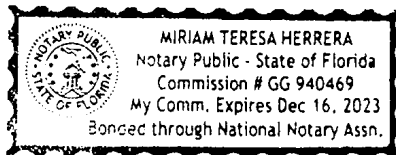
*Michael A. Belush*

BY: \_\_\_\_\_DEC3ECF2EB68404...

Michael Belush, AICP  
Planning & Design Officer  
For the Chair

STATE OF FLORIDA )  
COUNTY OF MIAMI-DADE )

The foregoing instrument was acknowledged before me this 16 day of May, 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: *GG 940469*

Approved As To Form: Steven Rothstein ( 5/15/2023 | 2:08 PM EDT )  
City Attorney's Office \_\_\_\_\_  
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Filed with the Clerk of the Board of Adjustment on Jessica Gonzalez ( 5/15/2023 | 4:43 PM EDT )  
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*MB*