

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

MEETING DATE: October 13, 2023

PROPERTY: 725 71st Street

FOLIO: 02-3211-002-0090

FILE NO. ZBA23-0155

IN RE: An application for a distance separation variance from religious institutions in association with the sale of beer & wine.

LEGAL

DESCRIPTION: Easterly 30 FT of Lots 5 & 6, Block 2, of Normandy Beach South, according to the Plat thereof, as recorded in Plat Book 21, Page 54 of the Public Records of Miami-Dade County, Florida.

FINAL ORDER

The applicant, Domenico D'Addio, 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 places 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 2.8.3 of the Land Development Regulations. Accordingly, the Board of Adjustment has determined the following:

- i. 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;
- ii. The special conditions and circumstances do not result from the action of the applicant;
- iii. Granting the variance requested will not confer on the applicant any special privilege that is denied by these land development regulations to other lands, buildings, or structures in the same zoning district;
- iv. Literal interpretation of the provisions of these land development regulations would deprive the applicant of rights commonly enjoyed by other properties in the same

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zoning district under the terms of these land development regulations and would work unnecessary and undue hardship on the applicant;

- v. The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;
- vi. The granting of the variance will be in harmony with the general intent and purpose of these land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare;
- vii. 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; and
- viii. 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 7, article I, as applicable.

B. The Board hereby **Approves** the requested variance and imposes the following conditions based on its authority in Section 2.8.4 of the Land Development Regulations.

- 1. This approval is granted to Domenico D'Addio as owner of gelato-go 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 40 seats within the entirety of the establishment, interior and exterior. 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. Alcohol sales shall cease by 9pm nightly.
- 5. The applicant shall return to the Board for a progress report within 90 days of the issuance of an alcohol license for Beer and Wine, at which time the Board may modify the conditions in a non-substantive matter, including hours of operations for the sale of alcohol.
- 6. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
- 7. The conditions of approval herein are binding on the applicant, the property's owners and all successors in interest and assigns.
- 8. 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

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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.

9. 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.
10. 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 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 in accordance with the conditions set forth in this Order, as applicable, with staff review and approval.

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 the alcohol license 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 Section 2.2.4.6 of the Land Development Regulations; the granting of any such extension of time shall be at the discretion of the Board.

In accordance with Chapter 2 of the Land Development Regulations, the violation of any conditions and safeguards that are a part of this Order shall be deemed a violation of the land development regulations of the City Code. Failure to comply with this **Order** shall subject the application to Chapter 2 of the Land Development Regulations, for revocation or modification of the application.

Dated 10/23/2023 | 1:15 PM EDT.

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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 24 day of October, 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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(10/23/2023 | 10:34 AM EDT)

Filed with the Clerk of the
Board of Adjustment on

DocuSigned by:

Jessica Gonzalez

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(10/24/2023 | 7:20 AM EDT)

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JK