


# MIAMIBEACH

## PLANNING DEPARTMENT

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### BOARD OF ADJUSTMENT STAFF REPORT

FROM: Thomas R. Mooney, AICP   
Planning Director

DATE: March 02, 2018 Meeting

RE: File No. ZBA17-0056  
**1429 Washington Avenue – Restaurant**

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The applicant, FDP La Caffe Creperie, LLC/DBA La Creperie Caffe, is requesting a modification to a previously approved variance for the reduction from the minimum required 300 foot distance separation between a business that sells alcoholic beverages and an existing educational facility. Specifically, the applicant is requesting to change the name of the owner/operator.

#### **HISTORY:**

A variance to sell alcoholic beverages at this location was approved by the Board on June 6, 1997. Modifications to the variance were approved by the Board on November 7, 2008 (to add liquor) and on June 1, 2012 (to change the name of the operator).

#### **LEGAL DESCRIPTION:**

See attached 'Exhibit A'.

#### **SITE DATA:**

Zoning -	CD-2 (Commercial, Medium Intensity)
Future Land Use Designation-	CD-2 (Commercial, Medium Intensity)
Lot Size -	4,322 S.F.
Existing FAR -	~4,034 S.F.*
Existing Use -	Commercial / Restaurant
Proposed Use -	Same

\*As per Miami-Dade Property Appraiser.

#### **THE PROJECT:**

The applicant has submitted documents dated November 7, 2017.

#### **REQUEST:**

The applicant requests to modify Condition No. 9 of the June 1, 2012 Final Order No. 2578, which granted the approval of the variance to the previous applicant and operator to permit the transfer of approval to FDP La Caffe Creperie, LLC/DBA La Creperie Caffe as follows:

9. This approval is granted to ~~JabaFoods, LLC. FDP La Caffe Creperie, LLC/DBA La Creperie Caffe~~ only. Any changes ~~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.~~ in ownership or operator shall require new owner or operator to return to the Board of Adjustment and seek a modification to the final Order transferring approval to the new owner or operator.

**STAFF ANALYSIS:**

The site contains a one story commercial building constructed in 1920. The applicant occupies the space located at the northeast side of the building at the ground level. In 1997 the Board of Adjustment granted the original variance for a restaurant serving beer and wine within the minimum required distance separation from an educational facility; in this case 100 feet from the Fienberg Fisher K-8 Center located at 1420 Washington Avenue. Two subsequent modifications were approved for the restaurant to change ownership and/or operator in 2008 and 2012. A specific condition of approval for this variance states that if any change of operator or ownership by more than 50% occurs, a modification to the conditions shall be required to transfer the approved variance to the new operator who shall be introduced to the Board to express understanding of the conditions imposed for the operation of the establishment. Staff would also note, that although the word "liquor" is being added to the Final Order, the addition of liquor was approved by the Board in 2008, but was not specifically added to the Final Order at that time.

The restaurant space, subject of this application has a business license approved by the City and no violations are outstanding on the property. In summary, staff is supportive of the application and recommends that the modifications be APPROVED.

**RECOMMENDATION:**

In view of the foregoing analysis, staff recommends **approval** of the requested modification, subject to the conditions outlined in the attached final order.

'Exhibit A'  
Legal Description

A Southerly part of that certain un-numbered Lot lying immediately North of Lot 16, Block 26, OCEAN BEACH FLA. ADDITION NO. 2, as recorded in Plat Book 2 at Page 56, of the Public Records of Dade County, Florida. Said un-numbered Lot now known as Lot 17.

Begin (P.O.B.) at the common Easterly boundaries of said Lots 16 and 17 of the above-referenced subdivision and run due West along an assumed bearing, along the dividing line between Lots 16, and 17, a distance of 130.00 feet to the common Westerly corner of said Lots 16 and 17, said corner being on the Easterly line of Washington Avenue; thence due North along the Westerly line of Lot 17, along the Easterly line of Washington Avenue, a distance of 27.82 feet to the Northerly face of a C.B.S. wall of a one story C.B.S. Building; thence run N. 80 degrees 47 minutes 43 seconds East along the Northerly face of said C.B.S. wall, a distance of 106.02 feet to the Easterly face of a C.B.S. Building Wall; thence run S. 0 degrees 15 minutes 08 seconds East along the Easterly face of a C.B.S. Building wall, a distance of 24.30 feet to the Southerly face of a C.B.S. wall; thence run N. 89 degrees 25 minutes 53 seconds East, a distance of 25.24 feet to the Easterly line of said Lot 17, thence run due South along the Easterly line of Lot 17, a distance of 20.73 feet to the Point of Beginning (P.O.B.).

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

**PROPERTY:** 1429 Washington Avenue

**FILE NO.** ZBA17-0056

**IN RE:** The application for a modification to a previously approved variance for the reduction from the minimum required 300 foot distance separation between a business that sells alcoholic beverages and an existing educational facility. Specifically, the applicant is requesting to change the name of the owner/operator.

**LEGAL DESCRIPTION:** See attached 'Exhibit A'.

**MEETING DATE:** March 2, 2018.

**MODIFIED ORDER**

The applicant, FDP La Caffè Creperie, LLC/DBA La Creperie Caffè, filed an application with the Planning Department for modifications to a previously approved variance granted on June 6, 1997 associated with the sale/service of alcohol within the minimum required distance separation from an educational facility, The applicant requests to modify Condition 9 of the June 1, 2012 Final Order No. 2578, which granted the approval of the variance to the previous applicant and operator to permit the transfer of approval to FDP La Caffè Creperie, LLC/DBA La Creperie Caffè, as follows:

9. This approval is granted to ~~JabaFoods, LLC.~~ FDP La Caffè Creperie, LLC/DBA La Creperie Caffè only. Any changes ~~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. in ownership or operator shall require new owner or operator to return to the Board of Adjustment and seek a modification to the final Order transferring approval to the new owner or operator.

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 hereby **Approves** the modification requested and imposes the following conditions based on its authority in Section 118-354 of the Miami Beach City Code. ~~Strike-through~~ denotes deletion of previous language and underlining denotes new language:

1. The applicant shall comply with all of the original conditions of approval granted by this Board on June 6, 1997, except as modified herein.
2. During school hours, beer, ~~and~~ wine and liquor shall only be served with meals. Otherwise, the sale of beer, ~~and~~ 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.
3. The full food menu shall be available at all times that the establishment is open.
4. 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.
5. Music shall be limited to only ambient background music and no entertainment license shall be approved.
6. The establishment shall not be converted to a stand-alone bar, or dance hall.
7. The applicant shall satisfy any City Liens prior to the issuance of a revised Certificate of Use and Occupational License for beer and wine.

8. The Board of Adjustment shall retain jurisdiction of this file. The applicant must present a progress report to the Board three months after obtaining the appropriate beer, and wine and liquor license; the Board shall then determine the necessity and timing of subsequent reports.
9. This approval is granted to ~~JabaFoods, LLC. FDP La Caffe Creperie, LLC/DBA La Creperie Caffe~~ only. Any changes ~~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. in ownership or operator shall require new owner or operator to return to the Board of Adjustment and seek a modification to the final Order transferring approval to the new owner or operator.
10. 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 specially 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.
11. If there is any change in the use or operation of the establishment, including but not limited to the establishment 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.
12. The applicant shall comply with all conditions imposed (if applicable) by the Public Works Department.
13. 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.
14. The conditions on this Order are binding on the applicant, the property's owners and all successors in interest and assigns.
15. 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.
16. 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.

17. The Operator shall be responsible for maintaining the areas adjacent to the facility, such as the sidewalk on Washington Avenue and Collins Court in excellent condition, keeping these areas in a clean condition, free of all refuse, at all times.
18. 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.
19. Except as may be required by the Fire, Building, or Life Safety Codes, no loudspeakers shall be affixed to or otherwise located on the exterior of the premises.
20. 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.
21. 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.
22. A copy of all pages of the recorded Final Order shall be scanned into the plans submitted for building permit, and shall be located immediately after the front cover page of the permit plans.
23. This modified 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(s) Approval is GRANTED for the above-referenced project, subject to those certain conditions specified in Paragraph B (Condition Nos. 1-23, inclusive) hereof, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with documents approved by the Board of Adjustment, as determined by staff, dated November 7, 2017, 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 the Board-approved plans, this approval does not mean that such handicapped access is not required.





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