

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

PROPERTY: 1443 Washington Avenue

FILE NO. ZBA18-0066 f/k/a BOA 1888

IN RE: The application for a modification to a previously approved variance to reduce the required 300 foot distance separation between a business that sells alcoholic beverages and an existing educational facility in order to operate a restaurant and sell alcoholic beverages for consumption on premises. Specifically the applicant is requesting changes to the conditions of approval, including a change of owner/operator.

LEGAL DESCRIPTION: Lots 3 thru 5, less the southerly 8.65 feet for right of way, block 2A of "Espanola Villas", According to the Plat Thereof, as recorded in Plat Book 7 at Page 145 of the Public Records of Miami-Dade County, Florida.

MEETING DATE: September 7, 2018

MODIFIED ORDER

The applicant, Andrix USA, LLC, filed an application with the Planning Department for modifications to a previously approved variance granted on April 7, 1988, associated with the sale/service of alcohol within the minimum required distance separation from an educational school and/or place of worship. The applicant requests to modify Condition 3 of the April 7, 1988 Case No. BOA 1888, which granted the approval of the variance to the previous applicant in order to permit the transfer of approval to Adrix USA, LLC. The original approval is attached as "Exhibit A" for reference. The conditions approved on April 7, 1988 are superseded as follows:

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 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 imposes the following conditions based on its authority in Section 118-354 of the Miami Beach City Code:

1. During school hours, alcohol shall only be served with meals. There shall be no sale of package goods.
2. 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.
3. The establishment shall not be converted to a stand-alone bar, or dance hall and the full food menu shall be available at all times that the establishment is open.
4. The applicant shall satisfy any City Liens prior to the issuance of a revised Certificate of Use and Occupational License for beer and wine.
5. The Board of Adjustment shall retain jurisdiction of this file.
6. This approval is granted to Andrix USA, LLC only. Any changes in ownership or operator shall require the new owner or operator to submit an affidavit approved by City to the City of Miami Beach Planning Department transferring approval to the new owner or operator and acknowledging acceptance of all conditions established herein prior to the issuance of a new Business Tax Receipt.
7. 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.
8. The Operator shall be responsible for maintaining the areas adjacent to the facility, such as the sidewalk on Espanola Way and Washington Avenue in excellent condition, keeping these areas in a clean condition, free of all refuse, at all times.

9. 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, 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.
10. 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.
11. 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.
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. 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.
16. This modified Order shall be recorded, in the Public Records of Miami-Dade County; prior to the issuance of a Building Permit.

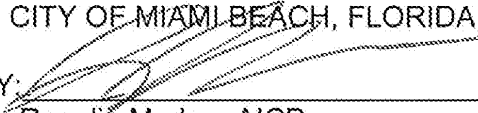
IT IS HEREBY ORDERED, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which are adopted herein, including staff recommendations, as modified by the Board of Adjustment, that the application to modify the previously approved 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.

Dated this 7th day of September, 2018.

Meeting Date: September 7, 2018

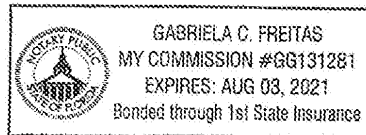
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CITY OF MIAMI BEACH, FLORIDA

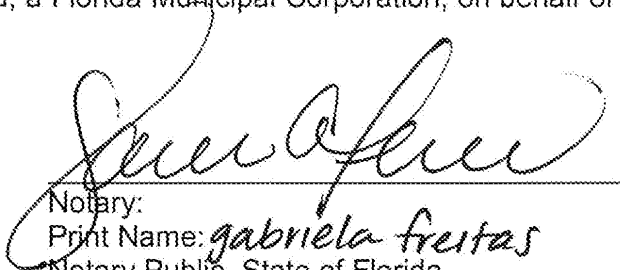
BY: 
Rogelio Madan, AICP
Chief of Community Planning & Sustainability
For the Chair

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 7th day of September, 2018, by Rogelio Madan, Chief of Community Planning and Sustainability of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.



[NOTARIAL SEAL]


Notary:
Print Name: gabriela freitas
Notary Public, State of Florida
My Commission Expires: 8-3-21
Commission Number: gg131281

Approved As To Form:
City Attorney's Office (Nick Kallergis) 9/11/2018

Filed with the Clerk of the Board of Adjustment on Jessie Gault (9/19/18)

Exhibit A

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88R180310

OFF REC 13689 PG 807

BEFORE THE ZONING BOARD OF ADJUSTMENT
OF THE CITY OF MIAMI BEACH, FLORIDA

IN RE: The application of
BOBADILLA, INC.

CASE NO: 1888

ORDER

The applicant, BOBADILLA, INC. filed an application with the Director of the Planning and Zoning Department for a variance to waive 1) all of the required four off-street parking spaces in order to increase the seating capacity of an existing restaurant from 30 to 46 seats, and 2) 98 ft. of the minimum required 300 ft. separation between a business that sells alcoholic beverages and a school and/or place of worship.

BOBADILLA, INC. d/b/a
OSTERIA DEL TEATRO
1443 WASHINGTON AVENUE
LOTS 3 to 5 INC.; BLOCK 2-A
ESPAÑOLA VILLAS;
PB 7/145

Notice of the request for variance was given as required by law and mailed to owners of property within a distance of 375 feet of the exterior limits of the property on which application was made. The Board finds that the property in question is located in the C-5 Zoning District. The Board further finds:

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, to wit:

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.

IT IS THEREFORE ORDERED, by the Board, that a variance (s) as requested and set forth above be:

APPROVED with the following conditions:

OFF
REC 13689 PG 808

1. Board shall retain jurisdiction with Mr. Holtz as the Board's representative.
2. All City liens are to be satisfied by April 11, 1988.
3. Variances shall be granted to the present applicant, not the property.
4. The applicant and his successors shall contribute an amount of money equivalent to the purchase of two parking decals (cash in lieu of parking decal program) on an annual basis. The first payment shall be received by the City prior to the issuance of a building permit and/or Occupational License and subsequent payment shall be received annually on the anniversary date that the Certificate of Occupancy for the restaurant was issued. Funds generated through the receipt of cash in lieu of parking decal program shall be placed in a City account entitled, "Washington Avenue Improvement Program", which is dedicated towards the construction of improvements in the vicinity of the site and which are consistent with the Department's neighborhood plan for this area; and

The restaurant shall be limited to the existing signage on the building.
5. Owner shall provide adequate grease interceptor and garbage facilities.
6. The existing garbage room to be air conditioned and serviced on a daily basis by a private hauler. Final improvements or alternatives shall be approved by the Building Department.

PROVIDED, the applicant shall take all necessary steps to have permit issued by the Building Department within a period of two (2) years from the date of hearing (April 7, 1988), unless the Board specifies a more restrictive time limitation, otherwise this order shall become null and void, unless the issuance of such permit is stayed by an appeal to the appropriate court. This order does not constitute a permit, but upon presentation of this Order to the Planning and Zoning Department, a permit shall be approved and processed in accordance and pursuant to the ordinances of the City of Miami Beach.

Dated this 6th day of May, 1988.

ZONING BOARD OF ADJUSTMENT OF
THE CITY OF MIAMI BEACH,
FLORIDA

BY: Barton S. Goldberg
BARTON S. GOLDBERG
CHAIRMAN

STATE OF FLORIDA)
COUNTY OF DADE) SS

BEFORE ME personally appeared BARTON S. GOLDBERG to me well known and known to me to be the person described in and who

DEF
REC 13689 PG 809

executed the foregoing instrument, and acknowledged to and before
me that he executed said instrument for the purpose therein
expressed.

WITNESS my hand and official seal, this 6th day of
May A.D. 1988.

Notary Public, State of Florida at Large,
My Commission Expires August 25, 1988
Bonded thru Fidelity & Deposit Company of Maryland
My commission expires!

Anna Phillips
NOTARY PUBLIC
STATE OF FLORIDA



Ron Rumbaugh, Public Services Director
Jud Kurlancheek, Planning & Zoning Director

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RECORDED IN OFFICIAL RECORDS BOOK
OF DADE COUNTY, FLORIDA
RECORD VERIFIED
RICHARD P. BRINKER
CLERK DADE COUNTY