

MIAMI BEACH

PLANNING DEPARTMENT

BOARD OF ADJUSTMENT STAFF REPORT

FROM: Thomas R. Mooney, AICP 
Planning Director

DATE: December 4, 2015 Meeting

RE: **File No. 3779**
Florida Fine Wine and Spirits, LLC.
1139 5th Street

90-Day Progress Report:

The subject property is located at the corner of Alton Road and 5th Street within the 5th and Alton Shopping Center. The retail space is situated at the southwest corner of the property with the main entrance toward the center of the building. A variance was approved on March 6, 2015, to waive 28.49 feet of the minimum required 300 foot separation between a business that sells alcoholic beverages for both on premises and off premises consumption and a place of worship, Saint Francis de Sales Catholic Church, in order to sell beer, wine and liquor for off-site and on-site consumption at a distance of 271.51 feet from the church.

Condition B2 of the Final Order requires that a progress report be presented to the Board within 90 days after obtaining the Occupational License. The applicant, Florida Fine Wine and Spirits, LLC is before the Board at this hearing for this purpose.

Staff would note that there are no open violations on the property at this time and that the applicant has obtained all required permits for the operation of the business. Attached is a copy of the Final Order associated with this variance approval.

TRM:MAB:IV

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

PROPERTY: 1139 5th Street

FILE NO. 3779

IN RE: The application for a variance to waive the minimum required 300 foot distance separation between a business that sells alcoholic beverages and an existing religious institution in order to sell alcoholic beverages for both on premises and off premises consumption.

LEGAL DESCRIPTION: See attached Exhibit 'A'.

MEETING DATE: March 6, 2015

ORDER

The applicant, Florida Fine Wine and Spirits, LLC., filed an application with the Planning Department for the following variance in order to sell alcoholic beverages for both on premises and off premises consumption:

1. A variance to waive 28.49 feet of the minimum required 300 foot separation between a business that sells alcoholic beverages for both on premises and off premises consumption and a place of worship, Saint Francis de Sales Catholic Church, in order to sell beer, wine and liquor for off-site and on-site consumption at a distance of 271.51 feet from the church.

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;

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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. 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.
2. The Board of Adjustment shall maintain jurisdiction of this file. Within ninety (90) days after obtaining the Occupational License to sell beer, wine and liquor, the operator shall make a progress report to the Board. The Board reserves the right to modify the conditions of this approval at the time of a progress report, in a non-substantive manner, including modifications to the hours of operation, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports.
3. This approval is granted to Florida Fine Wine and Spirits, LLC. only. Any change of operator, or ownership 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. If deemed necessary, at the request of the Planning Director, the applicant shall provide a progress report to the Board. The Board reserves the right to modify the Variances approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address problems and to determine the timing and need for future progress reports.
4. 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.
5. 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

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period up to six (6) months), the variance shall be subject to Section 118-356, City Code, for revocation or modification of the variance.

6. The applicant shall comply with all conditions imposed (if applicable) by the Public Works Department.
7. The applicant shall obtain a full building permit within eighteen months (18) months from the date of this hearing. If the full building permit is not obtained within the specified time limits, the applicant shall, prior to expiration of such period, apply to the Board for an extension of time. At the hearing on such application, the Board may deny or approve the request and modify the above conditions or impose additional conditions. Failure to comply with this order shall subject the variance to Section 118-356, City Code, for revocation or modification of the variance.
8. The conditions on this Order are binding on the applicant, the property's owners and all successors in interest and assigns.
9. 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.
10. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
11. 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.
12. 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.
13. This 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 Approval is GRANTED for the above-referenced project, subject to those certain conditions specified in Paragraph B (Condition Nos. 1-13, inclusive) hereof, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans approved by the Board of Adjustment, as determined by staff, entitled "TOTAL WINE", as prepared by BRR Architecture, signed and sealed January 9, 2015, modified in accordance with the conditions set forth in this Order and staff review and approval.

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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.

When requesting a building permit, the plans submitted to the Building 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 Building 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 Building Permit should expire for any reason (including but not limited to construction not commencing and continuing, with required inspections, in accordance with the applicable Building Code), and not reinstated by the Building Official or designee, the Variance Approval will expire and become null and void.

Dated this 31st day of MARCH, 2015.

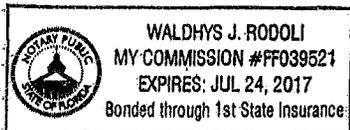
BOARD OF ADJUSTMENT
CITY OF MIAMI BEACH, FLORIDA

BY: Michael Belush
Michael Belush, AICP
Planning and Zoning Manager
For the Chair

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 31st day of March, 2015, by Michael Belush, Planning and Zoning Manager of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

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Waldhys J. Rodoli
Notary:
Print Name: Waldhys J. Rodoli
Notary Public, State of Florida
My Commission Expires: 7-24-2017
Commission Number: FF039521

[NOTARIAL SEAL]

Approved As To Form:
City Attorney's Office

[Signature], 3/30/2015

Filed with the Clerk of the Board of Adjustment on

3/31/15 [Signature]

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OFF. REC. 1892904252

RECORDED IN OFFICIAL RECORDS BOOK
OF DADE COUNTY, FLORIDA
RECORD VERIFIED
HARVEY RUVIN
CLERK CIRCUIT COURT

Exhibit "A"
LEGAL DESCRIPTION OF PROPERTY

(Old Parcels)

Lots 4 through 16, in Block 104, of OCEAN BEACH FLORIDA, ADDITION NO. 3, according to the Plat thereof, recorded in Plat Book 2, Page 81, of the Public Records of Miami-Dade County, Florida;

Less and except

The South 20 feet of the East 68 feet of Lot 11; the East 68 feet of Lot 10, less the South 10 feet of the West 25 feet of the East 68 feet thereof; and the East 43 feet of Lot 9, subject to the Public Dedication of the South 10 feet thereof, all in Block 104, of OCEAN BEACH FLORIDA, ADDITION NO. 3, according to the Plat thereof, recorded in Plat Book 2, Page 81, of the Public Records of Miami-Dade County, Florida;

And less and except

The North 90 feet of the East 50 feet of Lots 7 and 8, in Block 104, of OCEAN BEACH FLORIDA, ADDITION NO. 3, according to the Plat thereof, recorded in Plat Book 2, Page 81, of the Public Records of Miami-Dade County, Florida.

Subject to publicly dedicated rights of way, if any.

Folio Numbers:

- 02-42030098270
- 02-42030098280
- 02-42030098290
- 02-42030098300
- 02-42030098320
- 02-42030098330
- 02-42030098340
- 02-42030098390
- 02-42030098400

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