


MIAMI BEACH

PLANNING DEPARTMENT

BOARD OF ADJUSTMENT STAFF REPORT

FROM: Thomas R. Mooney, AICP 
Planning Director

DATE: September 7, 2018 Meeting

RE: File No. ZBA18-0066
1443 Washington Avenue – Restaurant

The applicant, Andrix USA LLC, is requesting 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

RECOMMENDATION:

Approval of the requested modification.

HISTORY:

A variance to reduce the minimum distance separation requirements for the sale of alcoholic beverages at this location was approved by the Board on April 7, 1988, pursuant to BOA File No. 1888.

At the July 6, 2018 Board of Adjustment (BOA) meeting, the application was continued to the September 7, 2018 BOA meeting.

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.

SITE DATA:

Zoning -	CD-2 (Commercial, Medium Intensity)
Future Land Use Designation-	CD-2 (Commercial, Medium Intensity)
Lot Size -	12,300 S.F.*
Existing FAR -	~17,589 S.F.*
Existing Use -	Commercial / Restaurant
Proposed Use -	Same

*As per Miami-Dade Property Appraiser.

THE PROJECT/REQUEST:

The applicant has submitted documents dated March 15, 2018. The applicant is requesting a modification 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" of the draft order for reference.

STAFF ANALYSIS:

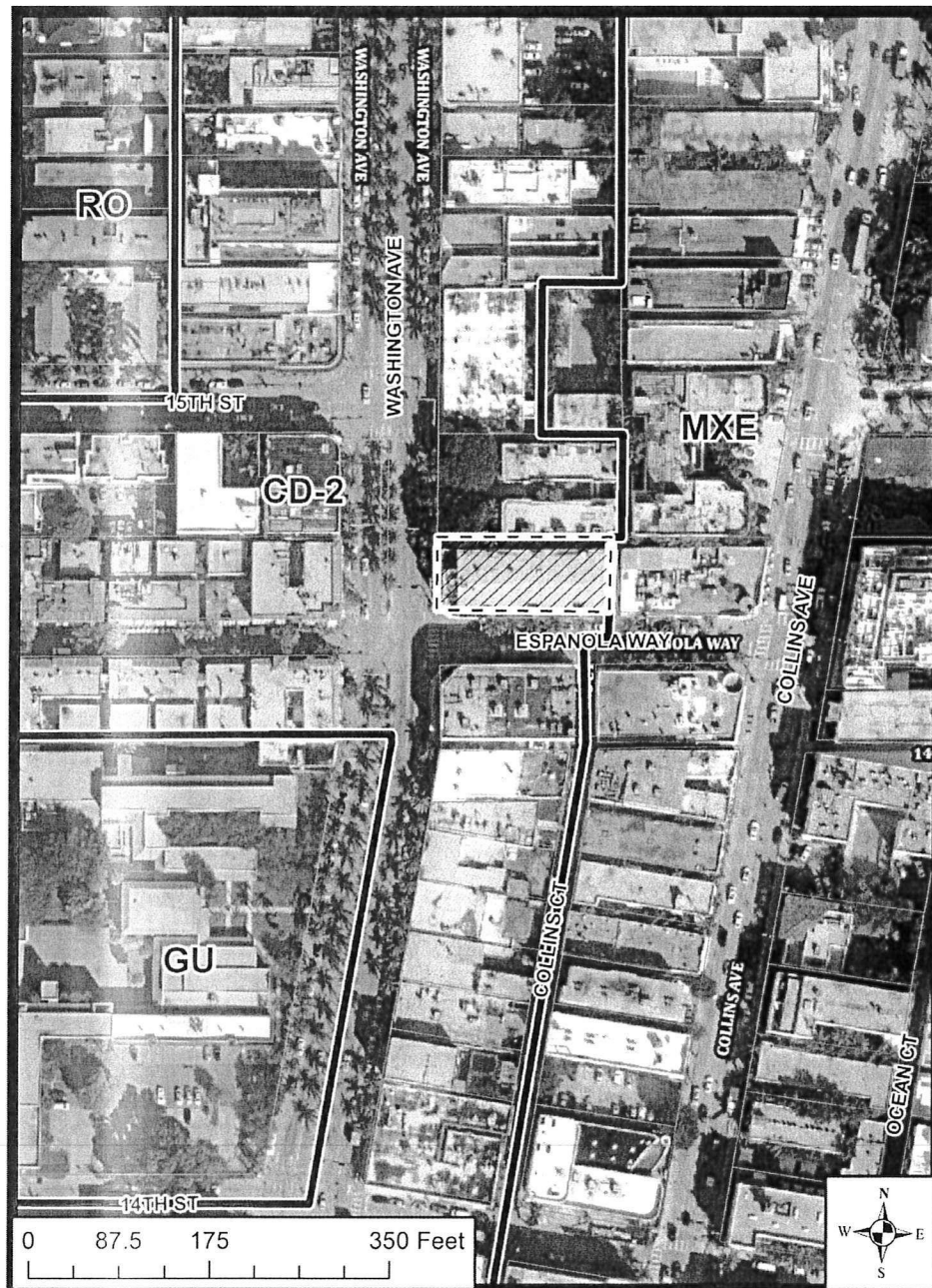
Staff supports the requested modification, allowing the transfer of the original variance to the restaurant's new owner(s)/operator. If approved, the long standing restaurant will be allowed to continue operation, uninterrupted.

Staff will note that in addition to the requested modification, additional conditions are being recommended. These conditions, listed in the attached draft final order, are consistent with those imposed on similar variance applications in recent years.

RECOMMENDATION:

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

ZONING/SITE MAP



**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 _____ day of _____, 2018.

