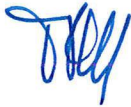


MIAMI BEACH

PLANNING DEPARTMENT

BOARD OF ADJUSTMENT STAFF REPORT

FROM: Thomas R. Mooney, AICP 
Planning Director

DATE: September 7, 2018 Meeting

RE: File No. ZBA18-0067
437 Espanola Way – Restaurant

The applicant, Manugio Corp., is requesting variances to reduce the required 300 foot distance separation between a business that sells alcoholic beverages and an existing educational facility and to reduce the minimum required seats to operate a restaurant and sell alcoholic beverages for consumption on premises.

STAFF RECOMMENDATION:

Approval of the requested variances with conditions.

LEGAL DESCRIPTION:

Lots 1, 2, 3, 4, 5 and 6, less the south 3 feet thereof for street, in Block 3-A, of First Addition to Whitman's Subdivision of Espanola Villas, According to the Plat thereof Recorded in Plat Book 9, Page 147, of the Public Records of Dade County, Florida.

HISTORY:

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

SITE DATA:

Zoning -	CD-2 (Commercial, Medium Intensity)
Future Land Use Designation-	CD-2 (Commercial, Medium Intensity)
Lot Size -	25,272 S.F.*
Existing FAR -	~49,683 S.F.*
Existing Use -	Commercial / Restaurant / Hotel
Proposed Use -	Same

**As per Miami-Dade Property Appraiser.*

THE PROJECT:

The applicant has submitted the following plans:

- Boundary Survey, sheet 1 of 1, by Lannes and Garcia, Inc., dated April 14, 2018
- Specific Purpose Survey, sheet 1 of 1, by Lannes and Garcia, Inc., dated April 12, 2018
- Side Walk Café Seating at: Boteco Copacabana, by G & S Infrastructure, Inc.
 - Location Map, sheet LM-1, dated May 2, 2018

- Site Plan, sheet SP-1, dated May 2, 2018
- Floor Plan, sheet A-1, dated May 2, 2018

The existing operation consists of a restaurant with the service of beer and wine, which has been in operation since 2010 under ZBA File No. 3310. The applicant is proposing to modify the existing business operations by expanding its services to include the service of full liquor. The proposed additional service of full liquor is the subject of the additional variance request.

The applicant is requesting the following variance(s):

1. A variance to reduce 185 feet of the minimum required 300 foot separation between a business that sells alcoholic beverages for consumption and an existing educational facility, Fienberg Fisher K-8 Center, in order to sell beer, wine and liquor for on-site consumption at a distance of 115 feet from the school.

- Variance requested from:

Section 6-4 Location and use restrictions

(a) *Generally. The following location and use restrictions are applicable for facilities selling or offering alcoholic beverages for consumption:*

(1) Educational facilities: No alcoholic beverage shall be sold or offered for consumption in a commercial use within 300 feet of any property used as a public or private school operated for the instruction of minors in the common branches of learning.

A variance was previously granted for the restaurant, in order to sell beer and wine, and is part of their current business license. The property is located 115 feet from the property line of the school, Fienberg Fisher K-8 Center, and a variance to sell alcoholic beverages within the minimum distance separation of 300 feet from a school is required, as the sale of full liquor is proposed. The main entrance to the restaurant is located on the south side of the property fronting Espanola Way. The existence of the school within the commercial district creates practical difficulties for the operation of these types of businesses that commonly include the sales of alcoholic beverages. As a variance has been approved for the same property, and similar variances have been approved for surrounding businesses, staff recommends that the Board approve the variance as requested.

2. A variance to reduce by thirty (30) seats the minimum required sixty (60) seats for a restaurant selling liquor in order to operate a thirty (30) seat restaurant serving beer, wine and liquor for consumption on the premises.

- Variance requested from:

Sec. 142-1302. Permitted main and accessory uses.

Vendors shall be permitted to sell alcoholic beverages within the zoning districts listed in section 142-1301 if such district permits as a permitted main use or accessory use one of the following: Restaurant, bar, alcoholic beverage establishment, outdoor cafe, private club, or golf clubhouse pursuant to the following standards:

(1) Permitted main uses.

a. Restaurants, alcoholic beverage establishments, and private clubs shall be permitted to sell alcoholic beverages for consumption on the premises based upon the following: when beer and wine are served a minimum of 30 seats shall be provided; and when, beer, wine and liquor are served, a minimum of 60 seats shall be provided.

The Code requires a minimum of sixty (60) seats for a restaurant in order to sell beer, wine and liquor for consumption on the premises. The applicant proposes to maintain the existing thirty (30) seats. As shown on the plans submitted, the available seating area for the restaurant does not appear to be able to accommodate the required sixty (60) seats, as the space has an area of approximately 977 s.f. The relatively small size of the establishment creates practical difficulties particularly as it pertains to the sale of alcohol.

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

The applicant has submitted plans and documents with the application that staff has concluded satisfy Article 1, Section 2 of the Related Special Acts, allowing the granting of a variance if the Board finds that practical difficulties exist with respect to implementing the proposed project at the subject property.

Additionally, staff has concluded that the plans and documents with the application comply with the following hardship criteria, as they relate to the requirements of Section 118-353(d), Miami Beach City Code:

1. 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;
2. That the special conditions and circumstances do not result from the action of the applicant;
3. 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;
4. 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;
5. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;
6. 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
7. 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.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 133-50(a) of the Land Development establishes review criteria for sea level rise and resiliency that must be considered as part of the review process for board orders. The following is an analysis of the request based upon these criteria:

- (1) A recycling or salvage plan for partial or total demolition shall be provided.
Not Applicable
- (2) Windows that are proposed to be replaced shall be hurricane proof impact windows.
Not Applicable
- (3) Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.
Not Applicable
- (4) Whether resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided.
Not Applicable
- (5) Whether adopted sea level rise projections in the Southeast Florida Regional Climate Action Plan, as may be revised from time-to-time by the Southeast Florida Regional Climate Change Compact, including a study of land elevation and elevation of surrounding properties were considered.
Not Applicable
- (6) The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land.
Not Applicable
- (7) Where feasible and appropriate, all critical mechanical and electrical systems shall be located above base flood elevation.
Not Applicable
- (8) Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.
Not Applicable
- (9) When habitable space is located below the base flood elevation plus City of Miami Beach Freeboard, wet or dry flood proofing systems will be provided in accordance with Chapter of 54 of the City Code.
Not Applicable
- (10) Where feasible and appropriate, water retention systems shall be provided.
Not Applicable

COMPLIANCE WITH ZONING CODE:

The application, as submitted, appears to be consistent with the applicable requirements of the City Code, with the exception of the variance(s) requests herein. This shall not be considered final zoning review or approval. These and all zoning matters shall require final review and verification by the Zoning Administrator prior to the issuance of a Building Permit.

STAFF ANALYSIS:

The subject site is located in the CD-2, Commercial Medium Intensity zoning district, and fronts Espanola Way. The tenant space is located at the first floor, on the north side of Espanola Way, and is currently a full service restaurant serving beer and wine.

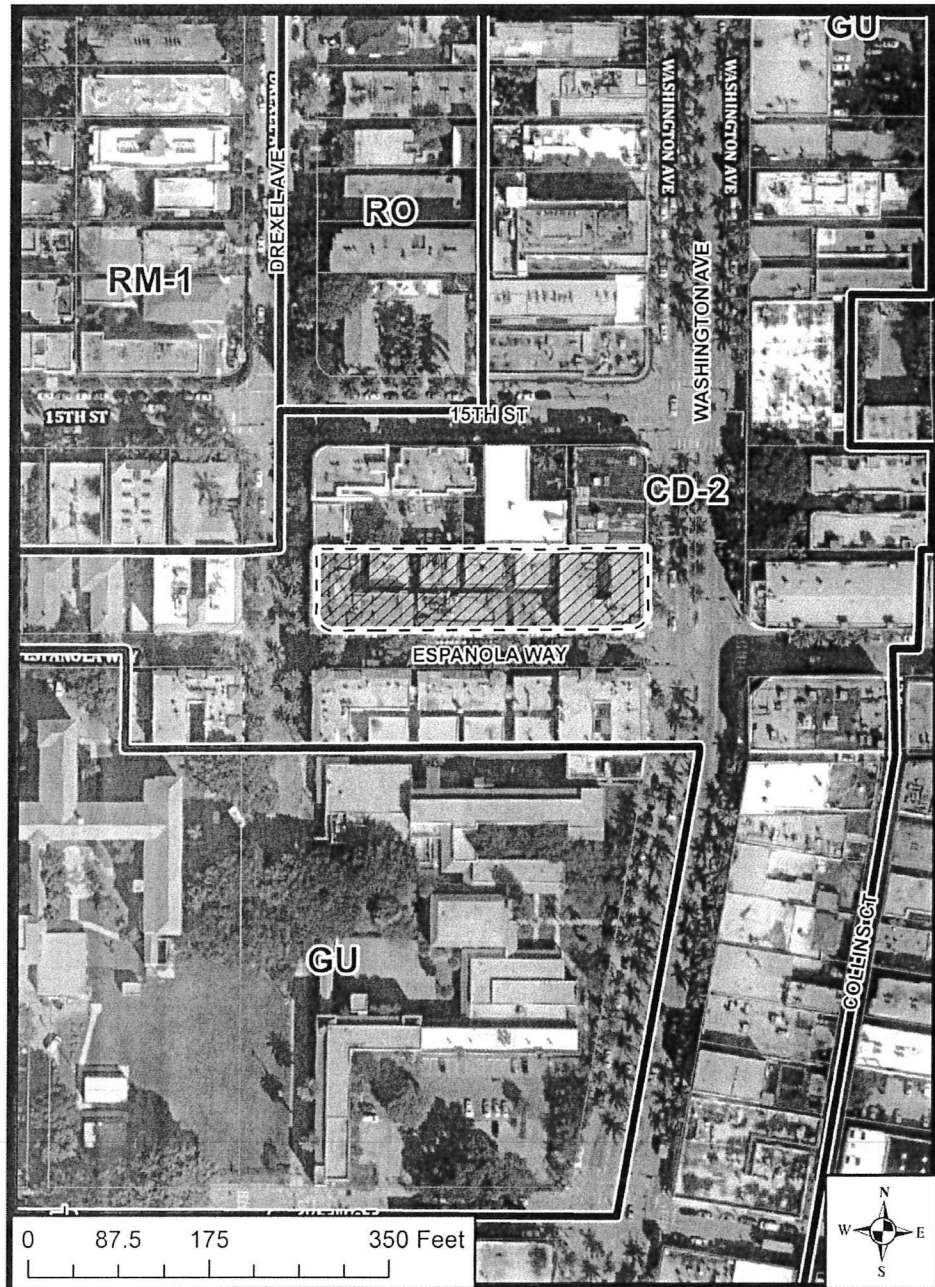
Staff believes that the proposed reduction of the minimum distance separation requirements and the minimum required number of seats for the service of full liquor would not be detrimental to the surrounding neighborhood, which is surrounded primarily by other restaurants, alcoholic beverage establishments and retail establishments. Many of the surrounding restaurants have been granted similar variances for both number of seats and distance separation from the Fienberg Fisher K-8 Center.

Staff has no objection to the applicant's request and recommends approval of the variances as requested.

RECOMMENDATION:

In view of the foregoing analysis, staff recommends **approval** of the variance(s) as requested, subject to the conditions enumerated in the attached Draft Order.

ZONING/SITE MAP



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

PROPERTY: 437 Espanola Way

FILE NO. ZBA18-0067

IN RE: The application for variances to reduce the required 300 foot distance separation between a business that sells alcoholic beverages and an existing educational facility and to reduce the minimum required seats to operate a restaurant and sell alcoholic beverages for consumption on premises.

LEGAL DESCRIPTION: Lots 1, 2, 3, 4, 5 and 6, less the south 3 feet thereof for street, in Block 3-A, of First Addition to Whitman's Subdivision of Espanola Villas, According to the Plat thereof Recorded in Plat Book 9, Page 147, of the Public Records of Dade County, Florida.

MEETING DATE: September 7, 2018

O R D E R

The applicant, Manugio Corp., filed an application with the Planning Department for the following variances(s):

1. A variance to reduce 185 feet of the minimum required 300 foot separation between a business that sells alcoholic beverages for consumption and an existing educational facility, Fienberg Fisher K-8 Center, in order to sell beer, wine and liquor for on-site consumption at a distance of 115 feet from the school.
2. A variance to reduce by thirty (30) seats the minimum required sixty (60) seats for a restaurant selling liquor in order to operate a thirty (30) seat restaurant serving beer, wine and liquor for consumption on the premises.

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. 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.
3. Music shall be limited to only ambient background music and no entertainment license shall be approved.
4. 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.
5. 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.
6. The applicant shall satisfy any City Liens prior to the issuance of a revised Certificate of Use and Occupational License for beer and wine.
7. The Board of Adjustment shall retain jurisdiction of this file.
8. This approval is granted to Manugio Corp. 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.

9. 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.
10. The Operator shall be responsible for maintaining the areas adjacent to the facility, such as the sidewalk on Espanola Way in excellent condition, keeping these areas in a clean condition, free of all refuse, at all times.
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, 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 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.
13. 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.
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 granted herein.
17. 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.
18. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
19. The applicant shall comply with all conditions imposed by the Public Works Department.

21. 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 for 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.

BOARD OF ADJUSTMENT
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 _____ day of _____, _____, 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:
Notary Public, State of Florida
My Commission Expires:
Commission Number:

Approved As To Form:
City Attorney's Office ()

Filed with the Clerk of the Board of Adjustment on _____ ()