


MIAMI BEACH

PLANNING DEPARTMENT

BOARD OF ADJUSTMENT STAFF REPORT

FROM: Thomas R. Mooney, AICP 
Planning Director

DATE: September 7, 2018 Meeting

RE: File No. ZBA18-0063
1434 Washington Avenue – Hotel/Outdoor Bar Counter

The applicant, Clay Hotel Partnership, LTD c/o Infinity Real Estate, 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 allow an outdoor bar counter to operate after midnight.

STAFF RECOMMENDATION:

Approval of variance #1 with conditions.

Denial of variance #2.

HISTORY

On May 9, 2017, the Historic Preservation Board (HPB) reviewed and approved a Certificate of Appropriateness (COA) for the partial demolition, renovation and restoration of all structures on the site, including an after-the-fact COA for the demolition of interior floor plates and variances to reduce the required rear setback, to relocate a projecting sign and to reduce the minimum size required for hotel units (HPB16-0068).

On November 14, 2017, the applicant was granted modifications to the previously issued COA including a variance to reduce the required rear pedestal setback for the construction of a new FPL vault as part of the renovations to the property by the HPB (HPB17-0148).

On June 26, 2018, the applicant was granted a Conditional Use Permit (CUP) by the Planning Board for an outdoor entertainment establishment on the roof of a portion of the hotel property, pursuant to Chapter 118, Article IV and Chapter 142, Article II of the City Code (PB 18-0189).

LEGAL DESCRIPTION:

All of Block 3-B, 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 Miami-Dade County, Florida.

SITE DATA:

Zoning -

CD-2 (Commercial, Medium Intensity)

Future Land Use Designation-	CD-2 (Medium Intensity Commercial Category)
Lot Size -	25,399.16 S.F./ ~0.58 Acres
Existing FAR -	~47,809 S.F.*
Existing Use -	Hotel / Commercial / Restaurant
Proposed Use -	Same

**As per Miami-Dade Property Appraiser.*

THE PROJECT:

The applicant has submitted the following plan: Española Hotel, Board of Adjustment Final Submittal, by DNB Design Group, dated July 6, 2018.

The Española Hotel is currently being renovated. The renovation will include a reconfiguration of the interior ground floor to create a hotel lobby and a rooftop terrace with an outdoor bar counter. The building currently contains several restaurants fronting Espanola Way that have similar variances approved for the sale of alcohol in proximity to a school. The applicant is requesting variances in order to serve full liquor within a lobby bar and on the rooftop outdoor bar counter. Additionally, the applicant is requesting a variance to allow the outdoor bar counter to be operated until 2 am.

The applicant is requesting the following variances:

1. **A variance to reduce 300 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 0 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.

The property is located adjacent to the property line of the school, Fienberg Fisher K-8 Center and, therefore, 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 applicant is proposing to create a lobby with a bar in the interior of the property and a rooftop terrace with an outdoor bar counter. Access to the site will be from Española Way, and will not face the school. The location of the subject property in such close proximity to the school creates practical difficulties. For that reason, and due to the fact that similar variances have been approved for surrounding businesses, staff recommends that the Board approve the variance as requested, with the conditions set forth in the attached Order.

2. **A variance to permit additional hours of the outdoor bar counter beyond midnight, specifically to 2 am.**

- Variance requested from:

Sec. 142-304. - Accessory uses.

The accessory uses in the CD-2 commercial, medium intensity district are as required in article IV, division 2 of this chapter; and accessory outdoor bar counters, provided that the accessory outdoor bar counter is not operated or utilized between midnight and 8:00 a.m.

The Code allows for accessory outdoor bar counters within the CD-2 district; however, the Code requires that such counters not be operated later than midnight. The applicant is requesting a variance to allow operation of the outdoor bar counter until 2:00 a.m. However, similar variances have NOT been approved for surrounding properties. Due to the site's proximity to residential uses in the Flamingo Park neighborhood, there is a potential for noise from the outdoor bar counter operation to impact those residential properties, which could negatively affect residents' quality of life, particularly if the bar counter is operated after midnight. As part of the Conditional Use Permit application to the Planning Board, the applicant submitted a Sound Study prepared by Edward Dugger + Associates, P.A., which was peer reviewed on behalf of the City by Arpeggio Acoustic Consultants. While the peer review indicates that sound levels can be controlled, to minimize impacts to surrounding areas, the hardship criteria and practical difficulty standards have not been satisfied for this particular variance request. Staff recommends that the Board DENY the variance requested.

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

Based on the plans and documents submitted with the application, staff has concluded that the requested variance **partially** satisfies 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 **partially** indicate the following, as they relate to the hardship criteria 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;

Satisfied for variance #1;

Not satisfied for variance #2.

2. That the special conditions and circumstances do not result from the action of the applicant;

Satisfied for variance #1;

Not satisfied for variance #2.

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;

***Satisfied for variance #1;
Not satisfied for variance #2.***

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;

***Satisfied for variance #1;
Not satisfied for variance #2.***

5. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;

***Satisfied for variance #1;
Not satisfied for variance #2.***

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

***Satisfied for variance #1;
Not satisfied for variance #2.***

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.

Satisfied.

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 Española Way. The proposal is to create a hotel lobby with a bar in the interior of the property and a rooftop terrace with an outdoor bar counter as part of a renovation of the hotel.

Staff believes that the proposed reduction of the minimum distance separation requirements for the service of full liquor (Variance #1) 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

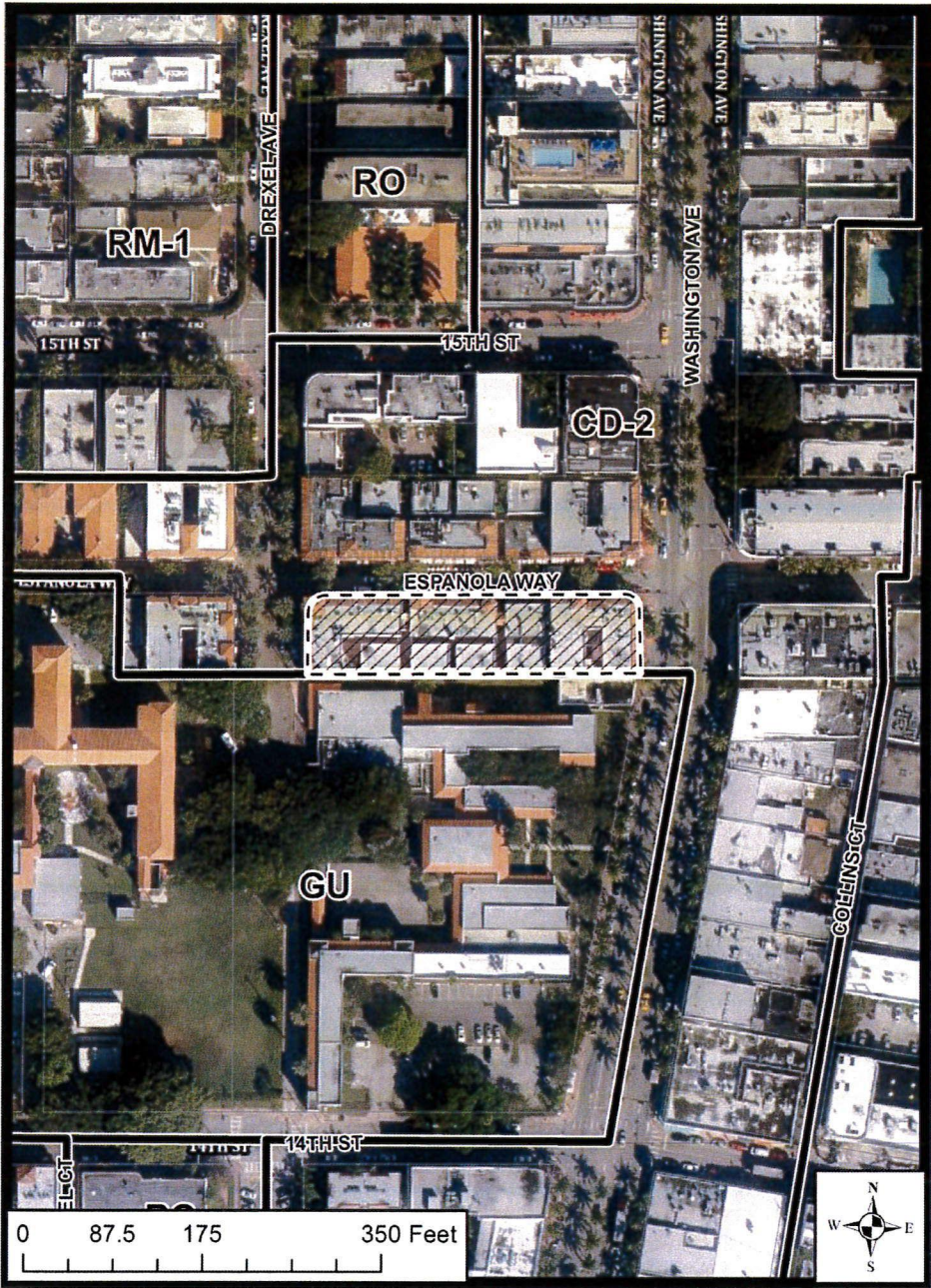
Fienberg Fisher K-8 Center, consistent with the predominant character of the Española Way corridor.

However, staff believes that allowing a rooftop terrace with an outdoor bar counter to remain open after midnight, until 2:00 a.m. (Variance #2) may create negative impacts for the surrounding residential areas in the Flamingo Park Neighborhood related to noise. Similar variances have NOT been granted in the area, and there are no other rooftop outdoor bar counters along Española Way. Additionally, the applicant has failed to demonstrate how this request satisfies the hardship and practical difficulty criteria.

RECOMMENDATION:

In view of the foregoing analysis, staff recommends **denial** of variance request #2, and **approval** of variance request #1, subject to the conditions enumerated in the attached Draft Order.

ZONING/SITE MAP



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

PROPERTY: 1434 Washington Avenue

FILE NO. ZBA18-0063

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 allow an outdoor bar counter to operate after midnight.

LEGAL DESCRIPTION: All of Block 3-B, 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 Miami-Dade County, Florida.

MEETING DATE: September 7, 2018

O R D E R

The applicant, Clay Hotel Partnership, LTD c/o Infinity Real Estate, filed an application with the Planning Department for the following variances which were either approved by the Board, or denied:

The following variance was approved by the Board:

1. A variance to reduce the required 300 foot distance separation between a business that sells alcoholic beverages and an existing educational facility and

The following variance was denied by the Board:

2. A variance to allow an outdoor bar counter to operate after midnight until 2 am.

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, only as it relates to variance #1, as noted. Accordingly, the Board of Adjustment has determined the following as to variance #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;

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** requested variance #1, as noted and **Denies** requested variance #2, as noted and 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 to hotel guests, unless 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 dance hall.
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 Clay Hotel Partnership, LTD c/o Infinity Real Estate 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 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.

