

**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.

20. 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.
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.

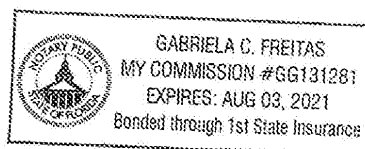
Dated this 7th day of September, 2018.

BOARD OF ADJUSTMENT
CITY OF MIAMI BEACH, FLORIDA

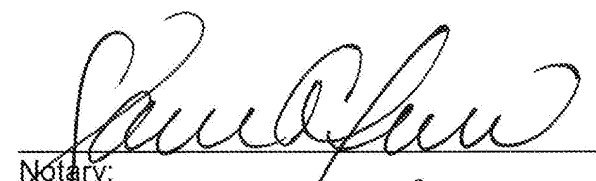
BY: 
Rogelio Madan, AICP
Chief of Community Planning & Sustainability
For the Chair

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)


The foregoing instrument was acknowledged before me this 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: 99131281

Approved As To Form: , 9/11/2018
City Attorney's Office

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