

# MIAMI BEACH

## PLANNING DEPARTMENT

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### BOARD OF ADJUSTMENT STAFF REPORT

FROM: Thomas R. Mooney, AICP   
Planning Director

DATE: February 05, 2016 Meeting

RE: BOA File No. 3641  
**432 Espanola Way – Clay Hotel**

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The applicant, Clay Hotel Partnership, LTD./AR Espanola, LLC., is requesting modifications to conditions of approval for previously approved variances for the reduction from the minimum required 300 foot distance separation between a business that sells alcoholic beverages and an existing educational facility and to reduce the minimum required number of seats for a restaurant serving beer and wine. Specifically, the applicant is requesting to sell beer, wine and liquor for consumption on the premises.

#### **HISTORY:**

This application was approved by the Board on June 7, 2013. Modifications to the original variances are requested in order to allow the applicant to provide beer, wine and liquor for consumption in the existing restaurant.

#### **STAFF RECOMMENDATION:**

Approval of the modifications with conditions.

#### **LEGAL DESCRIPTION:**

See attached Exhibit 'A'.

#### **SITE DATA:**

Zoning -	CD-2
Future Zoning-	CD-2
Lot Size -	~25,272 SF
FAR	
Existing	~47,809 SF
Proposed-	same
Existing Use-	Restaurant
Proposed Use-	Same

#### **EXISTING STRUCTURE:**

Year Constructed:	1925
Architect:	Unknown
Vacant Lot:	No
Demolition:	None

#### **THE PROJECT:**

The applicant has submitted documents entitled "Proposed Plan for Pizza 28" as prepared by Eduardo Vazquez, P.A., dated December, 2013.

The applicant is requesting modification to previously approved variances in order to sell beer, wine and liquor for consumption on the premises.

The applicant is requesting modifications to a previously approved variances as follows:

1. A variance to ~~waive~~ reduce 222 feet of the minimum required 300 foot separation between a business that sells alcoholic beverages for on premise consumption and an existing educational facility, Fisher-Feinberg Elementary School in order to sell beer, and wine and liquor at with a distance of 78 feet from ~~to~~ 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 alcohol beverages for consumption:

(1) Educational facilities. No alcohol 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.

This variance was previously approved in 2013 to allow the sale of beer and wine at less than 300 feet from the school. The applicant has increased the number of seats in order to add liquor to the current service and therefore, a modification to the variance is required. The space is located at the ground floor of the Clay Hotel, facing Espanola Way. Staff has no objection to this modification as this variance is common within the commercial corridor on Espanola Way and Washington Avenue and no negative impact is expected on the surrounding properties.

2. A variance to ~~waive~~ reduce 18 seats of the minimum requirement of ~~thirty (30)~~ sixty (60) seats for a ~~42~~ 42 seat restaurant to serve beer, and 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 60 seats on private property in order to sell beer, wine and liquor for consumption on the premises. A variance was approved to operate a 12-seat restaurant selling beer and wine for on-site consumption. The applicant is requesting to add

liquor to the business operation which requires a modification to the original variance. The number of seats has also increased from 12 seats to 42 seats inside the premises. A sidewalk café permit is approved for the space with 34 seats resulting in a total of 76 seats under the business license. However, the seating for the sidewalk café does not count toward the minimum required number of seats to sell alcoholic beverages. As shown on the plans submitted, the available seating area for the restaurant does not appear to accommodate the required 60 seats. Staff finds that practical difficulties exist based on the size of the restaurant within an existing historic hotel and has no objections to this variance modification and recommends its approval as proposed.

**PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA**

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

The applicant has submitted plans and documents with the application that also indicate the following, as they relate to the requirements of Section 118-353(d), Miami Beach City Code:

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.

**COMPLIANCE WITH ZONING CODE:**

A preliminary review of the project indicates that the application, as proposed, appears to be inconsistent with the following sections of the City Code, in addition to the requested variance:

1. There are two open violations CE15002907 and BV15001168 on the property for work done without building permits.

The above noted comments 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 site is situated within the CD-2 commercial district at the corner of Washington Avenue and Espanola Way. The restaurant space facing Espanola Way is located at the ground floor of the Clay Hotel. The applicant obtained variances in 2013 to sell beer and wine at the restaurant with a reduction in the required number of seats and a variance to sell beer and wine within the required distance separation from a school. The applicant is requesting a modification to these variances to include liquor service and to increase the number of seats of the restaurant.

Staff finds that the existing "Contributing" building constructed as a hotel in 1925 and located within the Espanola Way commercial district and the existing space constraints, create practical difficulties for the applicant that resulted in the request for the original variances. Based on the space limitation and the fact that these variances have been commonly granted to several restaurants within this area and in other commercial districts, staff recommends approval of the applicant's request for modifications.

**RECOMMENDATION:**

In view of the foregoing analysis, staff recommends that the modifications to the original Order be **approved**, subject to the following conditions. ~~Strike-through~~ denotes deletion of previous language and underlining denotes new language:

1. During school hours, beer, ~~and wine~~ and liquor shall only be served with meals. Otherwise, the sale of beer, ~~and wine~~ and liquor shall be limited to non-school hours (5:00 P.M. to 5:00 A.M.) and non-school days. 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. As proffered by the applicant, the package sales of single cans/bottles of beer shall not be permitted.
4. The Owner/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, and free of all refuse, at all times.
5. Music shall be limited to only ambient background music and no entertainment license shall be approved.
6. The establishment shall not be converted to a stand-alone bar, or dance hall.

7. The applicant shall satisfy any City Liens prior to the issuance of a revised Certificate of Use and Occupational License for beer, and wine and liquor.
8. A copy of all pages of the recorded modified 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.
9. The Board of Adjustment shall retain jurisdiction over of this file. The applicant must present a progress report to the Board three months after obtaining the appropriate CO or CC; the Board shall then determine the necessity and timing of subsequent reports.
10. This approval is granted to Clay Hotel Partnership, LTD / AR Espanola, LLC only. Any change of operator or ownership, including 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.
11. 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.
12. 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 period up to six (6) months), the variance shall be subject to Section 118-356, City Code, for revocation or modification of the variance.
13. The applicant shall comply with all conditions imposed (if applicable) by the Public Works Department.
14. All improvements in the public right-of-way associated with the subject project shall be subject to the final review and approval of the Planning Department Director, Public Works Director, and the Parks and Recreation Department Director, and shall require an agreement, subject to the review and approval of the City Attorney, providing for the assumption of maintenance and liability obligations by the Applicant, and its successors and assigns, executed and recorded before the issuance of a building permit
15. The conditions on this modified Order are binding on the applicant, the property's owners and all successors in interest and assigns.
16. This modified 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.

17. Nothing in this modified 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.
18. The modified final 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.

TRM:MAB:IV  
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EXHIBIT A

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, at Page 147, of the Public Records of Dade County, Florida.

AND: A rectangular strip of land in the Northwest corner of the Northerly 30 feet in Block 20, of OCEAN BEACH ADDITION NO. 3, according to the Plat thereof, recorded in Plat Book 2, at Page 81, of the Public Records of Dade County, Florida, having a width of 0.75 feet and length of 36.25 feet, having a frontage of 0.75 feet on Drexel Avenue and extending Easterly 36.25 feet.