

# MIAMI BEACH

## PLANNING DEPARTMENT

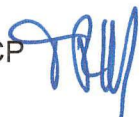
### Staff Report & Recommendation

### Historic Preservation Board

TO: Chairperson and Members  
Historic Preservation Board

DATE: April 12, 2016

FROM: Thomas R. Mooney, AICP  
Planning Director



SUBJECT: HPB File No. 7553, **1024 Lenox Avenue.**

The applicant, Daniel Marinberg, is requesting an after-the-fact variance to reduce the required pedestal rear setback to permit a perimeter structure to enclose the rear yard for the apartment unit number 5.

#### **STAFF RECOMMENDATION**

Approval with modifications.

#### **BACKGROUND**

On September 8, 2015, the Board continued the application to a date certain of November 10, 2015 to address neighbors' concerns with the existing wall.

On November 10, 2015, the Board continued the application to a date certain of December 8, 2015 at the request of the applicant.

On December 8, 2015 the Board continued the application to a date certain of January 12, 2016 at the request of the applicant

On January 12, 2016 the Board continued the application to a date certain of March 8, 2016 at the request of the applicant.

On March 8, 2016 the Board continued the application to a date certain of April 12, 2016 at the request of the applicant.

#### **EXISTING STRUCTURES**

Local Historic District:

Flamingo Park

#### **1012-1016 Lenox Avenue**

Status:

Contributing

Original Construction Date:

1940

Original Architect:

Pfeiffer and Pitt

#### **1024 Lenox Avenue**

Status:

Non-Contributing

Original Construction Date:

1994

### **ZONING / SITE DATA**

Legal Description:	Lots 4 & 5, Block 124, Lenox Manor Subdivision, According to the Plat Thereof, as Recorded in Plat Book 7, Page 81, of the Public Records of Miami-Dade County, Florida.
Zoning:	RM-1, Residential Multifamily, Low Intensity
Future Land Use Designation:	RM-1, Residential Multifamily, Low Intensity
Lot Size:	20,000 S.F.
Existing Use/Condition:	Multifamily/residential
Proposed Use:	Same

### **THE PROJECT**

The applicant has submitted plans entitled "Maringberg Terrace" as prepared by MCY Engineering, Inc. and Modern Fenceworks, Inc., signed and sealed November 10, 2015.

**The applicant is requesting an after the fact variance to reduce the required pedestal rear setback to permit a perimeter structure to enclose the rear yard for the apartment unit number 5.**

The applicant is requesting the following variance:

1. A variance to eliminate all required rear pedestal setback of 16.0 feet in order to construct a perimeter wall structure to enclose the patio up to the rear property line.
  - Variance requested from:

#### **Sec. 142-156 Setback requirements.**

(a) *The setback requirements for the RM-1 residential multifamily, low intensity district are as follows:*

*Pedestal, rear, Non-oceanfront lots—Minimum: 10% of lot depth*

The applicant has constructed perimeter walls with a height of 16 feet to enclose the rear patio for one of the townhome units. The structure is composed of metal fastened by plastic panels with a "green wall" system intended to have planting installed. Walls or fences are permitted up to 7 feet in height within the rear yard of the property and a variance to increase the height up to 10 feet may be granted. The applicant has modified the plans submitted in order to reduce the wall from the existing 16' in height to 13.4 feet and the addition of planter pockets on the side facing the neighboring properties in the rear to provide for the same finish on both sides.

The patio enclosure is immediately adjacent to the rear yard of a recently constructed Walgreens store, located in the abutting CD-2, Commercial Medium Intensity zoning district. In many areas of the City, commercially zoned properties are separated from residentially zoned properties with an alley; however in this case there is no such alley. The Walgreens building has a setback of approximately 10 feet from their rear property line. The properties within the RM-1 residential district which abut the subject property have non-conforming setbacks of approximately 5 feet. The location of the wall for Unit No. 5, which is the subject of the variance request, is located internally to the overall property. However, on a site visit, staff noted that the height of the fence has an adverse impact as seen from the balcony of the most impacted

apartment in the residential building to the west side at 1025 Alton Road.

In order to mitigate such an impact, staff recommends that the fence that was added on top of the existing west property wall be removed and the proposed height of 13.4 feet remain on the side walls adjacent to other units in the same building. With this modification, staff is supportive of the variance request, and the fact that the residential property is adjacent to a Commercial property without an alley to buffer any negative impact which creates the practical difficulties for the variance requested.

#### **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 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:**

The application, as submitted, appears to be consistent with the pertinent requirements of the Zoning Code, with the exception of the noted variance. However, this shall not be considered

final zoning review or approval. All zoning matters shall require final review and verification by the Zoning Administrator prior to the issuance of a Building Permit.

### **VARIANCE ANALYSIS**

The site contains three detached structures, a single-family home, a duplex residence and a 5-unit townhome building added to the site in 1994. The townhome building is located at the rear of the site facing a multifamily building and Walgreens on the west side, and multifamily buildings to the north and south. The rear yard of the townhome units as originally constructed, is an open space with lower privacy walls between them. There is a concrete wall along the rear property line that separates the townhomes from the adjacent properties to the west.

A patio wall enclosure has been constructed at the rear of the Townhome Unit No. 5 and the owner originally requested a setback variance to retain the structure. Since the first meeting, the applicant has revised the plans to include a reduction in height of the fence structure from 16 feet to 13.4 feet, and include planting pockets on both sides of the fence structure. The applicant has continued the application several times in order to present sample materials and further demonstration of the structure and the existing conditions, to satisfy the neighbor's concerns and as requested by the Board.

At the January 12, 2016 meeting, the Board requested that the applicant construct a mockup of the proposed new fence design at the proposed lower height, so that this could be evaluated by staff and the neighbors, however this was never done. Since the January meeting, planning staff visited the neighboring residential building, including the balcony areas of the units which face the subject property. The fence is plainly visible and in its current state, which has existed for well over six months, is an eyesore, with its exposed metal studs clearly visible. Although the applicant is proposing to install planting pockets on the west side of the fence facing the neighbors, these pockets will be inaccessible for maintenance due to their height and location abutting the Walgreens property. After careful consideration, staff recommends that the fence that was constructed on top of the existing west property wall be completely removed, with the portions of the privacy fence with the planting pockets that were constructed perpendicular to the townhouse to remain. As has been done with all of the other townhomes for the subject property, staff would recommend that at-grade landscaping be installed along the property line, in order to address the applicant's privacy concerns.

### **RECOMMENDATION**

In view of the foregoing analysis, staff recommends the application be **approved** subject to the conditions enumerated in the attached draft Order, which address the inconsistencies with the aforementioned Practical Difficulty and Hardship criteria.

**HISTORIC PRESERVATION BOARD**  
**City of Miami Beach, Florida**

MEETING DATE: April 12, 2016

FILE NO: 7553

PROPERTY: 1024 Lenox Avenue

APPLICANT: Daniel Marinberg.

LEGAL: Lots 4 & 5, Block 124, Lenox Manor Subdivision, According to the Plat Thereof, as Recorded in Plat Book 7, Page 81, of the Public Records of Miami-Dade County, Florida.

IN RE: The Application for an after-the-fact variance to reduce the required pedestal rear setback to permit a perimeter structure to enclose the rear yard for the apartment unit number 5.

**ORDER**

The City of Miami Beach Historic Preservation Board 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:

**I. Certificate of Appropriateness**

A Certificate of Appropriateness has not been requested as part of this application.

**II. Variance(s)**

A. The applicant filed an application with the Planning Department for the following variance(s), which were either approved by the Board with modifications, or denied (Underlying denotes new language):

1. A variance to eliminate all required rear pedestal setback of 16.0 feet in order to construct a perimeter wall structure at 13.4 feet in height to enclose the patio up to the rear property line. (Modified Variance)

B. 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 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.

C. The Board imposes the following conditions based on its authority in Section 118-354 of the Miami Beach City Code:

1. The approval issued herein shall be conditioned upon the applicant obtaining a building permit for the subject wall by July 12, 2016.
2. The added portion of the fence above the existing west wall shall be removed.
3. The height of the fence structure on the north and south sides of the patio shall be reduced to no more than 13'-6" in height.
4. Any proposed landscaping in the patio area shall be provided, subject to the review and approval of staff.
5. Any lighting proposed along the west side of the patio shall be contained completely on the property, and such fixtures shall be baffled to ensure that the light source is not directly visible from neighboring residential units.
6. 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.

**The decision of the Board regarding variances shall be final and there shall be no further review thereof except by resort to a court of competent jurisdiction by petition for writ of certiorari.**

**III. General Terms and Conditions applying to both 'I. Certificate of Appropriateness' and 'II. Variances' noted above.**

- A. 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.
- B. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
- C. Satisfaction of all conditions is required for the Planning Department to give its approval on a Certificate of Completion.
- D. The Final 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.
- E. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
- F. 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.

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. 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 the staff recommendations, which were amended and adopted by the Board, that the Certificate of Appropriateness and Variances are GRANTED for the above-referenced project subject to those certain conditions specified in Paragraph I, II, III of the Findings of Fact, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans approved by the Historic Preservation Board, as determined by staff, entitled "Maringberg Terrace" as prepared by MCY Engineering, Inc. and Modern Fenceworks, Inc., signed and sealed November 10, 2015.

When requesting a building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions set forth in this Order. No building permit may be issued unless and until all conditions of approval that must be satisfied prior to permit issuance, as set forth in this Order, have been met.

The issuance of a Certificate of Appropriateness and Variances does not relieve the applicant from obtaining all other required Municipal, County and/or State reviews and permits, including final zoning approval. If adequate handicapped access is not provided on the Board-approved plans, this approval does not mean that such handicapped access is not required. When requesting a building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions set forth in this Order.

If the Full Building Permit for the project is not issued within three (3) months of the meeting date at which the original Variance(s) were granted, the variance(s) shall expire and become null and void. If the Full Building Permit for the project should expire for any reason (including but not limited to construction not commencing and continuing, with required inspections, in accordance with the applicable Building Code), the Certificate of Appropriateness will expire and become null and void.

In accordance with Section 118-561 of the City Code, the violation of any conditions and safeguards that are a part of this Order shall be deemed a violation of the land development regulations of the City Code. Failure to comply with this **Order** shall subject the Certificate of Appropriateness to Section 118-564, City Code, for revocation or modification of the Certificate of Appropriateness.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

HISTORIC PRESERVATION BOARD  
THE CITY OF MIAMI BEACH, FLORIDA

BY: \_\_\_\_\_  
DEBORAH TACKETT  
PRESERVATION AND DESIGN MANAGER  
FOR THE CHAIR

STATE OF FLORIDA                     )  
  )SS  
COUNTY OF MIAMI-DADE         )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by Deborah Tackett, Preservation and Design Manager, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

\_\_\_\_\_  
NOTARY PUBLIC  
Miami-Dade County, Florida  
My commission expires: \_\_\_\_\_

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



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HPB File No. 7553  
Meeting Date: April 12, 2016

Filed with the Clerk of the Historic Preservation Board on \_\_\_\_\_ ( )

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