

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Historic Preservation Board

TO: Chairperson and Members
Historic Preservation Board

DATE: May 10, 2016

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: HPB File No. 7631, **1024 Lenox Avenue, Unit 7**

The applicant, Rene Hagen, is requesting a variance to reduce the minimum required rear setback for a pool.

STAFF RECOMMENDATION

Approval with conditions.

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 "New swimming pool for: Rene Hagen" as prepared by Vicente Franco, P.E., signed and sealed March 21, 2016.

The applicant is requesting a variance to reduce the minimum required rear setback for a pool located at the rear of the apartment unit number 7.

The applicant is requesting the following variance:

1. A variance to reduce by 3'-7" the minimum required setback of 7'-6" from the rear property line to the water's edge of a pool, in order to construct the pool's retaining walls at 3'-11" from the rear property line.

- Variance requested from:

Sec. 142-1133. Swimming pools.

This section applies to swimming pools in all districts, except where specified. Accessory swimming pools, open and enclosed, or covered by a screen enclosure, or screen enclosure not covering a swimming pool, may only occupy a required rear or side yard, provided:

(1) Rear yard setback. A six-foot minimum setback from rear property line to swimming pool deck or platform, the exterior face of an infinity edge pool catch basin, or screen enclosure associated or not associated with a swimming pool, provided, however, that swimming pool decks may extend to the property line and be connected to a dock and its related decking when abutting upon any bay or canal. There shall be a minimum seven and one-half-foot setback from the rear property line to the water's edge of the swimming pool or to the waterline of the catch basin of an infinity edge pool.

The applicant is proposing renovations to the rear of the unit number 7. The work includes the removal of the above-ground level spa and spiral stair and the construction of a new in-ground pool and a stair that matches the original stair constructed in 1994. At that time, a rear setback variance was granted to construct the stairs at 12 feet from the rear property line where 16 feet is required. The area of the rear patio of the unit is approximately 20' x 16' which does not allow sufficient space to place the pool at the required setback. The new pool is 14' x 7'-6" and is setback 3'-11" from the rear property line where the Code requires 7'-6". The patio is enclosed by a 6-foot high concrete wall in the rear and tall bamboo trees that will be replaced with a new landscape material. Eight-foot high fences exist on the sides, abutting the adjacent units. The new pool will be substantially enclosed from the adjacent neighbors.

The reduced size of the rear yard is a factor that affects the design of a pool with a reasonable size and allows for safety area around the pool. The site contains other structures, an historic single family home and an historic duplex residence; however there is no common pool on the property. Based on the size of the rear yard, staff finds that its limited area creates practical difficulties that result in the variance requested. In summary, staff recommends approval of the applicant's request.

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:

A preliminary review of the project indicates that the application, as proposed, appears to be inconsistent with the following sections of the City Code, aside from the requested variances as noted herein this application:

1. The eight-foot high wall fences on the sides do not comply with the maximum height of 7 feet for a fence. Evidence of a building permit for its construction shall be provided, otherwise the side walls shall be modified to comply with the maximum height.

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.

VARIANCE ANALYSIS

The site contains three detached structures, a single-family home, a duplex residence and a 4-story 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 also multifamily buildings to the north and south. The rear yard of the townhome units as originally constructed, is an open space with privacy walls between them and an open stair leading to the second floor. The

subject of this application pertains to unit number 7, located between units 6 and 8. The applicant is proposing improvements to the rear yard of the unit including a variance from the required rear setback for the construction of a new pool. As part of the work, the existing bamboo at the rear will be replaced with better quality landscape improving the overall conditions of the property as well

The new pool will be placed at 3'-11" from the rear property line where 7'-6" is required. As shown on the plans, the size of the rear yard of the unit, as originally constructed is very limited. In 1994, approval was granted for a new 4-story townhome project at the rear of the site. The existing historic properties at the front of the site were fully retained and restored, with the new structure located at the extreme rear of the site in order to ensure that the original one and 2-story structures were not overwhelmed by the new massing. The full retention of these historic buildings, including a very substantial separation in the middle of the site, between the existing structures and the new townhomes, resulted in the very limited area for new construction at the rear of the site. This site condition, which is the result of the 1994 addition and preservation of the historic structures, create the practical difficulties in constructing a pool on the subject property.

Staff believes that the granting of the variance would not have a negative impact on adjoining properties; therefore, staff recommends that the variance request be approved.

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: May 10, 2016

FILE NO: 7631

PROPERTY: 1024 Lenox Avenue, Unit 7

APPLICANT: Rene Hagen.

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 a variance to reduce the minimum required rear setback for a pool.

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):

1. A variance to reduce by 3'-7" the minimum required setback of 7'-6" from the rear property line to the water's edge of a pool, in order to construct the pool's retaining walls at 3'-11" from the rear property line.

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 hereby grants the requested variance(s) and imposes the following condition based on its authority in Section 118-354 of the Miami Beach City Code:

1. 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.
2. In order to retain the existing eight-foot (8') side walls at the rear of the unit, evidence of a final building permit shall be provided, otherwise the side walls shall comply with the maximum height of 7 feet as measured from grade.
3. The landscape plan shall be implemented, as proposed, including the installation of the Indian Trees along the west side of the property.
4. The proposed work shall be approved by the Condo Association.

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 Occupancy; a Temporary Certificate of Occupancy or Partial Certificate of Occupancy may also be conditionally granted Planning Departmental approval.
- 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.

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 application is 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 entitled "New swimming pool for: Rene Hagen" as prepared by Vicente Franco, P.E., signed and sealed March 21, 2016, as approved by the Historic Preservation Board, as determined by staff.

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 the approval 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 eighteen (18) months of the meeting date at which the original approval was granted, the application will expire and become null and void, unless the applicant makes an application to the Board for an extension of time, in accordance with the requirements and procedures of Chapter 118 of the City Code; the granting of any such extension of time shall be at the discretion of the Board. 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 application will expire and become null and void.

In accordance with Chapter 118 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 application to Chapter 118 of the City Code, for revocation or modification of the application.

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: _____ ()

Filed with the Clerk of the Historic Preservation Board on _____ ()