

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Historic Preservation Board

TO: Chairperson and Members
Historic Preservation Board

DATE: October 9, 2018

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: HPB18-01238, **353 West 47th Street.**

The applicant, Herberto Corp., is requesting a variance from the required pedestal side setback in order to install an emergency generator on the west side of the property.

STAFF RECOMMENDATION

Approval of the variance with conditions

EXISTING STRUCTURE

Local Historic District:	Flamingo Waterway
Status:	Non Contributing
Construction Date:	1962
Architect:	Mackay and Gibbs

ZONING / SITE DATA

Legal Description:	Lot 12 and the East ½ of Lot 11, Block 32, of the Lake View Subdivision, According to the Plat Thereof, as Recorded in Plat Book 14, Page 42, of the Public Records of Miami-Dade County, Florida.
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Zoning:	RM-1, Residential Multifamily, low intensity
Future Land Use Designation:	RM-1, Residential Multifamily, low intensity
Lot Size:	22,995 S.F.
Existing Use/Condition:	Multi-family residential

THE PROJECT

The applicant has submitted plans entitled "Regency House Apartments Proposed Emergency Generator" as prepared by Halmag Solutions, Inc., signed and dated August 1, 2018.

The applicant is requesting a variance from the required interior side setback for the installation of a new emergency generator on the west side of the property.

The applicant is requesting the following variance:

1. A variance to reduce by 4'-7" the required interior side pedestal setback of 10'-0" for the main structure in order to install an emergency generator at 5'-5" from the west side property line.

- Variance requested from:

Sec. 142-1132. Allowable encroachments within required yards.

(f) Central air conditioners, emergency generators and other mechanical equipment. Accessory central air conditioners, generators and any other mechanical equipment, including attached screening elements, may occupy a required side or rear yard, in single-family, townhome, or in the RM-1 residential multifamily low intensity districts, provided that:

(1) They are not closer than five feet to a rear or interior side lot line or ten feet to a side lot line facing a street.

(2) The maximum height of the equipment including attached screening elements, shall not exceed five feet above current flood elevation, with a maximum height not to exceed ten feet above grade, as defined in subsection 114-1, of the lot at which they are located.

(3) If visible from the right-of-way, physical and/or landscape screening shall be required.

(4) Any required sound buffering equipment is located outside the minimum five-foot yard area specified in subsection (f)(1) of this section.

(5) If the central air conditioning and other mechanical equipment do not conform to subsections (1), (2), (3), and (4) above, then such equipment shall follow the setbacks of the main structure.

Sec. 142-156. Setback requirements.

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

Subterranean and Pedestal, Side Interior: Single lots less than 65 feet in width: 7.5 feet. Lots equal or greater than 65 feet in width: Minimum 10 feet or 8% of lot width, whichever is greater, and sum of the side yards shall equal 16% of lot width.

Mechanical equipment including generators are permitted within required yards at a minimum setback of 5'-0", subject to height limitations. The proposed generator complies with the minimum setback of 5'-0" however, its height exceeds the maximum 10'-0" from the grade elevation allowed, which as a result, requires a larger setback in order to comply with the building setbacks. Because the grade elevation of the property is very low at 3.6' NGVD and the base of the generator is required to be above flood elevation, the top of the generator exceeds the maximum height allowed at a 5'-0" setback. The constraints of the site, with non-conforming setback on the west side, parking up to the side and rear property lines, and low grade elevation create the practical difficulties that result in the need of this variance. The open area on the mid-west side appears to be the most convenient at the ground level, as the parking ramp on this side screens the generator from street view and it is more internal to the site. Based on the setbacks of the existing building and low grade elevation, staff has no objections to the granting of this variance conditioned to the addition of landscape to minimize noise and views from the waterway.

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

The applicant has submitted plans and documents with the application that staff has concluded 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:

- 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, with the exception of the variances requested herein, appears to be consistent with the applicable requirements of the City Code. 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.

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

VARIANCE ANALYSIS

The subject site contains a multi-story apartment building constructed in 1962. The structure is considered non-contributing in the Flamingo Waterway Historic District. The applicant is proposing an emergency generator to serve emergency lighting, fire protection, stairwell pressurization fans and fire alarm as indicated on the plans. The location on the west side of the property requires a variance from the required side setback as a result of the existing low grade elevation, minimum elevation required by the Building Department and size of the equipment. Staff has obtained confirmation from the Fire Division Chief that the request for a new emergency generator is part of the new life safety systems required for the building. The proposed monthly testing for maintenance, as indicated on the plans will be for 1 hour on weekdays between 9 am and 3 pm, excluding holidays. Staff recommends that this time be modified to not earlier than 10 am and extending up to 5 pm.

As the existing building was constructed with setbacks that are non-conforming with current setback regulations, the area available on site is limited. Based on the site conditions and the need to comply with life safety requirements, staff recommends approval of the variance with the installation of additional landscape around the generator.

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, as applicable.

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HISTORIC PRESERVATION BOARD
City of Miami Beach, Florida

MEETING DATE: October 9, 2018

FILE NO: HPB18-0238

PROPERTY: 353 West 47th Street

APPLICANT: Herberto Corp.

LEGAL: Lot 12 and the East ½ of Lot 11, Block 32, of the Lake View Subdivision, According to the Plat Thereof, as Recorded in Plat Book 14, Page 42, of the Public Records of Miami-Dade County, Florida.

IN RE: The application for a variance from the required pedestal side setback in order to install an emergency generator on the west side of the property.

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 4'-7" the required interior side pedestal setback of 10'-0" for the main structure in order to install an emergency generator at 5'-5" from the west side 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 **approves** the requested variance 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. Except in the case of a true power outage for the property, the generator shall not be utilized or run, including for any required testing or repairs on weekends or holidays. Required generator testing or maintenance shall not be operated between 5 pm and 10 am.
3. A revised landscape plan, and corresponding site plan, shall be submitted to and approved staff, prior to the issuance of a building permit. The species type, quantity, dimensions, spacing, location and overall height of all plant material shall be clearly delineated. At a minimum, such plan shall incorporate the following:
 - a. Hedge material that will grow to fully screen the generator and with a minimum height of 8 feet at the time of installation along the property line adjacent to the generator and extending toward the north and south side and along the north side facing the water shall be provided, in a manner to be reviewed and approved by staff. The height of the plant material at the time of planting may be modified at the discretion of staff depending upon the plant material.

- b. A fully automatic irrigation system with 100% coverage and an automatic rain sensor in order to render the system inoperative in the event of rain. Right-of-way areas shall also be incorporated as part of the irrigation system.
- 4. Applicant agrees that in the event Code Compliance receives complaints of unreasonably loud noise from mechanical and/or electrical equipment, and determines the complaints to be valid, even if the equipment is operating pursuant to manufacturer specifications, the applicant shall take such steps to mitigate the noise with noise attenuating materials as reviewed and verified by an acoustic engineer, in a manner to be reviewed and approved by staff.

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. Where one or more parcels are unified for a single development, the property owner shall execute and record a unity of title or a covenant in lieu of unity of title, as may be applicable, in a form acceptable to the City Attorney.
- B. 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.
- C. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
- D. 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.
- E. 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.
- F. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
- G. 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.
- H. Upon the issuance of a final Certificate of Occupancy or Certificate of Completion, as applicable, the project approved herein shall be maintained in accordance with the plans

approved by the board, and shall be subject to all conditions of approval herein, unless otherwise modified by the Board. Failure to maintain shall result in the issuance of a Code Compliance citation, and continued failure to comply may result in revocation of the Certificate of Occupancy, Completion and Business Tax Receipt.

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 "Regency House Apartments Proposed Emergency Generator" as prepared by Halmag Solutions, Inc., dated August 1, 2018, 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
CHIEF OF HISTORIC PRESERVATION
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, Chief of Historic Preservation, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. She 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 _____ ()