



Neisen O. Kasdin

Akerman LLP
Three Brickell City Centre
98 Southeast Seventh Street
Suite 1100
Miami, FL 33131
Tel: 305.374.5600
Fax: 305.374.5095

May 10, 2017

Thomas Mooney
Planning and Zoning Director
City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33131

**Re: Letter of Intent – 1024 Lenox Avenue, Unit #6, Miami Beach, FL 33139
Final Submittal for Deck and Bathroom Variances
Historic Preservation Board (HPB17-0118)**

Dear Mr. Mooney:

Our firm represents Frederic Khalil, the owner of 1024 Lenox Avenue, Unit #6, Miami Beach, Florida (the "Property"). The Property is zoned RM-1 and is located within the Flamingo Park Historic District. The Property is one of several units within the four-story "row style" townhouse building (the "Townhouse Building") located at the back portion of a multi-building, single lot, condominium development. A depiction of the Property and Townhouse Building within the larger 1024 Lenox Avenue condominium development context is attached as "Exhibit A."

I. BACKGROUND

Mr. Khalil moved to Miami Beach in 1995, and has remained active in the community since, having contributed to numerous local charitable and artistic organizations throughout the past decades. Mr. Khalil has owned the Property since 1998 and intends to remain in Miami Beach and at the Property for the long-term.

In 2009, Mr. Khalil built a deck serving the second floor of the Property without first obtaining a building permit. Mr. Khalil was unaware that he needed a permit for the construction of the deck, and used it continuously for 8 years without knowledge that he was in violation of any City of Miami Beach Code provisions. The deck remains in place today. In November, 2016, Mr. Khalil was issued a Violation by the City of Miami Beach ("City") for the deck. To remedy the Violation, Mr. Khalil recently proceeded in good faith to apply for a building permit to rebuild the deck with an improved design and smaller footprint (the "Deck").

However, Mr. Khalil was informed by the Planning Department that he will need to obtain variances for the Deck before any building permit will be approved. During his conversations with the Planning Department regarding the Deck, Planning Staff also informed Mr. Khalil that he will need to obtain variances for a bathroom located on the first floor of the Property just below a portion of the existing deck, which was apparently also built without a permit (the "Bathroom"). Mr. Khalil was surprised to learn that the Bathroom was built without a permit, as he bought the Property with the Bathroom already installed, directly from the developer of the Property. The Townhouse Building (and thus the Property) was built in approximately 1996.

II. VARIANCES REQUESTED

Mr. Khalil wishes to move forward with his plans for the Deck. He also wishes to keep the Bathroom in its present state. Therefore, Mr. Khalil is hereby applying to obtain all necessary variances for the Deck and the Bathroom, including those which may be triggered by the requirements of Sections 142-1132(j) and 14255(b) of the City's Land Development Regulations. As part of these efforts, Mr. Khalil has obtained Letters of Support from all fellow Townhouse Building owners. He has also spoken with neighbors in surrounding buildings and has received no objections. The Letters of Support are attached as "Exhibit B."

In short, Mr. Khalil's request meets all necessary variance criteria (described more fully in the section below) because (1) the Townhouse Building was constructed up to the rear yard building setback requirement – a mere 16 feet from the rear property line and wall – thus leaving unit owners practically no room to make reasonable use of their already unusually tiny backyards through customary modifications without violating the City's Land Development Regulations; (2) the Property is located in the rear of a center lot in a multi-building development and is thus virtually invisible to anybody besides other Townhouse building owners; (3) Mr. Khalil has consulted with his neighbors regarding the Deck and Bathroom, and has received their full support; (4) other Townhouse Building unit owners have built decks and made other significant modifications to their backyards, including similar decks, and have received after-the-fact variances for those modifications; (5) the Deck and Bathroom are consistent with the surrounding area; (6) the Bathroom was built illegally by the developer of the Property without Mr. Khalil's knowledge; and (7) if the variances are denied, Mr. Khalil would be forced to tear down the Bathroom and Deck which would entail significant structural, electrical, plumbing and other significant modifications, and would cause him significant economic hardship, leave the second floor of the property with specially-designed doors (approved by the City) leading nowhere, leave him with one less bathroom in his home, and deprive him of reasonable and customary use of his backyard.

The City has on several occasions issued variances related to use of the rear yard of the Townhouse Building in recognition the unique practical difficulties and unnecessary hardships associated therewith. In fact, the entire Townhouse Building was issued a variance for setback relaxation from 16 feet to 12 feet to allow for more practical backyard functionality (staircases) at the rear of each of the Townhouse Building units. Moreover, a variance was recently issued by this Board on February 10, 2015 for a deck at one of the other Townhouse Building units. Notably, Mr. Khalil's proposed Deck here is designed with the exact setback dimensions approved by the City in that prior Townhouse Building deck variance. We would also note that one of Mr. Khalil's immediate neighbors recently obtained a variance for a pool in the rear yard of the Townhouse Building that appears to encroach on the setback requirement several feet more than would Mr. Khalil's Deck. The previously approved variances for the deck at the other unit and setback relaxation for the entire Townhouse Building are attached as "Exhibit C."

III. VARIANCE CRITERIA

Pursuant to The City Charter, Subpart B, Article I, Sec. 2, Variances may be granted where there are practical difficulties or unnecessary hardship in meeting the Land Development Regulations. The practical difficulties and unnecessary hardship facing Mr. Khalil in regard to his seeking variances for the Bathroom and Deck are described throughout this Letter of Intent.

In addition, Section 118-353(d) of the City's Zoning Code establishes seven (7) criteria by which requests for variances are evaluated. These criteria are listed below in bold and underline text, with our detailed response following each criteria in plain text.

1. **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.**

The Property located within a building (the Townhouse Building) which was constructed up to the rear yard building setback requirement – a mere 16 feet from the rear property line and wall – thus leaving unit owners practically no room to make reasonable use of their already unusually tiny backyards through customary modifications without violating some aspect of the City's Land Development Regulations.

In fact, the City has on several occasions issued variances related to use of the rear yard of the Townhouse Building in recognition these special conditions and circumstances. For example, the entire Townhouse Building was issued a variance for setback relaxation from 16 feet to 12 feet to allow for more practical backyard functionality (staircases) at the rear of each of the Townhouse Building units. Moreover, a variance was recently issued by this Board on February 10, 2015 for a deck at one of the other Townhouse Building units. Notably, Mr. Khalil's proposed Deck here is designed with the exact setback dimensions approved by the City in that prior Townhouse Building deck variance. We would also note that one of Mr. Khalil's immediate neighbors recently obtained a variance for a pool in the rear yard of the Townhouse Building that appears to encroach on the setback requirement several feet more than would Mr. Khalil's Deck.

Furthermore, the Property is located in the rear of a center lot in a multi-building development and is thus virtually invisible to anyone other than neighboring Townhouse Building unit owners.

2. **The special conditions and circumstances do not result from the action of Mr. Khalil.**

The Townhouse Building and Property were constructed before Mr. Khalil purchased the Property and Mr. Khalil in no way influenced the original design or construction of the Townhouse Building. Although Mr. Khalil did construct the current deck, he was unaware that he needed a permit, and did so only after obtaining the support of his condominium association and neighbors. Mr. Khalil has used deck continuously for 8 years without knowledge that the deck was non-conforming or otherwise illegal pursuant to the City Code, and without complaints from neighbors. The bathroom was built by the developer and Mr. Khalil had no idea that it was built without a permit. He has relied upon availability and use of the Bathroom approximately two decades without knowledge that the Bathroom was non-conforming or otherwise illegal pursuant the City Code.

3. Granting the variance requested will not confer on Mr. Khalil any special privilege that is denied by these land development regulations to other lands, buildings, or structures in the same zoning district.

The existing condition is unique to the Property and granting the variances would not confer special privileges by permitting the Mr. Khalil to maintain the Deck or Bathroom. In fact, variance for a nearly identical deck was previously granted at Townhouse Building. The Deck proposed by Mr. Khalil is intended to mirror the previously approved neighboring deck in terms of setbacks. Further, as previously mentioned, the developer of the Townhouse Building was granted a rear setback related variance due to the unique challenges created by the building's close proximity to the rear lot line. Other neighbors have also been permitted by the City to make significant modifications to their backyards. It is relatively common for the City to grant variances for similar requests in the surrounding neighborhood.

4. Literal interpretation of the provisions of these land development regulations would deprive Mr. Khalil of rights commonly enjoyed by other properties in the same zoning district under the terms of these land development regulations and would work unnecessary and undue hardship on Mr. Khalil.

Literal interpretation of the relevant provisions would result in practical difficulties and unnecessary and undue hardship, as the Mr. Khalil would be required to demolish both the existing deck and the Bathroom, which would entail significant structural, electrical, plumbing and other significant modifications. Further, the second floor was modified, by permit, to provide doors leading to the deck. If the deck were demolished, the doors would lead nowhere. This would be both unsightly and possibly dangerous. Such changes could be detrimental to the value of the Townhouse Building, and, of course, the Property.

Moreover, literal interpretation of the relevant provisions would deny him a use that is commonly enjoyed by other properties in the same zoning district, as is most clearly evidenced by his immediate neighbors, one of which was recently granted a variance for a nearly identical deck. Other neighbors have also made extensive modifications to their backyards by variance.

5. The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.

The variance is the minimum variance that will make possible the reasonable use of the Property in its present state. The requested Deck variance is a reduction of an existing non-conforming use to a deck size that is identical to the setback variance granted to the owner of the other Townhouse Building deck owner.

6. The granting of the variance will be in harmony with the general intent and purpose of these land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

The granting of the variance is in harmony with the general intent and purpose of the land development regulations because the character of the building will be preserved. The

variance will not be injurious to the area involved as nobody can see the Bathroom or Deck from the street, and neighbors are in support.

7. 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.


The requested variance for the proposed project and the project itself is consistent with the comprehensive plan and does not reduce the level of service for any public facility.

IV. CONCLUSION

Mr. Khalil is a long-time resident of Miami Beach who simply wishes to correct non-compliances and reduce non-conformities so that he can continue reasonably using the Property in the manners he has grown accustomed to over the past years and decades, which happen to be uses that are consistent and harmonious with the surrounding building and neighborhood. We respectfully request your favorable review. Please do not hesitate to contact me should you have any questions related to this matter. Thank you for your consideration.

Sincerely,

AKERMAN, LLP



Neisen O. Kasdin

cc: Deborah Tackett
Michael Belush
Irina Villegas
Jake Seiberling
Wesley Hevia

EXHIBIT A



EXHIBIT B

February 12, 2017

Historic Preservation Board Members
c/o Thomas Mooney, Director
Planning Department
City of Miami Beach
1700 Convention Center Drive, 2nd Floor
Miami Beach, Florida 33139

Re: Variance Approval for the Property Located at 1024 Lenox Avenue, Unit 6,
Miami Beach - LETTER OF SUPPORT

Dear Board Members:

I am the tenant of the property located at 1024 Lenox Ave apt 3, Miami Beach, Florida, and I am a neighbor of the above-referenced property. I met with the owner of the property, and reviewed the plans for the proposed outdoor deck, along the adjustments he plans to undertake in the backyard - including the bathroom - of the ground level. He explained the proposal and the associated variance, and he addressed all my concerns.

Based on the foregoing, I fully support the variance request and ask the Historic Preservation Board to approve the application.

Sincerely,



Dori Vukobratovic

Print Name

February 12, 2017

Historic Preservation Board Members
c/o Thomas Mooney, Director
Planning Department
City of Miami Beach
1700 Convention Center Drive, 2nd Floor
Miami Beach, Florida 33139

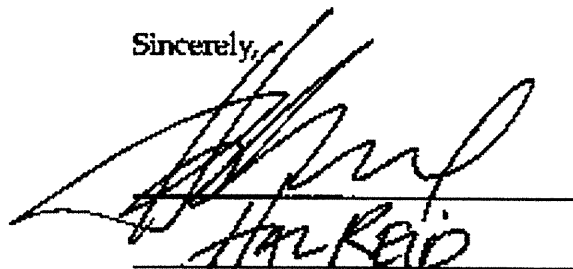
Re: Variance Approval for the Property Located at 1024 Lenox Avenue, Unit 6,
Miami Beach - LETTER OF SUPPORT

Dear Board Members:

I own the property located at 1024 Lenox Ave apt 8, Miami Beach, Florida, and I am a neighbor of the above-referenced property. I met with the owner of the property, and reviewed the plans for the proposed outdoor deck, along the adjustments he plans to undertake in the backyard - including the bathroom - of the ground level. He explained the proposal and the associated variance, and he addressed all my concerns.

Based on the foregoing, I fully support the variance request and ask the Historic Preservation Board to approve the application.

Sincerely,

A handwritten signature in black ink, appearing to read "Hal Reid", is written over a horizontal line.

Print Name

February 12, 2017

Historic Preservation Board Members
c/o Thomas Mooney, Director
Planning Department
City of Miami Beach
1700 Convention Center Drive, 2nd Floor
Miami Beach, Florida 33139


Re: Variance Approval for the Property Located at 1024 Lenox Avenue, Unit 6, Miami Beach - LETTER OF SUPPORT

Dear Board Members:

I am the President of the Board of Lenox Villas Association located at 1024 Lenox Ave, Miami Beach, Florida. On behalf of all board members, we, the Board, met with the owner of the property, and reviewed the plans for the proposed outdoor deck, along the adjustments he plans to undertake in the backyard - including the bathroom - of the ground level. He explained the proposal and the associated variance, and he addressed all our concerns.

Based on the foregoing, we fully support the variance request and ask the Historic Preservation Board to approve the application.

Sincerely,



Print Name Dan Martinberg

Title President

February 12, 2017

Historic Preservation Board Members
c/o Thomas Mooney, Director
Planning Department
City of Miami Beach
1700 Convention Center Drive, 2nd Floor
Miami Beach, Florida 33139

Re: Variance Approval for the Property Located at 1024 Lenox Avenue, Unit 6, Miami Beach - LETTER OF SUPPORT

Dear Board Members:

I am a Board member of the Lenox Villas Association and own the property located at 1024 Lenox Ave apt 2, Miami Beach, Florida, and I am a neighbor of the above-referenced property. I met with the owner of the property, and reviewed the plans for the proposed outdoor deck, along the adjustments he plans to undertake in the backyard - including the bathroom - of the ground level. He explained the proposal and the associated variance, and he addressed all my concerns.

Based on the foregoing, I fully support the variance request and ask the Historic Preservation Board to approve the application.

Sincerely,

A handwritten signature in black ink, appearing to read 'Marius Sluyters', written over a horizontal line.

MARIUS SLUYTERS
Print Name

February 12, 2017

Historic Preservation Board Members
c/o Thomas Mooney, Director
Planning Department
City of Miami Beach
1700 Convention Center Drive, 2nd Floor
Miami Beach, Florida 33139

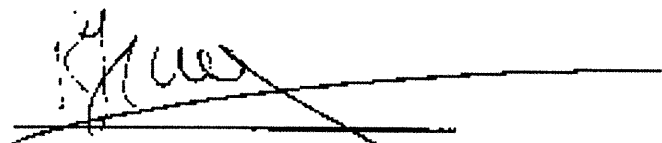
Re: Variance Approval for the Property Located at 1024 Lenox Avenue, Unit 6,
Miami Beach - LETTER OF SUPPORT

Dear Board Members:

I own the property located at 1024 Lenox Ave apt 7, Miami Beach, Florida, and I am a neighbor of the above-referenced property. I met with the owner of the property, and reviewed the plans for the proposed outdoor deck, along the adjustments he plans to undertake in the backyard - including the bathroom - of the ground level. He explained the proposal and the associated variance, and he addressed all my concerns.

Based on the foregoing, I fully support the variance request and ask the Historic Preservation Board to approve the application.

Sincerely,



Renee Hagan
Print Name

February 12, 2017

Historic Preservation Board Members
c/o Thomas Mooney, Director
Planning Department
City of Miami Beach
1700 Convention Center Drive, 2nd Floor
Miami Beach, Florida 33139


Re: Variance Approval for the Property Located at 1024 Lenox Avenue, Unit
6, Miami Beach - LETTER OF SUPPORT

Dear Board Members:

I own the property located at 1024 Lenox Ave apt 4, Miami Beach, Florida, and I am a neighbor of the above-referenced property. I met with the owner of the property, and reviewed the plans for the proposed outdoor deck, along the adjustments he plans to undertake in the backyard - including the bathroom - of the ground level. He explained the proposal and the associated variance, and he addressed all my concerns.

Based on the foregoing, I fully support the variance request and ask the Historic Preservation Board to approve the application.

Sincerely, /



VED ISHIA=122AY
Print Name

EXHIBIT C

BEFORE THE BOARD OF ADJUSTMENT
OF THE CITY OF MIAMI BEACH, FLORIDA

MEETING DATE: SEPTEMBER 10, 1993

IN RE: The application of
 SOBE DECO ASSOCIATES
 1012-1024 LENOX AVENUE
 LOTS 4 AND 5; BLOCK 124
 LENOX MANOR SUBDIVISION; PB 7/15

FILE NO. 2333

ORDER

The applicant, Sobe Deco Associates, filed an application with the Planning and Zoning Department for variances in order to construct a detached 5-unit townhouse addition in the rear yard of an existing single family and duplex residences as follows:

- 1.Applicant wishes to waive 4'-0" of the minimum required rear yard setback of 16'-0" in order to locate stairways leading to each of the units of the proposed townhouse addition, 12'-0" from the rear property line.
- 2.Applicant wishes to waive 2'-6" of the minimum required north and south side yard setbacks of 10'-0" in order to locate stairways 7'-6" from the side property lines.
- 3.Applicant wishes to waive all of the minimum required north and south side yard setbacks of 6'-3" for driveways in order to locate driveways along the north and south interior side yard property lines.
- 4.Applicant wishes to waive Section 5-11 of the Ordinance that requires all new pitched roofs to be constructed of barrel or cement tile, and instead, be permitted to construct pitched copper standing seam metal roofs.

Notice of the request for variance was given as required by law and mailed to owners of property within a distance of 375 feet of the exterior limits of the property on which application was made. The Board finds that the property in question is located in the RM-1 Zoning District. The Board further finds:

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;

continued . . .

File No. 2333 (continued)
Sobe Deco Associates
1012-1024 Lenox Avenue

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.

IT IS THEREFORE ORDERED, by the Board, that the variances as requested and set forth above be APPROVED with the following conditions to which the applicant has agreed:

1. Those conditions as imposed by the joint Design Review/Historic Preservation Board, including:

- a)The existing canopy frame and metal poles in the front yard of the existing two-unit apartment building shall be removed.
- b)A walkway shall be created between the parking area and the residence at 1024 Lenox Avenue.
- c)The two existing buildings shall be repainted in colors that are compatible with each other and the new construction.

continued . . .

File No. 2333 (continued)
Sobe Deco Associates
1012-1024 Lenox Avenue

- 2.The ground level door on the south elevation of the two-unit apartment building (duplex) shall be relocated to the rear elevation of said building and the former doorway replaced with a window to match the others on that elevation.
- 3.The CBS wall on the north property line shall be increased to 5 ft. to match the new wall construction; the design detail of the walls shall be submitted to the Planning, Design and Historic Preservation Division for review and approval.
- 4.The existing buildings shall have all windows and exterior doors restored to the appearance as shown on the plans; all through-the-wall air conditioning units shall be replaced with central air conditioning units.
- 5.The parkway along the sidewalk shall be re-sodded.
- 6.The project shall meet Federal Flood Ordinance requirements.
- 7.On-site drainage, underground utility service connections and proper garbage facilities shall be provided.
- 8.The complete removal and replacement of all curb, gutter and sidewalk along the entire frontage shall be required.

PROVIDED, the applicant shall build in accordance with the plans

submitted as part of this file and as approved by the Zoning Board of Adjustment with any applicable modifications. The applicant shall take all necessary steps to have a permit issued by the Building Department within a period of six (6) months from the date of hearing (September 10, 1993), unless the Board specifies a more restrictive time limitation, otherwise this Order shall become null and void, unless the issuance of such permit is stayed by an appeal to the appropriate court. This Order does not constitute a permit, but upon presentation of this Order to the Planning, Design and Historic Preservation Division, a permit shall be approved and processed in accordance and pursuant to the ordinances of the City of Miami Beach.

continued . . .

File No. 2333 (continued)
Sobe Deco Associates
1012-1024 Lenox Avenue

Dated this _____ day of _____, 1993.

BOARD OF ADJUSTMENT OF
THE CITY OF MIAMI BEACH,
FLORIDA

BY: _____

VIRGINIA MALCOLM SIEGEL
CHAIRPERSON

STATE OF FLORIDA)
)SS
COUNTY OF DADE)