

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Historic Preservation Board

TO: Chairperson and Members
Historic Preservation Board

DATE: July 11, 2017

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: HPB17-0118, **1024 Lenox Avenue, Unit 6**

The applicant, Frederic Khalil, is requesting variances to exceed the maximum area allowed for a deck within the rear yard, to reduce the required rear pedestal setback for a new covered terrace, and an after-the-fact variance to reduce the required rear pedestal setback for the retention of a bathroom structure.

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 “Mr. Frederic Khalil New Deck & Bathroom Addition” as prepared by Richard Cortes, P.A., signed and sealed May 18, 2017.

The applicant is requesting variances to exceed the maximum area allowed for a deck, to reduce the required rear pedestal setback for a new covered terrace, and an after-the-fact variance to reduce the required rear pedestal setback for the retention of a bathroom structure at the rear of the apartment unit number 6.

The applicant is requesting the following variances:

1. A variance to exceed by 23.1% (462.6 sf) the maximum area of 30% (600 sf) allowed for a deck within the required rear yard of the property (16'-0") in order to construct a covered terrace and provide a total deck area of 53.1% (1,062.6 sf) at the rear yard of the property.

- Variance requested from:

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

(j) Hot tubs, showers, saunas, whirlpools, toilet facilities, swimming pool equipment, decks. In all districts, hot tubs, showers, whirlpools, toilet facilities, decks and cabanas are structures which are not required to be connected to the main building but may be constructed in a required rear yard, provided such structure does not occupy more than 30 percent of the area of the required rear yard and provided it is not located closer than seven and one-half feet to a rear or interior side lot line.

The applicant is proposing the removal of an existing terrace at the rear of the townhome and the construction of a new covered terrace with accessible deck at the second floor. The overall deck area at the rear of the site will be increased up to 53.1% where the maximum allowed is 30%. The terrace is similar to another structure approved in 2015 for unit #4 at the south corner of the building. The building was originally constructed in 1994 with a rear setback of 12' where 16'-0" is required (Variance granted as per ZBA File No. 2333), in order to preserve the historic character of the detached 'Contributing' buildings on the site. As a result, the rear yard of the townhomes was reduced 4'-0" from the minimum required. This condition imposes practical difficulties when applying the requirements for accessory structures in the rear yard due to the restriction in area. Staff would note that the property does not have common outdoor amenity areas, such as covered terraces or pool area for the residents. Staff finds that the retention of the historic structures on the site and the reduction of the rear setback of the building creates the practical difficulties that justify the variance requested.

2. A. An after the fact variance to reduce by 5'-3" the required rear setback of 16'-0" in order to retain a bathroom addition at 10'-9" from the rear property line.

B. A variance to reduce by 9'-4" the required rear setback of 16'-0" in order to construct a new covered terrace with columns at 6'-8" from the rear property line.

- Variances 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 owned the townhome unit 6 since 1998. Unaware of the building permit requirements, he constructed a covered terrace in 2009 for which a building violation has been issued. Originally the unit had an open stairwell at the rear, similar to the other townhomes, but it was removed at some point and a bathroom addition was added without the appropriate building permits. As noted in the letter of intent, the bathroom already existed when the applicant bought the townhome unit. In order to remedy the violation, the deck is proposed to be removed and a smaller and improved covered terrace is proposed. The applicant also seeks to retain the bathroom addition at a 10'-9" setback and has applied for a building permit. The applicant proposes a new covered terrace and accessible open deck with ground floor columns at 6'-8" from the rear property line.

A similar covered terrace was also approved with variances for the townhome unit number 4 in 2015. As the building was constructed closer to the property line than what is required by the Code, the rear yard of the townhomes is restricted in area and the construction of any covered terrace or deck would likely require a variance from the rear setback or from the open space requirements, which creates practical difficulties to make a reasonable use of the rear yard of the units. Based on the size of the rear yard, staff finds that its limited area creates practical difficulties that result in the variances 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 applicable requirements of the City Code, with the exception of the variance(s) requests herein. 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.

VARIANCE ANALYSIS

The site contains three detached structures, a single-family home, a duplex residence and a 4-story, 5-unit townhome building, which was added to the site in 1994. The townhome building is located at the rear of the site facing a multifamily building, 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 stairs leading to the second floor. The subject of this application pertains to unit number 6, located between units 7 and 5. 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 covered terrace and the retention of a bathroom addition. A variance to reduce the overall open space within the rear yard is also requested as a result of the increase of impervious surface.

As shown on the plans, the size of the rear yard of the unit, as originally constructed is very limited. In 1993 a variance to reduce the required 16'-0" rear setback to 12'-0" was granted for the 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, and the new building structure located at the extreme rear of the site ensured 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, creates the practical difficulties in constructing a covered terrace at the rear and retaining the bathroom on the subject property.

The Board has previously approved variances to construct structures in the rear yard of the building including a variance to reduce the required rear setback for the construction of a covered terrace for unit #4 on February 10, 2015 (HPB File No. 7508) and a variance to reduce the rear setback for the construction of a pool for unit #7 on May 10, 2016 (HPB File No. 7631). The applicant will maintain a landscaping buffer adjacent to the rear fence to screen the new structure. Staff believes that the granting of the variance would not have a negative impact on the adjoining properties; therefore, staff recommends that the variances requested 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: July 11, 2017

FILE NO: HPB17-0118

PROPERTY: 1024 Lenox Avenue - Unit 6

APPLICANT: Frederic Khalil

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 variances to exceed the maximum area allowed for a deck within the rear yard, to reduce the required rear pedestal setback for a new covered terrace, and an after-the-fact variance to reduce the required rear pedestal setback for the retention of a bathroom structure.

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. No request for a Certificate of Appropriateness has been filed as a part of this application.

In accordance with Section 118-537, the applicant, the owner(s) of the subject property, the City Manager, Miami Design Preservation League, Dade Heritage Trust, or an affected person may appeal the Board's decision on a Certificate of Appropriateness to a special master appointed by the City Commission.

II. Variance(s)

- A. The applicant filed an application with the Planning Department for the following variance(s):

1. A variance to exceed by 23.1% (462.6 sf) the maximum area of 30% (600 sf) allowed for a deck within the required rear yard of the property (16'-0") in order to construct a covered terrace and provide a total deck area of 53.1% (1,062.6 sf) at the rear yard of the property.
2. A. An after the fact variance to reduce by 5'-3" the required rear setback of 16'-0" in order to retain a bathroom addition at 10'-9" from the rear property line.

B. A variance to reduce by 9'-4" the required rear setback of 16'-0" in order to construct a new covered terrace with columns at 6'-8" 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. A landscape plan and corresponding site plan shall be submitted to and approved by staff. The species type, quantity, dimensions, spacing, location and overall height of all plant material shall be clearly delineated and subject to the review and approval of staff.

3. The existing landscape material adjacent to the rear fence shall be maintained at a minimum height of 15'-0". Any replacement landscaping shall include material which would naturally grow to a height in excess of 15'-0", and shall be planted with a minimum height of 10'-0" at the time of planting, subject to the review and approval of staff.
4. The raised planter curb shall be eliminated to allow for the spread of the rooting system in order to ensure the growth of the trees to the minimum height required.
5. Approved building permits shall be obtained for the bathroom addition prior to the issuance of a CO for the construction of the covered terrace.
6. An updated as-built survey showing current conditions of the rear yard of the property shall be provided at the time of the building permit to verify the existing conditions of the rear of the property.

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.

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 "Mr. Frederic Khalil New Deck & Bathroom Addition" as prepared by Richard Cortes, P.A., signed and sealed May 18, 2017, 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 _____ ()