



**Town of Surfside
Town Commission Meeting
AGENDA**

SUPPLEMENTAL # 1

September 19, 2012

7 p.m.

Town Hall Commission Chambers - 9293 Harding Ave, 2nd Floor
Surfside, FL 33154

1. Opening

- A. Call to Order**
- B. Roll Call of Members**
- C. Pledge of Allegiance**
- D. Mayor and Commission Remarks** – Mayor Daniel Dietch
- E. Agenda and Order of Business** Additions, deletions and linkages
- F. Community Notes** – Mayor Daniel Dietch
- G. Representative Joseph “Joe” Gibbons, District 105 of the Florida House of Representatives**

2. Quasi-Judicial Hearings (None)

3. Consent Agenda (*Set for approximately 7:30 p.m.*)

All items on the consent agenda are considered routine or status reports by the Town Commission and will be approved by one motion. Any Commission member may request, during item 1E Agenda and Order of Business, that an item be removed from the Consent Agenda and discussed separately.

Recommended Motion: To approve all consent agenda items as presented below.

**** Denotes agenda items as “must haves” which means there will be significant impacts if the item is not addressed tonight. If these items have not been heard by 10 p.m., the order of the agenda will be changed to allow them to be heard.***

- *A. **Minutes** - August 15, 2012 – Regular Commission Meeting **Page 1 - 12**
August 23, 2012 – Special Commission Meeting **Page 13 - 16**
August 29, 2012 – Special Commission Meeting **Page 17 - 18**
- B. Budget to Actual Summary as of July 31, 2012** – Roger M. Carlton, Town Manager **Page 19 - 20**
- *C. **Town Manager’s Report (Points of Light)** – Roger M. Carlton, Town Manager **Page 21 - 62**
- *D. **Town Attorney’s Report** – Lynn M. Dannheisser, Town Attorney
- *E. **Projects Progress Report** – Calvin, Giordano and Associates, Inc. **Page 63 - 65**
- F. Committee Reports** – Roger M. Carlton, Town Manager (*Note: Vice Mayor Karukin has requested that Committee minutes appear on the Consent Agenda. The most recent approved minutes have been included*)
 - June 2012, 2012 – Parks and Recreation Committee Meeting **Page 66 - 67**
 - **Downtown Vision Advisory Committee Meeting**
 - **Tourist Board Meeting**
 - **Planning and Zoning Board Meeting**
- G. Renewal of Community Garden/Surfside Urban Gardeners Agreement** – Roger M. Carlton, Town Manager **Page 68 - 88**

4. Ordinances

(Set for approximately N/A p.m.) (Note: Good and Welfare must begin at 8:15)

A. Second Readings (Ordinances and Public Hearing)

1. **Amended Legislation to Planning & Zoning/Design Review Board Requirements** – Lynn Dannheisser, Town Attorney

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING CHAPTER 90-15 “MEMBERSHIP/QUORUM, MINIMUM QUALIFICATIONS, OFFICERS, TERMS OF OFFICERS, VACANCIES, GENERAL REGULATIONS, RECOMMENDATIONS, EXPENDITURES, INDEBTEDNESS”; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

[SECOND READING ORDINANCE WITHDRAWN. SEE ITEM 4B1]

(Set for approximately 8:00 p.m.) (Note: Good and Welfare must begin at 8:15)

B. First Readings Ordinances

- *1. Amendment to Planning and Zoning Ordinance – Lynn Dannheisser,
Town Attorney (*Cover memo and ordinance*)**

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING CHAPTER 90 “ZONING” BY AMENDING THE DEVELOPMENT REVIEW PROCESS AND SPECIFICALLY AMENDING ARTICLE I “IN GENERAL” AND SECTIONS 90-1 “GENERAL RULES OF CONSTRUCTION”; SECTION 90-2 “DEFINITIONS”; SECTION 90-3 ENFORCEMENT, INTERPRETATION, PURPOSE AND CONFLICT; SECTION 90-15 “MEMBERSHIP/QUORUM, MINIMUM QUALIFICATIONS, OFFICERS, TERMS OF OFFICERS, VACANCIES, GENERAL REGULATIONS, RECOMMENDATIONS, EXPENDITURES, INDEBTEDNESS”; SECTION 90-16 ”MEETINGS: BOARD YEAR, TIMEFRAME; ORDER OF PRESENTATION; LOCATION”; AND SECTION 90-17 “POWERS AND DUTIES”; AND SPECIFICALLY DELETING SECTIONS 90-18 “DESIGN REVIEW BOARD; SECTION 90-19 “SINGLE FAMILY AND TWO FAMILY DEVELOPMENT REVIEW PROCESS”; SECTION 90-20 “DEVELOPMENT REVIEW REQUIREMENTS FOR SUBMITTALS OTHER THAN SINGLE-FAMILY AND TWO-FAMILY”; AND ADDING SPECIFICALLY UNDER ARTICLE II “ADMINISTRATION AND ENFORCEMENT” DIVISION 1 “TOWN COMMISSION AND SECTION 90-14 “TOWN COMMISSION”; AND SPECIFICALLY ADDING ARTICLE III “DEVELOPMENT REVIEW PROCEDURES” AND SECTIONS 90-19 “CREATION OF PROCESS”; SECTION 90-20 “PROCEDURES OF GENERAL APPLICABILITY”; SECTION 90-22 “SITE PLAN REVIEW”; SECTION 90-23 “PERMITTED USES”; AND RENUMBERING ALL OTHER EXISTING SECTIONS TO CONFORM WITH CHANGES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

- *2. Amendment to Floodplain Ordinance per FEMA – Lynn Dannheisser, Town Attorney (*Item Deferred to Review FEMA Comments Received September 13, 2012*) Page 89 - 98**

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING CHAPTER 42 AND SPECIFICALLY SECTION 42-41 “DEFINITIONS”; SECTION 42-76 “PERMIT PROCEDURES”; SECTION 42-77 “DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR”; SECTION 42-91 “GENERAL STANDARDS”; SECTION 42-92 “SPECIFIC STANDARDS”; AND SECTION 42-95 COASTAL HIGH HAZARD ARAS (V-ZONES) OF THE TOWN OF SURFSIDE CODE OF ORDINANCES PROVIDING FOR INCLUSION IN THE CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE

- *3. Spa Ordinance – Sarah Sinatra, Town Planner Page 99 - 104**

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING CHAPTER 90 ZONING AND MORE SPECIFICALLY SECTION 90-41(d)(7) REGULATED USES INCLUDING SPAS; PROVIDING FOR INCLUSION IN THE CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

- *4. Construction Fence Ordinance – Lynn Dannheisser, Town Attorney (*Cover memo and ordinance*)**

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING CHAPTER 90 “ZONING” AND SPECIFICALLY AMENDING SECTION 90-56.1 “CONSTRUCTION FENCING” OF THE TOWN OF SURFSIDE CODE OF ORDINANCES TO RENUMBER AND SUPPLEMENT WITH SECTION 90.56.1.B AND TO INCLUDE A REQUIREMENT THAT ALL CONSTRUCTION SITES SHALL PROVIDE A CONSTRUCTION FENCE TO SECURE THE SITE-UNTIL THE COMPLETION OF CONSTRUCTION; PROVIDING FOR INCLUSION IN THE CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

5. Resolutions and Proclamations

(Set for approximately 8:30 p.m.) (Note: Depends upon length of Good and Welfare)

- *A. IPS Parking Meter Field Trial Agreement – Chief of Police David Allen Page
105 - 120**

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA APPROVING THE AGREEMENT WITH IPS, FOR THE INSTALLATION AND EQUIPMENT OF THIRTY CREDIT CARD ENABLED METER HEADS FOR A TRIAL PERIOD OF NINETY DAYS; AUTHORIZING THE TOWN MANAGER TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE TOWN MAYOR TO EXECUTE THE CONTRACT; AND PROVIDING FOR AN EFFECTIVE DATE.

- *B. Certification of General Municipal Election Results – March 20, 2012 –
Sandra Novoa, Town Clerk Page 121 - 125**

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA CERTIFYING AND DECLARING THE RESULTS OF THE TOWN OF SURFSIDE GENERAL MUNICIPAL ELECTION HELD ON MARCH 20, 2012 FOR THE ELECTION OF MAYOR AND THREE (3) TOWN COMMISSIONERS; AND PROVIDING FOR AN EFFECTIVE DATE.

- *C. Certification of Special Municipal Election Results – May 1, 2012 – Sandra
Novoa, Town Clerk Page 126 - 130**

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA CERTIFYING AND DECLARING THE RESULTS OF THE TOWN OF SURFSIDE SPECIAL MUNICIPAL ELECTION HELD ON MAY 1, 2012 FOR THE ELECTION OF A TOWN COMMISSIONER; AND PROVIDING FOR AN EFFECTIVE DATE.

- *D. Certification of Special Municipal Election Results – August 28, 2012 –
Sandra Novoa, Town Clerk Page 131 - 135**

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA CERTIFYING AND DECLARING THE RESULTS OF THE TOWN OF SURFSIDE SPECIAL MUNICIPAL ELECTION HELD ON AUGUST 28, 2012 FOR THE ELECTION OF A TOWN COMMISSIONER; AND PROVIDING FOR AN EFFECTIVE DATE.

***E. Charter Review – Lynn Dannheisser, Town Attorney Page 136 - 139**

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA APPROVING AFTER THE FACT REVISIONS TO THE MASTER BALLOT TO CLARIFY CLERICAL LANGUAGE FOR THE NOVEMBER 6, 2012 ELECTION IN TWO PROPOSED CHARTER AMENDMENTS: THE PREAMBLE AND CITIZENS' BILL OF RIGHTS AND THE MANDATORY CHARTER REVIEW; PROVIDING FOR INCLUSION INTO THE TOWN CHARTER AND CODE; PROVIDING FOR AN EFFECTIVE DATE.

6. Good and Welfare (Set for approximately 8:15 p.m.)

Public comments for subjects or items not on the agenda. Public comment on agenda items will be allowed when agenda item is discussed by the Commission.

7. Town Manager and Town Attorney Reports

Town Manager and Town Attorney Reports have been moved to the Consent Agenda – Item 3.

All items on the Consent Agenda are considered routine or status reports by the Town Commission and will be approved by one motion. Any Commission member may request, during item 1E Agenda and Order of Business, that an item be removed from the consent agenda and discussed separately.

8. Unfinished Business and New Business

9. Mayor, Commission and Staff Communications

***A. Turtle Project – Art in Public Places Update – Duncan Tavares, TEDACS Director Page 140 - 158**

***B. City of Miami Beach Stormwater Master Plan Summary – Sarah Sinatra, Town Planner Page 159 - 163**

***C. Town of Surfside Website Update – Duncan Tavares, TEDACS Director Page 164 - 165**

***D. Report on Short Term Rental Ordinance Enforcement – Joe Damian, Code Enforcement Director Page 166 - 200**

E. Byron Street Closure (Verbal) – Roger M. Carlton, Town Manager

***F. Indian Creek Settlement Agreement Discussion – Roger M. Carlton, Town Manager Page 201 - 248**

G. Commissioner “Round Table” Get Together – Commissioner Joe Graubart Page 249

10. Adjournment

Respectfully submitted,



Roger M. Carlton
Town Manager

THIS MEETING IS OPEN TO THE PUBLIC. IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990, ALL PERSONS ARE DISABLED; WHO NEED SPECIAL ACCOMMODATIONS TO PARTICIPATE IN THIS MEETING BECAUSE OF THAT DISABILITY SHOULD CONTACT THE OFFICE OF THE TOWN CLERK AT 305-893-6511 EXT. 226 NO LATER THAN FOUR DAYS PRIOR TO SUCH PROCEEDING. HEARING IMPAIRED PERSONS MAY CONTACT THE TDD LINE AT 305-893-7936.

IN ACCORDANCE WITH THE PROVISIONS OF SECTION 286.0105, FLORIDA STATUTES, ANYONE WISHING TO APPEAL ANY DECISION MADE BY THE TOWN OF SURFSIDE COMMISSION, WITH RESPECT TO ANY MATTER CONSIDERED AT THIS MEETING OR HEARING, WILL NEED A RECORD OF THE PROCEEDINGS AND FOR SUCH PURPOSE, MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE WHICH RECORD SHALL INCLUDE THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

AGENDA ITEMS MAY BE VIEWED AT THE OFFICE OF THE TOWN CLERK, TOWN OF SURFSIDE TOWN HALL, 9293 HARDING AVENUE. ANYONE WISHING TO OBTAIN A COPY OF ANY AGENDA ITEM SHOULD CONTACT THE TOWN CLERK AT 305-861-4863. A COMPLETE AGENDA PACKET IS ALSO AVAILABLE ON THE TOWN WEBSITE AT www.townofsurfsidefl.gov

TWO OR MORE MEMBERS OF OTHER TOWN BOARDS MAY ATTEND THIS MEETING.

THESE MEETINGS MAY BE CONDUCTED BY MEANS OF OR IN CONJUNCTION WITH COMMUNICATIONS MEDIA TECHNOLOGY, SPECIFICALLY, A TELEPHONE CONFERENCE CALL. THE LOCATION 9293 HARDING AVENUE, SURFSIDE, FL 33154, WHICH IS OPEN TO THE PUBLIC, SHALL SERVE AS AN ACCESS POINT FOR SUCH COMMUNICATION.



TOWN OF SURFSIDE
Office of the Town Attorney

MUNICIPAL BUILDING
 9293 HARDING AVENUE
 SURFSIDE, FLORIDA 33154-3009

Lynn M. Dannheisser
 Town Attorney

Telephone: 305 993-1065

MEMORANDUM

TO: Town Commission

FROM: Lynn M. Dannheisser, Town Attorney

CC: Roger M. Carlton, Town Manager

DATE: September 19, 2012

SUBJECT: Town Attorney Monthly Update for August and September, 2012

This Town Attorney report combines an update from the last report dated July 17, 2012 and includes a summary of the items handled by the Office of Town Attorney to this date.

This past month was an extraordinary month in terms of the sheer volume of legal work- three hundred and forty six (346) billed hours of legal work. This doesn't include my time or Linda's time or our new St. Thomas Law School law clerk's time which together was over approximately hundred and forty (140) additional hours. In addition to the magnitude of the usual monthly workload outlined below and yet another Town election, there were some other special circumstances that merit explanation.

First, the Building Official and the Office of Town Attorney allocated extensive time and resources to prepare a response to FEMA's Community Assistance Visit Report of Findings to ensure the Town's participation in the Community Rating System (CRS) Program so that its flood insurance policyholders may receive premium discounts. We worked with outside Washington D.C. counsel, Ernest B. Abbott, to timely meet the deadline to file our response. Special recognition goes to G. Miriam Maer, Esq. and Linda Miller in my office who, in my absence, worked tirelessly with Paul Gioia and Darlene Martinat, to secure the proper back-up documentation. It was a herculean effort by everyone involved.

Second, as you know, we have three (3) significant and somewhat complex development projects proceeding simultaneously- Surf Club, the Shul, and the Chateau Development. In addition, we are dealing with legal issues arising from the 95th Street improvement project being done in conjunction with the construction of 9501 Collins.

Third, there was an enormous amount of time spent on code enforcement/special master issues. We were advised by the director that he is under a mandate that he handle a very specific number of prosecutions and hearings each month without regard to the volume of his other work and he must do so with no support staff and little existing infrastructure. After discussion following the special master hearing, it was made clear that legal will not be required to do the same amount of work next month.

Lastly, the P & Z procedure ordinance overhaul was very time-consuming- although I am hopeful you will find it worthwhile and time well spent.

The following Ordinances and Resolutions have been prepared (and/or reviewed and researched) or other advice rendered regarding the issues contained in them. In the case where agreements are attached, those contracts have also been drafted and/or reviewed and revised this month:

Ordinances:

Fences Walls Hedges (Construction Fence) Ordinance Amendment
Height Requirements for Parking Facilities with Elevator Lifts
Planning & Zoning Development Review
Spa Requirements
FEMA Ordinance Amendment

Resolutions:

Amending Annual Appropriations for Fiscal Year 2011-2012
Seawall Inspection
Comprehensive Everglades Restoration
Master Ballot Clarification
IPS Group Field Trial – Parking Meter
Certification of General Municipal Election Results – March 20, 2012
Certification of General Municipal Election Results – May 1, 2012
Certification of General Municipal Elections Results – August 28, 2012

The Town Attorney has prepared for, attended and/or rendered advice for the following public meetings:

August 15, 2012 Commission Meeting
August 23, 2012 Special Master Hearing
August 23, 2012 Special Budget Workshop
August 23, 2012 Candidate Forum
August 28, 2012 Special Election – Canvassing Board
August 29, 2012 Swearing In Ceremony
September 10, 2012 Budget Hearing
September 10, 2012 FOP Executive Session

No meeting July or August 2012 for Planning & Zoning Board

Development Review:

July 31, 2012 – Surf Club
August 2, 2012 – Chateau
August 16, 2012 – Chateau
August 22, 2012 - Shul
August 23, 2012 - Surf Club
September 11, 2012 - Chateau

Development Impact Committee:

August 30, 2012 – Surf Club

Town Commission, Town Manager and Clerk Issues:

Clarification of Master Ballot for proposed Charter amendment language and ballot questions
Public information campaign re: Charter amendment ballot questions
Continuing research on numerous election related/campaign financing/disclosures issues.
Lobbyist research
Byron Street closure issues
Condo-hotel and short-term rental resort tax and other issues
Follow-up of PACE program
Numerous and various Code Enforcement issues raised by Town Manager, Code Compliance Director, and Building Official.
Miami-Dade Library Interlocal issues
Towing ordinance research
Lanzo Claim re: water/sewer project
Assist and supervise Town Clerk with Public Records requests, minutes, records and notices
CCNA research
Research related to whether Town must declare state of emergency to receive FEMA funds
License Plate Recognition System research
Continuing advice, inquiries, and meetings re: Best Western site
Surf Club inquiries relative to historic designation, financing and other general zoning issues
Continuing issues re Shul project
Continuation of Spiaggia Condo parking resolution attempts
9732 Bay Drive continuing issues and follow-up with Bank of America legal counsel
Town College scholarships legal issues
95th Street streetscape public works issues
BID research memorandum and address other DVAC issues
Mason Rules research for various committees
Everglades Restoration program
Downtown Vision Project: Follow up on issues
Water Sewer and Storm Drainage and Collins Avenue Force main projects
Beach concession issues
Dog Park

Turtle Sculptures agreement issues
FDOT Surfside Repaving
Parking Structure Feasibility Study
Bal Harbour Shops Expansion issues
Review Bay Harbor Islands agreement with Miami Dade County Public Library System
North Force Main/Building Better Communities Bond
Continuation of anti-bullying research
Clean water state revolving fund due diligence legal opinion letter
Use question on Shoe repair on Harding

Building Department/Code Enforcement/Planning:

Assist Town Building Official on continuing FEMA Flood Insurance issues
On-going issues with 9372 Bay Drive “Unsafe Structure” and court hearings re: attorney’s fees; and preparation of Affidavit re: same and issues with Bank of America counsel; review and execution of Release Hold Harmless and Indemnification Agreement
Special master hearing preparation- preparation of case files, testimony, affidavits, etc.
Settlement Agreement meetings and review
Red Tag issues
Construction Fence and demolition issues
Lien research re: 9040 Collins Ave

Human Resources Department:

Review termination notices
Prepare for FOP Executive Session

Finance Department:

Preparation of Departmental Budget items for 2012-2013/continuing evaluation of legal needs of the Town and the most cost-effective means of meeting those needs.
Review of TRIM and budget Resolutions
Work with new finance director on various issues

Parks and Recreation:

Follow – up harassment/nuisance issues

Police Department:

Continuing work and preparation for October trial re: Davis v Surfside and strategy session with outside counsel re: mediation.
IPS Trial Parking Meter Agreement
IA investigation and Law Enforcement Officers Bill of Rights issues

Public Works:

Seawall issues

Lanzo claim
FDOT sidewalk lease agreement

Tourist Bureau:

Question regarding required affidavits re: Tourism consultant RFP
Resort tax citations and settlement issues
Soda tax research
Renewal of Community Garden Lease

Litigation:

Kahalon v Town of Surfside and the Town of Surfside Building Department Case No. 12-10534 CA 08, Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. The Town Building Official inspected 9372 Bay Drive, determined the property was an “Unsafe Structure” and the occupants must vacate the premises. Plaintiff filed an emergency injunction to stay the proceedings. The Town filed a Motion to Dissolve the injunction. The Court heard arguments, ordered a Special Magistrate to inspect the premises and the Special Master agreed the property was an “Unsafe Structure.” The Motion to Dissolve was granted and the occupants of the property vacated the premises. The Court granted the Town’s Motion for Entitlement to Determine Attorney’s Fees and Costs on August 30, 2012.

John Davis v. Town of Surfside Case No. 07-17286 CA 08, Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. This case has been consolidated as to discovery with a previous case filed by a former sergeant in the Town’s police department. The Court denied the Motion to Consolidate both cases for trial. Outside counsel and this office are preparing for trial. This case involves the dismissal of former Town of Surfside Police Sergeant, John Davis, for various improprieties including sexual harassment of former Town officer, Melanie Grove (Davis 2), sexual harassment of current Town Officer Marian Valino, misuse of equipment and falsification of employment application (Davis 1).

Sgt. Davis has sued the Town in two separate lawsuits for not dismissing him within 180 days of the Town’s alleged knowledge of the above indiscretions. He has also alleged the dismissal was without merit.

The Town did not dismiss him within the 180 days. However, the Town has asserted that the 180 day time period as set forth in the Police officers Bill of Rights was tolled because both criminal and multijurisdictional investigations were occurring against Davis when The Town was investigating him. Currently, on October 22, 2012 a bench trial has been set before the Honorable Gisela Cardonne on the issue of whether the Town violated the 180 day rule with regard to the charges related to Melanie Grove (Davis 2). The Town moved to consolidate the cases for trial, as they had been for discovery, but the judge denied the Town’s Motion. The parties have been unsuccessful in their attempt to schedule a mutually agreeable date for a mediation, which was requested by the Plaintiff and ordered by the Court yet again, has not been set.

Florida League of City Cases:

We monitor, coordinate witnesses, and assist in strategy and with requests for discovery with League counsel on cases that are covered by the FMIT.

Young Israel of Bal Harbour, Inc. vs. Town of Surfside Civil Action No. 1:10-CV-24392 in the United States District Court for the Southern District of Florida (“Federal Court Matter”). On December 10, 2010, Young Israel served a complaint alleging the Town Zoning Code imposes a substantial burden on Young Israel in violation of the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”). This matter is primarily being defended by The Florida League of Cities which has approved counsel to assist in the defense of this case. Mediation was held on January 4, 2012 with a follow-up Executive Session on January 9, 2012. A settlement was negotiated and approved at a Special Commission Meeting held on January 23, 2012. A site plan was filed, and there were two meetings of the DRG beginning February 2, 2012. The Development Impact Committee met on March 1, 2012. The Planning and Zoning Board met on March 29, 2012 to recommend the site plan to the Town Commission. The Town Commission met on April 10, 2012 and approved the site plan. A Stipulation of Settlement and a joint motion to stay the matter for 120 days was filed. The Stay was granted and the Court ordered the parties to file a Stipulation of Dismissal by June 7, 2012. In the meantime, on May 30, 2012, Pieter Bakker v. Town of Surfside and Young Israel of Bal Harbour, Inc. Case No. 17783 CA04, Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida (“State Court Matter”) was served.

In Bakker, the counts against the Town include contract zoning, charter violations, and a request for a writ of certiorari to quash Resolution 12-Z-2078 approving a site plan application to permit Young Israel to build a synagogue on 9580 Abbott Avenue. The League has agreed to provide coverage. On June 19, 2012, the Town filed a Motion for Enlargement of Time to respond to the amended complaint. The items attached to the Town's motion advised the state court of the nature of the existing federal litigation and the request by Young Israel which, if granted by the federal court, would relieve the Town of having to address a second lawsuit. In lieu of the dismissal in the federal case, Young Israel filed a Supplementary Complaint for Injunction and Damages and joined Pieter Bakker as a third party defendant. Young Israel asked the court to issue an injunction against the state court proceeding initiated by Pieter Bakker and to permit the implementation of the settlement agreement of the federal lawsuit. Bakker has filed an answer and affirmative defenses and a counterclaim against Young Israel and Surfside in the federal litigation.

Although the Town complied with the Young Israel Settlement Stipulation, approved the Young Israel site plan, and was prepared to secure the final order of dismissal, the issuance of the final order is delayed. In response to the State Court Matter, Young Israel requested that the federal court enter an injunction which prevents Bakker from proceeding in the State Court Matter. In response to Young Israel's effort to impose a federal injunction, Bakker filed a counterclaim in the Federal Court Matter. The Counterclaim seeks various remedies against Young Israel and also against the Town. As to the Town, Bakker asserts that the Town violated 42 U.S.C. § 1983 by depriving him of his rights to due process of law. In essence, Bakker claims that the Town violated its own land use regulations when it accommodated Young Israel, provided certain requested variances, and failed to conduct the appropriate number of public hearings during the site plan approval process. As a remedy, Bakker seeks to invalidate the site plan (as he does in the State Court Matter) and to secure an award of damages, attorneys' fees, and costs.

Bakker recently responded to the injunction claim in the Federal Court Matter which indicated that a temporary injunction should be entered (1) staying the State Court Matter and (2) requiring the parties to litigate all of the issues in federal court. Judge Martinez has not yet addressed the “agreed temporary injunction” between Bakker and Young Israel. As a result, Young Israel’s injunction claim and Bakker’s counterclaim now remain before Judge Martinez in the Federal Court Matter.

Meanwhile, in the State Court Matter, the Town filed a motion seeking an extension of time to respond to Bakker’s claims and discovery requests. The Town argued that it would be premature for the state court to address the claims filed by Bakker without first giving the federal court (Judge Martinez) a chance to decide whether to issue the temporary injunction requiring that the parties resolve their three-way dispute in the Federal Court Matter.

With respect to Young Israel’s still-pending federal claims against the Town in the Federal Court Matter -- (1) the RLUIPA “substantial burden” claim in Count I, (2) the RLUIPA “equal terms” claim in Count II, (3) the civil rights claim under 42 U.S.C. § 1983 in Count III, and (4) claim under Florida’s Religious Freedom Restoration Act in Count IV) – The Town will be filing a motion with Judge Martinez and requesting that he enter the final order of dismissal as required by the Settlement Stipulation.

Young Israel requested a short delay before the Town files its motion for entry of the final order of dismissal. We have accommodated Young Israel’s request for same. Mr. Bakker’s attorney has submitted voluminous public records requests including for transcripts of the executive sessions with the Town Commission. Since the Federal Court Matter remains ongoing, we believe those transcripts and certain documents remain exempt from public records requests. We are working with League counsel closely on all of this. Finally, the payment due to Young Israel pursuant to section 6 of the Settlement Stipulation in the amount of \$40,000 is not due until 30 days after the entry of a final order of dismissal. This could potentially occur in the next couple of months.

Americo Wehbe v Town of Surfside, Civil Action No. 11-23445 in the United States District Court for the Southern District of Florida. Plaintiff filed a ten (10) count Complaint served December 13, 2011 and a Motion to Dismiss to Strike or Motion for More Definite Statement was filed on January 18, 2012. Mediation is scheduled for September 19, 2012. Florida League counsel represents the Town and these claims are currently under investigation by the Florida League of Cities counsel in accordance with the Town’s insurance policy and subject to the attorney-client privilege. This office is working with the Police Department and Florida League of Cities to sort out the facts and coverage issues. The Florida League previously investigated this matter and determined there was no liability on the Town or any of the officers, and the League stated there was probable cause for the arrest. The Federal Court **dismissed** the case without prejudice and all unresolved pending motions in the case are denied as moot.



Downtown Advisory Committee Meeting

Wednesday May 30, 2012

7:00pm Commission Chambers

Minutes

1. Town Manager Welcome / Roll Call

Town Manager Roger Carlton called the meeting to order at 7:05pm and welcomed Commissioner Kligman.

Commissioner Kligman introduced herself.

In attendance was; member Ken Arnold; member Shaun Grenald; member Andy Labrada; member Eileen Kileen; member, Joe Corderi; member Jennifer Brilliant; member Louis Cohen; member Adam Markow; member Sergio Castion (arrived at 7:22pm).

Also in attendance was; Town Manager Roger Carlton; TEDACS Director Duncan Tavares; Legal Intern Ana Iglesias; Town Planner Sarah Sinatra; Commissioner Kligman.

2. Review of April 23, 2012, Meeting Minutes

Shaun Grenald made a motion to approve the minutes, Louis Cohen seconded the motion. All members present voted in favor.

3. Mom & Pop Grants

Duncan Tavares reviewed this item and explained the process and the efforts the Town is making to expedite this process. He explained that 15 businesses applied and 11 were ultimately awarded grant money.

4. Wayfarer Update

Duncan Tavares reviewed this, showed examples of what has been approved and explained this item will go before the Town Commission in the June Commission Meeting.

5. Benches/Window Coverings/News Racks/Turtles

Duncan Tavares showed an example of the proposed benches to be placed in the Downtown District. Town Manager Roger Carlton mentioned that some of businesses have asked about sponsorship and he asked if tastefully done placards indicating sponsorship would be agreeable to the Committee.



Duncan Tavares showed examples of new window coverings, the new publications to be placed in the news racks, and the progress of the Turtle art project and the upcoming events unveiling the turtles.

The Committee responded favorably but expressed some concern with how these benches would be affected long term with plans to devise a downtown vision.

6. Deco Bikes Update

Duncan Tavares went over this and explained that an agreement was reached late today to permit the second station to be placed partially on Publix property.

7. Business Improvement District

Town Manager Roger Carlton explained the process and asked for someone to champion this effort to start the process.

Town Manager Roger Carlton asked that a timeline and major steps be completed prior to the next meeting about initiating the process, he also said he will have a leadership meeting prior to the next meeting.

8. Parking Structure Study Liaison

Town Manager Roger Carlton explained that the process itself calls for a citizens advisory committee, indicating it would be for an ad hoc 4 month long Committee. He asked Sergio Castion, Shaun Grenald, Joe Cordieri, and Ken Arnold to be involved in this process.

9. Malaise and Complacency Downtown - Survey

Duncan Tavares went over this item and explained that he held the second Downtown Dialogue Meeting and stated that after eighteen (18) RSVP's only six (6) members attended. He also indicated that a lot of the downtown restaurants have stated that they do not wish to participate in the upcoming culinary events. He attributes some of the reluctance to participate to code compliance efforts.

He asked for suggestions from the Committee about how to combat this problem. Committee members responded with suggestions recommending education about code compliance to business owners.

Town Manager Roger Carlton went over the code compliance process and the history of the Town, he asked Shaun Grenald to explain his experience with code compliance.

He said that the Tourist Board offered to incentivize Surfers Spice and offer coupons from their budget in an effort to reach out to the downtown restaurants.

Sarah Sinatra suggested that while compiling the stakeholders for the Business Improvement District (BID), those same individuals should be reaching out to the business owners.

The Committee members discussed various options for changing the attitude of the downtown business owners.

Commissioner Kligman spoke to some of the issues and some efforts she can make as a advocate for the Committee and serving as a commission member to facilitate some of the goals of the Committee.

10. Action Item: Committee to discuss

Sarah Sinatra presented a Power Point presentation reflecting some issues associated with the sign code and proposing changes. She discussed options for modifying the sign code. Town Manager Roger Carlton asked if this item should be a priority discussion for the next meeting. The Committee responded affirmatively.



Town Manager Roger Carlton asked that for next meeting there is discussion about cooperative advertising in Ocean Magazine.

Town Manager Roger Carlton responded that he is working with FPL in their extensive process to replace utility poles/underground utilities and will continue to update the Committee.

11. Summer Meetings: July, August, September

The Committee agreed to decide in the June meeting whether there will be a July, August and/or September meeting.

12. Public Comment

**none.*

13. Next Meeting: Monday June 25, 2012

Duncan Tavares explained that the next meeting would be Monday, June 25, 2012.

14. Adjournment

The meeting was adjourned at 8:52pm.



Tourist Board Meeting Minutes

May 4, 2011

The meeting was called to order at 5:34pm in the Manny Crawford Conference Room, 2nd Floor Town Hall.

Roll Call: Eli Tourgeman, Chair; Ricardo Mualin, Vice Chair; Barbara Cohen, Secretary; Jack Blachar, Member; Vice Mayor Graubart, Commission Liaison; Duncan Tavares, Tourism, Economic Development & Community Services Director.

Absent with regrets: Litsa Kryellis

Guests: June Neville, Resident.

Resort Tax Ordinance Update: Agenda item was moved up per the request of Eli Tourgeman without objection. He explained that this item, two years in the making, is the final draft before the Commission reviews it on May 10, 2011. The Vice Mayor informed the Board that the Mayor and Commissioner Karukin would not be at that meeting. He asked the Board members if they would like to postpone the Commission review until the following month. Eli Tourgeman felt that as the Vice Mayor will be there as the Tourist Board liaison, and that there will be a quorum, it should proceed. Eli Tourgeman asked if any Board member had any discussion points regarding the ordinance. There being none, he asked the Board to discuss the minimum thirty four percent as history has shown him that the Board has received forty percent while the average over the last three years was shown as thirty four percent. Discussion ensued regarding having more resort tax in the past due to the existence of more hotels then, the lack of hotels now and the subsequent decrease in resort tax, and the future increase of the fund if the proposed hotels are built. Barbara Cohen made a motion to accept the ordinance as presented, Ricardo Mualin seconded the motion. The motion passed with three votes for and one abstaining vote. Jack Blachar abstained from voting as he reiterated his stance that he is not for taxing people, especially adding new taxes. He feels that this is not the mission of the Board and that the Board should be discussing ways to bring visitors to the Town. All Board members and the Director reminded Mr. Blachar that there would not be a Tourist Board without the Resort Tax and that it is the resort tax that pays for the events and promotional

activities that the Tourist Bureau produces on behalf of the Tourist Board. He was reminded that the Director's email reminder of the meeting, that included the agenda, asked for all members to come to this meeting with ideas for events and promotional opportunities for next fiscal year (see item below).

Review and approval of April 11, 2011 Meeting Minutes (previously emailed): Ricardo Mualin made a motion to approve the minutes; Jack Blachar seconded the motion; the motion was passed unanimously by the Board.

Resort Tax Receipts Update (A/R) (previously emailed): The Director explained that The Harbour Grill is behind in their October, November and December payments but have paid January, February and March. There is an on-going discussion between them and the Town regarding their delinquent payments. He also informed the Board that the version they are viewing tonight is different from the one they received by email as tonight's version is the most current. He also identified that the month of March saw over a million dollars in restaurant sales. The Board instructed the Director to return to the Finance Department to remind them that they were to change the spreadsheets to reflect more comparison data as outlined by the Board at previous meetings. A delivery date will also be requested of the Finance Department. The Board discussed the upcoming additional business to the spreadsheets when the new ordinance passes. Ricardo Mualin asked if there was a plan in place to assist the store owners with the changes. The Director informed the Board that he has already met with the front office and finance personnel to achieve a smooth informative process for the merchants.

A/P Update (previously emailed): The Director will bring a financial review of each program for review next month.

GMCVB Occupancy Information (previously emailed): The Board agreed unanimously to discontinue receiving these reports. The Director will continue to forward the update emails he receives from the GMCVB. Discussion ensued about the GMCVB membership and its value. The Director will forward the networking events to all Board members, with the objective that they may be able to attend, as he is often unable to attend due to work commitments and many Surfside meetings that occur at night.

Fiscal Year 2011/2012 Budget: The Director explained that the main item on the Tourist Bureau budget is the Promotional Activities account. The Board can expect approximately \$95,000, an estimate provided by the Finance Department, to use on events and promotional activities for next fiscal year. He is requesting that the Board provide a wish list so that each item can be evaluated, voted on, and funds allocated at the next meeting. This list is imperative for the budget process. The final outcome goes to the Commission as part of the Town's proposed

budget. Eli Tourgeman reiterated that now is the time for the Board to express what they would like to see occur next fiscal year. The following is the list of ideas from the members:

- An antique car show during season.
- Tourist Board grants for event productions.
- International events at the Community Center: a concert / Snoopy / a carnival.
- A joint venture coupon between the Tourist Bureau and the restaurants.
- A revised 3rd Thursday event series.
- Surfside Spice.
- A culinary event.
- A New Year's gala without fireworks.
- The Surfside Business Directory.
- The Shop.Dine.Stay brochure.
- Funds for advertising/marketing/hotel promotion: trade shows.

A literary festival was not approved by the Board.

A 4th of July fireworks event was not approved by the Board as this is a Parks & Recreation event.

The Director reminded the Board that the Town Manager stated at a previous meeting that he would not come back to the Board for Community Center opening events funding as the Board has already approved \$19,800 for the additional room at the center.

Logistics, including how to measure return on investment (ROI), and funding will be discussed at the June meeting. The Board agreed to volunteer their time and services to ensure that opportunities are brought to a successful conclusion.

Old Business:

3rd Thursday Update: Eli Tourgeman informed the Board that this was the most successful event to date due to the later time period and the quality of the band. The Director agreed but cautioned that the quality of the band was reflected in the cost and that this event went over budget.

Business Directory Update: The Director informed the Board that the Directory will be out by the end of the month. The Board agreed with the Director's request that all advertisers receive a fifty percent discount due to the late date of production. The Board agreed.

Website Update: The Director informed the Board that he was still waiting on a response to his email sent to member Litsa Kryellis on April 4, 2011. He is reluctant to proceed with the new website company until Ms. Kryellis' questions are answered. This item was on for discussion at the April meeting as well as appearing here tonight in the anticipation that Ms. Kryellis, absent at both meetings, would give her approval to proceed. The Board instructed the Director to send an email to Ms. Kryellis explaining that she needs to respond within a week in order to proceed with this item.

The Welcome Channel / Commercial Update: The Director will forward the proposed commercial, after he receives it, for the Board to review. To date, he has requested The Welcome Channel amend the proposed commercial three times.

Short Term Rentals Ordinance Update: The Director informed the Board that two versions, one that excludes STRs in the residential district, will be presented to the Commission on May 10, 2011.

Audit Update: The Director reminded the Board that this will occur after the Resort Tax ordinance is passed by the Commission as the new ordinance outlines an audit process.

Intern Update: The Director reminded the Board that the present intern is working for other Town departments. The intern due to start in May for three months just advised him that she is now only available on Tuesdays and Thursdays for the months of June and July. He will pursue advertising for a volunteer in the June Gazette.

Culinary Arts Festival Update: The Director informed the Board that the date of June 19, 2011 now needs to be pushed forward a week, to a later date, due to the planned grand opening of the Community Center set for that same date. The Board agreed to move the event to Sunday June 26, 2011. The Director gave a brief update on the restaurants that have confirmed their interest in the event and a subsequent Surfside Spice. The Director will liaise with Eli Tourgeman to continue the momentum on this event.

New Business:

Development Impact Committee: The Director explained the objective of this new Town committee. Recently the DIC requested, and received, a number of items from the developer of the proposed hotel on 92nd Street. A number of these items addressed improvements under the Parks & Recreation Department including a \$25,000 contribution to repairs at the Town's

tennis courts. The Director requested the Board send him Tourism related requests so that the Tourist Bureau can enhance the tourism product through similar developer contributions. As more hotels are proposed, the opportunity to address the influx of tourists and to enhance the tourism product is imminent. One of the proposals could be the creation of the entertainment park on 95th Street and Collins Avenue as discussed at last month's meeting (see below). The Board could also request new beach chairs and umbrellas, as part of the DIC process, at the Community Center for Town residents. This could help alleviate the fears of residents that guests from the new proposed hotels, as well as those using any new garage, will occupy all of the available space on the beach.

96th Street Entertainment Area – Barbara Cohen: Barbara Cohen would like the Board to revisit the idea of transforming the parking lot on the north side of 95th Street at Collins Avenue into an entertainment park as presented. This would only occur when adequate garage parking is built to cover the loss of existing spaces. The Director informed the Board that this is the sort of project that could be funded by DIC requested developer contributions. The Board agreed to keep this item on the agenda as an on-going discussion item and to work with the Director on proposals to the DIC for tourism related improvements for the Town.

Tourist Bureau Issued Restaurant Coupon – Barbara Cohen: Barbara Cohen presented a restaurant coupon provided by the BID of Coral Gables. This item is included in the list of proposed events (see above).

Downtown Stores / Brochure and Website Presence: Tabled to the June meeting.

July Monthly Meeting: The Board agreed to change the July meeting date to Wednesday July 6, 2011 and the September meeting date to Wednesday September 7, 2011 due to the holidays.

Next meeting: Monday June 6, 2011 at 5:30pm

The meeting adjourned at 6:51pm.

Respectfully submitted,

Name of signor



TOWN OF SURFSIDE
PLANNING AND ZONING BOARD AND DESIGN REVIEW BOARD
MINUTES
MAY 31, 2012
7:00 PM

1. CALL TO ORDER

Peter Glynn called the meeting to order at 7:05PM.

2. ROLL CALL

Recording Clerk, Sarah Johnston called the roll.

In attendance; Chairperson, Peter Glynn; Member, Jared Plitt; Member, Jorge Gutierrez; Member, Lindsay Lecour; Member Carli Koshal.

Also in attendance; Town Planner, Sarah Sinatra; Mayor Daniel Dietch; Town Attorney, Lynn M. Dannheisser; Vice-Mayor Karukin (arrived at 7:56pm); Commissioner Kligman (arrived at 8:03pm).

3. APPROVAL OF MINUTES: MARCH 29, 2012

Lindsay Lecour made a motion to approve, Jorge Gutierrez seconded the motion. All members present voted in favor.

4. SELECTION OF CHAIRPERSON

Jorge Gutierrez made a motion to recommend Lindsay Lecour as the chairperson, Jared Plitt seconded the motion. All members present voted in favor.

Jorge Gutierrez made a motion to recommend Peter Glynn as the vice-chairperson, Jared Plitt seconded the motion. All members present voted in favor.

Peter Glynn made a motion to hear agenda items 7A, B, C, D, and F before items 5 and 6, Jorge Gutierrez seconded the motion. All members present voted in favor.

5. WORKSHOP ON THE LAW PERTAINING TO QUASI JUDICIAL HEARINGS

**This item was discussed after agenda item 7F.*

Lynn M. Dannheisser presented a Power Point Presentation on Quasi-Judicial Hearings to the Board.

6. ZONING HEARINGS ARE QUASI-JUDICIAL PUBLIC HEARINGS.

A. Planning Board sitting with Design Review Board as recommending Board to the Town Commission.

Request of Owner of Property located at 8985 Bay Drive

The applicant and owner is requesting a side setback variance from the Town of Surfside Code for the property located at 8985 Bay Drive. The code requires the side setbacks to be ten (10%) percent of the street frontage of the lot in this

case 20.9 feet. The frontage of the subject lot is 209.53 feet, therefore the required side setback is 20.9 feet. The existing home has a five foot side setback and is therefore non-conforming.

Sarah Johnston swore in those members intending to testify.

Sarah Sinatra introduced this item and explained why the property owners were seeking a variance, she reviewed the criteria for the requested variance and indicated that staff is recommending approval.

No members of the public were present to speak.

Jared Plitt made a motion to approve based upon the staff recommendation, Peter Glynn seconded the motion. All members present voted in favor.

**see additional discussion and vote under agenda item 7E.*

7. DESIGN REVIEW BOARD:

A. Request of the Tenant of Property located at 9445 Harding Avenue

The applicant is requesting to install a window sign in the front of the store.

Sarah Sinatra introduced the application and indicated that staff is recommending approval subject to three conditions; the sign not exceed twenty percent (20%) of the window area, the sign be centered in the window area, and that prior to the installation a building permit is obtained for any interior renovations.

Jorge Gutierrez asked about the existing signage.

Jared Plitt made a motion to approve with the conditions. Jorge Gutierrez seconded the motion. All members present voted in favor.

B. Request of the Owner of property located at 425 95th Street

The applicant is requesting to install a wood picket fence in the front setback.

Sarah Sinatra introduced the application and said that staff is recommending approval with the following conditions: fence shall be no higher than three and half (3½) feet, if the configuration of the traffic circle is ever modified the location and height of hedges and the fence would have to be modified if they are found to be in conflict at that time, and that the hedge height would have to be reduced to three and a half (3½) feet.

The Applicant responded to some questions from Jorge Gutierrez about the height of the hedges and proposed fence. She requested that she be permitted to have a four (4) foot fence placed on the interior of the hedges.

Peter Glynn stated that he thinks the Applicant should be allowed to have a four (4) foot fence because the design of the fence is open.

The Board approved the Applicants request pending approval of a code change to permit four (4) foot fences. The first and third condition (pertaining to limiting the height of the fence and hedge to three and half (3½) feet was removed pending a code change.

Jorge Gutierrez made a motion to approve subject to the remaining condition that the height and location of the fence and hedge be reviewed if the traffic circle is ever modified, Peter Glynn seconded the motion. All members present voted in favor.

C. Request of the Owner of Property located at 9156 Abbott Avenue

The property is located at 9156 Abbott Avenue within the H30B zoning district. The applicant is requesting a garage conversion, wall, deck extension, and trellis for their single family home.

Sarah Sinatra introduced this application and explained that staff is recommending approval subject to reducing the height of the fence within the permitted height.

Jorge Gutierrez made a motion to approve with the condition that the height of the fence is reduced to the proposed code change of a four (4) foot fence height maximum, Jared Plitt seconded the motion. All members present voted in favor.

D. Request of the Owner of Property located at 9556 Abbott Avenue

The property located at 9556 Abbott Avenue is within the H30B zoning district. The applicant is requesting a garage conversion and a second story addition at the rear of their single family home. The existing side setback on the south has a 4 foot 11 inch side setback. The code requires a 5 foot side setback. Therefore, the applicant is requesting an administrative variance. The administrative variance procedures in the code limit an administrative variance to 5% of the setback. The applicant is requesting a variance for 1 inch, which is less than 5% of the setback. The neighbors on either side of the property have provided written consent to the variance. Copies of signed affidavits of consent are attached.

Sarah Sinatra introduced this item and explained that the application meets all requirements of the code, including the administrative variance requirements and must be ratified by the Board. She explained this item was being recommended subject to two conditions, the applicant provide additional landscaping around the house with a landscape plan submitted to staff for approval and that the applicant remove the front brick wall.

Lynn M. Dannheisser explained that the Board could grant the administrative variance if they would like, however for the Design Review Board purposes he will have to supply accurate renderings for the Design Review Board review.

Jorge Gutierrez mentioned that going forward they should consider looking at the code and the ten (10) percent requirement for front facing walls.

Jorge Gutierrez made a motion to approve with the conditions, Jared Plitt seconded the motion. All members voted in favor.

E. Request of the Owner of Property located at 8985 Bay Drive

The property is located at 8985 Bay Drive within the H30B zoning district. The applicant is requesting a 452 square foot addition for their single family home.

**this item was heard after agenda item 6.*

Sarah Sinatra indicated that for the Design Review Board portion of the application, staff is recommending approval.

Jared Plitt made a motion to approve, Jorge Gutierrez seconded the motion. All members present voted in favor.

F. Request of the Owner of the Property located at 9316 Abbott Avenue

The property is located at 9316 Abbott Avenue, within the H30B zoning. The applicant/homeowner is requesting to build a one (1) story single-family residence on the west side of Abbott Avenue between 93rd Street and 94th Street.

**this item was heard after agenda item 7D.*

Sarah Sinatra introduced the application and indicated that staff is not recommending approval based upon surrounding homes and incompatibility and their interpretation of the design review standards.

The applicant/homeowner is also an architect and presented a slide show of his proposed home with his architect for the project. He explained that he is also seeking LEED certification with this project.

Jared Plitt, Lindsay Lecour, and Jorge Gutierrez indicated they were receptive to permitting more modern design homes.

Peter Glynn expressed some concern with not following the recommendation of staff.

Jared Plitt made a motion to approve with the condition that the Applicant expand and enlarge the cover over the door on the street elevation and enhance the front entryway. The Applicant responded favorably. Jorge Gutierrez seconded the motion. Lindsay Lecour, Jared Plitt, Carli Koshal, and Jorge Gutierrez voted to approve subject to the conditions. Peter Glynn voted in opposition.

8. Planning Board sitting with Design Review Board as recommending Board to the Town Commission.

A. Capital Improvement Element Update

Sarah Sinatra presented this item and reviewed the update.

Jared Plitt made a motion to approve, Jorge Gutierrez seconded the motion. All members present voted in favor.

9. REPORT OF PERMITS ISSUED FOR THE MONTH OF APRIL 2012

10. Adjournment

Jorge Gutierrez made a motion to approve, Peter Glynn seconded the motion. All members present voted in favor.

The meeting was adjourned at 9:13pm

Accepted this ____ day of _____, 2012

Lindsay Lecour, Chairperson

Attest:

Sarah Johnston, Recording Clerk



TOWN OF SURFSIDE
Office of the Town Attorney

MUNICIPAL BUILDING
 9293 HARDING AVENUE
 SURFSIDE, FLORIDA 33154-3009

Lynn M. Dannheisser
 Town Attorney

Telephone: 305 993-1065

MEMORANDUM

TO: Town Commission

FROM: Lynn M. Dannheisser, Town Attorney *LED*

CC: Roger Carlton, Town Manager

DATE: September 19, 2012

SUBJECT: Amendment to Chapter 90 Planning & Zoning Development Review Process

In June, the attached memorandum describing the code requirements for P & Z Board and Design Review Board requirements was distributed. The topic was discussed both at the June and July Commission meeting. The Town Commission decided it would be preferable to amend Chapter 90 to accomplish, among other things, two main points:

- A. Merge the functions of the Design Review Board with the Planning & Zoning Board
- B. Update the development review process provisions to accurately reflect the currently utilized and "best practices" process.

In addition, one of our goals in this massive task was to make Chapter 90 of the code user-friendly so that any person- lay or professional- could read it and understand how to file an application, fulfill the requirements of the Town, understand the projected time frames, and to provide all those involved in the process, whether it was the Applicant or the approving boards, with the exact criteria by which to govern themselves.

We took advantage of the process to re-number and re-organize sections. So, while it may *appear* that the whole chapter has been modified because the legislative adoption process requires us to underline any section that was relocated and renumbered, please understand that in reality much of the chapter remained the same and only a portion has actually been amended

This memorandum is intended to help you identify and understand (by narrative) only those sections that are truly new. Additionally, we created a chart which is also attached and will help you visually identify the currently existing provisions, their re-located positions and which provisions are newly created.

The main change, as requested, was to eliminate the design review board as a separate entity and fold their powers and duties into those of the P & Z Board. These are now set forth in Section 90-18. The Commission's authority is delineated in Section 90-14. The Manager's administrative authority is provided in Section 90-18 Subsection 4. We took the opportunity to address the issue of vacancies on the Board (as we have experienced this year) in Section 90-16 subparagraph 5. It provides that if the appointing Commissioner resigns or his position otherwise becomes vacant during his/her term, the appointment shall be for the unexpired term in the same manner as original appointments are made but that if the seat shall remain vacant longer than a three (3) month period for any reason, the sitting Town Commission collectively by majority appoint a temporary member until such Commission position is filled in accordance with the Town Charter and Code.

Article III. sets forth in detail the Town's development review procedures. Once again while the whole section is underlined because it is now placed in one neat section, but only the following provisions are newly created and discussed as they appear in chronological order:

In Section 90-20.1 evidence of property ownership is to be provided the Town no later than fourteen (14) days of hearing. In 90-20.2 and 3 the submittal and pre-app conference previously assigned to the DRB is moved to P & Z.

The requirements for the filing of applications in Section 90-20.4 (1) and (2) are new. They are intended to create an orderly process. Among these provisions: if modifications are made to the site plan after the issuance of a recommendation from the Manager, the matter is automatically deferred. Under Section 90-20.6, the time to wait to re-file for reconsideration is six (6) months although the Commission is given some discretion. Section 90-20.8 also legislates that the Town has a right to rely on information submitted by Applicant for accuracy. A misrepresentation by an applicant is done at their own peril. If there is no action on an application within a ninety (90) day period, Section 90-20.9 says that the application is annulled and applicant must re-file.

Section 90-20.10 disallows an applicant to file for a variance, etc. if construction work was commenced without a permit unless the violation has been remedied and violative activity stopped.

Section 90.20.11 specifies which procedures are quasi-judicial in nature and 90.20.12 requires resolutions for approval by the Town Commission be sent to the P & Z Board to keep them informed on the disposition of any matter. Most of the sections of 90.20.15 relating to time periods re applications, development orders, extensions, building permit expirations and completion dates are new. These are our suggestions but this is a matter of policy so you should feel free to suggest changes, of course. There is a new provision on charter schools/ private schools.

Section 90-22 has all the specifics on site plan review and submission requirements most of which are existing. What is completely new is the publication of the set of criteria for the Commission (and the P & Z Board before that) must utilize in judging site plan approval. It is very specific and gives the Commission standards and considerations upon which to base judgments and decisions about as you proceed through the hearing. Also, in subsection 4, you are provided with your choices for final action, i.e., continue/defer for further review, deny if criteria are not met in the Commission's judgment, or approve with or without additional conditions. However, that approval will not become valid unless the Applicant pays all fees and reimbursable costs to the Town within thirty (30) days.

Finally, it addresses the issues of modifications to an already approved site plan and how to judge whether the modification is major or minor. Minor modification as defined in the legislation can be approved by the Manager i.e., in the instance where lot coverage, location, height density or intensity, points of ingress or egress, landscaping, character or compatibility does not change or create what would otherwise be deemed a variance. Major modifications must return to the Boards for approval.

As with any new code, once it is put into actual practice, you can expect we may need to amend it to address unforeseen circumstances or determine how the provisions can be improved based on actual experience.

Please call me with any questions or suggestions for revision you may have *prior* to the Commission meeting so we can be prepared to either answer your questions or have your changes already drafted and prepared to be brought for Commission consideration.




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Ldannheisser@townofsurfsidefl.gov

Lynn M. Dannheisser
Town Attorney

MEMORANDUM

TO: Town Commission
FROM: Lynn M. Dannheisser, Town Attorney 
CC: Roger M. Carlton, Town Manager
DATE: June 12, 2012

SUBJECT: Final Appointment of Planning & Zoning Board/Design Review Board Members

Currently, the Code requires:

For the Planning & Zoning Board appointments-one of the five P & Z Board members must be a Florida-licensed architect or a Florida-licensed general contractor or certified planner (AICP) or a Florida-licensed landscape architect. The appointment must also have been a town resident for a period of one year (there is a six-month residency exception for the licensed architect/landscape architect) and the Florida licensed architects must have a minimum of five years of practical experience; and,

For the Design Review Board appointments-there shall be seven members, comprised of the P & Z Board members and two additional members which shall be a Florida-licensed architect (one of these members can be a Florida-licensed landscape architect.) These two members shall be appointed by a majority of the Town Commission.

In an instance where a licensed architect/landscape architect who is also a Town resident cannot be identified for service on either Board the Commission, (to be ratified by a majority) may select a non-resident architect with the minimum five years practical experience.

In the event that the Commission finds itself unable to make these appointments, you may consider

modifying the required qualifications for P & Z and Design Review Board members. The modifications can be a broadening of the permitted professions represented on the Design Review Board members or the elimination of some of those requirements. Alternatives to consider might be:

Inclusion of practical experience and/or education in architecture, urban design/planning, design, historic preservation, and/or engineering;

Inclusion an attorney in good standing licensed to practice in the United States;

Elimination of the Florida licensure from one of the architect members;

Requiring only one design review board member to be a licensed architect and the other member to be a person who as a result of their training, experience, and attainments are qualified to analyze and interpret architectural and site planning information, including, but not limited to, licensed landscape architects, urban planners, engineers and builders/developers.

CURRENT PROVISIONS	PROPOSED REVISIONS
<p>Article I. In General</p> <p>Sec. 90-1. - General rules of construction.</p> <p>Sec. 90-2. - Definitions.</p> <p>Sec. 90-3. - Enforcement, interpretation, purpose and conflict.</p> <p>Sec. 90-4. - Policy and objectives.</p> <p>Sec. 90-5. - Compliance with regulations.</p> <p>Sec. 90-6. - Zoning in progress, applicability, temporary hold on permits and licenses.</p> <p>Sec. 90-7. - Buildings under construction.</p> <p>Sec. 90-8. - Outstanding permits.</p> <p>Sec. 90-9. - Relationship to the comprehensive plan.</p> <p>Sec. 90-10. - Provision for storm drainage.</p> <p>Sec. 90-11. - Charges for consulting services established.</p> <p>Sec. 90-12. - Escrow accounts.</p> <p>Sec. 90-13. - Collection of fees.</p>	<p>Article I. In General</p> <p>Sec. 90-1. General Rules of construction.</p> <p>Sec. 90-2. Definitions.</p> <p>Sec. 90-3. Enforcement, interpretation, purpose and conflict.</p> <p>Sec. 90-4. Policy and objectives.</p> <p>Sec. 90-5. Compliance with regulations.</p> <p>Sec. 90-6. Zoning in progress.</p> <p>Sec. 90-7. Buildings under construction.</p> <p>Sec. 90-8. Outstanding Permits.</p> <p>Sec. 90-9. Relationship to the comprehensive plan.</p> <p>Sec. 90-10. Provision for storm drainage.</p> <p>Sec. 90-11. Charges for consulting services established.</p> <p>Sec. 90-12. Escrow accounts.</p> <p>Sec. 90-13. Collection of fees.</p>
<p>Article II. Administration and Enforcement</p> <p>DIVISION 1. - PLANNING AND ZONING BOARD</p> <p>Sec. 90-14. - Created.</p> <p>Sec. 90-15. - Membership/quorum, minimum qualifications, officers, terms of officers, vacancies, general regulations, recommendations, expenditures, indebtedness.</p> <p>Sec. 90-16. - Meetings: board year; timeframe; order of presentation; location.</p> <p>Sec. 90-17. - Powers and duties.</p> <p>Sec. 90-18. - Design review board.</p> <p>Sec. 90-19. - Single-family and two-family development review process.</p> <p>Sec. 90-20. - Development review requirements for submittals other</p>	<p>Article II. Administration and Enforcement</p> <p>Division 1. Town Commission.</p> <p>Sec. 90-14. Town Commission.</p> <p>Division 2. Planning and Zoning Board</p> <p>Sec. 90-14.15. - Created.</p> <p>Sec. 90-15.16. - Membership/quorum, minimum qualifications, officers, terms of officers, vacancies, general regulations, recommendations, expenditures, indebtedness.</p> <p>Sec. 90-16.17. - Meetings: board year; timeframe; order of presentation; location.</p> <p>Sec. 90-17.18. - Powers and duties.</p> <p>Sec. 90-18. - Design review board.</p> <p>Sec. 90-19. - Single family and two family development review</p> <p>Sec. 90-19. - Single family and two family development review</p>

<p>than single-family and two-family. Sec. 90-21. - Certificate of occupancy. Sec. 90-22. - Changes and amendments. Sec. 90-23. - Conditional uses. Sec. 90-24. - No-fee operational licensing of not-for-profit places of public assembly. Sec. 90-25. - Home-based and common-area based assembly uses. Sec. 90-26. - Home offices. Sec. 90-27. - Certificates of use.</p> <p>DIVISION 2. - NONCONFORMING USES, LOTS AND STRUCTURES Sec. 90-28. - Nonconforming uses and structures—Purpose and scope. Sec. 90-29. - Nonconforming lots. Sec. 90-30. - Nonconforming use of buildings. Sec. 90-31. - Discontinuance of nonconforming uses. Sec. 90-32. - Existence of nonconforming use. Sec. 90-33. - Alterations or enlargement of nonconforming structures. Sec. 90-34. - Nonconforming uses not validated.</p> <p>DIVISION 3. - SPECIAL EXCEPTIONS, ZONING CHANGES, CONDITIONAL USES AND VARIANCES Sec. 90-35. - Planning and zoning board; town commission; applications for site plan, amendments to the land use plan, special exceptions, zoning changes, conditional uses and variances; public noticing requirements; rules of procedure. Sec. 90-36. - Variances. Sec. 90-36.1. - Temporary use or structure permit. Sec. 90-37. - Special exceptions. Sec. 90-38. - Lapse of special exception or variance.</p>	<p>process: Sec. 90-20. —Development review requirements for submittals other than single-family and two-family.</p>
<p>Article III. Establishment of Zoning Designations</p>	<p>Article III. Development Review Procedures</p>

Sec. 90-39. - Zoning districts.
Sec. 90-40. - Regulating maps.

Sec. 90-19. Creation of process.
Sec. 90-20. Procedures of General Applicability.
Sec. 90-20.1 Who may file.
Sec. 90-20.2. Application requirements.
Sec. 90-20.3 Preapplication conference.
Sec. 90-20.4 Filing of applications.
Sec. 90-20.5 Public hearing and notices procedure.
Sec. 90-20.6 Reschedule meeting dates and withdrawal.
Sec. 90-20.7. Resubmission of applications after denial.
Sec. 90-20.8. Reliance on information presented by applicant.
Sec. 90-20.9. Application annulment.
Sec. 90-20.10 Restriction upon variance and other development applications.
Sec. 90-20.11 Quasi-judicial proceedings.
Sec. 90-20.12 Resolutions for approval.
Sec. 90-20.13 Time limit.
Sec. 90-20.14. Fees and bonuses.
Sec. 90-20.15. General development provisions.
Sec. 90-20.16. Zoning clearance.
Sec. 90-20.17. Charter schools/private educational facilities.
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Sec. 90-23. Permitted Uses.
Sec. 90-2324. - Conditional uses.
Sec. 90-2425. - No-fee operational licensing of not-for-profit places of public assembly.
Sec. 90-2526. - Home-based and common-area based assembly uses.
Sec. 90-2627. - Home offices.
Sec. 90-2728. - Certificates of use.
Sec. 90-2829. - Nonconforming uses and structures—Purpose and scope.
Sec. 90-2930. - Nonconforming lots.

	<p>Sec. 90-3431. - Nonconforming use of buildings.</p> <p>Sec. 90-3432. - Discontinuance of nonconforming uses.</p> <p>Sec. 90-3233. - Existence of nonconforming use.</p> <p>Sec. 90-3334. - Alterations or enlargement of nonconforming structures.</p> <p>Sec. 90-3435. - Nonconforming uses not validated.</p> <p>Sec. 90-2436. - Certificate of occupancy.</p> <p>Sec. 90-2237. - Changes and amendments.</p> <p>Sec. 90-3638. - Variances.</p> <p>Sec. 90-3639. - Temporary use or structure permit.</p> <p>Sec. 90-3740 - Special exceptions.</p> <p>Sec. 90-3841. - Lapse of special exception or variance.</p>
Article IV. District Regulations	Article IV. Establishment of Zoning Designations
Article V. Design Standards	Article V. District Regulations
Article VI. Signs	Article VI. Design Standards
Article VII. Off Street Parking and Loading	Article VII. Signs
Article VIII. Landscape Requirements	Article VIII. Off Street Parking and Loading
Article IX. Religious Land Use Relief Procedures	Article IX. Landscape Requirements
	Article X. Religious Land Use Relief Procedures

ORDINANCE NO. 2012-_____

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING CHAPTER 90 "ZONING" BY AMENDING THE DEVELOPMENT REVIEW PROCESS AND SPECIFICALLY AMENDING ARTICLE I "IN GENERAL" AND SECTIONS 90-1 "GENERAL RULES OF CONSTRUCTION"; SECTION 90-2 "DEFINITIONS"; SECTION 90-3 ENFORCEMENT, INTERPRETATION, PURPOSE AND CONFLICT; SECTION 90-15 "MEMBERSHIP/QUORUM, MINIMUM QUALIFICATIONS, OFFICERS, TERMS OF OFFICERS, VACANCIES, GENERAL REGULATIONS, RECOMMENDATIONS, EXPENDITURES, INDEBTEDNESS"; SECTION 90-16 "MEETINGS: BOARD YEAR, TIMEFRAME; ORDER OF PRESENTATION; LOCATION"; AND SECTION 90-17 "POWERS AND DUTIES"; AND SPECIFICALLY DELETING SECTIONS 90-18 "DESIGN REVIEW BOARD; SECTION 90-19 "SINGLE FAMILY AND TWO FAMILY DEVELOPMENT REVIEW PROCESS"; SECTION 90-20 "DEVELOPMENT REVIEW REQUIREMENTS FOR SUBMITTALS OTHER THAN SINGLE-FAMILY AND TWO-FAMILY"; AND ADDING SPECIFICALLY UNDER ARTICLE II "ADMINISTRATION AND ENFORCEMENT" DIVISION 1 "TOWN COMMISSION AND SECTION 90-14 "TOWN COMMISSION"; AND SPECIFICALLY ADDING ARTICLE III "DEVELOPMENT REVIEW PROCEDURES" AND SECTIONS 90-19 "CREATION OF PROCESS"; SECTION 90-20 "PROCEDURES OF GENERAL APPLICABILITY"; SECTION 90-22 "SITE PLAN REVIEW"; SECTION 90-23 "PERMITTED USES"; AND RENUMBERING ALL OTHER EXISTING SECTIONS TO CONFORM WITH CHANGES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the consolidation of the design review and planning and zoning boards functions would streamline the design and development review process; and

WHEREAS, in order to effectuate this legislative intent, it is necessary to amend Chapter 90 of Town Code of Ordinances to remove references to the Design Review Board contained therein and create a specific development review sequence based on the present process; and

WHEREAS, it is in the best interests of the public health, safety and welfare of the Town of Surfside to ensure the Zoning Code sets forth a streamlined process for development review; and

WHEREAS, the Planning and Zoning Board, as the local planning agency for the Town, shall conduct a hearing on the proposed amendment on September 27, 2012 with due public notice and input; and

WHEREAS, the Town Commission shall have conducted a first duly noticed public hearing on these regulations as required by law on September 19, 2012; and

WHEREAS, the Town Commission shall have conducted a duly noticed second public hearing on these regulations as required by law on October 9, 2012

THE COMMISSION OF THE TOWN OF SURFSIDE HEREBY ORDAINS:

Section 1. **Recitals.** The above Recitals are true and correct and are incorporated herein by this reference.

Section 2. **Zoning.** Chapter 90 “Zoning” of the Town Code is hereby amended to read as follows:

ARTICLE I. - IN GENERAL.

Sec. 90-1. - General rules of construction.

The following general rules of construction shall apply to the regulations contained in this chapter:

1. The singular number includes the plural and the plural the singular, unless the context clearly indicates the contrary.
2. Words used in the present tense include the past and future tenses, and the future the present.
3. Words and terms not defined herein shall be interpreted in accordance with their normal dictionary meaning and customary usage.
4. In the interpretation and application of any provision of these regulations, the provision shall be held to the minimum requirement adopted for the promotion of the public health, safety, comfort, convenience and general welfare. It is not intended by these regulations to interfere with or abrogate or annul any easements, covenants, or other agreements, provided however, that where these regulations impose a greater restriction upon the use of buildings or premises or upon the height of buildings, or require larger open spaces or yards or lot areas that are imposed or required by other ordinances, rules, regulations, or by easements, covenants, or agreements, the provisions of these regulations shall govern.
5. Where this code includes regulations on the same point as contained in any other law or ordinance, the provisions of this Code shall govern; except that where the regulations of the other law or ordinance are more restrictive than those of this code, the other shall govern.
6. Whenever a provision of this Code requires any Town officer or employee to do some act or perform some duty, this Code shall be construed to authorize delegation to professional-level subordinates to perform the required act or duty unless the terms of the provision or section specify otherwise. Following any reorganization of the structure or duties of existing departments, authority shall be delegated to the appropriate successor department or division.

Section 90-2. Definitions.

Administrative Official. The administrative official shall be the town manager or designee and shall provide technical support and advice for the preparation and implementation of the comprehensive plan and this zoning code, and shall perform such other functions as requested by the town commission and authorized by this zoning code, and consistent with the Florida Building Code.

Design Review Group (DRG). The design review group shall be the appropriate town staff as determined by the Town Manager responsible for development review as set forth herein.

Zoning Clearance. A zoning clearance is the procedure used by the Town to verify that a proposed land use or structure is allowing in the applicable zoning district, and that the project complies with the development standards of this Zoning Code that apply to the use, consistent with the Comprehensive Plan.

Sec. 90-3. - Enforcement, interpretation, purpose and conflict.

1. The town manager or designee shall designate personnel who shall have the authority to enforce the provisions of this Code.
2. Where it is found that any of the provisions of this Code are being violated, enforcement proceedings may be initiated against the real property owner, the tenant if applicable and any other person violating the provisions of this Code. Any enforcement procedure authorized by the Town of Surfside Code of Ordinances or state law may be used to enforce the provisions of this Code. It shall be at the discretion of the town manager or designee to determine which method of enforcement is appropriate and whether more than one method of enforcement should be brought.
3. In addition to enforcement by the town manager or designee, the provisions of this Code may be enforced by the Surfside Police Department if appropriate.
4. Further, the town commission may direct the town attorney to bring an action for injunctive relief in appropriate circumstances.
- ~~5. Where this Code includes regulations on the same point as contained in any other law or ordinance, the provisions of this Code shall govern; except that where the regulations of the other law or ordinance are more restrictive than those of this Code, the other shall govern.~~
- ~~6. In interpreting and applying the provisions of these regulations, they shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, comfort, prosperity, or general welfare. It is not intended by these regulations to interfere with or abrogate or annul any easements, covenants, or other agreement, provided however, that where these regulations impose a greater restriction upon the use of buildings or premises or upon the height of buildings, or require larger open spaces or yards or lot areas than are imposed or required by other ordinances, rules, regulations, or by easements, covenants, or agreements, the provisions of these regulations shall govern.~~

Article II. Administration and Enforcement.

Division 1. Town Commission.

Sec. 90-14. Town Commission.

1. Town Commission Powers and Duties in Land Development Matters. The Town Commission shall have the powers and duties listed herein in regard to the zoning code and all land development regulations.. The Commission's authority shall include but not be limited to approval, approval with conditions, or modifications or denial.
 - a. To adopt and amend the Official Zoning Map in accordance with the procedures outlined herein.
 - b. To adopt amendments to the zoning code and any future land development regulations and the Comprehensive Plan.
 - c. To review and act upon applications for conditional uses in accordance with this Code.
 - d. To review and act upon applications for certain temporary uses in accordance with this Code.
 - e. To review and act upon variances from the development standards of these regulations.
 - f. To perform design review applying the Design Review Guidelines set forth in Appendix "A" to the Zoning Code
 - g. To act as the Board to review flood variance waivers or any other FEMA issue.
 - h. To make the ultimate interpretation as to uncertainties within the Code based on administrative, Planning & Zoning Board recommendations;

- i. To hear and determine appeals from levels of service compliance in accordance with state statutes;
- j. To review and act upon final plats prior to recording and/or plat revisions in accordance with the procedures outlined herein.
- k. To hear and decide appeals when it is alleged that there is an error in any order, requirement, decision, determination made by any administrative official acting pursuant to the Code, except where state or Town regulations or this Code specifically provide otherwise.
- l. To enter into development agreements.
- m. To review and act upon appeals to vested rights determinations.
- n. To review administrative decisions as set forth herein.

Division 1-2. Planning and Zoning Board

Sec. 90-1415. - Created.

There is created a town planning and zoning board.

Sec. 90-1516. - Membership/quorum, minimum qualifications, officers, terms of officers, vacancies, general regulations, recommendations, expenditures, indebtedness.

1. *Planning & Zoning Board Membership/quorum:* The planning and zoning board membership and quorum requirements ~~for zoning matters and design review matters~~ are as follows:
 - a. The planning and zoning board, when performing its zoning functions, shall consist of five members. One of the board members must be a Florida-licensed architect or a Florida-licensed general contractor or certified planner (AICP) or a Florida-licensed landscape architect, or a Registered Interior Designer, or a Florida Licensed attorney. Each commissioner shall be entitled to one board appointment, not subject to majority approval. Three members present at the planning and zoning board meetings shall constitute a quorum.
 - b. *All board matters:* One town commissioner shall be a liaison, non-voting representative without a vote at all planning and zoning board meetings.
2. *Minimum board member qualifications:* All board members must have been a town resident for a minimum period of one year, except for the licensed architects, including the Florida-licensed landscape architect, if applicable, who must have been a town resident for a minimum period of six months. ~~The Florida-licensed architects must have a minimum of five years of practical experience in the field of landscape design.~~ To the extent that no licensed architect ~~(whether for service on the design review board only as more specifically described in section 90-18 hereinbelow)~~ who is also a town resident can be identified and is willing to serve at the time of appointment to either board, then the commission may select a non-resident architect who otherwise fulfills the requirements of this section, provided that appointment shall be ratified by a majority of the board of commissioners.
3. *Officers:* The board shall elect one of its members as chairman and one of its members as vice-chairman, at its first regular meeting in April of each year. In the event of the resignation, removal, or inability of the chairman to serve, the vice-chairman shall succeed to the chairman position for

the unexpired term; and the board shall, thereupon, elect one of its members as vice-chairman for the unexpired term. The chairman shall preside at all meetings. In the chairman's absence, the vice-chairman shall preside. The chairman shall submit all board reports and recommendations to the town commission, by and through the chairman, vice-chairman or the town commission liaison member. The town shall provide a secretary for the board and the town clerk shall be custodian of all records, books and journals of the board.

4. *Board member term(s)*: The term of each board member appointment shall begin on the last Thursday of April of the year in which the board member is appointed and end when a successor board member is appointed or on the last Thursday in April, whichever dates comes first. The term of any board member filling a vacancy created on the board as provided in paragraph (5) shall begin at the time of the board members appointment and end the last Thursday in April or whenever a replacement is appointed.
5. *Vacancies*: A vacancy shall exist: (1) on the date that any member ceases to possess the minimum required membership qualifications provided herein; ~~or~~ (2) when a board member has been absent from three consecutive regularly convened board meetings or has been absent from five regularly convened board meetings within a board year, or (3) if the appointing Commissioner resigns or his position otherwise becomes vacant during his/her term. Vacancies on the board shall be filled by appointment for the unexpired term in the same manner as original appointments are made provided however, if the seat shall remain vacant longer than a three (3) month period for any reason, the Town Commission collectively by majority appoint a temporary member until such Commission position is filled in accordance with the Town Charter and Code.
6. *General regulations governing members*: Board members shall be appointed in accordance with all applicable state, county and town ethics laws, rules and regulations. Appointed members of the board shall not, during their term, hold any other public office, paid position or serve on any other board under town government, except as a temporary board member, or that of a voluntary fireman.
- ~~7. *Expenditures; indebtedness*: The town commission may authorize the expenditure by the planning and zoning board of such funds as the town commission may deem necessary to perform the requirements of this chapter. The town commission may appropriate from the general fund as set up in the annual budget and such sums as it may from time to time authorize the board to expend. The board may not incur indebtedness without prior commission approval.~~

Sec. 90-1617. - Meetings: board year; timeframe; order of presentation; location.

1. *Board year*: The board year shall commence on the last Thursday of April in each year.
2. *Meetings on zoning matters/timeframe*: Regular board meetings ~~for zoning matters~~ shall be held on the last Thursday of each month. The chair may call special meetings and may cancel or continue meetings as may be necessary.
- ~~3. *Meetings on design review matters/timeframe*: The board shall meet as needed on design review matters. The chairman may call special meetings and may cancel or continue meetings as may be necessary.~~

4. ~~Order of presentation for zoning matters and design review matters: In order to avoid unnecessary project costs and delays, the board shall address and finalize each project zoning matter prior to initiating each project design review, to the extent applicable.~~
5. **Location of all board meetings:** All board meetings shall be held in the Town Hall or Community Center.

Sec. 90-1718.- Powers and duties.

1. **Zoning matters:** The planning and zoning board shall act as an advisory board to the town commission on zoning matters and design review matters. The boards' powers and duties are as follows:
 - a. To perform its responsibilities as the local planning agency pursuant to local and state government comprehensive planning and land development regulations (F.S. Ch. 163);
 - b. To review and make recommendations to the town manager and the town commission regarding the adopting and amendment of the official zoning map; the land development regulations amendments; zoning district boundary changes; and comprehensive plan amendments;
 - c. To review and make recommendations to the town commission, on applications pertaining to site plans (if applicable) zoning changes, special use permits, conditional use variances vested rights and any other zoning applications;
 - d. To conduct such studies and investigations required under the Town Code and/or requested by the town commission and as needed from time to time to sit in a joint session with the Town Commission as requested by the Town Commission; and
 - e. The planning and zoning board shall have such other duties pertaining to zoning matters as prescribed by law, this section and the Town Code.
2. **Design review:** The planning and zoning board shall conduct a design review for all structures to be constructed and renovated within town limits ~~on the terms outlined below.~~ in conformance with the Design Review Guidelines, to the extent that it does not allow for administrative review.
3. **FEMA review:** The planning and zoning board when ~~constituted as a design review board performing design review functions as set forth in section 90-18 hereinbelow,~~ shall act as the variance and appeals board pursuant Chapter 42, "Floods," Division 6, Variance Procedures, sections 42-111 through 42-117
4. **Administrative Review:** The administrative official shall be the town manager or designee, who shall provide technical support and advice for the preparation and implementation of the comprehensive plan and this zoning code, and shall perform such other functions as requested by the town commission and authorized by this zoning code, and consistent with the Florida Building Code. Specifically, and without limitation, the administrative official shall have the following duties:
 - a) Prepare and provide application forms for the development approvals authorized by this zoning code, and establish procedures for the processing of all applications, including setting required application filing deadlines to meet public hearing requirements;
 - b) Provide administrative interpretations of this zoning code;
 - c) Conduct pre-application conferences with applicants for development approval as required by this zoning code or as necessary or appropriate;

- d) Participate in the Development Impact Committee as established and set forth in section 90-21.
- e) Review and approve building permits for permitted uses;
- f) Issue building permits for uses that have received necessary approvals by the town commission or planning and zoning board pursuant to this zoning code;
- g) Approve minor administrative changes to approved site plans consistent with this zoning code;
- h) Review and approve certificates of occupancy and certificates of use;
- i) Prepare as necessary the record upon which each final decision of the town commission pursuant to the land development code is based, for purposes of any appeal to the circuit court of the eleventh judicial circuit in and for the county; and
- j) Approve administrative (de minimus) variances per section 90-38.2.

Sec. 90-18. — Design review board.

~~The planning and zoning board, when performing its design review and FEMA variance and appeals board functions shall be constituted as the design review board and shall have seven members. The seven members shall include the five members appointed by the commission and two additional Florida licensed architects, one of which may be a Florida licensed landscape architect. Both of these architects shall be appointed by a majority of the town commission. Four members present at the planning and zoning board design review meetings shall constitute a quorum and at least one of the four members shall be a licensed architect. The design review process is set forth as follows:~~

(1)

~~*Purpose.* This section is intended to promote excellence in architectural and urban design; preservation of the town's historic and architectural and neighborhood character; and desirable urban growth and development. To implement this goal, the design review board is hereby created to review and make advisory recommendations to the planning and zoning board as to whether the design of new developments and/or improvements within the town are consistent with and in conformance with the design guidelines set forth in the Town Code. The design guidelines are attached thereto as Exhibit A [at the end of this chapter] provided that the town commission may amend said guidelines from time to time via resolution. The guidelines as amended, shall govern and be applied as fully set forth herein.~~

(2)

~~*Design review procedure:*~~

~~a:~~

~~All applications for new developments or improvements that are subject to the town's adopted design guidelines shall be referred to the board for review and consideration.~~

~~b:~~

~~The board shall review each application whether for development of single family, multifamily,~~

~~commercial or other districts for conformity with the town's adopted design guidelines and recommend the application to the planning and zoning board for approval, approval with conditions, or disapproval of the application. No applicant shall be required to appear before the design review board more than twice per application.~~

~~e:~~

~~Meetings held by the board for review and recommendations of applications shall be arranged to permit participation by the person or group making the application or request and representatives of such person or group, if desired. Architectural plans and drawings of the building facades, lists of finish materials and other information necessary to provide adequate insight into the proposed development/improvement shall be provided to the board by the person or group making the proposal or request.~~

~~(3)~~

~~Design review application fees are set forth in the town designated fee schedule.~~

~~(4)~~

~~All meetings of the design review board shall be publicly noticed.~~

~~Sec. 90-19. Single family and two family development review process.~~

~~90-19.1 Permits. No building shall be erected, constructed, altered, moved, converted, extended or enlarged without the owner or owners first having obtained a building permit from the building official. Such permit shall require conformity with the provisions of these regulations. When issued, such permit shall be valid for a period of 180 days. However, the town manager or designee may grant an extension to the permit due to an uncontrollable act of nature of up to 180 days.~~

~~90-19.2 The building official reviews all applications for building permits or certificates of occupancy for compliance with the provisions of the zoning code and all other applicable codes. The building official shall issue a building permit if the applicant demonstrates that the proposed development is in compliance with all applicable codes and in compliance with any and all development orders issued in connection with the project, and that all fees have been paid.~~

~~90-19.3 Permit card. Upon approval of plan specifications and application for permit and payment of required fees, the building official shall issue a permit. The building official shall issue a permit card for each permit which shall bear the description of the property, identify the work being done, identify the owner and contactor and other pertinent information, and such card shall be maintained in a conspicuous place on the premises effected there by the hours of work and available on demand for examination.~~

~~90-19.4 Permit requirements. The Florida Building Code as amended is hereby adopted as the regulation governing the construction of buildings and structures in the town. All qualified applicants desiring a permit to be issued by the building official as required shall file an application in writing on a form provided by the town. No development shall occur until and unless the building official has issued a building permit.~~

~~90-19.5 Design guidelines. The town has adopted design guidelines intended to provide direction and suggestions for all development. The purpose of the design review board is to interpret those guidelines and provide guidance to the applicants as to how the design should be revised to more closely approximate or reflect the town's adopted guidelines. The applicant shall then incorporate those suggestions prior to proceeding to building permit.~~

~~90-19.6 Single family and two family development shall be reviewed by the design review board.~~

~~90-19.7 The following shall be exempt from design review board review; however, the design guidelines shall be followed:~~

~~(1)~~

~~Interior or rear yard fences.~~

(2)

Interior renovations.

(3)

Awnings.

(4)

Screens.

(5)

Driveways.

(6)

Re-roofs

~~90-19.8~~ The following are required for submittal to the design review board:

(1)

~~Application form: Each application shall describe the land on which the proposed work is to be done by legal description, and address shall show the use or occupancy of the building or structure; shall be accompanied by plans and specifications as required; shall state the value of the proposed work; shall give such other information as may reasonably required by the town manager or designee and the Florida Building Code; shall describe the proposed work and shall be attested to by the applicant and/or property owner.~~

(2)

~~Ownership affidavit.~~

(3)

~~Survey less than one year old. A survey over one year is sufficient as long as the property has not changed ownership and the owner provides an affidavit that no changes change occurred since the date of the survey.~~

(4)

~~Two full-sized sets of complete design development drawings (24" x 36" sheets) signed and sealed by a registered architect. Eight reduced sized (11" x 17") copies of the plans.~~

(5)

~~Surrounding context: Provide recent photographs, as visible from the street, of the subject property and of the adjacent two (2) homes on each side of the subject property on the same side of street. If the adjacent lot(s) are vacant then the next adjacent home(s) shall be utilized.~~

(6)

~~Site plan (minimum scale of 1" = 20')~~

~~a:~~

~~Show entire parcel(s) with dimensions and lot size in square feet.~~

~~b:~~

~~Show existing and proposed buildings with square footage.~~

~~c:~~

~~Show any buildings to be removed.~~

~~d:~~

~~Show all setbacks.~~

~~e:~~

~~Show dimensions and locations of all existing and proposed right of ways, easements and street frontage, including sidewalks, curb and gutter and planting strips.~~

~~f:~~

~~Show all existing and proposed site improvements, including, but not limited to, all utilities, retaining~~

walls, fences, decks and patios, driveways and sidewalks, signs, parking areas, and erosion control features.

g.

Show the location of all existing and proposed trees, vegetation, palms and note tree species.

h.

Show locations and dimensions of parking spaces and lot layout.

i.

Show driveway entrance width and setbacks from property line.

(7)

Architectural elevations (Minimum scale of $\frac{1}{8}'' = 1'$):

a.

Provide color elevations, showing all material finishes, textures and landscaping for all elevations of the proposed building(s). They should include, at a minimum:

b.

All exterior materials, colors and finishes, keyed to samples provided.

c.

Roof slopes and materials and color.

d.

Detail of doors, windows, garage doors.

e.

Lighting locations and details.

f.

Dimensions of structure(s) — height, width, and length.

g.

Deck, railing, stairs details including materials, colors, finishes, and decorative details.

h.

Exposed foundation treatment.

i.

Gutters and eaves.

j.

Abutting structure heights.

90-19.9 Effective period of design review board approval. An approval from the design review board shall be effective until the development is completed except that if, after 24 months from the date of the approval by the design review board a building permit for a principal building has not been issued and remains in effect, the approval shall be null and void.

(1)

Extensions for good cause, not to exceed a total of one year for all extensions, may be granted by the town commission, at its sole discretion, provided the applicant submits a request in writing to the town manager or designee in advance of the expiration of the original approval, setting forth good cause for such an extension. For the purpose of this Section, a building permit for a principal building shall cease to be in effect once required inspections have lapsed or once a certificate of completion or certificate of occupancy is issued.

(2)

All approvals which have been granted prior to the effective date of this chapter, shall be null and void and of no further force or effect if not utilized within two years after the effective date of this chapter, unless vested rights are demonstrated pursuant to subsection 90-5(11) of the zoning code. The foregoing

provision of this paragraph shall not apply if the governmental resolution granting the approval expressly established a specific time limitation for utilizing the approval. In such instances, the time limitation established by such resolution shall prevail.

Sec. 90-20. — Development review requirements for submittals other than single-family and two-family.

~~(1)~~

~~Generally. Review and approval of a site plan by staff reviewing agencies, the design review board, and the development impact committee, the planning and zoning board, and the town commission is required prior to any development of land in the town.~~

~~(2)~~

~~Process. Submit plans (sets to be determined by town staff as appropriately needed), which are distributed to the staff members of the development review group (DRG).~~

~~(a)~~

~~The DRG member shall review the site plan and prepare comments. The comments shall be forwarded to the town manager or designee. The comments shall be addressed by the applicant, if applicable. The town manager or designee shall hold a development review group meeting with appropriate town staff and the applicant to discuss the comments.~~

~~(b)~~

~~After the revisions and upon review of the final site plan by the DRG members, the site plan will be scheduled for the next available town design review board and planning and zoning board meetings. If possible, the planning and zoning board meeting and the design review board meeting should be held on the same date. The materials required under subsection 90-19.8 should not be duplicated for both the planning and zoning board meeting and design review board meeting. They shall be considered one submittal package.~~

~~(3)~~

~~Submittal requirements for DRG, planning and zoning and design review board are provided below.~~

~~(a)~~

~~Application. An application is required for site plan approval. This application shall include the following where applicable:~~

~~(b)~~

~~Site plan. A site plan, the overall size of which shall be 24" x 36", drawn at a scale not less than 1" = 20' and shall include the following:~~

~~i.~~

~~A legal description, including the section, township, and range or subdivision lot and block.~~

~~ii.~~

~~Site boundaries clearly identified, and ties to section corners.~~

~~iii.~~

~~Proposed uses.~~

~~iv.~~

~~Location and height of all structures and total floor area with dimensions to lot lines, and designations of use.~~

~~v.~~

~~Building separations.~~

~~vi.~~

~~Vehicular circulation system for cars, bicycles, and other required vehicle types, with indication of~~

~~connection to public rights of way. Location of all parking and loading areas.~~
~~vii.~~

~~All adjacent rights of way, with indication of ultimate right of way line, center line, width, paving width, existing median cuts and intersections, street light poles, and other utility facilities and easements.~~
~~Location of all cross streets and driveways within 350 feet of property limits.~~

~~viii.~~

~~Pedestrian circulation system.~~

~~ix.~~

~~Provider of water and wastewater facilities.~~

~~x.~~

~~Existing and proposed fire hydrant locations.~~

~~xi.~~

~~The following computations:~~

~~▲~~

~~Gross acreage.~~

~~▲~~

~~Net acreage. Gross acreage covered by the property excluding road easements and rights of way, if any.~~

~~▲~~

~~Number of dwelling units and density for residential uses only.~~

~~▲~~

~~Square footage of ground covered by buildings or structures and designation of use.~~

~~▲~~

~~Required number of parking spaces.~~

~~▲~~

~~Number of parking spaces provided.~~

~~▲~~

~~Pervious, impervious and paved surface, in square footage and percentage.~~

~~xii.~~

~~Site plan location sketch, including section, township, and range, showing adjacent property owners.~~

~~xiii.~~

~~Geometry of all paved areas including centerlines, dimensions, radii, and elevations.~~

~~xiv.~~

~~Location of trash and garbage disposal system and provisions for accessibility to garbage trucks.~~

~~xv.~~

~~Loading areas and provisions for accessibility to vehicles of the required type.~~

~~xvi.~~

~~Areas for emergency vehicles and fire engines, and provisions for accessibility to vehicles of the required type.~~

~~xvii.~~

~~Number of sets required shall be determined by town staff.~~

~~xviii.~~

~~Other such information as required by the town.~~

~~(e)~~

~~Survey. A survey less than one year old (including owner's affidavit that no changes have occurred since the date of the survey). The survey shall be prepared by a Florida registered land surveyor, certified as to meeting the requirements of the applicable Section of the Florida Administrative Code, reflecting existing natural features, such as topography, vegetation, existing paving, existing structures, and water bodies.~~

(d)

~~Landscape plan and irrigation plan. Landscape plan and irrigation plan with landscape calculations, existing tree survey with indication of existing native vegetation that will be preserved, as required herein.~~

(e)

~~Lighting plan. Lighting plan showing photometric measurements, lighting details and spillage onto adjacent properties and rights of way.~~

(f)

~~Sign plan for all signs which will be on-site.~~

(g)

~~Pavement markings and traffic signing plan.~~

(h)

~~Schematic water and sewer plan. Plans shall include the location and size of all mains and lift stations (Note: Final engineering plans must be submitted and approved).~~

(i)

~~Paving and drainage plans. Plans shall show the location of all drainage features and retention areas, if any.~~

(j)

~~Architectural elevations (minimum scale of 1/8" = 1')~~

~~i.~~

~~Show separate elevations of all sides of existing and proposed buildings with all dimensions, including height.~~

~~ii.~~

~~Label exterior materials, color, texture and trim, roof material, roof color and pitch, windows, doors, screens, skylights and all exposed mechanical equipment and screening.~~

~~iii.~~

~~Provide color elevations, showing all material finishes, textures and landscaping for all elevations of the proposed building(s) and structure(s), which should include at a minimum:~~

~~▲~~

~~All exterior materials, colors and finishes, keyed to samples provided.~~

~~▲~~

~~Roof slopes and materials including specifications and color.~~

~~▲~~

~~Detail of doors, windows, garage doors.~~

~~▲~~

~~Dimensions of structure(s) — Height, width, and length.~~

~~▲~~

~~Deck, railing, stairs details including materials, colors, finishes, and decorative details.~~

~~▲~~

~~Exposed foundation treatment.~~

~~▲~~

~~Gutters and eaves.~~

~~k.~~

~~Signs:~~

~~i.~~

~~Show dimensioned locations and mounting details of signs on building elevations and locations of signs on-site plan.~~

~~ii.~~

Note colors, materials, lighting and dimensions.

iii.

Show dimensions and square footages (proposed and existing).

iv.

Identify materials and colors—Background, trim/border, and copy.

v.

Show fonts and graphics.

(4)

Developmental impact committee.

(a)

There is hereby established a developmental impact committee composed of seven members representing the following town departments and disciplines:

i.

Town manager

ii.

Town attorney

iii.

Public works/landscape

iv.

Planning and zoning

v.

Park and recreation department

vi.

Engineering and traffic engineering

vii.

Building

(b)

The developmental impact committee shall review all developments (except single family and two family homes) and recommend where applicable, whether, and the extent to which:

i.

The development, as proposed, conforms to the comprehensive plan and the zoning code;

ii.

The development, as proposed, will have a favorable or unfavorable impact on the environment and natural resources, including a consideration of the means and estimated cost necessary to minimize the adverse impacts, if any;

iii.

The development, as proposed, will have a favorable or unfavorable impact on the economy of the Town of Surfside;

iv.

The development, as proposed, will efficiently use or unduly burden water, sewer, solid waste disposal, education, recreation or other necessary public facilities which have been constructed or planned and budgeted for construction in the area;

v.

The development, as proposed, will efficiently use or unduly burden or affect public transportation facilities, including mass transit, public streets, and roads, which have been planned and budgeted for construction in the area, and if the development is or will be accessible by private or public roads or streets.

vi.

~~The development, as proposed, is consistent with the community character of the immediate neighborhood. In addition to consistency there must be congruity between the subject development and neighboring improvements and surroundings including but not limited to form, spacing, heights, setbacks, materials, color, rhythm and pattern of architectural or aesthetic interest or value as well as with any overlays and other development schemes or legislation.~~

vii.

~~In the event of redevelopment, applicant shall also submit a detailed plan for demolition.~~

(e)

~~The committee shall meet prior to the planning and zoning board's hearing on the application. The committee shall be chaired by the town manager. The town manager or designee shall prepare a summary report of the development application to be distributed to and reviewed by the development impact committee prior to the committee meeting.~~

(d)

~~The town manager or designee shall prepare a summary report of the results of the development impact committee to be transmitted to the planning and zoning board and town commission upon their review of the development application.~~

(e)

~~The committee shall review and make recommendations pursuant to the criteria stated in (2) to the planning and zoning board and town commission whether, and to the extent to which, the development will efficiently use or unduly burden water, sewer, solid waste disposal, education, recreation or other necessary public facilities or public transportation facilities, including roads and streets, which have been constructed or planned and budgeted for construction in the area, and whether the proposed development will have a favorable or unfavorable impact on the economy of the Town of Surfside.~~

(f)

~~No public hearing shall be held by any board on any application subject to review by the developmental impact committee until the committee has made its recommendations with regard thereto.~~

(g)

~~Development impact committee meetings shall be noticed on the town website and shall be open to the public who may comment during a specific time scheduled on the agenda.~~

~~90-20.1 Site plan amendments. If an applicant's development plans change after previously receiving final site plan approval, the applicant may file an application for revised final site plan approval with the town manager or designee. However, no application will be considered for property that is the subject of pending code enforcement action by the town or that has an unpaid code enforcement lien.~~

(1)

~~Site plan amendment criteria:~~

~~a:~~

~~Amendments may not be contrary to a condition of the original site plan approval or any previously approved amendment (except that conditions that were imposed for a particular use may be lifted if that use is deleted from the site plan).~~

~~b:~~

~~Amendments may not change the character or location of any structure on the property that is not part of the main building.~~

~~c:~~

~~Amendments may not alter the location of any points of ingress or egress from the public right of way, nor alter any vehicular or pedestrian flows.~~

~~90-20.2 Exempt development.~~ Notwithstanding any other provision of this chapter, the following activities shall not require site plan approval, however, may require design review board approval:

- ~~(1)
The deposit and contouring of fill on land.~~
- ~~(2)
Construction of a single family home on an existing single family lot.~~
- ~~(3)
Construction of a single duplex on an existing single lot.~~

~~90-20.3 Effective period of final site plan approval.~~ An approved final site plan shall be effective until the development is completed except that if, after 24 months from the date the site plan is approved by the planning and zoning board a building permit for a principal building has not been issued and remains in effect, the site plan shall be null and void.

~~(1)
Extensions for good cause, not to exceed a total of one year for all extensions, may be granted by the town commission, at its sole discretion, provided the applicant submits a request in writing to the town manager or designee in advance of the expiration of the original approval, setting forth good cause for such an extension. For the purpose of this section, a building permit for a principal building shall cease to be in effect once required inspections have lapsed or once a certificate of completion or certificate of occupancy is issued. In those cases where a development includes more than one principal building and it is contemplated that the development shown on a site plan will not be completed with a building permit for a principal building continuously in effect, approval by the planning and zoning board of a phasing schedule must be obtained as part of the overall site plan approval. Amendments to the original site plan shall not extend this time frame unless an extension is expressly granted by the planning and zoning board as a part of the approval of the amendment.~~

~~(2)
All approvals which have been granted prior to the effective date of this chapter, shall be null and void and of no further force or effect if not utilized within two years after the effective date of this chapter, unless vested rights are demonstrated pursuant to subsection 90-5(11) of the zoning code. The foregoing provision of this paragraph shall not apply if the governmental resolution granting the approval expressly established a specific time limitation for utilizing the approval. In such instances, the time limitation established by such resolution shall prevail.~~

ARTICLE III. DEVELOPMENT REVIEW PROCEDURES.

Sec. 90-19. Creation of process. The Town Manager or his/her designee, (hereinafter the "Town Manager"), is hereby authorized to establish a development review process and to review and render recommendations on applications for development, conditional uses, temporary uses, variances, plats, development agreements, vested rights determinations, site plans and any other approval, condition or action contemplated by this Zoning Code and the Comprehensive Plan.

1. Determinations concerning uses or characteristics of uses not specified.

- a. Applicability. Where there is substantial doubt as to whether a particular use or uses, or classes of uses, or characteristics of use not specifically identified in this zoning ordinance, are of the same general character as those listed as permitted or conditional uses, or where use restrictions are either not provided or require interpretation, the Town Manager, upon request from any administrative agency, officer or department head of the Town, or on his/her own initiative, shall make a

determination in these matters, or on any issue regarding the development review process or intent of the zoning code provision involved. He/she shall give due consideration to the intent of the zoning regulation concerning the district involved, the character of uses specifically identified, and the character of the use or uses in question and the intent of the drafters.

- b. Appeal. On a determination made by the Town Manager in the manner set out above, an application for an appeal from such determination may be made to the Town Commission in writing, specifying the grounds for error, no later than 30 days from the issuance of the Town Manager's decision. The application for appeal from the determination or interpretation shall be scheduled for hearing before the Town Commission at the next regularly scheduled
 - c. Effect of findings by Town Manager.
 - i. If in making the determination the Town Manager finds that the determination or interpretation, as set forth hereinabove are of unusual or transitory nature or are unlikely to recur frequently and, unless his/her determination thereon is reversed on grounds of error on appeal to the Town Commission, the determination shall thereafter be binding on all officers and agencies of the Town as an administrative ruling, and without further action on, or amendment of this zoning ordinance.
 - ii. Where the Town Manager or Town Attorney finds, in making the determination or interpretation as set forth herein that such determination or interpretation is likely to lead to public uncertainty and confusion, the Town Attorney shall initiate a proposed amendment to the Zoning Code to rectify the omission. Notwithstanding the foregoing, until final action has been taken on such proposed amendment, the determination or interpretation of the Town Manager shall be binding on all officers and agencies of the Town as an interim administrative ruling.
2. Direct referral to the Town Commission. At the Town Manager's discretion, he/she may choose to take the matter for interpretation directly to the Town Commission for direction.

Sec. 90-20. Procedures of general applicability.

Sec. 90-20.1 Who may file. An application for site plan approval may be filed only by the fee simple owner of the land affected by the site plan or a contract purchaser or lessee, if applicable, of said land authorized by the fee simple owner to file such an application. Fourteen days prior to hearing, all contracts for purchase or leases must be presented or the application and any action taken thereon shall be considered null and void. Evidence of ownership of title must be presented to, and deemed legally sufficient by, the Town. In the case of an amendment to the Comprehensive Plan or Official Zoning Map, an application may be filed by the property fee simple owner or the Town of Surfside.

Sec. 90-20.2 Application requirements. Every application for a site plan shall be in a form specified by the Town and shall be accompanied by a fee, as established from time to time by the Town, to defray the costs of processing and reviewing the application and the required notice. (Professional fees shall be charged to the applicant in accordance with Section 90-11 hereinabove, as may be amended from time to time, after the hearing on the application and must be collected prior to permitting as provided for in the cost recovery program of the Town.) The application shall also be accompanied by the required notice. The applicant shall submit 10 copies of the application, accompanied by plans, data, or documents

specified by the application form. The applicant, at its sole expense, shall timely supply such other additional copies as may be required by the Town.

Sec. 90-20. 3 Preapplication conference. This is not mandatory and shall be at applicants request for all submittals other than single-family and two-family. If so requested, the Administrative Official shall schedule and hold preapplication conferences for the purpose of reviewing the proposed site plan, prior to the formal submission of an application for site plan approval. Formal application or filing of a complete application and plans with the Town is not required for the preapplication conference. Failure of staff to identify any requirements at a preapplication conference shall not constitute waiver of the requirement by staff or the decisionmaking body.

Sec. 90-20. 4 Filing of applications.

(1) The Administrative Official shall establish application filing deadlines and a review schedule for all applications.

(2) If an application is incomplete, the Administrative Official shall notify the applicant in writing of the deficiencies within five working days of receipt of the application. Upon determination that the application is complete, the Administrative Official shall distribute said application to the appropriate staff and reviewing agencies, including but not limited to the Design Review Group, Town Manager, Town Attorney, Planning Consultants, Building Official, landscape architect, traffic engineers, and other appropriate county and state agencies including, but not limited to Fire, PERA, WASA, Army Corps, FDOT and other appropriate review agencies.

a) **For applications other than single-family and two-family development;**

1. Review and approval of a site plan by staff reviewing agencies, the development impact committee, the planning and zoning board, and the Town Commission is required prior to any development of land in the Town.
2. An application for development approval may not be scheduled for public hearing until all required information has been submitted and the required review agencies have completed their review pursuant to section 90-21 Development Impact Committee.
3. Upon a determination by the Administrative Official that the applicant has addressed all reviewing agency comments or indicated s/he is declining to respond, the Administrative Official shall submit full recommendations to the Town Manager and Town Attorney prior to its issuance to the applicant and the public. Said review shall be conducted in accordance with the procedures set forth in section 90-21 Development Impact Committee.
4. Once the Town Manager and Town Attorney review said recommendation, they shall advise the Administrative Official that a public hearing shall be scheduled for the next available zoning agenda meeting, but in any case, not before the Development Impact Committee recommendations to the applicant.

b) **For applications for single-family and two-family development;**

1. The Administrative Official and the Building Official shall review all applications for building permits or certificates of occupancy for compliance with the provisions of the zoning code and all other applicable codes. The Building Official shall issue a building permit if the applicant demonstrates that the proposed development is in compliance with any and all development orders issues in connection with the project, and all fees have been paid.

c) **For applications for zoning change review criteria:**

1. In order to approve an application for zoning change the town commission must find that the application complies with each of the following criteria. The applicant is required to provide a report at the time the application is filed which includes documentation that the application complies with each of the below criteria:
 - a. The zoning change is consistent with the comprehensive plan;
 - b. The proposed change will result in development that is consistent in scale and character with those within 300 feet of the site;
 - c. The resulting boundaries of the zoning district are logically drawn;
 - d. The proposed change will not reduce property values in the town;
 - e. The proposed change will enhance the quality of life in the town; and
 - f. There are substantial and compelling reasons why the proposed change is in the best interests of the town.

Sec. 90-20. 5 Public hearing and notices procedure. Public hearing and notices procedures. All public hearing and notice requirements shall be provided in accordance with the provisions of F.S. § 163.3184 for a change to the Town's adopted Future Land Use Map, F.S. § 166.041 for adoption of ordinances and resolutions, and the Town's quasi-judicial legislation as may be amended, excluding single-family and two-family variance requests. Written recommendations of the Town Manager or his designee shall be developed and such recommendations shall become a part of the hearing file and record, and open for public inspection. Notice of the time and place of the public hearing describing the nature of the application and street address of the property shall be published in a newspaper of general circulation in the Town not less than 10 days prior to the public hearing. A notice containing substantially the same information set forth in the published notice shall be mailed to the property owners of record located within a radius of 300 feet of the property described in the application not less than 10 days prior to the public hearing. Where practicable, such advertising shall contain, in addition to a legal description, a street address, together with the specific, intended use in layman's language, i.e., "apartment house" rather than "multiple dwelling," "grocery store" rather than "Retail and General Commercial Use." The property shall be posted no later than 10 days prior to the hearing in a manner conspicuous to the public, by a sign or signs of 18 inches by 24 inches, containing information concerning the application, including but not limited to the applied for zoning action and the time and place of the public hearing. All costs of advertising, mailing and posting shall be borne by the applicant. The sign shall denote the following:

REQUEST FOR: _____
PLANNING AND ZONING MEETING: DATE AND TIME
TOWN COMMISSION MEETING: DATE AND TIME

TOWN HALL[]
9293 Harding Avenue[]
Surfside, FL 33154

COMPLETE INFORMATION REGARDING THE APPLICATION IS AVAILABLE BY CONTACTING THE TOWN HALL AT _____.
Modifications made to the application and site plan (regardless of cause or reason for those changes) subsequent to the issuance of the recommendation from Town Manager shall cause the

matter to be deferred until such time that the changes have been reviewed in accordance with the procedures set forth herein and in any case, not less than 30 days after such modifications have been submitted to the Town.

Sec. 90-20. 6 Rescheduled meeting dates and withdrawal. Public hearings for applications may be deferred or continued, by and at the discretion of the Town Commission, to a meeting date certain. If a deferral is either not elected or not granted, the Town Commission, within its discretion, may grant a withdrawal of the zoning application with or without prejudice. If a zoning applicant is provided with an opportunity to withdraw its application without prejudice, the application which is subject to said withdrawal may be re-filed at any time. If, however, a zoning applicant is allowed to withdraw its application with prejudice, that application shall not be resubmitted for reconsideration to the Town Commission for a period of six (6) months after the date the withdrawal with prejudice is granted by the Town Commission. In the event an application in whole or in part has been twice or more denied or withdrawn, a period of two years must run prior to the filing of any subsequent application. In any case, the applicant shall bear the costs associated with either the withdrawal or re-filing.

Sec. 90-20. 7 Resubmission of applications after denial. An application for development approval may not be resubmitted for reconsideration to the Town Commission for a period of one year after the date on which an application for substantially the same development approval has been denied by the Town Commission.

Sec. 90-20. 8 Reliance on information presented by applicant. The Town and its departments, boards and agencies shall have the right to rely on the accuracy of statements, documents and all other information presented to them by the applicant or his agent, in review of an application for development approval issued.

Sec. 90-20. 9 Application annulment. If an applicant fails to act upon a submitted application within a ninety-day period after receiving written comments from the Administrative Official and/or reviewing agencies, the application will be deemed null and void.

Sec. 90-20. 10 Restriction upon variance and other development applications.

1. Under those circumstances in which work has been done or a use has been established or conducted without obtaining the necessary building permit or development order, no application for a variance, conditional use, temporary use, new use or site plan approval (the "approval") related to such construction work or to such use may be considered by the Town Commission unless the violation which resulted from the conduct of such construction work or the establishment or conduct of such use is halted so as to remedy the violation of the Town's Zoning Code. Cessation of activity is required prior to the application being submitted for review.

2. Under those circumstances in which a permit or development order was issued for the conduct of construction work or the establishment or conduct of a use, but which nevertheless gives rise to the necessity for an approval application because of noncompliance with permit or development order conditions or otherwise, no application shall be accepted for review until the violative activity has ceased.

Sec. 90-20. 11 Quasi-Judicial proceedings. The following applications are quasi-judicial and shall comply with the Town's quasi-judicial legislation:

1. Site-specific rezoning.
2. Conditional use applications.
3. Special exceptions.
4. Variances, including, but not limited to: trees, signs, setback, distance requirements between buildings or other variances permitted by this chapter.
5. Development of regional impact.
6. Site plan (or site plan amendment).
7. Amendments to the land use plan.
8. Any other development approval deemed to be quasi-judicial by the town attorney.

Sec. 90-20.12 Resolutions for approval. Resolutions for approval of a site plan, special exceptions, variances and conditional use shall be sent to each member of the planning and zoning board by the town manager (or designee) following approval by the Town Commission (except for a rezoning of a parcel which shall be adopted by the ordinance as provided by law, and forwarded to the planning and zoning board in the same manner). All resolutions approving site plans, special exceptions, variances and conditional uses granted by the Commission shall be kept in a journal maintained for such purpose.

Sec. 90-20. 13 Time limit. Within two years after the Commission takes affirmative action approving an application for a variance, conditional use, other quasi-judicial zoning approval (other than a rezoning) or site plan approval (the "approval"), the approval must be utilized in accordance with its terms. In the event that the approval is not timely utilized, the approval by the Commission shall automatically expire and shall be considered void and of no effect. When taking affirmative action to approve an application, the Commission may extend the time limitations set forth above, by specifically authorizing a longer period of time for utilization of the approval. Additionally, the Commission may grant a time extension for utilization of the approval upon a showing of good cause in an application for extension of time filed prior to the expiration of the initial time period. An approval shall be deemed to be utilized if the use pursuant thereto shall have been established, or if a building permit has been issued, acted upon and the development to which such approval is an integral part is progressively and continuously carried to conclusion.

Sec. 90-20. 14 Fees, charges, and fines. Upon final approval of the application, and after the Building Department has reviewed and approved the plan, no building permit shall be issued, or if issued, shall be deemed valid, unless and until all professional fees, fines, and/or other charges, as may be amended from time to time, imposed in accordance with Town legislation have been paid and collected in full.

Sec. 90-20.15 General development provisions.

1. Time periods/expiration - completed application. A completed application (as determined by the Administrative Official) for a development order submitted after the effective date of this Zoning Code shall be valid for a period of twelve months. The application shall expire on the twelve month anniversary of the submission date of the application in the event a hearing has not been scheduled based upon said application has not been obtained by said date. The application shall expire earlier in the event of the final denial of the application prior to the expiration of the twelve-month period.
2. Time periods/expiration - development order. Each and every development order issued by the Town pursuant to this Zoning Code shall be valid for a period of 24 months from the date of

issuance of the development order and a building permit must be obtained during said twenty-four-month period (and construction begun and continue thereunder) except in the event a different time period to obtain a building permit is expressly authorized by the Town Commission and set forth in the development order. The foregoing sentence shall apply to development orders for all developments, inclusive of multiphase projects. A development order shall expire earlier in the event any condition or requirement of the development order containing a specific time period for performance is not timely satisfied as provided therein. In the event a building permit is not timely obtained or thereafter expires (or due to noncompliance with express conditions) and a development order expires, as provided above, it shall be deemed null and void and a new development order shall be required prior to development consistent with the Zoning Code then in effect. This subsection shall not apply to land use plan amendments or rezoning.

3. *Extensions of time.* If a developer desires additional time (beyond the twenty-four-month or other specified period), the developer may request an extension from the Town Commission by completing an application for extension prior to the expiration of the twenty-four month or other specified period. The Town Commission shall consider any such request on a case-by-case basis and may grant an extension for a period of time deemed reasonable by the Town Commission if the developer clearly established good cause for the extension and that the need for the extension is based substantially on events or occurrences beyond the control of the developer; provided, however, that, while the inability to obtain financing, volatility in the economy and/or changes in the market conditions affecting a project, as examples, may not constitute circumstances beyond the control of the developer, two or more of these factors combined and/or in combination with other relevant factors may be sufficient, as determined by the Town Commission, to establish the need for the extension.
4. *Building permit validity and expiration.* Upon issuance of a building permit to effectuate development approved by a development order, the rules and regulations of the Florida Building Code, as amended by Miami-Dade County or Town of Surfside, if applicable, shall determine the period of validity of the permit, subject to the Town's completion date requirements as set forth in this Zoning Code. However, in the event a building permit expires and becomes null and void, the development order for which the permit was issued shall contemporaneously expire and become null and void. This subsection shall not apply to land use plan amendments or rezoning. The foregoing shall not apply to dates the State of Florida has pre-empted or if any resolution by the Town Commission established a different time period.
5. *Permit card.* Upon approval of plan specifications and application for permit and payment of required fees, the building official shall issue a permit. The building official shall issue a permit card for each permit which shall bear the description of the property, identify the work being done, identify the owner and contactor and other pertinent information, and such card shall be maintained in a conspicuous place on the premises effected there by the hours of work and available on demand for examination.
6. *Permit requirements.* The Florida Building Code as amended is hereby adopted as the regulation governing the construction of buildings and structures in the town. All qualified applicants desiring a permit to be issued by the building official as required shall file an application in

writing on a form provided by the town. No development shall occur until and unless the building official has issued a building permit.

7. Completion date. All development authorized by a development order pursuant to the Zoning Code shall be complete and shall have satisfied all requirements for issuance of a certificate of occupancy or certificate of completion, as applicable, within 24 months from the date of issuance of the building permit authorizing development as approved in the development order, except in the event a different time period to obtain a certificate of occupancy or certificate of completion, as applicable, is expressly authorized by the Town Commission and set forth in the development order. If additional time (beyond the twenty-four month or other specified period), is desired by a developer, the developer may request an extension from the Town Commission as more particularly set forth hereinabove.

Sec. 90-20.16 Zoning clearance. Zoning clearance shall be required for all buildings and structures hereinafter erected, constructed, altered, or repaired within any zoning district established by the Zoning Code, and for the use of vacant land or for a change in the character of the use of land within any district established by the Zoning Code. No building permit shall be issued until a zoning clearance memorandum has been issued by the Administrative Official.

Sec. 90-20.17 Charter schools/private educational facilities. Notwithstanding any other provision in the Town Code, charter schools or private educational facilities with a student population of 40 or more students shall be required to submit a site plan, which includes vehicular queuing requirements as set forth in section 90-81.10, for a public hearing in accordance with the provisions herein. For the purpose of this subsection, "charter school" shall mean an educational institution which is authorized and maintained in accordance with the provisions of Chapter 1002, Florida Statutes, as same may be amended from time to time. For the purpose of this subsection, "private educational facility" is an educational facility which is not considered a public school or a charter school or a day-care facility under state law. Development approval may be issued administratively for charter schools or private educational facilities with a student population of 39 students or less, except where the Town Manager or designee has decided that the review of the Town Commission is required.

Sec. 90-20.18 through 90-20.99. Reserved.

Sec. 90-21. Developmental impact committee.

Sec. 90-22. Site plan review.

- A. Application required. Application for site plan review and approval shall be submitted to the Town in writing by the property owner or authorized representative on forms provided by the Administrative Official. A fee as established by the Town Commission shall be paid by the applicant.
- B. Exempt development. The following activities shall not require submission of a site plan pursuant to this section:
1. The deposit and contouring of fill on land.
 2. Construction of a single-family home on an existing single-family lot.

3. Construction of a single residential duplex on an existing residential duplex lot.
 4. Land clearing activity done in compliance with a valid land-clearing permit issued pursuant to the Zoning Code and a Town engineering permit.
 5. Demolition.
 6. Storage sheds on single-family residential lots, gazebos and tiki huts provided all other requirements of the Zoning Code are met.
 7. Site plans for government agency facilities that are consistent with the development standards of the zoning district.
- C. General site plan application requirements. All site plans must be prepared, signed and sealed by one or more of the following professionals:
1. A landscape architect registered by the State of Florida.
 2. An architect registered by the State of Florida.
 3. A civil engineer registered by the State of Florida.
 4. A land surveyor registered by the State of Florida.
- D. Site plan submission requirements. An application for site plan review shall include 10 sets of folded and collated plans containing the following:
1. Sealed current survey prepared by a Florida registered land surveyor, certified as to meeting the requirements of Chapter 5J-17, Florida Administrative Code. At a minimum the survey shall show the property's topography, water bodies, easements, rights-of-way, existing structures and paved areas. This survey shall be based upon current ownership and encumbrance report and shall so be stated on the survey itself.
 2. A tree survey is required if there are indications of existing native tree species or mature trees or palms not on the Miami-Dade County list of exotic or invasive species on the site when development is proposed within Town areas of particular concern as identified in the Town's Comprehensive Plan. The tree survey shall comply with the following minimum standards:
 - a. Tree surveys shall be prepared by and bear the seal of a registered land surveyor licensed to practice in the State of Florida. Tree species shall be identified by a registered landscape architect licensed to practice in the State of Florida.
 - b. Surveys shall delineate property boundaries, easements, and rights-of-way, bodies of surface water, and protected trees or groupings of trees. The species of trees to be removed or relocated shall be identified. In the case of a grouping of trees, the predominant species mix and estimated number shall be identified. Trees or areas of vegetation, which are required to be preserved, shall be delineated. Areas infested with prohibited or controlled plant species shall also be delineated and identified. Surveys shall also indicate such other information as may be required by the Administrative Official that is reasonable and necessary for the adequate administration of this section.
 3. Site development plans (Scale to be one inch equals 20 feet unless prior approval is received otherwise) shall include in proper form, detail, dimension and scale, the following:
 - a. Location, size and height of all principal and accessory structures, including buildings, wall, fences, walkways, driveways, parking areas, including garage and loading areas.
 - b. The building and floor plan, including roof plan.
 - c. Location, character and enclosure of all outside facilities for waste storage and disposal and/or outdoor storage, if any.
 - d. Exterior elevation with material, color designation, architectural finish treatments, surface treatments and curbing proposed for parking and loading areas including

- ingress and egress drives.
 - e. Landscaping plan (signed and sealed by a Florida registered landscape architect and planting schedule). Plans shall include required and provided quantities of plant materials.
 - f. Location, size, character, height and orientation of all signs.
 - g. Placement, height, and fixture design of all major exterior lighting fixtures, including hours of operation illumination and shielding of exterior lighting, certification by a registered professional engineer or registered architect that exterior lighting, as designed will not exceed the footcandle levels at the adjacent private property lines.
 - h. Off-site sketch map including, but not limited to, location of structures, utilities, rights-of-way and curb cuts within 300 feet of the subject property and other pertinent features.
 - i. Information as to all perimeter buffer requirements for adjacent properties.
 - j. A master site plan is required for all phased development.
 - k. Site data information including but not limited to zoning districts, permitted and proposed FAR, lot coverage, open space, parking, building height, density, setbacks and lot size information.
 - l. Details of all types of parking spaces and parking and truck loading areas showing ingress and egress.
 - m. Estimated construction schedule.
 - n. All signage locations, types and details.
 - o. Engineering plans (scale to be one inch equals 20 feet unless prior approval is received otherwise) including water, sewer, paving and drainage and utility locations.
 - p. Locations and details of all entry features (if applicable).
 - q. The location and owners of all adjoining lands as shown on the latest tax records, copies of all existing and proposed deed restrictions or covenants applying to the property, including covenants and agreements restricting the use, establishing future ownership and maintenance responsibilities for recreation and open space areas, existing zoning and prior zoning approvals and any other legal agreements documents and information required by the Administrative Official or the Town Commission.
 - r. Other elements integral to the proposed development as considered necessary by the Town Commission.
- E. Site plan review. The Administrative Official, Planning and Zoning Board, and consultants shall review all elements of the site plan and shall issue a preliminary recommendation to the Town Commission to assist the Commission in their site plan review and approval.
- F. Town Commission review.
- 1. Upon a determination by the Administrative Official that a site plan complies with the review criteria and the site plan has received recommendations from the DIC in accordance with Section 90-21 herein, all site plans will be placed on the quasi-judicial portion of the Town Commission agenda for final Town Commission action in accordance with the objective standards set forth below:
 - 2. Action.
 - a. On acting on site plan applications, the Town Commission shall consider:
 - i. The review and recommendations of the Administrative Official, staff, the DIC, the Planning and Zoning Board and all outside consultants who render reports with respect to the site plan under review;

- ii. Conformity of the site plan with the restrictions and requirements of the zoning code and consistency with the goals, policies and objectives of the Comprehensive Plan. The Town Commission's review shall include, but not necessarily be limited to, the general considerations set forth hereinbelow as well as all items contained in the submission list and set forth herein above and determine whether or not these considerations conform to the requirements of the land development regulations in each category:
 - a. Location, arrangement, size and general site compatibility of buildings, lighting and signs;
 - b. Acceptability and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic controls;
 - c. Location, arrangement, appearance and sufficiency of off-street parking and loading;
 - d. Acceptability and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience;
 - e. Acceptability of stormwater and drainage facilities;
 - f. Acceptability of water supply and sewage disposal facilities;
 - g. Acceptability, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise buffer between the applicant's adjoining lands, including the maximum retention of existing vegetation;
 - h. Acceptability of fire lanes and other emergency zones and the provision of fire hydrants;
 - i. Special attention to the adequacy and impact of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion.
- 3. The Town Commission's review shall be conducted at a public hearing.
- 4. Action by the Town Commission shall consist of one of the following:
 - a. Continue or table, pending further review by staff and consultants.
 - b. Deny the site plan if the Town can find it does not meet the criteria contained herein, and/or the site plan, as presented, is adverse to the public interest.
 - c. Approve or approve with conditions providing that upon action by the Town Commission, submission and review by Administrative Official and staff for Applicant's compliance with conditions of approval by the Town Commission, and upon payment by the applicant of all fees and reimbursable costs to the Town within 30 days of Commission action as verified by the Administrative Official then and that event the Building Official may approve issuance of a permit. Failure of an applicant to pay such fees and reimbursable costs shall become and be a lien upon the land involved and shall be added to and result in an immediate expiration of site plan approval within 10 days written notice to applicant. No permit shall issue without payment of same, in any case.
- G. Approved plans. An approved site plan shall remain valid for a period of 24 months from the date of approval. If no building permit is issued within the twenty-four-month time period, the site plan shall be considered null and void. Additionally, if at anytime building permits lapse the site plan shall be considered null and void. An extension may be granted by the Town Commission if the applicant

- shows good cause in the delay in obtaining building permits if requested prior to expiration.
- H. Site plan revisions. Where a proposed revision of an approved site plan affects the overall design and layout or where the proposal will require review under this section, the fee for processing the revision shall be the same as the initial submittal. All other revisions shall require a minor modification-processing fee as established by the Town Commission.
1. Major modification. Any change to an approved site plan that does not meet the criteria for review as a minor modification shall be deemed a major modification. All major modifications shall be processed in the same manner as an original site plan.
 2. Minor modification. The Town Manager may administratively approve "minor" changes and deviations from an approved site plan which are in compliance with the provisions and intent of this chapter and which do not depart from the principal concept of the approved plan. An amendment shall be considered a minor modification if in compliance with each of the following limitations:
 - a. The modification does not change lot coverage, setbacks, height limitations, as well as density or intensity calculations set forth in a previously approved site plan;
 - b. The change is not an alteration that would otherwise require a variance or would not meet the requirements of the Code of the Town of Surfside;
 - c. There is no change in the location, size and general site compatibility of building, lighting and signs;
 - d. The change does not alter the location of any points of ingress, egress, access and vehicular and pedestrian patterns to the site;
 - e. The changes does not substantially decrease the value of or substantially change the character or location of any improvement or amenity;
 - f. Change to landscape material, location, planting techniques, species, or size as deemed necessary by the Town Manager or his/her designee due to availability or site conditions; and
 - g. The change does not result in a material modification or the cancellation of any condition placed upon the site plan as originally approved.
 3. Upon considering whether a modification has met the criteria to be deemed a minor modification, the Town Manager or his/her designee, shall render a decision as to whether the modification shall be reviewed. The Town Manager or his/her designee shall have the discretionary authority to require Town Commission review of any modification whether minor or major.
 4. The Town Manager shall file a written report to the Town Commission advising of any minor modifications to a previously approved site plan.
- I. Engineering plans. No building permit shall be issued for any approved site plan unless and until all final engineering plans for water, the Town's Administrative Official approves sewer, roadway and drainage systems and a permit for it has been issued. Prior to the issuance of a building permit the applicant shall provide a copy of the approved site plan, on disc, in a format compatible with the Town's engineering applications.
- J. Copy of approved site plans required. Following Town sign off, but prior to the issuance of a building permit, a copy of the approved site plan shall be submitted to the Administrative Official. The copy

shall be in the same scale and identical to the approved site plan.

- K. Conformance with approved site plans. Prior to the issuance of a Certificate of Occupancy, two as-built surveys shall be submitted to the Administrative Official. The as-built surveys shall be in the same scale as the approved site plan. In case of any conflicts the approved site plan shall prevail.

Sec. 90-23 Permitted Uses.

1. Purpose. Permitted uses are considered to be fundamentally appropriate within the district in which they are located and are deemed to be consistent with the Comprehensive Plan. These uses are permitted as of right, subject to the required permits and procedures described in this section. Permitted uses require final site plan review and approval for compliance with the standards applicable to a particular permitted use as provided in the Zoning Code.
2. Permits required. Except as explicitly provided herein, no use designated as a permitted use in this chapter shall be established until after the person proposing such use has applied for and received all required development permits.

Sec. 90-2324 Conditional Uses.

90-2324.1 Purpose. Conditional Uses are generally compatible with the other land uses permitted in a zoning district but, because of their unique characteristics or potential impacts on the surrounding neighborhood and the town as a whole, require individual review as to their location, design, configuration, and/or operation for the particular use at the particular location proposed, as well as the imposition of individualized conditions in order to ensure that the use is compatible with the surrounding neighborhoods and appropriate at a particular location.

90-2324.2 Standards of review. In addition to the standards set forth in this zoning code for the particular use, all proposed conditional uses shall meet each of the following standards:

1. The proposed use shall be consistent with the Comprehensive Plan and the Zoning Code;
2. The establishment, maintenance or operation of the proposed use shall not be detrimental to or endanger the public health, safety, or general welfare;
3. The proposed use shall be compatible with the community character of the immediate neighborhood. In addition to compatibility there must be congruity between the subject development and neighboring improvements and surroundings including but not limited to form, spacing, heights, setbacks, materials, color, rhythm and pattern of architectural or aesthetic interest or value as well as with any overlays and other development schemes or legislation;
4. Adequate provisions shall be included for parking and safe traffic movement, both vehicular and pedestrian, both internal to the use and in the area which will serve the use;
5. Adequate measures exist including landscaping or other buffering measures or shall be taken to mitigate any adverse effects of noise, light or other potential nuisances; and

6. The establishment of the conditional use shall not impede the development of surrounding properties for uses permitted in the zoning district; and
7. Any other condition imposed by the ~~Design Review~~ Planning and Zoning Board, administrative official, and/or the Development Impact Committee.

90-2324.3 Applications requirements. No use designated, as a conditional use shall be established until after such use has received approval under the provisions of this section and has received all other permits required by the town. An application for conditional use approval shall be filed with the town. The application shall include:

1. An illustrative site plan.
2. An application fee, as established by the Town Commission.
3. A written summary of the proposed project.
4. Ownership affidavit and owner's sworn statement to consent, if applicable.
5. A survey less than one year old including owner's affidavit that no changes have occurred since the date of the survey.

90-2324.4 Procedures; Conditional Uses. Application and fee shall be submitted to the Town for a Conditional Use review and are subject to the requirements of section 90-24. Applications for approval of a Conditional Use shall be heard by the Planning and Zoning board for a recommendation to the Town Commission. The Planning and Zoning board's report may contain recommendations to the Town Commission in approving the Conditional Use. The Town Commission may establish these and/or additional conditions for an approval by a simple majority vote. Outdoor dining facilities, hotel swimming pools, and other similar facilities shall be required to obtain an annual Conditional Use permit. The permit will dictate hours of activity and other conditions necessary to provide compatibility with the surrounding neighborhood.

90-2324.5 Conditional Uses Expiration.

90-2324.6 Annual Permit Requirements. After approval by the Town Commission, a Conditional Use shall be required to obtain an annual permit. The Town Manager or designee shall review the annual permit application to determine if the Conditional Use continues to comply with the Standards of Review in Section 90-2324.2 and any additional conditions approved by the Town Commission. This permit shall include a fee as established by the Town Commission. The permit shall be submitted for and proceed concurrently with the annual business tax receipt.

90-2324.7 Revocation. If the Conditional Use fails to meet the Standards of Review in Section 90-2324.2 or the conditions approved by the Town Commission, a Conditional Use permit may be rescinded after the Conditional Use permit holder has been notified of these deficiencies. An administrative decision to revoke by the Town may be appealed to the Town Manager within thirty (30) days of the revocation. The Town Manager shall schedule an informal hearing with the applicant and his decision shall be rendered within ten days of the meeting in writing. That decision will be considered final. Any decision made by the Town Manager regarding Conditional Use permits may be appealed to the Town Commission.

Sec. 90-2125. - No-fee operational licensing of not-for-profit places of public assembly.

902125.1

902125.2

902125.3

902125.4

902125.5

Sec. 90-2526. - Home-based and common-area based assembly uses.

Sec. 90-2526.1 Applicability.

Sec. 90-2526.2

Sec. 90-2526.3 Frequency of home-based and common area based assembly uses.

Sec. 90-2526.4 Parking Standard.

Sec. 90-2627. - Home offices.

Sec. 90-2728. - Certificates of use.

90-2728.1 Term of certificate of use and transfer.

90-2728.2 Due date for payment of certificate of use fee.

90-2728.3 Fees.

90-2728.4 Application procedures.

(7) *Obtaining a certificate of occupancy prior to issuance of certificate of use.* All businesses required to obtain a certificate of occupancy from the town manager or designee pursuant to ~~Section 307~~ of the Florida Building Code, must do so prior to the issuance of a certificate of use. Any certificate of occupancy issued by Miami-Dade County shall be honored by the town, provided that the occupancy for which the certificate was issued remains the same.

90-2728.5 Grounds for denial.

(1) The town manager or designee, as appropriate, shall have the authority to deny an application for a certificate of use on the following grounds:

- a. That the applicant has failed to disclose or has misrepresented a material fact or any information required by this division in the application.
- b. That the applicant desiring to engage in the business, as described in the application, has selected a proposed site or type of business activity, which does not comply with the town's zoning ordinance or other laws of the town.
- c. That the applicant has failed to obtain a certificate of occupancy as required by ~~Section 307~~ of the Florida Building Code.

90-2728.6 Renewal of certificate of use.

90-2728.7 Display of certificate.

90-2728.8 Duties of building department.

90-2728.9 Examination of records.

90-2728.10 Approval of business location required.

90-2728.11 Lost or stolen certificates.

90-2728.12 Obtaining certificate by false statement.

90-2728.13 Illegal activity not approved by certificate.

90-2728.14 Revocation of certificate of use.

90-2728.15 Right of inspection.

90-2728.16 Penalties for offenses.

Sec. 90-2829. - Nonconforming uses and structures—Purpose and scope.

Sec. 90-2930. - Nonconforming lots.

Sec. 90-3031. - Nonconforming use of buildings.

Sec. 90-3132. - Discontinuance of nonconforming uses.

90-3132.1 Discontinuance or destruction of a nonconforming use or structure.

Sec. 90-3334. - Alterations or enlargement of nonconforming structures.

Sec. 90-3435. - Nonconforming uses not validated.

Sec. 90-2136. - Certificate of occupancy.

1. No vacant land shall be occupied or used until a certificate of occupancy shall have been issued by the building official after approval by the administrative official.
2. No premises shall be used and no buildings hereafter erected or structurally altered shall be used, occupied, or changed use until a certificate of occupancy and compliance shall have been issued by the building official, stating that the building or proposed use of a building or premises complies with the building laws and the provisions of these regulations. The administrative official shall first review and approve the application for certificate of occupancy prior to the building official review and issuance of said certificate.
3. Certificates of occupancy and compliance shall be applied for within ten days after the erection or structural alteration of such have been completed in conformity with the provisions of these

regulations. A record of all certificates shall be kept on file in the office of the building official.

Sec. ~~90-2237~~. - Changes and amendments.

90-22.1 Reconsideration of district boundary changes.

90-22.2 Withdrawal of a petition.

Sec. ~~90-3638~~. - Variances.

~~90-3638.1~~ General variances.

~~90-3638.2~~ Administrative variances.

Sec. ~~90-36.139~~. - Temporary use or structure permit.

(b) *Reviews and approval.* An application for temporary use as defined by Section 3103 of the Florida Building Code shall be submitted and reviewed for conformance with the procedures contained in Section 107 and Section 3103 and such other Sections of the Florida Building Code as may be applicable.

Sec. ~~90-3740~~. - Special exceptions.

Sec. ~~90-3841~~. - Lapse of special exception or variance.

ARTICLE ~~IV~~. DISTRICT REGULATIONS

Sec. ~~90-4142~~. - Regulated uses.

Sec. ~~90-41.142.1~~. - Short term rental of single family dwellings, two-family dwellings, multi-family dwellings and townhomes.

Sec. ~~90-4243~~. - Minimum unit sizes.

Sec. ~~90-4344~~. - Maximum building heights.

Sec. ~~90-4445~~. - Modifications of height regulations.

Sec. ~~90-4546~~. - Setbacks.

- Sec. ~~90-45-146.1~~. - Aggregation of lots.
- Sec. ~~90-4647~~. - Projections into required setbacks.
- Sec. ~~90-4748~~. - Yards generally, allowable projections.
- Sec. ~~90-4849~~. - Modification of side and rear yard regulations.
- Sec. ~~90-4950~~. - Lot standards.
- Sec. ~~90-49-150.1~~. - Entrances, windows and storefronts.
- Sec. ~~90-49-250.2~~. - Awnings and canopies.
- Sec. ~~90-49-350.3~~. - Materials and finishes.
- Sec. ~~90-49-450.4~~. - Structured parking garages.

ARTICLE ~~V~~VI. DESIGN STANDARDS

- Sec. 90-5051. - Architecture and roof decks.
- Sec. 90-5152. - Maximum frontage of buildings.
- Sec. 90-5253. - Required clearances.
- Sec. 90-5354. - Portable storage units.
- Sec. 90-5455. - Accessory buildings and structures in the H30A and H30B districts.
- Sec. 90-5556. - Accessory buildings and structures in the H30C, H40, SD-B40 and H120 districts.
- Sec. 90-5657. - Fences, walls and hedges.
- Sec. 90-56-157.1. - Construction fencing.
- Sec. 90-5758. - Marine structures.
- Sec. 90-5859. - Carport canopies.
- Sec. 90-5960. - Outdoor receiving and broadcasting antennae
- Sec. 90-6061. - Construction adjacent to bulkhead lines.
- Sec. 90-6162. - Paving in front and rear yards in H30 and H40 districts.
- Sec. 90-6263. - Outdoor lighting.
- Sec. 90-6364. - Miscellaneous elevations for seawalls, and groins.
- Sec. 90-6465. - Combined lots.
- Sec. 90-6566. - Boat parking.
- Sec. 90-6667. - Temporary storage of campers and house trailers.
- Sec. 90-6768. - Emergency power generators.

Sec. 90-67-168.1. - Service areas and mechanical equipment.

Sec. 90-67-268.2. - Underground and above-ground utilities.

ARTICLE ~~V~~IVVII. SIGNS

Sec. 90-6869. - General and miscellaneous provisions.

Sec. 90-6970. - Sign design parameters.

Sec. 90-7071. - Sign permits.

Sec. 90-7172. - Permanent signs by district.

Sec. 90-7273. - Exempt signs.

Sec. 90-7374. - Prohibited signs.

Sec. 90-7475. - Temporary signs.

Sec. 90-7576. - Non-conforming signs.

Sec. 90-7677. - Sign construction and maintenance.

ARTICLE ~~V~~IVVIII. OFF STREET PARKING AND LOADING

DIVISION 1. OFF STREET PARKING

Sec. 90-7778. - Off-street parking requirements.

Sec. 90-7879. - Interpretation of these requirements.

Sec. 90-7980. - Restricted and prohibited parking.

Sec. 90-8081. - Joint use and off-site facilities.

Sec. 90-8182. - Design standards.

DIVISION 2. OFF STREET LOADING

Sec. 90-8283. - Off-street loading requirements.

Sec. 90-8384. - Interpretation of the chart.

Sec. 90-8485. - Design standards.

ARTICLE ~~V~~IVIX. LANDSCAPE REQUIREMENTS

Sec 90-8586. - General.

Sec. 90-8687. - Landscape permit plans.

Sec. 90-8788. - Installation of landscaping and irrigation.

Sec. 90-8889. - Maintenance of landscaped areas.

Sec. 90-8990. - Plant material

Sec. 90-9091. - Vegetative provisions.

Sec. 90-9192. - Landscape buffer areas between residential and non-residential properties and vehicular use areas.

Sec. 90-9293. - Sight triangles and clearances.

Sec. 90-9394. - Open space.

Sec. 90-9495. - Landscape buffers.

Sec. 90-9596. - Single-family H30A and H30B district landscape requirements.

Sec. 90-9697. - Preparer's certification of landscape compliance.

Sec. 90-9798. - Tree removal, tree relocation, tree preservation, and tree abuse.

Sec. 90-9899. - Landscape manual and materials.

ARTICLE ~~IX~~X. RELEGIOUS LAND USE RELIEF PROCEDURES.

Sec. 90-99100. - Religious land use relief procedures.

Section 3. Severability. If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

Section 4. Inclusion in the Code. It is the intention of the Mayor and Town Commission of the Town of Surfside, and it is hereby ordained, that the provisions of this ordinance shall become and be made a part of the Code of the Town of Surfside, Florida. The

sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article", or other appropriate word.

Section 5. Conflicts. Any and all Ordinances and Resolutions or parts of Ordinances or Resolutions in conflict herewith are hereby repealed.

Section 6. Effective Date. This ordinance shall become effective in ten (10) days after second reading.

PASSED and ADOPTED on First Reading the ___ day of _____, 2012.

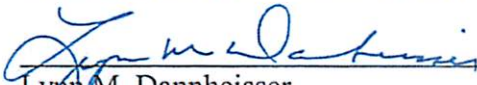
PASSED and ADOPTED on Second Reading this ___ day of _____, 2012.

Daniel Dietch, Mayor

ATTEST:

Sandra Novoa, Town Clerk

**APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:**



Lynn M. Dannheisser
Town Attorney

On Final Reading Moved by: _____

On Final Reading Seconded by: _____

VOTE ON ADOPTION:

Commissioner Joseph Graubart yes _____ no _____
Commissioner Michelle Kligman yes _____ no _____
Commissioner Marty Olchyk yes _____ no _____

Ordinance No. 2012-_____

Vice Mayor Michael Karukin
Mayor Daniel Dietch

yes _____ no _____
yes _____ no _____



**Town of Surfside
Commission Communication**

Agenda Item #: 4B4

Agenda Date: September 19, 2012

Subject: Amending Chapter 90 - Zoning and Amending Section 90-56.1 Construction Fencing

Background: Existing regulations require construction fences and fences around demolition sites on Collins and Harding Avenues. The existing ordinance was amended recently to allow the Town Manager to make adjustments in the location of the fence and approve the graphics to speed up the process and remove that burden from the Town Commission. A number of properties in other areas of Town have been demolished in whole or in part with the remains being left open to the public creating an unsightly and dangerous condition.

This ordinance remedies the problem by requiring that all construction sites Town-wide require a fence subject to the determination of the Building Official. This means that the Building Official will have discretion to allow a small project such as closing a garage to be done without a fence if that is appropriate. The ordinance puts height limitations on the fences, requires screening and places a time limit on how long the project may go on. The fences must be locked when there is no construction underway. There is an appropriate penalty if the ordinance is not adhered to by the property owner.

Based on the dangerous and unsightly conditions created at a number of sites Town-wide, approval of the ordinance amendment on first reading is recommended.

Roger M. Carlton, Town Manager

ORDINANCE NO. 12-_____

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING CHAPTER 90 "ZONING" AND SPECIFICALLY AMENDING SECTION 90-56.1 "CONSTRUCTION FENCING" OF THE TOWN OF SURFSIDE CODE OF ORDINANCES TO RENUMBER AND SUPPLEMENT WITH SECTION 90.56.1.B AND TO INCLUDE A REQUIREMENT THAT ALL CONSTRUCTION SITES SHALL PROVIDE A CONSTRUCTION FENCE TO SECURE THE SITE UNTIL THE COMPLETION OF CONSTRUCTION; PROVIDING FOR INCLUSION IN THE CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Commission (the "Commission") by Ordinance 1549, § 2, 3-9-10; and Ordinance 1583 § 2, 1-17-12 adopted regulations on construction fencing, including prohibited fencing, permit requirements, fees, and penalties; and

WHEREAS, the Commission clarifies § 90-56.1. – "Construction Fencing" by including it in § 90-56; and

WHEREAS, the Commission recognizes the danger posed within the confines of the construction fence during construction and non-construction hours and requires that such locations be locked; and

WHEREAS, the Planning and Zoning Board, as the local planning agency for the Town, shall conduct a hearing on the proposed amendment on September 27, 2012 with due public notice and input; and

WHEREAS, the Town Commission shall have conducted a first duly noticed public hearing on these regulations as required by law on September 19, 2012; and

WHEREAS, the Town Commission shall have conducted a duly noticed second

public hearing on these regulations as required by law on October 9, 2012.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA:

Section 1. Recitals. The foregoing “WHEREAS” clauses are ratified and confirmed as being true and correct and are made a specific part of this Ordinance.

Section 2. Code Amendment. The code of the Town of Surfside, Florida is hereby amended as follows:

Sec. 90-56. – Fences, Walls, and Hedges.

90-56.1.A. A fence or ornamental wall not more than six (6) feet in height, as measured from grade, may project into or enclose an interior side or rear yard only. Notwithstanding anything to the contrary elsewhere in the code, for purposes of this section, grade is defined as the point of the ground immediately below the location of the fence or wall.

90-56.1.B. Construction Fencing. Temporary construction fences are required by this ordinance unless otherwise determined by the Building Official. A construction fence permit shall be obtained from the Building Department prior to the fence being erected. Each fence constructed or maintained shall be constructed and anchored in accordance with the Florida Building Code.

a) Permit required. A permit application and a current survey of the site.

b) Permitted Fence. Subject to the approval of the Building and Zoning Departments, chain-link fence with canvas (or similar material) are the only type of fence that is permitted.

- i. Chain-link fences with canvas (or similar material backing) are permitted subject to approval of the Building and Zoning Departments. The property owner or agent shall obtain a demolition permit from the building department. The chain-link fence shall be permitted to be utilized as a demolition fence for a period of no longer than two months or until expiration of the demolition permit, whichever occurs first. However, such demolition fence shall not be removed until the installation of a permitted construction fence, as defined in this section.**
- ii. The permitted construction fence shall be installed immediately upon removal of the temporary demolition fence. At no time shall the parcel remain without a protective barrier.**

c) . Any person or entity found to be in violation of this subsection shall be subject to a fine of \$500.00 per day.

d) A temporary construction fence (as defined herein) shall be installed on the front, side, and rear property lines.

e) *Permitted height.* All construction fences shall be at least six (6) feet high and no higher than eight (8) feet.

(f) *Locked.* The fence shall be kept locked when the property is unoccupied.

(g) *Prohibited fences.*

(i)The following fences are not permitted, except as otherwise provided in the Code herein below:

1. Chain-link fences, unless,

(a) Chain-link fences with canvas (or similar material) backing or meshing may be permitted to be utilized as a temporary construction fence for a period of no longer than 18 months, provided they are neatly designed and maintained as approved by the building and zoning departments.

2. Barbed-wire fences.

3. Fences made of canvas material.

4. Any fences that fail to meet the requirement of the Florida Building Code.

(h) *Setbacks from property line on Harding Ave and Collins Ave.* A temporary fence installed on the front of the property shall be situated six feet from the property line on Harding Avenue and Collins Avenue, unless specifically waived by the town manager. The setback area between the temporary fence and the property line shall contain a continuous extensively landscaped buffer which must be maintained in good healthy condition by the property owner. No temporary construction permit shall be issued unless a landscape plan is approved by the town for the buffer. failure to maintain the landscaping will result in the town taking action to replace same and lien the property for the costs of landscaping.

(i) *Expiration of permit.* A temporary construction fence permit issued under this chapter shall expire at the completion of construction at which time the temporary fence shall be removed in accordance with the terms of the Florida Building Code.

(j) Murals and graphics. Graphics and murals on temporary construction fencing are prohibited unless approved by the town manager for aesthetic enhancement of the fence and advertisement of the project to be constructed.

(k) Fees. The town manager or designee may impose fees as he/she may determine appropriate for the use of construction fences for advertisement purposes in accordance with the schedule promulgated by the building official.

(l) Access gates. All temporary construction fences shall contain access gates with a minimum clear opening width of 12 feet. Access gates must be provided at the front and rear of the enclosure. Gates must be kept unlocked during inspection hours.

(m) Temporary construction signs. Construction, erection, and maintenance of temporary construction signs shall be governed by Town of Surfside Sign Code.

(n) Appeals. Any decision made by the town manager or designee regarding graphics, advertisement, and murals on a temporary construction fence may be appealed to the town commission.

(o) Enforcement and penalties. The code compliance division and building departments shall be responsible for the enforcement of the provisions of this section. Any person or entity found to be in violation of this section shall be subject to a \$500.00 fine per day.

90-56.2 A fence or ornamental wall may be placed within the front yard or primary corner yard if granted approval by the Design Review Board.

90-56.3 Fences or ornamental walls placed within a front yard or secondary frontage/corner yard are limited to function as spatial locators and shall not be substantial in appearance and shall adhere to height and opacity limitations as set forth in Table 90-56.4.

90-56.4 Front yard and corner yard fences and ornamental walls—Table.

Lot Frontage	Maximum Height (Feet)	Maximum Opacity (Percent)
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Less than or equal to 50 ft in width	4 ft	All wall and fence surfaces above two (2) feet measured from grade shall maintain a maximum opacity of fifty (50) percent
Wider than 50 ft and less than 100 ft	4 ft + ½ ft per 10 feet of lot width exceeding 50 feet, maximum 5 ft	
Wider than or equal to 100 ft	4 ft + ½ ft per 10 feet of lot width exceeding 50 feet, maximum 6 ft	
Secondary frontage (Corner only)	Shall adhere to the height and opacity limitations for corresponding lot frontage	

90-56.5 Modification of secondary frontage fence and ornamental wall regulations.

- (1) A fence that has a maximum opacity of 100 percent and a maximum height of five feet, as measured from grade, may project into or enclose up to 50 percent of the rear portion of the primary corner yard provided that the fence shall be placed at least ten feet from the right-of-way line or the fence shall be aligned with the wall plane of the subject home.
- (2) An ornamental wall whose surface above two feet measured from grade maintains a maximum opacity of 50 percent and a maximum height of five feet, may project into or enclose up to 50 percent of the rear portion of the primary corner yard provided that the ornamental wall shall be placed at least ten feet from the right of way line or the ornamental wall shall be aligned with the wall plane of the subject home.

90-56.6 When being installed as a safety feature for a swimming pool in a front or primary corner yard, a fence or ornamental wall shall be permitted at a maximum of four feet in height. The applicant shall demonstrate evidence relative to this hardship.

90-56.7 The height of such fence or ornamental wall shall be measured from grade. A berm or retaining wall shall not be created with the purpose of increasing the grade such that an ornamental wall or fence height exceeds the maximum height permitted by this Code.

90-56.8 In order to prevent water ponding at the base of ornamental walls, the installation of weep holes or other similar drainage features shall be required. The number and spacing shall be determined per lot per review.

90-56.9 Hedges shall be no more than four feet in height in the front yard and side corner yards and ten feet in height in the rear and interior side yards. Hedges may be higher if granted approval by the design review board, on a case-by-case basis.

90-56.10 Under no circumstances is any fence, wall or hedge to be located on a corner lot in such a way as to conflict with the requirements of section 90-52 (Required clearances) or fire codes, including concealment of fire hydrants.

90-56.11 No fence, wall or hedge may be placed within the public right-of-way except that landscaped islands surrounded by circular driveways on lots no more than 115 feet in width shall be permitted, provided that it is understood by the property owner that the town does not waive its right to demand removal without notice as deemed necessary within the town's discretion and the town shall not be liable for any damages arising from such removal. Property owner shall install or plant such materials at own risk. All improvements, other than groundcovers, as defined in the landscape section, shall be placed on private property.

90-56.12 Fences and walls shall be constructed so that the finished side shall face out or away from the property upon which it is constructed, and all support posts and the unfinished side shall be on the inside facing the property upon which said fence or wall is constructed. All masonry fences or walls shall be constructed so as to have a finished surface, including concrete block walls which shall have a plastered finish on all sides above ground level. In the event that a wood fence is constructed against a significant obstacle on the adjoining property, such as a hedge or another fence, that line of fence against the obstacle may be constructed with posts on the outside of the fence provided that the horizontal rails are at least 50 percent covered by boards on the side facing away from the property on which the fence is constructed.

90-56.13 It shall be a violation under this article for any person to erect or maintain a structure to serve as a fence in manner that endangers the health, safety, and welfare of the public as described in this section and as determined by the town manager or designee.

90-56.14 The following fencing material shall be prohibited:

- (1) Chain-link and other wire fencing, except as permitted herein.
- (2) Loosely attached masonry products, such as concrete block, bricks or other similar products not bonded together by mortar or comparable adhesive.

90-56.15 No grandfathering of chain-link fences shall be permitted in the front yard or in the corner side yard. Grandfathering of chain-link fences shall be permitted in interior side yards or rear yards.

90-56.16 In all districts, the owner or his agent, shall be responsible for the maintenance, in perpetuity, of all landscaping material in good condition so as to present a healthy, neat and orderly appearance and clear of weeds, refuse and debris. Landscaping material shall be trimmed and maintained so as to meet all site distance requirements. Hedges planted along property lines shall be maintained and neatly trimmed to prevent growth extended across the property lone or otherwise encroaching on an adjacent property. In the event of any discrepancy as to whether healthy, neat and orderly appearance is being maintained shall be determined by the town manager or designee.

90-56.17 Temporary construction fences shall be permitted pursuant to standards provided in section 90-56.1.B

~~Sec. 90-56.1.— Construction fencing.~~

~~(a)~~

~~Temporary construction fencing. No person or entity shall install or construct a temporary construction fence in this town without first obtaining a permit from the town's building department. Each fence constructed or maintained shall be constructed and anchored in accordance with the Florida Building Code.~~

~~(b)~~

~~Permitted fences:~~

~~(1)~~

~~Except on Harding Avenue and Collins Avenue, the following temporary construction fences are permitted in all the zoning districts:~~

~~a.~~

~~Wrought iron or blackened aluminum.~~

~~b.~~

~~Stucco and stone match main structure.~~

~~c.~~

~~Masonry walls pursuant to subsection 90-56.1~~

~~d.~~

~~Wood pickets.~~

~~e.~~

~~Concrete wall pursuant to subsection 90-56.1~~

~~f.~~

~~Frame plywood panel.~~

~~g.~~

~~Chain link fences with canvas (or similar material) are permitted if the property owner or agent has obtained a demolition permit from the building department. the chain link fence shall be permitted to be utilized as a demolition fence for a period of no longer than two months or until expiration of the demolition permit, whichever occurs first. However, such demolition~~

fence shall not be removed until the installation of a permitted construction fence, as defined in this section. The permitted construction fence shall be installed immediately upon removal of the temporary demolition fence. At no time shall the parcel remain without a protective barrier. Any person or entity found to be in violation of this subsection shall be subject to a fine of \$500.00 per day.

(2)

A temporary construction fence (as defined herein) shall be installed on the front, side, and rear property lines.

(3)

Chain-link fences with canvas (or similar material) backing or meshing may be permitted, provided they are neatly designed and maintained as approved by the building and zoning departments.

(e)

Prohibited fences.

(1)

The following fences are not permitted, except as otherwise provided in Code herein below:

a.

Chain-link fences.

b.

Barbed-wire fences.

c.

Fences made of canvas material.

d.

Any fences that fail to meet the requirement of the Florida Building Code.

(2)

Chain-link fences with canvas (or similar material) backing or meshing may be permitted to be utilized as a temporary construction fence for a period of no longer than 18 months, provided they are neatly designed and maintained as approved by the building and zoning departments.

(d)

Maximum and minimum height. A fence is permitted a maximum height of 12 feet and a minimum height of six feet.

(e)

Setbacks. A temporary fence installed on the front of the property shall be situated six feet from the property line on Harding Avenue and Collins Avenue, unless specifically waived by the town manager. The setback area between the temporary fence and the property line shall contain a continuous extensively landscaped buffer which must be maintained in good healthy condition by the property owner. No

~~temporary construction permit shall be issued unless a landscape plan is approved by the town for the buffer. failure to maintain the landscaping will result in the town taking action to replace same and lien the property for the costs of landscaping.~~

(f)

~~*Expiration of permit.* A temporary construction fence permit issued under this chapter shall expire upon the issuance of a certificate of occupancy. The temporary fence shall remain on the property until the completion of construction, provided that it shall be removed in accordance with the terms of the Florida Building Code.~~

(g)

~~*Murals and graphics.* Graphics and murals on temporary construction fencing are prohibited unless approved by the town manager for aesthetic enhancement of the fence and advertisement of the project to be constructed.~~

(h)

~~*Fees.* The town manager or designee may impose fees as he/she may determine appropriate for the use of construction fences for advertisement purposes in accordance with the schedule promulgated by the building official.~~

(i)

~~*Access gates.* All temporary construction fences shall contain access gates with a minimum clear opening width of 12 feet. Access gates must be provided at the front and rear of the enclosure. Gates must be kept unlocked during inspection hours.~~

(j)

~~*Temporary construction signs.* Construction, erection, and maintenance of temporary construction signs shall be governed by Town of Surfside Sign Code.~~

(k)

~~*Appeals.* Any decision made by the town manager or designee regarding graphics, advertisement, and murals on a temporary construction fence may be appealed to the town commission.~~

(l)

~~*Enforcement and penalties.* The code enforcement and building department shall be responsible for the enforcement of the provisions of this section. Any person or entity found to be in violation of this section shall be subject to a \$500.00 fine per day.~~

~~(Ord. No. 1549, § 2, 3-9-10; Ord. No. 1583, § 2, 1-17-12)~~

Section 3. Severability. If any section, subsection, clause or provision of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, the remainder shall not be affected by such invalidity.

Ordinance No. _____

Section 4. Conflict. All sections or parts of sections of the Town of Surfside Code of Ordinances in conflict herewith are intended to be repealed to the extent of such conflict.

Section 5. Inclusion in the Code of Ordinances. It is the intention of the Town Commission, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the Town of Surfside Code of Ordinances, that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and the word “ordinance” may be changed to “Section” or other appropriate word.

Section 6. Effective Date. This Ordinance shall be effective ten (10) days after adoption on second reading.

PASSED and ADOPTED on first reading this _____ day of _____, 2012.

PASSED and ADOPTED on second reading this ____ day of _____, 2012.

Daniel Dietch, Mayor

Attest:

Sandra Novoa
Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**



Lynn M. Dannheisser, Town Attorney

Ordinance No. _____

On First Reading Moved by: _____

On Second Reading Seconded by: _____

Vote:

Commissioner Joseph Graubart	yes	no
Commissioner Michelle Kligman	yes	no
Commissioner Marta Olchyk	yes	no
Vice Mayor Michael Karukin	yes	no
Mayor Daniel Dietch	yes	no

Ordinance No. _____