



**Town of Surfside
Special Town Commission Meeting
Quasi-Judicial Hearing
AGENDA**

August 13, 2019

6:00 p.m.

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

Rule 7.05 Decorum. Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the commission shall be barred from further appearance before the commission by the presiding officer, unless permission to continue or again address the commission is granted by the majority vote of the commission members present. No clapping, applauding, heckling or verbal outbursts in support or opposition to a speaker or his or her remarks shall be permitted. Signs or placards may be disallowed in the commission chamber by the presiding officer. Persons exiting the commission chambers shall do so quietly.

Any person who received compensation, remuneration or expenses for conducting lobbying activities is required to register as a lobbyist with the Town Clerk prior to engaging in lobbying activities per Town Code Sec. 2-235. "Lobbyist" specifically includes the principal, as defined in this section, as well as any agent, officer or employee of a principal, regardless of whether such lobbying activities fall within the normal scope of employment of such agent, officer or employee. The term "lobbyist" specifically excludes any person who only appears as a representative of a not-for-profit corporation or entity (such as charitable organization, a trade association or trade union), without special compensation or reimbursement for the appearance, whether direct, indirect, or contingent, to express support or opposition to any item.

Per Miami Dade County Fire Marshal, the Commission Chambers has a maximum capacity of 99 people. Once reached this capacity, people will be asked to watch the meeting from the first floor.

1. Opening

- A. Call to Order**
- B. Roll Call of Members**
- C. Pledge of Allegiance**

2. Quasi-Judicial Hearings

Please be advised that the following items on the agenda are quasi-judicial in nature. If you wish to object or comment upon an item, please complete a Public Speaker 's Card indicating the agenda item number on which you would like to comment. You must be sworn before addressing the Town Commission and you may be subject to cross-examination. If you refuse to submit to cross-examination, the Town Commission will not consider your comments in its final deliberation. Please also disclose any ex-parte communications you may have had with any members of the Town Commission. Town Commission members must also do the same.

A. Krieger Variance – 9264 Bay Drive – Guillermo Olmedillo, Town Manager

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, [APPROVING/ APPROVING WITH CONDITIONS/ DENYING] AN APPLICATION SUBMITTED BY DAVID KRIEGER AND BELLA TENDLER KRIEGER (“APPLICANT”) FOR THE PROPERTY LOCATED AT 9264 BAY DRIVE (“PROPERTY”) FOR A VARIANCE FROM SECTION 90-45 OF THE TOWN CODE TO PROVIDE A FIRST-FLOOR SIDE SETBACK OF 6 FEET, 9 INCHES WHERE 20 FEET ARE REQUIRED AND AN UPPER STORY SETBACK OF 10 FEET, 2 INCHES WHERE 25 FEET ARE REQUIRED; AND PROVIDING FOR AN EFFECTIVE DATE.

3. Adjournment

Respectfully submitted,



Guillermo Olmedillo
Town Manager

THIS MEETING IS OPEN TO THE PUBLIC. IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990, ALL PERSONS THAT ARE DISABLED; WHO NEED SPECIAL ACCOMMODATIONS TO PARTICIPATE IN THIS MEETING BECAUSE OF THAT DISABILITY SHOULD CONTACT THE OFFICE OF THE TOWN CLERK AT 305-861-4863 EXT. 226 NO LATER THAN FOUR DAYS PRIOR TO SUCH PROCEEDING.

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.

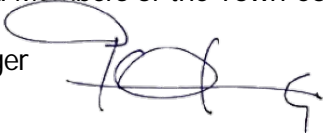
THESE MEETINGS MAY BE CONDUCTED BY MEANS OF OR IN CONJUNCTION WITH COMMUNICATIONS MEDIA TECHNOLOGY, SPECIFICALLY, A TELEPHONE CONFERENCE CALL. THE LOCATION 9293 HARDING AVENUE, SURFSIDE, FL 33154, WHICH IS OPEN TO THE PUBLIC, SHALL SERVE AS AN ACCESS POINT FOR SUCH COMMUNICATION.



MEMORANDUM

ITEM NO. 2A

To: Honorable Mayor, Vice-Mayor and Members of the Town Commission

From: Guillermo Olmedillo, Town Manager 

Date: August 13, 2019

Subject: Krieger Variance

The architect, Daniel Sorogon, on behalf of the owners Dr. David Krieger and Bella Tendler Krieger, is requesting two variances for side setbacks for the first floor and upper story level from the Town of Surfside Zoning Code. The property owners are proposing a new two-story single family home. The property is located at 9264 Bay Drive within the H30A zoning district. The code requires the first-floor side setbacks for a site that consists of more than one lot of record to be 20 feet or 20% of the frontage, whichever is greater. The frontage of the subject lot is 67.44 feet; therefore, the required first-floor side setback is 20 feet. The applicant is proposing a first-floor side setback of six feet, nine inches, a difference of 13 feet, three inches for each side of the first floor. The Code requires the upper story setback for a site that consists of more than one lot of record to be an average of 20 feet or 20% of the frontage, whichever is greater, plus an additional five feet. The applicant is proposing a 10 foot, two inch average setback on either side of the second story, a difference of 14 feet, 10 inches per the code requirements.

Location Map



Request

Section 90-45 of the Town's Zoning Code requires a minimum side setback of 10 percent of the frontage of the lot within the H30A zoning district for one lot of record. For more than one lot of record, the code requires the first-floor side setbacks for a site that consists of more than one lot of record to be 20 feet or 20% of the frontage, whichever is greater. The frontage of the subject lot is 67.44 feet; therefore, the required first-floor side setback is 20 feet. The applicant is currently proposing a first-floor side setback of six feet, 9 inches; therefore, the applicant is requesting a variance of 13 feet, three inches for the first-floor side setbacks.

The code requires the upper story setback for a site that consists of more than one lot of record to be an average of 20 feet or 20% of the frontage, whichever is greater, plus five feet. The applicant is currently proposing a 10 feet, two inches on average setback on either side of the property, a difference of 14 feet, 10 inches on either side; therefore, the applicant is requesting a variance of 14 feet, 10 inches for the upper story side setback.

Variance Criteria

(1) Special conditions and circumstances exist which are peculiar to the land, structure, or building involved, and which are not applicable to other lands, structures, or buildings in the same zoning district;

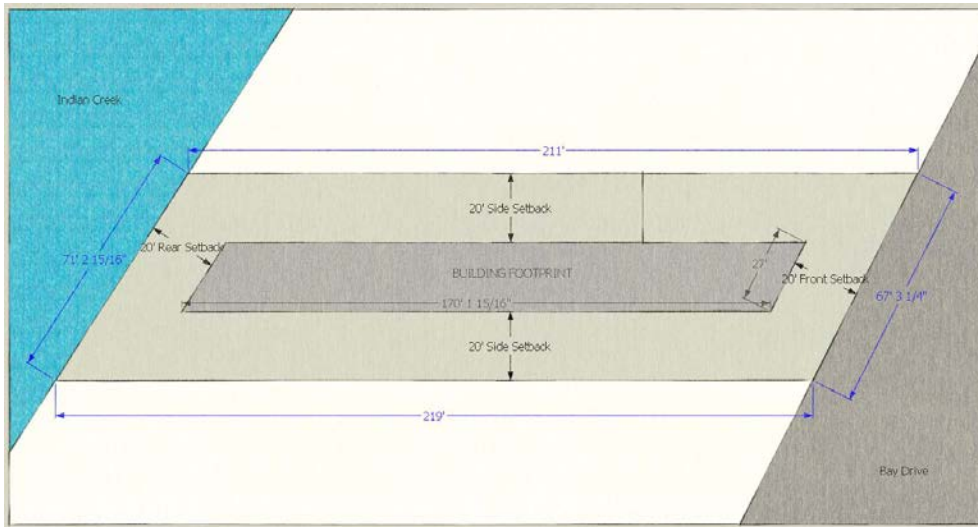
The property is a parallelogram-shaped lot which is similar to other properties along Bay Drive, many of which are located on parcels with more than one lot of record. The property has 67.44 feet of frontage along the street which extends to 71.45 feet in the rear of the property at Indian Creek. There are other lands, structures, or buildings that would be required to meet the Code-required setbacks.

(2) The special conditions and circumstances do not result from the actions of the applicant or a prior owner of the property;

The applicant is requesting the variances in order to construct a new structure. If the structure was not built, the variances would not be required.

(3) Literal interpretation of the provisions of the Town Code deprives the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Town Code and results in unnecessary and undue hardship on the applicant;

The literal interpretation of the provisions of the Town Code will create a residence that is only 27 feet wide on the first floor and 17 feet wide on the second floor (see graphic below). The intent of this provision of the Code was to provide additional separation between existing structures and new structures constructed on parcels with more than one lot of record. While the strict and literal interpretation of the code is constraining, the request for six foot, nine inch setbacks on the side setback does not meet the intent of this code requirement. As proposed, this building will replace an existing, smaller structure that has greater setbacks.



(4) The hardship has not been deliberately or knowingly created or suffered to establish a use or structure which is not otherwise consistent with the Town of Surfside Comprehensive Plan or the Town Code;

The hardship is a result of a new home being constructed/consisting of more than one lot of record, which requires the property to provide larger setbacks.

(5) An applicant's desire or ability to achieve greater financial return or maximum financial return from his property does not constitute hardship;

It appears the applicant's desire is to construct the structure for their occupancy and it is not known if the intent is for financial gain.

(6) Granting the variance application conveys the same treatment to the applicant as to the owner of other lands, buildings, or structures in the same zoning district;

As there are similar parcels within this zoning district with more than one lot of record, other property owners will need to meet this requirement.

(7) The requested variance is the minimum variance that makes possible the reasonable use of the land, building, or structure; and

As proposed the applicant is requesting a setback of six feet, nine inches. The applicant is requesting to build a 7,243 square foot two-story new home. The square footage includes a covered terrace and entranceway of 836 square feet. Although this is not enclosed areas, the Town's code counts porches and patios that are open on only one side as part of the square footage. This request is not the minimum variance necessary for the reasonable use of the land. The applicant could propose a home and/or a variance that is the minimum needed to make reasonable use of the land.

(8) The requested variance is in harmony with the general intent and purpose of the Town of Surfside Comprehensive Plan and the Town Code, is not injurious to the neighborhood, or otherwise detrimental to the public safety and welfare, is compatible with the neighborhood, and will not substantially diminish or impair property values within the neighborhood.

The proposed new home is injurious to the neighborhood by not providing adequate separation between the proposed new structure and the surrounding homes. The intent of the regulations was to develop new structures in the district more in keeping with the scale of the existing fabric of the zoning district and neighborhood. The applicant is requesting to build a 7,243 square foot two-story new home on a 12,900 square foot site. The additional setback requirements adopted by the Town Commission were intended to reduce the mass of buildings. This application is not in line with the Town Code requirements.

Recommendation

Staff recommends denial of the side setback variances for the first floor and upper story level.

Exhibits

1. Application
2. Site Plan

RESOLUTION NO. 2019-_____

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, [APPROVING/ APPROVING WITH CONDITIONS/ DENYING] AN APPLICATION SUBMITTED BY DAVID KRIEGER AND BELLA TENDLER KRIEGER (“APPLICANT”) FOR THE PROPERTY LOCATED AT 9264 BAY DRIVE (“PROPERTY”) FOR A VARIANCE FROM SECTION 90-45 OF THE TOWN CODE TO PROVIDE A FIRST-FLOOR SIDE SETBACK OF 6 FEET, 9 INCHES WHERE 20 FEET ARE REQUIRED AND AN UPPER STORY SETBACK OF 10 FEET, 2 INCHES WHERE 25 FEET ARE REQUIRED; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the applicant and property owner, Dr. David Krieger and Bella Tendler Krieger (“Applicant”), propose to build a new two-story single family home (the “Project”) and have applied for a variance from Section 90-45 of the Town of Surfside (“Town”) Code of Ordinances (“Code”), to allow a first-floor side setback of 6 feet, 9 inches, where 20 feet are required and an upper story setback of 10 feet, 2 inches where 25 feet are required (“Application”), on the property located at 9264 Bay Drive, and legally described in Exhibit A attached hereto (“Property”); and

WHEREAS, Section 90-45 of the Town Code requires a first-floor side setback for a site that consists of more than one lot of record to be 20 feet or 20% of the frontage, whichever is greater, and requires the upper story setback for a site that consists of more than one lot of record to be an average of 20 feet or 20% of the frontage, whichever is greater, plus an additional five feet; and

WHEREAS, Section 90-36 of the Town Code provides for variance application and review; and

WHEREAS, the Town Staff finds that the variance criteria set forth in the Town Code have not been met; and

WHEREAS, on August 13, 2019, the Town Commission conducted a public hearing on the Application for which a hearing was noticed, posted, advertised and held as required by law, all interested parties concerned in the matter were heard, and due and proper consideration was given to the matter; and

WHEREAS, the Town Commission, having reviewed the Application, the written and oral findings of Town staff, and all other relevant testimony and evidence, including the Applicant's voluntary proffers, finds that the Application [select one: meets or does not meet] the criteria for a variance.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AS FOLLOWS:

Section 1. Recitals. The above-stated recitals are true and correct and are incorporated herein by this reference.

Section 2. Variance [Approval/Approval with Conditions/Denial]. That the requested variance from the first-floor side setback requirement of Section 90-45 of the Town Code is hereby [select one: approved / approved with conditions / denied], to allow a first-floor side setback of 6 feet, 9 inches, where 20 feet are required on the Property. The requested variance from the upper story setback requirement of Section 90-45 of the Town Code is hereby [select one: approved / approved with conditions / denied], to allow an upper story setback of 10 feet, 2 inches where 25 feet are required.

Section 3. Conditions. If applicable, the approval granted by this Resolution is subject to the Applicant's compliance with the following conditions, which the Applicant voluntarily proffered and stipulated to at the public hearing:

- a. The variance is effective solely for purposes of the Project depicted in the Applicant's plans submitted to the Town on _____, 2019, and for no other purpose, and the Project must be developed substantially in accordance with the approved plans.
- b. In the event that the Applicant desires to develop the Property in a manner other than in substantial compliance with the plans submitted to the Town on _____, 2019, the variance shall be deemed never to have been granted, and shall become null and void. The Property shall automatically revert to the development status it had prior to this approval.
- c. The Applicant shall comply with all conditions and permit requirements of the Miami-Dade County Department of Environmental Resource Management, the Miami-Dade County Fire Rescue Department, the Miami-Dade County Water and Sewer Department, the Florida Department of Environmental Protection, the

Florida Department of Transportation, and all other governmental agencies with jurisdiction over the Project.

- d. In accordance with Section 166.033(6), Florida Statutes, the Applicant is advised that this Resolution does not create any right on the part of the Applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the Town for issuance of the permit if the Applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. All other applicable state or federal permits must be obtained before commencement of the Project.
- e. As provided in Section 90-35(a)(9) of the Code, approval of the variance shall be void if the Applicant does not obtain a building permit within 24 months after the granting of this approval. The Town Commission may grant one or more extensions for a period of up to a total of six months for good cause shown by the Applicant.
- f. Failure by the Town to timely enforce any of the above conditions does not constitute a waiver of same, and if the Applicant, its successors or assigns, do not perform such conditions within five (5) days after written notice, the Town reserves the right to stop construction, if necessary, until that condition is met. By acting in accordance with this approval, the Applicant hereby consents to all of the foregoing terms and conditions.

Section 4. **Effective Date.** This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED on this 13th day of August, 2019.

Moved By: _____
Second By: _____

FINAL VOTE ON ADOPTION

Commissioner Barry Cohen _____
Commissioner Michael Karukin _____
Commissioner Tina Paul _____
Vice Mayor Daniel Gielchinsky _____
Mayor Daniel Dietch _____

Daniel Dietch
Mayor

ATTEST:

Sandra Novoa, MMC
Town Clerk

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

Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorney

EXHIBIT A

LEGAL DESCRIPTION

Lot 9 and the North 10 feet of Lot 8, Block 17, of ALTOS DEL MAR NO. 5, according to the Plat thereof, as recorded in Plat Book 8, Page 92 of the public records of Miami-Dade County, Florida

Parcel Identification Number: 14-2235-006-2910

**SITE PLANS AVAILABLE
FOR REVIEW BY
CONTACTING THE TOWN
CLERKS OFFICE AT**

snovoa@townofsurfsidefl.gov

or

305-861-4863 Ext. 226