Town of Surfside
Special Town Commission Meeting
Quasi-Judicial Hearing
AGENDA
October 29, 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. **8810 Abbott Avenue** – 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 SAMUEL FRONT ("APPLICANT") FOR THE PROPERTY LOCATED AT 8810 ABBOTT AVENUE ("PROPERTY") FOR A PRACTICAL DIFFICULTY VARIANCE FROM SECTION 90-49 OF THE TOWN CODE TO PERMIT AN ADDITIONAL 3% LOT COVERAGE OR 43% LOT COVERAGE, WHERE A MAXIMUM LOT COVERAGE OF 40% IS PERMITTED; AND PROVIDING FOR AN EFFECTIVE DATE

B. **9264 Bay Drive – Variance** – 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 PROPERY 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 8 FEET, WHERE 20 FEET ARE REQUIRED AND AN UPPER STORY SETBACK OF 13 FEET, WHERE 25 FEET ARE REQUIRED; AND PROVIDING FOR AN EFFECTIVE DATE.

C. Young Israel - 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 YOUNG ISRAEL OF BAL HARBOUR, INC. ("APPLICANT") FOR THE PROPERTY LOCATED AT 9580 ABBOTT AVENUE ("PROPERTY") FOR A VARIANCE FROM SECTION 90-45 OF THE TOWN CODE AND REASONABLE ACCOMMODATION PURSUANT TO THE AMERICANS WITH DISABILITIES ACT (ADA) TO PROVIDE FOR A ZERO (0) FOOT SETBACK ALONG THE NORTH SIDE OF THE PROPERTY FOR THE INSTALLATION OF A HANDICAPPED ACCESSIBLE RAMP, WHERE ADDITIONAL SETBACK REQUIREMENTS ARE IMPOSED BY SETTLEMENT STIPULATION AGREEMENT DATED JANUARY 23, 2012; AND PROVIDING FOR AN EFFECTIVE DATE.

4. 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.

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

From: Sarah Sinatra Gould, AICP, Town Planner

Date: October 29, 2019

Subject: 8810 Abbott Avenue Practical Difficulty Variance

The property owner, Samuel Front, is requesting a practical difficulty variance to permit 3% additional lot coverage for the home at 8810 Abbott Avenue. Mr. Front is proposing an addition and renovation to the existing one-story single family home. The property is located within the Residential Single Family H30B zoning district.

Section 90-49 of the Town of Surfside Code requires maximum lot coverage of 40% of the lot. Lot coverage is the area covered by a roof and enclosed on three sides. The proposed addition provides 43% lot coverage. The code offers a practical difficulty variance as an option for homeowners to be granted additional lot coverage if they demonstrate there is a practical difficulty and the maximum amount of lot coverage permitted under this type of variance is 50%. This type of variance does not require an applicant to demonstrate a hardship and instead is a way to encourage property owners to renovate existing structures.

In this case, the homeowners are attempting to enclose a front porch to provide additional internal square footage. The applicant has indicated the open interior plan achieved by the proposed layout will provide better circulation for the homeowners.

Any property granted additional lot coverage by a practical difficulty variance shall not increase the square footage permitted on the second story. Further, any square footage added by the practical difficulty variance on the first floor, shall be considered a reduction in the available square footage be added to the second floor. A practical difficulty variance shall only be granted by the town one time per property. The intent of the practical difficulty variance is to allow homeowners to exceed the lot coverage with a tradeoff of reduced available square footage on the second floor. The goal of this type of variance is to encourage a homeowner to retain the existing home while allowing flexibility for the homeowner to still renovate and modernize.

This homeowner has indicated the rooms are at different levels. The additional 175 square feet afforded by the practical difficulty variance will allow circulation improvements and a more consistent layout.

The following criteria must be addressed to be granted a practical difficulty variance:

Practical Difficulty Variance Criteria

How substantial is the variance in relation to the requirement sought to be varied? (Express in square footage and percentage)

The applicant is requesting a 3% increase over the maximum lot coverage for a total of 43% lot coverage. This results in an increase of 175 square feet.

Will any adverse changes be produced in the character of the neighborhood as a result of the proposed work?

The majority of the neighboring properties are single story homes. The proposed plans renovate the home to convert the garage, widen the driveway and enclose an existing front porch, which equates to approximately 175 square feet over the maximum lot coverage. The applicant is staying within the required setbacks thus resulting in minimal impact to the neighboring properties and maintaining a one story home is consistent with the neighboring properties.

Can the difficulty be obviated by some method feasible for the applicant to pursue other than by a variance?

The option the applicant has is to renovate without adding the additional square footage. While this is permitted by the code, the additional 175 square feet offers the applicant the ability to reconfigure the space to provide adequate living space on the first floor while not attempting to provide a second story. The appearance of a second floor is more of an impact to the neighborhood that a one story addition within the setbacks. Also, a second floor addition may result in the entire structure being subjected to the 50% rule. This would usually result in a tear down of the home and new construction. The most minimal impact is permitting the addition which exceeds the lot coverage by 3%.

Whether, in view of the manner in which the difficulty arose, the interest of justice will be served by allowing the variance.

Justice will be served by permitting the variance. The homeowners are attempting to enclose a front porch to provide a more usable building. The addition proposed provides minimal impact to the neighborhood.

Do the plans demonstrate that the property meets or exceeds the landscape requirements in Chapter 90, Article VIII of the Town of Surfside Code of Ordinances?

The plans currently do not meet the landscape requirements described in the code of ordinances, however, staff has proposed a condition of approval to provide the minimum landscape requirements.

Staff finds that the 3% lot coverage increase of 175 square feet is minimal and is not expected to impact the neighbors. Staff also finds that the applicant is providing the required pervious area and therefore the 3% increase of lot coverage will not negatively impact the required green space. The Planning and Zoning Board unanimously recommended approval of the practical difficulty variance at their September 26, 2019 meeting with the following condition of approval:

1) Additional landscaping shall be required as part of the requirements of the practical difficulty variance. The following shall be required:

    a. *Shrub and tree requirements:*

i. A minimum of five trees of two different species and 25 shrubs shall be planted per lot.
ii. Where possible, a minimum of two trees shall be required in the front of the lot. Shrubs shall be incorporated in a manner on the site so as to be a visual screen for mechanical equipment or other accessories to the residence.

19-746

DRB Meeting ____/____/ 20__

Application / Plans Due ____/____/ 20__

TOWN OF SURFSIDE
SINGLE-FAMILY and TWO-FAMILY SITE PLAN APPLICATION

A complete submittal includes all items on the "Single-Family and Two-Family Site Plan Application Submission Checklist" document as well as completing this application in full. The owner and agent must sign the application with the appropriate supplemental documentation attached. Please print legibly in ink or type on this application form.

PROJECT INFORMATION

OWNER'S NAME	Samuel Front
PHONE / FAX	219-306-5554
AGENT'S NAME	JOE CLARK
ADDRESS	2935 BISCAYNE BLVD, MIAMI FL 33137
PHONE / FAX	786-254-003
PROPERTY ADDRESS	8810 Abbott Ave, Surfside, Fl, 33154
ZONING CATEGORY	RS-2 (SINGLE FAMILY)
DESCRIPTION OF PROPOSED WORK	HOME RENOVATION, EXPANDING LIVING ROOM AND CREATING A NEW ROOF DECK

INTERNAL USE ONLY

Date Submitted		Project Number	
Report Completed		Date	
Fee Paid	$		

ZONING STANDARDS	Required	Provided
Plot Size	5,600 MIN	5,625 SF
Setbacks (F/R/S)	20' | 20' | 5'	20'-3" | 17'-1" | 5'-0" (NEW ROOF DECK IN REAR WITHIN 20'-0")
Lot Coverage	(40%)	2,425 S.F. (43%)
Height	30'-0"	20.19' NGVD
Pervious Area	30%	2,102 SF. (37%

Samuel Front 08.05.19
SIGNATURE OF OWNER DATE

JC 08.07.2019
SIGNATURE OF AGENT DATE

RESOLUTION NO. 2019-_____

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, [APPROVING/ APPROVING WITH CONDITIONS/ DENYING] AN APPLICATION SUBMITTED BY SAMUEL FRONT ("APPLICANT") FOR THE PROPERTY LOCATED AT 8810 ABBOTT AVENUE ("PROPERTY") FOR A PRACTICAL DIFFICULTY VARIANCE FROM SECTION 90-49 OF THE TOWN CODE TO PERMIT AN ADDITIONAL 3% LOT COVERAGE OR 43% LOT COVERAGE, WHERE A MAXIMUM LOT COVERAGE OF 40% IS PERMITTED; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the applicant and property owner, Samuel Front ("Applicant"), is proposing an addition and renovation to the existing single-family home, including the enclosure of a front porch consisting of approximately 175 square feet (the "Project"), and has applied for a practical difficulty variance from Section 90-49 of the Town of Surfside ("Town") Code of Ordinances ("Code") to permit an additional 3% lot coverage or 43% lot coverage, where a maximum lot coverage of 40% is permitted ("Application"), on the property located at 8810 Abbott Avenue, and legally described in Exhibit "A" attached hereto ("Property"); and

WHEREAS, Section 90-49 of the Town Code permits a maximum lot coverage of 40% in the Residential Single Family H30B Zoning District where the Property is located; and

WHEREAS, Section 90-39 of the Town Code provides for practical difficulty variances to allow additional lot coverage for single family homes located on single platted lots in the H30B Zoning District; and

WHEREAS, Town Staff finds that the variance criteria or standards of review for a practical difficulty variance as set forth in Section 90-36(9) of the Town Code have been met for the Application; and

WHEREAS, on September 26, 2019, the Planning and Zoning Board recommended approval of the Application with a condition that additional landscaping shall be required; and

WHEREAS, on October 29, 2019, the Town Commission conducted a public hearing on the Application for which a hearing was noticed, posted or 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. Practical Difficulty Variance [Approval/Approval with Conditions/Denial]. That the requested practical difficulty variance from Section 90-49 of the Town Code is hereby [select one: approved / approved with conditions / denied], to permit an additional 3% lot coverage or 43% lot coverage on the Property, where a maximum lot coverage of 40% is permitted.

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 dated August 7, 2019 and prepared by Scale Design, 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 dated August 7, 2019 and prepared by Scale Design, 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 following additional landscaping shall be required:

a. Shrub and Tree Requirements:

1. A minimum of five trees of two different species and 25 shrubs shall be planted on the Property; and
2. Where possible, a minimum of two trees shall be required in the front of the Property. Shrubs shall be incorporated in a manner

on the Property so as to be a visual screen for mechanical equipment or other accessories to the residence.

(d) 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.

(e) 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.

(f) 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.

(g) 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 29th day of October, 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 12, Block 9, of NORMANDY BEACH SECOND AMENDED PLAT, according to the Plat thereof, as recorded in Plat Book 16, Page 44, of the Public Records of Miami-Dade County, Florida

Parcel Identification Number: 14-2235-005-1231

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

From: Sarah Sinatra Gould, AICP, Town Planner

Date: October 29, 2019

Subject: 9264 Bay Drive Side Setback 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 eight feet, a difference of 12 feet 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 13 foot average setback on either side of the second story, a difference of seven feet per the code requirements.

The application was previously heard by the Town Commission on August 13, 2019 where it was denied. The applicant was instructed to attend the August 29, 2019 meeting to get better direction on what the Planning and Zoning Board would be considering for amendments to the ordinance for setbacks on aggregated lots. The applicant has now resubmitted the request based on the discussion at the August 29, 2019 meeting relating to a potential ordinance change.

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 eight feet; therefore, the applicant is requesting a variance of 12 feet 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 13-foot average setback on either side of the property, a difference of seven feet on either side; therefore, the applicant is requesting a variance of seven feet 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. 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. The request for eight-foot setbacks on the first floor side setback meets the intent of this code requirement.

(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 would be affected by this code 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 eight feet on the first floor and an average of 13 feet on the second floor. The revised plan demonstrates the applicant's

intent to be more in line with the spirt of the code. The Town Commission and the Planning and Zoning Board have indicated a desire to modify the current ordinance to provide setbacks consistent with the width of the lot.

(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 consistent with the direction of the Town Commission and Planning and Zoning Board relating to setbacks based on lot width. Although the revised code provision has not been adopted, the applicant has attempted to meet the provisions discussed and therefore would not be injurious to the neighborhood. The additional setback requirements adopted by the Town Commission were intended to reduce the mass of buildings. This application works towards those provisions by providing eight-foot setbacks on the first floor and an average of 13-foot setbacks on the second floor.

Staff finds that the applicant has met the criteria for a variance. The Planning and Zoning Board unanimously recommended approval of the variance at their September 26, 2019 meeting. A number of neighboring residents spoke at the Planning and Zoning Board meeting and the applicant indicated they would meet with the neighbors prior to the Town Commission meeting on their concerns. The following condition was added to the application:

1. The applicant will work with the neighbors on their objections.

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 PROPERY 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 8 FEET, WHERE 20 FEET ARE REQUIRED AND AN UPPER STORY SETBACK OF 13 FEET, 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 8 feet, where 20 feet are required and an upper story setback of 13 feet, where 25 feet are required ("Revised 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 has been met for the Revised Application; and

WHEREAS, on August 13, 2019, the Town Commission conducted a public hearing on the original variance 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, with the Town Commission deferring the original

application and directing the Planning & Zoning Board to further review the variance request and applicable setback ordinance; and

WHEREAS, on September 26, 2019, the Planning and Zoning Board recommended approval of the Revised Application; and

WHEREAS, the Town Commission, having reviewed the Revised 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 Revised 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 8 feet, 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 13 feet, 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 dated August 30, 2019 and prepared by Florida Architectural Services, Inc. (Daniel Sorogan), 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 dated August 30, 2019 and prepared by Florida Architectural Services, Inc. (Daniel Sorogan), 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 29th day of October, 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

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

From: Sarah Sinatra Gould, AICP, Town Planner

Date: October 29, 2019

Subject: Young Israel of Bal Harbour Variance/9580 Abbott Avenue

The property owner, Young Israel of Bal Harbour, Inc. (Young Israel), is requesting a variance from the Town of Surfside Zoning Code for the property located at 9580 Abbott Avenue ("Property"). The applicant is proposing to construct a ramp consisting of approximately 205 square feet in the side or north setback of the Property to provide handicapped accessibility to Young Israel. Specifically, Section 90-45 of the Town Code requires a 10 foot setback on the north side of the property. The parcel was developed in accordance with a Settlement Stipulation Agreement that was approved by the Town Commission on January 23, 2012, which allowed 50% of the north side setback to have a zero foot setback and 50% to have a five foot setback. This request will now be a zero foot setback along the entire length of the north side of the building. The architect proposed a wheelchair lift for handicapped access on the north side of the Property, which was approved as part of the original site plan approval. However, it was not installed due to the applicant indicating they would not utilize the lift during services due to religious restrictions on electrical equipment. Religious institutions are not obligated to provide American's with Disability Act (ADA) accommodations and this building was designed without an ADA accessible ramp. Young Israel is proposing to develop an accessibility ramp which allows for access without the use of electrical equipment.

The applicant has submitted a request for a reasonable modification, pursuant to the ADA in order to install a handicapped accessible ramp in the north setback. Reasonable modifications are governed by ADA's Technical Assistance Manual for Title II, which supersede the Town's Code of Ordinances.

The Settlement Stipulation Agreement approved by the Town Commission on January 23, 2012 granted a number of allowances to the property, which deviated from the Zoning Code requirements, including the following that are affected by this application:

- Stairs may project into the setback in accordance with the 5 feet for 50% building length and 0 feet for 50% of the building length setback requirement (Code requires no more than a 2-foot projection into the setback)

- Young Israel will install landscaping along the entire length of the north side of the building, including the area under the cantilevered feature of the building.

- Impervious area: The project may exceed the 65% maximum impervious area requirement set forth in the Code, but in no event will exceed 83% (Code requires no more than 65% impervious coverage)

Section 90-36 of the Town Code establishes the following standards of review and criteria for an unnecessary and undue hardship variance:

(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 was developed in a residentially zoned district where the stipulation agreement approved certain deviations to the Towns requirements. The property was developed with reduced setbacks on the north side of the site as well as reductions in the required pervious area making this parcel unique.

(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 variance in order to construct a handicapped accessible ramp within a required setback in order to provide accessibility to its congregants. The property was previously developed without a ramp and instead an electric chair lift was approved as part of the design. The applicant now requests to install a ramp for handicapped accessibility for its members and guests.

(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 does not deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Town Code and does not result in unnecessary and undue hardships on the applicant. However, the applicant has submitted a request for a reasonable modification pursuant to the ADA. Reasonable modifications are governed by the ADA's Technical Assistance Manual for Title II, which supersede the Town's Code of Ordinances.

(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 applicant is requesting a ramp for accessibility. The encroachment into the setback is not consistent with the code, however, the applicant has submitted a request for a reasonable modification. Reasonable modifications are governed by ADA's Technical Assistance Manual for Title II, which supersede the Town's Code of Ordinances

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

The ramp is not expected to increase or provide greater financial return.

(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;

Granting the variance application would not convey the same treatment to the applicant as to the owner of other lands, buildings, or structures in the same zoning district as granting of such variance would be in conflict with code requirement for a setback and landscaping and the established Settlement Stipulation Agreement between the Town of Surfside and Young Israel of Bal Harbour, Inc. that identified there would be a five foot setback and landscaping along 50% of the north side of the building. However, the applicant has submitted a request for a reasonable modification pursuant to the ADA. Reasonable modifications are governed by ADA's Technical Assistance Manual for Title II, which supersede the Town's Code of Ordinances

(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 to develop roughly 205 square feet of accessibility ramp. The ramp will eliminate required landscaping and exceed the maximum impervious coverage total. This will also encroach into the established side setback area. This request is not the minimum variance necessary for the reasonable use of the land, however, it appears to be the minimum needed to provide an ADA ramp.

(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 addition removes the required trees and other landscaping on the north side of the building, and adds additional impervious area to the site. The applicant has indicated it will provide mitigation to address the impervious conditions. The applicant has indicated it will relocate the trees it will remove on the north side of the site, however, there is no additional space onsite. Therefore, they are considered removed, not relocated.

The Planning and Zoning Board unanimously recommended approval of the variance with the condition that the ramp and entrance to the ramp be ADA compliant. In addition to the evaluation of the standards and criteria for the variance request as set forth hereinabove, Staff provides the following findings:

1. There is no space onsite to relocate the removed trees to within the property, therefore the tree removal permit from Miami-Dade County will be for a removal, not relocation.

2. The chair lift was included in the original application as a way to address accessibility issues without a ramp. This allowed for the current building size with a five foot setback.

3. The addition of the ramp will result in the building having a zero foot setback along the entire northern side of the property.

4. The applicant is requesting a reasonable modification pursuant to the ADA. Reasonable modifications are governed by ADA's Technical Assistance Manual for Title II, which supersede the Town's Code of Ordinances. The following is applicable to this specific scenario, as defined in Illustration 1 from ADA's manual.

    a. II-3.6000 Reasonable modifications

    b. II-3.6100 General. A public entity must reasonably modify its policies, practices, or procedures to avoid discrimination. If the public entity can demonstrate, however, that the modifications would fundamentally alter the nature of its service, program, or activity, it is not required to make the modification.

    c. ILLUSTRATION 1: A municipal zoning ordinance requires a set-back of 12 feet from the curb in the central business district. In order to install a ramp to the front entrance of a pharmacy, the owner must encroach on the set-back by three feet. Granting a variance in the zoning requirement may be a reasonable modification of town policy.

5. The applicant is eligible for a reasonable modification based on the ADA's Technical Assistance Manual for Title II.

Exhibits

1. Application
2. Supplemental information from the applicant

3. Comments response
4. Letters of Support
5. Site Plan

Jerry B. Proctor, P.A.

June 28, 2019

Ms. Sarah Sinatra Gould, AICP
Director
Planning Department
Town of Surfside
c/o Calvin Giordano & Associates, Inc.
1300 Eller Drive, Suite 600
Fort Lauderdale, FL 33316

Re: Young Israel of Bal Harbour, Inc.
Property: 9580 Abbott Avenue,
Town of Surfside
Folio No.: 14-2235-007-1160

Dear Ms. Gould:

I represent Young Israel of Bal Harbour, Inc. ("Young Israel"), owner of approximately 16,576 square feet of land at the southwest corner of NE 96 Street and Abbott Avenue in Surfside (the "Property"). The Property is zoned H-30B.

In conjunction with the Code of Town of Surfside, please accept this application by Young Israel for approval of an amended site plan for the Property. The amendment consists primarily of the development of a ramp in the northern area of the Property to provide handicapped accessibility to workers, members and visitors of Young Israel.

In your consideration of the variances that comprise this application, please note:

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 small (16,367 net square feet) and has a limited amount of frontage on Abbott and Byron Avenues (about 50 feet); as a result, there is very limited space to place the necessary structure for the religious facility. These physical limitations are unique to this particular Property and result in a physical circumstance that make it essential to place part of the Temple structure within the Code-required setback area.

2. The special conditions and circumstances do not result from the actions of the applicant or a prior owner of the property. The special conditions and circumstances, i.e., the size and configuration of the Property, were not created by the applicant.

9130 S. DADELAND BLVD., SUITE 1700, MIAMI, FL 33156
305.779.2924 JPROCTOR@PROCTORPA.COM

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. Young Israel, as a religious institution, is exempt from the American with Disabilities Act (ADA) as it relates to public accommodation. However, Young Israel wishes to create full handicapped accessibility for its members and guests. As a property owner in the Town of Surfside, Young Israel has the right to place handicapped accessibility structures and facilities within its Property as do all other property owners in the H-30B District. By law, the Town must not impede such reasonable accommodation in a building of public assembly.

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 proposed use of the land, and all components of the site plan are consistent with the policies and aspirations of the Town Zoning Code and the Comprehensive Plan.

5. 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. Young Israel and all property owners in the H-30B zoning district have the right to place handicapped accessibility features within their Property, and to deny same would subject the Town to significant liabilities because it would exclude a disabled person from participating in the activities and benefits offered by Young Israel. 42 USC §12132 (Discrimination) states that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."

6. The requested variance is the minimum variance that makes possible the reasonable use of the land, building, or structure. Placement of a well-buffered ramp for accessibility on this small parcel of land allows for the reasonable accommodation of landscaping, parking, and architectural features to complement an adequate amount of worship and patron floor area. Due to the size and configuration of the Property, the denial of the requested variance would place a substantial burden on Young Israel by preventing them from operating an acceptable facility on the rest of the Property, or alternatively, by preventing them from serving all congregants, workers and visitors.

7. 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 ramp will be well buffered from the right of way by landscaping. The ramp does not increase usage or impacts of the facility on the surrounding area. Accordingly, the proposed addition does not injure or impact the surrounding area.

Thank you for your consideration of this application.

Sincerely,

Jerry B. Proctor, P.A.
Jerry B. Proctor
President

TOWN OF SURFSIDE
GENERAL VARIANCE APPLICATION

A complete submittal includes all items on the "Submission Checklist for General Variance Application" document as well as completing this application in full. The owner and agent must sign the application with the appropriate supplemental documentation attached. Please print legibly in ink or type on this application form.

PROJECT INFORMATION

OWNER'S NAME	Young Israel of Bal Harbour, Inc.
PHONE / FAX	305-866-0203
AGENT'S NAME	Jerry B. Proctor, Esq.
ADDRESS	Jerry B. Proctor, P.A., 9130 S. Dadeland Blvd., Suite 1700
PHONE / FAX	305-779-2924
PROPERTY ADDRESS	9580 Abbott Avenue, Surfside, FL 33154
ZONING CATEGORY	
DESCRIPTION OF VARIANCE REQUESTED (please use separate sheet)	See attached Letter of Intent

INTERNAL USE ONLY

Date Submitted		Project Number	
Report Completed		Date	
Comments			

ZONING STANDARDS	Required	Provided
Lot Coverage		
Dimension of yards		
Setbacks (F/R/S)		
Parking		
Loading		
Pervious Area		

SIGNATURE OF OWNER — DATE 3-13-19

SIGNATURE OF AGENT — DATE 7-3-19

TOWN OF SURFSIDE
SUBMISSION CHECKLIST
GENERAL VARIANCE APPLICATION

Project Name YOUNG ISRAEL CONGREGATION **Project Number** _____

Review Date _____

SUBMITTAL REQUIREMENTS FOR REVIEW (Permit clerk shall initial if item has been submitted):

☑ Completed "General Variance Application" form

☑ Statements of ownership and control of the property, executed and sworn to by the owner or owners of one hundred (100) percent of the property described in the application, or by tenant or tenants with the owners' written, sworn consent, or by duly authorized agents evidenced by a written power of attorney if the agent is not a member of the Florida Bar.

☐ The written consent of all utilities and/or easement holders if the proposed work encroaches into any easements

☑ Survey less than one (1) year old (including owner's affidavit that no changes have occurred since the date of the survey). A survey over one (1) 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.

☑ Recent photographs of the subject property and all abutting, diagonal and fronting properties visible from the street. (to be provided prior to Design Review Board Meeting)

☑ Site Plan (Minimum scale of 1" = 20').
- ✓ Ten (10) full sized sets of complete design development drawings (24" x 36" sheets) signed and sealed
- ✓ Eight (8) reduced sized copies of the plans (11" x 17" sheets) (to be provided prior to Design Review Board Meeting)

Please show / provide the following:

Tabulations of total square footage, lot coverage, setbacks and acreage
Entire parcel(s) with dimensions and lot size in square feet
Existing and proposed buildings with square footage
Buildings to be removed
Setbacks
Dimensions and locations of all existing and proposed right-of-ways, easements and street frontage, including sidewalks, curb and gutter and planting strips
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
Location of all existing and proposed trees, vegetation, palms and note tree species
Locations and dimensions of parking spaces and lot layout

☑ A map indicating the general location of the property.

☑ **Written Narrative of request that addresses each of the following standards of review:**

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;
2. The special conditions and circumstances do not result from the actions of the applicant or a prior owner of the property;
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;
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;
5. An applicant's desire or ability to achieve greater financial return or maximum financial return from his property does not constitute hardship;
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;
7. The requested variance is the minimum variance that makes possible the reasonable use of the land, building, or structure; and
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.

☐ Such additional data, maps, plans, or statements as the Town may require to fully describe and evaluate the particular proposed plan.

Tenant or Owner Affidavit

I, _____, being first duly sworn, depose and say that I am the owner/tenant of the property described and which is the subject matter of the proposed hearing; that all the answers to the questions in this application, and all sketch data and other supplementary matter attached to and made a part of the application are honest and true to the best of my knowledge and belief. I understand this application must be completed and accurate before a hearing can be advertised. In the event that I or any one appearing on my behalf is found to have made a material misrepresentation, either oral or written, regarding this application, I understand that any development action may be voidable at the option of the Town of Surfside

_____ _____

Print Name of Petitioner **Signature of Petitioner**

STATE OF _____ COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20 _____, by _____ who is personally known to me or who has produced _____ as identification and who (did) (did not) take an oath.

_____ _____

Printed Name of Notary Public Signature of Notary Public

My Commission Expires:

Attorney Affidavit

I, _____, being first duly sworn, depose and say that I am a State of Florida Attorney at Law, and I am the Attorney for the Owner/Applicant of the property described and which is the subject matter of the proposed hearing; that all the answers to the questions in this application, and all sketch data and other supplementary matter attached to and made a part of this application are honest and true to the best of my knowledge and belief. I understand this application must be complete and accurate before a hearing can be advertised. In the event that I or any one appearing on my behalf is found to have made a material misrepresentation, either oral or written, regarding this application, I understand that any variance, special exception or plat approval shall be voidable at the option of the Town of Surfside

_____ _____

Print Name of Petitioner **Signature of Petitioner**

STATE OF _____ COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20 _____, by _____ who is personally known to me or who has produced _____ as identification and who (did) (did not) take an oath.

_____ _____

Printed Name of Notary Public Signature of Notary Public

My Commission Expires:

Corporation Affidavit

I/We, Israel Kopel, being first duly sworn, depose and say that I/we are the President/Vice President, and Secretary of the aforesaid corporation, and as such, have been authorized by the corporation to file this application for public hearing; that all answers to the questions in said application and all sketches, data and other supplementary matter attached to and made a part of this application are honest and true to the best of our knowledge and belief; that said corporation is the owner/tenant of the property described herein and which is the subject matter of the proposed hearing. We understand that this application must be complete and accurate before a hearing can be advertised. In the event that I or any one appearing on our behalf is found to have made a material misrepresentation, either oral or written, regarding this application, I understand that any development action may be voidable at the option of the Town of Surfside

Israel Kopel, Vice President
Print Name of Petitioner

Signature of Petitioner

STATE OF Florida COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me this 13th day of March, 19 2019, by Israel Kopel who is personally known to me or who has produced as identification and who (did) (did not) take an oath.

Vanessa Castro Gonzalez
Printed Name of Notary Public

Signature of Notary Public

My Commission Expires:

Notary Public State of Florida
Vanessa Castro Gonzalez
My Commission GG 270967
Expires 10/24/2022

Disclosure of Interest

If the property, which is the subject of the application, is owned or leased by a CORPORATION, list the principal stockholders and the percentage of stock owned by each. Note: where the principal officers or stockholders consist of another corporation(s), trustee(s), partnership(s) or other similar entities, further disclosure shall be required which discloses the identity of the individual (s) (natural persons) having the ultimate ownership interest in the aforementioned entity.

Young Israel of Bal Harbour, Inc.
Corporation Name

Name, Address and Office	Percentage of Stock

If the property which is the subject of the application is owned or leased by a TRUSTEE, list the beneficiaries of the trust and the percentage of interest held by each. [Note: where the beneficiary (ies) consist of corporation (s), another trust(s), partnership(s) or other similar entities, further disclosure shall be required which discloses the identity of the individual(s) (natural persons) having the ultimate ownership interest in the aforementioned entity.]

Trust Name

Name, Address and Office	Percentage of Stock

If the property which is the subject of the application is owned or leased by a PARTNERSHIP or LIMITED PARTNERSHIP, list the principals of the partnership, including general and limited partners, and the percentage of ownership held by each. [Note: where the partners(s) consist of another partnership(s), corporation(s), trust(s), or other similar entities, further disclosure shall be required which discloses the identity of the individual(s) (natural persons) having the ultimate ownership interest in the aforementioned entity.]

Partnership of Limited Partnership Name

Name, Address	Percentage of Ownership

If there is a CONTRACT FOR PURCHSE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the principal officers, stockholders, beneficiaries, or partners. [Note: where the principal officers, stockholders, beneficiaries, or partners consist of another corporation, trust, partnership, or other similar entities, further disclosure shall be required which discloses the identity of the individual(s) (natural person) having the ultimate ownership interest in the aforementioned entity].

Name	Date of Contract
Name and Address	Percentage of Interest

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final public hearing, a supplemental disclosure of interest shall be filed. The above is full disclosure of all parties of interest in this application to the best of my knowledge and belief.

Signature of Applicant — Print Name of Applicant: Israel Kopel

State of Florida — County of Miami-Dade

The foregoing instrument was Sworn to and Subscribed before me ~~this~~ 13th day of March, 2019 by Israel Kopel who is personally known to me or who has produced _____ as identification.

Vanessa Castro Gonzalez — Printed Name of Notary Public

Signature of Notary Public

My commission Expires:

Notary Public State of Florida
Vanessa Castro Gonzalez
My Commission GG 270967
Expires 10/24/2022

Note: Disclosure shall not be required of any entity, the equity interests in which are regularly traded on an established securities market in the United States or other country; or of any entity, the ownership interest of which are held in a limited partnership consisting of more than 5,000 separate interest and where no one person or entity holds more than a total of 5% of the ownership interest in the limited partnership.

Jerry B. Proctor, P.A.

E-Mail and U.S. Mail

August 5, 2019

Ms. Sarah Sinatra Gould, AICP
Director
Planning Department
Town of Surfside
c/o Calvin Giordano & Associates, Inc.
1300 Eller Drive, Suite 600
Fort Lauderdale, FL 33316

Re: Young Israel of Bal Harbour, Inc.
Property: 9580 Abbott Avenue,
Surfside

Dear Ms. Gould:

In the Town of Surfside's consideration of Young Israel's zoning application to permit a handicapped-accessible ramp in front of their house of worship, please be advised that we believe that the denial of this improvement would expose the Town to liability under the relevant case law, including the Americans with Disabilities Act (ADA) and the Fair Housing Amendments Act (FHAA). Court generally apply the same analysis to claims under the ADA and FHAA. The touchstone is whether the governing body has made a "reasonable accommodation in rules, policies and services when such accommodations may be necessary to afford a handicapped individual with equal opportunity to use and enjoy a dwelling." 42 U.S.C. §3604(f)(3)(b). 10th Street Partners, LLC v. County Commission for Sarasota County, Florida, 2012 WL 4328655 (U.S.D.C., M.D. Florida, September 20, 2012).

Enclosed, please find four (4) letters from regular congregants of Young Israel who cannot reasonably attend events at this public entity. We will re-introduce these points at the upcoming public hearings on this matter.

Thank you.

Sincerely,

Jerry B. Proctor, P.A.
Jerry B. Proctor
President

cc: Guillermo Olmedillo, Town Manager

9130 S. DADELAND BLVD., SUITE 1700, MIAMI, FL 33156
305.779.2924 JPROCTOR@PROCTORPA.COM

2012 WL 4328655
Only the Westlaw citation is currently available.
United States District Court, M.D. Florida,
Tampa Division.

10TH STREET PARTNERS, LLC, Plaintiff,
v.
COUNTY COMMISSION for SARASOTA COUNTY, FLORIDA, Defendant.

No. 8:11–cv–2362–T–33TGW.
|
Sept. 20, 2012.

Attorneys and Law Firms

Joseph Michael Herbert, Icard, Merrill, Cullis, Timm, Furen & Ginsburg, PA, Sarasota, FL, for Plaintiff.

David Michael Pearce, Stephen E. Demarsh, Sarasota, FL, for Defendant.

ORDER

VIRGINIA M. HERNANDEZ COVINGTON, District Judge.

***1** This matter comes before the Court pursuant to Defendant County Commission for Sarasota County, Florida's Motion for Summary Judgment and Request for Judicial Notice (Doc. # 11), filed on January 3, 2012. Plaintiff 10th Street Partners, LLC filed a response in opposition to the Motion for Summary Judgment (Doc. # 23) on February 24, 2012. For the reasons that follow, Defendant's Request for Judicial Notice is granted and Defendant's Motion for Summary Judgment is denied without prejudice.

I. *Background*

10th Street is the owner of 5.06 acres of property in Sarasota County, Florida, on which 10th Street intends to build a two-story assisted living facility called "Grey Oaks." (Doc. # 1 at ¶ 9). Pursuant to the property's current zoning, 10th Street could construct a facility housing up to 68 beds on the property. *Id.* at ¶ 18. On September 14, 2010, 10th Street's agent, Robert Medred, filed an initial application for Rezone Petition No. 10–13, seeking a rezoning of the property to allow for construction of a facility housing up to 96 beds, a portion of which would house disabled residents with dementia and memory disorders. (Doc. # 1–1).

The Sarasota County Planning Commission considered 10th Street's zoning variance request at a public hearing on December 16, 2010. (Doc. # 9–1 at 19–22). The Planning Commission recommended denial of the petition based upon three findings of fact: (1) the proposed change would not be compatible with the existing land use pattern and designated future land uses; (2) the proposed change would adversely influence living conditions in the neighborhood; and (3) the proposed change would create adverse impacts in the adjacent area or the County in general. *Id.* at 21. 10th Street did not request at this hearing a reasonable accommodation under the Americans with Disabilities Act, the Fair Housing Act, or the Rehabilitation Act, nor did the Rezone Petition contain such a request.

The Sarasota Board of County Commissioners considered 10th Street's Rezone Petition and the Planning Commission's recommendation at a public hearing on February 22, 2011. Medred testified in support of the zoning variance request and explained that the additional 28 beds would "have very little additional impact on the neighborhood, but [would] make it possible to include amenities that will offer a modern, state-of-the-art assisted living and dedicated secure memory care unit within this facility." (Hr'g Tr. Doc. # 7–1 at 13). Dr. Gary Assarian also testified in support of the zoning variance request regarding the amenities and benefits that would be provided to residents, particularly disabled residents, by the proposed facility. Assarian's testimony indicated that the proposed amenities and services would not be economically feasible in a facility constructed on the property at the current zoning density of 68 beds. *Id.* at 16–21.

Following Assarian's testimony, Medred resumed the presentation and stated that:

> ***2** We believe that since our residents are disabled, we believe that the requested zoning change for an additional 28 beds is a reasonable accommodation within the meaning of the Americans with Disabilities

> Act. And Attorney Joe Herbert with the Icard Merrill Law Firm is here to discuss if you have any of those questions concerning that.

Id. at 23–24.

After the conclusion of Medred's presentation, the Board took comments from the public who spoke primarily about traffic concerns posed by the zoning variance request. The Board subsequently posed questions to Medred relating to the potential increase in traffic and other issues, but did not ask any questions regarding 10th Street's reasonable accommodation ADA request and did not ask for Herbert to speak as to that issue. Citing concerns about the proposed facility's "compatibility with this particular neighborhood," the Board voted 5–0 to deny 10th Street's zoning variance request. *Id.* at 49–50. The Board adopted Substitute Resolution No.2011–042 on February 22, 2011, which memorialized their decision at the hearing.

On May 9, 2011, 10th Street's counsel sent a demand letter to the Board requesting the Board to re-open the hearing and reconsider its decision on the Rezone Petition. (Doc. # 9–2 at 71–72). The letter stated that "[b]y failing to grant a reasonable accommodation to persons clearly within the ambit of protections from discrimination based on disability, this Commission has committed a violation-and remains in violation-of the requirements of the ADA and the FHA as to the Grey Oak facility and its prospective residents." *Id.* at 72.

The Board responded by letter dated June 16, 2011, stating that:

> 10th Street Partners alleges a failure to provide a reasonable accommodation associated with higher dwelling unit density. Unfortunately, the record of the proceedings does not indicate why an accommodation of density is necessary. There is no record evidence as to why a density increase is needed to properly afford persons with disabilities the equal opportunity to use and enjoy a dwelling in the neighborhood.

(Doc. # 9–2 at 74). The letter asked 10th Street to provide other evidence which had not been supplied during the proceedings and which would demonstrate the necessity of the requested reasonable accommodation. The letter further stated that the Board would "be in a better position to determine your demand for a reasonable accommodation" once it was in receipt of the requested information. *Id.*

10th Street's counsel sent a written response to the Board's letter on June 24, 2011, but did not supply additional evidence as requested by the Board, stating in part:

> I understand your desire to have my clients present evidence of an economic analysis of the efficacy and necessity of the requested rezoning. However, the Commission made its determination on the basis of the evidence presented at the hearing on February 22, 2011 and the December 16, 2010 hearing before the Planning Commission. The County Commission did not request additional evidence at that time to support the necessity of the proposed density changes for provision of a dedicated memory care unit. Therefore, the failure of the Commission to grant a reasonable accommodation-and, therefore, the discriminatory act-has already taken place.

*3 (Doc. # 9–2 at 76). However, the letter further stated that if the Board elected to re-open the petition for reconsideration, 10th Street would consider providing additional testimony and evidence in support of its reasonable accommodation request. *Id.*

On July 27, 2011, the Board adopted Resolution No.2011–147 to specifically deny 10th Street's reasonable

accommodation request. The resolution stated in part that:

> Based on evidence and testimony presented in the record from the February 22, 2011 public hearing, and the correspondence exchanged between the parties, the request for a reasonable accommodation for additional density association with Rezone Petition 10–13 is hereby DENIED.

(Doc. # 24–1 at 4).

10th Street filed its complaint on October 19, 2011, alleging a failure to accommodate in violation of Title II of the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*, the Fair Housing Act, 42 U.S.C. § 3604(f), and the Rehabilitation Act, 29 U.S .C. § 794. (Doc. # 1). Prior to conducting discovery, on January 3, 2011, the Board filed the instant Motion for Summary Judgment and Request for Judicial Notice, to which 10th Street responded on February 24, 2012. The Board subsequently filed a motion seeking to transfer the case to Track 1 and to limit discovery and the Court's review to the administrative record from the zoning proceedings below. (Doc. # 25). After conducting a hearing on the motion, the Magistrate Judge denied the motion to change the case to Track 1 and to limit discovery.

II. *Judicial Notice*

Pursuant to Federal Rule of Evidence 201, the Board requests the Court to take judicial notice of certain relevant portions of the Sarasota County Code of Ordinances and Comprehensive Plan.

Rule 201(b) of the Federal Rules of Evidence provides that:

> A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

F.R.E. 201(b).

"In order for a fact to be judicially noticed under Rule 201(b), indisputability is a prerequisite." *United States v. Jones*, 29 F.3d 1549, 1553 (11th Cir.1994) (citing 21 C. Wright & K. Graham, *Federal Practice and Procedure: Evidence* § 5104 at 485 (1977 & Supp.1994)). Further, Rule 201(d) of the Federal Rules of Evidence provides that "A court shall take judicial notice if requested by a party and supplied with the necessary information."

10th Street's response does not contain any objection to the Board's request for judicial notice. The Court finds that the above-noted municipal document is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Additionally, the Board has furnished the Court with a copy of the relevant ordinances of which it seeks judicial notice and has provided the internet address for the entire Sarasota County Code of Ordinances. (Doc. # 11–1). Thus, the Court finds it appropriate to take judicial notice of the Sarasota County Code of Ordinances and Comprehensive Plan and grants the Board's request accordingly.

III. *Summary Judgment*

A. *Legal Standard*

***4** Summary judgment is appropriate if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(a).

An issue is genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Mize v. Jefferson City Bd. of Educ.*, 93 F.3d 739, 742 (11th Cir.1996) (citing *Hairston v. Gainesville Sun Publ'g Co.*, 9 F.3d 913, 918 (11th Cir.1993)). A fact is material if it may affect the outcome of the suit under the governing law. *Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11th Cir.1997).

The Court must draw all inferences from the evidence in the light most favorable to the non-movant and resolve all reasonable doubts in that party's favor. *See Porter v. Ray*, 461 F.3d 1315, 1320 (11th Cir.2006). The moving party bears the initial burden of showing the Court, by reference to materials on file, that there are no genuine issues of material fact that should be decided at trial. *See id.* When a moving party has discharged its burden, the non-moving party must then go beyond the pleadings, and by its own affidavits, or by depositions, answers to interrogatories, and admissions on file, designate specific facts showing there is a genuine issue for trial. *See id.*

B. *Analysis*

10th Street brings its failure to accommodate claim pursuant to Title II of the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*, the Fair Housing Act, 42 U.S.C. § 3604(f), and the Rehabilitation Act, 29 U.S.C. § 794. Under the ADA, "no qualified individual with a disability shall, by reason of such disability, ... be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. Similarly, discrimination under the Fair Housing Act includes "a failure to make a reasonable accommodation in rules, policies and services when such accommodations may be necessary to afford a handicapped individual with equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(b). Finally, the Rehabilitation Act provides that "[n]o qualified individual with a disability in the United States, ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794.

Although there are certain differences between the statutes, due to their similarities, courts generally apply the same analysis to reasonable accommodation claims brought under each of the statutes. *United States v. Hialeah Hous. Auth.*, 418 F. App'x 872, 876 (11th Cir.2011) ("We have previously recognized that we look to case law under the Rehabilitation Act and the Americans with Disabilities Act for guidance in evaluating reasonable accommodation claims under the FHA."); *Caron Found. of Fla., Inc. v. City of Delray Beach*, No. 12–80215–CIV, 2012 WL 2249263, *5 (S.D.Fla. May 4, 2012) ("Due to the similarity of the ADA and the FHA's protections of individuals with disabilities in housing matters, courts often analyze the two statutes as one."). Additionally, the ADA, FHA, and the RHA all apply to municipal zoning decisions. *Caron Found.*, 2012 WL 2249263 at *5; *Oconomowoc Residential Programs v. City of Milwaukee*, 300 F.3d 775, 782–83 (7th Cir.2002). Accordingly, the Court's analysis applies to 10th Street's claims brought under each of the statutes.

***5** The Eleventh Circuit has discussed failure to accommodate claims on a number of occasions. In *Hialeah Housing Authority*, the court enumerated the elements for a failure to accommodate claim as follows: "A plaintiff must establish that (1) he is disabled or handicapped within the meaning of the FHA, (2) he requested a reasonable accommodation, (3) such accommodation was necessary to afford him an opportunity to use and enjoy his dwelling, and (4) the defendants refused to make the requested accommodation." 418 F. App'x at 875. The court noted that "whether a requested accommodation is required by law is highly fact specific, requiring case-bycase determination." *Id.* The Court also explained that "for a demand to be specific enough to trigger the duty to provide a reasonable accommodation, the defendant must have enough information to know of both the disability and a desire for an accommodation, or circumstances must at least be sufficient to cause a reasonable [defendant] to make appropriate inquiries about the possible need for an accommodation." *Id.* at 876.

Furthermore, in *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1218–1219 (11th Cir.2008), the court noted, "[T]he duty to make a reasonable accommodation does not simply spring from the fact that the handicapped person wants such an accommodation made. Defendants must instead have been given an opportunity to make a final decision with respect to Plaintiffs' request, which necessarily includes the ability to conduct a meaningful review of the requested accommodation to determine if such an accommodation is required by law."

The parties disagree on the appropriate scope of review the Court should employ in evaluating Defendant's denial of the zoning variance request and 10th Street's challenge to it. Finding no binding authority on point, Defendant urges the Court to follow several other Circuits by limiting its review "to the materials that were presented to [the] local land use board, except in circumstances where

the board prevents applicants from presenting sufficient information." (Doc. # 11 at 9) (citing *Lapid–Laurel, LLC v. Zoning Bd. of Adjustment,* 284 F.3d 442 (3d Cir.2001)). Defendant argues that based on the evidence-or the lack of evidence-provided by 10th Street to the Board in support of its reasonable accommodation request, 10th Street failed to demonstrate that its requested accommodation was necessary to afford disabled persons an opportunity to use and enjoy a dwelling on the property, as required to establish a reasonable accommodation violation. Specifically, Defendant argues that 10th Street failed to present sufficient evidence establishing "the requested accommodation-an increase in density that would allow 96 beds instead of 68 beds-as being necessary to allow persons with a disability to live at this location." (Doc. # 11 at 17). Accordingly, Defendant contends that its denial of 10th Street's zoning variance request did not violate the ADA, FHA, or RHA as a matter of law.

***6** 10th Street, on the other hand, asserts that the Court's review is not limited to the administrative record from the zoning proceedings, but rather, the Court may consider any evidence supplied by the parties to evaluate the efficacy of 10th Street's claims, whether or not the evidence was presented to the Board when it made its decision. 10th Street contends that such further evidence will show that its requested accommodation was reasonable and necessary and, accordingly, that Defendant's denial of the requested accommodation violated the ADA, FHA, and RHA. Additionally, 10th Street argues that even if the Court were to utilize Defendant's proffered standard, the exception to the rule applies in this case because Defendant prevented 10th Street from presenting sufficient information to support its request.

The Court need not determine at this juncture the appropriate scope of its evidentiary review. The Court agrees with 10th Street that even if it adopted Defendant's proffered scope of review, disputed issues of material fact remain regarding whether the exception to the rule should apply that would allow the Court to go beyond the evidence provided to the Board in its analysis of 10th Street's claims. Specifically, 10th Street contends that the Board prevented it from presenting sufficient information in support of its zoning variance request, due to the strict 20–minute time limitation the Board placed on 10th Street at the February 22, 2011, hearing. 10th Street contends that the 20–minute time limitation with a 5 minute rebuttal period did not allow it to sufficiently address the reasonable accommodation request while also necessarily addressing the other related concerns raised by the Board and the public at the hearing.

Although the Board asserts that it did not limit 10th Street's testimony at the February 22, 2012, hearing, the transcript of the hearing shows that at the beginning of 10th Street's presentation, Commissioner Nora Patterson stated to 10th Street's representative, Bo Medred, "Bo, you know the drill and you'll have 20 minutes." (Hr' g Tr. Doc. # 7–1 at 11). At the end of 10th Street's 20 minutes, Patterson interrupted Medred to alert him that the 20 minute period had expired and allowed him an additional 30 seconds to wrap up. *Id.* at 28.10th Street's presentation was followed by a public testimony session, a 5–minute rebuttal period by 10th Street, and questions from the Board members, none of which specifically addressed the reasonable accommodation issue, after which the Board voted to deny the zoning variance request.

10th Street contends that it did have more evidence to present to support its reasonable accommodation request if more time had been allowed. Indeed, the transcript shows that 10th Street specifically informed the Board that its attorney was present to discuss the reasonable accommodation request if the Board had questions about it. *Id.* at 23–24. Furthermore, 10th Street contends that the Board's failure to ask any questions about the reasonable accommodation request also effectively prevented 10th Street from submitting sufficient evidence in support. 10th Street asserts that the Board's failure to ask any questions of its attorney on the reasonable accommodation request or request any further evidence in support of the request reasonably led it to believe that its arguments and evidentiary presentation on the issue were sufficient and that further evidence was not needed.

***7** The Court agrees with 10th Street that issues of material fact remain which preclude summary judgment at this time. Based on the time limitation of only 25 total minutes allowed to 10th Street for its presentation and based on the Board's failure to ask to hear the further evidence proffered by 10th Street at the hearing, a jury could reasonably find that the Board prevented 10th Street from submitting sufficient evidence in support of its reasonable accommodation request.

Notwithstanding the above, the Court is mindful that the Board responded to 10th Street's May 9, 2011,

demand letter seeking reconsideration of the Board's decision, by requesting 10th Street to provide more evidence demonstrating why 10th Street's requested accommodation was necessary. (Doc. # 9–2 at 74). However, rather than providing the additional evidence at that time, by letter dated June 24, 2011, 10th Street's counsel requested the Board to first re-open the zoning variance petition for reconsideration upon which 10th Street would consider submitting additional evidence demonstrating the necessity of the accommodation. *Id.* at 76–78. Based on 10th Street's failure to provide additional evidence in response to the Board's request, the Board adopted Resolution No.2011–147 on July 27, 2011, which expressly denied the reasonable accommodation request.

Although the Board contends that its June 16th invitation to supply more evidence demonstrates that it did not prevent 10th Street from presenting sufficient evidence in support of its reasonable accommodation request, the Court agrees with 10th Street that questions remain regarding what effect any additional evidence would have had at that point, given that the Board had already denied the zoning variance petition and had not agreed to re-open the petition for reconsideration. Indeed, the Board's Resolution No.2011–147 expressly states that the Board in fact "cannot reopen the public hearing months after its final action to reconsider Rezone Petition No. 10–13." (Doc. # 24–1 at 3).

Because the Board apparently could not re-open the zoning variance hearing for reconsideration even if 10th Street had provided further evidence on the issue, a jury could reasonably find that Defendant's request for further evidence did not actually provide 10th Street with an opportunity to present sufficient evidence in support of its reasonable accommodation request. Thus, as it appears that the Board's denial of the accommodation request at the February 22, 2011, hearing was effectively the final decision on the issue, and given that the Court has determined that a genuine issue of material fact remains as to whether the Board prevented 10th Street from presenting sufficient evidence at the hearing, the Court finds that summary judgment is not warranted at this time.

However, the Court notes that even if it were to consider all of the evidence permitted under the Federal Rules in evaluating 10th Street's claims (either by adopting 10th Street's preferred scope of review or by finding that the exception to Defendant's preferred standard applies), although 10th Street claims to possess sufficient evidence to demonstrate that its requested accommodation is reasonable and necessary under the ADA, FHA, and RHA, it does not appear that 10th Street has filed such evidence on the record for the Court's consideration. Instead, 10th Street argues that the summary judgment motion is premature as it was filed prior to discovery taking place and asserts that discovery is necessary to "shed light on a number of issues that are factually material to this action." (Doc. # 23 at 21).

***8** Upon due consideration, the Court determines that Defendant's Motion for Summary Judgment should be denied without prejudice on the issue of whether 10th Street has established entitlement to a reasonable accommodation under the ADA, FHA, or RHA. On the present record, the Court is unable to make the "highly fact-specific" inquiry as to whether the requested increase in density was a required accommodation necessary to afford disabled persons an equal opportunity to use and enjoy a dwelling at this location. After the parties have had the opportunity to engage in discovery, Defendant may reassert the arguments contained in the Motion for Summary Judgment on this issue.

Accordingly, it is hereby

ORDERED, ADJUDGED, and **DECREED:**

Defendant Sarasota County's Request for Judicial Notice (Doc. # 11) is granted and Defendant's Motion for Summary Judgment (Doc. # 11) is denied without prejudice.

DONE and **ORDERED.**

All Citations

Not Reported in F.Supp.2d, 2012 WL 4328655

End of Document

Jerry B. Proctor, P.A.

August 7, 2019

Ms. Sarah Sinatra Gould, AICP
Director
Planning Department
Town of Surfside
c/I Calvin Giordano & Associates, Inc.
1300 Eller Drive, Suite 600
Fort Lauderdale, FL 33316

Re: Young Israel of Bal Harbour, Inc.
Property: 9580 Abbott Avenue,
Town of Surfside

Dear Ms. Gould:

Thank you for sending me the initial staff comments for the August 29 hearing for the above styled matter.

I hope that the following comments will be instructive. Please note:

1. Pervious area- Sheet A 2 of the drawings, at the top, indicates a 'mesh' material for the ramp that will be pervious. There will be a minimal area that will be used for the foundations for the ramp that will not be pervious; the applicant will work with the Town to provide a pervious substance similar to that of a French drain within the Temple property to mitigate for any loss of pervious area caused by the foundations.
2. The applicant and design team believe that the relocation of landscaped material can occur both within the site and on the adjacent right of way in an amount equal to the area lost to the placement of the proposed ramp.

Thank you for your consideration of these issues.

Sincerely

Jerry B. Proctor, P.A.
Jerry B. Proctor
President

cc: Guillermo Olmedillo, Town Manager
Stanley B. Price, Esq.

9130 S. DADELAND BLVD., SUITE 1700, MIAMI, FL 33156
305.779.2924 JPROCTOR@PROCTORPA.COM

9511 Collins Ave.
Apt 1409
Surfside FL 33154
July 22, 2019

Young Israel Congregation
9580 Abbott Ave.
Surfside Fl 33154

Dear Menno;

As one of the members of the Young Israel Congregation and unfortunately confined to a wheel chair, it is most important that the Congregation provide wheel chair access to the building. A ramp must be constructed as soon as possible enabling myself and others who are disabled to enter the building.

Thank you for your prompt attention and action to this request.

Yours truly.

Dr.Allen Packer

Drs. Miriam & Felix Glaubach
9801 Collins Ave Apt:8F
Bal Harbour, FL 33154

July 25, 2019

Young Israel Congregation

9580 Abbot Ave.

Surfside, FL 33154

To Whom It May Concern,

As members of the Young Israel Congregation, who are both handicapped and require walkers and wheelchairs. Utilizing the ramp into the garage is dangerous, risky, and not helpful at all. Please take our request seriously. My wife is 85 years of age and I am pushing 90.

Thank you for your kind consideration,

Dr. Felix Glaubach

Dr. Miriam Glaubach

632 Irvington Avenue
Hillside, N.J. 07205

9120 West Bay Harbor Drive
Bay Harbor Island,
Florida 33154
Apt 4 A

To whom it may concern:

I am and my husband ,ages 88 and 90 respectively are part time residents In a coop apartment listed above. We have been apartment owners from 1985 on, residing approximately 4 months a year. Since 8/30/2017 my wife Has be diagnosed as a handicap by the Center for Orthopedic (Prescription Blank herewith provided) and further attached is a copy of the NEW JERSEY Commission attesting to her Disability.

My husband was a founding member of the Young Israel Congregation, who Was a member of the Morgan David Synagogue when that was the only orth-Odox synagogue in 1972 when we first started to visit the Bay Harbor, Surf-Side, Bay Harbor multi-plex.

As age has caught up to us, I am unable to attend services or social events At the synagogue , as presently constructed. I have challenged the officers Under the protection of the American Disability Act requiring them to provide A ramp or other method of entry to the Synagogue so that I do not have to Walk up the staircase leading to the front entry to the synagogue. Any other Way currently that they try to provide is unsatisfactorily as it requires long stand-Ing waiting or calling for assistance.

With much frustration, I am told that Religious House of Prayers are exempt from ADA requirements, but aside from that they are prepared to provide the necessary Access ramp, in full compliance to code regulation, but the Town fathers have to Be willing to issue the proper building permits to do so.

It is with this in mind, I ask and plead with your council to consider issuing the Necessary building permits to allow the synagogue to proceed with the construction Of a code conforming ramp so that I, and the numerous other disabled members of The Synagogue can attend services and social events to occupy our lonely hours.

With much respect, I remain

Shirley Weiss

Mrs. Shirley Weiss

DOV WOLOWITZ

202 BROADWAY

LAWRENCE, NY 11559

July 23, 2019

Gentleman,

Please be advised that I am handicapped and I need access to the front of the synagogue via a wheelchair. Using the garage entrance is not a solution to my situation. I must have wheelchair access to the front entrance of the synagogue. I'm sure there are many handicap people who are members of the synagogue that feel the same as I do.

Thanking you in advance for your consideration,

Dov Wolowitz

Young Israel Congregation

Serving Communities of
Bal Harbour, Bay Harbor, Indian Creek
And Surfside

August 8, 2019

To whom it may concern,

In reference to having an electronic handicap chair lift outside our Synagogue in lieu of a ramp would not be acceptable, due to the fact that it must be operated electronically in full public view. This would be very inappropriate for an orthodox Synagogue not to mention the problematic issues in Jewish law of operating such a system on our holy Sabbath.
Thank you for your understanding regarding this matter.

Sincerely,

Rabbi Moshe Gruenstein
Rabbi Young Israel Congregation

9580 Abbott Ave, Surfside, FL 33154
P.O. Box 545985, Surfside, FL 33154-5985
Tel: (305) 866-0203 Fax: (305) 868-1155
E-mail: yakira@yicbh.org - Website: www.yicbh.org

RONNY AQUININ, M.D., P.A.
INTERNAL MEDICINE
AMERICAN BOARD OF INTERNAL MEDICINE, DIPLOMATE

4302 Alton Rd.
Suite 470
Miami Beach, Florida 33140
305-397-8699
fax: 305-397-8889

8/6/19

Re:Wander-Brum Adrianne 03/15/1944

To whom it may concern:

Please be advised that the above named patient is afflicted by severe gait limitations and is presently unable to safely attend her house of worship due to lack of/difficult access. It would be greatly appreciated if changes were made to allow for a safe arrival.

I appreciate your understanding in this matter.

Should you need additional information please contact me.

Thank You

Ronny Aquinin, MD.

RESOLUTION NO. 2019-_____

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, [APPROVING/ APPROVING WITH CONDITIONS/ DENYING] AN APPLICATION SUBMITTED BY YOUNG ISRAEL OF BAL HARBOUR, INC. ("APPLICANT") FOR THE PROPERTY LOCATED AT 9580 ABBOTT AVENUE ("PROPERTY") FOR A VARIANCE FROM SECTION 90-45 OF THE TOWN CODE AND REASONABLE ACCOMMODATION PURSUANT TO THE AMERICANS WITH DISABILITIES ACT (ADA) TO PROVIDE FOR A ZERO (0) FOOT SETBACK ALONG THE NORTH SIDE OF THE PROPERTY FOR THE INSTALLATION OF A HANDICAPPED ACCESSIBLE RAMP, WHERE ADDITIONAL SETBACK REQUIREMENTS ARE IMPOSED BY SETTLEMENT STIPULATION AGREEMENT DATED JANUARY 23, 2012; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the applicant and property owner, Young Israel of Bal Harbour, Inc. ("Applicant"), proposes to construct a ramp consisting of approximately 205 square feet in the north setback along the entire length of the building to provide handicapped accessibility and access without the use of electrical equipment (the "Project"), and has applied for a variance and reasonable accommodation pursuant to the Americans with Disabilities Act (ADA) and Section 90-45 of the Town of Surfside ("Town") Code of Ordinances ("Code") (as modified by Settlement Stipulation Agreement dated January 23, 2012) , to allow a zero (0) setback along the entire north side of the property ("Application"), on the property located at 9580 Abbott Avenue, and legally described in Exhibit "A" attached hereto ("Property"); and

WHEREAS, Section 90-45 of the Town Code requires a 10 foot setback on the north side of the Property, as modified by Settlement Stipulation Agreement dated January 23, 2012 which allowed fifty percent (50%) of the north side setback to have a zero (0) foot setback and fifty percent (50%) to have a five foot setback; and

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

WHEREAS, Applicant's variance request seeks a reasonable modification pursuant to the ADA in order to install a handicapped accessible ramp without the use of electrical equipment in the north side setback of the Property, as governed by the ADA's Technical Assistance Manual for Title II; and

WHEREAS, Town Staff has evaluated the variance criteria set forth in the Town Code pursuant to a reasonable modification request governed by the ADA's Technical Assistance Manuel for Title II; and

WHEREAS, on September 26, 2019, the Planning and Zoning Board recommended approval of the Application with a condition that the ramp and entrance be ADA compliant; and

WHEREAS, on October 29, 2019, the Town Commission conducted a public hearing on the Application for which a hearing was noticed, posted or 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 and reasonable accommodation pursuant to the ADA.

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 and reasonable accommodation pursuant to the ADA from the north side setback requirements of Section 90-45 of the Town Code, as modified by Settlement Stipulation Agreement dated January 23, 2012 which allowed fifty percent (50%) of the north side setback to have a zero (0) foot setback and fifty percent (50%) to have five foot setback, is hereby [select one: approved / approved with conditions / denied], to allow zero (0) foot setback along the entire length of the north side of the building on the Property.

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 dated June 14, 2019 and prepared by Schapiro Associates, 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 dated June 14, 2019 and prepared by Schapiro Associates, the variance and reasonable accommodation 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 handicapped accessible ramp and entrance shall be ADA compliant.

(d) 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.

(e) 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.

(f) 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.

(g) 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 29th day of October, 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

Lots 11, 12, 13 and 14, less the North 31 feet for right-of-way, Block 7, of ALTOS DEL MAR NO. 6, according to the Plat thereof, as recorded in Plat Book 8, Page 106, of the Public Records of Miami-Dade County, Florida

Parcel Identification Number: 14-2235-007-1160