

**RESOLUTION NO. 2019- 2636**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING WITH CONDITIONS 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 (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 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 Manual 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 meets 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 with Conditions.** 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 approved with conditions, 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 29<sup>th</sup> day of October, 2019.

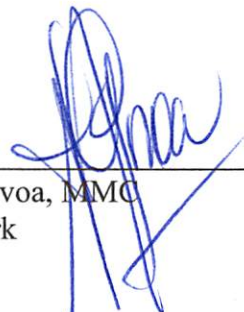
**Moved By:** Commissioner Paul  
**Second By:** Commissioner Karukin

**FINAL VOTE ON ADOPTION**

Commissioner Barry Cohen	<u>Absent</u>
Commissioner Michael Karukin	<u>Yes</u>
Commissioner Tina Paul	<u>Yes</u>
Vice Mayor Daniel Gielchinsky	<u>Yes</u>
Mayor Daniel Dietch	<u>Yes</u>

  
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Daniel Dietch  
Mayor

**ATTEST:**

  
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Sandra Novoa, MMC  
Town Clerk

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

  
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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