

RESOLUTION NO. 2019- 2637

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING WITH CONDITIONS AN APPLICATION SUBMITTED BY DAVID KRIEGER AND BELLA TENDLER KRIEGER (“APPLICANT”) FOR THE PROPERTY LOCATED AT 9264 BAY DRIVE (“PROPERTY”) FOR A VARIANCE FROM SECTION 90-45 OF THE TOWN CODE TO PROVIDE A FIRST-FLOOR SIDE SETBACK OF 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 meets 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 with Conditions. That the requested variance from the first-floor side setback requirement of Section 90-45 of the Town Code is hereby approved with conditions, 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 approved with conditions, to allow an upper story setback of an average 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.

(g) The single-family home to be constructed on the Property shall be relocated or moved five (5) feet east along the frontage of the Property. Plans shall be revised accordingly.

(h) One of the walls in the first floor outdoor covered terrace shall contain a large opening in order to eliminate a solid wall with no light or air. Plans shall be revised accordingly.

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

PASSED AND ADOPTED on this 29th day of October, 2019.

Moved By: Vice Mayor Gielchinsky
Second By: Commissioner Karukin

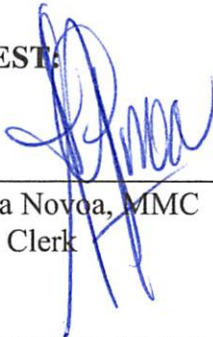
FINAL VOTE ON ADOPTION

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>



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