



**Town of Surfside  
PLANNING & ZONING BOARD  
AGENDA**

**August 29 – 6:00 p.m.**

Town Hall Commission Chambers –  
9293 Harding Ave, 2<sup>nd</sup> 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 community-based organization for the purpose of requesting a grant without special compensation or reimbursement for the appearance; and any person who only appears as a representative of a neighborhood, homeowners or condominium association without compensation for the appearance, whether direct or indirect or contingent, to express support of 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. Call to Order/Roll Call**

**2. Town Commission Liaison Report – Vice Mayor Gielchinsky**

**3. Approval of Minutes – July 11, 2019**

**4. Applications:**

- A. 9008 Byron** - The applicant received approval from the Planning and Zoning Board at the July 11, 2019 meeting to convert their garage to approximately 251 square feet of additional living space. The Board added a condition of approval to require the window in the converted garage to be level with the existing windows. The applicant has evaluated this condition and found that it would create an economic hardship for this project. Attached is a request to rescind the condition of approval with a copy of the proposed front elevation.
  
- B. 9433 Bay Drive** - The applicant is requesting to convert approximately 352 square feet of terraced area into interior living space. Furthermore, the applicant is also proposing a new terrace and interior renovations.

- C. **9540 Harding Avenue** - The applicant is requesting one (1) Permanent Wall Sign; four (4) Permanent Window Signs; three (3) on the store frontage and one (1) on the back door.
- D. **8926 Froude Ave** - The applicant is requesting after the fact approval for a carport.
- E. **500 93<sup>rd</sup> Street** - The applicant is requesting to build a new 5,538 square foot two-story home.

**5. Local Planning Agency Items**

**A. Parking Waiver Program**

**AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AMENDING SECTION 90-77, "OFF-STREET PARKING" OF CHAPTER 90, "ZONING" OF THE TOWN'S CODE OF ORDINANCES TO EXTEND THE PARKING EXEMPTION PROGRAM TO ADDRESS VACANCIES AND ECONOMIC REVITALIZATION IN THE SD-B40 ZONING DISTRICT; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.**

- B. **Young Israel Variance** - 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.

**6. Discussion Items:**

**A. Single Family Setbacks on Aggregated Lots**

**B. Future Agenda Items**

**C. Planning & Zoning Board Meeting Schedule [Verbal]**

1. October 31<sup>st</sup> – Proposing October 24<sup>th</sup>
2. November 28<sup>th</sup> (Thanksgiving) – Proposing November 21<sup>st</sup>
3. December 26<sup>th</sup> – Proposing December 19<sup>th</sup>
4. Option – Combine November and December to December 12<sup>th</sup>.

**7. Adjournment**

---

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](http://www.townofsurfsidefl.gov).

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

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



**Town of Surfside  
SPECIAL PLANNING & ZONING BOARD  
MINUTES**

**July 11, 2019 – 6:00 p.m.**

Town Hall Commission Chambers –  
9293 Harding Ave, 2<sup>nd</sup> Floor, Surfside, FL 33154

**1. Call to Order/Roll Call**

Chair Lindsay Lecour called the meeting to order at 6:00 p.m.

**Present:** Chair Lindsay Lecour, Vice Chair Judith Frankel, Board Member Peter Glynn, Board Member Brian Roller, Board Member Jorge Garcia and Board Member Marina Gershanovich.

Vice Mayor Gielchinsky entered at 6:01 p.m.

**Absent:** Board Member Rochel Kramer

Board Member Jorge Garcia entered at 6:06 p.m.

**2. Town Commission Liaison Report – Vice Mayor Gielchinsky**

Vice Mayor Gilchensky gave an update on the give a foot/get a foot program which he discussed with the Commission. He encouraged the Board to look at the video of that Commission meeting. He stated that the direction was to move forward and schedule the Joint Commission and Planning & Zoning meeting.

Vice Mayor Gilchensky gave an update on the zoning in progress and he stated that the memo from Town Planner Sarah Sinatra Gould will show the different options.

Vice Mayor Gilchensky spoke about the percentage of landscaping that is required and the artificial turf requirement.

**3. Approval of Minutes – May 23, 2019**

Chair Lindsay Lecour stated that in the minutes on page 1 it shows her absent, but on page 2 it shows her arriving and she wanted to make that amendment.

A motion was made by Vice Chair Judith Frankel to approve the May 23, 2019 minutes as amended, seconded by Board Member Peter Glynn. Motion passed with a 6-0 vote with Board Member Jorge Garcia and Board member Rochel Kramer absent.



**4. Applications:**

- A. 9049 Froude Avenue** – The applicant is requesting to repair and renovate the existing house along with converting the existing garage into a storage room.

Town Planner Sarah Sinatra Gould presented the item and the below staff recommendations:

1. Provide landscaping along the base of the new exterior wall. Per code section 90-50.1, If the garage entrance is located at the front or primary corner of the property, landscaping shall be provided along the base of the new exterior wall. When the installation of landscaping results in insufficient off-street parking, a landscaped planter shall be permitted in lieu of the required landscaping.
2. Provide details of the proposed driveway and walkway materials. The proposed driveway and walkway materials are not provided. Per code section 90-61(6), materials are limited to (a) pavers, (b) color and texture treated concrete, including stamped concrete as long as it is permeable, (c) painted concrete shall not be permitted, (d) asphalt shall not be permitted.
3. Provide calculation of each elevation to demonstrate there is no net loss of window openings.

David Burstyn, applicant, presented the item.

Vice Chair Judith Frankel asked the applicant if they have to raise the floor.

Town Planner Sarah Sinatra Gould stated that the Building Official would have to review it and since it is being used for storage, she does not believe so.

Board Member Peter Glynn asked what the difference between storage and habitable is physically.

Town Planner Sarah Sinatra Gould stated that the Building Department would determine that and flag it at that time if they decide to use it for something other than storage.

A motion was made by Board Member Peter Glynn, seconded by Board Member Marina Gershanovich to approve with staff recommendations. Motion passed with a 5-0 vote with Board Member Rochel Kramer absent.

- B. 9289 Emerson Avenue** - The applicant is requesting to convert their garage to approximately 216 square feet of additional living space.

Town Planner Sarah Sinatra Gould presented the item and the below staff recommendations:

1. Provide landscaping or a planter in front of the converted garage. Per **code section 90-50.1**, the installation of planter is only permitted when the landscaping will result in insufficient off-street parking. There is sufficient space in the front yard for a landscaped strip which will not impede off-street parking.

2. The north elevation results in a net loss of wall openings with the removal and fill of the existing door and window. Adjust accordingly so that there is 0 net loss of wall openings. **Per code section 90-50.1**

A motion was made by Board Member Brian Roller, seconded by Vice Chair Judith Frankel to approve with staff recommendations. Motion passed with a 6-0 vote with Board Member Rochel Kramer absent.

- C. 9008 Byron Avenue** - The applicant is requesting to convert their garage to approximately 251 square feet of additional living space.

Town Planner Sarah Sinatra Gould presented the item and the below staff recommendations:

1. Window shall be required to be flush with other windows.
2. Provide landscaping or a planter in front of the converted garage. Per Code Section 90-50.1, the installation of planter is only permitted when the landscaping will result in insufficient off-street parking. There is sufficient space in the front yard for a landscaped strip which will not impede off-street parking.
3. The north elevation (side) results in a net loss of wall openings with the removal and fill of the existing door. Per Code Section 90-50.1
4. Provide additional information showing that the 50% front setback permeability is being met Per Code Section 90.61.1

Chair Lindsay Lecour asked regarding the proposed east elevation and why are we not making the windows the same height as the other windows.

Jeff Rose, applicant, stated that was where the tie beam was, and they did not want to move it.

Chair Lindsay Lecour stated that she would like it to look like the other windows on the façade and maybe possibly raise the bottom or bring the stone around it but at least that way the windows will be flushed.

A motion was made by Vice Chair Judith Frankel, seconded Board Member Brian Roller to approve with staff recommendations and to make the windows to be in line with the other windows. Motion passed with a 6-0 vote with Board Member Rochel Kramer absent.

- D. 9538 Harding Avenue** - The applicant is moving the business from 9471 Harding Avenue. The applicant is requesting a permanent channel letter sign.

Town Planner Sarah Sinatra Gould presented the item and the below staff recommendations:

1. Any existing or proposed electrical boxes shall be concealed.

Board Member Brian Roller asked if they are able to leave a space between so that the water can run behind it because it is flushed against the wall right now.

Town Planner Sarah Sinatra Gould stated yes that they can add that requirement.

Board Member Peter Glynn asked if they will be refurbishing the façade.

Town Planner Sarah Sinatra Gould stated that they could add that requirement as well.

A motion was made by Board Member Peter Glynn, seconded Vice Chair Judith Frankel to approve with staff recommendations and to include refurbishment of the façade and leaving a space between in order for the water to run. Motion passed with a 6-0 vote with Board Member Rochel Kramer absent.

**E. 9000 Abbott Avenue** - This application was heard by the Planning and Zoning Board in September 2017. At that time the applicant was proposing a two-story addition. The revised request is to keep the structure to a one-story building and to raise the roof above a newly reconfigured master suite.

Town Planner Sarah Sinatra Gould presented the item and the below staff recommendations:

1. Remove the parking space that is beyond the front of the house. Remove the gate and replace with a fence since there will be no vehicular gate.
2. Remove parking space beyond front plan of the home and remove the vehicular gate. Fences or ornamental walls within the front yard or primary corner yard shall have a continuous hedge of a minimum height of three feet at the time of planting and shall thereafter be maintained a maximum height equal to the top of the fence or wall. The hedge shall be planted between the right-of-way and the fence or ornamental wall. The hedge shall be planted contemporaneously with the erection of the fence or wall. Per Code Section 90-56.2

Chair Lindsay Lecour asked the location of the gate. She also asked if they can add saying to remove the gate and vehicular gate.

Town Planner Sarah Sinatra Gould showed the Board the location and she explained what the Code states.

Discussion continued among the Board and staff regarding the parking space allowed.

Chair Lindsay Lecour stated that they have modified condition one to remove the 3<sup>rd</sup> space and vehicular gate and flip flopping the fence and the hedge.

A motion was made by Board Member Peter Glynn, seconded Board Member Marina Gershanovich to approve with staff recommendations. Motion passed with a 6-0 vote with Board Member Rochel Kramer absent.

- F. **1001 88<sup>th</sup> Street** - The applicant is requesting to build a 3,654 square foot two-story new home.

Town Planner Sarah Sinatra Gould presented the item and the below staff recommendations:

1. Provide a professional survey of the property.
2. The proposed gate and landscaping in the primary frontage are positioned in the right-of-way. Please adjust so the gate and landscaping are within the property boundaries.
3. Reduce the width of the driveway curb cut to meet the 18' maximum requirement as per **code section 90.61.1**
4. Provide the required curb cut distance for corner lots. For corner lots, no curb cut shall be located within 25 feet of the intersection of the front and secondary frontage lines, per **code section 90.61.1**. Currently, the driveway is setback 24' 8".
5. Correctly label the side setback property line on the site plan Page A.002. The side setback is being identified as the property line.
6. Provide additional details as it relates to the gates and fences if proposed.
7. Provide the material type for both the driveway and the pathway.

The following speakers spoke on the item:

Marci Varca  
Wesley Kean

Chair Lindsay Lecour addressed the speakers' remarks and questions.

Town Attorney Edward Martos clarified the code on the hours.

Chair Lindsay Lecour asked Town Planner Sarah Sinatra Gould if when they calculate the percentage of the 1<sup>st</sup> and 2<sup>nd</sup> floors if they include the garage as part of the first floor.

Town Planner Sarah Sinatra Gould answered Chair Lindsay Lecour question and stated yes; they do include the garage as part of the first floor.

Board Member Brian Roller asked if this is new that there are elevations on each one of the drawings and is happy to see it. He asked if the elevation is allowed to go to 30 feet. They are at 6 foot 4 inches from the crown and they are 23.7 feet and they are building a million-dollar house, and something doesn't feel right.

Discussion continued among the Board regarding the elevation.

Wesley Keen, architect, clarified the question regarding the elevation and showed the plans to the Board and explained the project.

Chair Lindsay Lecour made a recommendation for the applicant to do more to identify this as a front entrance.

A motion was made by Board Member Peter Glynn, seconded Board Member Jorge Garcia to approve with staff recommendations. Motion passed with a 6-0 vote with Board Member Rochel Kramer absent.

**G. 9264 Bay Dive** - The applicant is requesting to build a 7,243 square foot two-story new home *[Linked to item 5A]*

Chair Lindsay Lecour stated that this item is linked with the quasi-judicial item (5A) which will be heard first.

Town Planner Sarah Sinatra Gould presented the item and explained the process to the applicant and that it would be placed on the August 13, 2019 City Commission Meeting Agenda.

A motion was made to deny the variance by Board Member Peter Glynn, seconded by Vice Chair Judith Frankel with the conditions stated by the Vice Mayor Gielchinsky which is a 20% appropriate set back. Motion passed with a 6-0.

## **5. Local Planning Agency Items**

**A. 9264 Bay Drive Variance** – The applicant is requesting two variances for side setbacks for the first floor and upper story level from the Town of Surfside Zoning Code *[Linked to Item 4G]*

Chair Lindsay Lecour read the quasi-judicial statement into the record.

Town Attorney Martos polled the Board.

Town Clerk Frantza Duval swore the speakers in.

Town Planner Sarah Sinatra Gould stated that there was a letter of objection received by the Town Clerk from a neighbor.

Town Planner Sarah Sinatra Gould presented the item and stated that the applicant is proposing a first floor side set back of 6 feet and 9 inches instead of the required upper story average set back of 20 feet or 20% of the frontage, whichever is greater, plus an additional 5 feet for more than 1 lot of record. The applicant is proposing a 10-foot 2-inch average side set back on either side. This is a difference of 14 feet 10 inches per the code.

Chair Lindsay Lecour asked what the proposed setback is and what the minimum setback would be.

Town Planner Sarah Sinatra Gould stated the first floor is required to be 20 feet and they are proposing 6 feet 9 inches. The second story is supposed to be an average of 20 feet or 20% of the frontage, whichever is greater plus an additional 5 feet.

Town Planner Sarah Sinatra Gould continued explaining the variance request and the size of the property. She stated that the applicant is requesting the variance in order for the project to be constructed. She stated that what they found is that while the literal interpretation of the code may be restrictive, they might be eligible for some sort of variance. What they are suggesting is that what is being requested does not meet the minimum requirements to meet the spirit and intent of the code.

Town Planner Sarah Sinatra Gould stated that staff is recommending denial of the side set back variance for the first floor and the upper floor. She also went through the criteria of the code in reference to the zoning requirements.

Town Planner Sarah Sinatra Gould read the staff findings which were the following where the applicant did not meet the code.

1. The interior side and upper story variances did not meet the code and the applicant is requesting a variance.
2. The required 50% minimum front area permutability did not meet the code requirements. The plans state that it is a 35% permutability and the code only requires 30%, however the minimum of the code is 50% for the front setback.
3. Provide additional detail on the elevation sheet showing that the elevation meets the 10% wall opening. If this was to be approved, this must be one of the conditions.
4. They do not have information on the fences and gates. If this was to be approved, this must be one of the conditions.
5. The curb cut setback must be 5 feet curb cut being met, they need it dimensioned and a note on the plans stating they met that curb cut set back requirement.
6. Also, a note on the plans stating that when they come for permitting that the stairs on the roof cannot exceed the 30-foot height limitation.

Daniel Sorogon, architect for the applicant, presented his project and explained the hardship of needing the variance.

The following individual neighbors were against this item:

Peter Hickey

Board Member Brian Roller stated to Town Planner Sarah Sinatra Gould the requirements of the size of the lot and their concern on the setbacks.

Town Planner Sarah Sinatra Gould stated what the code requires.

Chair Lindsay Lecour stated that she is willing to maybe come up with a compromise but does not feel this project meets the proper intent of the code.

Vice Chair Judith Frankel stated that the project is large and does not meet the intent of the code and feels this house is very boxy. She stated that the neighbors are concerned. She further stated that as the variance is now, she is not able to approve their request. She does believe there might be some middle ground.

Further discussion among the Board, the applicant's architect and staff continued regarding the setbacks, the provisions of the code and other alternatives.

Board suggested a 20% setback and stated that an arrangement can be done. They also requested to increase the setback on the north side of the property to an extra 10 to 14 feet.

Town Attorney Martos gave the explanation on the site plan application, the variance and when the applicant can come back to the Board with the criteria for the site plan.

Vice Mayor Gielchinsky discussed the item and the aggregated condition of the lot.

Board requested a 20% setback and wanted discussion noted in the minutes for future discussion as stated by Vice Mayor Gielchinsky.

Discussion continued among the Board and the architect of the project regarding the setbacks.

Chair Lindsay Lecour stated that the Board should vote on the variance and then have a brief discussion on any other comments on the site plan application.

Town Attorney Martos stated that the item that will go forward to the Commission is the variance application. He suggested the Board to possibly table the discussion on the variance and have a vote on the site plan. Then come back to the variance, have a vote on that and transfer your recommendations to the Commission along with your thoughts on the site plan.

Town Planner Sarah Sinatra Gould asked for clarification on the vote of the site plan and variance.

Town Attorney Martos gave Town Planner Sarah Sinatra Gould the clarification she requested on the site plan and variance vote.

Chair Lindsay Lecour stated to table the variance and discuss the site plan.

The following speaker spoke on the item.

Anthony Blake

Jeff Rose

The Board and Town Planner Sarah Sinatra Gould addressed the speaker's questions and concerns.

Chair Lindsay Lecour closed the public hearing and asked for comments from the Board in regard to the site plan.

Vice Chair Judith Frankel stated that her concern is the view from the street, how is this property going to be viewed. She asked if there will be some type of fencing.

Daniel Sorogon, architect for the applicant, answered Vice Chair Judith Frankel's question regarding the fencing stating they will not be putting a fence in the front.

A motion was made by Board Member Peter Glynn, seconded by Vice Chair Judith Frankel to deny the application based on the variance required. Motion passed with a 6-0 vote with Board Member Rochel Kramer absent and Board Member Marina Gershanovich abstaining from voting.

#### **B. Hotel prohibition south of 93rd Street**

**AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING THE TOWN OF SURFSIDE CODE OF ORDINANCES BY AMENDING SECTION 90-41, "REGULATED USES", TO CHANGE THE LIST OF PERMITTED, CONDITIONAL, AND PROHIBITED USES TO PROHIBIT HOTELS IN THE H-40 ZONING DISTRICT SOUTH OF 93<sup>RD</sup> STREET AND ADDRESS HOTEL ACCESSORY USES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS AND PROVIDING FOR AN EFFECTIVE DATE.**

Town Clerk Frantza Ducal read the title into the record.

Town Planner Sarah Sinatra Gould presented the item. She stated that staff recommends the following:

1. To grandfather existing developed hotels relating solely to the use.
2. To prohibit or restrict ballrooms and hotel amenities and accessories.
3. To limit building of hotels to 100 feet in length and no aggregation of lots permitted with the intention to develop more than one hotel per lot.
4. Aggregation of lots for hotel use require a 25% reduction of allowable density.
5. A side setback of 15%.
6. If the idea was to do an office space, we would need to do a land use and a zoning map, a text amendment that creates a category for residential office, and excluding a hotel category, which allows it as an accessory use.

The following speakers spoke on the item:

Rick Superstein  
Jennifer Fine  
Alex Tachmes  
Silvia Coltrane  
George Kousoulas  
Kristofer Machado  
Matthew Barnes  
Esther Superstein



Board Member Brian Roller responded to the comments made by the speakers and feels that the Board should respect the desire of the public. He asked Town Planner Sarah Sinatra Gould if they are planning on opening it up for office space.

Town Planner Sarah Sinatra Gould stated that was the direction of the Town Commission and they were fine deferring it, but they added additional items to analyze and one was the office space.

Board Member Brian Roller feels that it should be eliminated since the developers are not on board with it and is surprised that they did not hear about the office space prior to this meeting. He agrees with the idea that they do not know what is driving this analysis and the crime statistics does not support the suggestion being made.

Board Member Peter Glynn stated that he agrees with Mr. Kousoulas and feels he needs to reject, postpone or grandfather this request and feels that some of the buildings would be deemed worthless.

Vice Chair Judith Frankel responded to the speakers' comments and concerns and feels that switching from hotel to office space does not make sense to her.

Board Member Jorge Garcia feels that it should be rejected and address it again and see what can be done.

Board Member Marina Gershanovich feels that they do not have enough evidence to pass this item.

Chair Lindsay Lecour agrees that she does not have enough information to make the change to the code.

Board Member Brian Roller stated that beach use is also something that needs to be considered.

A motion was made by Board Member Peter Glynn to reject the Ordinance, seconded by Board Member Brian Roller. Motion carried with a 6-0 vote with Board Member Rochel Kramer absent.

**6. Discussion Items:**

**A. Unlocking Height from the Charter – Verbal**

Chair Lindsay Lecour stated that the Board is to watch the video and see what the individuals are requesting and suggested as part of the agenda to have the questions that were asked made part of the agenda.

Town Planner Sarah Sinatra Gould stated that they are looking at scheduling the joint meeting a month out. This will be an informational meeting to see if there is an appetite from the Town to move forward with this on the ballot.

The following speakers spoke on the item:

Jeff Rose stated that if this goes on the ballot and approved, he will not be able to build the exact same home he currently has if it is damaged or destroyed in a storm.

George Kousoulas spoke regarding the variance and what a variance is used for.

Board Member Peter Glynn answered Mr. Rose's concern in the event of a storm, and stated that the requirement would change, and the charter would be unlocked.

Town Planner Sarah Sinatra Gould asked if there is a desire to move forward with a charter amendment, if there could be a way to do the language stating that it would be unlocked in the event of a major storm.

## **B. Future Agenda Items**

Chair Lindsay Lecour stated to add artificial turf to a future agenda.

Town Planner Sarah Sinatra Gould stated that they will be drafting an ordinance and the Board will see it in the future as an LPI item therefore, it does not need to be added to a future agenda.

Chair Lindsay Lecour would like to make a point that maybe they could be more lenient in using artificial turf in a rear yard instead of a front yard.

Town Planner Sarah Sinatra Gould explained that it would be more constraining to place the artificial turf in the front yard. She also stated that the commission had mentioned of requiring more landscaping if they get their artificial turf approved.

Chair Lindsay Lecour stated another item for future consideration is a 40-foot-wide house on a 50-foot-wide lot correct scale.

Vice Chair Judith Frankel agrees if it is a one story, her issue is when they want to add a second floor.

Vice Mayor Gielchinsky left the meeting at 8:52 p.m.

Further discussion continued regarding lot coverage and aggregation of lot among the Board and Staff.

Chair Lindsay Lecour requested to revisit setback, massing on the second story and pitch.

Town Planner Sarah Sinatra Gould suggested a workshop for this.

**7. Adjournment**

A motion was made by Board Member Peter Glynn, seconded by Vice Chair Judith Frankel to adjourn the meeting without objection at 8:59 p.m.

Respectfully submitted,

Accepted this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Lindsay Lecour, Chair

Attest:

\_\_\_\_\_  
Sandra Novoa, MMC  
Town Clerk



## MEMORANDUM

To: Planning and Zoning Board

Thru: Guillermo Olmedillo, Town Manager

From: Sarah Sinatra Gould, AICP, Town Planner

CC: Lillian Arango, Town Attorney

Date: August 29, 2019

Re: 9008 Byron Avenue – Garage Conversion

---

The property is located at 9008 Byron Avenue, within the H30B zoning. The applicant received approval from the Planning and Zoning Board at the July 11, 2019 meeting to convert their garage to approximately 251 square feet of additional living space. The Board added a condition of approval to require the window in the converted garage to be level with the existing windows. The applicant has evaluated this condition and found that it would create an economic hardship for this project. Attached is a request to rescind the condition of approval with a copy of the proposed front elevation.

INQUIRY TO 2308774  
TOWN OF SURFSIDE



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.

<b><u>PROJECT INFORMATION</u></b>	
OWNER'S NAME	Silvia & Marco Taglietti
PHONE / FAX	754-332-5112
AGENT'S NAME	Self Rose
ADDRESS	8851 Frowde Ave, Surfside, FL 33154
PHONE / FAX	305-733-2485
PROPERTY ADDRESS	9008 Byron Ave
ZONING CATEGORY	1130B
DESCRIPTION OF PROPOSED WORK	Garage Conversion - approved at last P&Z meeting in July however need to clarify comment

<b><u>INTERNAL USE ONLY</u></b>			
Date Submitted	_____	Project Number	_____
Report Completed	_____	Date	_____
Fee Paid	\$ _____		

<b><u>ZONING STANDARDS</u></b>	Required	Provided
Plot Size	_____	_____
Setbacks (F/R/S)	_____	_____
Lot Coverage	_____	_____
Height	_____	_____
Pervious Area	_____	_____

_____	_____	<i>Jeffery Rose</i>	8-7-17
SIGNATURE OF OWNER	DATE	SIGNATURE OF AGENT	DATE

Silvia and Marco Tagliatti  
9008 Byron Ave  
Surfside, FL, 33154

August 2, 2019

Dear Planning and Zoning Board,

Thank you for approving our garage conversion at last month's Planning and Zoning meeting for our new home at 9008 Byron Avenue. We have met with the architect and contractor to review the comments from the Board and specifically the point about raising the new window, where the garage door currently is, to be level with the other front window in the master bedroom.

We concluded that this new requirement by the board is extremely expensive (around \$10,000 or more additional cost) as it requires cutting the existing concrete and tie beam and making a new tie beam or a steel beam.

We also reviewed the code and, to our knowledge, this requirement is not in the zoning code.

Additionally, we believe there have been many other garage conversions in the neighborhood that were completed without this new requirement.

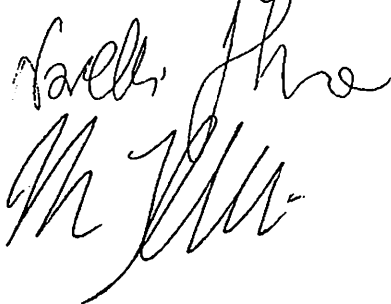
While it is not our intention to cause any trouble to the Board, we do not have the additional funds to spend on a requirement that is not in the code and, to our knowledge, has not been requested on other garage conversions.

Therefore we kindly ask to drop this specific requirement and allow the new window to be installed as per drawings we presented at the last Planning and Zoning meeting.

Thank you and we look forward to hearing back from you.

Sincerely,

Silvia and Marco Tagliatti

Handwritten signatures of Silvia and Marco Tagliatti. The signature for Silvia is written in a cursive style, and the signature for Marco is also in cursive, appearing as a stylized 'M' followed by 'Tagliatti'.

**Project: Tagliatti Residence – Interior Remodeling**

9008 Byron Avenue – Garage Conversion & Driveway Addition  
Surfside, FL 33154-3238

**August 05, 2019**

---

Town of Surfside – Planning and Zoning

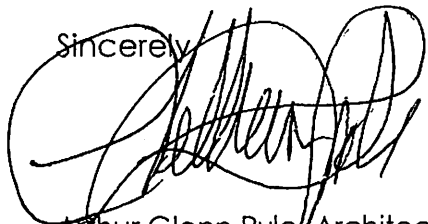
Dear Planning and Zoning Board,

Thank you for approving our garage conversion at last month's Planning and Zoning meeting for our new home at 9008 Byron Avenue. We have met with the residence owners and contractor at the house after the comments from the board about raising the new window where the garage door is to be replaced to be level with the other front window in our master bedroom.

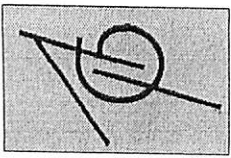
If this is required by the board this is something that is very expensive to do (around \$10,000 or more) as it requires cutting the existing concrete and tie beam and making a new tie beam or a steel beam. This requirement is not in the zoning code anywhere and to our knowledge.

We are not sure why the board is requesting for us to do this as there have been many other garage conversions in the neighborhood and this was not required. We are not trying to cause any problems as we just don't have the extra money to spend on the garage conversion for something that is not required and has not been requested on all other garage conversions. Thank you and we look forward to hearing back from you.

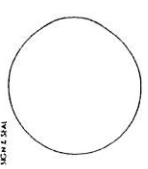
Sincerely,



Arthur Glenn Pyle, Architect #7174  
1016 NE 114th Street  
Biscayne Park, Florida 33161



AGP ARCHITECTS  
101A NE 114 Street  
Miramar, FL 33181

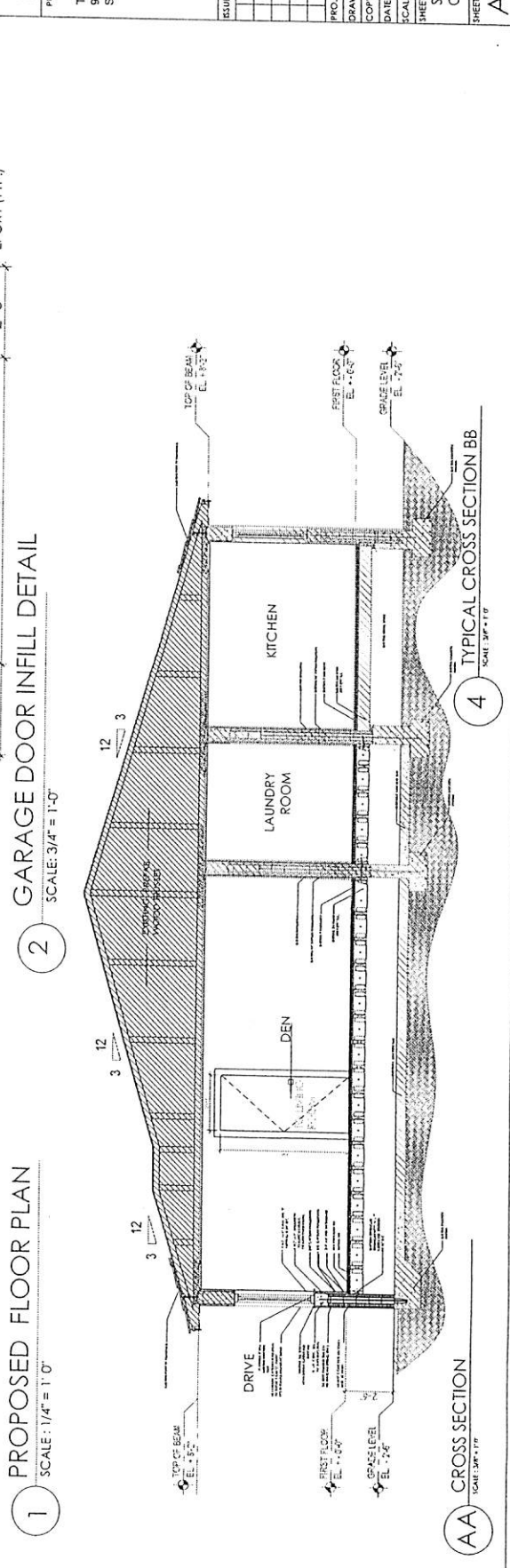
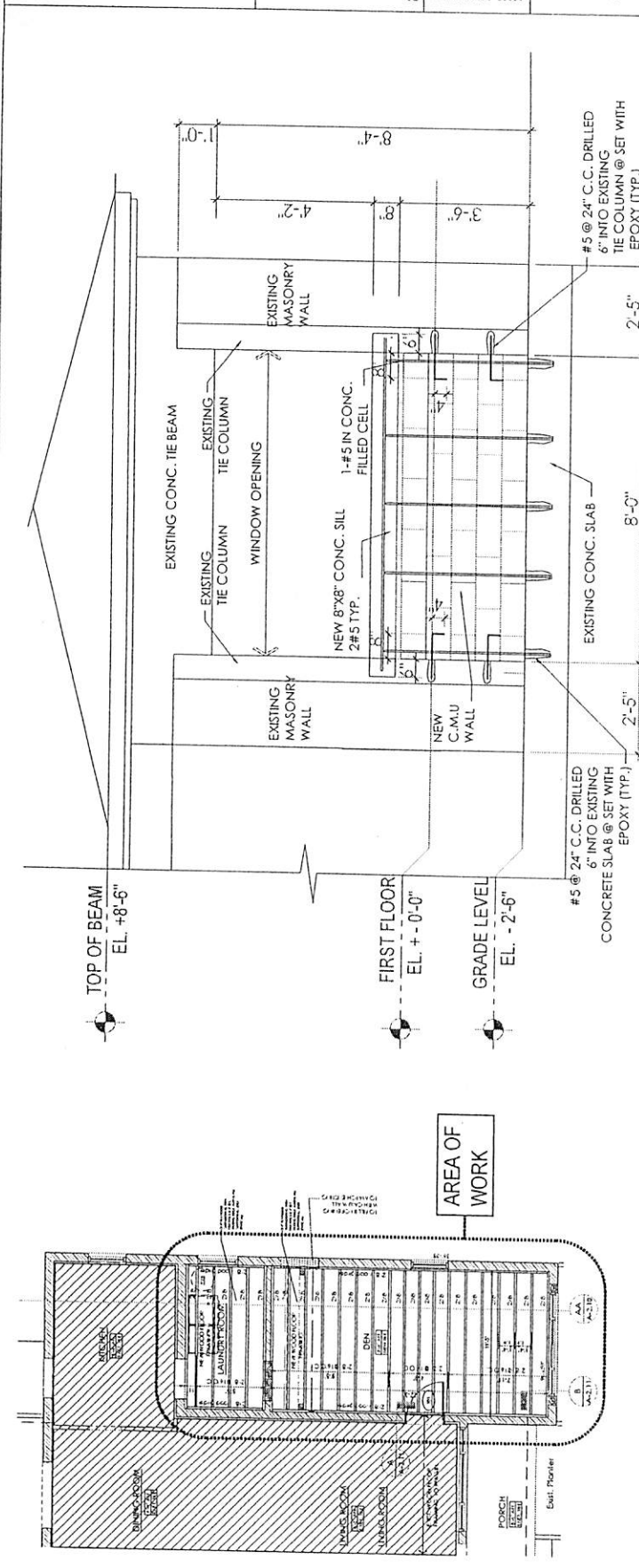


IGG US  
INTERNATIONAL GROUP CONSULTANTS  
The Professional Architect  
1500 NE 105 Street  
Miami Shores, FL 33138  
PH: 781.251.1754

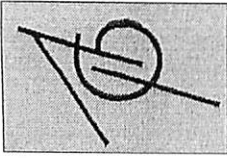
PROJECT IDENTIFICATION  
Tagliatti Residence  
9008 Byron Avenue  
Suntide, FL 33154-3238

ISSUE DATES	PROJECT NUMBER	DATE
	042919-01	CL
		CL
		CL

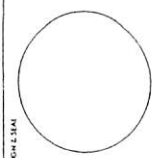
SHEET TITLE  
STRUCTURAL PLAN &  
CROSS SECTIONS  
SHEET NUMBER  
A-2.05







AGP ARCHITECTS  
10114G 134th Street  
Pensacola, FL 32504  
Phone: 331-6111



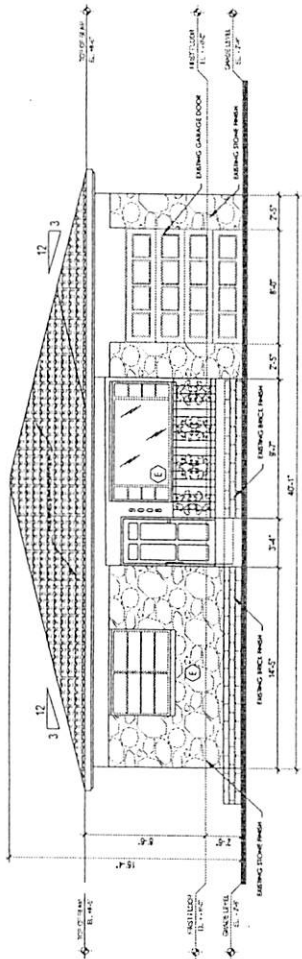
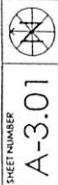
INTERNATIONAL GROUP OF CONSULTANTS  
ARCHITECTS  
1008 NE 105th Street  
P.O. Box 2011854  
Pensacola, FL 32520-11854  
Phone: 331-6111

**IGC**  
INTERNATIONAL GROUP OF CONSULTANTS  
ARCHITECTS

1008 NE 105th Street  
P.O. Box 2011854  
Pensacola, FL 32520-11854  
Phone: 331-6111

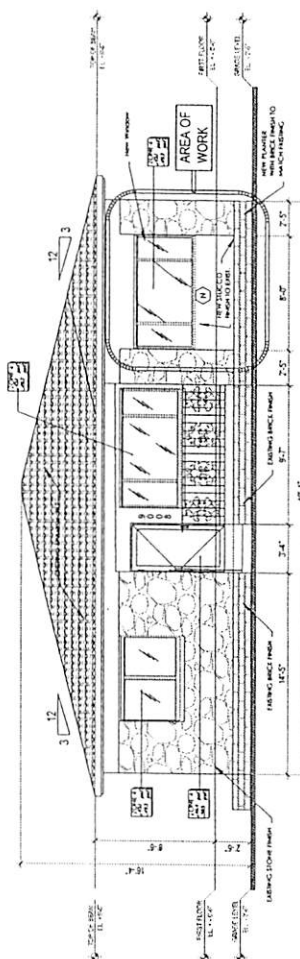
**PROJECT IDENTIFICATION**  
Tagliatti Residence  
9006 Byron Avenue  
Surfside, FL 33154-3238

PROJECT NUMBER	04-2919-01
DRAWN BY	CI
COPYRIGHT	AGP ARCHITECTS, 2019
DATE	08/04/2019
SCALE	1/4" = 1'-0"
SHEET TITLE	EXISTING & PROPOSED EXTERIOR EAST ELEVATIONS
SHEET NUMBER	A-3.01



**1** EXISTING EAST ELEVATION

SCALE: 1/4" = 1'-0"



**2** PROPOSED EAST ELEVATION

SCALE: 1/4" = 1'-0"

**NOTE:**  
1. ALL EXISTING WINDOWS TO BE REPLACED WITH  
NEW IMPACT WINDOWS UNDER SEPARATE PERMIT.



## MEMORANDUM

To: Planning & Zoning Board

Thru: Guillermo Olmedillo, Town Manager

From: Sarah Sinatra Gould, AICP, Town Planner

CC: Lillian Arango, Town Attorney

Date: August 29, 2019

Re: 9433 Bay Drive – Conversion & Addition

---

The property is located at 9433 Bay Drive, within the H30B zoning. The applicant is requesting to convert approximately 352 square feet of terraced area into interior living space. Furthermore, the applicant is also proposing a new terrace and interior renovations.



Staff has reviewed the current application for consideration by the Design Review Board. In this report Staff presents the following:

- Applicable Zoning Code regulations, along with the results of the review
- Applicable Design Guideline standards, along with the results of the review
- Staff Recommendation

## STANDARDS / RESULTS

### Town of Surfside Zoning Code, Applicable Requirements

#### **Sec. 90.43 Maximum building heights**

Height	Required Maximum	Proposed
H30B	30 feet	Less than 30 feet

#### **Sec. 90-45. Setbacks**

Setbacks	Required	Proposed
Primary Frontage	Minimum 20 feet	19.5 feet – existing
Interior side (lots over 50 feet in width)	5 feet	5 feet – existing
Rear	Minimum 20 feet	25'7" – existing

#### **Sec. 90.49 Lot standards**

Lot Standards H30B	Required	Proposed
Minimum Lot width	50 feet	50 feet
Minimum lot area	5,600 feet	5,625
Maximum lot coverage	40%	39%
Pervious area	35% (minimum)	The applicant states 68% pervious area, which is not correct based on the 39% lot coverage, which does not include the driveway and terrace.

#### **Sec. 90.50 Architecture and roof decks**

	Required	Proposed
Unique Elevation	A unique elevation from the main buildings of the adjacent two (2) homes shall be created through the modulation of at least three (3) of the following architectural features: (a)Length, width and massing of the structure; (b)Number of stories; (c)Façade materials; (d)Porches and other similar articulation of the front façade; (e)Number and location of doors and windows; and (f)Roof style and pitch.	The home will feature different façade materials, porches and other similar articulation of the front façade and number and locations of doors and windows.
Wall openings	10% for all elevations	Wall elevations appear to be 10% for all elevations
Wall openings	All elevations for single story additions to existing structures	The addition does not result in a net loss of wall

	shall result in a zero percent net loss of wall openings including windows, doors or transitional spaces defined by porches, porticoes or colonnades.	openings rather it adds a net gain of wall openings.
Roof Material	(a) Clay Tile; (b) White concrete tile; (c) Solid color cement tile which color is impregnated with the same color intensity throughout, provided said color if granted approval by the Design Review Board; (d) Architecturally embellished metal if granted approval by the Design Review Board; or (e) Other Florida Building Code approved roof material(s) if granted approval by the Design Review Board.	Consistent with the existing house.

**Sec. 90-77 Off-Street Parking Requirements**

Required	Minimum Space Requirements	Proposed
Single-family	2 spaces	2 spaces are provided.

**Town of Surfside Adopted Residential Design Guidelines**

***Building Massing***

Required	Proposed
Building forms should be varied enough to avoid monotony and to avoid pyramidal massing and should be compatible with surrounding houses.	Consistent

***Decorative Features***

Required	Proposed
Decorative features should be stylistically consistent throughout the entire building.	Consistent

***Overall Architectural Style***

Required	Proposed
The overall style of each house should be consistent on all sides of the building, as well as among all portions of the roof.	Consistent

***Wall Materials and Finishes***

Required	Proposed
The same material should be used on all building elevations unless multiple materials are a legitimate expression of the particular style.	Consistent

**Roof Materials, Types, and Slopes**

Required	Proposed
Roof types and slopes should be generally the same over all parts of a single building.	1/4:12 pitch
Restricted materials for roofs are pre-determined in the Town’s Building Code, which restricts roofing materials to: 1. Clay tile; 2. White concrete tile; 3. Solid color cement tile which color is impregnated with the same color intensity throughout, provided said color is first approved by the planning and zoning board; and 4. Metal.	Consistent with the existing house.

**Windows and Trims**

Required	Proposed
Window styles should always be consistent among all elevations of a building.	Consistent.
Frame materials should never vary on a single building.	Consistent
Window, door and eave trim should be consistent on all elevations of the house	Consistent

**RECOMMENDATION**

Staff finds that the application does not meet the Code subject to the following:

- 1) The applicant states 68% pervious area. This is incorrect. Provide correct pervious calculation. (Code Section 90.49)

19-747



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.

X

**PROJECT INFORMATION**

OWNER'S NAME ANNEN ONDOTE 2

PHONE / FAX 305 537 8079

AGENT'S NAME \_\_\_\_\_

ADDRESS 9433 Bay Drive

PHONE / FAX \_\_\_\_\_

PROPERTY ADDRESS 0

ZONING CATEGORY Residential

DESCRIPTION OF PROPOSED WORK Renovations master bedroom/master bathroom

L


**INTERNAL USE ONLY**

Date Submitted \_\_\_\_\_ Project Number \_\_\_\_\_

Report Completed \_\_\_\_\_ Date \_\_\_\_\_

Fee Paid \$ \_\_\_\_\_

<b><u>ZONING STANDARDS</u></b>	Required	Provided
Plot Size	_____	_____
Setbacks (F/R/S)	_____	_____
Lot Coverage	_____	_____
Height	_____	_____
Pervious Area	_____	_____

 \_\_\_\_\_ DATE \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE OF AGENT DATE \_\_\_\_\_

**COPIES OF SITE  
PLANS ARE  
AVAILABLE AT THE  
CLERKS OFFICE.**

PLEASE CALL 305-861-4863 FOR MORE  
INFORMATION OR EMAIL TOWN CLERK  
SANDRA NOVOA AT  
SNOVOA@TOWNOFSURFSIDEFL.GOV



# MEMORANDUM

To: Planning & Zoning Board  
 Thru: Guillermo Olmedillo, Town Manager  
 From: Sarah Sinatra Gould, AICP, Town Planner  
 CC: Lillian Arango, Town Attorney  
 Date: August 29, 2019  
 Re: 9540 Harding Avenue – X Beauty by Hanna

The subject property is located at 9540 Harding Avenue and is within the SD-B40 zoning district. The applicant is requesting one (1) Permanent Wall Sign; four (4) Permanent Window Signs; three (3) on the store frontage and one (1) on the back door.

Staff has reviewed the current application for consideration by the Design Review Board. In this report, Staff presents the following:

- Applicable Zoning Code regulations, along with the results of the review
- Staff Recommendation

## STANDARDS / RESULTS

### Town of Surfside Zoning Code, Applicable Requirements

#### Sec. 90-73

Signs	Permitted	Proposed
Area [Wall Sign]	<u>Wall Sign</u> For frontages less than 25 feet, a total sign area up to 25 square feet maximum shall be permitted	<u>Wall Sign</u> 25.5 square feet
Types [Wall Sign]	The following types of individually-mounted letter signs shall be permitted. No open face channel letters shall be permitted. <ol style="list-style-type: none"> <li>i. Reverse channel letter.</li> <li>ii. Push-through letter.</li> <li>iii. Pan channel letter.</li> <li>iv. Raceway mounted letter. All exposed raceways must be</li> </ol>	Reverse Channel letter





	<p>Painted to match finish of wall face of the building.</p>	
<b>Offset [Wall Sign]</b>	<p>Signs shall be off-set from the wall a minimum of one quarter inch to a maximum of two inches to permit rain water to flow down the wall face</p>	<p>Offset 1 inch</p>
<b>Illumination [Wall Sign]</b>	<p>All signage, lettering, logos or trademarks shall be required to be lit with white illumination from dusk to dawn. The illumination may be either internal illumination or external illumination, however, all walls below the sign shall be illuminated with white wall wash LED lighting. It shall be located and directed solely at the sign. The light source shall not be visible from or cast into the right-of-way, or cause glare hazards to pedestrians, motorists, or adjacent properties. Lighting shall meet all applicable electrical codes. Intensities of illumination shall be approved by the building official of the town before issuance of a sign permit.</p>	<p>Illumination is white LED</p>
<b>Area [Window Signs]</b>	<p><u>Window Signs</u> 20 percent of the area of the glass window or door in which the sign is displayed.</p>	<p><u>Window Signs</u> <b>Front Door</b> 1. &lt; 20 percent of the glass area <b>Back Door</b> 2. &lt; 20 percent of the glass area</p>
<b>Location [Window Signs]</b>	<p>With the exception of theater marquees and V-box signs, no sign shall be erected so that any portion thereof shall project over a dedicated street or sidewalk or so that any portion thereof shall project more than five feet from any main building wall.</p>	<p><u>Window Signs</u> Signs do not project over the sidewalk or street</p>



<p><b>Permanent window sign [Window Signs]</b></p>	<p>Lettering shall not exceed eighth inches in height. Acceptable materials include painted gold leaf or silver leaf, silk-screened, cut or polished metal, cut or frosted vinyl, and etched glass.</p>	<p>Lettering does not exceed eight inches in height</p>
--	---	---

**RECOMMENDATION**

Staff finds the application meets the Code requirements subject to the following;

**Condition of Approval**

- 1) Provide a wall sign that meets the maximum coverage of 25 square feet. Currently, the applicant is proposing a wall sign which is 25.5 square feet. Please adjust accordingly. **Code section 90-73**

TOWN OF SURFSIDE  
 JUN 19 19 2452PM



DRB Meeting	___/___/20__
Application / Plans Due	___/___/20__

**TOWN OF SURFSIDE**  
**MULTI-FAMILY AND NON-RESIDENTIAL DESIGN REVIEW APPLICATION**  
 (Signs, awnings, store fronts, fences, and walls etc)

A complete submittal includes all items on the "Multi-family and Non-Residential Design Review 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.

<b><u>PROJECT INFORMATION</u></b>	
OWNER'S NAME	DONALD J Kahn
PHONE / FAX	305-865-4311
AGENT'S NAME	FERNANDO MONTEZ
ADDRESS	317 71 <sup>ST</sup> ST MIAMI BEACH, FL 33137
PHONE / FAX	
PROPERTY ADDRESS	9540 HARDING AV, SURFSIDE FL 33154
ZONING CATEGORY	
DESCRIPTION OF PROPOSED WORK	SIGN

<b><u>INTERNAL USE ONLY</u></b>			
Date Submitted	_____	Project Number	_____
Report Completed	_____	Date	_____
Fee Paid	\$ _____		

<b><u>ZONING STANDARDS</u></b>	Required	Provided
Sign Area (if applicable)	24 SQF	_____
Awning Size (if applicable)	_____	_____
Fence Height (if applicable)	_____	_____
Wall Height (if applicable)	_____	_____

_____	_____		6/17/19
SIGNATURE OF OWNER	DATE	SIGNATURE OF AGENT	DATE

**COPIES OF SITE  
PLANS ARE  
AVAILABLE AT THE  
CLERKS OFFICE.**

PLEASE CALL 305-861-4863 FOR MORE  
INFORMATION OR EMAIL TOWN CLERK  
SANDRA NOVOA AT  
SNOVOA@TOWNOFSURFSIDEFL.GOV



## MEMORANDUM

To: Planning and Zoning Board  
Thru: Guillermo Olmedillo, Town Manager  
From: Sarah Sinatra Gould, AICP, Town Planner  
CC: Lillian Arango, Town Attorney  
Date: August 29, 2019  
Re: 8926 Froude Avenue – Carport in Driveway

---

The property is located at 8926 Froude Avenue, within the H30B zoning district. The applicant is requesting after the fact approval for a carport.



Staff has reviewed the current application for consideration by the Planning & Zoning Board. In this report Staff presents the following:

- Applicable Zoning Code regulations, along with the results of the review
- Staff Findings

## STANDARDS / RESULTS

### Town of Surfside Zoning Code, Applicable Requirements

**Sec. 90-58. – Carport canopies**

	Required	Proposed
<p>Carport canopies may be constructed, in a front, secondary side or rear yard setback in the H30A and H30B districts.</p>	<ol style="list-style-type: none"> <li>(1) Such canopy shall not exceed 20 feet in length, and 20 feet in width.</li> <li>(2) The height of such canopy shall not exceed ten feet.</li> <li>(3) The height of the side openings shall be at least six feet, three inches.</li> <li>(4) Such canopy shall be subject to the following minimum setbacks:               <ol style="list-style-type: none"> <li>a. Rear: Five feet.</li> <li>b. Interior side: Five feet.</li> <li>c. Primary (front) and secondary (corner): Two feet.</li> <li>d. Rear of street curb: Seven feet.</li> </ol> </li> <li>(5) A canopy shall at all times remain open on all four sides, if free standing, and open on three sides if attached to the main building.</li> <li>(6) The area under a canopy must be entirely paved by an approved paving material.</li> </ol>	<ol style="list-style-type: none"> <li>1. 9.7'x16.4' = 160 sq. ft.</li> <li>2. 7.1' in height</li> <li>3. +6'3"</li> <li>4(a). +5'</li> <li>4(b). +2'</li> <li>4(d). Exceeds 8' from rear of street curb</li> <li>(5) Open all four sides</li> </ol>

Staff finds the application meets the Code.

TOWN OF SURFSIDE

PLANS TO BE SUBMITTED



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.

<b>PROJECT INFORMATION</b>	
OWNER'S NAME	Julio Valdes and Eirelan Manning
PHONE / FAX	917 340 9903 / 917 815 3924
AGENT'S NAME	
ADDRESS	8926 Froude Ave Surfside FL 33154
PHONE / FAX	917 340 9903 / 917 815 3924
PROPERTY ADDRESS	8926 Froude Ave Surfside FL 33154
ZONING CATEGORY	
DESCRIPTION OF PROPOSED WORK	car port in driveway 14-27 case 190655

<b>INTERNAL USE ONLY</b>			
Date Submitted	_____	Project Number	_____
Report Completed	_____	Date	_____
Fee Paid	\$ _____		

<b>ZONING STANDARDS</b>	Required	Provided
Plot Size	_____	_____
Setbacks (F/R/S)	_____	_____
Lot Coverage	_____	_____
Height	_____	_____
Pervious Area	_____	_____

SIGNATURE OF OWNER \_\_\_\_\_ DATE \_\_\_\_\_ SIGNATURE OF AGENT \_\_\_\_\_ DATE \_\_\_\_\_

**COPIES OF SITE  
PLANS ARE  
AVAILABLE AT THE  
CLERKS OFFICE.**

PLEASE CALL 305-861-4863 FOR MORE  
INFORMATION OR EMAIL TOWN CLERK  
SANDRA NOVOA AT  
[SNOVOA@TOWNOFSURFSIDEFL.GOV](mailto:SNOVOA@TOWNOFSURFSIDEFL.GOV)





## MEMORANDUM

To: Planning and Zoning Board

Thru: Guillermo Olmedillo, Town Manager

From: Sarah Sinatra Gould, AICP, Town Planner

CC: Lillian Arango, Town Attorney

Date: August 29, 2019

Re: 500 93<sup>rd</sup> Street – New 2 Story Home

The property is located at 500 93<sup>rd</sup> Street, within the H30B zoning district. The applicant is requesting to build a new 5,538 square foot two-story home. The plans include a new driveway, walkways, pool, deck, carport, porte-cochere, covered terrace and front courtyard.

Staff has reviewed the current application for consideration by the Design Review Board. In this report Staff presents the following:

- Applicable Zoning Code regulations, along with the results of the review
- Applicable Design Guideline standards, along with the results of the review
- Staff Recommendation

### STANDARDS / RESULTS

#### Town of Surfside Zoning Code, Applicable Requirements

##### **Sec. 42.92 Lowest Floor Elevation**

Residential	Lowest Floor	Proposed (Resub)
Single-Family Residential	Base Flood +2	10 feet

##### **Sec. 90.43 Maximum building heights**

Height	Required Maximum	Proposed (Resub)
H30B	30 feet	30'

##### **Sec. 90-45. Setbacks**

H30A AND H30B UPPER STORY FLOOR AREA IS LESS THAN 50% OF FIRST STORY FLOOR AREA	Required	Proposed (Resub)
Maximum Lot Coverage	40%	40%
FIRST STORY (UP TO 15 FT IN HEIGHT)		

Primary frontage	Minimum 20 FT	20'
Interior side (when the site consists of more than one lot of record, as shown on plats in effect on November 13, 2018)	20 FT or 20% of the frontage whichever is greater (20% of 105' = 21')	21'
Rear	Minimum 20 FT	20'
Secondary frontage (corner only)(when the site consists of more than one lot of record, as shown on plats in effect on November 13, 2018)	20 FT or 20% of the frontage whichever is greater (20% of 105' = 21')	21'
UPPER STORY OR WALL PLANES GREATER THAN 15 FT IN HEIGHT		
Primary frontage	Minimum 20 FT / Average 22.5	Conforms
Interior side (when the site consists of more than one lot of record, as shown on plats in effect on November 13, 2018)	20 FT or 20% of the frontage whichever is greater / Average n/a	Conforms
Rear	Minimum 20 FT / Average n/a	Conforms
Secondary frontage (corner only)(when the site consists of more than one lot of record, as shown on plats in effect on November 13, 2018)	20 FT or 20% of the frontage whichever is greater  Average 20 FT or 20% of the frontage whichever is greater, plus 5 FT	Conforms

**Sec. 90-47. – Yards generally, allowable projections**

	Required	Proposed (Resub)
Every part of a required yard shall be open to the sky, except ordinary projections of sills, cornices, roof eaves and ornamental features	May project not more than 24 inches into any required yard	Conforms
Air conditioning equipment, pool pump or other mechanical equipment may be located in a required rear setback, provided;	<ul style="list-style-type: none"> <li>a. such equipment is at least 15 feet from any other single-family or two-family residence</li> <li>b. shall maintain at least a five-foot setback from the rear and side yards</li> <li>c. is not visible from any street or waterway</li> </ul>	<ul style="list-style-type: none"> <li>a. Equipment is setback 13'11" from the property line (assuming that the residence to the west is setback 5' for a total distance of 18'11")</li> <li>b. +5' setback</li> <li>c. Not visible from any street</li> </ul>

Open, unenclosed building entrance porches, platforms, stairs or paved terraces, not covered by a roof or canopy, and which do not extend above the level of the grade or entrance floor of the building	<ul style="list-style-type: none"> <li>a) May extend or project into the required front or side yard no more than six feet</li> <li>b) and the encroachments shall not provide less than a 24-inch setback to the property line.</li> </ul>	<ul style="list-style-type: none"> <li>a) Does not extend above grade</li> <li>b) Does not extend or project into the required front or side yard</li> <li>c) Setback 5 feet</li> </ul>
A cantilevered canopy will be permitted in the required front yard, subject to the following;	<ul style="list-style-type: none"> <li>1) The structure must be completely supported (cantilevered) from the main structure;</li> <li>2) The structure must be transparent in nature with a solid to transparent material ratio of no more than 35 percent solid to 65 percent transparent;</li> <li>3) The structure must not have a frontage of more than 30 feet in width;</li> <li>4) The structure must not extend more than 20 feet into the required front setback; and</li> <li>5) The structures shall not extend into any side setback area.</li> </ul>	*Cantilevered canopy has been removed from proposal* The applicant is now proposing a 22" concrete projection.

**Sec. 90-48. – Modification of side and rear yard regulations**

Standards	Required	Proposed (Resub)
New balconies or decks located more than five feet above grade on new or existing single family homes	Shall not encroach into any setbacks	<b>Not provided- Revise the portion of the deck in the side setback to no greater than five feet above grade</b>

**Sec. 90.49 Lot standards**

Lot Standards H30A	Required	Proposed (Resub)
Minimum Lot width	50 feet	105'0"
Minimum lot area	8,000 feet	11,681 SF
Maximum lot coverage	40%	40% (4,672/11,681=0.36)
Pervious area	35% (minimum)	33% (3,906/11,681=0.33)

**Sec. 90.50 Architecture and roof decks**

	<b>Required</b>	<b>Proposed (Resub)</b>
Unique Elevation	A unique elevation from the main buildings of the adjacent two (2) homes shall be created through the modulation of at least three (3) of the following architectural features: (a) Length, width and massing of the structure; (b) Number of stories; (c) Façade materials; (d) Porches and other similar articulation of the front façade; (e) Number and location of doors and windows; and (f) Roof style and pitch.	A unique elevation from the main buildings of the adjacent two (2) homes is created through the modulation of; (a) Length, width and massing of the structure (b) Number of stories (c) Roof style and pitch
Wall openings	10% for all elevations	+10% for all elevations
Roof Material	(a) Clay Tile; (b) White concrete tile; (c) Solid color cement tile which color is impregnated with the same color intensity throughout, provided said color if granted approval by the Design Review Board; (d) Architecturally embellished metal if granted approval by the Design Review Board; or (e) Other Florida Building Code approved roof material(s) if granted approval by the Design Review Board.	Flat roof

**Sec. 90-52. – Required clearances**

	<b>Required</b>	<b>Proposed (Resub)</b>
All corner properties shall provide and maintain	Unobstructed corner clearance areas along both the front and side lot lines	Conforms
All objects, fences, walls, gateways, ornamental structures, signs, hedges, shrubbery, and other fixtures, construction, and planting within any corner clearance areas shall provide unobstructed cross-visibility at a level	Between 30 inches and eight feet, with the exception of tree trunks that do not create a traffic hazard	No obstructions

**Sec. 90.54 Accessory Structures**

	<b>Required</b>	<b>Proposed (Resub)</b>
<b>Accessory buildings</b>	<p>90-54.2 Accessory swimming pools and decks, open and unenclosed, or covered by a screen enclosure, may occupy a required rear, front, or side setback, subject to the following minimum setbacks:</p> <p>(a) Rear: Five feet.</p> <p>(b) Interior side: Five feet.</p> <p>(c) Primary (front) and secondary (Corner): Ten feet.</p>	<p>(a) +5'</p> <p>(b) 5' 5"</p> <p>(c) 10'</p>
	<p>90-54.3 An open, uncovered porch, patio, or terrace may occupy a required rear or interior side setback, subject to the following minimum setbacks:</p> <p>(a) Rear: Five feet</p> <p>(b) Interior side: Five Feet</p> <p>(c) Primary (front) and secondary (corner): Ten feet</p>	<p>(a) +5'</p> <p>(b) 5'2"</p> <p>(c) +10'</p>

**Sec. 90.56 Fences, walls and hedges**

	<b>Required</b>	<b>Proposed (Resub)</b>
<b>Fence</b>	<p>90-56.1.A A fence or ornamental wall not more than six feet in height, as measured from grade, may project into or enclose an interior side or rear yard only.</p>	<p>The perimeter fence conforms, <b>however, the 14' stone clad wall may not exceed 6 feet in height.</b></p>
	<p>90-56.2 A fence or ornamental wall may be placed within the front yard or primary corner yard if granted design review approval by the planning and zoning board</p>	<p><b>Requires approval by the planning and zoning board</b></p>
	<p>90-56.4 Front yard and corner yard fences and ornamental walls</p> <p>Lot frontage is wider than or equal to 100 ft Maximum Height: (a) 4ft + ½ ft per 10 feet of lot width exceeding 50 feet, maximum 6 ft&gt; (b) Secondary frontage shall adhere to the height and opacity limitations for corresponding lot frontage</p> <p>Maximum Opacity: All wall and fence surfaces two (2) feet measured from grade shall maintain a maximum opacity of fifty (50) percent</p>	<p>Conforms</p>

	<p>90-56.5 Modification of secondary frontage fence and ornamental walls</p> <p>(1) A fence or ornamental wall that has a maximum opacity of 100 percent and a maximum height of six feet, as measured from grade, may project into or enclose the street side yard of a corner lot, provided:</p> <ol style="list-style-type: none"> <li>Not placed in front of the front façade of the primary residential structure and extends beyond the plane of the front façade on only one side of the primary residential structure;</li> <li>The fence/wall is setback 3 feet from any property line</li> <li>Shrubs shall be installed at the time the fence or wall is installed</li> <li>Shrubs shall be planted a minimum of 36" in height, shall be placed a maximum of 24" on center and shall cover the exterior of the fence or wall within one year after the final inspection of the fence</li> </ol>	<p>(1) Requiring additional details is relates to the fence in the secondary frontage</p> <ol style="list-style-type: none"> <li>Conforms</li> <li>The fence is setback 3' from the p/l</li> <li>Shrubs are proposed</li> <li><b>Shrubs must be a minimum of 36" in height</b></li> </ol>
Access gates	All temporary construction fences shall contain access gates with a minimum clear opening width of 12 feet. Access gates must be provided at the front and rear of the enclosure. Gates must be kept unlocked during inspection hours.	12 width has been provided

**Sec. 90-58. – Carport canopies**

	Required	Proposed (Resub)
Carport canopies may be constructed, in a front, secondary side or rear yard setback in the H30A and H30B districts.	<ol style="list-style-type: none"> <li>Such canopy shall not exceed 20 feet in length, and 20 feet in width.</li> <li>The height of such canopy shall not exceed ten feet.</li> <li>The height of the side openings shall be at least six feet, three inches.</li> <li>Such canopy shall be subject to the following minimum setbacks: <ol style="list-style-type: none"> <li>Rear: Five feet.</li> <li>Interior side: Five feet.</li> <li>Primary (front) and secondary (corner): Two feet.</li> <li>Rear of street curb: Seven feet.</li> </ol> </li> <li>A canopy shall at all times remain open on all four sides, if free standing, and open on</li> </ol>	<ol style="list-style-type: none"> <li>Conforms</li> <li>9' ½"</li> <li>8'0"</li> <li>(a) 5'</li> <li>(b) +5'</li> <li>(c) +2'</li> <li>(d) +7'</li> <li><b>Provide details showing that the carport is open on all four sides at building permit.</b></li> <li>Provide details showing that the area under the canopy is entirely paved by an approved paving material.</li> </ol>

	three sides if attached to the main building. (6) The area under a canopy must be entirely paved by an approved paving material.	
--	---	--

**Sec. 90.61 Paving in front and rear yards in H30 and H40 Districts**

<b>Paving Yards</b>	<b>Required</b>	<b>Proposed (Resub)</b>
Front setback permeability	50% minimum	50%
Front yard landscaped	30% minimum	>30%
Rear yard landscaped	20% minimum	>20%
Number of Curb Cuts	One minimum	3
Curb Cut side set back	5 feet minimum	>5 feet
Curb cut width	Three curb cuts, each curb cut shall not be more than 12 feet in width, and there shall be at least 12 feet between curb cuts	3 curb cuts all 12' in width and a separation between curb cuts of 30'
Driveway Materials	Limited to the following 1. Pavers 2. Color and texture treated concrete, including stamped concrete 3. Painted concrete shall not be permitted. 4. Asphalt shall not be permitted.	Concrete pavers

**Sec. 90-77 Off-Street Parking Requirements**

<b>Required</b>	<b>Minimum Space Requirements</b>	<b>Proposed</b>
Single-family	2 spaces	+ 2 spaces

**Sec. 90-89.4(6). Street Tree Requirements**

<b>Required</b>	<b>Required</b>	<b>Proposed (Resub)</b>
Street trees shall be required at one shade tree/palm tree per 20 linear feet of street frontage thereof along all public or private street right-of-ways in all zoning districts.	2 trees	Conforms

**Sec. 90-95. Single-family H30A and H30B district landscape requirements.**

<b>Required</b>	<b>Required</b>	<b>Proposed (Resub)</b>
A minimum of five trees of two different species and 25 shrubs shall be planted per lot.	5 trees, 25 shrubs	Conforms

## **Town of Surfside Adopted Residential Design Guidelines**

### ***Building Massing***

<b>Required</b>	<b>Proposed</b>
Building forms should be varied enough to avoid monotony and to avoid pyramidal massing and should be compatible with surrounding houses.	Consistent

### ***Decorative Features***

<b>Required</b>	<b>Proposed</b>
Decorative features should be stylistically consistent throughout the entire building.	Consistent

### ***Overall Architectural Style***

<b>Required</b>	<b>Proposed</b>
The overall style of each house should be consistent on all sides of the building, as well as among all portions of the roof.	Consistent

### ***Wall Materials and Finishes***

<b>Required</b>	<b>Proposed</b>
The same material should be used on all building elevations unless multiple materials are a legitimate expression of the particular style.	Consistent

### ***Roof Materials, Types, and Slopes***

<b>Required</b>	<b>Proposed (Resub)</b>
Roof types and slopes should be generally the same over all parts of a single building.	The applicant is proposing both a flat roof and a curved roof
Restricted materials for roofs are pre-determined in the Town's Building Code, which restricts roofing materials to: 1. Clay tile; 2. White concrete tile; 3. Solid color cement tile which color is impregnated with the same color intensity throughout, provided said color is first approved by the planning and zoning board; and 4. Metal.	Flat Roof Proposed

### ***Windows and Trims***

<b>Required</b>	<b>Proposed</b>
Window styles should always be consistent among all elevations of a building.	Consistent



Frame materials should never vary on a single building.	Consistent
Window, door and eave trim should be consistent on all elevations of the house	Consistent

Staff finds the application meets the code with the following conditions of approval:

- 1) Correct the second floor square footage to include the open space above the playroom. The correct square footage for the second floor is 1,780 square feet.
- 2) Provide a consistent lowest floor elevation. The zoning summary table states 8' NGVD and does not indicate the additional 2 feet for finished floor. Provide language in the zoning table reflecting this change. **code section 42.92**
- 3) Provide opacity details for all proposed fences and walls showing that they meet the maximum 50% opacity. All wall and fence surfaces above 2 feet measured from grade shall maintain a maximum opacity of 50 percent per **code section 90-56**
- 4) Revise the pool deck to be consistent with **code section 90-48.6** for the portion of the pool deck that's within the side setback which require no greater than five feet in height above grade.
- 5) The applicant is proposing a four foot wall on the pool deck. The pool deck is five feet above grade. This results in a nine foot wall total. Walls cannot exceed six feet in the setback. **code section 90.56**
- 6) Provide 36" shrubs on the exterior of the fence in the secondary frontage. Currently, 30" shrubs are proposed. **code section 90.56**
- 7) Provide additional details showing that the carport is open on all four sides. **code section 90-58.**
- 8) Provide additional details as it relates to the proposed stone cladded CMU wall located at the north east corner of the property.
- 9) Adjust the typo in the zoning data table related to the allowable lot coverage. The maximum required is 40%. **code section 90-49**
- 10) Provide a consistent five foot setback for the pool/deck to the side property line. A portion of the deck appears to encroach.

TOWN OF SURFSIDE

AUG 19 1:26PM



19-749

DRB Meeting	___/___/20__
Application / Plans Due	8/8/2019

**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.

<u>PROJECT INFORMATION</u>	
OWNER'S NAME	Irwin Tauber, Trustee / OPAOMA Trust
PHONE / FAX	305.861-8085
AGENT'S NAME	MARKUS A. FRANKEL & OR. LEHAT FISHMAN / FRANKEL BENYOUN ARCHITECTS, INC.
ADDRESS	
PHONE / FAX	
PROPERTY ADDRESS	500 - 93 RD STREET, SURFSIDE, FL 33154
ZONING CATEGORY	
DESCRIPTION OF PROPOSED WORK	NEW 2-STORY SINGLE-FAMILY RESIDENCE

<u>INTERNAL USE ONLY</u>			
Date Submitted	_____	Project Number	_____
Report Completed	_____	Date	_____
Fee Paid	\$ _____		

<u>ZONING STANDARDS</u>	Required	Provided
Plot Size	_____	_____
Setbacks (F/R/S)	_____	_____
Lot Coverage	_____	_____
Height	_____	_____
Pervious Area	_____	_____

X   
SIGNATURE OF OWNER

DATE

 08/06/19  
SIGNATURE OF AGENT

DATE

Town of Surfside – Single-Family and Two-Family Site Plan Application



**TOWN OF SURFSIDE**  
**SINGLE-FAMILY and TWO-FAMILY SITE PLAN APPLICATION**  
**PLANNING AND ZONING BOARD Rules and Procedures (June 2002)**

The Planning and Zoning Board shall generally meet the last Thursday of each month at 7:00 pm. at Town Hall.

Plans and completed applications (including all supporting documentation) must be submitted to the Building Department at least 21 days prior to the meeting, with the payment of applicable fees (example: \$200.00 for Plan Review for Zoning), at which time they will be considered. Incomplete plans and applications will not be processed.

The applicant or duly authorized agent (per ownership affidavit) must be present at the meeting. If there are no applications for consideration by the Planning and Zoning Board, the monthly meeting may be cancelled at the discretion of the Chairman of the Board.

Please advise the name of the Representative who will attend the hearing on behalf of this application:

MARKUS FRANKEL & OR  
LEAH B. FISHERMAN, ARCHITECTS 8/06/19  
NAME OF REPRESENTATIVE DATE

Owner's Affidavit

08/07/19

To whom it may concern,

I, Irwin Tauber, trustee for Opaoma Trust / owner of the property located on:

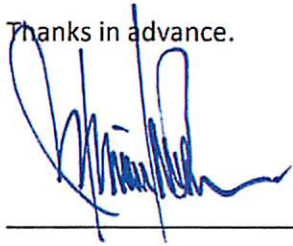
500 93 St

Surfside, FL 33154

Authorize Frankel Benayoun Architects, INC to submit the site plans application and perform all the necessary reviews throughout the permit process.

Shall you need to contact me for any additional information, you may contact me at: 305-861-8085

Thanks in advance.



---

Irwin Tauber, Trustee

**COPIES OF SITE  
PLANS ARE  
AVAILABLE AT THE  
CLERKS OFFICE.**

PLEASE CALL 305-861-4863 FOR MORE  
INFORMATION OR EMAIL TOWN CLERK  
SANDRA NOVOA AT  
SNOVOA@TOWNOFSURFSIDEFL.GOV



# MEMORANDUM

ITEM NO. 5A

**To:** Members of the Planning & Zoning Board

**From:** Sarah Sinatra Gould, AICP, Town Planner

**Date:** August 29, 2019

**Subject:** Parking Waiver Program

---

On July 10, 2018, the Town Commission approved an ordinance establishing a waiver program for required parking for vacancies in the downtown business district. The program expired on July 10, 2019. At the July 11, 2019 Town Commission meeting, the Commission approved a one year extension of this program. 50% of the stores vacant in July 2019 are now rented to retail or restaurant operations, which is further described in the attachment to this memorandum.

At the July 11, 2019 Town Commission meeting, it was suggested that as properties become vacant, they may be included in the program. The following two changes in the ordinance are proposed since the first reading:

1. The Manager may add properties to the vacant properties list.
2. Properties may be eligible if they are vacant at any time through July 10, 2020.

Staff is recommending the Planning and Zoning Board as the Local Planning Agency to recommend approval to the Town Commission for a one year extension of this program.





# MEMORANDUM

ITEM NO.

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

**From:** Guillermo Olmedillo, Town Manager

**Date:** July 9, 2019

**Subject:** One-Year Extension of the 2018 Parking Exemption Ordinance

At the June 11, 2019 Town Commission meeting, direction was given to return with a one-year extension to the parking exemption program that was established at the July 10, 2018 Town Commission Meeting via Ordinance No. 2018-1686 (Attachment A).

The Town updated its Vacant Properties in the Business District Inventory on July 1, 2019 with additional vacant properties within the SD-B40 Zoning District that could potentially benefit from the program. These properties were added to the inventory (Exhibit "A") provided with the accompanying ordinance extension.

The Town Administration seeks approval on the proposed ordinance as presented.

Reviewed by: DT

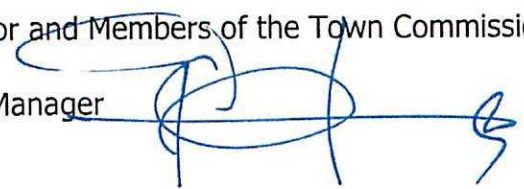
Prepared by: LF



## MEMORANDUM

ITEM NO.
----------

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

**From:** Guillermo Olmedillo, Town Manager 

**Date:** June 11, 2019

**Subject:** Parking Waiver Program Update

On July 10, 2018 the Town Commission approved Ordinance No. 2018-1686 to establish a waiver program for "off-street parking requirements of Chapter 90 Zoning" in an effort to address vacancies downtown, and provide an incentive for economic revitalization (Attachment A). This ordinance is slated to expire on July 10, 2019.

As of May 31, 2019, five of the eligible ten vacant properties have been rented, and four of the five new businesses utilized the parking waiver provision. This initiative has proven successful in addressing the goals set forth: assist with filling vacant properties and in the revitalize efforts downtown.

<i>Location</i>	<i>Spaces Waived</i>	<i>New Business</i>
9472 Harding Avenue	0*	Mesa Kosher Restaurant
9488 Harding Avenue	In Progress	Café Vert extension
9588 Harding Avenue	2	BH Home Design
9433 Harding Avenue	N/A	Vacant
9441 Harding Avenue	N/A	Vacant
9491 Harding Avenue	N/A	Vacant
262 95 <sup>th</sup> Street	N/A	Vacant
9509 Harding Avenue	3	The Fishery (Coming Soon)
9555 Harding Avenue	N/A	Vacant
9571 Harding Avenue	1	Morelia Gourmet Paletas

\*There was a restaurant previously in this space

Parking requirements for restaurants and retail spaces are more than office spaces. Therefore, if a retail or restaurant business were to replace a space that was previously occupied by an office space, a payment of \$38,000 per parking space, into the Parking Fund, for any space not accounted for by the prior use is required. The payments would then be connected to the Town offsetting the "parking deficit" with the establishment of additional parking.



It could be construed that this program eliminates this additional (conditional) revenue to the Town and, therefore, a loss. However, once an applicant realizes the additional cost for the parking, they typically find another location as expressed by some of the vacant downtown property owners. This results in a loss of a tenant and a perpetually vacant space. The benefit of the parking waiver program is that it has filled vacant spaces with retail and restaurant uses, and that the new restaurants will have a positive revenue effect from Resort Tax.

Due to the fact that fifty percent (50%) of the previously vacant store fronts are now rented, and eighty percent (80%) of the new businesses participated in the parking waiver program, this initiative can be viewed as a contributing factor in the attraction of new downtown businesses.

The parking waiver program, if extended and inclusive of the newly vacant properties, would include a total of sixteen properties, five from the original vacant property inventory identified in the chart below.

<i>West Side</i>	<i>East Side</i>
9452 Harding Avenue	9433 Harding Avenue (still vacant)
9482 Harding Avenue	9438 Harding Avenue
9486 Harding Avenue	9441 Harding Avenue (still vacant)
	9453 Harding Avenue
	9455 Harding Avenue
	9461 Harding Avenue
	9471 Harding Avenue
	9491 Harding Avenue (still vacant)
	262 95 <sup>th</sup> Street (still vacant)
	9509 Harding Avenue
	9513 Harding Avenue
	9555 Harding Avenue (still vacant)
	9599 Harding Avenue

There is no direct budgetary impact. Staff time would be required to bring the ordinance provision to the Commission and monitor the initiative for another year.

The Town Administration seeks direction on whether to extend the provision for the sixteen properties (new vacancy inventory) or to allow for it to expire.

Reviewed by

Prepared by



## Town of Surfside Commission Communication

### Agenda Item #

**Agenda Date:** July 10, 2018

**Subject:** Downtown Business District Parking Requirement Waiver

**Background:** At the May 8, 2018 Town Commission meeting there was a discussion item on providing a parking waiver for new retail or restaurant businesses filling existing vacancies downtown. The Administration received direction to return with an ordinance that facilitates the waiver (4:1 vote in favor). At the June 12, 2018 Town Commission meeting the ordinance was approved on first reading (5:0 vote in favor). The Planning & Zoning Board recommended moving forward with the ordinance at their June 27, 2018 meeting.

**Analysis:** While there are probably many factors affecting the vacancies downtown, this waiver addresses the property owners' stated issue of the parking requirement being the foremost issue in filling their vacancies.

In a good faith effort to address their stated view, and to reinvigorate the economic development of downtown, the Administration is proposing a waiver of the parking requirement with the following restrictions:

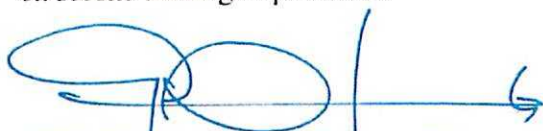
- The waiver would sunset after one year unless extended by the Town Commission. This is a change from the two-year waiver discussed on May 8, 2018 due to the desire to spur a more immediate economic resurgence
- The waiver would only apply to new businesses locating in existing vacant store fronts at the time of the ordinance adoption. An inventory of the existing vacancies will be conducted. Vacancy inventory attached (Attachment A)
- Businesses would be defined as retail or restaurant only for waiver eligibility

**Budget Impact:** While there is potential loss of Parking Fund revenue, this can only be determined if the waiver achieves its projected effect of filling the downtown vacancies and by the type of new businesses that open. This may not in effect be a valid "loss" as these businesses are not presently locating in Surfside.

New tenants, especially restaurants, can have a positive effect on Resort Tax Revenue. This could counteract any loss of payments to the Parking Fund. Filling vacancies can enhance the downtown experience and improve the desirability and marketability of the area. Thus, potentially resulting in increased patronage downtown and to all food and beverage establishments.

**Staff Impact:** The Tourist Bureau will assist with the outreach to the property owners and will monitor the venture. The Planning and Building operations will provide the waiver to applicable businesses when reviewed as part of a site plan, building permit or Certificate of Use issuance (whichever is the earliest).

**Recommendation:** The Administration is recommending the adoption of the accompanying ordinance on second reading as presented.



Guillermo Olmedillo, Town Manager



DT



ORDINANCE NO. 18 - 11086

AN ORDINANCE OF THE TOWN OF SURFSIDE, FLORIDA AMENDING SECTION 90-77 "OFF-STREET PARKING REQUIREMENTS," OF "CHAPTER 90 ZONING" OF THE TOWN OF SURFSIDE CODE OF ORDINANCES TO PROVIDE A PARKING EXEMPTION PROGRAM TO ADDRESS VACANCY AND ECONOMIC REVITALIZATION IN THE SD-B40 ZONING DISTRICT; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

1           WHEREAS, the Town Commission of the Town of Surfside, Florida, recognizes that  
2 changes to the adopted Code of Ordinances are periodically necessary in order to ensure that the  
3 Town's regulations are current and consistent with the Town's planning and regulatory needs;  
4 and

5           WHEREAS, the Town has worked with downtown businesses and property owners to  
6 improve the economic health and vitality of the downtown and analyze and address operational  
7 issues, vacancy, and economic growth; and

8           WHEREAS, the Town has conducted an inventory of downtown ground floor vacancies,  
9 attached hereto and incorporated herein as the "2018 Downtown Vacancy Inventory"; and

10           WHEREAS, the large number of vacancies has reduced the vibrancy and economic  
11 vitality of the Town's Downtown; and

12           WHEREAS, the Town desires to take positive action to avoid the onset of blight and  
13 restore the economic health and welfare of its crucial commercial district; and

14           WHEREAS, economic vitality and restoration can be enhanced with proactive policy  
15 interventions designed to improve economic viability, therein fostering new business activity,  
16 productivity and operational feasibility; and

17           WHEREAS, parking, and the limited availability of land may impact redevelopment,  
18 changes of use and occupancy; and

19 WHEREAS, in order to help reduce vacancy, improve aesthetics, and restore the  
20 pedestrian experience and downtown vitality, the Town desires to develop a temporary Parking  
21 Exemption Program; and

22 WHEREAS, the Town Commission held its first public hearing on these regulations on  
23 June 12, 2018; and

24 WHEREAS, the Planning and Zoning Board, sitting as the Local Planning Agency, has  
25 reviewed the revisions to the Code for consistency with the Town's Comprehensive Plan at a  
26 duly noticed hearing on June 27<sup>th</sup>, 2018; and

27 WHEREAS, the Town Commission has conducted a second duly noticed public hearing  
28 on these regulations as required by law on July 10<sup>th</sup>; and

29  
30 WHEREAS, the Town Commission hereby finds and declares that adoption of this  
31 Ordinance is necessary, appropriate, and advances the public interest.

32

33 NOW THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF  
34 THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:

35 Section 1. Recitals. Each of the above stated recitals is true and correct and the recitals are  
36 incorporated herein by this reference.

37 Section 2. Code Amendment. The Code of Ordinances of the Town of Surfside,  
38 Section 90-77 "Off-street parking requirements" of Chapter 90 "Zoning" is hereby amended as  
39 follows<sup>1</sup>:

40 Sec. 90-77. - Off-street parking requirements.

41 (a) Except as otherwise provided herein, when any building or structure is hereafter constructed;  
42 or structurally altered so as to increase the number of dwelling units or hotel rooms to  
43 increase its total commercial floor area, including provision of outdoor seating; or when any  
44 building or structure is hereafter converted to any of the uses listed in subsection 90-77(c),  
45 off- street parking spaces shall be provided in accordance with the requirements of  
46 subsection 90-77(c), or as required in subsequent sections of this article. The requirement for  
47 an increase in the number of required parking spaces shall be provided on the basis of the  
48 enlargement or change of use.

49 (b) Parking compliance for properties and uses located in SD-B40 zoning district and for  
50 religious places of public assembly in other areas of the town.

51 (1) Off-street parking applicability. This section applies to:

---

<sup>1</sup> Additions to text are shown in underline. Deletions to text are shown in ~~strikethrough~~.

- 52 a. Uses within the SD-B40 zoning district where changes of use from service  
53 businesses to restaurant or retail occur; and
- 54 b. Religious places of public assembly located within the area depicted on the Public  
55 Assembly Places as set forth in subsection 90-41(d)(23) hereinabove.
- 56 (2) Options to satisfy parking requirements for uses specified in (1) above. Satisfaction of  
57 the off-street parking requirements may be achieved with the permission of the town  
58 commission through compliance with any combination of the following options:
- 59 a. On site provision of required parking spaces as more specifically set forth in  
60 subsection 90-77(c);
- 61 b. Tandem parking as more specifically set forth in subsection 90-77(d);
- 62 c. Joint use and off-site facilities as more specifically described in section 90-80. If  
63 parking is satisfied by agreement with a private third party, the town shall require  
64 an agreement in writing for an effective period of no less than five years. No less  
65 than 60 days prior to the expiration of such agreement, either a new agreement shall  
66 be in place or the owner of the property for which the parking is being provided  
67 shall receive the town's approval of the employment of one of the other prescribed  
68 options contained in this subsection. Failure to secure the town's approval of one or  
69 a combination of the prescribed options shall result in revocation of the owner's  
70 certificate of occupancy and certificate of use;
- 71 d. Shared parking; or
- 72 e. Payment of parking trust fee that can be used to finance the provision of parking  
73 whether through the purchase, construction or modification of parking facilities or  
74 to otherwise provide for additional parking as more specifically set forth in  
75 subsection 90-77(b)(4).
- 76 (3) *Modification of parking requirements.* In tandem with the use of options (2)c—e to  
77 satisfy parking requirements, requests may be made for a reduction in the minimum  
78 parking requirements which may be considered by the town upon receipt of an  
79 application from the owner of the site seeking a reduction as follows:
- 80 a. *Minor reductions.* Requests for a reduction of one to three required parking spaces  
81 may be approved by the town manager in consultation with the town planner as a  
82 de minimus reduction upon a finding that the applicant has utilized the options  
83 available in subsection 90-77(b)(2) above, to the greatest extent feasible. If the  
84 request is denied by the town manager, that decision may be appealed to the town  
85 commission.
- 86 b. *Major reductions.* The planning and zoning board shall hear requests for reductions  
87 in parking in excess of the town manager's authority under subsection (3)a  
88 hereinabove. Such requests shall be accompanied by a report prepared by the town  
89 manager and town planner and approved for legal sufficiency by the town attorney,  
90 analyzing existing and future parking demands, the availability of underutilized  
91 public parking spaces, and traffic circulation. The report prepared by the town  
92 manager and town planner and approved for legal sufficiency by the town attorney

93 will be based upon an independent study completed by a professional traffic  
94 engineer licensed in the State of Florida.

95 c. Criteria for approval of major or minor reduction. Requests for reduction may be  
96 approved, in whole or in part, upon a finding that there is sufficient available  
97 parking that is open to the public and is judged adequate to accommodate the  
98 parking reduction request within 300 feet of the subject property along a practical  
99 and usable pedestrian route excluding residential districts.

100 If the request is denied by the planning and zoning board, that decision may be  
101 appealed to the town commission.

102 (4) Parking exemption. There is hereby created a "Parking Exemption Program".

103 a. Program. For the period from [July 10, 2018 - Effective date of this Ordinance]  
104 to [July 10, 2019 - 1 year from the effective date of this Ordinance], first floor  
105 properties in the SD-B40 zoning district which are vacant as of [July 10, 2018 -  
106 Effective date of this Ordinance] shall not be required to provide parking spaces,  
107 beyond those currently provided for the property, for any additional parking  
108 spaces required by the following:

109 1. The development of currently vacant existing first floor square footage for a  
110 change of use to retail or restaurant use which creates a requirement for  
111 additional parking spaces:

112 2. The development of a new sidewalk café in conjunction with a new retail or  
113 restaurant occupancy in currently vacant space:

114 3. The development of second floor square footage for a change of use to retail  
115 or restaurant use which creates a requirement for additional parking spaces  
116 provided the second floor area is an integral part of and accessed solely from  
117 the interior of a connected first floor space.

118 b. Application required. To qualify for the Parking Exemption Program, a parking  
119 exemption application must be submitted, in a form to be approved by the Town,  
120 with all supporting documentation as required by the application.

121 c. Eligibility for Program.

122 1. Only properties vacant as of July 10, 2018 as identified by Town inventory  
123 dated July 10, 2018 are eligible for the Program.

124 2. The application for a parking exemption, and all supporting documents,  
125 including any applicable certificate of use, building permit or development  
126 approval applications, shall have been submitted and deemed to be complete  
127 by the Town prior to the Program expiration, and all required permits received

128 and the retail or restaurant space subsequently built and opened to the public  
129 within one year from approval of parking exemptions.

130 3. Eligibility is limited to first floor square footage which was existing and  
131 vacant as of July 10, 2018, which is changing use and will be utilized for  
132 retail, restaurant, or new sidewalk café space in conjunction with the new  
133 retail or restaurant occupancy of currently vacant space, or the occupancy of  
134 existing vacant second floor space for retail or restaurant use in conjunction  
135 with, and which is an integral part of and accessed solely from, the interior of  
136 a currently vacant connected first floor space.

137 d. Program guidelines.

138 1. Program duration. The Parking Exemption Program shall last for a period of  
139 one year, from July 10, 2018, to July 10, 2019. Notwithstanding the  
140 foregoing, the Town Commission, may, for any reason and in its sole  
141 discretion, discontinue this Parking Exemption Program at any point during  
142 the duration of the Program.

143 2. This Program does not allow the elimination of any existing parking spaces  
144 and exemptions cannot be obtained to replace existing parking.

145 3. This Program may not be used for new construction, expanded building area  
146 or for independently accessed, stand-alone second floor square footage.

147 4. Once parking exemptions are awarded, failure to complete construction and  
148 open to the public within one year of approval of any parking exemptions  
149 shall result in forfeiture of any parking exemptions obtained.

150 5. Status following end of Program.

151 i. Nonconforming. At the end of the Parking Exemption Program, all retail,  
152 restaurant, and sidewalk café area built under the Parking Exemption  
153 Program will become nonconforming use as to parking, and shall be  
154 subject to the requirements of the nonconforming use provisions of the  
155 Town's Code of Ordinances. Notwithstanding the foregoing, retail,  
156 restaurant and sidewalk café uses which were granted parking exemptions  
157 under this Program may be completely remodeled or rebuilt without  
158 providing additional parking, as originally permitted through the Parking  
159 Exemption Program, as long as it is the same business and use and the  
160 retail floor area or restaurant seating capacity is not increased. If floor  
161 area or seating capacity are increased, compliance with the parking  
162 requirements in effect at that time is required for the new floor area or



163 seating capacity, through a mechanism available in the Code then in  
164 effect.

165 ii. Availability of exemptions to successor businesses. Parking exemptions  
166 are granted to a specific business for a specific use and are not assignable  
167 or transferable to another business, use, or property.

168 \* \* \*

169 (c) *Required parking table.* The number of off-street parking spaces that shall be required to  
170 serve each building or structure and use shall be determined in accordance with the  
171 following table:

Type of Residential Unit/Type of Use	Minimum Space Requirements
* * *	* * *
Grocery, fruit or meat market	1 space each 250 gross floor area
Retail store or Personal service establishment	1 space each 300 gross floor area
Office or Professional services use, except Financial institutions	1 space each 400 gross floor area
Medical or Dental uses	1 space each 300 gross floor area
Restaurants or other establishments for the consumption of food and beverages on the premises	1 space for every 4 seats
Financial institutions	1 space each 300 gross floor area
* * *	* * *

172 \* \* \*

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

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

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

183 **Section 6. Effective Date.** This Ordinance shall be effective upon final adoption on  
184 second reading.

185

186 PASSED on first reading this 12th day of June, 2018.

187 PASSED and ADOPTED on second reading this 10<sup>th</sup> day of July, 2018.

188

189 On Final Reading Moved by: Vice Mayor Gielchinsky

190 On Final Reading Second by: Commissioner Karukin

191

192 **FINAL VOTE ON ADOPTION**

193 Commissioner Barry Cohen

Absent

194 Commissioner Michael Karukin

YES

195 Commissioner Tina Paul

YES

196 Vice Mayor Daniel Gielchinsky

YES

197 Mayor Daniel Dietch

YES

198

199

  
Daniel Dietch, Mayor

200

201

202

ATTEST:

203

204

205   
Sandra Novoa, MMC, Town Clerk

206

207 **APPROVED AS TO FORM AND LEGALITY FOR THE USE**

208 **AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:**

209  
210  
211  
212  
213

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

*Back up  
Item 4A2*

**Town Inventory of Vacant Properties in the Business District**  
**As of July 10, 2018**

**West Side**

**9472 Harding Avenue**

**9488 Harding Avenue**

**9588 Harding Avenue**

**East Side**

**9433 Harding Avenue**

**9441 Harding Avenue**

**9491 Harding Avenue**

**262 95<sup>th</sup> Street**

**9509 Harding Avenue**

**9555 Harding Avenue**

**9571 Harding Avenue**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
  
12  
13  
14  
15  
  
16  
17  
18  
  
19  
20  
  
21  
22  
  
23  
24  
25  
  
26  
27  
  
28  
29  
30  
31  
32  
  
33  
34  
35  
  
36

**ORDINANCE NO. 2019-\_\_\_\_\_**

**AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AMENDING SECTION 90-77, "OFF-STREET PARKING" OF CHAPTER 90, "ZONING" OF THE TOWN’S CODE OF ORDINANCES TO EXTEND THE PARKING EXEMPTION PROGRAM TO ADDRESS VACANCIES AND ECONOMIC REVITALIZATION IN THE SD-B40 ZONING DISTRICT; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town Commission of the Town of Surfside (the “Town”) recognizes that changes to the adopted Code of Ordinances (the “Code”) are periodically necessary in order to ensure that the Town’s regulations are current and consistent with the Town’s planning and regulatory needs; and

**WHEREAS**, the Town has worked with downtown businesses and property owners to improve the economic health and vitality of the downtown and analyze and address operation issues, vacancy, and economic growth; and

**WHEREAS**, in 2018, the Town conducted an inventory of downtown ground floor vacancies and identified ten vacant properties (the “2018 Downtown Vacancy Inventory”); and

**WHEREAS**, the large number of vacancies has reduced the vibrancy and economic vitality of the Town’s Downtown; and

**WHEREAS**, economic vitality and restoration can be enhanced with proactive policy interventions designed to improve economic viability, therein fostering new business activity, productivity, and operational feasibility; and

**WHEREAS**, parking and the limited availability of land may impact redevelopment, changes of use, and occupancy rates; and

**WHEREAS**, on July 10, 2018, the Town Commission adopted Ordinance No. 2018-1686 to amend Section 90-77 “Off-Street Parking Requirements” of Chapter 90 “Zoning” of the Town Code to provide a temporary, one-year parking exemption program (the “Parking Exemption Program”) to help reduce vacancies, improve aesthetics, restore the pedestrian experience and downtown vitality, and incentivize economic revitalization in the SD-B40 Zoning District; and

**WHEREAS**, since the Parking Waiver Program was adopted, five of the ten eligible properties were leased and four out of the five new businesses participated in the Parking Waiver Program; and

**WHEREAS**, the Parking Exemption Program is scheduled to expire on July 10, 2019; and

37 WHEREAS, on July 1, 2019, the Town conducted a review of the inventory of downtown  
 38 ground floor vacancies in the SD-B40 Zoning District and identified eleven additional properties  
 39 that are vacant and should be eligible for participation in the Parking Waiver Program; and

40 WHEREAS, in an effort to continue incentivizing the economic revitalization of the SD-  
 41 B40 Zoning District, the Town Commission wishes to extend the duration of the Parking Waiver  
 42 Program through July 10, 2020 and increase the number of properties eligible for participation in  
 43 the Parking Waiver Program from ten to twenty-one properties as identified in the 2019 Downtown  
 44 Vacancy Inventory attached hereto and incorporated herein as Exhibit "A"; and

45 WHEREAS, the Town Commission held its first public hearing on these regulations on  
 46 July 9, 2019; and

47 WHEREAS, the Planning and Zoning Board, sitting as the Local Planning Agency, has  
 48 reviewed the revisions to the Code for consistency with the Town's Comprehensive Plan at a duly  
 49 noticed hearing on July 11, 2019; and

50 WHEREAS, the Town Commission conducted a second duly noticed public hearing on  
 51 these regulations as required by law on August 13, 2019; and

52 WHEREAS, the Town Commission finds that this Ordinance is necessary, appropriate,  
 53 and advances the public interest.

54 NOW, THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE TOWN  
 55 OF SURFSIDE AS FOLLOWS:¹

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

58 Section 2. Town Code Amended. The Code of Ordinances of the Town of Surfside,  
 59 Florida is hereby amended by amending Section 90-77, "Off-street parking requirements" as  
 60 follows:

61 Chapter 90 – Zoning

62 Article VII. – Off-Street Parking and Loading

63 \*\*\*

64 **Division 1. - Off-street parking**

65 **Section 90-77. Off-street parking requirements.**

---

¹ Coding: ~~Strikethrough words~~ are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicated with highlighted double-strikethrough and double underline.

66

\*\*\*

67 (4) *Parking exemption.* There is hereby created a "Parking Exemption Program".

68 a. Program. For the period from ~~{July 10, 2018 – Effective date of this Ordinance}~~ to  
69 ~~{July 10, 2019}~~20 ~~– 1 year from the effective date of this Ordinance~~, first floor  
70 properties in the SD-B40 zoning district which are vacant as of ~~{July 10, 2018 -~~  
71 ~~Effective date of this Ordinance}~~ through and including July 1, 2019 shall not be  
72 required to provide parking spaces, beyond those currently provided for the property,  
73 for any additional parking spaces required by the following:

- 74 1. The development of currently vacant existing first floor square footage for a  
75 change of use to retail or restaurant use which creates a requirement for  
76 additional parking spaces;
- 77 2. The development of a new sidewalk café in conjunction with a new retail or  
78 restaurant occupancy in currently vacant space;
- 79 3. The development of second floor square footage for a change of use to retail or  
80 restaurant use which creates a requirement for additional parking spaces  
81 provided the second floor area is an integral part of and accessed solely from the  
82 interior of a connected first floor space.

83 b. Application required. To qualify for the parking exemption program, a parking  
84 exemption application must be submitted, in a form to be approved by the town, with  
85 all supporting documentation as required by the application.

86 c. Eligibility for program.

87 1. Only properties vacant ~~as of~~ between July 10, 2018 and July 1, 2019, as  
88 identified by the Town’s Downtown Vacancy inventory dated July 10, 2018 and  
89 updated July 1, 2019, are eligible for the program.

90 2. The application for a parking exemption, and all supporting documents,  
91 including any applicable certificate of use, building permit or development  
92 approval applications, shall have been submitted and deemed to be complete by  
93 the town prior to the program expiration, and all required permits received and  
94 the retail or restaurant space subsequently built and opened to the public within  
95 one year from approval of parking exemptions.

96 3. Eligibility is limited to first floor square footage which was existing and vacant  
97 ~~as of~~ between July 10, 2018 and July 1, 2019, which is changing use and will be  
98 utilized for retail, restaurant, or new sidewalk café space in conjunction with the  
99 new retail or restaurant occupancy of currently vacant space, or the occupancy  
100 of existing vacant second floor space for retail or restaurant use in conjunction  
101 with, and which is an integral part of and accessed solely from, the interior of a  
102 currently vacant connected first floor space.

103 d. Program guidelines.

104 1. Program duration. The parking exemption program shall last ~~for a period of one~~  
105 ~~year,~~ from July 10, 2018, to July 10, 201920. Notwithstanding the foregoing, the

- 106 town commission, may, for any reason and in its sole discretion, discontinue this  
107 parking exemption program at any point during the duration of the program.
- 108 2. This program does not allow the elimination of any existing parking spaces and  
109 exemptions cannot be obtained to replace existing parking.
- 110 3. This program may not be used for new construction, expanded building area or  
111 for independently accessed, stand-alone second floor square footage.
- 112 4. Once parking exemptions are awarded, failure to complete construction and  
113 open to the public within one year of approval of any parking exemptions shall  
114 result in forfeiture of any parking exemptions obtained.
- 115 5. Status following end of program.
- 116 i. Nonconforming. At the end of the parking exemption program, all retail,  
117 restaurant, and sidewalk café area built under the parking exemption  
118 program will become nonconforming use as to parking, and shall be subject  
119 to the requirements of the nonconforming use provisions of the Town's  
120 Code of Ordinances. Notwithstanding the foregoing, retail, restaurant and  
121 sidewalk café; uses which were granted parking exemptions under this  
122 program may be completely remodeled or rebuilt without providing  
123 additional parking, as originally permitted through the parking exemption  
124 program, as long as it is the same business and use and the retail floor area  
125 or restaurant seating capacity is not increased. If floor area or seating  
126 capacity are increased, compliance with the parking requirements in effect  
127 at that time is required for the new floor area or seating capacity, through a  
128 mechanism available in the Code then in effect.
- 129 ii. Availability of exemptions to successor businesses. Parking exemptions are  
130 granted to a specific business for a specific use and are not assignable or  
131 transferable to another business, use, or property.

132 \*\*\*

133 **Section 3. Codification.** It is the intent of the Town Commission that the provisions  
134 of this ordinance shall become and be made a part of the Town's Code of Ordinances, and that the  
135 sections of this Ordinance may be renumbered or relettered, and the word "ordinance" may be  
136 changed to "section," "article," "regulation," or such other appropriate word or phrase in order to  
137 accomplish such intentions.

138 **Section 4. Severability.** The provisions of this Ordinance are declared to be severable  
139 and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be  
140 invalid or unconstitutional, such decision shall not affect the validity of the remaining sections,  
141 sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the  
142 legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

143 **Section 5. Conflicts.** All ordinances or parts of ordinances, resolutions or parts of  
144 resolutions, in conflict herewith, are repealed to the extent of such conflict.



145 **Section 6. Effective Date.** This Ordinance shall become effective immediately upon  
146 final adoption on second reading.

147 **PASSED** on first reading on the 9<sup>th</sup> day of July, 2019.

148 **PASSED AND ADOPTED** on second reading on the 13<sup>th</sup> day of August, 2019.

149 **On Final Reading Moved By:** \_\_\_\_\_

150 **On Final Reading Second By:** \_\_\_\_\_

151 **FINAL VOTE ON ADOPTION**

152 Commissioner Barry Cohen \_\_\_\_\_  
153 Commissioner Michael Karukin \_\_\_\_\_  
154 Commissioner Tina Paul \_\_\_\_\_  
155 Vice Mayor Daniel Gielchinsky \_\_\_\_\_  
156 Mayor Daniel Dietch \_\_\_\_\_

157

158

159

160

161

\_\_\_\_\_  
Daniel Dietch  
Mayor

162 **ATTEST:**

163

164

165

\_\_\_\_\_  
Sandra Novoa, MMC  
Town Clerk

168

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

171

172

173

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

175

**Exhibit “A”**

**Town Inventory of Vacant Properties in the Business District  
(Updated July 1, 2019)**

<b>West Side</b>	<b>East Side</b>
9452 Harding Avenue <sup>2</sup>	9433 Harding Avenue
9466 Harding Avenue <sup>2</sup>	9441 Harding Avenue
9472 Harding Avenue	9453 Harding Avenue <sup>2</sup>
9486 Harding Avenue <sup>2</sup>	9455 Harding Avenue <sup>2</sup>
9488 Harding Avenue <sup>3</sup>	9461 Harding Avenue <sup>2</sup>
9540 Harding Avenue <sup>2</sup>	9471 Harding Avenue <sup>2</sup>
9588 Harding Avenue <sup>3</sup>	9491 Harding Avenue
	262 95th Street
	9509 Harding Avenue <sup>3</sup>
	9513 Harding Avenue <sup>2</sup>
	9541 Harding Avenue <sup>2</sup>
	9555 Harding Avenue
	9571 Harding Avenue <sup>3</sup>
	9599 Harding Avenue <sup>2</sup>

---

<sup>2</sup> Designates those properties that have been added to the inventory since July 10, 2018 and were vacant as of July 1, 2019

<sup>3</sup> Designates those properties that were in the original 2018 Downtown Vacancy Inventory dated July 10, 2018 and have already participated in the Parking Exemption Program



# MEMORANDUM

ITEM NO. 5B

**To:** Members of the Planning & Zoning Board  
**From:** Sarah Sinatra Gould, AICP, Town Planner  
**Date:** August 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. Currently, the north side of the Property has landscaping and stairs with an attached wheelchair lift for handicapped access. 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. Lastly, drainage and lighting have not been described. 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. Drainage could be impacted by the additional impervious area. 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.

## **Findings**

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 has not demonstrated the additional impervious impacts on the drainage.
5. The applicant has not indicated what, if any, lighting impacts will occur.
6. The applicant has not indicated the amount of impervious area affected by this application.
7. 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.

8. 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.



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



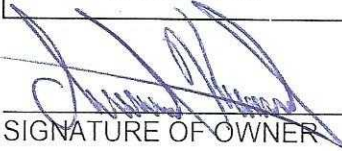

**TOWN OF SURFSIDE  
GENERAL VARIANCE APPLICATION**

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.

<b>PROJECT INFORMATION</b>	
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

<b>INTERNAL USE ONLY</b>	
Date Submitted _____	Project Number _____
Report Completed _____	Date _____
Comments _____	

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

	3-13-19		7-3-19
SIGNATURE OF OWNER	DATE	SIGNATURE OF AGENT	DATE





**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

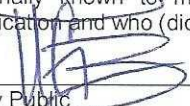
Israel Kopel, Vice President  
Print Name of Petitioner

  
Signature of Petitioner

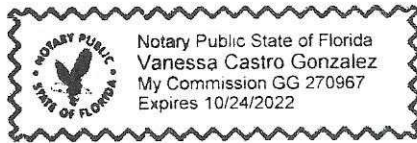
STATE OF Florida COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of March, 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:



**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 PURCHASE, 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.

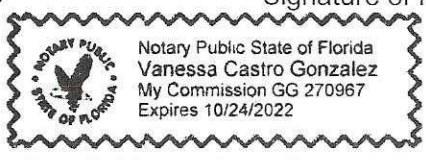
*Israel Kopel*  
 Signature of Applicant                      Print Name of Applicant

State of Florida                      County of Miami-Dade

The foregoing instrument was Sworn to and Subscribed before me this 13<sup>th</sup> day of March, 2019 by Israel Kopel who is personally known to me or who has produced \_\_\_\_\_ as identification.

Vanessa Castro Gonzalez                      *[Signature]*  
 Printed Name of Notary Public                      Signature of Notary Public

My commission Expires:



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). 10<sup>th</sup> 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



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.

opportunity to use and enjoy a dwelling in the neighborhood.

*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

(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-by-case 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



# Jerry B. Proctor, P.A.

August 7, 2019

Ms. Sarah Sinatra Gould, AICP  
Director  
Planning Department  
Town of Surfside  
c/ 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.

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

Young Israel Congregation  
9580 Abbott Ave.  
Surfside FI 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  
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 been diagnosed as a paraplegic 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 orthodox 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 standing 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



---

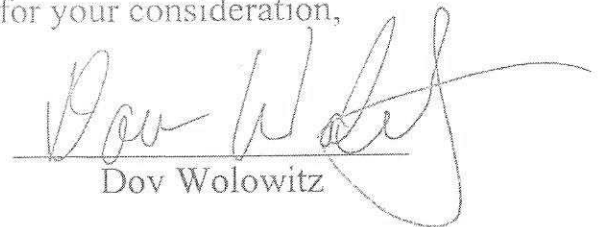
***DOV WOLOWITZ***  
***202 BROADWAY***  
***LAWRENCE, NY 11559***

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

**Rabbi**  
Moshe Gruenstein

**Board Of Directors**  
Menno Ratzker  
**President**

Jack Gluck  
**Vice President**  
Martin Jacobs  
**Vice President**  
Israel Kopel  
**Vice President**  
Aaron Weinberg  
**Treasurer**  
Daniel Courtney  
**Secretary**  
Meir Cosiol  
Max Dekelbaum  
Fred Farbman  
Sheldon Lisbon  
Jared Plitt  
Mali Schwartz  
Ianna Sterenfeld  
Ira Sussman  
Michael Szafranski

**Gabbaim**  
Meir Cosiol  
Jared Plitt  
Steve Schwartz

Michael Szafranski  
**Hashkama Minyan Gabbai**

**Board Members Emeritus**  
Harold Engelstein Z"l  
Nat Gurvitch Z"l  
Stuart Harris Z"l  
Rabbi Simeon Schreiber Z"l

**Youth Director**  
Rabbi Ariel Koriat

**Past Presidents**  
David Kwiat  
Daniel Courtney  
Max Dekelbaum  
Jack Gluck  
Shelly Lisbon  
Morris Kaplan  
Aaron Weinberg

**Founder**  
Bernard Lack, Z"l

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](mailto:yakira@yicbh.org) - Website: [www.yicbh.org](http://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 Adrienne 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.



# MEMORANDUM

ITEM NO. 6A

**To:** Members of the Planning & Zoning Board

**From:** Sarah Sinatra Gould, AICP, Town Planner

**Date:** August 29, 2019

**Subject:** Setbacks on aggregated single family lots

---

The Town Commission previously directed staff to prepare an ordinance modifying the zoning code to address the effects of aggregation of single family lots. This ordinance was adopted in 2018.

The change required aggregated lots to have setbacks of 20 feet or 20%, whichever was greater, regardless of the width of the lot. Therefore, an aggregated lot that is 65 feet in width would have a house that is 25 feet in width, while non-aggregated lot that is 50 feet in width could have a house that is 40 feet in width. A house on an aggregated lot of less than 80 feet in width would be required to build a house smaller than on a lot that is 50 feet in width.

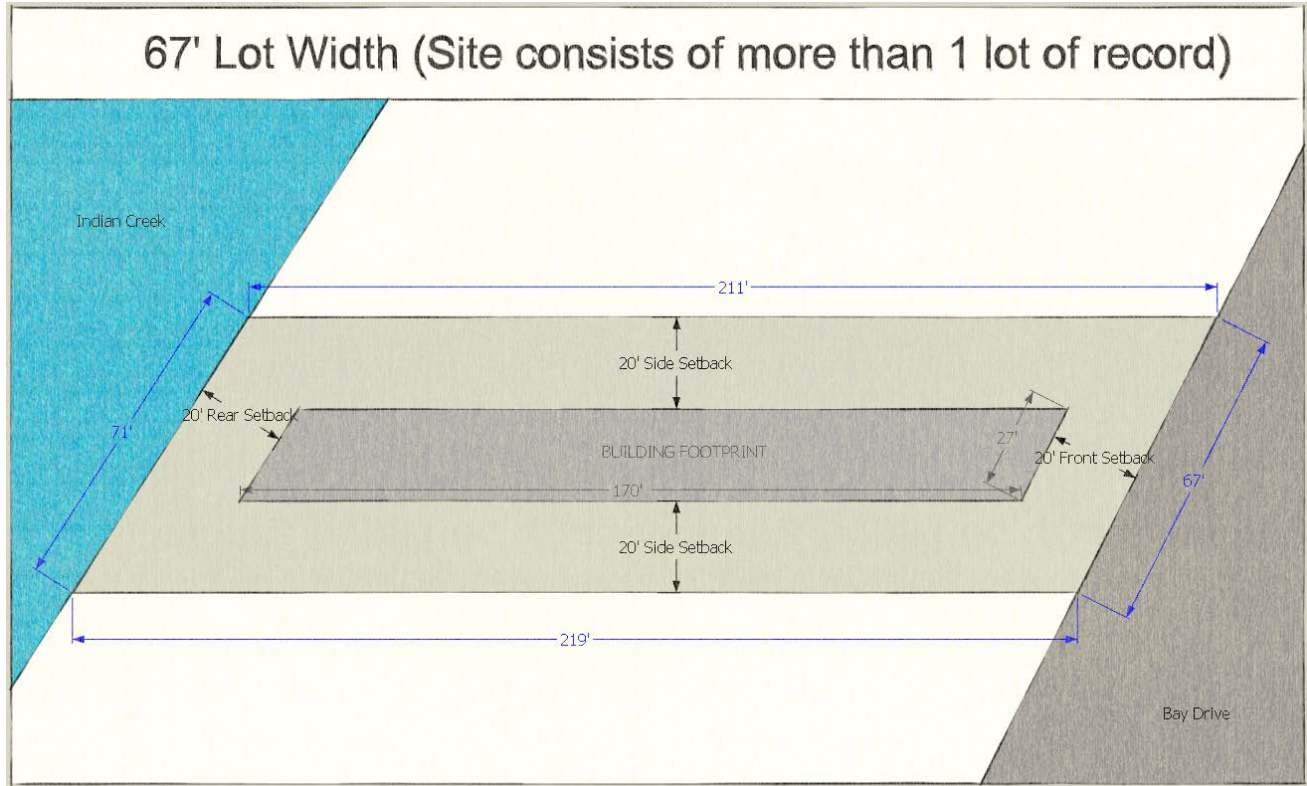
The Exhibit 1 demonstrate the disproportionate setbacks for aggregated lots less than 80 feet in width compared to a non-aggregated lot of 50 feet in width.

A concept was presented at the August 13, 2019 Town Commission meeting for a formula that would provide a sliding scale of setbacks based on the lot width. Attached as Exhibit 2 is that concept and graphics to assist in the interpretation of this concept. This concept was not agreed to by the Commission and the purpose is to aid in a discussion of options.

The Town Commission requests the Planning and Zoning Board to provide direction to Staff to prepare a modification to the ordinance addressing lot width. The Commission also requested the Planning and Zoning Board to consider measuring the front of a lot from the setback, rather than the location where it meets the street. This would provide equity for lots that are parallelogram shaped.



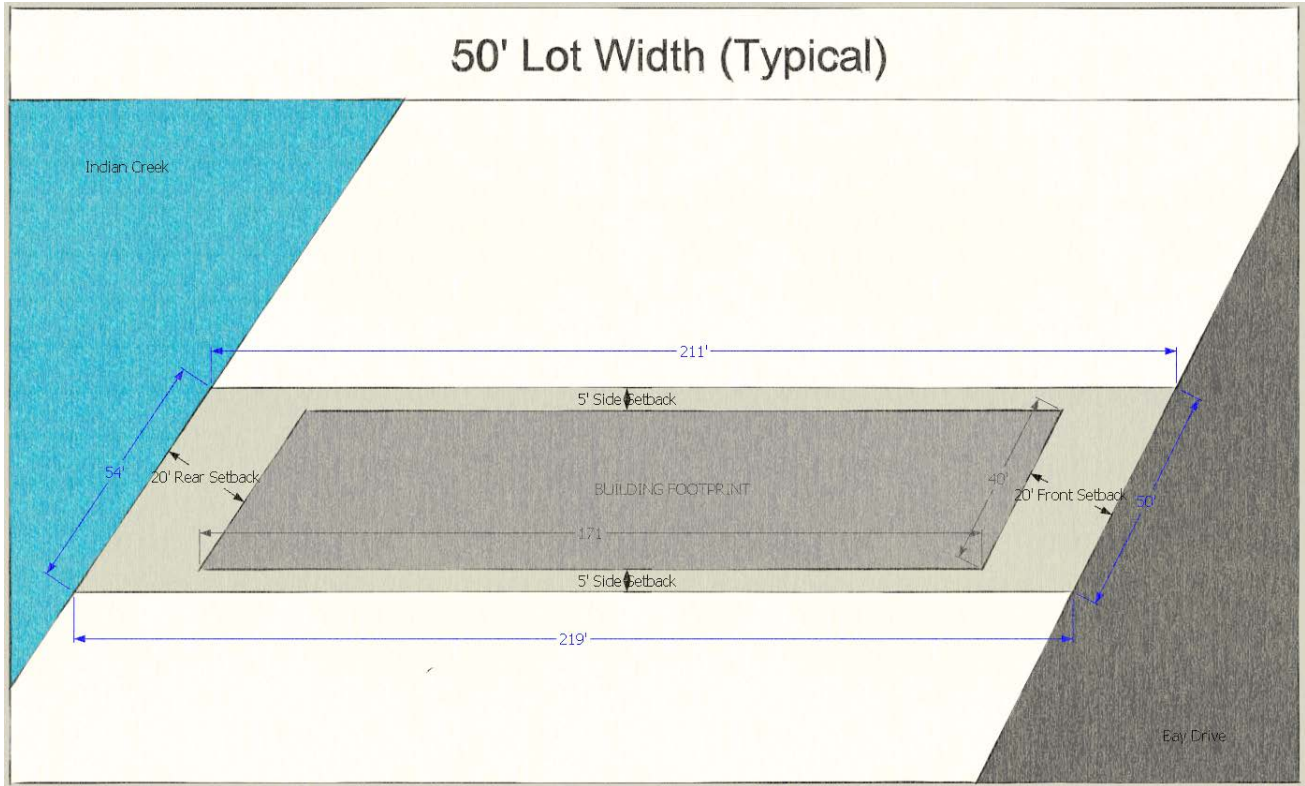
Exhibit 1



Code Requirements Per Code Section 90-45 – Setbacks		
	Required	Proposed
<b>Primary Frontage</b>	20 FT	20 FT
<b>Interior Side (when the site consists of more than one lot of record)</b>	20 FT or 20% of the frontage which is greater	20 FT
<b>Rear</b>	20 FT	20 FT

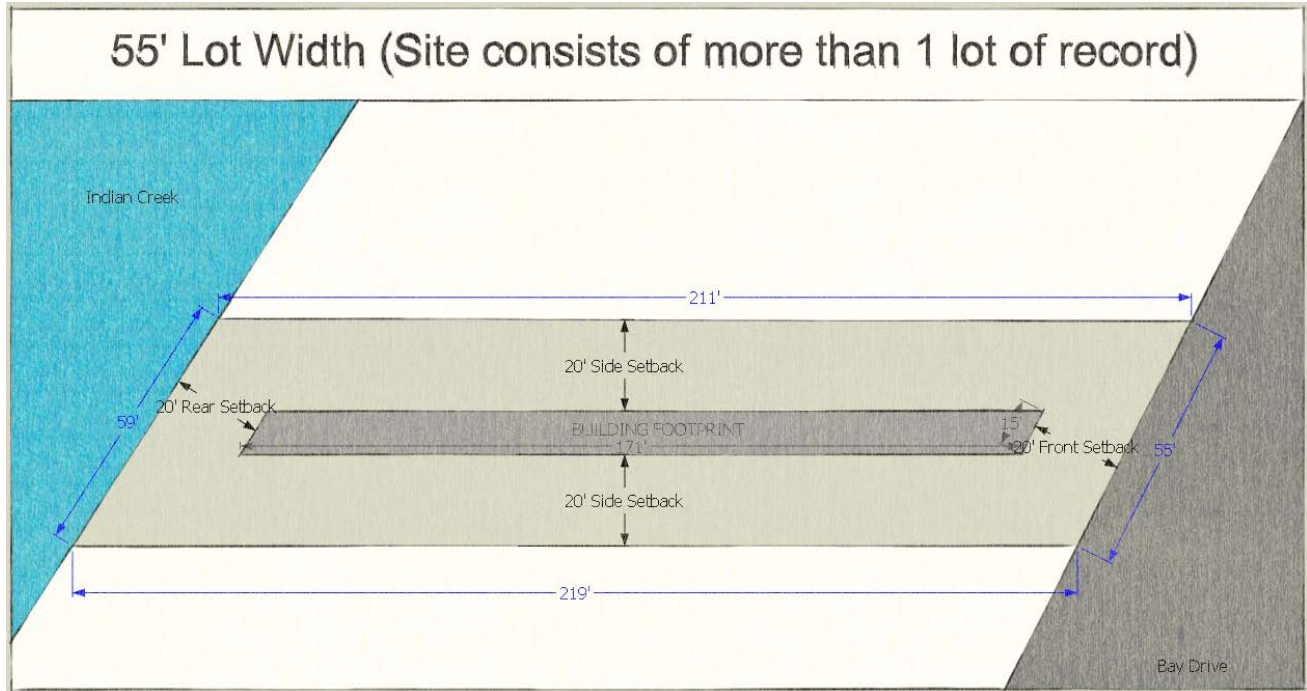
**Building Footprint: 170'\*27'**

Exhibit 1



Code Requirements Per Code Section 90-45 – Setbacks		
	Required	Proposed
<b>Primary Frontage</b>	20 FT	20 FT
<b>Interior Side (lots equal to or less than 50 feet in width)</b>	5 FT	5 FT
<b>Rear</b>	20 FT	20 FT

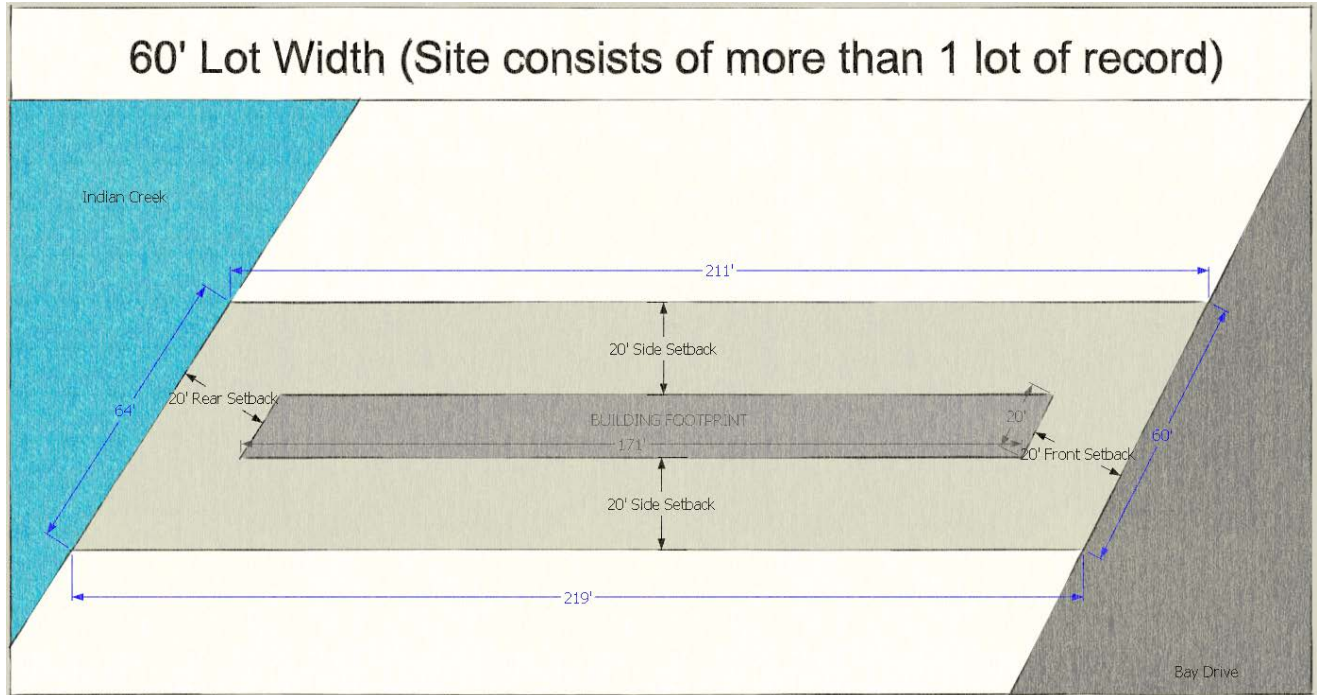
**Building Footprint: 171'\*40'**



Code Requirements Per Code Section 90-45 – Setbacks		
	Required	Proposed
<b>Primary Frontage</b>	20 FT	20 FT
<b>Interior Side (when the site consists of more than one lot of record)</b>	20 FT or 20% of the frontage which is greater	20 FT
<b>Rear</b>	20 FT	20 FT

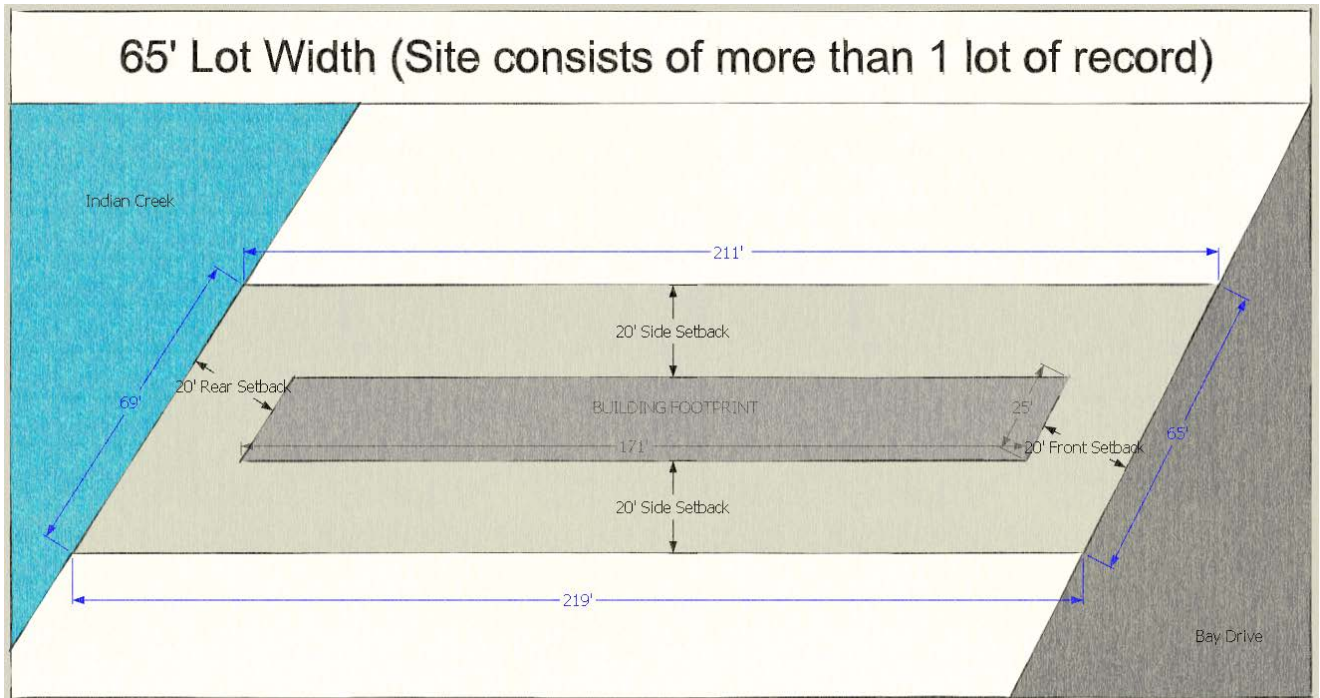
**Building Footprint: 171'\*15'**

Exhibit 1



Code Requirements Per Code Section 90-45 – Setbacks		
	Required	Proposed
<b>Primary Frontage</b>	20 FT	20 FT
<b>Interior Side (when the site consists of more than one lot of record)</b>	20 FT or 20% of the frontage which is greater	20 FT
<b>Rear</b>	20 FT	20 FT

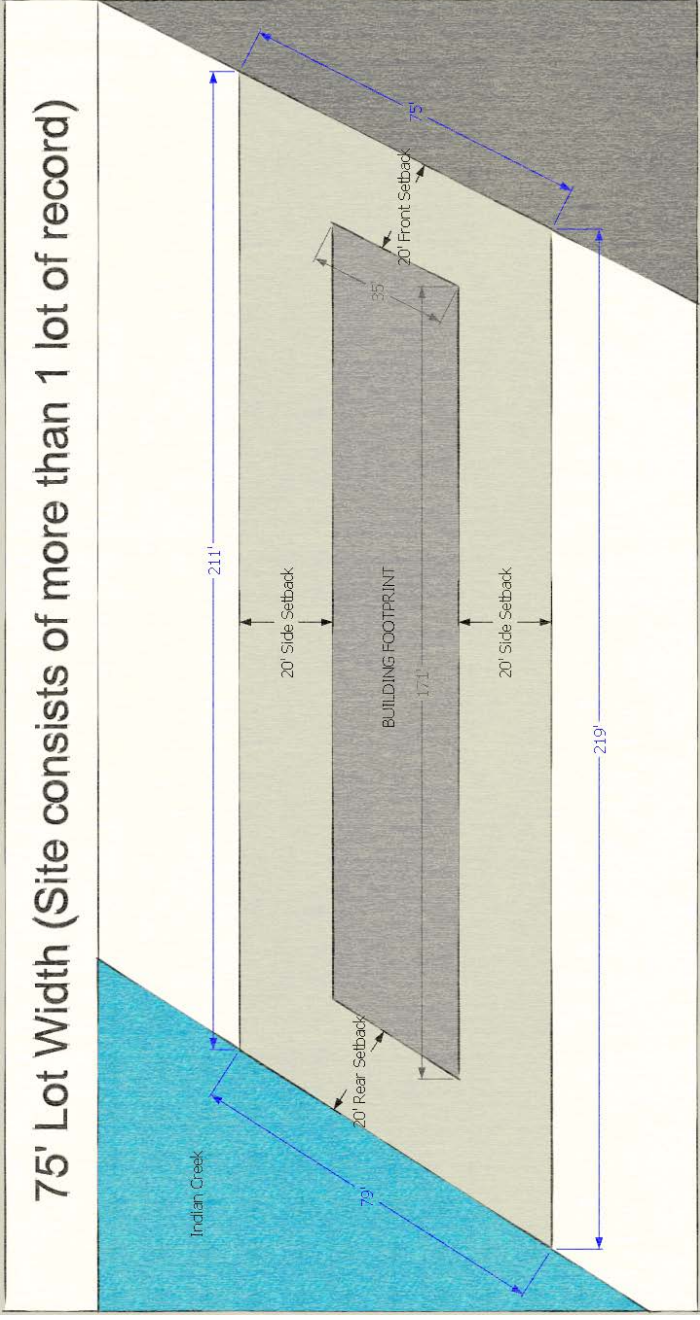
**Building Footprint: 171'\*20'**



Code Requirements Per Code Section 90-45 – Setbacks		
	Required	Proposed
<b>Primary Frontage</b>	20 FT	20 FT
<b>Interior Side (when the site consists of more than one lot of record)</b>	20 FT or 20% of the frontage which is greater	20 FT
<b>Rear</b>	20 FT	20 FT

**Building Footprint: 171'\*25'**





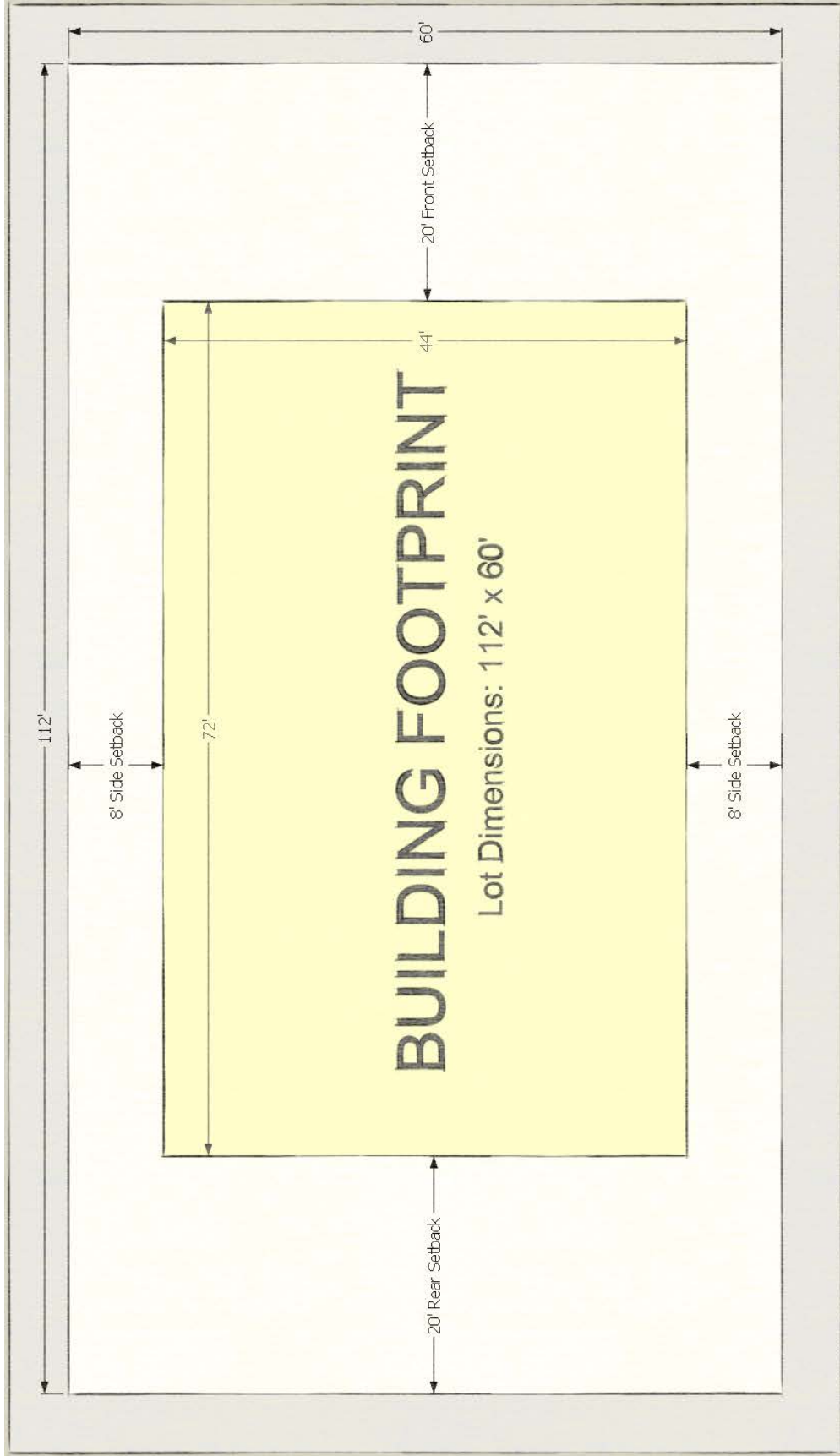
Code Requirements Per Code Section 90-45 – Setbacks		
	Required	Proposed
<b>Primary Frontage</b>	20 FT	20 FT
<b>Interior Side (when the site consists of more than one lot of record)</b>	20 FT or 20% of the frontage which is greater	20 FT
<b>Rear</b>	20 FT	20 FT

**Building Footprint: 171'\*35'**

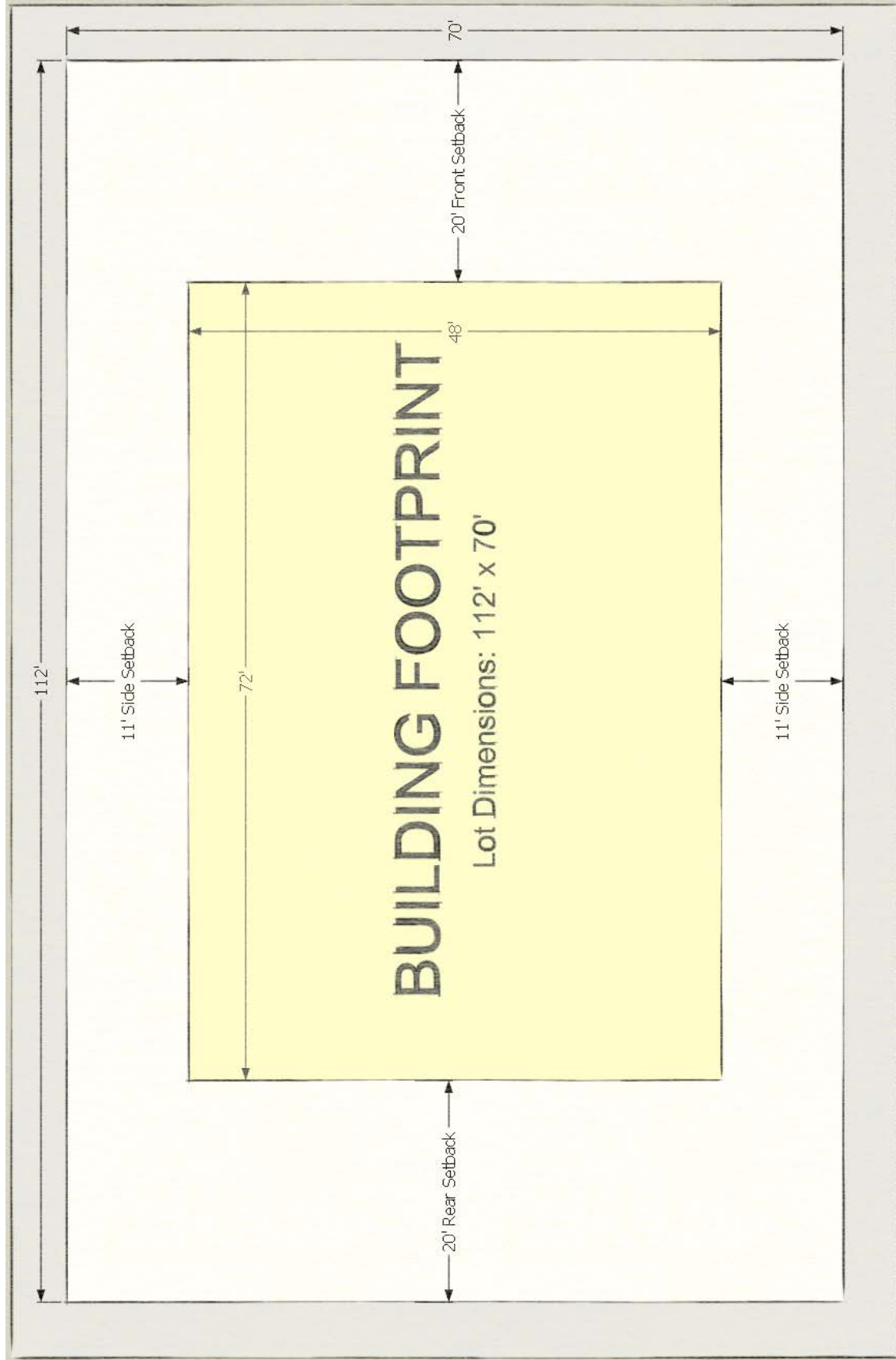
$$y = mx + b$$

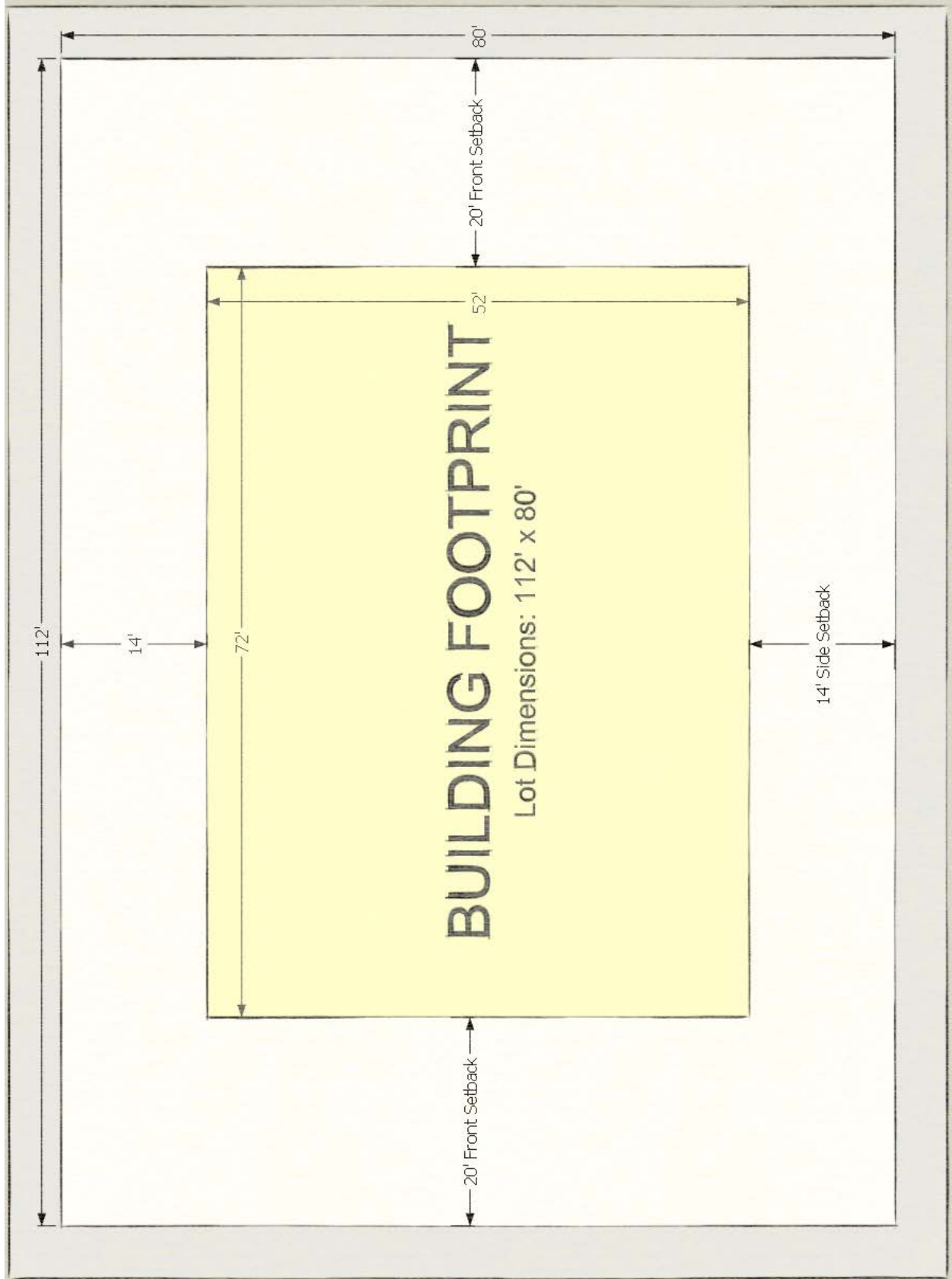
$$\text{setback} = -.3(\text{lot width}) + 10$$

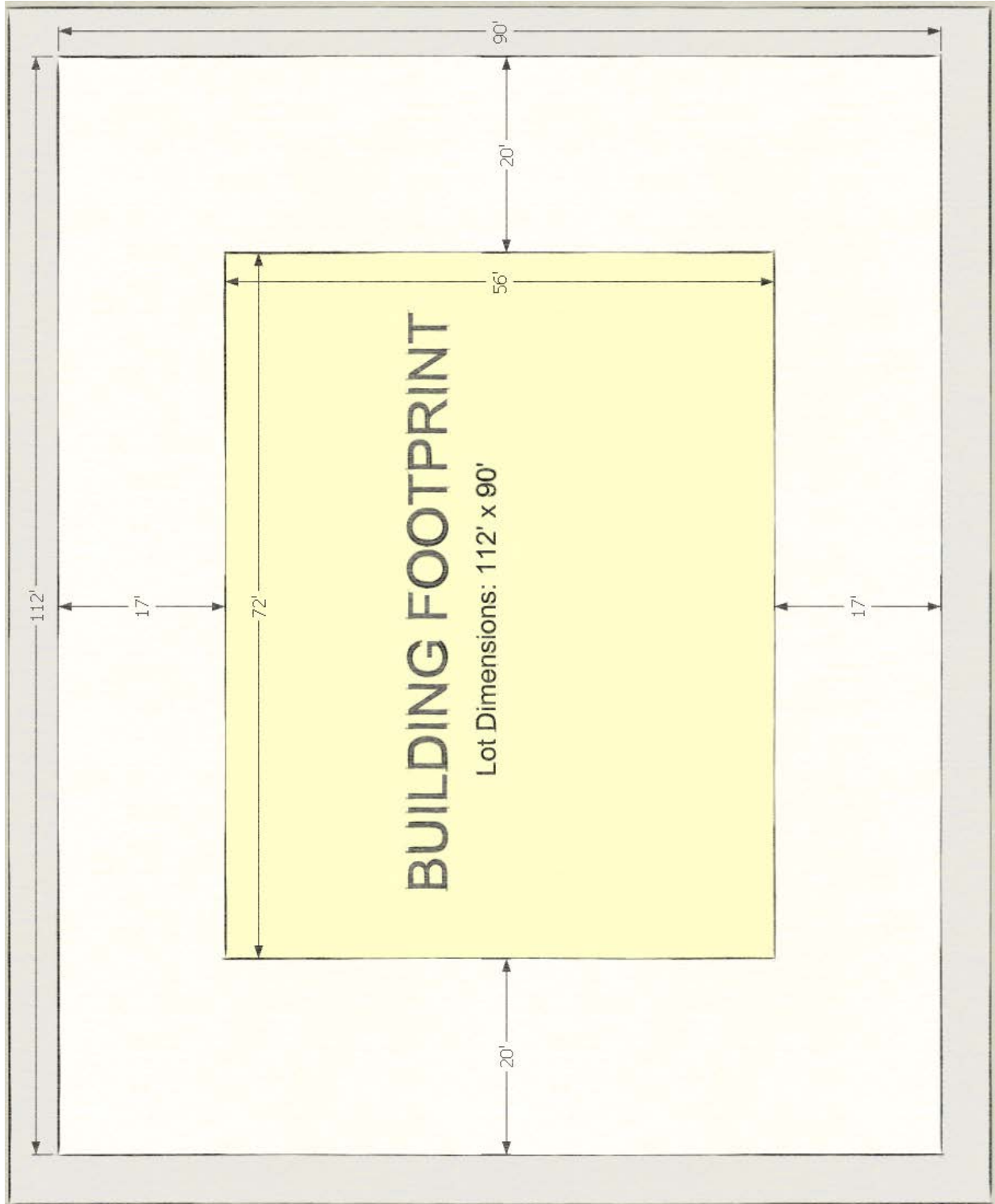
<u>Lot Width</u>	<u>Setback</u>	<u>House Width</u> <u>(max)</u>
100'	20'	60'
95'	18'-6"	58'
90'	17'	56'
85'	15'-6"	54'
80'	14'	52'
75'	12'-6"	50'
70'	11'	48'
65'	9'-6"	46'
60'	8'	44'
55'	6'-6"	42'
50'	5'	40'

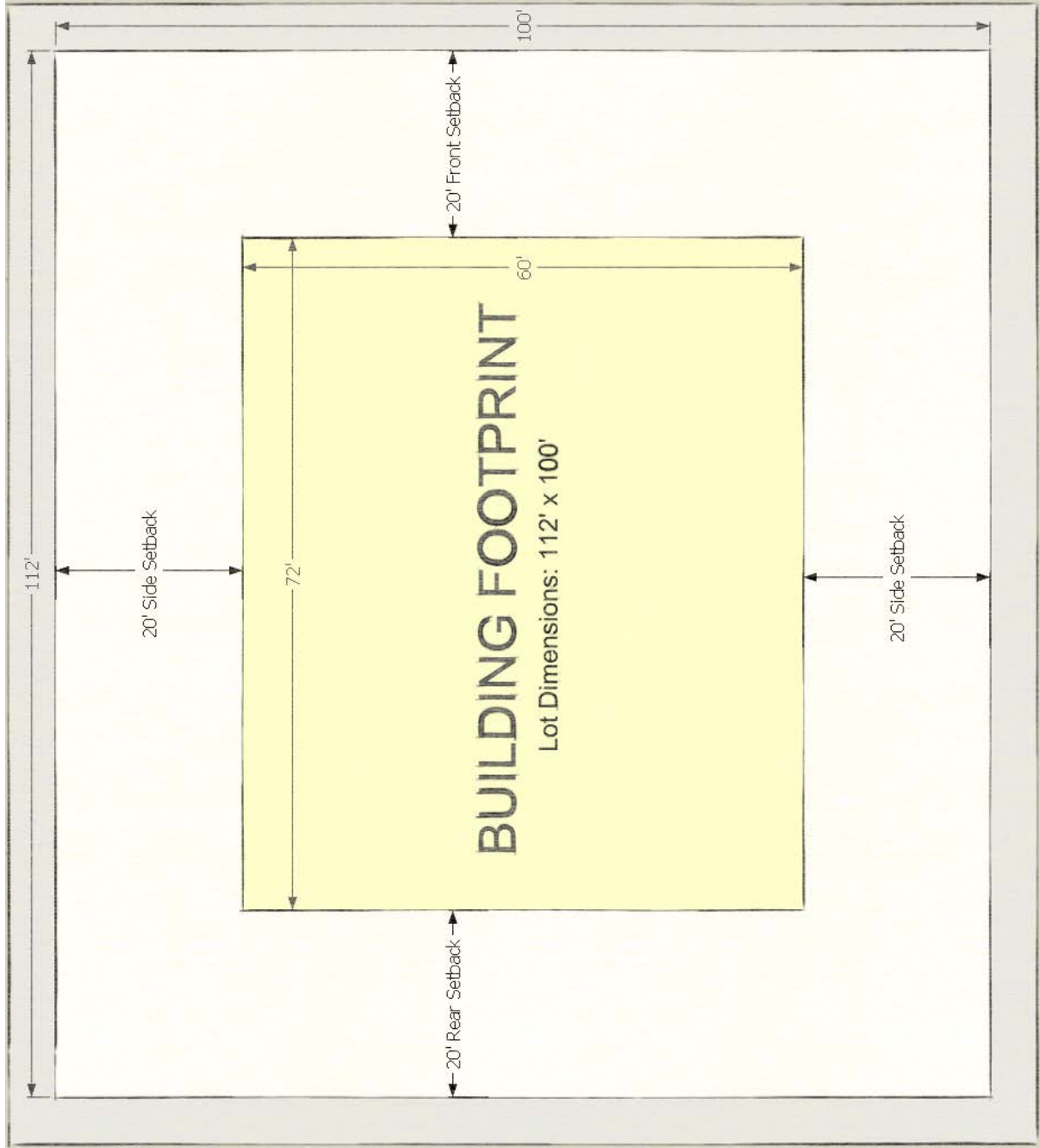












ITEM	OUTCOME	NEXT STEPS	TENTATIVE SCHEDULE	COMPLETE
<b>FUTURE PZ DISCUSSION ITEMS</b>				
Freeboard & Height	PZ requests discussion on additional freeboard & height	Joint meeting with Commission on 8-26-19	Waiting feedback from meeting specific to unlocking the height from the charter	
Impact fee discussion		Town is requesting a proposal from a consultant to do the impact fee analysis. Staff to prepare	Working with consultant on proposal Future PZ	
Update to sign code	Need to make revisions to the sign code including limiting the overall allowances for window signage to one window or door rather than multiple			
Stepback discussion	Commission has requested the PZ board analyze this requirement	Prepare visual and calculation of volume, how much square footage does this equate to	Future PZ	
Reduce the allowable area of a 2 <sup>nd</sup> story to no greater than 65% of the 1 <sup>st</sup> story	PZ Requests discussion including side setbacks	Provide text to PZ	September PZ	
Aggregated Lots	PZ requested discussion analyzing impacts on lots		August PZ	
<b>ON FUTURE COMMISSION AGENDA</b>				
Landscaping in front of fences	PZ requested fences along a ROW to have landscaping	Propose code amendment to propose landscaping	Future Commission	
Circulation pattern	PZ discussion on pedestrian safety and walkability	Pilot project	Ongoing	Ongoing
<b>COMPLETED</b>				
Parking needs	Evaluate if parking code requirements are expected to be	Commission gave direction not to move		No-action

Fences & Hedges in the front of single-family residences	status-quo based on current ride sharing trends or if the need will be reduced Discussion on hedge height in the front			forward with any action December Commission → 2 <sup>nd</sup> reading	Fences & Hedges in the front of single family residences	Approved
Landscape Plans	Require landscape plans for large scale renovations (renovations affecting more than 50% of the square footage of the house)	Requested Ross to attend meeting to discuss requirements for landscape plans as well as the drainage review process		November PZ		Ross provided details. No further action requested.
Sidewalk aesthetics	Prepare discussion item to determine if walkability can be improved.	Prepare graphics depicting 8-ft wide sidewalk & landscape buffer		November PZ	Sidewalk aesthetics	No action
Aggregation of Single Family	Requested by the Town Commission	Discuss limitations on building length relating to single-family		August Commission → First Reading November second reading		Adopted



Resiliency Strategy	PZ has requested staff to prepare a discussion item was to improve sustainability	lots, if aggregated. Invite Betsy Wheaton from Miami Beach to discuss what improvements Miami Beach has implemented	Future PZ or Sustainability Committee	Move to sustainability
Parking in Single-Family	In order to increase pervious areas, evaluate if two vehicles on a driveway are needed.		October PZ	No action
Update on business district	Follow up with PZ to notify the board of who is working on strategies & any improvements to the business district	Discussion of reinstating DVAC on October 9 <sup>th</sup> commission agenda	October PZ	Completed
Ways to increase pervious area of lots	Place on PZ agenda for discussion. Provide PZ with current standards		September PZ	No action
Limitation on building length in H40 & H30C	Revisit building limitations as well as green walls to soften the breaks in the building.	PZ Review. Commission heard on first reading, March 13	April PZ	Completed
H40, H30 & SDB40 Architecturally Significant ordinance	Review with PZ options for architecturally significant ordinance for other zoning districts.	PZ discussion	March PZ	No action
Green Roofs	Requested by the Town Commission		February PZ	No action
Photovoltaic Incentives	Requested by the Town Commission	Discuss requiring	February PZ	No action

				solar panels for all residential properties.				
Driveway		Prepare code modification that limits a driveway so that it does not exceed the front plane of the home.			January Commission		Complete	
Give a foot, get a foot relating Sea Level Rise - Flat Roof vs. Pitch roof		Place on agenda for discussion on referendum		Prepare visuals, timeline and cross-section.	February Commission 2 <sup>nd</sup> reading		Complete	
Roof Pitch of Single Family		Modify ordinance to include roof pitch above top of the truss as an architectural feature		Provide side by side elevation in current code to the top of the flat roof to demonstrate it is 3 feet above the top of a pitched roof.	February Commission 2 <sup>nd</sup> reading		Complete	
Trellis		Review if a trellis attached to the house is considered an accessory structure.		This has not been a reoccurring issue. Provide direction if this is necessary.	Trellis	Review if a trellis attached to the house is considered an accessory structure.	This has not been a reoccurring issue. P	

Average side setback /Massing	Modify ordinance for additional side setbacks on upper floors for single family homes	Direction if this is necessary. The Town has already modified the code to prohibit covered balconies counted towards setbacks.	Average side setback /Massing	Modify ordinance for additional side setbacks on upper floors for single family homes	The Town has already modified the code to prohibit covered balconies counted towards setbacks.
Satellite dishes	Further review by staff	Direction if this is necessary. This issue has not come up as a problem and it is not clear if this is still desired to be regulated.	Satellite dishes	Further review by staff	This issue has not come up as a problem and it is not clear if this is still desired to be regulated.
Commercial waste and recycling container screening	Screening for containers, green screen, vegetation, include pictures from Commissioner Kligman	Draft code amendment			Did not move forward
Driveway material regulations	Modify code to allow stamped concrete and concrete slabs with decorative rock or grass in between	Draft code amendment			Did not move forward
Painting of commercial structures	Town Staff to prepare ordinance	Prepare ordinance for commission			Did not move forward

Residential or commercial wind turbine regulations	Prepare ordinance regulating wind turbines including hurricane precautions, noise regulations, insurance considerations	Residential or commercial wind turbine regulations	Prepare ordinance regulating wind turbines including hurricane precautions, noise regulations, insurance considerations	Prepare ordinance regulating wind turbines including hurricane precautions, noise regulations, insurance considerations	Direction if this is necessary: This issue has not come up as a problem and it is not clear if this is still desired to be regulated.	Residential or commercial wind turbine regulations	Prepare ordinance regulating wind turbines including hurricane precautions, noise regulations, insurance considerations	This issue has not come up as a problem and it is not clear if this is still desired to be regulated.
Setback for parapet above 30 feet on single family homes	Prepare ordinance to require additional setback	Setback for parapet above 30 feet on single family homes	Prepare ordinance to require additional setback	Setback for parapet above 30 feet on single family homes	Direction if this is still necessary as the code could be modified to encourage pitched roofs.	Setback for parapet above 30 feet on single family homes	Prepare ordinance to require additional setback	Direction if this is still necessary as the code could be modified to encourage pitched roofs.
Final Zoning Inspections	Town Manager will analyze	Final Zoning Inspections	Town Manager will analyze	Final Zoning Inspections	Building performs inspections based on conditions on the plans. Need direction if anything further is necessary	Final Zoning Inspections	Town Manager will analyze	Building performs inspections based on conditions on the plans.
Requiring noticing for demolition of houses	Research option and place on agenda for discussion		Research option and place on agenda for discussion					Yes

Sign-Definitions	Modify sign definitions for monument and sign area	Drafted code amendment				
Carpets	Require improved surface on frame	Addressed in Code			September PZ	Yes
Provide summary on construction hours and noise ordinance	Place update on PZ agenda.				September PZ	Yes
Workforce housing update					September PZ	Yes
Add requirement for licensed architect for DRB submittals	Reviewing entire section relating to DRB	Draft code amendment				May Commission Agenda
Corridor Analysis	Study corridor between Collins & Harding	Prepare code amendments	Work authorization to be approved in <b>NOVEMBER</b>		January Commission	Complete
Single Family Paint Colors	Discussion with the Planning & Zoning Board to determine if a color palette is appropriate for single family homes and what colors/criteria should be included	Place on future Planning and Zoning agenda for discussion	In contract		Will add to Joint Meeting with PZ/Commission.	Complete
Parking Trust Fund	Discussion with the Planning & Zoning Board to provide a cap for payment into the fund	Ordinance on July PZ agenda	In contract		July Commission for 1 <sup>st</sup> reading, July PZ August Commission for 2 <sup>nd</sup> reading	Complete
Turtle Lighting	Town Staff to prepare review	No ordinance necessary. Turtle lighting already required in code.	COMPLETE		Turtle Lighting	Town Staff to prepare review

Downtown Color Palette	Discussion with the Planning & Zoning Board to determine if a color palette is appropriate and what colors/criteria should be included	Place on future Planning and Zoning agenda for discussion	In contract	Replaced with repainting of structures.	Complete
Bay Drive & 96 <sup>th</sup> Street	Open Bay Drive off 96 <sup>th</sup> Street	Staff will research	Police and Building to research	No change. Police Chief cited safety concerns	COMPLETE
Sign/awning code	Discussed at Joint Meeting	Staff beginning to work on draft	Work Authorization approved	July Commission August Commission	COMPLETE
As-built reviews for residential projects	Discuss increasing canopy in town, street trees, what can be planted in ROW	Research and prepare report for discussion and possible code amendment	In contract	March PZ	COMPLETE Added a program modification to FY2015 budget
Interpretation of base flood elevation for the H120 district	No change	No further action needed		N/A	COMPLETE
Solar panel regulations	Prepare ordinance regulating solar panels	Draft code amendment	In contract	March PZ	COMPLETE
Car charging station regulations	Prepare ordinance regulating car charging stations requiring them in new multi-family, research what other communities are doing	Draft code amendment	In contract	December PZ	COMPLETE
Pyramiding effects of stepbacks in the H120 district	No action necessary since Planning and Zoning Board currently reviewing stepbacks as part of wall frontage modifications			N/A	
Garage door clarification	Modify code to remove requirement for two separate garage doors	Draft code amendment	In contract	November PZ	COMPLETE



10% window opening requirement per story	Discussion with the Planning & Zoning Board	Prepare ordinance for commission	In contract	June PZ	November Commission for first reading
Landscaping in front of converted garage	Determine if landscaping planter is sufficient versus requiring landscaping.	Reviewed code and determined that planter is only permitted in cases where the driveway would be too short.	In contract	No further modification necessary	Yes
Sheds	Modify ordinance to increase square footage, but reduce height and add landscape requirements.	Draft code amendment	In contract	Discussed at March meeting.	Commission 1st reading in May. PZ in May