

ORDINANCE NO. 2023 - 1752

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING THE TOWN OF SURFSIDE CODE OF ORDINANCES BY AMENDING SECTIONS 90-2. – “DEFINITIONS” AND 90-45. -- “SETBACKS” TO MODIFY REGULATIONS PERTAINING TO AVERAGE SETBACKS IN H30A AND H30B DISTRICTS; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

1 **WHEREAS**, Article VIII, Section 2 of the Florida Constitution, and Chapter 166, Florida
2 Statutes, provide municipalities with the authority to exercise any power for municipal
3 purposes, except where prohibited by law, and to adopt ordinances in furtherance of such
4 authority; and

5 **WHEREAS**, the Town Commission of the Town of Surfside (“Town Commission”)
6 finds it periodically necessary to amend its Code of Ordinances and Land Development
7 Code (“Code”) in order to update regulations and procedures to maintain consistency with
8 state law, to implement municipal goals and objectives, to clarify regulations and address
9 specific issues and needs that may arise; and

10 **WHEREAS**, Section 90-45 of the Code provides for setbacks for zoning districts, and
11 as to the single family zoning districts, the H30A and H30B districts in particular, provides
12 a number of tables that impose varying setback regulations depending on the size of the
13 second floor compared to the first; and

14 **WHEREAS**, Section 90-45 imposes a second floor average setback in the single
15 family districts over and above the minimum setback with the intent of limiting massing
16 and encouraging compatibility between new homes and existing homes; and

17 **WHEREAS**, imposing an average setback only on the second floor has unintended
18 consequences such as limiting design options and encouraging continuous walls at the
19 ground floor along the minimum setback that lend to the perception of massing, while not
20 resulting the compatibility between neighboring properties that was intended; and

21 **WHEREAS**, the Town Commission finds that applying average setbacks across both
22 first and second floors provides more design optionality, better avoids the continuous walls
23 at the minimum setback that presents compatibility concerns and results in greater

24 variation and more opportunities for greater setbacks and spacing between structures at
25 the ground level; and

26 **WHEREAS**, at a special joint meeting of the Town Commission and Planning and
27 Zoning Board held on January 31, 2023, the Town Commission directed the Town
28 Manager to present an ordinance addressing average setbacks in the H30A and H30B
29 districts; and

30 **WHEREAS**, the Town Commission held its first public hearing on July 11, 2023 and,
31 having complied with the notice requirements in the Florida Statutes, approved the
32 proposed amendments to the Code; and

33 **WHEREAS**, the Planning and Zoning Board, as the local planning agency for the
34 Town, held its hearing on the proposed amendment to the Code on August 31, 2023 with
35 due public notice and input, and recommended approval of the proposed amendments to
36 the Code; and

37 **WHEREAS**, the Town Commission has conducted a second duly noticed public
38 hearing on these Code amendments as required by law on September 12, 2023 and
39 further finds the proposed changes to the Code are necessary and in the best interest of
40 the Town.

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42 **NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE**
43 **TOWN OF SURFSIDE, FLORIDA¹:**

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45 **Section 1. Recitals.** The above Recitals are true and correct and are
46 incorporated herein by this reference:

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48 **Section 2. Town Code Amended.** Section 90-2. – “Definitions” of the Code, is
49 hereby amended as follows:

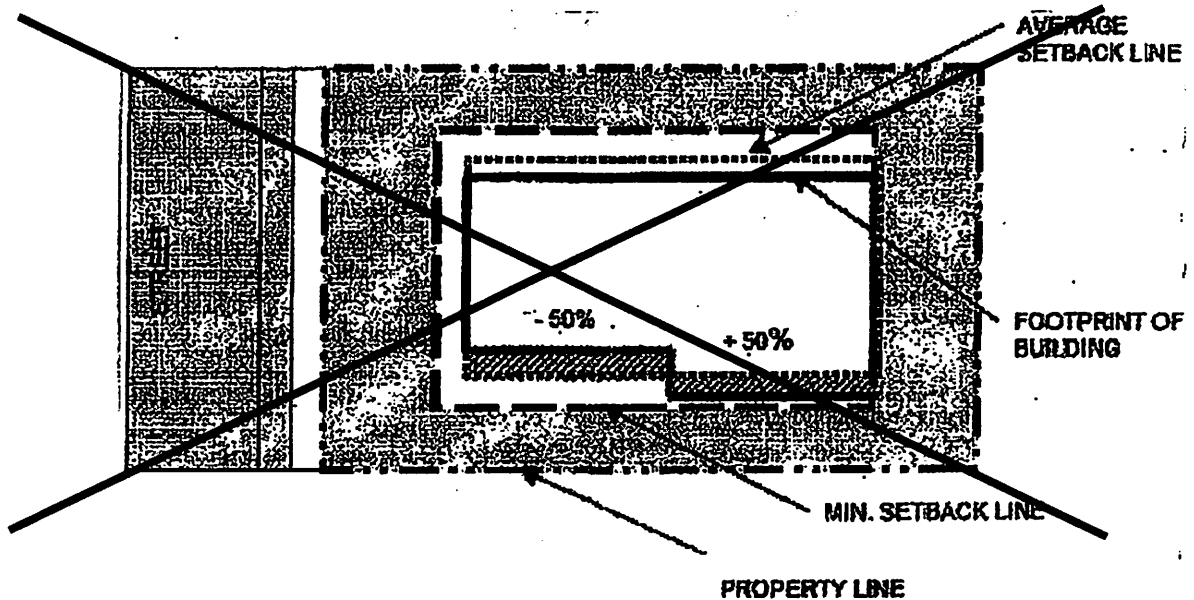
50 **Sec. 90-2. -- Definitions.**

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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.

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~~Setback (average): The average minimum distance required by a zoning district that all structures shall be from front, side and rear lot lines. The following diagram illustrates how the average setback is utilized.~~



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~~How an Average Setback Works~~

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~~The diagram above shows the building footprint varying around the average setback line. If the builder chooses to construct in the area between the minimum setback lines and the average set back lines (area shaded red), an equal area within the average setback line must be sacrificed (area shaded blue). In this example a simple 50/50 split is made at the mid point of the side yard facade of the building.~~

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~~Note that any number of variations can occur around the average setback line just as long as the sum of the areas outside of the average setback line balance with the sum of the areas sacrificed within the average setback line.~~

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~~The builder has the option of building continuously along the average set back line without variation. The builder also can construct any where within the average setback line in any variation.~~

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Section 3. Town Code Amended. Section 90-45. – “Setbacks” of the Code, is hereby amended as follows:

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Sec. 90-45. Setbacks.

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(a) Setbacks in H30A and H30B

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(1) Minimum Setbacks:

- 77 a. Front Setback: 20 feet
- 78 b. Interior Side: 5 feet or 10% of the lot frontage, whichever is greater
- 79 c. Secondary Frontage: 10 feet
- 80 d. Rear: 20 feet

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82 (2) Setback modifications -- Average setbacks for front and side (both interior side
 83 and secondary frontage): In addition to minimum setbacks, homes shall provide
 84 additional average front and side setbacks based on the floor area ratio of the
 85 home, as follows:

<u>Floor Area Ratio</u>	<u>Additional Average Side Setback Required for each side (including secondary frontage)</u>	<u>Additional Average Front Setback Required</u>
<u>0.5 or less</u>	<u>No additional setback required</u>	<u>No additional setback required</u>
<u>Greater than 0.5 up to 0.64</u>	<u>1.25 feet or 2.5% of frontage, whichever is greater</u>	<u>2.5 feet</u>
<u>Greater than 0.64 up to a Maximum of .72</u>	<u>2.5 feet or 5% of frontage, whichever is greater</u>	<u>5 feet</u>

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- 88 a. Additional average front setback shall be provided as follows:
- 89 i. Multiply the required additional average front setback by the
 90 width of the allowable building along the frontage (lineal feet
 91 between minimum side setbacks)
 - 92 ii. Multiply the resulting figure, in square feet, by the number of
 93 stories to arrive at the total area of required additional front
 94 setback, in square feet.
 - 95 iii. The total area of required additional front setback must be
 96 applied in any one or multiple areas throughout the height and
 97 width of the first and (if applicable) second stories of the home
 98 (further reducing the building envelope created by the minimum
 99 required front setback of 20 feet) to reduce the floor width (i.e.
 100 parallel to the front lot line) and/or depth (i.e. perpendicular to
 101 the front lot line), at the discretion of the design professional.
 102 Average front setback may be applied at any point along a floor,
 103 or mixed and matched among the floors of the home, as long as
 104 the average setback area is contiguous with the minimum front
 105 setback. Covered exterior areas may not be used to meet
 106 average setback requirements.

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- 108 b. Additional average side setback shall be provided as follows:

- i. Multiply the required additional average side setback by the depth of the allowable building on that side (lineal feet between minimum front and rear setback)
- ii. Multiply the resulting figure, in square feet, by the number of stories to arrive at the total area of required additional side setback for each side, in square feet.
- iii. The total area of required additional side setback for each side shall be applied in any one or multiple areas throughout the height and depth of the first and (if applicable) second stories of the home (further reducing the building envelope created by the minimum required side setbacks) to reduce the floor width (i.e. parallel to the front lot line) and/or depth (i.e. perpendicular to the front lot line), at the discretion of the design professional. Average side setback may be applied at any point along a floor, mixed and matched among floors, and/or joined with setbacks taken from the opposite side elevation, as long as the average side setback area is contiguous with the minimum side setback for that side. Area used to satisfy average front yard setback area shall not be counted to satisfy average side setback.

(3) The front façade of each home shall include at least one inside corner of at least 5 feet by 5 feet that is open on two sides or at least 50% open to the sky.

(4) A continuous wall along a consistent plane shall not exceed 50% of the lot depth.

(5) A space counted towards average setback on the second floor may not be covered and must be fully open on at least two sides.

Massing.

~~(1) Required massing—Generally. The development of new single family structures and additions to existing single family structures shall abide by height and massing regulations.~~

~~Massing regulations are based on the height of the structure and are delineated between a. single and multi story structures; b. new structures or additions to existing structures; and c. the ratio of area of the first story to the area of the upper stories. The area of the upper stories (wall plane greater than 15 feet in height) for new structures and additions to existing single story structures shall not exceed 80 percent of the area of the first story.~~

~~(2) Required Massing—New single-story structures and single-story additions to single-story structures in H30A and H30B districts. The following table shall be utilized for new single-story structures and single-story additions to existing single-story structures (up to 15 feet in height) in both the H30A and H30B districts.~~

H30A and H30B	PERCENTAGE
(SINGLE STORY STRUCTURES UP TO 15 FEET IN HEIGHT)	

Maximum Lot Coverage	40%
SINGLE STORY STRUCTURES	MINIMUM SETBACK
Primary frontage	20 ft
Interior side (lots equal to or less than 50 feet in width)	5 ft
Interior side (lots over 50 feet in width)	10% of the frontage
Rear	20 ft
Secondary frontage (corner only)	10 ft

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~~(3) Required Massing—Single family homes within the H30A and H30B districts. For single family homes within the H30A and H30B districts, the following table shall be utilized for new multi-story structures or multi-story additions (additions greater than 15 feet in height) to existing single-story structures where the upper story floor area is less than 50 percent of first-story floor area. Where provided both the minimum and average setback shall be utilized.~~

H30A AND H30B UPPER STORY FLOOR AREA IS LESS THAN 50% OF FIRST STORY FLOOR AREA	PERCENTAGE
Maximum Lot Coverage	40%
FIRST STORY (UP TO 15 FT IN HEIGHT)	SETBACK
Primary frontage	Minimum 20 ft
Interior side (lots equal to or less than 50 feet in width)	Minimum 5 ft
Interior side (lots over 50 feet in width)	Minimum 10% of the frontage
Rear	Minimum 20 ft
Secondary frontage (corner only)	Minimum 10 ft
UPPER STORY OR WALL PLANES GREATER THAN 15 FT IN HEIGHT	SETBACK
Primary frontage	Minimum 20 ft
	Average 22.5 ft
Interior side (lots equal to or less than 50 feet in width)	Minimum 5 ft
	Average n/a
Interior side (lots greater than 50 feet in width)	Minimum 10% of lot frontage
	Average n/a
Rear	Minimum 20 ft
	Average n/a
Secondary frontage (corner only)	Minimum 10 ft
	Average 12.5 ft

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~~(4) Required massing—New multi-story structures or multi-story additions. For single-family homes within the H30A and H30B districts, the following table shall be utilized for new multi-story structures or multi-story additions (additions greater~~

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than 15 feet in height) to existing single-story structures where the upper story floor area is 50 percent to 64 percent of first-story floor area. Where provided, both the minimum and average setbacks shall be utilized.

H30A AND H30B UPPER STORY FLOOR AREA IS 50% TO 64% OF FIRST STORY AREA		PERCENTAGE
Maximum Lot Coverage		40%
FIRST STORY (UP TO 15 FT IN HEIGHT)		SETBACK
Primary frontage		Minimum 20 ft
Interior side (lots equal to or less than 50 feet in width)		Minimum 5 ft
Interior side (lots over 50 feet in width)		Minimum 10% of the frontage
Rear		Minimum 20 ft
Secondary frontage (corner only)		Minimum 10 ft
UPPER STORY OR WALL PLANES GREATER THAN 15 FT IN HEIGHT		SETBACK
Primary frontage		Minimum 20 ft Average 25 ft
Interior side (lots equal to or less than 50 feet in width)	H30A—Wall length is equal to or less than 20% of the lot depth	Minimum 5 ft Average n/a
	H30A—Wall length is greater than 20% of the lot depth	Minimum 5 ft Average 7.5 ft
	H30B—Wall length is equal to or less than 25% of the lot depth	Minimum 5 ft Average n/a
	H30B—Wall length is greater than 25% of the lot depth	Minimum 5 ft Average 7.5 ft
Interior side (lots greater than 50 feet in width)	H30A—Wall length is equal to or less than 20% of the lot depth	Minimum 10% of lot frontage Average n/a
	H30A—Wall length is greater than 20% of the lot depth	Minimum 10% of lot frontage Average 15% of the frontage
	H30B—Wall length is equal to or less than 25% of the lot depth	Minimum 10% of the frontage Average n/a
	H30B—Wall length is greater than 25% of the lot depth	Minimum 10% of lot frontage Average 15% of the frontage
Rear		Minimum 20 ft Average n/a
Secondary frontage (corner only)		Minimum 10 ft Average 15 ft

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~~(5) Required Massing—New multi-story structures or multi-story additions (additions greater than 15 feet in height) to existing single-story structures where the upper-story floor area is 65 percent to 80 percent of first-story floor area. For single family homes within the H30A and H30B districts, the following table shall be utilized for new multi-story structures or multi-story additions (additions greater than 15 feet in height) to existing single-story structures where the upper-story floor area is 65 percent to 80 percent of first-story floor area. Where provided, both the minimum and average setbacks shall be utilized.~~

H30A AND H30B UPPER STORY FLOOR AREA IS 65% TO 80% OF FIRST STORY FLOOR AREA		PERCENTAGE
Maximum lot coverage		40%
FIRST STORY (UP TO 15 FT IN HEIGHT)		SETBACK
Primary frontage		Minimum 20 ft
Interior side (lots equal to or less than 50 feet in width)		Minimum 5 ft
Interior side (lots over 50 feet in width)		Minimum 10% of the frontage
Rear		Minimum 20 ft
Secondary frontage (corner only)		Minimum 10 ft
UPPER STORY OR WALL PLANES GREATER THAN 15 FT IN HEIGHT		SETBACK
Primary frontage		Minimum 20 ft Average 30 ft
Interior side (lots equal to or less than 50 feet in width)	H30A—Wall length is equal to or less than 20% of the lot depth	Minimum 5 ft Average n/a
	H30A—Wall length is greater than 20% of the lot depth	Minimum 5 ft Average 10 ft
	H30B—Wall length is equal to or less than 25% of the lot depth	Minimum 5 ft Average n/a
	H30B—Wall length is greater than 25% of the lot depth	Minimum 5 ft Average 10 ft
Interior side (lots greater than 50 feet in width)	H30A—Wall length is equal to or less than 20% of the lot depth	Minimum 10% of lot frontage Average n/a
	H30A—Wall length is greater than 20% of the lot depth	Minimum 10% of lot frontage Average 20% of the frontage
	H30B—Wall length is equal to or less than 25% of the lot depth	Minimum 10% of lot frontage Average n/a
	H30B—Wall length is greater than 25% of the lot depth	Minimum 10% of lot frontage

		Average 20% of the frontage
Rear		Minimum 20 ft
		Average n/a
Secondary frontage (corner only)		Minimum 10 ft
		Average 20 ft

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(b) *Setbacks in the H30C, H40, H120, and SD-B40 zoning districts.*

~~(1) Required setbacks Tables. The following tables shall be utilized for structures in the H30C, H40, H120, and SD B40 zoning districts.~~

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Section 3. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

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Section 4. Inclusion in the Code. It is the intention of the Town Commission, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the Town of Surfside Code of Ordinances, that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and the word "Ordinance" may be changed to "Section" or other appropriate word.

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Section 5. Conflicts. Any and all ordinances and resolutions or parts of ordinances or resolutions in conflict herewith are hereby repealed.

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Section 6. Effective Date. This ordinance shall become effective upon adoption on second reading.

PASSED on first reading on the 11th day of July, 2023.

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PASSED AND ADOPTED on second reading on the 12th day of September, 2023.

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First Reading:

Motion by: Vice Mayor Rose

Second by: Commissioner Landsman

Second Reading:

Motion by: Commissioner Landsman

Second by: Vice Mayor Rose

207 **FINAL VOTE ON ADOPTION**

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209 Commissioner Fred Landsman Yes

210 Commissioner Marianne Meisheid Yes

211 Commissioner Nelly Velasquez No

212 Vice Mayor Jeffrey Rose Yes

213 Mayor Shlomo Danzinger Yes

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Sandra N. McCready, MMC
Town Clerk



Shlomo Danzinger, Mayor

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

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