

RESOLUTION NO. 13-Z-05

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, CONSIDERING THE APPLICATION OF 1233 BISCAYA DRIVE, TO PERMIT A SIDE SET BACK VARIANCE FROM THE REQUIREMENTS OF SECTION 90-45 OF THE TOWN OF SURFSIDE CODE OF ORDINANCES TO ALLOW THE EXISTING SINGLE FAMILY HOME TO REPLACE THE EXISTING DECK WITH A NEW CONCRETE DECK; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 90-45 of the Town of Surfside Code of Ordinances requires a minimum side setback of ten (10%) percent of the street frontage of the lot in the H30A Zoning District or in this case 10 feet; and

WHEREAS, the property, 1233 Biscaya Drive, is located within the Residential Single Family H30A Zoning District; and

WHEREAS, the existing single family home currently has a roof on a portion of the west side that covers a portion of the deck and encroaches in that setback; and

WHEREAS, the Applicant wishes to leave the roof as it was constructed in the early 1960's; and

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

WHEREAS, the Planning and Zoning Board reviewed the application on February 28, 2013 and unanimously recommended approval of the application to the Town Commission subject to certain conditions and the Town Planner recommended approval of the side setback Variance (See Attachment "A").

NOW THEREFORE, BE IT RESOLVED BY THE PLANNING AND ZONING BOARD OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:

Section 1. Recitals. That the above and foregoing recitals are true and correct and are incorporated herein by reference.

Section 2. Variance. That it finds the requested variance from the minimum side setback requirement of Section 90-45 of the Town of Surfside Code of Ordinances **meets/does not meet** the

variance criteria set forth in Section 90-36 of the Town of Ordinances and adopts the Variance with all the conditions as stated in the Planning and Zoning Resolution No. 13-Z-01.

Section 3. Effective Date. This resolution becomes effective upon adoption.

PASSED AND ADOPTED this 12th day of March, 2013

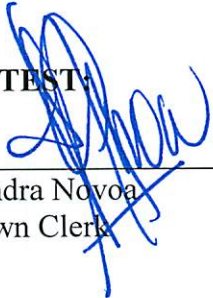
Motion by Vice Mayor Karukin, second by Commissioner Graubart.

FINAL VOTE ON ADOPTION

Commissioner Joseph Graubart	yes
Commissioner Michelle Kligman	yes
Commissioner Marta Olchyk	yes
Vice Mayor Michael Karukin	yes
Mayor Daniel Dietch	yes

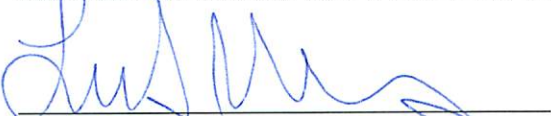


Daniel Dietch, Mayor

ATTEST:


Sandra Novoa
Town Clerk

APROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE TOWN OF SURFSIDE ONLY:



Linda Miller, Interim Town Attorney

13th

13th

Vice Mayor Karen

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12
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[Handwritten signature]

ATTACHMENT "A"

TOWN OF SURFSIDE PLANNING & ZONING BOARD RESOLUTION NO. 13-Z-01

A RESOLUTION OF THE TOWN OF SURFSIDE, FLORIDA PLANNING & ZONING BOARD CONSIDERING THE APPLICATION OF 1233 BISCAYA DRIVE, TO PERMIT A SIDE SET BACK VARIANCE FROM THE REQUIREMENTS OF SECTION 90-45 OF THE TOWN OF SURFSIDE CODE OF ORDINANCES TO ALLOW THE EXISTING SINGLE FAMILY HOME TO REPLACE THE EXISTING DECK WITH A NEW CONCRETE DECK; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 90-45 of the Town of Surfside Code of Ordinances requires a minimum side setback of ten (10%) percent of the street frontage of the lot in the H30A Zoning District or in this case 10 feet; and

WHEREAS, the property, 1233 Biscaya Drive, is located within the Residential Single Family H30A Zoning District; and

WHEREAS, the existing single family home currently has a roof on a portion of the west side that covers a portion of the deck and encroaches that setback; and

WHEREAS, the Applicant wishes to leave the roof as it was constructed in the early 1960's; and

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

WHEREAS, the Town Staff recommends approval of the side setback variance.

NOW THEREFORE, BE IT RESOLVED BY THE PLANNING AND ZONING BOARD OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:

Section 1. Recitals. That the above and foregoing recitals are true and correct and are incorporated herein by reference.

Section 2. Variance. That it finds the requested variance from the minimum side setback requirement of Section 90-45 of the Town of Surfside Code of Ordinances meets the variance criteria set forth in Section 90-36 of the Town of Surfside Code of Ordinances. (See also Attachment "A" Memorandum from Town Planner, Sarah Sinatra Gould, AICP, Town Planner.)

Section 3. Approval. The approval of this variance is subject to the property owner certifying with the Town of Surfside's Building Official that the existing roof structure encroaching into the side setback meets the wind load standards per the Florida Building Code.

Section 4. Effective Date. This resolution becomes effective upon adoption.

PASSED AND ADOPTED this 28th day of February, 2013

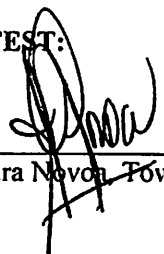
Motion by Planning and Zoning Board Member Koshal,
Second by Planning and Zoning Board Member Dray

FINAL VOTE ADOPTION

Member, Armando Castellanos	<u>yes</u>
Member, Jennifer Dray	<u>yes</u>
Member, Carli Koshal	<u>yes</u>
Vice Chair, Peter Glynn	<u>Absent</u>
Chair, Lindsay Lecour	<u>yes</u>


Lindsay Lecour, Chair

ATTEST:


Sandra Novoa, Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR
THE TOWN OF SURFSIDE ONLY:


Linda Miller, Interim Town Attorney



MEMORANDUM

To: Planning and Zoning Board
Thru: Roger M. Carlton, Town Manager
From: Sarah Sinatra Gould, AICP, Town Planner
CC: Linda Miller, Interim Town Attorney
Date: February 28, 2013
Re: 1233 Biscayne Drive-Klahr Variance

The applicants and property owners, Linda and Michael Klahr, are requesting a side setback variance from the Town of Surfside Code for the property at 1233 Biscaya Drive. The property is located within the Residential Single Family H30A zoning district. The code requires the interior side setbacks to be ten (10%) percent of the street frontage of the lot or in this case 10 feet. On the west side, an existing roof and deck encroach the entire 10 foot setback and extend to the property line. The owners wish to replace their current deck with a new concrete deck and extend the fence. The existing home also encroaches into the setback on the east side.

Request

Section 90-45 of the Town of Surfside Code requires a minimum side setback of ten (10%) percent of the street frontage of the lot in the H30A zoning district or in this case 10 feet. The existing single family home currently has a roof on a portion of the west side that covers a portion of the deck and encroaches that setback. The applicant wishes to leave the roof as it was constructed in the early 1960's.

Variance Criteria

(1) Special conditions and circumstances exist which are peculiar to the land, structure, or building involved, and which are not applicable to other lands, structures, or buildings in the same zoning district;

The house was built in 1951 and the roof was original to the house or added shortly thereafter. Many permits for the roof are shown in the Town of Surfside file, but the related drawings cannot be located. In the summer of 2010, a permit was taken out to repair the roofs of the whole house including this roof. The asphalt roofing material was replaced and any rotten or damaged wood was replaced at that time.

(2) The special conditions and circumstances do not result from the actions of the applicant or a prior owner of the property;

In 1950, the side setback requirement for single family homes was five feet. No original permits or site plans have been located regarding the original construction of the house. Aerial photography from the 1960s indicates the existing deck and correlating roof existed at that time. More recently in 2008, they were changed to 10% of the frontage or ten feet for this property. Many permits for the roof are shown in the Town of Surfside file, but the related drawings cannot be located.

(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 current owners purchased the property in 1980 with the existing roof. The roof was repaired in 1978 by the previous owner with permits from the Town and it was recently repaired with a building permit at the Town. Requiring the owner to move the roof back ten feet will essentially destroy any useful value derived from the roof since total coverage is 14 feet.

(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 roof in questions has been part of the home since the 1960s. The homeowners wish to repair the structure so that it is a safe and attractive feature of the home.

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

Since the structure has existed for so long, no additional financial return will result in granting this variance. It will only formally recognize the existence of a structure.

(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;

The roof has been part of this house for more than fifty years.

(7) The requested variance is the minimum variance that makes possible the reasonable use of the land, building, or structure; and

Any alteration in the roof at this time will result in a less architecturally pleasing solution. This is the minimum variance needed to make reasonable use of the deck.

(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 roof cannot be seen from the street and it is an open view area. The view to the street and the bay are open.

Results

Staff recommends approval of the side setback variance.

Exhibits

1. Application
2. Site Plan