

RESOLUTION NO. 16-Z- 2361

**A RESOLUTION OF THE TOWN OF SURFSIDE, FLORIDA TOWN COMMISSION CONSIDERING THE APPLICATION OF 9464 BYRON AVENUE TO PERMIT A PRACTICAL DIFFICULTY VARIANCE FROM THE REQUIREMENTS OF SECTION 90-49 OF THE TOWN OF SURFSIDE CODE OF ORDINANCES PURSUANT TO SECTION 90-36.1 OF THE TOWN OF SURFSIDE CODE OF ORDINANCES; TO PERMIT 7% ADDITIONAL LOT COVERAGE FOR AN ADDITION AND RENOVATION TO THE FIRST FLOOR OF THE EXISTING SINGLE FAMILY HOME; PROVIDING FOR APPROVAL; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the property, a single-family home, is located at 9464 Byron Avenue (property owners, Charles and Dorith Ness), within the Residential Single Family H30B zoning district; and

**WHEREAS**, the Applicant is proposing an addition and renovation to the first floor of the existing single family home; and

**WHEREAS**, Section 90-49 of the Town of Surfside Code provides a maximum lot coverage of 40% of the lot; and

**WHEREAS**, the Applicant is requesting a practical difficulty variance to permit a 7% increase over the maximum lot coverage for a total of 47% lot coverage; and

**WHEREAS**, Section 90-36.1 of the Town of Surfside Code provides a practical difficulty variance as an option for property owners to be granted if they demonstrate there is a practical difficulty; and

**WHEREAS**, Section 90-36.1(b) of the Town of Surfside Code of Ordinances provides that a practical difficulty variance is a relaxation of the terms or provisions of the Zoning Code which is less rigorous than the unnecessary and undue hardship standard; and

**WHEREAS**, Section 90-36.1(9) of the Town of Surfside Code of Ordinances provides that the Town Commission shall approve a practical difficulty variance if it finds, based on substantial competent evidence, that the following factors demonstrate that a practical difficulty exists: a). how substantial the variance is in relation to the requirement sought to be varied, b). whether an adverse change will be produced in the character of the neighborhood, c). whether the difficulty can be obviated by some method feasible for the Applicant to pursue other than by a variance, and d). whether in view of the manner in which the difficulty arose, the interest of justice will be served by allowing the variance; and

**WHEREAS**, a 7% increase of lot coverage is not substantial in relation to the requirement sought to be varied; and

**WHEREAS**, granting the practical difficulty variance will not produce an adverse change to the character of the neighborhood. The majority of the neighboring properties are single story homes and the applicant is staying within the required setbacks, thus resulting in minimal impact to the neighboring properties; and

**WHEREAS**, the difficulty cannot be obviated by some method feasible for the Applicant to pursue other than by a practical difficulty variance; and

**WHEREAS**, the interest of justice will be served by permitting the practical difficulty variance because the Applicant is attempting to remain in the home for a one bedroom expansion to provide a more usable building; and

**WHEREAS**, granting the practical difficulty variance is not intended to assist the Applicant in achieving greater financial return; rather, the Applicant wishes to expand the home for additional living space; and

**WHEREAS**, the practical difficulty variance is consistent with the intent of the Town of Surfside Comprehensive Plan, compatible with the neighborhood, and will not diminish or impair property values within the neighborhood; and

**WHEREAS**, the Town Staff recommends approval of the practical difficulty variance; and

**WHEREAS**, on February 25, 2016, the Planning and Zoning Board, at a duly noticed and televised quasi-judicial public hearing, after reviewing the Application and hearing from its professional staff, the Applicant, and members of the public, considered the requirements of the Town Zoning Code and recommended approval of the practical difficulty variance to the Town Commission.

**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION 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. Practical Difficulty Variance.** The Town Commission finds that based on substantial competent evidence, that the following factors demonstrate a practical difficulty exists based on the variance criteria set forth in Section 90-36.1(9) of the Town of Surfside Code of Ordinances and recommends a practical difficulty variance from the requirements of Section 90-49: a 7% increase of lot coverage is not substantial in relation to the requirement sought to be varied; granting the practical difficulty variance will not produce an adverse change to the character of the neighborhood because the majority of the neighboring properties are single story homes and the Applicant is staying within the required setbacks, thus resulting in minimal impact to the neighboring properties; the difficulty cannot be obviated by some method feasible for the applicant to pursue other than by a variance; and the interest of justice will be served by permitting the variance because the homeowner is attempting to remain in the home for a one bedroom expansion to provide a more usable building. (See Attachment "A" Commission Communication dated April 12, 2016 from Sarah Sinatra Gould, AICP, Town Planner).

**Section 3. Approval.** The Town Commission approves this practical difficulty variance.

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

PASSED AND ADOPTED this 12<sup>th</sup> day of April, 2016.

Motion by Vice Mayor Cohen,

Second by Commissioner Gielchinsky.

**FINAL VOTE ON ADOPTION**

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



Daniel Dietch, Mayor

**ATTEST:**

  
Sandra Novoa, MMC, Town Clerk

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

  
Linda Miller, Town Attorney

STATE OF FLORIDA                    )  
COUNTY OF MIAMI-DADE        )

I, Sandra Novoa, Town Clerk of the Town of Surfside, Florida, do hereby certify that the above and foregoing is a true and correct copy of Resolution No. 16-Z-2361 adopted by the Town Commission at its meeting held on the 12<sup>th</sup> day of April, 2016.

Issued: April 14, 2016

  
Sandra Novoa, MMC  
Town Clerk





## Town of Surfside Commission Communication

**Agenda #:**

**Agenda Date:** April 12, 2016

**Subject:** Ness Practical Difficulty Variance

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

**Background:** A practical difficulty variance is a relaxation of the terms or provisions of the Zoning Code which is less rigorous than the unnecessary and undue hardship standard. The proposed text relating to practical difficulty variances shall only be applicable to lot coverage for single family homes located on single platted lots in the H30B zoning district. The standard provides for a variance where a literal enforcement of a zoning regulation will create a practical difficulty in the use of the parcel of land for the purpose or in the manner for which it is zoned.

Practical difficulty variances are only be applicable to lot coverage for single family homes located on single platted lots in the H30B zoning district. If a practical difficulty variance is granted, the maximum lot coverage afforded shall be 50%. Any property granted additional lot coverage by a practical difficulty variance shall not increase the square footage permitted on the second story. Further, any square footage added by the practical difficulty variance on the first floor, shall be considered a reduction in the available square footage be added to the second floor.

The homeowners of 9464 Byron Avenue have requested a practical difficulty variance to exceed the maximum lot coverage in the code by 7% for a total lot coverage of 47%. They are proposing an addition and renovation to the first floor of the existing single family home. The property is located within the Residential Single Family H30B zoning district.

**Analysis:**

Section 90-49 of the Town of Surfside Code requires maximum lot coverage of 40% of the lot. The proposed addition provides 47% lot coverage. The code offers a practical difficulty variance as an option for homeowners to be granted additional lot

coverage if they demonstrate there is a practical difficulty. In this case, the homeowner could potentially build a second story addition, however, this could result in raising the home to meet the 50% rule on flood.

**Practical Difficulty Variance Criteria:**

- *How substantial is the variance in relation to the requirement sought to be varied? (Express in square footage and percentage)*

The applicant is requesting a 7% increase over the maximum lot coverage for a total of 47% lot coverage.

- *Will any adverse changes be produced in the character of the neighborhood as a result of the proposed work?*

The majority of the neighboring properties are single story homes. The request is to add a bedroom to the front of the home, which equates to approximately 400 square feet. The applicant is staying within the required setbacks thus resulting in minimal impact to the neighboring properties.

- *Can the difficulty be obviated by some method feasible for the applicant to pursue other than by a variance?*

The option the applicant has to add the additional bedroom is to add a second floor. While this is permitted by the code, this is not a feasible method. The appearance of a second floor is more of an impact to the neighborhood than a one story addition within the setbacks. Also, a second floor addition may result in the entire structure being subjected to the 50% rule. This would usually result in a tear down of the home and new construction. The most minimal impact is permitting the one story bedroom addition.

- *Whether, in view of the manner in which the difficulty arose, the interest of justice will be served by allowing the variance.*

Justice will be served by permitted the variance. The homeowner is attempting to remain in the home and do a one bedroom expansion to provide a more usable building. The addition proposed provides minimal impact to the neighborhood.

- *Do the plans demonstrate that the property meets or exceeds the landscape requirements in Chapter 90, Article VIII of the Town of Surfside Code of Ordinances?*

The plans meet the landscape requirements described in the code of ordinances.

**Budget Impact:** None, this review was paid for by the applicant under Cost Recovery.

**Growth Impact:** None

**Staff Impact:** None, this review was paid for by the applicant under Cost Recovery.

**Staff Recommendation:** The Planning and Zoning Board recommended approval to the Town Commission. Staff recommends approval to the Town Commission for the practical difficulty variance to permit lot coverage of 47%.



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Sarah Sinatra Gould, AICP, Town Planner

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Guillermo Olmedillo, Town Manager