

RESOLUTION NO. 2020- 2675

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING WITH CONDITIONS AN APPLICATION SUBMITTED BY SC 8955, LLC (“APPLICANT”) FOR THE PROPERTY LOCATED AT 8926 COLLINS AVENUE (“PROPERTY”) FOR A VARIANCE FROM SECTION 90.91.2(1) OF THE TOWN CODE TO PERMIT A MAXIMUM OF THREE FEET, 5 INCHES (3’5”) ENCROACHMENT OF FLORIDA POWER & LIGHT (“FPL”) TRANSFORMERS/EQUIPMENT WITHIN THE REQUIRED 10 FOOT LANDSCAPE BUFFER; PROVIDING FOR CONDITIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the applicant and property owner, SC 8955, LLC (“Applicant”) is requesting a variance from Section 90-91.2(1) of the Town of Surfside (“Town”) Code of Ordinances (“Code”), to permit a maximum three feet, five inches (3’5”) encroachment of two existing FPL transformers or equipment into the required 10 foot landscape buffer area to occupy approximately 40 square feet of the required 1,500 square foot landscape buffer along Collins Avenue (“Application”), on the property located at 8926 Collins Avenue, and legally described in Exhibit “A” attached hereto (“Property”); and

WHEREAS, Section 90-91.2(1) of the Town Code (Required Buffer Landscaping Adjacent to Streets and Abutting Properties) requires a 10 foot landscape buffer area in the front of the Property, where only landscape ground cover is permitted; and

WHEREAS, the Applicant is requesting a variance to allow for the existing and installed FPL utility transformers to remain in their current location on site, which encroach three feet, five inches (3’5”) into the required 10 foot landscape buffer area, where only landscape ground cover is permitted; and

WHEREAS, Section 90-36.1 of the Town Code provides for variance application and review for open space requirements of the Code; and

WHEREAS, Town Staff finds that the variance criteria set forth in the Town Code has not been met for the Application, but notes that the Applicant has stated that FPL is requiring the transformer at the existing site location; and

WHEREAS, the Planning and Zoning Board considered the Application at its January 30, 2020 meeting and recommended approval of the Application to the Town Commission; and

WHEREAS, on February 11, 2020, the Town Commission conducted a public hearing on the variance application for which a hearing was noticed, posted, advertised and held as required by law, all interested parties concerned in the matter were heard, and due and proper consideration was given to the matter, and the Town Commission, having reviewed the Application, the written and oral findings of Town staff, and all other relevant testimony and evidence, including the Applicant's voluntary proffers, finds that the Application meets the criteria for a variance.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AS FOLLOWS:

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

Section 2. Variance Approval with Conditions. That the requested variance from the 10 foot landscape buffer area requirement of Section 90-91.2(1) of the Town Code is hereby approved with conditions, to allow a maximum of three feet, five inches (3'5") encroachment into the required 10 foot landscape buffer area of two existing FPL transformers/equipment to occupy approximately 40 square feet of the required 1,500 square foot landscape buffer area along Collins Avenue on the Property.

Section 3. Conditions. If applicable, the approval granted by this Resolution is subject to the Applicant's compliance with the following conditions, which the Applicant voluntarily proffered and stipulated to at the public hearing:

(a) The variance is effective solely for purposes of the Project depicted in the Applicant's plans submitted to the Town dated January 9, 2020 and prepared by Kobe Karp Architecture, and for no other purpose, and the Project must be developed substantially in accordance with the approved plans.

(b) In the event that the Applicant desires to develop the Property in a manner other than in substantial compliance with the plans submitted to the Town dated January 9, 2020 and prepared by Kobe Karp Architecture, the variance shall be deemed never to have been granted, and shall become null and void. The Property shall automatically revert to the development status it had prior to this approval.

(c) As mitigation for the encroachment, the Applicant shall provide landscape screening of the FPL transformers/equipment and extensive landscaping to reduce the visual impact.

(d) The Applicant shall comply with all conditions and permit requirements of the Miami-Dade County Department of Environmental Resource Management, the Miami-Dade County Fire Rescue Department, the Miami-Dade County Water and Sewer Department, the Florida Department of Environmental Protection, the Florida Department of Transportation, and all other governmental agencies with jurisdiction over the Project.

(e) In accordance with Section 166.033(6), Florida Statutes, the Applicant is advised that this Resolution does not create any right on the part of the Applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the Town for issuance of the permit if the Applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. All other applicable state or federal permits must be obtained before commencement of the Project.

(f) Failure by the Town to timely enforce any of the above conditions does not constitute a waiver of same, and if the Applicant, its successors or assigns, do not perform such conditions within five (5) days after written notice, the Town reserves the right to stop construction, if necessary, until that condition is met. By acting in accordance with this approval, the Applicant hereby consents to all of the foregoing terms and conditions.

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

PASSED AND ADOPTED on this 11th day of February, 2020.

Moved By: Commissioner Cohen

Second By: Vice Mayor Gielchinsky

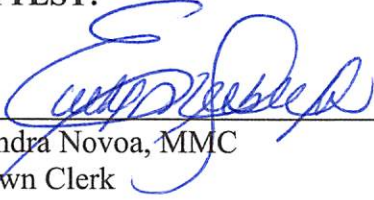
FINAL VOTE ON ADOPTION

| | |
|-------------------------------|------------|
| Commissioner Barry Cohen | <u>Yes</u> |
| Commissioner Michael Karukin | <u>Yes</u> |
| Commissioner Tina Paul | <u>Yes</u> |
| Vice Mayor Daniel Gielchinsky | <u>Yes</u> |
| Mayor Daniel Dietch | <u>No</u> |



Daniel Dietch
Mayor

ATTEST:



Sandra Novoa, MMC
Town Clerk

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



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

EXHIBIT "A"

LEGAL DESCRIPTION

Lots 13 through 15, less the East 10 feet for Street, Block 2, of SECOND AMENDED PLAT OF NORMANDY BEACH, according to the Plat thereof, as recorded in Plat Book 16, Page 44, of the public records of Miami-Dade County, Florida

Parcel Identification Number: 14-2235-005-0250