

RESOLUTION NO. 2022-2870

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING AN APPEAL OF THE APPLICATION OF ZONING IN PROGRESS TO ROOFTOP AMENITIES; APPROVING A SITE PLAN APPLICATION TO PERMIT THE DEVELOPMENT OF PROPERTY LOCATED AT 9165 COLLINS AVENUE, SURFSIDE, FLORIDA, FOR A MULTIFAMILY RESIDENTIAL DEVELOPMENT CONSISTING OF 14 DWELLING UNITS AND 32 PARKING SPACES SUBJECT TO CONDITIONS; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, 9165 Surfside, LLC (“Applicant”), fee simple owner of the property located at 9165 Collins Avenue, Surfside, FL 33154 and legally described in Exhibit “A” attached hereto (the “Property”), subject to two (2) 99-year ground leases held by Hillcrest-by-the-Sea, Associates Inc., a Delaware corporation, who has consented to the Application, submitted an “Application” on November 19, 2021, requesting site plan approval from the Town of Surfside, Florida for a 14-dwelling unit multifamily residential development with 32 parking spaces; and

WHEREAS, the Property was previously developed as the Hillcrest-by-the-Sea Co-op Apartments consisting of 24 multifamily dwelling units which are proposed to be demolished; and

WHEREAS, the subject application was processed while Zoning in Progress had been invoked by notices dated September 7, 2021, December 7, 2021, and March 27, 2022. While similar in form, the successive notices of Zoning in Progress were not identical. Consequently, the rooftop amenities and structures depicted in the site plan may not conform to one or more of the Zoning in Progress notices. To resolve this issue, the Applicant has filed a formal appeal pursuant to Section 90-6(3) of the Town Code seeking the Town Commission’s determination that Zoning in Progress should not be applied to the rooftop amenities; and

WHEREAS, on February 24, 2022, the Planning & 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 the Application’s consistency with the Town of Surfside Comprehensive Plan and recommended the Application for approval with staff conditions and an additional condition that balcony projections, including all architectural features, not extend beyond the maximum allowable encroachment for a balcony; and

WHEREAS, on April 12, 2022, the Town Commission, at a duly noticed and televised quasi-judicial public hearing, reviewed the Application and heard from its professional staff, the Applicant, and members of the public, and considered the recommendation of the Planning & Zoning Board, the requirements of the Town Zoning Code, the Application’s consistency with the Town of Surfside’s Comprehensive Plan, and the substantial competent evidence presented at the hearing.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPLICABLE TO APPLICANT, ITS SUCCESSORS AND/OR ASSIGNS, AS FOLLOWS:

SECTION 1. RECITALS AND FINDINGS OF FACT.

A. All recitals set forth above are incorporated into the body of this Resolution as if same were fully set forth herein.

B. The Town Commission finds that the proposed Site Plan as conditioned, is in compliance with the requirements and criteria set forth in the applicable Town Code and the Comprehensive Plan.

SECTION 2. APPEAL OF APPLICATION OF ZONING IN PROGRESS TO ROOFTOP AMENITIES. The appeal of the application of zoning in progress to the rooftop amenities depicted in the site plan is hereby approved.

SECTION 3. SITE PLAN APPROVAL. The request to approve a site plan is hereby approved based on the plans submitted to the Building Department as part of the Application as updated on February 15, 2022, by O’Donnell, Dannwolf, and Partners Architects, Inc., consisting of the following sheets:

- A0.00, A1.00, A2.00, A3.00, A3.50, A3.51, A4.00 – A4.07, A5.00 – A5.03, A6.00, A7.00, and A7.01
- C100, C101, C200, C300, and C400
- L-000, L-100, L-200, L-201, and L-300 – L-305.

SECTION 4. CONDITIONS. The approval granted herein is subject to the following conditions:

1. Prior to building permit, the Applicant shall:
 - a. Execute a recorded covenant that states that the landscaping material and design approved per the site plan shall not be modified without a site plan amendment. Plant and materials may be changed out due to maintenance but shall be reinstalled with the same type of plants and materials per the approved site plan.

- b. Clarify floor criteria requirements for cabanas and cabana bathrooms on level 1 and for flood venting of level 2, subject to the approval of the Building Official.
 - c. Demonstrate compliance with Ordinance No. 2022-1720, adopted March 8, 2022 (codified in Section 14-104 of the Town Code), regarding construction sites.
 - d. Tender the Applicant's voluntary proffer of \$180,000.00 towards the cost of water and sewer improvements and/or stormwater improvements on Collins Avenue within the Town of Surfside. Said funds may be used at the Town's discretion for design, engineering, planning, permitting, installation and construction observation or for any costs related to the planning, design, development, and implementation of water and sewer and/or stormwater improvements at the Town's option.
 - e. Demonstrate compliance with Section 14-30 of the Town Code regarding the required bond for damage to Town property.
 - f. Comply with calculating the cost of construction and auditing procedures pursuant to Town of Surfside Ordinance No. 16-1656 (Section 14-29 of the Town Code).
 - g. Provide water/sewer fees to the Town of Surfside in the amount prescribed in Town Code Section 78-83 and calculated using all fixtures in the buildings. Said fee shall be paid at the issuance of a Building Permit and there shall be no offset for existing fixtures if such offset is prohibited by law.
 - h. Dedicate a hardpack easement to the Town in form and substance acceptable to the Town Attorney, and in compliance with Section 90-60.1(5) of the Town Code.
2. During construction, the Applicant shall:
- a. Comply with all applicable requirements of Ordinance No. 2022-1720, adopted March 8, 2022 (codified in Section 14-104 of the Town Code), regarding construction sites.
 - b. Comply with Section 14-32 of the Town Code regarding construction hours and noise.
 - c. Prior to commencement of any above-grade work, obtain approval from the Florida Department of Transportation for both driveway access points to Collins Avenue.
3. Prior to Temporary Certificate of Occupancy, or Permanent Certificate of Occupancy if a Temporary Certificate of Occupancy is not granted, the Applicant shall:
- a. Exclusive of and in addition to any financial proffers, remove existing 8-inch water main and install a new C-900 8-inch water main within Collins Avenue

for the entire width of the Property and the Seaway property located at 9133-9149 Collins Avenue (the "Seaway Property").

- b. Tie-in to existing sewer main using existing sewer laterals. New sewer cut-ins shall not be approved.
 - i. Ensure the Town's water/sewer infrastructure is ready to receive the approved utility connections referenced in condition no. 1. above.
 - ii. Any damage to the existing sewer main or adjacent water main caused by the Applicant's development activities will be restored by the Applicant to the satisfaction of the Town's Public Works Department.
 - c. Improve the entire dune system east of and adjacent to the Property and the Seaway Property located at 9133-9149 Collins Avenue, bringing the elevation to +15.00 feet NGVD or the elevation of the dune adjacent to the Surf Club property, whichever is less, and improve dune as follows subject to FDEP approval:
 - i. Preserve existing sea grapes;
 - ii. Remove all invasive species;
 - iii. Replant island with 6-gallon sea oats or approved equivalent; and
 - iv. Permit applications, including existing conditions plan, grading plan, tree disposition plan, and landscape plan, shall be submitted for approval by the Florida Department of Environmental Protection and the Town's Public Works department prior to commencement work. Existing trees may be relocated as approved by FDEP and the Town.
 - d. Plant shade trees as close as possible to the sidewalk abutting the Property for providing shade to pedestrians using the sidewalk.
 - e. Restore all adjacent roadways damaged by construction to Town of Surfside and FDOT standards.
 - f. Maintain all landscaping materials on site in good condition, replacing diseased, dying or dead plant material as necessary so as to present a healthy and orderly appearance at all times. A bond in the amount and duration determined by the Town Manager or designee shall be posted to ensure the survival of landscaping material for one or more years after the Certificate of Occupancy is issued.
4. General conditions:
- a. All utilities shall be installed underground.
 - b. Applicant shall improve the public sidewalks abutting the Property with pavers with the design approved by the Town Manager or designee. Applicant shall provide a suitable transition between public and private sidewalks.
 - c. All voluntary proffers and commitments made to the Town of Surfside pursuant to the Resolution, including but not limited to, those described in these Conditions, shall be binding upon Applicant, its heirs, successors and assigns, and, as to payments, shall be due and payable, or in the event of an action, shall

be performed, in strict compliance with the manner and within the time frames set forth in these Conditions and any change in ownership, or modification of the site plan or design, whether substantial or minor in nature, shall not excuse the performance or the payments, all of which are part of the Conditions subject to which the Applicant's request for site plan approval were granted.

- d. In the event the Applicant obtains a building permit and the permit expires, it shall be required to comply with Section 14-55 entitled "Vacant lots or buildings" of the Town of Surfside Code, including but not limited to, the posting of a bond to defray the cost the Town may incur if required to secure and maintain the site, if necessary, and as may be required by the Building Official. The Applicant for this purpose shall provide a bond not to exceed five (5) percent of the construction cost, as required by the Building Official. These funds shall be used to secure the Property and the construction site in the event construction is abandoned or ceases prior to completion.
- e. The Applicant shall design the project to be LEED silver certifiable and use best efforts to obtain Silver or its equivalent certification within 12 months of issuance of the Certificate of Occupancy and maintain such certification thereafter.
- f. The Applicant shall meet all requirements of the Department of Public Works and Miami-Dade County for storm drainage services.
- g. The Applicant agrees that all contractor and subcontractor agreements applicable to this development shall include a separate clause prohibiting construction workers from parking on residential streets or public parking lots and that Applicant shall submit the proposed clause for the approval of the Town Manager or designee within 45 days of the effective date of this Resolution.
- h. The Applicant shall provide monthly reports to the Town Manager of any problems or complaints with regard to workers parking their vehicles in residential neighborhoods.
- i. If the Town Manager deems necessary, the Applicant shall provide more frequent reports and develop additional preventive measures to protect the residential neighborhoods.
- j. Any change in ownership of the current property owner shall be fully disclosed in writing to the Town Manager and Town Attorney immediately upon said change occurring. Any change of ownership of the Property shall not extend or modify any of the dates for payment or performance included in this Resolution or in any related agreements referenced in this Resolution nor shall any change of ownership modify or excuse or extend any of the payment obligations contained in this Resolution or in any related agreements referenced in this Resolution. All payment obligations and performance obligations of any kind set

forth in this Resolution and in these Conditions are binding on the Applicant, its heirs, successors and assigns.

- k. The Applicant shall only apply for a Certificate of Occupancy and Certificate of Use from the Town once in compliance with all terms and conditions of this Development Order are met and documented. The Certificate of Occupancy and Certificate of Use shall be subject to cancellation upon violation of any of the Conditions, in accordance with the law.
- l. Consistent with Section 90-44.1 of the Town of Surfside Code, all structures above the structural roof shall be constructed as non-habitable spaces and shall be used and maintained in such non-habitable condition.

5. Ongoing Operational Conditions:

- a. The rooftop deck shall not have live music. Recorded music, over a distributive sound system, no greater than 75 dba measured 1 meter from any speaker, is permitted only between the hours of 7 am to 11 pm. No music is permitted prior to 7 am or after 11 pm.
- b. The rooftop deck and garden shall not be used for organized events or activities after dusk.
- c. All lighting on the rooftop deck shall be internally focused.
- d. To the extent that a valet parking operation is used to service the building, the Applicant shall provide a copy of the valet operations agreement to the Town Manager to confirm the required number of valet attendants to optimize the on-site vehicle stacking.
- e. All employees shall be required to park on private property.
- f. All deliveries and loading after Certificate of Occupancy, shall occur on-site and shall not block the street, sidewalk or any right-of-way.

6. Revisions to Plans:

- a. A reduction in the total number of units, with no other exterior or operational changes, shall not require formal amendment of this site plan approval.
- b. Any other changes to the approved site plan, including changes to lot coverage, volume, height, or massing of the building, shall require a formal site plan amendment.

SECTION 5. VIOLATION OF CONDITIONS. Failure to adhere to the terms and conditions of this Resolution shall be considered a violation of the Town Code and persons found violating the conditions shall be subject to the penalties prescribed by the Town Code, including but not limited to, the revocation of any of the approval(s) granted in this Resolution. The

Applicant understands and acknowledges that it must comply with all other applicable requirements of the Town Code before it may commence construction or operation, and that the foregoing approval in this Resolution may be revoked by the Town at any time upon a determination by the Town Commission, following a public hearing, that the Applicant is in non-compliance with the Town Code or the conditions of this Approval and has failed to cure, or to provide an acceptable plan to timely cure, the non-compliance.

SECTION 6. SEVERABILITY CLAUSE. In the event any portion or section of this Resolution is determined to be invalid, illegal or unconstitutional by a court or agency of competent jurisdiction, such decision shall in no way affect the remaining portions of this Resolution, which shall remain full force and effect.

SECTION 7. EFFECTIVE DATE. This Resolution shall become effective upon adoption.

PASSED AND ADOPTED this 12th day of April 2022.

Motion by: Vice Mayor Jeffrey Rose

Second by: Commissioner Fred Landsman

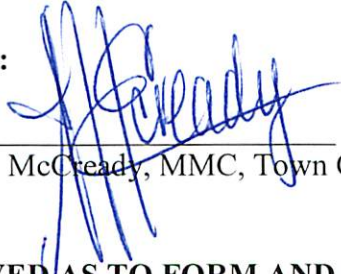
FINAL VOTE ON ADOPTION

Commissioner Fred Landsman	<u>YES</u>
Commissioner Marianne Meischoid	<u>YES</u>
Commissioner Nelly Velazquez	<u>YES</u>
Vice Mayor Jeffrey Rose	<u>YES</u>
Mayor Shlomo Danzinger	<u>YES</u>




Shlomo Danzinger, Mayor

ATTEST:



Sandra N. McCready, MMC, Town Clerk

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



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

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

I, Sandra N. McCreedy, 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. 2022-2870 adopted by the Town Commission at its meeting held on the 12th day of April 2022.

Issued: April 20, 2022



Sandra McCreedy, MMC
Town Clerk

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

Parcel 1:

Lots 6 and 7, Block 2 of "Altos del Mar No. 4" according to the plat thereof as recorded in Plat Book 10 at Page 63 of the Public Records of Miami-Dade County, Florida more particularly described as follows:

Begin at the Southwest corner of Lot 6; thence run North 05°55'47" West, along the Westerly Line of said Lot 6 and Lot 7 and the Easterly Right of Way Line of Collins Avenue as shown on the Florida Department of Transportation Right of Way Map for State Road A-1-A (Collins Avenue) Section 87060, for a distance of 71.43 feet to a point; thence run North 05°12'20" West, along the Westerly Line of said Lot 7 and the Easterly Right of Way Line of Collins Avenue as shown on said Right of Way Map, for a distance of 28.69 feet to the Northwest corner of said Lot 7; thence run North 87°04'29" East, along the Northerly line of said Lot 7 for a distance of 280.00 feet to the Northeast corner of said Lot 7; thence run South 05°43'20" East, along the Easterly Line of said Lots 7 and 6, for a distance of 100.12 feet to the Southeast corner of said Lot 6; thence run South 87°04'29" West, along the Southwesterly line of said Lot 6, for a distance of 280.00 feet to the Point of Beginning.

Parcel 2:

A Parcel of land lying Easterly of and adjacent to Lots 6 and 7, Block 2 of "Altos de Mar No. 4" according to the plat thereof as recorded in Plat Book 10 at Page 63 of the Public Records of Miami Dade County, and Westerly of the Erosion Control Line as shown on the "Erosion Control Line" according to the plat thereof as recorded in Plat Book 105 at Page 62 of the Public Records of Miami Dade County, more particularly described as follows:

Begin at the Northeast corner of said Lot 7, thence run North 87°04'29" East along the Easterly extension of the North line of said Lot 7 for 95.89 feet to a point on the Erosion Control Line as shown in said Plat Book 105 at Page 62, thence run South 05°23'57" East, along said Erosion Control line, for a distance of 100.09 feet to a point on the Easterly extension of the South line of said Lot 6; thence run South 87°04'29" West, along the aforesaid Easterly extension of Lot 6, for a distance of 95.32 feet to the Southeast corner of said Lot 6; thence run North 05°43'20" West, along the Easterly line of said Lots 6 and 7, for a distance of 100.12 feet to the Point of Beginning.