

**TOWN OF BAY HARBOR ISLANDS  
MINUTES OF A PUBLIC HEARING**

A Public Hearing of the Town Council was held on Tuesday, January 7<sup>th</sup>, 2020 7:00 p.m. in the Council Chambers. Upon roll call the following members responded:

Mayor Stephanie Bruder  
Council Member Jordan Leonard      Council Member Kelly Reid  
Council Member Elizabeth Tricoche      Council Member Robert Yaffe

**QUASI-JUDICIAL PUBLIC HEARING AGENDA**

**Item 1. Presentation of the proposed Development Agreement by N / R Wharton Kane Concourse Property Owner, LLC to construct a mixed used development zoned in the B-1 Business District which includes 90 residential units; 98,800 square feet of office space and 15,000 square feet of commercial space.**

Town Attorney Simone swore in all the individual speaking at the Public Hearing.

Attorneys Neisen Kasdin and Nicholas Barshel of Ackerman,LLP came forward and provided a brief summary of the proposed development which included a residential component that included 90 residential units and approximately 15,000 square feet of commercial space. The project property owners have agreed to modify the project with the following recommendation from the Town Council:

- There shall be no left turn into 97 street or West Bay Harbor Drive.
- Up to 1 hour of free parking for visitors.
- Will relocate 6 parking stackers to the roof to alleviate the delivery trucks in the alley.
- The alley shall be used for delivery access only not to be used as the property main entrance.

**Item 2. Town Manager's Report and presentation. Attached is a memorandum from Town Manager Jimenez with attachments.**

Town Manager Jimenez presented his memorandum to the Town Council in writing outlining the proposed modification and request from the developers.

**Item 3. Public Comment concerning the proposed Development Agreement and all related approvals.**

Luis Limares, 10301 W. Bay Harbor Drive, came forward and urged the Town Council to respect the community wishes and comments as it relates to the proposed development.

Dr. Sandy Leiberman, 1145 Kane Concourse, Beachside Pediatrics, came forward and was concerned with the meter parking spaces in front of the doctor office. She felt the existing parking would be taken by the new development. She also added that the alleyway was very busy considering there was nothing there yet and it could potentially bring excess traffic.

Kathie Srur, 10301 W. Bay Harbor Drive, came forward and was concerned with the traffic and share parking of the proposed development. She asked how the Town Manager would evaluate when the parking was at overcapacity. She was under the impression that if the building was over a specific

percentage of capacity the developer would be require to purchase the parking spaces from the Town parking garage.

Town Attorney Simone explained the percentage of overflow would be left to the Town Manager discretion.

Council Member Yaffe asked for language to be clarified on the agreement for the Town Manager discretion.

Town Attorney Simone stated the Town has all rights to enforce the proposed developer agreement. As such, the Town Manager will consult with the traffic consultant as to when the developer will purchase parking spaces from the parking garage.

Kathleen Kennedy, 9180 W. Bay Harbor Drive, suggested to have a moratorium on this project. She was opposed to the proposed development.

Rudy Kellerman, 9665 E. Bay Harbor Drive, came forward and felt that this was an important project and asked for the Council to consider postponing this meeting until Council Member Salver attend the meeting to vote. He was concerned with the loading truck in the alleyway.

Christine Justice, / Milton Rajman, property owners to the adjacent property, this was the largest commercial project in recent years. They were concerned with the density, parking and traffic flow in the alleyway.

Traffic Engineer, Joaquin Vargas, came forward and explained the analysis regarding the radius of the large trucks. The analysis was based on trucks exiting on Bay Harbor Terrace and a turn on the western side was not sufficient. The alley had 3 trucks count per hour. During the analysis they did not have an 18-wheeler truck come through the alley.

Council Member Leonard asked if a dedicated loading space in the public space solution could be? space could be on Bay Harbor Terrace. Town Attorney Simone stated that he could incorporated a conditional to restrict traffic to a specific vehicle type.

Frances Neuhut, 1060 Kane Concourse, came forward and was concerned with the Town Council holding the Public Hearing with recent fraudulent allegations towards the Former Town Attorney Craig Sherman.

Jed Frankel, 1231 99 street, came forward and felt that the project as presented was not in the best interest of the Town.

Hillary Frankel, 1231 99 street, came forward and was opposed to the proposed project.

Natasha Cortez, 10281 W. Bay Harbor Drive, was concerned with the traffic flow in the alley.

#### **CLOSED PUBLIC COMMENT**

#### **TOWN COUNCIL COMMENTS**

Council Member Leonard was concerned with the traffic in the alleyway and suggested a loading space for trucks for the adjacent properties to avoid excess traffic in the alleyway. He also like the concept for the Town Manager to have discretion of when the developer would need to purchase parking spaces in the parking garage.

Council Member Yaffe thanked members of the community for their input. He continued to have concerns with regards to the alleyway traffic flow and suggested restricting the left turn on 97 street. He also asked clarification for paragraph 27 of the development agreement as it relates to the re-assignment of the agreement. He felt that there should no free assignability. The Town should have a discussion should there be new property owners. He was opposed to that section of the agreement.

Attorney Kasdin clarified that the section is there particular for financing reason.

Town Attorney Simone stated that he could add a provision for the property owners to come before the Town Council should there be a request for re-assignment of the development agreement.

Council Member Reid was opposed to the density; the proposed number of residential units and requested for the applicant to come back to the Town Council with the list of recommendations.

Mayor Bruder asked the developer to remove the provision of re-assignment of the agreement.

There was a detailed discussion on the traffic impact to the alleyway; left turn onto 97 street; loading spaces; relocation of the parking stackers near the loading zone; the feasibility to add more parking spaces to a minimum of 520 spaces; increasing the alleyway to 25 feet; occupancy index to determine when the developer will purchase parking spaces from the parking garage; the discretion of the Town Manager to mandate a police officer to direct traffic at peak time at the proposed site.

Consensus was to move forward with the proposed development agreement with the following conditions:

1. Increase 5 feet to the alley way for a total of 25 feet.
2. Study the feasibility of additional parking spaces to a minimum of 520 parking spaces or more.
3. Create an occupancy index to purchase additional parking spaces from the Town parking garage.
4. Town Manager will have discretion to mandate a police officer to direct traffic that could impact the development.
5. Potential to reevaluate the left turns on 97 street.
6. Reassignment of agreement – Property owner will have to come before the Town Council for re-assignment if sold prior to the issuance of a TCO.

**Item 4. Approval of an ordinance on second reading approving a development agreement as authorized under the Florida Statutes Section 163.3220-163.3243 between N/R Wharton Kane Concourse Property Owner, LLC and the Town. The agreement will authorize the development of approximately 1.96 Acres at 1177 Kane Concourse of a mixed-use project consisting of 90 residential units, 98,800 square feet of office space and approximately 15,000 square feet of commercial use.**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, APPROVING A DEVELOPMENT AGREEMENT AS AUTHORIZED UNDER THE FLORIDA LOCAL GOVERNMENT DEVELOPMENT AGREEMENT ACT, SECTIONS 163.3220 – 163.3243 OF THE FLORIDA STATUTES, IN SUBSTANTIALLY THE ATTACHED FORM, BETWEEN N/R WHARTON KANE CONCOURSE PROPERTY OWNER, LLC (“OWNER”) AND THE TOWN OF BAY HARBOR ISLANDS (“TOWN”), RELATING TO THE DEVELOPMENT OF APPROXIMATELY 1.96 ACRES OF LAND GENERALLY LOCATED AT 1177 KANE**

**CONCOURSE, AS MORE PARTICULARLY DESCRIBED IN EXHIBIT "A," ATTACHED AND INCORPORATED, FOR THE PURPOSE OF REDEVELOPMENT OF SUCH LAND FOR MIXED USES PERMITTED BY THE BAY HARBOR ISLANDS COMPREHENSIVE PLAN – FUTURE LAND USE MAP DESIGNATION AND TOWN'S ZONING AND PLANNING CODE, AS AMENDED, WITH SAID DEVELOPMENT TO BE IN ACCORDANCE WITH THE SITE PLAN APPROVED BY THE TOWN AND TO CONSIST OF UP TO 90 RESIDENTIAL DWELLING UNITS, UP TO 98,800 SQUARE FEET OF OFFICE SPACE, UP TO 15,000 SQUARE FEET OF COMMERCIAL SPACE, AND 503 PARKING SPACES IN A BUILDING WITH A MAXIMUM HEIGHT OF 75 FEET; AND WITH SAID DEVELOPMENT AGREEMENT HAVING A TERM OF 10 YEARS AND ALSO MEMORIALIZING: (1) OWNER'S CONVEYANCE OF A WATERFRONT LOT AT 9600 WEST BAY HARBOR DRIVE TO THE TOWN FOR USE AS A PUBLIC PARK, (2) TOWN'S CONVEYANCE OF 24 TRANSFERRABLE DEVELOPMENT RIGHTS (TDRS) TO OWNER FOR USE AT 1177 KANE CONCOURSE, (3) CONDITIONS FOR THE TOWN'S PARTIAL ALLEY CLOSURE BETWEEN WEST BAY HARBOR DRIVE AND BAY HARBOR TERRACE AND OWNER'S PROVISION OF APPROPRIATE ACCESS EASEMENTS WITHIN SAID ALLEY, (4) TOWN'S APPROVAL OF A HEIGHT INCREASE FROM 65 FEET TO 75 FEET UNDER THE TOWN'S PUBLIC BENEFIT PROGRAM IN TOWN CODE SECTION 23-11(C)(8), BASED ON THE LISTED PUBLIC BENEFITS FROM OWNER; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE DEVELOPMENT AGREEMENT, IN SUBSTANTIALLY THE ATTACHED FORM; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**ACTION:** Council Member Leonard made a motion to approve the proposed ordinance on second reading with the following conditions:

1. Increase the width of the alleyway by 5 feet for a total of 25 feet.
2. Study the feasibility of additional parking spaces to a minimum of 520 parking spaces or more.
3. Create an occupancy index to purchase additional space from the parking garage.
4. Town Manager will have discretion to mandate a police officer to direct traffic that could impact the development.
5. Potential to reevaluate the left turns on 97 street.
6. Reassignment of agreement – Property owner will have to come before the Town Council for re-assignment if sold prior to the issuance of a TCO.

Council Member Tricoche seconded the motion and it passed by 3-2 poll vote, with Mayor Bruder and Council Member Reid opposed.

At this time Mayor Bruder left the meeting.

**Item 5. Approval of a resolution pursuant to the terms and conditions set forth in the Development Agreement approving the closure, vacation, abandonment, and discontinuance for public use of that portion of the platted alleyway bounded by West Bay Harbor Drive on the West and Bay Harbor Terrace on the East, which consists of a 20-foot wide Right-of-Way containing 6,000 square feet in total land area, In favor of the abutting property owner, N/R Wharton Kane Concourse Property Owner, LLC. Enclosed is a copy of the resolution.**

**ACTION:** Council Member Leonard made a motion to approve the proposed resolution. Council Member Tricoche seconded the motion and it passed 3-1 with Council Member Reid opposed.

**Item 6. Approval of a resolution pursuant to the terms and conditions set forth in the Development Agreement approving the transfer of (24) Transfer of Development Rights (TDR) to N/R Wharton Kane Concourse Property Owner, LLC for its project located at 1177 Kane Concourse from the Town's pool of commercial mixed use TDR's.**

**ACTION:** Council Member Leonard made a motion to approve the proposed resolution. Council Member Tricoche seconded the motion and it passed 3-1 with Council Member Reid opposed.

**Item 7. Approval of a resolution pursuant to the terms and conditions set forth in the Development Agreement to approve ten feet (10') of bonus height up to the maximum height of seventy five feet (75') for the development project located at 1177 Kane Concourse, under the Town Public Benefit Program.**

**ACTION:** Council Member Leonard made a motion to approve the proposed resolution as presented. Council Member Tricoche seconded the motion and it passed 3-1 with Council Member Reid opposed.

**Item 8. Approval of a resolution pursuant to the terms and conditions set forth in the Development Agreement approving a shared parking arrangement for the mixed-use development located at 1177 Kane Concourse, based on the shared parking study that concludes 503 parking spaces are sufficient spaces for the proposed development.**

**ACTION:** Council Member Leonard made a motion to approve the proposed resolution subject to proposed development have a minimum of 520 parking spaces. Council Member Tricoche seconded the motion and it passed 3-1 with Council Member Reid opposed.

There being no further business to discuss meeting was adjourned at 10:21 p.m.

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MAYOR

ATTEST

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DEPUTY TOWN CLERK