

NOTE: A three-minute maximum time limit will be imposed on all comments from the public, regardless of the subject matter. A request form is available from the Deputy Town Clerk; fill it in and return it to her prior to the start of the meeting. When you speak, you must come to the podium in the front and clearly state your name and address for the record. Please turn off or mute your cell phone or pager

TOWN OF BAY HARBOR ISLANDS
QUASI-JUDICIAL PUBLIC HEARING
AGENDA
January 9, 2017

AGENDA

PLEDGE OF ALLEGIANCE

CALL TO ORDER: Set for Approximately 6:00 p.m.

ROLL CALL

1. **Public hearing** for the purpose of hearing any public comment with respect to an appeal filed by Attorney Tucker Gibbs on behalf of 1060 Kane Concourse Inc., 1048 LLC, 1050 LLC, D&F LLC, owners of property at 1050, 1048, 1050 Kane Concourse and 1065-1073 95th Street regarding the Church by the Sea, 1000 Kane Concourse, site plan approval by the Planning & Zoning Board on July 19, 2016.
2. **Discussion and possible action** with respect to the appeal filed by Attorney Tucker Gibbs on behalf of his clients 1060 Kane Concourse Inc., 1048 LLC, 1050 LLC and D&F LLC, regarding the Site Plan approval by the Planning & Zoning Board on July 19, 2016 of the Church by the Sea to be located at 1000 Kane Concourse.
3. **Public hearing** for the purpose of hearing any public comment with respect to an appeal filed by Attorney Amy Huber on behalf of the Church by the Sea, owners of property at 1000 Kane Concourse regarding the Church by the Sea site plan approval by the Planning & Zoning Board on July 19, 2016.
4. **Discussion and possible action** with respect to the appeal filed by Attorney Amy Huber on behalf of the Church by the Sea, owners of property at 1000 Kane Concourse regarding the Church by the Sea site plan approval by the Planning & Zoning Board on July 19, 2016.

CONCLUSION OF PUBLIC HEARING - Approximately 7:00 p.m.

Pursuant to Florida Statutes 286.0105, the Town hereby advises the public that should any person decide to appeal any decision of the Town Council with respect to any matter to be considered at this meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

AGENDA ITEM REPORT

January 9, 2017

ITEM NUMBER: 1.

ITEM: Public hearing for the purpose of hearing any public comment with respect to an appeal filed by Attorney Tucker Gibbs on behalf of 1060 Kane Concourse Inc., 1048 LLC, 1050 LLC, D&F LLC, owners of property at 1050, 1048, 1050 Kane Concourse and 1065-1073 95th Street regarding the Church by the Sea, 1000 Kane Concourse, site plan approval by the Planning & Zoning Board on July 19, 2016.

DESCRIPTION:

Enclosed is a letter from Tucker Gibbs regarding his basis for the appeal of the site plan approval by the Planning and Zoning Board.

I have also enclosed the site plan approved by the Planning and Zoning Board.

Also attached is a response to the appeal submitted by Attorney Amy Huber representing the Church by the Sea.

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Marlene Siegel, Town Clerk

ATTACHMENTS

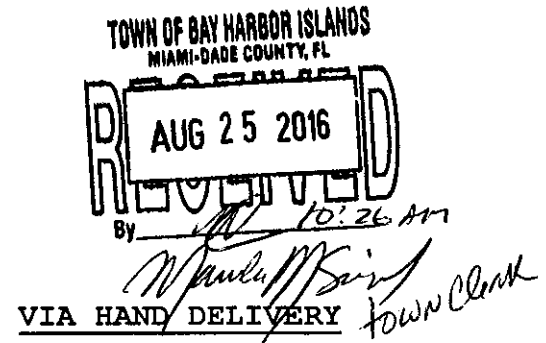
1.	Letter from T. Gibbs	Church appeal - Tucker Gibbs.pdf
2.	Church Site Plan	Church by the Sea Plans.pdf
3.	Response to Appeal	RESPONSE - complete package.pdf

W. TUCKER GIBBS, P.A.

ATTORNEY AT LAW

P.O. BOX 1050
COCONUT GROVE FL 33133

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FACSIMILE (305) 448-0773
tucker@wtgibbs.com



August 25, 2016

Ronald J. Wasson, Town Manager
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, Florida 33154

**Re: Appeal to the Town Council of Planning & Zoning Board
Resolution 2098 (Application for site plan approval for
property at 1000 Kane Concourse).**

Dear Mr. Wasson:

I represent the following property owners nearby the property that is subject to the referenced resolution:

1. 1060 Kane Concourse Inc., owner of the property at 1060 Kane Concourse.
2. 1048 LLC, owner of the property at 1048 Kane Concourse.
3. 1050 LLC, owner of the property at 1063-1073 95th Street.
4. D&F LLC, owner of the property at 1050 Kane Concourse.

My clients object to and appeal to the Town Council pursuant to section 23-5.1(b) of the Bay Harbor Islands Code of Ordinances the approval of Resolution 2098 because it approves a project that is contrary to section 23-5(7) of those regulations. That provision explicitly requires that "100 percent of the ground floor space of any newly developed building or land facing Kane Concourse shall be used for the purposes set forth above [which are the permitted use provisions listed in section 23-5(1) through (6)] excluding business and professional offices..." According to the approved plans, such uses do not occupy 100 percent of the ground floor space facing Kane Concourse.

Additionally, neither the resolution nor the record of the planning and zoning board review of the application shows the factual basis for the approval and how that approval comports with section 23-5(7).

For the forgoing reasons my clients through this letter appeal the issuance of Resolution No. 2098, approving a site plan for the property at 1000 Kane Concourse, Bay Harbor Islands, Florida.

Sincerely,



W. Tucker Gibbs

cc: 1060 Kane Concourse Inc.
1048 LLC
1050 LLC
D&F LLC

CHURCH BY THE SEA Planning & Zoning

Submittal 04/28/2016.

Revision 05/09/2016

Revision 06 /14/2016

Revision 06/27/2016

1000 KANE CONCOURSE BAY HARBOR, FL. 33154

INDEX LIST

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1000 Kane Concourse

Data Sheet

Scale NTS

GN-001

June 27, 2016

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LEO A DALY 100

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B7
06/27/2016

CHURCH BY THE SEA

CONCEPTUAL CIVIL PLANS

Bay Harbor Islands, Miami-Dade County, Florida.

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LEO A DALY 100



LOCATION SKETCH
Section 34, Township 52 South, Range 42 East
1" = 300'

FLOOD LEGEND
Commercial, Industrial

FOUO: 13-2227-001-2470 & 13-2235-004-0010 ADDRESS: 1000 KANE CONCOURSE, BAY HARBOR ISLANDS, FL

LOT: 18 BLOCK: 12 SUBDIVISION: "NOLAN BROWN" & "BAY HARBOR ISLANDS"

PLAT BOOK: 56 / 48 PAGE: 53 / 5 MEETS & BOUNDS: Tract "N" of "NOLAN BROWN", according to the Plat thereof, as recorded in Plat Book 56, Page 53, of the Public Records of Miami-Dade County, Florida.

Lot 18, Block 12 "BAY HARBOR ISLANDS", according to the Plat thereof, as recorded in Plat Book 48, Page 5, of the Public Records of Miami-Dade County, Florida.

CROWN OF ROAD ELEV.: +5.37 FT. NGVD. CROWN OF ROAD ELEVATION WAS TAKEN FROM

A CERTIFIED SURVEY PREPARED BY: US & TOLSTOY PLS. LIC.#: 8759 SURVEYOR'S NAME

DRAINAGE PLANS SHALL BE ATTACHED (IF 2+ ACRES IMPERVIOUS PLANS SHALL BE STAMPED WITH THE DERM/ WATER CONTROL SECTION APPROVAL)

DERM/WC - SURFACE WATER MANAGEMENT STORMWATER PERMIT (COPY ATTACHED)

SF/WD - ENVIRONMENTAL RESOURCES PERMIT (COPY ATTACHED)

TOTAL IMPERVIOUS AREA: 1.00 UNDERGROUND PARKING: YES/NO (CIRCLE ONE)
IF YES, FLOODPROOFING PLANS AND CERTIFICATE SHALL BE ATTACHED

BASEMENT: YES/NO (CIRCLE ONE)

HAVE THIS SITE OR OTHER PORTIONS OF THIS PROPERTY BEEN GRANTED A CLOAR OR FINAL LOMR? (CIRCLE ONE) YES/NO

	Lowest Floor Elevation (Including basement/sunken areas)	Adjacent Grade Elevation (Next to the wall of the structure)	Catch Basin Elevation
PROPOSED	FT. NGVD	FT. NGVD	FT. NGVD
	+5.37	+5.37	+5.00

0'-0" = NGVD

SHEET INDEX	
SHEET No.	TITLE
C1	COVER SHEET
C2	NOTES
C3	CIVIL PLAN
C4	CIVIL DETAILS
C5	STORM WATER POLLUTION PREVENTION PLAN
C6	STORM WATER POLLUTION PREVENTION DETAILS

FORTIN, LEAVY, SKILES, INC.
CONSULTING ENGINEERS, SURVEYORS & MAPPERS
FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER: 00003653
180 Northeast 168th Street / North Miami Beach, Florida, 33162
Phone: 305-653-4493 / Fax 305-651-7152 / Email fls@flsurvey.com
JOB No. 157020 CAD No. 151670CP DWG. No. 3015-047

CHURCH BY THE SEA
1000 Kane Concourse, Bay Harbor Islands, FL 33154

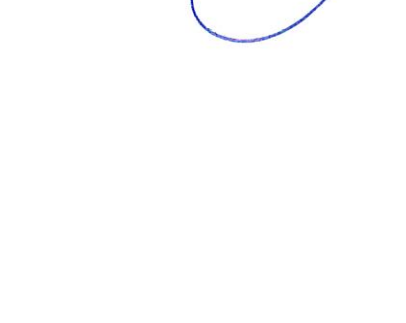
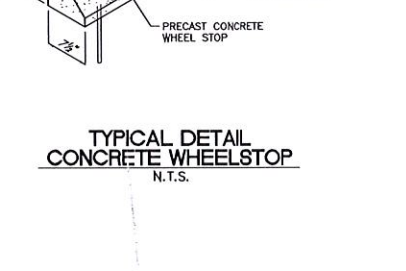
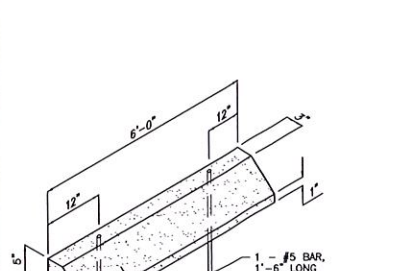
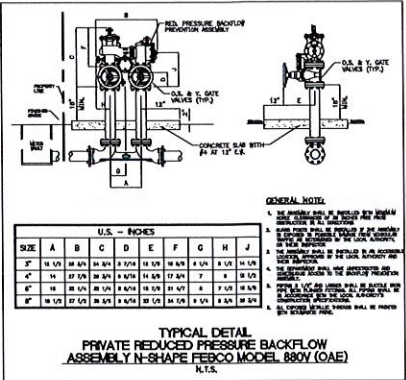
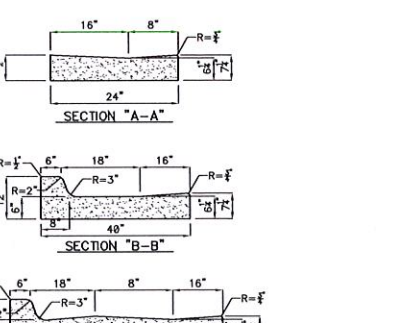
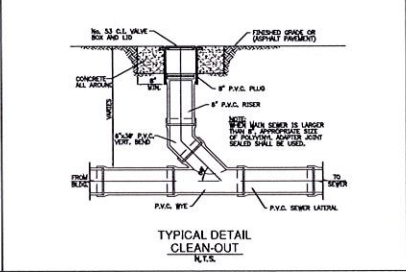
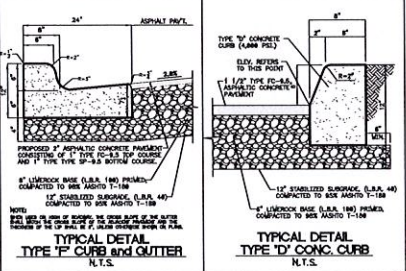
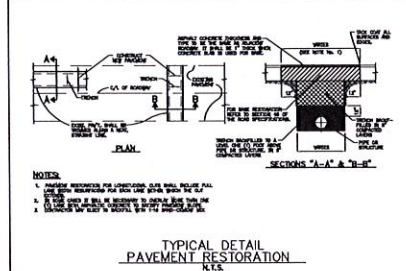
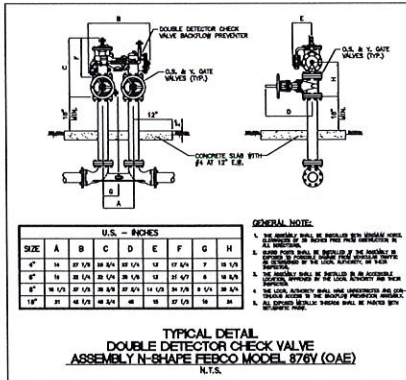
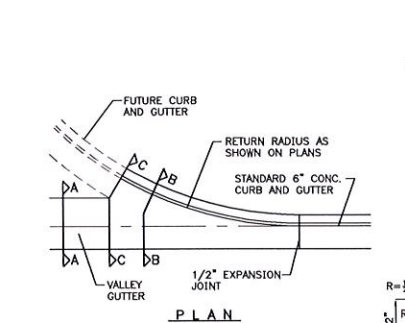
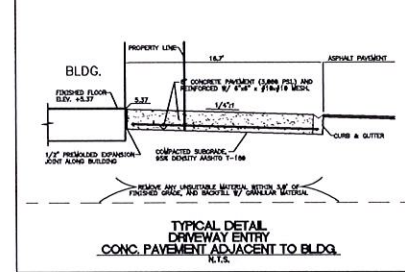
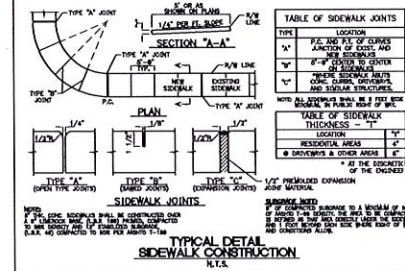
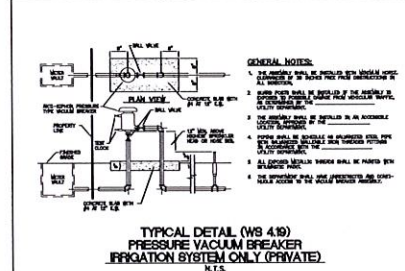
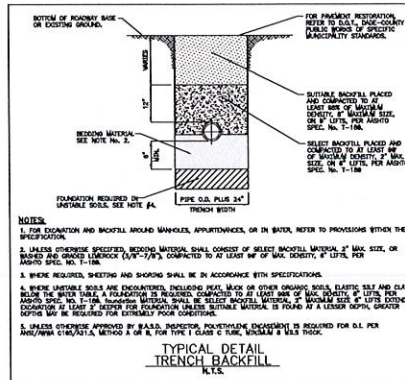
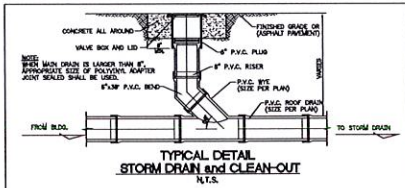
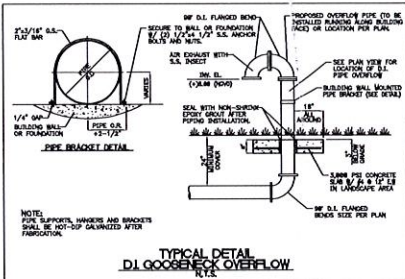
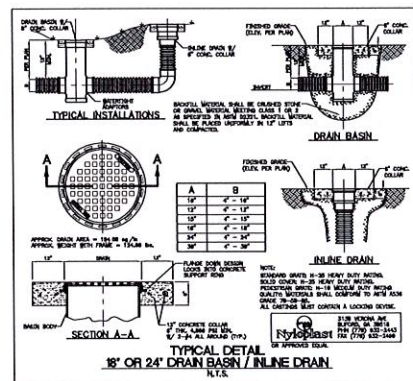
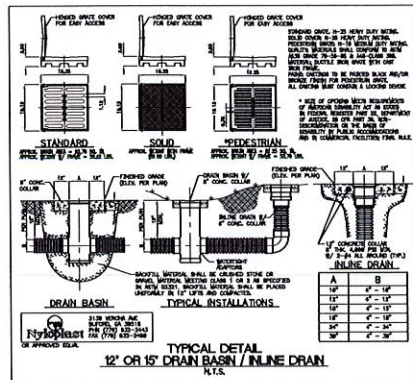
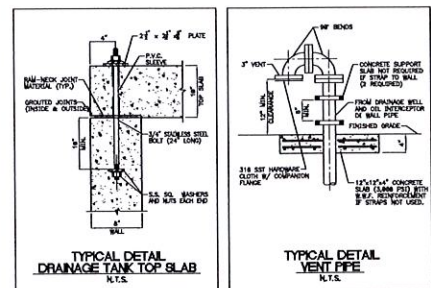
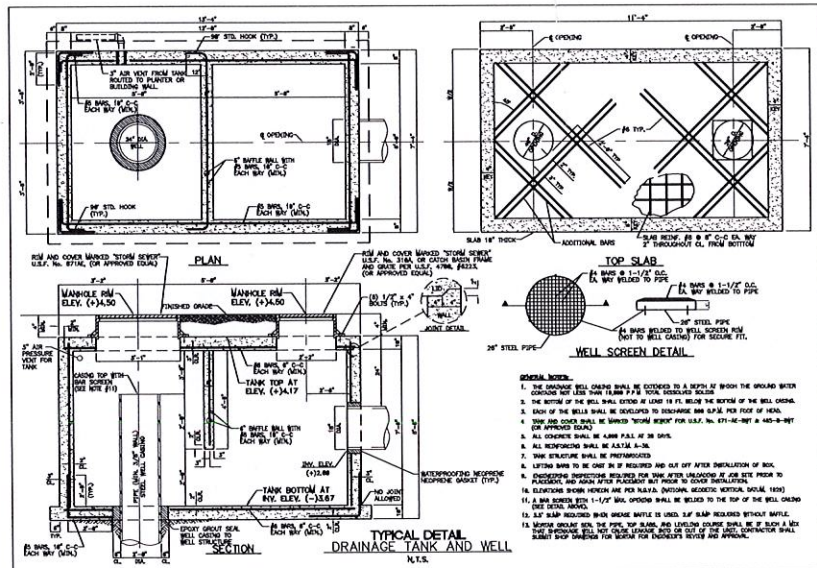
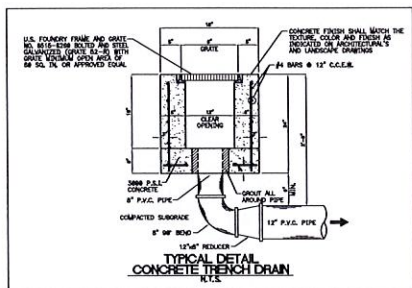
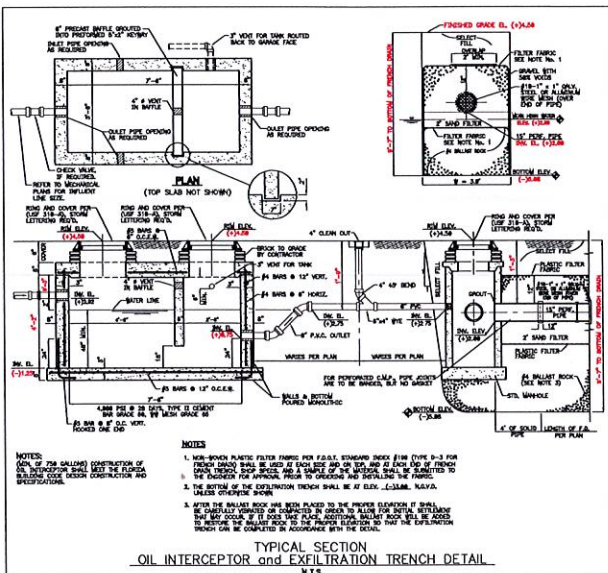


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Revised:
6/27/16 - REVISED
TO UPDATE ARCH, LS
AND LIGHTING PLANS

1609CBS 06/27/2016
C1

1. APPLICABLE CODES:
A. GENERAL:
EXCEPT AS PARTICULARLY NOTED ON THE PLANS, ALL PROPOSED CONSTRUCTION SHALL COMPLY WITH THE REQUIREMENTS OF THE TOWN OF BAY HARBOR ISLANDS, THE MIAMI-DADE COUNTY PUBLIC WORKS MANUAL, THE FLORIDA BUILDING CODE, AND THE AMERICANS WITH DISABILITIES ACT (ADA), 2010 STANDARDS, IF ANY ITEM OF WORK IS NOT COVERED IN EITHER OF THOSE SPECIFICATIONS, IT SHALL BE CONSTRUCTED PER THE FLORIDA DEPARTMENT OF TRANSPORTATION STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION.
B. CONSTRUCTION SAFETY:
1. ALL CONSTRUCTION SHALL BE DONE IN A SAFE MANNER, SPECIFICALLY, THE RULES AND REGULATIONS OF THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (O.S.H.A.) AND THE MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES (M.U.T.C.D.) SHALL BE STRICTLY OBSERVED.
2. CONTRACTOR PERFORMING UNDERGROUND WORK SHALL COMPLY WITH ANY AND ALL REQUIREMENTS OF CHAPTER 556, FLORIDA STATUTES AND THE "UNDERGROUND FACILITY DAMAGE PREVENTION AND SAFETY ACT".
C. TRENCH SAFETY ACT:
1. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR COMPLIANCE WITH THE STATE OF FLORIDA "TRENCH SAFETY ACT", AND ALL REQUIREMENTS OF O.S.H.A..
2. WHERE EXCAVATIONS TO A DEPTH IN EXCESS OF FIVE FEET (5.0') ARE REQUIRED, THE CONTRACTOR SHALL INCLUDE THE FOLLOWING INFORMATION IN THE BID.
a. A REFERENCE TO THE SAFETY STANDARDS THAT WILL BE IN EFFECT DURING THE PERIOD OF CONSTRUCTION OF THE PROJECT.
b. WRITTEN ASSURANCES BY THE CONTRACTOR PERFORMING THE TRENCH EXCAVATION THAT SUCH CONTRACTOR WILL COMPLY WITH THE APPLICABLE TRENCH SAFETY STANDARDS.
c. A SEPARATE ITEM IDENTIFYING THE COST OF COMPLIANCE WITH THE APPLICABLE TRENCH SAFETY STANDARDS.
3. WHERE A BID IS NOT SUBMITTED, THE CONTRACTOR SHALL SUBMIT THE INFORMATION LISTED IN ITEM 2, TO THE ENGINEER PRIOR TO STARTING WORK.
D. SURVEY DATA:
1. ALL ELEVATIONS ON THE PLANS OR REFERENCED IN THE SPECIFICATIONS ARE BASED ON NATIONAL GEODETIC VERTICAL DATUM OF 1929 (NGVD).
2. ALL CONSTRUCTION STAKEOUT SHALL BE PERFORMED UNDER THE SUPERVISION OF A FLORIDA REGISTERED SURVEYOR.
3. THE APPROXIMATE LOCATION OF ALL EXISTING UTILITIES SHOWN HEREON WERE DETERMINED FROM AVAILABLE "AS-BUILT" PLANS AND/OR FIELD LOCATION OF VISIBLE IMPROVEMENTS. SOME EXISTING UTILITIES MIGHT NOT BE SHOWN DUE TO THE LACK OF RECORDS AND/OR INACCESSIBILITY AND IT IS THE CONTRACTOR'S RESPONSIBILITY TO VERIFY THEIR LOCATION PRIOR TO CONSTRUCTION.
4. THE CONTRACTOR SHALL CONTACT THE DESIGN ENGINEER IF ANY ADDITIONAL DIMENSIONS OR SPECIFICATION ARE NEEDED TO LAYOUT OR CONSTRUCT THE PROJECT. UPON REQUEST, AN ELECTRONIC FILE OR GEOMETRIC CONTROL SHEET WILL BE PROVIDED TO THE CONTRACTOR BY THE ENGINEER OF RECORD.
II. PRECONSTRUCTION RESPONSIBILITY:
A. UPON RECEIPT OF NOTICE OF AWARD, THE CONTRACTOR SHALL ARRANGE A PRE CONSTRUCTION CONFERENCE TO INCLUDE THE APPROPRIATE PERMITTING AGENCIES, THE OWNER, AND THE ENGINEER OF RECORD. AFTER OBTAINING A CONSTRUCTION PERMIT FROM THE APPROPRIATE PERMITTING AGENCY.
B. THE CONTRACTOR SHALL OBTAIN A "SUNSHINE CERTIFICATION NUMBER" AT LEAST 48 HOURS PRIOR TO BEGINNING ANY EXCAVATION.
C. PRIOR TO BEGINNING CONSTRUCTION, THE CONTRACTOR SHALL VERIFY THE SIZE, LOCATION, ELEVATION, MATERIAL, AND CONDITION OF ALL EXISTING UTILITIES WITHIN THE AREA OF CONSTRUCTION.
D. IF UPON EXCAVATION, AN EXISTING UTILITY IS FOUND TO BE IN CONFLICT WITH THE PROPOSED CONSTRUCTION OR TO BE OF A SIZE OR MATERIAL DIFFERENT FROM THAT SHOWN ON THE PLANS, THE CONTRACTOR SHALL IMMEDIATELY NOTIFY THE ENGINEER OF RECORD.
E. CONTRACTOR SHALL UNCOVER ALL UNDERGROUND UTILITIES IN THE PATH OF THE WORK, WHETHER OR NOT THE UTILITIES ARE SHOWN ON THE PLANS, AND TAKE VERTICAL AND HORIZONTAL MEASUREMENTS OF THE LOCATION OF THESE UTILITIES, AND IF ANY CONFLICTS ARE APPARENT, REPORT THE MEASUREMENTS TO THE ENGINEER OF RECORD.
F. CONTRACTOR SHALL CONTACT THE ENGINEER OF RECORD TO RESOLVE CONFLICTS BETWEEN DESIGN AND EXISTING FEATURES.
G. THE CONTRACTOR SHALL BE RESPONSIBLE FOR DAMAGE TO ANY EXISTING UTILITIES FOR WHICH HE FAILS TO REQUEST LOCATIONS SUNSHINE CERTIFICATION NUMBER. HE IS RESPONSIBLE AS WELL FOR DAMAGE TO ANY EXISTING UTILITIES WHICH ARE PROPERLY LOCATED.
H. ALL EXISTING IMPROVEMENTS THAT ARE TO BE DEMOLISHED MUST BE REMOVED AND DISPOSED OF BY THE CONTRACTOR.
I. CONTRACTOR SHALL COORDINATE SEQUENCE OF UTILITY CONSTRUCTION TO PREVENT UNDERMINING THE EXISTING AND PROPOSED BUILDING FOUNDATIONS.
III. SHOP DRAWING NOTES:
A. SHOP DRAWINGS SHALL BE CHECKED AND APPROVED FIRST BY THE CONTRACTOR AND THEN ONE COPY SUBMITTED TO THE ENGINEER OF RECORD FOR REVIEW AND APPROVAL PRIOR TO THE PURCHASE OR INSTALLATION OF ANY SYSTEM COMPONENTS.
B. ANY SYSTEM COMPONENT THAT IS ADDED DURING CONSTRUCTION MUST BE APPROVED IN ADVANCE BY THE ENGINEER OF RECORD. SUCH APPROVAL REQUIRES THE SUBMISSION OF A SHOP DRAWING (ONE COPY ONLY) FOR EACH SYSTEM COMPONENT. SHOP DRAWINGS WILL ALSO BE REQUIRED FOR ALL NON-STANDARD ITEMS.
C. INDIVIDUAL SHOP DRAWINGS FOR ALL PRECAST CONCRETE STRUCTURES ARE REQUIRED. CATALOGUE LITERATURE WILL NOT BE ACCEPTED FOR PRECAST STRUCTURES.
IV. TEMPORARY FACILITIES:
A. TEMPORARY UTILITIES:
1. IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO ARRANGE FOR OR SUPPLY TEMPORARY WATER SERVICE, SANITARY FACILITIES AND ELECTRICITY TO HIS EMPLOYEE AND SUBCONTRACTORS FOR THEIR USE DURING CONSTRUCTION.
2. OBTAIN CONSTRUCTION METER FOR ALL WATER USED ON JOB. ALL WATER USED FOR CLEANING, TESTING, ETC. WILL BE PAID FOR BY THE CONTRACTOR. IF WATER CAN NOT BE METERED THEN IT WILL BE CALCULATED.
B. TRAFFIC REGULATION:
1. MAINTENANCE OF TRAFFIC IN THE PUBLIC RIGHT-OF-WAY SHALL BE IN ACCORDANCE WITH THE M.U.T.C.D. AND F.D.O.T.
2. ALL OPEN TRENCHES AND HOLES ADJACENT TO ROADWAYS OR WALKWAYS SHALL BE MARKED AND BARRICADED TO ASSURE THE SAFETY OF BOTH VEHICULAR AND PEDESTRIAN TRAFFIC.
3. NO TRENCHES OR HOLES NEAR WALKWAYS OR IN ROADWAYS OR THEIR SHOULDERS ARE TO BE LEFT OPEN DURING NIGHTTIME HOURS WITHOUT EXPRESS PERMISSION OF THE PERMITTING AGENCIES.
V. PROJECT CLOSE OUT:
A. GENERAL:
1. CERTIFICATION OF COMPLETION OF PROJECT IN ACCORDANCE WITH PLANS AND SPECIFICATIONS WILL "NOT" BE ISSUED BY THE ENGINEER OF RECORD TO THE APPROPRIATE APPROVAL AND PERMITTING AGENCIES UNTIL ALL THE REQUIREMENTS DESCRIBED HEREIN HAVE BEEN MET.
B. CLEANING UP:
1. DURING CONSTRUCTION, THE PROJECT SITE AND ALL ADJACENT AREAS SHALL BE MAINTAINED IN A NEAT AND CLEAN MANNER. UPON FINAL CLEAN UP, THE PROJECT SITE SHALL BE LEFT CLEAR OF ALL SURPLUS MATERIAL OR TRASH. THE PAVED AREAS SHALL BE SWEPT BROOM CLEAN.
2. THE CONTRACTOR SHALL RESTORE OR REPLACE ANY PUBLIC OR PRIVATE PROPERTY DAMAGED BY HIS WORK. EQUIPMENT, EMPLOYEES OR THOSE OF HIS SUBCONTRACTORS TO A CONDITION AT LEAST EQUAL TO THAT EXISTING IMMEDIATELY PRIOR TO THE BEGINNING OF OPERATIONS. TO THIS END, THE CONTRACTOR SHALL DO AS REQUIRED, ALL NECESSARY HIGHWAY OR DRIVEWAY, SIDEWALK AND LANDSCAPING WORK. SUITABLE MATERIALS AND METHODS SHALL BE USED FOR SUCH RESTORATION.
3. WHERE MATERIAL OR DEBRIS HAS WASHED OR FLOWED INTO OR BEEN PLACED IN WATER COURSES, DITCHES, DRAINS, CATCH BASINS, OR ELSEWHERE AS A RESULT OF THE CONTRACTOR'S OPERATIONS, SUCH MATERIAL OR DEBRIS SHALL BE REMOVED AND SATISFACTORILY DISPOSED OF DURING PROGRESS OF THE WORK, AND THE AREA KEPT IN A CLEAN AND NEAT CONDITION.
4. WHEN WORKING IN AND AROUND EXISTING DRAINAGE CANALS, APPROPRIATE SILT BARRIERS SHALL BE INSTALLED AS REQUIRED BY THE APPROPRIATE PERMITTING AGENCIES.
C. PROJECT RECORD DOCUMENTS:
1. UPON COMPLETION OF CONSTRUCTION, THE CONTRACTOR SHALL PROVIDE THE ENGINEER OF RECORD WITH A SET OF FINAL "AS-BUILT" DRAWINGS, SIGNED AND SEALED BY A STATE OF FLORIDA LICENSED SURVEYOR, FOR ENGINEER'S REVIEW AND FILE.
2. THE CONTRACTOR SHALL MAINTAIN ACCURATE AND COMPLETE RECORDS OF ALL WORK ITEMS COMPLETED.
3. ALL "AS-BUILT" INFORMATION SUBMITTED TO THE ENGINEER SHALL BE SUFFICIENTLY ACCURATE, CLEAR AND LEGIBLE TO SATISFY THE ENGINEER OF RECORD THAT THE INFORMATION PROVIDES A TRUE REPRESENTATION OF THE IMPROVEMENTS CONSTRUCTED.
4. PRIOR TO PLACEMENT OF ANY ASPHALT OR CONCRETE PAVEMENT, THE CONTRACTOR SHALL SUBMIT TO THE ENGINEER OF RECORD "AS-BUILT" PLANS SHOWING LIMEROCK BASE GRADES AND ALL DRAINAGE, WATER, AND SEWER IMPROVEMENTS. PAVING OPERATIONS SHALL NOT COMMENCE UNTIL THE ENGINEER OF RECORD AND THE APPROPRIATE PERMITTING AGENCIES HAVE REVIEWED AND APPROVED THE "AS-BUILTS".
5. ALL REQUIRED DENSITY AND L.B.R. TEST RESULTS FOR SUBGRADE SHALL BE PROVIDED TO AND APPROVED BY THE ENGINEER OF RECORD AND THE PERMITTING AGENCIES PRIOR TO PLACING THE LIMEROCK BASE MATERIAL.
6. ALL REQUIRED DENSITY AND L.B.R. TEST RESULTS FOR LIMEROCK SHALL BE PROVIDED TO AND APPROVED BY THE ENGINEER OF RECORD AND THE PERMITTING AGENCIES PRIOR TO PLACING ASPHALT.
VI. EARTHWORK AND COMPACTION NOTES:
A. GENERAL:
1. QUALITY CONTROL TESTING FOR STABILIZATION, BASE, PAVEMENT, COMPACTION, AND MATERIALS SHALL BE IN ACCORDANCE WITH FLORIDA D.O.T. REQUIREMENTS, AND SHALL BE ARRANGED FOR AND PAID FOR BY THE CONTRACTOR. COPIES OF ALL TEST REPORTS SHALL BE PROVIDED TO THE ENGINEER OF RECORD AS THEY ARE RECEIVED.
2. EXISTING ON-SITE BASE MATERIAL SHALL NOT BE REUSED FOR BASE CONSTRUCTION, BUT MAY BE USED FOR BACKFILL AROUND UTILITY AND DRAINAGE LINES, AND FOR SUBGRADE CONSTRUCTION, AND FOR GENERAL FILL IF NECESSARY.
3. ALL SUBGRADE UNDER PAVED AREAS SHALL HAVE A MINIMUM L.B.R. VALUE OF 40 AND SHALL BE COMPACTED TO 95% OF THE MAXIMUM DENSITY AS DETERMINED BY AASHTO T-180.
4. ALL SUBGRADE UNDER SIDEWALK AREAS SHALL HAVE A MINIMUM OF 6" COMPACTED SUBGRADE TO 95% OF THE MAXIMUM DENSITY AS DETERMINED BY AASHTO T-99.
5. ALL FILL MATERIAL IN AREAS NOT TO BE PAVED SHALL BE COMPACTED TO 90% OF THE MAXIMUM DENSITY AS DETERMINED BY AASHTO T-180.
6. A 2" BLANKET OF TOP SOIL SHALL BE PLACED OVER ALL AREAS TO BE SOODED.
7. SOD SHALL BE INSTALLED AND SPECIFIED AS SHOWN IN THE LANDSCAPED PLANS.
8. WHEN WORKING IN AND AROUND EXISTING DRAINAGE CANALS OR LAKES, APPROPRIATE SILT BARRIERS SHALL BE INSTALLED.
9. NO MUCK BLANKET IS TO BE PLACED ON THE BOTTOM OF RETENTION AREAS OR SWALES.
B. ON-SITE:
1. ALL ORGANIC AND OTHER UNSUITABLE MATERIAL WITHIN THREE (3) FEET OF FINISHED GRADE AREAS TO BE PAVED SHALL BE REMOVED.
2. SUITABLE BACKFILL SHALL BE MINIMUM L.B.R. 40 MATERIAL COMPACTED TO 95% OF THE MAXIMUM DENSITY AS DETERMINED BY AASHTO T-180 FOR THREE (3) FEET BEYOND THE PERIMETER OF THE PAVING.
3. EROSION CONTROL TO BE PROVIDED BY THE CONTRACTOR PER DETAILS ON THE PLANS.
VII. STORM DRAINAGE NOTES:
A. GENERAL:
1. EXISTING STORM DRAINAGE GRATES AND FRAMES AND MANHOLE COVERS AND RINGS THAT ARE TO BE REMOVED OR ADJUSTED, MAY BE REUSED ON THE SITE.
2. THE EXISTING DRAINAGE SYSTEM SHALL BE CLEANED AND/OR GRADED TO ENSURE PROPER FLOW AND FUNCTION.
3. THE CONTRACTOR SHALL INSTALL FILTER CLOTH AT ALL CATCH BASIN GRATES UNTIL FINAL ACCEPTANCE OF THE STORM DRAINAGE SYSTEM.
B. CONTRACTOR MAY UTILIZE ONE OF THE FOLLOWING MATERIALS, UNLESS OTHERWISE NOTED ON THE PLANS.
1. HIGH DENSITY POLYETHYLENE PIPE (H.D.P.E.)
a. PIPE SHALL BE CORRUGATED SMOOTH BORE POLYETHYLENE PIPE (N-12 PRO LINK ULTRA) OR APPROVED EQUAL, MANUFACTURED IN CONFORMANCE WITH ASTM M234.
b. PIPE SHALL HAVE BUILT-IN BELL JOINT WITH RUBBER GASKET IN CONFORMANCE WITH ASTM F477.
c. PIPE COUPLING BANDS IF NEEDED SHALL BE SPLIT/SPLIT PREMIUM REQUIREING MAXIMUM PULL-APART RESISTANT.
2. CORRUGATED ALUMINUM PIPE (CAP):
a. ALUMINUM PIPE SHALL CONFORM TO AASHTO M196 FOR CIRCULAR CORRUGATED PIPE OF AASHTO M211 FOR HELICALLY CORRUGATED PIPE, AND SECTION 945, AS PER FOOT STANDARD SPECIFICATIONS.
b. MAKE FIELD JOINTS IN (CAP) WITH BANDS FABRICATED OF THE SAME ALLOY AS THE CULVERT PIPE AND CONFORMING TO THE REQUIREMENTS OF AASHTO M196.
c. GASKET THE Banded JOINTS WITH A NEOPRENE GASKET OF THE DESIGN INDICATED TO SECURE A SOIL-TIGHT OR WATERTIGHT JOINT.
3. POLYVINYL CHLORIDE PIPE (PVC):
a. PLASTIC PIPE SHALL CONFORM WITH ASTM D 3034, TYPE PSM, POLYVINYL CHLORIDE (PVC) MATERIAL; BELL AND SPIGOT STYLE SOLVENT SEALED END JOINTS.
4. REINFORCED CONCRETE PIPE (RCP):
a. CONCRETE PIPE FOR STORM SEWERS SHALL CONFORM TO ASTM C 76, CLASS III WITH WALL TYPE A; BAR REINFORCEMENT.
b. ALL REINFORCED CONCRETE PIPES SHALL HAVE BELL AND SPIGOT END JOINTS, AS MODIFIED BY SECTION 941, FOOT STANDARD SPECIFICATIONS.
c. ALL REINFORCED CONCRETE PIPES SHALL HAVE RUBBER COMPRESSION GASKET JOINTS AS PER ASTM C443, UNLESS OTHERWISE SPECIFIED.
C. MISCELLANEOUS:
1. BEDDING AND INITIAL BACKFILL OVER DRAINAGE PIPES (EXCEPT FRENCH DRAINS) SHALL BE SAND WITH NO ROCK LARGER THAN 2" DIAMETER.
2. BACKFILL MATERIAL UNDER PAVED AREAS SHALL BE COMPACTED TO 95% OF THE MAXIMUM DENSITY AS DETERMINED BY AASHTO T-180.
3. BACKFILL MATERIAL UNDER AREAS NOT TO BE PAVED SHALL BE COMPACTED TO 90% OF THE MAXIMUM DENSITY AS DETERMINED BY AASHTO T-180.
4. CATCH BASINS SHALL BE PRECAST MINIMUM 3000 PSI CONCRETE WITH REINFORCED STEEL PER ASTM A615.
D. INSTALLATION:
1. PIPE SHALL BE PLACED ON STABLE GRANULAR MATERIAL FREE OF ROCK FORMATION OTHER FOREIGN FORMATIONS, AND CONSTRUCTED TO UNIFORM GRADE AND LINE.
2. BACKFILL MATERIAL SHALL BE WELL GRADED GRANULAR MATERIAL WELL TAMPED IN LAYERS NOT TO EXCEED SIX INCHES (6").
3. PROVIDE A MINIMUM PROTECTIVE COVER OF 24 INCHES OVER STORM SEWER, CROSSING BY HEAVY CONSTRUCTION VEHICLES DURING CONSTRUCTION SHALL NOT BE ALLOWED WITH LESS THAN 24 INCHES OF COVER.
4. THE CONTRACTOR SHALL NOTIFY THE LOCAL WATER MANAGEMENT DISTRICT AT LEAST 24 HOURS PRIOR TO THE START OF THE CONSTRUCTION AND INSPECTION.
VIII. STORM DRAINAGE PRE-TREATMENT/EXFILTRATION SYSTEM:
A. ANY CONFLICT WITH EXISTING OR PROPOSED UTILITIES SHALL IMMEDIATELY BE BROUGHT TO THE ATTENTION OF THE ENGINEER OF RECORD. ANY IMPERMEABLE MATERIAL ENCOUNTERED IN THE EXCAVATION FOR THE DRAIN FIELD SHALL BE REMOVED AS DIRECTED BY THE ENGINEER OF RECORD.
B. THE TRENCH LNER SHALL BE NON-WOVEN TYPE D-3 PER F.D.O.T. INDEX 199, OR APPROVED EQUAL. IT SHALL BE USED ON THE SIDES AND TOP OF DRAIN FIELD DITCH. THE TOP SECTION OF THE MATERIAL SHALL BE LAPPED A MINIMUM OF 24 INCHES AND THE CONTRACTOR SHALL TAKE EXTREME CARE IN BACKFILLING TO AVOID BRIDGING OF THE FABRIC.
C. PERFORATED PIPE WITHIN THE DRAIN FIELD SHALL HAVE 3/8 INCH PERFORATIONS 360° AROUND THE PIPE WITH APPROXIMATELY 120 PERFORATIONS PER FOOT OF PIPE.
D. PERFORATED PIPE SHALL TERMINATE FIVE FEET (5.0') FROM THE DRAINAGE STRUCTURE. THE REMAINING FIVE FEET (5.0') SHALL BE NON-PERFORATED PIPE.
E. PIPES SHALL TERMINATE TWO FEET (2.0') FROM THE END OF THE TRENCH OR CONNECT TO ADDITIONAL CATCH BASINS.
IX. PAVING NOTES:
A. GENERAL:
1. ALL UNDERGROUND FACILITIES, INCLUDING WATER, SEWER, STORM DRAINAGE, SLEEVES AND PUBLIC UTILITIES, AND IRRIGATION LINES SHALL BE INSTALLED PRIOR TO COMPACTION OF ROAD SUBGRADE AND INSTALLATION OF BASE MATERIAL.
2. ALL EXISTING PAVEMENT CUT OR DAMAGED BY CONSTRUCTION SHALL BE PROPERLY RESTORED AT THE CONTRACTOR'S EXPENSE.
3. WHERE PROPOSED PAVEMENT IS TO BE CONNECTED TO EXISTING PAVEMENT, THE EXISTING EDGE OF PAVEMENT SHALL BE SAW CUT.
4. EXISTING ASPHALT PAVEMENT THAT IS TO BE REMOVED SHALL BE TRUCKED OFF SITE BY THE CONTRACTOR FOR DISPOSAL AT AN APPROVED LOCATION.
5. ALL ACCESSIBLE ROUTES CANNOT EXCEED A RUNNING SLOPE OF 1:20 (5%) AND CURB CUT RAMPS AND RAMPS CANNOT EXCEED A RUNNING SLOPE OF 1:12 (8.33%). RAMPS THAT EXCEED 6" IN RISE REQUIRES HANDRAILS. ALL CROSS SLOPES CANNOT EXCEED A SLOPE 1:50 (2%).
B. MATERIALS:
1. BASE COURSE SHALL BE CRUSHED LIMEROCK MIAMI OOLITE WITH A MINIMUM OF 70% CARBONATES OF CALCIUM AND MAGNESIUM (60% FOR LOCAL STREETS AND PARKING AREAS) AND A MINIMUM LIMEROCK BEARING RATIO 100.
2. ALL LIMEROCK BASE UNDER PAVED AREAS SHALL HAVE A MINIMUM L.B.R. VALUE OF 100, AND SHALL BE COMPACTED TO 95% OF THE MAXIMUM DENSITY AS DETERMINED BY AASHTO T-180.
3. PRIME COAT AND TACK COAT SHALL MEET F.D.O.T. STANDARDS.
4. SURFACE COURSE SHALL BE EQUAL TO F.D.O.T. FC-95 ASPHALT.
5. REINFORCED CONCRETE SLABS SHALL BE CONSTRUCTED OF CLASS I CONCRETE WITH A MINIMUM STRENGTH OF 3000 PSI AND SHALL BE REINFORCED WITH A 6" x 6" NO. 10 GAUGE WIRE MESH, OR AS SHOWN ON THE PLANS.
C. INSTALLATION:
1. LIMEROCK BASE MATERIAL SHALL BE IN THE COMPACTION THICKNESS SHOWN ON THE PLANS AND SHALL BE COMPACTED TO 98% OF THE MAXIMUM DENSITY AS DETERMINED BY AASHTO T-180.
2. LIMEROCK BASE MATERIAL SHALL BE PLACED IN MAXIMUM 6" LIFTS. BASES GREATER THAN 6" SHALL BE PLACED IN TWO OR MORE EQUAL LIFTS.
3. ASPHALIC CONCRETE PAVEMENT SHALL BE IN THE THICKNESS SHOWN ON THE PLANS.
4. PRIME COAT SHALL BE PLACED ON ALL LIMEROCK BASES IN ACCORDANCE WITH F.D.O.T. STANDARDS.
5. TACK COAT SHALL BE PLACED AS REQUIRED IN ACCORDANCE WITH F.D.O.T. STANDARDS.
D. TESTING:
1. ALL SUBGRADE, LIMEROCK AND ASPHALT TESTS REQUIRED SHALL BE TAKEN AT THE DIRECTION OF THE ENGINEER OF RECORD AND/OR THE PERMITTING AGENCY.
2. THE FINISHED SURFACE OF THE BASE COURSE AND THAT OF THE WEARING SURFACE SHALL NOT VARY MORE THAN 1/4" FROM THE TEMPLATE. ANY IRREGULARITIES EXCEEDING THIS LIMIT SHALL BE CORRECTED.
3. DENSITY TESTS SHALL BE TAKEN BY AN INDEPENDENT TESTING LABORATORY, CERTIFIED BY THE STATE OF FLORIDA, AND TAKEN AS DIRECTED BY THE ENGINEER OF RECORD AND THE PERMITTING AGENCY.
4. ALL TESTING COSTS SHALL BE PAID FOR BY THE CONTRACTOR.
X. INSPECTION NOTES:
A. THE CONTRACTOR SHALL NOTIFY THE ENGINEER OF RECORD, AT LEAST 24 HOURS PRIOR TO THE INSPECTION OF THE FOLLOWING ITEMS:
1. STORM DRAINAGE.
2. SANITARY SEWER.
3. WATER SYSTEM.
4. SUBGRADE; SUBMIT AND HAVE APPROVED DENSITIES PRIOR TO PLACEMENT OF ROCK.
5. LIMEROCK BASE; SUBMIT AND HAVE APPROVED DENSITIES AND AS-BUILTS PRIOR TO THE PLACEMENT OF ANY ASPHALT.
6. ASPHALIC CONCRETE.
7. FINIAL.
X. SIGNING AND MARKING NOTES:
A. ALL PAVEMENT MARKINGS AND SIGNS SHALL COMPLY WITH THE "MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES", THE STANDARD SPECIFICATIONS OF THE FLORIDA DEPARTMENT OF TRANSPORTATION, AND THE MIAMI-DADE COUNTY PUBLIC WORKS MANUAL.
B. ALL OFF-SITE MARKINGS TO BE THERMOPLASTIC PER FLORIDA DEPARTMENT OF TRANSPORTATION SPECIFICATIONS, AND ALL ON-SITE MARKINGS SHALL BE TRAFFIC PAINT PER MIAMI-DADE COUNTY PUBLIC WORKS DEPARTMENT SPECIFICATIONS, UNLESS OTHERWISE NOTED.
C. INSTALL REFLECTIVE PAVEMENT MARKERS PER F.D.O.T. STANDARDS, OR AS SHOWN ON THE PLANS.
D. ALL SIGNS SHALL BE HIGH-INTENSITY GRADE REFLECTIVE SHEETING, MOUNTED ON A BREAK AWAY POST ASSEMBLY PER F.D.O.T. SPECIFICATION.
E. CONTRACTOR SHALL BE RESPONSIBLE FOR THE REMOVAL OF ALL PAVEMENT MARKINGS AND SIGNS CONFLICTING WITH THE PROPOSED ROADWAY CONSTRUCTION.
F. CONTRACTOR SHALL BE RESPONSIBLE FOR THE INSTALLATION OF ALL PAVEMENT MARKINGS AND SIGNS AS SHOWN IN THE PLANS AND APPLICABLE TRAFFIC DESIGN STANDARDS.
G. CONTRACTOR SHALL BE RESPONSIBLE FOR WATCHING EXISTING PAVEMENT MARKINGS AT THE BEGINNING AND AT THE END OF THE PROJECT.
H. SIGN ASSEMBLY LOCATIONS SHOWN IN THE PLANS WHICH ARE IN CONFLICT WITH STREET LIGHTING FIXTURES, DRIVEWAYS, PEDESTRIAN RAMPS ETC. MAY BE ADJUSTED AS DIRECTED BY THE ENGINEER OF RECORD AND/OR APPROVAL AGENCIES' INSPECTOR.
REGULATORY AND ECONOMIC RESOURCES REF NOTES ON WATER-SEWER INSTALLATION
1. A PREFERRED HORIZONTAL DISTANCE (OUTSIDE TO OUTSIDE) OF 10 FEET OR MINIMUM OF 6 FEET SHALL BE MAINTAINED BETWEEN GRAVITY OR PRESSURE SEWER PIPES AND WATER MAINS. THE HORIZONTAL SEPARATION CAN BE REDUCED TO A MINIMUM OF 3 FEET ONLY FOR GRAVITY SEWER PIPES WHERE THE BOTTOM OF THE WATER MAIN IS LAID AT LEAST 6 INCHES ABOVE THE TOP OF THE GRAVITY SANITARY SEWER. WHEN THE ABOVE SPECIFIED HORIZONTAL DISTANCE CRITERIA CANNOT BE MET DUE TO AN EXISTING UNDERGROUND FACILITY CONFLICT, SMALLER SEPARATIONS ARE ALLOWED IF:
a. THE SEWER PIPES ARE DESIGNED AND CONSTRUCTED EQUAL TO THE WATER PIPE AND PRESSURE TESTED AT 150 PSI.
b. THE SEWER IS ENCASED IN A WATERTIGHT CARRIER PIPE OR CONCRETE.
c. THE TOP OF THE SEWER IS AT LEAST 18 INCHES BELOW THE BOTTOM OF THE WATER PIPE.
2. A VERTICAL DISTANCE OF AT LEAST 12 INCHES (OUTSIDE TO OUTSIDE) SHALL BE MAINTAINED BETWEEN ANY WATER AND SEWER MAINS WITH SEWER PIPES PREFERABLY CROSSING UNDER WATER MAINS. THE MINIMUM VERTICAL SEPARATION CAN BE REDUCED TO 6 INCHES FOR GRAVITY SEWERS WHERE THE SEWER PIPE IS CROSSING BELOW THE WATER MAIN. THE CROSSING SHALL BE ARRANGED SO THAT ALL WATER MAIN JOINTS ARE AT LEAST 6 FEET FROM ALL JOINTS IN GRAVITY AND PRESSURE SEWER PIPES. WHEN THE ABOVE SPECIFIED VERTICAL DISTANCE CRITERIA CANNOT BE MET DUE TO AN EXISTING UNDERGROUND FACILITY CONFLICT, SMALLER SEPARATIONS ARE ALLOWED IF:
a. THE SEWER PIPES ARE DESIGNED AND CONSTRUCTED EQUAL TO THE WATER PIPE AND PRESSURE TESTED AT 150 PSI.
b. THE SEWER IS ENCASED IN A WATERTIGHT CARRIER PIPE OR CONCRETE.
3. THE CONTRACTOR SHALL VERIFY NATURE, DEPTH, AND CHARACTER OF EXISTING UNDERGROUND UTILITIES PRIOR TO START OF CONSTRUCTION.
4. ALL OTHER PUBLIC OR PRIVATE UTILITY FACILITIES SHALL BE CONSTRUCTED AT LEAST 5 FEET FROM ANY WATER AND SEWER MAIN AS MEASURED FROM THE OUTSIDE BELL OF THE WATER OF THE UTILITY PIPE.
5. WHEN THE 5 FEET SEPARATION BETWEEN PROPOSED AND EXISTING LINE IS NOT POSSIBLE, THE CONTRACTOR SHALL HAND DIG OR EXPOSE THE WATER AND SEWER PIPES BEFORE PROCEEDING WITH POWER EQUIPMENT EXCAVATION.
6. IN NO CASE SHALL A CONTRACTOR INSTALL UTILITY PIPES, CONDUITS, CABLES, ETC. IN THE SAME TRENCH PARALLEL AND ABOVE AN EXISTING WATER OR SEWER PIPE EXCEPT WHERE THEY CROSS. ANY DEVIATION FROM NOTES 3, 4 AND 5 SHALL BE APPROVED IN WRITING BY THE RESPONSIBLE WATER AND SEWER UTILITY.
7. IN HIGHLY CONGESTED AREAS, WHERE EITHER WATER OR SEWER FACILITIES ARE EXISTING OR THE SEPARATION REQUIREMENTS CANNOT BE MET, SPECIAL CONSIDERATION MAY BE GIVEN SUBJECT TO SUBMITTAL OF DOCUMENTATION SHOWING THAT THE PROPOSED ALTERNATIVE WILL RESULT IN AN EQUIVALENT LEVEL OF RELIABILITY AND PUBLIC HEALTH PROTECTION.
8. GRAVITY SANITARY SEWERS CONSTRUCTED WITHIN A PUBLIC WELLFIELD PROTECTION AREA SHALL BE PVC-900 OR DUCTILE IRON PIPE. THE MAXIMUM ALLOWABLE EXFILTRATION, INFILTRATION, OR LEAKAGE FOR GRAVITY SANITARY SEWERS CONSTRUCTED WITHIN A PUBLIC WELLFIELD PROTECTION AREA SHALL BE FIFTY (50) GALLONS PER INCH PIPE DIAMETER PER MILE PER DAY FOR RESIDENTIAL LAND USE AND TWENTY (20) GALLONS PER INCH PIPE DIAMETER PER MILE PER DAY FOR NON-RESIDENTIAL LAND USE WITH NO ALLOWANCES FOR MANHOLES OR LATERALS. THE MAXIMUM ALLOWABLE EXFILTRATION, INFILTRATION, OR LEAKAGE FOR GRAVITY SANITARY SEWERS CONSTRUCTED WITHIN A PUBLIC WELLFIELD PROTECTION AREA SHALL BE ONE HUNDRED (100) GALLONS PER INCH PIPE DIAMETER PER MILE PER DAY. THE DURATION OF ALL TESTS SHALL BE A MINIMUM OF TWO (2) HOURS. ANY OBSERVED LEAKS OR ANY OBVIOUSLY DEFECTIVE JOINTS OR PIPES SHALL BE REPLACED EVEN WHEN WHEN THE TOTAL LEAKAGE IS BELOW THAT ALLOWED.
9. FORCE MAIN SEWERS CONSTRUCTED IN A PUBLIC WELLFIELD PROTECTION AREA SHALL BE EITHER DUCTILE IRON OR REINFORCED CONCRETE PRESSURE SEWER PIPES.
a. FOR DUCTILE IRON PIPE EXFILTRATION RATE SHALL NOT BE GREATER THAN THE ALLOWABLE LEAKAGE RATE SPECIFIED IN THE AWWA C600-82 AT A TEST PRESSURE OF 100 PSI.
b. FOR REINFORCED CONCRETE PRESSURE SANITARY SEWER EXFILTRATION RATE SHALL NOT BE GREATER THAN HALF (1/2) THE ALLOWABLE LEAKAGE RATE SPECIFIED IN AWWA C600-82 AT A TEST PRESSURE OF 100 PSI.
10. A NON-RESETTABLE ELAPSED TIME METER SHALL BE INSTALLED AT EACH PUMP TO RECORD THE TOTAL NUMBER OF OPERATING HOURS OF THE STATION.
ENGINEER'S NOTES:
1. THE WATER AND/OR SEWER SYSTEMS SHALL BE INSTALLED IN ACCORDANCE WITH THE PUBLISHED AND CURRENT STANDARDS OF THE MIAMI-DADE WATER AND SEWER DEPARTMENT AND UNDER THE INSPECTION OF THEIR PERSONNEL.
2. THE APPROXIMATE LOCATION OF ALL UTILITIES SHOWN HEREON WERE DETERMINED FROM "AS-BUILT" PLANS AND/OR FIELD LOCATION AND MUST BE FIELD VERIFIED BY THE CONTRACTOR PRIOR TO ANY EXCAVATION.
3. CONTRACTOR TO VERIFY LOCATION, ELEVATION, MATERIAL AND CONDITION OF ALL EXISTING UTILITIES PRIOR TO THE START OF CONSTRUCTION. AFTER OBTAINING LOCATION FROM SURVEYOR AND OTHER UTILITY COMPANIES, AND PRIOR TO THE START OF CONSTRUCTION, CONTRACTOR SHALL UNCOVER ALL KNOWN UNDERGROUND UTILITIES IN THE PATH OF THE WORK, WHETHER OR NOT THE UTILITIES ARE SHOWN ON THE PLANS AND SHALL TAKE VERTICAL AND HORIZONTAL MEASUREMENTS OF THE LOCATIONS OF THESE UTILITIES, AND IF ANY CONFLICTS ARE APPARENT, REPORT THE MEASUREMENTS TO THE ENGINEER-OF-RECORD.
4. CONTRACTOR TO CONTACT ENGINEER-OF-RECORD IF EXISTING UTILITIES ARE NOT SHOWN ON THE PLANS.
5. ALL LANDSCAPING AND IRRIGATION DISTURBED SHALL BE REPLACED WITH LIKE KIND.
6. CONTRACTOR SHALL COMPLY WITH THE REQUIREMENTS OF THE " TRENCH SAFETY ACT", AND ALL REQUIREMENTS OF O.S.H.A.
7. ALL BRANCH VALVES ARE TO BE TIED TO TEES.
8. ALL REQUIRED BACTERIOLOGICAL SAMPLING POINTS SHALL BE INSTALLED BY THE CONTRACTOR AND ALL BACTERIOLOGICAL TESTS PERFORMED BY HIM PER THE REQUIREMENTS OF THE FLORIDA DEPARTMENT OF H.R.S.
9. ALL REQUIRED FLUSHING, CLEANING PRESSURE TESTING AND BACTERIOLOGICAL TESTING SHALL BE PERFORMED BY THE CONTRACTOR AND THE COST OF SAME SHALL BE INCLUDED IN THE CONTRACTORS BID FOR THE WORK.
10. SHOP DRAWINGS SHALL BE CHECKED AND APPROVED BY THE CONTRACTOR AND THEN ONE COPY SUBMITTED TO THE ENGINEER-OF-RECORD FOR REVIEW PRIOR TO THE PURCHASE OR INSTALLATION OF ANY SYSTEM COMPONENTS. SHOP DRAWINGS NEED TO BE REVIEWED AND APPROVED BY M-DWAS PLANS REV. UNIT BEFORE PRE-CONSTRUCTION MEETING CAN BE SCHEDULED (TYP.)
11. THE CONTRACTOR SHALL CONTACT THE DESIGN ENGINEER IF ANY ADDITIONAL DIMENSIONS OR SPECIFICATION ARE NEEDED TO LAYOUT OR CONSTRUCT THE PROJECT. AN ELECTRONIC FILE OR GEOMETRIC CONTROL SHEET WILL BE PROVIDED TO THE CONTRACTOR BY THE ENGINEER.
12. ALL PAVEMENT RESTORATION SHALL COMPLY WITH THE REQUIREMENTS OF MIAMI-DADE COUNTY PUBLIC WORKS MANUAL, F.D.O.T. FLORIDA BUILDING CODE, AND/OR THE SPECIFIC MUNICIPALITY STANDARDS.
13. LOCATION OF THE PUBLIC WATER SYSTEM MAINS SHALL COMPLY WITH THE LATEST FLORIDA ADMINISTRATIVE CODE (F.A.C.) RULE 62-555.314.
ENGINEER'S CERTIFICATION REQUIREMENTS:
1. THE WATER AND/OR SEWER STAKEOUTS, PIPE COVER AND/OR INVERT ELEVATIONS AND DETERMINATION OF EASEMENT GEOMETRY SHALL BE PERFORMED BY A STATE OF FLORIDA LICENSED LAND SURVEYOR AT THE TIME OF INSTALLATION.
2. THE ENGINEER-OF-RECORD SHALL BE NOTIFIED A MINIMUM OF 24 HOURS IN ADVANCE BEFORE INSTALLATION, TESTING AND BACKFILLING OF ANY LINES.
3. IMMEDIATELY UPON COMPLETION OF THE TESTS, THE ENGINEER-OF-RECORD SHALL BE PROVIDED WITH COPIES OF THE REPORTS SHOWING SATISFACTORY RESULTS OF THE FOLLOWING:
1. BACTERIOLOGICAL TESTING (WATER).
2. PRESSURE TESTING (WATER & FORCE MAINS).
3. BACKFLOW PREVENTOR TESTS (WATER).
4. EXFILTRATION TESTS (SEWER).
5. DENSITY TESTS (WATER & SEWER).
6. LAMPING REPORT (SEWER).
4. SHOP DRAWINGS SHALL BE SUBMITTED TO THE ENGINEER-OF-RECORD FOR REVIEW PRIOR TO THE PURCHASE OR INSTALLATION OF ANY SYSTEM COMPONENTS.
5. CONTRACTOR SHALL PROVIDE THE ENGINEER-OF-RECORD WITH A SET OF FINAL "AS-BUILT" DRAWINGS, SIGNED AND SEALED BY A STATE OF FLORIDA LICENSED LAND SURVEYOR, FOR ENGINEER'S REVIEW AND FILE.
6. CERTIFICATION OF COMPLETION IN ACCORDANCE WITH PLANS & SPECIFICATIONS WILL "NOT" BE ISSUED BY THE ENGINEER-OF-RECORD TO THE APPROPRIATE PERMITTING AGENCIES UNTIL ALL THE REQUIREMENTS DESCRIBED HEREIN HAVE BEEN MET.
ARCHITECT: ZYSCOVICH ARCHITECTS
PROJECT: CHURCH BY THE SEA
1000 Kane Concourse, Bay Harbor Islands, FL 33154
1609CBS 06/27/2016
FOOTING: 1609CBS
DATE: 06/27/2016
REVISIONS:
1. 06/27/2016 - REVISED TO UPDATE ARCH, LS AND LIGHTING PLANS
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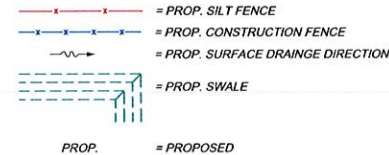
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STORM WATER PREVENTION PLAN LEGEND



EROSION AND SEDIMENT CONTROL GENERAL NOTES:

- IT IS THE CONTRACTOR'S RESPONSIBILITY TO IMPLEMENT THE EROSION AND TURBIDITY CONTROLS AS SHOWN ON THIS STORM WATER POLLUTION PREVENTION PLAN (SWPPP). IT IS ALSO THE CONTRACTOR'S RESPONSIBILITY TO ENSURE THESE CONTROLS ARE PROPERLY INSTALLED, MAINTAINED AND FUNCTIONING PROPERLY TO PREVENT TURBID OR POLLUTED WATER FROM LEAVING THE PROJECT SITE. THE CONTRACTOR WILL ADJUST THE EROSION AND TURBIDITY CONTROLS AS SHOWN HEREON AND ADD ADDITIONAL CONTROL MEASURES, AS REQUIRED TO ENSURE THE SITE MEETS ALL FEDERAL, STATE AND LOCAL EROSION AND TURBIDITY CONTROL REQUIREMENTS.
- ALL ELEVATIONS ON THE PLANS OR REFERENCED IN THE SPECIFICATIONS ARE BASED ON NATIONAL GEODETIC VERTICAL DATUM OF 1929 (NGVD).
- INSTALLATION OF ALL EROSION AND SEDIMENTATION CONTROL DEVICES SHALL BE PERFORMED UNDER THE SUPERVISION OF A FLORIDA REGISTERED SURVEYOR.
- THE CONTRACTOR SHALL CONTACT THE DESIGN ENGINEER IF ANY ADDITIONAL DIMENSIONS OR SPECIFICATION ARE NEEDED TO LAYOUT THE POLLUTION CONTROL DEVICES.
- CONTRACTOR SHALL CONTACT THE ENGINEER OF RECORD TO RESOLVE CONFLICTS BETWEEN DESIGN AND EXISTING FEATURES.
- WHERE MATERIAL OR DEBRIS HAS WASHED OR FLOWED INTO OR BEEN PLACED IN WATER COURSES, DITCHES, DRAINS, CATCH BASINS, OR ELSEWHERE AS A RESULT OF THE CONTRACTOR'S OPERATIONS, SUCH MATERIAL OR DEBRIS SHALL BE REMOVED AND SATISFACTORILY DISPOSED OF DURING PROGRESS OF THE WORK, AND THE AREA KEPT IN A CLEAN AND NEAT CONDITION.
- THE CONTRACTOR IS RESPONSIBLE FOR REMOVING THE TEMPORARY EROSION AND SEDIMENT CONTROL DEVICES AFTER COMPLETION OF CONSTRUCTION AND ONLY WHEN AREAS HAVE BEEN STABILIZED.
- CONTRACTOR SHALL INSURE THAT ALL DRAINAGE STRUCTURES, PIPES, E.T.C. ARE CLEANED OUT AND WORKING PROPERLY AT TIME OF ACCEPTANCE.
- BALES IF USED SHALL BE EITHER WIRE-BOUND OR STRING-TIED WITH THE BINDINGS ORIENTED AROUND THE SIDES RATHER THAN OVER AND UNDER THE BALES.
- BALES SHALL BE PLACED LENGTH WISE IN A SINGLE ROW SURROUNDING THE INLET WITH THE ENDS OF THE ADJACENT BALES PRESSED TOGETHER.
- SILT FENCES AND FILTER BARRIERS SHALL BE INSPECTED IMMEDIATELY AFTER EACH RAINFALL AND AT LEAST DAILY DURING PROLONGED RAINFALL. ANY REQUIRE REPAIRS SHALL BE MADE IMMEDIATELY.
- SHOULD THE FABRIC ON A SILT FENCE OR FILTER BARRIER DECOMPOSE OR BECOME INEFFECTIVE PRIOR TO THE END OF THE EXPECTED USABLE LIFE, THE BARRIER STILL BE NECESSARY, THE FABRIC SHALL BE REPLACED PROMPTLY.
- SEDIMENT DEPOSITS SHOULD BE REMOVED AFTER EACH STORM EVENT, THEY MUST BE REMOVED WHEN DEPOSITS REACH APPROXIMATELY ONE-THIRD THE HEIGHT OF THE BARRIER.
- THE CONTRACTOR IS RESPONSIBLE FOR FOLLOWING THE BEST EROSION AND SEDIMENT CONTROL PRACTICES.
- FOR ADDITIONAL INFORMATION ON SEDIMENT AND EROSION CONTROL REFER TO THE FLORIDA DEVELOPMENT MANUAL - A GUIDE TO SOUND LAND AND WATER MANAGEMENT FROM THE STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL REGULATION (FDER) CHAPTER 6.
- EROSION AND SEDIMENT CONTROL BARRIERS SHALL BE PLACED ADJACENT TO ALL WETLAND AREAS WHERE THERE IS A POTENTIAL FOR DOWNSTREAM WATER QUALITY DEGRADATION.
- ANY DISCHARGE FROM DEWATERING ACTIVITY SHALL BE FILTERED AND CONVEYED TO THE OUTFALL IN A MANNER WHICH PREVENTS EROSION AND TRANSPORTATION OF SUSPENDED SOLIDS TO THE RECEIVING OUTFALL.
- DEWATERING PUMPS SHALL NOT EXCEED THE CAPACITY OF THAT WHICH REQUIRES A CONSUMPTIVE USE PERMIT FROM THE DEPARTMENT OF ENVIRONMENTAL PROTECTION.
- ALL DISTURBED AREAS ARE TO BE STABILIZED THROUGH COMPACTION SILT SCREENS, HAY BALES, AND GRASSINGS. ALL THE FILL SLOPES 3:1 OR STEEPER TO RECEIVE STAKED SOLID SOO.
- ALL DEWATERING EROSION AND SEDIMENT CONTROL TO REMAIN IN PLACE AFTER COMPLETION OF CONSTRUCTION AND REMOVED ONLY WHEN AREAS HAVE BEEN STABILIZED.
- THIS PLAN INDICATES MINIMUM EROSION AND SEDIMENT CONTROL MEASURES REQUIRED FOR THIS PROJECT. THE CONTRACTOR IS RESPONSIBLE FOR MEETING ALL APPLICABLE REGULATIONS AND WATER QUALITY GUIDELINES AND MAY NEED TO INSTALL ADDITIONAL EROSION AND SEDIMENTATION CONTROLS.
- THE CONTRACTOR SHALL BE REQUIRED TO RESPOND TO ALL WATER D.E.P. INQUIRIES RELATIVE TO COMPLIANCE OF D.E.P. FOR EROSION AND SEDIMENTATION CONTROL. THE COST OF THIS COMPLIANCE SHALL BE PART OF THE CONTRACT.
- WHERE FLORIDA DEPARTMENT OF TRANSPORTATION (F.D.O.T.) SPECIFICATIONS AND INDEX ARE REFERENCED, PLEASE REFER TO (F.D.O.T.) ROADWAY AND TRAFFIC DESIGN STANDARDS AND (F.D.O.T.) STANDARD SPECIFICATIONS FOR ROADWAY AND BRIDGE CONSTRUCTION.

OTHER CONTROLS:

- WASTE MATERIALS:** ALL WASTE MATERIALS EXCEPT LAND CLEARING DEBRIS SHALL BE COLLECTED AND STORED IN A SECURELY LIDDED METAL DUMPSTER THE DUMPSTER WILL BE EMPTIED AS NEEDED AND THE TRASH WILL BE HAULED TO A STATE APPROVED LANDFILL. ALL PERSONNEL WILL BE INSTRUCTED REGARDING THE CORRECT PROCEDURE FOR WASTE DISPOSAL. NOTICES STATING THESE PRACTICES WILL BE POSTED AT THE CONSTRUCTION SITE BY THE CONSTRUCTION SUPERINTENDENT AND IS RESPONSIBLE FOR SEEING THAT THESE PROCEDURES ARE FOLLOWED.
- HAZARDOUS WASTE:** ALL HAZARDOUS WASTE MATERIAL WILL BE DISPOSED OF IN A MANNER SPECIFIED BY LOCAL OR STATE REGULATION OR BY THE MANUFACTURER. SITE PERSONNEL WILL BE INSTRUCTED IN THESE PRACTICES BY THE SITE SUPERINTENDENT. THE INDIVIDUAL WHO MANAGES DAY-TO-DAY SITE OPERATIONS WILL BE RESPONSIBLE FOR SEEING THAT THESE PRACTICES ARE FOLLOWED.
- SANITARY WASTE:** ALL SANITARY WASTE WILL BE COLLECTED FROM THE PORTABLE UNITS AS NEEDED TO PREVENT POSSIBLE SPILLAGE. THE WASTE WILL BE COLLECTED AND DISPOSED OF IN ACCORDANCE WITH THE STATE AND LOCAL WASTE DISPOSAL REGULATIONS FOR SANITARY SEWER SYSTEMS.
- OFFSITE VEHICLE TRACKING:** A STABILIZED CONSTRUCTION ENTRANCE WILL BE PROVIDED TO HELP REDUCE VEHICLE TRACKING OF SEDIMENTS. THE PAVED STREET ADJACENT TO THE SITE ENTRANCE WILL BE SWEEP DAILY TO REMOVE ANY EXCESS MUD, DIRT, OR ROCK TRACKED FROM THE SITE. DUMP TRUCKS HAULING MATERIAL FROM THE CONSTRUCTION SITE WILL BE COVERED.

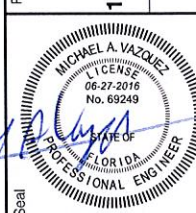
EXISTING IMPROVEMENTS LEGEND



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LEO A DAILY

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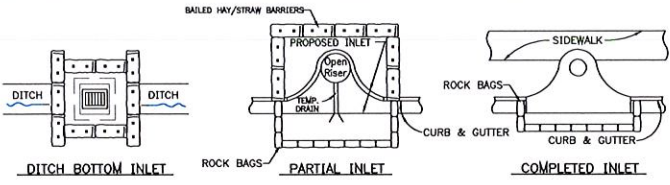
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6/27/16 - REVISED
TO UPDATE ARCH, LS
AND LIGHTING PLANS

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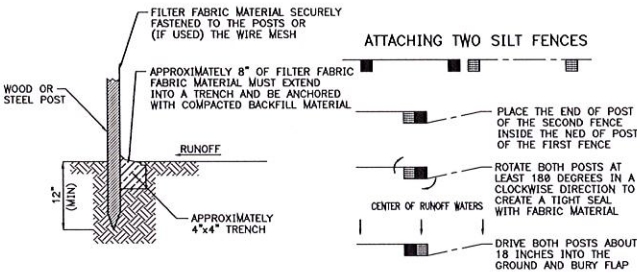
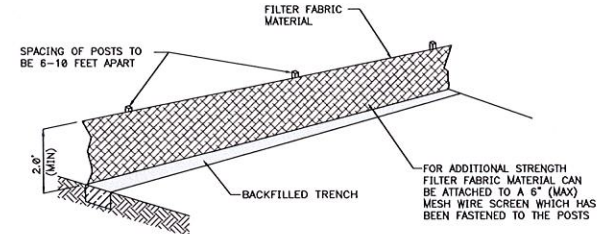
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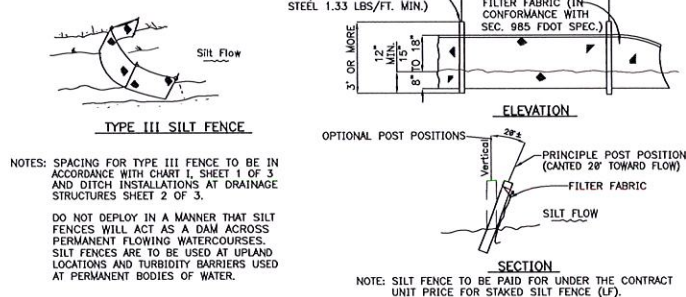
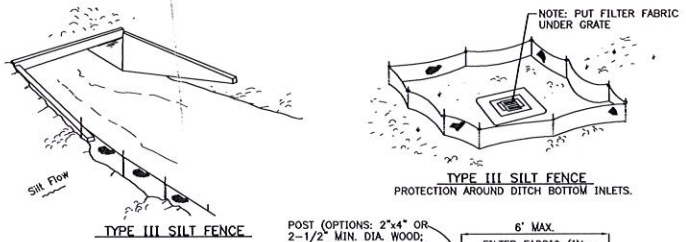


NOTE: THESE DETAILS ARE FOR TYPICAL INSTALLATIONS AND ARE REQUIRED ONLY WHEN NECESSARY TO PREVENT EROSION OF THE SITE.

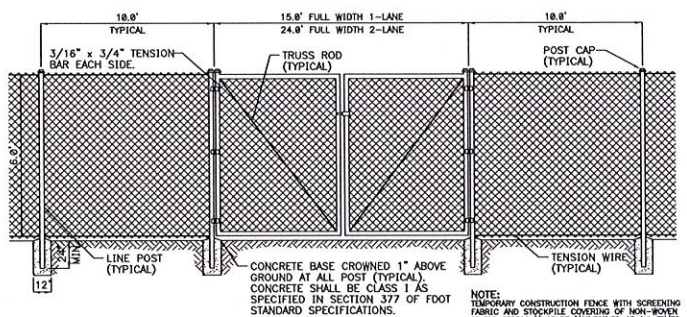
TYPICAL DETAIL PROTECTION AROUND INLETS
N.T.S.



TYPICAL DETAIL INSTALLING A FILTER FABRIC SILT FENCE
N.T.S.



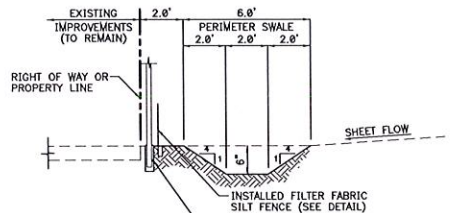
TYPICAL DETAIL SILT FENCE APPLICATION
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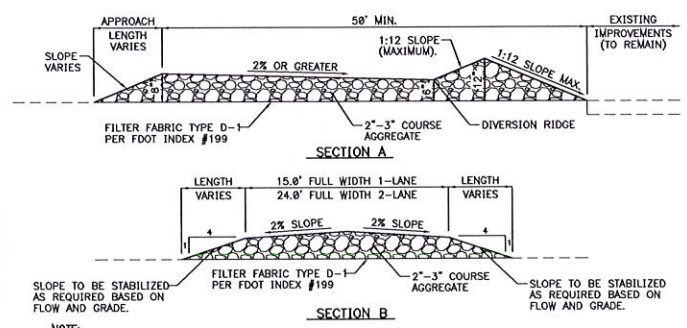
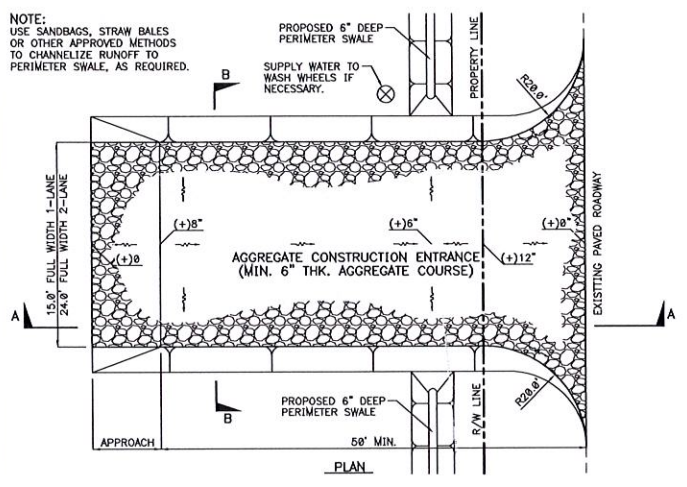
CHAIN LINK FENCE MATERIAL SPECIFICATION:
CHAIN LINK: 8\"/>

CONSTRUCTION FENCE SCREEN	
PROPERTIES	
COLOR	GREEN, BLACK, BROWN, BEIGE, ROYAL, BLUE
MATERIAL COMPOSITION	KNITTED HOPE HIGH DENSITY POLYETHYLENE
FILAMENT STRENGTH	60 LBS. PER FT.
MATERIAL BREAK STRENGTH	600 LBS. PER FT.
MATERIAL WEIGHT	145 GRAMS PER SQ. METER
CRYSTALLINE MELT POINT	133 DEGREES C
COMPOSITION OF UV INHIBITOR	1.5% ANIPAS CM11021/1.5% EQUASER CM100000
SHADE VALUE	88%
FLAMMABILITY POINT	364 DEGREES C

TYPICAL DETAIL TEMPORARY CONSTRUCTION CHAIN LINK FENCE
N.T.S.



TYPICAL DETAIL EROSION PROTECTION
N.T.S.



NOTE:
1. THE ENTRANCE SHALL BE MAINTAINED IN A CONDITION THAT WILL PREVENT TRACKING OR FLOWING OF SEDIMENT ONTO PUBLIC RIGHTS-OF-WAY. THIS MAY REQUIRE TOP DRESSING, REPAIR AND/ OR CLEANOUT OF ANY MEASURES USED TO TRAP SEDIMENT.
2. WHEN NECESSARY, WHEELS SHALL BE CLEANED PRIOR TO ENTRANCE ONTO PUBLIC RIGHT-OF-WAY.
3. WHEN WASHING IS REQUIRED, IT SHALL BE DONE ON AN AREA STABILIZED WITH CRUSHED STONE THAT DRAINS INTO AN APPROVED SEDIMENT TRAP OR SEDIMENT BASIN.

TYPICAL DETAIL TEMPORARY GRAVEL CONSTRUCTION ENTRANCE
N.T.S.

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C6

SITE:	61,860 SQ FT
OPEN SPACE TOTAL:	32,499 SQ FT (52.53%)
- GROUND FLOOR:	13,384 SQ FT (21.64%)
- SECOND FLOOR:	2,674 SQ FT (4.32%)
- THIRD FLOOR:	10,174 SQ FT (16.45%)
- ROOF:	6,267 SQFT (10.13%)

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CANOPY TREE	
EXISTING ROYAL PALMS TO REMAIN	
THRINAX RADIATA CHARACTER PALM	
VINE	
LIRIOPE MUSCARI	
PHYLLANTHUS MYRTIFOLIUS	
BRICK PAVING	
CONCRETE PAVING	
STREET LIGHT	
PEDESTRIAN LIGHT	
SIGN	
SEWER MANHOLE	
ELECTRIC UTILITY	
CATCH BASIN	
BENCH	
JAKOB TRELLIS SYSTEM	
ACCENT LIGHT	
OPEN SPACE	

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Project

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Seal
LANDSCAPE ARCHITECT:

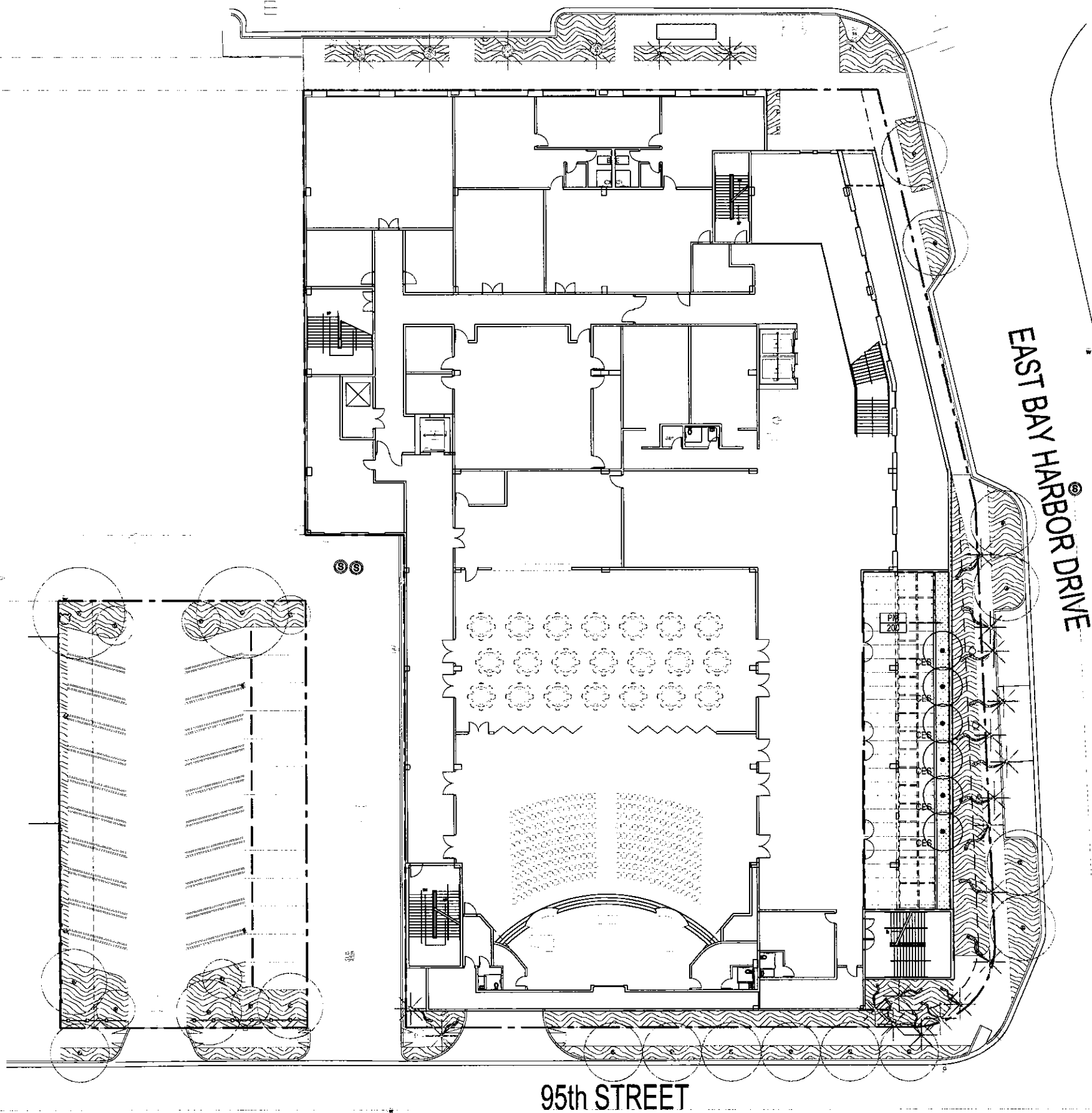
**SITE PLANTING
PLAN -
GROUND FLOOR**

1609CBS	06/14/2016

LH.100



96th STREET (KANE CONCOURSE)



95th STREET

LEGEND

- CANOPY TREE
- EXISTING ROYAL PALMS TO REMAIN
- THRINAX RADIATA CHARACTER PALM
- VINE
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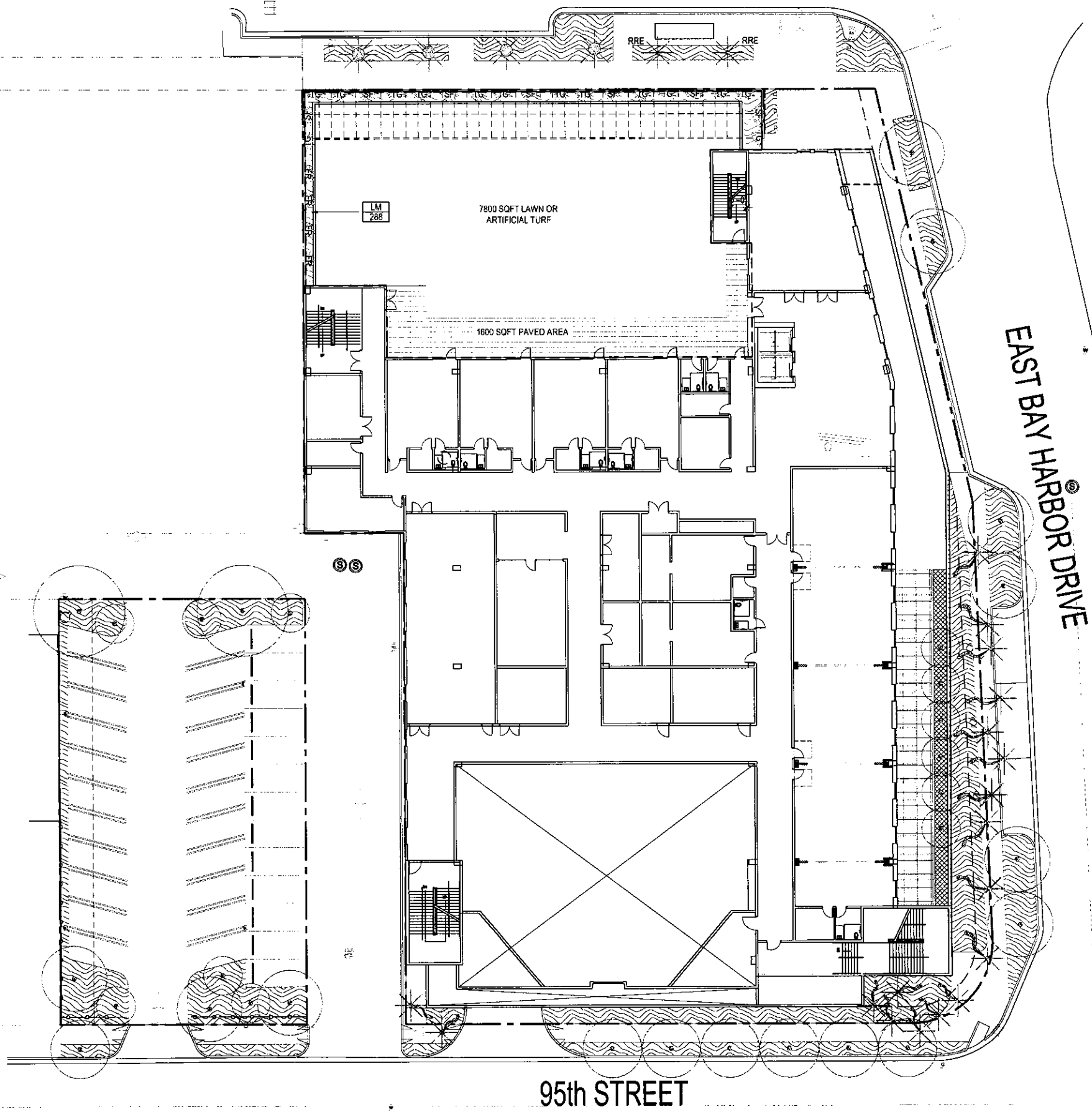
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**SITE PLANTING
PLAN -
SECOND FLOOR**

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96th STREET (KANE CONCOURSE)



LEGEND

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- CONCRETE PAVING
- STREET LIGHT
- PEDESTRIAN LIGHT
- SIGN
- SEWER MANHOLE
- ELECTRIC UTILITY
- CATCH BASIN
- BENCH
- ACCENT LIGHT
- OPEN SPACE

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CHURCH BY THE SEA
1000 Kane Concourse, Bay Harbor Islands, FL 33154

Seal
LANDSCAPE ARCHITECT
RAYMOND JUNG
RAYMOND JUNG

FLORIDA LICENSE NO.
LC 1000268
Not valid for construction unless signed in the box

**SITE PLANTING
PLAN -
THIRD FLOOR**

1609CBS 06/14/2016

LH.102

0 8 15 32
SCALE 1/16" = 1'-0"

96th STREET (KANE CONCOURSE)

EAST BAY HARBOR DRIVE

95th STREET

LEGEND

CANOPY TREE

EXISTING ROYAL
PALMS
TO REMAIN

THRINAX RADIATA
CHARACTER PALM

VINE

LIRIOPE MUSCARI

PHYLLANTHUS
MYRTIFOLIUS

GRAVEL

BRICK PAVING

CONCRETE PAVING

STREET LIGHT

PEDESTRIAN LIGHT

SIGN

SEWER MANHOLE

ELECTRIC UTILITY

CATCH BASIN

BENCH

ACCENT LIGHT

OPEN SPACE

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Project

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Revised

**SITE PLANTING
PLAN -
ROOF**

1609CBS	06/14/2016

LH.103

0 8' 16' 32'

SCALE: 1/16" = 1'-0"

JUNGLES

1000 Kane Concourse - Proposed Plant List
Bay Harbor Islands, FL

GROUND LEVEL				* = NATIVE
TREES				
QTY	SYM	Botanical Name	Common Name	Specification
3	CBA	Cassia bakeriana	Pink Shower Tree	16'-18' HT. x 10' SP. 3" Cal.
6	ON	Calophyllum inophyllum	Beauty Leaf	15'-16' HT. x 10' SP. 3" Cal., 6' clear wood
7	COL	Chrysophyllum oliviforme	Satin Leaf*	15'-16' HT. x 10' SP. 3" Cal., 6' clear wood
3	EFD	Eugenia foetida	Spanish Stopper*	12' HT. x 6' SP. 2.5" Cal.
3	MFR	Mycianthes fragrans	Simpson's Stopper*	12' HT. x 6' SP. 2.5" Cal.
2	SMS	Swietenia mahagoni	Malagasy*	14'-16' HT. x 8' SP. 3" Cal.
PALMS				
QTY	SYM	Botanical Name	Common Name	Specification
2	RRE	Roystonea regia	Royal Palm	15' CW.
19	TRA	Thrinax radiata	Florida Thatch Palm*	4 @ 18'-19' WD. With Character
				4 @ 16'-17' WD. With Character
				4 @ 14'-15' WD. With Character
				6 @ 10'-12' WD. With Character
SHRUBS				
QTY	SYM	Botanical Name	Common Name	Specification
190	CI	Chrysobalanus icaco	Horizontal Cocoplum*	7 gal.
150	PL	Psychotria ligustrifolia	Dwarf White Coffee*	7 gal.
105	TF	Triplaris flendana	Florida Ganima Grass*	13 gal. @ 30' O.C.
GROUND COVERS				
QTY	SYM	Botanical Name	Common Name	Specification
1960	LM	Liriodendron muscari	Lilyturf	3 gal. @ 18' O.C.
VINES				
QTY	SYM	Botanical Name	Common Name	Specification
5	BO	Bougainvillea	Bougainvillea	15 gal.
2	SF	Stephanotis floribunda	Madagascar Jasmine	25 gal.
2	TG	Thunbergia grandiflora alba	White Sky Vine	7 gal.
SECOND LEVEL				
TREES				
QTY	SYM	Botanical Name	Common Name	Specification
6	CE	Conocarpus erectus 'Sericeus'	Silver Buttonwood*	12' HT. 3" Cal.
GROUND COVERS				
QTY	SYM	Botanical Name	Common Name	Specification
200	PM	Physalis perfoliata	Mousetail Plant	3 gal. @ 18' O.C.
THIRD LEVEL				
VINES				
QTY	SYM	Botanical Name	Common Name	Specification
4	FR	Ficus repens	Creeping Fig	25 Gal.
7	SF	Stephanotis floribunda	Madagascar Jasmine	3 Gal.
14	TG	Thunbergia grandiflora alba	White Sky Vine	7 Gal.
GROUND COVERS				
QTY	SYM	Botanical Name	Common Name	Specification
288	LM	Liriodendron muscari	Lilyturf	3 gal. @ 18' O.C.
ROOF LEVEL				
TREES				
QTY	SYM	Botanical Name	Common Name	Specification
3	CE	Conocarpus erectus 'Sericeus'	Silver Buttonwood*	12' HT. 3" Cal.
GROUND COVERS				
QTY	SYM	Botanical Name	Common Name	Specification
820	PM	Physalis perfoliata	Mousetail Plant	3 gal. @ 18' O.C.

Town of Bay Harbor Islands, Florida Landscape Requirements Legend (Worksheet)

Commercial Sites
Town Landscape Code (Sec. 24-16) & Miami-Dade Landscape Code (Chapter 18A)

Site Address: Bay Harbor Islands, FL 33154 Legal Description: Tract 1

Net Lot Area: 4.0 Acres / 172,800 SF

Required Provided

I. Open Space Requirement

1. No minimum open space requirement.
(BHI - Sec. 23-11(C))

2. Maximum Lawn Area Allowed
(MDC - Sec. 18A(A)(5))

a. Net Lot Area: 4.0 SF - building footprint: 17,777 SF = 16,583 SF

b. SF from above: 16,583 x 20% = 3,317 SF 20% Max / 2,277 SF (Net Lot Area - Building Footprint x 20% = maximum lawn area permitted)

II. Shade Trees

A. Required

1. 22 shade trees/acre: 22 x 4.0 acres = 88 trees
(Min. 12 in height / 4" clear wood / 2 1/2" caliper)
(Palm trees subincluded at a 3:1 ratio, max. 25% of required shade trees)
(MDC - Sec. 18A-6(C)(5)) and BHI Sec. 24-15)

2. Native Species Required - 50% Min.
of shade trees req. 44 x 50% = 22
(BHI - Sec. 24-16(a)(2))

3. Drought Tolerant and Low Maintenance Species Required - 50% Min
of shade trees req. 44 x 50% = 22
(MDC - Sec. 18A-6(C)(1)(b))

B. Tree Species

1. Number of shade trees required
(from Sec. 11(A)(1) above) 44

2. Number of shade tree species required
(BHI - Sec. 24-16(a)(2)) 8

*See Following Table

Number of Different Tree Species based on Quantity

1-5 required shade trees	2 shade tree species
6-10 required shade trees	3 shade tree species
11-15 required shade trees	4 shade tree species
16-20 required shade trees	5 shade tree species
21-30 required shade trees	6 shade tree species
31 or more required shade trees	7 shade tree species

C. Tree Heights

1. Number of Stories of building 3

2. Number of shade trees required
(from Sec. 11(A)(1) above) 44

3. Shade tree heights required: 12 ft. - 50% or 22 shade trees

14-16 ft. - 40% or 18 shade trees

16-18 ft. - 10% or 4 shade trees

18-20 ft. - 5% or 2 shade trees

Size of Tree Species in Relationship to Building Height

No. Stories	Min. Shade Tree Height (ft.)	Min. Spread (ft.)	Palm Height (ft.)
1-2	12	5	14-18
3	50% min. req.	5	14-18
4	50% min. req.	6	18-22
5 plus	25% min. req.	6	14-18
	25% min. req.	7	22-28
	50% min. req.	7	22-28
	25% min. req.	8	22-28

(BHI - Sec. 24-16(a)(2))

III. Street Trees

1. Street Trees @ 1:35'

Width of lot: 35' =

(15' min height / 6" clear wood / 2 1/2" caliper)
(Street tree species determined by Street Tree Master Plan)
(Street trees do not count toward required or site shade trees)
(BHI - Sec. 24-16(a)(2)(a))

Required Provided

10 10

IV. Shrubs Required

Required Provided

1. 10 shrubs required per shade tree
(Min. 24" in height / visual screen min. 36" in height / max 24" on center)
(BHI - Sec. 24-16(a)(2)(d))

2. Native Species Required - 30% Min
(MDC - Sec. 18A-6(D)(1)(a))

3. Drought Tolerant and Low Maintenance Species Required - 50% Min
(MDC - Sec. 18A-6(D)(1)(b))

V. Buffers (If applicable)
(BHI - Sec. 24-16)

1. Parking Lot from ROW

2. Dissimilar Uses

VI. Parking Lot Landscaping (If applicable)

Required Provided

1. 10 SF / parking space:
10 x 31 spaces = 310 SF
(MDC - Sec. 18A-6(J))

2. Shade Trees Required
(MDC - Sec. 18A-6(I))

3. Shrubs Required
(MDC - Sec. 18A-6(I))

VII. Right Tree Right Place
(BHI - Sec. 24-16(a)(2)(f))

1. Number of trees near power lines
(See attached FPL guidelines)

VIII. Florida Friendly Landscaping
(MDC - Sec. 18A-2(A))

All landscaping shall promote Florida Friendly landscaping principles through the use of drought-tolerant plant species, grouping of plant material by water requirements, the use of irrigation systems that conserve the use of potable and non-potable water supplies and restrictions on the amount of lawn areas. Florida Friendly landscape principles also promote planting the right plant in the right place and appropriate fertilization and mulching.

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Project

Seal LANDSCAPE ARCHITECT: RAYMOND JUNGLES, INC.

Revised

PLANT
SCHEDULE AND
LANDSCAPE
LEGEND

1609CBS 06/14/2016

LH.104

1000 KANE CHURCH BY THE SEA/RETAIL

CHURCH BY THE SEA W RETAIL		ZONING DESIGNATION & FLOOR AREA		B-1 - Future Land Use: Commercial
SITE		SITE 1 52,110 SF +/-1.20 Acres	SITE 2 9,750 SF +/-0.22 Acres	61,860 SF = +/-1.42 Acres

	REQUIRED	PROPOSED
FLOOR AREA	NA	*75,583 SF
*TOTAL FLOOR AREA INCLUDES GROSS FLOOR AREA MINUS STAIRS, ELEVATORS, OPEN AREAS WITH NO AC . RETAIL 8,500 SF & CHURCH 67,083 SF		

CHURCH BY THE SEA		PARKING ANALYSIS		
PARKING BUSINESS DISTRICT	ALLOWED OR REQUIRED		PROVIDED	* VARIANCE
TOTAL PARKING SPACES	1PK Per 300 sf for Retail	8500/300 = 28 Spaces		
	1 Pk per 4 fixed Seats (Total of 386 Fixed Seats)	$\frac{386}{4} = 97$ Spaces		
TOTALS	125 SPACES		106 Regular Spaces + 20 Tandem = 126 SPACES	NONE

PARKING BREAKDOWN	REGULAR SPACES	TANDEM	ACCESSIBLE
SITE 1 COVERED PARKING (EAST LOT)	71	20 TANDEM	5
SITE 2 (WEST LOT)	35		
TOTAL PARKING	126 SPACES		

LEGAL DESCRIPTION
Tract "N" of "NOLAN BROWN", according to the Plat thereof, as recorded in Plat Book 56, Page 53, of the Public Records of Miami-Dade County, Florida. AND Lot 18 Block 12 "BAY HARBOUR ISLANDS", according to the Plat thereof, as recorded in Plat Book 46, Page 5, of the Public Records of Miami-Dade County, Florida. Containing 61,860 Square Feet or 1.42 Acres, more or less, by calculations.

NOTES:
-Property appers to be located in Flood Zone "AE" with the Base Flood Elevation being 9.0 feet. (Refer to Survey)
Retail and Lobby will require Flood Panels. Refer to Elevation Sheets
-Design of the Building is based on 2014 Florida Building Code

CHURCH BY THE SEA		ZONING ANALYSIS
SETBACKS BUSINESS DISTRICT	EXISTING / REQUIRED	PROVIDED
KANE CONCOURSE/ 96TH STREET	MIN. 55'-0" FROM CENTERLINE OF THE ROADWAY	MIN 55'-0" FROM CENTERLINE OF THE ROADWAY
EAST BAY HARBOR	5'-0" FOR THE FIRST 30 FT. FOR EACH ADDITIONAL 3 FT OF BLDG HEIGHT ABOVE 30 FT,THERE SHALL BE ONE ADDITIONAL FOOT OF BLDG SETBACK FOR THAT PORTION OF THE STRUCTURE OVER 30 FT. MAX SETBACK 15 FT	MIN 5'-0" @ GROUND FL (UP TO 12'-6") UPPER LEVELS MIN 12'-6" (UP TO 28'-7") All Portions of Building above 30 ft meet minimum requirements
95TH STREET	5'-0" FOR THE FIRST 30 FT. FOR EACH ADDITIONAL 3 FT OF BLDG HEIGHT ABOVE 30 FT,THERE SHALL BE ONE ADDITIONAL FOOT OF BLDG SETBACK FOR THAT PORTION OF THE STRUCTURE OVER 30 FT. MAX SETBACK 15 FT	MIN 5'-0" @ GROUND FL UPPER LEVELS MIN 10'-8" All Portions of Building above 30 ft meet minimum requirements
INTERIOR/REAR	0'-0"	0'-0" @ GROUND FL & UPPER LEVELS

HEIGHT BUSINESS DISTRICT	ALLOWED/REQUIRED	PROVIDED
	65'-0" + 62'-4" BFE = 70.37 NGVD	*54'-6" from Finish Retail floor of Ground Floor to Highest Roof Slab + 52'-2" BFE = 59.87 NGVD
*Max. Height measured from the Base Flood Elevation. Top of Steeple is @ +61'-2" = 69.20 NGVD		

FLOOR ARE BREAKDOWN		
USE	FLOOR	FLOOR AREA (SF)
RETAIL	1	8,500
	2	
	3	
CHURCH BY THE SEA	1	2,695 Lobby/Foyer
	2	39,403
	3	24,985
TOTAL	75,583	

OVERALL TOTALS CHURCH BY THE SEA FAR CALCULATION			
CALCULATION	TOTAL BUILDING (GFA)	SITE AREA (SF)	FAR RATIO
TOTAL	75,583 SF	61,860 SF	1.122

1000 Kane Concourse

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Data Sheet

Scale NTS

GN-002

June 10, 2016

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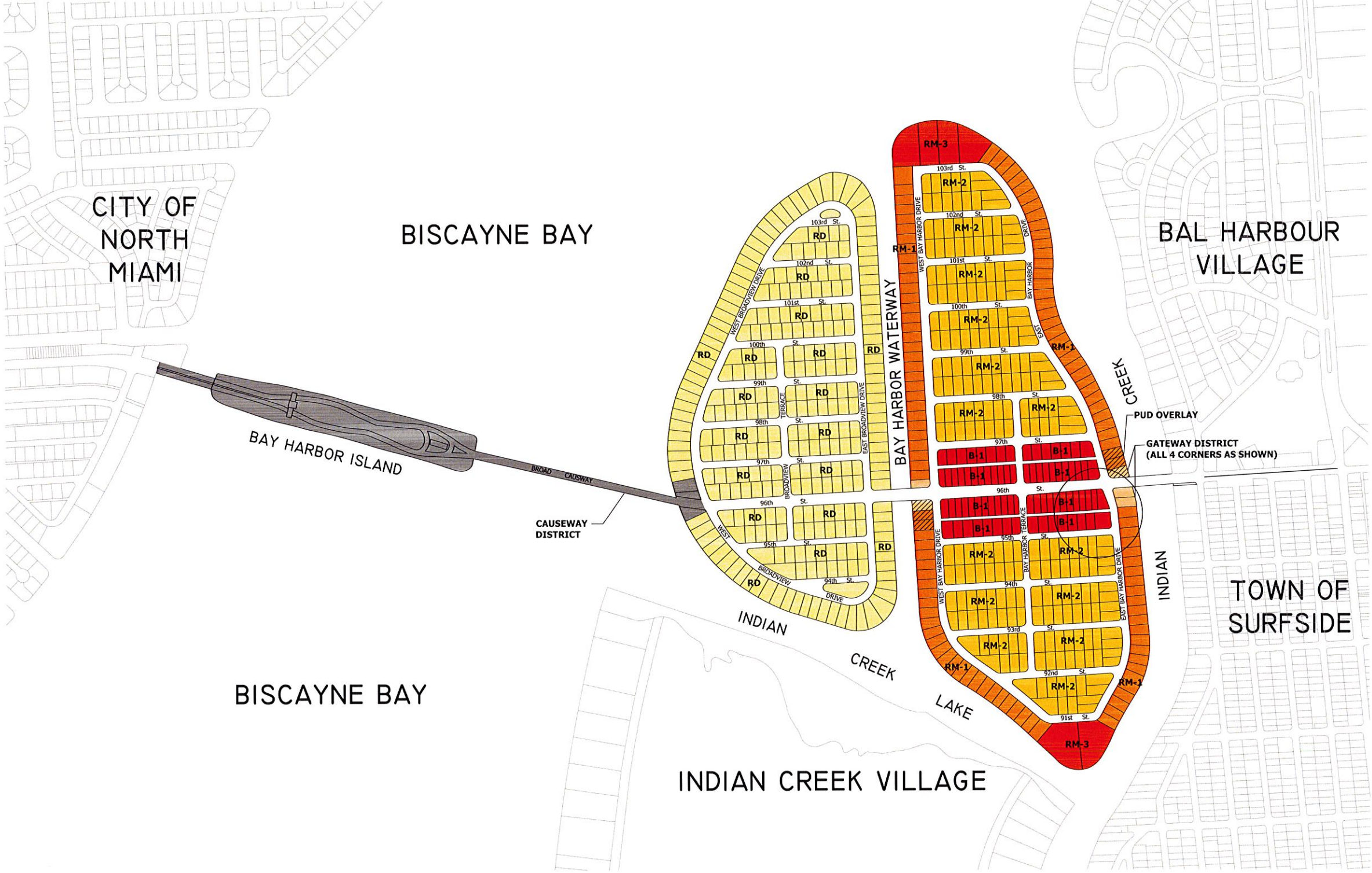


LEGEND

- RD SINGLE FAMILY RESIDENTIAL DISTRICT
- RM-1 MULTIPLE FAMILY RESIDENTIAL DISTRICT
- RM-2 MULTIPLE FAMILY RESIDENTIAL DISTRICT
- RM-3 MULTIPLE FAMILY RESIDENTIAL DISTRICT
- B-1 BUSINESS DISTRICT
- CAUSEWAY DISTRICT
- GATEWAY DISTRICT
- PUD OVERLAY DISTRICT

AMENDMENTS

DATE	ORD. NO.	PURPOSE
07-10-06	797	RENAME BAA TO B-1
02-11-08	831	REZONE LOT 2, BLOCK 1 TO GATEWAY
12-13-10	907	RENAME RBA TO RM-3
10-10-11	919	ASSIGN PUD TO LOTS 1-3, BLOCK 2
11-14-11	926	ASSIGN PUD TO LOTS 34-37, BLOCK 4
02-10-14	959	ASSIGN PUD TO LOTS 1-3, BLOCK 2



1000 Kane Concourse

Zoning Map

Scale NTS

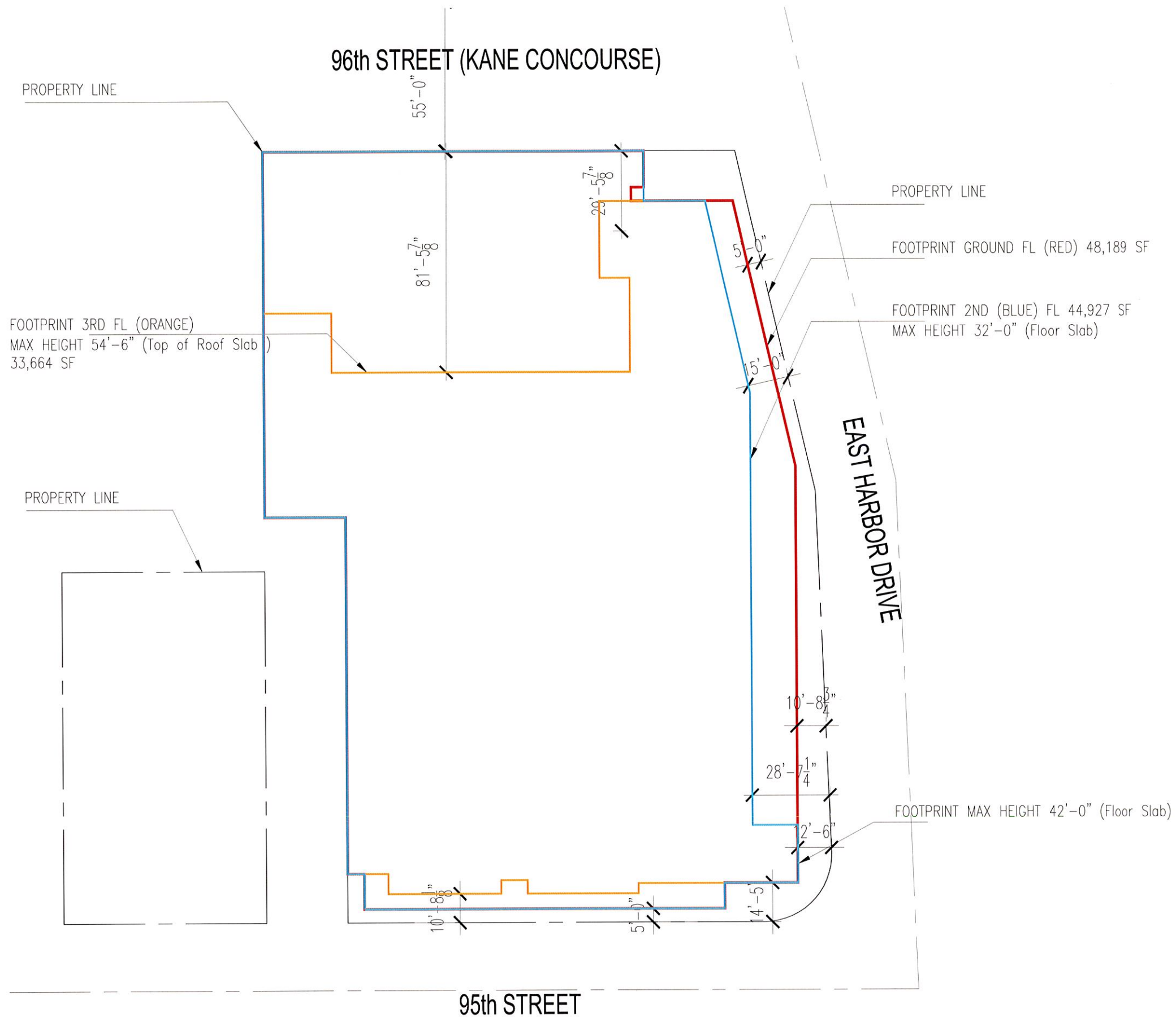
GN-003

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Setback Diagram

Scale 1":40'

GN-004

June 10, 2016

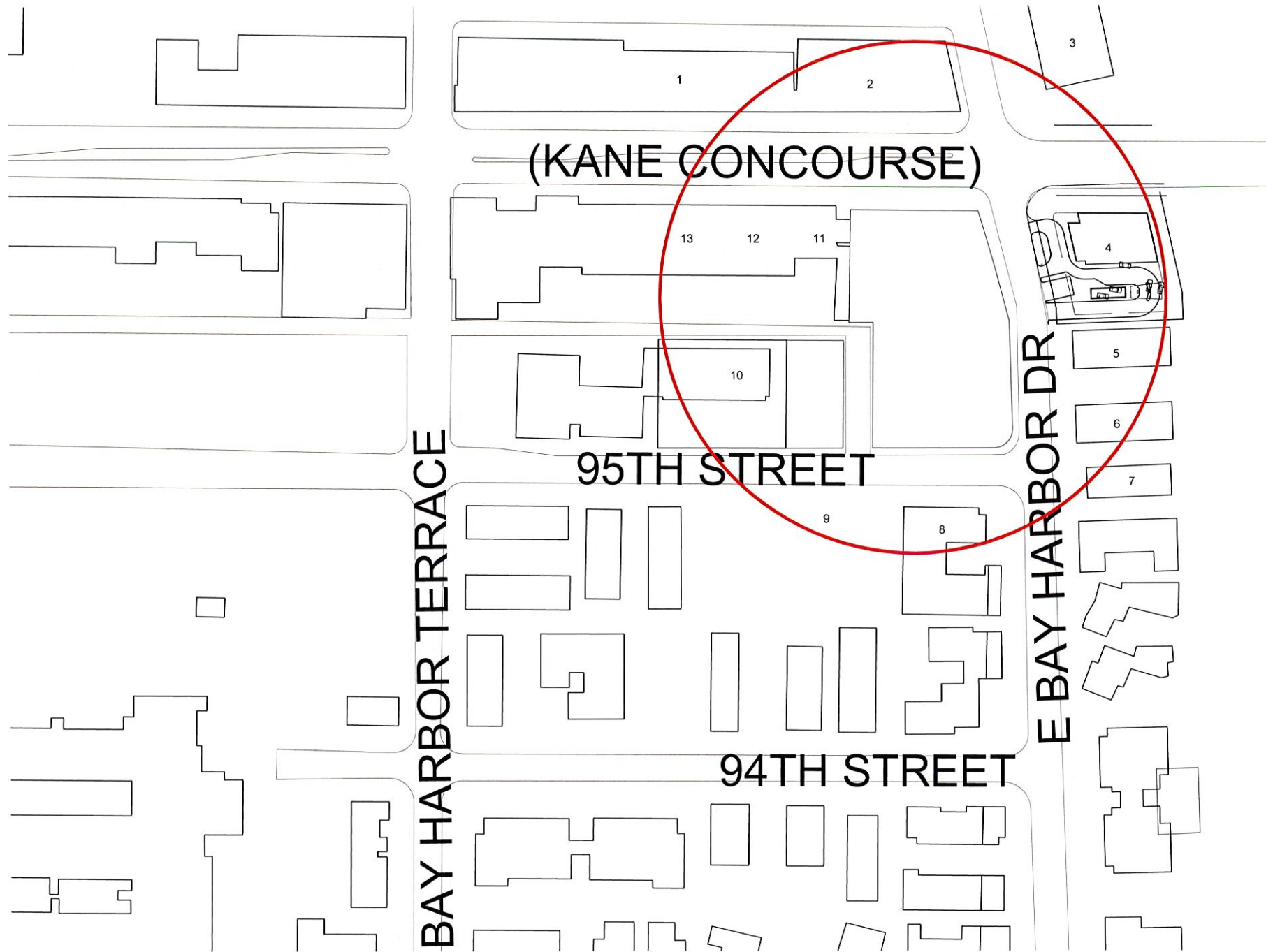
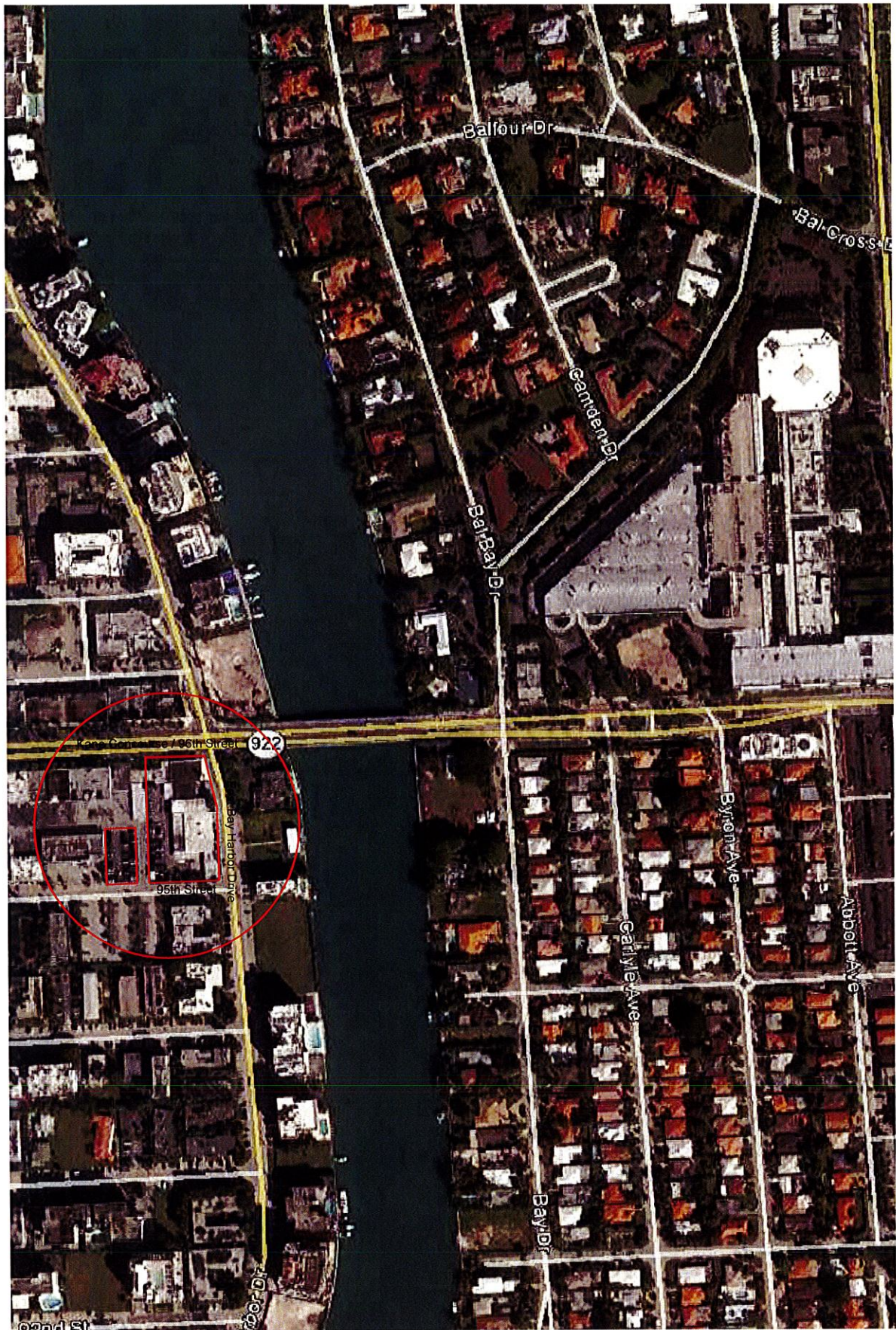
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- 1-2 story Commercial
- 2-2 story Commercial
- 3-7 story Grand Beach Hotel
- 4-7 story One Kane Concourse-Class A Retail/Office
(existing 1 story Commercial-Office)
- 5-2 story Multi Family
- 6-2 story Multi Family
- 7-5 story Multi Family
- 8-2 story Multi Family
- 9-Vacant Land current Site Parking lot (Multi Family Zoning)
- 10-1 Story Office-Commercial
- 11-1 Story Office-Commercial
- 12-2 Story Office-Commercial
- 13-2 Story Office-Commercial

1000 Kane Concourse

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Context Photos

Scale NTS

C-001

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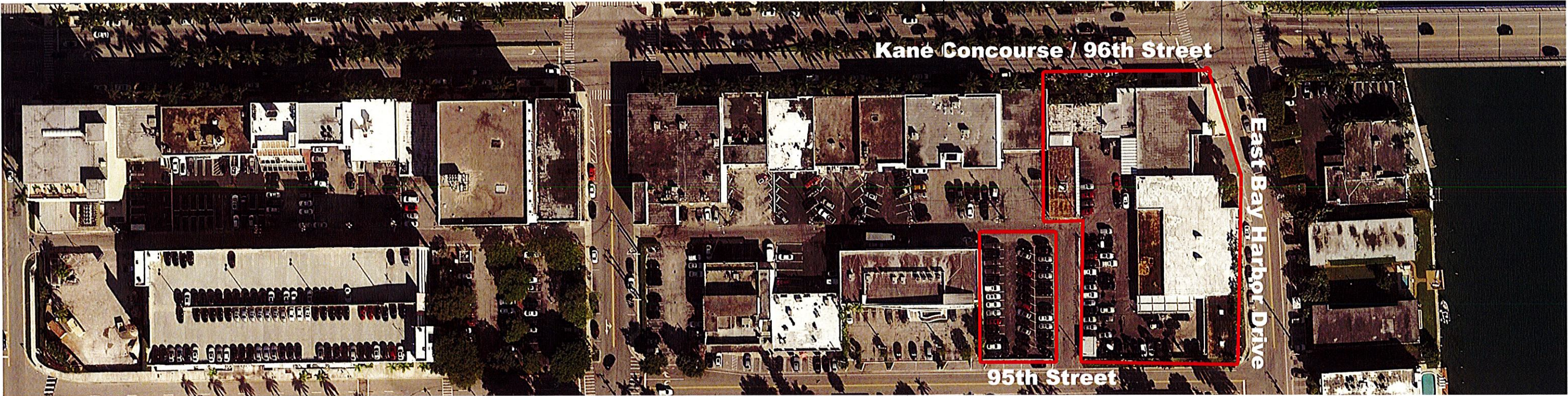
Kane Concourse & East Bay Harbor



Kane Concourse looking West



Kane Concourse looking West



1000 Kane Concourse

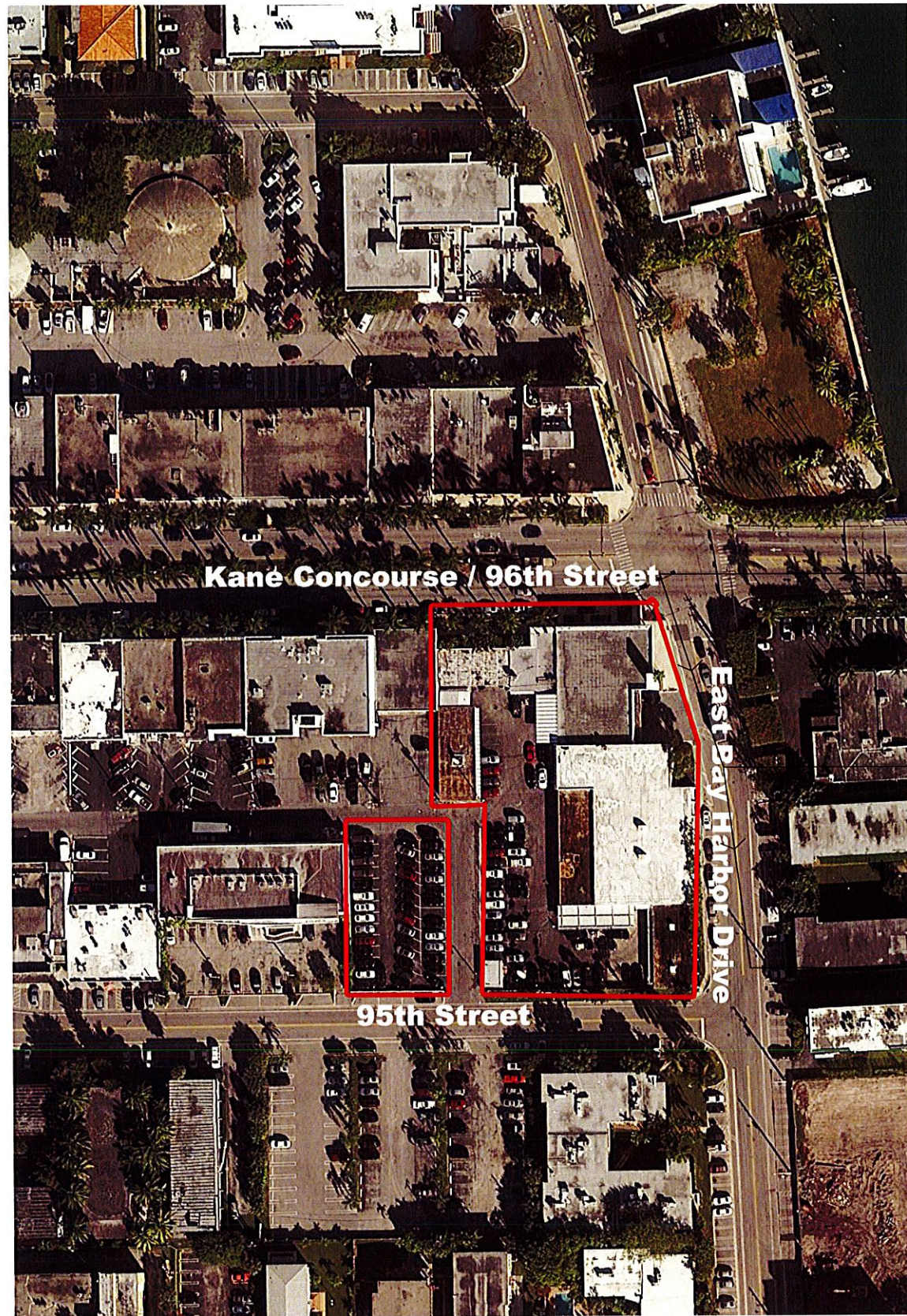
Context Photos

Scale NTS

C-002

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East Bay Harbor looking South



East Bay Harbor looking South



East Bay Harbor looking South

1000 Kane Concourse

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01 Context Photos

Context Photos

Scale NTS

C-003

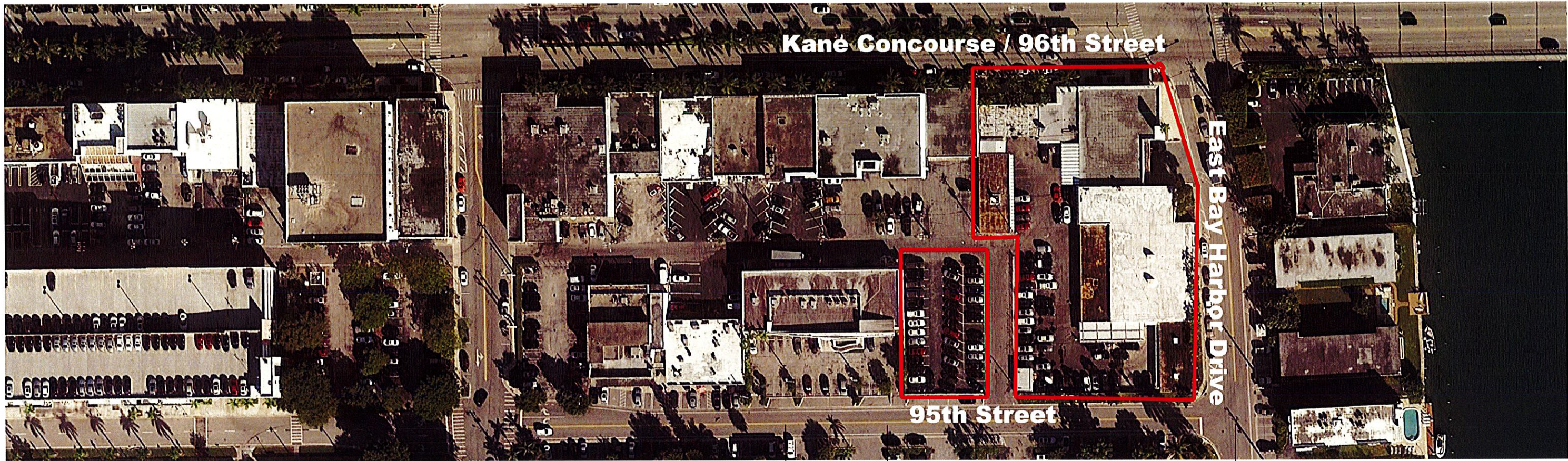
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95th Street Looking West



95th Street Looking West



Corner of 95th Street & East Bay Harbor

1000 Kane Concourse

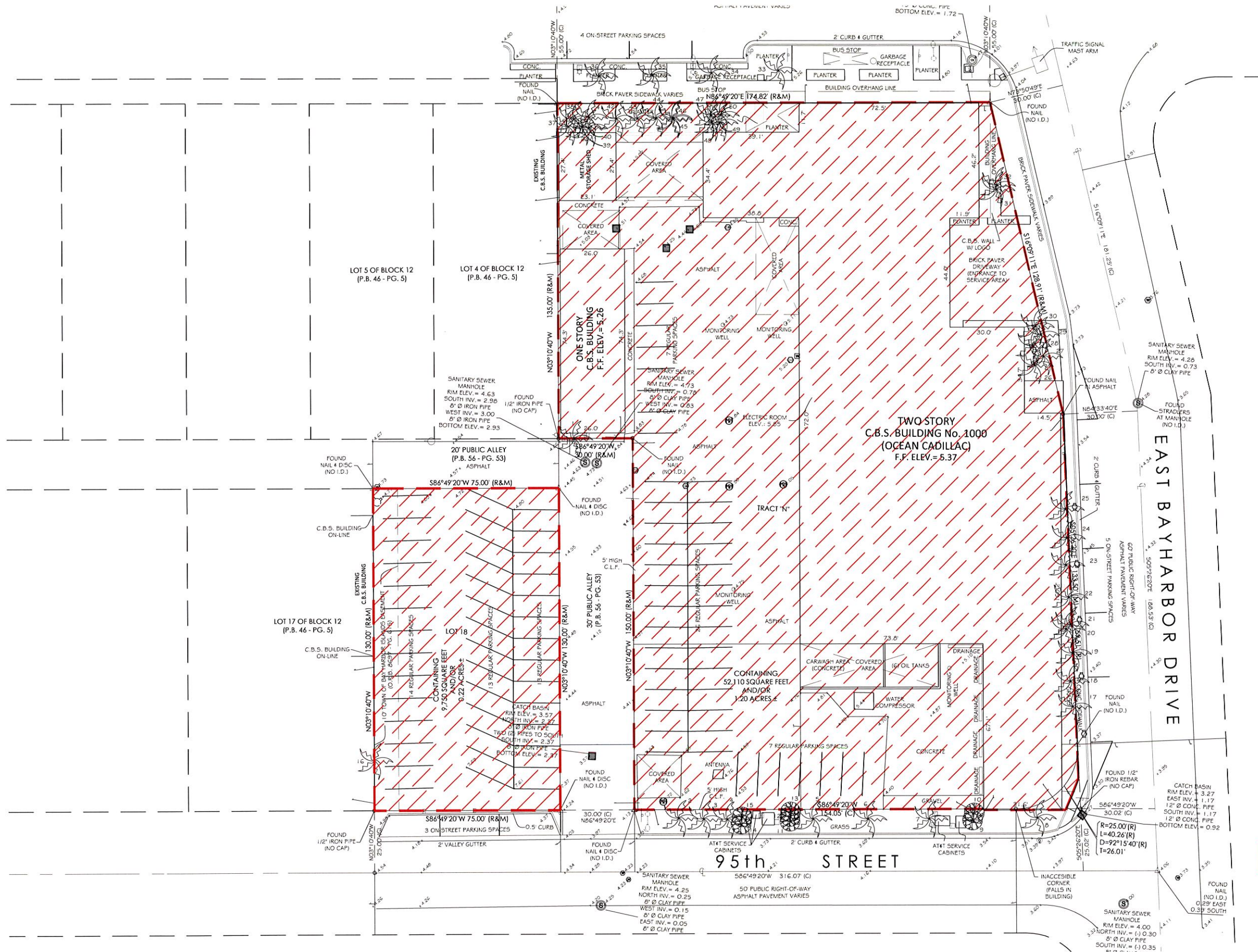
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Scale NTS

C-004

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Demolition Plan

Scale 1:40

D-101

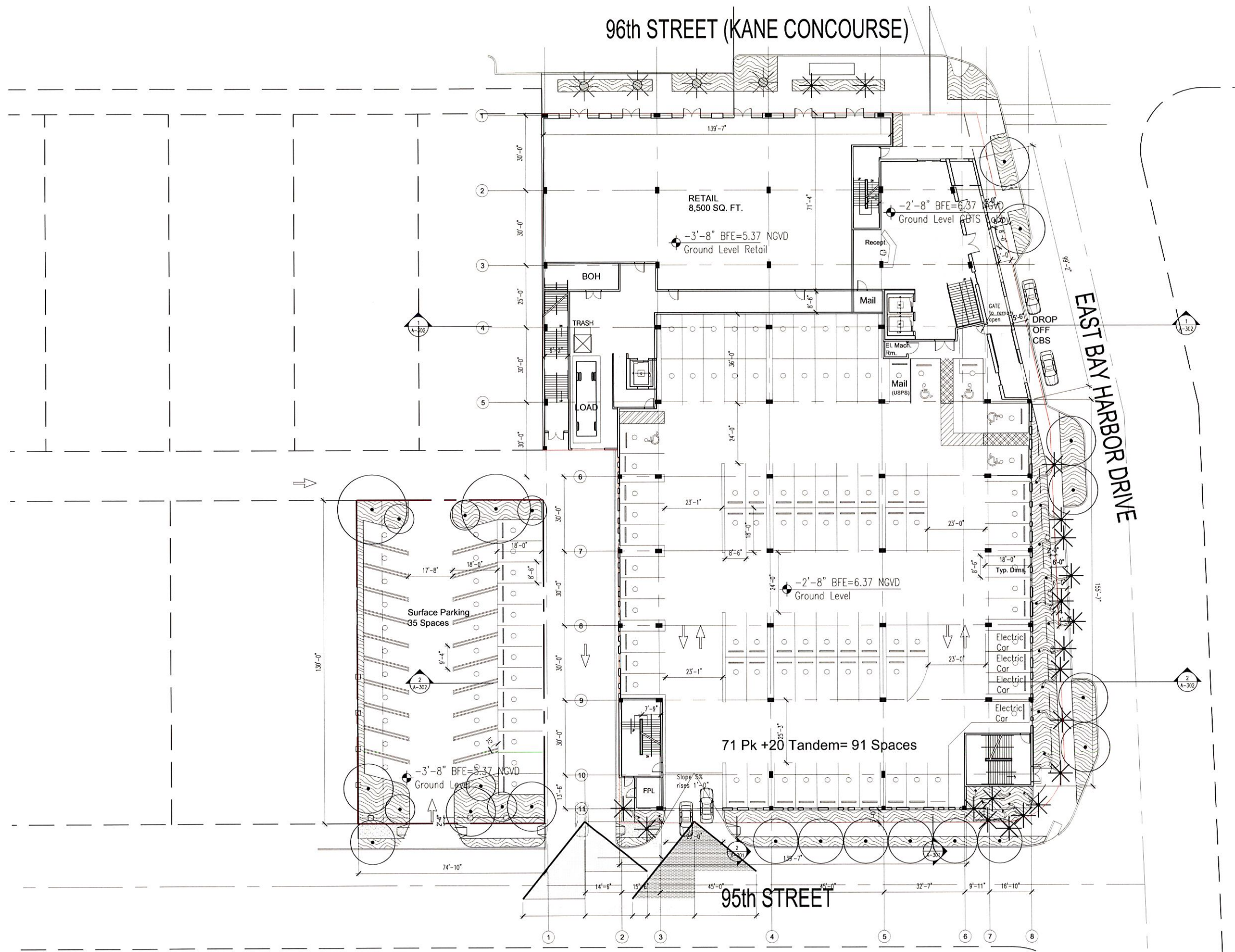
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1000 Kane Concourse

Ground floor

Scale 1:40

A-101

June 27, 2016

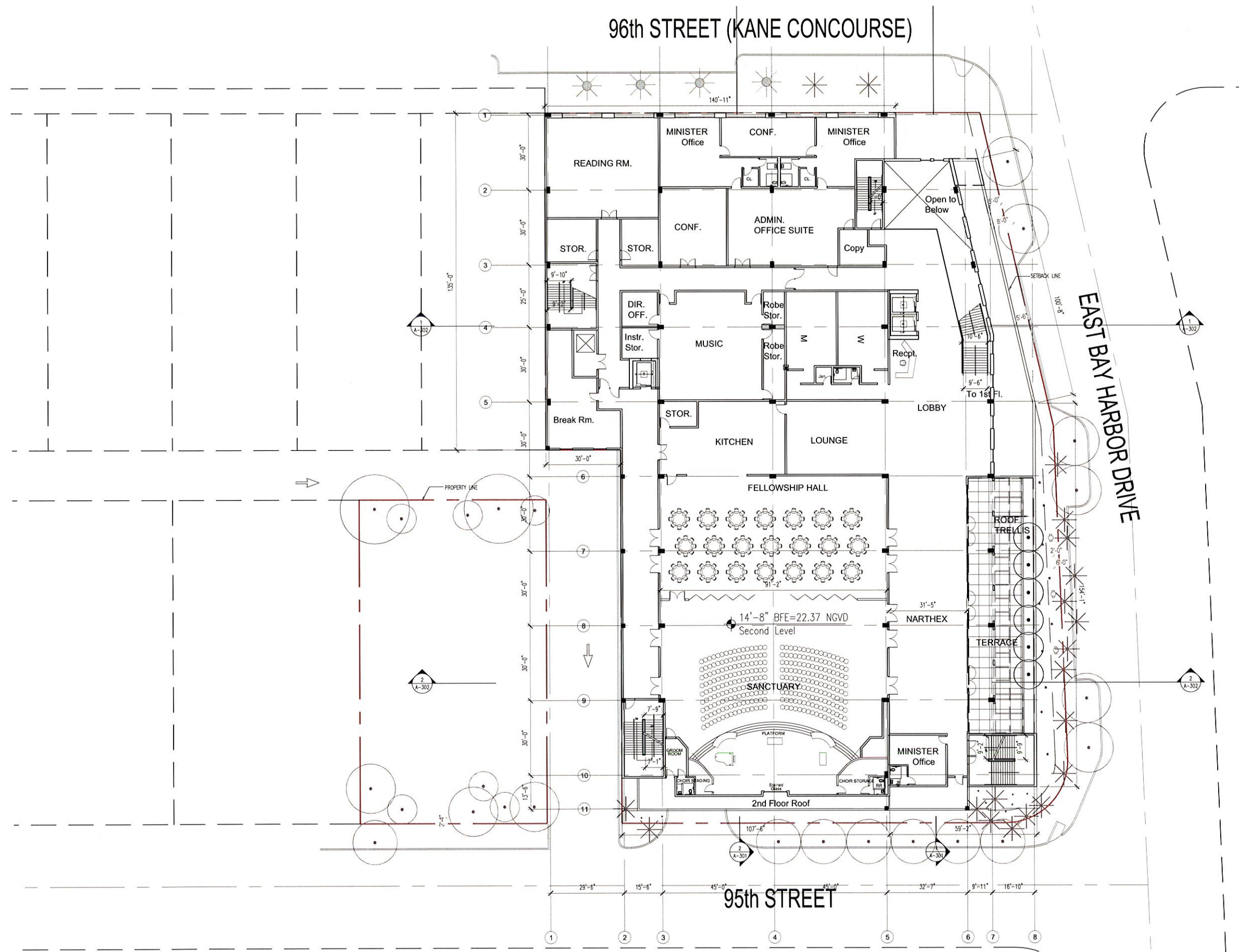
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1000 Kane Concourse

Second floor

Scale 1:40

A-102

June 27, 2016

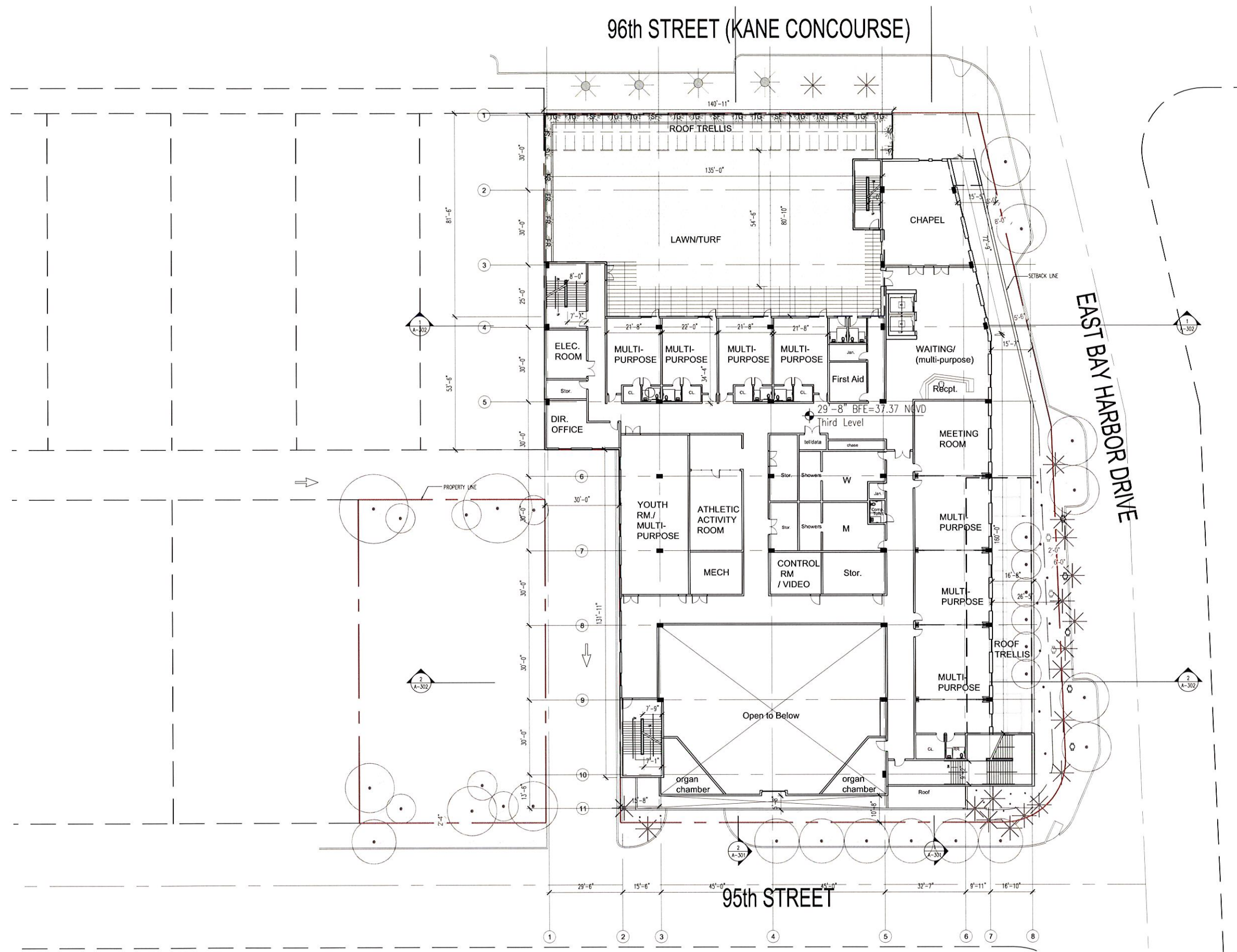
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1000 Kane Concourse

Third floor

Scale 1:40

A-103

June 27, 2016

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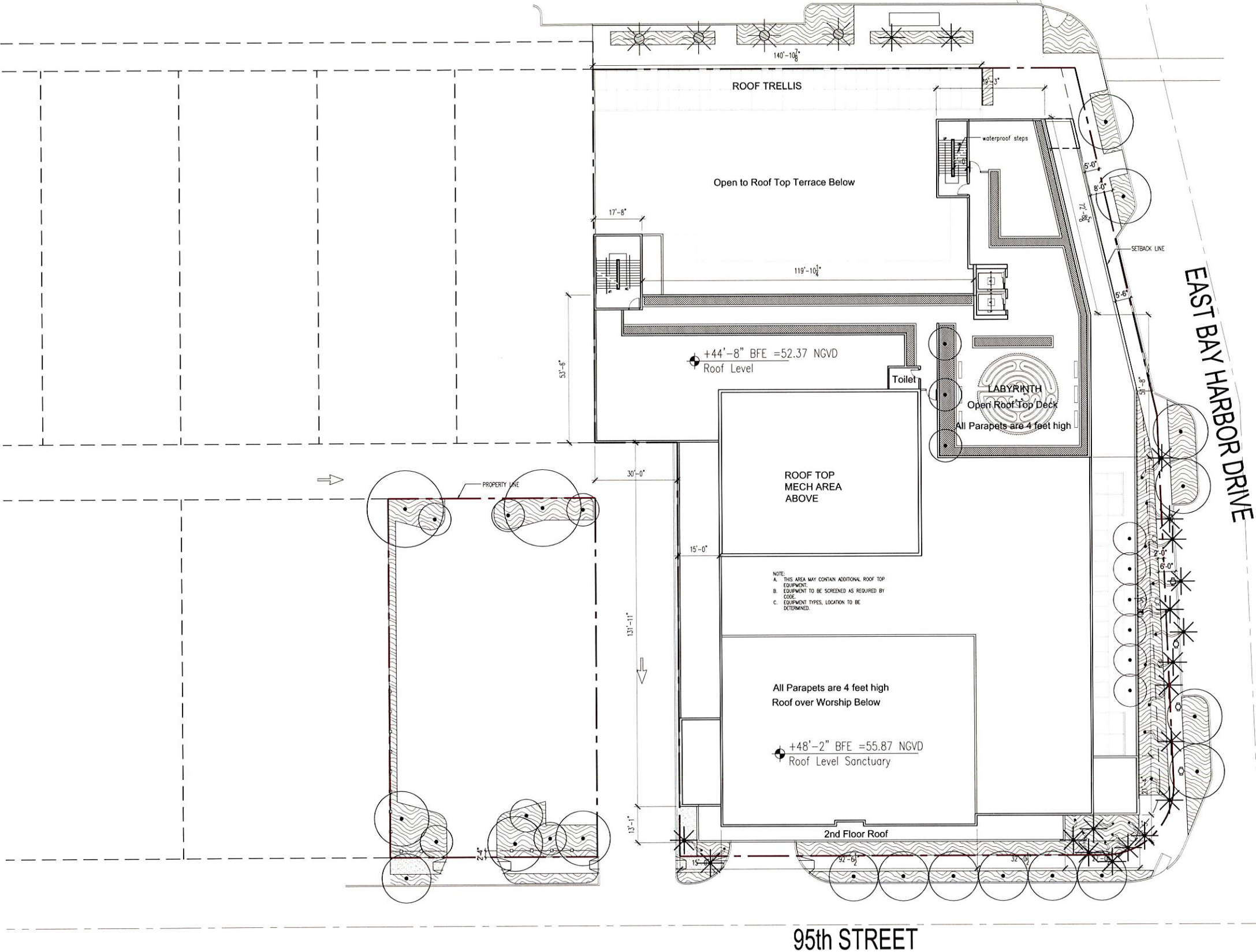
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96th STREET (KANE CONCOURSE)



1000 Kane Concourse

Roof floor

Scale 1:40

A-104

June 27, 2016

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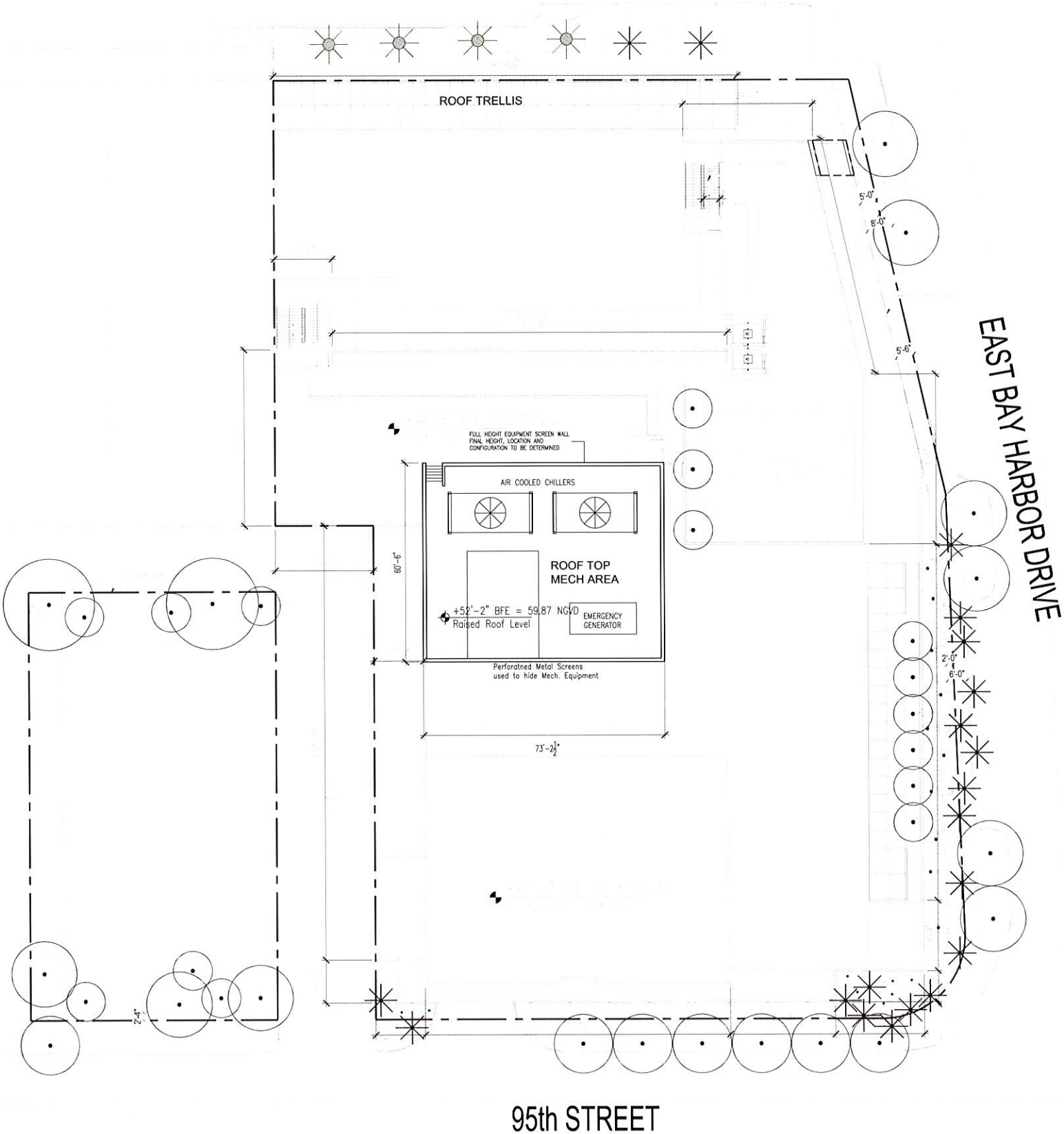
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96th STREET (KANE CONCOURSE)





North Elevation-96 Street

KEY NOTES ELEVATIONS	
MATERIALS WOULD BE USED IN AN ARTISTIC CONFIGURATION IN ORDER TO OBTAIN A PLEASING DESIGN	
①	5/8" SMOOTH STUCCO FINISH
②	5/8" SMOOTH STUCCO FINISH W/ SCOURING LINES
③	STOREFRONT TRANSPARENT GLASS
④	SPANDREL GLASS PANEL
⑤	ALUMINUM METAL PANEL
⑥	PERFORATED METAL BRONZE COLOR ALSO TO BE USED TO SCREEN ROOF EQUIPMENT
⑦	GREEN WALL WITH STEEL CABLES & CASCADING VINES OVER STUCCO
⑧	GLASS RAILING WITH ALUM CAP
⑨	METAL DOOR
⑩	METAL TRELLIS WITH VINES
⑪	ALUMINUM BRONZE COLORED LETTER
⑫	STAINED GLASS
⑬	GLASS SWING DOORS
⑭	BLUE COLORED WAVE ART DESIGN
⑮	TRANSPARENT GLASS

1000 Kane Concourse

Elevations

Scale 1:25

A-201

June 13, 2016

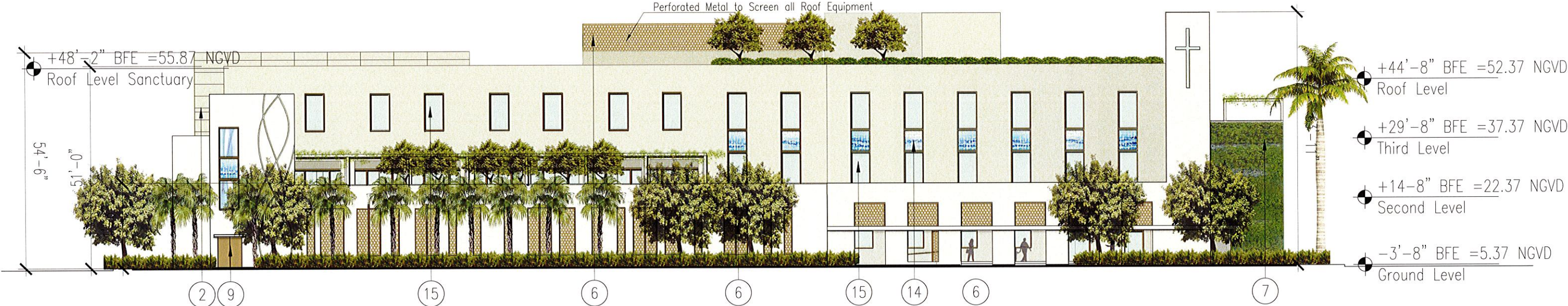
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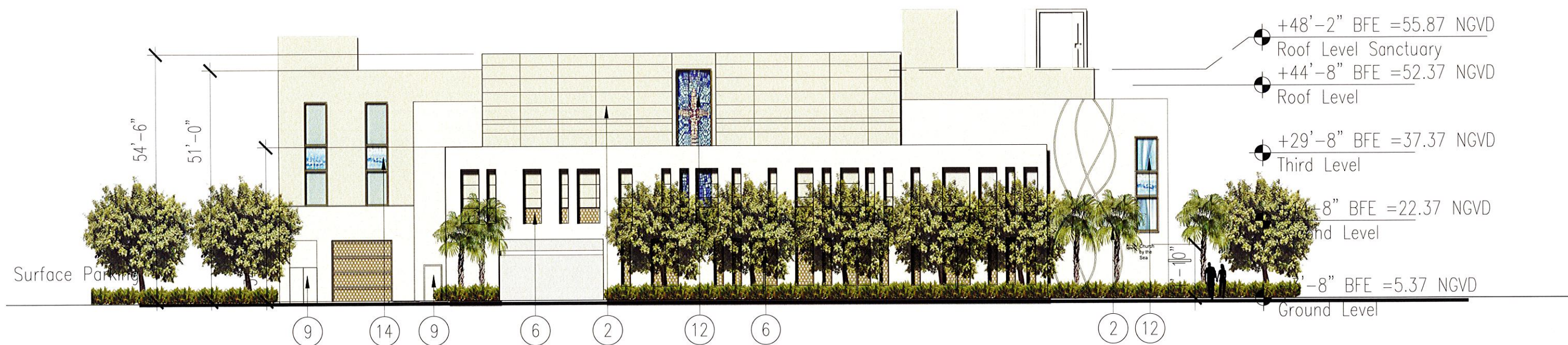
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Miami, FL 33132 2304
t 305.372.5222 f 305.577.4521

e info@zyscovich.com
w www.zyscovich.com



East Elevation-East Bay Harbor

KEY NOTES ELEVATIONS	
MATERIALS WOULD BE USED IN AN ARTISTIC CONFIGURATION IN ORDER TO OBTAIN A PLEASING DESIGN	
1	5/8" SMOOTH STUCCO FINISH
2	5/8" SMOOTH STUCCO FINISH W/ SCOURING LINES
3	STOREFRONT TRANSPARENT GLASS
4	SPANDREL GLASS PANEL
5	ALUMINUM METAL PANEL
6	PERFORATED METAL BRONZE COLOR ALSO TO BE USED TO SCREEN ROOF EQUIPMENT
7	GREEN WALL WITH STEEL CABLES & CASCADING VINES OVER STUCCO
8	GLASS RAILING WITH ALUM CAP
9	METAL DOOR
10	METAL TRELLIS WITH VINES
11	ALUMINUM BRONZE COLORED LETTER
12	STAINED GLASS
13	GLASS SWING DOORS
14	BLUE COLORED WAVE ART DESIGN
15	TRANSPARENT GLASS



South Elevation-95 Street

KEY NOTES ELEVATIONS	
MATERIALS WOULD BE USED IN AN ARTISTIC CONFIGURATION IN ORDER TO OBTAIN A PLEASING DESIGN	
①	5/8" SMOOTH STUCCO FINISH
②	5/8" SMOOTH STUCCO FINISH W/ SCOURING LINES
③	STOREFRONT TRANSPARENT GLASS
④	SPANDREL GLASS PANEL
⑤	ALUMINUM METAL PANEL
⑥	PERFORATED METAL BRONZE COLOR ALSO TO BE USED TO SCREEN ROOF EQUIPMENT
⑦	GREEN WALL WITH STEEL CABLES & CASCADING VINES OVER STUCCO
⑧	GLASS RAILING WITH ALUM CAP
⑨	METAL DOOR
⑩	METAL TRELLIS WITH VINES
⑪	ALUMINUM BRONZE COLORED LETTER
⑫	STAINED GLASS
⑬	GLASS SWING DOORS
⑭	BLUE COLORED WAVE ART DESIGN
⑮	TRANSPARENT GLASS

1000 Kane Concourse

Elevations

Scale 1:25

A-203

June 27, 2016

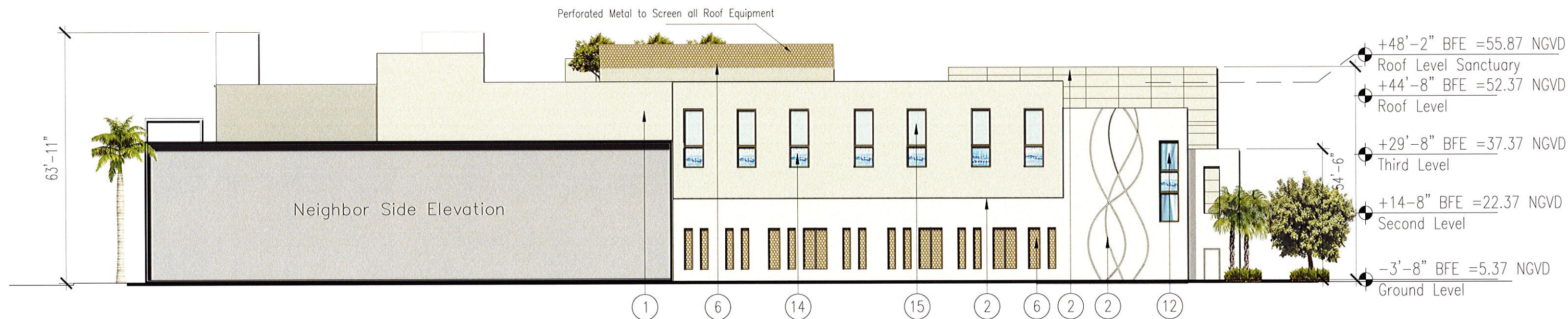
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Interior Elevation-Alley

KEY NOTES ELEVATIONS	
MATERIALS WOULD BE USED IN AN ARTISTIC CONFIGURATION IN ORDER TO OBTAIN A PLEASING DESIGN	
①	5/8" SMOOTH STUCCO FINISH
②	5/8" SMOOTH STUCCO FINISH W/ SCOURING LINES
③	STOREFRONT TRANSPARENT GLASS
④	SPANDREL GLASS PANEL
⑤	ALUMINUM METAL PANEL
⑥	PERFORATED METAL BRONZE COLOR ALSO TO BE USED TO SCREEN ROOF EQUIPMENT
⑦	GREEN WALL WITH STEEL CABLES & CASCADING VINES OVER STUCCO
⑧	GLASS RAILING WITH ALUM CAP
⑨	METAL DOOR
⑩	METAL TRELLIS WITH VINES
⑪	ALUMINUM BRONZE COLORED LETTER
⑫	STAINED GLASS
⑬	GLASS SWING DOORS
⑭	BLUE COLORED WAVE ART DESIGN
⑮	TRANSPARENT GLASS

1000 Kane Concourse

Elevations

Scale 1:25

A-204

June 27, 2016

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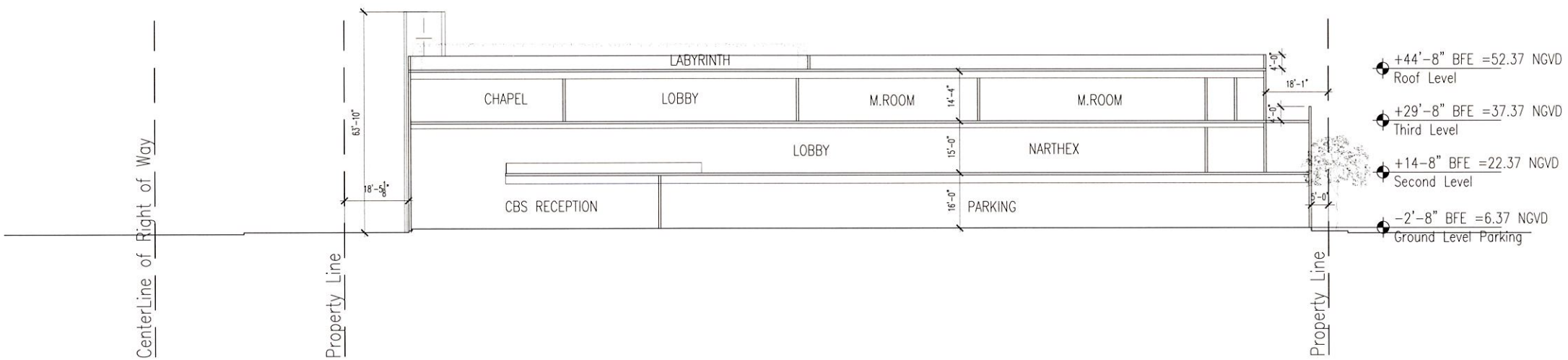
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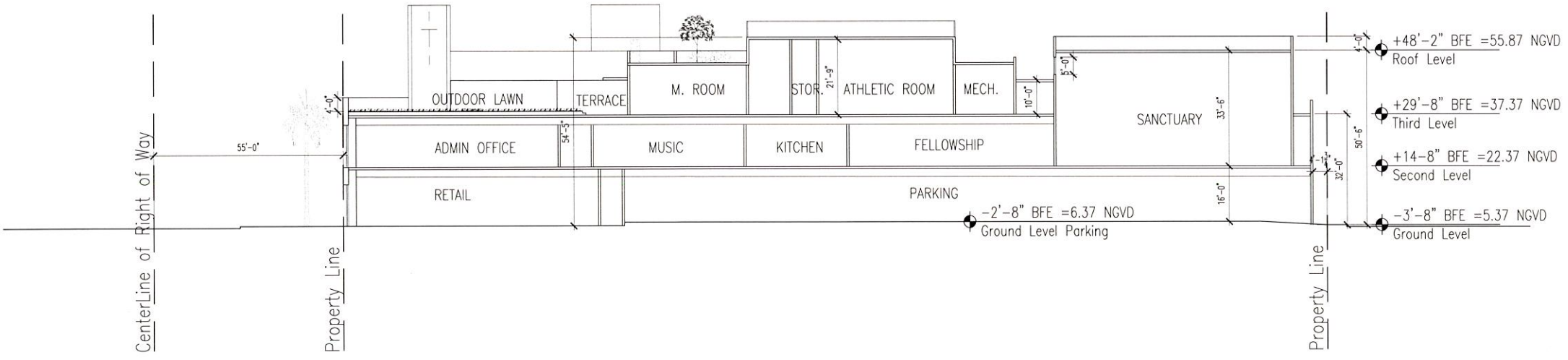
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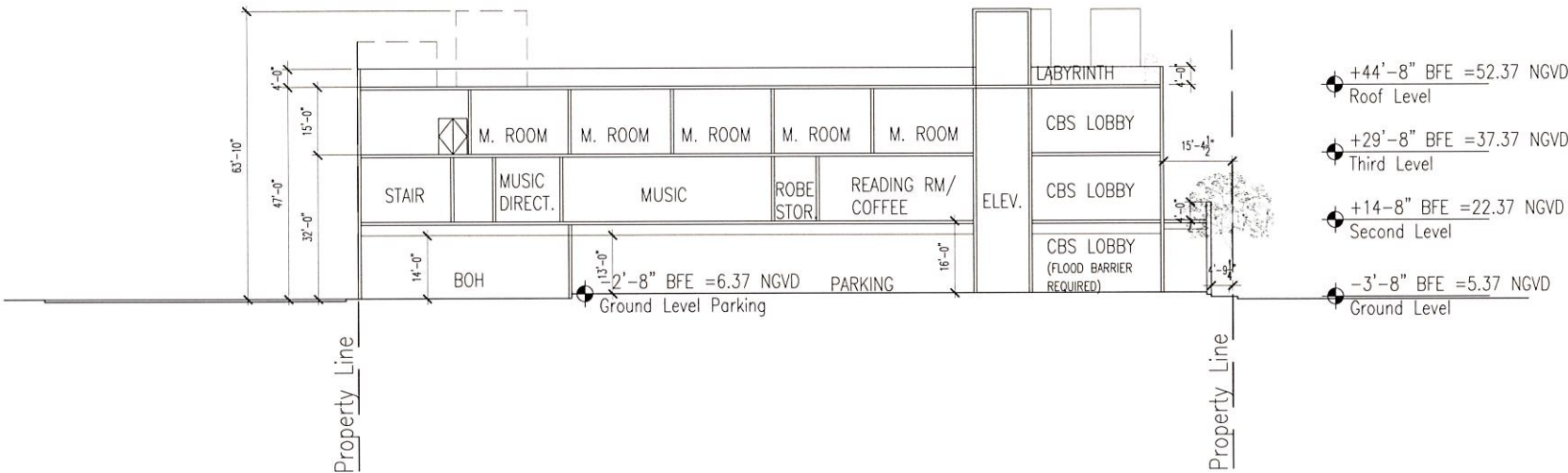
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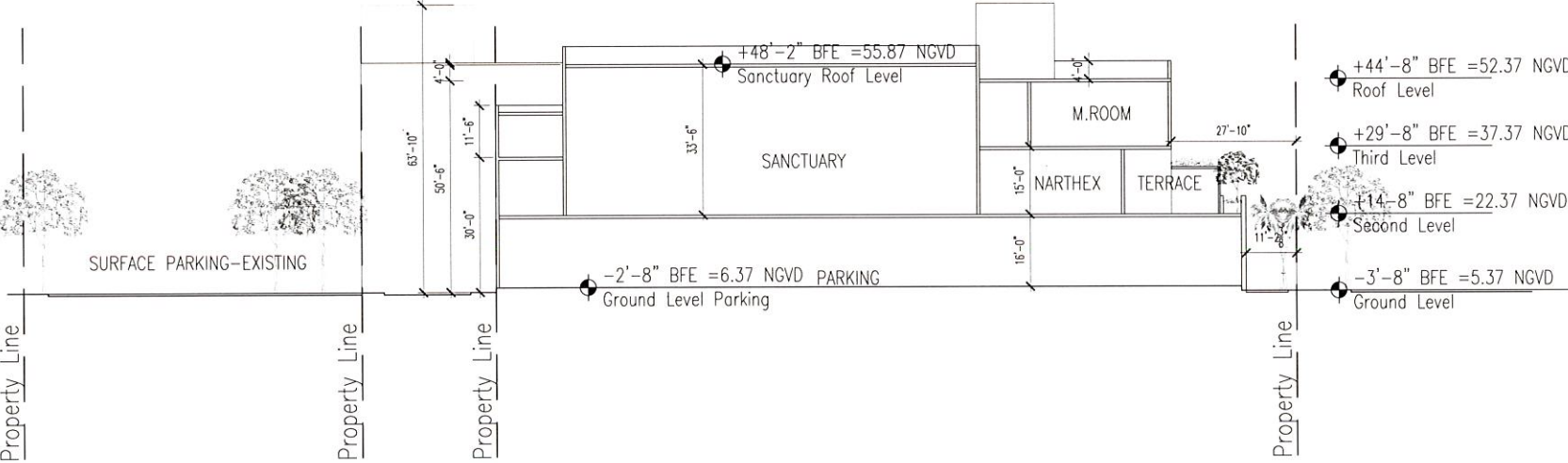
Section 2



Section 1



Section 2





Eyelevel View of Kane Concourse

1000 Kane Concourse

Rendering

A-401

June 10, 2016

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Eyelevel View of Kane Concourse & East Bay Harbor

1000 Kane Concourse

Rendering

A-402

June 10, 2016

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Eyelevel View of Kane Concourse

1000 Kane Concourse

Rendering

A-403

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Eyelevel View of Kane Concourse & East Bay Harbor

1000 Kane Concourse

Rendering

A-404

June 10, 2016

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Eyelevel View of East Bay Harbor

1000 Kane Concourse

Rendering

A-405

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Eyelevel View of Corner of East Bay Harbor & 95th Street

1000 Kane Concourse

Rendering

A-406

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Eyelevel View of Corner of 95th Street & Alley

1000 Kane Concourse

Rendering

A-407

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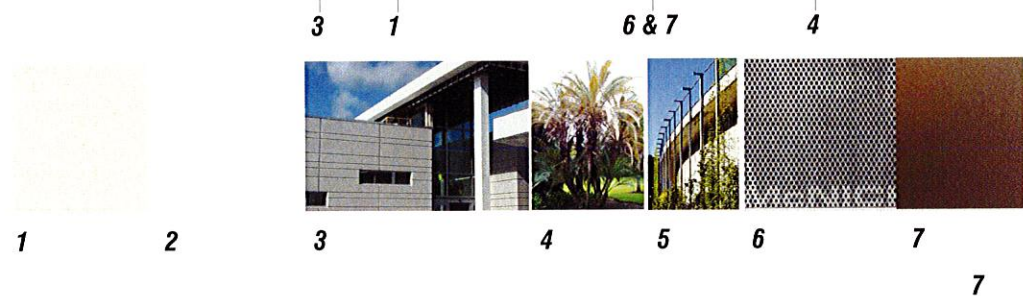
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East Elevation-East Bay Harbor Drive



- 1-Balboa Mist Color Paint
- 2-White Diamond Color Paint
- 3-Scouring Lines 2"
- 4-Phoenix Florida Hybrid Date Palm
- 5-Green Wall with Steel Cables & Cascading Vines over Stucco
- 6-Aluminum Perforated Metal 50% Solid to 50% Circular holes ratio(Bronze Color)
Also to be used for Screening Roof Equipment
- 7-Metal Panel Bronze Color



Kane Concourse Perspective



East Bay Harbor & Kane Concourse Perspective

1000 Kane Concourse

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Material Board

Scale NTS

A-501

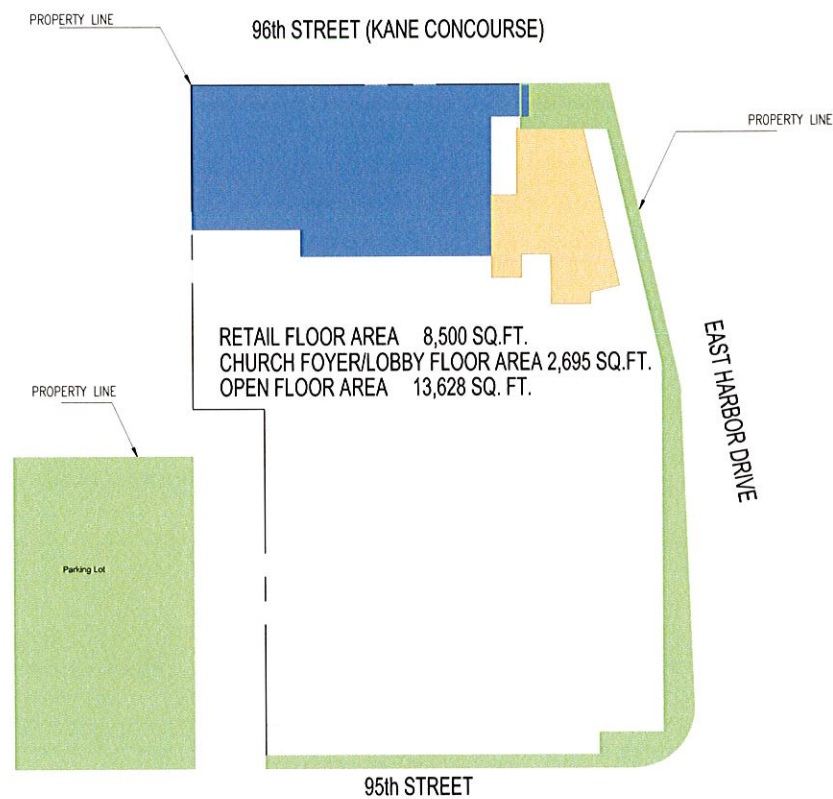
June 10, 2016

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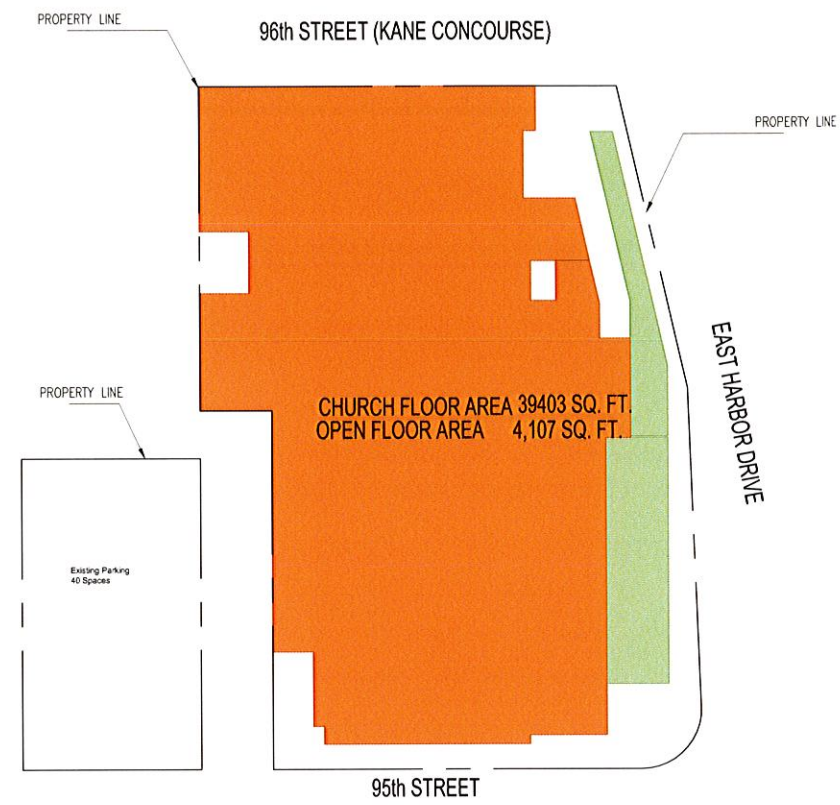
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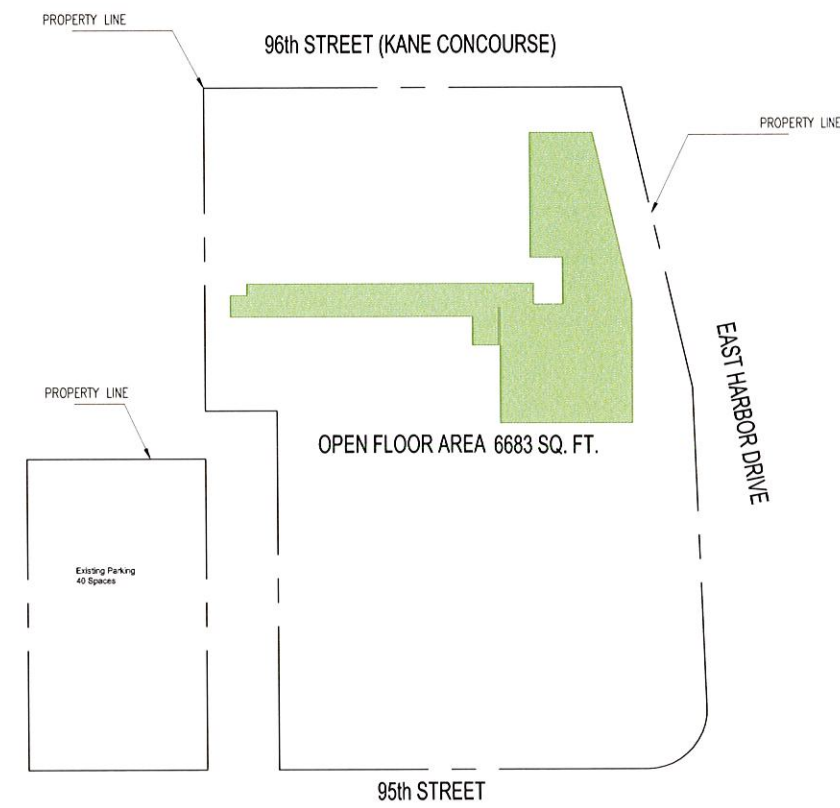
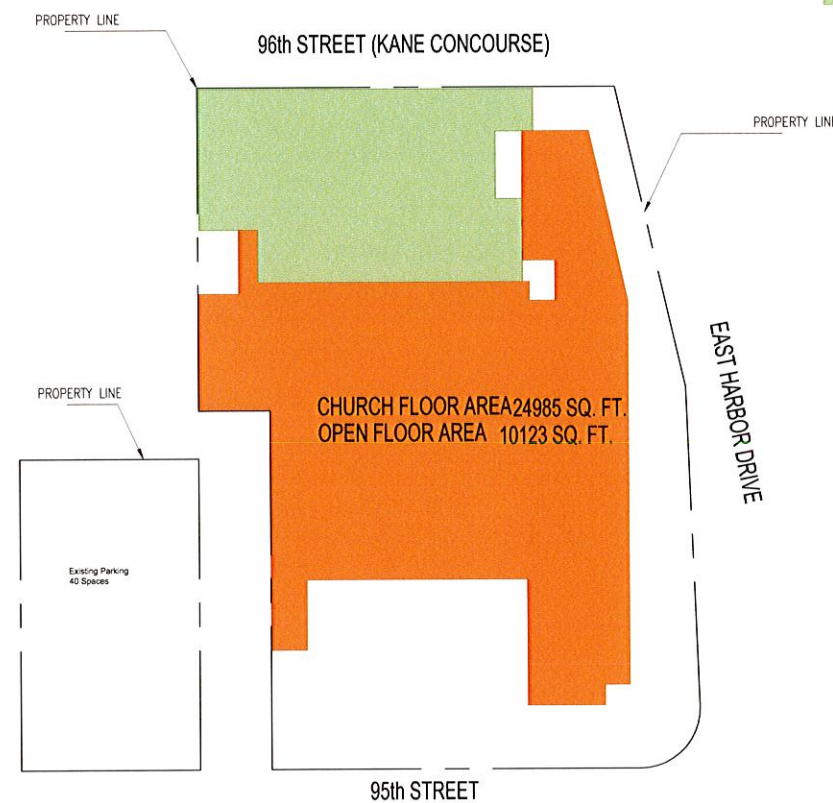


GROUND FLOOR

- RETAIL FLOOR AREA
- CHURCH FOYER/LOBBY FLOOR AREA
- CHURCH FLOOR AREA
- OPEN FLOOR AREA



2ND FLOOR



TOTAL FLOOR AREA 75,583 SF
(RETAIL 8,500 SF & CHURCH 67,083 SF)
TOTAL OPEN SPACE 34,541 SF

1000 Kane Concourse

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Sqft Calculations

Scale 1"=40'

A-601

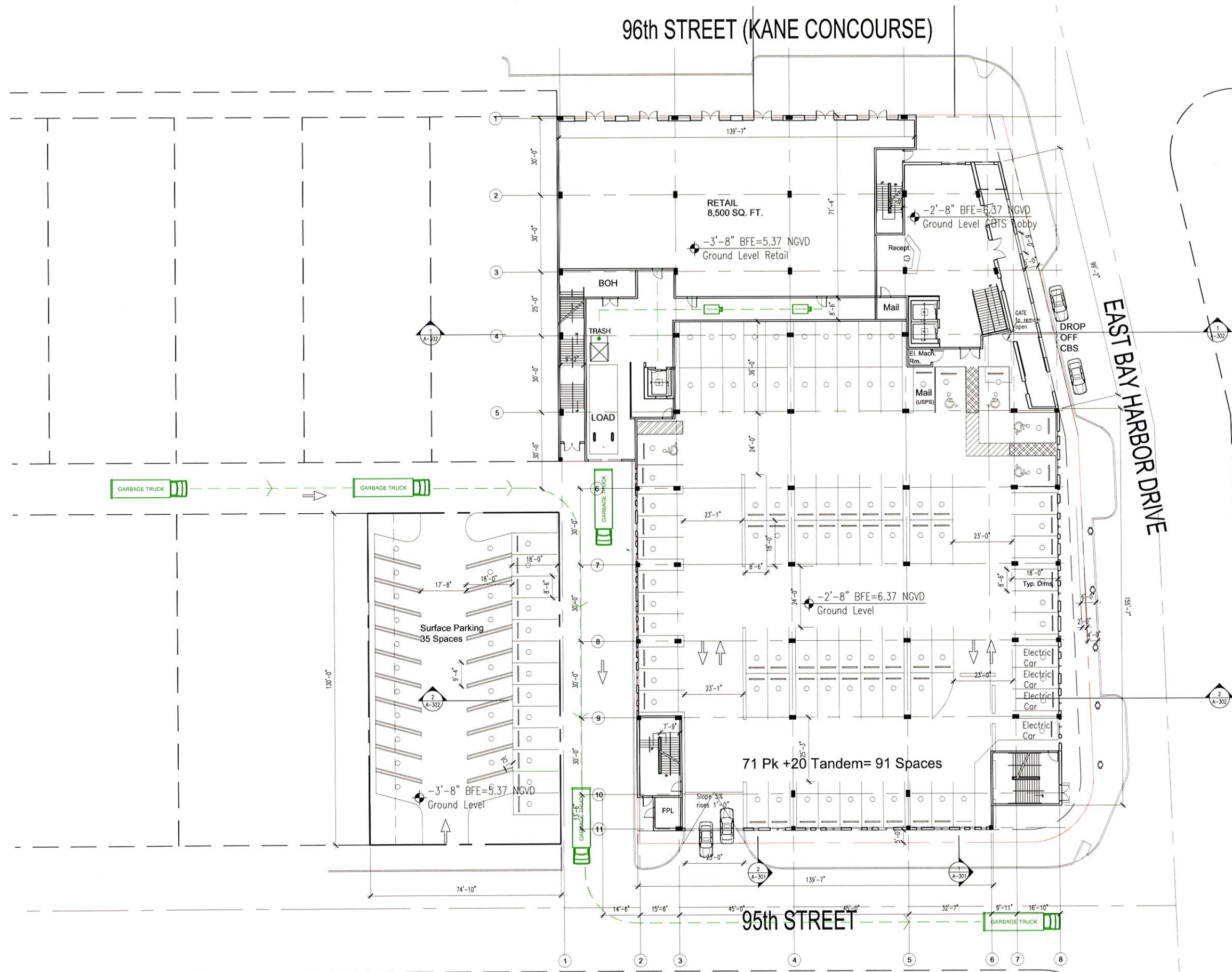
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February 9, 2016
 Mr. Roberto Bezold
 Zyscovich
 100 Biscayne Blvd.
 Miami, Florida 33132

Dear Mr. Bezold,

Please utilize this letter as confirmation that based on the drawings that you provided, Waste Management Inc. of Florida will be able to provide commercial waste and recycling services for the new church location at 1000 Kane Concourse, Bay Harbor Island, Florida.

If you require additional assistance, please contact me directly at 305-986-5120.

Sincerely,

Oliver Vega

Susan Vega
 Major Account Executive
 Waste Management Inc. of Florida
 susanvega@wm.com

2125 NW 10th Court
 Miami, Florida 33127
 305-471-4444

1000 Kane Concourse

Garbage Recycling Pick-Up Process

Scale 1:40

A-701

June 27, 2016

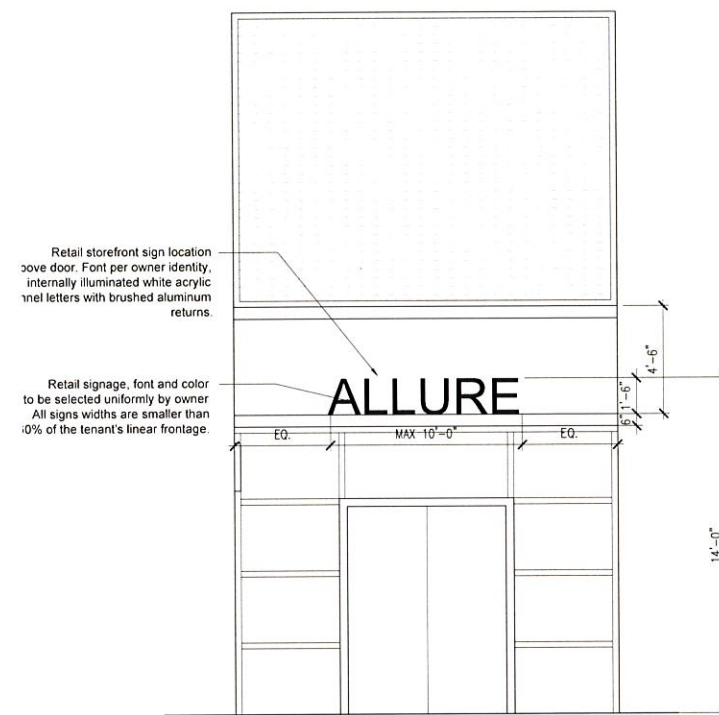
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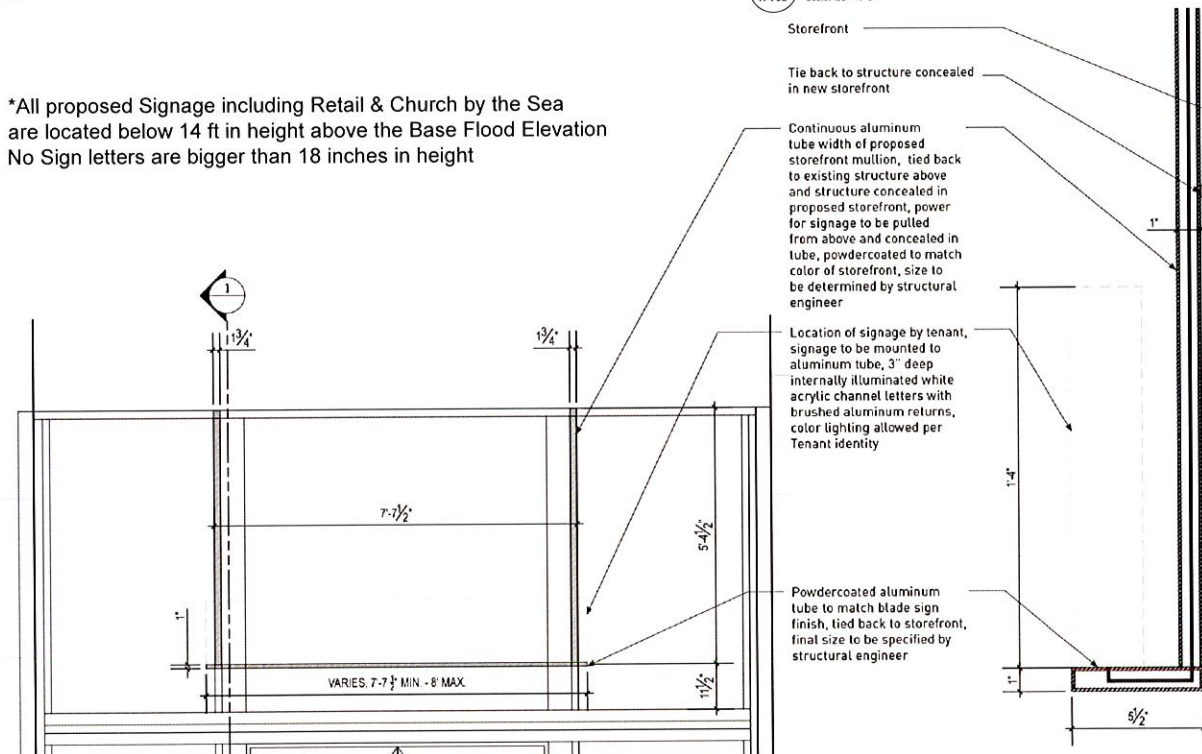
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02 Typical Storefront Elevation
A-702 Scale: 1/8" = 1'-0"

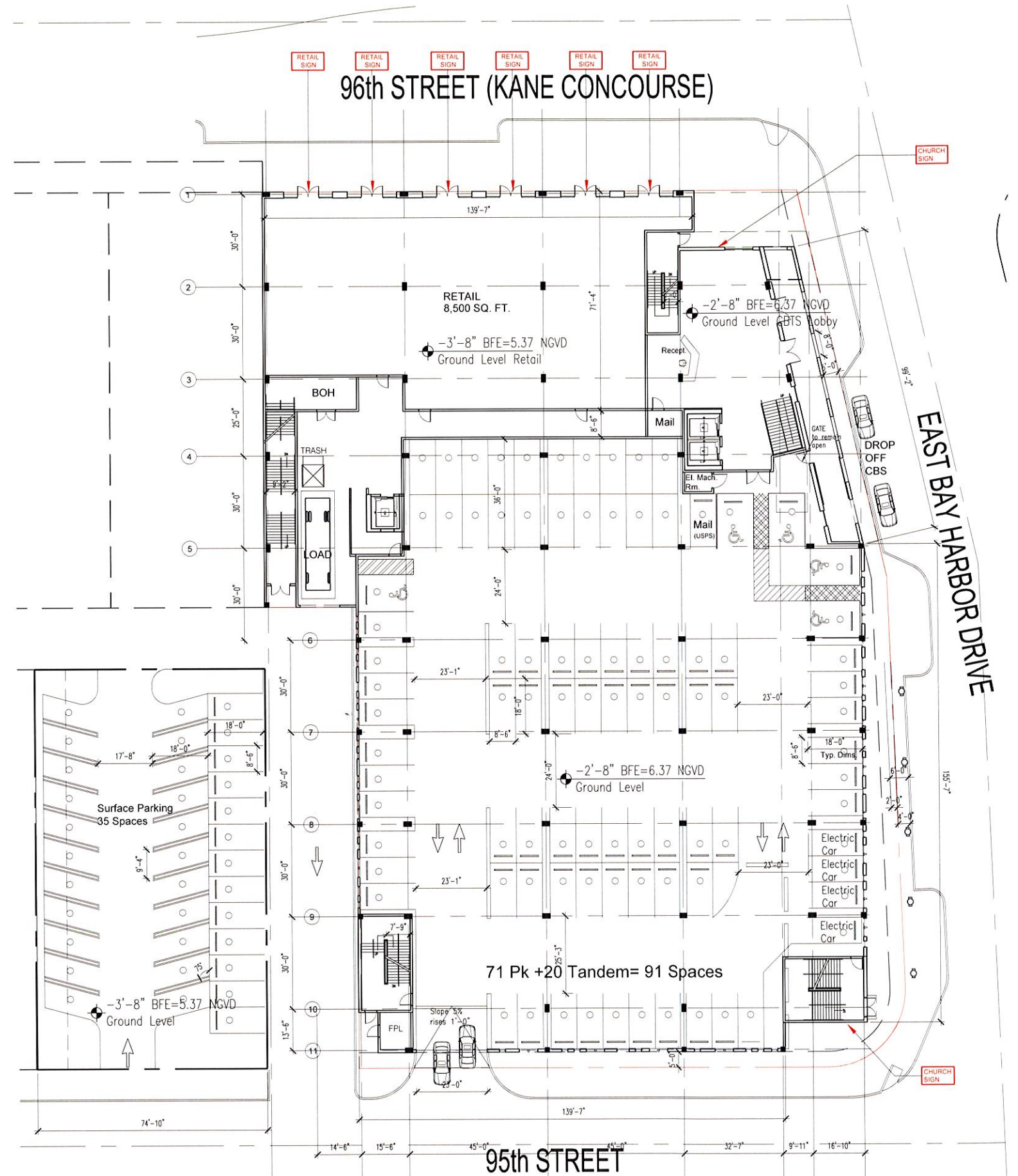
*All proposed Signage including Retail & Church by the Sea
are located below 14 ft in height above the Base Flood Elevation
No Sign letters are bigger than 18 inches in height



03 Typical Mounting Elevation and Section
A-702 Scale: nts



STOREFRONT SIGN MOUNTING CONCEPT



1000 Kane Concourse

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Exterior Signage

Scale 1:40

A-702

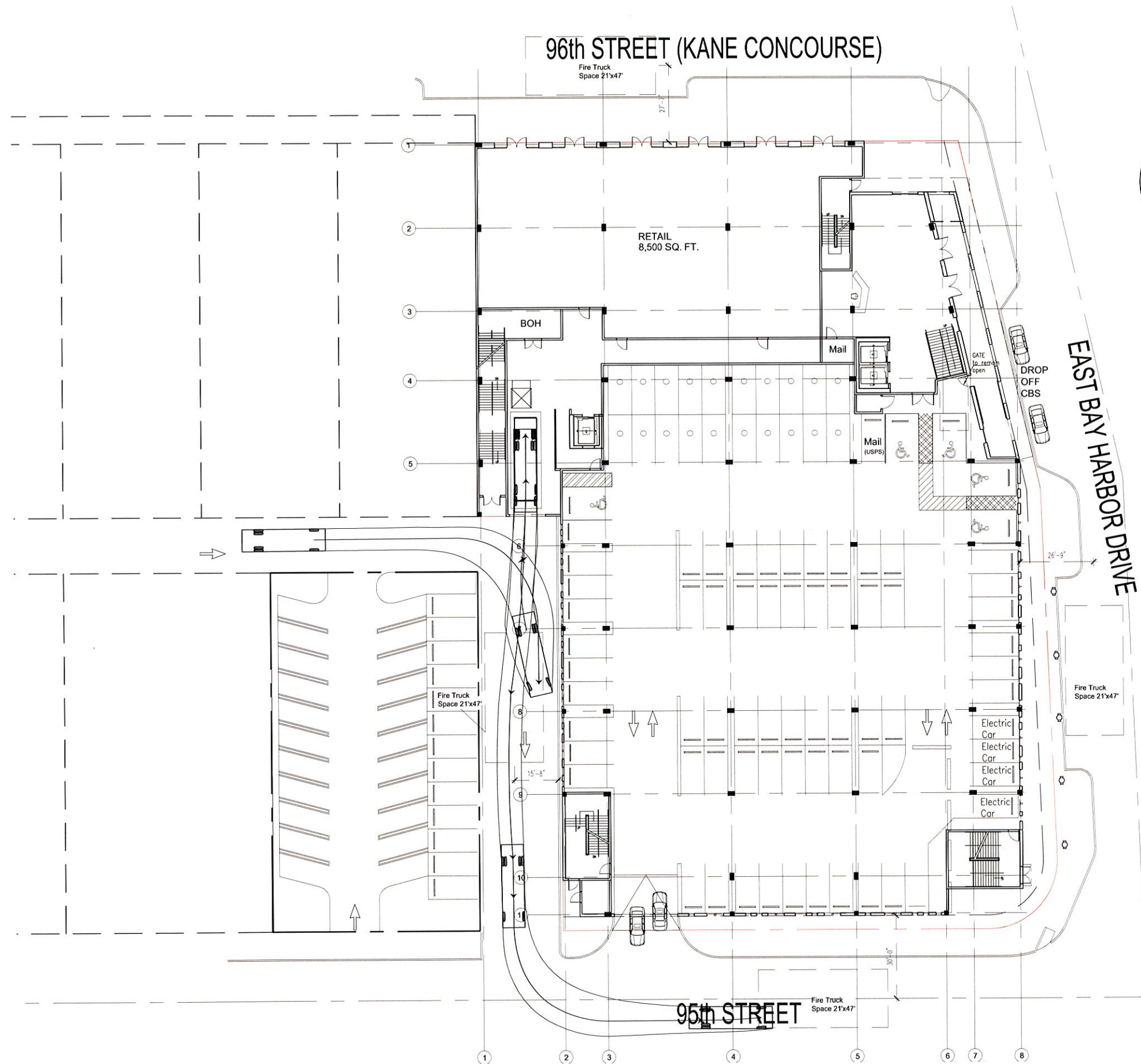
June 27, 2016

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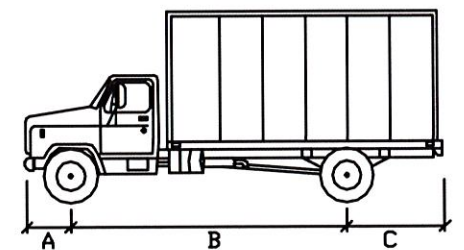
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SINGLE UNIT TRUCK DETAIL



	GB	GBm
Description	Ft.	M
A - Front Overhang	4.0	1.2
B - Wheelbase	20.0	6.1
C - Rear Overhang	6.0	1.8
D - Width	8.5	2.6
E - Track	8.5	2.6
F - Steering Angle (deg.)	31.6	31.6
Minimum Turning Radius	37.8	11.5

1000 Kane Concourse

Loading Diagram

Scale NTS

A-703

June 27, 2016

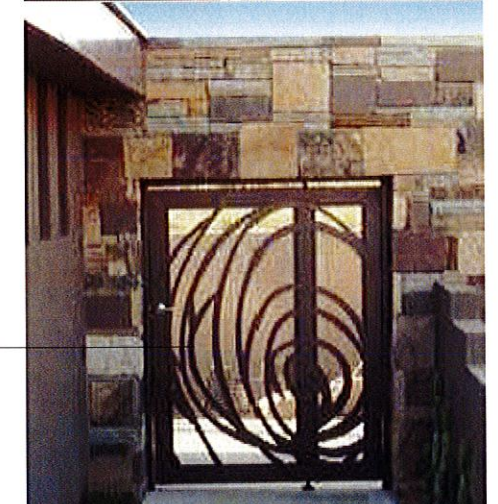
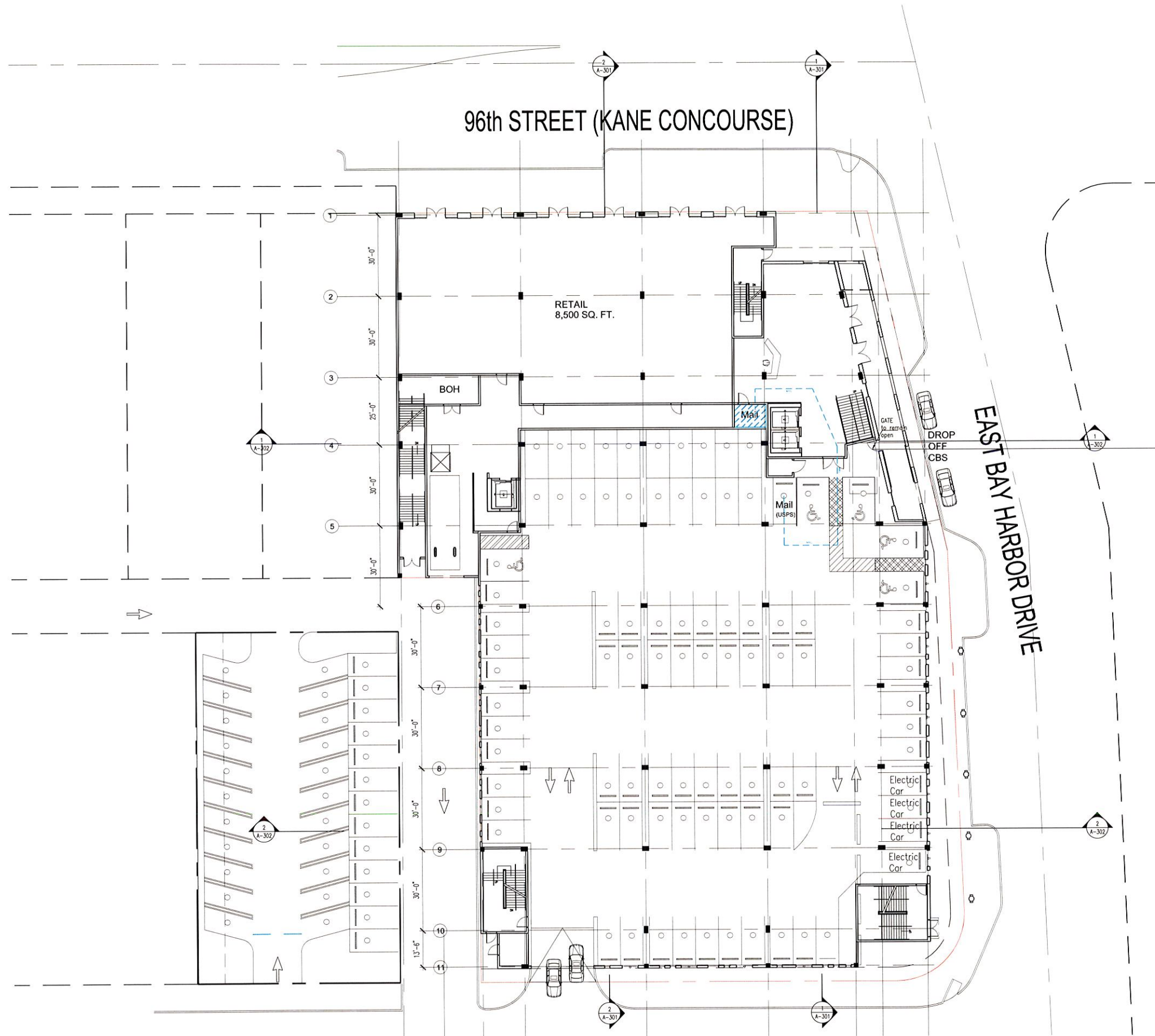
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Garage Gate Options



Mail Receptacle

1000 Kane Concourse

Mail Receptacle/Garage Gate

Scale 1:40

A-704

June 27, 2016

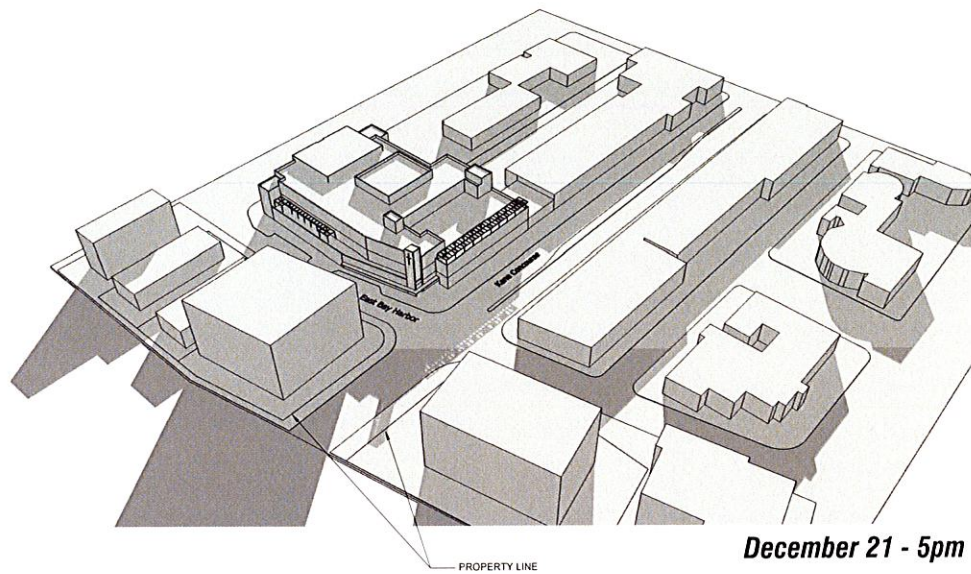
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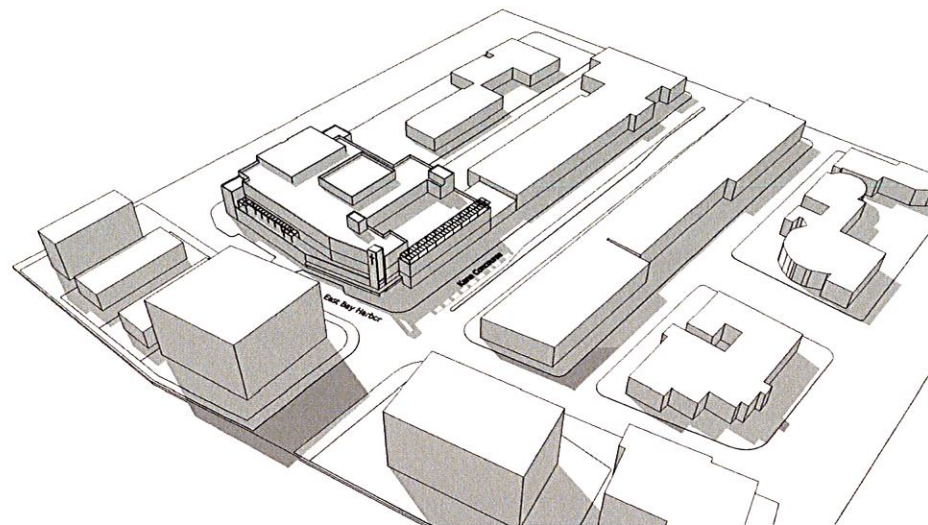
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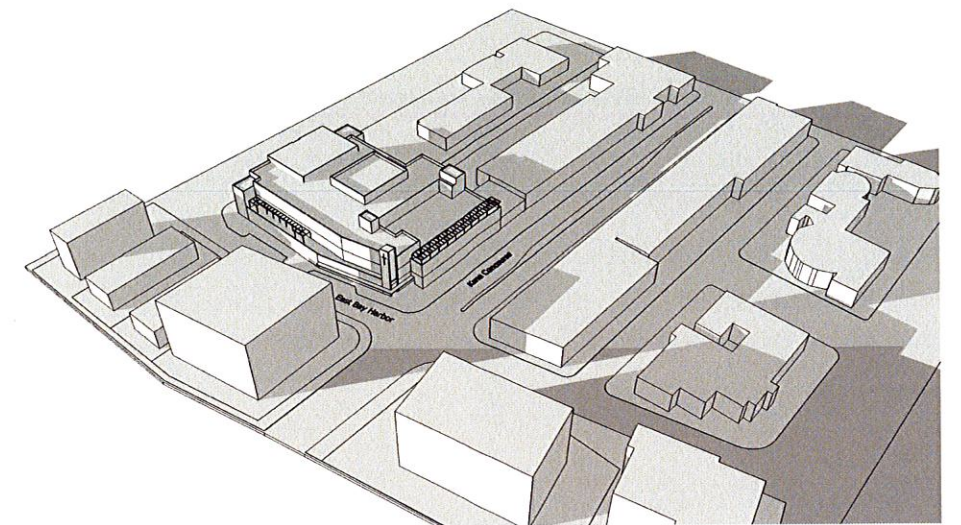
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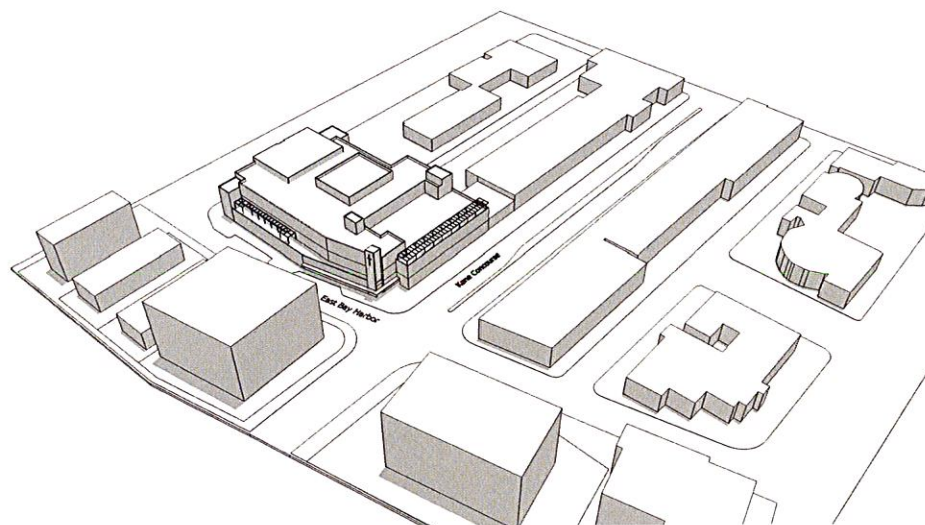
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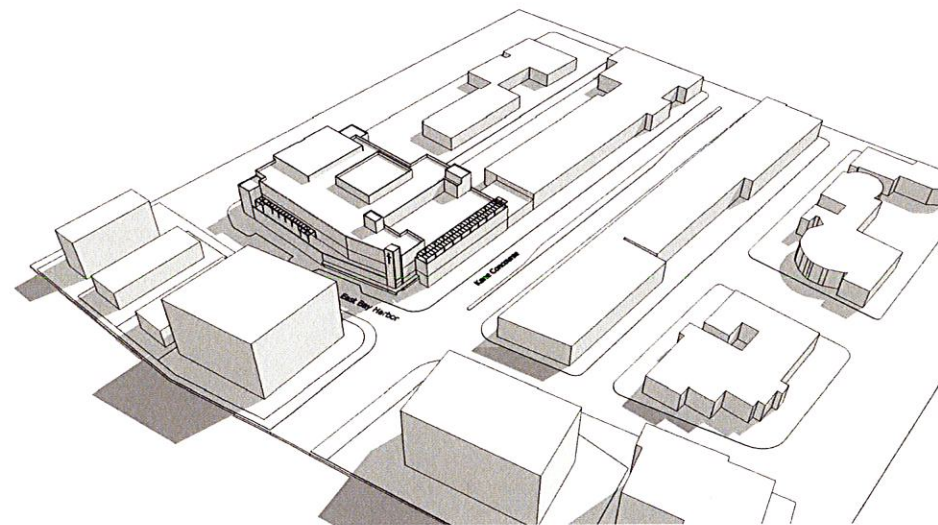
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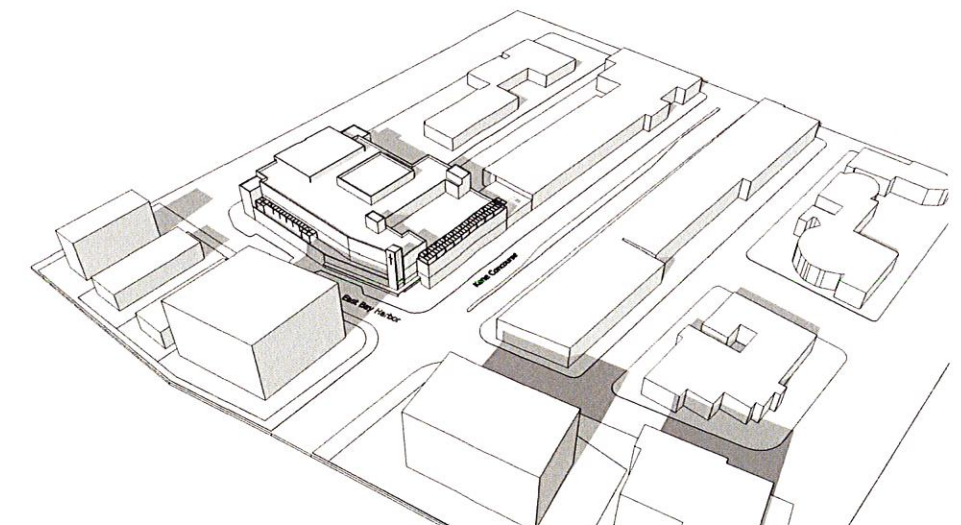
December 21 - 9am



June 20 - 5pm



June 20 - 2pm



June 20 - 9am

1000 Kane Concourse

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Shadow Study

Scale: N/A

A-705

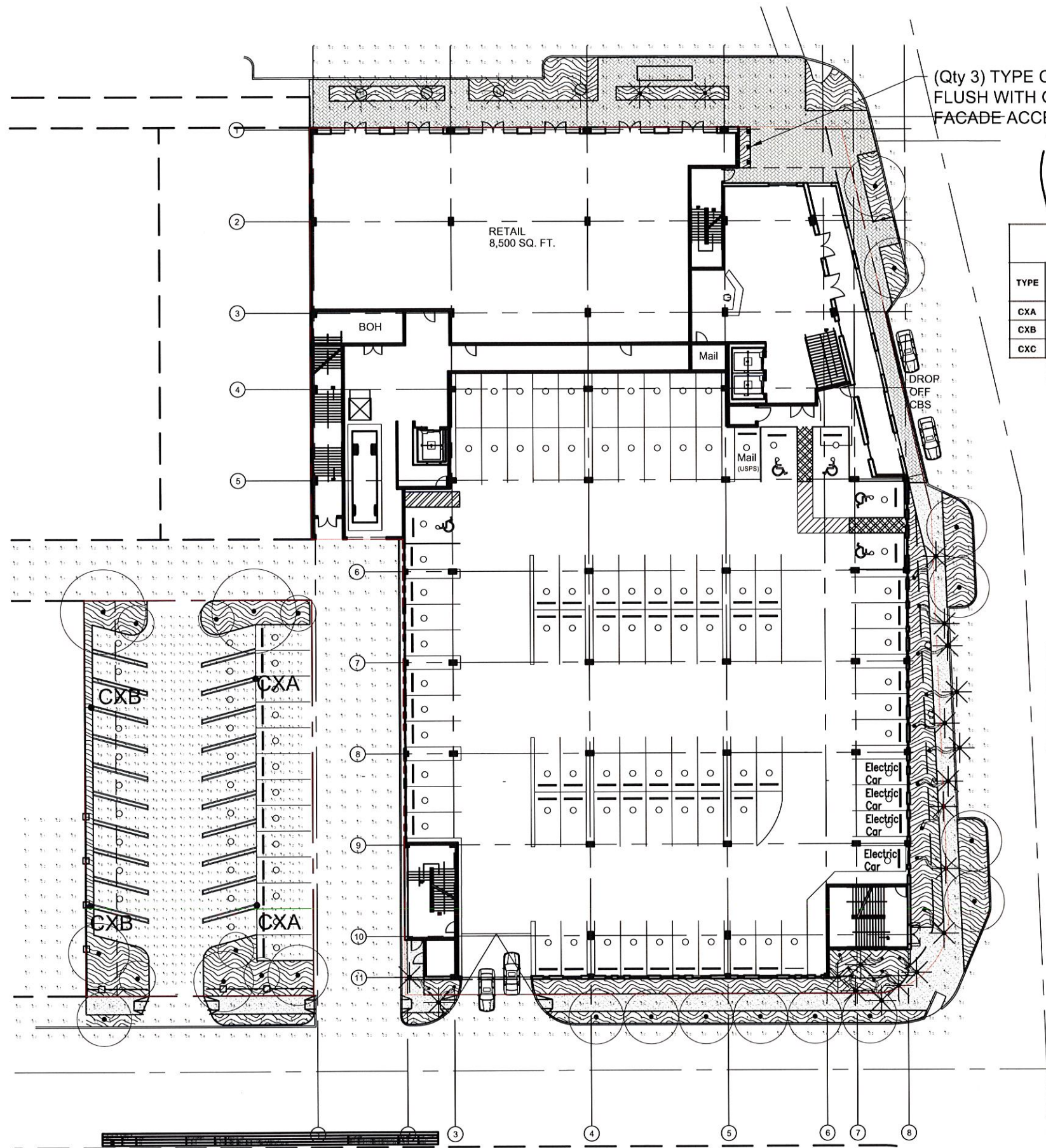
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(Qty 3) TYPE CXC
FLUSH WITH GRADE
FACADE ACCENT LIG

Church By the Sea - Luminaire Schedule

28 JUN 2016

TYPE	QTY	DESCRIPTION	MANUF.	CATALOGUE NUMBER	WATTAGE (input W)	VOLTAGE	DIM. PROTOCOL	NOTES
CXA	2	Decorative LED Type 5 dist. luminaire on 20' pole.	Lumec	MPTC 135W80LED4K-R-LE5-VOLT DMG APR5E-20 FINISH	(129)	TBD	0-10V	1
CXB	2	Decorative LED Type 4 dist. luminaire on 20' pole.	Lumec	MPTC 135W80LED4K-R-LE4HS-VOLT DMG APR5E-20 FINISH	(129)	TBD	0-10V	1
CXC	3	Flush with grade LED facade accent uplight	ERCO	33656.023 + 33958.023 + 33987.000	(20)	120	ELV	

NOTES:

All counts listed are for estimating purposes only. Ordering parties are responsible for take-off counts from lighting plans and confirming/ordinating order of proper mounting components.

1. Voltage & Finish TBD

Calculation Summary							
Label	CalcType	Units	Avg	Max	Min	Avg/Min	Max/Min
96th St	Illuminance	Fc	0.21	0.9	0.0	N.A.	N.A.
Adj Property	Illuminance	Fc	0.19	0.5	0.0	N.A.	N.A.
CalcPts Alley	Illuminance	Fc	0.58	0.9	0.3	1.93	3.00
CalcPts Alley 2	Illuminance	Fc	0.44	0.9	0.0	N.A.	N.A.
CalcPts Parking	Illuminance	Fc	1.46	2.1	0.7	2.09	3.00
East Harbour Drive	Illuminance	Fc	0.00	0.0	0.0	N.A.	N.A.
Kane Concourse	Illuminance	Fc	0.00	0.0	0.0	N.A.	N.A.



Hilbish McGee Lighting Design

402 peebles street
sewickley, pa 15143

phone 412.749.0533
email info@hmlid.biz

1000 Kane Concourse

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Ground floor @ +0'-0"

Scale 1:40

L-100

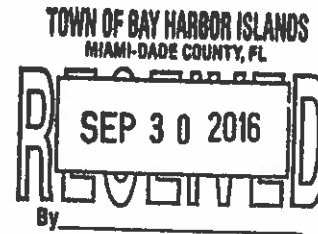
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Via Hand Delivery

September 30, 2016

Mayor Jordan Leonard and Council
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, Florida 33154

Re: Response to Corporations' Appeal

Dear Mayor Leonard and Members of the Town Council:

This correspondence is transmitted to you on behalf of The Church by the Sea, Inc. (the "Church") for the purpose of responding to the appeal filed by Tucker Gibbs on August 25, 2016 on behalf of 1060 Kane Concourse Inc., 1048 LLC, 1050 LLC, and D&F LLC (the "Corporations' Appeal").¹ (Ex. A). The Corporations' Appeal challenges the approval of Resolution 2098 (the "Development Order") issued by the Town of Bay Harbor Islands Planning and Zoning Board (the "Board") on July 28th, 2016. (Ex. B). The record demonstrates that the Corporations' Appeal is without merit. It presents nothing more than an absurd, unsupportable application of Section 23-5(7) of the Code designed to harass the Church for improper purposes. For the reasons set forth below, denial of the Corporations' Appeal is both necessary and justified.²

I. Procedural History

A. Development Review Committee Approval

On January 5, 2016, the Church submitted a site plan application to the Development Review Committee ("DRC") for approval of a mixed-use development comprised of retail and religious uses (the "Project"). DRC is responsible for ensuring strict compliance with the Town's Code on all proposed development projects.

¹ We provide a bound, indexed Addendum of relevant record materials from the proceedings before the Town's Boards as well as the Town's Professional Staff Reports and Recommendations. The Addendum is cited by exhibit letter, followed by the page, where applicable. For example, "(Ex. A, 1)" refers to page 1 of Exhibit A in the Church's Addendum.

² On August 26th, the Church filed its own appeal asking the Town Council to quash Condition D imposed by the Board, but to otherwise affirm the Development Order. Nothing in this response should be taken as an acquiescence to the imposition of Condition D.

The Church appeared before DRC on February 4, 2016 and April 14, 2016. (Ex. C and D). The final proposed plans for the Project were recommended for approval by the Town's professional staff ("Staff"), found to comply with all provisions of the Town's Code, and, importantly, reviewed and approved by DRC on April 24, 2016.³ Of particular importance, Staff found in its professional opinion that all first floor uses were permitted uses (i.e. retail and lobby) and complied with Section 23.5(7).

B. May 17th Planning and Zoning Board Meeting

Following DRC's approval, the Church submitted its application for review by the Planning and Zoning Board. On May 11, 2016, Staff issued a memorandum to the Board reiterating that the proposed plans complied with all provisions of the Town's Code and recommending that the Board approve the Project. (Ex. E). The Church first presented its proposed development plans to the Board on May 17, 2016. (Ex. F).

During the May 17th hearing, Mr. Gibbs addressed the Board and commented that the Project did not comply with the Town Code Section 23-5(7) because Kane Concourse "is supposed to be 100 percent retail." (Ex. F, 35:17). In response to Mr. Gibbs' comment, the Board presented the following question to its Staff:

MR. BEBCHIK: I have another question about that corner, maybe the question more about the usage on the frontage of Kane Concourse. Someone from the public mentioned all frontage need to be used for retail, so that part of frontage not being used for retail so what is the code, should [we] require that all retail continue into the corner or not, what are we discussing here?

(Ex. F, 130:17 – 131:1)

MR. HURWITZ: Yeah. Scott, do you want to say something or Stanley? I understand the difference but I think they want -- I think Alan's⁴ asking a legitimate question, you know, things come before us and we're really not supposed to be in position to judge whether or not something meets code or not, that's not our job, so when anyone on the board, or Alan in this case, makes a legitimate question and someone raised the issue, appreciate that, you know, perspective and input, but, you know, I'd like the town to tell us whether or not that's --

(Ex. F, 133:17 – 134:5)

Staff then affirmed that the Project complies with Section 23.5(7):

MR. SCOTT: *It meets the town code.*
(Ex. F, 134:6) (emphasis added).

³ It is also important to note that Fran Neuhut, the registered agent of all of the entities filing this appeal, was present at both DRC meetings.

⁴ Alan Bebchik is a member of the Board.

The Board concluded the May 17th hearing by deferring the site plan application and advising the applicant to return after making several modifications, none of which required the removal or relocation of the lobby. (Ex. F and G).

C. July 19th Planning and Zoning Board Meeting

The Church revised its plans to incorporate the Board's requested changes and provided a detailed narrative outlining the changes. (Ex. G). On June 28, 2016, Staff approved the revised plans and signed off that the Project complies with all provisions of the Town Code. (Ex. H). On July 12, 2016, the Town Planner and all other required departments again approved the revised plans and found that the Project complied with the Code. (Ex. I). The revised plans were then presented to the Planning and Zoning Board on July 19, 2016. (Ex. J).

During the July 19th hearing, Mr. Gibbs again addressed the Board, renewed his objection that the Project did not comply with Code Section 23-5(7)(relating to the Kane Concourse ground floor frontage requirements)(Ex. J, 23:6-11). In response to Mr. Gibbs' comments, the Board again asked for confirmation from the City's Staff that the Project complied with the code and the Town Planner again advised the Board and Mr. Gibbs that the Project complied with *all* Code provisions, including Section 23.5(7) (emphasis added):

MR. TELESCO: What's the validity of what he's saying? Because that's very important. We have a code that says one hundred percent of that space needs to be retail on Kane Concourse. How was this approved by your office?

MR. MILLER: . . . So in our position, it is commercial across the entire frontage at the corner. There is a common entrance into the building, the lobby, and you go up to the second.

(Ex. J, 30:3 – 31:3).

II. Legal Argument

A. Standard of Review on Appeal to the Town Council

It is a well-established principle that a reviewing body should defer to a board's interpretation of an ordinance as long as that interpretation is "consistent with legislative intent and supported by competent, substantial evidence." *Metro. Dade County v. P.J. Birds, Inc.*, 654 So. 2d 170, 175 (Fla. 3d DCA 1995) (deferring to County Historic Preservation Board's reasonable interpretation of Historic Preservation Ordinance). Indeed, "[a]n agency's interpretation of a statute it is charged with enforcing is entitled to great deference." *Fla. Cable Television Ass'n v. Deason*, 635 So. 2d 14, 15 (Fla. 1994); *See Las Olas Tower Co. v. City of Fort Lauderdale*, 742 So. 2d 308, 312 (Fla. 4th DCA 1999) (holding that staff's interpretation of city code was a reasonable interpretation and would only be overturned if it "amounts to an unreasonable interpretation, or is clearly erroneous"). Thus, the interpretation of the Code reached by the Board and its Staff is entitled to great deference.

B. The Proposed Development is in Full Compliance with Zoning Code Regulations

Section 23-5(7) of the Town's Code requires "100 percent of the ground floor space of any newly developed building or land facing Kane Concourse shall be used for the purposes set forth above [permitted uses listed in Sections 23-5(1) – (6)] excluding business and professional offices, including but not limited to physicians, attorneys, real estate offices, medical offices and clinics and stock and commodity broker offices." Sections 23-5(1) – (6) set forth the following permitted uses:

1. Multi-family residential uses that are part of a mixed-use development. "No residential dwelling units may be located at ground level adjoining Kane Concourse; provided however, *a lobby access is permitted;*"
2. Business and professional office uses;
3. Retail uses;
4. Personal service uses (fitness, yoga, barber, etc.);
5. Miscellaneous uses (listing various sales uses, as well as a post office, theater, and art gallery); and
6. Restaurant uses.

Thus, the Code requires that 100 percent of ground floor space has to be a permitted use within the B1 business district. *The Code does not require 100 percent to be retail.*

Even where the Code expressly forbids residential dwelling units on the ground floor, it simultaneously recognizes that a lobby is "permitted." *See id.* Moreover, nearly every building located within the B1 Business District has a first floor lobby similar to the one displayed in the Church's plans. For anyone to conclude that a lobby is not a permitted use in a multi-story building would be, as a matter of code interpretation, incorrect.⁵ More glaringly, as a practical matter, such an interpretation would lead to an absurd operation of business along Kane Concourse.

Staff for the Board, which includes the Town Planner, the Engineer, and Public Works, concluded that lobbies are permitted uses within the B1 business district. (Ex. C, D, and E).⁶ When asked about whether the Project meets Town Code requirements relating to retail frontage on Kane Concourse, Staff responded unequivocally that after careful consideration it concluded the Project meets the Town Code. (Ex. F, 134:6–14; Ex. J, 30:3 – 31:3). Specifically, the Town's Consultant

⁵ This is especially so when Section 23-5 is read in connection with other sections of the Code that specifically contemplate lobbies in multi-story buildings with the B-1 Zone. *See* Section 17-20(h) ("Building tenant directory signs are required for all multi-story buildings in the B-1 District in accordance with section 17-3. All building tenant directory signs must be installed adjacent to an elevator, if placed inside a lobby, or near the lobby front door and rear door, if provided, on an exterior wall surface if placed outside of a lobby.").

⁶ The Staff Memorandums demonstrate that Staff thoroughly reviewed the proposed plans on numerous occasions and found that they complied with all code requirements that exist in Bay Harbor Islands and recommended approval of the Project.

Planner, Mr. Miller, informed the Board that the Project was “looked at [] in a similar light where others have been allowed and do exist where there is a common lobby that goes into the building,” and it was concluded that the Project is “commercial across the entire frontage.” (Ex. J, 30:17 – 31:3). In addition to these thoughtful and unequivocal responses from Staff, the Board went on to conclude for itself that “the Site Plan is consistent with the criteria set forth in Section 5-23.1 of the Code....” (Ex. B).

The record of the proceedings is clear – the Town Planner confirmed that the Project complied with the Town Code, and specifically that a lobby is a permitted use, consistent with the criteria set forth in Section 23-5 of the Code. Further, the record demonstrates that the Board considered the exact issue raised by the Corporations’ Appeal was considered, and the Board adopted Staff’s position that the Project complied with the Town Code. The Staff reports and testimony constitute competent substantial, competent evidence and their interpretation of the Code is entirely reasonable. For these reasons, the Town Council should defer to the interpretations of the Board and Staff. *See P.J. Birds, Inc.*, 654 So. 2d at 175; *Las Olas Tower Co.*, 742 So. 2d at 312. To overturn this interpretation, the Corporation’s Appeal would need to demonstrate that it was arbitrary, capricious, contrary to the Code’s plain language, or otherwise beyond fair debate. *See Deason*, 635 So. 2d at 15; *P.J. Birds, Inc.*, 654 So. 2d at 175; *Las Olas Tower Co.*, 742 So. 2d at 312. The Corporation’s Appeal wholly fails to satisfy this heavy burden.

In conclusion, we ask that the Town Council deny the Corporations’ Appeal, as any other outcome would result in an unfair interpretation of the Code that would treat the Church unlike any other building in the Town.⁷ The Church reserves the right to supplement this response prior to the hearing. Moreover, the Church expressly reserves all rights and remedies existing under state and federal law. This response is not, nor shall it be deemed to be, a waiver or abandonment of any other rights and/or remedy existing at law or in equity.

Sincerely,



Amy E. Huber
For the Firm

Encls.

cc: Stanley Price, Esq.
Frank Simon, Esq.
Mr. Ron Wasson
Marlene Siegel
Michael Miller
Tucker Gibbs, Esq. (via Federal Express)

⁷ Again, Condition D of the Development Order is the subject of a separate Appeal filed by the Church on August 26, 2016, and nothing in this response should be taken as an acquiescence to the imposition of Condition D.

INDEX TO ADDENDUM

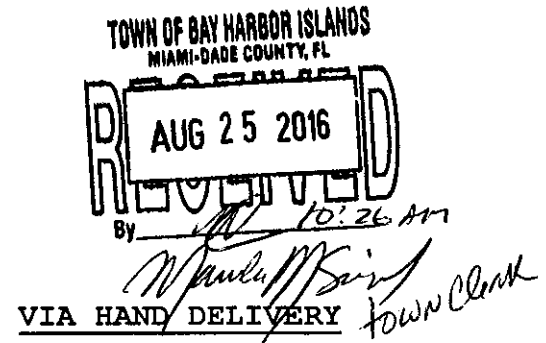
- A. Appeal filed by Tucker Gibbs on August 25, 2016 on behalf of 1060 Kane Concourse Inc., 1048 LLC, 1050 LLC, and D&F LLC
- B. Town of Bay Harbor Islands Resolution No. 2098
- C. Development Review Committee Staff Report dated January 29, 2016
- D. Development Review Committee Staff Report dated April 12, 2016
- E. Planning & Zoning Board Staff Memorandum dated May 11, 2016
- F. Transcript of Planning & Zoning Board Meeting dated May 17, 2016
- G. Zyscovich Architects Narrative of Revisions Based on Planning & Zoning Board Comments
- H. Planning Staff E-mail Approval of Revised Plans dated June 28, 2016
- I. Planning & Zoning Board Staff Memorandum dated July 12, 2016
- J. Transcript of Planning & Zoning Board Meeting dated July 19, 2016

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tucker@wtgibbs.com



August 25, 2016

Ronald J. Wasson, Town Manager
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, Florida 33154

**Re: Appeal to the Town Council of Planning & Zoning Board
Resolution 2098 (Application for site plan approval for
property at 1000 Kane Concourse).**

Dear Mr. Wasson:

I represent the following property owners nearby the property that is subject to the referenced resolution:

1. 1060 Kane Concourse Inc., owner of the property at 1060 Kane Concourse.
2. 1048 LLC, owner of the property at 1048 Kane Concourse.
3. 1050 LLC, owner of the property at 1063-1073 95th Street.
4. D&F LLC, owner of the property at 1050 Kane Concourse.

My clients object to and appeal to the Town Council pursuant to section 23-5.1(b) of the Bay Harbor Islands Code of Ordinances the approval of Resolution 2098 because it approves a project that is contrary to section 23-5(7) of those regulations. That provision explicitly requires that "100 percent of the ground floor space of any newly developed building or land facing Kane Concourse shall be used for the purposes set forth above [which are the permitted use provisions listed in section 23-5(1) through (6)] excluding business and professional offices..." According to the approved plans, such uses do not occupy 100 percent of the ground floor space facing Kane Concourse.

Additionally, neither the resolution nor the record of the planning and zoning board review of the application shows the factual basis for the approval and how that approval comports with section 23-5(7).

For the forgoing reasons my clients through this letter appeal the issuance of Resolution No. 2098, approving a site plan for the property at 1000 Kane Concourse, Bay Harbor Islands, Florida.

Sincerely,



W. Tucker Gibbs

cc: 1060 Kane Concourse Inc.
1048 LLC
1050 LLC
D&F LLC

A RESOLUTION OF THE PLANNING AND ZONING BOARD OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, APPROVING THE SITE DEVELOPMENT PLAN APPLICATION FOR THE CHURCH BY THE SEA PROJECT.

WHEREAS, on April 28, 2016, The Church by the Sea, Inc. (hereinafter the “Applicant”), filed an initial application for site plan approval. On June 27, 2016, Applicant submitted a revised site plan for a three (3) story mixed use building consisting of open and enclosed parking, together with commercial shopping on the ground floor along Kane Concourse, and two (2) stories of a religious use thereupon located at 1000 Kane Concourse, Bay Harbor Islands, Florida, and legally described as:

Tract “N” of “Nolan Brown”, according to the Plat thereof, as recorded in Plat Book 56 at Page 53, of the Public Records of Miami-Dade County, Florida.

And,

Lot 18 of Block 12, “Bay Harbor Island” Subdivision according to the plat thereof, as recorded in Plat Book 46, at Page 5 of the Public Records of Miami-Dade County;

(Hereinafter the “Site Plan”); and

WHEREAS, a site plan for new construction requires approval by the Planning and Zoning Board pursuant to Section 5-23.1(a) of the Town of Bay Harbor Islands’ Code of Ordinances (hereinafter the “Code”); and

WHEREAS, on July 19, 2016, the Town’s Planning and Zoning Board approved the Site Plan, pursuant to Section 5-23.1(a) of the Code, with the conditions set forth below.

NOW THEREFORE, be it resolved that:

1. **Recitals.** The foregoing recitals are hereby ratified as true and correct and incorporated herein by reference.
2. **Finding.** The Planning and Zoning Board finds that the Site Plan is consistent with the criteria set forth in Section of 5-23.1 of the Code and approves the Site Plan dated June 14, 2016, subject to the below conditions for approval.
3. **Effective Date.** This Resolution shall take effect upon the date of its adoption (the “Effective Date”).
4. **Conditions of Approval.**
 - A. This approval is based on the Site Plan dated June 27, 2016. Any modifications thereto shall require separate approvals from either staff or the Planning and Zoning Board, as specified in the Code.
 - B. When the Miami-Dade Fire Department formally reviews the Project, if any material site design changes are required, a re-approval of the Site Plan shall be required by staff or the Planning and Zoning Board, as specified in the Code.

- C. Applicant shall submit final working plans within 365 days after the Effective date of this Resolution, unless extended by the Town Manager, or his or her designee, for up to 180 days. Applicant shall obtain a building permit within 90 days after the approval of final working plans, unless extended by the Town Manager, or his or her designee, for up to 90 days. Failure to obtain a building permit within the prescribed time shall result in the invalidation of the Site Plan, except and unless this Resolution is extended pursuant to the Code or other valid extension as prescribed by Florida law.
- D. The vertical tower extending beyond the roof level depicted on the East Elevation (Page A-202 of the Site Plan) shall be relocated to the south so that the northern edge of the tower shall be located in the same position in which the northern edge of Ocean Cadillac's current vertical tower is located (thirty-four feet (34') from the north property line).
- E. The building signage depicted in the Site Plan is not a part of the Site Plan approval. Applicant shall apply for the building signage depicted in the Site Plan via separate application.

5. **Severability.** If any provision, section, phrase or word of this Resolution is declared invalid or unenforceable by a court of competent jurisdiction, the remaining provisions, sections, phrases or words of this Resolution shall remain in full force and effect.

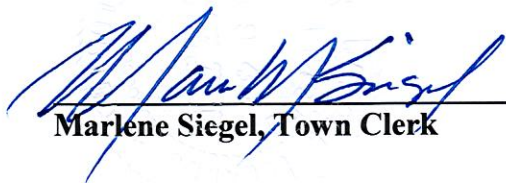
6. This Resolution shall become effective immediately upon its adoption, unless a timely appeal is filed with the Town Council.

PASSED this 28 day of July, 2016.

**PLANNING AND ZONING BOARD
TOWN OF BAY HARBOR ISLANDS**

By: 
Steven Hurwitz, Chair Person

ATTEST:


Marlene Siegel, Town Clerk

APPROVED AS TO FORM:


Frank C. Simone, Esq., Assistant Town Attorney

**TOWN OF BAY HARBOR ISLANDS
COMMUNITY DEVELOPMENT
MEMORANDUM**

To: Town of Bay Harbor Islands
Development Review Committee

From: Michael J. Miller, AICP
Consultant Town Planner

Date: January 29th, 2016

Subject: Site Development Plan Application – 1st Review
Church by the Sea – Mixed-Use Commercial Complex
1000 Kane Concourse
Bay Harbor Islands Acct. No. BP2016-XXX
MMPA Acct. No. 01-0702-1032

RECOMMENDED ACTION

MMPA recommends the Development Review Committee (DRC) **DEFER** action on the proposed Site Development Plan application at this time to allow the applicant's design team to address the listed comments. The submittal package has a few design / Code violation issues, some of the plans are inadequate / inconsistent and a few other items need to be corrected.

GENERAL PROJECT INFORMATION

Land Use Designation: C – Commercial

Zoning District: B-1 Business District

General Location: 1000 Kane Concourse

Legal Description: Tract "N" of "Nolan Brown", according to the Plat thereof, as recorded in Plat Book 56 Page 53, of the Public Records of Miami-Dade County, Florida.
And,
Lot 18 of Block 12, "Bay Harbor Island" Subdivision according to the Plat thereof, as recorded in Plat Book 46, at Page 5 of the Public Records of Miami-Dade County.

PROJECT DESCRIPTION

The project architect, Zyscovich Architects, as agent for the property owner, Ocean Cadillac, Inc., and contract purchaser, the Church-by-the-Sea, Inc., has submitted a Site Development Plan application to allow for the demolition of the existing Ocean Cadillac automobile dealership facilities and the construction of a new 3-story mixed-use development project. The new complex is proposed to have retail space at street level facing Kane Concourse with a religious establishment on the upper two (2) floors. The site is located at 1000 Kane Concourse.

The collective site is currently developed as the Ocean Cadillac automobile dealership complex. Tract "N" of the Nolan Brown re-plat, which fronts onto Kane Concourse and East Bay Harbor Drive, contains the Ocean Cadillac buildings (offices / showroom / repair facilities / etc.), while a surface parking lot that has been used for the temporary storage of new vehicles is located on Lot 18 of Block 12. The surface parking lot is separated by a 30-foot wide north / south alley from the main site. This alley connects to the original east / west 20-foot wide alley running between Kane Concourse and 95th Street. The surface parking lot site fronts onto 95th Street and the alley – both east and north of the site. The proposed site design incorporates a 2-story religious establishment facility over one floor of retail (8,474 sq. ft.) / religious establishment lobby (2,039 sq. ft.) / parking garage that is at grade. The site design includes one two-way driveway connection to 95th Street located just east of the alley that provides access to the grade level parking garage under the building. There is also one driveway connection proposed to the alley for the loading area under the building. Finally a one-way driveway connection from the surface parking lot to the north / south alley exists and the exit lane is onto the east /west alley on the north side of the site. Currently no Fire Department staging areas are shown on the plans. It is presumed since the site can be accessed from all sides this may be sufficient. The applicant is encouraged to meet with the M-D Fire Department for a conceptual approval. If changes are required by the Fire Dept. after the Town PZB approves the site plan the changes may have to be re-approved.

On the building rooftop is a labyrinth as well as a restroom. The proposed new building is 3-stories in height @ 44'-8" above BFE.

The survey indicates the total lot area for Lot 18 is 9,750 square feet / 0.22 acres in size but does not list the lot area for Tract "N". The Miami-Dade County Property Appraisers website lists the total lot area for Tract "N" as 51,717 square feet / 1.19 acres. The recorded plat indicates the site is 1.2 acres in size. Therefore, the total combined lot area is 61,467 square feet / 1.41 acres. The survey needs to be updated to include the total lot area of Tract "N".

The adjoining / nearby development sites currently include a 2-story commercial building to the north across Kane Concourse. To the immediate west is a one-story commercial building. To the south across 95th Street is a Town owned surface parking lot as well as the Capri Apartments @ 20 DU / 40 DUA. To the east across East Bay Harbor Drive is the one-story Tauber office building, the proposed La Boutique multi-family residential complex @ 41 DU / 78.8 DUA, and the Mansard Condominium @ 8 DU / 30.8 DUA. This area of the Town is predominated by a mixture of low-rise (1-3 stories) and mid-rise (5-7 stories) residential and commercial complexes.

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Church by the Sea – Mixed-use Commercial Complex
1000 Kane Concourse
Development Review Committee Report
January 29th, 2016
Page 3

The Town's 2002 Community Vision Master Plan identifies this area for mid-rise residential complexes (7+/- stories) and commercial uses along Kane Concourse. Therefore, the proposed development is deemed generally consistent with the Town's future vision for this area.

BACKGROUND INFORMATION

The Town of Bay Harbor Islands completed major amendments to the Town's adopted Comprehensive Plan and Land Development Regulations (LDRs) in the last 10+/- years. In 2005 when the Town updated the B-1 Business Zoning District LDRs a proposal was made to increase the allowable building height in the B-1 Business District to 75 feet BFE as per the B&A Downtown Study; however, the Town Council decided to keep the allowable height limit at 65 feet per the Community Visioning recommendations. The Town also adopted numerous other modifications to many other Code provisions that affect yard encroachments, parking lot designs, building height limits and exceptions, building design standards, landscaping and other provisions. The current submittal package has a few design / Code compliance issues.

COMPREHENSIVE PLAN / ZONING

Comprehensive Plan – The subject site has a Future Land Use Map (FLUM) designation of "Commercial." The proposed use of the commercial property would be consistent with the applicable FLUM designation of the property.

Land Development Regulations / Zoning Code – The property has a Zoning classification of B-1 Business District. The maximum building height allowed in this area is 65 feet (measured from BFE to top of main roof deck). Although the religious establishment use of the property is listed in the Zoning Code as requiring the Town Commission to approve it, a recent legal opinion from Stanley Price indicates the development proposal should be reviewed / processed as any other due to Federal law (Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA)). The proposed site design is not consistent with some provisions of the Code at present.

PLATTING

The site will not require re-platting, as the site is currently platted as described above. A Unity of Title document may be required to legally tie the lots together prior to the issuance of building permits, as the surface parking lot provides required parking for the building site.

RIGHT-OF-WAY, OFF-STREET PARKING AND ACCESS DESCRIPTION

As stated above, the site development plan includes a 20-foot wide two-way driveway connection to 95th Street that provides access to the parking garage (Code requires 23' min.). There are also driveway connections to the alley for a loading area under the building and for the surface parking lot. The alley traffic flow is a one-way only southerly to 95th Street.

Based on 8,474 square feet of retail space the Code requires at least twenty-eight (28) parking spaces and based on 386 seats the Code requires at least ninety-seven (97) parking spaces for a total of 125 required parking spaces. A total of 128 parking spaces are provided on site (81 standard, 44 tandem and 3 ADA spaces).

As stated above currently no Fire Department staging areas are shown on the plans. The applicant should meet with the Miami-Dade Fire Department staff as soon as possible to identify appropriate staging areas, as this may affect the site design. Since the site fronts public roadways on all sides this should not be an issue. Any changes required by the Fire Department subsequent to the Town's site plan approval may cause the plans to be re-submitted to the DRC / PZB.

BUILDING DESIGN / BUILDING LENGTH / BREEZEWAY

The building design is modern with decorative perforated metal screening and vertical glass elements.

The building does not require a breezeway as it does not contain residential units.

SITE PLAN COMMENTS

Following are comments based on the plans dated by the architect on January 5th, 2016, submitted to the Town for consideration:

- 1) The address on the cover sheet must be corrected to state that the Town is Bay Harbor Islands (not Isl.).
- 2) The address in the title block must be corrected to state 1000 Kane Concourse, Bay Harbor Islands (not Isl.), FL.
- 3) Many of the plans use a street name of "East Harbor Drive" – it is East Bay Harbor Drive".
- 4) The survey has the following issues:
 - a) MMPA believes the survey shows the centerline for Kane Concourse incorrectly. Kane Concourse is a 110' right-of-way. The centerline should be 55-feet from the property line (not 50).
 - b) Provide a lot size for Tract "N" and the combined site.
 - c) The Location Map must include Lot 18 of Block 12 as part of the subject site.
- 5) A tree survey must be provided showing the height, species, caliper, etc. of the existing trees on site. If no trees exist on the site, provide a note on the survey stating so. The tree survey must be the same scale as the site plan.
- 6) Sheet GN-002 has the following issues:
 - a) According to the Miami-Dade County Property Appraisers website, the total lot size for Tract "N" is 51,717 sq. ft. (not 52,110). The recorded plat shows 1.2 acres. This will need to be verified by the surveyor as listed above. Update all applications, sheets, tables and calculations to reflect the correct lot size.
 - b) The number of regular parking spaces (not ADA) provided in the parking garage is 67 (not 76) and the number of tandem parking spaces totals 18 (not 9).
 - c) The number of regular parking spaces for the remote surface west lot is 14 and the number of tandem parking spaces is 26.

- d) The required setback for properties fronting Kane Concourse is 55-feet; as stated above. MMPA believes the centerline of the road is shown incorrectly. The required setback for Kane Concourse will need to be updated upon verification.
 - e) The maximum height for buildings in the B-1 district is 65-feet **above Base Flood Elevation (BFE)** (not above crown of road). Revise all sheets to reflect this.
 - f) Provide a note on this sheet stating flood proofing will be provided in accordance with Sec 23-11(c)(17).
 - g) The B-1 Business Zoning district must be listed in the table.
 - h) The FLUM designation of Commercial must be listed in the table.
 - i) Provide the legal description of the site(s) in the table.
 - j) A map showing the adjacent existing land uses within 300-feet of the subject property must be provided.
- 7) Correct the setback for Kane Concourse on Sheet GN-003.
- 8) The image on Sheet C-004 for the corner of 95th Street and EBHD is actually an image of the corner of 94th Street and EBHD. Provide a correct image of the corner of 95th Street and EBHD.
- 9) Correct the centerline of Kane Concourse on Sheet D-101
- 10) The landscape plans have the following issues:
- a) The attached Landscape Requirements Legend must be included on the plans.
 - b) The plant list must list the correct name of the project (Church-by-the-Sea / not Bal Harbor Shops). Additionally, the project is in the Town of Bay Harbor Islands (not Miami).
 - c) Provide the size specifications for the Lignum Vitae tree.
 - d) The site requires 31 shade trees - only 8 are provided on the site.
 - e) The site also requires 18+/- Street Trees. The Street Trees along Kane Concourse already exist; however, Street Trees must be provided along EBHD and 95th Street. The Town's Street Tree Master Plan shows the Street Tree species for EBHD is Beauty Leaf while for 95th Street the Street Tree species is Satin Leaf.
 - f) The surface parking lot design is non-conforming. It has been used as a temporary storage lot for new vehicles - not by patrons. Section 24-16 of the Town's Code requires a 10-foot landscape strip between any on-site parking lot and adjacent public rights-of-way. Within this landscape strip a continuous hedge must be planted and trees. The paved area adjoins the concrete louver wall along 95th Street with no landscaping. A 2-foot setback is required for walls from front property lines so that landscaping can be planted on the street side. Verify that all parking spaces are at least 8.5' x 18' and one-way drives are 12' in width (Sec. 23-30). As there are 3 excess parking spaces, MMPA suggests a landscape strip be created between the surface parking and 95th Street.

- g) As required throughout Miami-Dade County the Town utilizes the base Miami-Dade County Landscape Code but has adopted supplemental regulations (Sec. 24-16). While the M-D Landscape Code requires 20% green open / pervious space for the site, the Town's Zoning Code does not require this. Therefore, the site meets the Town's pervious requirements.
- 11) Sheet A-101 has the following issues:
- a) The elevations must be shown as they relate to BFE (ex. -3'-8" BFE = 5.37 NGVD).
 - b) Provide spot elevations in the garage and the church lobby. The BFE for these sites are 9.0 NGVD.
 - c) Show the type and location of mail receptacles.
 - d) Provide arrows showing the alley is a one-way street (southbound to 95th Street).
 - e) Relocate / indent the door exiting the staircase at the southwest corner of the main site into the alley so it does not – or have it exit onto the walkway along 95th Street.
 - f) Provide a dimension for the driveway from 95th Street into the covered parking garage (scales 20-feet). Town Code requires that a two-way driveway must be a minimum of 23-feet in width.
 - g) Per Sec. 23-11(c)(2) 75% of the setback along EBHD must be landscape areas.
 - h) Per Sec. 23-11(c)(14) 5-foot pedestrian walkway must be provided periodically to provide access from Kane Concourse to the alley / parking areas in the rear of the buildings. Suggest this be placed at the west end of the site on Kane Concourse.
- 12) The building elevations appear to show portions of roof-mounted mechanical equipment (A/C Units) exposed above screening. This is not allowed – must be fully screened.
- 13) Provide additional setback dimensions on Sheet A-103.
- 14) On Sheet A-104, provide notations showing the height of the parapet walls (5 feet max.). Additionally, revise the spot elevations to show them as they relate to BFE.
- 15) Provide an upper roof plan with spot elevations.
- 16) The elevations (Sheet A-201 & A-202) have the following issues:
- a) The building elevations must be listed as they relate to BFE (ex. -3'-8" BFE / 5.37 NGVD); this would make the second level 14'-8" BFE, etc.
 - b) Per Sec. 17-20(o), (t), and (u), special PZB approval will be required for the Church-by-the-Sea sign. Any sign over 14 feet above grade requires special approval by the PZB.
- 17) The building sections (Sheets A-301 / A-302) must list the elevations as they relate to BFE.
- 18) The exterior signage details on Sheet A-702 do not meet the Town Code requirements (Sec. 17-20). The letters may be no more than 18 inches in height. The maximum width of the retail signs is 60% of the linear street frontage of the store (not 10-feet). The color of the signs is to be chosen by the building owner (not the tenant).

Site Development Plan Application – 1st Review
Church by the Sea – Mixed-use Commercial Complex
1000 Kane Concourse
Development Review Committee Report
January 29th, 2016
Page 7

- 19) A letter from the solid waste hauler must be provided stating that they agree to pick up the trash as currently proposed.
- 20) The alley between the sites is currently a one-way alley (southbound to 95th Street). The east / west alley operates as a two-way alley. Sheet A-703 appears to show traffic movement that travels the wrong way on the alley. Revise the traffic movements.
- 21) Sheet A-701 shows a solid waste / delivery truck backing northerly on the one-way southbound alley to the loading area. This is not possible unless the one-way traffic flow is modified by the Town.
- 22) MMPA is concerned with the proposed location of the new parking garage driveway to 95th Street and the alley, as motorists may not have good visibility. Suggest moving the driveway more easterly.
- 23) A sight triangle (25 feet) must be illustrated for the area where the building and alley intersect with 95th Street.
- 24) Sheet L-100 must show foot-candle readings at all property lines. Note: readings may be no more than 1-footcandle at any property line.
- 25) The Location Sketch on Sheet C1 must also include Lot 18 in the subject site.
- 26) The Civil Engineering plans must include preliminary paving and drainage plans and calculations and preliminary pavement markings and signage. The plans must include proposed storm-water flow directions and the amount of drainage flow. We suspect drainage wells will be used. How will storm-water be collected and discharged? Discharge off-site is prohibited.
- 27) The conceptual Fire Department staging areas need to be agreed to by the Miami-Dade Fire Department ASAP, as this could affect the design.
- 28) An impact analysis form must be submitted for concurrency determinations (potable water / sanitary sewer / storm-water / solid waste / traffic generation).
- 29) Provide a narrative as the expected number of employees at the religious establishment (daily / services), the number of congregants on average per service and service times.

Town of Bay Harbor Islands, Florida Landscape Requirements Legend (Worksheet)

Commercial Sites

Town Landscape Code (Sec. 24-16) & Miami-Dade Landscape Code (Chapter 18A)

Site Address _____ Legal Description _____

Net Lot Area _____ Acres / _____ SF

Required

Provided

I. Open Space Requirement

1. No minimum open space requirement.
(BHI – Sec. 23-11(C))

2. Maximum Lawn Area Allowed
(MDC – Sec. 18A(A)(5))

a. Net Lot Area _____ SF - building footprint _____ SF = _____ SF

b. SF from above _____ x 20% = _____ SF 20% Max / _____ SF _____ % / _____ SF
(Net Lot Area – Building Footprint x 20% = maximum lawn area permitted)

II. Shade Trees

A. Required

1. 22 shade trees/acre: 22 x _____ acres = _____
(Min. 12' in height / 4' clear wood / 2 ½" caliper)
(Palm trees substituted at a 3:1 ratio; max. 25% of required shade trees)
(MDC – Sec. 18A-6(C)(5)) and BHI Sec. 24-16)

2. Native Species Required - 50% Min.
of shade trees req. _____ x 50% = _____
(BHI – Sec. 24-16(a)(2))

3. Drought Tolerant and Low
Maintenance Species Require – 50% Min.
of shade trees req. _____ x 50% = _____
(MDC – Sec. 18A-6(C)(11)(b))

B. Tree Species

1. Number of shade trees required
(from Sec. (II)(A)(1) above) _____

2. Number of shade tree species required
(BHI – Sec. 24-16(a)(2)) _____

*See Following Table.

Number of Different Tree Species based on Quantity

1-5 required shade trees	2 shade tree species
6-10 required shade trees	3 shade tree species
11-15 required shade trees	4 shade tree species
16-20 required shade trees	5 shade tree species
21-30 required shade trees	6 shade tree species
31 or more required shade trees	7 shade tree species

C. Tree Heights

- Number of Stories of building _____
- Number of shade trees required _____
(from Sec. (II)(A)(1) above)
- Shade tree heights required:
 - 12 ft. - _____% or _____ shade trees
 - 14-16 ft. - _____% or _____ shade trees
 - 16-18 ft. - _____% or _____ shade trees
 - 18-20 ft. - _____% or _____ shade trees

Size of Tree Species in Relationship to Building Height

No. Stories	Min. Shade Tree Height (ft.)	Min. Spread (ft.)	Palm Height (ft.)
1-2	12	5	14-18
3	50% min. req.	5	14-18
	50% 14-16	6	18-22
4	50% min. req.	5	14-18
	25% 14-16	6	18-22
	25% 16-18	7	22-28
5 plus	25% min. req.	5	14-18
	50% 16-18	7	22-28
	25% 18-20	8	22-28

(BHI – Sec. 24-16(a)(2))

III. Street Trees

Required

Provided

1. Street Trees @ 1:35'

Width of lot _____ / 35' = _____

(15' min height / 6" clear wood / 2 ½" caliper)

(Street tree species determined by Street Tree Master Plan)

(Street trees do not count toward required on site shade trees)

(BHI – Sec. 24-16(a)(2)(a))

IV. Shrubs Required**Required****Provided****1. 10 shrubs required per shade tree**

(Min. 24" in height / visual screen min. 36" in height / max 24" on center)
(BHI – Sec. 24-16(a)(2)(d))

2. Native Species Required - 30% Min.

(MDC – Sec. 18A-6(D)(1)(a))

3. Drought Tolerant and Low**Maintenance Species Required – 50% Min.**

(MDC – Sec. 18A-6(D)(1)(b))

V. Buffers (If applicable)

(BHI – Sec. 24-16)

1. Parking Lot from ROW

(yes / no)

(yes / no)

2. Dissimilar Uses

(yes / no)

(yes / no)

VI. Parking Lot Landscaping (If applicable)**Required****Provided****1. 10 SF / parking space:**

10 x _____ spaces = _____ SF
(MDC – Sec. 18A-6(J))

2. Shade Trees Required

(MDC – Sec. 18A-6(J))

3. Shrubs Required

(MDC – Sec. 18A-6(I))

VII. Right Tree Right Place

(BHI – Sec. 24-16(a)(2)(f))

1. Number of trees near power lines

(See attached FPL guidelines)

VIII. Florida Friendly Landscaping

(MDC – Sec. 18A-2(A))

All landscaping shall promote Florida Friendly landscaping principles through the use of drought-tolerant plant species, grouping of plant material by water requirements, the use of irrigation systems that conserve the use of potable and non-potable water supplies and restrictions on the amount of lawn areas. Florida Friendly landscape principles also promote planting the right plant in the right place and appropriate fertilization and mulching.

TOWN OF BAY HARBOR ISLANDS, FLORIDA

DEVELOPMENT IMPACT ANALYSIS REPORT

Project Name: _____

Location: _____

Address: _____

General Project Description: _____

Site Square Feet / Acreage: _____

The following information and analysis is intended to satisfy the requirements set forth in Section 11-8 of the Town of Bay Harbor Islands, Florida Code of Ordinances, which provides guidelines and requirements to ensure that the Level of Service (LOS) standards as set forth in the adopted Comprehensive Plan will be maintained, unless mitigation is provided. The following LOS standards shall be used to analyze the infrastructure impacts of each development.

Potable Water	200 gallons per capita, per day
Sanitary Sewer	156 gallons per capita, per day
Solid Waste	0.632 tons per capita, per year
Drainage	Design LOS standards to meet a 10-year storm and as specified by the Miami-Dade County Public Works manual, Section D4 – Water Control; and no ponding water for more than 48 hours
Local Streets*	LOS "B" at peak hour
Arterial Roadways**	LOS "E" at PM peak hour* (96 th Street / Kane Concourse / SR 922)
Recreation Facilities	1 tennis court for every 4,000 persons, 12-60 years old 1 lighted baseball field for every 6,000 persons, 10-40 years old 1 tot lot for every 500 persons, 3-12 years old
Public School Facilities	100% of FISH (Florida Inventory of School Houses) capacity including re-locatable classrooms in each public school concurrency service area (CSA)

Note: * The Town's original Comprehensive Plan (June 1988) lists the adopted Level of Service (LOS) for all local roadways as LOS "B" Peak Hour. According to the 2002 FDOT Quality / Level of Service Handbook LOS "B" is not achievable in some instances (Table 4-1). However, the Town's plan includes a roadway capacity of 10,000 vehicles per day which corresponds to LOS "D". Therefore, the Town will use the highest achievable LOS during concurrency reviews.

****The Town's original Comprehensive Plan (June 1988) lists the preferred Level of Service (LOS) for SR 922 / Kane Concourse as "C" Peak Hour, but defers to state / county jurisdictions for applicable LOS. State law specifically prohibits local governments from adopting different LOS on state roadways. FDOT has adopted LOS "E" at PM Peak Hour for SR 922 / Kane Concourse and that LOS is used by both FDOT / Miami-Dade County for concurrency / planning purposes.**

For traffic impact analysis utilize the latest ITE Manual for applicable land use trip generation purposes (both ADT / PM Peak Hour). Both roadway link and signalized intersection analysis is required, as required by the Town.

Sec. 11-8.3. - Level of service (LOS).

The town's adopted level of service (LOS) standards for applicable public facilities and services are found in the town's adopted comprehensive plan elements, and/or as superseded by state law or county charter provisions. The following LOS standards are to be used in site specific development concurrency reviews:

Potable Water	200 gallons per capita, per day
Sanitary Sewer	156 gallons per capita, per day
Solid Waste	0.632 tons per capita, per day
Drainage	Design LOS standard to meet a 10-year storm and as specified by the Miami-Dade County Public Works Manual, Section D4 - Water Control; and no ponding water for more than 48 hours.
Local Streets*	LOS "B" at peak hour
Arterial Roadways**	LOS "E" at PM peak hour* (96th Street/Kane Concourse/SR 922)
Recreation Facilities	1 tennis court for every 4,000 persons, 12—60 years old 1 lighted baseball field for every 6,000 persons, 10—40 years old 1 tot lot for every 500 persons, 3—12 years old
Public School Facilities	100% of FISH (Florida Inventory of School Houses) capacity including re-locatable classrooms in each public school concurrency service area (CSA)

Notes:

* The town's original Comprehensive Plan (June 1988) lists the adopted level of service (LOS) for all local roadways as LOS "B" Peak Hour. According to the 2002 FDOT Quality/Level of Service Handbook LOS "B" is not achievable in some instances (Table 4-1). However, the town's plan includes a roadway capacity of 10,000 vehicles per day which corresponds to LOS "C". Therefore, the town will use the highest achievable LOS during concurrency reviews.

** The town's original Comprehensive Plan (June 1988) lists the preferred level of service (LOS) for SR 922/Kane Concourse as "C" Peak Hour, but defers to state/county jurisdictions for applicable LOS. State law now specifically prohibits local governments from adopting different LOS on state roadways. FDOT has adopted LOS "E" at PM Peak Hour for SR 922/Kane Concourse and that LOS is used by both FDOT/Miami-Dade County for concurrency/planning purposes.

(Ord. No. 923, § 1(Exh. A), 10-10-2011)

Sec. 11-8.4. - Method and responsibility of demonstrating compliance.

- (a) The responsibility of showing compliance with adopted level of service (LOS) requirements shall be upon the developer/property owner. In order to be approvable, applications for development order approvals shall provide sufficient written information showing compliance with these standards, as determined by the town. A concurrency evaluation application will be provided to the developer for completion and is available at the town's building department. The application and associated forms shall set forth the quantity and quality of written and graphic information necessary to show compliance with LOS requirements and shall at a minimum require:
- (1) Name, address, telephone number and e-mail address of the property owner as listed by the Miami-Dade Property Appraiser (signature of the actual property owner must be notarized).
 - (2) Name, address, telephone number and e-mail address of the applicant, if other than the actual property owner.
 - (3) Proof of ownership which shall consist of at least one of the following:
 - a. A fee simple title.
 - b. An option to acquire fee simple title within a specified period of time.
 - c. A leasehold interest in excess of 20 years.
 - d. A substantial interest in a joint venture agreement or real estate syndication which has can obtain a fee simple title.
 - e. A marketable title subject to a certain condition which will not substantially restrict development within a reasonable time.
 - f. An executed copy of the warranty deed.
 - (4) A certified (signed and sealed) survey, prepared by a licensed Florida surveyor within one year from date of application, which includes:
 - a. An accurate legal description and sketch of the subject property;
 - b. A computation of the total area of the property in square feet and to the nearest tenth of an acre; and
 - c. Current zoning of the property.
 - d. Current flood zone/minimum floor elevation of the property.
 - (5) Description of the proposed project, to include:
 - a. Specific use or uses proposed or proposed for expansion.
 - b. For non-residential uses, square footages of overall proposal and detailed breakdown of square footages for each individual use in a multi-use project.
For residential uses, the number of dwelling units and number of bedrooms by type.
 - (6) Certificate by Miami-Dade County or a trips analysis paid for by the applicant, unless the development proposal is specifically exempted by this article, or if applicable, a traffic study as required by the town. Traffic impact studies required under this section shall be prepared by appropriate consultants approved or retained by the town at the developer's expense.
 - (7)

For all residential projects, a Miami-Dade County School Board school concurrency review (letter/certificate) paid for by the applicant, unless the development proposal is specifically exempted by this article, shall be included with the application submitted to the town.

- (8) On-site storm water management plan prepared by a qualified professional engineer unless specifically exempted by section.
 - (9) A detailed solid waste management plan which describes the method of collection and disposal.
 - (b) The concurrency evaluation shall be reviewed by the town's designated review staff and/or consultants retained by the town at the developer's expense for compliance with this article. Based on the review, a written finding of compliance or noncompliance shall be issued by the town. Processing/review fees for the concurrency evaluation by the town shall be required. Such fees shall be adopted by resolution of the town council and are on file in the town clerk's office.
- (Ord. No. 923, § 1(Exh. A), 10-10-2011)

**TOWN OF BAY HARBOR ISLANDS
COMMUNITY DEVELOPMENT
MEMORANDUM**

To: Town of Bay Harbor Islands
Development Review Committee

From: Michael J. Miller, AICP *MDM*
Consultant Town Planner

Date: April 12th, 2016

Subject: Site Development Plan Application – 2nd Review
Church by the Sea – Mixed-Use Commercial Complex
1000 Kane Concourse
Bay Harbor Islands Acct. No. MB2016-17
MMPA Acct. No. 01-0702-1032

RECOMMENDED ACTION

MMPA recommends the Development Review Committee (DRC) either **DEFER** action on the proposed Site Development Plan application again to allow the applicant's design team to address the listed comments, or **APPROVE** the application subject to final staff sign-off of any remaining corrections. The submittal package still has a few design / Code violation issues, some of the plans are still inadequate / inconsistent and a few other items need to be corrected.

GENERAL PROJECT INFORMATION

Land Use Designation: C – Commercial

Zoning District: B-1 Business District

General Location: 1000 Kane Concourse

Legal Description: Tract "N" of "Nolan Brown", according to the Plat thereof, as recorded in Plat Book 56 Page 53, of the Public Records of Miami-Dade County, Florida.
And,
Lot 18 of Block 12, "Bay Harbor Island" Subdivision according to the Plat thereof, as recorded in Plat Book 46, at Page 5 of the Public Records of Miami-Dade County.

PROJECT DESCRIPTION

The project architect, Zyscovich Architects, as agent for the property owner, Ocean Cadillac, Inc., and contract purchaser, the Church-by-the-Sea, Inc., has submitted a Site Development Plan application to allow for the demolition of the existing Ocean Cadillac automobile dealership facilities and the construction of a new 3-story mixed-use development project. The new complex is proposed to have retail space at street level facing Kane Concourse with a religious establishment on the upper two (2) floors. The site is located at 1000 Kane Concourse.

The collective site is currently developed as the Ocean Cadillac automobile dealership complex. Tract "N" of the Nolan Brown re-plat, which fronts onto Kane Concourse and East Bay Harbor Drive, contains the Ocean Cadillac buildings (offices / showroom / repair facilities / etc.), while a surface parking lot that has been used for the temporary storage of new vehicles is located on Lot 18 of Block 12. The surface parking lot is separated by a 30-foot wide north / south alley from the main site. This alley connects to the original east / west 20-foot wide alley running between Kane Concourse and 95th Street. The surface parking lot site fronts onto 95th Street and the alley – both east and north of the site. The proposed site design incorporates a 2-story religious establishment facility over one floor of retail (8,474 sq. ft.) / religious establishment lobby (2,039 sq. ft.) / parking garage that is at grade. The proposed site design includes one two-way driveway connection to 95th Street located just east of the alley that provides access to the grade level parking garage under the building. There is also one driveway connection proposed to the alley for the loading area under the building. Finally as to the free-standing parking lot, a new one-way northbound driveway connection from 95th Street across the surface parking lot exiting onto the east / west alley on the north side of the site is proposed. Several parking spaces that now front onto the west side of the north / south alley are proposed to remain. One Fire Department staging area is currently shown on the plans along East Bay Harbor Drive. It is presumed since the site can be accessed from all sides this will be sufficient. The applicant is encouraged to meet with the M-D Fire Department for a conceptual review / approval. If changes are required by the Fire Dept. after the Town PZB approves the site plan the changes may have to be re-approved.

On the building rooftop is a labyrinth as well as a restroom. The proposed new building is 3-stories in height @ 44'-8" above BFE.

The survey indicates the total lot area for Lot 18 is 9,750 square feet / 0.22 acres in size and the total lot area for Tract "N" is 52,110 square feet / 1.20 acres in size. Therefore, the total combined lot area, according to the survey, is 61,860 square feet / 1.42 acres.

The adjoining / nearby development sites currently include a 2-story commercial building to the north across Kane Concourse. To the immediate west is a one-story commercial building. To the south across 95th Street is a Town owned surface parking lot as well as the Capri Apartments @ 20 DU / 40 DUA. To the east across East Bay Harbor Drive is the one-story Tauber office building, the proposed La Boutique multi-family residential complex @ 41 DU / 78.8 DUA, and the Mansard Condominium @ 8 DU / 30.8 DUA. This area of the Town is predominated by a mixture of low-rise (1-3 stories) and mid-rise (5-7 stories) residential and commercial complexes.

**Site Development Plan Application – 2nd Review
Church by the Sea – Mixed-use Commercial Complex
1000 Kane Concourse
Development Review Committee Report
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The Town's 2002 Community Vision Master Plan identifies this area for mid-rise residential complexes (7+/- stories) and commercial uses along Kane Concourse. Therefore, the proposed development is deemed generally consistent with the Town's future vision for this area.

BACKGROUND INFORMATION

The Town of Bay Harbor Islands completed major amendments to the Town's adopted Comprehensive Plan and Land Development Regulations (LDRs) in the last 12+/- years. In 2005 when the Town updated the B-1 Business Zoning District LDRs a proposal was made to increase the allowable building height in the B-1 Business District to 75 feet BFE as per the B&A Downtown Study; however, the Town Council decided to keep the allowable height limit at 65 feet per the Community Visioning recommendations. The Town also adopted numerous other modifications to many other Code provisions that affect yard encroachments, parking lot designs, building height limits and exceptions, building design standards, landscaping and other provisions. The current submittal package has a few design / Code compliance issues.

COMPREHENSIVE PLAN / ZONING

Comprehensive Plan – The subject site has a Future Land Use Map (FLUM) designation of "Commercial." The proposed use of the commercial property would be consistent with the applicable FLUM designation of the property.

Land Development Regulations / Zoning Code – The property has a Zoning classification of B-1 Business District. The maximum building height allowed in this area is 65 feet (measured from BFE to top of main roof deck). Although the religious establishment use of the property is listed in the Zoning Code as requiring the Town Commission to approve it, a recent legal opinion from Stanley Price, Esq. indicates the development proposal should be reviewed / processed as any other due to Federal law (Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA)). The proposed site design is still not consistent with some provisions of the Code at present.

PLATTING

The site will not require re-platting, as the site is currently platted as described above. A Unity of Title document may be required to legally tie the lots together prior to the issuance of building permits, as the surface parking lot provides required parking for the building site.

RIGHT-OF-WAY, OFF-STREET PARKING AND ACCESS DESCRIPTION

As stated above, the site development plan includes a 20-foot wide two-way driveway connection to 95th Street that provides access to the parking garage (Code requires 23' min.). There are also driveway connections to the alley for a loading area under the building and for the surface parking lot. The alley traffic flow is a one-way only southerly to 95th Street.

Based on 8,474 square feet of retail space the Code requires at least twenty-eight (28) parking spaces and based on 386 seats the Code requires at least ninety-seven (97) parking spaces for a total of 125 required parking spaces. A total of 125 parking spaces are provided on site (102 standard, 20 tandem and 3 ADA spaces).

Site Development Plan Application – 2nd Review
Church by the Sea – Mixed-use Commercial Complex
1000 Kane Concourse
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April 12th, 2016
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As stated above one Fire Department staging area is currently shown on the plans along East Bay Harbor Drive. The applicant should meet with the Miami-Dade Fire Department staff as soon as possible to identify appropriate staging areas, as this may affect the site design. Since the site fronts public roadways on all sides this should not be an issue. Any changes required by the Fire Department subsequent to the Town's site plan approval may cause the plans to be re-submitted to the DRC / PZB.

BUILDING DESIGN / BUILDING LENGTH / BREEZEWAY

The building design is modern with decorative perforated metal screening and vertical glass elements.

The building does not require a breezeway as it does not contain residential units.

SITE PLAN COMMENTS

Following are comments based on the plans dated by the architect on March 17th, 2016 and several revised sheets dated April 1st, 2016, submitted to the Town for consideration:

- 1) As requested previously a map showing the adjacent existing land uses within 300-feet of the subject property must be provided. Show the 300-foot radius on the map (draw a circle).
- 2) As required throughout Miami-Dade County the Town utilizes the base Miami-Dade County Landscape Code but has adopted supplemental regulations (Sec. 24-16). In our March 2016 DRC staff report we cited several typical M-D Landscape Code sections; however, after more in-depth research with county / other municipal staff it was determined that some of those provisions are "not applicable" to this site, as the Town's Kane Concourse commercial corridor is defined as an "Urban Center" – not a unincorporated suburban commercial site. The M-D Landscape Code does not address "Urban Center" commercial sites. However, within the M-D Urban Center District (Sec. 33-284.86) special land development regulations are set forth for more dense urban settings (city centers / downtowns). For example, rather than the normal 20% open space requirement, within Urban Centers least 10% open space is required. MMPA confirmed this Code application with the municipal staff at the City of Miami (downtown). Also the County's 10% requirement is broader than just landscaping. Most of the Town's commercial sites have little or no landscaping and predate the M-D Code. This information is new from our previous January 2016 DRC staff report.
 - a) Sec. 33-284.86(D) of the Miami-Dade County "Urban Center" Code states that the street area on the side adjoining the open space and consisting of the curb, street tree landscape strip and sidewalk shall count towards the square footage of the open space; the open space may also be provided in the form of landscape roof terraces / gardens on buildings. Additionally, private open space may be a combination of paving materials, lawn, ground cover, etc. Based on this section of the Miami-Dade County "Urban Center" Code, it appears that the proposed design exceeds the 10% open space requirement. Provide a new overall open space calculation on the plans (not just ground level pervious area / 4.55% shown).

- b) The above section of the Miami-Dade County “Urban Center” Code also states that only 16 trees are required per acre. Applying this Section of the Code, the site is required to have 23 shade trees. The Town Code allows 25% of the required shade trees to be palms at a ratio of 3 palms = 1 shade tree. See Sec. 24-16 of the Town Code for tree size requirements for shade trees and palm substitution. It appears that the site is currently short 3 shade trees. This can be addressed as follows.
 - c) Per Sec. 23-11(c)(2), 75% of the setback area along EBHD must be landscaped. The proposed design does not currently meet this requirement. The survey shows the existing sidewalk is outside of the property line rather than within the property as the proposed plans indicate. Perhaps a solution to many of the issues would be to leave the existing sidewalk outside of the property line as it currently exists, widen the landscape area adjoining the building, and place the street trees (and 3 missing on-site) trees inside the property line (permitted by M-D Landscape Ord). This would most likely provide the space needed to meet 75% landscaped requirement and may also solve the shortage of shade trees, as there are more street trees shown than required (some could count as shade trees / others could count as street trees). If the sidewalk was on private property (as now shown) there would be liability issues.
 - d) The plans show Thatch Palm trees in a landscape bed within the Kane Concourse right-of-way and along EBHD. The Town has a master-planned pedestrian promenade along Kane Concourse with specific species (Royal Palms). There is insufficient room in the narrow landscape planter behind the bus stop for large palms. On EBHD there is limited room for the proposed planter. Remove the planters / palms.
 - e) Section 24-16 of the Town’s Code requires a 10-foot landscape strip between any on-site parking lot and adjacent public rights-of-way. Within this landscape strip, a continuous hedge material must be planted. The 95th Street parking lot shows Lily Grass in the landscaped areas near the roadway (does not comply). A louvered concrete wall exists at present. Suggest leaving portions of the wall and/or installing a hedge (24” tall / 24” o.c. at planting).
 - f) Update the Landscape Requirements Legend to reflect the changes based on the above comments.
- 3) Per Sec. 23-11(c)(14) 5-foot pedestrian walkway must be provided periodically to provide access from Kane Concourse to the alley / parking areas in the rear of the buildings. However, as discussed at the initial DRC meeting a separate pedestrian walkway will not be necessary, as one could enter the building lobby and gain access to the rear alley / parking areas. This will be described in the PZB staff report.
- 4) As previously stated, the exterior signage details on Sheet A-702 do not meet the Town Code requirements (Sec. 17-20). The maximum width of retail signs is 60% of the linear street frontage of the store. The color of the signs is to be chosen by the building owner (not the tenant). A singular building sign color is preferred.

- 5) The Church-by-the-Sea signs must also comply with Sec. 17-20. Per Sec. 17-20(A)(6), uses occupying the corner space of a building on a corner lot may have one primary sign facing the street on which its main entrance is located. A secondary sign may be displayed, provided it is no greater than 50 percent of the maximum size permitted for the primary frontage. The PZB can grant modifications upon request.
- 6) Sheet L-100 shows foot-candle readings at all property lines; however, the readings are not legible – provide a plan darker text so compliance may be determined. Note: readings may be no more than 1-footcandle at any property line. It appears that several readings may exceed the 1.0 limit.
- 7) The conceptual Fire Department staging areas need to be agreed to by the Miami-Dade Fire Department ASAP, as this could affect the design.
- 8) Again, a Concurrency Impact Analysis form must be submitted for concurrency determinations (potable water / sanitary sewer / storm-water / solid waste / traffic generation). See attached.

TOWN OF BAY HARBOR ISLANDS, FLORIDA

DEVELOPMENT IMPACT ANALYSIS REPORT

Project Name: _____

Location: _____

Address: _____

General Project Description: _____

Site Square Feet / Acreage: _____

The following information and analysis is intended to satisfy the requirements set forth in Section 11-8 of the Town of Bay Harbor Islands, Florida Code of Ordinances, which provides guidelines and requirements to ensure that the Level of Service (LOS) standards as set forth in the adopted Comprehensive Plan will be maintained, unless mitigation is provided. The following LOS standards shall be used to analyze the infrastructure impacts of each development.

Potable Water	200 gallons per capita, per day (church 7 gallons seat/day) Retail
Sanitary Sewer	156 gallons per capita, per day (church 6 gpd seat) Retail 10 108 gallons
Solid Waste	0.632 tons per capita, per year Retail 4 lbs : 100% Gallons 57.5 ft per 57.5 ft./Day church 3 lbs : person
Drainage	Design LOS standards to meet a 10-year storm and as specified by the Miami-Dade County Public Works manual, Section D4 - Water Control; and no ponding water for more than 48 hours 36.63 Sunday / 12.04 PM
Local Streets*	LOS "B" at peak hour church 9.11 Trips per 1000 weekdays Retail 44.32 / 1000 Daily .52 PMPH
Arterial Roadways**	LOS "E" at PM peak hour* (96th Street / Kane Concourse / SR 922)
Recreation Facilities	1 tennis court for every 4,000 persons, 12-60 years old 1 lighted baseball field for every 6,000 persons, 10-40 years old 1 tot lot for every 500 persons, 3-12 years old
Public School Facilities	100% of FISH (Florida Inventory of School Houses) capacity including relocatable classrooms in each public school concurrency service area (CSA)

Note: * The Town's original Comprehensive Plan (June 1988) lists the adopted Level of Service (LOS) for all local roadways as LOS "B" Peak Hour. According to the 2002 FDOT Quality / Level of Service Handbook LOS "B" is not achievable in some instances (Table 4-1). However, the Town's plan includes a roadway capacity of 10,000 vehicles per day which corresponds to LOS "D". Therefore, the Town will use the highest achievable LOS during concurrency reviews.

**The Town's original Comprehensive Plan (June 1988) lists the preferred Level of Service (LOS) for SR 922 / Kane Concourse as "C" Peak Hour, but defers to state / county jurisdictions for applicable LOS. State law specifically prohibits local governments from adopting different LOS on state roadways. FDOT has adopted LOS "E" at PM Peak Hour for SR 922 / Kane Concourse and that LOS is used by both FDOT / Miami-Dade County for concurrency / planning purposes.

For traffic impact analysis utilize the latest ITE Manual for applicable land use trip generation purposes (both ADT / PM Peak Hour). Both roadway link and signalized intersection analysis is required, as required by the Town.

**TOWN OF BAY HARBOR ISLANDS
COMMUNITY DEVELOPMENT
MEMORANDUM**

To: Town of Bay Harbor Islands
Planning and Zoning Board

From: Michael J. Miller, AICP 
Consultant Town Planner

Date: May 11th, 2016

Subject: Site Development Plan Application
Church by the Sea – Mixed-Use Commercial Complex
1000 Kane Concourse
Bay Harbor Islands Acct. No. MB2016-17
MMPA Acct. No. 01-0702-1032

RECOMMENDED ACTION

MMPA recommends the Planning and Zoning Board review the most recent revised plans (dated 5/6/16) and, if found acceptable, **APPROVE** the proposed Site Development Plan application subject to the following:

- (1) The Board finds the proposed plan “fits” within the building envelope without alterations or variances;
 - (2) Subject to any staff recommended conditions listed herein.
-

GENERAL PROJECT INFORMATION

Land Use Designation: C – Commercial
Zoning District: B-1 Business District
General Location: 1000 Kane Concourse
Legal Description: Tract “N” of “Nolan Brown”, according to the Plat thereof, as recorded in Plat Book 56 Page 53, of the Public Records of Miami-Dade County, Florida.
And,
Lot 18 of Block 12, “Bay Harbor Island” Subdivision according to the Plat thereof, as recorded in Plat Book 46, at Page 5 of the Public Records of Miami-Dade County.

PROJECT DESCRIPTION

The project architect, Zyscovich Architects, as agent for the property owner, Ocean Cadillac, Inc., and contract purchaser, the Church-by-the-Sea, Inc., has submitted a Site Development Plan application to allow for the demolition of the existing Ocean Cadillac automobile dealership facilities and the construction of a new 3-story mixed-use development project. The new complex proposes to have commercial retail space at street level facing Kane Concourse with a religious establishment on the upper two (2) floors. The site is located at 1000 Kane Concourse.

The collective site is currently developed as the Ocean Cadillac automobile dealership complex. Tract "N" of the Nolan Brown re-plat, which fronts onto Kane Concourse and East Bay Harbor Drive, contains the Ocean Cadillac buildings (offices / showroom / repair facilities / etc.), while a surface parking lot that has been used for the temporary storage of new vehicles is located on Lot 18 of Block 12. The surface parking lot is separated by a 30-foot wide north / south alley from the main site. This alley connects to the original east / west 20-foot wide alley running between Kane Concourse and 95th Street. The surface parking lot site fronts onto 95th Street and the alley – both east and north of the site. The proposed site design incorporates a 2-story religious establishment facility over one floor of retail (8,474 sq. ft.) / religious establishment lobby (2,039 sq. ft.) / parking garage that is at grade. The proposed site design includes one two-way driveway connection to 95th Street located just east of the alley that provides access to the grade level parking garage under the building. There is also one driveway connection proposed to the alley for the loading area under the building. Finally as to the free-standing parking lot, a new one-way northbound driveway connection from 95th Street across the surface parking lot exiting onto the east / west alley on the north side of the site is proposed. Several parking spaces that now front onto the west side of the north / south alley are proposed to remain. One Fire Department staging area is currently shown on the plans along East Bay Harbor Drive. It is presumed since the site can be accessed from all sides this will be sufficient. If changes are required by the Fire Dept. after the Town PZB approves the site plan the changes may have to be re-approved.

On the building rooftop is a labyrinth as well as a restroom. The proposed new building is 3-stories in height @ 44'-8" above BFE (65 feet BFE allowed) .

The survey indicates the total lot area for Lot 18 is 9,750 square feet / 0.22 acres in size and the total lot area for Tract "N" is 52,110 square feet / 1.20 acres in size. Therefore, the total combined lot area, according to the survey, is 61,860 square feet / 1.42 acres.

The adjoining / nearby development sites currently include a 2-story commercial building to the north across Kane Concourse. To the immediate west is a one-story commercial building. To the south across 95th Street is a Town owned surface parking lot as well as the Capri Apartments @ 20 DU / 40 DUA. To the east across East Bay Harbor Drive is the one-story Tauber office building, the proposed La Boutique multi-family residential complex @ 41 DU / 78.8 DUA, and the Mansard Condominium @ 8 DU / 30.8 DUA. This area of the Town is predominated by a mixture of low-rise (1-3 stories) and mid-rise (5-7 stories) residential and commercial complexes.

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The Town's 2002 Community Vision Master Plan identifies this area for mid-rise residential complexes (7+/- stories) and commercial uses along Kane Concourse. Therefore, the proposed development is deemed generally consistent with the Town's future vision for this area.

BACKGROUND INFORMATION

The Town of Bay Harbor Islands completed major amendments to the Town's adopted Comprehensive Plan and Land Development Regulations (LDRs) in the last 12+/- years. In 2005 when the Town updated the B-1 Business Zoning District LDRs a proposal was made to increase the allowable building height in the B-1 Business District to 75 feet BFE as per the B&A Downtown Study; however, the Town Council decided to keep the allowable height limit at 65 feet per the Community Visioning recommendations. The Town also adopted numerous other modifications to many other Code provisions that affect yard encroachments, parking lot designs, building height limits and exceptions, building design standards, landscaping and other provisions.

COMPREHENSIVE PLAN / ZONING

Comprehensive Plan – The subject site has a Future Land Use Map (FLUM) designation of "Commercial." The proposed use of the commercial property would be consistent with the applicable FLUM designation of the property.

Land Development Regulations / Zoning Code – The property has a Zoning classification of B-1 Business District. The maximum building height allowed in this area is 65 feet (measured from BFE to top of main roof deck). Although the religious establishment use of the property is listed in the Zoning Code as requiring the Town Council to approve it, a recent legal opinion from Stanley Price, Esq. indicates the development proposal should be reviewed / processed as any other Site Development Plan due to Federal law (Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA)). The proposed site design is consistent with the provisions of the Code at present.

PLATTING

The site will not require re-platting, as the site is currently platted as described above. A Unity of Title document may be required to legally tie the lots together prior to the issuance of building permits, as the surface parking lot provides required parking for the building site.

RIGHT-OF-WAY, OFF-STREET PARKING AND ACCESS DESCRIPTION

As stated above, the site development plan includes a 23-foot wide two-way driveway connection to 95th Street that provides access to the parking garage. There are also driveway connections to the ally for a loading area under the building and for the surface parking lot. The alley traffic flow is a one-way only southerly to 95th Street.

Based on 8,474 square feet of retail space the Code requires at least twenty-eight (28) parking spaces and based on 386 seats the Code requires at least ninety-seven (97) parking spaces for a total of 125 required parking spaces. A total of 125 parking spaces are provided on site (102 standard, 20 tandem and 3 ADA spaces).

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As stated above one Fire Department staging area is currently shown on the plans along East Bay Harbor Drive. Since the site fronts public roadways on all sides this should not be an issue. Any changes required by the Fire Department subsequent to the Town's site plan approval may cause the plans to be re-submitted to the DRC / PZB.

BUILDING DESIGN / BUILDING LENGTH / BREEZEWAY

The building design is modern with decorative perforated metal screening and vertical glass elements.

The building does not require a breezeway as it does not contain residential units.

It should also be noted that per Sec. 23-11(c)(14), a 5-foot pedestrian walkway must be provided periodically to provide pedestrian access from Kane Concourse to the alley / parking areas in the rear of the buildings. In this instance, a separate pedestrian walkway will not be necessary, as one could enter the building lobby and gain access to the rear alley / parking areas.

SUGGESTED CONDITIONS OF APPROVAL / SITE PLAN COMMENTS

As the site design complies with the applicable Land Development Regulations, MMPA recommends the Town **APPROVE** the Site Development Plan application subject to the following suggested conditions of approval and/or comments on the latest plans dated May 6th, 2016 submitted to the Town for consideration:

- 1) This approval is based on the Site Development Plans prepared by Zyscovich Architects dated May 6th, 2016 for a 3-story mixed-use development project. Any substantial changes requested after the Town's approval may require a separate approval from staff / Planning and Zoning Board, as specified in the Code.
- 2) The proposed building signage for the Church by the Sea (upper floors) will be applied for under separate permit and is not part of this project approval. The signage will need to comply with the current day Sign Code requirements at time of signage application submission.

MEETING OF THE
PLANNING AND ZONING BOARD
QUASI-JUDICIAL PUBLIC HEARING
May 17, 2016
AGENDA

CALL TO ORDER: Set for 7:00 p.m.

PLEDGE OF ALLEGIANCE

ROLL CALL

1. Request for approval for a mixed-use development for "Church by the Sea" located at 1000 Kane Concourse, Tract N and Lot 18 of Block 12. The contract purchaser is proposing to construct a Three story mixed-use development project. The new complex proposes to have commercial retail Space at the street level facing Kane Concourse with a religious establishment on the upper two Floors. The proposed new building will be 44'-8" in height above BFE (65 feet BFE allowed). The Survey indicates the total lot area for lot 18 is 9,750 square feet in size and the area for Tract N is 52,110 square feet in size. Therefore, the total combined lot area according to the survey, is 61,860 square feet (1.42 acres). Enclosed please find the site plan and elevations. (Item #1A)

* Staff Review: Design meets Town Code and was approved by the Development Review Committee.

PUBLIC COMMENT - for the purpose of hearing any public comment with respect to an application for Site plan approval at 1000 Kane Concourse.

1 (Thereupon, the following proceedings were had)

2
3 MR. HURWITZ: Good evening, everybody,
4 we will call the roll and we'll get
5 started.

6 THE CLERK: Mr. Kolesko could not be
7 here today.

8 (Thereupon, the board was called)

9 MR. HURWITZ: Okay. We're going to
10 get going with the first item which has a
11 request for approval for mixed-use
12 development.

13 Anyone need to be sworn or we can do
14 it after?

15 Request for approval for a mixed-use
16 development for "Church by the Sea" located
17 at 1000 Kane Concourse, Tract N and Lot 18
18 of Block 12. Contract purchaser is
19 proposing to construct a three-story
20 mixed-use development project. The new
21 complex proposes to have commercial retail
22 space at the street level facing Kane
23 Concourse with a religious establishment on
24 the upper two floors. The proposed new
25 building will be 44'8" in height above BFE

1 (65 feet BFE is allowed). The survey
2 indicates the total lot area for Lot 18 is
3 9,750 square feet in size and the area for
4 Tract N is 52,110 square feet in size.
5 Therefore, the total combined lot area
6 according to the survey is 61,860 square
7 feet, 1.42 acres.

8 Before we get going, Stanley, I think
9 you wanted to make some comments.

10 MR. PRICE: Thank you, Mr. Chairman,
11 members of the board. My name is Stanley
12 Price, I have served as special wings
13 counsel to the town since the mid 1980's,
14 and I have been called upon this evening in
15 regard to the "Church by the Sea"
16 application. I furnished a memorandum
17 which hopefully you all have received and
18 digested but I'd like to summarize the
19 major points of the application in terms of
20 the laws that govern the -- that should
21 govern the decision making process of the
22 board.

23 I have served as the attorney for the
24 Archdiocese of greater Miami since the mid
25 1980's on venues matters. I represent the

1 two major Orthodox temples in Surfside and
2 Young Israel and I've been involved in
3 court cases involving those institutions.
4 I have been involved I would say in between
5 40 and 50 places of religious worship since
6 I began practicing here in Dade County in
7 1972.

8 I received a call from the town
9 attorney, Mr. Sherman, approximately a week
10 ago indicating that some issues had arisen
11 in regard to the nature of the operation of
12 the church that is the subject before you
13 here tonight. I will tell what the church
14 believes, what their theories are, what
15 their personal beliefs and what they
16 advocate plays no role whatsoever in the
17 decision making process that you are to
18 undertake as a zoning board this evening.

19 The reason I say that is that the
20 United States Supreme Court in the City of
21 Hialeah case, which I have submitted a copy
22 to everyone, the facts of that case involve
23 a Sanitoria church in the City of Hialeah.
24 As part of the teachings and religious
25 sacraments of the church they believe in

1 the sacrifice of animals as part of their
2 religious function.

3 Several members of the community came
4 down to the City of Hialeah comission
5 meeting and they raised a major issue that
6 this is not the type of religious group
7 that we would like in our community, and
8 based upon that the town of Hialeah enacted
9 several ordnances aimed specifically as to
10 the nature of the teachings of that church.
11 They banned the sacrifice of animals, they
12 created several ordinances that made it
13 very difficult for this religious group to
14 continue with their practice.

15 The case went to the United States
16 Supreme Court and while it was a unanimous
17 decision there were several concurring
18 opinions which means the court had all
19 different aspects of this. However, what
20 was abundantly clear the entire court found
21 that it is irrelevant for a zoning body or
22 a municipal body interfere or to even
23 examine the teachings, practices of a
24 religious group. That is unconstitutional,
25 it's protected by the First Amendment of

1 the freedom of religion. Following the
2 decision of the United States Supreme Court
3 the United States Congress adopted in the
4 early 2000 period the Religious Land Use
5 Institutional Person's Act, which is a
6 federal statute which by the way has also
7 been enacted by the State of Florida. It
8 gives added protection to religious
9 organizations in the context of zoning.

10 The genesis of the law was complaints
11 by several black churches in the south who
12 alleged that the local governments were
13 using the zoning power to exclude them from
14 operating within a municipal boundary. The
15 Congress took testimony, they passed the
16 law and the law provides that in regard to
17 religious organizations they must be judged
18 on an equal plane as any other place of
19 public assembly. They can be subject to no
20 greater standards, they must be treated on
21 a equal basis with other places of public
22 assembly.

23 Your ordinance is content neutral, it
24 does not distinguish between different
25 places of public assembly whether it be a

1 theater, whether it be a religious
2 organization, whether it be a private
3 school, they all must comply with the terms
4 of your code.

5 The only relevant aspect of testimony
6 today that you should consider is what the
7 land use application and how it's
8 applicable to your code of ordinances.

9 Once again, Mr. Chairmen, I would
10 respectfully suggest that any attempt by
11 anyone to try to characterize the religious
12 practice or the religious belief is not
13 relevant tonight, it may be relevant at
14 another time but for the purposes of zoning
15 it has no relevancy at all. I'll be
16 available to answer any questions that you
17 may have. Thank you.

18 MR. HURWITZ: Thank you, Stanley.

19 Okay. Any questions for the board of
20 Stanley before we begin? No. Okay.

21 If the applicant is here we'll give
22 you an opportunity to present, and just
23 want to remind everyone if anyone wants to
24 speak we'll swear in anyone who's planning
25 to speak. Go ahead, Stanley.

1 THE CLERK: If anyone wishes to speak
2 you have to turn in a form to speak and you
3 also have to be sworn in. If you'll raise
4 your right hand.

5 Swear or affirm to tell the truth,
6 whole truth in your testimony?

7 (Collective yes.)

8 MR. HURWITZ: Can we -- is it possible
9 to move that behind Stanley?

10 THE CLERK: A little bit, not much
11 more.

12 MR. HURWITZ: We will move it as much
13 as we can.

14 THE CLERK: You need to be able to see
15 the presentation too.

16 MR. FRANKEL: Mr. Price, so you told
17 us what we can't consider, I think it would
18 be helpful if you maybe tell us and
19 articulate to the members of the public
20 here what it is that we're supposed to be
21 considering.

22 MR. PRICE: The code of the town of
23 Bay Harbor Island contains criteria that
24 places of public assembly must meet.
25 Unless a variance is requested those are

1 the standards which you must apply this
2 evening. It talks about the location of
3 where these can be located, places of
4 public assembly, and it has other criteria,
5 that is what your inquiry should be limited
6 to, sir.

7 MR. HURWITZ: No different than any
8 other application that the board --

9 MR. PRICE: No different than any
10 public places of assembly.

11 MR. HURWITZ: If anyone would like to
12 speak on the matter there are forms in the
13 back, they need to be filled out and you
14 can bring them up, anyone, up here and will
15 be taken after the presentation.

16 Is the applicant here?

17 MS. HUBER: Yes. Good evening, my
18 name is Amy Huber with the law firm of
19 Shubin & Bass, 46 Southwest First Street,
20 Miami, Florida. I have the honor of being
21 here this evening on behalf of the "Church
22 by the Sea". I'm joined by Reverend
23 Barbara Asinger as well as many other
24 members of the church, as well as residents
25 of Bay Harbor Island who are in support of

1 the application. In an effort of brevity
2 for this evening I'm going to ask those
3 that are here in favor of the application
4 stand this evening as all of them will not
5 be speaking before you.

6 (People stand up.)

7 MS. HUBER: Thank you. In addition to
8 members of the church, members of the board
9 of the church and the Reverend I'm also
10 joined this evening by Bernard Zyscovich of
11 Zyscovich Architects and Danielle Smith who
12 are the architects of record for the
13 "Church by the Sea". We also have our
14 landscape architect here with Randy Jungles
15 as well as our traffic engineers Hank
16 Sandrow. So to the extent you have any
17 questions for them they'll be here and
18 happy to answer them.

19 In just a moment I'm going to turn the
20 application and the presentation this
21 evening over to Bernard to let him walk you
22 through the design criteria.

23 So you heard this evening from Stanley
24 that this application should be reviewed in
25 accordance with your code just like any

1 other application before you. Your staff
2 planners have done a fabulous review of
3 this application and the staff report is
4 very thorough on this matter and it's
5 recommending approval of the application.

6 Your planner has reviewed all of the
7 criteria of the code and found that the
8 "Church by the Sea" meets all of those
9 criteria with respect to placement,
10 location, permitted uses, uses that must
11 occur on the first floor as well as uses
12 that must occur on the second floor and
13 above. We are 20 feet below the maximum
14 height for this district.

15 As you see in our application this is
16 a mixed-use application. The code requires
17 retail to front Kane Concourse, as you'll
18 see there is retail on the first floor
19 fronting Kane Concourse, immediately behind
20 that is parking. The parking meets all of
21 the applicable parking criteria on site,
22 there is no need for additional parking
23 agreements with off site parking.

24 Located on the second and third level
25 is the new "Church by the Sea." Your code,

1 Section 523-1, outlines the criteria which
2 this board must review this application and
3 apply. That criteria limits this review to
4 architectural and aesthetic review of the
5 plan, so anything outside of that we would
6 ask for you to disregard this evening.

7 I'm going to retain a few minutes of
8 my time this evening for rebuttal after
9 public comments to the extent we need to
10 address. At this time I'm going to turn it
11 over to Bernard.

12 MR. ZYSCOVICH: Hi, good evening. My
13 name is Bernard Zyscovich, my office is at
14 100 North Biscayne Boulevard, and I'm very
15 happy to take you through the plans I'm
16 sure you've already looked at, and I'm sure
17 you're very familiar with the site.

18 So fortunately as architects get to
19 talk about the design and context and
20 things that I think you all are interested
21 in by the very nature of being here on the
22 board so we need to go through these other
23 issues as a matter of legal course, but
24 what I'm here to talk to you about is what
25 the church really is all about.

1 As you know, the location is on Kane
2 Concourse, as you can see in the diagram,
3 including the property on the other side of
4 the alley, it's currently where the
5 Cadillac dealership is. Here you can see
6 the context photos that have gone through
7 and been reviewed by staff, and we have
8 really taken a lot of care about really
9 making sure that we comply with, as Amy
10 mentioned, all of the architectural and
11 aesthetic review criteria that are listed
12 in your code. We've also made sure and
13 gone through significant research on our
14 own to ensure that we ask for no special
15 variances or any other conditions that
16 might, in fact, not be in compliance fully
17 with the code, so what I want to do is show
18 you what we've come up with.

19 Here you can see in the orange color
20 in the center the shops that face Kane
21 Concourse. They actually have a
22 significant retail presence. I'll show you
23 in the renderings the height of the ground
24 floor is 20 feet so we're looking at being
25 able to having those shops either

1 subdivided or they can go to a single
2 tenant. The attitude has been all along
3 that we want to be good neighbors to the
4 city and that we want the shops at Kane
5 Concourse to be viable commercial shops and
6 they are designed to be that. As you can
7 see behind where you see the truck loading,
8 we have as required by code ample truck
9 loading, trash pickup, we're utilizing the
10 alley in the way that it was meant to be
11 utilized, and we are able to have our exits
12 there come down from the upper floors which
13 is the little sliver of space that you see
14 between the shops and the adjoining shops
15 so that we can actually provide the exit
16 that we need for the rest of the building
17 above.

18 On the corner what we've done is we
19 set back from Kane Concourse and from East
20 Bay Harbor Drive public open space where we
21 have access to the front door so that
22 people can enter the church on the ground
23 floor, go up into the vertical circulation
24 and basically utilize the church which is
25 entirely occupied on the second and third

1 floor. We have made sure that there are no
2 church uses on the ground floor, only
3 commercial uses and parking.

4 We also have provided on 95th Street
5 the entry and exit point to the parking so
6 that we have ample distance from the
7 corner. As you can see in the diagram, we
8 have all of the landscape requirements that
9 are provided, we spent significant amount
10 of time with Mike Miller and his team
11 reviewing everything including going
12 through all of the landscape elements down
13 to the last bush to make sure that we can
14 provide with the letter of the requirements
15 as needed and as defined in your documents.

16 Regarding the ground floor empty lot,
17 what we've done is we've provided an
18 ingress that takes us to the ground level
19 parking, and we also have some 90 degree
20 parking off of the alleyway so that we
21 could maximize the amount of parking which
22 we have. We complied with the code
23 requirement, we have a total of 125 spaces
24 and we have a shared parking or
25 understanding between the church and the

1 retail shops, because as you know the
2 church is really occupied mostly during the
3 religious morning, mostly on Sunday, and
4 other than that it's really not going to be
5 occupying the garage by a significant
6 amount of uses.

7 When you go up to the first level
8 above grade what we have is a logia type of
9 space where you have a gathering space from
10 within the church that will allow people to
11 circulate, we have the vertical core, we
12 have the sanctuary and fellowship hall and
13 the northex for the church. We also have
14 library and other, you know, miscellaneous
15 spaces that are ancillary uses to the
16 church as part of it, and that is -- we
17 also have an outdoor deck that you see on
18 East Bay Harbor Drive so that we can set
19 the church back from the street and give
20 some relief. I think you'll notice it on
21 the renderings when we show it to you.

22 On the next floor up we're taking
23 advantage of the roof. So as you can see
24 on Kane Concourse we're setting the mass of
25 the third floor significantly back from the

1 street face so that we can be a very good
2 neighbor and also provide some outdoor
3 space for the multipurpose rooms that are
4 taking advantage of the open deck. And
5 then beyond that we have the second level
6 of the sanctuary and some additional
7 ancillary spaces related to church use.

8 And when we get to the rooftop we have
9 the -- a very small use space. As you can
10 see by the tan, that is the extent of
11 rooftop and it is mostly circulation. The
12 main idea is that the church has a space
13 they call the Labyrinth which is intended
14 for meditation. It's actually a graphic
15 that is imposed on the paving and people go
16 up there and utilize it for their own uses,
17 and it is a very limited amount of space as
18 you can see. And what we have is we have
19 fire and building code required exiting off
20 of the roof to manage that overall process.

21 So when you look at the section, the
22 lower section shows you the section through
23 the retail and through the additional
24 administrative uses of the church. The
25 sanctuary is on the south side in the

1 double height space. When you look at the
2 other section you can see the reception
3 area and the second level and third level
4 spaces, the area engraved as the parking.
5 So it's a very efficient building. As Amy
6 mentioned, it's significantly below the
7 maximum height allowable and in terms of
8 set back, in terms of open space, lot
9 coverage, every other requirement we meet
10 or exceed them.

11 And then when you get to the actual
12 aesthetic issues of what does it look like
13 and how does it comply, if you go to all of
14 your own requirements that we've paid a lot
15 of attention to in terms of the exterior
16 design, the appearance, the conformity with
17 standard aesthetic requirements, the site
18 layout, the motivation to have a retail
19 street, all of the things that are part of
20 what every good board does to protect the
21 interests of its own city.

22 I think you can see here with the
23 rendering with the buildings that have
24 already been approved that are clearly not
25 there now but they have been approved by

1 this board in the past, you can see the
2 building of the church on the corner. As
3 you can see, it blends in very well with
4 the scale and is actually lower and less
5 obtrusive than a lot of the surrounding
6 buildings. When you look at the building
7 on its corner you can see here the space
8 that is defined by the set back from Kane
9 Concourse, the articulation of the building
10 and the discreet way in which we're
11 utilizing the campanile concept of simply a
12 carved out cross from stucco rather than
13 going through a more traditional steeple or
14 many of the other devices that traditional
15 churches have. This is something that is
16 very in keeping with the modern and
17 contemporary philosophy of this church and
18 it's also in keeping with contemporary
19 modern design thereby dealing with the
20 standards of it being a mixed use. It
21 conveys that it's a church but it also
22 conveys that's it's a retail store, and
23 here you can see the blow up of what the
24 retail looks like in terms of how it meets
25 the street. We've gone to the best

1 landscape firm in town, possibly anywhere,
2 that could help us with providing the vine
3 and the trellis and all of the other
4 elements that we believe are embellishments
5 that most commercial projects I work on
6 don't contain but in this case it is there
7 by the church and it is being provided by
8 the owner to further commitment to this
9 project. You can also see the retail
10 stores and their transparency which is very
11 important to continuing the retail
12 character of the street. Here you can see
13 a shop looking east back toward Bal Harbor
14 where you can see a blow up of the store
15 fronts, the approach to the cleared display
16 of where the signage would be, and again
17 the landscape treatment, the wide
18 sidewalks.

19 We do a lot of retail design, this is
20 definitely a design that works for retail,
21 it's going to be very effective and very
22 usable and in no way a compromise to the
23 aspects of retail design. And here you can
24 see a rendering that showcases the
25 landscape requirements, the number of

1 trees, the amount of green that is
2 contained within both of the sidewalks.
3 Here you can see another view of the same
4 thing.

5 This is the data that I'm sure that
6 you've already scrutinized, we're in
7 compliance or below maximums in every
8 single situation including setbacks,
9 including height, including all of the
10 other zoning criteria. And that concludes
11 my presentation, I'd be happy to take
12 questions.

13 MR. HURWITZ: We're going to take some
14 input from the public and come back if it's
15 okay.

16 MR. ZYSOVICH: That would be fine.

17 MR. HURWITZ: If anyone would like to
18 speak I have a couple of pieces up here,
19 but please fill out a paper if you'd like
20 to speak.

21 MR. MAYA: Victor Maya, 1155 103rd
22 Street. A little bit confused with respect
23 to the scope of the application. It says
24 that this is going to be a mixed-use
25 project, commercial retail and religious.

1 However, when I look at it I also see an
2 educational component, a recreational
3 component and an event space component, and
4 I think when you add, you know, those extra
5 components here we are way beyond the scope
6 of just a religious institution in terms of
7 what we're looking at. So I think when you
8 look at all these other uses that we have
9 here the project basically is too big and
10 it's beyond the scope of what is being
11 sought.

12 One thing that I would like to note is
13 the issue with respect to parking and I
14 think that there needs to be a traffic
15 study and parking study because you have
16 three major projects that are going into
17 that intersection when you count the hotel
18 that's diagonal, the big office building,
19 the one across the street, and them. You
20 look at the folding wall between the social
21 hall or the fellowship hall and the
22 sanctuary and behind it there are 21 tables
23 that I counted with eight seats around each
24 table, you know, so that's, you know, an
25 extra 116 people that can go in there at

1 any given time, you know, which pretty much
2 equates out to 29 parking spaces that are
3 needed. There's also a chapel, is there no
4 seating in the chapel, you know, so that's
5 not being counted. What about the school
6 upstairs, the classrooms, how many seats
7 are in there and how they're being handled,
8 any parking for those, you know, so this is
9 a project that is way beyond the scope,
10 there is not enough parking the way it is.

11 I'm also a little bit concerned when I
12 read that building signage is not a part of
13 this application but that huge cross is.
14 This board, you know, spent, you know, at
15 least two or three sessions dealing with
16 sign on the Ocean Cadillac, you know, and
17 how big it can be, you know, and to try to
18 put the cross in as just, you know, not a
19 sign but part of the design, you know,
20 seems like a sneaky way to bypass, you
21 know, our sign ordinance and our sign
22 requirements.

23 Finally, I think that the building
24 itself is kind of ugly. I mean, if they
25 weren't in such a rush to tear down the

1 existing church they could have moved it
2 over and it would have been beautiful right
3 there on the corner. I understand that
4 they saved the steeple, you know, that is
5 not a part of anything here. I think that,
6 you know, we need to keep the integrity of
7 the existing streets to ensure it's
8 compatibility, and it's really just a big
9 ugly building especially on that corner the
10 way it looks like. There's nothing
11 special, spectacular, you know, that would,
12 you know, necessitate all that stuff. And
13 I can go on and on just bear with me for
14 another 20 seconds or so.

15 MR. HURWITZ: Wrap it up if you can.

16 MR. MAYA: Thank you. You know, just
17 to point out that, you know, there are
18 these other uses that are contemplated. We
19 have an educational director with his own
20 office, we have these multipurpose rooms
21 with bathrooms, we have a youth room, we
22 have an athletic activity room, so you have
23 this major field out here that is, you
24 know, this is more than just a religious
25 institution. Thank you.

1 MR. HURWITZ: Thank you, Victor.

2 Carol Holland.

3 MS. HOLLAND: My name is Carol
4 Holland, 10180 Harbor Drive. So just an
5 example of extra activities that would be
6 done, the church has different groups that
7 meet and one of them is a knitting group
8 and they ask people to knit and provide
9 whatever creative things for people who
10 need a little bit of support for
11 celebration of major life events, a chance
12 for people to get together and do other
13 things in the community. It's kind of like
14 in the Midwest it would be like a barn
15 raising brings people together in
16 communities, it brings people who may not
17 even know each other, who may not even like
18 each other, but it gets them together in
19 the community and to me that's part of what
20 it's -- it's maybe beyond what is called
21 religious but it's definitely what makes a
22 community. Thanks.

23 MR. HURWITZ: Thank you very much.

24 Katherine Kennedy.

25 MS. KENNEDY: Good evening, my name is

1 Katherine Kennedy, I'm at 9900 West Bay
2 Harbor Drive. I believe that this -- I
3 feel sorry for you guys right now, but
4 anyway I believe that we are here tonight
5 to discuss whether this project fits the
6 code and the zoning requirements only, not
7 about knitting or anything. I am a
8 Christian and I am for this church and I'm
9 going to get heat again from it, but I
10 believe it does good things. It's your job
11 as the planning and zoning committee not to
12 decide if this church belongs in our town
13 or it's affiliation to other organizations.
14 Anyone who wants to discuss those matters
15 should be redirected to the planning and
16 zoning no matter -- no matter what they
17 say.

18 The only thing I'm disappointed is
19 that the "Church by the Sea" did not come
20 to our town and explain to us citizens what
21 they do, what it is all about, which I
22 thought was happening when we had the last
23 council meeting. I thought this PNZ
24 meeting was going to be postponed until --
25 I personally called the Reverend who I

1 believe in, I believe in all the good
2 things they do, but I think out of respect
3 for the citizens of this town they should
4 have come and made a presentation and tell
5 us what they do, and they do great things.
6 I've worked in that "Church by the Sea", I
7 did the brown bags to the homeless, and
8 they just need to tell us and I think we
9 would go through all of this, but just
10 remember this is not your decision if this
11 church is coming here, you're only here to
12 approve the zoning requirements. So thank
13 you and I just feel sorry for all of you.
14 Thank you.

15 MR. HURWITZ: Happy to be here and
16 thank you.

17 Mark Alvarez.

18 MR. ALVAREZ: Good evening, my name is
19 Mark Alvarez, I'm a professional planner,
20 I'm here on behalf of 1048, LLC, which
21 is -- they are retail property owners on
22 Kane Concourse. I'm a professional
23 planner, I'd love to make a short
24 presentation, I might take just a minute
25 more if you mind.

1 I reviewed the plan as a planner and I
2 made some recommendations to them and I'd
3 like to share them with you. These are
4 basically design, it's not about use, it's
5 not about use as a church, I'm looking at
6 it as an institutional use. There are
7 three basic things and the first two come
8 under use regulations 23-5, number 7 and
9 number 13, and basically they follow out of
10 in 2002 you had a vision session for this
11 whole town, and the East Island report had
12 a vision that came out of that and the
13 vision was Kane Concourse would be retail
14 on the ground floor with office uses on the
15 next two floors and then the floors above
16 that residential. In creating a zoning
17 code to implement that the zoning code got
18 a little more specific, and one of the
19 things it says is, it's number 7 under
20 23-5, is that 100 percent of that store
21 front -- of that street front would be one
22 of the uses above which are retail and
23 restaurant, and, in fact, it goes to some
24 extent to exclude some of the institutional
25 uses. And so I look at that and then there

1 was also under design part of the code,
2 which is I think 23-11, number 13, about
3 the transparency of the windows and 75
4 percent of that street front should be
5 transparent. And what it came down to was
6 really a simply thing, is that the best
7 part of the retail, the corner crossing the
8 gateway is not retail, it's a wall
9 essentially, it may be an attractive wall
10 but it's the wall and it's the lobby of the
11 church which is not transparent, and we
12 would like to see that as part of the
13 retail extended and the lobby can very
14 easily move over to East Bay Drive. That's
15 the first point.

16 The second point is about also under
17 the design part of the code for this
18 district there is a requirement which is
19 23-11(c)(14), I didn't bring my glasses,
20 that requires pedestrian passage, and that
21 was also coming out of this whole idea that
22 you want to have a very pedestrian
23 frontage, you want retail, so you didn't
24 want parking, parking had to be in the
25 back, and you know that for good design you

1 have to be able to reach that parking
2 especially if it's shared, so there's a
3 requirement in the code that there be with
4 the exception of 150 feet from East Bay
5 Drive that there be a five foot pedestrian
6 passage which there is not on this design.
7 This building is about 175, 174 point
8 something feet long and that passage is not
9 there and that is a requirement in the
10 code.

11 And the last part would be a follow up
12 a little bit from what the gentlemen he
13 just talked about parking and some of the
14 uses, and I'm going to need about
15 30 seconds more, please. Under the uses,
16 23-5 under 8 and 8.1, there's some criteria
17 for making your decision, actually for the
18 town council to make this decision about
19 this use. Under 8.1 there's a requirement
20 that there not be adverse impact to a
21 variety of things and one of them is
22 parking. And I do parking studies and I
23 understand fully that it's a Sunday use but
24 with the parking requirement which is
25 exactly 125 is based on the retail square

1 footage and the 438 seats in the sanctuary.
2 Normally that's fine because the other uses
3 in the church or, you know, use like this
4 would be complimentary, they happen on
5 other days, they're ancillary. However, we
6 see that it's a fairly large co-mingling of
7 the building, two floors, there's eight
8 multipurpose rooms, there's an athletic
9 room, there's a music room, there's a lot
10 of programs, and in an abundance of caution
11 and for the benefit of the town and
12 retailers of the town I would not sit here
13 and say there's not enough parking, what I
14 would say is that the shared parking
15 between those uses and the other shared
16 parking for the retail needs to be
17 documented and right now it's not. There
18 needs to be a study that shows that parking
19 will work, that show how those other spaces
20 work.

21 MR. HURWITZ: Wrap it up please.

22 MR. ALVAREZ: Thank you very much.

23 MR. HURWITZ: Thank you.

24 MR. FRANKEL: Mr. Chairman, could I
25 ask a question at this point related to the

1 comments? In the memo that was provided to
2 us with regard to the pedestrian walkway it
3 says in this instance a separate pedestrian
4 walkway will not be necessary as one could
5 enter the building lobby and gain access to
6 the rear alley parking areas. Does that
7 mean that this lobby area is going to be
8 open 24/7?

9 MR. MARKS: Yes, this is something
10 that was discussed at the RC that they will
11 have --

12 MR. HURWITZ: Introduce yourself for
13 the record.

14 MR. MARKS: Scott Marks for the
15 record. That there will be access to the
16 shared parking in the rear through that
17 building lobby. I believe it's 24/7.

18 MR. HURWITZ: So as presented to
19 replace public access, public access is
20 construed through the church?

21 MR. MARKS: I'm sorry?

22 MR. HURWITZ: That's supposed to be an
23 access point from the sidewalk to the
24 parking in the rear, correct?

25 MR. MARKS: Yes.

1 MR. HURWITZ: And you're saying we're
2 not requiring that because you can go
3 through the church?

4 MR. MARKS: That functions as that
5 requirement, yes.

6 MR. GAVCOVICH: You're not really
7 going through the church --

8 MR. MARKS: No, you're going through
9 the lobby, not the church.

10 MR. GAVCOVICH: You're not using the
11 lobby, right, it's going through the
12 colonnade there that faces the exterior,
13 not really the interior space?

14 MR. MARKS: Yes.

15 MR. HURWITZ: Where is that?

16 MR. GAVCOVICH: That's on the first
17 page. I'm sorry, going back to that. Is
18 there -- there is no real connection
19 between the -- since we're on this subject,
20 between the detached lot and the parking
21 spaces there and the retailer or any other
22 part of the building, how is access open?

23 MR. MARKS: How do you get to the
24 rear?

25 MR. GAVCOVICH: I guess we can ask Mr.

1 Zyscovich, but in terms of your
2 recommendation those spaces don't really
3 provide access, you're not really going
4 through the garage, I can't imagine, and
5 then back of the building, there is no
6 pedestrian access to those spaces to the
7 retail or the church without going through
8 the alley or the service area?

9 MR. MARKS: Correct.

10 MR. HURWITZ: We have one more speaker
11 and then we'll be talking again tonight.

12 Tucker, I apologize, Cobbs?

13 MR. GIBBS: Gibbs.

14 MR. HURWITZ: I'm sorry.

15 MR. GIBBS: That's quite all right.
16 Good evening, my name is Tucker Gibbs, my
17 office is at 3835 Bellevue Court in Coconut
18 Grove. Mr. Alvarez basically said
19 everything I was going to say so I'm just
20 going to leave you with this. And, I'm
21 sorry, let me tell you who I represent so
22 that might help a little bit. I represent
23 1060 Kane Concourse, Inc., 1048, LLC, 1050,
24 LLC, and D & F, LLC, all who own properties
25 on Kane Concourse or 95th Street.

1 Mr. Alvarez basically has said
2 everything that really needed to be said.
3 I do want to remind you that this is a
4 pretty basic approval. It's a piece of
5 property, the Ocean Cadillac building will
6 be demolished on that property, so you have
7 a blank slate. The architect had a blank
8 slate, the church had a blank slate, and
9 there is no reason why any code provision
10 should be ignored in this situation. If
11 you have a blank piece of property it's
12 easy, it's relatively easy, and you have
13 three issues that are fairly important,
14 important to this community, Kane Concourse
15 is supposed to be a retail way. It's
16 supposed to be all along Kane Concourse
17 it's supposed to be 100 percent retail,
18 that's what it says in your code. It's
19 supposed to have access to Kane Concourse
20 directly from the parking area. That's
21 what it's supposed to have and this project
22 is flawed in that regard, and what we're
23 asking for is that you ask the applicant to
24 come back with a project that actually does
25 meet your code, and when it does meet the

1 code send it on to the town council. My
2 clients would be happy to support such a
3 plan because it will help, that plan will
4 help the retail on Kane Concourse. The way
5 this project is proposed right now I don't
6 think it's going to help that much. It is
7 better than Ocean Cadillac, we'll grant you
8 that, but it can be much better with these
9 three changes. Thank you.

10 MR. HURWITZ: Thank you, Mr. Gibbs.
11 No other speakers and we'll close the
12 public hearing.

13 MS. HUBER: I'd like a second for
14 rebuttal.

15 MR. HURWITZ: Sure, and then we'll let
16 the board ask some questions.

17 MS. HUBER: I just wanted to briefly
18 respond to a couple of questions you all
19 raised as well to the questions or to the
20 comments that were raised by some of the
21 members of the public. First of all, the
22 uses are not before you this evening. The
23 uses which are ancillary to a religious
24 institution have been deemed approved and
25 permitted by your staff. They are not

1 separate and apart from the religious use.
2 There is not a school at this facility nor
3 will there be a school at this facility.
4 There is Sunday school and youth programs
5 that occur in connection with Sunday
6 services as well as other programs during
7 the week, but it is not -- it is not a
8 school, a school use. In addition there is
9 no recreational use, that is again
10 ancillary to the other components.

11 In terms of a parking study and a
12 traffic study, a parking study was
13 submitted to you by our traffic consultant,
14 Walker Parking, that parking study was
15 reviewed by your staff and deemed to comply
16 with your code. There is no shared parking
17 analysis required because we meet all of
18 the provisions of your code and have enough
19 on site parking, some would say we have
20 more than enough on site parking in light
21 of the fact that the majority of the
22 parking is for the church to facilitate the
23 number of seats in the sanctuary and in the
24 fellowship hall and that only occurs on
25 Sunday so the majority of the time those

1 parking spaces will sit dormant.

2 In terms of a traffic study, a traffic
3 study was submitted to your staff by
4 Mandarin Consulting, it was reviewed and
5 approved and deemed to -- deemed to meet
6 all the criteria of the code. As you all
7 are aware, a parking study must take into
8 consideration previously approved projects
9 which means all of the previously approved
10 projects on Kane Concourse, East Bay
11 Harbor, as well as Bay Harbor, Bay Harbor
12 Island, Bal Harbor and Surfside have all
13 been taken into consideration with respect
14 to that traffic study. It found no adverse
15 impacts, it actually found a reduced --
16 reduced trips from the previous use.

17 To the extent that you have any
18 questions from our traffic engineer, Hank
19 Sandrow, he is here this evening and happy
20 to address those comments or concerns or
21 questions you may have.

22 With respect to the cross, that is an
23 architectural feature, religious feature,
24 that is not part of the review before you
25 nor is it considered a sign.

1 With respect to the comments made to
2 you by Mark Alvarez, Mark Alvarez is a
3 planner, I will agree to his expertise as a
4 planner, however, he is not an architect.
5 Our architect has testified to you with
6 respect to compliance to the code criteria.

7 In terms of the 100 percent street
8 front where it excludes institutional uses,
9 we will demonstrate and have demonstrated
10 for you that the uses along Kane Concourse
11 is a retail use, there is no religious use
12 on the ground floor in compliance with your
13 code. So irrespective of whether or not we
14 believe that that provision of your code is
15 legally binding or not we have complied
16 with that and have not placed any religious
17 uses on the first floor.

18 In terms of the second question that
19 you raised related to transparency and 75
20 transparency, you will see that there is
21 100 percent transparency along Kane
22 Concourse as it is all glass windows and
23 store front including the glass into the
24 lobby area.

25 The last thing he raised was the

1 pedestrian passage. I just want to address
2 that for a minute in terms of -- in terms
3 of your questions on that point. So in
4 reviewing this application and reviewing an
5 appropriate place to provide a pedestrian
6 access in a meeting with your staff, not
7 just your planner, but also with your town
8 manager, your building department, your
9 public works department, one of the
10 concerns about providing access in
11 between -- in between the church site and
12 the adjacent building is that that would
13 pedestrian access directly into that alley
14 as well as the loading area that is
15 provided there. No one on your staff felt
16 that that was appropriate or safe to have
17 pedestrian access into an alley in a
18 loading area. That is the loading area in
19 the alley that not only our property
20 utilizes but all of the property along Kane
21 Concourse, so having pedestrian access
22 directly into that location is not
23 appropriate which is why no one thought
24 that that would be the correct location.

25 What the church did do and what I

1 think is extremely important to recognize
2 of its own the church, that the existing
3 sidewalk is only about four feet from the
4 curb to the end of the pavement. What the
5 church is doing is providing an easement to
6 the town for the portions of the expanded
7 sidewalk that are on its own property down
8 East Bay Harbor. So one of the nice things
9 with the redevelopment of the site is
10 you're not only going to get expanded and
11 widened sidewalk on Kane Concourse, but
12 they're also extending that all the way
13 down East Bay Harbor Drive. So any
14 questions anybody has with respect to
15 pedestrian access, it is going to far
16 exceed the pedestrian access that you
17 currently have along East Bay Harbor, it's
18 going to be -- it's six feet with
19 landscaping on both sides. You can see
20 from the rendering as well as the landscape
21 plan how beautiful it's going to be, and
22 we're very exited about that because we
23 feel like it really changes the existing
24 context along East Bay Harbor drive for
25 pedestrians. And one of the citizens who's

1 actually questioning this was at the RC and
2 was thrilled to hear that the church of its
3 own is willing to provide an easement on
4 its own public property to expand that
5 pedestrian access.

6 In addition to that pedestrian access
7 we're also providing pedestrian access
8 through the lobby off of Kane Concourse
9 into the parking, so there is a direct
10 connection to the parking without requiring
11 an additional access that would not be safe
12 to the pedestrian trying to seek their
13 parking.

14 Your staff report is very thorough,
15 you all have already noted but I'd like to
16 call your attention to the provisions of
17 your staff report on page 3 at the bottom,
18 right of way, off street parking and access
19 description. This specifically provides
20 the criteria for you and explains very
21 thoroughly how we meet all of the parking
22 requirements, traffic, access, driveway.
23 When you look at building design, again it
24 specifically states that we meet the
25 criteria and why that pedestrian walkway is

1 through the building lobby.

2 Finally on page 4 staff recommends
3 approval and I would encourage you this
4 evening to recommend approval of this
5 application as well.

6 If you have any other questions we're
7 here with our team and happy to address
8 them.

9 MR. HURWITZ: Thank you.

10 MR. FRANKEL: Did you say that the
11 sign in the front, that the elevated sign
12 is something we're not considering tonight?

13 MS. HUBER: I'm not sure what elevated
14 sign you're talking about?

15 MR. FRANKEL: The cross.

16 MS. HUBER: The cross is not a sign.

17 MR. FRANKEL: But that structure, that
18 structure that is higher than the entrance
19 way, that --

20 MS. HUBER: The structure is before
21 you but the cross is not.

22 MR. FRANKEL: Okay.

23 MR. HURWITZ: Thank you very much.

24 Stanley, could you --

25 MR. GAVCOVICH: I'm sorry, when you

1 say the cross is not that means that the
2 cross is not being proposed or the cross is
3 not in your opinion part of our purview?

4 MS. HUBER: The cross is not part of
5 your purview. To the extent that you would
6 like to make recommendations with respect
7 to the structure that is before your
8 purview, however, the cross is not. Your
9 attorney is here and can address that.

10 MR. HURWITZ: Thank you very much.
11 Stanley, would you --

12 MR. PRICE: I have not been asked to
13 opine on that issue, it's an interesting
14 issue. What happens if this was not a
15 cross but it was a series of diagonal lines
16 that is an architectural feature to the
17 building, that raises the same type of
18 questions. Based on your code it would
19 technically meet the definition of a sign,
20 but there are other codes and I'd like to
21 research that position. That's not before
22 this board tonight and you can specifically
23 exclude that architectural feature subject
24 to an opinion.

25 MR. HURWITZ: Okay.

1 MR. FRANKEL: I'm a little confused
2 about that because one of the public
3 members said we spent at least two sessions
4 dealing with Cadillac wanting to change the
5 symbol on a similar type structure, so why
6 would we consider it for Cadillac but not
7 for this applicant.

8 MR. PRICE: I didn't say you shouldn't
9 I'm saying I haven't been asked to opine on
10 that position before this evening.

11 MR. HURWITZ: Okay. Why don't we go
12 in order? Alan, do you have any questions
13 or comments on the plans or any questions
14 for the architect?

15 MR. BECHIK: Yes. For a comment I
16 would like to have a concrete answer from
17 the architectural element that we discuss
18 if that's considered a sign or not. I
19 would like to know that to make a more
20 informed position. I would like to also
21 understand a little bit about the parking,
22 how the parking is going to work for retail
23 course and church course and if there's
24 going to be any type of enforcement or if
25 it's going to be open parking, and if that

1 can be addressed?

2 MR. HURWITZ: Why don't we go in
3 reverse order because I think everyone
4 shares a question with regard to the
5 signage or the cross or whatever you call
6 it. That's going to be an issue. Why
7 don't we take the parking because I think
8 others share that concern, that's less of
9 an issue.

10 Scott, can you talk to the uses?
11 We're not talking about uses relative to
12 religious uses but this board often talks
13 about relative uses in a project relative
14 to parking and access and that sort of
15 circulation sort of things. Can you just
16 maybe comment on your analysis which is on
17 the package of uses that are proposed and
18 whether or not it meets parking because
19 that was commented before and I'd like to
20 hear that from you.

21 MR. MARK: The code requirements state
22 that you calculate the parking based on the
23 number of seats in -- for the
24 establishment. I can find the exact
25 section to see how it's specifically

1 worded, but it's based on the number of
2 seats in the sanctuary if you will.

3 MR. HURWITZ: Is that for a sanctuary,
4 movie theater, day care school, ancillary
5 use that was suggested during Sunday
6 school, how is that being delineated?

7 MR. MARK: Bear with me one second.
8 It's places of assembly. Religious
9 institutions it's one space for every four
10 fixed seats.

11 MR. HURWITZ: So how are you counting
12 for -- so that covers the congregation
13 areas, correct? So how do you account for
14 the meeting rooms, the other gathering
15 places?

16 MR. MARK: Those are typically not
17 used at the same time as the sanctuary so
18 it's calculated based off the sanctuary
19 area and the retail space.

20 MR. HURWITZ: Wait. I think the
21 applicant shared that the rooms were
22 specifically going to be used for day care
23 or study only during assembly, correct, so
24 that would suggest all those rooms would be
25 used at the same time.

1 MS. HUBER: Not all of the rooms will
2 be used at the same time as the sanctuary,
3 but as I explained, so if the parents or
4 grandparents, whoever are attending
5 services then their children are in those
6 ancillary spaces, so you wouldn't need
7 additional parking spaces because those
8 people are not driving, so those uses are
9 not used in addition to, they're use
10 consecutively at the same time so
11 additional parking spaces are not required
12 for those uses per your code.

13 MR. BECHIK: To add to that, you have
14 the fellowship hall so I assume maybe you
15 might have like a wedding or some type of
16 gathering, so how are -- so the maximum
17 capacity would be 400 people for the
18 fellowship hall?

19 MS. HUBER: Traditionally what happens
20 at church, and I'm only speaking for
21 "Church by the Sea", but following services
22 on Sunday the members who are in the
23 sanctuary then move into the fellowship
24 hall following that. So the same with a
25 wedding, the members who attend the wedding

1 in the sanctuary then move to the
2 fellowship hall, so it's not concurrent
3 it's one following the other.

4 MR. HURWITZ: I mean, this is nowhere
5 near a religious question it's just a
6 mixed-use project and from our experience
7 both on the board and individually, you
8 know, I'm having a hard time digesting,
9 because I understand what you're saying and
10 I appreciate what you're saying, I'm
11 picturing how it works and it makes sense,
12 but from an approval perspective I'm having
13 a hard time that the town doesn't assign
14 certain seats, if you will, to those other
15 spaces just based upon the, you know, fair
16 representation that there's going to be 400
17 people in here and it's going to be only
18 kids, but there are people that are running
19 the building, there are people that are
20 caretakers, who are staff, I'm not saying
21 necessarily it's a problem I'm just trying
22 to see what the accounting is for the, you
23 know, quote, unquote, seats because I don't
24 think you can fairly say it should be
25 limited to the seats.

1 MS. HUBER: It's not. There are not
2 386 seats in the sanctuary so those seats
3 do occur in other spaces, so it's not --
4 it's not 386 seats just in the sanctuary,
5 so I think --

6 MR. HURWITZ: That's what I'm trying
7 to ask the town to summarize for me.

8 MR. MARKS: It specifically says
9 religious institutions which takes into
10 account the kids that are going to be in
11 the nursery and the staff that it takes to
12 cover all of that.

13 MR. HURWITZ: Okay. So you feel
14 comfortable that all the uses are covered.
15 It's just a large facility for a gathering
16 of any kind and that's a big concern in a
17 tiny town that doesn't have that many
18 people coming and going.

19 MR. GAVCOVICH: Before we get past
20 that issue, the -- how is the 300 -- is it
21 363, 386 number of seats determined, how
22 did you come up with those number of seats?

23 MR. HURWITZ: It's not that I don't
24 want to hear from you I just want to make
25 sure the town gets it.

1 MR. RONALD: That's what was stated on
2 the application and all the plans, that's
3 what we calculated based off of.

4 MR. HURWITZ: The account seats, I
5 mean, how do you -- I'm just sort of asking
6 the town to sort of prove it up to us that
7 we're comfortable.

8 MR. RONALD: Yea, I mean, if you go
9 through and count all the seats in there it
10 certainly appears that there's, you know,
11 386 or whatever it is, yes.

12 MR. GAVCOVICH: For the seats that are
13 shown in the sanctuary space?

14 MR. RONALD: Sanctuary and some in the
15 fellowship hall. I know they don't show
16 seating in some of the other rooms but it
17 seems appropriate for the space.

18 MR. GAVCOVICH: I mean, it's just the
19 way the seating is shown as you get to the
20 rear rows there's seats left out and
21 there's obviously room between the back
22 rows and the fellowship hall for more
23 seating, so if it's, you know, counting the
24 number of seats which seems to be very
25 close to the 360, 380, whatever it is, but

1 then there's room for more and the way it's
2 designed with the partition between the
3 sanctuary and the fellowship hall it would
4 seem to have the ability to extend the
5 seating into the fellowship hall.

6 MR. HURWITZ: Dale, please identify
7 yourself.

8 MR. LEE: Dale Lee, building official.
9 As you know, the occupant load is going to
10 be determined on the square footage of the
11 space which we will do when we do the plan
12 review on this thing. So certain areas are
13 going to be accessory spaces. If we assign
14 assembly use then it will be a specific
15 number of spaces. If there's more people
16 for that space then they have to add more
17 it exiting, that's how they determine that
18 with the fire code, you need to provide
19 exiting for those number of people.

20 MR. HURWITZ: But not more parking?

21 MR. DALE: No, not the building code.
22 We determine the occupant load, the space,
23 the number of people that can occupy that
24 space at one time, just like this room.

25 MR. GAVCOVICH: Which I think

1 Mr. Zyscovich and his team have done that.
2 If you actually look at the size of the
3 stairwells and the size of the egress
4 capacity it's, you know, and I did, I know
5 from this scale drawing some rough numbers
6 and you're well over 1,000 people based on
7 the stairs design.

8 MR. ZYSOVICH: Can I address that?
9 Obviously there's a difference in building
10 code and zoning code. The building code is
11 designed for exiting and we've taken every
12 possible circumstance of things being
13 filled to capacity because exiting is tied
14 to like safety which is tied to danger and
15 life. So in that regard we have maximized
16 the number of stairs. There will not be
17 anymore stair requirement in this building
18 because we've assumed that people are cheek
19 to jowl so to speak in terms of standing in
20 the spaces that are open. As architects we
21 all know we go through this all the time.

22 In terms of the parking, parking is
23 defined by zoning, and zoning is very
24 specific because it talks about
25 institutions in different ways. So by

1 example, if we were to come in with a
2 sanctuary that had no fixed seating, then
3 it would be a different situation because
4 you can't count the seats. The very
5 specific issue of zoning identifying church
6 use as being one space for every four fixed
7 seats really defines, just like in this
8 room, the capacity for this room. The
9 assumption is because it's silent is that
10 all the other ancillary uses as long as
11 they're not different uses, they're all
12 tied to the church use, are considered
13 within that parking requirement defined by
14 the fixed seats otherwise the code would
15 say, plus, plus, plus for whatever else it
16 is.

17 Now, the reality is there are certain
18 days in the year whatever religious you may
19 be part of where everybody in the world is
20 going to come there and there's not going
21 to be enough parking in that garage, but
22 zoning is not defining the maximum ever use
23 otherwise stadiums would never be able to
24 be built, churches and synagogues would
25 never be able to be built, none of these

1 things would ever be able to be built
2 because it's based upon an analysis that
3 was done by third parties basically
4 defining what you have to have in that
5 situation.

6 So the same is true in movie theaters
7 as another example. Movie theaters that
8 now have dine in, that have bars, that have
9 all these other uses, it's possible to have
10 every single seat full, it's possible to
11 exceed that, but life safety has to be
12 done, but when you go to movie theaters,
13 when we go to any other use that has fixed
14 seats it's always defined by the uses
15 contained within the ancillary envelope of
16 those uses. All the uses within the church
17 are church uses so that's why the zoning
18 makes sense, it's based on fixed seats, we
19 counted the seats, we divided by four,
20 that's what we provided.

21 MR. HURWITZ: Thank you, I appreciate
22 that explanation. So if you have three
23 times the amount of ancillary use you
24 wouldn't have to have one more parking
25 space?

1 MR. ZYSCOVICH: No, because the code
2 doesn't define that. It does when you
3 start dealing with other uses and tells you
4 to start adding up all of those things.
5 Like in -- like another great example is
6 parking required for restaurants. It's the
7 dining area of the restaurant it's not the
8 entire building. You've got people cooking
9 in the kitchen, you've got bathrooms, you
10 got all kinds of different things, catering
11 halls, assembly uses, they're all defined,
12 and in this case the definition is, in
13 fact, based upon fixed seats and we've
14 complied with it.

15 MR. HURWITZ: Alan, did you have any
16 comments or questions?

17 MR. GAVCOVICH: I'm sorry, I just have
18 a comment. It just seems that the parking
19 and the number of fixed seats is arbitrary
20 because the sanctuary space has a lot more
21 space, and I understand what you're saying
22 and it makes perfect sense and we've dealt
23 with that before that all the other spaces
24 are ancillary to what's happening in the
25 sanctuary and then the people move from one

1 space to the other. But the number of
2 fixed seats the way it's shown is -- it
3 just seems to be left out where you sit.

4 MR. ZYSCOVICH: Let me explain how we
5 got there. We spent time with the Reverend
6 and the congregation. We decided what
7 their congregation size is, we upped it and
8 we came up with 380. It's just like every
9 other, we can do synagogues, we can do
10 churches, you know, the whole point is is
11 that you probably could fit more chairs in
12 here too. You establish a certain capacity
13 and that is the capacity of fixed seats
14 intended to provide more than ample space
15 for the congregation. If it ever gets to
16 the point where they want to start adding
17 more fixed seats you would have a reason to
18 say to them you have to have more parking,
19 but as long as those are the seats
20 everybody's sitting in the presumption is
21 not that people are going to start adding
22 in more chairs. Now, having said that the
23 reality is like with on Christmas or on
24 Easter there are certain days where you
25 know that there's going to be people

1 sitting beyond the capacity, and that's
2 what we've designed the exits for but
3 that's not what you design parking for
4 otherwise we would have massive amounts of
5 parking required for every use. It's not
6 for the one time or two times a year that
7 you go beyond the capacity, what we did is
8 we designed it for more than the
9 congregational need and that's how we
10 established where those seats are. So we
11 didn't just make the space and add in seats
12 and let some out, we actually programmed it
13 and we decided what the congregation size
14 should be and now that's part of the
15 record, and if they ever want to add more
16 fixed seats you'd have every right to ask
17 them to provide more parking.

18 MR. HURWITZ: What was the current
19 membership that you said you started with?

20 Please identify yourself for the
21 record.

22 MS. ASINGER: Good evening,
23 Barbara Asinger, the other Asinger. It's
24 nice to meet all of you. Thank you for
25 listening to our proposal. If you'd like

1 me to tell you what we have on average and
2 how a Sunday works I can do that.

3 MR. HURWITZ: I just don't want to
4 take too much of your time.

5 MS. ASINGER: Our membership just like
6 with every membership we have just over 500
7 members and the number that attend on a
8 Sunday is not that, we have an average of
9 200 people that attend on a Sunday. So
10 that's our average. And usually what
11 happens for us just, you know, so you know
12 is that we actually have church school at
13 the same time as we have worship, so our
14 families which the majority are from Bay
15 Harbor, so we're thrilled to be part of the
16 Bay Harbor community, will be able to walk
17 to worship which is wonderful for them,
18 they can't wait. And what will happen is
19 while they're in worship their children are
20 in school, school will continue as they
21 then come out, we feed all our members and
22 break bread on Sunday, it's part of our
23 ritual and then we adjourn for the day.

24 MR. HURWITZ: But you don't sacrifice
25 animals?

1 MS. ASINGER: No, but with all due
2 respect to our brothers and sisters we do
3 have a pet blessing at some time in October
4 and invite all of you to bring your
5 animals.

6 MR. PRICE: Let the record reflect the
7 chairman was kidding.

8 MS. HUBER: I just want to address one
9 other thing. We also have the privilege of
10 having 50 years of historical data, so as
11 you all are aware of the church's previous
12 location in Bal Harbor, the church did not
13 have any parking of their own in Bal
14 Harbor, all of their parking was serviced
15 by Bal Harbor shops, and so we have
16 historical data showed that on a typical
17 Sunday their parking needs never exceeded
18 50 to 65 spaces, that was what the average
19 was every Sunday for the last -- we've
20 studied specifically the last ten years and
21 their parking needs never exceeded this, so
22 we have more than double that in this
23 space.

24 MR. GAVCOVICH: What was the capacity
25 of the previous church?

1 MS. HUBER: The sanctuary is exactly
2 the same size, the square footage is a
3 little larger here but the number of seats
4 is exactly the same as the number of seats
5 as was in their existing sanctuary.

6 MR. HURWITZ: Ancillary space is
7 significantly larger?

8 MS. HUBER: Nope, same number of
9 seats.

10 MR. HURWITZ: No, the ancillary --

11 MS. HUBER: The fellowship hall, same
12 thing.

13 MR. PRICE: No, the ancillary uses.

14 MR. HURWITZ: The ancillary uses,
15 the --

16 MS. HUBER: The multipurpose rooms,
17 they are more.

18 MR. HURWITZ: Here they are more than
19 they were there?

20 MS. HUBER: Correct, there's
21 additional square footage in here, yes.

22 MR. HURWITZ: Got you. Thank you.
23 Oscar.

24 MR. SKLAR: I wanted to get a
25 clarification on how the pedestrian on Kane

1 Concourse to the back to 95th Street
2 because I see that you mention about six
3 feet was needed through the town, that only
4 goes so far because the landscaping sort of
5 stops halfway; is that correct, am I
6 reading right or --

7 MS. HUBER: The sidewalk is six-feet
8 wide all the way down East Bay Harbor.

9 MR. SKLAR: Except in the corner that
10 is wide?

11 MS. HUBER: Yes.

12 MR. SKLAR: So the zoning that was --
13 is that part of your sidewalk or --

14 MS. HUBER: Which area?

15 MR. SKLAR: You have a red --

16 MR. GAVCOVICH: That's the property
17 line.

18 MR. SKLAR: That's the property line,
19 so --

20 MS. HUBER: So we have agreed to, and
21 the manager can speak to this, we felt that
22 it was important to provide additional
23 pedestrian access so everything that you
24 see inside the red line we will be
25 providing a pedestrian access easement to

1 the town. The reason for that is the town
2 and the reason the current situation exists
3 is the town does not have enough space on
4 its own property to provide additional
5 pedestrian space so we have agreed to
6 provide in access of what code is required
7 in that area on our own property and
8 provide a town with the easement to do so.
9 So everything you see inside the red we
10 will be providing an easement for to the
11 town.

12 MR. WASON: Chairman, so you know,
13 it's hard to turn down a wider sidewalk or
14 landscaping and it wraps all the way around
15 into the back on 95th Street.

16 MR. HURWITZ: So this --

17 MR. SKLAR: This drop off area that
18 you show is that part of the sidewalk now?

19 MS. HUBER: No.

20 MR. WASON: If you've ever looked over
21 there it's -- first of all, it's graded
22 terribly, it's very small, and this way the
23 building -- their building would be built
24 back to provide a great walkway and
25 landscaping.

1 MS. HUBER: There is not currently a
2 sidewalk in that location, you can drive by
3 after, but that area is where you actually
4 go into their service area so there is not
5 a sidewalk in that area, it stops, it's a
6 big driveway into this area.

7 MR. ZYSCOVICH: What we are showing is
8 the dedication in addition to a six-foot
9 sidewalk and wrap all the way around back.

10 MR. HURWITZ: So nothing in the front,
11 it's the corner, correct? The corner --

12 MS. HUBER: Of --

13 MR. HURWITZ: Well, the corner,
14 there's -- you mentioned that --

15 MS. HUBER: Which corner, we're very
16 blessed to have multiple corners?

17 MR. HURWITZ: It's the northeast.

18 MS. HUBER: We've been told for the
19 only lot that actually has that front three
20 major thoroughfares.

21 MR. HURWITZ: The northeast corner
22 which is the corner of entrance to the
23 building, that area there you're saying is
24 being dedicated?

25 MS. HUBER: There will be an easement.

1 MR. HURWITZ: Easement. And then
2 inside the red to the building which is the
3 five feet?

4 MR. ZYSCOVICH: Then we have the lower
5 where people can walk and then we have the
6 door.

7 MR. SKLAR: And the drop-off area is
8 now part of the street or is it part of the
9 sidewalk?

10 MS. HUBER: It's part of the street.

11 MR. GAVCOVICH: Then there's three, I
12 guess, parallel spaces, are they staying?

13 MS. HUBER: Yeah, those are staying
14 and it was important to some of the
15 residents to keep those existing. There
16 was a discussion with the town to eliminate
17 those spaces and make that sidewalk even
18 larger, however, some of the residents
19 across the street utilized those parking
20 spaces and so, therefore, they're
21 remaining, those three.

22 MR. GAVCOVICH: Any reason you didn't
23 continue the sidewalk to the other parcels,
24 again, for the access from those spaces to
25 Kane Concourse?

1 MS. HUBER: Because there isn't a
2 sidewalk in that location along that area.
3 To the extent that you'd like us to --
4 there's also street parking there, but to
5 the --

6 MR. GAVCOVICH: They will be lost I
7 assume.

8 MS. HUBER: Excuse me?

9 MR. GAVCOVICH: Those street spaces
10 are going to be lost. That's how you get
11 in.

12 MS. HUBER: One space.

13 MR. GAVCOVICH: There's three on the
14 street on the survey, you're going to lose,
15 I guess, two.

16 MS. HUBER: We lose the one in the
17 middle.

18 MR. GAVCOVICH: What about the
19 landscaping, there is not going to be
20 landscaping?

21 MS. HUBER: The landscaping is
22 surrounding the existing parking.

23 MR. GAVCOVICH: The drawing don't show
24 that second space and I don't even think
25 you have the room for a second space where

1 that landscaping is on the north -- I mean
2 southwest corner.

3 MS. HUBER: One of the things that
4 happened in this particular lot, one of
5 your code requirements provide -- requires
6 ten feet of landscaping there so that's why
7 there isn't a sidewalk in that area.

8 MR. GAVCOVICH: You're forcing people
9 to go either walk through the alley to get
10 to the sidewalk or onto the street.

11 MS. HUBER: Well, you have to walk --
12 existing you have to walk through the alley
13 to get to that parking.

14 MR. GAVCOVICH: You said existing.

15 MS. HUBER: We can't put a sidewalk
16 there because that's the alley. We can't
17 put a sidewalk through the alley. That's
18 an existing alley that service, so one of
19 the --

20 MR. GAVCOVICH: You have a crosswalk
21 like you have in any driveway entrance, do
22 you have --

23 MR. ZYSCOVICH: I'll try to answer
24 that. This is a constant catch 22. We try
25 to do the right urban thing by creating

1 continual sidewalk, having landscape, doing
2 it correctly, but we also have been told
3 that we need to meet the landscape
4 requirement, so we would appreciate if you
5 would suggest that we carry the sidewalk,
6 have less landscaping, right now there's
7 basically none, and let somebody decide
8 that. As far as we're concerned we're just
9 trying to meet the code, we meet the code.
10 Your point is well taken on that lot and I
11 think this board would have your attorney
12 agree.

13 MR. RONALD: Right now there is
14 nothing there, it's just a concrete wall or
15 fence, so the decision was would you rather
16 see nice landscaping there or would you
17 rather just carry a concrete right through.

18 MR. GAVCOVICH: Existing is based on
19 the Ocean Cadillac and their uses and I
20 don't know who parks there.

21 MR. ZYSCOVICH: I'm not sure how that
22 got created, that parking lot, but that's
23 how it is and that's a fence.

24 MR. GAVCOVICH: It's been there
25 forever.

1 MR. ZYSCOVICH: It's a storage.

2 MR. GAVCOVICH: So there's no need for
3 public or pedestrian access from there --

4 MR. RONALD: Yeah, but the code
5 requires landscaping in that spot, so we
6 either take it out and put a sidewalk or
7 you leave the landscaping.

8 MR. GAVCOVICH: 10-foot depth for
9 landscaping.

10 MS. HUBER: What's existing is what
11 they consider legally nonconforming so the
12 Ocean Cadillac site doesn't comply with the
13 majority of the provisions in your code
14 because these provisions of the code were
15 adopted after the existence of Ocean
16 Cadillac. So because we're demolishing the
17 site we start from the beginning and we
18 take all of the ideas that were decided in
19 your visioning, by your visioning team and
20 implement it to your code, so that is why
21 there isn't a sidewalk, there's ten-feet of
22 landscaping because that's what your code
23 required. And we had ad nauseam
24 conversations with staff, we went to DRC
25 two times and the majority of those

1 comments dealt with landscaping and where
2 we needed to provide additional landscaping
3 and this is the outcome of those
4 conversations. And so what you see on our
5 plans comply with the strict letter of your
6 code, so to the extent that you don't like
7 it or would like to see something
8 different, we're happy to discuss and
9 address that with you, we just want to
10 remind you to the extent that has a spa
11 below the minimum of the code requirement
12 it is not the church's intention to seek a
13 variance to do so. So that's why you see
14 what's there and that's why what's been
15 provided is there.

16 MR. GAVCOVICH: But the landscape
17 could have been I assume if that's what the
18 code would allow to push into the lot and
19 provide ten-feet and provide a sidewalk.
20 The concern is really for the people who
21 are going to be parking here and them
22 getting -- you're forcing them to walk out
23 into the street through the alley to get to
24 the building.

25 MS. HUBER: That's the existing

1 condition and that's the existing condition
2 of all of the parking lots that you see
3 behind Kane. All of those walk through --

4 MR. HURWITZ: I mean, it's the
5 existing condition but that lot is
6 currently --

7 MS. HUBER: If you look at all of the
8 uses along Kane --

9 MR. HURWITZ: That lot right now is
10 part of the --

11 MS. HUBER: Everyone here walks
12 through this alley to access their parking,
13 that's the existing condition that you have
14 on Kane Concourse. We have a service alley
15 and the existing condition is that the
16 people walk through that alley. Luckily
17 our site is able to accommodate the
18 majority of our parking here on site and
19 everyone will have direct access into the
20 lobby either to go to the church or go to
21 the retail. The majority of people who are
22 accessing the site will not be utilizing
23 those spaces they'll be utilizing these
24 spaces. To the extent of what people do,
25 they'll walk here, they'll go through, but

1 that's the existing --

2 MR. HURWITZ: Can you go back to what
3 you just said, they'll walk where?

4 MS. HUBER: They'll exit here or they
5 will exit here and walk into here.

6 MR. HURWITZ: Is that accessible?

7 MS. HUBER: Here, yes.

8 MR. GAVCOVICH: Through the service
9 area.

10 MR. HURWITZ: It doesn't show it as
11 accessible.

12 MS. HUBER: This whole area is the
13 service area.

14 MR. HURWITZ: You just suggested that
15 they walk through a wall, that's my only
16 question.

17 MS. HUBER: That isn't a wall. Our
18 parking garage is not enclosed. And
19 they're will not be loading that occurs in
20 this location.

21 MR. GAVCOVICH: Isn't that going to be
22 gated, the loading?

23 MS. HUBER: Yes.

24 MR. GAVCOVICH: So you can't really
25 walk through there.

1 MS. HUBER: Walk into parking, not the
2 loading.

3 MR. HURWITZ: Did I miss, is there no
4 elevation or anything on that side because
5 it's closed in the back, right?

6 MS. HUBER: It's opened with a
7 landscaping and a covering but it is not
8 enclosed. The parking does not have an
9 enclosed wall it is an open parking garage
10 with landscaping and screening. It's
11 not -- it is not a closed wall.

12 MR. GAVCOVICH: So between the column
13 there is no wall?

14 MS. HUBER: No.

15 MR. HURWITZ: On A202, the rear of the
16 top elevation, can you help me understand,
17 I'm just trying to figure --

18 MR. GAVCOVICH: The rest of the
19 elevation.

20 MR. HURWITZ: It's closed on the south
21 and east but the west is completely opened,
22 is that what you're saying?

23 MS. HUBER: It's not enclosed
24 anywhere.

25 MR. HURWITZ: Walk me through it.

1 MR. GAVCOVICH: On the west
2 elevation --

3 MR. ZYSCOVICH: Let me help you. It's
4 an open garage from the standpoint of
5 ventilation that is what I meant by open.
6 We brought the --

7 MR. HURWITZ: We've got that access.

8 MR. ZYSCOVICH: As you can see on A202
9 we have openings in the wall that are part
10 of this vertical demonstration, so you
11 could actually walk through but it's not
12 intended to be completely open.

13 MR. HURWITZ: So there's no fencing in
14 that that I understand?

15 MR. ZYSCOVICH: We were not thinking
16 of having any fencing, we wanted to have
17 enough air circulation so that we can
18 comply with what we have to comply.

19 MR. BECHIK: If you have cars parked
20 you can't really enter through that and you
21 have to go --

22 MR. ZYSCOVICH: I lost track of what
23 we're trying to solve.

24 MR. HURWITZ: We've made it into a
25 much bigger conversation, quite frankly.

1 MR. ZYSCOVICH: I mean, we're talking
2 about getting out of a car and getting --

3 MR. GAVCOVICH: Jerry asked a very
4 simple question which was when you leave
5 that ancillary where are you -- how are you
6 getting to the church?

7 MR. ZYSCOVICH: You have to walk
8 through the parking to get to the sidewalk.

9 MR. GAVCOVICH: It was suggested with
10 a visual you would walk through this garage
11 but that doesn't look like that can happen
12 so this is a safety question?

13 MR. SKLAR: You have to walk between
14 the cars?

15 MR. ZYSCOVICH: Yes, like in every
16 parking stall that you ever park in. You
17 have to walk between the cars. In this
18 case you would walk out to the alley, in
19 the other case you would have walked down
20 through the car and get out to the street
21 and get to the sidewalk. I thought Jerry
22 was asking why don't we have a sidewalk
23 there and the reason was we have two
24 answers, one is because no one really
25 wanted to move the parking space because

1 right now there is no space between the
2 property line and the street, it's occupied
3 by parking, there is no sidewalk in the
4 green area, and, you know, urbanistically
5 we would have recommended normally to just
6 simply lose the on street parking and
7 continue the street scape but we were asked
8 to not lose the parking on the street and
9 this then become our only alternative.

10 MR. GAVCOVICH: But -- and I
11 understand we are losing two of three
12 spaces.

13 MR. ZYSCOVICH: Yes.

14 MR. GAVCOVICH: I don't know if it
15 makes sense to say -- and you said it
16 perfectly, you know, urbanistically it
17 makes a lot of sense to continue it, it
18 ties it together, it makes them look like
19 it's possibly part of the same property and
20 the same project.

21 MR. ZYSCOVICH: Right. Well, that's
22 not accounted space for us it's off site,
23 so it's really whatever, at least, you
24 know, in my humble opinion, it's whatever
25 the board and the city determines.

1 MR. HURWITZ: The town would be losing
2 space.

3 MR. ZYSCOVICH: Right. We're just
4 trying to accommodate.

5 MR. HURWITZ: This lot and this garage
6 when church is not in session those are
7 closed to the public? They're accessible?

8 MR. ZYSCOVICH: They are open and
9 accessible, there's nothing to prevent
10 people from parking there.

11 MR. HURWITZ: The garage as well?

12 MR. ZYSCOVICH: That's different. In
13 terms of the vacant lot.

14 MR. HURWITZ: The open lot will always
15 be open to the public?

16 MS. HUBER: It has to remain open for
17 the retail component. Remember our parking
18 doesn't just service the church, the
19 parking also services the retail component.
20 So to the extent that the retail component
21 is open the parking will also be open, yes.

22 MR. GAVCOVICH: Was there any control,
23 any parking control?

24 MS. HUBER: The control has not been
25 determined.

1 MR. SKLAR: There is no gate?

2 MR. GAVCOVICH: So office building is
3 parking in the school parking or garage in
4 theory?

5 MR. ZYSCOVICH: No, I think -- I mean,
6 let me since we designed this how we
7 imagined it would work. The garage is
8 conceptually, psychologically you're going
9 to drive through there and not be in
10 someone's property. The open space, the
11 vacant property, unless we go through what
12 Miami Beach and other towns do and say
13 private and blah, blah, blah, we haven't
14 gotten there yet. We know that we need
15 some retail parking, one option would be to
16 have some kind of an indicator that allows
17 you to park there because you're going to
18 the retail, but right now we're just
19 thinking it's an open lot, it's for our
20 use, it counts in our count, on Sundays
21 there may be a sign that says no parking,
22 but right now we haven't really discussed
23 the operational aspects of that. All that
24 I'm trying to say is within the garage
25 there's going to be a perception and

1 perhaps a sign that this is private
2 parking, within the open space we haven't
3 discussed how it works.

4 MR. SKLAR: So the open space is
5 specifically for the retail?

6 MR. ZYSCOVICH: It's for the retail
7 and the church use, it's privately owned.

8 MR. SKLAR: So if somebody wanted to
9 go to one of the retail stores and they
10 want to park in the garage or in the open
11 lot they can do that?

12 MR. ZYSCOVICH: Yes.

13 MR. SKLAR: And how do they get from
14 the garage or the open lot to the retail?
15 Well, you say you have to go through the
16 lobby of the --

17 MR. ZYSCOVICH: No, not at all. I
18 mean, some people will go through a back
19 door then enter the retail on the back and
20 don't walk through the alley just like
21 other local community.

22 MR. SKLAR: So they would have to
23 enter the loading area?

24 MR. ZYSCOVICH: No. The problem I'm
25 having is have to, they don't have to do

1 anything. They could come around and walk
2 on the sidewalk, they could go through the
3 alley and enter the back door, they could
4 go through the sidewalk and go through the
5 church lobby. There's many different
6 options, we've provided for all of them,
7 but right now if you park on that surface
8 spot and you want to go through the back
9 door of one of those retail stores you walk
10 through the alley to get to the back door,
11 that's how most people do it.

12 I know when I'm on Miami Beach or I'm
13 on Coral Gables and I know that the store I
14 want to go to has a back door I go in
15 through the alley.

16 MR. HURWITZ: In this case there will
17 be no alley, right?

18 MR. ZYSCOVICH: The alley is there.
19 This is still a public alley, we're not
20 changing the public alley.

21 MR. HURWITZ: Help me with that
22 because --

23 MR. SKLAR: So you go to the back door
24 of the store from the public alley?

25 MR. ZYSCOVICH: Here's the public

1 alley, it's one way. Here is retail on
2 Kane Concourse, here is our retail. It's a
3 district. People might stop here, they
4 might stop there, they might go here first,
5 all I'm saying is it's on street parking or
6 it's this parking, but nevertheless no
7 matter what you do you can't really control
8 where people walk or where they're going to
9 enter the retail.

10 MR. HURWITZ: Bernard, did you have a
11 concern -- given the mixed-use nature of
12 the project retail stands alone, correct?

13 MR. ZYSCOVICH: Right.

14 MR. HURWITZ: From your perspective
15 was that a concern for you to have parking
16 that you'd have to really walk that far
17 around because you can't even walk through
18 an alley to Kane Concourse, you have to go
19 through either the parking, through the
20 main building or around, correct?

21 MR. ZYSCOVICH: Either come around or
22 you find your way through somehow.

23 MR. HURWITZ: There's no somehow.

24 MR. ZYSCOVICH: We're not asking
25 people to go through our loading they've

1 got to go around.

2 MR. HURWITZ: I'm asking you --

3 MR. ZYSCOVICH: Yes.

4 MR. HURWITZ: -- as an architect did
5 you have a problem in having parking so
6 really inaccessible to that retail?

7 MR. ZYSCOVICH: No, because if you go
8 to Miami Beach, you go to Coral Gables, the
9 biggest challenge you have is finding a
10 place to park.

11 MR. HURWITZ: You walk through the
12 alley.

13 MR. ZYSCOVICH: You walk through the
14 alley, you walk a block, you walk half a
15 block. The point is what we're saying is
16 that the retail is connected to the
17 district. What you have done as a town is
18 really smart, you've created a retail
19 corridor and a retail district. This is
20 not a situation where you're going to be
21 able to pull up to the retail in front like
22 at Meizner Park or any strip center and
23 park in front of the store and go in there.
24 We recognize that if somebody's going to
25 park there they're going to go to our

1 store, they might park there and go to
2 somebody else's store. It's very possible
3 they might go to three or four stores.
4 They might go to a store and then go have
5 dinner and go back and get in their car.
6 It's all the district. Somebody might park
7 in your public parking and come to our
8 store, so the way I look at it as an
9 architect is what we're doing is we're
10 providing a district requirement for our
11 share of the parking, but the reality is I
12 don't know right now how we would actually
13 govern that the person who parks there went
14 to that store in our building and not in a
15 store --

16 MR. HURWITZ: No, but many public
17 spaces like this, same issue on Miracle
18 Mile, same issue on Lincoln Roadway try to
19 create connectivity in the back where you'd
20 walk through an alley and try to make it
21 bright in area and public space.

22 MR. GAVCOVICH: But there is on this
23 block, but on the north side --

24 MR. HURWITZ: On the other side of
25 that if you go to any of the restaurants

1 you can park in the back and walk through
2 breezeways to the front door.

3 MR. ZYSCOVICH: Yeah, but you actually
4 have a destination like at the --

5 MR. HURWITZ: The retail at your
6 project.

7 MR. ZYSCOVICH: The other point of
8 view, what we discussed with staff when
9 this came up we could leave a five-foot
10 space and we could allow a passagio under
11 the building and we could reduce the retail
12 by five-feet and move everything over,
13 that's something we could do, but the
14 decision was walking through a 150-foot
15 long concrete five-foot space that takes
16 you to the nexus of where the alley turns
17 next to the loading dock was really not a
18 very safe or desirable thing.

19 MR. HURWITZ: I'm sure you could make
20 it beautiful.

21 MR. ZYSCOVICH: I could make the
22 five-feet but I'm still going to land in
23 the trash.

24 MR. HURWITZ: Yeah, I understand the
25 complication because you have your loading

1 and delivery there.

2 MR. ZYSCOVICH: I'm just saying the
3 intent of code is to give you a guideline
4 and to give you something to hang onto and
5 this was discussed at length, and the point
6 is that from an urbanistic point of view
7 this retail is part of our building but
8 it's more importantly it's part of the
9 overall street and we're providing the
10 count, we're complying with the
11 requirements, and to put in a five-foot --
12 I can tell you, I'm okay going to Coral
13 Gables but between Books & Books and some
14 of those other places where all the little
15 alleys are because that was something I was
16 very concerned about in Miami 21, which if
17 you followed my career I fought a lot, is I
18 don't think it's a particularly good idea
19 to have an five-foot wide three story on
20 both sides where somebody feels like they
21 are in between two open spaces and they
22 don't know where they're arriving until
23 they get there, to me that doesn't feel
24 like a good safe space. I don't see why we
25 would want to make that happen unless we've

1 really designed the alley and all the other
2 spaces to --

3 MR. HURWITZ: I appreciate your --
4 obviously your perspective and I don't
5 disagree that they don't really work, I
6 just wanted to know.

7 MR. GAVCOVICH: My only issue on that
8 and the reason I brought it up is the
9 connectivity of or the lack of continuation
10 of sidewalk, I would prefer to see that
11 sidewalk continued through that lot.

12 MR. ZYSCOVICH: Well, you'd be able to
13 make that motion and --

14 MR. HURWITZ: You can do that you're
15 just going to lose parking which apparently
16 was important.

17 MS. HUBER: To the extent that the
18 town manager and the building official,
19 it's ultimately their decision it's not a
20 church decision, but to the extent that's
21 what --

22 MR. WASON: If I can weigh in. We
23 look at all the parking spaces in town, we
24 have parking spaces that maybe get used
25 five times a year, these two spaces are not

1 used very much, they're not, that's why the
2 landscaping was preferred and if you want
3 to change it back.

4 MR. HURWITZ: Jerry.

5 MR. WASON: We do not derive a lot of
6 revenue from those two spaces.

7 MR. HURWITZ: Jerry.

8 MR. GAVCOVICH: Where that parking
9 space is to continue that sidewalk to me
10 makes sense.

11 MR. HURWITZ: I think they're okay
12 with their suggestion as long as the town
13 is okay, they don't have to go for any
14 other approvals.

15 Jerry, did you have any other comments
16 or questions?

17 MR. GAVCOVICH: Yeah, I got a --

18 MR. SKLAR: I have another question.
19 On that floor plan to the right-hand side
20 of the main lobby, the main entrance, that,
21 what is exactly that?

22 MR. ZYSCOVICH: That is an open
23 covered loggia outside the air-conditioned
24 wall.

25 MR. SKLAR: It's not air-conditioned?

1 MR. ZYSCOVICH: It's not
2 air-conditioned, it's outdoors.

3 MR. SKLAR: Now, it has a door in the
4 parking lot area, why does it have a door?

5 MR. ZYSCOVICH: So that you can park
6 here without going through the church lobby
7 and enter into a --

8 MR. SKLAR: It's an open breezeway
9 right because all the openings on the
10 street side are open, are just open to the
11 air, right?

12 MR. ZYSCOVICH: Open to the air.

13 MR. SKLAR: Okay. So if that would
14 also be open to the air and in the front is
15 open to the street, then it would be easier
16 for people parking in the parking lot
17 because that door could be locked, no?

18 MR. ZYSCOVICH: Well, you know, it's a
19 question of how you invite somebody in. If
20 you see a door you know that you have to
21 open the door. If you see the opening that
22 you have to squeeze between the plants to
23 get into the parking, so --

24 MR. SKLAR: It's not between the
25 plants.

1 MR. ZYSCOVICH: No, but I'm saying the
2 facade treatment if you look at the
3 elevation is a series of verticals right
4 through the building. So what we're saying
5 is that door would remain shut, people in
6 the parking could use it to exit, people
7 outside could use it to enter, but it makes
8 it a --

9 MR. HURWITZ: Security issue, trying
10 to keep people out of the garage.

11 MR. ZYSCOVICH: Yeah, we're trying to
12 like keep people from using the garage as a
13 shortcut to take a diagonal through the
14 building, we want them to walk around.

15 MR. HURWITZ: To get to the retail.

16 MR. SKLAR: For the people going to
17 retail nice if they can park and just feel
18 like they are being invited to go through
19 there.

20 MR. ZYSCOVICH: But they just have to
21 open the door.

22 MR. GAVCOVICH: The garage --

23 MR. SKLAR: If they park in the
24 garage --

25 MR. GAVCOVICH: That's the way they

1 would get there.

2 MR. SKLAR: I don't know if I see the
3 door and it's locked --

4 MR. HURWITZ: I understand, Oscar,
5 what you're saying just that the
6 connectivity between the gray here on the
7 parking and the yellow, there's really no
8 reason other than security to have that
9 wall and door there because it would be a
10 more free flowing space but there's a
11 security concern that's why.

12 MR. ZYSCOVICH: It's not a huge
13 concern. It's like why have a gaping hole
14 that's open to the garage because --

15 MR. SKLAR: It would continue the
16 vertical opening that you have on the side
17 and in the front where you have the tower
18 and it's opened, right?

19 MR. ZYSCOVICH: I just don't see the
20 need.

21 MR. SKLAR: People will enter the main
22 entrance.

23 MR. ZYSCOVICH: Okay. Thank you.

24 MR. HURWITZ: Any other comments?

25 MR. SKLAR: No, just there is no clear

1 connection between the parking and the
2 retail.

3 MR. GAVCOVICH: Well, you could
4 provide a sign that says Kane Concourse
5 access in the garage and that would work.
6 I think if it was open you would still have
7 to know that's where you would need to walk
8 through if there was no door.

9 I have a number of questions, I guess.
10 There's -- you have three, and I'm going to
11 bounce around a little bit, this is how I
12 wrote down these notes. Three handicapped
13 parking spaces, that's not meeting code, is
14 it? For 125 parking spaces don't we need
15 more than that?

16 MR. LEE: Well, there is a different
17 requirement for church.

18 MR. GAVCOVICH: Is there? I thought
19 it was just based on the number of parking
20 spaces in the building code.

21 MR. LEE: There are some exemptions,
22 I'd have to take a look at that.

23 MR. FRANKEL: I think it's just a
24 straight number of spaces and that a number
25 have to be accessible.

1 MR. GAVCOVICH: And I know places of
2 worship you can get exemptions, but then
3 there is you get exemption from all
4 accessibility requirements in theory. I
5 don't know if that's what's being proposed
6 here, I mean, otherwise it seems to be --

7 MR. LEE: Private clubs would be the
8 same, would require certain exemptions, not
9 require a public access.

10 MR. BECHIK: Isn't this a mixed-use
11 with a retail component, shouldn't it --

12 MR. LEE: The retail portion would be
13 required to calculate the handicap parking
14 there.

15 MR. HURWITZ: So whatever the retail
16 requires takes it -- takes the -- you got
17 8,500 square feet of retail requires how
18 many spaces of handicap parking or --

19 MR. LEE: The number of spaces would
20 be determined by the zoning code.

21 MR. GAVCOVICH: 28 spaces for the
22 code. 27?

23 MR. LEE: One for the first 25, I
24 don't know how many spaces are allocated.

25 MR. GAVCOVICH: For the retail

1 there's, I guess, 28 provided. So you need
2 two handicap spaces for the retail. I
3 mean, I'm not sure if you're suggesting
4 that you're going to --

5 MR. ZYSCOVICH: It is not our intent
6 to try to get a variance from the ADA
7 requirement. I'm looking at the plan, I
8 think we have to add more, so we can state
9 that we will have the ADA required, you
10 know, parking required, and just trying to
11 think of how we got to three, I don't
12 really remember. My recollection is five
13 percent would be handicapped, so that would
14 be six, so we need to find more space for
15 three, but if you look at the plan and the
16 space we have through the column grid we
17 can actually redesign what we need to and
18 we can look at the plan how there's three
19 and a space and three and then a space, and
20 then that's how we done it, I'm sure we can
21 find another three.

22 MR. GAVCOVICH: One of the things that
23 I thought from a design perspective on the
24 project, I like very much the design of
25 Kane Concourse, the scale, the detail is

1 well done, but I don't like Bay Harbor,
2 East Bay Harbor Drive at all. I think
3 there's -- first of all, I'm bothered by
4 the length of the building that is all
5 parking, and even though it's not a
6 requirement of the code that we have an
7 active use along Kane Concourse, it's
8 really a lot of length of building that is
9 basically parking. You screened it with
10 the bronze grills but it's a -- there's no
11 reason to walk there. It's not -- other
12 than going around to get to the parking on
13 the other parcel there's -- some of the
14 other blocks, Bay Harbor Terrace, for
15 example, there's more -- the building the
16 active uses extended a little further. I
17 know on Bay Harbor Terrace, well, Oscar at
18 one point proposed the project there was
19 going to be an office building on the Bay
20 Harbor Terrace. Was there an office
21 building?

22 MR. SKLAR: Yes.

23 MR. GAVCOVICH: And just that bothers
24 me. Obviously I'm not sure how you resolve
25 it with the -- without losing an incredible

1 number of spaces.

2 MS. HUBER: This is something that
3 we've discussed with staff and we worked
4 through, and to the extent that you
5 extended a use there what would happen is
6 we would have to provide an additional deck
7 of parking so you would actually have two
8 floors of parking which then increase the
9 height of the building, and so the
10 discussion that ensued and the thought
11 process behind is it is not anyone's desire
12 to have two levels of parking in this area
13 and to increase the height of that building
14 to accommodate that, and that because there
15 is not an existing use along Bay Harbor
16 that that wasn't -- that wasn't something
17 that the people were necessarily seeking or
18 desirable because of the residential use
19 across the street, so it was much more
20 desirable to not have the additional height
21 and instead have the additional
22 landscaping, because you will notice that
23 the building is further set back than is
24 required on East Bay, so to have the
25 additional landscaping between the building

1 and have the building set back and to
2 provide the widened sidewalk is what the
3 ultimate desire was for that area, so
4 that's how we arrived at where we are at.

5 MR. GAVCOVICH: I just --

6 MS. HUBER: I hear what you're saying,
7 but just so you understand that is -- the
8 additional height that would be required to
9 add that second level of parking was not
10 something that was desirable to the town or
11 to the neighborhood.

12 MR. GAVCOVICH: You do have quite a
13 high space in the garage, I mean, it is 17
14 feet or so, the garage, or 16 with the
15 structure, I'm not sure what kind of
16 structure you're going to have.

17 MS. HUBER: It's because the
18 additional height requirement for the
19 retail space so in order to put the retail
20 space in the front, so in order to put the
21 ramping in to put the second level of deck
22 we would need to increase the height
23 significantly.

24 MR. GAVCOVICH: I'm not sure if it
25 would be significant if you could do, I

1 don't know, I didn't really think about the
2 second level parking or the ramifications,
3 but there's a lot of height that maybe just
4 the back portion of the building where the
5 garage is could be two levels within one
6 story of the retail.

7 MS. HUBER: It doesn't work because of
8 the size configuration for the ramping. So
9 we put a lot of -- when I say considerable
10 amount of time on this point with the
11 church before we came to the town and then
12 with the town once we started meeting with
13 them, because of the ramping configurations
14 and the rest of it when you start to shrink
15 and change the ramp changes as well as the
16 necessity for the height. Walker Parking
17 did numerous, numerous evaluations and
18 studies related to that and the end
19 consensus was it was not desirable to have
20 the additional 11 or 12 feet to have the
21 second level of parking.

22 MR. HURWITZ: You're talking about
23 adding uses on that strip?

24 MR. GAVCOVICH: Yes.

25 MR. HURWITZ: Okay.

1 MR. GAVCOVICH: I mean, there's a
2 project that proposed across the street
3 which is an office building which does
4 extend a little bit into the frontage of
5 where the garage is. You know, there is --
6 if we're trying to improve the
7 connectivity, the walkability and better
8 the retail environment along Kane Concourse
9 it would be nice to have something to walk
10 by as you're going from --

11 MR. ZYSCOVICH: You know, we thought
12 about that and I actually looked at the
13 project across the street that was
14 proposed. It has a drop off, it has curb
15 cuts for parking, it's really not a
16 walkable -- I understand the intent and I
17 don't disagree with you except that in this
18 case on this street and in this design if
19 we were to place things, and this is kind
20 of, you know, the elevations, 3D elevation
21 of that corner, we would have dead retail,
22 there's no reason to walk there for any
23 commercial purpose, and that's why Amy said
24 when we discussed it with staff their
25 decision was let's move the building back

1 beyond what we need to, let's landscape it,
2 let's have a nice tree line. But I
3 understand it and I did look at the
4 buildings across the street proposed on the
5 canal and through there and, you know,
6 truthfully they, you know, beauty is in the
7 eye of the beholder, far be it for me to
8 say otherwise, but, you know, there's
9 underground parking proposed, there's all
10 kinds of stacking issues, there's major
11 curb cuts, this is actually much more
12 pedestrian friendly than heir our neighbor
13 and I think that it's a very, you know,
14 carefully considered way of dealing with
15 the street turning, because once you bring
16 people around the corning if you think
17 something's going to happen there's nothing
18 to happen there. I mean, there's no
19 purpose to be there.

20 MR. HURWITZ: Can I share a term but
21 it's more visual than captivating, I don't
22 disagree about not having to activate and
23 force more parking and higher heights, I
24 feel like everything that was done on the
25 retail side is really beautiful, this is

1 very simple and modern and clean, and then
2 you start to feel the corner and everything
3 going sort of south on East Bay Harbor
4 Drive and to me it's a completely different
5 building. It feels more like, you know, a
6 really nice convention center, obviously
7 it's a hall for congregating for a large
8 number of people so I know it's difficult
9 but I just don't get a vision of any way to
10 tie in what was done there, and I don't
11 mean changing the use that's, you know,
12 really pretty along the Concourse.

13 MR. ZYSCOVICH: If I make a vertical
14 demonstration of this view which is the
15 Kane corner, that same vertical
16 demonstration is that same attitude of
17 playing with simple clean volume stepping
18 back is what's also happening on the facade
19 as it turns the corner. If you look at
20 this it's very similar and I think of the
21 same language of the other streets and the
22 way that it turns. So it's really a very
23 simple I think elegant way of reflecting
24 the architecture and also the mission of
25 the church which is progressive and simple.

1 You know, we put the decoration and the
2 fenestration on the commercial side and the
3 rest of it is simple, but not without
4 consideration because I think when you look
5 at this facade there's a lot of movement in
6 terms of the base. It's true that the
7 sanctuary is coming up above but we're well
8 below the height and we're looking at how
9 we would grid this. In fact, this is very
10 similar to what I did with the movie
11 theater on Lincoln Road, if you look at it
12 from the alley it's an unobstructed wall,
13 you know, we put in reglits, we painted it
14 a different color and it blends in pretty
15 well. So if what you're saying is you want
16 more decoration then that's a different
17 conversation, but in terms of the
18 continuation of the elements of the
19 architectural treatment I think it's very
20 consistent.

21 MR. GAVCOVICH: That was my other
22 point on that east -- the south facade,
23 there's some movement with volumes but it's
24 a lack of detail, I guess, and some of it
25 may be -- I'm -- I didn't like the fact

1 that the scale of the drawings are so small
2 because you can't read the plan. I don't
3 know, you know, looking at the floor plan I
4 don't know where the windows are, you can
5 see an elevation but even in elevation at
6 1:20 scale you're not going to be able to
7 show any detail.

8 MR. ZYSCOVICH: I think we did submit
9 a larger drawing to the town.

10 MR. HURWITZ: You mean down here you
11 can't really see where --

12 MR. GAVCOVICH: I mean, there is the
13 scale of the drawing I'm not sure why you
14 would do it, it's such a small scale.

15 MR. ZYSCOVICH: We needed to make I
16 don't know how many sets of 11-by-17,
17 that's what they give you.

18 MR. GAVCOVICH: It's not, you know,
19 you had something similar in another recent
20 project where I thought the scale of the
21 drawing was too small, this scale is even
22 smaller. It's really hard to read and hard
23 to know really what you're trying to do and
24 we're relying on the renderings a little
25 bit more for that and the renderings to me

1 look a little, you know, are a little too
2 bland.

3 MR. ZYSCOVICH: The truth is your
4 point is -- so let's differentiate the form
5 because I think this is a great form among
6 design people, that's why this works. We
7 haven't yet designed the frame, we haven't
8 designed the detail. If you're familiar
9 with Skarpa's work or, you know, some of
10 the other modernists what we're after is a
11 very simple clean well detailed building
12 and I think this is that.

13 What we're trying to do is put the
14 fenestration in terms of decorative
15 elements through these, you know,
16 perforated screens, detailed facades on the
17 retail forum and the rest of it we really
18 want for it to be background, we're not
19 trying to draw attention to too much detail
20 on the rest of the facade, we want to keep
21 it simple.

22 MR. GAVCOVICH: It's more than wanting
23 to draw attention, I understand that, you
24 know, it is not the primary facade and, you
25 know, it's more subtle there but it's -- I

1 don think it's quite there. Whether it's
2 the length of the building that leaves me
3 that way or the level of detail I just
4 don't think it's quite fits or compatible
5 with --

6 MR. ZYSCOVICH: Think about it from
7 the street, walking on the sidewalk, that's
8 to the trees, their one story moves up to a
9 tall tower where the exiting is, moves to a
10 two story where the garage is detailed.
11 There's a lot of animation, a lot of street
12 movement. This rendering is not helping
13 our case because it doesn't show a lot of
14 detail. I think you appreciate with all of
15 the volumetric movement and the street
16 experience which you can imagine I think
17 you're going to have a very attractive
18 building and a building that people will
19 appreciate.

20 When we start looking at how we deal
21 with this, let's say that we do something
22 else, at this point in time other than
23 adding more materials we really don't feel
24 that bringing the volumes to express the
25 full height of the building is

1 advantageous, we're trying to keep the
2 scale back from the street. We
3 differentiated the buildings, we
4 differentiated them with color and we will
5 further differentiate them with detail. So
6 it's not a blank facade, it's animated and
7 it moves and I think that it works really
8 well.

9 So, I mean, like I said, beauty is in
10 the eye of the beholder, I don't think of
11 this as a blank facade treatment when I'm
12 on the board, I don't. You know, I know
13 the difference and I think that there's
14 been a lot of attention made to this scale,
15 so I would -- my view obviously as the
16 author is to say that I think it's a simple
17 building and it will be elegant and very
18 much in keeping with what Bay Harbor is
19 about. I don't know what else to tell you
20 except to start sketching together.

21 MR. GAVCOVICH: The sports, I guess
22 the court or field that's up -- yard area
23 that's under the roof on level 3, I guess,
24 it is that long turf, what's the intention
25 there, what's really happening there?

1 MR. ZYSCOVICH: That's a place for
2 small gatherings. It's a place where some
3 of the kids can run out and, you know, play
4 around, that's the intention.

5 MR. GAVCOVICH: You don't anticipate
6 the need for a fence that lawn area?

7 MR. ZYSCOVICH: Oh, no, it's
8 protected.

9 MR. GAVCOVICH: It's protected by the
10 trellis. I think, again, from Kane
11 Concourse the design there is quite
12 attractive in the scale.

13 MR. PHILLIPS: My name is James
14 Phillips with the landscape architect firm
15 of Raymond Douglas. That terrace area is
16 surrounded by a pair of fence planters that
17 will be of at least a 48-inch -- sorry,
18 42-inch height required for a guardrail and
19 then that will be planted with landscape
20 that will rise above that minimum elevation
21 as protection.

22 MR. GAVCOVICH: But if you're using
23 it -- and, again, if the answer is, no,
24 you're not going to -- there's no need for
25 any fencing in the future then I'm

1 satisfied, but if your kids are playing,
2 they're throwing a ball around --

3 MR. ZYSCOVICH: No, that's not the
4 intent, there is no need for fencing.

5 MR. GAVCOVICH: Okay. That on Kane
6 Concourse would be --

7 MR. ZYSCOVICH: We don't want that.

8 MR. GAVCOVICH: Would not be good.

9 MR. ZYSCOVICH: That's not what we're
10 trying to create.

11 MR. HURWITZ: Again, just the
12 problematic question regarding that, is the
13 ancillary usage that were described
14 including the field that it's only on
15 Sunday or school or classed during the
16 week, is there --

17 MR. ZYSCOVICH: I think there's some
18 after school programs, there's the Sunday
19 school program, that's the extent of it.

20 MR. HURWITZ: After school during the
21 week or Sunday?

22 MR. ZYSCOVICH: I don't know. It's
23 called church class.

24 MS. HUBER: Yes, there will be some
25 activity after school in that base, yes.

1 And to the extent during the day to the
2 extent that they decide to have -- they
3 have yoga classes and all kind of adult
4 exercise programs and other, so to the
5 extent that it's a beautiful day and they
6 decide to move it from the indoor space to
7 the outdoor space that could also occur out
8 there. Those are all activities that the
9 church currently has but now some of them
10 will be outside.

11 MR. HURWITZ: I hear the yoga classes
12 are great.

13 MR. GAVCOVICH: Looking at the corner,
14 the open corner, you have the stair there,
15 talked about there's a lot of transparency
16 at the corner, from an -- I'm not sure that
17 if the code requires 75 percent
18 transparency, I don't know if that means
19 glass, doesn't seem that you need it with
20 the -- I understand that you can't
21 create -- you can't have your entrance to
22 the lobby on Kane Concourse.

23 MS. HUBER: It is.

24 MR. GAVCOVICH: Well, not really, it's
25 on East Bay Harbor Drive.

1 MS. HUBER: No, there's a door.

2 MR. GAVCOVICH: There's a door into
3 the stair.

4 MS. HUBER: There's a door into the
5 lobby.

6 MR. ZYSCOVICH: The lobby is entered
7 from East Bay, that's an exit door for
8 stair.

9 Let me address your transparency
10 issue. The way we understood that is when
11 you look at the transparency issue because
12 we write this kind of code all the time,
13 it's related to the retail use. So in
14 terms of the entire length of Kane
15 Concourse we believe that we meet the
16 75 percent requirement for transparency
17 meaning from the sidewalk looking into the
18 space. We acknowledge that we are not
19 doing that at the corner entrance but we
20 set back, so when you look at the overall
21 what was 175 feet, we have about 150 feet
22 of store front, so we are going out of our
23 way to make it store front.

24 MR. HURWITZ: Would you have a
25 terrible problem trying to move the focus

1 down East Bay Harbor off the corner and
2 trying to extend the retail feel of that
3 corner at all?

4 MR. ZYSCOVICH: I think that would
5 become an issue because there is a
6 relationship between the mass of the church
7 building and the way it meets the ground,
8 which we've already carved back to a very
9 small minority of the frontage on Kane.
10 So, in fact, this is the end of the block
11 and it's a very small, it's like 25 feet of
12 setback where we have the stairway and the
13 campanile structure, so we've really, I
14 think, proportionally, you know, again from
15 an aesthetic issue I think that we need the
16 church to -- for the building to land on
17 the ground and that became a very important
18 issue for the church that it doesn't look
19 like it's above a store, so we think
20 that --

21 MR. HURWITZ: Is it possible to move
22 that structure, you said, you called it
23 a --

24 MR. ZYSCOVICH: Campanile, bell tower.
25 It's kind of a reference to a bell tower.

1 MR. HURWITZ: Is it possible to shift
2 that off the corner at all, I mean, it's
3 obviously still visible, it's significant,
4 it's not going to be missed, not trying to
5 hide it just trying to have the corner be
6 more of you know you're approaching a
7 retail district?

8 MR. ZYSCOVICH: But I don't think
9 there's any confusion that you're not
10 approaching a retail district. What I'm
11 saying is it's only 20 -- I mean, it's
12 about from here to the back wall, I mean,
13 that's all that's revealed of the building.

14 MR. HURWITZ: I'm getting that, I
15 understand that and I follow what you're
16 saying, but I'm not talking about the 25
17 feet --

18 MR. ZYSCOVICH: You're talking about
19 the vertical element?

20 MR. HURWITZ: The actual vertical
21 element which is right on the corner which
22 is offsetting it.

23 MR. ZYSCOVICH: It belongs on the
24 corner, that's where they always are, it's
25 a corner element. I think it would look

1 very odd if you have your three-story
2 building and then this thing popped up at
3 some random spot on the facade.

4 MR. HURWITZ: Not really random but
5 just closer to the front door.

6 MR. GAVCOVICH: I think it would
7 weaken the corner. I think having that
8 tower at that location makes sense. I
9 would have actually preferred to see the
10 stair, the portion between the retail and
11 the tower pushed back a little bit for a
12 couple of reasons. You know, I think
13 you're going to have as people come out of
14 the church and if they don't go into their,
15 you know, directly to their cars that area
16 is probably too small, you know, the area,
17 the spill out.

18 But I also from an architectural
19 standpoint I think breaking the tower from
20 that facade would have made sense. Right
21 now it reads -- it sort of -- the tower
22 doesn't read strong enough in my opinion.
23 In this rendering it does but it's not -- I
24 don't think it's really like that. In the
25 plan you're looking at it and it's the same

1 plane, the tower and the three-story
2 element, or the three-story building, the
3 stair itself, and to me it would have been
4 nice to --

5 MR. ZYSCOVICH: We can bring it closer
6 to the street.

7 MR. HURWITZ: You're saying it's on
8 the same plane as here?

9 MR. GAVCOVICH: No, on Kane Concourse
10 this is the same plane.

11 MR. SKLAR: The tower stays where it
12 is and the stairs would be reset.

13 MR. HURWITZ: That's what shifting the
14 tower left would -- not off the corner but
15 just --

16 MR. GAVCOVICH: Leave the tower where
17 it is and like Oscar just said you shift
18 the stair back or to the south and you
19 create this large plaza and you break that
20 mass of the stair and the campanile.

21 MR. SKLAR: The stair door doesn't
22 have to be necessarily going into the bell
23 tower or whatever here, the tower.

24 MR. GAVCOVICH: I'm not sure if it
25 would be -- are you not allowed to have --

1 MR. ZYSCOVICH: The stair has to exit
2 to the street.

3 MR. GAVCOVICH: Of course. But are
4 you not allowed to exit the lobby onto Kane
5 Concourse, is that part of the --

6 MR. ZYSCOVICH: We're just trying to
7 make sure that on behalf of our client we
8 don't create a situation where people could
9 say this is Kane Concourse, so, you know,
10 we're just trying to and make sure that we
11 don't trip. This is the way the code
12 reads, we decided to, you know, interpret
13 it very conservatively and that's where we
14 are.

15 MR. SKLAR: I just wanted to bring up
16 something of my knowledge of retail
17 business of Kane Concourse, which Kane
18 Concourse is not -- at the moment is not
19 the best retail walk for a pedestrian
20 street that you can imagine, so actually
21 the best retail is right across the street.
22 That's the best block as far as retail
23 because there is some access to parking in
24 the rare of the stores, which I happen to
25 own that building so I'm concerned about

1 the ability of the retail here because as
2 you can see that many retail stores that
3 don't make it on Kane Concourse because of
4 the parking, so I would really try to have
5 a better connection between the street,
6 especially on that, you know, that stair
7 that's on the west end of the building with
8 the door on Kane Concourse which is not the
9 prettiest part of the building. If that
10 becomes a walkway to the rear, by the way,
11 the trash, what is that trash, is that a
12 truck?

13 MR. ZYSCOVICH: That's a compactor.

14 MR. SKLAR: That's a compactor. Well,
15 because of the back are you going to go
16 there --

17 MR. ZYSCOVICH: No, just because we
18 went to Waste Management and they can place
19 a compactor. The reality as you know
20 depends on who the retailer is. You know,
21 not to give you a critique of this town, we
22 also do a lot of retail, my own perception
23 is that like a lot of other towns when you
24 take retail space and you allow service
25 providers to use retail space you end up

1 killing retail.

2 I think you actually have a beautiful
3 retail street and if you could figure out
4 how to get the service providers out and
5 put in real retailers and restaurants I
6 think you would have a great retail store.

7 MR. SKLAR: The code was changed a few
8 years back that doesn't allow anymore
9 offices on ground floors so everything has
10 to be retail.

11 MR. ZYSCOVICH: I'm agreeing with you,
12 Oscar, but what I'm saying is this is part
13 of a street scape of retail and we don't
14 have any elusions that because we have
15 these parking spaces in this location that
16 somebody's going to park here and come to
17 our store. We're saying that what we're
18 doing is we're, I think, meeting the spirit
19 of what we want which is the vast majority
20 of our facade is intended to be real
21 quality retail, we've gone out of our way
22 to make it 17-feet, it's going to be Class
23 A retail.

24 MR. SKLAR: No, I agree. I like the
25 retail storefront that you have, I like

1 most of the building, I like the modern
2 feel of it, you know, I think you did a
3 great job but, you know, certain --

4 MR. ZYSCOVICH: We could take this
5 exit door that approaches the west and we
6 could push it back, you know, so that
7 you're not passing the door, and we could,
8 you know, do something with that recess
9 that's more attractive but it does have to
10 exit directly out so we can't push it back
11 too far, but we could -- I think what
12 you're saying is you don't want to see that
13 door in the same plane as the storefront.

14 MR. SKLAR: That's one of the things.

15 MR. ZYSCOVICH: We're not disagreeing
16 with that, we could push it back a bit.

17 MR. SKLAR: I would.

18 MR. ZYSCOVICH: But in terms of trying
19 to get a different place to exit, we can't
20 exit through the back because we have our
21 loading and we have to exit directly to the
22 outdoors, so we can't exit through the
23 building, it's the only place we can exit.

24 MR. HURWITZ: You mention that you
25 could make --

1 MR. SKLAR: You have a lot of stairs
2 exiting.

3 MR. ZYSCOVICH: We do, we have a lot
4 of stairs exiting and have to be more or
5 less on the corners otherwise we don't meet
6 the requirement for the dead end. Believe
7 me we have analyzed this thing to death.

8 MS. HUBER: Because when you place, I
9 will be politically correct, a public
10 assembly place on the second floor or are
11 required to be above the first floor that
12 in and of itself requires a large number of
13 stairs, that's the end result
14 unfortunately.

15 MR. SKLAR: I understand that. I go
16 there in Miami Beach that has the assembly
17 on the second floor also and we have a lot
18 of stairs too.

19 MR. HURWITZ: Anything more?

20 MR. SKLAR: I still would like to see
21 a connection with a retail --

22 MS. HUBER: Can I ask you a question?
23 Would you prefer that we --

24 MR. GAVCOVICH: I understand what
25 you're saying with your question but to me

1 it feels like such a lost opportunity --

2 MR. ZYSCOVICH: Which part is the lost
3 opportunity?

4 MR. GAVCOVICH: The ability to have
5 parking and access points we have across
6 the street which has proven successful here
7 to have people that are parked behind, and
8 I don't need to repeat it because I know
9 how you feel about it and respect what
10 you're saying, it just feels like if you
11 look at the buildings all don't have
12 connections to the back, this is us
13 continuing that road inaccessibility from
14 parking to the back.

15 I get what you're saying, I understand
16 it's a philosophical thing. You have a lot
17 more experience than I do, I just want to
18 have for the ability to have retailers
19 along Kane Concourse have easily accessible
20 pedestrian access, but I understand that
21 you can give me a five-foot alleyway that
22 goes into a trash compacter and a loading
23 unless it was completely -- unless we
24 worked.

25 MS. HUBER: Can I ask a question?

1 MR. GAVCOVICH: Sure.

2 MS. HUBER: And I'm not an architect.
3 Would your preference be if we removed this
4 door so that was open then you just went --
5 I mean, can't get anymore direct than
6 parking here and going there, so if this
7 door was removed --

8 MR. HURWITZ: I mean, Oscar made the
9 suggestion but I understand what you're
10 saying. With security I don't think that
11 really addresses it because again that's
12 private parking. See, it's the lot behind
13 for the retail.

14 MR. SKLAR: I think that helps.

15 MS. HUBER: This lot is not for
16 retail. This is just as much for retail as
17 this is. People will and can park here and
18 go to this retail, people are not
19 required --

20 MR. HURWITZ: I think it was suggested
21 earlier that --

22 MS. HUBER: No, no, no. That is
23 absolutely -- no.

24 MR. HURWITZ: Someone said that would
25 be open 24/7 or open when retail was open,

1 but the garage parking may not, correct?
2 Is the garage parking going to be open all
3 day?

4 MS. HUBER: Yes.

5 MR. HURWITZ: And open to the public?

6 MS. HUBER: Yes. That garage --

7 MR. HURWITZ: So there's no security
8 measures on this garage?

9 MS. HUBER: Whether or not there will
10 be a security measure is a different
11 question than whether or not that lot will
12 be opened. The garage is intended just as
13 much for the retail as it is for the
14 religious use.

15
16 MR. HURWITZ: So the garage will be
17 available for use all day?

18 MS. HUBER: Yes. I'm sorry if that
19 was somehow not clear. That garage is
20 intended -- you can't have Class A retail
21 space as was designed in consultation with
22 the Whitman family about Bay Harbor Shops
23 and that's where your parking is, so
24 absolutely the parking was intended in the
25 garage to be -- to service that retail

1 space.

2 MR. HURWITZ: So it's going to be open
3 to the public all the time?

4 MS. HUBER: Yes, sir. I'm not going
5 to say all the time. Whether or not it
6 will be closed to the extent there is a
7 restaurant there or retail there when those
8 uses close along Kane Concourse that will
9 be closed as a deterrent for other
10 unnecessary behavior, but when those uses
11 are open the parking will be open.

12 MR. ZYSCOVICH: That might have been
13 my fault because I thought our conversation
14 took a term in terms of the vacant lot, so
15 I was just talking -- but the parking is
16 the parking for all the uses. We have 28
17 spaces dedicated. And as Amy said, if it's
18 the pleasure of the board to remove the
19 door and leave the loggia end open we can
20 do that. It's just our view that it seemed
21 more secure to have a door there and if you
22 park there and go through the door you
23 enter the street.

24 MR. GAVCOVICH: Could you describe the
25 loggia because it's to read on the drawing?

1 I mean, there are columns and the only
2 place you can get, I guess, a little bit of
3 understanding is the rendering, but I'm not
4 100 percent sure.

5 MR. ZYSCOVICH: We had elevations, but
6 is there an eyebrow that's extending all
7 the way along?

8 MR. GAVCOVICH: Yes.

9 MR. ZYSCOVICH: Okay. Here you can
10 see the window behind which is the
11 recitation of this loggia and you'll be
12 able to come in here and walk through that
13 space between the air-conditioned inner
14 wall and this space. And the eyebrow is
15 there as a feature to get a scale.

16 MR. GAVCOVICH: I think it's just hard
17 to read. When I look at the elevation
18 there's just -- are the columns -- I'm just
19 not seeing where the columns are or --

20 MR. ZYSCOVICH: The column --

21 MR. GAVCOVICH: I think there were
22 more columns on the rendering than there
23 are on the elevation, or just that the
24 column start -- the issue --

25 MR. ZYSCOVICH: The columns start

1 hiding the glass wall behind so they're
2 actually in line, so you have a glass
3 vertical opening on one side and an opening
4 through the wall to the air on the other
5 side, and that's your loggia. So the best
6 place to see it is actually in the rendering.

7 MR. GAVCOVICH: What's happening above
8 the eyebrow is what you said was happening
9 below?

10 MR. ZYSCOVICH: No, the eyebrow was
11 just interrupting the opening of the
12 loggia.

13 MR. GAVCOVICH: When you look at the
14 elevation there seems to be more openings
15 in --

16 MR. ZYSCOVICH: Yeah, the rendering
17 these walls should be coming down like the
18 elevation shows. There's a series of walls
19 and a series of slotted openings, that's
20 the loggia. Clearly looking at the
21 rendering more closely than I've been
22 looking at the rendering.

23 MR. GAVCOVICH: What are you thinking
24 in terms of that stair on the corner in
25 terms of the finishes, is it more -- is it

1 a typical egress stair, are you treating
2 that differently?

3 MR. ZYSCOVICH: You mean on the
4 interior?

5 MR. GAVCOVICH: On the interior.

6 MR. ZYSCOVICH: Yeah, it's intended to
7 be a circulation stair that will people to
8 move up and down without having to use the
9 elevator.

10 MR. GAVCOVICH: I mean, you have the
11 one that's the open stair and this one on
12 the corner which is more -- I would think
13 that one was more ingress.

14 MR. ZYSCOVICH: But it's wide, is that
15 your question?

16 MR. GAVCOVICH: Well, it's wide, I
17 guess, because of the occupant load, but
18 they're all wide, but in terms of that's
19 the corner and that -- and you're going to
20 see into the stair and I'm just wondering
21 in terms of the thought about the lighting
22 in there, the finishing in there, you know,
23 you're going to see through on this
24 prominent corner of Bay Harbor I think that
25 stair needs to be something that's a little

1 bit --

2 MR. ZYSCOVICH: We agree.

3 MR. GAVCOVICH: -- more important.

4 MR. ZYSCOVICH: It will be. We agree.

5 MR. GAVCOVICH: I'd prefer to not see
6 a stair there, but since it is I think it
7 needs to be treated quite differently than
8 a typical stair.

9 MR. ZYSCOVICH: We will make it a
10 condition, it will be treated as an
11 interior finished stair. That's our
12 intent.

13 MR. GAVCOVICH: You have -- I don't
14 know if this is an issue because of the
15 width of the sidewalk here, can the door
16 swing into the right of way into the
17 sidewalk?

18 MR. ZYSCOVICH: No.

19 MR. GAVCOVICH: Because your store
20 front doors -- the store front doors all
21 swing right on the property line and swing
22 into the --

23 MR. ZYSCOVICH: If the sidewalk is
24 wide enough.

25 MR. GAVCOVICH: That is a question, I

1 don't know, is that allowed?

2 MR. HURWITZ: Oscar, what is the rule
3 here?

4 MR. SKLAR: I'm sorry?

5 MR. HURWITZ: What is the rule here?

6 MR. SKLAR: I think not here. I think
7 that if this sidewalk is wide enough you
8 can at least five or six feet beyond the
9 door because it's --

10 MR. ZYSCOVICH: We have that.

11 MR. GAVCOVICH: It was really just a
12 question because I wasn't sure because I
13 thought we had that issue. Could you
14 describe a little bit the trellis on the
15 roof again? We're seeing it through the
16 rendering, you don't really see it in
17 sections, it's a little bit hard to see in
18 the elevations.

19 MR. HURWITZ: And also the whatever's
20 hanging there, the vine or --

21 MR. PHILLIPS: The intention there is
22 for that to be like a jig of wire toss, a
23 cable toss that would be attached to the
24 wall and there would be a series of vines,
25 stephanovas, scorabunda and some rigia and

1 alpha which are both white flowering plants
2 that would grow up the side of those walls.

3 MR. GAVCOVICH: Like a living wall?

4 MR. PHILLIPS: Like a living wall,
5 yeah, but they are planted in the ground
6 and they would just be a vine that grows up
7 the side of that wall.

8 MR. SKLAR: The door to that stair,
9 the corner stair, is -- couldn't it open to
10 the loggia if the loggia is open to the
11 pedestrian space?

12 MR. ZYSCOVICH: What's the question,
13 repeat the question, please?

14 MR. SKLAR: If the door goes out of
15 that stair on the corner opens to the
16 loggia and the loggia is an open air to
17 this gym space isn't that a lot better?

18 MR. ZYSCOVICH: It depends on the
19 building official. It seems logical but
20 we've had experience where they want you to
21 literally have nothing over your head as
22 you walk out the door.

23 MR. SKLAR: That door is --

24 MR. GAVCOVICH: Wouldn't you rather
25 see just a blank wall there? Isn't it

1 better to have some --

2 MR. SKLAR: It's not a door, not an
3 exit door to the stair.

4 MR. GAVCOVICH: Again that's why to
5 answer my question, if the stair is treated
6 a little bit different than an egress
7 stair, it's a glass door, I think it's
8 better than just a dead corner because you
9 have one wall is a green wall but the other
10 is -- that's a ground floor that just has a
11 door.

12 MR. ZYSCOVICH: I mean, I think you
13 have a great suggestion.

14 MR. SKLAR: It could even be --

15 MR. ZYSCOVICH: We need the building
16 official to tell us if he will accept the
17 exit into the loggia as if it's an exit to
18 the exterior. It makes sense to me, but,
19 you know, in the spirit of trying to make
20 sure that we're doing the right thing we've
21 had certain building officials tell us that
22 the door has to -- they won't even let us
23 have an eyebrow over us. It depends on --

24 MR. GAVCOVICH: But you have one there
25 anyway.

1 MR. ZYSCOVICH: Well, hopefully he
2 doesn't make us take it of.

3 MR. SKLAR: Even if --

4 MR. GAVCOVICH: I'd prefer to see more
5 glass there.

6 MR. SKLAR: If you accentuate the
7 tower by creating like a vest -- an outdoor
8 vestibule for the door to open between the
9 tower and the stair then you are
10 accentuating the tower.

11 MR. ZYSCOVICH: I'm in agreement. I'm
12 totally in agreement. That would be fine
13 with us and we can, you know, again, put it
14 there and we can take it from there and
15 we'll work with the town and see what they
16 tell us.

17 MR. BECHIK: I have another question
18 about that corner, maybe the question more
19 about the usage on the frontage of Kane
20 Concourse. Someone from the public
21 mentioned all frontage need to be used for
22 retail, so that part of frontage not being
23 used for retail so what is the code, should
24 be require that all retail continue into
25 the corner or not, what are we discussing

1 here?

2 MR. LEE: Well, through the DRC
3 process no one had an objection to that at
4 the time on the lobby.

5 MR. BECHIK: But is it a part of the
6 code that the person mentioned there's a
7 code that requires all of Kane Concourse to
8 be --

9 MR. LEE: I'm the building official --

10 MR. HURWITZ: That guy doesn't work
11 here. That's okay. Just answer your
12 question on --

13 MS. HUBER: The code does not require
14 100 percent of use of retail, it just
15 requires that if you have space it needs to
16 be one of -- it needs to be retail space.
17 It doesn't state that you can't have a
18 lobby or some other type of loggia space,
19 so we have a loggia space and the other
20 portions of the site fronting Kane
21 Concourse are 100 percent retail, but the
22 code doesn't say that you can't have -- you
23 can't have a loggia or a lobby space, and
24 under this context to do that then also
25 gets into the discriminatory nature of as a

1 code as it applies to religious uses. So
2 this was a topic of discussion with Stanley
3 Price and Ron Watson and your staff when
4 this application came forward, and so 100
5 percent of the space that fronts Kane
6 Concourse that is devoted to retail is
7 retail, and then the portion of the
8 building that provides access to the
9 religious use on the second floor is the
10 lobby space, so we meet your 75 percent
11 frontage transparency requirement but this
12 is the access space to get to the second
13 level, and there is -- there is no pressed
14 requirement or prohibition rather in your
15 code that says you can't have a lobby to
16 get to the second level on Kane Concourse.

17 MR. SKLAR: These two --

18 MS. HUBER: Just like you have in all
19 of the other buildings on Kane Concourse,
20 you have a lobby that allows people on Kane
21 Concourse, you don't make people go around
22 to the side or to the back to get into the
23 lobby to go on the second, we just happened
24 to put ours on the corner rather than in
25 the middle, we thought that everybody would

1 rather have a straight line and
2 continuation of retail space. From a
3 leasing perspective it makes sense because
4 people will come to you and they'll ask you
5 how much space you have and then they
6 determine how much of that they want, and
7 we're seeing a growing trend where people
8 want larger spaces. If a restaurant wants
9 to come in we felt it was better to have a
10 continuous space for the retail and the
11 lobby -- the lobby gets moved over to the
12 corner. So that's the intent. There is no
13 prohibition to having a lobby space on Kane
14 Concourse, we just can't use that space to
15 actually have a church service. Do you
16 understand the difference?

17 MR. HURWITZ: Yeah. Scott, do you
18 want to say something or Stanley? I
19 understand the difference but I think they
20 want -- I think Alan's asking a legitimate
21 question, you know, things come before us
22 and we're really not supposed to be in
23 position to judge whether or not something
24 meets code or not, that's not our job, so
25 when anyone on the board, or Alan in this

1 case, makes a legitimate question and
2 someone raised the issue, appreciate that,
3 you know, perspective and input, but, you
4 know, I'd like the town to tell us whether
5 or not that's --

6 MR. SCOTT: It meets the town code.
7 The code says that you can't have any
8 residential or those type of uses on ground
9 floor, lobbies are certainly allowed, you
10 just can't have, again, residential uses
11 facing the front. Now, I know this isn't a
12 residential use, it's a church, religious
13 establishment, but lobbies are allowed at
14 ground floor on Kane Concourse.

15 MS. HUBER: And I -- we are going --
16 this meeting's taking much, much longer
17 than I think anyone expected and I just
18 feel this is the most appropriate time to
19 reiterate to you that your staff spent
20 months reviewing this project and your
21 staff report is clear and unequivocal that
22 we meet all of the criteria of your zoning
23 code, so we are here, we're happy to
24 discuss the appearance, we're happy to
25 discuss the architect, but to the extent

1 there is a question regarding whether or
2 not this building, this church and this
3 retail space meets your code, your staff
4 has found that we meet the criteria of your
5 code.

6 MR. HURWITZ: Thank you so much for
7 your input. Any other questions?

8 MR. BECHIK: No.

9 MR. SKLAR: Bernard, the two loading,
10 are these trucks?

11 MR. ZYSCOVICH: Yes.

12 MR. SKLAR: Is this going to be for
13 the privately -- the trash is going to be
14 privately serviced?

15 MR. ZYSCOVICH: Yes.

16 MR SKLAR: But do you need two trucks
17 to service --

18 MR. ZYSCOVICH: We put two truck
19 because best of my knowledge the code
20 requires two trucks.

21 MR. SKLAR: Because with them it
22 usually has the compactor pick up the
23 trash.

24 MR. ZYSCOVICH: But that's not the
25 purpose of the loading bay. The purpose of

1 the loading bay was to meet the loading bay
2 requirement.

3 MR. SKLAR: And that shaft, is that a
4 trash shoot or --

5 MR. ZYSCOVICH: It's not a trash
6 shoot.

7 MR. SKLAR: The shaft that's next
8 to --

9 MR. ZYSCOVICH: It's a mechanical
10 shaft.

11 MR. SKLAR: Mechanical shaft but it
12 has an opening in the front.

13 MR. ZYSCOVICH: I stand correct, it is
14 a trash shoot.

15 MR. SKLAR: There is no trash shoot
16 there.

17 MR. ZYSCOVICH: I don't think it's a
18 trash shoot, it's a mechanical space. I
19 don't know what that's for I think it's an
20 air handler and the access is to get access
21 to the air handler.

22 Does this board review the interior of
23 the building layout?

24 MR. SKLAR: In which way?

25 MR. ZYSCOVICH: It's fine by us I'm

1 just surprised by the nature of that
2 question.

3 MR. SKLAR: We do sometimes, it could
4 affect the exterior of the building.

5 MR. GAVCOVICH: The tower doesn't
6 have -- you mentioned a company that
7 doesn't have bells.

8 MR. ZYSCOVICH: No.

9 MR. GAVCOVICH: The finishing so side
10 of the tower walls.

11 MR. ZYSCOVICH: We're looking to paint
12 that a bluish color and have it grow.

13 MR. GAVCOVICH: On both sides, both
14 interior sides?

15 MR. ZYSCOVICH: Yes, throughout.

16 MR. GAVCOVICH: The sidewalk that's
17 being -- that's shown in the -- on Kane
18 Concourse is it continuing in the same
19 pattern or materials that we have?

20 MR. ZYSCOVICH: Yes, whatever street
21 standard you have, continue them.

22 MR. GAVCOVICH: Can't do it better?

23 MR. ZYSCOVICH: Or do better.

24 MR. FRANKEL: That was a contest word.

25 MR. SKLAR: Are these the colors going

1 to be used in that --

2 MR. ZYSCOVICH: That's our first
3 thought, we're looking at these colors,
4 yes.

5 MR. SKLAR: Which is like a light
6 gray?

7 MR. ZYSCOVICH: It's a light gray with
8 a blue interior.

9 MR. GAVCOVICH: You are going have to
10 I assume -- well, I should ask, is there
11 going to be lighting on the lawn turf?

12 MR. ZYSCOVICH: We're going to have
13 the required foot candle lighting for
14 someone out there at night, yes.

15 MR. GAVCOVICH: Is that something
16 we're going to see from the street?

17 MR. ZYSCOVICH: Our intention is not
18 to see it from the street, we just want to
19 put it on the ground.

20 MR. GAVCOVICH: What about on the
21 upper roof where the labyrinth is?

22 MR. ZYSCOVICH: Same story, we don't
23 want to have poles we just want to have
24 light on the deck.

25 MR. GAVCOVICH: What about the --

1 what's happening in terms of -- you have --
2 I thought there was a lighting plan
3 somewhere and I wasn't really clear what
4 was being shown.

5 MR. ZYSCOVICH: Our intention is to
6 continue your city standard on the outside.

7 MR. GAVCOVICH: Okay.

8 MR. HURWITZ: The balcony space off of
9 the, I guess, which faces East Bay Harbor
10 Drive --

11 MR. ZYSCOVICH: Yes.

12 MR. HURWITZ: -- is that partitioned
13 off or is there a wall?

14 MR. ZYSCOVICH: There is a wall there
15 along the edge with landscaping.

16 MR. HURWITZ: How high is that wall?

17 MR. ZYSCOVICH: I think it's a 48-inch
18 wall with landscape planters. It's a
19 double wall with the planter inside. It's
20 the same as what's on the other deck.

21 MR. HURWITZ: On the Kane Concourse
22 side?

23 MR. ZYSCOVICH: Yes.

24 MR. HURWITZ: But there's no trellis
25 there?

1 MR. ZYSCOVICH: No trellis there.

2 MR. GAVCOVICH: The stair that's at
3 the northwest corner that Oscar was talking
4 about and the door that he was referring
5 to, that's stair is a eight-foot wide
6 stair, eight-foot wide for each leg I
7 should say, right?

8 MR. ZYSCOVICH: I don't recall the
9 dimensions.

10 MR. GAVCOVICH: There was -- somewhere
11 I saw -- I guess the question is --

12 MR. ZYSCOVICH: Sounds about right.

13 MR. GAVCOVICH: In this stair in the
14 floor plan we're not seeing up and down on
15 the same -- we're not seeing the two switch
16 back we're seeing just the one way down on
17 the ground floor, for example. The reason
18 I ask --

19 MR. ZYSCOVICH: On LH101 it's a switch
20 back. It is a switch back. On the ground
21 floor you're just seeing the end.

22 MR. GAVCOVICH: The end but not of the
23 switch back? We're just seeing that whole
24 width is going down. That means you're
25 going to need more than the one door. I

1 guess if the stair is designed for that
2 capacity it's not going to go out the same
3 door.

4 MS. ZYSCOVICH: Yes, you're right.

5 MR. GAVCOVICH: That's going to have
6 to be a double door. I don't know if the
7 same thing applies on the corner stair but
8 I guess all of those wide stairs.

9 MR. ZYSCOVICH: We're going to have to
10 make sure all the doors have ample exit
11 length, you're right.

12 MR. GAVCOVICH: I don't know if that
13 makes a difference in terms of -- I know
14 Oscar was saying that he didn't want so see
15 that door on that plane but I don't know if
16 the double door is worse or not.

17 MR. HURWITZ: Does it make any sense
18 to consider a trellis in that back area to
19 kind of soften up that side and then kind
20 of tie into the front or no?

21 MR. ZYSCOVICH: For the side wall on
22 East Bay?

23 MR. HURWITZ: Specifically the area
24 where you have that balcony.

25 MR. ZYSCOVICH: Yeah, well, the

1 trellis makes sense because we have nothing
2 overhead facing Kane Concourse, but the --
3 it's more of a carve out.

4 MR. HURWITZ: I just didn't know if
5 that -- yeah, to sort of soften up -- for
6 that whole facade side there is just I
7 think is something that brings in the
8 element in the front, it kind of softens it
9 up a little bit. I understand you said the
10 rendering of the trellis for how much it
11 undulates.

12 MR. ZYSCOVICH: We could put a trellis
13 there.

14 MR. HURWITZ: The area over here,
15 there's a balcony here, I was trying to
16 soften up this area, this whole facade.

17 MR. PHILLIPS: Which balcony are you
18 talking about?

19 MR. HURWITZ: East Bay Harbor Drive.

20 MR. PHILLIPS: So there are trees
21 which are being used for the required
22 street -- for the site tree requirement.

23 MR. HURWITZ: On the upper?

24 MR. PHILLIPS: Which is allowed by the
25 Miami-Dade County code, you're allowed to

1 have trees on the --

2 MR. ZYSCOVICH: We could have a
3 trellis between the trees?

4 MR. PHILLIPS: Yes, but it wouldn't
5 be --

6 MR. HURWITZ: I understand.

7 MR. GAVCOVICH: That is an element on
8 that side.

9 MR. PHILLIPS: That's fine.

10 MR. ZYSCOVICH: We don't object to
11 that.

12 MR. HURWITZ: You could do the same --
13 does it have to be on that street scape or
14 could it be on the top, your trees?

15 MR. ZYSCOVICH: The trees on the top
16 make it part of the inaccessible roof area,
17 we want people to be able to maintain the
18 trees and deal with them, notice if
19 something is wrong.

20 MR. HURWITZ: Okay.

21 MR. GAVCOVICH: Up on the roof on
22 A104, the rooftop mechanical area, or I
23 guess could you describe, you have the pale
24 yellow and the darker yellow, what are we
25 seeing, what's the difference in those two?

1 MR. ZYSCOVICH: The darker yellow
2 except for where it says rooftop mechanical
3 area is accessible space to the
4 congregation. The rooftop mechanical area
5 is for the mechanic to be able to access
6 the area. So we would have to identify a
7 gate that access across the roof into the
8 mechanical space so it's basically a
9 rooftop.

10 MR. GAVCOVICH: On the next sheet,
11 A105, you're showing the equipment above.

12 MR. ZYSCOVICH: No that's on the same
13 plane.

14 MR. GAVCOVICH: You have the roof
15 levels you're noting at 44.

16 MR. ZYSCOVICH: Actually it sticks up
17 higher because we're hiding the equipment.
18 That's probably what you're reading. See
19 on A202 on the lower elevation where that
20 darker color is?

21 MR. GAVCOVICH: Right.

22 MR. ZYSCOVICH: That's the upper edge
23 of what you're looking at for the rooftop.

24 MR. GAVCOVICH: But the equipment is
25 not at the 50-foot elevation it's at the

1 40-feet elevation?

2 MR. ZYSCOVICH: Yes.

3 MR. GAVCOVICH: And the screen around
4 that is the same screen you're using
5 throughout the -- on Kane Concourse and the
6 garage middle screening, the bronze?

7 MR. ZYSCOVICH: We weren't planning on
8 that we were -- it's basically invisible.
9 We were thinking just make a wall and
10 screen it in.

11 MR. GAVCOVICH: I'm just looking how
12 you showed it on A201 and it seems like it
13 was sort of shown at least in color --

14 MR. ZYSCOVICH: Yeah, it is shown the
15 same way. I'll have to talk to Roberto
16 about that.

17 MR. GAVCOVICH: Talk about that
18 screening on Kane Concourse above the
19 storefronts.

20 MR. ZYSCOVICH: That's a custom
21 fabricated metal mesh.

22 MR. GAVCOVICH: And what's happening
23 on the second level?

24 MR. ZYSCOVICH: That's administration
25 of the church is looking through the mesh.

1 MR. GAVCOVICH: So you have a window
2 there?

3 MR. ZYSCOVICH: You have a window
4 behind the mesh.

5 MR. GAVCOVICH: How deep is that
6 because again when you look at the scale
7 drawing it's a little difficult? So your
8 plan all you're seeing is what looks like a
9 native black wall, a wall, is the window
10 and mesh all higher than 90 inches or is it
11 recessed?

12 MR. ZYSCOVICH: Not recessed.

13 MR. GAVCOVICH: It's nice on the
14 rendering, it seems to be that that screen
15 is -- it has a little depth to it.

16 MR. ZYSCOVICH: Our intent because of
17 maintenance is to see how we can apply a
18 mesh to the window wall so that we don't
19 have an inaccessible area to be able to
20 deal with the window, so you could wash the
21 window through the mesh if it's part of the
22 same build up, that's what we're thinking.
23 Again it's something we have to detail and
24 we don't have those details at this point.

25 MR. GAVCOVICH: If you look A402,

1 A403, there's a pretty nice depth and I
2 think it adds to the scale, I guess, of
3 that storefront, that facade. You really
4 see it more on 403 probably.

5 MR. ZYSCOVICH: See here the deduction
6 of the glass? I mean what we were looking
7 for was like glass disks to appear between
8 the mesh. If we create a space there then
9 the question becomes how does somebody get
10 in between the mesh and the glass.

11 MR. GAVCOVICH: I guess what I'm
12 saying is the mesh seems to be at least a
13 foot --

14 MR. ZYSCOVICH: I'm sorry, I'm
15 misunderstanding you, Jerry. The glass it
16 is all back behind the thickness of the
17 wall. There's a thickness of wall and the
18 storefront is behind that. I misunderstood
19 you.

20 MR. GAVCOVICH: You will be able to
21 achieve that depth that we're seeing
22 because that's probably more than eight
23 inches.

24 MR. ZYSCOVICH: Yes, we will. We'll
25 have a deeper thicker wall.

1 MR. GAVCOVICH: I know we talked about
2 the cross and whether it's a sign, whether
3 it's not a sign and I'm not suggesting one
4 or the other. I have -- I had a concern of
5 it being at such a prominent location as
6 you enter Bay Harbor. That to me is --
7 that corner with those two corners directly
8 across where the retail is is more
9 significant corner of Bay Harbor than even
10 the two that are closer that are on the
11 water, because as you come over the bridge
12 you almost pass, or you maybe pass these
13 two buildings, maybe I'm not really seeing
14 it because those building aren't there yet,
15 those other ones are just one story, but I
16 think this corner where you're building
17 this project is a very significant corner.
18 I don't know if this is even an issue that,
19 you know, whether we have anything to say
20 on this, is it an expression -- a religious
21 expression that can't be restricted. I
22 just think whether regardless of religion
23 it's just so in your face, and whether it
24 was a Jewish star, a cross, to me it's a
25 little strong.

1 MR. ZYSCOVICH: That's why we did it
2 this way. We were concerned -- well, look
3 at this one.

4 MR. HURWITZ: It's not different than
5 the concern we had with the replacement of
6 the sign for Cadillac, it doesn't matter
7 what the expression is, I mean, it's a
8 matter of what the emblem is and it's
9 substantial size.

10 MR. ZYSCOVICH: Maybe I'm wrong but
11 maybe this answers a bunch of different
12 questions. I think from this drawing
13 you're going to appreciate several things.
14 If you just let your eye go to the street,
15 at least my eye, what I pick up is the
16 retail. By virtue of pushing it back,
17 which we didn't have to do, it was because
18 we wanted to make sure that the church can
19 still have it's tower, it's campanile,
20 whatever is the, you know, bell tower,
21 whatever word you prefer, we intentionally
22 created the vine and accentuated the retail
23 for exactly that reason because when you
24 look at it from this overall point of view
25 you don't actually do that.

1 When I show you the next drawing you
2 do because we've intentionally zoomed the
3 camera in to the corner of the building
4 that we're trying to show you is the
5 architectural expression of that corner.
6 But when you come across that bridge and
7 you imagine those buildings that have
8 already been approved or something like
9 them already there you really have to look
10 for what the tower is telling you because
11 everything else is -- I believe is much
12 more prominent. And that was the intent of
13 the exercise because not withstanding the
14 rules and the laws which as you can tell
15 we're really working hard to make sure we
16 don't cross, we actually have the church as
17 the client, we have the retail as an
18 objective and we have the village and its
19 rules as a way of managing those
20 expectations, and one of the things that we
21 were very careful to do was rather than
22 bring the bell tower right to the corner we
23 pushed it back, we wanted the street scape
24 of retail to be more prominent. As you
25 drive and approach that corner we want the

1 bell tower to be more prominent because
2 that is the expression of the church.
3 Everything else about the church is fairly
4 understated as you said.

5 So this has really been a part of very
6 methodical, logical reasoning as to why we
7 pushed the building back, why we created
8 the plaza, why we created the negative
9 space, we're trying really hard to make
10 sure we address the intent that everyone
11 has put forward. It's a little bit
12 complicated when you're not allowed to have
13 the church use on the ground floor and you
14 can't really mix those uses in the way you
15 might normally want to, but I think that we
16 have found at least from our point of view
17 a means by which we can pull all those
18 together, but that is exactly why we
19 commissioned this rendering because when
20 you come across the bridge and you imagine
21 the buildings there it's not going to be as
22 prominent as you think. Anyway that's our
23 point.

24 MR. FRANKEL: This rendering, I had a
25 problem with that because that's not a

1 bridge, that's not what you see when you
2 come into Bay Harbor, and to amplify what
3 Jerry said, this board spent a lot time, I
4 think this is the gateway to Bay Harbor, we
5 spent a lot of time with all the properties
6 here and when the Cadillac folks came here
7 and their tower is further back off the
8 street, you know, I for one had -- if I had
9 a choice at that time I would have said do
10 away with it because when you come into Bay
11 Harbor as it exists that really throws you
12 off. You see this -- whatever symbol is on
13 there you see this tower rather than the
14 beautiful entranceway that you're trying to
15 create. If it was up to me I'd move that
16 tower further back so it's less pronounced.

17 MR. ZYSCOVICH: Well, I mean, this is
18 not the bridge this is the first block.
19 This is not taken from the bridge this is
20 taken from your first block after you've
21 crossed the bridge. This building is in
22 the foreground and it's in front of this --

23 MR. GAVCOVICH: You're -- at this
24 point where that car is it's not flat you
25 are coming down the bridge.

1 MR. HURWITZ: Yeah, it's not -- you're
2 on a bridge right now.

3 MR. ZYSCOVICH: Right, but it's a
4 fairly shallow bridge. But the point is
5 let's not argue the bridge, I'm just making
6 the point that you have, what is that a
7 five-story building on each side?

8 MR. GAVCOVICH: No, more than that.

9 MR. ZYSCOVICH: Six or seven. What we
10 have is a 45-foot high building, you know,
11 it's very traditional with American
12 architecture and it has the church on Main
13 Street, it has the steeple. I mean, we are
14 not really outside the bounds of what you
15 would normally expect to see. It's
16 appropriate in terms of the traditional
17 architecture, the traditional retail.

18 I guess I don't agree with that
19 comment. I think it's not a negative to
20 have that be part of the visualization
21 because it's simple, it's understated, it's
22 elegant and it doesn't take anything away
23 from the street experience. To try to push
24 it back and have the rest of the building
25 come forward at least in my view I think

1 it -- well, first of all, it's not what the
2 church would like to have happen, but
3 beyond that I think there's something kind
4 of nice about the change in the scale and
5 the announcement. I mean, it's not a
6 question of religion, I agree with you, it
7 doesn't matter what it is, I'm just saying
8 this is an iconic bit of the building that
9 defines a gateway in the most traditional
10 way. That's how gateways normally are
11 defined is by some kind of pronouncement.
12 So we could agree to disagree about that,
13 but that's why the only point I'm making is
14 it's not the first thing that you see when
15 you come across the bridge. You have your
16 peripheral vision occupied with bigger
17 buildings and you're looking down the
18 center of the street and you have your
19 retail experience and over time I'm
20 convinced that this is going to be a
21 thriving retail street, I have no doubt
22 about it.

23 MR. HURWITZ: Stanley.

24 MR. PRICE: Mr. Chairman, let me -- as
25 I said, this issue was raised with me for

1 the first time in determine what's a sign
2 and what's a architectural feature. Mike
3 Miller who's the town planner who I have a
4 lot of respect for has determined this to
5 be an architectural feature. I would like
6 the opportunity to talk to Mike about it,
7 but while I was hearing this presentation
8 this evening Frank and I went on our
9 computers and we found some recent United
10 States Supreme Court decision which talks
11 about content neutral signage and the
12 question is whether the town code is
13 content neutral. I believe that it is,
14 however, there seems to be an inconsistency
15 in the code since we only permit places of
16 public assembly on the second floor. We
17 have another provision of the sign code
18 that says no signage shall identify the use
19 on the second floor. There is an
20 inconsistency there and that inconsistency
21 troubles me in terms of the remover
22 standards which I eluded to earlier this
23 evening, and fortunately without delaying
24 this project if we determine this is a sign
25 it still has to come back to this board

1 because of the size. This is more than
2 30 square feet. At least the scale is, I
3 believe it is, Bernard, you can tell me the
4 measurement -- if this is a sign is this
5 greater than 30 square feet?

6 MR. ZYSCOVICH: I don't know, I'm not
7 sure it is because we went to great lengths
8 to make the cross narrow.

9 MR. PRICE: It looks more than five by
10 six.

11 MR. ZYSCOVICH: If you are measuring
12 the cross it's not. See, this is an
13 important distinction, what we're doing is
14 we're cutting a hole in the wall we're not
15 applying a sign.

16 MR. PRICE: You can cut a hole in the
17 wall indicating "Church by the Sea" but
18 that's still a sign. And what I would like
19 to do is I'd like to discuss with Mike at
20 greater length why he reached that
21 conclusion, and whatever that conclusion is
22 it has to come back to you anyway. I
23 believe you measure signs from the top to
24 the bottom and sideways and that's how you
25 determine, you don't just measure a -- and

1 once again the question is and what's
2 troubling me, is if this was not a cross,
3 if this was just three articulated lines
4 just for air passage through that wall is
5 that any less of an impact than a cross?
6 We all know what a cross symbolizes but the
7 three dashed lines which are carved into
8 the wall have the same impact, and I
9 suggest they have to come back to you with
10 a signage plan so whatever approvals you
11 get tonight could be subject to that future
12 thing. I would like counsel for the
13 applicant to try to enlighten me why they
14 believe this is not a sign.

15 Many jurisdictions which I deal with
16 specifically in their code exempt religious
17 symbols from the signage code, the town of
18 Bay Harbor does not do so. So we have a
19 lot of competing forces here and I'd like
20 the opportunity to give you a more thorough
21 analysis, but you don't have to do that
22 tonight, that could be passed onto when
23 they come back to you with the signage
24 package.

25 MR. BECHIK: I would like to also talk

1 about the architectural element and the
2 tower because for me that's a gateway
3 entrance to the city, so I would like to
4 understand the reasoning on the design how
5 you came up to put it on that corner as
6 opposed to, for example, right above the
7 loading entrance or why it's not aligned to
8 the other tower that you have for the
9 stairs, why they don't all align, I would
10 like to understand that architectural
11 process.

12 MR. ZYSCOVICH: I understand that.
13 First of all, it's not designated as a
14 gateway block so you can confirm that but
15 that's my understanding. And then secondly
16 as an architect we would never put the
17 tower that represents the symbol of the
18 building over the loading dock or behind
19 the building where you can't see it. It's
20 actually the opposite. The whole idea of
21 every single historic city that you go into
22 the campanile, the tower, the bell tower is
23 always on the corner, it's always visible,
24 it's always a symbol. And I agree with
25 Stanley that he needs the time to move

1 forward with this, but when you look at the
2 piece that says "Church by the Sea" it
3 complies, as we know, within the sign
4 ordinance. This is about taking the corner
5 of the building where the uses can only be
6 above the ground and creating an
7 architectural feature that in a -- from,
8 again, it depends on the eye of the
9 beholder, from a discreet point of view
10 creates a very simple architectural
11 statement that has nothing but light and
12 air inside of it and establishes the
13 purpose of the building.

14 If we were to take this and push it
15 somewhere else, then at what point do we
16 ever have an opportunity to create a
17 purpose of a building. I mean, me
18 personally, I'm Jewish, it's very
19 traditional to have arches on synagogues.
20 I can tell you many synagogues that have
21 been designed with shooting angles and
22 spires and, you know, the point is that
23 where as we're not here to differentiate or
24 go against the issue of use, I don't think
25 that the idea of a board like this or an

1 architectural review is to somehow diminish
2 the architectural feature that symbolizes
3 what happens in that use.

4 So from my point of view this is a
5 very clear and appropriate use of a tower
6 that basically symbolizes what's happening
7 in the bulk of the building. If we took it
8 away and we moved it away and we're not
9 allowed to have a sign in what way does the
10 church actually define it's presence on the
11 street. I don't think that there's a
12 precedent, frankly.

13 MR. BECHIK: I'm not talking about
14 removing that element but I seen some like
15 bell tower that sometimes in the corner,
16 sometimes are in the middle of the
17 structure so just wanted to understand --

18 MR. ZYSCOVICH: You're right, when
19 they're in the middle of the structure it's
20 because they're symmetrically placed in a
21 plaza. When they're on the corner of a
22 city block they're almost always on the
23 corner. This is not a symmetrical
24 architecture, we don't control the entire
25 block, so our point of view was let's set

1 it back, let's make it more discreet, back
2 to the idea of this rendering, let's have
3 it become contextual in terms of the
4 heights that are around it and -- but we
5 still as architects and also on behalf of
6 our client we want to be able to be sure
7 that we can recognize the purpose of the
8 building, and the traditional way to do
9 that for a church is to have a vertical
10 spire. But we've gone out of our way not
11 to be derivative, not to be historically
12 copying, you know, there is an element here
13 that's inventive and discreet and I think
14 that this is maybe what we thought the town
15 would be looking for, not something in your
16 face, not something that's screaming out at
17 you in terms of what it is, it's a very
18 simple discreet shape and form. Light is
19 going to hit it in the morning, it's going
20 to illuminate the back wall, at different
21 times of the day the light is going to come
22 through that void in different ways, it's
23 going to be attractive, it's going to be
24 full of light and it's simple.

25 I mean, we've been talking about it

1 all night, I don't know what else I can
2 tell you, but that was how it came about
3 because we spent a lot of time in the
4 office because, you know, the church has as
5 you know been looking for a home for a
6 while and there have been many
7 architectural expressions that are almost
8 baroque, almost, you know, unbelievably
9 decorative and we had discussions about it
10 and we felt that the best expression here
11 on the context of the town and the retail
12 corridor is to have a simple understated
13 discreet expression but we still need an
14 expression. That's how it came about.

15 MR. SKLAR: I personally like the idea
16 of the cross being a void in the wall. I
17 think that was a very ingenious way of
18 doing it and, in fact, that will reflect in
19 the back wall, the shadow of it or the sun
20 or whatever I think is a good idea. I see
21 in the elevations in April 1 I think that
22 proportions are going to be very important
23 even though we are not approving right now
24 whether it's a sign or not a sign, but the
25 proportions are different in the two

1 elevations, one right on top of the other,
2 the one that's color and the other one
3 that's --

4 MR. ZYSCOVICH: Yes.

5 MR. SKLAR: -- right.

6 MR. ZYSCOVICH: Well, I think what
7 you've identified is how many time we've
8 touched these drawings. So, you know,
9 you're right about that.

10 MR. SKLAR: I like the proportion of
11 the one on the bottom better than the one
12 on top.

13 MR. ZYSCOVICH: Which I think is
14 reflected here. The bottom, you mean the
15 longer one? You like the longer one
16 better?

17 MR. SKLAR: I do personally.

18 MR. ZYSCOVICH: Me too. My opinion
19 that's the one we've reflected here.

20 MR. SKLAR: I can't --

21 MR. ZYSCOVICH: Maybe it should be a
22 little bit longer. But we're not here for
23 that but we've had a lot of discussion why
24 it's there. And, you know, if you have any
25 other comments we're happy to take them.

1 MR. SKLAR: I would like the retail to
2 extend a little more towards the corner so
3 that we have more glass and more retail
4 facing Kane Concourse stopping before the
5 tower.

6 MR. ZYSCOVICH: I'm just trying to
7 understand. Let me just give you a
8 scenario. We're going to have a beautiful
9 interior for the stair and we were to take
10 this form and move it another five, six,
11 eight, whatever looks right, you just pull
12 this, I think, Oscar, that's what you're
13 saying is that rather than have this form
14 slide we proportion and come to that edge,
15 I think we could do that, I don't think it
16 takes away --

17 MS. HUBER: There's a variety of
18 reasons that that's not acceptable. Number
19 one, it takes away any lobby space or
20 entrance into the church and basically
21 dwells it down to next to nothing. And,
22 number two, to the extent that you
23 increased the square footage of the retail
24 that would require additional parking and
25 we're back into the same position with

1 needing a second level of parking so that
2 is not an acceptable condition to the
3 church.

4 MR. BECHIK: Just to clarify, for me I
5 think that's an emergency exit, that's not
6 an entrance to the church, and having front
7 corner usage as a emergency exit stair as
8 opposed to having more retail that the
9 community can use I am aligned on that
10 direction as well. I would like to see
11 possibly more retail on Kane Concourse.

12 MS. HUBER: I don't believe it's
13 within the purview of this board to dictate
14 that we provide additional square footage
15 of retail. They're here to deal with the
16 architecture and the design, not to
17 regulate the use of the building.

18 MR. PRICE: That may be so but they
19 have a right to comment on the
20 architectural design and that is part of
21 the architectural design. They can't force
22 you into a variance, if that's what you're
23 saying I agree with you, but what they're
24 trying to do is get more a situation of the
25 retail space.

1 MS. HUBER: They're trying to expand
2 the retail space.

3 MR. PRICE: There could be other ways
4 of doing it. Could round the corner off
5 without increasing the square footage of
6 the retail.

7 MS. HUBER: But that's not what
8 they're suggesting.

9 MR. PRICE: I agree with you they
10 cannot compel you to get into a variance
11 situation but I think the comment is --

12 MR. HURWITZ: I'm not going to speak
13 for anyone on the board but I can speak for
14 myself and I can tell you what I'm hearing,
15 it's not that anyone is trying to dictate
16 use and add square footage.

17 MR. ZYSCOVICH: Can I make a proposal
18 to you?

19 MR. HURWITZ: They're looking for more
20 of the retail feel which everyone commented
21 in the beginning.

22 MR. ZYSCOVICH: Here's an idea. I'm
23 going to just check with the church and
24 make sure we're okay.

25 Here's the idea, if we were to pull

1 this forward to this point we can take away
2 some small amount of square feet so we keep
3 the retail amount the same, on the back
4 where the loading dock is we just carve it
5 out and push this forward, we keep these
6 windows, we keep the bell tower and we pull
7 the retail to this point, we could agree to
8 that.

9 MR. GAVCOVICH: What do you think in
10 terms of the proportions of that corner
11 when you do that?

12 MR. ZYSCOVICH: I think it's good. I
13 think it's good because the stairway in
14 here, as you mentioned, Jerry, gets
15 complicated with this, you know, treatment.
16 The idea that we're removing some of the
17 blank wall and we're allowing this to
18 become the glass statement, this is the
19 statement of open space, I think it doesn't
20 hurt at all because if you look at the plan
21 this is already wrapping the building, and
22 to have it wrap a little more and increase
23 the amount of --

24 MR. GAVCOVICH: In terms of the
25 proportions of the corner and the open

1 space that corner creates it's going to,
2 you know, it's much smaller.

3 MR. ZYSCOVICH: I don't see it as much
4 smaller, I think we're talking about five
5 feet, six feet. I don't really see it much
6 smaller, I don't think you're going to have
7 a perceptible difference. You're still
8 going to see the vertical element behind
9 where the stair tower is coming through.
10 Listen, I respect this conversation and I
11 think that what Oscar is lobbying for is a
12 little more visibility of retail and I
13 think it doesn't damage our client as long
14 as it's part of the same conversation that
15 we retain the bell tower in the condition
16 and situation that we have it then I think
17 that we establish both objectives which is
18 a good thing if we can. I mean, keep in
19 mind we're down to talking about 40 square
20 feet of a building. Will there be a huge
21 change one way or another, I don't think
22 so, but what we would do with the facade is
23 we would just re-proportion the same glass
24 opening with the neutral peers and
25 everything would remain the same and it's

1 just an adjustment.

2 MR. HURWITZ: The signage was, it's
3 not part of this submission but I think you
4 mentioned that it was and it's specifically
5 called out as to the, I didn't see the
6 size, but the lettering, is the "Church by
7 the Sea" what is proposed?

8 MR. ZYSCOVICH: All we're saying is we
9 have considered it, it's not part of this
10 application because we need to be able to
11 move forward with the planning and design
12 of the building and we'll come back for
13 different signage approval so that we don't
14 have to go through that process at the same
15 time. You will have the same discretion
16 that you have today to have us do --

17 MR. HURWITZ: So it's specifically the
18 "Church by the Sea" lettering or whatever
19 you would put --

20 MR. ZYSCOVICH: Yes.

21 MR. HURWITZ: -- the name of the
22 building, whatever it may be, and, Stanley,
23 you were saying you want to have a
24 conversation as to whether or not this
25 cross is part of their signage or not?

1 MR. PRICE: Correct. I may want to
2 have a conversation with the manager, it
3 may require a change in the board
4 discretion the ordinance of the town, but
5 that will give us plenty of time --

6 MR. HURWITZ: For a second --

7 MR. PRICE: The planning function and
8 the time when they come back with the
9 signage plan, that could be three, four
10 months from now and that will still give us
11 plenty of time to do what we have to do.
12 I'm concerned about the rule implications.

13 MR. FRANKEL: So the issue of the
14 signage, the symbol is separate and apart
15 from the architectural tower.

16 MR. PRICE: You could move a motion
17 tonight, you could specifically provide
18 that you're not deciding the issue of the
19 symbol or the signage.

20 MR. FRANKEL: So the tower would be
21 possibly approved tonight but not the
22 signage that would be on it?

23 MR. PRICE: That's correct. But
24 that's up to the board.

25 MR. HURWITZ: It doesn't sound, and

1 I'm not trying to get involved in legal
2 issues, trust me, but it sounds like you're
3 not comfortable that we can approve that
4 sign. That has to come back as 100
5 percent, has to come back as part of the
6 signage package.

7 MR. PRICE: I always try to get a
8 decision of a board that is supportable in
9 court if it's challenged and I am not 100
10 percent comfortable today that if you make
11 a decision to treat it one way or another
12 whether it's defensible, it's an honest
13 opinion.

14 MR. HURWITZ: Okay. Any other
15 questions, comments, motions seeing as the
16 signage is coming back under a separate, so
17 there were some proposed changes to the
18 green wall, if you will, moving it closer
19 to the staircase to carry more of the
20 retail feel along Kane Concourse, have a
21 trellis over the back and any other
22 changes.

23 MR. GAVCOVICH: I know we just -- what
24 I thought more articulation or more
25 development of the east, primarily the east

1 side I think the trellis would help quite a
2 bit. It does seem very flat to me even
3 though there is some change in depth in the
4 different elevations, different floors, I
5 think that's something that needs to be
6 looked at further.

7 MR. HURWITZ: Okay. Comments,
8 questions, motions?

9 MR. GAVCOVICH: I'd like to see these
10 changes that are being proposed come back.

11 MR. HURWITZ: Bernard, would you be
12 amenable to making those changes and coming
13 back to --

14 MR. ZYSCOVICH: I mean, no disrespect
15 intended, I've been doing this a long time,
16 I've been in your position in every city in
17 this community. To make the changes is no
18 problem. To really ask us to come back to
19 insert the same trellis that we're showing
20 you on the other facade and to move the
21 wall five feet I think is a bit of a reach
22 in my humble opinion. I don't see why you
23 couldn't allow us to work with staff to
24 ensure that that is done. So, I mean, if
25 you -- you're the board, we know how the

1 system works, but, I mean, truthfully these
2 are minor changes, we're happy to make them
3 and you can rely on us to make them, if you
4 make a condition I'm sure that your staff
5 will ensure that it happens, but, I mean,
6 really you want us to come back for the --
7 I mean, just seems like a lot to me to come
8 back for. You know, like I said, I tell
9 you the truth, if I were in your shoes I
10 wouldn't make you come back, just say
11 please do this and ensure that it happens
12 because what you're asking for is
13 relatively minor in the scheme of all these
14 things.

15 MR. BECHIK: Something I would like to
16 see is how the bell tower element would
17 look or pointing in the east facade how it
18 would look where it is, how it would look
19 in the middle of the building, how it would
20 look right above the lobby. I would like
21 to see how those options would look because
22 some board members mentioned they want to
23 research that to make an appreciation from
24 the retail and so I would like to see some
25 options on the tower bell how they would

1 look on the --

2 MR. GAVCOVICH: I'm not sure that we
3 can ask the applicant to come back with
4 options. They've got to come back with a
5 design that they think is most appropriate
6 and I guess satisfies our comments and for
7 them to, you know, we approve. I mean,
8 it's not, you know, make them come with
9 different options, we have different
10 opinions and it's not going to go anywhere.
11 I mean, if there's something -- I know what
12 we talked about, like you said, is breaking
13 that tower from the facade of the stair,
14 whether it's a shift one way or another
15 would also be important. The reason for
16 coming back for maybe a minor shift, I'm
17 not certain if that increase in retail is
18 going to be an improvement on that corner,
19 I'm not sure that's best that we --

20 MR. ZYSCOVICH: Well, listen, I mean,
21 this is what we designed, Oscar made some
22 good points but since the two of you don't
23 agree there's no way we're going to have a
24 consensus to please both of you. I think
25 everyone here has a bit of a minor

1 deviation in terms of what they're talking
2 about, but what we're after is something
3 where you can agree that this project
4 addresses, you know, the intent of the
5 code, that it meets the steady guidelines.
6 I mean, your criteria are much more broad
7 than this conversation has been. If you
8 want to tell us when we come back with the
9 tower sign with the cross carved out that
10 you would feel better if it moves --

11 MR. GAVCOVICH: Well --

12 MR. ZYSCOVICH: Let me just finish.
13 If we could move it here or there as long
14 as the church agrees, we're talking about,
15 you know, nuance, I think we can always
16 work with you on nuance, but I'm not really
17 clear what Alan is asking when he says the
18 middle of the building because we would not
19 agree to move it off the corner. If what
20 you're asking is should we have a reveal
21 between the tower and the building, I mean,
22 I don't know how deeply you want to go into
23 this design review, but we would not agree
24 to moving it off the corner. This is the
25 nature of the building so, I mean, you're

1 the board as I keep saying but we have, I
2 think, proven our -- the degree and the
3 depth to which we've taken these
4 considerations and, you know, when we come
5 back for signs you can deal with the issue
6 of where the cross occurs in the wall and
7 all the other issues, but if you want it to
8 be this proportion and one of the other
9 board members wants the retail to move five
10 feet more, you know, you can tell us what
11 you would like but I can guarantee you I
12 already know what the rendering is going to
13 look like when I bring it back. We're all
14 design professionals that's how you got on
15 the board so I don't know --

16 MR. HURWITZ: I understand your
17 hesitation to moving it towards the middle
18 of the building, but you mentioned a reveal
19 or moving it even slightly more closer to
20 where the entrance is which is not really
21 on the corner but sort of offset, is that
22 something you have an architectural problem
23 with or no?

24 MR. ZYSCOVICH: I think if we saw this
25 as a mass and we took this and shifted it

1 slightly perceptively, not physically,
2 through a reveal that accomplish a shadow
3 line that reflects the edge of that wall
4 coming all the way down, I think that could
5 be very nice. To me that's why I'm an
6 architect, I mean, that's what we do we
7 design. If you want to tell me where every
8 reveal should go and all of that I think
9 that's certainly your prerogative, but if
10 you leave it up to us as this is as a basic
11 concept that you can support I promise you
12 that we're not going to, you know, we would
13 never do that neither would you, this is a
14 conceptual drawing for the purpose of
15 identifying what are the criteria and the
16 code, and today we've talked about very,
17 very, you know, in detail about details
18 that are not designed at this level. So I
19 think that you don't need to worry about it
20 is what I'm trying to tell you, but I don't
21 really want to say it in those words
22 because it means you have to rely on my own
23 ability and own talent. But I think that
24 the building has been studied and the tower
25 from my framework your approval would allow

1 us to continue the design intent and the
2 detailing so that we could put in reveals
3 and do studies that we will certainly do,
4 but, you know, short of that I don't really
5 know what else to offer.

6 We're not moving it, we already said
7 we're not moving. The conversation we're
8 having about is would it be better for the
9 tower to appear as if it's somehow floating
10 off the edge of the building.

11 MR. GAVCOVICH: The truth is and the
12 point has been made that's the right place
13 to put the tower. Whether it's one foot,
14 two feet, five feet, the corner is the
15 place for the tower.

16 MR. ZYSCOVICH: Maybe you could do
17 your motion that way, have your vote
18 according to that idea, maybe break your
19 vote down to two or three.

20 MR. GAVCOVICH: I had other issues
21 that, again, I'm concerned about that leads
22 to elevation and the extent of parking
23 that's along the east facade, you know, and
24 that's -- I'm not sure that you're going to
25 satisfy those concerns. I mean, hopefully

1 the facade you will be able to but I'd like
2 to see it.

3
4 MR. ZYSCOVICH: Make a motion.

5 MS. HUBER: I have to interject from a
6 legal perspective. I believe that the
7 board at this point in time is starting to
8 go beyond a little bit beyond what the
9 purview of the code and what it provides,
10 and again we've met the criteria of the
11 code, your staff has stated we met the
12 criteria of the code, I think to defer us
13 to come back on two minor conditions is not
14 only unfair but not in compliance with the
15 code that you can approve subject to
16 conditions, you've made those two
17 conditions very clear, but I think to defer
18 their approval to come back after being
19 here for three-and-a-half hours and
20 discussing this exhaustively is an unfair
21 burden to the church.

22 MR. HURWITZ: Okay. Let's try to wrap
23 up then. Is there a motion with conditions
24 or without conditions, or do we need to see
25 them come back to make those changes?

1 Anybody?

2 MR. BECHIK: I would like to see
3 how -- I don't think they're minor changes,
4 I would like to see with the changes we're
5 proposing how things would look.

6 MR. HURWITZ: Does anyone feel
7 differently? Okay. I'm comfortable, I
8 trust your judgment, I think you developed
9 a beautiful building and I would be
10 comfortable with the changes but I need a
11 motion, so if there's no motion then we're
12 going have to see it. I want to make sure
13 we're clear though because I think there
14 was more discussed than just the moving of
15 the wall and adding a trellis. Jerry,
16 you've mentioned a few other things, do you
17 want to just -- and I don't want to make
18 you go through the whole thing but I do
19 want to make sure because I don't think
20 they're being asked to come back for the
21 moving of a wall for like five feet.

22 MR. GAVCOVICH: Some of these things
23 aren't significant in terms of the
24 architecture like the sidewalk on the south
25 side. I'd like to see a little larger

1 drawing scale of the drawing again just so
2 we see some better detail and plane and
3 elevation. We talked about we're relying
4 on, you know, one of the -- like I said,
5 one of the nice things of the retail facade
6 is the depth of those what are called
7 storefront, the storefront, you don't see
8 in the plan, we're relying on you to if we
9 don't see it in the drawing to develop it
10 that way. You're not at staff level,
11 they're not going to -- we don't have the
12 staff that you may be used to in some other
13 cities where they have a larger staff and
14 they can get into some of the detail of the
15 architecture, so I think it's important for
16 us to see it because there's not another
17 level.

18 MR. ZYSCOVICH: Just to save myself
19 some grief, I mean, the point is this
20 rendering is part of the submission, we
21 could think of no better way to show you
22 what our intent is than the rendering.
23 This is what we're going to do, we're going
24 to draw you a detail that shows this.

25 MR. HURWITZ: Okay. I don't hear a

1 motion, is there any other comments?

2 MR. BECHIK: I would like to see how
3 the bell tower would look here at the
4 corner but where the entrance is.

5 MR. HURWITZ: Offset. It's not in the
6 middle of the building, off the corner but
7 offset.

8 MR. HURWITZ: You want to wrap up or
9 any other comments? Okay.

10 MR. ZYSCOVICH: I mean, you know,
11 sounds like you made your decision, I have
12 to say I don't agree with it but that's not
13 my purview it's yours, we will come back
14 with these modifications and it's going to
15 look a whole lot like it does now with the
16 imagination that you can certainly do on
17 your own. So hopefully it will be a short
18 meeting. This has been a whole lot of
19 conversation about --

20 MR. GAVCOVICH: It's a significant
21 building and significant property, I guess,
22 for the city that's why, you know, we've
23 talked a lot about it.

24 MR. ZYSCOVICH: No, listen, I think
25 you have every right to ask all the details

1 you want, at this point I'm just a little
2 bit surprised by having to come back for
3 the comments that I've heard.

4 MR. HURWITZ: Thank you everyone's
5 time.

6 MS. HUBER: Is there going to be a
7 specific motion with all of the things you
8 want us to bring back?

9 MR. HURWITZ: There was no motion and
10 I think everything was brought, if you feel
11 comfortable you've got all the feedback, I
12 think that was pretty clear.

13 MR. ZYSCOVICH: By example, I don't
14 know how the city feels about space, I
15 don't know what we're supposed to draw.

16 MR. HURWITZ: For the sidewalk by
17 the --

18 MR. ZYSCOVICH: By the parking.

19 MR. HURWITZ: Fair question. Did you
20 have a final opinion about that because it
21 seems like they're comfortable and flexible
22 to add the sidewalk back in if the city
23 would allow them to do that.

24 MR. WASON: It's up to you, we like
25 the landscaping.

1 MR. GAVCOVICH: It's really just where
2 the parking, the off street parking is, on
3 street parking is. You probably don't need
4 to take it all away because definitely
5 you're in front of the parking lot and you
6 can walk. I just --

7 MR. ZYSCOVICH: We just don't have the
8 ability to vary from the ordinance, we have
9 a certain amount of landscaping we have to
10 provide, this is how we can do it.

11 MR. GAVCOVICH: In that area you're
12 not providing parking on the street.

13 MR. ZYSCOVICH: Right. You tell us
14 and we'll change the plan otherwise we
15 leave it the same way or we'll draw you
16 another plan you can pick next time,
17 whatever you want, I'm just saying --

18 MR. HURWITZ: Tell us --

19 MR. PRICE: Let me get some
20 clarification. What you're suggesting is
21 going to require them to eliminate some
22 landscaping?

23 MR. GAVCOVICH: No, actually what I'm
24 saying is it would eliminate the on street
25 parking space.

1 MS. HUBER: I guess where the
2 confusion is is I don't believe that this
3 board has the authority to require us to
4 place a sidewalk on public property when
5 the manager is saying they want us to
6 retain that off street parking space.

7 MR. PRICE: They could suggest it to
8 the manager, the manager doesn't
9 necessarily have to follow that but they
10 can suggest it.

11 MR. HURWITZ: Ron, you suggested that
12 the parking -- that one or two spaces are
13 not used.

14 MR. GAVCOVICH: They're not used much,
15 both of them.

16 MR. HURWITZ: I don't have a strong
17 opinion about it, so, Jerry, why don't
18 you -- unless anyone has a strong opinion
19 about it.

20 MR. GAVCOVICH: It's not going to be
21 the difference in approval or not approval
22 but it's just something that I'd like.

23 MR. HURWITZ: I don't think we should.

24 MR. PRICE: Could we get an
25 articulation exactly what we're looking for

1 at the next meeting, it's too open ended
2 right now, we need to --

3 MR. HURWITZ: I don't think it was
4 open ended at all but I'll start with a few
5 items and work them out, of course, but
6 moving the -- extending the feel of the
7 retail, not necessarily requiring you to
8 add any square footage, it appears you're
9 amenable to that very easily, so extend the
10 retail towards the corner to have more Kane
11 Concourse, to not necessarily relocate but
12 offset the tower if you were able to do
13 that, to have it feel like it was sort of
14 along the East Bay Harbor Drive.

15 MR. ZYSCOVICH: Let's talk about that
16 because I don't think we're willing to do
17 that.

18 MR. HURWITZ: Okay.

19 MR. ZYSCOVICH: The tower as I
20 understood it was still on the corner.

21 MR. HURWITZ: Okay.

22 MR. ZYSCOVICH: From any perspective
23 it will still be on the corner, but we
24 don't want the tower to be located with
25 this mass being here and the tower being

1 pushed back. What I was going to look at
2 is moving the tower eastward, northward,
3 reveals, I'm talking about articulation,
4 but I don't think we have an agreement that
5 we're ready to move the tower off the
6 corner so we better not stop talking about
7 that because that's not one of the things
8 we're going to come back with. And you've
9 all said you like the placement on the
10 conner so I took it to mean articulation.

11 MR. HURWITZ: Again I can only speak
12 for one, I'm fine with articulation and I'm
13 not suggesting, I'm not trying to bury the
14 tower or get rid of anything.

15 MR. ZYSCOVICH: Like --

16 MR. SKLAR: Moving the exit door
17 hopefully to --

18 MR. ZYSCOVICH: Yes, we will look at
19 that. We will also look at the western
20 stair so that we can make that a better
21 situation, see if we could resolve it, but
22 --

23 MR. SKLAR: And making that loggia
24 more pedestrian friendly by opening it the
25 other way.

1 MR. ZYSCOVICH: Yes, from the garage,
2 taking out the door. I guess that's my
3 point, really you want me to come back for
4 all of this.

5 MR. HURWITZ: I understood your
6 perspective.

7 MR. SKLAR: Maybe we can see it better
8 by the other members.

9 MR. ZYSCOVICH: But you are the board,
10 I mean --

11 MR. GAVCOVICH: From my perspective --

12 MR. SKLAR: Also from the east
13 elevation.

14 MR. GAVCOVICH: To me some of the
15 biggest issues is the east side, I guess
16 somewhat of the south side, the east.
17 There are some things you're going to --

18 MR. ZYSCOVICH: We spoke about --

19 MR. GAVCOVICH: -- not going to
20 satisfy with me with the parking on the
21 ground floor that extends all the way that
22 length.

23 MR. ZYSCOVICH: I don't understand
24 that comment.

25 MR. GAVCOVICH: You have parking

1 taking so much of the East Bay Harbor
2 Drive.

3 MR. ZYSCOVICH: But that's our
4 parking, we need --

5 MR. GAVCOVICH: I understand, to me
6 that's an issue and it's -- I don't think
7 it's appropriate development of East Bay
8 Harbor Drive on that lot the extent of the
9 parking there. You're not going to come
10 back clearly with changing that but that's
11 something that I'd prefer to see.

12 MR. ZYSCOVICH: Are you talking about
13 the use?

14 MR. GAVCOVICH: Yes.

15 MR. ZYSCOVICH: I thought we had the
16 conversation.

17 MR. GAVCOVICH: It doesn't mean it
18 satisfies my concern. I mean, I understand
19 why you're doing it and what's preventing
20 you from doing it, still it doesn't mean it
21 went away for me.

22 MR. ZYSCOVICH: We could put a mural
23 there, we can have a different articulation
24 but we can't reduce our parking to the
25 point where we no longer have a parking

1 structure that works, nor do we want to
2 encourage, you know, artificially elevating
3 the building, so there's nothing in your
4 code that requires us to have an active
5 use. I think your role here is an
6 aesthetic role and I think if you can say
7 to us that you don't like the facade, you
8 know, please help us understand why, but
9 there's no way that we can come back with
10 uses on East Bay Harbor Drive. They will
11 never work, we won't build them and it
12 makes no sense. So I don't -- that's my
13 point, I don't understand what you really
14 want us to be able to change that we're
15 going to be able to change.

16 MR. SKLAR: Is this going to be valet
17 parking at any point?

18 MR. ZYSCOVICH: No, it's self parking.
19 The tandem is for the church to use so they
20 can double park their staff and, you know,
21 fit in more cars. But if you ask us to do
22 something it needs to be either because the
23 code requires it or because you articulate
24 something you want us to change.

25 MR. GAVCOVICH: It's beyond the use,

1 it's not that I'm trying to dictate a use,
2 it's what I think is appropriate for that
3 block and it should be an improvement of
4 what's there now with lack of -- I mean use
5 of that block along East Bay Harbor Drive.
6 Again, I'm one person.

7 MR. ZYSCOVICH: If I'm remembering the
8 project across the street well it doesn't
9 do that, so the idea of the context
10 doesn't --

11 MR. GAVCOVICH: It's a little
12 different, there's no sidewalk there.

13 MR. HURWITZ: Are you talking about
14 the office building?

15 MR. ZYSCOVICH: Yeah.

16 MR. HURWITZ: The last proposed was
17 not passed. Are you talking about the
18 older --

19 MR. ZYSCOVICH: I'm talking about the
20 older one, the original --

21 MR. GAVCOVICH: The original --

22 MR. ZYSCOVICH: It had driveways, it
23 had curb cuts, it had underground parking,
24 it had nothing but interruptions in the
25 pedestrian flow. What we have is we're

1 dedicating land, we're increasing the
2 sidewalk, we're setting the building back,
3 we have landscaping. You know, we're -- I
4 don't know what else we could do, Jerry, I
5 mean, seriously, I don't -- there's no --
6 we don't -- it's not a commercial building
7 in terms of the use, we have no ability to
8 put a store there, it will just die. I
9 don't know what you're really asking us
10 for, your staff reviewed it and they found
11 it all compatible. So, again, that's
12 another item that I'm raising we need some
13 better articulation.

14 MR. GAVCOVICH: They don't review
15 compatibility.

16 MR. BECHIK: Everything that gets here
17 is not up to code.

18 MR. ZYSCOVICH: I think do review it,
19 that's one of your criteria. So, anyway, I
20 don't want to have a fight about this, you
21 know, you raised certain issues that we can
22 do and there are other things that I don't
23 want you to have an unrealistic
24 expectation. We're not going be able to
25 come back with different uses along East

1 Bay Drive or severely different type of
2 articulation. We agree with your comments
3 about the trellis, we agree with your
4 comments about, you know, some of the other
5 issues that we've talked about, increasing
6 the length of the retail and, you know,
7 whatever we can do we're happy to do, but I
8 don't understand why you're asking us to do
9 things that we're not going to be able to
10 resolve.

11 MR. GAVCOVICH: I'm just expressing my
12 opinion.

13 MR. ZYSCOVICH: Your opinion. Okay.
14 So you're disappointed.

15 MR. GAVCOVICH: Yeah, I would like to
16 see something more than a parking garage on
17 that extent of land.

18 MS. HUBER: Can you be more specific
19 of what you'd like to see?

20 MR. HURWITZ: How wide is the sidewalk
21 there?

22
23 MS. HUBER: Six feet.

24 MR. ZYSCOVICH: Six feet plus
25 landscaping.

1 MR. HURWITZ: I don't have a problem
2 with that element of it. I mean, we talked
3 about the facade and we talked about adding
4 the, you know, everything that we talked
5 about, you know, I thought we're happy with
6 adjustments to it. I don't know that I
7 need to see -- across the street is
8 basically a grid, across the street is curb
9 cuts and driveways, residential and office
10 buildings.

11 MR. GAVCOVICH: It's different because
12 you're not really seeing the garage, you're
13 seeing curb cuts and driveways and, you
14 know, we have some issues with that. It's
15 different than the wall that's -- I don't
16 know what that length is of --

17 MS. HUBER: You don't see the parking
18 garage. What you see is landscaping,
19 that's all you see in that area. I guess
20 that's what I'm trying to understand is
21 what you want to see. It's very difficult
22 for me to go back to the church and say,
23 because there's a board of, you know, 14
24 members that I'm going to go back and
25 they're going to say, okay, what happened,

1 I'm going to say they deferred us and asked
2 us to come back, they don't like what's
3 along East Bay Harbor, well, what would
4 they like to see, I don't know.

5 MR. GAVCOVICH: I'd like to see a lot
6 more active use.

7 MS. HUBER: But what specifically
8 would you like to see, a retail use?

9 MR. GAVCOVICH: If you can have retail
10 use that would be great.

11 MS. HUBER: What retail is going to
12 survive along East Bay Harbor Drive?

13 MR. GAVCOVICH: There's some retails
14 on Bay Harbor Terrace that survived. It
15 could be a restaurant. There's an office
16 on East Bay Harbor Drive.

17 MS. HUBER: So then under that set of
18 circumstance then you'd like us to make a
19 two story parking deck and elevate the
20 building because that's the only way to
21 make that happen. You can't extend the
22 retail along Kane and then extend a use
23 along East Bay Harbor without requiring
24 additional parking. There's no way for
25 that to happen so I guess I'm a little

1 perplexed as to what specifically you're
2 asking us. If you're asking to put a use
3 all the way along East Bay Harbor I'm
4 saying respectfully that I don't believe
5 that that's within your jurisdiction and,
6 number two, the church will not agree to
7 that.

8 MR. GAVCOVICH: I think it's in our
9 jurisdiction to review what we think is
10 compatible with the area.

11 MS. HUBER: Not the use, the
12 architectural features.

13 MR. GAVCOVICH: The lack of any use or
14 lack of any articulation where -- along
15 that street is --

16 MR. HURWITZ: Jerry, would you be
17 happy with a different facade, a different
18 articulation, a different treatment of that
19 stretch, or is it --

20 MR. GAVCOVICH: We talked about the
21 facade that I wasn't satisfied with, it was
22 one of my first comments, you know, the
23 Kane Concourse side is much nicer than the
24 eastern side. It's not necessarily that I
25 want to see, you know, decorative elements

1 added to that facade, it's just that the
2 scale proportion of the size is much nicer
3 on Kane Concourse side than the east side.

4 MS. HUBER: The difference is East Bay
5 Harbor is covered with beautiful
6 landscaping that you don't have on Kane
7 Concourse because visually you want people
8 to see the store windows which is why the
9 transparency is a requirement, so what you
10 see is beautiful landscape set back at
11 great length designed by Raymond Jungles
12 which is amazing so I guess you don't see a
13 parking garage, you see because of the
14 setbacks and because of the sidewalk and
15 because of the vast landscaping that's what
16 you see.

17 MR. GAVCOVICH: I'm not sure that in
18 my opinion that that landscape strip is the
19 appropriate use along East Bay Harbor
20 Drive, if it was further in off of Kane
21 Concourse then it's a little different.

22 MS. HUBER: But East Bay Harbor Drive
23 has specific landscape requirements for
24 East Bay Harbor Drive, that's the conflict.
25 I think part of what's -- and Mike Miller

1 is here and I'm going to ask him to help me
2 out here because one of the specific
3 provisions in your code have landscape
4 requirements for East Bay Harbor Drive, for
5 95th Street, for Kane Concourse, we have to
6 comply with those landscape requirements
7 and so to say you don't think we should
8 have landscape instead we should have a
9 more active use with windows, well, then we
10 can't comply with the landscape
11 requirements nor can we comply with
12 parking, so you're asking for something
13 that is impossible for us to provide.

14 MR. GAVCOVICH: You're saying can't
15 comply with parking, you can't comply the
16 way it's designed whether it's a taller
17 building or whether you introduce another
18 level of parking within that or you reduce
19 the building so that you have less parking
20 requirement. You can't comply, you know,
21 it's just, you know, I can't tell the
22 answer in terms of the parking, I'm sorry,
23 the landscaping because I'm not sure about
24 what the requirement is for East Bay Harbor
25 Drive, but like you said Mike Miller is

1 here, he can answer that question, but it's
2 my opinion in terms of coming around the
3 corner of Kane Concourse and it being a
4 pretty important street at least, you know,
5 coming around the corner that there should
6 be better development along that sidewalk.

7 MS. HUBER: Well, I wholeheartedly
8 respect your opinion, I'm advising you that
9 we cannot legally comply with what you're
10 asking us to do.

11 MR. HURWITZ: I think for now we're
12 going to have to agree to disagree, I don't
13 think this is going -- batting heads on
14 this issue is going to get us anywhere.

15 MS. HUBER: What I would like to know
16 is whether or not there is consensus on the
17 board on that point and if there is then
18 that's something we need to figure out how
19 to resolve, if that's only one member's
20 concern or opinion then --

21 MR. HURWITZ: It's a fair question. I
22 don't see -- I don't feel a need to have
23 that street activated with other uses, I
24 don't --

25 MR. PRICE: If I may intervene,

1 Mr. Chairman, the power of this board is to
2 review the architectural renderings of a
3 building. The power of this board does not
4 include rewriting the code, and I think
5 we're entitled to get an opinion from
6 Mr. Miller if that is a mandatory landscape
7 area, then if that's the answer to that
8 question I don't think we can impose uses
9 on that roadway. Also from my
10 understanding reading the staff report the
11 building complies with the zoning code of
12 the town, and it's not within the purview
13 of the board to tell them to build a
14 smaller building. They can discuss the
15 architectural, which is appropriate, and
16 you have great leeway in that regard, but
17 you can't change the substantive provisions
18 of the code.

19 MR. MILLER: Good evening. Trying to
20 cover two meetings in one. The code does
21 require on East Bay Harbor Drive that there
22 is an average five-foot landscape strip,
23 which means the way we wrote it is
24 congealed so 0 in some places and a little
25 bit more, the idea is to get foundation,

1 plant things up against the building. Kane
2 Concourse has the wide plaza so that's a
3 fixed commodity, but on the side streets
4 the way we wrote that section of the code
5 in the B District was to accommodate that,
6 and then up to 75 percent of that width has
7 to be landscaping. The idea was that if
8 there was store fronts, the door, the
9 showcase window, you know, come right up to
10 the window, so you have small planters with
11 the idea to get something against the
12 building.

13 I mean, there's all kinds -- you can
14 go in all different directions on -- there
15 was one project talking about the showcase
16 windows, you know, changing the facade a
17 little bit, that kind of thing. Just my
18 idea.

19 MR. HURWITZ: Thank you. I think we
20 got to wrap it up. You're having a one on
21 one. Do you want to ask the board any
22 other questions, you're welcome to, but
23 we're not talking about this as was
24 mentioned. I think Jerry's concern about
25 the facade, we're not here to talk about

1 use and that's been clear, so, you know,
2 unless you want to continue that
3 conversation, I don't --

4 MS. HUBER: No. What I'm trying to
5 gain is an understanding from the board
6 with a consensus what we're required to
7 bring back to you so that when we come back
8 it's very clear that we can get an
9 approval. Right now just hearing one
10 member wants one thing and one member wants
11 another doesn't necessarily send a clear
12 message to what the consensus of the board
13 is in order to gain approval when we come
14 back.

15 MR. HURWITZ: Let me respond. I
16 appreciate where you're coming from, I
17 appreciate the time, we're all here
18 together, but I don't think it's been a
19 haphazard five people, six people, whatever
20 it is, giving six different opinions.
21 There was definitely consensus about
22 several things that the board wanted to
23 see. The question at hand was whether or
24 not it was something that we could approve
25 on condition they needed to see again.

1 I personally am okay approving on
2 condition, I don't have a motion from the
3 board, but all the things that were
4 discussed were things that I think the
5 architect clearly understands except for
6 one singular issue where one of our board
7 members has an opinion, that's fine. If
8 anybody else wants to reiterate that they
9 share that opinion or don't so there's
10 clarity for the record and clarity for them
11 on coming back, that's a fair question. I
12 don't think that -- I don't think it's been
13 four hours of everyone shouting out
14 different things, I think it's been very
15 clear.

16 MS. HUBER: That's not what I said.

17 MR. HURWITZ: I just want to make sure
18 so you can get the right feedback.

19 MR. FRANKEL: I would prefer to have
20 that type of use, I understand the
21 limitations of the code, and in terms of
22 East Bay Harbor Drive I would like to see
23 the same sort of detail that was put into
24 Kane Concourse on East Bay Harbor Drive,
25 because right now I look at it I just see a

1 big mess.

2 MR. HURWITZ: I think it's very clear
3 that everyone has shared that concern about
4 the East Bay Harbor side.

5 MR. ZYSCOVICH: I understand, that's
6 some direction.

7 MR. HURWITZ: Whether we're talking
8 about use or not, we're not talking about
9 some use, I think that you clearly
10 understood from various people's
11 perspective that they'd like to see
12 something different there.

13 MR. ZYSCOVICH: I'm telling you what
14 I'm hearing so you know, basically
15 perforated metal mesh and articulation
16 similar to Kane Concourse with no use
17 behind it and take our voids and insert
18 some of this mesh stuff and we'll give you
19 more of that and we'll detail it.

20 MR. HURWITZ: And a trellis.

21 MR. ZYSCOVICH: That's a helpful
22 direction, you know, it's not how I see the
23 building but if you want that to reflect
24 the corner, that's fine, we can do that.

25 MR. HURWITZ: Thank you very much.

1 Are there any other questions or comments,
2 I think we should wrap it up? No? Okay.

3 MR. PRICE: I think you need a motion
4 to defer this to the next meeting.

5 MR. HURWITZ: I'm happy do that, we've
6 never done that before.

7 MR. PRICE: It's a problementry
8 procedure.

9 MR. HURWITZ: Thanks for commenting.

10 MR. FRANKEL: I make motion to defer.

11 MR. HURWITZ: Make a motion, is there
12 a second?

13 MR. GAVCOVICH: Second.

14 MR. HURWITZ: All in favor?

15 (All say aye.)

16 MR. HURWITZ: Opposed? Okay. Thank
17 you very much.

18 (Thereupon, the meeting was concluded
19 at 11:00 p.m.)

20

21

22

23

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25

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06/27/2016

Church by the Sea-1000 Kane Bay Harbor Islands

PZB Narrative & Revisions: Architect Submitted Plans June 14, 2016

Based on the Planning and Zoning Meeting dated May 17, 2016, we are providing the following changes:

Floor Plans:

- 1-Increased Retail Frontage Facing Kane Concourse, and removed NW exit stair towards Kane Concourse. Retail frontage increased from 125'-9" to 139'-7". Retail GLA increased from 8,474 sf to 8,500 sf. Overall increase in GFA due to the fact that we enclosed the second and third level West corridors and also increase Retail footprint. (Total increase +/-5K)
- 2- Reconfigured Parking/Loading Garage to accommodate 3 more Accessible spaces and increase the total parking count by one space for a total of 126 spaces (including 5 Handicap.) Increased the elevation grade of the garage by 1 foot to avoid flooding issues
- 3-Added Gate Access connecting Garage to Loggia facing East Bay Harbor and connecting to Kane concourse. Gate is to remain open while the garage is in operating hours. Refer to sheet A-705
- 4- Added double doors in the NW and SE Exit Stairs as requested.
- 5-Provided continuation of sidewalk south of the small parking lot facing 95 street and added landscape at the corner of 95 street and alley – The sidewalk on the north side of the 95th St. was extended across the alley to the adjacent parking lot.
- 6-Reconfiguration of the third level interior space and roof plan
- 7-Increased the overall height of the Mechanical and Roof of the Sanctuary by 2 ft. This allows for clearstory windows in the North Facing wall of the Sanctuary. Refer to sheet A-302 Section 2. Still overall maximum height proposed did not change (top of steeple)
- 8- We are providing a thicker, deeper wall on Kane Concourse (2ft wide) with the perforated metal screen and glass recessed at least 1'-6", intentionally to reflect a design intent.. Please refer to sheet A-102
- 9- At the SW corner of the project we are adding landscape (palms) facing 95 street. Landscape plans and sheet A-101 reflect those changes
- 10- A shadow study has been produced to show the shadow or non-shadow/reflection of the cross in the steeple in reference to the context. Refer to Sheet A-705. It shows the critical dates of summer and winter solstices at 9am, 2pm and 5pm
We will have an animation to be shown on the day of the hearing showing the entire days at those dates, if needed.

Elevations:

Kane Concourse

Reconfigured the Retail façade to incorporate the increase in retail frontage and removed stair doors facing Kane Concourse. Also added windows at the NE corner (CBTS Lobby)

East Bay Harbor

1-Addition of Trellis on the second level as per comments of P & Z

2-Addition of storefront windows at the second level facing the outdoor terrace and trellis. Reconfigured NE loggia openings and added perforated metal screen panels above the proposed eyebrow.

3- Reduction of the overall height of the SE Stair. Addition of Wavy Score lines and Stained Glass at the SE stair. Addition of mosaic pattern in the middle panels of the vertical windows along NE East Bay Harbor and SE Stair

4-The Cross in the Steeple was modified to a more vertical proportions as per P & Z comments

95th Street

1-Reduction of overall height of SE stair at the corner of 95 street and East Bay Harbor. Addition of Wavy Score lines and Stained Glass at the SE stair. Addition of mosaic pattern in the middle panels of the vertical windows at the SE Stair

2-Addition of Landscape Palms at the SW corner of the site

Interior Alley Elevation

1-Enclosed 2nd and 3rd level corridors facing the alley and added vertical windows on the third level. Overall reconfiguration of the facade

2- Addition of Wavy Score lines and Stained Glass at the SW stair. Addition of mosaic pattern in the middle panels of the vertical windows facing the alley. .

From: Scott Marks [mailto:smarks@michaelmillerplanning.com]

Sent: Tuesday, June 28, 2016 3:04 PM

To: Roberto Bezold <roberto@zyscovich.com>

Cc: Alba Chang (achang@bayharborislands.net) <achang@bayharborislands.net>; Ayanidys J. Martinez (amartinez@bayharborislands.net) <amartinez@bayharborislands.net>; Ronald J. Wasson (rwasson@bayharborislands.net) <rwasson@bayharborislands.net>; Marlene Siegel (msiegel@bayharborislands.net) <msiegel@bayharborislands.net>; Dale Lee <dlee@bayharborislands.net>

Subject: RE: 1000 kane

Roberto,

MMPA is ok with the plans submitted. Please ensure that a copy of the narrative (attached) is included in each set of plans.

Thanks,

Scott D. Marks

Community Planner

Michael Miller Planning Associates, Inc.

Phone: 954-757-9909

Email: SMarks@MichaelMillerPlanning.com

**TOWN OF BAY HARBOR ISLANDS
COMMUNITY DEVELOPMENT
MEMORANDUM**

To: Planning and Zoning Board
Town of Bay Harbor Islands

From: Scott D. Marks *SDM*
Community Planner
MMPA-Consultant Town Planner

Date: July 12th, 2016

Subject: Proposed Single-Family Residence
9911 W. Broadview Drive
Bay Harbor Islands Acct. No.: MB2016-73
MMPA Acct. No.: 01-0702-1039

RECOMMENDED ACTION

MMPA recommends the Planning and Zoning Board review the contents of this staff report, the latest revised site plan and architectural plans (dated 6/30/16) and if felt to be acceptable, **APPROVE** the plans as submitted or with modifications as deemed appropriate and/or with conditions, to allow for the construction of a new single-family house located at 9911 W. Broadview Drive.

GENERAL PROJECT INFORMATION

Land Use Designation:	L – Low Density Residential
Zoning District:	RD Single-Family District
General Location:	9911 W. Broadview Drive
Legal Description:	Lot 5 of Block 37, "Bay Harbor Island" according to the plat thereof, as recorded in Plat Book 46, at Page 5 of the Public Records of Miami-Dade County.

PROJECT DESCRIPTION

The project Engineer, American Building Engineers, Inc., as agent for the property owner, Pro Nan Investments IV, LLC, submitted an application for the construction of a new single-family residence on a non-waterfront corner lot located at 9911 W. Broadview Drive. The proposed two-story home will have approximately 6,324 square feet of A/C living space with a two-car garage and a pool and pool deck in the side (street) yard of the property fronting 99th Street. The

residence will have five (5) bedrooms, seven (7) full bathrooms, one (1) half bathroom and an office that could be considered a bedroom. The overall height of the structure will be 25'-0" above Base Flood Elevation (BFE), which is the maximum height allowed within the RD Single-Family District. The applicant is proposing a driveway connection to W. Broadview Drive which provides access to the garage and a parking space in the front yard area. Extensive landscaping is proposed that meets the Miami-Dade County Landscape Code and Town Supplemental Landscape Code requirements, including the use of native and drought tolerant plant materials.

The current draft of the Street Tree Master Plan identifies the tree species for this area of the Town as Glaucous Cassia along W. Broadview Drive and Live Oak along 99th Street.

The Historical Structure Survey for the Town of Bay Harbor Islands lists the existing structure as a Masonry Vernacular design that was built in 1956 (FMSF No. DA10427). The new single-family home will be a Modern design with wooden accents.

PROJECT HISTORY

The applicant submitted an initial set and several revised sets of plans that were reviewed by MMPA for consistency with the Town Code requirements. Comments were given to the applicant each time and the current submitted plans are reflective of all requested changes.

COMPREHENSIVE PLAN / ZONING

Comprehensive Plan – The property has a Future Land Use Map (FLUM) designation of "Low Density Residential". The maximum allowable base density is six (6) DUA. The proposed use and density of the property would be consistent with the applicable FLUM designation of the property.

Land Development Regulations / Zoning Code – The property has a Zoning Classification of RD Single Family Zoning District. The proposed use and density of the property is consistent with this zoning classification. The following Zoning and Planning sections of the Code apply to this proposal: Section 23-3 (Use Regulations RD Single-Family District), Section 23-9 (Minimum Size of Living Units), Section 23-10 (Minimum Size of Building Lot), Section 23-11(A) (Land Development Regulations RD Single-Family Area) and Section 23-12 (Land Development Regulations General Provisions). In addition, the Town has separate regulations for landscaping, driveways and building material regulations.

PLATTING

The site will not require re-platting, as the site is currently platted as described above under the legal description.

SUMMARY / SITE PLAN COMMENTS

The latest site plan and architectural plans submitted for the construction of a new single-family home located at 9911 W. Broadview Drive meet or exceed all Town Land Development and Landscape Code requirements. The applicant previously submitted plans that were reviewed and commented on by MMPA and all previous comments and issues have been addressed by the current plans.

**Town of Bay Harbor Islands
Planning and Zoning Board Staff Report
Proposed Single-Family Residence
9911 W. Broadview Drive
July 12th, 2016
Page 3**

It should be noted that the height of the wall along the south side of the property (along 99th Street) is proposed at 6'-0" in height. The proposed wall will screen the pool so that it will not be visible from the street. Per Sec. 23-12(22)(i)(5) walls / fences within the front (street side) setback may not exceed 3-feet solid above grade unless the PZB approves otherwise for specific sites based on creative and compatible design solutions and location issues. It should also be noted that per Sec. 23-12(15)(g)(vii), all pools abutting a street shall be screened from the street by a wall or fence so that the pool cannot be seen from the street. The wall will be setback 2-feet from the property line and will be screened by a Crabwood hedge that will be 3-feet tall at time of planting.

The following conditions of approval are recommended:

- 1) This approval is based on the plans prepared by American Building Engineers, Inc. dated June 30th, 2016 with any modifications required by the PZ Board. All modifications to the above plans shall be reviewed by Town staff and may require re-approval by the PZB if felt to be substantial.

TOWN OF BAY HARBOR ISLANDS
PLANNING AND ZONING BOARD

9665 Bay Harbor Terrace
Bal Harbour Islands, Florida 33154
July 19th, 2016
Tuesday, 7:07 - 9:02 p.m.

COUNCIL MEMBERS PRESENT:

Ronald Wasson, Stephen Hurwitz, Alan Bebachik,
Jerry Gavcovich, Tom Telesco, Jed Frankel

ALSO PRESENT:

Amy Huber, Esquire
John K. Shubin, Esquire
Tucker Gibbs, Esquire

1 Thereupon:

2 MR. HURWITZ: If you would please stand and
3 join us in the pledge, we'll get going.

4 (Pledge of Allegiance.)

5 Call role.

6 MS. SIEGEL: Mr. Telesco.

7 MR. TELESKO: Here.

8 MS. SIEGEL: Mr. Sklar could not be with us
9 today.

10 Mr. Frankel.

11 MR. FRANKEL: Here.

12 MS. SIEGEL: Mr. Bebchik.

13 MR. BEBCHIK: Here.

14 MS. SIEGEL: Mr. Gavcovich.

15 MR. GAVCOVICH: Here.

16 MS. SIEGEL: And Mr. Hurwitz.

17 MR. HURWITZ: Here.

18 Okay. We'll take the first item on the
19 agenda. A reminder to everyone, if you would like
20 to speak, I have a couple of forms up here. You'll
21 need to fill out a form and please bring it up and
22 we'll the take public comment.

23 The first item is a request for approval for a
24 new commercial complex for Church By The Sea
25 located at 1000 Kane Concourse, Tract N. The

1 developers are proposing to construct a new 3-story
2 mixed use development project. On May 17th, 2016,
3 the Board discussed and deferred and advised the
4 applicant to make several changes. The developers
5 have made the changes as requested. The new
6 complex proposes to have commercial retail space at
7 the street level facing Kane Concourse. The new
8 building is three stories in height at 48 feet and
9 2 inches above BFE, (65 feet BFE is allowed.)
10 Enclosed please find the Site Plan and elevations.

11 MR. SIMONE: Please raise your hand if you're
12 going to testify.

13 (All were sworn.)

14 MR. HURWITZ: Thank you very much.

15 Faculty is here.

16 MS. HUBER: Hi, good evening.

17 MR. HURWITZ: Good evening.

18 MS. HUBER: Amy Huber with the law firm of
19 Shubin & Bass here on behalf of the Church By The
20 Sea. When we were here with you last time, you had
21 several recommendations for us and things that you
22 would like to see. You requested that we move the
23 exit door. That's been done. You requested
24 modifications to the western stair. Those have
25 been made. You requested that the loggia be more

1 pedestrian friendly and remove the garage door.
2 We've done that. We've provided the sidewalk along
3 the surface parking lot pursuant to your request.
4 We added the trellis to the east elevation in
5 addition to modifications to the facade as well as
6 the south facade.

7 So I believe that those adequately address all
8 of the comments that you made last time. Staff has
9 reviewed the application and finds that it complies
10 with all of the code regulations. Mr. Zyscovich is
11 here with you today if you'd like him to walk you
12 through the revisions to the Plans that have been
13 made. But ultimately that's up to the Board
14 whether or not they would like him to walk you
15 through those changes.

16 MR. HURWITZ: Okay. Thank you.

17 The Board had requests. I would think it
18 would probably be a good idea to be able to
19 visually see it, if you don't mind.

20 MS. HUBER: Okay.

21 MR. HURWITZ: Just kind of highlighting the
22 changes so we can refresh everybody's memory and
23 show the visual changes, if you can.

24 Does that work for everyone?

25 MR. ZYSCOVICH: For the record, I was out

1 during the swearing in.

2 (Mr. Zyscovich was duly sworn.)

3 MR. ZYSCOVICH: Okay. Thank you.

4 This is Roberto Vesult and we'll be doing this
5 together. I have to leave around 8:00 or shortly
6 thereafter, so he can continue on my behalf.

7 Roberto knows everything about the Plans.

8 So what we've done is on the screen before
9 you, hopefully -- yes -- what we've done is we've
10 organized --

11 MR. SIMONE: State your name for the record
12 please and introduce yourself.

13 MR. ZYSCOVICH: Okay. I'm sorry. My name is
14 Bernard Zyscovich.

15 On the left-hand side of the screen, we have
16 the Plan that is the one that is been revised. And
17 we've taken care of a couple of the -- a number of
18 the things that you've been requesting. One is on
19 Kane Concourse, on the right hand you'll see that
20 we used to have the stair that was in the very
21 corner to the west. Now that's been cleared out,
22 and we now have a full array of storefronts because
23 we've moved the stair toward the rear so we can
24 exit to the alley. So that addresses one of the
25 comments that seemed to be on everyone's mind.

1 I don't see Oscar Sklar here, so I think he
2 was one of the ones especially that was concerned
3 about that. So we'll show you in the elevations
4 how that changed things. But we now have a full
5 entire length. I think it's 140 feet.

6 MR. VESULT: In increased by 14 feet.

7 MR. ZYSCOVICH: We increased by 14 feet the
8 amount of retail storefront.

9 We also have reduced the area behind the back
10 of house because we discovered that we really don't
11 need more than one loading bay. And we also have,
12 therefore, increased some of the parking. We have
13 identified the pathway whereby you get out of the
14 garage out to the street.

15 And then a very big issue that we spent a lot
16 of time talking about last time was in the corner
17 of the lobby to the church where the steeple was
18 located, as you can see before, we had the stairway
19 that was turned east/west that occupied a portion
20 of that area facing the street. We've now moved
21 it, turned it north/south, and now the storefront
22 of the church lobby is actually at grade and is
23 visible without the stair interfering.

24 So we have really managed I think to clean up
25 the project substantially in terms of those issues

1 that were there.

2 We also have been able to create some changes
3 if you see on the left, as we discussed, the side
4 lot across the alley where we have sidewalk and
5 parking. We have a continuous sidewalk now.

6 We added the accessible space that we were
7 missing.

8 MR. SIMONE: Who is he?

9 MR. ZYSCOVICH: This is Robert Vesult.

10 MR. VESULT: So the concern was we didn't have
11 enough accessible spaces. So we are providing 126
12 spaces. So are providing accessible space which is
13 required for that number of spaces.

14 Also, you had requested that you wanted a
15 continuous sidewalk along 95th Street so that it
16 continues. And we added some landscape at the
17 corner of the alley and 95th Street. You'll see
18 the revisions.

19 One of the revisions is that that door that
20 connects the part to the loggia, we replaced that
21 door with a gate that's going to be open 24 hours
22 as requested. And we have some sample images of
23 how it could look and it's going to be open all the
24 time.

25 MR. ZYSCOVICH: Thank you.

1 And on this slide, you can see in the red dots
2 the circulation path. You asked about how does
3 somebody get out of the parking? How does somebody
4 move about the site? So this shows you that we
5 have clear access to all the sidewalks that
6 surround the property.

7 In this drawing you can see that the impact to
8 the Plan was that we moved the stairways around, we
9 created the new exiting toward the alley, and we
10 have incorporated the trellis which you'll see more
11 clearly on your blowup Plans showing you the
12 outdoor decks and how that works.

13 MR. VESULT: We closed the west corridor also
14 and we added storefronts all along the sanctuary
15 facing east. So that's going to be visible on the
16 revision.

17 MR. ZYSCOVICH: You were asking what does that
18 sidewalk, the alley look like? We'll be able to
19 show it to you in a minute, but this reflects the
20 Plan change.

21 Go ahead.

22 MR. VESULT: And we made some minor
23 adjustments. We enclosed also the west corridor.
24 We added a clear story like to eliminate the
25 sanctuary from the north. It's not visible in the

1 views, but it's visible in the section. And we
2 cleaned up a little bit of the configuration of the
3 interior space.

4 We removed -- you're going to see on this the
5 southwest stair. We dropped that floor. So it's
6 not going to be that visible in the facade.

7 The roof Plans didn't change much.

8 MR. ZYSCOVICH: This is the upper roof.

9 MR. VESULT: Yes.

10 MR. ZYSCOVICH: So here you see the impact to
11 the changes that you requested. The larger drawing
12 shows you that there is no longer on the western
13 edge an area where we have an exit door that
14 interrupts the flow of the retail.

15 On the area next to the steeple, you can see
16 that the glass compared to the other one now comes
17 all the way down and we've moved the exit door. In
18 the rendering you'll see that there's a person
19 standing there in front of the exit door. So we've
20 really cleaned up the flows and we now have full
21 transparency.

22 MR. VESULT: The proportion of the storefront
23 I believe is better now.

24 MR. ZYSCOVICH: And here you see the
25 storefront proportion that Roberto is talking

1 about. The one on the bottom shows you the way we
2 had it designed previously and how we've changed it
3 to accommodate the fact that we no longer have the
4 exit door on the facade on Kane Concourse. It's
5 now all storefront and glass. It's very simple and
6 incorporates all the things that everybody liked
7 about the previous Plan.

8 Here you can see the change in the way that we
9 have regularized the facade of the loggia. It's a
10 very subtle difference. Frankly, we would have
11 done it during design development anyway, but we
12 did it now and we're showing you what those
13 sketches look like. And here you can also see the
14 definition of the glass verticality at Kane
15 Concourse.

16 MR. VESULT: You'll see in that image that we
17 also -- the proportion of the loggia, we
18 regularized the openings at 8 foot wide and we
19 added perforated metal on top, and it relates
20 better now to the facade on Kane, as you see, at
21 the northeast corner. And also we added mosaic
22 tiles in the middle of the vertical windows to go
23 with the concept of the wavy Church By The Sea
24 pattern. So those are going to be repeated in all
25 the windows.

1 You can see the trellis also, and we reduced
2 the stair volume at the southwest corner.

3 MR. ZYSCOVICH: As you'll see in your blowup
4 it shows you that the metal mesh that we have above
5 the storefront is now also in the panels above the
6 loggia. So we have a continuity of movement that
7 addresses the activation of that corner. Here you
8 can see it from the other direction. You will not
9 be able to see into the parking. You'll see the
10 metal mesh that will also be there at the openings
11 at the ground. Here you can see the landscape
12 above on the trellis.

13 MR. VESULT: And the wall on Kane Concourse is
14 2 feet wide to create the depth that we wanted.
15 And, more important, the facade, the wall is a foot
16 deep. So we can also play with the location of the
17 wall to create the shadow that we wanted to make it
18 a little bit more interesting.

19 MR. ZYSCOVICH: Here you can see that we
20 reduced the level of the stair all the way to the
21 left of the drawing, because we don't really need
22 it to go all the way up. We have the trellis
23 that's shown at the area off of the sanctuary and
24 this shows you the articulation of the --

25 MR. TELESCO: Excuse me. We can't see what

1 you're pointing at on the screen.

2 MR. ZYSCOVICH: Who can't?

3 MR. TELESCO: We on the Board can't see what
4 you're pointing at on the screen. Move over here.

5 MR. ZYSCOVICH: Oh.

6 MR. TELESCO: That's more helpful to us.

7 MR. VESULT: I'm sorry.

8 So this is the trellis. And we've added all
9 this glass behind, so it's a little bit more
10 showing the glass.

11 MR. HURWITZ: The trellis that was added
12 basically is about half of the structure? On the
13 top left there, that's all trellis?

14 MR. VESULT: Yes.

15 MR. HURWITZ: And then there's glass behind
16 that?

17 MR. VESULT: Right.

18 MR. ZYSCOVICH: Roberto, would you like to
19 explain this.

20 MR. VESULT: Yeah. I mean, this is the facade
21 on this side. On this side is Bay Harbor and you
22 can see the trellis. We modified the corner stairs
23 to add more detail. We added more lines in a wavy
24 pattern following the Church By The Sea motif. We
25 added stained glass in all the corner stairs. We

1 added perforated metal to the base on the entire
2 project so that relates to the building with that
3 detail.

4 We have the church on top and the base that
5 ties everything up to the parking. We have a
6 little more movement in this area. We added more
7 trees at the corner. And you can see we added the
8 alley facade with third-level windows on this side
9 with the stained glass panels so they have a little
10 bit more relation on both sides.

11 MR. TELESCO: I was not here for the last
12 meeting, so maybe I'm asking you a question that
13 you've already answered. But since the baseboard
14 elevation is 5-feet-and-change, what are your plans
15 for flood-proofing?

16 MR. ZYSCOVICH: We've actually raised the
17 first level of the garage by one foot beyond what
18 we're required by code in order to address that
19 issue, and we've also likewise raised the floor of
20 the lobby of the church for the same reason.

21 MR. VESULT: And the reason is the level of
22 sidewalk and we've not used flood panels for that
23 because we want to meet the sidewalk.

24 MR. TELESCO: Yes, but this renovation exceeds
25 50 percent of the fully appreciated value.

1 MR. VESULT: It's a new building.

2 MR. TELESCO: Okay. So you're going to be
3 using what?

4 MR. VESULT: Flood panels.

5 MR. TELESCO: Underneath the slab?

6 MR. ZYSCOVICH: It will have flood panels at
7 the facade, otherwise you're going to lose your
8 retail street.

9 MR. TELESCO: Okay. Well, I'm concerned
10 overall about any loss of FEMA's endorsement for
11 this community because that would lose us our
12 ability to get flood insurance. So I think it's a
13 concern for us that you a hundred percent --

14 MR. ZYSCOVICH: We're actually exceeding the
15 FEMA requirements.

16 MR. TELESCO: Okay. Good answer.

17 MR. VESULT: Thank you.

18 This is close-ups of the corners. You see
19 more detail. We added some landscaping at the
20 corner, and we added a lot of articulation at the
21 facade. You have a lot of movement. So that's it.

22 MR. TELESCO: And you had a shadow study?

23 MR. VESULT: Yes. We have an animation. I
24 don't know if you want to play it.

25 MS. SIEGEL: You have to get out of that first

1 and then go in.

2 MR. VESULT: Those are more renderings of the
3 complete building, if you want to see it. That's
4 another rendering that we have before of the retail
5 space.

6 And then the shadow study.

7 MR. ZYSCOVICH: These are the same things.
8 It's an animation they wanted to see, the shadow
9 study. There you go. Explain the shadows.

10 MR. VESULT: Okay. So we're using the
11 two worst times. I mean, the worst time is
12 December 31st, the winter solstice. You have the
13 9 a.m. shadows, 2 p.m. and 5 p.m. which will be the
14 worst day probably which otherwise in the year.
15 And you see the shadow with these people here. And
16 at 5 p.m, you don't see the cross. You just see
17 the steeple.

18 MR. ZYSCOVICH: So when the sun is in the
19 west, you'll never see the shadow.

20 MR. VESULT: And in June it's an even better
21 situation. You don't see the shadow at all.

22 MR. ZYSCOVICH: So what we did was Roberto
23 took it upon himself to watch in detail the almost
24 four-hour session we had last time and picked up
25 every conceivable detail that he could glean from

1 that video which has been incorporated into these
2 documents.

3 We think we've addressed everything, and if
4 you have more questions, we're happy to take them.
5 But I think that the concerns that you had about
6 the sidewalk, the fenestration, the treatment, the
7 loggia, the articulation, the fact that you didn't
8 want to interrupt the retail, we've answered all
9 those questions and I think that we're ready to
10 receive whatever else you have.

11 MR. VESULT: It's a better building.

12 MS. SIEGEL: And if the Board wants to see the
13 animation, it is there.

14 MR. HURWITZ: Sure. Why don't we do that. If
15 the Board is okay, we just have a few people to
16 speak. So we'll invite three speakers and then
17 we'll ask any questions.

18 MS. HUBER: And I just want to reserve the
19 right to a rebuttal to address any comments to the
20 extent I need to.

21 MR. HURWITZ: Sure. Thank you.

22 Terry D'Amico.

23 MS. D'AMICO: Terry D'Amico, 9101 East Bay
24 Harbor Drive.

25 I understand that the Council members have

1 with people of the church and, you know, the
2 architects and so on, and you all know that this is
3 coming just in front of you.

4 And, once again, it's decompartmentalizing as
5 our town does, but how did a building with so many
6 uses that are nonprofit get into our anchor
7 property in our business district? This is the
8 worst business plan I've ever seen in my whole
9 life. And you're talking about this is where the
10 larger building should go. Right? And you're not
11 putting it -- we're completely backwards in this
12 town.

13 Sorry, you know, Bernard, that you haven't had
14 more input from the community, but I would really
15 like for you to maybe approach to save the steeple
16 that we -- the pylon that we have. I know they
17 saved the steeple from the old church and that
18 detail is on a church detail in North Miami, the
19 same detail they you have cornered.

20 I would like to ask why we can't kind of
21 maintain the corner relationship. I think you can
22 get all the same, you know, uses in that would be
23 very welcoming at the corner if we kept it, and
24 that would be some kind of nice gesture to say that
25 we don't want to come in and change your commercial

1 district.

2 There's a cafeteria. What are the hours? Are
3 these events? I see like a playground. And there
4 are so many rooms up there that are not labeled on
5 the Plan. What's going on here? And where is the
6 traffic study? Because we have a new hotel with a
7 restaurant in it, we have a new office building
8 with a restaurant in it all on this one corner.

9 This is the way I get out of the island. You
10 know, so during construction or even after
11 construction, school comes through here. All the
12 kids from Surfside come through here.

13 Where is the traffic study? Do you guys care
14 about how this really affects the planning of our
15 town? Because this is a very important location
16 and building. And the Council is not going to
17 comment on it. You have to be really strong and
18 demand that we get some answers about what kind of
19 things are going on in this property.

20 We have an existing pylon. Why don't you use
21 it?

22 You know, as far as the events, you know, what
23 kind of events? We want to hear more about it.
24 This has been so non -- as far as the transparency
25 of how this is affecting our town, you know, we

1 have no idea how this has happened. And you know
2 as planners that anchor stores are to attract other
3 businesses, okay, and churches really don't do
4 that. Okay. We need a really good anchor store to
5 replace the Cadillac dealership.

6 Thank you.

7 MR. HURWITZ: Kathleen Kennedy.

8 MS. KENNEDY: Thank you, Mr. Hurwitz, for
9 calling me. Can I just point this to you for a
10 moment?

11 MR. HURWITZ: Sure.

12 MS. KENNEDY: Oh, let me identify myself. My
13 name is Kathleen Kennedy, 9900 West Bay Harbor
14 Drive.

15 A synagogue, the beautiful synagogue at 95th
16 Street, has no Star of David, no menorah, no
17 nothing, and they have the beautiful stained glass
18 windows. Come over the bridge -- and I'm a
19 Christian and I first believed in this church. But
20 you know what? This cross here should not be
21 there. You know, we're not a Christian town.
22 We're a town for everybody, the Jews. And that's
23 why I don't like some of the things that Isaac
24 Salver did ten years ago.

25 We are a town for everybody; for Muslims, for

1 Christians, for Jews, for everybody. So is this a
2 sign or is it a cross? And to me as a Christian,
3 it looks like a cross. I wear one. So anybody
4 that says that is a sign is full of Irish Blarney,
5 number one.

6 Number two, I believe in everything that this
7 church does. They do wonderful things. I've been
8 a volunteer there. I'd feed the homeless. But I'm
9 very concerned about the second floor catering for
10 the weddings. And they some do nice weddings up
11 there.

12 Where is the Emergency Evaluation Plan here?
13 What happened, God forbid, that we should get a
14 hurricane warning? You have a building across -- a
15 hotel going up across the street. You have this
16 church going in. We have a bridge that's not
17 working. God forbid, in five more years it's
18 coming down. We have to build it up again. Where
19 is the Plan?

20 And I know that this is a burden to all of
21 you, and shame on our Council for not taking this
22 on. They gave it to you to be the bad guys here.
23 And I know you're not. You're just doing your job.
24 But you know something? That cross that I wear
25 around my neck is not a sign. It's a cross. It's

1 a Christian cross for Mr. Simone -- excuse me --
2 Mr. Price. And shame on you for calling it a sign.

3 And on the second floor, you cannot put Church
4 By The Sea on a building in this town. It has to
5 be on the first floor in case you're putting one
6 up. I believe in the things that they do. But you
7 know what? This is becoming too much.

8 One of the reasons why I objected to Isaac
9 Salver in his all Jewish thing here, we are for
10 everybody here, all religions. To come over the
11 bridge and see this cross, the first thing you see,
12 I'm sorry, as a Christian, I resent it.

13 And I thank you and I respect all that you do.
14 Thank you.

15 MR. SIMONE: Chairman, I have never said that
16 was a sign. I have never submitted anything to the
17 town saying it was a sign. In fact, I have written
18 a written opinion that this is a religious symbol
19 which is protected by the First Amendment and
20 cannot be regulated as a sign.

21 MR. HURWITZ: Understood.

22 Thank you, Kathleen.

23 MS. ZELBERG: Linda Zelberg, West Island 95th
24 Street.

25 I served on the Planning and Zoning for eight

1 years. That was part of our job when we were on
2 the Council and I was mayor back then until we
3 separated and had all you good people come aboard.

4 First of all, we have some laws in this town.
5 The Church By The Sea or any religious facility
6 must be on the second floor.

7 The other law is that any facility or entity
8 on the second floor cannot have a sign on the wall.
9 So, therefore, I notice that they had a sign up on
10 the building. That should not be allowed. That's
11 part of our laws.

12 Thank you.

13 MR. HURWITZ: Thank you.

14 Tucker Gibbs.

15 MR. GIBBS: Good evening. My name is Tucker
16 Gibbs, and I'm representing four entities which I
17 can list: 1006 Kane Course, Inc. which owns
18 property at 1060 Kane Concourse, 1048, LLC which
19 owns property at 1048 Kane Concourse, 1050, LLC
20 which owns property at 1063 to 1073 95th Street,
21 and D&F, LLC which owns property at 1050 Kane
22 Concourse.

23 My offices are at 3835 Utopian Court in
24 Coconut Grove. And we spoke, I spoke and
25 Mr. Alvarez, who is our expert witness, spoke at

1 the last meeting. I would incorporate that into
2 the record today if I could and just focus on two
3 issues.

4 The revisions presented by the applicant
5 reflect some improvements to this project, but two
6 key issues remain. And according to section
7 23-5(7), A hundred percent of Kane Concourse ground
8 floor frontage is to be used for permitted B1 uses.
9 And you heard about the extension of the retail,
10 but that extension does not extend to the full
11 frontage of Kane Concourse. And that's an issue.

12 The updated Plans increase the retail frontage
13 I think they said 14 feet. But it still fails to
14 meet the hundred percent requirement, because the
15 lobby for the church is on Kane Concourse on the
16 ground floor. And for it to meet this
17 requirement -- it is a requirement -- it has to a
18 hundred percent of the frontage.

19 Number two, according to section 23-11C14, A
20 5-foot wide pedestrian walkway is required from
21 Kane Concourse to the rear parking area.

22 Now, the intent of this section, as
23 Mr. Alvarez spoke at the last meeting, is to
24 provide easy access to retail uses on Kane
25 Concourse from the parking lots behind the

1 buildings on Kane Concourse. But the proposed
2 access-way which runs down East Bay Harbor Drive
3 fails to meet the requirement because -- and I call
4 it a circuitous path and they're going to take
5 exception to that. But it goes down that street.
6 Yes, it goes within the loggia. It goes into the
7 buildings. It goes into the parking lot.

8 But the intent of this provision in the code
9 was to have a direct and uncomplicated path to and
10 from Kane Concourse preferably in the middle of the
11 block. If you read that section, it talks about
12 having pathways from the parking lots in the back
13 to Kane Concourse in the front. And this, while
14 providing such access, is not really within the
15 spirit of that particular provision.

16 In addition, there is no reason this building
17 can't be used and cannot meet these code
18 provisions, because the property will be a blank
19 slate. And that's something that's very important
20 to remember. They're going to tear down Ocean
21 Cadillac. So it will be a vacant lot. It's a
22 blank slate. The property will be vacant.

23 And it's a basic matter of building within the
24 code. The code requires a hundred percent
25 frontage. It requires a relatively straight

1 pathway between parking and Kane Concourse. And
2 that should be relatively easy to do. I don't know
3 why it has been done this kind of way, but it has
4 been.

5 So because of that, we would request that you
6 require the applicant to come back with a proposal
7 that actually meets the code. Thank you very much.

8 MR. HURWITZ: Thank you.

9 Paul Ruthfield.

10 MR. RUTHFIELD: Excuse me for being slow.

11 Paul Ruthfield, 1231 95th Street in Bay
12 Harbor.

13 As a resident of this area, especially in Bay
14 Harbor, I note that there are many people who have
15 called everybody. If they live on Bay Harbor, they
16 object. If they don't live on Bay Harbor, they
17 don't care. If they live in Bal Harbor, they're
18 happy.

19 Because what they did is something that
20 everybody's got to question. And what they did was
21 immediately before allowing anything to happen that
22 made any sense, that is taking some time and
23 looking at the law that they had to follow and
24 looking at the other laws that looked at existing
25 structures, immediately they jumped in and knocked

1 down the building they're building in Bal Harbour
2 as if everybody agreed to it, as if everybody
3 agreed that the church should be in Bay Harbor.

4 Well, thank you, Bal Harbour. I don't want
5 the church in Bay Harbor. Don't I get to say
6 anything or just the people who can pay to get it
7 done?

8 This is what I objected to. I objected to not
9 anybody listening. I know the job you gentlemen
10 are doing because I did the same thing in a couple
11 of different cities. And it's not easy. And in my
12 opinion, the Council has taken a ridiculous
13 position of forcing you guys to sit and make a
14 decision on something that they should be making
15 the decision on.

16 They should be -- they should be answering the
17 public. They should be addressing the residents of
18 Bay Harbor. They should be addressing the owners
19 of businesses in Bay Harbor and not shove it over
20 to you guys because it's easier for them, because
21 they don't have to answer and they could always
22 turn around and lay it on you and say that it's
23 caused by you, the Planning Board, the Planning and
24 Zoning Board.

25 Well, they're going to do that. If you don't

1 think they're going to do that, then you're
2 dreaming. This is still a town of people who live
3 here, and the decisions should be lead by the
4 people that live here and have their homes and
5 their businesses here and not by allowing another
6 town in order to help their business district make
7 decisions for us.

8 MR. HURWITZ: Thank you, Mr. Ruthfield.

9 MR. RUTHFIELD: Thank you.

10 MR. HURWITZ: Norma Horowitz.

11 MS. HOROWITZ: Good evening. Norma Horowitz,
12 9300 West Bay Harbor Drive, Unit 2A.

13 Mr. Price, I really don't see this as a First
14 Amendment issue. I have fought for and protected
15 First Amendment issues as a newspaper man, as a
16 person involved in American Jewish Congress. I
17 really see it as an ordnance issue here in Bay
18 Harbor where I have lived since 1964.

19 I have a couple of questions. It was very
20 difficult for us to see the slides. I'm wondering
21 about what kind of iconography. I saw of course
22 the cross in the -- if you're calling that a
23 steeple. Okay. The cross is obvious and very
24 large and will be the welcome to Bay Harbor
25 Islands.

1 I did see a stained glass window. I'm not
2 sure what side that was on. But it looked to me
3 like it was another cross and some stained glass
4 design. And I just wonder what other kind of
5 stained glass or iconography will be inserted once
6 the church is built if the church is built.

7 Thank you.

8 MR. HURWITZ: Thank you, Ms. Horowitz.

9 So there are no further speakers or questions?

10 Do you need to be sworn?

11 MR. ESKIN: Yes, I do.

12 (Mr. Eskin was duly sworn.)

13 MR. ESKIN: Ken Eskin, 1310 99th Street.

14 I've been told that there's a 38,000 square
15 foot kitchen within the facility. And checking
16 with some of my builder friends, I've told been
17 told you can feed about 325 people in a facility
18 that size.

19 Number one, I would be curious what they're
20 going to do with it, with something that big. And
21 I also had read there was 71 parking spaces. Now,
22 I wonder how you're going to equate that where
23 they're going to put all those people if they
24 happen to come.

25 I too would not like to see the cross exactly

1 where it is. When they were going to -- the town
2 was considering putting a temple on Kane
3 Concourse -- I'm Jewish -- I was totally against
4 it. I didn't think that it belonged Kane
5 Concourse. I also don't believe the church
6 believes it belongs on Kane Concourse.

7 As others have said, this should have been
8 dealt with at Council, but it was very easy for
9 them to put it on you guys.

10 Thank you.

11 MR. HURWITZ: No other speakers?

12 We will close the public hearing and ask the
13 Board.

14 Do you want to speak now or after?

15 MR. SIMONE: Mr. Chairman, can we just get
16 some clarification on the last comments that were
17 made as to the actual square footage?

18 MR. HURWITZ: Yes.

19 MR. VESULT: 1,350.

20 MR. TELESCO: That was a exaggeration. The
21 same with the parking spaces. There's not 76.
22 There's 126 I believe.

23 MR. GIBBS: None of that concerns me right
24 now. My big issue is listening to --

25 MR. TELESCO: Tucker Gibbs, is that your name,

1 sir.

2 MR. GIBBS: Yes.

3 MR. TELESCO: What's the validity of what he's
4 saying? Because that's very important. We have a
5 code that says one hundred percent of that space
6 needs to be retail on Kane Concourse. How was this
7 approved by your office?

8 MR. MILLER: Good question. And we looked at
9 this very carefully.

10 There's a number of buildings along the
11 boulevard, mixed use buildings. It's very common.
12 In the middle of the building at the ground level,
13 you go into a lobby and you can go straight to the
14 back of the building into the parking lots behind
15 the buildings. Then you get in the elevator or the
16 stair tower and go up to your floor.

17 So we looked at this in a similar light where
18 others have been allowed and do exist where there
19 is a common lobby that goes into the building. In
20 this case, they're proposing this at the corner.
21 We would have preferred it at the far west end of
22 the site, and we mentioned that at the DRC meeting
23 as well. But it is similar to entering the
24 building as other buildings on the boulevard.

25 So in our position, it is commercial across

1 the entire frontage at the corner. There is a
2 common entrance into the building, the lobby, and
3 you go up to the second.

4 MR. TELESCO: The eastern or western?

5 MR. MILLER: This is right at the corner of
6 East Bay Harbor Drive and Kane Concourse.

7 So that's how our office looked at that.

8 MR. HURWITZ: I appreciate that question and I
9 have others in the same vein. There were comments
10 made. But specifically here, the entrance is on
11 the side street. It's not on Kane Concourse.
12 Correct?

13 MR. MILLER: Right.

14 MR. HURWITZ: So the double-door entrance is
15 on the side. The piece that anyone could argue
16 fails to meet the hundred percent requirement of
17 retail is basically the wall between the retail and
18 the corner which used to be an exit is now a glass
19 window into the lobby.

20 MR. MILLER: Right.

21 MR. HURWITZ: I mean, again, I guess the
22 question is -- and it kind of summarizes some other
23 people's thoughts as well. Our job is to analyze
24 the architectural esthetic design of this building,
25 and when comments are made about this applicant and

1 others coming to this Board and not the Commission,
2 the assumption for our Board is that every single
3 code-related issue, be it the hundred percent
4 requirement to the corner, the uses, the mixed
5 uses, the parking allocations and those things, are
6 completely addressed by staff to DRC or the
7 commission or your office.

8 So I actually share Tom's question and other
9 people's comments about the mixed use and whether
10 the parking is there and the traffic studies and
11 those things. But I want to remind everyone, the
12 assumption, whether it's right or wrong -- and I
13 hope it's right -- is that those things are fully
14 addressed before it comes to this Board.

15 MR. MILLER: We believe that this Plan meets
16 the code requirements that exist in this community
17 except the sign, and we have a condition that says
18 that that's not included. They would have to get a
19 variance for that.

20 MR. TELESCO: The sign being the cross?

21 MR. MILLER: No. The sign is thus the name of
22 the church.

23 MR. HURWITZ: Tom, I didn't meant to interrupt
24 you. Again, I just share the question, and I want
25 to make sure on record for everyone here that made

1 comments and for us that all of the things
2 mentioned such as the mixed use and the allocations
3 of space and the parking, the traffic studies, the
4 requirement for the retail to extend a hundred
5 percent of the street but for the entrance which is
6 on the side, all meet today's code but for the sign
7 which is on the ground floor for a second floor
8 use -- and we're not approving today.

9 TOWN MANAGER WASSON: No, you're not. I'm
10 glad you -- it was really going to be brought up --
11 it was for illustrative purposes only that they
12 have to come back at a later date to get that
13 addressed.

14 MR. HURWITZ: And while we're talking about
15 signage, the cross or steeple, if you will, is not
16 a sign, and that is a religious symbol by which we
17 are not entitled to comment?

18 MR. SIMONE: The answer is no, it's not. It
19 is no different than any other architectural
20 feature. And after researching this issue, if this
21 perforation in the steeple area had been 3 diagonal
22 lines as an architecture feature, that probably
23 wouldn't raise a question with anyone.

24 A symbol is something that is known to the
25 general population. And under the town code, there

1 is no definition of whether that is a sign or not a
2 sign. So under the traditional methods that have
3 been used by this town for many years, the fallback
4 position is look at the Dade-County code as to
5 their signage. And the County code can be applied
6 on a county wide basis. Under the County code,
7 religious symbols such as a cross, a Jewish star,
8 or other type of religious symbol is not considered
9 a sign.

10 MR. HURWITZ: So the Board is not analyzing or
11 opining on the cross as a sign. It's not a sign.
12 It is an architectural element.

13 MR. SIMONE: That is correct.

14 MR. HURWITZ: And if the Board -- and I'm not
15 suggesting that they would want to. But if the
16 Board wanted it to be smaller or asked for it to be
17 different, that would be something that would be
18 within the purview for us to comment on.

19 MR. SIMONE: It would be in the purview. But
20 I must caution you.

21 MR. HURWITZ: Yes.

22 MR. SIMONE: There is the Religious Land Use
23 Institutional Persons Act which has given me a lot
24 of heartache on this project as well as I am the
25 attorney for the two major orthodox facilities in

1 Surfside, and I've had to go to court both times in
2 regard to those facilities.

3 And there is a very fine line. If the reason
4 that symbol is offensive to people, whether it's
5 15 feet, 14 feet or 9 feet, when does it become
6 less offensive? And it's a very slippery slope
7 that the town has to go through in terms of making
8 that analysis.

9 MR. HURWITZ: Okay.

10 MR. TELESCO: I'm confused on the issue too,
11 because I think Mr. Zyscovich said that the sign or
12 the cross was 15 square feet. Why was that? Why
13 were you held to that?

14 MR. ZYSCOVICH: Our job as architects is to do
15 what --

16 MS. SIEGEL: Could you come up please.

17 MR. ZYSCOVICH: Our job as architects is to
18 try to do things that we believe are proportional,
19 just as the amount of square inches of perforation
20 adds up to 15 square feet.

21 MR. TELESCO: I understand that.

22 Let me ask the attorney here. If it's not a
23 sign and you had chosen or someone had chosen to
24 make it three times its size, how would one
25 regulate that?

1 MR. SIMONE: Probably would not unless you'd
2 have to go back and change your code.

3 MR. HURWITZ: Right. I think, if I'm
4 understanding you correctly, it is not a sign. It
5 is an architectural detail of which the Board --
6 and I'm not asking this because I have a problem
7 with it myself or suggesting anyone else does. I'm
8 just putting it on the table so we can discuss it
9 and move forward.

10 MR. ZYSCOVICH: I'm an architect. That's not
11 an architectural detail. That's a symbol.

12 MR. SIMONE: A symbol and an architectural
13 detail under the treatises are the same. And
14 unless your town regulates religious symbols, which
15 it does not, you go to your fallback position which
16 traditionally has been the Dade County code. The
17 Dade County code specifically provides that
18 religious symbols are not signs and they cannot be
19 regulated.

20 MR. HURWITZ: One other just point of
21 clarification just for the record. The steeple,
22 the symbol, the cross, is the only icon or symbol
23 on the building. There is nothing in the stained
24 glass or anything else that, regardless of you how
25 felt about it, anyone would have an opinion on it.

1 Correct?

2 MR. VESULT: The stained glass on the corners

3 --

4 MR. HURWITZ: Yes.

5 MR. VESULT: The stained glass on the corners
6 is a wave pattern. It's an abstract wave pattern.

7 MR. HURWITZ: Right.

8 MR. VESULT: And we have defined the one that
9 is on the inside of the sanctuary which is inside
10 the building that may have a cross.

11 MR. HURWITZ: Inside the building.

12 MR. VESULT: Yes.

13 MR. HURWITZ: I'm only concerned about things
14 visible to the public here.

15 THE AUDIENCE: No, you can see it from inside
16 the building.

17 MR. VESULT: It incorporates a cross.

18 Let me go to the photo.

19 MR. HURWITZ: Please.

20 MR. VESULT: That one is a photo of the
21 existing stained glass they have right now in the
22 church, in the old church.

23 MR. HURWITZ: Is it possible to blow that up?
24 I didn't see what it looks like.

25 MS. HUBER: It's the existing stained glass

1 from the previous church that was preserved and
2 will be implemented into the new church.

3 MR. HURWITZ: Thank you. Okay.

4 So those are the two symbols, if you will.

5 MR. VESULT: But none of the other ones. The
6 only ones on the stairs that are more prominent are
7 all abstract.

8 MR. GAVCOVICH: I guess I'm still not,
9 Mr. Price, clear on how we can opine on in
10 particular the cross at the corner, at the steeple.
11 It can't be -- obviously it's not an objection of
12 the religious or restriction of the religious
13 representation, but could it be its location in
14 terms of the architectural --

15 MR. TELESCO: I think we can ask for it.

16 MR. HURWITZ: You can ask for what?

17 MR. TELESCO: We can ask if they would
18 voluntarily change that detail. See if they agree
19 to that. We're not forcing them. We're asking for
20 cooperation on an issue that's sensitive to
21 everybody here.

22 MR. SIMONE: Why is it sensitive? That's the
23 question that you have to answer.

24 MR. TELESCO: Well, we've heard the people,
25 one after the other.

1 MR. SIMONE: Well, if this was a group, not a
2 religious organization, if this was a group that
3 was abhorrent to the majority of people in this
4 community, a communist organization or whatever,
5 the fact that this community may not like --

6 MR. TELESCO: It is Constitutionally
7 protected.

8 MR. SIMONE: Right.

9 MR. TELESCO: Completely.

10 MR. SIMONE: And churches are given an even
11 greater protection.

12 MR. TELESCO: I was asking for a cooperative
13 --

14 MR. SIMONE: I think you can ask the question,
15 but I don't think you can compel them to do so.

16 MR. TELESCO: I didn't think that we could. I
17 agree with you a hundred percent. It's something
18 we could ask for and see if they are willing to do
19 that.

20 MR. HURWITZ: Can we talk about the signs just
21 also to clarify. The Church By The Sea sign now is
22 for illustration only, and it is problematic or not
23 acceptable in code because it's a first floor sign
24 for a second floor use?

25 MR. SIMONE: That's the interpretation by the

1 Planning Department.

2 MR. HURWITZ: So can you all just tell me what
3 the intention is. You intend, I assume, to have a
4 sign that says, "Church By The Sea" someplace.
5 When you do come back, where are you looking to do
6 that, if not there?

7 MS. HUBER: It is our position that the
8 current sign code violates RLIUPA as in you can
9 only have a religious use on the second floor, and
10 therefore if you're a use on the second floor, you
11 cannot have a sign. So essentially any religious
12 use cannot have a sign in Bay Harbor Island which
13 we believe violates RLUIPA.

14 We've addressed this with your counsel. It's
15 my understanding that he concurs. We intend to --
16 if the town does not voluntarily amend their code
17 to address this issue, we'll take further action.

18 MR. HURWITZ: And you're not allowed to have
19 the sign on the second floor?

20 MR. SIMONE: That's correct. That's what the
21 code provides.

22 MR. HURWITZ: So you can't have any sign on
23 the second floor, and your position is that because
24 they don't allow it on the first floor, you're
25 basically saying you can't have a sign even though

1 you're relegated to be being on the second floor.

2 MS. HUBER: Correct.

3 MR. SIMONE: That's exactly the issue.

4 MR. HURWITZ: Okay.

5 MR. FRANKEL: But following that logic, that
6 would mean that the only people on the second floor
7 that could have a sign would be a religious
8 institution and you're discriminating everybody
9 else on the second floor. No one else on the
10 second floor can have sign except a religious
11 institution assuming that interpretation is
12 correct.

13 MS. HUBER: But that's not entirely accurate.
14 But, again, religious uses have to be treated like
15 all other places of congregation and public
16 gathering and public assembly. And currently
17 that's not how your code addresses them.

18 To be fair and to be honest -- and, again,
19 this isn't before you nor is this within your
20 purview or jurisdiction -- but we also believe that
21 the code as currently written that requires and
22 obligated religious uses to only be on the second
23 floor violates RLUIPA as well.

24 But in an effort to accommodate the town and
25 to work with the town, that is not something we

1 challenge. We placed ourself of the second floor.
2 We have a very small lobby, which again that does
3 not violate your code. The code doesn't say that a
4 hundred percent has to be retail. It says a
5 hundred has to be a permitted use within the B1.

6 I think it would be very difficult for anyone
7 sitting on this Board or the jurisdiction of your
8 town or staff to opine that a lobby is not a
9 permitted use within a business district as every
10 building located within your business district
11 currently has a lobby. So it is a permitted use
12 within the B1 district.

13 Quickly to address the other comments that
14 were made, the majority of the objections and
15 issues raised before you are not within your
16 jurisdiction. Your staff has reviewed this
17 application thoroughly and vetted it and has found
18 that it complies one hundred percent with all of
19 the requirements of the code.

20 We properly submitted and reviewed all of the
21 requirements for this application, including, but
22 not limited to, a traffic study as well as the
23 uses, the amount of parking.

24 With respect to the walkway, we discussed that
25 at length last time we were here. There is direct

1 access to the parking behind Kane Concourse. This
2 site is uniquely situated and that is on the
3 corner. So there is direct access, that that
4 additional walkway is provided through the building
5 and also along East Bay Harbor.

6 I already addressed the frontage issue.

7 Again, the location of the church and the
8 placement of the church within the B1 district is a
9 permitted use within your code and is not within
10 your jurisdiction.

11 We concur with Mr. Price's opinion that a
12 cross is not a sign. It's a religious symbol.
13 It's an expression of religious speech. It's
14 protected within the First Amendment. Your code is
15 silent as to religious symbols. Miami-Dade County
16 specifically exempts that, and we would caution you
17 to tread very lightly to the extent that you
18 attempt to regulate the cross, its location or its
19 size based on commentary from the public.

20 Thank you.

21 MR. GAVCOVICH: Let me ask Michael to comment
22 on the 5-foot required -- the walkway, I guess,
23 connection between the parking and the retail on
24 the front of Kane Concourse. How did you make the
25 determination that what's provided meets the

1 requirement of the code?

2 MR. MILLER: You mean the connection?

3 MR. GAVCOVICH: Yes.

4 MR. MILLER: Yeah, I wrote that section of the
5 code, so I know what it means.

6 It's common when you have linear commercial
7 frontages, whether it's in a strip commercial
8 situation or kind of an urban center like we have
9 here. Again, the frontage, you know, it's a newer
10 code requirement too. Much of the older
11 development doesn't have any of these features
12 other than a lobby that you can traverse from Kane
13 Concourse through the building into the back area.

14 In this case they have commercial uses from
15 the western property line to the corner, and the
16 lobby is positioned at the corner with the door
17 facing East Bay Harbor Drive. There is a -- you
18 can go through the lobby into the garage and into
19 the alley to the rear. So we felt that was
20 consistent with the code provision as existed in
21 the town for many years.

22 The idea is to provide some means so you don't
23 have to walk completely around the block to any
24 parking that's in the center.

25 MR. HURWITZ: Can you explain -- can you just

1 step back one second. What do you mean by that?
2 Your question is about the access of the parking to
3 the retail.

4 MR. GAVCOVICH: Correct. And that requires by
5 code that there be a connection --

6 MR. HURWITZ: Right.

7 And you're suggesting that you're okay with
8 the connection because you can go through the
9 lobby, right?

10 MR. MILLER: Right.

11 MR. HURWITZ: Into the lobby of the church.

12 MR. ZYSCOVICH: Not through the lobby. You're
13 going through the gate -- it's described as a
14 gate -- that's always open into the loggia and then
15 out.

16 MR. GAVCOVICH: And that's the connection of
17 the main parking area. But what about from the
18 other -- the lot that has 35 spaces?

19 MR. MILLER: You mean the remote lot?

20 MR. GAVCOVICH: Yeah.

21 MR. MILLER: Well, you can walk underneath the
22 building through the parking garage area and
23 covered area to the alley and go across the alley
24 to that parking lot, which you could do. But it's
25 used as a surface parking lot today.

1 MR. HURWITZ: Where are you walking? Through
2 --

3 MR. MILLER: Through the garage area.

4 MR. HURWITZ: This is not -- this is all open,
5 the alleyway there, they would park in the space
6 with 35 spots?

7 MR. MILLER: You would walk through the --

8 MR. HURWITZ: That was the question last time
9 and I guess it's not clear still.

10 MR. VESULT: I mean, we thought that the
11 easiest way to walk on East Bay Harbor. So if you
12 are on the remote access, you just walk -- you see
13 the red dots? So you have a walkway, that
14 continuous walkway. You can have landscape going
15 along like that to the street. You can also go
16 into through here, walk through the parking, get
17 onto the covered loggia that's outside and go to
18 the parking or you can go out against uncovered and
19 walk that way (indicating).

20 MR. HURWITZ: And let me ask you a question.

21 If this were a retail development, which
22 partially it is, in your wildest dreams you would
23 never develop parking like that. If you --

24 Let me just finish.

25 If you were developing for a retail developer

1 parking to access those sites, you would never
2 think that you were going to attract retailers and
3 convince them that they had sufficient parking by
4 asking them to walk that red line which is about a
5 thousand miles away and the most indirect -- I just
6 don't -- I just don't -- my comments are just
7 practicality about the retail.

8 My primary concern -- just so everyone knows
9 where I'm at, I think you did a great job on the
10 design and I appreciate all the changes that were
11 made. I can't speak for the Board, but I have no
12 problem with it at all. So all the conversations
13 we had before, my biggest concerns are the ones
14 about it meeting code and having the confidence and
15 comfort that some of the legitimate questions and
16 comments that were made by the public I think are a
17 lot of those concerns.

18 So I have to again state that I assume all
19 those things are -- those boxes are checked with
20 regard to the uses and the traffic and parking
21 studies and all these things.

22 But with regard to the parking, I just -- I
23 don't know why you didn't do this -- again, since
24 you had a clean slate, I don't know why you didn't
25 create a pedestrian access point straight through

1 to Kane Concourse.

2 MR. ZYSCOVICH: Let me answer.

3 MR. HURWITZ: Yeah.

4 MR. ZYSCOVICH: I'd be happy to.

5 We do a lot of retail. This space is 8,500
6 square feet.

7 MR. HURWITZ: Right.

8 MR. ZYSCOVICH: How many square feet of retail
9 is there on Kane Concourse? This is a district of
10 shopping. If you go to Lincoln Road, if you go to
11 Miracle Mile, if you go to any of these places, no
12 one who is building 8,000 or 10,000 square feet of
13 retail would be worried about the things that you
14 speak of because basically people are coming to
15 Kane Concourse to shop, just like the people have
16 mentioned. This is a retail corridor.

17 So, therefore, they may park on the street.
18 They may park in some other place.

19 MR. HURWITZ: I see where you're going. I get
20 what you're saying.

21 MR. ZYSCOVICH: So I really, you know --

22 MR. HURWITZ: Can I just finish this
23 conversation with Bernard.

24 I total appreciate what you're saying. It's
25 not a huge amount of square footage and there's

1 other places to park. My biggest -- my gut is that
2 that's a lot of parking that really should be
3 something that is of value to the city and the town
4 when the church is not using it. Because the
5 church really has sort of limited hours that it
6 needs that much parking.

7 But, again, I guess would it have been that
8 difficult to create an access point for --

9 MR. ZYSCOVICH: Yeah. And let me tell you
10 why. Because the way retail normally works is you
11 have your back-of-house along this outer edge.

12 MR. HURWITZ: Yeah.

13 MR. ZYSCOVICH: This is the service corridor
14 to access all that. If there's a restaurant, we
15 need to get garbage out. If we have any of these
16 other things, we need the service corridor so that
17 we are totally contained and we're not spreading
18 that anywhere else.

19 MR. HURWITZ: Yeah.

20 MR. ZYSCOVICH: That's how all these retail
21 shops are set up.

22 MR. HURWITZ: I'm talking about like, for
23 example, when you go to retail on the north side of
24 Kane Concourse right across the street and there
25 are several breezeways, if you will, where you come

1 through.

2 MR. ZYSCOVICH: Right.

3 MR. HURWITZ: So couldn't that 8,000 square
4 feet -- couldn't that 8,000 square feet and also
5 the rest of the district enjoy this abundance of
6 parking by having an access point --

7 MR. ZYSCOVICH: That's a different question.

8 MR. HURWITZ: Just on the west side.

9 You know what I'm saying?

10 MR. ZYSCOVICH: He's saying -- well, I think
11 that's required for the church.

12 MR. HURWITZ: I'm trying to make an argument
13 that this is great for the church and great for the
14 town.

15 MS. HUBER: But it is public parking.

16 I guess my question is this: There is 8,500
17 square feet of retail which requires approximately
18 23 to 26 parking spaces which are located all right
19 here which are directly accessed by the retail. So
20 you don't have to park here and walk all the way
21 over there. You park right there, you get out of
22 your car, you walk in and you go straight to the
23 retail. It's actually in proximity to -- much
24 closer in proximity to any other parking provided
25 for anywhere else within the Bay Harbor Islands.

1 MR. ZYSCOVICH: And it's covered.

2 MR. HURWITZ: Okay, great. So I'm going to
3 shop at the 8,000 square feet. Is this signage
4 outside there public parking behind the -- because
5 there's one entrance into the back of the lot. It
6 says "Church By The Sea" and there's a gate.

7 MR. TELESCO: Slash retail.

8 MR. HURWITZ: There's a gate.

9 Is that gate for illustration also or is it --

10 MR. ZYSCOVICH: Which gate? This one?

11 MR. HURWITZ: No, your parking.

12 MS. HUBER: Yes, the parking is for 1000 Kane
13 Concourse, whether it's retail or church. There is
14 a gate there so that when the retail and the church
15 are closed, that parking lot is secured and isn't
16 open --

17 MR. HURWITZ: So that gate is open during the
18 day?

19 MS. HUBER: Yes.

20 MR. HURWITZ: Or there's a control access
21 system?

22 MR. ZYSCOVICH: It's a controlled access.

23 MR. HURWITZ: Is it open to the public?

24 MS. HUBER: Yes.

25 MR. HURWITZ: That gate is not going to be

1 down?

2 MR. ZYSCOVICH: It's a lift arm.

3 MR. HURWITZ: Right.

4 MR. GAVCOVICH: Controlled by what?

5 MR. ZYSCOVICH: By a revenue device which we
6 haven't decided yet. It's like any parking garage.
7 You come in, you get a ticket, the lift arm goes up
8 and you drive in.

9 MR. GAVCOVICH: What about the other lot
10 that's adjacent?

11 MS. HUBER: That also has a gate as well.

12 MR. HURWITZ: I understand. Okay.

13 MR. ZYSCOVICH: And it's covered and it's
14 accessible.

15 MR. TELESCO: So this is a church where you
16 have to pay to park? That's unfathomable to me.

17 MS. HUBER: No.

18 MR. ZYSCOVICH: No, the church doesn't have to
19 pay for -- its congregants aren't going to pay.

20 MR. HURWITZ: Well, what about people going to
21 the 8,500 square feet retail?

22 MR. ZYSCOVICH: That's how it's managed.

23 MS. HUBER: It's not determined at this point.

24 The other reason -- I just want to clarify. I
25 know we discussed this ad nauseam related to the

1 walkway that you're discussing in between the
2 buildings. The other reason that staff in
3 particular as well as the Public Works were very
4 concerned about having a walkway in that specific
5 location is because that's the public alley and the
6 public service-way for all of those buildings that
7 front Kane.

8 That corridor that runs behind there is where
9 many service trucks and cars utilize that area, and
10 so they did not believe that that would be creating
11 a safe condition for a pedestrian to be walking in
12 the middle of the service corridor where there's
13 cars and trucks loading and other things that occur
14 especially in the later evening hours.

15 MR. HURWITZ: Is there still parking behind
16 other buildings to the west? Yes?

17 MR. MILLER: Yes.

18 MR. HURWITZ: All of them, right? All of
19 those buildings have parking. And if you park in
20 those spaces with the intent of going to any of the
21 shops on Kane Concourse, how do you get to Kane
22 Concourse?

23 MR. DALE LEE: It's all private lots.

24 MR. HURWITZ: They're all private lots?
25 There's no public parking there?

1 MR. DALE LEE: Just the city garage.

2 MR. MILLER: And our surface parking lot south
3 of 95th Street.

4 MS. HUBER: This is actually a much more ideal
5 circumstance than is presently situated in the
6 majority of Bay Harbor Islands with proximity,
7 covered parking and direct access to the retail.

8 MR. HURWITZ: Any other questions from the
9 Board?

10 MR. BEBCHIK: Yeah. I know we talked a lot
11 about the bell tower element, and my point of
12 reference is the Cadillac building which is
13 existing today. And they also have some sort of
14 tower with the Cadillac sign. So when you are
15 driving through the street, you don't have that
16 tower right on the corner. And some people
17 mentioned a concern about that why should they
18 define the town that way.

19 So I asked this question in a previous meeting
20 and I would like to ask it again. If you could
21 consider the tower element protruding that toward
22 the north?

23 MS. HUBER: No, we will not move that tower
24 location. As we discussed last time, that is the
25 architectural element. That is what identifies

1 that that is a place of worship and that that is
2 not something that the church will move.

3 MR. TELESCO: I have a question for the town
4 attorney just out of curiosity. Since this is a
5 multi-use building and I know that religious
6 organizations are exempt from paying property
7 taxes, is that portion of the building which is
8 used for retail or other uses then church taxable?

9 MR. SIMONE: Yes, it is, sir.

10 MR. TELESCO: Are we losing money on this?

11 MR. SIMONE: Churches are only entitled to a
12 tax exemption for the religious use of a piece of
13 property, not the ownership of a piece of property.

14 MR. TELESCO: Okay. Thank you.

15 MR. GAVCOVICH: I have a couple question on
16 some of the comments you made when you were
17 presenting.

18 You talk about on the walls around the garage
19 being 12 inches thick. Is that both on the south
20 and east?

21 MR. VESULT: East Bay Harbor, 95th Street.

22 MR. GAVCOVICH: And then you also talked
23 about -- Tom raised the issue of the floor
24 elevation, flood elevation, that the lobby is a
25 foot above --

1 MR. VESULT: The lobby and the parking are a
2 foot above the sidewalk level. The retail is
3 matching the sidewalk level.

4 MR. GAVCOVICH: So how are you --

5 MR. VESULT: Positioned with those?

6 MR. GAVCOVICH: Yeah.

7 For the garage it's not an issue. But just
8 for the lobby to the loggia, how do you --

9 MR. VESULT: Sure.

10 We have 8 foot over here. We have two steps.
11 I think Coral Gables maybe does two steps.

12 We have access here and you have a 1 to 2 drop
13 that takes you up.

14 MR. GAVCOVICH: Within the loggia?

15 MR. VESULT: Yes, within the loggia. It goes
16 up a foot.

17 MR. GAVCOVICH: So if you're walking along the
18 loggia, can you step down from the sidewalk?

19 MR. VESULT: Yes.

20 MR. GAVCOVICH: Or those are the two steps?

21 MR. VESULT: It's two steps going up a foot.

22 MR. ZYSCOVICH: In the rendering you'll see
23 the steps.

24 MR. GAVCOVICH: Between the columns are the
25 steps.

1 MR. VESULT: You're going to see steps in the
2 rendering.

3 MR. GAVCOVICH: Twelve inches --

4 MR. VESULT: You see the steps. You see the
5 steps right here.

6 MR. GAVCOVICH: Do you need a railing and --

7 MR. VESULT: Yes. We have a railing inside of
8 the ramp, yes.

9 MR. GAVCOVICH: But on those two steps as
10 well, right?

11 MR. VESULT: I mean, I don't know. It's 18
12 inches. We don't think --

13 MR. ZYSCOVICH: It will have a handrail.

14 MR. GAVCOVICH: A handrail, right. I'm
15 talking about a handrail.

16 MR. VESULT: Yes.

17 MR. GAVCOVICH: And it has to have the
18 extension that are sticking into the sidewalk,
19 extending into the sidewalk. Is that --

20 MR. ZYSCOVICH: I'm not sure we need that if
21 it's less than 18 inches.

22 MR. GAVCOVICH: For the extensions.

23 MR. ZYSCOVICH: Yes. Because we don't need a
24 safeguard for less than 18 inches.

25 MR. GAVCOVICH: No, I'm not talking about a

1 safeguard. I'm not talking about a guardrail. I'm
2 talking about a handrail. A handrail is the one
3 that has the extensions, so --

4 MR. ZYSCOVICH: I don't think so. But if we
5 do, we'll move the stairway up.

6 MR. VESULT: Yeah, in the garage. I mean, in
7 Coral Gables none of that have a handrail. The
8 garage in Ponce de Leon almost always have steps
9 exactly like that.

10 MR. GAVCOVICH: I mean, some of the changes
11 that were made I think was an improvement to the
12 building. I don't know if you feel the same way.
13 I still have the some of the same concerns I raised
14 previously at our last meeting about the extent of
15 the frontage of the parking garage on East Bay
16 Harbor Drive.

17 Unfortunately there was nothing done there. I
18 understand your limitations and I do understand
19 that it's not a requirement of the code. I would
20 have liked to have seen something to make that side
21 a little bit more active, especially if you're
22 talking about people -- expecting possibly people
23 to walk around. There's not much to walk around to
24 or while they're walking.

25 MR. HURWITZ: Is there anything that you all

1 could get comfortable with that would solve or
2 mitigate both circumstances? Because one is, you
3 know, whether or not -- we may disagree on it. But
4 I just think it's a pretty far walk and far stretch
5 for people parking back there to access Kane
6 Concourse.

7 And others on the Board also feel like that
8 pedestrian experience is not activated. Isn't
9 there something that you can do along that ground
10 floor to add architectural detail? Anything? I
11 mean, it's not going to be activated with retail.
12 It's not a requirement.

13 Is there anything that could better that
14 experience or you just don't think the comment is
15 founded? Either is fine. I'm just asking.

16 MR. ZYSCOVICH: I, mean is there any
17 commercial use on that street?

18 MR. HURWITZ: No, I'm not suggesting -- I
19 think Jerry -- I think he understands that it's not
20 required. I'm talking about the experience. I'm
21 not talking about --

22 MR. ZYSCOVICH: I understand. Jerry has been
23 very clear and gracious about the idea that he
24 understands why we can't do that, because that
25 would push us into a second floor parking in order

1 to satisfy our parking requirement.

2 MR. HURWITZ: I'm talking about --

3 MR. ZYSCOVICH: Right. This 5-foot setback,
4 the landscape requirement is in your code and
5 requires that it be there. It's not ever intended
6 to be a commercial street. What we've done is
7 we've put mesh in there. We have done what we can
8 with the articulation with the Loggia.

9 I understand what Jerry would like, and I
10 don't disagree normally in an urban context. But
11 there is no surrounding retail there.

12 MR. HURWITZ: I understand.

13 Can you talk just for -- you mentioned the
14 loggia before. I meant to stop and ask a followup
15 question on that. Can you sort of just help me
16 understand that.

17 MR. ZYSCOVICH: What we think will happen is
18 there will be activity that's walking.

19 MR. HURWITZ: Correct.

20 MR. ZYSCOVICH: Because now this is in a
21 walkable environment and people will come here and
22 they will walk around the corner. They will walk
23 in here. They will park. They might come out of
24 the parking into the loggia. So we feel that we're
25 carrying activation around the corner for half of

1 the block.

2 MR. HURWITZ: The loggia goes back a half a
3 block?

4 MR. ZYSCOVICH: Pretty much. And that's a
5 pretty good wrap in terms of the corner.

6 MR. HURWITZ: Got you. Okay.

7 MR. ZYSCOVICH: And then the rest of it, we're
8 panelizing and we're putting in the same material
9 that's in the upper level of the retail. We're
10 making it attractive. I'm not trying to say that
11 we're activating it. We're not. But we are
12 screening the parking.

13 MR. HURWITZ: And that's new from the last
14 time?

15 MR. ZYSCOVICH: That's new from last time.

16 We're making the walls thicker to emphasize
17 the shadow pattern. We have 5 feet of landscaping.
18 We had a really hard time fitting enough trees as
19 the code requires.

20 The code that you've been saying we need to
21 meet we have really labored to meet, and the code
22 has pushed us into this solution. And we're not
23 unhappy with it because we don't really believe
24 from an urbanistic point of view that to put retail
25 or some other activity there would be something

1 that would be sustainable.

2 Most people will never go there. People who
3 come to the building will mostly park in the
4 building, and the 30 spaces that are part of the
5 surface lot are not enough to justify any kind of
6 business use on the side street. So we don't have
7 the room, so it's a moot point.

8 But just to finish the conversation, if we had
9 a two-sided commercial street, I think it would be
10 a much bigger issue. But in this case we don't.

11 MS. HUBER: And unfortunately to come -- and
12 it's not that we don't want to address your
13 comment, but in order to address your comments, we
14 would actually have to seek a variance from the
15 code with respect to the setback -- well, not only
16 the parking, but the setback in the landscape
17 requirement, because we're required to have a
18 5-foot setback, 75 percent of which has to be
19 landscaped.

20 So in order to have any type of viable retail
21 or commercial operation, you can't have 5 feet of
22 landscaping in front of any type of door or
23 otherwise. And I understand what you're asking
24 for. And unfortunately when this provision of the
25 code was drafted and there was all kinds of

1 workshops, the decision was made as to what they
2 wanted East Bay Harbor to be with respect to the
3 setback and the landscaping, and that unfortunately
4 is not compatible or consistent with having some
5 type of active use.

6 So if that is the intent of this Board, then
7 that would require significant amendments to your
8 zoning code to actually permit that to make it be
9 viable.

10 MR. HURWITZ: Was there any discussion with
11 the town? Did the church ever meet with the town
12 to talk about the parking as something that could
13 be a good benefit to both the church and the town?

14 MS. HUBER: We had DRC meetings and we did
15 have -- prior to filing our application, we did
16 meet with each of the Council members to let them
17 know that the church was purchasing the site and
18 that they would be coming forward with a proposed
19 mixed use application for retail and a religious
20 facility.

21 MR. HURWITZ: But there were concessions or
22 discussions with regard to the use of the parking?
23 Again, just understanding my sensitivity, I'm just
24 curious. Did they meet with the town to see, you
25 know, the church requires that this building

1 requires X amount of parking which the majority of
2 the time is not really going to be fully utilized
3 and how that could be, you know, a benefit to
4 everybody? I was just curious if those
5 conversations took place.

6 MS. HUBER: Yes, they did.

7 TOWN MANAGER WASSON: And every time at these
8 meetings, it was always the intention that the town
9 would be able to use the parking as it was
10 available in times when the church wasn't in use or
11 all the available parking. What we haven't decided
12 is how we're going to, you know, figure out how
13 we're going to pay -- you know, people coming in
14 and, you know, will pay for it. And that's
15 something we'll work it out. I don't think -- we
16 have some time for that. But there was always the
17 thought that the town would benefit from the excess
18 parking.

19 MR. GAVCOVICH: When the church is -- the day
20 or whether it's weekly or whatever day during the
21 year that the church is at full capacity or has a
22 lot of people, are there parking spaces that are
23 being held for the retail spaces -- the retail use?
24 Or is that -- if the church fills up the parking
25 garage and the 35 spaces, there's no more? Is

1 there any thought on that?

2 MS. HUBER: It's first come first serve. It's
3 not -- and the exact operations related to the
4 parking have yet to be determined. A lot of that
5 will be tenant driven depending on who the tenant
6 is and who goes there, whether it's retail or
7 restaurant or who that is, that will ultimately
8 decide it and driven.

9 What is nice is there is a public parking lot
10 immediately behind the church that's essentially
11 vacant the majority of the time. So any spillover
12 or additional on those couple of days a year when
13 everybody goes to service, there are additional
14 spaces immediately behind it in the public lot.

15 MS. SIEGEL: I was going to jump in and
16 clarify that the parking lot on 95th Street which
17 is right behind the site is never full and a good
18 portion of those spaces right now -- I think
19 there's like 30 or 35 spaces -- we sell to Ocean
20 Cadillac for their employees because they don't
21 really have parking within their site. So it's
22 going to be even more empty.

23 MR. HURWITZ: Well, again, I don't want to
24 belabor the point. We should move on. But just so
25 everyone understands, we're not talking about today

1 or tomorrow. We're talking about the possibility
2 of Kane Concourse at some point being a much more
3 active place with other development opportunities
4 going on, an office building across the street, and
5 two hotels coming out of the ground, another
6 substantially sized development on the west side of
7 Kane Concourse that would come before the group I'm
8 sure at some point, and the opportunities -- maybe
9 lost opportunity I'm saying to think about the
10 future and something that's great for the church
11 and great for the town.

12 But, anyway, that's not for -- I just was
13 saying.

14 TOWN MANAGER WASSON: Steve, while you were
15 speaking I just remembered one of the things that
16 the town did actually ask that that little, small
17 remote lot -- whatever you want to call it -- I
18 don't think that was in their original Plan. It
19 was really at our request to keep that parking
20 additional parking.

21 MS. HUBER: We originally had it as a park,
22 and that was our intention was to have it be green
23 space and not be parking. But that was not
24 something that was favorable to the town, so we
25 reverted it back.

1 But we truly understand your comment, but we
2 believe that the 71 spaces in the garage directly
3 connected to retail is more than adequate and more
4 than sufficient to provide for the type of
5 experience that you're looking for. The majority
6 of the week and the time, the church utilizes 10 to
7 20 parking spaces. It's 2 to 2 and-a-half hours on
8 a Sunday when they utilize approximately 50 to 60
9 parking space traditionally or historically. And
10 we have about 50 years of historical data as to how
11 many parking spaces they utilize on a Sunday
12 because they park at Bal Harbor Shops.

13 So we're comfortable that there's more than
14 ample parking to meet the needs of the church and
15 to make sure that -- because obviously we don't
16 want to invite a tenant that can't thrive and can't
17 be viable. And we believe that we've provided more
18 than ample parking to attract a good tenant and to
19 provide them with adequate parking.

20 MR. GAVCOVICH: How big is this facility
21 compared to what was in Bal Harbour?

22 MS. HUBER: The sanctuary is the same number
23 of seats as well as the fellowship hall.

24 MR. HURWITZ: It's more ancillary uses.

25 MR. SIMONE: Just to get the record straight,

1 the gentleman raised the issue on the square
2 footage of the kitchen that was never -- there was
3 no answer given on the record.

4 MS. HUBER: On the record --

5 MR. SIMONE: I thought you had cut off the --I
6 did not hear it. I'm sorry.

7 MS. HUBER: On the record, the size of the
8 kitchen is 1,350 square feet. It is not a 39,000
9 square foot kitchen.

10 MR. HURWITZ: Alan.

11 MR. BEBCHIK: Another question for the town.
12 Some public comment mentioned that Council wouldn't
13 have a vote or a say on this project. Some
14 projects go to the Town Council for review. So
15 what would be the process?

16 MR. SIMONE: If someone has the ability to
17 take an appeal of the decision tonight, whether you
18 vote for the project or against the project, that
19 is appealed to the Town Council.

20 MR. GAVCOVICH: There are other projects that
21 go to Council, for example, that we review that
22 are -- it's either a variance that has to be
23 approved or the project has TDRs.

24 TOWN MANAGER WASSON: Or gateway type of
25 situations does not fall in the category.

1 MR. GAVCOVICH: Ron, I have a question. It's
2 just something as we've heard in the presentation
3 that I just thought of.

4 Does the alley have utilities running through
5 it, in particular the leg that goes north/south?
6 Do you know?

7 TOWN MANAGER WASSON: I believe there's storm
8 water. It's catch basins. That's it. I don't
9 know specifically. I'm not sure.

10 MR. GAVCOVICH: And the reason I ask that is I
11 wonder if it would have been something that you
12 would have explored and just tried to move that
13 out, that north/south alley to the west.

14 MS. HUBER: It's funny that you raise that.
15 That wasn't something that the Church By The Sea
16 thought about, but actually another property owner
17 and resident raised it as to whether or not that
18 would be something the church would be amenable to,
19 to the extent that the town sought that. And the
20 church said that the would be something that it
21 would be amenable to, to the extent that the town
22 requested it. But it is our understanding from
23 Public Works that there are significant utilities
24 that run under that alleyway.

25 TOWN MANAGER WASSON: Sanitary system too.

1 MR. HURWITZ: Any other questions or comments
2 from the Board or does anyone want to entertain a
3 motion?

4 MR. FRANKEL: I just want to make the
5 comment -- I think last time I expressed this
6 concern and other members of the Board too -- about
7 the location of the tower. And I personally
8 thought when you come into town, I didn't like the
9 fact it's not symmetrical and you kind of lose
10 focus.

11 And, you know, I expressed also the fact that
12 I didn't think that the rendering really did it
13 justice because it showed a flat rendering, whereas
14 coming into town, you're coming off the bridge.
15 And unfortunately that wasn't corrected and I still
16 have an issue with that location of the tower. Not
17 what's on it, but the location.

18 MR. HURWITZ: The location of the tower was --
19 Alan shared your concern about it. And, you know,
20 quite frankly, so do I. Or so did I.

21 I want to -- obviously you spoke on behalf and
22 wanted to reiterate that the church will not
23 consider any movement of the tower.

24 A couple things.

25 If you look at the Plan, I just want to point

1 out one thing I'm sort of grappling with and maybe
2 justifying and getting myself comfortable for
3 consideration is the fact that the tower is not on
4 Kane Concourse. The rendering I don't think
5 adequately kind of shows you the setback, because
6 the retail goes along Kane Concourse and then the
7 tower is set back and goes above where the
8 reception area is. So I'm trying to look for a
9 dimension.

10 MR. GAVCOVICH: It's the location -- it's the
11 depth -- it's the setback of that little plaza on
12 the corner?

13 MR. HURWITZ: Yeah, which I don't know how far
14 that is.

15 MR. VESULT: I have a sketch of both.

16 MR. HURWITZ: Maybe it's about 15 feet, right?
17 I don't know. I was looking at 30 feet from the
18 corner to the --

19 MR. VESULT: It's 20 feet.

20 MR. HURWITZ: What's that?

21 MR. VESULT: Twenty feet?

22 MR. GAVCOVICH: Well, no. From the front edge
23 of the facade?

24 MR. HURWITZ: No, from the front edge of the
25 facade.

1 MR. GAVCOVICH: About 10 feet.

2 MR. VESULT: This is 20 feet.

3 MR. GAVCOVICH: On the property line.

4 MR. VESULT: From the property line here?

5 MR. GAVCOVICH: Yes.

6 MR. VESULT: This is 5 feet.

7 MR. GAVCOVICH: No, in the north/south
8 direction.

9 MR. VESULT: This dimension?

10 MR. HURWITZ: Yes, that dimension.

11 MR. VESULT: That should be about -- this is
12 30. This should be about 18 feet.

13 MR. HURWITZ: Yeah. It's a little bit more
14 than half of the 30.

15 MR. GAVCOVICH: Yeah, I'm looking at the door.

16 MR. HURWITZ: That's the reason I'm saying is
17 because I think it's not -- and I don't think it's
18 reading well on the rendering because it's reading
19 to me -- it reads to me like it's closer to the
20 corner and I think it actually is -- maybe not
21 sufficiently, but it's set back about 18, 20 feet.

22 So to me it sort of reads that the church, or
23 whatever it is, is sort of on the side. The door
24 is on the side. The tower is, in fact, on the side
25 set back about 20 feet. The retail pops out and is

1 on Kane Concourse.

2 I think it would have -- you know, to be
3 honest with you, I know it's a very sensitive
4 topic, and if they moved it 5 feet, 10 feet, I
5 think it would do nothing to impact the visibility
6 and the presence of the church, but I think it
7 would go a long way for the Board to get more
8 comfortable.

9 MR. TELESCO: I don't understand what you're
10 suggesting. Those 5 feet or 5 back closer to Kane
11 Concourse?

12 MR. HURWITZ: Farther back.

13 So the overall concern -- this is not to be
14 misconstrued as the use of a church or anything.
15 The overall concern I think is in the context --
16 the discussion has been that Kane Concourse is
17 required to have complete retail and the town has
18 said that it meets that requirement because it has
19 basically the side of the entrance of the lobby
20 with the glass and then the doors are on the side
21 street, and then the side use or the upstairs use
22 or the church use in this case is really on the
23 side. Right?

24 So, A, I'm suggesting that I'm more
25 comfortable now than I was before because it's

1 actually 20 feet back. And, B, I still think that
2 the church should consider or could consider moving
3 it a little bit because I don't think it really
4 impacts the visibility of it. I'm not trying to
5 put it in the corner. I'm just trying to create a
6 separation between Kane Concourse, you know, and
7 the side.

8 If you look at the Ocean Cadillac now, that
9 tower I believe is set back probably double the
10 distance off of Kane Concourse, yet when you come
11 down, the gateway to the town right now is the
12 tower of Ocean Cadillac and it's very prominent.

13 So it just seems to me that a give-and-take
14 would be considering moving that back a little bit.
15 I think it makes everyone -- I think maybe makes
16 everybody happy. But the representatives of the
17 church have spoken vehemently against it as if it's
18 an anti-church request, and I don't really read it
19 that way. Food for thought.

20 I actually think it's placed off of Kane
21 Concourse nicely, and if it moved another 5, 6
22 feet, I think it would architecturally work well,
23 still be prominent, still be the first thing you
24 see when you came down off Kane Concourse but it
25 would be offset a bit.

1 THE AUDIENCE: There's actually a section of
2 8301 that's the exact distance of the tower.

3 MR. TELESCO: Looking at the Floor Plans, such
4 a movement that Stephen has suggested doesn't seem
5 to affect the rest of the Floor plans. The
6 representative who is here on behalf of the church,
7 if we were to suggest passing this with a
8 stipulation based on the movement of the tower,
9 would that be something that you would agree to?

10 MS. HUBER: No.

11 MR. HURWITZ: Can I ask -- I understand your
12 position as legal counsel and I appreciate that.
13 Is that because you feel strongly architecturally
14 or because you think it's -- or because you feel
15 it's an inappropriate comment because it's a church
16 for some reason?

17 MS. HUBER: Both.

18 MR. HURWITZ: Both.

19 MR. VESULT: We have started --

20 MR. HURWITZ: Can you come up to the mic.

21 MR. VESULT: We studied the proportion of the
22 location of that project. It's a mixed used
23 project. It's a church that's above. We screened
24 in the garage. So that element is what ties the
25 project diametrically. So we moved it back and

1 forth. That's why --

2 MR. HURWITZ: So you looked at moving it
3 3 feet, 5 feet --

4 MR. VESULT: Yes.

5 MR. HURWITZ: It wasn't a deal breaker for
6 you.

7 MR. VESULT: Isn't a deal breaker.

8 MR. HURWITZ: Okay.

9 MR. VESULT: We thought it was a good
10 proportion of the use.

11 MR. HURWITZ: Look, I'm comfortable with where
12 it is, and I think it looks good. And, again, I
13 think based on the rendering, it doesn't really
14 show you how far back it is set. I just think that
15 the Board would be comfortable if you would
16 consider moving it a little bit further. But it
17 doesn't sound like something that you all would
18 consider.

19 MR. GAVCOVICH: Let me ask you a question in
20 relation to that. As a byproduct if it were to get
21 pushed back, obviously the lobby would get smaller,
22 but what it would allow is that area of the corner
23 to get a little bit bigger. And what I see is when
24 the church is -- when there's people in the church,
25 whether a Sunday, and there's whatever number of

1 parishioners there, the ones who get in the car,
2 they're going to leave.

3 But if some were to come down into the lobby,
4 maybe it would be nice to be able to be outside.
5 And I think that the corner right now is a little
6 small. And the loggia is also a little narrow
7 that, you know, it's not really a place really to
8 circulate. The loggia is the circulation. It's
9 not really a place to congregate.

10 It may have a nice effect once you get back in
11 creating a little plaza that's more useful on the
12 corner. I think it would be a nice element, the
13 creation of that larger plaza. And I'm not sure if
14 the lobby is something that really -- how important
15 that size of the lobby is.

16 MR. VESULT: Size-wise, it does affect a
17 little bit more the level of the chapel.

18 MS. HUBER: Again, to be clear, the position
19 of the church and the position of the Board of the
20 church is that's not an acceptable condition.

21 MR. HURWITZ: Okay. Any other questions or
22 comments? Anyone have a motion? No motions.

23 Anyone have any specific things that they'd
24 like to see that they could get comfortable with a
25 motion, whether it's something that the church

1 would agree to or not? I'm just trying to get good
2 feedback.

3 MR. BEBCHIK: I would be comfortable the same
4 way the Cadillac building. I wasn't part of the
5 Board when they decided to move that tower and
6 setback. But if we can have a similar setback to
7 the tower bell element to address some of the
8 concerns of the public of when you are driving,
9 this is a gateway into Bay Harbor and right now you
10 see the Cadillac. This will be a taller element.

11 So to address the comment of the public, I
12 would be comfortable if that tower can be set back
13 to the same is that position of where the Cadillac
14 tower is right now.

15 MR. FRANKEL: I have a similar pause. I
16 appreciate the comments from the architect to the
17 extent that he thought that that tower element ties
18 everything into the project. For me, it kind of
19 detracts from coming into town. I like the
20 symmetry of lower buildings without seeing a large
21 tower right on the corner. So I would also like to
22 see it pushed further south.

23 MR. HURWITZ: I don't know if it changes
24 anyone's mind on it, but how tall is the steeple or
25 the shadow box?

1 MR. VESULT: It's 65 feet to the top which is
2 the maximum allowed.

3 MR. GAVCOVICH: Which is the height -- the
4 maximum height of the gateway district, right, the
5 height of the office building across the street?

6 MR. HURWITZ: So it's the same height as the
7 proposed office building across the street?

8 MR. GAVCOVICH: Right.

9 MR. HURWITZ: And what's the height of the top
10 of the structure itself?

11 MR. VESULT: I mean, we have different levels,
12 17, and the two other levels is 15. So it's 47.

13 MR. HURWITZ: Forty-seven --

14 MR. VESULT: Then 4 feet of parking.

15 MR. HURWITZ: Yes.

16 So there's no motions?

17 MR. GAVCOVICH: I mean, what we're hearing --
18 what we've heard at least from Board members is
19 that they would be open to, I assume, approval with
20 that condition. I guess it's wasting time to make
21 a motion with that condition.

22 TOWN MANAGER WASSON: Jerry, before you go any
23 further, the thing to me disregarding this is that
24 --

25 MR. SIMONE: You could place whatever

1 reasonable conditions you want on the approval. If
2 you feel that way, then put a condition in and you
3 could make that a condition of the approval. If
4 they don't like the condition, they have remedies.

5 MR. HURWITZ: And the remedies would be?

6 MR. SIMONE: They can deal with the Town
7 Council.

8 MR. BEBCHIK: I would like to -- I don't know
9 how exactly the word -- but make a motion for
10 approval even the condition and the setback of the
11 tower bell element is in the same setback to the
12 Cadillac building.

13 MR. HURWITZ: How far is that?

14 MR. MILLER: We have a survey.

15 MR. VESULT: It's very close. You see the
16 image here. I believe it's right here with the
17 shadow.

18 MR. GAVCOVICH: It's probably 25 to 30 feet or
19 so. I'm just looking at the survey. It's hard to
20 tell.

21 MR. VESULT: It's 18 and-a-half.

22 MR. HURWITZ: I have to tell you -- just one
23 second. I'm sorry. I think sometimes in
24 situations like this, not just this part, but in
25 general, we get stuck on things. I just want to

1 reiterate my opinion, because I've expressed my
2 concerns. I've expressed things I'm not a hundred
3 percent in love with. But I'm not at the point
4 where want to hold up the project. And I just want
5 to make sure everybody kind of understands that we
6 think it through.

7 We're suggesting a comfort level in the
8 steeple being moved some, but I'm not really
9 wanting to be -- I don't think the process is sound
10 if we're standing on ceremony to move the tower 5
11 feet. If the tower is set back 18 to 20 feet from
12 the corner or from the property line now is --

13 Which is how far from the corner?

14 MR. VESULT: Eighteen-and-a-half.

15 MR. HURWITZ: From the property line?

16 MR. VESULT: Yes.

17 MR. HURWITZ: How far from the corner? The
18 corner is another 5 feet?

19 MR. ZYSCOVICH: Another 5 feet.

20 MR. HURWITZ: So, you know, I'm having a
21 little bit of trouble with it, because I appreciate
22 everyone's and I share everyone's concern. I
23 expressed it. But I'm also kind of like -- I don't
24 want to say no to the applicant based on my desire
25 to have the thing moved 5 feet.

1 Because if we look at the current location of
2 the tower now, I just want to make sure you're
3 comfortable with saying no to this, but if they
4 moved it 5 feet, it would be the same as Ocean,
5 Cadillac, then we're okay. I think that's a little
6 bit unreasonable. But I also think that we're
7 unhappy about something that we maybe shouldn't be
8 as unhappy about because I think it actually works.
9 It is set back.

10 I don't want to, you know, push too much, but
11 I just don't think it's as problematic. And I
12 brought you through my -- the complete complexity
13 of my original reaction to it which was the same as
14 everyone's, and I don't think it's very different
15 than where Ocean Cadillac is. I don't think Ocean
16 Cadillac is a problem.

17 And I also am thinking about the fact that
18 with 99 percent certainty, there's to be a building
19 on the corner, an office building on the corner on
20 the east side of similar size where you're not
21 seeing that thing until you get down that bridge up
22 until a certain point that you can see around the
23 corner of the office building, okay, and then
24 18 feet back from the their property line but, you
25 know, 20 something feet back from the corner.

1 So I'm just not thinking in actual read this
2 is the biggest issue not to give approval tonight.

3 MS. HUBER: For a point of clarification, your
4 question is how far is it actually from the street
5 from the corner there?

6 MR. HURWITZ: Correct.

7 MS. HUBER: So it's 18 and-a-half feet set
8 back from our property line.

9 MR. HURWITZ: Right.

10 MS. HUBER: But it's another approximately
11 28 feet from -- 20 feet more. So it's
12 approximately --

13 MR. HURWITZ: We're talking about 38 feet from
14 the corner, and I'm kind of wondering what the view
15 corridor is going to be once you have a six- or
16 seven-story office building.

17 MR. GAVCOVICH: That's what I'm saying.

18 I mean, the rendering that was done, I have to
19 assume it was done accurately. This is what you're
20 going to see. This is drawn. I assume that they
21 took the proposed tower project and they drew it to
22 scale. The only difference -- there is a
23 difference obviously because you're coming down the
24 bridge.

25 MR. HURWITZ: Right.

1 MR. GAVCOVICH: But that's what you'll see.

2 MR. HURWITZ: And, again, if that's accurate,
3 I'm also seeing that -- my problem is not just
4 seeing it but the scale of things, and it's the
5 same size if not -- I mean the tower alone is quite
6 small compared to the building which is at
7 40-something feet. And you're coming down reading
8 a hotel on the right and an office building on the
9 left that are left maxed out at --

10 MR. TELESCO: The hotel is on the water, so I
11 believe it's set 75 feet, not 65.

12 MR. HURWITZ: Seventy-five feet?

13 MR. TELESCO: It's on the water.

14 MR. HURWITZ: Oh, by the way, the office
15 building as well is 75 feet on both sides and then
16 you come down the bridge.

17 And, Jed, I agree. I really prefer to see it
18 going down the bridge. But okay.

19 MR. TELESCO: You're talking about coming in
20 from Surfside?

21 MR. HURWITZ: Yes.

22 MR. TELESCO: The hotel will be on the right.

23 MR. HURWITZ: It's 75 feet on the office on
24 the left, and then coming down the bridge between
25 them and looking at a 65-foot tower which is not a

1 building but a singular tower which is
2 30-something-whatever feet off the corner and 18
3 feet off their property line.

4 MR. TELESCO: It scales down to the red line.

5 MR. HURWITZ: Right. And I'm comfortable with
6 that.

7 MR. GAVCOVICH: And don't forget, the tower,
8 this tower, the steeple, is significantly taller
9 than the Ocean Cadillac tower. I know when this
10 came in front of us, I personally had an objection
11 to what they were proposing of replacing the sign.

12 And so it's the entrance to the Bay Harbor
13 from the east, and I think that's the same
14 objection I had to the tower.

15 MR. HURWITZ: And, again, the conversation is
16 about the tower and the scale of the tower. It
17 really has nothing to do with, you know, the church
18 or the use or anything like that. So you can
19 construe it that way, but that's not the
20 conversation that this Board is having in my
21 opinion. And I don't think anyone else disagrees.

22 MS. HUBER: Just as a point of clarification,
23 obviously the Cadillac site is a singular use and
24 was not required to be on the second story. So
25 there is a distinction.

1 MR. GAVCOVICH: Well, not if this is not
2 signage, right?

3 MS. HUBER: Again, but what you're asking for
4 is to set it back similar to what you asked the
5 Cadillac site to set back. And so, yes, we agree
6 with you it's not signage, but what you're asking
7 to do is to set it back what you asked the Cadillac
8 site to set back.

9 MR. HURWITZ: We didn't ask Cadillac to set it
10 back. That's a property that was developed way
11 before all of our time. The issue that came to us
12 was a sign for Cadillac that was on that site.

13 MS. HUBER: But the motion before us --

14 MR. HURWITZ: So it was used as a reference
15 point of the location. It wasn't something we
16 requested.

17 MS. HUBER: But, again, the motion before us
18 is to set it back similar to what that setback is.

19 MR. HURWITZ: Right, which I'm arguing is not
20 important to me, another 5 feet.

21 MR. FRANKEL: I think when you're saying
22 "setback," maybe we should say "location."

23 MR. HURWITZ: Yes.

24 MR. BEBCHIK: I'm looking at the survey, and
25 it reads about 46 feet from the property line.

1 MR. GAVCOVICH: So that dimension is to the
2 end of the building, right.

3 MR. BEBCHIK: And the sign.

4 MR. GAVCOVICH: Correct.

5 MR. VESULT: It's between 20 and 25 feet.

6 MR. HURWITZ: If there are other reasons, you
7 know, or architectural reasons why there's no
8 motion, we can talk about that. Just that's my
9 take on the location of the tower. I just -- I
10 don't think in reality it's a significant change
11 that will get us comfortable.

12 MS. SIEGEL: Steve, just to clarify for the
13 record, the elevation shows that the height of the
14 tower is 63' 11" from the ground level. And it
15 doesn't show the height of BFE which would be
16 higher. It's not 65 feet as is stated on the
17 record.

18 MR. HURWITZ: It's lower than that?

19 MS. SIEGEL: It's probably about 4 feet
20 lower -- 4 or 5 feet lower than it could be, yes.

21 MR. HURWITZ: Got you.

22 MR. GAVCOVICH: Well, it would be measured
23 from the actual finished door of the lobby.

24 MS. SIEGEL: No. The height of any buildings
25 on Kane Concourse could be 65 BFE, the maximum

1 height. So it could be.

2 MR. HURWITZ: You were looking for scale
3 proportion, not to maximize -- let's take the tower
4 and make it as big as we possibly can.

5 MR. VESULT: We wanted to make it for you to
6 make you aware.

7 MR. HURWITZ: And to me it is in context and
8 scale appropriate to the size of the building which
9 could be a lot bigger, the building itself.

10 MR. VESULT: With a little movement.

11 MR. HURWITZ: Yeah. I'm weighing, you know, a
12 lot of those concerns with realities as well. The
13 building is a lot less than it could be, the tower
14 is less than it can be, and I think it's actually
15 set back more than we're reading it.

16 TOWN MANAGER WASSON: But, you know, you might
17 want to just -- I know the Board last meeting had a
18 lot of requests for the church to make adjustments
19 to the building. You just might want to review
20 that. Because I know it was a lot of them.

21 MR. HURWITZ: I think everyone's concerns were
22 are addressed but for -- you know, Jerry had
23 concerns about the use along the side street,
24 right. We talked about that.

25 MR. GAVCOVICH: Yeah.

1 Oscar also I think was very strong about his
2 opinion about the connection from the parking to
3 the front of building, having that walkway,
4 breezeway.

5 MR. HURWITZ: Well --

6 MR. ZYSCOVICH: But in terms of what was
7 discussed.

8 MR. HURWITZ: Go ahead.

9 MR. GAVCOVICH: I was going to say, Alan was
10 considering make a motion. I don't know if --

11 MR. BEBCHIK: I made the motion. I hear what
12 you're saying, but --

13 MR. HURWITZ: So you're welcome to. So why
14 don't you reiterate your motion if that's where you
15 want to go with it.

16 MR. BEBCHIK: So I made a motion to approve
17 the Plan with the condition that the location of
18 the tower element is in the same location as where
19 the Cadillac building is.

20 MR. SIMONE: That's not specific. You have to
21 give a specific dimension.

22 MR. BEBCHIK: To the end, the end here of that
23 tower is 46 feet by this survey.

24 MR. VESULT: Yeah, we've got to measure
25 exactly where it is.

1 MR. BEBCHIK: So the end of that tower
2 aligning with 46 and to the Cadillac dealership.

3 MR. SIMONE: And your motion should also
4 include that signage shown on the Plan on the first
5 floor is not considered part of the Plan you're
6 approving.

7 MR. HURWITZ: Do we have the ability to
8 approve that?

9 MR. SIMONE: No. But I want the record to
10 reflect if you're going to move it pursuant to the
11 Plan, there's one condition.

12 MR. HURWITZ: Okay. The record reflects it
13 does not include the signage which is there for
14 illustration.

15 MR. FRANKEL: The dimension that we just
16 talked about, that's from the property line to the
17 northern edge of the tower.

18 MR. GAVCOVICH: No, that's the southern edge
19 of the tower.

20 MR. HURWITZ: Southern edge of the tower.

21 MR. GAVCOVICH: Existing.

22 MR. HURWITZ: How wide is the tower?

23 MR. VESULT: The steeple?

24 MR. HURWITZ: Yeah.

25 MR. VESULT: It's 9 feet by 9.

1 MR. HURWITZ: So almost 10 feet.

2 And your dimension here is?

3 MR. BEBCHIK: Forty-six.

4 MR. HURWITZ: Forty-six.

5 MR. BEBCHIK: So 36.

6 MR. HURWITZ: About 18 feet now. And you're
7 asking it to go another 18 feet.

8 Okay. Is the motion clear for the record for
9 everyone?

10 MS. HUBER: I just --

11 MR. HURWITZ: We're in the middle of making a
12 motion.

13 MS. HUBER: I understand. I do not believe
14 that his contingent that the survey that is --
15 based on our architect's opinion, it's not 46
16 and-a-half feet. So just if we're going to use the
17 dimension, I believe it should be an accurate
18 dimension and I don't believe that that is an
19 accurate dimension.

20 MR. HURWITZ: Okay. So maybe we just revise
21 that motion to reflect that the northern face of
22 the tower would be at the same location as the
23 northern face of the Ocean Cadillac distance from
24 the property line. Is that better?

25 MR. VESULT: (Nods head.)

1 MR. SIMONE: As reflected on the submitted
2 survey.

3 MR. HURWITZ: Is this is your motion. Are you
4 comfortable with that?

5 MR. BEBCHIK: Yes.

6 MR. HURWITZ: Okay.

7 Did you have a comment?

8 MR. TELESCO: Yes.

9 Exclusion of the sign was noted?

10 MR. HURWITZ: Exclusion of the signage was
11 noted, correct.

12 MR. TELESCO: If that's noted, then I'll
13 second the motion.

14 MR. HURWITZ: That's the second.

15 All in favor?

16 Want a role call?

17 MS. SIEGEL: Mr. Telesco?

18 MR. TELESCO: Aye.

19 MR. FRANKEL: For.

20 MS. SIEGEL: Mr. Bebchik?

21 MR. BEBCHIK: For.

22 MS. SIEGEL: Mr. Gavcovich?

23 MR. GAVCOVICH: No.

24 MS. SIEGEL: Mr. Hurwitz?

25 MR. HURWITZ: Yes.

1 MS. SIEGEL: It passes.

2 MR. HURWITZ: Okay.

3 MR. GAVCOVICH: I just don't see how it could
4 work.

5 MR. HURWITZ: It's over. Thank you very much.

6 (The meeting was concluded at 9:02 p.m.)

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HEARING CERTIFICATE

I, AMBER CHEEK, Court Reporter, certify that I was authorized and did stenographically report the foregoing proceedings and that this transcript, pages 1 through 94, is a true record of the proceedings before the Court.

I further certify that I am not a relative, employee, attorney, or counsel for any of the parties nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

Dated this 2nd day of August, 2016.



Amber Cheek

Notary Public, State of Florida at Large

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AGENDA ITEM REPORT

January 9, 2017

ITEM NUMBER: 3.

ITEM: Public hearing for the purpose of hearing any public comment with respect to an appeal filed by Attorney Amy Huber on behalf of the Church by the Sea, owners of property at 1000 Kane Concourse regarding the Church by the Sea site plan approval by the Planning & Zoning Board on July 19, 2016.

DESCRIPTION:

Enclosed is information provided by Attorney Amy Huber, representing the Church by the Sea, for her appeal.

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Marlene Siegel, Town Clerk

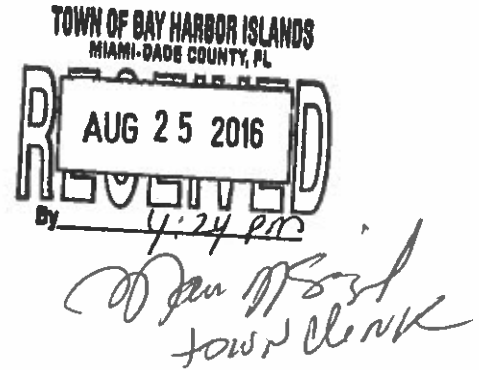
ATTACHMENTS

1.	Church Appeal	Church by the Sea Appeal - entire file.pdf

Via Hand Delivery

August 26, 2016

Mayor Jordan Leonard and Council
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, Florida 33154



Re: Church by the Sea – 1000 Kane Concourse, Bay Harbor Islands, Florida

Dear Mayor Leonard and Members of the Town Council:

This correspondence is transmitted to you on behalf of The Church by the Sea, Inc. (the “Church” or “Applicant”) for the purpose of appealing Condition D (the “Subject Condition”) of Resolution No. 2098 (the “Development Order”) issued by the Town of Bay Harbor Islands Planning and Zoning Board (the “Board”) on July 28th, 2016.¹ (Ex. A) The Subject Condition effectively requires the relocation of the Church’s steeple. Through this appeal we ask that the Town Council quash the Subject Condition, but otherwise affirm the Development Order in its entirety.²

I. Procedural History

A. Development Review Committee

On January 5, 2016, the Church submitted a site plan application to the Town’s Development Review Committee (“DRC”) for the approval of a mixed-use development comprised of retail and religious uses (the “Project”). The DRC is responsible for ensuring strict compliance with the Town’s Code on all proposed development projects.

¹ We provide a bound, indexed Addendum of relevant record materials from the proceedings before the Town’s Boards as well as the Town’s Professional Staff Reports and Recommendations. The Addendum is cited to by exhibit letter, followed by the page, where applicable. For example, “(Ex. A, 1)” refers to page 1 of Exhibit A in the Church’s Addendum.

² The relief we seek, to accept an approval and challenge a condition, is perfectly consistent with the spirit and intent of Section 70.45(2), Florida Statutes.

The Church appeared before DRC on February 4, 2016 and April 14, 2016. (Ex. B and C.) The final proposed plans for the Project were recommended for approval by Staff, found to comply with all provisions of the Town's Code, and, importantly, reviewed and approved by the DRC on April 24, 2016.

B. May 17th Planning and Zoning Board Meeting

Following the DRC's approval, the Church submitted its application for review by the Planning and Zoning Board. On May 11, 2016, Staff issued a memorandum to the Board reiterating that the proposed plans complied with all provisions of the Town's Code and recommending that the Board approve the Project. (Ex. D)

The Church first presented the Project to the Board on May 17, 2016. (Ex. E) At the outset of that meeting, Stanley Price, Esq., the Town's Special Counsel, reminded the Board of a Memorandum dated May 3, 2016 that he had issued advising the Board of its limited jurisdiction and authority in reviewing the Church's proposal. (Ex. F.) Mr. Price stated as follows:

STANLEY PRICE: The only relevant aspect of testimony today that you should consider is what the land use application and how it's applicable to your code of ordinances.

Once again, Mr. Chairmen, I would respectfully suggest that any attempt by anyone to try to characterize the religious practice or the religious belief is not relevant tonight, it may be relevant at another time but for the purposes of zoning it has no relevancy at all.

Ex. E, 7:5-15.

The Church began its presentation with a reminder to the the Board that Town Staff had previously concluded an exhaustive review of the Project and recommended approval of it. The Project architect -- Bernard Zyscovich -- explained how the Project complies with all architectural and aesthetic review criteria in the Town's Code. Excerpts of these comments are set forth below:

AMY HUBER: In just a moment I'm going to turn the application and the presentation this evening over to Bernard [Zyscovich] to let him walk you through the design criteria. So you heard this evening from Stanley [Price] that this application should be reviewed in accordance with your code just like any other application before you. Your staff planners have done a fabulous review of this application and the staff report is very thorough on this matter and it's recommending approval of the application.

Your planner has reviewed all of the criteria of the code and found that the "Church by the Sea" meets all of those criteria with respect to placement, location, permitted uses, uses that must occur on the first floor as well as uses that must occur on the second floor and above. We are feet below the maximum height for this district.

As you see in our application this is a mixed-use application. The code requires retail to front Kane Concourse, as you'll see there is retail on the first floor fronting Kane Concourse, immediately behind that is parking. The parking meets all of the applicable parking criteria on site, there is no need for additional parking agreements with off site parking. Located on the second and third level is the new "Church by the Sea." Your code, Section 523-1, outlines the criteria which this board must review this application and apply. That criteria limits this review to architectural and aesthetic review of the plan, so anything outside of that we would ask for you to disregard this evening. I'm going to retain a few minutes of my time this evening for rebuttal after public comments to the extent we need to address. At this time I'm going to turn it over to Bernard.

BERNARD ZYSCOVICH: Here you can see the context photos that have gone through and been reviewed by staff, and we have really taken a lot of care about really making sure that we comply with, as Amy mentioned, all of the architectural and aesthetic review criteria that are listed in your code. We've also made sure and gone through significant research on our own to ensure that we ask for no special variances or any other conditions that might, in fact, not be in compliance fully with the code, so what I want to do is show you what we've come up with.

....

And then when you get to the actual aesthetic issues of what does it look like and how does it comply, if you go to all of your own requirements that we've paid a lot of attention to in terms of the exterior design, the appearance, the conformity with standard aesthetic requirements, the site layout, the motivation to have a retail street, all of the things that are part of what every good board does to protect the interests of its own city. I think you can see here with the rendering with the buildings that have already been approved that are clearly not there now but they have been approved by this board in the past, you can see the building of the church on the corner. As you can see, it blends in very well with the scale and is actually lower and less obtrusive than a lot of the surrounding buildings. When you look at the building on its corner you can see here the space that is defined by the set back from Kane Concourse, the articulation of the building and the discreet way in which we're utilizing the campanile concept of simply a carved out cross from stucco rather than going through a more traditional steeple or many of the other devices that traditional churches have. This is something that is very in keeping with the modern and contemporary philosophy of this church and it's also in keeping with contemporary modern design thereby dealing with the standards of it being a mixed use. It conveys that it's a church but it also conveys that's it's a retail store, and here you can see the blow up of what the retail looks like in terms of how it meets the street....

This is the data that I'm sure that you've already scrutinized, we're in compliance or below maximums in every single situation including setbacks, including height,

including all of the other zoning criteria. And that concludes my presentation, I'd be happy to take questions.

Ex. E, 10:19-21:12.

Notwithstanding the advice from legal counsel at the beginning of the meeting, the Board went on to discuss matters outside its jurisdiction and authority. Specifically, Board members made highly improper comments about matters of religious expression such as:

MR. GAVCOVICH: I know we talked about the cross and whether it's a sign, whether it's not a sign and I'm not suggesting one or the other. I have -- I had a concern of it being at such a prominent location as you enter Bay Harbor. That to me is -- that corner with those two corners directly across where the retail is is more significant corner of Bay Harbor than even the two that are closer that are on the water, because as you come over the bridge you almost pass, or you maybe pass these two buildings, maybe I'm not really seeing it because those building aren't there yet, those other ones are just one story, but I think this corner where you're building this project is a very significant corner. I don't know if this is even an issue that, you know, whether we have anything to say on this, is it an expression -- a religious expression that can't be restricted. I just think whether regardless of religion it's just so in your face, and whether it was a Jewish star, a cross, to me it's a little strong.

(Ex. E, 148:1-25.)

Notwithstanding the fact that Staff recommended approval of the Project and, despite months of technical review to ensure compliance with the Town Code, the Board nevertheless deferred the application and advised the Church to return after making the following modifications:

1. Increase retail frontage facing Kane Concourse;
2. Provide additional ADA complaint parking spaces;
3. Increase the elevation grade of the garage;
4. Provide access to the garage from the loggia;
5. Provide continuation of the sidewalk south of the small parking lot;
6. Addition of trellis on the second level along East Bay Harbor; and
7. Revise the east and south façade to provide more detail.

(Ex. E and G.)

C. July 19th Planning and Zoning Board Meeting

The Church revised its plans to incorporate the Board's requested changes and provided a detailed narrative outlining the changes. (Ex. G.) On June 28, 2016, Town Staff approved the revised plans indicating that they complied with all provisions of the Town's Code. (Ex. H) On July 12, 2016, the Town Planner and all other required departments approved the revised plans. (Ex. I) The revised plans were then presented to the Planning and Zoning Board on July 19, 2016. (Ex. J) To guard against the Board's improvident encroachment into matters regarding religious expression, counsel for the Church submitted correspondence in advance of the hearing to detail the legal boundaries of the Board's jurisdiction. (Ex. K)

The Church then began its presentation by informing the Board how its proposed plans had been revised to address the comments of the Board during the May 17th meeting. Specifically, an overview of the process was described as follows:

MS. HUBER: When we were here with you last time, you had several recommendations for us and things that you would like to see. You requested that we move the exit door. That's been done. You requested modifications to the western stair. Those have been made. You requested that the loggia be more pedestrian friendly and remove the garage door. We've done that. We've provided the sidewalk along the surface parking lot pursuant to your request. We added the trellis to the east elevation in addition to modifications to the facade as well as the south facade.

So I believe that those adequately address all of the comments that you made last time. Staff has reviewed the application and finds that it complies with all of the code regulations. Mr. Zyscovich is here with you today if you'd like him to walk you through the revisions to the Plans that have been made.

(Ex. J, 3:18 – 4:15.)

Zyscovich then walked the Board through all of the proposed modifications made to address the Board's requests.

MR. ZYSCOVICH: We think we've addressed everything, and if you have more questions, we're happy to take them. But I think that the concerns that you had about the sidewalk, the fenestration, the treatment, the loggia, the articulation, the fact that you didn't want to interrupt the retail, we've answered all those questions and I think that we're ready to receive whatever else you have.

(Ex. J, 16:3-10.)

The Board then opened the meeting for public comment. A number of individuals from the public proceeded to make comments indicating they opposed the prominent display of the religious symbol. Those public comments included:

MS. KENNEDY: A synagogue, the beautiful synagogue at 95th Street, has no Star of David, no menorah, no nothing, and they have the beautiful stained glass windows. Come over the bridge -- and I'm a Christian and I first believed in this church. But you know what? This cross here should not be there. You know, we're not a Christian town.

.... To come over the bridge and see this cross, the first thing you see, I'm sorry, as a Christian, I resent it.

(Ex. J, 19:12 – 21:12.)

MR. ESKIN: I too would not like to see the cross exactly where it is. When they were going to -- the town was considering putting a temple on Kane Concourse -- I'm Jewish -- I was totally against it. I didn't think that it belonged Kane Concourse. I also don't believe the church believes it belongs on Kane Concourse.

(Ex. J, 28:25 – 29:6.)

Following the discussion about the cross, the Town Attorney provided the following response, which was acknowledged by the Chair of the Board:

MR. SIMONE: Chairman, I have never said that was a sign. I have never submitted anything to the town saying it was a sign. In fact, I have written a written opinion that this is a religious symbol which is protected by the First Amendment and cannot be regulated as a sign.

MR. HURWITZ: Understood.

(Ex. J, 21:15-21.)

In response to these comments, the Board went on to discuss whether or not it could require that the steeple be moved further back from the corner. As set forth below, legal counsel for the Town provided the opinion that the Board could *not* compel the Church to move the steeple back. The Board agreed:

MR. TELESCO: We can ask if they would voluntarily change that detail. See if they agree to that. We're not forcing them. We're asking for cooperation on an issue that's sensitive to everybody here.

MR. SIMONE: Why is it sensitive? That's the question that you have to answer.

MR. TELESCO: Well, we've heard the people, one after the other.

MR. SIMONE: Well, if this was a group, not a religious organization, if this was a group that was abhorrent to the majority of people in this community, a communist organization or whatever, the fact that this community may not like --

MR. TELESCO: It is Constitutionally protected.

MR. SIMONE: Right.

MR. TELESCO: Completely.

MR. SIMONE: And churches are given an even greater protection.

MR. TELESCO: I was asking for a cooperative--

MR. SIMONE: I think you can ask the question, but I don't think you can compel them to do so.

MR. TELESCO: I didn't think that we could. I agree with you a hundred percent. It's something we could ask for and see if they are willing to do that.

(Ex. J, 38:17 – 39:19.)

Despite the previous warning from the Town attorney, the Board failed to base their decision on matters within their purview. The preceding dialogue demonstrates that public comment was driving the Board's decision, as does the following comment:

MR. BEBCHIK: ... *So to address the comment of the public*, I would be comfortable if that tower can be set back to the same is that position of where the Cadillac tower is right now.

(Ex. J, 78:11-15.) (Emphasis added).

D. The Subject Condition

The July 19th meeting concluded with the Board passing the Development Order. The Board approved the Church's site development plan but imposed the Subject Condition requiring the Church to move the steeple approximately 18 feet further south from Kane Concourse. (Ex. A.) The Church clearly objected to this condition. (Ex. J, 75:3-10.) The Subject Condition effectively requires that the steeple be moved to a significantly less prominent location. The Board did not provide any justification to substantiate this requirement, nor did it explain what it intended to achieve other than to move the steeple so that it could not be viewed from Kane Concourse.

II. Legal Argument

A. The Proposed Development is in Full Compliance with Zoning Code Regulations

Staff for the Board, which includes the Town Planner, the Engineer, and Public Works, thoroughly reviewed the proposed plans on numerous occasions and found that they complied with

all code requirements that exist in Bay Harbor Islands and recommended approval of the proposed project, as evidenced in the Staff's Memorandums and their sign-off on the proposed plans. (Ex. D, H, and I) Additionally, during the July 19th Planning and Zoning meeting, the Board addressed its role and asked whether the revised proposed plans were in compliance with the Town Code and the Town planner, Michael J. Miller, then provided a response:

MR. HURWITZ: I mean, again, I guess the question is -- and it kind of summarizes some other people's thoughts as well. Our job is to analyze the architectural esthetic design of this building, and when comments are made about this applicant and others coming to this Board and not the Commission, the assumption for our Board is that every single code-related issue, be it the hundred percent requirement to the corner, the uses, the mixed uses, the parking allocations and those things, are completely addressed by staff to DRC or the commission or your office.

So I actually share Tom's question and other people's comments about the mixed use and whether the parking is there and the traffic studies and those things. But I want to remind everyone, the assumption, whether it's right or wrong -- and I hope it's right -- is that those things are fully addressed before it comes to this Board.

MR. MILLER: We believe that this Plan meets the code requirements that exist in this community....

(Ex. J, 31:21 – 32:16.)

B. The Subject Condition Infringes on the Church's Fundamental Constitutional Rights and Cannot Pass Strict Scrutiny

Under the First Amendment, a municipal government “has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2226 (2015). Municipal restrictions that target speech “based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.” *Id.*; see also *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 382 (1992).

The display of a religious symbol, such as a cross, is a constitutionally protected form of expression. See *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995); *Chabad-Lubavitch of Georgia v. Miller*, 5 F.3d 1383, 1387 (11th Cir. 1993) (citing various cases).³ Thus, a municipal resolution that targets the display of a religious symbol can only be justified if the governmental restriction can pass strict scrutiny—*i.e.*, the restriction is narrowly tailored to serve compelling state interests.

³ *Lubavitch* cites: *Kreisner v. City of San Diego*, 988 F.2d 883, 891 (9th Cir. 1993); *Americans United for the Separation of Church and State v. City of Grand Rapids*, 980 F.2d 1538, 1542 (6th Cir. 1992) (*en banc*); *Doe v. Small*, 964 F.2d 611, 618-19 (7th Cir. 1992).

The record demonstrates that the Subject Condition, requiring the movement of the Church's steeple, was imposed based solely on discomfort with the prominence of the religious symbol shared by members of the community and Board alike. (Ex. J, 38:17-25; 78:15, 19:12 – 21:12, 28:25 – 29:6.) Therefore, the Subject Condition is unconstitutional. It does not pass strict scrutiny because the Board did not rely on *any* evidence that would support a finding that the Subject Condition was narrowly tailored or that it served compelling state interests. Instead, the record clearly demonstrates that requiring the Church's steeple to be moved back was primarily shaped by discriminatory attitudes, and designed to limit the religious expression of the Church. For these reasons, the Subject Condition is unconstitutional.

C. The Subject Condition is Not Based on Competent Substantial Evidence

Separate and apart from the First Amendment considerations, the Board was required to support its exercise of this quasi-judicial authority with substantial competent evidence. In *Broward County v. G.B.V. International, Ltd.*, 787 So.2d 838, 842 (Fla. 2001), the Florida Supreme Court stated:

A decision granting or denying a site plan or plat application is governed by local regulations, which must be uniformly administered. The allocation of burdens expressed in *Irvine v. Duval County Planning Commission*, 495 So.2d 167 (Fla.1986), is applicable to such proceedings: once the petitioner met the initial burden of showing that his application met the statutory criteria for granting such [applications], 'the burden was upon the Planning Commission to demonstrate, by competent substantial evidence presented at the hearing and made a part of the record, that the [application] requested by petitioner did not meet such standards and was, in fact, adverse to the public interest.'"

Thus, in order to deny⁴ a site plan application that is in full compliance with code, the Board was required to establish by competent substantial evidence that the application did not meet the published criteria and was adverse to the public interest. See *G.B.V. International, Ltd.*, 787 So.2d at 842; *Irvine*, 495 So.2d at 167; *Bd. of County Com'rs of Brevard County v. Snyder*, 627 So. 2d 469, 474 (Fla. 1993) ("[R]ulings of a board acting in its quasi-judicial capacity ... will be upheld only if they are supported by substantial competent evidence.") (citing *De Groot v. Sheffield*, 95 So.2d 912 (Fla.1957).); *Premier Developers III Associates v. City of Fort Lauderdale*, 920 So. 2d 852, 854 (Fla. 4th DCA 2006) ("To deny a plat application, a local government agency must show by competent substantial evidence that the application does not meet the published criteria.").

Here, Staff confirmed that the project was in compliance with the applicable requirements of the Town's Code. Ex. J, 32:15-16. However, the Board failed to support its imposition of the Subject Condition with any evidence, much less "substantial competent evidence." Nor did the Board "detail in its findings the criterion or criteria that are not met" as required by Section 5-23.1 of the Town Code.

⁴ Or, as is the case here, to approve it subject to a condition that the applicant expressly rejected.

Moreover, courts of this state have made clear that public opinion and outcry cannot, as a matter of law, form a legitimate basis for denial of a site plan approval or building permit allowed under objective code standards. *See Colonial Apartments, L.P. v. City of DeLand*, 577 So.2d 593 (Fla. 5th DCA 1991); *Pollard v. Palm Beach County*, 560 So.2d 1358 (Fla. 4th DCA 1990); *BML Investments v. City of Casselberry*, 476 So.2d 713 (Fla. 5th DCA 1985); *City of Apopka v. Orange County*, 299 So.2d 657 (Fla. 4th DCA 1974); *cf. Metro. Dade County v. Blumenthal*, 675 So. 2d 598, 607 (Fla. 3d DCA 1995), *on reh'g* (Feb. 21, 1996) (discussing the value of citizen testimony in a zoning matter and holding that “[m]ere generalized statements of opposition are to be disregarded, but fact-based testimony is not.”). For example, in *Pollard*, the court held: “The objections of a large number of residents of the affected neighborhood are not a sound basis for the denial of a permit [N]umerous objections by adjoining landowners may not properly be given even a cumulative effect.” *Id.* at 1360.

Here, the Board relied on public comment and opinion instead of substantial competent evidence in reaching its conclusion as to where the Church’s cross should be moved back to. This issue is demonstrated by the following colloquy from the Board:

MR. TELESCO: We can ask if they would voluntarily change that detail. See if they agree to that. We're not forcing them. *We're asking for cooperation on an issue that's sensitive to everybody here.*

MR. SIMONE: *Why is it sensitive? That's the question that you have to answer.*

MR. TELESCO: *Well, we've heard the people, one after the other.*

(Ex. J, 38:17-25.) (Emphasis added).

MR. BEBCHIK: ... *So to address the comment of the public*, I would be comfortable if that tower can be set back to the same is that position of where the Cadillac tower is right now.

(Ex. J, 78:11-15.) (Emphasis added).

The transcript demonstrates that public opinion regarding placement of the steeple and cross was driving the Board’s decision making. A number of those public comments related to the religious symbol being inappropriate, including, *e.g.* “[t]his cross here should not be there. *You know, we’re not a Christian town.*” (Ex. J, 19:20-21.) (Emphasis supplied). By basing its decision on public comment and not the evidence presented by the Town’s Staff and the Church’s professionals, the Board failed to provide a legitimate basis for requiring the steeple to be moved back, and therefore the Subject Condition cannot stand.

In conclusion, we ask that the Town Council quash the Subject Condition but otherwise affirm the Development Order in its entirety. The Church reserves the right to supplement this appeal prior to the hearing. Moreover, the Church expressly reserves all rights and remedies existing under state and federal law. This appeal is not – nor shall it be deemed to be – a waiver or abandonment of any other rights and/or remedy existing at law or in equity.

Sincerely,



Amy E. Huber
For the Firm

Encls.

cc: Stanley Price, Esq.
Frank Simon, Esq.
Ron Wasson
Marlene Siegel
Michael Miller

INDEX TO ADDENDUM

- A. Town of Bay Harbor Islands Resolution No. 2098
- B. Development Review Committee Staff Report dated January 29, 2016
- C. Development Review Committee Staff Report dated April 12, 2016
- D. Planning & Zoning Board Agenda and Staff Memorandum dated May 11, 2016
- E. Planning & Zoning Board Meeting Transcript dated May 17, 2016
- F. Town Legal Memorandum Regarding Zoning of Religious Land Uses dated May 13, 2016
- G. Zyscovich Architects Narrative of Revisions Based on Planning & Zoning Board Comments
- H. Planning Staff E-mail Approval of Revised Plans dated June 28, 2016
- I. Planning & Zoning Board Staff Memorandum dated July 12, 2016
- J. Planning & Zoning Board Meeting dated July 19, 2016
- K. Shubin & Bass Letter dated July 19, 2016

EXHIBIT A

A RESOLUTION OF THE PLANNING AND ZONING BOARD OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, APPROVING THE SITE DEVELOPMENT PLAN APPLICATION FOR THE CHURCH BY THE SEA PROJECT.

WHEREAS, on April 28, 2016, The Church by the Sea, Inc. (hereinafter the "Applicant"), filed an initial application for site plan approval. On June 27, 2016, Applicant submitted a revised site plan for a three (3) story mixed use building consisting of open and enclosed parking, together with commercial shopping on the ground floor along Kane Concourse, and two (2) stories of a religious use thereupon located at 1000 Kane Concourse, Bay Harbor Islands, Florida, and legally described as:

Tract "N" of "Nolan Brown", according to the Plat thereof, as recorded in Plat Book 56 at Page 53, of the Public Records of Miami-Dade County, Florida.

And,

Lot 18 of Block 12, "Bay Harbor Island" Subdivision according to the plat thereof, as recorded in Plat Book 46, at Page 5 of the Public Records of Miami-Dade County;

(Hereinafter the "Site Plan"); and

WHEREAS, a site plan for new construction requires approval by the Planning and Zoning Board pursuant to Section 5-23.1(a) of the Town of Bay Harbor Islands' Code of Ordinances (hereinafter the "Code"); and

WHEREAS, on July 19, 2016, the Town's Planning and Zoning Board approved the Site Plan, pursuant to Section 5-23.1(a) of the Code, with the conditions set forth below.

NOW THEREFORE, be it resolved that:

1. **Recitals.** The foregoing recitals are hereby ratified as true and correct and incorporated herein by reference.
2. **Finding.** The Planning and Zoning Board finds that the Site Plan is consistent with the criteria set forth in Section of 5-23.1 of the Code and approves the Site Plan dated June 14, 2016, subject to the below conditions for approval.
3. **Effective Date.** This Resolution shall take effect upon the date of its adoption (the "Effective Date").
4. **Conditions of Approval.**
 - A. This approval is based on the Site Plan dated June 27, 2016. Any modifications thereto shall require separate approvals from either staff or the Planning and Zoning Board, as specified in the Code.
 - B. When the Miami-Dade Fire Department formally reviews the Project, if any material site design changes are required, a re-approval of the Site Plan shall be required by staff or the Planning and Zoning Board, as specified in the Code.

- C. Applicant shall submit final working plans within 365 days after the Effective date of this Resolution, unless extended by the Town Manager, or his or her designee, for up to 180 days. Applicant shall obtain a building permit within 90 days after the approval of final working plans, unless extended by the Town Manager, or his or her designee, for up to 90 days. Failure to obtain a building permit within the prescribed time shall result in the invalidation of the Site Plan, except and unless this Resolution is extended pursuant to the Code or other valid extension as prescribed by Florida law.
- D. The vertical tower extending beyond the roof level depicted on the East Elevation (Page A-202 of the Site Plan) shall be relocated to the south so that the northern edge of the tower shall be located in the same position in which the northern edge of Ocean Cadillac's current vertical tower is located (thirty-four feet (34') from the north property line).
- E. The building signage depicted in the Site Plan is not a part of the Site Plan approval. Applicant shall apply for the building signage depicted in the Site Plan via separate application.

5. **Severability.** If any provision, section, phrase or word of this Resolution is declared invalid or unenforceable by a court of competent jurisdiction, the remaining provisions, sections, phrases or words of this Resolution shall remain in full force and effect.

6. This Resolution shall become effective immediately upon its adoption, unless a timely appeal is filed with the Town Council.

PASSED this 28 day of July, 2016.

**PLANNING AND ZONING BOARD
TOWN OF BAY HARBOR ISLANDS**

By: 
Steven Hurwitz, Chair Person

ATTEST:


Marlene Siegel, Town Clerk

APPROVED AS TO FORM:


Frank C. Simone, Esq., Assistant Town Attorney

EXHIBIT B

**TOWN OF BAY HARBOR ISLANDS
COMMUNITY DEVELOPMENT
MEMORANDUM**

To: Town of Bay Harbor Islands
 Development Review Committee

From: Michael J. Miller, AICP
 Consultant Town Planner

Date: January 29th, 2016

Subject: Site Development Plan Application – 1st Review
 Church by the Sea – Mixed-Use Commercial Complex
 1000 Kane Concourse
 Bay Harbor Islands Acct. No. BP2016-XXX
 MMPA Acct. No. 01-0702-1032

RECOMMENDED ACTION

MMPA recommends the Development Review Committee (DRC) **DEFER** action on the proposed Site Development Plan application at this time to allow the applicant's design team to address the listed comments. The submittal package has a few design / Code violation issues, some of the plans are inadequate / inconsistent and a few other items need to be corrected.

GENERAL PROJECT INFORMATION

Land Use Designation: C – Commercial

Zoning District: B-1 Business District

General Location: 1000 Kane Concourse

Legal Description: Tract "N" of "Nolan Brown", according to the Plat thereof, as recorded in Plat Book 56 Page 53, of the Public Records of Miami-Dade County, Florida.
 And,
 Lot 18 of Block 12, "Bay Harbor Island" Subdivision according to the Plat thereof, as recorded in Plat Book 46, at Page 5 of the Public Records of Miami-Dade County.

PROJECT DESCRIPTION

The project architect, Zyscovich Architects, as agent for the property owner, Ocean Cadillac, Inc., and contract purchaser, the Church-by-the-Sea, Inc., has submitted a Site Development Plan application to allow for the demolition of the existing Ocean Cadillac automobile dealership facilities and the construction of a new 3-story mixed-use development project. The new complex is proposed to have retail space at street level facing Kane Concourse with a religious establishment on the upper two (2) floors. The site is located at 1000 Kane Concourse.

The collective site is currently developed as the Ocean Cadillac automobile dealership complex. Tract "N" of the Nolan Brown re-plat, which fronts onto Kane Concourse and East Bay Harbor Drive, contains the Ocean Cadillac buildings (offices / showroom / repair facilities / etc.), while a surface parking lot that has been used for the temporary storage of new vehicles is located on Lot 18 of Block 12. The surface parking lot is separated by a 30-foot wide north / south alley from the main site. This alley connects to the original east / west 20-foot wide alley running between Kane Concourse and 95th Street. The surface parking lot site fronts onto 95th Street and the alley – both east and north of the site. The proposed site design incorporates a 2-story religious establishment facility over one floor of retail (8,474 sq. ft.) / religious establishment lobby (2,039 sq. ft.) / parking garage that is at grade. The site design includes one two-way driveway connection to 95th Street located just east of the alley that provides access to the grade level parking garage under the building. There is also one driveway connection proposed to the alley for the loading area under the building. Finally a one-way driveway connection from the surface parking lot to the north / south alley exists and the exit lane is onto the east /west alley on the north side of the site. Currently no Fire Department staging areas are shown on the plans. It is presumed since the site can be accessed from all sides this may be sufficient. The applicant is encouraged to meet with the M-D Fire Department for a conceptual approval. If changes are required by the Fire Dept. after the Town PZB approves the site plan the changes may have to be re-approved.

On the building rooftop is a labyrinth as well as a restroom. The proposed new building is 3-stories in height @ 44'-8" above BFE.

The survey indicates the total lot area for Lot 18 is 9,750 square feet / 0.22 acres in size but does not list the lot area for Tract "N". The Miami-Dade County Property Appraisers website lists the total lot area for Tract "N" as 51,717 square feet / 1.19 acres. The recorded plat indicates the site is 1.2 acres in size. Therefore, the total combined lot area is 61,467 square feet / 1.41 acres. The survey needs to be updated to include the total lot area of Tract "N".

The adjoining / nearby development sites currently include a 2-story commercial building to the north across Kane Concourse. To the immediate west is a one-story commercial building. To the south across 95th Street is a Town owned surface parking lot as well as the Capri Apartments @ 20 DU / 40 DUA. To the east across East Bay Harbor Drive is the one-story Tauber office building, the proposed La Boutique multi-family residential complex @ 41 DU / 78.8 DUA, and the Mansard Condominium @ 8 DU / 30.8 DUA. This area of the Town is predominated by a mixture of low-rise (1-3 stories) and mid-rise (5-7 stories) residential and commercial complexes.

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The Town's 2002 Community Vision Master Plan identifies this area for mid-rise residential complexes (7+/- stories) and commercial uses along Kane Concourse. Therefore, the proposed development is deemed generally consistent with the Town's future vision for this area.

BACKGROUND INFORMATION

The Town of Bay Harbor Islands completed major amendments to the Town's adopted Comprehensive Plan and Land Development Regulations (LDRs) in the last 10+/- years. In 2005 when the Town updated the B-1 Business Zoning District LDRs a proposal was made to increase the allowable building height in the B-1 Business District to 75 feet BFE as per the B&A Downtown Study; however, the Town Council decided to keep the allowable height limit at 65 feet per the Community Visioning recommendations. The Town also adopted numerous other modifications to many other Code provisions that affect yard encroachments, parking lot designs, building height limits and exceptions, building design standards, landscaping and other provisions. The current submittal package has a few design / Code compliance issues.

COMPREHENSIVE PLAN / ZONING

Comprehensive Plan – The subject site has a Future Land Use Map (FLUM) designation of "Commercial." The proposed use of the commercial property would be consistent with the applicable FLUM designation of the property.

Land Development Regulations / Zoning Code – The property has a Zoning classification of B-1 Business District. The maximum building height allowed in this area is 65 feet (measured from BFE to top of main roof deck). Although the religious establishment use of the property is listed in the Zoning Code as requiring the Town Commission to approve it, a recent legal opinion from Stanley Price indicates the development proposal should be reviewed / processed as any other due to Federal law (Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA)). The proposed site design is not consistent with some provisions of the Code at present.

PLATTING

The site will not require re-platting, as the site is currently platted as described above. A Unity of Title document may be required to legally tie the lots together prior to the issuance of building permits, as the surface parking lot provides required parking for the building site.

RIGHT-OF-WAY, OFF-STREET PARKING AND ACCESS DESCRIPTION

As stated above, the site development plan includes a 20-foot wide two-way driveway connection to 95th Street that provides access to the parking garage (Code requires 23' min.). There are also driveway connections to the ally for a loading area under the building and for the surface parking lot. The alley traffic flow is a one-way only southerly to 95th Street.

Based on 8,474 square feet of retail space the Code requires at least twenty-eight (28) parking spaces and based on 386 seats the Code requires at least ninety-seven (97) parking spaces for a total of 125 required parking spaces. A total of 128 parking spaces are provided on site (81 standard, 44 tandem and 3 ADA spaces).

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As stated above currently no Fire Department staging areas are shown on the plans. The applicant should meet with the Miami-Dade Fire Department staff as soon as possible to identify appropriate staging areas, as this may affect the site design. Since the site fronts public roadways on all sides this should not be an issue. Any changes required by the Fire Department subsequent to the Town's site plan approval may cause the plans to be re-submitted to the DRC / PZB.

BUILDING DESIGN / BUILDING LENGTH / BREEZEWAY

The building design is modern with decorative perforated metal screening and vertical glass elements.

The building does not require a breezeway as it does not contain residential units.

SITE PLAN COMMENTS

Following are comments based on the plans dated by the architect on January 5th, 2016, submitted to the Town for consideration:

- 1) The address on the cover sheet must be corrected to state that the Town is Bay Harbor Islands (not Isl.).
- 2) The address in the title block must be corrected to state 1000 Kane Concourse, Bay Harbor Islands (not Isl.), FL.
- 3) Many of the plans use a street name of "East Harbor Drive" – it is East Bay Harbor Drive".
- 4) The survey has the following issues:
 - a) MMPA believes the survey shows the centerline for Kane Concourse incorrectly. Kane Concourse is a 110' right-of-way. The centerline should be 55-feet from the property line (not 50).
 - b) Provide a lot size for Tract "N" and the combined site.
 - c) The Location Map must include Lot 18 of Block 12 as part of the subject site.
- 5) A tree survey must be provided showing the height, species, caliper, etc. of the existing trees on site. If no trees exist on the site, provide a note on the survey stating so. The tree survey must be the same scale as the site plan.
- 6) Sheet GN-002 has the following issues:
 - a) According to the Miami-Dade County Property Appraisers website, the total lot size for Tract "N" is 51,717 sq. ft. (not 52,110). The recorded plat shows 1.2 acres. This will need to be verified by the surveyor as listed above. Update all applications, sheets, tables and calculations to reflect the correct lot size.
 - b) The number of regular parking spaces (not ADA) provided in the parking garage is 67 (not 76) and the number of tandem parking spaces totals 18 (not 9).
 - c) The number of regular parking spaces for the remote surface west lot is 14 and the number of tandem parking spaces is 26.

- d) The required setback for properties fronting Kane Concourse is 55-feet; as stated above. MMPA believes the centerline of the road is shown incorrectly. The required setback for Kane Concourse will need to be updated upon verification.
 - e) The maximum height for buildings in the B-1 district is 65-feet **above Base Flood Elevation (BFE)** (not above crown of road). Revise all sheets to reflect this.
 - f) Provide a note on this sheet stating flood proofing will be provided in accordance with Sec 23-11(c)(17).
 - g) The B-1 Business Zoning district must be listed in the table.
 - h) The FLUM designation of Commercial must be listed in the table.
 - i) Provide the legal description of the site(s) in the table.
 - j) A map showing the adjacent existing land uses within 300-feet of the subject property must be provided.
- 7) Correct the setback for Kane Concourse on Sheet GN-003.
- 8) The image on Sheet C-004 for the corner of 95th Street and EBHD is actually an image of the corner of 94th Street and EBHD. Provide a correct image of the corner of 95th Street and EBHD.
- 9) Correct the centerline of Kane Concourse on Sheet D-101
- 10) The landscape plans have the following issues:
- a) The attached Landscape Requirements Legend must be included on the plans.
 - b) The plant list must list the correct name of the project (Church-by-the-Sea / not Bal Harbor Shops). Additionally, the project is in the Town of Bay Harbor Islands (not Miami).
 - c) Provide the size specifications for the Lignum Vitae tree.
 - d) The site requires 31 shade trees - only 8 are provided on the site.
 - e) The site also requires 18+/- Street Trees. The Street Trees along Kane Concourse already exist; however, Street Trees must be provided along EBHD and 95th Street. The Town's Street Tree Master Plan shows the Street Tree species for EBHD is Beauty Leaf while for 95th Street the Street Tree species is Satin Leaf.
 - f) The surface parking lot design is non-conforming. It has been used as a temporary storage lot for new vehicles - not by patrons. Section 24-16 of the Town's Code requires a 10-foot landscape strip between any on-site parking lot and adjacent public rights-of-way. Within this landscape strip a continuous hedge must be planted and trees. The paved area adjoins the concrete louver wall along 95th Street with no landscaping. A 2-foot setback is required for walls from front property lines so that landscaping can be planted on the street side. Verify that all parking spaces are at least 8.5' x 18' and one-way drives are 12' in width (Sec. 23-30). As there are 3 excess parking spaces, MMPA suggests a landscape strip be created between the surface parking and 95th Street.

- g) As required throughout Miami-Dade County the Town utilizes the base Miami-Dade County Landscape Code but has adopted supplemental regulations (Sec. 24-16). While the M-D Landscape Code requires 20% green open / pervious space for the site, the Town's Zoning Code does not require this. Therefore, the site meets the Town's pervious requirements.
- 11) Sheet A-101 has the following issues:
- a) The elevations must be shown as they relate to BFE (ex. -3'-8" BFE = 5.37 NGVD).
 - b) Provide spot elevations in the garage and the church lobby. The BFE for these sites are 9.0 NGVD.
 - c) Show the type and location of mail receptacles.
 - d) Provide arrows showing the alley is a one-way street (southbound to 95th Street).
 - e) Relocate / indent the door exiting the staircase at the southwest corner of the main site into the alley so it does not – or have it exit onto the walkway along 95th Street.
 - f) Provide a dimension for the driveway from 95th Street into the covered parking garage (scales 20-feet). Town Code requires that a two-way driveway must be a minimum of 23-feet in width.
 - g) Per Sec. 23-11(c)(2) 75% of the setback along EBHD must be landscape areas.
 - h) Per Sec. 23-11(c)(14) 5-foot pedestrian walkway must be provided periodically to provide access from Kane Concourse to the alley / parking areas in the rear of the buildings. Suggest this be placed at the west end of the site on Kane Concourse.
- 12) The building elevations appear to show portions of roof-mounted mechanical equipment (A/C Units) exposed above screening. This is not allowed – must be fully screened.
- 13) Provide additional setback dimensions on Sheet A-103.
- 14) On Sheet A-104, provide notations showing the height of the parapet walls (5 feet max.). Additionally, revise the spot elevations to show them as they relate to BFE.
- 15) Provide an upper roof plan with spot elevations.
- 16) The elevations (Sheet A-201 & A-202) have the following issues:
- a) The building elevations must be listed as they relate to BFE (ex. -3'-8" BFE / 5.37 NGVD); this would make the second level 14'-8" BFE, etc.
 - b) Per Sec. 17-20(o), (t), and (u), special PZB approval will be required for the Church-by-the-Sea sign. Any sign over 14 feet above grade requires special approval by the PZB.
- 17) The building sections (Sheets A-301 / A-302) must list the elevations as they relate to BFE.
- 18) The exterior signage details on Sheet A-702 do not meet the Town Code requirements (Sec. 17-20). The letters may be no more than 18 inches in height. The maximum width of the retail signs is 60% of the linear street frontage of the store (not 10-feet). The color of the signs is to be chosen by the building owner (not the tenant).

Site Development Plan Application – 1st Review
Church by the Sea – Mixed-use Commercial Complex
1000 Kane Concourse
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- 19) A letter from the solid waste hauler must be provided stating that they agree to pick up the trash as currently proposed.
- 20) The alley between the sites is currently a one-way alley (southbound to 95th Street). The east / west alley operates as a two-way alley. Sheet A-703 appears to show traffic movement that travels the wrong way on the alley. Revise the traffic movements.
- 21) Sheet A-701 shows a solid waste / delivery truck backing northerly on the one-way southbound alley to the loading area. This is not possible unless the one-way traffic flow is modified by the Town.
- 22) MMPA is concerned with the proposed location of the new parking garage driveway to 95th Street and the alley, as motorists may not have good visibility. Suggest moving the driveway more easterly.
- 23) A sight triangle (25 feet) must be illustrated for the area where the building and alley intersect with 95th Street.
- 24) Sheet L-100 must show foot-candle readings at all property lines. Note: readings may be no more than 1-footcandle at any property line.
- 25) The Location Sketch on Sheet C1 must also include Lot 18 in the subject site.
- 26) The Civil Engineering plans must include preliminary paving and drainage plans and calculations and preliminary pavement markings and signage. The plans must include proposed storm-water flow directions and the amount of drainage flow. We suspect drainage wells will be used. How will storm-water be collected and discharged? Discharge off-site is prohibited.
- 27) The conceptual Fire Department staging areas need to be agreed to by the Miami-Dade Fire Department ASAP, as this could affect the design.
- 28) An impact analysis form must be submitted for concurrency determinations (potable water / sanitary sewer / storm-water / solid waste / traffic generation).
- 29) Provide a narrative as the expected number of employees at the religious establishment (daily / services), the number of congregants on average per service and service times.

Town of Bay Harbor Islands, Florida Landscape Requirements Legend (Worksheet)

Commercial Sites

Town Landscape Code (Sec. 24-16) & Miami-Dade Landscape Code (Chapter 18A)

Site Address _____ Legal Description _____

Net Lot Area _____ Acres / _____ SF

	Required	Provided
I. Open Space Requirement		

1. No minimum open space requirement.
(BHI – Sec. 23-11(C))

2. Maximum Lawn Area Allowed
(MDC – Sec. 18A(A)(5))

a. Net Lot Area _____ SF - building footprint _____ SF = _____ SF

b. SF from above _____ x 20% = _____ SF 20% Max / _____ SF _____ % / _____ SF
(Net Lot Area – Building Footprint x 20% = maximum lawn area permitted)

II. Shade Trees

A. Required

1. 22 shade trees/acre: 22 x _____ acres = _____
(Min. 12' in height / 4' clear wood / 2 1/2" caliper)
(Palm trees substituted at a 3:1 ratio; max. 25% of required shade trees)
(MDC – Sec. 18A-6(C)(5)) and BHI Sec. 24-16)

2. Native Species Required - 50% Min.
of shade trees req. _____ x 50% = _____
(BHI – Sec. 24-16(a)(2))

3. Drought Tolerant and Low
Maintenance Species Require – 50% Min.
of shade trees req. _____ x 50% = _____
(MDC – Sec. 18A-6(C)(11)(b))

B. Tree Species

1. Number of shade trees required
(from Sec. (II)(A)(1) above) _____

2. Number of shade tree species required
(BHI – Sec. 24-16(a)(2)) _____

*See Following Table.

Number of Different Tree Species based on Quantity

1-5 required shade trees	2 shade tree species
6-10 required shade trees	3 shade tree species
11-15 required shade trees	4 shade tree species
16-20 required shade trees	5 shade tree species
21-30 required shade trees	6 shade tree species
31 or more required shade trees	7 shade tree species

C. Tree Heights

1. Number of Stories of building _____
2. Number of shade trees required _____
(from Sec. (II)(A)(1) above)
3. Shade tree heights required:
 - 12 ft. - _____% or _____ shade trees
 - 14-16 ft. - _____% or _____ shade trees
 - 16-18 ft. - _____% or _____ shade trees
 - 18-20 ft. - _____% or _____ shade trees

Size of Tree Species in Relationship to Building Height

No. Stories	Min. Shade Tree Height (ft.)	Min. Spread (ft.)	Palm Height (ft.)
1-2	12	5	14-18
3	50% min. req.	5	14-18
	50% 14-16	6	18-22
4	50% min. req.	5	14-18
	25% 14-16	6	18-22
	25% 16-18	7	22-28
5 plus	25% min. req.	5	14-18
	50% 16-18	7	22-28
	25% 18-20	8	22-28

(BHI – Sec. 24-16(a)(2))

III. Street Trees

Required

Provided

1. Street Trees @ 1:35'

Width of lot _____ / 35' = _____

(15' min height / 6' clear wood / 2 ½" caliper)

(Street tree species determined by Street Tree Master Plan)

(Street trees do not count toward required on site shade trees)

(BHI – Sec. 24-16(a)(2)(a))

IV. Shrubs Required	Required	Provided

1. 10 shrubs required per shade tree (Min. 24" in height / visual screen min. 36" in height / max 24" on center) (BHI – Sec. 24-16(a)(2)(d))	_____	_____
2. Native Species Required - 30% Min. (MDC – Sec. 18A-6(D)(1)(a))	_____	_____
3. Drought Tolerant and Low Maintenance Species Required – 50% Min. (MDC – Sec. 18A-6(D)(1)(b))	_____	_____

V. Buffers (If applicable)
(BHI – Sec. 24-16)

1. Parking Lot from ROW	_____	_____
	(yes / no)	(yes / no)
2. Dissimilar Uses	_____	_____
	(yes / no)	(yes / no)

VI. Parking Lot Landscaping (If applicable)	Required	Provided

1. 10 SF / parking space: 10 x _____ spaces = _____ SF (MDC – Sec. 18A-6(J))	_____	_____
2. Shade Trees Required (MDC – Sec. 18A-6(J))	_____	_____
3. Shrubs Required (MDC – Sec. 18A-6(I))	_____	_____

VII. Right Tree Right Place
(BHI – Sec. 24-16(a)(2)(f))

1. Number of trees near power lines (See attached FPL guidelines)	_____

VIII. Florida Friendly Landscaping
(MDC – Sec. 18A-2(A))

All landscaping shall promote Florida Friendly landscaping principles through the use of drought-tolerant plant species, grouping of plant material by water requirements, the use of irrigation systems that conserve the use of potable and non-potable water supplies and restrictions on the amount of lawn areas. Florida Friendly landscape principles also promote planting the right plant in the right place and appropriate fertilization and mulching.

TOWN OF BAY HARBOR ISLANDS, FLORIDA

DEVELOPMENT IMPACT ANALYSIS REPORT

Project Name: _____

Location: _____

Address: _____

General Project Description: _____

Site Square Feet / Acreage: _____

The following information and analysis is intended to satisfy the requirements set forth in Section 11-8 of the Town of Bay Harbor Islands, Florida Code of Ordinances, which provides guidelines and requirements to ensure that the Level of Service (LOS) standards as set forth in the adopted Comprehensive Plan will be maintained, unless mitigation is provided. The following LOS standards shall be used to analyze the infrastructure impacts of each development.

Potable Water	200 gallons per capita, per day
Sanitary Sewer	156 gallons per capita, per day
Solid Waste	0.632 tons per capita, per year
Drainage	Design LOS standards to meet a 10-year storm and as specified by the Miami-Dade County Public Works manual, Section D4 – Water Control; and no ponding water for more than 48 hours
Local Streets*	LOS "B" at peak hour
Arterial Roadways**	LOS "E" at PM peak hour* (96 th Street / Kane Concourse / SR 922)
Recreation Facilities	1 tennis court for every 4,000 persons, 12-60 years old 1 lighted baseball field for every 6,000 persons, 10-40 years old 1 tot lot for every 500 persons, 3-12 years old
Public School Facilities	100% of FISH (Florida Inventory of School Houses) capacity including re-locatable classrooms in each public school concurrency service area (CSA)

Note: * The Town's original Comprehensive Plan (June 1988) lists the adopted Level of Service (LOS) for all local roadways as LOS "B" Peak Hour. According to the 2002 FDOT Quality / Level of Service Handbook LOS "B" is not achievable in some instances (Table 4-1). However, the Town's plan includes a roadway capacity of 10,000 vehicles per day which corresponds to LOS "D". Therefore, the Town will use the highest achievable LOS during concurrency reviews.

**The Town's original Comprehensive Plan (June 1988) lists the preferred Level of Service (LOS) for SR 922 / Kane Concourse as "C" Peak Hour, but defers to state / county jurisdictions for applicable LOS. State law specifically prohibits local governments from adopting different LOS on state roadways. FDOT has adopted LOS "E" at PM Peak Hour for SR 922 / Kane Concourse and that LOS is used by both FDOT / Miami-Dade County for concurrency / planning purposes.

For traffic impact analysis utilize the latest ITE Manual for applicable land use trip generation purposes (both ADT / PM Peak Hour). Both roadway link and signalized intersection analysis is required, as required by the Town.

Sec. 11-8.3. - Level of service (LOS).

The town's adopted level of service (LOS) standards for applicable public facilities and services are found in the town's adopted comprehensive plan elements, and/or as superseded by state law or county charter provisions. The following LOS standards are to be used in site specific development concurrency reviews:

Potable Water	200 gallons per capita, per day
Sanitary Sewer	156 gallons per capita, per day
Solid Waste	0.632 tons per capita, per day
Drainage	Design LOS standard to meet a 10-year storm and as specified by the Miami-Dade County Public Works Manual, Section D4 - Water Control; and no ponding water for more than 48 hours.
Local Streets*	LOS "B" at peak hour
Arterial Roadways**	LOS "E" at PM peak hour* (96th Street/Kane Concourse/SR 922)
Recreation Facilities	1 tennis court for every 4,000 persons, 12—60 years old 1 lighted baseball field for every 6,000 persons, 10—40 years old 1 tot lot for every 500 persons, 3—12 years old
Public School Facilities	100% of FISH (Florida Inventory of School Houses) capacity including re-locatable classrooms in each public school concurrency service area (CSA)

Notes:

* The town's original Comprehensive Plan (June 1988) lists the adopted level of service (LOS) for all local roadways as LOS "B" Peak Hour. According to the 2002 FDOT Quality/Level of Service Handbook LOS "B" is not achievable in some instances (Table 4-1). However, the town's plan includes a roadway capacity of 10,000 vehicles per day which corresponds to LOS "C". Therefore, the town will use the highest achievable LOS during concurrency reviews.

** The town's original Comprehensive Plan (June 1988) lists the preferred level of service (LOS) for SR 922/Kane Concourse as "C" Peak Hour, but defers to state/county jurisdictions for applicable LOS. State law now specifically prohibits local governments from adopting different LOS on state roadways. FDOT has adopted LOS "E" at PM Peak Hour for SR 922/Kane Concourse and that LOS is used by both FDOT/Miami-Dade County for concurrency/planning purposes.

(Ord. No. 923, § 1(Exh. A), 10-10-2011)

Sec. 11-8.4. - Method and responsibility of demonstrating compliance.

(a) The responsibility of showing compliance with adopted level of service (LOS) requirements shall be upon the developer/property owner. In order to be approvable, applications for development order approvals shall provide sufficient written information showing compliance with these standards, as determined by the town. A concurrency evaluation application will be provided to the developer for completion and is available at the town's building department. The application and associated forms shall set forth the quantity and quality of written and graphic information necessary to show compliance with LOS requirements and shall at a minimum require:

- (1) Name, address, telephone number and e-mail address of the property owner as listed by the Miami-Dade Property Appraiser (signature of the actual property owner must be notarized).
- (2) Name, address, telephone number and e-mail address of the applicant, if other than the actual property owner.
- (3) Proof of ownership which shall consist of at least one of the following:
 - a. A fee simple title.
 - b. An option to acquire fee simple title within a specified period of time.
 - c. A leasehold interest in excess of 20 years.
 - d. A substantial interest in a joint venture agreement or real estate syndication which has can obtain a fee simple title.
 - e. A marketable title subject to a certain condition which will not substantially restrict development within a reasonable time.
 - f. An executed copy of the warranty deed.
- (4) A certified (signed and sealed) survey, prepared by a licensed Florida surveyor within one year from date of application, which includes:
 - a. An accurate legal description and sketch of the subject property;
 - b. A computation of the total area of the property in square feet and to the nearest tenth of an acre; and
 - c. Current zoning of the property.
 - d. Current flood zone/minimum floor elevation of the property.
- (5) Description of the proposed project, to include:
 - a. Specific use or uses proposed or proposed for expansion.
 - b. For non-residential uses, square footages of overall proposal and detailed breakdown of square footages for each individual use in a multi-use project.
For residential uses, the number of dwelling units and number of bedrooms by type.
- (6) Certificate by Miami-Dade County or a trips analysis paid for by the applicant, unless the development proposal is specifically exempted by this article, or if applicable, a traffic study as required by the town. Traffic impact studies required under this section shall be prepared by appropriate consultants approved or retained by the town at the developer's expense.
- (7)

For all residential projects, a Miami-Dade County School Board school concurrency review (letter/certificate) paid for by the applicant, unless the development proposal is specifically exempted by this article, shall be included with the application submitted to the town.

- (8) On-site storm water management plan prepared by a qualified professional engineer unless specifically exempted by section.
- (9) A detailed solid waste management plan which describes the method of collection and disposal.
- (b) The concurrency evaluation shall be reviewed by the town's designated review staff and/or consultants retained by the town at the developer's expense for compliance with this article. Based on the review, a written finding of compliance or noncompliance shall be issued by the town. Processing/review fees for the concurrency evaluation by the town shall be required. Such fees shall be adopted by resolution of the town council and are on file in the town clerk's office.

(Ord. No. 923, § 1(Exh. A), 10-10-2011)

EXHIBIT C

**TOWN OF BAY HARBOR ISLANDS
COMMUNITY DEVELOPMENT
MEMORANDUM**

To: Town of Bay Harbor Islands
Development Review Committee

From: Michael J. Miller, AICP *MDM*
Consultant Town Planner

Date: April 12th, 2016

Subject: Site Development Plan Application – 2nd Review
Church by the Sea – Mixed-Use Commercial Complex
1000 Kane Concourse
Bay Harbor Islands Acct. No. MB2016-17
MMPA Acct. No. 01-0702-1032

RECOMMENDED ACTION

MMPA recommends the Development Review Committee (DRC) either DEFER action on the proposed Site Development Plan application again to allow the applicant's design team to address the listed comments, or APPROVE the application subject to final staff sign-off of any remaining corrections. The submittal package still has a few design / Code violation issues, some of the plans are still inadequate / inconsistent and a few other items need to be corrected.

GENERAL PROJECT INFORMATION

Land Use Designation: C – Commercial

Zoning District: B-1 Business District

General Location: 1000 Kane Concourse

Legal Description: Tract "N" of "Nolan Brown", according to the Plat thereof, as recorded in Plat Book 56 Page 53, of the Public Records of Miami-Dade County, Florida.
And,
Lot 18 of Block 12, "Bay Harbor Island" Subdivision according to the Plat thereof, as recorded in Plat Book 46, at Page 5 of the Public Records of Miami-Dade County.

PROJECT DESCRIPTION

The project architect, Zyscovich Architects, as agent for the property owner, Ocean Cadillac, Inc., and contract purchaser, the Church-by-the-Sea, Inc., has submitted a Site Development Plan application to allow for the demolition of the existing Ocean Cadillac automobile dealership facilities and the construction of a new 3-story mixed-use development project. The new complex is proposed to have retail space at street level facing Kane Concourse with a religious establishment on the upper two (2) floors. The site is located at 1000 Kane Concourse.

The collective site is currently developed as the Ocean Cadillac automobile dealership complex. Tract "N" of the Nolan Brown re-plat, which fronts onto Kane Concourse and East Bay Harbor Drive, contains the Ocean Cadillac buildings (offices / showroom / repair facilities / etc.), while a surface parking lot that has been used for the temporary storage of new vehicles is located on Lot 18 of Block 12. The surface parking lot is separated by a 30-foot wide north / south alley from the main site. This alley connects to the original east / west 20-foot wide alley running between Kane Concourse and 95th Street. The surface parking lot site fronts onto 95th Street and the alley – both east and north of the site. The proposed site design incorporates a 2-story religious establishment facility over one floor of retail (8,474 sq. ft.) / religious establishment lobby (2,039 sq. ft.) / parking garage that is at grade. The proposed site design includes one two-way driveway connection to 95th Street located just east of the alley that provides access to the grade level parking garage under the building. There is also one driveway connection proposed to the alley for the loading area under the building. Finally as to the free-standing parking lot, a new one-way northbound driveway connection from 95th Street across the surface parking lot exiting onto the east / west alley on the north side of the site is proposed. Several parking spaces that now front onto the west side of the north / south alley are proposed to remain. One Fire Department staging area is currently shown on the plans along East Bay Harbor Drive. It is presumed since the site can be accessed from all sides this will be sufficient. The applicant is encouraged to meet with the M-D Fire Department for a conceptual review / approval. If changes are required by the Fire Dept. after the Town PZB approves the site plan the changes may have to be re-approved.

On the building rooftop is a labyrinth as well as a restroom. The proposed new building is 3-stories in height @ 44'-8" above BFE.

The survey indicates the total lot area for Lot 18 is 9,750 square feet / 0.22 acres in size and the total lot area for Tract "N" is 52,110 square feet / 1.20 acres in size. Therefore, the total combined lot area, according to the survey, is 61,860 square feet / 1.42 acres.

The adjoining / nearby development sites currently include a 2-story commercial building to the north across Kane Concourse. To the immediate west is a one-story commercial building. To the south across 95th Street is a Town owned surface parking lot as well as the Capri Apartments @ 20 DU / 40 DUA. To the east across East Bay Harbor Drive is the one-story Tauber office building, the proposed La Boutique multi-family residential complex @ 41 DU / 78.8 DUA, and the Mansard Condominium @ 8 DU / 30.8 DUA. This area of the Town is predominated by a mixture of low-rise (1-3 stories) and mid-rise (5-7 stories) residential and commercial complexes.

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Church by the Sea – Mixed-use Commercial Complex
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The Town's 2002 Community Vision Master Plan identifies this area for mid-rise residential complexes (7+/- stories) and commercial uses along Kane Concourse. Therefore, the proposed development is deemed generally consistent with the Town's future vision for this area.

BACKGROUND INFORMATION

The Town of Bay Harbor Islands completed major amendments to the Town's adopted Comprehensive Plan and Land Development Regulations (LDRs) in the last 12+/- years. In 2005 when the Town updated the B-1 Business Zoning District LDRs a proposal was made to increase the allowable building height in the B-1 Business District to 75 feet BFE as per the B&A Downtown Study; however, the Town Council decided to keep the allowable height limit at 65 feet per the Community Visioning recommendations. The Town also adopted numerous other modifications to many other Code provisions that affect yard encroachments, parking lot designs, building height limits and exceptions, building design standards, landscaping and other provisions. The current submittal package has a few design / Code compliance issues.

COMPREHENSIVE PLAN / ZONING

Comprehensive Plan – The subject site has a Future Land Use Map (FLUM) designation of "Commercial." The proposed use of the commercial property would be consistent with the applicable FLUM designation of the property.

Land Development Regulations / Zoning Code – The property has a Zoning classification of B-1 Business District. The maximum building height allowed in this area is 65 feet (measured from BFE to top of main roof deck). Although the religious establishment use of the property is listed in the Zoning Code as requiring the Town Commission to approve it, a recent legal opinion from Stanley Price, Esq. indicates the development proposal should be reviewed / processed as any other due to Federal law (Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA)). The proposed site design is still not consistent with some provisions of the Code at present.

PLATTING

The site will not require re-platting, as the site is currently platted as described above. A Unity of Title document may be required to legally tie the lots together prior to the issuance of building permits, as the surface parking lot provides required parking for the building site.

RIGHT-OF-WAY, OFF-STREET PARKING AND ACCESS DESCRIPTION

As stated above, the site development plan includes a 20-foot wide two-way driveway connection to 95th Street that provides access to the parking garage (Code requires 23' min.). There are also driveway connections to the ally for a loading area under the building and for the surface parking lot. The alley traffic flow is a one-way only southerly to 95th Street.

Based on 8,474 square feet of retail space the Code requires at least twenty-eight (28) parking spaces and based on 386 seats the Code requires at least ninety-seven (97) parking spaces for a total of 125 required parking spaces. A total of 125 parking spaces are provided on site (102 standard, 20 tandem and 3 ADA spaces).

Site Development Plan Application – 2nd Review
Church by the Sea – Mixed-use Commercial Complex
1000 Kane Concourse
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As stated above one Fire Department staging area is currently shown on the plans along East Bay Harbor Drive. The applicant should meet with the Miami-Dade Fire Department staff as soon as possible to identify appropriate staging areas, as this may affect the site design. Since the site fronts public roadways on all sides this should not be an issue. Any changes required by the Fire Department subsequent to the Town's site plan approval may cause the plans to be re-submitted to the DRC / PZB.

BUILDING DESIGN / BUILDING LENGTH / BREEZEWAY

The building design is modern with decorative perforated metal screening and vertical glass elements.

The building does not require a breezeway as it does not contain residential units.

SITE PLAN COMMENTS

Following are comments based on the plans dated by the architect on March 17th, 2016 and several revised sheets dated April 1st, 2016, submitted to the Town for consideration:

- 1) As requested previously a map showing the adjacent existing land uses within 300-feet of the subject property must be provided. Show the 300-foot radius on the map (draw a circle).
- 2) As required throughout Miami-Dade County the Town utilizes the base Miami-Dade County Landscape Code but has adopted supplemental regulations (Sec. 24-16). In our March 2016 DRC staff report we cited several typical M-D Landscape Code sections; however, after more in-depth research with county / other municipal staff it was determined that some of those provisions are "not applicable" to this site, as the Town's Kane Concourse commercial corridor is defined as an "Urban Center" – not a unincorporated suburban commercial site. The M-D Landscape Code does not address "Urban Center" commercial sites. However, within the M-D Urban Center District (Sec. 33-284.86) special land development regulations are set forth for more dense urban settings (city centers / downtowns). For example, rather than the normal 20% open space requirement, within Urban Centers least 10% open space is required. MMPA confirmed this Code application with the municipal staff at the City of Miami (downtown). Also the County's 10% requirement is broader than just landscaping. Most of the Town's commercial sites have little or no landscaping and predate the M-D Code. This information is new from our previous January 2016 DRC staff report.
 - a) Sec. 33-284.86(D) of the Miami-Dade County "Urban Center" Code states that the street area on the side adjoining the open space and consisting of the curb, street tree landscape strip and sidewalk shall count towards the square footage of the open space; the open space may also be provided in the form of landscape roof terraces / gardens on buildings. Additionally, private open space may be a combination of paving materials, lawn, ground cover, etc. Based on this section of the Miami-Dade County "Urban Center" Code, it appears that the proposed design exceeds the 10% open space requirement. Provide a new overall open space calculation on the plans (not just ground level pervious area / 4.55% shown).

- b) The above section of the Miami-Dade County "Urban Center" Code also states that only 16 trees are required per acre. Applying this Section of the Code, the site is required to have 23 shade trees. The Town Code allows 25% of the required shade trees to be palms at a ratio of 3 palms = 1 shade tree. See Sec. 24-16 of the Town Code for tree size requirements for shade trees and palm substitution. It appears that the site is currently short 3 shade trees. This can be addressed as follows.
 - c) Per Sec. 23-11(c)(2), 75% of the setback area along EBHD must be landscaped. The proposed design does not currently meet this requirement. The survey shows the existing sidewalk is outside of the property line rather than within the property as the proposed plans indicate. Perhaps a solution to many of the issues would be to leave the existing sidewalk outside of the property line as it currently exists, widen the landscape area adjoining the building, and place the street trees (and 3 missing on-site) trees inside the property line (permitted by M-D Landscape Ord). This would most likely provide the space needed to meet 75% landscaped requirement and may also solve the shortage of shade trees, as there are more street trees shown than required (some could count as shade trees / others could count as street trees). If the sidewalk was on private property (as now shown) there would be liability issues.
 - d) The plans show Thatch Palm trees in a landscape bed within the Kane Concourse right-of-way and along EBHD. The Town has a master-planned pedestrian promenade along Kane Concourse with specific species (Royal Palms). There is insufficient room in the narrow landscape planter behind the bus stop for large palms. On EBHD there is limited room for the proposed planter. Remove the planters / palms.
 - e) Section 24-16 of the Town's Code requires a 10-foot landscape strip between any on-site parking lot and adjacent public rights-of-way. Within this landscape strip, a continuous hedge material must be planted. The 95th Street parking lot shows Lily Grass in the landscaped areas near the roadway (does not comply). A touvered concrete wall exists at present. Suggest leaving portions of the wall and/or installing a hedge (24" tall / 24" o.c. at planting).
 - f) Update the Landscape Requirements Legend to reflect the changes based on the above comments.
- 3) Per Sec. 23-11(c)(14) 5-foot pedestrian walkway must be provided periodically to provide access from Kane Concourse to the alley / parking areas in the rear of the buildings. However, as discussed at the initial DRC meeting a separate pedestrian walkway will not be necessary, as one could enter the building lobby and gain access to the rear alley / parking areas. This will be described in the PZB staff report.
- 4) As previously stated, the exterior signage details on Sheet A-702 do not meet the Town Code requirements (Sec. 17-20). The maximum width of retail signs is 60% of the linear street frontage of the store. The color of the signs is to be chosen by the building owner (not the tenant). A singular building sign color is preferred.

Site Development Plan Application – 2nd Review
Church by the Sea – Mixed-use Commercial Complex
1000 Kane Concourse
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Page 6

- 5) The Church-by-the-Sea signs must also comply with Sec. 17-20. Per Sec. 17-20(A)(6), uses occupying the corner space of a building on a corner lot may have one primary sign facing the street on which its main entrance is located. A secondary sign may be displayed, provided it is no greater than 50 percent of the maximum size permitted for the primary frontage. The PZB can grant modifications upon request.
- 6) Sheet L-100 shows foot-candle readings at all property lines; however, the readings are not legible – provide a plan darker text so compliance may be determined. Note: readings may be no more than 1-footcandle at any property line. It appears that several readings may exceed the 1.0 limit.
- 7) The conceptual Fire Department staging areas need to be agreed to by the Miami-Dade Fire Department ASAP, as this could affect the design.
- 8) Again, a Concurrency Impact Analysis form must be submitted for concurrency determinations (potable water / sanitary sewer / storm-water / solid waste / traffic generation). See attached.

TOWN OF BAY HARBOR ISLANDS, FLORIDA

DEVELOPMENT IMPACT ANALYSIS REPORT

Project Name: _____

Location: _____

Address: _____

General Project Description: _____

Site Square Feet / Acreage: _____

The following information and analysis is intended to satisfy the requirements set forth in Section 11-8 of the Town of Bay Harbor Islands, Florida Code of Ordinances, which provides guidelines and requirements to ensure that the Level of Service (LOS) standards as set forth in the adopted Comprehensive Plan will be maintained, unless mitigation is provided. The following LOS standards shall be used to analyze the infrastructure impacts of each development.

Potable Water	200 gallons per capita, per day (church 7 gallons seat/day) Retail
Sanitary Sewer	156 gallons per capita, per day (church 6 gpd seat) Retail 10 108 gallons
Solid Waste	0.632 tons per capita, per year Retail 4 lbs : 100 th church 3 lbs : person gallons 51.5 ft per 59.5 ft./Day
Drainage	Design LOS standards to meet a 10-year storm and as specified by the Miami-Dade County Public Works manual, Section D4 - Water Control; and no ponding water for more than 48 hours 36.63 Sunday / 12.04 PH
Local Streets*	LOS "B" at peak hour 2.71 PMPH/1000 th church 9.11 Trips per 1000 th weekdays Retail 44.32/1000 th Daily .52 PMPH
Arterial Roadways**	LOS "E" at PM peak hour (96 th Street / Kane Concourse / SR 922)
Recreation Facilities	1 tennis court for every 4,000 persons, 12-60 years old 1 lighted baseball field for every 6,000 persons, 10-40 years old 1 tot lot for every 500 persons, 3-12 years old
Public School Facilities	100% of FISH (Florida Inventory of School Houses) capacity including relocatable classrooms in each public school concurrency service area (CSA)

Note: * The Town's original Comprehensive Plan (June 1988) lists the adopted Level of Service (LOS) for all local roadways as LOS "B" Peak Hour. According to the 2002 FDOT Quality / Level of Service Handbook LOS "B" is not achievable in some instances (Table 4-1). However, the Town's plan includes a roadway capacity of 10,000 vehicles per day which corresponds to LOS "D". Therefore, the Town will use the highest achievable LOS during concurrency reviews.

**The Town's original Comprehensive Plan (June 1988) lists the preferred Level of Service (LOS) for SR 922 / Kane Concourse as "C" Peak Hour, but defers to state / county jurisdictions for applicable LOS. State law specifically prohibits local governments from adopting different LOS on state roadways. FDOT has adopted LOS "E" at PM Peak Hour for SR 922 / Kane Concourse and that LOS is used by both FDOT / Miami-Dade County for concurrency / planning purposes.

For traffic impact analysis utilize the latest ITE Manual for applicable land use trip generation purposes (both ADT / PM Peak Hour). Both roadway link and signalized intersection analysis is required, as required by the Town.

Last Updated 10/15/11

EXHIBIT D

When you speak, you must come to the podium in the front and clearly state your name and address for the record. Please turn off or mute your cell phone or pager at the start of the meeting. Please be advised that if you don't turn off your cell phone or pager and it rings, you will be asked to leave the chambers.

**MEETING OF THE
PLANNING AND ZONING BOARD
QUASI-JUDICIAL PUBLIC HEARING**

May 17, 2016

AGENDA

CALL TO ORDER: Set for 7:00 p.m.

PLEDGE OF ALLEGIANCE

ROLL CALL

1. Request for approval for a mixed-use development for "Church by the Sea" located at 1000 Kane Concourse, Tract N and Lot 18 of Block 12. The contract purchaser is proposing to construct a three story mixed-use development project. The new complex proposes to have commercial retail space at the street level facing Kane Concourse with a religious establishment on the upper two floors. The proposed new building will be 44'-8" in height above BFE (65 feet BFE allowed). The survey indicates the total lot area for lot 18 is 9,750 square feet in size and the area for Tract N is 52,110 square feet in size. Therefore, the total combined lot area according to the survey, is 61,860 square feet (1.42 acres). Enclosed please find the site plan and elevations. (Item #1A)

*** Staff Review:** Design meets Town Code and was approved by the Development Review Committee.

PUBLIC COMMENT - for the purpose of hearing any public comment with respect to an application for site plan approval at 1000 Kane Concourse.

CONCLUSION OF QUASI-JUDICIAL PUBLIC HEARING

2. Approval of the minutes held on March 1, 2016. (Item #2A)

ADJOURNMENT: Approximately 8:00 p.m.

Pursuant to Florida Statutes 286.0105, the Town hereby advises the public that should any person decide to appeal any decision of the Planning and Zoning Board with respect to any matter to be considered at this meeting or hearing, he or she will need a record of the proceedings, and that, for such purposes he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

AGENDA ITEM REPORT
May 17, 2016

ITEM NUMBER: 1.

ITEM: Request for approval for a mixed-use development for "Church by the Sea" located at 1000 Kane Concourse, Tract N and Lot 18 of Block 12. The contract purchaser is proposing to construct a three story mixed-use development project. The new complex proposes to have commercial retail space at the street level facing Kane Concourse with a religious establishment on the upper two floors. The proposed new building will be 44'-8" in height above BFE (65 feet BFE allowed). The survey indicates the total lot area for lot 18 is 9,750 square feet in size and the area for Tract N is 52,110 square feet in size. Therefore, the total combined lot area according to the survey, is 61,860 square feet (1.42 acres). Enclosed please find the site plan and elevations. (Item #1A)

DESCRIPTION:

for the purpose of hearing any public comment with respect to an application for site plan approval at 1000 Kane Concourse.

RECOMMENDED ACTION:

Design meets Town Code and was approved by the Development Review Committee.

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Ayanidys Martinez
 Ayanidys Martinez

ATTACHMENTS

1.	Staff Report	PZB Staff Report CBTS May 11 2016.pdf
2.	Site Plan & Elevations	Churchbythesea.pdf

**TOWN OF BAY HARBOR ISLANDS
COMMUNITY DEVELOPMENT
MEMORANDUM**

To: Town of Bay Harbor Islands
Planning and Zoning Board

From: Michael J. Miller, AICP *MDM*
Consultant Town Planner

Date: May 11th, 2016

Subject: Site Development Plan Application
Church by the Sea – Mixed-Use Commercial Complex
1000 Kane Concourse
Bay Harbor Islands Acct. No. MB2016-17
MMPA Acct. No. 01-0702-1032

RECOMMENDED ACTION

MMPA recommends the Planning and Zoning Board review the most recent revised plans (dated 5/6/16) and, if found acceptable, **APPROVE** the proposed Site Development Plan application subject to the following:

- (1) The Board finds the proposed plan "fits" within the building envelope without alterations or variances;
 - (2) Subject to any staff recommended conditions listed herein.
-

GENERAL PROJECT INFORMATION

Land Use Designation: C – Commercial
Zoning District: B-1 Business District
General Location: 1000 Kane Concourse
Legal Description: Tract "N" of "Nolan Brown", according to the Plat thereof, as recorded in Plat Book 56 Page 53, of the Public Records of Miami-Dade County, Florida.
And,
Lot 18 of Block 12, "Bay Harbor Island" Subdivision according to the Plat thereof, as recorded in Plat Book 46, at Page 5 of the Public Records of Miami-Dade County.

PROJECT DESCRIPTION

The project architect, Zyscovich Architects, as agent for the property owner, Ocean Cadillac, Inc., and contract purchaser, the Church-by-the-Sea, Inc., has submitted a Site Development Plan application to allow for the demolition of the existing Ocean Cadillac automobile dealership facilities and the construction of a new 3-story mixed-use development project. The new complex proposes to have commercial retail space at street level facing Kane Concourse with a religious establishment on the upper two (2) floors. The site is located at 1000 Kane Concourse.

The collective site is currently developed as the Ocean Cadillac automobile dealership complex. Tract "N" of the Nolan Brown re-plat, which fronts onto Kane Concourse and East Bay Harbor Drive, contains the Ocean Cadillac buildings (offices / showroom / repair facilities / etc.), while a surface parking lot that has been used for the temporary storage of new vehicles is located on Lot 18 of Block 12. The surface parking lot is separated by a 30-foot wide north / south alley from the main site. This alley connects to the original east / west 20-foot wide alley running between Kane Concourse and 95th Street. The surface parking lot site fronts onto 95th Street and the alley – both east and north of the site. The proposed site design incorporates a 2-story religious establishment facility over one floor of retail (8,474 sq. ft.) / religious establishment lobby (2,039 sq. ft.) / parking garage that is at grade. The proposed site design includes one two-way driveway connection to 95th Street located just east of the alley that provides access to the grade level parking garage under the building. There is also one driveway connection proposed to the alley for the loading area under the building. Finally as to the free-standing parking lot, a new one-way northbound driveway connection from 95th Street across the surface parking lot exiting onto the east / west alley on the north side of the site is proposed. Several parking spaces that now front onto the west side of the north / south alley are proposed to remain. One Fire Department staging area is currently shown on the plans along East Bay Harbor Drive. It is presumed since the site can be accessed from all sides this will be sufficient. If changes are required by the Fire Dept. after the Town PZB approves the site plan the changes may have to be re-approved.

On the building rooftop is a labyrinth as well as a restroom. The proposed new building is 3-stories in height @ 44'-8" above BFE (65 feet BFE allowed) .

The survey indicates the total lot area for Lot 18 is 9,750 square feet / 0.22 acres in size and the total lot area for Tract "N" is 52,110 square feet / 1.20 acres in size. Therefore, the total combined lot area, according to the survey, is 61,860 square feet / 1.42 acres.

The adjoining / nearby development sites currently include a 2-story commercial building to the north across Kane Concourse. To the immediate west is a one-story commercial building. To the south across 95th Street is a Town owned surface parking lot as well as the Capri Apartments @ 20 DU / 40 DUA. To the east across East Bay Harbor Drive is the one-story Tauber office building, the proposed La Boutique multi-family residential complex @ 41 DU / 78.8 DUA, and the Mansard Condominium @ 8 DU / 30.8 DUA. This area of the Town is predominated by a mixture of low-rise (1-3 stories) and mid-rise (5-7 stories) residential and commercial complexes.

**Site Development Plan Application
Church by the Sea – Mixed-use Commercial Complex
1000 Kane Concourse
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The Town's 2002 Community Vision Master Plan identifies this area for mid-rise residential complexes (7+/- stories) and commercial uses along Kane Concourse. Therefore, the proposed development is deemed generally consistent with the Town's future vision for this area.

BACKGROUND INFORMATION

The Town of Bay Harbor Islands completed major amendments to the Town's adopted Comprehensive Plan and Land Development Regulations (LDRs) in the last 12+/- years. In 2005 when the Town updated the B-1 Business Zoning District LDRs a proposal was made to increase the allowable building height in the B-1 Business District to 75 feet BFE as per the B&A Downtown Study; however, the Town Council decided to keep the allowable height limit at 65 feet per the Community Visioning recommendations. The Town also adopted numerous other modifications to many other Code provisions that affect yard encroachments, parking lot designs, building height limits and exceptions, building design standards, landscaping and other provisions.

COMPREHENSIVE PLAN / ZONING

Comprehensive Plan – The subject site has a Future Land Use Map (FLUM) designation of "Commercial." The proposed use of the commercial property would be consistent with the applicable FLUM designation of the property.

Land Development Regulations / Zoning Code – The property has a Zoning classification of B-1 Business District. The maximum building height allowed in this area is 65 feet (measured from BFE to top of main roof deck). Although the religious establishment use of the property is listed in the Zoning Code as requiring the Town Council to approve it, a recent legal opinion from Stanley Price, Esq. indicates the development proposal should be reviewed / processed as any other Site Development Plan due to Federal law (Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA)). The proposed site design is consistent with the provisions of the Code at present.

PLATTING

The site will not require re-platting, as the site is currently platted as described above. A Unity of Title document may be required to legally tie the lots together prior to the issuance of building permits, as the surface parking lot provides required parking for the building site.

RIGHT-OF-WAY, OFF-STREET PARKING AND ACCESS DESCRIPTION

As stated above, the site development plan includes a 23-foot wide two-way driveway connection to 95th Street that provides access to the parking garage. There are also driveway connections to the ally for a loading area under the building and for the surface parking lot. The alley traffic flow is a one-way only southerly to 95th Street.

Based on 8,474 square feet of retail space the Code requires at least twenty-eight (28) parking spaces and based on 386 seats the Code requires at least ninety-seven (97) parking spaces for a total of 125 required parking spaces. A total of 125 parking spaces are provided on site (102 standard, 20 tandem and 3 ADA spaces).

**Site Development Plan Application
Church by the Sea – Mixed-use Commercial Complex
1000 Kane Concourse
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Page 4**

As stated above one Fire Department staging area is currently shown on the plans along East Bay Harbor Drive. Since the site fronts public roadways on all sides this should not be an issue. Any changes required by the Fire Department subsequent to the Town's site plan approval may cause the plans to be re-submitted to the DRC / PZB.

BUILDING DESIGN / BUILDING LENGTH / BREEZEWAY

The building design is modern with decorative perforated metal screening and vertical glass elements.

The building does not require a breezeway as it does not contain residential units.

It should also be noted that per Sec. 23-11(c)(14), a 5-foot pedestrian walkway must be provided periodically to provide pedestrian access from Kane Concourse to the alley / parking areas in the rear of the buildings. In this instance, a separate pedestrian walkway will not be necessary, as one could enter the building lobby and gain access to the rear alley / parking areas.

SUGGESTED CONDITIONS OF APPROVAL / SITE PLAN COMMENTS

As the site design complies with the applicable Land Development Regulations, MMPA recommends the Town **APPROVE** the Site Development Plan application subject to the following suggested conditions of approval and/or comments on the latest plans dated May 6th, 2016 submitted to the Town for consideration:

- 1) This approval is based on the Site Development Plans prepared by Zyscovich Architects dated May 6th, 2016 for a 3-story mixed-use development project. Any substantial changes requested after the Town's approval may require a separate approval from staff / Planning and Zoning Board, as specified in the Code.
- 2) The proposed building signage for the Church by the Sea (upper floors) will be applied for under separate permit and is not part of this project approval. The signage will need to comply with the current day Sign Code requirements at time of signage application submission.

CHURCH BY THE SEA Planning & Zoning

Submittal 04/26/2016.

Revisions 05/09/2016

1000 KANE CONCOURSE BAY HARBOR ISLANDS, FL. 33154

INDEX LIST

FIGURE	TITLE	SCALE
GN-001	COVER SHEET & INDEX LIST	NA
GN-002	PAVEMENT	NA
GN-003	STREET LIGHTS	NA
GN-004	STREET LIGHTS	NA
GN-005	STREET LIGHTS	NA
GN-006	STREET LIGHTS	NA
GN-007	STREET LIGHTS	NA
GN-008	STREET LIGHTS	NA
GN-009	STREET LIGHTS	NA
GN-010	STREET LIGHTS	NA
GN-011	STREET LIGHTS	NA
GN-012	STREET LIGHTS	NA
GN-013	STREET LIGHTS	NA
GN-014	STREET LIGHTS	NA
GN-015	STREET LIGHTS	NA
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GN-100	STREET LIGHTS	NA

COVER SHEET

GN-001

CHURCH BY THE SEA

1000 Kane Concourse, Bay Harbor Islands, FL 33154

ZYSCOVICH ARCHITECTS

LEO A DALY 100

Seal: **BHARD ZYSCOVICH**

BZ

05/09/2016

Reg. No. NA-7410

CHURCH BY THE SEA W PETA	ZONING DESIGNATION & FLOOR AREA	B-1 - Future Land Use: Commercial

CHURCH BY THE SEA W REIAL	ZONING DESIGNATION & FLOOD AREA	B-1 - Future Land Use Commercial
ERT	ERT 1 32.108 ac +/- 1.20 ac	ERT 2 8.750 ac +/- 0.77 ac
		81,000 sq +/- 12,000 sq

FLIGHT AREA	ACQUIRED	PROCESSED
FLIGHT AREA	NA	19,153 SF

CHURCH BY THE SEA		PAIDUNG ANALYSIS		
PLANTING ANALYSIS DISTANCE	ALIGNED ON REQUIRED	PROCESSED	WARRANT	
APVLA PLANTING SPECIES	10% FOR 200 OF THE PLANT 17% per 1000 plants (Total of 1000 plants)	04/12/20 - 99 Species 99 - 97 Species		
TOTALS	1425 SPECIES	165 Species Species + 20 Species	1425 SPECIES	NONE

PHONE NUMBER	RELAT. PRKCS	INCLD	ACCESSIT
ST1 10000000000000000000	67	20 10000000000000000000	1
ST2 10000000000000000000	23		
ST3 10000000000000000000			

Best yr of \$25.4K \$60K², according to the PwC survey, is recorded in PwC band 14. PwC 14 of the Public Records of Illinois Data Change, PwC 1403

And

Best yr of \$25.4K \$60K², according to the PwC survey, is recorded in PwC band 14. PwC 14 of the Public Records of Illinois Data Change, PwC 1403

Continued 61,280 square ft or 1.42 Acres, owned by PwC, by California

[illegible][illegible]

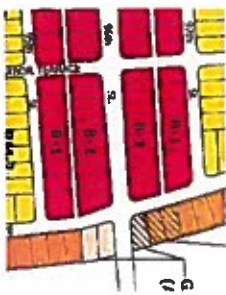
MEAT	ALLOCATION	PRICE
MEAT	63.8	15.8 (from base of 10.0) (see a later flow sheet)
MEAT	10.2 + 8.1 = 18.3 (MCO)	9.4 + 8.1 = 17.5 (MCO)

FLOOD RISK EVALUATIONS		
USE	FLOOD	FLOOD DAMAGE
	1	1 (LOW DAMAGE)
RESIDE	2	4 (H)
	3	2 (M)
CHURCH IN THE USA	2	2 (M)
	3	2 (M)
TOTAL		10 (H)

OPTICAL DENSITIES OF 10% IN CHLORAL			
CHLORAL	THICK MEASURING (CM)	SHORT WAVE (CM)	LONG WAVE (CM)
100%	0.0155	0.1005	0.125



AMENDMENTS		
FA-1	FA-2 Ad.	Proposed
2/12/02	747	ALPINE 100 TO 101
2/12/02	747	ALPINE 101 TO 102
2/12/02	011	ALPINE 102 TO 103
2/12/02	011	ALPINE 103 TO 104
2/12/02	011	ALPINE 104 TO 105
2/12/02	011	ALPINE 105 TO 106
2/12/02	011	ALPINE 106 TO 107
2/12/02	011	ALPINE 107 TO 108
2/12/02	011	ALPINE 108 TO 109
2/12/02	011	ALPINE 109 TO 110
2/12/02	011	ALPINE 110 TO 111
2/12/02	011	ALPINE 111 TO 112
2/12/02	011	ALPINE 112 TO 113
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BISCAYNE BAY

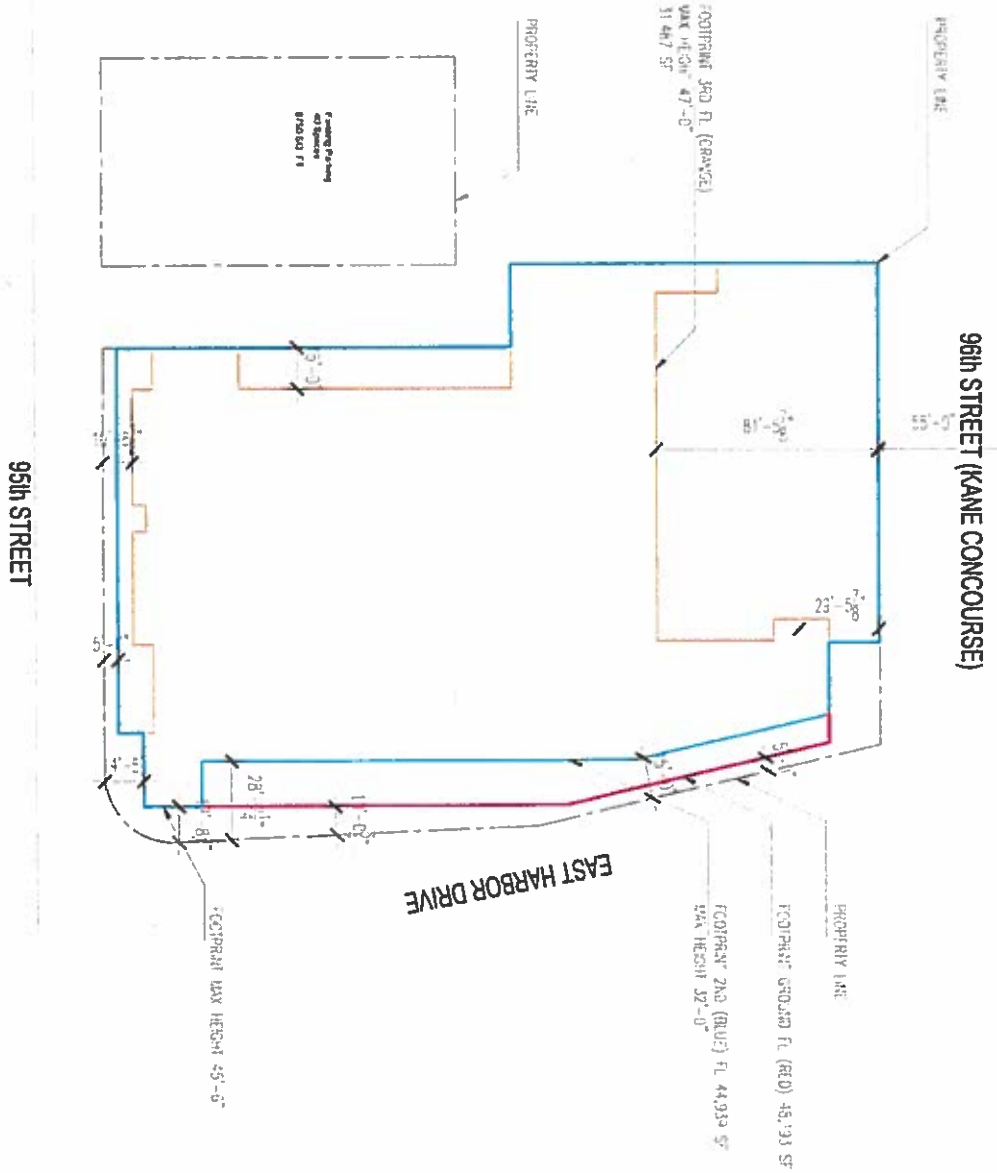
BISCAYNE BAY

INDIAN CREEK VILLAGE

BAL HARBOUR
VILLAGE

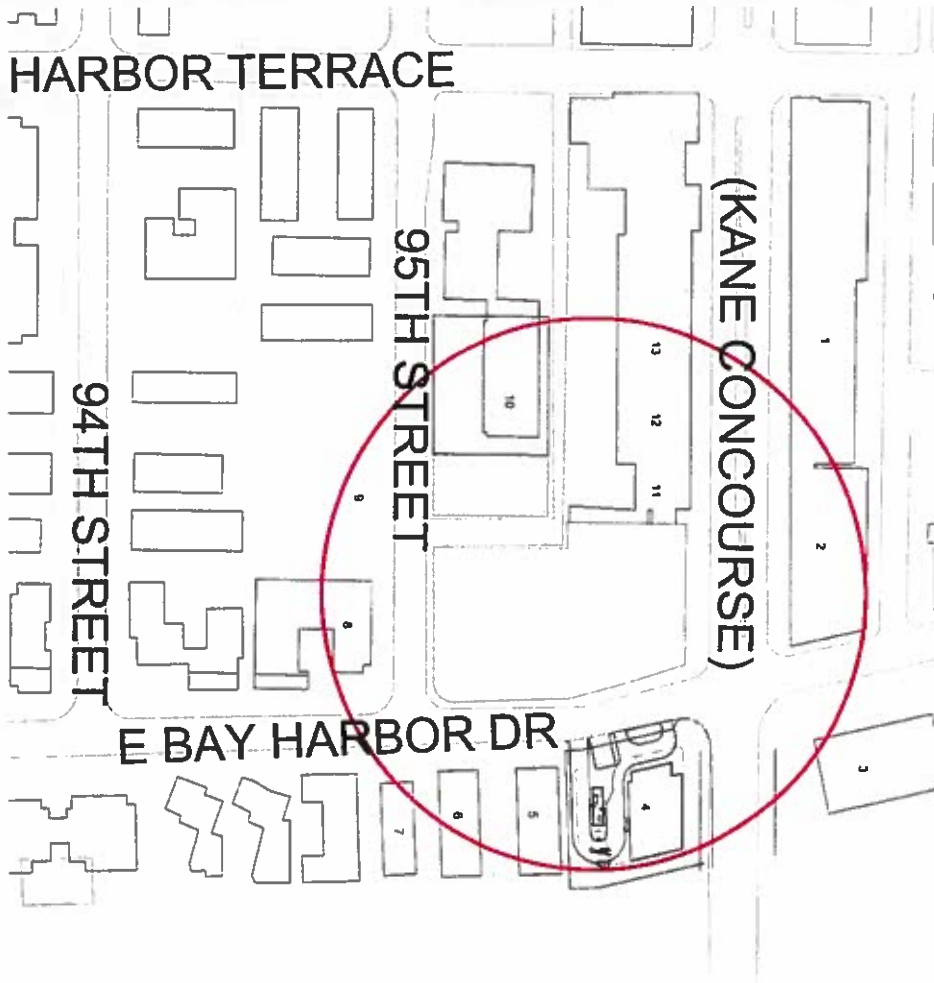
**TOWN OF
SURFSIDE**

GN-003 ZONING MAP		Sheet SETHNARD ZYSCOVICH Date: 10/1/2010	Project CHURCH BY THE SEA 1000 Kane Concourse, Bay Harbor Islands, FL 33154	Architect ZYSCOVICH ARCHITECTS 1000 Kane Concourse, Bay Harbor Islands, FL 33154 305.661.1111 LEO A DAILY 100





- 1-2 story Commercial
- 2-2 story Commercial
- 3-7 story Grand Beach Hotel
- 4-7 story One Kane Concourse-Class A Retail/Offices (existing 1 story Commercial-Offices)
- 5-2 story Multi Family
- 6-2 story Multi Family
- 7-5 story Multi Family
- 8-2 story Multi Family
- 8-Vacant Land current Site Parking lot (Multi Family Zoning)
- 10-1 Story Office-Commercial
- 11-1 Story Office-Commercial
- 12-2 Story Office-Commercial
- 13-2 Story Office-Commercial



CONTEXT PHOTOS LOCATION MAP 11/10/2016 11/10/2016	CHURCH BY THE SEA 1000 Kane Concourse, Bay Harbor Islands, FL 33154 Reg. No. RA7410	ZYSCOVICH ARCHITECTS LEO A DAILY 100
		G-001



Kane Concourse & East Bay Harbor

Kane Concourse looking West

Kane Concourse looking West



ZYSCOVICH
ARCHITECTS

100 N. Duval Street, Suite 200
Fort Lauderdale, FL 33301
Phone: 954.579.1000
Fax: 954.579.1001
www.zyscovich.com

LEO A DAILY 100

CHURCH BY THE SEA

1000 Kane Concourse, Bay Harbor Islands, FL 33154

Seal
DERIVATO ZYSCOVICH

Reg. No. RA-7412

CONTEXT
PHOTOS

10/10/2018 04:30:18

C-002



East Bay Harbor looking South

East Bay Harbor looking South

East Bay Harbor looking South

CHURCH BY THE SEA 1000 Kane Concourse, Bay Harbor Islands, FL 33154		Project 1000 Kane Concourse, Bay Harbor Islands, FL 33154	Architect ZYSCOVICH ARCHITECTS 1000 Kane Concourse, Bay Harbor Islands, FL 33154 LEO A DALY 100
Client BERNARD ZYSCOVICH		Reg. No. RA-7410	
Date 04/20/2016		Scale 1/8" = 1'-0"	
Description Church by the Sea		Notes Church by the Sea	
Context Photos		C-003	



85th Street Looking West

85th Street Looking West

Corner of 85th Street & East Bay Harbor



ZYSCOVICH
ARCHITECTS
LEO A DAILY 100

CHURCH BY THE SEA
1000 Kane Concourse, Bay Harbor Islands, FL 33154

Architect
Bernard Zyscovich

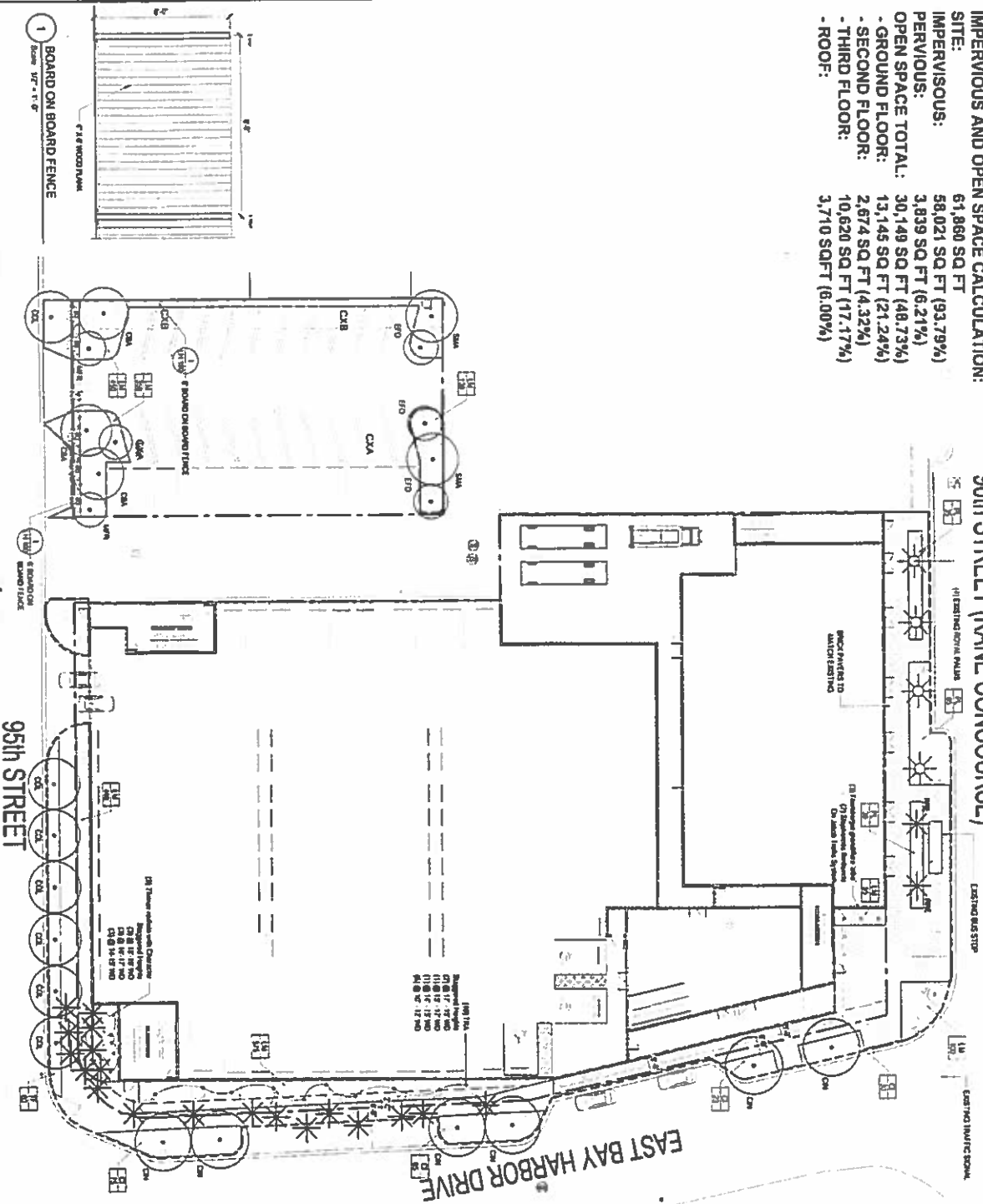
Reg. No. RA 7412

CONTEXT
PHOTOS

C-004

IMPERVIOUS AND OPEN SPACE CALCULATION:

SITE:	61,860 SQ FT
IMPERVIOUS:	58,021 SQ FT (93.79%)
PERVIOUS:	3,839 SQ FT (6.21%)
OPEN SPACE TOTAL:	30,149 SQ FT (48.73%)
- GROUND FLOOR:	13,145 SQ FT (21.24%)
- SECOND FLOOR:	2,674 SQ FT (4.32%)
- THIRD FLOOR:	10,620 SQ FT (17.17%)
- ROOF:	3,710 SQFT (6.00%)



1 BOARD ON BOARD FENCE
Scales: 1/2" = 1'-0"

95th STREET

EAST BAY HARBOR DRIVE

LEGEND	
CHARTER FIRM	
TRAINING FIRM	
PLANTS	
TIMBERLAND CHARACTER FIRM	
WFC	
LATROE ASSOCIATES	
ENVIRONMENTAL PROTECTION	
REED HING	
DOUGLASS HANCOCK	
STREET LIGHT	
PIECE SHAW LIGHT	
SON	
SPRING HARBOR	
ELECTRICITY	
CALICO BARN	
BLUETT	
WATER TREATMENT	
SEWERAGE	
WATER SUPPLY	
WATER SERVICE	

[illegible]

95th STREET

EAST BAY HARBOR DRIVE

LEO A DALY 100

1000 Kane Concourse, Bay Harbor Islands, FL 33154

PLANTER (SEE PAGE 40)
L.C. 20070

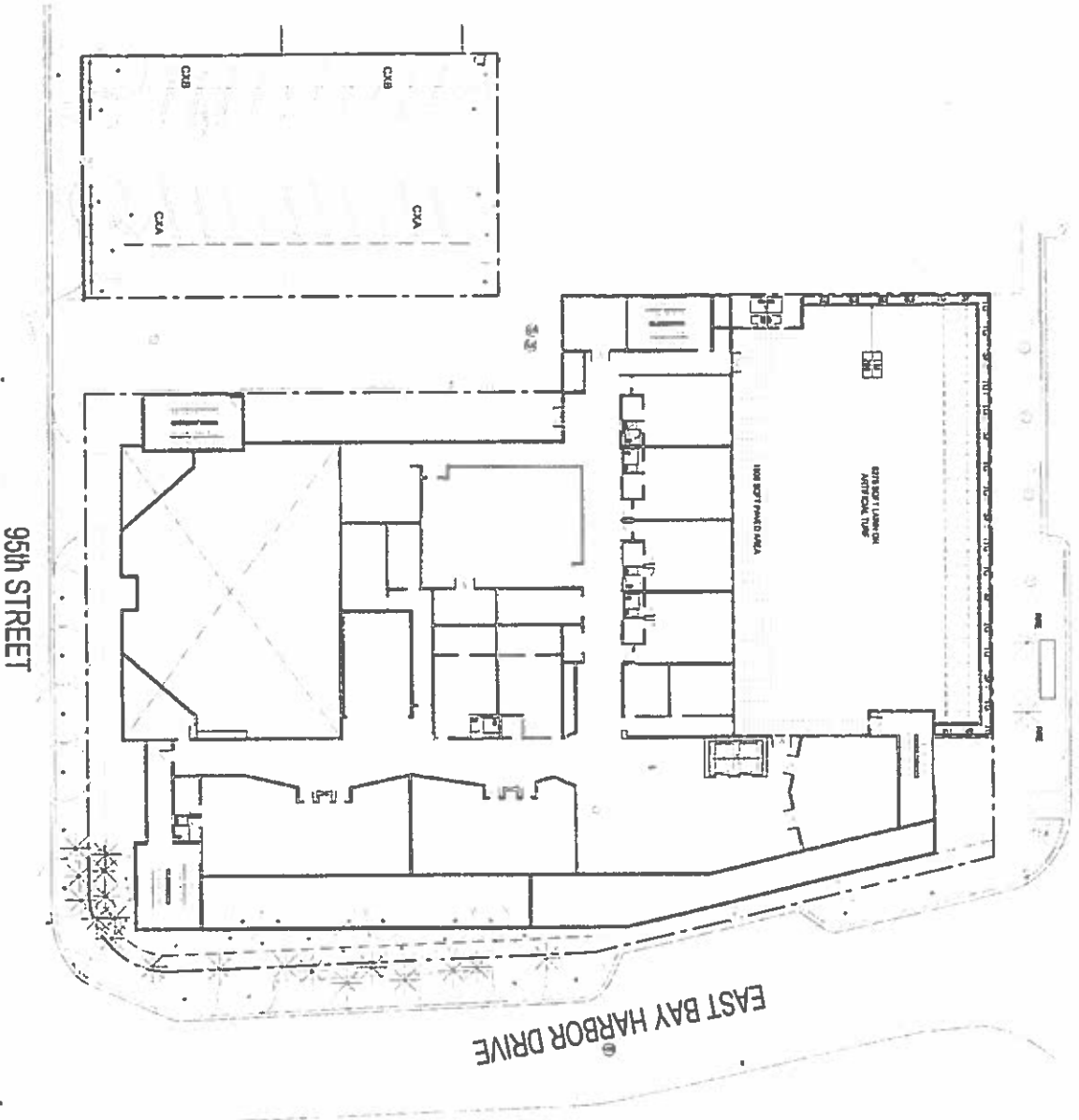
**SITE PLANTING
PLAN -
SECOND FLOOR**

LH.101

96th STREET (KANE CONCOURSE)

95th STREET

EAST BAY HARBOR DRIVE

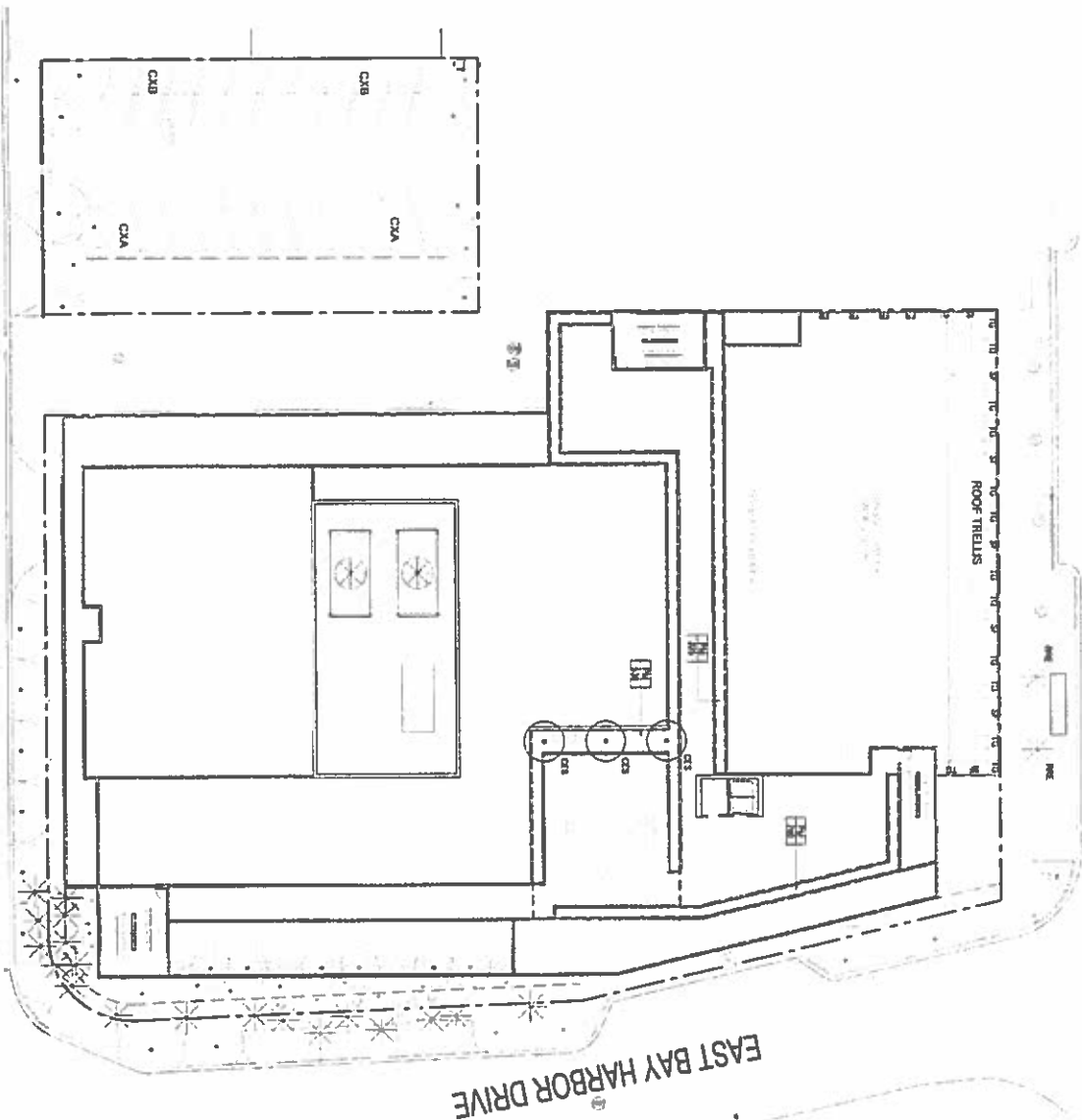


- LEGEND**
- CONCEPT
 - EXISTING
 - TO BE
 - THINKING
 - CHARACTER
 - PALE
 - WALL
 - STRUCTURE
 - PAINTING
 - INTERIOR
 - CEILING
 - BRICK
 - CONCRETE
 - STREET
 - PIED
 - SCEN
 - REPAIR
 - ELECTRIC
 - CATCH
 - WATER
 - ACCT
 - OPEN



LH.102	SITE PLANTING PLAN - THIRD FLOOR	Scale: 1/8" = 1'-0"	Scale: 1/8" = 1'-0"	CHURCH BY THE SEA 1000 Kane Concourse, Bay Harbor Islands, FL 33154	ZYSCOVICH ARCHITECTS LEO A DALY 100

95th STREET



- LEGEND**
- CAMPY TRIC
- LEADING ROYAL
PAIRS
- TO RELAX
- TRINITY RADATA
CHARACTERS PAIR
- THE
- LANDS JASCAR
- FROM LATHFAS
BENT FOLDS
- CANAL
- SPECI PAVING
- CONCRETE PAVING
- SINGLEDONT
- POLYSTIMULE CONT
- BOB
- SEVEN MARYOLE
- ELECTRIC UTILITY
- CALTON BAUPH
- BAUGH
- ACCESSION
- OPEN SPACE

1000

LH.103

03.05.79 10

SITE PLANTING
PLAN -
ROOF

5m
LANDSCAPE ARCHITECT
BATHING AND LARSEN, INC.

PLATE 10

TABLE 1

CHURCH BY THE SEA

1000 Kane Concourse, Bay Harbor Islands, FL 33154

100

ZYSCOVICH
ARCHITECTS

LEO A DALY 100

General Information		Classification		Status	
Form No.	Date	Class	Grade	Level	Year
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62	1-16	1-16	1-16	1-16	1-16

**Town of Big Water Island, Florida
Landscape Architectural Legend (Printed)**

Call today to see
these beautiful new homes.
1200 Pine Creek

High Lat Area 42 Area 1 (1,000) 30

1. Open Space Regulations

1997-1998

100% - Best Mortgage
 0 Bad Life Lines - 0% - Nothing Borrowed - 0% - 100% - 100%

[illegible]

A. Preparation

[illegible]

2. **Internal Corporate Responsibility** - The first of the three dimensions of corporate social responsibility is internal corporate responsibility. This dimension focuses on the company's internal operations and its impact on its employees, customers, and the community. Internal corporate responsibility is often measured by the company's policies and practices related to employee safety, environmental protection, and community development.

二

$$\frac{d}{dt} \left(\frac{1}{\rho} \right) = - \frac{1}{\rho^2} \frac{d\rho}{dt}$$

• Number of days from symptoms

2. Number of weeks that symptoms improved (0-9 = best, 10 = worst)	1	1

1994

Page 173

Page 1 of 1

Abstract

Page 3 of 3

1. **Large numbers**

100

100

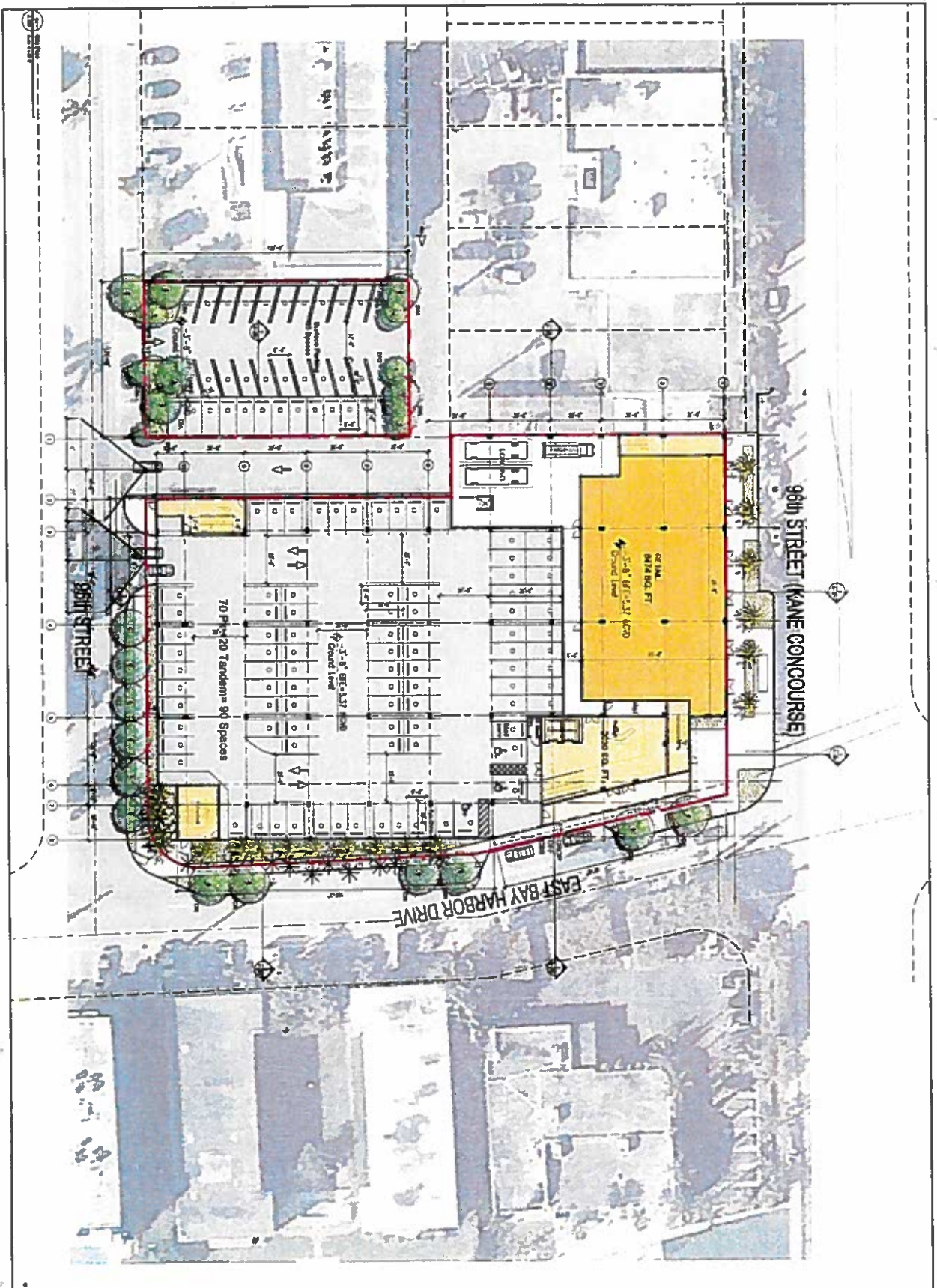
LH.104

CHURCH BY THE SEA

1000 Kane Concourse, Bay Harbor Islands, FL 33154

ZYSCOVICH
ARCHITECTS

LEO A DALY 100



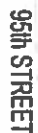
A-101

OVERALL
SITE PLAN

Seal
BERNARD ZYSCOVICH

Project
CHURCH BY THE SEA
1000 Kane Concourse, Bay Harbor Islands, FL 33154

Architect
ZYSCOVICH
ARCHITECTS
LEO A DAILY 100



EAST BAY HARBOR DRIVE

ADDS FLOOR

(000000)	(000000)

Project

1000 Kane Concourse, Bay Harbor Islands, Fl 33154

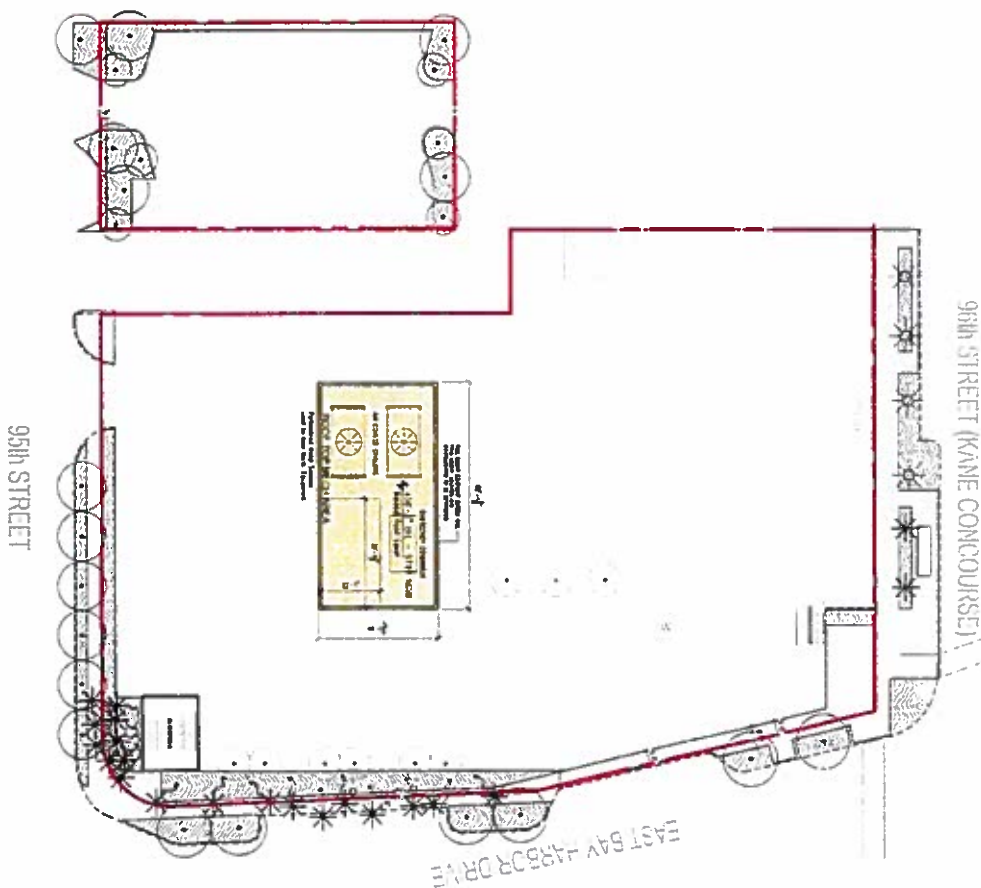
Doc No RA-7410

Architect

ZYSCOVICH
ARCHITECTS

LEO A DALY 100

Scale: 1/8" = 1'-0"

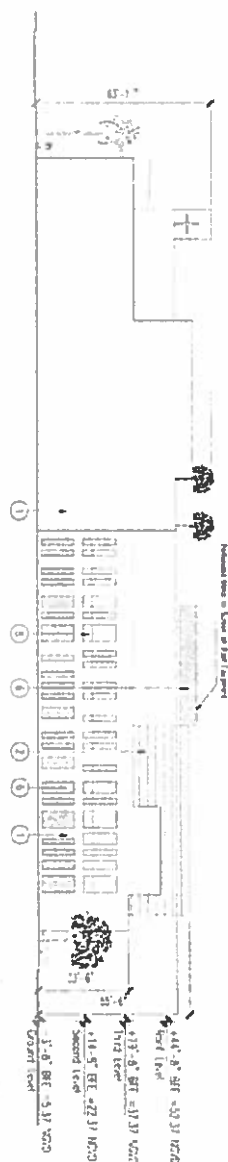
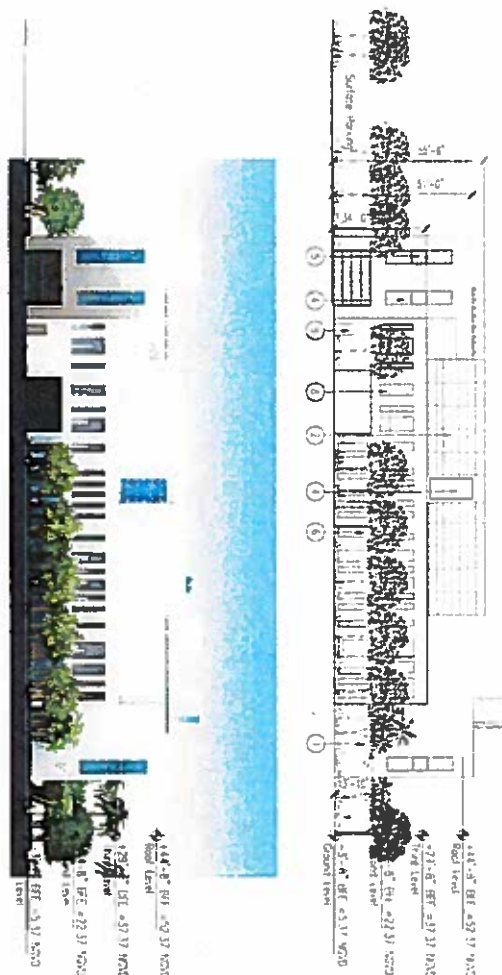


A-105 ROOF TOP MECHANICAL AREA LANCING 10/10/2015	1000 Kane Concourse, Bay Harbor Islands, FL 33154 1000 Kane Concourse, Bay Harbor Islands, FL 33154	Architect ZYSCOVICH ARCHITECTS 1000 Kane Concourse, Bay Harbor Islands, FL 33154 305.355.1000 www.zyscovich.com
		Project CHURCH BY THE SEA 1000 Kane Concourse, Bay Harbor Islands, FL 33154

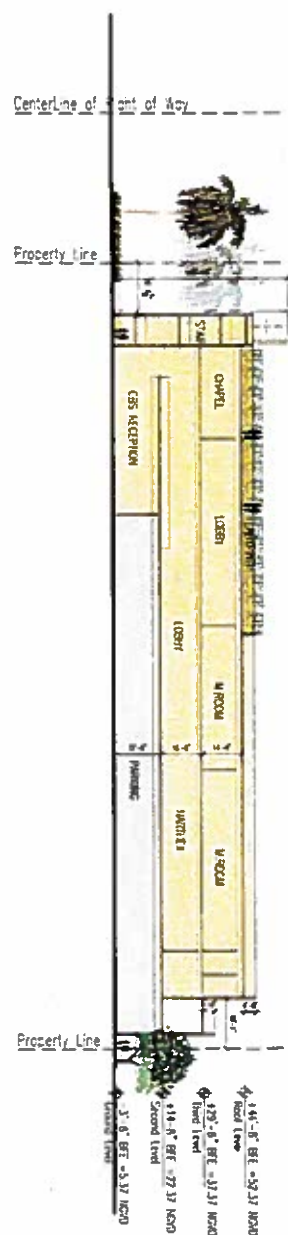
LEO A DAILY 100

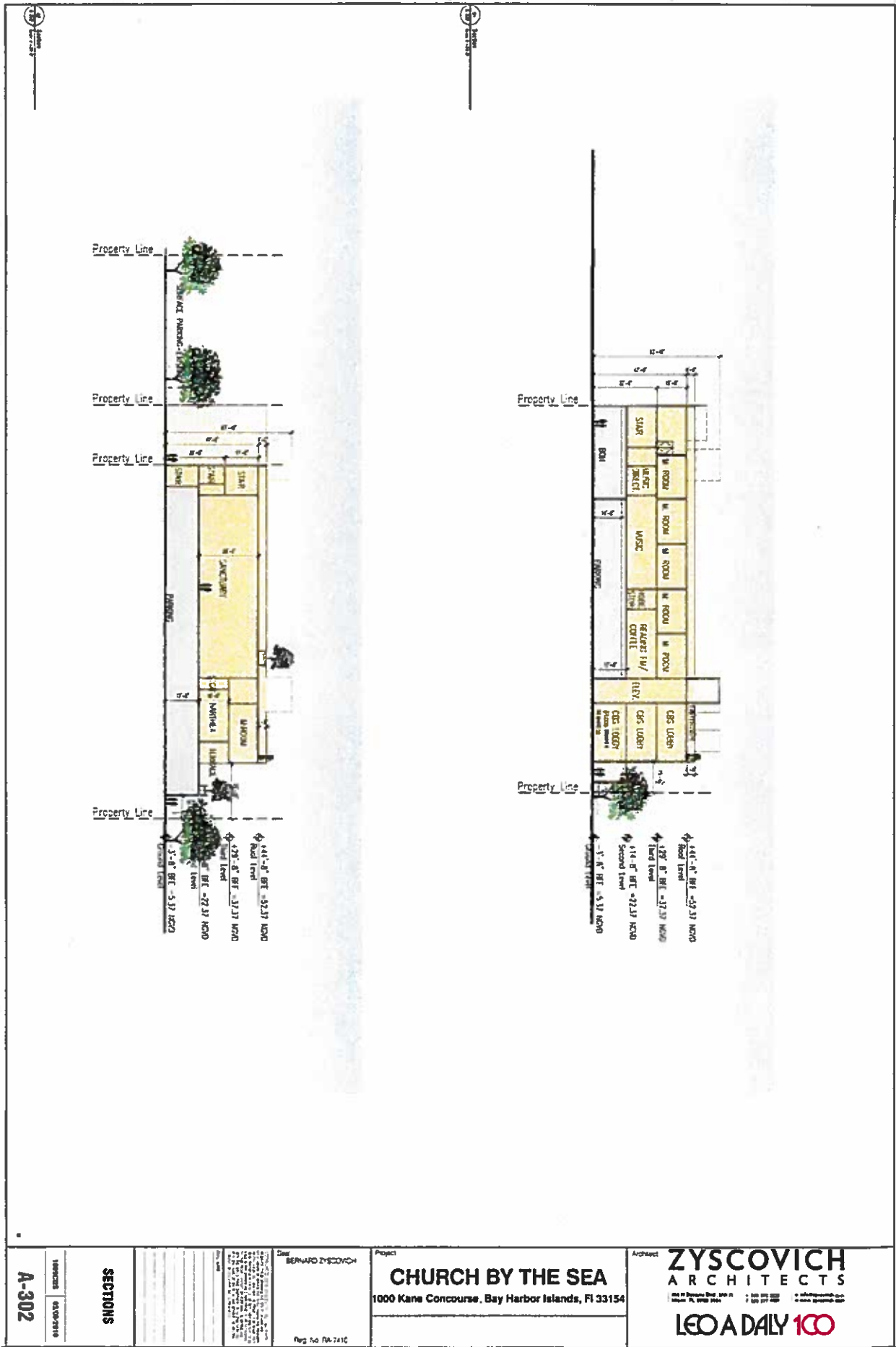
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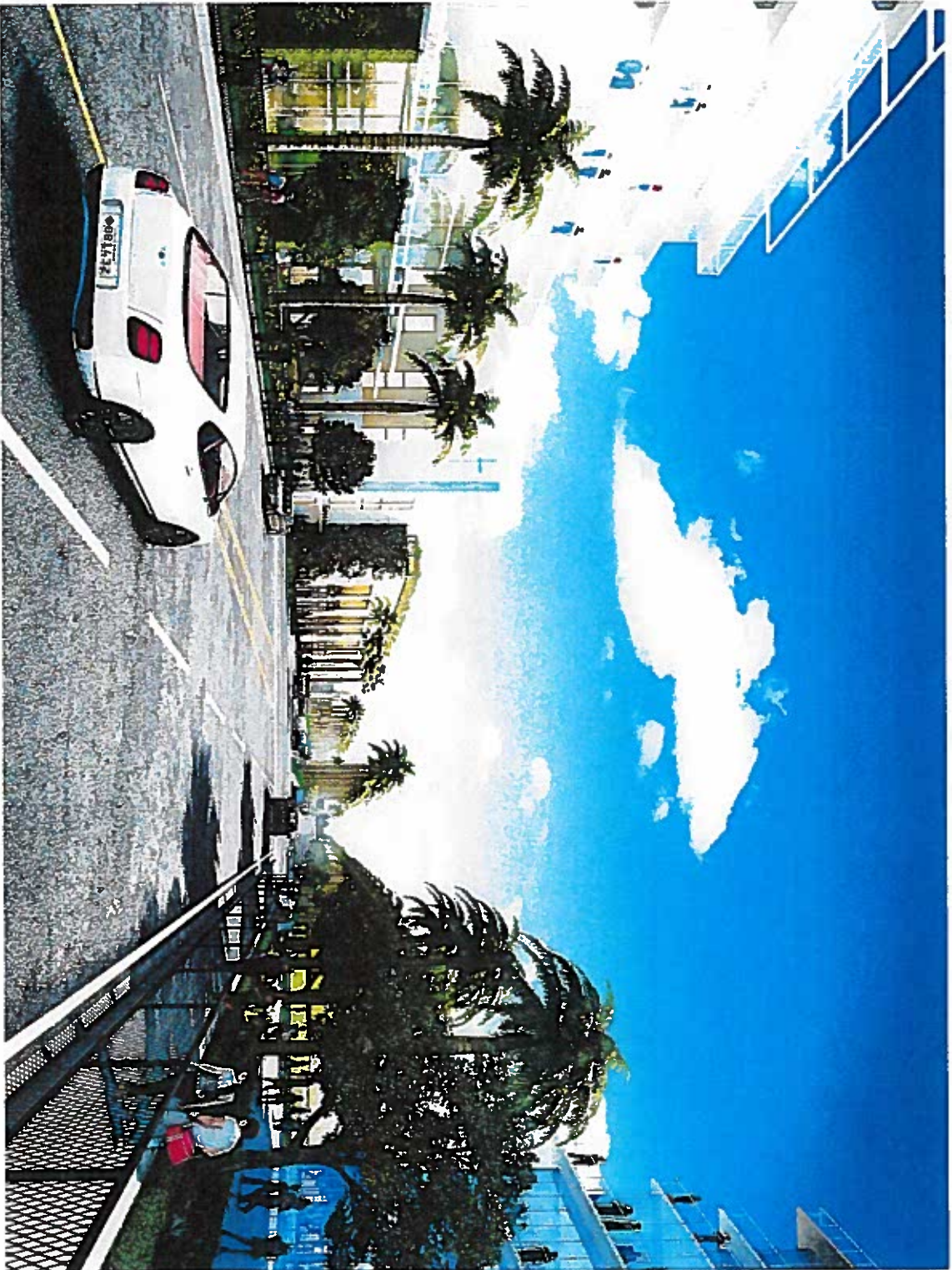
ELEVATIONS 1/10/2014 10/10/2014 A-201		Set BERNARD ZYSKOVICH	Project CHURCH BY THE SEA 1000 Kane Concourse, Bay Harbor Islands, FL 33154	Architect ZYSKOVICH ARCHITECTS 1001 NE 10th Street, Suite 100 Miami, FL 33132 Tel: 305.358.1111 Fax: 305.358.1112 www.zyskovich.com
		Drawn by: J. J. J. J.	LEO A DAILY 100	

[illegible]

(400) 231- A-202	ELEVATIONS		See BEHARD ZYSCOVICH	Project	Architect ZYSCOVICH ARCHITECTS 19910 Boulevard Blvd. Suite 100 Miami, FL 33154
				CHURCH BY THE SEA 1000 Kane Concourse, Bay Harbor Islands, FL 33154	







Eyelevel View of Kane Concourse

RENDERING 10/15/2016 10/15/2016	Drawn by: LEO A DALY Project: CHURCH BY THE SEA 1000 Kane Concourse, Bay Harbor Islands, FL 33154	Architect: ZYSCOVICH ARCHITECTS 1000 Kane Concourse, Bay Harbor Islands, FL 33154 305.865.1000 www.zyscovich.com
	Scale: 1/8" = 1'-0" Date: 10/15/2016 Reg. No. RL-7412	LEO A DALY 100



Eyeball View of Kane Concourse & East Bay Harbor

3/1/2010
 10:00 AM
 10:00 AM

A-402

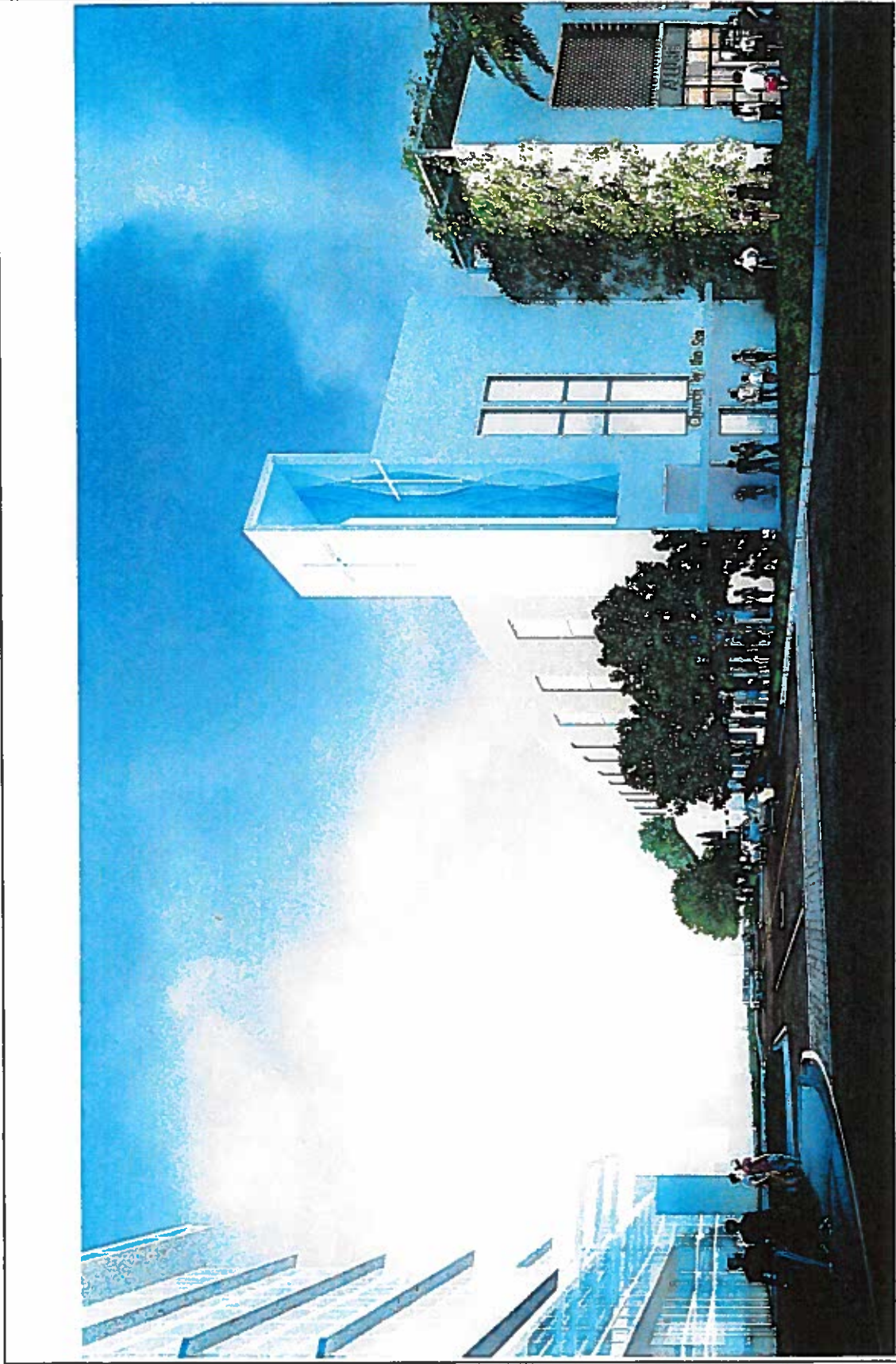
RENDERING

DATE: 03/01/2010

By: BERNARD ZYSCOVICH
 Reg. No. RA-7412

Project: CHURCH BY THE SEA
 1000 Kane Concourse, Bay Harbor Islands, FL 33154

Architect: ZYSCOVICH ARCHITECTS
 1000 Kane Concourse, Bay Harbor Islands, FL 33154
 Phone: 305.866.1000
 Fax: 305.866.1001
 Email: info@zysova.com
 Website: www.zysova.com
 LEO A DALY 100



Eyelevel View of Kane Concourse & East Bay Harbor



RENDERING

DATE: 04/06/2016

A-403

CHURCH BY THE SEA
1000 Kane Concourse, Bay Harbor Islands, FL 33154

ZYSCOVICH
ARCHITECTS
LEO A DALY 100



in **Recovery**

CHURCH BY THE SEA
1000 Kane Concourse, Bay Harbor Islands, FL 33154

0-7174 04 56

ZYSKOVICH
ARCHITECTS
100 N. Broadway, Suite 1000
New York, NY 10038
Tel: 212 312 1000
Fax: 212 312 1001
www.zyskovich.com



Eyelevel View of Kane Concourse

A-405	RENDERING	Client: Kane Concourse, Bay Harbor Islands, FL 33154	Project: CHURCH BY THE SEA	ZYSCOVICH ARCHITECTS LEO A DALY 100



Eyelevel View of Corner of East Bay Harbor & 95th Street

ZYSCOVICH
ARCHITECTS
LEO A DALY INC.

CHURCH BY THE SEA
1000 Kane Concourse, Bay Harbor Islands, FL 33154

Project No. 2700000	Rev. No. 01/10
Client: Kane Concourse	Architect: ZYSCOVICH
Scale: 1/8" = 1'-0"	Sheet: A-406
Date: 01/10	Drawn: [Name]
Check: [Name]	Approved: [Name]
RENDERING	

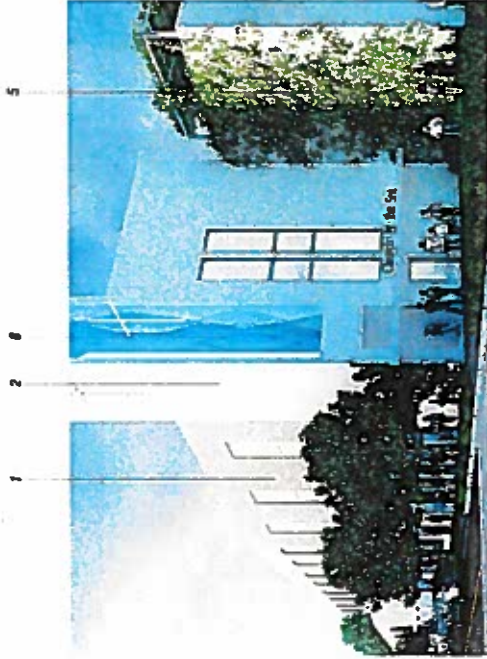


1000 CFS 04-03-2016
1000 CFS 04-03-2016

- 1-Balboa Mist Color Paint
- 2-White Color Paint
- 3-Scouring Lines 2"
- 4-Fluorin Florida Hybrid Dole Palm
- 5-Green Wall with Steel Cables & Cascading Vines over Stucco
- 6-Aluminum Perforated Metal 50% Solid to 50% Circular holes retail(Bronze Color)
Also to be used for Screening Roof Equipment
- 7-Metal Panel Bronze Color
- 8-Painted Wave Pattern in shades of blue



1 2 3 4 5 6 7

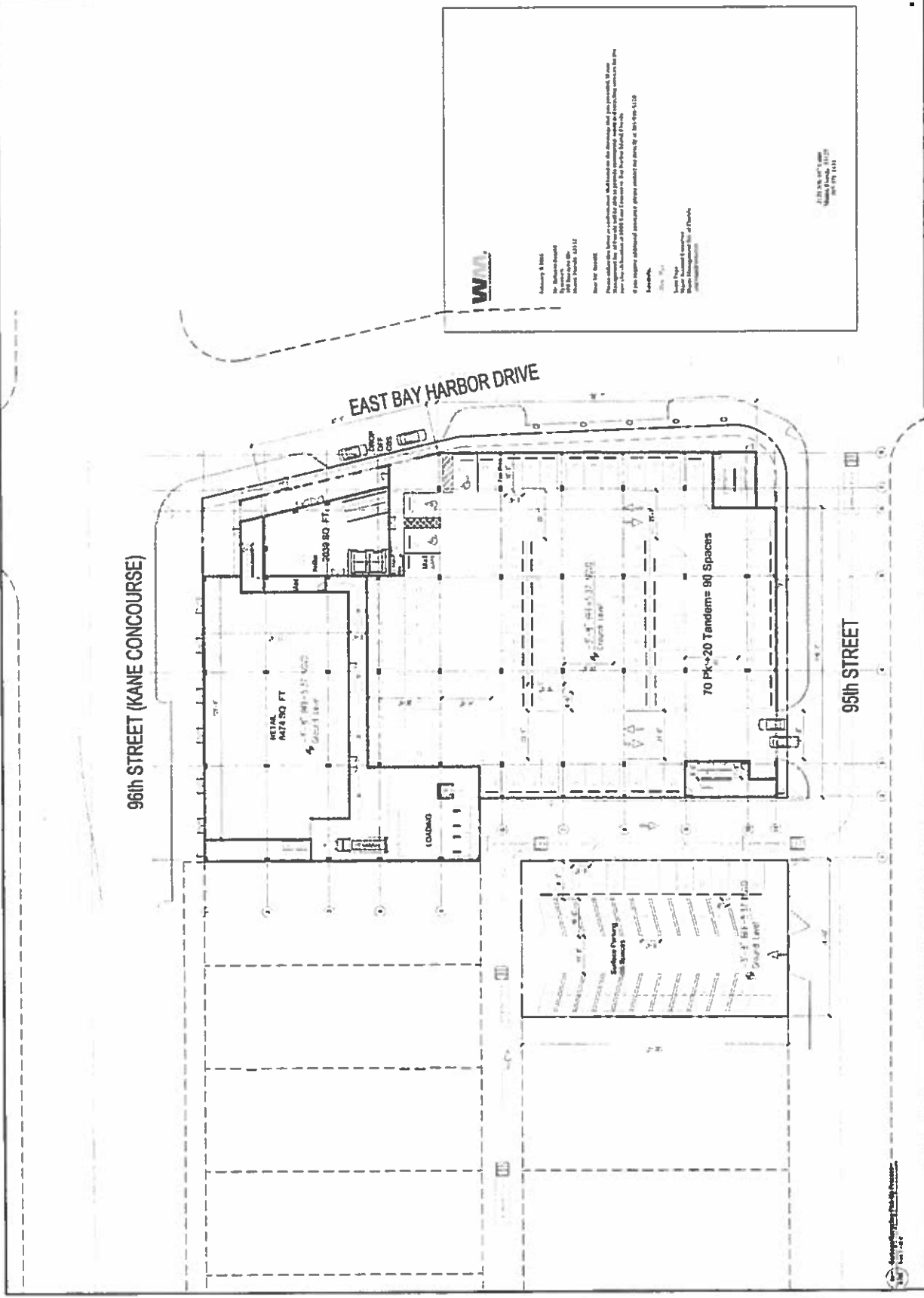


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1000 CFS 04-03-2016



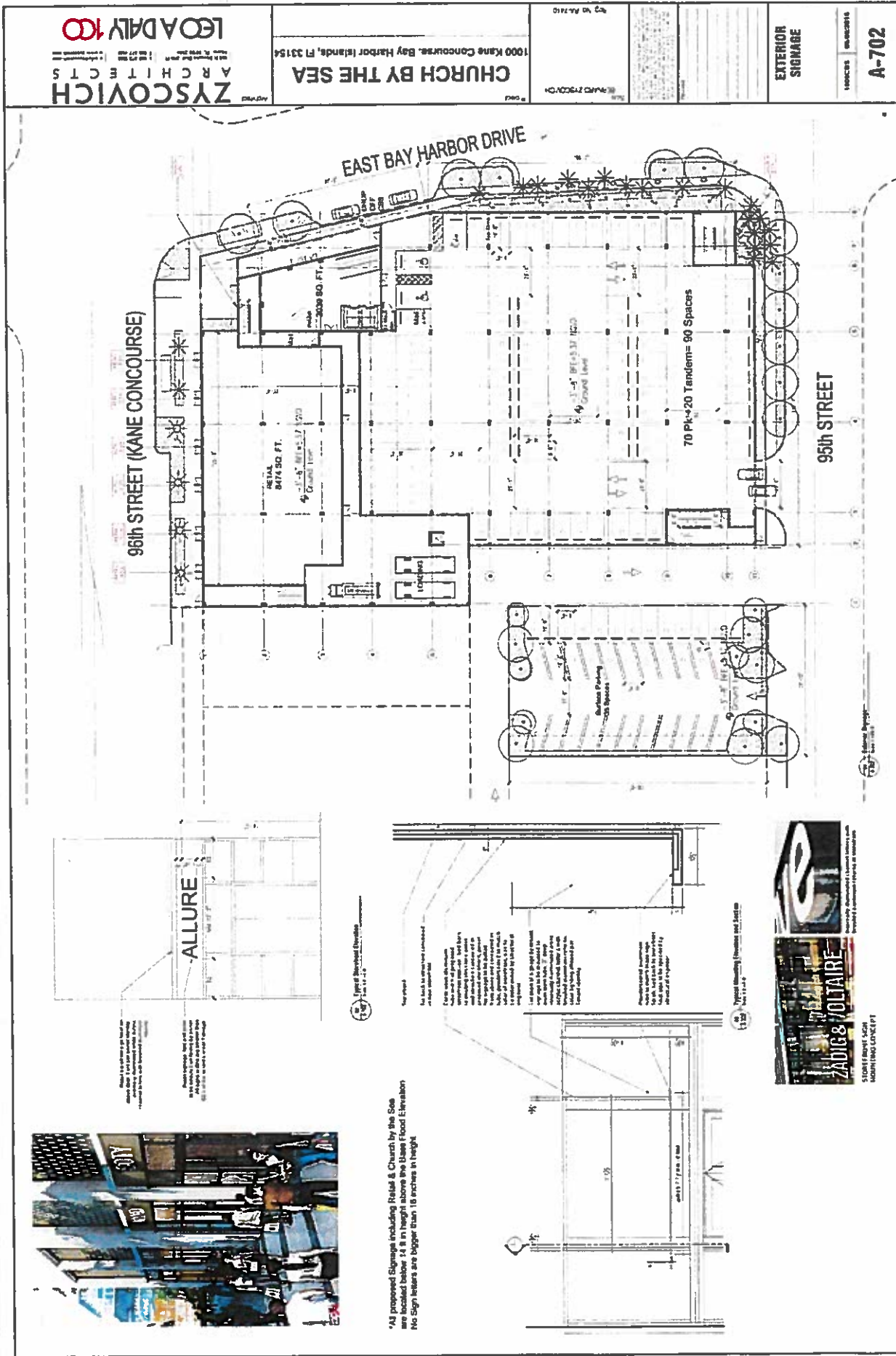
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1000 CFS 04-03-2016





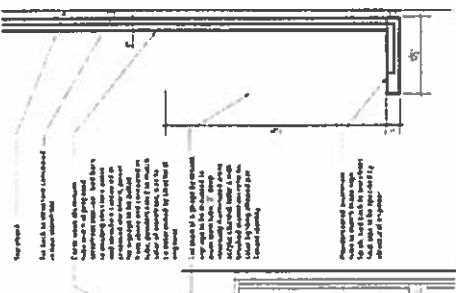
Waste Management
Waste Management is a leading provider of waste management services. We are committed to providing the highest quality service to our clients. We are committed to providing the highest quality service to our clients. We are committed to providing the highest quality service to our clients.

2100 Kane Concourse
Bay Harbor Islands, FL 33154
305-350-1111



*All proposed signage including Retail & Church by the Sea are located below 14.8 in height above the Mean Flood Elevation. No Sign letters are bigger than 18 inches in height.

100 Kane Concourse Signage



100 Kane Concourse Signage

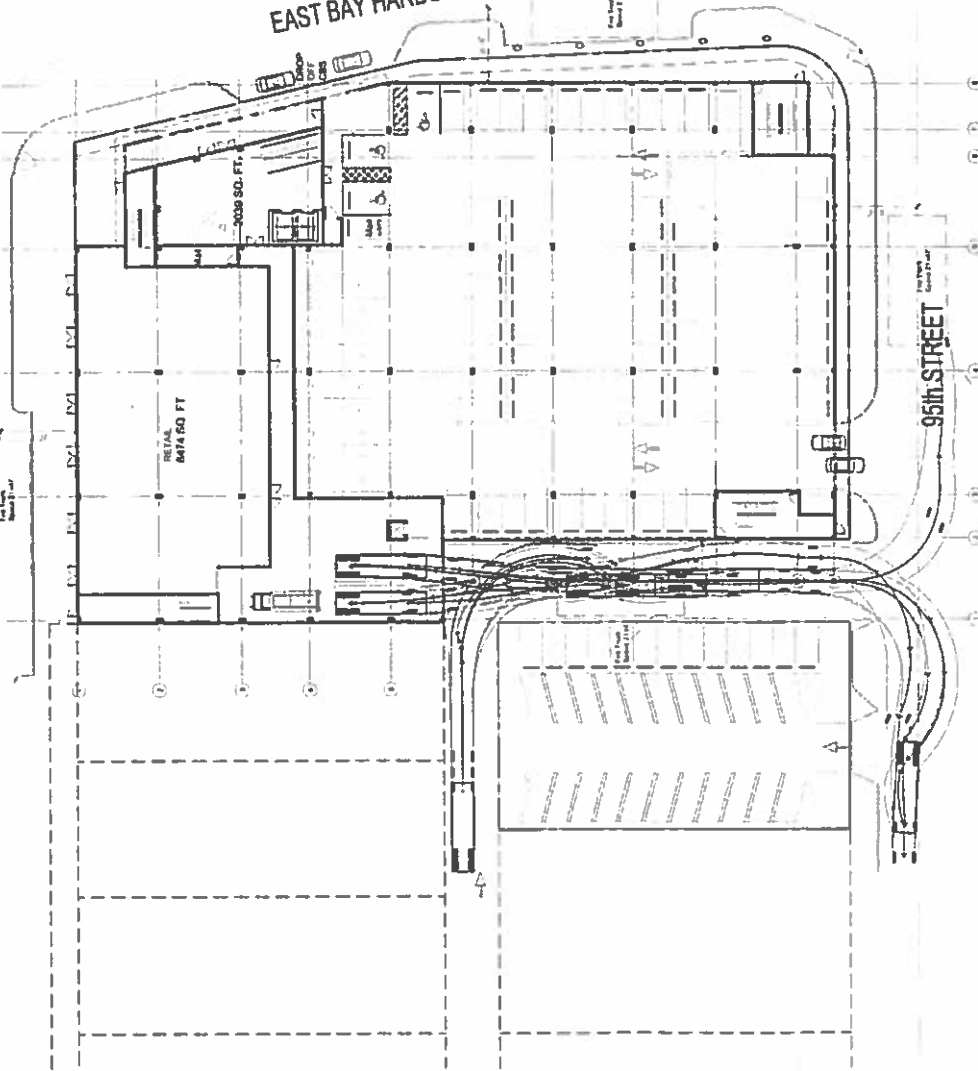


100 Kane Concourse Signage

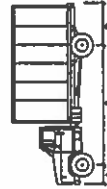
96th STREET (KANE CONCOURSE)

EAST BAY HARBOR DRIVE

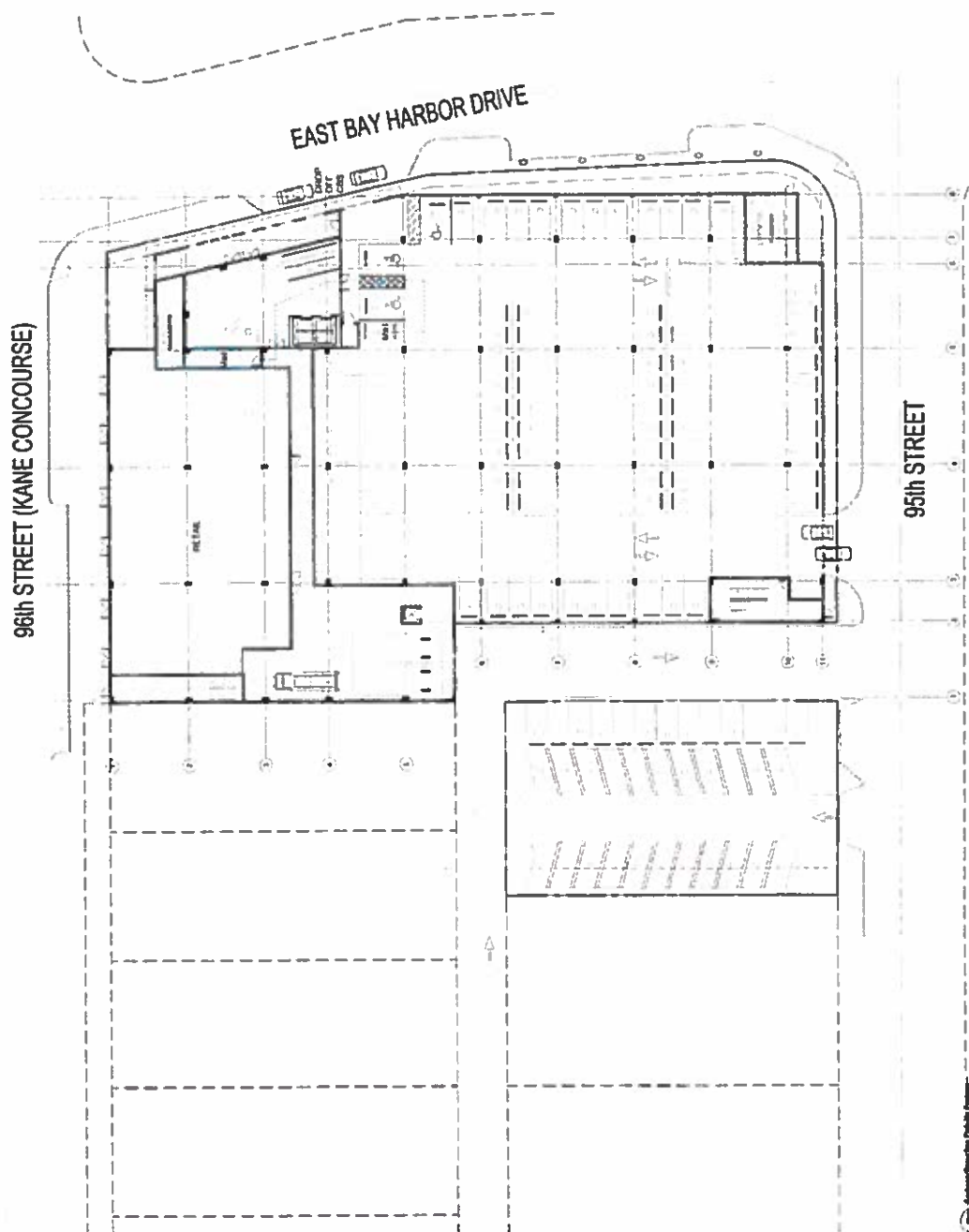
95th STREET

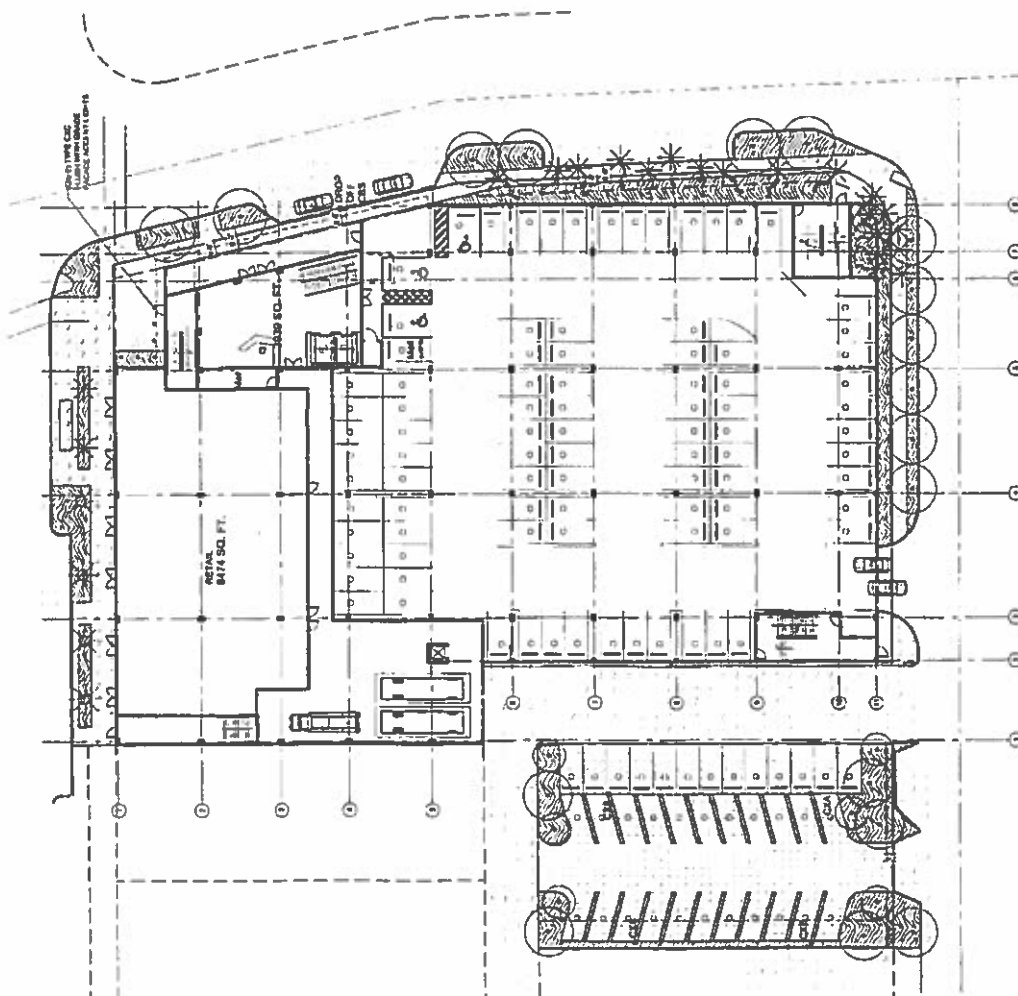


SINGLE UNIT TRUCK DETAIL



Description	GB	GBin	H
A - Front Overhang	7.5	1.0	1.0
B - Wheelbase	23.0	23.0	5.1
C - Rear Overhang	4.0	1.0	1.0
D - Width	6.5	6.5	2.5
E - Track	6.5	6.5	2.5
F - Steering Angle (deg)	31.6	31.6	24.6
Minimum Turning Radius	37.0	37.0	11.2





Church By the Sea - Luminare Schedule

[illegible][illegible]

1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

[illegible]

CHURCH BY THE SEA CONCEPTUAL CIVIL PLANS

CONCEPTUAL CIVIL PLANS

Bay Harbor Islands, Miami-Dade County, Florida.

ZYSCOVICH
ARCHITECTS
LEO A DAILY INC
1000 10TH AVE S
SUITE 100
MINNEAPOLIS, MN 55404
TEL: 612-338-1111
FAX: 612-338-1112
WWW.ZYSCOVICH.COM

LEO A DALY 100

CHURCH BY THE SEA

1000 Kane Concourse, Bay Harbor Islands, FL 33154

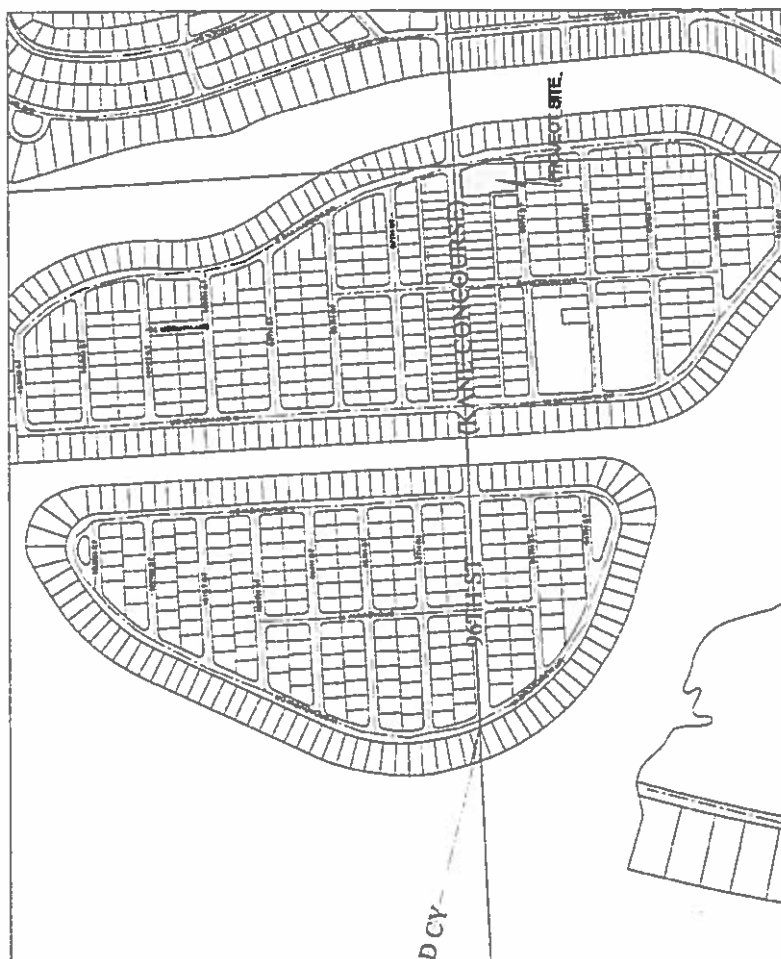


RECEIVED

016218790	0620001

[illegible]

SHEET No	TITLE
C1	COVER SHEET
C2	NOTES
C3	CIVIL PLAN
C4	CIVL DETAILS
C5	STORM WATER POLLUTION PREVENTION PLAN
C6	STORM WATER POLLUTION PREVENTION DETAILS



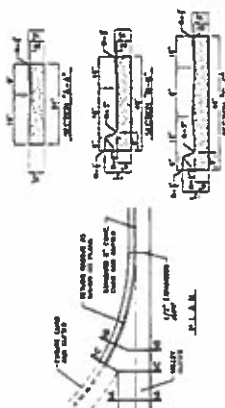
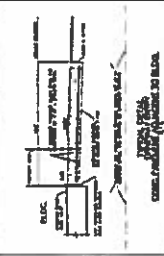
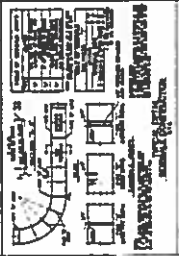
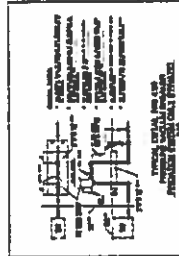
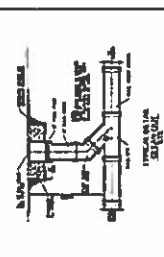
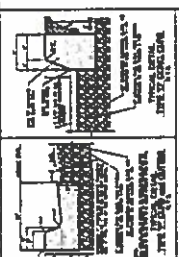
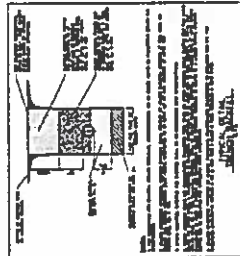
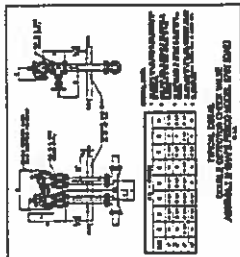
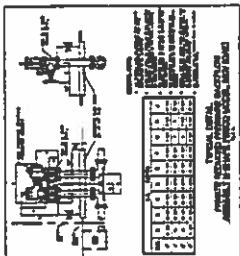
LOCATION SKETCH

Section J4, Township 52 South, Range 42 East

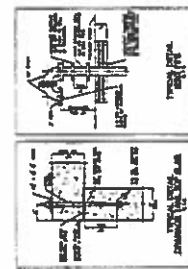
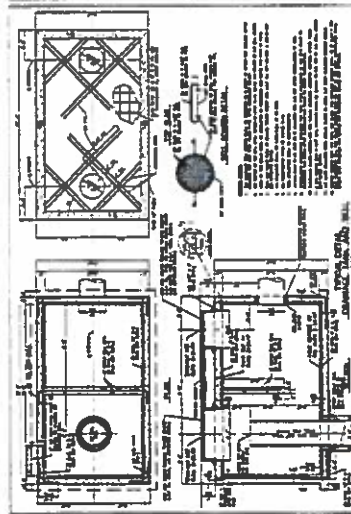
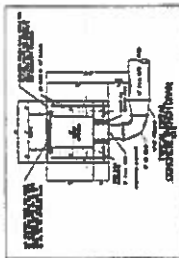
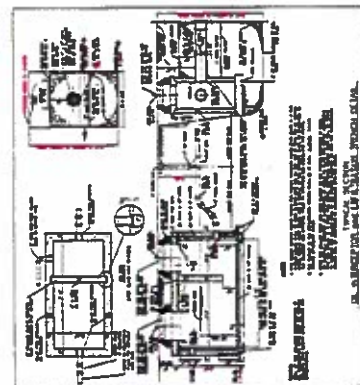
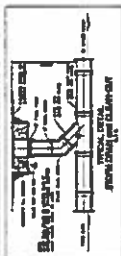
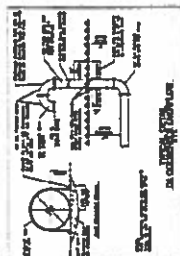
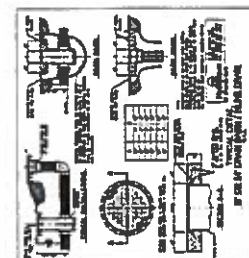
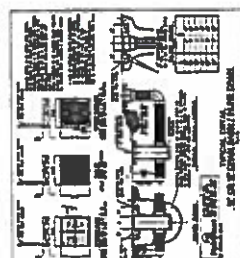
52 South
52 South

FORTIN, LEAVY, SKILES, INC.
CONSULTING ENGINEERS, SURVEYORS & MAPPLERS
10000 W. 7TH AVE. SUITE 100 DENVER CO. 80209
TEL: 333-6600 FAX: 333-6601
FLORENCE, SC 29501 TEL: 656-1111 FAX: 656-1112

FORTSLING, LEAVY, SKILES, INC.
CONSULTING ENGINEERS, SURVEYORS & MAPPERS
11100 E. 1st Ave. • P.O. Box 17107 • Atlanta 30322 • Tel. 404/506-1100 • Fax 404/506-1101
1000 Montague Square, Suite 100 • North Miami Beach, Florida 33162
Phone 305/435-4993 • Fax 305/435-1111 • E-mail info@fortsling.com
© 1993 Fortsling, Levy, Skiles, Inc. • CAD No. 11100 MEY • PWS No. 101-5411



TYPICAL DETAIL
CONCRETE VALLEY GUTTER.

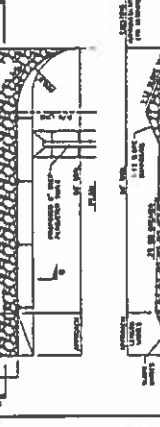
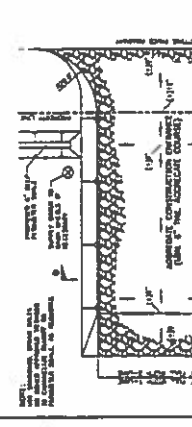
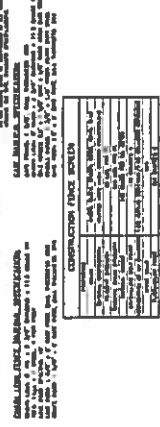
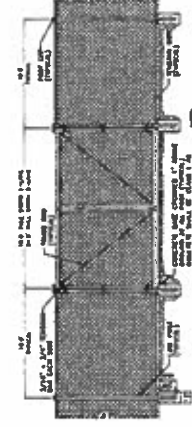
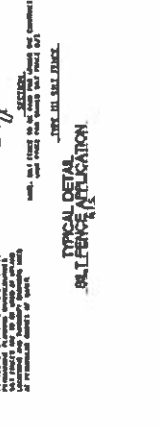
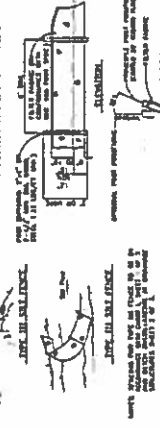
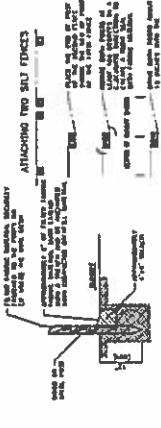
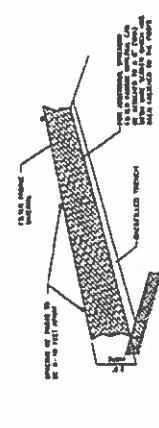
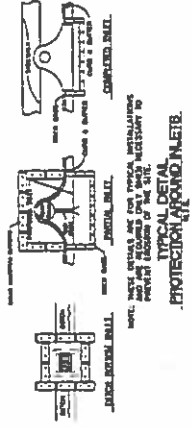


TYPICAL DETAIL
CONCRETE WHEELSTOP
4.1.1



2/19/18 - REVISED
PER CITY COMMENTS

FORTIN, LEAVY, SKILES, INC.
CONSULTING ENGINEER, SURVEYOR & MAPPERS
1100 North Bay Street, Suite 200, Fort Lauderdale, FL 33304
Phone: 954-553-0991 / Fax: 954-553-1127 / Email: info@fortinleavyskiles.com
EIR No. 131808 C-107 No. 111000077 1001 No. 1011001



IMPERVIOUS AND OPEN SPACE CALCULATION:

SITE:
 61,860 SQ FT

IMPERVIOUS:
 58,021 SQ FT (93.79%)

PERVIOUS:
 3,839 SQ FT (6.21%)

OPEN SPACE TOTAL:
 30,149 SQ FT (48.73%)

- GROUND FLOOR:
 13,145 SQ FT (21.24%)

- SECOND FLOOR:
 2,674 SQ FT (4.32%)

- THIRD FLOOR:
 10,620 SQ FT (17.17%)

- ROOF:
 3,710 SQ FT (6.00%)

96th STREET (KANE CONCOURSE)

EAST BAY HARBOR DRIVE

95th STREET

- LEGEND**
- CANOPY TREE
 - EXISTING ROYAL PALMS TO REMAIN
 - THORN ACACIA
 - CHARIVARI PALM
 - VINE
 - LE OPULENSIS
 - PERILANTHUS
 - SPITELIUS
 - BRICK PAVING
 - CONCRETE PAVING
 - STREET LIGHT
 - PEDESTRIAN LIGHT
 - SOB
 - SEWER MANHOLE
 - ELECTRIC UTILITY
 - CATCH BASIN
 - BENCH
 - JACOB TRILLIS
 - STYLLIS
 - ACCENT LIGHT
 - OPEN SPACE

ZYSCOVICH
 ARCHITECTS
 100 A DALY 100

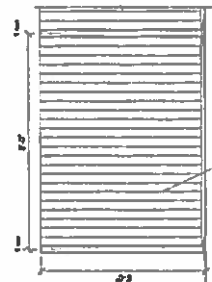
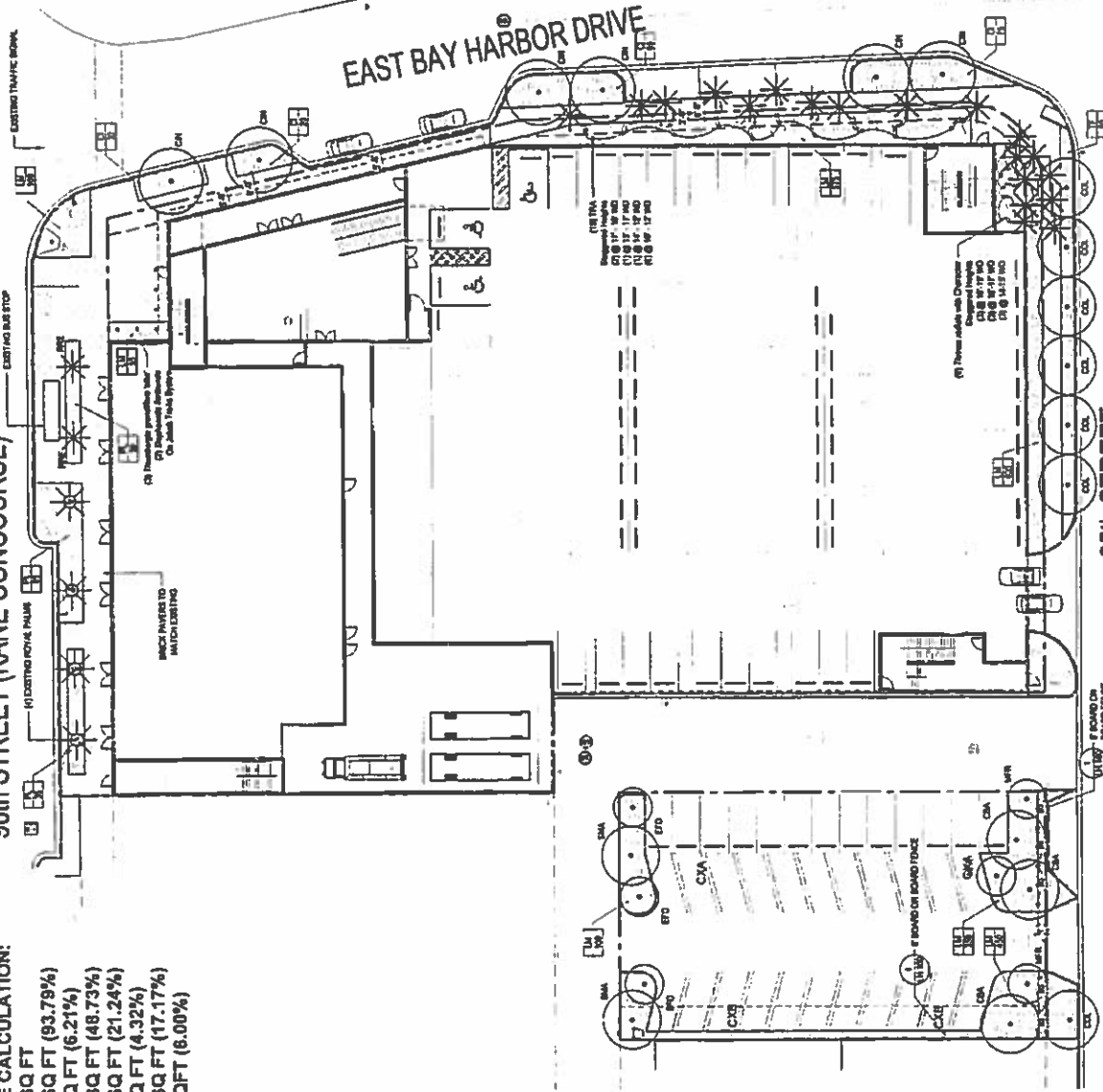
CHURCH BY THE SEA
 1000 Kane Concourse, Bay Harbor Islands, FL 33154

LABORING ARCHITECT
 RUTH AND ASSOCIATES, INC.

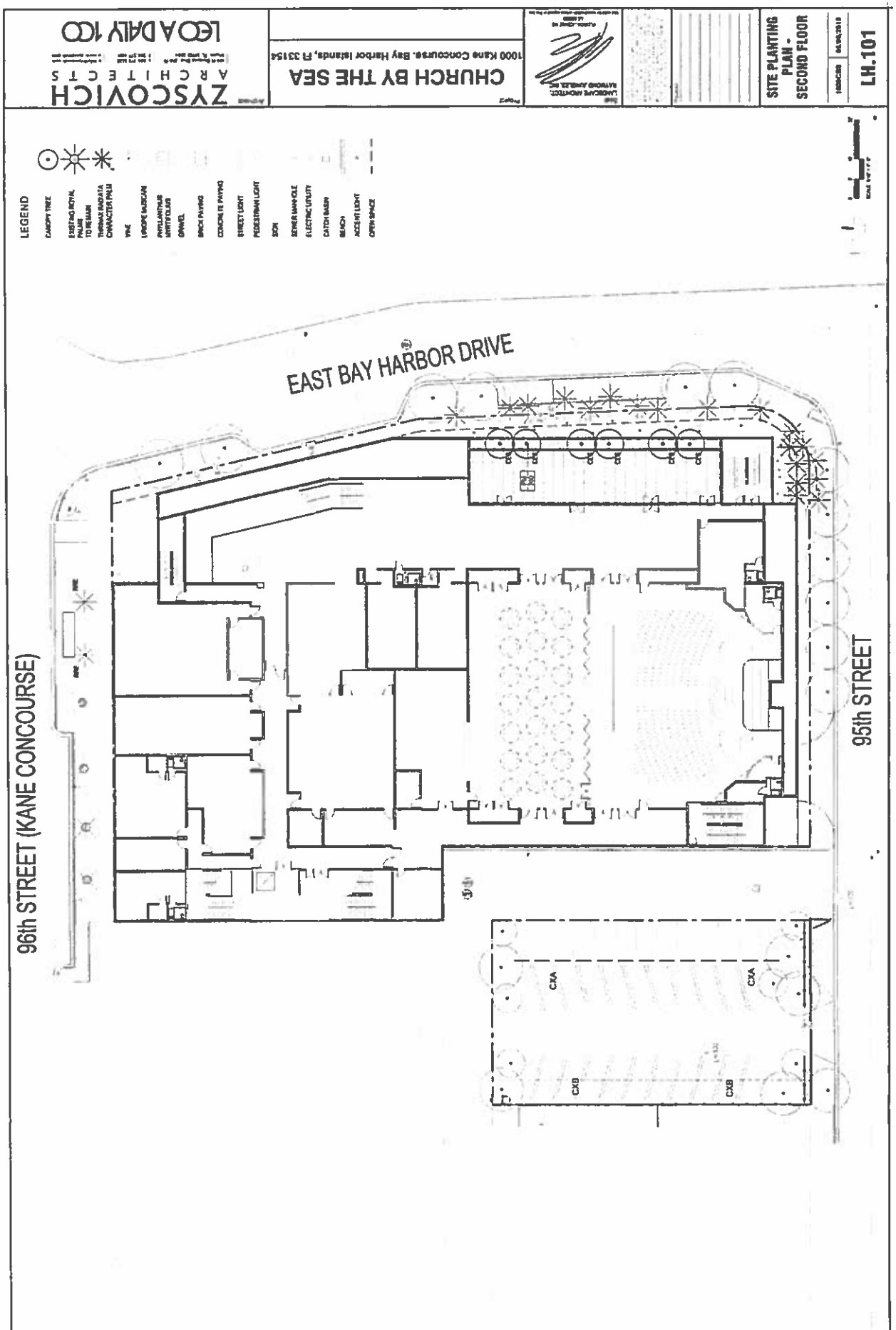
SITE PLANTING PLAN - GROUND FLOOR

LH.100

SCALE 1/8" = 1'-0"



1 BOARD ON BOARD FENCE
 Scale 1/2" = 1'-0"



96th STREET (KANE CONCOURSE)

EAST BAY HARBOR DRIVE

95th STREET

- LEGEND**
- CANOPY TREE
 - EXISTING ROYAL PALM
 - THORNACROFTIA
 - CONCEPT PLANT
 - YAC
 - UNIQUE BACCHAN
 - PAVILLANTULUS
 - WINTERFLOR
 - GRANDEL
 - BRICK PAVING
 - CONCRETE PAVING
 - STREET LIGHT
 - PEDESTRIAN LIGHT
 - BOX
 - SEWER MANHOLE
 - ELECTRIC UTILITY
 - CATCH BASIN
 - BLANCH
 - ACCENT LIGHT
 - OPEN SPACE

ZYSCOVICH ARCHITECTS
LEO A DALY 100

CHURCH BY THE SEA
1000 Kane Concourse, Bay Harbor Islands, FL 33154



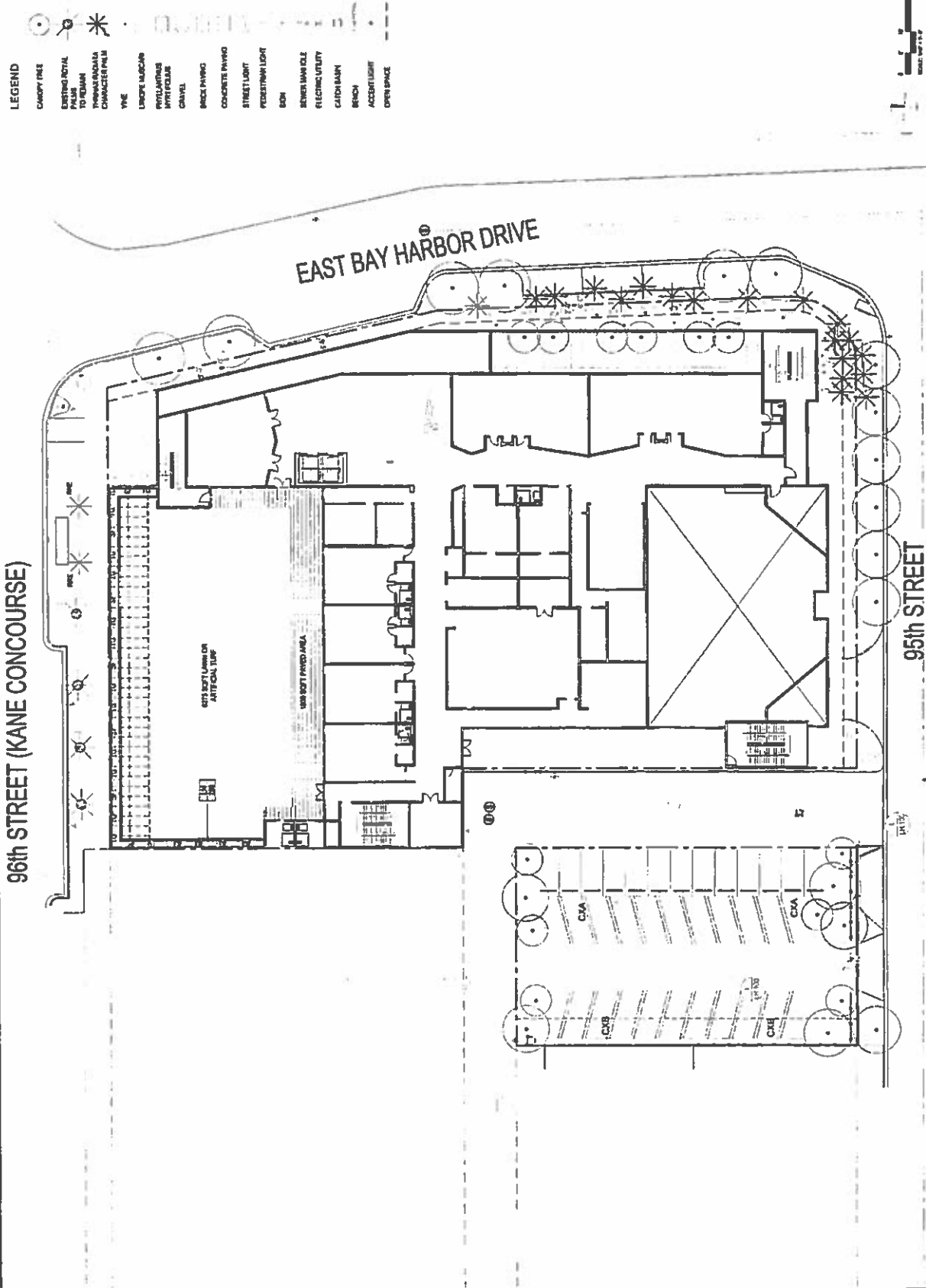
SITE PLANTING PLAN - SECOND FLOOR

LH.101

96th STREET (KANE CONCOURSE)

EAST BAY HARBOR DRIVE

95th STREET



- LEGEND
- CANOPY TREE
 - EXISTING ROYAL PALM TO REMAIN
 - THOMAS RADIAL CHARACTER PALS
 - VINE
 - LIPOE MUCUNA
 - PHYLANTHUS HYPOCISTIS
 - GRASS
 - BRICK PAVING
 - CONCRETE PAVING
 - STREET LIGHT
 - PEDESTAL LIGHT
 - BENCH
 - SEWER MAN HOLE
 - ELECTRIC UTILITY
 - CATCH BASIN
 - BENCH
 - ACCENT LIGHT
 - OPEN SPACE

ZYSCOVICH ARCHITECTS
LEO A DALY 100

CHURCH BY THE SEA
1000 Kane Concourse, Bay Harbor Islands, FL 33154

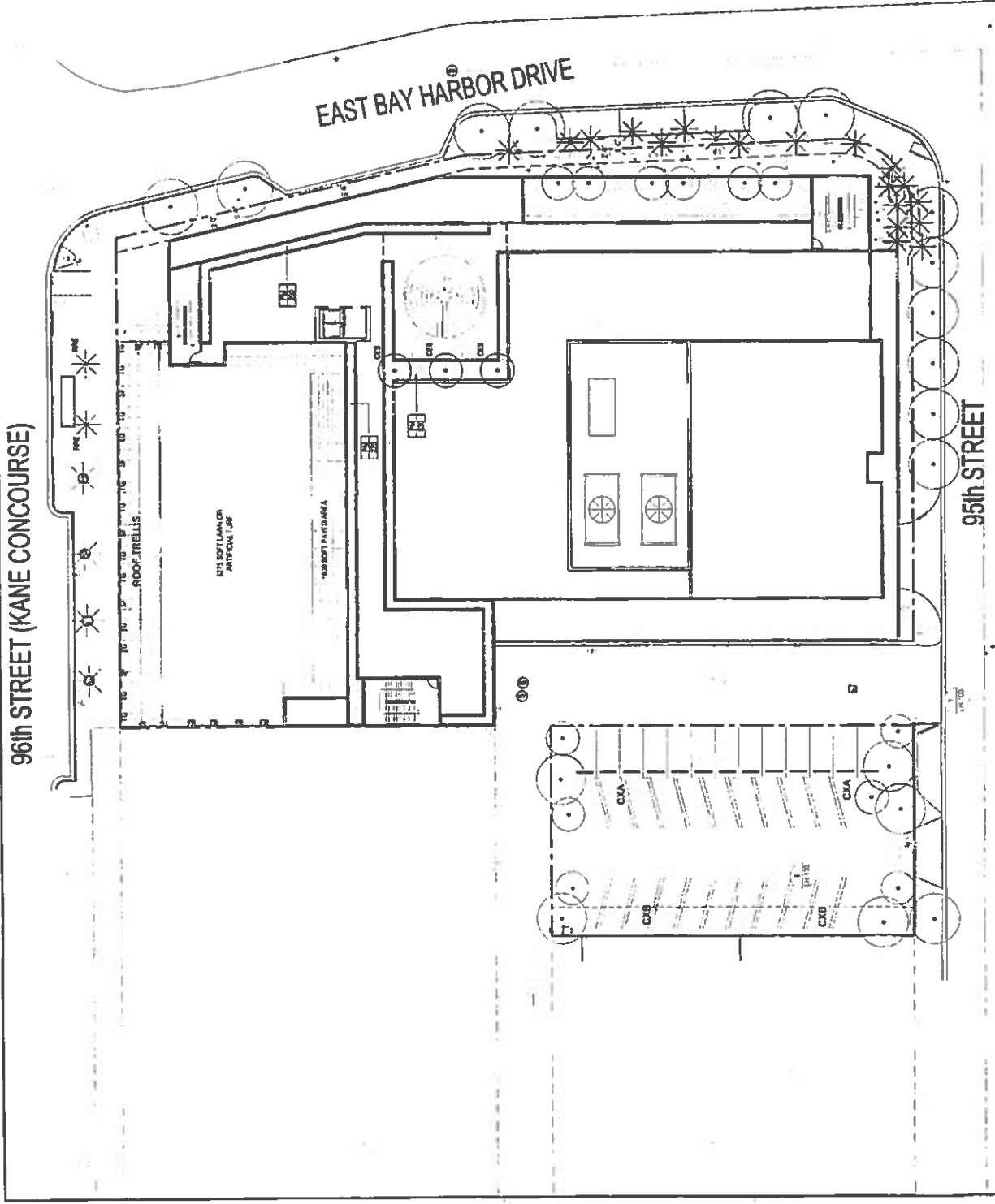


SITE PLANNING
PLAN -
THIRD FLOOR

1000C300 06/02/2010
LH.102

LEGEND

- CANOPY TREX
EMERALD ROYAL
PALMS
TO ITALY
THERMAL SIGATA
CHARACTER PALM
VINE
LYPHE GUSCAR
PANTLAPUS
MYTHOLUS
GRANVEL
BROCK PIANO
CONCRETE PIANO
STREET LIGHT
PEDESTRIAN LIGHT
SIGN
SEWER MANHOLE
ELECTRIC UTILITY
CATCH BASIN
BENCH
ACCENT LIGHT
OPEN SPACE



AGENDA ITEM REPORT

May 17, 2016

ITEM NUMBER: 2.

ITEM: Approval of the minutes held on March 1, 2016. (Item #2A)

DESCRIPTION:

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Ayanidys Martinez
 Ayanidys Martinez

ATTACHMENTS

1.	P & Z Minutes 3.1.16	3-1-16 DRAFT.docx

**MINUTES OF A PLANNING & ZONING BOARD MEETING
TOWN OF BAY HARBOR ISLANDS**

A Planning & Zoning Board Meeting was held Tuesday March 1, 2016 at 7:02 p.m. in the Council Chambers. The meeting was opened with the Pledge of Allegiance. Upon roll call, the following Board Members responded:

Chair Steven Hurwitz

Vice Chair Jerome Gavcovich

Board Member Jed Frankel

Board Member Oscar Sklar

QUASI-JUDICIAL PUBLIC HEARING

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

Item 1. Approval for a new multi-family dwelling for "Atlantis of Bay Harbor" located at 1170 103 Street, Lots 6 & 7 of Block 5. The developers are proposing to construct a thirty (30) unit mid rise residential development. The proposed units range from 1,275 to 2,260 sq. ft. The proposed design incorporates one squared shaped building positioned on top of a parking garage structure depressed 3'-6" below grade. The building is 6 stories in overall height (5 floors of residential over 1 floors of parking garage and lobby @ 65ft above BFE. The developer will be required to obtain 13 Transfer of Development Rights (TDR).

Project Manager Philip Andraus, 9821 NE 12 Terrace, came forward and presented the project renderings to the Board. He explained that the developers were proposing to construct a thirty (30) unit residential development that would cater to all age groups, with three and four bedrooms homes. The building is 6 stories in overall height that incorporated a wedding cake design; parking garage and lobby. He presented the Board with renderings of the surrounding buildings to the north, south, east and west. He provided a detailed explanation of the project amenities that included storage space; recreational area with 9 cabanas on the roof top and an active roof top with a spa area; pool area and ocean views.

PUBLIC COMMENT

Victor Maya, 1155 103 St, came forward and asked if the proposed cabanas on the roof top would be available for anyone to purchase. He stated that the property owner failed to obtain a demolition permit prior to the structure being demolished.

Frances Neuhut, 1060 Kane Concourse, came forward and was concerned with the unity of title for the property. She felt that the unity of title should have been recorded with Miami-Dade County prior to an approval from the Planning & Zoning Board.

CLOSED PUBLIC COMMENT

There was a detailed discussion on the guest parking; the landscaped strip to be reduced to 7 feet; request for the owner to not remove the large tree on the corner; requirements for developments to have a breezeway; height limit; canopy area on the roof top; radius for the ramps are too narrow; bathroom on the ground floor could be used for the valet attendant; the overall density; sculpture feature; mechanical parking lifts; setbacks; security gate and the number of parking spaces.

Consensus was for the applicant to come back and address the slope on the ramps; columns; the roof cabanas need to be open and ventilated; units layout needs to be addressed and the parking garage exhaust fans must be included on the site plans.

CONCLUSION OF QUASI-JUDICIAL PUBLIC HEARING

Item 2. Request for approval for a new single family home for "Isaac & Michelle Possin" located at 9461 East Broadview Drive Lot 100 of Block 23. The proposed 2 story home has approximately 5,248 square feet of living space with a two-car garage, pool and pool deck in the rear (water side). The residence will have five (5) bedrooms, six (6) full bathrooms, two half bathrooms, a play room and a study/guestroom. Enclosed please find the site plan, elevations and landscape plan. Item #2A

Architect, Stephanie Halfen, came forward and presented the proposed home to the Board. She explained that the applicant concept was to maximize the open spaces and green spaces on the property. The proposed 2 story home would have five bedrooms, six full bathrooms, a play room; and a study / guestroom. She provided the Board with sample board of the proposed materials that included white stucco, white marble, decorate stone and frosted glass.

There was a brief discussion from the Board on the proposed materials, garage gate; renderings, elevations and entry door.

PUBLIC COMMENT

Frances Nuehut, 9920 W. Broadview, came forward and felt that there was poor lighting on the streets and urged the Town to provide safe passage for walking pedestrians.

CLOSED PUBLIC COMMENT

ACTION: Board Member Sklar made a motion to approve the proposed home with the condition to add taller palms trees on the north and south elevation. Board Member Frankel seconded the motion and it passed unanimously.

Item 3. Approval of the minutes held on October 20, 2015, November 3, 2015, November 17, 2015 and January 5, 2016.

Vice Chair Gavcovich made correction to the January 5th Board Meeting.

ACTION: Board Member Frankel made a motion to approve the proposed Minutes subject to Vice Chair Gavcovich corrections. Vice Chair Gavcovich seconded the motion and it passed unanimously.

There being no further business to discuss meeting was adjourned at 9:09 p.m.

CHAIR

ATTEST

TOWN CLERK

EXHIBIT E

MEETING OF THE
PLANNING AND ZONING BOARD
QUASI-JUDICIAL PUBLIC HEARING
May 17, 2016
AGENDA

CALL TO ORDER: Set for 7:00 p.m.

PLEDGE OF ALLEGIANCE

ROLL CALL

1. Request for approval for a mixed-use development for "Church by the Sea" located at 1000 Kane Concourse, Tract N and Lot 18 of Block 12. The contract purchaser is proposing to construct a Three story mixed-use development project. The new complex proposes to have commercial retail Space at the street level facing Kane Concourse with a religious establishment on the upper two Floors. The proposed new building will be 44'-8" in height above BFE (65 feet BFE allowed). The Survey indicates the total lot area for lot 18 is 9,750 square feet in size and the area for Tract N is 52,110 square feet in size. Therefore, the total combined lot area according to the survey, is 61,860 square feet (1.42 acres). Enclosed please find the site plan and elevations. (Item #1A)

* Staff Review: Design meets Town Code and was approved by the Development Review Committee.

PUBLIC COMMENT - for the purpose of hearing any public comment with respect to an application for Site plan approval at 1000 Kane Concourse.

1 (Thereupon, the following proceedings were had)

2
3 MR. HURWITZ: Good evening, everybody,
4 we will call the roll and we'll get
5 started.

6 THE CLERK: Mr. Kolesko could not be
7 here today.

8 (Thereupon, the board was called)

9 MR. HURWITZ: Okay. We're going to
10 get going with the first item which his a
11 request for approval for mixed-use
12 development.

13 Anyone need to be sworn or we can do
14 it after?

15 Request for approval for a mixed-use
16 development for "Church by the Sea" located
17 at 1000 Kane Concourse, Tract N and Lot 18
18 of Block 12. Contract purchaser is
19 proposing to construct a three-story
20 mixed-use development project. The new
21 complex proposes to have commercial retail
22 space at the street level facing Kane
23 Concourse with a religious establishment on
24 the upper two floors. The proposed new
25 building will be 44'8" in height above BFE

1 (65 feet BFE is allowed). The survey
2 indicates the total lot area for Lot 18 is
3 9,750 square feet in size and the area for
4 Tract N is 52,110 square feet in size.
5 Therefore, the total combined lot area
6 according to the survey is 61,860 square
7 feet, 1.42 acres.

8 Before we get going, Stanley, I think
9 you wanted to make some comments.

10 MR. PRICE: Thank you, Mr. Chairman,
11 members of the board. My name is Stanley
12 Price, I have served as special wings
13 counsel to the town since the mid 1980's,
14 and I have been called upon this evening in
15 regard to the "Church by the Sea"
16 application. I furnished a memorandum
17 which hopefully you all have received and
18 digested but I'd like to summarize the
19 major points of the application in terms of
20 the laws that govern the -- that should
21 govern the decision making process of the
22 board.

23 I have served as the attorney for the
24 Archdiocese of greater Miami since the mid
25 1980's on venues matters. I represent the

1 two major Orthodox temples in Surfside and
2 Young Israel and I've been involved in
3 court cases involving those institutions.
4 I have been involved I would say in between
5 40 and 50 places of religious worship since
6 I began practicing here in Dade County in
7 1972.

8 I received a call from the town
9 attorney, Mr. Sherman, approximately a week
10 ago indicating that some issues had arisen
11 in regard to the nature of the operation of
12 the church that is the subject before you
13 here tonight. I will tell what the church
14 believes, what their theories are, what
15 their personal beliefs and what they
16 advocate plays no role whatsoever in the
17 decision making process that you are to
18 undertake as a zoning board this evening.

19 The reason I say that is that the
20 United States Supreme Court in the City of
21 Hialeah case, which I have submitted a copy
22 to everyone, the facts of that case involve
23 a Sanitoria church in the City of Hialeah.
24 As part of the teachings and religious
25 sacraments of the church they believe in

1 the sacrifice of animals as part of their
2 religious function.

3 Several members of the community came
4 down to the City of Hialeah comission
5 meeting and they raised a major issue that
6 this is not the type of religious group
7 that we would like in our community, and
8 based upon that the town of Hialeah enacted
9 several ordnances aimed specifically as to
10 the nature of the teachings of that church.
11 They banned the sacrifice of animals, they
12 created several ordinances that made it
13 very difficult for this religious group to
14 continue with their practice.

15 The case went to the United States
16 Supreme Court and while it was a unanimous
17 decision there were several concurring
18 opinions which means the court had all
19 different aspects of this. However, what
20 was abundantly clear the entire court found
21 that it is irrelevant for a zoning body or
22 a municipal body interfere or to even
23 examine the teachings, practices of a
24 religious group. That is unconstitutional,
25 it's protected by the First Amendment of

1 the freedom of religion. Following the
2 decision of the United States Supreme Court
3 the United States Congress adopted in the
4 early 2000 period the Religious Land Use
5 Institutional Person's Act, which is a
6 federal statute which by the way has also
7 been enacted by the State of Florida. It
8 gives added protection to religious
9 organizations in the context of zoning.

10 The genesis of the law was complaints
11 by several black churches in the south who
12 alleged that the local governments were
13 using the zoning power to exclude them from
14 operating within a municipal boundary. The
15 Congress took testimony, they passed the
16 law and the law provides that in regard to
17 religious organizations they must be judged
18 on an equal plane as any other place of
19 public assembly. They can be subject to no
20 greater standards, they must be treated on
21 a equal basis with other places of public
22 assembly.

23 Your ordinance is content neutral, it
24 does not distinguish between different
25 places of public assembly whether it be a

1 theater, whether it be a religious
2 organization, whether it be a private
3 school, they all must comply with the terms
4 of your code.

5 The only relevant aspect of testimony
6 today that you should consider is what the
7 land use application and how it's
8 applicable to your code of ordinances.

9 Once again, Mr. Chairmen, I would
10 respectfully suggest that any attempt by
11 anyone to try to characterize the religious
12 practice or the religious belief is not
13 relevant tonight, it may be relevant at
14 another time but for the purposes of zoning
15 it has no relevancy at all. I'll be
16 available to answer any questions that you
17 may have. Thank you.

18 MR. HURWITZ: Thank you, Stanley.

19 Okay. Any questions for the board of
20 Stanley before we begin? No. Okay.

21 If the applicant is here we'll give
22 you an opportunity to present, and just
23 want to remind everyone if anyone wants to
24 speak we'll swear in anyone who's planning
25 to speak. Go ahead, Stanley.

1 THE CLERK: If anyone wishes to speak
2 you have to turn in a form to speak and you
3 also have to be sworn in. If you'll raise
4 your right hand.

5 Swear or affirm to tell the truth,
6 whole truth in your testimony?

7 (Collective yes.)

8 MR. HURWITZ: Can we -- is it possible
9 to move that behind Stanley?

10 THE CLERK: A little bit, not much
11 more.

12 MR. HURWITZ: We will move it as much
13 as we can.

14 THE CLERK: You need to be able to see
15 the presentation too.

16 MR. FRANKEL: Mr. Price, so you told
17 us what we can't consider, I think it would
18 be helpful if you maybe tell us and
19 articulate to the members of the public
20 here what it is that we're supposed to be
21 considering.

22 MR. PRICE: The code of the town of
23 Bay Harbor Island contains criteria that
24 places of public assembly must meet.
25 Unless a variance is requested those are

1 the standards which you must apply this
2 evening. It talks about the location of
3 where these can be located, places of
4 public assembly, and it has other criteria,
5 that is what your inquiry should be limited
6 to, sir.

7 MR. HURWITZ: No different than any
8 other application that the board --

9 MR. PRICE: No different than any
10 public places of assembly.

11 MR. HURWITZ: If anyone would like to
12 speak on the matter there are forms in the
13 back, they need to be filled out and you
14 can bring them up, anyone, up here and will
15 be taken after the presentation.

16 Is the applicant here?

17 MS. HUBER: Yes. Good evening, my
18 name is Amy Huber with the law firm of
19 Shubin & Bass, 46 Southwest First Street,
20 Miami, Florida. I have the honor of being
21 here this evening on behalf of the "Church
22 by the Sea". I'm joined by Reverend
23 Barbara Asinger as well as many other
24 members of the church, as well as residents
25 of Bay Harbor Island who are in support of

1 the application. In an effort of brevity
2 for this evening I'm going to ask those
3 that are here in favor of the application
4 stand this evening as all of them will not
5 be speaking before you.

6 (People stand up.)

7 MS. HUBER: Thank you. In addition to
8 members of the church, members of the board
9 of the church and the Reverend I'm also
10 joined this evening by Bernard Zyscovich of
11 Zyscovich Architects and Danielle Smith who
12 are the architects of record for the
13 "Church by the Sea". We also have our
14 landscape architect here with Randy Jungles
15 as well as our traffic engineers Hank
16 Sandrow. So to the extent you have any
17 questions for them they'll be here and
18 happy to answer them.

19 In just a moment I'm going to turn the
20 application and the presentation this
21 evening over to Bernard to let him walk you
22 through the design criteria.

23 So you heard this evening from Stanley
24 that this application should be reviewed in
25 accordance with your code just like any

1 other application before you. Your staff
2 planners have done a fabulous review of
3 this application and the staff report is
4 very thorough on this matter and it's
5 recommending approval of the application.

6 Your planner has reviewed all of the
7 criteria of the code and found that the
8 "Church by the Sea" meets all of those
9 criteria with respect to placement,
10 location, permitted uses, uses that must
11 occur on the first floor as well as uses
12 that must occur on the second floor and
13 above. We are 20 feet below the maximum
14 height for this district.

15 As you see in our application this is
16 a mixed-use application. The code requires
17 retail to front Kane Concourse, as you'll
18 see there is retail on the first floor
19 fronting Kane Concourse, immediately behind
20 that is parking. The parking meets all of
21 the applicable parking criteria on site,
22 there is no need for additional parking
23 agreements with off site parking.

24 Located on the second and third level
25 is the new "Church by the Sea." Your code,

1 Section 523-1, outlines the criteria which
2 this board must review this application and
3 apply. That criteria limits this review to
4 architectural and aesthetic review of the
5 plan, so anything outside of that we would
6 ask for you to disregard this evening.

7 I'm going to retain a few minutes of
8 my time this evening for rebuttal after
9 public comments to the extent we need to
10 address. At this time I'm going to turn it
11 over to Bernard.

12 MR. ZYSCOVICH: Hi, good evening. My
13 name is Bernard Zyscovich, my office is at
14 100 North Biscayne Boulevard, and I'm very
15 happy to take you through the plans I'm
16 sure you've already looked at, and I'm sure
17 you're very familiar with the site.

18 So fortunately as architects get to
19 talk about the design and context and
20 things that I think you all are interested
21 in by the very nature of being here on the
22 board so we need to go through these other
23 issues as a matter of legal course, but
24 what I'm here to talk to you about is what
25 the church really is all about.

1 As you know, the location is on Kane
2 Concourse, as you can see in the diagram,
3 including the property on the other side of
4 the alley, it's currently where the
5 Cadillac dealership is. Here you can see
6 the context photos that have gone through
7 and been reviewed by staff, and we have
8 really taken a lot of care about really
9 making sure that we comply with, as Amy
10 mentioned, all of the architectural and
11 aesthetic review criteria that are listed
12 in your code. We've also made sure and
13 gone through significant research on our
14 own to ensure that we ask for no special
15 variances or any other conditions that
16 might, in fact, not be in compliance fully
17 with the code, so what I want to do is show
18 you what we've come up with.

19 Here you can see in the orange color
20 in the center the shops that face Kane
21 Concourse. They actually have a
22 significant retail presence. I'll show you
23 in the renderings the height of the ground
24 floor is 20 feet so we're looking at being
25 able to having those shops either

1 subdivided or they can go to a single
2 tenant. The attitude has been all along
3 that we want to be good neighbors to the
4 city and that we want the shops at Kane
5 Concourse to be viable commercial shops and
6 they are designed to be that. As you can
7 see behind where you see the truck loading,
8 we have as required by code ample truck
9 loading, trash pickup, we're utilizing the
10 alley in the way that it was meant to be
11 utilized, and we are able to have our exits
12 there come down from the upper floors which
13 is the little sliver of space that you see
14 between the shops and the adjoining shops
15 so that we can actually provide the exit
16 that we need for the rest of the building
17 above.

18 On the corner what we've done is we
19 set back from Kane Concourse and from East
20 Bay Harbor Drive public open space where we
21 have access to the front door so that
22 people can enter the church on the ground
23 floor, go up into the vertical circulation
24 and basically utilize the church which is
25 entirely occupied on the second and third

1 floor. We have made sure that there are no
2 church uses on the ground floor, only
3 commercial uses and parking.

4 We also have provided on 95th Street
5 the entry and exit point to the parking so
6 that we have ample distance from the
7 corner. As you can see in the diagram, we
8 have all of the landscape requirements that
9 are provided, we spent significant amount
10 of time with Mike Miller and his team
11 reviewing everything including going
12 through all of the landscape elements down
13 to the last bush to make sure that we can
14 provide with the letter of the requirements
15 as needed and as defined in your documents.

16 Regarding the ground floor empty lot,
17 what we've done is we've provided an
18 ingress that takes us to the ground level
19 parking, and we also have some 90 degree
20 parking off of the alleyway so that we
21 could maximize the amount of parking which
22 we have. We complied with the code
23 requirement, we have a total of 125 spaces
24 and we have a shared parking or
25 understanding between the church and the

1 retail shops, because as you know the
2 church is really occupied mostly during the
3 religious morning, mostly on Sunday, and
4 other than that it's really not going to be
5 occupying the garage by a significant
6 amount of uses.

7 When you go up to the first level
8 above grade what we have is a logia type of
9 space where you have a gathering space from
10 within the church that will allow people to
11 circulate, we have the vertical core, we
12 have the sanctuary and fellowship hall and
13 the northex for the church. We also have
14 library and other, you know, miscellaneous
15 spaces that are ancillary uses to the
16 church as part of it, and that is -- we
17 also have an outdoor deck that you see on
18 East Bay Harbor Drive so that we can set
19 the church back from the street and give
20 some relief. I think you'll notice it on
21 the renderings when we show it to you.

22 On the next floor up we're taking
23 advantage of the roof. So as you can see
24 on Kane Concourse we're setting the mass of
25 the third floor significantly back from the

1 street face so that we can be a very good
2 neighbor and also provide some outdoor
3 space for the multipurpose rooms that are
4 taking advantage of the open deck. And
5 then beyond that we have the second level
6 of the sanctuary and some additional
7 ancillary spaces related to church use.

8 And when we get to the rooftop we have
9 the -- a very small use space. As you can
10 see by the tan, that is the extent of
11 rooftop and it is mostly circulation. The
12 main idea is that the church has a space
13 they call the Labyrinth which is intended
14 for meditation. It's actually a graphic
15 that is imposed on the paving and people go
16 up there and utilize it for their own uses,
17 and it is a very limited amount of space as
18 you can see. And what we have is we have
19 fire and building code required exiting off
20 of the roof to manage that overall process.

21 So when you look at the section, the
22 lower section shows you the section through
23 the retail and through the additional
24 administrative uses of the church. The
25 sanctuary is on the south side in the

1 double height space. When you look at the
2 other section you can see the reception
3 area and the second level and third level
4 spaces, the area engraved as the parking.
5 So it's a very efficient building. As Amy
6 mentioned, it's significantly below the
7 maximum height allowable and in terms of
8 set back, in terms of open space, lot
9 coverage, every other requirement we meet
10 or exceed them.

11 And then when you get to the actual
12 aesthetic issues of what does it look like
13 and how does it comply, if you go to all of
14 your own requirements that we've paid a lot
15 of attention to in terms of the exterior
16 design, the appearance, the conformity with
17 standard aesthetic requirements, the site
18 layout, the motivation to have a retail
19 street, all of the things that are part of
20 what every good board does to protect the
21 interests of its own city.

22 I think you can see here with the
23 rendering with the buildings that have
24 already been approved that are clearly not
25 there now but they have been approved by

1 this board in the past, you can see the
2 building of the church on the corner. As
3 you can see, it blends in very well with
4 the scale and is actually lower and less
5 obtrusive than a lot of the surrounding
6 buildings. When you look at the building
7 on its corner you can see here the space
8 that is defined by the set back from Kane
9 Concourse, the articulation of the building
10 and the discreet way in which we're
11 utilizing the campanile concept of simply a
12 carved out cross from stucco rather than
13 going through a more traditional steeple or
14 many of the other devices that traditional
15 churches have. This is something that is
16 very in keeping with the modern and
17 contemporary philosophy of this church and
18 it's also in keeping with contemporary
19 modern design thereby dealing with the
20 standards of it being a mixed use. It
21 conveys that it's a church but it also
22 conveys that's it's a retail store, and
23 here you can see the blow up of what the
24 retail looks like in terms of how it meets
25 the street. We've gone to the best

1 landscape firm in town, possibly anywhere,
2 that could help us with providing the vine
3 and the trellis and all of the other
4 elements that we believe are embellishments
5 that most commercial projects I work on
6 don't contain but in this case it is there
7 by the church and it is being provided by
8 the owner to further commitment to this
9 project. You can also see the retail
10 stores and their transparency which is very
11 important to continuing the retail
12 character of the street. Here you can see
13 a shop looking east back toward Bal Harbor
14 where you can see a blow up of the store
15 fronts, the approach to the cleared display
16 of where the signage would be, and again
17 the landscape treatment, the wide
18 sidewalks.

19 We do a lot of retail design, this is
20 definitely a design that works for retail,
21 it's going to be very effective and very
22 usable and in no way a compromise to the
23 aspects of retail design. And here you can
24 see a rendering that showcases the
25 landscape requirements, the number of

1 trees, the amount of green that is
2 contained within both of the sidewalks.
3 Here you can see another view of the same
4 thing.

5 This is the data that I'm sure that
6 you've already scrutinized, we're in
7 compliance or below maximums in every
8 single situation including setbacks,
9 including height, including all of the
10 other zoning criteria. And that concludes
11 my presentation, I'd be happy to take
12 questions.

13 MR. HURWITZ: We're going to take some
14 input from the public and come back if it's
15 okay.

16 MR. ZYSOVICH: That would be fine.

17 MR. HURWITZ: If anyone would like to
18 speak I have a couple of pieces up here,
19 but please fill out a paper if you'd like
20 to speak.

21 MR. MAYA: Victor Maya, 1155 103rd
22 Street. A little bit confused with respect
23 to the scope of the application. It says
24 that this is going to be a mixed-use
25 project, commercial retail and religious.

1 However, when I look at it I also see an
2 educational component, a recreational
3 component and an event space component, and
4 I think when you add, you know, those extra
5 components here we are way beyond the scope
6 of just a religious institution in terms of
7 what we're looking at. So I think when you
8 look at all these other uses that we have
9 here the project basically is too big and
10 it's beyond the scope of what is being
11 sought.

12 One thing that I would like to note is
13 the issue with respect to parking and I
14 think that there needs to be a traffic
15 study and parking study because you have
16 three major projects that are going into
17 that intersection when you count the hotel
18 that's diagonal, the big office building,
19 the one across the street, and them. You
20 look at the folding wall between the social
21 hall or the fellowship hall and the
22 sanctuary and behind it there are 21 tables
23 that I counted with eight seats around each
24 table, you know, so that's, you know, an
25 extra 116 people that can go in there at

1 any given time, you know, which pretty much
2 equates out to 29 parking spaces that are
3 needed. There's also a chapel, is there no
4 seating in the chapel, you know, so that's
5 not being counted. What about the school
6 upstairs, the classrooms, how many seats
7 are in there and how they're being handled,
8 any parking for those, you know, so this is
9 a project that is way beyond the scope,
10 there is not enough parking the way it is.

11 I'm also a little bit concerned when I
12 read that building signage is not a part of
13 this application but that huge cross is.
14 This board, you know, spent, you know, at
15 least two or three sessions dealing with
16 sign on the Ocean Cadillac, you know, and
17 how big it can be, you know, and to try to
18 put the cross in as just, you know, not a
19 sign but part of the design, you know,
20 seems like a sneaky way to bypass, you
21 know, our sign ordinance and our sign
22 requirements.

23 Finally, I think that the building
24 itself is kind of ugly. I mean, if they
25 weren't in such a rush to tear down the

1 existing church they could have moved it
2 over and it would have been beautiful right
3 there on the corner. I understand that
4 they saved the steeple, you know, that is
5 not a part of anything here. I think that,
6 you know, we need to keep the integrity of
7 the existing streets to ensure it's
8 compatibility, and it's really just a big
9 ugly building especially on that corner the
10 way it looks like. There's nothing
11 special, spectacular, you know, that would,
12 you know, necessitate all that stuff. And
13 I can go on and on just bear with me for
14 another 20 seconds or so.

15 MR. HURWITZ: Wrap it up if you can.

16 MR. MAYA: Thank you. You know, just
17 to point out that, you know, there are
18 these other uses that are contemplated. We
19 have an educational director with his own
20 office, we have these multipurpose rooms
21 with bathrooms, we have a youth room, we
22 have an athletic activity room, so you have
23 this major field out here that is, you
24 know, this is more than just a religious
25 institution. Thank you.

1 MR. HURWITZ: Thank you, Victor.

2 Carol Holland.

3 MS. HOLLAND: My name is Carol
4 Holland, 10180 Harbor Drive. So just an
5 example of extra activities that would be
6 done, the church has different groups that
7 meet and one of them is a knitting group
8 and they ask people to knit and provide
9 whatever creative things for people who
10 need a little bit of support for
11 celebration of major life events, a chance
12 for people to get together and do other
13 things in the community. It's kind of like
14 in the Midwest it would be like a barn
15 raising brings people together in
16 communities, it brings people who may not
17 even know each other, who may not even like
18 each other, but it gets them together in
19 the community and to me that's part of what
20 it's -- it's maybe beyond what is called
21 religious but it's definitely what makes a
22 community. Thanks.

23 MR. HURWITZ: Thank you very much.

24 Katherine Kennedy.

25 MS. KENNEDY: Good evening, my name is

1 Katherine Kennedy, I'm at 9900 West Bay
2 Harbor Drive. I believe that this -- I
3 feel sorry for you guys right now, but
4 anyway I believe that we are here tonight
5 to discuss whether this project fits the
6 code and the zoning requirements only, not
7 about knitting or anything. I am a
8 Christian and I am for this church and I'm
9 going to get heat again from it, but I
10 believe it does good things. It's your job
11 as the planning and zoning committee not to
12 decide if this church belongs in our town
13 or it's affiliation to other organizations.
14 Anyone who wants to discuss those matters
15 should be redirected to the planning and
16 zoning no matter -- no matter what they
17 say.

18 The only thing I'm disappointed is
19 that the "Church by the Sea" did not come
20 to our town and explain to us citizens what
21 they do, what it is all about, which I
22 thought was happening when we had the last
23 council meeting. I thought this PNZ
24 meeting was going to be postponed until --
25 I personally called the Reverend who I

1 believe in, I believe in all the good
2 things they do, but I think out of respect
3 for the citizens of this town they should
4 have come and made a presentation and tell
5 us what they do, and they do great things.
6 I've worked in that "Church by the Sea", I
7 did the brown bags to the homeless, and
8 they just need to tell us and I think we
9 would go through all of this, but just
10 remember this is not your decision if this
11 church is coming here, you're only here to
12 approve the zoning requirements. So thank
13 you and I just feel sorry for all of you.
14 Thank you.

15 MR. HURWITZ: Happy to be here and
16 thank you.

17 Mark Alvarez.

18 MR. ALVAREZ: Good evening, my name is
19 Mark Alvarez, I'm a professional planner,
20 I'm here on behalf of 1048, LLC, which
21 is -- they are retail property owners on
22 Kane Concourse. I'm a professional
23 planner, I'd love to make a short
24 presentation, I might take just a minute
25 more if you mind.

1 I reviewed the plan as a planner and I
2 made some recommendations to them and I'd
3 like to share them with you. These are
4 basically design, it's not about use, it's
5 not about use as a church, I'm looking at
6 it as an institutional use. There are
7 three basic things and the first two come
8 under use regulations 23-5, number 7 and
9 number 13, and basically they follow out of
10 in 2002 you had a vision session for this
11 whole town, and the East Island report had
12 a vision that came out of that and the
13 vision was Kane Concourse would be retail
14 on the ground floor with office uses on the
15 next two floors and then the floors above
16 that residential. In creating a zoning
17 code to implement that the zoning code got
18 a little more specific, and one of the
19 things it says is, it's number 7 under
20 23-5, is that 100 percent of that store
21 front -- of that street front would be one
22 of the uses above which are retail and
23 restaurant, and, in fact, it goes to some
24 extent to exclude some of the institutional
25 uses. And so I look at that and then there

1 was also under design part of the code,
2 which is I think 23-11, number 13, about
3 the transparency of the windows and 75
4 percent of that street front should be
5 transparent. And what it came down to was
6 really a simply thing, is that the best
7 part of the retail, the corner crossing the
8 gateway is not retail, it's a wall
9 essentially, it may be an attractive wall
10 but it's the wall and it's the lobby of the
11 church which is not transparent, and we
12 would like to see that as part of the
13 retail extended and the lobby can very
14 easily move over to East Bay Drive. That's
15 the first point.

16 The second point is about also under
17 the design part of the code for this
18 district there is a requirement which is
19 23-11(c)(14), I didn't bring my glasses,
20 that requires pedestrian passage, and that
21 was also coming out of this whole idea that
22 you want to have a very pedestrian
23 frontage, you want retail, so you didn't
24 want parking, parking had to be in the
25 back, and you know that for good design you

1 have to be able to reach that parking
2 especially if it's shared, so there's a
3 requirement in the code that there be with
4 the exception of 150 feet from East Bay
5 Drive that there be a five foot pedestrian
6 passage which there is not on this design.
7 This building is about 175, 174 point
8 something feet long and that passage is not
9 there and that is a requirement in the
10 code.

11 And the last part would be a follow up
12 a little bit from what the gentlemen he
13 just talked about parking and some of the
14 uses, and I'm going to need about
15 30 seconds more, please. Under the uses,
16 23-5 under 8 and 8.1, there's some criteria
17 for making your decision, actually for the
18 town council to make this decision about
19 this use. Under 8.1 there's a requirement
20 that there not be adverse impact to a
21 variety of things and one of them is
22 parking. And I do parking studies and I
23 understand fully that it's a Sunday use but
24 with the parking requirement which is
25 exactly 125 is based on the retail square

1 footage and the 438 seats in the sanctuary.
2 Normally that's fine because the other uses
3 in the church or, you know, use like this
4 would be complimentary, they happen on
5 other days, they're ancillary. However, we
6 see that it's a fairly large co-mingling of
7 the building, two floors, there's eight
8 multipurpose rooms, there's an athletic
9 room, there's a music room, there's a lot
10 of programs, and in an abundance of caution
11 and for the benefit of the town and
12 retailers of the town I would not sit here
13 and say there's not enough parking, what I
14 would say is that the shared parking
15 between those uses and the other shared
16 parking for the retail needs to be
17 documented and right now it's not. There
18 needs to be a study that shows that parking
19 will work, that show how those other spaces
20 work.

21 MR. HURWITZ: Wrap it up please.

22 MR. ALVAREZ: Thank you very much.

23 MR. HURWITZ: Thank you.

24 MR. FRANKEL: Mr. Chairman, could I
25 ask a question at this point related to the

1 comments? In the memo that was provided to
2 us with regard to the pedestrian walkway it
3 says in this instance a separate pedestrian
4 walkway will not be necessary as one could
5 enter the building lobby and gain access to
6 the rear alley parking areas. Does that
7 mean that this lobby area is going to be
8 open 24/7?

9 MR. MARKS: Yes, this is something
10 that was discussed at the RC that they will
11 have --

12 MR. HURWITZ: Introduce yourself for
13 the record.

14 MR. MARKS: Scott Marks for the
15 record. That there will be access to the
16 shared parking in the rear through that
17 building lobby. I believe it's 24/7.

18 MR. HURWITZ: So as presented to
19 replace public access, public access is
20 construed through the church?

21 MR. MARKS: I'm sorry?

22 MR. HURWITZ: That's supposed to be an
23 access point from the sidewalk to the
24 parking in the rear, correct?

25 MR. MARKS: Yes.

1 MR. HURWITZ: And you're saying we're
2 not requiring that because you can go
3 through the church?

4 MR. MARKS: That functions as that
5 requirement, yes.

6 MR. GAVCOVICH: You're not really
7 going through the church --

8 MR. MARKS: No, you're going through
9 the lobby, not the church.

10 MR. GAVCOVICH: You're not using the
11 lobby, right, it's going through the
12 colonnade there that faces the exterior,
13 not really the interior space?

14 MR. MARKS: Yes.

15 MR. HURWITZ: Where is that?

16 MR. GAVCOVICH: That's on the first
17 page. I'm sorry, going back to that. Is
18 there -- there is no real connection
19 between the -- since we're on this subject,
20 between the detached lot and the parking
21 spaces there and the retailer or any other
22 part of the building, how is access open?

23 MR. MARKS: How do you get to the
24 rear?

25 MR. GAVCOVICH: I guess we can ask Mr.

1 Zyscovich, but in terms of your
2 recommendation those spaces don't really
3 provide access, you're not really going
4 through the garage, I can't imagine, and
5 then back of the building, there is no
6 pedestrian access to those spaces to the
7 retail or the church without going through
8 the alley or the service area?

9 MR. MARKS: Correct.

10 MR. HURWITZ: We have one more speaker
11 and then we'll be talking again tonight.

12 Tucker, I apologize, Cobbs?

13 MR. GIBBS: Gibbs.

14 MR. HURWITZ: I'm sorry.

15 MR. GIBBS: That's quite all right.

16 Good evening, my name is Tucker Gibbs, my
17 office is at 3835 Bellevue Court in Coconut
18 Grove. Mr. Alvarez basically said
19 everything I was going to say so I'm just
20 going to leave you with this. And, I'm
21 sorry, let me tell you who I represent so
22 that might help a little bit. I represent
23 1060 Kane Concourse, Inc., 1048, LLC, 1050,
24 LLC, and D & F, LLC, all who own properties
25 on Kane Concourse or 95th Street.

1 Mr. Alvarez basically has said
2 everything that really needed to be said.
3 I do want to remind you that this is a
4 pretty basic approval. It's a piece of
5 property, the Ocean Cadillac building will
6 be demolished on that property, so you have
7 a blank slate. The architect had a blank
8 slate, the church had a blank slate, and
9 there is no reason why any code provision
10 should be ignored in this situation. If
11 you have a blank piece of property it's
12 easy, it's relatively easy, and you have
13 three issues that are fairly important,
14 important to this community, Kane Concourse
15 is supposed to be a retail way. It's
16 supposed to be all along Kane Concourse
17 it's supposed to be 100 percent retail,
18 that's what it says in your code. It's
19 supposed to have access to Kane Concourse
20 directly from the parking area. That's
21 what it's supposed to have and this project
22 is flawed in that regard, and what we're
23 asking for is that you ask the applicant to
24 come back with a project that actually does
25 meet your code, and when it does meet the

1 code send it on to the town council. My
2 clients would be happy to support such a
3 plan because it will help, that plan will
4 help the retail on Kane Concourse. The way
5 this project is proposed right now I don't
6 think it's going to help that much. It is
7 better than Ocean Cadillac, we'll grant you
8 that, but it can be much better with these
9 three changes. Thank you.

10 MR. HURWITZ: Thank you, Mr. Gibbs.
11 No other speakers and we'll close the
12 public hearing.

13 MS. HUBER: I'd like a second for
14 rebuttal.

15 MR. HURWITZ: Sure, and then we'll let
16 the board ask some questions.

17 MS. HUBER: I just wanted to briefly
18 respond to a couple of questions you all
19 raised as well to the questions or to the
20 comments that were raised by some of the
21 members of the public. First of all, the
22 uses are not before you this evening. The
23 uses which are ancillary to a religious
24 institution have been deemed approved and
25 permitted by your staff. They are not

1 separate and apart from the religious use.
2 There is not a school at this facility nor
3 will there be a school at this facility.
4 There is Sunday school and youth programs
5 that occur in connection with Sunday
6 services as well as other programs during
7 the week, but it is not -- it is not a
8 school, a school use. In addition there is
9 no recreational use, that is again
10 ancillary to the other components.

11 In terms of a parking study and a
12 traffic study, a parking study was
13 submitted to you by our traffic consultant,
14 Walker Parking, that parking study was
15 reviewed by your staff and deemed to comply
16 with your code. There is no shared parking
17 analysis required because we meet all of
18 the provisions of your code and have enough
19 on site parking, some would say we have
20 more than enough on site parking in light
21 of the fact that the majority of the
22 parking is for the church to facilitate the
23 number of seats in the sanctuary and in the
24 fellowship hall and that only occurs on
25 Sunday so the majority of the time those

1 parking spaces will sit dormant.

2 In terms of a traffic study, a traffic
3 study was submitted to your staff by
4 Mandarin Consulting, it was reviewed and
5 approved and deemed to -- deemed to meet
6 all the criteria of the code. As you all
7 are aware, a parking study must take into
8 consideration previously approved projects
9 which means all of the previously approved
10 projects on Kane Concourse, East Bay
11 Harbor, as well as Bay Harbor, Bay Harbor
12 Island, Bal Harbor and Surfside have all
13 been taken into consideration with respect
14 to that traffic study. It found no adverse
15 impacts, it actually found a reduced --
16 reduced trips from the previous use.

17 To the extent that you have any
18 questions from our traffic engineer, Hank
19 Sandrow, he is here this evening and happy
20 to address those comments or concerns or
21 questions you may have.

22 With respect to the cross, that is an
23 architectural feature, religious feature,
24 that is not part of the review before you
25 nor is it considered a sign.

1 With respect to the comments made to
2 you by Mark Alvarez, Mark Alvarez is a
3 planner, I will agree to his expertise as a
4 planner, however, he is not an architect.
5 Our architect has testified to you with
6 respect to compliance to the code criteria.

7 In terms of the 100 percent street
8 front where it excludes institutional uses,
9 we will demonstrate and have demonstrated
10 for you that the uses along Kane Concourse
11 is a retail use, there is no religious use
12 on the ground floor in compliance with your
13 code. So irrespective of whether or not we
14 believe that that provision of your code is
15 legally binding or not we have complied
16 with that and have not placed any religious
17 uses on the first floor.

18 In terms of the second question that
19 you raised related to transparency and 75
20 transparency, you will see that there is
21 100 percent transparency along Kane
22 Concourse as it is all glass windows and
23 store front including the glass into the
24 lobby area.

25 The last thing he raised was the

1 pedestrian passage. I just want to address
2 that for a minute in terms of -- in terms
3 of your questions on that point. So in
4 reviewing this application and reviewing an
5 appropriate place to provide a pedestrian
6 access in a meeting with your staff, not
7 just your planner, but also with your town
8 manager, your building department, your
9 public works department, one of the
10 concerns about providing access in
11 between -- in between the church site and
12 the adjacent building is that that would
13 pedestrian access directly into that alley
14 as well as the loading area that is
15 provided there. No one on your staff felt
16 that that was appropriate or safe to have
17 pedestrian access into an alley in a
18 loading area. That is the loading area in
19 the alley that not only our property
20 utilizes but all of the property along Kane
21 Concourse, so having pedestrian access
22 directly into that location is not
23 appropriate which is why no one thought
24 that that would be the correct location.

25 What the church did do and what I

1 think is extremely important to recognize
2 of its own the church, that the existing
3 sidewalk is only about four feet from the
4 curb to the end of the pavement. What the
5 church is doing is providing an easement to
6 the town for the portions of the expanded
7 sidewalk that are on its own property down
8 East Bay Harbor. So one of the nice things
9 with the redevelopment of the site is
10 you're not only going to get expanded and
11 widened sidewalk on Kane Concourse, but
12 they're also extending that all the way
13 down East Bay Harbor Drive. So any
14 questions anybody has with respect to
15 pedestrian access, it is going to far
16 exceed the pedestrian access that you
17 currently have along East Bay Harbor, it's
18 going to be -- it's six feet with
19 landscaping on both sides. You can see
20 from the rendering as well as the landscape
21 plan how beautiful it's going to be, and
22 we're very exited about that because we
23 feel like it really changes the existing
24 context along East Bay Harbor drive for
25 pedestrians. And one of the citizens who's

1 actually questioning this was at the RC and
2 was thrilled to hear that the church of its
3 own is willing to provide an easement on
4 its own public property to expand that
5 pedestrian access.

6 In addition to that pedestrian access
7 we're also providing pedestrian access
8 through the lobby off of Kane Concourse
9 into the parking, so there is a direct
10 connection to the parking without requiring
11 an additional access that would not be safe
12 to the pedestrian trying to seek their
13 parking.

14 Your staff report is very thorough,
15 you all have already noted but I'd like to
16 call your attention to the provisions of
17 your staff report on page 3 at the bottom,
18 right of way, off street parking and access
19 description. This specifically provides
20 the criteria for you and explains very
21 thoroughly how we meet all of the parking
22 requirements, traffic, access, driveway.
23 When you look at building design, again it
24 specifically states that we meet the
25 criteria and why that pedestrian walkway is

1 through the building lobby.

2 Finally on page 4 staff recommends
3 approval and I would encourage you this
4 evening to recommend approval of this
5 application as well.

6 If you have any other questions we're
7 here with our team and happy to address
8 them.

9 MR. HURWITZ: Thank you.

10 MR. FRANKEL: Did you say that the
11 sign in the front, that the elevated sign
12 is something we're not considering tonight?

13 MS. HUBER: I'm not sure what elevated
14 sign you're talking about?

15 MR. FRANKEL: The cross.

16 MS. HUBER: The cross is not a sign.

17 MR. FRANKEL: But that structure, that
18 structure that is higher than the entrance
19 way, that --

20 MS. HUBER: The structure is before
21 you but the cross is not.

22 MR. FRANKEL: Okay.

23 MR. HURWITZ: Thank you very much.
24 Stanley, could you --

25 MR. GAVCOVICH: I'm sorry, when you

1 say the cross is not that means that the
2 cross is not being proposed or the cross is
3 not in your opinion part of our purview?

4 MS. HUBER: The cross is not part of
5 your purview. To the extent that you would
6 like to make recommendations with respect
7 to the structure that is before your
8 purview, however, the cross is not. Your
9 attorney is here and can address that.

10 MR. HURWITZ: Thank you very much.
11 Stanley, would you --

12 MR. PRICE: I have not been asked to
13 opine on that issue, it's an interesting
14 issue. What happens if this was not a
15 cross but it was a series of diagonal lines
16 that is an architectural feature to the
17 building, that raises the same type of
18 questions. Based on your code it would
19 technically meet the definition of a sign,
20 but there are other codes and I'd like to
21 research that position. That's not before
22 this board tonight and you can specifically
23 exclude that architectural feature subject
24 to an opinion.

25 MR. HURWITZ: Okay.

1 MR. FRANKEL: I'm a little confused
2 about that because one of the public
3 members said we spent at least two sessions
4 dealing with Cadillac wanting to change the
5 symbol on a similar type structure, so why
6 would we consider it for Cadillac but not
7 for this applicant.

8 MR. PRICE: I didn't say you shouldn't
9 I'm saying I haven't been asked to opine on
10 that position before this evening.

11 MR. HURWITZ: Okay. Why don't we go
12 in order? Alan, do you have any questions
13 or comments on the plans or any questions
14 for the architect?

15 MR. BECHIK: Yes. For a comment I
16 would like to have a concrete answer from
17 the architectural element that we discuss
18 if that's considered a sign or not. I
19 would like to know that to make a more
20 informed position. I would like to also
21 understand a little bit about the parking,
22 how the parking is going to work for retail
23 course and church course and if there's
24 going to be any type of enforcement or if
25 it's going to be open parking, and if that

1 can be addressed?

2 MR. HURWITZ: Why don't we go in
3 reverse order because I think everyone
4 shares a question with regard to the
5 signage or the cross or whatever you call
6 it. That's going to be an issue. Why
7 don't we take the parking because I think
8 others share that concern, that's less of
9 an issue.

10 Scott, can you talk to the uses?
11 We're not talking about uses relative to
12 religious uses but this board often talks
13 about relative uses in a project relative
14 to parking and access and that sort of
15 circulation sort of things. Can you just
16 maybe comment on your analysis which is on
17 the package of uses that are proposed and
18 whether or not it meets parking because
19 that was commented before and I'd like to
20 hear that from you.

21 MR. MARK: The code requirements state
22 that you calculate the parking based on the
23 number of seats in -- for the
24 establishment. I can find the exact
25 section to see how it's specifically

1 worded, but it's based on the number of
2 seats in the sanctuary if you will.

3 MR. HURWITZ: Is that for a sanctuary,
4 movie theater, day care school, ancillary
5 use that was suggested during Sunday
6 school, how is that being delineated?

7 MR. MARK: Bear with me one second.
8 It's places of assembly. Religious
9 institutions it's one space for every four
10 fixed seats.

11 MR. HURWITZ: So how are you counting
12 for -- so that covers the congregation
13 areas, correct? So how do you account for
14 the meeting rooms, the other gathering
15 places?

16 MR. MARK: Those are typically not
17 used at the same time as the sanctuary so
18 it's calculated based off the sanctuary
19 area and the retail space.

20 MR. HURWITZ: Wait. I think the
21 applicant shared that the rooms were
22 specifically going to be used for day care
23 or study only during assembly, correct, so
24 that would suggest all those rooms would be
25 used at the same time.

1 MS. HUBER: Not all of the rooms will
2 be used at the same time as the sanctuary,
3 but as I explained, so if the parents or
4 grandparents, whoever are attending
5 services then their children are in those
6 ancillary spaces, so you wouldn't need
7 additional parking spaces because those
8 people are not driving, so those uses are
9 not used in addition to, they're use
10 consecutively at the same time so
11 additional parking spaces are not required
12 for those uses per your code.

13 MR. BECHIK: To add to that, you have
14 the fellowship hall so I assume maybe you
15 might have like a wedding or some type of
16 gathering, so how are -- so the maximum
17 capacity would be 400 people for the
18 fellowship hall?

19 MS. HUBER: Traditionally what happens
20 at church, and I'm only speaking for
21 "Church by the Sea", but following services
22 on Sunday the members who are in the
23 sanctuary then move into the fellowship
24 hall following that. So the same with a
25 wedding, the members who attend the wedding

1 in the sanctuary then move to the
2 fellowship hall, so it's not concurrent
3 it's one following the other.

4 MR. HURWITZ: I mean, this is nowhere
5 near a religious question it's just a
6 mixed-use project and from our experience
7 both on the board and individually, you
8 know, I'm having a hard time digesting,
9 because I understand what you're saying and
10 I appreciate what you're saying, I'm
11 picturing how it works and it makes sense,
12 but from an approval perspective I'm having
13 a hard time that the town doesn't assign
14 certain seats, if you will, to those other
15 spaces just based upon the, you know, fair
16 representation that there's going to be 400
17 people in here and it's going to be only
18 kids, but there are people that are running
19 the building, there are people that are
20 caretakers, who are staff, I'm not saying
21 necessarily it's a problem I'm just trying
22 to see what the accounting is for the, you
23 know, quote, unquote, seats because I don't
24 think you can fairly say it should be
25 limited to the seats.

1 MS. HUBER: It's not. There are not
2 386 seats in the sanctuary so those seats
3 do occur in other spaces, so it's not --
4 it's not 386 seats just in the sanctuary,
5 so I think --

6 MR. HURWITZ: That's what I'm trying
7 to ask the town to summarize for me.

8 MR. MARKS: It specifically says
9 religious institutions which takes into
10 account the kids that are going to be in
11 the nursery and the staff that it takes to
12 cover all of that.

13 MR. HURWITZ: Okay. So you feel
14 comfortable that all the uses are covered.
15 It's just a large facility for a gathering
16 of any kind and that's a big concern in a
17 tiny town that doesn't have that many
18 people coming and going.

19 MR. GAVCOVICH: Before we get past
20 that issue, the -- how is the 300 -- is it
21 363, 386 number of seats determined, how
22 did you come up with those number of seats?

23 MR. HURWITZ: It's not that I don't
24 want to hear from you I just want to make
25 sure the town gets it.

1 MR. RONALD: That's what was stated on
2 the application and all the plans, that's
3 what we calculated based off of.

4 MR. HURWITZ: The account seats, I
5 mean, how do you -- I'm just sort of asking
6 the town to sort of prove it up to us that
7 we're comfortable.

8 MR. RONALD: Yea, I mean, if you go
9 through and count all the seats in there it
10 certainly appears that there's, you know,
11 386 or whatever it is, yes.

12 MR. GAVCOVICH: For the seats that are
13 shown in the sanctuary space?

14 MR. RONALD: Sanctuary and some in the
15 fellowship hall. I know they don't show
16 seating in some of the other rooms but it
17 seems appropriate for the space.

18 MR. GAVCOVICH: I mean, it's just the
19 way the seating is shown as you get to the
20 rear rows there's seats left out and
21 there's obviously room between the back
22 rows and the fellowship hall for more
23 seating, so if it's, you know, counting the
24 number of seats which seems to be very
25 close to the 360, 380, whatever it is, but

1 then there's room for more and the way it's
2 designed with the partition between the
3 sanctuary and the fellowship hall it would
4 seem to have the ability to extend the
5 seating into the fellowship hall.

6 MR. HURWITZ: Dale, please identify
7 yourself.

8 MR. LEE: Dale Lee, building official.
9 As you know, the occupant load is going to
10 be determined on the square footage of the
11 space which we will do when we do the plan
12 review on this thing. So certain areas are
13 going to be accessory spaces. If we assign
14 assembly use then it will be a specific
15 number of spaces. If there's more people
16 for that space then they have to add more
17 it exiting, that's how they determine that
18 with the fire code, you need to provide
19 exiting for those number of people.

20 MR. HURWITZ: But not more parking?

21 MR. DALE: No, not the building code.
22 We determine the occupant load, the space,
23 the number of people that can occupy that
24 space at one time, just like this room.

25 MR. GAVCOVICH: Which I think

1 Mr. Zyscovich and his team have done that.
2 If you actually look at the size of the
3 stairwells and the size of the egress
4 capacity it's, you know, and I did, I know
5 from this scale drawing some rough numbers
6 and you're well over 1,000 people based on
7 the stairs design.

8 MR. ZYSOVICH: Can I address that?
9 Obviously there's a difference in building
10 code and zoning code. The building code is
11 designed for exiting and we've taken every
12 possible circumstance of things being
13 filled to capacity because exiting is tied
14 to like safety which is tied to danger and
15 life. So in that regard we have maximized
16 the number of stairs. There will not be
17 anymore stair requirement in this building
18 because we've assumed that people are cheek
19 to jowl so to speak in terms of standing in
20 the spaces that are open. As architects we
21 all know we go through this all the time.

22 In terms of the parking, parking is
23 defined by zoning, and zoning is very
24 specific because it talks about
25 institutions in different ways. So by

1 example, if we were to come in with a
2 sanctuary that had no fixed seating, then
3 it would be a different situation because
4 you can't count the seats. The very
5 specific issue of zoning identifying church
6 use as being one space for every four fixed
7 seats really defines, just like in this
8 room, the capacity for this room. The
9 assumption is because it's silent is that
10 all the other ancillary uses as long as
11 they're not different uses, they're all
12 tied to the church use, are considered
13 within that parking requirement defined by
14 the fixed seats otherwise the code would
15 say, plus, plus, plus for whatever else it
16 is.

17 Now, the reality is there are certain
18 days in the year whatever religious you may
19 be part of where everybody in the world is
20 going to come there and there's not going
21 to be enough parking in that garage, but
22 zoning is not defining the maximum ever use
23 otherwise stadiums would never be able to
24 be built, churches and synagogues would
25 never be able to be built, none of these

1 things would ever be able to be built
2 because it's based upon an analysis that
3 was done by third parties basically
4 defining what you have to have in that
5 situation.

6 So the same is true in movie theaters
7 as another example. Movie theaters that
8 now have dine in, that have bars, that have
9 all these other uses, it's possible to have
10 every single seat full, it's possible to
11 exceed that, but life safety has to be
12 done, but when you go to movie theaters,
13 when we go to any other use that has fixed
14 seats it's always defined by the uses
15 contained within the ancillary envelope of
16 those uses. All the uses within the church
17 are church uses so that's why the zoning
18 makes sense, it's based on fixed seats, we
19 counted the seats, we divided by four,
20 that's what we provided.

21 MR. HURWITZ: Thank you, I appreciate
22 that explanation. So if you have three
23 times the amount of ancillary use you
24 wouldn't have to have one more parking
25 space?

1 MR. ZYSCOVICH: No, because the code
2 doesn't define that. It does when you
3 start dealing with other uses and tells you
4 to start adding up all of those things.
5 Like in -- like another great example is
6 parking required for restaurants. It's the
7 dining area of the restaurant it's not the
8 entire building. You've got people cooking
9 in the kitchen, you've got bathrooms, you
10 got all kinds of different things, catering
11 halls, assembly uses, they're all defined,
12 and in this case the definition is, in
13 fact, based upon fixed seats and we've
14 complied with it.

15 MR. HURWITZ: Alan, did you have any
16 comments or questions?

17 MR. GAVCOVICH: I'm sorry, I just have
18 a comment. It just seems that the parking
19 and the number of fixed seats is arbitrary
20 because the sanctuary space has a lot more
21 space, and I understand what you're saying
22 and it makes perfect sense and we've dealt
23 with that before that all the other spaces
24 are ancillary to what's happening in the
25 sanctuary and then the people move from one

1 space to the other. But the number of
2 fixed seats the way it's shown is -- it
3 just seems to be left out where you sit.

4 MR. ZYSCOVICH: Let me explain how we
5 got there. We spent time with the Reverend
6 and the congregation. We decided what
7 their congregation size is, we upped it and
8 we came up with 380. It's just like every
9 other, we can do synagogues, we can do
10 churches, you know, the whole point is is
11 that you probably could fit more chairs in
12 here too. You establish a certain capacity
13 and that is the capacity of fixed seats
14 intended to provide more than ample space
15 for the congregation. If it ever gets to
16 the point where they want to start adding
17 more fixed seats you would have a reason to
18 say to them you have to have more parking,
19 but as long as those are the seats
20 everybody's sitting in the presumption is
21 not that people are going to start adding
22 in more chairs. Now, having said that the
23 reality is like with on Christmas or on
24 Easter there are certain days where you
25 know that there's going to be people

1 sitting beyond the capacity, and that's
2 what we've designed the exits for but
3 that's not what you design parking for
4 otherwise we would have massive amounts of
5 parking required for every use. It's not
6 for the one time or two times a year that
7 you go beyond the capacity, what we did is
8 we designed it for more than the
9 congregational need and that's how we
10 established where those seats are. So we
11 didn't just make the space and add in seats
12 and let some out, we actually programmed it
13 and we decided what the congregation size
14 should be and now that's part of the
15 record, and if they ever want to add more
16 fixed seats you'd have every right to ask
17 them to provide more parking.

18 MR. HURWITZ: What was the current
19 membership that you said you started with?

20 Please identify yourself for the
21 record.

22 MS. ASINGER: Good evening,
23 Barbara Asinger, the other Asinger. It's
24 nice to meet all of you. Thank you for
25 listening to our proposal. If you'd like

1 me to tell you what we have on average and
2 how a Sunday works I can do that.

3 MR. HURWITZ: I just don't want to
4 take too much of your time.

5 MS. ASINGER: Our membership just like
6 with every membership we have just over 500
7 members and the number that attend on a
8 Sunday is not that, we have an average of
9 200 people that attend on a Sunday. So
10 that's our average. And usually what
11 happens for us just, you know, so you know
12 is that we actually have church school at
13 the same time as we have worship, so our
14 families which the majority are from Bay
15 Harbor, so we're thrilled to be part of the
16 Bay Harbor community, will be able to walk
17 to worship which is wonderful for them,
18 they can't wait. And what will happen is
19 while they're in worship their children are
20 in school, school will continue as they
21 then come out, we feed all our members and
22 break bread on Sunday, it's part of our
23 ritual and then we adjourn for the day.

24 MR. HURWITZ: But you don't sacrifice
25 animals?

1 MS. ASINGER: No, but with all due
2 respect to our brothers and sisters we do
3 have a pet blessing at some time in October
4 and invite all of you to bring your
5 animals.

6 MR. PRICE: Let the record reflect the
7 chairman was kidding.

8 MS. HUBER: I just want to address one
9 other thing. We also have the privilege of
10 having 50 years of historical data, so as
11 you all are aware of the church's previous
12 location in Bal Harbor, the church did not
13 have any parking of their own in Bal
14 Harbor, all of their parking was serviced
15 by Bal Harbor shops, and so we have
16 historical data showed that on a typical
17 Sunday their parking needs never exceeded
18 50 to 65 spaces, that was what the average
19 was every Sunday for the last -- we've
20 studied specifically the last ten years and
21 their parking needs never exceeded this, so
22 we have more than double that in this
23 space.

24 MR. GAVCOVICH: What was the capacity
25 of the previous church?

1 MS. HUBER: The sanctuary is exactly
2 the same size, the square footage is a
3 little larger here but the number of seats
4 is exactly the same as the number of seats
5 as was in their existing sanctuary.

6 MR. HURWITZ: Ancillary space is
7 significantly larger?

8 MS. HUBER: Nope, same number of
9 seats.

10 MR. HURWITZ: No, the ancillary --

11 MS. HUBER: The fellowship hall, same
12 thing.

13 MR. PRICE: No, the ancillary uses.

14 MR. HURWITZ: The ancillary uses,
15 the --

16 MS. HUBER: The multipurpose rooms,
17 they are more.

18 MR. HURWITZ: Here they are more than
19 they were there?

20 MS. HUBER: Correct, there's
21 additional square footage in here, yes.

22 MR. HURWITZ: Got you. Thank you.
23 Oscar.

24 MR. SKLAR: I wanted to get a
25 clarification on how the pedestrian on Kane

1 Concourse to the back to 95th Street
2 because I see that you mention about six
3 feet was needed through the town, that only
4 goes so far because the landscaping sort of
5 stops halfway; is that correct, am I
6 reading right or --

7 MS. HUBER: The sidewalk is six-feet
8 wide all the way down East Bay Harbor.

9 MR. SKLAR: Except in the corner that
10 is wide?

11 MS. HUBER: Yes.

12 MR. SKLAR: So the zoning that was --
13 is that part of your sidewalk or --

14 MS. HUBER: Which area?

15 MR. SKLAR: You have a red --

16 MR. GAVCOVICH: That's the property
17 line.

18 MR. SKLAR: That's the property line,
19 so --

20 MS. HUBER: So we have agreed to, and
21 the manager can speak to this, we felt that
22 it was important to provide additional
23 pedestrian access so everything that you
24 see inside the red line we will be
25 providing a pedestrian access easement to

1 the town. The reason for that is the town
2 and the reason the current situation exists
3 is the town does not have enough space on
4 its own property to provide additional
5 pedestrian space so we have agreed to
6 provide in access of what code is required
7 in that area on our own property and
8 provide a town with the easement to do so.
9 So everything you see inside the red we
10 will be providing an easement for to the
11 town.

12 MR. WASON: Chairman, so you know,
13 it's hard to turn down a wider sidewalk or
14 landscaping and it wraps all the way around
15 into the back on 95th Street.

16 MR. HURWITZ: So this --

17 MR. SKLAR: This drop off area that
18 you show is that part of the sidewalk now?

19 MS. HUBER: No.

20 MR. WASON: If you've ever looked over
21 there it's -- first of all, it's graded
22 terribly, it's very small, and this way the
23 building -- their building would be built
24 back to provide a great walkway and
25 landscaping.

1 MS. HUBER: There is not currently a
2 sidewalk in that location, you can drive by
3 after, but that area is where you actually
4 go into their service area so there is not
5 a sidewalk in that area, it stops, it's a
6 big driveway into this area.

7 MR. ZYSCOVICH: What we are showing is
8 the dedication in addition to a six-foot
9 sidewalk and wrap all the way around back.

10 MR. HURWITZ: So nothing in the front,
11 it's the corner, correct? The corner --

12 MS. HUBER: Of --

13 MR. HURWITZ: Well, the corner,
14 there's -- you mentioned that --

15 MS. HUBER: Which corner, we're very
16 blessed to have multiple corners?

17 MR. HURWITZ: It's the northeast.

18 MS. HUBER: We've been told for the
19 only lot that actually has that front three
20 major thoroughfares.

21 MR. HURWITZ: The northeast corner
22 which is the corner of entrance to the
23 building, that area there you're saying is
24 being dedicated?

25 MS. HUBER: There will be an easement.

1 MR. HURWITZ: Easement. And then
2 inside the red to the building which is the
3 five feet?

4 MR. ZYSCOVICH: Then we have the lower
5 where people can walk and then we have the
6 door.

7 MR. SKLAR: And the drop-off area is
8 now part of the street or is it part of the
9 sidewalk?

10 MS. HUBER: It's part of the street.

11 MR. GAVCOVICH: Then there's three, I
12 guess, parallel spaces, are they staying?

13 MS. HUBER: Yeah, those are staying
14 and it was important to some of the
15 residents to keep those existing. There
16 was a discussion with the town to eliminate
17 those spaces and make that sidewalk even
18 larger, however, some of the residents
19 across the street utilized those parking
20 spaces and so, therefore, they're
21 remaining, those three.

22 MR. GAVCOVICH: Any reason you didn't
23 continue the sidewalk to the other parcels,
24 again, for the access from those spaces to
25 Kane Concourse?

1 MS. HUBER: Because there isn't a
2 sidewalk in that location along that area.
3 To the extent that you'd like us to --
4 there's also street parking there, but to
5 the --

6 MR. GAVCOVICH: They will be lost I
7 assume.

8 MS. HUBER: Excuse me?

9 MR. GAVCOVICH: Those street spaces
10 are going to be lost. That's how you get
11 in.

12 MS. HUBER: One space.

13 MR. GAVCOVICH: There's three on the
14 street on the survey, you're going to lose,
15 I guess, two.

16 MS. HUBER: We lose the one in the
17 middle.

18 MR. GAVCOVICH: What about the
19 landscaping, there is not going to be
20 landscaping?

21 MS. HUBER: The landscaping is
22 surrounding the existing parking.

23 MR. GAVCOVICH: The drawing don't show
24 that second space and I don't even think
25 you have the room for a second space where

1 that landscaping is on the north -- I mean
2 southwest corner.

3 MS. HUBER: One of the things that
4 happened in this particular lot, one of
5 your code requirements provide -- requires
6 ten feet of landscaping there so that's why
7 there isn't a sidewalk in that area.

8 MR. GAVCOVICH: You're forcing people
9 to go either walk through the alley to get
10 to the sidewalk or onto the street.

11 MS. HUBER: Well, you have to walk --
12 existing you have to walk through the alley
13 to get to that parking.

14 MR. GAVCOVICH: You said existing.

15 MS. HUBER: We can't put a sidewalk
16 there because that's the alley. We can't
17 put a sidewalk through the alley. That's
18 an existing alley that service, so one of
19 the --

20 MR. GAVCOVICH: You have a crosswalk
21 like you have in any driveway entrance, do
22 you have --

23 MR. ZYSCOVICH: I'll try to answer
24 that. This is a constant catch 22. We try
25 to do the right urban thing by creating

1 continual sidewalk, having landscape, doing
2 it correctly, but we also have been told
3 that we need to meet the landscape
4 requirement, so we would appreciate if you
5 would suggest that we carry the sidewalk,
6 have less landscaping, right now there's
7 basically none, and let somebody decide
8 that. As far as we're concerned we're just
9 trying to meet the code, we meet the code.
10 Your point is well taken on that lot and I
11 think this board would have your attorney
12 agree.

13 MR. RONALD: Right now there is
14 nothing there, it's just a concrete wall or
15 fence, so the decision was would you rather
16 see nice landscaping there or would you
17 rather just carry a concrete right through.

18 MR. GAVCOVICH: Existing is based on
19 the Ocean Cadillac and their uses and I
20 don't know who parks there.

21 MR. ZYSCOVICH: I'm not sure how that
22 got created, that parking lot, but that's
23 how it is and that's a fence.

24 MR. GAVCOVICH: It's been there
25 forever.

1 MR. ZYSCOVICH: It's a storage.

2 MR. GAVCOVICH: So there's no need for
3 public or pedestrian access from there --

4 MR. RONALD: Yeah, but the code
5 requires landscaping in that spot, so we
6 either take it out and put a sidewalk or
7 you leave the landscaping.

8 MR. GAVCOVICH: 10-foot depth for
9 landscaping.

10 MS. HUBER: What's existing is what
11 they consider legally nonconforming so the
12 Ocean Cadillac site doesn't comply with the
13 majority of the provisions in your code
14 because these provisions of the code were
15 adopted after the existence of Ocean
16 Cadillac. So because we're demolishing the
17 site we start from the beginning and we
18 take all of the ideas that were decided in
19 your visioning, by your visioning team and
20 implement it to your code, so that is why
21 there isn't a sidewalk, there's ten-feet of
22 landscaping because that's what your code
23 required. And we had ad nauseam
24 conversations with staff, we went to DRC
25 two times and the majority of those

1 comments dealt with landscaping and where
2 we needed to provide additional landscaping
3 and this is the outcome of those
4 conversations. And so what you see on our
5 plans comply with the strict letter of your
6 code, so to the extent that you don't like
7 it or would like to see something
8 different, we're happy to discuss and
9 address that with you, we just want to
10 remind you to the extent that has a spa
11 below the minimum of the code requirement
12 it is not the church's intention to seek a
13 variance to do so. So that's why you see
14 what's there and that's why what's been
15 provided is there.

16 MR. GAVCOVICH: But the landscape
17 could have been I assume if that's what the
18 code would allow to push into the lot and
19 provide ten-feet and provide a sidewalk.
20 The concern is really for the people who
21 are going to be parking here and them
22 getting -- you're forcing them to walk out
23 into the street through the alley to get to
24 the building.

25 MS. HUBER: That's the existing

1 condition and that's the existing condition
2 of all of the parking lots that you see
3 behind Kane. All of those walk through --

4 MR. HURWITZ: I mean, it's the
5 existing condition but that lot is
6 currently --

7 MS. HUBER: If you look at all of the
8 uses along Kane --

9 MR. HURWITZ: That lot right now is
10 part of the --

11 MS. HUBER: Everyone here walks
12 through this alley to access their parking,
13 that's the existing condition that you have
14 on Kane Concourse. We have a service alley
15 and the existing condition is that the
16 people walk through that alley. Luckily
17 our site is able to accommodate the
18 majority of our parking here on site and
19 everyone will have direct access into the
20 lobby either to go to the church or go to
21 the retail. The majority of people who are
22 accessing the site will not be utilizing
23 those spaces they'll be utilizing these
24 spaces. To the extent of what people do,
25 they'll walk here, they'll go through, but

1 that's the existing --

2 MR. HURWITZ: Can you go back to what
3 you just said, they'll walk where?

4 MS. HUBER: They'll exit here or they
5 will exit here and walk into here.

6 MR. HURWITZ: Is that accessible?

7 MS. HUBER: Here, yes.

8 MR. GAVCOVICH: Through the service
9 area.

10 MR. HURWITZ: It doesn't show it as
11 accessible.

12 MS. HUBER: This whole area is the
13 service area.

14 MR. HURWITZ: You just suggested that
15 they walk through a wall, that's my only
16 question.

17 MS. HUBER: That isn't a wall. Our
18 parking garage is not enclosed. And
19 they're will not be loading that occurs in
20 this location.

21 MR. GAVCOVICH: Isn't that going to be
22 gated, the loading?

23 MS. HUBER: Yes.

24 MR. GAVCOVICH: So you can't really
25 walk through there.

1 MS. HUBER: Walk into parking, not the
2 loading.

3 MR. HURWITZ: Did I miss, is there no
4 elevation or anything on that side because
5 it's closed in the back, right?

6 MS. HUBER: It's opened with a
7 landscaping and a covering but it is not
8 enclosed. The parking does not have an
9 enclosed wall it is an open parking garage
10 with landscaping and screening. It's
11 not -- it is not a closed wall.

12 MR. GAVCOVICH: So between the column
13 there is no wall?

14 MS. HUBER: No.

15 MR. HURWITZ: On A202, the rear of the
16 top elevation, can you help me understand,
17 I'm just trying to figure --

18 MR. GAVCOVICH: The rest of the
19 elevation.

20 MR. HURWITZ: It's closed on the south
21 and east but the west is completely opened,
22 is that what you're saying?

23 MS. HUBER: It's not enclosed
24 anywhere.

25 MR. HURWITZ: Walk me through it.

1 MR. GAVCOVICH: On the west
2 elevation --

3 MR. ZYSCOVICH: Let me help you. It's
4 an open garage from the standpoint of
5 ventilation that is what I meant by open.
6 We brought the --

7 MR. HURWITZ: We've got that access.

8 MR. ZYSCOVICH: As you can see on A202
9 we have openings in the wall that are part
10 of this vertical demonstration, so you
11 could actually walk through but it's not
12 intended to be completely open.

13 MR. HURWITZ: So there's no fencing in
14 that that I understand?

15 MR. ZYSCOVICH: We were not thinking
16 of having any fencing, we wanted to have
17 enough air circulation so that we can
18 comply with what we have to comply.

19 MR. BECHIK: If you have cars parked
20 you can't really enter through that and you
21 have to go --

22 MR. ZYSCOVICH: I lost track of what
23 we're trying to solve.

24 MR. HURWITZ: We've made it into a
25 much bigger conversation, quite frankly.

1 MR. ZYSCOVICH: I mean, we're talking
2 about getting out of a car and getting --

3 MR. GAVCOVICH: Jerry asked a very
4 simple question which was when you leave
5 that ancillary where are you -- how are you
6 getting to the church?

7 MR. ZYSCOVICH: You have to walk
8 through the parking to get to the sidewalk.

9 MR. GAVCOVICH: It was suggested with
10 a visual you would walk through this garage
11 but that doesn't look like that can happen
12 so this is a safety question?

13 MR. SKLAR: You have to walk between
14 the cars?

15 MR. ZYSCOVICH: Yes, like in every
16 parking stall that you ever park in. You
17 have to walk between the cars. In this
18 case you would walk out to the alley, in
19 the other case you would have walked down
20 through the car and get out to the street
21 and get to the sidewalk. I thought Jerry
22 was asking why don't we have a sidewalk
23 there and the reason was we have two
24 answers, one is because no one really
25 wanted to move the parking space because

1 right now there is no space between the
2 property line and the street, it's occupied
3 by parking, there is no sidewalk in the
4 green area, and, you know, urbanistically
5 we would have recommended normally to just
6 simply lose the on street parking and
7 continue the street scape but we were asked
8 to not lose the parking on the street and
9 this then become our only alternative.

10 MR. GAVCOVICH: But -- and I
11 understand we are losing two of three
12 spaces.

13 MR. ZYSCOVICH: Yes.

14 MR. GAVCOVICH: I don't know if it
15 makes sense to say -- and you said it
16 perfectly, you know, urbanistically it
17 makes a lot of sense to continue it, it
18 ties it together, it makes them look like
19 it's possibly part of the same property and
20 the same project.

21 MR. ZYSCOVICH: Right. Well, that's
22 not accounted space for us it's off site,
23 so it's really whatever, at least, you
24 know, in my humble opinion, it's whatever
25 the board and the city determines.

1 MR. HURWITZ: The town would be losing
2 space.

3 MR. ZYSCOVICH: Right. We're just
4 trying to accommodate.

5 MR. HURWITZ: This lot and this garage
6 when church is not in session those are
7 closed to the public? They're accessible?

8 MR. ZYSCOVICH: They are open and
9 accessible, there's nothing to prevent
10 people from parking there.

11 MR. HURWITZ: The garage as well?

12 MR. ZYSCOVICH: That's different. In
13 terms of the vacant lot.

14 MR. HURWITZ: The open lot will always
15 be open to the public?

16 MS. HUBER: It has to remain open for
17 the retail component. Remember our parking
18 doesn't just service the church, the
19 parking also services the retail component.
20 So to the extent that the retail component
21 is open the parking will also be open, yes.

22 MR. GAVCOVICH: Was there any control,
23 any parking control?

24 MS. HUBER: The control has not been
25 determined.

1 MR. SKLAR: There is no gate?

2 MR. GAVCOVICH: So office building is
3 parking in the school parking or garage in
4 theory?

5 MR. ZYSCOVICH: No, I think -- I mean,
6 let me since we designed this how we
7 imagined it would work. The garage is
8 conceptually, psychologically you're going
9 to drive through there and not be in
10 someone's property. The open space, the
11 vacant property, unless we go through what
12 Miami Beach and other towns do and say
13 private and blah, blah, blah, we haven't
14 gotten there yet. We know that we need
15 some retail parking, one option would be to
16 have some kind of an indicator that allows
17 you to park there because you're going to
18 the retail, but right now we're just
19 thinking it's an open lot, it's for our
20 use, it counts in our count, on Sundays
21 there may be a sign that says no parking,
22 but right now we haven't really discussed
23 the operational aspects of that. All that
24 I'm trying to say is within the garage
25 there's going to be a perception and

1 perhaps a sign that this is private
2 parking, within the open space we haven't
3 discussed how it works.

4 MR. SKLAR: So the open space is
5 specifically for the retail?

6 MR. ZYSCOVICH: It's for the retail
7 and the church use, it's privately owned.

8 MR. SKLAR: So if somebody wanted to
9 go to one of the retail stores and they
10 want to park in the garage or in the open
11 lot they can do that?

12 MR. ZYSCOVICH: Yes.

13 MR. SKLAR: And how do they get from
14 the garage or the open lot to the retail?
15 Well, you say you have to go through the
16 lobby of the --

17 MR. ZYSCOVICH: No, not at all. I
18 mean, some people will go through a back
19 door then enter the retail on the back and
20 don't walk through the alley just like
21 other local community.

22 MR. SKLAR: So they would have to
23 enter the loading area?

24 MR. ZYSCOVICH: No. The problem I'm
25 having is have to, they don't have to do

1 anything. They could come around and walk
2 on the sidewalk, they could go through the
3 alley and enter the back door, they could
4 go through the sidewalk and go through the
5 church lobby. There's many different
6 options, we've provided for all of them,
7 but right now if you park on that surface
8 spot and you want to go through the back
9 door of one of those retail stores you walk
10 through the alley to get to the back door,
11 that's how most people do it.

12 I know when I'm on Miami Beach or I'm
13 on Coral Gables and I know that the store I
14 want to go to has a back door I go in
15 through the alley.

16 MR. HURWITZ: In this case there will
17 be no alley, right?

18 MR. ZYSCOVICH: The alley is there.
19 This is still a public alley, we're not
20 changing the public alley.

21 MR. HURWITZ: Help me with that
22 because --

23 MR. SKLAR: So you go to the back door
24 of the store from the public alley?

25 MR. ZYSCOVICH: Here's the public

1 alley, it's one way. Here is retail on
2 Kane Concourse, here is our retail. It's a
3 district. People might stop here, they
4 might stop there, they might go here first,
5 all I'm saying is it's on street parking or
6 it's this parking, but nevertheless no
7 matter what you do you can't really control
8 where people walk or where they're going to
9 enter the retail.

10 MR. HURWITZ: Bernard, did you have a
11 concern -- given the mixed-use nature of
12 the project retail stands alone, correct?

13 MR. ZYSCOVICH: Right.

14 MR. HURWITZ: From your perspective
15 was that a concern for you to have parking
16 that you'd have to really walk that far
17 around because you can't even walk through
18 an alley to Kane Concourse, you have to go
19 through either the parking, through the
20 main building or around, correct?

21 MR. ZYSCOVICH: Either come around or
22 you find your way through somehow.

23 MR. HURWITZ: There's no somehow.

24 MR. ZYSCOVICH: We're not asking
25 people to go through our loading they've

1 got to go around.

2 MR. HURWITZ: I'm asking you --

3 MR. ZYSCOVICH: Yes.

4 MR. HURWITZ: -- as an architect did
5 you have a problem in having parking so
6 really inaccessible to that retail?

7 MR. ZYSCOVICH: No, because if you go
8 to Miami Beach, you go to Coral Gables, the
9 biggest challenge you have is finding a
10 place to park.

11 MR. HURWITZ: You walk through the
12 alley.

13 MR. ZYSCOVICH: You walk through the
14 alley, you walk a block, you walk half a
15 block. The point is what we're saying is
16 that the retail is connected to the
17 district. What you have done as a town is
18 really smart, you've created a retail
19 corridor and a retail district. This is
20 not a situation where you're going to be
21 able to pull up to the retail in front like
22 at Meizner Park or any strip center and
23 park in front of the store and go in there.
24 We recognize that if somebody's going to
25 park there they're going to go to our

1 store, they might park there and go to
2 somebody else's store. It's very possible
3 they might go to three or four stores.
4 They might go to a store and then go have
5 dinner and go back and get in their car.
6 It's all the district. Somebody might park
7 in your public parking and come to our
8 store, so the way I look at it as an
9 architect is what we're doing is we're
10 providing a district requirement for our
11 share of the parking, but the reality is I
12 don't know right now how we would actually
13 govern that the person who parks there went
14 to that store in our building and not in a
15 store --

16 MR. HURWITZ: No, but many public
17 spaces like this, same issue on Miracle
18 Mile, same issue on Lincoln Roadway try to
19 create connectivity in the back where you'd
20 walk through an alley and try to make it
21 bright in area and public space.

22 MR. GAVCOVICH: But there is on this
23 block, but on the north side --

24 MR. HURWITZ: On the other side of
25 that if you go to any of the restaurants

1 you can park in the back and walk through
2 breezeways to the front door.

3 MR. ZYSCOVICH: Yeah, but you actually
4 have a destination like at the --

5 MR. HURWITZ: The retail at your
6 project.

7 MR. ZYSCOVICH: The other point of
8 view, what we discussed with staff when
9 this came up we could leave a five-foot
10 space and we could allow a passagio under
11 the building and we could reduce the retail
12 by five-feet and move everything over,
13 that's something we could do, but the
14 decision was walking through a 150-foot
15 long concrete five-foot space that takes
16 you to the nexus of where the alley turns
17 next to the loading dock was really not a
18 very safe or desirable thing.

19 MR. HURWITZ: I'm sure you could make
20 it beautiful.

21 MR. ZYSCOVICH: I could make the
22 five-feet but I'm still going to land in
23 the trash.

24 MR. HURWITZ: Yeah, I understand the
25 complication because you have your loading

1 and delivery there.

2 MR. ZYSCOVICH: I'm just saying the
3 intent of code is to give you a guideline
4 and to give you something to hang onto and
5 this was discussed at length, and the point
6 is that from an urbanistic point of view
7 this retail is part of our building but
8 it's more importantly it's part of the
9 overall street and we're providing the
10 count, we're complying with the
11 requirements, and to put in a five-foot --
12 I can tell you, I'm okay going to Coral
13 Gables but between Books & Books and some
14 of those other places where all the little
15 alleys are because that was something I was
16 very concerned about in Miami 21, which if
17 you followed my career I fought a lot, is I
18 don't think it's a particularly good idea
19 to have an five-foot wide three story on
20 both sides where somebody feels like they
21 are in between two open spaces and they
22 don't know where they're arriving until
23 they get there, to me that doesn't feel
24 like a good safe space. I don't see why we
25 would want to make that happen unless we've

1 really designed the alley and all the other
2 spaces to --

3 MR. HURWITZ: I appreciate your --
4 obviously your perspective and I don't
5 disagree that they don't really work, I
6 just wanted to know.

7 MR. GAVCOVICH: My only issue on that
8 and the reason I brought it up is the
9 connectivity of or the lack of continuation
10 of sidewalk, I would prefer to see that
11 sidewalk continued through that lot.

12 MR. ZYSCOVICH: Well, you'd be able to
13 make that motion and --

14 MR. HURWITZ: You can do that you're
15 just going to lose parking which apparently
16 was important.

17 MS. HUBER: To the extent that the
18 town manager and the building official,
19 it's ultimately their decision it's not a
20 church decision, but to the extent that's
21 what --

22 MR. WASON: If I can weigh in. We
23 look at all the parking spaces in town, we
24 have parking spaces that maybe get used
25 five times a year, these two spaces are not

1 used very much, they're not, that's why the
2 landscaping was preferred and if you want
3 to change it back.

4 MR. HURWITZ: Jerry.

5 MR. WASON: We do not derive a lot of
6 revenue from those two spaces.

7 MR. HURWITZ: Jerry.

8 MR. GAVCOVICH: Where that parking
9 space is to continue that sidewalk to me
10 makes sense.

11 MR. HURWITZ: I think they're okay
12 with their suggestion as long as the town
13 is okay, they don't have to go for any
14 other approvals.

15 Jerry, did you have any other comments
16 or questions?

17 MR. GAVCOVICH: Yeah, I got a --

18 MR. SKLAR: I have another question.
19 On that floor plan to the right-hand side
20 of the main lobby, the main entrance, that,
21 what is exactly that?

22 MR. ZYSCOVICH: That is an open
23 covered loggia outside the air-conditioned
24 wall.

25 MR. SKLAR: It's not air-conditioned?

1 MR. ZYSCOVICH: It's not
2 air-conditioned, it's outdoors.

3 MR. SKLAR: Now, it has a door in the
4 parking lot area, why does it have a door?

5 MR. ZYSCOVICH: So that you can park
6 here without going through the church lobby
7 and enter into a --

8 MR. SKLAR: It's an open breezeway
9 right because all the openings on the
10 street side are open, are just open to the
11 air, right?

12 MR. ZYSCOVICH: Open to the air.

13 MR. SKLAR: Okay. So if that would
14 also be open to the air and in the front is
15 open to the street, then it would be easier
16 for people parking in the parking lot
17 because that door could be locked, no?

18 MR. ZYSCOVICH: Well, you know, it's a
19 question of how you invite somebody in. If
20 you see a door you know that you have to
21 open the door. If you see the opening that
22 you have to squeeze between the plants to
23 get into the parking, so --

24 MR. SKLAR: It's not between the
25 plants.

1 MR. ZYSCOVICH: No, but I'm saying the
2 facade treatment if you look at the
3 elevation is a series of verticals right
4 through the building. So what we're saying
5 is that door would remain shut, people in
6 the parking could use it to exit, people
7 outside could use it to enter, but it makes
8 it a --

9 MR. HURWITZ: Security issue, trying
10 to keep people out of the garage.

11 MR. ZYSCOVICH: Yeah, we're trying to
12 like keep people from using the garage as a
13 shortcut to take a diagonal through the
14 building, we want them to walk around.

15 MR. HURWITZ: To get to the retail.

16 MR. SKLAR: For the people going to
17 retail nice if they can park and just feel
18 like they are being invited to go through
19 there.

20 MR. ZYSCOVICH: But they just have to
21 open the door.

22 MR. GAVCOVICH: The garage --

23 MR. SKLAR: If they park in the
24 garage --

25 MR. GAVCOVICH: That's the way they

1 would get there.

2 MR. SKLAR: I don't know if I see the
3 door and it's locked --

4 MR. HURWITZ: I understand, Oscar,
5 what you're saying just that the
6 connectivity between the gray here on the
7 parking and the yellow, there's really no
8 reason other than security to have that
9 wall and door there because it would be a
10 more free flowing space but there's a
11 security concern that's why.

12 MR. ZYSCOVICH: It's not a huge
13 concern. It's like why have a gaping hole
14 that's open to the garage because --

15 MR. SKLAR: It would continue the
16 vertical opening that you have on the side
17 and in the front where you have the tower
18 and it's opened, right?

19 MR. ZYSCOVICH: I just don't see the
20 need.

21 MR. SKLAR: People will enter the main
22 entrance.

23 MR. ZYSCOVICH: Okay. Thank you.

24 MR. HURWITZ: Any other comments?

25 MR. SKLAR: No, just there is no clear

1 connection between the parking and the
2 retail.

3 MR. GAVCOVICH: Well, you could
4 provide a sign that says Kane Concourse
5 access in the garage and that would work.
6 I think if it was open you would still have
7 to know that's where you would need to walk
8 through if there was no door.

9 I have a number of questions, I guess.
10 There's -- you have three, and I'm going to
11 bounce around a little bit, this is how I
12 wrote down these notes. Three handicapped
13 parking spaces, that's not meeting code, is
14 it? For 125 parking spaces don't we need
15 more than that?

16 MR. LEE: Well, there is a different
17 requirement for church.

18 MR. GAVCOVICH: Is there? I thought
19 it was just based on the number of parking
20 spaces in the building code.

21 MR. LEE: There are some exemptions,
22 I'd have to take a look at that.

23 MR. FRANKEL: I think it's just a
24 straight number of spaces and that a number
25 have to be accessible.

1 MR. GAVCOVICH: And I know places of
2 worship you can get exemptions, but then
3 there is you get exemption from all
4 accessibility requirements in theory. I
5 don't know if that's what's being proposed
6 here, I mean, otherwise it seems to be --

7 MR. LEE: Private clubs would be the
8 same, would require certain exemptions, not
9 require a public access.

10 MR. BECHIK: Isn't this a mixed-use
11 with a retail component, shouldn't it --

12 MR. LEE: The retail portion would be
13 required to calculate the handicap parking
14 there.

15 MR. HURWITZ: So whatever the retail
16 requires takes it -- takes the -- you got
17 8,500 square feet of retail requires how
18 many spaces of handicap parking or --

19 MR. LEE: The number of spaces would
20 be determined by the zoning code.

21 MR. GAVCOVICH: 28 spaces for the
22 code. 27?

23 MR. LEE: One for the first 25, I
24 don't know how many spaces are allocated.

25 MR. GAVCOVICH: For the retail

1 there's, I guess, 28 provided. So you need
2 two handicap spaces for the retail. I
3 mean, I'm not sure if you're suggesting
4 that you're going to --

5 MR. ZYSCOVICH: It is not our intent
6 to try to get a variance from the ADA
7 requirement. I'm looking at the plan, I
8 think we have to add more, so we can state
9 that we will have the ADA required, you
10 know, parking required, and just trying to
11 think of how we got to three, I don't
12 really remember. My recollection is five
13 percent would be handicapped, so that would
14 be six, so we need to find more space for
15 three, but if you look at the plan and the
16 space we have through the column grid we
17 can actually redesign what we need to and
18 we can look at the plan how there's three
19 and a space and three and then a space, and
20 then that's how we done it, I'm sure we can
21 find another three.

22 MR. GAVCOVICH: One of the things that
23 I thought from a design perspective on the
24 project, I like very much the design of
25 Kane Concourse, the scale, the detail is

1 well done, but I don't like Bay Harbor,
2 East Bay Harbor Drive at all. I think
3 there's -- first of all, I'm bothered by
4 the length of the building that is all
5 parking, and even though it's not a
6 requirement of the code that we have an
7 active use along Kane Concourse, it's
8 really a lot of length of building that is
9 basically parking. You screened it with
10 the bronze grills but it's a -- there's no
11 reason to walk there. It's not -- other
12 than going around to get to the parking on
13 the other parcel there's -- some of the
14 other blocks, Bay Harbor Terrace, for
15 example, there's more -- the building the
16 active uses extended a little further. I
17 know on Bay Harbor Terrace, well, Oscar at
18 one point proposed the project there was
19 going to be an office building on the Bay
20 Harbor Terrace. Was there an office
21 building?

22 MR. SKLAR: Yes.

23 MR. GAVCOVICH: And just that bothers
24 me. Obviously I'm not sure how you resolve
25 it with the -- without losing an incredible

1 number of spaces.

2 MS. HUBER: This is something that
3 we've discussed with staff and we worked
4 through, and to the extent that you
5 extended a use there what would happen is
6 we would have to provide an additional deck
7 of parking so you would actually have two
8 floors of parking which then increase the
9 height of the building, and so the
10 discussion that ensued and the thought
11 process behind is it is not anyone's desire
12 to have two levels of parking in this area
13 and to increase the height of that building
14 to accommodate that, and that because there
15 is not an existing use along Bay Harbor
16 that that wasn't -- that wasn't something
17 that the people were necessarily seeking or
18 desirable because of the residential use
19 across the street, so it was much more
20 desirable to not have the additional height
21 and instead have the additional
22 landscaping, because you will notice that
23 the building is further set back than is
24 required on East Bay, so to have the
25 additional landscaping between the building

1 and have the building set back and to
2 provide the widened sidewalk is what the
3 ultimate desire was for that area, so
4 that's how we arrived at where we are at.

5 MR. GAVCOVICH: I just --

6 MS. HUBER: I hear what you're saying,
7 but just so you understand that is -- the
8 additional height that would be required to
9 add that second level of parking was not
10 something that was desirable to the town or
11 to the neighborhood.

12 MR. GAVCOVICH: You do have quite a
13 high space in the garage, I mean, it is 17
14 feet or so, the garage, or 16 with the
15 structure, I'm not sure what kind of
16 structure you're going to have.

17 MS. HUBER: It's because the
18 additional height requirement for the
19 retail space so in order to put the retail
20 space in the front, so in order to put the
21 ramping in to put the second level of deck
22 we would need to increase the height
23 significantly.

24 MR. GAVCOVICH: I'm not sure if it
25 would be significant if you could do, I

1 don't know, I didn't really think about the
2 second level parking or the ramifications,
3 but there's a lot of height that maybe just
4 the back portion of the building where the
5 garage is could be two levels within one
6 story of the retail.

7 MS. HUBER: It doesn't work because of
8 the size configuration for the ramping. So
9 we put a lot of -- when I say considerable
10 amount of time on this point with the
11 church before we came to the town and then
12 with the town once we started meeting with
13 them, because of the ramping configurations
14 and the rest of it when you start to shrink
15 and change the ramp changes as well as the
16 necessity for the height. Walker Parking
17 did numerous, numerous evaluations and
18 studies related to that and the end
19 consensus was it was not desirable to have
20 the additional 11 or 12 feet to have the
21 second level of parking.

22 MR. HURWITZ: You're talking about
23 adding uses on that strip?

24 MR. GAVCOVICH: Yes.

25 MR. HURWITZ: Okay.

1 MR. GAVCOVICH: I mean, there's a
2 project that proposed across the street
3 which is an office building which does
4 extend a little bit into the frontage of
5 where the garage is. You know, there is --
6 if we're trying to improve the
7 connectivity, the walkability and better
8 the retail environment along Kane Concourse
9 it would be nice to have something to walk
10 by as you're going from --

11 MR. ZYSCOVICH: You know, we thought
12 about that and I actually looked at the
13 project across the street that was
14 proposed. It has a drop off, it has curb
15 cuts for parking, it's really not a
16 walkable -- I understand the intent and I
17 don't disagree with you except that in this
18 case on this street and in this design if
19 we were to place things, and this is kind
20 of, you know, the elevations, 3D elevation
21 of that corner, we would have dead retail,
22 there's no reason to walk there for any
23 commercial purpose, and that's why Amy said
24 when we discussed it with staff their
25 decision was let's move the building back

1 beyond what we need to, let's landscape it,
2 let's have a nice tree line. But I
3 understand it and I did look at the
4 buildings across the street proposed on the
5 canal and through there and, you know,
6 truthfully they, you know, beauty is in the
7 eye of the beholder, far be it for me to
8 say otherwise, but, you know, there's
9 underground parking proposed, there's all
10 kinds of stacking issues, there's major
11 curb cuts, this is actually much more
12 pedestrian friendly than heir our neighbor
13 and I think that it's a very, you know,
14 carefully considered way of dealing with
15 the street turning, because once you bring
16 people around the corning if you think
17 something's going to happen there's nothing
18 to happen there. I mean, there's no
19 purpose to be there.

20 MR. HURWITZ: Can I share a term but
21 it's more visual than captivating, I don't
22 disagree about not having to activate and
23 force more parking and higher heights, I
24 feel like everything that was done on the
25 retail side is really beautiful, this is

1 very simple and modern and clean, and then
2 you start to feel the corner and everything
3 going sort of south on East Bay Harbor
4 Drive and to me it's a completely different
5 building. It feels more like, you know, a
6 really nice convention center, obviously
7 it's a hall for congregating for a large
8 number of people so I know it's difficult
9 but I just don't get a vision of any way to
10 tie in what was done there, and I don't
11 mean changing the use that's, you know,
12 really pretty along the Concourse.

13 MR. ZYSCOVICH: If I make a vertical
14 demonstration of this view which is the
15 Kane corner, that same vertical
16 demonstration is that same attitude of
17 playing with simple clean volume stepping
18 back is what's also happening on the facade
19 as it turns the corner. If you look at
20 this it's very similar and I think of the
21 same language of the other streets and the
22 way that it turns. So it's really a very
23 simple I think elegant way of reflecting
24 the architecture and also the mission of
25 the church which is progressive and simple.

1 You know, we put the decoration and the
2 fenistration on the commercial side and the
3 rest of it is simple, but not without
4 consideration because I think when you look
5 at this facade there's a lot of movement in
6 terms of the base. It's true that the
7 sanctuary is coming up above but we're well
8 below the height and we're looking at how
9 we would grid this. In fact, this is very
10 similar to what I did with the movie
11 theater on Lincoln Road, if you look at it
12 from the alley it's an unobstructed wall,
13 you know, we put in reglits, we painted it
14 a different color and it blends in pretty
15 well. So if what you're saying is you want
16 more decoration then that's a different
17 conversation, but in terms of the
18 continuation of the elements of the
19 architectural treatment I think it's very
20 consistent.

21 MR. GAVCOVICH: That was my other
22 point on that east -- the south facade,
23 there's some movement with volumes but it's
24 a lack of detail, I guess, and some of it
25 may be -- I'm -- I didn't like the fact

1 that the scale of the drawings are so small
2 because you can't read the plan. I don't
3 know, you know, looking at the floor plan I
4 don't know where the windows are, you can
5 see an elevation but even in elevation at
6 1:20 scale you're not going to be able to
7 show any detail.

8 MR. ZYSCOVICH: I think we did submit
9 a larger drawing to the town.

10 MR. HURWITZ: You mean down here you
11 can't really see where --

12 MR. GAVCOVICH: I mean, there is the
13 scale of the drawing I'm not sure why you
14 would do it, it's such a small scale.

15 MR. ZYSCOVICH: We needed to make I
16 don't know how many sets of 11-by-17,
17 that's what they give you.

18 MR. GAVCOVICH: It's not, you know,
19 you had something similar in another recent
20 project where I thought the scale of the
21 drawing was too small, this scale is even
22 smaller. It's really hard to read and hard
23 to know really what you're trying to do and
24 we're relying on the renderings a little
25 bit more for that and the renderings to me

1 look a little, you know, are a little too
2 bland.

3 MR. ZYSCOVICH: The truth is your
4 point is -- so let's differentiate the form
5 because I think this is a great form among
6 design people, that's why this works. We
7 haven't yet designed the frame, we haven't
8 designed the detail. If you're familiar
9 with Skarpa's work or, you know, some of
10 the other modernists what we're after is a
11 very simple clean well detailed building
12 and I think this is that.

13 What we're trying to do is put the
14 fenestration in terms of decorative
15 elements through these, you know,
16 perforated screens, detailed facades on the
17 retail forum and the rest of it we really
18 want for it to be background, we're not
19 trying to draw attention to too much detail
20 on the rest of the facade, we want to keep
21 it simple.

22 MR. GAVCOVICH: It's more than wanting
23 to draw attention, I understand that, you
24 know, it is not the primary facade and, you
25 know, it's more subtle there but it's -- I

1 don think it's quite there. Whether it's
2 the length of the building that leaves me
3 that way or the level of detail I just
4 don't think it's quite fits or compatible
5 with --

6 MR. ZYSCOVICH: Think about it from
7 the street, walking on the sidewalk, that's
8 to the trees, their one story moves up to a
9 tall tower where the exiting is, moves to a
10 two story where the garage is detailed.
11 There's a lot of animation, a lot of street
12 movement. This rendering is not helping
13 our case because it doesn't show a lot of
14 detail. I think you appreciate with all of
15 the volumetric movement and the street
16 experience which you can imagine I think
17 you're going to have a very attractive
18 building and a building that people will
19 appreciate.

20 When we start looking at how we deal
21 with this, let's say that we do something
22 else, at this point in time other than
23 adding more materials we really don't feel
24 that bringing the volumes to express the
25 full height of the building is

1 advantageous, we're trying to keep the
2 scale back from the street. We
3 differentiated the buildings, we
4 differentiated them with color and we will
5 further differentiate them with detail. So
6 it's not a blank facade, it's animated and
7 it moves and I think that it works really
8 well.

9 So, I mean, like I said, beauty is in
10 the eye of the beholder, I don't think of
11 this as a blank facade treatment when I'm
12 on the board, I don't. You know, I know
13 the difference and I think that there's
14 been a lot of attention made to this scale,
15 so I would -- my view obviously as the
16 author is to say that I think it's a simple
17 building and it will be elegant and very
18 much in keeping with what Bay Harbor is
19 about. I don't know what else to tell you
20 except to start sketching together.

21 MR. GAVCOVICH: The sports, I guess
22 the court or field that's up -- yard area
23 that's under the roof on level 3, I guess,
24 it is that long turf, what's the intention
25 there, what's really happening there?

1 MR. ZYSCOVICH: That's a place for
2 small gatherings. It's a place where some
3 of the kids can run out and, you know, play
4 around, that's the intention.

5 MR. GAVCOVICH: You don't anticipate
6 the need for a fence that lawn area?

7 MR. ZYSCOVICH: Oh, no, it's
8 protected.

9 MR. GAVCOVICH: It's protected by the
10 trellis. I think, again, from Kane
11 Concourse the design there is quite
12 attractive in the scale.

13 MR. PHILLIPS: My name is James
14 Phillips with the landscape architect firm
15 of Raymond Douglas. That terrace area is
16 surrounded by a pair of fence planters that
17 will be of at least a 48-inch -- sorry,
18 42-inch height required for a guardrail and
19 then that will be planted with landscape
20 that will rise above that minimum elevation
21 as protection.

22 MR. GAVCOVICH: But if you're using
23 it -- and, again, if the answer is, no,
24 you're not going to -- there's no need for
25 any fencing in the future then I'm

1 satisfied, but if your kids are playing,
2 they're throwing a ball around --

3 MR. ZYSCOVICH: No, that's not the
4 intent, there is no need for fencing.

5 MR. GAVCOVICH: Okay. That on Kane
6 Concourse would be --

7 MR. ZYSCOVICH: We don't want that.

8 MR. GAVCOVICH: Would not be good.

9 MR. ZYSCOVICH: That's not what we're
10 trying to create.

11 MR. HURWITZ: Again, just the
12 problematic question regarding that, is the
13 ancillary usage that were described
14 including the field that it's only on
15 Sunday or school or classed during the
16 week, is there --

17 MR. ZYSCOVICH: I think there's some
18 after school programs, there's the Sunday
19 school program, that's the extent of it.

20 MR. HURWITZ: After school during the
21 week or Sunday?

22 MR. ZYSCOVICH: I don't know. It's
23 called church class.

24 MS. HUBER: Yes, there will be some
25 activity after school in that base, yes.

1 And to the extent during the day to the
2 extent that they decide to have -- they
3 have yoga classes and all kind of adult
4 exercise programs and other, so to the
5 extent that it's a beautiful day and they
6 decide to move it from the indoor space to
7 the outdoor space that could also occur out
8 there. Those are all activities that the
9 church currently has but now some of them
10 will be outside.

11 MR. HURWITZ: I hear the yoga classes
12 are great.

13 MR. GAVCOVICH: Looking at the corner,
14 the open corner, you have the stair there,
15 talked about there's a lot of transparency
16 at the corner, from an -- I'm not sure that
17 if the code requires 75 percent
18 transparency, I don't know if that means
19 glass, doesn't seem that you need it with
20 the -- I understand that you can't
21 create -- you can't have your entrance to
22 the lobby on Kane Concourse.

23 MS. HUBER: It is.

24 MR. GAVCOVICH: Well, not really, it's
25 on East Bay Harbor Drive.

1 MS. HUBER: No, there's a door.

2 MR. GAVCOVICH: There's a door into
3 the stair.

4 MS. HUBER: There's a door into the
5 lobby.

6 MR. ZYSCOVICH: The lobby is entered
7 from East Bay, that's an exit door for
8 stair.

9 Let me address your transparency
10 issue. The way we understood that is when
11 you look at the transparency issue because
12 we write this kind of code all the time,
13 it's related to the retail use. So in
14 terms of the entire length of Kane
15 Concourse we believe that we meet the
16 75 percent requirement for transparency
17 meaning from the sidewalk looking into the
18 space. We acknowledge that we are not
19 doing that at the corner entrance but we
20 set back, so when you look at the overall
21 what was 175 feet, we have about 150 feet
22 of store front, so we are going out of our
23 way to make it store front.

24 MR. HURWITZ: Would you have a
25 terrible problem trying to move the focus

1 down East Bay Harbor off the corner and
2 trying to extend the retail feel of that
3 corner at all?

4 MR. ZYSCOVICH: I think that would
5 become an issue because there is a
6 relationship between the mass of the church
7 building and the way it meets the ground,
8 which we've already carved back to a very
9 small minority of the frontage on Kane.
10 So, in fact, this is the end of the block
11 and it's a very small, it's like 25 feet of
12 setback where we have the stairway and the
13 campanile structure, so we've really, I
14 think, proportionally, you know, again from
15 an aesthetic issue I think that we need the
16 church to -- for the building to land on
17 the ground and that became a very important
18 issue for the church that it doesn't look
19 like it's above a store, so we think
20 that --

21 MR. HURWITZ: Is it possible to move
22 that structure, you said, you called it
23 a --

24 MR. ZYSCOVICH: Campanile, bell tower.
25 It's kind of a reference to a bell tower.

1 MR. HURWITZ: Is it possible to shift
2 that off the corner at all, I mean, it's
3 obviously still visible, it's significant,
4 it's not going to be missed, not trying to
5 hide it just trying to have the corner be
6 more of you know you're approaching a
7 retail district?

8 MR. ZYSCOVICH: But I don't think
9 there's any confusion that you're not
10 approaching a retail district. What I'm
11 saying is it's only 20 -- I mean, it's
12 about from here to the back wall, I mean,
13 that's all that's revealed of the building.

14 MR. HURWITZ: I'm getting that, I
15 understand that and I follow what you're
16 saying, but I'm not talking about the 25
17 feet --

18 MR. ZYSCOVICH: You're talking about
19 the vertical element?

20 MR. HURWITZ: The actual vertical
21 element which is right on the corner which
22 is offsetting it.

23 MR. ZYSCOVICH: It belongs on the
24 corner, that's where they always are, it's
25 a corner element. I think it would look

1 very odd if you have your three-story
2 building and then this thing popped up at
3 some random spot on the facade.

4 MR. HURWITZ: Not really random but
5 just closer to the front door.

6 MR. GAVCOVICH: I think it would
7 weaken the corner. I think having that
8 tower at that location makes sense. I
9 would have actually preferred to see the
10 stair, the portion between the retail and
11 the tower pushed back a little bit for a
12 couple of reasons. You know, I think
13 you're going to have as people come out of
14 the church and if they don't go into their,
15 you know, directly to their cars that area
16 is probably too small, you know, the area,
17 the spill out.

18 But I also from an architectural
19 standpoint I think breaking the tower from
20 that facade would have made sense. Right
21 now it reads -- it sort of -- the tower
22 doesn't read strong enough in my opinion.
23 In this rendering it does but it's not -- I
24 don't think it's really like that. In the
25 plan you're looking at it and it's the same

1 plane, the tower and the three-story
2 element, or the three-story building, the
3 stair itself, and to me it would have been
4 nice to --

5 MR. ZYSCOVICH: We can bring it closer
6 to the street.

7 MR. HURWITZ: You're saying it's on
8 the same plane as here?

9 MR. GAVCOVICH: No, on Kane Concourse
10 this is the same plane.

11 MR. SKLAR: The tower stays where it
12 is and the stairs would be reset.

13 MR. HURWITZ: That's what shifting the
14 tower left would -- not off the corner but
15 just --

16 MR. GAVCOVICH: Leave the tower where
17 it is and like Oscar just said you shift
18 the stair back or to the south and you
19 create this large plaza and you break that
20 mass of the stair and the campanile.

21 MR. SKLAR: The stair door doesn't
22 have to be necessarily going into the bell
23 tower or whatever here, the tower.

24 MR. GAVCOVICH: I'm not sure if it
25 would be -- are you not allowed to have --

1 MR. ZYSCOVICH: The stair has to exit
2 to the street.

3 MR. GAVCOVICH: Of course. But are
4 you not allowed to exit the lobby onto Kane
5 Concourse, is that part of the --

6 MR. ZYSCOVICH: We're just trying to
7 make sure that on behalf of our client we
8 don't create a situation where people could
9 say this is Kane Concourse, so, you know,
10 we're just trying to and make sure that we
11 don't trip. This is the way the code
12 reads, we decided to, you know, interpret
13 it very conservatively and that's where we
14 are.

15 MR. SKLAR: I just wanted to bring up
16 something of my knowledge of retail
17 business of Kane Concourse, which Kane
18 Concourse is not -- at the moment is not
19 the best retail walk for a pedestrian
20 street that you can imagine, so actually
21 the best retail is right across the street.
22 That's the best block as far as retail
23 because there is some access to parking in
24 the rare of the stores, which I happen to
25 own that building so I'm concerned about

1 the ability of the retail here because as
2 you can see that many retail stores that
3 don't make it on Kane Concourse because of
4 the parking, so I would really try to have
5 a better connection between the street,
6 especially on that, you know, that stair
7 that's on the west end of the building with
8 the door on Kane Concourse which is not the
9 prettiest part of the building. If that
10 becomes a walkway to the rear, by the way,
11 the trash, what is that trash, is that a
12 truck?

13 MR. ZYSCOVICH: That's a compactor.

14 MR. SKLAR: That's a compactor. Well,
15 because of the back are you going to go
16 there --

17 MR. ZYSCOVICH: No, just because we
18 went to Waste Management and they can place
19 a compactor. The reality as you know
20 depends on who the retailer is. You know,
21 not to give you a critique of this town, we
22 also do a lot of retail, my own perception
23 is that like a lot of other towns when you
24 take retail space and you allow service
25 providers to use retail space you end up

1 killing retail.

2 I think you actually have a beautiful
3 retail street and if you could figure out
4 how to get the service providers out and
5 put in real retailers and restaurants I
6 think you would have a great retail store.

7 MR. SKLAR: The code was changed a few
8 years back that doesn't allow anymore
9 offices on ground floors so everything has
10 to be retail.

11 MR. ZYSCOVICH: I'm agreeing with you,
12 Oscar, but what I'm saying is this is part
13 of a street scape of retail and we don't
14 have any elusions that because we have
15 these parking spaces in this location that
16 somebody's going to park here and come to
17 our store. We're saying that what we're
18 doing is we're, I think, meeting the spirit
19 of what we want which is the vast majority
20 of our facade is intended to be real
21 quality retail, we've gone out of our way
22 to make it 17-feet, it's going to be Class
23 A retail.

24 MR. SKLAR: No, I agree. I like the
25 retail storefront that you have, I like

1 most of the building, I like the modern
2 feel of it, you know, I think you did a
3 great job but, you know, certain --

4 MR. ZYSCOVICH: We could take this
5 exit door that approaches the west and we
6 could push it back, you know, so that
7 you're not passing the door, and we could,
8 you know, do something with that recess
9 that's more attractive but it does have to
10 exit directly out so we can't push it back
11 too far, but we could -- I think what
12 you're saying is you don't want to see that
13 door in the same plane as the storefront.

14 MR. SKLAR: That's one of the things.

15 MR. ZYSCOVICH: We're not disagreeing
16 with that, we could push it back a bit.

17 MR. SKLAR: I would.

18 MR. ZYSCOVICH: But in terms of trying
19 to get a different place to exit, we can't
20 exit through the back because we have our
21 loading and we have to exit directly to the
22 outdoors, so we can't exit through the
23 building, it's the only place we can exit.

24 MR. HURWITZ: You mention that you
25 could make --

1 MR. SKLAR: You have a lot of stairs
2 exiting.

3 MR. ZYSCOVICH: We do, we have a lot
4 of stairs exiting and have to be more or
5 less on the corners otherwise we don't meet
6 the requirement for the dead end. Believe
7 me we have analyzed this thing to death.

8 MS. HUBER: Because when you place, I
9 will be politically correct, a public
10 assembly place on the second floor or are
11 required to be above the first floor that
12 in and of itself requires a large number of
13 stairs, that's the end result
14 unfortunately.

15 MR. SKLAR: I understand that. I go
16 there in Miami Beach that has the assembly
17 on the second floor also and we have a lot
18 of stairs too.

19 MR. HURWITZ: Anything more?

20 MR. SKLAR: I still would like to see
21 a connection with a retail --

22 MS. HUBER: Can I ask you a question?
23 Would you prefer that we --

24 MR. GAVCOVICH: I understand what
25 you're saying with your question but to me

1 it feels like such a lost opportunity --

2 MR. ZYSCOVICH: Which part is the lost
3 opportunity?

4 MR. GAVCOVICH: The ability to have
5 parking and access points we have across
6 the street which has proven successful here
7 to have people that are parked behind, and
8 I don't need to repeat it because I know
9 how you feel about it and respect what
10 you're saying, it just feels like if you
11 look at the buildings all don't have
12 connections to the back, this is us
13 continuing that road inaccessibility from
14 parking to the back.

15 I get what you're saying, I understand
16 it's a philosophical thing. You have a lot
17 more experience than I do, I just want to
18 have for the ability to have retailers
19 along Kane Concourse have easily accessible
20 pedestrian access, but I understand that
21 you can give me a five-foot alleyway that
22 goes into a trash compacter and a loading
23 unless it was completely -- unless we
24 worked.

25 MS. HUBER: Can I ask a question?

1 MR. GAVCOVICH: Sure.

2 MS. HUBER: And I'm not an architect.
3 Would your preference be if we removed this
4 door so that was open then you just went --
5 I mean, can't get anymore direct than
6 parking here and going there, so if this
7 door was removed --

8 MR. HURWITZ: I mean, Oscar made the
9 suggestion but I understand what you're
10 saying. With security I don't think that
11 really addresses it because again that's
12 private parking. See, it's the lot behind
13 for the retail.

14 MR. SKLAR: I think that helps.

15 MS. HUBER: This lot is not for
16 retail. This is just as much for retail as
17 this is. People will and can park here and
18 go to this retail, people are not
19 required --

20 MR. HURWITZ: I think it was suggested
21 earlier that --

22 MS. HUBER: No, no, no. That is
23 absolutely -- no.

24 MR. HURWITZ: Someone said that would
25 be open 24/7 or open when retail was open,

1 but the garage parking may not, correct?
2 Is the garage parking going to be open all
3 day?

4 MS. HUBER: Yes.

5 MR. HURWITZ: And open to the public?

6 MS. HUBER: Yes. That garage --

7 MR. HURWITZ: So there's no security
8 measures on this garage?

9 MS. HUBER: Whether or not there will
10 be a security measure is a different
11 question than whether or not that lot will
12 be opened. The garage is intended just as
13 much for the retail as it is for the
14 religious use.

15
16 MR. HURWITZ: So the garage will be
17 available for use all day?

18 MS. HUBER: Yes. I'm sorry if that
19 was somehow not clear. That garage is
20 intended -- you can't have Class A retail
21 space as was designed in consultation with
22 the Whitman family about Bay Harbor Shops
23 and that's where your parking is, so
24 absolutely the parking was intended in the
25 garage to be -- to service that retail

1 space.

2 MR. HURWITZ: So it's going to be open
3 to the public all the time?

4 MS. HUBER: Yes, sir. I'm not going
5 to say all the time. Whether or not it
6 will be closed to the extent there is a
7 restaurant there or retail there when those
8 uses close along Kane Concourse that will
9 be closed as a deterrent for other
10 unnecessary behavior, but when those uses
11 are open the parking will be open.

12 MR. ZYSCOVICH: That might have been
13 my fault because I thought our conversation
14 took a term in terms of the vacant lot, so
15 I was just talking -- but the parking is
16 the parking for all the uses. We have 28
17 spaces dedicated. And as Amy said, if it's
18 the pleasure of the board to remove the
19 door and leave the loggia end open we can
20 do that. It's just our view that it seemed
21 more secure to have a door there and if you
22 park there and go through the door you
23 enter the street.

24 MR. GAVCOVICH: Could you describe the
25 loggia because it's to read on the drawing?

1 I mean, there are columns and the only
2 place you can get, I guess, a little bit of
3 understanding is the rendering, but I'm not
4 100 percent sure.

5 MR. ZYSCOVICH: We had elevations, but
6 is there an eyebrow that's extending all
7 the way along?

8 MR. GAVCOVICH: Yes.

9 MR. ZYSCOVICH: Okay. Here you can
10 see the window behind which is the
11 recitation of this loggia and you'll be
12 able to come in here and walk through that
13 space between the air-conditioned inner
14 wall and this space. And the eyebrow is
15 there as a feature to get a scale.

16 MR. GAVCOVICH: I think it's just hard
17 to read. When I look at the elevation
18 there's just -- are the columns -- I'm just
19 not seeing where the columns are or --

20 MR. ZYSCOVICH: The column --

21 MR. GAVCOVICH: I think there were
22 more columns on the rendering than there
23 are on the elevation, or just that the
24 column start -- the issue --

25 MR. ZYSCOVICH: The columns start

1 hiding the glass wall behind so they're
2 actually in line, so you have a glass
3 vertical opening on one side and an opening
4 through the wall to the air on the other
5 side, and that's your loggia. So the best
6 place to see it is actually in the rendering.

7 MR. GAVCOVICH: What's happening above
8 the eyebrow is what you said was happening
9 below?

10 MR. ZYSCOVICH: No, the eyebrow was
11 just interrupting the opening of the
12 loggia.

13 MR. GAVCOVICH: When you look at the
14 elevation there seems to be more openings
15 in --

16 MR. ZYSCOVICH: Yeah, the rendering
17 these walls should be coming down like the
18 elevation shows. There's a series of walls
19 and a series of slotted openings, that's
20 the loggia. Clearly looking at the
21 rendering more closely than I've been
22 looking at the rendering.

23 MR. GAVCOVICH: What are you thinking
24 in terms of that stair on the corner in
25 terms of the finishes, is it more -- is it

1 a typical egress stair, are you treating
2 that differently?

3 MR. ZYSCOVICH: You mean on the
4 interior?

5 MR. GAVCOVICH: On the interior.

6 MR. ZYSCOVICH: Yeah, it's intended to
7 be a circulation stair that will people to
8 move up and down without having to use the
9 elevator.

10 MR. GAVCOVICH: I mean, you have the
11 one that's the open stair and this one on
12 the corner which is more -- I would think
13 that one was more ingress.

14 MR. ZYSCOVICH: But it's wide, is that
15 your question?

16 MR. GAVCOVICH: Well, it's wide, I
17 guess, because of the occupant load, but
18 they're all wide, but in terms of that's
19 the corner and that -- and you're going to
20 see into the stair and I'm just wondering
21 in terms of the thought about the lighting
22 in there, the finishing in there, you know,
23 you're going to see through on this
24 prominent corner of Bay Harbor I think that
25 stair needs to be something that's a little

1 bit --

2 MR. ZYSCOVICH: We agree.

3 MR. GAVCOVICH: -- more important.

4 MR. ZYSCOVICH: It will be. We agree.

5 MR. GAVCOVICH: I'd prefer to not see
6 a stair there, but since it is I think it
7 needs to be treated quite differently than
8 a typical stair.

9 MR. ZYSCOVICH: We will make it a
10 condition, it will be treated as an
11 interior finished stair. That's our
12 intent.

13 MR. GAVCOVICH: You have -- I don't
14 know if this is an issue because of the
15 width of the sidewalk here, can the door
16 swing into the right of way into the
17 sidewalk?

18 MR. ZYSCOVICH: No.

19 MR. GAVCOVICH: Because your store
20 front doors -- the store front doors all
21 swing right on the property line and swing
22 into the --

23 MR. ZYSCOVICH: If the sidewalk is
24 wide enough.

25 MR. GAVCOVICH: That is a question, I

1 don't know, is that allowed?

2 MR. HURWITZ: Oscar, what is the rule
3 here?

4 MR. SKLAR: I'm sorry?

5 MR. HURWITZ: What is the rule here?

6 MR. SKLAR: I think not here. I think
7 that if this sidewalk is wide enough you
8 can at least five or six feet beyond the
9 door because it's --

10 MR. ZYSCOVICH: We have that.

11 MR. GAVCOVICH: It was really just a
12 question because I wasn't sure because I
13 thought we had that issue. Could you
14 describe a little bit the trellis on the
15 roof again? We're seeing it through the
16 rendering, you don't really see it in
17 sections, it's a little bit hard to see in
18 the elevations.

19 MR. HURWITZ: And also the whatever's
20 hanging there, the vine or --

21 MR. PHILLIPS: The intention there is
22 for that to be like a jig of wire toss, a
23 cable toss that would be attached to the
24 wall and there would be a series of vines,
25 stephanovas, scorabunda and some rigia and

1 alpha which are both white flowering plants
2 that would grow up the side of those walls.

3 MR. GAVCOVICH: Like a living wall?

4 MR. PHILLIPS: Like a living wall,
5 yeah, but they are planted in the ground
6 and they would just be a vine that grows up
7 the side of that wall.

8 MR. SKLAR: The door to that stair,
9 the corner stair, is -- couldn't it open to
10 the loggia if the loggia is open to the
11 pedestrian space?

12 MR. ZYSCOVICH: What's the question,
13 repeat the question, please?

14 MR. SKLAR: If the door goes out of
15 that stair on the corner opens to the
16 loggia and the loggia is an open air to
17 this gym space isn't that a lot better?

18 MR. ZYSCOVICH: It depends on the
19 building official. It seems logical but
20 we've had experience where they want you to
21 literally have nothing over your head as
22 you walk out the door.

23 MR. SKLAR: That door is --

24 MR. GAVCOVICH: Wouldn't you rather
25 see just a blank wall there? Isn't it

1 better to have some --

2 MR. SKLAR: It's not a door, not an
3 exit door to the stair.

4 MR. GAVCOVICH: Again that's why to
5 answer my question, if the stair is treated
6 a little bit different than an egress
7 stair, it's a glass door, I think it's
8 better than just a dead corner because you
9 have one wall is a green wall but the other
10 is -- that's a ground floor that just has a
11 door.

12 MR. ZYSCOVICH: I mean, I think you
13 have a great suggestion.

14 MR. SKLAR: It could even be --

15 MR. ZYSCOVICH: We need the building
16 official to tell us if he will accept the
17 exit into the loggia as if it's an exit to
18 the exterior. It makes sense to me, but,
19 you know, in the spirit of trying to make
20 sure that we're doing the right thing we've
21 had certain building officials tell us that
22 the door has to -- they won't even let us
23 have an eyebrow over us. It depends on --

24 MR. GAVCOVICH: But you have one there
25 anyway.

1 MR. ZYSCOVICH: Well, hopefully he
2 doesn't make us take it of.

3 MR. SKLAR: Even if --

4 MR. GAVCOVICH: I'd prefer to see more
5 glass there.

6 MR. SKLAR: If you accentuate the
7 tower by creating like a vest -- an outdoor
8 vestibule for the door to open between the
9 tower and the stair then you are
10 accentuating the tower.

11 MR. ZYSCOVICH: I'm in agreement. I'm
12 totally in agreement. That would be fine
13 with us and we can, you know, again, put it
14 there and we can take it from there and
15 we'll work with the town and see what they
16 tell us.

17 MR. BECHIK: I have another question
18 about that corner, maybe the question more
19 about the usage on the frontage of Kane
20 Concourse. Someone from the public
21 mentioned all frontage need to be used for
22 retail, so that part of frontage not being
23 used for retail so what is the code, should
24 be require that all retail continue into
25 the corner or not, what are we discussing

1 here?

2 MR. LEE: Well, through the DRC
3 process no one had an objection to that at
4 the time on the lobby.

5 MR. BECHIK: But is it a part of the
6 code that the person mentioned there's a
7 code that requires all of Kane Concourse to
8 be --

9 MR. LEE: I'm the building official --

10 MR. HURWITZ: That guy doesn't work
11 here. That's okay. Just answer your
12 question on --

13 MS. HUBER: The code does not require
14 100 percent of use of retail, it just
15 requires that if you have space it needs to
16 be one of -- it needs to be retail space.
17 It doesn't state that you can't have a
18 lobby or some other type of loggia space,
19 so we have a loggia space and the other
20 portions of the site fronting Kane
21 Concourse are 100 percent retail, but the
22 code doesn't say that you can't have -- you
23 can't have a loggia or a lobby space, and
24 under this context to do that then also
25 gets into the discriminatory nature of as a

1 code as it applies to religious uses. So
2 this was a topic of discussion with Stanley
3 Price and Ron Watson and your staff when
4 this application came forward, and so 100
5 percent of the space that fronts Kane
6 Concourse that is devoted to retail is
7 retail, and then the portion of the
8 building that provides access to the
9 religious use on the second floor is the
10 lobby space, so we meet your 75 percent
11 frontage transparency requirement but this
12 is the access space to get to the second
13 level, and there is -- there is no pressed
14 requirement or prohibition rather in your
15 code that says you can't have a lobby to
16 get to the second level on Kane Concourse.

17 MR. SKLAR: These two --

18 MS. HUBER: Just like you have in all
19 of the other buildings on Kane Concourse,
20 you have a lobby that allows people on Kane
21 Concourse, you don't make people go around
22 to the side or to the back to get into the
23 lobby to go on the second, we just happened
24 to put ours on the corner rather than in
25 the middle, we thought that everybody would

1 rather have a straight line and
2 continuation of retail space. From a
3 leasing perspective it makes sense because
4 people will come to you and they'll ask you
5 how much space you have and then they
6 determine how much of that they want, and
7 we're seeing a growing trend where people
8 want larger spaces. If a restaurant wants
9 to come in we felt it was better to have a
10 continuous space for the retail and the
11 lobby -- the lobby gets moved over to the
12 corner. So that's the intent. There is no
13 prohibition to having a lobby space on Kane
14 Concourse, we just can't use that space to
15 actually have a church service. Do you
16 understand the difference?

17 MR. HURWITZ: Yeah. Scott, do you
18 want to say something or Stanley? I
19 understand the difference but I think they
20 want -- I think Alan's asking a legitimate
21 question, you know, things come before us
22 and we're really not supposed to be in
23 position to judge whether or not something
24 meets code or not, that's not our job, so
25 when anyone on the board, or Alan in this

1 case, makes a legitimate question and
2 someone raised the issue, appreciate that,
3 you know, perspective and input, but, you
4 know, I'd like the town to tell us whether
5 or not that's --

6 MR. SCOTT: It meets the town code.
7 The code says that you can't have any
8 residential or those type of uses on ground
9 floor, lobbies are certainly allowed, you
10 just can't have, again, residential uses
11 facing the front. Now, I know this isn't a
12 residential use, it's a church, religious
13 establishment, but lobbies are allowed at
14 ground floor on Kane Concourse.

15 MS. HUBER: And I -- we are going --
16 this meeting's taking much, much longer
17 than I think anyone expected and I just
18 feel this is the most appropriate time to
19 reiterate to you that your staff spent
20 months reviewing this project and your
21 staff report is clear and unequivocal that
22 we meet all of the criteria of your zoning
23 code, so we are here, we're happy to
24 discuss the appearance, we're happy to
25 discuss the architect, but to the extent

1 there is a question regarding whether or
2 not this building, this church and this
3 retail space meets your code, your staff
4 has found that we meet the criteria of your
5 code.

6 MR. HURWITZ: Thank you so much for
7 your input. Any other questions?

8 MR. BECHIK: No.

9 MR. SKLAR: Bernard, the two loading,
10 are these trucks?

11 MR. ZYSCOVICH: Yes.

12 MR. SKLAR: Is this going to be for
13 the privately -- the trash is going to be
14 privately serviced?

15 MR. ZYSCOVICH: Yes.

16 MR. SKLAR: But do you need two trucks
17 to service --

18 MR. ZYSCOVICH: We put two truck
19 because best of my knowledge the code
20 requires two trucks.

21 MR. SKLAR: Because with them it
22 usually has the compactor pick up the
23 trash.

24 MR. ZYSCOVICH: But that's not the
25 purpose of the loading bay. The purpose of

1 the loading bay was to meet the loading bay
2 requirement.

3 MR. SKLAR: And that shaft, is that a
4 trash shoot or --

5 MR. ZYSCOVICH: It's not a trash
6 shoot.

7 MR. SKLAR: The shaft that's next
8 to --

9 MR. ZYSCOVICH: It's a mechanical
10 shaft.

11 MR. SKLAR: Mechanical shaft but it
12 has an opening in the front.

13 MR. ZYSCOVICH: I stand correct, it is
14 a trash shoot.

15 MR. SKLAR: There is no trash shoot
16 there.

17 MR. ZYSCOVICH: I don't think it's a
18 trash shoot, it's a mechanical space. I
19 don't know what that's for I think it's an
20 air handler and the access is to get access
21 to the air handler.

22 Does this board review the interior of
23 the building layout?

24 MR. SKLAR: In which way?

25 MR. ZYSCOVICH: It's fine by us I'm

1 just surprised by the nature of that
2 question.

3 MR. SKLAR: We do sometimes, it could
4 affect the exterior of the building.

5 MR. GAVCOVICH: The tower doesn't
6 have -- you mentioned a company that
7 doesn't have bells.

8 MR. ZYSCOVICH: No.

9 MR. GAVCOVICH: The finishing so side
10 of the tower walls.

11 MR. ZYSCOVICH: We're looking to paint
12 that a bluish color and have it grow.

13 MR. GAVCOVICH: On both sides, both
14 interior sides?

15 MR. ZYSCOVICH: Yes, throughout.

16 MR. GAVCOVICH: The sidewalk that's
17 being -- that's shown in the -- on Kane
18 Concourse is it continuing in the same
19 pattern or materials that we have?

20 MR. ZYSCOVICH: Yes, whatever street
21 standard you have, continue them.

22 MR. GAVCOVICH: Can't do it better?

23 MR. ZYSCOVICH: Or do better.

24 MR. FRANKEL: That was a contest word.

25 MR. SKLAR: Are these the colors going

1 to be used in that --

2 MR. ZYSCOVICH: That's our first
3 thought, we're looking at these colors,
4 yes.

5 MR. SKLAR: Which is like a light
6 gray?

7 MR. ZYSCOVICH: It's a light gray with
8 a blue interior.

9 MR. GAVCOVICH: You are going have to
10 I assume -- well, I should ask, is there
11 going to be lighting on the lawn turf?

12 MR. ZYSCOVICH: We're going to have
13 the required foot candle lighting for
14 someone out there at night, yes.

15 MR. GAVCOVICH: Is that something
16 we're going to see from the street?

17 MR. ZYSCOVICH: Our intention is not
18 to see it from the street, we just want to
19 put it on the ground.

20 MR. GAVCOVICH: What about on the
21 upper roof where the labyrinth is?

22 MR. ZYSCOVICH: Same story, we don't
23 want to have poles we just want to have
24 light on the deck.

25 MR. GAVCOVICH: What about the --

1 what's happening in terms of -- you have --
2 I thought there was a lighting plan
3 somewhere and I wasn't really clear what
4 was being shown.

5 MR. ZYSCOVICH: Our intention is to
6 continue your city standard on the outside.

7 MR. GAVCOVICH: Okay.

8 MR. HURWITZ: The balcony space off of
9 the, I guess, which faces East Bay Harbor
10 Drive --

11 MR. ZYSCOVICH: Yes.

12 MR. HURWITZ: -- is that partitioned
13 off or is there a wall?

14 MR. ZYSCOVICH: There is a wall there
15 along the edge with landscaping.

16 MR. HURWITZ: How high is that wall?

17 MR. ZYSCOVICH: I think it's a 48-inch
18 wall with landscape planters. It's a
19 double wall with the planter inside. It's
20 the same as what's on the other deck.

21 MR. HURWITZ: On the Kane Concourse
22 side?

23 MR. ZYSCOVICH: Yes.

24 MR. HURWITZ: But there's no trellis
25 there?

1 MR. ZYSCOVICH: No trellis there.

2 MR. GAVCOVICH: The stair that's at
3 the northwest corner that Oscar was talking
4 about and the door that he was referring
5 to, that's stair is a eight-foot wide
6 stair, eight-foot wide for each leg I
7 should say, right?

8 MR. ZYSCOVICH: I don't recall the
9 dimensions.

10 MR. GAVCOVICH: There was -- somewhere
11 I saw -- I guess the question is --

12 MR. ZYSCOVICH: Sounds about right.

13 MR. GAVCOVICH: In this stair in the
14 floor plan we're not seeing up and down on
15 the same -- we're not seeing the two switch
16 back we're seeing just the one way down on
17 the ground floor, for example. The reason
18 I ask --

19 MR. ZYSCOVICH: On LH101 it's a switch
20 back. It is a switch back. On the ground
21 floor you're just seeing the end.

22 MR. GAVCOVICH: The end but not of the
23 switch back? We're just seeing that whole
24 width is going down. That means you're
25 going to need more than the one door. I

1 guess if the stair is designed for that
2 capacity it's not going to go out the same
3 door.

4 MS. ZYSCOVICH: Yes, you're right.

5 MR. GAVCOVICH: That's going to have
6 to be a double door. I don't know if the
7 same thing applies on the corner stair but
8 I guess all of those wide stairs.

9 MR. ZYSCOVICH: We're going to have to
10 make sure all the doors have ample exit
11 length, you're right.

12 MR. GAVCOVICH: I don't know if that
13 makes a difference in terms of -- I know
14 Oscar was saying that he didn't want so see
15 that door on that plane but I don't know if
16 the double door is worse or not.

17 MR. HURWITZ: Does it make any sense
18 to consider a trellis in that back area to
19 kind of soften up that side and then kind
20 of tie into the front or no?

21 MR. ZYSCOVICH: For the side wall on
22 East Bay?

23 MR. HURWITZ: Specifically the area
24 where you have that balcony.

25 MR. ZYSCOVICH: Yeah, well, the

1 trellis makes sense because we have nothing
2 overhead facing Kane Concourse, but the --
3 it's more of a carve out.

4 MR. HURWITZ: I just didn't know if
5 that -- yeah, to sort of soften up -- for
6 that whole facade side there is just I
7 think is something that brings in the
8 element in the front, it kind of softens it
9 up a little bit. I understand you said the
10 rendering of the trellis for how much it
11 undulates.

12 MR. ZYSCOVICH: We could put a trellis
13 there.

14 MR. HURWITZ: The area over here,
15 there's a balcony here, I was trying to
16 soften up this area, this whole facade.

17 MR. PHILLIPS: Which balcony are you
18 talking about?

19 MR. HURWITZ: East Bay Harbor Drive.

20 MR. PHILLIPS: So there are trees
21 which are being used for the required
22 street -- for the site tree requirement.

23 MR. HURWITZ: On the upper?

24 MR. PHILLIPS: Which is allowed by the
25 Miami-Dade County code, you're allowed to

1 have trees on the --

2 MR. ZYSCOVICH: We could have a
3 trellis between the trees?

4 MR. PHILLIPS: Yes, but it wouldn't
5 be --

6 MR. HURWITZ: I understand.

7 MR. GAVCOVICH: That is an element on
8 that side.

9 MR. PHILLIPS: That's fine.

10 MR. ZYSCOVICH: We don't object to
11 that.

12 MR. HURWITZ: You could do the same --
13 does it have to be on that street scape or
14 could it be on the top, your trees?

15 MR. ZYSCOVICH: The trees on the top
16 make it part of the inaccessible roof area,
17 we want people to be able to maintain the
18 trees and deal with them, notice if
19 something is wrong.

20 MR. HURWITZ: Okay.

21 MR. GAVCOVICH: Up on the roof on
22 A104, the rooftop mechanical area, or I
23 guess could you describe, you have the pale
24 yellow and the darker yellow, what are we
25 seeing, what's the difference in those two?

1 MR. ZYSCOVICH: The darker yellow
2 except for where it says rooftop mechanical
3 area is accessible space to the
4 congregation. The rooftop mechanical area
5 is for the mechanic to be able to access
6 the area. So we would have to identify a
7 gate that access across the roof into the
8 mechanical space so it's basically a
9 rooftop.

10 MR. GAVCOVICH: On the next sheet,
11 A105, you're showing the equipment above.

12 MR. ZYSCOVICH: No that's on the same
13 plane.

14 MR. GAVCOVICH: You have the roof
15 levels you're noting at 44.

16 MR. ZYSCOVICH: Actually it sticks up
17 higher because we're hiding the equipment.
18 That's probably what you're reading. See
19 on A202 on the lower elevation where that
20 darker color is?

21 MR. GAVCOVICH: Right.

22 MR. ZYSCOVICH: That's the upper edge
23 of what you're looking at for the rooftop.

24 MR. GAVCOVICH: But the equipment is
25 not at the 50-foot elevation it's at the

1 40-feet elevation?

2 MR. ZYSCOVICH: Yes.

3 MR. GAVCOVICH: And the screen around
4 that is the same screen you're using
5 throughout the -- on Kane Concourse and the
6 garage middle screening, the bronze?

7 MR. ZYSCOVICH: We weren't planning on
8 that we were -- it's basically invisible.
9 We were thinking just make a wall and
10 screen it in.

11 MR. GAVCOVICH: I'm just looking how
12 you showed it on A201 and it seems like it
13 was sort of shown at least in color --

14 MR. ZYSCOVICH: Yeah, it is shown the
15 same way. I'll have to talk to Roberto
16 about that.

17 MR. GAVCOVICH: Talk about that
18 screening on Kane Concourse above the
19 storefronts.

20 MR. ZYSCOVICH: That's a custom
21 fabricated metal mesh.

22 MR. GAVCOVICH: And what's happening
23 on the second level?

24 MR. ZYSCOVICH: That's administration
25 of the church is looking through the mesh.

1 MR. GAVCOVICH: So you have a window
2 there?

3 MR. ZYSCOVICH: You have a window
4 behind the mesh.

5 MR. GAVCOVICH: How deep is that
6 because again when you look at the scale
7 drawing it's a little difficult? So your
8 plan all you're seeing is what looks like a
9 native black wall, a wall, is the window
10 and mesh all higher than 90 inches or is it
11 recessed?

12 MR. ZYSCOVICH: Not recessed.

13 MR. GAVCOVICH: It's nice on the
14 rendering, it seems to be that that screen
15 is -- it has a little depth to it.

16 MR. ZYSCOVICH: Our intent because of
17 maintenance is to see how we can apply a
18 mesh to the window wall so that we don't
19 have an inaccessible area to be able to
20 deal with the window, so you could wash the
21 window through the mesh if it's part of the
22 same build up, that's what we're thinking.
23 Again it's something we have to detail and
24 we don't have those details at this point.

25 MR. GAVCOVICH: If you look A402,

1 A403, there's a pretty nice depth and I
2 think it adds to the scale, I guess, of
3 that storefront, that facade. You really
4 see it more on 403 probably.

5 MR. ZYSCOVICH: See here the deduction
6 of the glass? I mean what we were looking
7 for was like glass disks to appear between
8 the mesh. If we create a space there then
9 the question becomes how does somebody get
10 in between the mesh and the glass.

11 MR. GAVCOVICH: I guess what I'm
12 saying is the mesh seems to be at least a
13 foot --

14 MR. ZYSCOVICH: I'm sorry, I'm
15 misunderstanding you, Jerry. The glass it
16 is all back behind the thickness of the
17 wall. There's a thickness of wall and the
18 storefront is behind that. I misunderstood
19 you.

20 MR. GAVCOVICH: You will be able to
21 achieve that depth that we're seeing
22 because that's probably more than eight
23 inches.

24 MR. ZYSCOVICH: Yes, we will. We'll
25 have a deeper thicker wall.

1 MR. GAVCOVICH: I know we talked about
2 the cross and whether it's a sign, whether
3 it's not a sign and I'm not suggesting one
4 or the other. I have -- I had a concern of
5 it being at such a prominent location as
6 you enter Bay Harbor. That to me is --
7 that corner with those two corners directly
8 across where the retail is is more
9 significant corner of Bay Harbor than even
10 the two that are closer that are on the
11 water, because as you come over the bridge
12 you almost pass, or you maybe pass these
13 two buildings, maybe I'm not really seeing
14 it because those building aren't there yet,
15 those other ones are just one story, but I
16 think this corner where you're building
17 this project is a very significant corner.
18 I don't know if this is even an issue that,
19 you know, whether we have anything to say
20 on this, is it an expression -- a religious
21 expression that can't be restricted. I
22 just think whether regardless of religion
23 it's just so in your face, and whether it
24 was a Jewish star, a cross, to me it's a
25 little strong.

1 MR. ZYSCOVICH: That's why we did it
2 this way. We were concerned -- well, look
3 at this one.

4 MR. HURWITZ: It's not different than
5 the concern we had with the replacement of
6 the sign for Cadillac, it doesn't matter
7 what the expression is, I mean, it's a
8 matter of what the emblem is and it's
9 substantial size.

10 MR. ZYSCOVICH: Maybe I'm wrong but
11 maybe this answers a bunch of different
12 questions. I think from this drawing
13 you're going to appreciate several things.
14 If you just let your eye go to the street,
15 at least my eye, what I pick up is the
16 retail. By virtue of pushing it back,
17 which we didn't have to do, it was because
18 we wanted to make sure that the church can
19 still have it's tower, it's campanile,
20 whatever is the, you know, bell tower,
21 whatever word you prefer, we intentionally
22 created the vine and accentuated the retail
23 for exactly that reason because when you
24 look at it from this overall point of view
25 you don't actually do that.

1 When I show you the next drawing you
2 do because we've intentionally zoomed the
3 camera in to the corner of the building
4 that we're trying to show you is the
5 architectural expression of that corner.
6 But when you come across that bridge and
7 you imagine those buildings that have
8 already been approved or something like
9 them already there you really have to look
10 for what the tower is telling you because
11 everything else is -- I believe is much
12 more prominent. And that was the intent of
13 the exercise because not withstanding the
14 rules and the laws which as you can tell
15 we're really working hard to make sure we
16 don't cross, we actually have the church as
17 the client, we have the retail as an
18 objective and we have the village and its
19 rules as a way of managing those
20 expectations, and one of the things that we
21 were very careful to do was rather than
22 bring the bell tower right to the corner we
23 pushed it back, we wanted the street scape
24 of retail to be more prominent. As you
25 drive and approach that corner we want the

1 bell tower to be more prominent because
2 that is the expression of the church.
3 Everything else about the church is fairly
4 understated as you said.

5 So this has really been a part of very
6 methodical, logical reasoning as to why we
7 pushed the building back, why we created
8 the plaza, why we created the negative
9 space, we're trying really hard to make
10 sure we address the intent that everyone
11 has put forward. It's a little bit
12 complicated when you're not allowed to have
13 the church use on the ground floor and you
14 can't really mix those uses in the way you
15 might normally want to, but I think that we
16 have found at least from our point of view
17 a means by which we can pull all those
18 together, but that is exactly why we
19 commissioned this rendering because when
20 you come across the bridge and you imagine
21 the buildings there it's not going to be as
22 prominent as you think. Anyway that's our
23 point.

24 MR. FRANKEL: This rendering, I had a
25 problem with that because that's not a

1 bridge, that's not what you see when you
2 come into Bay Harbor, and to amplify what
3 Jerry said, this board spent a lot time, I
4 think this is the gateway to Bay Harbor, we
5 spent a lot of time with all the properties
6 here and when the Cadillac folks came here
7 and their tower is further back off the
8 street, you know, I for one had -- if I had
9 a choice at that time I would have said do
10 away with it because when you come into Bay
11 Harbor as it exists that really throws you
12 off. You see this -- whatever symbol is on
13 there you see this tower rather than the
14 beautiful entranceway that you're trying to
15 create. If it was up to me I'd move that
16 tower further back so it's less pronounced.

17 MR. ZYSCOVICH: Well, I mean, this is
18 not the bridge this is the first block.
19 This is not taken from the bridge this is
20 taken from your first block after you've
21 crossed the bridge. This building is in
22 the foreground and it's in front of this --

23 MR. GAVCOVICH: You're -- at this
24 point where that car is it's not flat you
25 are coming down the bridge.

1 MR. HURWITZ: Yeah, it's not -- you're
2 on a bridge right now.

3 MR. ZYSCOVICH: Right, but it's a
4 fairly shallow bridge. But the point is
5 let's not argue the bridge, I'm just making
6 the point that you have, what is that a
7 five-story building on each side?

8 MR. GAVCOVICH: No, more than that.

9 MR. ZYSCOVICH: Six or seven. What we
10 have is a 45-foot high building, you know,
11 it's very traditional with American
12 architecture and it has the church on Main
13 Street, it has the steeple. I mean, we are
14 not really outside the bounds of what you
15 would normally expect to see. It's
16 appropriate in terms of the traditional
17 architecture, the traditional retail.

18 I guess I don't agree with that
19 comment. I think it's not a negative to
20 have that be part of the visualization
21 because it's simple, it's understated, it's
22 elegant and it doesn't take anything away
23 from the street experience. To try to push
24 it back and have the rest of the building
25 come forward at least in my view I think

1 it -- well, first of all, it's not what the
2 church would like to have happen, but
3 beyond that I think there's something kind
4 of nice about the change in the scale and
5 the announcement. I mean, it's not a
6 question of religion, I agree with you, it
7 doesn't matter what it is, I'm just saying
8 this is an iconic bit of the building that
9 defines a gateway in the most traditional
10 way. That's how gateways normally are
11 defined is by some kind of pronouncement.
12 So we could agree to disagree about that,
13 but that's why the only point I'm making is
14 it's not the first thing that you see when
15 you come across the bridge. You have your
16 peripheral vision occupied with bigger
17 buildings and you're looking down the
18 center of the street and you have your
19 retail experience and over time I'm
20 convinced that this is going to be a
21 thriving retail street, I have no doubt
22 about it.

23 MR. HURWITZ: Stanley.

24 MR. PRICE: Mr. Chairman, let me -- as
25 I said, this issue was raised with me for

1 the first time in determine what's a sign
2 and what's a architectural feature. Mike
3 Miller who's the town planner who I have a
4 lot of respect for has determined this to
5 be an architectural feature. I would like
6 the opportunity to talk to Mike about it,
7 but while I was hearing this presentation
8 this evening Frank and I went on our
9 computers and we found some recent United
10 States Supreme Court decision which talks
11 about content neutral signage and the
12 question is whether the town code is
13 content neutral. I believe that it is,
14 however, there seems to be an inconsistency
15 in the code since we only permit places of
16 public assembly on the second floor. We
17 have another provision of the sign code
18 that says no signage shall identify the use
19 on the second floor. There is an
20 inconsistency there and that inconsistency
21 troubles me in terms of the remover
22 standards which I eluded to earlier this
23 evening, and fortunately without delaying
24 this project if we determine this is a sign
25 it still has to come back to this board

1 because of the size. This is more than
2 30 square feet. At least the scale is, I
3 believe it is, Bernard, you can tell me the
4 measurement -- if this is a sign is this
5 greater than 30 square feet?

6 MR. ZYSCOVICH: I don't know, I'm not
7 sure it is because we went to great lengths
8 to make the cross narrow.

9 MR. PRICE: It looks more than five by
10 six.

11 MR. ZYSCOVICH: If you are measuring
12 the cross it's not. See, this is an
13 important distinction, what we're doing is
14 we're cutting a hole in the wall we're not
15 applying a sign.

16 MR. PRICE: You can cut a hole in the
17 wall indicating "Church by the Sea" but
18 that's still a sign. And what I would like
19 to do is I'd like to discuss with Mike at
20 greater length why he reached that
21 conclusion, and whatever that conclusion is
22 it has to come back to you anyway. I
23 believe you measure signs from the top to
24 the bottom and sideways and that's how you
25 determine, you don't just measure a -- and

1 once again the question is and what's
2 troubling me, is if this was not a cross,
3 if this was just three articulated lines
4 just for air passage through that wall is
5 that any less of an impact than a cross?
6 We all know what a cross symbolizes but the
7 three dashed lines which are carved into
8 the wall have the same impact, and I
9 suggest they have to come back to you with
10 a signage plan so whatever approvals you
11 get tonight could be subject to that future
12 thing. I would like counsel for the
13 applicant to try to enlighten me why they
14 believe this is not a sign.

15 Many jurisdictions which I deal with
16 specifically in their code exempt religious
17 symbols from the signage code, the town of
18 Bay Harbor does not do so. So we have a
19 lot of competing forces here and I'd like
20 the opportunity to give you a more thorough
21 analysis, but you don't have to do that
22 tonight, that could be passed onto when
23 they come back to you with the signage
24 package.

25 MR. BECHIK: I would like to also talk

1 about the architectural element and the
2 tower because for me that's a gateway
3 entrance to the city, so I would like to
4 understand the reasoning on the design how
5 you came up to put it on that corner as
6 opposed to, for example, right above the
7 loading entrance or why it's not aligned to
8 the other tower that you have for the
9 stairs, why they don't all align, I would
10 like to understand that architectural
11 process.

12 MR. ZYSCOVICH: I understand that.
13 First of all, it's not designated as a
14 gateway block so you can confirm that but
15 that's my understanding. And then secondly
16 as an architect we would never put the
17 tower that represents the symbol of the
18 building over the loading dock or behind
19 the building where you can't see it. It's
20 actually the opposite. The whole idea of
21 every single historic city that you go into
22 the campanile, the tower, the bell tower is
23 always on the corner, it's always visible,
24 it's always a symbol. And I agree with
25 Stanley that he needs the time to move

1 forward with this, but when you look at the
2 piece that says "Church by the Sea" it
3 complies, as we know, within the sign
4 ordinance. This is about taking the corner
5 of the building where the uses can only be
6 above the ground and creating an
7 architectural feature that in a -- from,
8 again, it depends on the eye of the
9 beholder, from a discreet point of view
10 creates a very simple architectural
11 statement that has nothing but light and
12 air inside of it and establishes the
13 purpose of the building.

14 If we were to take this and push it
15 somewhere else, then at what point do we
16 ever have an opportunity to create a
17 purpose of a building. I mean, me
18 personally, I'm Jewish, it's very
19 traditional to have arches on synagogues.
20 I can tell you many synagogues that have
21 been designed with shooting angles and
22 spires and, you know, the point is that
23 where as we're not here to differentiate or
24 go against the issue of use, I don't think
25 that the idea of a board like this or an

1 architectural review is to somehow diminish
2 the architectural feature that symbolizes
3 what happens in that use.

4 So from my point of view this is a
5 very clear and appropriate use of a tower
6 that basically symbolizes what's happening
7 in the bulk of the building. If we took it
8 away and we moved it away and we're not
9 allowed to have a sign in what way does the
10 church actually define it's presence on the
11 street. I don't think that there's a
12 precedent, frankly.

13 MR. BECHIK: I'm not talking about
14 removing that element but I seen some like
15 bell tower that sometimes in the corner,
16 sometimes are in the middle of the
17 structure so just wanted to understand --

18 MR. ZYSCOVICH: You're right, when
19 they're in the middle of the structure it's
20 because they're symmetrically placed in a
21 plaza. When they're on the corner of a
22 city block they're almost always on the
23 corner. This is not a symmetrical
24 architecture, we don't control the entire
25 block, so our point of view was let's set

1 it back, let's make it more discreet, back
2 to the idea of this rendering, let's have
3 it become contextual in terms of the
4 heights that are around it and -- but we
5 still as architects and also on behalf of
6 our client we want to be able to be sure
7 that we can recognize the purpose of the
8 building, and the traditional way to do
9 that for a church is to have a vertical
10 spire. But we've gone out of our way not
11 to be derivative, not to be historically
12 copying, you know, there is an element here
13 that's inventive and discreet and I think
14 that this is maybe what we thought the town
15 would be looking for, not something in your
16 face, not something that's screaming out at
17 you in terms of what it is, it's a very
18 simple discreet shape and form. Light is
19 going to hit it in the morning, it's going
20 to illuminate the back wall, at different
21 times of the day the light is going to come
22 through that void in different ways, it's
23 going to be attractive, it's going to be
24 full of light and it's simple.

25 I mean, we've been talking about it

1 all night, I don't know what else I can
2 tell you, but that was how it came about
3 because we spent a lot of time in the
4 office because, you know, the church has as
5 you know been looking for a home for a
6 while and there have been many
7 architectural expressions that are almost
8 baroque, almost, you know, unbelievably
9 decorative and we had discussions about it
10 and we felt that the best expression here
11 on the context of the town and the retail
12 corridor is to have a simple understated
13 discreet expression but we still need an
14 expression. That's how it came about.

15 MR. SKLAR: I personally like the idea
16 of the cross being a void in the wall. I
17 think that was a very ingenious way of
18 doing it and, in fact, that will reflect in
19 the back wall, the shadow of it or the sun
20 or whatever I think is a good idea. I see
21 in the elevations in April 1 I think that
22 proportions are going to be very important
23 even though we are not approving right now
24 whether it's a sign or not a sign, but the
25 proportions are different in the two

1 elevations, one right on top of the other,
2 the one that's color and the other one
3 that's --

4 MR. ZYSCOVICH: Yes.

5 MR. SKLAR: -- right.

6 MR. ZYSCOVICH: Well, I think what
7 you've identified is how many time we've
8 touched these drawings. So, you know,
9 you're right about that.

10 MR. SKLAR: I like the proportion of
11 the one on the bottom better than the one
12 on top.

13 MR. ZYSCOVICH: Which I think is
14 reflected here. The bottom, you mean the
15 longer one? You like the longer one
16 better?

17 MR. SKLAR: I do personally.

18 MR. ZYSCOVICH: Me too. My opinion
19 that's the one we've reflected here.

20 MR. SKLAR: I can't --

21 MR. ZYSCOVICH: Maybe it should be a
22 little bit longer. But we're not here for
23 that but we've had a lot of discussion why
24 it's there. And, you know, if you have any
25 other comments we're happy to take them.

1 MR. SKLAR: I would like the retail to
2 extend a little more towards the corner so
3 that we have more glass and more retail
4 facing Kane Concourse stopping before the
5 tower.

6 MR. ZYSCOVICH: I'm just trying to
7 understand. Let me just give you a
8 scenario. We're going to have a beautiful
9 interior for the stair and we were to take
10 this form and move it another five, six,
11 eight, whatever looks right, you just pull
12 this, I think, Oscar, that's what you're
13 saying is that rather than have this form
14 slide we proportion and come to that edge,
15 I think we could do that, I don't think it
16 takes away --

17 MS. HUBER: There's a variety of
18 reasons that that's not acceptable. Number
19 one, it takes away any lobby space or
20 entrance into the church and basically
21 dwells it down to next to nothing. And,
22 number two, to the extent that you
23 increased the square footage of the retail
24 that would require additional parking and
25 we're back into the same position with

1 needing a second level of parking so that
2 is not an acceptable condition to the
3 church.

4 MR. BECHIK: Just to clarify, for me I
5 think that's an emergency exit, that's not
6 an entrance to the church, and having front
7 corner usage as a emergency exit stair as
8 opposed to having more retail that the
9 community can use I am aligned on that
10 direction as well. I would like to see
11 possibly more retail on Kane Concourse.

12 MS. HUBER: I don't believe it's
13 within the purview of this board to dictate
14 that we provide additional square footage
15 of retail. They're here to deal with the
16 architecture and the design, not to
17 regulate the use of the building.

18 MR. PRICE: That may be so but they
19 have a right to comment on the
20 architectural design and that is part of
21 the architectural design. They can't force
22 you into a variance, if that's what you're
23 saying I agree with you, but what they're
24 trying to do is get more a situation of the
25 retail space.

1 MS. HUBER: They're trying to expand
2 the retail space.

3 MR. PRICE: There could be other ways
4 of doing it. Could round the corner off
5 without increasing the square footage of
6 the retail.

7 MS. HUBER: But that's not what
8 they're suggesting.

9 MR. PRICE: I agree with you they
10 cannot compel you to get into a variance
11 situation but I think the comment is --

12 MR. HURWITZ: I'm not going to speak
13 for anyone on the board but I can speak for
14 myself and I can tell you what I'm hearing,
15 it's not that anyone is trying to dictate
16 use and add square footage.

17 MR. ZYSCOVICH: Can I make a proposal
18 to you?

19 MR. HURWITZ: They're looking for more
20 of the retail feel which everyone commented
21 in the beginning.

22 MR. ZYSCOVICH: Here's an idea. I'm
23 going to just check with the church and
24 make sure we're okay.

25 Here's the idea, if we were to pull

1 this forward to this point we can take away
2 some small amount of square feet so we keep
3 the retail amount the same, on the back
4 where the loading dock is we just carve it
5 out and push this forward, we keep these
6 windows, we keep the bell tower and we pull
7 the retail to this point, we could agree to
8 that.

9 MR. GAVCOVICH: What do you think in
10 terms of the proportions of that corner
11 when you do that?

12 MR. ZYSCOVICH: I think it's good. I
13 think it's good because the stairway in
14 here, as you mentioned, Jerry, gets
15 complicated with this, you know, treatment.
16 The idea that we're removing some of the
17 blank wall and we're allowing this to
18 become the glass statement, this is the
19 statement of open space, I think it doesn't
20 hurt at all because if you look at the plan
21 this is already wrapping the building, and
22 to have it wrap a little more and increase
23 the amount of --

24 MR. GAVCOVICH: In terms of the
25 proportions of the corner and the open

1 space that corner creates it's going to,
2 you know, it's much smaller.

3 MR. ZYSCOVICH: I don't see it as much
4 smaller, I think we're talking about five
5 feet, six feet. I don't really see it much
6 smaller, I don't think you're going to have
7 a perceptible difference. You're still
8 going to see the vertical element behind
9 where the stair tower is coming through.
10 Listen, I respect this conversation and I
11 think that what Oscar is lobbying for is a
12 little more visibility of retail and I
13 think it doesn't damage our client as long
14 as it's part of the same conversation that
15 we retain the bell tower in the condition
16 and situation that we have it then I think
17 that we establish both objectives which is
18 a good thing if we can. I mean, keep in
19 mind we're down to talking about 40 square
20 feet of a building. Will there be a huge
21 change one way or another, I don't think
22 so, but what we would do with the facade is
23 we would just re-proportion the same glass
24 opening with the neutral peers and
25 everything would remain the same and it's

1 just an adjustment.

2 MR. HURWITZ: The signage was, it's
3 not part of this submission but I think you
4 mentioned that it was and it's specifically
5 called out as to the, I didn't see the
6 size, but the lettering, is the "Church by
7 the Sea" what is proposed?

8 MR. ZYSCOVICH: All we're saying is we
9 have considered it, it's not part of this
10 application because we need to be able to
11 move forward with the planning and design
12 of the building and we'll come back for
13 different signage approval so that we don't
14 have to go through that process at the same
15 time. You will have the same discretion
16 that you have today to have us do --

17 MR. HURWITZ: So it's specifically the
18 "Church by the Sea" lettering or whatever
19 you would put --

20 MR. ZYSCOVICH: Yes.

21 MR. HURWITZ: -- the name of the
22 building, whatever it may be, and, Stanley,
23 you were saying you want to have a
24 conversation as to whether or not this
25 cross is part of their signage or not?

1 MR. PRICE: Correct. I may want to
2 have a conversation with the manager, it
3 may require a change in the board
4 discretion the ordinance of the town, but
5 that will give us plenty of time --

6 MR. HURWITZ: For a second --

7 MR. PRICE: The planning function and
8 the time when they come back with the
9 signage plan, that could be three, four
10 months from now and that will still give us
11 plenty of time to do what we have to do.
12 I'm concerned about the rule implications.

13 MR. FRANKEL: So the issue of the
14 signage, the symbol is separate and apart
15 from the architectural tower.

16 MR. PRICE: You could move a motion
17 tonight, you could specifically provide
18 that you're not deciding the issue of the
19 symbol or the signage.

20 MR. FRANKEL: So the tower would be
21 possibly approved tonight but not the
22 signage that would be on it?

23 MR. PRICE: That's correct. But
24 that's up to the board.

25 MR. HURWITZ: It doesn't sound, and

1 I'm not trying to get involved in legal
2 issues, trust me, but it sounds like you're
3 not comfortable that we can approve that
4 sign. That has to come back as 100
5 percent, has to come back as part of the
6 signage package.

7 MR. PRICE: I always try to get a
8 decision of a board that is supportable in
9 court if it's challenged and I am not 100
10 percent comfortable today that if you make
11 a decision to treat it one way or another
12 whether it's defensible, it's an honest
13 opinion.

14 MR. HURWITZ: Okay. Any other
15 questions, comments, motions seeing as the
16 signage is coming back under a separate, so
17 there were some proposed changes to the
18 green wall, if you will, moving it closer
19 to the staircase to carry more of the
20 retail feel along Kane Concourse, have a
21 trellis over the back and any other
22 changes.

23 MR. GAVCOVICH: I know we just -- what
24 I thought more articulation or more
25 development of the east, primarily the east

1 side I think the trellis would help quite a
2 bit. It does seem very flat to me even
3 though there is some change in depth in the
4 different elevations, different floors, I
5 think that's something that needs to be
6 looked at further.

7 MR. HURWITZ: Okay. Comments,
8 questions, motions?

9 MR. GAVCOVICH: I'd like to see these
10 changes that are being proposed come back.

11 MR. HURWITZ: Bernard, would you be
12 amenable to making those changes and coming
13 back to --

14 MR. ZYSCOVICH: I mean, no disrespect
15 intended, I've been doing this a long time,
16 I've been in your position in every city in
17 this community. To make the changes is no
18 problem. To really ask us to come back to
19 insert the same trellis that we're showing
20 you on the other facade and to move the
21 wall five feet I think is a bit of a reach
22 in my humble opinion. I don't see why you
23 couldn't allow us to work with staff to
24 ensure that that is done. So, I mean, if
25 you -- you're the board, we know how the

1 system works, but, I mean, truthfully these
2 are minor changes, we're happy to make them
3 and you can rely on us to make them, if you
4 make a condition I'm sure that your staff
5 will ensure that it happens, but, I mean,
6 really you want us to come back for the --
7 I mean, just seems like a lot to me to come
8 back for. You know, like I said, I tell
9 you the truth, if I were in your shoes I
10 wouldn't make you come back, just say
11 please do this and ensure that it happens
12 because what you're asking for is
13 relatively minor in the scheme of all these
14 things.

15 MR. BECHIK: Something I would like to
16 see is how the bell tower element would
17 look or pointing in the east facade how it
18 would look where it is, how it would look
19 in the middle of the building, how it would
20 look right above the lobby. I would like
21 to see how those options would look because
22 some board members mentioned they want to
23 research that to make an appreciation from
24 the retail and so I would like to see some
25 options on the tower bell how they would

1 look on the --

2 MR. GAVCOVICH: I'm not sure that we
3 can ask the applicant to come back with
4 options. They've got to come back with a
5 design that they think is most appropriate
6 and I guess satisfies our comments and for
7 them to, you know, we approve. I mean,
8 it's not, you know, make them come with
9 different options, we have different
10 opinions and it's not going to go anywhere.
11 I mean, if there's something -- I know what
12 we talked about, like you said, is breaking
13 that tower from the facade of the stair,
14 whether it's a shift one way or another
15 would also be important. The reason for
16 coming back for maybe a minor shift, I'm
17 not certain if that increase in retail is
18 going to be an improvement on that corner,
19 I'm not sure that's best that we --

20 MR. ZYSCOVICH: Well, listen, I mean,
21 this is what we designed, Oscar made some
22 good points but since the two of you don't
23 agree there's no way we're going to have a
24 consensus to please both of you. I think
25 everyone here has a bit of a minor

1 deviation in terms of what they're talking
2 about, but what we're after is something
3 where you can agree that this project
4 addresses, you know, the intent of the
5 code, that it meets the steady guidelines.
6 I mean, your criteria are much more broad
7 than this conversation has been. If you
8 want to tell us when we come back with the
9 tower sign with the cross carved out that
10 you would feel better if it moves --

11 MR. GAVCOVICH: Well --

12 MR. ZYSCOVICH: Let me just finish.
13 If we could move it here or there as long
14 as the church agrees, we're talking about,
15 you know, nuance, I think we can always
16 work with you on nuance, but I'm not really
17 clear what Alan is asking when he says the
18 middle of the building because we would not
19 agree to move it off the corner. If what
20 you're asking is should we have a reveal
21 between the tower and the building, I mean,
22 I don't know how deeply you want to go into
23 this design review, but we would not agree
24 to moving it off the corner. This is the
25 nature of the building so, I mean, you're

1 the board as I keep saying but we have, I
2 think, proven our -- the degree and the
3 depth to which we've taken these
4 considerations and, you know, when we come
5 back for signs you can deal with the issue
6 of where the cross occurs in the wall and
7 all the other issues, but if you want it to
8 be this proportion and one of the other
9 board members wants the retail to move five
10 feet more, you know, you can tell us what
11 you would like but I can guarantee you I
12 already know what the rendering is going to
13 look like when I bring it back. We're all
14 design professionals that's how you got on
15 the board so I don't know --

16 MR. HURWITZ: I understand your
17 hesitation to moving it towards the middle
18 of the building, but you mentioned a reveal
19 or moving it even slightly more closer to
20 where the entrance is which is not really
21 on the corner but sort of offset, is that
22 something you have an architectural problem
23 with or no?

24 MR. ZYSCOVICH: I think if we saw this
25 as a mass and we took this and shifted it

1 slightly perceptively, not physically,
2 through a reveal that accomplish a shadow
3 line that reflects the edge of that wall
4 coming all the way down, I think that could
5 be very nice. To me that's why I'm an
6 architect, I mean, that's what we do we
7 design. If you want to tell me where every
8 reveal should go and all of that I think
9 that's certainly your prerogative, but if
10 you leave it up to us as this is as a basic
11 concept that you can support I promise you
12 that we're not going to, you know, we would
13 never do that neither would you, this is a
14 conceptual drawing for the purpose of
15 identifying what are the criteria and the
16 code, and today we've talked about very,
17 very, you know, in detail about details
18 that are not designed at this level. So I
19 think that you don't need to worry about it
20 is what I'm trying to tell you, but I don't
21 really want to say it in those words
22 because it means you have to rely on my own
23 ability and own talent. But I think that
24 the building has been studied and the tower
25 from my framework your approval would allow

1 us to continue the design intent and the
2 detailing so that we could put in reveals
3 and do studies that we will certainly do,
4 but, you know, short of that I don't really
5 know what else to offer.

6 We're not moving it, we already said
7 we're not moving. The conversation we're
8 having about is would it be better for the
9 tower to appear as if it's somehow floating
10 off the edge of the building.

11 MR. GAVCOVICH: The truth is and the
12 point has been made that's the right place
13 to put the tower. Whether it's one foot,
14 two feet, five feet, the corner is the
15 place for the tower.

16 MR. ZYSCOVICH: Maybe you could do
17 your motion that way, have your vote
18 according to that idea, maybe break your
19 vote down to two or three.

20 MR. GAVCOVICH: I had other issues
21 that, again, I'm concerned about that leads
22 to elevation and the extent of parking
23 that's along the east facade, you know, and
24 that's -- I'm not sure that you're going to
25 satisfy those concerns. I mean, hopefully

1 the facade you will be able to but I'd like
2 to see it.

3
4 MR. ZYSCOVICH: Make a motion.

5 MS. HUBER: I have to interject from a
6 legal perspective. I believe that the
7 board at this point in time is starting to
8 go beyond a little bit beyond what the
9 purview of the code and what it provides,
10 and again we've met the criteria of the
11 code, your staff has stated we met the
12 criteria of the code, I think to defer us
13 to come back on two minor conditions is not
14 only unfair but not in compliance with the
15 code that you can approve subject to
16 conditions, you've made those two
17 conditions very clear, but I think to defer
18 their approval to come back after being
19 here for three-and-a-half hours and
20 discussing this exhaustively is an unfair
21 burden to the church.

22 MR. HURWITZ: Okay. Let's try to wrap
23 up then. Is there a motion with conditions
24 or without conditions, or do we need to see
25 them come back to make those changes?

1 Anybody?

2 MR. BECHIK: I would like to see
3 how -- I don't think they're minor changes,
4 I would like to see with the changes we're
5 proposing how things would look.

6 MR. HURWITZ: Does anyone feel
7 differently? Okay. I'm comfortable, I
8 trust your judgment, I think you developed
9 a beautiful building and I would be
10 comfortable with the changes but I need a
11 motion, so if there's no motion then we're
12 going have to see it. I want to make sure
13 we're clear though because I think there
14 was more discussed than just the moving of
15 the wall and adding a trellis. Jerry,
16 you've mentioned a few other things, do you
17 want to just -- and I don't want to make
18 you go through the whole thing but I do
19 want to make sure because I don't think
20 they're being asked to come back for the
21 moving of a wall for like five feet.

22 MR. GAVCOVICH: Some of these things
23 aren't significant in terms of the
24 architecture like the sidewalk on the south
25 side. I'd like to see a little larger

1 drawing scale of the drawing again just so
2 we see some better detail and plane and
3 elevation. We talked about we're relying
4 on, you know, one of the -- like I said,
5 one of the nice things of the retail facade
6 is the depth of those what are called
7 storefront, the storefront, you don't see
8 in the plan, we're relying on you to if we
9 don't see it in the drawing to develop it
10 that way. You're not at staff level,
11 they're not going to -- we don't have the
12 staff that you may be used to in some other
13 cities where they have a larger staff and
14 they can get into some of the detail of the
15 architecture, so I think it's important for
16 us to see it because there's not another
17 level.

18 MR. ZYSCOVICH: Just to save myself
19 some grief, I mean, the point is this
20 rendering is part of the submission, we
21 could think of no better way to show you
22 what our intent is than the rendering.
23 This is what we're going to do, we're going
24 to draw you a detail that shows this.

25 MR. HURWITZ: Okay. I don't hear a

1 motion, is there any other comments?

2 MR. BECHIK: I would like to see how
3 the bell tower would look here at the
4 corner but where the entrance is.

5 MR. HURWITZ: Offset. It's not in the
6 middle of the building, off the corner but
7 offset.

8 MR. HURWITZ: You want to wrap up or
9 any other comments? Okay.

10 MR. ZYSCOVICH: I mean, you know,
11 sounds like you made your decision, I have
12 to say I don't agree with it but that's not
13 my purview it's yours, we will come back
14 with these modifications and it's going to
15 look a whole lot like it does now with the
16 imagination that you can certainly do on
17 your own. So hopefully it will be a short
18 meeting. This has been a whole lot of
19 conversation about --

20 MR. GAVCOVICH: It's a significant
21 building and significant property, I guess,
22 for the city that's why, you know, we've
23 talked a lot about it.

24 MR. ZYSCOVICH: No, listen, I think
25 you have every right to ask all the details

1 you want, at this point I'm just a little
2 bit surprised by having to come back for
3 the comments that I've heard.

4 MR. HURWITZ: Thank you everyone's
5 time.

6 MS. HUBER: Is there going to be a
7 specific motion with all of the things you
8 want us to bring back?

9 MR. HURWITZ: There was no motion and
10 I think everything was brought, if you feel
11 comfortable you've got all the feedback, I
12 think that was pretty clear.

13 MR. ZYSCOVICH: By example, I don't
14 know how the city feels about space, I
15 don't know what we're supposed to draw.

16 MR. HURWITZ: For the sidewalk by
17 the --

18 MR. ZYSCOVICH: By the parking.

19 MR. HURWITZ: Fair question. Did you
20 have a final opinion about that because it
21 seems like they're comfortable and flexible
22 to add the sidewalk back in if the city
23 would allow them to do that.

24 MR. WASON: It's up to you, we like
25 the landscaping.

1 MR. GAVCOVICH: It's really just where
2 the parking, the off street parking is, on
3 street parking is. You probably don't need
4 to take it all away because definitely
5 you're in front of the parking lot and you
6 can walk. I just --

7 MR. ZYSCOVICH: We just don't have the
8 ability to vary from the ordinance, we have
9 a certain amount of landscaping we have to
10 provide, this is how we can do it.

11 MR. GAVCOVICH: In that area you're
12 not providing parking on the street.

13 MR. ZYSCOVICH: Right. You tell us
14 and we'll change the plan otherwise we
15 leave it the same way or we'll draw you
16 another plan you can pick next time,
17 whatever you want, I'm just saying --

18 MR. HURWITZ: Tell us --

19 MR. PRICE: Let me get some
20 clarification. What you're suggesting is
21 going to require them to eliminate some
22 landscaping?

23 MR. GAVCOVICH: No, actually what I'm
24 saying is it would eliminate the on street
25 parking space.

1 MS. HUBER: I guess where the
2 confusion is is I don't believe that this
3 board has the authority to require us to
4 place a sidewalk on public property when
5 the manager is saying they want us to
6 retain that off street parking space.

7 MR. PRICE: They could suggest it to
8 the manager, the manager doesn't
9 necessarily have to follow that but they
10 can suggest it.

11 MR. HURWITZ: Ron, you suggested that
12 the parking -- that one or two spaces are
13 not used.

14 MR. GAVCOVICH: They're not used much,
15 both of them.

16 MR. HURWITZ: I don't have a strong
17 opinion about it, so, Jerry, why don't
18 you -- unless anyone has a strong opinion
19 about it.

20 MR. GAVCOVICH: It's not going to be
21 the difference in approval or not approval
22 but it's just something that I'd like.

23 MR. HURWITZ: I don't think we should.

24 MR. PRICE: Could we get an
25 articulation exactly what we're looking for

1 at the next meeting, it's too open ended
2 right now, we need to --

3 MR. HURWITZ: I don't think it was
4 open ended at all but I'll start with a few
5 items and work them out, of course, but
6 moving the -- extending the feel of the
7 retail, not necessarily requiring you to
8 add any square footage, it appears you're
9 amenable to that very easily, so extend the
10 retail towards the corner to have more Kane
11 Concourse, to not necessarily relocate but
12 offset the tower if you were able to do
13 that, to have it feel like it was sort of
14 along the East Bay Harbor Drive.

15 MR. ZYSCOVICH: Let's talk about that
16 because I don't think we're willing to do
17 that.

18 MR. HURWITZ: Okay.

19 MR. ZYSCOVICH: The tower as I
20 understood it was still on the corner.

21 MR. HURWITZ: Okay.

22 MR. ZYSCOVICH: From any perspective
23 it will still be on the corner, but we
24 don't want the tower to be located with
25 this mass being here and the tower being

1 pushed back. What I was going to look at
2 is moving the tower eastward, northward,
3 reveals, I'm talking about articulation,
4 but I don't think we have an agreement that
5 we're ready to move the tower off the
6 corner so we better not stop talking about
7 that because that's not one of the things
8 we're going to come back with. And you've
9 all said you like the placement on the
10 conner so I took it to mean articulation.

11 MR. HURWITZ: Again I can only speak
12 for one, I'm fine with articulation and I'm
13 not suggesting, I'm not trying to bury the
14 tower or get rid of anything.

15 MR. ZYSCOVICH: Like --

16 MR. SKLAR: Moving the exit door
17 hopefully to --

18 MR. ZYSCOVICH: Yes, we will look at
19 that. We will also look at the western
20 stair so that we can make that a better
21 situation, see if we could resolve it, but
22 --

23 MR. SKLAR: And making that loggia
24 more pedestrian friendly by opening it the
25 other way.

1 MR. ZYSCOVICH: Yes, from the garage,
2 taking out the door. I guess that's my
3 point, really you want me to come back for
4 all of this.

5 MR. HURWITZ: I understood your
6 perspective.

7 MR. SKLAR: Maybe we can see it better
8 by the other members.

9 MR. ZYSCOVICH: But you are the board,
10 I mean --

11 MR. GAVCOVICH: From my perspective --

12 MR. SKLAR: Also from the east
13 elevation.

14 MR. GAVCOVICH: To me some of the
15 biggest issues is the east side, I guess
16 somewhat of the south side, the east.
17 There are some things you're going to --

18 MR. ZYSCOVICH: We spoke about --

19 MR. GAVCOVICH: -- not going to
20 satisfy with me with the parking on the
21 ground floor that extends all the way that
22 length.

23 MR. ZYSCOVICH: I don't understand
24 that comment.

25 MR. GAVCOVICH: You have parking

1 taking so much of the East Bay Harbor
2 Drive.

3 MR. ZYSCOVICH: But that's our
4 parking, we need --

5 MR. GAVCOVICH: I understand, to me
6 that's an issue and it's -- I don't think
7 it's appropriate development of East Bay
8 Harbor Drive on that lot the extent of the
9 parking there. You're not going to come
10 back clearly with changing that but that's
11 something that I'd prefer to see.

12 MR. ZYSCOVICH: Are you talking about
13 the use?

14 MR. GAVCOVICH: Yes.

15 MR. ZYSCOVICH: I thought we had the
16 conversation.

17 MR. GAVCOVICH: It doesn't mean it
18 satisfies my concern. I mean, I understand
19 why you're doing it and what's preventing
20 you from doing it, still it doesn't mean it
21 went away for me.

22 MR. ZYSCOVICH: We could put a mural
23 there, we can have a different articulation
24 but we can't reduce our parking to the
25 point where we no longer have a parking

1 structure that works, nor do we want to
2 encourage, you know, artificially elevating
3 the building, so there's nothing in your
4 code that requires us to have an active
5 use. I think your role here is an
6 aesthetic role and I think if you can say
7 to us that you don't like the facade, you
8 know, please help us understand why, but
9 there's no way that we can come back with
10 uses on East Bay Harbor Drive. They will
11 never work, we won't build them and it
12 makes no sense. So I don't -- that's my
13 point, I don't understand what you really
14 want us to be able to change that we're
15 going to be able to change.

16 MR. SKLAR: Is this going to be valet
17 parking at any point?

18 MR. ZYSCOVICH: No, it's self parking.
19 The tandem is for the church to use so they
20 can double park their staff and, you know,
21 fit in more cars. But if you ask us to do
22 something it needs to be either because the
23 code requires it or because you articulate
24 something you want us to change.

25 MR. GAVCOVICH: It's beyond the use,

1 it's not that I'm trying to dictate a use,
2 it's what I think is appropriate for that
3 block and it should be an improvement of
4 what's there now with lack of -- I mean use
5 of that block along East Bay Harbor Drive.
6 Again, I'm one person.

7 MR. ZYSCOVICH: If I'm remembering the
8 project across the street well it doesn't
9 do that, so the idea of the context
10 doesn't --

11 MR. GAVCOVICH: It's a little
12 different, there's no sidewalk there.

13 MR. HURWITZ: Are you talking about
14 the office building?

15 MR. ZYSCOVICH: Yeah.

16 MR. HURWITZ: The last proposed was
17 not passed. Are you talking about the
18 older --

19 MR. ZYSCOVICH: I'm talking about the
20 older one, the original --

21 MR. GAVCOVICH: The original --

22 MR. ZYSCOVICH: It had driveways, it
23 had curb cuts, it had underground parking,
24 it had nothing but interruptions in the
25 pedestrian flow. What we have is we're

1 dedicating land, we're increasing the
2 sidewalk, we're setting the building back,
3 we have landscaping. You know, we're -- I
4 don't know what else we could do, Jerry, I
5 mean, seriously, I don't -- there's no --
6 we don't -- it's not a commercial building
7 in terms of the use, we have no ability to
8 put a store there, it will just die. I
9 don't know what you're really asking us
10 for, your staff reviewed it and they found
11 it all compatible. So, again, that's
12 another item that I'm raising we need some
13 better articulation.

14 MR. GAVCOVICH: They don't review
15 compatibility.

16 MR. BECHIK: Everything that gets here
17 is not up to code.

18 MR. ZYSCOVICH: I think do review it,
19 that's one of your criteria. So, anyway, I
20 don't want to have a fight about this, you
21 know, you raised certain issues that we can
22 do and there are other things that I don't
23 want you to have an unrealistic
24 expectation. We're not going be able to
25 come back with different uses along East

1 Bay Drive or severely different type of
2 articulation. We agree with your comments
3 about the trellis, we agree with your
4 comments about, you know, some of the other
5 issues that we've talked about, increasing
6 the length of the retail and, you know,
7 whatever we can do we're happy to do, but I
8 don't understand why you're asking us to do
9 things that we're not going to be able to
10 resolve.

11 MR. GAVCOVICH: I'm just expressing my
12 opinion.

13 MR. ZYSCOVICH: Your opinion. Okay.
14 So you're disappointed.

15 MR. GAVCOVICH: Yeah, I would like to
16 see something more than a parking garage on
17 that extent of land.

18 MS. HUBER: Can you be more specific
19 of what you'd like to see?

20 MR. HURWITZ: How wide is the sidewalk
21 there?

22
23 MS. HUBER: Six feet.

24 MR. ZYSCOVICH: Six feet plus
25 landscaping.

1 MR. HURWITZ: I don't have a problem
2 with that element of it. I mean, we talked
3 about the facade and we talked about adding
4 the, you know, everything that we talked
5 about, you know, I thought we're happy with
6 adjustments to it. I don't know that I
7 need to see -- across the street is
8 basically a grid, across the street is curb
9 cuts and driveways, residential and office
10 buildings.

11 MR. GAVCOVICH: It's different because
12 you're not really seeing the garage, you're
13 seeing curb cuts and driveways and, you
14 know, we have some issues with that. It's
15 different than the wall that's -- I don't
16 know what that length is of --

17 MS. HUBER: You don't see the parking
18 garage. What you see is landscaping,
19 that's all you see in that area. I guess
20 that's what I'm trying to understand is
21 what you want to see. It's very difficult
22 for me to go back to the church and say,
23 because there's a board of, you know, 14
24 members that I'm going to go back and
25 they're going to say, okay, what happened,

1 I'm going to say they deferred us and asked
2 us to come back, they don't like what's
3 along East Bay Harbor, well, what would
4 they like to see, I don't know.

5 MR. GAVCOVICH: I'd like to see a lot
6 more active use.

7 MS. HUBER: But what specifically
8 would you like to see, a retail use?

9 MR. GAVCOVICH: If you can have retail
10 use that would be great.

11 MS. HUBER: What retail is going to
12 survive along East Bay Harbor Drive?

13 MR. GAVCOVICH: There's some retails
14 on Bay Harbor Terrace that survived. It
15 could be a restaurant. There's an office
16 on East Bay Harbor Drive.

17 MS. HUBER: So then under that set of
18 circumstance then you'd like us to make a
19 two story parking deck and elevate the
20 building because that's the only way to
21 make that happen. You can't extend the
22 retail along Kane and then extend a use
23 along East Bay Harbor without requiring
24 additional parking. There's no way for
25 that to happen so I guess I'm a little

1 perplexed as to what specifically you're
2 asking us. If you're asking to put a use
3 all the way along East Bay Harbor I'm
4 saying respectfully that I don't believe
5 that that's within your jurisdiction and,
6 number two, the church will not agree to
7 that.

8 MR. GAVCOVICH: I think it's in our
9 jurisdiction to review what we think is
10 compatible with the area.

11 MS. HUBER: Not the use, the
12 architectural features.

13 MR. GAVCOVICH: The lack of any use or
14 lack of any articulation where -- along
15 that street is --

16 MR. HURWITZ: Jerry, would you be
17 happy with a different facade, a different
18 articulation, a different treatment of that
19 stretch, or is it --

20 MR. GAVCOVICH: We talked about the
21 facade that I wasn't satisfied with, it was
22 one of my first comments, you know, the
23 Kane Concourse side is much nicer than the
24 eastern side. It's not necessarily that I
25 want to see, you know, decorative elements

1 added to that facade, it's just that the
2 scale proportion of the size is much nicer
3 on Kane Concourse side than the east side.

4 MS. HUBER: The difference is East Bay
5 Harbor is covered with beautiful
6 landscaping that you don't have on Kane
7 Concourse because visually you want people
8 to see the store windows which is why the
9 transparency is a requirement, so what you
10 see is beautiful landscape set back at
11 great length designed by Raymond Jungles
12 which is amazing so I guess you don't see a
13 parking garage, you see because of the
14 setbacks and because of the sidewalk and
15 because of the vast landscaping that's what
16 you see.

17 MR. GAVCOVICH: I'm not sure that in
18 my opinion that that landscape strip is the
19 appropriate use along East Bay Harbor
20 Drive, if it was further in off of Kane
21 Concourse then it's a little different.

22 MS. HUBER: But East Bay Harbor Drive
23 has specific landscape requirements for
24 East Bay Harbor Drive, that's the conflict.
25 I think part of what's -- and Mike Miller

1 is here and I'm going to ask him to help me
2 out here because one of the specific
3 provisions in your code have landscape
4 requirements for East Bay Harbor Drive, for
5 95th Street, for Kane Concourse, we have to
6 comply with those landscape requirements
7 and so to say you don't think we should
8 have landscape instead we should have a
9 more active use with windows, well, then we
10 can't comply with the landscape
11 requirements nor can we comply with
12 parking, so you're asking for something
13 that is impossible for us to provide.

14 MR. GAVCOVICH: You're saying can't
15 comply with parking, you can't comply the
16 way it's designed whether it's a taller
17 building or whether you introduce another
18 level of parking within that or you reduce
19 the building so that you have less parking
20 requirement. You can't comply, you know,
21 it's just, you know, I can't tell the
22 answer in terms of the parking, I'm sorry,
23 the landscaping because I'm not sure about
24 what the requirement is for East Bay Harbor
25 Drive, but like you said Mike Miller is

1 here, he can answer that question, but it's
2 my opinion in terms of coming around the
3 corner of Kane Concourse and it being a
4 pretty important street at least, you know,
5 coming around the corner that there should
6 be better development along that sidewalk.

7 MS. HUBER: Well, I wholeheartedly
8 respect your opinion, I'm advising you that
9 we cannot legally comply with what you're
10 asking us to do.

11 MR. HURWITZ: I think for now we're
12 going to have to agree to disagree, I don't
13 think this is going -- batting heads on
14 this issue is going to get us anywhere.

15 MS. HUBER: What I would like to know
16 is whether or not there is consensus on the
17 board on that point and if there is then
18 that's something we need to figure out how
19 to resolve, if that's only one member's
20 concern or opinion then --

21 MR. HURWITZ: It's a fair question. I
22 don't see -- I don't feel a need to have
23 that street activated with other uses, I
24 don't --

25 MR. PRICE: If I may intervene,

1 Mr. Chairman, the power of this board is to
2 review the architectural renderings of a
3 building. The power of this board does not
4 include rewriting the code, and I think
5 we're entitled to get an opinion from
6 Mr. Miller if that is a mandatory landscape
7 area, then if that's the answer to that
8 question I don't think we can impose uses
9 on that roadway. Also from my
10 understanding reading the staff report the
11 building complies with the zoning code of
12 the town, and it's not within the purview
13 of the board to tell them to build a
14 smaller building. They can discuss the
15 architectural, which is appropriate, and
16 you have great leeway in that regard, but
17 you can't change the substantive provisions
18 of the code.

19 MR. MILLER: Good evening. Trying to
20 cover two meetings in one. The code does
21 require on East Bay Harbor Drive that there
22 is an average five-foot landscape strip,
23 which means the way we wrote it is
24 congealed so 0 in some places and a little
25 bit more, the idea is to get foundation,

1 plant things up against the building. Kane
2 Concourse has the wide plaza so that's a
3 fixed commodity, but on the side streets
4 the way we wrote that section of the code
5 in the B District was to accommodate that,
6 and then up to 75 percent of that width has
7 to be landscaping. The idea was that if
8 there was store fronts, the door, the
9 showcase window, you know, come right up to
10 the window, so you have small planters with
11 the idea to get something against the
12 building.

13 I mean, there's all kinds -- you can
14 go in all different directions on -- there
15 was one project talking about the showcase
16 windows, you know, changing the facade a
17 little bit, that kind of thing. Just my
18 idea.

19 MR. HURWITZ: Thank you. I think we
20 got to wrap it up. You're having a one on
21 one. Do you want to ask the board any
22 other questions, you're welcome to, but
23 we're not talking about this as was
24 mentioned. I think Jerry's concern about
25 the facade, we're not here to talk about

1 use and that's been clear, so, you know,
2 unless you want to continue that
3 conversation, I don't --

4 MS. HUBER: No. What I'm trying to
5 gain is an understanding from the board
6 with a consensus what we're required to
7 bring back to you so that when we come back
8 it's very clear that we can get an
9 approval. Right now just hearing one
10 member wants one thing and one member wants
11 another doesn't necessarily send a clear
12 message to what the consensus of the board
13 is in order to gain approval when we come
14 back.

15 MR. HURWITZ: Let me respond. I
16 appreciate where you're coming from, I
17 appreciate the time, we're all here
18 together, but I don't think it's been a
19 haphazard five people, six people, whatever
20 it is, giving six different opinions.
21 There was definitely consensus about
22 several things that the board wanted to
23 see. The question at hand was whether or
24 not it was something that we could approve
25 on condition they needed to see again.

1 I personally am okay approving on
2 condition, I don't have a motion from the
3 board, but all the things that were
4 discussed were things that I think the
5 architect clearly understands except for
6 one singular issue where one of our board
7 members has an opinion, that's fine. If
8 anybody else wants to reiterate that they
9 share that opinion or don't so there's
10 clarity for the record and clarity for them
11 on coming back, that's a fair question. I
12 don't think that -- I don't think it's been
13 four hours of everyone shouting out
14 different things, I think it's been very
15 clear.

16 MS. HUBER: That's not what I said.

17 MR. HURWITZ: I just want to make sure
18 so you can get the right feedback.

19 MR. FRANKEL: I would prefer to have
20 that type of use, I understand the
21 limitations of the code, and in terms of
22 East Bay Harbor Drive I would like to see
23 the same sort of detail that was put into
24 Kane Concourse on East Bay Harbor Drive,
25 because right now I look at it I just see a

1 big mess.

2 MR. HURWITZ: I think it's very clear
3 that everyone has shared that concern about
4 the East Bay Harbor side.

5 MR. ZYSCOVICH: I understand, that's
6 some direction.

7 MR. HURWITZ: Whether we're talking
8 about use or not, we're not talking about
9 some use, I think that you clearly
10 understood from various people's
11 perspective that they'd like to see
12 something different there.

13 MR. ZYSCOVICH: I'm telling you what
14 I'm hearing so you know, basically
15 perforated metal mesh and articulation
16 similar to Kane Concourse with no use
17 behind it and take our voids and insert
18 some of this mesh stuff and we'll give you
19 more of that and we'll detail it.

20 MR. HURWITZ: And a trellis.

21 MR. ZYSCOVICH: That's a helpful
22 direction, you know, it's not how I see the
23 building but if you want that to reflect
24 the corner, that's fine, we can do that.

25 MR. HURWITZ: Thank you very much.

1 Are there any other questions or comments,
2 I think we should wrap it up? No? Okay.

3 MR. PRICE: I think you need a motion
4 to defer this to the next meeting.

5 MR. HURWITZ: I'm happy do that, we've
6 never done that before.

7 MR. PRICE: It's a problementry
8 procedure.

9 MR. HURWITZ: Thanks for commenting.

10 MR. FRANKEL: I make motion to defer.

11 MR. HURWITZ: Make a motion, is there
12 a second?

13 MR. GAVCOVICH: Second.

14 MR. HURWITZ: All in favor?

15 (All say aye.)

16 MR. HURWITZ: Opposed? Okay. Thank
17 you very much.

18 (Thereupon, the meeting was concluded
19 at 11:00 p.m.)

20

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I, MARVALENCIA MILLER, Florida
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Dated this 26th day of May, 2016.



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Florida Professional Reporter

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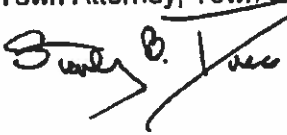
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EXHIBIT F

MEMORANDUM

TO: Craig Sherman, Town Attorney, Town of Bay Harbor Islands

FROM: Stanley B. Price 

DATE: May 13, 2016

RE: Zoning of Religious Land Uses

In general, property owners may develop their property as they desire so long as their plans and uses are in conformity with the precise, objective guidelines and well-defined criteria of the zoning ordinances and standards governing the area where their property is located. The regulation of religious land uses involves additional prevailing parameters because it brings zoning powers and police powers in conflict with the traditional First Amendment principle that government cannot burden an individual's free exercise of religion. The power of a locality to regulate the use of land through zoning and other regulations arises from the locality's police power, which is a residual power, intrinsic in the sovereign, to protect the public health, safety and welfare.¹ This alone is the purview of a government's zoning power. A government cannot evaluate or critique a particular religion, its teachings, practices, or beliefs as part of a zoning process or regulate such characteristics through zoning ordinances. The United States Constitution, Federal Statutes, and jurisprudence advance two basic legal tenets regarding the zoning of religious land uses: (1) zoning ordinances and regulations must be neutral time, place, and manner of speech restrictions of general applicability; and (2) burdens on religious expression receive strict scrutiny and thus must be justified by a compelling government interest that is addressed via narrowly tailored regulations.

The First Amendment of the United States Constitution guarantees the right to free exercise of religion and the right to religious expression.² A congregation is authorized to have its own beliefs, practices, and policies. The United States Supreme Court has ruled that there may be laws and regulations limiting this right, but such laws must be valid and neutral laws of general applicability that only incidentally burden religion.³ Laws specifically aimed at burdening or prohibiting religious practice are unconstitutional.⁴

In *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, the Court held that a zoning ordinance that prevented a Santeria church from engaging in rituals central to the Santeria faith was unconstitutional because it was not neutral and impermissibly targeted Santeria practices.⁵ The genesis of this case was initiated by a group of citizens of the City that there was concern that the Santeria Religion engages in practices which are inconsistent with the public morals, peace and safety of the community. In rejecting this public view, the Court concluded:

¹ *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365 (1926).

² See Exhibit 1.

³ *Employment Division v. Smith*, 494 U.S. 872, 876-879 (1990).

⁴ *Id.* at 876-82.

⁵ 508 U.S. 520 (1993). See Exhibit 2.

The Free Exercise Clause commits government itself to religious tolerance, and upon even slight suspicion that proposals for state intervention stem from animosity to religion or distrust of its practices, all officials must pause to remember their own high duty to the Constitution and to the rights it secures. Those in office must resolute in resisting importunate demands and must ensure that the sole reasons for imposing the burdens of law and regulation are secular. Legislators may not devise mechanisms, overt or disguised, designed to persecute or oppress a religion or its practices. The laws here in question were enacted contrary to these constitutional principles, and they are void.

The Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) provides a statutory standard by which local religious land use decisions should be judged.⁶ RLUIPA prohibits governments from imposing or implementing a land use regulation that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution unless such burden is in furtherance of a compelling government interest or is the least restrictive means of furthering a compelling government interest. RLUIPA also prohibits implementation of land use regulations that causes unequal treatment of or discriminates against religious assembly or institutions. Thus, zoning regulations cannot be crafted to discriminately target religious practice. Only the gravest circumstances justify limiting free exercise of religion. In those circumstances it is incumbent on the government to demonstrate that a compelling interest necessitated the limitations, and there were no alternative forms of regulation that could address those circumstances without infringing on religious practice.

Under RLUIPA there is a heightened level of scrutiny and governments have to fully justify substantial burdens on religious exercise. Without a compelling government interest, a municipality cannot burden a religious use. As was recognized by the Court in *Midrash Sephardi, Inc. v. Town of Surfside*, "[u]nder RLUIPA, 'religious exercise' includes the 'use, building, or conversion of real property for the purpose of religious exercise.'"⁷

Further, there cannot be disparate treatment between secular and religious uses. The neutral zoning regulations must be equally applied and cannot be used to treat religious practice more restrictively. In *Konikov v. Orange Cnty.*, the Court decided that the equal terms provision of RLUIPA was violated where an ordinance distinguished between secular social organizations and religious organizations, whereby allowing the secular social organizations to assemble in dwellings without an application for a special exception but requiring such application from religious organizations.⁸ In *Hollywood Synagogue v. City of Hollywood*, a Jewish synagogue seeking zoning approval experienced selective enforcement of code provisions, constant monitoring, and investigation by local officials.⁹ The Hollywood zoning board granted other approvals, but selectively denied permission to this synagogue. The Court determined that the board violated RLUIPA and impermissibly denied the synagogue's application on the basis of its religious affiliation.¹⁰

⁶ 42 U.S.C.A. § 2000cc (2000). See Exhibit 3.

⁷ 366 F.3d 1214, 1235 (11th Cir. 2004).

⁸ 410 F.3d 1317 (11th Cir. 2005).

⁹ 430 F. Supp. 2d 1296 (S.D. Fla. 2006).

¹⁰ *Id.* at 1321.

In addition to the federal laws and jurisprudence that provides strict scrutiny to zoning limitations that burden religious practice, there are Florida State court decisions and laws that reinforce the same propositions. The Florida Supreme Court has held that the Florida Religious Freedom Restoration Act (FRFRA) (Chapter 761, Florida Statutes) broadens the scope of protected religious conduct such that strict scrutiny applies to laws of general application that "substantially burden" the free exercise of religion.¹¹ Thus, both State and Federal law has made clear that a municipality's zoning power cannot be used to restrict religious practice absent a compelling interest and means that are narrowly tailored to address that interest.¹²

¹¹ See *Warner v. City of Boca Raton*, 887 So. 2d 1023, 1033-1034 (Fla. 2004), where the Court stated that the "compelling interest test" extends to laws of general application restricting free exercise, therefore making Florida protections of free exercise broader than the analogous Federal protections.

¹² Recent State and local legislation imposing restraints on contractual activity as it relates to individuals or organizations engaging in boycotts or that discriminate against groups, has no applicability in the zoning context and cannot supersede Federal law.

EXHIBIT 1

Amendment I. Freedom of Religion, Speech and Press;..., USCA CONST Amend. I

United States Code Annotated
Constitution of the United States
Annotated
Amendment I. Freedom of Religion, Speech and Press; Peaceful Assemblage; Petition of Grievances (Refs & Annos)

U.S.C.A. Const. Amend. I

Amendment I. Freedom of Religion, Speech and Press; Peaceful Assemblage; Petition of Grievances

Currentness

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

<This amendment is further displayed in three separate documents according to subject matter>

<see USCA Const Amend. I, Religion>

<see USCA Const Amend. I, Speech>

<see USCA Const Amend. I, Assemblage>

U.S.C.A. Const. Amend. I, USCA CONST Amend. I

Current through P.L. 114-143. Also includes P.L. 114-145, 114-146, and 114-148.

End of Document

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EXHIBIT 2

KeyCite Yellow Flag - Negative Treatment
Superseded by Statute as Stated in Miller v. Davis, E.D.Ky.,
August 12, 2015

113 S.Ct. 2217
Supreme Court of the United States

CHURCH OF THE LUKUMI BABALU AYE, INC.
and Ernesto Pichardo, Petitioners,

v.
CITY OF HIALEAH.
No. 91-948.

|
Argued Nov. 4, 1992.

|
Decided June 11, 1993.

Church brought action challenging city ordinances dealing with ritual slaughter of animals. The United States District Court for the Southern District of Florida denied relief, 723 F.Supp. 1467, and church appealed. The Court of Appeals for the Eleventh Circuit affirmed, 936 F.2d 586. On certiorari, the Supreme Court, Justice Kennedy, held that: (1) ordinances were not neutral; (2) ordinances were not of general applicability; and (3) governmental interest assertedly advanced by the ordinances did not justify the targeting of religious activity.

Reversed.

Justice Scalia filed an opinion concurring in part and concurring in the judgment in which Chief Justice Rehnquist joined.

Justice Souter filed an opinion concurring in part and concurring in the judgment.

Justice Blackmun filed an opinion concurring in the judgment in which Justice O'Connor joined.

****2219 Syllabus***

Petitioner church and its congregants practice the Santeria religion, which employs animal sacrifice as one of its principal forms of devotion. The animals are killed by cutting their carotid arteries and are cooked and eaten following all Santeria rituals except **2220 healing and death rites. After the church leased land in respondent city and announced plans to establish a house of worship and other facilities there, the city council held an emergency public session and passed, among other enactments, Resolution 87-66, which noted city residents' "concern" over religious practices inconsistent with public morals,

peace, or safety, and declared the city's "commitment" to prohibiting such practices; Ordinance 87-40, which incorporates the Florida animal cruelty laws and broadly punishes "[w]hoever ... unnecessarily or cruelly ... kills any animal," and has been interpreted to reach killings for religious reasons; Ordinance 87-52, which defines "sacrifice" as "to unnecessarily kill ... an animal in a ... ritual ... not for the primary purpose of food consumption," and prohibits the "possess[ion], sacrifice, or slaughter" of an animal if it is killed in "any type of ritual" and there is an intent to use it for food, but exempts "any licensed [food] establishment" if the killing is otherwise permitted by law; Ordinance 87-71, which prohibits the sacrifice of animals, and defines "sacrifice" in the same manner as Ordinance 87-52; and Ordinance 87-72, which defines "slaughter" as "the killing of animals for food" and prohibits slaughter outside of areas zoned for slaughterhouses, but includes an exemption for "small numbers of hogs and/or cattle" when exempted by state law. Petitioners filed this suit under 42 U.S.C. § 1983, alleging violations of their rights under, *inter alia*, the Free Exercise Clause of the First Amendment. Although acknowledging that the foregoing ordinances are not religiously neutral, the District Court ruled for the city, concluding, among other things, that compelling governmental interests in preventing public health risks and cruelty to animals fully justified the absolute prohibition on ritual sacrifice accomplished by the ordinances, and that an exception to that prohibition for religious conduct would unduly interfere with fulfillment of the governmental interest because any more narrow restrictions would *521 be unenforceable as a result of the Santeria religion's secret nature. The Court of Appeals affirmed.

Held: The judgment is reversed.

936 F.2d 586, (CA 11 1991) reversed.

Justice KENNEDY delivered the opinion of the Court with respect to Parts I, II-A-1, II-A-3, II-B, III, and IV, concluding that the laws in question were enacted contrary to free exercise principles, and they are void. Pp. 2225-30, 2231-34.

(a) Under the Free Exercise Clause, a law that burdens religious practice need not be justified by a compelling governmental interest if it is neutral and of general applicability. *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872, 110 S.Ct. 1595, 108 L.Ed.2d 876. However, where such a law is not neutral or not of general application, it must undergo the most rigorous of scrutiny: It must be justified by a

compelling governmental interest and must be narrowly tailored to advance that interest. Neutrality and general applicability are interrelated, and failure to satisfy one requirement is a likely indication that the other has not been satisfied. Pp. 2225–26.

(b) The ordinances' texts and operation demonstrate that they are not neutral, but have as their object the suppression of Santeria's central element, animal sacrifice. That this religious exercise has been targeted is evidenced by Resolution 87–66's statements of "concern" and "commitment," and by the use of the words "sacrifice" and "ritual" in Ordinances 87–40, 87–52, and 87–71. Moreover, the latter ordinances' various prohibitions, definitions, and exemptions demonstrate that they were "gerrymandered" with care to proscribe religious killings of animals by Santeria church members but to exclude almost all other animal killings. They also suppress much more religious conduct than is necessary to achieve their stated ends. The legitimate governmental interests in protecting the public health and preventing cruelty to animals could be addressed by restrictions stopping far short of a flat prohibition of all Santeria sacrificial practice, such as **2221 general regulations on the disposal of organic garbage, on the care of animals regardless of why they are kept, or on methods of slaughter. Although Ordinance 87–72 appears to apply to substantial nonreligious conduct and not to be overbroad, it must also be invalidated because it functions in tandem with the other ordinances to suppress Santeria religious worship. Pp. 2227–30.

(c) Each of the ordinances pursues the city's governmental interests only against conduct motivated by religious belief and thereby violates the requirement that laws burdening religious practice must be of general applicability. Ordinances 87–40, 87–52, and 87–71 are substantially underinclusive with regard to the city's interest in preventing cruelty to *522 animals, since they are drafted with care to forbid few animal killings but those occasioned by religious sacrifice, while many types of animal deaths or kills for nonreligious reasons are either not prohibited or approved by express provision. The city's assertions that it is "self-evident" that killing for food is "important," that the eradication of insects and pests is "obviously justified," and that euthanasia of excess animals "makes sense" do not explain why religion alone must bear the burden of the ordinances. These ordinances are also substantially underinclusive with regard to the city's public health interests in preventing the disposal of animal carcasses in open public places and the consumption of uninspected meat, since neither interest is pursued by respondent with regard to conduct that is not motivated by religious conviction. Ordinance

87–72 is underinclusive on its face, since it does not regulate nonreligious slaughter for food in like manner, and respondent has not explained why the commercial slaughter of "small numbers" of cattle and hogs does not implicate its professed desire to prevent cruelty to animals and preserve the public health. Pp. 2231–33.

(d) The ordinances cannot withstand the strict scrutiny that is required upon their failure to meet the *Smith* standard. They are not narrowly tailored to accomplish the asserted governmental interests. All four are overbroad or underinclusive in substantial respects because the proffered objectives are not pursued with respect to analogous nonreligious conduct and those interests could be achieved by narrower ordinances that burdened religion to a far lesser degree. Moreover, where, as here, government restricts only conduct protected by the First Amendment and fails to enact feasible measures to restrict other conduct producing substantial harm or alleged harm of the same sort, the governmental interests given in justification of the restriction cannot be regarded as compelling. Pp. 2233–34.

KENNEDY, J., delivered the opinion of the Court with respect to Parts I, III, and IV, in which REHNQUIST, C.J., and WHITE, STEVENS, SCALIA, SOUTER, and THOMAS, JJ., joined, the opinion of the Court with respect to Part II–B, in which REHNQUIST, C.J., and WHITE, STEVENS, SCALIA, and THOMAS, JJ., joined, the opinion of the Court with respect to Parts II–A–1 and II–A–3, in which REHNQUIST, C.J., and STEVENS, SCALIA, and THOMAS, JJ., joined, and an opinion with respect to Part II–A–2, in which STEVENS, J., joined. SCALIA, J., filed an opinion concurring in part and concurring in the judgment, in which REHNQUIST, C.J., joined, *post*, p. —. SOUTER, J., filed an opinion concurring in part and concurring in the judgment, *post*, p. —. BLACKMUN, J., filed an opinion concurring in the judgment, in which O'CONNOR, J., joined, *post*, p. —.

Attorneys and Law Firms

*523 Douglas Laycock, Austin, TX, for petitioners.

Richard G. Garrett, Miami, FL, for respondent.

Opinion

**2222 Justice KENNEDY delivered the opinion of the Court, except as to Part II–A–2.*

The principle that government may not enact laws that suppress religious belief or practice is so well understood that few violations are recorded in our opinions. Cf. *McDaniel v. Paty*, 435 U.S. 618, 98 S.Ct. 1322, 55

L.Ed.2d 593 (1978); *Fowler v. Rhode Island*, 345 U.S. 67, 73 S.Ct. 526, 97 L.Ed. 828 (1953). Concerned that this fundamental nonpersecution principle of the First Amendment was implicated here, however, we granted certiorari. 503 U.S. 935, 112 S.Ct. 1472, 117 L.Ed.2d 616 (1992).

*524 Our review confirms that the laws in question were enacted by officials who did not understand, failed to perceive, or chose to ignore the fact that their official actions violated the Nation's essential commitment to religious freedom. The challenged laws had an impermissible object; and in all events the principle of general applicability was violated because the secular ends asserted in defense of the laws were pursued only with respect to conduct motivated by religious beliefs. We invalidate the challenged enactments and reverse the judgment of the Court of Appeals.

I

A

This case involves practices of the Santeria religion, which originated in the 19th century. When hundreds of thousands of members of the Yoruba people were brought as slaves from western Africa to Cuba, their traditional African religion absorbed significant elements of Roman Catholicism. The resulting syncretism, or fusion, is Santeria, "the way of the saints." The Cuban Yoruba express their devotion to spirits, called *orishas*, through the iconography of Catholic saints, Catholic symbols are often present at Santeria rites, and Santeria devotees attend the Catholic sacraments. 723 F.Supp. 1467, 1469–1470 (SD Fla.1989); 13 Encyclopedia of Religion 66 (M. Eliade ed. 1987); 1 Encyclopedia of the American Religious Experience 183 (C. Lippy & P. Williams eds. 1988).

The Santeria faith teaches that every individual has a destiny from God, a destiny fulfilled with the aid and energy of the *orishas*. The basis of the Santeria religion is the nurture of a personal relation with the *orishas*, and one of the principal forms of devotion is an animal sacrifice. 13 Encyclopedia of Religion, *supra*, at 66. The sacrifice of animals as part of religious rituals has ancient roots. See generally 12 *id.*, at 554–556. Animal sacrifice is mentioned throughout the Old Testament, see 14 Encyclopaedia Judaica 600, 600–605 *525 (1971), and it played an important role in the practice of Judaism before destruction of the second Temple in Jerusalem, see *id.*, at 605–612. In modern Islam, there is an annual sacrifice

commemorating Abraham's sacrifice of a ram in the stead of his son. See C. Glassé, Concise Encyclopedia of Islam 178 (1989); 7 Encyclopedia of Religion, *supra*, at 456.

According to Santeria teaching, the *orishas* are powerful but not immortal. They depend for survival on the sacrifice. Sacrifices are performed at birth, marriage, and death rites, for the cure of the sick, for the initiation of new members and priests, and during an annual celebration. Animals sacrificed in Santeria rituals include chickens, pigeons, doves, ducks, guinea pigs, goats, sheep, and turtles. The animals are killed by the cutting of the carotid arteries in the neck. The sacrificed animal is cooked and eaten, except after healing and death rituals. See 723 F.Supp., at 1471–1472; 13 Encyclopedia of Religion, *supra*, at 66; M. González-Wippler, The Santeria Experience 105 (1982).

Santeria adherents faced widespread persecution in Cuba, so the religion and its **2223 rituals were practiced in secret. The open practice of Santeria and its rites remains infrequent. See 723 F.Supp., at 1470; 13 Encyclopedia of Religion, *supra*, at 67; M. González-Wippler, Santeria: The Religion 3–4 (1989). The religion was brought to this Nation most often by exiles from the Cuban revolution. The District Court estimated that there are at least 50,000 practitioners in South Florida today. See 723 F.Supp., at 1470.

B

Petitioner Church of the Lukumi Babalu Aye, Inc. (Church), is a not-for-profit corporation organized under Florida law in 1973. The Church and its congregants practice the Santeria religion. The president of the Church is petitioner Ernesto Pichardo, who is also the Church's priest and holds the religious title of *Italero*, the second highest in the Santeria faith. In April 1987, the Church leased land in *526 the City of Hialeah, Florida, and announced plans to establish a house of worship as well as a school, cultural center, and museum. Pichardo indicated that the Church's goal was to bring the practice of the Santeria faith, including its ritual of animal sacrifice, into the open. The Church began the process of obtaining utility service and receiving the necessary licensing, inspection, and zoning approvals. Although the Church's efforts at obtaining the necessary licenses and permits were far from smooth, see 723 F.Supp., at 1477–1478, it appears that it received all needed approvals by early August 1987.

The prospect of a Santeria church in their midst was distressing to many members of the Hialeah community,

and the announcement of the plans to open a Santeria church in Hialeah prompted the city council to hold an emergency public session on June 9, 1987. The resolutions and ordinances passed at that and later meetings are set forth in the Appendix following this opinion.

A summary suffices here, beginning with the enactments passed at the June 9 meeting. First, the city council adopted Resolution 87-66, which noted the "concern" expressed by residents of the city "that certain religions may propose to engage in practices which are inconsistent with public morals, peace or safety," and declared that "[t]he City reiterates its commitment to a prohibition against any and all acts of any and all religious groups which are inconsistent with public morals, peace or safety." Next, the council approved an emergency ordinance, Ordinance 87-40, which incorporated in full, except as to penalty, Florida's animal cruelty laws. Fla.Stat. ch. 828 (1987). Among other things, the incorporated state law subjected to criminal punishment "[w]hoever ... unnecessarily or cruelly ... kills any animal." § 828.12.

The city council desired to undertake further legislative action, but Florida law prohibited a municipality from enacting legislation relating to animal cruelty that conflicted with § 828.27(4). To obtain clarification, Hialeah's city attorney requested an opinion from the attorney general of Florida as to whether § 828.12 prohibited "a religious group from sacrificing an animal in a religious ritual or practice" and whether the city could enact ordinances "making religious animal sacrifice unlawful." The attorney general responded in mid-July. He concluded that the "ritual sacrifice of animals for purposes other than food consumption" was not a "necessary" killing and so was prohibited by § 828.12. Fla.Op.Atty.Gen. 87-56, Annual Report of the Atty.Gen. 146, 147, 149 (1988). The attorney general appeared to define "unnecessary" as "done without any useful motive, in a spirit of wanton cruelty or for the mere pleasure of destruction without being in any sense beneficial or useful to the person killing the animal." *Id.*, at 149, n. 11. He advised that religious animal sacrifice was against state law, so that a city ordinance prohibiting it would not be in conflict. *Id.*, at 151.

The city council responded at first with a hortatory enactment, Resolution 87-90, that noted its residents' "great concern regarding the possibility of public ritualistic animal sacrifices" **2224 and the state-law prohibition. The resolution declared the city policy "to oppose the ritual sacrifices of animals" within Hialeah and announced that any person or organization practicing

animal sacrifice "will be prosecuted."

In September 1987, the city council adopted three substantive ordinances addressing the issue of religious animal sacrifice. Ordinance 87-52 defined "sacrifice" as "to unnecessarily kill, torment, torture, or mutilate an animal in a public or private ritual or ceremony not for the primary purpose of food consumption," and prohibited owning or possessing an animal "intending to use such animal for food purposes." It restricted application of this prohibition, however, to any individual or group that "kills, slaughters or sacrifices animals for any type of ritual, regardless of whether or not the flesh or blood of the animal is to be consumed." The ordinance *528 contained an exemption for slaughtering by "licensed establishment[s]" of animals "specifically raised for food purposes." Declaring, moreover, that the city council "has determined that the sacrificing of animals within the city limits is contrary to the public health, safety, welfare and morals of the community," the city council adopted Ordinance 87-71. That ordinance defined sacrifice as had Ordinance 87-52, and then provided that "[i]t shall be unlawful for any person, persons, corporations or associations to sacrifice any animal within the corporate limits of the City of Hialeah, Florida." The final Ordinance, 87-72, defined "slaughter" as "the killing of animals for food" and prohibited slaughter outside of areas zoned for slaughterhouse use. The ordinance provided an exemption, however, for the slaughter or processing for sale of "small numbers of hogs and/or cattle per week in accordance with an exemption provided by state law." All ordinances and resolutions passed the city council by unanimous vote. Violations of each of the four ordinances were punishable by fines not exceeding \$500 or imprisonment not exceeding 60 days, or both.

Following enactment of these ordinances, the Church and Pichardo filed this action pursuant to 42 U.S.C. § 1983 in the United States District Court for the Southern District of Florida. Named as defendants were the city of Hialeah and its mayor and members of its city council in their individual capacities. Allying violations of petitioners' rights under, *inter alia*, the Free Exercise Clause, the complaint sought a declaratory judgment and injunctive and monetary relief. The District Court granted summary judgment to the individual defendants, finding that they had absolute immunity for their legislative acts and that the ordinances and resolutions adopted by the council did not constitute an official policy of harassment, as alleged by petitioners. 688 F.Supp. 1522 (SD Fla.1988).

After a 9-day bench trial on the remaining claims, the District Court ruled for the city, finding no violation of petitioners' *529 rights under the Free Exercise Clause.

723 F.Supp. 1467 (SD Fla.1989). (The court rejected as well petitioners' other claims, which are not at issue here.) Although acknowledging that "the ordinances are not religiously neutral," *id.*, at 1476, and that the city's concern about animal sacrifice was "prompted" by the establishment of the Church in the city, *id.*, at 1479, the District Court concluded that the purpose of the ordinances was not to exclude the Church from the city but to end the practice of animal sacrifice, for whatever reason practiced, *id.*, at 1479, 1483. The court also found that the ordinances did not target religious conduct "on their face," though it noted that in any event "specifically regulating [religious] conduct" does not violate the First Amendment "when [the conduct] is deemed inconsistent with public health and welfare," *id.*, at 1483-1484. Thus, the court concluded that, at most, the ordinances' effect on petitioners' religious conduct was "incidental to [their] secular purpose and effect." *Id.*, at 1484.

The District Court proceeded to determine whether the governmental interests underlying the ordinances were compelling and, if **2225 so, to balance the "governmental and religious interests." The court noted that "[t]his 'balance depends upon the cost to the government of altering its activity to allow the religious practice to continue unimpeded versus the cost to the religious interest imposed by the government activity.' " *Ibid.*, quoting *Grosz v. City of Miami Beach*, 721 F.2d 729, 734 (CA 11 1983), cert. denied, 469 U.S. 827, 105 S.Ct. 108, 83 L.Ed.2d 52 (1984). The court found four compelling interests. First, the court found that animal sacrifices present a substantial health risk, both to participants and the general public. According to the court, animals that are to be sacrificed are often kept in unsanitary conditions and are uninspected, and animal remains are found in public places. 723 F.Supp., at 1474-1475, 1485. Second, the court found emotional injury to children who witness the sacrifice of animals. *Id.*, at 1475-1476, 1485-1486. Third, the court found compelling the city's interest *530 in protecting animals from cruel and unnecessary killing. The court determined that the method of killing used in Santeria sacrifice was "unreliable and not humane, and that the animals, before being sacrificed, are often kept in conditions that produce a great deal of fear and stress in the animal." *Id.*, at 1472-1473, 1486. Fourth, the District Court found compelling the city's interest in restricting the slaughter or sacrifice of animals to areas zoned for slaughterhouse use. *Id.*, at 1486. This legal determination was not accompanied by factual findings.

Balancing the competing governmental and religious interests, the District Court concluded the compelling governmental interests "fully justify the absolute

prohibition on ritual sacrifice" accomplished by the ordinances. *Id.*, at 1487. The court also concluded that an exception to the sacrifice prohibition for religious conduct would " 'unduly interfere with fulfillment of the governmental interest' " because any more narrow restrictions—e.g., regulation of disposal of animal carcasses—would be unenforceable as a result of the secret nature of the Santeria religion. *Id.*, at 1486-1487, and nn. 57-59. A religious exemption from the city's ordinances, concluded the court, would defeat the city's compelling interests in enforcing the prohibition. *Id.*, at 1487.

The Court of Appeals for the Eleventh Circuit affirmed in a one-paragraph *per curiam* opinion. Judgt. order reported at 936 F.2d 586 (1991). Choosing not to rely on the District Court's recitation of a compelling interest in promoting the welfare of children, the Court of Appeals stated simply that it concluded the ordinances were consistent with the Constitution. App. to Pet. for Cert. A2. It declined to address the effect of *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990), decided after the District Court's opinion, because the District Court "employed an arguably stricter standard" than that applied in *Smith*. App. to Pet. for Cert. A2, n. 1.

*531 II

The Free Exercise Clause of the First Amendment, which has been applied to the States through the Fourteenth Amendment, see *Cantwell v. Connecticut*, 310 U.S. 296, 303, 60 S.Ct. 900, 903, 84 L.Ed. 1213 (1940), provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..." (Emphasis added). The city does not argue that Santeria is not a "religion" within the meaning of the First Amendment. Nor could it. Although the practice of animal sacrifice may seem abhorrent to some, "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S. 707, 714, 101 S.Ct. 1425, 1430, 67 L.Ed.2d 624 (1981). Given the historical association between animal sacrifice and religious worship, see *supra*, at 2, petitioners' assertion that animal sacrifice is an integral part of their religion "cannot be **2226 deemed bizarre or incredible." *Frazee v. Illinois Dept. of Employment Security*, 489 U.S. 829, 834, n. 2, 109 S.Ct. 1514, 1518, n. 2, 103 L.Ed.2d 914 (1989). Neither the city nor the courts below, moreover, have questioned the sincerity of petitioners' professed desire to conduct animal sacrifices for religious reasons.

We must consider petitioners' First Amendment claim.

¹¹ ¹² In addressing the constitutional protection for free exercise of religion, our cases establish the general proposition that a law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice. *Employment Div., Dept. of Human Resources of Ore. v. Smith*, *supra*. Neutrality and general applicability are interrelated, and, as becomes apparent in this case, failure to satisfy one requirement is a likely indication that the other has not been satisfied. A law failing to satisfy these requirements must be justified by a compelling governmental interest and must be narrowly tailored to advance *532 that interest. These ordinances fail to satisfy the *Smith* requirements. We begin by discussing neutrality.

A

In our Establishment Clause cases we have often stated the principle that the First Amendment forbids an official purpose to disapprove of a particular religion or of religion in general. See, e.g., *Board of Ed. of Westside Community Schools (Dist. 66) v. Mergens*, 496 U.S. 226, 248, 110 S.Ct. 2356, 2370–71, 110 L.Ed.2d 191 (1990) (plurality opinion); *School Dist. of Grand Rapids v. Ball*, 473 U.S. 373, 389, 105 S.Ct. 3216, 3225–26, 87 L.Ed.2d 267 (1985); *Wallace v. Jaffree*, 472 U.S. 38, 56, 105 S.Ct. 2479, 2489–90, 86 L.Ed.2d 29 (1985); *Epperson v. Arkansas*, 393 U.S. 97, 106–107, 89 S.Ct. 266, 271–72, 21 L.Ed.2d 228 (1968); *School Dist. of Abington v. Schempp*, 374 U.S. 203, 225, 83 S.Ct. 1560, 1573, 10 L.Ed.2d 844 (1963); *Everson v. Board of Ed. of Ewing*, 330 U.S. 1, 15–16, 67 S.Ct. 504, 511–12, 91 L.Ed. 711 (1947). These cases, however, for the most part have addressed governmental efforts to benefit religion or particular religions, and so have dealt with a question different, at least in its formulation and emphasis, from the issue here. Petitioners allege an attempt to disfavor their religion because of the religious ceremonies it commands, and the Free Exercise Clause is dispositive in our analysis.

¹³ At a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons. See, e.g., *Braunfeld v. Brown*, 366 U.S. 599, 607, 81 S.Ct. 1144, 1148, 6 L.Ed.2d 563 (1961) (plurality opinion); *Fowler v. Rhode Island*, 345 U.S. 67, 69–70, 73 S.Ct. 526, 527, 97 L.Ed. 828 (1953). Indeed, it was “historical

instances of religious persecution and intolerance that gave concern to those who drafted the Free Exercise Clause.” *Bowen v. Roy*, 476 U.S. 693, 703, 106 S.Ct. 2147, 2154, 90 L.Ed.2d 735 (1986) (opinion of Burger, C.J.). See J. Story, *Commentaries on the Constitution of the United States* §§ 991–992 (abridged ed. 1833) (reprint 1987); T. Cooley, *Constitutional Limitations* 467 (1868) (reprint 1972); *McGowan v. Maryland*, 366 U.S. 420, 464, and n. 2, 81 S.Ct. 1153, 1156, and n. 2, 6 L.Ed.2d 393 (1961) (opinion of Frankfurter, J.); *Douglas v. Jeannette*, 319 U.S. 157, 179, 63 S.Ct. 882, 888, 87 L.Ed. 1324 (1943) (Jackson, J., concurring in result); *533 *Davis v. Beason*, 133 U.S. 333, 342, 10 S.Ct. 299, 300, 33 L.Ed. 637 (1890). These principles, though not often at issue in our Free Exercise Clause cases, have played a role in some. In *McDaniel v. Paty*, 435 U.S. 618, 98 S.Ct. 1322, 55 L.Ed.2d 593 (1978), for example, we invalidated a State law that disqualified members of the clergy from holding certain public offices, because it “impose[d] special disabilities on the basis of ... religious status,” *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S., at 877, 110 S.Ct., at 1599. On the **2227 same principle, in *Fowler v. Rhode Island*, *supra*, we found that a municipal ordinance was applied in an unconstitutional manner when interpreted to prohibit preaching in a public park by a Jehovah’s Witness but to permit preaching during the course of a Catholic mass or Protestant church service. See also *Niemotko v. Maryland*, 340 U.S. 268, 272–273, 71 S.Ct. 325, 327–28, 95 L.Ed. 267 (1951). Cf. *Larson v. Valente*, 456 U.S. 228, 102 S.Ct. 1673, 72 L.Ed.2d 33 (1982) (state statute that treated some religious denominations more favorably than others violated the Establishment Clause).

1

¹⁴ ¹⁵ Although a law targeting religious beliefs as such is never permissible, *McDaniel v. Paty*, *supra*, 435 U.S., at 626, 98 S.Ct., at 1327–28 (plurality opinion); *Cantwell v. Connecticut*, *supra*, 310 U.S., at 303–304, 60 S.Ct., at 903 if the object of a law is to infringe upon or restrict practices because of their religious motivation, the law is not neutral, see *Employment Div., Dept. of Human Resources of Oregon v. Smith*, *supra*, 494 U.S., at 878–879, 110 S.Ct., at 1599–1600; and it is invalid unless it is justified by a compelling interest and is narrowly tailored to advance that interest. There are, of course, many ways of demonstrating that the object or purpose of a law is the suppression of religion or religious conduct. To determine the object of a law, we must begin with its text, for the minimum requirement of neutrality is that a law not discriminate on its face. A law lacks facial neutrality if it refers to a religious practice without a secular meaning

discernable from the language or context. Petitioners contend that three of the ordinances fail this test of facial neutrality because they use the words *534 "sacrifice" and "ritual," words with strong religious connotations. Brief for Petitioners 16–17. We agree that these words are consistent with the claim of facial discrimination, but the argument is not conclusive. The words "sacrifice" and "ritual" have a religious origin, but current use admits also of secular meanings. See Webster's Third New International Dictionary 1961, 1996 (1971). See also 12 Encyclopedia of Religion, at 556 ("[T]he word *sacrifice* ultimately became very much a secular term in common usage"). The ordinances, furthermore, define "sacrifice" in secular terms, without referring to religious practices.

¹⁴¹ We reject the contention advanced by the city, see Brief for Respondent 15, that our inquiry must end with the text of the laws at issue. Facial neutrality is not determinative. The Free Exercise Clause, like the Establishment Clause, extends beyond facial discrimination. The Clause "forbids subtle departures from neutrality," *Gillette v. United States*, 401 U.S. 437, 452, 91 S.Ct. 828, 837, 28 L.Ed.2d 168 (1971), and "covert suppression of particular religious beliefs," *Bowen v. Roy*, *supra*, 476 U.S., at 703, 106 S.Ct., at 2154 (opinion of Burger, C.J.). Official action that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality. The Free Exercise Clause protects against governmental hostility which is masked, as well as overt. "The Court must survey meticulously the circumstances of governmental categories to eliminate, as it were, religious gerrymanders." *Walz v. Tax Comm'n of New York City*, 397 U.S. 664, 696, 90 S.Ct. 1409, 1425, 25 L.Ed.2d 697 (1970) (Harlan, J., concurring).

¹⁴² The record in this case compels the conclusion that suppression of the central element of the Santeria worship service was the object of the ordinances. First, though use of the words "sacrifice" and "ritual" does not compel a finding of improper targeting of the Santeria religion, the choice of these words is support for our conclusion. There are further respects in which the text of the city council's enactments discloses the improper attempt to target Santeria. *535 Resolution 87–66, adopted June 9, 1987, recited that "residents and citizens of the City of Hialeah have expressed their concern **2228 that certain religions may propose to engage in practices which are inconsistent with public morals, peace or safety," and "reiterate[d]" the city's commitment to prohibit "any and all [such] acts of any and all religious groups." No one suggests, and on this record it cannot be maintained, that city officials had in mind a religion other than Santeria.

¹⁴³ It becomes evident that these ordinances target Santeria sacrifice when the ordinances' operation is considered. Apart from the text, the effect of a law in its real operation is strong evidence of its object. To be sure, adverse impact will not always lead to a finding of impermissible targeting. For example, a social harm may have been a legitimate concern of government for reasons quite apart from discrimination. *McGowan v. Maryland*, 366 U.S., at 442, 81 S.Ct., at 1113–14. See, e.g., *Reynolds v. United States*, 98 U.S. 145, 25 L.Ed. 244 (1879); *Davis v. Beason*, 133 U.S. 333, 10 S.Ct. 299, 33 L.Ed. 637 (1890). See also Ely, *Legislative and Administrative Motivation in Constitutional Law*, 79 Yale L.J. 1205, 1319 (1970). The subject at hand does implicate, of course, multiple concerns unrelated to religious animosity, for example, the suffering or mistreatment visited upon the sacrificed animals and health hazards from improper disposal. But the ordinances when considered together disclose an object remote from these legitimate concerns. The design of these laws accomplishes instead a "religious gerrymander," *Walz v. Tax Comm'n of New York City*, *supra*, 397 U.S., at 696, 90 S.Ct., at 1425 (Harlan, J., concurring), an impermissible attempt to target petitioners and their religious practices.

It is a necessary conclusion that almost the only conduct subject to Ordinances 87–40, 87–52, and 87–71 is the religious exercise of Santeria church members. The texts show that they were drafted in tandem to achieve this result. We begin with Ordinance 87–71. It prohibits the sacrifice of animals, but defines sacrifice as "to unnecessarily kill ... an animal in a public or private ritual or ceremony not for the *536 primary purpose of food consumption." The definition excludes almost all killings of animals except for religious sacrifice, and the primary purpose requirement narrows the proscribed category even further, in particular by exempting kosher slaughter, see 723 F.Supp., at 1480. We need not discuss whether this differential treatment of two religions is itself an independent constitutional violation. Cf. *Larson v. Valente*, 456 U.S., at 244–246, 102 S.Ct., at 1683–84. It suffices to recite this feature of the law as support for our conclusion that Santeria alone was the exclusive legislative concern. The net result of the gerrymander is that few if any killings of animals are prohibited other than Santeria sacrifice, which is proscribed because it occurs during a ritual or ceremony and its primary purpose is to make an offering to the *orishas*, not food consumption. Indeed, careful drafting ensured that, although Santeria sacrifice is prohibited, killings that are no more necessary or humane in almost all other circumstances are unpunished.

Operating in similar fashion is Ordinance 87-52, which prohibits the "possess[ion], sacrifice, or slaughter" of an animal with the "inten[t] to use such animal for food purposes." This prohibition, extending to the keeping of an animal as well as the killing itself, applies if the animal is killed in "any type of ritual" and there is an intent to use the animal for food, whether or not it is in fact consumed for food. The ordinance exempts, however, "any licensed [food] establishment" with regard to "any animals which are specifically raised for food purposes," if the activity is permitted by zoning and other laws. This exception, too, seems intended to cover kosher slaughter. Again, the burden of the ordinance, in practical terms, falls on Santeria adherents but almost no others: If the killing is—unlike most Santeria sacrifices—unaccompanied by the intent to use the animal for food, then it is not prohibited by Ordinance 87-52; if the killing is specifically for food but does not occur during the **2229 course of "any type of ritual," it again falls outside the prohibition; and if *537 the killing is for food and occurs during the course of a ritual, it is still exempted if it occurs in a properly zoned and licensed establishment and involves animals "specifically raised for food purposes." A pattern of exemptions parallels the pattern of narrow prohibitions. Each contributes to the gerrymander.

Ordinance 87-40 incorporates the Florida animal cruelty statute, Fla.Stat. § 828.12 (1987). Its prohibition is broad on its face, punishing "[w]hoever ... unnecessarily ... kills any animal." The city claims that this ordinance is the epitome of a neutral prohibition. Brief for Respondent 13-14. The problem, however, is the interpretation given to the ordinance by respondent and the Florida attorney general. Killings for religious reasons are deemed unnecessary, whereas most other killings fall outside the prohibition. The city, on what seems to be a *per se* basis, deems hunting, slaughter of animals for food, eradication of insects and pests, and euthanasia as necessary. See *id.*, at 22. There is no indication in the record that respondent has concluded that hunting or fishing for sport is unnecessary. Indeed, one of the few reported Florida cases decided under § 828.12 concludes that the use of live rabbits to train greyhounds is not unnecessary. See *Kiper v. State*, 310 So.2d 42 (Fla.App.), cert. denied, 328 So.2d 845 (Fla.1975). Further, because it requires an evaluation of the particular justification for the killing, this ordinance represents a system of "individualized governmental assessment of the reasons for the relevant conduct," *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S., at 884, 110 S.Ct., at 1603. As we noted in *Smith*, in circumstances in which individualized exemptions from a general requirement are available, the government "may not refuse to extend that system to

cases of 'religious hardship' without compelling reason." *Ibid.*, quoting *Bowen v. Roy*, 476 U.S., at 708, 106 S.Ct., at 2156 (opinion of Burger, C.J.). Respondent's application of the ordinance's test of necessity devalues religious reasons for killing by judging them to be of lesser import than nonreligious reasons. *538 Thus, religious practice is being singled out for discriminatory treatment. *Bowen v. Roy*, 476 U.S., at 722, and n. 17, 106 S.Ct., at 2164, and n. 17 (STEVENS, J., concurring in part and concurring in result); *id.*, at 708, 106 S.Ct. 2156 (opinion of Burger, C.J.); *United States v. Lee*, 455 U.S. 252, 264, n. 3, 102 S.Ct. 1051, 1059, n. 3, 71 L.Ed.2d 127 (1982) (STEVENS, J., concurring in judgment).

We also find significant evidence of the ordinances' improper targeting of Santeria sacrifice in the fact that they proscribe more religious conduct than is necessary to achieve their stated ends. It is not unreasonable to infer, at least when there are no persuasive indications to the contrary, that a law which visits "gratuitous restrictions" on religious conduct, *McGowan v. Maryland*, 366 U.S., at 520, 81 S.Ct., at 1186 (opinion of Frankfurter, J.), seeks not to effectuate the stated governmental interests, but to suppress the conduct because of its religious motivation.

¹¹⁰ The legitimate governmental interests in protecting the public health and preventing cruelty to animals could be addressed by restrictions stopping far short of a flat prohibition of all Santeria sacrificial practice. If improper disposal, not the sacrifice itself, is the harm to be prevented, the city could have imposed a general regulation **2230 on the disposal of organic garbage. It did not do so. Indeed, counsel for the city conceded at oral argument that, under the ordinances, Santeria sacrifices would be illegal even if they occurred in licensed, inspected, and zoned slaughterhouses. Tr. of Oral Arg. 45. See also *id.*, at 42, 48. Thus, these broad ordinances prohibit Santeria sacrifice even when it does not threaten the city's interest *539 in the public health. The District Court accepted the argument that narrower regulation would be unenforceable because of the secrecy in the Santeria rituals and the lack of any central religious authority to require compliance with secular disposal regulations. See 723 F.Supp., at 1486-1487, and nn. 58-59. It is difficult to understand, however, how a prohibition of the sacrifices themselves, which occur in private, is enforceable if a ban on improper disposal, which occurs in public, is not. The neutrality of a law is suspect if First Amendment freedoms are curtailed to prevent isolated collateral harms not themselves prohibited by direct regulation. See, e.g., *Schneider v. State*, 308 U.S. 147, 162, 60 S.Ct. 146, 151-52, 84 L.Ed. 155 (1939).

Under similar analysis, narrower regulation would achieve the city's interest in preventing cruelty to animals. With regard to the city's interest in ensuring the adequate care of animals, regulation of conditions and treatment, regardless of why an animal is kept, is the logical response to the city's concern, not a prohibition on possession for the purpose of sacrifice. The same is true for the city's interest in prohibiting cruel methods of killing. Under federal and Florida law and Ordinance 87-40, which incorporates Florida law in this regard, killing an animal by the "simultaneous and instantaneous severance of the carotid arteries with a sharp instrument"—the method used in kosher slaughter—is approved as humane. See 7 U.S.C. § 1902(b); Fla.Stat. § 828.23(7)(b) (1991); Ordinance 87-40, § 1. The District Court found that, though Santeria sacrifice also results in severance of the carotid arteries, the method used during sacrifice is less reliable and therefore not humane. See 723 F.Supp., at 1472-1473. If the city has a real concern that other methods are less humane, however, the subject of the regulation should be the method of slaughter itself, not a religious classification that is said to bear some general relation to it.

¹¹¹¹ Ordinance 87-72—unlike the three other ordinances—does appear to apply to substantial nonreligious conduct and *540 not to be overbroad. For our purposes here, however, the four substantive ordinances may be treated as a group for neutrality purposes. Ordinance 87-72 was passed the same day as Ordinance 87-71 and was enacted, as were the three others, in direct response to the opening of the Church. It would be implausible to suggest that the three other ordinances, but not Ordinance 87-72, had as their object the suppression of religion. We need not decide whether the Ordinance 87-72 could survive constitutional scrutiny if it existed separately; it must be invalidated because it functions, with the rest of the enactments in question, to suppress Santeria religious worship.

2

In determining if the object of a law is a neutral one under the Free Exercise Clause, we can also find guidance in our equal protection cases. As Justice Harlan noted in the related context of the Establishment Clause, "[n]eutrality in its application requires an equal protection mode of analysis." *Walz v. Tax Comm'n of New York City*, 397 U.S., at 696, 90 S.Ct., at 1425 (concurring opinion). Here, as in equal protection cases, we may determine the city council's object from both direct and circumstantial evidence. *Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266, 97 S.Ct. 555,

563-64, 50 L.Ed.2d 450 (1977). Relevant evidence includes, among other things, the historical background of the decision under challenge, the specific series of events leading to the enactment or official policy in question, and the legislative or administrative history, including contemporaneous **2231 statements made by members of the decisionmaking body. *Id.*, at 267-268, 97 S.Ct., at 564-65. These objective factors bear on the question of discriminatory object. *Personnel Administrator of Mass. v. Feeney*, 442 U.S. 256, 279, n. 24, 99 S.Ct. 2282, 2296, n. 24, 60 L.Ed.2d 870 (1979).

That the ordinances were enacted " 'because of,' not merely 'in spite of,' " their suppression of Santeria religious practice, *id.*, at 279, 99 S.Ct., at 2296 is revealed by the events preceding their enactment. Although respondent claimed at oral argument *541 that it had experienced significant problems resulting from the sacrifice of animals within the city before the announced opening of the Church, Tr. of Oral Arg. 27, 46, the city council made no attempt to address the supposed problem before its meeting in June 1987, just weeks after the Church announced plans to open. The minutes and taped excerpts of the June 9 session, both of which are in the record, evidence significant hostility exhibited by residents, members of the city council, and other city officials toward the Santeria religion and its practice of animal sacrifice. The public crowd that attended the June 9 meetings interrupted statements by council members critical of Santeria with cheers and the brief comments of Pichardo with taunts. When Councilman Martinez, a supporter of the ordinances, stated that in prerevolution Cuba "people were put in jail for practicing this religion," the audience applauded. Taped excerpts of Hialeah City Council Meeting, June 9, 1987.

Other statements by members of the city council were in a similar vein. For example, Councilman Martinez, after noting his belief that Santeria was outlawed in Cuba, questioned: "[I]f we could not practice this [religion] in our homeland [Cuba], why bring it to this country?" Councilman Cardoso said that Santeria devotees at the Church "are in violation of everything this country stands for." Councilman Mejides indicated that he was "totally against the sacrificing of animals" and distinguished kosher slaughter because it had a "real purpose." The "Bible says we are allowed to sacrifice an animal for consumption," he continued, "but for any other purposes, I don't believe that the Bible allows that." The president of the city council, Councilman Echevarria, asked: "What can we do to prevent the Church from opening?"

Various Hialeah city officials made comparable comments. The chaplain of the Hialeah Police

Department told the city council that Santeria was a sin, "foolishness," "an abomination to the Lord," and the worship of "demons." He advised *542 the city council: "We need to be helping people and sharing with them the truth that is found in Jesus Christ." He concluded: "I would exhort you ... not to permit this Church to exist." The city attorney commented that Resolution 87-66 indicated: "This community will not tolerate religious practices which are abhorrent to its citizens...." *Ibid.* Similar comments were made by the deputy city attorney. This history discloses the object of the ordinances to target animal sacrifice by Santeria worshippers because of its religious motivation.

3

In sum, the neutrality inquiry leads to one conclusion: The ordinances had as their object the suppression of religion. The pattern we have recited discloses animosity to Santeria adherents and their religious practices; the ordinances by their own terms target this religious exercise; the texts of the ordinances were gerrymandered with care to proscribe religious killings of animals but to exclude almost all secular killings; and the ordinances suppress much more religious conduct than is necessary in order to achieve the legitimate ends asserted in their defense. These ordinances are not neutral, and the court below committed clear error in failing to reach this conclusion.

B

¹²¹ We turn next to a second requirement of the Free Exercise Clause, the rule **2232 that laws burdening religious practice must be of general applicability. *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S., at 879-881, 110 S.Ct., at 1600-1601. All laws are selective to some extent, but categories of selection are of paramount concern when a law has the incidental effect of burdening religious practice. The Free Exercise Clause "protect[s] religious observers against unequal treatment," *Hobbie v. Unemployment Appeals Comm'n of Fla.*, 480 U.S. 136, 148, 107 S.Ct. 1046, 1053, 94 L.Ed.2d 190 (1987) (STEVENS, J., concurring in judgment), and inequality results when a legislature decides that *543 the governmental interests it seeks to advance are worthy of being pursued only against conduct with a religious motivation.

¹²² The principle that government, in pursuit of legitimate interests, cannot in a selective manner impose burdens

only on conduct motivated by religious belief is essential to the protection of the rights guaranteed by the Free Exercise Clause. The principle underlying the general applicability requirement has parallels in our First Amendment jurisprudence. See, e.g., *Cohen v. Cowles Media Co.*, 501 U.S. 663, 669-670, 111 S.Ct. 2513, 2518-2519, 115 L.Ed.2d 586 (1991); *University of Pennsylvania v. EEOC*, 493 U.S. 182, 201, 110 S.Ct. 577, 588-89, 107 L.Ed.2d 571 (1990); *Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue*, 460 U.S. 575, 585, 103 S.Ct. 1365, 1371-72, 75 L.Ed.2d 295 (1983); *Larson v. Valente*, 456 U.S., at 245-246, 102 S.Ct., at 1683-84; *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 449, 89 S.Ct. 601, 606, 21 L.Ed.2d 658 (1969). In this case we need not define with precision the standard used to evaluate whether a prohibition is of general application, for these ordinances fall well below the minimum standard necessary to protect First Amendment rights.

¹²³ Respondent claims that Ordinances 87-40, 87-52, and 87-71 advance two interests: protecting the public health and preventing cruelty to animals. The ordinances are underinclusive for those ends. They fail to prohibit nonreligious conduct that endangers these interests in a similar or greater degree than Santeria sacrifice does. The underinclusion is substantial, not inconsequential. Despite the city's proffered interest in preventing cruelty to animals, the ordinances are drafted with care to forbid few killings but those occasioned by religious sacrifice. Many types of animal deaths or kills for nonreligious reasons are either not prohibited or approved by express provision. For example, fishing—which occurs in Hialeah, see A. Khedouri & F. Khedouri, *South Florida Inside Out* 57 (1991)—is legal. Extermination of mice and rats within a home is also permitted. Florida law incorporated by Ordinance 87-40 sanctions *544 euthanasia of "stray, neglected, abandoned, or unwanted animals," Fla.Stat. § 828.058 (1987); destruction of animals judicially removed from their owners "for humanitarian reasons" or when the animal "is of no commercial value," § 828.073(4)(c)(2); the infliction of pain or suffering "in the interest of medical science," § 828.02; the placing of poison in one's yard or enclosure, § 828.08; and the use of a live animal "to pursue or take wildlife or to participate in any hunting," § 828.122(6)(b), and "to hunt wild hogs," § 828.122(6)(c).

The city concedes that "neither the State of Florida nor the City has enacted a generally applicable ban on the killing of animals." Brief for Respondent 21. It asserts, however, that animal sacrifice is "different" from the animal killings that are permitted by law. *Ibid.* According

to the city, it is "self-evident" that killing animals for food is "important"; the eradication of insects and pests is "obviously justified"; and the euthanasia of excess animals "makes sense." *Id.*, at 22. These *ipse dixit*s do not explain why religion alone must bear the burden of the ordinances, when many of these secular killings fall within the city's interest in preventing the cruel treatment of animals.

****2233** ¹¹⁵¹ The ordinances are also underinclusive with regard to the city's interest in public health, which is threatened by the disposal of animal carcasses in open public places and the consumption of uninspected meat, see Brief for Respondent 32, citing 723 F.Supp., at 1474–1475, 1485. Neither interest is pursued by respondent with regard to conduct that is not motivated by religious conviction. The health risks posed by the improper disposal of animal carcasses are the same whether Santeria sacrifice or some nonreligious killing preceded it. The city does not, however, prohibit hunters from bringing their kill to their houses, nor does it regulate disposal after their activity. Despite substantial testimony at trial that the same public health hazards result from improper disposal of garbage by restaurants, see 11 Record 566, *545 590–591, restaurants are outside the scope of the ordinances. Improper disposal is a general problem that causes substantial health risks, 723 F.Supp., at 1485, but which respondent addresses only when it results from religious exercise.

The ordinances are underinclusive as well with regard to the health risk posed by consumption of uninspected meat. Under the city's ordinances, hunters may eat their kill and fishermen may eat their catch without undergoing governmental inspection. Likewise, state law requires inspection of meat that is sold but exempts meat from animals raised for the use of the owner and "members of his household and nonpaying guests and employees." Fla.Stat. § 585.88(1)(a) (1991). The asserted interest in inspected meat is not pursued in contexts similar to that of religious animal sacrifice.

Ordinance 87–72, which prohibits the slaughter of animals outside of areas zoned for slaughterhouses, is underinclusive on its face. The ordinance includes an exemption for "any person, group, or organization" that "slaughters or processes for sale, small numbers of hogs and/or cattle per week in accordance with an exemption provided by state law." See Fla.Stat. § 828.24(3) (1991). Respondent has not explained why commercial operations that slaughter "small numbers" of hogs and cattle do not implicate its professed desire to prevent cruelty to animals and preserve the public health. Although the city has classified Santeria sacrifice as slaughter, subjecting it to

this ordinance, it does not regulate other killings for food in like manner.

We conclude, in sum, that each of Hialeah's ordinances pursues the city's governmental interests only against conduct motivated by religious belief. The ordinances "ha[ve] every appearance of a prohibition that society is prepared to impose upon [Santeria worshippers] but not upon itself." *Florida Star v. B.J.F.*, 491 U.S. 524, 542, 109 S.Ct. 2603, 2614, 105 L.Ed.2d 443 (1989) (SCALIA, J., concurring in part and concurring in judgment). This *546 precise evil is what the requirement of general applicability is designed to prevent.

III

¹¹⁶¹ ¹¹⁷¹ ¹¹⁸¹ A law burdening religious practice that is not neutral or not of general application must undergo the most rigorous of scrutiny. To satisfy the commands of the First Amendment, a law restrictive of religious practice must advance "interests of the highest order" and must be narrowly tailored in pursuit of those interests. *McDaniel v. Paty*, 435 U.S., at 628, 98 S.Ct., at 1328, quoting *Wisconsin v. Yoder*, 406 U.S. 205, 215, 92 S.Ct. 1526, 1533, 32 L.Ed.2d 15 (1972). The compelling interest standard that we apply once a law fails to meet the *Smith* requirements is not "water[ed] ... down" but "really means what it says." *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S., at 888, 110 S.Ct., at 1605. A law that targets religious conduct for distinctive treatment or advances legitimate governmental interests only against conduct with a religious motivation will survive strict scrutiny only in rare cases. It follows from what we have already said that these ordinances cannot withstand this scrutiny.

****2234** First, even were the governmental interests compelling, the ordinances are not drawn in narrow terms to accomplish those interests. As we have discussed, see *supra*, at 16–18, 21–24, all four ordinances are overbroad or underinclusive in substantial respects. The proffered objectives are not pursued with respect to analogous non-religious conduct, and those interests could be achieved by narrower ordinances that burdened religion to a far lesser degree. The absence of narrow tailoring suffices to establish the invalidity of the ordinances. See *Arkansas Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 232, 107 S.Ct. 1722, 1729, 95 L.Ed.2d 209 (1987).

Respondent has not demonstrated, moreover, that, in the context of these ordinances, its governmental interests are compelling. Where government restricts only conduct protected by the First Amendment and fails to enact

feasible *547 measures to restrict other conduct producing substantial harm or alleged harm of the same sort, the interest given in justification of the restriction is not compelling. It is established in our strict scrutiny jurisprudence that "a law cannot be regarded as protecting an interest 'of the highest order' ... when it leaves appreciable damage to that supposedly vital interest unprohibited." *Florida Star v. B.J.F.*, *supra*, 491 U.S., at 541-542, 109 S.Ct., at 2613-14 (SCALIA, J., concurring in part and concurring in judgment) (citation omitted). See *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 119-120, 112 S.Ct. 501, 510-11, 116 L.Ed.2d 476 (1991). Cf. *Florida Star v. B.J.F.*, *supra*, at 540-541, 109 S.Ct., at 2612-13; *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97, 104-105, 99 S.Ct. 2667, 2671-72, 61 L.Ed.2d 399 (1979); *id.*, at 110, 99 S.Ct., at 2674-75 (REHNQUIST, J., concurring in judgment). As we show above, see *supra*, at 21-24, the ordinances are underinclusive to a substantial extent with respect to each of the interests that respondent has asserted, and it is only conduct motivated by religious conviction that bears the weight of the governmental restrictions. There can be no serious claim that those interests justify the ordinances.

IV

The Free Exercise Clause commits government itself to religious tolerance, and upon even slight suspicion that proposals for state intervention stem from animosity to religion or distrust of its practices, all officials must pause to remember their own high duty to the Constitution and to the rights it secures. Those in office must be resolute in resisting importunate demands and must ensure that the sole reasons for imposing the burdens of law and regulation are secular. Legislators may not devise mechanisms, overt or disguised, designed to persecute or oppress a religion or its practices. The laws here in question were enacted contrary to these constitutional principles, and they are void.

Reversed.

*548 APPENDIX TO OPINION OF THE COURT
City of Hialeah, Florida, Resolution No. 87-66, adopted June 9, 1987, provides:

"WHEREAS, residents and citizens of the City of Hialeah have expressed their concern that certain religions may propose to engage in practices which are inconsistent with public morals, peace or safety, and

"WHEREAS, the Florida Constitution, Article I, Declaration of Rights, Section 3, Religious Freedom, specifically states that religious freedom shall not justify practices inconsistent with public morals, peace or safety.

"NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, that:

"1. The City reiterates its commitment to a prohibition against any and all acts of any and all religious groups which are **2235 inconsistent with public morals, peace or safety."

City of Hialeah, Florida, Ordinance No. 87-40, adopted June 9, 1987, provides:

"WHEREAS, the citizens of the City of Hialeah, Florida, have expressed great concern over the potential for animal sacrifices being conducted in the City of Hialeah; and

"WHEREAS, Section 828.27, Florida Statutes, provides that 'nothing contained in this section shall prevent any county or municipality from enacting any ordinance relating to animal control or cruelty to animals which is identical to the provisions of this Chapter ... except as to penalty.'

"NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, that:

*549 "Section 1. The Mayor and City Council of the City of Hialeah, Florida, hereby adopt Florida Statute, Chapter 828—'Cruelty to Animals' (copy attached hereto and made a part hereof), in its entirety (relating to animal control or cruelty to animals), except as to penalty.

"Section 2. Repeal of Ordinances in Conflict.

"All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

"Section 3. Penalties.

"Any person, firm or corporation convicted of violating the provisions of this ordinance shall be punished by a fine, not exceeding \$500.00, or by a jail sentence, not exceeding sixty (60) days, or both, in the discretion of the Court.

"Section 4. Inclusion in Code.

"The provisions of this Ordinance shall be included and incorporated in the Code of the City of Hialeah, as an addition or amendment thereto, and the sections of this Ordinance shall be re-numbered to conform to the uniform numbering system of the Code.

"Section 5. Severability Clause.

"If any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared invalid or unconstitutional by the judge or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not effect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

"Section 6. Effective Date.

"This Ordinance shall become effective when passed by the City Council of the City of Hialeah and signed by the Mayor of the City of Hialeah."

City of Hialeah Resolution No. 87-90, adopted August 11, 1987, provides:

"WHEREAS, the residents and citizens of the City of Hialeah, Florida, have expressed great concern regarding *550 the possibility of public ritualistic animal sacrifices in the City of Hialeah, Florida; and

"WHEREAS, the City of Hialeah, Florida, has received an opinion from the Attorney General of the State of Florida, concluding that public ritualistic animal sacrifices is [sic] a violation of the Florida State Statute on Cruelty to Animals; and

"WHEREAS, the Attorney General further held that the sacrificial killing of animals other than for the primary purpose of food consumption is prohibited under state law; and

"WHEREAS, the City of Hialeah, Florida, has enacted an ordinance mirroring state law prohibiting cruelty to animals.

"NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, that:

"Section 1. It is the policy of the Mayor and City Council of the City of Hialeah, Florida, to oppose the ritual sacrifices of animals within the City of Hialeah, Florida [sic]. Any individual or organization **2236 that seeks to practice animal sacrifice in violation of state and local law will be prosecuted."

City of Hialeah, Florida, Ordinance No. 87-52, adopted September 8, 1987, provides:

"WHEREAS, the residents and citizens of the City of Hialeah, Florida, have expressed great concern regarding the possibility of public ritualistic animal sacrifices within the City of Hialeah, Florida; and

"WHEREAS, the City of Hialeah, Florida, has received an opinion from the Attorney General of the State of Florida, concluding that public ritualistic animal sacrifice, other than for the primary purpose of food consumption, is a violation of state law; and

*551 "WHEREAS, the City of Hialeah, Florida, has enacted an ordinance (Ordinance No. 87-40), mirroring the state law prohibiting cruelty to animals.

"WHEREAS, the City of Hialeah, Florida, now wishes to specifically prohibit the possession of animals for slaughter or sacrifice within the City of Hialeah, Florida.

"NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, that:

"Section 1. Chapter 6 of the Code of Ordinances of the City of Hialeah, Florida, is hereby amended by adding thereto two (2) new Sections 6-8 'Definitions' and 6-9 'Prohibition Against Possession Of Animals For Slaughter Or Sacrifice', which is to read as follows:

"Section 6-8. Definitions

"1. Animal—any living dumb creature.

"2. Sacrifice—to unnecessarily kill, torment, torture, or mutilate an animal in a public or private ritual or ceremony not for the primary purpose of food consumption.

"3. Slaughter—the killing of animals for food.

"Section 6-9. Prohibition Against Possession of Animals for Slaughter Or Sacrifice.

"1. No person shall own, keep or otherwise possess, sacrifice, or slaughter any sheep, goat, pig, cow or the young of such species, poultry, rabbit, dog, cat, or any other animal, intending to use such animal for food purposes.

"2. This section is applicable to any group or individual that kills, slaughters or sacrifices animals for any type of ritual, regardless of whether or not the flesh or blood

of the animal is to be consumed.

"3. Nothing in this ordinance is to be interpreted as prohibiting any licensed establishment from slaughtering for food purposes any animals which are specifically *552 raised for food purposes where such activity is properly zoned and/or permitted under state and local law and under rules promulgated by the Florida Department of Agriculture.

"Section 2. Repeal of Ordinance in Conflict.

"All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

"Section 3. Penalties.

"Any person, firm or corporation convicted of violating the provisions of this ordinance shall be punished by a fine, not exceeding \$500.00, or by a jail sentence, not exceeding sixty (60) days, or both, in the discretion of the Court.

"Section 4. Inclusion in Code.

"The provisions of this Ordinance shall be included and incorporated in the Code of the City of Hialeah, as an addition or amendment thereto, and the sections of this Ordinance shall be re-numbered to conform to the uniform numbering system of the Code.

"Section 5. Severability Clause.

"If any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared invalid or unconstitutional by the judgement or decree of a court of competent jurisdiction, such invalidity or unconstitutionality **2237 shall not effect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

"Section 6. Effective Date.

"This Ordinance shall become effective when passed by the City Council of the City of Hialeah and signed by the Mayor of the City of Hialeah."

City of Hialeah, Florida, Ordinance No. 87-71, adopted September 22, 1987, provides:

"WHEREAS, the City Council of the City of Hialeah, Florida, has determined that the sacrificing of animals *553 within the city limits is contrary to the public health, safety, welfare and morals of the community; and

"WHEREAS, the City Council of the City of Hialeah, Florida, desires to have qualified societies or corporations organized under the laws of the State of Florida, to be authorized to investigate and prosecute any violation(s) of the ordinance herein after set forth, and for the registration of the agents of said societies.

"NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, that:

"Section 1. For the purpose of this ordinance, the word sacrifice shall mean: to unnecessarily kill, torment, torture, or mutilate an animal in a public or private ritual or ceremony not for the primary purpose of food consumption.

"Section 2. For the purpose of this ordinance, the word animal shall mean: any living dumb creature.

"Section 3. It shall be unlawful for any person, persons, corporations or associations to sacrifice any animal within the corporate limits of the City of Hialeah, Florida.

"Section 4. All societies or associations for the prevention of cruelty to animals organized under the laws of the State of Florida, seeking to register with the City of Hialeah for purposes of investigating and assisting in the prosecution of violations and provisions [sic] of this Ordinance, shall apply to the City Council for authorization to so register and shall be registered with the Office of the Mayor of the City of Hialeah, Florida, following approval by the City Council at a public hearing in accordance with rules and regulations (i.e., criteria) established by the City Council by resolution, and shall thereafter, be empowered to assist in the prosecution of any violation of this Ordinance.

*554 **"Section 5.** Any society or association for the prevention of cruelty to animals registered with the Mayor of the City of Hialeah, Florida, in accordance with the provisions of Section 4 hereinabove, may appoint agents for the purposes of investigating and assisting in the prosecution of violations and provisions [sic] of this Ordinance, or any other laws of the City of Hialeah, Florida, for the purpose of protecting animals and preventing any act prohibited hereunder.

"Section 6. Repeal of Ordinances in Conflict.

"All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

"Section 7. Penalties.

"Any person, firm or corporation convicted of violating the provisions of this ordinance shall be punished by a fine, not exceeding \$500.00, or by a jail sentence, not exceeding sixty (60) days, or both, in the discretion of the Court.

"Section 8. Inclusion in Code.

"The provisions of this Ordinance shall be included and incorporated in the Code of the City of Hialeah, as an addition or amendment thereto, and the sections of this Ordinance shall be re-numbered to conform to the uniform numbering system of the Code.

"Section 9. Severability Clause.

****2238** "If any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not effect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance.

"Section 10. Effective Date.

"This Ordinance shall become effective when passed by the City Council of the City of Hialeah and signed by the Mayor of the City of Hialeah."

***555** City of Hialeah, Florida, Ordinance No. 87-72, adopted September 22, 1987, provides:

"WHEREAS, the City Council of the City of Hialeah, Florida, has determined that the slaughtering of animals on the premises other than those properly zoned as a slaughter house, is contrary to the public health, safety and welfare of the citizens of Hialeah, Florida.

"NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, that:

"Section 1. For the purpose of this Ordinance, the word slaughter shall mean: the killing of animals for food.

"Section 2. For the purpose of this Ordinance, the word animal shall mean: any living dumb creature.

"Section 3. It shall be unlawful for any person, persons, corporations or associations to slaughter any animal on any premises in the City of Hialeah, Florida, except those properly zoned as a slaughter house, and meeting all the health, safety and sanitation codes prescribed by the City for the operation of a slaughter house.

"Section 4. All societies or associations for the prevention of cruelty to animals organized under the laws of the State of Florida, seeking to register with the City of Hialeah for purposes of investigating and assisting in the prosecution of violations and provisions [sic] of this Ordinance, shall apply to the City Council for authorization to so register and shall be registered with the Office of the Mayor of the City of Hialeah, Florida, following approval by the City Council at a public hearing in accordance with rules and regulations (i.e., criteria) established by the City Council by resolution, and shall thereafter, be empowered to assist in the prosecution of any violations of this Ordinance.

***556** **"Section 5.** Any society or association for the prevention of cruelty to animals registered with the Mayor of the City of Hialeah, Florida, in accordance with the provisions of Section 4 hereinabove, may appoint agents for the purposes of investigating and assisting in the prosecution of violations and provisions [sic] of this Ordinance, or any other laws of the City of Hialeah, Florida, for the purpose of protecting animals and preventing any act prohibited hereunder.

"Section 6. This Ordinance shall not apply to any person, group or organization that slaughters, or processes for sale, small numbers of hogs and/or cattle per week in accordance with an exemption provided by state law.

"Section 7. Repeal of Ordinances in Conflict.

"All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

"Section 8. Penalties.

"Any person, firm or corporation convicted of violating the provisions of this ordinance shall be punished by a fine, not exceeding \$500.00, or by a jail sentence, not exceeding sixty (60) days, or both, in the discretion of the Court.

"Section 9. Inclusion in Code.

"The provisions of this Ordinance shall be included and incorporated in the Code of the City of Hialeah, as an addition or amendment thereto, and the sections of ****2239** this Ordinance shall be re-numbered to conform to the uniform numbering system of the Code.

"Section 10. Severability Clause.

"If any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared invalid or

unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not effect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

*557 "Section 11. Effective Date.

"This Ordinance shall become effective when passed by the City Council of the City of Hialeah and signed by the Mayor of the City of Hialeah."

Justice SCALIA, with whom THE CHIEF JUSTICE joins, concurring in part and concurring in the judgment.

The Court analyzes the "neutrality" and the "general applicability" of the Hialeah ordinances in separate sections (Parts II-A and II-B, respectively), and allocates various invalidating factors to one or the other of those sections. If it were necessary to make a clear distinction between the two terms, I would draw a line somewhat different from the Court's. But I think it is not necessary, and would frankly acknowledge that the terms are not only "interrelated," *ante*, 2226, but substantially overlap.

The terms "neutrality" and "general applicability" are not to be found within the First Amendment itself, of course, but are used in *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990), and earlier cases to describe those characteristics which cause a law that prohibits an activity a particular individual wishes to engage in for religious reasons nonetheless not to constitute a "law ... prohibiting the free exercise" of religion within the meaning of the First Amendment. In my view, the defect of lack of neutrality applies primarily to those laws that by their terms impose disabilities on the basis of religion (e.g., a law excluding members of a certain sect from public benefits, cf. *McDaniel v. Paty*, 435 U.S. 618, 98 S.Ct. 1322, 55 L.Ed.2d 593 (1978)), see *Bowen v. Roy*, 476 U.S. 693, 703-704, 106 S.Ct. 2147, 2153-54, 90 L.Ed.2d 735 (1986) (opinion of Burger, C.J.); whereas the defect of lack of general applicability applies primarily to those laws which, though neutral in their terms, through their design, construction, or enforcement target the practices of a particular religion for discriminatory treatment, see *Fowler v. Rhode Island*, 345 U.S. 67, 73 S.Ct. 526, 97 L.Ed. 828 (1953). But certainly a law that is not of general applicability (in the sense I *558 have described) can be considered "nonneutral"; and certainly no law that is nonneutral (in the relevant sense) can be thought to be of general applicability. Because I agree

with most of the invalidating factors set forth in Part II of the Court's opinion, and because it seems to me a matter of no consequence under which rubric ("neutrality," Part II-A, or "general applicability," Part II-B) each invalidating factor is discussed, I join the judgment of the Court and all of its opinion except section 2 of Part II-A.

I do not join that section because it departs from the opinion's general focus on the object of the laws at issue to consider the subjective motivation of the lawmakers, i.e., whether the Hialeah City Council actually intended to disfavor the religion of Santeria. As I have noted elsewhere, it is virtually impossible to determine the singular "motive" of a collective legislative body, see, e.g., *Edwards v. Aguillard*, 482 U.S. 578, 636-639, 107 S.Ct. 2573, 2605-07, 96 L.Ed.2d 510 (1987) (dissenting opinion), and this Court has a long tradition of refraining from such inquiries, see, e.g., *Fletcher v. Peck*, 6 Cranch 87, 130-131, 3 L.Ed. 162 (1810) (Marshall, C.J.); **2240 *United States v. O'Brien*, 391 U.S. 367, 383-384, 88 S.Ct. 1673, 1682-83, 20 L.Ed.2d 672 (1968).

Perhaps there are contexts in which determination of legislative motive must be undertaken. See, e.g., *United States v. Lovett*, 328 U.S. 303, 66 S.Ct. 1073, 90 L.Ed. 1252 (1946). But I do not think that is true of analysis under the First Amendment (or the Fourteenth, to the extent it incorporates the First). See *Edwards v. Aguillard*, *supra*, 482 U.S., at 639, 107 S.Ct., at 2607 (SCALIA, J., dissenting). The First Amendment does not refer to the purposes for which legislators enact laws, but to the effects of the laws enacted: "Congress shall make no law ... prohibiting the free exercise [of religion]...." This does not put us in the business of invalidating laws by reason of the evil motives of their authors. Had the Hialeah City Council set out resolutely to suppress the practices of Santeria, but ineptly adopted ordinances that failed to do so, I do not see how those laws could be said to "prohibi[t] the free exercise" of *559 religion. Nor, in my view, does it matter that a legislature consists entirely of the pure-hearted, if the law it enacts in fact singles out a religious practice for special burdens. Had the ordinances here been passed with no motive on the part of any councilman except the ardent desire to prevent cruelty to animals (as might in fact have been the case), they would nonetheless be invalid.

Justice SOUTER, concurring in part and concurring in the judgment.

This case turns on a principle about which there is no disagreement, that the Free Exercise Clause bars government action aimed at suppressing religious belief or practice. The Court holds that Hialeah's animal-

sacrifice laws violate that principle, and I concur in that holding without reservation.

Because prohibiting religious exercise is the object of the laws at hand, this case does not present the more difficult issue addressed in our last free-exercise case, *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990), which announced the rule that a "neutral, generally applicable" law does not run afoul of the Free Exercise Clause even when it prohibits religious exercise in effect. The Court today refers to that rule in dicta, and despite my general agreement with the Court's opinion I do not join Part II, where the dicta appear, for I have doubts about whether the *Smith* rule merits adherence. I write separately to explain why the *Smith* rule is not germane to this case and to express my view that, in a case presenting the issue, the Court should re-examine the rule *Smith* declared.

I

According to *Smith*, if prohibiting the exercise of religion results from enforcing a "neutral, generally applicable" law, the Free Exercise Clause has not been offended. *Id.*, at 878-880, 110 S.Ct., at 1599-1601. I call this the *Smith* rule to distinguish it from the noncontroversial principle, also expressed in *Smith* though *560 established long before, that the Free Exercise Clause is offended when prohibiting religious exercise results from a law that is not neutral or generally applicable. It is this noncontroversial principle, that the Free Exercise Clause requires neutrality and general applicability, that is at issue here. But before turning to the relationship of *Smith* to this case, it will help to get the terms in order, for the significance of the *Smith* rule is not only in its statement that the Free Exercise Clause requires no more than "neutrality" and "general applicability," but also in its adoption of a particular, narrow conception of free-exercise neutrality.

That the Free Exercise Clause contains a "requirement for governmental neutrality," *Wisconsin v. Yoder*, 406 U.S. 205, 220, 92 S.Ct. 1526, 1535-36, 32 L.Ed.2d 15 (1972), is hardly a novel proposition; though the term does not appear in the First Amendment, our cases have used it as shorthand to describe, at least in part, what the Clause commands. **2241 See, e.g., *Jimmy Swaggart Ministries v. Board of Equalization of Cal.*, 493 U.S. 378, 384, 110 S.Ct. 688, 693, 107 L.Ed.2d 796 (1990); *Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S. 707, 717, 101 S.Ct. 1425, 1431, 67 L.Ed.2d 624 (1981); *Yoder, supra*, 406 U.S., at 220, 92 S.Ct., at 1535; *Committee for Public Ed. & Religious Liberty v. Nyquist*, 413 U.S. 756, 792-793, 93 S.Ct. 2955, 2975, 37 L.Ed.2d

948 (1973); *School Dist. of Abington v. Schempp*, 374 U.S. 203, 222, 83 S.Ct. 1560, 1571, 10 L.Ed.2d 844 (1963); see also *McDaniel v. Paty*, 435 U.S. 618, 627-629, 98 S.Ct. 1322, 1328-1329, 55 L.Ed.2d 593 (1978) (plurality opinion) (invalidating a nonneutral law without using the term). Nor is there anything unusual about the notion that the Free Exercise Clause requires general applicability, though the Court, until today, has not used exactly that term in stating a reason for invalidation. See *Fowler v. Rhode Island*, 345 U.S. 67, 73 S.Ct. 526, 97 L.Ed. 828 (1953); cf. *Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue*, 460 U.S. 575, 585, 103 S.Ct. 1365, 1372, 75 L.Ed.2d 295 (1983); *Larson v. Valente*, 456 U.S. 228, 245-246, 102 S.Ct. 1673, 1683-1684, 72 L.Ed.2d 33 (1982).¹

*561 While general applicability is, for the most part, self-explanatory, free-exercise neutrality is not self-revealing. Cf. *Lee v. Weisman*, 505 U.S. 577, 627, 112 S.Ct. 2649, 2676, 120 L.Ed.2d 467 (1992) (SOUTER, J., concurring) (considering Establishment Clause neutrality). A law that is religion neutral on its face or in its purpose may lack neutrality in its effect by forbidding something that religion requires or requiring something that religion forbids. Cf. McConnell & Posner, *An Economic Approach to Issues of Religious Freedom*, 56 U.Chi.L.Rev. 1, 35 (1989) ("[A] regulation is not neutral in an economic sense if, whatever its normal scope or its intentions, it arbitrarily imposes greater costs on religious than on comparable nonreligious activities"). A secular law, applicable to all, that prohibits consumption of alcohol, for example, will affect members of religions that require the use of wine differently from members of other religions and nonbelievers, disproportionately burdening the practice of, say, Catholicism or Judaism. Without an exemption for sacramental wine, Prohibition may fail the test of religion neutrality.²

It does not necessarily follow from that observation, of course, that the First Amendment requires an exemption from Prohibition; that depends on the meaning of neutrality as the Free Exercise Clause embraces it. The point here is the unremarkable one that our common notion of neutrality is broad enough to cover not merely what might be called formal neutrality, which as a free-exercise requirement *562 would only bar laws with an object to discriminate against religion, but also what might be called substantive neutrality, which, in addition to demanding a secular object, would generally require government to accommodate religious differences by exempting religious practices from formally neutral laws. See generally Laycock, *Formal, Substantive, and Disaggregated **2242 Neutrality Toward Religion*, 39 DePaul L.Rev. 993 (1990). If the Free Exercise Clause

secures only protection against deliberate discrimination, a formal requirement will exhaust the Clause's neutrality command; if the Free Exercise Clause, rather, safeguards a right to engage in religious activity free from unnecessary governmental interference, the Clause requires substantive, as well as formal, neutrality.¹

Though *Smith* used the term "neutrality" without a modifier, the rule it announced plainly assumes that free-exercise neutrality is of the formal sort. Distinguishing between laws whose "object" is to prohibit religious exercise and those that prohibit religious exercise as an "incidental effect," *Smith* placed only the former within the reaches of the Free Exercise Clause; the latter, laws that satisfy formal neutrality, *Smith* would subject to no free-exercise scrutiny at all, even when they prohibit religious exercise in application. 494 U.S., at 878, 110 S.Ct., at 1599. The four Justices who rejected the *Smith* rule, by contrast, read the Free Exercise Clause as embracing what I have termed substantive neutrality. The enforcement of a law "neutral on its face," they said, may "nonetheless offend [the Free Exercise Clause's] requirement *563 for government neutrality if it unduly burdens the free exercise of religion." *Id.*, at 896, 110 S.Ct., at 1609 (opinion of O'CONNOR, J., joined by Brennan, Marshall, and BLACKMUN, JJ.) (internal quotation marks and citations omitted). The rule these Justices saw as flowing from free-exercise neutrality, in contrast to the *Smith* rule, "requir[es] the government to justify any substantial burden on religiously motivated conduct by a compelling state interest and by means narrowly tailored to achieve that interest." *Id.*, at 894, 110 S.Ct., at 1608 (emphasis added).

The proposition for which the *Smith* rule stands, then, is that formal neutrality, along with general applicability, are sufficient conditions for constitutionality under the Free Exercise Clause. That proposition is not at issue in this case, however, for Hialeah's animal-sacrifice ordinances are not neutral under any definition, any more than they are generally applicable. This case, rather, involves the noncontroversial principle repeated in *Smith*, that formal neutrality and general applicability are necessary conditions for free-exercise constitutionality. It is only "this fundamental nonpersecution principle of the First Amendment [that is] implicated here," *ante*, at 2222, and it is to that principle that the Court adverts when it holds that Hialeah's ordinances "fail to satisfy the *Smith* requirements," *ante*, at 2226. In applying that principle the Court does not tread on troublesome ground.

In considering, for example, whether Hialeah's animal-sacrifice laws violate free-exercise neutrality, the Court rightly observes that "[a]t a minimum, the protections of

the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons," *ibid.*, and correctly finds Hialeah's laws to fail those standards. The question whether the protections of the Free Exercise Clause also pertain if the law at issue, though nondiscriminatory in its object, has the effect nonetheless of placing a burden on religious exercise is not before the Court *564 today, and the Court's intimations on the matter are therefore dicta.

The Court also rightly finds Hialeah's laws to fail the test of general applicability, and as **2243 the Court "need not define with precision the standard used to evaluate whether a prohibition is of general application, for these ordinances fall well below the minimum standard necessary to protect First Amendment rights," *ante*, at 2232, it need not discuss the rules that apply to prohibitions found to be generally applicable. The question whether "there are areas of conduct protected by the Free Exercise Clause of the First Amendment and thus beyond the power of the State to control, even under regulations of general applicability," *Yoder*, 406 U.S., at 220, 92 S.Ct., at 1535, is not before the Court in this case, and, again, suggestions on that score are dicta.

II

In being so readily susceptible to resolution by applying the Free Exercise Clause's "fundamental nonpersecution principle," *ante*, at 2222, this is far from a representative free-exercise case. While, as the Court observes, the Hialeah City Council has provided a rare example of a law actually aimed at suppressing religious exercise, *ibid.*, *Smith* was typical of our free-exercise cases, involving as it did a formally neutral, generally applicable law. The rule *Smith* announced, however, was decidedly untypical of the cases involving the same type of law. Because *Smith* left those prior cases standing, we are left with a free-exercise jurisprudence in tension with itself, a tension that should be addressed, and that may legitimately be addressed, by reexamining the *Smith* rule in the next case that would turn upon its application.

A

In developing standards to judge the enforceability of formally neutral, generally applicable laws against the mandates of the Free Exercise Clause, the Court has addressed *565 the concepts of neutrality and general applicability by indicating, in language hard to read as not

foreclosing the *Smith* rule, that the Free Exercise Clause embraces more than mere formal neutrality, and that formal neutrality and general applicability are not sufficient conditions for free-exercise constitutionality:

"In a variety of ways we have said that '[a] regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion.' " *Thomas*, 450 U.S., at 717 [101 S.Ct., at 1431] (quoting *Yoder*, 406 U.S., at 220 [92 S.Ct., at 1535]).

"[T]o agree that religiously grounded conduct must often be subject to the broad police power of the State is not to deny that there are areas of conduct protected by the Free Exercise Clause of the First Amendment and thus beyond the power of the State to control, even under regulations of general applicability." *Ibid.*

Not long before the *Smith* decision, indeed, the Court specifically rejected the argument that "neutral and uniform" requirements for governmental benefits need satisfy only a reasonableness standard, in part because "[s]uch a test has no basis in precedent." *Hobbie v. Unemployment Appeals Comm'n of Fla.*, 480 U.S. 136, 141, 107 S.Ct. 1046, 1049, 94 L.Ed.2d 190 (1987) (internal quotation marks omitted). Rather, we have said, "[o]ur cases have established that '[t]he free exercise inquiry asks whether government has placed a substantial burden on the observation of a central religious belief or practice and, if so, whether a compelling governmental interest justifies the burden.' " *Swaggart Ministries*, 493 U.S., at 384-385, 110 S.Ct., at 692-693 (quoting *Hernandez v. Commissioner*, 490 U.S. 680, 699, 109 S.Ct. 2136, 2148, 104 L.Ed.2d 766 (1989)).

Thus we have applied the same rigorous scrutiny to burdens on religious exercise resulting from the enforcement of formally neutral, generally applicable laws as we have applied to burdens caused by laws that single out religious exercise: *566 " 'only those interests *2244 of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion.' " *McDaniel v. Paty*, 435 U.S., at 628, 98 S.Ct., at 1328 (plurality opinion) (quoting *Yoder*, *supra*, 406 U.S., at 215, 92 S.Ct., at 1533). Compare *McDaniel*, *supra*, 435 U.S., at 628-629, 98 S.Ct., at 1328-1329 (plurality opinion) (applying that test to a law aimed at religious conduct) with *Yoder*, *supra*, 406 U.S., at 215-229, 92 S.Ct., at 1533-1540 (applying that test to a formally neutral, general law). Other cases in which the Court has applied heightened scrutiny to the enforcement of formally neutral, generally applicable laws that burden religious exercise include *Hernandez v. Commissioner*, *supra*, 490 U.S., at 699, 109 S.Ct., at 2149; *Frazee v.*

Illinois Dept. of Employment Security, 489 U.S. 829, 835, 109 S.Ct. 1514, 1518, 103 L.Ed.2d 914 (1989); *Hobbie v. Unemployment Appeals Comm'n*, *supra*, 480 U.S., at 141, 107 S.Ct., at 1049; *Bob Jones Univ. v. United States*, 461 U.S. 574, 604, 103 S.Ct. 2017, 2035, 76 L.Ed.2d 157 (1983); *United States v. Lee*, 455 U.S. 252, 257-258, 102 S.Ct. 1051, 1055, 71 L.Ed.2d 127 (1982); *Thomas*, *supra*, 450 U.S., at 718, 101 S.Ct., at 1432; *Sherbert v. Verner*, 374 U.S. 398, 403, 83 S.Ct. 1790, 1793, 10 L.Ed.2d 965 (1963); and *Cantwell v. Connecticut*, 310 U.S. 296, 304-307, 60 S.Ct. 900, 903-904, 84 L.Ed. 1213 (1940).

Though *Smith* sought to distinguish the free-exercise cases in which the Court mandated exemptions from secular laws of general application, see 494 U.S., at 881-885, 110 S.Ct., at 1601-1603, I am not persuaded. *Wisconsin v. Yoder*, and *Cantwell v. Connecticut*, according to *Smith*, were not true free-exercise cases but "hybrid[s]" involving "the Free Exercise Clause in conjunction with other constitutional protections, such as freedom of speech and of the press, or the right of parents ... to direct the education of their children." *Smith*, *supra*, 494 U.S., at 881, 882, 110 S.Ct., at 1601, 1602. Neither opinion, however, leaves any doubt that "fundamental claims of religious freedom [were] at stake." *Yoder*, *supra*, 406 U.S., at 221, 92 S.Ct., at 1536. See also *Cantwell*, *supra*, 310 U.S., at 303-307, 60 S.Ct., at 903-905.⁴ *567 And the distinction *Smith* draws strikes me as ultimately untenable. If a hybrid claim is simply one in which another constitutional right is implicated, then the hybrid *2245 exception would probably be so vast as to swallow the *Smith* rule, and, indeed, the hybrid exception would cover the situation exemplified by *Smith*, since free speech and associational rights are certainly implicated in the peyote ritual. But if a hybrid claim is one in which a litigant would actually obtain an exemption from a formally neutral, generally applicable law under another constitutional provision, then there would have been no reason for the Court in what *Smith* calls the hybrid cases to have mentioned the Free Exercise Clause at all.

Smith sought to confine the remaining free-exercise exemption victories, which involved unemployment compensation *568 systems, see *Frazee*, *supra*; *Hobbie v. Unemployment Appeals Comm'n of Fla.*, 480 U.S. 136, 107 S.Ct. 1046, 94 L.Ed.2d 190 (1987); *Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S. 707, 101 S.Ct. 1125, 67 L.Ed.2d 624 (1981); and *Sherbert*, *supra*, "stand[ing] for the proposition that where the State has in place a system of individual exemptions, it may not refuse to extend that system to cases of 'religious hardship' without compelling reason." 494 U.S., at 884, 110 S.Ct., at 1603. But prior to *Smith* the Court had already refused to accept that explanation of

the unemployment compensation cases. See *Hobbs*, *supra*, 480 U.S., at 142, n. 7, 107 S.Ct., at 1049, n. 7; *Bowen v. Roy*, 476 U.S. 693, 715–716, 106 S.Ct. 2147, 2160–2161, 90 L.Ed.2d 735 (1986) (opinion of BLACKMUN, J.); *id.*, at 727–732, 106 S.Ct., at 2166–2169 (opinion of O'CONNOR, J., joined by Brennan and Marshall, JJ.); *id.*, at 733, 106 S.Ct., at 2169 (WHITE, J., dissenting). And, again, the distinction fails to exclude *Smith*: "If *Smith* is viewed as a hypothetical criminal prosecution for peyote use, there would be an individual governmental assessment of the defendants' motives and actions in the form of a criminal trial." McConnell, Free Exercise Revisionism and the *Smith* Decision, 57 U.Chi.L.Rev. 1109, 1124 (1990). *Smith* also distinguished the unemployment compensation cases on the ground that they did not involve "an across-the-board criminal prohibition on a particular form of conduct." 494 U.S., at 884, 110 S.Ct., at 1603. But even Chief Justice Burger's plurality opinion in *Bowen v. Roy*, on which *Smith* drew for its analysis of the unemployment compensation cases, would have applied its reasonableness test only to "denial of government benefits" and not to "governmental action or legislation that criminalizes religiously inspired activity or inescapably compels conduct that some find objectionable for religious reasons," *Bowen v. Roy*, *supra*, 476 U.S., at 706, 106 S.Ct., at 2155 (opinion of Burger, C.J., joined by Powell and REHNQUIST, JJ.); to the latter category of governmental action, it would have applied the test employed in *Yoder*, which involved an across-the-board criminal prohibition and which Chief Justice Burger's opinion treated as an ordinary free-exercise *569 case. See *Bowen v. Roy*, 476 U.S., at 706–707, 106 S.Ct., at 2155–2156; *id.*, at 705, n. 15, 106 S.Ct., at 2155, n. 15; *Yoder*, 406 U.S., at 218, 92 S.Ct., at 1534; see also *McDaniel v. Paty*, 435 U.S., at 628, n. 8, 98 S.Ct., at 1328, n. 8 (noting cases in which courts considered claims for exemptions from general criminal prohibitions, cases the Court thought were "illustrative of the general nature of free-exercise protections and the delicate balancing required by our decisions in [*Sherbert* and *Yoder*,] when an important state interest is shown").

As for the cases on which *Smith* primarily relied as establishing the rule it embraced, *Reynolds v. United States*, 98 U.S. 145, 25 L.Ed. 244 (1879), and *Minersville School Dist. v. Gobitis*, 310 U.S. 586, 60 S.Ct. 1010, 84 L.Ed. 1375 (1940), see *Smith*, *supra*, 494 U.S., at 879, 110 S.Ct., at 1600, their subsequent treatment by the Court would seem to require rejection of the *Smith* rule. *Reynolds*, which in upholding the polygamy conviction of a Mormon stressed the evils it saw as associated with polygamy, see 98 U.S., at 166 ("polygamy leads to the patriarchal principle, and ... fetters the people in stationary despotism"); *id.*, at 165, 168, has been read as consistent

with the principle that religious conduct may be regulated by general or targeting law only if the conduct "pose[s] some substantial threat to public safety, peace or order." **2246 *Sherbert v. Verner*, 374 U.S., at 403, 83 S.Ct., at 1793; see also *United States v. Lee*, 455 U.S., at 257–258, 102 S.Ct., at 1055–1056; *Bob Jones University*, 461 U.S., at 603, 103 S.Ct., at 2034; *Yoder*, *supra*, 406 U.S., at 230, 92 S.Ct., at 1540. And *Gobitis*, after three Justices who originally joined the opinion renounced it for disregarding the government's constitutional obligation "to accommodate itself to the religious views of minorities," *Jones v. Opelika*, 316 U.S. 584, 624, 62 S.Ct. 1231, 1251, 86 L.Ed. 1691 (1942) (opinion of Black, Douglas, and Murphy, JJ.), was explicitly overruled in *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 642, 63 S.Ct. 1178, 1187, 87 L.Ed. 1628 (1943); see also *id.*, at 643–644, 63 S.Ct., at 1187–1188 (Black and Douglas, JJ., concurring).

Since holding in 1940 that the Free Exercise Clause applies to the States, see *Cantwell v. Connecticut*, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213, the Court repeatedly has stated that the Clause sets strict limits on the government's power to burden religious exercise, whether it is a law's object to do so or its unanticipated *570 effect. *Smith* responded to these statements by suggesting that the Court did not really mean what it said, detecting in at least the most recent opinions a lack of commitment to the compelling-interest test in the context of formally neutral laws. *Smith*, *supra*, 494 U.S., at 884–885, 110 S.Ct., at 1603. But even if the Court's commitment were that palid, it would argue only for moderating the language of the test, not for eliminating constitutional scrutiny altogether. In any event, I would have trouble concluding that the Court has not meant what it has said in more than a dozen cases over several decades, particularly when in the same period it repeatedly applied the compelling-interest test to require exemptions, even in a case decided the year before *Smith*. See *Frazee v. Illinois Dept. of Employment Security*, 489 U.S. 829, 109 S.Ct. 1514, 103 L.Ed.2d 914 (1989).¹ In sum, it seems to me difficult to escape the conclusion *571 that, whatever *Smith's* virtues, **2247 they do not include a comfortable fit with settled law.

B

The *Smith* rule, in my view, may be reexamined consistently with principles of *stare decisis*. To begin with, the *Smith* rule was not subject to "full-dress argument" prior to its announcement. *Mapp v. Ohio*, 367 U.S. 643, 676–677, 81 S.Ct. 1684, 1703, 6 L.Ed.2d 1081 (1961) (Harlan, J., dissenting). The State of Oregon in *Smith* contended that its refusal to exempt religious

peyote use survived the strict scrutiny required by "settled free exercise principles," inasmuch as the State had "a compelling interest in regulating" the practice of peyote use and could not "accommodate the religious practice without compromising *572 its interest." Brief for Petitioners in *Smith*, O.T. 1989, No. 88-1213, p. 5; see also *id.*, at 5-36; Reply Brief for Petitioners in *Smith*, pp. 6-20. Respondents joined issue on the outcome of strict scrutiny on the facts before the Court, see Brief for Respondents in *Smith*, pp. 14-41, and neither party squarely addressed the proposition the Court was to embrace, that the Free Exercise Clause was irrelevant to the dispute. Sound judicial decisionmaking requires "both a vigorous prosecution and a vigorous defense" of the issues in dispute, *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 419, 98 S.Ct. 694, 699, 54 L.Ed.2d 648 (1978), and a constitutional rule announced *sua sponte* is entitled to less deference than one addressed on full briefing and argument. Cf. *Ladner v. United States*, 358 U.S. 169, 173, 79 S.Ct. 209, 211, 3 L.Ed.2d 199 (1958) (declining to address "an important and complex" issue concerning the scope of collateral attack upon criminal sentences because it had received "only meagre argument" from the parties, and the Court thought it "should have the benefit of a full argument before dealing with the question").

The *Smith* rule's vitality as precedent is limited further by the seeming want of any need of it in resolving the question presented in that case. Justice O'CONNOR reached the same result as the majority by applying, as the parties had requested, "our established free exercise jurisprudence," 494 U.S., at 903, 110 S.Ct., at 1613, and the majority never determined that the case could not be resolved on the narrower ground, going instead straight to the broader constitutional rule. But the Court's better practice, one supported by the same principles of restraint that underlie the rule of *stare decisis*, is not to "formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied." *Ashwander v. TVA*, 297 U.S. 288, 347, 56 S.Ct. 466, 483, 80 L.Ed. 688 (1936) (Brandeis, J., concurring) (quoting *Liverpool, New York & Philadelphia S.S. Co. v. Commissioners of Emigration*, 113 U.S. 33, 39, 5 S.Ct. 352, 355, 28 L.Ed. 899 (1885)). While I am not suggesting that the *Smith* Court lacked the power to announce its rule, I think a rule of law unnecessary to the outcome of a case, especially one not put *573 into play by the parties, approaches without more the sort of "*dicta* ... which may be followed if sufficiently persuasive but which are not controlling." *Humphrey's Executor v. United States*, 295 U.S. 602, 627, 55 S.Ct. 869, 873, 79 L.Ed. 1611 (1935); see also **2248 *Kastigar v. United States*, 406 U.S. 441, 454-455, 92 S.Ct. 1653, 1661-

1662, 32 L.Ed.2d 212 (1972).

I do not, of course, mean to imply that a broad constitutional rule announced without full briefing and argument necessarily lacks precedential weight. Over time, such a decision may become "part of the tissue of the law," *Radovich v. National Football League*, 352 U.S. 445, 455, 77 S.Ct. 390, 395, 1 L.Ed.2d 456 (1957) (Frankfurter, J., dissenting), and may be subject to reliance in a way that new and unexpected decisions are not. Cf. *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 854-855, 112 S.Ct. 2791, 2808, 120 L.Ed.2d 674 (1992). *Smith*, however, is not such a case. By the same token, by pointing out *Smith*'s recent vintage I do not mean to suggest that novelty alone is enough to justify reconsideration. "[S]tare decisis," as Justice Frankfurter wrote, "is a principle of policy and not a mechanical formula," *Helvering v. Hallock*, 309 U.S. 106, 119, 60 S.Ct. 444, 451, 84 L.Ed. 604 (1940), and the decision whether to adhere to a prior decision, particularly a constitutional decision, is a complex and difficult one that does not lend itself to resolution by application of simple, categorical rules, but that must account for a variety of often competing considerations.

The considerations of full briefing, necessity, and novelty thus do not exhaust the legitimate reasons for reexamining prior decisions, or even for reexamining the *Smith* rule. One important further consideration warrants mention here, however, because it demands the reexamination I have in mind. *Smith* presents not the usual question of whether to follow a constitutional rule, but the question of which constitutional rule to follow, for *Smith* refrained from overruling prior free-exercise cases that contain a free-exercise rule fundamentally at odds with the rule *Smith* declared. *Smith*, indeed, announced its rule by relying squarely upon *574 the precedent of prior cases. See 494 U.S., at 878, 110 S.Ct., at 1600 ("Our decisions reveal that the ... reading" of the Free Exercise Clause contained in the *Smith* rule "is the correct one"). Since that precedent is nonetheless at odds with the *Smith* rule, as I have discussed above, the result is an intolerable tension in free-exercise law which may be resolved, consistently with principles of *stare decisis*, in a case in which the tension is presented and its resolution pivotal.

While the tension on which I rely exists within the body of our extant case law, a rereading of that case law will not, of course, mark the limits of any enquiry directed to reexamining the *Smith* rule, which should be reviewed in light not only of the precedent on which it was rested but also of the text of the Free Exercise Clause and its origins. As for text, *Smith* did not assert that the plain language of

the Free Exercise Clause compelled its rule, but only that the rule was "a permissible reading" of the Clause. *Ibid.* Suffice it to say that a respectable argument may be made that the pre-*Smith* law comes closer to fulfilling the language of the Free Exercise Clause than the rule *Smith* announced. "[T]he Free Exercise Clause ..., by its terms, gives special protection to the exercise of religion," *Thomas*, 450 U.S., at 713, 101 S.Ct., at 1429, specifying an activity and then flatly protecting it against government prohibition. The Clause draws no distinction between laws whose object is to prohibit religious exercise and laws with that effect, on its face seemingly applying to both.

Nor did *Smith* consider the original meaning of the Free Exercise Clause, though overlooking the opportunity was no unique transgression. Save in a handful of passing remarks, the Court has not explored the history of the Clause since its early attempts in 1879 and 1890, see *Reynolds v. United States*, 98 U.S., at 162-166, and *Davis v. Beason*, 133 U.S. 333, 342, 10 S.Ct. 299, 300, 33 L.Ed. 637 (1890), attempts that recent scholarship makes clear were incomplete. See generally McConnell, **2249 *575 The Origins and Historical Understanding of Free Exercise of Religion, 103 Harv.L.Rev. 1409 (1990).⁶ The curious absence of history from our free-exercise decisions creates a stark contrast with our cases under the Establishment Clause, where historical analysis has been so prominent.⁷

This is not the place to explore the history that a century of free-exercise opinions have overlooked, and it is enough to note that, when the opportunity to reexamine *Smith* presents itself, we may consider recent scholarship raising serious questions about the *Smith* rule's consonance with the original understanding and purpose of the Free Exercise Clause. See McConnell, The Origins and Historical Understanding of Free Exercise of Religion, *supra*; Durham, Religious Liberty and the Call of Conscience, 42 DePaul L.Rev. 71, 79-85 (1992); see also Office of Legal Policy, U.S. Dept. of Justice, Report to the Attorney General, Religious Liberty under the Free Exercise Clause 38-42 (1986) (predating *Smith*). There appears to be a strong argument from the *576 Clause's development in the First Congress, from its origins in the post-Revolution state constitutions and pre-Revolution colonial charters, and from the philosophy of rights to which the Framers adhered, that the Clause was originally understood to preserve a right to engage in activities necessary to fulfill one's duty to one's God, unless those activities threatened the rights of others or the serious needs of the State. If, as this scholarship suggests, the Free Exercise Clause's original "purpose [was] to secure religious liberty in the individual by prohibiting any

invasions thereof by civil authority," *School Dist. of Abington v. Schempp*, 374 U.S., at 223, 83 S.Ct., at 1572, then there would be powerful reason to interpret the Clause to accord with its natural reading, as applying to all laws prohibiting religious exercise in fact, not just those aimed at its prohibition, and to hold the neutrality needed to implement such a purpose to be the substantive neutrality of our pre-*Smith* cases, not the formal neutrality sufficient for constitutionality under *Smith*.⁸

**2250 *577 The scholarship on the original understanding of the Free Exercise Clause is, to be sure, not uniform. See, e.g., Hamburger, A Constitutional Right of Religious Exemption: An Historical Perspective, 60 Geo.Wash.L.Rev. 915 (1992); Bradley, Beguiled: Free Exercise Exemptions and the Siren Song of Liberalism, 20 Hofstra L.Rev. 245 (1991). And there are differences of opinion as to the weight appropriately accorded original meaning. But whether or not one considers the original designs of the Clause binding, the interpretive significance of those designs surely ranks in the hierarchy of issues to be explored in resolving the tension inherent in free-exercise law as it stands today.

III

The extent to which the Free Exercise Clause requires government to refrain from impeding religious exercise defines nothing less than the respective relationships in our constitutional democracy of the individual to government and to God. "Neutral, generally applicable" laws, drafted as they are from the perspective of the non-adherent, have the unavoidable potential of putting the believer to a choice between God and government. Our cases now present competing answers to the question when government, while pursuing secular ends, may compel disobedience to what one believes religion commands. The case before us is rightly decided without resolving the existing tension, which remains for another day when it may be squarely faced.

Justice BLACKMUN, with whom Justice O'CONNOR joins, concurring in the judgment.

The Court holds today that the city of Hialeah violated the First and Fourteenth Amendments when it passed a set of restrictive ordinances explicitly directed at petitioners' religious practice. With this holding I agree. I write separately to emphasize that the First Amendment's protection of religion extends beyond those rare occasions

on which the government explicitly targets religion (or a particular religion) *578 for disfavored treatment, as is done in this case. In my view, a statute that burdens the free exercise of religion "may stand only if the law in general, and the State's refusal to allow a religious exemption in particular, are justified by a compelling interest that cannot be served by less restrictive means." *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872, 907, 110 S.Ct. 1595, 1615, 108 L.Ed.2d 876 (1990) (dissenting opinion). The Court, however, applies a different test. It applies the test announced in *Smith*, under which "a law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice." *Ante*, at 2226. I continue to believe that *Smith* was wrongly decided, because it ignored the value of religious freedom as an affirmative individual liberty and treated the Free Exercise Clause as no more than an antidiscrimination principle. See 494 U.S., at 908-909, 110 S.Ct., at 1616. Thus, while I agree with the result the Court reaches in this case, I arrive at that result by a different route.

When the State enacts legislation that intentionally or unintentionally places a burden upon religiously motivated practice, it must justify that burden by "showing that it is the least restrictive means of achieving some compelling state interest." *Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S. 707, 718, 101 S.Ct. 1425, 1432, 67 L.Ed.2d 624 (1981). See also *Wisconsin v. Yoder*, 406 U.S. 205, 215, 92 S.Ct. 1526, 1533, 32 L.Ed.2d 15 (1972). A State may no more create an underinclusive statute, one **2251 that fails truly to promote its purported compelling interest, than it may create an overinclusive statute, one that encompasses more protected conduct than necessary to achieve its goal. In the latter circumstance, the broad scope of the statute is unnecessary to serve the interest, and the statute fails for that reason. In the former situation, the fact that allegedly harmful conduct falls outside the statute's scope belies a governmental assertion that it has genuinely pursued an interest "of the highest order." *Ibid*. If the State's goal is important enough to prohibit religiously motivated activity, it *579 will not and must not stop at religiously motivated activity. Cf. *Zablocki v. Redhail*, 434 U.S. 374, 390, 98 S.Ct. 673, 683, 54 L.Ed.2d 618 (1978) (invalidating certain restrictions on marriage as "grossly underinclusive with respect to [their] purpose"); *Supreme Court of N.H. v. Piper*, 470 U.S. 274, 285, n. 19, 105 S.Ct. 1272, 1279, n. 19, 84 L.Ed.2d 205 (1985) (a rule excluding nonresidents from the bar of New Hampshire "is underinclusive ... because it permits lawyers who move away from the State to retain their membership in

the bar").

In this case, the ordinances at issue are both overinclusive and underinclusive in relation to the state interests they purportedly serve. They are overinclusive, as the majority correctly explains, because the "legitimate governmental interests in protecting the public health and preventing cruelty to animals could be addressed by restrictions stopping far short of a flat prohibition of all Santeria sacrificial practice." *Ante*, at 2229. They are underinclusive as well, because "[d]espite the city's proffered interest in preventing cruelty to animals, the ordinances are drafted with care to forbid few killings but those occasioned by religious sacrifice." *Ante*, at 2232. Moreover, the "ordinances are also underinclusive with regard to the city's interest in public health..." *Ante*, at 2233.

When a law discriminates against religion as such, as do the ordinances in this case, it automatically will fail strict scrutiny under *Sherbert v. Verner*, 374 U.S. 398, 402-403, 407, 83 S.Ct. 1790, 1793, 1795, 10 L.Ed.2d 965 (1963) (holding that governmental regulation that imposes a burden upon religious practice must be narrowly tailored to advance a compelling state interest). This is true because a law that targets religious practice for disfavored treatment both burdens the free exercise of religion and, by definition, is not precisely tailored to a compelling governmental interest.

Thus, unlike the majority, I do not believe that "[a] law burdening religious practice that is not neutral or not of general application must undergo the most rigorous of scrutiny." *Ante*, at 2233. In my view, regulation that targets religion in this way, *ipso facto*, fails strict scrutiny. It is for this reason *580 that a statute that explicitly restricts religious practices violates the First Amendment. Otherwise, however, "[t]he First Amendment ... does not distinguish between laws that are generally applicable and laws that target particular religious practices." *Smith*, 494 U.S., at 894, 110 S.Ct., at 1608 (opinion concurring in judgment).

It is only in the rare case that a state or local legislature will enact a law directly burdening religious practice as such. See *ibid*. Because respondent here does single out religion in this way, the present case is an easy one to decide.

A harder case would be presented if petitioners were requesting an exemption from a generally applicable anticruelty law. The result in the case before the Court today, and the fact that every Member of the Court concurs in that result, does not necessarily reflect this

Court's views of the strength of a State's interest in prohibiting cruelty to animals. This case does not present, and I therefore decline to reach, the question whether the Free Exercise Clause would require a religious exemption from a law that sincerely pursued the goal of protecting animals from cruel treatment. The number of organizations that have filed *amicus* briefs **2252 on behalf of this interest,¹ however, demonstrates that it is not a concern to be treated lightly.

All Citations

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Footnotes

- * The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.
- * THE CHIEF JUSTICE, Justice SCALIA, and Justice THOMAS join all but Part II-A-2 of this opinion. Justice WHITE joins all but Part II-A of this opinion. Justice SOUTER joins only Parts I, III, and IV of this opinion.
- * Respondent advances the additional governmental interest in prohibiting the slaughter or sacrifice of animals in areas of the city not zoned for slaughterhouses, see Brief for Respondent 28-31, and the District Court found this interest to be compelling, see 723 F.Supp. 1467, 1486 (SD Fla.1989). This interest cannot justify Ordinances 87-40, 87-52, and 87-71, for they apply to conduct without regard to where it occurs. Ordinance 87-72 does impose a locational restriction, but this asserted governmental interest is a mere restatement of the prohibition itself, not a justification for it. In our discussion, therefore, we put aside this asserted interest.
- 1 A law that is not generally applicable according to the Court's definition (one that "selective[ly] impose[s] burdens only on conduct motivated by religious belief," *ante*, at 2232) would, it seems to me, fail almost any test for neutrality. Accordingly, the cases stating that the Free Exercise Clause requires neutrality are also fairly read for the proposition that the Clause requires general applicability.
- 2 Our cases make clear, to look at this from a different perspective, that an exemption for sacramental wine use would not deprive Prohibition of neutrality. Rather, "[s]uch an accommodation [would] 'reflec[t] nothing more than the governmental obligation of neutrality in the face of religious differences.'" *Wisconsin v. Yoder*, 406 U.S. 205, 235, n. 22, 92 S.Ct. 1526, 1543, n. 22, 32 L.Ed.2d 15 (1972) (quoting *Sherbert v. Verner*, 374 U.S. 398, 409, 83 S.Ct. 1790, 1796, 10 L.Ed.2d 985 (1963)); see also *Lee v. Weisman*, 505 U.S. 577, 627, 112 S.Ct. 2849, 2877, 120 L.Ed.2d 487 (1992) (SOUTER, J., concurring). The prohibition law in place earlier this century did in fact exempt "wine for sacramental purposes." National Prohibition Act, Title II, § 3, 41 Stat. 308.
- 3 One might further distinguish between formal neutrality and facial neutrality. While facial neutrality would permit discovery of a law's object or purpose only by analysis of the law's words, structure, and operation, formal neutrality would permit enquiry also into the intentions of those who enacted the law. Compare *ante*, at 2230-31 (opinion of KENNEDY, J., joined by STEVENS, J.) with *ante*, at 2239-40 (opinion of SCALIA, J., joined by REHNQUIST, C.J.). For present purposes, the distinction between formal and facial neutrality is less important than the distinction between those conceptions of neutrality and substantive neutrality.
- 4 *Yoder*, which involved a challenge by Amish parents to the enforcement against them of a compulsory school attendance law, mentioned the parental rights recognized in *Pierce v. Society of Sisters*, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925), as *Smith* pointed out. See *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872, 881, n. 1, 110 S.Ct. 1595, 1601, n. 1, 108 L.Ed.2d 876 (1990) (citing *Yoder*, 406 U.S., at 233, 92 S.Ct., at 1542). But *Yoder* did so only to distinguish *Pierce*, which involved a substantive due process challenge to a compulsory school attendance law and which required merely a showing of "reasonable[ness]." *Wisconsin v. Yoder*, 406 U.S. 205, 233, 92 S.Ct. 1526, 1542, 32 L.Ed.2d 15 (1972) (quoting *Pierce*, *supra*, 268 U.S., at 535, 45 S.Ct., at 573). Where parents make a "free exercise claim," the *Yoder* Court said, the *Pierce* reasonableness test is inapplicable and the State's action must be measured by a stricter test, the test developed under the Free Exercise Clause and discussed at length earlier in the opinion. See 406 U.S., at 233, 92 S.Ct., at 1542; *id.*, at 213-229, 92 S.Ct., at 1532-1540. Quickly after the reference to parental rights, the *Yoder* opinion makes clear that the case involves "the central values underlying the Religion Clauses." *Id.*, at 234, 92 S.Ct., at 1542. The *Yoders* raised only a free-exercise defense to their prosecution under the school-attendance law, *id.*, at 209, and n. 4, 92 S.Ct., at 1530, and n. 4; certiorari was

granted only on the free-exercise issue, *id.*, at 207, 92 S.Ct., at 1529; and the Court plainly understood the case to involve "conduct protected by the Free Exercise Clause" even against enforcement of a "regulat[io]n of general applicability," *id.*, at 220, 92 S.Ct., at 1535.

As for *Cantwell*, *Smith* pointed out that the case explicitly mentions freedom of speech. See 494 U.S., at 881, n. 1, 110 S.Ct., at 1601, n. 1 (citing *Cantwell v. Connecticut*, 310 U.S. 298, 307, 60 S.Ct. 900, 905, 84 L.Ed. 1213 (1940)). But the quote to which *Smith* refers occurs in a portion of the *Cantwell* opinion (titled: "[s]econd," and dealing with a breach-of-peace conviction for playing phonograph records, see 310 U.S., at 307, 60 S.Ct., at 905) that discusses an entirely different issue from the section of *Cantwell* that *Smith* cites as involving a "neutral, generally applicable law" (titled: "[f]irst," and dealing with a licensing system for solicitations, see *Cantwell*, *supra*, 310 U.S., at 303-307, 60 S.Ct., at 903-905). See *Smith*, *supra*, 494 U.S., at 881, 110 S.Ct., at 1601.

- 5 Though *Smith* implied that the Court, in considering claims for exemptions from formally neutral, generally applicable laws, has applied a "water[ed] down" version of strict scrutiny, 494 U.S., at 888, 110 S.Ct., at 1605, that appraisal confuses the cases in which we purported to apply strict scrutiny with the cases in which we did not. We did not purport to apply strict scrutiny in several cases involving discrete categories of governmental action in which there are special reasons to defer to the judgment of the political branches, and the opinions in those cases said in no uncertain terms that traditional heightened scrutiny applies outside those categories. See *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 349, 107 S.Ct. 2400, 2404, 96 L.Ed.2d 282 (1987) ("[P]erson regulations ... are judged under a 'reasonableness' test less restrictive than that ordinarily applied to alleged infringements of fundamental constitutional rights"); *Goldman v. Weinberger*, 475 U.S. 503, 507, 106 S.Ct. 1310, 1313, 89 L.Ed.2d 478 (1986) ("Our review of military regulations challenged on First Amendment grounds is far more deferential than constitutional review of similar laws or regulations designed for civilian society"); see also *Johnson v. Robison*, 415 U.S. 361, 385-386, 94 S.Ct. 1180, 1174-1175, 39 L.Ed.2d 389 (1974); *Gillette v. United States*, 401 U.S. 437, 462, 91 S.Ct. 828, 842, 28 L.Ed.2d 188 (1971). We also did not purport to apply strict scrutiny in several cases in which the claimants failed to establish a constitutionally cognizable burden on religious exercise, and again the opinions in those cases left no doubt that heightened scrutiny applies to the enforcement of formally neutral, general laws that do burden free exercise. See *Jimmy Swaggart Ministries v. Board of Equalization of Cal.*, 493 U.S. 378, 384-385, 110 S.Ct. 688, 692-693, 107 L.Ed.2d 796 (1990) ("Our cases have established that [t]he free exercise inquiry asks whether government has placed a substantial burden on the observation of a central religious belief or practice and, if so, whether a compelling governmental interest justifies the burden") (internal quotation marks and citation omitted); *Lyng v. Northwest Indian Cemetery Protective Assn.*, 485 U.S. 439, 450, 108 S.Ct. 1319, 1326, 99 L.Ed.2d 534 (1988) ("[T]his Court has repeatedly held that indirect coercion or penalties on the free exercise of religion, not just outright prohibitions, are subject to [the] scrutiny" employed in *Sherbert v. Verner*, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963)); see also *Braunfeld v. Brown*, 366 U.S. 599, 606-607, 81 S.Ct. 1144, 1147-1148, 6 L.Ed.2d 563 (1961) (plurality opinion). Among the cases in which we have purported to apply strict scrutiny, we have required free-exercise exemptions more often than we have denied them. Compare *Frazee v. Illinois Dept. of Employment Security*, 489 U.S. 829, 109 S.Ct. 1514, 103 L.Ed.2d 914 (1989); *Hobbie v. Unemployment Appeals Comm'n of Fla.*, 480 U.S. 136, 107 S.Ct. 1046, 94 L.Ed.2d 190 (1987); *Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S. 707, 101 S.Ct. 1426, 67 L.Ed.2d 624 (1981); *Wisconsin v. Yoder*, 408 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972); *Cantwell v. Connecticut*, 310 U.S. 298, 60 S.Ct. 900, 84 L.Ed.2d 1213 (1940), with *Hernandez v. Commissioner*, 490 U.S. 680, 109 S.Ct. 2136, 104 L.Ed.2d 766 (1989); *Bob Jones University v. United States*, 461 U.S. 574, 103 S.Ct. 2017, 76 L.Ed.2d 157 (1983); *United States v. Lee*, 455 U.S. 262, 102 S.Ct. 1051, 71 L.Ed.2d 127 (1982). And of the three cases in which we found that denial of an exemption survived strict scrutiny (all tax cases), one involved the government's "fundamental, overriding interest in eradicating racial discrimination in education," *Bob Jones Univ.*, *supra*, 461 U.S., at 604, 103 S.Ct., at 2035; in a second the Court "doubt[ed] whether the alleged burden ... [was] a substantial one," *Hernandez*, *supra*, 490 U.S., at 699, 109 S.Ct., at 2149; and the Court seemed to be of the same view in the third, see *Lee*, *supra*, 455 U.S., at 261, n. 12, 102 S.Ct., at 1057, n. 12. These cases, I think, provide slim grounds for concluding that the Court has not been true to its word.
- 6 *Reynolds* denied the free-exercise claim of a Mormon convicted of polygamy, and *Davis v. Beason* upheld against a free-exercise challenge a law denying the right to vote or hold public office to members of organizations that practice or encourage polygamy. Exactly what the two cases took from the Free Exercise Clause's origins is unclear. The cases are open to the reading that the Clause sometimes protects religious conduct from enforcement of generally applicable laws, see *supra*, at 2245-46 (citing cases); that the Clause never protects religious conduct from the enforcement of generally applicable laws, see *Smith*, 494 U.S., at 879, 110 S.Ct., at 1600; or that the Clause does not protect religious conduct at all, see *Yoder*, 408 U.S., at 247, 92 S.Ct., at 1549 (Douglas, J., dissenting in part); McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv.L.Rev. 1409, 1488, and n. 404 (1990).
- 7 See *Engel v. Vitale*, 370 U.S. 421, 425-436, 82 S.Ct. 1261, 1264-1270, 8 L.Ed.2d 601 (1962); *McGowan v. Maryland*, 366 U.S. 420, 431-443, 81 S.Ct. 1101, 1108-1114, 6 L.Ed.2d 393 (1961); *Everson v. Board of Ed. of Ewing*, 330 U.S. 1, 8-16, 67 S.Ct. 504, 508-511, 91 L.Ed. 711 (1947); see also *Lee v. Weisman*, 505 U.S. 577, 612-616, 622-626, 112

S.Ct. 2649, 2667, 120 L.Ed.2d 467 (1992) (SOUTER, J., concurring); *Wallace v. Jaffree*, 472 U.S. 38, 91–107, 105 S.Ct. 2479, 2507–2516, 86 L.Ed.2d 29 (1985) (REHNQUIST, J., dissenting); *School Dist. of Abington v. Schempp*, 374 U.S. 203, 232–239, 83 S.Ct. 1560, 1576–1581, 10 L.Ed.2d 844 (1963) (Brennan, J., concurring); *McGowan v. Maryland*, *supra*, 386 U.S., at 469–495, 81 S.Ct., at 1153–1172 (Frankfurter, J., concurring); *Everson*, *supra*, 330 U.S., at 31–43, 67 S.Ct., at 519–525 (Rutledge, J., dissenting).

- 8 The Court today observes that "historical instances of religious persecution and intolerance ... gave concern to those who drafted the Free Exercise Clause." *Ante*, at 2226 (internal quotation marks and citations omitted). That is no doubt true, and of course it supports the proposition for which it was summoned, that the Free Exercise Clause forbids religious persecution. But the Court's remark merits this observation: the fact that the Framers were concerned about victims of religious persecution by no means demonstrates that the Framers intended the Free Exercise Clause to forbid only persecution, the inference the *Smith* rule requires. On the contrary, the eradication of persecution would mean precious little to a member of a formerly persecuted sect who was nevertheless prevented from practicing his religion by the enforcement of "neutral, generally applicable" laws. If what drove the Framers was a desire to protect an activity they deemed special, and if "the [Framers] were well aware of potential conflicts between religious conviction and social duties," A. Adams & C. Emmerich, *A Nation Dedicated to Religious Liberty* 61 (1990), they may well have hoped to bar not only prohibitions of religious exercise fueled by the hostility of the majority, but prohibitions flowing from the indifference or ignorance of the majority as well.

See Brief for Washington Humane Society in support of Respondent; Brief for People for the Ethical Treatment of Animals, New Jersey Animal Rights Alliance, and Foundation for Animal Rights Advocacy in support of Respondent; Brief for Humane Society of the United States, American Humane Association, American Society for the Prevention of Cruelty to Animals, Animal Legal Defense Fund, Inc., and Massachusetts Society for the Prevention of Cruelty to Animals in support of Respondent; Brief for the International Society for Animal Rights, Citizens for Animals, Farm Animal Reform Movement, In Defense of Animals, Performing Animal Welfare Society, and Student Action Corps for Animals in support of Respondent; and Brief for the Institute for Animal Rights Law, American Fund for Alternatives to Animal Research, Farm Sanctuary, Jews for Animal Rights, United Animal Nations, and United Poultry Concerns in support of Respondent.

EXHIBIT 3

KeyCite Yellow Flag - Negative Treatment
Unconstitutional or Preempted Limited on Constitutional Grounds by *Lighthouse Institute for Evangelism, Inc. v. City of Long Branch*, 3rd Cir.(N.J.), Nov. 27, 2007

United States Code Annotated

Title 42. The Public Health and Welfare

Chapter 21C. Protection of Religious Exercise in Land Use and by Institutionalized Persons

42 U.S.C.A. § 2000cc

§ 2000cc. Protection of land use as religious exercise

Effective: September 22, 2000

Currentness

(a) Substantial burdens

(1) General rule

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution--

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest.

(2) Scope of application

This subsection applies in any case in which--

(A) the substantial burden is imposed in a program or activity that receives Federal financial assistance, even if the burden results from a rule of general applicability;

(B) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, even if the burden results from a rule of general applicability; or

(C) the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.

(b) Discrimination and exclusion

(1) Equal terms

No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

(2) Nondiscrimination

No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

(3) Exclusions and limits

No government shall impose or implement a land use regulation that--

(A) totally excludes religious assemblies from a jurisdiction; or

(B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

CREDIT(S)

(Pub.L. 106-274, § 2, Sept. 22, 2000, 114 Stat. 803.)

Notes of Decisions (196)

42 U.S.C.A. § 2000cc, 42 USCA § 2000cc
Current through P.L. 114-143. Also includes P.L. 114-145, 114-146, and 114-148.

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EXHIBIT 4

MIAMI 5005473.2 73248/10390

287.135. Prohibition against contracting with scrutinized companies, FL ST § 287.135

KeyCite Yellow Flag - Negative Treatment
Unconstitutional or Preempted Prior Version Preempted by Odebrecht Const., Inc. v. Secretary, Florida Dept. of Transp., 11th Cir.(Fla.), May 08, 2013

KeyCite Yellow Flag - Negative Treatment Proposed Legislation

West's Florida Statutes Annotated

Title XIX. Public Business (Chapters 279-290)

Chapter 287. Procurement of Personal Property and Services (Refs & Annos)

Part I. Commodities, Insurance, and Contractual Services (Refs & Annos)

West's F.S.A. § 287.135

287.135. Prohibition against contracting with scrutinized companies

Effective: October 1, 2016

Currentness

<Text of section effective October 1, 2016. See, also, text of section 287.135 effective until October 1, 2016.>

(1) In addition to the terms defined in ss. 287.012 and 215.473, as used in this section, the term:

(a) "Awarding body" means, for purposes of state contracts, an agency or the department, and for purposes of local contracts, the governing body of the local governmental entity.

(b) "Boycott of Israel" has the same meaning as defined in s. 215.4725.

(c) "Business operations" means, for purposes specifically related to Cuba or Syria, engaging in commerce in any form in Cuba or Syria, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commerce.

(d) "Local governmental entity" means a county, municipality, special district, or other political subdivision of the state.

(2) A company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with an agency or local governmental entity for goods or services of \$1 million or more if at the time of bidding or submitting a proposal for a new contract or renewal of an existing contract, the company:

(a) Is on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725, or is engaged in a

boycott of Israel;

(b) Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473; or

(c) Is engaged in business operations in Cuba or Syria.

(3) Any contract with an agency or local governmental entity for goods or services of \$1 million or more entered into or renewed on or after:

(a) July 1, 2011, through June 30, 2012, must contain a provision that allows for the termination of such contract at the option of the awarding body if the company is found to have submitted a false certification as provided under subsection (5) or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

(b) July 1, 2012, through September 30, 2016, must contain a provision that allows for the termination of such contract at the option of the awarding body if the company is found to have submitted a false certification as provided under subsection (5), been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria.

(c) October 1, 2016, must contain a provision that allows for the termination of such contract at the option of the awarding body if the company:

1. Is found to have submitted a false certification as provided under subsection (5);

2. Has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel;

3. Has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; or

4. Has been engaged in business operations in Cuba or Syria.

(4) Notwithstanding subsection (2) or subsection (3), an agency or local governmental entity, on a case-by-case basis, may permit a company on the Scrutinized Companies that Boycott Israel List, the Scrutinized Companies with

Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or a company with business operations in Cuba or Syria, to be eligible for, bid on, submit a proposal for, or enter into or renew a contract for goods or services of \$1 million or more under the conditions set forth in paragraph (a) or the conditions set forth in paragraph (b):

(a) 1. With respect to a company on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, all of the following occur:

a. The scrutinized business operations were made before July 1, 2011.

b. The scrutinized business operations have not been expanded or renewed after July 1, 2011.

c. The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company.

d. The company has adopted, has publicized, and is implementing a formal plan to cease scrutinized business operations and to refrain from engaging in any new scrutinized business operations.

2. With respect to a company engaged in business operations in Cuba or Syria, all of the following occur:

a. The business operations were made before July 1, 2012.

b. The business operations have not been expanded or renewed after July 1, 2012.

c. The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company.

d. The company has adopted, has publicized, and is implementing a formal plan to cease business operations and to refrain from engaging in any new business operations.

3. With respect to a company on the Scrutinized Companies that Boycott Israel List, all of the following occur:

a. The boycott of Israel was initiated before October 1, 2016.

b. The company certifies in writing that it has ceased its boycott of Israel.

c. The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company.

d. The company has adopted, has publicized, and is implementing a formal plan to cease scrutinized business operations and to refrain from engaging in any new scrutinized business operations.

(b) One of the following occurs:

1. The local governmental entity makes a public finding that, absent such an exemption, the local governmental entity would be unable to obtain the goods or services for which the contract is offered.

2. For a contract with an executive agency, the Governor makes a public finding that, absent such an exemption, the agency would be unable to obtain the goods or services for which the contract is offered.

3. For a contract with an office of a state constitutional officer other than the Governor, the state constitutional officer makes a public finding that, absent such an exemption, the office would be unable to obtain the goods or services for which the contract is offered.

(5) At the time a company submits a bid or proposal for a contract or before the company enters into or renews a contract with an agency or governmental entity for goods or services of \$1 million or more, the company must certify that the company is not participating in a boycott of Israel, on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or that it does not have business operations in Cuba or Syria.

(a) If, after the agency or the local governmental entity determines, using credible information available to the public, that the company has submitted a false certification, the agency or local governmental entity shall provide the company with written notice of its determination. The company shall have 90 days following receipt of the notice to respond in writing and to demonstrate that the determination of false certification was made in error. If the company does not make such demonstration within 90 days after receipt of the notice, the agency or the local governmental entity shall bring a civil action against the company. If a civil action is brought and the court determines that the company submitted a false certification, the company shall pay the penalty described in subparagraph 1. and all reasonable attorney fees and costs, including any costs for investigations that led to the finding of false certification.

1. A civil penalty equal to the greater of \$2 million or twice the amount of the contract for which the false certification was submitted shall be imposed.

2. The company is ineligible to bid on any contract with an agency or local governmental entity for 3 years after the date the agency or local governmental entity determined that the company submitted a false certification.

(b) A civil action to collect the penalties described in paragraph (a) must commence within 3 years after the date the false certification is submitted.

(6) Only the agency or local governmental entity that is a party to the contract may cause a civil action to be brought under this section. This section does not create or authorize a private right of action or enforcement of the penalties provided in this section. An unsuccessful bidder, or any other person other than the agency or local governmental entity, may not protest the award of a contract or contract renewal on the basis of a false certification.

(7) This section preempts any ordinance or rule of any agency or local governmental entity involving public contracts for goods or services of \$1 million or more with a company engaged in scrutinized business operations.

(8) The contracting prohibitions in this section applicable to companies on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or to companies engaged in business operations in Cuba or Syria become inoperative on the date that federal law ceases to authorize the states to adopt and enforce such contracting prohibitions.

Credits

Added by Laws 2011, c. 2011-104, § 1, eff. July 1, 2011. Amended by Laws 2012, c. 2012-196, § 2, eff. July 1, 2012; Laws 2014, c. 2014-17, § 42, eff. July 1, 2014; Laws 2016, c. 2016-36, § 2, eff. Oct. 1, 2016.

Editors' Notes

VALIDITY

<For validity of this section, see Odebrecht Construction, Inc. v. Secretary, Florida Dept. of Transportation, 715 F.3d 1268 (2013).>

Notes of Decisions (10)

West's F. S. A. § 287.135, FL ST § 287.135

Current with chapters from the 2016 2nd Regular Session of the 24th Legislature in effect through May 10, 2016

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EXHIBIT G

06/27/2016

Church by the Sea-1000 Kane Bay Harbor Islands

PZB Narrative & Revisions: Architect Submitted Plans June 14, 2016

Based on the Planning and Zoning Meeting dated May 17, 2016, we are providing the following changes:

Floor Plans:

- 1-Increased Retail Frontage Facing Kane Concourse, and removed NW exit stair towards Kane Concourse. Retail frontage increased from 125'-9" to 139'-7". Retail GLA increased from 8,474 sf to 8,500 sf. Overall increase in GFA due to the fact that we enclosed the second and third level West corridors and also increase Retail footprint. (Total increase +/-5K)
- 2- Reconfigured Parking/Loading Garage to accommodate 3 more Accessible spaces and increase the total parking count by one space for a total of 126 spaces (including 5 Handicap.) Increased the elevation grade of the garage by 1 foot to avoid flooding issues
- 3-Added Gate Access connecting Garage to Loggia facing East Bay Harbor and connecting to Kane concourse. Gate is to remain open while the garage is in operating hours. Refer to sheet A-705
- 4- Added double doors in the NW and SE Exit Stairs as requested.
- 5-Provided continuation of sidewalk south of the small parking lot facing 95 street and added landscape at the corner of 95 street and alley – The sidewalk on the north side of the 95th St. was extended across the alley to the adjacent parking lot.
- 6-Reconfiguration of the third level interior space and roof plan
- 7-Increased the overall height of the Mechanical and Roof of the Sanctuary by 2 ft. This allows for clearstory windows in the North Facing wall of the Sanctuary. Refer to sheet A-302 Section 2. Still overall maximum height proposed did not change (top of steeple)
- 8- We are providing a thicker, deeper wall on Kane Concourse (2ft wide) with the perforated metal screen and glass recessed at least 1'-6", intentionally to reflect a design intent.. Please refer to sheet A-102
- 9- At the SW corner of the project we are adding landscape (palms) facing 95 street. Landscape plans and sheet A-101 reflect those changes
- 10- A shadow study has been produced to show the shadow or non-shadow/reflection of the cross in the steeple in reference to the context. Refer to Sheet A-705. It shows the critical dates of summer and winter solstices at 9am, 2pm and 5pm
We will have an animation to be shown on the day of the hearing showing the entire days at those dates, if needed.

Elevations:

Kane Concourse

Reconfigured the Retail façade to incorporate the increase in retail frontage and removed stair doors facing Kane Concourse. Also added windows at the NE corner (CBTS Lobby)

East Bay Harbor

1-Addition of Trellis on the second level as per comments of P & Z

2-Addition of storefront windows at the second level facing the outdoor terrace and trellis. Reconfigured NE loggia openings and added perforated metal screen panels above the proposed eyebrow.

3- Reduction of the overall height of the SE Stair. Addition of Wavy Score lines and Stained Glass at the SE stair. Addition of mosaic pattern in the middle panels of the vertical windows along NE East Bay Harbor and SE Stair

4-The Cross in the Steeple was modified to a more vertical proportions as per P & Z comments

95th Street

1-Reduction of overall height of SE stair at the corner of 95 street and East Bay Harbor. Addition of Wavy Score lines and Stained Glass at the SE stair. Addition of mosaic pattern in the middle panels of the vertical windows at the SE Stair

2-Addition of Landscape Palms at the SW corner of the site

Interior Alley Elevation

1-Enclosed 2nd and 3rd level corridors facing the alley and added vertical windows on the third level. Overall reconfiguration of the facade

2- Addition of Wavy Score lines and Stained Glass at the SW stair. Addition of mosaic pattern in the middle panels of the vertical windows facing the alley. .

EXHIBIT H

From: Scott Marks [mailto:smarks@michaelmillerplanning.com]

Sent: Tuesday, June 28, 2016 3:04 PM

To: Roberto Bezold <roberto@zyscovich.com>

Cc: Alba Chang (achang@bayharborislands.net) <achang@bayharborislands.net>; Ayanidys J. Martinez (amartinez@bayharborislands.net) <amartinez@bayharborislands.net>; Ronald J. Wasson (rwasson@bayharborislands.net) <rwasson@bayharborislands.net>; Marlene Siegel (msiegel@bayharborislands.net) <msiegel@bayharborislands.net>; Dale Lee <dlee@bayharborislands.net>

Subject: RE: 1000 kane

Roberto,

MMPA is ok with the plans submitted. Please ensure that a copy of the narrative (attached) is included in each set of plans.

Thanks,

Scott D. Marks

Community Planner

Michael Miller Planning Associates, Inc.

Phone: 954-757-9909

Email: SMarks@MichaelMillerPlanning.com

EXHIBIT I

**TOWN OF BAY HARBOR ISLANDS
COMMUNITY DEVELOPMENT
MEMORANDUM**

To: Planning and Zoning Board
Town of Bay Harbor Islands

From: Scott D. Marks *SDM*
Community Planner
MMPA-Consultant Town Planner

Date: July 12th, 2016

Subject: Proposed Single-Family Residence
9911 W. Broadview Drive
Bay Harbor Islands Acct. No.: MB2016-73
MMPA Acct. No.: 01-0702-1039

RECOMMENDED ACTION

MMPA recommends the Planning and Zoning Board review the contents of this staff report, the latest revised site plan and architectural plans (dated 6/30/16) and if felt to be acceptable, **APPROVE** the plans as submitted or with modifications as deemed appropriate and/or with conditions, to allow for the construction of a new single-family house located at 9911 W. Broadview Drive.

GENERAL PROJECT INFORMATION

Land Use Designation:	L – Low Density Residential
Zoning District:	RD Single-Family District
General Location:	9911 W. Broadview Drive
Legal Description:	Lot 5 of Block 37, "Bay Harbor Island" according to the plat thereof, as recorded in Plat Book 46, at Page 5 of the Public Records of Miami-Dade County.

PROJECT DESCRIPTION

The project Engineer, American Building Engineers, Inc., as agent for the property owner, Pro Nan Investments IV, LLC, submitted an application for the construction of a new single-family residence on a non-waterfront corner lot located at 9911 W. Broadview Drive. The proposed two-story home will have approximately 6,324 square feet of A/C living space with a two-car garage and a pool and pool deck in the side (street) yard of the property fronting 99th Street. The

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residence will have five (5) bedrooms, seven (7) full bathrooms, one (1) half bathroom and an office that could be considered a bedroom. The overall height of the structure will be 25'-0" above Base Flood Elevation (BFE), which is the maximum height allowed within the RD Single-Family District. The applicant is proposing a driveway connection to W. Broadview Drive which provides access to the garage and a parking space in the front yard area. Extensive landscaping is proposed that meets the Miami-Dade County Landscape Code and Town Supplemental Landscape Code requirements, including the use of native and drought tolerant plant materials.

The current draft of the Street Tree Master Plan identifies the tree species for this area of the Town as Glaucous Cassia along W. Broadview Drive and Live Oak along 99th Street.

The Historical Structure Survey for the Town of Bay Harbor Islands lists the existing structure as a Masonry Vernacular design that was built in 1956 (FMSF No. DA10427). The new single-family home will be a Modern design with wooden accents.

PROJECT HISTORY

The applicant submitted an initial set and several revised sets of plans that were reviewed by MMPA for consistency with the Town Code requirements. Comments were given to the applicant each time and the current submitted plans are reflective of all requested changes.

COMPREHENSIVE PLAN / ZONING

Comprehensive Plan – The property has a Future Land Use Map (FLUM) designation of "Low Density Residential". The maximum allowable base density is six (6) DUA. The proposed use and density of the property would be consistent with the applicable FLUM designation of the property.

Land Development Regulations / Zoning Code – The property has a Zoning Classification of RD Single Family Zoning District. The proposed use and density of the property is consistent with this zoning classification. The following Zoning and Planning sections of the Code apply to this proposal: Section 23-3 (Use Regulations RD Single-Family District), Section 23-9 (Minimum Size of Living Units), Section 23-10 (Minimum Size of Building Lot), Section 23-11(A) (Land Development Regulations RD Single-Family Area) and Section 23-12 (Land Development Regulations General Provisions). In addition, the Town has separate regulations for landscaping, driveways and building material regulations.

PLATTING

The site will not require re-platting, as the site is currently platted as described above under the legal description.

SUMMARY / SITE PLAN COMMENTS

The latest site plan and architectural plans submitted for the construction of a new single-family home located at 9911 W. Broadview Drive meet or exceed all Town Land Development and Landscape Code requirements. The applicant previously submitted plans that were reviewed and commented on by MMPA and all previous comments and issues have been addressed by the current plans.

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It should be noted that the height of the wall along the south side of the property (along 99th Street) is proposed at 6'-0" in height. The proposed wall will screen the pool so that it will not be visible from the street. Per Sec. 23-12(22)(i)(5) walls / fences within the front (street side) setback may not exceed 3-feet solid above grade unless the PZB approves otherwise for specific sites based on creative and compatible design solutions and location issues. It should also be noted that per Sec. 23-12(15)(g)(vii), all pools abutting a street shall be screened from the street by a wall or fence so that the pool cannot be seen from the street. The wall will be setback 2-feet from the property line and will be screened by a Crabwood hedge that will be 3-feet tall at time of planting.

The following conditions of approval are recommended:

- 1) This approval is based on the plans prepared by American Building Engineers, Inc. dated June 30th, 2016 with any modifications required by the PZ Board. All modifications to the above plans shall be reviewed by Town staff and may require re-approval by the PZB if felt to be substantial.

Michael Miller Planning Associates, Inc.

EXHIBIT J

TOWN OF BAY HARBOR ISLANDS
PLANNING AND ZONING BOARD

9665 Bay Harbor Terrace
Bal Harbour Islands, Florida 33154
July 19th, 2016
Tuesday, 7:07 - 9:02 p.m.

COUNCIL MEMBERS PRESENT:

Ronald Wasson, Stephen Hurwitz, Alan Bebachik,
Jerry Gavcovich, Tom Telesco, Jed Frankel

ALSO PRESENT:

Amy Huber, Esquire
John K. Shubin, Esquire
Tucker Gibbs, Esquire

1 Thereupon:

2 MR. HURWITZ: If you would please stand and
3 join us in the pledge, we'll get going.

4 (Pledge of Allegiance.)

5 Call role.

6 MS. SIEGEL: Mr. Telesco.

7 MR. TELESKO: Here.

8 MS. SIEGEL: Mr. Sklar could not be with us
9 today.

10 Mr. Frankel.

11 MR. FRANKEL: Here.

12 MS. SIEGEL: Mr. Bebchik.

13 MR. BEBCHIK: Here.

14 MS. SIEGEL: Mr. Gavcovich.

15 MR. GAVCOVICH: Here.

16 MS. SIEGEL: And Mr. Hurwitz.

17 MR. HURWITZ: Here.

18 Okay. We'll take the first item on the
19 agenda. A reminder to everyone, if you would like
20 to speak, I have a couple of forms up here. You'll
21 need to fill out a form and please bring it up and
22 we'll the take public comment.

23 The first item is a request for approval for a
24 new commercial complex for Church By The Sea
25 located at 1000 Kane Concourse, Tract N. The

1 developers are proposing to construct a new 3-story
2 mixed use development project. On May 17th, 2016,
3 the Board discussed and deferred and advised the
4 applicant to make several changes. The developers
5 have made the changes as requested. The new
6 complex proposes to have commercial retail space at
7 the street level facing Kane Concourse. The new
8 building is three stories in height at 48 feet and
9 2 inches above BFE, (65 feet BFE is allowed.)
10 Enclosed please find the Site Plan and elevations.

11 MR. SIMONE: Please raise your hand if you're
12 going to testify.

13 (All were sworn.)

14 MR. HURWITZ: Thank you very much.

15 Faculty is here.

16 MS. HUBER: Hi, good evening.

17 MR. HURWITZ: Good evening.

18 MS. HUBER: Amy Huber with the law firm of
19 Shubin & Bass here on behalf of the Church By The
20 Sea. When we were here with you last time, you had
21 several recommendations for us and things that you
22 would like to see. You requested that we move the
23 exit door. That's been done. You requested
24 modifications to the western stair. Those have
25 been made. You requested that the loggia be more

1 pedestrian friendly and remove the garage door.
2 We've done that. We've provided the sidewalk along
3 the surface parking lot pursuant to your request.
4 We added the trellis to the east elevation in
5 addition to modifications to the facade as well as
6 the south facade.

7 So I believe that those adequately address all
8 of the comments that you made last time. Staff has
9 reviewed the application and finds that it complies
10 with all of the code regulations. Mr. Zyscovich is
11 here with you today if you'd like him to walk you
12 through the revisions to the Plans that have been
13 made. But ultimately that's up to the Board
14 whether or not they would like him to walk you
15 through those changes.

16 MR. HURWITZ: Okay. Thank you.

17 The Board had requests. I would think it
18 would probably be a good idea to be able to
19 visually see it, if you don't mind.

20 MS. HUBER: Okay.

21 MR. HURWITZ: Just kind of highlighting the
22 changes so we can refresh everybody's memory and
23 show the visual changes, if you can.

24 Does that work for everyone?

25 MR. ZYSCOVICH: For the record, I was out

1 during the swearing in.

2 (Mr. Zyscovich was duly sworn.)

3 MR. ZYSCOVICH: Okay. Thank you.

4 This is Roberto Vesult and we'll be doing this
5 together. I have to leave around 8:00 or shortly
6 thereafter, so he can continue on my behalf.
7 Roberto knows everything about the Plans.

8 So what we've done is on the screen before
9 you, hopefully -- yes -- what we've done is we've
10 organized --

11 MR. SIMONE: State your name for the record
12 please and introduce yourself.

13 MR. ZYSCOVICH: Okay. I'm sorry. My name is
14 Bernard Zyscovich.

15 On the left-hand side of the screen, we have
16 the Plan that is the one that is been revised. And
17 we've taken care of a couple of the -- a number of
18 the things that you've been requesting. One is on
19 Kane Concourse, on the right hand you'll see that
20 we used to have the stair that was in the very
21 corner to the west. Now that's been cleared out,
22 and we now have a full array of storefronts because
23 we've moved the stair toward the rear so we can
24 exit to the alley. So that addresses one of the
25 comments that seemed to be on everyone's mind.

1 I don't see Oscar Sklar here, so I think he
2 was one of the ones especially that was concerned
3 about that. So we'll show you in the elevations
4 how that changed things. But we now have a full
5 entire length. I think it's 140 feet.

6 MR. VESULT: In increased by 14 feet.

7 MR. ZYSCOVICH: We increased by 14 feet the
8 amount of retail storefront.

9 We also have reduced the area behind the back
10 of house because we discovered that we really don't
11 need more than one loading bay. And we also have,
12 therefore, increased some of the parking. We have
13 identified the pathway whereby you get out of the
14 garage out to the street.

15 And then a very big issue that we spent a lot
16 of time talking about last time was in the corner
17 of the lobby to the church where the steeple was
18 located, as you can see before, we had the stairway
19 that was turned east/west that occupied a portion
20 of that area facing the street. We've now moved
21 it, turned it north/south, and now the storefront
22 of the church lobby is actually at grade and is
23 visible without the stair interfering.

24 So we have really managed I think to clean up
25 the project substantially in terms of those issues

1 that were there.

2 We also have been able to create some changes
3 if you see on the left, as we discussed, the side
4 lot across the alley where we have sidewalk and
5 parking. We have a continuous sidewalk now.

6 We added the accessible space that we were
7 missing.

8 MR. SIMONE: Who is he?

9 MR. ZYSCOVICH: This is Robert Vesult.

10 MR. VESULT: So the concern was we didn't have
11 enough accessible spaces. So we are providing 126
12 spaces. So are providing accessible space which is
13 required for that number of spaces.

14 Also, you had requested that you wanted a
15 continuous sidewalk along 95th Street so that it
16 continues. And we added some landscape at the
17 corner of the alley and 95th Street. You'll see
18 the revisions.

19 One of the revisions is that that door that
20 connects the part to the loggia, we replaced that
21 door with a gate that's going to be open 24 hours
22 as requested. And we have some sample images of
23 how it could look and it's going to be open all the
24 time.

25 MR. ZYSCOVICH: Thank you.

1 And on this slide, you can see in the red dots
2 the circulation path. You asked about how does
3 somebody get out of the parking? How does somebody
4 move about the site? So this shows you that we
5 have clear access to all the sidewalks that
6 surround the property.

7 In this drawing you can see that the impact to
8 the Plan was that we moved the stairways around, we
9 created the new exiting toward the alley, and we
10 have incorporated the trellis which you'll see more
11 clearly on your blowup Plans showing you the
12 outdoor decks and how that works.

13 MR. VESULT: We closed the west corridor also
14 and we added storefronts all along the sanctuary
15 facing east. So that's going to be visible on the
16 revision.

17 MR. ZYSCOVICH: You were asking what does that
18 sidewalk, the alley look like? We'll be able to
19 show it to you in a minute, but this reflects the
20 Plan change.

21 Go ahead.

22 MR. VESULT: And we made some minor
23 adjustments. We enclosed also the west corridor.
24 We added a clear story like to eliminate the
25 sanctuary from the north. It's not visible in the

1 views, but it's visible in the section. And we
2 cleaned up a little bit of the configuration of the
3 interior space.

4 We removed -- you're going to see on this the
5 southwest stair. We dropped that floor. So it's
6 not going to be that visible in the facade.

7 The roof Plans didn't change much.

8 MR. ZYSCOVICH: This is the upper roof.

9 MR. VESULT: Yes.

10 MR. ZYSCOVICH: So here you see the impact to
11 the changes that you requested. The larger drawing
12 shows you that there is no longer on the western
13 edge an area where we have an exit door that
14 interrupts the flow of the retail.

15 On the area next to the steeple, you can see
16 that the glass compared to the other one now comes
17 all the way down and we've moved the exit door. In
18 the rendering you'll see that there's a person
19 standing there in front of the exit door. So we've
20 really cleaned up the flows and we now have full
21 transparency.

22 MR. VESULT: The proportion of the storefront
23 I believe is better now.

24 MR. ZYSCOVICH: And here you see the
25 storefront proportion that Roberto is talking

1 about. The one on the bottom shows you the way we
2 had it designed previously and how we've changed it
3 to accommodate the fact that we no longer have the
4 exit door on the facade on Kane Concourse. It's
5 now all storefront and glass. It's very simple and
6 incorporates all the things that everybody liked
7 about the previous Plan.

8 Here you can see the change in the way that we
9 have regularized the facade of the loggia. It's a
10 very subtle difference. Frankly, we would have
11 done it during design development anyway, but we
12 did it now and we're showing you what those
13 sketches look like. And here you can also see the
14 definition of the glass verticality at Kane
15 Concourse.

16 MR. VESULT: You'll see in that image that we
17 also -- the proportion of the loggia, we
18 regularized the openings at 8 foot wide and we
19 added perforated metal on top, and it relates
20 better now to the facade on Kane, as you see, at
21 the northeast corner. And also we added mosaic
22 tiles in the middle of the vertical windows to go
23 with the concept of the wavy Church By The Sea
24 pattern. So those are going to be repeated in all
25 the windows.

1 You can see the trellis also, and we reduced
2 the stair volume at the southwest corner.

3 MR. ZYSCOVICH: As you'll see in your blowup
4 it shows you that the metal mesh that we have above
5 the storefront is now also in the panels above the
6 loggia. So we have a continuity of movement that
7 addresses the activation of that corner. Here you
8 can see it from the other direction. You will not
9 be able to see into the parking. You'll see the
10 metal mesh that will also be there at the openings
11 at the ground. Here you can see the landscape
12 above on the trellis.

13 MR. VESULT: And the wall on Kane Concourse is
14 2 feet wide to create the depth that we wanted.
15 And, more important, the facade, the wall is a foot
16 deep. So we can also play with the location of the
17 wall to create the shadow that we wanted to make it
18 a little bit more interesting.

19 MR. ZYSCOVICH: Here you can see that we
20 reduced the level of the stair all the way to the
21 left of the drawing, because we don't really need
22 it to go all the way up. We have the trellis
23 that's shown at the area off of the sanctuary and
24 this shows you the articulation of the --

25 MR. TELESKO: Excuse me. We can't see what

1 you're pointing at on the screen.

2 MR. ZYSCOVICH: Who can't?

3 MR. TELESCO: We on the Board can't see what
4 you're pointing at on the screen. Move over here.

5 MR. ZYSCOVICH: Oh.

6 MR. TELESCO: That's more helpful to us.

7 MR. VESULT: I'm sorry.

8 So this is the trellis. And we've added all
9 this glass behind, so it's a little bit more
10 showing the glass.

11 MR. HURWITZ: The trellis that was added
12 basically is about half of the structure? On the
13 top left there, that's all trellis?

14 MR. VESULT: Yes.

15 MR. HURWITZ: And then there's glass behind
16 that?

17 MR. VESULT: Right.

18 MR. ZYSCOVICH: Roberto, would you like to
19 explain this.

20 MR. VESULT: Yeah. I mean, this is the facade
21 on this side. On this side is Bay Harbor and you
22 can see the trellis. We modified the corner stairs
23 to add more detail. We added more lines in a wavy
24 pattern following the Church By The Sea motif. We
25 added stained glass in all the corner stairs. We

1 added perforated metal to the base on the entire
2 project so that relates to the building with that
3 detail.

4 We have the church on top and the base that
5 ties everything up to the parking. We have a
6 little more movement in this area. We added more
7 trees at the corner. And you can see we added the
8 alley facade with third-level windows on this side
9 with the stained glass panels so they have a little
10 bit more relation on both sides.

11 MR. TELESCO: I was not here for the last
12 meeting, so maybe I'm asking you a question that
13 you've already answered. But since the baseboard
14 elevation is 5-feet-and-change, what are your plans
15 for flood-proofing?

16 MR. ZYSCOVICH: We've actually raised the
17 first level of the garage by one foot beyond what
18 we're required by code in order to address that
19 issue, and we've also likewise raised the floor of
20 the lobby of the church for the same reason.

21 MR. VESULT: And the reason is the level of
22 sidewalk and we've not used flood panels for that
23 because we want to meet the sidewalk.

24 MR. TELESCO: Yes, but this renovation exceeds
25 50 percent of the fully appreciated value.

1 MR. VESULT: It's a new building.

2 MR. TELESCO: Okay. So you're going to be
3 using what?

4 MR. VESULT: Flood panels.

5 MR. TELESCO: Underneath the slab?

6 MR. ZYSCOVICH: It will have flood panels at
7 the facade, otherwise you're going to lose your
8 retail street.

9 MR. TELESCO: Okay. Well, I'm concerned
10 overall about any loss of FEMA's endorsement for
11 this community because that would lose us our
12 ability to get flood insurance. So I think it's a
13 concern for us that you a hundred percent --

14 MR. ZYSCOVICH: We're actually exceeding the
15 FEMA requirements.

16 MR. TELESCO: Okay. Good answer.

17 MR. VESULT: Thank you.

18 This is close-ups of the corners. You see
19 more detail. We added some landscaping at the
20 corner, and we added a lot of articulation at the
21 facade. You have a lot of movement. So that's it.

22 MR. TELESCO: And you had a shadow study?

23 MR. VESULT: Yes. We have an animation. I
24 don't know if you want to play it.

25 MS. SIEGEL: You have to get out of that first

1 and then go in.

2 MR. VESULT: Those are more renderings of the
3 complete building, if you want to see it. That's
4 another rendering that we have before of the retail
5 space.

6 And then the shadow study.

7 MR. ZYSCOVICH: These are the same things.
8 It's an animation they wanted to see, the shadow
9 study. There you go. Explain the shadows.

10 MR. VESULT: Okay. So we're using the
11 two worst times. I mean, the worst time is
12 December 31st, the winter solstice. You have the
13 9 a.m. shadows, 2 p.m. and 5 p.m. which will be the
14 worst day probably which otherwise in the year.
15 And you see the shadow with these people here. And
16 at 5 p.m, you don't see the cross. You just see
17 the steeple.

18 MR. ZYSCOVICH: So when the sun is in the
19 west, you'll never see the shadow.

20 MR. VESULT: And in June it's an even better
21 situation. You don't see the shadow at all.

22 MR. ZYSCOVICH: So what we did was Roberto
23 took it upon himself to watch in detail the almost
24 four-hour session we had last time and picked up
25 every conceivable detail that he could glean from

1 that video which has been incorporated into these
2 documents.

3 We think we've addressed everything, and if
4 you have more questions, we're happy to take them.
5 But I think that the concerns that you had about
6 the sidewalk, the fenestration, the treatment, the
7 loggia, the articulation, the fact that you didn't
8 want to interrupt the retail, we've answered all
9 those questions and I think that we're ready to
10 receive whatever else you have.

11 MR. VESULT: It's a better building.

12 MS. SIEGEL: And if the Board wants to see the
13 animation, it is there.

14 MR. HURWITZ: Sure. Why don't we do that. If
15 the Board is okay, we just have a few people to
16 speak. So we'll invite three speakers and then
17 we'll ask any questions.

18 MS. HUBER: And I just want to reserve the
19 right to a rebuttal to address any comments to the
20 extent I need to.

21 MR. HURWITZ: Sure. Thank you.

22 Terry D'Amico.

23 MS. D'AMICO: Terry D'Amico, 9101 East Bay
24 Harbor Drive.

25 I understand that the Council members have

1 with people of the church and, you know, the
2 architects and so on, and you all know that this is
3 coming just in front of you.

4 And, once again, it's decompartmentalizing as
5 our town does, but how did a building with so many
6 uses that are nonprofit get into our anchor
7 property in our business district? This is the
8 worst business plan I've ever seen in my whole
9 life. And you're talking about this is where the
10 larger building should go. Right? And you're not
11 putting it -- we're completely backwards in this
12 town.

13 Sorry, you know, Bernard, that you haven't had
14 more input from the community, but I would really
15 like for you to maybe approach to save the steeple
16 that we -- the pylon that we have. I know they
17 saved the steeple from the old church and that
18 detail is on a church detail in North Miami, the
19 same detail they you have cornered.

20 I would like to ask why we can't kind of
21 maintain the corner relationship. I think you can
22 get all the same, you know, uses in that would be
23 very welcoming at the corner if we kept it, and
24 that would be some kind of nice gesture to say that
25 we don't want to come in and change your commercial

1 district.

2 There's a cafeteria. What are the hours? Are
3 these events? I see like a playground. And there
4 are so many rooms up there that are not labeled on
5 the Plan. What's going on here? And where is the
6 traffic study? Because we have a new hotel with a
7 restaurant in it, we have a new office building
8 with a restaurant in it all on this one corner.

9 This is the way I get out of the island. You
10 know, so during construction or even after
11 construction, school comes through here. All the
12 kids from Surfside come through here.

13 Where is the traffic study? Do you guys care
14 about how this really affects the planning of our
15 town? Because this is a very important location
16 and building. And the Council is not going to
17 comment on it. You have to be really strong and
18 demand that we get some answers about what kind of
19 things are going on in this property.

20 We have an existing pylon. Why don't you use
21 it?

22 You know, as far as the events, you know, what
23 kind of events? We want to hear more about it.
24 This has been so non -- as far as the transparency
25 of how this is affecting our town, you know, we

1 have no idea how this has happened. And you know
2 as planners that anchor stores are to attract other
3 businesses, okay, and churches really don't do
4 that. Okay. We need a really good anchor store to
5 replace the Cadillac dealership.

6 Thank you.

7 MR. HURWITZ: Kathleen Kennedy.

8 MS. KENNEDY: Thank you, Mr. Hurwitz, for
9 calling me. Can I just point this to you for a
10 moment?

11 MR. HURWITZ: Sure.

12 MS. KENNEDY: Oh, let me identify myself. My
13 name is Kathleen Kennedy, 9900 West Bay Harbor
14 Drive.

15 A synagogue, the beautiful synagogue at 95th
16 Street, has no Star of David, no menorah, no
17 nothing, and they have the beautiful stained glass
18 windows. Come over the bridge -- and I'm a
19 Christian and I first believed in this church. But
20 you know what? This cross here should not be
21 there. You know, we're not a Christian town.
22 We're a town for everybody, the Jews. And that's
23 why I don't like some of the things that Isaac
24 Salver did ten years ago.

25 We are a town for everybody; for Muslims, for

1 Christians, for Jews, for everybody. So is this a
2 sign or is it a cross? And to me as a Christian,
3 it looks like a cross. I wear one. So anybody
4 that says that is a sign is full of Irish Blarney,
5 number one.

6 Number two, I believe in everything that this
7 church does. They do wonderful things. I've been
8 a volunteer there. I'd feed the homeless. But I'm
9 very concerned about the second floor catering for
10 the weddings. And they some do nice weddings up
11 there.

12 Where is the Emergency Evaluation Plan here?
13 What happened, God forbid, that we should get a
14 hurricane warning? You have a building across -- a
15 hotel going up across the street. You have this
16 church going in. We have a bridge that's not
17 working. God forbid, in five more years it's
18 coming down. We have to build it up again. Where
19 is the Plan?

20 And I know that this is a burden to all of
21 you, and shame on our Council for not taking this
22 on. They gave it to you to be the bad guys here.
23 And I know you're not. You're just doing your job.
24 But you know something? That cross that I wear
25 around my neck is not a sign. It's a cross. It's

1 a Christian cross for Mr. Simone -- excuse me --
2 Mr. Price. And shame on you for calling it a sign.

3 And on the second floor, you cannot put Church
4 By The Sea on a building in this town. It has to
5 be on the first floor in case you're putting one
6 up. I believe in the things that they do. But you
7 know what? This is becoming too much.

8 One of the reasons why I objected to Isaac
9 Salver in his all Jewish thing here, we are for
10 everybody here, all religions. To come over the
11 bridge and see this cross, the first thing you see,
12 I'm sorry, as a Christian, I resent it.

13 And I thank you and I respect all that you do.
14 Thank you.

15 MR. SIMONE: Chairman, I have never said that
16 was a sign. I have never submitted anything to the
17 town saying it was a sign. In fact, I have written
18 a written opinion that this is a religious symbol
19 which is protected by the First Amendment and
20 cannot be regulated as a sign.

21 MR. HURWITZ: Understood.

22 Thank you, Kathleen.

23 MS. ZELBERG: Linda Zelberg, West Island 95th
24 Street.

25 I served on the Planning and Zoning for eight

1 years. That was part of our job when we were on
2 the Council and I was mayor back then until we
3 separated and had all you good people come aboard.

4 First of all, we have some laws in this town.
5 The Church By The Sea or any religious facility
6 must be on the second floor.

7 The other law is that any facility or entity
8 on the second floor cannot have a sign on the wall.
9 So, therefore, I notice that they had a sign up on
10 the building. That should not be allowed. That's
11 part of our laws.

12 Thank you.

13 MR. HURWITZ: Thank you.

14 Tucker Gibbs.

15 MR. GIBBS: Good evening. My name is Tucker
16 Gibbs, and I'm representing four entities which I
17 can list: 1006 Kane Course, Inc. which owns
18 property at 1060 Kane Concourse, 1048, LLC which
19 owns property at 1048 Kane Concourse, 1050, LLC
20 which owns property at 1063 to 1073 95th Street,
21 and D&F, LLC which owns property at 1050 Kane
22 Concourse.

23 My offices are at 3835 Utopian Court in
24 Coconut Grove. And we spoke, I spoke and
25 Mr. Alvarez, who is our expert witness, spoke at

1 the last meeting. I would incorporate that into
2 the record today if I could and just focus on two
3 issues.

4 The revisions presented by the applicant
5 reflect some improvements to this project, but two
6 key issues remain. And according to section
7 23-5(7), A hundred percent of Kane Concourse ground
8 floor frontage is to be used for permitted B1 uses.
9 And you heard about the extension of the retail,
10 but that extension does not extend to the full
11 frontage of Kane Concourse. And that's an issue.

12 The updated Plans increase the retail frontage
13 I think they said 14 feet. But it still fails to
14 meet the hundred percent requirement, because the
15 lobby for the church is on Kane Concourse on the
16 ground floor. And for it to meet this
17 requirement -- it is a requirement -- it has to a
18 hundred percent of the frontage.

19 Number two, according to section 23-11C14, A
20 5-foot wide pedestrian walkway is required from
21 Kane Concourse to the rear parking area.

22 Now, the intent of this section, as
23 Mr. Alvarez spoke at the last meeting, is to
24 provide easy access to retail uses on Kane
25 Concourse from the parking lots behind the

1 buildings on Kane Concourse. But the proposed
2 access-way which runs down East Bay Harbor Drive
3 fails to meet the requirement because -- and I call
4 it a circuitous path and they're going to take
5 exception to that. But it goes down that street.
6 Yes, it goes within the loggia. It goes into the
7 buildings. It goes into the parking lot.

8 But the intent of this provision in the code
9 was to have a direct and uncomplicated path to and
10 from Kane Concourse preferably in the middle of the
11 block. If you read that section, it talks about
12 having pathways from the parking lots in the back
13 to Kane Concourse in the front. And this, while
14 providing such access, is not really within the
15 spirit of that particular provision.

16 In addition, there is no reason this building
17 can't be used and cannot meet these code
18 provisions, because the property will be a blank
19 slate. And that's something that's very important
20 to remember. They're going to tear down Ocean
21 Cadillac. So it will be a vacant lot. It's a
22 blank slate. The property will be vacant.

23 And it's a basic matter of building within the
24 code. The code requires a hundred percent
25 frontage. It requires a relatively straight

1 pathway between parking and Kane Concourse. And
2 that should be relatively easy to do. I don't know
3 why it has been done this kind of way, but it has
4 been.

5 So because of that, we would request that you
6 require the applicant to come back with a proposal
7 that actually meets the code. Thank you very much.

8 MR. HURWITZ: Thank you.

9 Paul Ruthfield.

10 MR. RUTHFIELD: Excuse me for being slow.

11 Paul Ruthfield, 1231 95th Street in Bay
12 Harbor.

13 As a resident of this area, especially in Bay
14 Harbor, I note that there are many people who have
15 called everybody. If they live on Bay Harbor, they
16 object. If they don't live on Bay Harbor, they
17 don't care. If they live in Bal Harbor, they're
18 happy.

19 Because what they did is something that
20 everybody's got to question. And what they did was
21 immediately before allowing anything to happen that
22 made any sense, that is taking some time and
23 looking at the law that they had to follow and
24 looking at the other laws that looked at existing
25 structures, immediately they jumped in and knocked

1 down the building they're building in Bal Harbour
2 as if everybody agreed to it, as if everybody
3 agreed that the church should be in Bay Harbor.

4 Well, thank you, Bal Harbour. I don't want
5 the church in Bay Harbor. Don't I get to say
6 anything or just the people who can pay to get it
7 done?

8 This is what I objected to. I objected to not
9 anybody listening. I know the job you gentlemen
10 are doing because I did the same thing in a couple
11 of different cities. And it's not easy. And in my
12 opinion, the Council has taken a ridiculous
13 position of forcing you guys to sit and make a
14 decision on something that they should be making
15 the decision on.

16 They should be -- they should be answering the
17 public. They should be addressing the residents of
18 Bay Harbor. They should be addressing the owners
19 of businesses in Bay Harbor and not shove it over
20 to you guys because it's easier for them, because
21 they don't have to answer and they could always
22 turn around and lay it on you and say that it's
23 caused by you, the Planning Board, the Planning and
24 Zoning Board.

25 Well, they're going to do that. If you don't

1 think they're going to do that, then you're
2 dreaming. This is still a town of people who live
3 here, and the decisions should be lead by the
4 people that live here and have their homes and
5 their businesses here and not by allowing another
6 town in order to help their business district make
7 decisions for us.

8 MR. HURWITZ: Thank you, Mr. Ruthfield.

9 MR. RUTHFIELD: Thank you.

10 MR. HURWITZ: Norma Horowitz.

11 MS. HOROWITZ: Good evening. Norma Horowitz,
12 9300 West Bay Harbor Drive, Unit 2A.

13 Mr. Price, I really don't see this as a First
14 Amendment issue. I have fought for and protected
15 First Amendment issues as a newspaper man, as a
16 person involved in American Jewish Congress. I
17 really see it as an ordinance issue here in Bay
18 Harbor where I have lived since 1964.

19 I have a couple of questions. It was very
20 difficult for us to see the slides. I'm wondering
21 about what kind of iconography. I saw of course
22 the cross in the -- if you're calling that a
23 steeple. Okay. The cross is obvious and very
24 large and will be the welcome to Bay Harbor
25 Islands.

1 I did see a stained glass window. I'm not
2 sure what side that was on. But it looked to me
3 like it was another cross and some stained glass
4 design. And I just wonder what other kind of
5 stained glass or iconography will be inserted once
6 the church is built if the church is built.

7 Thank you.

8 MR. HURWITZ: Thank you, Ms. Horowitz.

9 So there are no further speakers or questions?

10 Do you need to be sworn?

11 MR. ESKIN: Yes, I do.

12 (Mr. Eskin was duly sworn.)

13 MR. ESKIN: Ken Eskin, 1310 99th Street.

14 I've been told that there's a 38,000 square
15 foot kitchen within the facility. And checking
16 with some of my builder friends, I've told been
17 told you can feed about 325 people in a facility
18 that size.

19 Number one, I would be curious what they're
20 going to do with it, with something that big. And
21 I also had read there was 71 parking spaces. Now,
22 I wonder how you're going to equate that where
23 they're going to put all those people if they
24 happen to come.

25 I too would not like to see the cross exactly

1 where it is. When they were going to -- the town
2 was considering putting a temple on Kane
3 Concourse -- I'm Jewish -- I was totally against
4 it. I didn't think that it belonged Kane
5 Concourse. I also don't believe the church
6 believes it belongs on Kane Concourse.

7 As others have said, this should have been
8 dealt with at Council, but it was very easy for
9 them to put it on you guys.

10 Thank you.

11 MR. HURWITZ: No other speakers?

12 We will close the public hearing and ask the
13 Board.

14 Do you want to speak now or after?

15 MR. SIMONE: Mr. Chairman, can we just get
16 some clarification on the last comments that were
17 made as to the actual square footage?

18 MR. HURWITZ: Yes.

19 MR. VESULT: 1,350.

20 MR. TELESCO: That was a exaggeration. The
21 same with the parking spaces. There's not 76.
22 There's 126 I believe.

23 MR. GIBBS: None of that concerns me right
24 now. My big issue is listening to --

25 MR. TELESCO: Tucker Gibbs, is that your name,

1 sir.

2 MR. GIBBS: Yes.

3 MR. TELESCO: What's the validity of what he's
4 saying? Because that's very important. We have a
5 code that says one hundred percent of that space
6 needs to be retail on Kane Concourse. How was this
7 approved by your office?

8 MR. MILLER: Good question. And we looked at
9 this very carefully.

10 There's a number of buildings along the
11 boulevard, mixed use buildings. It's very common.
12 In the middle of the building at the ground level,
13 you go into a lobby and you can go straight to the
14 back of the building into the parking lots behind
15 the buildings. Then you get in the elevator or the
16 stair tower and go up to your floor.

17 So we looked at this in a similar light where
18 others have been allowed and do exist where there
19 is a common lobby that goes into the building. In
20 this case, they're proposing this at the corner.
21 We would have preferred it at the far west end of
22 the site, and we mentioned that at the DRC meeting
23 as well. But it is similar to entering the
24 building as other buildings on the boulevard.

25 So in our position, it is commercial across

1 the entire frontage at the corner. There is a
2 common entrance into the building, the lobby, and
3 you go up to the second.

4 MR. TELESCO: The eastern or western?

5 MR. MILLER: This is right at the corner of
6 East Bay Harbor Drive and Kane Concourse.

7 So that's how our office looked at that.

8 MR. HURWITZ: I appreciate that question and I
9 have others in the same vein. There were comments
10 made. But specifically here, the entrance is on
11 the side street. It's not on Kane Concourse.
12 Correct?

13 MR. MILLER: Right.

14 MR. HURWITZ: So the double-door entrance is
15 on the side. The piece that anyone could argue
16 fails to meet the hundred percent requirement of
17 retail is basically the wall between the retail and
18 the corner which used to be an exit is now a glass
19 window into the lobby.

20 MR. MILLER: Right.

21 MR. HURWITZ: I mean, again, I guess the
22 question is -- and it kind of summarizes some other
23 people's thoughts as well. Our job is to analyze
24 the architectural esthetic design of this building,
25 and when comments are made about this applicant and

1 others coming to this Board and not the Commission,
2 the assumption for our Board is that every single
3 code-related issue, be it the hundred percent
4 requirement to the corner, the uses, the mixed
5 uses, the parking allocations and those things, are
6 completely addressed by staff to DRC or the
7 commission or your office.

8 So I actually share Tom's question and other
9 people's comments about the mixed use and whether
10 the parking is there and the traffic studies and
11 those things. But I want to remind everyone, the
12 assumption, whether it's right or wrong -- and I
13 hope it's right -- is that those things are fully
14 addressed before it comes to this Board.

15 MR. MILLER: We believe that this Plan meets
16 the code requirements that exist in this community
17 except the sign, and we have a condition that says
18 that that's not included. They would have to get a
19 variance for that.

20 MR. TELESCO: The sign being the cross?

21 MR. MILLER: No. The sign is thus the name of
22 the church.

23 MR. HURWITZ: Tom, I didn't meant to interrupt
24 you. Again, I just share the question, and I want
25 to make sure on record for everyone here that made

1 comments and for us that all of the things
2 mentioned such as the mixed use and the allocations
3 of space and the parking, the traffic studies, the
4 requirement for the retail to extend a hundred
5 percent of the street but for the entrance which is
6 on the side, all meet today's code but for the sign
7 which is on the ground floor for a second floor
8 use -- and we're not approving today.

9 TOWN MANAGER WASSON: No, you're not. I'm
10 glad you -- it was really going to be brought up --
11 it was for illustrative purposes only that they
12 have to come back at a later date to get that
13 addressed.

14 MR. HURWITZ: And while we're talking about
15 signage, the cross or steeple, if you will, is not
16 a sign, and that is a religious symbol by which we
17 are not entitled to comment?

18 MR. SIMONE: The answer is no, it's not. It
19 is no different than any other architectural
20 feature. And after researching this issue, if this
21 perforation in the steeple area had been 3 diagonal
22 lines as an architecture feature, that probably
23 wouldn't raise a question with anyone.

24 A symbol is something that is known to the
25 general population. And under the town code, there

1 is no definition of whether that is a sign or not a
2 sign. So under the traditional methods that have
3 been used by this town for many years, the fallback
4 position is look at the Dade-County code as to
5 their signage. And the County code can be applied
6 on a county wide basis. Under the County code,
7 religious symbols such as a cross, a Jewish star,
8 or other type of religious symbol is not considered
9 a sign.

10 MR. HURWITZ: So the Board is not analyzing or
11 opining on the cross as a sign. It's not a sign.
12 It is an architectural element.

13 MR. SIMONE: That is correct.

14 MR. HURWITZ: And if the Board -- and I'm not
15 suggesting that they would want to. But if the
16 Board wanted it to be smaller or asked for it to be
17 different, that would be something that would be
18 within the purview for us to comment on.

19 MR. SIMONE: It would be in the purview. But
20 I must caution you.

21 MR. HURWITZ: Yes.

22 MR. SIMONE: There is the Religious Land Use
23 Institutional Persons Act which has given me a lot
24 of heartache on this project as well as I am the
25 attorney for the two major orthodox facilities in

1 Surfside, and I've had to go to court both times in
2 regard to those facilities.

3 And there is a very fine line. If the reason
4 that symbol is offensive to people, whether it's
5 15 feet, 14 feet or 9 feet, when does it become
6 less offensive? And it's a very slippery slope
7 that the town has to go through in terms of making
8 that analysis.

9 MR. HURWITZ: Okay.

10 MR. TELESCO: I'm confused on the issue too,
11 because I think Mr. Zyscovich said that the sign or
12 the cross was 15 square feet. Why was that? Why
13 were you held to that?

14 MR. ZYSCOVICH: Our job as architects is to do
15 what --

16 MS. SIEGEL: Could you come up please.

17 MR. ZYSCOVICH: Our job as architects is to
18 try to do things that we believe are proportional,
19 just as the amount of square inches of perforation
20 adds up to 15 square feet.

21 MR. TELESCO: I understand that.

22 Let me ask the attorney here. If it's not a
23 sign and you had chosen or someone had chosen to
24 make it three times its size, how would one
25 regulate that?

1 MR. SIMONE: Probably would not unless you'd
2 have to go back and change your code.

3 MR. HURWITZ: Right. I think, if I'm
4 understanding you correctly, it is not a sign. It
5 is an architectural detail of which the Board --
6 and I'm not asking this because I have a problem
7 with it myself or suggesting anyone else does. I'm
8 just putting it on the table so we can discuss it
9 and move forward.

10 MR. ZYSCOVICH: I'm an architect. That's not
11 an architectural detail. That's a symbol.

12 MR. SIMONE: A symbol and an architectural
13 detail under the treatises are the same. And
14 unless your town regulates religious symbols, which
15 it does not, you go to your fallback position which
16 traditionally has been the Dade County code. The
17 Dade County code specifically provides that
18 religious symbols are not signs and they cannot be
19 regulated.

20 MR. HURWITZ: One other just point of
21 clarification just for the record. The steeple,
22 the symbol, the cross, is the only icon or symbol
23 on the building. There is nothing in the stained
24 glass or anything else that, regardless of you how
25 felt about it, anyone would have an opinion on it.

1 Correct?

2 MR. VESULT: The stained glass on the corners

3 --

4 MR. HURWITZ: Yes.

5 MR. VESULT: The stained glass on the corners
6 is a wave pattern. It's an abstract wave pattern.

7 MR. HURWITZ: Right.

8 MR. VESULT: And we have defined the one that
9 is on the inside of the sanctuary which is inside
10 the building that may have a cross.

11 MR. HURWITZ: Inside the building.

12 MR. VESULT: Yes.

13 MR. HURWITZ: I'm only concerned about things
14 visible to the public here.

15 THE AUDIENCE: No, you can see it from inside
16 the building.

17 MR. VESULT: It incorporates a cross.

18 Let me go to the photo.

19 MR. HURWITZ: Please.

20 MR. VESULT: That one is a photo of the
21 existing stained glass they have right now in the
22 church, in the old church.

23 MR. HURWITZ: Is it possible to blow that up?
24 I didn't see what it looks like.

25 MS. HUBER: It's the existing stained glass

1 from the previous church that was preserved and
2 will be implemented into the new church.

3 MR. HURWITZ: Thank you. Okay.

4 So those are the two symbols, if you will.

5 MR. VESULT: But none of the other ones. The
6 only ones on the stairs that are more prominent are
7 all abstract.

8 MR. GAVCOVICH: I guess I'm still not,
9 Mr. Price, clear on how we can opine on in
10 particular the cross at the corner, at the steeple.
11 It can't be -- obviously it's not an objection of
12 the religious or restriction of the religious
13 representation, but could it be its location in
14 terms of the architectural --

15 MR. TELESKO: I think we can ask for it.

16 MR. HURWITZ: You can ask for what?

17 MR. TELESKO: We can ask if they would
18 voluntarily change that detail. See if they agree
19 to that. We're not forcing them. We're asking for
20 cooperation on an issue that's sensitive to
21 everybody here.

22 MR. SIMONE: Why is it sensitive? That's the
23 question that you have to answer.

24 MR. TELESKO: Well, we've heard the people,
25 one after the other.

1 MR. SIMONE: Well, if this was a group, not a
2 religious organization, if this was a group that
3 was abhorrent to the majority of people in this
4 community, a communist organization or whatever,
5 the fact that this community may not like --

6 MR. TELESKO: It is Constitutionally
7 protected.

8 MR. SIMONE: Right.

9 MR. TELESKO: Completely.

10 MR. SIMONE: And churches are given an even
11 greater protection.

12 MR. TELESKO: I was asking for a cooperative
13 --

14 MR. SIMONE: I think you can ask the question,
15 but I don't think you can compel them to do so.

16 MR. TELESKO: I didn't think that we could. I
17 agree with you a hundred percent. It's something
18 we could ask for and see if they are willing to do
19 that.

20 MR. HURWITZ: Can we talk about the signs just
21 also to clarify. The Church By The Sea sign now is
22 for illustration only, and it is problematic or not
23 acceptable in code because it's a first floor sign
24 for a second floor use?

25 MR. SIMONE: That's the interpretation by the

1 Planning Department.

2 MR. HURWITZ: So can you all just tell me what
3 the intention is. You intend, I assume, to have a
4 sign that says, "Church By The Sea" someplace.
5 When you do come back, where are you looking to do
6 that, if not there?

7 MS. HUBER: It is our position that the
8 current sign code violates RLIUPA as in you can
9 only have a religious use on the second floor, and
10 therefore if you're a use on the second floor, you
11 cannot have a sign. So essentially any religious
12 use cannot have a sign in Bay Harbor Island which
13 we believe violates RLUIPA.

14 We've addressed this with your counsel. It's
15 my understanding that he concurs. We intend to --
16 if the town does not voluntarily amend their code
17 to address this issue, we'll take further action.

18 MR. HURWITZ: And you're not allowed to have
19 the sign on the second floor?

20 MR. SIMONE: That's correct. That's what the
21 code provides.

22 MR. HURWITZ: So you can't have any sign on
23 the second floor, and your position is that because
24 they don't allow it on the first floor, you're
25 basically saying you can't have a sign even though

1 you're relegated to be being on the second floor.

2 MS. HUBER: Correct.

3 MR. SIMONE: That's exactly the issue.

4 MR. HURWITZ: Okay.

5 MR. FRANKEL: But following that logic, that
6 would mean that the only people on the second floor
7 that could have a sign would be a religious
8 institution and you're discriminating everybody
9 else on the second floor. No one else on the
10 second floor can have sign except a religious
11 institution assuming that interpretation is
12 correct.

13 MS. HUBER: But that's not entirely accurate.
14 But, again, religious uses have to be treated like
15 all other places of congregation and public
16 gathering and public assembly. And currently
17 that's not how your code addresses them.

18 To be fair and to be honest -- and, again,
19 this isn't before you nor is this within your
20 purview or jurisdiction -- but we also believe that
21 the code as currently written that requires and
22 obligated religious uses to only be on the second
23 floor violates RLUIPA as well.

24 But in an effort to accommodate the town and
25 to work with the town, that is not something we

1 challenge. We placed ourself of the second floor.
2 We have a very small lobby, which again that does
3 not violate your code. The code doesn't say that a
4 hundred percent has to be retail. It says a
5 hundred has to be a permitted use within the B1.

6 I think it would be very difficult for anyone
7 sitting on this Board or the jurisdiction of your
8 town or staff to opine that a lobby is not a
9 permitted use within a business district as every
10 building located within your business district
11 currently has a lobby. So it is a permitted use
12 within the B1 district.

13 Quickly to address the other comments that
14 were made, the majority of the objections and
15 issues raised before you are not within your
16 jurisdiction. Your staff has reviewed this
17 application thoroughly and vetted it and has found
18 that it complies one hundred percent with all of
19 the requirements of the code.

20 We properly submitted and reviewed all of the
21 requirements for this application, including, but
22 not limited to, a traffic study as well as the
23 uses, the amount of parking.

24 With respect to the walkway, we discussed that
25 at length last time we were here. There is direct

1 access to the parking behind Kane Concourse. This
2 site is uniquely situated and that is on the
3 corner. So there is direct access, that that
4 additional walkway is provided through the building
5 and also along East Bay Harbor.

6 I already addressed the frontage issue.

7 Again, the location of the church and the
8 placement of the church within the B1 district is a
9 permitted use within your code and is not within
10 your jurisdiction.

11 We concur with Mr. Price's opinion that a
12 cross is not a sign. It's a religious symbol.
13 It's an expression of religious speech. It's
14 protected within the First Amendment. Your code is
15 silent as to religious symbols. Miami-Dade County
16 specifically exempts that, and we would caution you
17 to tread very lightly to the extent that you
18 attempt to regulate the cross, its location or its
19 size based on commentary from the public.

20 Thank you.

21 MR. GAVCOVICH: Let me ask Michael to comment
22 on the 5-foot required -- the walkway, I guess,
23 connection between the parking and the retail on
24 the front of Kane Concourse. How did you make the
25 determination that what's provided meets the

1 requirement of the code?

2 MR. MILLER: You mean the connection?

3 MR. GAVCOVICH: Yes.

4 MR. MILLER: Yeah, I wrote that section of the
5 code, so I know what it means.

6 It's common when you have linear commercial
7 frontages, whether it's in a strip commercial
8 situation or kind of an urban center like we have
9 here. Again, the frontage, you know, it's a newer
10 code requirement too. Much of the older
11 development doesn't have any of these features
12 other than a lobby that you can traverse from Kane
13 Concourse through the building into the back area.

14 In this case they have commercial uses from
15 the western property line to the corner, and the
16 lobby is positioned at the corner with the door
17 facing East Bay Harbor Drive. There is a -- you
18 can go through the lobby into the garage and into
19 the alley to the rear. So we felt that was
20 consistent with the code provision as existed in
21 the town for many years.

22 The idea is to provide some means so you don't
23 have to walk completely around the block to any
24 parking that's in the center.

25 MR. HURWITZ: Can you explain -- can you just

1 step back one second. What do you mean by that?
 2 Your question is about the access of the parking to
 3 the retail.

4 MR. GAVCOVICH: Correct. And that requires by
 5 code that there be a connection --

6 MR. HURWITZ: Right.

7 And you're suggesting that you're okay with
 8 the connection because you can go through the
 9 lobby, right?

10 MR. MILLER: Right.

11 MR. HURWITZ: Into the lobby of the church.

12 MR. ZYSCOVICH: Not through the lobby. You're
 13 going through the gate -- it's described as a
 14 gate -- that's always open into the loggia and then
 15 out.

16 MR. GAVCOVICH: And that's the connection of
 17 the main parking area. But what about from the
 18 other -- the lot that has 35 spaces?

19 MR. MILLER: You mean the remote lot?

20 MR. GAVCOVICH: Yeah.

21 MR. MILLER: Well, you can walk underneath the
 22 building through the parking garage area and
 23 covered area to the alley and go across the alley
 24 to that parking lot, which you could do. But it's
 25 used as a surface parking lot today.

1 MR. HURWITZ: Where are you walking? Through

2 --

3 MR. MILLER: Through the garage area.

4 MR. HURWITZ: This is not -- this is all open,
5 the alleyway there, they would park in the space
6 with 35 spots?

7 MR. MILLER: You would walk through the --

8 MR. HURWITZ: That was the question last time
9 and I guess it's not clear still.

10 MR. VESULT: I mean, we thought that the
11 easiest way to walk on East Bay Harbor. So if you
12 are on the remote access, you just walk -- you see
13 the red dots? So you have a walkway, that
14 continuous walkway. You can have landscape going
15 along like that to the street. You can also go
16 into through here, walk through the parking, get
17 onto the covered loggia that's outside and go to
18 the parking or you can go out against uncovered and
19 walk that way (indicating).

20 MR. HURWITZ: And let me ask you a question.

21 If this were a retail development, which
22 partially it is, in your wildest dreams you would
23 never develop parking like that. If you --

24 Let me just finish.

25 If you were developing for a retail developer

1 parking to access those sites, you would never
2 think that you were going to attract retailers and
3 convince them that they had sufficient parking by
4 asking them to walk that red line which is about a
5 thousand miles away and the most indirect -- I just
6 don't -- I just don't -- my comments are just
7 practicality about the retail.

8 My primary concern -- just so everyone knows
9 where I'm at, I think you did a great job on the
10 design and I appreciate all the changes that were
11 made. I can't speak for the Board, but I have no
12 problem with it at all. So all the conversations
13 we had before, my biggest concerns are the ones
14 about it meeting code and having the confidence and
15 comfort that some of the legitimate questions and
16 comments that were made by the public I think are a
17 lot of those concerns.

18 So I have to again state that I assume all
19 those things are -- those boxes are checked with
20 regard to the uses and the traffic and parking
21 studies and all these things.

22 But with regard to the parking, I just -- I
23 don't know why you didn't do this -- again, since
24 you had a clean slate, I don't know why you didn't
25 create a pedestrian access point straight through

1 to Kane Concourse.

2 MR. ZYSCOVICH: Let me answer.

3 MR. HURWITZ: Yeah.

4 MR. ZYSCOVICH: I'd be happy to.

5 We do a lot of retail. This space is 8,500
6 square feet.

7 MR. HURWITZ: Right.

8 MR. ZYSCOVICH: How many square feet of retail
9 is there on Kane Concourse? This is a district of
10 shopping. If you go to Lincoln Road, if you go to
11 Miracle Mile, if you go to any of these places, no
12 one who is building 8,000 or 10,000 square feet of
13 retail would be worried about the things that you
14 speak of because basically people are coming to
15 Kane Concourse to shop, just like the people have
16 mentioned. This is a retail corridor.

17 So, therefore, they may park on the street.
18 They may park in some other place.

19 MR. HURWITZ: I see where you're going. I get
20 what you're saying.

21 MR. ZYSCOVICH: So I really, you know --

22 MR. HURWITZ: Can I just finish this
23 conversation with Bernard.

24 I total appreciate what you're saying. It's
25 not a huge amount of square footage and there's

1 other places to park. My biggest -- my gut is that
2 that's a lot of parking that really should be
3 something that is of value to the city and the town
4 when the church is not using it. Because the
5 church really has sort of limited hours that it
6 needs that much parking.

7 But, again, I guess would it have been that
8 difficult to create an access point for --

9 MR. ZYSCOVICH: Yeah. And let me tell you
10 why. Because the way retail normally works is you
11 have your back-of-house along this outer edge.

12 MR. HURWITZ: Yeah.

13 MR. ZYSCOVICH: This is the service corridor
14 to access all that. If there's a restaurant, we
15 need to get garbage out. If we have any of these
16 other things, we need the service corridor so that
17 we are totally contained and we're not spreading
18 that anywhere else.

19 MR. HURWITZ: Yeah.

20 MR. ZYSCOVICH: That's how all these retail
21 shops are set up.

22 MR. HURWITZ: I'm talking about like, for
23 example, when you go to retail on the north side of
24 Kane Concourse right across the street and there
25 are several breezeways, if you will, where you come

1 through.

2 MR. ZYSCOVICH: Right.

3 MR. HURWITZ: So couldn't that 8,000 square
4 feet -- couldn't that 8,000 square feet and also
5 the rest of the district enjoy this abundance of
6 parking by having an access point --

7 MR. ZYSCOVICH: That's a different question.

8 MR. HURWITZ: Just on the west side.

9 You know what I'm saying?

10 MR. ZYSCOVICH: He's saying -- well, I think
11 that's required for the church.

12 MR. HURWITZ: I'm trying to make an argument
13 that this is great for the church and great for the
14 town.

15 MS. HUBER: But it is public parking.

16 I guess my question is this: There is 8,500
17 square feet of retail which requires approximately
18 23 to 26 parking spaces which are located all right
19 here which are directly accessed by the retail. So
20 you don't have to park here and walk all the way
21 over there. You park right there, you get out of
22 your car, you walk in and you go straight to the
23 retail. It's actually in proximity to -- much
24 closer in proximity to any other parking provided
25 for anywhere else within the Bay Harbor Islands.

1 MR. ZYSCOVICH: And it's covered.

2 MR. HURWITZ: Okay, great. So I'm going to
3 shop at the 8,000 square feet. Is this signage
4 outside there public parking behind the -- because
5 there's one entrance into the back of the lot. It
6 says "Church By The Sea" and there's a gate.

7 MR. TELESCO: Slash retail.

8 MR. HURWITZ: There's a gate.

9 Is that gate for illustration also or is it --

10 MR. ZYSCOVICH: Which gate? This one?

11 MR. HURWITZ: No, your parking.

12 MS. HUBER: Yes, the parking is for 1000 Kane
13 Concourse, whether it's retail or church. There is
14 a gate there so that when the retail and the church
15 are closed, that parking lot is secured and isn't
16 open --

17 MR. HURWITZ: So that gate is open during the
18 day?

19 MS. HUBER: Yes.

20 MR. HURWITZ: Or there's a control access
21 system?

22 MR. ZYSCOVICH: It's a controlled access.

23 MR. HURWITZ: Is it open to the public?

24 MS. HUBER: Yes.

25 MR. HURWITZ: That gate is not going to be

1 down?

2 MR. ZYSCOVICH: It's a lift arm.

3 MR. HURWITZ: Right.

4 MR. GAVCOVICH: Controlled by what?

5 MR. ZYSCOVICH: By a revenue device which we
6 haven't decided yet. It's like any parking garage.
7 You come in, you get a ticket, the lift arm goes up
8 and you drive in.

9 MR. GAVCOVICH: What about the other lot
10 that's adjacent?

11 MS. HUBER: That also has a gate as well.

12 MR. HURWITZ: I understand. Okay.

13 MR. ZYSCOVICH: And it's covered and it's
14 accessible.

15 MR. TELESCO: So this is a church where you
16 have to pay to park? That's unfathomable to me.

17 MS. HUBER: No.

18 MR. ZYSCOVICH: No, the church doesn't have to
19 pay for -- its congregants aren't going to pay.

20 MR. HURWITZ: Well, what about people going to
21 the 8,500 square feet retail?

22 MR. ZYSCOVICH: That's how it's managed.

23 MS. HUBER: It's not determined at this point.

24 The other reason -- I just want to clarify. I
25 know we discussed this ad nauseam related to the

1 walkway that you're discussing in between the
2 buildings. The other reason that staff in
3 particular as well as the Public Works were very
4 concerned about having a walkway in that specific
5 location is because that's the public alley and the
6 public service-way for all of those buildings that
7 front Kane.

8 That corridor that runs behind there is where
9 many service trucks and cars utilize that area, and
10 so they did not believe that that would be creating
11 a safe condition for a pedestrian to be walking in
12 the middle of the service corridor where there's
13 cars and trucks loading and other things that occur
14 especially in the later evening hours.

15 MR. HURWITZ: Is there still parking behind
16 other buildings to the west? Yes?

17 MR. MILLER: Yes.

18 MR. HURWITZ: All of them, right? All of
19 those buildings have parking. And if you park in
20 those spaces with the intent of going to any of the
21 shops on Kane Concourse, how do you get to Kane
22 Concourse?

23 MR. DALE LEE: It's all private lots.

24 MR. HURWITZ: They're all private lots?
25 There's no public parking there?

1 MR. DALE LEE: Just the city garage.

2 MR. MILLER: And our surface parking lot south
3 of 95th Street.

4 MS. HUBER: This is actually a much more ideal
5 circumstance than is presently situated in the
6 majority of Bay Harbor Islands with proximity,
7 covered parking and direct access to the retail.

8 MR. HURWITZ: Any other questions from the
9 Board?

10 MR. BEBCHIK: Yeah. I know we talked a lot
11 about the bell tower element, and my point of
12 reference is the Cadillac building which is
13 existing today. And they also have some sort of
14 tower with the Cadillac sign. So when you are
15 driving through the street, you don't have that
16 tower right on the corner. And some people
17 mentioned a concern about that why should they
18 define the town that way.

19 So I asked this question in a previous meeting
20 and I would like to ask it again. If you could
21 consider the tower element protruding that toward
22 the north?

23 MS. HUBER: No, we will not move that tower
24 location. As we discussed last time, that is the
25 architectural element. That is what identifies

1 that that is a place of worship and that that is
2 not something that the church will move.

3 MR. TELESKO: I have a question for the town
4 attorney just out of curiosity. Since this is a
5 multi-use building and I know that religious
6 organizations are exempt from paying property
7 taxes, is that portion of the building which is
8 used for retail or other uses then church taxable?

9 MR. SIMONE: Yes, it is, sir.

10 MR. TELESKO: Are we losing money on this?

11 MR. SIMONE: Churches are only entitled to a
12 tax exemption for the religious use of a piece of
13 property, not the ownership of a piece of property.

14 MR. TELESKO: Okay. Thank you.

15 MR. GAVCOVICH: I have a couple question on
16 some of the comments you made when you were
17 presenting.

18 You talk about on the walls around the garage
19 being 12 inches thick. Is that both on the south
20 and east?

21 MR. VESULT: East Bay Harbor, 95th Street.

22 MR. GAVCOVICH: And then you also talked
23 about -- Tom raised the issue of the floor
24 elevation, flood elevation, that the lobby is a
25 foot above --

1 MR. VESULT: The lobby and the parking are a
2 foot above the sidewalk level. The retail is
3 matching the sidewalk level.

4 MR. GAVCOVICH: So how are you --

5 MR. VESULT: Positioned with those?

6 MR. GAVCOVICH: Yeah.

7 For the garage it's not an issue. But just
8 for the lobby to the loggia, how do you --

9 MR. VESULT: Sure.

10 We have 8 foot over here. We have two steps.
11 I think Coral Gables maybe does two steps.

12 We have access here and you have a 1 to 2 drop
13 that takes you up.

14 MR. GAVCOVICH: Within the loggia?

15 MR. VESULT: Yes, within the loggia. It goes
16 up a foot.

17 MR. GAVCOVICH: So if you're walking along the
18 loggia, can you step down from the sidewalk?

19 MR. VESULT: Yes.

20 MR. GAVCOVICH: Or those are the two steps?

21 MR. VESULT: It's two steps going up a foot.

22 MR. ZYSCOVICH: In the rendering you'll see
23 the steps.

24 MR. GAVCOVICH: Between the columns are the
25 steps.

1 MR. VESULT: You're going to see steps in the
2 rendering.

3 MR. GAVCOVICH: Twelve inches --

4 MR. VESULT: You see the steps. You see the
5 steps right here.

6 MR. GAVCOVICH: Do you need a railing and --

7 MR. VESULT: Yes. We have a railing inside of
8 the ramp, yes.

9 MR. GAVCOVICH: But on those two steps as
10 well, right?

11 MR. VESULT: I mean, I don't know. It's 18
12 inches. We don't think --

13 MR. ZYSCOVICH: It will have a handrail.

14 MR. GAVCOVICH: A handrail, right. I'm
15 talking about a handrail.

16 MR. VESULT: Yes.

17 MR. GAVCOVICH: And it has to have the
18 extension that are sticking into the sidewalk,
19 extending into the sidewalk. Is that --

20 MR. ZYSCOVICH: I'm not sure we need that if
21 it's less than 18 inches.

22 MR. GAVCOVICH: For the extensions.

23 MR. ZYSCOVICH: Yes. Because we don't need a
24 safeguard for less than 18 inches.

25 MR. GAVCOVICH: No, I'm not talking about a

1 safeguard. I'm not talking about a guardrail. I'm
2 talking about a handrail. A handrail is the one
3 that has the extensions, so --

4 MR. ZYSCOVICH: I don't think so. But if we
5 do, we'll move the stairway up.

6 MR. VESULT: Yeah, in the garage. I mean, in
7 Coral Gables none of that have a handrail. The
8 garage in Ponce de Leon almost always have steps
9 exactly like that.

10 MR. GAVCOVICH: I mean, some of the changes
11 that were made I think was an improvement to the
12 building. I don't know if you feel the same way.
13 I still have the some of the same concerns I raised
14 previously at our last meeting about the extent of
15 the frontage of the parking garage on East Bay
16 Harbor Drive.

17 Unfortunately there was nothing done there. I
18 understand your limitations and I do understand
19 that it's not a requirement of the code. I would
20 have liked to have seen something to make that side
21 a little bit more active, especially if you're
22 talking about people -- expecting possibly people
23 to walk around. There's not much to walk around to
24 or while they're walking.

25 MR. HURWITZ: Is there anything that you all

1 could get comfortable with that would solve or
2 mitigate both circumstances? Because one is, you
3 know, whether or not -- we may disagree on it. But
4 I just think it's a pretty far walk and far stretch
5 for people parking back there to access Kane
6 Concourse.

7 And others on the Board also feel like that
8 pedestrian experience is not activated. Isn't
9 there something that you can do along that ground
10 floor to add architectural detail? Anything? I
11 mean, it's not going to be activated with retail.
12 It's not a requirement.

13 Is there anything that could better that
14 experience or you just don't think the comment is
15 founded? Either is fine. I'm just asking.

16 MR. ZYSCOVICH: I, mean is there any
17 commercial use on that street?

18 MR. HURWITZ: No, I'm not suggesting -- I
19 think Jerry -- I think he understands that it's not
20 required. I'm talking about the experience. I'm
21 not talking about --

22 MR. ZYSCOVICH: I understand. Jerry has been
23 very clear and gracious about the idea that he
24 understands why we can't do that, because that
25 would push us into a second floor parking in order

1 to satisfy our parking requirement.

2 MR. HURWITZ: I'm talking about --

3 MR. ZYSCOVICH: Right. This 5-foot setback,
4 the landscape requirement is in your code and
5 requires that it be there. It's not ever intended
6 to be a commercial street. What we've done is
7 we've put mesh in there. We have done what we can
8 with the articulation with the Loggia.

9 I understand what Jerry would like, and I
10 don't disagree normally in an urban context. But
11 there is no surrounding retail there.

12 MR. HURWITZ: I understand.

13 Can you talk just for -- you mentioned the
14 loggia before. I meant to stop and ask a followup
15 question on that. Can you sort of just help me
16 understand that.

17 MR. ZYSCOVICH: What we think will happen is
18 there will be activity that's walking.

19 MR. HURWITZ: Correct.

20 MR. ZYSCOVICH: Because now this is in a
21 walkable environment and people will come here and
22 they will walk around the corner. They will walk
23 in here. They will park. They might come out of
24 the parking into the loggia. So we feel that we're
25 carrying activation around the corner for half of

1 the block.

2 MR. HURWITZ: The loggia goes back a half a
3 block?

4 MR. ZYSCOVICH: Pretty much. And that's a
5 pretty good wrap in terms of the corner.

6 MR. HURWITZ: Got you. Okay.

7 MR. ZYSCOVICH: And then the rest of it, we're
8 panelizing and we're putting in the same material
9 that's in the upper level of the retail. We're
10 making it attractive. I'm not trying to say that
11 we're activating it. We're not. But we are
12 screening the parking.

13 MR. HURWITZ: And that's new from the last
14 time?

15 MR. ZYSCOVICH: That's new from last time.

16 We're making the walls thicker to emphasize
17 the shadow pattern. We have 5 feet of landscaping.
18 We had a really hard time fitting enough trees as
19 the code requires.

20 The code that you've been saying we need to
21 meet we have really labored to meet, and the code
22 has pushed us into this solution. And we're not
23 unhappy with it because we don't really believe
24 from an urbanistic point of view that to put retail
25 or some other activity there would be something

1 that would be sustainable.

2 Most people will never go there. People who
3 come to the building will mostly park in the
4 building, and the 30 spaces that are part of the
5 surface lot are not enough to justify any kind of
6 business use on the side street. So we don't have
7 the room, so it's a moot point.

8 But just to finish the conversation, if we had
9 a two-sided commercial street, I think it would be
10 a much bigger issue. But in this case we don't.

11 MS. HUBER: And unfortunately to come -- and
12 it's not that we don't want to address your
13 comment, but in order to address your comments, we
14 would actually have to seek a variance from the
15 code with respect to the setback -- well, not only
16 the parking, but the setback in the landscape
17 requirement, because we're required to have a
18 5-foot setback, 75 percent of which has to be
19 landscaped.

20 So in order to have any type of viable retail
21 or commercial operation, you can't have 5 feet of
22 landscaping in front of any type of door or
23 otherwise. And I understand what you're asking
24 for. And unfortunately when this provision of the
25 code was drafted and there was all kinds of

1 workshops, the decision was made as to what they
2 wanted East Bay Harbor to be with respect to the
3 setback and the landscaping, and that unfortunately
4 is not compatible or consistent with having some
5 type of active use.

6 So if that is the intent of this Board, then
7 that would require significant amendments to your
8 zoning code to actually permit that to make it be
9 viable.

10 MR. HURWITZ: Was there any discussion with
11 the town? Did the church ever meet with the town
12 to talk about the parking as something that could
13 be a good benefit to both the church and the town?

14 MS. HUBER: We had DRC meetings and we did
15 have -- prior to filing our application, we did
16 meet with each of the Council members to let them
17 know that the church was purchasing the site and
18 that they would be coming forward with a proposed
19 mixed use application for retail and a religious
20 facility.

21 MR. HURWITZ: But there were concessions or
22 discussions with regard to the use of the parking?
23 Again, just understanding my sensitivity, I'm just
24 curious. Did they meet with the town to see, you
25 know, the church requires that this building

1 requires X amount of parking which the majority of
2 the time is not really going to be fully utilized
3 and how that could be, you know, a benefit to
4 everybody? I was just curious if those
5 conversations took place.

6 MS. HUBER: Yes, they did.

7 TOWN MANAGER WASSON: And every time at these
8 meetings, it was always the intention that the town
9 would be able to use the parking as it was
10 available in times when the church wasn't in use or
11 all the available parking. What we haven't decided
12 is how we're going to, you know, figure out how
13 we're going to pay -- you know, people coming in
14 and, you know, will pay for it. And that's
15 something we'll work it out. I don't think -- we
16 have some time for that. But there was always the
17 thought that the town would benefit from the excess
18 parking.

19 MR. GAVCOVICH: When the church is -- the day
20 or whether it's weekly or whatever day during the
21 year that the church is at full capacity or has a
22 lot of people, are there parking spaces that are
23 being held for the retail spaces -- the retail use?
24 Or is that -- if the church fills up the parking
25 garage and the 35 spaces, there's no more? Is

1 there any thought on that?

2 MS. HUBER: It's first come first serve. It's
3 not -- and the exact operations related to the
4 parking have yet to be determined. A lot of that
5 will be tenant driven depending on who the tenant
6 is and who goes there, whether it's retail or
7 restaurant or who that is, that will ultimately
8 decide it and driven.

9 What is nice is there is a public parking lot
10 immediately behind the church that's essentially
11 vacant the majority of the time. So any spillover
12 or additional on those couple of days a year when
13 everybody goes to service, there are additional
14 spaces immediately behind it in the public lot.

15 MS. SIEGEL: I was going to jump in and
16 clarify that the parking lot on 95th Street which
17 is right behind the site is never full and a good
18 portion of those spaces right now -- I think
19 there's like 30 or 35 spaces -- we sell to Ocean
20 Cadillac for their employees because they don't
21 really have parking within their site. So it's
22 going to be even more empty.

23 MR. HURWITZ: Well, again, I don't want to
24 belabor the point. We should move on. But just so
25 everyone understands, we're not talking about today

1 or tomorrow. We're talking about the possibility
2 of Kane Concourse at some point being a much more
3 active place with other development opportunities
4 going on, an office building across the street, and
5 two hotels coming out of the ground, another
6 substantially sized development on the west side of
7 Kane Concourse that would come before the group I'm
8 sure at some point, and the opportunities -- maybe
9 lost opportunity I'm saying to think about the
10 future and something that's great for the church
11 and great for the town.

12 But, anyway, that's not for -- I just was
13 saying.

14 TOWN MANAGER WASSON: Steve, while you were
15 speaking I just remembered one of the things that
16 the town did actually ask that that little, small
17 remote lot -- whatever you want to call it -- I
18 don't think that was in their original Plan. It
19 was really at our request to keep that parking
20 additional parking.

21 MS. HUBER: We originally had it as a park,
22 and that was our intention was to have it be green
23 space and not be parking. But that was not
24 something that was favorable to the town, so we
25 reverted it back.

1 But we truly understand your comment, but we
2 believe that the 71 spaces in the garage directly
3 connected to retail is more than adequate and more
4 than sufficient to provide for the type of
5 experience that you're looking for. The majority
6 of the week and the time, the church utilizes 10 to
7 20 parking spaces. It's 2 to 2 and-a-half hours on
8 a Sunday when they utilize approximately 50 to 60
9 parking space traditionally or historically. And
10 we have about 50 years of historical data as to how
11 many parking spaces they utilize on a Sunday
12 because they park at Bal Harbor Shops.

13 So we're comfortable that there's more than
14 ample parking to meet the needs of the church and
15 to make sure that -- because obviously we don't
16 want to invite a tenant that can't thrive and can't
17 be viable. And we believe that we've provided more
18 than ample parking to attract a good tenant and to
19 provide them with adequate parking.

20 MR. GAVCOVICH: How big is this facility
21 compared to what was in Bal Harbour?

22 MS. HUBER: The sanctuary is the same number
23 of seats as well as the fellowship hall.

24 MR. HURWITZ: It's more ancillary uses.

25 MR. SIMONE: Just to get the record straight,

1 the gentleman raised the issue on the square
2 footage of the kitchen that was never -- there was
3 no answer given on the record.

4 MS. HUBER: On the record --

5 MR. SIMONE: I though you had cut off the --I
6 did not hear it. I'm sorry.

7 MS. HUBER: On the record, the size of the
8 kitchen is 1,350 square feet. It is not a 39,000
9 square foot kitchen.

10 MR. HURWITZ: Alan.

11 MR. BEBCHIK: Another question for the town.
12 Some public comment mentioned that Council wouldn't
13 have a vote or a say on this project. Some
14 projects go to the Town Council for review. So
15 what would be the process?

16 MR. SIMONE: If someone has the ability to
17 take an appeal of the decision tonight, whether you
18 vote for the project or against the project, that
19 is appealed to the Town Council.

20 MR. GAVCOVICH: There are other projects that
21 go to Council, for example, that we review that
22 are -- it's either a variance that has to be
23 approved or the project has TDRs.

24 TOWN MANAGER WASSON: Or gateway type of
25 situations does not fall in the category.

1 MR. GAVCOVICH: Ron, I have a question. It's
2 just something as we've heard in the presentation
3 that I just thought of.

4 Does the alley have utilities running through
5 it, in particular the leg that goes north/south?
6 Do you know?

7 TOWN MANAGER WASSON: I believe there's storm
8 water. It's catch basins. That's it. I don't
9 know specifically. I'm not sure.

10 MR. GAVCOVICH: And the reason I ask that is I
11 wonder if it would have been something that you
12 would have explored and just tried to move that
13 out, that north/south alley to the west.

14 MS. HUBER: It's funny that you raise that.
15 That wasn't something that the Church By The Sea
16 thought about, but actually another property owner
17 and resident raised it as to whether or not that
18 would be something the church would be amenable to,
19 to the extent that the town sought that. And the
20 church said that the would be something that it
21 would be amenable to, to the extent that the town
22 requested it. But it is our understanding from
23 Public Works that there are significant utilities
24 that run under that alleyway.

25 TOWN MANAGER WASSON: Sanitary system too.

1 MR. HURWITZ: Any other questions or comments
2 from the Board or does anyone want to entertain a
3 motion?

4 MR. FRANKEL: I just want to make the
5 comment -- I think last time I expressed this
6 concern and other members of the Board too -- about
7 the location of the tower. And I personally
8 thought when you come into town, I didn't like the
9 fact it's not symmetrical and you kind of lose
10 focus.

11 And, you know, I expressed also the fact that
12 I didn't think that the rendering really did it
13 justice because it showed a flat rendering, whereas
14 coming into town, you're coming off the bridge.
15 And unfortunately that wasn't corrected and I still
16 have an issue with that location of the tower. Not
17 what's on it, but the location.

18 MR. HURWITZ: The location of the tower was --
19 Alan shared your concern about it. And, you know,
20 quite frankly, so do I. Or so did I.

21 I want to -- obviously you spoke on behalf and
22 wanted to reiterate that the church will not
23 consider any movement of the tower.

24 A couple things.

25 If you look at the Plan, I just want to point

1 out one thing I'm sort of grappling with and maybe
2 justifying and getting myself comfortable for
3 consideration is the fact that the tower is not on
4 Kane Concourse. The rendering I don't think
5 adequately kind of shows you the setback, because
6 the retail goes along Kane Concourse and then the
7 tower is set back and goes above where the
8 reception area is. So I'm trying to look for a
9 dimension.

10 MR. GAVCOVICH: It's the location -- it's the
11 depth -- it's the setback of that little plaza on
12 the corner?

13 MR. HURWITZ: Yeah, which I don't know how far
14 that is.

15 MR. VESULT: I have a sketch of both.

16 MR. HURWITZ: Maybe it's about 15 feet, right?
17 I don't know. I was looking at 30 feet from the
18 corner to the --

19 MR. VESULT: It's 20 feet.

20 MR. HURWITZ: What's that?

21 MR. VESULT: Twenty feet?

22 MR. GAVCOVICH: Well, no. From the front edge
23 of the facade?

24 MR. HURWITZ: No, from the front edge of the
25 facade.

1 MR. GAVCOVICH: About 10 feet.

2 MR. VESULT: This is 20 feet.

3 MR. GAVCOVICH: On the property line.

4 MR. VESULT: From the property line here?

5 MR. GAVCOVICH: Yes.

6 MR. VESULT: This is 5 feet.

7 MR. GAVCOVICH: No, in the north/south
8 direction.

9 MR. VESULT: This dimension?

10 MR. HURWITZ: Yes, that dimension.

11 MR. VESULT: That should be about -- this is
12 30. This should be about 18 feet.

13 MR. HURWITZ: Yeah. It's a little bit more
14 than half of the 30.

15 MR. GAVCOVICH: Yeah, I'm looking at the door.

16 MR. HURWITZ: That's the reason I'm saying is
17 because I think it's not -- and I don't think it's
18 reading well on the rendering because it's reading
19 to me -- it reads to me like it's closer to the
20 corner and I think it actually is -- maybe not
21 sufficiently, but it's set back about 18, 20 feet.

22 So to me it sort of reads that the church, or
23 whatever it is, is sort of on the side. The door
24 is on the side. The tower is, in fact, on the side
25 set back about 20 feet. The retail pops out and is

1 on Kane Concourse.

2 I think it would have -- you know, to be
3 honest with you, I know it's a very sensitive
4 topic, and if they moved it 5 feet, 10 feet, I
5 think it would do nothing to impact the visibility
6 and the presence of the church, but I think it
7 would go a long way for the Board to get more
8 comfortable.

9 MR. TELESCO: I don't understand what you're
10 suggesting. Those 5 feet or 5 back closer to Kane
11 Concourse?

12 MR. HURWITZ: Farther back.

13 So the overall concern -- this is not to be
14 misconstrued as the use or a church or anything.
15 The overall concern I think is in the context --
16 the discussion has been that Kane Concourse is
17 required to have complete retail and the town has
18 said that it meets that requirement because it has
19 basically the side of the entrance of the lobby
20 with the glass and then the doors are on the side
21 street, and then the side use or the upstairs use
22 or the church use in this case is really on the
23 side. Right?

24 So, A, I'm suggesting that I'm more
25 comfortable now than I was before because it's

1 actually 20 feet back. And, B, I still think that
2 the church should consider or could consider moving
3 it a little bit because I don't think it really
4 impacts the visibility of it. I'm not trying to
5 put it in the corner. I'm just trying to create a
6 separation between Kane Concourse, you know, and
7 the side.

8 If you look at the Ocean Cadillac now, that
9 tower I believe is set back probably double the
10 distance off of Kane Concourse, yet when you come
11 down, the gateway to the town right now is the
12 tower of Ocean Cadillac and it's very prominent.

13 So it just seems to me that a give-and-take
14 would be considering moving that back a little bit.
15 I think it makes everyone -- I think maybe makes
16 everybody happy. But the representatives of the
17 church have spoken vehemently against it as if it's
18 an anti-church request, and I don't really read it
19 that way. Food for thought.

20 I actually think it's placed off of Kane
21 Concourse nicely, and if it moved another 5, 6
22 feet, I think it would architecturally work well,
23 still be prominent, still be the first thing you
24 see when you came down off Kane Concourse but it
25 would be offset a bit.

1 THE AUDIENCE: There's actually a section of
2 8301 that's the exact distance of the tower.

3 MR. TELESCO: Looking at the Floor Plans, such
4 a movement that Stephen has suggested doesn't seem
5 to affect the rest of the Floor plans. The
6 representative who is here on behalf of the church,
7 if we were to suggest passing this with a
8 stipulation based on the movement of the tower,
9 would that be something that you would agree to?

10 MS. HUBER: No.

11 MR. HURWITZ: Can I ask -- I understand your
12 position as legal counsel and I appreciate that.
13 Is that because you feel strongly architecturally
14 or because you think it's -- or because you feel
15 it's an inappropriate comment because it's a church
16 for some reason?

17 MS. HUBER: Both.

18 MR. HURWITZ: Both.

19 MR. VESULT: We have started --

20 MR. HURWITZ: Can you come up to the mic.

21 MR. VESULT: We studied the proportion of the
22 location of that project. It's a mixed used
23 project. It's a church that's above. We screened
24 in the garage. So that element is what ties the
25 project diametrically. So we moved it back and

1 forth. That's why --

2 MR. HURWITZ: So you looked at moving it
3 3 feet, 5 feet --

4 MR. VESULT: Yes.

5 MR. HURWITZ: It wasn't a deal breaker for
6 you.

7 MR. VESULT: Isn't a deal breaker.

8 MR. HURWITZ: Okay.

9 MR. VESULT: We thought it was a good
10 proportion of the use.

11 MR. HURWITZ: Look, I'm comfortable with where
12 it is, and I think it looks good. And, again, I
13 think based on the rendering, it doesn't really
14 show you how far back it is set. I just think that
15 the Board would be comfortable if you would
16 consider moving it a little bit further. But it
17 doesn't sound like something that you all would
18 consider.

19 MR. GAVCOVICH: Let me ask you a question in
20 relation to that. As a byproduct if it were to get
21 pushed back, obviously the lobby would get smaller,
22 but what it would allow is that area of the corner
23 to get a little bit bigger. And what I see is when
24 the church is -- when there's people in the church,
25 whether a Sunday, and there's whatever number of

1 parishioners there, the ones who get in the car,
2 they're going to leave.

3 But if some were to come down into the lobby,
4 maybe it would be nice to be able to be outside.
5 And I think that the corner right now is a little
6 small. And the loggia is also a little narrow
7 that, you know, it's not really a place really to
8 circulate. The loggia is the circulation. It's
9 not really a place to congregate.

10 It may have a nice effect once you get back in
11 creating a little plaza that's more useful on the
12 corner. I think it would be a nice element, the
13 creation of that larger plaza. And I'm not sure if
14 the lobby is something that really -- how important
15 that size of the lobby is.

16 MR. VESULT: Size-wise, it does affect a
17 little bit more the level of the chapel.

18 MS. HUBER: Again, to be clear, the position
19 of the church and the position of the Board of the
20 church is that's not an acceptable condition.

21 MR. HURWITZ: Okay. Any other questions or
22 comments? Anyone have a motion? No motions.

23 Anyone have any specific things that they'd
24 like to see that they could get comfortable with a
25 motion, whether it's something that the church

1 would agree to or not? I'm just trying to get good
2 feedback.

3 MR. BEBCHIK: I would be comfortable the same
4 way the Cadillac building. I wasn't part of the
5 Board when they decided to move that tower and
6 setback. But if we can have a similar setback to
7 the tower bell element to address some of the
8 concerns of the public of when you are driving,
9 this is a gateway into Bay Harbor and right now you
10 see the Cadillac. This will be a taller element.

11 So to address the comment of the public, I
12 would be comfortable if that tower can be set back
13 to the same is that position of where the Cadillac
14 tower is right now.

15 MR. FRANKEL: I have a similar pause. I
16 appreciate the comments from the architect to the
17 extent that he thought that that tower element ties
18 everything into the project. For me, it kind of
19 detracts from coming into town. I like the
20 symmetry of lower buildings without seeing a large
21 tower right on the corner. So I would also like to
22 see it pushed further south.

23 MR. HURWITZ: I don't know if it changes
24 anyone's mind on it, but how tall is the steeple or
25 the shadow box?

1 MR. VESULT: It's 65 feet to the top which is
2 the maximum allowed.

3 MR. GAVCOVICH: Which is the height -- the
4 maximum height of the gateway district, right, the
5 height of the office building across the street?

6 MR. HURWITZ: So it's the same height as the
7 proposed office building across the street?

8 MR. GAVCOVICH: Right.

9 MR. HURWITZ: And what's the height of the top
10 of the structure itself?

11 MR. VESULT: I mean, we have different levels,
12 17, and the two other levels is 15. So it's 47.

13 MR. HURWITZ: Forty-seven --

14 MR. VESULT: Then 4 feet of parking.

15 MR. HURWITZ: Yes.

16 So there's no motions?

17 MR. GAVCOVICH: I mean, what we're hearing --
18 what we've heard at least from Board members is
19 that they would be open to, I assume, approval with
20 that condition. I guess it's wasting time to make
21 a motion with that condition.

22 TOWN MANAGER WASSON: Jerry, before you go any
23 further, the thing to me disregarding this is that
24 --

25 MR. SIMONE: You could place whatever

1 reasonable conditions you want on the approval. If
2 you feel that way, then put a condition in and you
3 could make that a condition of the approval. If
4 they don't like the condition, they have remedies.

5 MR. HURWITZ: And the remedies would be?

6 MR. SIMONE: They can deal with the Town
7 Council.

8 MR. BEBCHIK: I would like to -- I don't know
9 how exactly the word -- but make a motion for
10 approval even the condition and the setback of the
11 tower bell element is in the same setback to the
12 Cadillac building.

13 MR. HURWITZ: How far is that?

14 MR. MILLER: We have a survey.

15 MR. VESULT: It's very close. You see the
16 image here. I believe it's right here with the
17 shadow.

18 MR. GAVCOVICH: It's probably 25 to 30 feet or
19 so. I'm just looking at the survey. It's hard to
20 tell.

21 MR. VESULT: It's 18 and-a-half.

22 MR. HURWITZ: I have to tell you -- just one
23 second. I'm sorry. I think sometimes in
24 situations like this, not just this part, but in
25 general, we get stuck on things. I just want to

1 reiterate my opinion, because I've expressed my
2 concerns. I've expressed things I'm not a hundred
3 percent in love with. But I'm not at the point
4 where want to hold up the project. And I just want
5 to make sure everybody kind of understands that we
6 think it through.

7 We're suggesting a comfort level in the
8 steeple being moved some, but I'm not really
9 wanting to be -- I don't think the process is sound
10 if we're standing on ceremony to move the tower 5
11 feet. If the tower is set back 18 to 20 feet from
12 the corner or from the property line now is --

13 Which is how far from the corner?

14 MR. VESULT: Eighteen-and-a-half.

15 MR. HURWITZ: From the property line?

16 MR. VESULT: Yes.

17 MR. HURWITZ: How far from the corner? The
18 corner is another 5 feet?

19 MR. ZYSCOVICH: Another 5 feet.

20 MR. HURWITZ: So, you know, I'm having a
21 little bit of trouble with it, because I appreciate
22 everyone's and I share everyone's concern. I
23 expressed it. But I'm also kind of like -- I don't
24 want to say no to the applicant based on my desire
25 to have the thing moved 5 feet.

1 Because if we look at the current location of
2 the tower now, I just want to make sure you're
3 comfortable with saying no to this, but if they
4 moved it 5 feet, it would be the same as Ocean,
5 Cadillac, then we're okay. I think that's a little
6 bit unreasonable. But I also think that we're
7 unhappy about something that we maybe shouldn't be
8 as unhappy about because I think it actually works.
9 It is set back.

10 I don't want to, you know, push too much, but
11 I just don't think it's as problematic. And I
12 brought you through my -- the complete complexity
13 of my original reaction to it which was the same as
14 everyone's, and I don't think it's very different
15 than where Ocean Cadillac is. I don't think Ocean
16 Cadillac is a problem.

17 And I also am thinking about the fact that
18 with 99 percent certainty, there's to be a building
19 on the corner, an office building on the corner on
20 the east side of similar size where you're not
21 seeing that thing until you get down that bridge up
22 until a certain point that you can see around the
23 corner of the office building, okay, and then
24 18 feet back from the their property line but, you
25 know, 20 something feet back from the corner.

1 So I'm just not thinking in actual read this
2 is the biggest issue not to give approval tonight.

3 MS. HUBER: For a point of clarification, your
4 question is how far is it actually from the street
5 from the corner there?

6 MR. HURWITZ: Correct.

7 MS. HUBER: So it's 18 and-a-half feet set
8 back from our property line.

9 MR. HURWITZ: Right.

10 MS. HUBER: But it's another approximately
11 28 feet from -- 20 feet more. So it's
12 approximately --

13 MR. HURWITZ: We're talking about 38 feet from
14 the corner, and I'm kind of wondering what the view
15 corridor is going to be once you have a six- or
16 seven-story office building.

17 MR. GAVCOVICH: That's what I'm saying.

18 I mean, the rendering that was done, I have to
19 assume it was done accurately. This is what you're
20 going to see. This is drawn. I assume that they
21 took the proposed tower project and they drew it to
22 scale. The only difference -- there is a
23 difference obviously because you're coming down the
24 bridge.

25 MR. HURWITZ: Right.

1 MR. GAVCOVICH: But that's what you'll see.

2 MR. HURWITZ: And, again, if that's accurate,
3 I'm also seeing that -- my problem is not just
4 seeing it but the scale of things, and it's the
5 same size if not -- I mean the tower alone is quite
6 small compared to the building which is at
7 40-something feet. And you're coming down reading
8 a hotel on the right and an office building on the
9 left that are left maxed out at --

10 MR. TELESCO: The hotel is on the water, so I
11 believe it's set 75 feet, not 65.

12 MR. HURWITZ: Seventy-five feet?

13 MR. TELESCO: It's on the water.

14 MR. HURWITZ: Oh, by the way, the office
15 building as well is 75 feet on both sides and then
16 you come down the bridge.

17 And, Jed, I agree. I really prefer to see it
18 going down the bridge. But okay.

19 MR. TELESCO: You're talking about coming in
20 from Surfside?

21 MR. HURWITZ: Yes.

22 MR. TELESCO: The hotel will be on the right.

23 MR. HURWITZ: It's 75 feet on the office on
24 the left, and then coming down the bridge between
25 them and looking at a 65-foot tower which is not a

1 building but a singular tower which is
2 30-something-whatever feet off the corner and 18
3 feet off their property line.

4 MR. TELESCO: It scales down to the red line.

5 MR. HURWITZ: Right. And I'm comfortable with
6 that.

7 MR. GAVCOVICH: And don't forget, the tower,
8 this tower, the steeple, is significantly taller
9 than the Ocean Cadillac tower. I know when this
10 came in front of us, I personally had an objection
11 to what they were proposing of replacing the sign.

12 And so it's the entrance to the Bay Harbor
13 from the east, and I think that's the same
14 objection I had to the tower.

15 MR. HURWITZ: And, again, the conversation is
16 about the tower and the scale of the tower. It
17 really has nothing to do with, you know, the church
18 or the use or anything like that. So you can
19 construe it that way, but that's not the
20 conversation that this Board is having in my
21 opinion. And I don't think anyone else disagrees.

22 MS. HUBER: Just as a point of clarification,
23 obviously the Cadillac site is a singular use and
24 was not required to be on the second story. So
25 there is a distinction.

1 MR. GAVCOVICH: Well, not if this is not
2 signage, right?

3 MS. HUBER: Again, but what you're asking for
4 is to set it back similar to what you asked the
5 Cadillac site to set back. And so, yes, we agree
6 with you it's not signage, but what you're asking
7 to do is to set it back what you asked the Cadillac
8 site to set back.

9 MR. HURWITZ: We didn't ask Cadillac to set it
10 back. That's a property that was developed way
11 before all of our time. The issue that came to us
12 was a sign for Cadillac that was on that site.

13 MS. HUBER: But the motion before us --

14 MR. HURWITZ: So it was used as a reference
15 point of the location. It wasn't something we
16 requested.

17 MS. HUBER: But, again, the motion before us
18 is to set it back similar to what that setback is.

19 MR. HURWITZ: Right, which I'm arguing is not
20 important to me, another 5 feet.

21 MR. FRANKEL: I think when you're saying
22 "setback," maybe we should say "location."

23 MR. HURWITZ: Yes.

24 MR. BEBCHIK: I'm looking at the survey, and
25 it reads about 46 feet from the property line.

1 MR. GAVCOVICH: So that dimension is to the
2 end of the building, right.

3 MR. BEBCHIK: And the sign.

4 MR. GAVCOVICH: Correct.

5 MR. VESULT: It's between 20 and 25 feet.

6 MR. HURWITZ: If there are other reasons, you
7 know, or architectural reasons why there's no
8 motion, we can talk about that. Just that's my
9 take on the location of the tower. I just -- I
10 don't think in reality it's a significant change
11 that will get us comfortable.

12 MS. SIEGEL: Steve, just to clarify for the
13 record, the elevation shows that the height of the
14 tower is 63' 11" from the ground level. And it
15 doesn't show the height of BFE which would be
16 higher. It's not 65 feet as is stated on the
17 record.

18 MR. HURWITZ: It's lower than that?

19 MS. SIEGEL: It's probably about 4 feet
20 lower -- 4 or 5 feet lower than it could be, yes.

21 MR. HURWITZ: Got you.

22 MR. GAVCOVICH: Well, it would be measured
23 from the actual finished door of the lobby.

24 MS. SIEGEL: No. The height of any buildings
25 on Kane Concourse could be 65 BFE, the maximum

1 height. So it could be.

2 MR. HURWITZ: You were looking for scale
3 proportion, not to maximize -- let's take the tower
4 and make it as big as we possibly can.

5 MR. VESULT: We wanted to make it for you to
6 make you aware.

7 MR. HURWITZ: And to me it is in context and
8 scale appropriate to the size of the building which
9 could be a lot bigger, the building itself.

10 MR. VESULT: With a little movement.

11 MR. HURWITZ: Yeah. I'm weighing, you know, a
12 lot of those concerns with realities as well. The
13 building is a lot less than it could be, the tower
14 is less than it can be, and I think it's actually
15 set back more than we're reading it.

16 TOWN MANAGER WASSON: But, you know, you might
17 want to just -- I know the Board last meeting had a
18 lot of requests for the church to make adjustments
19 to the building. You just might want to review
20 that. Because I know it was a lot of them.

21 MR. HURWITZ: I think everyone's concerns were
22 are addressed but for -- you know, Jerry had
23 concerns about the use along the side street,
24 right. We talked about that.

25 MR. GAVCOVICH: Yeah.

1 Oscar also I think was very strong about his
2 opinion about the connection from the parking to
3 the front of building, having that walkway,
4 breezeway.

5 MR. HURWITZ: Well --

6 MR. ZYSCOVICH: But in terms of what was
7 discussed.

8 MR. HURWITZ: Go ahead.

9 MR. GAVCOVICH: I was going to say, Alan was
10 considering make a motion. I don't know if --

11 MR. BEBCHIK: I made the motion. I hear what
12 you're saying, but --

13 MR. HURWITZ: So you're welcome to. So why
14 don't you reiterate your motion if that's where you
15 want to go with it.

16 MR. BEBCHIK: So I made a motion to approve
17 the Plan with the condition that the location of
18 the tower element is in the same location as where
19 the Cadillac building is.

20 MR. SIMONE: That's not specific. You have to
21 give a specific dimension.

22 MR. BEBCHIK: To the end, the end here of that
23 tower is 46 feet by this survey.

24 MR. VESULT: Yeah, we've got to measure
25 exactly where it is.

1 MR. BEBCHIK: So the end of that tower
2 aligning with 46 and to the Cadillac dealership.

3 MR. SIMONE: And your motion should also
4 include that signage shown on the Plan on the first
5 floor is not considered part of the Plan you're
6 approving.

7 MR. HURWITZ: Do we have the ability to
8 approve that?

9 MR. SIMONE: No. But I want the record to
10 reflect if you're going to move it pursuant to the
11 Plan, there's one condition.

12 MR. HURWITZ: Okay. The record reflects it
13 does not include the signage which is there for
14 illustration.

15 MR. FRANKEL: The dimension that we just
16 talked about, that's from the property line to the
17 northern edge of the tower.

18 MR. GAVCOVICH: No, that's the southern edge
19 of the tower.

20 MR. HURWITZ: Southern edge of the tower.

21 MR. GAVCOVICH: Existing.

22 MR. HURWITZ: How wide is the tower?

23 MR. VESULT: The steeple?

24 MR. HURWITZ: Yeah.

25 MR. VESULT: It's 9 feet by 9.

1 MR. HURWITZ: So almost 10 feet.

2 And your dimension here is?

3 MR. BEBCHIK: Forty-six.

4 MR. HURWITZ: Forty-six.

5 MR. BEBCHIK: So 36.

6 MR. HURWITZ: About 18 feet now. And you're
7 asking it to go another 18 feet.

8 Okay. Is the motion clear for the record for
9 everyone?

10 MS. HUBER: I just --

11 MR. HURWITZ: We're in the middle of making a
12 motion.

13 MS. HUBER: I understand. I do not believe
14 that his contingent that the survey that is --
15 based on our architect's opinion, it's not 46
16 and-a-half feet. So just if we're going to use the
17 dimension, I believe it should be an accurate
18 dimension and I don't believe that that is an
19 accurate dimension.

20 MR. HURWITZ: Okay. So maybe we just revise
21 that motion to reflect that the northern face of
22 the tower would be at the same location as the
23 northern face of the Ocean Cadillac distance from
24 the property line. Is that better?

25 MR. VESULT: (Nods head.)

1 MR. SIMONE: As reflected on the submitted
2 survey.

3 MR. HURWITZ: Is this is your motion. Are you
4 comfortable with that?

5 MR. BEBCHIK: Yes.

6 MR. HURWITZ: Okay.

7 Did you have a comment?

8 MR. TELESCO: Yes.

9 Exclusion of the sign was noted?

10 MR. HURWITZ: Exclusion of the signage was
11 noted, correct.

12 MR. TELESCO: If that's noted, then I'll
13 second the motion.

14 MR. HURWITZ: That's the second.

15 All in favor?

16 Want a role call?

17 MS. SIEGEL: Mr. Telesco?

18 MR. TELESCO: Aye.

19 MR. FRANKEL: For.

20 MS. SIEGEL: Mr. Bebchik?

21 MR. BEBCHIK: For.

22 MS. SIEGEL: Mr. Gavcovich?

23 MR. GAVCOVICH: No.

24 MS. SIEGEL: Mr. Hurwitz?

25 MR. HURWITZ: Yes.

1 MS. SIEGEL: It passes.

2 MR. HURWITZ: Okay.

3 MR. GAVCOVICH: I just don't see how it could
4 work.

5 MR. HURWITZ: It's over. Thank you very much.

6 (The meeting was concluded at 9:02 p.m.)
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HEARING CERTIFICATE

I, AMBER CHEEK, Court Reporter, certify that I was authorized and did stenographically report the foregoing proceedings and that this transcript, pages 1 through 94, is a true record of the proceedings before the Court.

I further certify that I am not a relative, employee, attorney, or counsel for any of the parties nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

Dated this 2nd day of August, 2016.



Amber Cheek

Notary Public, State of Florida at Large

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EXHIBIT K

Via Hand Delivery

July 19, 2016

Mr. Ron Wasson
Town Manager
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, Florida 33154

Re: Church by the Sea – 1000 Kane Concourse, Bay Harbor Islands, Florida

Dear Mr. Wasson:

This correspondence is transmitted to you on behalf of The Church by the Sea, Inc. ("CBTS") with respect to its pending application before the Town of Bay Harbor Islands Planning and Zoning Board. At the last meeting, a question was raised as to the Board's review and comments regarding the steeple/cross on the proposed building. Specifically, more than one of the Boardmembers stated that the cross "was in your face" and another wanted the cross moved off of the corner or to the center of the building so that it was not as visible.

The CBTS objected to the Board's arbitrary attempts to alter the cross by requesting its removal, reduction in size, or placement on the site. As such, questions were raised as to whether the cross was a "sign" subject to the Board's review. We concur with counsel for the Town, in that the cross is not a "sign" and not subject to the Board's arbitrary review regarding its size, location or placement on the building for the following reasons:

Compliance with Zoning Code Regulations

To the extent that the Board questioned whether the height or setback of the building complied with the Town Code, Staff for the Town thoroughly reviewed the proposed building and found that the building complies with all Zoning criteria, and recommends approval of the proposed project.

A Cross is not a "Sign"

The Bay Harbor Islands Code of Ordinances ("the Code") does not provide a definition of "sign." See Generally Bay Harbor Islands Code of Ordinances Ch. 17. The Merriam-Webster Online Dictionary definition of "sign" includes: "a display (as a lettered board or a configuration of neon tubing) used to identify or advertise a place of business or a product." "Sign" Merriam-Webster Online Dictionary. 2015. www.merriam-webster.com (Jul. 2016). This definition is consistent with the use and regulation of signs in Chapter 17 of the Town Code. First, the Code

identifies categories of regulated signs whose purpose is to advertise, namely: “for sale” and “for rent” signs (Sect. 17-2); “temporary political signs” (Sect. 17-8); “open house” signs (Sect. 17-2); and construction signs which identify the contractor and architect (17-5). **Second**, a number of sections in the Code regulate the lettering of signage as well as the use of neon tubing. *See generally* Bay Harbor Islands Code of Ordinances Ch.17. **Third**, in the “B-1 District”, where CBTS’s property is located, the Code specifically states that “[s]igns...shall bear no more than the name of the building, the trade name of the establishment, and the nature of the business, without designation of any particular product or service by trade name.” Bay Harbor Islands Code of Ordinances Sec. 17-20. **Fourth**, the most general regulation of signs in the Code, which deals with the approval and permitting process, specifically covers the coloring and height of letters as well as the illumination of signage. Bay Harbor Islands Code of Ordinances Sec. 17-3. In other words, the Code suggests that the primary purpose of a “sign” is to advertise a product or service using lettering or illumination. This understanding of the Code is consistent with the dictionary definition of “sign” and a cross does not meet this definition.

The plain meaning of a symbol, by comparison, is “something that stands for or suggests something else by reason of relationship, association, or accidental resemblance[.]” “Symbol” *Merriam-Webster Online Dictionary*. 2015. www.merriam-webster.com (Jul. 2016). Architectural theory dictates that symbols are “unified constructs”, i.e. the meaning of symbols can only be obtained by considering the whole of the object and not by breaking down its parts as is the case with signs. *See* Scott Rimmer, *The Symbolic Form of Architecture*, (April 28, 1997) (unpublished M.S. thesis, Virginia Polytechnic Institute) at 6. Additionally, architectural theory distinguishes signs from symbols because symbols can be subject to varying interpretations, *See* Amer A. Moustafa, *Architectural Representation and Meaning: Towards a Theory of Interpretation* (unpublished M.S. thesis, Massachusetts Institute of Technology 1988) at 3-4, 34-35, whereas signs tend to have a common or objective meaning.

The Judeo-Christian cross is a religious symbol. No matter where it is seen—as a tattoo on a person’s body, hanging in a person’s home, hanging from a necklace, pasted to the bumper of someone’s car, or affixed to the top of a church—it represents one’s religious beliefs. A cross is “something that stands for or suggests something else by reason of relationship, association, or accidental resemblance[.]” *See definition of “symbol.”* Placing a religious symbol on a building is not reflective of a business, rather it reflects the religious beliefs practiced within. By contrast, a sign is most often used to identify a particular business or establishment by its “trade name”, to use the parlance of the Code. Additionally, a cross is a unified construct, i.e. there is no need to parse out the parts of a cross to understand its meaning, whereas signs require a viewer to consider all of the words or pictorial elements to understand them. A cross is not marked by words or pictures intended to convey a meaning, rather when one views a cross they associate it with the Judeo-Christian faiths. Signs, however, use letters to convey their meaning—a fact which the writers of the Code evidently acknowledged. *See generally* Bay Harbor Islands Code of Ordinances Ch. 17. In sum, a cross is not a sign no matter which definition one subscribes to, rather it is a religious symbol. As such, CBTS need not obtain a separate sign permit for the construction of the cross on the building.

A Cross is a Religious Symbol and Expression of Speech Protected By the First Amendment

The concept that symbols, both religious or otherwise, are deserving of First Amendment protection was effectively conveyed by U.S. Supreme Court Justice Jackson when he wrote:

“Symbolism is a primitive but effective way of communicating ideas....Causes and nations, political parties, lodges and ecclesiastical groups seek to knit loyalty of their followings to a flag or banner, a color or design. The State announces rank, function, and authority through crowns and maces, uniforms and black robes; the church speaks through the Cross, the Crucifix, the altar and shrine, and clerical raiment. Symbols of State often convey political ideas just as religious symbols come to convey theological ones.”

West Virginia State Board of Education v. Barnette, 319 U.S. 624, 632 (1943).

Various courts have adopted this position, and have further elaborated upon it in the 73 years since Justice Jackson penned his majority opinion. Indeed, courts have noted that, “[s]peech encompasses verbal and written expression, as well as symbolic speech expressed through symbols and conduct.” *U.S. v. Magana*, 544 Supp.2d 560, 566 (W.D. Tex. 2008) (citing *Tinker v. Des Moines Indep. Sch. Dist.*, 393 U.S. 503 (1969)) (quotations omitted). Symbolic speech is protected when “(1) the ‘speaker’ intends to convey a message; and (2) there is a ‘great likelihood’ that observers will understand the message.” *Id.* (citing *Spence v. Washington*, 418 U.S. 405, 410-11 (1974)). Private religious speech is protected by the First Amendment. *See Capitol Square Review and Advisory Board v. Pinette*, 515 U.S. 753, 760 (1995); *Widmar v. Vincent*, 454 U.S. 263, 269 (1981). Thus, by extension the display of a religious symbol is also protected by the First Amendment. *See Chabad-Lubavitch of Georgia v. Miller*, 5 F.3d 1383, 1387 (11th Cir. 1993) (citing various cases)¹; *see also Magana*, 544 Supp.2d at 567.

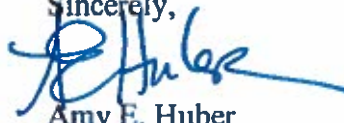
The intent of the cross at issue here is to express the religious beliefs of the CBTS and identify CBTS as a place of worship for those with similar religious beliefs. As such, the Town’s Planning and Zoning Board does not have the authority to restrict CBTS’s cross or attempt to reduce or remove its placement on the proposed building. To the extent that the Planning and Zoning Board seeks to modify or restrict the cross, it must do so strictly and narrowly lest it violate the First Amendment and curb the expression of religious beliefs.

The Church by the Sea maintains that the cross is not a sign and does not need to apply for or receive a sign permit. It further maintains that the cross is a religious symbol which is an expression of religious beliefs protected by the First Amendment. Any action taken by the Board or the Town to restrict or remove the cross will be defended to the maximum extent permitted by law.

¹ *Lubavitch* cites: *Kreisner v. City of San Diego*, 988 F.2d 883, 891 (9th Cir. 1993); *Americans United for the Separation of Church and State v. City of Grand Rapids*, 980 F.2d 1538, 1542 (6th Cir. 1992) (*en banc*); *Doe v. Small*, 964 F.2d 611, 618-19 (7th Cir. 1992).

As always, please contact me with any questions.

Sincerely,



Amy E. Huber
For the firm

cc: Stanley Price, Esq.