

RESOLUTION OF THE NYACK VILLAGE BOARD

A regular meeting of the Nyack Village Board was convened on September 28, 2017, at 7:30 p.m.

The following resolution was duly offered and seconded, to wit:

Resolution No. 2017-__

**IN THE MATTER OF APPLICATION OF TZ VISTA LLC
FOR A SPECIAL PERMIT TO CONSTRUCT A MULTI-FAMILY DEVELOPMENT
WITH REQUIRED PUBLIC AMENITIES IN THE WF ZONING DISTRICT**

WHEREAS, on September 6, 2016, TZ Vista, LLC (the “Applicant”) submitted an application to the Nyack Building Department for Site Plan Approval, Subdivision, and a Village Board Special Permit to permit the construction of a 128-unit multi-family residential building with an accessory café, a riverfront park, and 282 parking spaces in the WF Zoning District (the “Project”).

WHEREAS, a review of the Site Development Plan pending before the Planning Board reveals that Project proposes to include three apartment buildings, each 52 feet tall, and townhomes to serve as liner buildings fronting the Hudson River, with two stories of garage parking underground and interior to the structure which will hold 252 spaces (30 additional street level parking spaces will be provided on two lots across Gedney Street).

WHEREAS, the Site Development Plan also proposes to provide a minimum 50-foot distance separation between the apartment buildings, maintaining views to the Hudson River from Lydecker Street, High Avenue, and Main Street, a pedestrian walkway constructed along the Hudson River, with public amenities including seating areas, an outlook/observation pier, potential kayak launches with available kayak rentals, and recreational fishing opportunities (additionally, from Gedney Street, the roof of the parking garage will provide additional public and private residential open space, as well as access to the proposed pedestrian walkway).

WHEREAS, on July 21, 2017, the Village of Nyack Planning Board, acting as lead agency for SEQR review, pursuant to Part 617 of the Implementing regulations pertaining to Article 8 of the Environmental Conservation Law (State Environmental Quality Review Act), issued a Negative Declaration under SEQRA following the Planning Board's extensive review of the Project's environmental impact.

WHEREAS, the Applicant also supplemented the original application with a "Special Permit Compliance Narrative", dated July 31, 2017.

WHEREAS, specifically as relates to the request for a Special Permit by the Applicant, the WF Zoning District regulations provide (in §360-2.5(B)(2)(c)) that the Village Board may issue a Special Permit for certain delineated exceptions to what amounts to the size of the development ("development incentives") for the following two reasons:

1. “To encourage development which promotes the purposes for which the WF District has been established”.

2. “To achieve the design guidelines outlined in §[360-2.5B\(2\)\(c\)\[6\]](#)” of the WF District Zoning code language.

WHEREAS, the Village Board of the Village of Nyack noticed a Public Hearing with regard to the Special Permit application for September 14, 2017 at its regularly scheduled Village Board meeting; and

WHEREAS, the Village Board took public comment with respect to the application at the Public Hearing, and in addition to the Planning Board’s Negative Declaration of July 21, 2017, and the documentation submitted by the Applicant in support of its application, also considered and discussed the following submission from its staff and consultants retained to review the Project:

1. The Memorandum of the Building Inspector dated September 5, 2017, which states that “the application is in compliance with the . . . Development Incentives requirements of the WF Zoning District”.

2. The Memorandum of Valerie M. Monastra, AICP of VHB, the Village's retained Planning consultants relative to the Project, dated August 23, 2017, which concluded, inter alia, that the Project promotes the purposes for which the WF Zoning District was created, and further that the Site Development Plan application incorporated the design guidelines set forth in the zoning district text.

3. The Memorandum of Bob Galvin, AICP, the Village Planner, dated September 8, 2017, who, specifically with respect to the Special Permit application, and after review of the Building Inspector's and Planning Consultant's memos (together with the minutes of the Planning Board and latest Site Development Plan of the Applicant), similarly concluded that the Project is in conformity with the WF Zoning District regulations, achieved the purposes of the WF Zoning District, and incorporated the objective design guidelines in the WF Zoning District text.

4. The minutes of the Architectural Review Board's meeting of July 26, 2017 as they pertain to the Project, which detail the extent to which the Project achieves the design guidelines set forth in the WF Zoning District text. [Note: The ARB approved the Project at its September 19, 2017 meeting; the ARB's approval is incorporated by reference into this Resolution].

THEREFORE BE IT RESOLVED,

That the Village Board hereby adopts and incorporates the recitations and statements set forth

above as if fully set forth and resolved herein; and

BE IT FURTHER RESOLVED, that the Village Board hereby adopts and incorporates into this Resolution all of the discussion, data, analysis, and conclusions drawn with respect to each and every document referenced and considered by the Planning Board as set forth the Planning Board's July 21, 2017 Negative Declaration made under New York State Environmental Quality Review Act (SEQRA); and

BE IT FURTHER RESOLVED, that the Village Board of Trustees has also considered the Special Permit Application in the context of evaluating the LWRP policy standards and conditions to make a Consistency Determination and hereby adopts and incorporates the recitations and statements set forth above as if fully set forth and resolved herein into a LWRP Consistency Determination made pursuant to the provisions of Chapter 342 of the Code of the Village of Nyack with respect to the proposed Project; and

BE IT FURTHER RESOLVED that upon a review of the documents referenced hereinabove, the Village Board finds that the Project is consistent with and advances the policies of the LWRP, and that the Proposed Action will not hinder the achievement of any of the policies set forth in the LWRP for the following reasons:

1. *LWRP Policy No. 1 - Revitalization/redevelopment of deteriorated or underutilized waterfront*

site. As noted in the Planning Board's Negative Declaration and the Applicant's Project Narrative, the Project will encourage increased public access to the riverfront. Much of the developed waterfront sites in the WF district are privately owned with no public access; and the Project site has been closed to the public for over 100 years (and was in fact a Brownfield site now remediated by the Applicant). The specifically delineated and increased public access provisions in the WF Zoning District text, which have been complied with by the Applicant, will advance the policy of redeveloping the site and providing true public access to the waterfront where none now exists.

2. *LWRP Policy No.2. Encouraging potential public recreation opportunities.* The Project will encourage increased public access to the riverfront and provide that public access as parkland under the control of the Village. The requirement in the WF Zoning District text that the public access walkway along the waterfront be dedicated as parkland to the Village, as opposed to it being a developer controlled easement, will advance the policy of expanding potential public recreation opportunities. The current pier at the Clermont development in the WF zoning district is under the control of a private property owner, and is underutilized by the public. The dedication of parkland to the Village will prevent this from happening with respect to the Project.

3. *LWRP Policy Nos. 2, 21 and 22. Development of the future or existing water-dependent uses.* The proposed zoning text amendment will encourage increased public access to the riverfront.

The Building Inspector and Village Planner have confirmed that the Project seeks to utilize development incentives under the WF Zoning District text amendment (as reflected in the request for the Special Permit), and therefore the public access provided is increased to 30' from 12' along the entire length of the property under the existing WF Zoning regulations.

Furthermore, public access to the waterfront is provided every 200' from Gedney Street. Finally, the Site Development Plan shows restaurant/café adjacent to the public walkway.

4. *LWRP Policy Nos. 19, 20 and 21. Discourage reduction of existing or potential public access to or along coastal waters.* Again, as noted above, the Project will encourage increased public access to the riverfront. The specifically delineated and increased public access provisions in the WF text are incorporated into the Project, therefore advancing the policy of preventing a reduction of potential public access along the Hudson River.

5. *LWRP Policy Nos. 14 and 17. Use of non-structural measures and erosion protection measures to mitigate flood damage.* Parts of the WF Zoning District are located in the 100 year and 500 year floodplain of the Hudson River, and the Project and construction of the waterfront path are proposed to include resiliency features which will serve to provide increased protection/mitigation for flood prone areas. No residential structures are proposed to be located within the 100-year or 500 year floodplain. Additionally, the requirement of a minimum 50 foot building setback from the Hudson River in the text amendment, when taken together with the resiliency features, will promote the LWRP policy referenced in this finding.

6. *LWRP Policy Nos. 25 and 25A. Protection of views and non-designated scenic resources.*

The Project will preserve the view corridors as required under the WF Zoning District text, and in fact enhance the view corridors by placing parking underground. Additionally, width of the publicly accessible promenade along the entire length of the property reflected on the Site Development Plan enhances the scenic views for the public.

7. *LWRP Policy No. 24. Addressing siting and scale of new structures.* The Village Board finds, based on the ARB approval, and the review of the Project by Village Staff and the Village's retained Planning consultants, that the specific design guidelines in the WF Zoning text ensure that landscape treatments, building façade materials, and glazing areas are appropriate and consistent with the surrounding context and in keeping with the general character of Nyack.

AND BE IT FURTHER RESOLVED, that for the foregoing reasons, and considering the foregoing LWRP policies and objectives, pursuant to the provisions of Chapter 342 of the Code of the Village of Nyack, the grant of a Special Permit is consistent with the policies of the LWRP, will not hinder the achievement of any of the policies set forth in the LWRP, and will in fact advance the LWRP policies referenced herein above.

BE IT FURTHER RESOLVED that the WF Zoning District text amendments adopted in 2016 were designed, inter alia, to provide certain dimensional (bulk) incentives applicable to future

site development plans in the WF zoning district, which incentives may be obtained if the Nyack Village Board, in the context of a grant of a Special Permit, determine that the zoning language has been complied with, and that design and development incentives introduced into the legislation are adequately incorporated by a potential developer (i.e. design guidelines, view shed preservation, open space, and public access to the waterfront); and

BE IT FURTHER RESOLVED, that based upon the record before it, including but not limited all of the public comment, the SEQRA Negative Declaration Resolution of the Planning Board, and the documents underlying the same, the Village's expert submission, and staff analysis, all of which are which are incorporated into the Resolution by reference, the Village Board makes the following findings pursuant to the requirements set forth in Village Code 360-2.5(B)(2):

(a) That the Project is consistent with the aims and principals of the Waterfront Development District, and promotes the Zoning Districts purposes as set forth in the zoning code, in that:

1. The Village Board finds that the Project meets the goal of maximizing the utilization of waterfront land by water-oriented uses which require a waterfront location by requiring increased public access to the riverfront and the dedication of parkland to the Village along the waterfront. Furthermore, public recreation opportunities directly on waterfront land in the WF zoning district are included in the Project.

2. The Village Board finds that the Project regulates uses that are enhanced by a location along

or near the shoreline but do not require a waterfront location. The Project achieves the specific design guidelines that ensure that landscape treatments, building façade materials, and glazing areas in permitted developments are appropriate and consistent with the surrounding context and in keeping with the general character of Nyack. Furthermore, the Village Board finds that the Project's provision of more specific development incentive "give backs" required in the WF Zoning District text similarly introduce a greater degree of regulation over the Project by the Village; these "give backs" include items such as stringent requirements for increased dedicated public access to the riverfront, preservation and enhancement of view corridors by providing underground parking, increased required setback from the high water line of the Hudson River for the new buildings, requirement of resiliency features, and the provision of access through the Project to the waterfront walkway.

3. The Village Board finds that the Project maximizes physical public access from the land to and along the Hudson River shoreline. As noted, the language of the proposed text amendments will encourage increased public access to the riverfront since Project provides 30' of dedicated parkland along the entire length of the property. Public access to the waterfront is provided every 200' from Gedney Street. A water dependent use will be established, as well as a restaurant/café. These features of the Project serve maximize physical public access to and from the Hudson River.

4. The Village Board finds that the Project, to the extent possible, protects water quality, fish and

wildlife, scenic views and natural vegetation and enhances aesthetic resources to the greatest extent feasible. The Village Board notes that no project could feasibly achieve all of the goals of this particular purpose of the WF Zoning district text; however, the Board adopts the analysis and findings set forth in its professionals review of the project, and as set forth in the July 21, 2017 Negative Declaration adopted by the Planning Board, and finds, to the extent practicable, that this stated purpose of the WF Zoning District is promoted by the Project.

(b) That the Project achieves the design guidelines, based on the analysis of the Village Planner, Planning Consultant, and the approval of the Project by the Architectural Review Board.

THEREFORE BE IT FURTHER RESOLVED,

That based upon the findings and reasoning set forth above, the based upon the Whereas and Resolved clauses set forth herein and above, the Nyack Village Board of Trustees resolves:

That the Special Permit application of TZ Vista, LLC is hereby GRANTED, subject to the conditions enumerated below, and that the Village Clerk is directed to publish and take appropriate action as required by law to effectuate this Resolution.

CONDITIONS ON THE GRANT OF THE SPECIAL PERMIT:

1. Obtaining and fully complying with Final Site Development Plan Approval for the Project from the Planning Board.
2. Obtaining and fully complying with the approval of the Project by the Architectural Review

Board.

3. The provision of a completion Bond, or other acceptable financial security, provided to the Village prior to the issuance of a building permit, to insure that all the public amenities reflected on the Site Development Plan can be fully constructed even if the project is not completed in form acceptable to counsel to the Village and in an amount or amounts to be established by the Village Engineer.

4. The provision of a performance bond, or other acceptable financial security, for a time period no less than eighteen (18) months from the project's completion, during which the developer must maintain the rip rap, landscaping, and other park amenities to ensure that the construction and installation of the same was done correctly.

5. The negotiation and acceptance by the Village Board of a satisfactory "Land Acquisition and Disposition Agreement" which will contain, *inter alia*:

(i.) provisions reflecting the extent of the land to be dedicated to the Village (which shall be reflected on the Final Site Development Plan);

(ii.) the timing of the dedication;

(iii.) provisions relating to the operation and maintenance of the land to be dedicated to the Village as generally reflected in the Applicant's "Narrative on Special Permit Compliance dated January 31, 2017", or as otherwise agreed between the parties;

(iv.) provisions relating to insuring that the Village is indemnified from any existing or future maintenance related to the current on site (and in water) remediation activities, and/or relating to the Environmental Conditions existing on the premises to be dedicated;

(v.) provisions relating to the ability of the public to access portions of the waterfront land to be dedicated to the Village prior to the Village accepting the dedication of such property.

6. The inclusion of the all elements of the Applicant's "Narrative on Special Permit Compliance

dated July 31, 2017” on the Final Site Development Plan.

7. The inclusion of language, to be provided to the Village for review prior to filing with New York State, of provisions in the Condominium Declaration and Offering Plan that public access to the waterfront on land not owned by the Village will remain open in perpetuity.

8. The submission of a letter to the Building Department to be part of the Final Site Development Plan approval, reflecting the Phasing of the Project as generally set forth in the Applicant’s “Narrative on Special Permit Compliance dated July 31, 2017”.

9. Filing of the final details of the Brownfields Site Remediation with the Building Department, including any treatment of the site during the construction of the Project, as well as relative to ongoing DEC involvement with monitoring, reporting, and future responsibilities of the Applicant. Written notices relative to compliance with DEC regulations pertaining to the site shall be provided to the Building Department within 10 days from the Applicant’s receipt of the same.

10. The provision of public access to the area of the premises that will constitute the future public walkway shall be provided to the extent practicable, and in accord with all OSHA regulations (or rules and regulations of other regulatory agencies having jurisdiction over the construction activities on the site), during the construction.

The intent of this condition is to provide safe public access to the riverwalk area, recognizing that public safety is the paramount concern of both the Village and Applicant.

The Applicant’s plans currently show a narrow gravel walkway on the extreme east side of the premises that may serve to provide limited public access during the construction process. In the event that construction activity prevents the opening of this area, or any area of public access on the premises, the Applicant shall notify the Building Department and install appropriate signage indicating that public access is not available.

11. The Site Development Plan shows, and the zoning code requires, that two parking lots

owned by the Applicant on the west side of Gedney Street (consisting of 30 spaces) be open to the public. These lots shall be improved to the satisfaction of the Planning Board, reflected on the Final approved Site Development Plan, and shall be opened to the public within 45 days of final non-appealable Site Development Plan approval pursuant to an Agreement with the Village as to permitted hours of operation and enforcement. It is the intent of this condition to have the additional public parking opened to the public as soon as possible, recognizing that construction activity (particularly when construction relating to Phase 2 and Phase 3 of the project restrict the area where construction equipment can be stored on site) may serve to provide limited public access during the construction process. In the event that construction activity prevents the opening of either parking lot, or requires a temporary closing of the lot(s), the Applicant shall notify the Building Department and the Village shall install appropriate signage indicating that public parking is not available.

The question of the adoption of the foregoing Resolution was duly put to a vote, which resulted as follows:

	<u>Yea</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
_____	[]	[]	[]	[]
_____	[]	[]	[]	[]
_____	[]	[]	[]	[]
_____	[]	[]	[]	[]
_____	[]	[]	[]	[]

Mary E. White, Village Clerk

This resolution was adopted by a Resolution of the Board of Trustees at the regular meeting of the Board on September 28, 2017.