

Minutes
BOARD OF ADJUSTMENT
Wednesday, January 13, 2010, 7:00 PM

MEMBERS: Chair Al Hartkopf, Vice Chair Tommy Sikes, Carla Lunsford, Dave Remington, and Eddie Sain.

ABSENT: Bradley Curelop, absence excused.

STAFF: Senior Planner Tom King and Town Attorney Bob Hornik.

PUBLIC: Jeff Swicegood, Subal Das, Jessica Carmichael, Kevin Carmichael, Michael Neal, Hal House, Albert Hill, Deborah Malinowski, Jessica Knight, Lisa Kubish, Frank Cohen, Richard Holcomb, Elena Peace, George Horton, Tracy Parrott and Chad Abbott.

Mr. King swore in those who came forward indicating a desire to speak.

ITEM #1: **Call meeting to order and confirm the presence of a quorum.**
Chair Al Hartkopf called the meeting to order at 7:00 p.m. and confirmed the presence of a quorum.

ITEM #2: **Consideration of additions to the agenda.**
Mr. King stated that a Closed Session item needed to be added as Item 7A to discuss the Nannie Richmond and Webb Grove pending litigation.

MOTION: **Mr. Sikes** moved to amend the Agenda to add a Closed Session as Item 7A to discuss pending litigation. **Mr. Remington** seconded.

VOTE: Unanimous.

ITEM #3: **Approval of the December 9, 2009 minutes.**

MOTION: **Mr. Sain** moved to adopt the minutes of the December 9, 2009 meeting as submitted. **Mr. Sikes** seconded.

VOTE: Unanimous.

ITEM #4: ***Continued Item* - Case #BA-13-2009 - Special Exception Permit request from Ellen L. Steinberg to allow a wooden deck with outdoor shower to be constructed on the rear of an existing house. The proposed deck will continue with the line of the house that currently encroaches 12 feet into the allowed reduced 15-foot south side yard setback. The proposed deck will be no closer than 3.0 feet from the south side property line, once constructed. The property is located at 313 North Hassel Street (Orange County Tax Map Reference #4.18.G.8) and is zoned R-20 (Medium Intensity Residential)/HD (Historic District) Overlay.**

Mr. King stated that Ms. Steinberg was not present, although she had been notified twice by mail as well as by phone yesterday, and she had responded via email to the Board's questions. He said that the main question was in regards to drainage, and Ms. Steinberg had responded that the contractor had indicated that the drainage for the shower would be plumbed with the house. Mr. King said Ms. Steinberg had indicated in her email that, if the shower caused concern, then it could be omitted from of her plans. He said that Ms. Steinberg would be required to obtain plumbing and building permits, so any work would be inspected for compliance with the Building Code. Mr. King noted that he believed Ms. Steinberg was not able to be present due to an odd work schedule.

Mr. Remington said he believed the drainage for the shower was the only outstanding issue, and believed the Board could make a decision based on the information Mr. King had provided.

MOTION: **Mr. Sikes** moved to close the hearing on Case #BA-13-2009 – Special Exception Permit request from Ellen L. Steinberg. **Mr. Remington** seconded.

VOTE: Unanimous.

Discussion:

Mr. Sain suggested that a condition be placed on approval regarding the drainage. Mr. King stated that the permitting required would result in various inspections, and the condition he had included was that an as-built survey be submitted to verify compliance with the submitted plan.

MOTION: **Mr. Sikes** moved to approve Case #BA-13-2009 – Special Exception Permit request from Ellen L. Steinberg with the condition that an as-built survey, prepared by a professional land surveyor, showing that the deck complies with the terms of the Ordinance and Special Exception Permit shall be submitted to the Zoning Officer prior to the issuance of a Certificate of Occupancy for the project. **Mr. Sain** seconded.

VOTE: Unanimous.

ITEM #5: **Case #BA-01-2010 – Conditional Use-2 Permit request from Summit Consulting c/o Chad Abbott on behalf of Meadowlands Associates for the construction of 4 buildings totaling 59,500 square feet in gross floor area for use as flexible office, warehouse and storage space. 133 off-street parking spaces are to be provided. The property is located at the end of Executive Court (Orange County Tax Map Reference #4.40.A.11) and is zoned HIC (High Intensity Commercial).**

Mr. Hartkopf opened the public hearing. Mr. King noted that the purpose of the Conditional Use Permit was to allow for the construction of 4 buildings totaling 59,500 square feet in gross floor area for use as flexible office, warehouse and storage space. He said this project would be called Tryon Business Center II, and 133 off-street parking spaces were being proposed. Mr. King said the property was zoned High Intensity Commercial, and was just over 5 acres in area. It is

located at the end of Executive Court. He said to the east of the site was a residential subdivision and to the northwest and south were commercial/industrial uses.

Mr. King stated that staff found the plans to be in general compliance with the Ordinance; however, staff had identified several outstanding questions that needed to be answered. He said first, there was no clear indication provided as to what landscaping would be used for screening and buffering in the Type D land use buffer required along the east side of the property. Mr. King said secondly, no employment information was provided so calculating the required off-street parking was difficult to do, adding that the minimum parking requirements for office use were one space per employee, plus one space per 300 square feet of gross floor area. Mr. King said for storage and warehousing it was one space per employee and two customer spaces. He said by his calculations this application would require 103 spaces although that provided the bare minimum; the application was proposing 133 spaces.

Mr. King said he believed the applicant may be able to supply answers to those questions, but Mr. Abbott had not yet arrived. He suggested they leave the hearing open and continue with the next item. There was no objection from the Board.

MOTION: Mr. Sikes moved to keep the public hearing open on Case #BA-01-2010 - Conditional Use-2 Permit request from Summit Consulting c/o Chad Abbott on behalf of Meadowlands Associates, to allow the applicant time to arrive at the meeting; and, to renumber this item to Item 6 and renumber Item 6 as Item 5. Mr. Sain seconded.

VOTE: Unanimous.

ITEM #6 #5: Case #BA-02-2010 – Conditional Use-2 Permit from Krishna Temple of NC, Inc. c/o Albert Hill for the construction of a 19,772 square foot temple with an associated 124 off-street parking spaces. The property is located on the east side of Dimmocks Mill Road approximately 1,600 feet south of the Ben Johnston Road/Dimmocks Mill Road intersection (Orange County Tax Map Reference #4.38.B.4A) and is zoned AR (Agricultural/Residential).

Mr. Hartkopf opened the public hearing. Mr. King stated that the property was located on the east side of Dimmocks Mill Road approximately 1,600 feet south of the Ben Johnston Road/Dimmocks Mill Road intersection. He said the applicant was requesting a Conditional Use Permit to allow for the construction of a 19,772 square foot temple with an associated 124 off-street parking spaces. Mr. King said the site was a little more than 6½ acres and was zoned Agricultural/Residential, with surrounding land uses of farming and single-family residential.

Mr. King said at the time that the staff report was prepared the only outstanding issue was that no stormwater plan approval had been received. He said that had been granted today by Orange County Erosion Control and had been provided to

the Board via an email with revised calculations for the basins, as well as a map indicating the location of the basins. Mr. King said it should be made known that when the application came through in 2007 the stormwater regulations were not as stringent as they were now, but the project was required to meet the Neuse River rules at this time.

Mr. Hartkopf said he believed the rather long slender rectangle on the map was the bio-retention area and there would be plantings in that area for the purpose of filtering out the organics. Mr. King replied he was referring to the wastewater system, and the rectangle on the map showed the stormwater system. He said that originally the stormwater was proposed to be handled with grass swales, but the issue was that that would not allow the applicant to meet the Neuse River rules in regards to handling suspended solids. Mr. King said in order to meet the rules, bio-retention basins had been added.

Mr. Hartkopf asked how that interacted with a statement in the agenda materials about a stream feature that was no longer present. Mr. King responded that was in reference to the SWID, or surface water identification determination. He said when this project had originally gone through site plan review a neighboring property owner had indicated there may be a stream on the property at the far southern end. Mr. King said he had advised the applicant that that may still be an issue and they were advised to have that investigated by Orange County Erosion Control. He said that investigation indicated that there was no water feature on the site, or it was not a water feature that would require a buffer.

Mr. Hartkopf said another prior issue had been the NDENR (North Carolina Department of Environment and Natural Resources) report was the affluent management, but believed that issue was now closed in that the applicant had received the wastewater system approval from NCDENR-Division of Water Quality.

Mr. Hartkopf said the absence of seats in the Temple was another issue. Mr. King said that was an issue the applicant had raised in their narrative, in that since there were no seats how they would apply the off-street parking requirements which was one space for every four seats, and that was generally interpreted to be in the main sanctuary for churches. He said the applicant had determined the number by looking at the State Building Code requirements of one person per 7 square feet for occupancy and equated that into persons' seats in the Temple hall. Mr. King said the Temple hall was 3,260 square feet in area which was calculated to an occupancy of 466, so one space for every four seats would be 116 parking spaces. He said the applicant was proposing 124. Mr. Hartkopf said he found that to be reasonable.

Mr. King swore in Michael Neal. Mr. Neal, the engineer for the project, said that one of the issues had been the stormwater, but as Mr. King had noted that had been granted approval today. He noted that the bio-retention basins would

include vegetation that would appear to be small gardens to help with the impurities in the water. Mr. Neal said they also had provided a letter from Orange County Erosion Control that addressed the issue of the stream, indicating that there was no water feature on the site that would require a buffer.

Mr. Remington asked for a brief explanation of the nature of the bio-retention basins. Mr. Neal stated that bio-retention basins were stormwater best management practices with the intent to collect the runoff generated by the first inch of rainfall which was directed and carried into the bio-retention basin. He said to create a bio-retention basin you removed the soil to a depth of between 2 feet and 4 feet, and replaced that soil with a specific mixture of soils that would allow the water to percolate into it at a relatively fast rate. Mr. Neal said at the top of the basin there would be mulch and other materials that were conducive to growing plants, and shrubs, trees, and other ground cover that carried that first flush of polluted runoff that was then directed into that basin. He said any water beyond that was not considered to be polluted and bypassed it by going over the berm. Mr. Neal said the polluted runoff that was taken into the basin was degraded over time by the soil and various plantings through a biological process.

Mr. Sikes said then what would be seen was a planted sunken area. Mr. Neal replied yes, that generally there would be a berm around it no more than one foot high, then there would be flat table-top area. He said generally such basins could be any shape but would need to have a width of 10 feet to 15 feet and be planted with a specific variety of plants along with ground cover.

Mr. Remington said the memo from Orange County Erosion Control said that the project proposed to make an in-lieu payment to offset remaining nitrogen loading which was allowed under current regulations. He asked what that payment would actually be used for. Mr. Neal said it went into a State fund that was used to restore streams and wetlands and other stream mitigation projects.

Town Attorney Bob Hornik stated that supposedly those funds were segregated by districts so that funds paid in a particular district were used within that same district. Mr. King said he believed it would also be within the same drainage watershed.

Mr. King swore in Richard Holcomb. Mr. Holcomb stated he was the owner of Coon Rock Farm which bordered that property on three sides and was between that property and the Eno River. He said his farm was a 45-acre sustainable, natural organic produce and animal farm, and said he was opposed to the project for many reasons. Mr. Holcomb said one was the scale, noting it was a 6½ acre site and the proposal was to build a very large structure that would disturb about 75% of the site. He said they were using a spray system rather than the normal septic system, as well as 124 parking spaces which was a fairly large amount of impervious area that would be dumping oil, gasoline, antifreeze, and any number of toxic substances onto the soil. Mr. Holcomb said that would all be draining

downhill, and he was downhill, and everyone who ate at Weaver Street Market would be downhill because that was where his produce was sold as well as other organic markets in the area. He said it boggled his mind that it was possible to put an open tank of human waste effluent 30 to 40 feet away from organic lettuce.

Mr. Holcomb said several years ago in California there had been an e coli outbreak in organic spinach which had been traced back to effluent from a factory cow farm where sick cows had e coli in their gut which contaminated the water, the water ran downhill and contaminated the spinach, people ate the spinach, and many got sick and some died. He said he was not suggesting that the Krishna's were going to kill anyone, but was saying that having an open spray septic system literally just feet away from organic produce was incomprehensible. Mr. Holcomb said in addition, the project was oversized for the small amount of area it had, that the traffic burden on that residential/farming area would be greatly increased, and believed it would decrease the property values of all the land around it. He said this would very much be a commercial structure, and believed that some of the structures associated with the Temple did not match that very well with a typical exclusion that would be available for a church due to the amphitheaters and other open entertainment-type areas, particularly since he believed it was the Krishna's intent to allow other organizations to use those areas. Mr. Holcomb said he did not believe that was an appropriate use of facilities in what was a residential area.

Ms. Lunsford asked Mr. Holcomb to point out his property on the map, which he did. He said he had 10 acres of sustainable, naturally grown vegetables with the remainder in pasture and trees.

Mr. Sikes asked if his property also bordered Occoneechee Mountain. Mr. Holcomb responded yes, noting that two sides bordered the river and the other the Occoneechee State Park. He said even if proposed bio-retention basins worked they would not be 100%, noting that man-made systems often failed, and anything that did not work would flow over onto his vegetables which would be consumed by citizens in Hillsborough. Mr. Holcomb said what was left would flow over into the Eno River and into the Town's drinking water. He stated it just seemed like a really bad idea to have the sewer sprayed over open ground.

Mr. Hartkopf asked how DENR approved of such a sewer disposal area and its effect on produce. Mr. Holcomb said he did not know that DENR was made aware of his farm and the close proximity of the produce. He said one of the disadvantages the homeowners had was that they did not have the resources to hire consultants and stormwater engineers to refute what a large organization like the Temple was able to afford. Mr. Holcomb said his point was more of a logical one, in that did you really want stormwater and sewer water just a few feet from lettuce and spinach you might very well be eating the next day.

Mr. Remington said then the portion of his farm where he grew the produce was immediately downstream from the bio-retention basin. He said his vegetables were growing 10 feet from the property line.

Mr. Sikes said the narrative did say that the technology used standard septic tanks to remove waste solids, and plant beds to remove pollutants from the water. He asked Mr. Neal were they then using a combination system. Mr. Neal pointed out that where the stormwater was located, there was no vegetation beds of any sort downstream from where the stormwater went, noting it actually went to the far end and then off into the woods. He said it did cross a very small dirt road that went back to Mr. Holcomb's farm and there was a small irrigation pond on the left side of that road. Mr. Neal said they had been concerned about that, but after looking at that they had determined that none of this site's stormwater would reach that irrigation pond. So, he said, the water would go into the woods so there was not a worry that it would cross over the produce.

Mr. Holcomb noted that his animals grazed in the woods, including sheep, cows and goats. He said he was a rotational farmer, in that where vegetables were one day there may be animals there the next eating the leftovers and providing the nutrients for the next crop.

Mr. Neal reiterated that the stormwater leaving the site would meet all State stormwater requirements.

Mr. Hartkopf asked Mr. Holcomb to point out on the map where he grew his vegetables. Mr. Holcomb did so. Mr. Hartkopf said the northeast corner of the property appeared to be a relatively open area. Mr. Holcomb said that was correct, and he grew vegetables in that area as well. Mr. Hartkopf said immediately to the north, between the project and what appeared to be a farming area, there as a long rectangular open area. Mr. Holcomb said that was a vegetable garden area as well, noting that at present it had animals on it but in the spring in would be planted. Mr. Hartkopf said then Mr. Holcomb used all three of those open areas for plants as well as other areas to the east. Mr. Holcomb said that was correct. Mr. Hartkopf said the animals were in the wooded area. Mr. Holcomb said the animals rotated from the wooded areas to the pastures to eat the leftovers and to provide nutrients for the soil. He said that was known as intensive rotational grazing.

Mr. Hartkopf suggested breaking the issues down into two issues, with the first being the bio-retention of the stormwater. He said that appeared to be down by a relatively wooded area, which presumably would be cleared. Mr. Neal said only the area for the basin would be cleared. Mr. Hartkopf said the area where the amphitheater and play space was proposed as well as the outdoor events space would be cleared. He said the bio-retention area was supposed to catch the first inch of rain.

Mr. Holcomb commented that in the last month there had been several days where he had gotten an inch of rain in the first hour of a rain event. So, he said, he believed the bio-retention system would overrun and pollute his fields.

Mr. Hartkopf asked about the septic spray field. Mr. Hornik suggested that someone explain exactly how that system would work.

Mr. King swore in Dr. Hal House. Dr. House said he had spent his 30-year career focusing on clean water to high levels, and did not believe in disposing of wastewater which was what septic systems did. He said such a system would carry water from a building into a septic tank and then by gravity went beneath the ground. Dr. House said at that point you had raw wastewater that had a higher potential of pollution of the environment. He said the treatment being proposed here was based on treatment and reuse of so-called wastewater, and applauded the Krishna Temple for taking that strategy as clean water was becoming more and more critical. Dr. House said they would clean the 2,250 gallons of water that would be created within the Temple when there was 450 people there to very high levels. He said the system was designed to recycle that water back into the building to flush toilets, irrigate the landscape, and for firefighting purposes.

Dr. House said he had started off at NC State University 20 years ago developing technologies to do this system, and he had been using it in business the last ten years. He said he was doing a project now in Pittsboro that was going to be used in a new library that was under construction, and he had a system at his office that had been in place for 12 years that was cleansing water to a very high level and recycling it back into the building to flush the toilets. Dr. House said that was the first project in the State to treat and reuse water.

Dr. House said the treatment technology used used vegetative sand filters and constructed wetlands, and it was a process that mimicked nature where nature cleansed water as it ran off the land into wetlands. He said they had found that to be very effective, and for this design they had gone to extremes to make the water very clean. Dr. House said the State required only one pass through one of the vegetative sand filters, and they were actually doing three passes in addition to the constructed wetlands. So, he said, they had over-designed tremendously to meet their goals.

Mr. Hornik said then the wastewater went through the sand filter and then through the wetland before it was sprayed. Dr. House responded yes. He said it came out of the building and went into a septic tank where the solids were settled out. Then, he said, the water went into a pump chamber and was pumped into the top of the vegetative sand filter. He said it then percolated down into the plant roots and sand and gravel and was cleansed and went into the constructed wetland. Dr. House said it then came back around and did that again, and then it went into another pump chamber and was pumped through another vegetative sand filter where it again percolated through plant roots and sand and gravel. He said at that

point the water was very clean, with nitrogen levels at better than drinking water standards for nitrate and the ammonia was down to less than .1. Dr. House said that clean water was then irrigated on top of the ground, and the system was designed for that clean water to enter the ground similar to the way rain water did, which was spread out in a natural way.

Dr. House said State rules required that the design had to be created in such a way that there was zero runoff, in that all the water had to go into the ground. He said if it was too wet to irrigate, then the bio-retention pond would be used to store the water until it could be irrigated. Dr. House said in terms of potential health hazards there were two different forms of disinfection which were ultraviolet light and chlorination although they really needed only one method. He said for water going back into the building you had to use chlorination, but for irrigation you only had to use ultraviolet light. He said they used both methods, so they would be killing pathogens.

Dr. House said they did a lot of collaboration with scientists particularly in regards to pollutants of the future, notably estrogen compounds from pharmaceuticals and the like. He said through Ph.D. research out of UNC's Environmental Sciences and Engineering Department it had been found that this system removed those better than the standard wastewater treatment plant. Dr. House said his company was all about clean water, recycling, and making good use of it, and they were very excited about this project. He said he was always willing to share information with the Town and residents about the system, and would welcome people to come over during construction so they could understand how the system worked.

Mr. Remington asked at what stage the water went through the ultraviolet light and chlorination process. Dr. House said the water had to be fairly clear to use the ultraviolet light process, so that happened after the filtration processes.

Ms. Lunsford asked how it would work if the water had to be held in the retention pond versus spraying it. Dr. House said if it was too wet to irrigate then the water would be captured and held in the bio-retention pond. He said the system had to have an operator to oversee the system, so if necessary the water could be diverted into the storage pond. Dr. House said when it was time to take the water out, the irrigation chamber was plumbed into the side of the storage pond so that you could irrigate directly from the storage pond into the landscape.

Mr. Sain asked if the storage pond was lined with anything. Dr. House said the pond was created by doing a very clean excavation to remove rocks and roots, and then a layer of 8 ounce Geotech and then a 3 millimeter polyethylene liner was installed. He said you then added another layer of 8 ounce Geotech on top of that, a layer of soil for plantings, and then you fill it up to what they called the aesthetic level with vegetation around the edges just as any other pond. Dr. House said the space above that was the actual storage space, so the pond was always full of

water and looked nice, and then when you had to store water it was stored above the aesthetic level to what was called the storage level.

Mr. Sikes said when that process was done over time, was there a saturation point of the filtration, or was it in a separate system and emptied periodically. Dr. House said as the plants grew, they pumped air into the sand and gravel, and when the wastewater came in full of organic materials the air helped to grow the microbes that decomposed the organic matter. He said so when the solids were coming in they were being decomposed by the microbes of the plants and turned into gas, and if the system was designed properly you would have equilibrium where you would not accumulate materials.

Mr. Hornik asked had any studies been done about the soil in the infiltration area so that you knew how much spray could be absorbed. Dr. House replied yes, noting that in order to do this design a soil scientist had to look at the soil. He said after looking at the soil the scientist would insert a tube with water into the soil to see how fast the water moved out. Dr. House said that would tell them exactly how much water the soil could accept, and the irrigation system would be designed based on that. He said the soil scientist would give them two numbers, how much water the soil could accept and how much it could accept over a given time period. In other words, he said, how long you could leave your pump on before the soil got too wet.

Ms. Lunsford asked once the system was in, was there any periodic testing done to test the soil after it was sprayed. Dr. House said yes, that the State required monitoring of both the reuse treatment and the irrigation. He added that the owners of the system were also required to have a back-up generator on site should it be needed to keep the pumps operational.

Mr. Hornik said then there were monitoring requirements as well as reporting requirements by the State. Dr. House replied yes, and the permits were issued by the State. He said typically the monitoring was required to be done either monthly or twice monthly, and the nitrogen, phosphorus, and organic materials were measured.

Mr. Hartkopf said after the water went through the filtration was the odor treated, noting he was aware of other sites that were sprayed than carried an aroma of ammonia. Dr. House said well-designed systems that were installed properly and were maintained did not carry an odor. He said the system was designed in such a way that you did not smell raw wastewater on the treatment side, which was usually where odors originated. Dr. House said that the multiple filtrations prevented odors on the treatment side as well.

Mr. Hartkopf said in standard wastewater treatment plants there was an odor that he did not attribute to ammonia, but did not know what that was. Ms. Lunsford remarked she believed it was sulfur. Dr. House said where the most odor was in

any system was at the beginning of the system with the raw wastewater in a septic tank, normally when the top was off that tank. He said they had plastic risers on their tanks with gasket lids to keep all odors inside the tank, which was the first step. Dr. House said with most wastewater treatment plants the odors were attributed to too much moisture in that they were trying to filter a lot of water and they were not getting enough air into the water. He said with sand and gravel filtration beds the water was added in a controlled manner, with timed doses of one to three gallons per square foot per day, so that the beds were always full of air. Dr. House said that prevented the odor Mr. Hartkopf had described.

Mr. Hartkopf asked about the wastewater that would be present at the southern end of the site. Dr. House said that was for storage. Mr. Hartkopf asked where the septic tanks would be located. Dr. House responded they were close to the building. Mr. Hartkopf asked about the sand filtration system. Dr. House said that was treatment, irrigation, and storage, and were integrated into the amphitheater as well as the circle indicated on the map. He said they were aesthetic landscape features as well as cleaning the water, adding that inside that circle was the constructed wetland. He also pointed out the location of the five-day storage pond on the map. Mr. Hartkopf said on the north end of the site was where the water would ultimately be sprayed. Dr. House said that was correct. Mr. Hartkopf said what was sprayed would be water that was post-chlorinated and UV treated. Dr. House replied the water irrigated would be UV treated, noting that the water treated with chlorine would be used inside the building.

Mr. Hartkopf asked how that water would affect vegetables growing nearby. Dr. House said the system design was based on regulatory setbacks both from the treatment area and irrigation, and those setbacks were based on how far potential pollutants would move. He said the chance of pollutants was very, very low, and once the water was irrigated the chance went down even lower. Dr. House said if the system was not installed properly or it was over-irrigated, then pollutants would be moving. He said vegetation such as the grass cover and the forest all cleaned water just as the plants in the sand filters, so once irrigated the cleaning actually continued even further.

Mr. Sikes asked what exactly was in the irrigation fields; was it a sunken area or was it flat. Dr. House said that regulations required that it be vegetated, and in this case it was part pine and part grass and part landscape plants. He said they were required to show that the amount of nitrogen and phosphorus being put into that area was being removed by the plants, noting they could not irrigate if the plants could not use what was being put out.

Mr. Hartkopf said in regards to organisms in that UV treated water, those organisms should have been eliminated by that point. Dr. House replied yes, noting once the water had been cleaned and made very clear, the ultraviolet light would go through that water and basically kill any bacteria or virus present in the water. Mr. Hartkopf said it was his interpretation that this type of system would

not be allowed if it could in any way damage Mr. Holcomb's ability to continue his business on his property. Dr. House responded that was correct, adding that the animals likely added more bacteria and viruses to the landscape. Mr. Hartkopf asked if the sheep, goats and other animals excrete e coli. Dr. House said there was a lot of conversation about diseases between pigs and humans, and that conversation has evolved in science. He said you would not want to be ingesting animal waste in any case. Dr. House said that there were many different types and strains of e coli, and some that was more associated with animals than with humans so pigs would have their own type of e coli. He said in terms of the disinfection and cleaning they were doing they had gotten those issues down to what was certainly a reasonable risk, noting that nothing was a zero risk.

Mr. Hartkopf said that Mr. Holcomb was doing farming on a more natural basis, and in his lay opinion it would seem that factory-type farms and slaughter houses had poor handling practices of animal products and by-products. Dr. House said he understood the concern of contamination, and the concern of irrigating a crop like lettuce with treated wastewater. He said what was typically done was that the reuse water that was used for food crops was put beneath the lettuce as opposed to on top of it, adding that the State was looking at that as a viable option. Dr. House said once you cleaned the water and it sparkled, it basically could be used to grow food products. Dr. House said he could honestly say that everything possible had been done to manage bacteria, viruses, and nutrients, and the system had been over-designed to make that happen. He said the State approved the design in its regulations as a reuse system.

Mr. Hornik asked what had been done in the design to make sure they were not spraying treated water onto Mr. Holcomb's property. Dr. House said whenever they were close to a property line they used drip rather than spray. He said the spray technology used was low profile spray with spray heads that popped up out of the ground and had a very low spray projection. Dr. House said as well, the vegetation around the spray area caught the spray and prevented it from traveling.

Mr. Hornik asked would the system be spraying every day. Dr. House replied it depended on how much water was used, noting with a maximum of 450 people at the Temple during services that water would go into the system and be cleansed. Mr. Hornik asked was the system designed so that if people were at the Temple every day it would still function. Dr. House replied yes, that the system was designed as if 450 people would be there every day, and it was based on 5 gallons per person. Mr. Hornik asked if that was the standard the State recognized. Dr. House replied yes.

Mr. Sikes asked what the cost was for that system as compared to a traditional septic system. Dr. House replied that a traditional septic disposal system for a home would cost between \$4,000 and \$6,000. He said this system was about the size of six houses, and if they were doing a house the system would run between \$20,000 and \$35,000. So, he said, there was a lot more cost involved. Dr. House

emphasized that if the Temple elected to dispose of its waste in the traditional manner, they would be putting 2,250 gallons of raw wastewater that had only gone through a septic tank beneath the ground, and the potential there was certainly much greater than anything they were talking about.

Mr. Hartkopf asked for information regarding the stormwater runoff. Dr. House said the bio-retention for suspended solids was also good for nitrogen. He said it was very similar to a constructed wetland in that it held water and the plants and the gravel and the microbes cleaned the water as it sat there.

Mr. Hartkopf asked about the concern regarding automobile byproducts leeching from the asphalt, and asked would that damage the plants that were there to clean the water. He asked were there some processes in place to inspect that. Dr. House said that was where the plants were better, noting the plants, particularly wetland plants, took up the pollutants and tucked them away in their tissue so that they did not get away. He said that was why they had been so excited by the so-called emerging contaminants like pharmaceuticals, household chemicals, and estrogen compounds because they were being treated nicely with their system. Dr. House said they did not yet know why but scientists were looking at that, but those contaminants were removed quite nicely.

Mr. King said he wanted to bring up the issue of overflow of the wastewater pond in relation to the bio-retention area. He asked what the chances were of that and what could happen as a result. Dr. House said the wastewater pond was designed based on local weather conditions and in conjunction with how much wastewater would be created on a daily basis. He said they would not be creating that much wastewater though they had designed for that. Dr. House reiterated that there was a normal, aesthetic level, and then there was the capacity within the pond for 96 days of bad weather per year, and above that was emergency storage which was called free board that was another two feet. So, he said, you had the 96 days of storage for bad weather, plus two feet of free board, plus toilet flush that was recycled.

Mr. Sain said the water in the pond was pretty much cleared since it was already cleansed, so if it were to overrun it would not be polluted water. Dr. House said that was correct, noting it was very clean water and it was designed not to overflow. He said they had designed it for a bridge to go across it so that people could enjoy it like an aesthetic pond. Dr. House said fish such as Koi would do well in the pond.

Mr. Hartkopf said in regards to the additional uses on the property, did that hold any concern or did zoning regulations address that in any way. Mr. King said that could be considered accessory uses to a place of worship. He said he supposed the concern could be what the amphitheater would be used for or the other outdoor event areas. Mr. Hartkopf said he recalled that those areas would be used

for outdoor education. Mr. King said there had been a concern expressed that the areas could be rented out for other uses.

Mr. King swore in Albert Hill. Mr. Hill said the property would not be rented to anyone for any use other than Temple purposes. He said the amphitheater was also for educational purposes, services, and outdoor events associated with the Temple. Mr. Hill said that area would be used primarily in the summer months and to accommodate the one or two religious festivals they held each year. He said the area was more of a grassed berm-shaped amphitheater that would not be used for concerts or the like. He said also in that area, under what would be the stage area, would be all the mechanical devices that managed the wastewater system.

Mr. King said he had received a phone call today from one person who had expressed concern about whether the amphitheater and outdoor event features should be allowed.

Mr. Sikes said for any outdoor event, the Temple would be required to adhere to Orange County's noise ordinance.

Mr. Hornik said for the Board's consideration, the courts were more and more taking a liberal interpretation of what was an accessory use of a church.

Mr. King stated that the Town's zoning ordinance also had noise requirements that would address any issues that might arise. He said since this site was in the ETJ (Extraterritorial Jurisdiction), Orange County's noise ordinance would also apply.

Subal Das, having already been sworn, stated that he had been a member of the Temple and an Orange County resident for 15 years and wanted to address the issue raised of property values. He said in his 15 years he had found that as young members joined the church, got married and had families, and gradually grew older they wanted to live closer to the Temple. Mr. Das said he believed when people wanted to live close to the Temple you would not have to worry about property values being affected.

Mr. King swore in Frank Cohen. Mr. Cohen said the existing Temple had neighbors that were members of the Temple, and they had held some large festivals during that time. He said he had never observed any complaints coming from the neighbors during those times, noting there had never been any noise issues. Mr. Cohen said as mentioned, there were regulations in place to monitor that should the need arise.

Mr. Sikes asked would parking during those larger events cause any issues. Mr. Cohen said they would maintain ownership of the existing property across the street, so should the need arise there was plenty of space for overflow parking.

Mr. King asked if the large events were coordinated with the Orange County Sheriff's Office. Mr. Cohen said that had not been necessary in the past, but they were willing to do that. He said they had so many volunteers during festivals that they had always managed that in-house.

Mr. King swore in Deborah Malinowski. Ms. Malinowski said that parking was an issue, noting that at times cars pulled off the side of the road and parked on neighbors' property. She said at times you could not get out of your driveway, but noted the Temple had been good about having someone present to get cars in and out. But, she said, there had been a time when one person had been telling traffic to go and another was telling traffic to stop, so that was not coordinated. Ms. Malinowski said when you had that kind of traffic the road needed to be widened with a turn lane added. She said Orange County had on their plans for years to widen that road, and believed that should be done before this project was approved so that the rest of the neighbors could get in and out without incident. Ms. Malinowski said she believed the Temple should be able to build what it wanted, but she did not want her rights taken away in the process.

Mr. Hartkopf asked how many parking spaces were at the current Temple. Mr. Cohen said they did not have demarcated parking spaces, but there was space for approximately 60 cars. Mr. Hartkopf said his point was that if that area was used for overflow parking for the new facility, then that might address the issue of cars parking on the side of the road as mentioned by Ms. Malinowski.

Ms. Malinowski said she used her property for agriculture and frequently pulled a trailer as did her neighbors, and her concern was using that road and coming up inclines where sight distances were limited. She said if there was a turning lane it would be much safer for everyone. Ms. Malinowski added that one side of the road was served by Duke Power and the other by Piedmont Electric. She said since they were on the end of the line on the Duke Power side, they were usually the last ones to have their power turned back on even though those across the street had power, so that was an issue that should be considered.

Mr. Cohen said he believed Ms. Malinowski made a good point and he would consult with the planning team to identify ways they might address that.

Mr. Hornik asked had NCDOT taken a look at the plans, and if so what had been their comments. Mr. King said that NCDOT had been given the opportunity to look at the plans but offered no comments other than the need for an encroachment agreement for the electric utility line in the NCDOT right-of-way, and of course a permit for the driveways.

Mr. Neal said they had had discussions with NCDOT and had looked at the need for a turning lane, but NCDOT had not requested that and they were given no indication that a turning lane was necessary. He said the use of the property would not be during normal peak driving hours, and the sight distance for the

driveways was excellent in that there was adequate spacing to provide time to see and be seen when entering and exiting the site. Mr. Neal said there was also adequate spacing for cars to queue in when waiting to park without blocking the street.

Mr. Remington said the comment about power outages brought up the question of what would happen to the sewer disposal system if there was no power. He asked was there some kind of back-up generator. Dr. House stated that was required, noting it would automatically flip over to the back-up system if the power went out.

Mr. King swore in Jessica Knight. Ms. Knight said she had recently purchased property across the street from the site of the new Temple. She said she had lived in the community for 13 years and was pleased to see the Temple community growing. Ms. Knight said the Temple had been in Hillsborough since 1984 and the members had always done their best to be responsible community members and to consider how their growth was affecting others. She said they were thrilled to have the opportunity to build the new facility so that they could continue to grow and share with the community, and because they were a part of the community they wanted to be responsible and do their part.

Mr. Holcomb said Dr. House had made two comments that were relevant to him. He said there would be plumbing that separated the water going back into the Temple used to flush toilets so that it did not get into the sinks. Mr. Holcomb said that led him to believe you should not drink the water and by association that meant you should not put in on lettuce and eat it. He said it was also said that these types of systems worked well when installed and maintained properly, and wondered how you would know if the system was installed and maintained properly. Mr. Holcomb said his entire livelihood was being based on the installation and maintenance of a system that was being crammed into a very small area that would endanger the lives of people if it went wrong even the slightest bit.

Mr. Hartkopf said he had understood that the system had to be maintained. Mr. Hornik said there was testimony that there were State monitoring and reporting requirements.

Dr. House said the only way he could see wastewater getting to the lettuce would be through the air, noting that plants did not uptake viruses and bacteria to the vegetative part of the leaf. He said they could offer, at whatever distance Mr. Holcomb determined, to use drip as opposed to spray to prevent the water from getting up into the air. Dr. House said he did not believe there would be any significant risk to Mr. Holcomb's plants using drip, but they could go that extra step and make sure the water stayed beneath the layer of mulch when it was irrigated and that there was adequate vegetation between the spray field and Mr. Holcomb's crops. Dr. House said they could also chlorinate the drip to cleanse it

even more, noting that chlorination with the UV was about the best you could do to treat any bacteria or virus.

Mr. Holcomb said the best you could do would be to not have the system that was spraying potentially toxic water into the air and on the grass to leech onto your neighbor's property. He said he did not use chlorine or other chemicals because he grew organic vegetables. Mr. Holcomb said he had no issue with having the Temple built at that location, noting the Krishna's had always been good neighbors. But, he said, he had a problem with the runoff, the potential problems with the impervious surfaces, and he had a real problem with human fecal matter contaminating his vegetables.

Mr. Hartkopf stated Mr. Holcomb and Dr. House may have to continue their discussion outside of this forum, noting the Board would deal with the testimony that had been provided as matters of fact to make their decision. He said the Board appreciated Dr. House's offer to work with Mr. Holcomb. Dr. House stated that the State required that there be no runoff from the system, and it was designed in that way. He said he understood the concerns, but that everything possible was done to increase the assurance that the system would operate in the way he had described.

Mr. King swore in Elana Peace. Ms. Peace said she lived directly across from the site, and believed it was a small amount of area that would have an enormous amount going on. She said she had no issue with the Krishna's but was concerned about the wastewater system. Ms. Peace said this area had droughts as well as storms, and her concern was that her well and her home was close to the road. She said during the festivals, she usually had to place cones in her driveway to prevent people from blocking her drive, making her feel trapped. Ms. Peace said there had also been times that the police had been called by neighbors because of the traffic, noting that people tended to park on both sides of the road making that narrow road even narrower. She said adding to the problem was the many tractors and horse trailers using the road. Ms. Peace said her biggest concern was how close she was to the road and what odors she may be subjected to; that the road needed to be widened, and how the new facility would affect her property value.

Ms. Peace said she would like to be informed when the festivals were planned so that she could prepare her animals, noting they tended to get upset. She said if she knew when the festivals were planned she could leave her home for the evening, noting that even though the festivals were not terribly loud, that people sometimes walked through her yard, and she would rather be away for the evening and not exposed to that.

Mr. King swore in Lisa Kubish. Ms. Kubish said they had just moved to Hillsborough this past year and had begun "free-ganic" farming on the existing Temple grounds, noting that was different from organic farming in that they used

no animal products or byproducts typically used in organic farming. She said in addition to the vegetables grown they also grew flowers and intended to plant ½ acre of flowers in the coming year. She said when the new Temple was built they would continue that model across the street, and was hoping to have plenty of irrigation for the flowers. Ms. Kubish said they hoped that the larger tract would bring people to the area to visit a completely green, eco-friendly botanical garden that people would appreciate. She said based on what she knew about organic farming she had no concerns about the water treatment system, noting that they would be nourishing the soil through different methods. Ms. Kubish said she was not fearful of the system affecting that, noting that they used drip irrigation on the current site which reduced the amount of water that had to be used and in turn not creating runoff. She said she agreed that the proposed system would not produce any runoff, noting they would be using that same system to irrigate their vegetables and flower gardens.

Jeff Swicegood, having already been sworn, spoke in support of the Temple. He said that the Temple had been in its current location since 1985 and had good relationships with local businesses. Mr. Swicegood said the Temple served 43 families in Hillsborough, 89 in Chapel Hill and Carrboro, 10 in Mebane, 125 in Durham, 15 in Burlington, 90 in Greensboro, and 275 in Cary. He said using 4 persons per family, the current Temple served 584 persons in Orange County and an additional 2,020 within a 35 mile radius.

Mr. Hill explained that the Temple was not like an average church that everyone came to on Sundays. He said many of the families came several times a year only, so the figures addressed in regards to parking and sewage and septic was based on an integer that was above what they had seen in the last 24+ years that the Temple had been at its current location. Mr. Hill said he did not want to leave the impression that that many people would be at the Temple all at one time. He said in regards to Mr. Holcomb's issues, he said he understood the concern about his livelihood and the affect on his property, and believed it was important that the Board consider that. Mr. Hill said at the same time, it was important that the Board consider, once all the science and regulations were taken into account, whether those concerns were still reasonable.

MOTION: Mr. Sain moved to close the hearing on Case #BA-02-2010 - Conditional Use-2 Permit request from Krishna Temple of NC, Inc., c/o Albert Hill. Mr. Sikes seconded.

VOTE: Unanimous.

Discussion:

Mr. Sain said it appeared to him that the filtration system, the way it had been explained, was much safer than having animals on the land because there were less contaminants. He said the system had safety features built in that did a better job than what the State required.

Mr. Hornik stated that one of the things the Board had to consider was the evidence presented. He said the standard was the substantial competent evidence in the record, so they had to consider the quality of the testimony about facts and opinions.

Mr. Remington said he agreed with Mr. Sain, noting that he took Mr. Holcomb's concerns extremely seriously and the Board wanted to make sure that there was no threat to the public health and safety. He said nothing was risk free, but believed the competent testimony provided indicated that the proposed system came as close as anything could. Mr. Remington said he saw nothing in the evidence that indicated a particular kind of risk based on the design of the system.

Ms. Lunsford agreed, noting the State regulated such systems and they were monitored.

Mr. Sain agreed, noting that if during the monitoring something was found to be not working properly then the Temple would be required to have it addressed.

Mr. Hornik said if he understood Dr. House's testimony, the filtration area and the irrigation system was designed in such a way that there would not be any airborne water traveling to anyone else's property. He said if the Board was still concerned about that, they could impose a condition that drip irrigation only be used. Mr. Hornik said he was not advising that the Board require that, only that it was a condition that could be required if the Board felt it necessary.

Mr. Hartkopf asked could such a condition be worded so that the applicant addressed it in the way they saw fit, in that the Board would not say that drip irrigation had to be used entirely but that the applicant was responsible for not spraying beyond their property. Mr. Hornik said that State regulations already required that, according to Dr. House.

Mr. Sain said with the low pop-up heads that would be used to spray he did not see how the water could get airborne.

Mr. Hartkopf asked if the pop-up heads emitted a multitude stream as opposed to a spray. He said he believed it was actually a misnomer to call it a spray system because it was not a mist spray, it was a multitude of streams that came out in several directions. Dr. House said that was exactly right, noting you had to choose the hardware that produced droplets rather than a mist. Mr. Hartkopf said then Mr. Holcomb's property was protected by law.

Mr. Sikes asked what the standard setback was between the property lines. Mr. King responded there was a 50-foot setback for buildings, but not a buffer requirement for the property lines per the Town's regulations. However, he said, there was in the State regulations. Mr. Sikes said from looking at the slope of the

land on the map, the slope of the northwestern corner of the Temple property actually pushed runoff back onto the property.

Mr. Remington said it also appeared that the bubble around the irrigation fields stopped 40 to 50 feet from the east property line. He said in looking at the outlet to the bio-retention basin, assuming that was where outflow would go, it was definitely below the south end of that field so it would be going into the wooded area rather than the cultivated area. Mr. Remington said that would reduce the concerns about what might come off the parking lot and into the storm drainage system.

Mr. Hartkopf said recourse for any damages to crops or livestock would be available to Mr. Holcomb through the courts. Mr. Hornik said he would think so.

Mr. Hartkopf said in regards to the road, he understood that the Temple would not increase traffic during peak hours. He said he understood the concerns about the road perhaps needing turn lanes or widening, but NCDOT had not brought that issue up. Mr. King said during the Technical Review Committee meeting that was held with review agencies, a NCDOT representative had indicated only that an encroachment agreement would be needed for the electric line within the NCDOT right-of-way, as well as the need for driveway permits.

Mr. Hartkopf asked about parking on the side of a State road. Mr. King said that was a matter for the Sheriff or the State Highway Patrol.

Mr. Sain said he believed that issue would cure itself, based on the number of parking spaces at the new Temple and the fact that the current Temple site would be used for overflow parking for the new Temple.

Mr. Hartkopf said the church leadership had also made note of that and believed they would address it in the future.

Mr. Remington asked how the proposal fit in with the Strategic Growth Plan and the Land Use Plan, as far as a place of worship in that residential/agricultural area. He said he did not see that as something that typically would not happen, noting the number of rural churches. Mr. Remington said that would minimize the idea of complete segregation of uses, and to his way of thinking this was something that did fit in to the overall zoning classification.

Mr. Sikes said the fact that the existing Temple was there would speak to that. Mr. Hornik said something to keep in mind was that the Zoning Ordinance said if the applicant satisfied all the specifications of the Zoning Ordinance for the use, then they were entitled to the Conditional Use Permit. He said unless there was competent evidence in the record to support one of the four Findings of Fact against the CUP, and if the applicant had demonstrated that they satisfied all the

specific requirements of the Zoning Ordinance, then the process indicated that they would receive the CUP.

Mr. Remington said until recently, he would have interpreted Finding D in terms of the Findings of Facts to say that they had to find that the use was consistent with the Comprehensive Plan, but apparently the Court of Appeals had indicated that that interpretation was not correct. He said even given that, he would be hard pressed to say that you could not have places of worship in a rural/residential area. Mr. Hornik said the ordinance already said that you could as long as you satisfied the specifications.

Mr. Hartkopf suggested that they work through the worksheet provided by Mr. King. There was no objection from the Board.

Mr. Hartkopf read each of the requirements noted on the worksheet, asking the Board for any comments of objections. The Board agreed that the application met each of the requirements as noted on the worksheet.

Regarding the Findings of Fact, the Board after a brief discussion agreed that the proposed project met each of the findings.

Mr. King asked Mr. Hill if had he received his email regarding the ten conditions that were recommended to be imposed. He asked that Mr. Hill look those over and determine if he was in agreement with those conditions. Mr. Hill responded he had no issues with the proposed conditions.

MOTION: **Mr. Remington** moved to approve Case #BA-02-2010 - Conditional Use-2 Permit request from Krishna Temple of NC, Inc., c/o Albert Hill, based on the fact that the application satisfied Articles 4.9, 4.14, and 4.3 of the Zoning Ordinance, subject to the following conditions:

- a. Construction Plans: Final, detailed construction plans including site, grading, stormwater control, erosion control, landscaping, lighting, and architectural elevations, shall be submitted to the Zoning Officer for review and approval prior to the issuance of a Zoning Compliance Permit. The plans shall conform in all respects to the plans approved as part of the Conditional Use-2 Permit application, including any authorized changes approved by the Board at the hearing, and demonstrate compliance with all applicable approval conditions and standards of the Zoning Ordinance.
- b. Stormwater Control Plan: The applicant shall submit a Stormwater Control Plan for review and approval by the Erosion Control Division of the Orange County Planning and Inspections Department. Written evidence of plan approval shall be submitted to the Zoning Officer prior to the issuance of the Zoning Compliance Permit.

- c. Stormwater Best Management Practice (BMP) Construction Certification: A certification letter signed and sealed by the designing engineer stating that the on-site stormwater control BMPs, as constructed, will function properly shall be submitted to the Zoning Officer prior to the issuance of a Certificate of Occupancy for the project.
- d. Stormwater BMP Operation and Maintenance Plan: A Stormwater BMP Operation and Maintenance Plan prepared by the designing engineer and executed by the property owner shall be recorded with the Orange County Register of Deeds Office. The plan shall include the owner's financial responsibility and include the maintenance schedule of the facilities to ensure that it continues to function as originally intended. Evidence of the recordation of the Operation and Maintenance Plan shall be provided to the Zoning Officer prior to the issuance of a Certificate of Occupancy for the project.
- e. Stormwater As-built Plan: An "as-built" plan for all stormwater management facilities shall be submitted to the Zoning Officer after final construction is completed and before a Certificate of Occupancy is issued for the project.
- f. As-built Survey: An as-built survey prepared by a professional land surveyor showing all above ground structures including, but not limited to, buildings, eave overhangs, awnings, HVAC units, walls, fencing, parking lot and driveways, freestanding signs, dumpster compounds, freestanding identification signs, stormwater control facilities and freestanding light poles shall be submitted to the Zoning Officer prior to the issuance of a Certificate of Occupancy for the project.
- g. Building Height Verification: The applicant shall provide a written and sealed certification, prepared by a professional land surveyor, verifying that the tallest point of the temple structure is 65 feet in height or less on all sides of the building. The height of the building shall be measured from the mean elevation of the finished grade of the building to its highest point. This certification must be received prior to the issuance of a Certificate of occupancy for the project.
- h. Utilities Encroachment Agreement: A fully executed North Carolina Department of Transportation (NCDOT) Encroachment Agreement for the electric line to be installed in the right-of-way of Dimmocks Mill Road will be provided to the Zoning Officer prior to the issuance of a Certificate of Occupancy for the project.
- i. Driveway Permits: Approved NCDOT Driveway Permits shall be submitted prior to the issuance of a Zoning Compliance Permit for the project.

- j. Sidewalk Easement: A public pedestrian/sidewalk easement granting access for maintenance by the Town of Hillsborough for the required sidewalk located along Dimmocks Mill Road and on the property subject to the Conditional Use-2 Permit, prepared in a format acceptable to the Town of Hillsborough Town Attorney, shall be recorded in the Orange County Register of Deeds Office prior to the issuance of a Certificate of Occupancy for the project.

Mr. Sain seconded.

VOTE: Unanimous.

ITEM #5 6: Case #BA-01-2010 – Conditional Use-2 Permit request from Summit Consulting c/o Chad Abbott on behalf of Meadowlands Associates for the construction of 4 buildings totaling 59,500 square feet in gross floor area for use as flexible office, warehouse and storage space. 133 off-street parking spaces are to be provided. The property is located at the end of Executive Court (Orange County Tax Map Reference #4.40.A.11) and is zoned HIC (High Intensity Commercial).

Mr. Hartkopf noted that the public hearing was still open on this matter. Mr. King reiterated that the purpose of the Conditional Use Permit was to allow for the construction of 4 buildings totaling 59,500 square feet in gross floor area for use as flexible office, warehouse and storage space. He said this project would be called Tryon Business Center II, and 133 off-street parking spaces were being proposed. Mr. King said the property was zoned High Intensity Commercial, and was just over 5 acres located at the end of Executive Court. He said to the east of the site was a residential subdivision and to the northwest and south were commercial/industrial uses.

Mr. King stated that staff found the plans to be in general compliance with the Ordinance; however, staff had identified several outstanding questions that needed to be answered. He said first, there was no clear indication provided as to what landscaping would be used for screening and buffering in the Type D land use buffer required along the east side of the property. Mr. King said secondly, no employment information was provided so calculating the required off-street parking was difficult to do, adding that the minimum parking requirements for office use were one space per employee, plus one space per 300 square feet of gross floor area. Mr. King said for storage and warehousing it was one space per employee and two customer spaces. He said by his calculations this application would require 103 spaces although that provided the bare minimum; the application was proposing 133 spaces.

Mr. King swore in Chad Abbott of Summit Consulting. Mr. Abbott stated that plans had been submitted to all appropriate agencies and no negative comments had been received. He said to speak to the issues raised by Mr. King, the lights typically used were at a 25-foot mounting height, but because the buildings were 3 feet shorter the mounting height would be dropped to 22 feet. Mr. Abbott said

the landscaping on a tree-by-tree basis was not shown on the proposed landscaping plan along with the 50-foot buffer. He said there were existing trees in the area, and it was the applicant's intent to fully comply with the Type D buffer. Mr. Abbott said they would be disturbing parts of the buffer to cut down the slopes, but they would replant those areas as necessary to comply with the 50-foot land use buffer being opaque to a height of 6 feet and visual obstructions from there up to 20 feet.

Mr. Abbott said that Mr. King's staff report had referenced that the applicant had requested that on the southeastern end there was a slope that would be cut back to make room for the docks at the back of that one building along the southern property line, noting that 7-foot slope would taper down and turn into a field slope. He said along the field slope section they would replant to fully comply with the Ordinance. Mr. Abbott said they were requesting that the cut slope count towards some of the opaque screening required along that area. He said the report said that if you used a cut slope it should be 12 feet tall, but the ordinance required you to have an opaque screen up to six feet. Mr. Abbott said if they had a cut slope that was 7 feet then you could not see through it, so that would comply with the opaque requirement of 6 feet. He said then of course, the existing vegetation beyond that slope would provide the visual obstructions from 6 to 20 feet, and if it did not then they would comply with the ordinance. Mr. Abbott said it was their intent to comply, but until they began the site disturbance and identified which trees would remain, it was difficult to show on a tree-by-tree basis how many would remain. But, he said, the ordinance was clear as to how many trees per linear foot were required and the degree of opaqueness it must comply with, so they fully intended to do that. Mr. Abbott said even though it was not shown on the plans, they did say in their narrative submitted with the application that a 50-foot Type D buffer would be placed along the east side of the property.

Mr. King said for the Board's information, the Type D land use buffer was a Subdivision Ordinance requirement and was supposed to be there when the subdivision was approved. He said that the opaque portion of that Type D buffer was a planted buffer that was measured from the ground height to at least 20 feet, with a semi-opaque or intermittent visual obstruction from the opaque portion to a height of at least 30 feet.

Mr. Remington said then that would exceed the Zoning Ordinance buffer in this case. Mr. King said the Zoning Ordinance said one thing, and the Subdivision Ordinance said another. Mr. Abbott said based on Mr. King's comments in the staff report, it talked about the Type 1 buffer having to have the opaqueness of 6 feet. Mr. King said the Zoning Ordinance required a Type 1 buffer that required a 6 foot screen with a semi-opaque screen of at least 20 feet at maturity.

Mr. Sikes asked was that only for that eastern side. Mr. King replied yes, noting that a portion of the cut slope in the southeast corner Mr. Abbott had described

would be included in that requirement. He said the question would be whether the Type 1 screening or the Type D screening would apply, noting that the existing vegetation adhered to the Type D buffer when the subdivision was approved. Mr. King said now they had a screening requirement in the Zoning Ordinance that was different from that, noting it was less stringent as far as height. He said it was his opinion that the Type D screening should apply.

Mr. Hornik said it would seem that they would want to maintain, as closely as possible, the same type of buffer that was present before construction.

Mr. Abbott said they would maintain that as much as possible, but with the topography of the site shifting so much, in that they had a cut slope on one side and a field slope on the other, it was a matter of what they would replant to. Mr. King said it would be a matter of changing the species of what was planted, in that on one side it should reach a height of 20 feet at maturity rather than 6 feet, and on the other side 30 feet at maturity versus 20 feet. Plus, he said, if there was existing vegetation that could be retained then that could add to that.

Mr. King asked when the construction drawings were done, would they have a better idea of what would be needed. Mr. Abbott said yes, that they would do a tree survey showing the existing tree types and sizes, adding that once he did those drawings and did more detailed storm drainage, they may find they would have to bump the slope out even more which would mean removal of additional trees. Mr. King stated that was something that staff could work with the applicant on.

Mr. Remington said something similar was done with a previous application, adding an inspection would be done in the winter after all the leaves were off the trees to see what if anything would need to be added. Mr. King said that could be done here, that based on the landscaping plan that an inspection could be done once the landscaping was in to determine if the requirements had been met and if not what needed to be done. He said if there was any disagreement at that point then the applicant could come back to the Board and state its case. Mr. Abbott said he believed that would be a better approach.

Mr. Remington said frankly he would like to see as much existing vegetation as possible remain. Mr. King asked if the Board was indicating it wanted to add that condition to those already recommended in the staff report.

Mr. Remington said he believed it was a matter of saying that it needed to meet the Type D buffer requirements after construction, which would be evaluated by staff. Mr. King said there would be a final landscape inspection, and if the applicant would locate trees that fell within the guidelines for Type D and then plant where needed, he believed they would then comply. He said he believed Mr. Remington was indicating he wanted as much existing vegetation to remain as possible. Mr. Remington said yes, he did want as much as possible to remain,

but he understood that once the construction drawings were completed some things might change.

Mr. Abbott said the other issue brought up in the staff report was the number of parking spaces needed for the development, which was flexible office and warehouse space. He said the problem was that you may have space that was leased to a tenant who did not want that much warehouse or that much office space, so that would change the calculation for the number of spaces required. Mr. Abbott said they had provided 133 to cover such contingencies and had designed the site so that the parking was interior to the site while providing rather large landscaped islands for stormwater treatment. He said 133 spaces was the most efficient, maximum parking they could achieve on site while still complying with stormwater rules and others, noting that truck turning radii had taken a lot of space.

Mr. Hornik asked what would happen if they had a mixture of tenants that required 165 spaces, and would they then not issue the Zoning Compliance Permit because they had only 133 spaces. He said 133 spaces limited what could be done there, in that they may be forced to pass up a potential tenant because there was inadequate parking. Mr. Hornik said if the applicant was satisfied with 133, then that was what they would have to work with regardless of the tenant mix.

Mr. Hartkopf noted that flex space was notoriously difficult to predict, so the applicant was assuming a certain amount of risk. He asked about the strip that was between building A and the parking area. Mr. Abbott said there was a minute point where the radius and the sidewalk came together at perhaps a foot or two, noting that when you came in the entrance and went to the right where the sidewalk curved around the corner of the building, there was one small area where they could not provide the required 3-foot strip simply because of the turning radius provided for tractor trailers. He said they had provided a 3-foot strip all the way up to that corner and one coming to the corner, but where they met it was slightly narrower. Mr. Abbott said instead of changing the whole roadway they could radius the edge of the sidewalk.

Mr. King said the question for the Board to consider was if the spirit and intent of that provision in the ordinance was being met.

Mr. Abbott said the 3-foot strip along the back of the building had no plants showing on the plans, but that was an error. He said there would be plantings in that strip. Mr. Abbott said he believed that covered all of the outstanding issues. Mr. King stated that the HVAC units would be roof-mounted and were similar to others in the Meadowlands development.

Mr. Remington asked were there sidewalks required on Executive Court. Mr. King stated that based on the Orange Charter School CUP from several months ago it was determined that that street was a cul-de-sac and not considered a sub-

collector or greater. He said he would assume that same logic would come into play in this case, so no sidewalk would be required.

Jessica Carmichael, having been sworn, stated that their property was at the bottom of the hill where the stream ran along the edge of their property. She said they had a few concerns, the first of which was property value. Ms. Carmichael said they believed the buffer might help that, but wanted a better explanation regarding runoff. She said the site plan was not very detailed as to where their property was located in relation to the site and they needed more information about how stormwater would flow from the proposed site and whether it would affect their property.

Mr. King stated that a surface water analysis had been conducted on the drainage feature that Ms. Carmichael had referred to back in 2004 that showed where the water feature ended.

Mr. Abbott, using a map, pointed out to Ms. Carmichael how the stormwater from the proposed site would flow into a draw which would take the water to the Meadowlands pond. So, he said, that stormwater would not run to the stream bordering the Carmichael property or affect their property in any way. After some discussion, it was noted that the Carmichaels' property did not immediately adjoin the subject property. They were within 500 feet of the property, though.

MOTION: **Mr. Sikes** moved to close the hearing on Case #BA-01-2010 - Conditional Use-2 Permit request from Summit Consulting c/o Chad Abbott on behalf of Meadowlands Associates. **Mr. Sain** seconded.

VOTE: Unanimous.

Discussion:

Mr. Remington said he believed they could be somewhat flexible about little details, such as that one corner where the strip was narrow, but at the same time he did not think that someone should be allowed to squeeze every last bit of space out of something at the cost of not complying with the ordinance. He said given that it was feasible to have a slightly tighter turning radius to provide that, his inclination would be that the strip should be 3 feet wide at that corner.

Mr. Hartkopf said he did not disagree with that.

Mr. Sikes said he did not believe it was that big of an exemption. He asked how big of a difference would it make to the trucks coming in. Mr. Abbott said not a huge difference, but believed the intent of the ordinance was so that the three-foot strip could be used for landscaping and they intended to landscape all the way around, but it just was not 3 feet at that particular section. He said it was just the very corner, and they could radius the sidewalk to solve the issue.

Mr. King said that the ordinance did not specify on the site how wide the sidewalk had to be, and wondered if there could be some flexibility in the width of the sidewalk in that location. Mr. Abbott said that typically they showed sidewalks at 5 feet wide, but the ADA allowed the sidewalk to be 4 feet in width. Mr. King said then perhaps narrowing the sidewalk in that one area would help. Mr. Abbott said that was a possibility, but they could also look at realigning the drive as well.

Mr. Hartkopf said in regards to the buffer, he believed they were in agreement that the Type D would be what was required. The Board agreed by consensus.

Mr. Remington said he did not know that special language would be needed in the conditions, noting his point was to suggest that the as-built needed to satisfy it and if that required some plantings anywhere that the existing trees did not take care of it that they be required. He said he believed it went without saying that the existing vegetation would help meet the requirement, so he did not know if that needed to be a part of a condition of approval.

MOTION: **Mr. Remington** moved to approve Case #BA-01-2010 - Conditional Use-2 Permit request from Summit Consulting c/o Chad Abbott on behalf of Meadowlands Associates based on the fact that the application satisfied Articles 4.9, 4.10, and 4.3 of the Zoning Ordinance, subject to the condition that the 3-foot landscape strip around the buildings be required throughout as well as the following conditions:

- a. Construction Plans: Final, detailed construction plans including site, grading, stormwater control, erosion control, landscaping, lighting, and architectural elevations shall be submitted to the Zoning Officer for review and approval prior to the issuance of a Zoning Compliance Permit. The plans shall conform in all respects to the plans approved as part of the Conditional Use-2 Permit application, including any authorized changes approved by the Board at the hearing, and demonstrate compliance with all applicable approval conditions and standards of the Zoning Ordinance.
- b. Stormwater Control Plan: The applicant shall submit a Stormwater Control Plan for review and approval by the Erosion Control Division of the Orange County Planning and Inspections Department. Written evidence of plan approval shall be submitted to the Zoning Officer prior to the issuance of the Zoning Compliance Permit.
- c. Stormwater Best Management Practice (BMP) Construction Certification: A certification letter signed and sealed by the designing engineer stating that the on-site stormwater control BMPs, as constructed, will function properly shall be submitted to the Zoning Officer prior to the issuance of a Certificate of Occupancy for the project.

- d. Stormwater BMP Operation and Maintenance Plan: A Stormwater BMP Operation and Maintenance Plan prepared by the designing engineer and executed by the property owner shall be recorded with the Orange County Register of Deeds Office. The plan shall include the owner's financial responsibility and include the maintenance schedule of the facilities to ensure that it continues to function as originally intended. Evidence of the recordation of the Operation and Maintenance Plan shall be provided to the Zoning Officer prior to the issuance of a Certificate of Occupancy for the project.
- e. Stormwater As-built Plan: An "as-built" plan for all stormwater management facilities shall be submitted to the Zoning Officer after final construction is completed and before a Certificate of Occupancy is issued for the project.
- f. As-built Site Survey: An as-built survey prepared by a professional land surveyor showing all above ground structures including, but not limited to, buildings, eave overhangs, awnings, HVAC units, fencing, parking lot and driveways, freestanding signs, dumpster compounds, freestanding identification signs, stormwater control facilities and freestanding light poles shall be submitted to the Zoning Officer prior to the issuance of a Certificate of Occupancy for the project.

Mr. Sikes seconded.

VOTE: Unanimous.

ITEM #7: Committee and Staff reports.

Planning Board:

Mr. Remington said the Planning Board had discussed and sent the amendments to the Parks and Recreation Master Plan to public hearing, which was scheduled for next Thursday. He said they had also discussed ordinance rewrites. Mr. Hornik stated that the first draft of the new Unified Development Ordinance which combined the Subdivision and Zoning Ordinances would be available on Friday, and would be discussed by the Town Board and this Board at an upcoming meeting.

Elizabeth Brady Road:

Mr. King stated that the Durham-Chapel Hill-Carrboro MPO (Metropolitan Transportation Organization) had this morning voted unanimously to recommend the no-build option for the Elizabeth Brady Road extension. He said that would now go to NCDOT for consideration.

Mr. Sikes asked how much weight that would carry with NCDOT. Mr. King responded it was hard to tell, noting that Orange County, the Town Board, and now the MPO had all recommended the no-build option and to explore other alternatives in order to retain the funding that had been earmarked and apply it to

some other projects already in the TIP (Transportation Improvement Plan) that might help alleviate traffic issues on Churton Street. He said examples of other projects would be the realignment at Eno Mountain Road and Mayo Street, doing the South Churton Street improvements from I-40 to the Eno River bridge, and the Orange Grove Road connector over to US 70A East, which would open up the Town-owned property for the proposed rail station. Mr. King said there was a meeting scheduled for next week to look at a site plan for the Town-owned tract with a rail station, possibly a performing arts center, police and fire station, and incorporating the HYAA (Hillsborough Youth Athletic Association) ball fields. He said they hoped to have at that meeting a diagram with a general transportation network for the Collins tract to the south and behind the Daniel Boone shopping area.

Ms. Lunsford asked about the current Board of Adjustment vacancy. Mr. King said the Planning Director had been informed, adding that Brad Curelop's term expired in February and he had indicated that he would not seek reappointment, so that would be two vacancies. He said both were in-Town seats, with one being an alternate.

ITEM 7A: Closed Session to Discuss Pending Litigation for Webb Grove and the Nannie Richmond Appeal.

MOTION: Mr. Sikes moved to enter into a Closed Session to discuss pending litigation. Mr. Sain seconded.

VOTE: Unanimous.

Other:

Mr. King stated that the Fairview Child Care project had run into a minor issue. He said that Lawndale Avenue had a 30-foot-wide right-of-way up to a point and at that point it became a 50-foot-wide right-of-way, noting that that was the same area where there was an unopened right-of-way that they needed to have closed. Mr. King said that bumped the front setback further back, which would require them to move the building back. He said in doing that the orientation of the building would have to change causing the play equipment to have to be moved at a considerable expense. Mr. King said that applicant was now asking if they could turn the building with the front of the building facing Lawndale Avenue and not move the play equipment. He said staff believed it was something that they could handle, but he had talked with the Planning Director who had suggested bringing it to the Board to see if they believed it would be a change the size, form, or ornamentation of the building that would cause the applicant to have to come back to the Board.

Mr. Hartkopf said the only change he saw that would drive that would be the need for a walkway to get to the front of the building. Mr. King said he had spoken to the contractor today who had indicated that they would address that by having an entry to the porch with doors entering from another direction so that when you

entered you would step up on the porch and cross over to the door. He said to get the three-foot separation between the parking space and the building may mean a shift of about a foot. Mr. King asked the Board if they believed the applicant needed to come back before the Board to make those changes, noting staff believed it could be handled at the staff level.

Mr. Remington said the question was coming up because the right-of-way was different from what they thought it was. Mr. King said that was correct, that for whatever reason the right-of-way changed from 30 feet to 50 feet at a particular point.

Mr. Sikes asked if making those changes would keep the building in compliance with setback requirements. Mr. King said that was correct, noting that making the change would require the applicant to move the drainage ditch slightly, in that instead of going straight it would have to veer off at one point into another direction.

After a brief discussion, the Board agreed by consensus that the applicant would not have to come back before the Board to make the changes as described by Mr. King, and that staff would oversee the changes.

Mr. King said another issue was the Mt. Bright Cemetery, noting they had received approval from the Historic District Commission who had required them to provide two retaining walls. He said the original plan was to have one retaining wall and the HDC, in order to protect trees, had required that there be a step-down retaining wall that was 4-feet high, above grade, then flatten out, and then drop down three feet. Mr. King said that did not really change anything, but wanted the Board to be aware of that. He said staff believed that was not a significant enough change to merit having to go back through BOA review.

After some discussion, the Board agreed.

Mr. King said lastly, there was a training opportunity, noting that the Centralina Council of Governments was going to hold a training session on quasi-judicial practices and NC planning law in Greensboro on February 23. He said it would be from 1:30 to 5 p.m. at the Greensboro Coliseum Special Events Center. Mr. King said the cost was \$50 per person, and the Planning Director had indicated that the Town would either pay the fee in advance or would reimburse any Board members who chose to attend.

Mr. King stated another option would be to have Mr. Hornik provide a training session at some point. Or, he said, they could do both.

After some discussion, the Board agreed to email Mr. King if they decided to attend the February 23 session.

ITEM #8: Adjourn.

Mr. Sikes moved to adjourn the meeting at 10:45 p.m. **Mr. Remington** seconded. The motion was adopted unanimously.

Approved:

Tom King, AICP, CZO
Senior Planner
Secretary to the Board