

Minutes
BOARD OF ADJUSTMENT
Wednesday, February 10, 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, Planning Director Margaret Hauth, and Town Attorney Bob Hornik.

PUBLIC: Joe Phelps, Howard McAdams and Bill Whitmore.

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 Mr. Bill Whitmore was appearing at this meeting in order to interview for an upcoming open seat on the Board. Mr. King also noted that the Board needed to review the final Order for the AA Graphics, LLC appeal from October 14, 2009. Ms. Lunsford suggested the order of Items #4 and #5 should be renumbered so that Item #5 was heard first.

MOTION: **Ms. Lunsford** moved to adjust the agenda to renumber Item #4 to Item #5, and Item #5 to Item #4, and add an Item #5b regarding the appeal from AA Graphics. **Mr. Sain** seconded.

VOTE: Unanimous.

ITEM #3: **Approval of the January 13, 2010 minutes, and approval of the January 13, 2010 Closed Session minutes.**

MOTION: **Mr. Remington** moved to adopt the minutes of the January 13, 2010 meeting as submitted. **Mr. Sain** seconded.

VOTE: Unanimous.

MOTION: **Ms. Lunsford** moved to adopt the minutes of the January 13, 2010 Closed Session meeting as submitted. **Mr. Sain** seconded.

VOTE: Unanimous.

ITEM #4: **Case #BA-04-2010 – Variance request from Joe Phelps of Orange County Farm Bureau. The request is for a 5-foot variance from the 10-foot freestanding sign setback of the EDD (Economic Development District) zoning district to allow for the placement of a freestanding sign. The subject**

property is located at 110 Millstone Drive (Orange County Tax Map Reference #4.45.R..27).

Mr. Hartkopf opened the public hearing and Mr. King swore in himself and Joe Phelps. Mr. King provided some brief information regarding the variance request, noting the request was for a 5-foot variance from the 10-foot freestanding sign setback of the EDD zoning district to allow for the placement of a freestanding sign. He referred the Board to the as-built survey included in their packets, pointing out where the applicant wanted to place the freestanding sign, which would be 4 feet from the back of the curb. Mr. King stated it was an 8-foot long sign, and that would leave 5 feet between the right-of-way and the actual sign. He said that Attachment #3 was a copy of the proposed sign which matched the other signage in the Old Mill Business Park.

Mr. King stated that staff had gone through the required findings and did not support the granting of a variance, noting it did not meet the first finding. He said the applicant's original property before it was developed did not show any indication to staff that it would have precluded the location of the building, parking and a sign. Mr. King said as to the second finding, this property was being used as a land use allowed in the EDD zoning district, and whether or not the alleged hardship resulted from the action or inaction of the applicant he supposed could be debatable. He said the applicant's engineer did not leave a lot of room on site for a sign of that size and still meet the 10-foot setback. Mr. King said there were restrictive covenants in the EDD that did extend to signage but did not know if the applicant could meet those requirements.

Mr. King said the third finding regarded whether the granting of the variance for the sign would substantially interfere or injure the rights of others whose property would be affected if the variance was allowed. He said staff could not find a reason that, if granted, it would substantially interfere or injure the rights of others. Mr. King said there were other businesses in the Old Mill Business Park that had signage that was close to the right-of-way and did not meet the requirements of the EDD standards.

Mr. King said the fourth finding was that the variance was in harmony with and served the general intent and purpose of the Zoning Ordinance and the Comprehensive Plan. He said staff had also looked at the Vision 2010 Plan and you could make an argument that the variance would not be in harmony with Goal C in that document, which was to improve and protect the economic vitality of non-residential development. Mr. King said objective 2 of that Goal was to improve conformity with the Zoning Ordinance by removing nonconformities and retrofitting developed sites. He said although that language spoke to existing nonconformities you could possibly extend that to the creation of new nonconformities which the granting of this variance would do.

Mr. King said the last finding was that allowing the variance would result in substantial justice being done considered by the public benefits intended to be

secured by the Ordinance, and the individual hardships that would be suffered by the failure of the Board to grant the variance. He said the sign regulations were adopted to control the location and size of signs, and granting the variance would benefit the applicant and the property owner but it had the potential of undermining the purposes of the Zoning Ordinance. Mr. King said every variance granted chipped away at a standard and opened the door for other variances; however, variances were site specific and case specific.

Mr. King said the reasons just stated were why staff's recommendation was that the variance should not be granted.

Mr. Hartkopf said that site plan approval was granted for construction of that office building in April 2009, and asked by which process that approval was granted. Mr. King stated it was a staff site plan approval. Mr. Hartkopf said in the paperwork submitted for that site plan was there signage noted on the site plan. Mr. King replied no. Mr. Hartkopf asked was it usually included. Mr. King replied not always.

Mr. Hornik stated if the applicant was asking for a sign at that point it would be included, but did not believe that was the case in this instance. Mr. King said many times it was left off because the signage would be determined by another party, so it was not included in the site plan. He said the plans did show the building setback and the parking and sign setbacks effective in the EDD, so you would assume that they left some area for a sign but maybe not for one that was 8 feet long.

Mr. Sikes stated he had visited the site and when looking at the sign the applicant was proposing it appeared it would block sight distance for traffic exiting the site.

Mr. King said for this sign, about 2 feet of the leading edge of the sign would fall within that sight triangle.

Mr. Sikes said with the amount of traffic in that area, he believed the sign would create a visibility issue for traffic.

Mr. Hartkopf asked that the Board consider whether or not to recuse him from consideration of this issue based on the fact that he and Mr. Phelps had been friends for some time, and he had supported his candidacy for office as Mr. Phelps had supported his. He said that friendship was not something out of the ordinary but it was up to the Board to determine if he should be recused.

Mr. Hornik stated that friendship did not constitute a legal conflict of interest, but it was right to disclose it. He said if Mr. Hartkopf or the Board believed it would be better if Mr. Hartkopf did not participate, then the Board could vote to recuse him. Mr. Hornik said if Mr. Hartkopf were excused, there would have to be a unanimous vote of the Board to grant the variance, because there had to be at least

4 votes in favor. He added that you would have to have a direct financial interest or stake in the outcome in order to have a legal conflict of interest.

Mr. Hartkopf said as well, the applicant had a right to a hearing by the full Board, and the applicant could decide to delay consideration of the variance until the full Board could be present.

Mr. Hornik said if Mr. Hartkopf felt that he could not be objective, then the Board should recuse him. But, he said, Mr. Hartkopf could say he would be able to judge the application fairly, but if not then the right thing to do would be to recuse him.

Mr. Phelps said he would not benefit financially by the variance, noting he was just a member of the Board of Directors for the Farm Bureau which was a volunteer board.

Mr. Sikes stated he had found Mr. Hartkopf to be objective in all his deliberations, even in ones like this where he had disclosed a relationship other than financial or legal. He said he saw no reason to believe Mr. Hartkopf would not be objective in this case.

After a short discussion, the Board identified no legal reason for Mr. Hartkopf to be recused.

Joe Phelps stated he understood that Ms. Hauth needed to leave early, and offered to have his application wait until the next item was heard. Mr. Hornik said procedurally the Board could recess the hearing on this matter, open the hearing on the Colonial Inn, conduct that hearing, and then come back to this matter. Mr. Phelps said he was willing to do that.

MOTION: Ms. Lunsford moved to temporarily recess this application, hear the next item, and then come back and reopen this item. Mr. Remington seconded.

VOTE: Unanimous.

ITEM #5: **Case #BA-03-2010 – Appeal of an adverse decision of the Zoning Officer submitted by Francis Henry of Colonial Inn, LLC. The appeal relates to staff finding the repair work completed at the Colonial Inn is insufficient to satisfy the repair order issued pursuant to the “Prevention of Demolition by Neglect” provisions of the Zoning Ordinance. The property is located at 153 West King Street (Orange County Tax Map Reference #4.36.A.4A) and is zoned R-20 (Medium Intensity Residential)/HD (Historic District) Overlay.**

Ms. Hauth was sworn in. Mr. Hartkopf disclosed that he had received a phone call from Mr. Henry yesterday evening but they did not discuss the issues related to the case. He said Mr. Henry had offered to bring certain documents to his home which he had advised should be delivered to Mr. King, and believed those

were the documents that had been placed at their seats this evening. Mr. King confirmed that was the case.

Mr. Hornik said he had been led to believe that Mr. Henry would be out of the country at this time which was why he was asking that the matter be continued to the March 10, 2010 meeting. But, he said, Mr. Henry was in the country but had indicated he was unavailable to attend the meeting.

Mr. Hartkopf stated Mr. Henry had indicated to him last evening that he and his attorney would be out of State this evening on another business matter.

Mr. Hornik said it was his understanding that Mr. Henry would prefer that his appeal be heard in March, and staff had indicated to him that the Board would have to make that decision.

Mr. Hartkopf said there were reasons why he had not requested that this application be delayed until March. He said upon reading the materials delivered with the packet, it was Mr. Henry's position that he was given a list of things to do and he had done that list of things. Mr. Hartkopf said the question then became when the order was to be vacated, and that was why he had requested that Mr. Hornik be present this evening.

Mr. Hartkopf said as he read the statute he did not find anything that even intimated that the order was satisfied, and if that order was completed then another order would have to happen. He said he believed that was the crux of Mr. Henry's case, in that from his perspective until another list of items was delivered to him that he was done. Mr. Hornik said he believed the staff narrative would provide a better understanding of the factual situation and what the dispute actually was. Mr. Hartkopf said he did not know that he wanted to rule on this tonight, but it occurred to him that this had already taken a considerable amount of time and it was time for it to be settled.

Ms. Hauth provided an overview of the major points, noting that the entire history of the events was contained in the packet of materials. She said about this time last year she had issued an order following a public hearing detailing 12 items that were necessary to bring the property into compliance so that the building would no longer be subject to Demolition by Neglect.

Mr. Hornik interjected that the order of Demolition by Neglect had been issued after a hearing and after Mr. Henry had had the opportunity to be heard, and Mr. Henry had chosen not to attend the hearing. Ms. Hauth said that was correct.

Ms. Hauth said after issuance of the order, Mr. Henry had begun to move through the list of items and had requested and received extensions as necessary as additional work had been identified that was not really relevant to the order. She said they had moved along reasonably well given the scope of the project, but

work had then ceased and Mr. Henry had not asked for any further extensions on the timeframe to comply with the order. Ms. Hauth said that Mr. Henry's timeframe had expired at the end of the calendar year, and staff had then conducted a site inspection to see if everything on the list had been satisfied. She said everything on the list had not been satisfied, and she had notified Mr. Henry of that. Ms. Hauth said, in her mind, the issue then became a zoning violation, in that Mr. Henry had received the order and was to bring the property into compliance, which he had not done. She said sending Mr. Henry the notice that he had not done everything he needed to do had triggered the appeal period, which was when Mr. Henry chose to appeal and indicated that he did not agree that the list had not been satisfied. Ms. Hauth said Mr. Henry believed that the order should only be based on the citizen's complaint letter that had caused the hearing and subsequent order and not based on the staff decision, and therefore only things visible from the public right-of-way should need to be repaired.

Mr. Hornik asked Ms. Hauth to testify as to what the process was from the time Mr. Reece had filed his letter of complaint. He said he believed that would illustrate to the Board what he believed was Mr. Henry's issue versus what the staff's position was with respect to the order.

Mr. Hartkopf said he did not believe the ordinance spoke to a complaint brought by a citizen that alleged violations. Mr. Hornik said what the ordinance did say was that a complaint started the process. Mr. Hartkopf said that the order issued by staff was mentioned specifically in the ordinance, but not the sum or the contents of the complaint. He asked was it staff's position that Mr. Henry had not completed what had been contained in the order. Ms. Hauth responded "absolutely."

Mr. Hornik said if he understood Mr. Henry's position, there were 7 items in Mr. Reece's letter, and Mr. Henry was saying that he had completed those 7 items so he was done. Mr. Hornik said staff's position was that the letter of complaint came in, and whether it said 1 thing or 7 things it was what had spurred the investigation. He said staff did the investigation and prepared a report, and if staff determined that there may be Demolition by Neglect then the matter was brought before the HDC (Historic District Commission), the HDC reviewed it, and if the HDC determined that it appeared that Demolition by Neglect was going on, then the HDC issued an order to the Planning Director to hold a hearing on the possibility of Demolition by Neglect.

Mr. Hartkopf asked if everyone on the Board understood that point, and did everyone who had read the ordinance believe that to be what the ordinance indicated. There was no disagreement voiced by the Board.

Mr. Hornik said the hearing was held last January as directed by the HDC, and notice had been sent to Mr. Henry advising him of the hearing to determine whether there was in fact Demolition by Neglect going on, and if that

determination was made that she would issue an order saying what needed to be done in order to abate the ongoing Demolition by Neglect. He said that Mr. Henry had not attended the hearing although he was given notice of it, and staff presented a detailed presentation at that hearing. Mr. Hornik said after the hearing was closed, a few days later Ms. Hauth had issued the Order of Demolition by Neglect and that order had 12 or more items that Mr. Henry was charged with completing by a certain date and if that was done then that would stop the ongoing Demolition by Neglect that had been identified and he would have satisfied the order.

Mr. Hornik said the issue here was that Mr. Henry had satisfied 6 or 7 of the 12 or more items that were in Ms. Hauth's order, but none of the others. He said Mr. Henry's position was that the items he had satisfied were the items contained in Mr. Reece's complaint letter, and believed that was all he had to do based on his interpretation of the ordinance.

Ms. Hauth said in receiving the corrective order, Mr. Henry had not appealed any of the items at that time, and they had been diligently moving through the list. Now, she said, Mr. Henry was saying that he did not have to do the remaining items on the list. Ms. Hauth said the ordinance was about prevention of Demolition by Neglect, and if a condition was endangering a condition on the north side and it was found to be present on the south side, it was endangering the structure just as much and it did not matter. She said once the complaint was filed and staff was on the property for site inspection with Mr. Henry's permission, he had participated in the inspection and had never questioned being on all sides of the property and documenting all conditions although he had ample opportunity to do so.

Mr. Hartkopf said the ordinance indicated a provision for appeal for economic hardship. Ms. Hauth said that was correct, by Mr. Henry had not filed that appeal. Mr. Hartkopf said there was another provision that Mr. Henry had 14 days to appeal the Order of Demolition by Neglect to the Board of Adjustment. Ms. Hauth said that was also correct, and Mr. Henry had not filed that appeal.

Mr. Hornik said it appeared from reading Mr. Henry's appeal letter that his position seemed to be that when the ordinance used the word "site" it meant the specific location on the building where the complaint had identified that Demolition by Neglect was going on. He said that the Board would need to make that interpretation, stating that elsewhere in the ordinance it was clear that the site was intended to be the property on which the structure was alleged to be undergoing Demolition by Neglect.

Mr. Remington said in reading the materials, he had come to the conclusion that the interpretation of the word "site" was the key to the appeal. He said with due respect to the staff's interpretation of that, he would feel much more comfortable deliberating after they had had the opportunity to hear Mr. Henry's side of the

matter if he had indeed expressed interest in coming before the Board in March. Mr. Remington said he believed the Board's deliberations would be less biased if they had the chance to hear Mr. Henry's arguments.

Mr. Hornik said his point was that the Board had had the chance to hear Mr. Henry's argument, and that chance was tonight. He said just as with the hearing in January, Mr. Henry had chosen not to attend for whatever reason.

Mr. Sikes said when reading through the material and visiting the site, you could see where some work had been done on the west side. But, he said, the east and south sides of the structure were in "horrible" condition, with rotted wood and obvious disrepair. Mr. Sikes said once this process was started you could plainly determine that the structure needed repairs.

Mr. Hornik said it was completely up to the Board whether they wanted to provide Mr. Henry with an additional opportunity to appear, but he wanted to make sure the Board understood the staff's position. He said part of his concern as the attorney representing staff and counseling the Board was that Mr. Henry had received the process he was entitled to. But, he said, the Board always had the option to provide an additional chance to appear.

Mr. Sikes said he did not believe there was anything Mr. Henry could say that could change his mind, based on his reading and understanding of the process, the ordinance, and the obvious work that was still needed to the structure. He said he did not believe Mr. Henry was anywhere close to completing the necessary repairs, and he did not see how he could justify otherwise.

Mr. Sikes asked who had prepared the chart of tasks and dates and when was it submitted. Mr. King stated it was submitted by Mr. Henry today, on February 10, 2010. Ms. Hauth said that was a chart that staff had created for Mr. Henry at the beginning of the process to track the deadlines and extensions and was provided as a status report of where he was. She said the chart Mr. Henry had submitted today was the "final version." Mr. Sikes said the chart indicated that 5 of the 12 items had been satisfied. Ms. Hauth said those 5 items had been completed, but the remaining 7 had not been addressed.

Ms. Lunsford said then Mr. Henry had that information of what was expected and when it was expected to be completed. Ms. Hauth said that was correct.

Mr. Sikes said regarding the complainant's letter, it looked like it originally was not enumerated but was bullet points and someone had gone back and placed numbers beside the bullet points. He asked who had done that. Mr. King stated those numbers had been handwritten in when the original was delivered to him. Mr. Sikes said the first thing that the complaint letter said was that closer examination would likely bring to light several other serious problems, and his interpretation would be that the complaint letter specified certain things that had

been identified, but since the complainant could not closely inspect the property he was saying there were likely other issues that he had been unable to identify without closer inspection. He said to him that made sense, in that the Zoning Officer's determination was indeed correct in the order.

Mr. Hartkopf agreed. He said in the chart, he presumed that there was no argument that the remaining 7 items had not been completed. Ms. Hauth said she was unaware of any disagreement as to the status of the remaining items.

Mr. Hartkopf said those were the points he had wanted to clarify. He said since the ordinance had been crafted in its current state around 2003, it had been a long and drawn out process with some fairly wide-cast nets that were eventually refined to have a more manageable ordinance. Mr. Hartkopf said there had been concern expressed by one of the Planning Board members at that time that the ordinance allowed for neighbor on neighbor action, and that he had a problem with one person being able to tell another person what they could or could not do with their property, but it was a good ordinance for what it was supposed to do which was to preserve historic buildings in a town that cared about its history.

Mr. Hornik said the General Statutes specifically authorized towns with historic districts to adopt a demolition by neglect ordinance. He said they had gone through a long process and received a lot of public input, noting from his perspective the ordinance was difficult because it required so many steps to be taken before there was actually a determination of demolition by neglect. Mr. Hornik said that was precisely because some members of the public had believed that the ordinance would be used by one neighbor against another for spiteful things. He said that was why the process began with a complaint by a citizen, and it was then referred to Town staff who must investigate and independently verify whether there appeared to be demolition by neglect taking place. Mr. Hornik said when the Town staff made that determination it still had to go to the HDC, and the HDC had to determine that there was probable cause to believe there was demolition by neglect, and then it had to go to the Planning Director to notice and hold a hearing. Mr. Hornik said those intermediate steps had been built in as a fail safe to make sure that the ordinance would not be used to pit neighbor against neighbor.

Ms. Lunsford said it looked like all the procedures and the formality had been adhered to, and asked was there any reason to believe otherwise. Ms. Hauth replied no, noting every time staff had taken a step they had rechecked the ordinance and conferred with Mr. Hornik to make sure they were adhering to the ordinance. Ms. Lunsford said then there really was no excuse for the Demolition by Neglect order not to have been completed. Ms. Hauth said that was her perception, noting she believed the last step was Mr. Henry not performing the tasks required.

Mr. Hartkopf asked what the next step was if the BOA (Board of Adjustment) upheld the Demolition by Neglect ruling. Ms. Hauth said she would have to take the issue to the Town Board for authorization for future enforcement action to attempt to collect the civil penalties.

Mr. Hornik said at present they had sent Mr. Henry the Notice of Civil Penalty which was \$100 a day, but that had been staid by the appeal. He said if the Board were to affirm Ms. Hauth's determination, then the Town could commence an assessment of civil penalties and collection of those penalties. He said theoretically the Town could get a court order compelling Mr. Henry to perform the remaining items of work, but no one wanted it to come to that point.

Mr. Hartkopf said in the spirit of being charitable and cautious, he believed Mr. Remington had a point in that they ought to understand what the Town meant by the term "site" which was the key to Mr. Henry's appeal. But, he said, he had to say that he believed the ordinance as crafted was fairly straightforward and that staff had been diligent and deliberate in their efforts. Mr. Hartkopf said while he may be willing to have the issue continued for one month, he believed the day after one month should be when the civil penalty should commence. He said that was only because while the appellant had been given every latitude by staff to appear and state his case and he had not taken it, he had not been given that opportunity by the BOA. But, he said, he was not willing to see the issue pushed off beyond one month.

Mr. Hornik said his suggestion would be to give Mr. Henry until the next meeting to appear, only because if the Board decided to affirm and if Mr. Henry decided to appeal in court, then he wanted to be able to say to the judge that despite everything the Town had given Mr. Henry yet one more chance to state his case. He said that might be worth waiting 30 days.

Mr. Hartkopf said it might also prompt Mr. Henry to move with all due swiftness to resolve the outstanding 7 items on the order before the Board arrived at the March 10, 2010 meeting.

Mr. Remington said he had the impression that Mr. Henry had said it would be his preference for the Board to continue the appeal to the March 10, 2010 meeting so that he could attend. Mr. King said that was correct. Mr. Remington said to him it made a difference that Mr. Henry had asked for a continuance, which was likely why he had not felt it necessary to appear tonight. He said he agreed with Mr. Hartkopf that he would be unwilling to continue the issue beyond the next meeting.

Mr. Sikes agreed as well, noting it would give Mr. Henry one last chance.

MOTION: Mr. Sikes moved to continue the public hearing on Case #BA-03-2010 to the March 10, 2010 meeting. Ms. Lunsford seconded.

VOTE: Unanimous.

**BACK TO
ITEM #4:**

Continue hearing on Case #BA-04-2010 – Variance request from Joe Phelps of Orange County Farm Bureau. The request is for a 5-foot variance from the 10-foot freestanding sign setback of the EDD (Economic Development District) zoning district to allow for the placement of a freestanding sign. The subject property is located at 110 Millstone Drive (Orange County Tax Map Reference #4.45R..27).

Mr. Hartkopf invited Mr. Phelps to make a statement. Mr. Phelps commended Mr. King on the work he had done, noting he had been thorough but had also been fair, and he had been very helpful throughout the process. Mr. Phelps introduced Howard McAdams, President of Orange County Farm Bureau, and provided some brief information about the Farm Bureau which was a non-profit entity. He said he believed Mr. King had said that there was only 5 feet, but their variance was asking for only 4 feet. Mr. King said on the drawing, the 4-feet was the distance between the back of the curb and the back of the sign, and then if you put in the 8 foot sign it would be 5 feet from the street right-of-way line.

Mr. Phelps said in regards to Finding of Fact A, if you looked at the map showing the site before construction they had purposely left as much wooded area undisturbed as possible in order to be environmental conscious. He said that might not address Finding of Fact A, but that was why they had placed the building where it was. Mr. Phelps said if they had had to move the building back 4 or 5 feet to accommodate the sign which was supposedly required by the restrictive covenants in Old Mill, you could see that the slope of the land went up even more which would have required cutting into the bank more than 4 feet which would have destroyed more trees and would have increased the amount of impervious surface.

Mr. Hornik asked if the location of the sign was driven by the location of the building on the site. Mr. Phelps replied “yes,” noting they had had little area to work with and had made the drive and the turnaround area as small as possible while remaining feasible. Mr. Hornik said then the location of the building was placed on the site so that as many trees as possible were preserved, and placing it that close to the front of the lot had squeezed the available area and was why the sign was proposed where it was. Mr. Phelps said that was correct, and added that he had not been aware that they were restricted by a protective covenant to have a particular size sign. He said they had not known that the sign should have been on the site plan, noting if they had known that they could have addressed the issue sooner.

Mr. Phelps said he believed they were well below their impervious surface allowance. Mr. King responded that there was no impervious surface requirement in that particular area because it was not in a protected watershed. He said there was a site volume ratio that had to be complied with which spoke to impervious

surface, in that you were required to have a specific site volume ratio. Mr. King said you took the amount of building area, parking, and driveway area and subtracted that from the proposed existing and proposed landscaping on site which gave you the site volume ratio. He said this project was well within their required site volume ratio.

Mr. Hartkopf asked how many parking spaces were provided versus how many were required by the ordinance. Mr. King said the number of parking spaces required by the ordinance was 16, and there were 27 spaces provided.

Mr. Phelps said they were providing that many because they had a number of agents and if many were present at the same time they would still need parking for customers. He said another issue was that the size of the storm sedimentation pond was directly related to how much impervious surface they had, so they had tried to keep that to a minimum as well. Mr. Phelps said they had placed the retention pond in the best available location based on the topography of the land.

Mr. Remington said then the sign out there now was suppose to be bigger to comply with the restrictive covenants. Mr. Phelps said that was correct, noting the drawing in the packet was what the sign should look like, but they had put up a temporary sign to indicate they were open for business. Mr. Remington said the sign erected was perfectly visible, although it was definitely smaller than the other signs. Mr. Phelps said that sign had been moved from their former location so that they would have some identifying marker as to their new location.

Mr. Remington said to have an 8 foot sign that did not impinge on the curb or the parking lot, you would almost have to make another bump out which would mean eliminating a couple of parking spots.

Ms. Lunsford asked had Mr. Phelps looked at other options, and did they have an alternative plan. Mr. Phelps replied no, indicating they had not identified any other options.

Mr. Hornik asked was that sign design required by the restrictive covenants, in its shape and configuration. Mr. Phelps replied "yes," exactly. Mr. Hornik said then either they did not have a sign, or they complied with the restrictive covenants, or they had something else that did not comply with the restrictive covenants. Mr. Phelps said that was correct.

Mr. Remington said his point had been that something of a similar size to the temporary sign would be visible to the public. Mr. Phelps said it was a covenant issue, noting the sign cost thousands of dollars and he did not want to design a sign and then have to remove it because it did not meet the restrictive covenants. He said that was why he was before the Board this evening.

Mr. Phelps said in regards to Finding of Fact B, they were severely limited because of the main stormwater drain that came from the lot across the parking lot, and then Duke Power had put a high-power line farther into the lot than was normal, which further limited them on the configuration of the stormwater drain. He said in addition there were fiber optic lines on the premises. Mr. Hornik said those lines as well as the power lines could have been moved but it would have been expensive and time consuming. Mr. Phelps said they had actually moved the phone lines, but it would have been cost prohibitive to move the power and fiber optic lines. He said it was his opinion that it would be impossible for them to operate their business without a sign, noting not many businesses could survive without a sign and it would adversely affect the Farm Bureau.

Mr. Phelps said regarding Finding of Fact D that was one area where they likely had not done enough, but in his opinion this was a Board of Adjustment and what he was asking for was an adjustment. He said he understood there were guidelines that had to be adhered to, but he did know that there had been two houses that were begun in the setback and the owner of one had come before the BOA (Board of Adjustment), and the BOA had granted the variance to allow the house to remain. But, he said, the BOA's message to that owner was that they would allow it that one time but never again. Mr. Phelps said he did not know if the same thought could apply in this case, in that their sign would be allowed this one time.

Mr. Phelps pointed out that he had noticed that 3 if not 4 of the other businesses in the business park had signs that were the same footage from the road that they were requesting the variance to be. Mr. King agreed that was most likely correct.

Ms. Lunsford asked if those other properties had had similar issues with the storm drains.

Mr. Hartkopf responded they did not, noting they were on the right side as you traveled down the road. He said this particular site was under a disadvantage due to the way that the water was carried down through that area, and in that particular place there was a large culvert and conduit under the driveway. Mr. Hartkopf said as you continued in the business park the swale of the water ran further away from the road and eventually the right-hand side of the road went up but not as radically as it was going down in front of this particular property. He said so the excavations for the culvert and the conduit were a lot less dramatic than it was in this particular location.

Mr. Remington said then water drained down to this lot, which had taken out quite a bit of useable space.

Mr. Hartkopf said in addition you were getting a lot of water coming up from Old NC 86 because it was higher and it drained down the road and did so fairly dramatically in this location.

Mr. Remington asked had the drainage been like that prior to construction. Mr. Phelps said the stormwater drain was there and took up a lot of space, and it took the stormwater from the bank and from across the street. He said the pond itself took care of only the stormwater from their particular lot to get the first inch of water from the roof and the parking lot.

Mr. Phelps said in regards to Finding of Fact E, he believed their sign was an important benefit and believed that the size of the temporary sign was not adequate. He said he believed Mr. Remington had been able to locate that sign because he was looking for it specifically.

Mr. Remington said the question was if the new sign would sit where the temporary sign was now sitting. Mr. Phelps said it would be in that area, but would be larger. Mr. Remington asked if the size of the temporary sign was legal in terms of the right-of-way. Mr. Phelps said he did not believe the temporary sign infringed on the setback, but it did not meet the restrictive covenant.

Ms. Lunsford asked had the new sign already been designed and purchased. Mr. Phelps said it had been designed but they had a hold on it at present, although they had already spent funds on it. He said in his opinion the sign did not have the potential to undermine the purpose of the ordinance, and believed the Board could allow a variance to be specific to a particular issue and not allow it to be precedent for future issues.

Mr. Phelps said that it was quite a struggle to build a building and meet some of the guidelines that were required by the Town, and pointed out that they had outgrown their previous building that was outside the Town's limits. He said any time you grew your business you had to look for space that was adequate, and the space identified just happened to be in the Town's limits. Mr. Phelps said he knew that the tax value on the new building would likely be around half a million, and they would be paying over \$3,000 in taxes to the Town. He said he was pleading for mercy in that he would ask the Town to try to help businesses such as the Farm Bureau.

Mr. Hartkopf asked was it accurate to say that the proposed sign would go roughly where the temporary sign was located, more specifically would it go on the street side or the building side of that culvert. Mr. Phelps said it would be almost in the same location as the temporary sign, but it would be closer to the road and wider than the temporary sign. Mr. Hartkopf said then it would be on the building side of the concrete culvert. Mr. Phelps said when you entered the parking lot it would be on the left. Mr. Hartkopf said in the stormwater path underneath the building there was a huge concrete pipe, and the sign would be on the building side of that concrete pipe.

Mr. Sikes said where the current sign was, the culvert did not just run under the driveway but extended quite a bit down to catch the water coming down the road.

He said where the sign would be, some portion of it would be on top of the culvert.

Mr. Hartkopf said then it would be closer to the parking lot. Mr. Hornik said the street side was the north side, and the building side was the south side, and the sign would be closer to the south side.

Mr. Hartkopf said he was looking at Attachment 3 (the sign specification drawing) which indicated there was a 4 inch pipe and also indicated that there was a 4 foot deep, 2 foot wide something, and asked what that something was around that 4 inch pipe.

Mr. Sikes said he believed it was the concrete footing to support the weight of the sign. Mr. King said he assumed that as well.

Mr. Hartkopf said then that 4 foot deep, two foot wide apparatus would be on the parking lot side of the concrete pipe and the ditch, which was where the temporary sign was now. Mr. Phelps replied that was correct. Mr. Hartkopf said then 3 feet of the sign would be out away from the building side and would extend over top of where the culvert was located. He said that would mean a maximum of 3 feet beyond what could be towards the road.

Mr. Hartkopf said his concern was exactly how the sign would fit onto the property and what was the maximum amount of "damage" it could cause. Mr. Phelps said he understood the concern, noting that his thought was that the footing could be redesigned because it was likely they had not thought about anything being under it. He said the deeper and wider a footing or support the more it would support, and believed it might be possible to redesign that so that there were two pipes that were shorter and still accomplish the goal.

Mr. Hartkopf said his point was that as submitted, there was only so much violence the sign could do to the ordinance because of that concrete pipe. He said that 4 foot by 2 foot chunk of concrete could go no closer to the road than the side of that culvert, so that meant that it could only extend over that culvert by 3 feet. Mr. Hartkopf asked what the diameter was of the culvert that went underneath the road. Mr. Phelps said about 3 feet.

Mr. Sikes said it was smaller than 4 feet, but it flared at the end. Mr. Phelps said he did not know what the exact pipe size was, but it was larger than 2 feet.

Mr. Hartkopf said his thought was that the sign could only get so close to the road because of the way the footing was laid, which made him question the whole 4 or 5 foot variance question. He said the second thing that had made him question it was exactly how close it would approach the curbing for the parking lot. Mr. Phelps said if they had placed the sign as required by the ordinance then the edge of the sign would have come to the edge of the curbing, so it would be vulnerable

to someone backing into it. He said that was why they were requesting the variance from the sign setback to allow the sign to be 4 feet from the parking lot curb.

Mr. Hartkopf asked was it Mr. Phelps' testimony that the Farm Bureau did not operate as a for-profit entity. Mr. Phelps said that was correct.

Mr. Hornik said if the Board was considering granting the variance, many times they could consider if it was the least variance necessary to accomplish the applicant's purpose. He said in other words, the Board might want to consider whether 2 feet rather than 4 feet from the back of the curb was good enough for the parking lot, and if so then perhaps only grant the variance for a 7 foot setback rather than the required 10 feet.

Mr. Sain asked if putting that large a sign there would hinder the sight distance of people coming and going from the parking lot. Mr. King said depending on where you took the measurement, the front edge could possibly stick out as much as 2½ feet, but it depended on what point at the driveway throat you measured back from.

Mr. Phelps said that whole space was open, and their landscape design included low growing shrubs. So, he said, even when the shrubs matured you would still be able to see the road as you headed out of the parking lot. Mr. Phelps said that road also went uphill and curved to the north away from the sign, noting if the road was straight the sign would have more of an effect. He said that would provide a better view in his opinion.

Mr. Sikes said he was leaning towards if they granted the variance that rather than being 4 feet from the parking lot that it be pushed somewhat closer, noting there was no parking space right there so the chance of the sign being hit was minimal. He said he understood that backing up it may be an issue, but moving a little closer to the parking lot would help. Mr. Sikes said as far as the sign itself, since it had not been physically purchased he suggested that the entire width of the sign be cut down from 8 feet to perhaps 7 feet, cutting 6 inches off each side, but keeping the exact same shape. He said that would provide an additional foot of space and they could then move it closer to the curb. Mr. Sikes said he would be much more comfortable granting a variance using that scenario.

Mr. King said there may have been an engineering turn radius used as the reasoning for the throat of the driveway to be configured as it was.

Mr. Phelps said he had no problem with cutting down the size of the sign, noting he believed they could do that without having someone notice that it did not meet restrictive covenants.

Mr. Sikes said even if it was noticed, they could refer them to the Zoning Officer. Mr. Phelps said he believed they could cut it down at least a foot, and if practical perhaps they could go a foot and a half. But, he said, they would still need a variance to put the sign where planned. Mr. Phelps said regarding getting the sign closer to the curb, the dumpsters were in the back and the trash truck had to come in and back out and turn into the drive to exit the site. So, he said, if that trash truck was hanging over the rear axle his sign would be history. Mr. Phelps said he would not want to bring the sign much closer to the curb. He said they had actually tried to have two entrances into the site to eliminate problems with trash trucks, but they had been encouraged not to do that. Mr. King indicated that the EDD design manual frowned multiple driveways.

Mr. Sikes said his other issue, although he did not believe it was all that feasible, was that on the western side of the driveway in, it looked like on the drawing that there was enough room to potentially place the sign rather than placing it where Mr. Phelps had proposed. But, he said, when he had visited the site there appeared to be a rather steep slope there and the area would likely have to have a retaining wall. Mr. Phelps said it was very steep there, and there was a telephone junction box as well as the high power cables and the grate for the stormwater, all in that location. He said that left almost no room for a sign to be placed, and if placed there the bank property would block sight of it. Mr. Sikes said he assumed it would be against the covenants to turn it parallel to the road or perpendicular from its current configuration. Mr. Phelps said he had not checked into that, but did not believe it was a good idea. He said a parallel sign would cause people to have to turn and look as they drove by. Mr. Sikes said if it was cantered somewhat, the size was reduced somewhat, and it was pulled closer to the parking lot, then he would be more in favor of granting a variance. Mr. Phelps said he did not believe cutting down the size of the sign by at least a foot would be a problem, but would not want to push it much closer to the curb because of the trash truck issue.

Mr. Hartkopf said in regards to the dumpster, he had noticed as you drove up and looked at the dumpsters that there were two parking places to the immediate left that were somewhat behind the building. He asked was there some regulation that said you could not have that dumpster pad where the two parking places were located. Mr. Hartkopf asked could the building have been slide back further, noting that the dumpster pad was right at the parking signage setback at 12 feet. Mr. King said he did not believe there was an ordinance reason, but was a result of how the parking lot had been designed as well as the dumpster pad. He said he did not know why there were two parking spaces there, but that was the only other place the dumpster could be placed.

Mr. Remington said when they measured building setbacks, was it the farthest projection out of anywhere on the vertical plane of the building, such as the eaves, or was it from where the foundation came out of the ground. Mr. King said the setback was measured to the building and eaves could extend 24 inches into the

setback. Mr. Remington said by the same logic, could a sign extend up to 24 inches out from a setback if the foundation of the sign did not go out to the edge of the sign. Mr. King said that was not the way the regulations had been interpreted in the past, and believed it was allowed for eaves because they were high off the ground rather than at ground level.

Mr. Hornik said the way the Town had interpreted that language was common in other jurisdictions with respect to eaves, and signs were not allowed the same kind of overhang.

Mr. Sikes asked if shrinking the sign could be a condition of approval with the variance, or would the Board be interested in actually seeing the design. Mr. Sikes said he was suggesting that Mr. Phelps submit a picture of the actual redesign of the sign at 7 feet long, and moved back towards the curb by 2 feet. Mr. King said moving it closer to the curb appeared to be an issue for Mr. Phelps, noting his concern that pickup trucks backing up would be in danger of hitting the sign.

Mr. Phelps said he was worried about pushing the sign closer to the curb, noting vehicles backing up would likely hit the sign. He said he had no problem with coming back with a redesign for the sign at no longer than 7 feet.

Mr. Hartkopf asked if the sign was kept at the same scale, would a shorter sign be that noticeable from one office site to another. Mr. Phelps said he did not believe so. Mr. Hartkopf asked if the Farm Bureau leased any of its space to anyone else. Mr. Phelps replied "no," and there were no intentions to do so. He said the building was built for a single business use.

Mr. Sikes said in reading the Findings of Fact analysis, it said a variance may be allowed in cases involving practical difficulties or unnecessary hardship, and that substantial evidence in the official record of the case supported all of the facts. He said did that mean in order to grant the variance that all five of those components had to be answered. Mr. Hornik said yes, all five had to be answered in the affirmative. He stated that was State law, not a Town regulation.

Mr. Remington asked what exactly the restrictive covenants required for that sign. Mr. King said the Town did not generally become involved with restrictive covenants.

Mr. Hornik said he had gathered from the testimony that the restrictive covenants would require the design, shape and size as proposed and in that approximate location, he assumed.

Mr. Sikes said there were other signs in that same park that were not as large as the one proposed here, noting there was one that was brick and had two tenants listed side by side. Mr. King said he had seen several that did not meet EDD

requirements, but since his tenure with the Town he had been requiring that the regulations be met.

Mr. Hornik commented that the further down the road the sign was placed away from the driveway the less good it did, because it would make it harder to identify the Farm Bureau's driveway.

Mr. Hartkopf said you could certainly make the case that without the sign people could drive up and down the road looking for the Farm Bureau.

Mr. Remington said his biggest issue was with Finding A, and to some extent B. He said the question was if it was really unique and singular, noting he was not sure he saw where the culvert changed things that much. Instead, he said, it was the location of the parking lot and the building and the width needed for cars to back out. Mr. Remington said he believed anyone else looking at it would not find it to be a unique and singular hardship, because they had "painted themselves into a corner." He said that was his problem with it, although he was sympathetic to the issues. Mr. Remington said in terms of Finding B, he believed a narrower sign would provide adequate visibility. He said the biggest issue he believed was with the restrictive covenants, which were out of the Board's purview. Mr. Remington said he agreed with Mr. Phelps that a sign was needed so that people could find them, but he believed it would be quite findable with a narrower sign.

Mr. Hornik said how the Board made the Findings of Fact depended on how they wanted to view the circumstances by which they had gotten to this point. He said had the sign location been a part of the original site design would be one circumstance because it could have been rearranged at that time. Mr. Hornik said that might be viewed as not being a practical difficulty because it could have been addressed with the original site design. But, he said, the Board could say that they had the plan they had, and they had what was on the ground, and now they wanted to put up a sign. He said under the circumstances they faced today, if they disregarded the fact that it could have been designed differently and just looked at what they had today, then that might make a difference in the Board's determination.

Mr. Hartkopf said in regards to Finding B, the fact that this was a non-profit enterprise had a fair amount of bearing, in that it was not merely an inability to maximize profits because no profit was being made.

Mr. Sikes wondered if they should check to see what the covenants would allow, and if they would accept a small sign. Mr. Phelps said the restrictive covenants gave instructions as to how the sign was to be designed, but the control of the property had changed several times since those covenants were written. He said having said that, the original covenants stated that the sign should be as he had originally proposed, but someone would have to enforce that. Mr. Phelps said he would gamble on making the sign somewhat smaller, but did not believe they

could make it small enough not to require a variance. He said even with reducing the size of the sign, his position remained that they should not be any closer than 4 feet from the curb. Mr. Phelps said he agreed cars backing out may not hit the sign, but trucks certainly would. He said 4 feet was enough distance, but no closer.

Mr. Phelps said even with cutting the size of the sign down, he believed they would still need a variance of at least 3 and up to 5 feet. He said they could reduce the size of the lettering, but it needed to be large enough to be easily read from the road. Mr. Phelps said in the design if you reduced the available space too much, then it would not allow room for the emblem they were required to display. Mr. King said they had only about 7 feet from the back of the curb and the setback to work with at the widest point, and he was basing that on the as-built survey and not the actual site plan.

Mr. Sikes said reading back over the Findings of Fact he was concentrating on Finding B, and he was having trouble coming up with a way for that to work. He said he would be very interested in finding out exactly what the current covenants were for signs, just to see if there were some changes that could be made to the shape or size. Mr. Phelps said there may be, but believed that continuity in the business park was a consideration in that their sign should not be much different from those already existing on the various sites. He said he wanted the sign to look as similar as possible to what was already in the business park. Mr. Sikes agreed, but said his feeling was that there were some signs in the business park that were different, noting that the Community One Bank sign was different although its frontage was on Old NC 86, and Carolina Financial Advisors' sign was different as well. Mr. Sikes said it was his perspective as a member of the BOA and in looking at the ordinances that it was beyond their purview to say that another set of circumstances, being the covenants, because of their aesthetic requirements, superseded the BOA's Findings of Fact.

Mr. Hornik said relevant considerations, and one of the things that would make the restrictive covenants relevant to the Board, was if that was the minimum variance necessary to accomplish what the property owner needed to accomplish. He said knowing what the covenants required may be irrelevant, but they did not know that yet. Mr. Hornik said secondly, was the situation that made the variance request necessary self-created; that is, created somehow by the applicant's own actions. He said the language in the covenants may have some bearing on that as well, and the whole sequence of how they had gotten to this point also had some bearing. Mr. Hornik said to him it sounded like the Board was searching for a way to make the Findings of Fact and to find a way to accommodate the applicant to some extent. He said if they wanted to do that, the best way for them to help the applicant was to have the applicant provide the restrictive covenants for the Board's review.

Mr. Remington said then the covenants were something that the Board could take into account. Mr. Hornik said they could be taken into consideration.

Ms. Lunsford said the applicant may also be able to request a variance with the covenants. Mr. Hornik said they needed to know that. He said if the covenants did require a certain dimension and/or required them to be in a certain location, and that the location on the site was that location, then it may be that somehow if they could fit a 6 foot wide sign rather than an 8 foot wide sign on the site then perhaps the applicant would not need a variance, or, if he needed a variance that it would be for only 2 feet instead of for 5 feet.

Mr. Phelps said he would get all the information he could locate and provide it to the Board. He said as he mentioned earlier, restrictive covenants were recorded and were supposed to be binding, but were useless until someone enforced them. Mr. Phelps said the Farm Bureau wanted to do things the right way, and was not sure that anyone was really enforcing the covenants per se. He said his point was that if someone did, there was a trigger in the restrictive covenants that they could be enforced. Mr. Phelps said any sign they got would cost thousands, but his point was if the restrictive covenants allowed them to alter the size of the sign, then they were at the point that they would erect a sign that promoted the Farm Bureau instead of trying to be in harmony with others in the business park. But, he said, it would still be no closer to the road than other signs erected in the business park.

Mr. Phelps said they were just trying to make what they had work, but someone may one day come along and say the sign did not meet the covenants. He said there was actually a building in the park that had not received prior permission to be built as it was, but they had taken a gamble and the Town had approved it. Mr. Phelps said if the restrictive covenants were enforced they could likely cause that building to be torn down. He said he believed they had an attractive building, but if they did not get the variance it would not be the end of the world. Mr. Phelps said personally he would like to have a sign that looked very close to others in the park, even if it was cut down a foot or so.

Mr. Phelps said he could wait another month, and it would not make a difference. He said he would bring back whatever information the Board asked for to the next meeting and then try again. Mr. Phelps said regardless of what the covenants might say they wanted an attractive sign that was in harmony with the rest of the business park. He said if this was held over to the March 10, 2010 meeting, he would ask that a decision be made at that time.

Mr. Sikes said he believed the Board wanted to find a way to do it, and ideally doing that without granting a variance. But, he said, the way it was submitted he believed some things would have to be changed.

MOTION: Mr. Sikes moved to continue Case #BA-04-2010 to the March 10, 2010 meeting, and that the applicant would bring back at that time the restrictive covenants for the business park for review, drawings that depicted alternative orientations for the sign, and options of how the size of the sign might be reduced. Ms. Lunsford seconded.

VOTE: Unanimous.

ITEM #5b: Review of Final Order for Case #BA-10-2009 – Arthur Ruzensky of AA Graphics, LLC is appealing an adverse decision of the Zoning Officer as it relates to the replacement of a freestanding sign in violation of the required freestanding sign setback requirement of the Zoning Ordinance. The property subject to the appeal is located at 202 Cardinal Drive (Orange County Tax Map Reference #4.42.B.3H) and is currently zoned HIC (High Intensity Commercial).

Mr. Hartkopf said absent anyone making a motion to recommit, he would sign it into law. Mr. Hornik said he had reviewed the record and the minutes and believed they accurately reflected the Board’s decision.

Mr. Hartkopf said hearing no motion to recommit, he would sign and execute the documents.

ITEM #6: Committee and Staff reports.

Planning Board:

Mr. Remington said last month the Planning Board held its public hearing and the update to the Parks and Recreation Master Plan was on the agenda but no one spoke. He said the remainder of the meeting was devoted to the ordinance rewrite. Mr. Remington said there were a couple of things that the consultant, Roger Waldon with Clarion, had brought forward that decisions would need to be made on. He said one that might be of interest to this Board was that Mr. Waldon was suggesting there be a provision for what was called “administrative adjustment” which would allow staff to deviate within certain parameters on a variety of issues related to unique or unusual circumstances, where the deviation was judged to make things better. Mr. Remington said one of those was setbacks.

Mr. Hornik said one of the reasons for setting those parameters within limited circumstances was so that minor adjustments would not need to come back to the Board, and staff could approve a change within those set parameters. Mr. King said from what he understood the Special Exception Permits that the BOA saw every so often would fall to staff, in that there would be some set criteria that such exceptions would have to fall under. For instance, he said, if a part of a house was already nonconforming and an owner wanted to add on it would have fall within the set parameters.

Mr. Remington said he was not sure there was anything proposed that would relate to the particular case they had just heard, but he had asked the question that

if staff could make those kinds of deviations why not the Board of Adjustment, and could the same thing apply to the BOA when they had a Conditional Use Permit or something similar so that they would have some flexibility. He said he had made the comment that the BOA may not necessarily want to have that flexibility because it may cause more complications, but it was something to consider.

Mr. Hornik said staff had just completed the first run through to rearrange the current ordinance into a more useable format, and Clarion was in the process of making some revisions. He said they expected to have a draft ready for Planning Board, Board of Adjustment, and Town Board review sometime in early March for more substantive comments.

Mr. Remington said that going into this they had thought that any substantive changes would be made during the ordinance rewrite, but they now realized it was not practical and the rewrite was more about getting the ordinances into a form that was workable and understandable, in that they would not have separate zoning regulations and subdivision regulations that might contradict each other. Mr. Remington said there were a limited set of items that would be included in the rewrite and that would be the next step, but it would not be wholesale changes in all the content. He said changes would be the exception, not the rule.

Mr. Hornik said it would be a huge step in the right direction, but it would not fix everything because there was too much to do in that one process.

Rail Station Task Force:

Mr. King stated they were trying to come up with a conceptual development plan for the Town-owned tract that showed where the rail station would go, as well as a police/fire station and a possible performing arts center, and still maintaining space for the HYAA (Hillsborough Youth Athletic Association) ball fields. He said they had also been looking at the Collins tract to the south behind Daniel Boone and adjacent to the railway corridor and I-85 to come up with a very conceptual diagram for what kind of development they would want to see on that tract of land. Mr. King said they would be meeting on February 15, 2010 to go over some additional conceptual drawings for the Town-owned tract as well as the initial conceptual drawings for land uses on the Collins tract.

Mr. King said on January 28, 2010 the federal government had announced that NCDOT (North Carolina Department of Transportation) had been awarded \$545 million for the southeast high speed rail project, and they were fairly certain the rail station had not been included with that funding although NCDOT had submitted in their grant application the Hillsborough station as well as the Lexington station. He said they would know for sure next week, but another grant would be coming and NCDOT had said they would resubmit for those two stations in that second grant. Mr. King said they were again asking Congressman

David Price for some congressional appropriation funding for the rail station, noting the deadline for the upcoming cycle was the end of the month.

Interview Candidate for In-Town Alternate Vacancy - Bill Whitmore.

Mr. King noted that Bill Whitmore was present to be interviewed for a vacancy on the Board. He said Mr. Whitmore had been before the Board in the past, and was seeking to take Brad Curelop's seat in that his term would expire at the end of the month. Mr. King noted that the upcoming vacancies were for an In-Town Alternate seat and In-Town Regular seat.

Mr. Whitmore provided some brief information regarding his background and interests, saying that his family had moved to Hillsborough a year and a half ago, and were renovating a house on West Queen Street and would soon be moving into it. He said Mr. King and Stephanie Trueblood had been very helpful in getting over the hurdles associated with renovations in the historic district, and had noted that in his conversations with Mr. King that he had an attitude and outlook of how he might make their plans work. Mr. Whitmore said that had made serving on this Board attractive to him, noting he had encountered that attitude at every level of local government as they became new residents. He said he believed he would be able to contribute to and learn from service to the Town.

Mr. Whitmore said he had 30 years of corporate life behind him, having spent the last 10 years in Chapel Hill before deciding to make the move to Hillsborough. He said their children were grown and they had wanted to downsize, and since they had fallen in love with Hillsborough they had begun looking for a home. Mr. Whitmore said he was looking for a way to contribute to his new Town in some way, and believed this Board might be the right place.

Mr. Sain said there were times when they had to deal with the laws as they were written regardless of what they might feel should be done, but they had to restrain themselves and abide by those laws.

Mr. Whitmore said it had been interesting to hear the discussion on the new UDO (Unified Development Ordinance), noting he worked with Habitat for Humanity and had spoken with Town Commissioner Mike Gering about how things were going, and he had referred to the fact that they were going to try to build in some latitude or administrative freedom for affordable housing. He wondered how the Board felt about having more freedom or wiggle room.

Mr. Sikes said he liked the idea of allowing staff to handle more routine issues that were straightforward, and there had been several of those in the past few months. But, he said, when it came to larger site plans he liked having specific guidelines that indicated exactly what had to be done, and if there were questions then there had to be very compelling reasons to find otherwise.

Mr. Hartkopf said there were times that the Board worked very hard to find creative solutions for a particular applicant. He said it was not a question of whether an applicant was deserving, it was a question of a viable hole in the ordinance or was the ordinance saying something that really did not mean what it said in that particular instance. For instance, he said, the ordinance might say a sidewalk was required, but there were issues with that in that did the ordinance really mean that a sidewalk should be provided in a place where no continuity would ever be achieved.

Mr. Hornik said the sidewalk issue had come up at the Planning Board meeting as being one of the types of situations where they were going to try to establish presumptive standards that generally speaking stated what would be required. But, he said, if an applicant came forward and could establish good reason why the presumptive standards should not apply in that case, whichever board had the authority could waive or adjust the standard.

Mr. Hartkopf said that sounded really good because they would not have to work so hard, but the curse of it was what concerned him. He said if they had to work really hard to grant something like that, then he did not believe that they or subsequent members of the Board would say that that had been a precedent initiation. Mr. Hartkopf said if finite or closely drawn situations converged to say that the ordinance did not really mean what it said in that particular instance, then if you opened that up you did run the risk of setting precedent or a de facto precedent. He said it would also place a great deal of pressure on a staff member who was paid to do those sorts of things and had a supervisor, versus a citizen board who was not paid but were volunteers.

Mr. Hartkopf said he had long believed that you could not write everything into law and have it work out well.

Mr. Whitmore said during the Farm Bureau sign discussion, he had seen the Board deliberating and trying to find an avenue that would work for the applicant and still comply. He said he was a fairly new realtor, having only been in the real estate business for five years, and said he was only just beginning to scratch the surface of what the Board dealt with on a regular basis. He asked was there any training that would bring him up to speed more quickly.

Mr. Sikes said that Mr. King could provide information on potential training opportunities, noting he believed there was one coming up soon. Mr. King said he believed there was one in Greensboro at the end of the month on quasi-judicial decision making, but he did not know if it was too late to sign up. He said there were other training opportunities that would be more specific to this Board, and he would provide some information to Mr. Whitmore at a later date. Mr. King said he could also provide some training for Mr. Whitmore in his office, as could Mr. Hornik, that was a little more in depth.

Mr. Whitmore stated he was involved with the Greater Chapel Hill Association of Realtors, so was somewhat familiar with parliamentary procedures. Mr. Hornik said that this Board was not hard and fast on parliamentary procedure or Roberts Rules of Order. He said they tried to follow parliamentary procedure as much as possible, but at times it seemed that the greater the stakes the more formal they became.

Mr. Sikes said they wanted to stay out of court as much as possible and make Mr. Hornik's job of defending the Board as easy as possible. Mr. Hornik said that was exactly what he wanted.

Mr. Hartkopf asked if Mr. King had reserved this Board any space in the upcoming training in Greensboro. Mr. King replied no, that no one had replied in the affirmative.

Mr. Sikes said he would be interested in a training session just for this Board. Mr. Hornik said he had talked with other boards about that as well, and it might be possible to hold some kind of joint session. But, he said, this Board's standards were very different in some ways, but it was worthwhile to do such training periodically, at least once every one to two years.

Mr. Whitmore asked apart from a willing volunteer, what was the Board looking for. Mr. Sain replied someone with common sense.

Mr. Remington said common sense along with a willingness to look at the details of issues. He said it was helpful to read through the packet of materials prior to the meeting and get familiar with the issues. Mr. Remington said when at all possible, he tried to visit the sites that they would be considering at the meeting to get a feel for those issues, such as had been the case with the Farm Bureau sign.

Mr. Sain said it was helpful for him to visit the site, noting it helped him to visually understand what was on paper. He said with the Colonial Inn case, you could plainly see what work had been accomplished and what had not.

Mr. Hartkopf said it was important during a meeting to stay on point and at the same time not get too frustrated with the sub-tangents that the Board members went on from time to time. He said for instance, when he had asked about the Farm Bureau dumpsters he was trying to understand why they were right up against the building storage setback, but there was so much room between the building setback and where the building actually began. Mr. Hartkopf said he had wondered if there was something about where the building was placed that made the building move forward that much, and why there were two parking places back there. Mr. Hartkopf said he had driven in and driven out of that lot six times trying to look at it from every angle, noting it was odd how it had been placed on the site. He said his point was it was important to visit the sites.

Mr. Sikes said he believed Mr. Hartkopf's line of reasoning for going down that path was that one of those Findings of Fact had something to do with whether the applicant had caused the hardship themselves. Mr. Hornik said there was more to that in terms of the placement of the building and the way the site was set up.

Mr. Hartkopf said it was helpful to ask questions that had definitive answers, noting early on he had asked some fairly open ended questions, but now he tried to ask questions that were not so open ended, and actually tended to ask yes or no questions as much as possible. He said the next person that would look at these applications would be superior court judges, and he did not want to provide them opportunities for laughter.

Ms. Lunsford said she was ordinarily quick to make decisions, and serving on this Board had been a lesson in patience in that you could not make quick decisions. She said the more you dug the more you found issues that were unclear, so their job was not black and white.

Mr. Sain said that was why you had to stay open-minded about the issues the Board faced.

Ms. Lunsford said she did believe the sign issue should have been a 30 minute discussion and not an hour and a half discussion, so it would be nice to figure out a way to do that.

Mr. Hartkopf thanked Mr. Whitmore for his interest in serving, noting Hillsborough was a great small town with its own idiosyncrasies. Mr. Whitmore stated he had actually enjoyed the discussion this evening.

Mr. Sain remarked you could not help but learn a lot serving on the BOA.

MOTION: Mr. Sikes moved to recommended to the Town Board appointment of Bill Whitmore to a vacancy on the Board of Adjustment as an In-Town Alternate. Mr. Remington seconded.

VOTE: Unanimous.

ITEM #7: Adjourn.

Mr. Sikes moved to adjourn the meeting at 9:51 p.m. Ms. Lunsford seconded. The motion was adopted unanimously.

Approved:

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