

MINUTES
JOINT PUBLIC HEARING
HILLSBOROUGH TOWN BOARD and PLANNING BOARD
Thursday, October 16, 2008
7:00 PM, Gordon Battle Courtroom, Orange County Court House

BOARD OF COMMISSIONERS PRESENT: Mayor Tom Stevens and Commissioners Frances Dancy, Evelyn Lloyd, Mike Gering, L. Eric Hallman, and Brian Lowen.

PLANNING BOARD MEMBERS PRESENT: Chair Matthew Farrelly, Dan Barker, Kate Faherty, Neil Jones, Dave Remington, Barrie Wallace, Bryant Warren, and Elizabeth Woodman.

STAFF PRESENT: Planning Director Margaret Hauth, Town Attorney Bob Hornik, and Assistant Town Manager/Public Works Director Nicole Ard.

ITEM #1: Call to Order.

Mayor Stevens called the public hearing to order at 7:05 p.m. He did not read the Public Charge but noted it would be followed. Mayor Stevens then turned the gavel over to Planning Board Chair Matthew Farrelly.

ITEM #2: Special Use Permit request from 2X2 Enterprises to develop 2.22 acres at 610 Hampton Pointe Boulevard as a Sonic drive-in restaurant with a drive thru window. The building is proposed at 1,728 square feet with 36 parking spaces (TMBL 4.45..4m).

Planning Director Margaret Hauth noted that speakers for this item would need to be sworn prior to speaking. She provided a brief overview, noting that the request was from 2X2 Enterprises to develop 2.22 acres at 610 Hampton Pointe Boulevard as a Sonic drive-in restaurant with a drive thru window, with the building proposed at 1,728 square feet with 36 parking spaces. Ms. Hauth stated when the Hampton Pointe Master Plan had been approved one of the anticipated uses was restaurants with drive-thrus, of which two had been allowed. She stated that this would be the second one in Hampton Pointe.

Ms. Hauth said the ordinance contained a section of special criteria to be applied to restaurants within a special use district, and the applicant was seeking four waivers. Ms. Hauth stated that since the site was approved before the Town had gotten into the Phase 2 stormwater requirements, the applicant was requesting that the approval that was in place at that time apply to this site as well rather than coming in with the nitrogen loading requirements that were a part of Phase 2. Ms. Hauth stated the ordinance required a three-foot wide landscaped area between the parking and the building, and given the somewhat unique nature of this use, that was problematic and the applicant was asking that they not be required to install that. She said there were two different sign waivers being requested, one of which was for the height of the freestanding sign which was limited to 7 feet, and the applicant was requesting 7½ feet. Ms. Hauth said lastly, the ordinance prohibited changeable message signs, and the applicant was asking for a changeable message portion on the face of the sign.

Ms. Hauth said that there were several issues identified by staff that should be kept in mind as this application was considered. She said there were three driveways into the site, and perhaps one should be considered for removal. Ms. Hauth stated the staff recommendation was that the first one off the shared drive between this site and the adjoining vacant lot should be removed, which would require deeper travel into the site before turning in, and leaving the driveway that connected to the Eagles. She said another

issue was the outside eating area and whether it actually met the criteria of the ordinance regarding screening. Ms. Hauth stated there was a striped area near the drive-thru that staff believed ought to be more of a landscaped island rather than just a striped paved area to prevent it becoming a casual parking space. She said given the type of use and the back and forth of wait staff and pedestrians, there were many opportunities on this site for conflicts between vehicles and pedestrians.

Mr. Farrelly asked if new information would be provided. Ms. Hauth stated she believed what the applicant would provide was summary information and nothing new. She said if new information was to be provided, staff had not seen it.

After having been sworn, Tracy Parrott of Summit Consulting and representing 2X2 Enterprises, introduced Greg Wilson, the Director of Operations and General Managing Partner of 2x2 Enterprises and the local franchisee, Keith Burns, the attorney for 2x2 Enterprises, and Chad Abbott, a member of the Summit staff and the project engineer. He noted that Mr. Abbott would provide details of the application using a PowerPoint presentation.

After having been sworn, Chad Abbott stated that this was a local franchise of a national restaurant chain that offered walk-up, drive-in, or drive-thru service. He stated it was a 1950's diner-style restaurant where service would be provided at the vehicles. Mr. Abbott stated the outdoor seating would provide a unique and environmentally enjoyable dining experience, and provided a rendering of the site. He pointed out the adjoining developed sites, and noted that all pertinent infrastructure had already been provided on the site. Mr. Abbott stated they were adhering to the required cross access and shared access, and noted that there was limited environmental impact as the site had been previously graded. He stated that the site was in the Entranceway Special Use district, and the proposed use was consistent with the uses proposed for that district. Using photos, Mr. Abbott described nearby properties and their uses as well as the required buffers that must be maintained.

Mr. Abbott stated that the only difference between what was proposed and what had been provided in the SUP packet was that the applicant would like to use all brick rather than brick and stucco, to bring it more in line with nearby buildings. He said that special menu boards would appear along the drive-in stalls, as well as a menu board out front for sit-down customers with patio-type tables and chairs. Mr. Abbott stated that the proposed use was in accordance with the Land Use Plan.

Mr. Abbott stated the topography was flat, sloping and draining to the west. He said they were providing a shared drive for the future development of the adjacent parcel to the west, as well as shared access with the Burger King. Mr. Abbott stated there was a grove of trees as well as some stand-alone trees, consisting of maples and cedars that would remain to provide a buffer between this site and the Burger King site. He stated that there were some oak trees along the front of the parcel that would more than likely remain.

Mr. Abbott stated the site was roughly 2.2 acres, the building height would be no higher than 25' tall to accommodate the yellow tower shown on the plan, there would be two 24-foot full access drives off of the shared drive, and one access shared between this lot and the Burger King lot. He stated there were 37 parking spaces with pedestrian crosswalks added at the Town's request. Mr. Abbott said that a difficulty with traffic flow would be created by eliminating the first driveway as suggested by Town staff, in that it would force traffic to circle the building twice. He stated the applicant desired to participate with the rest of the development by keeping the existing approved stormwater plan without further treatment on this

site, and was seeking a waiver to that effect. He also described how stormwater would traverse and be collected.

Mr. Abbott pointed out the existing trees that would be kept, noting that the tree spread was not to scale. He said they would try to save the large trees in the back, but had not yet determined how many would be saved in the front. Mr. Abbott stated per building covenants they would be required to plant scarlet oaks along the frontage. He said a single tree was required along the NC 86 frontage, but that may cause more disruption to existing landscaping.

Mr. Abbott stated that signs would be within the allowable square footage, and that the site met the lighting requirements with most lighting under the canopy which limited the height of poles. He remarked that waivers were being requested to allow for a changeable message sign as well as to allow for a 7½ foot sign rather than a 7 foot sign. Mr. Abbott stated that changeable messages were necessary to advertise specials, noting they had limited windows for additional signage. He also commented that they were asking only for 6" additional height.

Mr. Abbott said that the parking was shown on one side of the building and the drive-thru on the other. He said the majority of the buildings in that development had a sidewalk with no foundation landscaping, and they were asking for the same consideration, adding that parking landscaping would create a nuisance for customers and wait staff. Mr. Abbott stated that regarding stormwater, they wanted to discharge into the pond with no additional disturbance on the site. He said the impervious area for an Entranceway Special Use was under 50%, and this site was 36% due to restrictive covenants.

Mr. Farrelly asked if the other businesses Mr. Abbott alluded to were not complying with the landscape requirements for the parking area. Ms. Hauth responded that the other buildings were approved as a part of the Special Use Permit, and the plans were likely not as detailed in that they did not show the parking landscaped so it was not required when it was reviewed. She said it was not called out as a specific waiver granted, but it was not in the plans that were submitted and therefore had not been required in the approval package.

Regarding the stormwater runoff, Ms. Hauth stated that behind the fourth tab in the packet, Terry Hackett with the Orange County Stormwater Control office had provided comments that indicated it would not be difficult for the applicant to meet either standard. She said the applicant would provide more information.

Responding to a question regarding order board signs, Ms. Hauth said that those signs did not count as signs for this use because they were not oriented towards the street, noting that the signs that were regulated in the ordinance were signs that were aimed at people who were off-site in an effort to bring them on-site.

Ms. Woodman asked if the yellow arch on top was illuminated. After having been sworn, Greg Wilson responded that the arch was illuminated by strip lighting on the outside of it. Ms. Woodman asked if the canopy was translucent, and if light escaped above it. Mr. Wilson replied that it was solid, not translucent, and the lights would be shooting up from underneath it so that it was captured on the patio itself as opposed to dissipating off the patio. He stated that normally, those lights on top would be turned on at dusk and would be turned off at closing at midnight.

Ms. Hauth stated that the ordinance addressed illuminated tubing of edges in that it was not permitted, so that needed to be looked at in detail to determine how that archway was illuminated. She said that might require another waiver, at minimum.

7:39:15 PM Commissioner Lloyd asked would any of the site be visible from Beckett's Ridge. Mr. Abbott replied the closest residence was at least 1000 feet away and the road curved to the right as it went past the Home Depot, so the Home Depot likely blocked any view. He said for someone driving down NC 86, even if the trees were not quite 25 feet tall, the arch would likely not be visible.

Mr. Warren asked if all Sonic buildings had that yellow arch on top. Mr. Wilson responded the answer was yes for all sites built within the last 24 months, and that older sites were being retrofitted to include it. Mr. Warren asked how much trouble it would be not to have the yellow arch, noting he believed it would be an eyesore in the development. Mr. Wilson suggested taking a look at the Sonic building in Mebane, noting the overall effect was attractive. He said the one in Holly Springs was being retrofitted now and the one on Atlantic Avenue was finished. But, he said, they would do what they were required to do.

Mr. Parrott said that one thing different about this site was the mature trees that would be retained, which would be a real benefit in that it would break up the mass of the building and the parking. He stated that if the arch was allowed, it would be broken up some by the height of the existing trees.

Mayor Stevens asked about the back service entrances, wondering if they would be visible from the road. Mr. Abbott stated that the interstate buffer ordinance required a 50-foot buffer which was not disturbed at all, and another 50 feet that contained no structures. He said to further reduce that, the development covenants stated that the second 50-foot buffer was to be augmented. Mr. Abbott stated they just touched the back of the second 50-foot buffer to align the back drive with the future development next door. He said there was roughly a 20-foot buffer there consisting of 20-foot tall pine trees and thick hedges from the corridor of I-85 and NC 86, so the chances of seeing this building from the interstate were slim to none.

Mr. Remington asked if what was shown tonight was the same as what was provided to Orange County. He said that Terry Hackett's comments implied he saw something that may have included some bio-retention. Mr. Abbott said Orange County had seen the same information and nothing more. He said what Mr. Hackett was referring to was that whichever requirements the Town choose it was his understanding that this development was approved in pre-Phase 2, and either pre-Phase 2 requirements or post-Phase 2 requirements would be acceptable. Mr. Abbott said that if Phase 2 rules were enforced, they would have to disturb some other area on the site to create further treatment and still discharge it into the pond behind Wal-Mart.

Mr. Remington said Mr. Hackett's comment implied that he had seen something that was not being shown now, or that some other details had been provided. He asked was there some kind of bio-retention that could be done to pre-filter some of the water run-off that would not require more disturbance. Mr. Abbott reiterated that Mr. Hackett had received the same information that had been provided tonight, and what Mr. Hackett had referred to was the fact that the grades facilitated the water across the site towards a common area. He said if bio-retention was required, it could easily be channeled to the back of the property for treatment and then discharged into the pond. Mr. Abbott stated that Mr. Hackett had liked that the site had minimal grading, that it did not disturb the natural flow, and that there were options on site to meet the Phase 2 requirements.

Mayor Stevens asked what would happen if the Town enforced Phase 2 rules. Mr. Abbott replied they would use the large island between the two drives for some treatment of the runoff. He said they may chose to pursue the offset payment as well. He said it would not be difficult to do, but it would create more on-site disturbance.

Mr. Parrott stated it was also a cost issue, in that the applicant was paying for his portion of the existing storm pond, and requiring that Phase 2 rules be met would increase those costs, including long-term maintenance.

Mr. Barker said regarding the sign, what was the compelling reason for the changeable message board rather than using the menu boards. Mr. Parrott stated they had minimal building façade to use for advertising. Mr. Barker stated they had menu boards for every car that came in which provided an excellent opportunity at car side, so they did not need the signs on the glass. He asked what the compelling reason was for changeable signs at the road. Mr. Parrott said it was for “capture” purposes to bring people into the site, noting that once you were at the menu board at car side, you were already committed.

Mr. Barker asked what the need was for the extra 6” in height, and if it was to have 3 lines rather than 2. Mr. Parrott replied no, that if they needed to trim down to 7’ they would reduce the base. Mr. Barker asked if the sign was oriented to Hampton Pointe. Mr. Parrot stated it was oriented to the circle. Mr. Abbott stated it was similar to the Burger King/Eagles sign at the corner of Hampton Pointe Boulevard and the private shared drive.

Mr. Warren stated that such menu boards were used for specials at other locations, and understood they were used to catch people’s attention. Mr. Parrott said that was correct, adding it was for limited duration specials. Mr. Warren asked why three lines were needed. He said if you removed one line, the sign would be in compliance in regards to height. Mr. Parrott stated three lines facilitated explaining clearly what the specials were as opposed to using various abbreviations. Mr. Warren asked about the size of the lettering. Mr. Parrott responded 4” to 6”, and eliminating one line might be an option.

Mr. Barker stated a sign in the circle on the right when everyone was curving left seemed curious. He stated you were turning to the left and therefore looking to the left. Mr. Parrott stated one reason for that was that there was basically three spokes to the roundabout, and they would be the fourth. He said coming in on Hampton Pointe Drive, the first facility would be on the right. He said positioning it the way it was shown would be for that middle spoke between the drive aisle that was coming between the Home Depot and the Wal-Mart.

Upon a motion by Commissioner Gering, seconded by Commissioner Dancy, the Board moved to close the public hearing. The vote was unanimous.

ITEM #3: Zoning Ordinance text amendment to remove the spacing limitation on family care homes.

Ms. Hauth stated this request came through the Planning Board from the Board of Adjustment based on a situation where there were two family care homes, neither of which was opened, and when one was partially through their construction project the Town had become aware of the second family care home that had actually preceded the other one. She said the difficulty was that the two homes were too close together by a fairly short distance, noting from the driveway of one to the driveway of the other it met the

½ mile spacing requirement, but if you measured from property line to property line which was the normal method then the ½ mile spacing requirement was not met.

Ms. Hauth stated there were also some general concerns in the planning field about whether or not that ½ mile spacing for family care homes was a violation of fair housing, since the point of family care homes was that they were essentially the same as a house based on the number of people in them. She said by requiring spacing you could be discriminating against those who were seeking care in those homes and treating them differently in some way. Ms. Hauth said on the recommendation of both the Board of Adjustment and the Planning Board, they were asking that the requirement for the ½ mile spacing be removed from the ordinance. She said that had been an issue in other jurisdictions, in that entities could come in and buy up a significant number of houses in a neighborhood and then attempt to have staff serve more than one house. Ms. Hauth stated she knew of no instances of that happening in Town or even close to town, but there was some rationale for that spacing requirement. But, she said, they were still asking that the spacing requirement be removed from the ordinance.

Commissioner Hallman asked if family care homes were allowed in any residential district. Ms. Hauth responded yes. Commissioner Hallman said then there was a potential to have a density of family care homes without any control. Ms. Hauth said there was that potential. She said if that situation were to appear likely, then some sort of spacing requirement could be put back into the ordinance. She said anyone operating such a home would need to obtain a permit, so it would allow the Town the opportunity to have spatial representation of where such homes were located. Commissioner Hallman stated that such homes had a vested right. Ms. Hauth stated that was correct. Town Attorney Bob Hornik pointed out that the genesis of the ½ mile space requirement was that the General Statute specifically authorized it, but did not require governments to put in that ½ mile separation requirement. He said that was why it had been added to the ordinance.

Mayor Stevens asked would it make sense to maintain the spacing requirement but to issue a waiver in this instance. Ms. Hauth said that would have to be set up as a Conditional Use or something similar, since the word “waiver” was not a part of the Special Use process.

Commissioner Gering asked if the Planning Board had discussed just reducing the separation requirement. Mr. Farrelly said yes, and he had also brought up that a concern was having one entity buying up several homes in a neighborhood as Ms. Hauth had described. He said he had suggested you could have such homes within ½ mile but not if they were owned by the same entity. Mr. Farrelly stated in this case, there were different owners, so you would not be promoting amassing several homes in one area. Commission Gering asked what the general consensus was of the Planning Board. Mr. Farrelly said the general consensus was to remove the restriction because the risk was relatively low of having an entity buying up property to open such homes.

Commissioner Lloyd said that would mean that two or more such homes could be located on the same street. Ms. Hauth responded that was correct, noting there would not be a provision in place to prevent that from happening, unless one was added by the Town Board. Mr. Hornik stated this was an amendment that was prompted by an ongoing situation.

Upon a motion by Commissioner Gering, seconded by Commissioner Lowen, the Board moved to close the public hearing. The vote was unanimous.

ITEM #4: Zoning Ordinance text amendment to create a Special Use Permit process for recreation facilities in the Neighborhood Business district.

Ms. Hauth stated that the Town had received a request from some citizens to develop private tennis courts within a residential neighborhood, and there was no process in the ordinance to accommodate that. She said the parcel in the request was designated in the Future Land Use Map as the Neighborhood Commercial Corridor which had not yet been created. So, she said, it did not appear to be an unreasonable request since the lot being considered was somewhat scheduled for uses other than simply homes. Ms. Hauth said the citizens had approached the Planning Board who had looked at a variety of options as to how to proceed, and realized that the Neighborhood Business district was fairly constrained in terms of the uses that it permitted, but that recreation facilities could be permitted as a special use within that district. She said the property being considered was zoned Residential, so the applicant would need to file for rezoning to Neighborhood Business and also submit a Special Use Permit application for the recreation facility if they wanted it to go in that particular location.

Ms. Hauth said if the Town allowed such a facility there, the question was asked what would happen if someone wanted to do the same thing in some other neighborhood. She said the question then became how appropriate was the Neighborhood Business zoning for the location that wanted to develop a recreation facility, which might be something other than a tennis court such as private basketball courts, an indoor video arcade, or some other facility that was considered a recreation facility. Ms. Hauth said the point was that it would have a broader scope than just the tennis courts proposed on West King Street, but it was aimed to accommodate both interior and exterior features on site and was set up to require both a rezoning component and a Special Use Permit component. She said they had found that there was some existing language in the ordinance which required that building capacity was shown as well as usage times and parking plans. Ms. Hauth said there was also a requirement that the application reflect consideration of potential impact on adjacent uses, and they had taken that further with new requirements regarding spacing to residential, time frames for lighting, setbacks, and other issues. She said the citizens who were interested in developing these tennis courts had looked at that language and believed they could make it work, and were present tonight to speak. Ms. Hauth said given the unusual and somewhat narrowly drawn text amendment request, they had proposed something that was broader and further reaching and not so narrowly drawn.

Mr. Warren stated the Parks and Recreation Board's chief concern was public use, noting that the tennis courts would be primarily for private use but with some public use. He said that was somewhat of a concern, but the Board had not been against the proposal.

Jennifer Boraski stated she was representing the property owners of the site in question, who were longtime Hillsborough residents and a part of the tennis community. She stated that there were currently no courts for them to play on, so they used the County facilities at Orange High and Cedar Ridge. Ms. Boraski stated they had to compete for court time with the high school teams as well as other tennis enthusiasts, and the property under consideration would allow them to have three courts for regular play, for instruction, for tournaments, and for community events without having to pay the fees to rent courts at other locations. She said the courts would be non-profit and open to the public, but there would of course be a minimal fee to partake of the programming.

Mayor Stevens asked would the special events all be tennis-related events. Ms. Boraski stated she had not considered events other than tennis events because all the available space would be taken up by the tennis courts and parking. But, she said, that did not mean the courts could not be used for other purposes when not in use for tennis-related events.

Commissioner Lloyd asked about the apartments that were located near the proposed tennis court area. Ms. Boraski stated that the tennis courts would be in the area where the playground used to be, and there were stairs that went up to another level which was where the apartments were located.

Mr. Warren stated that the location was the playground area of the old West Hill Elementary School, which was on Jones Street, correcting the packet reference to Allen Ruffin Avenue and addressing Commissioner Lloyd's question about the site location.

Upon a motion by Commissioner Lowen, seconded by Commissioner Hallman, the Board moved to close the public hearing. The vote was unanimous.

ITEM #5: Zoning Ordinance text amendment to create a special use permit process for event centers within the Central Commercial zoning district.

Ms. Hauth stated that the packet contained a proposed definition for what would be an event center, and then read it for the benefit of those present. She said that definition generally fell in line with the range of uses that had been suggested to the Town Board, and the possibilities for the renovated Colonial Inn and redevelopment of that site. Ms. Hauth stated that information had been shared with the property owner, Frances Henry, and he had requested that the definition include allowance of a longer-term stay as a possible use, such as a rooming house, which implied a month-to-month lease whereas a tourist home or bed-and-breakfast implied overnight or week-to-week rental. She said she and the Town Attorney had discussed how the Town would know the length of stay of a tourist/tenant and whether or not they would even want to try to regulate that.

Ms. Hauth said this was being proposed as a Special Use Permit in the Central Commercial zone, so again if the property were not zoned Central Commercial then a rezoning would need to be applied for as well as a Special Use Permit during the same process. She said the ordinance spelled out a series of requirements for the uses, pulling from the existing standards for all of the uses that were listed to address all of the activities that might be associated with those uses. Ms. Hauth stated that the Central Commercial zoning district did not have any setback requirements and did not have an impervious surface limit, which should be kept in mind.

Commissioner Gering said to be clear, the only motivation for creating this text amendment was Frances Henry's request. Ms. Hauth said initially, yes, but in the past few months since this process had begun this seemed to be the use that many people wanted to place on various vacant buildings in Town. She said she had gotten many calls from people who had interest in having such a designation applied to other scattered sites throughout Town, noting those people seemed to understand that Hillsborough was lacking any sort of facility that could be rented for any type of event of any size. Ms. Hauth said in the last month she had received inquiries from two other people totally unrelated to the Colonial Inn and unrelated to downtown locations, who had said that was what they wanted to operate and asked how they would go about doing it. She said her response was that the use did not appear in the ordinance.

Mayor Stevens asked was this a designation that could apply to the Big Barn, for example. Ms. Hauth responded you would almost have to consider the Big Barn as an existing non-conformity. Commission Gering commented that this text amendment only applied to Central Commercial, so the Big Barn would not qualify. Ms. Hauth replied that was correct, that this text amendment would not provide a solution for the Big Barn.

Mayor Stevens said he believed the Town would want to look at this as not being targeted for a specific property. Ms. Hauth stated if adopted, this would then be one of the two options that existed in the ordinance if someone wanted to reopen the Colonial Inn.

Mr. Hornik stated this should be looked at with not only the Colonial Inn in mind but any other potential Central Commercial district building that might be appropriate for the specified uses. He said while the Colonial Inn prompted this text amendment, it was possible that this classification could be requested for other properties.

Ms. Hauth said one of the things the Town would have to look at was if it was appropriate to rezone the property for which it was being requested to Central Commercial. She said one of the standards for that was that it be in close proximity to something already zoned Central Commercial, and there were only two places in Town that had Central Commercial zoning. Ms. Hauth said those were the compact downtown in Town and the attached strip of shops that was on South Nash Street. So, she said, if an isolated lot in the middle of a neighborhood requested Central Commercial zoning, the Town would have a difficult time approving that request based on the standards for Central Commercial, setting aside any of the Special Use Permit requirements.

Mr. Remington said one of the proposed provisions was that the applicant would have to supply their business plan stating the types of events being proposed, which would be approved as part of the Special Use Permit. He asked what would happen six months later when the applicant decided to open a nightclub, which was one of the uses listed but was not one originally proposed. Ms. Hauth stated the property owner would have to come back to the Town with an application. She said another thing this text amendment tended to do was speak to some of the difficulties they had experienced in the past with tourist homes or bed and breakfasts, particularly when two such businesses had been very active. Ms. Hauth stated that both of the Conditional Use Permits for those two businesses clearly stated that they also intended to run such events and had done so on a regular basis. She said if that had not been a part of the Conditional Use Permit approved by the Town Board, the Town could have easily cited them for zoning violations because it was not included in the Town's definition of what a tourist home was.

Ms. Faherty said a tourist home was sometimes referred to as a bed and breakfast, and was traditionally a home where the owner or operator resided as well. She said in other states, although she did not know about North Carolina, having the owner or operator reside in the home was a requirement in order to operate as a tourist home or bed and breakfast. Ms. Faherty stated that would help to eliminate any confusion. Ms. Hauth stated the Town's ordinance did not require the owner and/or operator to be on site or to even be the same person.

Upon a motion by Commissioner Gering, seconded by Commissioner Dancy, the Board moved to close the public hearing. The vote was unanimous.

ITEM #6: Zoning Ordinance text amendment to add a new section 21.6.4 to the Zoning Ordinance to refer to the Historic District Design Guidelines and indicate their role in project review.

Ms. Hauth stated the Historic District Commission was requesting that the Zoning Ordinance be amended to allow specific references to the Design Guidelines in the ordinance, so that as the HDC was reviewing applications for Certificates of Appropriateness and cited the Design Guidelines, it would act as supporting evidence for how an application did or did not meet the Standards of Evaluation. She said the HDC wanted to be given that force, and that the Design Guidelines were clearly envisioned and

documented in the Zoning Ordinance as a document that was meant to be a reference and was meant to be a document that the HDC and the public could rely on when applications were reviewed. Ms. Hauth said if an application did not meet the Design Guidelines and the HDC stated and found that it did not meet the Design Guidelines and it was tied to one of the Standards of Evaluation, then that was a reasonable and fair conclusion for the HDC to come to in saying that an application was inappropriate. She said that seemed to be logical and implied, but it was better to have that specifically stated in the ordinance.

Ms. Hauth stated this text amendment would not take the Design Guidelines manual and make it an appendix to the Zoning Ordinance and would not require that if that manual was amended that it would have to come to the Town Board for a public hearing. She said it would still allow the Design Guidelines to be a flexible document that the HDC continued to work on and improve upon, but it did make it clear that the HDC was meant to rely on that document in its review of Certificates of Appropriateness, and that the public could rely on it was well.

Responding to previous discussions regarding having architectural review and whether or not that was separate from this proposal, Ms. Hauth stated this was different in that the discussion about architectural review was for projects outside the historic district.

John MacAulay, a former member of the HDC, expressed his disagreement with the proposed amendment. He stated he did not believe closely tying the Design Guidelines to the Zoning Ordinance was appropriate, noting he was worried that the perversity of the legal system would cause them to become by the letter a part of law.

Mr. MacAulay said he had three concerns. The first, he said, was that if you tied the Design Guidelines very rigorously to the Standards, then what you were doing was essential turning a one-page document into a 74-page document. Mr. MacAulay said at present these were guidelines and not the law and should not be made the law, because in his view there would be serious consequences. He said that connection would tie the hands of the HDC and would not allow them to exercise judgment. Mr. MacAulay said if all you needed was that document boxed checked against an application then you did not need the HDC. He said the HDC exercised judgment in that when an application was received they had the opportunity to explain why the application would fit in one place but might not fit somewhere else but perhaps made sense in the context of their evaluation.

Mr. MacAulay stated there was an interesting example that came up in an HDC meeting several months ago where there were two separate applications for a COA to demolish property. He said in August an applicant had asked for a COA to demolish the Freeland's Garage with the thought of building a restaurant. Mr. MacAulay stated the HDC did not act on the request because the applicant did not submit architectural plans for the restaurant. He stated the applicant had not drawn up plans because he had come to the HDC first to see whether or not he could gain approval before he invested in purchasing the property and drawing up plans, so the HDC had tabled the application. Yet, he said, the next month another applicant had requested a COA to demolish an old residence on West Queen Street, and the HDC had asked what the plans were for the property. Mr. MacAulay stated the applicant had said they had not made any plans, and the HDC had decided that since there were no plans then they could grant the COA to demolish the building. He said if this were the letter of the law that they were dealing with, then the HDC would not have been able to make that reasonable decision for the second applicant even though it was the right thing to do.

Mr. MacAulay stated his second concern was that even if it was said that the Design Guidelines would not become a rigorous part of the Zoning Ordinance, that if it did then any time a change was made they would have to go through the public hearing process to make such changes. He said that would remove the latitude the HDC currently had to make decisions.

Mr. MacAulay stated his third concern was the one that scared him the most, and that was unintended consequences. He said if you turned a one-page document into a 74-page document, then you would be turning simple one-liners that allowed the HDC to use its judgment into two and three page detailed issues. Mr. MacAulay stated that invariably things would pop up that would impede progress in various ways and would make the HDC "look silly." He stated the existing system worked well and gave the HDC flexibility. Mr. MacAulay said if the Town decided to proceed with this text amendment, he asked that they do a comprehensive review of the Design Guidelines to avoid the unintended consequences.

Mr. MacAulay stated the historic district had three classes of houses: 18th and 19th century houses, the ones between the 19th century and 1939, and the ones built post-1939. He questioned whether the review of those three classes should be the same, and suggested that the Town establish three different standards to address each of the three classes. Mr. MacAulay stated that the standards applied to a 1950's ranch-style house should not be same as those applied to an 18th or 19th century historic structure, but that was the way the system currently worked.

Joseph Council, a current member of the HDC and a practicing attorney, presented a petition from the HDC urging approval of text amendment. He read the petition in full, which noted how the HDC reviewed COA applications and how the Standards of Evaluation and the Design Guidelines were used in making those decisions. The petition stated that the Design Guidelines, currently an 81-page non-legally binding document, were used to interpret the Standards of Evaluation and expound upon and explain the Standards of Evaluation when it came time to explain to an applicant why their application was either being denied or approved, and that the Design Guidelines were especially important when the HDC had to explain why an application was denied.

The petition went on to describe how the HDC provided due process to applicants, and frequently referred applicants to the Design Guidelines; that since the Design Guidelines were only explanatory and not legally-binding, the HDC was sometimes faced with an applicant asking if the Design Guidelines were explanatory or binding; and, that the HDC was also faced with an applicant making a procedural error that under normal circumstances might prohibit the application from moving forward, but because the Design Guidelines were not legally-binding, they must either table the application until the procedural error was corrected, or they must proceed with the application as submitted with missing or incomplete information.

Mr. Council then used Mr. MacAulay's example of the two requests for demolition to explain why making the Design Guidelines legally binding by adopting the proposed text amendment would have addressed those two applications for demolition. He read a portion of the minutes from the August HDC meeting as further explanation to support the HDC's decision in the first example, in that the applicant had a proposed use for the property after demolition but had no plans ready for submittal. Mr. Council said in the second example, the applicant understood that the HDC would allow the house to be demolished, but if and when a decision was made as to the use of the property, then the applicant or owner would have to come back before the HDC with specific plans.

Mr. Council stated that he did not believe that adopting the Design Guidelines would create more problems, and in many respects would limit legal issues and would likely contribute to reducing the

number of potential lawsuits that the Town might face. He said by having the Design Guidelines as legally binding then the HDC would be given a little more power to say that their interpretations were official interpretations of the Design Guidelines and how they applied to the Standards of Evaluation. Mr. Council stated he believed that would be helpful for appeals that went forward from the HDC to the Board of Adjustment, as well as helpful with appeals that went forward from the Board of Adjustment to Superior Court. He said he believed it would give applicants a sense of finality and any appellate board or court something to refer to by saying that an official interpretation was used.

Mr. Council stated the Design Guidelines were not static but were changeable, which was a good thing. He said for example, materials could be evaluated and selected, and something like Hardieplank could be included in the Design Guidelines. Mr. Council stated that one advantage of having the longer document was that it did provide some breadth and wiggle room to consider specific applications, whereas if you were given a one sentence or one paragraph explanation using the Standards of Evaluation, it was very enclosing and boxing. He stated the longer document was liberating and provided room to work with the definitions included in the document, and allowed members of the HDC who had specific expertise, such as the architect and builder currently on the HDC, to say how something should be applied to the Design Guidelines and how the Design Guidelines should be applied to the Standard of Evaluation. Mr. Council said if anything, the HDC was giving applicants the benefit of the doubt by having the Design Guidelines referenced as a part of the Zoning Ordinance.

Mr. Council stated that for those reasons, the HDC was petitioning the Town Board and Planning Board to adopt the text amendment to reference the HDC Design Guidelines in the Zoning Ordinance, thus making the Design Guidelines binding on both the HDC and applicants appearing before them to obtain Certifications of Appropriateness.

Jessica Dockery, Chair of the HDC, stated that the Design Guidelines are a document that the public could understand while the ordinance was difficult for someone to understand without a background in architecture. She said the language was sufficiently loose in the Design Guidelines to allow some flexibility and to allow for consistency. Ms. Dockery said that the Design Guidelines helped the public to understand the goal, and asked that the text amendment be adopted.

Mr. Hornik stated what they had tried to do here was to walk the middle road by not adopting the Design Guidelines as part of the Zoning Ordinance, because he believed it would mean that every time the Design Guidelines were amended they would have to go through the public hearing process. He said rather, making specific reference to the Design Guidelines under the HDC section would ensure that everyone knew that when the HDC evaluated an application they would be using the Design Guidelines as a tool for evaluation. Mr. Hornik said he believed it would help the HDC apply the Design Guidelines as well as help the public to understand that if they complied with the Guidelines, while also understanding that there was room for interpretation within the Design Guidelines, that their application could be successful. He stated at present, there was no reference in the Zoning Ordinance of the Design Guidelines. Mr. Hornik stated he did not believe the Design Guidelines were perfect, but they were better than what they now had.

Mr. Hornik said when they had drafted the language for the text amendment, the idea was to try to incorporate the Design Guidelines not specifically as a part of the Zoning Ordinance but to make it clear that the HDC had the authority to adopt the Design Guidelines, to modify those guidelines when needed, and to apply those guidelines to applications. He said in his opinion adopting the text amendment to refer

to the Design Guidelines in the Zoning Ordinance was not perfect, but was much better than what they were now doing.

Mr. Farrelly stated there was precedent in other parts of the Zoning Ordinance in that the ordinance referred to other documents in various sections. Mr. Hornik stated that was correct, noting that other jurisdictions did the same. He reiterated the Design Guidelines would not be made a part of the Zoning Ordinance because mechanically and logistically that made it difficult to modify, but by making reference to the Design Guidelines then applicants understood that the Design Guidelines would be used during review of applications.

Upon a motion by Commissioner Dancy, seconded by Commissioner Gering, the Board moved to close the public hearing. The vote was unanimous.

Commissioner Hallman stated he appreciated the discussion of the text amendment, noting it was very educational for him in understanding the proposal.

ITEM #7: Adjourn.

Mr. Farrelly returned the gavel to Mayor Stevens who asked if there was any further business.

Upon a motion by Commissioner Lowen, seconded by Commissioner Dancy, the Board moved to adjourn the Joint Planning Meeting at 9:00 p.m. The vote was unanimous.

Respectfully submitted,



Margaret A. Hauth, Secretary