

Minutes
BOARD OF ADJUSTMENT
Wednesday, April 14, 2010, 7:00 PM

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

ABSENT: Rod Jones and Bill Whitmore, absences excused.

STAFF: Senior Planner Tom King, Planning Director Margaret Hauth, and Town Attorney Bob Hornik.

PUBLIC: Elizabeth Read, Anne Derby, David Taylor.

ITEM #1: **Call meeting to order and confirm the presence of a quorum.**
Chair Al Hartkopf called the meeting to order at 7:04 p.m. and confirmed the presence of a quorum.

ITEM #2: **Consideration of additions to the agenda.**
There were no additions or adjustments to the agenda.

ITEM #3: **Approval of the minutes of the March 10, 2010 meeting and the March 10, 2010 Closed Session.**
Mr. King noted that the March 10 regular meeting minutes referred to the Orange County Justice Facility as having received special and/or conditional use approval, and it should read or be noted that it received site plan approval from the Board of Adjustment.

MOTION: **Mr. Sikes** moved to adopt the minutes of the March 10, 2010 regular meeting as amended. **Mr. Sain** seconded.

VOTE: Unanimous.

MOTION: **Mr. Sikes** moved to adopt the minutes of the March 10, 2010 Closed Session meeting with the noted amendment suggested by staff. **Mr. Remington** seconded.

VOTE: Unanimous.

ITEM #4: ***Continued Item - Review of the parking plan for the Orange County Justice Facility. The Board conditionally approved this project on November 8, 2006. An approval condition required that the applicant present an acceptable plan for remote parking facilities including process documents covering their operation. The applicant intends to present an alternative plan to the Board for consideration.***

Mr. King stated the public hearing on this issue was opened on March 10, 2010 and was continued to this meeting. He said the Town had received a letter

yesterday, April 13, 2010, from Jeff Thompson of Orange County staff requesting a deferral and a specially called meeting of the Board of Adjustment, and that letter had been forwarded to the Board members via electronic mail. Mr. King said essentially, there were conversations between Town and County staff yesterday (April 13, 2010) requesting that the Board call a special meeting for Wednesday, April 28, 2010 to allow the County time to finalize adjustments to its parking plan proposal based on the staff discussions of April 13th.

Town Attorney Bob Hornik said there had been a meeting between Town and County staff yesterday morning which prompted this request, noting there was discussion about ways the County might adjust its parking proposal to bring it closer to the expectations expressed at the March 10, 2010 meeting. Mr. Hornik said at the conclusion of conversations yesterday it was determined that the County was not ready to make a presentation tonight. He added that the County was working towards a deadline of May 1, 2010 which was why the special meeting was being requested for April 28th, and it was the County's hope that the deferral would give them time to solidify and finalize a proposal.

Mr. Sikes asked when the next regularly scheduled Board meeting was. Mr. King replied May 12, 2010. Mr. Sikes asked would a special meeting need public notification. Mr. Hornik said not if the public hearing was continued to a date certain.

Mr. Remington asked was it staff's opinion that this issue really could not wait until the next regularly scheduled meeting. Mr. Hornik said that decision was up to the Board, noting the May 1 deadline had been indicated by the court system so that they could occupy their space, so the effort was to attempt to get the issue resolved by May 1. Mr. Hornik said if it was not resolved, then no Certificate of Occupancy would be issued, conditional or otherwise, and the court and the County would have to deal with that. He said in the meeting yesterday the April 28 date had been considered as a way to give the County time to get together a better and more solid proposal and still meet the May 1 obligation the County had with the court system.

Mr. Hartkopf asked what would be the Town's process to call a special meeting. Planning Director Margaret Hauth replied that because there was no publication required and staff gained no overtime, there was no true cost of calling a special meeting.

The Board briefly discussed holding the public hearing over to April 28. Mr. Hornik said based on yesterday's discussion, he believed the County was motivated to get the issue resolved.

Ms. Lunsford noted that she would be out of Town on April 28. Mr. King noted that the Rail Station Small Area Plan Task Force's regularly scheduled meeting

was that same evening, so that would impact Mr. Remington who served on that Task Force.

Mr. Hornik said that he believed that Wednesday, April 28 had been chosen simply because the Board normally met on a Wednesday night.

Mr. Remington said with apologies to the Rail Station Task Force, he believed his attendance at a special Board of Adjustment meeting was more critical. Mr. King remarked that the Task Force was not encumbered by having to meet quorum criteria.

Mr. Sain suggested considering Thursday, April, 29th.

Mr. Sikes said he was not enamored with the idea of calling a special meeting in any case, noting that there appeared to be a presupposition that the parking plan would be approved that night, and he did not want the Board to feel pressured to do so when they had not yet seen the plan and just because the County was trying to meet a deadline three days later. Mr. Hornik said the idea for holding a special meeting on or around April 28 at least would give the chance, with no promises or guarantees made, for the County to meet its May 1 deadline. He said in the end if that was not possible, then the County would have to deal with it.

Mr. Sikes said the parking issue was something that the Town wanted to get right. Mr. Hornik agreed, noting from his perspective the issue was important enough that providing the time to allow the County to bring forward a proposal that may be palatable to everyone was worth the effort.

Mr. Hartkopf said the County has asked the Board to be flexible and they had been, and had placed a condition of approval on the County to provide an acceptable parking plan because they had known at that time that the Justice Facility project had the potential to have a great effect on the downtown to the detriment to visitors and citizens.

MOTION: **Mr. Remington** moved to continue the Public Hearing to April 28, 2010. **Mr. Sain** seconded.

DISCUSSION: Ms. Lunsford said she would not be present on April 28, but believed allowing the additional time was the right thing for the County.

Mr. Sain said he hoped that the County's new plan would take into consideration the Board's concerns regarding its affect on the downtown.

Mr. Sikes asked if there was any point in going through the plan they had on the table now and sending the County a message as to what should or should not be brought forward on April 28. He said what they had in hand did contain some discussion of potential directions the County might go.

Mr. Remington said that might be useful in terms of relaying any information to the County regarding issues the Board had identified.

Mr. Hornik stated they were in the discussion phase of their deliberation, so such a discussion would be appropriate before the Board took its final vote. He said that discussion could include highlights of issues the Board wanted the County to focus on or to steer clear of when they came back before the Board.

Mr. Remington said given the comparison of what was said at the last meeting and previous Board decisions of what they were willing to accept, he asked was it the Board's position that absolutely no on-street parking was acceptable to be included as opposed to how far away they might count on-street spaces towards the County's requirement.

Mr. Sikes stated he believed on-street parking should not be counted at all towards the County's requirement, noting those spaces were for merchants, visitors, and citizens and not for the court system.

Mr. Remington said he wondered if there were a few on-street spaces along Margaret Lane in front of the courthouse or the annex that they might want to include, noting he looked at those spaces a little differently than spaces on Cameron Street, King Street, and possibly Churton Street.

Mr. Sikes said he did not like the idea of counting on-street parking meant for the public to help satisfy the County's requirement, particularly given that the facility was not just for employees. He said it could be argued that the facility was assembly space and the parking requirement they were talking about was for employees and visitors to the facility. Mr. Sikes said to count on-street spaces for employee parking missed the whole idea of what the parking requirement was trying to address.

Mr. Hartkopf said he agreed with Mr. Sikes' sentiment, adding that on-street parking was for the customers to the downtown, and the court system had to look at its employees and visitors as its customers and they had to provide somewhere for them to park. He said he absolutely believed that on-street parking belonged to the public in general and not to any particular vendor whether it be the County or a restaurant or some other vendor.

Mr. Remington said his purpose in asking the question was so that the Board could be very clear in its expectations.

Mr. Hartkopf said to follow that same train of thought, the use of the parking deck to satisfy the County's requirement, given the everyday counts at the deck, had been proposed. He said it was important to remember that the parking deck was supposed to allow the public parking so they could access the downtown, and there was a reasonable expectation that that would occur.

Ms. Lunsford said another issue was the enforcement of the off-site parking and how that would be enforced, as well as what the encouragement would be for County employees to park off-site at the Durham Technical Community College lot. She said that had been a key issue at the last meeting, noting that if an employee was running late one morning, they would likely just park downtown and utilize one of the on-street spaces for hours.

Mr. Remington said from his perspective that remained a serious issue. He said if the park and ride spaces counted then it should be towards the employees, and there should be some way to enforce that as opposed to having people doing business with the court system being forced to park there.

Mr. Hartkopf asked if most on-street parking was patrolled. Mr. Hornik said they were not metered, and did not know what if any program the Hillsborough Police Department might have in place. He said he also suspected that the County did not do any self-policing of its employee parking.

Ms. Hauth remarked that during construction the Town had agreed that they would not do parking enforcement.

Mr. Hartkopf said they wanted to ensure that the public had places to park, but that would be hard to do if employees were parking for eight hours at a time. He said he believed that some of the parking signs said that spaces were for two hour limits. Ms. Hauth said that the recent parking study had recommended that there be more consistency in parking enforcement and that all on-street parking carry the same time limit, whether it be two hours or something else. She said it also recommended that the parking lots controlled by the Town not carry any time limit, noting that provided for easier and more consistent enforcement by Police personnel. Mr. Hartkopf said those suggestions had merit.

Mr. Remington said for him another issue was the double counting, noting that he believed the Ordinance was written in a way so that in instances such as this that a development provided its fair share of parking.

Mr. Hartkopf agreed that enforcement would be necessary.

Mr. Remington said it was important to note that they were not prejudicing their decision but were simply bringing forward the issues that the Board believed needed to be addressed by the County, and if those things were not addressed then the County needed to present good reasons why.

Elizabeth Read, having previously been sworn, said that the downtown merchants had been dealing with a separate parking issue in regards to managing available spaces and trying to provide correct information to customers to the downtown and also respecting business owners who were trying to lease additional spaces for their customers. She said that situation had proven at times to be tense

between merchants, but they continued to work to provide adequate solutions. Ms. Read said the County Justice Facility issue had been clouding those discussions because while trying to solve their own issues they knew that the Justice Facility could be adding 168 additional cars to the parking issue and that was impacting their decisions. She said they wanted to make sure that the County was held to the same standard that they as business owners were held to, and to ensure that everyone was being treated equally under the Ordinance. Ms. Read said in addition, the Town's draft parking study had identified some of the Cameron and Margaret Lane on-street spaces as not being shorter or hourly leased spaces but as places that someone could park all day because they were so close to the Visitors Center. She said those spaces were identified as being better for visitors rather than for court employees.

Mr. Hartkopf asked if Ms. Read would be available to attend the meeting on April 28th so that she could bring forward the issues of most importance to the downtown merchants. Ms. Read replied that she served on the Rail Station Task Force that was meeting on the 28th, so that was a conflict for her.

Mr. King swore in Anne Derby. Ms. Derby, owner of The Yarn Shop on Churton Street, stated that many of the merchants did lease spaces so they could provide for their customers. She said she was one of the merchants who had participated in having cars towed, and she wanted to address why that had been necessary and the feeling it had created among the other merchants. Ms. Derby said the people towed from her leased spaces were customers of a restaurant, and since that time the merchants had agreed among themselves that those of them that leased spaces would identify those spots and the hours that towing was enforced. She said in her case her business closed at 5:30 p.m. but classes were held in the evenings, so it was not appropriate for restaurant clientele to use her leased spaces in the evenings.

Ms. Derby said the merchants were working together to make sure they fulfilled their obligations to their customers and to keep the downtown vibrant, and not turn it into only a commercial/judicial environment. She said the merchants were very anxious about what might happen once traffic court came back to Hillsborough, and it was the merchants and their businesses that would be very much affected by this Board's decisions.

VOTE: The vote was 3-2, with Ms. Lunsford, Mr. Sain, and Mr. Remington voting Aye, and Mr. Sikes and Mr. Hartkopf voting Nay.

Mr. Hartkopf noted that only a simple majority was required, so the motion had carried.

ITEM #5: **Case #BA-05-2010 – Appeal from an adverse decision of the Zoning Officer and request for the use of an alternate screen for the parking lot adjacent to East Margaret Lane at the Orange County Justice Facility project. The**

Appellant is Jeff Thompson acting on behalf of Orange County. The property is located at 106 East Margaret Lane (Orange County Tax Map Reference #4.36.D.1) and is zoned OI (Office/Institutional)/HD (Historic District) Overlay.

Mr. King noted that David Taylor, the project architect, would be speaking on behalf of the County, and swore in Mr. Taylor. He stated that this appeal resulted from a site inspection on the Justice Facility property regarding landscaping, noting that initial site plan approval had been granted by the Board in 2006. Mr. King said during the inspection some deficiencies had been identified in the landscaping at the site, noting that one of the conditions of approval was that the ground level parking facilities be screened from the street. He said that Article 7.9 in the screening and buffer requirements in the Ordinance stated that ground level parking facilities and the ground level of parking structures shall be screened from adjacent residential areas and streets by means of evergreen shrubs at least three feet in height above the grade of the edge of the parking area.

Mr. King said in early 2007 there had been some discussion that there was an area of some archaeological importance in the area, noting at one point a kiln from the 1800's was discovered, and it had been inventoried and the area noted as a non-disturbance area.

David Taylor stated that kiln had been discovered just after the approval had been granted, noting the County had hired a survey company that had done the actual digging and found the articles of some significance. He said the County had then issued the order that that area was not to be disturbed and was to be preserved.

Mr. Taylor provided information of what the Board had previously approved, noting that the original line of the parking was noted as a dashed line on the sketch he had provided. He said the result of the archeological dig had given them an area of interest, noting they had found a well head that was dated to the 1840's, as well as the area where the kiln had been found that also dated to the 1840's that they believed had been used to create the bricks for the original courthouse and other structures. Mr. Taylor said also found were footings of a previous house that was thought to have been a part of William Churton's original structure that stood on that property. He said as a result, that entire area of interest was made off limits for any type of construction. Mr. Taylor said they had surveyed the entire area, documented everything, removed a few items, and then covered it back up and made it off limits.

Mr. Taylor said as a result of that, the County had allowed them to do certain things. He said the entry drive still needed to be across the street from the entrance into the jail property, but the original parking was about 35 feet closer to East Margaret Lane than it was currently. Mr. Taylor said they were able to save the two large trees as a result of moving the parking, noting the island that had been planned had been removed and another isle had been moved ten feet, and the parking adjacent to East Margaret Lane had been eliminated.

Mr. Hornik asked how many net parking spaces were lost as a result of that. Mr. Taylor replied ten were lost. He provided the Board with a sketch showing the current view of what was now existing on the site, noting curbing that was significantly further away and pointing out the trees that had been retained. Mr. Taylor said basically what they were requesting was a judgment of relief of not having to provide additional screening along that area based on the fact that they were about 60 feet from their original pavement line off of East Margaret Lane and that they were significantly lower than East Margaret Lane by about 8 feet.

Mr. Remington pointed out that he had looked at the site today, and there was not an even slope going down to the parking lot. He said it was flatter, and the last few feet dropped off in a steep manner. Mr. Taylor agreed. Mr. Remington said to him it appeared that the berm swell was very close to 3 feet. He asked if the argument was that no shrubs should be planted in the area of preservation because it would disturb the ground in a way that compromised the area of interest. Mr. Taylor said that was their position.

Mr. Hartkopf asked how deep the area was where the artifacts were identified. Mr. Taylor said it was relatively shallow, no more than three or four feet, just below finished grade.

Ms. Lunsford asked if the ten parking spaces moved or were they actually lost. Mr. Taylor said they were actually lost in that ten more spaces were not created elsewhere on site.

Mr. Remington asked what the size would be of the mature plantings that were planned for that area and what was the recommended planting depth. Mr. Taylor replied that was a question for David Swanson, the landscape architect, and he would refer the question to him. He said the plants that were originally supposed to provide the screen were to go along the edge, but because of the archaeological site the line had been moved. Mr. Taylor said the two street trees that were planned also had to be relocated.

Mr. Hornik asked if the two street trees were on the approved plan. Mr. Taylor responded yes. Mr. Hornik commented that whenever it was necessary to deviate from an approved plan, then the applicant was to seek a modification of the site plan from the approving authority.

Mr. Sikes asked how accurate was the drawing indicating the area of interest. Mr. Taylor said what was indicated was the exact area and the exact extent of what was placed off limits for any disturbance. Mr. Sikes confirmed with Mr. King that what they were discussing now was the shrubs that were supposed to be planted and not the trees noted in the corner of the site. Mr. King stated that was correct, in that when he had performed the site inspection he had identified that the shrubs in the approved plan were not on the site. Mr. Sikes said if the map Mr. Taylor had provided was accurate, then some of the area where the shrubbery

was supposed to go was in the area of interest but some was not in that area. He said on the map, it appeared that in Trench A that if shrubs were planted that they would not serve any purpose. Mr. King said the two maps were at a different scale, so the shrubs at the larger drive would be in the area of interest.

Mr. Hartkopf agreed that they likely would be, but he did not see that their depth would be substantial and did not believe that it was close to the archaeological find that was somewhere within that area. He said it also occurred to him that if the find was of that much significance that Tom Magnusson would have been involved.

Ms. Lunsford asked if such an archaeological find had come up in the past with other applications. Mr. Hornik said in the last ten years there had been other projects that had come before this and other boards where there were archeological sites or features that had to be investigated and documented.

Mr. Sikes asked if the person who had done the archaeological survey had submitted any information to the County that the Board could obtain. Mr. Taylor said he would assume that there would be some documentation and information that could be provided, adding that he believed that the Hillsborough Historical Society had been aware of the archeological dig. He said at one time there had been some talk of placing some monuments up on the site to memorialize the historic activities that had taken place on the site, but did not know what the outcome of that had been.

Mr. Hartkopf said if the Board believed that persons interested in the Town's history should have a chance to comment, he would not be opposed to that. He said he certainly would not want to be a part of destroying something of historical significance.

Mr. Remington said in looking at the site from the street and at the parking lot, if shrubs were planted that would grow at about three to four feet tall, then right on the crest of where the steeper berm leveled off it would not hide the parking lot. He said he did not know if the Ordinance specifically said anything about the purpose of the screen being to absolute heights, because it would not do that. Mr. Remington asked would it provide a softening to the visual buffer, which to him was much more important in such cases than actually hiding something. He said he believed there was some benefit to considering that, noting that at times when you tried to hide something you actually drew attention to it by the screening and it was not very easy on the eyes. Mr. Remington said he hoped their purpose was not just to hide things but to create a sense of visual space, softening, and separation.

Ms. Lunsford said she would like to see a process where the County could present its landscaping plan in conjunction with its preservation of the area of interest. Mr. Taylor said he could provide a copy of the original plan, but getting the

consultant to attend a meeting was up to the County. Mr. Taylor said what they were requesting tonight was an appeal on the ruling based on Section 7.7, item b, of the Ordinance. He said from a procedural standpoint the “specialized land use” noted in that section was in this case the area of archaeological interest.

Mr. Hartkopf remarked that had merit.

Mr. Remington said he would argue that the language said that it may require more intensive or less intensive screening. He said in terms of the screening requirements, moving the parking lot down increased the height and something needed to be in that plane where there was some level of screening. Mr. Remington said from the standpoint of the purpose of the Ordinance he believed it could be argued that it called for a higher screen rather than no screen. Mr. Taylor said he looked at that differently, in that moving it 35 feet back from its original location made it much less obvious as you were walking down East Margaret Lane because they had added that increased distance and had basically increased the depth below the sidewalk. He said in the original plan the parking was only about 15 feet from the sidewalk so you would be looking at vehicle’s radiators, and by moving it 35 feet back it had made the angle in which you looked at that area much less severe.

Mr. Remington said what Mr. Taylor was saying was that what was being screened was much farther away, but he maintained that what was being screened took more height to screen it. He said from his perspective he did not believe screening would require plantings of more than a foot deep, and did not believe that would disturb the archaeological value of the site. Mr. Remington said he, too, would like to see some evidence that that would be a problem before making a decision on the appeal. He said for him the issue was could they disturb the ground as opposed to the actual screening issue.

Mr. Remington suggested that the Board consider continuing the public hearing in order to get information on what size root balls or containers the plantings would have, and whether digging holes deep enough to plant those would really constitute a disturbance to the archeological area.

Mr. Hornik said he believed the Board would want to see whatever archeological report was submitted to the County regarding what was found and where it was found, and if placing screening in that area would truly constitute a disturbance and harm the archeologically sensitive area. He said the only way to determine that would be to have the necessary information.

Mr. Sikes said he would also like to hear from the landscape architect regarding the technical specifications of any chosen plantings, including the average height at maturity.

Mr. Hartkopf said he wanted the County to understand that the Board was not requiring or subpoenaing the survey contractor to attend a meeting, although they could, but if the County truly believed that area was archaeologically significant and should not be disturbed then they had an interest to submit the necessary information to substantiate that claim.

Mr. Taylor stated that the parking issue would be coming back to the Board on April 28th, and asked if a decision on this appeal would preclude receiving a Certificate of Occupancy by May 1. Mr. King replied that technically the County could offer some kind of guarantee that they would continue to pursue a solution. Mr. Taylor said his question was should this issue “piggyback” the issue on April 28th, or be postponed to May 12, 2010. Mr. King asked if holding it open to April 28th would provide enough time to gather the necessary information. Mr. Taylor said he could get the survey tomorrow, and could certainly talk with David Swanson tomorrow as well about the proposed plantings.

Mr. Remington said he certainly would not want to prevent traffic court moving back to Hillsborough because of 30 Spirea plants.

MOTION: Mr. Sain moved to continue the Public Hearing to April 28, 2010. Mr. Remington seconded.

VOTE: Unanimous.

ITEM #6: **Review of Final Orders for Orange County Farm Bureau variance request and Francis Henry appeal. These cases were decided at the March 10, 2010 Board meeting.**

Mr. King stated the Final Orders were ready for the Chair’s signature, noting there were no outstanding issues that staff was aware of.

Mr. Hartkopf asked if the word “site” should continue to be put in quotes in the Final Order. Mr. Hornik said he saw no problem with that. Mr. King noted that the signature page did not have the word “site” on it, so if it was an issue for the Chair then he would suggest he sign the last page and then staff would remove the quotation marks from the references elsewhere.

Mr. Hartkopf said that Mr. Henry had believed that the word “site” carried a different interpretation, and he only wanted to make sure that there was no confusion as to what that word referred to. He said it was a very small point and did not believe it was necessary to correct the Final Order.

After some discussion, Mr. King determined that the quotation marks would be removed from the word “site” in Paragraph c of the Order.

Mr. Sikes called attention to a typo in Paragraph c, noting that there was a parenthesis that should be included after the word “property” and not the word “district.” Mr. King noted that would be corrected.

Ms. Lunsford asked about the status of the work on the Colonial Inn. Mr. King replied that Mr. Henry would at some point be coming to this Board to request a Special Exception Permit to tear out the existing kitchen and rebuild it on its existing footprint, and add a second story to it.

Mr. Hartkopf asked if it would come before the HDC (Historic District Commission) first. Mr. King said it would likely come before this Board before it went to the HDC, noting that if the Board did not grant the Special Exception Permit there was no point in taking it to the HDC.

Mr. Sikes asked if Mr. Henry had let the Town know what he was going to do with the building. He said he continued to come forward with ideas for the use building, but it did not appear that he had any firm direction as to what the ultimate use of the building would be. Mr. King said Mr. Henry did have some plan but was having difficulty in obtaining the necessary permits to do it. He said Mr. Henry had tried rezoning and had gotten text amendments to allow him to do certain things.

Mr. Hornik said the issue was that Mr. Henry had never been particularly specific about what he wanted, and what he had asked for in the past would require either a rezoning to a general use zoning district where various uses would be permitted, which he did not believe the Town Board was willing to do, or a Conditional Use or Special Use district which Mr. Henry did not like because of some of the requirements he would have to meet. He said he believed part of the problem had to be the financing of what Mr. Henry wanted to do, and he may not be liquid enough to do what he wanted without investors.

Mr. Hartkopf, as Chair, signed the Final Order for the Orange County Farm Bureau variance as well as the Francis Henry appeal.

ITEM #7: Committee and Staff reports.

Planning Board:

Mr. Remington said that the last meeting had been dedicated to the Ordinance rewrite, noting one thing that he had noticed was that there were a couple of places in the rewrite where there was language about the conditions for granting a variance. He said at one place it was the current language but in another place it was somewhat streamlined language, and he was not sure if it was meant to be duplicated or if it was for different classes of variance. Mr. Remington said it seemed to him that the streamlined language would make it a little easier to grant a variance in common sense situations. He said with the current language he believed the Board had to twist it to justify what Mr. Phelps had asked for last month. Mr. Remington said variance language set a high standard and made it difficult to grant a variance. Mr. Hornik said that was the way it was supposed to be. Mr. Remington said it seemed to him that the streamlined language lowered the bar somewhat, not to allow variances for trivial things but to allow variances

when it made sense to do so. Mr. Hornik said the hardship aspect was softened somewhat in the streamlined language. Mr. Remington agreed, and asked was the idea to replace the current language with that streamlined language. Mr. Hornik said he was not sure but would look into it.

Mr. Remington said he had brought that up because he was curious what the feeling of the Board was about making what they had gone through last month with Mr. Phelps a little easier next time. He asked if the Board thought that perhaps the hardship language was too harsh and if they wanted to see it softened.

Mr. Sikes said in the instance with the sidewalk at the Catholic Church in December, there was no language that allowed the Board to do anything in lieu of the full requirements. He said he did not believe it was necessarily the variance language that was the issue. Mr. Sikes said he would rather see language in other areas that allowed more leeway as to where you could push and shove in the initial approval. Mr. Hornik said he believed they were heading in that direction, where they would have presumptive standards for things like sidewalks that said this is what you were supposed to do, but if you can convince the permitting authority that there was a good and valid reason why the presumptive standard did not make sense in that particular case, then the Board could reduce or amend the requirement through a variance of the standard.

Mr. Remington said he believed the Subdivision Ordinance already had a provision in it that if you could come up with an alternative to a paved sidewalk that met the needs, then it could be approved. But, he said, the Zoning Ordinance did not carry that language, and he was interested in seeing that addressed in the rewrite. Mr. Hornik said what he believed they would see was more conditional use permit-type uses and as a part of that process there would be more flexibility to relax standards, waive standards, or allow applicants to rebut the presumptive standards.

Mr. Remington said the other language he had found that would be of interest to this Board referred to Special Exception Permits that might allow something like a house that was nonconformingly close to the lot line, and allowing that house to be extended out without getting any closer to the lot line, and those sorts of things. Approvals of Special Exception Permits would shift from the Board of Adjustment to staff approvals under the proposed ordinance.

Mr. Sikes said if something like that came in on an application he was sure that Mr. King would address that immediately. Mr. Hornik said if someone did that and did not agree with Mr. King's determination, then it would come to the Board of Adjustment as an appeal.

Mr. Hartkopf asked about Special Exception Permits. Mr. King said Special Exception Permits would be treated just like zoning permits, noting the application would have to show the same things with the exception of compliance

with the Comprehensive Plan and things of that nature. He said for staff to approve a Special Exception Permit, the same standards would apply just as if it was coming before the Board of Adjustment, but there would be no hearing procedure. Mr. Hartkopf asked how long someone would have to appeal a determination by staff. Mr. King replied 30 days.

Other:

Mr. Hartkopf asked about the rail station public input meeting. Mr. King stated it was held two weeks ago with approximately 80 people participating, with most comments positive in nature. He said the conceptual drawings for the Collins tract had been posted on the Town's Website and citizens were taking advantage of that to post comments, and all of those comments would be discussed at the April 28th Rail Station Task Force meeting. The Board briefly discussed the conceptual drawings and how those future plans might affect the Town as a whole.

Mr. Sikes asked about the status of the Rooster's Nest snack shop at 133 East King Street the Board had approved some years ago. Mr. King responded plans were supposedly moving forward, noting the primary issue with that application had been the screening from the neighbor to the east.

Mr. King stated that on Monday, April 12, 2010 the Town Board had appointed Roderick Jones as the in-Town regular member to fill Eric Oliver's unexpired term, and Bill Whitmore as the alternate in-Town member to take Brad Curelop's seat. He said that David Neal had withdrawn his name from consideration late Monday afternoon.

Mr. King noted that Ms. Lunsford's term expired September 30 of this year. Ms. Lunsford asked Mr. King to double check that information, noting she did not believe her term expired this year. Mr. King agreed to do so, noting that she was eligible to serve another term.

Mr. King stated that Mr. Sain's term expired on June 30 of this year, and Mr. Sikes term expired on March 30, 2011. Mr. Sain stated he did not believe his expiration date was correct, and Mr. King responded he would check all of the dates and report back.

The Board briefly discussed the necessity of making sure that Board members were sworn in. Mr. King noted it was a matter of visiting the Town Clerk's office and signing a form, or having the Town Clerk attend the beginning of a meeting and administering the oath to everyone at once.

Mr. Remington noted that he was the Planning Board's liaison to this Board and his term expired in a few months, so the Planning Board would soon be appointing a new liaison to the Board of Adjustment.

ITEM #8: Election of Chair and Vice Chair.

MOTION: Mr. Sikes moved to elect Al Hartkopf as Chair. Mr. Remington seconded.

VOTE: Unanimous.

MOTION: Mr. Sain moved to elect Tommy Sikes as Vice Chair. Ms. Lunsford seconded.

MOTION: Mr. Sikes moved to elect Eddie Sain as Vice Chair. The motion died for lack of a second.

VOTE: Unanimous.

Mr. Hartkopf was re-elected as Chair, and Mr. Sikes was re-elected as Vice Chair.

ITEM #9: Adjourn.

Mr. Sikes moved to adjourn the meeting at 9:01 p.m. Ms. Lunsford seconded. The motion was adopted unanimously.

Approved:

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