

**Minutes**  
**BOARD OF ADJUSTMENT**  
Wednesday, March 10, 2010, 7:00 PM

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

**MEMBERS**

**ABSENT:** Bradley Curelop, absence excused.

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

**PUBLIC:** Elizabeth Read, Francis Henry, Melissa Booth, Joe Phelps, Jeff Thompson, David Taylor, Roderick Jones, David Neal and LeAnn Brown.

**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.**  
There were no additions or adjustments to the agenda.

**ITEM #3:** **Interview Potential Candidates to fill the unexpired term of an In-Town Regular Member.**  
Roderick Jones provided brief information regarding his background and interests, noting that he was a lifelong resident of Hillsborough with the exception of three years in Guilford County, He holds a degree in Criminal Justice and Political Science, and was currently employed by Orange County in their Solid Waste Management Department.

Mr. Remington said his resume included that he had acted as the staff liaison to the Board of Adjustment in Guilford County. Mr. Jones said that was correct, and provided a summary of those duties. He said it was his first experience with a quasi-judicial body and it had been a good experience. Mr. Jones said he had also served as a Zoning Investigator while in Guilford County, so many of the issues coming before that board was due to zoning complaints that he had investigated. Mr. Remington said then he was familiar with the kinds of responsibilities that this Board faced, as well as its limitations. Mr. Jones replied that was correct.

David Neal provided information regarding his background, noting his family had moved to Hillsborough two years ago and he had opened a criminal law practice in Town. He stated he had served on a number of advisory boards, mostly nonprofit boards, and currently he served on a board in Winston Salem and in Durham. Mr. Neal said he had also served on an ad hoc advisory board for

Orange County regarding the transfer tax issue. He added that although his current legal work was criminal cases, he had worked for a number of years with a civil firm and he had litigated before the Durham Board of Adjustment which had provided him the opportunity to become very familiar with State law governing boards of adjustments and the kind of work they performed.

Mr. Hartkopf said that Mr. Neal was a member of the bar and argued points of law, and asked how did he see that contrasting or comparing with sitting on a board where he was interpreting or applying existing law. Mr. Neal said it was essentially the difference between being a judge or a litigator, and when you litigated you had to argue only one side and push it as forcibly as possible within the law. He said as a judge you had to sit and weigh both sides and take an impartial view, and as this was a quasi-judicial board it had to function much as a judge did, in that the board had to evaluate both sides fairly, ensure that proper procedures were followed, and that decisions were made based on existing code.

**MOTION:** Mr. Sikes moved to recommend to the Town Board appointment of either Roderick Jones or David Neal to fill an unexpired term on the Board of Adjustment to expire March 31, 2011. Mr. Sain seconded.

**VOTE:** Unanimous.

**ITEM #4:** Approval of the February 10, 2010 minutes.

**MOTION:** Mr. Sikes moved to adopt the minutes of the February 10, 2010 meeting as submitted. Mr. Sain seconded.

**VOTE:** Unanimous.

**ITEM #5:** *Continued Item - 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. King noted that since this was a continued item, he and the applicant remained sworn. He stated that the public hearing had been opened on February 10 and the Board had asked Mr. Phelps to return with a revised sign drawing reducing it a foot in length from 8 feet to 7 feet, and to provide potential alternative orientations for the sign although it was discussed at the last meeting that that may not be possible given the orientation of the space. Mr. King said Mr. Phelps had also been requested to provide the restrictive covenants of the Old Mill Business Park as they related to signage. He said those additional attachments were #6 and #7 in the Board materials.

Mr. Hartkopf reiterated 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. Hartkopf stated that he had not been recused at the February meeting, but wanted to offer that same opportunity now.

Mr. Hornik said at the February meeting Mr. Hartkopf had noted he was able to put that friendship aside and remain unbiased, and to hear the evidence and make a decision based on that evidence rather than any prior relationship with Mr. Phelps. Mr. Hartkopf said that was indeed the case. There was no objection from the Board.

Mr. Phelps said he had provided the revised drawings and the pertinent restrictive covenants as requested. He stated that the restrictive covenants specified the guidelines for signs, and stated as had been discussed in February he really had no alternative to offer other than reducing the width of the sign.

Ms. Lunsford asked had he approached the business park management to see if they would approve a different sign. Mr. Phelps said the original developer retained control over that, and he did not want to approve anything different. He said he did not get that in writing from the developer but he could provide it if necessary. Mr. Phelps said the developer should have signed over that control when the complex was sold but he had not, but there had been other things done since that time that did not meet the covenants. But, he said, he did not want to put up something that was nonconforming and if the Business Park changed hands he did not want to be forced to take down a nonconforming sign.

Mr. Sain said on page 9 of the covenants, it said that signs had to be free-standing with a maximum height of 4 feet 6 inches. Mr. Phelps said that was what it said but it was different from what the developer had approved, so the developer had contradicted himself. He said the signs currently at the park were what the developer had approved which was different from what the covenants said, but it also said that the developer had control of that so he could change it at any time

Mr. Remington said it almost looked like they were not counting the arch in the center. Mr. Phelps said that was correct. Mr. Remington said from what was planned, if you did not count that it was 4 feet 6 inches exactly. Mr. Phelps said that was correct, noting the developer had said that because they had not considered the street number, instead of having an additional sign they had just added a street number to an arch in the sign.

Mr. Sikes asked about moving the sign closer to the parking lot. Mr. Phelps said that was the reason they had requested the variance, noting they had talked in February about the layout of the trash trucks backing in. He said he continued to contend that trash trucks had a 4 or 5 foot overhang and the pattern was designed for the trash trucks to back in. Mr. Phelps said if the sign was any closer there was a danger that the trucks would back straight into the sign. He said even a pickup truck with the tail gate down would be in danger of hitting the sign.

Ms. Lunsford asked what the difference was between this meeting and the February meeting as far as the variance being requested. Mr. King responded at the February meeting the applicant had requested a 5-foot variance from the 10-foot sign setback, so the leading front edge of the sign would be 5 feet from the edge of the street right-of-way. He said under this scenario, they were reducing the sign length by one foot, so it would be 6 feet from the back of the street right-of-way, which would be a 4-foot variance from the 10-foot sign setback.

Mr. Remington said there had been a discussion at the last meeting about assessing the effects on the sight triangle.

Ms. Lunsford said it appeared that other signs in the park were nonconforming. Mr. King said that many of them were. Mr. Phelps said if the variance were granted the other signs would actually be a foot closer to the road than the sign he was proposing. He said he did not believe that shortening the sign by a foot would be noticeable or make any difference in the aesthetics of it.

Mr. King said under the original proposal the sign would have been hanging about 2 feet into the 10-foot by 70-foot (10 X 70) sight distance triangle. He said the current proposal would reduce that by a foot, so it would be further out of the sight distance triangle.

Mr. Remington said the way it was drawn it appeared to be a little closer to the driveway than the widest part of the parking barrier as far as how it intersected the setback. He said he wondered if it could be moved a couple of feet farther from the driveway without encroaching any closer to the parking. Mr. Phelps asked was he suggesting moving it farther down Millstone Drive. Mr. Remington replied yes, just a few feet east. Mr. Phelps said it may be possible to move it just a little, but if you moved it much you would not have a foundation to support it because of the storm drainage pipe.

Mr. Hornik noted that the storm drainage infrastructure at that location was actually part of the problem. Mr. Phelps agreed.

Mr. Sikes said with regard to the setback, what was the worst case scenario from the Town's perspective. He asked was Millstone Drive a Town street. Mr. King responded yes. Mr. Sikes said then the Town could at some point decide to widen the road. Mr. King said there was a 50-foot public right-of-way, but the chances of Millstone Drive being widened were slim. Mr. Sikes said the point of having that setback was obviously for sight triangle safety concerns, but he was trying to look at it from a practical standpoint and the effects of this kind of variance.

Mr. Hartkopf said widening Millstone Drive on the south side would be incredibly expensive, whereas the north side of Millstone was relatively flat. So, he said, if there was to be any widening he believed an engineer would look to the north side. Mr. Phelps said any widening would be expensive because of the way

the water and sewer lines as well as the storm drains were installed. He said he believed those were put in with the assumption that the road would not be widened.

Mr. Hartkopf asked was there anyone present who wished to offer testimony on this issue, but there was no response.

**MOTION:** Mr. Remington moved to close the Public Hearing. Mr. Sain seconded.  
**VOTE:** Unanimous.

**Discussion:**

Mr. Hornik reminded the Board to try to consider the variance worksheet as they deliberated on the variance request.

Mr. Sikes said given the circumstances of the site and its limitations, he believed this was a reasonable request for a variance and it was a matter of finding the best way to do that.

Mr. Remington said that he had looked over the business park and the orientation of other signs, parking lots, and buildings. He said as far as unique and singular, this was the only property as built that appeared to have this particular kind of situation. Mr. Remington said he had looked at several other signs that looked to be close, and it did not appear that this proposed sign really had any other place it could be placed.

Mr. Sain agreed, noting with the drainage lines there really was nowhere to move it.

Mr. Remington said because of the parking lot, he fully accepted the safety and property concerns expressed by Mr. Phelps.

Mr. Hornik asked was it the Board's finding that on Item #1a that the hardships were unique and singular and were not in common with other properties similarly located. There was no disagreement from the Board.

Mr. Remington stated, in regards to Item #1b, with due respect to the staff analysis it seemed to him that these were designed to be businesses that dealt with the public, and it was difficult to do that without adequate signage.

Mr. Sikes agreed, noting this was a business that accepted customers and adequate signage was necessary, adding this was not an industrial business or warehouse where only delivery trucks or the like would be coming in.

Mr. Hornik said he was hearing that in regards to Item #1b, that due to the inability to use the land differently that it was logical and practical to grant the variance for the sign. Mr. King said then the Board was saying that not having a

freestanding sign at that location would inhibit the use of the land for its zoned purpose.

Mr. Hornik said the second part of Item #1b was that hardships had or had not resulted from the action or inaction of the applicant.

The Board briefly discussed how the applicant had placed the building on the site and the limitations due to water and sewer as well as drainage infrastructure. Mr. Hornik commented that it had been the applicant's testimony that the building had been placed in such a way as to preserve as many trees as possible.

Mr. Sikes asked if a "red flag" was raised when an applicant submitted a site plan without signage noted. Mr. King stated they usually asked for that, but many times the engineering firm would state that the sign was to be provided by others. He said in essence the engineers did not know where the sign would be placed because it would be contracted out to a sign company.

Mr. Hartkopf said the applicant had placed the building in order to save trees, and that was a good action on his part.

Mr. Remington said the hardship had certainly not resulted from the action or inaction of the applicant, in that if the Board had seen this as a conditional use permit they would not have had the right to allow a deviation. He said the issue was the tradeoff, in that would they rather allow the deviation or would they rather see additional trees being cut. Mr. Remington said unfortunately they did not really have that situation here, but if they had he would rather see fewer trees cut. He said his point was that the actions of the applicant were a very small piece of the problem, but the rest was a result of the size and shape and the orientation of the drainage.

Mr. Hartkopf said in regards to #1c, it stated that if the variance were allowed it would or would not substantially interfere with or injure the rights of others with respect to allowance of the variance. The Board agreed it would not.

Mr. Hartkopf said the next issue was that the variance was or was not in harmony with and did or did not serve the general intent and purpose of the Zoning Ordinance and the adopted Comprehensive Plan. Mr. Remington said the staff argument was that the Town was attempting to eliminate existing nonconformities and it would not be consistent with that to allow new nonconformities. He said he believed in this case it was a unique situation and was not sure it was setting that kind of precedent, and believed it was a greater justice to allow it. After some discussion, the Board agreed that it was in harmony and did serve the general intent and purpose.

Mr. Hartkopf said from the discussion, he believed the Board was inclined to grant a variance subject to conditions that they might want to include. He said

there had been some discussion about attempting to avoid as much as possible intrusion into the sight triangle.

Mr. Remington said that any intrusion into the sight triangle should be minimized as much as possible. There was no objection from the Board.

**MOTION:** Mr. Sain moved to approve a 4-foot variance, rather than a 5-foot variance, with the following conditions:

1. The applicant shall minimize intrusion into the sight triangle by moving the sign east as far as practical, or until out of the sight triangle, whichever comes first.
2. The sign to be erected will be 7 feet in length and must match the drawing submitted by the applicant at the March 10, 2010 meeting.

Mr. Sikes seconded.

**VOTE:** Unanimous.

**ITEM #6:** *Continued Item - 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.*

Mr. King noted that Planning Director Margaret Hauth had previously been sworn, and swore in Francis Henry. Ms. Hauth noted she was present only to respond to any necessary questions, noting that Mr. Henry would state his case this evening as he was unable to attend the hearing opened in February.

Mr. Henry commended the Planning Department and the Planning Board in the improvements they had made in their level of work over the past several years. He said secondly he had never had the opportunity to publicly thank a group who had spent a lot of hours trying to help solve some of the problems that had arisen.

Mr. Henry said his appeal was based on the fact that in his estimation the work required had been completed in response to the original complaint filed by Mr. Joe Reese. He said that complaint had been the reason that the Demolition by Neglect Order had been brought forward. Mr. Henry said that complaint had listed eight items that needed to be addressed, and when working out a schedule to do that with Ms. Hauth they had had to tweak a few things to address the eight complaints in the timeframe set out. He said he did not believe he and the Town were in disagreement on what the outcome should be; it was a matter of how to go about doing that. Mr. Henry said many times restoration, construction, time limitations and other constraints did not all come together and required that you work around different issues at different points in the process.

Mr. Henry said one case was likely the item that was not completed according to the request made of him by the Planning Department, which was to the east side of the Inn towards the downtown. He said discussions about that side had to do with the footprint required where the kitchen area was located and perhaps putting a second story on in that area, and the various boards and approvals that he would be required to go through to do that. Mr. Henry said his point was that it was not an issue that had just popped up, and it was the last thing that had not been completed. But, he said, that was irrelevant because it was not something that was going to happen this fall in any case. Mr. Henry said no drawings had been made that could be confirmed, they did not have approvals from the Town to do the work, and it would not have made sense to replace that wall and then get the approval for the changes and tear it all down again.

Mr. Henry said that was not really what the problem was that they were now facing, but had more to do with how he and the Planning staff perceived the Ordinance that pertained to the complaint that had been made. He said he had always believed that if you got a complaint and read through the Ordinance, that you addressed the eight items in the complaint and that would take care of the immediate problem. Mr. Henry said that was what he had tried to do in order to move on, and this summer they had accomplished a lot of good work.

Mr. Henry said in one of the letters he had received from Ms. Hauth, she talked about a lack of clarity in regards to the repairs being done. He said they knew at that time that they had a difference of opinion on what should be done, and Ms. Hauth had even referred to the visibility of something that was drawn was not a prerequisite to not fixing it. Mr. Henry said what was meant by that was even if you could not see it or the complainant could not see it, if it was bad it was bad, or at least that was his interpretation of it. He said he agreed that things that were bad needed to be fixed and in the order that things should be done, but the complaint did not list that particular item. Mr. Henry said in changing the schedule around and including unexpected repairs, they had addressed the items and kept up with each other as to the items being fixed. He said Ms. Hauth had a timing schedule that they had tried to follow and they had been given time extensions when it was necessary, primarily due to some of the issues being addressed were 60 or 70 years old and could not be repaired in a short period of time.

Mr. Henry said in an email to Ms. Hauth dated June 6, 2009, he had said that he was not in agreement with the order as far as a remedy to the complaint items which were listed by Joe Reese dated July 28, 2008. He said the email went on to say that the order was far too broad and did not specifically limit itself to the items of each site that received a complaint as taken from Section 21.7.3(b). Mr. Henry said the email stated he had not believed that the letter of the law regarding staff investigating the items of complaint gave the Town carte blanche authority to broaden its scope to include items not listed in the complaint.

Mr. Henry said that was basically the issue he now had. He said he had received the complaint letter, he had accepted that and addressed the items listed in the complaint, and believed the difference now was the interpretation of what the Ordinance required as far as addressing the original complaint. Mr. Henry said he believed they needed to settle what the Ordinance really meant. He said he knew that the Ordinance had undergone some changes over the last few years to address some issues, and believed this section might be just one of those that were left over, noting there was a term or two that could be interpreted in different ways. Mr. Henry said from his viewpoint, common sense would tell you to look at the complaint and the work he had done to address it, and did not believe you would find anywhere in the Ordinance language that said that the Planning Department of the Town had the authority to extend to other issues found beyond the complaint at this particular time and enforce that and say that the work he had done and the complaint he had responded to had not been resolved.

Mr. Henry said he had read over the Ordinance several times and did not see where the Planning Department had the right to add on additional repairs that had not been included in the letter of complaint. He said the repairs noted at some point would get done, but to charge him with abuse of the Ordinance was not fair at this point.

Mr. Hornik asked where he had been charged with abuse of the Ordinance, noting he had not read that anywhere. Mr. Henry said what he was saying was that he believed he had done the work required, but apparently the Planning Department did not agree. He added he did not believe they were correct.

Mr. Hornik said in the January 30, 2009 letter from Ms. Hauth to Mr. Henry it outlined 12 items that needed to be addressed and included an initial timeframe within which those items were to be accomplished. He asked Mr. Henry had he appealed that determination. Mr. Henry responded that he and Ms. Hauth had discussed it at length, and you would find that in every email or letter that he had responded to it said that he had done particular work although it was not necessarily to Ms. Hauth's order, but was to satisfy the complaint that had been made. He said some of the things that had been included in additional orders that he had not agreed with were done because it was natural to do so during the course of other repairs.

Mr. Hornik asked had he appealed to the Board of Adjustment or to anyone else after Ms. Hauth's January 30, 2009 letter. Mr. Henry said he had not felt it was necessary to appeal it, because he had talked with Planning staff and he was getting the work done and he had thought he and Ms. Hauth had a good understanding about that. Mr. Hornik said then the answer to his question was no, he had not appealed it. Mr. Henry said he had not known he was supposed to appeal it if he did not agree. Mr. Hornik said he was allowed to appeal, and the letter indicated that. Mr. Henry said every correspondence he had sent in had said he did not agree with that but that he wanted to get the job done.

Mr. Hartkopf said he believed what Mr. Hornik was asking him was that according to Section 21.7.6 of the Ordinance, if the Planning Director made a determination, then that determination had to be appealed to the Board of Adjustment within 30 days of that determination. He said he appreciated Mr. Henry's willingness to try to work with the Planning Department to accomplish the repairs, but the Ordinance was very straightforward in that area. Mr. Hartkopf said the Ordinance clearly stated that if he did not agree with the determination that he had 30 days to appeal it to the Board of Adjustment, which was this Board. He said Mr. Henry had not done that.

Mr. Henry asked had he been sent a letter stating that he had that right. Mr. Hornik responded yes, that the January 30, 2009 letter spelled that out. Mr. Henry said he would have to go back and read that letter, noting he had not understood that.

Mr. Hartkopf said if he understood Mr. Henry's perspective, there was a difference of opinion on what the word "site" meant. Mr. Henry said this was the first he had heard of that, but as he had said in his letter there were eight sites needing repairs. Mr. Hartkopf said he understood that Mr. Henry's definition was that a "site" was, for instance, that hole, that piece of rot, that loose brick, and so on, and each of those was a "site."

Mr. Hartkopf asked Ms. Hauth if the word "site" was defined anywhere in the Ordinance. Ms. Hauth replied no. Mr. Hartkopf said absence a de facto definition then one was left with a contextual definition. He said when this Board or the Planning Department dealt with a site plan, it was a large piece of land on which some activity was meant to take place, and that was considered a "site." Mr. Hartkopf said in that context, once the Code Enforcement Officer looked at the Inn, which was initiated by a complaint from a citizen, then that entire site, or the entirety of the Inn property, became the question of the day. He said it was no longer a loose brick or a piece of rot, but the entire Inn site. Mr. Henry said he did not believe there was a lot of question about his point when he said there were eight issues that needed to be addressed.

Mr. Hartkopf said there were actually seven individual items that were pointed out by a casual observer on the street who had filed the original complaint. He said when the Ordinance had been put together there had been a lot of talk at that time, and it had been very clear that the point was that if a casual observer walking down the street and observing a building or some deficiency in that building were to lodge a complaint that it would be coming from a layman's view. Mr. Hartkopf said then the Planning Department became involved and had looked to see if the things that the casual observer saw were indeed there and had then looked at the general welfare of the entire site, meaning the entire site of the Inn as registered at the Courthouse. He said at that point in time the issue no longer was about a brick or a piece of rot, but was about the entirety of the lot in question. Mr. Hartkopf said he believed that was where the confusion was, and

he wished Mr. Henry had come to the Board within the 30 days that had been allowed to him so that that issue could have been resolved. But, he said, for the purposes of this Board and for the purposes of the Ordinance, the site meant the site plan that was registered for the Colonial Inn, and that was the entirety of the site.

Mr. Henry said there was certainly some ambiguity then in the wording. Mr. Hartkopf said absent a de facto or verbatim definition of the word "site," the Board had to rely on the contextual definition of site. He said when this Board dealt with a "site," and when the Planning Department dealt with a "site," it was what was on the site plan that was registered and not a wall or a particular spot, but the entire site. Mr. Henry said Mr. Hartkopf was suggesting that the Planning Department was aware of that, whereas the common layman may not. Mr. Hartkopf said he was saying that Planning staff was aware or became aware of the further deficiencies that might not be observable by a common layman walking down a sidewalk. He said the professionals in the Planning Department had become aware of the entirety of the deficiencies of the structure, because as Mr. Henry had said himself you could cover up a lot of rot with a paintbrush. But, Mr. Hartkopf said, that would not really exonerate or absolve the property owner of their responsibility. Mr. Henry said if that was the case, in his responses each time to Planning he had said that he did not agree with them and went on to explain what he had accomplished. He said he would think it would behoove Planning to get that issue resolved as they went along.

Mr. Hartkopf asked when he had first purchased the Colonial Inn. Mr. Henry said he did not remember. Ms. Hauth responded she believed it was 2003 but did not know if that was entirely accurate. Mr. Hartkopf asked was that before or after the Demolition by Neglect statute was in place. Ms. Hauth said it was before.

Mr. Hartkopf asked Mr. Henry if he in fact had a master plan for the full and complete renovation of the Inn. Mr. Henry replied he had full intentions of renovating it but they kept changing. Mr. Hartkopf asked if he had a conception of a drawing or something to show how it was meant to look at the end of the day. Mr. Henry replied no, because things continued to change. He said some of the things they had wanted to do may not be possible because of the construction of the Inn, and some of the ideas formulated as far as altering the roof lines had been halted because they were unsure whether they would receive approval for that. Mr. Henry said he had a lot of ideas, but those had not yet materialized for many reasons. Mr. Hartkopf said he fully understood that, but what he was trying to establish was whether Mr. Henry had a vision for where he wanted to be at the end of the renovations and what it would look like, but he was not hearing that he really knew that at this point. Mr. Henry said what he believed he was being asked was did he know what the Inn would look like when the renovations were done, and the answer was that he had a vision but did not know what he would receive approval for or be allowed to do.

Mr. Hartkopf said this Board understood very well the processes and the time spans that lay ahead for the Inn. Mr. Henry said he hoped that was understood, because most people did not seem to understand that it was not the Colonial Inn any more but was a residence. He said he had tried to do what was necessary to get it rezoned but the neighbors had protested, but the physical structure would have to be repaired before they knew what the Inn would finally become.

Mr. Hartkopf asked when Mr. Henry had actually begun efforts to repair the Inn after he had purchased it. Mr. Henry said he could not say offhand. Mr. Hartkopf asked how many workers he employed on the site. Mr. Henry replied it varied from three to five depending on the work being performed at any given time. He said in regards to the eight complaints, he had hired the number of people needed to get the job done within the timeframe and his financial frame. Mr. Hartkopf asked if Mr. Henry believed that number of workers to be adequate given the scope of the project. Mr. Henry said it was adequate for the work being performed at a given time based on what he was being allowed to do under the Ordinance. He said once it was known exactly what he would be allowed to do then he would have a much better picture of how many workers would be needed to complete the work. Mr. Hartkopf asked if he believed a master plan might help him get to an understanding of all of those things that he would be or would not be permitted to do. Mr. Henry said he knew what he was working towards, but was inhibited by the Ordinance.

Mr. Sikes said the timeline document showed extended deadlines and the final column showed a confirmation of completion. He said that only five of the 12 items listed had been indicated as completed. Mr. Henry said he did not know if that list was up to date.

Ms. Hauth replied it was, noting that some of the items were partially completed. Mr. Henry reiterated that he had completed all eight of the items noted in the original complaint letter.

Ms. Lunsford said her question was how those signals had gotten crossed, in that this process had begun with the original complaint and then the Town had done an inspection to make an evaluation and assess what needed to be repaired. She said she was confused about why that was not understood. Mr. Henry replied that his understanding of the complaint was that after he and people who knew construction work had looked it over he had agreed that those items needed to be addressed. He said the Town had done an extensive inspection of the Inn and had come up with some other areas they believed should be addressed, and his concern from what he had read and understood and still firmly believed was that the complaint was what he was addressing, and the Town did not have carte blanche authority to say that other issues had to be addressed. He said you could not conduct a 'witch hunt' to find other things that needed to be done.

Ms. Lunsford said she believed the Ordinance was written in a way that if a complaint was received from a citizen that that complaint was not the only source that required that something had to be done. She said such complaints were reviewed by a committee because there may have been a complaint listed that was not found to be valid, so it was reviewed to make sure that everything needed to be done was included. Mr. Henry said he did not dispute that the letter was a valid complaint, and he did not believe they were disputing what needed to be fixed. He said at some point they may find other things that needed to be fixed, but believed it was important to understand that the issues with the Inn did not just happen. Mr. Henry said he had had two major inspections conducted on the Inn after he purchased it, and did not believe there was anything new that would create work that had not been there before. He said there were enough problems with the Inn that he hated to be stopped in that process, and truly believed that at this point he had satisfied the complaint.

Mr. Hartkopf, referring to the spreadsheet, asked if Mr. Henry had spoken to the Planning Department about those items. Mr. Henry asked if he was referring to the items that the Town had added to the complaint. Mr. Hartkopf responded yes. Mr. Henry said he had spoken to Ms. Hauth about it in terms of the timeframe and the work that needed to be done. Mr. Hartkopf asked if he agreed or disagreed that those things needed to be done to the Inn. Mr. Henry said more than likely the answer was yes, but there also were many things that were not listed that needed to be done. Mr. Hartkopf asked was it fair to say that while Mr. Henry believed those things ought to be done, that he did not believe that they should be a part of this hearing. Mr. Henry said that was correct, that he did not believe it was a part of the original complaint. Mr. Hartkopf said in addition, while Mr. Henry may agree that the additional repairs needed to be done, they were not necessarily at the top of the list of things to do in order. Mr. Henry said generally, the answer was yes. He said there were different needs and different things to be resolved, for instance the plastic sheeting over the front wall. Mr. Henry said they had had no intention of getting into that now but they were trying to do other work on the building which had required that the plastic sheeting be put up to protect the wall. He said there was an obvious order to construction, for instance you could not put on a new roof when the wood underneath was rotten.

Mr. Henry said there were priorities, and he did not know whether the order of things that Ms. Hauth had put in her list to be fixed and that he had received an extension on were decided by the Building Inspector or by Ms. Hauth. Ms. Hauth said it was her decision and she was the one who had issued the order. She said the order was based on her knowledge of construction and she was not ignorant of the order in which things needed to be done. Ms. Hauth said she had consulted with the Building Inspector as well, noting she understood that things needed to be done in the proper order. She said she believed the list had been in a reasonable order in terms of how construction got done. Ms. Hauth said to be clear, the Ordinance focused on the outside of the building, although there may be

many things that needed to be addressed on the inside of the building before some of the items noted on the outside of the building could be addressed.

Mr. Hartkopf said it appeared that there were only two items on the list, items 11 and 12, that appeared to be future items in that they were repairing the gutters and washing and painting the exterior. But, he said, as he looked at some of the other items that were not complete, some were exposed structural elements. Mr. Hartkopf said he would think that things like that were the first things you would want to do in order to shore up the structure. He asked if there were other issues that were keeping Mr. Henry from doing that. Mr. Henry responded it was the order in which such work had to be done.

Mr. Henry said he wanted to summarize why he had been lead to believe that completing the original complaint would have satisfied the temporary problem. He said regarding Ms. Hauth's letter dated January 30, 2009, there was a paragraph that said that based on the staff report and information from Stephanie Trueblood and Don Knight presented at the hearing she had conducted on Friday, January 23, 2009, and considering the comments that he had made in his letter to Ms. Hauth dated January 22, 2009 addressing the Demolition by Neglect complaint, she found that the Inn was undergoing Demolition by Neglect as a result of the conditions noted in the complaint letter. He said that letter indicated that was why the Inn was undergoing the Demolition by Neglect, which was the complaint letter itself and not the additional issues that had been added by Planning.

Ms. Lunsford asked if Demolition by Neglect was a process. Ms. Hauth said it started with a complaint letter and that began the process. She said Mr. Henry had been very clear and up front that from the minute he had begun work under the Demolition by Neglect Order, which was more than 30 days after he had received the Order so the time for appeal had already passed, that he continued to believe that he only had to address the complaint. Ms. Hauth said she had continued to reply that the answer to that was no, and that they were in disagreement about that and he was required to do what was in her Order. She said at that point there was no opportunity or method to bring the issue before the Board of Adjustment because the 30 days allowed for an appeal had already elapsed. Ms. Hauth said the only alternative was to bring it to the Board once the timeframes had expired and Mr. Henry had stopped work, and that was what they had done.

Mr. Hornik said that when Mr. Henry had requested extensions, in regards to items six through 12, had he said each time that he had gotten the extension that he had no intention of doing the work. Ms. Hauth said he had included in his emails requesting extensions that he was addressing the items in Mr. Reese's letter, and he disagreed that the items in her Order were relevant.

Mr. Hartkopf asked was there anyone present who wished to offer testimony on this issue, but there was no response.

**MOTION:** Mr. Sikes moved to close the Public Hearing. Mr. Sain seconded.  
**VOTE:** Unanimous.

**Discussion:**

Mr. Remington said one of the items came down to the interpretation of the word “site,” and that he would certainly have to agree with Mr. Hartkopf that there was a contextual definition that referred to the overall property and not specific spots pointed out in the complaint. He said the other relevant issue was when you looked at Section 21.7.3(b) it said that the Planning Department staff member that made the preliminary investigation may consult at his/her discretion, which was done. He said then in Section 21.7.3(i) it said that based on a determination the Planning Director shall issue and cause to be served upon the owner a list of those items that were deteriorating or contributing to deterioration or deteriorated, so those items had to be based on all the expertise that was brought to bear. Mr. Remington said it did not look to him like there was any basis to say that the repairs were limited to what the person filing the complaint had listed in the complaint letter. He said it appeared to him that the proper procedures were followed, and that the 12 items noted in Ms. Hauth’s January 30, 2009 letter were what needed to be addressed and not the items in the original complaint letter.

Mr. Sikes agreed, noting that the Ordinance was clear and the complaint coming from the citizen had initiated the procedures. He said the word “site” was just another word for property in the Ordinance context, and the Planning Department when making its determination could consult with at its discretion professionals such as architects, landscape architects, engineers, building inspectors, and historic preservationists. Mr. Sikes said that, as had been stated, a layperson noticed something, filed a complaint, the Town had brought in experts to the site, i.e. the property, and Ms. Hauth’s Demolition by Neglect Order had resulted from that process. He said there was an extensive list of repairs, and the Order stated that one or more of those things would constitute Demolition by Neglect, and emphasized that it did not say it had to be two or three or more, but just one. Mr. Sikes said to him that was straightforward.

Mr. Remington said he believed they would all concur that this did not mean that once the Order was issued that you could pile on other items and keep it an ongoing Order. He said once Mr. Henry satisfied the Order, then that Order would be satisfied and anything more would require a separate process.

Mr. Hartkopf said to that point, he did not see anything in the Order that came anywhere close to abuse of the Ordinance by Town staff. He said that Town staff had been measured and reasonable in what they had set forward. Mr. Hartkopf said from his understanding, the repairs were listed from the bottom up and believed them to be how they should be approached. He said in regards to Mr.

Sikes' point that only one of the items was required to constitute Demolition by Neglect, there were actually two.

Mr. Hartkopf said there were two things that bothered him, with the first being his desire to decide in favor of the property owner as often as possible. However, he said, this was a central building to the community and that was known when the building was purchased. Mr. Hartkopf said there were certain expectations of the property owner and believed the property owner was aware of that. He said the other thing that bothered him was that there was no process for such a disagreement, bona fide or not, to be brought before this Board until the end of the process or within 30 days at the start of the process. Mr. Hartkopf said that was of concern to him and he considered that a huge gaping hole in the process. He said he hoped that would be addressed in future.

Mr. Hornik said on that point he would have to disagree one hundred percent. He said the Ordinance provided exactly what the remedy was, which was to bring an appeal forward within 30 days after the Order was made. Mr. Hornik said the way the Ordinance was written, there was opportunity provided by law for an appeal of an Order by the Historic District Commission or by the Planning Director.

Mr. Hartkopf said once they passed that 30-day window, there was no other resource for the property owner. Mr. Hornik said that was why there were statutes of limitations, so that people could not wait for an extended period of time before they appealed. He said there had to be finality to local government decisions and that was the policy behind the time limitations for appeals. Mr. Hornik said he understood the concern, but the Ordinance was consistent with State statutes.

Mr. Hartkopf said he did not believe there had been any abuse of the Ordinance in any way, and did not believe the current Ordinance rewrite had any bearing on this case because they were dealing with the Ordinance as it now stood before them today.

Mr. Hornik suggested that if they were getting close to a decision that they use the worksheet provided as a structure.

Mr. Sain asked if work had taken place on the Inn prior to the issuance of the complaint. Ms. Hauth replied that she knew some work had been done inside the building well in advance of the complaint, but work to address the issues in the complaint began after the complaint and the Order were issued.

Mr. Hartkopf said in reading the worksheet, he believed the issues were Items 1 and 2 or 2b, and believed that Item 2b was what they needed to focus on.

Mr. Hornik said there were a few relevant facts that the Board might want to find. He said the first was that in July of 2008, a complaint had been submitted by Joe Reese that the Colonial Inn property was undergoing Demolition by Neglect. He said subsequent to the filing of that complaint, Planning staff had undertaken an investigation of the site in accordance with the Demolition by Neglect Ordinance and found that there was enough evidence to suggest that the Inn was undergoing Demolition by Neglect. Mr. Hornik said following that recommendation by Town staff, the matter was brought before the Historic District Commission which likewise determined that there was probable cause that the Colonial Inn was undergoing Demolition by Neglect. He said that pursuant to the Town's Demolition by Neglect Ordinance, the HDC (Historic District Commission) directed the Planning Director to conduct a hearing to determine whether the Colonial Inn was undergoing Demolition by Neglect. Mr. Hornik said that hearing was conducted on January 22, 2009, and Mr. Henry was notified of the date and time of the hearing. He said Mr. Henry had not attended the hearing, and the hearing was conducted by the Planning Director as ordered by the HDC, and that on January 30, 2009, the Planning Director issued her decision and Order determining that based on the Planning staff's investigation the Colonial Inn was undergoing Demolition by Neglect. Mr. Hornik said the Order listed 12 items that were to be completed by the owner of the Colonial Inn in order to remedy the Demolition by Neglect Order.

Mr. Remington said he believed that the processes required by the Ordinance had been followed. Mr. Hartkopf agreed.

Mr. Hornik said the last pertinent fact that he wanted reflected in the record was that Mr. Henry had filed his appeal which was dated December 17, 2009. He said that was the appeal that was before the Board tonight. Mr. Hornik said that completed Item 1, and they should now move to item 2a or 2b.

Mr. Remington said in terms of 2a or 2b and how the relevant facts of the Ordinance were applied, he believed that first the standards under Section 21.7.2 went with the criteria used by the Town to get a finding. He said it was under Section 21.7.3(b) that the word "site" referred to the property, and in 21.7.3(i) it reflected how orders to repair could address all aspects that were found to be deteriorating as a result of the inspection.

Mr. Remington asked should they be applying 2a or 2b, noting they were specifically saying that the order to repair was within the purview of the Ordinance. Mr. Hornik said he was not sure which it more comfortably fell under, but he would be comfortable with 2a(2) and relying on the same sections of the Ordinance Mr. Remington had just mentioned. He said that Section 21.7.2, Paragraphs (a) through (j) contain the standards applied to determine whether a property may be undergoing Demolition by Neglect. Mr. Hornik said he believed the dispute came down to Mr. Henry's position that the word "site" referred back to each of the seven specific locations on the structure that were referred to in Mr.

Reese's original complaint letter. And, he said, he believed staff's interpretation was that "site" referred to the entire Colonial Inn property. Mr. Hornik said the complaint letter, while it was the start of the process, was not a limitation on the issues that may be investigated by staff once a determination had been made that a property may be undergoing Demolition by Neglect. He said once the staff was on the property and conducting its investigation, then its purview was to look at the entire site to determine that, and if so, what conditions were causing the property to undergo Demolition by Neglect. Mr. Hornik said the process then related not just to the initial conditions that were noted in the complaint letter, but may include any conditions that were discovered as a result of the investigation that was prompted by the complaint letter.

Mr. Hartkopf said then based on the wording in the various Ordinance sections noted, the word "site" referred to the entirety of the lot in question. He said he believed they had to address the difference of opinion in the wording and to address the appellant's position. Mr. Hartkopf said based on Mr. Hornik's explanation, the word "site" did refer to the entirety of the Colonial Inn property.

Mr. Remington said to pull the other piece of that together, the order to repair under item (i) should consider all the items in 21.7.2, Paragraphs (a) through (j).

Mr. Sikes stated that 21.7.3(g) also stated that the HDC would review complaints and the staff report at a regular meeting, so it actually made a difference between a complaint and the staff report as being two separate things. He said in addition to that, it said that if the HDC found that the structure was undergoing Demolition by Neglect, it should file an order so that there was an additional step in the process.

Mr. Hartkopf noted that had been included in the timeline provided. Mr. Hornik said the Board should not leave out any reason for a decision, so it was better to include it than to exclude it even if you believed it was not necessary, because someone else may believe it to be necessary.

**MOTION:** Mr. Sikes moved to uphold the decision of the Zoning Officer and deny the appeal of Francis Henry of Colonial Inn, LLC, and in so doing refer to the timeline of the initial complaint, staff's report and investigation, the HDC's review, agreement on the staff's investigation and findings, and the subsequent order to repair, the lack of the applicant's appeal in the required 30 days as stated in the letter to the applicant on January 30, 2009, and the findings of fact regarding the conditions requiring a Demolition by Neglect in Section 21.7.2, Paragraphs (a) through (j); and, it is the Board's conclusion that in Section 21.7.3(b) the mention of the word "site" referred to the entire property and not to specific locations of complaints by a citizen. Mr. Sain seconded.

**VOTE:** Unanimous.

**ITEM #7:** **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 swore in Elizabeth Read, Melissa Booth, Jeff Thompson, David Taylor, and LeAnn Brown. Mr. King noted that the Town Attorney had advised that the Board hold a public hearing for this item.

**MOTION:** **Mr. Sikes** moved to treat Item #7, Review of the Parking Plan for the Orange County Justice Facility, as a Public Hearing. **Mr. Remington** seconded.

**VOTE:** Unanimous.

Staff Note: Throughout this discussion it is stated at times that the Orange County Justice Facility expansion project received a "Special Use Permit." This is incorrect. The project received "Site Plan approval" and a "Special Exception Permit" for building height from the Board. Ms. Hauth provided a brief overview of the issue, noting that the County had applied for a site plan in 2006 for an addition to the Justice Facility to create some additional court and office space adjacent to the new County courthouse. She said the minutes of the November 8, 2006 Board of Adjustment meeting had been provided in the packet of materials before the Board. Ms. Hauth said when the Board approved the site plan in 2006, there was a condition attached that there be a specific parking plan submitted related to the property because in the course of that deliberation there was a promise made to address some of the parking situation on the site by using park and rides and shuttles for staff. She said that had been somewhat nonspecific and the Board had asked to see more specifics on it once it was closer to the time of actual implementation.

Ms. Hauth said the packet contained a previous letter from the County discussing how they believed they had met the parking needs, the zoning permit, the approval letter for the site, some excerpts from the downtown parking study that staff had believed was relevant, and the current parking proposal from Orange County. She said since the time of the site plan approval the County had had a change of heart about the shuttle service and were attempting to meet the ordinance requirements in a different manner.

Ms. Hauth said to be clear, while the staff recognized that they had been creative in the past, many times looking at other sites with parking requirements, at this point staff did not feel that the proposal before the Board was adequate to address the safety and other concerns that would be raised by this site. She said they had shared the entire packet of information with the Town Board as they had some interest in downtown parking by having commissioned the downtown parking study, and had briefly discussed it at their meeting on Monday night of this week. Ms. Hauth said the Town Board had expressed their disappointment with the

proposal and how it attempted to meet the ordinance, and had said they were more than happy to have sufficient time to sit down with all relevant parties and discuss a more complete and more creative solution to the issue.

Mr. Sikes asked what other properties the Town had allowed adjustments for in terms of parking requirements. Ms. Hauth said they had done so when the Triangle Sportsplex was first built in terms of how they calculated the required parking, noting the Ordinance had not been particularly clear about such things as swimming pools and skating rinks and how to calculate them. She said those buildings had significant mechanical areas that they had excluded from some of the parking requirements. Ms. Hauth said she believed they may have repeated that with the addition to the Senior Center.

Ms. Hauth said today someone had asked how parking was calculated when the Link Center was built, so they had gone back to look to see how that had been done. She said that seemed to be completely and totally 100% by the ordinance as it was written. Ms. Hauth said she did not have the information with her, but she recalled that when the Battle Courtroom was added the Town had likely allowed the calculation of the on-street parking to count toward the site meeting the parking requirements at that time.

Ms. Hauth said almost anytime they got a use that was very diverse inside, they would attempt to break up those uses and apply different standards. She said for example, you could consider that the Courthouse had office uses and assembly uses. Ms. Hauth said they had not chosen to take advantage of that in this case, but it had been done in the past. She said the Town had also allowed off-site parking from other sites, such as with the Webb House when it was a bed-and-breakfast, and they had allowed churches to have agreements with a remote site owner to meet their parking requirements. Ms. Hauth said her point was that both staff and this Board had been flexible in the past with different creative methods to satisfy parking.

Mr. Hornik said there was no courthouse parking standard in the Zoning Ordinance. Ms. Hauth said that was correct. Mr. Hornik asked had staff looked at and tried to approximate the requirement such as comparing the Courthouse to a church or something similar. Ms. Hauth said they had offered that as a potential solution as they had gotten closer towards having a parking plan, but what the County had come back with was eliminating some of the mechanical areas. So, she said, they had not said that a certain number of square feet of the building, i.e. the courtrooms, were more like a church or an assembly facility and the remainder more like office. Ms. Hauth said they had not done that math although she had offered it as an option. She said they had also looked at other county seats to find other courthouse standards, and had been able to identify one in Asheville and one in Durham. Ms. Hauth said the problem was that similarly sized county seats did not have separate courthouse requirements for parking.

Mr. Hornik said under the most generous County interpretation of the Town's parking regulations, how close did the Justice Center site plan come to meeting that most generous interpretation. Ms. Hauth said the one now before the Board was the most generous, and if you excluded moving off site, or to the west side of Churton Street, it still put the County 106 spaces short of the requirement. She said that was with allowing the reduced square footage by taking out some of the mechanical area and allowing them to count the on-street spaces towards their parking needs. Ms. Hauth said they had drawn the line around the area that was shown on the site plan, so it included the building that was the Justice Facility, the building that was the Sheriff's Office that was now the District Attorney's Office, and the Public Market House. She said they had not gone over onto the Link Center property and counted any of those square footages or any of that parking into the map for this site although they were willing to do that.

Jeff Thompson, Value Engineer for Orange County, stated he was present to speak for the County and was available to answer questions. He noted that David Taylor with Corley Redfoot Zack was also present and that Mr. Taylor had also been present during the meetings in 2006.

Mr. Hornik asked what had happened to the park and ride plan. Mr. Thompson said that due to economic deterioration the park and ride shuttle, which was supposed to have been funded by a grant from the North Carolina Department of Transportation, had not materialized and the County did not have the funds to dedicate towards a shuttle. He said there was a public transportation line, the Chapel Hill Transit 420, that ran stops to that site, and they were willing to encourage all court visitors to use that as much as possible. Mr. Hornik asked did they know what the timing was on the bus route, and if it made sense for County employees to make use of it. Mr. Thompson said they could absolutely make use of that bus. Mr. Hornik asked what they planned to do to encourage employees to use that bus service. Mr. Thompson said they could encourage it, but they could not force it. He said they were encouraging through the 21 parking passes issued to the east campus employees to park in the deck, because they were finding that they had a surplus of spaces among the 120 spaces that they had leased from the Eno River Parking Deck owner.

Mr. Hartkopf asked about the parking lots by the Tax Assessor's offices, and asked if those buildings were still owned by Orange County. Mr. Thompson said the adjusted calculations for the Link Center had excluded the lower level which was going to hopefully be a permanent Commissioner's Chambers. So, he said, they were counting only the first level. Mr. Thompson said the Government Services Annex was partially full with the Board of Elections, and they had also pulled out the attic and basement spaces of that building because they could not utilize those spaces. He said, as Ms. Hauth had alluded, they had focused on the District Attorney's Office, the former Sheriff's Office, and the Justice Facility, because if they pulled in the additional parking for the Link Center and for the Government Services Annex the numbers did not get any better. Mr. Thompson

said they had effectively increased the square footage but they had not increased the employee loads for those buildings.

Elizabeth Read, the Executive Director of the Alliance for Historic Hillsborough, stated that she was also an ex officio board member for the Chamber of Commerce, and was speaking tonight on behalf of both organizations. She said the Chamber Board had voted unanimously today in opposition to the County's amended request and were very concerned that the request had been made. Ms. Read said she had worked with Town staff to provide feedback on the Town's parking study, and the study was waiting for the County's final parking plan in order to be finalized. She said they had successfully marketed Hillsborough as a day trip destination, and visitors were encouraged to park on Cameron Street. Ms. Read said those spaces had been identified by the Town as the ideal spaces for visitors to park for extended times to encourage uninhibited shopping and dining, and not as all-day, every day, courthouse employee parking. She said they were absolutely opposed to the County's request to allow Margaret Lane and Cameron Street spaces to be applied to reduce the County's parking deficit.

Ms. Read said they believed those spaces were beneficial to the long term, economic vitality of Hillsborough. She said current capacity levels of the Eno River Parking Deck should have no bearing on this decision, as traffic patterns in the deck would be drastically altered once the courthouse was in full use. Ms. Read said in addition, passing out additional tags to the same number of spaces in the parking deck did not add any additional spaces to the count; it simply removed spaces that had been previously allocated for other uses.

Ms. Read said instead of encouraging court visitors to use the Durham Tech park and ride lot, employees should be the ones encouraged to use the park and ride lot. She said that County employees could use the park and ride lot with the existing 420 bus, noting that a private shuttle was not necessary and would only duplicate the 420 route. Ms. Read said perhaps the County could develop an employee ridership discount or waiver through its partnership with Triangle Transit Authority. She said increased ridership would go a long way in the continued health of that route, and could result in the service growing to increase the number of buses on the route and decreasing the time between each bus.

Ms. Read said court visitors would often be visiting Hillsborough for the first time, and it was unlikely that navigating the park and ride system would be used by one-time visitors or those using the courthouse for only a few hours. But, she said, the County had outlined no specifics as to how it intended to encourage County employees and court visitors to use the park and ride lot or the Eno River Parking Deck. Ms. Read said without a specific plan a free-for-all situation would be created. She said one solution could be to use the parking deck, noting the available spaces seemed to provide a logical solution to the problem and the County could lease additional spaces in the deck to meet the necessary parking requirement.

Ms. Read said it was clear that the County's parking plan did not meet the current ordinance requirements. She said the County's proposal created a system that required individual business owners and the Hillsborough Police Department to be the "bad guys" for the County, because the County would not be providing adequate parking and others would be left to tow and ticket the mess created.

Ms. Read said they understood that the solutions suggested might require additional planning within County staff, and because of that they believed it was prudent to recommend that the Board of Adjustment deny the plan as it was currently proposed or continue the case to allow the County to return with parking options that allowed for more suitable parking alternatives. Ms. Read said that would include both identifying proper spaces as well as detailing how the parking plan would be communicated to both employees and visitors to the facility.

Melissa Booth, a downtown merchant, said she was representing the downtown merchants of historic Hillsborough, particularly businesses in the 100 block of South Churton Street. She said that it was their position that the County's request to amend the parking plan be continued to a later date. Ms. Booth said the County's plan was lacking critical information for making an informed decision, and the assessment of currently available parking was fundamentally flawed. She said additionally the amended request was presented in isolation and ignored the needs of the Town and its businesses. Ms. Booth said finally, the plan did not meet the requirements of the law as currently defined. She said many of the County's functions, particularly the court functions, were being performed elsewhere, and asked when the Justice Facility was completed how many employees would be working there and what would be the daily visitor count. Ms. Booth said without that information it was impossible to make an informed assessment of the plan, and the Board of Adjustment could not ascertain that such a plan would provide safe conditions for motorists and pedestrians which was part of its responsibility as defined in the Zoning Ordinance.

Ms. Booth said that much of the argument put forth by the County in its amended plan rested on its claim that there was a practical abundance of available parking. She said that assessment was based on the current functioning of the facility, but as the renovations were completed and the County functions moved back to Hillsborough, the demands on parking would change dramatically. Ms. Booth said it was a fundamentally flawed argument to claim that the current parking availability would meet demand when the County had taken no steps to define what the future demand would be. She said that an accurate assessment of parking supply and demand had to take into account future demand, and not current demand. Ms. Booth said that anyone who had searched for parking when traffic court was in session could attest that locating parking was very difficult.

Ms. Booth said the County presented its request without taking into consideration the parking needs of the Town and its businesses. She said the County proposed that the street parking on East Margaret Lane and South Cameron Street

essentially be treated as permanent parking for the County facility. Ms. Booth said that ignored the reality that those parking spaces were shared with the Town and its businesses, particularly the Alliance for Historic Hillsborough. She said those 40 spaces were not available for the exclusive use of the County and they should not be allowed to be considered as such.

Ms. Booth said according to the Town's Zoning Officer, the County's parking plan did not meet the letter of the law as currently outlined by the Ordinance. She said granted the Zoning Officer felt that the current ordinance should be changed and had indicated that it was currently being rewritten; however, it was not within the Board's authority to base decisions on what the law might become. Ms. Booth said the Board must make its decision within the current framework and the letter of the law, and as such it could be argued that the County's plan should be rejected outright. She said, however, that they recognized the need to find a workable solution, and given the fiscal concerns of the County it was important that a solution was found that did not put undue strain on the budget. Ms. Booth said at the same time, the safety of motorists and pedestrians must be taken into account and that an accurate assessment of the supply and demand of parking be made.

Ms. Booth said to balance those concerns it was the position of the downtown merchants of historic Hillsborough that the hearing of the County's request to amend the Justice Facility parking plan be continued to a later date. She said that would allow the County to present an accurate assessment of their needs, both for employees and visitors, and allow the Town to finalize revisions to the Zoning Ordinance.

Mr. Thompson, in response to some of the remarks made, noted that last year information regarding traffic counts and demand data had been passed on to staff.

LeAnn Brown, counsel for and speaking for the owners of the Eno River Parking Deck, stated that she had been asked to relate to the Board some of their concerns as a result of the County's plan as written. She said one of their concerns had to do with double counting the hang tags, and her concern from having worked on the County's project when they had approval for the deck area was that the Site Special Use Permit for that deck contemplated a certain number of spaces be allocated to the people there. Ms. Brown said even if people were to look around and thought that there seemed to be extra spaces there, they were concerned about double tagging and the implication that would have for their compliance with the Special Use Permit. She said if there were going to be changes in the parking downtown, then those were things they could work with them on as far as modifications, but they did not want assumptions made about parking in the deck that would put them out of compliance.

Ms. Brown said another concern as the Board considered the parking plan and an appropriate solution was that it was always important for the Town to be sure that

there was some legal requirement for spaces that were identified to ultimately be available long term. She said she hoped they would keep that in mind.

Mr. Remington asked what was meant by double tagging. Ms. Brown said that as she read the County's proposal, it included providing 21 tags for the spaces leased by the County for the campus across the street. She said those spaces were a part of the spaces allocated to the Library and the Orange County campus. Ms. Brown said giving tags to employees of a different facility to park in the same spaces was double tagging, in effect counting the spaces twice. She said as counsel she would not want to see a violation of their Special Use Permit because they were counting spaces twice.

In response to a statement by Mr. Hornik regarding the County's use of spaces already allocated, Ms. Brown said there were likely spaces available in the deck area that could appropriately be allocated to address some overflow from across the street, but that was a process that required more than just the County writing down that they were going to use those spaces. She said that required a legal relationship that made those spaces available no matter who owned the deck, and also allowed you to think through the number of spaces available and whether on that Central Commercial zoning side the modification would be more appropriate and not on the Office and Institutional zoning side which was the Justice Facility. Ms. Brown said they were not opposed to being part of the solution and were not opposed to working with the County, but did believe there needed to be some parameters that protected the Town, protected the citizens, and protected the deck's Special Use Permit.

Mr. Hartkopf asked how many spaces within the deck were already leased. Ms. Brown said 200 were leased to the County.

Mr. Thompson stated that 120 were leased for employees, and the balance to employees and the public. He said the 21 spaces he had referred to were behind the gate which was only available to County employees and were on the top floor of the deck.

Mr. Hartkopf asked how many spaces total were in the deck. Ms. Brown responded 409, so there were 209 that were not leased to the County or anyone else, and were fee spaces for public use that were identified in the permit. Ms. Hauth said those 209 spaces were mandated by the site plan for the activities on the west campus. She said all of those 209 parking spaces were allocated under the Ordinance to either the surface lot for the parking deck or the surface lot in front of the library, and were allocated to Weaver Street Market or to the occupants of the Gateway Center, the County office building, and the library.

Mr. Hartkopf said then the spaces already leased by the County were allocated to those uses, so the entire 409 spaces were basically already allocated for some use. Mr. Thompson said there were also surface parking spaces that added up to 452

for the entire campus. Ms. Hauth said those came from the asphalt parking lot beside the Weaver Street Market. She said if you counted everything on that side that had been constructed in the last three years, they were all spoken for under the Town's Ordinance.

Mr. Hornik said notwithstanding that they often saw empty spaces in the deck, under the Town's Ordinance as written now, that was the number required for those existing uses. Ms. Brown said there were more spaces there than the Ordinance would have required, but all of the spaces that were there were spaces that were required to comply with the permit as issued. So, she said, there would need to be some work with the permit if they determined that there was a different way to use those spaces. Ms. Brown said they were not saying there may not be a different way; they were saying that it was a cooperative process with all parties included to make that happen in a realistic way.

Mr. Hartkopf stated the Board could consider continuing the public hearing, or they could close the public hearing and deliberate on the evidence provided. He said his preference would be to continue the public hearing, noting that rejecting the parking plan outright may put the Town's Ordinance at peril. Mr. Hornik said the Board could reject the plan, but was not sure they wanted to do that. He said he believed they were trying to find some creative alternatives, and it was his recommendation to continue the public hearing, because he believed they needed to hear more from various sources to see if there was some creative solution they could arrive at. Mr. Hornik said based on the information in front of the Board tonight, there was only one choice they could make that he could defend as their counsel, and he did not believe that was a position anyone wanted to be in at this point.

Mr. Hartkopf said to make the issue very clear making the general public park at Durham Tech or Wal-Mart in order to pay a traffic citation or appear in court was not a choice that was on the table for consideration. He said that was not what was discussed in 2006 and from his perspective was a non-issue. Mr. Hartkopf said they were somewhere in the neighborhood of 168 spaces short, and he wanted to see a plan that freed up 168 spaces that did not include on-street parking. He said the parking was for the public, and he was sorry that County employees would apparently have to bear the brunt of that situation. However, he said, those were the stakes when the Conditional Use Permit was issued. Mr. Hartkopf said for the County to think it was okay now to say that they had not gotten the grant to get the bus and therefore could not afford it and to think that the citizen coming from a different county to pay a traffic ticket he got on I-85 had to park at Durham Tech and try to find his way to traffic court was unconscionable. And, he said, it was a hazard to the public because someone in that situation was likely not in a great frame of mind and if they were unable to find a parking place, had difficulty finding Durham Tech, and was now missing their court date and likely held in contempt of court, was more than just an

inconvenience, it was unacceptable. Mr. Hartkopf said he found it hard to believe that the County had even suggested that.

Mr. Sikes said he was curious as to the logistics of a creative solution. He said first, was it even feasible. Mr. Sikes said with the allocation of the spaces and other issues, if there was extra allocation due to previous permits then the question became was there enough and how flexible could they get. Mr. Sikes said if there were physically enough spaces, could they be allocated specifically for this site to meet the Ordinance. He asked what the process was to make that attachment to the site, and would the County need to purchase the deck or purchase extra spaces and place signage indicating what was reserved for court uses.

Mr. Hartkopf said he believed that was possible, and was actually the vision they had had in 2006 when this was first discussed. He said he believed the County's solution would have to look at every employee getting a number for every car that an employee drove, and that that number was tied to a particular space. Mr. Hartkopf said that employee would park only in that space, and if that space was at Durham Tech then that was where they would park. He said some preference to park in the deck could be given to employees that carpooled, noting it was very hard to control such a plan without large fees for towing but it could be done. Mr. Hartkopf said he believed the County would have to develop some plan that was similar, noting that he did not believe just encouraging employees or the public to park elsewhere was feasible.

Mr. Sain agreed, noting that expecting the public to park in satellite lots was totally wrong. He said the parking deck was relied on by merchants for the public to park and visit their businesses. Mr. Sain said to close the businesses and the public out of that opportunity was very wrong.

Mr. Hartkopf said Mr. Sain was exactly right. He said like it or not they wanted people to visit and enjoy Hillsborough's restaurants, their art and their history, and they had to have places available for those visitors to park and that was why the parking deck had been approved.

Mr. Remington said the 2006 meeting predated his membership on the Board so he was not a party to the history surrounding the discussion other than the minutes from that time. He said if the County had not received the grant, there was public transportation so there had to be some way that that public transportation could be used. Mr. Remington said he would like to see some way of ensuring that the deficit of spaces was answered by County employees using park and ride. He said the Town could not demand that of the public, adding that was "totally backwards." Mr. Remington said if the public hearing was continued they needed to be clear on what the Board was asking. He added that the on-street spaces should not be counted towards the County's requirement.

Ms. Hauth asked if the Board wanted to place some framework on the creative solutions that might be put forward. She said she was hearing that the Board preferred that County employees park elsewhere and that the on-street parking not be counted, and asked were there other limitations the Board wanted to place on them. Ms. Hauth asked was the Board okay with recalculating square footages within reason, were they okay with expanding the scope to be more property if it helped, were they okay to tie the two properties together if that helped, and were they okay to perhaps look at different parking standards that were not now in the Ordinance. She said she felt that with each one of those suggestions they were getting “a little farther away from home.” Ms. Hauth said she was looking for some guidance on how far to go.

Mr. Hartkopf said he would encourage Ms. Hauth to err on the side she knew to err on. Ms. Hauth said that would be staying as close to home as possible. Mr. Hartkopf responded “absolutely.” He said the County may look at this from a different angle and realize there were spaces available that they were not aware of and could come back a year from now and ask for a modification on the ruling. He said he believed that was perfectly appropriate and doable. Mr. Hornik responded where there was a will there was a way to do it. He said it may take some creative thinking to arrive at a creative solution, but if there was a creative, worthwhile, and workable solution there would be a way, whether by this Board or the Town Board or both, to do it. But, he said, it may not be easy and it may not be fast.

Mr. Remington said one of his concerns was the pictures they could create so easily. He said if they were to decide in the Ordinance rewrite that the parking requirements needed to be changed or calculated differently, all of a sudden by a matter of fiction they had made some needs go away. Or, he said, it would be the other way around in that because the Town required more spaces than others did then by fiction they had created a need that was not there. Mr. Remington said based on what they saw at the current Wal-Mart and other places his sense was that perhaps the Town tended to require more than what was needed to be required. He said in recognizing that, the creativity could err on the side as far as it was safe to do so. But, Mr. Remington said, he did not believe they should be kidding themselves in that the street spaces should be left available for visitors and customers of downtown businesses. He said that if people would need to park and ride, then it should be employees.

Mr. Sikes said in regard to the Ordinance, was it similar to what retail would require. Ms. Hauth responded no, they had treated it like an office in that they had said there should be one space per employee and one space per 300 square feet of gross floor area which was why they had gone back and recalculated gross floor area. She said that was because you could see that the courtrooms were fairly large, they were not anyone’s office and everyone in those rooms had an office somewhere else. Ms. Hauth said the people there might also be out in the courtyard or in the lobby area, and the question became were they saving them a

space in both places, and the answer was they might be. She said there were a number of ways to look at it, and that was where you got into the fiction that Mr. Remington had spoken of. Ms. Hawth said they did need to be careful about that, and that was why she had said if they took the courtrooms and counted those more like they were meeting space, then the parking would not be based on the square footage but on seating. She said in other words, they had not done all the variety of math that could be done.

Mr. Sikes asked if this courthouse would eventually get the traffic court now in Chapel Hill. Ms. Hawth said that was the intent and was the reason behind adding the two courtrooms.

Mr. Thompson said they had not had traffic court since the deck had been completed, nor since the expansion had been completed. He said their demand estimate was 100 people on average per day visiting the courthouse, and that would likely spike a bit at certain times but they could not estimate what that might be. Mr. Thompson said those spikes would occur between 9 a.m. and noon on Tuesdays and Thursdays, as put out by Planning staff in October.

Mr. Sikes asked did that include traffic court coming back to Hillsborough from Chapel Hill. Mr. Thompson responded yes. He said they did not yet have the demand that they would have once that occurred.

Ms. Hawth said the one group that they truly needed to hear from during this discussion was the people who ran the court system. She said one representative from the court and one from the Bar Association had spoken to the Town Board when the Town Board had received the preliminary parking study, and both had argued for close parking for various reasons. Ms. Hawth said how the court operated and how it could be tweaked may need to be looked at again, and perhaps there were operational things that if changed might spread out some of the demand. She said she believed she had a good understanding of what should be brought back for the Board for further discussion.

Mr. Hartkopf said in regards to “staying close to home” they could “open the gates a little wider” but it would be very hard to close them again.

Mr. Sikes said as a downtown business person with his office above Bandido’s restaurant, he often relinquished his leased space to others.

**MOTION:** **Mr. Remington** moved to continue the Public Hearing to April 14, 2010. **Mr. Sain** seconded.

**VOTE:** Unanimous.

**ITEM #8:** **Committee and Staff reports.**

**Planning Board:**

Mr. Remington said at the last meeting they had discussed the Ordinance rewrite, and spent some time talking about the results of the internet survey. He said Planner Stephanie Trueblood had provided a presentation on the work she was doing on the proposed Design Manual, and some of the discussion was on how generally it would apply and whether there would be different districts that might have different standards, and if it would apply to residential. Mr. Remington said it appeared that might involve some new directions.

Ms. Hauth said they would soon receive their first real draft of the Unified Development Ordinance (UDO), and because the Planning Board had delayed its meeting by a week they would have two weeks to review it prior to meeting. She said they would be meeting again March 25, 2010 and would conduct their first review of the draft at that time. Ms. Hauth said a public workshop was scheduled for April 10, 2010 from 9 a.m. to noon at the library.

Mr. Hornik said right now, they were focusing on structural changes on how the document was laid out, merging the Subdivision Ordinance with the Zoning Ordinance, and making sure any duplicate language or inconsistencies were removed. He said they felt comfortable that the two documents were now fairly well blended and in an order that made sense, so now they were beginning to look more closely at specific language and making sure that the language said what they wanted it to say. Mr. Hornik said he did not expect any major policy changes at this point, although there may be some policy changes as time went on. He said they were trying to make sure that common phrases were used throughout, that those common phrases meant the same thing every time you saw them, and the like.

Ms. Hauth said the document was about 300 pages, and said if a Board member wanted a printed copy to let her know and she would provide one. She said she would welcome any suggestions the Board members would like to make in regards to the draft.

Mr. Hornik said this was the Board's opportunity to say that something in the Ordinance had never made sense to them, or something could be said in a different way, or they had a question about how something was addressed in the Ordinance. He said now was the time to offer those things, noting that he and Ms. Hauth had been keeping a list over the years that had over 300 items that they might want to do or say differently or were inconsistent or needed to be addressed some other way. Mr. Hornik said some were minor, but some were not so minor.

Ms. Hauth said they expected to receive the draft by the end of the day tomorrow, so hopefully it would be available to everyone after that time.

Mr. Remington said the entire document should be shorter than the two documents combined because there had been much duplication between the two documents. Ms. Hauth said in addition, they were pulling out a lot of information

that would now reside in an Administrative Manual, so the end document would be shorter.

**Rail Station Task Force:**

Mr. King stated that the Rail Station Task Force would be holding an Open House on March 31, 2010 from 6:00 to 7:30 p.m. at the new library, and they would likely open the doors at 5:30 to allow people to look over the conceptual drawings for the Town-owned tract and the greater Collins property. He said right now that would consist of maybe a transportation network and a list of what the Town believed would work best on that property to the south of the Town-owned tract.

**ITEM #9: Closed Session as authorized by North Carolina General Statute Section 143-318.11(a)(3) regarding Update on Legal Matter involving the Bonnie Schaefer and Robert D. Bevan, III (Webb Grove) case under Attorney-Client Privilege.**

**MOTION:** Mr. Hartkopf moved to enter into Closed Session to receive an update from the Town Attorney regarding Webb Grove. Mr. Sikes seconded.

**VOTE:** Unanimous.

Mr. Hornik gave the Board an update on this legal matter and answered Board questions.

**MOTION:** Mr. Hartkopf moved to return to Open Session. Mr. Sikes seconded.

**VOTE:** Unanimous.

**ITEM #10: Adjourn.**

Mr. Sikes moved to adjourn the meeting at 10:07 p.m. Mr. Remington seconded. The motion was adopted unanimously.

Approved:

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